

**CITY OF MIDLAND, TEXAS
BRIEFING SESSION AGENDA**

August 14, 2012 – 9:00 A.M.

Basement Conference Room – City Hall
300 North Loraine
Midland, Texas

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

1. Receive a presentation from Lisa Grissom on the recent Tall City Blues Festival.
2. Receive an update from Elaine Magruder on the I-20 Wildlife Preserve and Jenna Welch Nature Study Center.

AGENDA FOR CITY COUNCIL MEETING
August 14, 2012 – 10:00 AM
Council Chamber - City Hall

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

OPENING ITEMS

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

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - a. Presentation of a Proclamation for National Immunization Month.

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 24, 2012.
 - b. Special Meeting of July 26, 2012.
6. Receive for information and possibly discuss third quarter Fiscal Year 2011 - 2012 Investment Report. (FINANCE)
7. Consider a resolution authorizing the execution of a 2-year purchase agreement for uniforms for City of Midland employees from the low bidder, Cintas-RUS, L.P., at a total cost of \$96,505.50. (GENERAL SERVICES) (2012 - 241)

8. Consider a resolution approving the purchase of assorted playground equipment at a total cost of \$137,037.85; and authorizing the execution of purchase and installation agreements for the playground equipment purchased herein that requires installation. (GENERAL SERVICES) (2012 - 242)
9. Consider a resolution authorizing the execution of a contract with Jones Bros. of Odessa, Texas, for the project described as Reconstruct Executive Apron, Area B (7081) at the Midland International Airport; the Council previously authorized advertisement for bids for the project; the City's share is \$326,303.00 in which 18,000.00 was previously appropriated; and appropriating funds. (AIRPORTS) (2012 - 243)
10. Consider a resolution authorizing the City Manager or his designee to execute on behalf of the City of Midland, all contracts and agreements with the State of Texas, represented by the Texas Department of Transportation, and such other parties as shall be necessary and appropriate for the implementation of the project described as Airpark Hangar Expansion which is an improvement contained in the Airport Capital Improvement Program. (AIRPORTS) (2012 - 244)
11. Consider a resolution authorizing a right-of-way license with the City of Midland, Texas and WTG Processing, L.P.; said right-of-way license is for the purpose of entering City of Midland's right-of-way for placing, constructing, operating, repairing, maintaining, replacing and removing, three (3) petroleum products and petroleum by-products pipelines, for the transportation of petroleum products and petroleum by-products and one (1) pad site location for the use of a compressor station, and to further have the right of ingress and egress at convenient points; the pipeline is located within the City of Midland right-of-way, 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 shall automatically renew at the end of the term for one additional five (5) year term upon 120 days written request prior to expiration. (AIRPORTS) (2012 - 245)
12. Consider a resolution authorizing the execution of an agreement in lieu of annexation between the City of Midland and GGB Leasing, L.P., STG Development, LLC, and STG Development II, LLC, regarding two tracts of land described as an 81.04-acre tract located in Section 11, Block 40, T-2-S, T&P RR Co. Survey and a 152.2-acre tract located in Sections 1, 2, 11 and 12, Block 40, T-2-S, T&P RR Co. Survey, all in Midland County, Texas. (CITY ATTORNEY'S OFFICE) (2012 - 246)
13. Consider a resolution authorizing the acceptance of a 15-foot water line easement located in Sections 2, 11 and 12, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas; and ordering recordation by the City Secretary. (CITY ATTORNEY'S OFFICE) (2012 - 247)

14. Consider a resolution authorizing the City of Midland to accept a donation in the amount of \$21,093.00 from the Friends of the I-20 Wildlife Preserve and Jenna Welch Nature Study Center in order to assist in the construction of the I-20 Wildlife Preserve Pavilion and Restrooms Project, and appropriating funds. (COMMUNITY SERVICES) (2012 - 248)
15. Consider a motion on a request by Schumann Engineering for Bonito Estates – Section 2, to approve items requested for deferral in the amount of \$343,830.90, and to waive the associated public improvement guarantee. (ENGINEERING SERVICES)
16. Consider a motion on a request by Schumann Engineering for Bonito Estates – Section 3, to approve items requested for deferral in the amount of \$543,016.80, and to waive the associated public improvement guarantee. (ENGINEERING SERVICES)
17. Consider a motion on a request by West Engineering for Mustang Trail Addition, to approve items requested for deferral in the amount of \$115,824.10, and to waive the associated public improvement guarantee. (ENGINEERING SERVICES)
18. Consider a resolution authorizing a right-of-way license with the City of Midland, Texas and Midmar Gas, L.L.C.; said right-of-way license is for the purpose of entering City of Midland's right-of-way for the purpose of installing 1 six inch poly pipeline to gather gas from an oil and gas lease under a portion of Holiday Hill Road; the pipeline is located within the City of Midland right-of-way, Section 6, Block X, H.P. Hillard Survey, and Section 24, Block 40, T-1-S, T&P RR Co. Survey, Midland, Midland County, Texas; the license term is for twenty-five (25) years, commencing with the date of this license and may renew at the end of the term for one additional twenty-five (25) year term upon 90 days written request prior to expiration. (ENGINEERING SERVICES) (2012 - 249)
19. Consider a motion on a request by Landgraf, Crutcher, and Associates for the Los Conchos Estates (Phase 2), to approve items requested for deferral in the amount of \$227,550, and to waive the associated public improvement guarantee. (ENGINEERING SERVICES)
20. Consider a motion on a request by West Company of Midland for the Harvell Addition, to approve items requested for deferral in the amount of \$479,906.56, and to waive the associated public improvement guarantee. (ENGINEERING SERVICES)
21. Consider a motion on a request by Schumann Engineering for Quail Ridge Addition (Section 3), to approve items requested for deferral in the amount of \$42,286.70, and to waive the associated public improvement guarantee. (ENGINEERING SERVICES)

22. Consider a resolution authorizing the City of Midland Police Department in conjunction with the Midland County Sheriff's Department to accept the Fiscal Year 2012 Justice Assistance Grant Funds totaling \$31,908.00; the City of Midland will receive \$19,145.00 (60%) and Midland County will receive \$12,763.00 (40%) of the grant funds; authorizing the execution of acceptance documents; and appropriating funds. (POLICE) (2012 - 250)
23. Consider a resolution accepting the Fiscal Year 2013 Victim Coordinator and Liaison Grant from the Texas Attorney General; this grant is to be used by the Midland Police Department to maintain a Victim Assistance Liaison position; authorizing the execution of acceptance documents; and depositing the funds into the General Fund. (POLICE) (2012 - 251)

SECOND READINGS

24. 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 12.63-acre tract of land out of the northwest quarter of Section 6, Block 39, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas, and more specifically described in Section One hereof, which is presently zoned as two separate Planned Districts for Shopping Centers, to be used as a PD, Planned District for a Housing Development (Generally located on the east side of Loop 250, approximately 1/4 of a mile north of Wall Street); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9006)
25. Consider an ordinance on second reading changing the zoning use classification of the property described as the north 125 feet of the east half of Block 29 and the adjacent vacated 0.032-acre portion of West Louisiana Avenue right-of-way, Homestead Addition, City and County of Midland, Texas (Generally located on the southwest corner of the intersection of West Louisiana Avenue and North Colorado Street), which is presently zoned C-1, Central Area District, by permitting said property to be used under a Specific Use Permit with Term for the sale of all alcoholic beverages in a restaurant for on-premises consumption; making said permit subject to certain conditions and restrictions contained herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9043)
26. Consider an ordinance on second reading of the City of Midland, Texas, amending the Midland Comprehensive Plan 2025 as authorized by Chapter 213 of the Texas Local Government Code; said Comprehensive Plan illustrating the future development of the City of Midland; providing a savings and severability clause; and providing an effective date. (DEVELOPMENT SERVICES) (9045)

27. Consider an ordinance on second reading amending Title VIII, "Food Establishments, Health and General Sanitation", Chapter 6, "Garbage, Trash and Rubbish," Section 18, "Accumulation of Stagnant Water, Filth, Weeds, Brush, and Debris on Lots" Subsection A "Prohibited Accumulations" Paragraph 5 of the Midland City Code so as to modify the term "Debris" and adding a new paragraph 6 so as to create presumptions as to ownership, possession and occupying; and amending Title VIII, "Food Establishments, Health and General Sanitation", Chapter 6, "Garbage, Trash and Rubbish," Section 18, "Accumulation of Stagnant Water, Filth, Weeds, Brush, and Debris on Lots" Subsection "B" "Affirmative Defenses" so as to establish affirmative defenses to prosecution and Subsection "C" "Penalty" of the City Code of Midland, Texas, containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of five hundred dollars (\$500.00); and ordering publication. (DEVELOPMENT SERVICES) (9046)
28. Consider an ordinance on second reading approving a promotional agreement between the Midland Tax Increment Reinvestment Zone No. 1 and the Downtown Midland Management District; and approving a grant of \$50,000.00 from the Midland Tax Increment Reinvestment Zone No. 1 to the Downtown Midland Management District pursuant to the promotional agreement. (DEVELOPMENT SERVICES) (9047)

PUBLIC HEARINGS

29. At approximately 10:30 a.m. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lot 1, Block 161, Wilshire Park Addition, Section 9, City and County of Midland, Texas, which is presently zoned PD, Planned District for a Housing Development, to be used as an Amended Planned District (Generally located on the east side of Loop 250, between Leisure Drive and Graceland Drive); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9048)
30. At approximately 10:33 a.m. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lot 4, Block 192, Southern Addition, City and County of Midland, Texas, which is presently zoned 1F-2, One-Family Dwelling District, to be used as an LR-3, Local Retail District (Generally located on the west side of Marshall Street, approximately 150 feet south of East Florida Avenue); 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) (9049)

31. At approximately 10:39 a.m. hold a public hearing regarding a proposed oil and gas permit to Callon Petroleum Operating Company (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Pecan Acres 22C#1) located 1,847 feet from the east line and 467 feet from the south 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 east side of Trobaugh Boulevard, approximately 467 feet north of Briarwood Avenue.) (DEVELOPMENT SERVICES)
32. At approximately 10:42 a.m. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lots 1-3, Block 1, Bishop Addition, City and County of Midland, Texas, which is presently zoned 2F, Two-Family Dwelling District, to be used as a PD, Planned District for a Housing Development (Generally located at the northwest corner of the intersection of Tarleton Street and Shell Avenue); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9050)
33. At approximately 10:45 a.m. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lot 3A, Block 15A, Oxford Heights, Section 8, City and County of Midland, Texas, which is presently zoned LR-2, Local Retail District, to be used as a PD, Planned District for a Housing Development (Generally located at the northwest corner of West Illinois Avenue and Delmar Street); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9051)
34. At approximately 10:48 a.m. hold a public hearing and consider a resolution authorizing the temporary use of land for a church carnival and fair on Lot 13, Block 71, West End Addition, Section 15, City and County of Midland, Texas (Generally located between West Illinois Avenue and West Texas Avenue, east of North "O" Street); and making said permit subject to certain special conditions and restrictions contained herein. (DEVELOPMENT SERVICES) (2012 - 252)
35. At approximately 10:51 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) (2012 - 253)

36. At approximately 6:00 p.m. hold a second public hearing regarding a proposal establishing the Ad Valorem tax rate of \$0.461088 per \$100 taxable assessed valuation for the Fiscal Year 2012-2013 and announce dates of August 21, 2012 and August 27, 2012 at 9:00 a.m. to vote on tax rate. (FINANCE)

MISCELLANEOUS

37. Consider making appointments to various Boards and Commissions.

EXECUTIVE SESSION

38. 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 Deliberation Regarding Economic Development Negotiations
 - a.1. Discuss business prospects that the City of Midland and/or the Midland Development Corporation seeks to have locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives.

Respectfully Submitted,

Courtney B. Sharp
City Manager

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

**MIDLAND CITY COUNCIL
MINUTES
July 24, 2012**

BRIEFING SESSION

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 9:30 a.m. on July 24, 2012.

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

Council Members absent: Council Member Scott Dufford (At-Large).

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, Director of Airports Marv Esterly, Downtown Development Director Genora Young, Transportation Manager Gary Saunders, Planning Division Manager Cameron Walker, Senior Planner Ken VanDyne, Building Official Steve Thorpe, City Engineer David Beard, Public Information Officer Persephone Dakopolos, and Multimedia Developer Ryan Stout.

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

Dan Sefko, Director of Planning for Freese & Nichols, presented a PowerPoint summarizing the project and noting it was a collaborative effort between five entities.

Craig Farmer reviewed the recommendations for land use and development controls, looked at economic and financial strategies and provided a short and long term action plan and a Capital Improvement Plan.

Dan Sefko presented the top 10 list of the 80 recommendations that were made in the plan.

Craig Farmer emphasized the importance of linking together transportation and commercial nodes noting that the nodes should have retail, commercial and housing. He explained that the other entities have adopted the plan or variations of the plan.

Planning Division Manager Walker stated this would be placed on an agenda for City Council consideration. Mr. Sefko emphasized the importance of the City of Midland, County of Midland, City of Odessa and Ector County working together to require the same development standards so as not to give one entity an advantage over the others.

City Manager Sharp noted a meeting had been scheduled with Odessa to address some of the issues discussed.

The foregoing agenda items were discussed by the City Council with no formal action taken. The Briefing Session was adjourned at 9:55 a.m.

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:05 a.m., July 24, 2012.

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

Council Members absent: Council Member Scott Dufford (At-Large).

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

OPENING ITEMS

1. Invocation – City Manager Sharp
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 National Night Out to Police Chief Price Robinson and his staff.

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 present wishing to speak.

CONSENT AGENDA

Council Member Morales moved to approve Consent Agenda items 5 - 19 excluding 6, 9, 13; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

5. Approved a motion approving the following minutes:
 - a. Special Meeting of July 9, 2012.
 - b. Regular Meeting of July 10, 2012
7. Approved a resolution approving plans and specifications and authorizing advertisement for bids for the construction of a commons area fence at the Scharbauer Sports Complex for the Community Services Department. (GENERAL SERVICES)

RESOLUTION NO. 2012-225
RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING
ADVERTISEMENT FOR BIDS FOR THE CONSTRUCTION OF A FENCE AROUND
THE COMMONS AREA AT THE SCHARBAUER SPORTS COMPLEX

8. Approved a resolution approving a contract for the base bid only from Reece Albert, Inc. for the 2011-2012 Street Improvement Mill/Overlay Project for the Engineering Services Department. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 226
RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH REECE
ALBERT, INCORPORATED, FOR THE 2011-2012 STREET IMPROVEMENT
MILL/OVERLAY PROJECT AT A COST OF \$2,253,322.65; AND AUTHORIZING AN
ADDITIONAL TEN PERCENT (10%) CONTINGENCY FEE BRINGING THE TOTAL
FUNDS AVAILABLE TO \$2,478,655.00; AND ALLOCATING AND APPROPRIATING
FUNDS

10. Approved a resolution approving the issuance of a Request for Proposal for the City-Wide Public Safety and Public Works Radio System Replacement for the Communications and Information Systems Department. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 228
RESOLUTION AUTHORIZING THE ISSUANCE OF A REQUEST FOR PROPOSALS
FOR THE REPLACEMENT OF THE CITY-WIDE PUBLIC SAFETY AND PUBLIC
WORKS RADIO SYSTEM FOR THE CITY OF MIDLAND, TEXAS

11. Approved a resolution authorizing the execution of Land Lease Agreement for Airport Hangar Facility between COG REALTY LLC and the City of Midland, Texas in Lot 4B, Block 11, (Lease Tract 5) Midland International Airport, Industrial Park Addition, Section 6, Midland County, Texas. (AIRPORTS)

RESOLUTION NO. 2012 - 229
RESOLUTION AUTHORIZING THE EXECUTION OF A LAND LEASE AGREEMENT
WITH COG REALTY LLC FOR HANGAR DEVELOPMENT LOCATED ON A 1.35
ACRE TRACT OF LAND LOCATED IN LOT 4B, BLOCK 11, MIDLAND
INTERNATIONAL AIRPORT, INDUSTRIAL PARK ADDITION, SECTION 6, AN
ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

12. Approved a resolution authorizing the execution of Airport Fuel Service Agreement between COG REALTY LLC and the City of Midland, Texas in Lot 4B, Block 11, (Lease Tract 5) Midland International Airport, Industrial Park Addition, Section 6, Midland

County, Texas. (AIRPORTS)

RESOLUTION NO. 2012 - 230

RESOLUTION AUTHORIZING THE EXECUTION OF AN AIRPORT FUELING AGREEMENT WITH COG REALTY LLC IN ORDER TO STORE AND DISPENSE ALL FORMS OF AVIATION PROPELLANTS AND FUELS FROM FIXED DISPENSERS ONLY TO COG REALTY LLC'S AIRCRAFT AT THE MIDLAND INTERNATIONAL AIRPORT, MIDLAND, MIDLAND COUNTY, TEXAS

14. Approved a resolution authorizing a reallocation of certain Community Development Block Grant funds from previous program years to the Community Development Block Grant fund 2012-2013 Program Year; the grant funds from previous program years to be reallocated total \$22,326.00. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2012 - 232

RESOLUTION AUTHORIZING A REALLOCATION OF CERTAIN COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FROM PREVIOUS PROGRAM YEARS TO THE COMMUNITY DEVELOPMENT BLOCK GRANT FUND PROGRAM YEAR 2012-2013 IN THE AMOUNT OF \$22,326.00

15. Approved the 2012/2013 Community Development Block Grant Application (DEVELOPMENT SERVICES)

RESOLUTION NO. 2012 - 233

RESOLUTION AUTHORIZING THE ADOPTION OF THE CITY OF MIDLAND'S 2012-2013 ACTION PLAN TO THE CONSOLIDATED PLAN FOR COMMUNITY DEVELOPMENT AND HOUSING FUNDS FOR FISCAL YEARS 2011-2015, (OCTOBER 2010-SEPTEMBER 2015); THE CONSOLIDATED PLAN WAS APPROVED BY RESOLUTION NUMBER 2010-197; AND AUTHORIZING THE EXECUTION OF AN APPLICATION FOR COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS

16. Approved a resolution appropriating Interest Earned on 2009 JAG Grant. (POLICE)

RESOLUTION NO. 2012 - 234

RESOLUTION APPROPRIATING INTEREST EARNED IN THE AMOUNT OF \$58.00 ON THE 2009 JUSTICE ASSISTANCE GRANT FUNDS; THIS GRANT WAS ACQUIRED FOR THE PURCHASE OF NEEDED EQUIPMENT FOR THE MIDLAND POLICE DEPARTMENT

17. Approved a resolution authorizing the disposal of a City asset (Troxler 4640 – Nuclear Density Testing Gauge). (ENGINEERING SERVICES)

RESOLUTION NO. 2012 - 235

RESOLUTION AUTHORIZING THE ADVERTISEMENT FOR BIDS FOR THE SALE OF PROPERTY OWNED BY THE CITY OF MIDLAND DESCRIBED AS A TROXLER 4640 NUCLEAR DENSITY GAUGE; AND SETTING A MINIMUM BID AT \$1,000.00.

18. Approved a resolution authorizing the City Attorney's Office to file all necessary documents in lawsuit. (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2012 - 236

RESOLUTION AUTHORIZING THE OFFICE OF THE CITY ATTORNEY TO FILE ALL DOCUMENTS AND MAKE ALL NECESSARY APPEARANCES TO REPRESENT THE CITY OF MIDLAND IN A LAWSUIT STYLED, SHAYLA HAYNES, INDIVIDUALLY AND AS NEXT FRIEND OF JATAISHA WOODARD, A MINOR CHILD V. CITY OF MIDLAND, TEXAS, IN THE COUNTY COURT AT LAW, MIDLAND COUNTY, TEXAS; CAUSE NO. CC16654; AND RATIFYING ALL ACTIONS TAKEN TO DATE BY THE OFFICE OF THE CITY ATTORNEY AS PART OF SETTLEMENT NEGOTIATIONS

19. Approved a resolution denying the effective date of an Atmos West Texas proposed rate increase. (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2012 - 237

RESOLUTION OF THE CITY OF MIDLAND, TEXAS, DENYING ATMOS ENERGY CORPORATION - WEST TEXAS DIVISION'S ("ATMOS WEST TEXAS") REQUESTED RATE CHANGE; REQUIRING THE COMPANY TO REIMBURSE THE CITY'S REASONABLE RATEMAKING EXPENSES; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE OF THIS RESOLUTION TO THE COMPANY AND THE CITY'S LEGAL COUNSEL

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 2-12 - 2013 and establish dates to hold public hearings on the proposed tax rate; and to establish dates when there will be a record vote on the tax rate; and authorizing and directing the City Manager to post all appropriate notices. (FINANCE)

RESOLUTION NO. 2012 - 224

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

Finance Director Bob McNaughton noted that the proposed tax rate needed to be inserted into the resolution. The public hearings are scheduled for August 14th at 6:00 p.m. and August 7th at 9:00 a.m. The proposed rate is .461088 which is the effective rate plus 3.05%. The proposed rate is below the current rate of .47054. The difference between the effective rate and what the City is proposing is for the cost of six firefighters and the incremental cost of the debt the City issued.

Council Member Sparks moved to adopt Resolution No. 2012 – 224 with the effective rate of .461088; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

9. Consider a resolution authorizing the advertisement of a Request for Proposals (RFP) for the sale of Lots 3-A, 4-A and 5-A, Block 3, Midland International Airport Industrial

Park Addition, City of Midland, Midland County, Texas. File #5192-12 (GENERAL SERVICES)

RESOLUTION NO. 2012 - 227

RESOLUTION AUTHORIZING THE ADVERTISEMENT FOR BIDS FOR THE SALE OF REAL PROPERTY DESCRIBED AS BEING LOTS THREE A (3A), FOUR A (4A) AND FIVE A (5A), BLOCK THREE (3), MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS; ACCEPTING AN APPRAISAL SETTING THE FAIR MARKET VALUE OF THE PROPERTY AT \$435,000.00; SAID PROPERTY TO BE DEVELOPED INTO HOTEL FACILITIES

General Services Director Robert Patrick reported that there was interest in the property. Airports Director Esterly reported the request was specific to build a hotel which would be the best use for the area. City Attorney Stretcher clarified that this property was being bid with the understanding that it could only be used for a hotel and if it was not used for that purpose within 18 months, the property would revert back to the City.

Council Member Morales moved to adopt Resolution No. 2012 - 227; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

13. Consider a resolution accepting \$21,500 in grant funds from the Permian Basin Area Foundation for improvements to the porch and decking at the Scarborough Linebery House; and appropriating said funds to Project No. 7088 (COMMUNITY SERVICES)

RESOLUTION NO. 2012 - 231

RESOLUTION AUTHORIZING THE CITY OF MIDLAND TO ACCEPT \$21,500.00 IN GRANT FUNDS FROM THE PERMIAN BASIN AREA FOUNDATION FOR IMPROVEMENTS TO THE PORCH AND DECKING AT THE SCARBOROUGH LINEBERY HOUSE; AND APPROPRIATING FUNDS

Council asked Frances Stapp of the Scarborough-Linebery House how the house was doing and if other maintenance dollars were needed. Frances reported that the house was doing well and that usage was currently down mainly due to the heat. She reported that invitations were going out for events, that school tours would be starting soon, and the calendar was full for the fall and Christmas. She reported that an older house is always in need of maintenance and that those issues were address as needed.

Council Member Morales moved to adopt Resolution No. 2012 - 231; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

SECOND READINGS

20. Consider an ordinance on second reading on a request by Babuhai A. Patel for a zone change from LR-2, Local Retail District, to PD, Planned District for a Shopping Center. (Generally located near the southwest corner of the intersection of West Interstate Highway 20 and Camp Street. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9037

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING THE REMAINDER OF LOT 4, BLOCK 1, AMARON ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED NEAR THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST INTERSTATE HIGHWAY 20 AND CAMP STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Reyes read the caption of Ordinance No. 9037.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 9037 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks.

Brief discussion ensued regarding the use of the property noting that the Ordinance was for a shopping center. Staff and Council understood and agreed that the use would actually be for a hotel and asked that point be placed in the minutes.

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

21. Consider an ordinance on second reading on a request by Brownstones Midland, L.P. for a zone change from C-3, Commercial District to PD, Planned District for Housing Development. (Generally located between South Pecos Street and South Marienfeld Street north of West Front Street.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9038

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-5, THE REMAINDER OF LOT 6, AND LOTS 7-12, BLOCK 110, ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED C-3, COMMERCIAL DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED BETWEEN SOUTH PECOS STREET AND SOUTH MARIENFELD STREET, NORTH OF WEST FRONT STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Reyes read the caption of Ordinance No. 9038.

Council Member Trost moved to approve the second and final reading of Ordinance No. 9038 in accordance with the Charter of the City of Midland; seconded by Council

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

22. Consider an ordinance on second reading on a request by Lamar Outdoor Advertising for a Specific Use Permit with Term for an Electronic Billboard/Billboard Sign. (Generally located on the northeast corner of the intersection of North Big Spring Street and West Dakota Avenue. - District 2) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9039

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 9, BLOCK 183, SOUTHERN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH BIG SPRING STREET AND WEST DAKOTA AVENUE), WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR A BILLBOARD; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Reyes read the caption of Ordinance No. 9039.

Council Member James moved to approve the second and final reading of Ordinance No. 9039 in accordance with the Charter of the City of Midland; seconded by Council Member Morales.

Council Member James reported that he and the City Manager met with the owner and discussed how the owner currently provides public service announcements to the community. He noted the meeting was to encourage use of this billboard for public service announcements regarding downtown events. After the meeting, he felt it was no longer important for them to use that billboard specifically for the promotion of downtown events and reported that the procedure for providing emergency announcements would be worked on between the City Manager and the owner to ensure a smooth notification process.

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

23. Consider an ordinance on second reading on a request by Midland Community Development Corporation for a zone change from O-1, Office District to PD, Planned District for a Housing Development and to TH, Townhouse Dwelling District. (Generally located on both the north and south sides of Elm Avenue between North Tyler Street and North Carver Street. – District 2) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9040

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-12, BLOCK 8, AND A TO BE VACATED 0.3863-ACRE PORTION OF ELM AVENUE RIGHT-OF-WAY, WHICH IS PRESENTLY ZONED O-1, OFFICE DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING

DEVELOPMENT; BY PERMITTING LOTS 1-13, BLOCK 7, AND A TO BE VACATED 0.1445-ACRE PORTION OF ELM STREET RIGHT-OF-WAY, WHICH IS PRESENTLY ZONED O-1, OFFICE DISTRICT, TO BE USED AS A TH, TOWNHOUSE DWELLING DISTRICT; SAID PROPERTY BEING ALL OUT OF LYNDSIDE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS; SAID 0.3863-ACRE TRACT AND SAID 0.1445-ACRE TRACT BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS MADE A PART HEREOF; SAID PROPERTY IS GENERALLY LOCATED ON BOTH SIDES OF ELM AVENUE, BETWEEN TYLER STREET AND CARVER STREET; PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Reyes read the caption of Ordinance No. 9040.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 9040 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks.

Discussion ensued about whether this was a Midland Community Development Corporation (MCDC) project and if it was an affordable housing project.

David Diaz, representing MCDC, clarified that this was a MCDC project. In the past MCDC provided housing to families that were at 80 percent or below of the median income. Because there were no federal funds involved with this property, the MCDC board decided to make 51% open to anyone and 49% would be made available to low income families.

Discussion ensued regarding the right-of-way. City Manager Sharp clarified that traditionally when the City abandons right-of-way, staff comes to the Council with the fair market value of that property. This item was different because at the last meeting there was a swap of right-of-way land for land the City needed for the channel.

Discussion ensued regarding the income ranges of the people who could live at the property. Mr. Diaz reported there was a push from HUD and the State of Texas to create mixed income neighborhoods and that incentives were being provided by the federal and state governments for mixed income communities.

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

24. Consider an ordinance on second reading amending Title X, "Traffic Regulations", Chapter Four, "Traffic Control Devices", Section 11, "School Zones and Crossings", of the Midland City Code, so as to designate each school zone and school crossing within the City and regulate the speed and movement of traffic therein; authorizing and directing the Traffic Engineer to install appropriate signs and markings; repealing Ordinance No.8920; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two hundred dollars (\$200.00); and ordering publication. (ENGINEERING SERVICES)

ORDINANCE NO. 9042

AN ORDINANCE AMENDING TITLE X, "TRAFFIC REGULATIONS", CHAPTER FOUR, "TRAFFIC CONTROL DEVICES", SECTION 11, "SCHOOL ZONES AND CROSSINGS", OF THE MIDLAND CITY CODE, SO AS TO DESIGNATE EACH SCHOOL ZONE AND SCHOOL CROSSING WITHIN THE CITY AND REGULATE THE SPEED AND MOVEMENT OF TRAFFIC THEREIN; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO INSTALL APPROPRIATE SIGNS AND MARKINGS; REPEALING ORDINANCE NO. 8920; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION

Deputy City Secretary Reyes read the caption of Ordinance No. 9042.

Council Member Sparks moved to approve the second and final reading of Ordinance No. 9042 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

PUBLIC HEARINGS

25. At approximately 10:30 a.m. hold a public hearing and consider an ordinance on a request by Basin Burger House, LLC. for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant. (Generally located on the southwest corner of the intersection of West Louisiana Avenue and North Colorado Street) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9043

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS THE NORTH 125 FEET OF THE EAST HALF OF BLOCK 29 AND THE ADJACENT VACATED 0.032-ACRE PORTION OF WEST LOUISIANA AVENUE RIGHT-OF-WAY, HOMESTEAD ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST LOUISIANA AVENUE AND NORTH COLORADO STREET), WHICH IS PRESENTLY ZONED C-1, CENTRAL AREA DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Planning Division Manager Walker gave an overview of the item noting one letter of objection had been received and that the Planning & Zoning Commission and staff recommended support of the item.

Mayor Perry opened the public hearing at 10:58 a.m.

Ivan Arriola, 5613 Rio Grande, reported they were planning on selling all alcohols and that it would be a family casual restaurant, not fast-food.

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

Deputy City Secretary Reyes read the caption of Ordinance No. 9043.

Council Member Morales moved approval of the first of two readings of Ordinance No. 9043 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

26. At approximately 10:33 a.m. hold a public hearing and consider an ordinance on a request by David Alldredge for a Specific Use Permit, With Term, for the sale and on-premise consumption of alcoholic beverages in a restaurant. (Generally located on the east side of North Fairgrounds Road at the east end of East Wadley Avenue. - District 2) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9044

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 1A, BLOCK 1, ALLDREDGE GARDENS ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF FAIRGROUNDS ROAD AT ITS INTERSECTION WITH WADLEY AVENUE), WHICH IS PRESENTLY ZONED LR-3, LOCAL RETAIL DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Planning Division Manager Walker gave an overview of the item noting the previous permit had expired and that the applicant was asking for a minor increase to the floor area. No letters of objection had been received and the Planning & Zoning Commission recommended approval.

Mayor Perry opened the public hearing at 11:02 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Reyes read the caption of Ordinance No. 9044.

Council Member Trost moved approval of the first of two readings of Ordinance No. 9044 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

27. At approximately 10:36 a.m. hold a public hearing and consider an ordinance on a city-initiated request to amend the City's Thoroughfare Plan from The City's Comprehensive Plan 2025, Chapter 4, The Thoroughfare Plan, "Plate 4-1". (DEVELOPMENT SERVICES)

ORDINANCE NO. 9045

AN ORDINANCE OF THE CITY OF MIDLAND, TEXAS, AMENDING THE MIDLAND COMPREHENSIVE PLAN 2025 AS AUTHORIZED BY CHAPTER 213 OF THE TEXAS LOCAL GOVERNMENT CODE; SAID COMPREHENSIVE PLAN ILLUSTRATING THE FUTURE DEVELOPMENT OF THE CITY OF MIDLAND; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

Planning Division Manager Walker provided an overview of the item noting the Consultant of Freese & Nichols, Mr. Dan Sefko, spoke during the briefing session. Staff was proposing an amendment to the Thoroughfare Plan adopted by the City's Comprehensive Plan in 2005 due to the population and housing growth since that time. He summarized previous discussions and gave a broad overview of major changes. He noted a number of agencies had input into the plan.

Mayor Perry opened the public hearing at 11:08 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Reyes read the caption of Ordinance No. 9045.

Council Member James moved approval of the first of two readings of Ordinance No. 9045 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

DEVELOPMENT SERVICES

28. Consider an ordinance amending City of Midland Code of Ordinances 8-6-18 (A) 5. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9046

AN ORDINANCE AMENDING TITLE VIII, "FOOD ESTABLISHMENTS, HEALTH AND GENERAL SANITATION", CHAPTER 6, "GARBAGE, TRASH AND RUBBISH," SECTION 18, "ACCUMULATION OF STAGNANT WATER, FILTH, WEEDS, BRUSH, AND DEBRIS ON LOTS" SUBSECTION A "PROHIBITED ACCUMULATIONS" PARAGRAPH 5 OF THE MIDLAND CITY CODE SO AS TO MODIFY THE TERM "DEBRIS" AND ADDING A NEW PARAGRAPH 6 SO AS TO CREATE PRESUMPTIONS AS TO OWNERSHIP, POSSESSION AND OCCUPYING; AND AMENDING TITLE VIII, "FOOD ESTABLISHMENTS, HEALTH AND GENERAL SANITATION", CHAPTER 6, "GARBAGE, TRASH AND RUBBISH," SECTION 18, "ACCUMULATION OF STAGNANT WATER, FILTH, WEEDS, BRUSH, AND DEBRIS ON LOTS" SUBSECTION "B" "AFFIRMATIVE DEFENSES" SO AS TO ESTABLISH AFFIRMATIVE DEFENSES TO PROSECUTION AND SUBSECTION "C" "PENALTY" OF THE CITY CODE OF MIDLAND, TEXAS, CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00); AND ORDERING PUBLICATION

Building Official Steve Thorpe gave an overview of the item noting this would help Code Enforcement better enforce removal of accumulated debris by further expanding the bulky debris list. He explained the process of issuing a citation and answered other questions.

Deputy City Secretary Reyes read the caption of Ordinance No. 9046.

Council Member James moved approval of the first of two readings of Ordinance No. 9046 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

MISCELLANEOUS

29. Consider an ordinance approving the expenditure of \$50,000 of TIRZ funds for the purpose of promoting Downtown events. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9047

AN ORDINANCE APPROVING A PROMOTIONAL AGREEMENT BETWEEN THE MIDLAND TAX INCREMENT REINVESTMENT ZONE NO. 1 AND THE DOWNTOWN MIDLAND MANAGEMENT DISTRICT; AND APPROVING A GRANT OF \$50,000.00 FROM THE MIDLAND TAX INCREMENT REINVESTMENT ZONE NO. 1 TO THE DOWNTOWN MIDLAND MANAGEMENT DISTRICT PURSUANT TO THE PROMOTIONAL AGREEMENT

Planning Division Manager Walker provided an overview of the item noting in June the Tax Increment Reinvestment Zone Board authorized the expenditure of \$50,000 for grant funding of downtown events and that staff recommended support.

Deputy City Secretary Reyes read the caption of Ordinance No. 9047.

Council Member James moved approval of the first of two readings of Ordinance No. 9047 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

Mayor Perry announced that Agenda Items 30 and 31 would be heard after Executive Session.

32. Consider a motion making appointments to various City of Midland Boards and Commissions.

No appointments were made.

EXECUTIVE SESSION

33. 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 551.074 Personnel Matters

- a.1. Deliberate the employment, evaluation, duties, and salary of the Presiding Municipal Court Judge, the Associate Municipal Court Judge, the City Manager, the City Attorney and the City Secretary.

- b. Section 551.071, Consultation with the City Attorney
 - b.1. Discuss with the City Attorney and Attorney(s) with the law firm of Cotton, Bledsoe, Tighe, and Dawson, litigation styled in Re: Heritage Consolidated, LLC, Case No. 10-36484-hdh, Chapter 11, Jointly Administered, in the United States Bankruptcy Court, Northern District of Texas, Dallas Division.
- c. Section 551.072 Deliberation Regarding Real Property
 - c.1. Discuss the sale, lease and value of two City of Midland-owned properties located east of the Midland Center described as:
 - (i) Bing approximately 0.884 acres, Block 053, Lots 013 through 023, Original Town Addition, Midland, Texas. Recorded in Volume 0858, page 0111, Midland County, Texas.
 - (ii) Being approximately 0.886 acres, Block 053, Lots 1 through 8 & 9 (N8 of W75), and the E65 of Lots 9 through 12, Original Town Addition, Midland, Texas. Recorded in Volume 0649, page 0762, Midland County, Texas.

Mayor Perry recessed the meeting at 11:24 a.m. to Executive Session and announced that the Council would reconvene in the Council Chambers at 1:00 p.m. to hear Agenda Items 30 and 31. The Council met in Executive Session until 12:50 p.m.

Mayor Perry reconvened the meeting into Regular Session at 1:05 p.m. All Council Members were present except for Council Member Dufford.

MISCELLANEOUS (Continued)

- 30. Consider a resolution authorizing the Mayor to negotiate and execute a Chapter 380 Agreement with the TIRZ District. (City Manager's Office)

RESOLUTION NO. 2012 - 238

CONSIDER A RESOLUTION AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE A TEXAS LOCAL GOVERNMENT CODE CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIDLAND AND THE TAX INCREMENT REINVESTMENT ZONE NO. 1 ("TIRZ") REGARDING THE TIRZ PURCHASING CITY-OWNED PROPERTY DESCRIBED AS BEING APPROXIMATELY 0.884 ACRES, BLOCK 053, LOTS 013 THROUGH 023, ORIGINAL TOWN ADDITION, RECORDED IN VOLUME 0858, PAGE 0111; AND/OR PROPERTY DESCRIBED AS BEING APPROXIMATELY 0.886 ACRES, BLOCK 053, LOTS 1 THROUGH 8 AND 9 (N8 AND W75), AND THE E65 OF LOTS 9 THROUGH 12, ORIGINAL TOWN ADDITION, RECORDED IN VOLUME 0649, PAGE 0762, ALL LOCATED IN MIDLAND, MIDLAND COUNTY, TEXAS; AND AUTHORIZING THE EXECUTION OF ALL NECESSARY DOCUMENTS AND LEGAL INSTRUMENTS RELATED THERETO

Council Member James moved to adopt Resolution No. 2012 - 238; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Perry, James, Sparks. NAY: None. ABSTAIN: Hailey. ABSENT: Dufford.

31. Consider a resolution authorizing the Mayor to negotiate and execute an agreement with the Midland Development Corporation for the construction of a parking structure in downtown Midland. (City Manager's Office)

RESOLUTION NO. 2012 - 239

RESOLUTION AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIDLAND AND THE MIDLAND DEVELOPMENT CORPORATION FOR CONSTRUCTION OF A PARKING FACILITY AND RELATED INFRASTRUCTURE TO BE LOCATED ON PROPERTY DESCRIBED AS BEING APPROXIMATELY 0.884 ACRES, BLOCK 053, LOTS 013 THROUGH 023, ORIGINAL TOWN ADDITION, RECORDED IN VOLUME 0858, PAGE 0111; OR ON PROPERTY DESCRIBED AS BEING APPROXIMATELY 0.886 ACRES, BLOCK 053, LOTS 1 THROUGH 8 AND 9 (N8 AND W75), AND THE E65 OF LOTS 9 THROUGH 12, ORIGINAL TOWN ADDITION, RECORDED IN VOLUME 0649, PAGE 0762, ALL LOCATED IN MIDLAND, MIDLAND COUNTY, TEXAS, AS AUTHORIZED BY CHAPTER 501 OF THE TEXAS LOCAL GOVERNMENT CODE

Council Member James moved to adopt Resolution No. 2012 - 239; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Perry, James, Sparks. NAY: None. ABSTAIN: Hailey. ABSENT: Dufford.

All of the business at hand having been completed, the meeting adjourned at 1:09 p.m.

PASSED AND APPROVED the 14th day of August, 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

**MIDLAND CITY COUNCIL
MINUTES
July 26, 2012**

The City Council convened in a Special Session at the Downtown Doubletree Hotel Civic Room, located at 117 West Wall Street, Midland, Texas, at 10:00 a.m. on July 26, 2012.

Council Members present: Mayor W. Wesley Perry, Mayor Pro Tem Jerry Morales (At-Large), Council Member Scott Dufford (At-Large), Council Member Vicky Hailey (District 2) (Hailey arrived at 10:40 a.m.), and Council Member Michael Trost (District 4) (Trost arrived at 12:42 p.m.).

Council Members absent: Council Member Jeff Sparks (District 1), and Council Member John James (District 3).

Staff present: City Manager Courtney Sharp, Assistant City Manager Jim Nichols, Assistant Code Administration Manager Ron Jenkins, Downtown Development Manager Genora Young, Planning Division Manager Cameron Walker, Building Official Steve Thorpe, Senior Planner Jim Compton, Senior Planner Ken VanDyne, Associate Planner Melissa Hale, Associate Planner Martin Siwek, Public Information Officer Persephone Dakopolos, and Deputy City Secretary SueAnn Reyes.

Mayor Perry called the meeting to order at 10:15 a.m.

1. The City Council will meet in a joint session with the City of Midland Planning & Zoning Commission and the Midland Development Corporation together with the City's administrative staff and others in a training workshop to discuss: an introduction to municipal planning, zoning, platting and land use and development; annexation issues; being an effective planning and City government advocate including roles, responsibilities, ethics, and other issues; Open Meetings Act procedures and their importance; the impact of recent and possible future legislation and updates on such legislation; community vision discussion regarding the 2025 Comprehensive Plan and Midland Development Corporation priorities; economic development tools and issues, including special districts authorized by State law.

Kim Mikelson, representing Olson & Olson, and David Hoover, Planning Consultant, gave overviews and examples of the different tools available in economic development and how they might be put to use in the City of Midland. Discussion ensued regarding the various roles of the departments and organizations present and how they could work together to make the City of Midland the best it could be. No action was taken.

All of the business at hand having been completed, the meeting adjourned at 2:20 p.m.

PASSED AND APPROVED the 14th day of August, 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 8/14/2012

TO: City Council / City Manager

FROM: Bob McNaughton, Finance Director

SUBJECT: Receive for information and possibly discuss third quarter Fiscal Year 2011 - 2012 Investment Report

Purpose:

Compliance with the Public Funds Investment Act (PFIA) requires providing information on investments to governing body on a quarterly basis.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None

Discussion:

Report indicates compliance with all PFIA requirements.

Results for third quarter FY 2012 indicate the yield on the portfolio for the third quarter was .2462% as compared to the benchmark 3 month Treasury yield of .0871% and pool yields of .1242% to .1241%. The effective interest rate on the portfolio as of June 30, 2012 was 0.6629%. Average maturity was 23.16 months at quarter end.

The amounts in the Portfolio Summary associated with Unrealized Gains/Losses in Portfolio and Change in Unrealized Gains/(Losses) are an indicator of changing market rates and securities with higher rates being called. No unrealized losses are anticipated to be realized during the year.

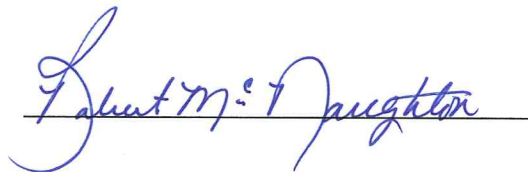
Unrealized gains in the portfolio attributable to market conditions at the end of the third quarter were \$7,350. Unrealized gains or losses do not necessarily result in cash gains or losses, but do reflect changes in the market value of securities in the portfolio.

CITY OF MIDLAND
INVESTMENT PORTFOLIO REPORT
THIRD QUARTER FY2012
AS OF 6/30/2012

This Quarterly Report is in compliance with the City of Midland Investment Policy and the Public Funds Investment Act (Chapter 2256).

The Investment Portfolio is in compliance with the City of Midland Investment Policy and applicable State Laws.

Robert McNaughton
Director of Finance

A handwritten signature in blue ink, reading "Robert McNaughton", written over a horizontal line.

Tommy Howell
Comptroller

A handwritten signature in blue ink, reading "Thomas R Howell", written over a horizontal line.

Rolly Hughes
Asst. Treasurer

A handwritten signature in blue ink, reading "Rolly Hughes", written over a horizontal line.

Portfolio Summary

3rd Quarter Fiscal 2012

	3rd Quarter	YTD
Average Portfolio	\$240,856,878	\$218,632,975
Yield	0.2462%	0.4422%
Gains/Losses	0	361,875
Yield inc. G/L	0.2462%	0.6629%
Unrealized G/L	7,350	7,350
Change from Last Report	281,045	76,100
3mo T-Bill Yield	0.0871%	0.0605%
Texpool Yield	0.1242%	0.1063%
TexStar Yield	0.1241%	0.1058%

City of Midland
Listing of Investments
June 30, 2012

Investment Type	Maturity Date	Fund Owner-ship	Coupon Interest Rate	Principal	Beginning Market Value	Change in Position from Previous Quarter	Current Market Value	Accrued Interest to Date	Unrealized Profit/Loss	Cumulative Unrealized Profit/Loss
CASH	30-Jun-12	pooled	0.0000%	1,571,317.85	2,307,092.72	(735,774.87)	1,571,317.85	-	-	-
LOGIC	30-Jun-12	pooled	0.2441%	122,293.19	122,211.30	81.89	122,293.19	-	-	-
LOGIC	30-Jun-12	fund 365	0.2441%	29.10	29.07	0.03	29.10	-	-	-
LOGIC	30-Jun-12	fund 366	0.2441%	15,126.68	15,116.55	10.13	15,126.68	-	-	-
LOGIC	30-Jun-12	fund 389	0.2441%	1,415.89	1,414.95	0.94	1,415.89	-	-	-
LOGIC	30-Jun-12	fund 397	0.2441%	5,752.68	5,748.83	3.85	5,752.68	-	-	-
LOGIC	30-Jun-12	fund 501	0.2441%	13,685.19	13,676.02	9.17	13,685.19	-	-	-
LOGIC	30-Jun-12	fund 531	0.2441%	1,361.17	1,360.26	0.91	1,361.17	-	-	-
LOGIC	30-Jun-12	fund 532	0.2441%	5,585.88	5,582.15	3.73	5,585.88	-	-	-
TEXPOOL	30-Jun-12	pooled	0.1366%	42,149,889.63	74,632,010.09	(32,482,120.46)	42,149,889.63	-	-	-
TEXPOOL	30-Jun-12	fund 157	0.1366%	171,723.75	171,670.19	53.56	171,723.75	-	-	-
TEXPOOL	30-Jun-12	fund 158	0.1366%	2,551.17	2,550.26	0.91	2,551.17	-	-	-
TEXPOOL	30-Jun-12	fund 159	0.1366%	4,622.65	4,621.09	1.56	4,622.65	-	-	-
TEXPOOL	30-Jun-12	fund 165	0.1366%	90,503.85	90,475.63	28.22	90,503.85	-	-	-
TEXPOOL	30-Jun-12	fund 167	0.1366%	3,683.72	3,682.72	1.00	3,683.72	-	-	-
TEXPOOL	30-Jun-12	fund 168	0.1366%	4,699.46	4,697.89	1.57	4,699.46	-	-	-
TEXPOOL	30-Jun-12	fund 169	0.1366%	6,861.83	6,859.70	2.13	6,861.83	-	-	-
TEXPOOL	30-Jun-12	fund 185	0.1366%	8,155.04	8,152.40	2.64	8,155.04	-	-	-
TEXPOOL	30-Jun-12	fund 186	0.1366%	200,439.10	200,376.62	62.48	200,439.10	-	-	-
TEXPOOL	30-Jun-12	fund 187	0.1366%	20,792.66	20,786.16	6.50	20,792.66	-	-	-
TEXPOOL	30-Jun-12	fund 188	0.1366%	116,406.04	116,369.76	36.28	116,406.04	-	-	-
TEXPOOL	30-Jun-12	fund 189	0.1366%	84,149.38	84,123.15	26.23	84,149.38	-	-	-
TEXPOOL	30-Jun-12	fund 365	0.1366%	12,473.85	12,469.98	3.87	12,473.85	-	-	-
TEXPOOL	30-Jun-12	fund 375	0.1366%	485,007.84	484,856.66	151.18	485,007.84	-	-	-
TEXPOOL	30-Jun-12	fund 389	0.1366%	1,297,075.38	1,296,671.22	404.16	1,297,075.38	-	-	-
TEXPOOL	30-Jun-12	fund 397	0.1366%	1,523,584.87	1,523,110.04	474.83	1,523,584.87	-	-	-
TEXPOOL	30-Jun-12	fund 501	0.1366%	4,092,811.17	4,091,535.70	1,275.47	4,092,811.17	-	-	-
TEXPOOL	30-Jun-12	fund 531	0.1366%	200,746.33	200,683.71	62.62	200,746.33	-	-	-
TEXPOOL	30-Jun-12	fund 621	0.1366%	11,852,385.34	11,848,691.59	3,693.75	11,852,385.34	-	-	-
TEXPOOL	30-Jun-12	fund 641	0.1366%	7,711.76	7,709.26	2.50	7,711.76	-	-	-
TEXSTAR	30-Jun-12	pooled	0.1329%	64,639,076.59	49,984,176.92	14,654,899.67	64,639,076.59	-	-	-
TEXSTAR	30-Jun-12	fund 160	0.1329%	3,589,124.15	3,621,002.96	(31,878.81)	3,589,124.15	-	-	-
TEXSTAR	30-Jun-12	fund 161	0.1329%	4,115,642.54	4,152,356.85	(36,714.31)	4,115,642.54	-	-	-
TEXSTAR	30-Jun-12	fund 162	0.1329%	1,929,846.86	2,000,231.75	(70,384.89)	1,929,846.86	-	-	-
TEXSTAR	30-Jun-12	fund 163	0.1329%	2,501,068.99	2,500,289.69	779.30	2,501,068.99	-	-	-
TEXSTAR	30-Jun-12	fund 182	0.1329%	39,169.91	39,157.71	12.20	39,169.91	-	-	-
TEXSTAR	30-Jun-12	fund 184	0.1329%	387,134.87	387,014.25	120.62	387,134.87	-	-	-
TEXSTAR	30-Jun-12	fund 190	0.1329%	180,145.10	180,088.97	56.13	180,145.10	-	-	-
TEXSTAR	30-Jun-12	fund 191	0.1329%	405,449.16	405,322.83	126.33	405,449.16	-	-	-
TEXSTAR	30-Jun-12	fund 192	0.1329%	124,726.65	124,687.79	38.86	124,726.65	-	-	-
TEXSTAR	30-Jun-12	fund 193	0.1329%	26,220.38	26,212.21	8.17	26,220.38	-	-	-
TEXSTAR	30-Jun-12	fund 194	0.1329%	269,078.01	298,991.55	(29,913.54)	269,078.01	-	-	-
TEXSTAR	30-Jun-12	fund 195	0.1329%	4,761,622.90	4,760,139.24	1,483.66	4,761,622.90	-	-	-
TEXSTAR	30-Jun-12	fund 196	0.1329%	1,502,264.10	1,579,989.21	(77,725.11)	1,502,264.10	-	-	-
TEXSTAR	30-Jun-12	fund 380	0.1329%	1,028,572.17	1,164,739.80	(136,167.63)	1,028,572.17	-	-	-
TEXSTAR	30-Jun-12	fund 381	0.1329%	16,556,710.98	16,551,552.13	5,158.85	16,556,710.98	-	-	-
TEXSTAR	30-Jun-12	fund 621	0.1329%	574,281.46	574,102.52	178.94	574,281.46	-	-	-
TEXSTAR	30-Jun-12	fund 776	0.1329%	2,000,855.19	2,000,231.75	623.44	2,000,855.19	-	-	-

City of Midland
Listing of Investments
June 30, 2012

Investment Type	Maturity Date	Fund Owner- ship	Coupon Interest Rate	Principal	Beginning Market Value	Change in Position from Previous Quarter	Current Market Value	Accrued Interest to Date	Unrealized Profit/ Loss	Cumulative Unrealized Profit/ Loss
				168,703,832.46	187,634,623.80	(18,930,791.34)	168,703,832.46	-	-	-
FHLB NOTE	22-Feb-17	pooled	0.4500%	30,000,000.00	29,907,000.00	94,500.00	30,001,500.00	3,328.77	1,500.00	1,500.00
FHLB NOTE	28-Mar-17	pooled	0.4000%	-	9,963,230.00	(9,963,230.00)	-	-	-	-
FHLB NOTE	28-Feb-20	pooled	0.5500%	20,000,000.00	-	20,001,020.00	20,001,020.00	2,712.33	1,020.00	1,020.00
		pooled	1.2500%	10,000,000.00	9,896,390.00	110,190.00	10,006,580.00	42,465.75	6,580.00	6,580.00
		pooled	3.1250%	-	4,959,685.00	(4,959,685.00)	-	-	-	1,500.00
FHLMC	01-Nov-21	pooled	0.5000%	10,000,000.00	-	9,998,250.00	9,998,250.00	1,506.85	(1,750.00)	(1,750.00)
				70,000,000.00	54,726,305.00	15,281,045.00	70,007,350.00	50,013.70	7,350.00	
				238,703,832.46	242,360,928.80	(3,649,746.34)	238,711,182.46	50,013.70	7,350.00	

**CITY OF MIDLAND
INTERNAL INVESTMENT PORTFOLIO
As of June 30, 2012**

	Cum. % Maturing	% Maturing	Principal	Net Book Value	Effective Interest Rate	Market Value
AGING SCHEDULE - TOTAL PORTFOLIO:						
0 - 60 DAYS	70.7%	70.7%	\$ 168,703,832.46	\$ 168,703,832.46	0.1331%	\$ 168,703,832.46
61 - 120 DAYS	70.7%	0.0%	-	-	0.0000%	-
121 - 180 DAYS	70.7%	0.0%	-	-	0.0000%	-
181 - 365 DAYS	70.7%	0.0%	-	-	0.0000%	-
365 - 546 DAYS	70.7%	0.0%	-	-	0.0000%	-
547 - 730 DAYS	70.7%	0.0%	-	-	0.0000%	-
730 - 1095 DAYS	70.7%	0.0%	-	-	0.0000%	-
3 - 5 YEARS	83.2%	12.6%	30,000,000.00	30,000,000.00	0.4500%	30,001,500.00
5 - 7 YEARS	91.6%	8.4%	20,000,000.00	20,000,000.00	0.5500%	20,001,020.00
7 - 10 YEARS	100.0%	8.4%	20,000,000.00	20,000,000.00	0.8750%	20,004,830.00
OVER 10 YEARS	100.0%	0.0%	-	-	0.0000%	-
TOTAL		100.0%	\$ 238,703,832.46	\$ 238,703,832.46		\$ 238,711,182.46

TOTAL PORTFOLIO BY INVESTMENT TYPE:

CASH	0.7%	\$ 1,571,317.85	\$ 1,571,317.85	0.0000%	\$ 1,571,317.85
LOGIC	0.1%	165,249.78	165,249.78	0.2441%	165,249.78
TEXPOOL	26.1%	62,336,274.82	62,336,274.82	0.1366%	62,336,274.82
TEXSTAR	43.8%	104,630,990.01	104,630,990.01	0.0983%	104,630,990.01
FGIC	0.0%	-	-	0.0000%	-
C.D.'s	0.0%	-	-	0.0000%	-
T-BILL's	0.0%	-	-	0.0000%	-
SLMA's	0.0%	-	-	0.0000%	-
T-NOTE's	0.0%	-	-	0.0000%	-
FHLB NOTE	29.3%	70,000,000.00	70,000,000.00	0.0000%	70,007,350.00
FNMA	0.0%	-	-	0.0000%	-
FFCB	0.0%	-	-	0.0000%	-
FHLMC	0.0%	-	-	0.0000%	-
SLUG's	0.0%	-	-	0.0000%	-
	<u>100.0%</u>	<u>\$ 238,703,832.46</u>	<u>\$ 238,703,832.46</u>		<u>\$ 238,711,182.46</u>

EFFECTIVE INTEREST RATE FOR TOTAL PORTFOLIO:	\$238,703,832.46	@	0.2700%
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AVERAGE MATURITY IN MONTHS	23.16
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Bot/ Sold	Transaction List Type Security	Rate	Fiscal 2012 Trade Date	Settlement Date	Maturity Date	Broker	Face Amount	Price %	32's	Principal Amount
Q3 FISCAL 2012										
Bot	FHLB	0.500%	02-May-12	22-May-12	22-May-19	FTN	20,000,000.00	100	0.0000	20,000,000.00
Bot	FHLB	0.500%	05-Jun-12	20-Jun-12	20-Jun-22	BOSC	10,000,000.00	99	0.8750	9,987,500.00



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 8/14/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving a master agreement for the purchase of Uniforms for City of Midland Employees. RFB 4016-12

Purpose:

Consider a resolution approving a master agreement for 2 years for the purchase of Uniforms for City of Midland Employees.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$96,505.50 estimated for 2 years

General, Water & Sewer, Sanitation, Golf Course, Airport, Garage and Warehouse Funds

Discussion:

We received two bids from uniform suppliers in the area. Pursuant to a review of the bids and garments submitted as samples, we are recommending an award to the low bidder, Cintas –RUS, L.P.

Therefore, please consider a resolution awarding a master agreement for two years to Cintas –RUS, L.P. for an estimated cost of \$96,505.50.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
2-YEAR PURCHASE AGREEMENT FOR UNIFORMS
FOR CITY OF MIDLAND EMPLOYEES FROM THE
LOW BIDDER, CINTAS-RUS, L.P., AT A TOTAL COST
OF \$96,505.50**

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for bids for the provision of uniforms for City of Midland employees over the next two (2) years; and

WHEREAS, Bid No. 4016-12 was opened on June 20, 2012, with the lowest and most responsible bid being submitted from Cintas - RUS, L.P., 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 purchase uniforms for City of Midland employees from Cintas - RUS, L.P.;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a purchase agreement with Cintas - RUS, L.P., for the provision of uniforms for City of Midland employees over the next two (2) years, said agreement being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Cintas - RUS, L.P., according to the terms of said purchase agreement, from funds available in the following 2011 – 2012 budget accounts: General Fund (001) General Services (040); General Fund (001) Development Services (075); General Fund (001) Community Services (090); Water & Sewer Fund (300) Utilities (300); Sanitation Fund (430) Sanitation (430) Golf Course (440) Community Services (090); Airport Fund (500) Airport (500); Garage Fund (750) General Services (040); Warehouse Fund (760) General Services (040) upon proper receipt of invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 4016-12 OPENED June 20, 2012 Est. Cost: \$112,000.00			Cintas Corporation 2029 S Loop 250 W Midland, TX 79703 Phillip Shelton (432) 681-3750		ALSCO, Inc 404 N. University Lubbock, TX 79415 Jim McIntire (806) 762-8751	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL
		SHIRTS				
1	1000	Long Sleeve - 65/35 Blend	\$12.50	\$12,500.00	\$20.58	\$20,580.00
		Extra Cost for XXL	\$13.50		\$20.58	
		Extra Cost for 3X	\$14.50		\$22.70	
		Extra Cost for 4X	\$15.50		\$22.70	
		Extra Cost for 5X	\$17.50		\$22.70	
			Product 935		Dickies LL508	
2	597	Short Sleeve - 65/35 Blend	\$11.50	\$6,865.50	\$18.10	\$10,805.70
		Extra Cost for XXL	\$12.50		\$18.10	
		Extra Cost for 3X	\$13.50		\$19.98	
		Extra Cost for 4X	\$14.50		\$19.98	
		Extra Cost for 5X	\$16.50		\$19.98	
			Product 935		Dickies LS508	
3	20	Supervisor - Long Sleeve - 65/35 Blend	\$15.00	\$300.00	\$21.60	\$432.00
		Extra Cost for XXL	\$16.00		\$21.60	
		Extra Cost for 3X	\$17.00		\$23.80	
		Extra Cost for 4X	\$18.00		\$23.80	
		Extra Cost for 5X	\$20.00		\$23.80	
			Product 831		Dickies LL504	
4	50	Supervisor Short Sleeve - 65/35	\$14.00	\$700.00	\$19.12	\$956.00
		Extra Cost for XXL	\$15.00		\$19.12	
		Extra Cost for 3X	\$16.00		\$21.08	
		Extra Cost for 4X	\$17.00		\$21.08	
		Extra Cost for 5X	\$19.00		\$21.08	
			Product 831		Dickies LS504	
5	1	Denim Long Sleeve - 100% Cotton	\$16.00	\$16.00	\$35.96	\$35.96
		Extra Cost for XXL	\$17.00			
		Extra Cost for 3X	\$18.00			
		Extra Cost for 4X	\$19.00		\$35.96	All sizes
		Extra Cost for 5X	\$21.00			
			Product 65415		Rivers End 4010	
6	1	Denim Short Sleeve - 100% Cotton	\$15.00	\$15.00	\$25.50	\$25.50
		Extra Cost for XXL	\$16.00		\$25.50	
		Extra Cost for 3X	\$17.00		\$28.20	
		Extra Cost for 4X	\$18.00		\$28.20	
		Extra Cost for 5X	\$20.00		\$28.20	
			Product 65415		Dickies WS300	
7	50	Welder Long Sleeve - 100% Cotton	\$27.00	\$1,350.00	\$23.90	\$1,195.00
		Extra Cost for XXL	\$28.00		\$23.90	
		Extra Cost for 3X	\$29.00		\$26.30	
		Extra Cost for 4X	\$30.00		\$26.30	
		Extra Cost for 5X	\$32.00		\$26.30	
			Product 1393		Dickies LL307	
8	30	Button Down Dress	\$17.00	\$510.00	\$18.28	\$548.40
		Extra Cost for XXL	\$18.00		\$18.28	
		Extra Cost for 3X	\$19.00		\$20.14	
		Extra Cost for 4X	\$20.00		\$20.14	
		Extra Cost for 5X	\$22.00		\$20.14	
			Product 374		Dickies SS36	
9	30	Blouse - Button Down Dress	\$17.00	\$510.00	\$27.70	\$831.00
		Extra Cost for XXL	\$18.00		\$27.70	
		Extra Cost for 3X	\$19.00		\$27.70	
		Extra Cost for 4X	\$20.00		\$27.70	
		Extra Cost for 5X	\$22.00		\$27.70	
			Product 66528		Product 254	
10	100	T-Shirts	\$6.00	\$600.00	\$6.00	\$600.00
		Extra Cost for XXL	\$7.00		\$6.00	
		Extra Cost for 3X	\$8.00		\$7.00	7.4

		Extra Cost for 4X	\$9.00		\$8.00	S-3X
		Extra Cost for 5X	\$11.00		\$10.00	
			Product 119		Rivers End 4010	
11	40	Unisex Golf Jersey Knit	\$16.00	\$640.00	\$18.00	\$720.00
		Extra Cost for XXL	\$17.00		\$20.00	
		Extra Cost for 3X	\$18.00		\$24.00	
		Extra Cost for 4X	\$19.00		\$26.00	S-3X
		Extra Cost for 5X	\$21.00		\$30.00	
			Product 69155		Rivers End 436M	
12	40	Golf Shirts	\$16.50	\$660.00	\$22.76	\$910.40
		Extra Cost for XXL	\$17.50		\$22.76	
		Extra Cost for 3X	\$18.50		\$22.76	
		Extra Cost for 4X	\$19.50		\$22.76	
		Extra Cost for 5X	\$21.50		\$22.76	
			Product 259		Red Kap SK28	
		PANTS				
13	50	Standard, Full	\$14.00	\$700.00	\$17.37	\$868.50
		Extra Cost for XXL			\$17.37	
		Extra Cost for 3X			\$19.64	44-60
		Extra Cost for 4X	\$18.00	46" waist & up + 4.00		
		Extra Cost for 5X				
			Product 945		Dickies LP210	
14	100	Cotton, Full	\$23.00	\$2,300.00	\$18.40	\$1,840.00
		Extra Cost for XXL			\$18.40	
		Extra Cost for 3X			\$19.75	44-60
		Extra Cost for 4X	\$27.00	46" waist & up + 4.00		
		Extra Cost for 5X				
			Product 340		Dickies LP310	
15	1100	Jeans, Denim, Contractor Brand or Dickies	\$18.00	\$19,800.00	\$15.15	\$16,665.00
		Extra Cost for XXL			\$15.15	
		Extra Cost for 3X				
		Extra Cost for 4X	\$22.00	46" waist & up + 4.00	\$17.17	46-50
		Extra Cost for 5X				
			Product 394 or Dickies		Dickies C993RWB	
16	1100	Jeans, Denim, Wranglers Brand	\$29.00	\$31,900.00	\$25.99	\$28,589.00
		Extra Cost for XXL				
		Extra Cost for 3X				
		Extra Cost for 4X	\$33.00	46" waist & up + 4.00	\$25.98	44-56
		Extra Cost for 5X				
			Product 946		Wranglers 13 MWZ	
17	20	Women's Standard	\$14.00	\$280.00	\$18.95	\$379.00
		Extra Cost for XXL			\$18.95	
		Extra Cost for 3X	\$19.00	Size 22 & up	\$18.95	
		Extra Cost for 4X			\$21.35	20-26
		Extra Cost for 5X				
			Product 390		FP331	
		SHORTS				
18	15	Men's	\$16.50	\$247.50	\$14.15	\$212.25
		Extra Cost for XXL			\$14.15	
		Extra Cost for 3X	\$20.90	46" waist & up + 4.00	\$15.15	30-44
		Extra Cost for 4X			\$17.15	
		Extra Cost for 5X			\$20.25	
			Product 370		Dickies 42734	
19	15	Women's	\$16.50	\$247.50	\$14.42	\$216.30
		Extra Cost for XXL			\$14.42	
		Extra Cost for 3X	\$20.50	Size 22 & up	\$17.22	4-20
		Extra Cost for 4X			\$17.22	22
		Extra Cost for 5X				
			Product 380		Red Kap PT27	
		COVERALLS				
20	25	100% Cotton	\$38.00	\$950.00	\$37.95	\$948.75
		Extra Cost for XXL	\$40.00		\$37.95	
		Extra Cost for 3X	\$41.00		\$40.75	
		Extra Cost for 4X	\$42.00		\$42.75	
		Extra Cost for 5X	\$43.00		\$44.75	
			Product 910		Product 4870	
21	70	Blend	\$27.00	\$1,890.00	\$34.70	\$727.50

		Extra Cost for XXL	\$29.00		\$34.70	
		Extra Cost for 3X	\$30.00		\$40.75	
		Extra Cost for 4X	\$31.00		\$42.75	
		Extra Cost for 5X	\$32.00		\$44.75	
			Product 912		Product 4879	
22	35	Insulated	\$49.00	\$1,715.00	\$59.60	\$2,086.00
		Extra Cost for XXL	\$53.00		\$59.60	
		Extra Cost for 3X	\$54.00		\$65.00	
		Extra Cost for 4X	\$55.00		\$65.00	
		Extra Cost for 5X	\$56.00		\$65.00	
			Product 914		TV239	
23	20	Overalls - Cotton		NO BID		NO BID
		Extra Cost for XXL				
		Extra Cost for 3X				
		Extra Cost for 4X				
		Extra Cost for 5X				
24	20	Overalls - Insulated	\$52.00	\$1,040.00	\$54.00	\$1,080.00
		Extra Cost for XXL	\$56.00		\$56.00	
		Extra Cost for 3X	\$57.00		\$58.00	
		Extra Cost for 4X	\$58.00		\$59.00	S-3X
		Extra Cost for 5X	\$59.00		\$64.00	
			Product 82325		TB839 (Bib)	
		SMOCKS				
25	5	Blend	\$18.00	\$90.00	\$13.38	\$66.90
		Extra Cost for XXL	\$19.00		\$13.38	
		Extra Cost for 3X	\$20.00		\$15.98	
		Extra Cost for 4X	\$21.00		\$15.98	S-4X
		Extra Cost for 5X	\$23.00		\$15.98	
			Product 964		Red Kap TP23	
		LAB COATS				
26	5	Lab Coats	\$16.00	\$80.00	\$26.00	\$130.00
		Extra Cost for XXL	\$2.00		\$30.00	
		Extra Cost for 3X	\$3.00		\$34.00	
		Extra Cost for 4X	\$4.00		\$39.00	
		Extra Cost for 5X	\$5.00		\$45.00	
			Product 59925			
		JACKET				
27	50	Perma Lined	\$26.00	\$1,300.00	\$49.90	\$2,495.00
		Extra Cost for XXL	\$1.00		\$49.90	
		Extra Cost for 3X	\$2.00		\$54.90	
		Extra Cost for 4X	\$3.00		\$54.90	
		Extra Cost for 5X	\$5.00		\$54.90	
			Product 970		TJ15	
28	50	Hooded Duck - Dickies	\$44.00	\$2,200.00	\$65.00	\$3,250.00
		Extra Cost for XXL	\$3.00		\$67.00	
		Extra Cost for 3X	\$6.00		\$71.85	
		Extra Cost for 4X	n/a		\$71.85	
		Extra Cost for 5X	n/a		\$71.85	
			Product 760		TJ345	
29	50	WindBreaker	\$24.00	\$1,200.00	\$27.98	\$1,399.00
		Extra Cost for XXL	\$3.00			
		Extra Cost for 3X	\$3.00			
		Extra Cost for 4X	n/a		\$27.98	S-5X
		Extra Cost for 5X	n/a			
			Product 80600		Rivers End 3380	
30	50	Tundra System Outer Only	\$59.99	\$2,999.50	\$84.00	\$4,200.00
		Extra Cost for XXL	\$4.00		\$90.31	
		Extra Cost for 3X	\$5.00		\$90.31	2X-5X
		Extra Cost for 4X	n/a		\$90.31	
		Extra Cost for 5X	n/a		\$90.31	
			Product 80175		JP70	
31	50	Tundra System Inner Only	\$39.99	\$1,999.50	\$45.00	\$2,250.00
		Extra Cost for XXL	\$4.00		\$47.00	
		Extra Cost for 3X	\$5.00		\$47.00	
		Extra Cost for 4X	n/a		\$47.00	
		Extra Cost for 5X	n/a		\$47.00	
			Product 80178			7.6

32	50	Other	\$18.00	\$900.00		NO BID
		Extra Cost for XXL	\$1.00			
		Extra Cost for 3X	\$2.00			
		Extra Cost for 4X	\$3.00			
		Extra Cost for 5X	\$5.00			
		Product 330 100% Cotton Non Welder Shirt				
33	50	Other	\$5.00	\$5.00		NO BID
		Extra Cost for XXL	Direct embroidery on any garment			
		Extra Cost for 3X				
		96505.5				
		Extra Cost for 5X				
		Delivery	14 Calendar Days		31-Aug-12	
TOTALS:				\$96,505.50		\$106,744.66

Bidding Summary:

4 Bid requests were issued.

2 Bids listed above

0 NO BIDS were received.

2 Bidders did not respond.

Ameripride, Unifirst



Master Agreement
4016-12
For Employee Uniforms

THIS AGREEMENT, made this 15th day of August, 2012, by and between the City of Midland, Texas, a home rule municipal corporation, hereinafter referred to as "City", and Cintas-RUS, L.P., hereinafter referred to as "Company".

1. Company agrees to sell Employee Uniforms listed in the attached Cost Summary, as submitted by Company, which shall conform to the City's specifications set forth in that request, being incorporated herein and made a part of this agreement for all purposes.

Total Projected Cost: \$96,505.50

The above stated prices shall remain in effect for the full term of this agreement.

2. Said Employee Uniforms are to be delivered in such quantities and at such time as designated by the Purchasing Agent of the City. The total quantity of products which the City is obliged to purchase shall be the total of the quantities from time to time ordered by the Purchasing Agent of the City, and which are delivered and accepted.

3. Payment by the City shall be made within 30 days after receipt of invoices from the Company which shall be subject to verification as to quantities and quality delivered as herein provided.

4. Such Employee Uniforms shall be delivered to the City's user Departments and Divisions Midland, Texas. Freight and delivery charges are included in the purchase prices stated above.

5. The term of this agreement shall be for a period of 2 year(s) commencing on August 15, 2012, and terminating on August 14, 2014 unless sooner terminated as provided in this agreement. The City may at its option, renew this agreement for a period of one additional year. In order to exercise this option, the City must give Company notice of its intent to renew not less than 30 days prior to the expiration of this agreement.

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

6. If Company fails in any manner to fully perform and carry out each and all of the terms, covenants and conditions of this agreement, Company shall be in default and notice in writing shall be given it of such default by the Purchasing Agent of the City. If Company fails to cure such default within 30 days of such notice, City, acting by and through the Purchasing Agent, may at its option terminate and cancel this agreement, and, at the expense of the Company, complete the agreement or cause the same to be completed.

In the event of such termination, all monies due Company under the terms of this agreement shall be retained by the City, but such retention shall not release Company from liability for its default. In such event, however, Company will be credited with the amount of money so retained toward any amount by which the cost of completion

of the agreement, as above provided, exceeds the agreement price.

Such termination shall not effect or terminate any of the rights of the City as against Company then existing, or which may thereafter accrue because of such default, and the foregoing provision shall be in addition to all other rights and remedies available to the City under the law.

The waiver of a breach of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

7. **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.

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

9. **WAIVER OF 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 OR 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. THE 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 OR SOVEREIGN IMMUNITY.

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

10. **RELEASE:** NOTWITHSTANDING ANY OTHER PROVISION, 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.

11. **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 to be 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 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 Company's work. Company shall assume exclusive responsibility for the work. Company is entirely free to do the work in its own way.

12. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this agreement, 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 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.

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

14. **Sovereign Immunity:** By executing this agreement, the City is not waiving its right of Sovereign immunity. The City is retaining its immunity from suit. The City is not granting consent to be sued by legislative resolution or

action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on the date first above written.

Cintas-RUS, L.P.

By _____

Please Print Name

Please Print Title

CITY OF MIDLAND, TEXAS

By _____
Courtney B. Sharp, City Manager

ATTEST:

APPROVED AS TO FORM:

Amy M. Turner, City Secretary

Keith Stretcher, City Attorney

Corporate Acknowledgment: Master Agreement No. 4016-12

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of Cintas-RUS, L.P., 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 an act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

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

Notary Public, State of Texas

City of Midland - Cost Summary

BID # 4016-12 City of Midland Uniforms			Cintas Corporation 2029 S Loop 250 W Midland, TX 79703 Phillip Shelton (432) 681-3750	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
SHIRTS				
1	1000	Long Sleeve - 65/35 Blend	\$12.50	\$12,500.00
		Extra Cost for XXL	\$13.50	
		Extra Cost for 3X	\$14.50	
		Extra Cost for 4X	\$15.50	
		Extra Cost for 5X	\$17.50	
		Product 935		
2	597	Short Sleeve - 65/35 Blend	\$11.50	\$6,865.50
		Extra Cost for XXL	\$12.50	
		Extra Cost for 3X	\$13.50	
		Extra Cost for 4X	\$14.50	
		Extra Cost for 5X	\$16.50	
		Product 935		
3	20	Supervisor - Long Sleeve - 65/35 Blend	\$15.00	\$300.00
		Extra Cost for XXL	\$16.00	
		Extra Cost for 3X	\$17.00	
		Extra Cost for 4X	\$18.00	
		Extra Cost for 5X	\$20.00	
		Product 831		
4	50	Supervisor Short Sleeve - 65/35	\$14.00	\$700.00
		Extra Cost for XXL	\$15.00	
		Extra Cost for 3X	\$16.00	
		Extra Cost for 4X	\$17.00	
		Extra Cost for 5X	\$19.00	
		Product 831		
5	1	Denim Long Sleeve - 100% Cotton	\$16.00	\$16.00
		Extra Cost for XXL	\$17.00	
		Extra Cost for 3X	\$18.00	
		Extra Cost for 4X	\$19.00	
		Extra Cost for 5X	\$21.00	
		Product 65415		
6	1	Denim Short Sleeve - 100% Cotton	\$15.00	\$15.00
		Extra Cost for XXL	\$16.00	
		Extra Cost for 3X	\$17.00	
		Extra Cost for 4X	\$18.00	
		Extra Cost for 5X	\$20.00	
		Product 65415		
7	50	Welder Long Sleeve - 100% Cotton	\$27.00	\$1,350.00
		Extra Cost for XXL	\$28.00	
		Extra Cost for 3X	\$29.00	
		Extra Cost for 4X	\$30.00	
		Extra Cost for 5X	\$32.00	
		Product 1393		
8	30	Button Down Dress	\$17.00	\$510.00
		Extra Cost for XXL	\$18.00	
		Extra Cost for 3X	\$19.00	
		Extra Cost for 4X	\$20.00	
		Extra Cost for 5X	\$22.00	
		Product 374		
9	30	Blouse - Button Down Dress	\$17.00	\$510.00

		Extra Cost for XXL	\$18.00	
		Extra Cost for 3X	\$19.00	
		Extra Cost for 4X	\$20.00	
		Extra Cost for 5X	\$22.00	
			Product 66528	
10	100	T-Shirts	\$6.00	\$600.00
		Extra Cost for XXL	\$7.00	
		Extra Cost for 3X	\$8.00	
		Extra Cost for 4X	\$9.00	
		Extra Cost for 5X	\$11.00	
			Product 119	
11	40	Unisex Golf Jersey Knit	\$16.00	\$640.00
		Extra Cost for XXL	\$17.00	
		Extra Cost for 3X	\$18.00	
		Extra Cost for 4X	\$19.00	
		Extra Cost for 5X	\$21.00	
			Product 69155	
12	40	Golf Shirts	\$16.50	\$660.00
		Extra Cost for XXL	\$17.50	
		Extra Cost for 3X	\$18.50	
		Extra Cost for 4X	\$19.50	
		Extra Cost for 5X	\$21.50	
			Product 259	
		PANTS		
13	50	Standard, Full	\$14.00	\$700.00
		Extra Cost for XXL		
		Extra Cost for 3X		
		Extra Cost for 4X	\$18.00	46" waist & up + 4.00
		Extra Cost for 5X		
			Product 945	
14	100	Cotton, Full	\$23.00	\$2,300.00
		Extra Cost for XXL		
		Extra Cost for 3X		
		Extra Cost for 4X	\$27.00	46" waist & up + 4.00
		Extra Cost for 5X		
			Product 340	
15	1100	Jeans, Denim, Contractor Brand or Dickies Brand	\$18.00	\$19,800.00
		Extra Cost for XXL		
		Extra Cost for 3X		
		Extra Cost for 4X	\$22.00	46" waist & up + 4.00
		Extra Cost for 5X		
			Product 394 or Dickies Brand	
16	1100	Jeans, Denim, Wranglers Brand	\$29.00	\$31,900.00
		Extra Cost for XXL		
		Extra Cost for 3X		
		Extra Cost for 4X	\$33.00	46" waist & up + 4.00
		Extra Cost for 5X		
			Product 946	
17	20	Women's Standard	\$14.00	\$280.00
		Extra Cost for XXL		
		Extra Cost for 3X	\$19.00	Size 22 & up
		Extra Cost for 4X		
		Extra Cost for 5X		
			Product 390	
		SHORTS		
18	15	Men's	\$16.50	\$247.50
		Extra Cost for XXL		
		Extra Cost for 3X	\$20.90	46" waist & up + 4.00
		Extra Cost for 4X		

		Extra Cost for 5X		
			Product 370	
19	15	Women's	\$16.50	\$247.50
		Extra Cost for XXL		
		Extra Cost for 3X	\$20.50	Size 22 & up
		Extra Cost for 4X		
		Extra Cost for 5X		
			Product 380	
		COVERALLS		
20	25	100% Cotton	\$38.00	\$950.00
		Extra Cost for XXL	\$40.00	
		Extra Cost for 3X	\$41.00	
		Extra Cost for 4X	\$42.00	
		Extra Cost for 5X	\$43.00	
			Product 910	
21	70	Blend	\$27.00	\$1,890.00
		Extra Cost for XXL	\$29.00	
		Extra Cost for 3X	\$30.00	
		Extra Cost for 4X	\$31.00	
		Extra Cost for 5X	\$32.00	
			Product 912	
22	35	Insulated	\$49.00	\$1,715.00
		Extra Cost for XXL	\$53.00	
		Extra Cost for 3X	\$54.00	
		Extra Cost for 4X	\$55.00	
		Extra Cost for 5X	\$56.00	
			Product 914	
23	20	Overalls - Cotton		NO BID
		Extra Cost for XXL		
		Extra Cost for 3X		
		Extra Cost for 4X		
		Extra Cost for 5X		
24	20	Overalls - Insulated	\$52.00	\$1,040.00
		Extra Cost for XXL	\$56.00	
		Extra Cost for 3X	\$57.00	
		Extra Cost for 4X	\$58.00	
		Extra Cost for 5X	\$59.00	
			Product 82325	
		SMOCKS		
25	5	Blend	\$18.00	\$90.00
		Extra Cost for XXL	\$19.00	
		Extra Cost for 3X	\$20.00	
		Extra Cost for 4X	\$21.00	
		Extra Cost for 5X	\$23.00	
			Product 964	
		LAB COATS		
26	5	Lab Coats	\$16.00	\$80.00
		Extra Cost for XXL	\$2.00	
		Extra Cost for 3X	\$3.00	
		Extra Cost for 4X	\$4.00	
		Extra Cost for 5X	\$5.00	
			Product 59925	
		JACKET		
27	50	Perma Lined	\$26.00	\$1,300.00
		Extra Cost for XXL	\$1.00	
		Extra Cost for 3X	\$2.00	
		Extra Cost for 4X	\$3.00	
		Extra Cost for 5X	\$5.00	
			Product 970	

28	50	Hooded Duck - Dickies	\$44.00	\$2,200.00
		Extra Cost for XXL	\$3.00	
		Extra Cost for 3X	\$6.00	
		Extra Cost for 4X	n/a	
		Extra Cost for 5X	n/a	
			Product 760	
29	50	WindBreaker	\$24.00	\$1,200.00
		Extra Cost for XXL	\$3.00	
		Extra Cost for 3X	\$3.00	
		Extra Cost for 4X	n/a	
		Extra Cost for 5X	n/a	
			Product 80600	
30	50	Tundra System Outer Only	\$59.99	\$2,999.50
		Extra Cost for XXL	\$4.00	
		Extra Cost for 3X	\$5.00	
		Extra Cost for 4X	n/a	
		Extra Cost for 5X	n/a	
			Product 80175	
31	50	Tundra System Inner Only	\$39.99	\$1,999.50
		Extra Cost for XXL	\$4.00	
		Extra Cost for 3X	\$5.00	
		Extra Cost for 4X	n/a	
		Extra Cost for 5X	n/a	
			Product 80178	
32	50	Other	\$18.00	\$900.00
		Extra Cost for XXL	\$1.00	
		Extra Cost for 3X	\$2.00	
		Extra Cost for 4X	\$3.00	
		Extra Cost for 5X	\$5.00	
			Product 330 100% Cotton Non Welder Shirt	
33	50	Other	\$5.00	\$5.00
		Extra Cost for XXL	Direct embroidery on any garment	
		Extra Cost for 3X		
		96505.5		
		Extra Cost for 5X		
		Delivery	14 Calendar Days	
TOTALS:				\$96,505.50



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 8/14/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the Phase 1 purchase of playground equipment for the Community Services Department.

Purpose:

Consider a resolution approving the purchase of playground equipment for the Community Services Department.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$137,037.85 General Fund and 2009 GPCO-Park Improvements Fund

Discussion:

We solicited bids from 18 vendors and received 9 bids for playground and recreational equipment. The bid request consisted of 20 items but the Phase 1 purchase will consist of Items 1 through 11a. Items 12 through 20a will be reviewed by the Parks Commission and recommended for award at a later date. Please see the attached memos from Tina Jauz, Community Services Director and Michele James, Parks & Recreation Manager for further information. Therefore, please consider a resolution awarding the purchase of items 1 through 11a as follows:

	Cost
Items 1, 1a, 2, 2a, 8, 8a, 10, 10a, 11 and 11a from Child's Play, Inc.	\$61,285.00
Items 3 and 4 from BSN Sports	\$31,274.95
Items 5, 6, 6a, 9 and 9a from Miracle Recreation Equipment Co.	\$38,043.90
Item 7 from Exerplay, Inc.	\$6,434.00
Total Cost	<u>\$137,037.85</u>

RESOLUTION NO.

**RESOLUTION APPROVING THE PURCHASE OF
ASSORTED PLAYGROUND EQUIPMENT AT A TOTAL
COST OF \$137,037.85; AND AUTHORIZING THE
EXECUTION OF PURCHASE AND INSTALLATION
AGREEMENTS FOR THE PLAYGROUND EQUIPMENT
PURCHASED HEREIN THAT REQUIRES
INSTALLATION**

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for bids for assorted Playground Equipment; and

WHEREAS, Bid No. 5185-12 was opened on July 30, 2012, with the lowest and most responsive bids being submitted as follows and as shown on the bid tabulation attached hereto as Exhibit “A” and incorporated herein for all legal purposes:

<u>Item#</u>	<u>Qty.</u>	<u>Description</u>	<u>Supplier</u>	<u>Cost</u>
1	25	Benches	Child’s Play, Inc. Dallas, TX	\$9,225.00
1a	1	Installation of Benches	Child’s Play, Inc. Dallas, TX	\$1,250.00
2	25	Tables	Child’s Play, Inc. Dallas, TX	\$17,850.00
2a	1	Installation of Tables	Child’s Play, Inc. Dallas, TX	\$1,250.00
3	20	Player’s Benches	BSN Sports Dallas, TX	\$2,081.60
4	5	Bleachers	BSN Sports Dallas, TX	\$29,193.35
5	15	Soccer Goals	Miracle Rec. Equip. Co. Niwot, CO	\$11,987.10
6	6	Basketball Backboards w/ posts and nets	Miracle Rec. Equip. Co. Niwot, CO	\$5,574.00
6a	1	Installation of Basketball Backboards	Miracle Rec. Equip. Co. Niwot, CO	\$2,088.00
7	50	Pool Lounge Chairs	Exerplay, Inc. Cedar Crest, NM	\$6,434.00
8	10	Barbeque Pits	Child’s Play, Inc.	\$2,700.00

			Dallas, TX	
8a	1	Installation of Barbeque Pits	Child's Play, Inc. Dallas, TX	\$500.00
9	6	Drinking Fountains	Miracle Rec. Equip. Co. Niwot, CO	\$13,504.80
9a	1	Installation of Drinking Fountains	Miracle Rec. Equip. Co. Niwot, CO	\$4,890.00
10	20	Disc Golf Nets and Posts	Child's Play, Inc. Dallas, TX	\$6,160.00
10a	1	Installation of Disc Golf Nets And Posts	Child's Play, Inc. Dallas, TX	\$1,350.00
11	50	Steel Trash Cans	Child's Play, Inc. Dallas, TX	\$18,500.00
11a	1	Installation of Steel Trash Cans	Child's Play, Inc. Dallas, TX	\$2,500.00
Total Costs to City According to Bid				\$137,037.85

WHEREAS, items 1, 2, 8, 10 and 11, bid by Child's Play, Inc., require installation services and therefore compel the execution of a Purchase and Installation Agreement; and

WHEREAS, items 6 and 9, bid by Miracle Recreation Equipment Co., require installation services and therefore compel the execution of a Purchase and Installation Agreement; and

WHEREAS, the City Council finds it to be in the public interest to purchase the assorted Playground Equipment as shown on the attached bid tabulation from the respective low bidders, for a total price of \$137,037.85; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of Purchase and Installation Agreements for the Playground Equipment requiring installation services;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase the above-referenced Playground Equipment from the suppliers indicated above and at the prices indicated at an estimated total price not to exceed \$137,037.85.

SECTION TWO. 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 Purchase and Installation Agreement with Child's Play, Inc., for the supply and installation of items 1, 2, 8, 10 and 11, said Purchase and Installation Agreement being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION THREE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a Purchase and Installation Agreement with Miracle Recreation Equipment Co., for the supply and installation of items 5, 6 and 9, said Purchase and Installation Agreement being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION FOUR. That upon proper receipt of invoices or statements approved by the City Manager, the City Treasurer is hereby authorized and directed to pay the companies listed herein the sums indicated above from funds available as follows:

-Fiscal Year 2011 – 2012 General Fund (001) Community Services (090) Parks
(0 0 9 0)
.....\$122,421.00

-Halff, Taylor, Ratliff Parks Improvement Project (8931).....\$14,617.00

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

Council members voting "AYE":

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 5185-12 Playground & Recreational Equipment			Simmons Builders General Contractor 3804 Simmons Creek Lane Flower Mound, TX 75022-5495 Eugene Carl Simmons (972) 355-8580		BSN Sport PO Box 7726 Dallas, TX 75209 Chris Bloomfield (800) 527-7510		Child's Play Inc 10661 Shady Trail Dallas, TX 75720 Kathy Robertson (972) 484-0600		Exerplay Inc PO Box 1160 Cedar Crest, NM 87008 Daniel Gardiner (505) 281-0151		Miracle Recreation Equipment Co PO Box 1174 NIWOT, CO 80544 Chris Churchich (303) 530-4414	
OPENED July 30, 2012 Est. Cost: \$887,398.00												
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
1	25	Benches	\$527.64	\$13,191.00	\$425.58	\$10,639.50	\$369.00	\$9,225.00		NO BID	\$340.70	\$8,517.50
1a	1	Installation of Benches	\$3,245.00	\$3,245.00		NO BID	\$1,250.00	\$1,250.00	\$2,475.00	\$2,475.00	\$2,887.50	\$2,887.50
2	25	Tables	\$979.28	\$24,482.00	\$797.62	\$19,940.50	\$714.00	\$17,850.00	\$1,135.85	\$28,396.25	\$638.25	\$15,956.25
2a	1	Installation of tables	\$6,343.00	\$6,343.00		NO BID	\$1,250.00	\$1,250.00	\$6,875.00	\$6,875.00	\$5,307.50	\$5,307.50
3	20	Players' Benches without backs	\$346.95	\$6,939.00	\$104.08	\$2,081.60	\$266.00	\$5,320.00	\$235.08	\$4,701.60	\$261.63	\$5,232.60
4	5	Bleachers	\$9,491.40	\$47,457.00	\$5,838.67	\$29,193.35	\$6,779.00	\$33,895.00	\$7,498.30	\$37,491.50	\$9,600.45	\$48,002.25
5	15	Soccer Goals	\$1,374.60	\$20,619.00	\$821.92	\$12,328.80	\$1,320.00	\$19,800.00	\$865.67	\$12,985.05	\$799.14	\$11,987.10
6	6	Basketball backboard with posts and nets	\$1,082.67	\$6,496.02	\$519.36	\$3,116.16	\$1,816.00	\$10,896.00	\$945.17	\$5,671.02	\$929.00	\$5,574.00
6a	1	Installation of basketball backboard	\$3,540.00	\$3,540.00		NO BID	\$2,100.00	\$2,100.00	\$4,500.00	\$4,500.00	\$2,088.00	\$2,088.00
7	50	Chaise lounge chairs for a pool deck	\$146.10	\$7,305.00		NO BID		NO BID	\$128.68	\$6,434.00		NO BID
8	10	Barbecue Pits	\$233.90	\$2,339.00	\$175.03	\$1,750.30	\$270.00	\$2,700.00	\$169.15	\$1,691.50	\$283.34	\$2,833.40
8a	1	Installation	\$1,180.00	\$1,180.00		NO BID	\$500.00	\$500.00	\$1,760.00	\$1,760.00	\$468.00	\$468.00
9	6	Round Pedestal Drinking Fountains	\$2,708.17	\$16,249.02		NO BID	\$270.00	\$1,620.00	\$2,634.74	\$15,806.44	\$2,250.80	\$13,504.80
9a	1	Installation of drinking fountains	\$5,310.00	\$5,310.00		NO BID	\$1,050.00	\$1,050.00	\$4,500.00	\$4,500.00	\$4,890.00	\$4,890.00
10	20	Disc Golf Nets and Posts	\$518.05	\$10,361.00		NO BID	\$308.00	\$6,160.00	\$416.85	\$8,337.00	\$459.00	\$9,180.00
10a	1	installation of nets and posts	\$4,720.00	\$4,720.00		NO BID	\$1,350.00	\$1,350.00	\$2,640.00	\$2,640.00	\$3,440.00	\$3,440.00
11	50	Steel trash cans to match existing park receptacles	\$637.32	\$31,866.00	\$445.67	\$22,283.50	\$370.00	\$18,500.00	\$543.53	\$27,176.50	\$485.20	\$24,260.00
11a	1	Installation of trash cans	\$4,425.00	\$4,425.00		NO BID	\$2,500.00	\$2,500.00	\$5,500.00	\$5,500.00	\$5,950.00	\$5,950.00
12	1	Cost per square foot for finished shade material	\$8.50	\$8.50		NO BID		NO BID	\$4.00	\$4.00	\$2.60	\$2.60
				square foot							square foot	square foot
12a	1	Installation of shade material	\$1,500.00	\$1,500.00		NO BID		NO BID		NO BID		NO BID
13	1	Picnic pavilion for Hogan Park	\$47,843.00	\$47,843.00		NO BID	\$49,037.00	\$49,037.00	\$67,303.50	\$67,303.50	\$62,103.00	\$62,103.00
13a	1	Installation of pavilion	\$18,000.00	\$18,000.00		NO BID	\$23,396.00	\$23,396.00	\$35,838.00	\$35,838.00	\$33,069.00	\$33,069.00
14	2	Sections of senior wellness stations/fitness stations	\$12,137.50	\$24,275.00		NO BID	\$9,618.00	\$19,236.00	\$2,944.00	\$5,888.00	\$7,452.90	\$14,905.80
14a	1	Installation of wellness/fitness stations	\$5,900.00	\$5,900.00		NO BID	\$2,848.00	\$2,848.00		NO BID	\$4,705.80	\$4,705.80
15	1	Playground equipment for Butler Park	\$59,054.00	\$59,054.00		NO BID	\$59,548.00	\$59,548.00	\$68,373.00	\$68,373.00	\$79,108.00	\$79,108.00
15a	1	Installation in butler park	\$22,360.00	\$22,360.00		NO BID	\$18,971.00	\$18,971.00	\$31,500.00	\$31,500.00	\$20,892.00	\$20,892.00
16	1	Playground equipment for Grafa Park	\$47,019.00	\$47,019.00		NO BID	\$35,105.00	\$35,105.00	\$66,315.45	\$66,315.45	\$78,515.00	\$78,515.00
16a	1	Installation in Grafa Park	\$21,112.00	\$21,112.00		NO BID	\$9,473.00	\$9,473.00	\$32,800.00	\$32,800.00	\$21,485.00	\$21,485.00
17	1	Playground equipment for House Park	\$48,241.00	\$48,241.00		NO BID	\$30,828.00	\$30,828.00	\$68,890.00	\$68,890.00	\$84,214.00	\$84,214.00

BID # 5185-12		Playground & Recreational Equipment		Simmons Builders General Contractor 3804 Simmons Creek Lane Flower Mound, TX 75022-5495 Eugene Carl Simmons (972) 355-8580		BSN Sport PO Box 7726 Dallas, TX 75209 Chris Bloomfield (800) 527-7510		Child's Play Inc 10661 Shady Trail Dallas, TX 75720 Kathy Robertson (972) 484-0600		Exerplay Inc PO Box 1160 Cedar Crest, NM 87006 Daniel Gardiner (505) 281-0151		Miracle Recreation Equipment Co PO Box 1174 NIWOT, CO 80544 Chris Churchich (303) 530-4414	
OPENED July 30, 2012		Est. Cost: \$887,398.00											
17a	1	Installation for House Park		\$21,112.00	\$21,112.00		NO BID	\$9,210.00	\$9,210.00	\$26,500.00	\$26,500.00	\$15,786.00	\$15,786.00
18	1	Playground equipment for Pioneer Park		\$48,000.00	\$48,000.00		NO BID	\$39,928.00	\$39,928.00	\$62,310.00	\$62,310.00	\$88,899.00	\$88,899.00
18a	1	Installation in Pioneer Park		\$21,112.00	\$21,112.00		NO BID	\$12,339.00	\$12,339.00	\$25,450.00	\$25,450.00	\$11,101.00	\$11,101.00
19	1	Playground equipment for Sparks Park		\$63,646.00	\$63,646.00		NO BID	\$47,029.00	\$47,029.00	\$64,321.00	\$64,321.00	\$79,017.00	\$79,017.00
19a	1	Installation for Sparks Park		\$22,880.00	\$22,880.00		NO BID	\$15,067.00	\$15,067.00	\$24,000.00	\$24,000.00	\$20,983.00	\$20,983.00
20	1	Playground equipment for Ulmer Park		\$44,531.00	\$44,531.00		NO BID	\$28,706.00	\$28,706.00	\$69,774.95	\$69,774.95	\$83,579.00	\$83,579.00
20a	1	Installation in Ulmer Park		\$21,112.00	\$21,112.00		NO BID	\$9,178.00	\$9,178.00	\$29,800.00	\$29,800.00	\$16,421.00	\$16,421.00
1	25	Alternate Bench Bid			NO BID		NO BID		NO BID		NO BID		NO BID
1	25	Alternate Bench Bid			NO BID		NO BID		NO BID		NO BID		NO BID
1	25	Alternate Bench Bid			NO BID		NO BID		NO BID		NO BID		NO BID
										*BID BOND	\$42,800.40		
												If all 6 parks are ordered, please deduct \$19,927	
				BID BOND PROVIDED		*BID BOND PROVIDED*		*BID BOND PROVIDED*		PROVIDED*		*BID BOND PROVIDED*	
TOTALS:				\$753,764.04		\$101,333.71		\$545,865.00		\$856,006.76		\$884,862.50	

Bidding Summary:

18 Bid requests were issued.

8 Bids listed above

0 NO BIDS were received.

10 Bidders did not respond.

Playworld Systems, Landscape Structure, Total Recreation Products Inc., Play & Park Structures,
Engineered Plastic Systems LLC, Churchich Recreation, Insight Amenities, Gametime, BCI Burke Co.
Recreation Brands Group

City of Midland - Bid Tabulation

BID # 5185-12 Playground & Recreational Equipment				Kraftsman 19535 Haude Rd Spring, TX 77388 Mark Soderberg (800)451-4869		The Playwell Group 4743 Iberia Avenue, Suite C Dallas, TX 75207 Paige Underwood (800)726-1816		Recreation Sales 12700 Pancolin Ct Kellar, TX 76244 James Riddle (817)707-3001		Engineered Plastic Systems LLC 885 Church Road Elgin, IL 60123 Marge Arndt (8004)780-2327	
OPENED July 30, 2012 Est. Cost: \$887,398.00											
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	
1	25	Benches	\$280.00	\$7,000.00	\$310.82	\$7,770.50	\$362.00	\$9,050.00	\$436.00	\$10,900.00	
1a	1	Installation of Benches		NO BID	\$2,419.35	\$2,419.35	\$3,125.00	\$3,125.00	6' Garden - #GSLB6	NO BID	
2	25	Tables	\$480.00	\$12,000.00	\$759.71	\$18,992.75	\$662.00	\$16,550.00		NO BID	
2a	1	Installation of tables		NO BID	\$6,720.42	\$6,720.42	\$5,000.00	\$5,000.00		NO BID	
3	20	Players' Benches without backs	\$170.00	\$3,400.00	\$232.60	\$4,652.00	\$250.00	\$5,000.00		NO BID	
4	5	Bleachers	\$7,578.00	\$37,890.00	\$8,087.16	\$40,435.80	\$7,158.00	\$35,790.00		NO BID	
5	15	Soccer Goals		NO BID	\$1,024.68	\$15,370.20	\$1,929.00	\$28,935.00		NO BID	
6	6	Basketball backboard with posts and nets		NO BID	\$1,290.60	\$7,743.60		NO BID		NO BID	
6a	1	Installation of basketball backboard		NO BID	\$4,359.12	\$4,359.12		NO BID		NO BID	
7	50	Chaise lounge chairs for a pool deck		NO BID	\$154.76	\$7,738.00		NO BID		NO BID	
8	10	Barbecue Pits	\$552.00	\$5,520.00	\$274.61	\$2,746.10	\$208.00	\$2,080.00		NO BID	
8a	1	Installation		NO BID	\$1,721.56	\$1,721.56	\$1,000.00	\$1,000.00		NO BID	
9	6	Round Pedestal Drinking Fountains		NO BID	\$2,045.92	\$12,275.52		NO BID		NO BID	
9a	1	Installation of drinking fountains		NO BID		NO BID		NO BID		NO BID	
10	20	Disc Golf Nets and Posts		NO BID		NO BID		NO BID		NO BID	
10a	1	installation of nets and posts		NO BID		NO BID		NO BID		NO BID	
11	50	Steel trash cans to match existing park receptacles		NO BID	\$326.71	\$16,335.50	\$428.00	\$21,400.00		NO BID	
11a	1	Installation of trash cans		NO BID	\$5,376.34	\$5,376.34	\$5,000.00	\$5,000.00		NO BID	
12	1	Cost per square foot for finished shade material		NO BID		NO BID	\$2.17	\$2.17		NO BID	
12a	1	Installation of shade material		NO BID		NO BID		square foot NO BID		NO BID	
13	1	Picnic pavilion for Hogan Park	\$85,445.00	\$85,445.00	\$61,979.52	\$61,979.52	\$43,454.25	\$43,454.25		NO BID	
13a	1	Installation of pavilion	\$35,569.00	\$35,569.00	\$71,311.87	\$71,311.87	\$35,000.00	\$35,000.00		NO BID	
14	2	Sections of senior wellness stations/fitness stations		NO BID	\$31,517.86	\$63,035.72	\$3,690.90	\$7,381.80		NO BID	
14a	1	Installation of wellness/fitness stations		NO BID	\$4,516.13	\$4,516.13	\$1,600.00	\$1,600.00		NO BID	
15	1	Playground equipment for Butler Park	\$63,073.00	\$63,073.00	\$59,704.50	\$59,704.50	\$86,189.00	\$86,189.00		NO BID	
15a	1	Installation in butler park	\$24,592.00	\$24,592.00	\$19,087.00	\$19,087.00	\$13,000.00	\$13,000.00		NO BID	
16	1	Playground equipment for Grafa Park	\$48,225.00	\$48,225.00	\$60,589.61	\$60,589.61	\$77,970.10	\$77,970.10		NO BID	
16a	1	Installation in Grafa Park	\$20,624.00	\$20,624.00	\$20,107.53	\$20,107.53	\$14,500.00	\$14,500.00		NO BID	
17	1	Playground equipment for House Park	\$39,506.00	\$39,506.00	\$67,540.28	\$67,540.28	\$66,727.00	\$66,727.00		NO BID	

BID # 5185-12 Playground & Recreational Equipment OPENED July 30, 2012 Est. Cost: \$887,398.00			Kraftsman 19535 Haude Rd Spring, TX 77388 Mark Soderberg (800)451-4869		The Playwell Group 4743 Iberia Avenue, Suite C Dallas, TX 75207 Paige Underwood (800)726-1816		Recreation Sales 12700 Pancolin Ct Keller, TX 76244 James Riddle (817)707-3001		Engineered Plastic Systems LLC 885 Church Road Elgin, IL 60123 Marge Arndt (8004)780-2327	
17a	1	Installation for House Park	\$17,380.00	\$17,380.00	\$28,655.92	\$28,655.92	\$15,300.00	\$15,300.00		NO BID
18	1	Playground equipment for Pioneer Park	\$44,824.00	\$44,824.00	\$52,950.40	\$52,950.40	\$70,661.00	\$70,661.00		NO BID
18a	1	Installation in Pioneer Park	\$19,892.00	\$19,892.00	\$16,666.67	\$16,666.67	\$13,900.00	\$13,900.00		NO BID
19	1	Playground equipment for Sparks Park	\$64,253.00	\$64,253.00	\$44,433.53	\$44,433.53	\$83,812.60	\$83,812.60		NO BID
19a	1	Installation for Sparks Park	\$25,405.00	\$25,405.00	\$14,248.00	\$14,248.00	\$15,000.00	\$15,000.00		NO BID
20	1	Playground equipment for Ulmer Park	\$60,992.00	\$60,992.00	\$55,178.04	\$55,178.04	\$68,053.00	\$68,053.00		NO BID
20a	1	Installation in Ulmer Park	\$25,083.00	\$25,083.00	\$19,248.00	\$19,248.00	\$15,800.00	\$15,800.00		NO BID
1	25	Alternate Bench Bid		NO BID		NO BID		NO BID	\$379.00	\$9,475.00
1	25	Alternate Bench Bid		NO BID		NO BID		NO BID	6' Trail Side - #TSLB6 \$522.00	\$13,050.00
1	25	Alternate Bench Bid		NO BID		NO BID		NO BID	8' Garden - #GSLB8 \$436.00	\$10,900.00
						\$12,668.80			8' Trail Side - #TSLB8	
TOTALS:			\$640,673.00		\$813,909.48		\$761,278.75		\$44,325.00	

Bidding Summary:

18 Bid requests were issued.

8 Bids listed above

0 NO BIDS were received.

10 Bidders did not respond.

Playworld Systems, Landscape Structure, Total Recreation Products Inc.,
 Engineered Plastic Systems LLC, Churchich Recreation, Insight Amenities
 Recreation Brands Group

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: August 14, 2012
To: Tommy Hudson, Deputy City Manager
From: Tina Jauz, Community Services Director
Subject: Recreation Playground, Structures, and Equipment Bid

The Parks Division of the Community Services Department solicited bids during July 2012 for various recreational items, including:

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

On July 30, 2012, nine bids were received and opened—all within the allotted budget for this project. Staff is seeking City Council authorization to contract with the following companies who submitted the lowest and most qualified bid on the following products:

- | | |
|--|-------------|
| 1. Exerplay: Chaise Lounge Chairs (for pools) | \$6,434.00 |
| 2. BSN Sports: Players' Benches and Bleachers | \$31,274.95 |
| 3. Miracle Recreation Equipment Co: Soccer Goals, Basketball Backboards, and Fountains | \$38,043.90 |
| 4. Child's Play: Benches, Tables, BBQ Grills, Disc Golf Nets, and Trash Receptacles. | \$61,285.00 |

Total \$137,037.85

If approved, staff will place orders and plan to receive and install the items prior to September 25, 2012. The playgrounds and picnic pavilion projects will be reviewed by the Parks and Recreation Commission and recommended for award at a future City

Council meeting (since their funding sources allow them to exceed the current fiscal year's limitations).



Parks & Recreation Division

DEPARTMENT MEMO

To: Regina
Purchasing

From: Michele
Parks & Recreation

Date: August 2, 2012

SUBJECT: BID JUSTIFICATION (#5185-12)

Please refer to the following information for the justification on each line of the Recreation Playground, Structures and Equipment Bid (No. 5185-12)

1. Benches and Tables (Items 1, 1a, 2, 2a)

It's recommended that Child's Play be awarded these bid items. In order for the park equipment to look synonymous, it's important that we purchase the tables and benches from the same source. When adding the tables, benches and installation together, the lowest bid was Child's Play.

2. Players Benches and Bleachers (Items 3 and 4)

It's recommended that BSN Sports be awarded these bid items, as they were the lowest bid.

3. Soccer Goals (Item 5)

It's recommended that Churchich Recreation (Miracle) be awarded these bid items, as they were the lowest bid.

4. Basketball Backboard with Posts and Nets including installation (Items 6 and 6a)

It's recommended that Churchich Recreation (Miracle) be awarded these bid items, as they were the lowest bid.

5. Chaise Lounge Chairs (Item 7)

It's recommended that this bid item be awarded to Exerplay, as they were the lowest bid.

6. Barbecue Pits and Installation (Items 8 and 8a)

It's recommended that these items be awarded to Child's Play; they were \$120 more than the lowest bidder, however in order to consolidate our product orders, staff is recommending that we award to Child's Play since they were our lowest bidder on a number of other items.

7. Round Pedestal Drinking Fountains and Installation (Items 9 and 9a)

It's recommended that these items be awarded to Churchich Recreation (Miracle), as they were the lowest bidder. It should be noted that the Child's Play bid had an error in the calculation on this item; after phoning the company to verify their price, they rescinded their bid on this item.

8. Disc Golf Nets, Posts and Installation (Items 10 and 10a)

It's recommended that Child's Play be awarded the bid, as they were the lowest bidder.

9. Steel Trash Cans and Installation (Items 11 and 11a)

It's recommended that Child's Play be awarded these bid items, as they were the lowest bid.



THE CITY OF MIDLAND

CONTRACT

Contract No.5185-12-1

THIS CONTRACT, effective the 15th day of August, 2012, by and between the City of Midland, hereinafter referred to as the "Owner", and Child's Play, Inc., hereinafter referred to as the "Contractor", is made for the following considerations:

1. **Cost:** Total Proposal: \$ 61,285.00 DOLLARS
2. **Scope of Work:** The Contractor shall perform all work described for labor, material, equipment and supervision necessary to purchase and install Parks and Recreational Equipment as shown in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

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

EXHIBIT B..... Intentionally Omitted

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

EXHIBIT D..... Wage Scale

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

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

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

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

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

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

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

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

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

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

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

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

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

9. **Start of Work:** The Contractor shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 120 calendar days after release to proceed.

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

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

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

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

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

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

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

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

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

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

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

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

19. **Insurance**

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Worker's Compensation: Statutory limits

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

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

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

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

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

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

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

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

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

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

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

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

occurred in Midland County, Texas.

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

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

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

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

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

Contract No: 5185-12

OWNER, City of Midland

CONTRACTOR

Courtney B. Sharp, City Manager

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

Contractor Corporate Acknowledgment: Contract No.5185-12

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

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

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

Notary Public, State of Texas

City of Midland - Exhibit A

Contract 5185-12-1 Playground & Recreational Equipment			Child's Play Inc 10661 Shady Trail Dallas, TX 75720 Kathy Robertson (972) 484-0600	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
1	25	Benches	\$369.00	\$9,225.00
1a	1	Installation of Benches	\$1,250.00	\$1,250.00
2	25	Tables	\$714.00	\$17,850.00
2a	1	Installation of tables	\$1,250.00	\$1,250.00
8	10	Barbecue Pits	\$270.00	\$2,700.00
8a	1	Installation	\$500.00	\$500.00
10	20	Disc Golf Nets and Posts	\$308.00	\$6,160.00
10a	1	installation of nets and posts	\$1,350.00	\$1,350.00
11	50	Steel trash cans to match existing park receptacles	\$370.00	\$18,500.00
11a	1	Installation of trash cans	\$2,500.00	\$2,500.00
TOTALS:				\$61,285.00
The City of Midland will purchase the above items only for this contract				



CITY OF MIDLAND
PURCHASING DIVISION
BID REQUEST

DATE: 06/27/12

PAGE: 01

(THIS IS NOT AN ORDER)

BID NO: 5185-12

OPENING TIME: 11:00 AM

CLOSING DATE: 07/25/12

CITY OF MIDLAND
 300 NORTH LORAIN
 P. O. BOX 1152
 MIDLAND, TX 79702

BIDS WILL BE RECEIVED IN THE OFFICE OF THE City Secretary, Suite 330
 UNTIL 11:00 A.M. 7-25-12 FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO:
Parks & Recreation, 2300 Butternut Lane, Midland, Texas

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
			Playground and Recreational Equipment in accordance with the attached detail sheet, specifications and contract.	\$548,541.00	\$548,541.00
				TOTAL	548,541.00

NOTICE TO BIDDERS:

- FAILURE TO RESPOND WITH EITHER A BID OR "NO BID" WILL SUBJECT YOUR FIRM TO REMOVAL FROM THE BID LIST FOR THIS TYPE OF MATERIAL, EQUIPMENT OR SUPPLY ITEM.
- BIDS SHALL BE DELIVERED TO THE CITY IN A SEALED PACKAGE (ENVELOPE, ETC) **UNLESS THE CITY STATES** THAT THE BID MAY BE FAXED OR E-MAILED, OTHERWISE, BIDS FAXED OR E-MAILED DIRECTLY TO THE CITY WILL BE REJECTED. A SEALED BID MAY BE FAXED TO A THIRD PARTY FOR SEALED DELIVERY TO THE CITY. PLEASE CALL FOR MORE INFORMATION.
- IF THIS PURCHASE REQUIRES A CONTRACT, THE ATTACHED CONTRACT AND INSURANCE REQUIREMENTS ARE **NON-NEGOTIABLE**. MODIFICATIONS BY BIDDER/CONTRACTOR OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE BID. NON-RESPONSIVE BIDS WILL BE REJECTED. BIDDER/CONTRACTOR MUST BE WILLING TO SIGN THE CONTRACT AS IS AND WITHOUT MODIFICATIONS, PROVIDE PROPERLY EXECUTED BONDS (IF APPLICABLE) AND PROVIDE INSURANCE SPECIFICALLY AS REQUIRED WITHIN THE CONTRACT DOCUMENTS **WITHIN 21 DAYS** OF THE DATE OF THE TRANSMITTAL LETTER.
- IF THE SELECTED BIDDER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF PARAGRAPH 3, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER.
- IMPORTANT NOTICE** - IF THE CONTRACT DOCUMENTS REQUIRE WORKER'S COMPENSATION INSURANCE, BIDDER/CONTRACTOR MUST CARRY WORKER'S COMPENSATION INSURANCE TO BE ELIGIBLE FOR THIS CONTRACT. IF YOU CANNOT PROVIDE WORKER'S COMPENSATION INSURANCE AS REQUIRED BY STATE OF TEXAS STATUTE WE RESPECTFULLY REQUEST THAT YOU "NO BID" THIS WORK.

FOR ADDITIONAL INFORMATION, CONTACT (432) 685-7234 OR 685-7233. FAX NO. (432) 685-0523

NOTE: EACH BIDDER IS TO INDICATE BRAND NAME PRODUCT NUMBER AND ATTACH DESCRIPTIVE LITERATURE CLEARLY MARKED TO SHOW EACH ITEM ON THIS BID.

THE UNDERSIGNED HEREBY OFFERS TO FURNISH AND DELIVER THE ARTICLES OR SERVICE AS SPECIFIED ABOVE AT THE PRICES AND TERMS HEREIN STATED AND IN STRICT ACCORDANCE WITH THE SPECIFICATIONS AND CONDITIONS OF BIDDING ALL WHICH ARE MADE A PART OF THIS OFFER. THIS OFFER IS NOT SUBJECT TO WITHDRAWAL WITHOUT PERMISSION.

COMPANY NAME: Child's Play, Inc.
 ADDRESS: 10661 Shady Trail
 CITY: Dallas ST: TX ZIP: 75220
 PHONE NO. 972-484-0600 FAX NO. 972-484-0333
 EMAIL: bills@childsplayinc.net

CASH DISCOUNT: _____ % _____ DAYS

DELIVERY CAN BE MADE 4 weeks from order

AUTHORIZED SIGNATURE Kathy M. Robertson

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING



Child's Play, Inc
Contractor's Name

PROPOSAL Bid #5185-12

To: Purchasing Manager
City of Midland
Midland, Texas

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

Item	Qty	Unit	Description	Unit Cost	Total Cost
1	25	ea	Benches	\$ 369.00	\$ 9,225.00
1a	1	lot	Installation	\$ 50.00	\$ 1,250.00
2	25	ea	Tables	\$ 714.00	\$ 17,850.00
2a	1	lot	Installation	\$ 50.00	\$ 1,250.00
3	20	ea	Players' Benches without backs	\$ 266.00	\$ 5,320.00
4	5	ea	Bleachers	\$ 6,779.00	\$ 38,895.00
5	15	ea	Soccer Goals	\$ 1,320.00	\$ 19,800.00
6	6	ea	Basketball backboard with posts and nets	\$ 1,816.00	\$ 10,896.00
6a	1	lot	Installation	\$ 350.00	\$ 2,100.00
7	50	ea	Chaise lounge chairs for a pool deck	\$ No Bid	\$ No Bid
8	10	ea	Barbecue Pits	\$ 270.00	\$ 2,700.00
8a	1	lot	Installation	\$ 50.00	\$ 500.00
9	6	ea	Round Pedestal Drinking Fountains	\$ 270.00	\$ 2,700.00
9a	1	lot	Installation	\$ 175.00	\$ 1,050.00
10	20	ea	Disc Golf Nets and Posts	\$ 308.00	\$ 6,175.00
10a	1	lot	Installation	\$ 75.00	\$ 1,350.00
11	50	ea	Steel Trash Cans to match existing park receptacles originally purchased from Wabash Valley	\$ 370.00	\$ 18,500.00
11a	1	lot	Installation	\$ 50.00	\$ 2,500.00
12			Cost per square foot for finished shade material – fabric and related items only.	\$ No Bid /sqft	No Bid
12a	1	lot	Installation	\$ —	\$ —
13	1	ea	Picnic pavilion for Hogan Park	\$ 49,037.00	\$ 49,037.00
13a	1	lot	Installation must be included for the pavilion.	\$ 23,396.00	\$ 23,396.00
14	2	ea	Sections of Senior Wellness Stations/Fitness Stations	\$ 9,618.00	\$ 19,237.00
14a	1	lot	Installation	\$ 2,848.00	\$ 2,848.00
15	1	lot	Playground equipment for Butler Park	\$ 59,548.00	\$ 59,548.00
15a	1	lot	Installation	\$ 18,971.00	\$ 18,971.00
16	1	lot	Playground equipment for Grafa Park	\$ 35,105.00	\$ 35,105.00
16a	1	lot	Installation	\$ 9,473.00	\$ 9,473.00
17	1	lot	Playground equipment for House Park	\$ 30,828.00	\$ 30,828.00
17a	1	lot	Installation	\$ 9,210.00	\$ 9,210.00
18	1	lot	Playground equipment for Pioneer Park	\$ 39,928.00	\$ 39,928.00
18a	1	lot	Installation	\$ 12,339.00	\$ 12,339.00

19	1	lot	Playground equipment for Sparks Park	\$47,029.00	\$47,029.00
19a	1	lot	Installation	\$15,067.00	\$15,067.00
20	1	lot	Playground equipment for Ulmer Park	\$28,706.00	\$28,706.00
20a	1	lot	Installation	\$9,178.00	\$9,178.00
			Total Cost		\$557,451.00

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

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

VENDOR CONTACT:

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

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

FAX: (432) 685-0523
OR
E-mail: purchasing@midlandtexas.gov

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

AWARD

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

BID WAIVERS:

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

BIDDER AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL

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

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

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

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

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

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

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

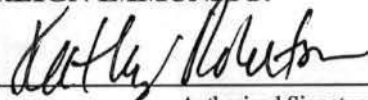
except the Owner from any liability whatsoever. The Owner is under no obligation to provide notice to Bidder that Bidder's notice is insufficient. Owner reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

<u>Child's Play, Inc</u>	<u></u>	<u>972-484-0600</u>
Bidder	Authorized Signature	Telephone
<u>10661 Shady Trail, Dallas, Tx 75220</u>	<u>Kathy Robertson</u>	<u>972-484-0333</u>
Address, City and State	Please Print above Name	Fax

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

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

PLEASE NOTE:

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

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

THE CITY OF MIDLAND

SPECIFICATION

Playground and Recreational Equipment

1. SCOPE

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

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

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

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

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

13. Two Sections of Senior Wellness Stations/Fitness Stations

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

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

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

PLAYGROUND DESIGN ELEMENTS:

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

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

2. VENDOR CONTACT:

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

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

OR

FAX: (432)685-0523

Email: purchasing@midlandtexas.gov

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

3. DEFINITIONS

3.1. OWNER

City of Midland

3.2. CONTRACTOR

Successful Bidder

4. REQUIREMENTS

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

Requirement

Vendor Comment

4.1. TAXES:

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

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

4.2. PLAYGROUND/FITNESS STATION MATERIAL:

- 4.2.1. The cost of each item shall include all freight charges for that item.
- 4.2.2. All equipment shall conform to applicable safety standards and dimensions.
- 4.2.3. Playground materials should include a percentage of both pre-consumer and post-consumer recycled content.
- 4.2.4. Playground components (where applicable) must be IPEMA Certified.
- 4.2.5. The system shall meet or exceed the Texas Accessibility Standards of the Texas Architectural Barriers Act and the standards as required under the Americans with Disabilities Act. Playground layout must comply with ASTM 1487.
- 4.2.6. All materials shall be structurally sound and suitable for safe play, low maintenance and long life.
- 4.2.7. Frame shall be of metal construction with powder coat finish (unless made of an approved alternate surface).
- 4.2.8. Decks shall be plastic coated expanded metal (or better).
- 4.2.9. All equipment shall conform to applicable safety standards including CPSC Guidelines.
- 4.2.10. Slides shall be polyethylene material (or better). Metal slides will not be accepted.
- 4.2.11. Colors will be selected after award. A color selection chart/guides should be included with the bid.
- 4.2.12. The cost summary shall include the total system cost with a breakdown of each item with its individual cost. Please provide the individual cost with freight as a stand-alone cost. This is to provide costs for adding or deleting equipment from the system if necessary.
- 4.2.13 Chain Climbers are NOT allowed.

4.3. PLAYGROUND/PAVILION SITE PREPARATION AND INSTALLATION:

- 4.3.1 Installation costs for equipment and ground-surface shall be included in bid.
- 4.3.2 Site preparation costs shall be included in bid.
- 4.3.3 Bid shall include removal and disposal of all packing materials and related debris during installation.
- 4.3.4 Security fencing shall be included in bid to enclose the project area during installation.

4.4 IMPACT ABSORBENT ACCESSIBLE SURFACING MATERIAL FOR PLAYROUNDS

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

5 QUALITY ASSURANCE

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

6 BID WAIVERS:

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

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

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

B. WAIVER:

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

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

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

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

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

CITY OF MIDLAND

ADDENDUM

BID # 5185-12

Playground and Recreational Equipment Bid

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 1

DATE: June 29, 2012

Please use the following information while creating your bid for submittal. The information provided is a matter of clarification for all bidders:

- The referenced bid seeks six (6) unique playgrounds to be placed at different locations. Each playground has a total budget of \$100,000, which must include the structure, ground surface, and installation.

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

Child's Play, Inc.

Company Name

[Signature]

Bidder Authorized Signature

7/26/12

Date

Kathy Robertson/Bill Shortz

Please Print Above Name

972.484.0600

Phone

CITY OF MIDLAND

ADDENDUM

BID # 5185-12

Playground and Recreational Equipment

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 2

DATE: July 3, 2012

The following questions were raised by one or more of the bidders. The answers are provided as a matter of clarification for all bidders as follows:

Q1. In the specifications it calls for 15 goals. Is that 15 pair or 15 individual?

A1. 15 individual

Q2. Regarding page 6 of 8, item 4.3.4: "Security fencing shall be included in bid to enclose the project area during installation." What type of fence specifically is required? Chain-link temporary fence, or orange snow-fence? Please advise.

A2. Security fencing may be orange snow-fence or better, as long as it can withstand windy conditions prone to Midland's weather.

Q3. Regarding page 4 of 11 (contract), item 9: "...the Owner may withhold permanently from Contractor's total compensation, the sum of _____ Dollars (\$____), not as a penalty but as liquidated damages for the breach of the contract..... " Please clarify amount of liquidated damages, as bonding companies will require information.

A3. N/A

Q4. What is the make and model of the current Wabash Valley trash can in the parks?

A4. Section 1.10 states the specifications for the trash can that we seek, and references a Wabash Valley can that we'd like to match. The trash can has three model numbers, one for each part.

The Receptacle: WAV-LR300P

The Liner: WAV-LR310 - 1,150

The Ground Post Package: WAV-LR100N - 2,550

Q5. The playground calls for a resilient surface material under the play apparatus; can this material be confined to the fall zone only and use an alternate (less expensive material) for the surrounding area?

A5. Yes, the area outside of the fall zone may be sand to minimize costs on the playground projects.

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

Child's Play, Inc

Company Name

B. Short

Bidder Authorized Signature

Kathy Robertson/Bill Short

Please Print Above Name

7/26/12

Date

972-484-0600

Phone

CITY OF MIDLAND

ADDENDUM

BID # 5185-12

Playground and Recreational Equipment

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 3

DATE: July 10, 2012

The following questions were raised by one or more of the bidders. The answers are provided as a matter of clarification for all bidders as follows:

Q1. Does the \$100,000 budget per playground to also include removal and disposal of the existing playground equipment?

A1. The City of Midland will remove and dispose of the existing playground.

Q2. Our company is bidding on the benches only. Are we able to do that? Or do we have to Bid on the Benches & Picnic tables both?

A2. Yes, vendors may bid on the benches only.

Q3. Is there an existing pad that the tables will be mounted in or will a new pad be poured around them?

A3. All tables have an existing cement pad, and if they don't, one will be provided by the City of Midland prior to installation.

Q4. Should the tables and benches be perforated to match the trash receptacles?

A4. Yes, the picnic tables should match the perforated trash can design, however the athletic benches need not match the perforated design.

Q5. What site preparations to include in the bid will be needed at each playground/pavilion site?

A5. The City of Midland will remove and dispose of existing playground equipment; provide a cement ribbon around the playground area, and remove 12 inches of existing surface (ground) material within the ribbon. Any additional preparations required by the playground/ground surface installation guidelines must be completed by the contractor.

Q6. What will the shade fabric be attached to if not a shade structure? What is the design of the sewn fabric to be, connection points, etc.?

A6. Shade material will be attached to square steel beam structures that comprise triangular, rectangular and square shapes. Connection points should be steel grommets with hook and cable. Final design plans are not yet known, therefore the bid only requires a cost per square foot for the shade material.

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

Child's Play, Inc

Company Name

B. S.

Bidder Authorized Signature

Kathy Robertson/Bill Short

Please Print Above Name

7/26/12

Date

972-484-0600

Phone

CITY OF MIDLAND

ADDENDUM

BID # 5185-12

Playground and Recreational Equipment

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 4

DATE: July 13, 2012

The following questions were raised by one or more of the bidders. The answers are provided as a matter of clarification for all bidders as follows:

Q1. The bid request states that the picnic tables should be 6 feet and also ADA accessible. Can you clarify – ADA tables usually have an 8 foot tabletop with 6 foot seats to allow for a wheelchair to fit on one end of the table. Is this what the bid is calling for?

A1. The bid states that picnic tables should be **at least 6 feet** in length. Therefore, nothing needs to be changed. ADA tables do generally take up 8 feet, however the manufacturing business regularly comes up with new designs. As a result, I stated that tables should be **at least 6 feet in length** in case a new product came out that would accommodate ADA needs in a smaller capacity.

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

Child's Play, Inc
Company Name

B. B.
Bidder Authorized Signature

Kathy Robertson/Bill Short
Please Print Above Name

7/26/12
Date

972-484-0600
Phone

CITY OF MIDLAND

ADDENDUM

BID # 5185-12

Playground and Recreational Equipment

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 5

DATE: July 19, 2012

The following questions were raised by one or more of the bidders. The answers are provided as a matter of clarification for all bidders as follows:

Q1. Are you requiring powder coat OVER galvanized finish?

A1. The current bid language in section 12.d reads: Frame must be galvanized steel with powder coated color options. This language will be amended to read: Frame must be corrosion resistant steel with powder coated color options.

Q2. Do you want tongue and groove wood deck with metal roof, or just the metal roof directly on the frame?

A2. The bid shall include tongue and groove wood deck with metal roof.

Q3. Are nets required with the soccer goals?

A3. No, nets are not required.

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

Child's Play, Inc

Company Name

B. B.

Bidder Authorized Signature

7/26/12

Date

Kathy Robertson/Bill Short

Please Print Above Name

972-484-0600

Phone

CITY OF MIDLAND

ADDENDUM

BID # 5185-12

Playground and Recreational Equipment

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 6

DATE: July 19, 2012

The following changes have been made to the specifications. Please make note of these changes and incorporate them in your bid.

The bid closing date has been changed to **July 30, 2012** at 11:00 AM.

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

Child's Play, Inc
Company Name

B. S.
Bidder Authorized Signature

Kathy Robertson / Bill Short
Please Print Above Name

7/26/12
Date

972.484.0600
Phone

CITY OF MIDLAND

ADDENDUM

BID # 5185-12

Playground Equipment

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 7

DATE: July 26, 2012

The following questions were raised by one or more of the bidders. The answers are provided as a matter of clarification for all bidders as follows:

Q1. Could you clarify how you would like the installation priced?

A1. Installation should be priced separately from the item.

Q2. Is the installation that is considered optional, to be included in our total price on page 1 and 4 of the bid?

A2. Yes

Q3. Will the installation of the playground equipment definitely be included when the bid is awarded?

A3. The answer is yes for item 13 and items 15 through 20.

Q4. Is the surfacing required to be a unitary surfacing, or will a loose fill material, such as wood chips be acceptable?

A4. See question 5 on Addendum 2

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

Child's Play, Inc
Company Name

BBL
Bidder Authorized Signature

Kathy Robertson / Bill Short
Please Print Above Name

7/26/12
Date

972-484-0600
Phone

EXHIBIT C

Bonding Requirements

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

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

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

PAYMENT BOND

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____,

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

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

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

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

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

PERFORMANCE BOND

STATE OF TEXAS

§
§
§

SURETY'S NO. _____

COUNTY OF MIDLAND

KNOW ALL MEN BY THESE PRESENTS, THAT _____

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

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

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

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

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

EXHIBIT "D"

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

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

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

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

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

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



THE CITY OF MIDLAND

CONTRACT

Contract No.5185-12-2

THIS CONTRACT, effective the 15th day of August, 2012, by and between the City of Midland, hereinafter referred to as the "Owner", and Miracle Recreation Equipment Company c/o Churchich Recreation LLC, hereinafter referred to as the "Contractor", is made for the following considerations:

1. **Cost:** Total Proposal: \$ 38,043.90 DOLLARS

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

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

EXHIBIT B..... Intentionally Omitted

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

EXHIBIT D..... Wage Scale

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

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

to perform the work in accordance with the contract.

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

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

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

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

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

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

8. **INDEMNITY: THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE OWNER AND ALL OF THE OWNER'S OFFICERS, AGENTS AND**

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

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

8.2. THE CONTRACTOR AGREES THAT HE WILL INDEMNIFY AND SAVE THE OWNER HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE

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

9. **Start of Work:** The Contractor shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 120 calendar days after release to proceed.

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

9.1. TIME IS OF THE ESSENCE IN THIS CONTRACT.

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

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

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

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

15. **Payment:** After all work is completed by the Contractor, and the Owner has inspected and approved that work, the Owner shall within thirty-one (31) days thereafter issue payment to the

Contractor in the amount of the contract and subsequent verified Change Orders. The Owner shall be the final judge of when work is completed by the Contractor. For contracts exceeding \$25,000 and construction time exceeds ninety days, requests for progress payments may be made to the extent of the materials and labor completed at the end of each month. Upon approval by the Owner's Representative the request and invoice shall be forwarded for payment less 5% retainage. The total of these payments shall not exceed 95% of the total contract amount.

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

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

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

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

19. **Insurance**

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Worker's Compensation: Statutory limits

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

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

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

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

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

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

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

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

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

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

22. **Governing Law and Venue:** This Contract shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Contract shall be deemed to have occurred in

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

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

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

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

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

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

Contract No: 5185-12

OWNER, City of Midland

CONTRACTOR

Courtney B. Sharp, City Manager

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

Contractor Corporate Acknowledgment: Contract No.5185-12

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

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

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

Notary Public, State of Texas

City of Midland - Exhibit A

Contract # 5185-12-2 Playground & Recreational Equipment			Miracle Recreation Equipment Co PO Box 1174 NIWOT, CO 80544 Chris Churchich (303) 530-4414	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
5	15	Soccer Goals	\$799.14	\$11,987.10
6	6	Basketball backboard with posts and nets	\$929.00	\$5,574.00
6a	1	Installation of basketball backboard	\$2,088.00	\$2,088.00
9	6	Round Pedestal Drinking Fountains	\$2,250.80	\$13,504.80
9a	1	Installation of drinking fountains	\$4,890.00	\$4,890.00
TOTALS:				\$38,043.90
The City of Midland will purchase the above items only for this contract				



**CITY OF MIDLAND
PURCHASING DIVISION
BID REQUEST**

DATE: 06/27/12

PAGE: 01

(THIS IS NOT AN ORDER)

BID NO: 5185-12

OPENING TIME: 11:00 AM

CLOSING DATE: 07/25/12

CITY OF MIDLAND
300 NORTH LORAIN
P. O. BOX 1152
MIDLAND, TX 79702

BIDS WILL BE RECEIVED IN THE OFFICE OF THE City Secretary, Suite 330
UNTIL 11:00 A.M. 7-25-12 FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO:
Parks & Recreation, 2300 Butternut Lane, Midland, Texas

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
			Playground and Recreational Equipment in accordance with the attached detail sheet, specifications and contract.	\$803,750.00	\$803,750.00
			**ADDITIONAL DISCOUNT IS OFFERED AS INCENTIVE TO PURCHASE ALL SIX PLAYGROUNDS AS BID. SHOULD BID BE BROKEN UP, ADDITIONAL DISCOUNT WOULD NOT APPLY. IF ALL 6 PARKS ARE ORDERED, PLEASE DEDUCT \$19,927.00		
			**BOTTOM LINE TOTAL DOES NOT INCLUDE TOTAL COST FOR FABRIC SHADE, AS QUANTITY IS NOT KNOWN.		
			TOTAL		\$803,750.00

NOTICE TO BIDDERS:

- FAILURE TO RESPOND WITH EITHER A BID OR "NO BID" WILL SUBJECT YOUR FIRM TO REMOVAL FROM THE BID LIST FOR THIS TYPE OF MATERIAL, EQUIPMENT OR SUPPLY ITEM.
- BIDS SHALL BE DELIVERED TO THE CITY IN A SEALED PACKAGE (ENVELOPE, ETC) **UNLESS THE CITY STATES THAT THE BID MAY BE FAXED OR E-MAILED**, OTHERWISE, BIDS FAXED OR E-MAILED DIRECTLY TO THE CITY WILL BE REJECTED. A SEALED BID MAY BE FAXED TO A THIRD PARTY FOR SEALED DELIVERY TO THE CITY. PLEASE CALL FOR MORE INFORMATION.
- IF THIS PURCHASE REQUIRES A CONTRACT, THE ATTACHED CONTRACT AND INSURANCE REQUIREMENTS ARE **NON-NEGOTIABLE**. MODIFICATIONS BY BIDDER/CONTRACTOR OF ANY MATERIAL TERM(S) TO THE CONTRACT DOCUMENTS WILL BE DEEMED A NON-RESPONSIVE BID. NON-RESPONSIVE BIDS WILL BE REJECTED. BIDDER/CONTRACTOR MUST BE WILLING TO SIGN THE CONTRACT AS IS AND WITHOUT MODIFICATIONS, PROVIDE PROPERLY EXECUTED BONDS (IF APPLICABLE) AND PROVIDE INSURANCE SPECIFICALLY AS REQUIRED WITHIN THE CONTRACT DOCUMENTS **WITHIN 21 DAYS** OF THE DATE OF THE TRANSMITTAL LETTER.
- IF THE SELECTED BIDDER/CONTRACTOR CANNOT MEET THE REQUIREMENTS OF PARAGRAPH 3, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER.
- IMPORTANT NOTICE** - IF THE CONTRACT DOCUMENTS REQUIRE WORKER'S COMPENSATION INSURANCE, BIDDER/CONTRACTOR MUST CARRY WORKER'S COMPENSATION INSURANCE TO BE ELIGIBLE FOR THIS CONTRACT. IF YOU CANNOT PROVIDE WORKER'S COMPENSATION INSURANCE AS REQUIRED BY STATE OF TEXAS STATUTE WE RESPECTFULLY REQUEST THAT YOU "NO BID" THIS WORK.

FOR ADDITIONAL INFORMATION, CONTACT (432) 685-7234 OR 685-7233. FAX NO. (432) 685-0523

NOTE: EACH BIDDER IS TO INDICATE BRAND NAME PRODUCT NUMBER AND ATTACH DESCRIPTIVE LITERATURE CLEARLY MARKED TO SHOW EACH ITEM ON THIS BID.

THE UNDERSIGNED HEREBY OFFERS TO FURNISH AND DELIVER THE ARTICLES OR SERVICE AS SPECIFIED ABOVE AT THE PRICES AND TERMS HEREIN STATED AND IN STRICT ACCORDANCE WITH THE SPECIFICATIONS AND CONDITIONS OF BIDDING ALL WHICH ARE MADE A PART OF THIS OFFER. THIS OFFER IS NOT SUBJECT TO WITHDRAWAL WITHOUT PERMISSION.

COMPANY NAME: MIRACLE RECREATION EQUIPMENT CO.
ADDRESS PO BOX 1174
CITY NIWOT ST CO ZIP 80544
PHONE NO. 303.530.4414 X 1 FAX NO. 303.530.9239
EMAIL: CHRIS@CHURCHCHRECREATION.NET

CASH DISCOUNT: SEE ABOVE ~~7~~ DAYS
DELIVERY CAN BE MADE 4 WKS A.R.O. OR LESS
AUTHORIZED SIGNATURE Chris Church

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING

** INSTALLATION OF ALL ITEMS INS BID BASED ON THE ASSUMPTION THAT ALL ITEMS WILL BE ORDERED AS BID. SHOULD ONLY PORTIONS OF THE BID BE ORDERED, INSTALLATION WOULD NEED TO BE REQUESTED.



MIRACLE RECREATION EQUIPMENT CO.
C/O CHURCH RECREATION, LLC.

Contractor's Name

PROPOSAL Bid #5185-12

To: Purchasing Manager
City of Midland
Midland, Texas

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

Item	Qty	Unit	Description	Unit Cost	Total Cost
1	25	ea	Benches	\$ 340.70	\$8,517.50
1a	1	lot	Installation **OPTIONAL PER BID DOCUMENTS	\$2,887.50	\$2,887.50
2	25	ea	Tables	\$ 638.25	\$15,956.25
2a	1	lot	Installation **OPTIONAL PER BID DOCUMENTS	\$5,307.50	\$5,307.50
3	20	ea	Players' Benches without backs	\$ 261.63	\$5,262.60
4	5	ea	Bleachers	\$ 9,600.45	\$48,002.25
5	15	ea	Soccer Goals	\$ 799.14	\$11,987.10
6	6	ea	Basketball backboard with posts and nets	\$ 929.00	\$ 5,574.00
6a	1	lot	Installation	\$ 348.00	\$ 2,088.00
7	50	ea	Chaise lounge chairs for a pool deck	\$ NO BID	\$ NO BID
8	10	ea	Barbecue Pits	\$283.34	\$1,700.07
8a	1	lot	Installation **OPTIONAL PER BID DOCUMENTS	\$ 78.00	\$468.00
9	6	ea	Round Pedestal Drinking Fountains	\$ 2,250.80	\$13,504.80
9a	1	lot	Installation	\$ 815.00	\$4,890.00
10	20	ea	Disc Golf Nets and Posts	\$459.00	\$9,180.00
10a	1	lot	Installation **OPTIONAL PER BID DOCUMENTS	\$172.00	\$3,440.00
11	50	ea	Steel Trash Cans to match existing park receptacles originally purchased from Wabash Valley	\$485.20	\$24,260.00
11a	1	lot	Installation **OPTIONAL PER BID DOCUMENTS	\$119.00	\$5,950.00
12			Cost per square foot for finished shade material – fabric and related items only.	\$ 2.60 /sqft	T.B.D. BASED ON QUANTITY
12a	1	lot	Installation	\$ NO BID	\$ NO BID
13	1	ea	Picnic pavilion for Hogan Park	\$62,103.00	\$62,103.00
13a	1	lot	Installation must be included for the pavilion.	\$33,069.00	\$33,069.00
14	2	ea	Sections of Senior Wellness Stations/Fitness Stations	\$ 7,452.90	\$14,905.40
14a	1	lot	Installation	\$2,352.90	\$4,705.80
15	1	lot	Playground equipment for Butler Park	\$79,108.00	\$79,108.00
15a	1	lot	Installation	\$20,892.00	\$20,892.00
16	1	lot	Playground equipment for Grafa Park	\$78,515.00	\$78,515.00
16a	1	lot	Installation	\$21,485.00	\$21,485.00
17	1	lot	Playground equipment for House Park	\$84,214.00	\$84,214.00
17a	1	lot	Installation	\$15,786.00	\$15,786.00
18	1	lot	Playground equipment for Pioneer Park	\$88,899.00	\$88,899.00
18a	1	lot	Installation	\$11,101.00	\$11,101.00

19	1	lot	Playground equipment for Sparks Park	\$79,017.00	\$79,017.00
19a	1	lot	Installation	\$20,983.00	\$20,983.00
20	1	lot	Playground equipment for Ulmer Park	\$83,579.00	\$83,579.00
20a	1	lot	Installation	\$16,421.00	\$16,421.00
			Total Cost		\$883,758.80

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

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

VENDOR CONTACT:

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

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

OR

FAX: (432) 685-0523

E-mail: purchasing@midlandtexas.gov

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

AWARD

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

BID WAIVERS:

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

BIDDER AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL

except the Owner from any liability whatsoever. The Owner is under no obligation to provide notice to Bidder that Bidder's notice is insufficient. Owner reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

Miracle Recreation Equipment Co

Bidder

Chris Church

Authorized Signature

800-729-7529

Telephone

Po Box 1174, Midland CO 80544

Address, City and State

Chris Church

Please Print above Name

303-530-9239

Fax

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

☒ **PROOF OF AUTOMOBILE, WORKER'S COMPENSATION AND GENERAL LIABILITY INSURANCE COVERAGE AS REQUIRED BY THE TERMS OF THE CONTRACT. (Upon award and prior to execution of the contract The City of Midland will have to be added to the policy as an additional insured and a certificate issued reflecting that provision, including a waiver of subrogation as stated in the contract)**

☒ **5% BID BOND FOR CONTRACTS IN AMOUNTS OF \$50,000 OR MORE. (ONLY WHEN EXHIBIT "C" IS INCLUDED IN THE CONTRACT).* THE SUCCESSFUL BIDDER SHALL BE REQUIRED TO PROVIDE A PAYMENT BOND AND PERFORMANCE BOND FOR BIDS OF \$50,000 OR MORE. IF BOND FORMS WERE NOT INCLUDED, THEY MAY BE OBTAINED FROM THE OFFICE OF THE PURCHASING MANAGER. Call (432) 685-7234 for information.**

PLEASE NOTE:

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

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

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

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

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

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

Miracle Recreation Equipment Co.

Company Name

800.729.7529

Phone

Chris Churchill

Authorized Signature

303.530.9239

Fax

Chris Churchill

Print Above Name

7-25-12

Date

THE CITY OF MIDLAND

SPECIFICATION

Playground and Recreational Equipment

1. SCOPE

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

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

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

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

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

13. Two Sections of Senior Wellness Stations/Fitness Stations

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

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

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

PLAYGROUND DESIGN ELEMENTS:

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

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

2. VENDOR CONTACT:

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

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

OR

FAX: (432)685-0523

Email: purchasing@midlandtexas.gov

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

3. DEFINITIONS

3.1. OWNER

City of Midland

3.2. CONTRACTOR

Successful Bidder

4. REQUIREMENTS

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

Requirement

Vendor Comment

4.1. TAXES:

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

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

4.2. PLAYGROUND/FITNESS STATION MATERIAL:

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

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

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

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

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

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

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

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

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

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

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

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

4.2.13 Chain Climbers are NOT allowed.

4.3. PLAYGROUND/PAVILION SITE PREPARATION AND INSTALLATION:

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

4.3.2 Site preparation costs shall be included in bid.

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

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

4.4 IMPACT ABSORBENT ACCESSIBLE SURFACING MATERIAL FOR PLAYGROUNDS

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

5 QUALITY ASSURANCE

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

6 BID WAIVERS:

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

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

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

B. WAIVER:

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

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

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

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

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

CITY OF MIDLAND

ADDENDUM

BID # 5185-12

Playground and Recreational Equipment Bid

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 1

DATE: June 29, 2012

Please use the following information while creating your bid for submittal. The information provided is a matter of clarification for all bidders:

- The referenced bid seeks six (6) unique playgrounds to be placed at different locations. Each playground has a total budget of \$100,000, which must include the structure, ground surface, and installation.

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

MIRAGE RECREATION EQUIPMENT CO.

Company Name

Chris Churchich

Bidder Authorized Signature

7.25.12

Date

Chris Churchich

Please Print Above Name

800.729.7529

Phone

CITY OF MIDLAND

ADDENDUM

BID # 5185-12

Playground and Recreational Equipment

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 2

DATE: July 3, 2012

The following questions were raised by one or more of the bidders. The answers are provided as a matter of clarification for all bidders as follows:

Q1. In the specifications it calls for 15 goals. Is that 15 pair or 15 individual?

A1. 15 individual

Q2. Regarding page 6 of 8, item 4.3.4: "Security fencing shall be included in bid to enclose the project area during installation." What type of fence specifically is required? Chain-link temporary fence, or orange snow-fence? Please advise.

A2. Security fencing may be orange snow-fence or better, as long as it can withstand windy conditions prone to Midland's weather.

Q3. Regarding page 4 of 11 (contract), item 9: "...the Owner may withhold permanently from Contractor's total compensation, the sum of _____ Dollars (\$____), not as a penalty but as liquidated damages for the breach of the contract..... " Please clarify amount of liquidated damages, as bonding companies will require information.

A3. N/A

Q4. What is the make and model of the current Wabash Valley trash can in the parks?

A4. Section 1.10 states the specifications for the trash can that we seek, and references a Wabash Valley can that we'd like to match. The trash can has three model numbers, one for each part.

The Receptacle: WAV-LR300P

The Liner: WAV-LR310

The Ground Post Package: WAV-LR100N

Q5. The playground calls for a resilient surface material under the play apparatus; can this material be confined to the fall zone only and use an alternate (less expensive material) for the surrounding area?

A5. Yes, the area outside of the fall zone may be sand to minimize costs on the playground projects.

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

Mirade Recreation Equipment Co.
Company Name

Chris Churchick
Bidder Authorized Signature

Chris Churchick
Please Print Above Name

7-25-12
Date

800-729-7529
Phone

CITY OF MIDLAND

ADDENDUM

BID # 5185-12

Playground and Recreational Equipment

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 3

DATE: July 10, 2012

The following questions were raised by one or more of the bidders. The answers are provided as a matter of clarification for all bidders as follows:

Q1. Does the \$100,000 budget per playground to also include removal and disposal of the existing playground equipment?

A1. The City of Midland will remove and dispose of the existing playground.

Q2. Our company is bidding on the benches only. Are we able to do that? Or do we have to Bid on the Benches & Picnic tables both?

A2. Yes, vendors may bid on the benches only.

Q3. Is there an existing pad that the tables will be mounted in or will a new pad be poured around them?

A3. All tables have an existing cement pad, and if they don't, one will be provided by the City of Midland prior to installation.

Q4. Should the tables and benches be perforated to match the trash receptacles?

A4. Yes, the picnic tables should match the perforated trash can design, however the athletic benches need not match the perforated design.

Q5. What site preparations to include in the bid will be needed at each playground/pavilion site?

A5. The City of Midland will remove and dispose of existing playground equipment; provide a cement ribbon around the playground area, and remove 12 inches of existing surface (ground) material within the ribbon. Any additional preparations required by the playground/ground surface installation guidelines must be completed by the contractor.

Q6. What will the shade fabric be attached to if not a shade structure? What is the design of the sewn fabric to be, connection points, etc.?

A6. Shade material will be attached to square steel beam structures that comprise triangular, rectangular and square shapes. Connection points should be steel grommets with hook and cable. Final design plans are not yet known, therefore the bid only requires a cost per square foot for the shade material.

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

Miracle Recreation Equipment Co

Company Name

Chris Churchich

Bidder Authorized Signature

7-25-12

Date

Chris Churchich

Please Print Above Name

800-729-7529

Phone

CITY OF MIDLAND

ADDENDUM

BID # 5185-12

Playground and Recreational Equipment

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 4

DATE: July 13, 2012

The following questions were raised by one or more of the bidders. The answers are provided as a matter of clarification for all bidders as follows:

Q1. The bid request states that the picnic tables should be 6 feet and also ADA accessible. Can you clarify – ADA tables usually have an 8 foot tabletop with 6 foot seats to allow for a wheelchair to fit on one end of the table. Is this what the bid is calling for?

A1. The bid states that picnic tables should be **at least 6 feet** in length. Therefore, nothing needs to be changed. ADA tables do generally take up 8 feet, however the manufacturing business regularly comes up with new designs. As a result, I stated that tables should be **at least 6 feet in length** in case a new product came out that would accommodate ADA needs in a smaller capacity.

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

Miracle Recreation Equipment Co.
Company Name

Chris Charchich
Bidder Authorized Signature

Chris Charchich
Please Print Above Name

7-25-12
Date

800 729-7529
Phone

CITY OF MIDLAND

ADDENDUM

BID # 5185-12

Playground and Recreational Equipment

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 5

DATE: July 19, 2012

The following questions were raised by one or more of the bidders. The answers are provided as a matter of clarification for all bidders as follows:

Q1. Are you requiring powder coat OVER galvanized finish?

A1. The current bid language in section 12.d reads: Frame must be galvanized steel with powder coated color options. This language will be amended to read: Frame must be corrosion resistant steel with powder coated color options.

Q2. Do you want tongue and groove wood deck with metal roof, or just the metal roof directly on the frame?

A2. The bid shall include tongue and groove wood deck with metal roof.

Q3. Are nets required with the soccer goals?

A3. No, nets are not required.

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

Miracle Recreation Equipment Co.

Company Name

Chris Churchick

Bidder Authorized Signature

Chris Churchick

Please Print Above Name

7-25-12

Date

800.729.7529

Phone

CITY OF MIDLAND

ADDENDUM

BID # 5185-12

Playground and Recreational Equipment

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 6

DATE: July 19, 2012

The following changes have been made to the specifications. Please make note of these changes and incorporate them in your bid.

The bid closing date has been **changed to July 30, 2012** at 11:00 AM.

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

Miracle Recreation Equipment Co.

Company Name

Chris Church

Bidder Authorized Signature

7-25-12

Date

Chris Church

Please Print Above Name

800-729-7529

Phone

CITY OF MIDLAND

ADDENDUM

BID # 5185-12

Playground Equipment

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 7

DATE: July 26, 2012

The following questions were raised by one or more of the bidders. The answers are provided as a matter of clarification for all bidders as follows:

Q1. Could you clarify how you would like the installation priced?

A1. Installation should be priced separately from the item.

Q2. Is the installation that is considered optional, to be included in our total price on page 1 and 4 of the bid?

A2. Yes

Q3. Will the installation of the playground equipment definitely be included when the bid is awarded?

A3. The answer is yes for item 13 and items 15 through 20.

Q4. Is the surfacing required to be a unitary surfacing, or will a loose fill material, such as wood chips be acceptable?

A4. See question 5 on Addendum 2

PLEASE RETURN THIS ADDENDUM WITH YOUR BID BY THE CLOSING DATE.

All other terms and conditions shall remain the same.

MIRACLE RECREATION EQUIPMENT CO.

Company Name



Bidder Authorized Signature

07.26.12

Date

CHRIS CHURCHICH

Please Print Above Name

303.530.4414 x 12

Phone

Contractor Corporate Acknowledgment: Contract No.5185-12

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

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

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

Notary Public, State of Texas

EXHIBIT C

Bonding Requirements

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

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

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

PAYMENT BOND

STATE OF TEXAS

§
§
§

SURETY'S NO. _____

COUNTY OF MIDLAND

KNOW ALL MEN BY THESE PRESENTS, THAT _____,

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

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

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

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

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

PERFORMANCE BOND

STATE OF TEXAS

§
§
§

SURETY'S NO. _____

COUNTY OF MIDLAND

KNOW ALL MEN BY THESE PRESENTS, THAT _____

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

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

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

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

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

EXHIBIT "D"

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

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

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

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

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

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



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 8/14/2012

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution awarding the project described as Reconstruct Executive Apron, Area B, at Midland International Airport, to Jones Bros. of Odessa, Texas, and appropriate the necessary funds.

Purpose:

Consider a resolution awarding the project described as Reconstruct Executive Apron, Area B, at Midland International Airport, to Jones Bros. of Odessa, Texas, and appropriate the necessary funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Economic Impact:

FAA 90/10 Split:

FAA Share: \$2,936,724.00

City Share: \$326,303.00 (\$18,000.00 previously appropriated)

Appropriation Language:

That the sum of \$2,936,724.00 is hereby appropriated from the Airport Operating Fund (500) Current Year Federal Unappropriated Fund Balance (5305) to the Executive Apron Reconstruction – Area B (7081)

That the sum of \$308,303.00 is hereby appropriated from the Airport Passenger Facility Charge (PFC) Fund (501) Unappropriated Fund Balance (5650) to the Executive Apron Reconstruction – Area B (7081)

Discussion:

On April 24, 2012, City Council authorized the execution of Federal Aviation Administration Airport Improvement Grant #53 when it was received to assist in the funding of the project described as Executive Apron Reconstruction – Area B (7081).

On May 22, 2011, City Council approved a recommendation made by the Department of Airports to amend Parkhill, Smith and Cooper's Professional Services Agreement to add the project described as the Executive Apron Reconstruction – Area B (7081). This project will reconstruct asphalt ramp area located in the Executive Hangar Area.

On April 24, 2012, City Council authorized the advertisement of bids and on May 24, 2012, bids were received and opened. Jones Bros. of Odessa, Texas was the low bid for this project. It appears that Jones Bros. met all the requirements contained in the advertised specifications.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH JONES BROS. OF ODESSA, TEXAS, FOR THE PROJECT DESCRIBED AS RECONSTRUCT EXECUTIVE APRON, AREA B (7081) AT THE MIDLAND INTERNATIONAL AIRPORT; THE COUNCIL PREVIOUSLY AUTHORIZED ADVERTISEMENT FOR BIDS FOR THE PROJECT; THE CITY'S SHARE IS \$326,303.00 IN WHICH 18,000.00 WAS PREVIOUSLY APPROPRIATED; AND APPROPRIATING FUNDS

WHEREAS, the City Council previously approved the plans and specifications and authorized advertisement for bids for the Project described as Reconstruct Executive Apron, Area B (7081) 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 Reconstruct Executive Apron, Area B (7081) , at a total estimated cost of \$2,936,724.00.

SECTION TWO. That the sum of \$2,936,724.00 is hereby appropriated from the Airport Operating Fund (500) Current Year Federal Unappropriated Fund Balance (5305) to the Executive Apron, Area B (7081).

SECTION THREE. That the sum of \$308,303.00 is hereby appropriated from the Airport Passenger Facility Charge (PFC) Fund (501) Unappropriated Fund Balance (5650)

to the Executive Apron, Area B (7081).

SECTION FOUR. 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 \$2,936,724.00 upon receipt of proper invoice or statement executed by the City Manager.

SECTION FIVE. 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., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**MIDLAND INTERNATIONAL AIRPORT****Executive Apron Reconstruction – Area B****Midland, Texas****May 24, 2012 – 2:00 p.m.****PSC Project No. 01.9751.12**

CONTRACTOR	BID BOND	ADDENDUM #1	BASE BID	ADDITIVE ALTERNATE 1	ADDITIVE ALTERNATE 2	TOTAL BASE BID WITH ADDITIVE ALTERNATES
Jones Bros Dirt & Paving 1401 S. Grandview Odessa, TX 79761	X	X	\$2,089,948.00	\$329,980.00	\$153,111.80	\$2,573,039.80
Reece Albert, Inc. P.O. BOX 3238 Midland, TX 79705	X	X	\$2,081,913.20	\$356,430.50	\$209,911.30	\$2,648,255.00



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 8/14/2012

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the City Manager or his designee to execute on behalf of the City of Midland, all contracts and agreements with the State of Texas, represented by the Texas Department of Transportation, and such other parties as shall be necessary and appropriate for the implementation of the project described as Midland Airpark Hangar Expansion.

Purpose:

Consider a resolution authorizing the City Manager or his designee to execute on behalf of the City of Midland, all contracts and agreements with the State of Texas, represented by the Texas Department of Transportation, and such other parties as shall be necessary and appropriate for the implementation of the project described as Midland Airpark Hangar Expansion.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Project Cost Estimates:

Total design and construction project costs currently estimated to be	\$ 666,666.00
Total sponsor share including, construction and design estimated to be	\$ 66,666.00

Discussion:

On May 22, 2012, Council approved to add this project to Amendment #1 of Parkhill, Smith & Cooper Professional Services agreement. There is a serious demand for

hangars at both Midland International and Midland Airpark Airports, with a waiting list of at least two pages long. It is, therefore, imperative that we offer some relief to the aviation community in providing hangars for their aircraft. The Texas Department of Transportation (TxDOT) will participate in this project at a 90/10 cost split. Improvements include the design and construction of new T-hangars at Midland Airpark. If approved by Council, funds will be available in 2013.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE ON BEHALF OF THE CITY OF MIDLAND, ALL CONTRACTS AND AGREEMENTS WITH THE STATE OF TEXAS, REPRESENTED BY THE TEXAS DEPARTMENT OF TRANSPORTATION, AND SUCH OTHER PARTIES AS SHALL BE NECESSARY AND APPROPRIATE FOR THE IMPLEMENTATION OF THE PROJECT DESCRIBED AS AIRPARK HANGAR EXPANSION WHICH IS AN IMPROVEMENT CONTAINED IN THE AIRPORT CAPITAL IMPROVEMENT PROGRAM

WHEREAS, the City of Midland intends to make certain improvements to the Midland Airpark; and

WHEREAS, on May 22, 2012, the City Council approved Resolution Number 2012-140 authorizing an amendment to the professional services agreement with Parkhill, Smith & Cooper, Inc. for the Airport Capital Improvement Program which included the Airpark Hangar Expansion Project; and

WHEREAS, the Texas Department of Transportation will participate in the Airpark Hangar Expansion Project at a 90/10 cost split in which the City of Midland will be responsible for 10% of the total project costs currently estimated to be \$666,666.00; and

WHEREAS, the City of Midland intends to name the Texas Department of Transportation as its agent for the purposes of applying for, receiving and disbursing all funds for these improvements and for the administration of contracts necessary for the implementation of the Airpark Hangar Expansion Project; and

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager or his designee to execute on behalf of the City of Midland, all contracts and agreements with the State of Texas, represented by the Texas Department of Transportation, and such other parties as shall be necessary and appropriate for the implementation of the project described as the Airpark Hangar Expansion Project;

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

THAT the City Manager or his designee is hereby authorized and directed to execute on behalf of the City of Midland, all contracts and agreements with the State of Texas, represented by the Texas Department of Transportation, and such other parties as shall be necessary and appropriate for the implementation of the project described as improvements to the Midland Airpark.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 8/14/2012

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the execution of a Right of Way Agreement between WTG Processing, L.P. and the City of Midland at Midland Executive Airpark, for pipeline and associated compressor site located in Section 36, Block 39, T-1-N, T&P Ry. Co. Survey, Martin County , Texas

Purpose:

Consider a resolution authorizing the execution of a Right of Way Agreement between WTG Processing, L.P. and the City of Midland at Midland Executive Airpark, for pipeline and associated compressor site located in Section 36, Block 39, T-1-N, T&P Ry. Co. Survey, Martin County , Texas

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

City Non-refundable processing fee	- \$ 500.00
Compressor Pad	- \$ 5,000.00
1,385 ft of 12" pipe (83.94 rods) at \$59.00 per rod	- \$ 4,952.42
3,909 ft of 6" pipe (236.91 rods) at \$41.00 per rod	- \$ 9,713.27
3,909 ft of 4" pipe (236.91 rods) at \$22.00 per rod	- \$ 5,212.00
Initial fee due at execution of ROW	- \$25,377.69
Annual fee	- \$5,000.00

Discussion:

WTG Gas Processing, L.P. is requesting permission to install a Compressor Station and related pipelines on Airport property located north of Midland along Hwy

349. The Department of Airports concurs with this request under the terms negotiated. The term of the agreement is for ten (10) years. The license shall automatically renew at the end of the term for an additional five (5) years upon the written request of either party to be received by the other party at least 120 days before the expiration of this Agreement. Granting this agreement will not impact future Airport plans for this property.

RESOLUTION NO.

RESOLUTION AUTHORIZING A RIGHT-OF-WAY LICENSE WITH THE CITY OF MIDLAND, TEXAS AND WTG PROCESSING, L.P.; SAID RIGHT-OF-WAY LICENSE IS FOR THE PURPOSE OF ENTERING CITY OF MIDLAND'S RIGHT-OF-WAY FOR PLACING, CONSTRUCTING, OPERATING, REPAIRING, MAINTAINING, REPLACING AND REMOVING, THREE (3) PETROLEUM PRODUCTS AND PETROLEUM BY-PRODUCTS PIPELINES, FOR THE TRANSPORTATION OF PETROLEUM PRODUCTS AND PETROLEUM BY-PRODUCTS AND ONE (1) PAD SITE LOCATION FOR THE USE OF A COMPRESSOR STATION, AND TO FURTHER HAVE THE RIGHT OF INGRESS AND EGRESS AT CONVENIENT POINTS; THE PIPELINE IS LOCATED WITHIN THE CITY OF MIDLAND RIGHT-OF-WAY, SECTION 36, BLOCK 39, T-1-N, T&P RY CO. SURVEY, MARTIN COUNTY, TEXAS; THE LICENSE TERM IS FOR TEN (10) YEARS, COMMENCING WITH THE DATE OF THIS LICENSE AND SHALL AUTOMATICALLY RENEW AT THE END OF THE TERM FOR ONE ADDITIONAL FIVE (5) YEAR TERM UPON 120 DAYS WRITTEN REQUEST PRIOR TO EXPIRATION

WHEREAS the City Council finds it to be in the public interest to authorize a right-of-way license with WTG Processing, L.P., located within the City of Midland Right-of-Way, Section 36, Block 39, T-1-N, T&P Ry. 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 right-of-way license with WTG Processing, L.P., 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., 2012, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marvin 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 AGREEMENT, made and entered into this 15th day of August, 2012, by and between THE CITY OF MIDLAND, TEXAS, a home rule municipal corporation, hereinafter called "Licensor", and WTG Gas Processing, L.P., hereinafter called "Licensee".

Licensee desires use of certain properties owned by the Licensor in Martin County, Texas inside the City of Midland, Texas, for the purposes set forth below.

It is the position of the Licensor that Licensee must obtain a license in order to use the public lands.

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:

1. Licensor does hereby grant unto Licensee, the right to enter upon certain properties of the City of Midland in Martin County, Texas, being thirty feet (30') on either side of each of the centerlines described below for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing thereon, a maximum of three (3) petroleum products and petroleum by-products pipelines, not to exceed twelve inches (12") in diameter, for the transportation of petroleum products and petroleum by-products and one (1) pad site location for the use of a compressor station and to further have the right of ingress and egress at convenient points for such purpose.

Said centerlines for the one (1) 3909' right of way granted herein are described as follows:

CENTERLINE descriptions of Pipeline at Midland Executive Airpark, located in Section 36, Block 39, T-1-N, T&P Ry. Co. Survey, Martin County, Texas, and being more particularly illustrated in Exhibit A.

Said centerlines for the one (1) 3909' right of way granted herein are described as follows:

CENTERLINE descriptions of Pipeline at Midland Executive Airpark, located in Section 36, Block 39, T-1-N, T&P Ry. Co. Survey, Martin County, Texas, and being more particularly illustrated in Exhibit A.

Said centerlines for the one (1) 1390' in right of way granted herein are described as follows:

CENTERLINE descriptions of Pipeline at Midland Executive Airpark, located in Section 36, Block 39, T-1-N, T&P Ry. Co. Survey, Martin County, Texas, and being more particularly illustrated in Exhibit A.

The three centerlines consist of 9,208 linear feet or 558.06 rods.

Said pad site location for the use of a compressor station for one (1) 150ft X 250ft in right of way granted herein described as follows:

Site descriptions of the pad site location for the use of a compressor station at Midland Executive Airpark, located in Section 36, Block 39, T-1-N, T&P Ry. Co. Survey, Martin County, Texas, and being more particularly illustrated in Exhibit A.

The pad site location for the use of a compressor station consist of 37,500 Sq ft.

2. This license shall be for a term of ten (10) years, commencing with the date of this license, the "Commencement Date," unless terminated earlier as provided hereafter. The license shall automatically renew at the end of the term for an additional five (5) years, upon the written request of either party to be received by the other party at least 120 days before the expiration of this Agreement.

Either party may terminate this license at any time and for any or no reason upon giving the other party written notice at least one year in advance of such termination. The parties agree that it is in either party's sole discretion to terminate this license, without penalty, and that they have bargained for this flexibility.

Upon termination of this license, Licensee shall remove all pipelines, vaults and other equipment and structures associated with the three (3) pipeline systems buried in the subsurface of the properties described above. After removal of such pipeline systems, 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 Director of Airports, which approval shall not be unreasonably withheld. All of said work shall be completed within ninety (90) days after the effective date of termination of this license.

3. In consideration for the rights herein granted to Licensee, Licensee shall pay to the Licensor the following sums:

Fifty-Nine Dollars (\$59.00) per linear rod 84.24 rods for 1,390 ft of 12" pipe for a total fee of \$4,970.30.

Forty-One Dollars (41.00) per linear rod 236.91 rods for 3,909 ft of 6" pipe for a total fee of \$9,713.27.

Twenty-Two Dollars (22.00) per linear rod 236.91 rods for 3,909 ft of 4" pipe for a total fee of \$5,212.00.

The pad site location for the use of a compressor station consist of 37,500 sq. ft. for a total fee of \$5,000.00.

The first year license fee of \$25,395.57 shall be due and payable in advance of the commencement date of this license ("License Fee"). At the end of the initial five (5) year period, the annual fee shall be renegotiated, with any increase not to exceed twenty-five percent (25%) of the prior period's rate. The amount of the new license fee shall be decided by Licensor if the parties are unable to agree on a license fee. Licensee's failure to make such payment when due shall constitute a surrender and termination of this license and all improvements remaining on the properties that were constructed by Licensee shall be and become the property of the Licensor, its successors and assigns. However, prior thereto, Licensor shall give Licensee written notice of such failure and Licensee shall have two (2) business days from receipt of such notice to make payment and avoid termination of this agreement.

4. In further consideration for the rights herein granted to Licensee, Licensee shall pay to the Licensor the sum of Five thousand dollars (\$5,000.00) per annum, each year

payable on or before the anniversary of the commencement date of this license agreement except for the first year of the license agreement. The first year's license fee of \$25,395.57 shall be due and payable in advance of the commencement date of this license ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay the Licensor a late charge of five percent (5%).

5. At the same time the first year License Fee is due, Licensee shall pay a non-refundable onetime fee of Five hundred dollars (\$500.00) to the Director of Airports. Said fee shall revert to the Licensor and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

The license fee payment shall be made to the Licensor at the office of the Director of Airports, City of Midland, P.O. Box 60305, Midland, Texas, 79711.

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.

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

7. 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 Licensor 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 Licensor's Standard Specifications.

8. Licensee covenants and agrees that it will bury the pipelines to be constructed hereunder at least thirty-six inches (36") in depth. All backfill used in burying such line shall be compacted to a density of ninety percent (90%), except where such pipeline crosses under a paved or traveled portion of the Licensor's right of way where such backfill shall be

compacted to a density of ninety five percent (95%). The Licensor shall be afforded the opportunity to test the density on all backfill.

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

10. **INDEMNITY** - **LICENSEE WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND LICENSOR AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, its agents or employees, or any subcontractor, arising out of, or resulting from, Licensee's use of, or activities on, the Agreement Premises, and Licensee will be required to pay any judgment with costs which may be obtained against Licensor or any of its officers, agents or employees, including reasonable attorney's fees.**

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

11. Licensor expressly reserves the right to install, repair, or reconstruct within the rights of way used and occupied by the Licensee any 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 structures.

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 PIPELINES, 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 grade of a street or in the location or manner of constructing a water pipe, sewer pipe, or other 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 ninety (90) 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.

12. 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.

13. It is especially provided, however, that as an express condition of this license, and not as a mere covenant, in the event Licensee abandons the pipeline system to be constructed hereunder, 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 the construction of the pipeline system to be built hereunder, 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, without the necessity of any notice to Licensee or any re-entry by the Licensor.

14. In the event that Licensee desires to reconstruct, repair, maintain, replace or remove the pipeline systems 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 Director of Airports for his approval. In the event of emergency repairs necessary to restore service, the Licensee shall notify Licensor's Director of Airports before making any repairs if on a Licensor work day and if not on a work day, the Licensee shall notify the Licensor's Director of Airports on the first work day after repairs have begun.

15. The Licensor reserves the right to use the surface or subsurface or airspace above the properties covered by this license for any public purpose allowed by law and deemed necessary by the Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by the Licensor on, across, along, under or over said right of way occupied by the Licensee; and whenever by reason of said work in connection with said public purposes it shall be deemed necessary by the Licensor to alter, change, adapt, conform or relocate said pipelines of Licensee, such alteration or change or

relocation shall be commenced by the Licensee within ninety (90) days after being ordered in writing by the Licensor pursuant to directions from the Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against the Licensor provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding the Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable Federal or State laws with respect to relocation payments.

16. **Assignment** - Licensee 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.

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

"Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Licensee shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder. Licensors does not have the power to direct the order in which the work is done. Licensors shall not have the right to control the means, methods or details of Licensee's work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way.

18. **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, INTERPRETATION OR BREACH 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.

19. **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.

20. **Release** - NOTWITHSTANDING ANY OTHER PROVISION, LICENSEE HEREBY RELEASES, RELINQUISHES, ACQUITS AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS 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.

21. **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.

22. **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.

23. **Notice of Alleged Breach; Statutory Prerequisites** - As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this 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-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 Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the Licensor from any liability whatsoever. The Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

said claim or alleged damages. Licensee agrees that the requirements of this entire Agreement are reasonable.

24. **Insurance** - Licensee shall obtain Commercial General Liability insurance covering all of Licensee's operations under this Agreement and provide Licensor with a certificate(s) of insurance, and shall maintain such insurance in effect during the term of this Agreement plus any renewal periods, containing the following amounts: Insurance coverage in the minimum amount of ONE MILLION DOLLARS (\$1,000,000.00) against liability for injury to or the death of any one or more persons in any one event and property damage insurance in the amount of ONE MILLION DOLLARS (\$1,000,000.00) for property damage as a result of any one event.

The Licensee shall obtain Business Automobile Liability insurance and 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.

Such insurance shall be written with insurance companies authorized to do business in the State of Texas and acceptable to Licensor and all insurance policies, except Worker's Compensation Insurance, shall include Licensor as an additional insured and shall cover all of Licensee's contractors and subcontractors, and copies of the policies of insurance that have been issued or certificates evidencing proof of said policies shall be deposited with the Licensor's City Secretary. All of Licensee's insurance shall waive all rights of subrogation in favor of Licensor. The Licensor's Director of Airports shall be responsible to ensuring that the insurance required under this Agreement remains in place during the entire term of the Agreement.

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, with language similar to the following:

"The City of Midland is included as an additional insured on all policies except for Worker's Compensation. The Licensee and Insurer hereby waive all rights of subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance."

25. Any notice or communication required in the administration of this license shall be sent to the Licensor as follows: Director of Airports, City of Midland, P.O. Box 60305, Midland, Texas 79711.

Any notice or communication required in the administration of this license shall be sent to the Licensee as follows: WTG Gas Processing, L.P., 211 N. Colorado, Midland, Texas 79701.

LICENSOR:
CITY OF MIDLAND, TEXAS

Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Marvin Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

LICENSEE:
WTG GAS PROCESSING, L.P.
**by VEALMOOR GP, INC, its General
Partner**

J.L. Davis, President

THE STATE OF TEXAS

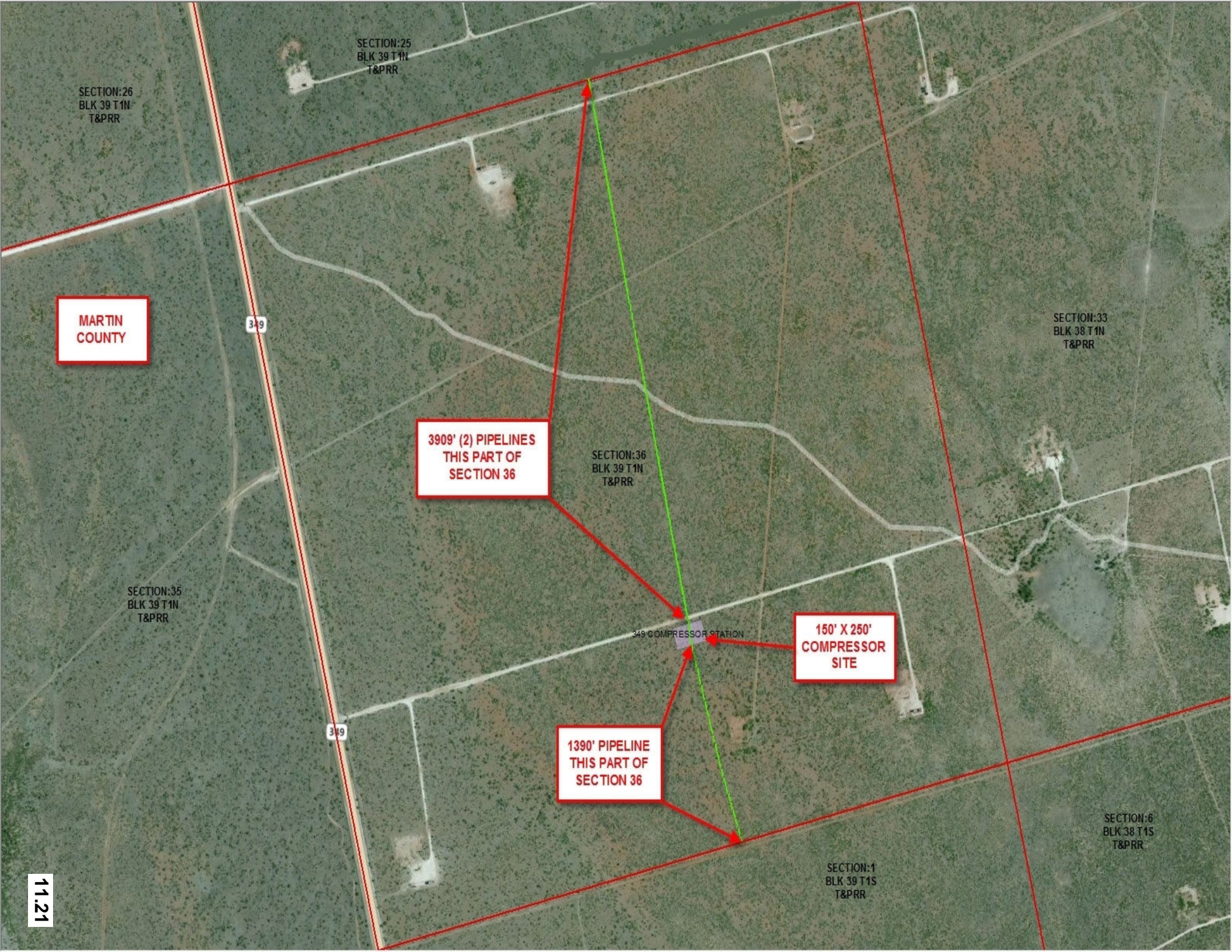
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§
§

COUNTY OF _____

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of WTG GAS PROCESSING, L.P., 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 corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

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

Notary Public, State of Texas



SECTION:26
BLK 39 T1N
T&PRR

SECTION:25
BLK 39 T1N
T&PRR

SECTION:33
BLK 38 T1N
T&PRR

MARTIN
COUNTY

3909' (2) PIPELINES
THIS PART OF
SECTION 36

SECTION:36
BLK 39 T1N
T&PRR

SECTION:35
BLK 39 T1N
T&PRR

349 COMPRESSOR STATION

150' X 250'
COMPRESSOR
SITE

1390' PIPELINE
THIS PART OF
SECTION 36

SECTION:1
BLK 39 T1S
T&PRR

SECTION:6
BLK 38 T1S
T&PRR



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/14/2012

TO: City Council / City Manager

FROM: Jim Nichols, Assistant City Manager

SUBJECT: Consider a Resolution Authorizing the Execution of an Agreement In Lieu of Annexation Between the City of Midland and STG Development, LLC

Purpose:

Consider a resolution authorizing the execution of an agreement in lieu of annexation between the City of Midland and STG Development, LLC regarding two tracts of land described as a 152.2-acre tract located in sections 1, 2, 11 and 12, Block 40, T-2-S, T&P RR Co. Survey and an 81.04-acre tract located in Section 11, Block 40, T-2-S, T&P RR Co. Survey, Midland County.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The City will receive the sum of \$150 annually from the property owner over the life of the agreement.

Discussion:

STG Development, LLC, owner of the property shown in the attached map, wish to remain in the City's extraterritorial jurisdiction (ETJ). To accommodate this desire, the City is proposing to enter into an in lieu of annexation agreement with the property owner. This will ensure that the City does not involuntarily annex the property for a term of no less than seven years, barring unforeseen legislative changes that may impact this term. Staff recommends approval of this resolution.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT IN LIEU OF ANNEXATION BETWEEN THE CITY OF MIDLAND AND GGB LEASING, L.P., STG DEVELOPMENT, LLC, AND STG DEVELOPMENT II, LLC, REGARDING TWO TRACTS OF LAND DESCRIBED AS AN 81.04-ACRE TRACT LOCATED IN SECTION 11, BLOCK 40, T-2-S, T&P RR CO. SURVEY AND A 152.2-ACRE TRACT LOCATED IN SECTIONS 1, 2, 11 AND 12, BLOCK 40, T-2-S, T&P RR CO. SURVEY, ALL IN MIDLAND COUNTY, TEXAS

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of an agreement in lieu of annexation between the City of Midland and GGB Leasing, L.P., STG Development, LLC, and STG Development II, LLC;

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

THAT the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, an agreement in lieu of annexation with GGB Leasing, L.P., STG Development, LLC, and STG Development II, LLC, regarding the property described in the caption hereof. Said agreement is attached hereto and incorporated herein as Exhibit "A".

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

STATE OF TEXAS §

COUNTY OF MIDLAND §

AGREEMENT IN LIEU OF ANNEXATION

THIS AGREEMENT is made and entered into on this the 15th day of August, 2012, by and between the City of Midland, Texas (the "City") GGB Leasing, L.P., STG Development, LLC, and STG Development II, LLC (herein together known as the "Owner").

WHEREAS, the Owner owns the tracts of land (the "Property") in Midland County, Texas which are more particularly described in the attached Exhibits "A" and "B"; and

WHEREAS, the Owner desires to have the Property remain in the City's extraterritorial jurisdiction, in consideration for which the Owner agrees to enter into this Agreement in Lieu of Annexation (the "Agreement"); and

WHEREAS, the Agreement is to be recorded in the Official Records of Midland County, Texas;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. The findings contained in the preamble hereof are hereby declared true and correct and are hereby adopted.
2. For and in consideration of the payment by the Owner, the City hereby agrees that all of the real and personal property thereon owned, used, occupied, leased, rented or possessed by the Owner at the Property shall continue its extraterritorial status and shall not be annexed by the City nor shall the City attempt to annex, or in any way cause or permit to be annexed any of such property during the term of this Agreement. The City further agrees that during the term of this Agreement it will not levy or purport to levy ad valorem taxes against any real or personal property owned, used, occupied, leased, rented or possessed by the Owner at the Property.
3. Owner agrees to pay the City \$150.00 on or before December 31 of each year during the term of this Agreement. Such payments shall be directed to the City Secretary, P.O. Box 1152, Midland, Texas, 79702.
4. This Agreement shall be for a term of seven (7) years, beginning September 1, 2012 and ending August 31, 2019. Notwithstanding the foregoing, the City has the right to terminate this Agreement in the event that there is a change in applicable Texas law that would, in the City's reasonable discretion, materially limit the City's ability to annex the Property or other property contained within the City's extraterritorial jurisdiction. Prior to terminating this Agreement because of a change in Texas law, the City shall give the Owner thirty (30) days' written notice of its intent to terminate, and during such notice period, shall discuss the reasons for termination with the Owner. The City shall, upon becoming aware of legislation that may materially limit the City's ability to annex the Property of the Owner or other

property contained within the City's extraterritorial jurisdiction, provide written notice to the Owner of such legislation and, if the Owner desires, begin consultation with the Owner seeking a mutually agreeable solution to the problems created by such legislation, but without waiving the City's termination rights as set forth herein. In the event that the Agreement is terminated by the City because of a change in applicable law and the Owner has made the payment for the applicable year, the City will reimburse the Owner for such payment.

5. It is agreed by the parties to this Agreement that only full, complete and faithful performance of the terms hereof shall satisfy the rights and obligations assumed by the parties and that, therefore, in addition to any action at law for damages which either party may have, the Owner may enjoin the enactment or enforcement of any ordinance or charter amendment in violation of, or in conflict with, the terms of the Agreement and may obtain such other equitable relief, including specific performance of the Agreement, as is necessary to enforce its rights. It is further agreed that should this Agreement be breached by the Owner, the City shall be entitled, in addition to any action at law for damages, to obtain specific performance of this Agreement and such other equitable relief necessary to enforce its rights.
6. In the event the Owner, or the Owner's successors or assigns, desires to use water and sewer facilities owned and operated by the City to serve the Property, then the Owner shall make such request to the City and the terms and conditions under which the City may, in its sole discretion, furnish water and sewer service for use by the Owner, or the Owner's successors or assigns, on the Property shall be set forth by a separate agreement between the parties, subject to approval by the City Council of the City of Midland. Notwithstanding any other provision contained herein, by entering into such an agreement for water and sewer service with the City, the Owner, or the Owner's successors or assigns, shall be deemed to have consented to voluntary annexation of the Property at such time as the City, in its sole discretion, initiates annexation proceedings with respect to the Property and this Agreement shall automatically terminate.
7. In the event the terms and conditions of this Agreement are rendered ineffective or their effect materially changed by applicable law, both parties mutually agree that this Agreement shall be renegotiated to accomplish the intent of this Agreement. The City reserves the right to enter into different agreements with other parties.
8. 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.
9. This Agreement contains all the agreements of the parties relating to the subject matter hereof and is the full and final expression of the agreement between the parties. This Agreement expressly terminates any prior agreement between the parties with regard to the subject matter hereof.
10. If the Owner conveys all or any part of the Property covered under this Agreement, the Owner shall thereupon cease to be obligated with respect to the property so conveyed, if the

grantee thereof assumes in writing the obligations hereof with respect to such property so conveyed; provided, however, that no such conveyance shall be binding on the City until such time as the City shall have been furnished with a copy of the instrument whereby the grantee assumed such obligations.

11. Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing thereunder upon default or failure of performance shall not be considered a waiver of the right to insist on and to enforce by an appropriate remedy, strict compliance with any other obligation hereunder to exercise any right or remedy occurring as a result of any future default or failure of performance.
12. 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.
13. All notices to either party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such party at the addresses shown below. All notices shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Either party hereto may change the address below by sending written notice of such change to the other in the manner provided herein.

If to City: City Manager
 P.O. Box 1152
 Midland, Texas 79702

If to Owner: c/o STG Development, LLC
 6001 West Industrial
 Midland, Texas 79706

14. The parties hereby agree that this Agreement is supported by good and valuable consideration.
15. The individual or officer executing this Agreement on behalf of the Owner hereby represents that such individual or officer has full authority to execute this Agreement and bind the Owner.

Entered into the date first above written.

[Signature pages follow]

CITY OF MIDLAND, TEXAS

By: _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

GGB LEASING, L.P.
By: Agri Properties, Inc.
its general partner

By: _____
Stephen T. Goree, President

THE STATE OF TEXAS	§	
	§	ACKNOWLEDGMENT
COUNTY OF MIDLAND	§	

This instrument was acknowledged before me this ____ day of _____, 2012,
by Stephen T. Goree, President of Agri Properties, Inc., general partner of GGB Leasing, L.P., a
Texas limited partnership, on behalf of said limited partnership.

Notary Public – State of Texas

STG DEVELOPMENT, LLC

By: _____
Stephen T. Goree, Manager

THE STATE OF TEXAS §
 § ACKNOWLEDGMENT
COUNTY OF MIDLAND §

BEFORE ME, _____, a notary public, on this day personally appeared
STEPHEN T. GOREE, Manager of STG DEVELOPMENT, LLC, known to me to be the person
whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the
same as the act and deed of STG DEVELOPMENT, LLC, for the purposes and consideration therein
expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day of
_____, A.D., 2012.

Notary Public, in and for
the State of Texas

STG DEVELOPMENT II, LLC

By: _____
Stephen T. Goree, Manager

THE STATE OF TEXAS §
 § ACKNOWLEDGMENT
COUNTY OF MIDLAND §

BEFORE ME, _____, a notary public, on this day personally appeared STEPHEN T. GOREE, Manager of STG DEVELOPMENT II, LLC, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of STG DEVELOPMENT II, LLC, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day of _____, A.D., 2012.

Notary Public, in and for
the State of Texas

EXHIBIT A



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
81.04 ACRE TRACT LOCATED IN
SECTION 11, BLOCK 40, T-2-S,
T&P RR CO. SURVEY,
MIDLAND COUNTY, TEXAS

Boundary Being Further Described by Metes and Bounds as Follows:

BEGINNING at a point in the south right-of-way line of Industrial Avenue (F.M. 662) and the centerline of South County Road 1250 for the northwest corner of this tract, whence the northwest corner of said Section 11 bears North 14°18'44" West, a distance of 1234.76 feet;

THENCE North 59°44'40" East with the south right-of-way line of said Industrial Avenue, a distance of 4470.22 feet to a point for the northwest corner of Capstone Business Park Section 2, recorded in Cabinet I, Page 62, Midland County Plat Records, being the northeast corner of this tract;

THENCE South 29°53'42" East with the west line of said Capstone Business Park Section 2, a distance of 771.03 feet to a point for the southeast corner of this tract;

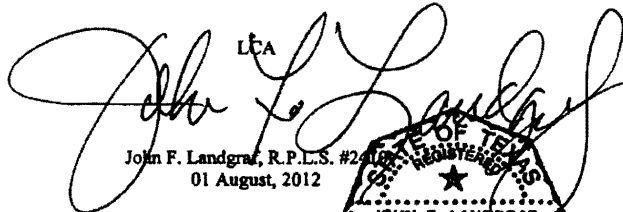
THENCE South 59°44'40" West, a distance of 4623.24 feet to a point of deflection in the south line of this tract;

THENCE South 75°41'16" West, a distance of 60.00 feet to a point in the centerline of said South County Road 1250 for the southwest corner of this tract;

THENCE North 14°18'44" West with the centerline of said South County Road 1250, a distance of 784.72 feet to the Point of the Beginning containing 81.04 acres of land.

Bearings and distances are based on the Texas Coordinate System, NAD 83, Central Zone.

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
John F. Landgrae, R.P.L.S. #2410
01 August, 2012


LCA Project Number 2011-058

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EXHIBIT B



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
152.2 ACRE TRACT LOCATED IN
SECTIONS 1, 2, 11 & 12, BLOCK 40, T-2-S,
T&P RR CO. SURVEY,
MIDLAND COUNTY, TEXAS**

Boundary Being Further Described by Metes and Bounds as Follows:

BEGINNING at a point in the south right-of-way line of Industrial Avenue (F.M. 662) at the northeast corner of Capstone Business Park Section 2 recorded in Cabinet I, Page 62, Midland County Plat Records, being the northwest corner of this tract;

THENCE North 59°45'24" East with the south right-of-way line of said Industrial Avenue, a distance of 4109.58 feet to the northwest corner of ABCO West Industrial Park Section 4 recorded in Cabinet E, Page 351, Midland County Plat Records, being the northeast corner of this tract;

THENCE South 30°23'23" East with the west line of said ABCO West Industrial Park Section 4, a distance of 673.90 feet to a point in the north line of ABCO West Industrial Park Section 3 recorded in Cabinet E, Page 19, Midland County Plat Records, being a point of deflection in the east line of this tract;

THENCE South 60°10'32" West with the north line of said ABCO West Industrial Park Section 3, a distance of 368.57 feet to a point of curvature in the east line of this tract;

THENCE along a curve to the right in a southwesterly direction with the north line of said ABCO West Industrial Park Section 3, said curve having a radius length of 767.43 feet, an arc length of 132.43, a delta angle of 09°53'13" and a chord length of 132.26 feet bearing South 62°27'18" West to a point for the northwest corner of said ABCO West Industrial Park Section 3, being a point of deflection in the east line of this tract;

THENCE South 30°08'49" East with the west line of said ABCO West Industrial Park Section 3, passing its southwest corner and continuing for a total distance of 964.80 feet to a point in the curving west right-of-way line of Loop 250, being a point of non-tangent curvature in the east line of this tract;

THENCE along a curve to the left in a southwesterly direction with the west right-of-way line of said Loop 250, said curve having a radius length of 1095.61 feet, an arc length of 325.36, a delta angle of 17°00'53" and a chord length of 324.16 feet bearing South 18°08'25" West to a point in the existing City of Midland city limits line, being the southeast corner of this tract;

THENCE South 59°39'24" West with said city limits line, a distance of 1377.35 feet to a point of deflection in the south line of this tract;

THENCE North 30°07'24" West, a distance of 162.29 feet to a point of deflection in the south line of this tract;

THENCE South 59°44'26" West, passing the northeast corner of a 10.01 acre tract recorded in Volume 3028, Page 236, Midland County Deed Records, the northwest corner of said 10.01 acre tract and the northeast corner of a 8.47 acre tract recorded in Instrument No. 2009-19360, Midland County Deed Records, continuing for a total distance of 1775.45 feet to a point in the east line of a 127.3922 acre tract

Page 1 of 2

recorded in Volume 1422, Page 319, Midland County Deed Records for the northwest corner of said 8.47 acre tract, being a point of deflection in the south line of this tract;

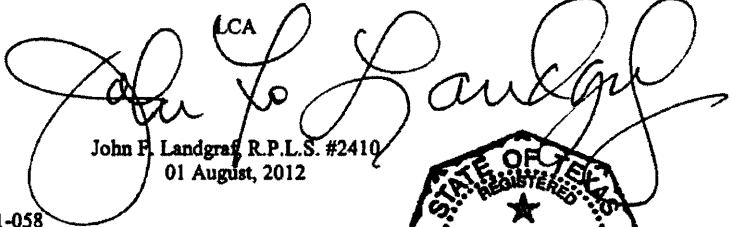
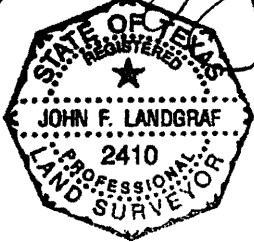
THENCE North 54°31'07" West with the east line of said 127.3922 acre tract, a distance of 97.95 feet to a point of deflection in the south line of this tract;

THENCE North 87°37'38" West with the east line of said 127.3922 acre tract, a distance of 213.93 feet to the southeast corner of said Capstone Business Park Section 2, being the southwest corner of this tract;

THENCE North 30°00'04" West with the east line of said Capstone Business Park Section 2, a distance of 1481.11 feet to the Point of the Beginning containing 152.2 acres of land.

Bearings and distances are based on the City of Midland's G.I.S. datasets.

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

John F. Landgraf, R.P.L.S. #2410
01 August, 2012


LCA Project Number 2011-058

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/14/2012

TO: City Council / City Manager

FROM: Jim Nichols, Assistant City Manager

SUBJECT: Consider a Resolution Approving a Water Line Easement with STG Development, LLC

Purpose:

Consider a resolution approving a water line easement with STG Development, LLC located in Sections 2, 11 and 12, Block 40, T-2-S, T&P RR Co. Survey, Midland County.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

There is no cost to the City associated with the provision of this water line easement.

Discussion:

The proposed water line easement will afford City staff with access to public utilities that cross private property. Staff recommends approval of this resolution

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE ACCEPTANCE OF
A 15-FOOT WATER LINE EASEMENT LOCATED IN
SECTIONS 2, 11 AND 12, BLOCK 40, T-2-S, T&P RR CO.
SURVEY, MIDLAND COUNTY, TEXAS; AND
ORDERING RECORDATION BY THE CITY
SECRETARY**

WHEREAS, the City Council finds it to be in the public interest to authorize the acceptance of a 15-foot water line easement located in Sections 2, 11 and 12, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, for the use and benefit of the public for utility purposes;

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

SECTION ONE. That the 15-foot water line easement located in Sections 2, 11 and 12, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, is hereby accepted. A copy of said easement is attached hereto as Exhibit “A” and incorporated herein for all legal purposes.

SECTION TWO. That the City Secretary is hereby authorized and directed to file said easement 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., 2012, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Easement Agreement for Utilities

Water Line Easement

Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

Date: July __, 2012

Grantor: STG Development, LLC
a Texas limited liability company
6001 West Industrial
Midland, Texas 79706

STG Development II, LLC
a Texas limited liability company
6001 West Industrial
Midland, Texas 79706

Grantee: The City of Midland, Texas
300 North Loraine Street
Midland, Texas 79701

Easement Property: As described on Exhibit A attached hereto.

Easement Purpose: For the installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of a public water line and related facilities (collectively, the "Facilities").

Consideration: Good and valuable consideration, the receipt and sufficiency of which are acknowledged by Grantor.

Grant of Easement: Grantor, for the Consideration herein grants, sells, and conveys to Grantee and Grantee's successors, and assigns an easement over, on, and across the Easement Property for the Easement Purpose, together with all and singular the rights and

appurtenances thereto in any way belonging (collectively, the "Easement"), to have and to hold the Easement to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's successors, and assigns to warrant and forever defend the title to the Easement in Grantee and Grantee's successors, and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part of the Easement, to the extent that such claim arises by, through, or under Grantor but not otherwise.

Terms and Conditions: The following terms and conditions apply to the Easement granted by this agreement:

1. *Character of Easement.* The Easement is exclusive and irrevocable. The Easement is for the benefit of Grantee and Grantee's successors, and assigns (as applicable, the "Holder").

2. *Duration of Easement.* The duration of the Easement is perpetual.

3. *Reservation of Rights.* Holder's right to use the Easement Property is nonexclusive, and Grantor reserves for Grantor and Grantor's successors, and assigns the right to use all or part of the Easement Property in conjunction with Holder as long as such use by Grantor and Grantor's heirs, successors, and assigns does not interfere with the use of the Easement Property by Holder for the Easement Purpose, no buildings or other improvements (other than driveways) are constructed within the Easement Property without Holder's prior consent, and the right to convey to others the right to use all or part of the Easement Property in conjunction with Holder, as long as such further conveyance is subject to the terms of this agreement.

4. *Improvement and Maintenance of Easement Property.* Holder has the right to construct, install, maintain, replace, and remove the Facilities under or across any portion of the Easement Property. All matters concerning the Facilities and their configuration, construction, installation, maintenance, replacement, and removal are at Holder's sole discretion, subject to performance of Holder's obligations under this Agreement. Holder has the right to remove or relocate any fences within the Easement Property or along or near its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Facilities, subject to replacement of the fences to their original condition on the completion of the work. Any damage caused to the Easement Property as a result of the work performed by or on behalf of Holder hereunder shall be repaired at Holder's sole cost and expense.

5. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective successors, and permitted assigns.

6. *Counterparts.* This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

7. *Entire Agreement.* This agreement and any exhibits constitute the entire agreement of the parties concerning the grant of the Easement by Grantor to Grantee. There are no representations, agreements, warranties, or promises that are not expressly set forth in this agreement and any exhibits.

GRANTOR:

STG : STG Development, LLC
a Texas limited liability company

by: _____
Stephen T. Goree
Manager

STG II: STG Development II, LLC
a Texas limited liability company

by: _____
Stephen T. Goree
Manager

STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on this _____, day of _____, 2012 by Stephen T. Goree as Manager of STG Development, LLC, a Texas limited liability company.

By: _____

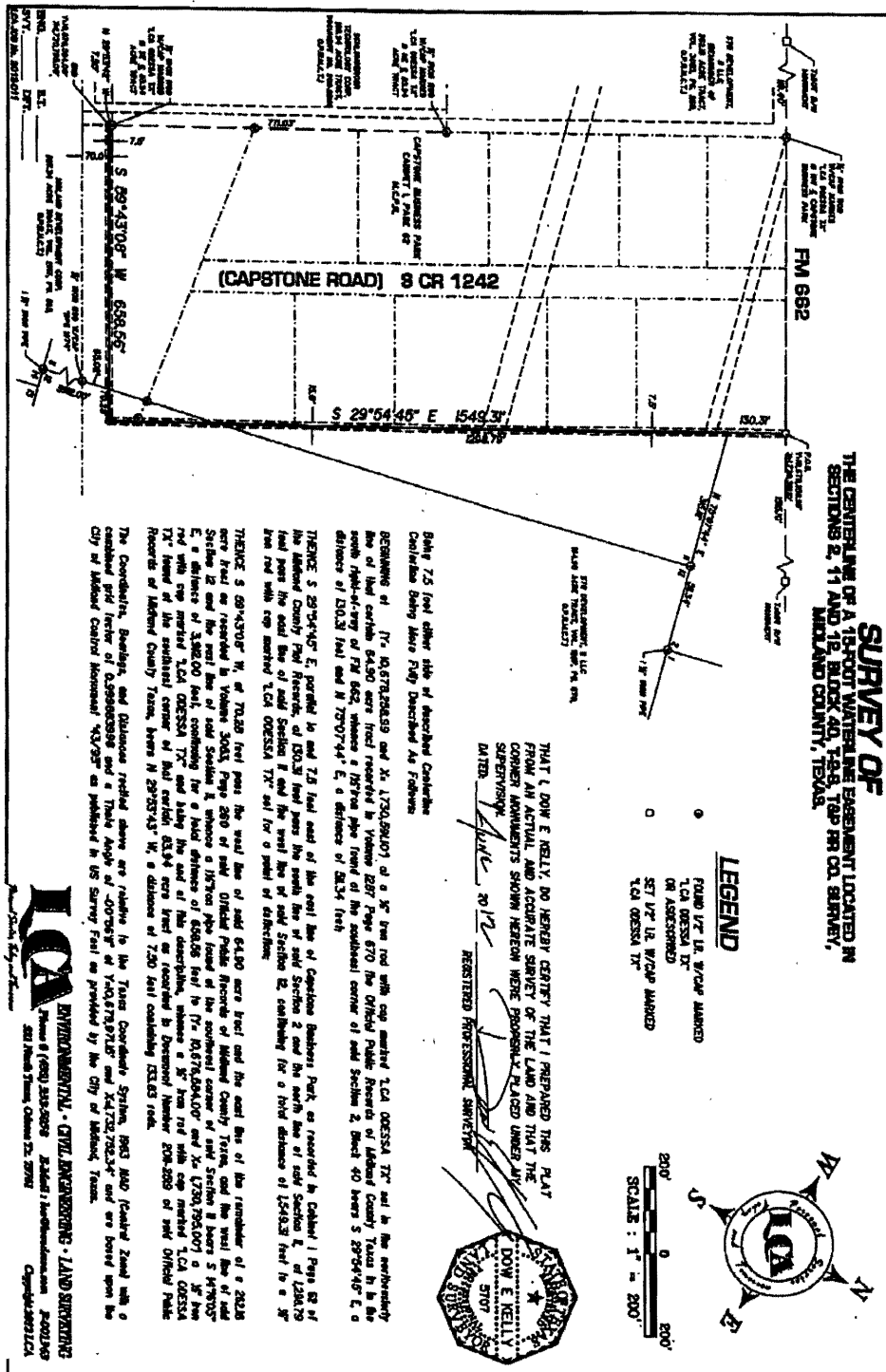
Notary Public for _____
My Commission expires:

STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on this _____, day of _____, 2012 by
Stephen T. Goree as Manager of STG Development II, LLC, a Texas limited liability company.

By: _____

Notary Public for _____
My Commission expires: _____





City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 8/14/2012

TO: City Council / City Manager

FROM: Tina Jauz / Community Services Director

SUBJECT: Consider a resolution authorizing the City of Midland to accept \$21,093 as a donation from the Friends of the I-20 Wildlife Preserve and Jenna Welch Nature Study Center, and appropriating said funds to Project No. 8998

Purpose:

To accept donated funds from the Friends of the I-20 Wildlife Preserve and Jenna Welch Nature Study Center for the purpose of constructing a Pavilion and Restrooms at the site.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$21,093

Discussion:

During the July 10 City Council meeting, Council approved appropriating \$250,000 from 2009 Certificate of Obligation Funds to the I-20 Wildlife Preserve Pavilion and Restrooms Project. The contractor of the original I-20 Wildlife Preserve Project, JC Roberts, had submitted several alternate bids. Two of those bids, one for the restrooms, and one for the pavilion, total \$271,093. The donation of \$21,093, coupled with the appropriated \$250,000 CO funds, will allow the city to initiate a change order to have the project completed while the contractor is still on site. Construction of this project is an estimated 15 weeks. The Texas Parks & Wildlife Department matching grant portion of the project is nearing completion with an anticipated ribbon cutting around October 1, 2012.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE CITY OF MIDLAND TO ACCEPT A DONATION IN THE AMOUNT OF \$21,093.00 FROM THE FRIENDS OF THE I-20 WILDLIFE PRESERVE AND JENNA WELCH NATURE STUDY CENTER IN ORDER TO ASSIST IN THE CONSTRUCTION OF THE I-20 WILDLIFE PRESERVE PAVILION AND RESTROOMS PROJECT, AND APPROPRIATING FUNDS

WHEREAS, the City of Midland has received a donation from the Friends of the I-20 Wildlife Preserve and Jenna Welch Nature Study Center; and

WHEREAS, the donation coupled with the July 10, 2012 City Council's approval of appropriated funds in the amount of \$250,000.00 will allow for the project to be paid in full; and

WHEREAS, the Council finds it to be in the public interest to accept a donation from the Friends of the I-20 Wildlife Preserve and Jenna Welch Nature Study Center;

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

THAT the sum of \$21,093.00 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the I-20 Wildlife Preserve Pavilion and Restrooms Project (8998).

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 08/14/2012

TO: City Council / City Manager

FROM: David D. Beard, P.E.

SUBJECT: Consider a motion on a request by Schumann Engineering for Bonito Estates (Section 2), to approve items requested for deferral in the amount of \$343,830.90, and to waive the associated public improvement guarantee. (City of Midland – ETJ)

Purpose:

Consider a motion on a request by Schumann Engineering for Bonito Estates (Section 2) to approve items requested for deferral in the amount of \$343,830.90, and to waive the associated public improvement guarantee.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Wastewater Collection	\$92,485.30
Water Distribution	\$90,939.20
Paving Construction	\$139,128.00
Sidewalk Construction	\$21,278.40

Total value of deferral (recommended items) \$343,830.90

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 Bonito Estates (Section 2) is positioned in the City of Midland ETJ, located on the east side of CR 1140 (1 mile east of Elkins Rd.) approximately 700' 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 Old Lamesa Rd. and Loop 250 (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 near the intersection of Old Lamesa Rd. and Loop 250 (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 1150 (1 mile east of Elkins Rd) and Loop 250.
 - The nearest connection to the City of Midland's pavement system is at Fairgrounds Rd. and Loop 250 (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.

ENGINEERING DIVISION

**Bonito Estates
(Section 2 & 3)**

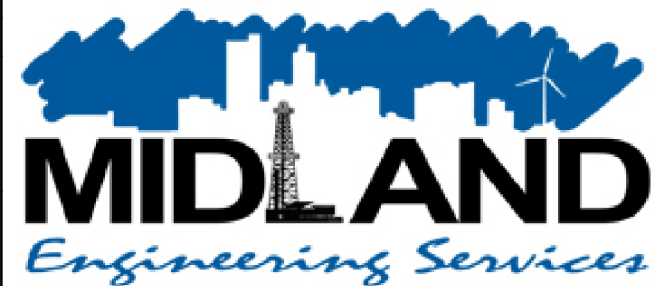
Request for Deferral

CR 1140

Bonito Estates

Loop 250

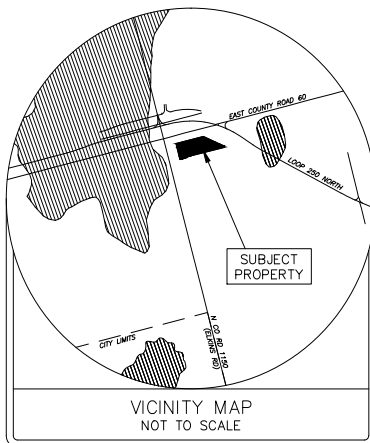
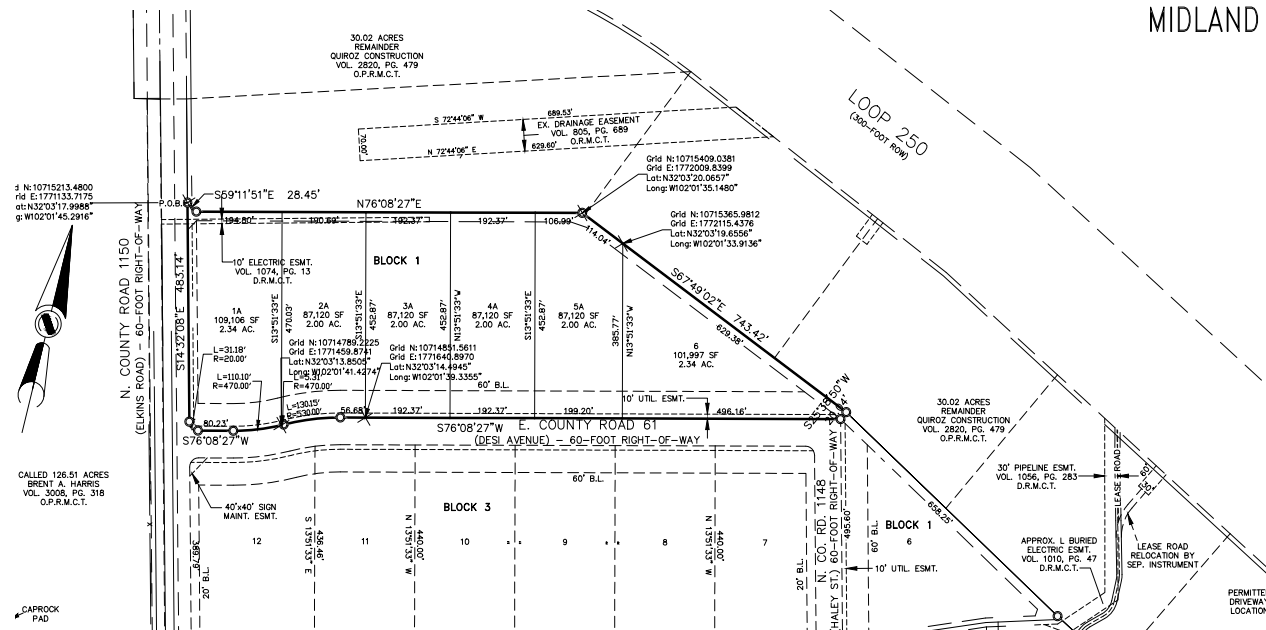
N



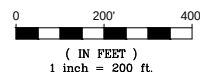
Map by DDB 08/05/2012

PRELIMINARY PLAT BONITO ESTATES SECTION 2

BEING A REPLAT OF LOTS 1-5, BLOCK 1,
BONITO ESTATES
AN ADDITION TO THE CITY AND COUNTY OF
MIDLAND COUNTY, TEXAS.



GRAPHIC SCALE



OWNER:

QUIROZ CONSTRUCTION CO.
FELIX QUIROZ, JR.
5610 E. COUNTY ROAD 60
MIDLAND, TEXAS 79705
(432) 631-6734

NOTES:

1. SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION OF CITY ORDINANCE AND STATE LAW AND SUBJECT TO FINES AND WITHHOLDING OF UTILITIES AND BUILDING PERMITS.
2. APPROVAL OF A SITE PLAN BY THE CITY OF MIDLAND MAY BE REQUIRED BEFORE THE DEVELOPMENT OF ANY LOT AND BEFORE A BUILDING PERMIT MAY BE OBTAINED.
3. COURSE FOR THE SOUTH LINE OF LOOP 250 WAS USED FOR DIRECTIONAL CONTROL.

DRAWN BY:	SC	DATE:	03/14/2012
CHECKED BY:	MAS	DRAWING NO.:	73001FQ
JOB NO.:	73,001	SHEET	1 OF 1

NO.	DATE	DESCRIPTION	BY
3	05/16/2012	REVISED FOR PRELIMINARY PLAT	CAK
2	03/14/2012	REVISED SKETCH AS PER CITY	CAK
1	01/24/2012	SKETCH AS PER F. QUIROZ	CAK

SCHUMANN ENGINEERING CO., INC.
REGISTERED PROFESSIONAL LAND SURVEYORS
LICENSED STATE LAND SURVEYORS
REGISTERED PROFESSIONAL CIVIL ENGINEERS
TEXAS and NEW MEXICO
Civil Engineering ~ Land Surveying
408 N. PECOS STREET - P. O. BOX 504
MIDLAND, TEXAS 79702-0504
Office (432) 684-5548
Fax (432) 684-6973



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 08/14/2012

TO: City Council / City Manager

FROM: David D. Beard, P.E.

SUBJECT: Consider a motion on a request by Schumann Engineering for Bonito Estates (Section 3), to approve items requested for deferral in the amount of \$543,016.80, and to waive the associated public improvement guarantee. (City of Midland - ETJ)

Purpose:

Consider a motion on a request by Schumann Engineering for Bonito Estates (Section 3), to approve items requested for deferral in the amount of \$543,016.80, and to waive the associated public improvement guarantee.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Wastewater Collection	\$148,771.48
Water Distribution	\$141,203.15
Paving Construction	\$219,475.36
Sidewalk Construction	\$33,566.81

Total value of deferral (recommended items) \$543,016.80.

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 Bonito Estates (Section 3) is positioned in the City of Midland ETJ, located on the east side of CR 1140 (Elkins Rd.) approximately 2100' 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 Old Lamesa Rd. and Loop 250 (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 near the intersection of Old Lamesa Rd. and Loop 250 (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 1150 (Elkins Rd) and Loop 250.
 - The nearest connection to the City of Midland's pavement system is at Fairgrounds Rd. and Loop 250 (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 (Elkins Rd.). 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.

ENGINEERING DIVISION

**Bonito Estates
(Section 2 & 3)**

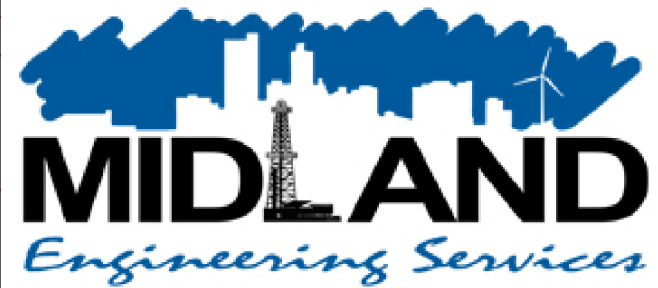
Request for Deferral

CR 1140

Bonito Estates

Loop 250

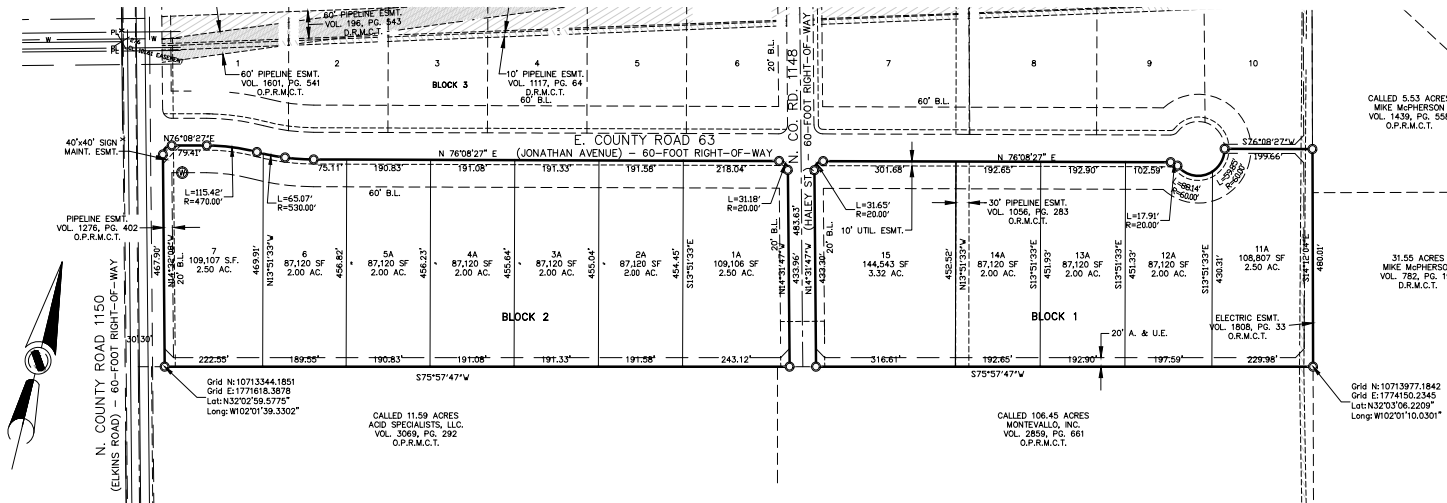
N



Map by DDB 08/05/2012

PRELIMINARY PLAT BONITO ESTATES SECTION 3

BEING A REPLAT OF LOTS 11-14, BLOCK 1,
AND LOTS 1-5, BLOCK 2,
BONITO ESTATES
AN ADDITION TO THE CITY AND COUNTY OF
MIDLAND COUNTY, TEXAS.



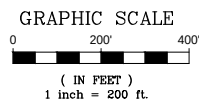
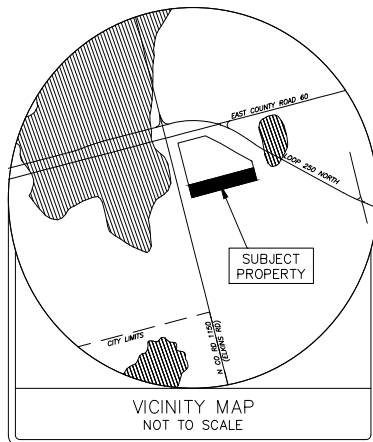
CALLED 5.53 ACRES
MIKE McPHERSON
VOL. 1439, PG. 558
O.P.R.M.C.T.

31.55 ACRES
MIKE McPHERSON
VOL. 782, PG. 196
D.R.M.C.T.

CALLED 11.59 ACRES
ACD SPECIALISTS, LLC
VOL. 3069, PG. 292
O.P.R.M.C.T.

CALLED 106.45 ACRES
MONTEVALLO, INC.
VOL. 2859, PG. 661
O.P.R.M.C.T.

Grid N:10713977.1842
Grid E:1774150.2345
Lot:N3203'06.2209"
Long:W102'01'10.0301"



OWNER:

QUIROZ CONSTRUCTION CO.
FELIX QUIROZ, JR.
5610 E. COUNTY ROAD 60
MIDLAND, TEXAS 79705
(432) 631-6734

NOTES:

1. SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION OF CITY ORDINANCE AND STATE LAW AND SUBJECT TO FINES AND WITHHOLDING OF UTILITIES AND BUILDING PERMITS.
2. APPROVAL OF A SITE PLAN BY THE CITY OF MIDLAND MAY BE REQUIRED BEFORE THE DEVELOPMENT OF ANY LOT AND BEFORE A BUILDING PERMIT MAY BE OBTAINED.
3. COURSE FOR THE SOUTH LINE OF LOOP 250 WAS USED FOR DIRECTIONAL CONTROL.

DRAWN BY:	SC	DATE:	03/14/2012
CHECKED BY:	MAS	DRAWING NO.:	73079FQ
JOB NO.:	73,079	SHEET	1 OF 1

NO.	DATE	DESCRIPTION	BY
3	05/16/2012	REVISED FOR PRELIMINARY PLAT	CAK
2	03/14/2012	REVISED SKETCH AS PER CITY	SC
1	01/24/2012	SKETCH AS PER F. QUIROZ	CAK

SCHUMANN ENGINEERING CO., INC.			
REGISTERED PROFESSIONAL LAND SURVEYORS		REGISTERED PROFESSIONAL CIVIL ENGINEERS	
LICENSED STATE LAND SURVEYORS		TEXAS and NEW MEXICO	
Civil Engineering ~		Land Surveying	
408 N. PECOS STREET - P. O. BOX 504		Office (432) 684-5548	
MIDLAND, TEXAS 79702-0504		Fax (432) 684-6973	



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 08/14/2012

TO: City Council / City Manager

FROM: David D. Beard, P.E.

SUBJECT: Consider a motion on a request by West Company of Midland for the Mustang Trail Addition, to approve items requested for deferral in the amount of \$115,824.10, and to waive the associated public improvement guarantee. (City of Midland - ETJ)

Purpose:

Consider a motion on a request by West Company of Midland for the Mustang Trail Addition, to approve items requested for deferral in the amount of \$115,824.10, and to waive the associated public improvement guarantee.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Wastewater Collection	\$55,868.90
Water Distribution	\$44,027.70
<u>Sidewalk Construction</u>	<u>\$15,927.50</u>

Total value of deferral (recommended items) \$115,824.10

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 Mustang Trail Addition is positioned in the City of Midland ETJ, located on the northwest corner of the intersection of Loop 250 and CR 1150 (Elkins Rd.).

West Company of Midland is proposing to plat the property and defer all public improvements. Below is a discussion of the public infrastructure and deferral request related to the development of the property associated with this plat:

Deferral Request

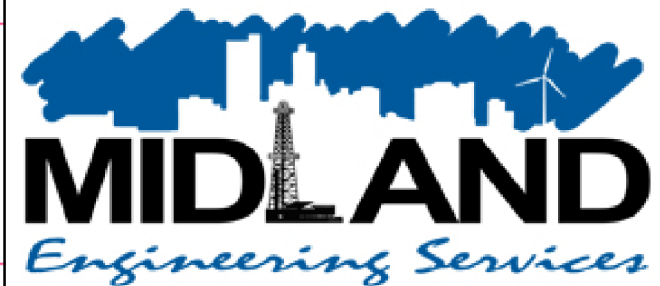
1. Water Distribution: The applicant is requesting deferral of water distribution improvements.
 - The nearest connection to the City of Midland's water distribution system is near the intersection of Old Lamesa Rd. and Loop 250 (distance greater than 1 mile).
 - The likelihood of infrastructure construction 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 near the intersection of Old Lamesa Rd. and Loop 250 (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 1150 (Elkins Rd) and Loop 250.
 - The current pavement along CR 1150, adjacent to the property is paved including curb & gutter with adequate right-of-way meeting the requirements of the Thoroughfare Plan.
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 (Elkins Rd.) or Loop 250. 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 West Company of Midland.

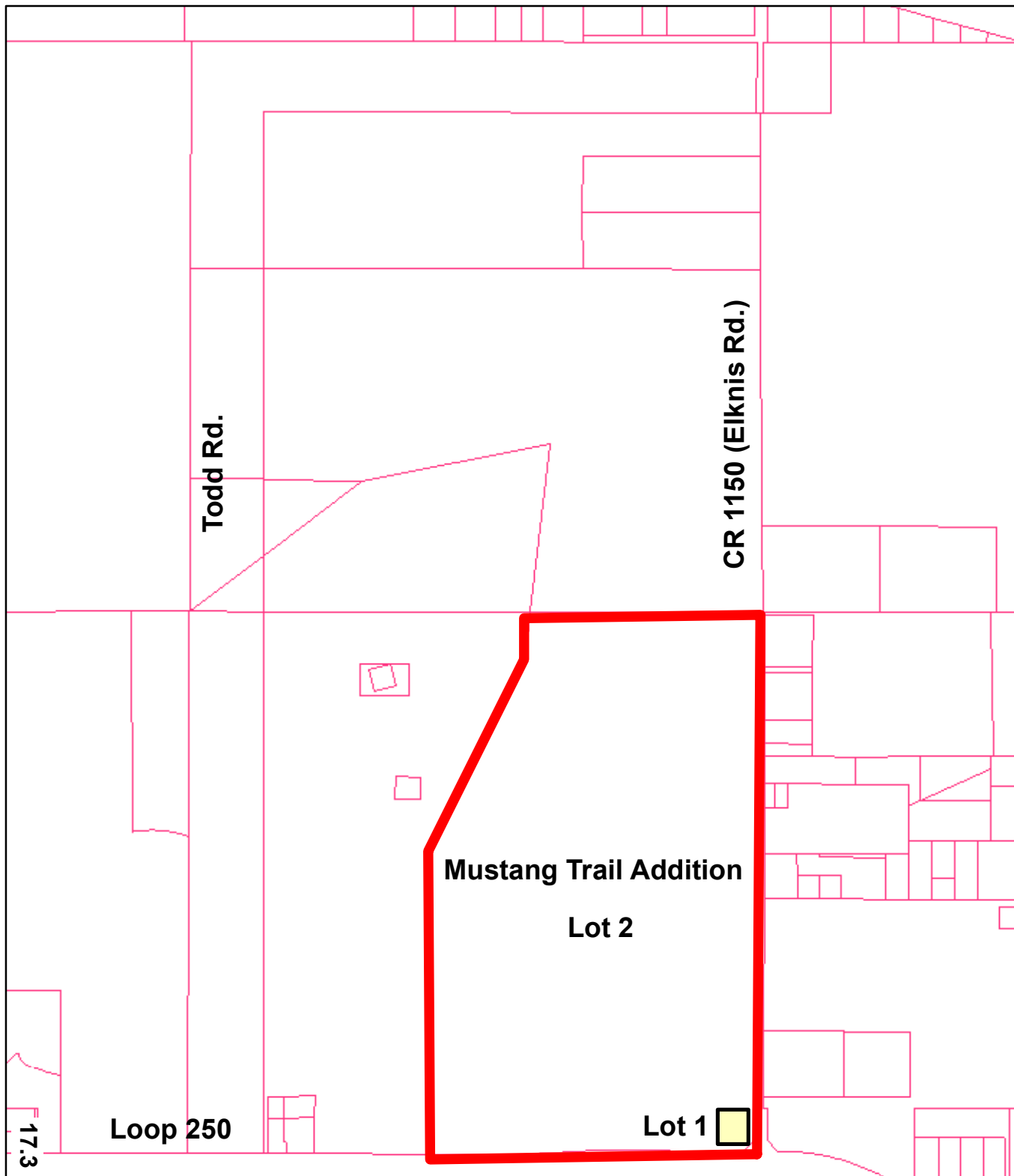
ENGINEERING DIVISION

Mustang Trail Addition Lot 1

Request for Deferral



Map by DDB 08/05/2012





110 West Louisiana Avenue
Suite 110
Midland, Texas 79701
T: 432.687.0865
F: 432.687.0868
www.team-west.com

August 01, 2012

David Beard
City Engineer (Midland Texas)
300 N. Loraine
P.O. Box 1152
Midland, Texas 79702

Attn: City Engineer-COM Engineering Department

Dear Mr. Beard:

Stella Swanson owner of 326.88 acres of land in section 20, Block 38, T-1-S Midland County, Texas Located approximately at the North West corner of Loop 250 and N. County Rd. 1150 is attempting to plat a small 2 acre corner portion of her property in order to sell the property. Please refer to the attached Preliminary Plan for visual in Appendix A.

Sewer

West Company of Midland, Inc., on behalf of Stella Swanson (Property Owner), is here by requesting that the City Council defer public improvements for the installation of an offsite sewer main line along the subject property frontage at Loop 250 and County Road 1150. This is approximately 554 linear feet of line. The site is currently ± 3.5 miles from available city utilities.

See Appendix B for Sewer Cost Spreadsheet Per COM Engineering Department Standards.

Sidewalk

The owner is requesting a deferral of sidewalk improvements until such time the site becomes developed.

Sidewalk Deferral

Mustang Trial Commercial		
Description	Unit Cost (ft²)	Total Cost
554 LF 5' Sidewalk	\$5.00 SF	\$13,850
Additional 15% Contingency		\$2,077.50
TOTAL		\$15,927.50

David Beard
Re: Mustang Trail
August 01, 2012



Water

West Company of Midland, Inc., on behalf of Stella Swanson (Property Owner), is here by requesting that the City Council defer public improvements for the installation of an offsite water main line along the subject property frontage at Loop 250 and County Road 1150. This is approximately 554 linear feet of line. The site is currently ± 3.5 miles from available city utilities.

See Appendix B for Water Cost Spreadsheet Per COM Engineering Department Standards.

Paving

There is currently no paving improvements necessary for this 2 acre site. All paving is curb and guttered and to the proper section widths per TXDOT and Midland County Guidelines.

Drainage

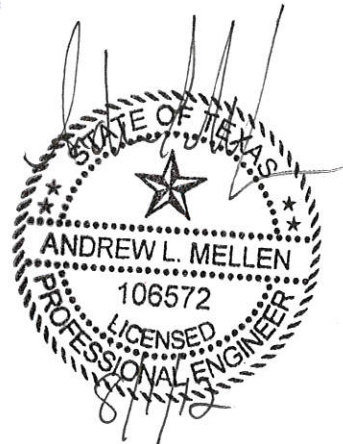
There will be onsite pre vs. post detention calculated per City of Midland Standards at time of construction and presented to the City in a Report format.

Should you have any questions regarding this deferral or need further information, please do not hesitate to contact me at (432) 687-0865 or by email at andrew@team-west.com

Respectfully,
Andrew L. Mellen, P.E.
West Company of Midland, Inc.
Director of Civil Engineering

Enclosures:

Preliminary Plat
COM Spredsheat Break outs Water and Sewer



MUSTANG TRAIL

BEING A PLAT OF A 2.00 ACRE TRACT OF LAND IN SECTION 20, BLOCK 38, T-1-S, T&P RR. Co. SURVEY, MIDLAND COUNTY, TEXAS.

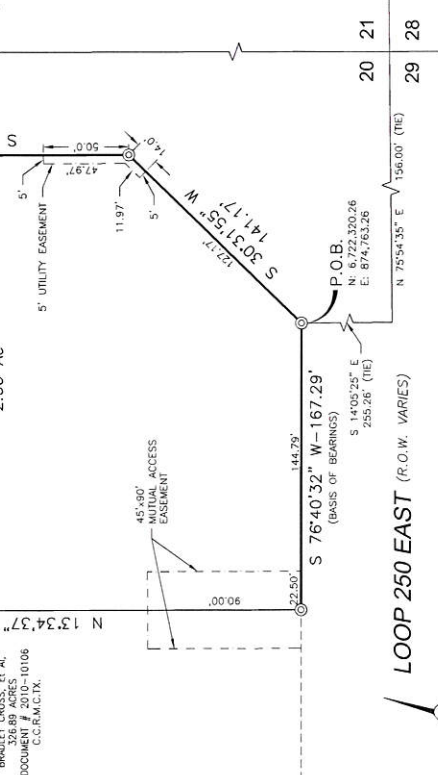
ADJACENT LAND OWNER
BRADLEY CROSS, ET AL.
326.89 ACRES
DOCUMENT # 2010-10106
C.C.R.M.C.T.

N. COUNTRY RD. 1150 (120' R.O.W.)

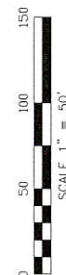
N 76°37'13" E-265.52'

ADJACENT LAND OWNER
BRADLEY CROSS, ET AL.
326.89 ACRES
DOCUMENT # 2010-10106
C.C.R.M.C.T.

LOT 1
SECTION 20, BLOCK 38, T-1-S
MIDLAND COUNTY, TEXAS
87,309 ft²
2.00 Ac



UTILITY COMPANY'S CERTIFICATE
This plat has been checked for accessibility of utilities.



LEGEND

⊙ DENOTES FOUND 1/2-INCH IRON ROD MARKED "SCHUMANN"

ATKINS ENERGY	Print Name:
ONCOR ELECTRIC DELIVERY	Print Name:
SUDANLINK	Print Name:
GRANDE COMMUNICATIONS	Print Name:
AT&T-TEXAS	Print Name:
SHARTLAND UTILITIES	Print Name:

NOTICE

1. SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION OF CITY ORDINANCE AND STATE LAW AND SUBJECT TO FINES AND WITHOLDING OF UTILITIES AND BUILDING PERMITS.
2. APPROVAL OF A SITE PLAN BY THE CITY OF MIDLAND MAY BE REQUIRED. APPROVAL OF ANY LOT AND BEFORE A BUILDING PERMIT MAY BE OBTAINED.
3. BEARINGS, DISTANCES AND COORDINATES ARE RELATIVE TO THE TEXAS STATE PLANE COORDINATE SYSTEM, TEXAS NORTH CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That, I, Bradley C. Cross, the owner of the land shown on this plat designated as Mustang Trail, on Addition to the City of Midland, Midland County, Texas and whose name is subscribed hereto, do hereby dedicate to the public use forever the streets, alleys, and easements shown thereon, and do hereby give an easement of ingress and egress to the City of Midland for garbage and trash collection, and location and maintenance of trash containers and access thereto and condition said that no construction shall commence on said lot or lots until the exact location of said utilities. WITNESS my hand at Midland, Texas, this _____ day of _____, 2012.

ADJACENT LAND OWNER
PAULA A. HENRY
VOL. 7115, PG. 456
D.R.M.C.T.

BY: Bradley C. Cross

ACKNOWLEDGEMENT
THE STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Bradley C. Cross known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act as owner, and that he executed the same as the act for the purposes and consideration therein expressed, and in the capacity therein stated. Given under my hand and seal of office this _____ day of _____, 2012.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

ADJACENT LAND OWNER
PAULA A. HENRY
VOL. 7115, PG. 456
D.R.M.C.T.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That, I, Stella Swanson, the owner of the land shown on this plat designated as Mustang Trail, on Addition to the City of Midland, Midland County, Texas and whose name is subscribed hereto, do hereby dedicate to the public use forever the streets, alleys, and easements shown thereon, and do hereby give an easement of ingress and egress to the City of Midland for garbage and trash collection, and location and maintenance of trash containers and access thereto and condition said that no construction shall commence on said lot or lots until the exact location of said utilities. WITNESS my hand at Midland, Texas, this _____ day of _____, 2012.

BY: Stella Swanson

ACKNOWLEDGEMENT
THE STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Stella Swanson known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act as owner, and that he executed the same as the act for the purposes and consideration therein expressed, and in the capacity therein stated. Given under my hand and seal of office this _____ day of _____, 2012.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

CERTIFICATE OF APPROVAL

This is to certify that the above and foregoing plat of "Mustang Trail" was approved by the proper action of the Director of Development Services of the City of Midland, Texas on this the _____ day of _____, 2012.

BECKY FERGUSON, CHAIRMAN

CAMERON WALKER, SECRETARY

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That, I, Elizabeth H. Sharp, the owner of the land shown on this plat designated as Mustang Trail, on Addition to the City of Midland, Midland County, Texas and whose name is subscribed hereto, do hereby dedicate to the public use forever the streets, alleys, and easements shown thereon, and do hereby give an easement of ingress and egress to the City of Midland for garbage and trash collection, and location and maintenance of trash containers and access thereto and condition said that no construction shall commence on said lot or lots until the exact location of said utilities. WITNESS my hand at Midland, Texas, this _____ day of _____, 2012.

BY: Elizabeth H. Sharp

ACKNOWLEDGEMENT
THE STATE OF TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Elizabeth H. Sharp known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act as owner, and that he executed the same as the act for the purposes and consideration therein expressed, and in the capacity therein stated. Given under my hand and seal of office this _____ day of _____, 2012.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

OWNER'S CERTIFICATE
THE STATE OF TEXAS
COUNTY OF MIDLAND

BRING a 2.00 acre tract of land out of a 396.88 acre tract of land to Bradley Cross, ET AL, declared in Document # 2010-10106, C.C.R.M.C.T., and being further described by metes and bounds as follows:

BEGINNING at (N. 6722.320.26, E. 874.763.26) a 1/2-inch iron rod marked "Schumann" found for the most Southern Southeast corner of this tract and the most Southeast corner of said Bradley Cross tract, from which the calculated Southeast corner of Section 20 bears S 14°02'25" E, a distance of 255.26 feet and N 75°54'35" E, a distance of 156.00 feet.

THENCE S 76°40'32" W with the South line of said Bradley Cross tract and the North variable right-of-way line of said Loop 250 frontage road a distance of 167.29 feet to a 1/2-inch iron rod marked "Schumann" found for the Southwest corner of this tract;

THENCE N 13°34'37" W in and across said Bradley Cross tract a distance of 347.51 feet to 1/2-inch iron rod marked "Schumann" found for the Northeast corner of this tract;

THENCE N 76°37'13" E in and across said Bradley Cross tract a distance of 265.52 feet to a 1/2-inch iron rod marked "Schumann" found for the Northwest corner of this tract in the East line of said Bradley Cross tract and the West line of Elkins Road, a 120 foot right-of-way;

THENCE S 13°34'37" E with the East line of said Bradley Cross tract and the West line of said Elkins Road a distance of 246.08 feet to a 1/2-inch iron rod marked "Schumann" found for the most Southern Southeast corner of this tract and the most Southeast corner of said Bradley Cross tract;

THENCE S 30°37'55" W with the Southeast line of said Bradley Cross tract a distance of 143.1 feet to the POINT OF BEGINNING. Subject tract contains 2.00 acres of land.

SURVEYOR'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

That, I, Marcus L. Hostas, a Registered Professional Land Surveyor of the State of Texas, do hereby certify that this plat was prepared from an actual and accurate survey of the land and that the monuments shown therein were properly located under my personal supervision in accordance with the Subdivision Regulations of the City of Midland, Texas.

Marcus L. Hostas, R.P.L.S.
Registration Number - 5643



OWNER:
Bradley C. Cross
Elizabeth H. Sharp
Stella Swanson

WEST COMPANY

OF MIDLAND, INC.
ENGINEERS-PLANNERS-SURVEYORS
110 W. LOUISIANA AVE., SUITE 110
MIDLAND, TEXAS 79701
(432) 687-4888 - FAX (432) 687-4888

MUSTANG TRAIL
MAY, 2012

PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS
NO. _____ CABINET _____
DATE _____ PAGE _____

Summary of Public Improvement Deferral - Opinion of Probable Cost

Location: Mustang Trail
Engineer: West Company of Midland

Summary	Total
Wastewater Main Improvements	\$55,868.90
Water Main Improvements	\$44,027.70
Construction Total	\$99,896.60

Wastewater Main Deferral - Opinion of Probable Cost

Location: Mustang Trail
 Engineer: West Company of Midland

Wastewater	Quantity	Unit	Unit Price	Total
12" SDR 35 PVC		LF	25.00	0.00
8" SDR 35 PVC	554	LF	15.00	8310.00
6" SDR 35 PVC		LF	13.00	0.00
Trenching/Backfill 0'-5'		LF	20.00	0.00
Trenching/Backfill 5'-8'	554	LF	22.00	12188.00
Trenching/Backfill 8'-10'		LF	25.00	0.00
Trenching/Backfill 10'-12'		LF	30.00	0.00
Trenching 12'-14'		LF	35.00	0.00
Imported Backfill Material	548.46	TN	15.00	8226.90
Imported Backfill Material - Unit Weight	120.00	PCF		
Replacement Manhole		EA	5000.00	0.00
New Manhole	2	EA	3500.00	7000.00
Remove Manhole		EA	1000.00	0.00
Manhole Extra Depth (MH>5')		VF	400.00	0.00
Connect to Existing MH	1	EA	500.00	500.00
24" Bore & Steel Encasement		LF	480.00	0.00
18" Bore & Steel Encasement		LF	360.00	0.00
12" Bore & Steel Encasement		LF	240.00	0.00
4" Wastewater Service	1	EA	550.00	550.00
6" Wastewater Service		EA	750.00	0.00
Volume - Flowable Fill (3 Sac) - Depth Below	0.00	CY	105.00	0.00
Depth of Flowable Fill (ft)	1.00	FT		
Asphalt Pavement Repair		LF	20.00	0.00
Concrete Pavement Repair		LF	25.00	0.00
Erosion Protection (\$/100LF)	5.54	LS	500.00	2770.00
Trench Protection (Trenching > 5')	554	LF	2.00	1108.00
Traffic Control / Job Site Safety	5.54	LF	150.00	831.00
Construction Staking (\$/100LF)	5.54	LF	250.00	1385.00
Contingency (nearest \$1000)	15%			6000.00
Construction Total				\$48,868.90
ROW Acquisition	0	LS	1	0.00
Engineering & Surveying	10%			5000.00
Construction Administration	5%			2000.00
TOTAL				\$55,868.90

Water Main Deferral - Opinion of Probable Cost

Location: Mustang Trail
 Engineer: West Company of Midland

Wastewater	Quantity	Unit	Unit Price	Total
12" C-900 DR 18		LF	42.00	0.00
8" C-900 DR 18	554	LF	30.00	16620.00
6" C-900 DR 18		LF	24.00	0.00
Imported Backfill Material	349.02	TN	15.00	5235.30
Imported Backfill Material - Unit Weight	120.00	PCF		
Lower Water Main Under Existing Utiliy		EA	1000.00	0.00
16" Tapping Sleeve		EA	4000.00	0.00
12" Tapping Sleeve		EA	2500.00	0.00
8" Tapping Sleeve	1	EA	1500.00	1500.00
6" Tapping Sleeve		EA	1200.00	0.00
12" Gate Valve		EA	1700.00	0.00
12" Gate Valve (MJ x F)		EA	2000.00	0.00
8" Gate Valve	1	EA	1100.00	1100.00
8" Gate Valve (MJ x F)		EA	1100.00	0.00
6" Gate Valve		EA	1000.00	0.00
6" Gate Valve (MJ x F)		EA	1000.00	0.00
Fire Hydrant		EA	3000.00	0.00
Wet Connection		EA	2500.00	0.00
Ductile Iron Fittings	0.17	TN	4000.00	696.00
12" Joint Restraint	2	EA	200.00	400.00
8" Joint Restraint	7	EA	150.00	1050.00
6" Joint Restraint	0	EA	100.00	0.00
24" Bore & Steel Encasement		LF	240.00	0.00
18" Bore & Steel Encasement		LF	180.00	0.00
12" Bore & Steel Encasement		LF	120.00	0.00
1" Water Service (short)		EA	600.00	0.00
2" Water Service (long)		EA	1100.00	0.00
Volume - Flowable Fill (3 Sac)	0.00	CY	105.00	0.00
Depth of Flowable Fill (ft)	1.00	FT		
Asphalt Pavement Repair		LF	25.00	0.00
Concrete Pavement Repair		LF	35.00	0.00
Erosion Protection (\$/100LF)	5.54	LS	1000.00	5540.00
Traffic Control / Job Site Safety	5.54	LF	150.00	831.00
Construction Staking (\$/100LF)	5.54	LS	10.00	55.40
Contingency (nearest \$1000)	15%			5000.00
Construction Total				\$38,027.70
ROW Acquisition	0	LS	1	0.00
Engineering & Surveying	10%			4000.00
Construction Administration	5%			2000.00
TOTAL				\$44,027.70



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 8/14/2012

TO: City Council / City Manager

FROM: Gary Saunders, Transportation Manager

SUBJECT: Consider a resolution authorizing a right-of-way crossing license with the City of Midland, Texas and Midmar Gas LLC. for the purpose of installing one 6" poly pipeine to gather gas from an oil and gas lease under a portion of Holiday Hill Road right-of-way within the City of Midland, Texas, Section 6, Block X, H.P. Hilliard Survey, and Section 24, Block 40, T-1-S, T&P RR. CO. Survey, City of Midland, Midland County Texas.

Purpose:

Consider a resolution authorizing a right-of-way crossing license with the City of Midland, Texas and Midmar Gas LLC. for the purpose of installing one 6" poly pipeline to gather gas from an oil and gas lease under a portion of Holiday Hill Road right-of-way within the City of Midland, Texas, Section 6, Block X, H.P. Hilliard Survey, and Section 24, Block 40, T-1-S, T&P RR. CO. Survey, City of Midland, Midland County Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The City of Midland shall receive payment of \$400.00 annually for the duration 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 Midmar Gas LLC for the purpose of installing a six (6) inch poly pipeline to gather gas from an oil and gas lease under a portion of Holiday Hill Road right-of-way within the City of Midland, Texas, Section 6, Block X, H.P. Hilliard Survey, and Section 24, Block 40, T-1-S, T&P RR. CO. Survey, City of Midland, Midland County, Texas.

The Agreement shall be for a term of twenty-five (25) years and may be renewed at the end of the initial Agreement term for one (1) additional twenty-five (25) year, upon written request of Midmar Gas LLC on or before ninety (90) days prior to the expiration of the Agreement term in effect and with written consent of the City of Midland.

Attached is a map indicating location of the gas pipeline.

Staff recommends approval of this resolution.

RESOLUTION NO.

RESOLUTION AUTHORIZING A RIGHT-OF-WAY LICENSE WITH THE CITY OF MIDLAND, TEXAS AND MIDMAR GAS, L.L.C.; SAID RIGHT-OF-WAY LICENSE IS FOR THE PURPOSE OF ENTERING CITY OF MIDLAND'S RIGHT-OF-WAY FOR THE PURPOSE OF INSTALLING 1 SIX INCH POLY PIPELINE TO GATHER GAS FROM AN OIL AND GAS LEASE UNDER A PORTION OF HOLIDAY HILL ROAD; THE PIPELINE IS LOCATED WITHIN THE CITY OF MIDLAND RIGHT-OF-WAY, SECTION 6, BLOCK X, H.P. HILLARD SURVEY, AND SECTION 24, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND, MIDLAND COUNTY, TEXAS; THE LICENSE TERM IS FOR TWENTY-FIVE (25) YEARS, COMMENCING WITH THE DATE OF THIS LICENSE AND MAY RENEW AT THE END OF THE TERM FOR ONE ADDITIONAL TWENTY-FIVE (25) 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 Midmar Gas, L.L.C., located within the City of Midland Right-of-Way, Section 6, Block X, H.P. Hillard Survey, and Section 24, Block 40, T-1-S, T&P RR Co. Survey, Midland, Midland County, Texas;

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

THAT the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a right-of-way license with Midmar Gas, L.L.C., 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., 2012, by the following vote:

Council members voting "AYE":

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Gary Saunders, Transportation Manager

RIGHT-OF-WAY CROSSING LICENSE

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

THIS RIGHT-OF-WAY CROSSING LICENSE (“AGREEMENT”), effective this 15th day of August, 2012, by and between THE CITY OF MIDLAND, TEXAS, a home rule municipal corporation, hereinafter called “Licensor”, and MIDMAR GAS LLC, 24 Smith Road, Suite 501, Midland, Texas, 79705, P.O. Box 50307, Midland, Texas, 79710, hereinafter called “Licensee”.

Licensee desires use of property owned by the Licensor in Midland County, Texas within the City of Midland, Texas, for the purposes of installing one six inch (6”) poly pipeline to gather gas from an oil and gas lease under a portion of Holiday Hill Road right-of-way within the City of Midland, Texas, Section 6, Block X, H.P. Hillard Survey, and Section 24, Block 40, T-1-S, T&P RR Co. Survey, City of Midland, Midland County, Texas.

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

W I T N E S S E T H:

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

I. Term

This Agreement shall be for a term of twenty-five (25) years (the “Initial Term”), commencing with the date of this Agreement, the “Commencement Date,” unless terminated earlier as provided hereafter. This Agreement may renew at the end of the Initial Term for one (1) additional term of twenty-five (25) 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 the sum of Four hundred dollars (\$400.00) per annum, each year payable on or before the anniversary of the commencement date of this license agreement except for the first year of the license agreement. The first year’s license fee of \$400.00

shall be due and payable in advance of the commencement date of this license (“License Fee”). Licensee’s failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay the Licensor 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 Licensor’s Transportation Manager. Said fee shall revert to the Licensor 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 Licensor and Licensee shall negotiate in good faith to agree to an adjustment of the License Fee. If the Licensor and Licensee are unable to reach an agreement regarding an adjustment to the License Fee, then the License Fee shall be determined by Licensor 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 payment shall be made to the Licensor at the office of the Transportation Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

1. Licensor does hereby grant unto Licensee, the right to enter upon certain property of the City of Midland as shown on “Exhibit A” attached hereto and incorporated herein

for all purposes, at the location identified on “Exhibit A”.

2. Licensee shall install one (1) six inch (6”) poly pipeline at the location shown on “Exhibit A”.

3. Licensee covenants and agrees that it will repair any of Licensor’s roads that Licensee damages on Licensor’s property so that such roads will comply with Licensor’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 Licensor 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 Licensor’s Standard Specifications.

5. Licensee will install the poly pipeline at a depth of at least thirty-six inches (36”) below the surface to comply with the requirements of the Licensor’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 Licensor’s Transportation Manager.

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

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and

other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of the Licensor, in, across, along, over or under any public property occupied by Licensee. In permitting such work to be done, the Licensor shall not be liable to the Licensee for any damage so caused to the Licensee's system, **NOR SHALL THE LICENSOR BE LIABLE TO THE LICENSEE FOR ANY DAMAGES TO THE LICENSEE'S PIPELINE OR CASING, ARISING OUT OF THE NEGLIGENCE BY THE LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If the Licensor requires the Licensee to remove, alter, change, adapt, or conform its facilities because of changes in the grade of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by the Licensor, the Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by the Licensor, without claim for reimbursement for the cost of the relocation or for damages against the Licensor. If these requirements impose a financial hardship upon the Licensee, the Licensee shall have the right to present alternative proposals for the Licensor's consideration.

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 Licensor.

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 or her 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 surface or subsurface or airspace above the land covered by this Agreement for any public purpose allowed by law and deemed necessary by the Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by the Licensor on, across, along, under or over said right of way occupied by the Licensee. In the event of such work in connection with said public purposes it shall be deemed necessary by the Licensor, at

Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline or casing of Licensee, such alteration or change or relocation shall be commenced and completed by the Licensee within one hundred eighty (180) days after being ordered in writing by the Licensor pursuant to directions from the Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against the Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding the Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable Federal or State laws with respect to relocation payments.

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$100,000.00 per occurrence

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

Worker's Compensation: Statutory limits

Umbrella Liability: \$5,000,000.00 each occurrence and aggregate

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

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

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

The Commercial General Liability Insurance shall be on a per project or policy aggregate, including completed operations, and shall be on an occurrence basis. The Commercial General Liability Insurance shall name the Licensor as an additional insured and waive all rights of subrogation against 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.

2. **INDEMNITY** - THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR AND ALL OF LICENSOR'S OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, LOSSES, ATTORNEY'S FEES AND EXPENSES OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON, PERSONS OR PROPERTY, ON ACCOUNT OF ANY ACT OF THE LICENSEE, Licensee's contractor or subcontractor, their agents or employees, arising directly or indirectly or in any way connected with the placement, construction, operations, repair, maintenance, replacement or removal of any part of the Licensee's pipeline or casing system in the Licensor's rights 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.

THE LICENSEE AGREES THAT LICENSEE WILL INDEMNIFY AND SAVE THE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN,

MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE OR CASING SYSTEM DESCRIBED HEREIN.

THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS, AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH

THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF THE LICENSEE'S PIPELINE OR CASING SYSTEM IN THE LICENSOR'S RIGHT OF WAY. THE LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

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

4. **Independent Contractor** - It is expressly understood and agreed that Licensee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the Licensor; that Licensee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between Licensor and Licensee, its officers, agents, employees, contractors and subcontractors;

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

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: 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: Midmar Gas LLC, Mike Feagan, Vice-President, 24 Smith Road, Suite 501, Midland, Texas 79705, P.O. Box 50307, 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 Licensor from any liability whatsoever. The Licensor is under no obligation to provide

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

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

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

LICENSOR:

CITY OF MIDLAND, TEXAS

Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Gary Saunders, Transportation Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

LICENSEE:

MIDMAR GAS LLC

Mike Feagan, Vice-President

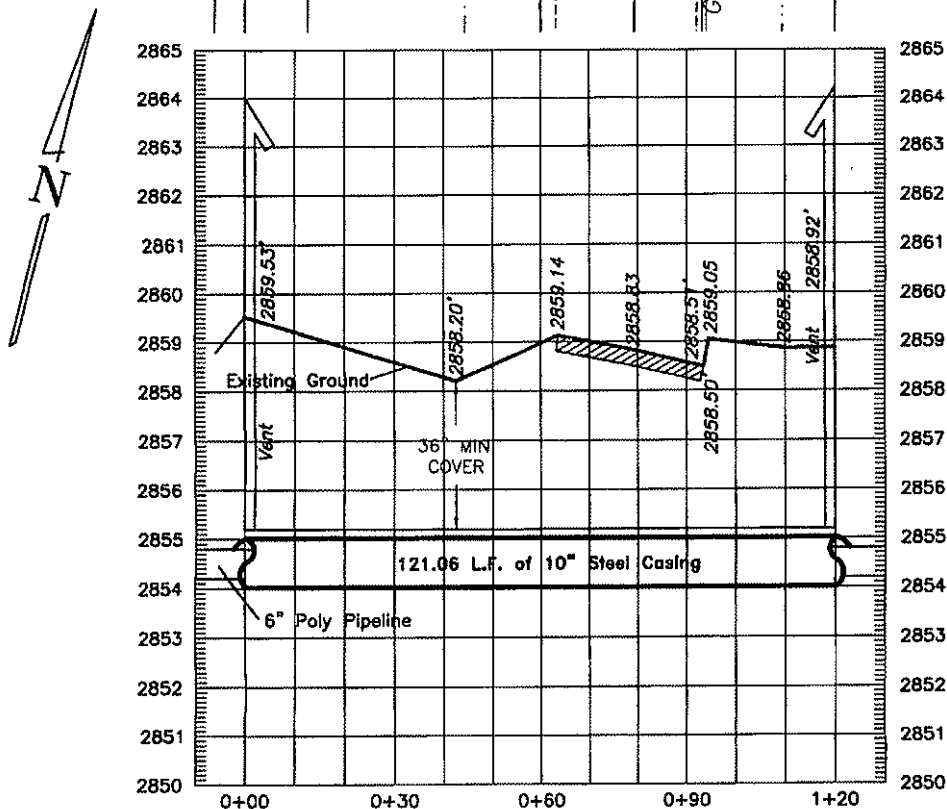
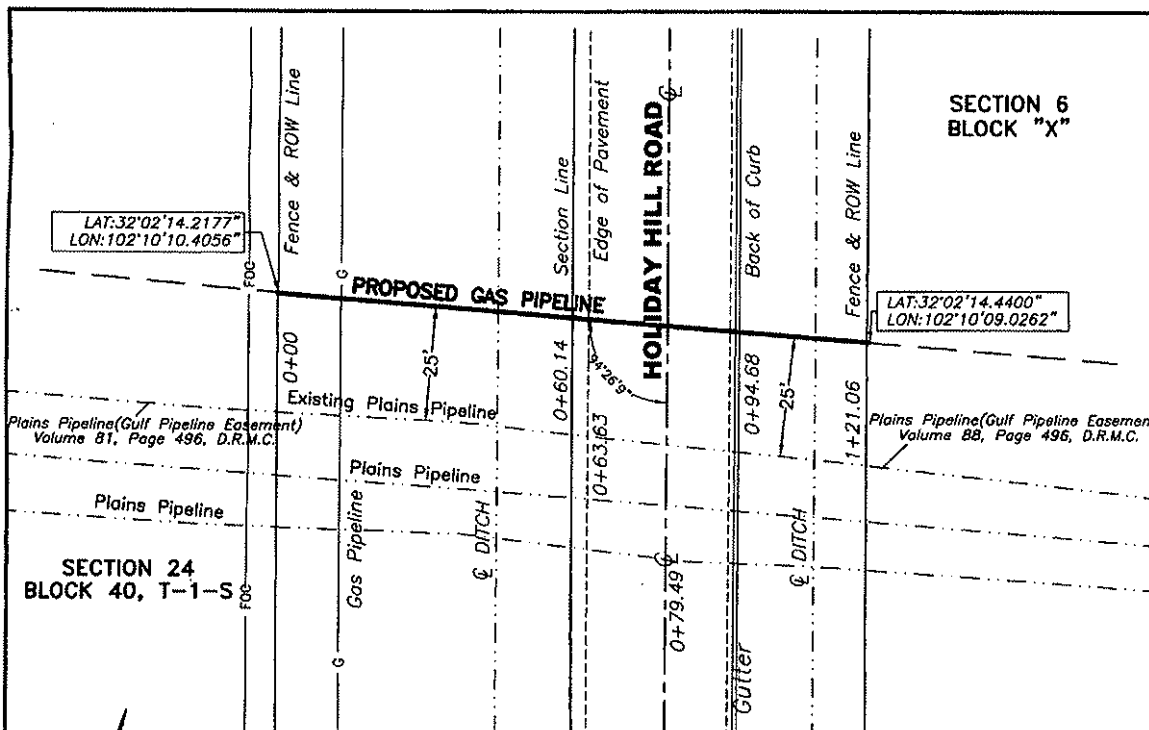
THE STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared Mike Feagan, an officer of MIDMAR GAS 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 _____, 2012.

Notary Public, State of Texas

L:\Contracts\Transportation\Midmar ROW Agreement 2.docx



Drawing File: Feagan-Patriot.Dwg; Drawn by: Tina Chalambaga
Horizontal Scale: 1"=30', Vertical Scale: 1"=3'; Date: 7/16/12

**PLAN AND PROFILE SHOWING SURVEY OF A PROPOSED 6" POLY GAS PIPELINE
CROSSING OF HOLIDAY HILL ROAD LOCATED IN SECTION 6, BLOCK X,
H.P. HILLIARD SURVEY, AND SECTION 24, BLOCK 40, T-1-S,
T. & P. RR. CO. SURVEY CITY OF MIDLAND, MIDLAND COUNTY, TEXAS**

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

Elevations are relative to 1988 NAVD.

I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this plot is based on an actual survey made by me or under my supervision, and that the same are true and correct to the best of my knowledge and belief as surveyed on the ground on June 30, 2012.

[Signature]
J. Stan Piper
Registered Professional Land Surveyor No. 1974
PIPER SURVEYING P.O. BOX 60432; MIDLAND, TEXAS 79711; 432.550.7810

Prepared for:
Feagan Gas Gathering
P.O. Box 50307
Midland, Texas 79710



MIDMAR GAS LLC

Proposed 6" Poly Gas Line

BLK 40-1-S SEC 24

BLK XHP HILLIARD SEC 6

HOLIDAY HILL RD

1 inch = 45 feet

Legend

- Streets
- State Roads
- Easement
- Parcel
- Survey Section

18.24

©THE CITY OF MIDLAND - 2012
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA. WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 08/14/2012

TO: City Council / City Manager

FROM: David D. Beard, P.E.

SUBJECT: Consider a motion on a request by Landgraf, Crutcher, and Associates for the Los Conchos Estates – Phase 2, to approve items requested for deferral in the amount of \$227,550, and to waive the associated public improvement guarantee. (District #4 – Trost)

Purpose:

Consider a motion on a request by Landgraf, Crutcher, and Associates (LCA) for the Los Conchos Estates – Phase 2, to approve items requested for deferral in the amount of \$227,550, and to waive the associated public improvement guarantee.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Wastewater Collection	\$227,550.00
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Total value of deferral (recommended items)	\$227,550.00
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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 Los Conchos Estates - Phase 2 is positioned in the City of Midland City Limits, located on the west side of Avalon Dr. approximately 1320' north of Mockingbird Ln.

LCA 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:

Deferral Request

1. Water Distribution: The applicant is proposing to install the necessary water distribution improvements to serve the subject property.
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 a proposed 24"Ø main in Holiday Hill Rd. at the north end of the Greentree Addition (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 Avalon Dr. (future primary arterial).
 - The nearest connection to the City of Midland's pavement system is at Briarwood Ave. and Avalon Dr. (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 Avalon Dr. 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 LCA.

ENGINEERING DIVISION

Los Conchos Estates Phase 2

Request for Deferral

Los Conchos
Estates
Phase 2

Avalon Dr.

Mockingbird Ln.

N



Map by DDB 08/05/2012



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

FIRM # 001363

**521 NORTH TEXAS • ODESSA, TEXAS 79761
(432) 332-5058 or 580-8812 • FAX (432) 332-8812**

David Beard, P.E.
City Engineer
City of Midland
P.O. Box 1152
Midland, Texas 79702

RE: Los Conchos Estates Phase 2

Dear Mr. Beard:

We respectfully request on behalf of our client, Mr. Richard Dunham, for the City Council to defer the following public improvements relating to the Los Conchos Estates Phase 2 Plat:

Sewer:

We are requesting deferral of any additional sewer lines because; There is no existing sewer line that is currently accessible to the property. (Please see exhibit for visual)

Water:

No deferral is requested and water lines will be designed and built to city standards.

Drainage:

The paving and drainage is designed to drain to the north toward the existing drainage basin.

Paving, Curb & Gutter:

No deferral requested, paving, curb and gutter will be built to city standard.

Sidewalk:

Sidewalks will be built as lots are developed to city standards.

Sincerely,



Matthew R. McCoy, E.I.T.
Landgraf, Crutcher, & Associates, Inc.



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

FIRM # 001363

**521 NORTH TEXAS • ODESSA, TEXAS 79761
(432) 332-5058 or 580-8812 • FAX (432) 332-8812**

Los Conchos Estates Phase 2 Sewer Cost Estimate
LCA Project Number 12-023

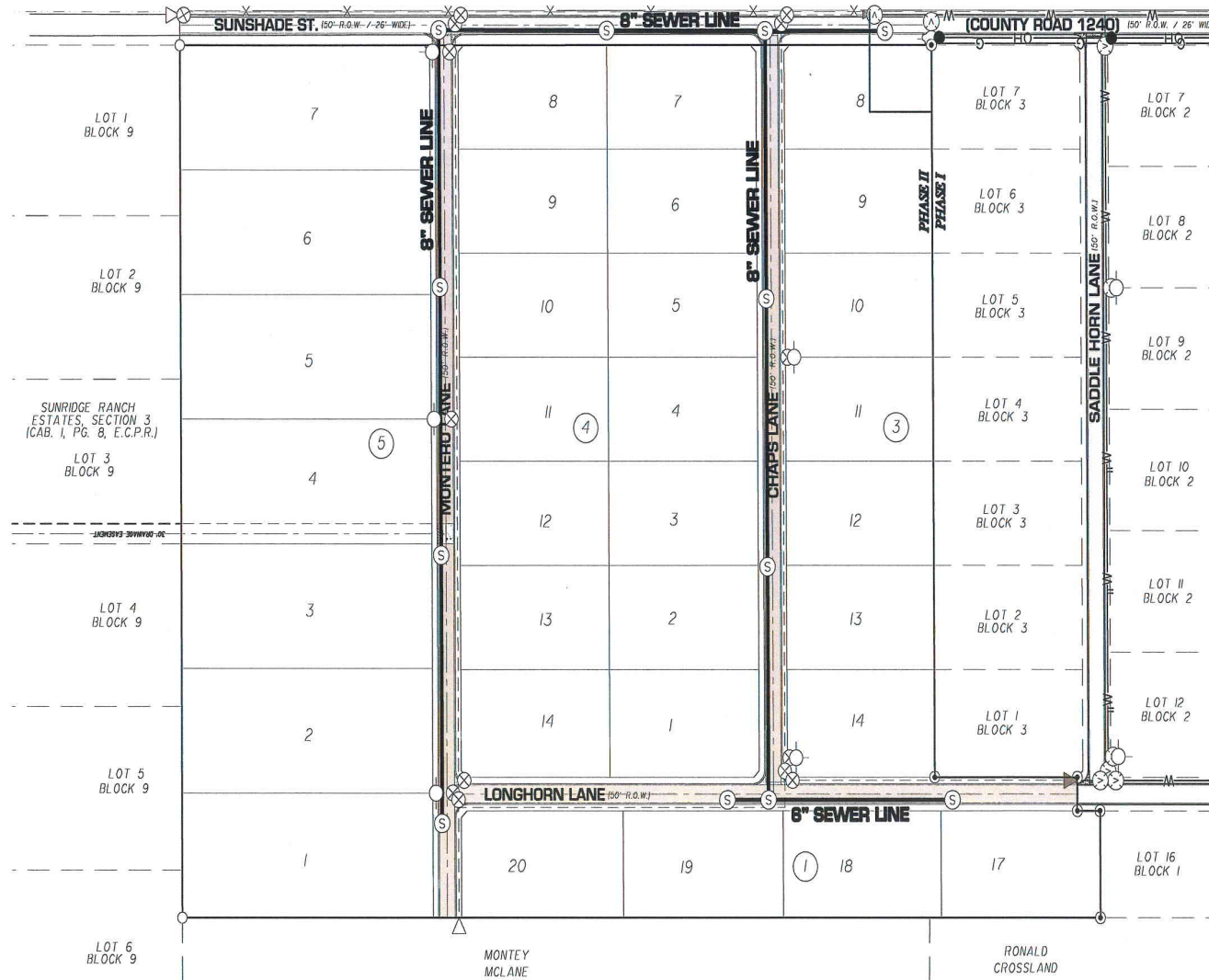
Description	Cost Each	Unit	Quantity	Total
6" SDR-35	\$30.00	L.F.	400	\$12,000
8" SDR-35	\$35.00	L.F.	3150	\$110,250
48" Std. COO Manholes	\$4,800.00	Ea.	12	\$57,600
15% Contingency				\$27,000
Surveying and Engineering				\$20,700
Total				\$227,550

SEWER DEFERRAL

LOS CONCHOS ESTATES - PHASE II

MIDLAND COUNTY, TEXAS

FASKEN LAND
& MINERALS, LTD



200' 0 200'
SCALE : 1" = 200'

LEGEND

⊙ SEWER MANHOLE

ENG. _____ E.T. _____
SVY. _____ DFT. _____
LCA JOB No. 2012-023

LCA ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING
Phone # (432) 332-5058 E-Mail : lca@lcaodessa.com F-001363
521 North Texas, Odessa Tx. 79761 Copyright 2012 LCA
Personal Service, Today and Tomorrow



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 08/14/2012

TO: City Council / City Manager

FROM: David D. Beard, P.E.

SUBJECT: Consider a motion on a request by West Company of Midland for the Harvell Addition, to approve items requested for deferral in the amount of \$479,906.56, and to waive the associated public improvement guarantee. (City of Midland - ETJ)

Purpose:

Consider a motion on a request by West Company of Midland for the Harvell Addition, to approve items requested for deferral in the amount of \$479,906.56, and to waive the associated public improvement guarantee.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Wastewater Collection	\$82,654.41
Water Distribution	\$61,839.84
Paving Construction	\$312,074.50
Sidewalk Construction	\$23,337.81

Total value of deferral (recommended items) \$479,906.56

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 Harvell Addition is positioned in the City of Midland ETJ, located on the west side of S. CR 1140 (1 mile east of Elkins Rd.) approximately 720' south of FM 307.

West Company of Midland is proposing to plat the property and defer all public improvements. Below is a discussion of the public infrastructure and deferral request related to the development of the property associated with this plat:

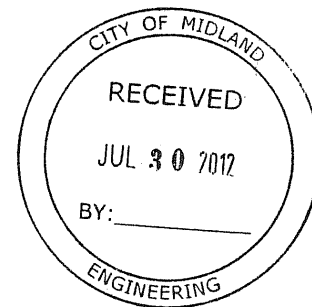
Deferral Request

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 wastewater treatment plant (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 improvement.
 - The nearest connection to the City of Midland's wastewater collection system is at the wastewater treatment plant (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 S. CR 1140 (future secondary arterial).
 - Through the platting process, the applicant is dedicating 50' of right-of way (half the right-of-way required for construction of a future secondary arterial street).
4. Drainage: A Drainage Study for this site has been submitted.
 - The applicant is proposing to provide on-site storage based on the impervious area. City staff is reviewing the drainage study.
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 S. CR 1140 frontage. 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 West Company of Midland.



110 West Louisiana Avenue
Suite 110
Midland, Texas 79701
T: 432.687.0865
F: 432.687.0868
www.team-west.com



July 27, 2012

David Beard
City Engineer (Midland Texas)
300 N. Loraine
P.O. Box 1152
Midland, Texas 79702

Attn: City Engineer-COM Engineering Department

Dear Mr. Beard:

Mike Harvell owner of 5.55 acres of land out of section 4, block 38, T-2-S, T&P RR Co. Survey, Midland, Texas located approximately 5,443' east of south county road 1150, 720' south of FM 307, and along the west side of S county road 1140. See attached map for location.

Sewer

West Company of Midland, Inc., on behalf of Mike Harvell (Property Owner), is here by requesting that the City Council defer public improvements for the installation of an offsite sewer main line along S county road 1140 frontage of exactly 811.75 feet. The nearest Sewer connection is 5,443 LF away.

See Appendix B for Sewer Cost Spreadsheet Per COM Engineering Department Standards.

Sidewalk

The owner is requesting a deferral of sidewalk improvements until such time the site becomes developed.

Sidewalk Deferral

Harvell Addition		
Description	Unit Cost (ft ²)	Total Cost
811.75 LF 5' Sidewalk	\$5.00 SF	\$20,293.75
Additional 15% Contingency		\$3,044.06
TOTAL		\$23,337.81

David Beard
Re: Harvell Addition
July 27, 2012



Water

West Company of Midland, Inc., on behalf of Mike Harvell (Property Owner), is here by requesting that the City Council defer public improvements for the installation of an offsite water main line along S county road 1140 frontage of exactly 811.75 feet. The nearest water connection is 5,443 LF away.

See Appendix B for Water Cost Spreadsheet Per COM Engineering Department Standards.

Paving

West Company of Midland, Inc., on behalf of Mike Harvell (Property Owner), is here by requesting that the City Council defer public improvements for the installation of paving along S county road 1140 frontage of exactly 811.75 feet.

Drainage

The preliminary plat denotes future detention requirements as follows. The owner/developer will be responsible for providing 0.15 cubic feet of detention storage for every square foot of impervious area added to the site.

Should you have any questions regarding this deferral or need further information, please do not hesitate to contact me at (432) 687-0865 or by email at andrew@team-west.com

Respectfully,
Andrew L. Mellen, P.E.
West Company of Midland, Inc.
Director of Civil Engineering

Enclosures:

Final Plat 11x 17
COM Spreadsheet Break outs Water, Sewer, and Paving

Summary of Public Improvement Deferral - Opinion of Probable Cost

Location: Harvell Addition - approx. 720' south of FM 307 along the west side of S Co. Rd. 1140
Engineer: West Company of Midland

Summary	Total
Wastewater Main Improvements	\$82,654.41
Water Main Improvements	\$61,839.84
Paving Improvements	\$312,074.50
Construction Total	\$456,568.74

Wastewater Main Deferral - Opinion of Probable Cost

Location: Harvell Addition - approx. 720' south of FM 307 along the west side of S Co. Rd. 1140
 Engineer: West Company of Midland

Wastewater	Quantity	Unit	Unit Price	Total
12" SDR 35 PVC		LF	25.00	0.00
8" SDR 35 PVC	811.75	LF	15.00	12176.25
6" SDR 35 PVC		LF	13.00	0.00
Trenching/Backfill 0'-5'		LF	20.00	0.00
Trenching/Backfill 5'-8'	202.9375	LF	22.00	4464.63
Trenching/Backfill 8'-10'	608.8125	LF	25.00	15220.31
Trenching/Backfill 10'-12'		LF	30.00	0.00
Trenching 12'-14'		LF	35.00	0.00
Imported Backfill Material	1077.60	TN	15.00	16163.97
Imported Backfill Material - Unit Weight	120.00	PCF		
Replacement Manhole		EA	5000.00	0.00
New Manhole	1	EA	3500.00	3500.00
Remove Manhole		EA	1000.00	0.00
Manhole Extra Depth (MH>5')		VF	400.00	0.00
Connect to Existing MH		EA	500.00	0.00
24" Bore & Steel Encasement		LF	480.00	0.00
18" Bore & Steel Encasement		LF	360.00	0.00
12" Bore & Steel Encasement		LF	240.00	0.00
4" Wastewater Service	4	EA	550.00	2200.00
6" Wastewater Service		EA	750.00	0.00
Volume - Flowable Fill (3 Sac) - Depth Below	0.00	CY	105.00	0.00
Depth of Flowable Fill (ft)	1.00	FT		
Asphalt Pavement Repair		LF	20.00	0.00
Concrete Pavement Repair		LF	25.00	0.00
Erosion Protection (\$/100LF)	8.1175	LS	500.00	4058.75
Trench Protection (Trenching > 5')	811.75	LF	2.00	1623.50
Traffic Control / Job Site Safety	8.1175	LF	150.00	1217.63
Construction Staking (\$/100LF)	8.1175	LF	250.00	2029.38
Contingency (nearest \$1000)	15%			9000.00
Construction Total				\$71,654.41
ROW Acquisition	0	LS	1	0.00
Engineering & Surveying	10%			7000.00
Construction Administration	5%			4000.00
TOTAL				\$82,654.41

Water Main Deferral - Opinion of Probable Cost

Location: Harvell Addition - approx. 720' south of FM 307 along the west side of S Co. Rd. 1140
 Engineer: West Company of Midland

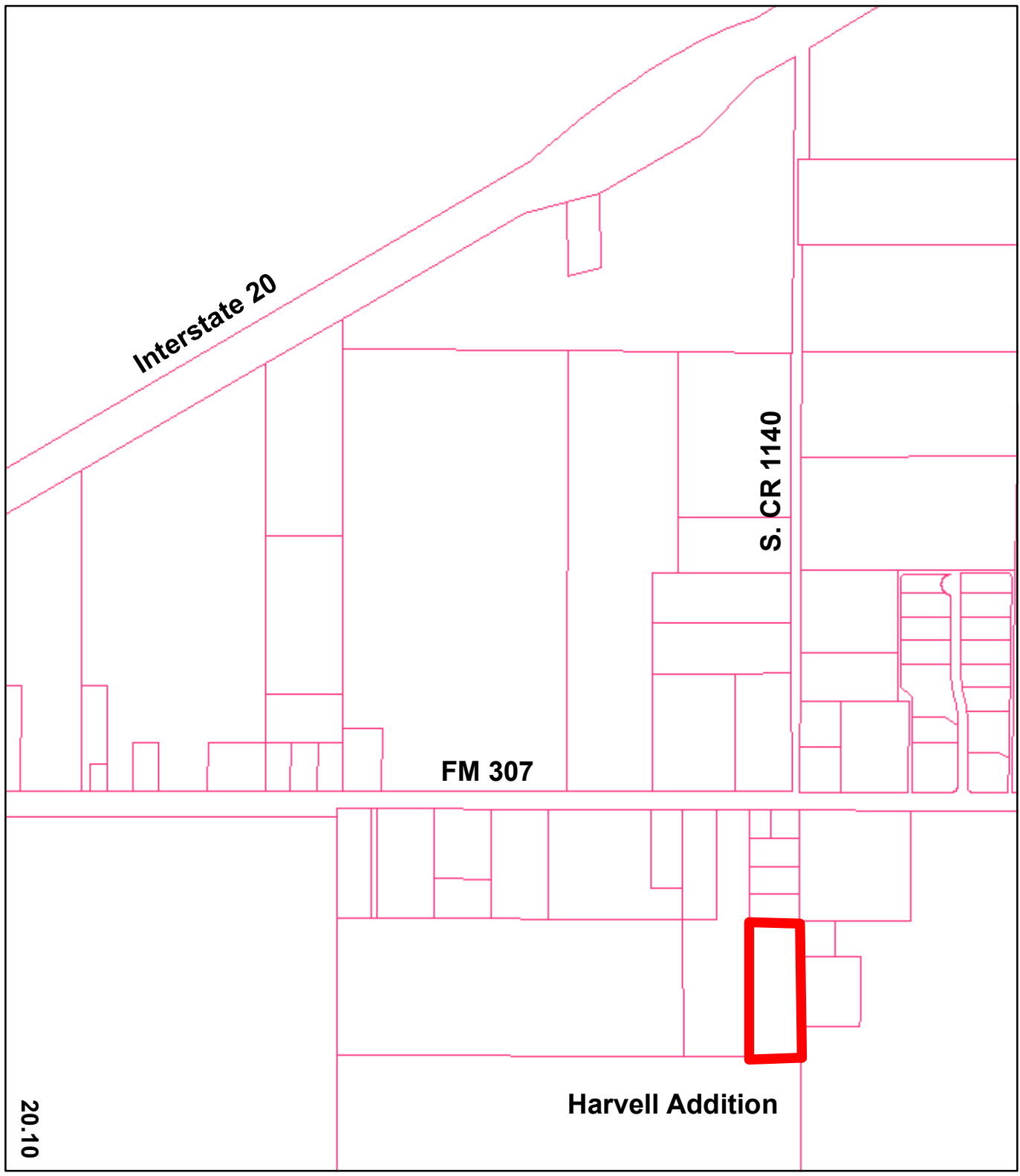
Wastewater	Quantity	Unit	Unit Price	Total
12" C-900 DR 18		LF	42.00	0.00
8" C-900 DR 18	811.75	LF	30.00	24352.50
6" C-900 DR 18		LF	24.00	0.00
Imported Backfill Material	511.40	TN	15.00	7671.04
Imported Backfill Material - Unit Weight	120.00	PCF		
Lower Water Main Under Existing Utiliy		EA	1000.00	0.00
14" Tapping Sleeve		EA	3250.00	0.00
12" Tapping Sleeve		EA	2500.00	0.00
8" Tapping Sleeve		EA	1500.00	0.00
6" Tapping Sleeve		EA	1200.00	0.00
12" Gate Valve		EA	1700.00	0.00
12" Gate Valve (MJ x F)		EA	2000.00	0.00
8" Gate Valve		EA	1100.00	0.00
8" Gate Valve (MJ x F)		EA	1100.00	0.00
6" Gate Valve		EA	1000.00	0.00
6" Gate Valve (MJ x F)		EA	1000.00	0.00
Fire Hydrant	1	EA	3000.00	3000.00
Wet Connection		EA	2500.00	0.00
Ductile Iron Fittings		TN	4000.00	0.00
12" Joint Restraint		EA	200.00	0.00
8" Joint Restraint		EA	150.00	0.00
6" Joint Restraint		EA	100.00	0.00
24" Bore & Steel Encasement		LF	240.00	0.00
18" Bore & Steel Encasement		LF	180.00	0.00
12" Bore & Steel Encasement		LF	120.00	0.00
1" Water Service (short)	4	EA	600.00	2400.00
2" Water Service (long)		EA	1100.00	0.00
Volume - Flowable Fill (3 Sac)	0.00	CY	105.00	0.00
Depth of Flowable Fill (ft)	1.00	FT		
Asphalt Pavement Repair		LF	25.00	0.00
Concrete Pavement Repair		LF	35.00	0.00
Erosion Protection (\$/100LF)	8.1175	LS	1000.00	8117.50
Traffic Control / Job Site Safety	8.1175	LF	150.00	1217.63
Construction Staking (\$/100LF)	8.1175	LS	10.00	81.18
Contingency (nearest \$1000)	15%			7000.00
Construction Total				\$53,839.84
ROW Acquisition		LS	1	0.00
Engineering & Surveying	10%			5000.00
Construction Administration	5%			3000.00
TOTAL				\$61,839.84

Paving Deferral - Opinion of Probable Cost

Location: Harvell Addition - approx. 720' south of FM 307 along the west side of S Co. Rd. 1140
 Engineer: West Company of Midland

Paving Width	53
Length of Paving	811.75
Base Rock Depth - Bottom Lift (in)	8
Base Rock Depth - Top Lift (in) - (6" min - 8" max)	10
Base Rock Unit Weight (95% Standard Proctor)	135
Base Rock waste	5%
HMAC thickness (in)	3
HMAC waste	5%

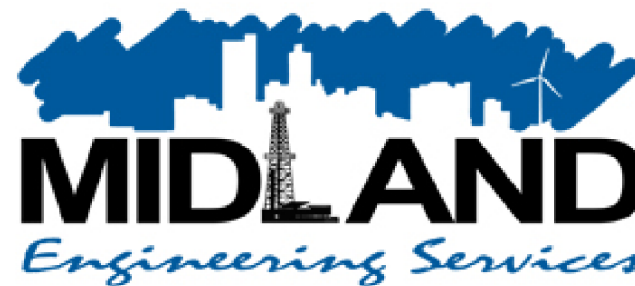
Paving	Quantity	Unit	Unit Price	Total
ROW Preparation	811.75	LF	10.00	8117.50
24" Curb & Gutter	1623.5	LF	15.00	24352.50
Excavation	2480.35	CY	5.00	12401.74
Scarify / Shape / Compact Sub-grade	4960.69	SY	3.50	17362.43
Base Rock - Bottom Lift (Material Only)	2109.54	TN	9.50	20040.59
Base Rock - Top Lift (Material Only)	2464.32	TN	9.50	23411.05
Shape / Compact Base Rock - Bottom Lift	4960.69	SY	3.50	17362.43
Shape / Compact Base Rock - Top Lift	4419.53	SY	3.50	15468.35
Tack Coat	4419.53	SY	1.00	4419.53
HMAC (Material Only)	765.68	TN	80.00	61254.66
Installation of HMAC Surface Course	4419.53	SY	4.00	17678.11
Erosion Protection (\$/100 LF)	8.1175	LS	1000.00	8117.50
Construction Staking (\$/100LF)	8.1175	LS	500.00	4058.75
Traffic Control / Job Site Safety (\$/100LF)	8.1175	LS	250.00	2029.38
Contingency (nearest \$1000)	15%			35000.00
Construction Total				\$271,074.50
ROW Acquisition	0	LS	1	0.00
Engineering & Surveying	10%			27000.00
Construction Administration	5%			14000.00
TOTAL				\$312,074.50



ENGINEERING DIVISION

Harvell Addition

Request for Deferral



Map by DDB 08/02/2012



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 08/14/2012

TO: City Council / City Manager

FROM: David D. Beard, P.E.

SUBJECT: Consider a motion on a request by Schumann Engineering for Quail Ridge Addition (Section 3), to approve items requested for deferral in the amount of \$42,286.70, and to waive the associated public improvement guarantee. (District #2 – Hailey)

Purpose:

Consider a motion on a request by Schumann Engineering for Quail Ridge Addition (Section 3), to approve items requested for deferral in the amount of \$42,286.70, and to waive the associated public improvement guarantee.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Wastewater Collection	\$35,937.50
Sidewalk Construction	<u>\$6,349.20</u>

Total value of deferral (recommended items) \$42,286.70

Cash deposit or other acceptable security \$0.00

Deferral recommendations are based on the model Deferral Process previously presented at the council briefing.

Discussion:

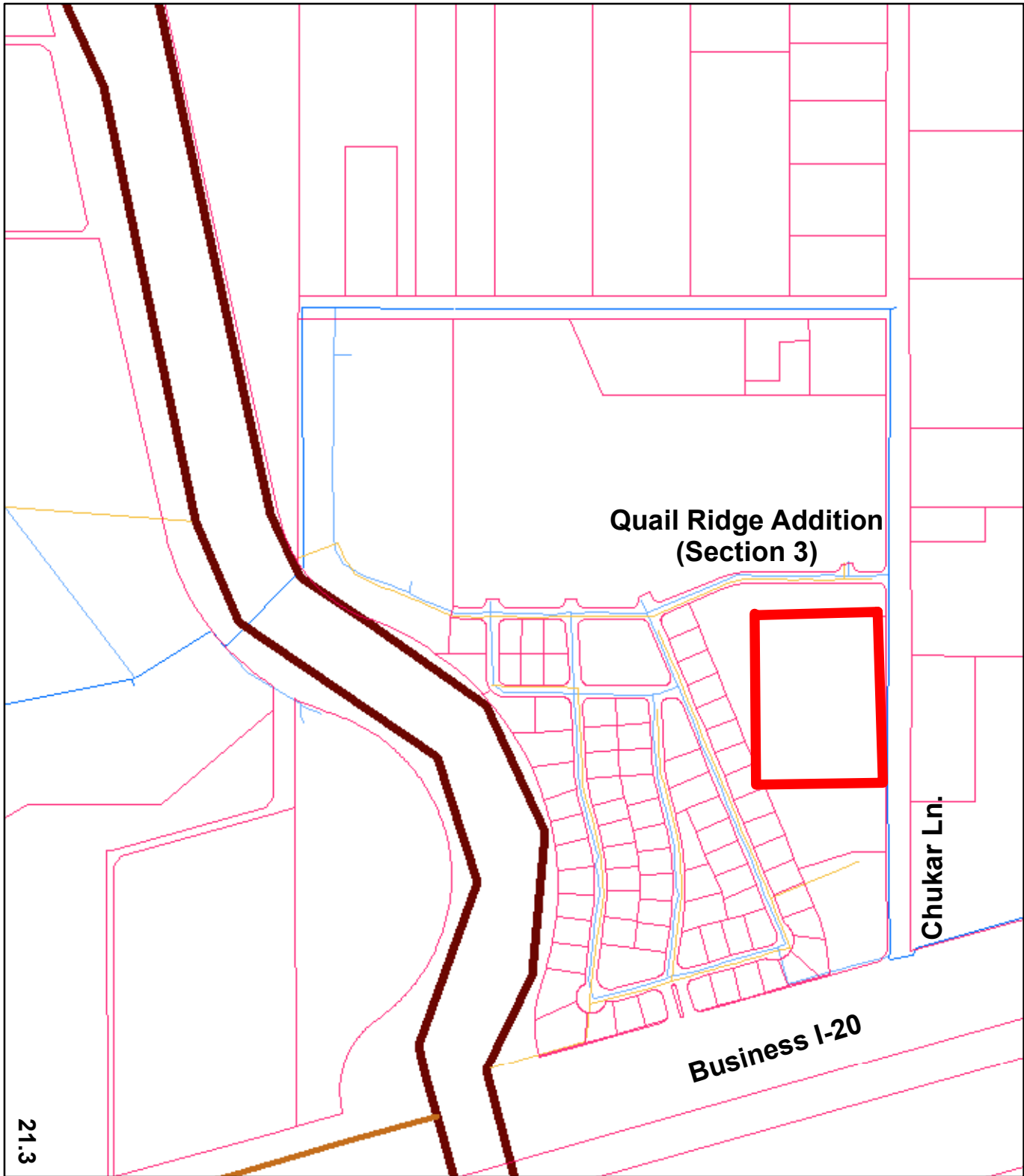
The Quail Ridge Addition (Section 3) is positioned in the City of Midland City Limits, located on the west side of Chukar Ln. approximately 450' north of Business I-20.

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:

Deferral Request

1. Water Distribution: A 12"Ø water main in Chukar Ln. is available. The applicant has agreed to connect to this water main for domestic use.
2. Wastewater Collection: The applicant is requesting a deferral of wastewater collection improvements.
 - The current owner is platting the lot to obtain a building permit to demolish the existing structure and build a residence in the same location. Wastewater service is currently being provided through an on-site septic tank; therefore staff is not requiring extension of wastewater infrastructure to this site.
3. Paving: Access to the site is provided along Chukar Ln.
 - The current pavement along Chukar Ln., adjacent to the property is paved including curb & gutter with adequate right-of-way.
4. Drainage: A Drainage Statement for this site has been approved.
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 Chukar Ln. 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.



ENGINEERING DIVISION

Quail Ridge Addition (Section 3)

Request for Deferral



Map by DDB 08/05/2012

QUAIL RIDGE ADDITION SECTION 3

BEING A PLAT OF A 3.79-ACRE
TRACT OF LAND, BEING 0.91 ACRES OUT OF
PARKER ACRES AND 2.88 ACRES
OF UNPLATTED LAND, OUT OF
THE SE/4 OF SECTION 42, BLOCK 38,
T-1-S, T & P RR CO SURVEY
CITY AND COUNTY OF
MIDLAND, TEXAS.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT I, PAUL CLEVELAND PERRY, DO HEREBY ADOPT THIS PLAT DESIGNATING THE HEREINABOVE DESCRIBED PROPERTY AS QUAIL RIDGE ADDITION, SECTION 3, AN ADDITION TO THE CITY OF MIDLAND, AND DO HEREBY DEDICATE TO THE PUBLIC USE FOREVER THE STREETS, ALLEY, AND EASEMENTS, (AND PARKWAYS) SHOWN HEREON.

WITNESS MY HAND AT MIDLAND, TEXAS, THIS ____ DAY OF _____, 20 ____.

PAUL CLEVELAND PERRY

STATE OF TEXAS:
COUNTY OF MIDLAND:

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THIS ____ DAY OF _____, 20 ____, PAUL CLEVELAND PERRY.

NOTARY PUBLIC
MIDLAND COUNTY, TEXAS

NOTES:

- 1.) SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION OF CITY ORDINANCE AND STATE LAW AND SUBJECT TO FINES AND WITHHOLDING OF UTILITIES AND BUILDING PERMITS.
- 2.) APPROVAL OF A SITE PLAN BY THE CITY OF MIDLAND MAY BE REQUIRED BEFORE THE DEVELOPMENT OF ANY LOT AND BEFORE A BUILDING PERMIT MAY BE OBTAINED.
- 3.) A BLANKET EASEMENT OF INGRESS AND EGRESS IS HEREBY GRANTED FOR QUAIL RIDGE ADDITION, SECTION 3, TO THE CITY OF MIDLAND FOR GARBAGE AND TRASH COLLECTION AND LOCATION AND MAINTENANCE OF TRASH CONTAINERS, SAVE AND EXCEPT THOSE AREAS OCCUPIED BY A BUILDING OR STRUCTURE, SAID EASEMENT IS CONDITIONED SUCH THAT NO CONSTRUCTION SHALL COMMENCE ON SAID LOT UNTIL EXACT LOCATION OF SAID CONTAINERS AND THE EASEMENTS IN CONNECTION THEREWITH HAVE BEEN SELECTED AND APPROVED BY THE DIRECTOR OF UTILITIES.
- 4.) BEARINGS AND DISTANCES SHOWN ARE GRID BASED ON GPS OBSERVATIONS AND CONFORM TO THE "TEXAS COORDINATE SYSTEM" TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. THE CONVERGENCE ANGLE AT THE POINT OF BEGINNING IS -0°52'42.39", THE COMBINED SCALE FACTOR IS 0.99991148568.
- 5.) NO INCREASE IN DEVELOPMENT AREA RESULTS IN NO NET INCREASE IN STORMWATER RUNOFF.

PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS
NO. _____ CABINET _____
DATE _____ PAGE _____

SCHUMANN ENGINEERING CO., INC.

REGISTERED PROFESSIONAL LAND SURVEYORS
LICENSED STATE LAND SURVEYORS

REGISTERED PROFESSIONAL CIVIL ENGINEERS
TEXAS AND NEW MEXICO

Civil Engineering ~ Land Surveying

408 N. PECOS STREET - P. O. BOX 504
MIDLAND, TEXAS 79702-0504

Office (432) 684-5548
Fax (432) 684-6973

NO.	DATE	DESCRIPTION	BY
2	07/02/12	REVISED FOR FINAL PLAT	CAK
1	05/17/12	REVISED FOR PRELIMINARY PLAT	SC

DRAWN BY:	KDS/SRC	DATE:	03/12/12
CHECKED BY:	RJD	DRAWING NO.:	73,037
JOB NO.:	73037DP	SHEET	1 OF 1



RJ DAUM
RPLS 4826

THAT I, RJ DAUM, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT I PREPARED THIS PLAT FROM AN ACTUAL AND ACCURATE SURVEY OF THE LAND AND THAT THE CORNER MONUMENTS SHOWN THEREON WERE PROPERLY PLACED UNDER MY PERSONAL SUPERVISION, IN ACCORDANCE WITH THE SUBDIVISION REGULATIONS OF THE CITY OF MIDLAND, TEXAS.

CERTIFICATE OF APPROVAL

FOR APPROVAL BY THE COMMISSION:

THIS IS TO CERTIFY THAT THE ABOVE AND FOREGOING PLAT OF QUAIL RIDGE ADDITION SECTION 3, WAS APPROVED BY PROPER ACTION OF THE CITY PLANNING AND ZONING COMMISSION OF THE CITY OF MIDLAND, ON THIS ____ DAY OF _____, 20 ____.

SIGNED: _____
CHAIRMAN BECKY FERGUSON

ATTEST: _____
SECRETARY CAMERON WALKER

THIS PLAT HAS BEEN CHECKED FOR ACCESSIBILITY OF UTILITIES.

SIGNED: _____
ONCOR ELECTRIC DELIVERY COMPANY LUIS AGUILAR

SIGNED: _____
AT&T TEXAS ENRIQUE MONDRAGON

SIGNED: _____
ATMOS ENERGY MARK LIEB

SIGNED: _____
SUDDENLINK COMMUNICATIONS BILL BENTLEY

SIGNED: _____
SHARYLAND UTILITIES LP DOUG McGEE

SIGNED: _____
GRANDE COMMUNICATIONS SHERRY SANDERS

21.6

THIS DRAWING SHALL NOT BE UTILIZED BY ANY PERSON, FIRM, OR CORPORATION IN WHOLE OR IN PART WITHOUT THE SPECIFIC PERMISSION OF SCHUMANN ENGINEERING CO., INC.

QUAIL RIDGE ADDITION, SECTION 3

QUAIL RIDGE ADDITION, SECTION 3



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 8/14/2012

TO: City Council / City Manager

FROM: Price Robinson, Chief of Police

SUBJECT: Consider a Resolution to Accept and Appropriate Grant Funding Awarded Through the 2012 Justice Assistance Grant Program

Purpose:

Consider a resolution to accept and appropriate grant funding awarded through the 2012 Justice Assistance Grant Program

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

That the sum of \$31,908 is hereby appropriated from the Department of Justice Grant Fund (074) Unappropriated Fund Balance (5650) to the following projects in the following amounts:

JAG 12 City Portion (7089)	19,145
JAG 12 County Portion (7090)	12,763

Discussion:

The City of Midland Police Department has received notice that we, in conjunction with Midland County, have received a federal grant award in the amount of \$31,908, through the 2012 Justice Assistance Grant. The Attorney General of Texas has determined that Texas counties are responsible for more than 50% of the costs incurred for the prosecution and incarceration of Part I violent crimes. The Office of the Attorney General has certified this fact to the Bureau of Justice Assistance. The effect of the Attorney General's certification is that cities and counties will have to file a joint application with the Bureau of Justice Assistance, with the cities and counties agreeing to the funding allocations among them.

The end result is that the City of Midland will receive \$19,145 (60%) and Midland County will receive \$12,763 (40%).

RESOLUTION NO.

RESOLUTION AUTHORIZING THE CITY OF MIDLAND POLICE DEPARTMENT IN CONJUNCTION WITH THE MIDLAND COUNTY SHERIFF'S DEPARTMENT TO ACCEPT THE FISCAL YEAR 2012 JUSTICE ASSISTANCE GRANT FUNDS TOTALING \$31,908.00; THE CITY OF MIDLAND WILL RECEIVE \$19,145.00 (60%) AND MIDLAND COUNTY WILL RECEIVE \$12,763.00 (40%) OF THE GRANT FUNDS; AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS; AND APPROPRIATING FUNDS

WHEREAS, the City of Midland Police Department, in conjunction with the Midland County Sheriff's Department, has received notice it had been awarded \$31,908.00 through the FY2012 Justice Assistance Grant Program, with said grant funds to be used to purchase law enforcement equipment, technology and other material directly related to basic law enforcement; and

WHEREAS, the City of Midland and Midland County were required to allocate the percentage of funds to be received by each law enforcement entity, and said entities filed a joint application with the Bureau of Justice Assistance to receive said grant funds; and

WHEREAS, the \$31,908.00 in grant funds will be divided so that the City of Midland will receive \$19,145.00 (60%) and Midland County will receive \$12,763.00 (40%) of the grant funds; and

WHEREAS, the grant funds will be used by the Midland Police Department to purchase equipment, technology, and other material directly related to basic law enforcement; and

WHEREAS, the Council finds it to be in the public interest to accept the grant award and to appropriate the grant funds;

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

SECTION ONE. That the City of Midland hereby accepts the grant award of \$31,908.00, which will be divided so that the City of Midland will receive \$19,145.00 (60%) and Midland County will receive \$12,763.00 (40%) of the grant funds as made by the

FY2012 Justice Assistance Grant Program. Said grant funds shall be used by the Midland Police Department to purchase equipment, technology and other material directly related to basic law enforcement.

SECTION TWO. That the City Manager, or his designee, is hereby authorized and directed to evidence the City of Midland's acceptance by executing all necessary documents in order to accept the grant award.

SECTION THREE. That the sum of \$31,908.00 is hereby appropriated from the Department of Justice Grant Fund (074) Unappropriated Fund Balance (5650) to the following projects in the following amounts:

JAG 12 AVL Project (7089)
..... \$19,145.00

JAG 12 County Portion (7090)
..... \$12,763.00

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Price Robinson, Police Chief

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 8/14/2012

TO: City Council / City Manager

FROM: Price Robinson, Chief of Police

SUBJECT: Consider a Resolution to Accept Funding Awarded Through the 2013 Victim Coordinator Liaison Grant Program

Purpose:

Consider a resolution to accept funding awarded through the 2013 Victim Coordinator Liaison Grant Program

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

That the grant awarded in the sum of \$41,863.00 by the FY2013 Victim Coordinator Liaison Grant to the Midland Police Department are hereby accepted and deposited into the General Fund (001)

Discussion:

The Texas Crime Victims' Grant Program was created by Texas Code of Criminal Procedure, Articles 56.54 and 56.541. The Texas Code of Criminal Procedure, Article 56.33, designates the Office of the Attorney General as the administering agency. The source of the funds is a biennial appropriation by the Texas Legislature from a fund collected from court costs and fees. These funds are constitutionally dedicated by Article I, Section 31, of the Texas Constitution. In the latter part of 1989, State law mandated that all local law enforcement agencies designate an individual to serve as a representative to consult with the Texas Attorney General, to ensure that victims, guardians of victims, or relatives of deceased victims were afforded the rights granted to them.

RESOLUTION NO.

**RESOLUTION ACCEPTING THE FISCAL YEAR 2013
VICTIM COORDINATOR AND LIAISON GRANT FROM
THE TEXAS ATTORNEY GENERAL; THIS GRANT IS
TO BE USED BY THE MIDLAND POLICE
DEPARTMENT TO MAINTAIN A VICTIM ASSISTANCE
LIAISON POSITION; AUTHORIZING THE EXECUTION
OF ACCEPTANCE DOCUMENTS; AND DEPOSITING
THE FUNDS INTO THE GENERAL FUND**

WHEREAS, the Midland Police Department has received notice of grants awarded through the FY2013 Victim Coordinator and Liaison Grant Program, in the amount of \$41,863.00, which are administered by the Office of the Texas Attorney General; and

WHEREAS, the Midland Police Department will use these funds to maintain a victim assistance liaison; and

WHEREAS, the Council finds it to be in the public interest to accept the grant award; and

WHEREAS, the City of Midland will not use the existence of the Office of the Texas Attorney General grant awards to offset or decrease total salaries, expenses and allowances for the City of Midland Police Department at or after the time the grants are awarded; and

WHEREAS, in the event of loss or misuse of Office of the Texas Attorney General funds, the City assures that the funds will be returned to the Office of the Texas Attorney General in full;

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

SECTION ONE. That the City of Midland, acting through its Mayor and City Council, hereby accepts the grant awards of \$41,863.00 for the FY2013 Victim Coordinator and Liaison Grant Program, with said funds to be used by the Midland Police Department to maintain a victim assistance liaison.

SECTION TWO. That the City Manager, or his designee, is hereby authorized and directed to evidence the City of Midland's acceptance of said grants by executing all necessary documents in order to accept the grants.

SECTION THREE. That the 2013 Victim Coordinator Liaison Grant awarded in the sum of \$41,863.00 is hereby accepted and directed to be deposited into the General Fund (001).

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Price Robinson, Police Chief
APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 14, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by Rick Shirley for a zone change from PD, Planned District for a Shopping Center, to a Planned District for a Housing Development on a 12.63-acre tract of land. (Generally located on the east side of South Loop 250 West, approximately 1/4 mile north of West Wall Street.)

Purpose:

Consider an ordinance on second reading on a request by Rick Shirley for a zone change from PD, Planned Districts for Shopping Centers to PD, Planned District for a Housing Development.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Rick Shirley wishes to construct townhouses on a 12-acre tract located on the east side of Loop 250, south of Anetta Drive. On April 24, 2012, the City Council approved an ordinance on first reading that adopted the required zoning. However, the drainage plan for this development proposes to store the increase in storm water run-off on a portion of Beal Park. State law requires the City Council to call a public hearing and consider such proposals that impact public parks. Thus, second reading of the zone change ordinance was delayed until this matter could be resolved. The public hearing to allow the storing of storm water in Beal Park was held on July 10, 2012, and the Council approved the developer's request. It is now appropriate for the City Council to consider the zone change ordinance on second and final reading.



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: July 24, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by Rick Shirley for a zone change from PD, Planned District for a Shopping Center, to a Planned District for a Housing Development on a 12.63-acre tract of land. (Generally located on the east side of South Loop 250 West, approximately 1/4 mile north of West Wall Street.)

Purpose:

Consider an ordinance on second reading on a request by Rick Shirley for a zone change from PD, Planned Districts for Shopping Centers to PD, Planned District for a Housing Development.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Rick Shirley wishes to construct townhouses on a 12-acre tract located on the east side of Loop 250, south of Anetta Drive. On April 24, 2012, the City Council approved an ordinance on first reading that adopted the required zoning. However, the drainage plan for this development proposes to store the increase in storm water run-off on a portion of Beal Park. State law requires the City Council to call a public hearing and consider such proposals that impact public parks. Thus, second reading of the zone change ordinance was delayed until this matter could be resolved. The public hearing to allow the storing of storm water in Beal Park was held on July 10, 2012, and the Council approved the developer's request. It is now appropriate for the City Council to consider the zone change ordinance on second and final reading.

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 12.63-ACRE TRACT OF LAND OUT OF THE NORTHWEST QUARTER OF SECTION 6, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED AS TWO SEPARATE PLANNED DISTRICTS FOR SHOPPING CENTERS, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE EAST SIDE OF LOOP 250, APPROXIMATELY 1/4 OF A MILE NORTH OF WALL STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a Planned District for a Housing Development, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned as two separate Planned Districts for Shopping Centers, and it shall be used as a Planned District for a

Housing Development, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 12.63-acre tract of land out of the northwest quarter of Section 6, Block 39, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "B", which is attached hereto and incorporated herein.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That this property shall be subject to the development regulations of the TH, Townhouse District, except as otherwise stated below.
2. That prior to the construction of any residence abutting Loop 250, a screening fence shall be completely constructed in its entirety. Said screening fence shall be consistent with the conditions shown on the site plan attached hereto and incorporated herein as Exhibit "A".
3. That the screening fence described in Paragraph 2 above shall be constructed within a common area to be established by the subdivision plat associated with this property. A homeowners association shall be established to be responsible for the ownership and maintenance responsibilities associated with said screening fence.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more

sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the ____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS ____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Rick Crownover, Director of Development
Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**Planning and Zoning Commission
Minutes
April 02, 2012**

Z-12-005 - Hold a public hearing and consider a request by **Rick Shirley** for a *zone change* from PD, Planned District for a Shopping Center, to a Planned District for a Housing Development on a 12.63-acre tract of land out of the NW/4 of Section 6, Block 39, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the east side of South Loop 250 West, approximately ¼ mile north of W. Wall Street.)

Applicant yielded to staff. Senior Planner Jim Compton gave an overview of the request for a zone change by Rick Shirley. He stated this particular property has remained vacant since being rezoned 15 years ago and applicant wishes to develop townhomes on the property. A screening fence is required which will either be painted or finished in stucco. He stated staff had some concerns that it may be a monotonous view. Staff is recommending approval of the proposed plat subject to conditions A through C.

Applicant Andrew Mellon, 110 W. Louisiana Ave, stated the City did express concerns regarding the wall and that they are willing to go with a decorative block to give it some texture and variance.

Chairman Ferguson opened the public hearing.

With no one speaking in favor of the request Chairman Ferguson called for anyone speaking in opposition of the request.

Darrell Weisman, property owner to the south expressed concern on whether there would be a wall between his commercial property and the development. Andrew Mellon stated that there is currently a wooden fence in place and that fence will stay in place. Mr. Weisman stated he was planning on putting in a six-foot metal wall for privacy and wondered if it would any objection against it. Cameron Walker stated there is no permit requirement as long as it's on your property.

There being no one else wishing to speak in favor or in opposition to the item, Chairman Ferguson closed the public hearing.

Discussion ensued regarding the half a mile fence and the Commission agreed to have the City Council decide on the layout and design of the fencing.

A motion for approval of a zone change subject to conditions A through C was made by Commissioner Gatten; seconded by Commissioner York. The motion

carried by the following vote: AYE: Ferguson, Gatten, Norris, Wilton, York, Watkins, Lanning and Carrillo. NAY: None. ABSTAIN: None. ABSENT: Wolf and Woodruff

PLANNING AND ZONING COMMISSION

April 2, 2012

CASE: Z-12-005.

REQUEST: Hold a public hearing and consider a request for a zone change from PD, Planned District for a Shopping Center to PD, Planned District for a Housing Development.

APPLICANT/OWNER: Rick Shirley

REPRESENTATIVE: West Company of Midland.

LEGAL DESCRIPTION: A 12.63-acre tract out of Section 6, Block 39, T-2-S, T&P RR Company Survey, Midland County, Texas.

LOCATION: East side of Loop 250, approximately one-fourth mile north of Wall Street.

ASSOCIATED CASE: P-11-063, Floyd Acres.

DETAILS OF REQUEST:

1. The subject property was zoned Planned District for a Shopping Center in 1997 as part of a comprehensive City-initiated zoning study of this segment of Loop 250. During the intervening 15 years, the property has remained vacant. A new owner wishes to construct townhouses on this property. Since the associated preliminary plat is designed with the rear of lots facing Loop 250, the applicant is required to establish a permanent screening of the back of these lots. Consequently, this request is for a Planned District for a Housing Development, subject to the regulations of the TH District. Further, a site plan, Exhibit A, has been provided to describe the character of the screening fence.

SURROUNDING ZONING AND LAND USE:

2. This property is bounded by Loop 250 on the west and Beal Parkway on the west. Beal Park is located to the east. To the south is another Planned District for a Shopping Center, but it is developed with office uses. West, across Loop 250 is vacant land that is outside the City limit. The area to the north is zoned and developed with single-family homes.

ANALYSIS:

3. When land is rezoned from an intensive retail use to a single-family use, we refer to this as "down-zoning". The result is a significant reduction in land use intensity, especially in traffic and overall noise, lighting and activity. This reduction lessens the impact on the surrounding property owners. The proximity of this property to Beal Parkway will enhance the residential experience for those who would eventually live in this area. For these reasons, the staff believes that this requested zone change is reasonable.

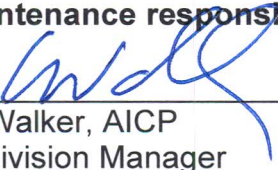
SCREENING FENCE:

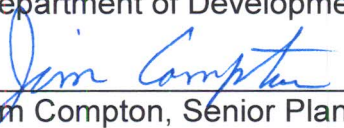
4. As stated in Paragraph 1, the design of the associated subdivision plat orients lots adjacent to Loop 250 in a backing condition. This orientation is prohibited by the Subdivision Code unless the associated plat establishes a common area between the lots and the street that is developed with some type of screening element. The associated plat includes a two-foot wide common area for a screening fence. The design of the fence is illustrated on the attached Exhibit A. This fence will be a solid six-foot tall masonry fence constructed of CMU blocks that will either be painted or finished in stucco. The staff has indicated a concern for the likely monotonous appearance of such a fence that is approximately one-half mile long. We anticipate that the developer will be prepared to discuss the design detail of this fence at the April 2nd meeting. A neutral earth tone color is proposed. This will be a sturdy fence which should require little maintenance.

STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from PD, Planned District for a Shopping Center to PD, Planned District for a Housing Development, subject to the following conditions:

- A. The development of this property shall be subject to the regulations of the TH, Townhouse District, except as otherwise stated below.
- B. Prior to construction on any residential lot adjacent to Loop 250, a screening fence consistent with the conditions illustrated or stated on the attached Exhibit A shall be constructed.
- C. The screening fence described in Condition B above shall be constructed within a common area to be established by the subdivision plat associated with this property. A home owners association shall be established to be responsible for the ownership and maintenance responsibilities associated with this screening fence.


Cameron Walker, AICP
Planning Division Manager
Department of Development Services


Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibit A

Case Number: 212-005

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Rick Shirley
Andrew Mellen 3000 Acres 432-687-0865
Applicant Name (Phone/e-mail)

110 W. Louisiana Ave 79701
Address Zip Code

Rick Shirley
Property Owner Name (Phone/e-mail)
P.O. Box 600608 Dallas TX 75360
Address Zip Code

Andrew Mellen 432-687-0865
Representative Name (Phone/e-mail)
110 W. Louisiana Ave 79701
Address Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. 12.63 Acre Tract out of the NW 1/4 of Section 6, Block 39
T-2-S, Texas & Pacific RR. CO. Survey, Midland County, Texas

PRESENT ZONE: N/A REQUESTED ZONE: PDHO
(List by tracts if more than one district is requested)

Reason for Zone Change Request: Town home Development: Attached

Present Use of Property: Raw Land

Proposed Use of Property: Town home Development

How will zone change affect the public health, safety and welfare? _____

Describe how conditions affecting the property have changed since present zoning designation: _____

Is a Specific Use Permit with Term for alcoholic beverages sales needed? ____ Yes X No

APPLICATION FEES:

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

SITE PLAN SUBMITTALS (if applicable):

16 copies (FOLDED) of the PD site plan:

Site Plan in digital format .pdf and .jpg:

✓
✓

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

Property Owner (signature): _____ Date: _____

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

STATE of TEXAS

COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

Andrew L. Mellen Jr who, being by me duly sworn, upon oath says: That (s)he is authorized by Rick Shirley, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Andrew L. Mellen Jr

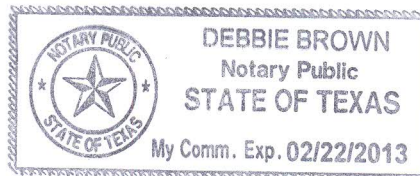
Authorized Agent (signature)

Subscribed and sworn to before me, this 10th day of February, 20 12, to certify which witness my hand and seal of office.

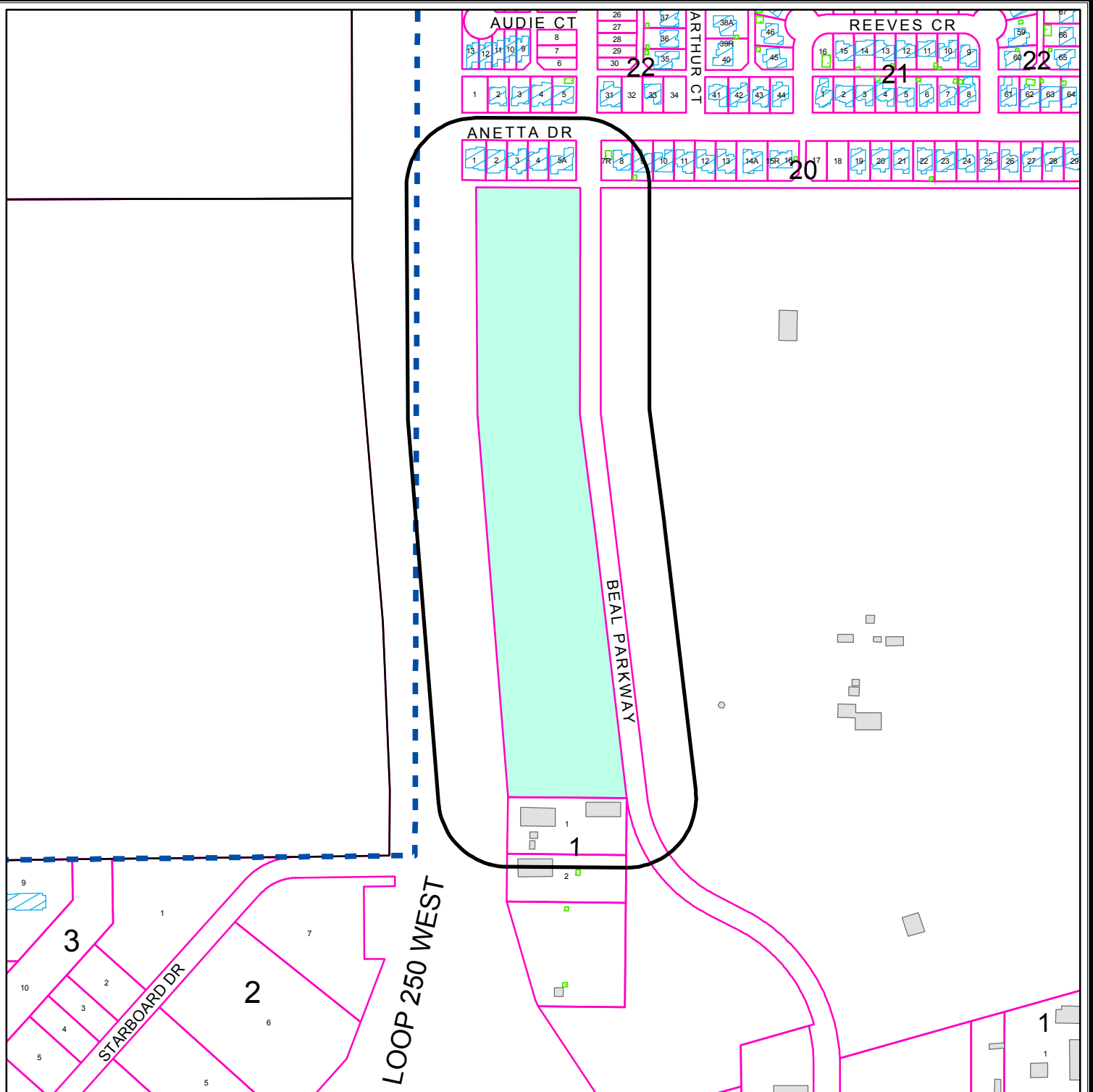
Debbie Brown

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>JC</u>	Date: <u>2/10/12</u>
Assigned: <u>JC</u>	
For: _____	On: _____



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



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 005

Scale: 1" = 400'

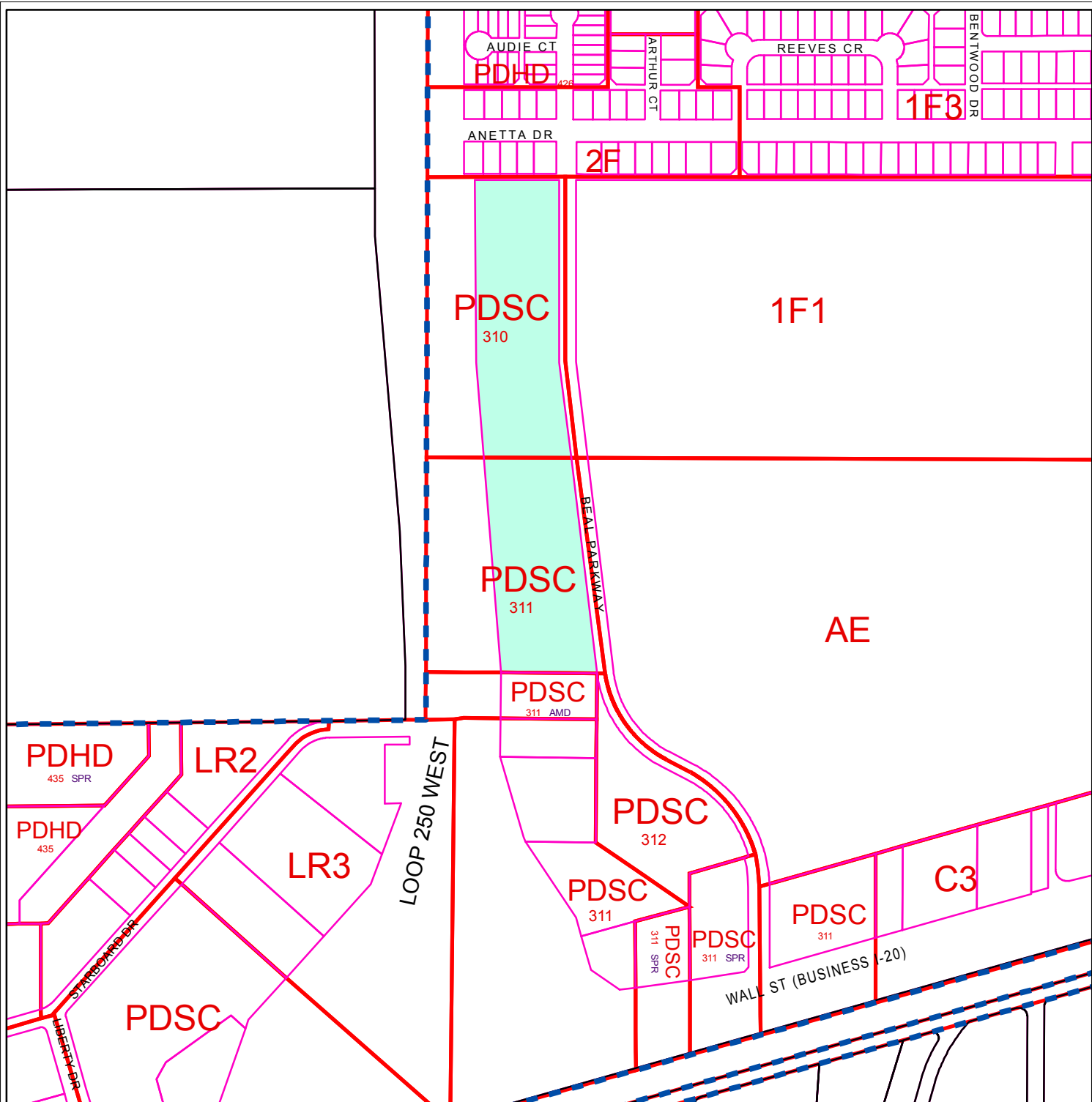
Consider a request for a zone change from PD, Planned Districts for a Shopping Center, to a Planned District for a Housing Development on a 12.63-acre tract of land out of the NW/4 of Section 6, Block 39, T-2-S, T & P RR Co. Survey, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- COUNTY PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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 WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS
 THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CILING, OR OTHER DECISION, SOLELY ON THE INFORMATION CONTAINED HEREIN



ZONING MAP

Z - 12 - 005

Scale: 1" = 500'

Consider a request for a zone change from PD, Planned Districts for a Shopping Center, to a Planned District for a Housing Development on a 12.63-acre tract of land out of the NW/4 of Section 6, Block 39, T-2-S, T & P RR Co. Survey, City and County of Midland, Texas.

LEGEND

ZONING

CITY LIMITS

CITY PARCELS

COUNTY PARCELS

ZONING DISTRICTS:

FD
PD
AE
CE
1F1, 1F2, 1F3
MH
TH
2F
MF1, MF2

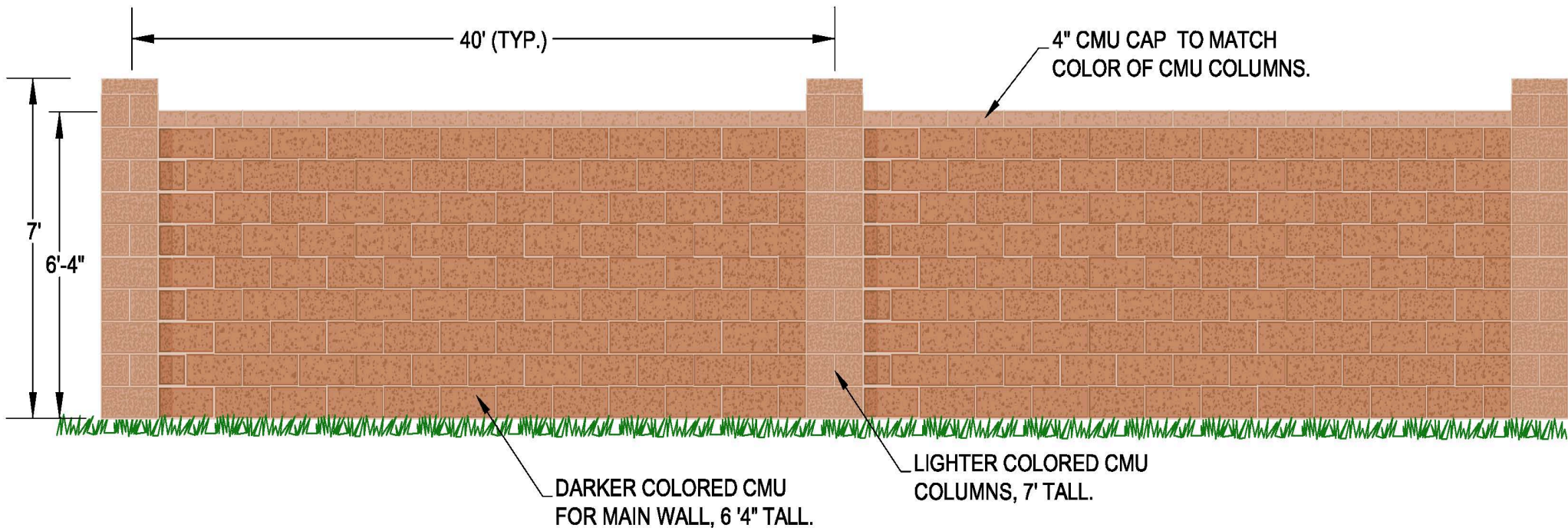
FUTURE DEVELOPMENT
PLANNED DISTRICT
AGRICULTURE ESTATE
COUNTRY ESTATE
ONE-FAMILY DWELLING
MOBILE HOME DWELLING
TOWNHOUSE DWELLING
TWO-FAMILY DWELLING
MULTIPLE FAMILY DWELLING

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

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PROPOSED SCREENING WALL ALONG LOOP 250 FRONTAGE

NO SCALE

A 6'4" TALL SCREENING WALL IS TO BE BUILT IN THE 2' COMMON AREA BETWEEN FLOYD ACRES AND THE WEST LOOP 250 SERVICE ROAD. THE WALL WILL BE CONSTRUCTED PER THE DETAIL SHOWN. THE COLUMNS AND CAP WILL BE CONSTRUCTED OF LIGHTER COLORED BLOCKS, AND THE MAIN WALL SECTIONS WILL BE OF DARKER COLORED BLOCK TO PROVIDE CONTRAST.

THE CMU IS COLORED BY AN INTEGRAL STAIN TO PROVIDE A LOW MAINTENANCE FINISH. THE SELECTED COLORS WILL COMPLIMENT THE DESIGN OF THE HOMES IN THE SUBDIVISION.

LEGAL DESCRIPTION of a 12.63 acre tract out of the Northwest Quarter of Section 6, Block 39, Township-2-South, Texas & Pacific Railroad Company Survey, Midland County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 Inch Iron Rod found for the Northwest corner of this tract found in the North line of said Section 6 from which the Northwest Corner of said Section 6, Block 39, T-2-S bears S 75°38'00" W (S 75°36'41" W) a distance of 70.00 feet, said 1/2 Inch Iron Rod being also in the Easterly right-of-way line of Loop 250 West and in the Southerly right-of-way line of a 20 foot wide alley in the Western Hills, Section 2 addition to the City of Midland as recorded in Cabinet "C", Page 65 of the Plat Records of Midland County, Texas;

THENCE N 75°38'00" E (N 75°36'41" E) with the North line of said Section 6 and the Southerly line of said 20 foot wide alley a distance of 300.10 feet (300.00 feet) to a 1/2 Inch Iron Rod found in the Westerly line of Beal Parkway for the Northeast corner of this tract;

THENCE S 14°25'47" E (S 14°26'22" E) with the Westerly line of said Beal Parkway a distance of 650.88 feet (651.00 feet) to a 1/2 Inch Iron Rod found for an angle point to the Left;

THENCE S 21°28'28" E (S 21°28'28" E) with the Westerly line of said Beal Parkway a distance of 1,112.25 feet (1,112.25 feet) to a set 1/2 inch iron rod with red plastic cap marked "West Co. Midland" for the Southeast corner of this tract and the Northeast corner of Lot 1, Block 1, of the Westridge Addition to the city of Midland, Texas as recorded in Cabinet "D", Page 132 of the Plat Records of Midland County, Texas;

THENCE S 75°35'16" W (S 75°35'16" W) with the Northerly line of said Lot 1, Block 1, Westridge a distance of 343.08 feet (343.08 feet) to a set 1/2 inch iron rod with red plastic cap marked "West Co. Midland" in the Easterly right-of-way line of Loop 250 West for the Southwest corner of this tract;

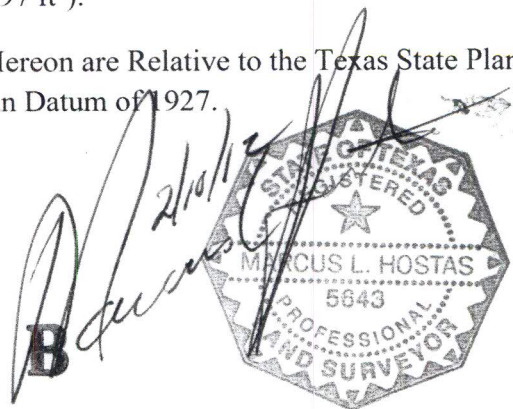
THENCE N 19°15'44" W (N 19°15'44" W) with the Easterly line of said Loop 250 West a distance of 1,107.99 feet (1,107.90 feet) to a 1/2 inch Iron Rod found for an angle point to the Right;

THENCE N 14°26'22" W (N 14°26'22" W) (Basis of Bearing) with the line of said Loop 250 West a distance of 650.91 feet (651.00 feet) to the POINT OF BEGINNING;

Subject Tract containing a total of 12.63 acres (550,230.97 ft²).

Note: All Bearings, Distances and Coordinates Shown Hereon are Relative to the Texas State Plane Coordinate System, Texas Central Zone, North American Datum of 1927.

EXHIBIT





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/14/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by Basin Burger House, LLC. for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant. (Generally located on the southwest corner of the intersection of W. Louisiana Avenue and N. Colorado Street.)

Purpose:

Consider an ordinance on second reading on a request by **Basin Burger House, LLC.** for a *Specific Use Permit with Term* for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant. No changes have been made to this item since its first reading on July 24, 2012.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

The applicant plans to build a restaurant offering a full dining menu in addition to selling alcoholic beverages for on-premise consumption. The proposed area serving alcoholic beverages will be 3,200 square feet inside the restaurant with an additional 800 square feet in an outdoor dining area. Proposed hours of operation are Sundays through Thursdays 11:00 a.m. to 11:00 p.m. with Fridays & Saturdays 11:00 a.m. to midnight. Maximum occupancy is estimated by the applicant to be 175 persons. Staff concurs with the Planning & Zoning Commission that the proposal fits in with on-going efforts to revitalize the underutilized properties downtown.

Attachments:

Application
Maps
Exhibit A - Floor Plan
Exhibit B - Site Plan

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS THE NORTH 125 FEET OF THE EAST HALF OF BLOCK 29 AND THE ADJACENT VACATED 0.032-ACRE PORTION OF WEST LOUISIANA AVENUE RIGHT-OF-WAY, HOMESTEAD ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST LOUISIANA AVENUE AND NORTH COLORADO STREET), WHICH IS PRESENTLY ZONED C-1, CENTRAL AREA DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by the granting of a Specific Use Permit With Term, set out hereinafter, on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned C-1, Central Area District, to-wit:

The north 125 feet of the east half of Block 29 and the adjacent vacated 0.032-acre portion of West Louisiana Avenue right-of-way, Homestead Addition, City and County of Midland, Texas;

is hereby changed to permit said property to be used under a Specific Use Permit With Term for the sale of all alcoholic beverages for on-premises consumption in a restaurant, together with the uses permitted in the present C-1, Central Area District.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

- A. That the alcohol serving area shall be a maximum of 4,000 square feet, and the maximum occupancy shall be 175 persons.
- B. That no outside entrance to a separate bar area shall be permitted.
- C. That all applicable provisions of the Building Code and Fire Code shall be met prior to business operations.
- D. That the days and hours of alcoholic beverage sales and consumption shall be limited to Sunday through Thursday, from 11:00 a.m. until 11:00 p.m., and Friday and Saturday, from 11:00 a.m. until 12:00 a.m. (Midnight), unless otherwise prohibited by law.
- E. That the sale and on-premise consumption of alcoholic beverages shall conform to all applicable laws established by the City of Midland and the State of Texas.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland,

Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Attorney

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

PLANNING AND ZONING COMMISSION

July 2, 2012

CASE: S-12-006.

REQUEST: Hold a public hearing and consider a request for a Specific Use Permit with Term for on-premise consumption of all alcoholic beverages in a restaurant.

APPLICANT: Basin Burger House, LLC.

OWNER: Duke Edwards.

LEGAL DESCRIPTION: The north 125 feet of the east half of Block 29 and the adjacent vacated 0.032-acre portion of the right-of-way of W. Louisiana Avenue, Homestead Addition, City and County of Midland, Texas..

LOCATION: Generally located on the southwest corner of the intersection of W. Louisiana Avenue and N. Colorado Street.

CURRENT ZONING: C-1, Central Area District.

DETAILS OF REQUEST:

1. The applicant plans to develop this site with a restaurant offering a full dining menu in addition to selling alcoholic beverages for on-premise consumption. The proposed area serving alcoholic beverages will be 3,200 square feet inside the restaurant with an additional 800 square feet providing the same food and alcohol service in an outdoor dining area (Exhibit – A). Proposed hours of operation are Sundays through Thursdays 11:00 a.m. to 11:00 p.m. with Fridays & Saturdays 11:00 a.m. to midnight. Maximum occupancy is estimated by the applicant to be 175 persons.

SURROUNDING ZONING AND LAND USE:

2. The proposed building and most of the surrounding area is zoned C-1, Central Area District. Located on N. Colorado Street just south of W. Louisiana Avenue, this property has an old house on it that will be incorporated as a portion of the new restaurant. Just west of this is the Subway restaurant located on Big Spring Street. To the south is large parking lot, to the east is the police station, and to the north is an office building. To the immediate northeast is a vacant lot (proposed for development by this applicant as a separate project) in an O-2, Office District.

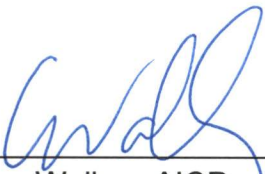
ANALYSIS:

3. The request is to sell alcoholic beverages at this downtown location, which would require developing this property for this proposed use. The proposed plan offers 14 on-site parking spaces (Exhibit – B); however, there are no minimum parking spaces required in the C-1, Central Area District. This property is currently in the process of being platted. City Council has also approved the vacation of a small portion of right-of-way associated with this proposed development. Staff concurs that the proposal fits in with on-going efforts to revitalize the downtown.

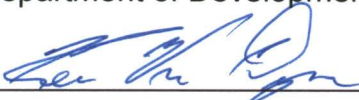
STAFF RECOMMENDATION:

Staff recommends approval of this request for a Specific Use Permit with Term for the sale and on-premise consumption of alcoholic beverages in a restaurant, subject to the following conditions:

- A. That the maximum area of the alcohol serving area shall be 4,000 square feet and the occupancy shall be 175 persons;
- B. All applicable Building and Fire Codes must be met prior to business operations;
- C. That the days and hours of alcoholic beverage sales and consumption shall not exceed the following: Sundays through Thursdays 11:00 a.m. to 11:00 p.m. with Fridays & Saturdays 11:00 a.m. to midnight;
- D. That the operation of the Lounge shall conform to all laws established by the City of Midland and the State of Texas.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Ken Van Dyne, Senior Planner
Department of Development Services

Attachments:

Application
Exhibits A – Floor Plan
Exhibit B – Site Plan
Maps

Case Number: S-12-006

CITY OF MIDLAND
Planning Division

SPECIFIC USE PERMIT APPLICATION

BASIN Burger House, LLC 432-688-2650
Applicant Name Contact Phone #s

Box 51108 Midland, TX 79710
Address Zip Code

E-Mail address: Dukeofoil-tex@msn.com

ADD Alliance Energy Management, LLC 688-2650
Property Owner Name Contact Phone #s

Box 51108 Midland, TX 79710
Address Zip Code

E-Mail address: Aronmarquez@AOL.com

(Duke Edwards, Aron Marquez, JUAN ARRIOLA)
Operator (if different from Applicant or Property Owner) Contact Phone #s

Address Zip Code
Type of Permit: Restaurant w/ Alcoholic Beverages

SUP with Term: ☐ Yes ☐ No
(For Office Use)

Street address and Legal Description of property on which SUP is desired (complete Lot, Block, and Subdivision, or if unplatted, attach a Metes and Bounds description with surveyor's seal.)

607-609 N Colorado Midland TX 79701
S. 50' OF N 125' OF E/2 and N 75' OF
E/2, Block 29, Midland County

Current Zoning: Commercial C-1

Maximum Floor Area: 5,400 Max. Occupancy: Est. 175

Proposed hours and days of use or operation: 11 to 11 Daily
11 to 12 midnighly Fri & Sat

Reason for request: New Restaurant wishing to Sell
Alcoholic Beverages

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: Location is in Commercial Area
no homes are located within general area.

REQUIRED SUBMITTALS

1. Application fee: **\$300.** (80% of fee will be refunded if no P&Z public hearing is called; if no City Council public hearing is called, then 30% of fee will be refunded.)
2. Site plan – 16 copies (FOLDED)
3. On a CD in .pdf and .jpg format.

SIGNATURES:

Applicant: _____

Date: 4/5/12

Property Owner: _____

Date: 4/5/12

Duke Edwards

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

STATE of TEXAS

COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

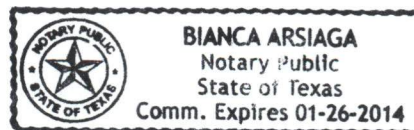
Duke Edwards who, being by me duly sworn, upon oath says: That (s)he is authorized by Basin Burger House, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Subscribed and sworn to before me, this 5 day of April, 20 12, to certify which witness my hand and seal of office.

[Signature]
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

Rec'd By: CW Date: 4/5/12
Assigned: _____
For: _____ On: _____



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

**Planning and Zoning Commission
Minutes
July 02, 2012**

S-12-006 - Hold a public hearing and consider a request by **Basin Burger House, LLC.** for a *Specific Use Permit with Term* for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on the north 125 feet of the east half of Block 29 and the adjacent vacated 0.032-acre portion of the right-of-way of W. Louisiana Avenue, Homestead Addition, City and County of Midland, Texas. (Generally located on the southwest corner of the intersection of W. Louisiana Avenue and N. Colorado Street.)

Aron Marquez, P.O. Box 51108, Midland, TX 79710, is partnering with Duke Edwards to open the Basin Burger House. The restaurant will be open for brunch on the weekends as well as open for lunch and dinner during the week. He stated the restaurant would serve different types of American fare and hopefully bring more people to the downtown area

Senior Planner Ken VanDyne gave an overview of the request for a Specific Use Permit with Term. He stated this was a full service restaurant that was zoned C-1 and has no minimum parking space requirements. Although the site plan indicates 14 on-site parking spaces in addition to on street parking within the area. The City Council has approved a vacation that will help accommodate on-site parking. Staff concurred the proposal's fit, which is within walking distance from offices in the area and would add to the downtown nightlife. Staff received one letter of concern. Staff recommended approval of the request for a Specific Use Permit with Term subject to conditions A through D.

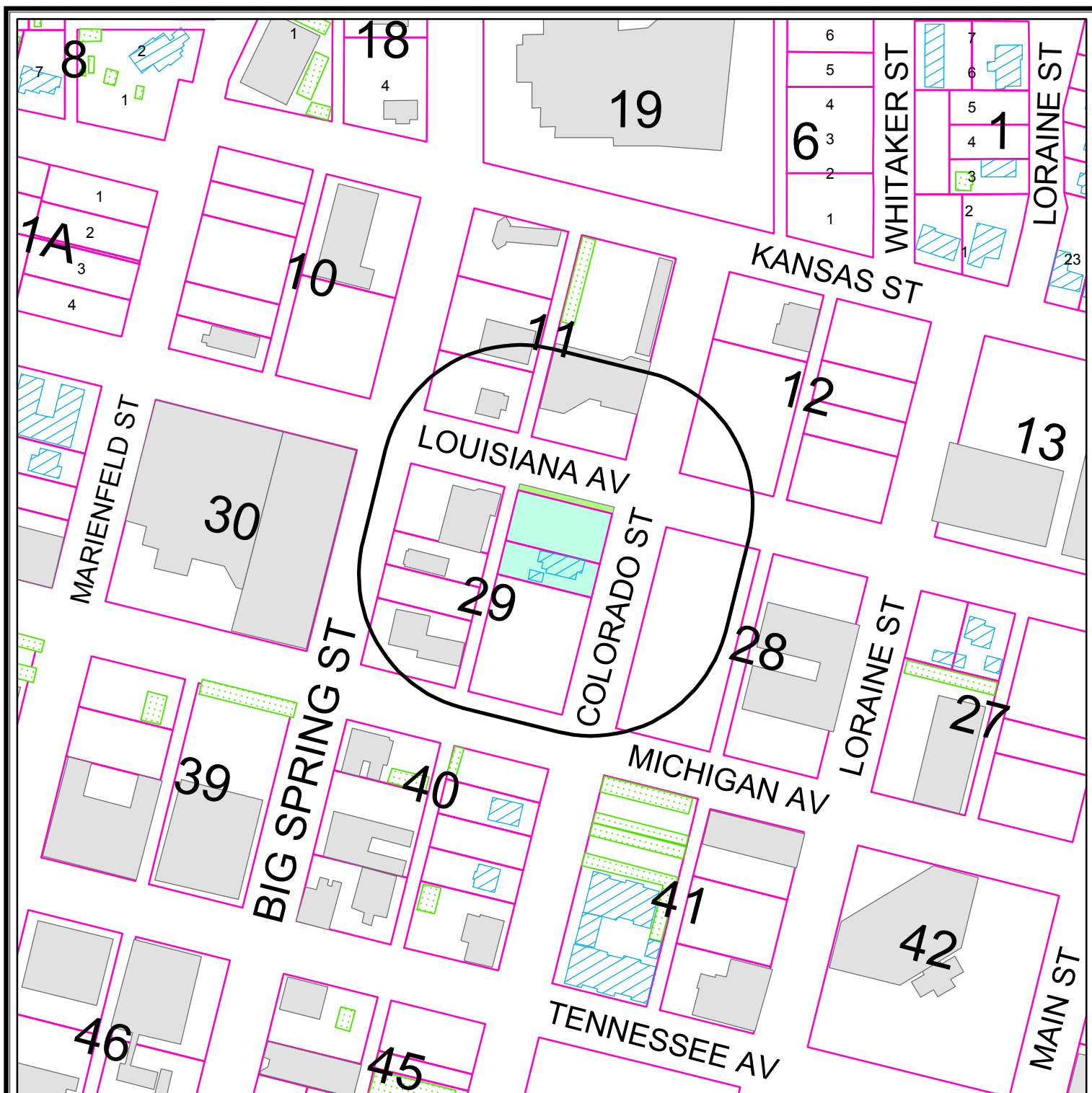
Commissioner Norris asked about the letter of concern. Mr. VanDyne stated the concern was from a business at 604 N. Big Spring. Domino's Pizza expressed concern with the late night alcohol sales.

Chairman Ferguson opened the public hearing.

Mr. Marquez stated that in regards to the Dominos concern his restaurant would not have a bar atmosphere and that he wanted to keep the liquor license hours until midnight due to football games. There was no intention of having a bar atmosphere and with the restaurant being located next door to the police station he was not expecting any problems.

With no one else wishing to speak in favor or in opposition of the request, Chairman Ferguson closed the public hearing.

A motion for approval was made by Commissioner Gatten subject to conditions A through D; seconded by Commissioner Lanning. The motion carried by the following vote: AYE: Ferguson, Gatten, Norris, Wolf, Lanning, Watkins and Wilton. NAY: None. ABSTAIN: None. ABSENT: York, Woodruff and Carrillo.



PROPERTY OWNER NOTIFICATION MAP

S - 12 - 006

Scale: 1" = 200'

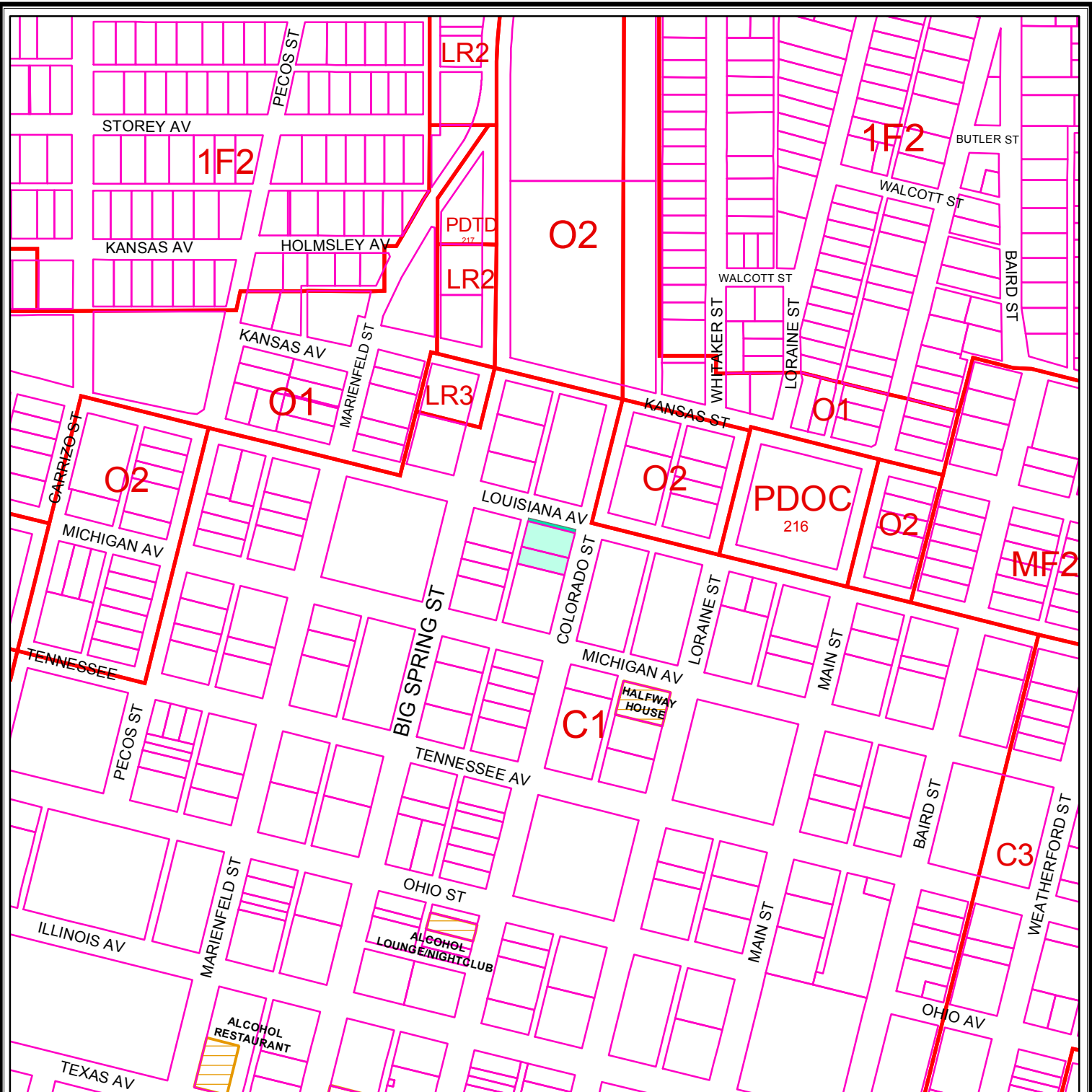
Consider a request for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on the north 125 feet of the east half of Block 29 and the adjacent vacated 0.032-acre portion of the right-of-way of W. Louisiana Avenue, Homestead Addition, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- PUBLIC BLDGS
- ACCESSORY BLDGS



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ZONING MAP

S - 12 - 006

Scale: 1" = 400'

Consider a request for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on the north 125 feet of the east half of Block 29 and the adjacent vacated 0.032-acre portion of the right-of-way of W. Louisiana Avenue, Homestead Addition, City and County of Midland, Texas.

LEGEND

ZONING PARCELS SPECIFIC USE PERMITS

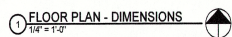
ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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PROJECT : 1201
DATE: 6-1-12
DRAWN BY: ****
REVISION: ****



607 COLORADO AVE.
MIDLAND, TEXAS 79701

**TRAVIS
DURHAM ARCHITECT**

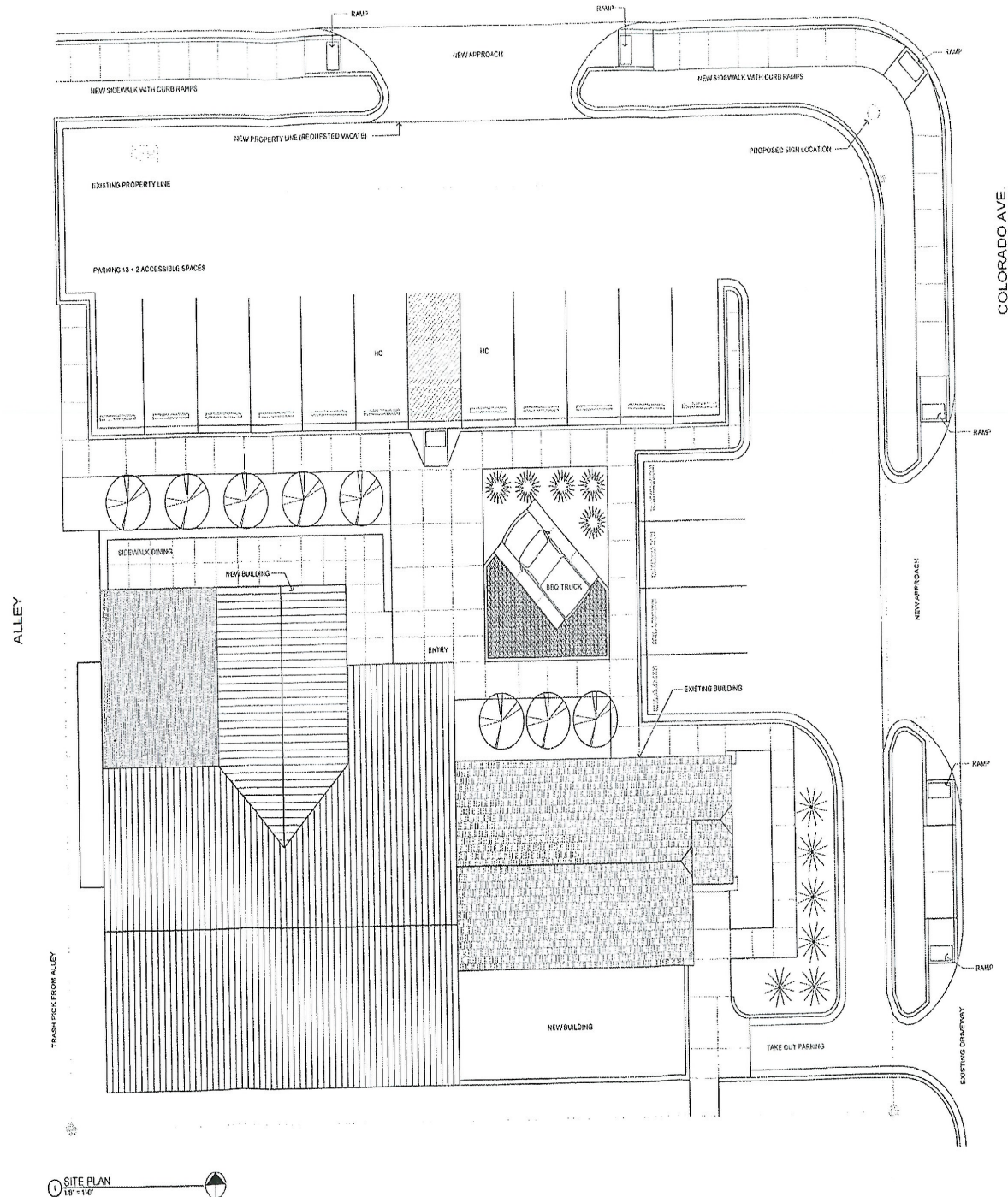
1306 G West Wall Street
Midland, Texas 79701
p 432.685.3997
f 432.685.0525

RECEIVED

JUN 21 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

LOUISIANA AVE.



NOT FOR REGULATORY APPROVAL,
PERMITTING, OR CONSTRUCTION.

PROJECT : 1201
DATE: 4-3-12
DRAWN BY: ***
REVISION: ****

RECEIVED

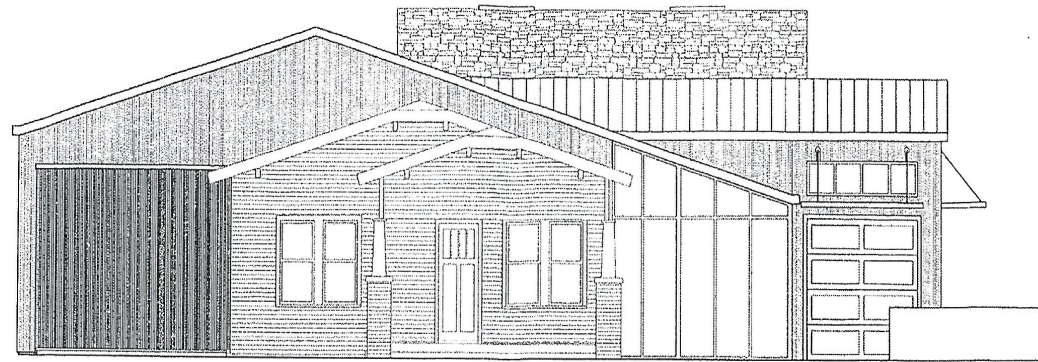
APR 5 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

BASIN BURGER HOUSE
600 BLOCK OF COLORADO AVE.
MIDLAND, TEXAS 79701

**TRAVIS
OURIAN ARCHITECT**
1306 G West Wall Street
Midland, Texas 79701
p 432.685.3997
f 432.685.0525

CASE NO. S-12-006



① ELEVATION LOOKING WEST
1/4" = 1'-0"



NOT FOR REGULATORY APPROVAL,
PERMITTING, OR CONSTRUCTION

PROJECT: 1201
DATE: 4-3-12
DRAWN BY: ****
REVISION: ****



① ELEVATION LOOKING SOUTH
1/4" = 1'-0"

BASIN BURGER HOUSE
600 BLOCK OF COLORADO AVE.
MIDLAND, TEXAS 79701

AVIS
RHAM ARCHITECT
1206 G West Wall Street
Midland, Texas 79701
P 432.685.3997
F 432.685.0525

CASE NO. S-12-006



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/14/2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a city-initiated request to amend the City's thoroughfare plan from The City's Comprehensive Plan 2025, Chapter 4, The Thoroughfare Plan, "Plate 4-1".

Purpose:

Consider an ordinance on second reading on a city-initiated request to amend the City's thoroughfare plan from The City's Comprehensive Plan 2025, Chapter 4, The Thoroughfare Plan, "Plate 4-1". No changes have been made to this item since its first reading on July 24, 2012.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

This is a city-initiated effort to update the City's thoroughfare plan. In 2005 the City Council adopted the Master Plan 2025, which also included the Midland Thoroughfare Plan with Ordinance 8310. The adopted thoroughfare plan is shown in the attached map (Exhibit – B). While minor, periodic road network amendments have occurred, this city-initiated request is to update and create a more encompassing long-range Midland Thoroughfare Plan. The city's rapid growth through annexation, development and population increases necessarily requires the need to evaluate the current road network in light of projected development trends.

These proposed amendments are the result of both observed traffic and development trends within the City of Midland and, at a broader scale, the incorporation of the results of the draft State Highway 191 Corridor Management Plan. That study, initiated by Midland Odessa Transportation Organization (MOTOR) MPO, identified existing and proposed transportation corridors over a large study area (Exhibit – C). Staff recommends approval of this request to amend the City's Thoroughfare Plan as it is intended that the amended thoroughfare plan (Exhibit – A) be implemented immediately for current right-of-way development and identifying right-of-way for future development.

Attachments:

Proposed Amended Thoroughfare Plan, New "Plate 4-1" – Exhibit A
Plate 4-1 (to be replaced) from the Current 2025 Comprehensive Plan – Exhibit B
State Highway 191 Corridor Subject Area Thoroughfare Plan Map – Exhibit C
Proposed Ordinance

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF MIDLAND,
TEXAS, AMENDING THE MIDLAND
COMPREHENSIVE PLAN 2025 AS AUTHORIZED BY
CHAPTER 213 OF THE TEXAS LOCAL
GOVERNMENT CODE; SAID COMPREHENSIVE
PLAN ILLUSTRATING THE FUTURE
DEVELOPMENT OF THE CITY OF MIDLAND;
PROVIDING A SAVINGS AND SEVERABILITY
CLAUSE; AND PROVIDING AN EFFECTIVE DATE**

WHEREAS, the City of Midland recognizes the need for a comprehensive plan for the long-range development of the City; and

WHEREAS, the City Council previously adopted the Midland Comprehensive Plan 2025 to promote the sound development of the City of Midland and to promote the public health, safety and welfare; and

WHEREAS, Chapter 213 of the Texas Local Government Code provides for the adoption and amendment of municipal comprehensive plans; and

WHEREAS, on July 24, 2012, as advertised, a public hearing was held in the Council Chambers at which the public was given the opportunity to give testimony and present written evidence, all pursuant to law, regarding a City-initiated proposal to amend the Midland Comprehensive Plan 2025; and

WHEREAS, notice of said public hearing was published in a newspaper having general circulation in the City of Midland, Texas, on July 7, 2012; and

WHEREAS, the City Council finds it to be in the public interest to amend the Midland Comprehensive Plan 2025;

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

SECTION ONE. That the Midland Comprehensive Plan 2025 is hereby amended by deleting the current “Plate 4-1” referenced in Chapter 4, “The Thoroughfare Plan”, of the Midland Comprehensive Plan 2025 and replacing it with “Plate 4-1” which is attached hereto and incorporated herein for all purposes as Exhibit “A”.

SECTION TWO. That the Midland Comprehensive Plan 2025, as amended herein, is hereby adopted as the official policy of the City of Midland.

SECTION THREE. As required by Section 213.005 of the Texas Local Government Code, the City Manager shall make certain that the Midland Comprehensive Plan 2025 shall contain the following clearly visible statement: "A Comprehensive Plan shall not constitute zoning regulations or establish zoning district boundaries."

SECTION FOUR. Should any paragraph, sentence, subdivision, clause, phrase, or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

SECTION FIVE. This ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law in such cases provides.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

PLANNING AND ZONING COMMISSION

June 4, 2012

CASE: M-12-006, Amending Thoroughfare Plan.

REQUEST: Hold a public hearing and consider a city-initiated request to amend the City's thoroughfare plan from The City's Comprehensive Plan 2025, Chapter 4, The Thoroughfare Plan, "Plate 4-1".

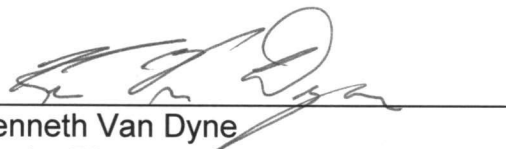
DETAILS OF REQUEST:

1. In 2005 the City Council adopted the *Master Plan 2025*, which also included the Midland Thoroughfare Plan with Ordinance 8310. The adopted thoroughfare plan is shown in the attached map (Exhibit – A). While minor, periodic road network amendments have occurred, this city-initiated request is to update and create a more encompassing long-range Midland Thoroughfare Plan. The city's rapid growth through annexation, development and population increases necessarily require the need to evaluate the current road network in light of projected development trends.
2. The proposed amendments are the result observed traffic and development patterns within the City of Midland and, at a broader scale, the incorporation of the results of the draft State Highway 191 Corridor Management Plan. This study, initiated by Midland Odessa Transportation Organization (MOTOR) MPO, identified, existing and proposed transportation corridors over a large study area (Exhibit – B).
3. Staff had prepared an amended, draft version of the Midland Thoroughfare Plan map to the Planning and Zoning Commission on April 30, 2012 for their review. At this time staff would like to provide a final version for consideration and vote to amend the City's Thoroughfare Plan (Exhibit – C).
4. Once approved by the Planning & Zoning Commission, an ordinance will need to be considered by the City Council and the amended thoroughfare plan adopted. It is intended that the amended thoroughfare plan be implemented immediately for current right-of-way development and identifying right-of-way for future development.

STAFF RECOMMENDATION:

Staff recommends approval of this request to to amend the City's Thoroughfare Plan.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services

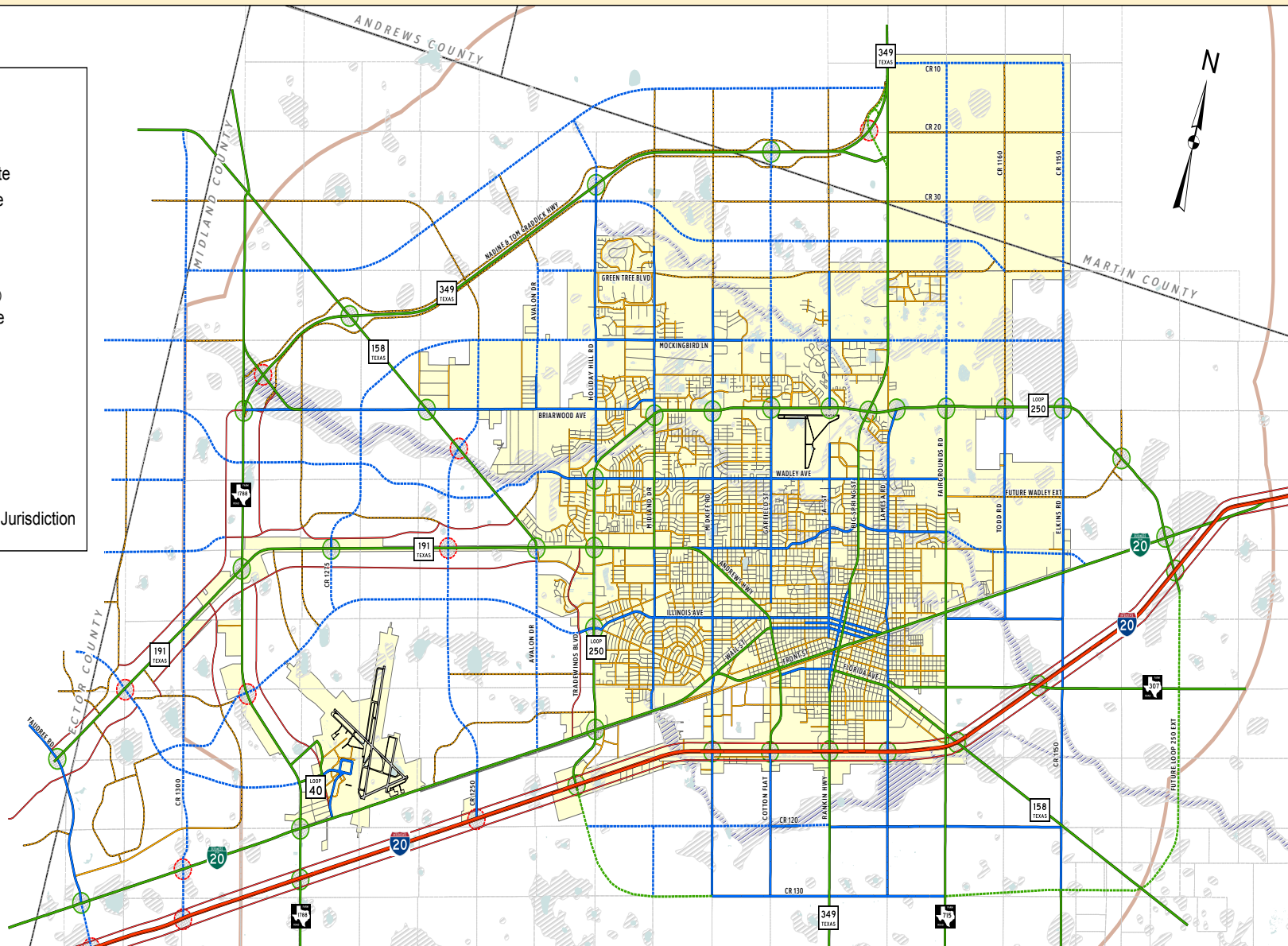
Kenneth Van Dyne
Senior Planner
Department of Development Services

Attachments:

Plate 4-1 for the Current 2025 Comprehensive Plan – Exhibit A
State Highway 191 Corridor Subject Area Thoroughfare Plan Map – Exhibit B
Proposed Amended Thoroughfare Plan – Exhibit C

Legend

-  Interstate Highway
-  Current Fed/State Route
-  Future Fed/State Route
-  Current Arterial Route
-  Future Arterial Route
-  Future Backage Route
(Primary Collector Class Reliever)
-  Current Collector Route
-  Future Collector Route
-  Current Interchange
-  Future Interchange
-  County Boundary
-  City Limits
-  Midland Extraterritorial Jurisdiction



City of Midland, Texas Thoroughfare Plan 2012

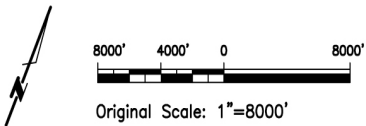


Plate 4-1

Lambert Conformal Conic Projection
NAD83 Texas State Plane - Central

Created June, 2012
Planning Division
Department of Development Services
300 N. Loraine, Midland, Texas 79701

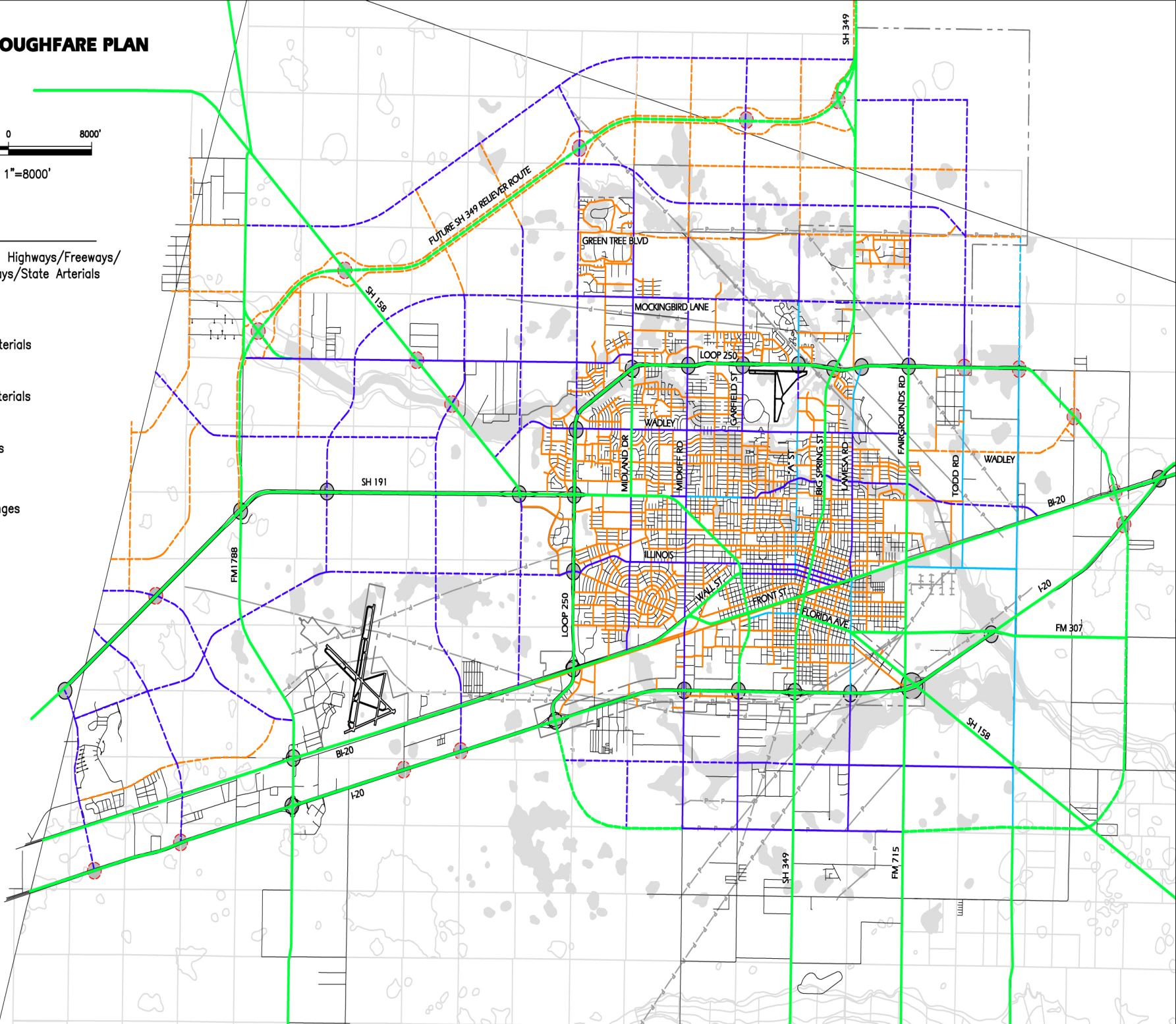
PLATE 4-1
MIDLAND THOROUGHFARE PLAN



LEGEND

- Federal & State Highways/Freeways/
Major Expressways/State Arterials
- Future Highways
- Major Arterials
- Future Major Arterials
- Minor Arterials
- Future Minor Arterials
- Collectors
- Future Collectors
- Interchanges
- Future Interchanges
- Pipeline

Flood Plain

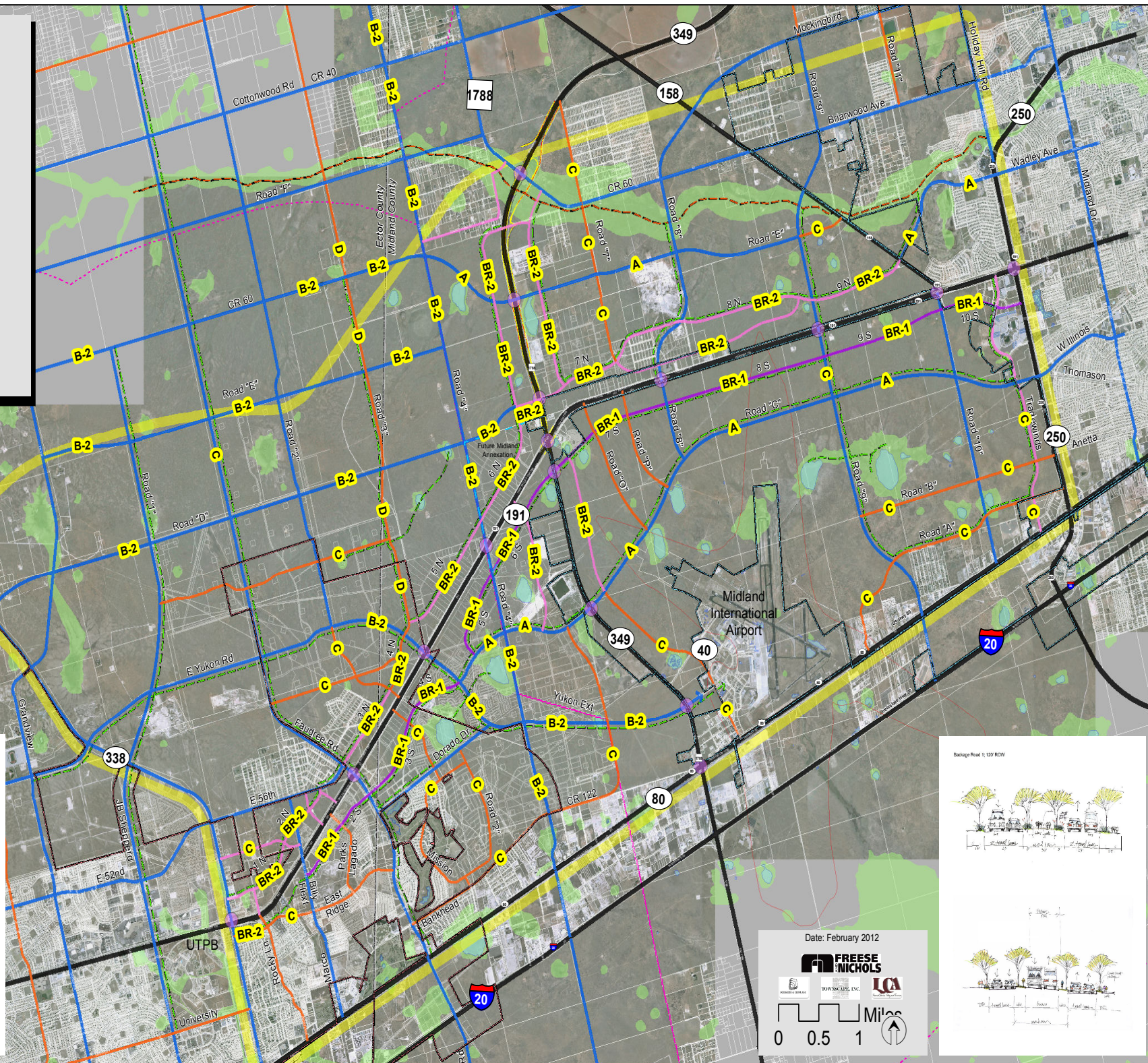


DRAFT INTERIM

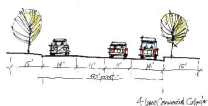
SH 191 Corridor Sub-Area Thoroughfare Plan

- Midland City Limits
- Odessa City Limits
- Midland / Odessa ETJ Boundary
- Midland / Ector County Boundary
- Plays
- 1-Percent Flood Risk Zones (FEMA)
- Equestrian/Bike / Pedestrian Trail
- Bike and Pedestrian Trail
- Expressway/Freeway
- Arterial
- Collector
- Transit Ready Corridor Backage Road (BR1, 120' ROW)
- Corridor Backage Road (BR2 80' ROW)
- Grade Separation or Crossover
- B-2 Thoroughfare Designation

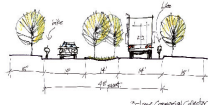
* All thoroughfares indicated are in existing City Thoroughfare Plan except as noted. Design standards per City requirements except as noted. BR-1 and BR-2 are new design standards.



Backage Road 2: 80' ROW



4-lane Divided Corridor



4-lane Divided Corridor



Intersecting Collector: 80' ROW

Backage Road 1: 120' ROW



Date: February 2012

FREESE NICHOLS



TOWN & COUNTRY, INC.





City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 8/14/2012

TO: City Council / City Manager

FROM: Steve Thorpe, Acting Assistant Development Services
Director/Building Official

SUBJECT: Amend City of Midland Code of Ordinances 8-6-18 (A) 5.

Purpose:

Consider an ordinance on second reading to add language to this code section that clearly determines what "other bulky heavy materials" are.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None

Discussion:

This ordinance section is typically used by Code Enforcement regarding prohibited accumulations of materials on a property. The term "debris" in this section includes brick, broken concrete, lumber, construction materials, cinders, plaster, automobile frames, dead trees, demolished or partly demolished structures or building structures or building destroyed by fire and other bulky heavy material. The Code Administration Division would like to add the following list of materials and items in place of "other bulky heavy materials". The list includes: discarded wood, automobile parts, sofas, coffee/end tables, trunks, televisions, mattress', box-springs, head boards, bed frames, cabinets, lamps, washers/dryers, dish washers, refrigerators, dining tables, sinks, toilets, bath-tubs, doors, heating and air-conditioning units, fans, heaters, desks, barrels, metal, pipe, carpet, drywall, ducts, fixtures, shingles, roofing products/material, insulation, plumbing fixtures, doors, vacuum cleaners, sewing machines, entertainment centers, book shelves, dresser, microwaves, love seats, rugs, exercise equipment, weights, treadmills, pool tables, non-operating lawn mowers, lawn equipment, water heaters, office equipment, tires, tanks, trash bags, swimming pools, swimming pool liners, discarded swimming pool accessories, wood/chain fence panels, wood/metal fence posts, cardboard boxes, water coolers, non-operating bicycles/bicycle parts, discarded/broken toys, stoves, ovens, non-operating motorcycles/motorcycle parts, dismantled swing sets, discarded/dismantled yard/patio furniture, clothing, limbs, Christmas trees, plastic waste/containers/products, paint cans/paint products, discarded pallets, discarded brick/stone/concrete block, tin and aluminum cans, batteries, oil, electronic equipment/waste (televisions, computers, monitors, keyboards, cell phones, VCR players, DVD players, stereos, etc.), discarded glass, mirrors, windows curtains/valances , shoes, kitchen/bath hardware, books/magazines, electrical cords, discarded planting pots, discarded/non-working bar-b-q pits/equipment, daybeds, cabinets, bookcases, media centers, benches, dinnerware, bedding material, cribs, dressers, nightstands, armoires, water softener tanks and accessories, discarded landscaping implements, dismantled/partially dismantled trailers



City Council Agenda

Approved for Agenda:
jnichols
City Manager's Office

MEETING DATE: 7/24/2012

TO: City Council / City Manager

FROM: Steve Thorpe, Acting Assistant Development Services
Director/Building Official

SUBJECT: Amend City of Midland Code of Ordinances 8-6-18 (A) 5.

Purpose:

To add language to this code section that clearly determines what "other bulky heavy materials" are.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None

Discussion:

This ordinance section is typically used by Code Enforcement regarding prohibited accumulations of materials on a property. The term "debris" in this section includes brick, broken concrete, lumber, construction materials, cinders, plaster, automobile frames, dead trees, demolished or partly demolished structures or building structures or building destroyed by fire and other bulky heavy material. The Code Administration Division would like to add the following list of materials and items in place of "other bulky heavy materials". The list includes: discarded wood, automobile parts, sofas, coffee/end tables, trunks, televisions, mattress', box-springs, head boards, bed frames, cabinets, lamps, washers/dryers, dish washers, refrigerators, dining tables, sinks, toilets, bath-tubs, doors, heating and air-conditioning units, fans, heaters, desks, barrels, metal, pipe, carpet, drywall, ducts, fixtures, shingles, roofing products/material, insulation, plumbing fixtures, doors, vacuum cleaners, sewing machines, entertainment centers, book shelves, dresser, microwaves, love seats, rugs, exercise equipment, weights, treadmills, pool tables, non-operating lawn mowers, lawn equipment, water heaters, office equipment, tires, tanks, trash bags, swimming pools, swimming pool liners, discarded swimming pool accessories, wood/chain fence panels, wood/metal fence posts, cardboard boxes, water coolers, non-operating bicycles/bicycle parts, discarded/broken toys, stoves, ovens, non-operating motorcycles/motorcycle parts, dismantled swing sets, discarded/dismantled yard/patio furniture, clothing, limbs, Christmas trees, plastic waste/containers/products, paint cans/paint products, discarded pallets, discarded brick/stone/concrete block, tin and aluminum cans, batteries, oil, electronic equipment/waste (televisions, computers, monitors, keyboards, cell phones, VCR players, DVD players, stereos, etc.), discarded glass, mirrors, windows curtains/valances, shoes, kitchen/bath hardware, books/magazines, electrical cords, discarded planting pots, discarded/non-working bar-b-q pits/equipment, daybeds, cabinets, bookcases, media centers, benches, dinnerware, bedding material, cribs, dressers, nightstands, armoires, water softener tanks and accessories, discarded landscaping implements, dismantled/partially dismantled trailers

ORDINANCE NO.

AN ORDINANCE AMENDING TITLE VIII, "FOOD ESTABLISHMENTS, HEALTH AND GENERAL SANITATION", CHAPTER 6, "GARBAGE, TRASH AND RUBBISH," SECTION 18, "ACCUMULATION OF STAGNANT WATER, FILTH, WEEDS, BRUSH, AND DEBRIS ON LOTS" SUBSECTION A "PROHIBITED ACCUMULATIONS" PARAGRAPH 5 OF THE MIDLAND CITY CODE SO AS TO MODIFY THE TERM "DEBRIS" AND ADDING A NEW PARAGRAPH 6 SO AS TO CREATE PRESUMPTIONS AS TO OWNERSHIP, POSSESSION AND OCCUPYING; AND AMENDING TITLE VIII, "FOOD ESTABLISHMENTS, HEALTH AND GENERAL SANITATION", CHAPTER 6, "GARBAGE, TRASH AND RUBBISH," SECTION 18, "ACCUMULATION OF STAGNANT WATER, FILTH, WEEDS, BRUSH, AND DEBRIS ON LOTS" SUBSECTION "B" "AFFIRMATIVE DEFENSES" SO AS TO ESTABLISH AFFIRMATIVE DEFENSES TO PROSECUTION AND SUBSECTION "C" "PENALTY" OF THE CITY CODE OF MIDLAND, TEXAS, CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00); AND ORDERING PUBLICATION

WHEREAS, the City Council of the City of Midland, Texas, finds it to be in the public interest to amend Section 18, "Accumulation of Stagnant Water, Filth, Weeds, Brush, and Debris on Lots" Chapter 6, "Garbage, Trash and Rubbish" of Title VIII, "Food Establishment, Health and General Sanitation" of the Midland City Code;

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

SECTION ONE. That Title VIII, "Food Establishments, Health and General Sanitation", Chapter 6, "Garbage, Trash and Rubbish", Section 18, "Accumulation of Stagnant Water, Filth, Weeds, Brush, and Debris on Lots", Subsection A, "Prohibited Accumulations", Paragraph 5, and Paragraph 6, of the City Code of Midland, Texas, shall hereafter read as follows:

5. It shall be unlawful for any person or entity who shall own, occupy, or possess any lot, lots, or premises in the City to permit or allow debris to accumulate or

remain thereon. For purposes of this Subsection the term "debris" shall include such material as brick, broken concrete, cinder blocks, lumber, construction materials, cinders, plaster, automobile frames, dead trees, demolished or partly demolished structures or buildings, structures or buildings destroyed by fire, and other bulky heavy material, automobile parts, furniture, trunks, televisions, mattresses, box-springs, appliances, sinks, toilets, bath-tubs, doors, heating and air-conditioning units, fans, heaters, barrels, metal, pipe, carpet, drywall, ducts, roofing products/material, insulation, plumbing fixtures, vacuum cleaners, sewing machines, rugs, exercise equipment, weights, lawn mowers, lawn equipment, water heaters, office equipment, tires, tanks, trash bags, portable swimming pools and accessories, wood/chain fence panels, wood/metal fence posts, cardboard boxes, water coolers, bicycles/bicycle parts, toys, motorcycles/motorcycle parts, swing sets, clothing, tree limbs, Christmas trees, plastic waste/containers/products, paint cans/paint products, discarded pallets, discarded brick/stone/concrete block, tin and aluminum cans, batteries, oil, electronic equipment, glass, mirrors, windows curtains/valances, books/magazines, electrical cords, planting containers, bar-b-q pits/equipment, dinnerware, bedding material, water softener tanks and accessories, landscaping implements, and trailers.

6. For purposes of this Section, it shall be presumed that the following individual or entity owns, occupies or possesses the property, lot, lots or premises:
 1. The individual or entity whose name is on the City's water bill for the lot, lots, property or premises in question;
 2. The individual or entity who is paying the taxes or owns the property according to records of the Midland Central Appraisal District;
 3. The individual or entity who is paying the taxes or owns the property according to records of Midland County, Texas;

4. An individual who is physically present on the lot, lots, property or premises in question; or
5. An individual who is physically present in any structure on the lot, lots, premises or the property in question.

SECTION TWO. That Title VIII, "Food Establishments, Health and General Sanitation", Chapter 6, "Garbage, Trash and Rubbish", Section 18, "Accumulation of Stagnant Water, Filth, Weeds, Brush, and Debris on Lots", Subsection B, "Affirmative Defenses" of the City Code of Midland, Texas, shall hereafter read as follows:

(B) AFFIRMATIVE DEFENSES:

It is an affirmative defense to prosecution if any of the following apply:

1. The weeds or tall grass are less than eighteen inches (18") tall, and the brush is less than two feet (2') tall.
2. The weeds, tall grass, or brush are located on a City Council approved wildlife sanctuary or on land that is zoned Agriculture-Estate as defined by Section 11-1-6 of this Code and is devoted to livestock grazing.
3. The tall grass is located on land in an Agriculture-Estate zoned district as defined by Section 11-1-6 of this Code and the grass is being cultivated for agricultural purposes.
4. The brush has a central trunk with a girth of ten inches (10") or more at its base.
5. The weeds, tall grass, and brush are located more than one hundred seventy-five feet (175') from any property line of a public park or of any tract of land under unitary ownership which is developed with growing crops or with one or more buildings or structures, and from any building, structure or any improvement to the realty, and more than thirty-five feet (35') from the curb of any street or, if there is no curb, the edge of the pavement or traveled portion of the street.

6. The weeds, tall grass, and brush are located on an undeveloped area and are more than thirty-five (35') from the curb of any street or, if there is no curb, the edge of the pavement or traveled portion of the street. "Undeveloped area" means any unplatted land, which may or may not be under unitary ownership, which is in an undisturbed native biome for this part of the State of Texas, which is not less than seven and five-tenths (7.5) acres in area and has continuous width of at least three hundred feet (300'), and which has no streets, roads, commercial or residential improvements, or crops located thereon.
7. The weeds, tall grass, and brush are located on public property owned by the State of Texas, or any of its subdivisions, and such governmental entity has determined that it is in the public interest that such property should remain in its natural, undisturbed condition, and the vegetation on such property is in its native biome, and the condition of such property does not present a danger or hazard to abutting properties.
8. The debris is shielded from view by a screening fence or structure from any alley, street, public property or other private property with a different owner or occupant, and does not constitute a fire or health hazard or a violation of the zoning ordinance. Automotive service garages, wrecking and salvage yards shall be subject to the requirements of sections relating to those businesses as set forth in the City Code.
9. The construction materials are stored on residential property during a period of active construction or repair as evidenced by a current building-permit where applicable.
10. The person is actively engaged in a legally permissible garage or estate sale.

SECTION THREE. That Title VIII, "Food Establishments, Health and General Sanitation", Chapter 6, "Garbage, Trash and Rubbish", Section 18, "Accumulation of

Stagnant Water, Filth, Weeds, Brush, and Debris on Lots”, Subsection C, “Penalty” of the City Code of Midland, Texas, shall hereafter read as follows:

(C) PENALTY:

Any person, corporation, or association who shall violate any of the provisions of this Section shall be guilty of a misdemeanor, and upon conviction shall be fined in a sum not to exceed five hundred dollars (\$500.00). Each day on which the violation shall exist shall constitute a separate and distinct offense. A culpable mental state is not required. A culpable mental state is not required to prove a criminal offense under this Chapter. It is hereby declared, that for all offenses under this Chapter, that the culpable mental state required by Section 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.

SECTION FOUR. The provisions of any ordinance which are inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

SECTION SEVEN. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding five hundred dollars (\$500.00) pursuant to State law. The definition of all offenses under this ordinance does not require a

culpable mental state. The definition of all offenses under this ordinance plainly dispenses with any mental element as authorized by Section 6.02 of the Texas Penal Code. It is hereby declared, that for all offenses under this ordinance, that the culpable mental state required by Section 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/14/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading approving a Promotional Agreement between the Midland Tax Increment Reinvestment Zone No. 1 and the Downtown Midland Management District; and approving a grant of \$50,000.00 from the Midland Tax Increment Reinvestment Zone No. 1 to the Downtown Midland Management District pursuant to the Promotional Agreement.

Purpose:

Consider an ordinance on second reading approving a Promotional Agreement between the Midland Tax Increment Reinvestment Zone No. 1 and the Downtown Midland Management District; and approving a grant of \$50,000.00 from the Midland Tax Increment Reinvestment Zone No. 1 to the Downtown Midland Management District pursuant to the Promotional Agreement. No changes have been made to this item since its first reading on July 24, 2012.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

On June 6, 2012, the Board of the Midland Tax Increment Reinvestment Zone No. 1 (TIRZ) voted to contribute \$50,000 of TIRZ funds to participate in a partnership with the City of Midland (Hotel/Motel Tax Fund), the Midland Development Corporation and the Downtown Midland Management District. The partnership would provide grant funding under the direction of the Live Downtown Midland Event Grant Program, which will be administered by the Downtown Midland Management District. The funding will be used to enhance community pride and image, to generate positive media exposure and visibility, to generate positive economic impact, to promote tourism and to demonstrate support for local businesses and cultural organizations.

ORDINANCE NO.

AN ORDINANCE APPROVING A PROMOTIONAL AGREEMENT BETWEEN THE MIDLAND TAX INCREMENT REINVESTMENT ZONE NO. 1 AND THE DOWNTOWN MIDLAND MANAGEMENT DISTRICT; AND APPROVING A GRANT OF \$50,000.00 FROM THE MIDLAND TAX INCREMENT REINVESTMENT ZONE NO. 1 TO THE DOWNTOWN MIDLAND MANAGEMENT DISTRICT PURSUANT TO THE PROMOTIONAL AGREEMENT

WHEREAS, the Midland Tax Increment Reinvestment Zone No. 1 (the “TIRZ”) authorized the negotiation and execution of a promotional agreement with the Downtown Midland Management District (the “DMMD”) whereby the DMMD will promote, foster and advertise the City’s Tax Increment Reinvestment Zone (the “Zone”) as a destination for tourism and conventions in exchange for a \$50,000.00 grant from the TIRZ; and

WHEREAS, Chapter 311 of the Texas Tax Code authorizes the TIRZ to enter into such agreements; and

WHEREAS, the City Council finds it to be in the public interest to approve a promotional agreement between the TIRZ and the DMMD;

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

SECTION ONE. That the recitals stated above are hereby adopted and approved.

SECTION TWO. That the promotional agreement between the TIRZ and the DMMD, being attached hereto as Exhibit “A” and incorporated herein for all legal purposes, is hereby approved.

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay the Downtown Midland Management District, on behalf of the Midland Tax Increment Reinvestment Zone No. 1, in accordance with the terms of said promotional agreement, from funds available in the Midland Development Corporation Promotions Project (8705).

The above and foregoing ordinance was duly proposed, read in full and adopted on

first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

ATTEST:

W. Wesley Perry, Mayor

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

THIS AGREEMENT, made and effective this ____ day of ___, 2012, between the MIDLAND TAX INCREMENT REINVESTMENT ZONE NO. 1, hereinafter called “TIRZ”, and the DOWNTOWN MIDLAND MANAGEMENT DISTRICT, hereinafter called “District”.

W I T N E S S E T H:

WHEREAS, within downtown Midland is a tax increment reinvestment zone, created pursuant to Chapter 311 of the Texas Tax Code, and designated as Midland Tax Increment Reinvestment Zone No. 1 (the “Zone”); and

WHEREAS, it is the plan of the TIRZ to strengthen key geographical assets within the Zone, to transition underutilized or vacant properties, and to enhance the Zone as a multi-dimensional destination; and

WHEREAS, the District has for numerous years promoted, fostered and otherwise advertised the City of Midland as a destination for tourism and conventions, and as a result thereof has obtained certain knowledge and expertise in this particular area of endeavor; and

WHEREAS, the TIRZ finds that the Districts promotional activities will help to implement the TIRZ’ plan for the Zone; and

WHEREAS, it is the desire of the parties hereto to combine their efforts to bolster the tax base in the Zone and facilitate progress and development in downtown Midland;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits which will accrue to each of the parties hereof, as well as the general citizenry of the City of Midland, Texas, the parties have agreed and do hereby agree as follows:

I. **PROMOTIONAL ACTIVITIES**

Pursuant to this Agreement, the District shall promote the Zone as a destination for tourism and conventions, and shall promote additional activities, all in an effort to help the TIRZ to implement its plan as referenced herein.

II.

ECONOMIC INCENTIVES

A. Designation of a Tax Increment Reinvestment Zone. The District and the TIRZ understand and agree that within downtown Midland is a tax increment reinvestment zone, created pursuant to Chapter 311 of the Texas Tax Code, and designated as Midland Tax Increment Reinvestment Zone No. 1.

B. The TIRZ agrees to pay to the District, as compensation for their promotional activities as enumerated in the attached “Project Plan/Finance Plan” within the Zone, the sum of \$50,000.00. Such sum shall be paid in a lump sum by the Treasurer of the City of Midland upon statement or invoice approved by the TIRZ Chairman. The District shall fund events only in the Zone.

C. Funding. Funds from the TIRZ to the District shall be granted contingent on the following conditions:

1. The District agrees that there shall be at least one (1) TIRZ Board Member on the Advisory Committee charged with the selection of the activities funded herein; and
2. The District agrees to only use funds granted herein to fund activities or events within the Zone.

D. Repayment. The District shall repay the funds to the TIRZ if the District violates any provision of this Agreement. The amount repayable shall be repaid, without interest, to the TIRZ on or before thirty (30) days after the TIRZ gives written notice to the District. Notwithstanding anything to the contrary contained anywhere in this Agreement, under no circumstances shall the District be obligated to repay the TIRZ an amount in excess to the total dollar amount of the funds actually received by the District from the TIRZ under this Agreement.

III.

MISCELLANEOUS PROVISIONS

A. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, the District or its legal representative, shall give TIRZ and the City of Midland notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of

this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the District will settle, the physical and mailing addresses of the District at the time and date the claim was presented and the physical and mailing addresses of the District for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the District relies to establish its claim; and a failure to so notify the TIRZ and the City of Midland within the time and manner provided herein shall exonerate, excuse and except the TIRZ and the City of Midland from any liability whatsoever. Neither the TIRZ nor the City of Midland is under any obligation to provide notice to the District that the District's notice is insufficient. Both the TIRZ and the City of Midland reserve the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

B. Independent Contractor. It is expressly understood and agreed that the District shall perform all work described herein as an independent contractor and not as an officer, agent, servant or employee of either the TIRZ or the City of Midland; that the District shall have exclusive control of and the exclusive right to control the details of the work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between the District and the TIRZ or the City of Midland, their officers, members, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between the District and the TIRZ or the City of Midland. No person performing any of the work described hereunder by the District shall be considered an officer, agent, servant or employee of either the TIRZ or the City of Midland. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. The District shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder. Neither the TIRZ nor the City of Midland have the power to direct the order in which the work is done. Neither the TIRZ nor the City of Midland shall have the right to control the means, methods or details of the the District's work. The District shall assume exclusive responsibility for the work. The District is entirely free to do the

work in its own way.

C. **INDEMNITY. THE DISTRICT WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND BOTH THE TIRZ AND THE CITY OF MIDLAND, AND ALL OF THEIR OFFICERS, MEMBERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF THE DISTRICT,** its agents or employees, or any subcontractor, arising out of, or resulting from, the District's use of, or activities on, the Agreement premises, and the District will be required to pay any judgment with costs which may be obtained against TIRZ or the City of Midland, or any of their officers, agents or employees, including reasonable attorney's fees.

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

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

of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas. The District specifically consents to, and waives any objections to, in personam jurisdiction in Midland County, Texas.

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

F. Complete Agreement. This Agreement represents the complete agreement of the parties with respect to the subject matter hereof and supercedes all prior written and oral matters related to this Agreement. Any amendment to this Agreement must be in writing and signed by all parties hereto or permitted or approved assignees.

G. Exhibits. All exhibits attached to this Agreement are incorporated herein by reference and expressly made part of this Agreement as if copied verbatim.

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

To the Midland Tax Increment
Reinvestment Zone No. 1:

Chairman
Midland Tax Increment
Reinvestment Zone No. 1
PO Box 1152
Midland, Texas 79702

with a copy to:

Courtney Sharp,
City Manager
PO Box 1152
Midland, Texas 79702

To the Downtown Midland
Management District:

Natalie Shelton,
Executive Director
Downtown Midland
Management District
109 North Main
Midland, Texas 79701

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

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

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

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

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

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

L. Financial Commitment. Notwithstanding any provision of this Agreement which

might be interpreted otherwise, the TIRZ' total financial commitment during the term of this Agreement shall not exceed \$50,000.00 in the aggregate.

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

N. Sovereign Immunity. By acknowledging this Agreement, the City of Midland is not waiving its right of sovereign immunity from suit. The City of Midland is not granting consent to be sued by legislative resolution or action. There is no waiver of sovereign immunity.

O. Term of Agreement. This Agreement shall be for a term of five (5) months, commencing on May 1, 2012, and ending September 30, 2012.

EXECUTED by the duly authorized officials of the TIRZ and the District as of the day and year first above written.

**MIDLAND TAX INCREMENT
REINVESTMENT ZONE NO. 1**

By _____
Mark T. Wellen, Chairman

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared **Mark T. Wellen**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he properly executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of **Midland Tax Increment Reinvestment Zone No. 1**.

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

Notary Public, State of Texas

**DOWNTOWN MIDLAND
MANAGEMENT DISTRICT**

By _____
W. L. "Scooter" Brown, Chairman

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared **W. L. "Scooter" Brown**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the **Downtown Midland Management District**.

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

Notary Public, State of Texas

Live Downtown Midland Event Grant Program
Project Plan & Facts

1. The Live Downtown Midland Event Grant Program will be a partnership between the following entities & proposed contributions by each:
 - a. City of Midland Hotel/Motel Tax Fund - \$50,000
 - b. Tax Increment Reinvestment Zone Number 1, City of Midland, Texas - \$50,000
 - c. Midland Development Corporation - \$50,000
 - d. Downtown Midland Management District - \$25,000
2. DMMD will execute Interlocal agreements with each of the partners that will outline the terms and conditions of each of the partners' participation in the program.
 - a. Each partner will contribute a certain amount of funds annually into the program
 - b. There may be some limitations on the use of some funds, i.e., Hotel-Motel Occupancy Tax can only be used to support hotel and tourist industry.
 - c. Funds will need to be maintained in a separate account from the DMMD's operating account.
3. DMMD will administer the grant program and will incur some additional costs associated with administering the program such as staff time and additional costs associated with annual audit.
4. Goals of the program are as follows:
 - a. Enhance community pride and positive image
 - b. Generate positive media exposure and visibility
 - c. Generate positive economic impact by stimulating business and commercial activity
 - d. Promote tourism and the convention/hotel industry
 - e. Demonstrate support for local businesses and charitable/non-profit/cultural organizations.
5. DMMD will establish the Live Downtown Midland Event Grant Review Committee to evaluate grant applications. This will require Board action to create Committee.
 - a. Committee will consist of no more than 5 members composed of representatives from funding partners and other downtown entities or event personnel.
 - b. Committee's role is to evaluate applications and make recommendations to DMMD Board.
 - c. DMMD Board will make all final decisions on whether to approve an application for funding by slate vote.
6. DMMD will execute a funding agreement with each grant recipient.
7. Application Period
 - a. Preferably once a year, but committee will make an exception if an applicant misses the set deadline.
8. Special consideration and enhanced incentives may be given to applications for reoccurring annual events.

9. Grant recipients must possess adequate amount of General Liability coverage and agree to release and indemnify DMMD from all liability.
10. Applicants must disclose other sources of funds and cannot receive funding from any of the partner entities or other grant programs, i.e., Hotel-Motel Tax or SEAM for the same event.
11. There will be no limits on amounts of grants.

**Downtown Midland Management District
Live Downtown Midland Event Grant Review Committee Structure**

- I. The Live Downtown Midland Event Grant Review Committee (Committee) is established as a standing Committee of the Downtown Midland Management District (DMMD).
- II. The purpose of the Committee is to review and evaluate grant funding applications for events for the Live Downtown Midland Event Grant Program and to make funding recommendations to the DMMD. The DMMD will consider the Committee's recommendation(s) and make all final funding decisions.
- III. The role of the Committee is to screen application for completeness, evaluate the merits of applications, complete score sheets as to how well each application meets the Program goals and criteria, and request additional information from the applicant, if needed.
- IV. The Committee will be composed of up to 5 members as follows:
 1. Representative from DMMD
 2. Representative from Midland Chamber of Commerce
 3. Representative from the City of Midland
 4. Representative from the Tax Increment Reinvestment Zone Number 1, City of Midland, Texas
 5. Vacant
- V. Natalie Shelton, in her position as Executive Director of DMMD, is appointed as the representative from the DMMD and will serve as Chair. The Chair shall preside over all Committee meetings.
- VI. The Chair will call meetings on an as needed basis to review and evaluate grant applications. Meetings will generally occur after the June 20th application deadline but could occur at other times as well.
- VII. Committee members must receive notice of a meeting at least 72 hours in advance of a scheduled meeting. There must be a quorum of the Committee in attendance to hold a meeting. A quorum is defined as a majority of the members appointed to the Committee.
- VIII. At the conclusion of its review process, the Committee will vote to decide which applications will be submitted to the DMMD to be considered for funding. The Committee has discretion to decide whether an interview with an applicant is needed. Applications must receive a majority vote of the Committee to be eligible for consideration by the DMMD for funding. Applications that result in a tie vote of the Committee will be forwarded to the DMMD for funding consideration.

- IX. All Committee members, including the Chair, are entitled one (1) vote on all applications for event grant funding except when there is a conflict of interest between a member of the Committee and an application for funding. The interested member must disclose the nature of the conflict and refrain from participating in any of the deliberations and voting on the application.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 14, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by Andrew Mellen for a zone change from PD, Planned District for a Housing Development to Amended Planned District. (Generally located on the east side of Loop 250, between Graceland and Leisure Drive.)

Purpose:

Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by Andrew Mellen for a zone change from PD, Planned District for a Housing Development to Amended Planned District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

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

Discussion:

In 2011, the City Council rezoned this 9.5 acre tract from MF-1 District to Planned District for a Housing Development to allow an increase in density from 16 to 21 dwelling units per acre. Site plan approval is also required prior to any development. We have received this application along with the attached Exhibits A and B to satisfy the site plan review requirement. Exhibit A is a plan view showing nine buildings and 200 dwelling units. The overall density is 21 units per acre. There is no access to Loop 250. The principle access will be from Beal Parkway, with secondary driveways on Leisure and Graceland Drives. A 5,000 square foot office and club house is planned, along with a swimming pool and other outdoor space. Internal driving aisles meet the minimum width requirement of 26 feet required by the Fire Department. Building setbacks meet or exceed the requirements set in the Zoning Code. Two detention basins on the east side of the lot will increase the setback adjacent to the zoned but vacant residential land on the east side of Beal Parkway.

Exhibit B includes elevation views of the apartments. Both two and three story apartments are planned, with a maximum roof ridge height of 38 feet (50 feet is allowed). Exterior building materials include brick veneer, stone, horizontal siding and glazing. Both hip and gable roof designs are planned with composition shingles on the roof. The Planning and Zoning Commission recommended unanimous approval of this request, and no opposition was noted. The staff finds this request to be consistent with recent apartment approvals.

Attachments:

July 16, 2012 P&Z Staff Report
Proposed ordinance and Exhibits A and B

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1, BLOCK 161, WILSHIRE PARK ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF LOOP 250, BETWEEN LEISURE DRIVE AND GRACELAND DRIVE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of an Amended Planned District, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned PD, Planned District for a Housing Development, and it shall be used as an Amended Planned District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

Lot 1, Block 161, Wilshire Park Addition, Section 9, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That the development of this property with multi-family dwelling units shall conform to the site plans attached hereto and incorporated herein as Exhibits “A” and “B”, except as otherwise stated below.
2. That the development of this property shall conform to the City of Midland Sign Code, Outdoor Lighting Code and Landscaping Code.
3. That no driveways onto the Loop 250 service road shall be allowed.
4. That a screening fence shall be constructed between the west property line and the Loop 250 right-of-way line prior to the issuance of a Certificate of Occupancy. Said fence shall be constructed of masonry with a minimum height of six feet, with masonry pilasters spaced at 40-foot intervals. The masonry shall be a product manufactured by Fence-Crete or an equivalent product and shall be tan in color.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance

with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the ____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS ____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

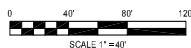
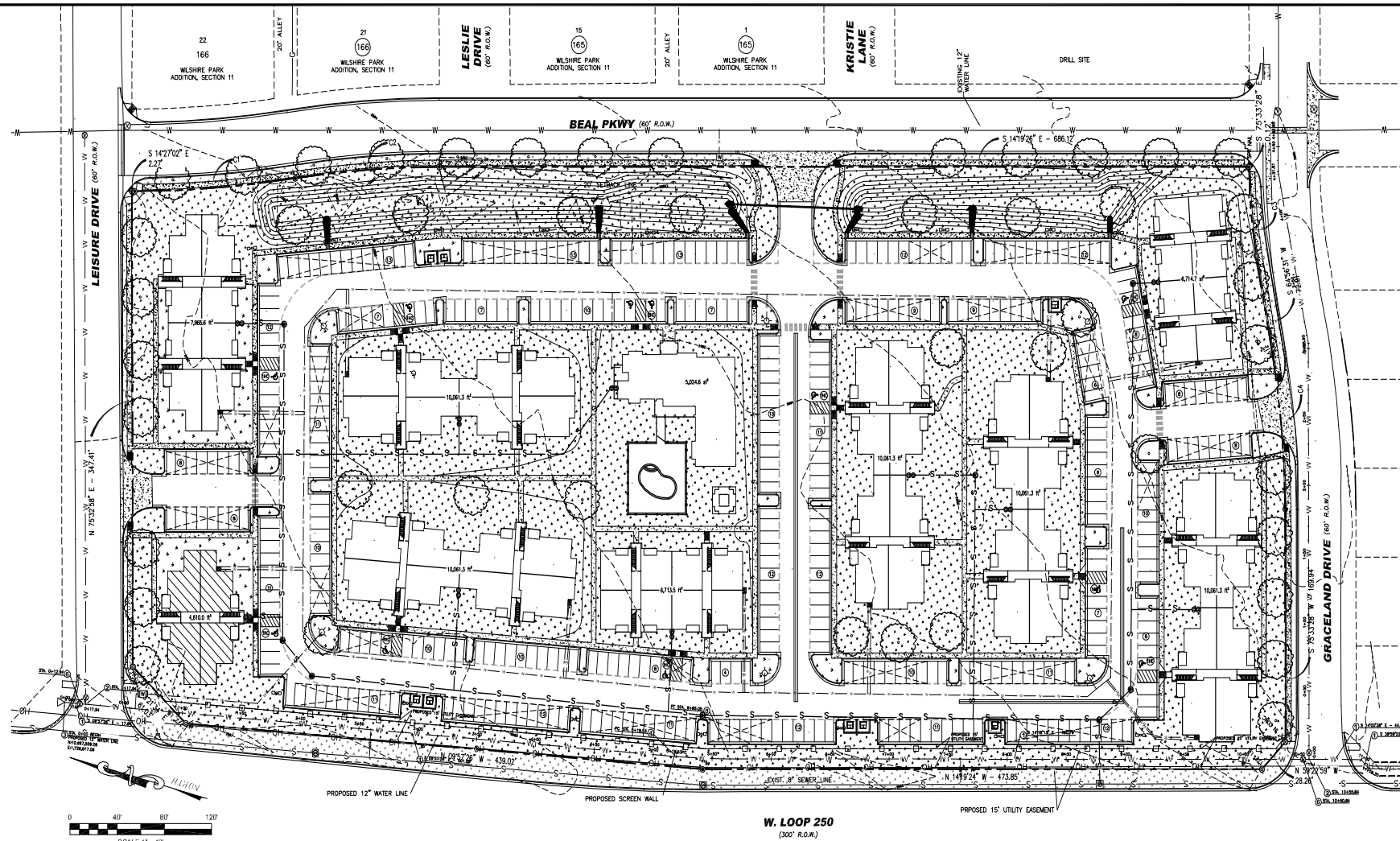
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



LEGEND

⊙	DECKS FOUND 1/2\"/>
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CURVE TABLE

CURVE	RADIUS	DELTA	ARC	BEARING	CHORD
C1	1015.66'	07°41'33"	136.26'	S 18°17'49" E	136.26'
C2	896.78'	07°49'09"	122.38'	S 18°14'01" E	122.29'
C3	352.26'	10°36'59"	65.27'	S 70°15'00" W	65.18'
C4	615.79'	10°36'59"	114.09'	N 70°14'59" E	113.93'

INGRESS & EGRESS

- BEAL PARKWAY TO BE EXTENDED FROM LEISURE DR. TO GRACELAND DR. LENGTH OF BEAL PARKWAY BEING IMPROVED IS APPROXIMATELY 950 FEET.
- MAIN ENTRANCE WILL BE A 30' DRIVEWAY OFF OF BEAL PARKWAY.
- A NORTHERN ENTRANCE WILL BE PROVIDED BY A 24' DRIVEWAY OFF OF LEISURE DRIVE.
- A SOUTHERN ENTRANCE WILL BE PROVIDED BY A 24' DRIVEWAY OFF OF GRACELAND DRIVE.

DRAINAGE

ALL ON-SITE DRAINAGE FROM THE SITE WILL BE CONVEYED BY SURFACE FLOW TO FOUR BASINS BEING CONSTRUCTED ALONG THE EAST SIDE OF THE PROPERTY. OUTFALL FROM THE BASINS WILL BE VIA SHEET FLOW FROM THE SOUTHERNMOST INTO THE BEAL PARKWAY CURB AND GUTTER SYSTEM. DRAINAGE WILL BE DESIGNED IN COMPLIANCE WITH THE CITY OF MIDLAND STORM DRAINAGE DESIGN MANUAL.

LANDSCAPE

- PER CITY OF MIDLAND ORDINANCE, MINIMUM LANDSCAPE AREA = 10% OF LOT AREA LESS STRUCTURE FOOTPRINTS.
- TOTAL LOT AREA = 413,929.73 sq ft
- TOTAL STRUCTURE FOOTPRINT: 81,338.3 sq ft
- REQUIRED LANDSCAPE AREA: 33,249.1 sq ft
- PROVIDED LANDSCAPE AREA: 165,588.5 sq ft

SITE UTILITIES

NECESSARY UTILITIES ARE CURRENTLY IN PLACE. SOME ADDITIONAL IMPROVEMENTS TO EXISTING UTILITY INFRASTRUCTURE MAY BE REQUIRED BY THE CITY OF MIDLAND.

FIRE PROTECTION

A 26" WIDE FIRE LINE HAS BEEN PROVIDED AT THE FRONT OF ALL BUILDINGS. THE FIRE LINE WILL BE IDENTIFIED BY PAINTED STRIPES AND CURBS PER THE CITY OF MIDLAND'S REQUIREMENTS.

SIDEWALKS

FOUR-FOOT WIDE SIDEWALKS WILL BE CONSTRUCTED ONE FOOT OFF OF THE PROPERTY LINE ALONG LEISURE DRIVE, BEAL PARKWAY, AND GRACELAND DRIVE PROPERTY FRONTS.

BUILDING SETBACKS

BUILDING SETBACK DISTANCES OF 20 FEET FROM THE PROPERTY LINE WILL BE OBSERVED ALONG W. LOOP 250, LEISURE DRIVE, BEAL PARKWAY, AND GRACELAND DRIVE ROAD FRONTS.

BUILDING HEIGHTS

A MAXIMUM BUILDING HEIGHT OF 38 FEET WILL BE OBSERVED.

TRASH ENCLOSURES

TRASH DUMPSTERS TO BE PLACED AS SHOWN. ENCLOSURES TO BE BUILT OF FENCE-CRETE OR CMU, AND WILL MATCH DESIGN OF SCREENING WALL.

PARKING SPACES

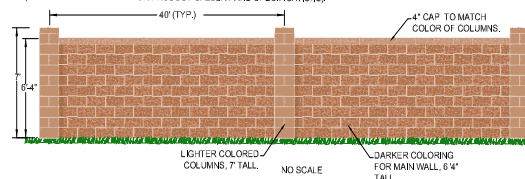
- REQUIRED:
- PER THE CITY OF MIDLAND'S PARKING REQUIREMENTS: 2 SPACES FOR EACH DWELLING UNIT IN A ONE-FAMILY RESIDENCE AND 2 SPACES FOR EACH TWO-FAMILY OR APARTMENT UNIT.
 - 200 UNITS @ 2 SPACES / UNIT = 400 REQUIRED SPACES
- PROVIDED:
- 406 REGULAR PARKING
 - 10 HANDICAP PARKING
 - 416 TOTAL PARKING

TREE REQUIREMENTS

- 1 TREE FOR EVERY 30 LINEAR FOOT STREET
- 1 TREE FOR EVERY 15 PARKING SPACES
- 385 LINEAR FOOT OF LEISURE DRIVE: 13 TREES
- 917 LINEAR FOOT OF BEAL PARKWAY: 31 TREES
- 918 LINEAR FOOT OF LOOP 250: 31 TREES
- 406 PARKING SPACES: 20 TREES
- TOTAL REQUIRED: 94 TREES
- PROVIDED: 47 TREES
- 47 TREES TO BE BUNKED WITH THE CITY OF MIDLAND TREE FUND.

PROPOSED SCREENING WALL

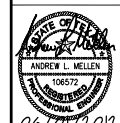
A SCREENING WALL IS TO BE CONSTRUCTED BETWEEN THE APARTMENT COMPLEX AND THE W. LOOP 250 SERVICE ROAD. WALL IS PROPOSED TO BE CONSTRUCTED OUT OF FENCE-CRETE PRE-CAST CONCRETE FENCE PANELS. (WWW.FENCECRETE.COM FOR PRODUCT GALLERY AND SPECIFICATIONS).



FEMA FIRM INFORMATION					
COMMUNITY NUMBER	PANEL NUMBER	SUFFIX	DATE OF FIRM	FIRM ZONE	BASE FLOOD ELEVATION
480477	182	F	9/16/2005	X	n/a
CURRENTLY, FEMA MAP 48329C0180Z DOES NOT INCLUDE BASE FLOOD ELEVATIONS FOR THIS AREA.					

SITE PLAN

MESQUITE TERRACE APARTMENTS
LOT 1, BLOCK 161, WILSHIRE PARK, SECTION 9
MIDLAND, TEXAS



PROJECT NUMBER: 2012-0824
SHEET 004 OF 15

WEST COMPANY
OF MIDLAND, INC.
ENGINEERS-PLANNERS-DESIGNERS
110 N. LOOMIS AVE., SUITE 110
MIDLAND, TEXAS 79701
(409) 552-5888 • FAX (409) 552-5888

NO.	DATE	BY	APPROVED
1	2012-08-24	ALM	ALM
2	2012-08-24	ALM	ALM
3	2012-08-24	ALM	ALM
4	2012-08-24	ALM	ALM
5	2012-08-24	ALM	ALM
6	2012-08-24	ALM	ALM
7	2012-08-24	ALM	ALM
8	2012-08-24	ALM	ALM
9	2012-08-24	ALM	ALM
10	2012-08-24	ALM	ALM
11	2012-08-24	ALM	ALM
12	2012-08-24	ALM	ALM
13	2012-08-24	ALM	ALM
14	2012-08-24	ALM	ALM
15	2012-08-24	ALM	ALM
16	2012-08-24	ALM	ALM
17	2012-08-24	ALM	ALM
18	2012-08-24	ALM	ALM
19	2012-08-24	ALM	ALM
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93	2012-08-24	ALM	ALM
94	2012-08-24	ALM	ALM
95	2012-08-24	ALM	ALM
96	2012-08-24	ALM	ALM
97	2012-08-24	ALM	ALM
98	2012-08-24	ALM	ALM
99	2012-08-24	ALM	ALM
100	2012-08-24	ALM	ALM



FRONT ELEVATION - BLDG. TYPE II

BUILDING # 2

MATERIAL LEGEND	
(A)	BRICK ACME RAVENS CREEK
(B)	STONE ACME AUTUMN BLEND CHOPPED
(C)	SIDING (PATIO, BALC, BRZWY) SW 6114 BAGEL
(D)	SIDING SW 6117 SMOKEY TOPAZ
(E)	ROOF - COMP. SHINGLE BARKWOOD
(F)	FASCIA, DOORS AND TRIM SW 6076 TURKISH COFFEE
(G)	PARAPET BAND AND COLUMNS SW 2833 ROYCROFT VELLUM



FRONT ELEVATION - BLDG. TYPE I

BUILDINGS # 5,9

12 JUL12

ARCHON CORPORATION
ARCHITECTURE / PLANNING
2929 CARLISLE STREET
SUITE 130 - DALLAS, TX
75204 214/526-0731

MESQUITE TERRACE APARTMENTS

SENIOR HOUSING

200 UNITS

MIDLAND, TEXAS

PLANNING AND ZONING COMMISSION

July 16, 2012

CASE: Z-12-020.

REQUEST: Hold a public hearing and consider a request for a zone change from PD, Planned District for a Housing Development to Amended Planned District.

APPLICANT: Andrew Mellen.

OWNER: G. Granger MacDonald.

REPRESENTATIVE: West Company of Midland.

LEGAL DESCRIPTION: Lot 1, Block 161, Wilshire Park Addition, Section 9, City and County of Midland, Texas.

LOCATION: East side of Loop 250, between Leisure and Graceland Drives.

CURRENT ZONING: PD, Planned District for a Housing Development.

DETAILS OF REQUEST:

1. The City Council recently rezoned this property from MF-1 District to a Planned District for a Housing Development, subject to the regulations of the MF-1 District, except that the density was increased from 16 to 21 dwelling units per acre. Additionally, a site plan must be approved prior to the issuance of a building permit. The owner wishes to construct 200 apartment units on this site, and has submitted the attached Exhibits A and B to conform to the planned district conditions.

SURROUNDING ZONING AND LAND USE:

2. This property is located adjacent to the northbound service road of Loop 250, between Leisure and Graceland Drives. Much of the frontage of Loop 250 was rezoned in 1995 to promote new growth, but it has been slow in developing. The predominant zoning classification is Planned District for Shopping Centers, subject to retail district regulations and site plan approval. The land to the east is zoned for single-family use, and Beal Parkway provides a transition between the business and residential districts. A zone change to allow townhouse construction two blocks to the south is still pending.

ANALYSIS:

3. Exhibit A is a plan view of this proposed development. No driveway access is planned from Loop 250, a condition that the staff supports. The main entrance will be from Beal Parkway, which the applicant will construct from the current southern terminus to Leisure Drive. One driveway each is planned on Leisure Drive and Graceland Drive. All driveways must conform to Midland design standards. Nine separate buildings with a maximum of 200 dwelling units are proposed. This places the density at 21.0 units per acre, consistent with the Planned District requirements. Additionally, a 5,000 square foot office and club house, a swimming pool and other outdoor space is planned. A note on Exhibit A states that all drive aisles will be at least 26 feet wide, which is the minimum width required by the Fire Code. Another note states that the minimum building setback line will be 20 feet from all four abutting streets. However, the fence along Loop 250 is only 15 feet from the property line. Given the landscaping buffer shown between the fence and the Loop 250, staff has no objection. Exhibit A also shows two detention basins on the east side of the property, which will increase the building setback to 130 feet, except for the extreme northeast and southeast lot corners. This additional separation will improve the transition to the single-family area to the east. The minimum building setback is listed on Exhibit A as 20 feet, which is consistent with the Zoning Code requirements. Exhibit A contains a table stating that 94 trees are required under the Landscape Code. The applicant intends to install half of these, and provide funding for the remaining trees through the Parks Endowment fund. Finally, the applicant proposes to construct a screening fence along Loop 250. This will be a six-foot tall solid fence constructed of precast fence panels, with pilasters placed every 40 feet. No other fencing is shown on the site plan.

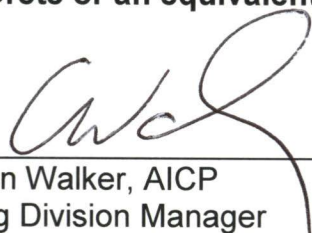
ELEVATION VIEWS:

4. Exhibit B illustrates a typical elevation view of the apartment buildings. The office/clubhouse will be a single story building, and the other apartments will be two and three stories tall, with a maximum building height of 38 feet. This is well below the maximum permitted height of 50 feet. Exterior building materials are listed as brick veneer, stone, horizontal siding and glazing. Both hip and gable roof designs will be covered with a composition shingle, except the clubhouse will have tile shingles. These materials are similar to those listed in recent applications of this nature.

STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from PD, Planned District for a Housing Development to Amended Planned District, subject to the following conditions:

- A. That the development of this property as multi-family dwelling units shall conform to the attached site plans, Exhibit A and B, in all respects, unless as otherwise stated below.
- B. The development of this property shall conform to the City of Midland Sign Code, Outdoor Lighting Code and Landscaping Code.
- C. No driveways onto Loop 250 shall be permitted.
- D. The screening fence located between the west property line and the Loop 250 right-of-way must be completed before the first Certificate of Occupancy is issued to this property. This fence shall be constructed of masonry with a minimum height of six feet, with masonry pilasters spaced every 40 feet. The specific material is a product manufactured by Fence-Crete or an equivalent, and shall be tan in color.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A and B

Case Number: Z-12-020

CITY OF MIDLAND
Planning Division

APPLICATION TO AMEND A PLANNED DISTRICT

Applicant: ANDREW L. MELLEN, JR.

Address: 110 W. LOUISIANA AVE., STE. 110 687-0865
Street Address (Phone/e-mail)
MIDLAND TEX 79701
City State Zip Code

Property Owner: G. GRANGER MACDONALD

Address: 2951 FALL CREEK RD.
Street Address (Phone/e-mail)
KERRVILLE TEX 78028
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 1, BLOCK 161, WILSHIRE PARK, SECTION 9

Current PD Classification: PDHD

Requested PD Classification: PDHD
(List by tracts if more than one zoning district is requested)

Reason for amendment request: THE PROPERTY OWNER WISHED TO CONSTRUCT
AN APARTMENT COMPLEX ON THE SITE.

Describe how conditions affecting the property have changed since it was designated its present zone: THE PROPERTY OWNER HAS A SITEPLAN FOR THE PLANNED DISTRICT

Will a Specific Use Permit with Term for alcoholic beverage sales be needed? Yes X 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

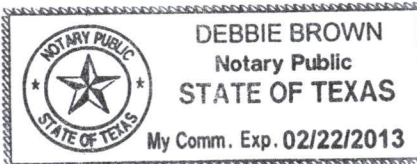
Andrew L. Mellen Jr. who, being by me duly sworn, upon oath says: That (s)he is authorized by Granger MacDonald, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Andrew L. Mellen Jr.
Authorized Agent (signature)

Subscribed and sworn to before me, this 25th day of May, 20 12, to certify which witness my hand and seal of office.

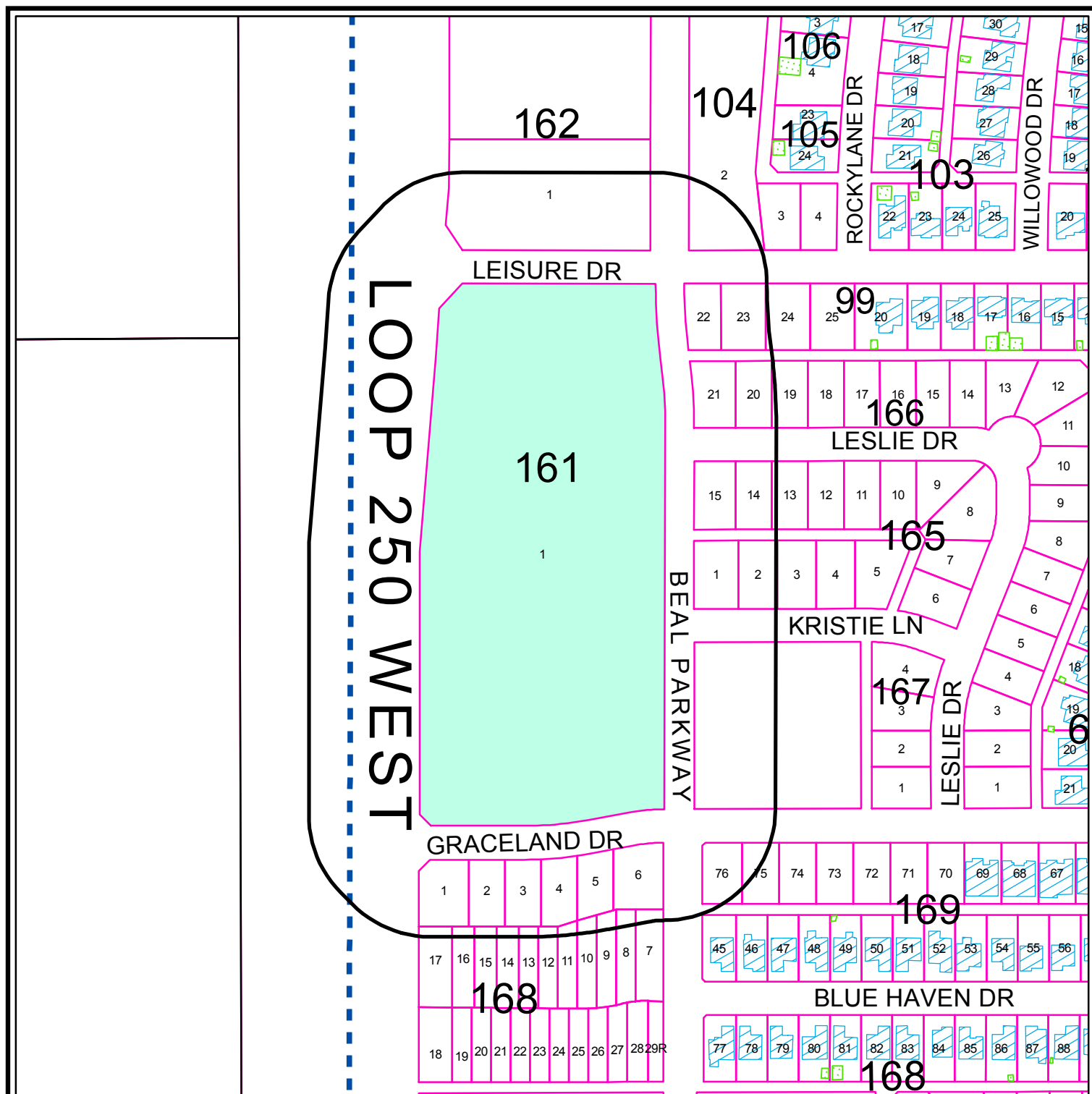
Debbie Brown
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>TS</u>	Date: <u>5/25/12</u>
Assigned: _____	
For: _____	On: _____



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

2012-0824
29.13



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 020

Scale: 1" = 250'

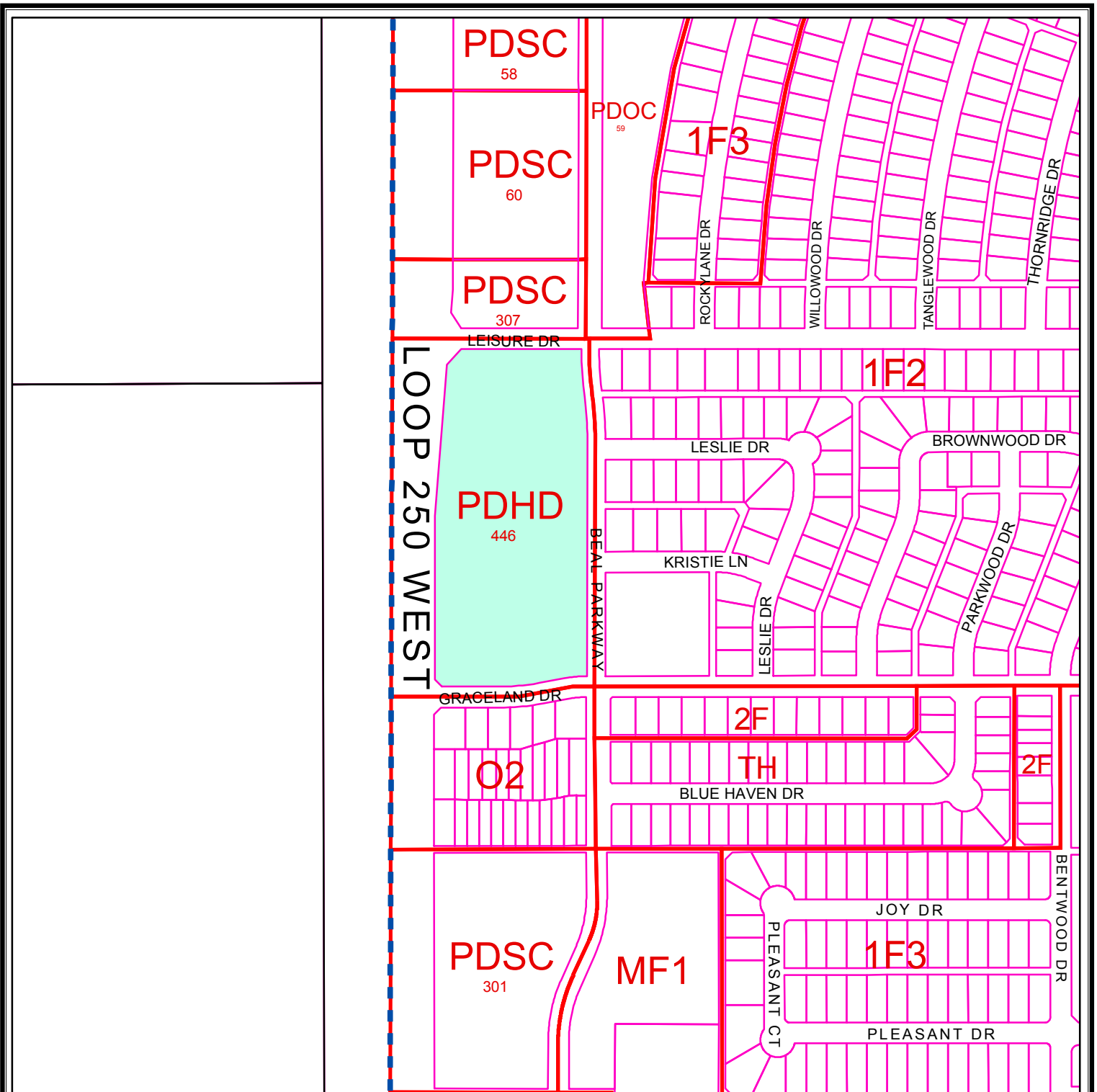
Consider a request for a zone change from PD, Planned District for a Housing Development, to an Amended Planned District on Lot 1, Block 161, Wilshire Park Addition, Section 9, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- COUNTY PARCEL
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 12 - 020

Scale: 1" = 400'

Consider a request for a zone change from PD, Planned District for a Housing Development, to an Amended Planned District on Lot 1, Block 161, Wilshire Park Addition, Section 9, City and County of Midland, Texas.

LEGEND

- | | |
|---|--|
| ZONING | CITY PARCELS |
| CITY LIMITS | COUNTY PARCELS |

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 14, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, AICP

SUBJECT: Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by Barbara Ann Harris amending the zoning of Lot 4, Block 192, Southern Addition, City and County of Midland, Texas. (Generally located on the west side of S. Marshall Street, approximately 150 feet south of E. Florida Avenue.)

Purpose: Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by Barbara Ann Harris amending the zoning of Lot 4, Block 192, Southern Addition, City and County of Midland, Texas. (Generally located on the west side of S. Marshall Street, approximately 150 feet south of E. Florida Avenue.)

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this zone change.

Discussion:

This property is adjacent to a linear LR-3, Local Retail District that includes land on both sides of E. Florida Avenue.

This lot lies at the edge of the LR-3 District boundary. It is zoned 1F-2, One Family Dwelling District and it has been used as an automotive repair shop for over three decades. While the building(s) is currently vacant it would be extremely challenging to turn it into a residential use to conform to the current zoning. The use of the property has been non-residential for at least two generations of neighborhood residents, staff believes this amendment to the LR-3 District to include another lot is reasonable. The LR-3 District permits indoor retail sales as well as limited outdoor sales; however, due to the size of this lot outdoor sales and storage is less likely. No letters of objection have been received; the

Planning and Zoning Commission recommends approval.

Attachments:

June 6, 2011 P&Z Staff report

Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 4, BLOCK 192, SOUTHERN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 1F-2, ONE-FAMILY DWELLING DISTRICT, TO BE USED AS AN LR-3, LOCAL RETAIL DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF MARSHALL STREET, APPROXIMATELY 150 FEET SOUTH OF EAST FLORIDA AVENUE); 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 LR-3, Local Retail District, as set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned 1F-2, One-Family Dwelling District, and it shall be used as a LR-3, Local Retail District, said property being described as follows:

Lot 4, Block 192, Southern Addition, City and County of Midland, Texas.

SECTION TWO. 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 THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the

following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

PLANNING AND ZONING COMMISSION

July 16, 2012

CASE: Z-12-021, Barbara Ann Harris.

STATUS: Hold a public hearing and consider a zone change.

APPLICANT/OWNER: Barbara Ann Harris.

LEGAL DESCRIPTION: Being Lot 4, Block 192, Southern Addition, City and County of Midland, Texas.

LOCATION: Generally located on the west side of S. Marshall Street, approximately 150 feet south of E. Florida Avenue.

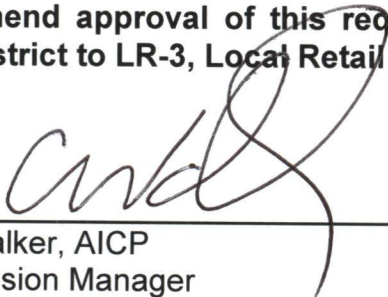
CURRENT ZONING: 1F-2, One Family Dwelling District.

DISCUSSION:

1. This property is adjacent to a linear LR-3, Local Retail District that includes land on both sides of E. Florida Avenue. The area has been developed with retail and office uses for decades. A City Fire Station is also in the vicinity.
2. The property being considered for rezoning lies at the edge of the LR-3 District boundary; this single lot is zoned 1F-2, One Family Dwelling District. It has been used as a service garage and automotive repair shop for over three decades. While the building(s) is currently vacant it would be extremely challenging to turn it into a residential use to match the current zoning. Since the development and use of the property has been non-residential for at least two generations of neighborhood residents, staff believes this amendment to the LR-3 District to include another lot is reasonable.

STAFF RECOMMENDATION:

We recommend approval of this request to approve a zone change from 1F-2, One Family Dwelling District to LR-3, Local Retail District.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Attachment:

Application
Maps

Case Number: Z-12-021

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Barbara Ann Harris 432-559-0033
Applicant Name (Phone/e-mail)
408 ECR 127 Midland, TX 79706
Address Zip Code

Barbara Ann Harris (Executrix) 432-559-0033
Property Owner Name (Phone/e-mail)
408 ECR 127 Midland, TX 79706
Address Zip Code

Representative Name (Phone/e-mail)

Address Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. Blk 192 Lot 004 Addn: Southern
906 Marshall ST Midland, TX 79701

PRESENT ZONE: 1 F2 REQUESTED ZONE: LR 3
(List by tracts if more than one district is requested)

Reason for Zone Change Request: Best use of property

Present Use of Property: Vacant

Proposed Use of Property: Business with living quarters

How will zone change affect the public health, safety and welfare? Add a facility for more business

Describe how conditions affecting the property have changed since present zoning designation:

Is a Specific Use Permit with Term for alcoholic beverages sales needed? ____ Yes ☒ No

APPLICATION FEES:

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

SITE PLAN SUBMITTALS (if applicable):

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

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

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

Property Owner (signature): *Barbara Ann Harris* Date: 6-5-2012

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

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

_____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

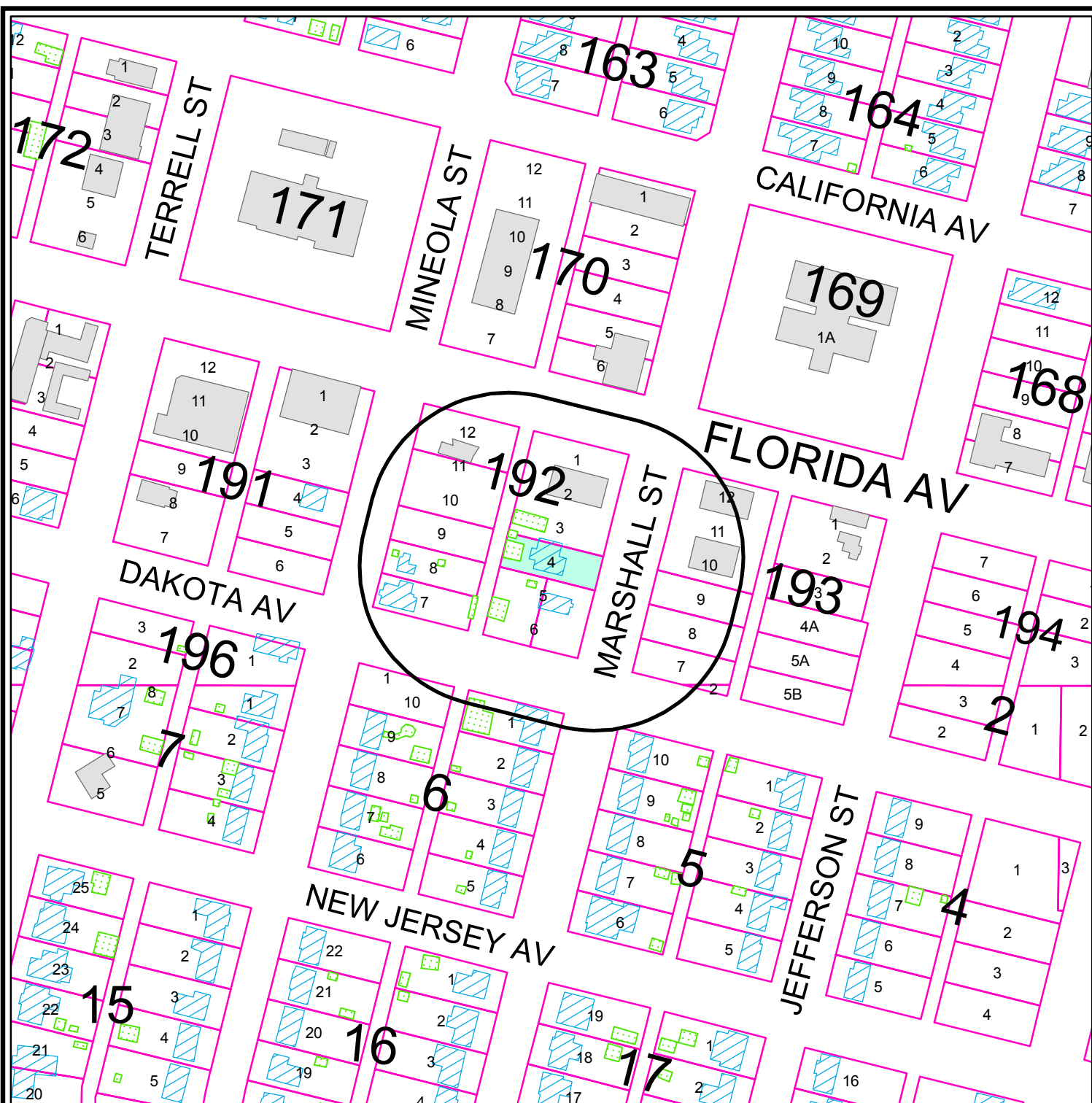
Authorized Agent (signature)

Subscribed and sworn to before me, this _____ day of _____, 20 ____, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>CW</u>	Date: <u>6/5/12</u>
Assigned: <u>CW</u>	
For: <u>P+Z</u>	On: <u>7/16/12</u>

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



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 021

Scale: 1" = 200'

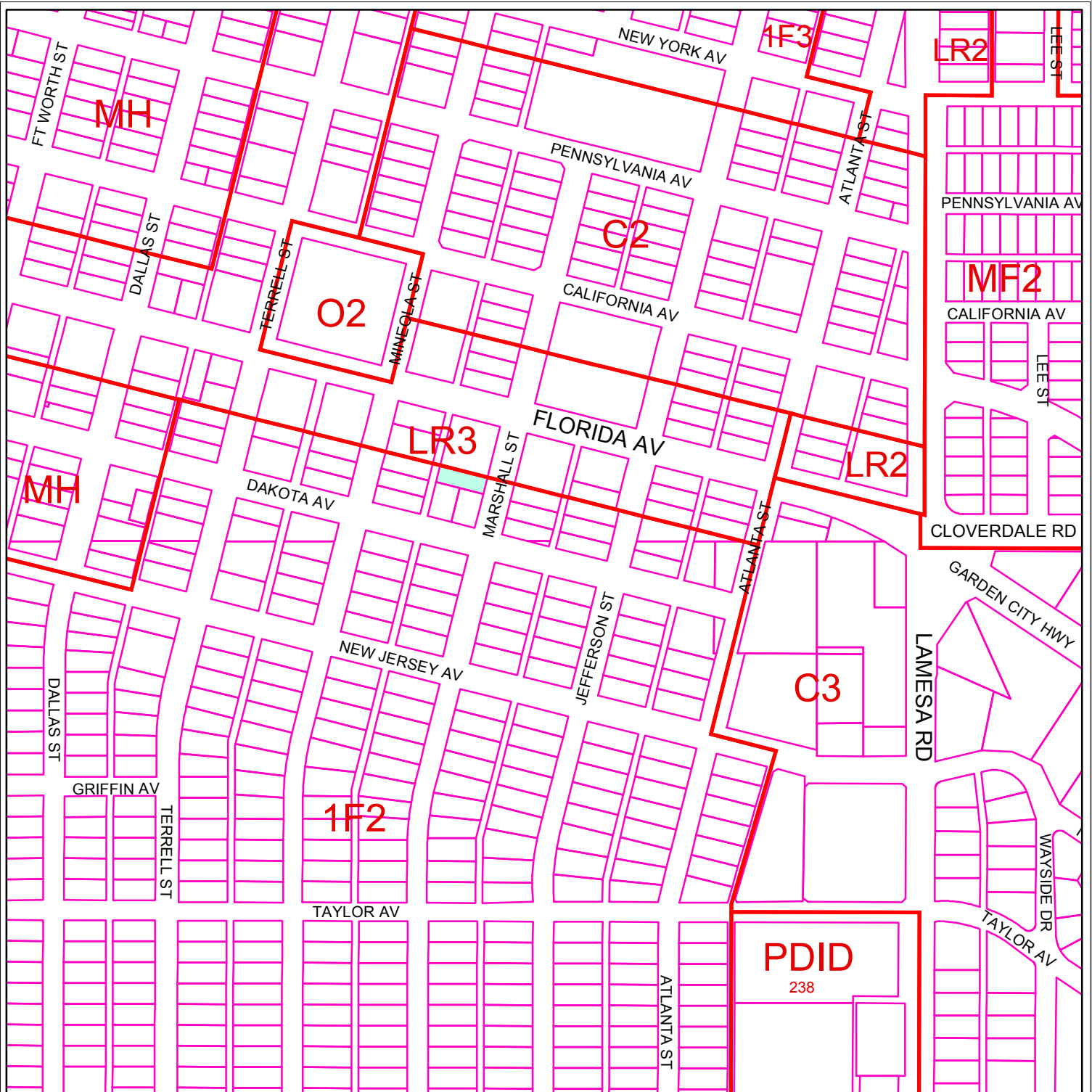
Consider a request for a zone change from 1F-2, One Family Dwelling District, to LR-3, Local Retail District on Lot 4, Block 192, Southern Addition, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 12 - 021

Scale: 1" = 400'

Consider a request for a zone change from 1F-2, One Family Dwelling District, to LR-3, Local Retail District on Lot 4, Block 192, Southern Addition, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda
JNichols
City Managers Office

MEETING DATE: August 14, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:39 a.m. regarding a proposed oil and gas permit to Callon Petroleum Operating Company (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Pecan Acres 22C#1) located 1,847 feet from the east line and 467 feet from the south 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 east side of Trobaugh Boulevard, approximately 467 feet north of Briarwood Avenue.)

Purpose:

At approximately 10:39 a.m. hold a public hearing on a request from Callon Petroleum Operating Company (Operator), to Drill an Oil and Gas Well within the City Limits (Pecan Acres 22C #1) located 1,847 feet from the east line and 467 feet from the south 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 east side of Trobaugh Boulevard, approximately 467 feet north of Briarwood Avenue.) 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.

Recommended City Council Action

Approve Deny X 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. Callon Petroleum is requesting a landscaping variance of no more than two years; the Oil and Gas Advisory Committee concurs.

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)

0-12-009
RECEIVED

JUN 21 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

I. General Information

Date 06/13/2012	Operator Name (must match W-1) Callon Petroleum Operating Company	Operator Address P.O. Box 1287 Natchez, MS 39121
Representative Name Jimmy Baggett	Representative Address (within Midland City Limits) 4305 N. Garfield, Suite 235 Midland, TX 79705	Rep. Tele. (432) 686-1828 Rep. Fax (432) 686-2764
Fee: \$4,000.00 Rec'd Yes ___ No ___		
Permit Compliance Contact (Choose 1): Option A: 24/7 Answering Services - No. 1 (tele) _____ No. 2 (Tele.): _____ Option B: Jimmy Baggett 4305 N. Garfield, Suite 235 Midland, TX 79705 Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): _____		
Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Vince Borrello (432) 553-9522 4305 N. Garfield, Suite 235 Midland, TX 79705		
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]). Nine: Annie 3 & 8; Pecan Acres 23A #1,2,3; Pecan Acres 23 #3,6,12 Pecan Acres 23 #1D		

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 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):

Agricultural use (zoned AE).

ATTACHED AS EXHIBIT D is (a Title Opinion by _____, A licensed Texas Attorney/a Take-off from _____, a Certified Petroleum Landman/ **Current Tax Roll from Midland Central Appraisal District**), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)]. **Attached**
ATTACHED AS EXHIBIT E is (a map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance - 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 22C #1**

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

Attached

Legal Description of Proposed Well Site: **1,847' FEL, 467' FSL of Section 22, Block 40, T1S, T&P RR Co. Survey, Midland County, Texas (Abstract 1391)**

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(1) **Attached**

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

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

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety bond in the amount of at least \$25,000. 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**

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

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

(1) Drilling: **No public utilities will be needed during drilling operations.**

(2) Operations: **See Exhibit N and N-3. Electricity provided by Oncor Electric.**

Description of water source to be used during Drilling: **Water will be pulled from water wells existing on adjacent property and hauled if necessary. Water wells are depicted on Exhibit G herein and are located on that certain 380.2733 acre tract described in document 2012-926 of the Official Public Records of Midland County, Texas.**

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]: **See Exhibits G & N attached.**

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: **See Exhibit O - Pits will be deep buried in accordance with City of Midland requirements.**

V. Additional Required Exhibits

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

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

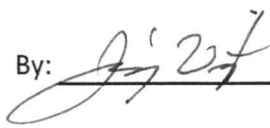
ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)]. **Attached**

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

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)]. **See Exhibit T and Attachment T-1**

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

Callon Petroleum Operating Company

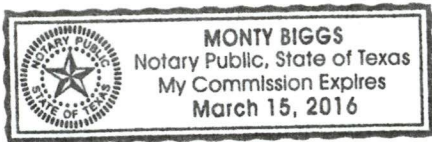
By: 

Jimmy Wright, CPL
Land Manager - Permian Basin

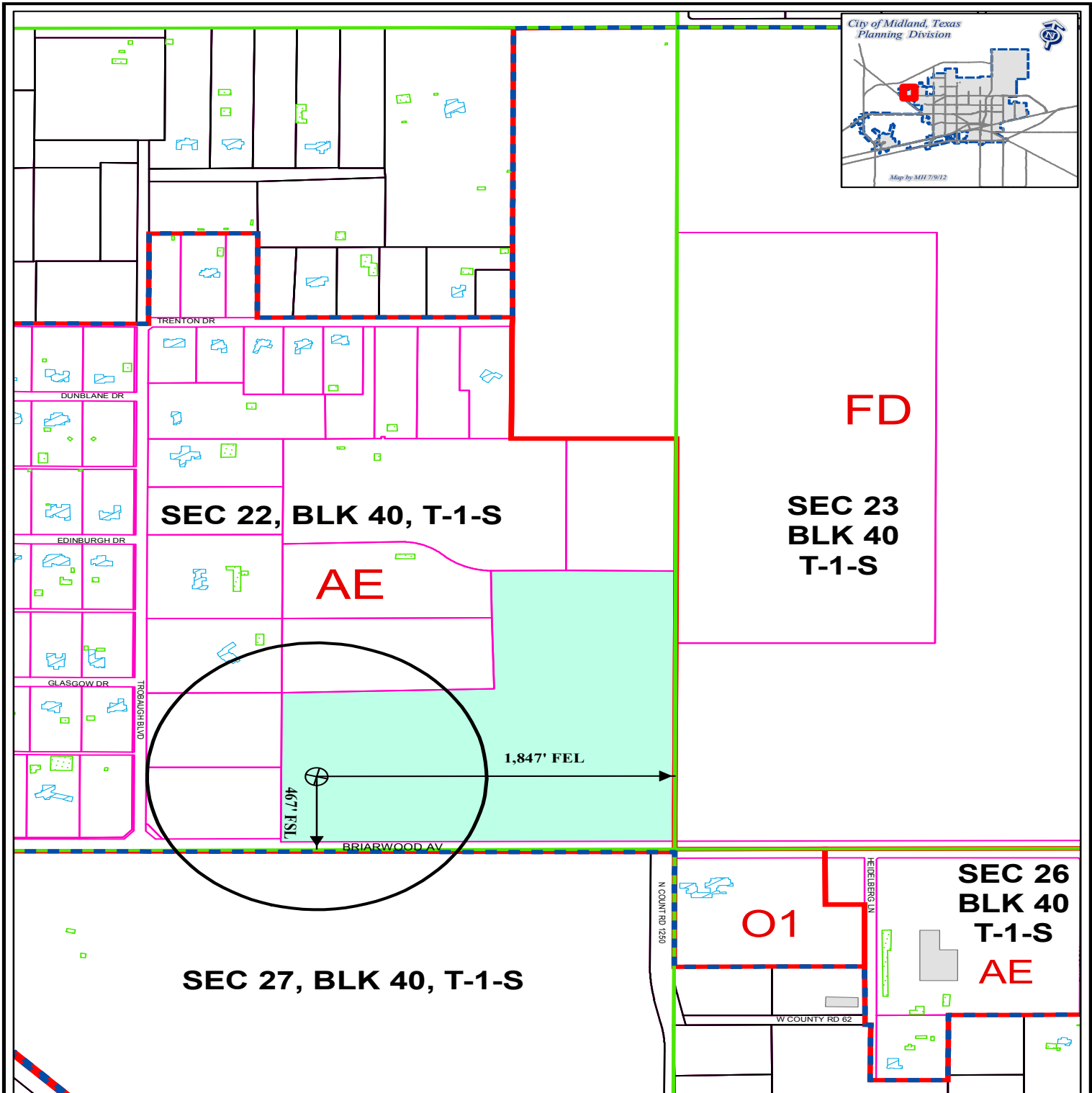
STATE OF TEXAS

COUNTY OF MIDLAND

This instrument was acknowledged before me on the 13th day of June, 2012 by Jimmy Wright, Land Manager-Permian Basin of Callon Petroleum Operating Company, who personally appeared before me and states that he has read the above application and attached exhibits and the statements therein are true and correct to the best of his knowledge.




Notary Public, State of Texas



LOCATION AND ZONING MAP

O - 12 - 009

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 1847' FEL and 467' FSL, Section 22, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Pecan Acres 22C #1

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LEGEND

	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.

ZONING DISTRICTS:

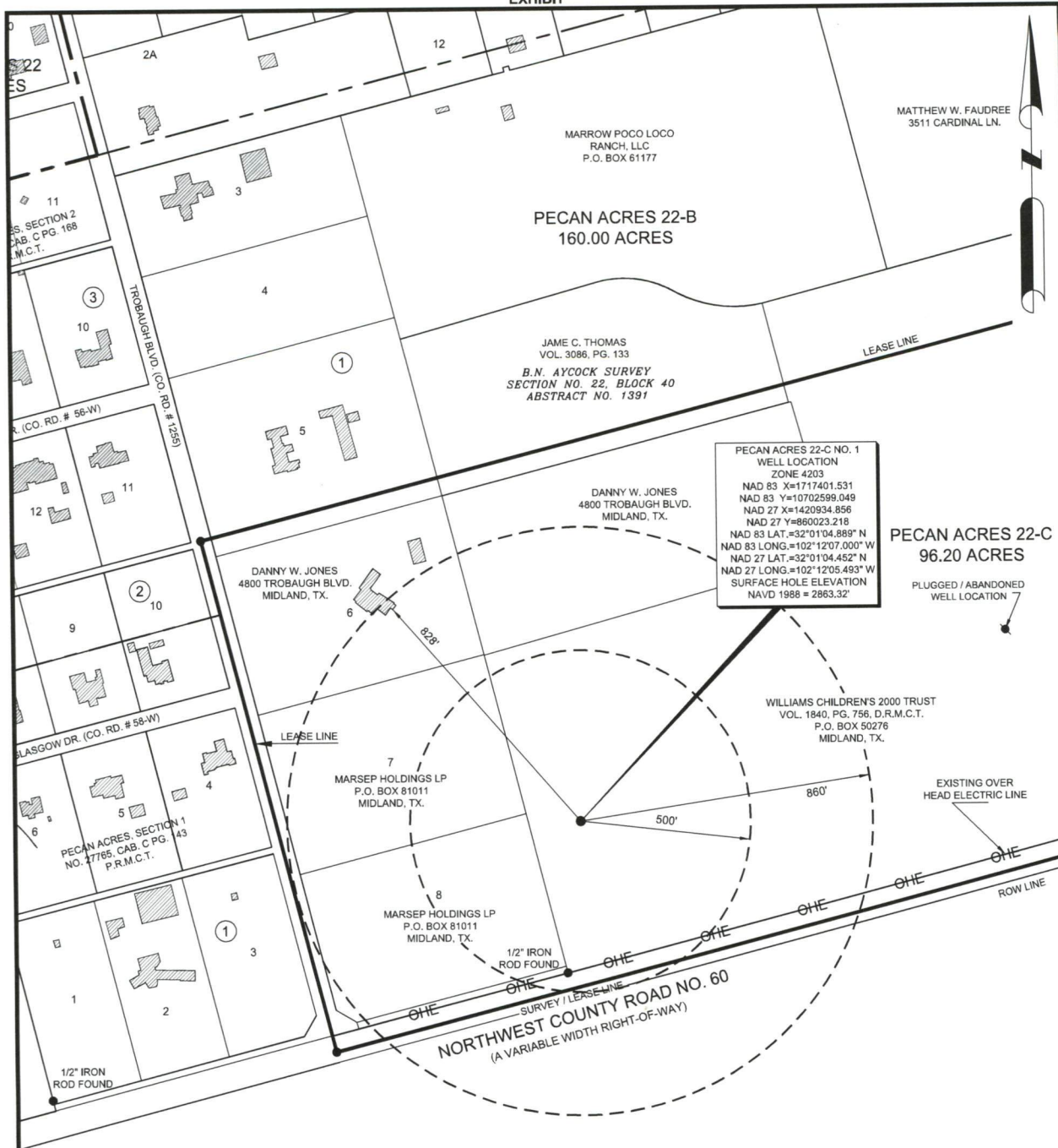
FD
PD
AE
1F1, 1F2, 1F3
MH
TH
2F
MF1, MF2

FUTURE DEVELOPMENT
PLANNED DISTRICT
AGRICULTURE ESTATE
ONE-FAMILY DWELLING
MOBILE HOME DWELLING
TOWNHOUSE DWELLING
TWO-FAMILY DWELLING
MULTIPLE FAMILY DWELLING

BP
P
O1, O2
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



T. & P. RR. CO. SURVEY
SECTION NO. 27, BLOCK 40
ABSTRACT NO. 254

CUMBERLAND & WESTERN RESOURCES
VOL. 3131, PG. 210, D.R.M.C.T.
2200 LAPSLEY LN
BOWLING GREEN, KY 42103

300' 0' 300' 600'
SCALE: 1" = 300'

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.

I HEREBY STATE THAT THIS PLAT SHOWS
THE PROPOSED WELL LOCATION.

James Curtis Yarger
JAMES CURTIS YARGER
REGISTERED PROFESSIONAL LAND SURVEYOR
STATE OF TEXAS #5854



WELL SYMBOL LEGEND

- OIL / GAS WELL
- GAS WELL
- PLUGGED OIL WELL
- OIL WELL
- PERMITTED LOCATION
- SHUT-IN OIL WELL



Callon Petroleum Operating Company

"FOR PERMITTING PURPOSES ONLY"

PECAN ACRES 22-C NO. 1 RESIDENCE STRUCTURE TIES PLAT

SITUATED IN THE
B.N. AYCOCK SURVEY, SECTION NO. 22
BLOCK 40 T-1-S, OF THE T. & P. RR. CO. SURVEY, ABSTRACT NO. 1391
PECAN ACRES 22-C LEASE
MIDLAND COUNTY, TEXAS
SAID WELL LOCATION BEING
N 78°43' W, 7.5 MILE FROM THE CITY OF MIDLAND
MIDLAND COUNTY, TEXAS

DRAWN BY: GG	DATE: 06-04-12	DWG. NO.	REV.
CHECKED BY: CY	DATE: 06-04-12	1100A PECAN ACRES 22-C NO. 1 RESIDENCE STRUCTURE PLAT	0
SCALE: 1"=300	APP.:	PAGE 1 OF 1	

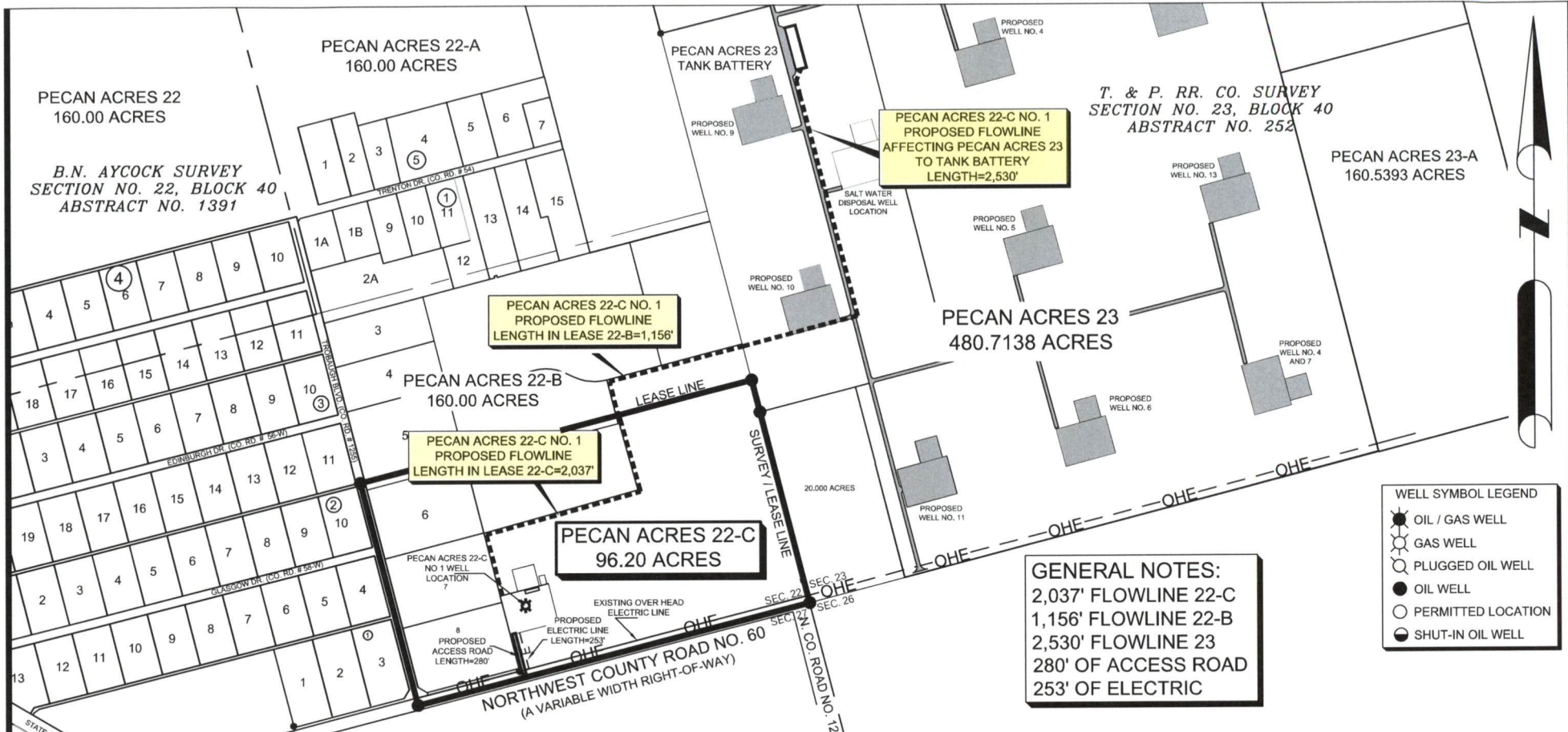
REV.	DATE	BY	DESCRIPTION	CHK
PROJECT NO. 1110006				

ZDSMS
Zero Degrees Surveying & Mapping Services

403 West Loop 820, Suite 160
Fort Worth, Texas 76108
(817) 367-6900 ~ Fax (817) 367-1973

DRILL SITE MAP

CASE NO. 0-12-0031.6



T. & P. RR. CO. SURVEY
SECTION NO. 23, BLOCK 40
ABSTRACT NO. 252

B.N. AYCOCK SURVEY
SECTION NO. 22, BLOCK 40
ABSTRACT NO. 1391

WELL SYMBOL LEGEND

- OIL / GAS WELL
- GAS WELL
- PLUGGED OIL WELL
- OIL WELL
- PERMITTED LOCATION
- SHUT-IN OIL WELL

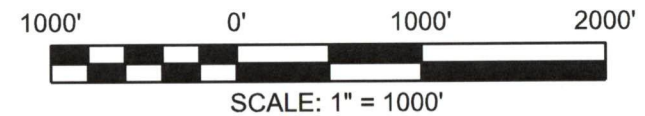
GENERAL NOTES:
2,037' FLOWLINE 22-C
1,156' FLOWLINE 22-B
2,530' FLOWLINE 23
280' OF ACCESS ROAD
253' OF ELECTRIC

LEGEND

- = PROPOSED ADDITIONAL ELECTRIC LINES
- = PROPOSED FLOWLINES
- = PROPOSED ADDITIONAL ACCESS ROADS
- = PROPOSED WELL LOCATION

I HEREBY STATE THAT THIS PLAT
SHOWS THE PROPOSED LOCATION
AS STAKED ON THE GROUND.

James Curtis Yarger
JAMES CURTIS YARGER
REGISTERED PROFESSIONAL LAND SURVEYOR
STATE OF TEXAS #5854



1	06-12-12	GG	INCREASE SCALE TO SHOW TANK BATTERY	CY
REV.	DATE	BY:	DESCRIPTION	CHK
			PROJECT NO. 1110006	

ZDSMS
Zero Degrees Surveying & Mapping Services
403 West Loop 820, Suite 160
Fort Worth, Texas 76108
(817) 367-6900 ~ Fax (817) 367-1973

Calon Petroleum Operating Company

"FOR PERMITTING PURPOSES ONLY"

EXHIBIT SHOWING
PROPOSED
PECAN ACRES 22-C NO. 1
PROPOSED FLOWLINE, ACCESS ROAD AND ELECTRIC LINE
LOCATIONS
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

DRAWN BY: GG	DATE: 06-04-12	DWG. NO.	REV.
CHECKED BY: CY	DATE: 06-04-12	1110006 PECAN ACRES 22-C NO. 1 FLOWLINE ACCESS AND UTILITY	1
SCALE: 1"=1000'	APP.:	PAGE 1 OF 1	

FLOW LINE LOCATION

CASE NO. 0-12-009

31.7



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 14, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:42 a.m. and consider an ordinance on a request by MARC Inc. and B & R Metal Buildings for a zone change from 2F, Two-Family Dwelling District, to a PDHD, Planned District for a Housing Development. (Generally located on the northwest corner of the intersection of Tarleton Street and Shell Avenue.)

Purpose:

Hold a public hearing at approximately 10:42 a.m. and consider an ordinance on a request by MARC Inc. and B&R Metal Buildings for a zone change from 2F, Two-Family Dwelling District, to a PDHD, Planned District for a Housing Development.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

MARC Inc. and B&R Metal Buildings are being represented by Mr. Wells for a request regarding a zone change. The applicants are requesting to rezone their properties to allow for a reduction in the lot width requirement from the current zoning standards. The current zoning standards would prohibit the applicant from being able to develop the proposed three patio homes. The patio homes would fit in well with the surrounding land uses as the surrounding properties are mainly patio and single family homes. Staff recommends approval of this zone change in order to accommodate the use and development of the property for future development of three patio homes.

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-3, BLOCK 1, BISHOP ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 2F, TWO-FAMILY DWELLING DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF TARLETON STREET AND SHELL AVENUE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a Planned District for a Housing Development, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned 2F, Two-Family Dwelling District, and it shall be used as a Planned District for a Housing Development, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

Lots 1-3, Block 1, Bishop Addition, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That this planned district shall be subject to the zoning regulations of the 1F-3, One-Family Dwelling District, except as stated below.
2. That the minimum lot width in this planned district shall be 45 feet.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on

first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

ROADRUNNER 3 @ BRAND.COM.NET

Case Number: 2-12-030

CITY OF MIDLAND

Planning Division

MARC INC

APPLICATION TO CHANGE ZONING CLASSIFICATION

B+R METAL BLOGS 432-620-0003
Applicant Name (Phone/e-mail)

10006 MIDLAND TX 79702
Address Zip Code

B+R METAL BLOGS 432-620-0003
Property Owner Name (Phone/e-mail)

Box 10006 MIDLAND TX 79702
Address Zip Code

ROGER WELLS 432-620-0003
Representative Name (Phone/e-mail)

Box 10006 MIDLAND TX 79702
Address Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately.

3504 Shell Avenue
LOTS 1, 2 & 3 Bishop Addition

LOT 1 is MARC + 2 & 3 ROGER WELLS

PRESENT ZONE: _____ REQUESTED ZONE: _____

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

Reason for Zone Change Request: TO BUILD 3-2000'-2500' PATIO
HOUSES

Present Use of Property: 1 - HOME - 2F

Proposed Use of Property: PDHD

How will zone change affect the public health, safety and welfare? N/A

Describe how conditions affecting the property have changed since present zoning designation:

BEST OF BLOCK is all Duplexes & PATIO HOMES

Is a Specific Use Permit with Term for alcoholic beverages sales needed? _____ Yes X No

ROADRUNNER 3 @ BRAND.COM.NET

APPLICATION FEES:

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

SITE PLAN SUBMITTALS (if applicable):

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

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

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

Property Owner (signature):

[Handwritten Signature]

Date:

9 July 12

[Handwritten Signature] President Bd of Directors, MORE, Inc.

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

STATE of TEXAS

COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

_____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

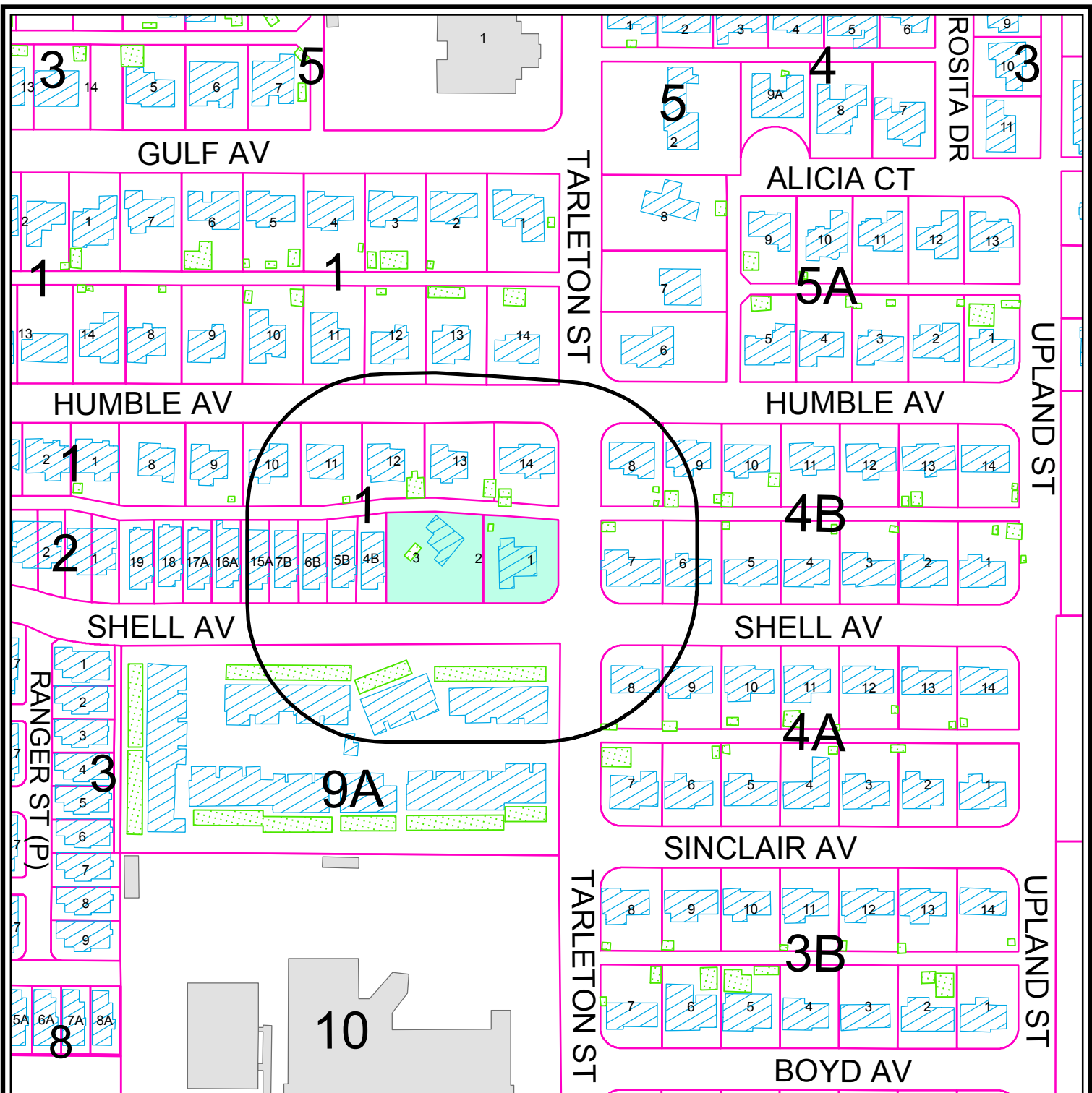
Authorized Agent (signature)

Subscribed and sworn to before me, this _____ day of _____, 20 __, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <i>CW</i>	Date: <i>8/6/12</i>
Assigned: <i>MS</i>	
For: <i>P+2</i>	On: <i>8/6/12</i>

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



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 030

Scale: 1" = 200'

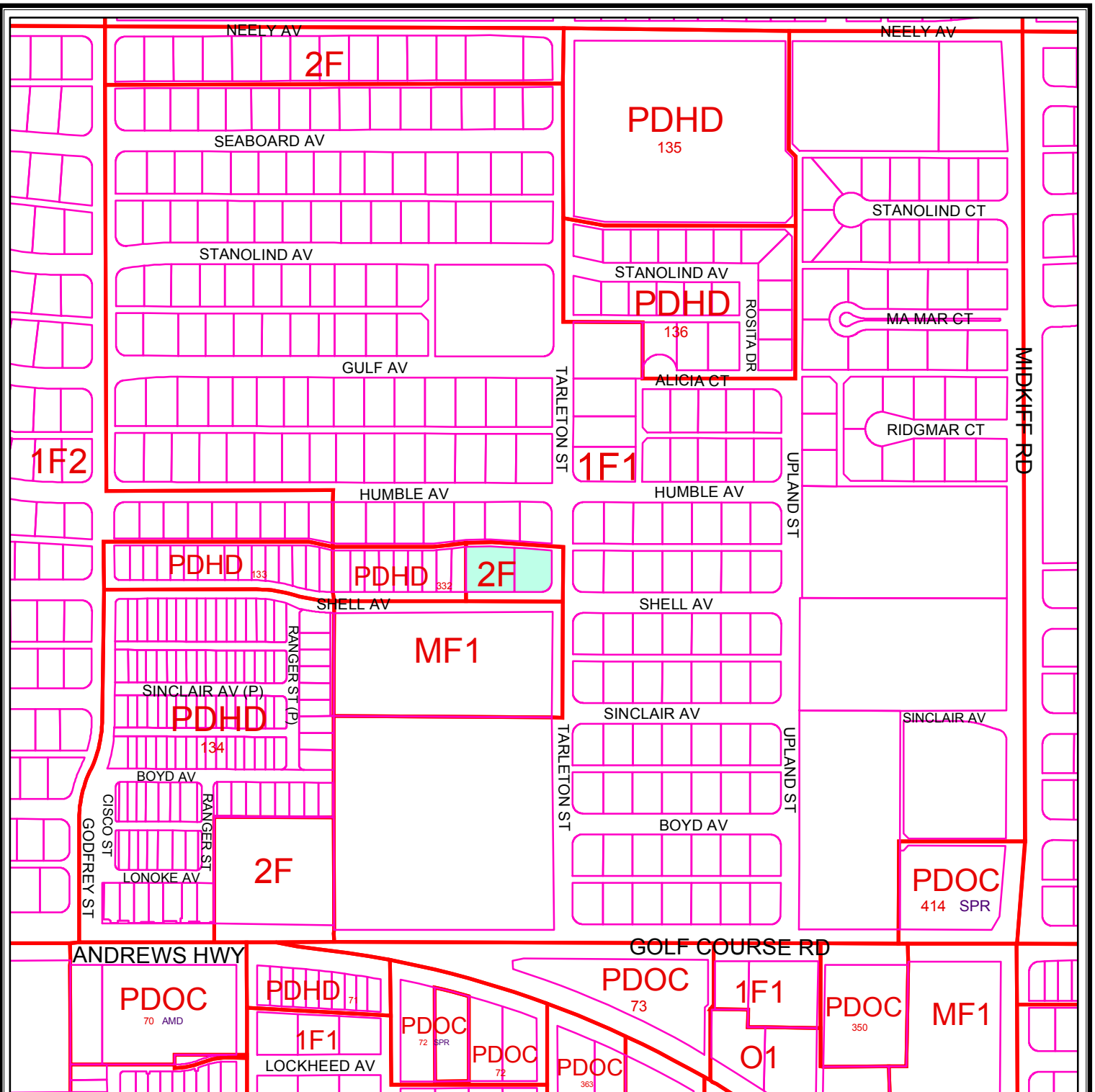
Consider a request for a zone change from 2F, Two Family Dwelling District, to PD, Planned District for a Housing Development Lots 1 – 3, Block 1; Bishop Addition, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 12 - 030

Scale: 1" = 400'

Consider a request for a zone change from 2F, Two Family Dwelling District, to PD, Planned District for a Housing Development Lots 1 – 3, Block 1; Bishop 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: 8/14/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: At approximately 10:45 A.M. hold a public hearing and consider an ordinance on request by Jim Roachelle for a zone change from LR-2, Local Retail District to PD, Planned District for a Housing Development. (Generally located at the northwest corner of W. Illinois Avenue and Delmar Street. – District 4)

Purpose:

Consider an ordinance on request by Jim Roachelle for a zone change from LR-2, Local Retail District to PD, Planned District for a Housing Development.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

The applicant plans to develop this vacant property with two apartment buildings that will provide 52 dwelling units just to the east of the large retail area that is located at the northeast corner of Illinois Avenue and Midland Drive. The proposed 3-story height exceeds the 2 ½ stories permitted with the current zoning. Additionally, the density would be 24 dwelling units / acre and exceed the City Code's current maximum of 16 dwelling units / acre in a multi-family development. Therefore, this request is to rezone the property as a Planned District for a Housing Development and adopt the associated building elevations and site plan to provide for the height and density while guiding how the development occurs. In addition to the apartment buildings, the applicant's proposed plan also includes 5 enclosed garages and 20 storage units for the use of tenants. The area provided for landscaping is adequate with the total tree count required by the landscaping

code being 27 trees. While the trees are not shown, planning staff will work with the developer on placement and options to offset the total tree requirement by contributing to the Park Endowment Fund in order to accommodate the required parking. The parking shown at 104 spaces, currently meets the minimum requirements. The only point of concern is the building separation distance, which is not specifically identified. City code will require that this distance is 30 feet due to the positioning of the entry/exit doors and the height of the buildings. The proposed building height of 42 ½ feet would make this development one story higher than the adjacent Avalon Springs Apartments to the east, but not out of scale for a building that shares a corner lot with a large, multiple building, mall area. The addition of on-site storage facilities for tenants creates an appropriate alley screening for this development and serves as a privacy wall for the apartments to the north. The apartment building materials will be a mix of stone veneer, stucco and siding. Two additional dumpsters would be required to service the 52-unit apartment complex. Finally, the requested density of 24 dwelling units/acre versus the permitted maximum of 16 dwelling units/acre, would not pose a problem in this location. First, it is a small development of only 52 units; second, the infrastructure here has a large carrying capacity with both Illinois Avenue and Midland Drive being arterial class roads; and third, the large developed area at the northeast of this major intersection is largely vacant. Staff concurs with the Planning & Zoning Commission and recommends approval of this rezoning for a complementary use with the neighboring apartments and an opportunity to address the City's housing needs.

Attachments:

Application

Maps

Site Plan – Exhibit A

Building Elevations – Exhibits B – D

Building Rendering – Exhibit E

Proposed Ordinance

August 6, 2012 Planning & Zoning Commission Staff Report

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 3A, BLOCK 15A, OXFORD HEIGHTS, SECTION 8, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED AT THE NORTHWEST CORNER OF WEST ILLINOIS AVENUE AND DELMAR STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a Planned District for a Housing Development, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned LR-2, Local Retail District, and it shall be used as a Planned District for a Housing Development, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

Lot 3A, Block 15A, Oxford Heights, Section 8, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That the development of said property shall conform to the regulations of the MF-1, Multi-Family District zoning regulations.
2. That the development shall be consistent with the Site Plan (Exhibit "A"), the Building Elevations (Exhibits "B", "C" and "D"), and the Building Rendering (Exhibit "E"). Said Exhibits are attached hereto and incorporated herein.
3. That the maximum height of the apartment building shall not exceed 43 feet.
4. That the minimum distance separating the two buildings shall not be less than that permitted by the City of Midland Building Code and shall include permanent lighting sources to illuminate, 24 hours a day, the pedestrian-level areas between the two buildings.
5. That the landscaping shall conform to City of Midland regulations in place at the time of development.
6. That four, 3 cubic yard, waste containers are adequately placed on the property in accordance with the Midland City Code.
7. That the air conditioners, dumpsters and any ground-based utility equipment shall be appropriately screened.
8. That the total number of dwelling units shall not exceed 52 units.
9. That the use of the on-site storage and the enclosed parking garages shall be reserved for tenant use only and shall not be rented out as a separate business enterprise nor subleased by tenants.
10. That sidewalks shall be paved to the required standards.
11. That all signage shall be in compliance with the City of Midland sign code.
12. That all City of Midland Building Code and Fire Code requirements shall be met.
13. That driveway cuts and dimensions shall be in accordance with the Midland City Code.
14. That water and sewer connections must be approved by the City Engineer.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council

member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

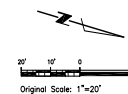
James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OXFORD HEIGHTS SECTION 8

Lot 3-A
Block 15A



PD Site Plan:
Submitted to City of Midland P&Z
on June 13, 2012.

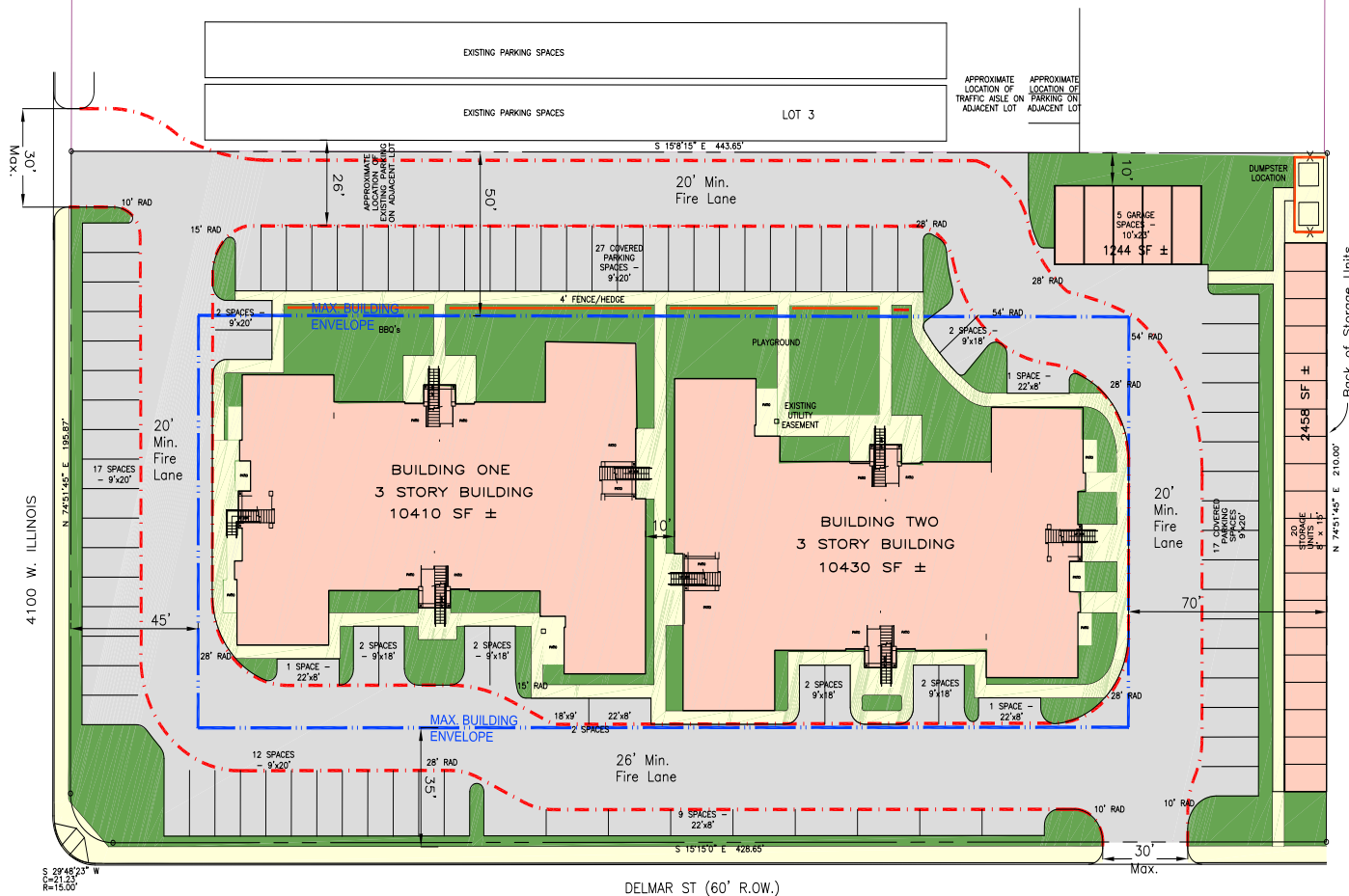
NOTES:

- BUILDING FOOTPRINT, PARKING AND LANDSCAPING SHOWN ARE FOR ILLUSTRATIVE PURPOSES ONLY. FINAL SITE DESIGNS TO BE REVIEWED BY THE CITY OF MIDLAND PRIOR TO ISSUING BUILDING PERMITS.
- SHADED AREAS DENOTED BY [Pattern] TO BE PAVED OR OTHER DRIVING SURFACE.
- SHADED AREAS DENOTED BY [Pattern] TO BE CONCRETE.
- SHADED AREAS DENOTED BY [Pattern] TO BE IRRIGATED & LANDSCAPED INCLUDING TREES OR SHRUBS - WHICH MAY BE ENHANCED BY OTHER LANDSCAPE MATERIALS.
- SHADED AREAS DENOTED BY [Pattern] ARE BUILDINGS.
- SHADED AREAS DENOTED BY [Pattern] ARE SCREEN WALLS.
- AREAS DENOTED BY [Pattern] ARE FIRE LANES.
- LANDSCAPED AREA (NOT INCLUDING R.O.W.S) WILL BE A MINIMUM OF 10% OF TOTAL LOT AREA, LESS THE BUILDING AREA.
- EXTERIOR BUILDING MATERIALS SHALL BE DECORATIVE OR PAINTED CMU, FACE BRICK, PRECAST CONCRETE, TILT-WALL, STUCCO, GLAZING OR SIMILAR CONSTRUCTION AND PER THE ELEVATION EXHIBITS.
- ROOF MATERIALS MAY INCLUDE COMPOSITE SHINGLES.
- ALL SIGNS SHALL BE IN CONFORMANCE WITH SECTION 11-7a OF THE MIDLAND CITY CODE.
- ALL EXTERIOR LIGHTING SHALL ADHERE TO THE STANDARDS OUTLINED IN SECTION 11-10 OF THE MIDLAND CITY CODE.
- HVAC UNITS WILL BE LOCATED ON THE GROUND AND SURROUNDED BY A SCREEN WALL.
- UNPROTECTED OPENINGS ON BUILDING SIDES FACING EACH OTHER WILL BE RESTRICTED PER CITY CODE AND BASED ON THE ACTUAL DISTANCE BETWEEN BUILDINGS.

SITE DATA

SITE AREA	93,311 SF ±
BUILDING AREA (Foot Print)	24,542 SF ±
BUILDING AREA (Total Floor Space)	66,222 SF ±
LANDSCAPE AREA REQUIRED	6,876 SF ±
LANDSCAPED AREA SHOWN	20,370 SF ±
PARKING SPACES REQUIRED	104
PARKING SPACES PLANNED	104
H.C. PARKING SPACES REQUIRED	5

**OXFORD HEIGHTS
ADDITION
SECTION 8**



PARKING
52 TOTAL UNITS
2 SPACES PER UNIT
104 SPACES REQUIRED



WEST ELEVATION



SOUTH ELEVATION



NORTH ELEVATION



EAST ELEVATION

Exhibit - B

BUILDING ONE
EXTERIOR ELEVATIONS
Scale: 1/8" = 1'-0"

DANZE & DAVIS
ARCHITECTS, INC.
4701 Spicewood Springs Road, Suite 200 Phone 512.343.0714 Fax 512.343.0718
WWW.DANZE-DAVIS.COM

WESTWOOD VILLAGE APARTMENTS
4100 W. Illinois
Midland, Texas



JUN 12 2012

Job No. C2794

DRAWN BY: RAH
DATE: 06-12-2012
CHKD. BY:
REVISED:

A4.0

PLANNED DISTRICT EXHIBIT



EAST ELEVATION



NORTH ELEVATION



SOUTH ELEVATION



WEST ELEVATION

Exhibit - C

**BUILDING TWO
EXTERIOR ELEVATIONS**
Scale: 1/8" = 1'-0"

DANZE & DAVIS
ARCHITECTS, INC.
4701 Spicewood Springs Road, Suite 200 Phone 512.343.0714 Fax 512.343.0718
WWW.DANZE-DAVIS.COM

WESTWOOD VILLAGE APARTMENTS
4100 W. Illinois
Midland, Texas



JUN 12 2012

Job No. C2794
DRAWN BY: RAH
DATE: 06-12-2012
CHKD. BY:
REVISED:

A4.1

PLANNED DISTRICT EXHIBIT

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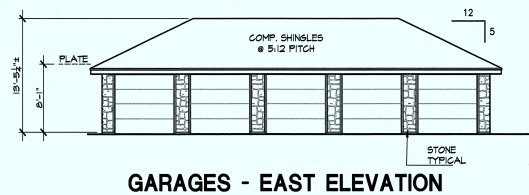
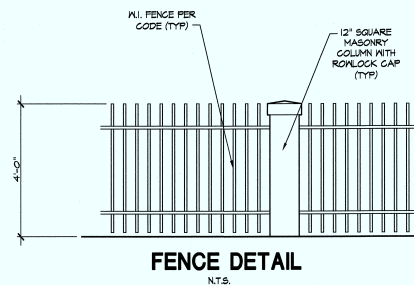
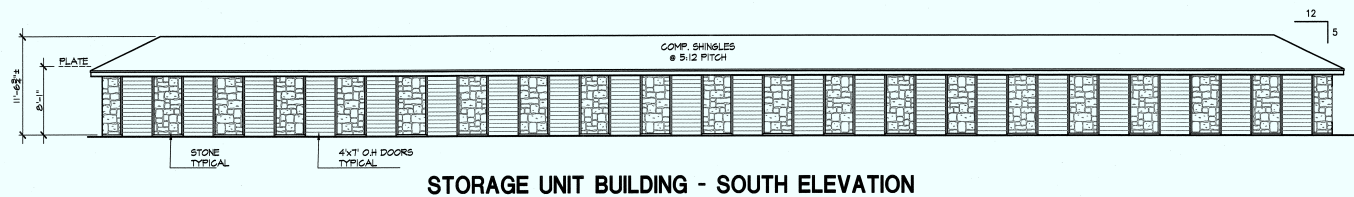


Exhibit - D

EXTERIOR ELEVATIONS
Scale: 1/8" = 1'-0"

PLANNED DISTRICT EXHIBIT

Job No. C2794

DRAWN BY: RAH
DATE: 06-12-2012
CHKD. BY: .
REVISED: .



JUN 12 2012

WESTWOOD VILLAGE APARTMENTS
4100 W. Illinois
Midland, Texas

DANZE & DAVIS
ARCHITECTS, INC.
4701 Spicewood Springs Road, Suite 200 Phone 512.343.0714 Fax 512.343.0718
WWW.DANZE-DAVIS.COM

A4.2



Exhibit - E

CITY OF MIDLAND

Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

JIM ROACHELLE / ACS 925-250-7118
Applicant Name (Phone/e-mail)

2861 CRESTON RD WALNUT CREEK, CA 94597
Address Zip Code

EMB NORTH, LLC / EMB TEXAS VENTURE, LLC 510-728-1102
Property Owner Name (Phone/e-mail)

20632 REDWOOD ROAD, SUITE B CASTRO VALLEY, CA 94546
Address Zip Code

BILL COURTNEY 510-728-1102
Representative Name (Phone/e-mail)

SAME AS PROPERTY OWNER
Address Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately.

4100 W. ILLINOIS AVENUE
LOT 3-A, BLOCK 15A, OXFORD HEIGHTS - SECTION 8

PRESENT ZONE: LR-2 REQUESTED ZONE: PD HD
(List by tracts if more than one district is requested)

Reason for Zone Change Request: INCREASED DENSITY TO 24 UNITS PER ACRE

Present Use of Property: VACANT PARCEL ADJACENT TO WESTWOOD VILLAGE SHOPPING CENTER.

Proposed Use of Property: MULTI-FAMILY APARTMENTS AND SUPPORT AMENITIES PERMANENT HOUSING TO THE AREA.

How will zone change affect the public health, safety and welfare? PROVIDE MUCH NEEDED PERMANENT HOUSING TO THE AREA.

Describe how conditions affecting the property have changed since present zoning designation:
AN INCREASE OF JOBS IN THE REGION HAS CREATED DEMAND FOR MORE PERMANENT HOUSING.

Is a Specific Use Permit with Term for alcoholic beverages sales needed? Yes ☒ No

APPLICATION FEES:

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

SITE PLAN SUBMITTALS (if applicable):

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

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

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

Property Owner (signature):

[Handwritten Signature]
Managing Member - EMS North, LLC

Date: 6/3/12

EMS North, LLC

Emerson Vento

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

STATE of TEXAS

COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

_____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

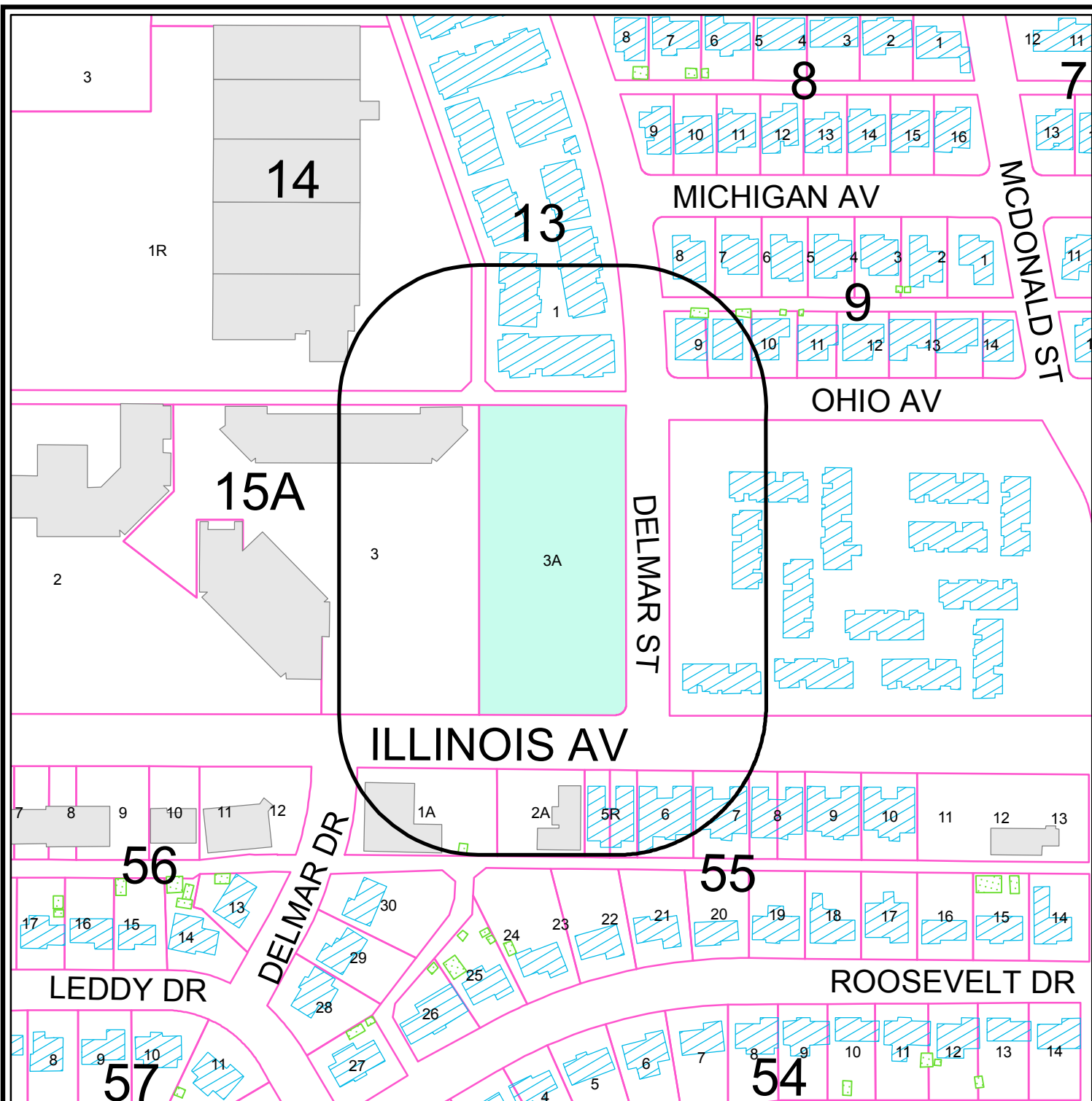
Authorized Agent (signature)

Subscribed and sworn to before me, this _____ day of _____, 20 ____, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>VS</u>	Date: <u>6/13/12</u>
Assigned: <u>KV</u>	
For: <u>Pt 2</u>	On: <u>8/6/12</u>

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



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 023

Scale: 1" = 200'

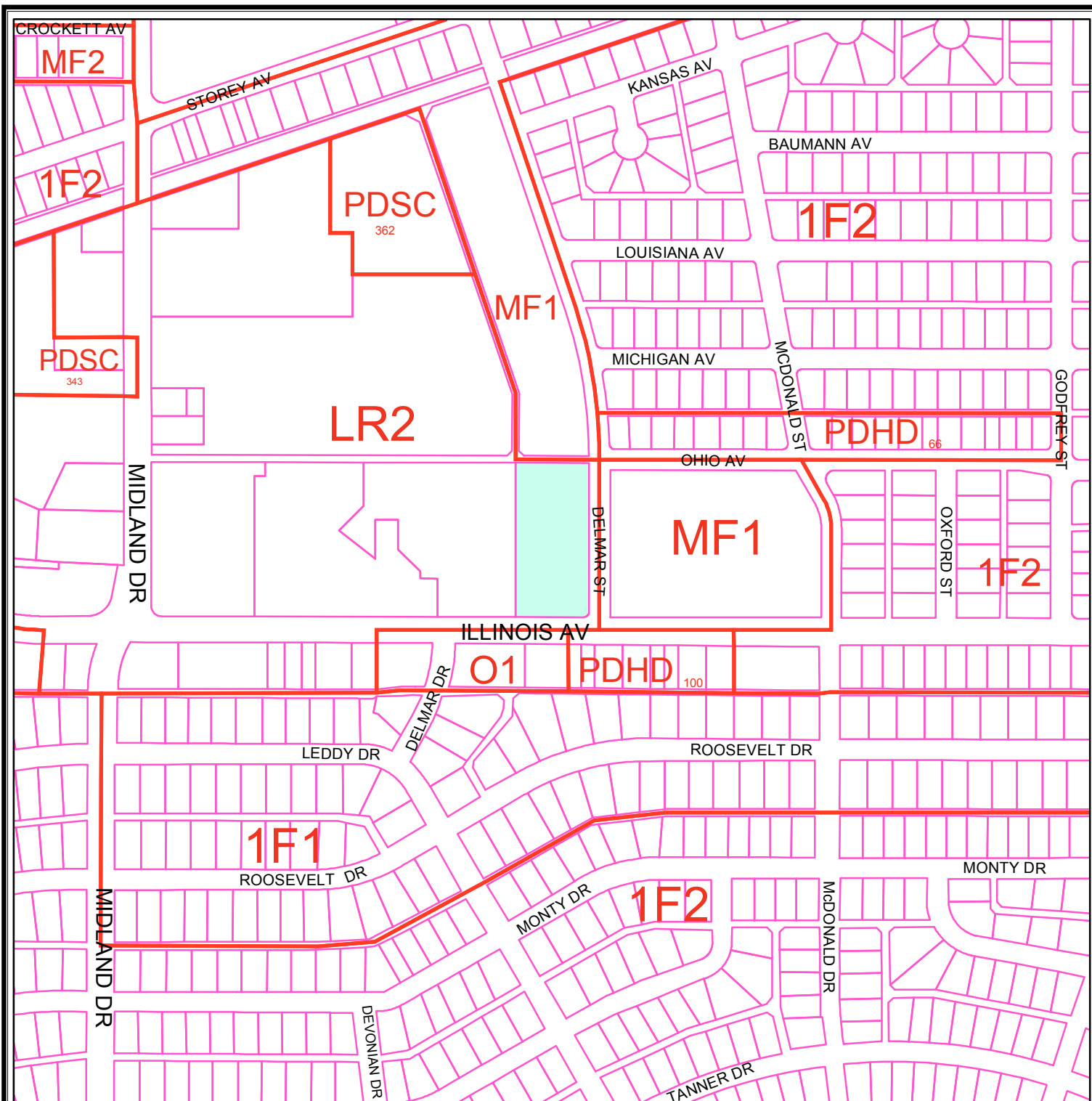
Consider a request for a zone change from LR-2, Local District, to PD, Planned District for a Housing Development on Lot 3A, Block 15A, Oxford Heights, Section 8, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 12 - 023

Scale: 1" = 400'

Consider a request for a zone change from LR-2, Local District, to PD, Planned District for a Housing Development on Lot 3A, Block 15A, Oxford Heights, Section 8, 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 14, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:48 a.m. and consider a resolution on a request by St. Ann's Catholic Church for approval of a Temporary Land Use Permit for a Church Carnival and Fair. (Generally located between W. Illinois Avenue and W. Texas Avenue, east of N. "O" Street.)

Purpose:

Hold a public hearing at 10:48 a.m. and consider a resolution on a request by St. Ann's Catholic Church for approval of a Temporary Land Use Permit for a Church Carnival and Fair.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

No City funds are required to approve this request.

Discussion:

Since 1948 St. Ann's Catholic Church has held an annual church carnival and fair. The Church is requesting a Temporary Land Use Permit at the location shown on the site plan.

Proposed days and hours of the Carnival and Fair are:

Thursday, September 27, 2012 from 6:00 p.m. to 11:00 p.m. (Carnival only)
Friday, September 28, 2012 from 6:00 p.m. to 11:00 p.m. (Carnival only)
Saturday, September 29, 2012 from 8:00 a.m. to 11:00 p.m. (Carnival & Fair)
Sunday, September 30, 2012 from 1:00 p.m. to 6:00 p.m. (Carnival only)

Carnival music will be played during all operating hours. The sale and on-premise consumption of beer and wine is proposed on, Saturday only, from 10:00 a.m. to 11:00 p.m. Fourteen restrooms will be provided for public use. Twenty-four security guards will be on duty at all times during the event as well as a manned first aid station with a registered nurse on call. According to police reports minimal complaints were reported in connection with last year's event.

Attachments: Application, Maps, Proposed Resolution & Site Plan - Exhibit A

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE TEMPORARY USE
OF LAND FOR A CHURCH CARNIVAL AND FAIR ON
LOT 13, BLOCK 71, WEST END ADDITION, SECTION
15, CITY AND COUNTY OF MIDLAND, TEXAS
(GENERALLY LOCATED BETWEEN WEST ILLINOIS
AVENUE AND WEST TEXAS AVENUE, EAST OF
NORTH "O" 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, St. Ann's Catholic Church has applied for authorization to temporarily use land for a church carnival and fair on Lot 13, Block 71, West End Addition, Section 15, 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 St. Ann's Catholic Church is hereby authorized by the City Council to have a church carnival and fair on the following described land:

Lot 13, Block 71, West End Addition, Section 15, 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 carnival shall be limited to the following:

Thursday, September 27, 2012 from 6:00 p.m. to 11:00 p.m.;
Friday, September 28, 2012 from 6:00 p.m. to 11:00 p.m.;
Saturday, September 29, 2012 from 8:00 a.m. to 11:00 p.m.; and
Sunday, September 30, 2012 from 1:00 p.m. to 6:00 p.m.

B. That the days and hours of operation of the fair shall be limited to the following:

Saturday, September 29, 2012 from 8:00 a.m. to 11:00 p.m.

C. That only the following uses shall be permitted:

1. Carnival music shall be allowed during all operating hours.
 2. That the sale and on-premise consumption of beer and wine shall be allowed on Saturday, September 29, 2012 from 10:00 a.m. to 11:00 p.m. only.
- D. That the operation of the carnival and fair shall conform in all respects to the site plan attached hereto as Exhibit "A" and incorporated herein for all purposes.
- E. That a minimum of twenty-four (24) certified peace officers shall be provided as security guards during all operating hours.
- F. That a minimum of six (6) restrooms and eight (8) portable toilets shall be provided.
- G. That the event shall comply with all requirements of the Fire Code. The applicant must call for an inspection by the Fire Marshal prior to commencing operations.
- H. That the applicant shall obtain approval from the Utilities Department for refuse collection and clean-up prior to the event.
- I. That the Code Administration Division shall be notified no later than 48 hours preceding the event.
- J. That the Chief of Police and the applicant shall ensure that all individuals have obtained the appropriate license(s) from the Midland Police Department before commencing any operations.
- K. That Steve Pepper, a representative of St. Ann's Catholic Church, shall be responsible for ensuring that the conditions of this permit are observed.

SECTION THREE. The 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 permit has been given at least one (1) day notice.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

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 (25) days prior to the City Council meeting at which action is desired.

Application is hereby made to the City Council for a Temporary Land Use Permit:

Name of Applicant: Steve Pepper Phone: 432-682-6303

E-mail: _____

Applicant's Address: St. Ann's Church, 1906 W. Texas, Midland, TX 79701

Property Owner: St. Ann's Church Phone: 432-682-6303

E-mail: _____

Owner's Address: 1906 W. Texas, Midland, TX 79701

Other required information:

1. Street address and legal description of property: 2000 W. Texas Ave., Block 71,
Lot 13, West End Addition, Section 15
2. Zoning District: _____
3. Type of temporary use requested: Fair and Carnival
4. Duration of temporary use: 4 Days
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: Carnival - Sept. 27-28, 6-11PM; Fair and Carnival - Sept. 29,
8AM-11PM; Carnival - Sept. 30, 1-6PM
6. Will alcoholic beverages be sold? X Yes _____ No
7. A detailed Site Plan is required (8 copies needed, plus digital - .jpg and .pdf). Show existing buildings, parking, access arrangements, surrounding streets, activity areas, areas of alcoholic beverage sales, proposed street closures, etc.
Site Plan received: ✓ Yes _____ No

8. Are you requesting the temporary closure of any streets? _____ Yes X No

If yes, you must:

- A. Obtain and complete the "Special Event and Street Closure Application", available in the Transportation Division office (5th Floor, City Hall).
- B. Provide the City with a **general liability insurance certificate**, naming the **City** as an **Additional Insured**, in the amount of one million dollars (\$1,000,000) for the term of the closure.

9. Other information: Number of security guards provided: 24
Number of restrooms provided: 14
Type of music (carnival, live, etc.): Carnival
Showmobile requested _____ Days and hours _____

10. A **\$500.00 Clean-up Deposit** and a **\$500.00 Damage Deposit** are required for all events. Checks need to be dated day of event. Inspection of site after the event for trash and damage is a City responsibility. The deposits, or a portion thereof, may be refunded following inspection.

Clean-up Deposit received: __ (Y) __ (N) **Clean-up Deposit refunded:** __ (Y) __ (%) __ (N)

Damage Deposit received: __ (Y) __ (N) **Damage Deposit refunded:** __ (Y) __ (%) __ (N)

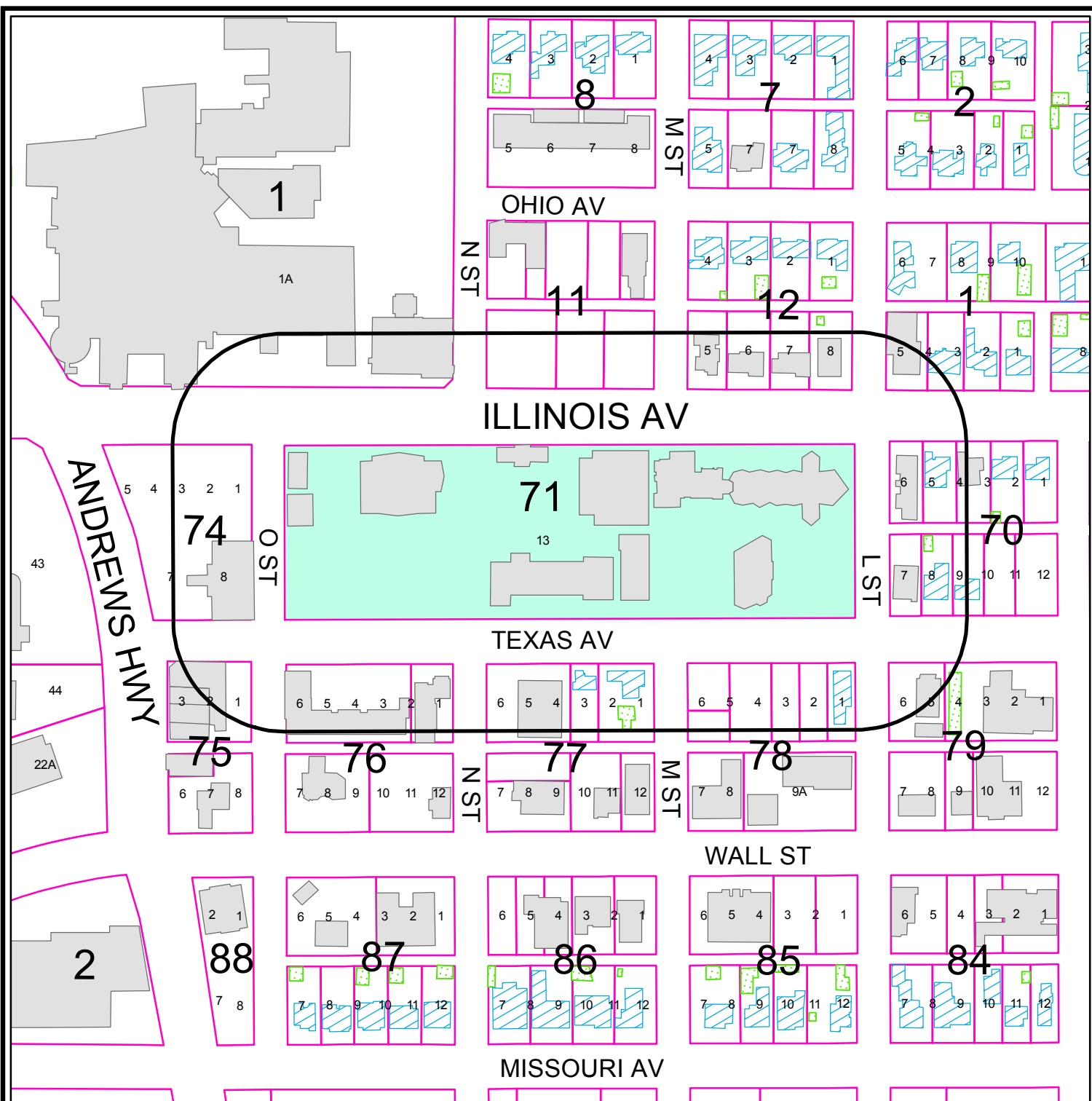
11. A **\$200 Application Review fee** is required. **Fee received:** _____ Yes _____ No
\$25.00 for each additional event date.

Owner or Operator (if other than Applicant) responsible for ensuring that the conditions of this permit will be observed:

St. Ann's Church	1906 W. Texas	79701	432-682-6303
Printed Name of Owner/Operator	Address	Zip	Phone
<u>Steve Appen</u>		7/3/12	
Signature of Owner/Operator		Date	
<u>Steve Appen</u>		7/3/12	
Signature of Applicant		Date	
<u>Morgan Langford</u>		7/3/12	
Signature of Property Owner, if other than Applicant		Date	

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

FOR OFFICE USE ONLY	
Received By: <u>AZ</u>	Date: <u>7/3/12</u>
Assigned: <u>MS</u>	
For: <u>CC</u>	On: <u>8/14/12</u>



PROPERTY OWNER NOTIFICATION MAP

M - 12 - 016

Scale: 1" = 250'

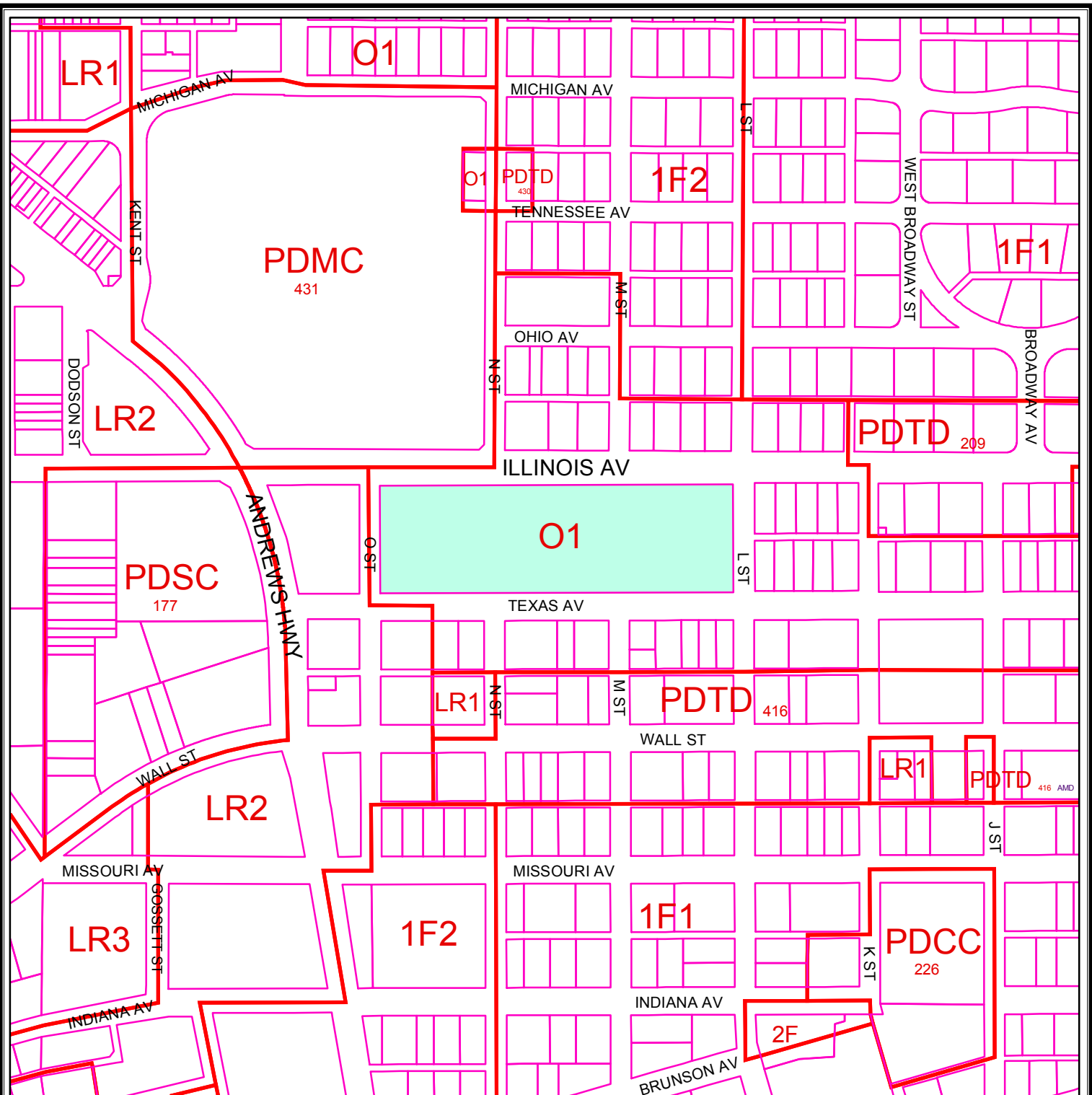
Consider a request for a Temporary Land Use Permit for a Church Carnival and Fair and on Lot 13, Block 71, West End Addition, Section 15, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

M - 12 - 016

Scale: 1" = 400'

Consider a request for a Temporary Land Use Permit for a Church Carnival and Fair and on Lot 13, Block 71, West End Addition, Section 15, 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

© THE CITY OF MIDLAND 2012; THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA. WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 14, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:51 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.

Purpose:

Hold a public hearing at 10:51 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:

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

Discussion:

"Septemberfest" is an annual event that the Museum has conducted for the last 41 years. Festivities include Artist's exhibits, live music, food and drink and are to be held for three days at the location shown on the site plan.

Proposed days and hours are:

Friday, September 7, 2012 from 6:00 p.m. to 11:00 p.m.

Saturday, September 8, 2012 from 9:00 a.m. to 6:00 p.m.

Sunday, September 9, 2012 from noon to 5:00 p.m.

Live music, and the sale and on-premise consumption of alcoholic beverages are planned for all operating hours of the event. A minimum of ten (10) portable restrooms and seven (7) restrooms in the museum building will be provided. Twelve (12) security officers will be available throughout the event to ensure order and to provide traffic direction. The applicants have submitted a Special Event and Street Closure to the Transportation Manager's office.

Some impact is expected on the area residences resulting from music, traffic and general activities; however we do not anticipate any significant disruption to the neighboring area. According to police reports, no incident was reported concerning last year's event.

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 7, 2012 from 6:00 p.m. to 11:00 p.m.;
Saturday, September 8, 2012 from 9:00 a.m. to 6:00 p.m.; and
Sunday, September 9, 2012 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.
- 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 eight (8) portable restrooms and seven (7) restrooms in the museum building shall be provided.
- G. That a barricade shall be set up parallel to and at least 15 feet from the west fence in the area labeled "Artist Parking" on the site plan.
- H. That the event must comply with all requirements of the Fire Code. The applicant must call for an inspection by the Fire Marshal prior to commencing operation of the function.
- I. That the applicant shall obtain approval from the Utilities Department for a refuse collection and clean-up plan prior to the festival.
- J. That the Code Administration Division shall be notified no later than 48 hours preceding the festival.
- K. That Andrew Young, a representative 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., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

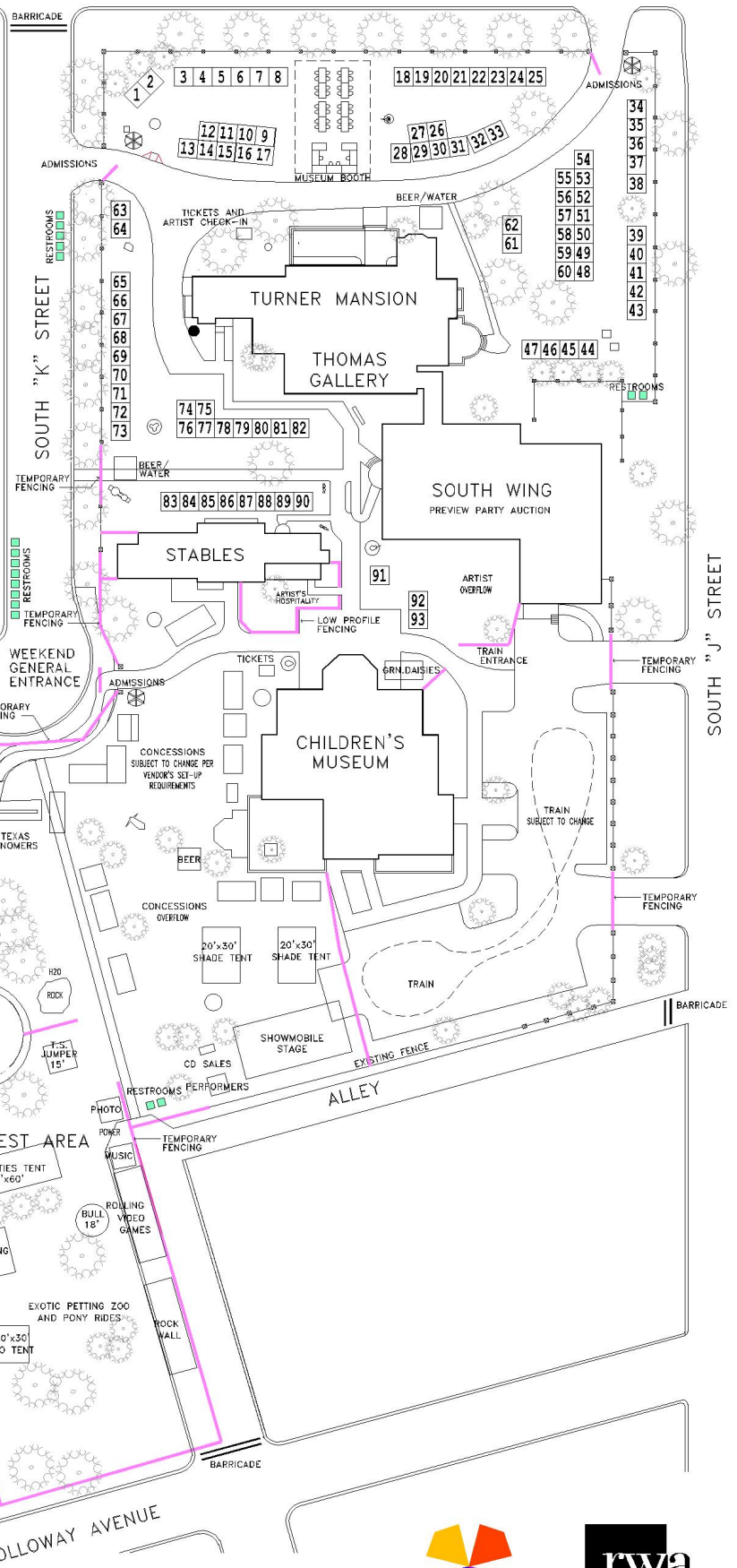
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



CITY OF MIDLAND, TEXAS
Planning Division

TEMPORARY LAND USE PERMIT APPLICATION

Submission Requirements: Application shall be submitted to the Planning Division not less than eighteen (18) days prior to the City Council meeting at which action is desired.

Application is hereby made to the City Council for a Temporary Land Use Permit:

Name of Applicant: MUSEUM OF THE SOUTHWEST Phone: 432-683-2882
 Applicant's Address: 1705 W. Missouri Ave., Midland E-mail: _____
 Property Owner: Same as above Phone: "
 Owner's Address: " " " E-mail: "

Other required information:

- Street address and legal description of property: 1705 W. Missouri (MSW Grounds)
Lots 10-12, Block 93, Lots 1-5, Block 105 + Blocks 94 + 104
- Zoning District: PDC & IF-1 West end addition
- Type of temporary use requested: Annual Festival
- Duration of temporary use: 3 Days
 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.
- Proposed days and hours: 9/17 6-11pm 9/18 9-6pm, 9/19 12-5pm
- Will alcoholic beverages be sold? ☒ Yes ☐ No
- A detailed Site Plan is required (16 copies needed (FOLDED), plus digital - .jpg and .pdf). Show existing buildings, parking, access arrangements, surrounding streets, activity areas, areas of alcoholic beverage sales, proposed street closures, etc.
 Site Plan received: ☐ Yes ☐ No

8. Are you requesting the temporary closure of any streets? ☒ Yes ☐ No

If yes, you must:

- A. Obtain and complete the "Special Event and Street Closure Application", available in the Transportation Division office (5th Floor, City Hall).
- B. Provide the City with a **general liability insurance certificate**, naming the **City** as an **Additional Insured**, in the amount of one million dollars (\$1,000,000) for the term of the closure.

9. Other information: Number of security guards provided: Approx. 12
Number of restrooms provided: 15
Type of music (carnival, live, etc.): Live Community Group performers
Showmobile requested Days and hours

10. A **\$500.00 Clean-up Deposit** and a **\$500.00 Damage Deposit** are required for all events. Checks need to be dated day of event. Inspection of site after the event for trash and damage is a City responsibility. The deposits, or a portion thereof, may be refunded following inspection.

Clean-up Deposit received: ☒ (Y) ☐ (N) Clean-up Deposit refunded: ☐ (Y) ☐ (%) ☐ (N)

Damage Deposit received: ☒ (Y) ☐ (N) Damage Deposit refunded: ☐ (Y) ☐ (%) ☐ (N)

11. A **\$200 Application Review fee** is required. Fee received: ☒ Yes ☐ No
\$25.00 for each additional event date.

Owner or Operator (if other than Applicant) responsible for ensuring that the conditions of this permit will be observed:

Printed Name of Owner/Operator

Address

Zip

Phone

Signature of Owner/Operator

Date

Valerie Tinker

Signature of Applicant

7/12/12

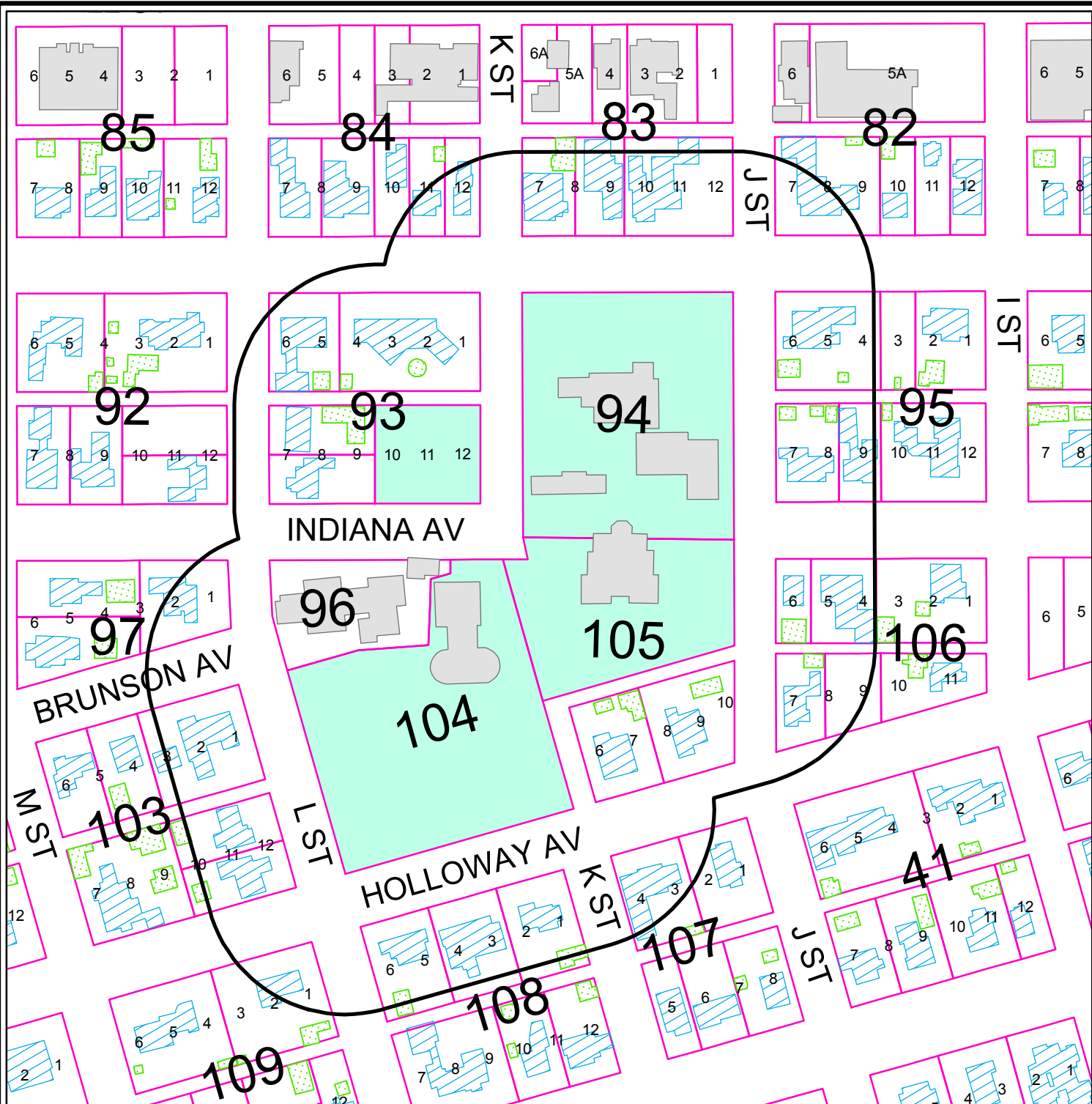
Date

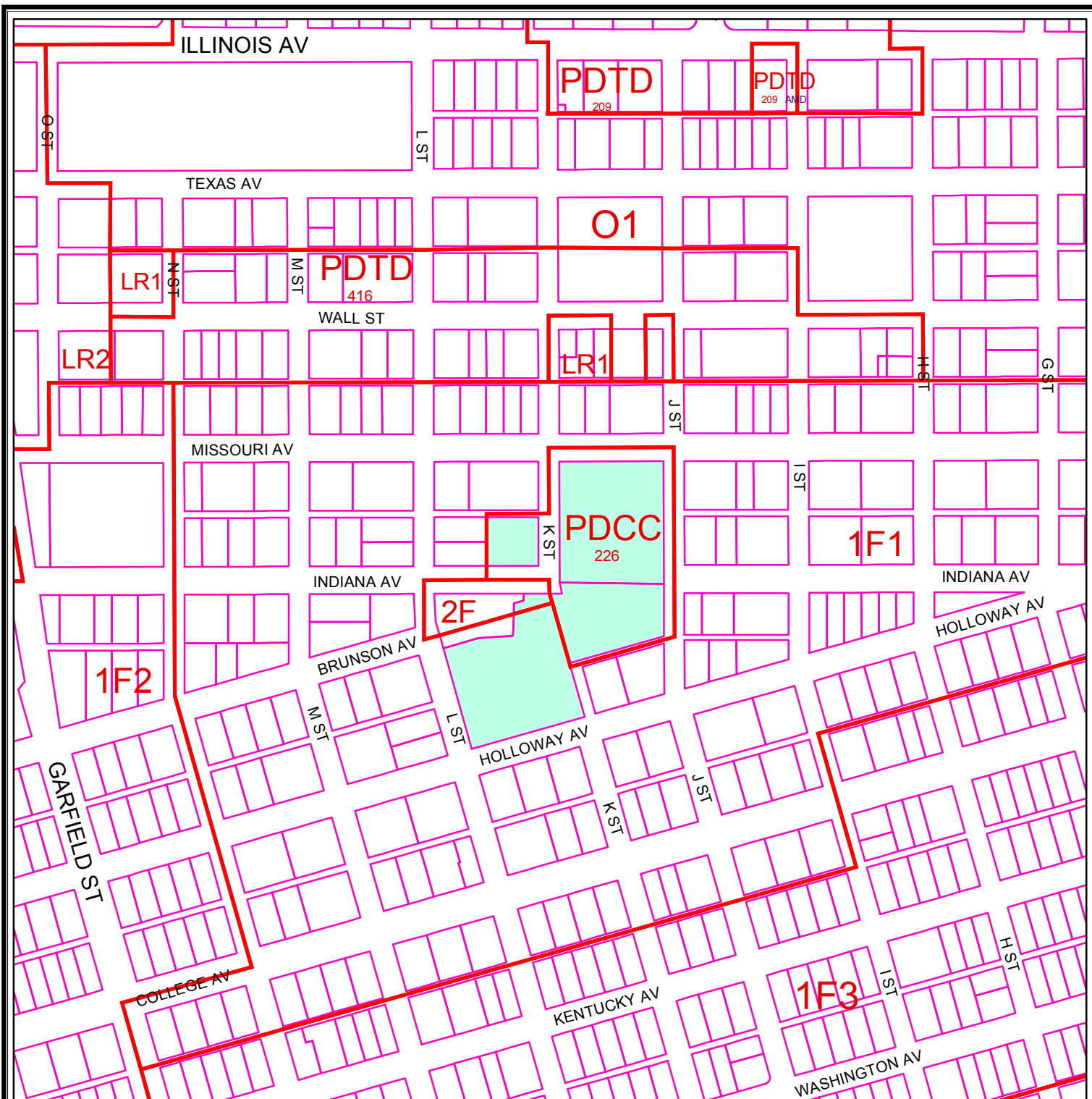
Signature of Property Owner, if other than Applicant

Date

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

FOR OFFICE USE ONLY	
Received By: <u>TS</u>	Date: <u>7/13/2012</u>
Assigned: <u>MS</u>	
For: <u>CC</u>	On: <u>8/14/12</u>





ZONING MAP

M - 12 - 017

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:

City Manager's Office

MEETING DATE: August 14, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Bob McNaughton, Director of Finance

SUBJECT: Second Public Hearing on Tax Increase

Purpose:

Public notification of tax increase and to provide public forum for citizen input on tax increase.

Recommended City Council Action:

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

Proposed ad valorem tax rate of .461088 per \$100 valuation

Discussion:

The proposed rate is a .9452 cent, 2.01%, decrease from the current rate of .47054.

The proposed rate is a 1.3646 cent, 3.05% increase over the effective rate of .4474426.

The combined proposed rate of .461088 per \$100 valuation for fiscal year 2012 - 2013 is composed of a maintenance and operations rate of .404049 per \$100 valuation and a debt service levy of .057039 per \$100 valuation.

Attached are the certified appraisal roll received from MCAD on July 20, 2012, the "Notice of Public Hearing on Tax Increase" as published in the MRT on July 25, 2012, and the distribution worksheet for current and delinquent ad valorem tax revenues.

Additionally, the dates of August 21, 2012 and August 27, 2012 at 9:00 a.m. are to be announced as the date and time for the vote on the tax rate.



MIDLAND CENTRAL APPRAISAL DISTRICT
4631 ANDREWS HWY.
P. O. BOX 908002 MIDLAND, TEXAS 79708-0002
(432) 699-4991 FAX (432) 689-7185

JERRY BUNDICK
RPA, RTA
Chief Appraiser

July 20, 2012

Mr. Robert McNaughton
Finance Director
City of Midland
P. O. Box 1152
Midland, Texas 79702

Dear Robert:

Enclosed please find the Certification of the 2012 Appraisal Roll for the City of Midland.

If you have any questions, please contact me.

Sincerely,

Jerry Bundick, RPA, RTA
Chief Appraiser

JB/cc
Enclosure

CERTIFICATION OF 2012 APPRAISAL ROLL CITY OF MIDLAND

GROSS VALUE	\$8,342,331,820
LOSS DUE TO AGRICULTURAL USE	(\$44,269,410)
CONSTITUTIONAL EXEMPT PROPERTY	(\$405,888,265)
DISABLED VETERAN EXEMPTION	(\$4,537,600)
DISABLED VETERAN EXEMPTION FROZEN	\$0
DISABLED VETERAN EXEMPTION (100%)	(\$13,599,750)
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)	(\$49,591,659)
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	(\$165,698)
FREEPORT EXEMPTION	(\$1,903,554)
MINIMUM VALUE LOSS (MINERALS & PERSONAL PROPERTY	(\$65,340)
PARTIAL YEAR EXEMPTION/ LEASED VEHICLES & OTHER	(\$2,318,590)
10% CAP LOSS	(\$83,656,470)
TOTAL TAXABLE VALUE FOR 2012	\$7,736,335,484
LESS VALUE STILL UNDER PROTEST	(\$332,883,920)
ESTIMATED VALUE THAT WILL BE CERTIFIED BY ARB	\$251,334,564
ESTIMATED TOTAL TAXABLE VALUE FOR 2012	\$7,654,786,128

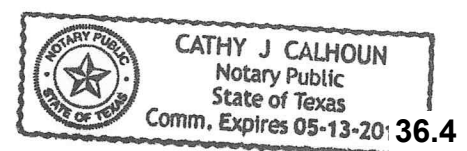
I, Jerry M. Bundick, Chief Appraiser for the Midland Central Appraisal District, do solemnly swear or affirm that I have made, or caused to be made, a diligent effort to ascertain all property in the City of Midland subject to appraisal by me and that I have included in the certification the market and taxable values of property that I am aware of at an appraised value determined as required by law.

Jerry M. Bundick

Jerry M. Bundick

Sworn to and subscribed before me the 20th day of July, 2012

Cathy J. Calhoun



**CERTIFICATION OF 2012 APPRAISAL ROLL
CITY OF MIDLAND**

	REAL ESTATE	P P	P&A MIN	P&A PP	TOTALS
GROSS VALUE	\$7,353,537,940	\$649,413,890	\$60,451,810	\$278,928,180	\$8,342,331,820
LOSS DUE TO AGRICULTURAL USE	(\$44,269,410)	\$0	\$0	\$0	(\$44,269,410)
CONSTITUTIONAL EXEMPT PROPERTY	(\$403,258,695)	(\$2,419,230)	(\$210,340)	\$0	(\$405,888,265)
DISABLED VETERAN EXEMPTION	(\$4,531,940)	(\$5,660)	\$0	\$0	(\$4,537,600)
DISABLED VETERAN EXEMPTION FROZEN	\$0	\$0	\$0	\$0	\$0
DISABLED VETERAN EXEMPTION (100%)	(\$13,599,750)	\$0	\$0	\$0	(\$13,599,750)
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)	(\$49,504,478)	(\$87,181)	\$0	\$0	(\$49,591,659)
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	(\$21,360)	\$0	(\$144,338)	(\$165,698)
FREEPORT EXEMPTION	\$0	(\$708,654)	\$0	(\$1,194,900)	(\$1,903,554)
MINIMUM VALUE LOSS (MINERALS & PERSONAL PROPERTY	\$0	(\$21,240)	(\$44,100)	\$0	(\$65,340)
PARTIAL YEAR EXEMPTION/ LEASED VEHICLES & OTHER	(\$2,309,090)	(\$9,500)	\$0	\$0	(\$2,318,590)
10% CAP LOSS	(\$83,656,470)	\$0	\$0	\$0	(\$83,656,470)
TOTAL TAXABLE VALUE FOR 2012	\$6,752,408,107	\$646,141,065	\$60,197,370	\$277,588,942	\$7,736,335,484
LESS VALUE STILL UNDER PROTEST	(\$318,080,300)	(\$14,803,620)	\$0	\$0	(\$332,883,920)
ESTIMATED VALUE THAT WILL BE CERTIFIED BY ARB	\$240,468,707	\$10,865,857	\$0	\$0	\$251,334,564
ESTIMATED TOTAL TAXABLE VALUE FOR 2012	\$6,674,796,514	\$642,203,302	\$60,197,370	\$277,588,942	\$7,654,786,128

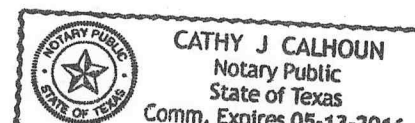
I, Jerry M. Bundick, Chief Appraiser for the Midland Central Appraisal District, do solemnly swear or affirm that I have made, or caused to be made, a diligent effort to ascertain all property in the City of Midland subject to appraisal by me and that I have included in the certification the market and taxable values of property that I am aware of at an appraised value determined as required by law.

Jerry M. Bundick

Jerry M. Bundick

Sworn to and subscribed before me the 20th day of July, 2012

Cathy J. Calhoun



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 3.05 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 7, 2012, at 9:00 a.m. at Midland City Hall, City Council Chambers, 300 N. Lorraine.

The second public hearing will be held on August 14, 2012, at 6:00 p.m. at Midland City Hall, City Council Chambers, 300 N. Lorraine.

The members of the governing body voted on the proposal to consider the tax increase as follows:

FOR: Trost, Morales, Hailey, James, Sparks, Perry

AGAINST: None

PRESENT and not voting: None

ABSENT: Dufford

The average taxable value of a residence homestead in The City of Midland last year was \$166,207. Based on last year's tax rate of \$.47054 per \$100 of taxable value, the amount of taxes imposed last year on the average home was \$782.07.

The average taxable value of a residence homestead in The City of Midland this year is \$173,975. If the governing body adopts the effective tax rate for this year of \$.4474426 per \$100 of taxable value, the amount of taxes imposed this year on the average home would be \$778.44.

If the governing body adopts the proposed tax rate of \$.461088 per \$100 of taxable value, the amount of taxes imposed this year on the average home would be \$802.18.

Members of the public are encouraged to attend the hearings and express their views.

07/24/12
10:52:44

\$0.4543594 Eff. RATE (Comb. M&O+I&S)"

\$0.3973206 est. Eff.M&O

*est chg pr yr base at left

**est net new adds

29,229,060 Prior Yr tot. M&O anticipation

29,825,572 Prior Yr curr. M&O levy

\$3,540,837 Prior Yr curr. I&S levy

\$33,366,409 Prior Yr adj. tot curr. levy

\$7,091,088,720	3.93% *	2.41% **
-----------------	---------	----------

2013 ESTIMATED TAXABLE VALUE:

PROPOSED
RATEEFFECTIVE
RATE
(REVISED EST.)

EFFECTIVE
RATE
+ 3%

EFFECTIVE
M&O RATE
+8%+I&S

TAX RATE PER \$100 OF VALUATION

TOTAL 2013 TAX LEVY (est.)

EST. 2013 REV. AT COLLECTION RATE OF 98.00%

EST. DEL. COLLECT AT 2.0% OF PREV YR	\$33,384,453
--------------------------------------	--------------

ESTIMATED TOTAL COLLECTIONS

REQUIRED I&S CURRENT LEVY

GENERAL FUND OPERATIONS (Net of TIRZ Increment)

Gen. Fund REVENUE FROM EACH \$0.01 OF TAX RATE (est.)

Gen. Fund REVENUE FROM EACH 1% OF RATE CHANGE (est.)

EFFECT OF INCREASE (DEC) ON \$100,000 PROPERTY

approx. Eff. plus

ESTIMATED DISTRIBUTION OF TAX RATE AND REVENUE FROM 2011 AND PRIOR ROLLS

INTEREST AND SINKING FUND REQ.
(from I&S Service model)

4,288,766

	RATE	PERCENT
	----	-----
GENERAL	0.41845	88.92%
INTEREST AND REDEMPTION	0.05209	11.08%
	-----	-----

EFFECTIVE RATE

\$0.4474

EFFECTIVE PLUS 3%

\$0.4609

TOTAL	0.47054	100.00%
-------	---------	---------

TIRZ INCREMENT
TIRZ INCREMENT REVENUE AT PROPOSED

114,515,359
528,017

PROPOSED DISTRIBUTION OF TAX RATE AND REVENUE FROM 2012 ROLL

	CURRENT RATE	CURRENT PERCENT
	----	-----
GENERAL	0.404049	87.63%
INTEREST AND REDEMPTION	0.057039	12.37%

PERCENT
CURR \$

TOTALS

DELINQUENT

TOTAL	0.461088	100.00%
-------	----------	---------

100.00%

34,738,997

667,689

City of Midland
City Secretary's Office
Interoffice Memorandum

Date: August 9, 2012
To: The Honorable Mayor Perry and Council
From: Amy M. Turner, City Secretary
Subject: Membership - Boards and Commissions

Attached is an updated membership listing for the City's Boards and Commissions effective August 14, 2012. Remaining expirations and vacancies are listed below:

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS – Two vacancies for Alternate terms expired on September 30, 2007.

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION – Two terms expired in November 2011.

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION – Three vacancies expired on January 1, 2007, one term expired on January 1, 2009, two terms expired on January 1, 2010 and one term expired on January 1, 2012.

MIDLAND HOUSING FINANCE CORPORATION – One vacancy expired on September 30, 2010 and two terms expired on September 30, 2011.

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD – One vacancy.

OIL AND GAS ADVISORY COMMITTEE - One vacancy.

PARKS AND RECREATION COMMISSION – One term expired on September 30, 2011.

PERMIAN BASIN AIRPORT BOARD – Two terms expired on September 30, 2010 (Carlsbad and Hobbs New Mexico) and two terms expired on September 30, 2011.

PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH AND MENTAL RETARDATION – One term expiring in June 2012.

PLANING AND ZONING COMMISSION – One term expired on September 30, 2011.

TAX INCREMENT REINVESTMENT ZONE BOARD – One term expired on March 20, 2009 (one College representative), seven terms expired on March 20, 2010, two terms expired March 20, 2011 and two terms expired on March 20, 2012. (Four City representatives, two Hospital representatives, two County representatives and one College representative.)

ZONING BOARD OF ADJUSTMENT AND AIRPORT ZONING BOARD OF ADJUSTMENT- Two terms expired on September 30, 2011, one vacancy for Alternate term expired on September 30, 2006 and one vacancy for Alternate term expired September 30, 2009.

BOARDS AND COMMISSIONS OF THE CITY OF MIDLAND

August 14, 2012

AIRPORT PLANNING AND DEVELOPMENT BOARD

(Advisory)

(Membership-10; Terms - 3 Years expiring 3-3-4.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ronald Schwisow	09/06	Sept 30 2012	Sept 30 2012
Herbert Blankinship	09/06	Sept 30 2012	Sept 30 2012
Jerry Walton	11/09	Sept 30 2012	Sept 30 2015
Mike Owen	10/07	Sept 30 2013	Sept 30 2013
Gregory F. Baiano	09/10	Sept 30 2013	Sept 30 2016
John T. Echols	09/10	Sept 30 2013	Sept 30 2016
Dallas L. Smith	09/10	Sept 30 2013	Sept 30 2016
Earl Erdmann, Chairman	09/08	Sept 30 2014	Sept 30 2014
Brooks Smith	11/11	Sept 30 2014	Sept 30 2017
Don "Woody" Woodward	11/11	Sept 30 2014	Sept 30 2017

Ex-Officio members are Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

ANIMAL SERVICES ADVISORY COMMISSION

(Advisory)

(Membership - 6; Terms - 4 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Dr. Tom Green (Veterinarian)	10/07*	Sept 30 2013	Sept 30 2017
Kelly Spencer	09/09	Sept 30 2013	Sept 30 2017
Laura Hollifield	09/08*	Sept 30 2013	Sept 30 2017
Justin Petty	04/07*	Sept 30 2013	Sept 30 2017
Tony Carrillo	09/09	Sept 30 2013	Sept 30 2017
Paul O'Neill	09/09	Sept 30 2013	Sept 30 2017

BUILDING CODES REVIEW COMMITTEE

(Membership – 9; Terms – 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
James Rigger	12/09	Dec 31 2013	Dec 31 2013
Chris Repman	12/09	Dec 31 2013	Dec 31 2013
John Cooper	12/09	Dec 31 2013	Dec 31 2013
Bill Routh	12/09	Dec 31 2013	Dec 31 2013
Tom Woodruff	12/09	Dec 31 2013	Dec 31 2013
Ron Ainsworth	12/09	Dec 31 2013	Dec 31 2013
Walter Pate	12/09	Dec 31 2013	Dec 31 2013
Robert Harrington	12/09	Dec 31 2013	Dec 31 2013
Jerry Morales	12/09	Dec 31 2013	Dec 31 2013

* Indicates appointment to an unexpired term.

CITY DEVELOPMENT ADVISORY COMMITTEE

(Advisory)

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vicky Hailey	09/10	Sept 30 2012	Sept 30 2014
Reggie Lawrence	09/10	Sept 30 2012	Sept 30 2014
Lena Margita	10/09	Sept 30 2013	Sept 30 2013
Alonda Massey	11/11	Sept 30 2013	Sept 30 2015
Tim Bryson	11/11	Sept 30 2013	Sept 30 2015

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

(Decision Making)

(Membership - 7; Terms - 4 Years expiring 2-2-2-1)

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>Eligibility Expires</u>	<u>Appt Date</u>	<u>Term Expires</u>	<u>Position</u>
Don Woodward (At Large)	11/11*	Sept 30 2012	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>
Tyler Wolfe	04/11*	Sept 30 2012	Sept 30 2012
Jon S. Blair	02/09*	Sept 30 2012	Sept 30 2014
Karmen Hendrix Bryant	02/12*	Sept 30 2013	Sept 30 2017
David Baur	09/10	Sept 30 2013	Sept 30 2014
Lisa Grissom	9/09	Sept 30 2013	Sept 30 2013
Steve Jones	02/09*	Sept 30 2013	Sept 30 2013
Alex Singh-Hotel/Motel Assn. Rep.	09/09	Dec 31 2013	Assn. Appt.
Vicky Hailey (Liaison Officer)			

- Indicates appointment to an unexpired term.

HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Rosie Gransberry	06/08*	Oct 2012	Oct 2012
Norma Duran	11/08*	Oct 2012	Oct 2014
Gregory Maes	11/11	Oct 2013	Oct 2015
Carla Repman, Vice Chairman	09/09	Oct 2013	Oct 2013
James A. Blischke	01/10	Oct 2013	Oct 2013

ALTERNATES:

Dennis Bade	11/11	Oct 2013	Oct 2015
-------------	-------	----------	----------

JOINT ECONOMIC DEVELOPMENT TASK FORCE

(Ad Hoc)

	<u>Appt. Date</u>
(Midland)	
Wes Perry	01/08
LuAnn Morgan	12/00
Keith Stretcher	12/00
Tommy Hudson	08/07
John Breier	01/04
(Odessa)	
Larry Melton	08/01
Jim Morris	11/00
Richard Morton	01/02
Joel Roberts	11/00
Neil McDonald	11/00

MANAGED COMPETITION COMMITTEE

(Ad Hoc)

	<u>Appt. Date</u>
Jon Morgan	01/02
Wes Perry	01/02
Roy Nelson	01/02
Hugh "Andy" Shaffer	12/03
Scott Dufford	01/02
Ted Tipton	04/04
Kevin Sparks	11/07
Scott Lovett	04/10
P. Lourcey Sams	04/10

Ex-Officio members are the Mayor and the City Manager.

- **Indicates appointment to an unexpired term.**

MIDLAND CENTER ADVISORY BOARD

(Advisory & Decision Making)

(Membership - 9; Terms - 3 Years expiring 3-2-2.)

		<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Brent Blackburn	(City)	09/09*	Sept 30 2013	Sept 30 2016
Charles Spence	(CC)	11/07	Sept 30 2013	N/A
Lorri Lyon West	(City)	09/10	Sept 30 2013	Sept 30 2016
Patricia S. Blackwell	(City)	10/07*	Sept 30 2014	Sept 30 2014
Paula Mitchell	(City)	09/08	Sept 30 2014	Sept 30 2014
Greg Turner	(CC)	12/11	Sept 30 2014	N/A
Tracy Bacon	(CC)	12/11	Sept 30 2014	N/A
Jerry Morales (Liaison Officer)				

Ex-Officio members are the City Manager and Executive Director of the Chamber of Commerce.

MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

Five Directors, Elected by Local Taxing Entities.

City Nominates/Cast Vote for one Director

(Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>
Chad Clark	3/12*	Dec 31 2013

MIDLAND DEVELOPMENT CORPORATION

(Membership - 5; Terms -3 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Michael Trost	02/11*	Jan 14 2013	Jan 14 2019
Cary J. Love	12/09	Jan 14 2013	Jan 14 2016
Gary Douglas	11/11*	Jan 14 2013	Jan 14 2019
Laura Roman	01/08	Jan 14 2014	Jan 14 2014
Robert Rendall, Chairman	01/09*	Jan 14 2014	Jan 14 2017

- Indicates appointment to an unexpired term.

MIDLAND FRESH WATER SUPPLY DISTRICT #1

(Ad Hoc)

(3 Non Voting Members)

	<u>Appt Date</u>
Wes Perry	05/12
Gary Harris	05/12
Wayne Merritt	05/12

**MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX
DEVELOPMENT CORPORATION**

(Decision Making)

Membership - 7; Terms - 2 Years)

	<u>Appt Date</u>	<u>Eligibility Term Expires</u>	<u>Expires</u>
Ken Marks, Vice President	10/07	Nov 2011	Nov 2011
James G. Smith	12/07	Nov 2011	Nov 2011
Mike Thompson	11/11	Nov 2013	Nov 2015
Tim Bryson	11/11	Nov 2013	Nov 2015
Wesley D. Bownds	02/09*	Nov 2013	Nov 2013
John James	08/08*	Nov 2013	Nov 2013
Rick Davis (MISD Resp.)	10/10*	Nov 2013	Nov 2015

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2009	
Cathy Oestmann	11/05*	Jan 1 2010	Jan 1 2010
Steve Jones	09/08*	Jan 1 2010	Jan 1 2012
Curt Kamradt	11/05*	Jan 1 2012	Jan 1 2012

- Indicates appointment to an unexpired term.

MIDLAND HOUSING FINANCE CORPORATION

(Decision Making)

(Membership - 5; Terms - 2 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy - (Damon L. Blakeley)	07/07*	Sept 30 2010	
Adrienne Valencia	10/07	Sept 30 2011	Sept 30 2011
Melissa Wicker	10/07	Sept 30 2011	Sept 30 2011
Jerry Morales (Liaison Officer)	10/08	Sept 30 2012	Sept 30 2012
Nathan Miller	11/11*	Sept 30 2012	Sept 30 2016

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD

(Ad Hoc)

Appt. Date

Vacancy	
Richard Hatchett	11/08
W. L. "Scooter" Brown	09/04
Ken Burgess	09/04
Jim Hightower	11/08
Ted H. Jones	09/04
Mitch Malouf	11/08
Christi Newton	09/04
Dan Rush	09/04

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making)

(Membership - 6; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Willie Barber	09/08	Sept 30 2012	Sept 30 2012
Raymond McCarthy	09/08	Sept 30 2012	Sept 30 2012
Michael Trost	09/08	Sept 30 2012	Sept 30 2012
John H. James	09/09	Sept 30 2013	Sept 30 2013
Karen York	06/09*	Sept 30 2013	Sept 30 2013
Guy McKenize	03/11*	Sept 30 2013	Sept 30 2015

- Indicates appointment to an unexpired term.

OIL AND GAS ADVISORY COMMITTEE

(Advisory)

(Membership – 5; Terms – 3 Years expiring 2-2-1)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy (Richard D Dunham) (Petro Eng.)	01/10	Sept 30 2013	Sept 30 2016
D. Patrick Darden (Petroleum Eng.)	02/10	Sept 30 2012	Sept 30 2015
Don Eubank (Drilling Eng.)	04/10	Sept 30 2012	Sept 30 2015
Paul Brown	11/11	Sept 30 2014	Sept 30 2017
David Rosen	11/11	Sept 30 2014	Sept 30 2017

PARKS AND RECREATION COMMISSION

(Advisory)

(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Berry Simpson	09/10*	Sept 30 2011	Sept 30 2017
Amanda McCann	11/11*	Sept 30 2012	Sept 30 2018
David Ham	09/06	Sept 30 2012	Sept 30 2012
Charles A. Spence	01/10*	Sept 30 2013	Sept 30 2016
Susan Nichols	02/06*	Sept 30 2013	Sept 30 2013
Eric L. West	10/07	Sept 30 2013	Sept 30 2013
Kenny Harper	03/12*	Sept 30 2013	Sept 30 2019
P. Lourcey Sams	09/08	Sept 30 2014	Sept 30 2014
Tina Corbett	09/08	Sept 30 2014	Sept 30 2014

PERMIAN BASIN AIRPORT BOARD

(Advisory)

(Membership - 30; Terms - 1 year.)

	<u>Appt. Date</u>	<u>Term Expires</u>
10 Members of the Airport Planning and Development Board		
Bob Forrest (Carlsbad, NM)	10/04	Sept 30 2010
Larry Shed (Hobbs, NM)	10/01	Sept 30 2010
Larry Gill (Abilene)	10/10	Sept 30 2011
Isabelle Blanchard (Pecos)	10/10	Sept 30 2011
Elvin Brownlee III (Andrews)	12/10*	Sept 30 2012
Jim Little (Big Spring)	09/03	Sept 30 2012
David Hardwick (Ft. Stockton)	10/07	Sept 30 2012
Don Bethel (Lamesa)	02/91	Sept 30 2012

Henry Cutbirth (Monahans) 09/05 Sept 30 2012

- Indicates appointment to an unexpired term.

PERMIAN BASIN AIRPORT BOARD CON'T

	<u>Appt. Date</u>	<u>Term Expires</u>
Willie Taylor (Odessa)	02/00	Sept 30 2012
Gloria Pena (Odessa)	03/03*	Sept 30 2012
Barbara Graff (Odessa)	06/10*	Sept 30 2012
Luis E. Elguezabal (San Angelo)	10/07	Sept 30 2012
Lex Hinds (Seminole)	10/08	Sept 30 2012
Glenn Wortham (Sweetwater)	10/07	Sept 30 2012
John Rogotzke (Snyder)	01/12	Sept 30 2012
Lance Goodrich (Artesia, NM)	09/09	Sept 30 2012
Larry Fry (Roswell, NM)	09/00	Sept 30 2012

Ex-Officio members are the City Manager and the City Attorney. The Secretary is the Director of Aviation.

**PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH
AND MENTAL RETARDATION**

(Decision Making)

(Membership - 2 (City); Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Janet R. Pritchett (City)	05/09*	June 2012	June 2014
Larry Edgerton	07/10*	June 2013	June 2015

PERSONNEL BOARD OF APPEALS

(Decision Making)

(Membership - 3; No designated terms.)

	<u>Appt. Date</u>
John James	03/08
Hugh A. "Andy" Shaffer	09/05
Michael Trost	01/10

- Indicates appointment to an unexpired term.

PLANNING AND ZONING COMMISSION

(Advisory & Decision Making)
(Membership - 9; Terms - 3 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Becky Ferguson, Chairman	03/04*	Sept 30 2011	Sept 30 2011
Kevin Wilton	09/08*	Sept 30 2012	Sept 30 2015
Bill Woodruff	02/05*	Sept 30 2012	Sept 30 2012
Royce Watkins	02/08*	Sept 30 2012	Sept 30 2015
Karen York	01/10*	Sept 30 2012	Sept 30 2018
Jane Wolf	03/09*	Sept 30 2013	Sept 30 2016
Cindy Lanning	09/10	Sept 30 2013	Sept 30 2016
Jay Norris	11/11	Sept 30 2014	Sept 30 2017
Galen Gatten, Vice Chairman	09/08	Sept 30 2014	Sept 30 2014

ALTERNATES:

Tony Carrillo	11/11	Sept 30 2014	Sept 30 2017
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TAX INCREMENT REINVESTMENT ZONE BOARD

(Decision Making)
(Membership - 12; Terms - 2 Years, or 3 Years if appointed after 3/1/07)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Neil Florer (College)	07/01	Mar 20 2009	Mar 20 2009
Dan Rush (City)	07/01	Mar 20 2010	Mar 20 2010
Mark T. Wellen (City), Vice Chairman	07/01	Mar 20 2010	Mar 20 2010
Jay Reynolds (Hospital)	03/02	Mar 20 2010	Mar 20 2010
Ralph Way (College)	07/01	Mar 20 2010	Mar 20 2010
Randy Prude (County)	03/07	Mar 20 2010	Mar 20 2013
Judge Mike Bradford (County)	01/07*	Mar 20 2010	Mar 20 2014
C. Mark Wheeler (City), Treasurer	04/08	Mar 20 2011	Mar 20 2014
Bob Lanier (City), Secretary	04/03	Mar 20 2011	Mar 20 2011
Brent Kennedy (City)	06/09	Mar 20 2012	Mar 20 2015
John L. Kennedy (City)	10/09*	Mar 20 2012	Mar 20 2018
Pete Hulder (Hospital)	03/10	Mar 20 2013	Mar 20 2016

Ex-Officio member is President, Board of Trustees, Midland Independent School District

- Indicates appointment to an unexpired term.

ZONING BOARD OF ADJUSTMENT
AND
AIRPORT ZONING BOARD OF ADJUSTMENT

(Decision Making)

(Membership - 5; Terms - 2 Years expiring 3 odd & 2 even.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Trudi Edwards	10/07	Sept 30 2011	Sept 30 2011
Manny Ribera	10/07	Sept 30 2011	Sept 30 2011
Todd Byars	02/08*	Sept 30 2012	Sept 30 2014
Ken Morgan	01/10*	Sept 30 2012	Sept 30 2014
Carla Repman	01/10*	Sept 30 2013	Sept 30 2015

ALTERNATES: (not applicable to Airport Zoning)

Vacancy		Sept 30 2006	
Vacancy		Sept 30 2009	
Annabel Holguin	11/11	Sept 30 2013	Sept 30 2015
Greg Turner	11/11	Sept 30 2013	Sept 30 2015

- * Indicates appointment to an unexpired term.

RICHARD D. DUNHAM
4701 ISLAND DRIVE
MIDLAND, TEXAS 79707-1408
PHONE (432)-520-7145 FAX (877)-443-5696
E-MAIL: rddunham@ashingdon.com

July 27, 2012

Amy Turner, City Secretary
City of Midland
300 N. Loraine
Midland, TX 79701

Re: Resignation of Appointment to the Oil and Gas Advisory Committee

Dear Amy,

It is with significant disappointment that I must tender my resignation in serving on the Oil and Gas Advisory Committee. I recently was diagnosed with a serious medical condition which will require me to spend significant time away from our Midland community and will limit my ability to serve on the Committee.

I was deeply honored to be named to the committee and have enjoyed serving the City. I am hopeful that I may one day return to serving our community in another volunteer capacity.

Please consider my resignation effective immediately unless an alternate date would be helpful in filling this position.

Sincerely,

A handwritten signature in cursive script, reading "Richard", with a long horizontal flourish extending to the right.



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: _____

Address: _____

(City) (State) (Zip)

I am ____ I am not ____ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ____ years.

Professional and/or Community Activities:

What is your personal vision for the City?

Please specify any time constraints you may have.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Please tell us why you are interested in serving on this board or commission.

Date: _____

Phone: _____ (Home)

(Business)

Email: _____

Are you a graduate of Midland 101? ____yes ____no

Occupation: _____

What contribution would you most like to make?

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Applications may be submitted online via email or print in order to send by mail or fax:

**City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433**



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Name: _____

Address: _____

(City)

(State)

(Zip)

I am ____ I am not ____ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ____ years.

Professional and/or Community Activities:

What is your personal vision for the City?

Please specify any time constraints you may have.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Please tell us why you are interested in serving on this board or commission.

Date: _____

Phone: _____ (Home)

_____ (Business)

Email: _____

Are you a graduate of Midland 101? ____yes ____no

Occupation: _____

What contribution would you most like to make?

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Applications may be submitted online via email or print in order to send by mail or fax:

**City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433**



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: _____

Address: _____

(City)

(State)

(Zip)

I am ____ I am not ____ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ____ years.

Professional and/or Community Activities:

What is your personal vision for the City?

Please specify any time constraints you may have.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Please tell us why you are interested in serving on this board or commission.

Date: _____

Phone: _____ (Home)

_____ (Business)

Email: _____

Are you a graduate of Midland 101? ____yes ____no

Occupation: _____

What contribution would you most like to make?

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Applications may be submitted online via email or print in order to send by mail or fax:

**City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433**