CITY OF MIDLAND, TEXAS
AGENDA FOR CITY COUNCIL MEETING
August 27, 2013 – 10:00 AM
Council Chamber - City Hall
300 North Loraine
Midland, Texas

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

OPENING ITEMS

1. Invocation - Pastor Douglas Lamb of Fannin Baptist Church

2. Pledge of Allegiance

PRESENTATIONS

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

    a. Presentation of Proclamation to Freddie Ezell in recognition of his many years of service and commitment to softball in Midland.

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 August 13, 2013.

6. Consider a resolution authorizing issuance of a request for proposals for refuse truck route optimization services for the Solid Waste Department. (GENERAL SERVICES) (2013 - 253)

7. Consider a resolution authorizing the execution of Naming Rights License Agreement for the Baseball Stadium at the Scharbauer Sports Complex; and naming the Baseball Stadium Security Bank Ball Park. (GENERAL SERVICES) (2013 - 254)

8. Consider a resolution authorizing issuance of a Request for Qualifications for a Pavement Condition Index Survey for the Engineering Department. (GENERAL SERVICES) (2013 - 255)

9. Consider a resolution allocating $84,367.00 for the City Facilities Renovation Project (Project 9059); and these funds are used to repair and replace various City facilities. (GENERAL SERVICES) (2013 - 256)

10. Consider a resolution authorizing the purchase of two (2) Holmatro rescue tools, and parts to repair the City's current Holmatro rescue tool, from Metro Fire Apparatus Specialists, Incorporated; said purchase was not bid but purchased as a sole source; and the costs for the two (2) rescue tools plus parts shall be approximately $68,110.55. (GENERAL SERVICES) (2013 - 257)

11. Consider a resolution authorizing the appropriation of Federal Aviation Grant #54 to certain capital improvement projects at Midland International Airport; authorizing the reimbursement of airport funds. (AIRPORTS) (2013 - 258)

12. Consider a resolution rejecting the single bid received for the project described as Taxiway P Aircraft Run-Up (7084) at the Midland International Airport. (AIRPORTS) (2013 - 259)

13. Consider a resolution authorizing the execution of Amendment Number Five to the Professional Services Agreement with Parkhill, Smith & Cooper, Incorporated, for improvements contained in the Airport Capital Improvement Program; said amendment to include the following projects: Airfield Lighting Cabling Replacement and Airfield Signage (7112), Rehabilitation Entrance Road Pavement and Guidance Signage Project (7113); and appropriating necessary funds. (AIRPORTS) (2013 - 260)

14. Consider a resolution authorizing the execution of a contract with Little Manufacturing, Inc. of Abilene, Texas, for the project described as Emergency Roadway and Gates Rehabilitation (7082) at the Midland International Airport; the Council previously authorized advertisement for bids for the project; the total estimated cost of said project is $764,835.50; and appropriating funds. (AIRPORTS) (2013 - 261)

15. Consider a resolution authorizing the execution of a contract with Jones Bros. of Odessa, Texas, for the project described as NW TaxiLane Extension Project Phase II (7083) at the Midland International Airport; the Council previously authorized advertisement for bids for the project; the City's share is $941,297.92; and appropriating funds. (AIRPORTS) (2013 - 262)

16. Consider a resolution acknowledging receipt of submission for preclearance from the United States Department of Justice regarding annexations by Ordinance Nos. 9141, 9158, 9159 and 9160 effective July 9, 2013. (CITY SECRETARY'S OFFICE) (2013 - 263)

17. Consider a resolution authorizing the execution of a Professional Services Agreement with Kimley-Horn and Associates, Inc. to provide engineering, planning, administration services, and implementation for the Citywide Traffic Analysis Project; and authorizing payment therefor in the amount of $1,255,000.00. (ENGINEERING SERVICES) (2013 - 264)

18. Consider a resolution authorizing a right-of-way license between the City of Midland, Texas and Pioneer Natural Resources, USA Incorporated, a Delaware Corporation; said right-of-way license is for entering the City of Midland's right-of-way for the purpose of placing, installing, constructing, operating, repairing, maintaining, replacing and removing up to two (2) petroleum and petroleum by products pipeline, for salt water disposal and to have the right of ingress and egress at convenient points for such purpose; the pipeline is located within the City of Midland right-of-way, Section 8, Block 38, T-1-S, T&P RR Co. Survey, Midland County, Texas; the license term is for five (5) 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. (ENGINEERING SERVICES) (2013 - 265)

19. Consider a resolution authorizing the execution of a Public Improvement Development Agreement with Devon Energy Production Co., L.P. for drainage improvements to Devon Addition; and appropriating funds therefor; said agreement being authorized by Section 395.081 of the Texas Local Government Code. (ENGINEERING SERVICES) (2013 - 266)

20. Consider a resolution authorizing the execution of a Public Improvement Development Agreement with KJ Texas Properties, LLC for paving improvements to South Baird Street; and appropriating funds therefor; said agreement being authorized by Section 395.081 of the Texas Local Government Code. (ENGINEERING SERVICES) (2013 - 267)

21. Consider a resolution authorizing the execution of a Temporary Water and Sewer Service Agreement between the City of Midland and Sun Development, Inc. for services to Lot 1, less 0.77 acres, Block 1, Warfield Industrial Park, Midland County, Texas (Commonly known as 10400 West Interstate 20); said property is outside the City limits; Sun Development, Inc. has executed a letter agreeing to annexation if and when the property is annexed; Sun Development, Inc. shall be charged a rate for service which is one and one-half times the rate charged customers in the City limits; and ordering recordation by the City Secretary. (ENGINEERING SERVICES) (2013 - 268)

22. Consider a resolution authorizing the execution of a Temporary Water and Sewer Service Agreement between the City of Midland and Sun Development,

Inc. for services to an approximate 4.66-acre tract of land out of the east half of Section 18, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas; said property is outside the City limits; Sun Development, Inc. has executed a letter agreeing to annexation if and when the property is annexed; Sun Development, Inc. shall be charged a rate for service which is one and one-half times the rate charged customers in the City limits; and ordering recordation by the City Secretary. (ENGINEERING SERVICES) (2013 - 269)

23. Consider a resolution authorizing the acceptance of a 248.9 square foot public water easement located in Lot 1, Block 1, Wallco Addition, Section 11, Midland, Midland County, Texas; and ordering recordation by the City Secretary. (ENGINEERING SERVICES) (2013 - 270)

24. Consider a resolution authorizing the acceptance of a 0.003-acre public drainage easement located in Lot 1, Block 1, Wallco Addition, Section 11, Midland, Midland County, Texas; and ordering recordation by the City Secretary. (ENGINEERING SERVICES) (2013 - 271)

25. Consider a resolution authorizing the acceptance of a 0.005-acre public drainage easement located in Section 14, Block 39, T-1-S, T&P RR Co. Survey, Midland, Midland County, Texas; and ordering recordation by the City Secretary. (ENGINEERING SERVICES) (2013 - 272)

SECOND READINGS

26. Consider an ordinance on second reading changing the zoning use classification of a 1.50-acre portion of Lot 53, Block 2, Skyview Development, City and County of Midland, Texas (Generally located on the west side of Irvin Drive, approximately 240 feet south of East Loop 250 North), which is presently zoned AE, Agriculture Estate District, by permitting said property to be used under a Specific Use Permit Without Term for a vineyard; making said permit subject to certain conditions and restrictions contained herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars ($2,000.00); and ordering publication. (DEVELOPMENT SERVICES)(First reading held August 13, 2013.)(9173)

27. 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 Lot 20, Block 5, North Park, Section 16, City and County of Midland, Texas, which is presently zoned PD, Planned District for a Shopping Center, to be used as an Amended Planned District (Generally located on the north side of Loop 250, east of Billingsley Boulevard); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars ($2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9174)

PUBLIC HEARINGS

28. At approximately 10:30 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) (2013 - 273)

29. At approximately 10:33 A.M. hold a public hearing and consider a resolution authorizing the temporary use of land for outdoor sales on Lots 1, 2, 10, 11 and 12, Block 58, Original Town, City and County of Midland, Texas (Generally located on the south side of West Texas Avenue, between North Pecos Street and North Marienfeld Street); making said permit subject to certain special conditions and restrictions contained herein. (DEVELOPMENT SERVICES) (2013 - 274)

30. At approximately 10:36 A.M. hold a public hearing and consider an ordinance changing the zoning use classification of the property described as a 929 square foot portion of Lots 7-9, Block 58, Original Town, City and County of Midland, Texas (Generally located on the northeast corner of the intersection of West Wall Street and North Pecos 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) (9177)

31. At approximately 10:39 A.M. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lots 2 and 4, Block 8, Westridge Park Addition, Section 23, City and County of Midland, Texas, which is presently zoned PD, Planned District for Housing Development, in part, and LR-2, Local Retail District, in part, to be used as a PD, Planned District for a Housing Development (Generally located near the southwest corner of the intersection of Deauville Boulevard and Tradewinds Boulevard); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars ($2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9178)

32. At approximately 10:42 a.m. hold a public hearing regarding a proposed oil and gas permit to Endeavor Energy Resources, L.P. (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Chaps #4) located 330 feet from the north line and 1,831 feet from the west line located in Section 9, Block X, H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the

north side of the Passage Way, approximately 1,800 feet east of north of N. Midkiff Road.) This is a public hearing only. No further action will be taken. (DEVELOPMENT SERVICES)

MISCELLANEOUS

33. Consider a resolution authorizing the issuance of a Building Permit for the Installation of a Manufactured Home on Lot 12, Block 10, East Midland Addition, City and County of Midland, Texas (Commonly known as 1311 Walnut Lane); and providing that the issuance of said permit does not undertake to adjudicate property rights; said permit was denied by the Building Official and this resolution is an appeal to the Midland City Council. (DEVELOPMENT SERVICES) (2013 - 275)

34. Consider an ordinance providing the maximum time limit for parking on a portion of the south side of Ohio Avenue from the west curb line of Colorado Street west to the north/south alley to two hours; authorizing and directing the Traffic Engineer to erect appropriate signs; declaring any vehicle in violation of the provisions of this ordinance a nuisance and providing for the removal of same; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two hundred dollars ($200.00); and ordering publication. (ENGINEERING SERVICES) (9179)

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

EXECUTIVE SESSION

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

    a. Section 551.074 Personnel Matters.

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

    b. Section 551.087 Deliberate Economic Development Negotiations.

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

Respectfully Submitted,

Courtney B. Sharp
City Manager

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

MIDLAND CITY COUNCIL
MINUTES
August 13, 2013

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:00 a.m., August 13, 2013.

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

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

The Agenda Items were heard in the following order: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 9, 15, 16, 19, 34, 35, 36, 39, 40, 41, 42, 43, 45, 37, 38, 46, and 44.

OPENING ITEMS

1. Invocation – Ron Jenkins

2. Pledge of Allegiance

PRESENTATIONS

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

   a. Council Member Love presented a Proclamation to Tedrick Macklin in recognition of his winning the 2013 Class A Junior Men's Black Belt World Championship in sparring.

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.

   Mayor Perry acknowledged Finance Director Bob McNaughton's birthday, and announced that today would be the last meeting for Utilities Director Stuart Purvis and Interim Planning Division Manager Ken VanDyne.

   There were no other citizens wishing to speak.

CONSENT AGENDA

Council Member Sparks moved to approve Consent Agenda items 5 - 36 excluding 9, 15, 16, 19, 34, 35, 36; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

5. Approved a motion approving the following minutes:

   a. Regular meeting of July 23, 2013.

   b. Special meeting of August 6, 2013.

6. Approved a resolution ratifying the emergency purchase of electrical work to replace wiring in vandalized light poles at Grande Stadium from D & E Electric LLC for the Parks Division. (GENERAL SERVICES)

   RESOLUTION NO. 2013 - 220

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

7. Approved a resolution approving a contract for paving, sidewalks, alleys and streets for the Engineering Services Department. (GENERAL SERVICES)

   RESOLUTION NO. 2013 - 221

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

8. Approved a resolution approving the sole source purchase of 500 - 520RA single port MXU's (radios) for the Customer Service Division. (GENERAL SERVICES)

   RESOLUTION NO. 2013 - 222

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

10. Approved a resolution approving the purchase of 3 refuse bodies and 1 cart body through HGAC from Kann Manufacturing Corporation of Guttenberg, Iowa for the Garage Division. (GENERAL SERVICES)

    RESOLUTION NO. 2013 - 224

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

PURCHASED THROUGH A COUNCIL OF GOVERNMENTS

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

RESOLUTION NO. 2013 - 225

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

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

RESOLUTION NO. 2013 - 226

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

13. Approved a resolution to authorize the Mayor to execute a Lease and Operating Agreement with the Midland County Fresh Water Supply District No. 1 (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2013 - 227

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

14. Approved a resolution approving a 20-foot sewer line easement. (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2013 - 228

RESOLUTION APPROVING A 20-FOOT SEWER LINE EASEMENT LOCATED IN SECTION 8, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS; PROVIDING THAT SAID EASEMENT SHALL BE IN A FORM

ACCEPTABLE TO WESTERN-T CORPORATION, VINEYARD RESERVE, LLC, AND THE CITY OF MIDLAND; AUTHORIZING THE CITY OF MIDLAND'S ACCEPTANCE OF SAID EASEMENT CONTINGENT UPON INSPECTION AND APPROVAL OF THE SEWER LINE LOCATED THEREIN; DETERMINING THE VALUE OF SAID EASEMENT TO BE $49,400; AND PROVIDING WESTERN-T CORPORATION A CREDIT IN SAID AMOUNT AT THE TIME OF PLATTING

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

RESOLUTION NO. 2013 - 231

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

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

RESOLUTION NO. 2013 - 232

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

20. Approved a resolution approving the issuance of a permit to CrownQuest Operating, LLC (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (COM Nail #1) located 1,550 feet from the south line and 1,980 feet from the east line located in Section 36, Block 39, T-1-N, T&P RR Co. Survey, City of Midland and County of Martin, Texas. (Generally located on the east side of the State Highway 349, approximately 2 ½ miles north of Arapahoe Road.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 234

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO CROWNQUEST OPERATING, LLC ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 1,550 FEET FROM THE SOUTH LINE AND 1,980 FEET FROM THE EAST LINE, SECTION 36, BLOCK 39, T-1-N, T&P RR CO. SURVEY, CITY OF MIDLAND AND MARTIN COUNTY, TEXAS (GENERALLY LOCATED ON THE

EAST SIDE OF THE STATE HIGHWAY 349, APPROXIMATELY 2 ½ MILES NORTH OF ARAPAHOE ROAD); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

21. Approved a resolution approving the issuance of a permit to CrownQuest Operating, LLC (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (COM Nail #2) located 660 feet from the north line and 2,173 feet from the east line located in Section 36, Block 39, T-1-N, T&P RR Co. Survey, City of Midland and County of Martin, Texas. (Generally located on the east side of the State Highway 349, approximately 3 miles north of Arapahoe Road.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 235

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO CROWNQUEST OPERATING, LLC ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 660 FEET FROM THE NORTH LINE AND 2,173 FEET FROM THE EAST LINE, SECTION 36, BLOCK 39, T-1-N, T&P RR CO. SURVEY, CITY OF MIDLAND AND MARTIN COUNTY, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF THE STATE HIGHWAY 349, APPROXIMATELY 3 MILES NORTH OF ARAPAHOE ROAD); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

22. Approved a resolution approving the issuance of a permit to CrownQuest Operating, LLC (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (COM Nail #3) located 467 feet from the north line and 467 feet from the east line located in Section 36, Block 39, T-1-N, T&P RR Co. Survey, City of Midland and County of Martin, Texas. (Generally located on the east side of the State Hwy 349, approximately 3 miles north of Arapahoe Road.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 236

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO CROWNQUEST OPERATING, LLC ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 467 FEET FROM THE NORTH LINE AND 467 FEET FROM THE EAST LINE, SECTION 36, BLOCK 39, T-1-N, T&P RR CO. SURVEY, CITY OF MIDLAND AND MARTIN COUNTY, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF THE STATE HIGHWAY 349, APPROXIMATELY 3 MILES NORTH OF ARAPAHOE ROAD); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

23. Approved a resolution approving the issuance of a permit to Callon Petroleum Operating Company (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Pecan Acres 23 #8) located 660 feet from the north line and 660 feet from the west line located in Section 23, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south side of the west extension of Mockingbird Lane, approximately ¾ mile west of Golden Gate Drive.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 237

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO CALLON PETROLEUM OPERATING COMPANY ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 660 FEET FROM THE NORTH LINE AND 660 FEET FROM THE WEST LINE, SECTION 23, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON

THE SOUTH SIDE OF THE WEST EXTENSION OF MOCKINGBIRD LANE, APPROXIMATELY 3/4 OF A MILE WEST OF GOLDEN GATE DRIVE); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

24. Approved a resolution approving the issuance of a permit to Callon Petroleum Operating Company (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Pecan Acres 22A #3) located 660 feet from the north line and 587 feet from the east line located in Section 22, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south side of the west extension of Mockingbird Lane, approximately 1 mile north of Briarwood Avenue.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 238

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO CALLON PETROLEUM OPERATING COMPANY (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 660 FEET FROM THE NORTH LINE AND 587 FEET FROM THE EAST LINE, SECTION 22, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF THE WEST EXTENSION OF MOCKINGBIRD LANE, APPROXIMATELY 1 MILE NORTH OF BRIARWOOD AVENUE); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

25. Approved a resolution approving the issuance of a permit to Petroplex Energy, Inc. (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Western-T 8 #4) located 2,173 feet from the south line and 2,173 feet from the west line located in Section 8, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the east side of the extension of North Midland Drive, approximately 1/2 mile north of Green Tree Boulevard.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 239

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO PETROPLEX ENERGY, INC. (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 2,173 FEET FROM THE SOUTH LINE AND 2,173 FEET FROM THE WEST LINE, SECTION 8, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF THE EXTENSION OF NORTH MIDLAND DRIVE, APPROXIMATELY ½ MILE NORTH OF GREEN TREE BOULEVARD); AND WAIVING THE REQUIREMENT OF A ROAD REPAIR AGREEMENT

26. Approved a resolution to grant a variance to Ordinance 8769 (January 1, 2010 Oil and Gas Well Drilling Ordinance) to allow building permits for residences, to be issued in the future, where the proposed residence, either in whole or part is no closer than 155.0 feet of an existing oil and gas well. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 240

RESOLUTION GRANTING A VARIANCE FOR LOTS 37-42, BLOCK 7, LOTS 4-13, 19-25 AND 36, BLOCK 18, LOTS 1-10, BLOCK 20, AND LOTS 1-7, 9-12 AND 21-25,

BLOCK 21, GREATHOUSE ADDITION, SECTION 7, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF HOLIDAY HILL ROAD, SOUTH OF MOCKINGBIRD LANE), BY PERMITTING CONSTRUCTION OF RESIDENCES WHERE NO PORTION OF ANY STRUCTURE IS CLOSER THAN 155.0 FEET OF AN OIL AND GAS WELL; AND AUTHORIZING ISSUANCE OF BUILDING PERMITS

27. Approved a resolution to grant a variance to Ordinance 8769 (January 1, 2010 Oil and Gas Well Drilling Ordinance) to allow building permits for residences, to be issued in the future, where the proposed residence, either in whole or part is no closer than 330.1 feet of an existing oil and gas well. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 241

RESOLUTION GRANTING A VARIANCE FOR LOTS 38-41, BLOCK 18, LOT 2, BLOCK 19, AND LOTS 1 AND 2, BLOCK 24, GREATHOUSE ADDITION, SECTION 7, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF HOLIDAY HILL ROAD, SOUTH OF MOCKINGBIRD LANE), BY PERMITTING CONSTRUCTION OF RESIDENCES WHERE NO PORTION OF ANY STRUCTURE IS CLOSER THAN 330.1 FEET OF AN OIL AND GAS WELL; AND AUTHORIZING ISSUANCE OF BUILDING PERMITS

28. Approved a resolution to grant a variance to Ordinance 8769 (January 1, 2010 Oil and Gas Well Drilling Ordinance) to allow building permits for residences, to be issued in the future, where the proposed residence, either in whole or part is no closer than 155.0 feet of an existing oil and gas well. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 242

RESOLUTION GRANTING A VARIANCE FOR LOTS 7-12 AND 15, BLOCK 13, LOTS 6, 7, 9 AND 13-39, BLOCK 14, LOTS 12-21, BLOCK 24, AND LOTS 3-16, BLOCK 26, GREATHOUSE ADDITION, SECTION 7, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF HOLIDAY HILL ROAD, SOUTH OF MOCKINGBIRD LANE), BY PERMITTING CONSTRUCTION OF RESIDENCES WHERE NO PORTION OF ANY STRUCTURE IS CLOSER THAN 155.0 FEET OF AN OIL AND GAS WELL; AND AUTHORIZING ISSUANCE OF BUILDING PERMITS

29. Approved a resolution to grant a variance to Ordinance 8769 (January 1, 2010 Oil and Gas Well Drilling Ordinance) to allow building permits for residences, to be issued in the future, where the proposed residence, either in whole or part is no closer than 155.0 feet of an existing oil and gas well tank battery. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 243

RESOLUTION GRANTING A VARIANCE FOR LOTS 38 AND 39, BLOCK 18, AND LOTS 1-5 AND 36-42, BLOCK 24, GREATHOUSE ADDITION, SECTION 7, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF HOLIDAY HILL ROAD, SOUTH OF MOCKINGBIRD LANE), BY PERMITTING CONSTRUCTION OF RESIDENCES WHERE NO PORTION OF ANY STRUCTURE IS CLOSER THAN 155.0 FEET OF A TANK BATTERY; AND AUTHORIZING ISSUANCE OF BUILDING PERMITS

30. Approved a resolution authorizing the execution of a Right-of-Way License Agreement between the City of Midland and CrownQuest Operating, LLC, for the purpose of

placement, operation and maintenance of three (3) three (3) inch poly surface flow lines within a portion of City owned property, Block 39, T-1-N, T.&P. RR. CO. Survey, Martin County, Texas. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 244

RESOLUTION AUTHORIZING A RIGHT-OF-WAY LICENSE WITH THE CITY OF MIDLAND, TEXAS AND CROWNQUEST OPERATING LLC; SAID RIGHT-OF-WAY LICENSE IS FOR THE PURPOSE OF DRILLING AND MAINTAINING THREE (3) OIL WELLS AND ASSOCIATED ROAD WAY, SURFACE FLOW LINES, TANK BATTERIES, TRANSMISSION LINES, AND FRAC PITS; THE THREE OIL WELLS ARE LOCATED WITHIN THE CITY OF MIDLAND, SECTION 36, BLOCK 39, T-1-N, T&P RR CO. SURVEY, MARTIN COUNTY, TEXAS; THE LICENSE TERM IS FOR TEN (10) YEARS, COMMENCING WITH THE DATE OF THIS LICENSE AND MAY RENEW AT THE END OF THE TERM FOR ONE ADDITIONAL FIVE (5) YEAR TERM UPON 90 DAYS WRITTEN REQUEST PRIOR TO EXPIRATION

31. Approved a resolution authorizing the City Manager or execute an amendment to an existing Utility Crossing Agreement with Union Pacific Railroad. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 245

RESOLUTION AUTHORIZING THE EXECUTION OF A SUPPLEMENTAL AGREEMENT WITH UNION PACIFIC RAILROAD COMPANY ("UNION PACIFIC") REGARDING CERTAIN UTILITIES THAT HAVE BEEN ABANDONED OR REMOVED FROM UNION PACIFIC'S RIGHT-OF-WAY

32. Approved a motion on a request by Schumann Engineering Company for the Ranchero Park – Section 7 to approve items requested for deferral and to waive the associated public improvement guarantee. The subject property is located south of I-20 along County Road 1120. (ENGINEERING SERVICES)

33. Approved a resolution to appropriate donated funds resulting from the proceeds of the 2013 Bad Boy Blast to the Midland Police Department. (POLICE)

RESOLUTION NO. 2013 - 246

RESOLUTION ACCEPTING A CASH DONATION OF $44,000.00 FROM THE "BAD BOY BLAST" FUND-RAISING PROJECT SPONSORED BY CONOCO-PHILLIPS; THE DONATED FUNDS WILL BE USED TO PURCHASE LAW ENFORCEMENT EQUIPMENT, TECHNOLOGY, AND TRAINING; AND APPROPRIATING SAID FUNDS

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

9. Consider a resolution approving the sole source purchase of two - XG-75 portable radios with accessories, ten - XM-100F-D02 mobile radios with accessories, three - EX55-PBU8B portable radios with accessories and one - MAHK-S8MEX mobile radios with accessories for the Communication and Information Systems Department. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 223

RESOLUTION AUTHORIZING THE PURCHASE OF SIXTEEN (16) MOBILE RADIOS IN ASSORTED CONFIGURATIONS, WITH ACCESSORIES, FROM HOLSUM

BAKERS, INCORPORATED, DBA CAPROCK COMMUNICATIONS OF MIDLAND, TEXAS; SAID PURCHASE WAS NOT BID BUT PURCHASED AS A SOLE SOURCE; AND THE COSTS FOR THE RADIOS SHALL BE APPROXIMATELY $71,276.25

Chief Information Officer Sharlett Chowning answered questions about the radios noting they will work on the current proprietary system. They are P25-compliant and will also work on the new system which should be implemented within the next eighteen months. Ms. Chowning answered questions about accessories noting they included microphones, belt clips, and other items as needed by various departments.

Council Member Morales moved to adopt Resolution No. 2013 - 223; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

15. Consider a resolution accepting the property located at 310 W. Texas Avenue (known as the Building of the Southwest). (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2013 - 229

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

Council Member Trost moved to adopt Resolution No. 2013 – 229 with the amendment to include the City Attorney's office; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

16. Consider a resolution allocating $142,992 from the Hotel/Motel Construction Fund and appropriating $90,000 from the Hotel/Motel Unappropriated Fund Balance to the Bill Williams Softball Complex Renovations Project. (CITY SECRETARY'S OFFICE)

RESOLUTION NO. 2013 - 230

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

Council Member Sparks stated he did not have enough information to spent $232,000 for a renovation project and asked for more time to review the materials and determine if the City is getting a good deal.

Council Member James moved to adopt Resolution No. 2013 - 230; seconded by Council Member Dufford.

When asked if this was a project needed today, Parks & Recreation Manager Laurie Williams reported they like to keep their facilities up-to-date, especially ones that are heavily involved in bringing in tournaments. She answered questions about the

tournaments and renovations.

Council Member Trost noted that Midland competes with some fairly new sports complexes and felt the project was important to continue bringing tournaments to Midland.

Council Member Sparks stated he wasn't necessarily against the renovation but was not sure this was the right timing.

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

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

RESOLUTION NO. 2013 - 233

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

When asked why the Road Repair Agreement was being waived, Oil & Gas Compliance Officer Ron Jenkins responded that they will not be using City roads.

Council Member James moved to adopt Resolution No. 2013 - 233; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

34. Consider a resolution to appropriate funds to the Police Supervisory Training Project. (POLICE)

RESOLUTION NO. 2013 - 247

RESOLUTION AUTHORIZING THE MIDLAND POLICE DEPARTMENT TO TRANSFER THE APPROPRIATION OF FUNDS FROM THE POLICE EQUIPMENT AND TECHNOLOGY PROJECT TO THE POLICE SUPERVISORY TRAINING PROJECT IN THE AMOUNT OF $48,000.00; THE MIDLAND POLICE DEPARTMENT WILL USE SAID FUNDS TO HOST A LAW ENFORCEMENT SUPERVISORY TRAINING SERIES; THERE IS NO FISCAL IMPACT TO THE CITY

Police Chief Price Robinson answered questions about the training.

Council Member Love moved to adopt Resolution No. 2013 - 247; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Morales, Trost,

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

35. Consider a resolution to enter into a contract with Del Carmen Consulting, LLC to provide services in connection with the evaluation of racial profiling data collected by the Midland Police Department. (POLICE)

RESOLUTION NO. 2013 - 248

RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH DEL CARMEN CONSULTING, LLC, TO PROVIDE SERVICES IN CONNECTION WITH THE EVALUATION OF RACIAL PROFILING DATA COLLECTED BY THE MIDLAND POLICE DEPARTMENT

When asked if Del Carmen Consulting provides analysis of harassment, Police Chief Price Robinson noted that the majority of the analysis is racial profiling noting that after analyzing the data, solutions are offered, if necessary.

Council Member Trost moved to adopt Resolution No. 2013 - 248; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

36. Consider a Resolution approving the execution of a Task Order for additional inspection and construction management services for the several ongoing projects with CDM Smith Inc. and appropriate funds. (UTILITIES)

RESOLUTION NO. 2013 - 249

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT TASK ORDER WITH CDM SMITH INC., FOR PROFESSIONAL INSPECTION SERVICES AND CONSTRUCTION MANAGEMENT SERVICES FOR THE MIDLAND WATER PURIFICATION PLANT RAW WATER PROJECT AND THE MBR SATELLITE REUSE PROJECT, AT AN ESTIMATED TOTAL COST OF $248,000.00; AND APPROPRIATING FUNDS

When asked about additional work included, Utilities Director Stuart Purvis reported that some items are taking longer than expected which caused the need for additional inspection to continue oversight of the project. He answered other questions about the project.

Council Member Dufford moved to adopt Resolution No. 2013 - 249; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

SECOND READINGS

37. Consider an ordinance on second reading on a request by Kenneth Huseman for a zone change from FD, Future Development to LR-2, Local Retail District on a 6.08-acre tract of land (Tract 1), to LI, Light Industrial District a 40.90-acre tract of land (Tract 2), to PD, Planned District for a Housing Development a 37.72-acre tract of land (Tract 6), to 1F-3, One-Family Dwelling District a 55.83-acre tract of land (Tract 10), from PD, Planned District for a Shopping Center, to LR-2, Local Retail District a 13.70-acre tract of land (Tract 3), to PD, Planned District for a Housing Development a 16.61-acre tract of land (Tract 4), to BP, Business Park District a 21.82-acre tract of land (Tract 7), from BP,

Business Park District to PD, Planned District for a Housing Development a 34.39-acre tract of land (Tract 5), to 1F-3, One-Family Dwelling District a 2.77-acre tract of land (Tract 9), from LR-2, Local Retail District to BP, Business Park District a 0.74- (DEVELOPMENT SERVICES)

ORDINANCE NO. 9171

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 6.08-ACRE TRACT OF LAND ("TRACT 1") WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT; BY PERMITTING A 40.90-ACRE TRACT OF LAND ("TRACT 2") WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS AN LI, LIGHT INDUSTRIAL DISTRICT; BY PERMITTING A 13.70-ACRE TRACT OF LAND ("TRACT 3") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT; BY PERMITTING A 16.61-ACRE TRACT OF LAND ("TRACT 4") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; BY PERMITTING A 34.39-ACRE TRACT OF LAND ("TRACT 5") WHICH IS PRESENTLY ZONED BP, BUSINESS PARK DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; BY PERMITTING A 37.72-ACRE TRACT OF LAND ("TRACT 6") WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; BY PERMITTING A 21.82-ACRE TRACT OF LAND ("TRACT 7") WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS A BP, BUSINESS PARK DISTRICT; BY PERMITTING A 0.74-ACRE TRACT OF LAND ("TRACT 8") WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, TO BE USED AS A BP, BUSINESS PARK DISTRICT; BY PERMITTING A 2.77-ACRE TRACT OF LAND ("TRACT 9") WHICH IS PRESENTLY ZONED BP, BUSINESS PARK DISTRICT, TO BE USED AS A 1F-3, ONE-FAMILY DWELLING DISTRICT; BY PERMITTING A 55.83-ACRE TRACT OF LAND ("TRACT 10") WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS A 1F-3, ONE-FAMILY DWELLING DISTRICT; ALL OF SAID TRACTS BEING OUT OF SECTION 12, BLOCK 40, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS; ALL OF SAID TRACTS BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS MADE A PART HEREOF; SAID TRACTS ARE GENERALLY LOCATED ON THE SOUTH SIDE OF WEST INTERSTATE HIGHWAY 20, SOUTH OF LOOP 250; PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

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

Council Member Love moved to approve the second and final reading of Ordinance No. 9171 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

38. Consider an ordinance on second reading on a request by Rednecks Drafthouse for an Amended Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a lounge, on a 5,000 square foot portion of Lot 1, Block 1, Mesa Verde Addition, City and County of Midland, Texas. (Generally located on the southwest corner of the intersection of N. Midland Drive and Neely Avenue.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9172

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS A 5,000 SQUARE FOOT PORTION OF LOT 1, BLOCK 1, MESA VERDE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH MIDLAND DRIVE AND NEELY AVENUE), WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A LOUNGE FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

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

Council Member Love moved to approve the second and final reading of Ordinance No. 9172 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

PUBLIC HEARINGS

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

RESOLUTION NO. 2013 - 250

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

Interim Planning Division Manager Ken VanDyne gave an overview of the item noting it was a request from Museum of the Southwest for an event to be held September 6-8, 2013. No incidents were reported last year and staff recommended approval.

Mayor Perry opened the public hearing at 10:40 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Council Member Morales moved to adopt Resolution No. 2013 - 250; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

40. At approximately 10:33 a.m. hold a public hearing and consider a resolution on a request by Community and Senior Services for a Temporary Land Use Permit for a Philanthropic Event. (Generally located on the north side of Scharbauer Drive, approximately 250 feet west of Lamesa Road.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 251

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A PHILANTHROPIC EVENT ON THE WEST 51.5 FEET OF LOT 5, ALL OF LOTS 6-10, AND THE EAST 22 FEET OF LOT 11, BLOCK 8, LOMA LINDA REPLAT, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF SCHARBAUER DRIVE, APPROXIMATELY 250 FEET WEST OF LAMESA ROAD); MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

Interim Planning Division Manager Ken VanDyne gave an overview of the item noting staff recommended approval.

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

Council Member Dufford moved to adopt Resolution No. 2013 - 251; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

41. At approximately 10:36 a.m. hold a public hearing and consider an ordinance on a request by David and Nancy Tyler for a Specific Use Permit Without Term for a Vineyard. (Generally located on the west side of Irvin Drive, approximately 240 feet south of East Loop 250 North.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9173

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF A 1.50-ACRE PORTION OF LOT 53, BLOCK 2, SKYVIEW DEVELOPMENT, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF IRVIN DRIVE, APPROXIMATELY 240 FEET SOUTH OF EAST LOOP 250 NORTH), WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR A VINEYARD; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

Interim Planning Division Manager Ken VanDyne gave an overview of the item noting it was a request for a Specific Use Permit for off-premises sale. Staff has no objection to the item.

Mayor Perry opened the public hearing at 10:45 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. 9173.

Council Member James moved approval of the first of two readings of Ordinance No. 9173 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

42. At approximately 10:39 a.m. hold a public hearing and consider an ordinance on a request by Darrell Mann/GRACO for a zone change from PD, Planned District for a Shopping Center to Amended Planned District on Lot 20, Block 5, North Park, Section 16, City and County of Midland, Texas (Generally located on the north side of West Loop 250 N. approximately 1,200 feet west of Whitman Drive) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9174

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 20, BLOCK 5, NORTH PARK, SECTION 16, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF LOOP 250, EAST OF BILLINGSLEY BOULEVARD); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

Interim Planning Division Manager Ken VanDyne gave an overview of the item noting staff recommended approval. A question was raised about handicapped parking not being near the building. Mr. VanDyne noted they would look at that and make corrections prior to second reading.

Mayor Perry opened the public hearing at 10:50 a.m.

Darrel Mann, Lubbock, reported that they would move in the ADA parking as close to the front door as possible noting four spaces were now designated.

There being no one else wishing to speak, the public hearing was closed at 10:51 a.m.

Deputy City Secretary Reyes read the caption of Ordinance No. 9174.

Council Member Sparks moved approval of the first of two readings of Ordinance No. 9174 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

43. At approximately 10:42 a.m. hold a public hearing regarding a proposed oil and gas permit to Rust Oil Corporation (Operator), for a Permit to Drill an Oil & Gas Well within

the City Limits, (Moss Partnership "9" No. 1) located 2,183 feet from the south line and 1,616 feet from the east line located in Section 9, Block X, H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of the extension of North Garfield Street, approximately 1/2 mile north of Mockingbird Lane.) This is a public hearing only. No further action will be taken. (DEVELOPMENT SERVICES)

Mayor Perry announced that this was part of his property and left the dais.

Oil & Gas Compliance Officer Ron Jenkins reported the item had been received by the Oil & Gas Advisory Committee and that Rust Oil had addressed all issues. The committee recommended a two-year landscape and irrigation variance and recommended accepting their offer to provide security at the school during school hours. No letters of objection have been received.

Mayor Pro Tem Sparks opened the public hearing at 10:54 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

MISCELLANEOUS

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

No appointments were made.

EXECUTIVE SESSION

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

b. Section 551.087 Deliberate Economic Development Negotiations

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

Mayor Perry recessed the meeting to Executive Session at 11:04 a.m. noting that the Council would recess from that meeting to 6:00 p.m. for the final public hearing. The entire Council met in Executive Session until 2:47 p.m.

PUBLIC HEARINGS (Continued)

Mayor Perry reconvened the meeting in Regular Session at 6:00 p.m. with all Council Members present.

44. At approximately 6:00 p.m. hold a public hearing regarding a proposal establishing the

ad valorem tax rate of .431927 per $100 taxable assessed valuation for the Fiscal Year 2013 - 2014. (FINANCE)

Finance Director Bob McNaughton gave an overview of the item noting this was the second of two required public hearings on the proposed tax rate. He reviewed figures comparing the proposed budget to the previous year. When asked if a person would pay more or less than last year if their property value went up six percent, Mr. McNaughton responded that as long as an individual's property value went up 6.7% or less, they would pay less than they had the previous year in property taxes to the City.

Mayor Perry opened the public hearing at 6:04 p.m.

Randy Atwood, 3217 W. Golf Course Road, worked for the City for 30 years and has lived in Midland for 48 years. He asked the Council to forgo raising property taxes on seniors over 65 years of age. He asked questions about the old County Courthouse property. He stated he has lived through two busts in Midland and expects it will happen again. He doesn't want to be stuck paying taxes when the young people leave because he has no ability to raise his income.

Laurie Stephens, 5000 Rainbow Road, stated she previously asked for a park to be designated near her home and it has not been done so far. The cost to install an 8 foot concrete path around the basin is approximately $165,000 and asked that a line item be added to the budget to complete that project.

John Arroyo, 12710 East County Road 135, stated he is retired and cannot afford to pay more taxes.

Thomas Flornoy, 3302 W. Kansas Street, asked Council to hold the tax rate because the United States will likely soon experience a financial collapse. People should be saving their money to tackle emergencies when they come up. He encouraged everyone to put money in gold, silver, food supplies or water supplies.

Dan Anderson, 1700 Storey, always thought of Midland as a conservative town where the best government is small government. He feels high taxes and government programs do not work. Midland is blessed with an economy unlike any other and is facing a housing crisis and worker shortage. If taxes are raised it will force higher prices. He addressed programs that he felt the City should cut such as building permits and noted the City's first priority should be to reduce taxes to a bare minimum while trimming unnecessary programs.

Elnora Hill, 203 Lincoln, asked the Council not to raise taxes on senior citizens because they can't afford to pay more. She lives on Social Security and has no way to get another job to increase her income.

Joel Rogers, 2200 North "H" Street, disagreed with the comments of Dan Anderson and disagreed with those who want Midland to grow. He used to live in Round Rock and found it a miserable place after their population boom. He asked questions about the Energy Tower project specifically citing an email from Bill Meyer to the Mayor. He plans to retire in Midland, disagrees with downtown revitalization and with giving money to a millionaire. He also expressed concern for increased traffic, public/private collaboration and red light cameras.

Nancy Jones, 706 E. Broadway, stated she is nearing retirement and expressed concern for her 23 year old daughter who does not work in the oil field. She wondered how her daughter could ever leave home because of high rents and increasing taxes.

Ken Holmes, 5027 Pleasant Drive, stated the population is growing steadily and housing prices continue to rise. The cost of living index is similar to Houston. If Council raises taxes that will only continue to raise the cost of living index.

Mary Mabry, 3511 Boyd Street, stated the County is lowering their tax rate and talked about the companies that are moving out of downtown. She asked questions about Energy Tower and the Mayor offered to sit down with her one-on-one to answer her questions. She stated the Council is taxing people who cannot afford it.

Spencer Bennett, 3503 Imperial Avenue, noted many cities do not have a boom like Midland has and they also are not experiencing Midland's growing pains. In the last four years his tax valuation has gone up considerably even though he is near a low housing apartment complex. He feels this is a stealth tax on him. He noted not everyone has an oilfield income but at some point the transients will leave and those remaining will be stuck with a higher tax rate.

Glenda Southerland, 728 Beckley, asked if the City really needed to change the tax rate. She is worried about rising taxes, trash in the neighborhood and the need for more code enforcement. Everyone should learn to live within their means.

Michael Strange, 3918 North County Road 1247, stated the downtown plan will affect taxes and the government should not give money to private enterprise.

There being no one else presenting wishing to speak, the public hearing was closed at 6:52 p.m.

Mayor Perry thanked those who came out for the meeting. Finance Director McNaughton noted the next dates and times for public hearings and the adoption of the budget.

All of the business at hand having been completed, the meeting adjourned at 6:54 p.m.

PASSED AND APPROVED the 27th day of August, 2013.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 8/27/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving plans and specifications and authorizing advertisement for a request for proposals for a Solid Waste Route Optimization service for the Solid Waste Department.

Purpose:

Approval of a resolution authorizing the issuance of a request for proposals for a Solid Waste Route Optimization service.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Funding is not required at this time.

Discussion:

The Solid Waste Department is seeking a service to optimize refuse truck routes. As the City expands, staff is working toward meeting those challenges associated with more customers, a larger collection area and new types of service by becoming more effective and cost efficient.

Therefore, please consider a resolution approving plans and specifications and authorizing advertisement for a request for proposals for a Solid Waste Route Optimization service for the Solid Waste Department.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING ISSUANCE OF A REQUEST FOR PROPOSALS FOR REFUSE TRUCK ROUTE OPTIMIZATION SERVICES FOR THE SOLID WASTE DEPARTMENT

WHEREAS, a request for proposals has been prepared for refuse truck route optimization services for the Solid Waste Department ; and

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

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

SECTION ONE. That the request for proposals for refuse truck route optimization services for the Solid Waste Department is hereby approved, said request for proposals being on file with the office of the City Secretary, referenced by the date and number of this Resolution.

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

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

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Robert Patrick, General Services Director

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

Request for Proposals

RFP _____

for

Solid Waste Route Optimization

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

Proposals May be Mailed or Delivered to:

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

No Late Proposals Will Be Accepted

NOTICE TO PROPOSERS:

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

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

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

See Section 1.9 for Pre-proposal Meeting Information

TABLE OF CONTENTS

	Page
SCHEDULE OF EVENTS	iii
Special Terms and Conditions	iv
1. General Information	1
2. Proposal Waivers:	5
3. Scope Of Project	6
4. Requirements	6
5. Narrative	7
6. Vendor Qualifications	8
7. Evaluation Process	9
8. Proposal Contents	9
EXECUTION OF OFFER	11

SCHEDULE OF EVENTS

RFP _____

For

Solid Waste Route Optimization

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

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

NOTE:

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

SPECIAL TERMS AND CONDITIONS

Proposal Requirements /Terms

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

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

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

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

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

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

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

Conditions

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

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

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

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

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

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

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

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

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

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

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

1. GENERAL INFORMATION

1.1. INTRODUCTION

The City of Midland General Services Department (hereinafter referred to as "the City") is pleased to invite you to submit a proposal for **Solid Waste Route Optimization** as specified herein. Proposals submitted in response to the specifications contained herein shall comply with the following instructions and procedures.

Request for Proposal Standard Information

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

1.2. INITIAL EVALUATION

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

1.3. DISCUSSION/NEGOTIATION

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

1.4. BEST AND FINAL OFFER

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

1.5. AWARD

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

1.6. TRADE SECRETS

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

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

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

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

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

1.6.2.2. An affidavit from the offeror's legal counsel attesting to and explaining the validity of the trade secret claim must be attached to each proposal containing trade secrets. In

addition, offerors submitting a proposal containing trade secrets must be prepared to pay all legal costs and fees associated with defending the claim for trade secret protection in the event of an open records request from another party.

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

1.7. LATE PROPOSALS

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

1.8. PREPARING A RESPONSE

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

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

1.9. PRE-PROPOSAL CONFERENCE:

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

1.10. CLARIFICATION/ INTERPRETATION

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

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

OR

FAX: (432) 685-0523

e-mail: purchasing@midlandtexas.gov

1.11. FORMAT FOR INQUIRIES:

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

1.12. INTERPRETATION:

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

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

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

1.13. PROPOSAL ORGANIZATION AND SUBMISSION

Offerors must organize proposals into sections following the format of this RFP, with tabs separating each section. If no exception, explanation, or clarification is required in the offeror's

response to a specific subsection, the offeror shall indicate so in the point-by-point response with the following:

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

1.14. OFFER PRICING

Offerors must respond to this RFP by utilizing the attached cost summary sheet. Cost should be broken down as granular as possible to allow the City to determine what modules are being proposed. The cost summary will be used as the primary representation of each offeror's cost, and will be used extensively during proposal evaluations. Additional information should be included as necessary to explain in detail the offeror's cost.

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

1.15. ALTERNATE PROPOSALS

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

1.16. SUBMITTING A SEALED PROPOSAL

1.16.1. Number of copies and Location:

1.16.1.1. Offerors must submit one original, 3 hard copies and one (1) soft copy (PDF or Word) to the City Secretary. Sealed Proposals must be received by the date before the time stated on the face of the Request for Proposal Cover Page, local time. Sealed Proposals received after this time will not be accepted for consideration. Facsimile copies are not acceptable.

1.16.1.2. Please be sure to label the outermost package of the RFP whether it is an envelope, box or overnight package with the RFP number, RFP description and closing date so that it is visible when received by the City.

1.16.2. Each Offeror who submits a proposal represents that:

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

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

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

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

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

1.17. RIGHTS RESERVED

While the City has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the City of Midland to award a contract. Upon a determination, such actions would be in its best interests, the City in its sole discretion reserves the right to:

A) waive any formality;

b) cancel or terminate this RFP;

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

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

1.18. BONDING REQUIREMENTS

See APPENDIX C

1.19. OFFEROR INTERVIEW / PRODUCT DEMONSTRATION

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

1.20. SUBCONTRACTING

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

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

1.21. INSURANCE REQUIREMENTS

See Contract or Agreement

1.22. CONTRACTOR'S RESPONSIBILITIES

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

1.23. OFFEROR COMPETITION

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

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

1.24. CONTRACT PROVISIONS AND TERMS

1.24.1. Contract Execution

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

1.24.2. Terms and Conditions

Contract that will be executed by the successful offeror and the City is found in Appendix A.

1.24.3. Exceptions to Contract Terms & Conditions

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

1.24.4. The initial contract(s) term is for a period of 1 year. Renewals of the contract may be made at 1 year intervals, not to exceed a total of 3 years, at the City's option.

1.24.5. Contract Extension

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

1.24.6. Escalation

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

2. PROPOSAL WAIVERS:

2.1. WAIVER OF ATTORNEY FEES: BY SUBMITTING THIS PROPOSAL, OFFEROR AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE PROPOSAL, THE CONSTRUCTION, VALIDITY OR INTERPRETATION OF THE PROPOSAL DOCUMENTS, OR THE CONSTRUCTION, VALIDITY, INTERPRETATION, AWARD, OR BREACH OF THE CONTRACT. THE OFFEROR SPECIFICALLY AGREES THAT IF THE OFFEROR BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS PROPOSAL, THE CONSTRUCTION, VALIDITY OR INTERPRETATION OF THE PROPOSAL DOCUMENTS, OR THE CONSTRUCTION, VALIDITY, INTERPRETATION, AWARD, OR BREACH OF THE 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 OFFEROR AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH OFFEROR MIGHT OTHERWISE BE ENTITLED.

2.2. OFFEROR AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. THE OFFEROR ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE PROPOSAL DOCUMENTS INCLUDING BUT NOT LIMITED TO THE CONTRACT. THE OFFEROR FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE OFFEROR. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

2.3. THE OFFEROR AND CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THESE PROPOSAL

DOCUMENTS, INCLUDING THE CONTRACT, WITH COMPETENT LEGAL COUNSEL PRIOR TO SUBMISSION OF THE PROPOSAL OR EXECUTION OF THE CONTRACT.

2.4. <u>WAIVER:</u>

2.5. BY SUBMITTING A PROPOSAL, THE OFFEROR AGREES TO WAIVE AND DOES HEREBY VOLUNTARILY AND INTENTIONALLY WAIVE, ABANDON AND RELINQUISH ANY CLAIM THE OFFEROR 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:

2.5.1. THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY PROPOSAL;

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

2.5.3. ACCEPTANCE OR REJECTION OF ANY PROPOSALS; OR

2.5.4. AWARD OF THE CONTRACT.

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

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

3. SCOPE OF PROJECT

The City is interested in purchasing a service to do Solid Waste Route Optimization. Because of severe limitations with City resources on-site (network and personnel), this must be provided in the form of an off-site, fully hosted, web-based service completely maintained by the vendor. City access of the software, using City data transferred to the off-site operation is a possibility, with suitable training. The Sanitation Department offers a wide variety of services and programs for the removal and disposal of waste and recyclables for the City of Midland. The Solid Waste Division currently serves more than 32,000 residential and 2,000 commercial accounts, generating annual revenues of approximately $7 million. The division is in direct competition with private haulers on the commercial accounts.

In the future, the Solid Waste Division seeks to become more effective and cost-efficient. As the City expands through growth and annexation, we will also meet the challenges associated with more customers, a larger collection area, and new types of service.

The goal of this RFP is to provide the Department with a fully optimized set of routes, based on all parameters available, in order for us to compare where we are in the service of our existing customer base with an optimized routing system, so as to utilize our assets in the most efficient and cost-effective manner. Once we determine that standard and compare with our existing system, we will determine how far we will move toward that optimization and how quickly.

4. REQUIREMENTS

The requirements are outlined in Appendix D of this RFP.

NOTE: Each feature must be addressed. The vendor may not leave a row blank.

The City of Midland will provide the following data:

- A GIS point layer of all pickup locations with x-y coordinates (16,000+)
- An accurate street centerline network, with alleys included for routing
- A GIS polygon layer of current routes being run (25 routes, currently)
- A complete description of trucks used and number of drivers available
- A complete description of containers and carts used
- Other GIS and City data, as might be required for optimization

*Included means that if the feature or requirement is not normally included, but will be at No Extra Charge

**Will be at an additional cost. These added costs shall be listed on the cost summary page.

5. NARRATIVE

The Solid Waste Division is part of the Sanitation Department. Information about the City's Solid Waste process is below.

- Residential garbage is picked up either Monday and Thursday, or Tuesday and Friday.
- One container is set for every four-five residents, where alleys are available.
- Each customer with curbside cart service has his/her own individual cart.
- For residential customers, the City of Midland will pick up furniture and appliances at no additional charge. Examples of items we can pick up: couches, chairs, bed frames (most household furniture). Also, water heaters, washers/dryers, refrigerators, freezers, A/C units, BBQ grills, swing sets, and patio furniture. These items must be placed in the alley in the City right-of-way; the City **WILL NOT** go onto private property. **DO NOT** place your item next to the dumpster; it needs to be behind your home, in the alley. These larger item collections must be scheduled with the Solid Waste Division and are currently collected by date of call Please call (432) 685-7278 to schedule this service.
- We **DO NOT** pick up tires, vehicle batteries, barrels of oil or any related materials and the unauthorized disposal of such items is considered illegal dumping.
- We **DO NOT** pick up tree limbs or construction debris and the unauthorized disposal of such items is considered illegal dumping. Please call our office for disposal information.
- Yard waste can be disposed of at the Citizens Collection Station. This site is located just north of the ClayDesta post office at 4100 Smith Road.
- Special collections may be scheduled for insecticides, chemicals, or paints by having the resident place these items in a box and placing the box on the front porch. A Labor Supervisor will go to the residence and collect these items. These special collections **must** be scheduled with the Solid Waste Division.

- Residents are encouraged to spread paints on old wood or cardboard. Once dry, they can be placed into the alley container.
- Construction containers can be provided to our customers upon request. These containers are 30 cubic yard open-tops. Charges for these containers are billed on the customers' current water bill or set up through Customer Service.

Vendor Information Verification

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

6. VENDOR QUALIFICATIONS

6.1. INFORMATION VERIFICATION

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

6.2. RIGHT TO REJECT

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

6.3. VENDOR CAPABILITIES

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

6.3.1. References

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

6.3.1.2. These references should include City government and universities where the offeror, preferably within the last 5 years, has successfully completed this type of project.

6.3.1.3. These references should include (any other desired information) _____

6.3.2. Vendor Stability

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

6.3.2.2. Provide financial statements, preferably audited, for the two consecutive years immediately preceding the issuance of this RFP.

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

6.3.2.4. Offerors shall specify how long the company submitting the proposal has been in business (doing similar projects) _____.

7. EVALUATION PROCESS

Section 7 needs to be tailored to each project.

7.1. EVALUATION PROCEDURE

7.1.1. Committee Actions

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

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

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

7.2. EVALUATION CRITERIA

The evaluation committee will review and evaluate the offers according to the following criteria. A compliant proposal will meet at least 70% of each of the criteria. A score on any criteria that falls below 70% will disqualify the proposal.

Vendor Qualifications

Pricing

Functionality

Other criteria

If software is proposed, preference will be given to software that operates from ESRI ArcGIS software.

7.2.1. Company Service Qualifications

7.2.2. Three references

7.2.3. Years in business

7.2.4. Project Manager

7.2.5. Implementation Plan

7.2.6. Training Requirements

7.2.7. Organization

7.2.8. Technical Abilities

7.2.9. Cost Analysis

8. PROPOSAL CONTENTS

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

8.1. THE RFP

8.2. THE COST SUMMARY OR PROPOSAL FORM

8.3. REQUESTED ATTACHMENTS

8.3.1. References

8.3.2. Resumes

8.3.3. Business Plan

8.3.4. Financial Information

8.3.5. Appendix A - Agreement

8.3.6. Appendix B – Proposal

8.3.7. Appendix C – Bonding Requirements

8.3.8. Appendix D - Requirements

8.3.9. Signed Execution of Offer

9. TEXAS PUBLIC INFORMATION ACT

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

EXECUTION OF OFFER

FOR

SOLID WASTE ROUTE OPTIMIZATION RFP

Date:

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

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

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

This offer consists of pages number 1 through _____.

Offeror/ COMPANY: _____

SIGNATURE (INK): _____

NAME: (TYPED/PRINTED) _____

TITLE: _____

STREET: _____

CITY/STATE/ZIP: _____

TELEPHONE: _____ FAX: _____

E-MAIL ADDRESS: _____

APPENDIX A
AGREEMENT
FOR ROUTE OPTIMIZATION SERVICES

THIS AGREEMENT is made and effective the ____ day of _____ 2013, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, _____hereinafter referred to as "COMPANY."

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which COMPANY shall provide Route Optimization Services for the City of Midland.

ARTICLE II. SERVICES TO BE PERFORMED

1. COMPANY shall provide the services described in Exhibit "A."

2. COMPANY shall perform all the services under this Agreement consistent with the same level of skill and care as other professionals in approximately the same region at approximately the same point in time and for the same types of projects. COMPANY represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in Exhibit "A.".

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay COMPANY according to the schedule set forth in Exhibit "A" upon presentation of a monthly invoice. The invoice shall set out service fees for the month and those Additional Expenses and Reimbursable Expenses described in Exhibit "A" incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. COMPANY shall perform professional services as outlined in the "Services to be Performed" for a fee of $_____ (breakdown of fees is located in Exhibit "A".) which fee for basic services shall in no event exceed $_____, excluding Additional Services and Reimbursable Expenses. Within 30 days of the date COMPANY's invoice is received by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion of an invoice, CITY shall notify COMPANY of CITY's objection and the grounds therefor within 15 days of the date of

receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. CITY in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV. TERM

The term of this Agreement shall be from _____, 2013 until _____, 2014, unless the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

The CITY may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days written notice to the Company. The parties to this Agreement understand and agree that it is in the CITY's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the CITY. The Company has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

ARTICLE VI. ASSIGNMENT

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

ARTICLE VII. OWNERSHIP AND CONFIDENTIALITY OF DOCUMENTS AND OTHER WORK PRODUCT

All reports, information and other data ("instruments of service"), given to, prepared or assembled by COMPANY under this Agreement, and any other related documents or items shall become the sole property of CITY and shall be delivered to CITY, without restriction, except that COMPANY may make copies of any and all instruments of service for its files. The CITY shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of COMPANY, which consent shall not be unreasonably

withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

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

ARTICLE IX. INSURANCE

1. 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-CITY 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.

ARTICLE X. ATTORNEY FEES

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

COMPANY AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. 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 OF 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.

ARTICLE XI. SOVEREIGN IMMUNITY

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

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

ARTICLE XIII. RELEASE

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

ARTICLE XIV. GENERAL PROVISIONS

A. Waiver. No waiver by CITY of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.

B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have

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

D. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

If to CITY: City Manager's Office
P.O. Box 1152
Midland, Texas 79702

If to COMPANY:

The parties hereto may change the above-designated addresses by giving notice pursuant to the terms of this Section.

E. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

F. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.

G. 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.

H. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.

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

J. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Company or his legal representative, shall give the City Manager, or any other reasonable official of the CITY, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one-hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Company will settle, the physical and mailing addresses of Company at the time and date the claim was presented and the physical and mailing addresses of Company for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Company relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the CITY from any liability whatsoever. The CITY is under no obligation to provide notice to Company that Company's notice is insufficient. CITY reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Company's failure to comply with the

requirements herein shall perpetually bar Company's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if CITY has actual or constructive notice or knowledge of said claim or alleged damages. Company agrees that the requirements of this entire Agreement are reasonable.

K. **PROMPT PAY ACT** - The City and Company agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Courtney B. Sharp, City Manager

COMPANY:

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

_____
Keith Stretcher, City Attorney

ATTEST

_____
Amy M. Turner, City Secretary

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the __day of _____, 2013.

_____

Notary Public, State of Texas

MIDLAND
Purchasing Division

_____
Contractor's Name

Appendix B
PROPOSAL
RFP

To: Purchasing Agent
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:

		Cost per month	Total Cost
12 months	Solid Waste Route Optimization Service	$_____	$_____

The undersigned bidder hereby declares that he has visited the site of the work and has carefully examined the Contract Documents pertaining to the work covered by the above bid and he further agrees to commence work within ten (10) days after the date of written notice to do so and to substantially complete same within _____ calendar days.

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

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

OR

FAX: (432) 685-0523

E-mail: purchasing@midlandtexas.gov

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

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

BID WAIVERS:

A. WAIVER OF ATTORNEY FEES: BY SIGNING THIS PROPOSAL, BIDDER AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE CONTRACT. THE 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 CITY AND THE BIDDER.

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

THE BIDDER AND THE CITY 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 City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Contract) of such damages, duly verified, within one-hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the 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 City from any liability whatsoever. The City is under no obligation to provide notice to Bidder that Bidder's notice is insufficient. The City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, 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 the City has actual or constructive notice or knowledge of said claim or alleged damages. Bidder agrees that the requirements of this entire Contract are reasonable.

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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

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

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

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

PLEASE NOTE:

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

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

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

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

BID BOND

THE STATE OF TEXAS §

SURETY NO. _____

COUNTY OF MIDLAND §

KNOW ALL MEN BY THESE PRESENTS, THAT _____

_____

_____

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

_____

_____

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

_____ DOLLARS

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

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

_____.

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

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

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

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

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

APPROVED AS TO FORM:

_____

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

PAYMENT BOND

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____,

_____

of the City of_____ County of_____,

and State of_____ as Principal, and _____

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

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

_____,

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

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

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

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

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

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

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

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

APPROVED AS TO FORM:

_____

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

PERFORMANCE BOND

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____

_____.

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

_____,

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

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

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

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

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

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

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

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

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

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

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

APPROVED AS TO FORM:

_____

City Attorney

NOTE: <u>ATTACH POWER OF ATTORNEY</u>

Appendix D: Features and Functionality Requirements for RFP

The City is seeking proposals from qualified vendors to provide a web-based, offsite-hosted route optimization service (ROS) application that provides secure internet access to a routing system loaded with City-supplied data, accessible through Mozilla Firefox and Internet Explorer, and capable of performing the following implementation functions:

1. Work interactively with City staff to compile and manipulate customer data into required formats,
2. Provide true Route Optimization, not route management
3. Train all personnel that will be utilizing the ROS,
4. Provide future optimization, as needed, and
5. Provide technical assistance including, but not limited to, on-call support available to the City Monday through Friday from 7:00 a.m. to 4:00 p.m. EST via a toll-free number.
6. Provide future direction to City staff on appropriate GPS hardware and software components for vehicles that would be compatible with the ROS.

The proposed ROS must support the following routing requirements:

1. Daily and weekly route balancing,
2. Stop clustering,
3. Residential and commercial routing,
4. Customer time-windows,
5. Employee breaks,
6. Multiple vehicle load and unload locations,
7. Vehicle capacity constraints,
8. Route capacity constraints.

Routing Requirements

The ROS shall provide a comprehensive routing system that includes, at a minimum, a balanced routing system that equitably balances route driver workload over eight (8) hours per day, five (5) days per week, improves collection efficiency, creates the environment for improved customer services, and provides maps with directions of the new routes on an as needed basis.

The Contractor will be responsible for creating balanced routes for the following services. The services are listed in order of optimization importance and planned implementation:

1. Commercial solid waste,
2. Commercial recycling,
3. Automated residential solid waste,
4. Manual residential recycling (may convert to automated in future),
5. Residential bulk waste, and
6. Residential yard waste.

The ROS must include all required licensing and route/data set-up. It must have the ability to run "what if" scenarios directed by City staff from software-developed and optimized routes to customize routes for field use and project the impact of future customer count modifications.

The ROS must provide maps that delineate the following:

1. Route type,
2. Route day,
3. Route number,
4. Anticipated number of stops per route, and
5. Driving pattern utilizing heuristic routing wherever possible.

ROS Requirements

To achieve the City's expectations, the ROS must be able to:

1. Optimize routes with regard to existing facilities,
2. Minimize travel time and distance to and from facilities,
3. Optimize route paths,
4. Individually optimize routes based on the following vehicle requirements:

    a. Minimum and maximum time windows,
    b. Specific beginning and ending times,
    c. Minimum and maximum weight and/or volume,
    d. Minimum and maximum number of customers,
    e. Minimum and maximum number of containers,
    f. Minimum and maximum distance,
    g. Minimum and maximum number of disposal facility trips,
    h. Wait times at the disposal facility,
    i. Individual vehicle preparation times at the beginning and end of each day,
    j. Break times, and
    k. Crew sizes.

5. Individually optimize routes based on the following customer requirements:

    a. Day(s) of week collection,
    b. Number of containers,
    c. Service time for each container,
    d. Weight or volume of each container,
    e. Size of vehicle required to service the customer, and
    f. Various customer data.

6. Individually optimize routes based on the following driving requirements:

    a. Driving time,
    b. Specific roadway travel restrictions (i.e. one-way, weight restrictions, alley collection, etc.), and
    c. Street classifications.

7. Provide interim and final route, customer, and collection point data that can be imported in the City's ESRI Enterprise GIS system.

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

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

(1) the lowest bidder; or

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

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

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

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: _____

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

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

   Reseller Permit Number: _____

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

   _____

   _____

   _____

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

   _____

   _____

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

   ☐ Yes ☐ No

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

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

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

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

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

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

OFFICE USE ONLY

Date Received

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

_____

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

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

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

_____

_____

_____

_____

_____

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

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

Adopted 11/02/2005

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor or other person doing business with local governmental entity

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

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

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

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

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

D. Describe each affiliation or business relationship.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

6

_____ Signature of person doing business with the governmental entity

_____ Date

Adopted 11/02/2005

This form is available in a Word Form fill in document. If desired please contact the Purchasing office for a copy by e-mail.

No-Bid
Response
For
Request #: Solid Waste Route Optimization Service

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

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

or

Fax to: (432) 685-0523

Email: purchasing@midlandtexas.gov

Please Check all reasons below that apply:

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

_____

_____

Company Name: _____

Authorized Officer or Agent Signature: _____

Telephone Number: _____ Fax: _____

Email Address: _____

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

NOTICE TO BIDDERS

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 ABOVE REQUIREMENTS, 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.

ANY VENDOR WHO FAILS TO COMPLY WITH THE TERMS OF THE AWARD **MAY BE DECLARED AN IRRESPONSIBLE VENDOR**. BIDS SUBMITTED BY SAID VENDOR SHALL NOT BE CONSIDERED AGAIN FOR A MINIMUM PERIOD OF SIX MONTHS AS DETERMINED BY THE CITY MANAGER, OR DIRECTOR OF GENERAL SERVICES.

City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 8/27/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving a naming rights agreement for the Scharbauer Sports Complex baseball stadium for the Community Services Department.

Purpose:

Approval of a resolution for naming rights for the Scharbauer Sports Complex Baseball Stadium.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

$3.6 million dollars deposited during a 25 year timeframe into the Scharbauer Sports Complex fund

Discussion:

Citibank will no longer continue their naming rights agreement of the baseball stadium at the Scharbauer Sports Complex. The agreement will end on December 31, 2013. A request for proposals was sent out to approximately 250 companies for naming rights of the baseball stadium and one bid was received from Security Bank of Midland, Texas. After negotiating Security Bank's proposed terms, staff recommends entering into a naming rights agreement with Security Bank. Please see the attached memo from Tina Jauz, Community Services Director, for further discussion.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF NAMING RIGHTS LICENSE AGREEMENT FOR THE BASEBALL STADIUM AT THE SCHARBAUER SPORTS COMPLEX; AND NAMING THE BASEBALL STADIUM SECURITY BANK BALL PARK

WHEREAS, the Council finds it to be in the public interest to execute a Naming Rights License Agreement for the baseball stadium at the Scharbauer Sports Complex;

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

SECTION ONE. That the Mayor and City Secretary are hereby authorized and directed to execute and attest respectively, on behalf of the City of Midland, the Naming Rights License Agreement for the baseball stadium at the Scharbauer Sports Complex. Said License Agreement being attached hereto, marked as Exhibit "A", and incorporated herein for all purposes.

SECTION TWO. That the baseball stadium at the Scharbauer Sports Complex is hereby named Security Bank Ball Park.

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

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Tina Jauz, Community Services Director

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

SPONSORSHIP LICENSE AGREEMENT FOR THE BASEBALL STADIUM AT THE SCHARBAUER SPORTS COMPLEX

RECITALS

This Sponsorship License Agreement (the "Agreement") is made and entered into this 28th day of August, 2013, by and between the City of Midland, Texas, (the "City"), a home rule municipal corporation, and Security Bank, (the "Sponsor") a Texas state-chartered bank; and

WHEREAS, the effective date of this Agreement is January 2, 2014; and

WHEREAS, the City owns and operates the Scharbauer Sports Complex, consisting of a Baseball Stadium and a Football Stadium; and,

WHEREAS, the City wishes to sell, assign, license and transfer the sponsorship and naming rights to the Baseball Stadium portion of the Scharbauer Sports Complex, and Sponsor wishes to purchase said rights;

NOW, THEREFORE, in consideration of the mutual rights, covenants and agreements herein contained, the Parties hereto do hereby agree as follows:

ARTICLE I

NAMING RIGHTS GRANTED

The City will and does hereby grant to Sponsor, subject to the terms and conditions of this Agreement, the naming rights to the Baseball Stadium at the Scharbauer Sports Complex (the "Stadium").

1.01 Sponsor shall have the continuing right to designate and/or redesignate the name of the Stadium subject to the approval of City, which approval shall not be

unreasonably withheld. Sponsor has initially designated “Security Bank Ballpark” as the name of the Stadium. By the duly authorized execution of this Agreement, the City shall and does hereby cause the name of the Stadium to be so designated. City will not employ nicknames or encourage others to employ nicknames or other names for the Stadium, but will use its best efforts to clearly discourage the use of nicknames or other names for the Stadium.

1.02 Sponsor shall have the right to have the name of the Stadium ("Security Bank Ballpark") placed in all advertising promoting the Stadium. As used herein, the term "advertising" shall include outdoor, electronic and printed media, and other promotional efforts for any Stadium event sponsored by the City. Unless the Sponsor notifies the City otherwise, the City shall require Stadium tenants and event promoters to use the designated Stadium name in all advertising.

1.03 Unless the Sponsor notifies the City otherwise, the City will include the Stadium name on printed items such as publications, tickets, pocket schedules and brochures, and will encourage the use of the Stadium name on related merchandise.

1.04 Unless the Sponsor notifies the City otherwise, the City will insert requirements in future contracts and agreements with respect to the Stadium that the contracting parties use the Stadium name in all references to the Stadium.

1.05 The City will encourage radio, television and print media to use the Stadium name in all reports and specials at the Stadium and will include the Stadium name in appropriate announcements on the public address system and message boards. Unless the Sponsor notifies the City otherwise, the City will cause a public address announcement to

be made prior to each ticketed special event in the Stadium. Such announcement will welcome attendees to the event and will use the Stadium name.

1.06 Subject to scheduling approval by the City, Sponsor will have the right to host corporate/individual business and social opportunities at the Baseball Stadium for events such as product launches, press conferences, sales meetings and employee outings. Sponsor will be responsible for costs of food and beverages at said events.

1.07 The City will place the Stadium's name at major information points in the interior of the Stadium, such as building directories, information stands, reception desks and ticket booths. The selection of specific locations for the placement of such facilities shall be determined by the City in its sole discretion.

1.08 The City agrees that in the event it creates new opportunities for permanent advertising signage on the outside of the Stadium, City will first offer Sponsor the right to obtain the use of such signage which may include additional expense to the Sponsor.

1.09 The City agrees that in the event it grants the right to name the Football Stadium to a third party, that name shall not include the words "bank", "savings and loan", "credit unions" or "thrift".

1.10 Sponsor has not licensed the use of its Security Bank and "S" Design Logo to the City and the City shall not use the Trademark and/or Logo of Sponsor in any manner without the prior written approval of Sponsor. Immediately upon the expiration or termination of the Agreement for any reason whatsoever, the City will cease all use of the Security Bank Ballpark name, and all use of the Security Bank Logo that may have been

granted pursuant to the Agreement.

ARTICLE II.

SPONSORSHIP RIGHTS GRANTED

In addition to the Naming Rights referred to in Article I above, the City will grant to Sponsor, subject to the terms and conditions hereof, the rights described in this Article:

2.01 The Sponsor shall have the right to erect one lighted sign on the exterior of the Stadium near the main entrance. The sign must incorporate the name of the Sponsor and/or the name of the Stadium. The cost of sign and installation shall be the responsibility of Sponsor. The specific dimensions and the exact location of the sign shall be subject to reasonable approval by the City.

2.02 The City shall recognize the Sponsor and the name of the Stadium on the Scharbauer Sports Complex marquee at the main entrances to the Scharbauer Sports Complex. The type and size of such means of recognition shall be determined by the City, commensurate with all other recognitions incorporated in said marquee. The City shall seek input from the Sponsor.

2.03 The City shall use electronic or channel lettering or such other lettering as agreed to by parties to be located at the top of the Stadium scoreboard, both front and back, to identify the Sponsor and/or the Stadium name. The exact type and size of such means of identification shall be determined by the mutual agreement of the parties, in accordance with commercially reasonable standards.

2.04 To the extent permitted by applicable law, the City will use the name of the

Stadium in signage providing traffic directional information adjacent to the Scharbauer Sports Complex. The size, quantity and location of such signage shall be determined by the City.

2.05 The Sponsor shall be entitled to one 7' x 34' backlit sign on the football stadium scoreboard, which sign identifies the Sponsor.

2.06 This Agreement includes certain marketing opportunities between Sponsor and the Midland Rockhounds organization on an annual basis. These opportunities will vary from year to year, in both number and in value and, and in some cases will be exclusive and the Rockhounds will have final say. A portion of the annual License Fee described in Article V of this Agreement shall be allocated to such marketing opportunities, and that portion, on an annual basis, shall not be less than $25,000.00.

2.07 The Sponsor shall receive one luxury suite (22 tickets) for all professional minor league and other baseball games hosted at the facility. At any time following conclusion of the first year of this Agreement, Sponsor shall have a preferential option to negotiate an increase in the space allotted and number of tickets.

2.08 Sponsor will have the right to install Automated Teller Machine (ATM) banking locations, temporarily or permanently, at the Scharbauer Sports Complex adjacent to or inside the respective stadiums. The costs associated with such ATMs shall be the responsibility of the Sponsor. The specific location of each such ATM shall be subject to the reasonable approval of the City.

2.09 Sponsor may also secure, at additional expense, sponsorship for other events

and teams which host events or games at the Stadium. Sponsorships may include single-event sponsorships, additional signage, tickets, promotions, broadcast packages, luxury suites and related items.

2.10 In each instance in which Sponsor is solely responsible for the cost and expense of signage, Sponsor will also be responsible for the design and installation of such signs. Prior to installation, Sponsor must receive City's approval of the architect's construction drawings, specifications and color renderings depicting such Stadium sign or signs, with such approval not to be unreasonably withheld.

2.11 All signage may be changed or updated from time to time according to the then current standards at Sponsor's sole option and expense, subject to approval by the City, with such approval not to be unreasonably withheld. Upon removal, all signage with Sponsor logos, trademarks or tradenames will become the property of the Sponsor.

ARTICLE III

TERM

The full term contemplated by this Agreement is a period of twenty-five (25) years, divided into component units of approximately ten (10) years and five (5) years each, respectively designated and hereinafter referred to as the Initial Term, the Second Term, and the Subsequent Terms.

The Initial Term of this Agreement shall be from January 2, 2014 until December 31, 2023, unless sooner terminated in accordance with the provisions of this Agreement.

The Second Term of this Agreement shall be from January 1, 2024 to December 31,

2028, unless sooner terminated in accordance with the provisions of this Agreement.

The Subsequent Terms of this Agreement shall consist of two (2) terms of five years, commencing at the end of the Second Term.

ARTICLE IV

TERMINATION

4.01 The Sponsor may elect to terminate the Agreement no earlier than the end of five (5) years from the commencement date. The commencement date is January 2, 2014. The Sponsor has no right to terminate this Agreement prior to January 1, 2019. Sponsor must give written notice of its intent not to extend the Agreement for the Second Term to the City on or before December 31, 2022. The Sponsor is obligated to make the license payments during the first five (5) years of the Initial Term. If the Sponsor elects to terminate the agreement during years six (6) though ten (10) of the Initial Term, Sponsor shall pay to City a one-time, lump sum payment of seventy-five thousand ($75,000) dollars, and provide a one (1) year written notice of that intent to the City.

4.02 Sponsor may elect to terminate this Agreement at any time during the Second Term or Subsequent Terms, without penalty or liability for remaining terms payments, by providing one (1) year written notice of that intent to the City.

ARTICLE V

LICENSE FEE

Payments of said License Fee shall be made by Sponsor to City according to the following schedule.

The first-year License Fee shall be due as follows:

$ 120,000.00 shall be due on or before January 15, 2014;

The remaining payments for years 2015 through 2038 shall be made by Sponsor to City in the indicated amounts according to the following schedule:

$120,000.00 January 1, 2015	$145,500.00 January 1, 2027
$120,000.00 January 1, 2016	$149,150.00 January 1, 2028
$120,000.00 January 1, 2017	$152,900.00 January 1, 2029
$120,000.00 January 1, 2018	$156,700.00 January 1, 2030
$120,000.00 January 1, 2019	$160,650.00 January 1, 2031
$120,000.00 January 1, 2020	$164,650.00 January 1, 2032
$125,500.00 January 1, 2021	$168,775.00 January 1, 2033
$128,625.00 January 1, 2022	$173,000.00 January 1, 2034
$131,850.00 January 1, 2023	$177,300.00 January 1, 2035
$135,150.00 January 1, 2024	$181,750.00 January 1, 2036
$138,500.00 January 1, 2025	$186,300.00 January 1, 2037
$141,950.00 January 1, 2026	$191,000.00 January 1, 2038

ARTICLE VI

ASSIGNMENT

This Agreement may be assigned by Sponsor in whole or in part at any time during the term of this Agreement to any individual or entity so long as (i) the City is reasonably

satisfied with the ability of the assignee to perform its obligations under the Agreement; (ii) the assignee's business reputation and standing is reasonably acceptable to the City; and (iii) the assignee is doing business within the City. The City reserves the right to approve any resultant change in the Stadium name.

ARTICLE VII

GENERAL PROVISIONS

7.01 **Development of Stadium**. The City hereby reserves the right, in its sole discretion and without Sponsor's consent, to further develop or improve the Stadium in a commercially reasonable manner.

7.02 **First Right of Refusal**. If, after the expiration of the term of this Agreement, the City decides to enter into another sponsorship license agreement involving naming rights to the Stadium and receives an offer from a third-party to purchase said license, Sponsor shall have a right of first refusal to enter into another sponsorship license agreement with the City. However, Sponsor must meet or exceed all terms and conditions of such proposed license agreement with a third-party. Sponsor must exercise this right of first refusal in writing no later than thirty (30) days after it is given written notice by the City together with a summary of said offer by the third-party. If Sponsor fails to exercise this right of first refusal within said thirty (30) days, it shall automatically expire and be void and of no effect.

7.03 **General Liability Insurance**. At all times during the term of this Agreement, Sponsor shall provide and keep in force liability insurance covering Sponsor and naming the

City as an additional insured. Said insurance shall protect the City and Sponsor against any and all liability for accidental death, personal injury, loss or damage to property arising out of, or connected with the Sponsor's use or occupation of the Stadium. This insurance shall be either: (i) carried by one or more insurance companies duly authorized to transact business in Texas, selected by Sponsor and approved by the City, and shall be paid for by Sponsor or (ii) Sponsor shall have the option, either alone or in conjunction with its ultimate parent corporation, or any subsidiaries or affiliates of its ultimate parent, to maintain self insurance and/or provide or maintain any insurance required by this Agreement under blanket insurance policies maintained by Sponsor or its ultimate parent company, or provide or maintain insurance through such alternative risk management programs as its ultimate parent company may provide or participate in from time to time(such types of insurance programs being herein collectively and severally referred to as "self insurance"), provided the same does not thereby decrease the insurance coverage or limits set forth in this Section. Any self insurance shall be deemed to contain all of the terms and conditions applicable to such insurance as required in this Section. If Sponsor elects to self-insure, then, with respect to any claims which may result from incidents during the Term, such self insurance obligation shall survive the expiration or earlier termination of this Agreement to the same extent as if the insurance required would survive. The insurance provided pursuant to this Article shall be in an amount not less than $1,000,000.00 combined single limit, per occurrence. This insurance shall protect the City and Sponsor against liability to any employees or servants of Sponsor *and* to any other person or persons whose property damage or personal injury arises out of

or in connection with Sponsor's use or occupation of the premises, or any condition thereof for which Sponsor is solely responsible. This insurance policy shall provide for a waiver of subrogation in favor of the City.

7.04 **Workmen's Compensation Coverage**. Sponsor shall carry workmen's compensation insurance as required by Texas Law.

7.05 **Certificates of Insurance**. Sponsor shall furnish the City with certificates of all insurance required by this Agreement. Sponsor agrees that if it does not keep this insurance in full force and effect as required by this Article, the City may notify Sponsor of this failure, and if Sponsor does not deliver to the City certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, the City may, at its option, take out and/or pay the premiums on the insurance needed to fulfill Sponsor's obligations under the provisions of this Article. Upon demand from the City, Sponsor shall reimburse the City the full amount of any insurance premiums paid by the City pursuant to this Article, with interest at the rate of 10 percent per annum from the date of the City's demand until reimbursement by Sponsor.

7.06 **Indemnification Claims**. In the event that any party to this Agreement proposes to make any claim for indemnification, the party seeking indemnification (the "Indemnified Party") shall deliver, within fifteen (15) days of receiving notice of claim or notice of a civil suit, written notification to the other party (the "Indemnitor"). The Indemnitor will assume the defense of any claim, demand or action covered by the above-described paragraphs against such Indemnified Party and will, upon the request of the

Indemnified Party, allow the Indemnified Party to participate in the defense thereof, such participation to be at the expense of the Indemnified Party. The Indemnified Party will in any case cooperate fully with the Indemnitor in the defense and will, at its expense, provide all relevant documents, witnesses and other assistance within its possession or control upon the reasonable request of the Indemnitor. Settlement by the Indemnified Party without the Indemnitor's prior written consent shall release the Indemnitor from the indemnity as to the claim, demand or action so settled. Termination of this Agreement shall not affect the continuing obligations of each of the parties as indemnitors hereunder with respect to those acts, breaches, failures or omissions falling within the purview of the foregoing indemnities and which shall have occurred prior to such termination.

7.07 **Workmen's Compensation Claims**. Sponsor agrees to be responsible for the workers' compensation insurance on its employees, agents, independent contractors and subcontractors. If any direct claim for worker's compensation benefits is asserted against the City by any of said employees or, in the event of death, by their personal representative(s), then upon written notice from the City, Sponsor shall undertake to defend the City against such claim(s) and shall indemnify and hold the City harmless from and against any such claim(s) to the extent of all benefits, costs of litigation, disbursements and attorney's fees incurred in connection therewith.

7.08 **Default by Sponsor**. An event of default by Sponsor shall be deemed to have occurred in any of the following instances:

(a) Sponsor fails to make any payment to the City required by this Agreement on

the date when such payment is due and payable and such failure continues for a period of thirty (30) days after written notice of such failure from City to Sponsor;

(b) Sponsor fails to perform or observe any other term, covenant, condition or provision of this Agreement and such failure is not remedied within forty-five (45) days following written notice to Sponsor of such failure.

(c) There shall be filed against Sponsor in any court pursuant to any statute either of the United States or of any state, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or substantially all of Sponsor's property or other such proceeding and within ninety (90) days of such filing Sponsor fails to secure a discharge of such petition or the dismissal of such proceedings.

(d) Sponsor files a voluntary petition in bankruptcy or insolvency or for such reorganization or for the appointment of such a receiver or trustee or other such proceeding or makes an assignment for the benefit of creditors or petitions for or enters into an arrangement for the benefit of creditors.

7.09 **Default by City**. An event of default by the City shall be deemed to have occurred under this Agreement in the following instances:

(a) The City fails to perform or observe any term, covenant, condition or provision of this Agreement and such failure, although capable of remedy, is not remedied within forty-five (45) days following written notice of such failure;

(b) The Stadium ceases to host a professional minor league baseball team as its

tenant, such event of default being determined as of January 1st of any regular league playing season during the term of this Agreement;

(c) The Stadium fails to host more than fifty (50) events on an annual basis; or,

(d) The total attendance of all hosted events falls below one hundred fifty thousand (150,000) during any twelve (12) month period.

7.10 **Notice of Default**. Notwithstanding any and all other provisions of this Agreement, no notice that in default (herein called Notice of Default) shall be valid or effective unless it complies with the following requirements:

(a) Notice of Default shall be served within thirty (30) days after the Party acquires knowledge of the occurrence of a claimed default.

(b) Such Notice of Default shall specify in reasonable detail the alleged default and specify the Article, and/or Section, of the Agreement under which such default is claimed to have occurred.

7.11 **Termination for Default**. After the occurrence of any event of default, the non-defaulting Party shall have the right to give formal notice of its intention to terminate this Agreement. Upon the effective date of such termination specified in such notice (which shall be not less than 30 days after the giving of such notice), the term of this Agreement shall end as fully and completely as if that were the date herein for the expiration of the term of this Agreement.

7.12 **Prospective Effect**. Any termination of this Agreement, caused by the default of the Sponsor, as provided in this Agreement shall not relieve Sponsor from the payment

of any sum or sums that have previously become due and payable to the City under this Agreement at the time of termination, or any claim for damages then or previously accruing against Sponsor under this Agreement. Any termination of this Agreement shall not prevent the City from enforcing the payment of any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from Sponsor for any default under this Agreement.

7.13 **Acceleration of Payments**. In addition to and cumulative with any other remedies which the City has reserved in this Agreement, in the event of any default by Sponsor, the City reserves the right to accelerate all installment payments to be made by Sponsor to the City during the then current year of this Agreement and to declare the same immediately due and payable. This paragraph applies to, but is not limited to, the agreement on the part of Sponsor to pay the License Fee and any other sponsorship fees associated with this Agreement.

7.14 **Replacement Grant**. In the event of any termination of this Agreement upon an event of default by Sponsor, the City may grant to any other persons or entities any or all of the rights granted to Sponsor under this Agreement, on such terms as may be desired by City.

(a) In such an event, the City may alter or replace any related signage which the City, in its sole discretion, may deem advisable, all without in any way releasing Sponsor from liability under this Agreement. Sponsor shall upon demand reimburse the City its costs of all such alterations or replacements, together with the City's other

expenses of granting such rights, including reasonable legal expenses. The total amount of such reimbursement shall not exceed twenty-five thousand ($25,000) dollars.

(b) In the event of any termination of this Agreement upon an event of default, Sponsor shall make the payments provided in this Agreement at the times and upon the terms herein provided for in the Terms of this Agreement, or any extension thereof then in effect, less the net revenues received or contracted for by the City from other persons or entities for the rights and privileges granted to Sponsor by this Agreement.

(c) The City shall not be liable for failure to regrant any of the rights granted to Sponsor by this Agreement, or, if such rights are regranted, for its reasonable failure to collect the payments under such regranting.

7.15 **Reimbursement for Signage**. In the event that the City defaults on the Agreement at anytime during the Initial Term, the City shall reimburse the Sponsor for all signage costs as represented above in Section 7.16, said amount not to exceed twenty-five thousand ($25,000) dollars.

7.16 **Equitable Relief**. In the event of a breach or a threatened breach by either Party of any of the terms, covenants, conditions or provisions of this Agreement, the other Party shall have the right to obtain equitable relief including, without limitation, injunction and restraining orders in addition to any other remedy which may be available by law. Each Party does hereby (i) acknowledge that its failure to comply with the terms, covenants,

conditions and provisions of this Agreement (other than the payment of money) may cause the other Party irrevocable harm and that a remedy at law for such failure may not provide the other Party with an adequate remedy for such breach and (ii) therefore agree that equitable relief of a court of competent jurisdiction may be sought in order to enforce such compliance.

7.17 **Remedies Cumulative**. All rights, options, and remedies contained in this Agreement shall be construed and held to be cumulative, and none shall be exclusive of the other, and the Parties shall have the right to pursue any or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Agreement.

7.18 **Jurisdiction and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas applicable to contracts negotiated, executed and wholly performed within the State of Texas. Exclusive venue shall be in Midland County, Texas for any lawsuit or claim arising under or in any way connected to this Agreement. The obligations, performance and payments by the parties to this Agreement are deemed to have occurred in Midland County, Texas.

7.19 **Sponsor as Independent Contractor**. It is expressly understood and agreed that Sponsor shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City. Sponsor shall have exclusive control 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.

The doctrine of respondent superior shall not apply as between City and Sponsor, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Sponsor. No person performing any of the work and services described hereunder for Sponsor shall be considered an officer, agent, servant or employee of the City. 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.

7.20 Partnership Disclaimer. It is mutually understood that nothing in this Agreement is intended or shall be construed as in any way creating or establishing the relationship of partners between the parties hereto, or as constituting the Sponsor as an agent or representative of the City for any purpose or in any manner whatsoever.

7.21 Compliance with Law. The Sponsor shall comply, at all times during the term of this Agreement, at its own cost and expense, with all generally applicable ordinances and laws of the City, State of Texas and the United States.

7.22 Nonwaiver of Rights. No waiver of default by either Party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

7.23 Severability. If one or more clauses, Articles, or provisions of this Agreement,

or the application thereof, shall be held to be unlawful, invalid, or unenforceable, the remaining provisions shall not be affected thereby.

7.24 **Force Majeure**. Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, or payment of fees, covenants or conditions of this Agreement due to causes beyond the control of that party including acts of God or any other circumstance for which such party is not responsible or which is not in its power to control.

7.25 **Entire Agreement**. This Agreement, together with all exhibits attached hereunto, constitutes the entire Agreement between the parties hereto, and all other representations or statements heretofore made, verbal, or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto. The Sponsor acknowledges that this Agreement supersedes and cancels any and all prior and contemporaneous understandings and represents the entire Agreement between the parties.

7.26 **Textual Construction**. Words and phrases herein shall be construed as in the singular or plural number, and a masculine, feminine, or neuter gender, according to the context.

7.27 **Headings**. The headings appearing in this Agreement are for the convenience and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Agreement.

7.28 **Required Notices**. Notices required herein shall be given by certified mail by

depositing the same in the United States mail, postage prepaid. Either Party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notice shall be delivered as follows:

City of Midland
City Manager
P. O. Box 1152
Midland, Texas 79702

Mr. Bobby Norman
Senior Vice President
Security Bank
600 N. Marienfeld, Suite 100
Midland, TX 79702.

If notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.

7.29 **Binding Effect**. This Agreement shall be binding upon and inure to the benefit of the parties and their respective shareholders, officers, directors, elected officials, agencies, employees, agents, successors, and assigns.

7.30 **Third Parties**. There are no third-party beneficiaries to this Agreement. No person or entity who is not a party to this Agreement shall have any third-party beneficiary or any other right hereunder.

IN WITNESS WHEREOF, the City of Midland and the Sponsor have executed this Agreement on the _____ day of _____, 2013.

THE CITY OF MIDLAND, TEXAS

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary
APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

SECURITY BANK

_____
Bobby Norman, Senior Vice President

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME,_____, a notary public, on this day personally appeared Bobby Norman, Senior Vice President of Security Bank, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said bank, 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., 2013.

_____
Notary Public, State of Texas

6465-13 Baseball Stadium Naming Rights Tabulation

Security Bank
600 N. Marienfeld, Suite 100
Midland, TX 79702
Bobby Norman
570-9330

Escalation Rate = 1.5% rounded to the nearest $50.00 increment.

Year 1	$120,000.00	Term:	25 years
Year 2	$120,000.00	Primary Term:	10 years
Year 3	$120,000.00	Extensions:	One-15 years
Year 4	$120,000.00	Exit Clause:	Beginning in year 4
Year 5	$120,000.00	Exit Fee (Year 4-5):	$75,000.00 (One Year Notice)
Year 6	$121,800.00	Exit Fee (Year 5-10):	$50,000.00 (One Year Notice)
Year 7	$123,650.00	Exit Fee (Year 11-26):	None
Year 8	$125,500.00		
Year 9	$127,400.00		
Year 10	$129,250.00	235 RFPs were sent to various companies	
Year 11	$131,200.00	2 companies attended pre-proposal conference	
Year 12	$133,200.00	1 proposal was received	
Year 13	$135,200.00		
Year 14	$137,200.00	Negotiated Terms:	
Year 15	$139,300.00	Five years no exit clause	
Year 16	$141,350.00	Exit clause in years 6-10 with $75,000 exit fee	
Year 17	$143,450.00	Exit clause in years 10-25 with no exit fee/1yr notice	
Year 18	$145,650.00	2.5% escalation rate in years 8-25	
Year 19	$147,800.00		
Year 20	$150,000.00		
Year 21	$152,300.00		
Year 22	$154,600.00		
Year 23	$156,850.00		
Year 24	$159,200.00		
Year 25	$161,650.00		
Total	$3,416,600.00		
Avg. Annual:	$136,663.00		

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: August 16, 2013
To: Tommy Hudson, Deputy City Manager
From: Tina Jauz, Community Services Director
Subject: Naming Rights Agreement – Baseball Stadium

In January, the City of Midland received official notice that Citibank would no longer continue their agreement for naming rights of the Baseball Stadium at the Scharbauer Sports Complex. The agreement will end on December 31, 2013.

As a result, staff put together a Request for Proposals for Naming Rights for the Baseball Stadium. On June 5th, one bid was received from Security Bank.

A committee, comprised of staff, RockHounds Management, and 4B Board members, reviewed the proposal and the 4B made recommendation to staff to negotiate the agreement.

After various meetings with Bobby Norman at Security Bank, an agreement was reached as to the terms of the Naming Rights Agreement. The terms include:

- A 25-year Agreement worth $3.6 million
- Five years no exit clause
- Exit clause in years 6-10 with $75,000 exit fee (in addition to the final year payment listed in the agreement) and a one year notice
- Exit clause in years 10-25 with no exit fee and a one year notice (must make final year payment as listed in the agreement)
- 2.5% escalation rate in years 8-25
- First year payment $120,000
- (see attached sheet for financial details)

The 4B Board is making recommendation to the City Council to enter into an agreement with Security Bank for the naming rights of the baseball stadium. The agreement would be effective January 1, 2014.

City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 8/27/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the issuance of a request for qualifications for a Pavement Condition Index Survey for the Engineering Department.

Purpose:

Approval of a resolution authorizing the issuance of a request for qualifications for a pavement condition index survey.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Funding is not required at this time.

Discussion:

The Pavement Condition Index (PCI) is a numerical index between 0 and 100 which is used to indicate the general condition of pavement. PCI was developed by the United States Army Corp of Engineers. The method is based on a visual survey of the number and types of distresses in street pavement. The result of the analysis is a numerical value between 0 and 100, with 100 representing the best possible condition and 0 representing the worst possible condition. Trained personnel are required to complete the complicated survey procedure. Please see the attached memo from Gary Saunders, Transportation Manager for further discussion.

Therefore, please consider approving a resolution authorizing the issuance of a request for qualifications for engineering, planning and administrative services to conduct a pavement condition index survey for the Engineering Department.

City Council Agenda

MEETING DATE: **August 27, 2013**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Gary Saunders, Transportation Manager**

SUBJECT: **Resolution – Pavement Condition Index Survey RFQ**

Purpose:

Consider a resolution authorizing the City Manager to advertise a Request for Qualifications for a Pavement Condition Index Survey for pavement analysis and pavement management strategies.

Recommended City Council Action

X Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

No financial impact at the time. Once selection has been made, staff will return to City Council to request allocation of funds for a professional services agreement. It is anticipated that the project will be funded from the General Fund.

Discussion:

The Legal Department has prepared a resolution authorizing the City Manager to advertise a Request for Qualifications (RFQ) from parties interested in assisting the City's Transportation Division in performing a Pavement Condition Index Survey to update its Pavement Management System and import the information into a pavement management software application.

The main scope of this RFQ is for pavement analysis and pavement management strategies plus providing information on how the collection would be performed so that additional assets can be collected and supplied to the City of Midland at a later date without re-mobilizing staff.

Staff recommends approval of this resolution.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING ISSUANCE OF A REQUEST FOR QUALIFICATIONS FOR A PAVEMENT CONDITION INDEX SURVEY FOR THE ENGINEERING DEPARTMENT

WHEREAS, a request for qualifications has been prepared for a pavement condition index survey for the Engineering Department; and

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

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

SECTION ONE. That the request for qualifications for a pavement condition index survey for the Engineering Department is hereby approved, said request for qualifications being on file with the office of the City Secretary, referenced by the date and number of this Resolution.

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

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

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Robert Patrick, General Services Director

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

MIDLAND

Purchasing Division

August 27, 2013

Re: Request for Qualifications (RFQ)

The City of Midland, (hereinafter "City") is seeking concise letters of interest and a Statement of Qualifications (SOQ) from parties interested in assisting the City's Transportation Division in performing a Pavement Condition Survey, update its Pavement Management System, import that information into a pavement management software application, propose a 5 year pavement preservation strategy and convey that information in a public forum to the governing body of the City. The current system is Micropaver which is integrated with Cityworks asset management system. Certain types of information will not be allowed; windshield, video with rater keyboard or fully automated solutions using just lasers.

SERVICES

The selected submitter will perform the following services under this agreement:

1. Provide engineering, planning, and administrative services in connection with the pavement indexing including the implementation of a 5 year pavement preservation strategy.

- Deliver Digital images in industry standard *.JPEG format.
- Inspect existing pavement sections to determine actual deterioration of pavement.
- Update City`s Geographic Information System (GIS) data
- Load information into Micropaver.
- Load new pavement analysis into Micropaver using an automated loading script to reduce key entry errors.

- Deliver updated Micropaver file that combines historic and current pavement analysis.
- Deliver a geodatabase with current PCI data.
- Deliver a geodatabase with current sample polygons with all measured distress data.
- Schedule walk-out field reviews with City of Midland staff for pavement analysis for quality control check.
- Make presentation(s) to City staff and/or City Council as necessary.
- Conduct project kickoff, progress and close out meetings.

Requirements

1. Minimum G.I.S. Standards Required

a. Provide Geodatabase format only on all G.I.S. deliveries
b. Provide Road and section Cityworks ID in Micro Paver and GIS centerline or pavement section
c. Provide Submeter Spatial accuracy of >3' on all GIS files to overlay on existing City GIS data

Vendor Requirements

a. Provide history as a Strategic Cityworks partner
b. Provide history as a ESRI business and public works partner
c. Show prior Texas pavement analysis projects.
d. Show company experience directly related pavement asset collection and analysis.
e. Show each project team members experience related to pavement asset collection and analysis.
f. Provide experience/history in prioritizing cost benefit of pavement rehabilitation projects, formulating data for studies and presentation of findings to City Manager, City Council.

Collection Method

a. Show collection vehicle capabilities should have GPS, DMI and image capabilities. Ability to collect ground based LiDAR that can be used to determine roadway characteristics. Be able to cover roadway both directions for a 360 degree view on road and capture R.O.W. assets. Ability to have cameras images overlap to acquire any requested assets. Show capability of the use of actual measurements of surface distress data.

b. Show asset collection using GPS technology.
c. Provide detailed description of cameras, the mounting on vehicle and capabilities of the camera.

Collected Assets

a. Provide experience in adding data to street centerline layers in GIS.
b. Provide experience in adding data to micropaver pavement management software.
c. The main focus of this RFQ is for pavement analysis and pavement management strategies. However, provide information on how the collection would be performed so that additional assets can be collected and then supplied to the City at a later date without re-mobilizing crews. Vendor must show the ability to provide attribution in the following methodology:

    - X,Y,Z (in Texas State Plane - Central Zone NAD 83)
    - Road name
    - Asset ID
    - Image Link
    - Material type
    - Condition assessment
    - Size
    - MUTCD code

Optional Roadway list

- **Drop/Curb inlets**
- **Manholes**
- **Water Valves/Meters**
- **Sewer Cleanouts**
- **Fire Hydrants**
- **Culverts**
- **Ditches**
- **Traffic signs**
- **Pavement Markings/Striping**
- **Bridges**
- **Traffic Signals and Poles**
- **Curb and Sidewalk**
- **Light Poles**
- **Guardrails**
- **Handrails**
- **Ramps**

- **Shoulders**

Software Integration

1. The City of Midland GIS Department uses ESRI products. Provide qualifications for providing geodatabase with separate feature classes for each collected asset.
2. The City of Midland is an Azteca Cityworks user, which is a GIS centric CMMS. Provide qualifications that collected assets are formatted to seamlessly integrate with Cityworks and Micropaver. Demonstrate that asset data has been successfully implemented into Cityworks. Provide Micropaver projects using ASTM D6433-09 method of collection with sample data and locations.

QUALIFICATIONS

The Statement of Qualifications should include:

1. Resumes of the proposed project team including at least one professional with a minimum of five (5) years experience in the development, management and oversight of pavement management;
2. Demonstrate familiarity with an pavement preservation strategy;
3. References including project descriptions and client contact information for recent similar projects in which the proposed project team was directly involved;
4. Estimated time for completion of the project;
5. Availability of key personnel and ability to commit their time throughout the life of the project;
6. Ability to provide technical support to monitor, update, and implement changes as needed for a period of three years after the initial implementation.

SELECTION

The City will make its selection from those responding to this RFQ. If deemed necessary by the City, interviews with the firms deemed most qualified, may be conducted. Once a selection is made, the chosen firm will be requested to submit a detailed scope of work and cost estimate to perform the services. If a mutually

satisfactory agreement cannot be reached with the selected professional, negotiations will be terminated with that firm and the negotiation process may be initiated with the next most qualified firm. The process may be repeated until a mutually satisfactory agreement is reached. The City maintains the right to terminate the selection process at any time if they feel it is in the best interest of the project. At such time as an agreement is reached, City staff will make a recommendation to the City Council to execute a contract pursuant to the agreement and subject to the availability of funding. The City reserves the right to accept or reject any or all proposals and to accept what in the judgment of the Mayor and City Council is the most advantageous proposal.

SUBMITTAL

Three (3) copies of the Statement of Qualifications should be submitted. The submittal should not include fees or any other cost estimates. The entire qualification package can be no more than 30, one-sided pages. Text is to be presented in Times 12 format with minimum margins of one-inch on all sides. The total page number shall include all corporate brochures and materials that may be submitted with the Statement of Qualifications. Failure to include all requested information in the qualifications package or follow the format guidelines included herein shall be grounds for disqualification from consideration.

Statements of Qualifications are to be submitted no later than 5:00 p.m., on September 27, 2013, to the following:

City of Midland Purchasing Division PO Box 1152 Midland, Texas 79702 Attn: Regina Stephenson	Street Address: 300 North Loraine Midland, Texas 79701

Only timely submittals received from invited firms will be considered.

WAIVER

A. <u>WAIVER OF CLAIMS ARISING FROM THE COMPETITIVE REQUEST FOR QUALIFICATION PROCESS OF AWARD OF CONTRACT</u>

BY SUBMITTING A STATEMENT OF QUALIFICATIONS, EACH SUBMITTER AGREES TO AND DOES HEREBY WAIVE ANY CLAIM THE SUBMITTER HAS OR MAY HAVE AGAINST THE CITY AND/OR 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 STATEMENT OF QUALIFICATIONS.

2. WAVIER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE STATEMENT OF QUALIFICATIONS OR THE CONTRACT DOCUMENTS.

3. ACCEPTANCE OR REJECTION OF ANY STATEMENT OF QUALIFICATION.

4. AWARD OF CONTRACT.

By submitting a Statement of Qualifications, the submitter acknowledges that he or she understands all terms of the proposal documents and consents to the competitive selection process and the possibility of a negative assessment. By submitting a Statement of Qualifications, the submitter acknowledges and agrees that there was and is no disparity of bargaining power between the submitter and the City.

The submitter agrees that this is the intentional relinquishment of the above listed presently existing known rights.

B. WAIVER OF ATTORNEY FEES

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

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

By execution and submission of a Statement of Qualifications under this RFQ, the submitter hereby represents and warrants to the City that the submitter has read and understands the RFQ and the Statement of Qualifications is submitted in accordance

with this RFQ. The submitter acknowledges that it understands all terms within the proposal documents, which include the waiver provisions, and that it had the right to consult with counsel regarding all of the above documents.

This section shall not be construed as a Waiver of Sovereign Immunity.

SOVEREIGN IMMUNITY

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.

QUESTIONS REGARDING THIS REQUEST

Questions should be directed to:

Transportation Manager
Phone No. (432) 685-7287
Fax No. (432) 683-1786

Very truly yours,

Gary Saunders
Transportation Manager

PROFESSIONAL SERVICES AGREEMENT
FOR CONSULTING SERVICES

THIS AGREEMENT is made and effective the _____day of ____ 2013, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, _____hereinafter referred to as "CONSULTANT."

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which CONSULTANT shall perform Pavement Condition Index Survey services for the City of Midland.

ARTICLE II. SERVICES TO BE PERFORMED

1. CONSULTANT shall provide those services described in Exhibit "A."

2. CONSULTANT shall perform all the services under this Agreement consistent with the same level of skill and care as other professionals in approximately the same region at approximately the same point in time and for the same types of projects. CONSULTANT represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in Exhibit "A.".

ARTICLE III. FINANCIAL CONSIDERATIONS

CITY agrees to pay CONSULTANT according to the schedule set forth in Exhibit "A" upon presentation of a monthly invoice. The invoice shall set out service fees for the month and those Additional Expenses and Reimbursable Expenses described in Exhibit "A" incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. CONSULTANT shall perform professional services as outlined in the "Services to be Performed" for a fee of $____ (breakdown of fees is located in Exhibit "A".) which fee for basic services shall in no event exceed $____, excluding Additional Services and Reimbursable Expenses. Within 30 days of the date CONSULTANT's invoice is received by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion of an invoice, CITY

shall notify CONSULTANT of CITY's objection and the grounds therefor within 15 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. CITY in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV. TERM

The term of this Agreement shall be from ____, 2013 until ____, 201_, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

The CITY may terminate this Agreement at will for no or any reason upon giving at least sixty (60) days written notice to the Consultant. The parties to this Agreement understand and agree that it is in the CITY's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the CITY. The Consultant has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

ARTICLE VI. ASSIGNMENT

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

ARTICLE VII. OWNERSHIP AND CONFIDENTIALITY OF DOCUMENTS AND OTHER WORK PRODUCT

All reports, information and other data ("instruments of service"), given to, prepared or assembled by CONSULTANT under this Agreement, and any other related documents or items shall become the sole property of CITY and shall be delivered to CITY, without restriction, except that CONSULTANT may make copies of any and all instruments of service for its files. The CITY shall not make any modification to the plans and specifications or make them available for

use by third parties without the prior written authorization of CONSULTANT, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

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

ARTICLE IX. INSURANCE

1. 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-CITY 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.

ARTICLE X. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, CONSULTANT AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE CONSULTANT SPECIFICALLY AGREES THAT IF THE CONSULTANT 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 CONSULTANT AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CONSULTANT MIGHT OTHERWISE BE ENTITLED.

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

THE CONSULTANT 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.

ARTICLE XI. SOVEREIGN IMMUNITY

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

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

ARTICLE XIII. RELEASE

NOTWITHSTANDING ANY OTHER PROVISIONS, CONSULTANT 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 CONSULTANT HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE..

ARTICLE XIV. GENERAL PROVISIONS

A. Waiver. No waiver by CITY of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.

B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of

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

D. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

If to CITY: City Manager's Office
P.O. Box 1152
Midland, Texas 79702

If to CONSULTANT:

The parties hereto may change the above-designated addresses by giving notice pursuant to the terms of this Section.

E. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

F. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.

G. 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.

H. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.

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

J. 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, Consultant 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 Consultant will settle, the physical and mailing addresses of Consultant at the time and date the claim was presented and the physical and mailing addresses of Consultant for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Consultant 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 Consultant that Consultant's notice is insufficient. CITY reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas

Government Code. Notwithstanding any other provision, Consultant's failure to comply with the requirements herein shall perpetually bar Consultant'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. Consultant agrees that the requirements of this entire Agreement are reasonable.

K. **PROMPT PAY ACT** - The City and Consultant agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Courtney B. Sharp, City Manager

CONSULTANT:

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

_____
Keith Stretcher, City Attorney

ATTEST

_____
Amy M. Turner, City Secretary

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ___day of _____, 2013.

_____

Notary Public, State of Texas

NOTICE TO BIDDERS

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 ABOVE REQUIREMENTS, 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.

ANY VENDOR WHO FAILS TO COMPLY WITH THE TERMS OF THE AWARD **MAY BE DECLARED AN IRRESPONSIBLE VENDOR**. BIDS SUBMITTED BY SAID VENDOR SHALL NOT BE CONSIDERED AGAIN FOR A MINIMUM PERIOD OF SIX MONTHS AS DETERMINED BY THE CITY MANAGER, OR DIRECTOR OF GENERAL SERVICES.

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

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

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

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

OFFICE USE ONLY

Date Received

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

_____

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

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

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

_____

_____

_____

_____

_____

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

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

Adopted 11/02/2005

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor or other person doing business with local governmental entity

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

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

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

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

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

D. Describe each affiliation or business relationship.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

6

_____ Signature of person doing business with the governmental entity

_____ Date

Adopted 11/02/2005

CITY OF MIDLAND

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

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

(1) the lowest bidder; or

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

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

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

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: _____

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

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

   Reseller Permit Number: _____

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

   _____

   _____

   _____

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

   _____

   _____

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

   ☐ Yes ☐ No

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

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

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 8/27/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution allocating funds to the 2013 Facilities Renovations Project (9059)

Purpose:

Approval of a resolution authorizing the allocation of funds to be available for building renovations.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Allocation of $84,367 to the 2013 Facilities Renovations Project

Discussion:

These funds are appropriated annually to provide for the repair of City owned buildings. $100,000.00 was budgeted for FY2013 and to date we spent $15,633.00 of this amount to landscape the east side of City Hall. Anticipated projects for City Hall are replacement of the elevator generator in the east elevator, replacement of concrete in exterior walkways, installation of an ADA ramp and an ADA automatic door opener on the southwest side of the building and replacement of the flag poles along with other minor miscellaneous improvements at various buildings.

Therefore, please consider approval of a resolution allocating $84,367.00 from the General Fund (001) Non-Departmental (150) Interfund Transfer (0199) General Construcion Fund (6299) budget account to the 2013 Facilities Renovations Project (9059).

RESOLUTION NO. _____

RESOLUTION ALLOCATING $84,367.00 FOR THE CITY FACILITIES RENOVATION PROJECT (PROJECT 9059); AND THESE FUNDS ARE USED TO REPAIR AND REPLACE VARIOUS CITY FACILITIES

WHEREAS, the City Facilities Renovations Project (Project 9059) is an ongoing project to insure that the major systems of City of Midland facilities are repaired or replaced as needed; and

WHEREAS, the Council finds it to be in the public interest to appropriate funds for the City Facilities Renovations Project (Project 9059);

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

THAT the sum of $84,367.00 is hereby allocated from the Fiscal Year 2012 – 2013 General Fund (001) Non-Departmental (150) Interfund Transfer (0199) General Construction Fund (6299) budget account to the Facilities Project (9059).

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

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Robert Patrick, General Services Director

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 8/27/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the sole source purchase of two Holmatro rescue tools and repair parts for a third City owned Holmatro rescue tool from Metro Fire Apparatus Specialists, Inc. for the Fire Department.

Purpose:

Approval of a resolution authorizing the sole source purchase of two Holmatro rescue tools and repair parts for a third Holmatro rescue tool.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

$68,110.55 General Fund

Discussion:

The Fire Department's current Holmatro rescue tool is inoperable. Staff is proposing repairing the inoperable piece of equipment and purchasing two more Holmatro rescue tools. Metro Fire Apparatus Specialists, Inc. is the only authorized sales and service dealer for Holmatro equipment in Texas. Please see the memo from Robert Isbell, Fire Chief, for further discussion.

Therefore, please consider a resolution approving the purchase of two Holmatro rescue tools and repair parts from Metro Fire Apparatus Specialists, Inc. for a total cost of $68,110.55.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE PURCHASE OF TWO (2) HOLMATRO RESCUE TOOLS, AND PARTS TO REPAIR THE CITY'S CURRENT HOLMATRO RESCUE TOOL, FROM METRO FIRE APPARATUS SPECIALISTS, INCORPORATED; SAID PURCHASE WAS NOT BID BUT PURCHASED AS A SOLE SOURCE; AND THE COSTS FOR THE TWO (2) RESCUE TOOLS PLUS PARTS SHALL BE APPROXIMATELY $68,110.55

WHEREAS, the City Manager approved the single source bid two (2) Holmatro Rescue Tools, and parts to repair the City's current Holmatro Rescue Tool, for the Fire Department; and

WHEREAS, the single source provider, Metro Fire Apparatus Specialists, Inc., submitted a total bid for said tools and parts in the estimated amount of $68,110.55, as shown on the sales orders attached hereto as Exhibit "A" and incorporated herein for all purposes; and

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

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

WHEREAS, the City Council finds it to be in the public interest to purchase said tools and parts from Metro Fire Apparatus Specialists, Inc.;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase said tools and parts at a total estimated cost of $68,110.55.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Metro Fire Apparatus Specialists, Inc., for said tools and parts at a price not to exceed $68,110.55, from funds available in the Fiscal Year 2012 – 2013 General Fund (001) Fire (115) Fire (0115) budget account upon proper receipt of invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Robert Patrick, General Services Director

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

ORDER ACKNOWLEDGEMENT

METRO FIRE
APPARATUS SPECIALISTS, INC.

Order Number	64224-0
Printed Date	08/02/2013
Ordered Date	08/02/2013
Page	1

Corporate
10940 W. Sam Houston Pkwy N.
Suite 325
Houston, TX 77064
(713) 692-0911 Phone
(713) 692-1591 Fax

Mansfield
1501 Heritage Pkwy
Suite 103
Mansfield, TX 76063
(817) 467-0911 Phone
(817) 375-1775 Fax

South Houston
514 Michigan

South Houston, TX 77587
(713) 475-2411 Phone
(713) 475-2428 Fax

Bill to: MIDLAND FIRE DEPARTMENT
W-9 ACCOUNT PAY
P O BOX 1152
MIDLAND, TX 79702

Ship to: MIDLAND FIRE DEPARTMENT
1500 W WALL
MIDLAND, TX 79701

Attn: FRITZ NIGGELER

Cust Code	Ordered By	Salesman	Job/Rel#	Customer PO
MID002	ROCKY	JONATHAN MERCER		PENDING

Entered By	FOB	Ship Via	Terms
JONATHAN MERCER	CUSTOMER PAYS FREIGHT	BEST WAY	NET 30 DAYS

LOC	OC	Quantity Ord	Shp	B/O	U/M	Item #	Description	Price	Extension
02	P	1	0	1	EA	HOL-158.012.078	4050NCT CUTTER CORE	5554.2200	5554.22
02	P	1	0	1	EA	HOL-158.012.101	4240 SPREADER CORE	6630.9200	6630.92
02	P	1	0	1	EA	HOL-158.012.107	CU 4007 MINI CUTTER CORE	3578.3300	3578.33
02	P	1	0	1	EA	HOL-158.572.125	HOSE CORE 32 ORANGE	841.9600	841.96
02	P	1	0	1	EA	HOL-158.572.128	HOSE CORE 32 BLUE	841.9600	841.96
02	P	1	0	1	EA	HOL-158.152.178	SR 20 GAS POWERED CORE PUMP SP20PC2	7658.1500	7658.15
02	P	-1	-1	0	EA	MET-DISCOUNT	ENTER DISCOUNT REASON HERE CUSTOMER LOYALTY	106.0000	106.00-

SubTotal	24,999.54
Total	24,999.54

THIS IS NOT AN INVOICE. DO NOT PAY FROM THIS SALES ORDER.

ORDER ACKNOWLEDGEMENT

METRO FIRE
APPARATUS SPECIALISTS, INC.

Order Number	64223-0
Printed Date	08/02/2013
Ordered Date	08/02/2013
Page	1

Corporate
10940 W. Sam Houston Pkwy N.
Suite 325
Houston, TX 77064
(713) 692-0911 Phone
(713) 692-1591 Fax

Mansfield
1501 Heritage Pkwy
Suite 103
Mansfield, TX 76063
(817) 467-0911 Phone
(817) 375-1775 Fax

South Houston
514 Michigan

South Houston, TX 77587
(713) 475-2411 Phone
(713) 475-2428 Fax

Bill to: MIDLAND FIRE DEPARTMENT
W-9 ACCOUNT PAY
P O BOX 1152
MIDLAND, TX 79702

Ship to: MIDLAND FIRE DEPARTMENT
1500 W WALL
MIDLAND, TX 79701

Attn: FRITZ NIGGELER

Cust Code	Ordered By	Salesman	Job/Rel#	Customer PO
MID002	ROCKY	JONATHAN MERCER		PENDING

Entered By	FOB	Ship Via	Terms
JONATHAN MERCER	CUSTOMER PAYS FREIGHT	BEST WAY	NET 30 DAYS

LOC	OC	Quantity Ord	Quantity Shp	Quantity B/O	U/M	Item #	Description	Price	Extension
02	P	1	0	1	EA	HOL-158.152.178	SR 20 GAS POWERED CORE PUMP SP20PC2	7658.1500	7658.15
02	P	1	0	1	EA	HOL-158.572.125	HOSE CORE 32 ORANGE	841.9600	841.96
02	P	1	0	1	EA	HOL-158.572.128	HOSE CORE 32 BLUE	841.9600	841.96
02	P	1	0	1	EA	HOL-158.012.107	CU 4007 MINI CUTTER CORE	3578.3300	3578.33
02	P	1	0	1	EA	HOL-158.012.078	4050NCT CUTTER CORE	5554.2200	5554.22
02	P	1	0	1	EA	HOL-158.012.101	4240 SPREADER CORE	6630.9200	6630.92
02	P	-1	-1	0	EA	MET-DISCOUNT	ENTER DISCOUNT REASON HERE CUSTOMER LOYALTY	106.0000	106.00-

SubTotal	24,999.54
Total	24,999.54

THIS IS NOT AN INVOICE. DO NOT PAY FROM THIS SALES ORDER.

ORDER ACKNOWLEDGEMENT

METRO FIRE
APPARATUS SPECIALISTS, INC.

Order Number	64226-0
Printed Date	08/06/2013
Ordered Date	08/02/2013
Page	1

Corporate
10940 W. Sam Houston Pkwy N.
Suite 325
Houston, TX 77064
(713) 692-0911 Phone
(713) 692-1591 Fax

Mansfield
1501 Heritage Pkwy
Suite 103
Mansfield, TX 76063
(817) 467-0911 Phone
(817) 375-1775 Fax

South Houston
514 Michigan

South Houston, TX 77587
(713) 475-2411 Phone
(713) 475-2428 Fax

Bill to: MIDLAND FIRE DEPARTMENT
W-9 ACCOUNT PAY
P O BOX 1152
MIDLAND, TX 79702

Ship to: MIDLAND FIRE DEPARTMENT
1500 W WALL
MIDLAND, TX 79701

Attn: FRITZ NIGGELER

Cust Code	Ordered By	Salesman	Job/Rel#	Customer PO
MID002	ROCKY	JONATHAN MERCER	08/02/2013 BJ	PENDING

Entered By	FOB	Ship Via	Terms
JONATHAN MERCER	CUSTOMER PAYS FREIGHT	BEST WAY	NET 30 DAYS

LOC	OC	Quantity Ord	Shp	B/O	U/M	Item #	Description	Price	Extension
02	D	3	0	3	EA	HOL-150.062.190	SR20 ADAPTER QFA 20	101.8500	305.55
02	D	3	0	3	EA	HOL-150.062.188	QUICK RELEASE LOCKING BRACKET FOR SPIDER RANGE PUMP	227.9500	683.85
02	D	1	0	1	EA	HOL-158.012.078	4050NCT CUTTER CORE	5440.0000	5440.00
02	D	1	0	1	EA	HOL-158.152.178	SR 20 GAS POWERED CORE PUMP SP20PC2	7658.1500	7658.15
02	D	1	0	1	EA	HOL-158.572.128	HOSE CORE 32 BLUE	841.9600	841.96
02	D	1	0	1	EA	HOL-158.572.132	HOSE CORE 32 GREEN	841.9600	841.96
02	D	4	0	4	EA	HOL-158.013.166	3000 SERIES TOOL CORE CONVERSION 3035 CUTTER	585.0000	2340.00

SubTotal 18,111.47

THIS IS NOT AN INVOICE. DO NOT PAY FROM THIS SALES ORDER.

Total 18,111.47

Holmatro, Inc.
505 McCormick Drive
Glen Burnie, Maryland 21061 USA
Tel: 410-768-9662 • Fax: 410-768-4878

August 21, 2013

Midland Fire Department
ATTN: Rocky Bellamy
Fleet & Equipment Coordinator
1500 W. Wall Street.
Midland, TX 79701

To Whom It May Concern:

To best serve the needs of our customers, Holmatro® trains service technicians, who are authorized to perform warranty service on behalf of Holmatro®. These DST's (Dealer Service Technicians) are required to return to our factory in Glen Burnie, Maryland, every two years, in order to maintain their certification. Any DST with a lapsed certification or not presently employed by an authorized Holmatro dealer, is not certified to perform warranty service on Holmatro® Rescue Equipment.

This letter is to certify in writing that as of this date, the authorized sales and service dealer for your area is:

Metro Fire Apparatus Specialists

For the very latest information about the local authorized dealer for your area, please feel free to contact us, or use the Dealer Locator tool available on our website at:

www.holmatro-usa.com

Thank you for your interest in Holmatro® Rescue Equipment. Should you have any questions or concerns, please don't hesitate to contact us at 800-654-0203.

Best Regards,
Holmatro, Inc.

CITY OF MIDLAND
MIDLAND FIRE DEPARTMENT

INTEROFFICE MEMORANDUM

DATE: August 14, 2013

TO: Regina Stephenson, Purchasing Manager

CC: Robert Patrick, General Services Director

FROM: Robert Isbell, Fire Chief

SUBJECT: Rescue Tool Justification

The proposed purchase of rescue tools is to replace a broken unit that is the sole tool for the MFD. Without this vital equipment, firefighters are relegated to using hand tools for vehicle and heavy rescues. When the existing unit was taken out of service, we found that due to the age of the tool, service was not readily available. The vendor is able to service the existing tool with an old parts inventory, but at an extended down time. We recommend purchasing two new units for better coverage and continuity of service, as well as service the existing tool as a back-up.

City Council Agenda

Approved for Agenda:
TTHudson
City Manager's Office

MEETING DATE: 8/27/2013

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing 2013 FAA Grant #54 appropriations to certain capital improvement projects at Midland International Airport.

Purpose:

Consider a resolution authorizing 2013 FAA Grant #54 appropriations to certain capital improvement projects at Midland International Airport.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Appropriation Language:

Access Control System and Cable Upgrade (7084)

That the sum of $27,000.00 is hereby appropriated from the Airport Operating Fund (500) Current Year Federal Unappropriated Fund Balance (5305) to the Access Control System and Cable Upgrade (7084);

That the amount appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the Access Control System and Cable Upgrade (7084) is hereby reduced by $27,000.00 and the Airport Operating Fund (500) Unappropriated Fund Balance (5650) is increased by the amount of the referenced reduction.

Taxiway P Aircraft Run-up (7084)

That the sum of $82,800.00 is hereby appropriated from the Airport Operating Fund (500) Current Year Federal Unappropriated Fund Balance (5305) to the Taxiway P Aircraft Run-up (7084);

That the amount appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the Taxiway P Aircraft Run-up (7084) is hereby reduced by $82,000.00 and the Airport Operating Fund (500) Unappropriated Fund Balance (5650) is increased by the amount of the referenced reduction.

Wildlife Hazard Management Plan (7104)

That the sum of $19,396.80 is hereby appropriated from the Airport Operating Fund (500) Current Year Federal Unappropriated Fund Balance (5305) to the Wildlife Hazard Management Plan (7104);

That the amount appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the Wildlife Hazard Management Plan (7104) is hereby reduced by $19,396.80 and the Airport Operating Fund (500) Unappropriated Fund Balance (5650) is increased by the amount of the referenced reduction.

Discussion:

On August 15, 2013, the Department of Airports received Federal Aviation Administration Grant #54 in the amount of $3,404,500.00. During the August 13, 2013, meeting City Council authorized the execution of this grant upon receipt. It is now necessary to make certain appropriations to particular 2013 FAA supported capital improvement projects previously approved by City Council. These appropriations allow the reimbursement of funds fronted for FAA's portion of the design of several projects under the grant.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE APPROPRIATION OF FEDERAL AVIATION GRANT #54 TO CERTAIN CAPITAL IMPROVEMENT PROJECTS AT MIDLAND INTERNATIONAL AIRPORT; AUTHORIZING THE REIMBURSEMENT OF AIRPORT FUNDS

WHEREAS, the City Council on August 13, 2013 approved the acceptance of the Federal Aviation Administration (FAA) grant #54 which was received on August 15, 2013; and

WHEREAS, the grant funds were scheduled to assist the Airport in the completion of FAA approved Capital Improvement Projects; and

WHEREAS, the Airport advanced the FAA's portion of the design of several projects and it is now necessary to appropriate and reimburse said grant proceeds to the Airport Operating Fund; and

WHEREAS, the City Council finds it to be in the public interest to authorize the appropriation of these grant proceeds to their respective projects and reimburse the Airport Operating Fund for the money advanced for Grant #54;

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

SECTION ONE. That the sum of $27,000.00 is hereby appropriated from the Airport Operating Fund (500) Current Year Federal Unappropriated Fund Balance (5305) to the Access Control System and Cable Upgrade (7084).

SECTION TWO. That the amount appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the Access Control System and Cable Upgrade (7084) is hereby reduced by $27,000.00 and the Airport Operating Fund (500) Unappropriated Fund Balance (5650) is increased by the amount of the referenced reduction.

SECTION THREE. That the sum of $82,800.00 is hereby appropriated from the Airport Operating Fund (500) Current Year Federal Unappropriated Fund Balance (5305) to the Taxiway P Aircraft Run-up (7084).

SECTION FOUR. That the amount appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to Taxiway P Aircraft Run-up (7084) is hereby reduced by $82,800.00 and the Airport Operating Fund (500) Unappropriated Fund Balance (5650) is increased by the amount of the referenced reduction.

SECTION FIVE. That the sum of $19,396.80 is hereby appropriated from the Airport Operating Fund (500) Current Year Federal Unappropriated Fund Balance (5305) to the Wildlife Hazard Management Plan (7104).

SECTION SIX. That the amount appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the Wildlife Hazard Management Plan (7104) is hereby reduced by $19,396.00 and the Airport Operating Fund (500) Unappropriated Fund Balance (5650) is increased by the amount of the referenced reduction.

SECTION SEVEN. That the City Treasurer is hereby authorized and directed to reimburse the above Capital Improvement projects at the Midland International Airport for funds fronted for the FAA's portion of the design of projects under the grant.

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

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

_____
Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Marv Esterly, Director of Airports

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 8/27/2013

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution rejecting bids received for the project described as Taxiway P Aircraft Run-up (7084).

Purpose:

Consider a resolution rejecting bids received for the project described as Taxiway P Aircraft Run-up (7084).

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Discussion:

Recently bids were received and opened for the project described as Taxiway P Run-up (7084) (see attached bid tab). One bid was received and it was nearly twice the cost of the project estimate. FAA spec. P-501 concrete was the cause of increase. A conference call with FAA official yielded no additional funding this year to cover these overages. It is necessary at this time to reject the bid received. The Department of Airports is currently discussing other funding options, as well as seeking a possible waiver to the FAA P-501 spec allowing the Airport to use FAA P-610 as a substitute.

RESOLUTION NO. _____

RESOLUTION REJECTING THE SINGLE BID RECEIVED FOR THE PROJECT DESCRIBED AS TAXIWAY P AIRCRAFT RUN-UP (7084) AT THE MIDLAND INTERNATIONAL AIRPORT

WHEREAS, the City Council authorized advertising for bids for the project described as Taxiway P Aircraft Run-up (7084) at the Midland International Airport; and

WHEREAS, the City received a single bid on July 25, 2013 in the amount of $1,188,481.10 from Jones Bros Dirt & Paving Contractors, Inc., which was nearly twice the cost of the project estimate; and

WHEREAS, the City Council finds it to be in the public interest to reject the bid for the project described as Taxiway P Aircraft Run-up (7084) at the Midland International Airport; and

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

SECTION ONE. That the recitals stated above are hereby adopted.

SECTION TWO. That the bid received for the project described as Taxiway P Aircraft Run-up (7084) at the Midland International Airport, as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated for all legal purposes, is hereby rejected.

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

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Marv Esterly, Director of Airports

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

MIDLAND INTERNATIONAL AIRPORT

TAXIWAY P AIRCRAFT RUN-UP

JULY 25, 2013 @ 2:00 PM

Bidder	Bid Bond	Financial/Quals.	Addendum #1	Base Bid
Jones Bros. Dirt & Paving Contractors, Inc. 1404 S. Grandview Odessa, TX 79761	X	X	X	$1,188,481.10

City Council Agenda

Approved for Agenda:
TTHudson
City Manager's Office

MEETING DATE: 8/27/2013

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the execution of Amendment #5 to Parkhill, Smith & Cooper's Professional Services Agreement to include Airfield Lighting Cabling Replacement and Airfield Signage (7112), Rehabilitation Entrance Road Pavement and Guidance Signage Project (7113) an appropriate necessary funds.

Purpose:

Consider a resolution authorizing the execution of Amendment #5 to Parkhill, Smith & Cooper's Professional Services Agreement to include Airfield Lighting Cabling Replacement and Airfield Signage (7112), Rehabilitation Entrance Road Pavement and Guidance Signage Project (7113) an appropriate necessary funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Design - Airfield Lighting Cabling Replacement and Airfield Signage (7112)

FAA…….$ 90,000.00
Airport…….$ 10,000.00
Total……$100,000.00

Appropriation Language:

That the sum of $90,000.00 is hereby appropriated from the Airport Operating Fund (500) Current Year Federal Unappropriated Fund Balance (5305) to the Airfield Lighting Cabling Replacement and Airfield Signage Project (7112);

That the sum of $10,000.00 is hereby appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the Airfield Lighting Cabling Replacement and Airfield Signage Project (7112).

Design- Rehabilitation Entrance Road Pavement and Guidance Signage Project (7113)

FAA…….$87,300.00
Airport…….$ 9,700.00
Total……$97,000.00

Appropriation Language:

That the sum of $87,300.00 is hereby appropriated from the Airport Operating Fund (500) Current Year Federal Unappropriated Fund Balance (5305) to the Rehabilitation Entrance Road Pavement and Guidance Signage Project (7113);

That the sum of $9,700.00 is hereby appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the Rehabilitation Entrance Road Pavement and Guidance Signage Project (7113).

Discussion:

The City of Midland, Texas and Parkhill, Smith & Cooper, Inc. have entered into an Agreement for Professional Services dated February 8, 2011, for improvements contained in the Airport Capital Improvement Program. As of this date, said Agreement has been amended four times, and will be amended a fifth time to include the Airfield Lighting Cabling Replacement and Airfield Signage and the Rehabilitation Entrance Road Pavement and Guidance Signage Project.

Approval of this resolution will appropriate necessary funding to allow PSC to begin the design phase of these projects.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF AMENDMENT NUMBER FIVE TO THE PROFESSIONAL SERVICES AGREEMENT WITH PARKHILL, SMITH & COOPER, INCORPORATED, FOR IMPROVEMENTS CONTAINED IN THE AIRPORT CAPITAL IMPROVEMENT PROGRAM; SAID AMENDMENT TO INCLUDE THE FOLLOWING PROJECTS: AIRFIELD LIGHTING CABLING REPLACEMENT AND AIRFIELD SIGNAGE (7112), REHABILITATION ENTRANCE ROAD PAVEMENT AND GUIDANCE SIGNAGE PROJECT (7113); AND APPROPRIATING NECESSARY FUNDS

WHEREAS, the City of Midland and Parkhill, Smith & Cooper, Inc., previously entered into an agreement relating to professional services for improvements contained in the Airport Capital Improvement Program at the Midland International Airport; and

WHEREAS, the Department of Airports recommends that certain improvements be made at the Midland International Airport; and

WHEREAS, the City Council finds it to be in the public interest to make certain amendments to said agreement;

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, an amendment to the professional services agreement with Parkhill, Smith & Cooper, Inc. for the Airport Capital Improvement Program. Said amendment to be on file in the City Secretary's office referenced by the date and number of this resolution.

SECTION TWO. That the sum of $90,000.00 is hereby appropriated from the Airport Operating Fund (500) Current Year Federal Unappropriated Fund Balance (5305) to the Airport Lighting Cabling Replacement and Airfield Signage Project (7112).

SECTION THREE. That the sum of $10,000.00 is hereby appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the Airport Lighting Cabling Replacement and Airfield Signage Project (7112).

SECTION FOUR. That the sum of $87,300.00 is hereby appropriated from the Airport Operating Fund (500) Current Year Federal Unappropriated Fund Balance (5305) to the Rehabilitation Entrance Road Pavement and Guidance Signage Project (7113).

SECTION FIVE. That the sum of $9,700.00 is hereby appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the Rehabilitation Entrance Road Pavement and Guidance Signage Project (7113).

SECTION SIX. That the City Treasurer is hereby authorized and directed to pay Parkhill, Smith & Cooper, Inc., pursuant to the terms of the contract, at a price not to exceed a total of the funds appropriated above upon receipt of proper invoice or statement executed by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

_____
Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Marv Esterly, Director of Airports

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

AMENDMENT NO. 5

TO

AGREEMENT

CITY OF MIDLAND, TEXAS

AND

PARKHILL, SMITH & COOPER, INC.

FOR

PROFESSIONAL SERVICES

WHEREAS, the City of Midland, Texas and Parkhill, Smith & Cooper, Inc. have entered into an Agreement for professional services dated February 8, 2011, for improvements contained in the Airport Capital Improvement Program; as amended May 22, 2012 (Amendment 1), August 28, 2012 (Amendment 2), November 13, 2012 (Amendment 3) and June 11, 2013 (Amendment 4).

AND WHEREAS, the City of Midland, Texas desires to perform the improvements listed in the Recitals of the Agreement as Item 23 MAF Passenger Facility Charge Application and Amendments:

THIS AGREEMENT WITNESSETH:

A. Exhibit B, Article 4 - PAYMENTS TO THE ARCHITECT/ENGINEER, the following shall be added to paragraph 4.01a.A:

"**Items 2 & 5 Rehab Entrance Road Pavement and Guidance Signage**

1i. A Lump Sum amount of $ 90,000 based on the following distribution of compensation:

a.	Preliminary Design Phase	$ 29,400
b.	Final Design Phase	$ 26,400
c.	Bidding Phase	$ 4,200
d.	Construction Phase	$ 30,000

"**Item 8 Airfield Lighting Cabling Replacement and Airfield Signage**

1j. A Lump Sum amount of $ 130,000 based on the following distribution of compensation:

a.	Preliminary Design Phase	$ 44,100
b.	Final Design Phase	$ 39,600
c.	Bidding Phase	$ 6,300
d.	Construction Phase	$ 40,000

B. Exhibit B, Article 4 - PAYMENTS TO THE ARCHITECT/ENGINEER, the following shall be added to paragraph 4.02.C.:

	"Items 2&5	Item 8
Design Administration	$ 4,000	$ 2,500
Design Surveying & Testing	$33,000	$ 7,500
Construction Administration	$16,000	$15,000
Construction Surveying & Testing	$100,000	$10,000
Resident Project Representative	$50,000	$115,000"

IN WITNESS WHEREOF, the City of Midland, Texas and Parkhill, Smith & Cooper, Inc. have hereto set their hands this 27th day of August, 2013.

OWNER:

CITY OF MIDLAND, TEXAS

By: W. Wesley Perry

Title: Mayor

Date Signed:

Address for giving notices:

P.O. Box 1152
Midland, Texas 79702
Phone: (432) 685-7357

ARCHITECT/ENGINEER:

PARKHILL, SMITH & COOPER, INC.

By: Danny G. Winchester

Title: Firm Principal

Date Signed:

Address for giving notices:

1700 W. Wall
Midland, Texas 79701
Phone: (432) 697-1447

IN DUPLICATE

City Council Agenda

Approved for Agenda:
TTHudson
City Manager's Office

MEETING DATE: 8/27/2013

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution awarding the project described as Emergency Roadway and Gates Rehabilitation (7082), at Midland International Airport, to Little Manufacturing, Inc. of Abilene, Texas, and appropriate the necessary funds.

Purpose:

Consider a resolution awarding the project described as Emergency Roadway and Gates Rehabilitation (7082), at Midland International Airport, to Little Manufacturing, Inc. of Abilene, Texas, and appropriate the necessary funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

FAA……$688,351.95
Airport……$ 76,483.55
Total……...$764,835.50

Appropriation Language:

That the sum of $688,351.95 is hereby appropriated from the Airport Operating Fund (500) Current Year Federal Unappropriated Fund Balance (5305) to the Emergency Roadway and Gates Rehabilitation (7082).

That the sum of $41,484.00 is hereby appropriated from the Airport Passenger Facility Charge (PFC) Fund (501) Unappropriated Fund Balance (5650) to the Emergency Roadway and Gates Rehabilitation (7082).

That the amount appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the Emergency Roadway and Gates Rehabilitation (7082) is hereby reduced by $31,500.00 and the Airport Operating Fund (500) Unappropriated Fund Balance (5650) is increased by the amount of the referenced reduction.

Discussion:

On June 11, 2013, City Council authorized the advertisement of bids and on July 31, 2013, bids were received and opened July 31, 2013 (see attached bid tabs). Little Manufacturing, Inc. of Abilene, Texas was the low bid for this project and met all the requirements contained in the advertised specifications.

This project will make necessary repairs to the Airport's required perimeter emergency roadway that allows quick access for emergency vehicles during an aircraft incident on the Airport. In addition, it will allow the Airport to make needed repairs to security gates and required signage.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH LITTLE MANUFACTURING, INC. OF ABILENE, TEXAS, FOR THE PROJECT DESCRIBED AS EMERGENCY ROADWAY AND GATES REHABILITATION (7082) AT THE MIDLAND INTERNATIONAL AIRPORT; THE COUNCIL PREVIOUSLY AUTHORIZED ADVERTISEMENT FOR BIDS FOR THE PROJECT; THE TOTAL ESTIMATED COST OF SAID PROJECT IS $764,835.50; AND APPROPRIATING FUNDS

WHEREAS, the City Council previously approved the plans and specifications and authorized advertisement for bids for the Project described as Emergency Roadway and Gates Rehabilitation (7082) 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 Little Manufacturing, Inc. of Abilene, 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 Little Manufacturing, Inc., to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to award a contract to Little Manufacturing, Inc., 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 Little Manufacturing, Inc. for the project described as Emergency Roadway and Gates Rehabilitation (7082), at a total estimated cost of $764,835.50.

SECTION TWO. That the sum of $688,351.95 is hereby appropriated from the Airport Operating Fund (500) Current Year Federal Unappropriated Fund Balance (5305) to the Emergency Roadway and Gates Rehabilitation (7082).

SECTION THREE. That the sum of $41,484.00 is hereby appropriated from the

Airport Passenger Facility Charge (PFC) Fund (501) Unappropriated Fund Balance (5650) to the Emergency Roadway and Gates Rehabilitation (7082).

SECTION FOUR. That the amount appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the Emergency Roadway and Gates Rehabilitation (7082) is hereby reduced by $31,500.00 and the Airport Operating Fund (500) Unappropriated Fund Balance (5650) is increased by the amount of the referenced reduction.

SECTION FIVE. That the City Treasurer is hereby authorized and directed to pay Little Manufacturing Inc. pursuant to the terms of the contract, at a price not to exceed a total of $764,835.50 upon receipt of proper invoice or statement executed by the City Manager.

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

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

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

_____
Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Marv Esterly, Director of Airports

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

MIDLAND INTERNATIONAL AIRPORT

EMERGENCY ROADWAY AND GATES REHABILITATION

July 25, 2013 @ 2:30 PM

Bidder	Bid Bond	Financial\Quals.	Addendum #1	Base Bid	Additive Alternate No. 1	Total Bid
Little Manufacturing, Inc. Little Manufacturing Co. of Abilene P.O. Box 2341 Abilene, Texas 79604-2341	X	X	X	$512,835.50	-$5,068.00 ~~$5,068.00~~	$507,767.50 ~~$517,903.50~~

City Council Agenda

Approved for Agenda:
TTHudson
City Manager's Office

MEETING DATE: 8/27/2013

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution awarding the project described as NW Taxilane Extension Project Phase II (7083), at Midland International Airport, to Jones Bros. of Odessa, Texas, and appropriate the necessary funds.

Purpose:

Consider a resolution awarding the project described as NW Taxilane Extension Project Phase II (7083), 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:

FAA…….$2,409,651.25
Airport……$ 941,297.92
Total……...$3,350,949.17

Appropriation Language:

That the sum of $2,409,651.25 is hereby appropriated from the Airport Operating Fund (500) Current Year Federal Unappropriated Fund Balance (5305) to the Northwest Taxilane Extension – Phase 2 (7083);

That the sum of $773,597.92 is hereby appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the Northwest Taxilane Extension – Phase 2 (7083).

Discussion:

On June 11, 2013, City Council authorized the advertisement of bids and on July 31, 2013, bids were received and opened. (see attached bid tabs) Jones Bros. of Odessa, Texas was the low bid for this project and met all the requirements contained in the advertised specifications.

Phase II of the Taxilane extension will be constructed on the north side of the Airport off of Taxiway A. Phase I of this project was completed in 2011 opening up an eight-land tract for corporate hangar development. All eight tracts have been leased and construction of hangars on these tracts is well underway. Demand continues, despite the completion of Phase I, with interested parties for additional tracts in Phase II. (see attached development layout)

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH JONES BROS. OF ODESSA, TEXAS, FOR THE PROJECT DESCRIBED AS NW TAXILANE EXTENSION PROJECT PHASE II (7083) AT THE MIDLAND INTERNATIONAL AIRPORT; THE COUNCIL PREVIOUSLY AUTHORIZED ADVERTISEMENT FOR BIDS FOR THE PROJECT; THE CITY'S SHARE IS $941,297.92; AND APPROPRIATING FUNDS

WHEREAS, the City Council previously approved the plans and specifications and authorized advertisement for bids for the Project described as NW Taxilane Extension Project Phase II (7083) 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 NW Taxilane Extension Project Phase II (7083), at a total estimated cost of $3,350,949.17.

SECTION TWO. That the sum of $2,409,651.25 is hereby appropriated from the Airport Operating Fund (500) Current Year Federal Unappropriated Fund Balance (5305) to the Northwest Taxilane Extension - Phase 2 (7083).

SECTION THREE. That the sum of $773,597.92 is hereby appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the Northwest

Taxilane Extension - Phase 2 (7083).

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 $3,350,949.17 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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

_____
Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Marv Esterly, Director of Airports

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

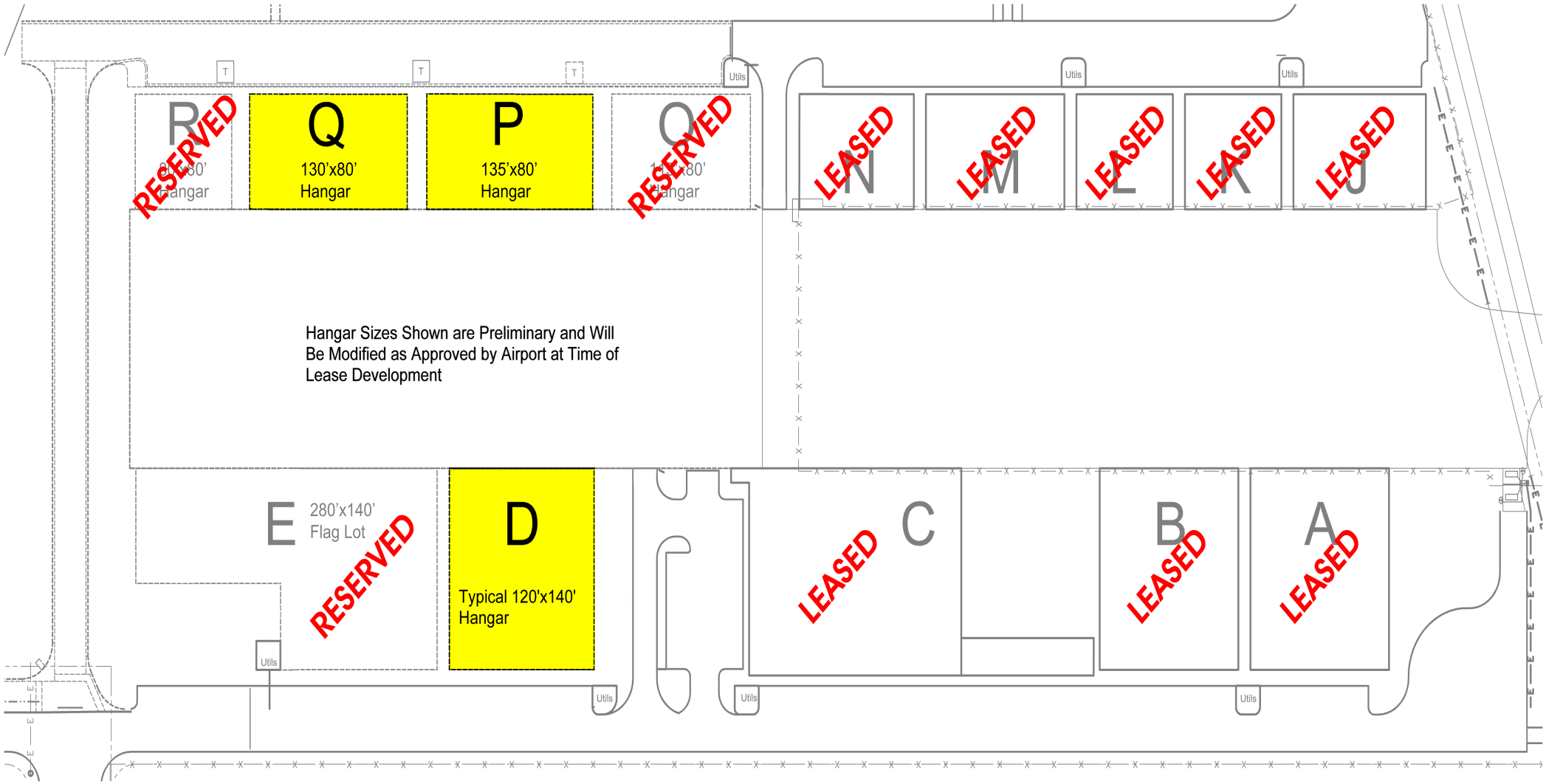
PSC

MIDLAND INTERNATIONAL AIRPORT

NORTHWEST TAXILANE EXTENSION PHASE II

JULY 25, 2013 @ 11:00 A.M.

Bidder	Bid Bond	Financial/Quals.	Addendum #1	Addendum #2	FAA Base Bid	City of Midland Base Bid	Total Bid
Jones Bros. Dirt & Paving Contractors, Inc. 1404 S. Grandview Odessa, TX 79761	X	X	X	X	$2,083,169.81	$364,323.97	$2,447,493.78
Reece Albert, Inc. P.O. Box 3238 Midland, TX 79702	X	X	X	X	$3,346,593.45	$346,343.50	$3,692,936.95


R
RESERVED
Hangar
Q
130'x80'
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Hangar
O
RESERVED
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LEASED
Hangar Sizes Shown are Preliminary and Will
Be Modified as Approved by Airport at Time of
Lease Development
E
280'x140'
Flag Lot
RESERVED
D
Typical 120'x140'
Hangar
C
LEASED
B
LEASED
A
LEASED
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T

City of Midland
Office Memorandum

DATE: 8/27/2013

TO: The Honorable Mayor and City Council Members

FROM: Amy Turner, City Secretary

SUBJECT: Consider a resolution acknowledging receipt of submission for preclearance from the U.S. Department of Justice regarding annexations effective July 9, 2013.

Section 5 of the Voting Rights Act requires that the City seek Preclearance by the U.S. Department of Justice for every annexation.

On June 25, 2013, the United States Supreme Court held that the coverage formula in Section 4(b) of the Voting Rights Act is unconstitutional and can no longer be used as a basis for subjecting jurisdictions to preclear under Section 5 of the Voting Right Act. The U.S. Department of Justice has not made a determination on the merits of the submission but has acknowledged receipt as of July 25, 2013.

The proposed resolution acknowledges receipt of the submission from the U.S. Department of Justice in connection with annexations by Ordinance Nos. 9141, 9158, 9159 and 9160 effective July 9, 2013.

RESOLUTION NO. _____

RESOLUTION ACKNOWLEDGING RECEIPT OF SUBMISSION FOR PRECLEARANCE FROM THE UNITED STATES DEPARTMENT OF JUSTICE REGARDING ANNEXATIONS BY ORDINANCE NOS. 9141, 9158, 9159 AND 9160 EFFECTIVE JULY 9, 2013

WHEREAS, the City of Midland has recently annexed property into the City limits by Ordinance Nos. 9141, 9158, 9159 and 9160 effective July 9, 2013; and

WHEREAS, the United States Department of Justice, Civil Rights Division, acknowledges receipt of the preclearance submission as of July 25, 2013; and

WHEREAS, the United States Supreme Court held that the coverage formula in Section 4(b) of the Voting Rights Act as reauthorized by the Voting Rights Act Reauthorization and Amendments Act of 2006, is unconstitutional and can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5 of the Voting Rights Act; and

WHEREAS, there has been no determination on the merits of the preclearance submission or findings regarding whether the specified changes comply with any federal voting rights law;

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

THAT the letter attached hereto and marked as Exhibit "A", and incorporated herein for all legal purposes, acknowledges receipt of the preclearance submission as of July 25, 2013.

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

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT AND COMPLETENESS:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

U.S. Department of Justice

Civil Rights Division

TCH:RSB:RPL:JMS:par
DJ 166-012-3
2013-2126

Voting Section - NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

August 2, 2013

Ms. Amy M. Turner
City Secretary
P.O. Box 1152
Midland, Texas 79702-1152

Dear Ms. Turner:

This refers to four annexations (Ordinance Nos. 9141, 9158, 9159, and 9160 (2013)) to the City of Midland in Midland County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on July 25, 2013.

On June 25, 2013, the United States Supreme Court held that the coverage formula in Section 4(b) of the Voting Rights Act, 42 U.S.C. 1973b(b), as reauthorized by the Voting Rights Act Reauthorization and Amendments Act of 2006, is unconstitutional and can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. *Shelby County* v. *Holder*, 570 U.S. ___, 2013 WL 3184629 (U.S. June 25, 2013) (No. 12-96). Accordingly, no determination will be made under Section 5 by the Attorney General on the specified changes. *Procedures for the Administration of Section 5 of the Voting Rights Act*, 28 C.F.R. 51.35. We further note that this is not a determination on the merits and, therefore, should not be construed as a finding regarding whether the specified changes comply with any federal voting rights law.

Sincerely,

T. Christian Herren, Jr.
Chief, Voting Section

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/27/2013

TO: City Council / City Manager

FROM: Gary Saunders, Transportation Manager

SUBJECT: Consider a resolution authorizing the City of Midland to negotiate a Professional Service Agreement with Kimley-Horn and Associates, Inc. to provide engineering, planning, administrative services and implementation for the City Wide Traffic Analysis Project.

Purpose:

Consider a resolution authorizing the City of Midland to negotiate a Professional Service Agreement with Kimley-Horn and Associates, Inc. to provide engineering, planning, administrative services and implementation for the City Wide Traffic Analysis Project.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Approximately $1,255,000.00 for engineering, planning, administrative services and implementation.

Discussion:

The Legal Department has prepared a resolution authorizing the City of Midland to negotiate a Professional Service Agreement with Kimley-Horn and Associates, Inc., 12750 Merit Drive, Suite 1000, Dallas, Texas for the City Wide Traffic Analysis Project within the City of Midland.

The Traffic Analysis Project will include City wide traffic flow and analysis, capacity analysis of the existing street system throughout the City, evaluation and feasibility of on-street bicycle facilities, bike sharing evaluation and corridor studies.

Staff recommends approval of this resolution.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. TO PROVIDE ENGINEERING, PLANNING, ADMINISTRATION SERVICES, AND IMPLEMENTATION FOR THE CITYWIDE TRAFFIC ANALYSIS PROJECT; AND AUTHORIZING PAYMENT THEREFOR IN THE AMOUNT OF $1,255,000.00

WHEREAS, the City of Midland advertised a Request for Qualifications for professional services to provide engineering, planning, administrative services and implementation for the Citywide Traffic Analysis Project; and

WHEREAS, the Kimley-Horn and Associates, Inc. has agreed to perform said professional services for an estimated $1,255,000.00; and

WHEREAS, the City Council finds that Kimley-Horn and Associates, Inc. is qualified to perform said professional services; and

WHEREAS, the City Council finds that the professional fees proposed by Kimley-Horn and Associates, Inc. are consistent with and not higher than the recommended practices and fees published by the applicable professional associations and do not exceed any maximum provided by law; and

WHEREAS, the City Council finds that Kimley-Horn and Associates, Inc. provides professional services for a fair and reasonable price; and

WHEREAS, the City Council finds it to be in the public interest to execute a professional services agreement with Kimley-Horn and Associates, Inc. as the most highly qualified provider of said professional services based on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a professional services agreement with Kimley-Horn and Associates, Inc. for said professional

services. A copy said agreement is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION TWO. That the appropriation to the Street Paving and Ancillary Uses Project (8912) is hereby reduced by $706,916 and the appropriation to the Citywide Traffic Analysis and Implementation Project (9060) is increased by the amount of the referenced reduction.

SECTION THREE. That the sum of $548,084 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the Citywide Traffic Analysis and Implementation Project (9060).

SECTION FOUR. That the City Treasurer is hereby authorized and directed to make payment to Kimley-Horn and Associates, Inc., pursuant to the terms of said agreement, in an amount not to exceed $1,255,000, from funds available in the Citywide Traffic Analysis and Implementation Project (9060) budget account upon receipt of proper invoice or statement approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Jose Ortiz, Engineering Services Director

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and effective the 28th day of August, 2013, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "City," and KIMLEY-HORN AND ASSOCIATES, INC., hereinafter referred to as "Company."

ARTICLE I.
PURPOSE

The purpose of this Agreement is to state the terms and conditions under which Company shall provide engineering, planning, administrative services, (also referred to as the "services") and implementation for the Citywide Traffic Analysis Project.

ARTICLE II.
SERVICES TO BE PERFORMED

1. Company shall provide those services described in Exhibit "A", which is attached hereto and incorporated herein for all legal purposes.

2. Company shall perform all the services under this Agreement consistent with the same level of skill and care as other professionals in approximately the same location at approximately the same point in time and for the same types of projects. Company represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in Exhibit "A."

ARTICLE III.
FINANCIAL CONSIDERATIONS

City agrees to pay Company in an amount not to exceed **$1,255,000.00** for the professional services described in Exhibit "A." City agrees to pay Company in accordance with the Fee Schedule set forth in Exhibit "B", which is attached hereto and incorporated herein for all legal purposes, upon presentation of a monthly invoice. The monthly invoice shall set forth all fees and costs. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of receipt of the monthly invoice, City shall pay the full amount of such invoice; provided, however, that if City objects to any portion of an invoice, City shall notify Company of City's objection and the grounds therefor within 30 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. The City in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV.
TERM

The term of this Agreement shall be from August 28, 2013, until the project is completed, unless the Agreement is terminated earlier as provided in Article V below.

ARTICLE V.
TERMINATION

Either party may terminate this Agreement at will, for no or any reason, upon giving the other party sixty (60) days written notice. The parties to this Agreement understand and agree that it is in either party's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the other party. All work and services under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective. The parties have bargained for the flexibility to terminate the Agreement upon giving the requisite notice. In the event of termination of the Agreement under this Article, the Company shall be paid for all services performed up to the termination date.

ARTICLE VI.
CONTRACT PERSONAL

This Agreement provides for personal or professional services, and the Company shall not assign this Agreement, in whole or in part, without the prior written consent of City. It is understood that any necessary engineering services shall be either self-performed or subcontracted by the Company.

ARTICLE VII.
OWNERSHIP AND CONFIDENTIALITY OF DOCUMENTS AND OTHER WORK PRODUCT

All reports, information and other data ("instruments of service"), given to, prepared or assembled by Company under this Agreement, and any other related documents or items shall become the sole property of City and shall be delivered to City, without restriction, except that Company may make copies of any and all instruments of service for its files. The City shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of Company, which consent shall not be unreasonably withheld.

ARTICLE VIII.

INDEPENDENT CONTRACTOR

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

ARTICLE IX.
INSURANCE

Company shall at all times during the term of this 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:

Comprehensive 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 Workers' Compensation coverage provided by Company shall inure to the benefit of employees injured during the course and scope of their employment by Company pursuant to this Agreement.

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

All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name the City as an additional insured. All insurance required pursuant to this Agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the City.

The parties agree that, prior to the execution of the Agreement, Company shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, the following endorsement:

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

City shall be provided the notice by Company's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. City shall not be required to provide any insurance whatsoever pursuant to this Agreement.

Company shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the 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 (except workers compensation).

ARTICLE X.
ATTORNEY FEES

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

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

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

ARTICLE XI.
SOVEREIGN IMMUNITY

By executing this Agreement the City is not waiving its sovereign immunity and retains all immunity from suit. The City is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF SOVEREIGN IMMUNITY**.

ARTICLE XII.
NO THIRD PARTY BENEFICIARIES

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

ARTICLE XIII.
RELEASE

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

ARTICLE XIV.
GENERAL PROVISIONS

A. Waiver. No waiver by City of a breach of any covenant, condition, or restriction of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this Agreement.

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

C. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

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

If to Company: Kimley-Horn and Associates, Inc.
12750 Merit Drive, Suite 1000
Dallas, Texas 75251

The parties hereto may change the above designated addresses by giving notice pursuant to the terms of this Section.

D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

E. Use of Language. Words in the singular shall be held to include the plural, unless the context otherwise requires.

F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

G. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed as original, and all of which shall constitute one and the same instrument.

ARTICLE XV.
NOTICE OF ALLEGED BREACH:
STATUTORY PREREQUISITES

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

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

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

ARTICLE XVI.
ASSIGNMENT

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By:_____
Courtney Sharp, City Manager

ATTEST:

_____

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

Company:
KIMLEY-HORN AND ASSOCIATES, INC.

By: _____

Title: _____

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____ _____ known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of KIMLEY-HORN AND ASSOCIATES, INC.

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

_____
Notary Public, State of Texas

_____
Printed Name

My Commission Expires:_____

L:\Contracts\Transportation\Professional Service Agreements\Kimley Horn and Associates Professional Services Agreement - City Wide Traffic Analysis Project.wpd

Scope of Services
Citywide Traffic Analysis

Prepared for:

City of Midland

Prepared by:

Kimley-Horn and Associates, Inc.

August 7, 2013

Table of Contents

1.0 PROJECT ADMINISTRATION 1
1.1 Kick-off Meeting 1
1.2 Project Control and Management 1
2.0 CLIENT-FURNISHED DATA AND INITIAL SYNCHRO™ MODEL UPDATE 2
2.1 Data to Be Furnished by the Client 2
2.2 Initial Update of the Synchro™ Model 3
3.0 TRAFFIC OPERATIONS EVALUATION 3
3.1 Project Area for this Task 3
3.2 Evaluation Process 4
3.3 Task Technical Memorandum 4
3.4 Task Presentation 4
4.0 DOWNTOWN CIRCULATION ANALYSIS 4
4.1 Evaluation of One-Way Operation 5
4.2 Traffic Counts 5
4.3 Other Data Collection and Field Observations 5
4.4 Development and Analysis of Alterative Scenarios 6
4.5 Task Technical Memorandum 7
5.0 TRAFFIC SIGNAL TIMING 7
5.1 Project Area for this Task 7
5.2 Number of Timing Plans 7
5.3 Data Collection and Assembly 7
5.4 Signal Timing Policy Elements 9
5.5 Initial Analyses 9
5.6 Signal Warrant Analyses 10
5.7 Refine Synchro™ Models 10
5.8 Determine Control Area Boundaries 11
5.9 Develop Timing Plans 12
5.10 Timing Plan Fine-Tuning 13
5.11 Final Timing Documentation 13
5.12 Periodic Revaluation of the New Timing Plans 14
6.0 ON-STREET BICYCLE FACILITY FEASIBILITY EVALUATION 14
6.1 GIS Data 14
6.2 Determine Corridors for Evaluation 14

6.3 Field Data Collection 14
6.4 Bicycle Corridor/Connections Plan 15
6.5 Documentation 16
7.0 BICYCLE SHARING FEASIBILITY EVALUATION 16
7.1 Bicycle Sharing Training/Webinar 16
7.2 Task Documentation 16
8.0 PROJECT FINAL DOCUMENTATION 16
8.1 Project Final Report 16
8.2 Project Final Presentation 17
9.0 CORRIDOR STUDIES 17
9.1 Data Collection 17
9.2 Corridor Analysis 17
9.3 Recommendations and Documentation 17
9.4 Meetings and Coordination 18

SCOPE OF SERVICES (DRAFT)
CITYWIDE TRAFFIC ANALYSIS FOR THE CITY OF MIDLAND

Kimley-Horn and Associates, Inc. (the "Consultant") will perform the Professional Services described herein relative to a citywide traffic analysis for the City of Midland, Texas (the "Client").

1.0 PROJECT ADMINISTRATION

Project administration spans the duration of the Project, and is crucial to the success of the Project. This task involves the monitoring and coordination of services to be provided to the Client to achieve timely and efficient completion of the Project. Included in this task are the project kick-off meeting, project control and management, maintenance of project records and files, reporting requirements, project status meetings, schedule development and maintenance, and quality assurance and quality control procedures.

1.1 Kick-off Meeting

Upon notice-to-proceed, the Consultant will prepare for and attend one (1) Project kick-off meeting to be held at the Client's office. Topics that will be addressed during this meeting will include the following:

- Project scope and schedule
- Data and information to be provided by the Client (see Task 2.1 below)
- Any forthcoming roadway or utility construction projects (by the City, TxDOT, private development, etc.) that may affect the project
- Procedures for invoicing and project status reporting.

1.2 Project Control and Management

The Consultant will be responsible for the day-to-day activities of managing the Project. Specific activities include subconsultant coordination; review, verification, and approval of each subconsultant's services; and ongoing reassessments of contract and schedule adherence.

1.2.1 Project Records and Files

The Consultant will develop a project filing system, for data in both hard copy and electronic format. This filing system, which will be maintained in the Consultant's offices for the life of the project, will be designed so that files can be easily located and retrieved at all times. This filing system will also allow that electronic files are frequently backed up, with duplicate copies stored at a secure, off-site location. After the conclusion of the project, the Consultant will maintain project files for the period of time as required by law.

1.2.2 Status Reports and Invoicing

Monthly status reports will be prepared and submitted to the Client. The status reports will contain a concise report of Project progress and contract fulfillment. The report will address technical progress, contract progress, and management-related topics.

1.2.3 Project Status Meetings

Project status meetings will be held monthly, normally by means of a conference telephone call. Other project meetings will be held as provided for in Tasks 3 through 8 below.

1.2.4 Schedule Development and Maintenance

Upon receipt of the notice to proceed from the Client, the Consultant will develop a project schedule for review and approval by the Client. As the Project progresses, the schedule will be refined as needed.

2.0 CLIENT-FURNISHED DATA AND INITIAL SYNCHRO™ MODEL UPDATE

Some of the necessary data for this Project will be provided by the Client. Also, several components of the data will be needed for several of the other tasks. As such, this task defines the existing data to be provided by the Client. Also, this task includes the initial update of the Synchro™ model, which will be needed for several of the other tasks.

2.1 Data to Be Furnished by the Client

The following data and information will be proved to the Consultant by the Client:

- General items
  - Recently available high quality ortho-photography/aerial photos of the City
  - Currently adopted Master Thoroughfare Plan
  - Map of proposed smart meter locations
  - Currently adopted hike/bike trail master plan
  - Available ADA/sidewalk information
  - Available recently completed traffic studies, evaluations, or related information regarding mobility in Midland.
- Traffic count data
  - 2012 per-lane approach counts for signalized intersections
  - Any other currently available turning movement count (TMC) data
  - Any other available 7-day count data
- Existing Synchro™ models (for AM peak, midday peak, and PM peak)
- Existing signal timing database – to be exported from the City's Naztec Advanced Transportation Management System (ATMS)
- Speed limits (including school speed zones)
- Crash data (as available)

For all of the included signalized intersections, the Client shall provide the following information:

- Other information
  - Directionality of the signal phase numbers (e.g. Ph 1 is EBL, Ph 2 is WBT, etc.)
  - The existence or lack of walk/don't walk signals (by side of the intersection).
  - The existence or lack of pedestrian push buttons (by side of the intersection).
- Local controller timing parameters
  - Minimums and maximums
  - Vehicular clearances
  - Pedestrian timing
  - Phase sequences
  - Local special functions
- Coordination timing (for each existing timing plan)
  - Cycle length
  - Offset
  - Splits
  - Phase sequence
- Existing time-of-day, day-of-week (TOD/DOW) schedules

- Existing special function programming (if any)

It is assumed that much of his information can be exported from the ATMS database. However, some elements of the information may require separately-provided intersection sketches.

2.2 Initial Update of the Synchro™ Model

Updated Synchro™ models will be necessary for the purposes of several of this Project's tasks (including Task 3, Task 4, and Task 5). Therefore, as early as practical in the Project, the Consultant will verify and update the existing Synchro models provided by the Client. This update will accomplish the following:

- Verify and update the intersection geometry
    - Number of lanes and lane use
    - Modes of left turn operation
- Verify and update the link geometry
    - Number of lanes (and lane drop or add locations)
    - Speed limits (including school speed zones)
- For three weekday peak periods (i.e. AM peak, midday peak, and PM peak)
    - Verify and update the existing signal timing parameters
    - Enter the traffic volumes

Using digital aerial photography such as *Google Earth*™, and supplemented by a windshield survey, the Consultant will:

- Determine the approximate lengths of left-turn bays.
- Import the background to verify the accuracy of intersection and link locations.

3.0 TRAFFIC OPERATIONS EVALUATION

The purpose of this task is to identify and document opportunities for traffic operations improvements. Of particular interest are the types of projects that can be implemented quickly and at relatively low cost. Examples of such projects include signal phasing changes (including left turn mode modification), lane use assignment changes, and restriping to provide more traffic lanes within the existing pavement width. Given that some of the potential projects may involve roadways or intersections that are on designated state highway system, it is recommended and assumed that appropriate personnel of the Texas Department of Transportation (TxDOT) will be invited to participate in this task. Mid- and long-range improvements that may benefit area mobility will also be collected as part of this task.

3.1 Project Area for this Task

For the purposes of this task, the project area will include all arterial streets and freeway frontage roads within the Midland city limits. The Consultant's evaluation will specifically include the following locations, which have previously been identified as having capacity or operational issues.

- Roadway segments
    - Andrews Highway/S. Garfield Street between Midland Drive and Wall Street
    - Garfield Street between Cuthbert Avenue and Michigan Avenue
    - Midland Drive from Briarwood Avenue to the Target signal (includes the Loop 250 diamond)
    - Wadley Avenue from Midland Drive to Big Spring Street
    - Scharbauer Drive east and west of Big Spring Street
- IH 20 frontage roads
    - Citywide evaluation of the opportunity to convert two-way frontage roads to one-way
- Other interchanges or individual intersections

- Andrews Highway at Loop 250 (box diamond)
- IH 20 at Rankin Highway (diamond)
- Big Spring Street at Loop 250 (diamond)
- IH 20 Business at Loop 250 (partial cloverleaf)

3.2 Evaluation Process

The Consultant will meet with appropriate members of the Client's staff and TxDOT's staff to get their perspectives regarding specific operational issues and problems. The Consultant will perform a "windshield assessment", driving the key corridors during peak hours to observe problem areas and identify potential short-, mid-, and /or long-term solutions. The Consultant will use the volume-to-capacity (v/c) ratios in the updated Synchro models to develop a quantitative assessment of the current degree of congestion. The Consultant will also make use of the Client-furnished crash data to assess relative crash rates.

3.3 Task Technical Memorandum

The Consultant will prepare a technical memorandum that summarizes this task's findings and recommendations. Candidate transportation improvements to improve flow and safety will be provided for three general categories, short-term, mid-term, and long-term.

The Consultant will submit a draft version of this technical memorandum for the Client's review. Five (5) bound copies will be provided along with a PDF file from which additional copies can be printed by the Client.

At a subsequent review meeting, the Consultant will receive Client and TxDOT comments. Based on the consensus developed at this meeting, the Consultant will make revisions and submit a sealed, final version of this task technical memorandum. Twenty (20) bound copies will be provided along with a PDF file from which additional copies can be printed by the Client.

Any design services related to the implementation of any identified improvements shall be considered additional services.

3.4 Task Presentation

The Consultant will prepare for and make one formal presentation to the Client (for example, at a City Council Briefing Session) regarding the results of this task.

4.0 DOWNTOWN CIRCULATION ANALYSIS

The purpose of this task is to evaluate the existing downtown street network relative to the following:

- To assess the advantages and disadvantages of possible changes to the limits of one-way operation.

- To identify other opportunities for optimizing the use of existing pavements and rights-of-way. These might include adding on-street parking and/or bicycle lanes in areas where the current traffic lane configuration provides excess capacity.

The study area boundaries for this task shall be as follows: Louisiana Avenue on the north; Andrews Highway and Garfield Street on the west, Texas Avenue on the south, and Baird Street on the east.

4.1 Evaluation of One-Way Operation

Relative to possible conversion from one-way operation to two-way operation, the Consultant will evaluate the following streets:

- Louisiana Avenue (currently westbound from Baird Street on the east to Garfield Street on the west);
- Michigan Avenue (currently eastbound from Garfield Street on the west to Baird Street on the east).
- Illinois Avenue (currently westbound from Baird Street on the east to K Street on the west); and
- Texas Avenue (currently eastbound from L Street on the west to Baird Street on the east).

4.2 Traffic Counts

4.2.1 Recording Machine Counts

The Consultant will make 72-hour recording machine counts (Thursday, Friday, and Saturday) at the following locations:

On Louisiana Avenue and Michigan Avenue:

- Between N and M Streets;
- Between B and A Streets;
- Between Marienfield and Big Springs Streets; and
- Between Loraine and Main Streets.

On Illinois Avenue and Texas Avenue:

- Between H and G Streets;
- Between C and A Streets;
- Between Marienfield and Big Springs Streets; and
- Between Loraine and Main Streets.

4.2.2 Turning Movement Counts

For the purposes of traffic signal timing (Task 5), turning movement count data will be assembled for all signalized intersections. The Consultant will also make use of those counts for this task. Additionally, the Consultant will make AM, midday, and PM peak hour pedestrian and vehicle turning movement counts at up to ten (10) unsignalized intersections along the existing one-way streets. During the field observations, the Consultant will determine the recommended intersections and submit them to the Client for concurrence.

4.3 Other Data Collection and Field Observations

The Consultant will collect the following data for the streets within the study area:

- Pavement width;
- Lane widths;
- Presence of on-street parking;
- Adjacent land uses

This information will make maximum practical use of resources such as Google Earth™ and a "windshield level" survey, but will not include detailed design-level survey.

The Consultant will also conduct field observations of the study area during the AM and PM peak periods.

4.4 Development and Analysis of Alterative Scenarios

4.4.1 Existing Conditions Synchro Models

In Task 5.7 as part of the signal timing task, the Consultant will assemble a citywide Synchro™ model that will include all of Midland's signalized intersections. For the specific purposes of this task, the Consultant will add selected unsignalized intersections to create a more detailed Synchro™ model of Task 4's study area. Separate models will be created to reflect current traffic volume conditions for the weekday AM, midday, and PM peaks.

4.4.2 Estimate Future-Year Traffic Volumes

Several significant redevelopment projects (including a 58-story building) are currently in the planning stage. In consultation with the Client's staff, and making use of any relevant traffic studies performed by others, the Consultant will develop estimates of approximate traffic volume levels for an agreed-upon horizon year.

4.4.3 Initial Quantitative Analysis

For each of three traffic volume scenarios (i.e. AM, midday, and PM peak volumes for the agreed-upon horizon year), the Consultant will use the Synchro models to assess the extent to which the capacity afforded by the current configuration of traffic lanes will be needed to accommodate vehicular demand.

4.4.4 Develop Alternative Scenarios

For at least some portions of the task study area, it is assumed that excess roadway capacity will exist during the agreed-upon the horizon year. Making use of the quantitative analysis, the Consultant will develop up to three scenarios for making alternate uses of street rights-of-way. Such uses may include conversion from one-way operation to two-way, providing additional on-street parking, lane-use changes (e.g. provision of turn bays), bicycle accommodations, and/or wider sidewalks. After submitted these scenarios in preliminary form, the Consultant will meet with the Client to reach consensus regarding any desired modifications. After making agreed-upon revisions, the Consultant will prepare the following for each of the three scenarios:

- Plan-view schematic illustrating the proposed changes in lane configuration, directionality, on-street parking, and/or bicycle pedestrian accommodation;
- Planning level cross sections;
- Planning level estimates of project delivery costs (design, survey, construction, and contingency)

These exhibits and estimates will be based on available ortho-photography and "windshield level" observations but will not include detailed design-level survey.

4.5 Task Technical Memorandum

The Consultant will prepare a summary technical memorandum documenting the data collected and the analysis and recommendations from this task. The information will be at a planning level, i.e. no formal schematic design work will be performed as part of this scope of services. In electronic (PDF) format, a draft technical memorandum will be prepared and submitted to the Client for review and comment. The Consultant will the meet once with the Client to receive concurrence regarding the document. The Consultant will then incorporate review comments and submit twenty (20) bound copies and one (1) electronic copy (PDF) of the final technical memorandum.

5.0 TRAFFIC SIGNAL TIMING

The purpose of this task is to develop, implement, and fine-tune updated traffic signal timing plans on a citywide basis.

5.1 Project Area for this Task

The project area for this task includes the 117 signalized intersections currently operated by the Client. All such signalized intersections are listed in the attached **Exhibit A.** Additionally, the project area for this task includes the following signalized intersections that are currently maintained by TxDOT:

- IH 20 at Rankin Highway
- IH 20 at Garden City Road

5.2 Number of Timing Plans

For all project intersections, four (4) new signal timing plans will be developed:

- Weekday AM peak
- Weekday Midday peak
- Weekday PM peak
- Off-peak

The weekday AM peak, Midday peak, and PM peak timing plans will be uniquely generated using TMC data for those time periods. For the off-peak timing plan, the Weekday midday volumes will be factored down by an agreed-upon percentage factor developed from 7-day count data. The intended application for this plan will be relatively low-volume periods (such as weekday mid-morning, weekday evenings, Sunday mornings, etc.) when traffic is heavy for coordination to be desirable (as opposed to free operation) but the minimum practical cycle length should be used.

For up to thirty (30) intersections that are impacted by shopping traffic, a weekend timing plan will be uniquely generated. The specific intersections for which a weekend timing plan will be developed will be determined later, taking into consideration the results of the 7-day traffic count data. The weekend timing plan will be based on TMC volumes from the weekend shopping peak hour (typically made on a Saturday afternoon).

5.3 Data Collection and Assembly

5.3.1 Machine Counts

Seven-day traffic counts are needed to determine predictable traffic flow variation over the course of a full week. This information is needed to determine the optimum beginning and ending times of the

turning movement counts, the time periods over which travel time runs can be made, and to determine the most appropriate time-of-day/day-of-week operating schedule for the signal timing plans.

For this project, the Consultant will make 7-day machine counts at up to ten (10) mutually agreed-upon locations. Each such count will be bi-directional, i.e. the data will be recorded by direction. Also, the data will be recorded in increments of 15-minutes and totaled for each hour. These counts will typically not be made on a week that includes a holiday.

5.3.2 Turning Movement Counts

Turning movement count (TMC) data are needed for the signal optimization modeling.

For all intersections listed in **Exhibit A**, the Client will provide per-lane counts made with machine counters. For each intersection, the Consultant will compile this information into a spreadsheet from which peak-hour TMC data can be extracted.

Additionally, the Consultant will make the following new TMC counts:

- For up to 30 intersections to be determined later, TMC data will be collected for the weekday AM, midday, and PM peaks.
- For up to 30 intersections, the Consultant will make a new TMC for a weekend peak (typically Saturday afternoon).

For each of these TMC periods, 120 minutes (i.e. eight consecutive 15-minute periods) will be counted and the peak hour (highest 60 minutes) will then be extracted. In all cases, the new TMC data will be tabulated by 15-minute increment, by approach direction (e.g., northbound), and by turning movement (e.g., left, straight, or right). Also, for all new TMC counts made by the Consultant will tabulate the number of pedestrian crossings by side of the intersection. The specific beginning and ending times of the new TMC counts will be determined from the 7-day count data.

5.3.3 Travel Time Runs

Travel time runs are one means of quantifying the benefits of a signal timing project. These runs will be made using floating car techniques, i.e., the driver of the test vehicle will travel at the prevailing speed of other traffic. The Consultant will make "before" travel time runs while the existing signal timing is still in effect. Later, after the implementation and fine-tuning of the new signal timing, the Consultant will make “after” runs along the same routes and at the same times of day. To assure statistical validity, five runs will be made per direction during the following three weekday time periods – AM peak, midday peak, and PM peak.

The travel time routes shall be as follows:

- Andrews Highway/S. Garfield Street from Midland Drive to Industrial Avenue
- Wall Street from Loop 250 West Frontage Road to Main Street
- Midland Drive from Briarwood Avenue to Thomason Drive
- Midkiff Road from Loop 250 North Frontage Road to Wall Street
- N. Garfield Street from Loop 250 North Frontage Road to Michigan Avenue
- Big Spring Street/Rankin Highway from Loop 250 North Frontage Road to IH 20 South Frontage Road
- Wadley Avenue from Loop 250 West Frontage Road to Lamesa Road

5.4 Signal Timing Policy Elements

Each agency that operates traffic signals has unique preferences relative to certain matters of traffic signal operations. At the outset of this task, the Consultant will meet with the Client to discuss and reach consensus regarding the following traffic signal timing policy elements:

- Minimum and maximum allowable cycle lengths
- Minimum split times by type of movement (e.g., left-turn phase, major-street through phase, cross-street through phase, etc.)
- Relative importance of major street bandwidth maximization vs. side-street delay minimization
- Pedestrian accommodation

With respect to pedestrian accommodation, one issue is whether or not a particular intersection's coordinated split times need to fully cover pedestrian timing. The alternative (if a split does not fully cover the pedestrian timing) is for the controller to get out of step whenever a pedestrian call for that phase has to be served. As such, the use of splits that do not fully cover the pedestrian timing is normally appropriate only at locations where pedestrian actuations normally occur no more frequently than two or three times per hour.

5.5 Initial Analyses

5.4.1 Qualitative Assessment

Using engineers experienced in traffic signal operations, the Consultant will perform an in-field qualitative assessment. During the weekday AM, midday, PM peaks, major intersections will be observed with respect to existing cycle lengths, splits, offsets, phase sequences, and left turn operations modes (e.g., permissive-only, protected-permissive, or protected-only). The Consultant will also identify intersection approaches where excessive queuing is observed, where capacity appears to be substantially constrained, and/or where excessive delay appears to be the result of inefficient signal operations. The Consultant will also estimate the appropriate signal progression speeds.

The results of the qualitative assessment will be submitted in the form of a brief technical memorandum. To the greatest practical extent, the relevant information will be conveyed in tabular or map format. The technical memorandum will also make note of apparent opportunities for minor operational improvements such as the following:

- Phasing changes (including modifying left-turn operation to allow lead-lag signal sequences
- Lane assignment changes
- Geometric improvements (e.g. longer turn bays, additional turn lanes, etc.)

5.4.2 Clearance Interval Calculations

Normal practice is to calculate vehicular yellow and all-red clearance intervals in accordance with the ITE formula*:

$$CP = t + V/(2a \pm 64.4g) + (W + L)/V$$

where:

CP	=	non-dilemma change period (yellow plus all-red)
t	=	perception-reaction time (nominally 1 second)
V	=	approach speed (in ft/sec)
g	=	percent grade (positive for upgrade, negative to downgrade)
a	=	deceleration rate (ft/sec^2, typically 10 ft/sec^2)
W	=	width of intersection, curb to curb (feet)

L = length of vehicle (feet, typically 20 ft)

* Source: Traffic Engineering Handbook, 5th Edition, Institute of Transportation Engineers, Washington, DC 20005, 1999

Since this Project's new coordination timing will not change any of the input variables, vehicular clearance times that have previously been calculated in accordance with this formula will not require recalculation. **Exhibit B-1** lists the intersections for which this Consultant's scope includes the recalculation of vehicular yellow and all-red clearance intervals.

5.4.3 Pedestrian Clearance Calculations

The 2011 *Texas Manual on Uniform Traffic Control Devices* (TMUTCD) included changes in the procedures to be used relative to the calculation of pedestrian clearances. Specifically,

- The assumed walking speed is now 3.5 feet per second (previously 4.0 feet per second)
- The crossing distance is now measured from the near edge of pavement to the far edge of pavement (previously from near edge of pavement to the center of the farthest traffic lane)

Since this Project's new coordination timing will not change any of the input variables, pedestrian clearance times that have previously been calculated in accordance with the 2011 MUTCD requirements will not require recalculation. **Exhibit B-2** lists the intersections for which this Consultant's scope includes the recalculation of pedestrian clearance times.

For these intersections, the Consultant will use digital aerial photography such as *Google Earth*™ to measure the intersection widths and pedestrian crossing distances.

5.6 Signal Warrant Analyses

This scope does not include signal warrant analyses.

5.7 Refine Synchro™ Models

In Task 2.2 above, the Consultant performed an initial update of the Client-provided Synchro™ files. Although this initial update was adequate for the purposes of Task 3 and Task 4, additional refinement will be needed prior to the development of the new signal timing. Under this task, the Consultant will perform this additional refinement and calibration.

Starting with the PM peak model, the Consultant will perform additional refinement as follows:

- Because all of the TMCs will not have been made on the same day, it is appropriate to make adjustments to smooth out significant variations between adjacent intersections. Such adjustments will take into account sizeable traffic generators (i.e., traffic sources or sinks) that logically would cause substantial differences.

- The model's link speeds will be adjusted to achieve a reasonable correlation with actual observed travel speeds along the corridor.

- The SimTraffic™ feature will be used to perform a qualitative (i.e. visual) assessment of the adequacy of the calibration. Specific factors that will be reviewed include queue lengths and the locations of significant stops and delays. Iterative adjustments will be made until reasonable calibration is achieved.

Once the existing-conditions PM peak model has been satisfactorily calibrated, the same procedure will be used to develop and calibrate the existing-conditions models for three other timing plan periods. These will be the weekday AM peak, the weekday Midday (Noon) peak, and the off-peak.

No turning movement data will be collected specifically for the off-peak timing plan. Instead, the midday volume data will be reduced based on factors developed from the machine count data. The appropriate factors will be input as a growth factor in Synchro's network settings.

Along arterial segments that have school speed zones, both "school" and "non-school" versions will be developed for the timing plans that will be in effect when the speeds zones are in operation. The associated "school" and "non-school" timing plans will be based on the same volumes (which presumably have been counted on school days). However, the two versions will differ with respect to the travel speed assumptions.

5.8 Determine Control Area Boundaries

The following process will be used to determine control area boundaries:

5.8.1 Cycle Length Requirements

Using the Synchro™ models, the practical minimum cycle lengths for all timing plan periods will be determined for the major intersections. Recognizing that Midland is currently experiencing rapid growth, the Consultant will also determine the minimum practical cycle lengths to accommodate 110 percent of current traffic volumes and 120 percent of current traffic volumes.

5.8.2 Philosophical Considerations

All other factors being equal, it is desirable to minimize the number of different cycle lengths in use. This is because each different cycle will constitute its own "control group", and coordination will not be possible across control group boundaries.

Accordingly, the intent will be to find a common cycle length at which it is possible for the intersections along a particular thoroughfare to operate. More than one control group will be assumed to be needed only if there is substantial difference in the shortest practical cycle lengths, and/or it is not feasible to obtain reasonably good two-way progression for all intersections at one common cycle length.

Also, wherever feasible and appropriate, the overall control areas for this Project will be structured to achieve interlocking two-way progression, i.e., both north-south and east-west.

5.8.3 Intersection Spacing Considerations

The relative benefits that result from coordination between two signalized intersections is directly proportional to the traffic volumes on that link, and inversely proportional to the distance between those signals. Accordingly the traffic volumes and link distances will be heavily considered.

A parameter referred to as the "coupling index", defined as link volume divided by link distance, can be used to quantify the relative benefits of coordination. However, along most major arterials, the volumes change relatively little from one link to another. Therefore, the intersection spacing becomes the dominant factor and the probable groupings can be developed visually by considering (on a map) the relative spacing between the signals. Accordingly, experience has shown that the use of the coupling index can be reserved for the rare instances where the best location for a necessary control group break is not readily apparent.

5.8.4 Progression Considerations

Progression bandwidths will also be considered in the determination of recommended cycle lengths. Depending on intersection spacing, some cycle lengths inherently lend themselves to good two-way progression while other cycle lengths will not. Although cycle should normally be as short as practical, a somewhat longer cycle that accommodates good progression is almost always better than a shorter cycle that does not accommodate good progression

5.8.5 Determination of Recommended Control Groups

Considering all of these factors, the Consultant will develop and submit (in map format) the recommended cycle lengths and control groups. In a subsequent review meeting, appropriate Client-desired adjustments will be made and the control groups will be finalized.

5.9 Develop Timing Plans

The following process will be used to develop the new timing plans:

5.9.1 Develop Preliminary Timing Plans

The new timing plans will be developed using the following process:

- The Synchro™ optimization process will be used to generate a "first cut" version of the timing plan.

- The following "on-screen" review and adjustment will then be performed by senior engineers with extensive experience in traffic signal operations:

    - At intersections that are not over-saturated, Synchro™ tends to allocate more time than necessary to minor movements. Accordingly, the splits for non-coordinated phases will be reduced to provide additional split times for the coordinated phases.

    - The progression bands will be reviewed and offset and phase sequence adjustments will be made to improve operations for the coordinated movements. As previously noted, the intent will be to achieve interlocking two-way progression, i.e., both north-south and east-west.

- Once the on-screen adjustments are complete, the resulting Synchro™ files will be submitted to the Client for review.

5.9.2 Develop TOD/DOW Schedules

The most appropriate TOD/DOW schedule for each control area will be developed using the 7-day count data. The recommended TOD/DOW schedule will be submitted to the Client review.

5.9.3 Finalize Timing Plans and TOD/DOW Schedules

At a subsequent review meeting, the Consultant will present the proposed timing plans and TOD/DOW schedules. An LCD projector will be used to allow the meeting participants to view possible timing plan modifications on-screen. Through interactive discussions, consensus will be reached regarding further modifications.

Following this meeting, the Consultant will make the agreed-upon modifications. The Consultant will then provide the new timing plans for the Client's staff to enter into the ATMS database. The format for this submittal will be a PDF file of the Synchro™ timing sheets.

5.9.4 Timing Plan Data Entry

The actual entry of new timing plans into the central and controller databases will be done by the Client's staff, with the Consultant providing remote assistance.

After the timing plans have been input by the Client into the system database, but before they are downloaded to the controllers for operation, the Consultant will review Client-furnished database print-outs. Identified discrepancies between the database and the Consultant's intended timing plans will be communicated to the Client.

5.10 Timing Plan Fine-Tuning

The Consultant will perform in-field fine-tuning to enhance the actual on-street operation of the new timing plans. This fine-tuning will be led by senior engineers with extensive experience in traffic signal operations. Participation by the Client's staff will be encouraged.

It is assumed that recommended adjustments will be called in by the Consultant, with the Client having a staff member on duty in the control center to download the requested change. For any intersections that do not have operable communications, the needed controller database changes will be made by Client personnel.

5.11 Final Timing Documentation

5.11.1 Final Synchro™ Files

The Consultant will provide the Client with Synchro™ files of the final (i.e. as fine-tuned) timing plans.

5.11.2 Task Technical Memorandum

The Consultant will develop a technical memorandum that will include the following:

- Executive summary
- Narrative discussion of the timing plan development process with supporting figures, such as maps of the control groups by time period
- A summary of the quantitative results including:
    - Tabular comparisons of the travel time results.
    - Tabular comparison of the before and after Synchro™ MOEs.

The Consultant will submit a draft version of the task technical memorandum for Client review. Five (5) bound copies will be provided along with a PDF file from which additional copies can be printed by the Client.

During a subsequent conference call, the Consultant will receive the Client's comments. Incorporating these comments, the Consultant will then prepare and submit the final version. Ten (10) bound copies will be provided along with a PDF file from which additional copies can be printed by the Client.

5.12 Periodic Revaluation of the New Timing Plans

Following the completion of the timing plan fine-tuning (Task 5.10 above), the Consultant will conduct follow-up site visits once every six months for 18 months. During these visits, the Consultant will meet with the Client staff to discuss issues and concerns. Also, the Consultant will perform AM and PM peak hour observations of the system. The purpose of these site visits will be to confirm that the timing plans are running as intended and to make split and offset adjustments for better accommodation of current traffic.

Timing plan changes adjustments that require cycle length changes will be considered as additional services beyond the scope of this task.

6.0 ON-STREET BICYCLE FACILITY FEASIBILITY EVALUATION

This task will identify the need for on-street bicycle connections. It is not intended that a citywide bicycle master plan will be created from this task. Instead, this task will be limited to the evaluation of potential on-street corridors to provide bicycle connections between the schools, parks, downtown, and existing and proposed trails or off-street bicycle facilities.

6.1 GIS Data

In addition to the data called for in Task 2, the Client will provide the Consultant with available GIS shapefiles, associated databases, and layer files in ESRI ArcGIS 9.x format. All such data will be projected in NAD 83 State Plane, Texas South Central Zone Coordinates. As available, such data shall include:

- Public roads within the City;
- Thoroughfare plan;
- Traffic signals;
- 85th percentile speeds;
- Posted speed limits;
- Trail plan;
- Major activity centers;
- Parks;
- Public buildings;
- Schools.

6.2 Determine Corridors for Evaluation

The Consultant will meet with the Client will discuss the need for on-street bicycle connections and to reach consensus regarding up to six (6) corridor connections to be inventoried and evaluated. (An example of one such connection might be Midland College to downtown.)

6.3 Field Data Collection

The Consultant will prepare for and perform a field visit to collect needed data, which will be collected using field inventory forms and transcribed into a GIS format. The data collection will include the following:

- Facilities pavement width;
- Facilities pavement quality;
- Facilities lane widths;
- Presence of on-street parking;
- Posted speed;
- In-field facility recommendation;
- In-field facility recommended action; and
- Comments including driver behavior and other in-field observations that may impact bicycle facilities recommendations.

For each facility evaluated, the Consultant will develop preliminary sections that identify street width, number of lanes, presence of on street parking, potential lane widths.

6.4 Bicycle Corridor/Connections Plan

Based on the results of Task 6.3, the Consultant will prepare an on-street bicycle connections plan. This plan will have three components, a corridor/connections map, typical cross sections, and project sheets.

6.4.1 Bicycle Corridor/Connections Map

The bicycle facility infrastructure recommendations will be integrated into a GIS database and displayed on a GIS map. A specific focus will be school-specific recommendations that could become part of the engineering component of a future Safe Routes to School Plan. The infrastructure recommendations may include, but are not limited to:

- On-street dedicated bicycle lanes;
- Paved shoulders;
- On-street shared narrow lanes (where "Bikes May Use Full Lane");
- On-street shared wide lanes (where cars and bikes ride side-by-side);
- On-street signed bicycle routes;
- On-street dedicated cycle tracks (if applicable);
- On-street bicycle boulevards (if applicable);
- Off-street side paths to increase connectivity of on-street and off-street system; and
- Identification of spot locations where specific improvements are needed to address barriers and create a connected system. The design of specific solutions for identified barriers is not included in this scope of services.

6.4.2 Cross Sections

The Consultant will develop proposed cross sections that show how roadways can be reconfigured to accommodate bicycle needs. To the extent practical, the cross sections will use of existing pavement.

6.4.3 Project Sheets

The Consultant will prepare project sheets that define the proposed project limits, cross section, project notes, and planning level costs.

6.5 Documentation

The bicycle corridor/connections map, cross sections, and project sheets will constitute the documentation for this task.

7.0 BICYCLE SHARING FEASIBILITY EVALUATION

The purpose of this task is to evaluate the feasibility of a bicycle sharing system within the City.

7.1 Bicycle Sharing Training/Webinar

The Consultant will prepare for and lead a bicycle sharing webinar (approximately two hours in length). At least one member of the Consultant team will be in Midland with the Client during this webinar.

The webinar will cover a variety of topics and levels of knowledge regarding bicycle sharing systems. These topics will include the following:

- A basic overview of bike sharing;
- Economic, environmental and health benefits of systems;
- Proliferation of systems in the US and globally;
- Different equipment choices around the world;
- Technical aspects in launching a system (including station density and site planning, bicycle infrastructure needs, etc.); and
- Business models and governance structures.

7.2 Task Documentation

Following the initial webinar and the feedback gained from the Client, the Consultant will prepare a summary memorandum documenting the recommendations for the Client to consider regarding potential next steps for the bicycle sharing system. A draft of this memorandum will be prepared and submitted to the Client (in PDF format) for review and comment. After meeting once with the Client by means of conference call, the Consultant will incorporate review comments and submit ten (10) hard copies and one (1) electronic copy (PDF) of the final memorandum.

8.0 PROJECT FINAL DOCUMENTATION

8.1 Project Final Report

Consolidating and summarizing the information from the various task technical memorandums, the Consultant will prepare a project final report. This document will include an executive summary.

The Consultant will submit a draft version of the project final report for Client review. Five (5) bound copies will be provided along with a PDF file from which additional copies can be printed by the Client.

During a subsequent conference call, the Consultant will receive the Client's comments. Incorporating these comments, the Consultant will then prepare and submit the final version. Twenty (20) bound copies will be provided along with a PDF file from which additional copies can be printed by the Client.

8.2 Project Final Presentation

The Consultant will prepare for and make one formal presentation of the results of the project (for example, at a City Council briefing session).

9.0 CORRIDOR STUDIES

The purpose of this task is to conduct corridor studies along three (3) corridors (to be identified by the Client). The tasks listed below will be performed for each of the corridors.

9.1 Data Collection

The Consultant will collect the following data along each of the corridors:

- Compile information along the corridor collected as part of Task 2
- Speed and classification data at up to three (3) points along each corridor
- Historical accident reports along the corridor for the previous three (3) years
- Existing and Proposed land use information along the corridor
- Any proposed development plans along the corridor
- Available GIS data along the corridor (floodplain, parcels, sidewalks, etc)

The Consultant will conduct a windshield survey of existing conditions along each corridor to create a basemap of existing conditions.

9.2 Corridor Analysis

The Consultant will perform the following analysis along each corridor:

- Capacity analysis along each major roadway link, all signalized intersections, and any major unsignalized intersections for existing and projected future conditions at a horizon year to be identified by the Client.
- Evaluation of the existing access management along the corridor.
- Investigation of any locations experiencing a high rate of accidents, congestion, or other conditions that may warrant additional investigation.
- Pedestrian / ADA accommodations along the corridor.
- Alignment evaluation for undeveloped or non-fully developed corridors (planning level consideration of up to three (3) alternative alignment options along undeveloped corridors).

9.3 Recommendations and Documentation

Based on the analysis conducted as part of Task 9.2, the Consultant will compile a set of short-, mid-, and long-term recommendations along the corridor that may address capacity, safety, operations, pedestrian accommodations, alignment recommendations, etc.

For each corridor, the Consultant will prepare a summary technical memorandum documenting the data collection, analysis results, and recommendations; including any required supporting exhibits.

The Consultant will submit a draft version of the corridor study (in electronic .pdf format) for Client review.

During a subsequent conference call, the Consultant will receive the Client's comments. Incorporating these comments, the Consultant will then prepare and submit the final version. Twenty (20) bound copies will be provided along with a PDF file from which additional copies can be printed by the Client.

9.4 Meetings and Coordination

The Consultant will prepare for and attend up to six (6) meetings with the Client (or any other stakeholders identified by the Client) as part of this task (anticipated to be two (2) meetings per corridor).

In addition, the Consultant will prepare for and make one formal presentation of the results of the Corridor Studies (for example, at a City Council briefing session).

Kimley-Horn and Associates, Inc.

Kimley-Horn and Associates, Inc.

Standard Rate Schedule

(Hourly Rate)

Senior Professional I	$190 - $225
Senior Professional II	$170 - $210
Professional	$135 - $175
Analyst	$135-$150
Designer	$95 - $160
Technical Support	$65 - $145
Clerical/Administrative Support	$60 - $110

Effective July 2013

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/27/2013

TO: City Council / City Manager

FROM: Bill Hodge, GIS Manager

SUBJECT: **Consider a Resolution authorizing the City of Midland to enter into a Right-of-Way Crossing Agreement with Pioneer Natural Resources, USA Inc, a Delaware Corporation for the purpose of installing up to two (2) petroleum and petroleum by-products pipeline within City Limits, not to exceed eight (8) inches in diameter across Arapahoe Road, approximately 0.62 miles west of the intersection of Elkins Road, in Block 38, Section 8, T1S, T&P RR Survey, Midland County, TX. and a Surface Damage Agreement for the pipeline crossing Block 38, Section 8, T1S, T&P RR Survey, Midland County, TX and Martin County, TX.**

Purpose:

Consider a Resolution authorizing the City of Midland to enter into a Right-of-Way Crossing Agreement with Pioneer Natural Resources, USA Inc, a Delaware Corporation for the purpose of installing up to two (2) petroleum and petroleum by-products pipeline within City Limits, not to exceed eight (8) inches in diameter across Arapahoe Road, approximately 0.62 miles west of the intersection of Elkins Road, in Block 38, Section 8, T1S, T&P RR Survey, Midland County, TX.

A Surface Damage Agreement for the pipeline crossing Block 38, Section 8, T1S, T&P RR Survey, Midland County, TX and Martin County, TX will also be required.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Application fee: $ 500.00 (one-time)
Annual lease fee, ROW Crossing Agreement: $ 400.00 (the minimum annual fee)

Surface Damage Fee (one-time): $ 10/rod, over 339.13 rods for a total fee of $ 3,391.30.

Discussion:

Pioneer is installing a 4 inch salt water disposal line to connect a production well east of the Arapahoe Road Crossing with their salt water disposal facility to the north and will be crossing the City's Arapahoe Road in order to complete the connection. They have a preexisting blanket ROW contract with the previous landowner that allows them to lay a new line across City-owned property, which is why we are not executing a ROW License agreement for this line in addition to the Surface Damage Agreement. Because the majority of this crossing north of Arapahoe Road will be over Airport controlled property, the Surface Damage fee will go to the Airport Operating Fund, but the annual lease payment will go to the General Fund.

Coming from the south and east, this pipeline will cross Arapahoe Road approximately 0.62 miles west of its intersection with Elkins Road, within City Limits, then proceed north across City property in Block 38, Section 8, T1S, T&P Survey, Midland and Martin Counties, TX to their salt water facility.

This will be a 10-year contract, divided into two 5-year contract periods, with an automatic renewal between periods, upon Pioneer's written request, to be received at least 120 days prior to the end of the first period.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND, TEXAS AND PIONEER NATURAL RESOURCES, USA INCORPORATED, A DELAWARE CORPORATION; SAID RIGHT-OF-WAY LICENSE IS FOR ENTERING THE CITY OF MIDLAND'S RIGHT-OF-WAY FOR THE PURPOSE OF PLACING, INSTALLING, CONSTRUCTING, OPERATING, REPAIRING, MAINTAINING, REPLACING AND REMOVING UP TO TWO (2) PETROLEUM AND PETROLEUM BY PRODUCTS PIPELINE, FOR SALT WATER DISPOSAL AND TO HAVE THE RIGHT OF INGRESS AND EGRESS AT CONVENIENT POINTS FOR SUCH PURPOSE; THE PIPELINE IS LOCATED WITHIN THE CITY OF MIDLAND RIGHT-OF-WAY, SECTION 8, BLOCK 38, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; THE LICENSE TERM IS FOR FIVE (5) 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 Pioneer Natural Resources, USA Inc., a Delaware Corporation, located within the City of Midland Right-of-Way, Section 44, Block 38, T-1-S, T&P RR Co. Survey, 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 Pioneer Natural Resources, USA Inc., a Delaware Corporation, said license being substantially in the form attached hereto as Exhibit "A" and incorporated herein for all purposes.

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

Council members voting “AYE”:

Council members voting “NAY”:

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Bill Hodge, GIS Manager

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

RIGHT-OF-WAY LICENSE

THE STATE OF TEXAS §
§ **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF MIDLAND §

THIS RIGHT-OF-WAY LICENSE ("AGREEMENT"), effective this 28th day of August, 2013, by and between THE CITY OF MIDLAND, TEXAS, a home rule municipal corporation, hereinafter called "Licensor", and PIONEER NATURAL RESOURCES, USA Inc., a Delaware Corporation, P.O. Box 3178, Midland, Texas 79702, hereinafter called "Licensee".

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

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 five (5) years (the "Initial Term"), commencing with the date of this Agreement, the "Commencement Date," unless terminated earlier as provided hereafter. This Agreement shall automatically renew at the end of the Initial Term for one (1) additional term of five (5) years, upon the written

request of Licensee received by Licensor on or before (120) 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.

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

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 GIS 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 and 0/100 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 FOUR HUNDRED and 0/100 Dollars ($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%). Licensee shall also pay a one-time surface damage fee to the Licensor for the sum of THREE THOUSAND THREE HUNDRED NINETY ONE and 80/100 Dollars ($3,391.80), payable before the commencement date of this license agreement.

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 GIS 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 twenty-five percent (25%) 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 GIS 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 in Midland City Limits, being thirty (30) feet from the pipeline center location, with an additional 35 (thirty-five) feet allowed for used during construction, reverting to 30 (thirty) feet total width after completion as shown on Exhibit "A," attached hereto and incorporated herein for the purpose of placing, installing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the hereinafter described pipeline location, up to two (2) petroleum and petroleum by-products pipeline, for salt-water disposal, not to exceed four (4) inches in diameter and to have the right of ingress and egress at convenient points for such purpose.

2. 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.

3. 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.

4. 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 City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). The City of Midland shall be afforded the opportunity to test the density on all backfill.

5. 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 GIS Manager.

6. 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 Licensee's 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.

7. 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.

8. 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.

9. 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 GIS Manager for his or her approval. In the event of emergency repairs necessary to restore service, the Licensee shall notify Licensor's GIS 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 GIS Manager on the first work day after repairs have begun.

10. 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
Employers' Liability:	$1,000,000.00 per accident or occurrence
Pollution Liability:	$1,000,000.00 each loss limit
	$2,000,000.00 claims made

This insurance, except Worker's Compensation, shall name the Licensor as an additional insured and all insurance shall waive subrogation in favor of the Licensor.

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

The Business Automobile Liability insurance provided by Licensee shall cover

any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement. All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name the Licensor as an additional insured on a claims occurred basis. All insurance required pursuant to this Agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the Licensor.

The parties agree that, prior to the execution of the Agreement, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

Licensor shall be provided the notice by Licensee's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Licensor shall not be required to provide any insurance whatsoever pursuant to this Agreement.

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured.

Licensee certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Senate Bill 425, passed during the 82nd regular session of the Texas Legislature, and effective January 1, 2012.

2. **<u>INDEMNITY</u> - 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 INURIES, 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 LINCENSOR'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 Licensor and Licensee. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of the Licensor. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Licensee shall be an independent contractor under this Agreement and shall assume all of the rights,

obligations and liabilities applicable to it as such independent contractor hereunder. Licensor does not have the power to direct the order in which the work is done. Licensor shall not have the right to control the means, methods or details of Licensee's work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way.

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

OTHERWISE BE ENTITLED.

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

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

6. **Governing Law & Venue** - All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have been performed in Midland County, Texas.

7. **RELEASE** - **NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS,**

FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LICENSOR'S NEGLIGENCE.

8. **Sovereign Immunity** - By executing this Agreement the Licensor is not waiving its right of sovereign immunity. The Licensor is retaining its immunity from suit. The Licensor is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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

10. **Notice** - Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensor as follows: GIS 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: Pioneer Natural Resources, USA Inc., a Delaware Corporation, David A. Sutter, Vice President of Permian Land, P.O. Box 3178, Midland, Texas, 79702.

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:

_____

Bill Hodge, GIS Manager

APPROVED AS TO FORM:

_____

Keith Stretcher, City Attorney

LICENSEE:

PIONEER NATURAL RESOURCES, USA INC., A DELAWARE CORPORATION

_____

David A. Sutter, Vice President

THE STATE OF TEXAS **§**

§

COUNTY OF _____ **§**

BEFORE ME, the undersigned authority, on this day personally appeared David A. Sutter, an officer of PIONEER NATURAL RESOURCES, USA, INC., A DELAWARE CORPORATION, known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2013.

_____

Notary Public, State of Texas

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PIONEER NATURAL RESOURCES

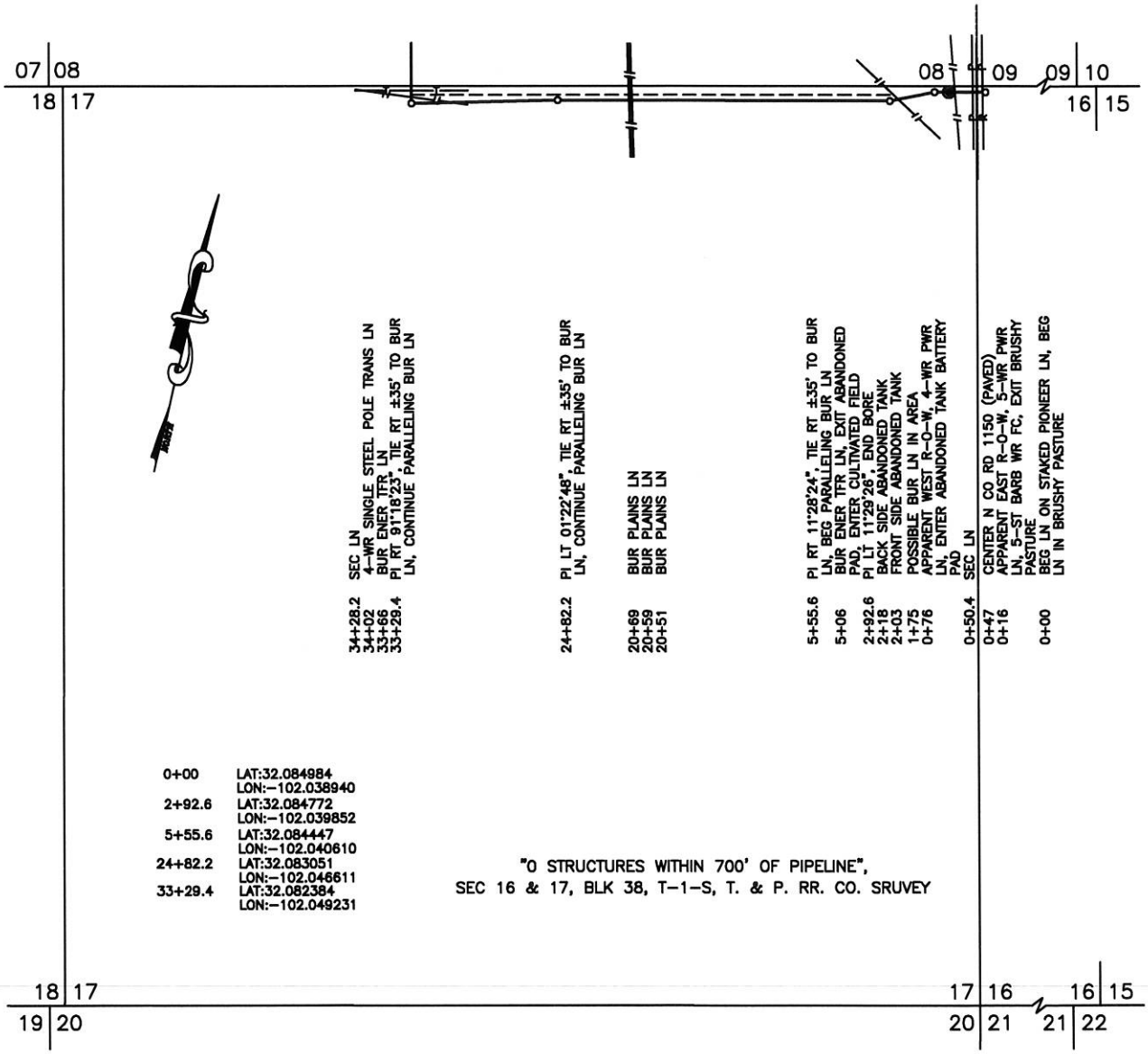
SHEET NO. 1 OF 2

NATURE OF WORK PROPOSED PIPELINE ROUTE DATE 5/29/13 LINE NO.

DISTRICT PERMIAN BASIN PLANT OR STATION JOB OR AFE NO.

SEC. 16 & 17 TWP. T-1-S BLK. OR RANGE 38 SURVEY T. & P. RR. CO. CO. MIDLAND STATE TX.

Abst. # A-866
A-152



SURVEY DATE: 5/28/13

1. Coordinates and Bearings and Distances are based on Lambert Conical Projection of the State Plane Coordinate System NAD 83, Texas North Central Zone. To obtain surface values multiply distances by a factor of 1.0001104.
2. This survey was performed without the benefit of a title report. There may be easements and/or covenants affecting this property not shown hereon. Location of improvements and, or easements were beyond commissioned scope of this project and have been specifically omitted.
3. See documents and electronic data in the office of West Co. of Midland for complete reconstruction of these sections and blocks in drawing T:\WADE\DCP\MIDLAND-MARTIN\070903 MIDLAND-MARTIN BASE NAD83TNCZ.dwg.

PRELIMINARY NOT TO BE RECORDED FOR ANY PURPOSE

RE: ☐ RESURVEY ☑ STAKING

SCALE: 1"= 1000'

REMARKS LINE REQUIRES ±50.4 FEET OR ±3.05 RODS IN SEC. 16
LINE REQUIRES ±3377.8 FEET OR ±204.72 RODS IN SEC. 17

FOR CHANGES & RESURVEYS, THIS PLAT TO BE ACCOMPANIED BY PIPE LINE REPORT, FORM NO. 3997. RC – CE SURVEYING MAPPING & PIPELINE RECORD SECTION

WEST COMPANY OF MIDLAND, INC.
110 W. LOUISIANA AVE. STE. 110
MIDLAND TEXAS, 79701
(432) 687-0865 – FAX: (432) 687-0868

T:\PIONEER\...\2013-0877.dwg
WO# 2013-0877
DCP 68\19

© COPYRIGHT 2013 ALL RIGHTS RESERVED
TDD

PIONEER NATURAL RESOURCES

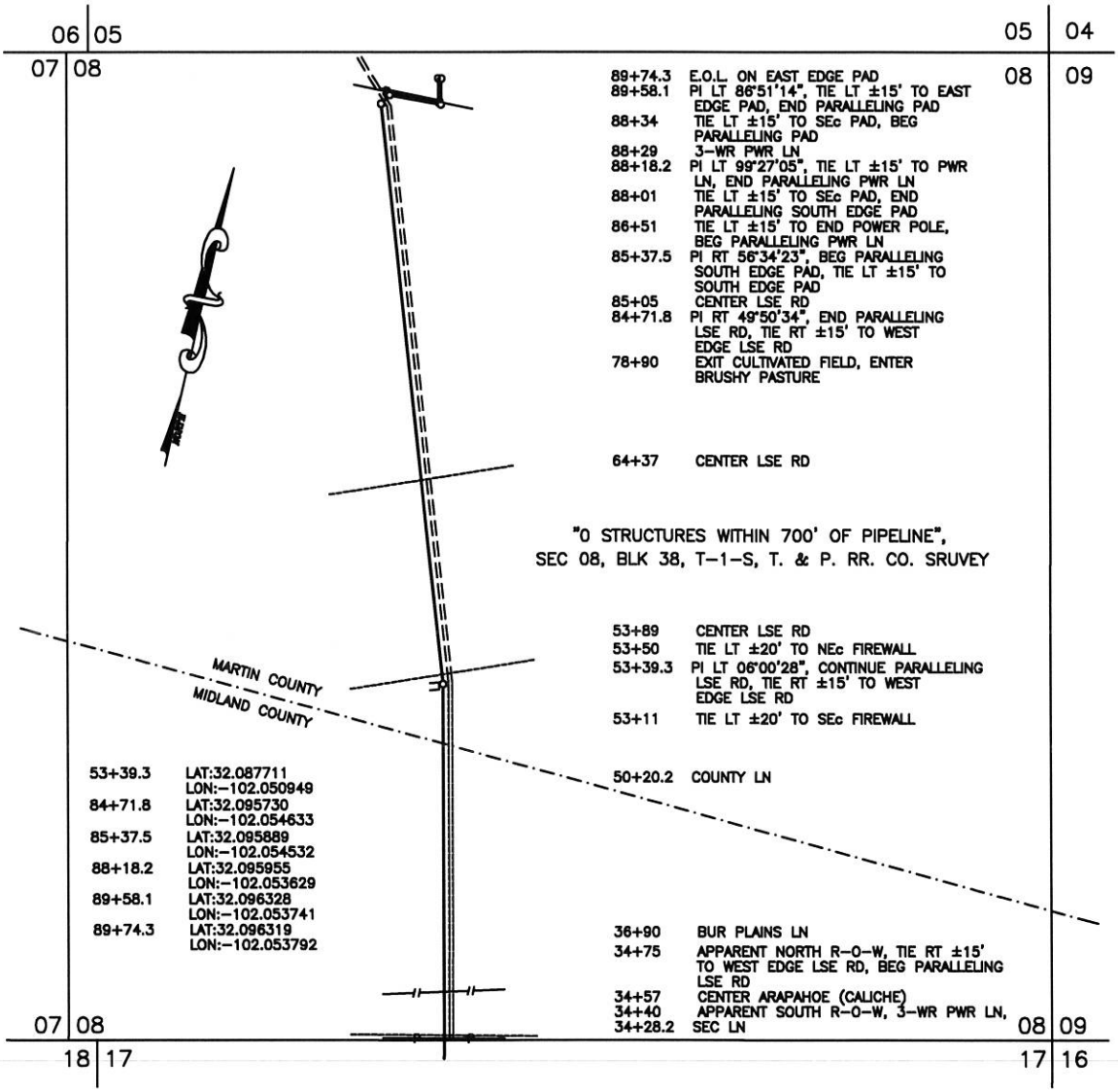
SHEET NO. 2 OF 2

NATURE OF WORK PROPOSED PIPELINE ROUTE DATE 5/29/13 LINE NO.

DISTRICT PERMIAN BASIN PLANT OR STATION JOB OR AFE NO.

SEC. 8 TWP. T-1-S BLK. OR RANGE 38 SURVEY T. & P. RR. CO. CO. MIDLAND/MARTIN STATE TX.

Abst.# A-637
A-1213



SURVEY DATE: 5/28/13

1. Coordinates and Bearings and Distances are based on Lambert Conical Projection of the State Plane Coordinate System NAD 83, Texas North Central Zone. To obtain surface values multiply distances by a factor of 1.0001104.
2. This survey was performed without the benefit of a title report. There may be easements and/or covenants affecting this property not shown hereon. Location of improvements and, or easements were beyond commissioned scope of this project and have been specifically omitted.
3. See documents and electronic data in the office of West Co. of Midland for complete reconstruction of these sections and blocks in drawing T:\WADE\DCP\MIDLAND-MARTIN\070903 MIDLAND-MARTIN BASE NAD83TNCZ.dwg.

PRELIMINARY NOT TO BE RECORDED FOR ANY PURPOSE

RE: ☐ RESURVEY ☑ STAKING

SCALE: 1"= 1000'

REMARKS LINE REQUIRES ±5546.1 FEET OR ±336.13 RODS IN SEC. 8

FOR CHANGES & RESURVEYS, THIS PLAT TO BE ACCOMPANIED BY PIPE LINE REPORT, FORM NO. 3997. RC – CE SURVEYING MAPPING & PIPELINE RECORD SECTION

WEST COMPANY OF MIDLAND, INC.
110 W. LOUISIANA AVE. STE. 110
MIDLAND TEXAS, 79701
(432) 687-0865 – FAX: (432) 687-0868

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WO# 2013-0877
DCP 68\19

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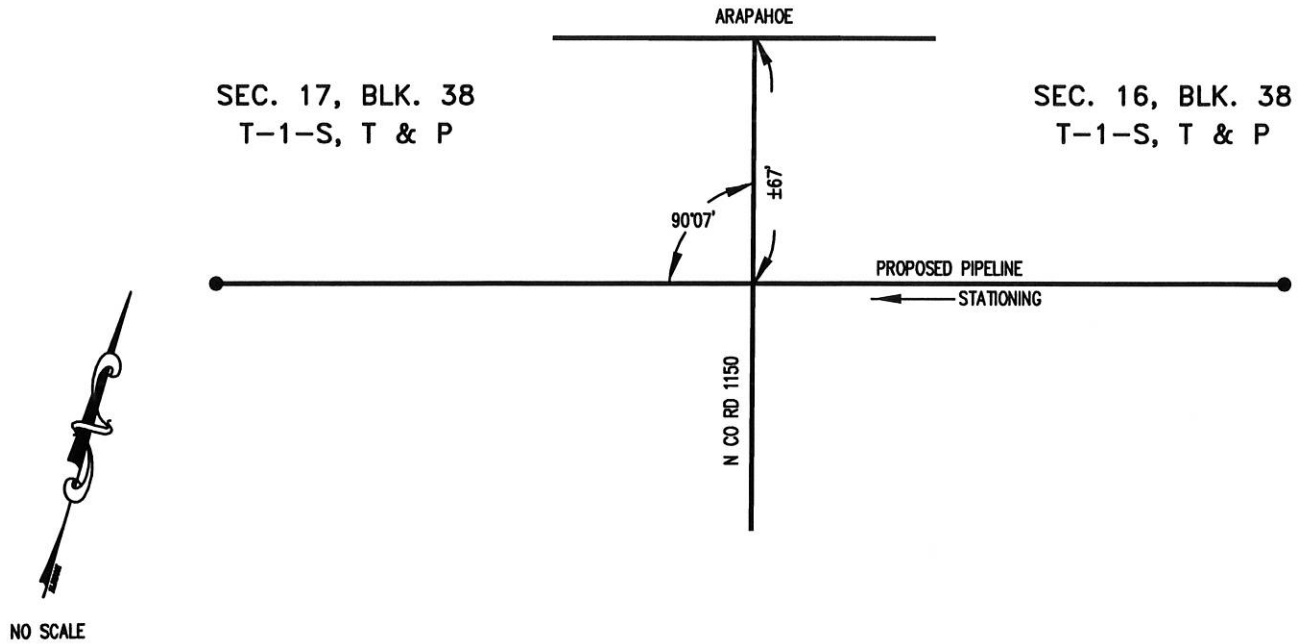
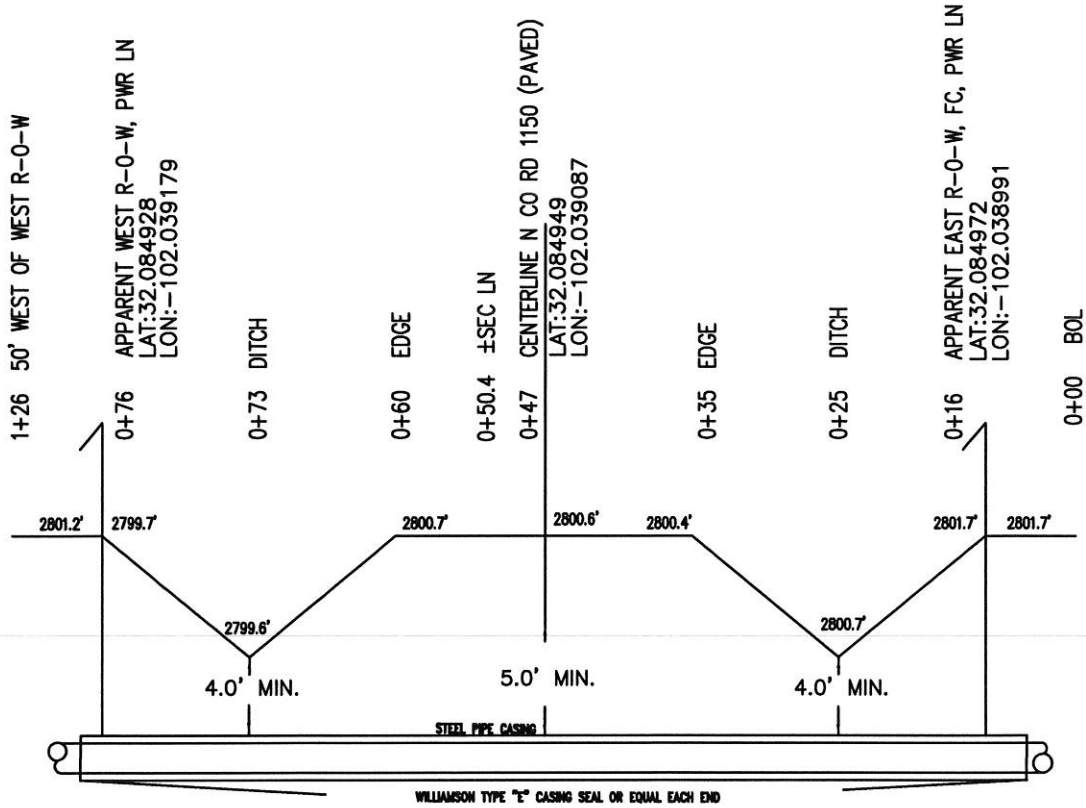
TDD



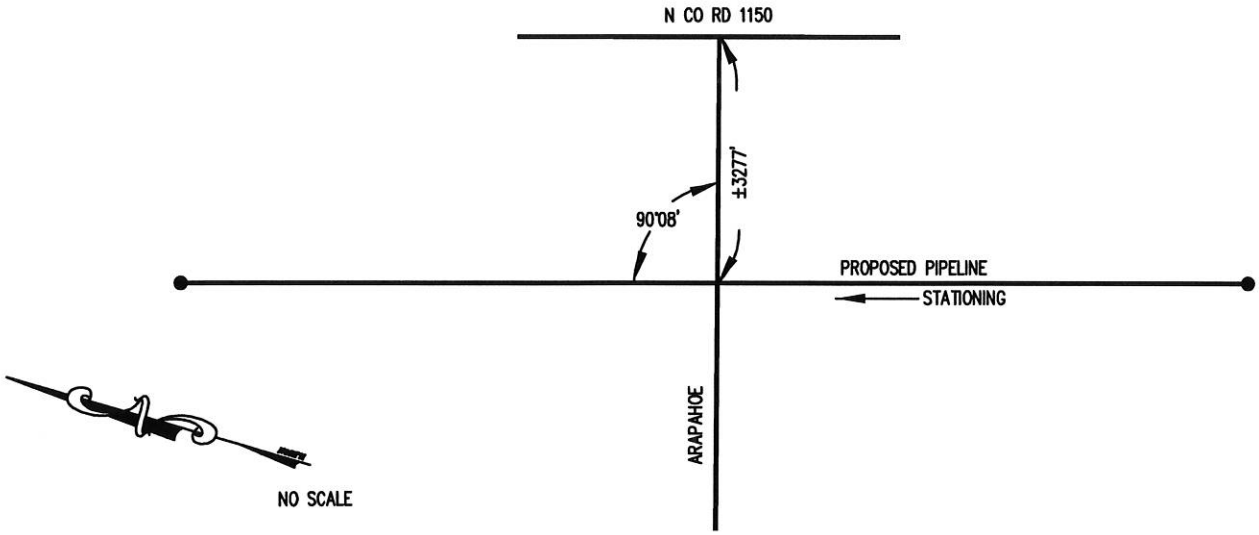


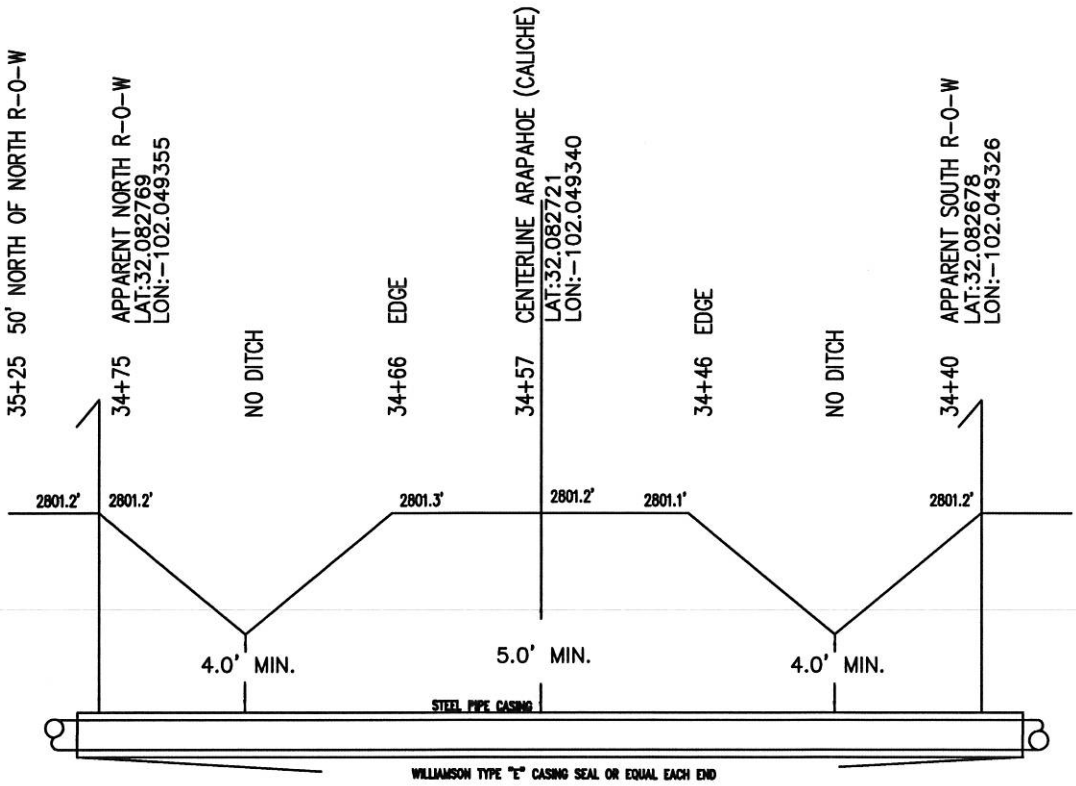
PROFILE VIEW

NO.	REVISION	BY	DATE	CHKD	APP'D

FOR BIDS	PIONEER NATURAL RESOURCES MIDLAND, TEXAS	WORKORDER # 2013-0877 / FILE CODE
FOR APPR		SCALE NONE UNLESS OTHERWISE NOTED
FOR CONST	PROPOSED PIPELINE CROSSING N CO RD 1150 (PAVED) SEC. 16, BLK. 38, T-1-S. T & P RR CO. SURVEY SEC. 17, BLK. 38, T-1-S. T & P RR CO. SURVEY MIDLAND COUNTY, TEXAS	DWG NO.
DRAWN		
CHECKED		SH. NO.
APP'D		

SEC. 8, BLK. 38
T-1-S, T & P





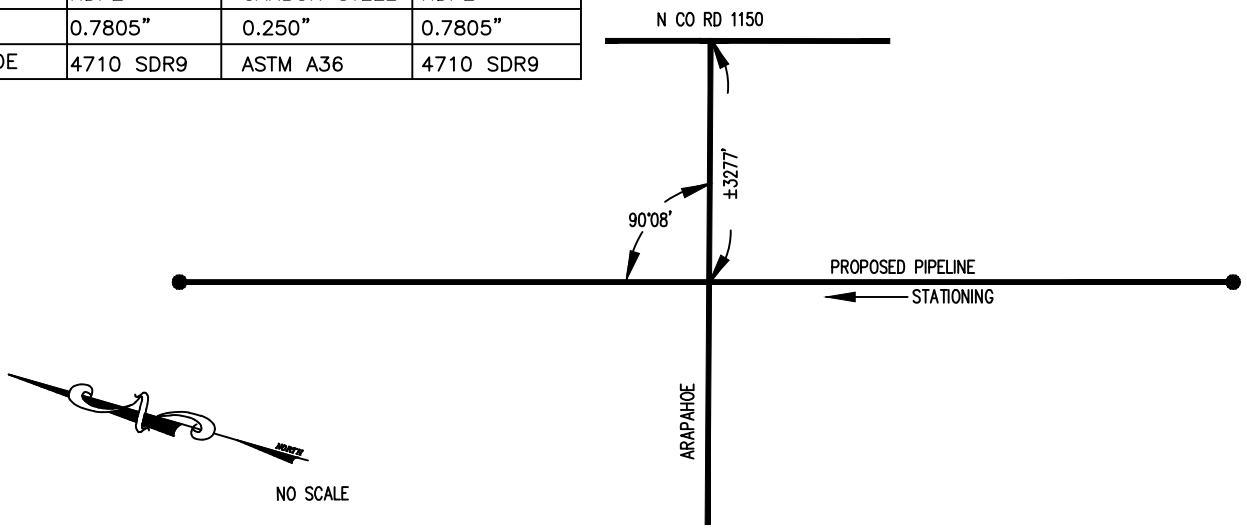
PROFILE VIEW

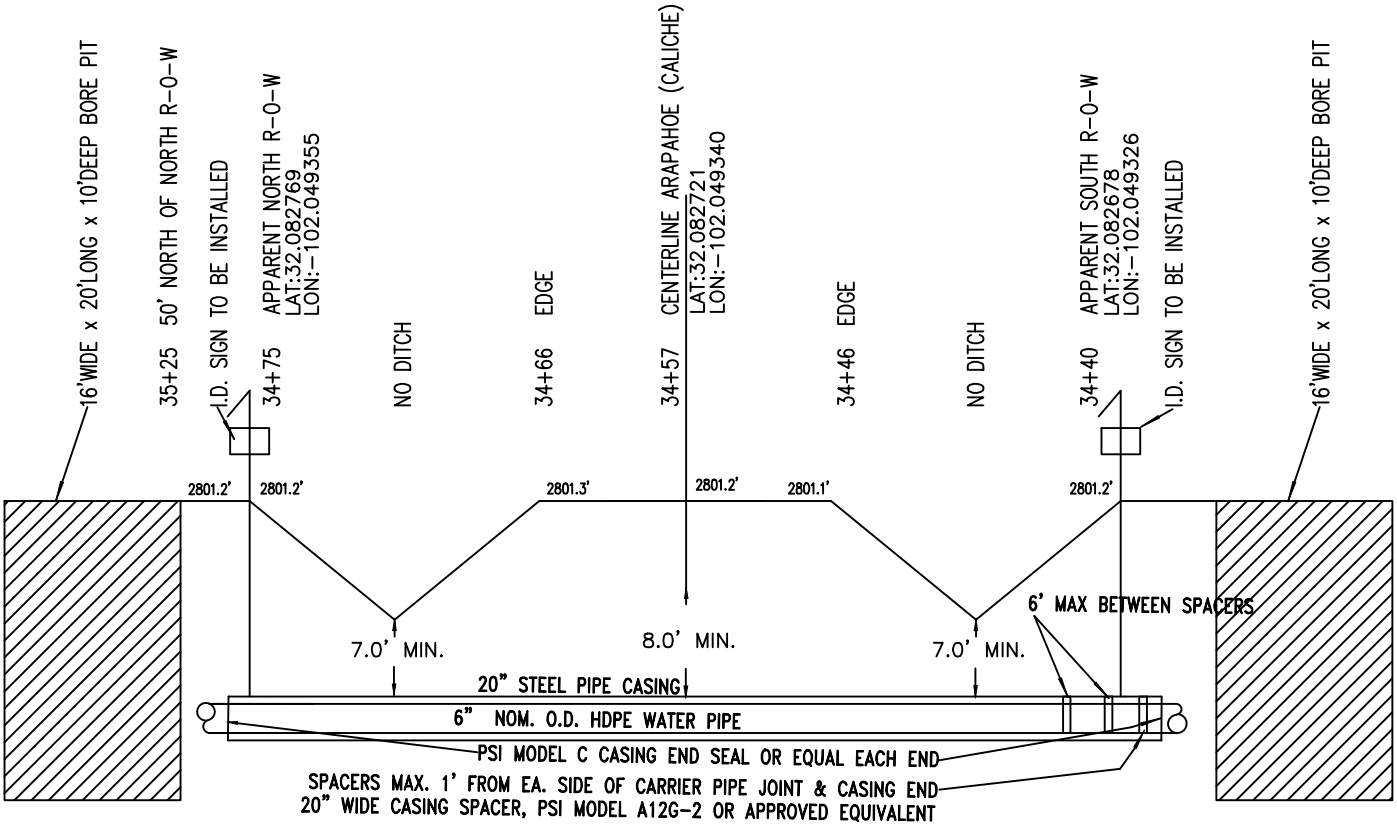
NO.	REVISION	BY	DATE	CHKD	APP'D

FOR BIDS	PIONEER NATURAL RESOURCES MIDLAND, TEXAS	WORKORDER # 2013-0877	FILE CODE
FOR APPR		SCALE NONE UNLESS OTHERWISE NOTED	
FOR CONST	PROPOSED PIPELINE CROSSING ARAPAHOE SEC. 8, BLK. 38, T-1-S. T & P RR CO. SURVEY MIDLAND COUNTY, TEXAS	DWG NO.	
DRAWN			
CHECKED		SH. NO.	
APP'D			

	CARRIER PIPE	CASING PIPE	FUTURE PIPING
CONTENTS	PROD. WATER	N A	UNKNOWN
O.D.	6.625"	20.0"	6.625"
I.D	5.064"	19.5"	5.064"
MATERIAL	HDPE	CARBON STEEL	HDPE
W.T.	0.7805"	0.250"	0.7805"
GRADE	4710 SDR9	ASTM A36	4710 SDR9

SEC. 8, BLK. 38
T-1-S, T & P





PROFILE VIEW

NO.	REVISION	BY	DATE	CHKD	APP'D
1	REVISED PER DIRECTION OF CITY OF MIDLAND & PIONEER NATURAL RESOURCES	JDE	6-26-13		

FOR BIDS
FOR APPR
FOR CONST
DRAWN
CHECKED
APP'D

PIONEER NATURAL RESOURCES
MIDLAND, TEXAS

PROPOSED PIPELINE CROSSING
ARAPAHOE
SEC. 8, BLK. 38, T-1-S. T & P RR CO. SURVEY
MIDLAND COUNTY, TEXAS

WORKORDER # 2013-0877
FILE CODE
SCALE NONE UNLESS OTHERWISE NOTED
DWG NO.
SH. NO.

RLL

L-910445

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/27/2013

TO: City Council / City Manager

FROM: Jeff Cohen, Assistant City Engineer

SUBJECT: Consider a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of $5,520 with Devon Energy for drainage improvements to serve Devon Addition. (District #4 – Trost)

Purpose:

Consider a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of $5,520 with Devon Energy for drainage improvements to serve Devon Addition.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

That the sum of $5,520 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the Devon Addition Detention Basin Project (9056).

Discussion:

Devon Energy has constructed an office building in the Devon Addition, located at the northeast intersection of Younger Road and Norden Drive (near the Midland International Airport). When the property was platted, a drainage plan was approved that included a regional detention pond for properties located within a 155-acre area bounded approximately by Loop 40, South FM 1788, Younger Road, and Wright Drive. As each tract is platted, the developer must contribute funds for the construction of the regional pond. When sufficient development has taken place, the City will construct the pond.

Devon Energy's contribution is $5,520, which will cover approximately 4435 cubic yards of exacavation and approximately 2.2% (their portion of the tributary acreage to the pond) of the cost of the outfall pipe.

Staff recommends approval of the development agreement to accept funds for the drainage improvements in the amount of $5,520.

Attached is an opinion of probable cost from staff for the outfall pipe, an opinion of probable cost by staff for the excavation volume, and a location map.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH DEVON ENERGY PRODUCTION CO., L.P. FOR DRAINAGE IMPROVEMENTS TO DEVON ADDITION; AND APPROPRIATING FUNDS THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

WHEREAS, an adjoining landowner of Devon Addition, Devon Energy Production Co., L.P. ("Devon Energy"), has requested City participation in drainage improvements to Devon Addition; and

WHEREAS, the City Council finds that in accordance with Section 395.081 of the Texas Local Government Code that the City of Midland will benefit from allowing Devon Energy to participate in drainage improvements to Devon Addition and thereby promote the health, safety, and public welfare and provide for efficient and well-planned urban growth and development; and

WHEREAS, the City Council finds it to be in the public interest to execute an agreement with Devon Energy which sets forth the extent of the landowner's participation in the construction of public improvements; and

WHEREAS, the City has not adopted an impact fee, any obligation incurred or owed by the adjoining landowner, Devon Energy, shall constitute payment of a proportional share of the cost of the capital improvements constructed as provided for in Section 395.081 of the Texas Local Government Code;

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

SECTION ONE. That the recitals stated above are hereby adopted and approved for all purposes.

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 public improvement development agreement with Devon Energy Production Co., L.P. Said

agreement is attached hereto as Exhibit "A" and is incorporated herein for all purposes.

SECTION THREE. That the City Treasurer is hereby authorized and directed, upon receipt of $5,520 from Devon Energy Production Co., L.P. under said agreement, to deposit said funds into the General Fund (001) of the City of Midland; and that said funds shall be appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the Devon Addition Detention Basin Project (9056).

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

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

_____
Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Jose Ortiz, Engineering Services Director

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT
BETWEEN DEVON ENERGY PRODUCTION CO., L.P.
AND THE CITY OF MIDLAND, TEXAS

THIS AGREEMENT ("Agreement") is made and effective as of the 28th day of August, 2013, by and between Devon Energy Production Co., L.P. ("Developer") and the City of Midland, Texas ("City"), a home rule municipal corporation.

WITNESSETH:

WHEREAS, the City and Developer find it to be to their mutual advantage to enter into this agreement for the construction of appropriate and necessary public facilities; and

WHEREAS, the City finds that in accordance with Section 395.081 of the Texas Local Government Code that the City will benefit by allowing the Developer to participate in drainage improvements to Devon Addition and thereby promote the health, safety, and public welfare and provide for efficient and well-planned urban growth and development;

NOW, THEREFORE, in consideration of the covenants, conditions, and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree to the terms set forth in this Agreement:

I.

The Developer agrees to pay to the City its proportional share of the cost of the public improvements to be constructed as described in Section II hereof. The Developer's proportional share for the drainage improvements shall be $1,971.00 for excavation and $3,549.00 for the storm drain, not to exceed a total of $5,520.00.

Developer's payment of $5,520.00 shall be due upon execution of this Agreement. The City agrees to place the funds paid by Developer under this Agreement in a separate project account of the City. The City shall manage the project account and agrees to only expend funds therefrom for

costs appropriate and necessary for the construction of the public improvements described in Section II.

In the event the City does not commence construction of the public improvements described in Section II within twenty (20) years of the date of this Agreement, and diligently continue such construction to completion, then the City agrees to repay all funds received from Developer hereunder without interest or penalty.

II.

The public improvements to be constructed by the City shall be generally described as follows: The construction of a regional detention pond, consisting of approximately 15-acre feet of storage and approximately 1,200 feet of outfall pipe. The storage portion shall be constructed on a tract of land within 2,000 feet of the property described in the Devon Addition plat, and the outfall pipe shall be constructed within City of Midland right-of-way and drainage easements.

Costs appropriate and necessary for said public improvements shall include costs for mobilization, excavation and grading, concrete headwalls, trench work, pipe embedment, HDPE plastic storm drain pipe, trench backfill, asphalt pavement repair, erosion protection, job site safety and traffic control, construction staking, and contingencies.

III.

The Developer agrees that its payment(s) pursuant to Section I above, constitutes only Developer's public improvement obligation for drainage improvements to serve Devon Addition, Midland County, Texas, and the City agrees that such payment(s) constitute all of Developer's public improvement obligation for said portion of Devon Addition.

IV.

This Agreement may be modified or amended only by the mutual written consent of the parties hereto.

V.

This Agreement contains the complete and entire agreement between the parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations and understandings, if any, between the parties respecting such matters.

VI.

Except as may be otherwise specifically provided in this Agreement, all notices required or permitted hereunder shall be in writing as follows:

If to Developer:

Shannon Fetz
Devon Energy Production Co., L.P.
333 W. Sheridan Ave.
Oklahoma City, Oklahoma 73102-5015

If to City:

Director of Engineering Services
City of Midland
P.O. Box 1152
Midland, Texas 79702

VII.

Any clause, sentence, provision, paragraph or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal or ineffective shall not impair, invalidate or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph or article so held to be invalid, illegal or ineffective.

VIII.

This Agreement shall be construed under the laws of the State of Texas. Exclusive venue for any cause of action shall be in Midland County, Texas. All the obligations and undertakings of the parties shall be deemed to have occurred in Midland County, Texas.

IX.

In the event of any conflict between the parties hereto such that either party brings or commences any legal action or proceeding related to this Agreement, including but not limited to any action pursuant to the provisions of the Texas Uniform Declaratory Judgments Act (TEX. CIV. PRAC. & REM. CODE § 37.001 *et seq*., as amended), the parties hereto agree to waive any and all rights to recovery of attorneys fees to which the prevailing party might otherwise be entitled.

BY EXECUTING THIS AGREEMENT, DEVELOPER AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE DEVELOPER SPECIFICALLY AGREES THAT IF THE DEVELOPER 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 DEVELOPER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE

RECOVERY OF ATTORNEY'S FEES TO WHICH DEVELOPER MIGHT OTHERWISE BE ENTITLED.

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

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

X.

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

XI.

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

XII.

The parties agree that this Agreement is made under the authority of Section 395.081 of the Texas Local Government Code and the laws of the State of Texas and Ordinances and the Charter of the City of Midland. The City finds in accordance with Section 395.081 of the Texas Local Government Code that the City of Midland will benefit by allowing the Developer to participate in funding the public improvements described herein. The City finds that this benefit will promote the public health, safety, and public welfare of the citizens of Midland. The City finds that the benefit the City of Midland receives will be efficient and well-planned urban growth and development, in coordination with public services. The benefit is also that this agreement will help preserve and increase the ad valorem tax base of the City. The City finds that the Developer's land adjoins the capital improvement or is within four (4) miles of the capital improvement. Four (4) miles is the specified distance required in Section 395.081 of the Texas Local Government Code.

EXECUTED in duplicate the day and year first above written.

CITY OF MIDLAND, TEXAS

By:_____
Courtney Sharp, City Manager

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

DEVON ENERGY PRODUCTION CO., L.P.

By: _____
Shannon Fetz, Director of Facilities and Real Estate

THE STATE OF _____ §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared Shannon Fetz, 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 Devon Energy Production Co., L.P.

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

_____
Notary Public, State of _____

MEMO

TO: Rizwan M. Najmi, P.E. / C.H. Guernsey & Co.
FR: Jeffrey H. Cohen, P.E. / City of Midland
DA: 04 March 2013
RE: 139 ♦ Devon Energy Midland Field Office; 10200 Younger Road ♦ Site Plan Review, 2nd Submittal

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To discuss the comments outlined below, or any other engineering issues related to this project, please call 432.685.7286 to speak with one of our engineers. Thank you.

Dept of Engineering Services, Engineering Services Division, has received construction drawings for an office expansion for Devon Energy Production Company, LP located at 10200 Younger Road in the City of Midland, Texas. Since the drawings were not signed and sealed, we are returning them to you with a few comments:

General Comments

1. Make the requested changes enumerated below. Then, please Sign, Seal & Date the drawings.

Make the Following Revisions

1. On the Site Plan, the pedestrian ramps at the corners of Younger Road & Norden Drive and Pilot Road & Norden Drive shall be Type 8 Diagonal Curb Ramp, as shown on City of Midland "City Design & Construction Standards" Drawing No. P-6a. Add the reference; no need to add the detail or change the symbology.
2. Sidewalks and pedestrian ramps will be required with the building permit, as shown on the Site Plan.
3. On the Utility Plan, change the water meter to 2".

Drainage Comments

1. Because there is no platting required for this development, a Deferral of the drainage improvements by fee is not appropriate. Yet, in order to receive payment in lieu of detention, Council action is necessary. Therefore, the City would like to enter into a Developer's Agreement with Devon Energy for the drainage costs.
2. The drainage analysis is acceptable. We concur with your estimate of 4435 cf needed as storage volume to detain runoff associated with the proposed development. We estimate that excavation of the regional detention pond will cost approximately $12.00 per cubic yard, including hauling off-site for disposal elsewhere. Therefore, Devon Energy's portion of the excavation costs is $1,971.
3. The approved drainage plan for the Devon Addition calls for a regional 15-ac.ft pond to serve a 55.1-acre tributary watershed, including Devon Energy's field office complex. The pond will be dewatered with a 24-inch diameter 1200-foot long discharge pipe from the pond to a culvert under La Force Blvd at State Hwy 80.
4. Attached is our Opinion of Probable Cost for construction of the discharge pipe: approximately $161,305.
5. The 1.25-acre addition to Devon Energy's field office is 2.2% of the tributary drainage area. Therefore, Devon Energy's portion of the costs associated with constructing the discharge pipe is $3,549.

6. Thus, the total fee in lieu of detention for the Devon Energy Midland Field Office addition is $5,520.
7. If this total is acceptable to Devon, we will prepare the Developer's Agreement documents, submit them for your review, and begin the process of getting the Agreement on the next Council Meeting agenda, which is Tuesday, March 26, 2013.

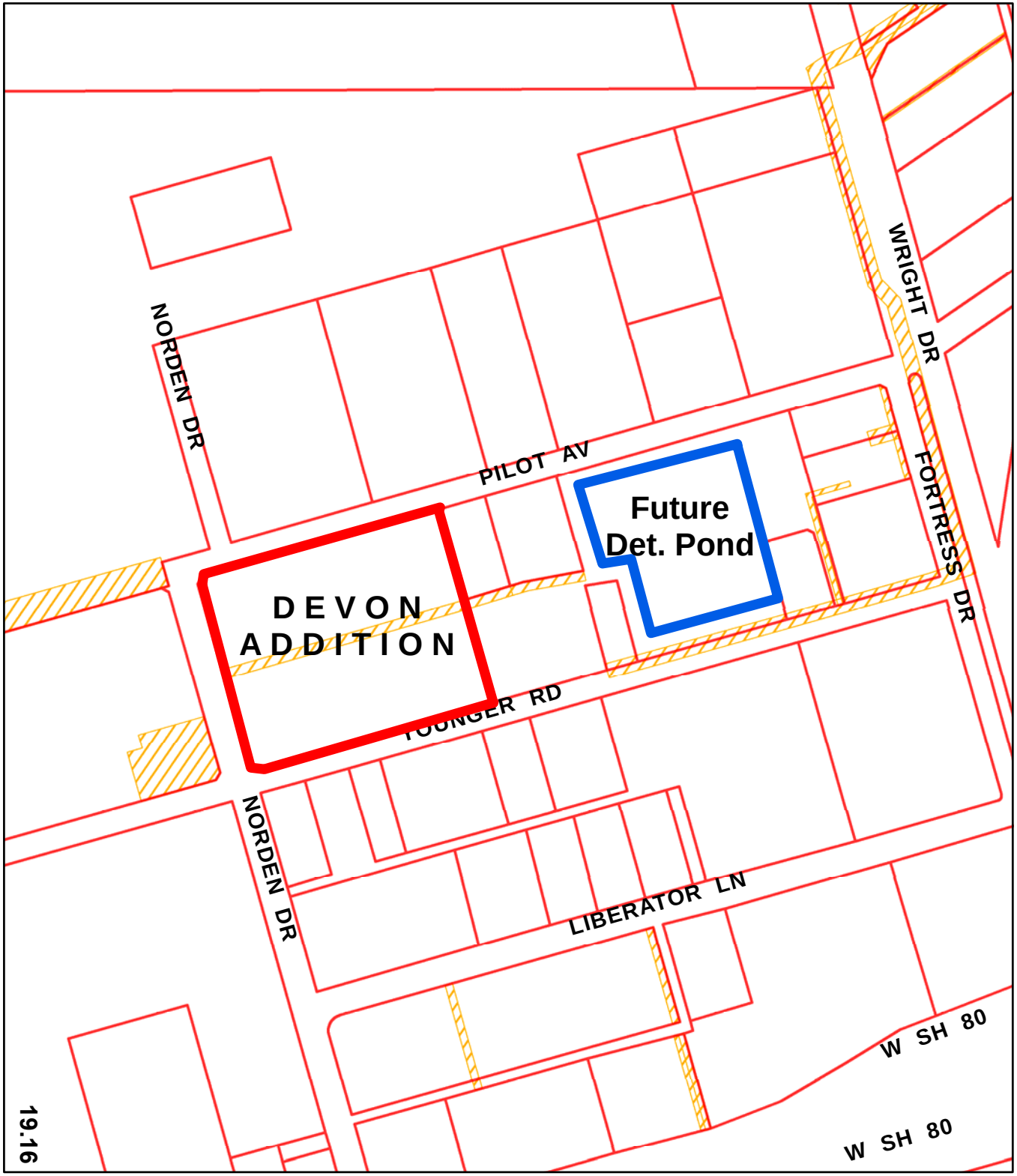
Please submit a complete set of revised civil design drawings — i.e., cover/index, plat, site plan, grading plan, erosion control plan, utility plan, etc. — that address our comments. Please note what has been changed (e.g., by cloud, by memo), and if no changes are proposed in response to our comments, please provide a justification and/or explanation. As these construction drawings are part of a Building Permit Application, please submit the complete construction drawing set to the Development Services Department; they will route the necessary drawings to our office. If you have any questions, please feel free to call me at our office.

— JHC

Storm Sewer - Opinion of Probable Cost

Location: Devon Energy Midland Field Office Addition
Engineer: City of Midland ; Jeff Cohen

Wastewater Main Improvements	Quantity	Unit	Unit Price	Total
48" HDPE	0	LF	100.00	0.00
36" HDPE	0	LF	75.00	0.00
30" HDPE	0	LF	50.00	0.00
24" HDPE	1200	LF	30.00	36,000.00
18" HDPE	0	LF	25.00	0.00
Trenching/Backfill 0'-5'	1200	LF	40.00	48,000.00
Length under paved surface	415			
Trenching/Backfill 5'-8'	0	LF	50.00	0.00
Length under paved surface	0			
Trenching/Backfill 8'-10'	0	LF	70.00	0.00
Length under paved surface	0			
Trenching/Backfill 10'-12'	0	LF	100.00	0.00
Length under paved surface	0			
Trenching/Backfill 12'-14'	0	LF	150.00	0.00
Length under paved surface	0			
Imported Backfill Material	498.00	TN	15.00	7,470.00
Imported Backfill Material - Unit Weight	120.00	PCF		
Replacement Manhole/Junction Box	0	EA	5000.00	0.00
New Manhole/Junction Box	2	EA	3500.00	7,000.00
ManholeJunction Box Extra Depth (MH>5')	0	VF	400.00	0.00
Connect to Existing MH/J-Box	1	EA	500.00	500.00
48" Bore & Steel Encasement	0	LF	720.00	0.00
36" Bore & Steel Encasement	0	LF	540.00	0.00
30" Bore & Steel Encasement	0	LF	450.00	0.00
24" Bore & Steel Encasement	0	LF	360.00	0.00
18" Bore & Steel Encasement	0	LF	240.00	0.00
Length of Flowable Fill (3 Sac)	0			
Volume - Flowable Fill (3 Sac)	0.00	CY	105.00	0.00
Depth of Flowable Fill (ft)	1.00	FT		
Asphalt Pavement Repair	415	LF	20.00	8,300.00
Concrete Pavement Repair	0	LF	25.00	0.00
Erosion Protection ($/100LF)	16.15	LS	500.00	8,075.00
Trench Protection (Trenching > 5')	16.15	LF	2.00	500.00
Traffic Control / Job Site Safety	16.15	LF	150.00	2,422.50
Construction Staking ($/100LF)	16.15	LF	250.00	4,037.50
Contingency (nearest $1000)	15%			18,000.00
Construction Total				**$140,305.00**
ROW Acquisition	0	LS	1.00	0.00
Engineering & Surveying	10%			14000.00
Construction Administration	5%			7000.00
TOTAL				**$161,305.00**
$Cost / LF	1200	LF		**$134.42**



ENGINEERING DIVISION

Resolution:
Public Improvement Development Agreement

Devon Addition
& Future Detention Pond

N

MIDLAND
Engineering Services

Map by JHC 08/27/2013

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/27/2013

TO: City Council / City Manager

FROM: Jeff Cohen, Assistant City Engineer

SUBJECT: Consider a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of $29,751 with K.J. Hotel Properties for paving improvements to serve Belmont Addition, Section 17. (District #2 – Love)

Purpose:

Consider a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of $29,751 with K.J. Hotel Properties for paving improvements to serve Belmont Addition, Section 17.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Paving Improvements	$	29,751
Total OPC (City Staff)	$	29,751

That the sum of $29,751 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the Belmont Addition Section 17 Project (9055).

Discussion:

Belmont Addition Section 17 is located in south Midland, on the northwest corner of the intersection of W. Longview Avenue and S. Baird Street. The developer is replatting the property and is therefore required to construct paving improvements on Baird Street, from Longview Avenue north approximately 360 feet to the limits of the plat.

The developer will fund the paving improvements, rather than construct the improvements himself. The paving improvements that the developer is funding consists of ±360 LF curb-and-gutter on the west side of Baird Street with 8-feet of asphalt pavement on Baird Street.

Staff recommends approval of the development agremeent to accept funds for paving improvements in the amount of $29,751.

Attached is an opinion of probable cost based on staff's recent paving cost records, and a location map.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH KJ TEXAS PROPERTIES, LLC FOR PAVING IMPROVEMENTS TO SOUTH BAIRD STREET; AND APPROPRIATING FUNDS THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

WHEREAS, an adjoining landowner of South Baird Street, KJ Texas Properties, LLC ("KJ Texas Properties"), has requested City participation in paving improvements to South Baird Street; and

WHEREAS, the City Council finds that in accordance with Section 395.081 of the Texas Local Government Code that the City of Midland will benefit from allowing KJ Texas Properties to participate in paving improvements to South Baird Street and thereby promote the health, safety, and public welfare and provide for efficient and well-planned urban growth and development; and

WHEREAS, the City Council finds it to be in the public interest to execute an agreement with KJ Texas Properties which sets forth the extent of the landowner's participation in the construction of public improvements; and

WHEREAS, the City has not adopted an impact fee, any obligation incurred or owed by the adjoining landowner, KJ Texas Properties, shall constitute payment of a proportional share of the cost of the capital improvements constructed as provided for in Section 395.081 of the Texas Local Government Code;

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

SECTION ONE. That the recitals stated above are hereby adopted and approved for all purposes.

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 public improvement development agreement with KJ Texas Properties, LLC. Said agreement is

attached hereto as Exhibit "A" and is incorporated herein for all purposes.

SECTION THREE. That the City Treasurer is hereby authorized and directed, upon receipt of $29,751 from KJ Texas Properties, LLC under said agreement, to deposit said funds into the General Fund (001) of the City of Midland; and that said funds shall be appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the Belmont Addition Section 17 Project (9055).

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

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

_____
Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Jose Ortiz, Engineering Services Director

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT
BETWEEN KJ TEXAS PROPERTIES, LLC
AND THE CITY OF MIDLAND, TEXAS

THIS AGREEMENT ("Agreement") is made and effective as of the 28th day of August, 2013, by and between KJ Texas Properties, LLC ("Developer") and the City of Midland, Texas ("City"), a home rule municipal corporation.

WITNESSETH:

WHEREAS, the City and Developer find it to be to their mutual advantage to enter into this agreement for the construction of appropriate and necessary public facilities; and

WHEREAS, the City finds that in accordance with Section 395.081 of the Texas Local Government Code that the City will benefit by allowing the Developer to participate in paving improvements to South Baird Street and thereby promote the health, safety, and public welfare and provide for efficient and well-planned urban growth and development;

NOW, THEREFORE, in consideration of the covenants, conditions, and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree to the terms set forth in this Agreement:

I.

The Developer agrees to pay to the City its proportional share of the cost of the public improvements to be constructed as described in Section II hereof. The Developer's proportional share for the paving improvements shall be $82.87 per foot of development that abuts South Baird Street, not to exceed a total of $29,751.00.

Developer's payment of $29,751.00 shall be due upon execution of this Agreement. The City agrees to place the funds paid by Developer under this Agreement in a separate project account of the City. The City shall manage the project account and agrees to only expend funds therefrom for

costs appropriate and necessary for the construction of the public improvements described in Section II.

In the event the City does not commence construction of the public improvements described in Section II within twenty (20) years of the date of this Agreement, and diligently continue such construction to completion, then the City agrees to repay all funds received from Developer hereunder without interest or penalty.

II.

The public improvements to be constructed by the City shall be generally described as follows: The construction of South Baird Street from its existing chip seal surface to an asphalt surface meeting City of Midland pavement standards, approximately 359 feet adjacent to the property described in the Belmont Addition, Section 17 plat.

Costs appropriate and necessary for said public improvements shall include costs for mobilization, excavation/grading, sub-grade preparation, 6" flexible base, compact flexible base, tack coat, HMAC surface course, curb and gutter, concrete shoulder, striping, traffic signalization/intersection, job site safety/traffic control, construction staking, and contingencies.

III.

The Developer agrees that its payment(s) pursuant to Section I above, constitutes only Developer's public improvement obligation for South Baird Street adjacent to Belmont Addition, Section 17, Midland County, Texas, and the City agrees that such payment(s) constitute all of Developer's public improvement obligation for said portion of South Baird Street.

IV.

This Agreement may be modified or amended only by the mutual written consent of the parties hereto.

V.

This Agreement contains the complete and entire agreement between the parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations and understandings, if any, between the parties respecting such matters.

VI.

Except as may be otherwise specifically provided in this Agreement, all notices required or permitted hereunder shall be in writing as follows:

If to Developer:

Kendall Combs
KJ Texas Properties, LLC
2424 West 76th Street
Branson, Missouri 65616

If to City:

Director of Engineering Services
City of Midland
P.O. Box 1152
Midland, Texas 79702

VII.

Any clause, sentence, provision, paragraph or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal or ineffective shall not impair, invalidate or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph or article so held to be invalid, illegal or ineffective.

VIII.

This Agreement shall be construed under the laws of the State of Texas. Exclusive venue for any cause of action shall be in Midland County, Texas. All the obligations and undertakings of the parties shall be deemed to have occurred in Midland County, Texas.

IX.

In the event of any conflict between the parties hereto such that either party brings or commences any legal action or proceeding related to this Agreement, including but not limited to any action pursuant to the provisions of the Texas Uniform Declaratory Judgments Act (TEX. CIV. PRAC. & REM. CODE § 37.001 *et seq*., as amended), the parties hereto agree to waive any and all rights to recovery of attorneys fees to which the prevailing party might otherwise be entitled.

BY EXECUTING THIS AGREEMENT, DEVELOPER AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE DEVELOPER SPECIFICALLY AGREES THAT IF THE DEVELOPER 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 DEVELOPER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH DEVELOPER MIGHT OTHERWISE BE ENTITLED.

DEVELOPER AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN

RIGHT. DEVELOPER ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE DEVELOPER. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

X.

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

XI.

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

XII.

The parties agree that this Agreement is made under the authority of Section 395.081 of the Texas Local Government Code and the laws of the State of Texas and Ordinances and the Charter of the City of Midland. The City finds in accordance with Section 395.081 of the Texas Local Government Code that the City of Midland will benefit by allowing the Developer to participate in funding the public improvements described herein. The City finds that this benefit will promote the public health, safety, and public welfare of the citizens of Midland. The City finds that the benefit the City of Midland receives will be efficient and well-planned urban growth and development, in coordination with public services. The benefit is also that this agreement will help preserve and increase the ad valorem tax base of the City. The City finds that the Developer's land adjoins the capital improvement or is within four (4) miles of the capital improvement. Four (4) miles is the specified distance required in Section 395.081 of the Texas Local Government Code.

EXECUTED in duplicate the day and year first above written.

CITY OF MIDLAND, TEXAS

By:_____
Courtney Sharp, City Manager

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

KJ TEXAS PROPERTIES, LLC

By: _____
Kendall Combs, Managing Member

THE STATE OF _____ §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared Kendall Combs, 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 KJ Texas Properties, LLC.

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

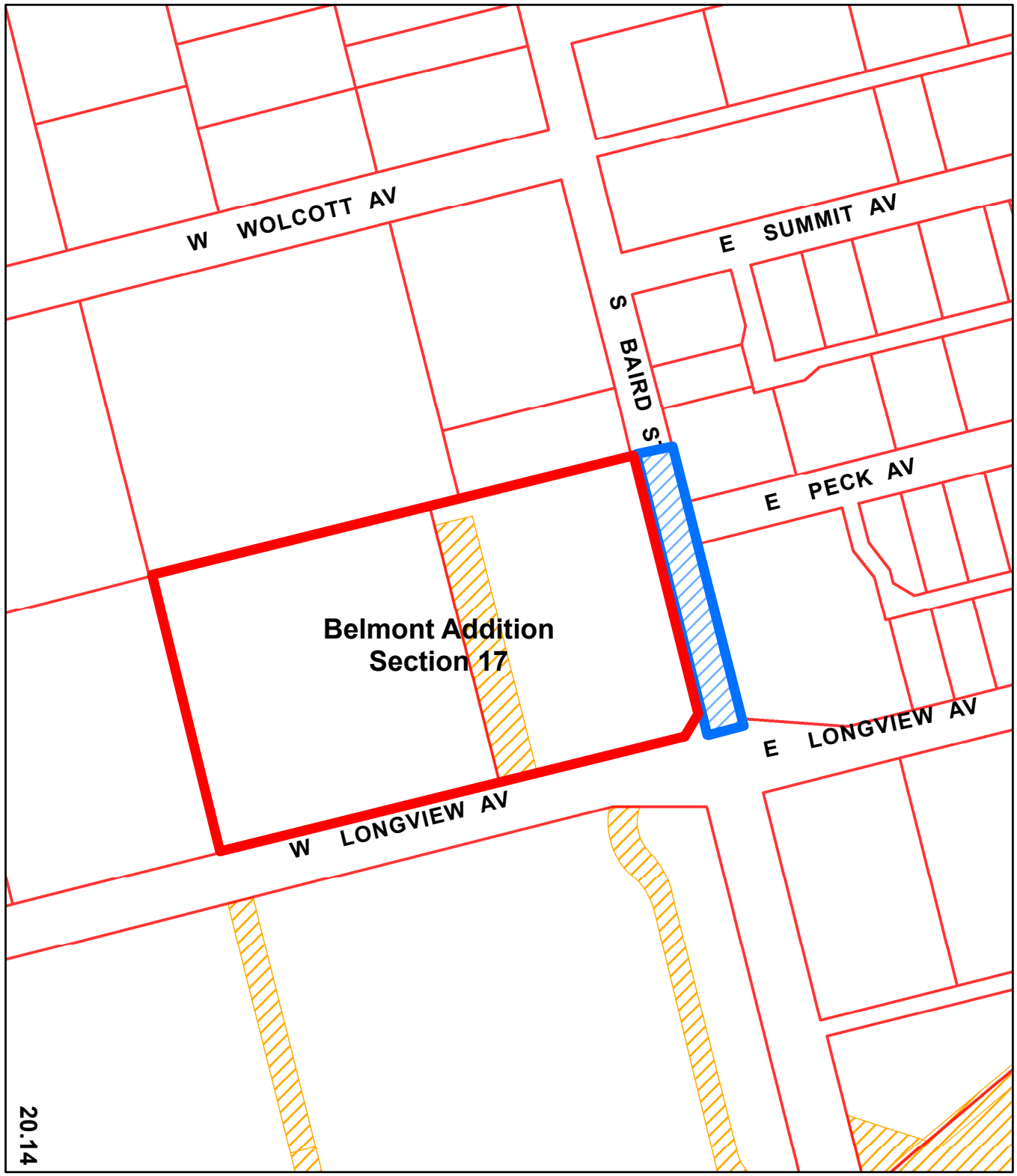
_____
Notary Public, State of _____

Paving - Opinion of Probable Cost

Location: Belmont Addn Sec 17
Engineer: City of Midland; Jeffrey H Cohen PE

Paving Width	8	
Length of Paving	359	South Baird Street
Base Rock Depth - Bottom Lift (in)	8	
Base Rock Depth - Top Lift (in) - (6" min - 8" max)	0	
Base Rock Unit Weight (95% Standard Proctor)	135	
Base Rock waste	5%	
HMAC thickness (in)	1.75	
HMAC waste	5%	

Paving Improvements	Quantity	Unit	Unit Price	Total
ROW Preparation	359	LF	10.00	3590.00
24" Curb & Gutter	359	LF	15.00	5385.00
Excavation	88.64	CY	5.00	443.21
Scarify / Shape / Compact Sub-grade	398.89	SY	3.50	1396.11
Base Rock - Bottom Lift (Material Only)	169.63	TN	9.50	1611.46
Base Rock - Top Lift (Material Only)	0.00	TN	9.50	0.00
Shape / Compact Base Rock - Bottom Lift	398.89	SY	3.50	1396.11
Shape / Compact Base Rock - Top Lift	159.56	SY	3.50	558.44
Tack Coat	159.56	SY	1.00	159.56
HMAC (Material Only)	16.13	TN	80.00	1290.01
Installation of HMAC Surface Course	159.56	SY	4.00	638.22
Erosion Protection ($/100 LF)	3.59	LS	1000.00	3590.00
Construction Staking ($/100LF)	3.59	LS	500.00	1795.00
Traffic Control / Job Site Safety ($/100LF)	3.59	LS	250.00	897.50
Contingency (nearest $1000)	15%			3000.00
Construction Total				$25,750.62
ROW Acquisition	0	LS	1	0.00
Engineering & Surveying	10%			3000.00
Construction Administration	5%			1000.00
TOTAL				**$29,750.62**
Developers Cost				**$29,751.00**



ENGINEERING DIVISION

Resolution:
Public Improvement Development Agreement

Belmont Addition Section 17
Paving Improvements

N

MIDLAND
Engineering Services

Map by JHC 08/27/2013

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/27/2013

TO: City Council / City Manager

FROM: David Beard, City Engineer

SUBJECT: Consider a resolution approving a Temporary Water and Sewer Service Agreement with Sun Development, Inc. for development of a hotel. The subject property is positioned in the City of Midland ETJ, generally located at the northwest corner of I-20 and FM 1788 - Warfield Truck Stop. (Midland ETJ)

Purpose:

Consider a resolution approving a Temporary Water and Sewer Service Agreement with Sun Development, Inc. for development of a hotel. The subject property is positioned in the City of Midland ETJ, generally located at the northwest corner of I-20 and FM 1788 - Warfield Truck Stop. (Midland ETJ)

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The City will receive monthly payment for services equal to 150% of the cost for service inside the City Limits. This revenue will be deposited to the Water and Sewer Fund.

Discussion:

Sun Development. Inc. is proposing to expand their existing site at I-20 and FM 1788. The expansion includes a hotel adjacent to the Warfield Truck Stop. The purpose of this Temporary Water and Sewer Service Agreement is to allow the developer to connect to the City of Midland water distribution system adjacent to their site. In addition, the owner has agreed to voluntarily annex at the time the City deems appropriate.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A TEMPORARY WATER AND SEWER SERVICE AGREEMENT BETWEEN THE CITY OF MIDLAND AND SUN DEVELOPMENT, INC. FOR SERVICES TO LOT 1, LESS 0.77 ACRES, BLOCK 1, WARFIELD INDUSTRIAL PARK, MIDLAND COUNTY, TEXAS (COMMONLY KNOWN AS 10400 WEST INTERSTATE 20); SAID PROPERTY IS OUTSIDE THE CITY LIMITS; SUN DEVELOPMENT, INC. HAS EXECUTED A LETTER AGREEING TO ANNEXATION IF AND WHEN THE PROPERTY IS ANNEXED; SUN DEVELOPMENT, INC. SHALL BE CHARGED A RATE FOR SERVICE WHICH IS ONE AND ONE-HALF TIMES THE RATE CHARGED CUSTOMERS IN THE CITY LIMITS; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, pursuant to Resolution No. 2003-285, the City Council may enter into an agreement to provide water and sewer service outside the City limits when such service will benefit the City of Midland and its economic development opportunities; and

WHEREAS, Sun Development, Inc. owns Lot 1, less 0.77 acres, Block 1, Warfield Industrial Park, Midland County, Texas, such land being situated outside the corporate limits of the City; and

WHEREAS, the City Council finds it to be in the public interest and of an economic benefit to the City of Midland to authorize the execution of a temporary water and sewer service agreement;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, Texas, a temporary water and sewer service agreement with Sun Development, Inc., the property owner of Lot 1, less 0.77 acres, Block 1, Warfield Industrial Park, Midland County, Texas, for temporary water and sewer service outside the City limits, said agreement being 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 a certified copy of this Resolution in the Deed Records of Midland County, Texas.

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

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Jose Ortiz, Engineering Services Director

APPROVED AS TO FORM:

_____

Keith Stretcher, City Attorney

TEMPORARY WATER AND SEWER SERVICE AGREEMENT

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This Agreement, effective this 28th day of August, 2013, by and between the City of Midland, Texas ("City"), a home rule municipal corporation, acting by and through its duly authorized City Manager and City Secretary, and Sun Development, Inc. ("Customer");

WITNESSETH

WHEREAS, Customer owns a tract of land, which is described herein below, such land being situated outside the corporate limits of the City; and

WHEREAS, Customer desires to use water and sewer facilities owned and operated by the City to serve the property; and

WHEREAS, the City Council has determined that the temporary provision of water and sewer service will be of an economic benefit to the City;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the rates, fees and deposits paid and to be paid by Customer to City, and the mutual covenants herein, the parties hereto agree as follows:

1. City agrees to furnish temporary water and sewer service for use by Customer on the property described as Lot 1, less 0.77 acres, Block 1, Warfield Industrial Park, Midland County, Texas, and shown on Exhibit "A" hereto, which is incorporated herein for all legal purposes.

2. Customer shall construct and provide at its sole expense, according to City specifications, all necessary extensions of lines, fittings and appurtenances thereto and thereafter be responsible for the maintenance thereof. The City agrees to allow the water and sewer lines to be

temporarily attached or connected to the City's water and sewer lines, upon certification by the City's Director of Utilities that the lines constructed by Customer comply with City specifications.

3. Customer agrees that all lines, fittings and appurtenances which are to be constructed by the Customer to the property described in Paragraph One of this Contract, must comply with the regulations contained in Title IV, "Building Regulations", Chapter 3, "Plumbing Code", of the City Code of Midland, Texas.

4. In consideration of City's allowing Customer to temporarily connect or attach its water or sewer lines to the City's water or sewer lines, Customer agrees to pay for any services used promptly and when due, at the rates established by ordinance from time to time by the City Council for customers outside the City, which rate is presently one and one-half (1-1/2) times the rates established for customers inside the City. The City shall have the right to terminate service and this Agreement for nonpayment by Customer in accordance with standard City procedures as well as reasons stated in this Agreement. The City shall provide notice of rate increases as required by law.

5. Customer further agrees to pay the current rates established in the City of Midland Water/Wastewater/Fire Hydrant Tap Project.

6. Customer agrees to pay the City an inspection fee of THIRTY AND NO/100 DOLLARS ($30.00) per connection to the water and sewer lines installed on or to serve the property described in Paragraph One, as the cost of reimbursing the City for inspecting and approving the Customer's water and sewer lines and appurtenances prior to acceptance by the City. This fee shall be paid before service is provided to the property.

7. It is expressly understood and agreed that any extension of water or sewer lines from Customer's property described above so as to service any other persons or property is expressly prohibited unless approved in writing by the City.

8. It is expressly understood and agreed that the following undesirable plumbing practices are prohibited by State regulations:

(i) No direct connection between the public drinking water supply and a potential source of contamination is permitted. Potential sources of contamination shall be isolated from the public water system by an air-gap or an appropriate backflow prevention device.

(ii) No cross-connection between the public drinking water supply and a private water system is permitted. These potential threats to the public drinking water supply shall be eliminated at the service connection by the installation of an air-gap or a reduced pressure-zone backflow prevention device.

(iii) No connection which allows water to be returned to the public drinking water supply is permitted.

(iv) No pipe or pipe fitting which contains more than 8.0% lead may be used for the installation or repair of plumbing at any connection which provides water for human use.

(v) No solder or flux which contains more than 0.2% lead can be used for the installation or repair of plumbing at any connection which provides water for human use.

9. The Customer shall allow the property to be inspected for possible cross-connections and other undesirable plumbing practices. These inspections shall be conducted by City or its designated agent prior to initiating service and periodically thereafter upon prior written notice and at City's sole expense. The inspections shall be conducted during the City's normal business hours. The City shall notify the Customer in writing of any cross-connection or other undesirable plumbing practice which has been identified during the initial inspection or the periodic reinspection. The Customer shall immediately correct any undesirable plumbing practice on the property. The

Customer shall, at its expense, properly install, test and maintain any backflow prevention device required by the City.

10. Customer agrees that it shall not allow any unauthorized connection to any sewer line that is constructed pursuant to the provisions of this Agreement, or provide water service to any person, corporation, partnership or other entity on the above described property without the written permission of the City Manager. Customer also agrees that violation of the terms of this paragraph, or violation of any applicable federal, state or local rule or regulation, constitute grounds for immediate termination of this Agreement and immediate cessation of water and/or sewer services.

11. It is expressly agreed and understood that all present or future ordinances and regulations applicable to water customers and related to water service within the City limits are incorporated by reference as express conditions of this Agreement; and that the Customer expressly agrees to be bound by all such ordinances or regulations of City related to water or sewer service as if Customer were in fact within the corporate limits and that any violation of any such ordinance or regulation by the Customer, its agents, servants, or employees, shall constitute a breach of this Agreement and be grounds for the immediate cancellation by the City of this Agreement and/or discontinuance of the services furnished hereunder.

12. **ATTORNEY FEES - BY EXECUTING THIS AGREEMENT, CUSTOMER AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR**

BREACH OF THE AGREEMENT. THE CUSTOMER SPECIFICALLY AGREES THAT IF THE CUSTOMER 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 CUSTOMER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CUSTOMER MIGHT OTHERWISE BE ENTITLED.

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

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

13. 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**.

14. 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.

15. <u>RELEASE</u> - NOTWITHSTANDING ANY OTHER PROVISIONS, CUSTOMER 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 CUSTOMER 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 THE CITY'S NEGLIGENCE.

16. 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.

17. If the Customer fails to comply with the terms of this Agreement, the City shall, at its option, either terminate service immediately or properly install, test, and maintain an appropriate backflow prevention device at the service connection. Any expenses associated with the enforcement or termination of this Agreement shall be billed to the Customer.

18. Notwithstanding any other provisions, the City may terminate this Agreement at will for any reason, or no reason, and without penalty by giving at least one hundred eighty (180) days written notice to the Customer. The City and Customer have bargained for this flexibility. The parties understand that it is in City's sole and absolute discretion to terminate this Agreement by giving the requisite notice. The Customer also understands and acknowledges that Customer has no property right in water and sewer service by virtue of this Agreement. All water and sewer service shall cease and be suspended immediately upon termination of the Agreement becoming effective.

19. Customer understands and agrees that the City has entered into this Agreement with the explicit intention of annexing the property served by this Agreement, and would not have agreed to provide temporary water and sewer service in the absence of Customer's agreement that Customer will not contest, oppose or seek to delay said annexation proceedings in any manner. By executing this Agreement, Customer is requesting annexation by the City. The customer has provided the City a letter which is attached hereto and marked as Exhibit "B" requesting annexation.

20. All notices hereunder must be given in writing by certified mail return receipt requested. All notices under this agreement shall be sent as follows:

To the City of Midland, Texas:	To Customer:
Jose Ortiz Engineering Services Director P.O. Box 1152 Midland, Texas 79702	John Cook Sun Development, Inc. P.O. Box 4456 Houston, Texas 77210

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

CUSTOMER SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS

OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH CUSTOMER OR CUSTOMER'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 CUSTOMER WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

22. This Agreement may not be assigned without the written consent of the Midland City Council. The decision on whether or not to approve an assignment shall be in the sole discretion of the Midland City Council.

23. The parties agree that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

24. It is expressly understood and agreed that Customer 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 Customer shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Customer, its officers, agents, employees, contractors and subcontractors; and that nothing

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

25. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this agreement, Customer 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 Customer will settle, the physical and mailing addresses of Customer at the time and date the claim was presented and the physical and mailing addresses of Customer for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Customer 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 Customer that Customer's notice is insufficient. City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

CITY OF MIDLAND, TEXAS

By_____
Courtney Sharp, City Manager

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Jose Ortiz, Engineering Services Director

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

CUSTOMER:
SUN DEVELOPMENT, INC.

By_____

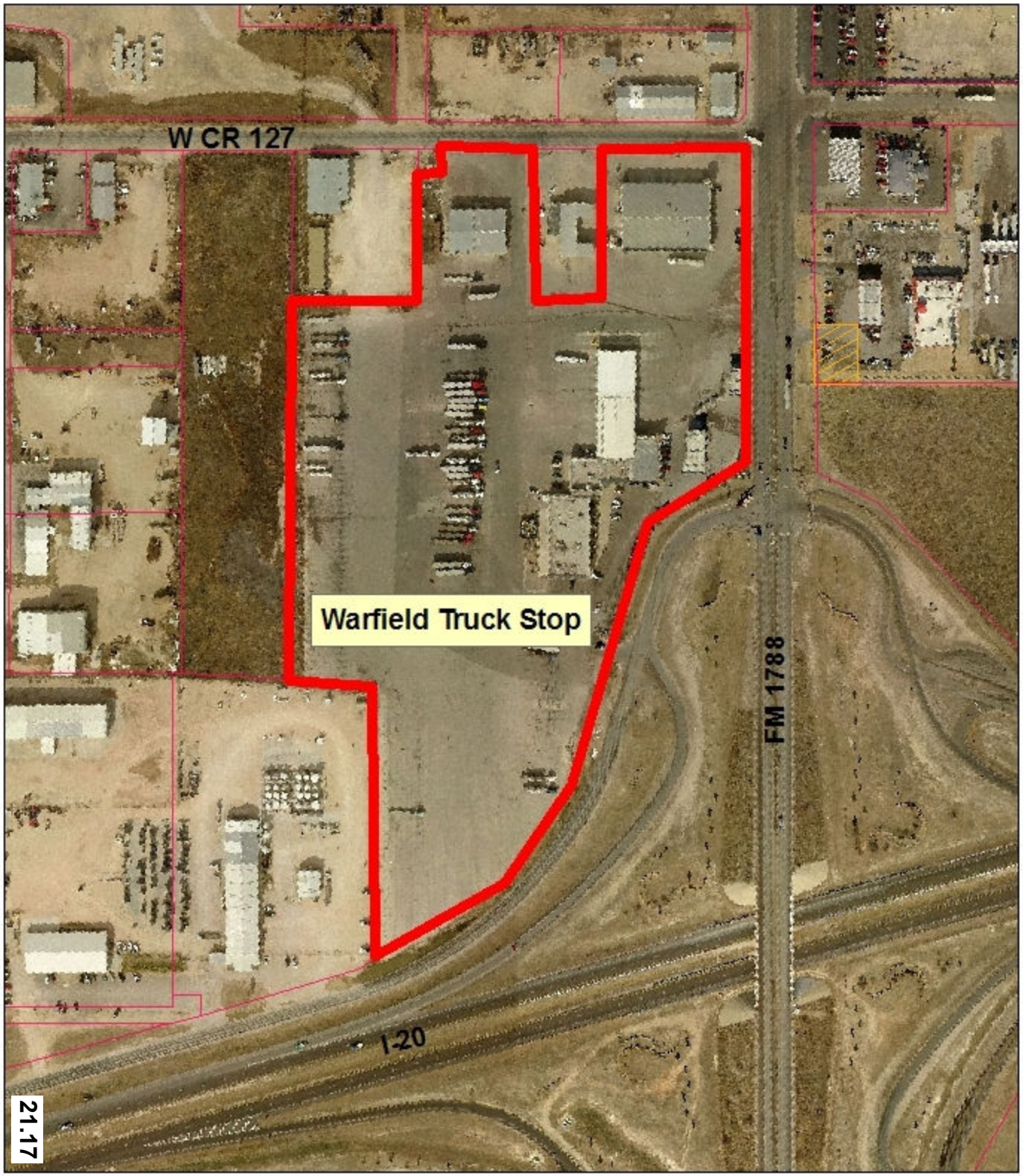
Title_____

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as his act and deed on behalf of SUN DEVELOPMENT, INC., for the purposes and consideration therein expressed.

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

_____
Notary Public, in and for
the State of Texas



ENGINEERING DIVISION

Water and Sewer Service Agreemement

Warfield Truck Stop
Hotel

N

MIDLAND
Engineering Services

Map by DDB 08/19/2013

City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

Attn: Jose Ortiz, Engineering Director

Re: Water & Sewer Service Agreement

Dear Mr. Ortiz,

We are aware and understand that it is the City's policy to NOT provide water and sewer service outside of the City Limits, such as at our property location, but that each request for such service is considered on a case-by-case basis. We also understand that the referenced agreement must be approved by the City Council at a regular meeting and that by signing the agreement, we verify that we have no opposition to being annexed into the City at such time as the City wishes to do so. Please proceed with placement of the agreement on the next City Council meeting.

Very truly yours,

Signature of Owner of Property

Address of site or legal description of property:
Blk: 001 Lot 001 Less 0.77 Ac

Contact information for land owner:
Sun Development
PO Box 4456 281-681-1000
Houston Tx 77210

Estimated Monthly Water Usage:
100,000

PETROLEUM WHOLESALE L.P.
P.O. Box 4456 • Houston, TX 77210
8550 Technology Forest Place • The Woodlands, Texas 77381
Telephone: (281) 681-1000 • FAX: (281) 681-1020

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/27/2013

TO: City Council / City Manager

FROM: David Beard, City Engineer

SUBJECT: Consider a resolution approving a Temporary Water and Sewer Service Agreement with Sun Development, Inc. for development of an RV Park. The subject property is positioned in the City of Midland ETJ, generally located at the northwest corner of I-20 and FM 1788 - Warfield Truck Stop. (Midland ETJ)

Purpose:

Consider a resolution approving a Temporary Water and Sewer Service Agreement with Sun Development, Inc. for development of an RV Park. The subject property is positioned in the City of Midland ETJ, generally located at the northwest corner of I-20 and FM 1788 - Warfield Truck Stop. (Midland ETJ)

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The City will receive monthly payment for services equal to 150% of the cost for service inside the City Limits. This revenue will be deposited to the Water and Sewer Fund.

Discussion:

Sun Development, Inc. is proposing to expand their existing site at I-20 and FM 1788. The expansion includes an RV Park adjacent to the Warfield Truck Stop. The purpose of this Temporary Water and Sewer Service Agreement is to allow the developer to connect to the City of Midland water distribution system adjacent to their site. In addition, the owner has agreed to voluntarily annex at the time the City deems appropriate.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A TEMPORARY WATER AND SEWER SERVICE AGREEMENT BETWEEN THE CITY OF MIDLAND AND SUN DEVELOPMENT, INC. FOR SERVICES TO AN APPROXIMATE 4.66-ACRE TRACT OF LAND OUT OF THE EAST HALF OF SECTION 18, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; SAID PROPERTY IS OUTSIDE THE CITY LIMITS; SUN DEVELOPMENT, INC. HAS EXECUTED A LETTER AGREEING TO ANNEXATION IF AND WHEN THE PROPERTY IS ANNEXED; SUN DEVELOPMENT, INC. SHALL BE CHARGED A RATE FOR SERVICE WHICH IS ONE AND ONE-HALF TIMES THE RATE CHARGED CUSTOMERS IN THE CITY LIMITS; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, pursuant to Resolution No. 2003-285, the City Council may enter into an agreement to provide water and sewer service outside the City limits when such service will benefit the City of Midland and its economic development opportunities; and

WHEREAS, Sun Development, Inc. owns an approximate 4.66-acre tract of land located in the east half of Section 18, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, such land being situated outside the corporate limits of the City; and

WHEREAS, the City Council finds it to be in the public interest and of an economic benefit to the City of Midland to authorize the execution of a temporary water and sewer service agreement;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, Texas, a temporary water and sewer service agreement with Sun Development, Inc., the property owner of an approximate 4.66-acre tract of land located in the east half of Section 18, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, for temporary water and sewer service outside the City limits, said agreement being 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 a certified copy of this Resolution in the Deed Records of Midland County, Texas.

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

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Jose Ortiz, Engineering Services Director

APPROVED AS TO FORM:

_____

Keith Stretcher, City Attorney

TEMPORARY WATER AND SEWER SERVICE AGREEMENT

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This Agreement, effective this 28th day of August, 2013, by and between the City of Midland, Texas ("City"), a home rule municipal corporation, acting by and through its duly authorized City Manager and City Secretary, and Sun Development, Inc. ("Customer");

WITNESSETH

WHEREAS, Customer owns a tract of land, which is described herein below, such land being situated outside the corporate limits of the City; and

WHEREAS, Customer desires to use water and sewer facilities owned and operated by the City to serve the property; and

WHEREAS, the City Council has determined that the temporary provision of water and sewer service will be of an economic benefit to the City;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the rates, fees and deposits paid and to be paid by Customer to City, and the mutual covenants herein, the parties hereto agree as follows:

1. City agrees to furnish temporary water and sewer service for use by Customer on the property described as an approximate 4.66-acre tract of land out of the east half of Section 18, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, and shown on Exhibit "A" hereto, which is incorporated herein for all legal purposes.

2. Customer shall construct and provide at its sole expense, according to City specifications, all necessary extensions of lines, fittings and appurtenances thereto and thereafter be responsible for the maintenance thereof. The City agrees to allow the water and sewer lines to be

temporarily attached or connected to the City's water and sewer lines, upon certification by the City's Director of Utilities that the lines constructed by Customer comply with City specifications.

3. Customer agrees that all lines, fittings and appurtenances which are to be constructed by the Customer to the property described in Paragraph One of this Contract, must comply with the regulations contained in Title IV, "Building Regulations", Chapter 3, "Plumbing Code", of the City Code of Midland, Texas.

4. In consideration of City's allowing Customer to temporarily connect or attach its water or sewer lines to the City's water or sewer lines, Customer agrees to pay for any services used promptly and when due, at the rates established by ordinance from time to time by the City Council for customers outside the City, which rate is presently one and one-half (1-1/2) times the rates established for customers inside the City. The City shall have the right to terminate service and this Agreement for nonpayment by Customer in accordance with standard City procedures as well as reasons stated in this Agreement. The City shall provide notice of rate increases as required by law.

5. Customer further agrees to pay the current rates established in the City of Midland Water/Wastewater/Fire Hydrant Tap Project.

6. Customer agrees to pay the City an inspection fee of THIRTY AND NO/100 DOLLARS ($30.00) per connection to the water and sewer lines installed on or to serve the property described in Paragraph One, as the cost of reimbursing the City for inspecting and approving the Customer's water and sewer lines and appurtenances prior to acceptance by the City. This fee shall be paid before service is provided to the property.

7. It is expressly understood and agreed that any extension of water or sewer lines from Customer's property described above so as to service any other persons or property is expressly prohibited unless approved in writing by the City.

8. It is expressly understood and agreed that the following undesirable plumbing practices are prohibited by State regulations:

(i) No direct connection between the public drinking water supply and a potential source of contamination is permitted. Potential sources of contamination shall be isolated from the public water system by an air-gap or an appropriate backflow prevention device.

(ii) No cross-connection between the public drinking water supply and a private water system is permitted. These potential threats to the public drinking water supply shall be eliminated at the service connection by the installation of an air-gap or a reduced pressure-zone backflow prevention device.

(iii) No connection which allows water to be returned to the public drinking water supply is permitted.

(iv) No pipe or pipe fitting which contains more than 8.0% lead may be used for the installation or repair of plumbing at any connection which provides water for human use.

(v) No solder or flux which contains more than 0.2% lead can be used for the installation or repair of plumbing at any connection which provides water for human use.

9. The Customer shall allow the property to be inspected for possible cross-connections and other undesirable plumbing practices. These inspections shall be conducted by City or its designated agent prior to initiating service and periodically thereafter upon prior written notice and at City's sole expense. The inspections shall be conducted during the City's normal business hours. The City shall notify the Customer in writing of any cross-connection or other undesirable plumbing practice which has been identified during the initial inspection or the periodic reinspection. The Customer shall immediately correct any undesirable plumbing practice on the property. The

Customer shall, at its expense, properly install, test and maintain any backflow prevention device required by the City.

10. Customer agrees that it shall not allow any unauthorized connection to any sewer line that is constructed pursuant to the provisions of this Agreement, or provide water service to any person, corporation, partnership or other entity on the above described property without the written permission of the City Manager. Customer also agrees that violation of the terms of this paragraph, or violation of any applicable federal, state or local rule or regulation, constitute grounds for immediate termination of this Agreement and immediate cessation of water and/or sewer services.

11. It is expressly agreed and understood that all present or future ordinances and regulations applicable to water customers and related to water service within the City limits are incorporated by reference as express conditions of this Agreement; and that the Customer expressly agrees to be bound by all such ordinances or regulations of City related to water or sewer service as if Customer were in fact within the corporate limits and that any violation of any such ordinance or regulation by the Customer, its agents, servants, or employees, shall constitute a breach of this Agreement and be grounds for the immediate cancellation by the City of this Agreement and/or discontinuance of the services furnished hereunder.

12. **ATTORNEY FEES - BY EXECUTING THIS AGREEMENT, CUSTOMER AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR**

BREACH OF THE AGREEMENT. THE CUSTOMER SPECIFICALLY AGREES THAT IF THE CUSTOMER 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 CUSTOMER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CUSTOMER MIGHT OTHERWISE BE ENTITLED.

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

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

13. 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**.

14. 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.

15. <u>RELEASE</u> - NOTWITHSTANDING ANY OTHER PROVISIONS, CUSTOMER 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 CUSTOMER 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 THE CITY'S NEGLIGENCE.

16. 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.

17. If the Customer fails to comply with the terms of this Agreement, the City shall, at its option, either terminate service immediately or properly install, test, and maintain an appropriate backflow prevention device at the service connection. Any expenses associated with the enforcement or termination of this Agreement shall be billed to the Customer.

18. Notwithstanding any other provisions, the City may terminate this Agreement at will for any reason, or no reason, and without penalty by giving at least one hundred eighty (180) days written notice to the Customer. The City and Customer have bargained for this flexibility. The parties understand that it is in City's sole and absolute discretion to terminate this Agreement by giving the requisite notice. The Customer also understands and acknowledges that Customer has no property right in water and sewer service by virtue of this Agreement. All water and sewer service shall cease and be suspended immediately upon termination of the Agreement becoming effective.

19. Customer understands and agrees that the City has entered into this Agreement with the explicit intention of annexing the property served by this Agreement, and would not have agreed to provide temporary water and sewer service in the absence of Customer's agreement that Customer will not contest, oppose or seek to delay said annexation proceedings in any manner. By executing this Agreement, Customer is requesting annexation by the City. The customer has provided the City a letter which is attached hereto and marked as Exhibit "B" requesting annexation.

20. All notices hereunder must be given in writing by certified mail return receipt requested. All notices under this agreement shall be sent as follows:

To the City of Midland, Texas:	To Customer:
Jose Ortiz Engineering Services Director P.O. Box 1152 Midland, Texas 79702	John Cook Sun Development, Inc. P.O. Box 4456 Houston, Texas 77210

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

CUSTOMER SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS

OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH CUSTOMER OR CUSTOMER'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 CUSTOMER WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

22. This Agreement may not be assigned without the written consent of the Midland City Council. The decision on whether or not to approve an assignment shall be in the sole discretion of the Midland City Council.

23. The parties agree that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

24. It is expressly understood and agreed that Customer 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 Customer shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Customer, its officers, agents, employees, contractors and subcontractors; and that nothing

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

25. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this agreement, Customer 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 Customer will settle, the physical and mailing addresses of Customer at the time and date the claim was presented and the physical and mailing addresses of Customer for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Customer 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 Customer that Customer's notice is insufficient. City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

CITY OF MIDLAND, TEXAS

By_____
Courtney Sharp, City Manager

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Jose Ortiz, Engineering Services Director

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

CUSTOMER:
SUN DEVELOPMENT, INC.

By_____

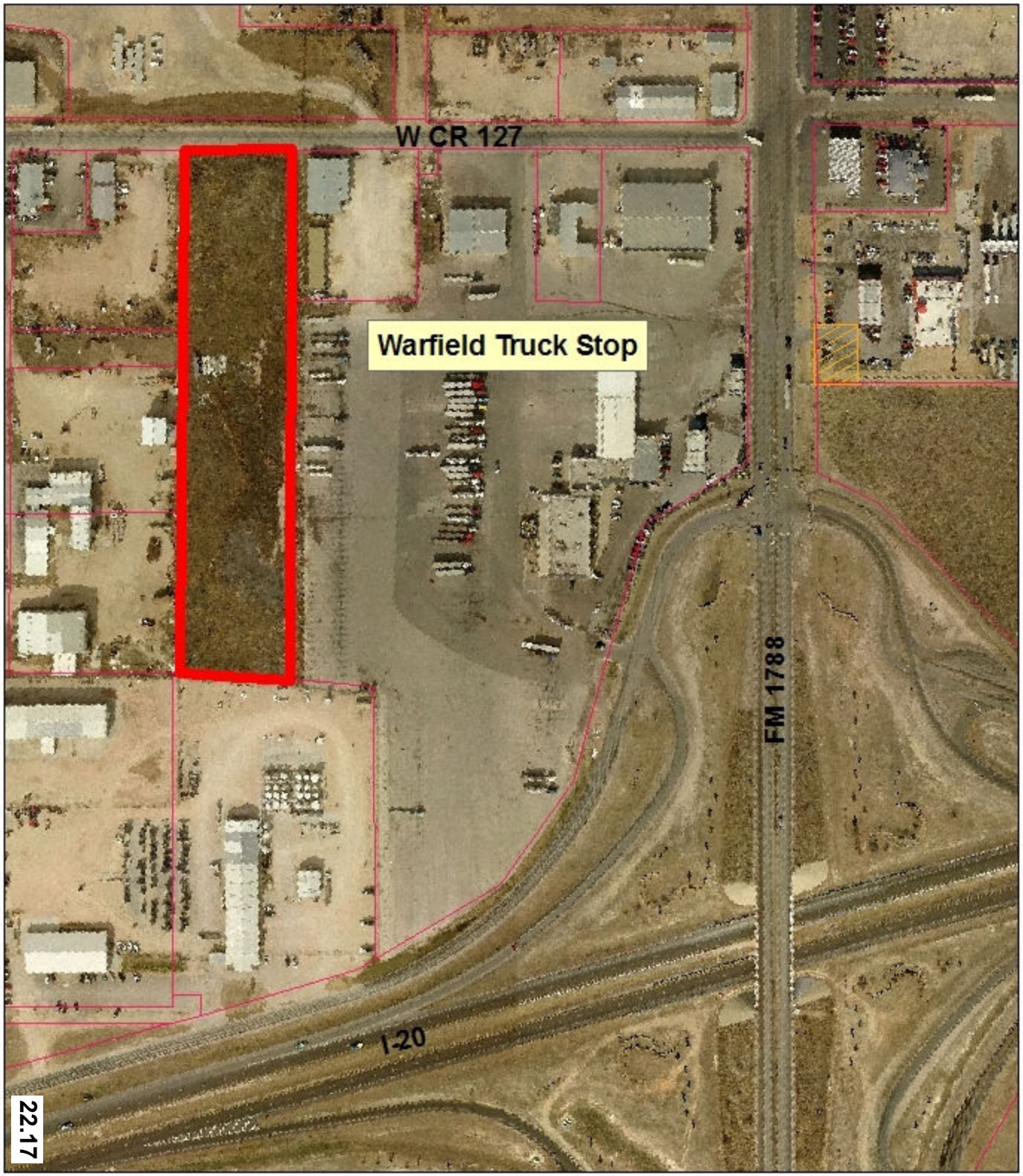
Title_____

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as his act and deed on behalf of SUN DEVELOPMENT, INC., for the purposes and consideration therein expressed.

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

_____
Notary Public, in and for
the State of Texas



22.17

ENGINEERING DIVISION

Water and Sewer Service Agreemement

Warfield Truck Stop
RV Park

N

MIDLAND
Engineering Services

Map by DDB 08/19/2013

City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

Attn: Jose Ortiz, Engineering Director

Re: Water & Sewer Service Agreement

Dear Mr. Ortiz,

We are aware and understand that it is the City's policy to NOT provide water and sewer service outside of the City Limits, such as at our property location, but that each request for such service is considered on a case-by-case basis. We also understand that the referenced agreement must be approved by the City Council at a regular meeting and that by signing the agreement, we verify that we have no opposition to being annexed into the City at such time as the City wishes to do so. Please proceed with placement of the agreement on the next City Council meeting.

Very truly yours,

Signature of Owner of Property

Address of site or legal description of property:
Blk: 001 Lot 001 Less 0.77 Ac

Contact information for land owner:
Sun Development
PO Box 4456 281-681-1000
Houston Tx 77210

Estimated Monthly Water Usage:
100,000

PETROLEUM WHOLESALE L.P.
P.O. Box 4456 • Houston, TX 77210
8550 Technology Forest Place • The Woodlands, Texas 77381
Telephone: (281) 681-1000 • FAX: (281) 681-1020

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/27/2013

TO: City Council / City Manager

FROM: Jeff Cohen, Assistant City Engineer

SUBJECT: Consider a resolution accepting a Public Water Easement by Pioneer Natural Resources USA, Inc. on property located near Big Spring Street and Veterans Air Park Lane. (District #3 — James)

Purpose:

Consider a resolution accepting a Public Water Easement by Pioneer Natural Resources USA, Inc. on property located near Big Spring Street and Veterans Air Park Lane.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

A Public Water Easement and water line is being dedicated by the property owner at no cost to the City.

Discussion:

Pioneer Natural Resources USA, Inc. ("Pioneer") is constructing an office building located at 3617 N. Big Spring Street (Lot 1, Block 1, Wallco Addition). The site design calls for a 4-inch compound water meter. Pioneer is dedicating a Public Water Easement to the City for access, maintenance and other activities related to operating, reading, and maintaining the large compound water meter.

Staff supports accepting the easement agreement.

The easement agreement is attached, and a location map is attached.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE ACCEPTANCE OF A 248.9 SQUARE FOOT PUBLIC WATER EASEMENT LOCATED IN LOT 1, BLOCK 1, WALLCO ADDITION, SECTION 11, MIDLAND, 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 248.9 square foot public water easement located in Lot 1, Block 1, Wallco Addition, Section 11, Midland, 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 248.9 square foot public water easement located in Lot 1, Block 1, Wallco Addition, Section 11, Midland, 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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Jose Ortiz, Engineering Services Director

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

PUBLIC WATER EASEMENT

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

THAT I, Danny F. Barker, authorized representative of Pioneer Natural Resources USA, Inc. (hereinafter referred to as "**Grantor**"), whose Business Address is 5205 N. O'Connor Boulevard, Suite 200, Irving, Texas 75039, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant, convey, and warrant to the City of Midland, Texas (hereinafter referred to as "**Grantee**") its successors and assigns, a 248.9 square foot tract of land located in the Northeast corner of Lot 1, Block 1, Wallco Addition, Section 11, as recorded in Cabinet "D", Page 36 of the Plat Records of Midland County, Texas, for their use and access, a Public Water Easement dedication. Subject tract being located in Section 14, Block 39, T-1-S, T&P RR Company Survey, Midland County, Texas, and being more particularly described as follows:

LEGAL DESCRIPTION

BEGINNING at (N: 10,707,906.56; E: 1,753,616.62) a point on the West right-of-way line of North Big Spring Street being the Northeast corner of the herein described tract, from which a Mag Nail found on the Northeast corner of said Lot 1 bears Northwesterly along a Curve to the left having a Radius of 1086.22 feet, an Arc Length of 33.13 feet, a Chord Length of 33.12 feet, a Chord Bearing of N 27°29'15" W, and a Delta Angle of 01°44'50"

THENCE S 75°41'12" W in and across said Lot 1 a distance of 15.00 feet to a point for the Northwest corner of the herein described tract;

THENCE S 14°18'48" E in and across said Lot 1 a distance of 15.00 feet to a point for the Southwest corner of the herein described tract;

THENCE N 75°41'12" E in and across said Lot 1 a distance of 18.16 feet to a point on the West right-of-way line of North Big Spring Street, for the Southeast corner of the herein described tract;

THENCE Northwesterly along a Curve to the left having a Radius of 1086.22 feet, an Arc Length of 15.33 feet, a Chord Length of 15.33 feet, a Chord Bearing of N 26°12'34" W, and a Delta Angle of 00°48'31", to the POINT OF BEGINNING

Subject tract containing a total of 248.9 square feet of land.

TO HAVE AND TO HOLD for said purposes together with all and singular the rights, privileges, and appurtenances thereto in any manner belonging unto the Grantees and its successors.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on this 8th day of August, 2013.

Pioneer Natural Resources USA

By: _____
Danny F. Barker, Authorized Representative

ATTEST: _____
Name: Tom Dragisic
Title: Director of Facilities Construction

ACKNOWLEDGEMENTS

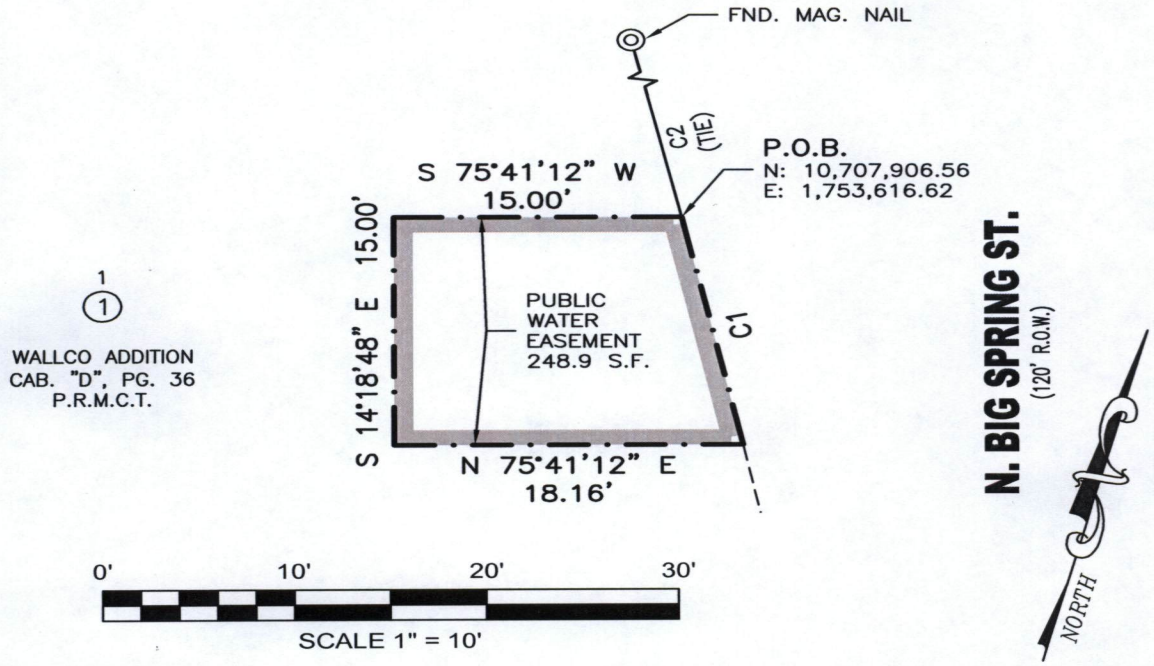
STATE OF TEXAS §
§
COUNTY OF MIDLAND §

The foregoing instrument was acknowledged before me on this 8th day of August, 2013 by Danny F. Barker, 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.

Kayla D. Paredes
Notary Public, Midland County, Texas

[Seal] NOTARY PUBLIC STATE OF TEXAS
KAYLA D. PAREDES
Notary Public
STATE OF TEXAS
My Comm. Exp. Mar. 09, 2017

PUBLIC WATER EASEMENT
248.9 S.F.



CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	1086.22'	15.33'	15.33'	N 26°12'34" W	0°48'31"
C2	1086.22'	33.13'	33.12'	N 27°29'15" W	1°44'50"

LEGAL DESCRIPTION of a Public Water Easement out of Lot 1, Block 1, Wallco Addition, an addition to the City of Midland, Texas as recorded in Cabinet "D", Page 36 of the Plat Records of Midland County, Texas, Subject tract being more particularly described as follows:

BEGINNING at (N: 10,707,906.56; E: 1,753,616.62) a point on the West right-of-way line of North Big Spring Street being the Northeast corner of the herein described tract, from which a Mag Nail found on the Northeast corner of said Lot 1 bears Northwesterly along a Curve to the left having a Radius of 1086.22 feet, an Arc Length of 33.13 feet, a Chord Length of 33.12 feet, a Chord Bearing of N 27°29'15" W, and a Delta Angle of 01°44'50"

THENCE S 75°41'12" W in and across said Lot 1 a distance of 15.00 feet to a point for the Northwest corner of the herein described tract;

THENCE S 14°18'48" E in and across said Lot 1 a distance of 15.00 feet to a point for the Southwest corner of the herein described tract;

THENCE N 75°41'12" E in and across said Lot 1 a distance of 18.16 feet to a point on the West right-of-way line of North Big Spring Street, for the Southeast corner of the herein described tract;

THENCE Northwesterly along a Curve to the left having a Radius of 1086.22 feet, an Arc Length of 15.33 feet, a Chord Length of 15.33 feet, a Chord Bearing of N 26°12'34" W, and a Delta Angle of 00°48'31", to the POINT OF BEGINNING;

Subject tract containing a total of 248.9 square feet of land.

COORDINATES, BEARINGS, DISTANCES AND AREAS SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM 1983.

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

8/7/13

MARCUS L. HOSTAS TEXAS R.P.L.S. No. 5643
DATE SURVEYED FEBRUARY 05, 2013

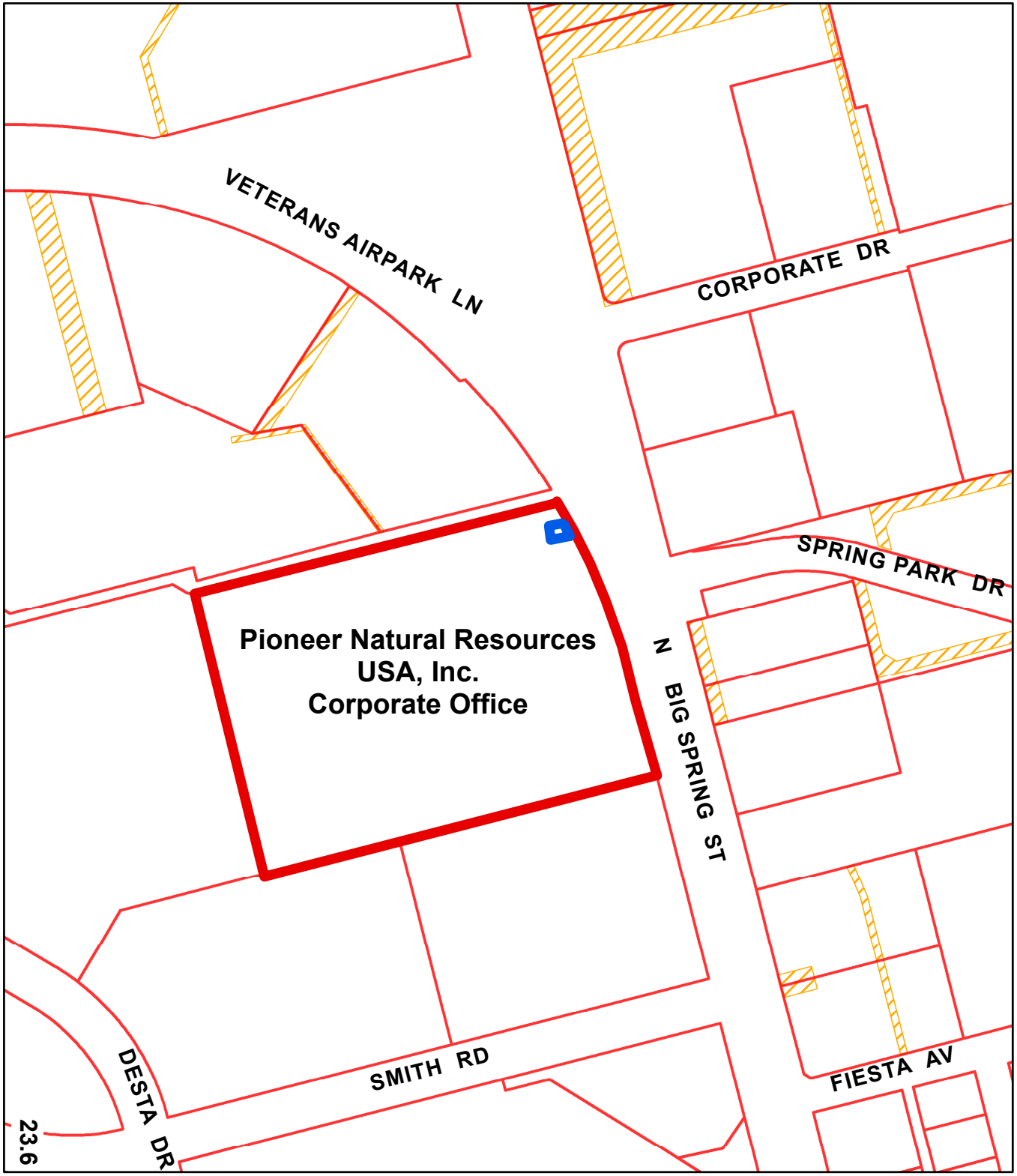
STATE OF TEXAS REGISTERED MARCUS L. HOSTAS 5643 PROFESSIONAL LAND SURVEYOR

WEST COMPANY OF MIDLAND, INC.

ENGINEERS - PLANNERS - SURVEYORS
REGISTRATION: FIRM 2184
110 W. LOUISIANA AVE., SUITE 110
MIDLAND, TEXAS 79701
(432) 687-0865 - FAX (432)687-0868

© COPYRIGHT 2013 WEST COMPANY OF MIDLAND

T:\CIVIL DRAWINGS\2012\2012-0259-PIONEER CORPORATE OFFICE\EXHIBITS\2012-0259 15 FT UTILITY EASEMENT EXHIBIT.DWG



ENGINEERING DIVISION

Resolution:
Water Line Easement

Pioneer Natural Resources USA, Inc.
Corporate Office

N

MIDLAND
Engineering Services

Map by JHC 08/27/2013

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/27/2013

TO: City Council / City Manager

FROM: Jeff Cohen, Assistant City Engineer

SUBJECT: Consider a resolution accepting a Public Drainage Easement by Pioneer Natural Resources USA, Inc. on property located near Big Spring Street and Veterans Air Park Lane. (District #3 — James)

Purpose:

Consider a resolution accepting a Public Drainage Easement by Pioneer Natural Resources USA, Inc. on property located near Big Spring Street and Veterans Air Park Lane.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

A Public Drainage Easement and storm drain is being dedicated by the property owner at no cost to the City.

Discussion:

Pioneer Natural Resources USA, Inc. ("Pioneer") is constructing an office building located at 3617 N. Big Spring Street (Lot 1, Block 1, Wallco Addition). The site design collects storm water runoff into an on-site storm drain system that discharges to the public drainage system on North Big Spring Street.

For the City to continue to maintain the public drainage system, Pioneer is dedicating the discharge end of their on-site storm drain network—consisting of approximately 133 LF of 36" plastic pipe and two concrete junction boxes—to the City as part of the public infrastructure. Part of this discharge network is located on Pioneer property and, therefore, a Public Drainage Easement needs to be dedicated to the City for access, maintenance, and other related activities.

Staff supports accepting the easement agreement.

The easement agreement is attached, and a location map is attached.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE ACCEPTANCE OF A 0.003-ACRE PUBLIC DRAINAGE EASEMENT LOCATED IN LOT 1, BLOCK 1, WALLCO ADDITION, SECTION 11, MIDLAND, 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 0.003-acre public drainage easement located in Lot 1, Block 1, Wallco Addition, Section 11, Midland, 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 0.003-acre public drainage easement located in Lot 1, Block 1, Wallco Addition, Section 11, Midland, 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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Jose Ortiz, Engineering Services Director

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

PUBLIC DRAINAGE EASEMENT

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

THAT I, Danny F. Barker, authorized representative of Pioneer Natural Resources USA, Inc. (hereinafter referred to as **"Grantor"**), whose Business Address is 5205 N. O'Connor Boulevard, Suite 200, Irving, Texas 75039, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant, convey, and warrant to the City of Midland, Texas (hereinafter referred to as **"Grantee"**) its successors and assigns, a 0.003 acre tract of land located in the Northeast corner of Lot 1, Block 1, Wallco Addition, Section 11, as recorded in Cabinet "D", Page 36 of the Plat Records of Midland County, Texas, for their use and access, a Public Drainage Easement dedication. Subject tract being located in Section 14, Block 39, T-1-S, T&P RR Company Survey, Midland County, Texas, and being more particularly described as follows:

LEGAL DESCRIPTION

BEGINNING at (N: 10,707,932.93, E: 1,753,589.60) a point in the North line of said Lot 1 and in the South line of that certain 20-Foot Public Right of Way as recorded in Instrument # 2012-18113, of the County Clerk's Records of Midland County, Texas, from which a mag nail found for the Northeast corner of said Lot 1 bears N 75°34'58" E, a distance of 12.1 feet;
THENCE S 14°19'38" E, in and across said Lot 1 a distance of 8.5 feet to a point for the Southeast corner of this tract;
THENCE S 75°34'58" W, in and across said Lot 1 a distance of 15.0 feet to a point for the Southwest corner of this tract;
THENCE N 14°19'38" W, in and across said Lot 1 a distance of 8.5 feet to a point in the North line of said Lot 1 and in the South line of said 20-Foot Public right of way, for the Northwest corner of this tract;
THENCE N 75°34'58" E, with the North line of said Lot 1 and with the South line of said 20-Foot Public right of way a distance of 15.0 feet to the POINT OF BEGINNING;
Subject tract containing a total of 0.003 acres (128 s.f.) of land.

TO HAVE AND TO HOLD for said purposes together with all and singular the rights, privileges, and appurtenances thereto in any manner belonging unto the Grantees and its successors.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on this 11th day of June, 2013.

Pioneer Natural Resources USA

By: _____
Danny F. Barker, Authorized Representative

ATTEST: Kristy Young
Name:
Title:

ACKNOWLEDGEMENTS

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

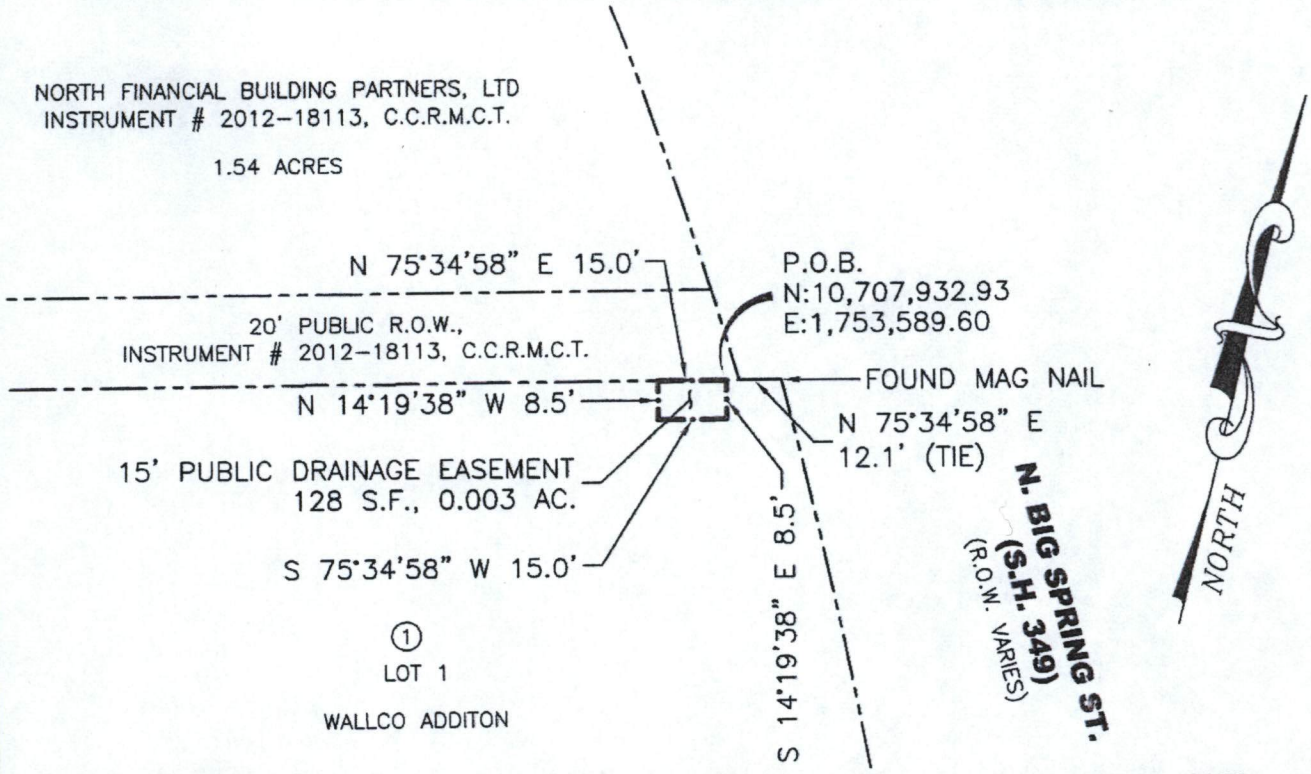
The foregoing instrument was acknowledged before me on this 11th day of June, 2013 by Danny F. Barker, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act as owner, and that he executed the same as the act for the purposes and consideration therein expressed, and in the capacity therein stated.

Kayla D. Paredes
Notary Public, Midland County, Texas

[Seal]

NOTARY PUBLIC STATE OF TEXAS
KAYLA D. PAREDES
Notary Public
STATE OF TEXAS
My Comm. Exp. Mar. 09, 2017

PUBLIC DRAINAGE EASEMENT



LEGAL DESCRIPTION of a 15-foot Public Drainage Easement out of Lot 1, Block 1, Wallco Addition, an addition to the City of Midland, Texas as recorded in Cabinet "D", Page 36 of the Plat Records of Midland County, Texas, and being Located in Section 14, Block 39, T-1-S, T&P RR Company Survey, Midland County, Texas, Subject tract being more particularly described as follows:

BEGINNING at (N: 10,707,932.93, E: 1,753,589.60) a point in the North line of said Lot 1 and in the South line of that certain 20-Foot Public Right of Way as recorded in Instrument # 2012-18113, of the County Clerk's Records of Midland County, Texas, from which a mag nail found for the Northeast corner of said Lot 1 bears N 75°34'58" E, a distance of 12.1 feet;

THENCE S 14°19'38" E, in and across said Lot 1 a distance of 8.5 feet to a point for the Southeast corner of this tract;

THENCE S 75°34'58" W, in and across said Lot 1 a distance of 15.0 feet to a point for the Southwest corner of this tract;

THENCE N 14°19'38" W, in and across said Lot 1 a distance of 8.5 feet to a point in the North line of said Lot 1 and in the South line of said 20-Foot Public right of way, for the Northwest corner of this tract;

THENCE N 75°34'58" E, with the North line of said Lot 1 and with the South line of said 20-Foot Public right of way a distance of 15.0 feet to the POINT OF BEGINNING;

Subject tract containing a total of 0.003 acres (128 s.f.) of land.

LEGEND

- DENOTES BOUNDARY LINE
- DENOTES PROPOSED EASEMENT LINE
- C.C.R.M.C.T. DENOTES COUNTY CLERK'S RECORDS, MIDLAND COUNTY, TEXAS

0' 40' 80' 120'

SCALE 1" = 40'

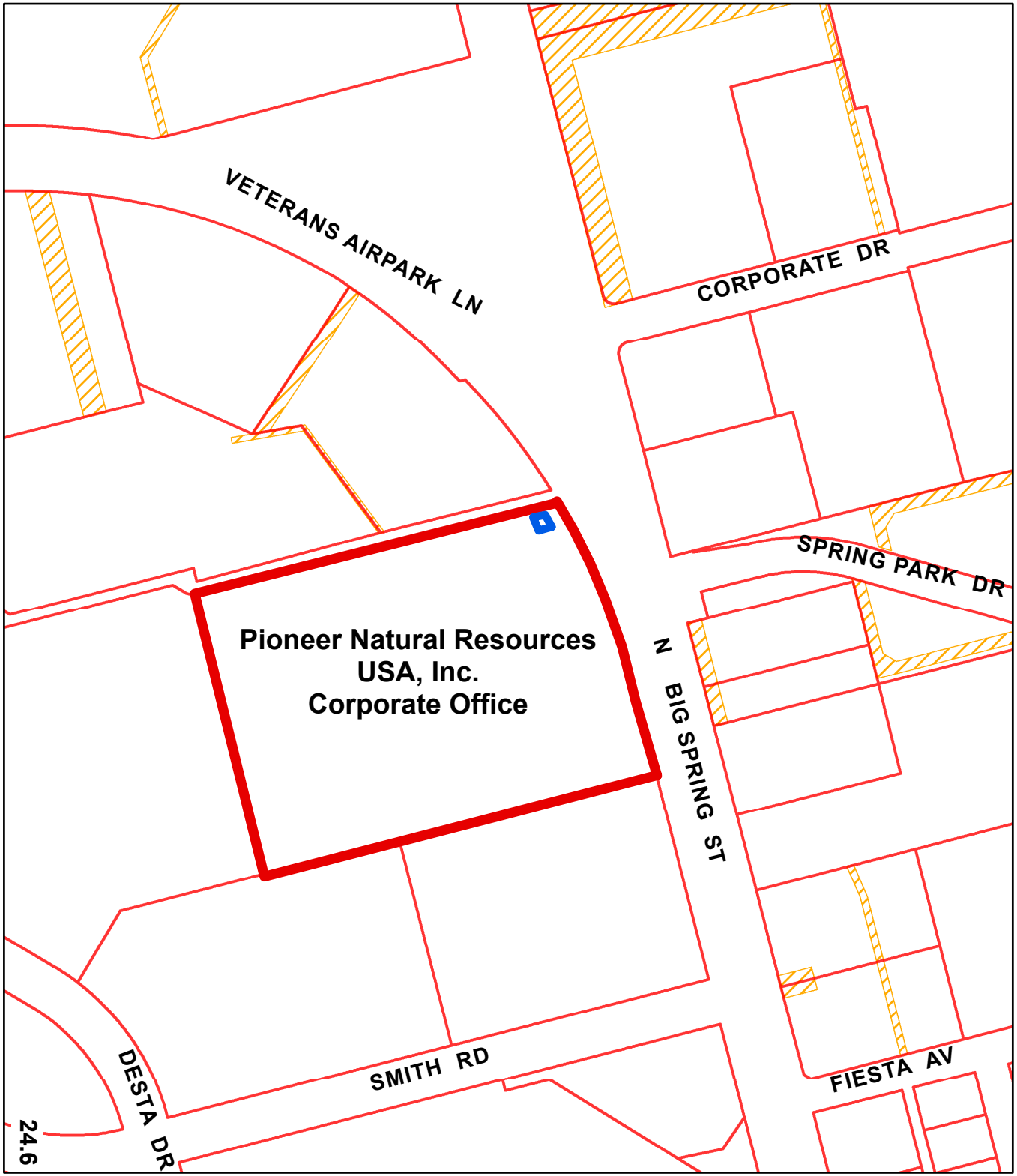
I HEREBY CERTIFY THAT THIS PLAT WAS MADE FROM NOTES TAKEN IN THE FIELD IN A BONA FIDE SURVEY MADE UNDER MY SUPERVISION.

6/5/13.

MARCUS L. HOSTAS TEXAS R.P.L.S. No. 5643
DATE SURVEYED JUNE 04, 2013

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

T:/CIVIL DRAWINGS/2012/2012-0259/EXHIBITS/EASEMENT EXHIBIT.dwg



ENGINEERING DIVISION

Resolution:
Drainage Easement

Pioneer Natural Resources USA, Inc.
Corporate Office

N

MIDLAND
Engineering Services

Map by JHC 08/27/2013

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/27/2013

TO: City Council / City Manager

FROM: Jeff Cohen, Assistant City Engineer

SUBJECT: Consider a resolution accepting a Public Drainage Easement by North Financial Business Partners, Ltd. on property at Big Spring Street and Veterans Air Park Lane. (District #3 — James)

Purpose:

Consider a resolution accepting a Public Drainage Easement by North Financial Business Partners, Ltd. on property at Big Spring Street and Veterans Air Park Lane.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

A Public Drainage Easement and storm drain is being dedicated by the property owner at no cost to the City.

Discussion:

Pioneer Natural Resources USA, Inc. ("Pioneer") is constructing an office building located at 3617 N. Big Spring Street (Lot 1, Block 1, Wallco Addition). The site design collects storm water runoff into an on-site storm drain system that discharges to the public drainage system on North Big Spring Street.

For the City to continue to maintain the public drainage system, Pioneer is dedicating the discharge end of their on-site storm drain network—consisting of approximately 133 LF of 36" plastic pipe and two concrete junction boxes—to the City as part of the public infrastructure. A portion of this discharge network crosses property owned by North Financial Business Partners, Ltd. and, therefore, Pioneer has negotiated for North Financial Business Partners, Ltd., to dedicate a Public Drainage Easement to the City for access, maintenance, and other related activities.

Staff supports accepting the easement agreement.

The easement agreement is attached, and a location map is attached.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE ACCEPTANCE OF A 0.005-ACRE PUBLIC DRAINAGE EASEMENT LOCATED IN SECTION 14, BLOCK 39, T-1-S, T&P RR CO. SURVEY, MIDLAND, 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 0.005-acre public drainage easement located in Section 14, Block 39, T-1-S, T&P RR Co. Survey, Midland, 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 0.005-acre public drainage easement located in Section 14, Block 39, T-1-S, T&P RR Co. Survey, Midland, 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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Jose Ortiz, Engineering Services Director

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

PUBLIC DRAINAGE EASEMENT

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

THAT I, Robert W. Floyd, authorized representative of North Financial Business Partners, LTD. (hereinafter referred to as "**Grantor**"), whose Business Address is 500 W. Texas, Suite 500, Midland, Texas 79701, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant, convey, and warrant to the City of Midland, Texas (hereinafter referred to as "**Grantee**") its successors and assigns, a 0.005 acre tract of land located in the Southeast corner of that called 1.54 acre tract to North Financial Building Partners, LTD as recorded in Instrument # 2012-18113, of the County Clerk's Records of Midland County Texas, for their use and access, a Public Drainage Easement dedication. Subject tract being located in Section 14, Block 39, T-1-S, T&P RR Company Survey, Midland County, Texas, and being more particularly described as follows:

LEGAL DESCRIPTION

BEGINNING at (N: 10,707,951.71, E: 1,753,581.93) a point in the South line of said 1.54 acre tract and in the North line of that certain 20' Public right-of-way as recorded in Instrument # 2012-18113, of the County Clerk's Records of Midland County, Texas, for the Southeast corner of said 1.54 acre tract, for the Southeast corner of this tract;
THENCE S 75°34'58" W, with the North line of said 20' Public right-of-way and with the South line of said 1.54 acre tract a distance of 12.0 feet to a point for the Southwest corner of this tract;
THENCE N 14°19'38" W, in and across said 1.54 acre tract a distance of 37.2 feet to a point of curvature to the right in the East line of said 1.54 acre tract and the West line of N. Big Spring Street (State Highway 349), for the Northwest corner of this tract;
THENCE Southeasterly with said curve to the right having a Radius of 1065.9', an Arc Length of 39.0', a Chord Length of 39.0', a Chord Bearing of S 32°16'57" E, and a Delta Angle of 2°05'54" with the East line of said 1.54 acre tract and the West line of N. Big Spring Street to the POINT OF BEGINNING;
Subject tract containing a total of 0.005 acres (224 s.f.) of land.

TO HAVE AND TO HOLD for said purposes together with all and singular the rights, privileges, and appurtenances thereto in any manner belonging unto the Grantees and its successors.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on this 10th day of June, 2013.

By: _____
Name: Robert W. Floyd
Title: President

ATTEST: _____
Name:
Title:

ACKNOWLEDGEMENTS

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

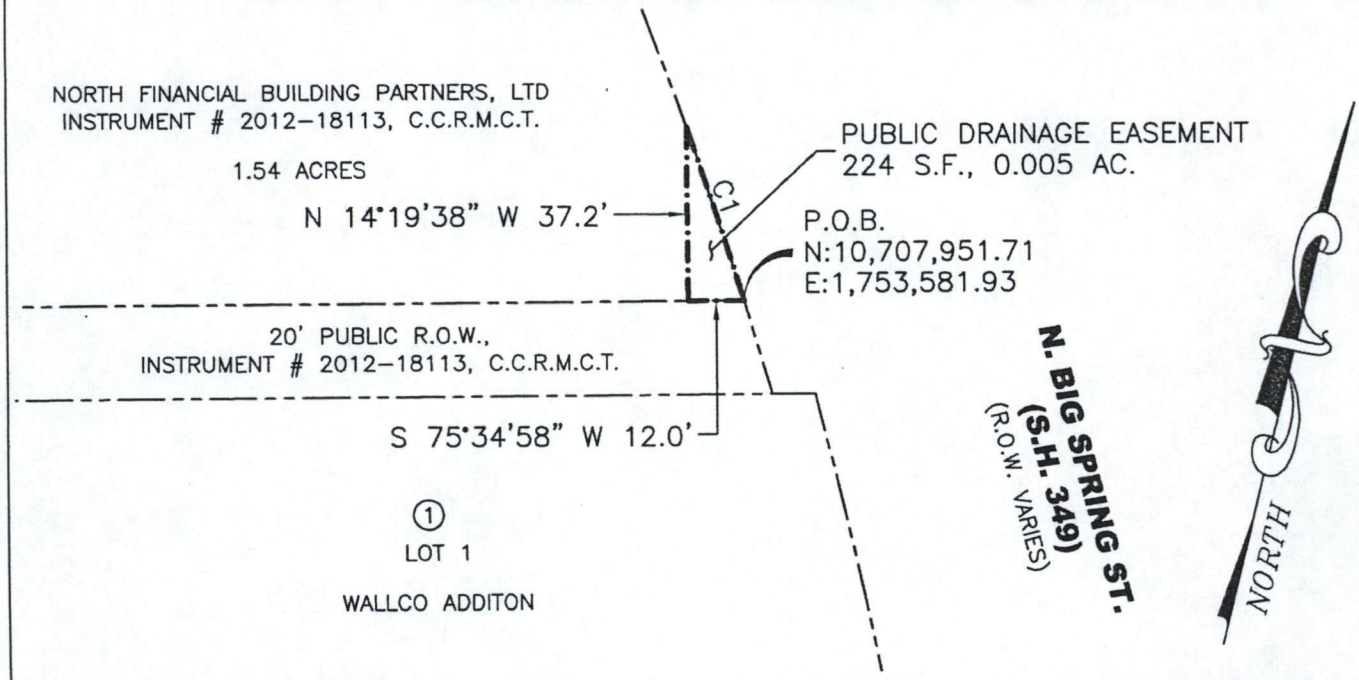
The foregoing instrument was acknowledged before me on this 10th day of June, 2013 by Robert W. Floyd, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act as owner, and that he executed the same as the act for the purposes and consideration therein expressed, and in the capacity therein stated.

JEAN HAYSLIP
My Commission Expires
April 26, 2017

_____
Notary Public, Midland County, Texas

[Seal]

PUBLIC DRAINAGE EASEMENT



LEGAL DESCRIPTION of a 0.005 Acre Public Drainage Easement out of that 1.54 acre tract to North Financial Building Partners, LTD as recorded in Instrument # 2012-18113, of the County Clerk's Records of Midland County, Texas, and being Located in Section 14, Block 39, T-1-S, T&P RR Company Survey, Midland County, Texas, Subject tract being more particularly described as follows:

BEGINNING at (N: 10,707,951.71, E: 1,753,581.93) a point in the South line of said 1.54 acre tract and in the North line of that certain 20' Public right-of-way as recorded in Instrument # 2012-18113, of the County Clerk's Records of Midland County, Texas, for the Southeast corner of said 1.54 acre tract, for the Southeast corner of this tract;

THENCE S 75°34'58" W, with the North line of said 20' Public right-of-way and with the South line of said 1.54 acre tract a distance of 12.0 feet to a point for the Southwest corner of this tract;

THENCE N 14°19'38" W, in and across said 1.54 acre tract a distance of 37.2 feet to a point of curvature to the right in the East line of said 1.54 acre tract and the West line of N. Big Spring Street (State Highway 349), for the Northwest corner of this tract;

THENCE Southeasterly with said curve to the right having a Radius of 1065.9', an Arc Length of 39.0', a Chorld Length of 39.0', a Chord Bearing of S 32°16'57" E, and a Delta Angle of 2°05'54" with the East line of said 1.54 acre tract and the West line of N. Big Spring Street to the POINT OF BEGINNING;

Subject tract containing a total of 0.005 acres (224 s.f.) of land.

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	39.0'	1065.9'	2°05'54"	S 32°16'57" E	39.0'

LEGEND

- DENOTES BOUNDARY LINE
- DENOTES PROPOSED EASEMENT LINE
- C.C.R.M.C.T. DENOTES COUNTY CLERK'S RECORDS, MIDLAND COUNTY, TEXAS

0' 40' 80' 120'

SCALE 1" = 40'

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

STATE OF TEXAS REGISTERED MARCUS L. HOSTAS 5643 PROFESSIONAL LAND SURVEYOR

6/5/13

MARCUS L. HOSTAS, TEXAS R.P.L.S. No. 5643
DATE SURVEYED JUNE 04, 2013

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

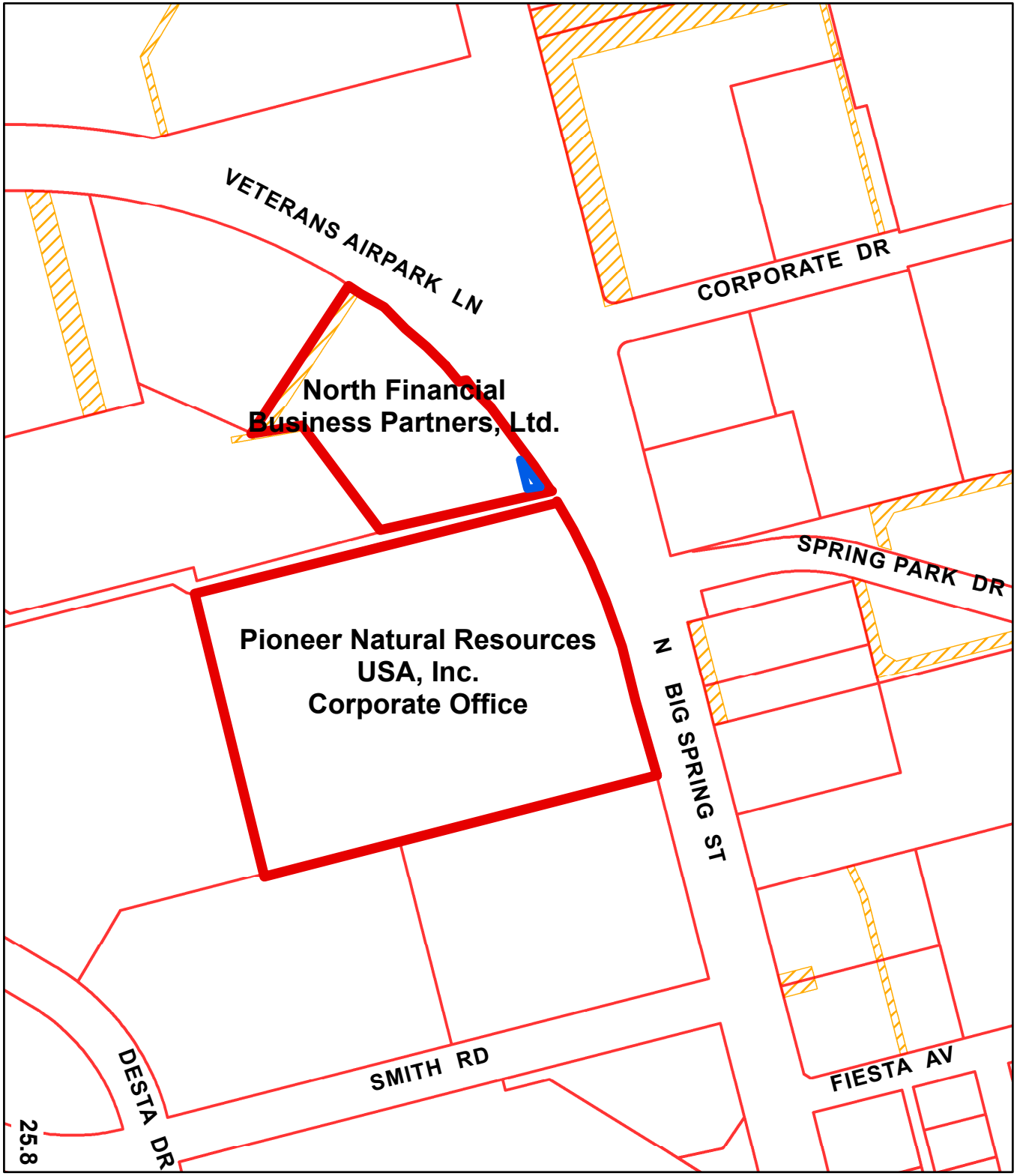
T:/CIVIL DRAWINGS/2012/2012-0259/EXHIBITS/EASEMENT EXHIBIT.dwg

Exhibit "A"

(Attached to and made a part of a Ratification and Pooling Agreement between Henry Brevard Clay, Jr. and Petro-Hunt, LLC)

The "Subject Lease":

Grantor: Bank of America, N.A., Trustee
Seth and Neva Campbell Trust FBO Helen Campbell McAshan
Grantee: Round Rock Energy, LLC
Doc. #: C6277
Effective Date: April 19, 2011



ENGINEERING DIVISION

Resolution:
Drainage Easement

Pioneer Natural Resources USA, Inc.
Corporate Office

N

MIDLAND
Engineering Services

Map by JHC 08/27/2013

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **August 27, 2013**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Jim Compton, Acting Planning Division Manager**

SUBJECT: **Consider an ordinance on second reading on a request by David and Nancy Tyler for a Specific Use Permit Without Term for a Vineyard on a 1 ½-acre portion of Lot 53, Block 2, Skyview Development, City and County of Midland, Texas. (Generally located on the west side of Irvin Drive, approximately 240 feet south of E. Loop 250 North.) District – 2.**

Purpose:

Consider an ordinance on second reading on a request by David and Nancy Tyler for a Specific Use Permit Without Term for a Vineyard on a 1 ½-acre portion of Lot 53, Block 2, Skyview Development, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

No city funds are required to process this request.

Discussion:

Mr. and Mrs. Tyler live on a 2.33-acre property at 4405 Irvin Drive, within a large AE, Agriculture-Estate District. The applicants are requesting a Specific Use Permit without Term for a Vineyard to grow grapes for sale to commercial wineries. In an AE District, a farm, ranch, garden, orchard, and other similar uses to a vineyard, are permitted by right on a tract of land greater than five acres. These same uses are permitted on smaller lots – less than five acres, but greater than 40,000 square feet – with the approval of a Specific Use Permit. The City Council approved this ordinance on first reading on August 13, 2013, and no opposition was noted. It is now appropriate to consider this request on second and final reading.

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF A 1.50-ACRE PORTION OF LOT 53, BLOCK 2, SKYVIEW DEVELOPMENT, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF IRVIN DRIVE, APPROXIMATELY 240 FEET SOUTH OF EAST LOOP 250 NORTH), WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR A VINEYARD; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings and affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the health, safety and general welfare will be best served by the granting of a Specific Use Permit Without Term, set out hereinafter, subject to the special conditions and restrictions set out hereinafter on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned AE, Agriculture Estate District, to wit:

> A 1.50-acre portion of Lot 53, Block 2, Skyview Development, City and County of Midland, Texas;

is hereby changed to permit same to be used under a Specific Use Permit Without Term for a vineyard, together with the uses permitted in an AE, Agriculture Estate District, subject to

the following conditions:

1. That the vineyard shall conform to the conditions on Exhibit "A", which is attached hereto and incorporated herein.

2. That the vineyard shall not exceed 1.50 acres in area.

3. That no retail sales shall be conducted on the premises.

SECTION TWO. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

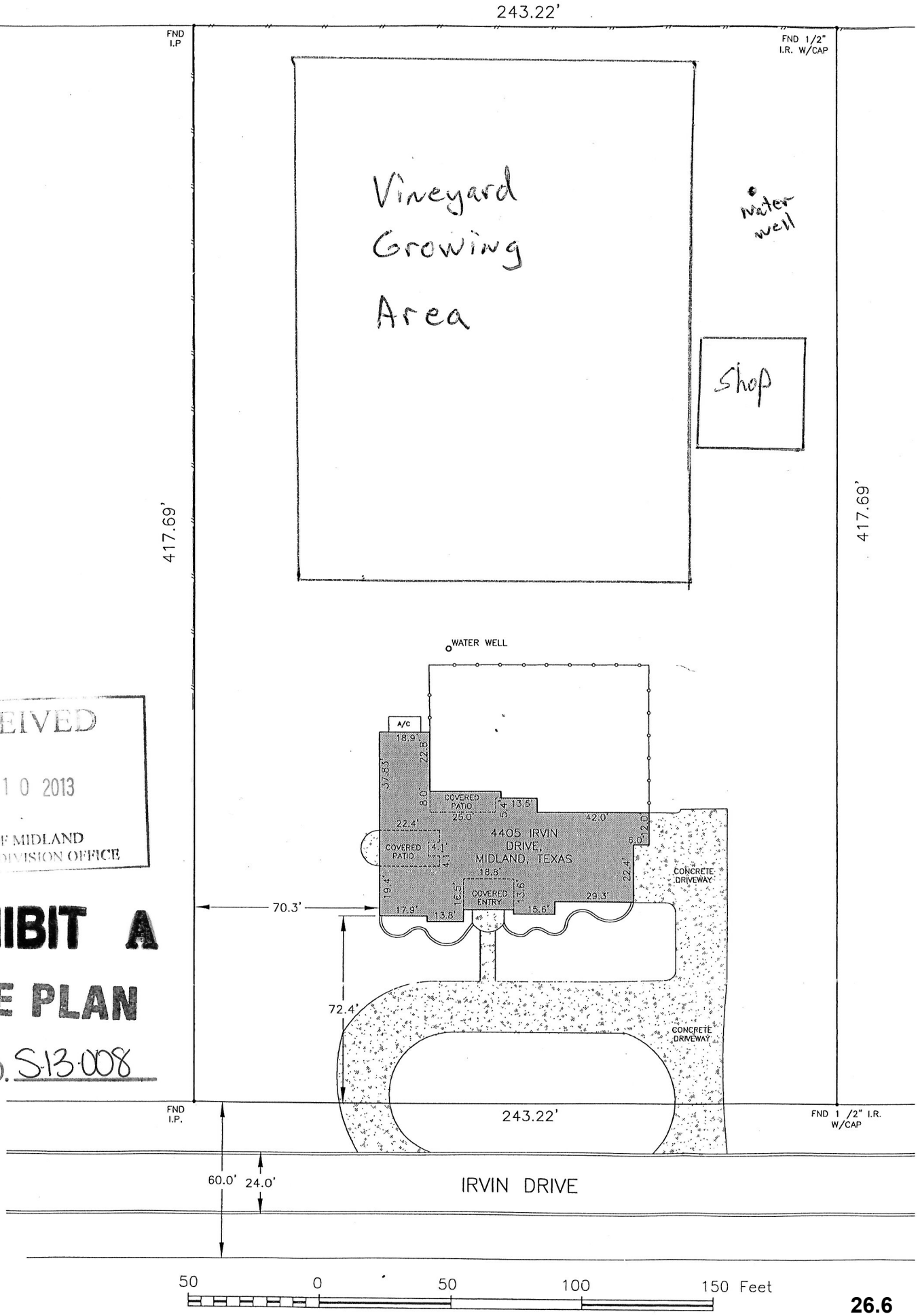
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

_____

Keith Stretcher, City Attorney



RECEIVED
JUN 10 2013
CITY OF MIDLAND
PLANNING DIVISION OFFICE

EXHIBIT A

SITE PLAN

CASE NO. S13-008

PLANNING AND ZONING COMMISSION

August 5, 2013

CASE: S-13-008.

REQUEST: Hold a public hearing and consider a request for a Specific Use Permit Without Term for a Vineyard.

APPLICANT/OWNER: David Mark Tyler and Nancy Darlene Tyler.

LEGAL DESCRIPTION: On a 1 ½-acre portion of Lot 53, Block 2, Skyview Development, City and County of Midland, Texas.

LOCATION: Generally located on the west side of Irvin Drive, approximately 240 feet south of E. Loop 250 North.

CURRENT ZONING: AE, Agriculture-Estate District.

DETAILS OF REQUEST:

1. The applicants are requesting a Specific Use Permit without Term for a Vineyard on a portion of their 2.33-acre property located at 4405 Irvin Drive. The applicants would like to grow grapes for sale to commercial wineries. They wish to plant about 700 vines in an approximately 1 ½-acre vineyard growing area on the western portion of the property, west of their residence and south of an existing 1,200 square foot shop and a water well. According to our Zoning Code, a Specific Use Permit without Term is required for a "farm, ranch, garden, orchard or plant nursery (including commercial) or the raising, training or boarding of livestock on a tract of not less than 40,000 square feet in an AE, Agriculture-Estate District."

SURROUNDING ZONING AND LAND USE:

2. The applicants' property is located on the west side of Irvin Drive, classified as a residential street, and south of Loop 250 North, within a large AE, Agriculture-Estate District. The area to the north is within the same AE District. To the west is a continuation of the Agriculture-Estate District as well as a currently vacant PDSC, Planned District for a Shopping Center further west. Both the areas to the south (primarily composed of residences) and the east (mainly vacant) are outside the City limits.

ANALYSIS:

3. A commercial farm, ranch, stable, garden, orchard or plant nursery is a use permitted by right in the AE, Agriculture-Estate District, on a tract of five acres or more, provided no retail sales are conducted from the premises. This use is permitted on a smaller lot (on a tract not less than 40,000 square feet) in an AE District through the approval of a Specific Use Permit. Thus, a vineyard on an AE District is permitted, but the SUP is required because of the smaller lot size. The applicants' lot is less than five acres, but greater than 40,000 square feet, and thus, meets these requirements. The vineyard would not require mechanical harvesting, and irrigation would be addressed through high efficiency drip systems using private wells. There is also a variable 6'-7' fence on the western and southern portions of the property. The property owners will also build a fence on the northern portion when the lot to the north is no longer vacant. We do not anticipate any adverse impacts upon adjacent properties should this request be approved. Therefore, we believe that the applicant's request is reasonable, and staff recommends approval.

STAFF RECOMMENDATION:

We recommend approval of this request for a Specific Use Permit Without Term for a Vineyard, subject to the following conditions:

A. That the vineyard shall significantly conform to the conditions on Exhibit A in all respects;

B. That the vineyard shall not exceed 1 ½ acres in area;

C. That no retail sales are conducted from the premises.

Ken Van Dyne
Acting Planning Division Manager
Department of Development Services

Madhuri Kulkarni, City Planner
Department of Development Services

Attachments:

Application
Exhibit A, Site Plan

Case Number: S13-008

CITY OF MIDLAND
Planning Division

SPECIFIC USE PERMIT APPLICATION

David Mark Tyler + Nancy Darlene Tyler 432-638-1183
Applicant Name Contact Phone #s

4405 Irvin Dr 79705
Address Zip Code

E-Mail address: tylermark@suddenlink.net

David Mark + Nancy Darlene Tyler 432-638-1183 + 638-1185
Property Owner Name Contact Phone #s

4405 Irvin Dr 79705
Address Zip Code

E-Mail address: tylermark@suddenlink.net + dtyler@pentecpensions.com

Operator (if different from Applicant or Property Owner) Contact Phone #s

Address Zip Code

Type of Permit: NO Term specific use

SUP with Term: ____Yes ✓ No
(For Office Use)

Street address and Legal Description of property on which SUP is desired (complete Lot, Block, and Subdivision, or if unplatted, attach a Metes and Bounds description with surveyor's seal.)
4405 Irvin Dr, Midland, Tx 79705 - Lot 53, Block 2, Skyview Developement

Current Zoning: Agriculture Estate - AE

Maximum Floor Area: 62,500 (1.42 acres) Max. Occupancy: _____

Proposed hours and days of use or operation: _____

Reason for request: Would like to grow grapes for sale to Commercial Wineries. Wish to plant 200 vines on the back half of our property.

Applicant's opinion as to why the request will not adversely affect the public safety, health, morals, general welfare, and convenience: the proposed vineyard is small + would not require mechanical harvesting. Irrigation would be done using high efficiency Drip systems using Private wells. This will be a test vineyard allowing us to learn the art of growing grapes.

REQUIRED SUBMITTALS

1. Application fee: **$300.** (80% of fee will be refunded if no P&Z public hearing is called; if no City Council public hearing is called, then 30% of fee will be refunded.)
2. Site plan – 16 copies (FOLDED)
3. On a CD in .pdf and .jpg format.

SIGNATURES:

Applicant: D Mark Tyler Darlene Tyler Date: 6-9-2013

Property Owner: D Mark Tyler Darlene Tyler Date: 6-9-2013

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

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

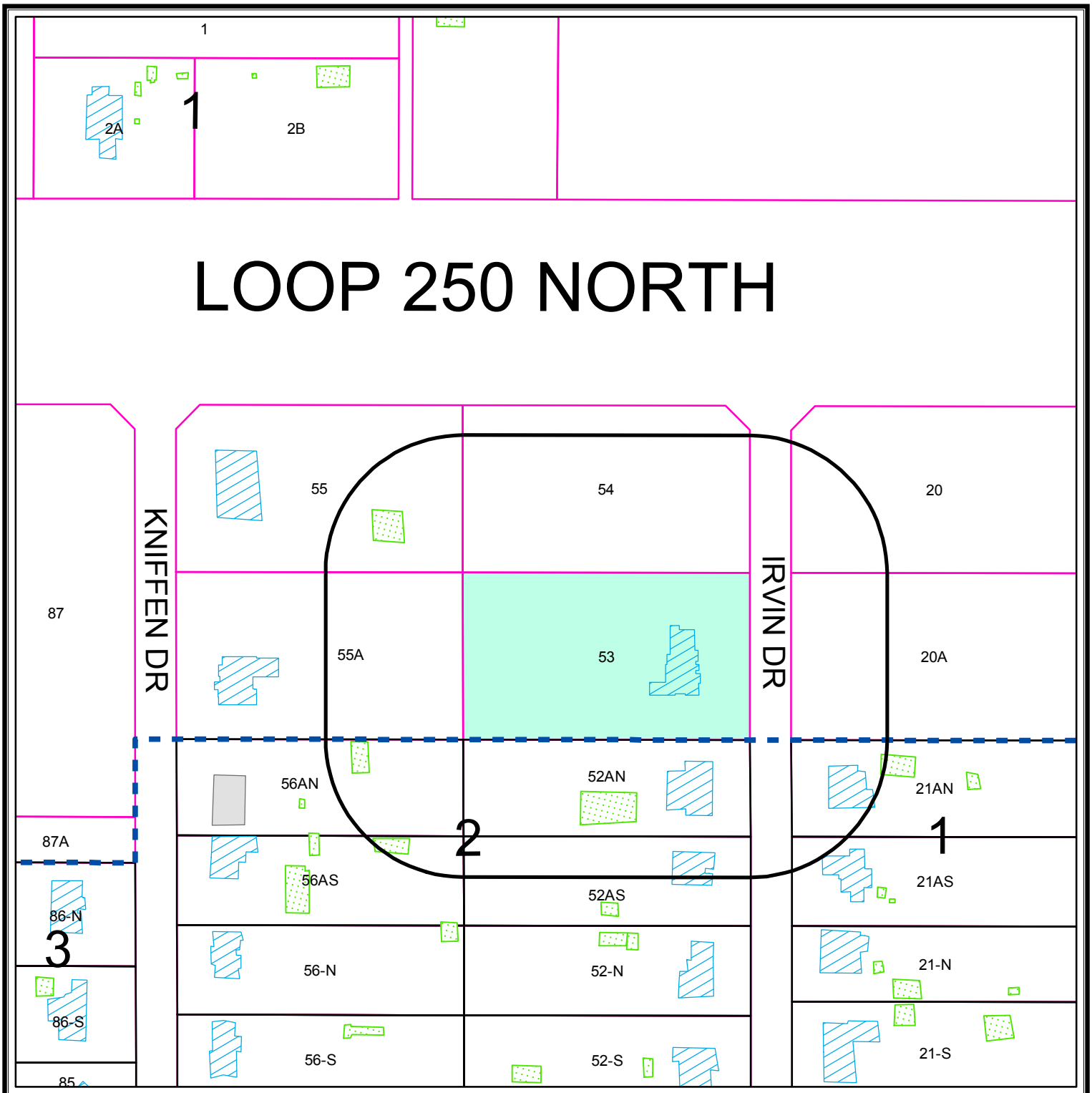
Subscribed and sworn to before me, this _____ day of _____, 20 ___, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

Rec'd By: RS Date: 6/10/13
Assigned: MK
For: P+Z On: 7/15/13

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



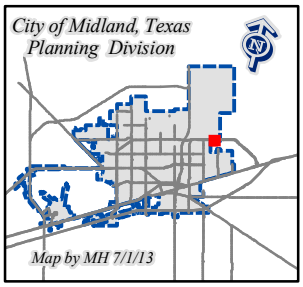
OWNER NOTIFICATION WITHIN CITY LIMITS ONLY

S - 13 - 008 **Scale: 1" = 200'**

Consider a request for a Specific Use Permit Without Term for a Vineyard on a 1 1/2-acre portion of Lot 53, Block 2, Skyview Development, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- COUNTY PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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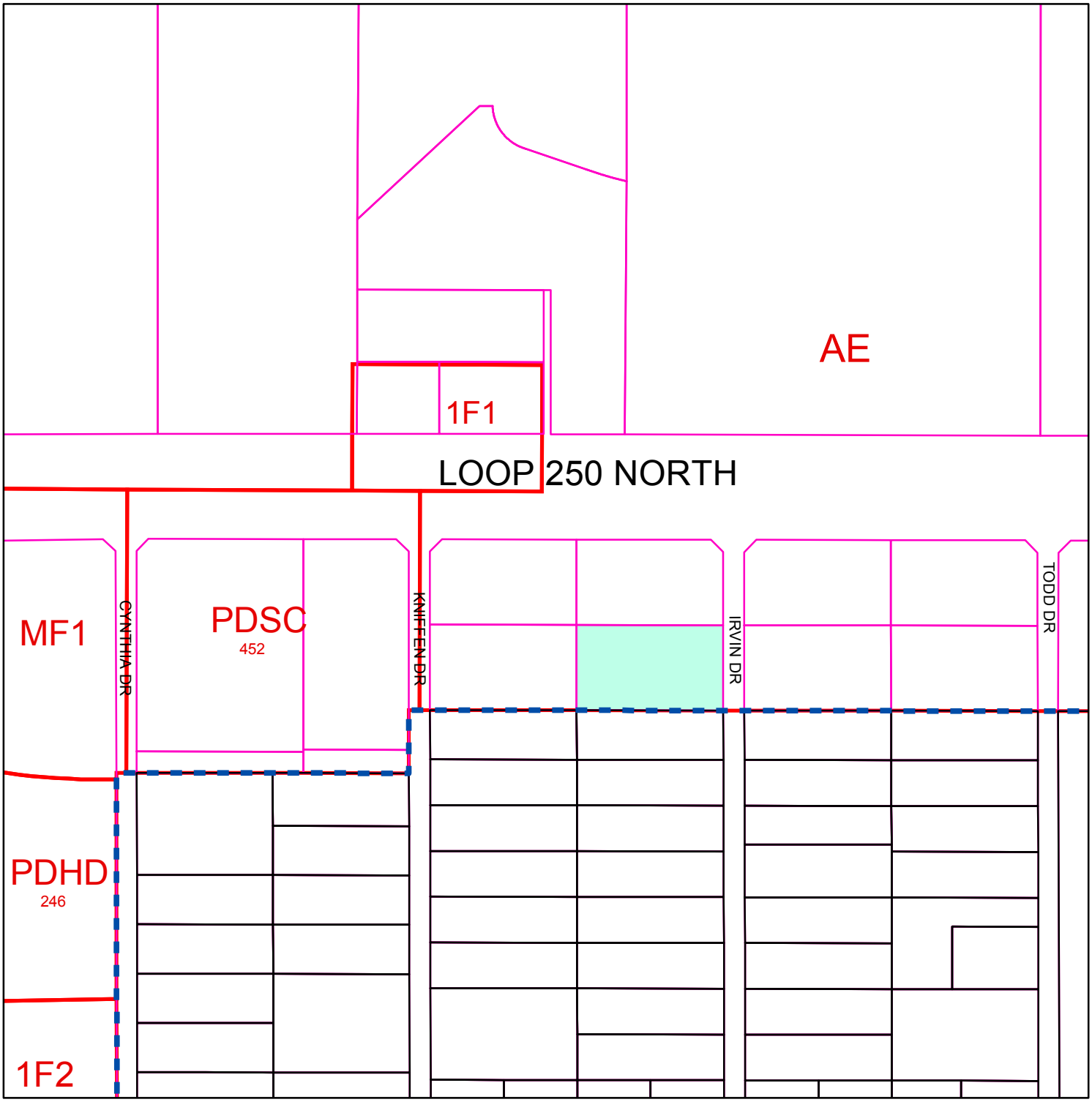

ZONING MAP

S - 13 - 008 **Scale: 1" = 400'**

Consider a request for a Specific Use Permit Without Term for a Vineyard on a 1 1/2-acre portion of Lot 53, Block 2, Skyview Development, City and County of Midland, Texas.

LEGEND

ZONING — CITY PARCELS
CITY LIMITS — COUNTY PARCELS

ZONING DISTRICTS:

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

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **August 27, 2013**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Jim Compton, Acting Planning Division Manager**

SUBJECT: **Consider an ordinance on second reading on a request by Darrell Mann/GRACO for a zone change from PD, Planned District for a Shopping Center to Amended Planned District on Lot 20, Block 5, North Park, Section 16, City and County of Midland, Texas (Generally located on the north side of W. Loop 250 N. approximately 1,200 feet west of Whitman Drive-District 1)**

Purpose:

Consider an ordinance on second reading on a request by Darrell Mann/GRACO for a zone change from PD, Planned District for a Shopping Center to Amended Planned District on Lot 20, Block 5, North Park, Section 16, City and County of Midland, Texas

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

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

Discussion:

The subject property is zoned Planned District for a Shopping Center, subject to LR-2 District regulations and to a requirement that a site plan be approved in the same manner as a zone change prior to development. Known as The Commons, two site plans have already been approved for this shopping center. This application represents the third and final building pad site, and is being proposed as a location for Abuelo's restaurant. The exhibits indicate the location of the 10,200 square foot building, and the exterior building materials and design features. The City Council approved this ordinance on first reading during a public hearing on August 13, 2013. A condition was added to the ordinance providing for flexibility in the location of parking spaces, including handicap spaces. This requires a separate motion on the amended ordinance. It would then be appropriate to consider this 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 LOT 20, BLOCK 5, NORTH PARK, SECTION 16, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF LOOP 250, EAST OF BILLINGSLEY BOULEVARD); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of "Planned Districts" under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of an Amended Planned District, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned PD, Planned District for a Shopping Center, and it shall be used as an Amended Planned District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

Lot 20, Block 5, North Park, Section 16, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That Exhibits "A", "B" and "C", which are attached hereto and incorporated herein, are hereby adopted as required by City of Midland Ordinance No. 7773.

2. That the development of this property shall conform to Exhibits "A", "B" and "C" in all respects, except as otherwise stated below.

3. That the exterior building materials shall be EIFS and/or masonry with glass tile accents. Red canvas awnings shall be allowed over the windows.

4. That all other development conditions not otherwise set forth in this ordinance and the exhibits hereto shall conform to the regulations of the LR-2, Local Retail District, and all other applicable regulations of the Midland City Code.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ___day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member_____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member_____ , seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
James R. Nichols, Assistant City Manager

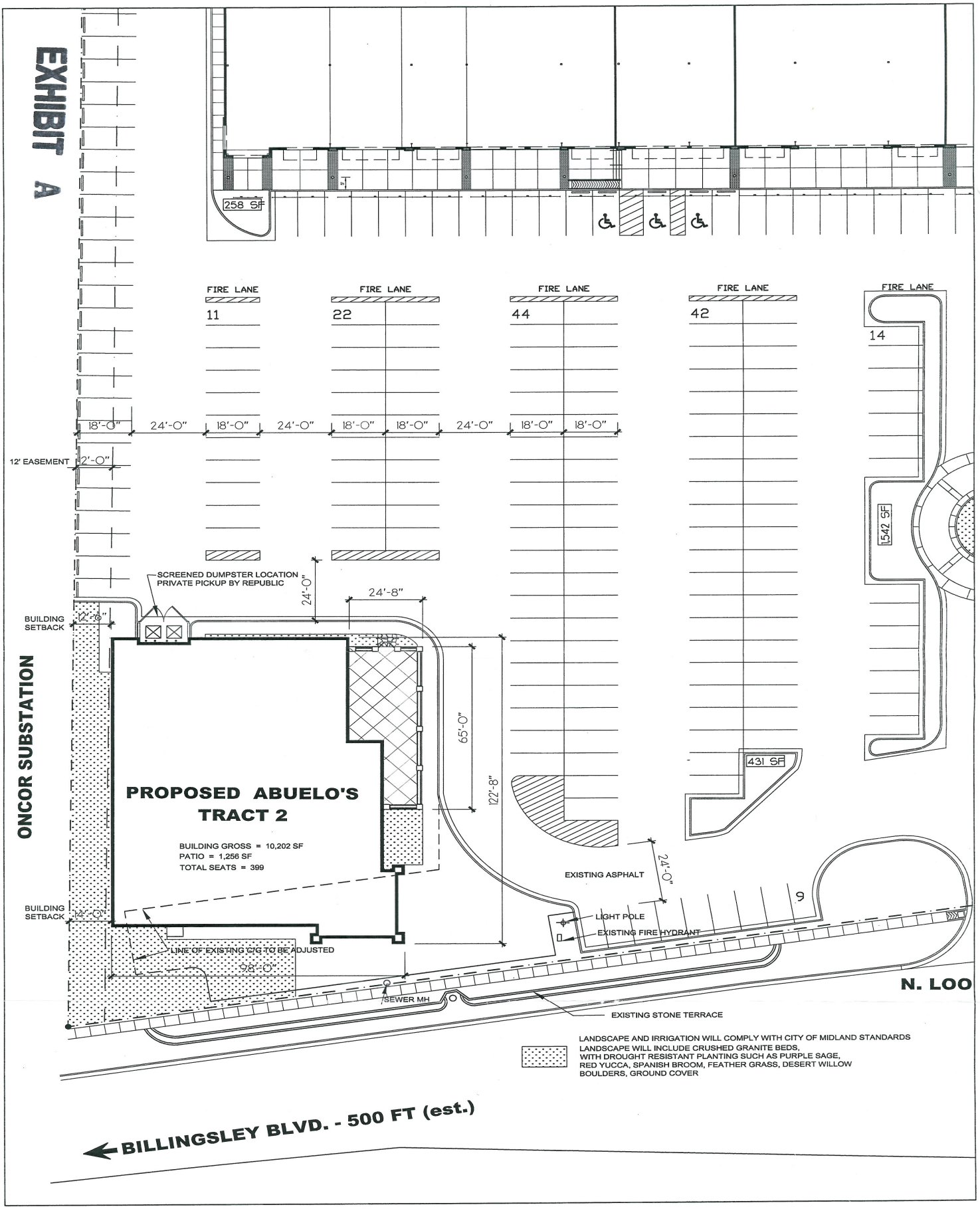
APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

27.6

CASE NO. Z13026

EXHIBIT A

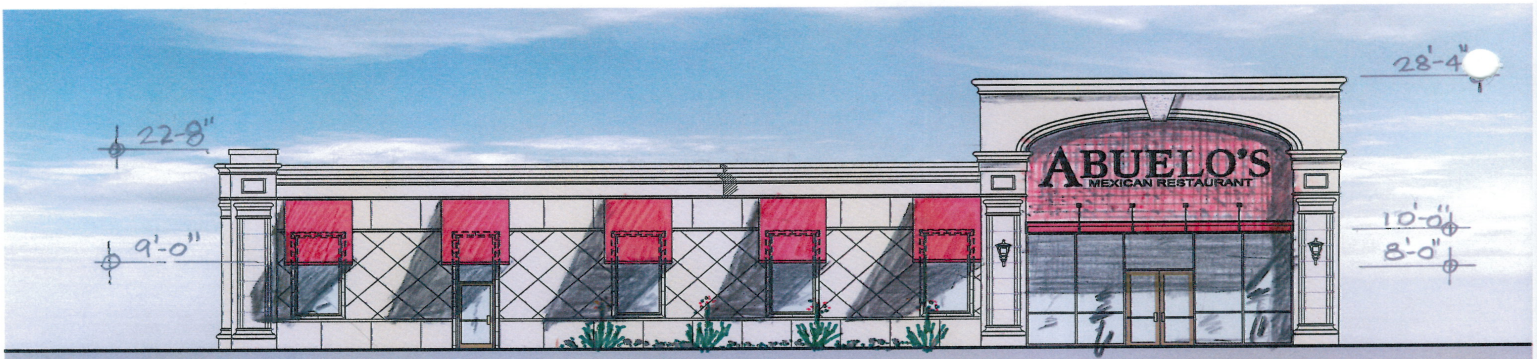


PROPOSED SITE PLAN

SCALE: 1/32"=1'-0"

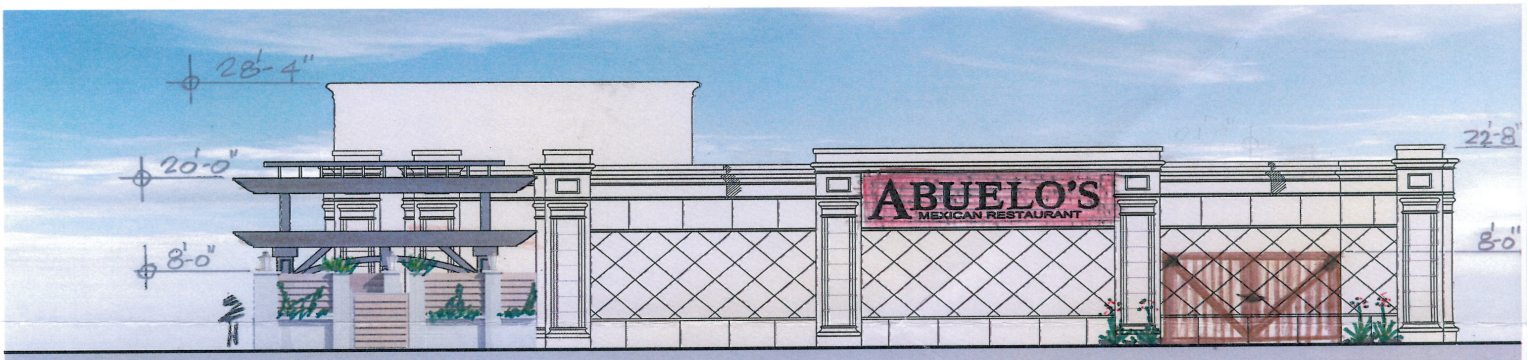
NORTH

PRELIMINARY NOT FOR REGULATORY APPROVAL, PERMITTING, OR CONSTRUCTION
DATE: 6/13/13
JASON MOORE NO. 19265
MELANIE MEIXNER NO. 19192



FRONT ELVEATION

PATIO SIDE - PERGOLA



REAR ELEVATION

5-30-13

PRELIMINARY NOT FO
REGULATORY APPROV
PERMITTING, OR
CONSTRUCTION
DATE: 5/13/13
JASON MOORE NO. 19265
MELANIE MEIXNER NO. 19192

MWM architects

EXHIBIT B

MWM Architects, Inc.
2574 74th Street, S
Lubbock, TX 79423
Phone: 806.745.77
Fax: 806.745.7620

27.7

CASE NO. Z-13-026

Page 1

EXHIBIT C

CASE NO. Z-13-026

Case Number: Z-B-026

CITY OF MIDLAND
Planning Division

APPLICATION TO AMEND A PLANNED DISTRICT

Applicant: DARRELL MANN - MWM ARCHITECTS, INC.

Address: 2574 74th St. Ste 201 dMANN@MWM-ARCH.COM 806-745-7707
Street Address (Phone/e-mail)

LUBBOCK TX. 79423
City State Zip Code

Property Owner: NORTHPARK COMMONS, LLC.

Address: 2574 74th st. ste 210 (806)745-9718 RCHILI@GRACOREALESTATE.CO
Street Address (Phone/e-mail)

LUBBOCK TX. 79423
City State Zip Code

Street address and Legal Description of Planned District (complete Lot, Block, and Subdivision Name description below, or, if not in a recorded plat, attach a sealed Metes and Bounds Description:

LOT 20 BLOCK 5, NORTHPARK, SECTION 15

Current PD Classification: PDSC

Requested PD Classification: PDSC
(List by tracts if more than one zoning district is requested)

Reason for amendment request: We are developing the West out parcel which was not included in the original site plan review application. TRACT 2

Describe how conditions affecting the property have changed since it was designated its present zone: the property was developed as a shopping center since it was designated its present zone and we are developing the last of the two out parcels. (TRACT 2)

Will a Specific Use Permit with Term for alcoholic beverage sales be needed? ✓ Yes ____ No

FEES:
Single, Planned District amendment: **$550**. Multiple, PD proposal: add **$75** per district.

SUBMITTALS:

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

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

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

Property Owner (signature): _____ Date: _____

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

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Darrell Mann who, being by me duly sworn, upon oath says: That (s)he is authorized by ~~MWM Architects~~ Northpark Commons the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Darrell S. Mann
Authorized Agent (*signature*)

Subscribed and sworn to before me, this 30 day of May, 2013, to certify which witness my hand and seal of office.

Casey Hopkins
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: MS	Date: 5/30/13
Assigned: JC	
For: PZ	On: 8/5/13

CASEY LYNN HOPKINS
MY COMMISSION EXPIRES
October 8, 2016

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

PLANNING AND ZONING COMMISSION

August 5, 2013

CASE: Z-13-026.

REQUEST: Hold a public hearing and consider a request for a zone change from PD, Planned District for a Shopping Center to Amended Planned District.

APPLICANT: Darrel Mann.

OWNER: Northpark Commons, LLC.

LEGAL DESCRIPTION: Lot 20, Block 5, Northpark, Section 15, City and County of Midland, Texas.

LOCATION: North side of Loop 250, east of Billingsley Boulevard.

DETAILS OF REQUEST:

1. This property is located at the southwest corner of The Commons shopping center, adjacent to Loop 250. The property is zoned Planned District for a Shopping Center, subject to the LR-2 District regulations. Additionally, a site plan must be approved before a building permit can be issued. The purpose of this application is to adopt site plans for a new pad site for an Abuelo's restaurant.

SURROUNDING ZONING AND LAND USE:

2. This shopping center is still under development; this would be the third separate building for this center. The land north of this property is zoned Planned District for a Housing Development District, and is the location of the Blue Ridge Apartments. The area to the east is also zoned Planned District for a Shopping Center, but remains vacant at this time. The south side of this property is bounded by Loop 250, and the area immediately to the west is an electrical substation. Farther west is Billingsley Boulevard, which is developed with a variety of retail uses.

ANALYSIS:

3. The proposed use of this property is a restaurant, which is allowed in the underlying LR-2 District zoning. This lot has already been platted, and is a part of the larger shopping center. This shopping center has blanket cross-parking and mutual access easements. Thus, the parking within the shopping center will fulfill the parking requirements on this lot. Also, there is no direct driveway access to this property. Access restrictions were imposed to the shopping center by the Texas Department of Transportation. Access to this site will be across the common parking area that serves this center.

   The attached Exhibit A is a plan view of the proposed restaurant pad. The gross floor area is proposed to be 10,200 square feet. Included in this area is a 1,256 square-foot outdoor patio. A maximum seating capacity of 399 persons is proposed. This seating requires 100 spaces, which is available throughout the shopping center. The building will be setback a minimum of 12.5 feet from the west property line, and a setback of 15 feet is required from the front property line. The screened dumpster location is on the north side of the building. Landscaping and outdoor lighting were installed with the first phases of development. Exhibit B is an elevation view of the restaurant. The maximum building height is 22 feet, 8 inches, although a parapet wall extends to 29 feet. These standards meet the Zoning Code requirements. The exterior building materials include EIFS in a light stone color, accents of glass tile above the entrance and red canvas awnings over the windows. Note that the patio area will be enclosed with a screening wall, and covered with a pergola. The dumpster site will be screened with a gate. Exhibit C is an artist rendering of the rear corner of the building, and indicates a neutral color scheme. We believe that from an architectural, material and color standpoint, this proposed restaurant building conforms to the characteristics of the existing buildings, and will be a positive addition to this shopping center.

STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from PD, Planned District for a Shopping Center to Amended Planned District, subject to the following conditions:

A. That this property shall be developed in accordance to the conditions shown on the attached Exhibits A, B and C in all respects, except as otherwise stated below.

B. The exterior building materials shall consist of EIFS, stone, and glass tile.

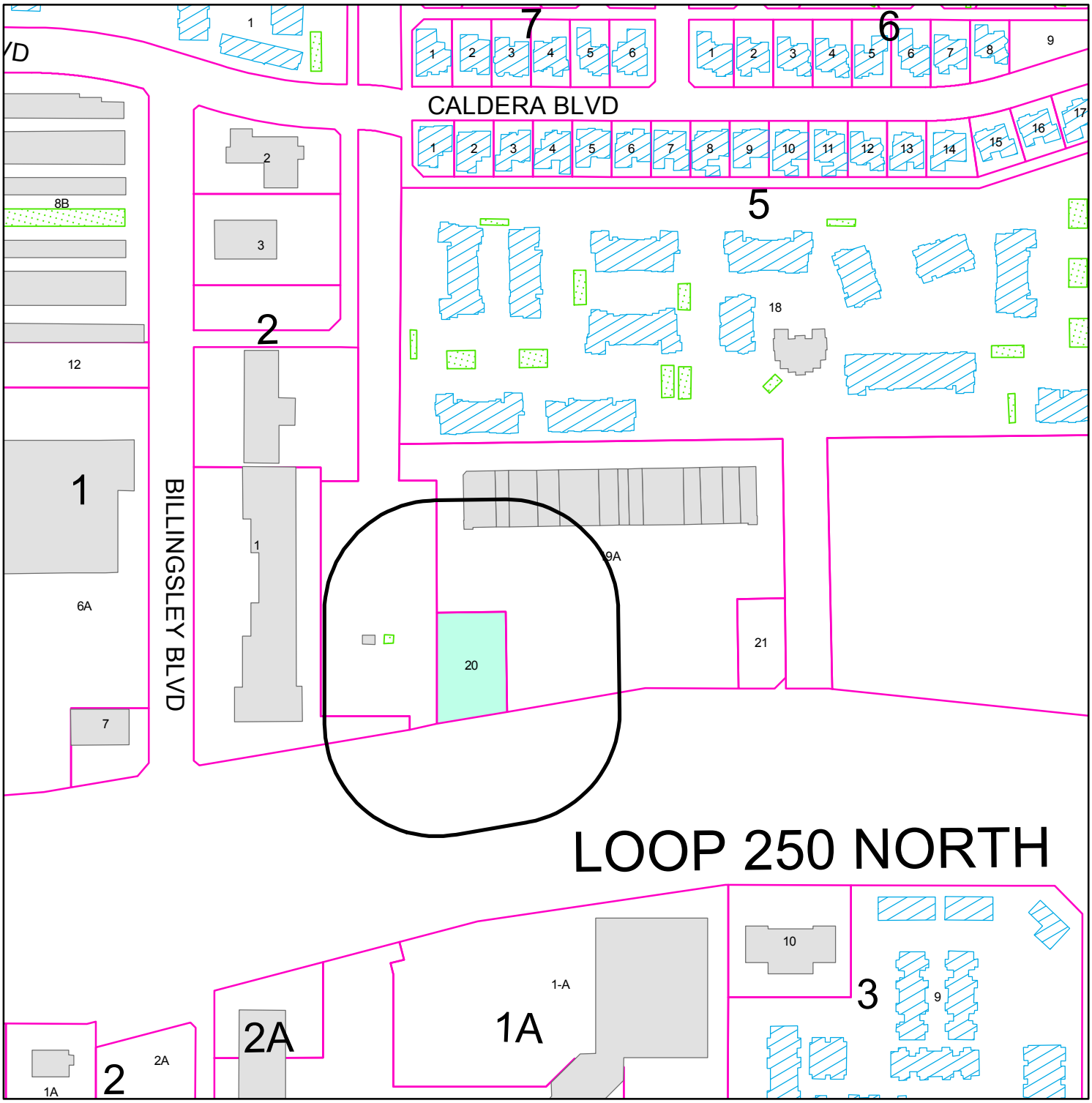
C. All other development conditions not otherwise expressed in this ordinance or on Exhibits A, B and C shall conform to the regulations of the LR-2, Local Retail District

Ken Van Dyne
Acting Planning Division Manager
Department of Development Services

Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A, B and C



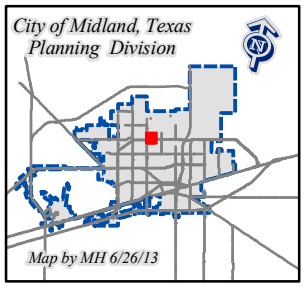
PROPERTY OWNER NOTIFICATION MAP

Z - 13 - 026 **Scale: 1" = 250'**

Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on Lot 20, Block 5, North Park, Section 16, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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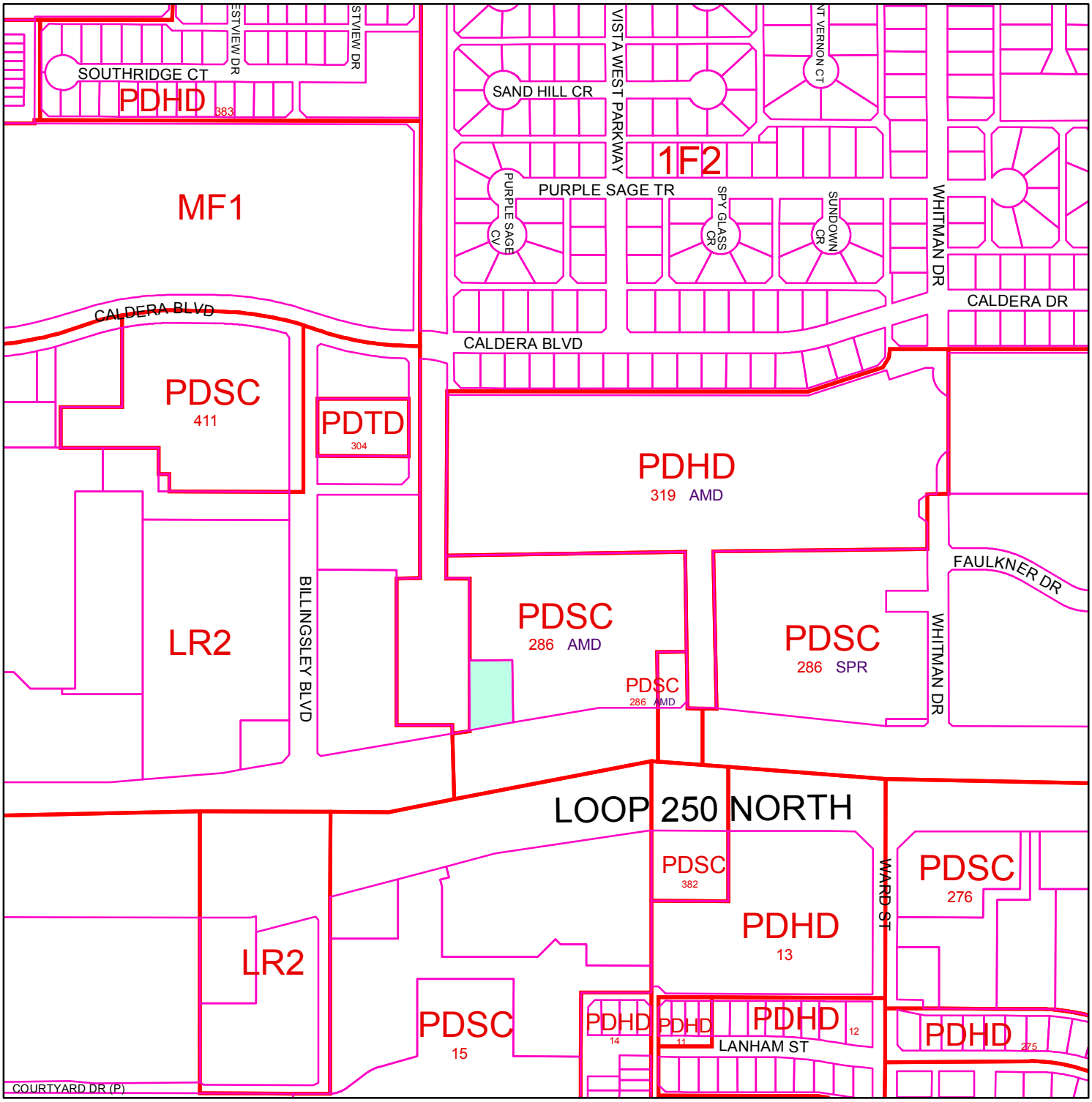

ZONING MAP

Z - 13 - 026 **Scale: 1" = 400'**

Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on Lot 20, Block 5, North Park, Section 16, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
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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 27, 2013**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Jim Compton, Acting Planning Division Manager**

SUBJECT: **Hold a public hearing at approximately 10:30 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.) - District – 3.**

Purpose:

Hold a public hearing at 10:30 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 process this request.

Discussion:

The St. Ann's Catholic Church is requesting a Temporary Land Use Permit for holding their annual church carnival and fair on their property located at 2000 W.Texas Avenue., as shown on the site plan (Exhibit A).

Proposed days and hours of the Carnival and Fair are:

Thursday, September 26, 2013 from 6:00 p.m. to 12:30 a.m. (Carnival only)
Friday, September 27, 2013 from 6:00 p.m. to 12:30 a.m. (Carnival only)
Saturday, September 28, 2013 from 8:00 a.m. to 12:30 a.m. (Carnival & Fair)
Sunday, September 29, 2013 from 1:00 p.m. to 6:00 p.m. (Carnival only)

The four day event will include carnival-type music played during all operating hours. The sale and on-premises consumption of alocholic beverages is proposed on Saturday only from 10:00 a.m. to 11:00 p.m. Fourteen (14) portable restrooms will be provided for public use. Twenty-four (24) security quards will be on duty at all times during the event. According to police reports from the event held last year from September 27 to 30, 2012, no major incidences were reported.

Attachments: Application, Maps, Proposed Resolution, and 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 26, 2013 from 6:00 p.m. to 12:30 a.m.;
Friday, September 27, 2013 from 6:00 p.m. to 12:30 a.m.;
Saturday, September 28, 2013 from 8:00 a.m. to 12:30 a.m.; and
Sunday, September 29, 2013 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 28, 2013 from 8:00 a.m. to 12:30 a.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 alcoholic beverages shall be allowed on Saturday, September 28, 2013 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 fourteen (14) portable toilets shall be provided.

G. That the event shall comply with all requirements of the Fire Code, including:

1. Existing fire lanes shall be maintained clear of all obstructions during the event.

2. All food vendors using open flame or heat producing appliances shall have portable fire extinguishers of an ABC Type 5 lb. or greater.

3. 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., 2013, by

the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

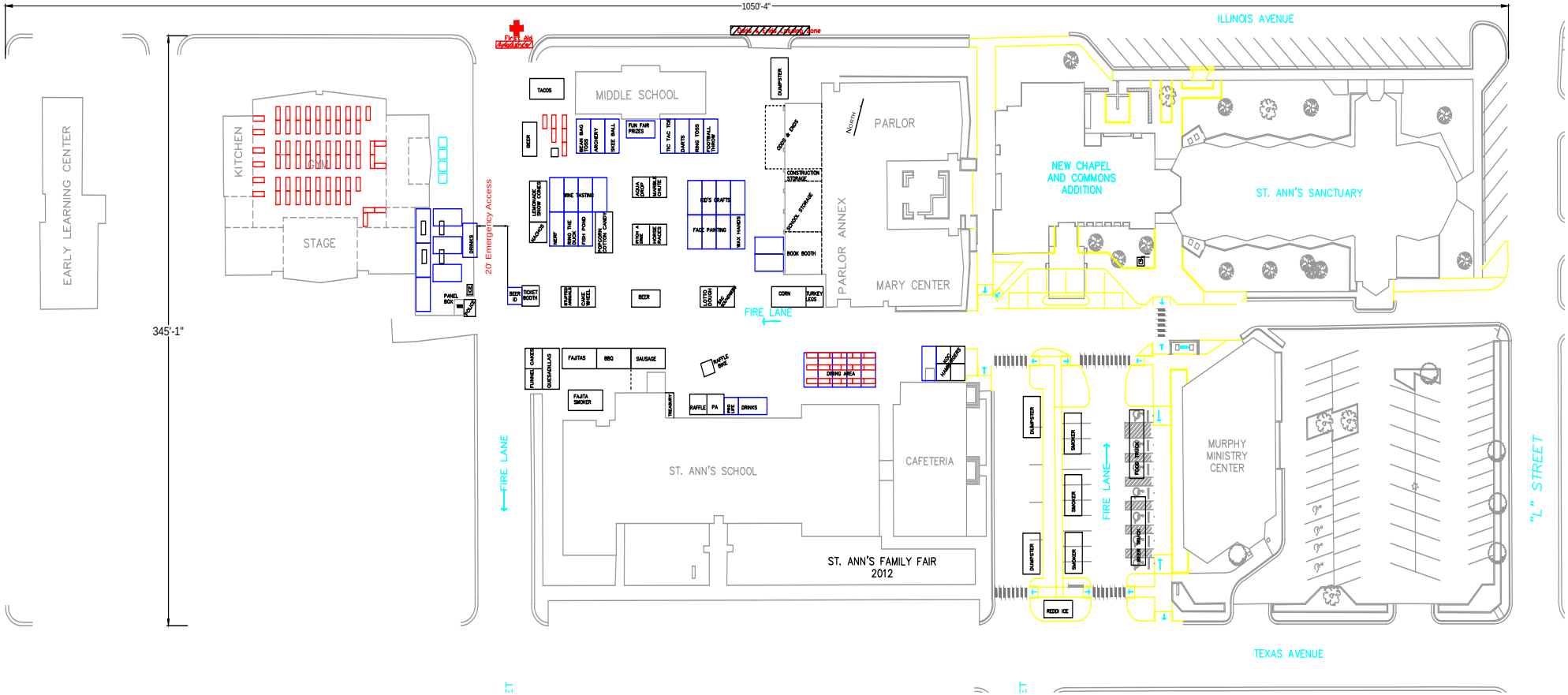
_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney


1050'-4"
345'-1"
ILLINOIS AVENUE
TEXAS AVENUE
"L" STREET
EARLY LEARNING CENTER
KITCHEN
GYM
STAGE
DRINKS
PANEL BOX
20' Emergency Access
First Aid
TACOS
MIDDLE SCHOOL
BEER
BEAN BAG TOSS
ARCHERY
DICE BALL
FUN FAIR PRIZES
TIC TAC TOE
DARTS
RING TOSS
FOOTBALL THROW
LEMONADE SNOW CONES
WINE TASTING
HERP
RING THE DUCK
FISH POND
POPCORN COTTON CANDY
AQUA DROP
MARBLE CHUTE
PONY A LINE
HORSE RACES
KID'S CRAFTS
FACE PAINTING
WAX HANDS
BOOK BOOTH
BEER ID
TICKET BOOTH
BEER
CORN
TURKEY LEGS
DUMPSTER
CONSTRUCTION STORAGE
SCHOOL STORAGE
PARLOR
NORTH
PARLOR ANNEX
MARY CENTER
NEW CHAPEL AND COMMONS ADDITION
ST. ANN'S SANCTUARY
FIRE LANE
CANDY
FUNNEL CAKES
QUESADILLAS
FAJITAS
BBQ
SAUSAGE
FAJITA SMOKER
RAFFLE
DRINK AREA
RAFFLE
FA
DRINKS
ST. ANN'S SCHOOL
CAFETERIA
ST. ANN'S FAMILY FAIR 2012
SMOKER
REDDI ICE
MURPHY MINISTRY CENTER

Case No. M-13-017

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: spepper@stanns.us
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. 26-27, 6-12:30am; Fair and Carnival - Sept. 28 8am - 12:30am: Carnival - Sept. 29, 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 (portable)
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

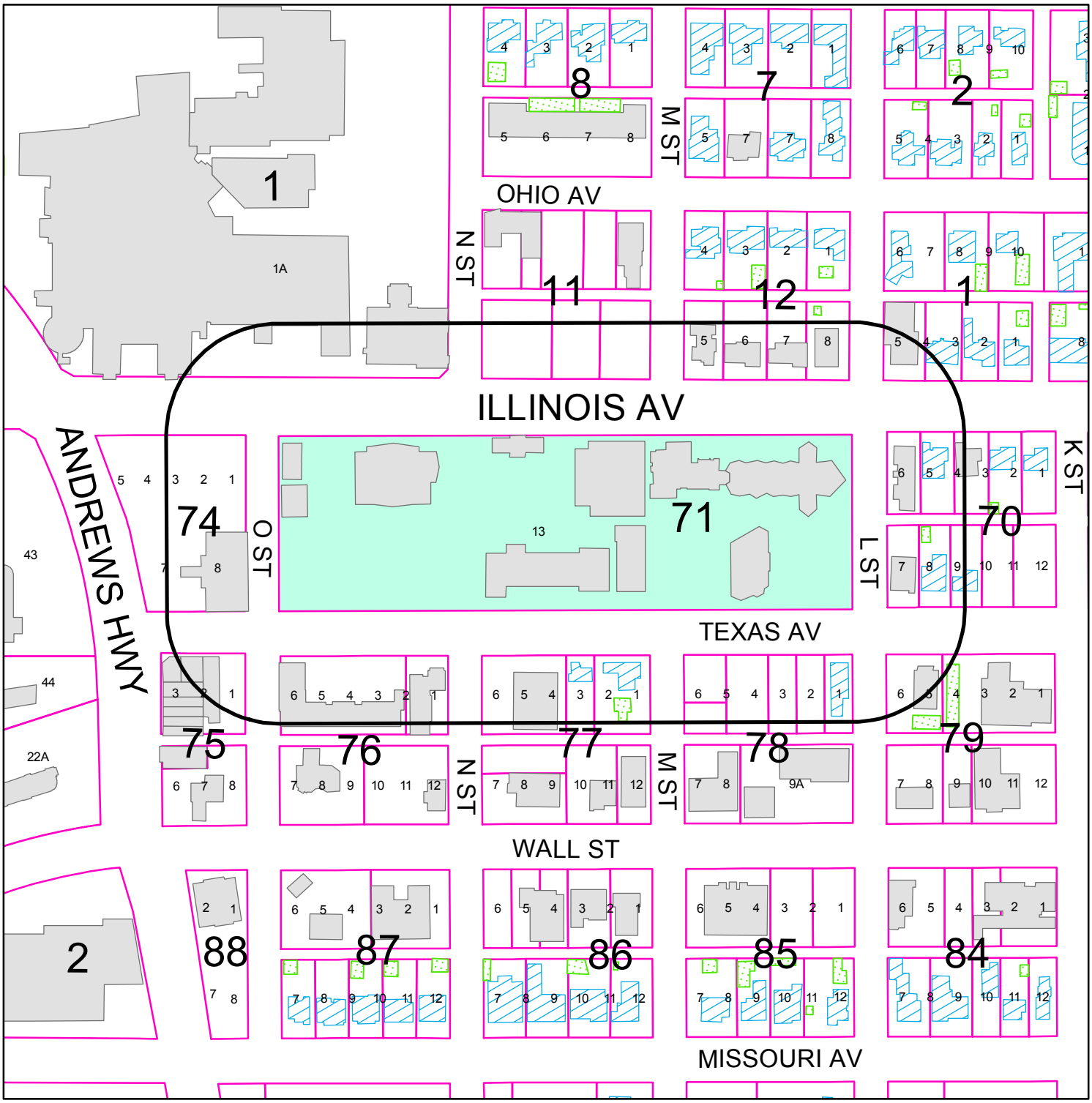
Steve Reppen — 7/25/13
Signature of Owner/Operator — Date

Steve Reppen — 7/25/13
Signature of Applicant — Date

Larry Doll — 7/25/13
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: NK Date: 7/25/13
Assigned: 7/25/13
For: RC On: 8/27/13



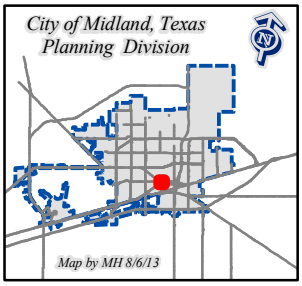
PROPERTY OWNER NOTIFICATION MAP

M - 13 - 017 **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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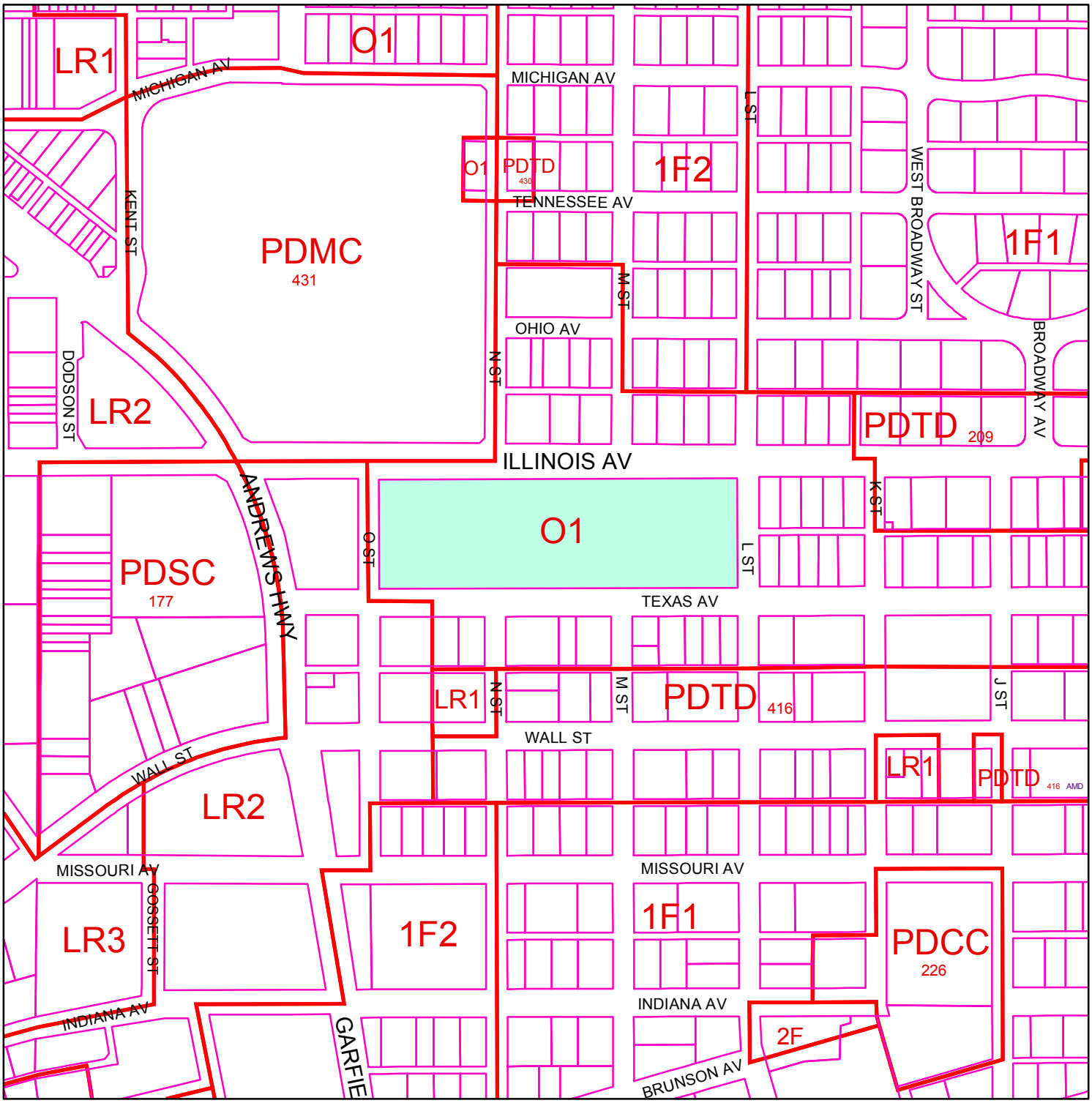

ZONING MAP

M - 13 - 017 **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	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **August 27, 2012**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Jim Compton, Acting Planning Division Manager**

SUBJECT: **Hold a public hearing at approximately 10:33 a.m. and consider a resolution on a request by Matt Hanson, Midland Downtown Farmers' Market, for a Temporary Land Use Permit for an Outdoor Sales Event. (Generally located on the south side of W. Texas Avenue, between N. Pecos Street and N. Marienfeld Street) - District – 3.**

Purpose:

Hold a public hearing at approximately 10:33 a.m. and consider a resolution on a request by Midland Downtown Farmers' Market for a Temporary Land Use Permit for an Outdoor Sales Event.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

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

Discussion:

The Midland Downtown Farmers' Market holds their outdoor sales event (the farmers' market) beneath the covered parking on the south side of Texas Avenue, between Pecos Street and Marienfeld Street. The farmer's market is held every Saturday from 8:00 a.m. to 1:00 p.m. Mr. Hanson is requesting that the event be extended up to 3:00 p.m. during special events on certain Saturdays. This permit will allow Mr. Hanson to continue the event with the aforementioned hours and the days of operation to be from August 31, 2013, to August 30, 2014. We believe the farmers' market is a positive event as it provides an opportunity for local growers to sell food products, local produce, and arts and crafts on a seasonal basis. The event also creates a sense of community and generates activity in the downtown area. Finally, local businesses are promoted through the event, and help to generate additional revenue.

Attachments: Application, Maps, Proposed Resolution, and Exhibit A (Site Plan)

RESOLUTION NO.

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR OUTDOOR SALES ON LOTS 1, 2, 10, 11 AND 12, BLOCK 58, ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF WEST TEXAS AVENUE, BETWEEN NORTH PECOS STREET AND NORTH MARIENFELD STREET); MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

WHEREAS, pursuant to Section 11-1-6(D) of the City Code of Midland, Texas, Midland Downtown Farmers' Market has applied for authorization to temporarily use land for outdoor sales on Lots 1, 2, 10, 11 and 12, Block 58, Original Town, City and County of Midland, Texas; and

WHEREAS, the Council finds and determines that such temporary use shall be allowed;

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

SECTION ONE. That Midland Downtown Farmers' Market is hereby authorized by the City Council to have outdoor sales on the following described land:

On Lots 1, 2, 10, 11 and 12, Block 58, Original Town, City and County of Midland, Texas.

SECTION TWO. That said temporary use shall be allowed within the area designated herein, subject to the following conditions and restrictions:

A. That the term of this permit shall be from August 31, 2013 through August 30, 2014.

B. That such outdoor sales shall only be conducted at this location on Saturdays, from 8:30 a.m. until 1:00 p.m., with extended hours until 3:00 p.m. during special events.

C. That the use of this property for outdoor sales (Farmers' Market) shall conform to the site plan attached hereto as Exhibit "A" and incorporated herein for all purposes.

D. That one (1) portable restroom shall be provided.

E. That live music shall be allowed during all operating hours of the Farmers'

Market.

F. That Matthew Hanson, a representative of Midland Downtown Farmers' Market, shall be responsible for ensuring that the conditions of this permit are observed.

SECTION THREE. The City Council reserves at all times the full right and power to revoke said temporary use for violation of any of its terms or any misrepresentations contained in the application, after a hearing of which the holder of said temporary use has been given at least one (1) day notice.

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

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

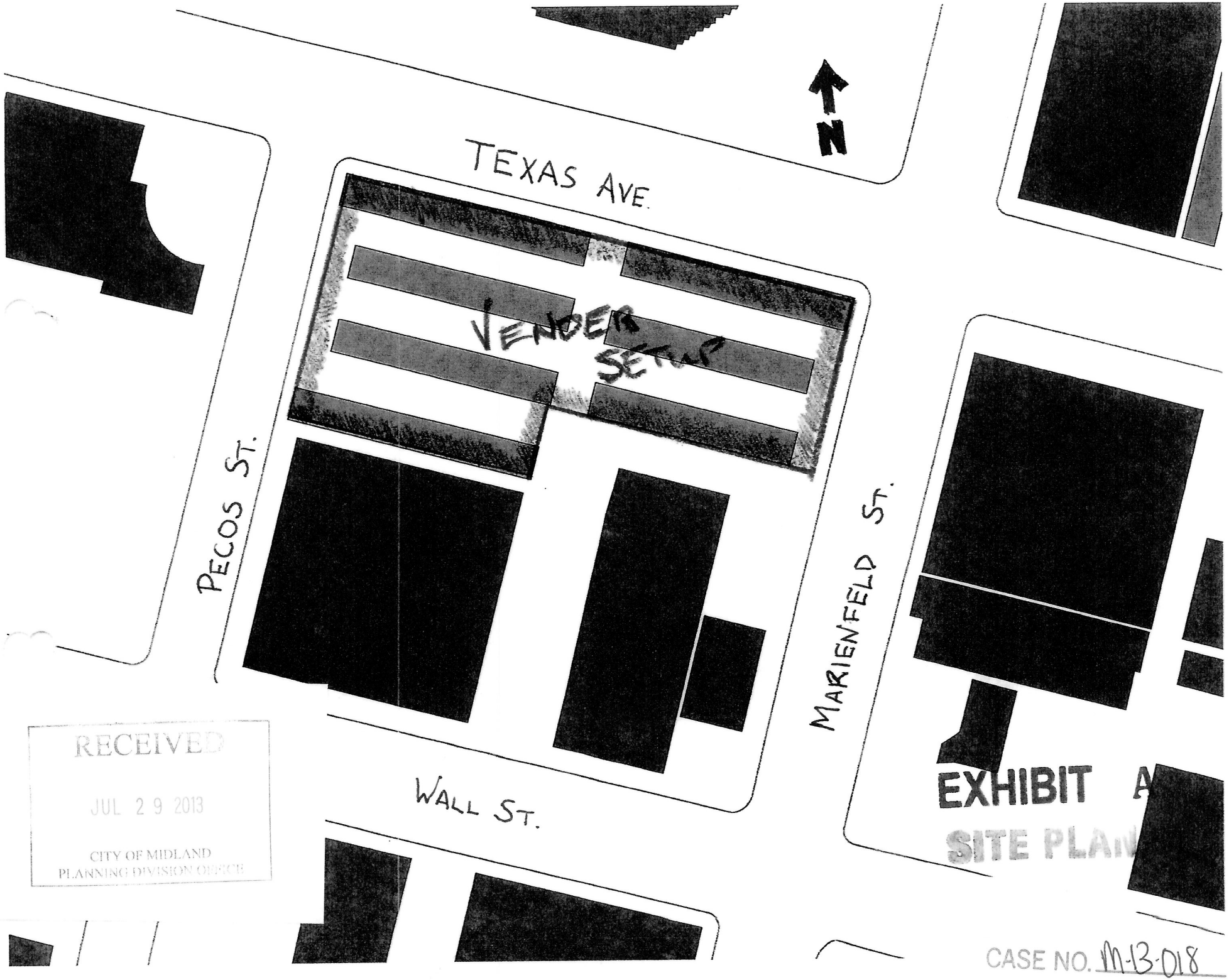
_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney



RECEIVED
JUL 29 2013
CITY OF MIDLAND
PLANNING DIVISION OFFICE

EXHIBIT A
SITE PLAN

CASE NO. M-13-018

Case No.: M-13-018

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: Midland Downtown Farmers Market - Matthew Hanson Phone: 432-853-9338

E-mail: mdfmmarketdirector@yahoo.com

Applicant's Address: PO Box 7431 Midland, TX 79708

Property Owner: David Arrington Oil + Gas Phone: 432-685-6685

E-mail:

Owner's Address: PO Box 2071 Midland TX 79702

Other required information:

1. Street address and legal description of property: Lots 1, 2, 10, 11 + 12, Block 58, Original Town, City + County of Midland, TX

2. Zoning District: C-1, Commercial

3. Type of temporary use requested: Farmers Market - Temporary Use

4. Duration of temporary use: 1 year
   If more than One (1) day and is located within any residential district or is located within 1000 feet of any residential district, then a public hearing is required.

5. Proposed days and hours: Every Saturday, Year Round 8:30-~~12:30~~ 3pm

6. Will alcoholic beverages be sold? _____ Yes __X__ No

7. A detailed Site Plan is required (16 copies needed (FOLDED), plus digital - .jpg and .pdf). Show existing buildings, parking, access arrangements, surrounding streets, activity areas, areas of alcoholic beverage sales, proposed street closures, etc.
   Site Plan received: __X__ Yes _____ No

8. Are you requesting the temporary closure of any streets? _____ Yes ___X___ No

If yes, you must:

A. Obtain and complete the "**Special Event and Street Closure Application**", available in the Transportation Division office (5th Floor, City Hall).

B. Provide the City with a **general liability insurance certificate**, naming the **City** as an **Additional Insured**, in the amount of one million dollars ($1,000,000) for the term of the closure.

9. Other information: Number of security guards provided: ___n/a___
Number of restrooms provided: ___1, portable toilet___
Type of music (carnival, live, etc.): ___live Music___
Showmobile requested _____ Days and hours _____

10. A **$500.00 Clean-up Deposit** and a **$500.00 Damage Deposit** are required for all events. Checks need to be dated day of event. Inspection of site after the event for trash and damage is a City responsibility. The deposits, or a portion thereof, may be refunded following inspection.
Clean-up Deposit received: __ (Y) ✓ (N) Clean-up Deposit refunded: __ (Y) ____ (%) __ (N)
Damage Deposit received: __ (Y) ✓ (N) Damage Deposit refunded: __ (Y) ____ (%) __ (N)

11. A **$200 Application Review fee** is required. **Fee received:** _____ Yes ___✓___ No
$25.00 for each additional event date.

Owner or Operator (if other than Applicant) responsible for ensuring that the conditions of this permit will be observed:

Printed Name of Owner/Operator	Address	Zip	Phone
Matthew Hanson	PO Box 7431	79706	432.853.9338

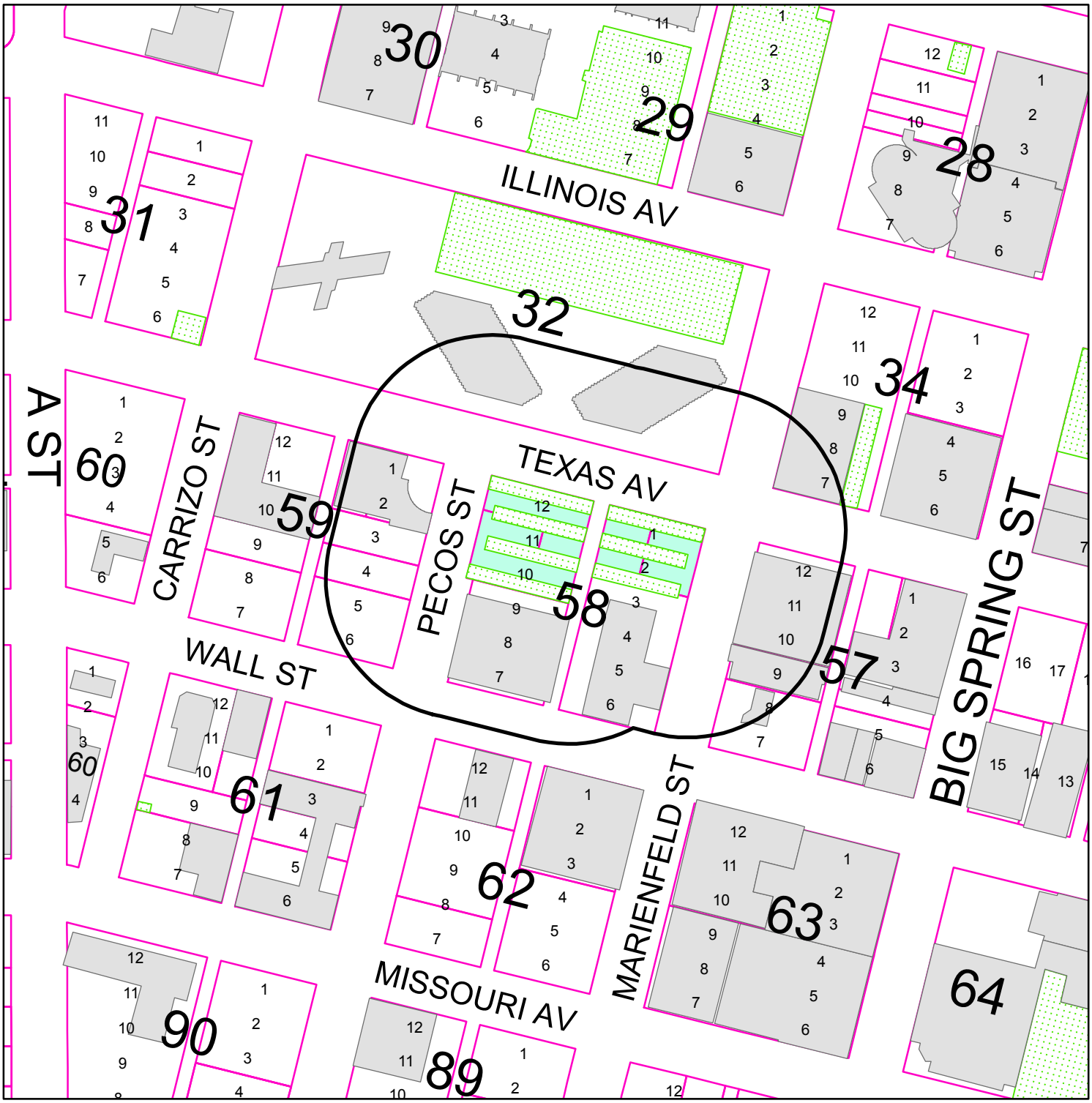
Signature of Owner/Operator _____ Date 7/29/13

Signature of Applicant _____ Date 7/29/13

Signature of Property Owner, if other than Applicant _____ Date 7/30/2013

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

FOR OFFICE USE ONLY
Received By: TRS Date: 7/29/2013
Assigned: MK
For: CC On: 8/27/13



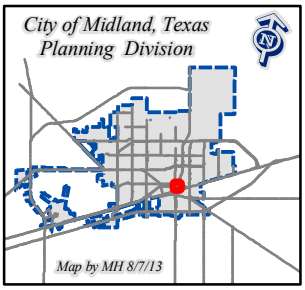
PROPERTY OWNER NOTIFICATION MAP

M - 13 - 018 **Scale: 1" = 200'**

Consider a request for a Temporary Land Use Permit for outdoor sales on Lots 1, 2, 10, 11 and 12, Block 58, Original Town, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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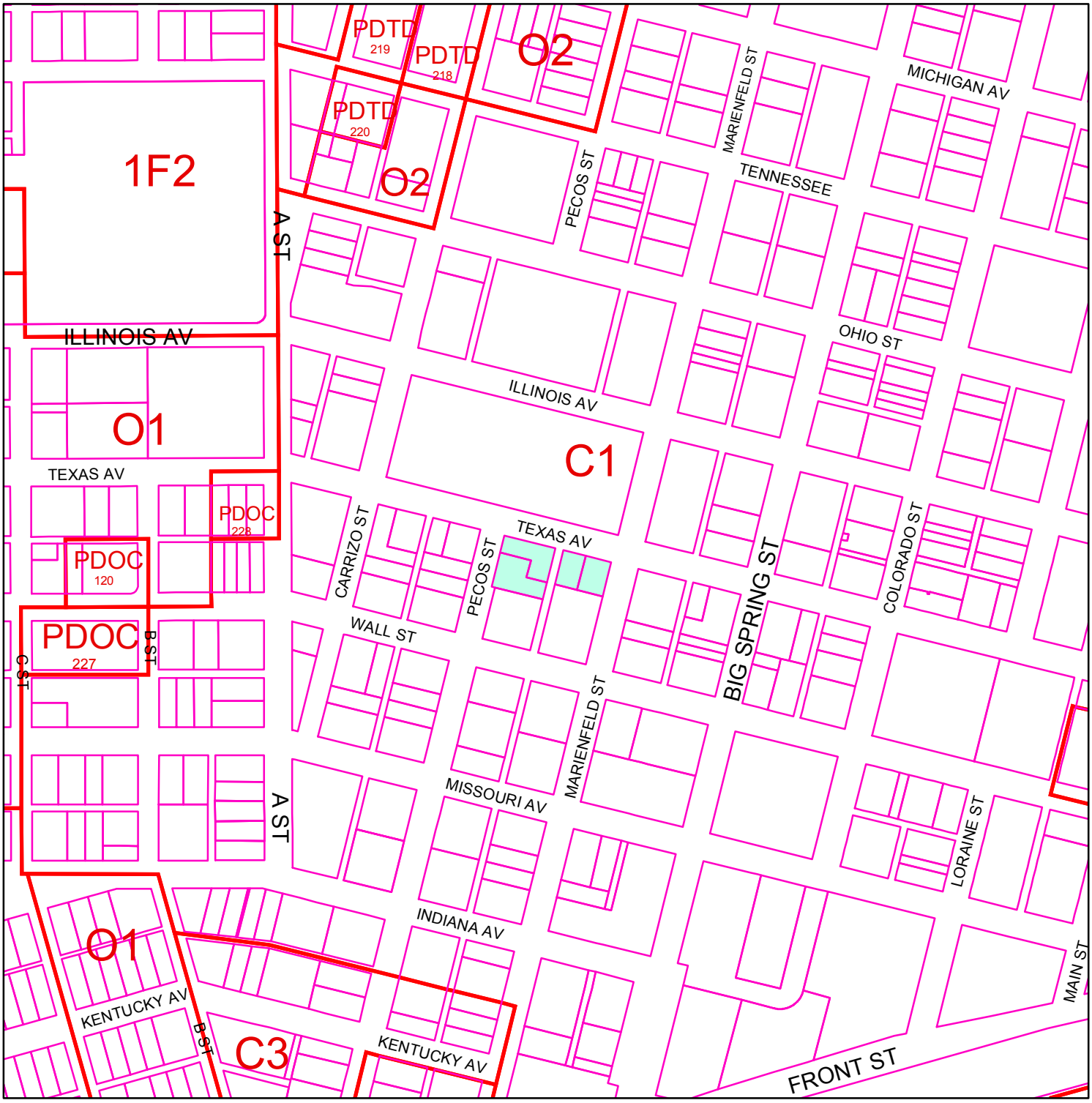


ZONING MAP

M - 13 - 018 **Scale: 1" = 400'**

Consider a request for a Temporary Land Use Permit for outdoor sales on Lots 1, 2, 10, 11 and 12, Block 58, Original Town, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

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

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **August 27, 2013**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Jim Compton, Acting Planning Division Manager**

SUBJECT: **Hold a public hearing at approximately 10:36 a.m. and consider an ordinance on a request by Timothy Rogers and Sandra Javelly 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 northeast corner of the intersection of W. Wall Street N. Pecos Street). - District – 3.**

Purpose:

Hold a public hearing at approximately 10:36 a.m. and consider an ordinance on a request by Timothy Rogers and Sandra Javelly for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

No City funds are required to process this request.

Discussion:

Timothy Rogers and Sandra Javelly are applying for a Specific Use Permit With Term for the sale of all alcoholic beverages for on-premises consumption for their café. Lori's Café will be replacing a previous restaurant at the WNB Tower on the northeast corner of the intersection of Wall Street and Pecos Street. This property is located within a large C-1, Central Area District, which currently includes about 15 Specific Use Permits for the on-premises consumption of alcoholic beverages. The applicants are requesting alcoholic beverage service hours Monday through Sunday from 10:00 a.m. to 9:00 p.m. Lori's Café will have a maximum area of 929 square feet with 390 square feet utilized to serve alcohol. Based off the 390 serviceable square feet, the Building Official has

determined a maximum seating capacity of 25 seats. The Planning and Zoning Commission voted unanimously for approval, and staff concurs, subject to the conditions listed in the attached ordinance proposal.

Attachments:

Application
Maps
August 5, 2013 Staff Report
Exhibit A (Site Plan)
Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS A 929 SQUARE FOOT PORTION OF LOTS 7-9, BLOCK 58, ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF WEST WALL STREET AND NORTH PECOS 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:

Lots 7-9, Block 58, Original Town, 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 serviceable space of the café shall be limited in area to 390 contiguous square feet.

B. That seats shall be limited to a maximum of 25.

C. That the days and hours of alcoholic beverage sales and consumption shall be limited to Monday through Sunday from 10:00 a.m. to 9:00 p.m.

D. That the sale and on-premise consumption of alcoholic beverages shall conform to all applicable laws established by the City of Midland and the State of Texas.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on

first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

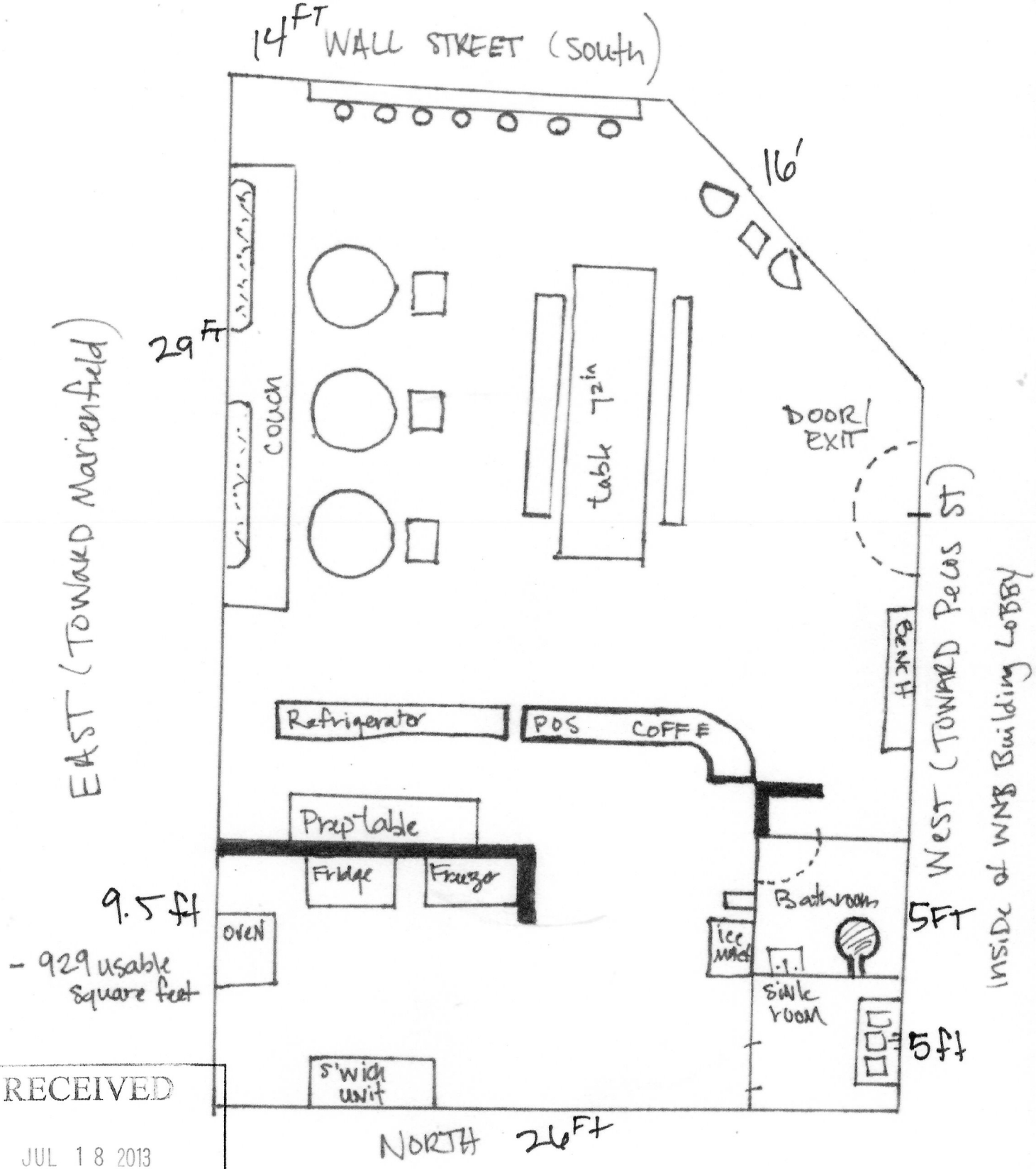
APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

_____

Keith Stretcher, City Attorney



RECEIVED
JUL 18 2013
CITY OF MIDLAND
PLANNING DIVISION OFFICE

EXHIBIT A

SITE PLAN

CASE NO. S-13-009

PLANNING AND ZONING COMMISSION

August 5, 2013

CASE: S-13-009.

REQUEST: Hold a public hearing and consider a request for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant.

APPLICANT: Timothy Rogers and Sandra Javelly.

OWNER: WNB REI LLC.

LEGAL DESCRIPTION: On a 929 square feet portion of Lots 7 thru 9, Block 58, Original Town, City and County of Midland, Texas.

LOCATION: Generally located on the northeast corner of the intersection of W. Wall Street N. Pecos Street.

CURRENT ZONING: C-1, Central Area District.

DETAILS OF REQUEST:

1. The applicants are requesting a Specific Use Permit for the sale of alcoholic beverages for on-premise consumption for their café. Lori's Café will be replacing a previous restaurant located within the WNB Tower north of Wall Street and east of Pecos Street. The applicants are requesting a maximum seating capacity of 30 seats, with alcoholic beverage service hours Monday through Sunday from 10:00 a.m. to 9:00 p.m.

SURROUNDING ZONING AND LAND USE:

2. This property is within a large C-1, Central Area District. The zoning districts to the north, west, south, and east are all in the same C-1 District. There are about 15 Specific Use Permits for the on-premise consumption of alcoholic beverages within this C-1 district, the closest ones being for Hot Shots, Lone Star Bar, and The Bar across Wall Street to the west.

ANALYSIS:

3. Lori's Cafe will have a maximum floor area of 929 square feet, with 390 square feet being utilized to serve alcohol. The Building Official has determined that seating capacity will be 25 seats based on the 390 serviceable square feet available. Staff has no objections to the requested hours of service Monday through Sunday 10:00 a.m. to 9:00 p.m.

STAFF RECOMMENDATION:

Staff recommends approval of the request for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, subject to the following conditions:

A. That the serviceable space of the café shall be limited to 390 square feet in contiguous area.

B. That the maximum number of seats shall be limited to 25 seats.

C. That alcoholic beverages may be sold only during the hours specified as follows:

Monday through Sunday 10:00 a.m. to 9:00 p.m.

D. That the sale of alcoholic beverages for on-premise consumption shall comply with state and local laws.

Ken Van Dyne
Acting Planning Division Manager
Department of Development Services

Madhuri Kulkarni, City Planner
Department of Development Services

Attachments:

Application
Maps
Exhibit A (Site Plan)

Case Number: S-13-009 ~~SB002~~

CITY OF MIDLAND
Planning Division

APPLICATION FOR A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALCOHOLIC BEVERAGES FOR ON-PREMISE CONSUMPTION

Timothy Rogers Loris Cafe LLC T 4322300225
Sandra Davelly dba taste @ 508 S 917 488 1119
Applicant Name Phone/e-mail

508 W Wall St Suite 150 Midland, TX 79701
Address Zip Code

WNB REI LLC 4326874414
Property Owner Name Phone/e-mail

400 W Illinois Ave STE 160 Midland TX 79701
Address Zip Code

Haley-Nwc Property mgmt 432 687 4414
Operator (if different from Applicant or Property Owner) Phone/e-mail

As above
Address Zip Code

Type of Business: Restaurant / cafe
(Restaurant, Bar, Lounge, Nightclub, etc.)

Street address and Legal Description of property on which SUP is desired (complete Lot, Block, and Subdivision, name, or if unplatted, attach a Metes and Bounds description with surveyor's seal.)
929 usable square feet. 390 square feet for seating

Current Zoning:

Max. Floor Area: 390 sq feet serviable space Seating Capacity: 30

Proposed hours and days of alcoholic beverage sales: 10AM - 9PM

Reason for request: Beer & Wine license for small cafe

REQUIRED SUBMITTALS

1. Application fee: **$300** ✓.

2. Site plan – 16 copies (FOLDED) ____.
3. On a CD in .pdf and .jpg digital format ____.

SIGNATURES:

Applicant: _____ Date: 7.12.2013

Property Owner: _____ Date: 7.12.2013

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

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Timothy S. Rogers who, being by me duly sworn, upon oath says: That (s)he is authorized by Scooter Brown, 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.

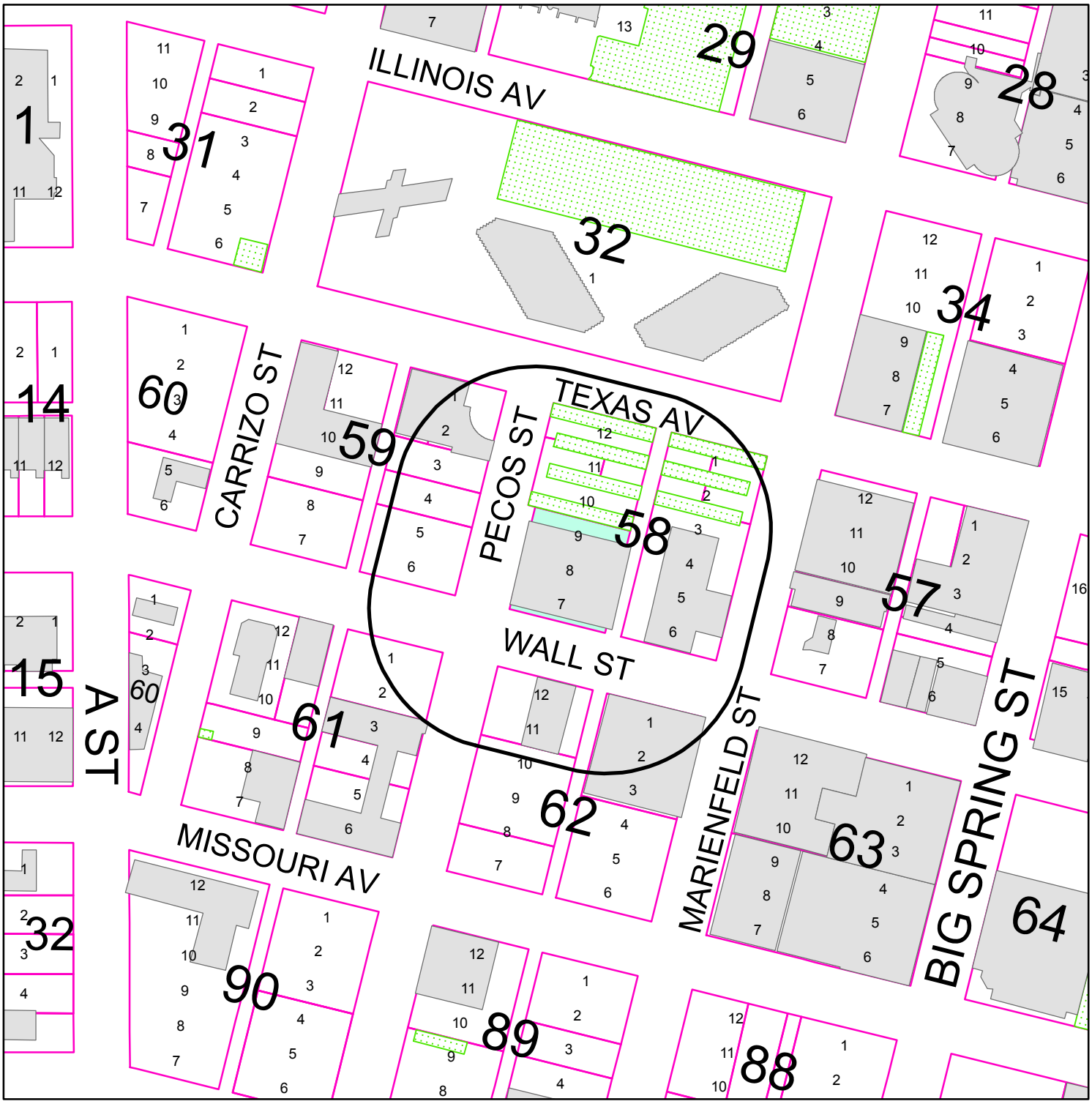
Subscribed and sworn to before me, this 12 day of July, 20 13, to certify which witness my hand and seal of office.

TAMMY BELMAN
Notary Public, State of Texas
My Commission Expires
July 05, 2016

Tammy Belman
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: RS	Date: 7/2/13
Assigned: MK	
For: P+Z	On: 8/5/13

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



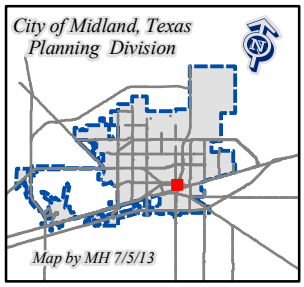
PROPERTY OWNER NOTIFICATION MAP

S - 13 - 009 **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 a 929 square feet portion of Lots 7 thru 9, Block 58, Original Town, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- ACCESSORY BLDGS



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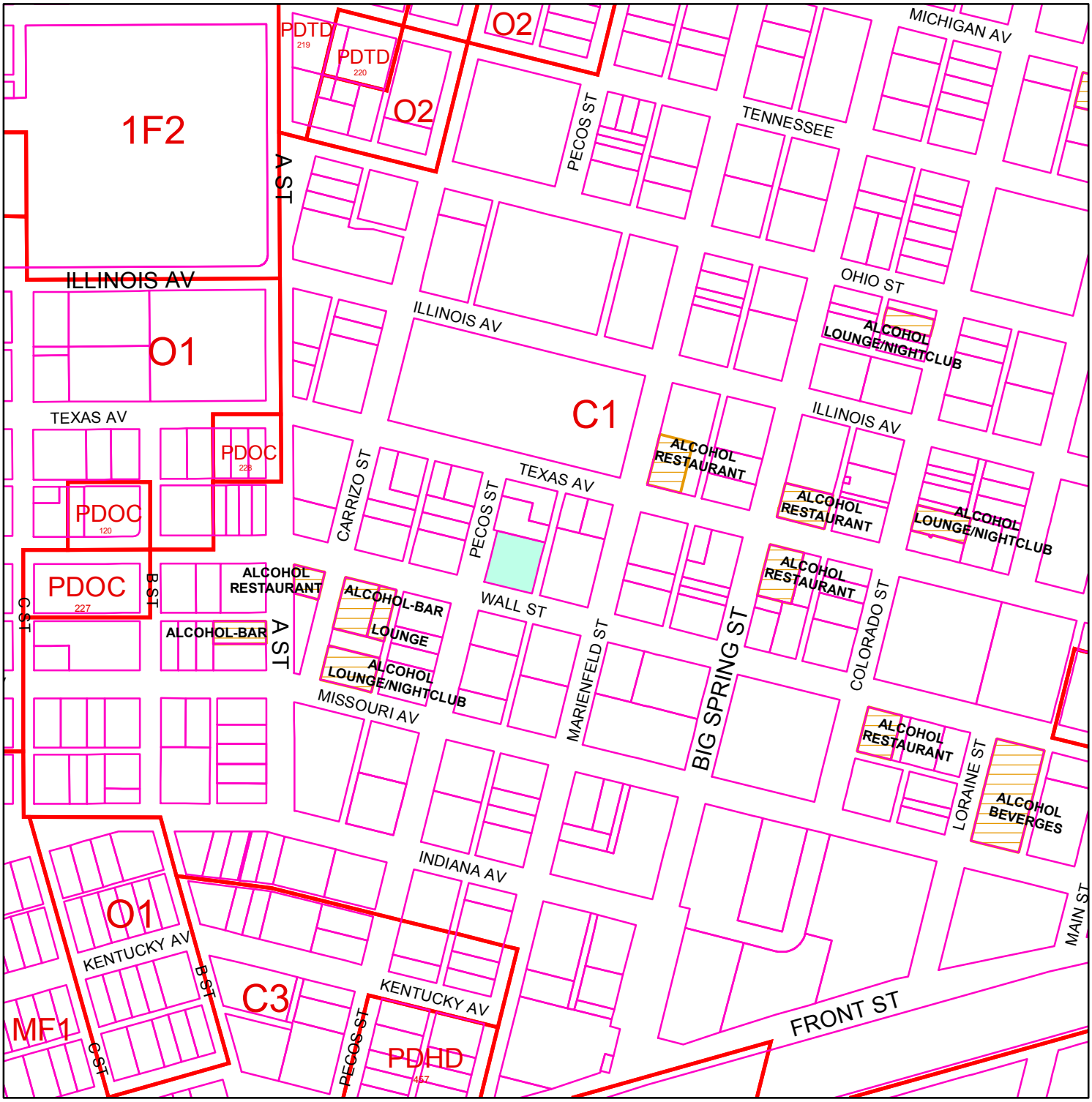

ZONING MAP

S - 13 - 009 **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 a 929 square feet portion of Lots 7 thru 9, Block 58, Original Town, City and County of Midland, Texas.

LEGEND

ZONING PARCELS SPECIFIC USE PERMITS

ZONING DISTRICTS:

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

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **August 27, 2013**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Jim Compton, Acting Planning Division Manager**

SUBJECT: **Hold a public hearing at approximately 10:39 a.m. and consider an ordinance on a request by Jay Stewart for a zone change from PD, Planned District for a Housing Development and LR-2, Local Retail District to PD, Planned District for a Housing Development on Lot 2 and Lot 4, Block 8, Westridge Park Addition, Section 23, City and County of Midland, Texas. (Generally located near the southwest corner of the intersection of Deauville Boulevard and Tradewinds Boulevard.)**

Purpose: Hold a public hearing at approximately 10:39 a.m. and consider an ordinance on a request by Jay Stewart for a zone change from PD, Planned District for a Housing Development and LR-2, Local Retail District to PD, Planned District for a Housing Development on Lot 2 and Lot 4, Block 8, Westridge Park Addition, Section 23, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

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

Discussion:
Lots 2 and 4 are presently zoned PD, Planned District for a Housing Development and LR – 2, Local Retail District; respectively the applicant has submitted plans to develop a 290 unit apartment complex on both lots with a density of 17.0 units/acre. The applicant is requesting to incorporate Lot 4 into the new Planned District, while maintaining the original density of the previously approved Planned District. The total acreage of the original site is 15.32 acres and total acreage incorporating Lot 4 would be 17.11 acres. The complex will consist of two and three story tenant buildings with entry and exit located off of Tradewinds Boulevard and Deauville Boulevard. The three story tenant buildings will be located near Deauville Boulevard and the two story tenant buildings will be located near the residential subdivision adjacent to the southern property boundary.

Attachments: Exhibits A, B, C, and D.

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 2 AND 4, BLOCK 8, WESTRIDGE PARK ADDITION, SECTION 23, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR HOUSING DEVELOPMENT, IN PART, AND LR-2, LOCAL RETAIL DISTRICT, IN PART, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED NEAR THE SOUTHWEST CORNER OF THE INTERSECTION OF DEAUVILLE BOULEVARD AND TRADEWINDS BOULEVARD); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of "Planned Districts" under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of 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 PD, Planned District for a Housing Development, in part, and LR-2, Local Retail District, in part, 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 2 and 4, Block 8, Westridge Park Addition, Section 23, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That the use and development of this property shall conform to the regulations of the MF-1, Multiple-Family Dwelling District.

2. The total density shall not exceed 17 dwelling units per acre or 290 total apartment units.

3. That the proposed development shall significantly conform to the conditions shown on the site plan and renderings, which are attached hereto as Exhibits "A", "B", "C" and "D".

4. That the maximum height of all buildings shall not exceed 50 feet.

5. That the proposed development shall meet all requirements of the Fire Marshal's Office.

6. That the proposed development shall meet all requirements of the Building Official.

7. That all driveways shall be in compliance with all applicable provisions of the Midland City Code.

8. That all signage shall be in compliance with all applicable provisions of the Midland City Code, and any requests varying from sign standards shall require an amended planned district.

9. That all landscaping shall be in compliance with all applicable City of Midland landscaping regulations.

10. That dumpster placement and utility screening shall be in compliance with all applicable provisions of the Midland City Code.

11. That City of Midland Ordinance No. 9087 is hereby amended by this ordinance.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that

covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ___day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member_____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member_____ , seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

_____
W. Wesley Perry, Mayor

ATTEST:

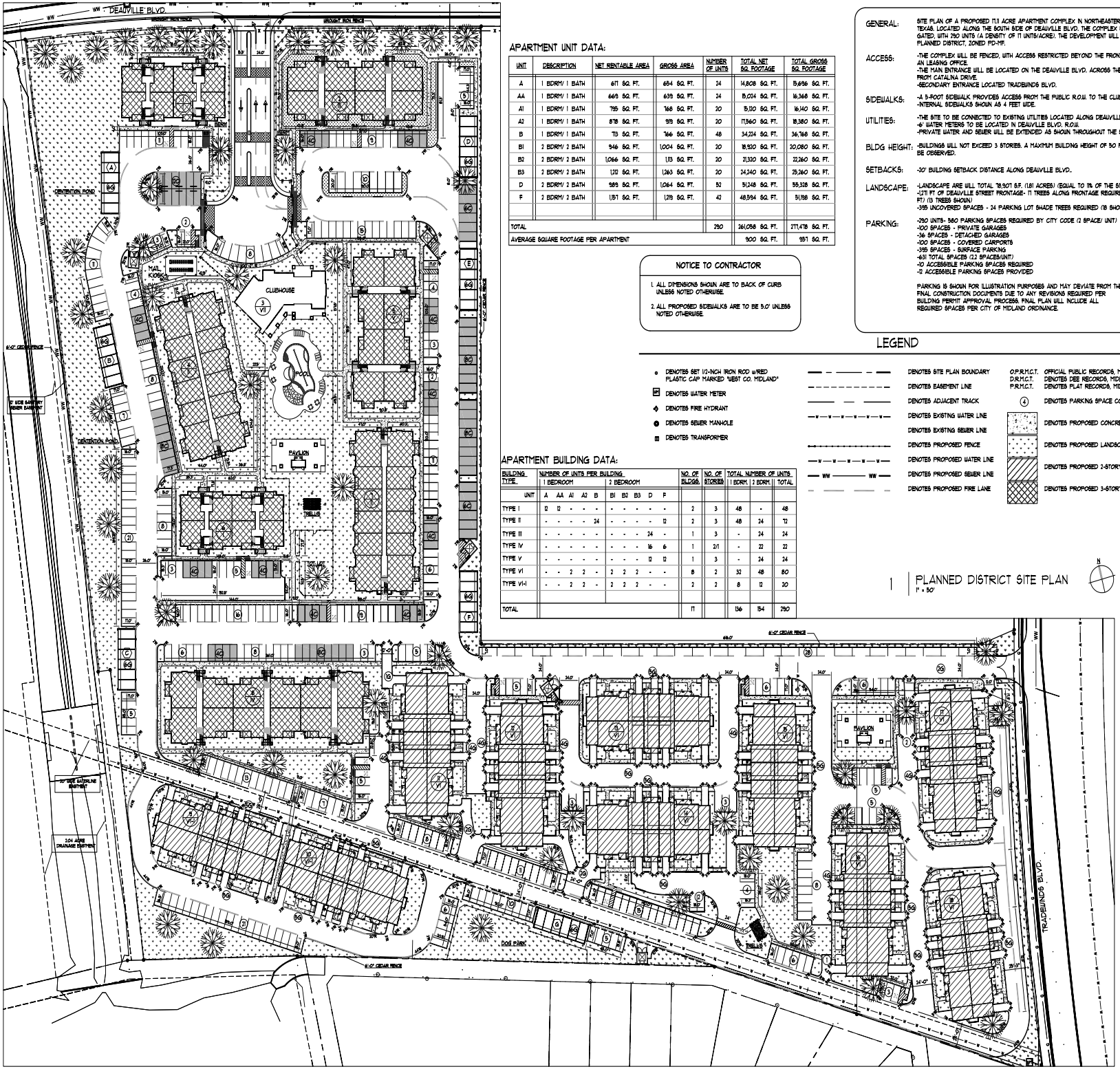
_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney



APARTMENT UNIT DATA:

UNIT	DESCRIPTION	NET RENTABLE AREA	GROSS AREA	NUMBER OF UNITS	TOTAL NET SQ. FOOTAGE	TOTAL GROSS SQ. FOOTAGE
A	1 BDRM/ 1 BATH	611 SQ. FT.	654 SQ. FT.	24	14,808 SQ. FT.	15,696 SQ. FT.
AA	1 BDRM/ 1 BATH	669 SQ. FT.	639 SQ. FT.	24	15,024 SQ. FT.	16,368 SQ. FT.
A1	1 BDRM/ 1 BATH	785 SQ. FT.	768 SQ. FT.	20	15,120 SQ. FT.	16,140 SQ. FT.
A2	1 BDRM/ 1 BATH	878 SQ. FT.	919 SQ. FT.	20	17,560 SQ. FT.	18,380 SQ. FT.
B	1 BDRM/ 1 BATH	713 SQ. FT.	766 SQ. FT.	48	34,224 SQ. FT.	36,768 SQ. FT.
B1	2 BDRM/ 2 BATH	946 SQ. FT.	1,004 SQ. FT.	20	18,920 SQ. FT.	20,080 SQ. FT.
B2	2 BDRM/ 2 BATH	1,066 SQ. FT.	1,113 SQ. FT.	20	21,320 SQ. FT.	22,260 SQ. FT.
B3	2 BDRM/ 2 BATH	1,212 SQ. FT.	1,263 SQ. FT.	20	24,240 SQ. FT.	25,260 SQ. FT.
D	2 BDRM/ 2 BATH	989 SQ. FT.	1,064 SQ. FT.	52	51,428 SQ. FT.	55,328 SQ. FT.
F	2 BDRM/ 2 BATH	1,157 SQ. FT.	1,219 SQ. FT.	42	48,594 SQ. FT.	51,198 SQ. FT.
TOTAL				290	261,058 SQ. FT.	271,478 SQ. FT.
AVERAGE SQUARE FOOTAGE PER APARTMENT					900 SQ. FT.	937 SQ. FT.

NOTICE TO CONTRACTOR

1. ALL DIMENSIONS SHOWN ARE TO BACK OF CURB UNLESS NOTED OTHERWISE.
2. ALL PROPOSED SIDEWALKS ARE TO BE 5.0' UNLESS NOTED OTHERWISE.

GENERAL: SITE PLAN OF A PROPOSED 7.11 ACRE APARTMENT COMPLEX IN NORTHEASTERN MIDLAND TEXAS, LOCATED ALONG THE SOUTH SIDE OF DEAUVILLE BLVD. THE COMPLEX WILL BE GATED, WITH 290 UNITS (A DENSITY OF 11 UNITS/ACRE). THE DEVELOPMENT WILL BE A PLANNED DISTRICT, ZONED PD-MF.

ACCESS:
-THE COMPLEX WILL BE FENCED, WITH ACCESS RESTRICTED BEYOND THE FRONT ENTRANCE AN LEASING OFFICE.
-THE MAIN ENTRANCE WILL BE LOCATED ON THE DEAUVILLE BLVD. ACROSS THE STREET FROM CATALINA DRIVE.
-SECONDARY ENTRANCE LOCATED TRADEWINDS BLVD.

SIDEWALKS:
-A 5-FOOT SIDEWALK PROVIDES ACCESS FROM THE PUBLIC R.O.W. TO THE CLUBHOUSE.
-INTERNAL SIDEWALKS SHOWN AS 4 FEET WIDE.

UTILITIES:
-THE SITE TO BE CONNECTED TO EXISTING UTILITIES LOCATED ALONG DEAUVILLE BLVD.
-6" WATER METERS TO BE LOCATED IN DEAUVILLE BLVD. R.O.W.
-PRIVATE WATER AND SEWER WILL BE EXTENDED AS SHOWN THROUGHOUT THE SITE.

BLDG HEIGHT: -BUILDINGS WILL NOT EXCEED 3 STORIES. A MAXIMUM BUILDING HEIGHT OF 50 FEET WILL BE OBSERVED.

SETBACKS: -20' BUILDING SETBACK DISTANCE ALONG DEAUVILLE BLVD..

LANDSCAPE:
-LANDSCAPE ARE WILL TOTAL "18,907 S.F. (1.81 ACRES) (EQUAL TO 1% OF THE SITE.)
-1,271 FT OF DEAUVILLE STREET FRONTAGE- 11 TREES ALONG FRONTAGE REQUIRED (1 TREE/30 FT) (13 TREES SHOWN)
-395 UNCOVERED SPACES - 24 PARKING LOT SHADE TREES REQUIRED (18 SHOWN)

PARKING:
-290 UNITS- 580 PARKING SPACES REQUIRED BY CITY CODE (2 SPACE/ UNIT)
-100 SPACES - PRIVATE GARAGES
-36 SPACES - DETACHED GARAGES
-200 SPACES - COVERED CARPORTS
-395 SPACES - SURFACE PARKING
-631 TOTAL SPACES (2.2 SPACES/UNIT)
-10 ACCESSIBLE PARKING SPACES REQUIRED
-12 ACCESSIBLE PARKING SPACES PROVIDED

PARKING IS SHOWN FOR ILLUSTRATION PURPOSES AND MAY DEVIATE FROM THE FINAL CONSTRUCTION DOCUMENTS DUE TO ANY REVISIONS REQUIRED PER BUILDING PERMIT APPROVAL PROCESS. FINAL PLAN WILL INCLUDE ALL REQUIRED SPACES PER CITY OF MIDLAND ORDINANCE.

LEGEND

- DENOTES SET 1/2-INCH IRON ROD w/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
- DENOTES WATER METER
- DENOTES FIRE HYDRANT
- DENOTES SEWER MANHOLE
- DENOTES TRANSFORMER

- DENOTES SITE PLAN BOUNDARY
- DENOTES EASEMENT LINE
- DENOTES ADJACENT TRACK
- DENOTES EXISTING WATER LINE
- DENOTES EXISTING SEWER LINE
- DENOTES PROPOSED FENCE
- DENOTES PROPOSED WATER LINE
- DENOTES PROPOSED SEWER LINE
- DENOTES PROPOSED FIRE LANE

O.P.R.M.C.T. OFFICIAL PUBLIC RECORDS, MIDLAND CO., TX
D.R.M.C.T. DENOTES DEE RECORDS, MIDLAND CO., TX
P.R.M.C.T. DENOTES PLAT RECORDS, MIDLAND CO., TX

- DENOTES PARKING SPACE COUNT
- DENOTES PROPOSED CONCRETE
- DENOTES PROPOSED LANDSCAPE
- DENOTES PROPOSED 2-STORY BUILDING
- DENOTES PROPOSED 3-STORY BUILDING

APARTMENT BUILDING DATA:

BUILDING TYPE	NUMBER OF UNITS PER BUILDING: 1 BEDROOM					2 BEDROOM					NO. OF BLDGS.	NO. OF STORIES	TOTAL NUMBER OF UNITS: 1 BDRM.	2 BDRM.	TOTAL
UNIT	A	AA	A1	A2	B	B1	B2	B3	D	F					
TYPE I	12	12	-	-	-	-	-	-	-	-	2	3	48	-	48
TYPE II	-	-	-	-	24	-	-	-	-	12	2	3	48	24	72
TYPE III	-	-	-	-	-	-	-	-	24	-	1	3	-	24	24
TYPE IV	-	-	-	-	-	-	-	-	16	6	1	2/1	-	22	22
TYPE V	-	-	-	-	-	-	-	-	12	12	1	3	-	24	24
TYPE VI	-	-	2	2	-	2	2	2	-	-	8	2	32	48	80
TYPE VI-1	-	-	2	2	-	2	2	2	-	-	2	2	8	12	20
TOTAL											17		136	154	290

1 PLANNED DISTRICT SITE PLAN
1" = 50'

TED TROUT ARCHITECT AND ASSOCIATES, LTD.
Architecture - Planning - Interior Design
6363 Woodway Suite 500
Houston, Texas 77057

Copyright © 2013 TED TROUT ARCHITECT AND ASSOCIATES, LTD. drawings and specifications or instruments of service and shall remain the property of the architect. They are not to be used on other projects or extensions to this project except by agreement in writing and with appropriate compensation to the architect.

REGISTERED ARCHITECT TED A. TROUT 7758 STATE OF TEXAS

05.10.13

CLIENT:

PARKCREST BUILDERS
800 GESSNER DRIVE
SUITE 350
HOUSTON, TX 77024

PROJECT NAME:

THE RESIDENCE AT MIDLAND

PROJECT LOCATION:

MIDLAND, TX

DATE	ISSUE
06.09.2011	PRELIMINARY SITE
06.24.2011	BLDG PLAN CHANGES
01.07.2011	PRELIM. PACKAGE
09.30.2011	ELEVATION REVISIONS
04.10.2013	PERMIT SUBMITTAL

DATE	MAY 10, 2013
SCALE	1" = 50'-0"
PROJECT NUMBER	1119
DRAWN BY	HM
SHEET TITLE	PLANNED DISTRICT SITE PLAN
SHEET NUMBER	1 of 1

RECEIVED
JUL 5 2013
CITY OF MIDLAND
PLANNING DIVISION OFFICE

ELEVATION - TYPICAL 2/1 STORY BUILDING

KEY NOTES

1. COMPOSITION SHINGLE ROOF (TIMBERLINE NATURAL SHADOW/ SOVEREIGN)
2. 1x8 KDAT FASCIA (SW 7510 CHATEAU BROWN/ SHERWIN WILLIAMS)
3. 18" DIA. LOUVER (LOUVER WITH FLAT TRIM & KEYSTONE, STAINABLE/ FYPON)
5. PAINTED CEMENTITIOUS FIBER SIDING 8" LAP (ARCTIC WHITE/ JAMES HARDIE)
5A. PAINTED CEMENTITIOUS FIBER SIDING 8" LAP (WOODLAND CREAM/ JAMES HARDIE)
5B. PAINTED CEMENTITIOUS FIBER TRIM (EXTRA WHITE SW 7006/ JAMES HARDIE-SHERWIN WILLIAMS)
6. STUCCO FINISHED (DEER VALLEY/ SHERWIN WILLIAMS)
7. 42" HIGH METAL RAILING (QUARTERSAWN OAK SW 2836/ SHERWIN WILLIAMS)
8. PRE-FAB SHUTTERS (QUARTERSAWN OAK SW 2836/ SHERWIN WILLIAMS)
9. STONE (TEXAS STONE)
10. STONE TRIM & ROWLOCK (REDSTONE K/ ACME BRICK)
11. GUTTER - TYP. (QUARTERSAWN OAK SW 2836/ SHERWIN WILLIAMS)
12. DOWNSPOUT (QUARTERSAWN OAK SW 2836/ SHERWIN WILLIAMS)
14. STANDING SEAM METAL ROOFING (SILVER)
15. STANDING SEAM METAL AWNING (SILVER) W/ WOOD FRAMING (SW 7510 CHATEAU BROWN/ SHERWIN WILLIAMS)
16. STUCCO TRIM (DEER VALLEY SW 7720/ SHERWIN WILLIAMS)

THE RESIDENCE at MIDLAND

MIDLAND, TEXAS

EXHIBIT B

TED TROUT
ARCHITECT
AND ASSOCIATES, LTD.
Architecture - Planning - Interior Design
6363 Woodway Suite 500
Houston, Texas 77057

CASE NO. Z-13-020

ELEVATION-TYPICAL 3-STOREY BUILDING

KEY NOTES

1. COMPOSITION SHINGLE ROOF (TIMBERLINE NATURAL SHADOW/ SOVEREIGN)
2. 1x8 KDAT FASCIA (SW 7510 CHATEAU BROWN/ SHERWIN WILLIAMS)
3. 18" DIA. LOUVER (LOUVER WITH FLAT TRIM & KEYSTONE, STAINABLE/ FYPON)
5. PAINTED CEMENTITIOUS FIBER SIDING 8" LAP (ARCTIC WHITE/ JAMES HARDIE)
5A. PAINTED CEMENTITIOUS FIBER SIDING 8" LAP (WOODLAND CREAM/ JAMES HARDIE)
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6. STUCCO FINISHED (DEER VALLEY/ SHERWIN WILLIAMS)
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8. PRE-FAB SHUTTERS (QUARTERSAWN OAK SW 2836/ SHERWIN WILLIAMS)
9. STONE (TEXAS STONE)
10. STONE TRIM & ROWLOCK (REDSTONE K/ ACME BRICK)
11. GUTTER - TYP. (QUARTERSAWN OAK SW 2836/ SHERWIN WILLIAMS)
12. DOWNSPOUT (QUARTERSAWN OAK SW 2836/ SHERWIN WILLIAMS)
14. STANDING SEAM METAL ROOFING (SILVER)
15. STANDING SEAM METAL AWNING (SILVER) W/ WOOD FRAMING (SW 7510 CHATEAU BROWN/ SHERWIN WILLIAMS)
16. STUCCO TRIM (DEER VALLEY SW 7720/ SHERWIN WILLIAMS)

THE RESIDENCE at MIDLAND

MIDLAND, TEXAS

TED TROUT
ARCHITECT
AND ASSOCIATES, LTD.
Architecture · Planning · Interior Design
6363 Woodway Suite 500
Houston, Texas 77057

ELEVATION- CLUBHOUSE BUILDING

KEY NOTES

1. COMPOSITION SHINGLE ROOF (TIMBERLINE NATURAL SHADOW/ SOVEREIGN)
2. 1x8 KDAT FASCIA (SW 7510 CHATEAU BROWN/ SHERWIN WILLIAMS)
3. STONE (TEXAS STONE)
4. GUTTER - TYP. (QUARTERSAWN OAK SW 2836/ SHERWIN WILLIAMS)
5. DOWNSPOUT (QUARTERSAWN OAK SW 2836/ SHERWIN WILLIAMS)
6. KDAT WOOD GIRDER & TRUSS (QUARTERSAWN OAK SW 2836/ SHERWIN WILLIAMS)

THE RESIDENCE at MIDLAND

MIDLAND, TEXAS

TED TROUT
ARCHITECT
AND ASSOCIATES, LTD.
Architecture · Planning · Interior Design
6363 Woodway Suite 500
Houston, Texas 77057

PLANNING AND ZONING COMMISSION

August 5, 2013

CASE: Z-13-020

REQUEST: Hold a public hearing and consider a request for a zone change from PD, Planned District for a Housing Development and LR-2, Local Retail District to PD, Planned District for a Housing Development.

APPLICANT Jay H. Stewart.

OWNER: Residence at Midland, LLC.

REPRESENTATIVE: David P. Smith

LEGAL DESCRIPTION: Lot 2 and Lot 4, Block 8, Westridge Park Addition, Section 23, City and County of Midland, Texas.

LOCATION: Generally located near the southwest corner of the intersection of Deauville Boulevard and Tradewinds Boulevard.

CURRENT ZONING: PD, Planned District for a Housing Development and LR – 2, Local Retail District.

DETAILS OF REQUEST:

1. This property is presently zoned PD, Planned District for a Housing Development and LR – 2, Local Retail District. The applicant has submitted plans to develop a 290 unit apartment complex, with a density of 17.0 units/acre. The applicant is requesting to incorporate the additional lot zoned as LR – 2 into the Planned District to provide additional units.

SURROUNDING ZONING AND LAND USE:

2. The property is located at the southwest corner of the intersection of Tradewinds Boulevard and Deauville Boulevard. To the north of this property are the SpringHill Suites hotel and the restaurant, Osaka's. The property is among 14 other Planned Districts for Shopping Centers, with LR-2 as the underling zoning for those districts. Immediately west of this property are two Planned Districts for Office Centers, one of which will be the future site of the Chevron's new campus. Immediately south of this property is a Planned District for a Housing Development with an underlying zoning of 1F – 3, Single Family Dwelling District.

ANALYSIS:

3. The existing Planned District for a Housing Development this property is presently zoned for contains an underlying zoning of MF – 1, Multi-Family Dwelling District with a limit of 17.0 units/acre. The applicant is seeking to include the 1.8 acre property presently zoned as LR – 2 into this request, and the density will for the planned site will remain at 17.0 units/acre. The complex will have a total of 290 units, with a maximum building height of 50 feet. The building setback from Deauville Boulevard is 20 feet, while the complex will have 25 feet of setback along Tradewinds Boulevard. Staff finds the request to incorporate the additional property into the Planned District a reasonable request given that the density of units shall remain the same.

SITE PLAN:

4. Exhibit A is the site plan providing the overview for the project. The site plan indicates a total of 18 tenant buildings, with a proposed maximum height of 50 feet. The tenant buildings to the north will be three stories, while the tenant buildings to the south will be two stories. The property will have its main entrance off of Deauville Boulevard, along with another entry and exit off of Tradewinds Boulevard.

5. Exhibits B and C represent the elevation views of the proposed two and three story tenant buildings. The exterior of the buildings are shown to be composed of composite shingle roofs, hardi-plank siding, stone masonry, and stucco. Exhibit D represents the front elevation view of the proposed clubhouse which is also composed of a composition shingle roof, and stone masonry.

PARKING:

6. The complex is required to provide a minimum of two parking spaces per dwelling unit. The Exhibit A site plan indicates that the proposed site will provide a total of 580 spaces, including private garages, detached garages, covered carports, and surface parking.

STAFF RECOMMENDATION:

A. That the use and development of this property shall conform to the regulations of the MF – 1, Multi-Family Dwelling District, except where expressly permitted otherwise.

B. The total density shall not exceed 17 dwelling units/acre or 290 total apartment units.

C. That the proposed development shall significantly conform to the conditions shown on the attached site plan, and renderings; Exhibits A, B, C, and D.

D. That the maximum height of all buildings shall not exceed 50 feet.

E. That the proposed development meets all requirements per the Fire Marshal's Office.

F. That the proposed development meets all requirements per the Building Official's Office.

G. That all driveways are in compliance with Midland City Code.

H. That all signage shall be in compliance with the Midland City Sign Code.

I. That landscaping shall be in compliance with the City of Midland Landscape Ordinance.

J. All other signs on this lot shall conform to the Midland City Sign Code.

K. Dumpster placement and utility screening shall conform to the Midland City Code.

L. That Ordinance 9087 is hereby amended.

Ken VanDyne
Acting Planning Division Manager
Department of Development Services

Martin Siwek, City Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A, B, C, and D

Case Number: Z-13-020

CITY OF MIDLAND
Planning Division

APPLICATION TO AMEND A PLANNED DISTRICT

Applicant: Jay H. Stewart

Address: Parkcrest Builders, 800 Gessner, Suite 350 713-266-0414 / jay@parkcrestbuilders.com

Street Address (Phone/e-mail)

Houston TX 77024

City State Zip Code

Property Owner: Residence at Midland, LLC, SBC, LP

Address: Parkcrest Builders, 800 Gessner, Suite 350 713-266-0414 / jay@parkcrestbuilders.com

Street Address (Phone/e-mail)

Houston TX 77024

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:

Lots 2 & 4, Block 8, Westridge Park Addition, Section 23, as recorded in Cabinet ' I ', Page 135, P.R.M.C.T.

Current PD Classification: PD-HD (Lot 2), LR-2 (Lot 4)

Requested PD Classification: PD-HD

(List by tracts if more than one zoning district is requested)

Reason for amendment request: To construct a multiple-family housing development on the subject property

Describe how conditions affecting the property have changed since it was designated its present zone: No changes have occurred that affect the property since present zoning designation in November 2012.

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): Doug Peterson 3BC, LP Date: 6/24/13

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

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared David P. Smith who, being by me duly sworn, upon oath says: That (s)he is authorized by Residence at Midland, LLC, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

David P. Smith
Authorized Agent (*signature*)

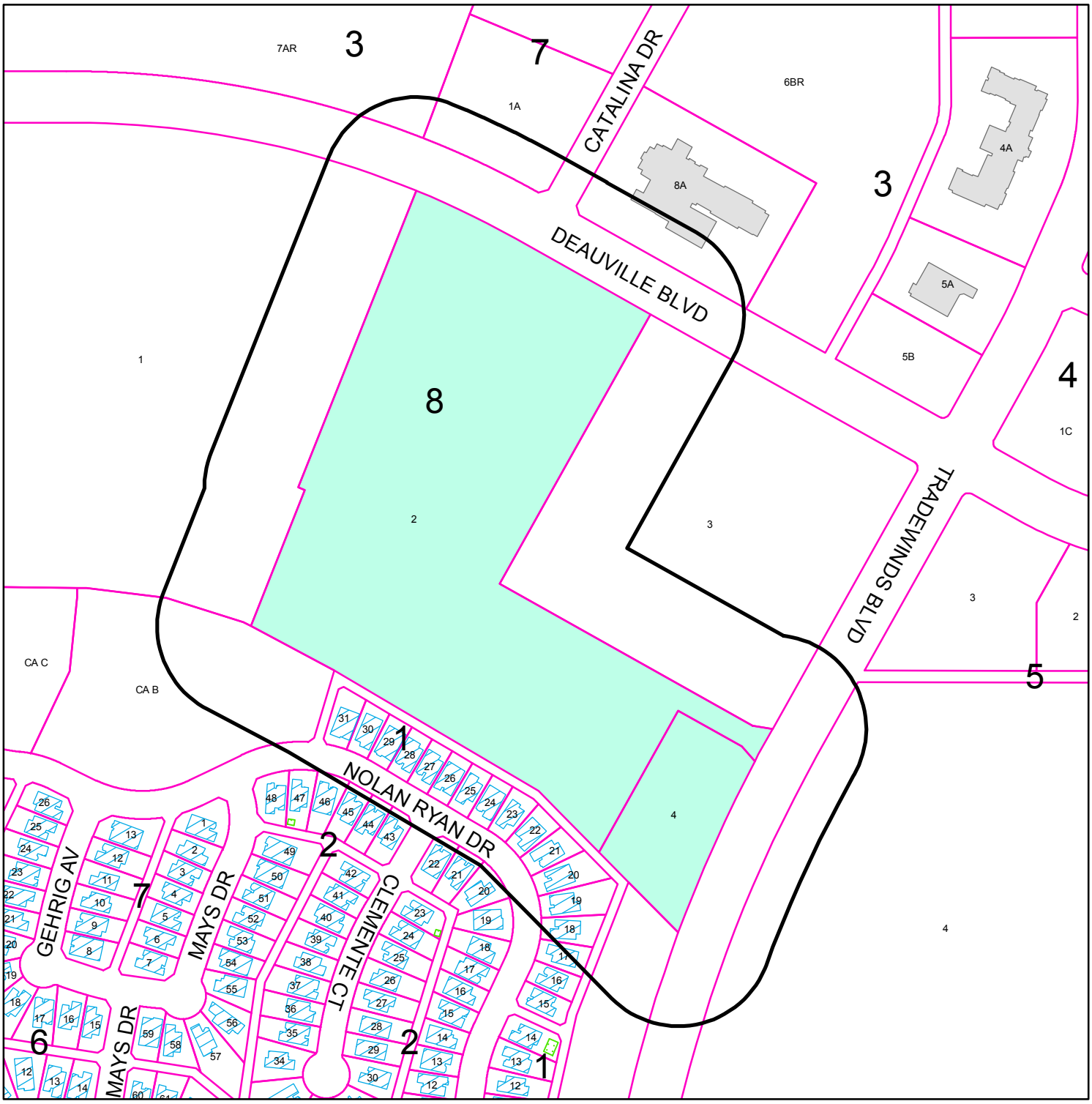
Subscribed and sworn to before me, this 7th day of May, 20 13, to certify which witness my hand and seal of office.

Terri Castro
NOTARY PUBLIC, ~~MIDLAND~~ McLennan COUNTY, TEXAS

TERRI CASTRO
Notary Public, State of Texas
My Commission Expires
March 05, 2016

FOR OFFICE USE ONLY
Rec'd By: RS Date: 5/10/13
Assigned: MS
For: P+Z On: 8/5/13

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



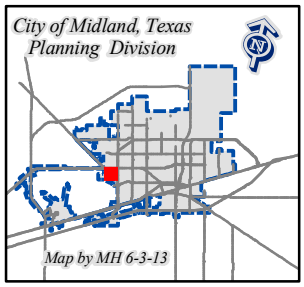
PROPERTY OWNER NOTIFICATION MAP

Z - 13 - 020 **Scale: 1" = 300'**

Consider a request for a zone change from PD, Planned District for a Housing Development on Lot 2 and from LR-2, Local Retail District, on Lot 4, to PD, Planned District for a Housing Development, all out of Block 8, Westridge Park Addition, Section 23; 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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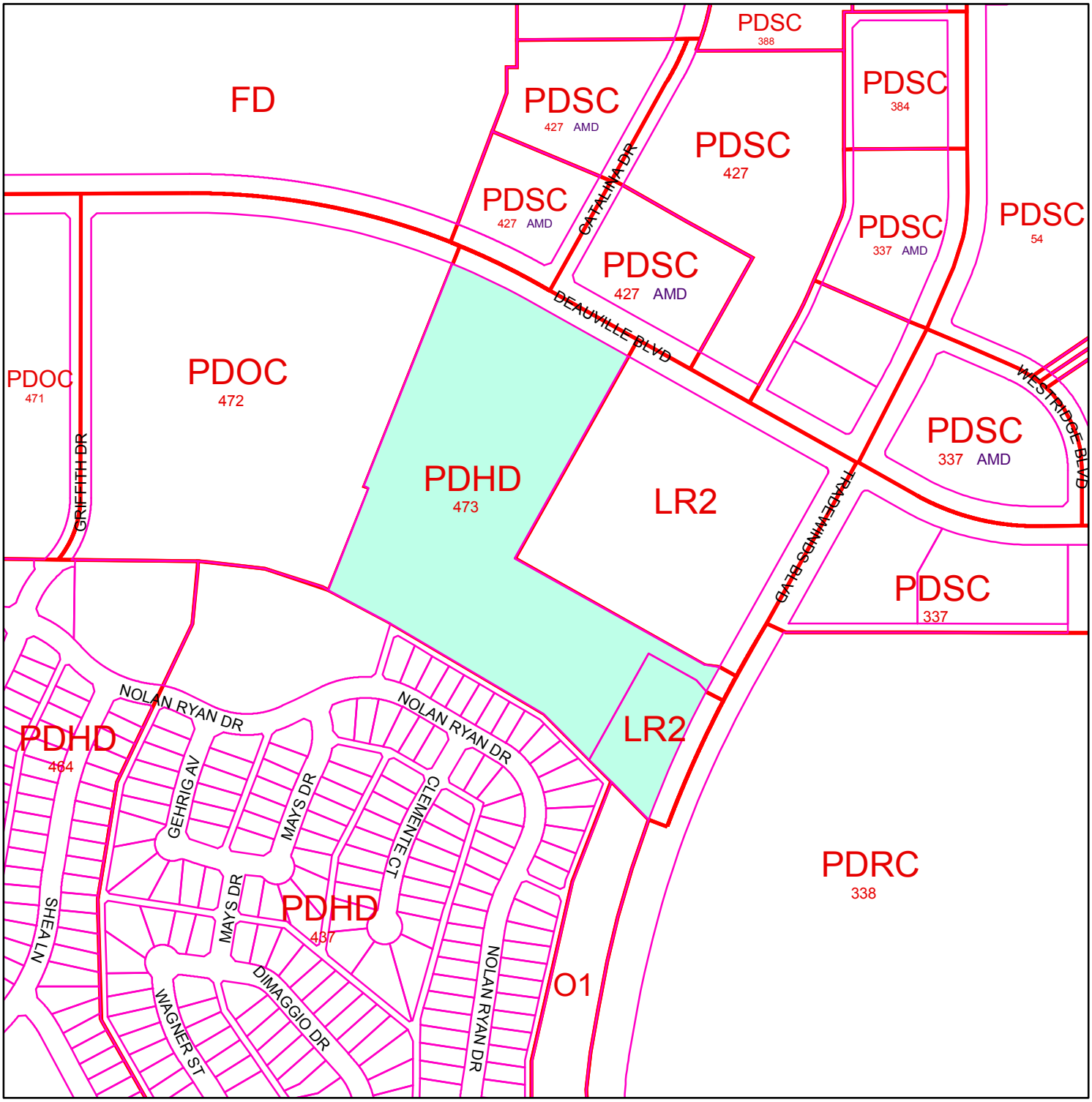

ZONING MAP

Z - 13 - 020 **Scale: 1" = 400'**

Consider a request for a zone change from PD, Planned District for a Housing Development on Lot 2 and from LR-2, Local Retail District, on Lot 4, to PD, Planned District for a Housing Development, all out of Block 8, Westridge Park Addition, Section 23; City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

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

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **August 27, 2013**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Ron Jenkins, Oil & Gas Compliance Coordinator**

SUBJECT: **Hold a public hearing at approximately 10:42 a.m. regarding a proposed oil and gas permit to Endeavor Energy Resources, L.P. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Chaps #4) located 330 feet from the north line and 1,831 feet from the west line located in Section 9, Block X, H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the north side of the Passage Way, approximately 1,800 feet east of north of N. Midkiff Road-District 1) This is a public hearing only. No further action will be taken.**

Purpose:
At approximately 10:42 a.m. hold a public hearing on a request from Endeavor Energy Resources, L.P. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Chaps #4) located 330 feet from the north line and 1,831 feet from the west line located in Section 9, Block X, H.P. Hilliard Survey, City and County of Midland, Texas. This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period and at a regularly scheduled meeting. No letters of objection received.

Recommended City Council Action

☐ Approve ☐ Deny ☒ Direction/Informational

Fiscal Impact:

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

Discussion:
The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval of the application to include an additional letter for the notification, the addition of a scale to a map and correction of the language in the emergency action plan. Endeavor Energy Resources has addressed the recommendations and updated the application

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

0-13-014

MIDLAND
CITY OF MIDLAND

RECEIVED
JUN 6 2013
CITY OF MIDLAND
PLANNING DIVISION OFFICE

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
June 5, 2013	Endeavor Energy Resources, LP	110 N. Marienfeld, Suite 200 Midland, TX 79701

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. 432-687-1575
Michael A. Short General Counsel, Vice President, Land	110 N. Marienfeld St., Ste. 200 Midland, TX 79701	Rep. Fax 432-682-3088

Permit Compliance Contact (Choose 1): Option A: 24/7 Answering Services -No. 1 (Tele.): No. 2 (Tele.):
Option B: Company Compliance Representative (Name, Address, Local Telephone):
Alin Richardson
3345 Acapulco Road
Midland, Texas 79705
432-664-1587
See attached statements

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):
Val Joe Walker, Safety Manager for Endeavor Energy Resources, LP: 432-262-4299 or 432-631-8968
Midland Police Department: 911 or 432-685-7110
Midland Fire Department: 911
Ambulance: 911
Paramedics: 911

Other Permitted Wells in City *(ATTACH EXHIBIT B* [see § J(26)]). See attached

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):
See attached – List of Names and Addresses of Mineral Estate Lessors and Supplemental Drilling and Division Order Title Opinion dated July 10, 2012 by Robert A. Spears at Lynch, Chappell & Alsup

***ATTACHED AS EXHIBIT C* is (a *Title Opinion by , a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from , a Certified Petroleum Landman/an opinion letter from , a licensed Texas Attorney)* indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].** See attached

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):
Pasture and residential
See attached a list of surface owners and their respective addresses.

***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)].** See attached

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

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

IV. Well & Operations Information

Proposed Well Name: Chaps No. 4
***ATTACHED IN EXHIBIT G* -Proposed Hole Size, Casing Program and Cementing Program [See § J(11) and § L(4)]:**
See attached

Legal Description of Proposed Well Site
330' FNL & 1831' FWL
Northeast Quarter of the Northwest Quarter (NE/4 of NW/4) Section 9, Block X, H. P. Hilliard Survey, Midland County, Texas

***ATTACHED AS EXHIBIT G* is the Location Site Plan [See § J(9)]. *ATTACHED AS EXHIBIT H* is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)]. *ATTACHED AS EXHIBIT I* is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments *(also file copy of W-1 with City Secretary before commencement of drilling operations).* [See § J(16) and (20)]. *ATTACHED AS EXHIBIT J* is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)]. *ATTACHED AS EXHIBIT K (if applicable)* is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)]. *ATTACHED AS EXHIBIT L* is the Fencing and Irrigation Plan. [See § J(30)]. *ATTACHED AS EXHIBIT M* is the Road Repair Agreement and *Letter of Credit/Certificate of Deposit/Surety Bond* in the amount of at least $75,000. *Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable):* Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary $75,000 *letter of credit/certificate of deposit/surety bond* in conjunction with this request. [See § J(31)]. *ATTACHED AS EXHIBIT N* is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)]. See attached**

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

Electricity
TXU: 1-800-233-2133

Description of water source to be used during Drilling:

Water arrangements have been agreed to with surface owner from water well located to the west of the location

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

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

V. Additional Required Exhibits

***ATTACHED AS EXHIBIT P* is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)]. *ATTACHED AS EXHIBIT Q* are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)]. *ATTACHED AS EXHIBIT R* is the required Insurance Certificate. [See § J(19) and § K(3)]. *ATTACHED AS EXHIBIT S (if applicable)* is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)]. *ATTACHED AS EXHIBIT T* is Applicant's Emergency Action Response Plan. [See § J(22)]. *ATTACHED AS EXHIBIT U* is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].**

[SIGNATURE PAGE FOLLOWS]

1. COMPLIANCE REPRESENTATIVES

STATEMENT

I, Alin Richardson, whose address is 3345 Acapulco Road, Midland, Texas 79705, and whose telephone number is 432-664-1587, hereby understand and agree to be responsible for ensuring that I will comply with the conditions of the Oil and Gas Well Permit issued by the City of Midland, along with applicable laws, regulations and ordinances on the Chaps "2" well located in the City of Midland, Midland, Texas. In the event that I am relieved of my responsibilities, I will provide a replacement name, local address and local telephone number of a responsible replacement.

Alin Richardson

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This instrument was acknowledged before me on this 10th day of January, 2011 by Alin Richardson.

Nettie Lennox Anderson
Notary Public
STATE OF TEXAS
My Comm. Exp. 07/05/2011

Notary Public, State of Texas

STATEMENT

I, Kelvin Fisher, whose address is 5427 Basswood Circle, Midland, Texas 79707, and whose telephone number is 432-634-5621, hereby understand and agree to be responsible for ensuring that I will comply with the conditions of the Oil and Gas Well Permit issued by the City of Midland, along with applicable laws, regulations and ordinances on the Chaps "2" well located in the City of Midland, Midland, Texas. In the event that I am relieved of my responsibilities, I will provide a replacement name, local address and local telephone number of a responsible replacement.

Kelvin Fisher
DRILLING MANAGER

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This instrument was acknowledged before me on this 10th day of January, 2011 by Kelvin Fisher.

Nettie Lennox Anderson
Notary Public
STATE OF TEXAS
My Comm. Exp. 07/05/2011

Notary Public, State of Texas

STATEMENT

I, Rodney Foster, whose address is 3116 Humble, Midland, Texas 79705, and whose telephone number is 432-664-0641, hereby understand and agree to be responsible for ensuring that I will comply with the conditions of the Oil and Gas Well Permit issued by the City of Midland, along with applicable laws, regulations and ordinances on the Chaps "2" well located in the City of Midland, Midland, Texas. In the event that I am relieved of my responsibilities, I will provide a replacement name, local address and local telephone number of a responsible replacement.

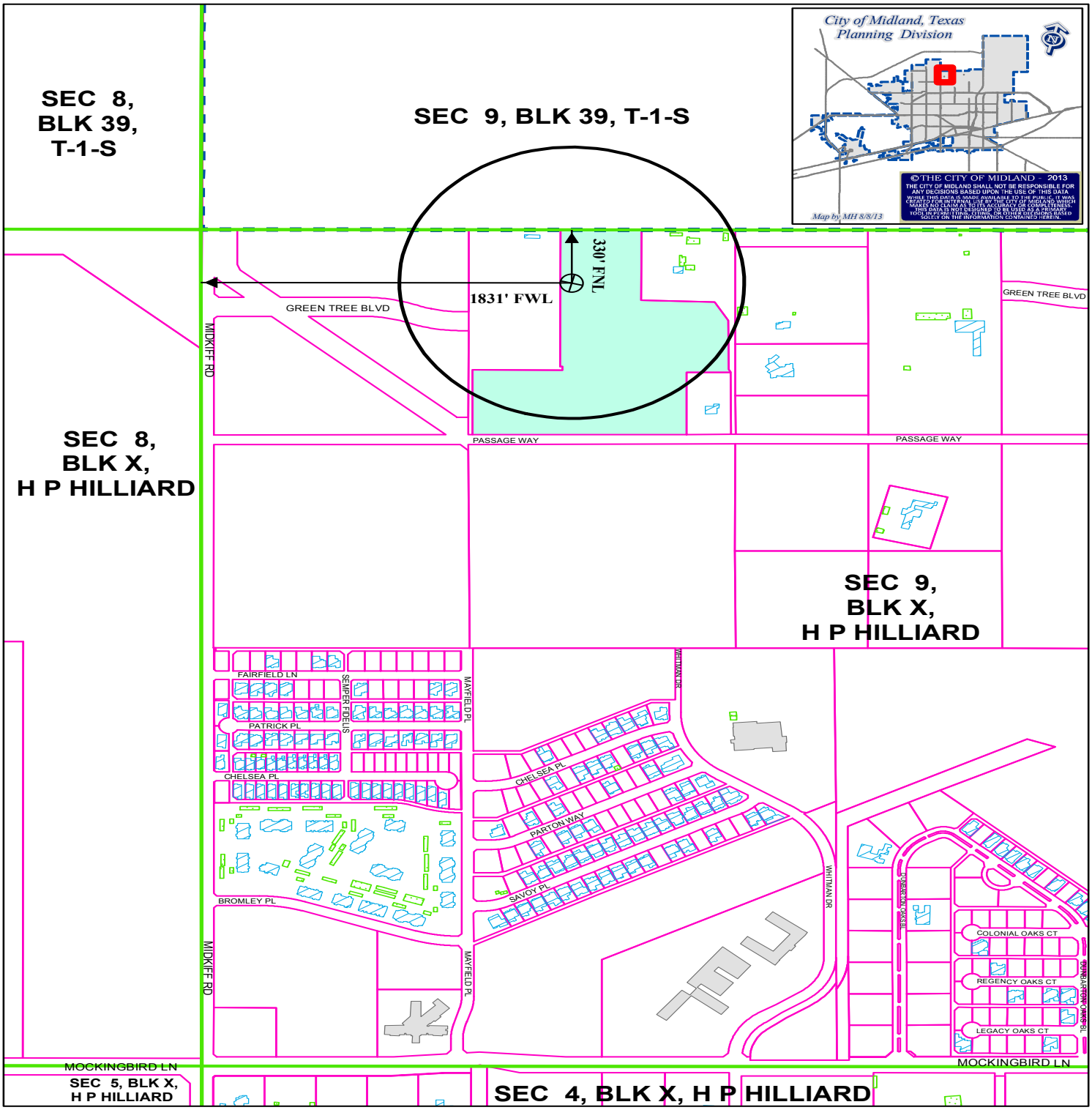
Rodney Foster
Field Land Manager

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

This instrument was acknowledged before me on this 18th day of January, 2011 by Rodney Foster.

Nettie Lennox Anderson
Notary Public
STATE OF TEXAS
My Comm. Exp. 07/05/2011

Nettie Lennox Anderson
Notary Public, State of Texas



LOCATION AND ZONING MAP

O - 13 - 014 **Scale: 1" = 700'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 330' FNL and 1831' FWL, Section 9, Block "X", H. P. Hilliard Survey, Midland County, Texas.

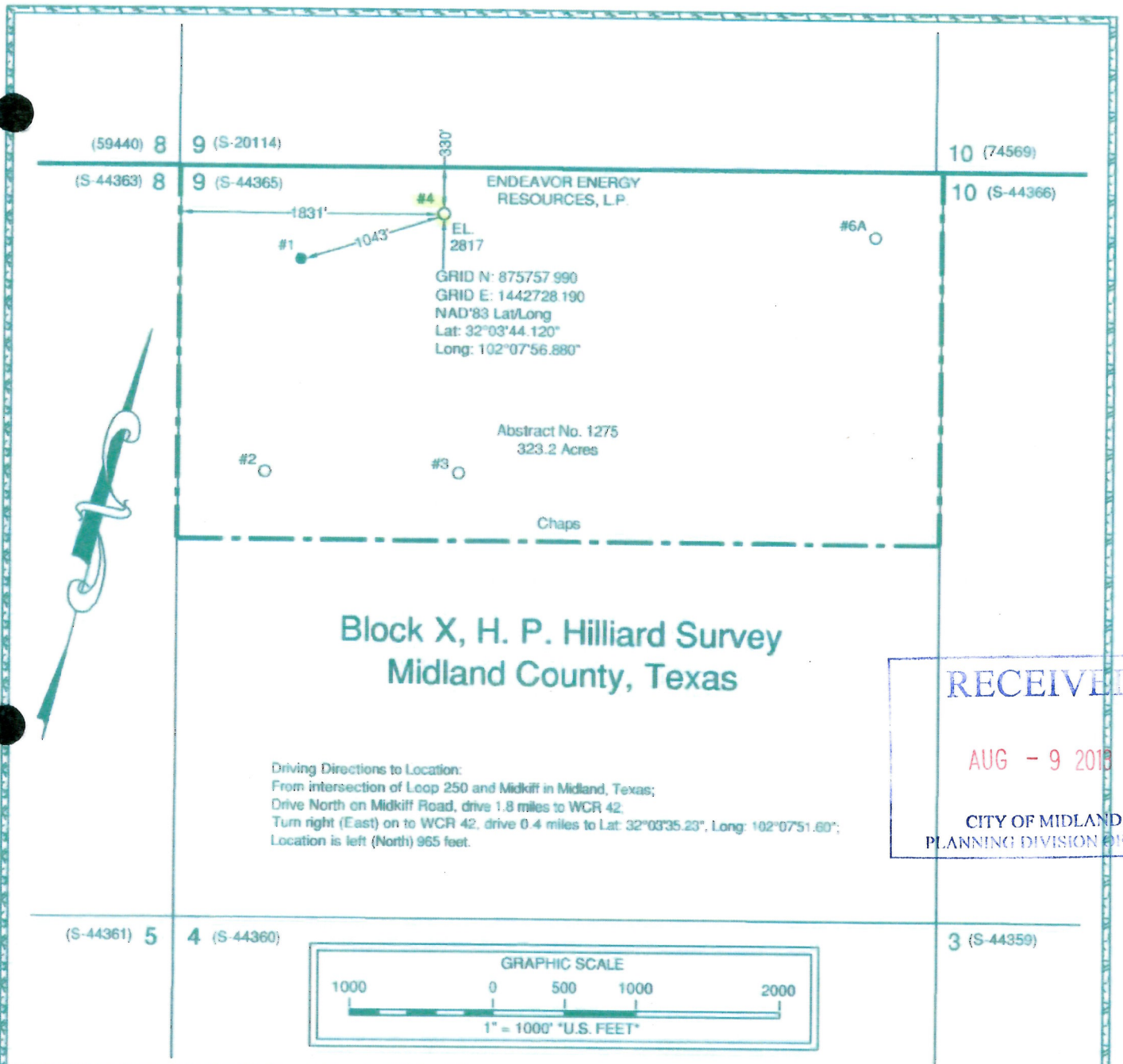
Chaps No. 4

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

		BP	BUSINESS PARK
FD	FUTURE DEVELOPMENT	P	PARKING
PD	PLANNED DISTRICT	01, O2	OFFICE
AE	AGRICULTURE 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



RECEIVED
AUG - 9 2013
CITY OF MIDLAND
PLANNING DIVISION OFFICE

Note: Well location is 5.3 miles Northwest of the city of Midland, Texas.
Note: Survey Reconstruction filed in the Office of Pennell & Marlowe Land Surveyors, Inc.
Note: Coordinates shown herein are on The Texas Coordinate System of 1927, Central Zone.
Note: Example: (S-99999) indicates General Land Office file number.

USGS Quadrangle Sheet: Northwest Midland, Tex.

Railroad Commission Permit Plat

ENDEAVOR ENERGY RESOURCES, L.P.
Chaps #4
330' FROM NORTH LINE
1831' FROM WEST LINE
Chaps Lease
323.2 Acres being the N/2 of
Section 9, Block X
H. P. Hilliard Survey
Midland County, Texas

Scale: 1" = 1000'

PENNELL & MARLOWE
RESIDENTIAL, OILFIELD & LAND SURVEYORS, INC.
ALL TYPES OF SURVEYS

STATE OF TEXAS REGISTERED STEPHEN P. MARLOWE 5715 PROFESSIONAL LAND SURVEYOR

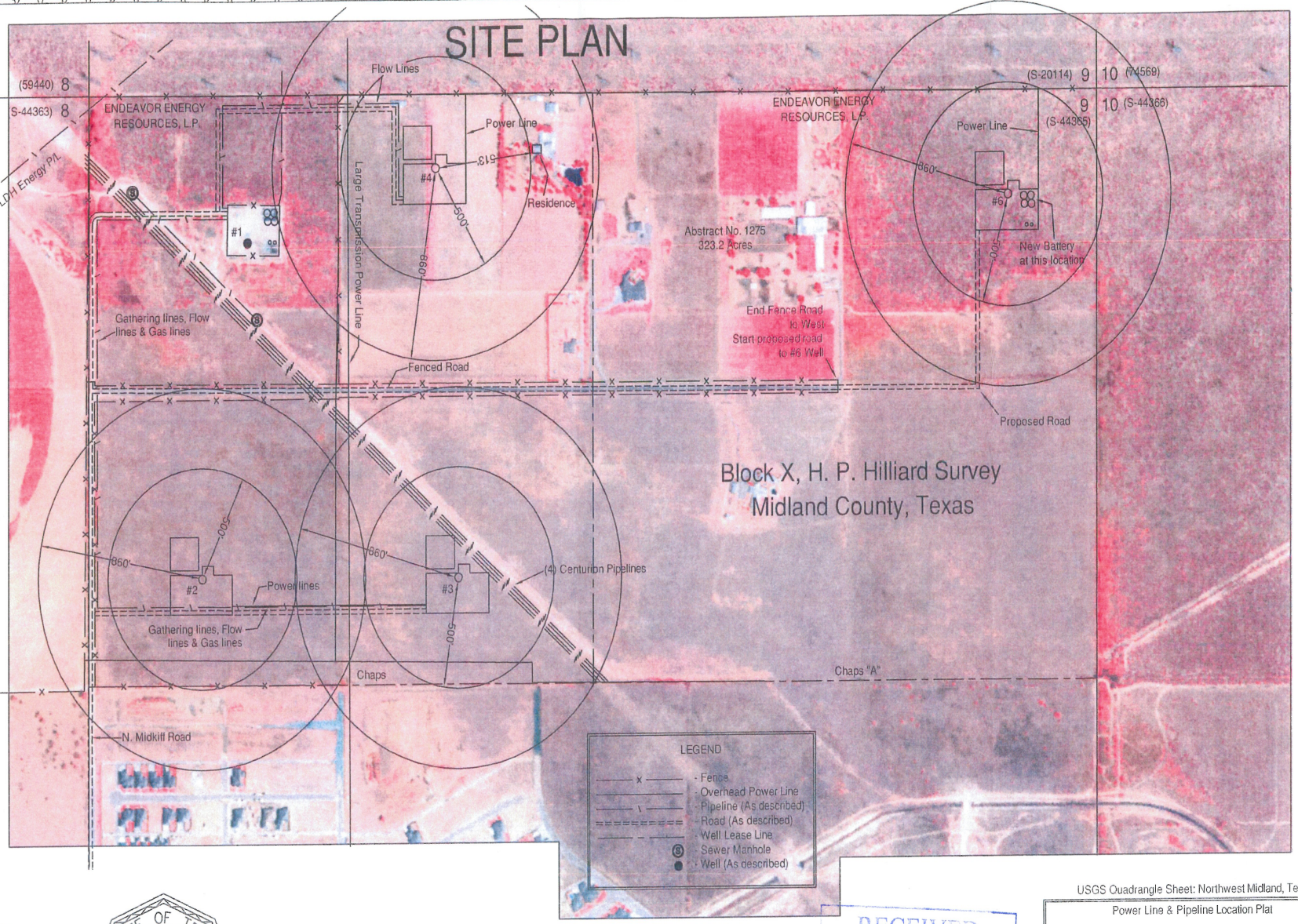
Stephen P. Marlowe
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5715

May 24, 2012
120524A1-KRJ

P.O. Box 51622, Midland, Texas, 79710 (432) 570-6256 Fax (432) 682-3262

DRILL SITE LOCATION CHAPS #4 O-13-014

SITE PLAN



PENNELL & MARLOWE
RESIDENTIAL, OILFIELD & LAND SURVEYORS, INC.
ALL TYPES OF SURVEYS

STATE OF TEXAS
REGISTERED
STEPHEN P. MARLOWE
5715
PROFESSIONAL LAND SURVEYOR

GRAPHIC SCALE
500 0 250 500 1000
1" = 500' "U.S. FEET"

RECEIVED
AUG - 9 2013
CITY OF MIDLAND
PLANNING DIVISION OFFICE

Note: Survey Reconstruction filed in the Office of Pennell & Marlowe Land Surveyors, Inc.
Note: Example: (S-99999) indicates General Land Office file number.

USGS Quadrangle Sheet: Northwest Midland, Tex.

Power Line & Pipeline Location Plat

ENDEAVOR ENERGY RESOURCES, L.P.
Survey of Power Line & Pipeline Locations
In the Chaps & Chaps "A" Leases
323.2 Acres being the N/2 of
Section 9, Block X
H. P. Hilliard Survey
Midland County, Texas

August 8, 2012
120808S2

Scale: 1" = 500'

Stephen P. Marlowe
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5715

P.O. Box 51622, Midland, Texas, 79710 (432) 570-6256 Fax (432) 682-3262

32.10

FLOW LINE MAP

CHAPS #4

O-13-014

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/27/2013

TO: City Council / City Manager

FROM: Steve Thorpe, Acting Assistant Development Services Director

SUBJECT: Consider a resolution appealing the Building Official's denial of a building permit for the installation of a manufactured home on Block 10, Lot 12, East Midland Addition, commonly known as 1311 Walnut Lane

---

Purpose:

Consider a resolution appealing the Building Official's denial of a building permit for the installation of a manufactured home (mobile home) on Block 10, Lot 12, East Midland Addition, commonly known as 1311 Walnut Lane

Recommended City Council Action

☐ Approve ☒ Deny ☐ Directional / Informational

Fiscal Impact:

Payment of back taxes, liens and outstanding invoices for demolition, lot clearing and weed mowing

Discussion:

Mr. Carl Englestad has applied for a building permit to install a manufactured home (mobile home) on the property located at 1311 Walnut Lane. The permit has been denied per the City of Midland Code of Ordinances Title 11, Section1-6-(A)6b(a) which states: Both the mobile home or manufactured home and the lot on which it is located must be under a common ownership.
According to the records of the Midland Central Appraisal District the Estate of Ramon Hernandez is the owner of record. The mailing address for this estate is 1311 Walnut Lane, the vacant lot. Currently the property taxes have not been paid for several years. The taxes owing are $2287.40 and the total amount owing is $4379.97 according the Central Appraisal District website.

Mr. Englestad has not provided proof of ownership of this property therefore the permit application has been denied. The Code Administration Division uses the Midland Central Appraisal District information to verify property ownership. In cases where a transfer of property has occurred and the Appraisal District information has not been updated, the permit applicants have provided documentation indicating that the change of ownership has occurred. Typically this documentation has been a new warranty deed and real estate closing paperwork.

Mr. Englestad and his attorney have met with the City Manager, City Attorney and Building Official to present his claim of ownership. Based on the information that was presented Mr. Englestad was directed to appeal the denial of the building permit to the City Council. Mr. Englestad or his attorney should explain their claim of ownership to City Council prior to City Council making a decision regarding the issuance of the permit.

Additionally, there are liens and outstanding invoices for demolition and lot clearing. Currently, the demolition payoff amount with accrued interest is $12,615.29 and lot clearing with accrued interest is $2236.18. These amounts are subject to change depending on pay-off date. Should City Council determine that the Building Official is to issue the building permit for the manufactured home installation, it is requested that all back taxes, liens and outstanding invoices be paid, by Mr. Englestad , prior to the issuance of the permit.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE ISSUANCE OF A BUILDING PERMIT FOR THE INSTALLATION OF A MANUFACTURED HOME ON LOT 12, BLOCK 10, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (COMMONLY KNOWN AS 1311 WALNUT LANE); AND PROVIDING THAT THE ISSUANCE OF SAID PERMIT DOES NOT UNDERTAKE TO ADJUDICATE PROPERTY RIGHTS; SAID PERMIT WAS DENIED BY THE BUILDING OFFICIAL AND THIS RESOLUTION IS AN APPEAL TO THE MIDLAND CITY COUNCIL

WHEREAS, the applicant for a building permit for the installation of a manufactured home on Lot 12, Block 10, East Midland Addition, City and County of Midland, Texas, has filed an appeal regarding the Building Official's denial of said permit application; and

WHEREAS, the City Council finds it to be in the public interest to authorize the issuance of said permit to the applicant; and

WHEREAS, the City Council finds and determines that said permit does not undertake to adjudicate property rights, nor does it in any way affect property rights as between the applicant and any third parties, and that said permit is expressly subject to the terms and conditions set forth below;

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

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

SECTION TWO. That the City Manager, or his designee, is hereby authorized and directed to issue, on behalf of the City of Midland, Texas, a building permit to the applicant for the installation of a manufactured home on Lot 12, Block 10, East Midland Addition, City and County of Midland, Texas, subject to the terms and conditions set forth below.

SECTION THREE. That said building permit shall be subject to the following terms and conditions:

1. The issuance of this permit by the City of Midland does not in any way alter or modify the rights as between the applicant and any third party asserting an

ownership or property interest in the property. This permit in no way exempts the applicant from the applicant's responsibilities or obligations as to third parties. The issuance of this permit only means that the applicant has, at this time, complied with City of Midland requirements and that the Midland City Council, as a regulatory body, will allow the applicant to proceed under the conditions of this permit. The issuance of this permit is intended to be only a negative pronouncement that grants no affirmative rights to the applicant to occupy the property. It is expressly provided that this permit does not authorize a trespass by the applicant as to any third party. Obtaining this permit does not authorize the applicant to act with impunity as to third parties, nor does it insulate the applicant from the consequences of the applicant's actions with regard to third parties.

2. It is expressly provided, and agreed to and acknowledged by the applicant, that the issuance of this permit by the City of Midland and the applicant's receipt thereof does not undertake to adjudicate property rights, nor does it in any way affect property rights as between the applicant and any third parties.

3. This permit granted by the City of Midland does not act to immunize the applicant from civil liability from third parties for actions arising out of the use of the permit. This permit is a negative pronouncement that grants no affirmative rights to the applicant. The issuance of this permit does not authorize any injury to persons or property or an invasion of property rights, or any infringement of state or local laws or regulations. The applicant has obtained this permit from the City of Midland but the consequences of acting under the permit have not been immunized. The fact that the City of Midland has issued this permit is in no way intended to nor does it shield the applicant from liability to third parties stemming from the permitted activity.

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

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

MIDLAND
CITY OF MIDLAND

HOMEOWNER'S
PERMIT APPLICATION

1. PROJECT INFORMATION

Project Address: 1311 WALNUT LN	Project Description: PLACING MOBile Home ON LOT
Type of Work: New ✓ Addition ____ Alteration ____ Detached Structure ____ Demolition ____ Other ✓	
Valuation of Job: $ 3,000.00	Zoning: MH
Property Line Setbacks: Front 25 Side 10 Rear 10	Property Easements: Yes ____ No ✓

Lot/Tract: 012	Block: 010	Subdivision/Survey: EAST Midland	Lot Size: (sq. ft.) 6250 (APPROX)
1st Floor Area: N/A	2nd Floor Area:	Garage Area:	Porch Area: / Total Building Area:

Water: Supply: City Midland Size of Water Service Meter 3/4" TAP Well ____	Fire District?
Sanitary Sewer: City Midland Septic ____ *If septic, attach Health Dept. permit*	Flood Hazard? NO

2. BUILDING OWNER (CONTRACTOR) INFORMATION

Name: CARL Englestad	Address: 1006 E. New Jersey	City/State/Zip: Midland, TX 79701
Phone: 432. 664. 2355	Fax: 695. 4118	Email: theenglestad5@sudden Link.net

3. SUBCONTRACTOR INFORMATION

Plumbing:	Mechanical:	Electrical:
Backflow Tester:	Irrigation:	Well Driller:

4. PLEASE READ CAREFULLY

- Be advised incomplete applications may be rejected, denied or cause permit processing delays.
- **Has a Site Plan been completed? Yes** ____ **No** ____ **NR** ____ (attach documentation).
- This permit becomes null and void if work authorized is not commenced within 180 days of issuance or if work is suspended or abandoned for a period of 180 days at any time after work is commenced.
- As the Homeowner, I understand that I am able to be the General Contractor for my Home Improvement Project. I realize that it is my responsibility to make sure that all work is done to meet or exceed the Codes that the City of Midland has adopted. I also realize that I should hire a licensed Contractor to do the work that I am not qualified to do, such as electrical, plumbing, mechanical and gas work.
- I hereby certify that I am the Homeowner and further certify that the information provided is true and correct to the best of my knowledge. This work shall comply with all provisions of laws and ordinances, whether specified or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any federal, state or local law regulating construction or the performance of construction.

Signature of Applicant:	Date: 8/8/13
Printed Name of Applicant: CARL Englestad	Phone: 664. 2355
Email: SAME AS ABOVE	Fax: 695. 4118

Code Administration Division
Development Services Department
300 N. Loraine Street - P.O. Box 1152 - Midland, Texas 79702
Office: 432-685-7390 - Fax 432-686-1609

Ver: 8/30/10

MIDLAND CENTRAL
APPRAISAL DISTRICT

Home Return to Search Print

Property Year 2013 Tax Summary

Information Updated 8/16/2013

Property ID: R000016917 Geo ID: 00032000.010.0120

< Previous Property 1 / 51 Next Property >

**** Property Alert ** This property's 2013 value(s) are preliminary and un-certified.**

Property Details

Ownership

HERNANDEZ RAMON EST

1311 WALNUT LN
MIDLAND, TX 79701-3677

Ownership Interest: 1.0000000

N35B

Available Actions

Qualified Exemptions

Not Applicable

Legal Information

Legal: Acres: 0.161, BLK: 010, LOT: 012, ADDN: EAST MIDLAND

Situs: WALNUT LN 1311 E

Property Valuation History

Values by Year		2013	2012	2011	2010	2009	n/a
Improvements	+	$0	$0	$0	$33,850	$32,240	$0
Land	+	$4,900	$700	$700	$700	$700	$0
Production Market	+	$0	$0	$0	$0	$0	$0
Personal	+	$0	$0	$0	$0	$0	$0
Mineral	+	$0	$0	$0	$0	$0	$0
Total Market	=	$4,900	$700	$700	$34,550	$32,940	$0
Agricultural Loss	-	$0	$0	$0	$0	$0	$0
Homestead Cap Loss	-	$0	$0	$0	$0	$0	$0
Total Assessed	=	$4,900	$700	$700	$34,550	$32,940	$0

Improvement / Buildings *Improvement Value: $0*

Group Sequence	Code	Building Description	Year Built	Square Footage	Perimeter Footage

Land Details *Market Value: $4,900* *Production Market Value: $0* *Production Value: $0*

Land Code	Acres	Sq. Ft.	Front Ft.	Rear Ft.	Depth	Mkt. Value	Prd. Value
RS00P	0.161	7,000	0	0		4,900	0

Deed History

Sold By	Volume	Page	Deed Date Instrument
n/a	0655	0674	4/4/1979

Property Tax Estimation by Entity / Jurisdiction

Code	Description	Taxable Value	Tax Rate per $100	Tax Factor applied to Taxable Value	Estimated Tax
165	MIDLAND COUNTY	4,900	$0.154789	0.00154789	$7.58
CTM	CITY OF MIDLAND	4,900	$0.461088	0.00461088	$22.59
HOS	MIDLAND HOSPITAL	4,900	$0.13973	0.0013973	$6.85
RDC	MIDLAND COLLEGE	4,900	$0.14418	0.0014418	$7.06
SCM	MIDLAND ISD	4,900	$1.14005	0.0114005	$55.86
	Total Estimation		**$2.039837**	**0.02039837**	**$99.94**

The above property tax estimation is not a tax bill. Do not pay.
Click here to view actual Property Tax Bill.

Southwest Data Solutions provides this information "as is" without warranty of any kind.
Southwest Data Solutions is not responsible for any errors or omissions.

MIDLAND CENTRAL
APPRAISAL DISTRICT

Home Return to Search Print

Property Year 2013 **Tax Summary**

Information Updated 8/16/2013

Property ID: R000016917 Geo ID: 00032000.010.0120

< Previous Property 1 / 51 Next Property >

Property Tax Bills

View Property Taxes Detail by Entity

CLICK HERE TO PAY PROPERTY TAXES

Year	Taxing Detail	Base Tax	Paid Tax	Tax Due	*Additional Fees	Late Fees	Amount Due
2012	All applicable taxing entities	$13.20	$0.00	$13.20	$5.65	$0.00	$18.85
2011	All applicable taxing entities	$13.60	$0.00	$13.60	$7.78	$0.00	$21.38
2010	All applicable taxing entities	$675.15	$0.00	$675.15	$483.40	$0.00	$1,158.55
2009	All applicable taxing entities	$646.47	$0.00	$646.47	$555.98	$0.00	$1,202.45
2008	All applicable taxing entities	$607.52	$0.00	$607.52	$609.94	$0.00	$1,217.46
2007	All applicable taxing entities	$88.18	$0.00	$88.18	$101.24	$0.00	$189.42
2006	All applicable taxing entities	$81.31	$0.00	$81.31	$97.29	$0.00	$178.60
2005	All applicable taxing entities	$74.45	$0.00	$74.45	$99.35	$0.00	$173.80
2004	All applicable taxing entities	$65.30	$0.00	$65.30	$96.15	$0.00	$161.45
2003	All applicable taxing entities	$57.16	$34.94	$22.22	$35.79	$0.00	$58.01
	Total Amount Due:			$2,287.40	$2,092.57	$0.00	**$4,379.97**

* Additional Fees include any applicable penalties and interest, attorney and/or late fees.

08/16/2013

RECALCULATE PAYMENT

(with different proposed payment date)

Southwest Data Solutions provides this information "as is" without warranty of any kind.
Southwest Data Solutions is not responsible for any errors or omissions.

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/27/2013

TO: City Council / City Manager

FROM: Gary Saunders, Transportation Manager

SUBJECT: Consider an ordinance establishing a maximum two-hour limit on parking during weekdays between the hours of 8:00 A.M. and 6:00 P.M. on a portion of the south side of Ohio Avenue from the west curb line of Colorado Street west to the north/south alley.

Purpose:

Consider an ordinance establishing a maximum two-hour limit on parking during weekdays between the hours of 8:00 A.M. and 6:00 P.M. on a portion of the south side of Ohio Avenue from the west curb line of Colorado Street west to the north/south alley.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Approximately $825.00 for installation cost of signs and posts including materials, equipment and labor.

Discussion:

The Legal Department has prepared an ordinance establishing a maximum two-hour limit on parking during weekdays between the hours of 8:00 A.M. and 6:00 P.M. on a portion of the south side of Ohio Avenue from the west curb line of Colorado Street west to the north/south alley.

The proposed parking restriction has been requested by Gloria Salazar owner of So Fly Boutique, 301 W. Ohio Avenue to provide better utilization of the available parking in this area and eliminate the continued saturation of vehicles remaining parked throughout the day.

Attached is a map indicating the proposed parking restriction.

Staff recommends approval of this ordinance.

ORDINANCE NO. _____

AN ORDINANCE PROVIDING THE MAXIMUM TIME LIMIT FOR PARKING ON A PORTION OF THE SOUTH SIDE OF OHIO AVENUE FROM THE WEST CURB LINE OF COLORADO STREET WEST TO THE NORTH/SOUTH ALLEY TO TWO HOURS; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO ERECT APPROPRIATE SIGNS; DECLARING ANY VEHICLE IN VIOLATION OF THE PROVISIONS OF THIS ORDINANCE A NUISANCE AND PROVIDING FOR THE REMOVAL OF SAME; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS ($200.00); AND ORDERING PUBLICATION

WHEREAS, the City Council finds it to be in the public interest to provide for a two hour maximum parking time limit on a portion of the south side of Ohio Avenue from the west curb line of Colorado Street west to the north/south alley, and to provide for the removal of vehicles in violation of said time limit;

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

SECTION ONE. That a maximum time limit of two hours is hereby imposed for the parking of vehicles in parking spaces upon the following street:

On the south side of Ohio Avenue from the west curb line of Colorado Street west to the north/south alley;

and it shall hereafter be unlawful for any person to park a motor vehicle upon any of said parking spaces for a time in excess of two hours. Provided, however, such parking restrictions shall be applicable during weekdays between the hours of 8:00 a.m. and 6:00 p.m.

SECTION TWO. The provisions of this ordinance shall be effective from and after five (5) days after publication as hereinafter set forth. City of Midland Ordinance No. 6757 is hereby repealed.

SECTION THREE. In the event any vehicle shall be found parked in violation of the provisions of this ordinance, the same shall be a nuisance per se, and shall be removed

by any police officer and taken to some place designated by the Chief of Police for such purpose, and be kept by such officer until the application for its redemption shall be made by the owner or his duly authorized agent, who shall be entitled to the possession thereof upon payment to the City of Midland of the charges specified in Section 2 of Chapter 3 of Title VI of the City Code of Midland, Texas. In the event any vehicle so impounded should not be redeemed by the owner or his duly authorized agent after notice as provided in Section 4 of Chapter 3 of Title VI of said Code, then such vehicle shall be disposed of in accordance with Sections 3 and 8 of Chapter 3 of Title VI of said Code.

SECTION FOUR. When any vehicle is parked in violation of the provisions of this ordinance, such fact shall be prima facie evidence that the person in whose name said vehicle is registered is guilty of a violation of the parking provisions herein contained.

SECTION FIVE. That the Traffic Engineer is hereby authorized and directed to erect appropriate signs and markings at the designated locations, in conformance with the State Highway Department's manual and specifications, where applicable, indicating and carrying out the provisions of this ordinance.

SECTION SIX. 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 SEVEN. 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 EIGHT. The penalty for violation of this ordinance shall be in

accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two hundred dollars ($200.00) pursuant to State law.

SECTION NINE. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

_____
W. Wesley Perry, Mayor

ATTEST:

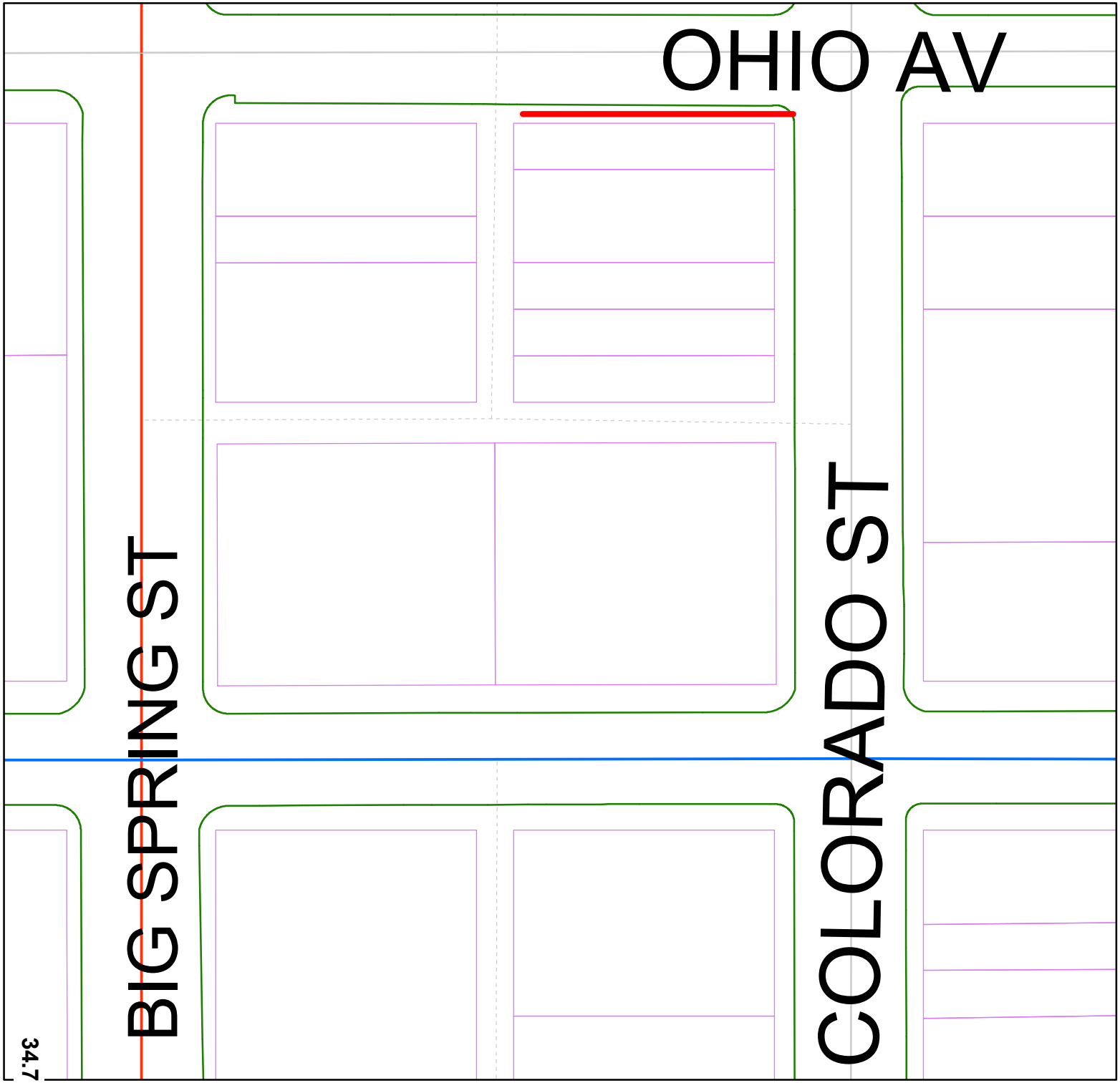
_____
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

_____
Gary Saunders, Transportation Manager

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney



Proposed two-hour parking
Monday - Friday
8:00 am - 6:00 pm

MIDLAND Transportation

Map by TC 8/15/13

City of Midland

City Secretary's Office

Interoffice Memorandum

Date: August 22, 2013

To: The Honorable Mayor Perry and Council

From: Amy M. Turner, City Secretary

Subject: Membership - Boards and Commissions

Attached is an updated membership listing for the City's Boards and Commissions effective August 27, 2013. Remaining expirations and vacancies are listed below:

AIRPORT PLANNING AND DEVELOPMENT BOARD – Two terms expired on September 30, 2012.

ANIMAL SERVICES ADVISORY COMMISSION – One vacancy which will expire on September 30, 2013.

CITY DEVELOPMENT ADVISORY COMMITTEE – One terms expired on September 30, 2012 and one vacancy expiring on September 30, 2014.

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS – Two vacancies for Alternate terms expired on September 30, 2007.

HOUSING AUTHORITY COMMISSION – One vacancy as Alternate term expiring in October 2015

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION – Two terms expired in November 2011.

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION – Three vacancies expired on January 1, 2007, one term expired on January 1, 2009, and two terms expired on January 1, 2010.

MIDLAND HOUSING FINANCE CORPORATION –One vacancy expired on September 30, 2010, two terms expired on September 30, 2011 and one term expired on September 30, 2012.

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD – One vacancy.

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD – Two terms expired on September 30, 2012.

PERMIAN BASIN AIRPORT BOARD – Two terms expired on September 30, 2010 (Carlsbad and Hobbs New Mexico), one term expired on September 30, 2011 and two terms expired on September 30, 2012.

TAX INCREMENT REINVESTMENT ZONE BOARD –Four terms expired on March 20, 2010, one term expired March 20, 2011, one terms expired on March 20, 2012 and two terms expired on March 20, 2013. (Four City representatives, two Hospital representatives and two County representatives.)

ZONING BOARD OF ADJUSTMENT AND AIRPORT ZONING BOARD OF ADJUSTMENT- One term expired on September 30, 2011, one term expired on September 30, 2012 and one vacancy for Alternate term expired on September 30, 2006 and one vacancy for Alternate term expired September 30, 2009.

BOARDS AND COMMISSIONS OF THE CITY OF MIDLAND

August 27, 2013

AIRPORT PLANNING AND DEVELOPMENT BOARD

(Advisory)
(Membership-10; Terms - 3 Years expiring 3-3-4.)

	Appt Date	Term Expires	Eligibility Expires
Ronald Schwisow	**09/06**	**Sept 30 2012**	**Sept 30 2012**
Herbert Blankinship	**09/06**	**Sept 30 2012**	**Sept 30 2012**
Jerry Walton	11/09	Sept 30 2015	Sept 30 2015
Mike Owen	10/07	Sept 30 2013	Sept 30 2013
Gregory F. Baiano	09/10	Sept 30 2013	Sept 30 2016
John T. Echols	09/10	Sept 30 2013	Sept 30 2016
Dallas L. Smith	09/10	Sept 30 2013	Sept 30 2016
Earl Erdmann, Chairman	09/08	Sept 30 2014	Sept 30 2014
J. Ross Lacy	09/12*	Sept 30 2014	Sept 30 2020
Don “Woody” Woodward	11/11	Sept 30 2014	Sept 30 2017

Ex-Officio members are Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

ANIMAL SERVICES ADVISORY COMMISSION

(Advisory)
(Membership - 6; Terms - 4 Years)

	Appt Date	Term Expires	Eligibility Expires
Vacancy-Tony Carrillo	**09/09**	**Sept 30 2013**	**Sept 30 2017**
Dr. Tom Green (Veterinarian)	10/07*	Sept 30 2013	Sept 30 2017
Kelly Spencer	09/09	Sept 30 2013	Sept 30 2017
Laura Hollifield	09/08*	Sept 30 2013	Sept 30 2017
Justin Petty	04/07*	Sept 30 2013	Sept 30 2017
Paul O’Neill	09/09	Sept 30 2013	Sept 30 2017

BUILDING CODES REVIEW COMMITTEE

(Membership – 9; Terms – 2 Years)

	Appt Date	Term Expires	Eligibility Expires
James Riggen	12/09	Dec 31 2013	Dec 31 2013
Chris Repman	12/09	Dec 31 2013	Dec 31 2013
John Cooper	12/09	Dec 31 2013	Dec 31 2013
Bill Routh	12/09	Dec 31 2013	Dec 31 2013
Tom Woodruff	12/09	Dec 31 2013	Dec 31 2013
Ron Ainsworth	12/09	Dec 31 2013	Dec 31 2013
Walter Pate	12/09	Dec 31 2013	Dec 31 2013
Robert Harrington	12/09	Dec 31 2013	Dec 31 2013
Jerry Morales	12/09	Dec 31 2013	Dec 31 2013

CITY DEVELOPMENT ADVISORY COMMITTEE

(Advisory)
(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd)

	Appt Date	Term Expires	Eligibility Expires
Reggie Lawrence	**09/10**	**Sept 30 2012**	**Sept 30 2014**
W. Roger Beebe	**02/13**	**Sept 30 2014**	**Sept 30 2016**
Alonda Massey	11/11	Sept 30 2013	Sept 30 2015
Tim Bryson	11/11	Sept 30 2013	Sept 30 2015
Avery I. Pullins	02/13*	Sept 30 2013	Sept 30 2017

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

(Decision Making)
(Membership - 7; Terms - 4 Years expiring 2-2-2-1)
Position to include: 1. Registered Architectural or Builder Superintendent, 2. Registered Structural Engineer, 3. Registered Mechanical and Plumbing, 4. Registered Electrical Engineer, 5. Registered Fire Protection Engineer

	Appt Date	Term Expires	Eligibility Expires	Position
Don Woodward (At Large)	11/11*	Sept 30 2016	Sept 30 2020	5
Richard D. Dunham	10/05	Sept 30 2013	Sept 30 2013	1
Greg Turner	03/11*	Sept 30 2013	Sept 30 2021	4
Chris Repman	10/07*	Sept 30 2014	Sept 30 2018	3
Jay K. Bradford	09/10	Sept 30 2014	Sept 30 2018	2

ALTERNATES:

Vacancy	**Sept 30 2007**	**Any**
Vacancy	**Sept 30 2007**	**Any**

HOTEL/MOTEL TAX ADVISORY BOARD

(Advisory)
(Membership - 7; Terms - 2 Years Staggered)

	Appt Date	Term Expires	Eligibility Expires
Karmen Hendrix Bryant	02/12*	Sept 30 2013	Sept 30 2017
David Baur	09/10	Sept 30 2013	Sept 30 2014
Lisa Grissom	09/09	Sept 30 2013	Sept 30 2013
Steve Jones	02/09*	Sept 30 2013	Sept 30 2013
Annabell Ramirez	09/12	Sept 30 2014	Sept 30 2016
Brian Smith	09/12	Sept 30 2014	Sept 30 2016
Alex Singh-Hotel/Motel Assn. Rep.	09/09	Dec 31 2013	Assn. Appt.

*** Indicates appointment to an unexpired term.**

HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd.)

	Appt Date	Term Expires	Eligibility Expires
Gregory Maes	11/11	Oct 2013	Oct 2015
Carla Repman, Vice Chairman	09/09	Oct 2013	Oct 2013
James A. Blischke	01/10	Oct 2013	Oct 2015
Dennis Bade	09/12	Oct 2014	Oct 2016
Norma Duran	11/08*	Oct 2014	Oct 2014

ALTERNATES:

Vacancy	**Oct 2013**	**Oct 2015**

JOINT ECONOMIC DEVELOPMENT TASK FORCE

(Ad Hoc)

	Appt. Date
(Midland)	
Wes Perry	01/08
LuAnn Morgan	12/00
Keith Stretcher	12/00
Tommy Hudson	08/07
John Breier	01/04
(Odessa)	
Larry Melton	08/01
Jim Morris	11/00
Richard Morton	11/02
Joel Roberts	11/00
Neil McDonald	11/00

MANAGED COMPETITION COMMITTEE

(Ad Hoc)

	Appt. Date
Jon Morgan	01/02
Wes Perry	01/02
Roy Nelson	01/02
Hugh “Andy” Shaffer	12/03
Scott Dufford	01/02
Ted Tipton	04/04
Kevin Sparks	11/07
Scott Lovett	04/10
P. Lourcey Sams	04/10

Ex-Officio members are the Mayor and the City Manager.

*** Indicates appointment to an unexpired term.**

MIDLAND CENTER ADVISORY BOARD

(Advisory & Decision Making)
(Membership - 9; Terms - 3 Years expiring 3-2-2.)

		Appt Date	Term Expires	Eligibility Expires
Brent Blackburn	(City)	09/09*	Sept 30 2013	Sept 30 2016
Charles Spence	(CC)	11/07	Sept 30 2013	N/A
Lorri Lyon West	(City)	09/10	Sept 30 2013	Sept 30 2016
Patricia S. Blackwell	(City)	10/07*	Sept 30 2014	Sept 30 2014
Paula Mitchell	(City)	09/08	Sept 30 2014	Sept 30 2014
Vicky Hailey	(CC)	01/13*	Sept 30 2014	N/A
Tracy Bacon	(CC)	12/11	Sept 30 2014	N/A
Jerry Morales (Liaison Officer)				

Ex-Officio members are the City Manager and Executive Director of the Chamber of Commerce.

MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

Five Directors, Elected by Local Taxing Entities.
City Nominates/Cast Vote for one Director
(Terms - 2 Years)

	Appt Date	Term Expires
Chad Clark	3/12*	Dec 31 2013

MIDLAND DEVELOPMENT CORPORATION

(Membership - 5; Terms -3 Years - Staggered)

	Appt Date	Term Expires	Eligibility Expires
Laura Roman, Chairman	01/08	Jan 14 2014	Jan 14 2014
Robert Rendall	01/09*	Jan 14 2014	Jan 14 2017
Michael Trost	02/11*	Jan 14 2016	Jan 14 2019
Cary J. Love	12/09	Jan 14 2016	Jan 14 2016
Gary Douglas	11/11*	Jan 14 2016	Jan 14 2019

*** Indicates appointment to an unexpired term.**

MIDLAND FRESH WATER SUPPLY DISTRICT #1

(Ad Hoc)
(3 Non Voting Members)

	Appt Date
Wes Perry	05/12
Gary Harris	05/12
Wayne Merritt	05/12

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION

(Decision Making)
Membership - 7; Terms - 2 Years)

	Appt Date	Term Expires	Eligibility Expires
Ken Marks, Vice President	**10/07**	**Nov 2011**	**Nov 2011**
James G. Smith	**12/07**	**Nov 2011**	**Nov 2011**
Mike Thompson	11/11	Nov 2013	Nov 2015
Tim Bryson	11/11	Nov 2013	Nov 2015
Wesley D. Bownds	02/09*	Nov 2013	Nov 2013
John James	08/08*	Nov 2013	Nov 2013
Rick Davis (MISD Resp.)	10/10*	Nov 2013	Nov 2015

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

	Appt Date	Term Expires	Eligibility Expires
Vacancy		**Jan 1 2007**	
Vacancy		**Jan 1 2007**	
Vacancy		**Jan 1 2007**	
Vacancy		**Jan 1 2009**	
Cathy Oestmann	**11/05***	**Jan 1 2010**	**Jan 1 2010**
Steve Jones	**09/08***	**Jan 1 2010**	**Jan 1 2012**
Curt Kamradt	11/05*	Jan 1 2014	Jan 1 2014

*** Indicates appointment to an unexpired term.**

MIDLAND HOUSING FINANCE CORPORATION

(Decision Making)
(Membership - 5; Terms - 2 Years - Staggered)

	Appt Date	Term Expires	Eligibility Expires
Vacancy - (Damon L. Blakeley)	**07/07***	**Sept 30 2010**	
Adrianne Valencia	**10/07**	**Sept 30 2011**	**Sept 30 2011**
Melissa Wicker	**10/07**	**Sept 30 2011**	**Sept 30 2011**
Jerry Morales (Liaison Officer)	**10/08**	**Sept 30 2012**	**Sept 30 2012**
Nathan Miller	11/11*	Sept 30 2012	Sept 30 2016

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD

(Ad Hoc)

	Appt. Date
Vacancy	
Richard Hatchett	11/08
W. L. “Scooter” Brown	09/04
Ken Burgess	09/04
Jim Hightower	11/08
Ted H. Jones	09/04
Mitch Malouf	11/08
Christi Newton	09/04
Dan Rush	09/04

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making)
(Membership - 6; Terms - 2 Years Staggered)

	Appt Date	Term Expires	Eligibility Expires
Willie Barber	**09/08**	**Sept 30 2012**	**Sept 30 2012**
Michael Trost	**09/08**	**Sept 30 2012**	**Sept 30 2012**
John H. James	09/09	Sept 30 2013	Sept 30 2013
Karen York	06/09*	Sept 30 2013	Sept 30 2013
Guy McKenize	03/11*	Sept 30 2013	Sept 30 2015
Rebecca Bell	09/12	Sept 30 2014	Sept 30 2016

*** Indicates appointment to an unexpired term.**

OIL AND GAS ADVISORY COMMITTEE

(Advisory)
(Membership – 5; Terms – 3 Years expiring 2-2-1)

	Appt Date	Term Expires	Eligibility Expires
Russell Richards (Petroleum Eng.)	09/12	Sept 30 2015	Sept 30 2018
Perry Dan Taylor (Real Estate)	09/12	Sept 30 2015	Sept 30 2018
Lance Friday (Real Estate)	09/12*	Sept 30 2013	Sept 30 2019
Paul Brown (Petroleum Eng.)	11/11	Sept 30 2014	Sept 30 2017
David Rosen (Petroleum Eng.)	11/11	Sept 30 2014	Sept 30 2017

PARKS AND RECREATION COMMISSION

(Advisory)
(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	Appt Date	Term Expires	Eligibility Expires
Charles A. Spence	01/10*	Sept 30 2013	Sept 30 2016
Susan Nichols	02/06*	Sept 30 2013	Sept 30 2013
Eric L. West	10/07	Sept 30 2013	Sept 30 2013
Kenny Harper	03/12*	Sept 30 2013	Sept 30 2019
P. Lourcey Sams	09/08	Sept 30 2014	Sept 30 2014
Tina Corbett	09/08	Sept 30 2014	Sept 30 2014
Katey Howard	09/12*	Sept 30 2014	Sept 30 2020
Amanda McCann	11/11*	Sept 30 2015	Sept 30 2018
Edward Mayberry	09/12	Sept 30 2015	Sept 30 2021

PERMIAN BASIN AIRPORT BOARD

(Advisory)
(Membership - 30; Terms - 1 year.)

	Appt. Date	Term Expires
10 Members of the Airport Planning and Development Board		
Bob Forrest (Carlsbad, NM)	**10/04**	**Sept 30 2010**
Larry Shed (Hobbs, NM)	**10/01**	**Sept 30 2010**
Larry Gill (Abilene)	**10/10**	**Sept 30 2011**
David Hardwick (Ft. Stockton)	**10/07**	**Sept 30 2012**
Lex Hinds (Seminole)	**10/08**	**Sept 30 2012**

* **Indicates appointment to an unexpired term.**

PERMIAN BASIN AIRPORT BOARD CON'T

	Appt. Date	Term Expires
Elvin Brownlee III (Andrews)	12/10*	Sept 30 2013
Jim Little (Big Spring)	09/03	Sept 30 2013
Frankie Rolfe (Kermit)	09/12	Sept 30 2013
Don Bethel (Lamesa)	02/91	Sept 30 2013
Willie Taylor (Odessa)	02/00	Sept 30 2013
Gloria Pena (Odessa)	03/03*	Sept 30 2013
Barbara Graff (Odessa)	06/10*	Sept 30 2013
Henry Cutbirth (Monahans)	09/05	Sept 30 2013
Isabelle Blanchard (Pecos)	10/10	Sept 30 2013
Luis E. Elguezabal (San Angelo)	10/07	Sept 30 2013
Glenn Wortham (Sweetwater)	10/07	Sept 30 2013
John Rogotzke (Snyder)	01/12	Sept 30 2013
Lance Goodrich (Artesia, NM)	09/09	Sept 30 2013
Larry Fry (Roswell, NM)	09/00	Sept 30 2013

Ex-Officio members are the City Manager and the City Attorney. The Secretary is the Director of Aviation.

PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH AND MENTAL RETARDATION

(Decision Making)
(Membership - 2 (City); Terms - 2 Years)

	Appt Date	Term Expires	Eligibility Expires
Janet R. Pritchett (City)	05/09*	June 2014	June 2014
Larry Edgerton	07/10*	June 2015	June 2015

PERSONNEL BOARD OF APPEALS

(Decision Making)
(Membership - 3; No designated terms.)

	Appt. Date
John James	03/08
Hugh A. "Andy" Shaffer	09/05
Michael Trost	01/10

*** Indicates appointment to an unexpired term.**

PLANNING AND ZONING COMMISSION

(Advisory & Decision Making)
(Membership - 9; Terms - 3 Years)

	Appt Date	Term Expires	Eligibility Expires
Jane Wolf	03/09*	Sept 30 2013	Sept 30 2016
Cindy Lanning	09/10	Sept 30 2013	Sept 30 2016
Jay Norris	11/11	Sept 30 2014	Sept 30 2017
Galen Gatten, Vice Chairman	09/08	Sept 30 2014	Sept 30 2014
Warren Lvey	10/12*	Sept 30 2014	Sept 30 2020
Kevin Wilton	09/08*	Sept 30 2015	Sept 30 2017
Karen York	10/10*	Sept 30 2015	Sept 30 2018
Sharla Hotchkiss	10/12	Sept 30 2015	Sept 30 2018
Brad Bullock	07/13*	Sept 30 2015	Sept 30 2021
ALTERNATES:			
Tony Carrillo	11/11	Sept 30 2014	Sept 30 2017

TAX INCREMENT REINVESTMENT ZONE BOARD

(Decision Making)
(Membership - 12; Terms - 2 Years, or 3 Years if appointed after 3/1/07)

	Appt Date	Term Expires	Eligibility Expires
Mark T. Wellen (City), Chairman	**07/01**	**Mar 20 2010**	**Mar 20 2010**
Randy Prude (County)	**03/07**	**Mar 20 2010**	**Mar 20 2013**
Ken Burgess (City)	**10/12***	**Mar 20 2013**	**Mar 20 2018**
Judge Mike Bradford (County)	**01/07***	**Mar 20 2010**	**Mar 20 2014**
Bob Lanier (City), Secretary	**04/03**	**Mar 20 2011**	**Mar 20 2011**
Pete Hulder (Hospital)	03/10	Mar 20 2016	Mar 20 2016
Michael Blonkvist (City)	09/12*	Mar 20 2014	Mar 20 2020
John L. Kennedy (City)	10/09*	Mar 20 2015	Mar 20 2018
Link Grimes (City)	12/12*	Mar 20 2015	Mar 20 2021
Charlene McBride (College)	12/12	Mar 20 2016	Mar 20 2019
Steve Castle (College)	04/13*	Mar 20 2015	Mar 20 2021
Russell Meyer (Hospital)	12/12	Mar 20 2016	Mar 20 2019

Ex-Officio member is President, Board of Trustees, Midland Independent School District

*** Indicates appointment to an unexpired term.**

ZONING BOARD OF ADJUSTMENT
AND
AIRPORT ZONING BOARD OF ADJUSTMENT

(Decision Making)

(Membership - 5; Terms - 2 Years expiring 3 odd & 2 even.)

	Appt Date	Term Expires	Eligibility Expires
Manny Ribera	**10/07**	**Sept 30 2011**	**Sept 30 2011**
Ken Morgan	**01/10***	**Sept 30 2012**	**Sept 30 2014**
Carla Repman	01/10*	Sept 30 2013	Sept 30 2015
Scott Young	0912*	Sept 30 2013	Sept 30 2017
Todd Byars	02/08*	Sept 30 2014	Sept 30 2014

ALTERNATES: (not applicable to Airport Zoning)

Vacancy		**Sept 30 2006**	
Vacancy		**Sept 30 2009**	
Annabel Holguin	11/11	Sept 30 2013	Sept 30 2015
Greg Turner	11/11	Sept 30 2013	Sept 30 2015

* **Indicates appointment to an unexpired term.**

Ms. Amy Turner
City Secretary
City of Midland
P O Box 1152
Midland, TX 79702

August 15, 2013

Dear Amy;

I regret that I must resign my position on the City Development Tax Advisory Board, effective immediately.

I have accepted another position within my company and will transfer to the Portland, Oregon area next week.

Thank you for allowing me to participate in the important tasks assigned to the board. I will miss working with you and everyone on the board.

Best Regards,

W. Roger Beebe