

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

August 28, 2012 - 9:00 AM

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

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

1. Receive an update from the Midland County Freshwater Supply District No. 1 regarding the delivery of water from T-Bar Ranch located in Winkler County and Loving County, Texas.
2. Presentation and discussion regarding the FY2013 Solid Waste Rate Structure.
3. Presentation and discussion regarding the Water Rate Structure.

AGENDA FOR CITY COUNCIL MEETING
August 28, 2012 – 10:00 AM
Council Chamber - City Hall

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

OPENING ITEMS

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

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - a. Presentation of a Proclamation for Permits & Inspections Staff Day.

PUBLIC COMMENT

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

CONSENT AGENDA

5. Consider a motion approving the following minutes:
 - a. Special Meeting of August 7, 2012.
 - b. Regular meeting of August 14, 2012.
6. Consider a resolution authorizing the execution of a Professional Services Agreement with Parkhill, Smith and Cooper, Inc., for professional architectural and engineering services for the construction of Fire Station #10, for a fee of 6.5% of the total cost of construction, not to exceed \$265,000.00; and appropriating funds. (GENERAL SERVICES) (2012 - 256)
7. Consider a resolution approving the purchase of assorted playground equipment at a total cost of \$686,317.70; and authorizing the execution of a Purchase and

Installation Agreement with Miracle Recreation Equipment Company, of Niwot, Colorado, for the playground equipment purchased herein that requires installation; and rejecting some of the bids; and appropriating funds. (GENERAL SERVICES) (2012 - 257)

8. Consider a resolution authorizing the execution of a contract with TI Training Corporation of Golden, Colorado, for the supply and installation of a Use of Force Computer Based Simulator for the City of Midland Police Department at a total cost of \$58,380.00. (GENERAL SERVICES) (2012 - 258)
9. Consider a resolution authorizing issuance of a Request for Proposals for cellular services for voice, data and messaging services and other traditional cellular services and equipment for the City of Midland. (GENERAL SERVICES) (2012 - 259)
10. Consider a resolution authorizing issuance of a Request for Proposals for federal reimbursement opportunities and consultant services for the Health Department. (GENERAL SERVICES) (2012 - 260)
11. Consider a resolution approving plans and specifications and authorizing advertisement for bids to provide and install new seating at the Scharbauer Sports Complex. (GENERAL SERVICES) (2012 - 261)
12. Consider a resolution authorizing the City Manager to execute and file all documents, and make all payments necessary for the purchase of property located in the 4500 Block of Sinclair Avenue, Midland, Texas, for a Fire Station, at a cost of approximately \$151,000.00 plus associated closing costs; and appropriating funds; and directing that said property shall be closed at Lonestar Abstract and Title Company, Incorporated; and authorizing the City Manager to negotiate the terms and execute and file all documents necessary for the purchase of property located in the 4500 Block of Thomason Drive, Midland, Texas, for a Fire Station. (GENERAL SERVICES) (2012 - 262)
13. Consider a resolution authorizing the City Manager to execute a Consent Agreement between Western National Bank, the City of Midland, Texas and OGM Aviation, L.L.C., as authorized by Article 8(K) of OGM Aviation, L.L.C.'s Lease Agreement in order to allow Western National Bank to encumber OGM Aviation, L.L.C.'s Leasehold Interest by pledging said lease as collateral for a loan to construct a hangar on the premises at the Midland International Airport. (AIRPORTS) (2012 - 263)
14. Consider a resolution authorizing the execution of Amendment Number Two to the Professional Services Agreement with Parkhill, Smith & Cooper, Incorporated, with such amendment authorizing the inclusion of the project described as Commercial Space Launch Site Application; and appropriating necessary funds. (AIRPORTS) (2012 - 264)
15. Consider a resolution authorizing the Mayor to execute the First Amendment to

the Wholesale Water Delivery Agreement between the City of Midland and the Midland County Fresh Water Supply District No. 1. (CITY ATTORNEY'S OFFICE) (2012 - 265)

16. Consider a resolution authorizing the Office of the City Attorney to file all documents, employ all necessary experts and make all necessary appearances to represent the City of Midland in a lawsuit styled Elizabeth Morales v. Denisse Reyes; Alfredo Alvarado; City of Midland; United States Customs and Border Patrol; City of Edinburg, Texas; County Court at Law #7, Hidalgo County, Texas; Cause No. CL-12-2444-G; and authorizing the payment of all costs. (CITY ATTORNEY'S OFFICE) (2012 - 266)
17. Consider a resolution canceling the General City Election which was to be held on November 6, 2012, for election of two Council Members At-Large, one Council Member representing District 1, and one Council Member representing District 2, as the requirements of the Texas Election Code are complied with; authorizing the City Secretary to post notice; accepting and approving the City Secretary's Certification; and declaring the unopposed candidates elected to office. (CITY SECRETARY'S OFFICE) (2012 - 267)
18. Consider a resolution authorizing the execution of a Professional Services Agreement between the City of Midland, Texas and Midland Sports, Incorporated in the amount of \$68,000.00, for professional marketing, promotion, and management services at the Scharbauer Sports Complex. (COMMUNITY SERVICES) (2012 - 268)
19. Consider a resolution authorizing the execution of a Public Improvement Development Agreement with Playa del Pueblo, Ltd. for development of Playa del Pueblo Addition, City and County of Midland, Texas (Generally located on the north side of Interstate 20, approximately 300 feet east of Terrell Street); authorizing the execution of all documents necessary for the City of Midland's participation in said development; and appropriating funds in the amount of \$265,558.00 therefor; said agreement being authorized by Section 395.081 of the Texas Local Government Code. (ENGINEERING SERVICES) (2012 - 269)
20. Consider a motion on a request by Schumann Engineering for Ruedas Estates, to approve items requested for deferral in the amount of \$153,150.00, and to waive the associated public improvement guarantee. (ENGINEERING SERVICES)
21. Consider a motion on a request by Schumann Engineering for Country Sky Addition (Section 15), to approve items requested for deferral in the amount of \$288,674.00, and to waive the associated public improvement guarantee. (ENGINEERING SERVICES)
22. Consider a resolution authorizing the execution of Change Order Number Three with Onyx Contractors Operations, LP regarding the Ward Street Bridge Rehabilitation and Garfield Street Bridge Rail Retrofit Project; said change order

to provide for the reconstruction of the alley along the north side of Jal Draw between Ward Street and Garfield Street; and authorizing payment in the amount of \$145,622.00. (ENGINEERING SERVICES) (2012 - 270)

23. Consider a resolution accepting a grant in the amount of \$23,876.00 from the Texas Department of Transportation in order to conduct a Fiscal Year 2012-2013 Comprehensive Special Traffic Enforcement Program for intersection traffic control enforcement and driving while intoxicated enforcement; said grant award requires a City cash match in the amount of \$4,839.00; providing that the grant funds shall be used to pay overtime to police officers working on said program; authorizing the execution of acceptance document; and appropriating grant funds. (POLICE) (2012 - 271)
24. Consider a resolution authorizing a Second Amendment to the existing Water Supply Contract with the Colorado River Municipal Water District; this amendment relocated the water delivery point under the contract. (UTILITIES) (2012 - 272)
25. Consider a resolution authorizing the purchase of the fifteen million gallon raw water reservoir, located on the City's Water Purification Plant Site, from the Colorado River Municipal Water Authority, for \$557,000.00; all closing costs to be borne by the City of Midland; and ordering recordation by the City Secretary; and appropriating funds. (UTILITIES) (2012 - 273)
26. Consider a resolution approving a Bill of Sale conveying to the City of Midland all appurtenances associated with the purchase of the fifteen million gallon raw water reservoir, located on the City's Water Purification Plant Site, from the Colorado River Municipal Water Authority; and ordering recordation by the City Secretary. (UTILITIES) (2012 - 274)
27. Consider a resolution authorizing the execution of a Memorandum of Agreement with the Colorado River Municipal Water District ("CRMWD") associated with the Water Supply Contract executed with CRMWD in 1966, as amended. (UTILITIES) (2012 - 275)

SECOND READINGS

28. 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 1, Block 161, Wilshire Park Addition, Section 9, City and County of Midland, Texas, which is presently zoned PD, Planned District for a Housing Development, to be used as an Amended Planned District (Generally located on the east side of Loop 250, between Leisure Drive and Graceland Drive); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9048)

29. 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 4, Block 192, Southern Addition, City and County of Midland, Texas, which is presently zoned 1F-2, One-Family Dwelling District, to be used as an LR-3, Local Retail District (Generally located on the west side of Marshall Street, approximately 150 feet south of East Florida Avenue); containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9049)
30. Consider an ordinance on second reading changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lots 1-3, Block 1, Bishop Addition, City and County of Midland, Texas, which is presently zoned 2F, Two-Family Dwelling District, to be used as a PD, Planned District for a Housing Development (Generally located at the northwest corner of the intersection of Tarleton Street and Shell Avenue); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9050)
31. 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 3A, Block 15A, Oxford Heights, Section 8, City and County of Midland, Texas, which is presently zoned LR-2, Local Retail District, to be used as a PD, Planned District for a Housing Development (Generally located at the northwest corner of West Illinois Avenue and Delmar Street); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9051)

PUBLIC HEARINGS

32. At approximately 10:33 a.m. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 27.00-acre tract of land out of Section 41, Block 38, T-1-S, T&P RR Co. Survey, and Lot 4, Block 1, Freeland Addition, Section 4, City and County of Midland, Texas, which is presently zoned AE, Agriculture Estate District, in part, PD, Planned District for a Transition District, in part, and as a separate PD, Planned District for a Transition District, in part, to be used as a C-3, Commercial District (Generally located on the northwest corner of the intersection of East Business Interstate 20 and Lozoya Road); 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) (9054)

33. At approximately 10:36 a.m. hold a public hearing and Consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lots 3A, 4A and 5A, Block 3, Midland International Airport Industrial Park, City and County of Midland, Texas, which is presently zoned IP-3, Industrial Park District, to be used as a PD, Planned District for an Office Center (Generally located on the southeast corner of the intersection of Sloan Field Boulevard and Windecker Street); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9055)
34. 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 a 26.28-acre tract of land ("Tract 1") which is presently zoned FD, Future Development District, to be used as a PD, Planned District for a Housing Development; by permitting a 12.11-acre tract of land ("Tract 2") which is presently zoned FD, Future Development District, to be used as an LR-2, Local Retail District; said tracts being located in Section 13, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas; said tracts being more specifically described by metes and bounds made a part hereof; said tracts are generally located on the west side of Holiday Hill Road at its intersection with Sherwood Drive; providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9056)
35. At approximately 10:42 a.m. hold a public hearing and consider a resolution authorizing the temporary use of land for a philanthropic event on the west 51.5 feet of Lot 5, all of Lots 6-10, and the east 22 feet of Lot 11, Block 8, Loma Linda Replat, City and County of Midland, Texas (Generally located on the north side of Scharbauer Drive, approximately 250 feet west of Lamesa Road); making said permit subject to certain special conditions and restrictions contained herein. (DEVELOPMENT SERVICES) (2012 - 276)

DEVELOPMENT SERVICES

36. Consider a resolution granting a variance to Fasken Land and Minerals, Ltd. by authorizing issuance of building permits for any single- or multi-family residential or commercial buildings within 135 feet of any existing oil and gas well within Sections 1, 12 and 13, Block 40, T-1-S, T&P RR Co. Survey, Midland, Texas; and authorizing a variance for construction of public streets up to 100 feet from existing oil and gas wells within said sections. (DEVELOPMENT SERVICES) (2012 - 277)

MISCELLANEOUS

37. Consider a motion to approve the preliminary plat of The Vineyard Addition,

Section 2, a 300.36-acre tract out of Section 13, Block 40, T-1-S, T&P RR Company Survey, Midland County, Texas. (Generally located on the west side of Holiday Hill Road, between Mockingbird Lane and Green Tree Boulevard.) (DEVELOPMENT SERVICES)

38. Consider an ordinance vacating and abandoning a 0.06-acre portion of the east/west 20-foot alley adjacent to the north side of Lot 6, Block 3, Edwards Addition, City and County of Midland, Texas (Generally located on the east side of Edwards Street, approximately 140 feet south of Cuthbert Street); adopting the appraisal by the City Manager of \$522.72; and ordering recordation by the City Secretary. (DEVELOPMENT SERVICES) (9057)
39. Consider a motion appealing the decision by the City Building Official to deny a proposed sign permit on Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas. (Generally located on the southwest corner of the intersection of West Louisiana Avenue and North Colorado Street.) (DEVELOPMENT SERVICES)
40. Consider a motion on a request for the annexation of a 43.00-acre tract of land out of Section 35, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the east side of State Highway 158, approximately 1/2 mile northwest of State Highway 191.) (DEVELOPMENT SERVICES)
41. Consider a motion on a request for the annexation of a 195-acre tract of land out of Section 12 and 13, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the south side of East Interstate Highway 20, south of South Loop 250 West.) (DEVELOPMENT SERVICES)
42. Consider making appointments to various Boards and Commissions.

EXECUTIVE SESSION

43. Pursuant to Texas Government Code §551.101, the Council will hold an Executive Session which is closed to the public to discuss the following matters as permitted under the following Texas Government Code Sections:
 - a. Section 551.074 Personnel Matters
 - a.1. Deliberate the employment, evaluation, duties, and salary of the Presiding Municipal Court Judge, the Associate Municipal Court Judge, the City Manager, the City Attorney and the City Secretary.
 - b. Section 551.072 Deliberation Regarding Real Property
 - b.1. Deliberate the purchase, exchange and value of real property described as Lots 1 through 6, Block 38, Original Town Addition, an addition to the City of Midland, Texas.

- b.2. Deliberate the sale, exchange and value of real property consisting of all of Block 50, Original Town Addition, an addition to the City of Midland, Midland County, Texas.
- b.3. Deliberate the purchase, exchange and value of real property in Block 39, Lots 7-12, Original Town Addition, an addition to the City of Midland, Midland County, Texas.
- b.4. Deliberate the purchase, exchange and value of real property being all of Block 55, Original Town Addition, an addition to the City of Midland, Midland County, Texas.
- b.5. Deliberate the sale, exchange and value of real property described as Lots 1, 2, 3, 4, 5, and 6, Block 41, Original Town Addition, an addition to the City of Midland, Midland County, Texas.

Respectfully Submitted,

Courtney B. Sharp
City Manager

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

**MIDLAND CITY COUNCIL
MINUTES
August 7, 2012**

The City Council convened in a Special Session in the Council Chamber, City Hall, Midland, Texas, at 9:00 a.m. on August 7, 2012.

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

Council Members absent: Mayor W. Wesley Perry and Scott Dufford (Dufford arrived at 9:10 a.m.).

Items to be considered:

1. Consider a resolution calling an election for four City Officials.

RESOLUTION NO. 2012 - 240
RESOLUTION CALLING AN ELECTION FOR FOUR CITY OFFICIALS; PROVIDING
FOR USE OF ACCESSIBLE VOTING SYSTEMS; ESTABLISHING ELECTION
PRECINCTS FOR SAID ELECTION; AND ESTABLISHING POLLING PLACES FOR
SAID ELECTION

Council Member Hailey moved to adopt Resolution No. 2012 - 240; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry, Dufford.

2. First Public Hearing on Proposed FY 2012 - 2013 Tax rate (FINANCE)

Finance Director Bob McNaughton gave an overview of the workshop regarding the effective rate and the tax rate. Mayor Pro Tem Morales opened the public hearing at 9:21 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

No further action was taken on this item.

All of the business at hand having been completed, the meeting adjourned at 9:22 a.m.

PASSED AND APPROVED the 28th day of August, 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

**MIDLAND CITY COUNCIL
MINUTES
August 14, 2012**

BRIEFING SESSION

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 9:00 a.m. on August 14, 2012.

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

Council Members absent: Council Member Vicky Hailey (District 2) (Hailey arrived at 9:08 a.m.) and Council Member Michael Trost (District 4).

Staff members present: City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, Assistant City Manager Jim Nichols, City Secretary Amy Turner, Community Services Director Tina Jauz, Acting Engineering Director David Beard, Building Official Steve Thorpe, Transportation Manager Gary Saunders, Public Information Officer Persephone Dakopolos, Downtown Development Manager Genora Young, and Assistant Code Administration Manager Ron Jenkins.

1. Receive a presentation from Lisa Grissom on the recent Tall City Blues Festival.

Lisa Grissom, representing Tall City Blues Festival reported they have established the festival as a mainstay staple in the community. A survey was sent out and the data is being compiled but as of the time of the report 107 of 4,300 people have completed the survey. She reported that approximately 40% of the attendees were from outside of Midland. They believe they will have a comparable financial result as the previous year and felt it was largely due to the number of complimentary tickets given to promote the event. Her focus in the last two years was on creating a quality event and now her focus will shift to building a sustainable business. They are already working on front-end fundraising so that the festival will be paid for before it begins next year. Ms. Grissom noted that having stage anchors in the street would be of benefit to the event.

2. Receive an update from Elaine Magruder on the I-20 Wildlife Preserve and Jenna Welch Nature Study Center.

Elaine Magruder of the I-20 Wildlife Preserve provided a status of the project noting that the trails, bird blinds and hawk tower had been completed. A person in a wheelchair helped them ensure they were ADA compliant. Phase II will be a parking lot and a pavilion with restrooms. She discussed some challenges that they were facing with a neighbor who has been dumping and the need to pave South Midland Drive so that the dust from the caliche road would not harm the preserve. A fencing contractor has been hired to fence the entire preserve.

Discussion ensued about the need to annex the surrounding property to ensure that dumping would not continue. Council asked for a recommendation from staff. City Manager Sharp reported that staff would have one by the next Council Meeting.

The foregoing agenda items were discussed by the City Council with no formal action taken. The Briefing Session was adjourned at 9:40 a.m.

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:03 a.m., August 14, 2012.

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

Council Members absent: Council Member Michael Trost (District 4) (Trost arrived at 10:26 a.m.).

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

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

OPENING ITEMS

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

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - a. Council Member James presented a Proclamation for National Immunization Month to the Health Department.

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.

Kim Henderson, 4700 Boulder, #712, speaking on behalf of PDAP, reported on their Medication Take Back Program noting that two permanent medication drop-offs have been established at the Sheriff's Department lobby and at Graham's Pharmacy. She

also announced a community forum to be held on September 13 at Midland College from 7-9 p.m. regarding drugs and alcohol.

CONSENT AGENDA

Council Member Morales moved to approve Consent Agenda items 5 - 23 excluding 21; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Trost.

5. Approved a motion approving the following minutes:
 - a. Regular Meeting of July 24, 2012.
 - b. Special Meeting of July 26, 2012.
6. Received for information the third quarter Fiscal Year 2011 - 2012 Investment Report. (FINANCE)
7. Approved a resolution approving a master agreement for the purchase of Uniforms for City of Midland employees. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 241

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

8. Approved a resolution approving the Phase 1 purchase of playground equipment for the Community Services Department. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 242

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

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

RESOLUTION NO. 2012 - 243

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

10. Approved a resolution authorizing the City Manager to execute on behalf of the City of Midland with the State of Texas, represented by the Texas Department of

Transportation, for the implementation of the project described as Midland Airpark Hangar Expansion. (AIRPORTS)

RESOLUTION NO. 2012 - 244

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

11. Approved a resolution authorizing the execution of a Right of Way Agreement between WTG Processing, L.P. and the City of Midland at Midland Executive Airpark. (AIRPORTS)

RESOLUTION NO. 2012 - 245

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

12. Approved a resolution authorizing the execution of an agreement in lieu of annexation between the City of Midland and STG Development, LLC, regarding two tracts of land described as 152.2-acre tract located in Sections 1, 2, 11 and 12, Block 40, T-2-S, T&P RR Co. Survey and an 81.04-acre tract located in Section 11, Block 40, T-2-S, T&P RR Co. Survey, all in Midland County, Texas. (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2012 - 246

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

13. Approved a resolution authorizing the acceptance of a 15-foot water line easement located in Section 2, 11 and 12, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas; and ordering recordation by the City Secretary. (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2012 - 247

RESOLUTION AUTHORIZING THE ACCEPTANCE OF A 15-FOOT WATER LINE EASEMENT LOCATED IN SECTIONS 2, 11 AND 12, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; AND ORDERING RECORDATION BY THE CITY SECRETARY

14. Approved a resolution authorizing the City of Midland to accept \$21,093 as a donation from the Friends of the I-20 Wildlife Preserve and Jenna Welch Nature Study Center, and appropriating said funds to Project No. 8998. (COMMUNITY SERVICES)

RESOLUTION NO. 2012 - 248

RESOLUTION AUTHORIZING THE CITY OF MIDLAND TO ACCEPT A DONATION IN THE AMOUNT OF \$21,093.00 FROM THE FRIENDS OF THE I-20 WILDLIFE PRESERVE AND JENNA WELCH NATURE STUDY CENTER IN ORDER TO ASSIST IN THE CONSTRUCTION OF THE I-20 WILDLIFE PRESERVE PAVILION AND RESTROOMS PROJECT, AND APPROPRIATING FUNDS

15. Approved a motion on a request by Schumann Engineering for Bonito Estates – Section 2, to approve items requested for deferral in the amount of \$343,830.90, and to waive the associated public improvement guarantee. (ENGINEERING SERVICES)
16. Approved a motion on a request by Schumann Engineering for Bonito Estates – Section 3, to approve items requested for deferral in the amount of \$543,016.80, and to waive the associated public improvement guarantee. (ENGINEERING SERVICES)
17. Approved a motion on a request by West Engineering for Mustang Trail Addition, to approve items requested for deferral in the amount of \$115,824.10, and to waive the associated public improvement guarantee. (ENGINEERING SERVICES)
18. Approved a resolution authorizing a right-of-way crossing license with the City of Midland, Texas and Midmar Gas LLC. for the purpose of installing one 6" poly pipeline to gather gas from an oil and gas lease under a portion of Holiday Hill Road right-of-way within the City of Midland, Texas, Section 6, Block X, H.P. Hillard Survey, and Section 24, Block 40, T-1-S, T&P RR. Co. Survey City of Midland, Midland County Texas. (ENGINEERING SERVICES)

RESOLUTION NO. 2012 - 249

RESOLUTION AUTHORIZING A RIGHT-OF-WAY LICENSE WITH THE CITY OF MIDLAND, TEXAS AND MIDMAR GAS, L.L.C.; SAID RIGHT-OF-WAY LICENSE IS FOR THE PURPOSE OF ENTERING CITY OF MIDLAND'S RIGHT-OF-WAY FOR THE PURPOSE OF INSTALLING 1 SIX INCH POLY PIPELINE TO GATHER GAS FROM AN OIL AND GAS LEASE UNDER A PORTION OF HOLIDAY HILL ROAD; THE PIPELINE IS LOCATED WITHIN THE CITY OF MIDLAND RIGHT-OF-WAY, SECTION 6, BLOCK X, H.P. HILLARD SURVEY, AND SECTION 24, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND, MIDLAND COUNTY, TEXAS; THE LICENSE TERM IS FOR TWENTY-FIVE (25) YEARS, COMMENCING WITH THE DATE OF THIS LICENSE AND MAY RENEW AT THE END OF THE TERM FOR ONE ADDITIONAL TWENTY-FIVE (25) YEAR TERM UPON 90 DAYS WRITTEN REQUEST PRIOR TO EXPIRATION

19. Approved a motion on a request by Landgraf, Crutcher, and Associates for the Los Conchos Estates (Phase 2), to approve items requested for deferral in the amount of \$227,550, and to waive the associated public improvement guarantee. (ENGINEERING SERVICES)
20. Approved a motion on a request by West Company of Midland for the Harvell Addition, to approve items requested for deferral in the amount of \$479,906.56, and to waive the associated public improvement guarantee. (ENGINEERING SERVICES)
22. Approved a resolution to accept and appropriate grant funding awarded through the 2012 Justice Assistance Grant Program. (POLICE)

RESOLUTION NO. 2012 - 250

RESOLUTION AUTHORIZING THE CITY OF MIDLAND POLICE DEPARTMENT IN CONJUNCTION WITH THE MIDLAND COUNTY SHERIFF'S DEPARTMENT TO ACCEPT THE FISCAL YEAR 2012 JUSTICE ASSISTANCE GRANT FUNDS TOTALING \$31,908.00; THE CITY OF MIDLAND WILL RECEIVE \$19,145.00 (60%) AND MIDLAND COUNTY WILL RECEIVE \$12,763.00 (40%) OF THE GRANT FUNDS; AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS; AND APPROPRIATING FUNDS

23. Approved a resolution to accept funding awarded through the 2013 Victim Coordinator Liaison Grant Program. (POLICE)

RESOLUTION NO. 2012 - 251

RESOLUTION ACCEPTING THE FISCAL YEAR 2013 VICTIM COORDINATOR AND LIAISON GRANT FROM THE TEXAS ATTORNEY GENERAL; THIS GRANT IS TO BE USED BY THE MIDLAND POLICE DEPARTMENT TO MAINTAIN A VICTIM ASSISTANCE LIAISON POSITION; AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS; AND DEPOSITING THE FUNDS INTO THE GENERAL FUND

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

21. Consider a motion on a request by Schumann Engineering for Quail Ridge Addition (Section 3), to approve items requested for deferral in the amount of \$42,286.70, and to waive the associated public improvement guarantee. (ENGINEERING SERVICES)

Council Member Hailey asked for a brief update. City Engineer David Beard gave a brief overview of the item noting that it had nothing to do with the housing.

Council Member Sparks moved to approve a request by Schumann Engineering for Quail Ridge Addition (Section 3), to approve items requested for deferral in the amount of \$42,286.70, and to waive the associated public improvement guarantee; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Trost.

SECOND READINGS

24. Consider an ordinance on second reading on a request by Rick Shirley for a zone

change from PD, Planned District for a Shopping Center, to a Planned District for a Housing Development on a 12.63-acre tract of land out of the NW/4 of Section 6, Block 39, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the east side of South Loop 250 West, approximately 1/4 mile north of West Wall Street.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9006

ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 12.63-ACRE TRACT OF LAND OUT OF THE NORTHWEST QUARTER OF SECTION 6, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED AS TWO SEPARATE PLANNED DISTRICTS FOR SHOPPING CENTERS, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE EAST SIDE OF LOOP 250, APPROXIMATELY 1/4 OF A MILE NORTH OF WALL STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Reyes read the caption of Ordinance No. 9006

Council Member James moved to approve the second and final reading of Ordinance No. 9006 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Trost.

25. Consider an ordinance on second reading on a request by Basin Burger House, LLC. for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant. (Generally located on the southwest corner of the intersection of West Louisiana Avenue and North Colorado Street.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9043

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

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

Council Member Morales moved to approve the second and final reading of Ordinance No. 9043 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Trost.

26. Consider an ordinance second reading on a city-initiated request to amend the City's Thoroughfare Plan from The City's Comprehensive Plan 2025, Chapter 4, The Thoroughfare Plan, "Plate 4-1". (DEVELOPMENT SERVICES)

ORDINANCE NO. 9045

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

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

Council Member Hailey moved to approve the second and final reading of Ordinance No. 9045 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Trost.

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

ORDINANCE NO. 9046

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

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

Council Member Hailey moved to approve the second and final reading of Ordinance No. 9046 in accordance with the Charter of the City of Midland; seconded by Council Member James.

Council Member Sparks moved to amend Subsection D, Section 3 of Ordinance No. 9046 to add judicial notice to allow for easier implementation in Municipal Court; seconded by Council Member Dufford.

City Attorney Stretcher reported that in Municipal Court it has to be proved that a person occupies a residence and often water bills or tax records are used to make such proof. If the other side contests each agency must be subpoenaed to testify that the documents provided are accurate records. The change would allow the Municipal Court Judge to examine the records and take judicial notice which would eliminate the need to subpoena for testimony that records are accurate.

City Attorney Stretcher read the following into the record: JUDICIAL NOTICE: a) The City of Midland Municipal Court upon its own motion may, or upon the motion of a party shall, take judicial notice of this Ordinance. b) The City of Midland Municipal Court upon its own motion may, or upon the motion of a party shall, take judicial notice of records in the City's Customer Service Division. c) The City of Midland Municipal Court upon its own motion may, or upon the motion of a party shall, take judicial notice of all records of Midland County, Texas; all records of the Midland Central Appraisal District; and all records of the City of Midland, Texas.

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

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

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

ORDINANCE NO. 9047

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

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

Council Member Hailey moved to approve the second and final reading of Ordinance No. 9047 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Trost.

PUBLIC HEARINGS

29. At approximately 10:30 a.m. hold a public hearing and consider an ordinance on a request by Andrew Mellen for a zone change from PD, Planned District for a Housing Development to Amended Planned District. (Generally located on the east side of Loop 250, between Graceland and Leisure Drives.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9048

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1, BLOCK 161, WILSHIRE PARK ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF LOOP 250, BETWEEN LEISURE DRIVE AND GRACELAND DRIVE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Planning Division Manager Cameron Walker provided an overview of the item noting no letters of objection had been received and that Planning & Zoning was in favor of the item.

Mayor Perry opened the public hearing at 10:36 a.m. There being no one present wishing to speaking, the public hearing was immediately closed.

Deputy City Secretary Reyes read the caption of Ordinance No. 9048.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 9048 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

30. At approximately 10:33 a.m. hold a public hearing and consider an ordinance on a request by Barbara Ann Harris for a zone change from 1F-2, One Family Dwelling District to LR-3, Local Retail District. (Generally located on the west side of South Marshall Street, approximately 150 feet south of East Florida Avenue) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9049

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 4, BLOCK 192, SOUTHERN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 1F-2, ONE-FAMILY DWELLING DISTRICT, TO BE USED AS AN LR-3, LOCAL RETAIL DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF MARSHALL STREET, APPROXIMATELY 150 FEET SOUTH OF EAST FLORIDA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Planning Division Manager Walker provided an overview of the item noting two phone calls had been received regarding this item but no letters of objection had been received. Staff and the Planning & Zoning Commission recommended approval.

Mayor Perry opened the public hearing at 10:41 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. 9049.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 9049 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

31. At approximately 10:39 a.m. hold a public hearing regarding a proposed oil and gas permit to Callon Petroleum Operating Company (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Pecan Acres 22C#1) located 1,847 feet from the east line and 467 feet from the south line located in Section 22, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the east side of Trobaugh Boulevard, approximately 467 feet north of Briarwood Avenue.) (DEVELOPMENT SERVICES)

Oil & Gas Compliance Officer Ron Jenkins reported the wells would be located north of Briarwood, the flow lines would go to an already approved battery to the east, that the well was approved by the Oil & Gas Advisory Committee, that Callon was requesting a landscape variance for no more than two years, and the closest house was 828 feet away.

Mayor Perry opened the public hearing at 10:44 a.m. There being no one present wishing to speak, the public hearing was immediately closed. No other action was taken on this item.

32. At approximately 10:42 a.m. hold a public hearing and consider an ordinance on a request by MARC Inc. and B & R Metal Buildings for a zone change from 2F, Two-Family Dwelling District, to a PDHD, Planned District for a Housing Development. Generally located on the northwest corner of the intersection of Tarleton Street and Shell Avenue. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9050

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-3, BLOCK 1, BISHOP ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 2F, TWO-FAMILY DWELLING DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF TARLETON STREET AND SHELL AVENUE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Planning Division Manager Walker provided an overview of the item noting two letters of opposition had been received and that Planning & Zoning determined it would be a continuation of the zoning to the west.

Mayor Perry opened the public hearing at 10:48 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. 9050.

Council Member Sparks moved approval of the first of two readings of Ordinance No. 9050 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

33. At approximately 10:45 a.m. hold a public hearing and consider an ordinance on request by Jim Roachelle for a zone change from LR-2, Local Retail District to PD, Planned District for a Housing Development. (Generally located at the northwest corner of West Illinois Avenue and Delmar Street.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9051

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 3A, BLOCK 15A, OXFORD HEIGHTS, SECTION 8, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED AT THE NORTHWEST CORNER OF WEST ILLINOIS AVENUE AND DELMAR STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Planning Division Manager Walker provided an overview of the item noting no development had been on this property since at least the early 1980's. The owner was asking for ten or more feet between the buildings. There was adequate parking of 104 spaces and no letters of objection had been received. Staff recommended approval of the item.

Brief discussion ensued regarding the changes to density and parking issues.

Mayor Perry opened the public hearing at 11:06 a.m.

Eric West, Parkhill Smith & Cooper, noted that on a smaller piece of property, higher density would be needed to make a project viable and have adequate on-site parking. He addressed that trash would be picked up from the alley by Solid Waste. He addressed the smaller space between the buildings was due to a public utility easement and that to increase the separation between the buildings would involve abandoning the easement. He requested that the code not call for a specific separation.

When asked if this would be low or middle income housing Mr. West noted it was a brand new apartment community with storage units and garages and it would not be on the low end but would command a reasonable rent for the space available. He reported there would be a small playground and some grassy and picnic areas as well, but no pool.

There being no one else wishing to speak, the public hearing was closed at 11:18 a.m.

Deputy City Secretary Reyes read the caption of Ordinance No. 9051.

Council Member James moved approval of the first of two readings of Ordinance No. 9051 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Hailey, Perry, Dufford, James, Sparks. NAY: Trost. ABSTAIN: None. ABSENT: None.

34. At approximately 10:48 a.m. hold a public hearing 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 West Illinois Avenue and West Texas Avenue, east of North "O" Street. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2012 - 252

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

Planning Division Manager Walker gave an overview of the item noting this item was for St. Ann's Annual Fair to be held September 27-30. He reported additional bathrooms would be added on site and 24 peace officers would be on location during the event. No letters of objection had been received.

Mayor Perry opened the public hearing at 11:26 a.m.

Steve Pepper, 106 W. Texas, representing St. Ann's, reported there had been talk about closing the street but realized that would cause other issues. He reported they do a good job of organizing the event and they keep people moving and out of the way of traffic. They do not foresee moving the event to another location because of the ease of having it on church property and that they have learned to make do with what they have.

There being no one else wishing to speak, the public hearing was closed at 11:29 a.m.

Council Member James moved to adopt Resolution No. 2012 - 252; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

35. At approximately 10:51 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. 2012 - 253

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

Planning Division Manager Walker gave an overview of the item noting it was for their annual SeptemberFest event to be held September 7-9. Additional bathroom facilities would be provided on the property and there would be 12 peace officers on site during all operating hours. He reported no letters of objection had been received.

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

Council Member James moved to adopt Resolution No. 2012 - 253; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

MISCELLANEOUS

37. Consider making appointments to various Boards and Commissions.

No appointments were made.

EXECUTIVE SESSION

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

- a. Section 551.087 Deliberation Regarding Economic Development Negotiations

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

Mayor Perry recessed the meeting to executive session at 11:32 a.m. He announced the meeting would reconvene at 6:00 p.m. to hear Agenda Item number 36. The entire Council met in executive session until 12:38 p.m.

Mayor Perry reconvened the meeting at 6:03 p.m. in the Council Chamber with all Council Members present except Council Member Hailey.

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

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

Robert Crites, 606 E Broadway, questioned the need to raise the effective tax rate and

suggested the rainy day fund money be used instead.

Mayor Perry explained that the money would be used to fund a Fire Station and 6 new Fire Fighters as well as upgrades to mandated technology.

Lori Bizzle, 2816 Auburn Drive, reported she had reviewed a few sections of the budget. She noted that her salary has not necessarily kept up with increasing costs. She referred to areas of the budget that she felt could be decreased such as travel and entertainment in the legislative fund which increased 80 percent and that City Manager's Office salaries which increased 112 percent. City Attorney Sharp noted that the PIO was paid out of non-departmental last year and that salary has been moved to his office this year. Ms. Bizzle asked the Council to review the budget to make any cuts that could be made and expressed concern that she would have to have a decent paying job in retirement just to pay for taxes and insurance.

There being no one else wishing to speak, the public hearing was closed at 6:16 p.m.

Mayor Perry announced that on August 21 and August 27 the Council would vote on the tax rate.

All of the business at hand having been completed, the meeting adjourned at 6:19 p.m.

PASSED AND APPROVED the 28th day of August, 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 8/28/2012

TO: City Council / City Manager

FROM: Robert Patrick, General Services Director

SUBJECT: Consider a resolution approving a professional services agreement with Parkhill, Smith and Cooper for the design of Fire Station 10.

Purpose:

To request Council approval to authorize the City Manager and the City Attorney to execute a Professional Services Agreement to perform architectural services for the construction of Fire Station #10.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$265,000 of 2012 Certificate of Obligation Funds.

Discussion:

Please consider approval of a resolution authorizing the City Manager and City Attorney to execute a Professional Services agreement with Parkhill, Smith and Cooper.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH PARKHILL, SMITH AND COOPER, INC., FOR PROFESSIONAL ARCHITECTURAL AND ENGINEERING SERVICES FOR THE CONSTRUCTION OF FIRE STATION #10, FOR A FEE OF 6.5% OF THE TOTAL COST OF CONSTRUCTION, NOT TO EXCEED \$265,000.00; AND APPROPRIATING FUNDS

WHEREAS, the Request for Qualifications was advertised for architectural and engineering services regarding construction of Fire Station #10 (“Professional Services”); and

WHEREAS, Parkhill, Smith and Cooper, Inc., proposes to perform said Professional Services for a fee of 6.5% of the total cost of construction, not to exceed \$265,000.00; and

WHEREAS, the Council finds Parkhill, Smith and Cooper, Inc., to be the most highly qualified provider for such Professional Services based on demonstrated competence, knowledge, and qualifications; and

WHEREAS, the Council finds it to be in the public interest to select Parkhill, Smith and Cooper, Inc., to provide said Professional Services; and

WHEREAS, the Council authorizes the City Manager to execute a professional services agreement with Parkhill, Smith and Cooper, Inc., for the performance of said Professional 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 Parkhill, Smith and Cooper, Inc., for performance of said Professional Services, said agreement being on file in the office of the City Secretary referenced by the date and number of this Resolution.

SECTION TWO. That the sum of \$265,000.00 is hereby appropriated from the 2012 GPCO Fire Facilities Bond Fund (161) Unappropriated Fund Balance (5650) to the Fire

Station Land Acquisition Project (8013).

SECTION THREE. That the City Treasurer is hereby authorized and directed to make payments to Parkhill, Smith and Cooper, Inc., for Professional Services pursuant to the terms of said professional services agreement from funds appropriated herein upon receipt of proper invoice(s) approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

PROFESSIONAL SERVICES AGREEMENT
FOR ARCHITECTURAL SERVICES

THIS AGREEMENT is made and effective the 29th day of August 2012, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "OWNER," and, Parkhill, Smith and Cooper, Inc., 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 architectural and engineering services for construction of Fire Station 10.

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 design professionals in approximately the same location 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

OWNER 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 6.5% of the total construction costs (breakdown of fees is located in Exhibit "A.") which fee for basic services shall in no event exceed Two Hundred and Sixty Five Thousand dollars (\$265,000), excluding Additional Services and Reimbursable Expenses. Within 60 days of the date CONSULTANT's invoice is received by OWNER, OWNER shall pay the full amount of such invoice; provided, however, that if OWNER objects to any portion of an invoice, OWNER shall notify CONSULTANT of OWNER'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. OWNER in any event shall pay every portion of the invoice that is not in dispute within the 60-day period for payment.

ARTICLE IV. TERM

The term of this Agreement shall be from August 29th, 2012 until August 29th, 2015, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

The Owner may terminate this Agreement at will for no or any reason upon giving at least one-hundred-eighty (180) days written notice to the Consultant. The parties to this Agreement understand and agree that it is in the Owner's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the Owner. 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 Owner. The issue on whether or not to grant consent to an assignment is in the sole discretion of the Owner.

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 OWNER and shall be delivered to OWNER, without restriction, except that CONSULTANT may make copies of any and all instruments of service for its files. The OWNER 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 Owner; 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 Owner and Consultant, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Owner 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 Owner. 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 Owner does not have the power to direct the order in which the work is done. The Owner shall not have the right to control the means, methods or details of the 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
• Medical Expenses: Unlimited • Disability Benefits: Up to 2/3 of weekly wage, up to 400 weeks • Death Benefits: Up to \$10,000	• Medical Expenses: Up to \$10,000 • Disability Benefits: Up to 2/3 of weekly wage, up to 400 weeks • Death Benefits: Up to \$10,000

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

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

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

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

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

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

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

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

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 OWNER, 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 OWNER AND THE CONSULTANT. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

THE CONSULTANT AND OWNER 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 Owner is not waiving its right of sovereign immunity. The Owner is retaining its immunity from suit. The Owner is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

The OWNER'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 OWNER, OWNER'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 OWNER'S NEGLIGENCE..

ARTICLE XIV. GENERAL PROVISIONS

A. Waiver. No waiver by OWNER 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 OWNER: City Manager's Office
P.O. Box 1152
Midland, Texas 79702

If to CONSULTANT: Daniel S. Hart, AIA, PE
Parkhill, Smith and Cooper, Inc.
1700 West Wall Street
Midland, TX 79701

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

CONSULTANT:

By: _____
Courtney B. Sharp, City Manager

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 Parkhill, Smith and Cooper, Inc., known to me to be the person and official
whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed
the same as the act and deed of said corporation, for the purposes and consideration therein
expressed, and in the capacity therein stated.

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

Notary Public, State of Texas

EXHIBIT A
ENGINEER'S/ARCHITECT'S SERVICES

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. ENGINEER/ARCHITECT shall provide Basic and authorized Additional Services as set forth below.

EXHIBIT A - PART I -- BASIC SERVICES

A1.01 Study and Report (Programming & Schematic Design) Phase

A. ENGINEER/ARCHITECT shall:

1. Consult with OWNER to define and clarify OWNER's requirements for the Project and available data.
 2. Advise OWNER as to the necessity of OWNER's providing data or services which are not part of ENGINEER's/ARCHITECT's Basic Services, and assist OWNER in obtaining such data and services.
 3. Establish the scope, and advise the OWNER, of any special investigations, field surveys or soil and foundation investigations which, in the opinion of the ENGINEER/ARCHITECT, may be required for the proper execution of the Programming & Schematic Design Phase; and arrange with the OWNER for the conduct of such investigations and tests. The performance of these investigations and tests is not a part of the ENGINEER's/ARCHITECT's Basic Services, and compensation therefore is not included in the Basic Fee; the investigations and tests may be performed by the ENGINEER/ARCHITECT, by agreement with the OWNER, in which case compensation shall be determined by the applicable portions of Exhibit B. Optionally, surveys may be performed by the OWNER and furnished to the ENGINEER/ARCHITECT.
 4. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER/ARCHITECT, including but not limited to mitigating measures identified in the environmental assessment.
 5. Identify and evaluate alternate solutions available to OWNER and, after consultation with OWNER, recommend to OWNER those solutions which in ENGINEER's/ARCHITECT's judgment meet OWNER's requirements for the Project.
 6. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to OWNER which ENGINEER/ARCHITECT recommends. This Report will be accompanied by ENGINEER's/ARCHITECT's opinion of Total Project Costs for each solution which is so recommended for the Project with each component separately itemized, including the following, which will be separately itemized: opinion of probable Construction Cost, allowances for contingencies and for the estimated total costs of design, professional, and related services provided by ENGINEER/ARCHITECT, and other information furnished by OWNER.
 7. Furnish five (5) review copies of the Report to OWNER and review it with OWNER.
 8. Revise the Report in response to OWNER's and other parties' comments, as appropriate, and furnish ten (10) final copies of the revised Report to the OWNER.
- B. ENGINEER's/ARCHITECT's services under the Study and Report (Programming & Schematic Design) Phase will be considered complete on the date when the final copies of the revised Report have been delivered to OWNER.

A1.02 Preliminary Design Phase (Design Development Phase)

A. After acceptance by OWNER of the Report, selection by OWNER of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER/ARCHITECT shall:

1. On the basis of the above acceptance, selection, and authorization, prepare Design Development Phase documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the Project.
2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners. The performance of field surveys is not a part of the ENGINEER's/ARCHITECT's basic services, and compensation therefore is not included in the Basic Fee; the surveys may be performed by the ENGINEER/ARCHITECT, by agreement with the OWNER, in which case compensation shall be determined by applicable portions of Exhibit B. Optionally, surveys may be performed by the OWNER and furnished to the ENGINEER/ARCHITECT.
3. Establish the scope, and advise the OWNER, of any additional soils or foundation investigations which, in the opinion of the ENGINEER/ARCHITECT, may be required for the proper execution of the Project; and arrange with the OWNER for the conduct of such investigations and tests. The performance of these investigations and tests is not a part of the ENGINEER's/ARCHITECT's Basic Services, and compensation therefore is not included in the Basic Fee; the investigations and tests may be performed by the ENGINEER/ARCHITECT, by agreement with the OWNER, in which case compensation shall be determined by the applicable portions of Exhibit B.
4. Advise OWNER if additional reports, data, information, or services are necessary and assist OWNER in obtaining such reports, data, information, or services.
5. Based on the information contained in the Design Development Phase documents, submit a revised opinion of probable Construction Cost.
6. Furnish five (5) review copies of the Design Development Phase documents to and review them with OWNER.

B. ENGINEER's/ARCHITECT's services under the Design Development Phase will be considered complete on the date when copies of the Design Development Phase documents have been delivered to OWNER.

A 1.03 *Final Design Phase (Construction Documentation Phase)*

A. After acceptance by OWNER of the Design Development Phase documents and revised opinion of probable Construction Cost as determined in the Design Development Phase, but subject to any OWNER-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from OWNER, ENGINEER/ARCHITECT shall:

1. On the basis of the above acceptance, direction, and authorization, prepare final Drawings indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Specifications will be prepared, where appropriate, in general conformance with the 16-division format of the Construction Specifications Institute.
2. Provide technical criteria, written descriptions, and design data for OWNER's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project and assist OWNER in consultations with appropriate authorities. Prepare all exhibits and supporting documentation, and represent OWNER in obtaining review and approval from Texas Department of Licensing and Regulation (TDLR) - Architectural Barriers Section.
3. Advise OWNER of any adjustments to the opinion of probable Construction Cost.
4. Prepare and furnish five (5) sets of Bidding Documents and a revised opinion of probable

Construction Cost for review and approval by OWNER, its legal counsel, and other advisors, as appropriate, and assist OWNER in the preparation of other related documents.

B. The number of prime contracts for Work designed or specified by ENGINEER/ARCHITECT upon which the ENGINEER's/ARCHITECT's compensation has been established under this Agreement is one (1).

C. ENGINEER's/ARCHITECT's services under the Construction Documentation Phase will be considered complete on the date when the final Bidding Documents have been delivered to OWNER.

A1.04 *Bidding or Negotiating Phase*

A. After acceptance by OWNER of the Bidding Documents and the most recent opinion of probable Construction Cost as determined in the Construction Documentation Phase, and upon written authorization by OWNER to proceed, ENGINEER/ARCHITECT shall:

1. Furnish the number of copies of the Plans and Specifications as required by prospective bidders and furnishers of material and equipment. All sets of plans and specifications are to be paid for separately under Exhibit B as an Additional Service.
2. Assist OWNER in advertising for and obtaining bids or negotiating proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process Contractor deposits or charges for the Bidding Documents.
3. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
4. Consult with OWNER as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.
5. Attend the Bid opening, prepare Bid tabulation sheets, and assist OWNER in evaluating Bids or proposals and in assembling and awarding contracts for the Work.

B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors.

A1.05 *Construction Phase*

A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from OWNER, ENGINEER/ARCHITECT shall:

1. *General Administration of Construction Contract.* Consult with OWNER and act as OWNER's representative as provided in the General Conditions.
2. *Resident Project Representative (RPR).* Provide the services of an RPR at the Site to assist the ENGINEER/ARCHITECT and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit C. The furnishing of such RPR's services will not extend ENGINEER's/ARCHITECT's responsibilities or authority beyond the specific limits set forth elsewhere in this Agreement. The performance of the RPR is not included in the ENGINEER's/ARCHITECT's basic fee and may be performed by the ENGINEER/ARCHITECT, by agreement with the OWNER, in which case compensation shall be determined by applicable portions of Exhibit B.
3. *Selecting Independent Testing Laboratory.* Assist OWNER in the selection of an independent testing laboratory. The performance of these investigations and tests is not included in the ENGINEER's/ARCHITECT's basic fee and may be performed by the ENGINEER/ARCHITECT, by

agreement with the OWNER, in which case compensation shall be determined by applicable portions of Exhibit B.

4. *Pre-Construction Conference.* Conduct a Pre-Construction Conference prior to commencement of Work at the Site.

5. *Baselines and Benchmarks.* As appropriate, establish baselines and benchmarks for locating the Work which in ENGINEER's/ARCHITECT's judgment are necessary to enable Contractor to proceed. The performance of field surveys is not included in the ENGINEER's/ARCHITECT's basic fee and may be performed by the ENGINEER/ARCHITECT, by agreement with the OWNER, in which case compensation shall be determined by applicable portions of Exhibit B.

6. *Visits to Site and Observation of Construction.* In connection with observations of Contractor's work in progress while it is in progress:

- a. Make up to 24 visits to the Site at intervals appropriate to the various stages of construction, as ENGINEER/ARCHITECT deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the Work. Such visits and observations by ENGINEER/ARCHITECT, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress or to involve detailed inspections of Contractor's work in progress beyond the responsibilities specifically assigned to ENGINEER/ARCHITECT in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the work based on ENGINEER's/ARCHITECT's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and such observations, ENGINEER/ARCHITECT will determine in general if Contractor's work is proceeding in accordance with the Contract Documents, and ENGINEER/ARCHITECT shall keep OWNER informed of the progress of the Work.
- b. ENGINEER/ARCHITECT shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall ENGINEER/ARCHITECT have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, or for any failure of Contractor to comply with laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, ENGINEER/ARCHITECT neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

7. *Defective Work.* Recommend to OWNER that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, ENGINEER/ARCHITECT believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed project as a functioning whole as indicated in the Contract Documents.

8. *Clarifications and Interpretations; Field Orders.* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER/ARCHITECT may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

9. *Change orders and Work Change Directives.* Recommend Change Orders and Work Change Directives to OWNER, as appropriate, and prepare Change Orders and Work Change Directives as required.

10. *Shop Drawings and Samples.* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety, precautionary and programs incident thereto.

11. *Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor.

12. *Inspections and Tests.* Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. ENGINEER's/ARCHITECT's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents.

13. *Disagreements between OWNER and Contractor.* Render formal written decisions on all claims of OWNER and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of Contractor's work. In rendering such decisions, ENGINEER/ARCHITECT shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

14. *Applications for Payment.* Based on ENGINEER's/ARCHITECT's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:

- a. Determine the amounts that ENGINEER/ARCHITECT recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's/ARCHITECT's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's/ARCHITECT's knowledge, information and belief, Contractor's work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's/ARCHITECT's responsibility to observe Contractor's work. In the case of unit price work, ENGINEER's/ARCHITECT's recommendations of payment will include final determinations of quantities and classifications of Contractor's work (subject to any subsequent adjustments allowed by the Contract Documents).

15. *Contractor's Completion Documents.*

- a. Receive and review maintenance and operating instructions, schedules, and guarantees.
- b. Receive bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, tests and approvals,

Shop Drawings, Samples, annotated record drawings, and other data which are to be assembled by Contactor in accordance with the Contract Documents to obtain final payment.

c. ENGINEER/ARCHITECT shall transmit these documents to OWNER.

16. *Substantial Completion.* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with OWNER and Contractor, conduct an inspection to determine if the Work is Substantially Complete. If after considering any objections of OWNER, ENGINEER/ARCHITECT considers the Work Substantially Complete, ENGINEER/ARCHITECT shall deliver a certificate of Substantial Completion to OWNER and Contractor.

17. *Final Notice of Acceptability of the Work.* Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that ENGINEER/ARCHITECT may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER/ARCHITECT shall also provide a notice in the form attached hereto as Exhibit D (the 'Notice of Acceptability of Work') that the Work is acceptable to the best of ENGINEER's/ARCHITECT's knowledge, information, and belief and based on the extent of the services provided by ENGINEER/ARCHITECT under this Agreement.

B. *Duration of Construction Phase.* The Construction Phase will commence with the execution of the first Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by ENGINEER/ARCHITECT for final payment to Contractors. If the Project involves more than one prime contract, Construction Phase services may be rendered at different times in respect to the separate contracts.

C. *Limitation of Responsibilities.* ENGINEER/ARCHITECT shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. ENGINEER/ARCHITECT shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

EXHIBIT A - PART 2 - ADDITIONAL SERVICES

A2.01 *Additional Services Requiring OWNER's Authorization in Advance*

A. If authorized in writing by OWNER, ENGINEER/ARCHITECT shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by OWNER as indicated in Article 4 of the Agreement.

1. Providing design and/or construction surveys and staking to enable ENGINEER/ARCHITECT to perform its services and Contractor to perform his work, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
2. Services of a Resident Project Representative and other field personnel, as required, for on-the-site observation of construction and for construction layout surveys.
3. Soil and foundation investigations, including field and laboratory tests, borings, related engineering analysis and recommendations.
4. Preparing and furnishing to OWNER Record Drawings showing appropriate record information based on project annotated record documents received from Contractor.
5. Post-Construction Phase. The Post-Construction Phase includes, providing assistance in connection with the testing and adjusting of Project equipment or systems; Assisting OWNER in training OWNER's staff to operate and maintain Project, equipment, and systems; Assisting OWNER in developing procedures for control of the operation and maintenance of, and record keeping for Project equipment and systems; visiting the Project with the OWNER to observe any apparent defects in the Work, assist OWNER in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present; and in company with OWNER or OWNER's representative, provide an inspection of the Project within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.
6. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
7. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.
8. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by ENGINEER/ARCHITECT or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contact Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's/ARCHITECT's control.
9. Services required as a result of OWNER's providing incomplete or incorrect Project information.
10. Providing renderings or models for OWNER's use

11. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting OWNER in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by OWNER.
12. Furnishing services of ENGINEER's/ARCHITECT's Consultants for other than Basic Services.
13. Services during out-of-town travel required of ENGINEER/ARCHITECT other than for visits to the site or OWNER's office.
14. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
15. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by OWNER for the Work or a portion thereof.
16. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.
17. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.
18. Providing Construction Phase services beyond the Contract Times set forth in Exhibit B.
19. Providing assistance in resolving any Hazardous Environmental Condition in compliance with current Laws and Regulations.
20. Preparation of operation and maintenance manuals.
21. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other dispute resolution process related to the Project.
22. Providing more extensive services required to enable ENGINEER/ARCHITECT to issue notices or certifications requested by OWNER.
23. Services in connection with Work Change Directives and Change Orders to reflect changes requested by OWNER so as to make the compensation commensurate with the extent of the Additional Services rendered.
24. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the Construction Agreement in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.
25. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
26. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) an occurrence of a Hazardous Environmental Condition, (3)

Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.

27. Services in connection with any partial utilization of any part of the Work by OWNER prior to Substantial Completion.

28. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.

29. Other services performed or furnished by ENGINEER/ARCHITECT not otherwise provided for in this Agreement.

30. Reimbursable expenses associated with providing additional services.

EXHIBIT B
PAYMENTS TO ENGINEER/ARCHITECT
HOURLY RATE METHOD
STUDY AND REPORT (PROGRAMMING & SCHEMATIC DESIGN) PHASE
LUMP SUM METHOD - SUBSEQUENT PHASES

Article 4 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 4 -- PAYMENTS TO THE ENGINEER/ARCHITECT

B4.01a For Basic Services Having A Determined Scope - Standard Hourly Rate Method of Payment

A. OWNER shall pay ENGINEER/ARCHITECT for Basic Services set forth in Exhibit A - Part 1, as follows:

1. For platting the property—for the purposes of the sale of the property to the city and to locate appropriate easements in appropriate configurations—compensation will be based on ENGINEER's/ARCHITECT's Standard Hourly Rates (attached to Exhibit B as Appendix 1).
2. The total compensation for services under Item 1 above shall not exceed \$15,000.
3. For the Study and Report (Programming & Schematic Design) Phase compensation will be based on ENGINEER's/ARCHITECT's Standard Hourly Rates (attached to this Exhibit B as Appendix 1).
4. The total compensation for services under Item 3 above shall not exceed \$12,000.
5. The amounts billed for ENGINEER's/ARCHITECT's services will be based on the cumulative hours charged to the Project during the billing period by each class of ENGINEER's/ARCHITECT's employees times Hourly Rates for each applicable billing class, plus Direct Expenses at cost times a factor of 1.15, and ENGINEER's/ARCHITECT's Consultant's charges at cost times a factor of 1.0.

B4.01b For Basic Services Having A Determined Scope-Lump Sum Method of Payment

A. OWNER shall pay ENGINEER/ARCHITECT for Basic Services set forth in Exhibit A-Part 1, as follows:

1. A Lump Sum amount of 6.5% of the latest revised opinion of probable cost prepared prior to bidding, based on the following distribution of compensation:

a. Programming & Schematic Design Phase	NA
b. Design Development Phase	1.5%
c. Construction Documentation Phase	3.2%
d. Bidding and Negotiating Phase	0.4%
e. Construction Phase	1.4%
f. Resident Project Representation	*
2. The Lump Sum includes compensation for ENGINEER's/ARCHITECT's services and services of ENGINEER's/ARCHITECT's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Direct Expenses.
3. The portion of the Lump Sum amount billed for ENGINEER's/ARCHITECT's services will be based upon ENGINEER's/ARCHITECT's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.
4. The Lump Sum is conditioned on Construction Contract Times to complete the Work not exceeding the dates indicated above. Should the Construction Contract Times to complete the Work be

extended beyond this period, the total compensation to ENGINEER/ARCHITECT shall be appropriately adjusted.

- * To be negotiated at time of contract award on hourly rate basis.

B4.02 For Authorized, Additional Services -Standard Hourly Rates Method of Payment.

A. OWNER shall pay ENGINEER/ARCHITECT for authorized Additional Services set forth in Exhibit A - Part 2 as follows:

1. For labor on an hourly rate basis in accordance with Appendix 1
2. For reimbursable expenses, on the basis of cost times a factor of 1.15

B. The hourly rate schedule will be adjusted each January 1st to reflect cost of living adjustments.

Client: City of Midland

Project: Fire Station # 10

Agreement Date: August 29, 2012

January 1, 2012

Classification	Hourly Rate
PROFESSIONAL LEVEL VII	\$178.00
Engineer VII	
Architect VII	
Landscape Architect VII	
Interior Designer VII	
PROFESSIONAL LEVEL VI	\$151.00
Engineer VI	
Architect VI	
Landscape Architect VI	
Interior Designer VI	
PROFESSIONAL LEVEL V	\$134.00
Engineer V	
Architect V	
Landscape Architect V	
Interior Designer V	
PROFESSIONAL LEVEL IV	\$116.00
Engineer III, IV	
Architect IV, Intern (Architect) IV	
Landscape Architect IV	
Interior Designer IV	
Technologist IV	
Resident Project Representative IV	
PROFESSIONAL LEVEL III	\$98.00
Engineer I/II	
Architect III, Intern (Architect) III	
Landscape Architect III	
Intern (Landscape Architect) III	
Interior Designer III	
Technologist III	
Resident Project Representative III	
PROFESSIONAL LEVEL II	\$87.00
Intern (Architect) II	
Interior Designer II, Intern (Interiors) II	
Landscape Architect II	
Technologist II	
Resident Project Representative II	
Clerical Supervisor II	

Expenses

Reimbursement for expenses, as listed below, but not limited to, incurred in connection with the services, will be at cost plus fifteen percent for items such as:

1. Maps, photographs, postage, telephone, reproductions, printing, equipment rental, and special supplies related to the services.
2. Consultants, soils engineers, surveyors, contractors, and other outside services.
3. Rented vehicles, local public transportation and taxis, road toll fees, travel, and subsistence.
4. Special or job specific fees, insurance, permits, and licenses applicable to the work services.
5. Mileage at IRS approved rate.

Rate for professional staff for legal proceedings or as expert witnesses will be a rate one and one-half times the Hourly Rates specified above. Excise and gross receipts taxes, if any, will be added as an expense.

The foregoing Schedule of Charges is incorporated into the agreement for the services provided, effective January 1, 2012 through December 31, 2012. After December 31, 2012, invoices will reflect the Schedule of Charges currently in effect.

Classification	Hourly Rate
PROFESSIONAL LEVEL I	\$79.00
Intern (Architect) I	
Intern (Interiors) I	
Intern (Landscape Architect) I	
Technologist I	
Resident Project Representative I	
Clerical Supervisor I	
SUPPORT STAFF III	\$76.00
Engineering Technician III, IV	
CADD III, IV	
Administrative Secretary III	
Architect Technician III, IV	
Project Assistant I/II	
SUPPORT STAFF II	\$70.00
Architect Technician I, II	
Engineering Technician I, II	
CADD I, II	
Accounting Clerk I, II	
Administrative Secretary I, II	
Project Assistant EL	
Word Processor I, II	
Receptionist I, II	
File Clerk I	
SUPPORT STAFF I	\$40.00
Architectural Student EL	
Engineering Student EL	
Landscape Architecture Student EL	
Interiors Student EL	
CADD EL	
Accounting Clerk EL	
Word Processor EL	
Receptionist EL	
File Clerk EL	



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 8/28/12

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the Phase 2 purchase of Playground Equipment for the Community Services Department. 5185-12

Purpose:

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

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$693,517.70 General Fund, 2007 CO Bonds and 2012 CO Bonds

Discussion:

We solicited bids from 18 vendors and received 9 bids for playground and recreational equipment. The original bid request consisted of 20 items but the Phase 2 purchase will consist of Items 13, 13a, 14 and 15 through 20a. Items 12 and 12a for the shade cloth will not be purchased at this time therefore, these items should be rejected. Item 14a for the installation of the wellness stations should be rejected since the Parks Division has elected to install the wellness stations in-house. Parks personnel will also install the footings and concrete foundation for the Hogan Park pavilion. Please see the attached memo from Tina Jauz, Community Services Director for further information. Therefore, please consider a resolution awarding the purchase of the following items as follows:

	Cost
Items 13, 13a, 15, 15a, 16, 16a, 17, 17a, 18, 18a, 19, 19a, 20 and 20a from Miracle Recreation Equipment Co.	\$675,245.00
Item 14 from Recreation Sales for 3 stations instead of 2 to be installed by Parks personnel	\$11,072.70

Estimated cost for a concrete foundation for the Hogan Park Pavilion to be installed by Parks personnel	\$7,200.00
Total Cost	\$693,517.70

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: August 28, 2012
To: Tommy Hudson, Deputy City Manager
From: Tina Jauz, Community Services Director
Subject: Recreation Playground, Structures, and Equipment Bid

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

- 6 Playgrounds, funded by the 2012 CO Bonds. They include: Butler, Grafa, House, Sparks, Pioneer, and Ulmer.
- Hogan Park Pavilion, funded by the 2007 CO Bonds.
- Senior Accessible Wellness Stations at Pioneer Park and Trinity Park, funded by the approved FY2012 General Fund.

On July 30, 2012, nine bids were received and opened—all within the allotted budget for this project. Following the bid opening, the Parks and Recreation Commission held a Special Meeting on August 13, 2012, to review the project-based bids. After a lengthy discussion, the Parks and Recreation Commission (in conjunction with staff) are seeking City Council authorization to contract with the following companies who submitted the most qualified bid on the aforementioned projects:

#	Company	Project	Cost	Budget
1	Miracle Recreation Equipment Company	Six Playgrounds: Butler, Grafa, House, Pioneer, Sparks and Ulmer	\$600,000 <u>-\$19,927 credit</u> \$580,073 (Credit provided if the City purchased all six playgrounds from Miracle)	\$600,000
2	Miracle Recreation Equipment Company	Hogan Park Pavilion	\$95,172 (bid)	\$120,000
	City will install the footings and concrete foundation	Hogan Park Pavilion Foundation	\$7,200 (concrete foundation to be completed in-house)	“ ”
3	Recreation Sales	Three Senior Wellness Stations for Pioneer Park, Trinity Park, and Windlands Park*	\$11,072.70	\$14,000
		Total	\$693,517.70	\$734,000

*The original bid requested two (4-piece) Senior Wellness Stations, however the bid came in under budget and therefore, the Parks and Recreation Commission has recommended that the City Council purchase an additional wellness station to be placed at another park. If the City Council authorizes the additional expense, staff recommends placing the wellness station at Windlands Park. Windlands offers an extensive (and highly utilized) walking trail with existing fitness apparatus along its route. Placing equipment in this location would expand the park's amenities and ensure a successful project.

BID JUSTIFICATION

A. Playground Projects

Seven of nine companies submitted bids for playground design and installation. Because this project is funded by the 2012 C.O. Bond, with the intention of bringing a \$100K improvement to each of six neighborhood parks, the bid packet clearly communicated that the City had a budget of \$100K per playground. Only one company responded with six playground designs that fully met the design threshold of \$100K--Miracle Recreation Equipment Co.

During the Park and Recreation Commission's design review, it became apparent that a few of the companies who underbid the project also delivered less equipment or inferior surface material for the playground's fall zone (bids ranged from \$315K - \$580K). The Commission's main objective was to select a company whose design met the allotted budget and delivered playgrounds with a revitalizing and noticeable improvement for the neighborhood. Two companies stood out among all the bids:

- Simmons Builders with Game Time Playgrounds: \$440,179
- Miracle Recreation Equipment: \$580,073

The elements of each company's designs showed playability, variety, minimal potential for vandalism, ADA accessibility, and excellent shade over sizable portions of each play structure. The key difference between the two is that Simmons Builders specified an engineered wood fiber surface (similar to wood chips), while Miracle was able to stay within budget and deliver a superior poured-in-place product (rubberized, spongy surface). The Commission determined that if the funding is available, they wanted to deliver the highest quality playground experience for Midland youth and their parents—thereby recommending that Miracle receive the award of bid.

B. Hogan Park Pavilion

Seven of nine companies submitted bids for the Hogan Park Pavilion design and installation. This project is funded by the 2007 C.O. Bond, with an available budget of \$120K. Bids ranged in price from \$65K to \$133K, however the three lowest bidders did not submit enough information to properly award the bid.

Therefore the fourth lowest and complete bid was collected from Miracle Recreation Equipment at a cost of \$95,172.

C. Senior Wellness Stations

Six of nine companies submitted bids for the Senior Wellness stations. This project is funded by the approved FY2012 General Fund, with an available budget of \$14,000. Bids ranged in price from \$5.8K to \$36K. The Commission is recommending the second lowest bidder (at a price of \$7,381.80)—Recreation Sales—who offered a wider range of fitness apparatus than the lowest bidder.

As noted above, the Commission also recommends that the City Council consider awarding a third fitness station with the budget savings (\$6,618.20) from this project. Currently fitness stations would be placed at Pioneer Park and Trinity Park; the third station is recommended for Windlands Park.

CONCLUSION

If approved, staff will place orders and plan to receive and install the equipment according to the timelines shown below:

Playgrounds:	By December, 2012
Pavilion:	By December 2012
Senior Wellness Stations:	By September 25, 2012

RESOLUTION NO.

RESOLUTION APPROVING THE PURCHASE OF ASSORTED PLAYGROUND EQUIPMENT AT A TOTAL COST OF \$686,317.70; AND AUTHORIZING THE EXECUTION OF A PURCHASE AND INSTALLATION AGREEMENT WITH MIRACLE RECREATION EQUIPMENT COMPANY, OF NIWOT, COLORADO, FOR THE PLAYGROUND EQUIPMENT PURCHASED HEREIN THAT REQUIRES INSTALLATION; AND REJECTING SOME OF THE BIDS; AND APPROPRIATING FUNDS

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

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

<u>Item#</u>	<u>Qty.</u>	<u>Description</u>	<u>Supplier</u>	<u>Cost</u>
13	1	Picnic Pavilion	Miracle Rec. Equip. Co. Niwot, CO	\$62,103.00
13a	1	Installation of Pavilion	Miracle Rec. Equip. Co. Niwot, CO	\$33,069.00
14	3	Sections of senior wellness stations/fitness stations	Recreation Sales Kellar, TX	\$11,072.70
15	1	Playground equipment for Butler Park	Miracle Rec. Equip. Co. Niwot, CO	\$79,108.00
15a	1	Installation for Butler Park	Miracle Rec. Equip. Co. Niwot, CO	\$20,892.00
16	1	Playground equipment for Grafa Park	Miracle Rec. Equip. Co. Niwot, CO	\$78,515.00
16a	1	Installation for Grafa Park	Miracle Rec. Equip. Co. Niwot, CO	\$21,485.00
17	1	Playground equipment for House Park	Miracle Rec. Equip. Co. Niwot, CO	\$84,214.00
17a	1	Installation for for House Park	Miracle Rec. Equip. Co. Niwot, CO	\$15,786.00
18	1	Playground equipment	Miracle Rec. Equip. Co.	\$88,899.00

		for Pioneer Park	Niwot, CO	
18a	1	Installation for Pioneer Park	Miracle Rec. Equip. Co. Niwot, CO	\$11,101.00
19	1	Playground equipment for Sparks Park	Miracle Rec. Equip. Co. Niwot, CO	\$79,017.00
19a	1	Installation for Sparks Park	Miracle Rec. Equip. Co. Niwot, CO	\$20,983.00
20	1	Playground equipment for Ulmer Park	Miracle Rec. Equip. Co. Niwot, CO	\$83,579.00
20a	1	Installation for Ulmer Park	Miracle Rec. Equip. Co. Niwot, CO	\$16,421.00
Sub-total.....				\$706,244.70
* discount for all 6 parks ordered from Miracle Rec. Equip. Co.....				(\$19,927.00)
Total Costs to City.....				\$686,317.70
According to Bid				

WHEREAS, items 13, 13a, 15, 15a, 16, 16a, 17, 17a, 18, 18a, 19, 19a, 20 and 20a, bid by Miracle Recreation Equipment Co., require installation services and therefore compel the execution of a Purchase and Installation Agreement; and

WHEREAS, the City Council finds it to be in the public interest to purchase the assorted Playground Equipment as shown on the attached bid tabulation from the respective low bidders, for a total price of \$686,317.70; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a Purchase and Installation Agreements with Miracle Recreation Equipment Company for the Playground Equipment referenced herein requiring installation services; and

WHEREAS, the City Council finds it to be in the public interest to reject bids received for items 12, 12a and 14a; and

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase the above-referenced Playground Equipment from the suppliers indicated above and at the prices indicated at an estimated total price not to exceed \$686,317.70.

SECTION TWO. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a Purchase and Installation Agreement with Miracle Recreation Equipment Co., for the supply and installation of items 13, 13a, 15, 15a, 16, 16a, 17, 17a, 18, 18a, 19, 19a, 20 and 20a, said Purchase and Installation Agreement being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION THREE. That the sum of \$580,073.00 is hereby appropriated from the 2012 GPCO Park Improvements Bond Fund (162) Unappropriated Fund Balance (5650) to the Butler, Grafa, House, Pioneer, Sparks, and Ulmer Park Improvements Project (9004).

SECTION FOUR. Funds are also available from the following Sources in the following amounts:

-Hogan Park Renovation Project (8596).....\$102,372.00
-Fiscal Year 2011–2012 General Fund (001) Community Services(090) Parks (0090) budget.....\$11,073.00

SECTION FIVE. That upon proper receipt of invoices or statements approved by the City Manager, the City Treasurer is hereby authorized and directed to pay Miracle Recreation Equipment Co. according to the terms of said Purchase and Installation Agreement from funds appropriated and or made available herein, as appropriate.

SECTION SIX. That the bids submitted for items 12, 12a and 14a are hereby rejected.

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

Council members voting “AYE”:

Council members voting “NAY”:

ATTEST:

W. Wesley Perry, Mayor

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 5185-12 Playground & Recreational Equipment OPENED July 30, 2012 Est. Cost: \$887,398.00			Simmons Builders General Contractor 3804 Simmons Creek Lane Flower Mound, TX 75022-5495 Eugene Carl Simmons (972) 355-8580		BSN Sport PO Box 7726 Dallas, TX 75209 Chris Bloomfield (800) 527-7510		Child's Play Inc 10661 Shady Trail Dallas, TX 75720 Kathy Robertson (972) 484-0600		Exerplay Inc PO Box 1160 Cedar Crest, NM 87008 Daniel Gardiner (505) 281-0151		Miracle Recreation Equipment Co PO Box 1174 NIWOT, CO 80544 Chris Churchich (303) 530-4414	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
1	25	Benches	\$527.64	\$13,191.00	\$425.58	\$10,639.50	\$369.00	\$9,225.00		NO BID	\$340.70	\$8,517.50
1a	1	Installation of Benches	\$3,245.00	\$3,245.00		NO BID	\$1,250.00	\$1,250.00	\$2,475.00	\$2,475.00	\$2,887.50	\$2,887.50
2	25	Tables	\$979.28	\$24,482.00	\$797.62	\$19,940.50	\$714.00	\$17,850.00	\$1,135.85	\$28,396.25	\$638.25	\$15,956.25
2a	1	Installation of tables	\$6,343.00	\$6,343.00		NO BID	\$1,250.00	\$1,250.00	\$6,875.00	\$6,875.00	\$5,307.50	\$5,307.50
3	20	Players' Benches without backs	\$346.95	\$6,939.00	\$104.08	\$2,081.60	\$266.00	\$5,320.00	\$235.08	\$4,701.60	\$261.63	\$5,232.60
4	5	Bleachers	\$9,491.40	\$47,457.00	\$5,838.67	\$29,193.35	\$6,779.00	\$33,895.00	\$7,498.30	\$37,491.50	\$9,600.45	\$48,002.25
5	15	Soccer Goals	\$1,374.60	\$20,619.00	\$821.92	\$12,328.80	\$1,320.00	\$19,800.00	\$865.67	\$12,985.05	\$799.14	\$11,987.10
6	6	Basketball backboard with posts and nets	\$1,082.67	\$6,496.02	\$519.36	\$3,116.16	\$1,816.00	\$10,896.00	\$945.17	\$5,671.02	\$929.00	\$5,574.00
6a	1	Installation of basketball backboard	\$3,540.00	\$3,540.00		NO BID	\$2,100.00	\$2,100.00	\$4,500.00	\$4,500.00	\$2,088.00	\$2,088.00
7	50	Chaise lounge chairs for a pool deck	\$146.10	\$7,305.00		NO BID		NO BID	\$128.68	\$6,434.00		NO BID
8	10	Barbecue Pits	\$233.90	\$2,339.00	\$175.03	\$1,750.30	\$270.00	\$2,700.00	\$169.15	\$1,691.50	\$283.34	\$2,833.40
8a	1	Installation	\$1,180.00	\$1,180.00		NO BID	\$500.00	\$500.00	\$1,760.00	\$1,760.00	\$468.00	\$468.00
9	6	Round Pedestal Drinking Fountains	\$2,708.17	\$16,249.02		NO BID	\$270.00	\$1,620.00	\$2,634.74	\$15,808.44	\$2,250.80	\$13,504.80
9a	1	Installation of drinking fountains	\$5,310.00	\$5,310.00		NO BID	\$1,050.00	\$1,050.00	\$4,500.00	\$4,500.00	\$4,890.00	\$4,890.00
10	20	Disc Golf Nets and Posts	\$518.05	\$10,361.00		NO BID	\$308.00	\$6,160.00	\$416.85	\$8,337.00	\$459.00	\$9,180.00
10a	1	Installation of nets and posts	\$4,720.00	\$4,720.00		NO BID	\$1,350.00	\$1,350.00	\$2,640.00	\$2,640.00	\$3,440.00	\$3,440.00
11	50	Steel trash cans to match existing park receptacles	\$637.32	\$31,866.00	\$445.67	\$22,283.50	\$370.00	\$18,500.00	\$543.53	\$27,176.50	\$485.20	\$24,260.00
11a	1	Installation of trash cans	\$4,425.00	\$4,425.00		NO BID	\$2,500.00	\$2,500.00	\$5,500.00	\$5,500.00	\$5,950.00	\$5,950.00
12	1	Cost per square foot for finished shade material	\$8.50	\$8.50		NO BID		NO BID	\$4.00	\$4.00	\$2.60	\$2.60
12a	1	Installation of shade material	\$1,500.00	\$1,500.00		NO BID		NO BID		NO BID		NO BID
13	1	Picnic pavilion for Hogan Park	\$47,843.00	\$47,843.00		NO BID	\$49,037.00	\$49,037.00	\$67,303.50	\$67,303.50	\$62,103.00	\$62,103.00
13a	1	Installation of pavilion	\$18,000.00	\$18,000.00		NO BID	\$23,396.00	\$23,396.00	\$35,838.00	\$35,838.00	\$33,069.00	\$33,069.00
14	2	Sections of senior wellness stations/fitness stations	\$12,137.50	\$24,275.00		NO BID	\$9,618.00	\$19,236.00	\$2,944.00	\$5,888.00	\$7,452.90	\$14,905.80
14a	1	Installation of wellness/fitness stations	\$5,900.00	\$5,900.00		NO BID	\$2,848.00	\$2,848.00		NO BID	\$4,705.80	\$4,705.80
15	1	Playground equipment for Butler Park	\$59,054.00	\$59,054.00		NO BID	\$59,548.00	\$59,548.00	\$68,373.00	\$68,373.00	\$79,108.00	\$79,108.00
15a	1	Installation in butler park	\$22,360.00	\$22,360.00		NO BID	\$18,971.00	\$18,971.00	\$31,500.00	\$31,500.00	\$20,892.00	\$20,892.00
16	1	Playground equipment for Grafa Park	\$47,019.00	\$47,019.00		NO BID	\$35,105.00	\$35,105.00	\$66,315.45	\$66,315.45	\$78,515.00	\$78,515.00
16a	1	Installation in Grafa Park	\$21,112.00	\$21,112.00		NO BID	\$9,473.00	\$9,473.00	\$32,800.00	\$32,800.00	\$21,485.00	\$21,485.00
17	1	Playground equipment for House Park	\$48,241.00	\$48,241.00		NO BID	\$30,828.00	\$30,828.00	\$68,890.00	\$68,890.00	\$84,214.00	\$84,214.00

BID # 5185-12 Playground & Recreational Equipment OPENED July 30, 2012 Est. Cost: \$887,398.00			Simmons Builders General Contractor 3804 Simmons Creek Lane Flower Mound, TX 75022-5495 Eugene Carl Simmons (972) 355-8580		BSN Sport PO Box 7726 Dallas, TX 75209 Chris Bloomfield (800) 527-7510		Child's Play Inc 10661 Shady Trail Dallas, TX 75720 Kathy Robertson (972) 484-0600		Exerplay Inc PO Box 1160 Cedar Crest, NM 87008 Daniel Gardiner (505) 281-0151		Miracle Recreation Equipment Co PO Box 1174 NIWOT, CO 80544 Chris Churchich (303) 530-4414	
17a	1	Installation for House Park	\$21,112.00	\$21,112.00		NO BID	\$9,210.00	\$9,210.00	\$26,500.00	\$26,500.00	\$15,786.00	\$15,786.00
18	1	Playground equipment for Pioneer Park	\$48,000.00	\$48,000.00		NO BID	\$39,928.00	\$39,928.00	\$62,310.00	\$62,310.00	\$88,899.00	\$88,899.00
18a	1	Installation in Pioneer Park	\$21,112.00	\$21,112.00		NO BID	\$12,339.00	\$12,339.00	\$25,450.00	\$25,450.00	\$11,101.00	\$11,101.00
19	1	Playground equipment for Sparks Park	\$63,646.00	\$63,646.00		NO BID	\$47,029.00	\$47,029.00	\$64,321.00	\$64,321.00	\$79,017.00	\$79,017.00
19a	1	Installation for Sparks Park	\$22,880.00	\$22,880.00		NO BID	\$15,067.00	\$15,067.00	\$24,000.00	\$24,000.00	\$20,983.00	\$20,983.00
20	1	Playground equipment for Ulmer Park	\$44,531.00	\$44,531.00		NO BID	\$28,706.00	\$28,706.00	\$69,774.95	\$69,774.95	\$83,579.00	\$83,579.00
20a	1	Installation in Ulmer Park	\$21,112.00	\$21,112.00		NO BID	\$9,178.00	\$9,178.00	\$29,800.00	\$29,800.00	\$16,421.00	\$16,421.00
1	25	Alternate Bench Bid		NO BID		NO BID		NO BID		NO BID		NO BID
1	25	Alternate Bench Bid		NO BID		NO BID		NO BID		NO BID		NO BID
1	25	Alternate Bench Bid		NO BID		NO BID		NO BID		NO BID		NO BID
									*BID BOND	\$42,800.40		
											If all 6 parks are ordered, please deduct \$19,927	
			BID BOND PROVIDED		*BID BOND PROVIDED*		*BID BOND PROVIDED*		PROVIDED*		*BID BOND PROVIDED*	
TOTALS:				\$753,764.04		\$101,333.71		\$545,865.00		\$856,006.76		\$884,862.50

Bidding Summary:

18 Bid requests were issued.

9 Bids listed above

0 NO BIDS were received.

9 Bidders did not respond.

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

City of Midland - Bid Tabulation

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

BID # 5185-12		Kraftsman		The Playwell Group		Recreation Sales		Engineered Plastic Systems LLC	
Playground & Recreational Equipment		19535 Haude Rd Spring, TX 77388 Mark Soderberg (800)451-4869		4743 Iberia Avenue, Suite C Dallas, TX 75207 Paige Underwood (800)726-1816		12700 Pancolin Ct Kellar, TX 76244 James Riddle (817)707-3001		885 Church Road Elgin, IL 60123 Marge Arndt (800)4780-2327	
OPENED July 30, 2012 Est. Cost: \$887,398.00									
17a	1	Installation for House Park	\$17,380.00	\$17,380.00	\$28,655.92	\$28,655.92	\$15,300.00	\$15,300.00	NO BID
18	1	Playground equipment for Pioneer Park	\$44,824.00	\$44,824.00	\$52,950.40	\$52,950.40	\$70,661.00	\$70,661.00	NO BID
18a	1	Installation in Pioneer Park	\$19,892.00	\$19,892.00	\$16,666.67	\$16,666.67	\$13,900.00	\$13,900.00	NO BID
19	1	Playground equipment for Sparks Park	\$64,253.00	\$64,253.00	\$44,433.53	\$44,433.53	\$83,812.60	\$83,812.60	NO BID
19a	1	Installation for Sparks Park	\$25,405.00	\$25,405.00	\$14,248.00	\$14,248.00	\$15,000.00	\$15,000.00	NO BID
20	1	Playground equipment for Ulmer Park	\$60,992.00	\$60,992.00	\$55,178.04	\$55,178.04	\$68,053.00	\$68,053.00	NO BID
20a	1	Installation in Ulmer Park	\$25,083.00	\$25,083.00	\$19,248.00	\$19,248.00	\$15,800.00	\$15,800.00	NO BID
1	25	Alternate Bench Bid		NO BID		NO BID		NO BID	\$379.00 \$9,475.00
1	25	Alternate Bench Bid		NO BID		NO BID		NO BID	6' Trail Side - #TSLB6 \$522.00 \$13,050.00
1	25	Alternate Bench Bid		NO BID		NO BID		NO BID	8' Garden - #GSLB8 \$436.00 \$10,900.00
					\$12,668.80				8' Trail Side - #TSLB8
		BID BOND PROVIDED		*BID BOND NOT PROVIDED*		*BID BOND PROVIDED*		*BID BOND NOT PROVIDED*	
TOTALS:			\$640,673.00		\$813,909.48		\$761,278.75		\$44,325.00

Bidding Summary:

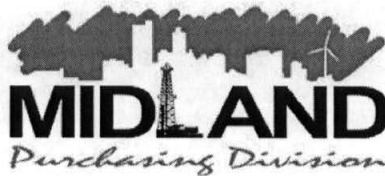
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9 Bids listed above

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9 Bidders did not respond.

Playworld Systems, Landscape Structure, Total Recreation Products Inc.,
Churchich Recreation, Insight Amenities, Gametime, BCI Burke Co.
Recreation Brands Group



THE CITY OF MIDLAND

CONTRACT

Contract No.5185-12-3

THIS CONTRACT, effective the 29th day of August, 2012, by and between the City of Midland, hereinafter referred to as the "Owner", and Miracle Recreation Equipment Company c/o Churchich Recreation LLC, hereinafter referred to as the "Contractor", is made for the following considerations:

1. **Cost:** Total Proposal: \$ 675,245.00 DOLLARS
2. **Scope of Work:** The Contractor shall perform all work described for labor, material, equipment and supervision necessary to purchase and install Parks and Recreational Equipment as shown in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

EXHIBIT A..... Specifications, Proposal or Cost Summary
EXHIBIT B..... Intentionally Omitted
EXHIBIT C..... Bonding instructions for Public Works Contract of \$50,000 and more
EXHIBIT D..... Wage Scale

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

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

to perform the work in accordance with the contract.

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

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

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

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

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

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

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

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

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

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

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

9. **Start of Work:** The Contractor shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than 30 calendar days after release to proceed.

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

9.1. TIME IS OF THE ESSENCE IN THIS CONTRACT.

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

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

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

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

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

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

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

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

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

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

19. **Insurance**

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Worker's Compensation: Statutory limits

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Contract No: 5185-12

OWNER, City of Midland

CONTRACTOR

Courtney B. Sharp, City Manager

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

Contractor Corporate Acknowledgment: Contract No.5185-12

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

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

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

Notary Public, State of Texas

City of Midland - Exhibit A

BID # 5185-12-3 Playground & Recreational Equipment			acle Recreation Equipment Co PO Box 1174 NIWOT, CO 80544 Chris Churchich (303) 530-4414	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
13	1	Picnic pavilion for Hogan Park	\$62,103.00	\$62,103.00
13a	1	Installation of pavilion	\$33,069.00	\$33,069.00
				\$95,172.00
15	1	Playground equipment for Butler Park	\$79,108.00	\$79,108.00
15a	1	Installation in butler park	\$20,892.00	\$20,892.00
				\$100,000.00
16	1	Playground equipment for Grafa Park	\$78,515.00	\$78,515.00
16a	1	Installation in Grafa Park	\$21,485.00	\$21,485.00
				\$100,000.00
17	1	Playground equipment for House Park	\$84,214.00	\$84,214.00
17a	1	Installation for House Park	\$15,786.00	\$15,786.00
				\$100,000.00
18	1	Playground equipment for Pioneer Park	\$88,899.00	\$88,899.00
18a	1	Installation in Pioneer Park	\$11,101.00	\$11,101.00
				\$100,000.00
19	1	Playground equipment for Sparks Park	\$79,017.00	\$79,017.00
19a	1	Installation for Sparks Park	\$20,983.00	\$20,983.00
				\$100,000.00
20	1	Playground equipment for Ulmer Park	\$83,579.00	\$83,579.00
20a	1	Installation in Ulmer Park	\$16,421.00	\$16,421.00
				\$100,000.00
			If all 6 parks are ordered, please deduct \$19,927	
				(\$19,927.00)
		The City of Midland will purchase the above items only for this contract		
TOTAL:				\$675,245.00



CITY OF MIDLAND
PURCHASING DIVISION
BID REQUEST

DATE: 06/27/12

PAGE: 01

(THIS IS NOT AN ORDER)

BID NO: 5185-12

OPENING TIME: 11:00 AM

CLOSING DATE: 07/25/12

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

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

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
			Playground and Recreational Equipment in accordance with the attached detail sheet, specifications and contract.	\$883,750.00	\$883,750.00
			**ADDITIONAL DISCOUNT IS OFFERED AS INCENTIVE TO PURCHASE ALL SIX PLAYGROUNDS AS BID. SHOULD BID BE BROKEN UP, ADDITIONAL DISCOUNT WOULD NOT APPLY. IF ALL 6 PARKS ARE ORDERED, PLEASE DEDUCT \$19,927.00		
			**BOTTOM LINE TOTAL DOES NOT INCLUDE TOTAL COST FOR FABRIC SHADE, AS QUANTITY IS NOT KNOWN.		
			TOTAL		\$883,750.00

NOTICE TO BIDDERS:

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

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

NOTE: EACH BIDDER IS TO INDICATE BRAND NAME PRODUCT NUMBER AND ATTACH DESCRIPTIVE LITERATURE CLEARLY MARKED TO SHOW EACH ITEM ON THIS BID.
 THE UNDERSIGNED HEREBY OFFERS TO FURNISH AND DELIVER THE ARTICLES OR SERVICE AS SPECIFIED ABOVE AT THE PRICES AND TERMS HEREIN STATED AND IN STRICT ACCORDANCE WITH THE SPECIFICATIONS AND CONDITIONS OF BIDDING ALL WHICH ARE MADE A PART OF THIS OFFER. THIS OFFER IS NOT SUBJECT TO WITHDRAWAL WITHOUT PERMISSION.

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

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

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING

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



PROPOSAL Bid #5185-12

To: Purchasing Manager
City of Midland
Midland, Texas

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

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

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

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

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

VENDOR CONTACT:

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

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

OR

FAX: (432) 685-0523

E-mail: purchasing@midlandtexas.gov

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

AWARD

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

BID WAIVERS:

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

BIDDER AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL

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

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

Miracle Recreation Equipment Co

Bidder

Chris Churchich

Authorized Signature

800-729-7529

Telephone

Po Box 1174, Lubbock TX 79401

Address, City and State

Chris Churchich

Please Print above Name

303-530-9239

Fax

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

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

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

PLEASE NOTE:

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

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

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

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

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

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

Miracle Recreation Equipment Co.

Company Name

800.729.7529

Phone

Chris Church

Authorized Signature

303.530.9239

Fax

Chris Church

Print Above Name

7.25.12

Date

THE CITY OF MIDLAND

SPECIFICATION

Playground and Recreational Equipment

1. SCOPE

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

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

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

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

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

13. Two Sections of Senior Wellness Stations/Fitness Stations

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

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

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

PLAYGROUND DESIGN ELEMENTS:

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

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

2. VENDOR CONTACT:

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

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

OR

FAX: (432)685-0523

Email: purchasing@midlandtexas.gov

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

3. DEFINITIONS

3.1. OWNER

City of Midland

3.2. CONTRACTOR

Successful Bidder

4. REQUIREMENTS

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

Requirement

Vendor Comment

4.1. TAXES:

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

4.1.2. Tax Exemption Certificate

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

4.2. PLAYGROUND/FITNESS STATION MATERIAL:

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

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

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

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

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

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

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

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

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

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

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

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

4.2.13 Chain Climbers are NOT allowed.

4.3. PLAYGROUND/PAVILION SITE PREPARATION AND INSTALLATION:

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

4.3.2 Site preparation costs shall be included in bid.

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

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

4.4 IMPACT ABSORBENT ACCESSIBLE SURFACING MATERIAL FOR PLAYGROUNDS

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

5 QUALITY ASSURANCE

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

6 BID WAIVERS:

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

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

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

B. WAIVER:

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

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

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

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

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

CITY OF MIDLAND

ADDENDUM

BID # 5185-12

Playground and Recreational Equipment Bid

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 1

DATE: June 29, 2012

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

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

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

All other terms and conditions shall remain the same.

MIRAGE RECREATION EQUIPMENT CO.

Company Name

Chris Churchich

Bidder Authorized Signature

7.25.12

Date

Chris Churchich

Please Print Above Name

800.729.7529

Phone

CITY OF MIDLAND

ADDENDUM

BID # 5185-12

Playground and Recreational Equipment

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 2

DATE: July 3, 2012

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

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

A1. 15 individual

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

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

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

A3. N/A

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

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

The Receptacle: WAV-LR300P

The Liner: WAV-LR310

The Ground Post Package: WAV-LR100N

CITY OF MIDLAND

ADDENDUM

BID # 5185-12

Playground and Recreational Equipment

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 3

DATE: July 10, 2012

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

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

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

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

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

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

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

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

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

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

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

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

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

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

All other terms and conditions shall remain the same.

Miracle Recreation Equipment Co

Company Name

Chris Churchich

Bidder Authorized Signature

7-25-12

Date

Chris Churchich

Please Print Above Name

800-729-7529

Phone

CITY OF MIDLAND

ADDENDUM

BID # 5185-12

Playground and Recreational Equipment

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 4

DATE: July 13, 2012

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

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

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

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

All other terms and conditions shall remain the same.

Miracle Recreation Equipment Co.

Company Name

Chris Charchich

Bidder Authorized Signature

Chris Charchich

Please Print Above Name

7-25-12

Date

800 729-7529

Phone

CITY OF MIDLAND

ADDENDUM

BID # 5185-12

Playground and Recreational Equipment

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 5

DATE: July 19, 2012

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

Q1. Are you requiring powder coat OVER galvanized finish?

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

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

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

Q3. Are nets required with the soccer goals?

A3. No, nets are not required.

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

All other terms and conditions shall remain the same.

Miracle Recreation Equipment Co.

Company Name

Chris Churchick

Bidder Authorized Signature

Chris Churchick

Please Print Above Name

7-25-12

Date

800.729.7529

Phone

CITY OF MIDLAND

ADDENDUM

BID # 5185-12

Playground and Recreational Equipment

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 6

DATE: July 19, 2012

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

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

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

All other terms and conditions shall remain the same.

Miracle Recreation Equipment Co.

Company Name

Chris Churchick

Bidder Authorized Signature

7-25-12

Date

Chris Churchick

Please Print Above Name

800-729-7529

Phone

CITY OF MIDLAND

ADDENDUM

BID # 5185-12

Playground Equipment

TO ALL BIDDERS ON THE SUBJECT BID:

ADDENDUM # 7

DATE: July 26, 2012

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

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

A1. Installation should be priced separately from the item.

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

A2. Yes

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

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

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

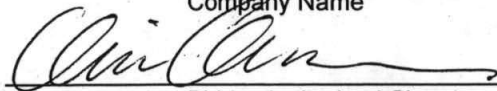
A4. See question 5 on Addendum 2

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

All other terms and conditions shall remain the same.

MIRACLE RECREATION EQUIPMENT CO.

Company Name



Bidder Authorized Signature

07.26.12

Date

CHRIS CHURCHICH

Please Print Above Name

303.530.4414 x 12

Phone

EXHIBIT C

Bonding Requirements

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

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

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

PAYMENT BOND

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____,

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

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

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

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

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

PERFORMANCE BOND

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____

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

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

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

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

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

EXHIBIT "D"

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

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

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

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

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

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



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 8/28/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of a Use of Force Computer Based Simulator for the Police Department. Bid 5331-12

Purpose:

Consider a resolution approving the purchase of a Use of Force Computer Based Simulator.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$58,380 General Construction Fund and Police Special Purposes-Fed Fund

Discussion:

This computer based simulating system will be used to train police officers by simulating different types of use of force situations that deal with decision making and the use of current tools. The low bidder, Ti Training Corp., met all of our specification requirements.

Therefore, please consider approval of a resolution authorizing the purchase of a use of force computer based simulator from Ti Training Corp. of Golden, Colorado for a total cost of \$58,380.00

City of Midland
Police Department

Interoffice Memorandum

DATE: August 20, 2012
TO: Regina Stephenson, Purchasing Manager
FROM: Price Robinson, Chief of Police
SUBJECT: Use-of-Force Simulator bids

The Midland Police Department was recently awarded a competitive grant in the amount of \$63,000 for the purchase of a Use-of-Force Training Simulator.

The simulator was advertised for bid and 2 bids were received. Ti Training Corporation from Golden, Colorado submitted the low bid in the amount of \$58,380. The other bid received totaled \$302,557.

The department is familiar with Ti Training Corporation and we are recommending that their bid in the amount of \$58,380 be accepted.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
CONTRACT WITH TI TRAINING CORPORATION OF
GOLDEN, COLORADO, FOR THE SUPPLY AND
INSTALLATION OF A USE OF FORCE COMPUTER
BASED SIMULATOR FOR THE CITY OF MIDLAND
POLICE DEPARTMENT AT A TOTAL COST OF
\$58,380.00**

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for bids for the supply and installation of a use of force computer based simulator for the City of Midland Police Department; and

WHEREAS, Ti Training Corp. has submitted the lowest and most responsible bid for the said simulator in the total amount of \$58,380.00, as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the City Council finds it to be in the public interest to execute a contract with Ti Training Corp. for said simulator;

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

SECTION ONE. That the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Ti Training Corp. for the supply and installation of said simulator at a cost not to exceed \$58,380.00, said contract being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Ti Training Corp. pursuant to the terms of said contract from funds available in the Use-of-Force Training Technology Project (7087) account upon receipt of proper invoices or statements approved by the City Manager.

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

the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 5331-12 Use of Force Computer Based Simulator OPENED August 8, 2012 Est. Cost:			Ti Training Corp. 14998 W. 6th Avenue, Ste. 500 Golden, CO 80401 Gregory Otte (303) 414-3555		VirTra Systems, Inc. 7970 S. Kyrene Road Tempe, AZ 85284 Matthew S. MacCallum (480) 968-1488	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL
1	1	Materials Portion Incorporated Into Project	\$58,380.00	\$58,380.00	\$295,257.00	\$295,257.00
2	1	Labor Portion Incorporated Into Project	\$0.00	\$0.00	\$5,400.00	\$5,400.00
3	1	Other Costs Not Incorporated Into Project	\$0.00	\$0.00	\$1,900.00	\$1,900.00
TOTALS:				\$58,380.00		\$302,557.00

Bidding Summary:

5 Bid requests were issued.

2 Bids listed above

0 NO BIDS were received.

3 Bidders did not respond.

USE OF FORCE COMPUTER BASED SIMULATOR
SERVICE AGREEMENT
#5331-12

THIS AGREEMENT is made and effective the 29th day of August, 2012, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "City," and Ti Training Corp., hereinafter referred to as "Company."

ARTICLE I.
PURPOSE

The purpose of this Agreement is to state the terms and conditions under which Company shall provide and install a Use of Force Computer Based Simulator for the Midland Police Department.

ARTICLE II.
SERVICES TO BE PERFORMED

1. Company shall provide and install a Use of Force Computer Based Simulator as described in the Scope of Services attached hereto as Exhibit "1" and incorporated herein for all legal purposes.
2. Company represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in Exhibit "1."

ARTICLE III.
FINANCIAL CONSIDERATIONS

City agrees to pay Company in an amount not to exceed \$58,380.00 for the services described in Exhibit "1." City agrees to pay Company for Labor, Incidental Direct Costs and Sub-contractor Costs as set forth in Exhibit "1" upon presentation of an invoice. The invoice shall set out Labor fees and those Incidental Direct Costs and Sub-contractor Costs described in Exhibit "1". The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of receipt of the monthly invoice, City shall pay the full amount of such invoice; provided, however, that if City objects to any portion of an invoice, City shall notify Company of City's objection and the grounds therefor within 30 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. City in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV. TERMINATION

Either party may terminate this Agreement at will, for no or any reason, upon giving the other party One-Hundred-Eighty (180) days written notice. The parties to this Agreement understand and agree that it is in either party's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the other party. All work and services under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective. The parties have bargained for the flexibility to terminate the Agreement upon giving the requisite notice.

ARTICLE V. CONTRACT PERSONAL

This Agreement provides for personal or professional services, and the Company shall not assign this Agreement, in whole or in part, without the prior written consent of City. It is understood that any necessary engineering services shall be subcontracted by the Company.

ARTICLE VI. 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 VII. INSURANCE

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

Commercial General Liability (including contractual liability):

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

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

Worker's Compensation: Statutory limits

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

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

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

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

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

Company shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement

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

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

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

ARTICLE VIII. FEDERAL WAGE REQUIREMENTS

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

ARTICLE IX. 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 X.
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 XI.
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 XII.
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 XIII. 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: Ti Training Corp
14998 West 6th Ave Suite 500
Golden, CO 80401

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

D. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision

of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

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

F. Amendments, Modifications, Alterations. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

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

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

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

ARTICLE XIV.
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 XV.
ASSIGNMENT

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Ti Training Corp

By: _____

Title: _____

STATE OF TEXAS

§
§
§

COUNTY OF MIDLAND

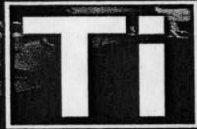
BEFORE ME, the undersigned authority, on this day personally appeared known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of Ti Training Corp.

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

Notary Public, State of Texas

Printed Name

My Commission Expires: _____



Training Corp

BID REQUEST

Use of Force Computer Based Simulator

BID NO: 5331-12

OPENING TIME: 11:00 AM CLOSING DATE: 08/08/12



Exhibit "1"

Ti Training Corp.

14998 West 6th Ave Suite 500
Golden, CO 80401

Ned Partridge

Ned@Titraining.com
1.800.634.1936 X 222
303-414-3556 Fax

"The Strongest Element in Training"

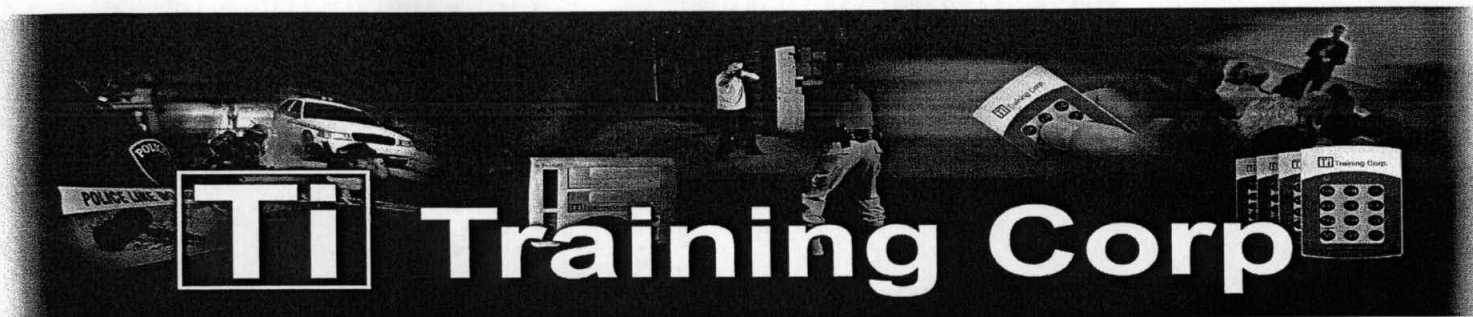


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- Ti** Cover Page
- Ti** Unit Price
- Ti** Proposal Bid #5331-12
- Ti** Bid Pricing Calculation Sheet
- Ti** Line Item Description
- Ti** Terms and Agreements
- Ti** Contact Info
- Ti** Executive Summary
- Ti** Training Syllabus
- Ti** Copy of the Warrant
- Ti** References
- Ti** Retail Price List
- Ti** Demo DVD (Back Cover)



CITY OF MIDLAND
PURCHASING DIVISION
BID REQUEST

DATE: 07/19/12

PAGE: 01

(THIS IS NOT AN ORDER)

BID NO: 5331-12

OPENING TIME: 11:00 AM

CLOSING DATE: 08/08/12

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

BIDS WILL BE RECEIVED IN THE OFFICE OF THE City Secretary, Suite 330
 UNTIL 11:00 A.M. 8-08-12 FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED TO:
Midland Police Department, 601 N. Loraine, Midland, Texas

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
			The Midland Police Department is requesting a Use of Force Computer Based Simulator in accordance with the attached proposal, specifications and service agreement.	\$58,380	\$58,380
				TOTAL	58,380

NOTICE TO BIDDERS:

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

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

NOTE: EACH BIDDER IS TO INDICATE BRAND NAME PRODUCT NUMBER AND ATTACH DESCRIPTIVE LITERATURE CLEARLY MARKED TO SHOW EACH ITEM ON THIS BID.
 THE UNDERSIGNED HEREBY OFFERS TO FURNISH AND DELIVER THE ARTICLES OR SERVICE AS SPECIFIED ABOVE AT THE PRICES AND TERMS HEREIN STATED AND IN STRICT ACCORDANCE WITH THE SPECIFICATIONS AND CONDITIONS OF BIDDING ALL WHICH ARE MADE A PART OF THIS OFFER. THIS OFFER IS NOT SUBJECT TO WITHDRAWAL WITHOUT PERMISSION.

COMPANY NAME: Ti TRAINING Corp.
 ADDRESS 14998 W 6TH AVE #500
 CITY GOLDEN ST CO ZIP 80401
 PHONE NO. 303 4143555 FAX NO. 303 414 3556
 EMAIL: GIREG@Ti.TRAINING.com

CASH DISCOUNT: 2 % 10 DAYS

DELIVERY CAN BE MADE 45 day ARO

AUTHORIZED SIGNATURE [Signature]

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING



TI TRAINING CORP.
Contractor's Name

PROPOSAL Bid #5331-12

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:

Materials Portion Incorporated Into Project \$ 58,380 DOLLARS
Labor Portion Incorporated Into Project 0 DOLLARS
Other Costs Not Incorporated Into Project 0 DOLLARS
Total Proposal \$ 58,380 DOLLARS

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 45 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

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

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

AWARD

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

BID WAIVERS:

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

INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET. SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE BIDDER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH BIDDER MIGHT OTHERWISE BE ENTITLED.

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

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

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

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

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

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

C. Notice of Alleged Breach; Statutory Prerequisites: As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, Bidder or his legal representative, shall give the City Manager, or any other reasonable official of the Owner, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Contract) of such damages, duly verified, within one-hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages

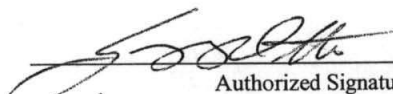
occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Bidder will settle, the physical and mailing addresses of Bidder at the time and date the claim was presented and the physical and mailing addresses of Bidder for the six months immediately preceding the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

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

<u>TI TRAINING CORP.</u>		<u>303 414 3555</u>
Bidder	Authorized Signature	Telephone
<u>14998 W 6TH AVE #500 Golden CO 80401</u>	<u>GREGORY OTTE</u>	<u>303 414 3556</u>
Address, City and State	Please Print above Name	Fax

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

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

PLEASE NOTE:

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

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

Bid Calculation Sheet
Midland TX. Bid No: 5331-12

Aug. 2012

The Proposed "Training Lab" system meets all bid specifications. 1 - Complete "Training Lab" portable system. 2 - Year Warranty – Includes 24/7 support line and loaner system. 2 - "Storm" Travel Cases for system and components plus screen case Master Instructor Training * See Training Description	
Midland, TX. System Pricing	\$27,380

Requested Devices TI 1 - Dry Fire Laser for GLOCK \$900 TI 2 - OC Canisters Laser \$2,000 TI 2 - Flashlights Surefire w/ Filter \$400 TI 1 - TASER laser Weapon \$1,800 TI 1 - Drop in air recoil kits for (GLOCK 17) non-tethered (weapon not included) \$2,100 TI 1 - Drop in air recoil kits for (GLOCK 21) TETHERED (weapon not included) \$2,100 TI 4 - Drop in air recoil kits for (GLOCK 22) non-tethered (weapon not included) \$8,400 TI 1 - Drop in air recoil kit for (AR 15) non-tethered (weapon not included) \$2 100 TI 6 - Additional Magazines for above weapons \$200 ea. total \$1,000 \$1,200 TI 1 - Drop in shotgun laser shells \$1,000 TI 1- Shadow Hostile Fire Device \$2,400 TI 2- Stress Vest Package (2- Vest, 2- Sirt weapons) \$3,400 TI 1 - Tr 101 Training Room Classroom System with 24 keypads \$3,200	
Price of Requested Devices:	\$31,000
Total Price for Training Lab Simulation System with Requested Options:	\$58,380

Additional Warranty is 5% of the total system price for each additional year

Shipping: There is no additional charge for shipping. Shipping is FOB destination.

Terms:

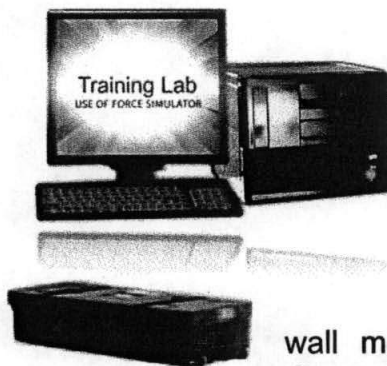
- a. Net 30 days from invoice / 2% discount net 10 days
- b. FOB: Destination
- c. Delivery: 45 days
- d. Warranty: 2 year from delivery
- e. Partial Shipment and/or Partial Invoices are accepted. Please note otherwise.
- f. Screen: Shipped direct from the factory.
- g. Payment cannot be held for training completion. Training dates are set by the end user to accommodate schedule and are not controlled by Ti Training.
- h. Ti Training will set up the system but cannot "Install" the system. Ti Training personnel cannot drill, hang, hardwire or mount any equipment to a Structure.

get

Use of Force Computer Based Simulator

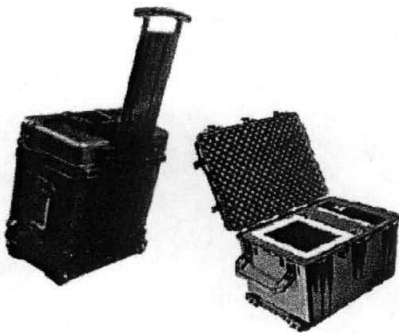
Product Configuration / Line Item Description

All of the Ti Training Products come in two configurations, A portable version or a permanent mounted system. Each has their advantages depending on your facility and training needs. Your sales person will work with you on the best configuration and the pricing is the same so it comes to what is best for you.



Both configurations have the same computer, screen, speakers, keyboard and mouse. Ti Training delivers the "Cube" computer case due to the ease of upgrades, durability and reliability. The cube easily travels well and is 100% COTS. Both can go to Live fire.

Both configurations come with a HD Free standing screen, standard size has viewing area 12' X 6'11" and comes in a storage / travel case. Options include a pull down screen, wall mounted or electric drop down screen and can range in dimension from 6' - 16' wide, depending on agencies requirements.



Ti Portable configuration

- 2 - Storm Cases
- Pip USB cable 8'
- Projector/camera cables 25'
- Standard 5.1 Speakers with cables
- Screen is portable with legs and case
- Sets up & Calibrates in 15 min.

*Does not come with Ceiling mounting hardware

Windows Professional Operating System

Ti The system comes with Windows Professional operating System, Win 7.

Microsoft Office

Ti The system comes with Windows Office for running any type of PowerPoint, Word Doc. Excel for the purpose of using the entire system with both the Training room Classroom training system and for any multimedia training the department sees fit.

High Definition Video Projector (16 x 9 Native Format)

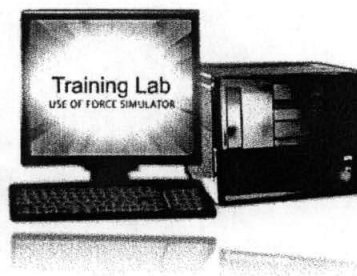
- Ti** Widescreen High Definition Home Cinema Projector. 5500; 1 Contrast Ratio with Smooth Screen Technology, 16.9 Native Resolution 1280x720 Pixel HD LCD Panels

HD Projector Screen

- Ti** The projection screen is portable "DA-LITE – Fast Fold", comes with travel case and legs. The size is 12' x 6'11", 16 x 9 aspect ratio for HD viewing.

5.1 Surround Sound Speaker System

Front Left, Front Right, Center, Rear Right, Rear Left and a Subwoofer compromise the speaker system that is standard on the Training Lab.



22' Flat Panel Instructor Monitor (Will fit in travel cases)

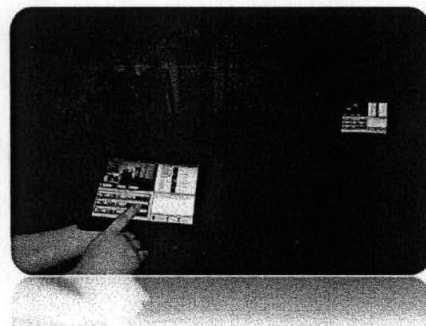
- Ti** The System comes with a 22" flat panel monitor, optical mouse with magnification feature, allowing the instructor to zoom in on scenarios in debrief. Full keyboard for ease of use in low light training environments.

Keyboard & Optical Mouse

- Ti** The System comes with a windows compatible Keyboard and Optical mouse for ergonomics.

Remote System Instructor Access Tablet

- Ti** Using an I-Pad and a wireless connection the instructor can move about the room and control the Training Lab remotely. All functions are available to the instructor including choosing a scenario, volume, branching on the fly, Weapon malfunctions, etc.!

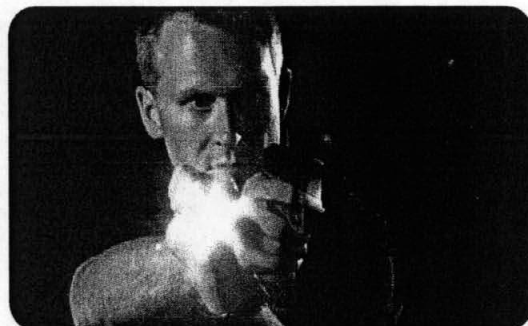


All Wires, cables and connectors necessary

- Ti** The Training Lab is a complete turn Key system and no additional products or cost will be incurred for set up and operation.

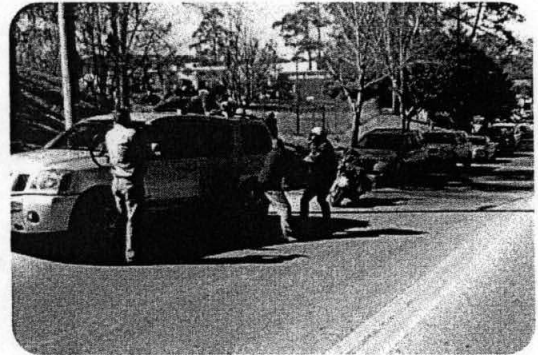
Low Light feature, adjustable light conditions on any Scenario

- Ti** All scenarios are filmed in daylight (Bright Light). The instructor can then adjust the lighting conditions of any scenario from completely bright, to completely dark, or anything in between.. The trainee can use his/her actual flashlight to light up the portion of the screen that they want to see. Since most situations happen in adverse lighting conditions this is an important feature that is not possible without a simulation system. A simulator can meet your low light training requirements and provide for continual lowlight training throughout the year.



Scenario creation software w/ ability to Customize existing Scenarios

- [Ti]** *The Training Lab™ includes the ability to film and edit your own scenarios. This can be accomplished in as little as 20 minutes. So, for example, if you have an incident in your agency and need to ensure that all your deputies/officers are trained on your policies concerning that situation, you can film it and have it on your system almost immediately. The Training Lab™ comes standard with the required editing software and training to make your own, fully branching scenarios. You can designate target areas that are effective and how many shots each target area requires for a reaction.*



Line scan calibration for laser accuracy.

- [Ti]** *The Training Lab™ includes the software to do a line scan calibration for pixle accuracy*

Self calibrating without the need for hand held devices.

- [Ti]** *The Training Lab™ includes the software that allows the system to calibrate without any wands or devices, due to the line scan tecknology the system is self calibrating.*

Operates in ANY light conditions for proper PiP video playback.

- [Ti]** *The Training Lab™ includes the ability to do a line scan calibration. This takes into account the location and light conditions of each and every pixle allowing the system to operate in any light condition and also allows the ability to film the student in full color for video playback in debrief.*

Scenario and “On-the-Fly” 3-D Audio.

- [Ti]** *Native to the scenario is 5.1 Surround Sound recorded during filming and/or added in post production. The system then plays audio from appropriate locations during scenario playback. Also, the instructor can play any audio file from a specific location in the training room to provide directional stimulus to the student.*

Audio Controls located on Instructor Monitor

- [Ti]** *The spaker controls have an dial system to control the audio llevel output by the 5.1 surrand sound spaker set.*

Customizable Trainee Report Generation.

- [Ti]** *Reports as simple as Name, Time, Date and Scenario Title to intricate reports detailing time and location of shots can be created using this software. This software can output reports electronically, or into standard formats such as Microsoft Excel, Microsoft Word, etc.*

After scenario debriefing, allows any Microsoft™ material to be viewed

- TI** While running a trainee through a scenario you are testing to see what they know, how they react to multiple situations etc. But the real training takes place after the scenario ends and how the instructor uses this information to teach. With the Training Lab™ you have a complete file system to pull information to show the trainee word docs, PowerPoint's, PDF, Videos and graphics to reinforce policy, procedures, law, weapon functionality or anything you desire. You have the ability to add any document/file type supported by Microsoft by use of simple Windows copy operations.



Picture in picture (PiP) in full color and audio for viewing on replay

- TI** The Training Lab™ provides feedback from a variety of sources. While trainees might be inclined to accept feedback from an expert/instructor or even their peers, the independent third-party verification given by the Training Lab™ is even more powerful. A good example of this type of objective feedback is the PIP (Picture in Picture). This is a Picture in Picture display of video and audio of the officer's actions in sync with the simulation. The Training Lab™ PIP replay can be described to the trainee as a videotape of their performance taken by a tourist. The trainer can inform the officer that this videotape will be playing on the evening news and in the courtroom. It represents the primary means by which most people will judge their actions. This PIP replay technique is usually a very sobering exercise for all officers. Interestingly enough, it seems to have the greatest impact on the officer with between 5 and 15 years of service. A possible reason is that this officer grouping may have had an opportunity to develop bad habits that they themselves are unaware of. Recent research has shown that the self evaluation that can be accomplished by the officer allowed to view the PIP feature of the Training Lab™ greatly increases leaning and retention.



Pause, play, restart and stop functions during scenario play

- TI** The Training Lab™ has the ability to pause the scenario during play. We have found this feature has a tremendous value in saving time for the instructors. Very often the student has a question at the beginning of a scenario. Instead of starting over the instructor can pause the scenario, talk to the student and resume.

Slow Motion, Pause, Frame Forward, Frame Back controls on debrief replay

- TI** The Training Lab™ all of the scenarios in digital format on a internal hard-drive. With this feature the video can be shown and replayed in slowmotion, paused and frame by frame playback to help the instructor to teach using the video points necessary to show a given training objective.

Digital scrolling capabilities in the replay video

- Ti** The Training Lab™ all of the scenarios in digital format on a internal hard-drive. With this feature the video can be shown and replayed by a simple move of the mouse, this feature gives the instructor the ability to scroll through the video to help in thier teaching.

Zoom in During Debrief for Viewing Shot Accuracy

- Ti** The Training Lab™ incorporates a optical microsoft mouse that has a zoom feature. This allows the instructor to zoom in on the big screen to show a greater level of accuracy.

Capable of creating scenario "playlist" with save and recall function.

- Ti** The Training Lab, just like an I-pod has the ability to create a play list. With over 400 scenarios in the Library it can be difficult to find any particular scenario. The playlist allows the instrutor to create a list and replay it with out any searching. The play list can be saved and brough back up tommarrow or in years to recount the scenarios that have been used for training.

Classroom RF keypads can be integrated at no additional cost

- Ti** The Training Lab™ comes with the ability to add the Classroom Training system with no additional cost, just add the keypads and reciever.

Training Scenario Library 400+ native HD scenarios preloaded

- Ti** All scenarios created by Ti Training are available FREE of CHARGE to our customers for the life of the system. These scenarios are professionally filmed and edited scenarios created by our in house production team. All Scenario are in High Definition video. Currently the system comes with over 400 fully branching HD Scenarios with thusendands of outcomes and branches.

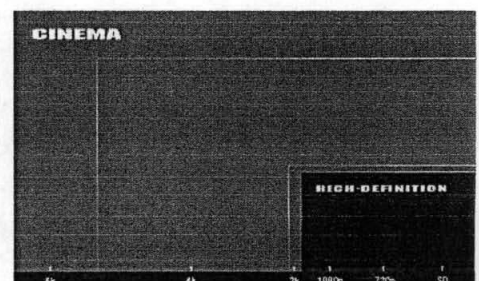
Free HD scenarios for the life of the system (15+ each quarter)

- Ti** The Training Lab™ comes with a lifetime subscription to new scenarios. All of the scenarios are filmed by the professional filming crew at Ti Training. All scenarios are filmed with the latest 4K resoution camera system (RED). Every few month a DVD is automatically sent to the customer and these scenarios are free of charge for the life of the system.

Professional filming with special effects for maximizing training objectives

- Ti** The heart of any video based simulation system is the content. The Scenarios are what you see and how they are Planned, Set up, Filmed and editing make all the difference in the world. Are you being drawn into the screen? Does it create an emotion? Is it relevant? Is it real? Ti Training is the only Simulation company with a in house studio and a full time video and editing staff! With a 3000 square foot studio and green screen technology coupled with a state of the art editing capabilities, Ti Training is constantly creating the best scenarios in the industry! and as always the new scenarios are free to our customers, keeping your training at its peak!

- Ti** Full Time Video Staff
- Ti** 3000 foot studio in house
- Ti** Actors used on every scenario shoot
- Ti** Custom scenarios filmed upon request
- Ti** Professionally filmed with the "Red One" camera
- Ti** Shooting Video Resolution of up to 4096 x 2304



- ❑ Scenarios filmed on location with special effects
- ❑ Free Scenarios automatically shipped each quarter
- ❑ Always filmed w/ Law Enforcement present (SME's)

Many of the scenarios filmed we have added effects, such as blood splatter, Any "POST" effect is added to coincide with the training objectives. If a suspect is hit in the arm or leg they will see a different reaction then a head shot. A head shot might show blood splatter to alert the trainee as to a lethal hit.



Skill Builder Shooting Drills in Graphic Applications Pre-Loaded

- ❑ The Training Lab™ comes with Over 50 Skill Builders such as Pepperpoppers, plate racks, hogans allys, etc...

2 Year Warranty - Included 24/7 support line

- ❑ The Training Lab™ comes with 2 years warranty and a life time phone support. (see a copy of the full Warranty attached)

Instructor Training either on site or Factory Facility

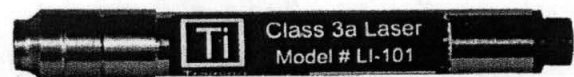
- ❑ The Training Lab™ comes with 2 options for training. The training class is 3 days and a full syllabus is attached. The option is to have 2 instructors come to the Ti Training Academy in Golden Colorado, all expenses paid or a Certified instructor will come to the customer site for the 3 day class. (see Attached)

Devices

The Training Lab™ Quoted in this Bid No: 5331-12 comes complete with the following devices in the quoted quantities. comes with 2

1 - Dry Fire Drop in Laser - Glock 22

- ❑ We have multiple ways of having a laser inserted in to a pistol to be used on the simulator.



With the dry fire drop in laser, any double action weapon can be used, your handgun, your sights, your trigger pull in dry fire. The "Red" Glock or and training weapon may also be used.

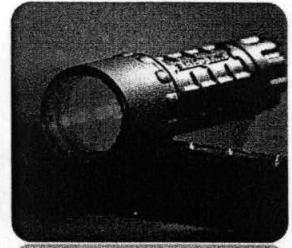
2 - OC Laser Canisters

- ❑ O/C Spray. This device is the actual size and shape of a typical O/C canister. If this pulsing laser hits the subject(s) on screen in the appropriate area, that person(s) will react as if they were sprayed with O/C.



2 - Flashlight Surefire G2 w/ Filter

- [Ti]** *The Training Lab allows for the use of actual flashlights (covered by special filters). The instructor can set any lighting level for the scenario forcing the use of a flashlight to light up the portion of the screen that the student wants to see. Multiple flashlights can be used. This does not affect the use of any laser device and is not a laser based device.*



1 - Taser X-26 Laser Fitted

- [Ti]** *TASER™ The TASER device is an actual M26 or X26 manufactured by TASER and is a safe weapon. It fires two lasers at the same 8 degree spread of a real cartridge and both lasers have to hit the suspect to be effective.*



4 - Recoil Conversion Kits for pistol with Magazines - GLOCK 22

1 - Recoil Conversion Kits for pistol with Magazines - GLOCK 21

1 - Recoil Conversion Kits for pistol with Magazines - GLOCK 27

- [Ti]** *Using the "DVORAK" Recoil system a real weapon can be made into a recoil laser simulation weapon with no permanent modifications. The drop in kit uses a 12 gram CO2 cartridge and produces around 80 shots allowing for clearing and reloading drills. (Weapon not included)*



1 - Shotgun Drop in Laser insert

- [Ti]** *Shotgun. Scenarios will branch by the introduction of a shotgun laser. The shotgun laser can be set to be pellets, slug, X-Rep or less lethal rounds. The insert is inserted into a department weapon (weapon not included)*



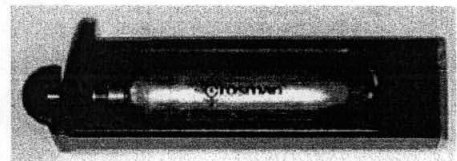
2 - Air Recoil Conversion Kit for AR-15

- [Ti]** *Using the "DVORAK" Recoil system a real weapon can be made into a recoil laser simulation weapon with no permanent modifications. The drop in kit uses a 2- 12 gram CO2 cartridge and produces around 120 shots allowing for clearing and reloading drills. (Weapon not included)*



6 - Extra Magazines for the Recoil Kits (4 - Glock22, 1- Glock 21, 1-Glock 17)

- [Ti]** *These will be from "DVORAK" and fit by the MFG.*



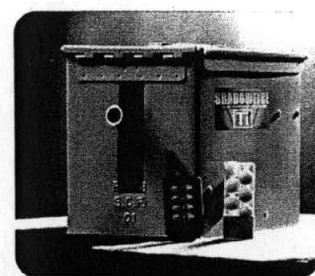
2 - Hostile Fire Simulation Vests

- Ti** The Force on Force package comes with 2 Stress Vests and 2 SIRT® Laser Weapons/drop in lasers. Additional Vests and Weapons/Lasers can be added. All parties can wear the vest for Force on Force training in any environment. Since there are no projectiles being fired, there is no requirement for additional safety equipment that can restrict vision and/or movement. The vest tracks the number of hits for debrief. The Force on Force package includes a Shock device that cannot be used in the Simulator training.



1 - Hostile Fire Device

- Ti** The Shadow Fire is a standalone return fire cannon. It is remote controlled device, no wirers, completely portable. The Shadow fire shoots 68 cal. hard foam balls and can be used with the simulator or as a standalone training product. The barrel can be adjusted vertically and set in any aiming position for ease of use and simplicity.



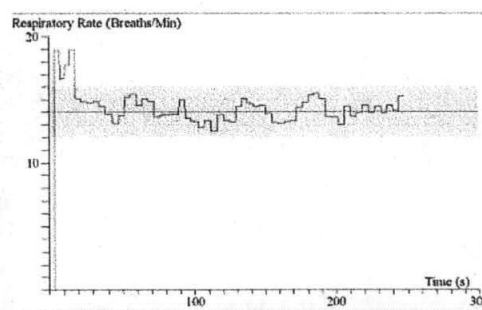
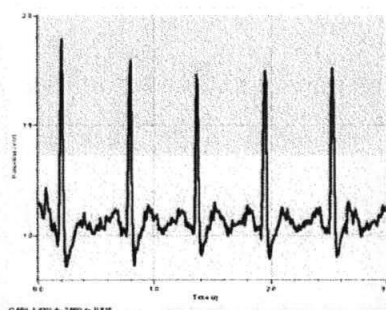
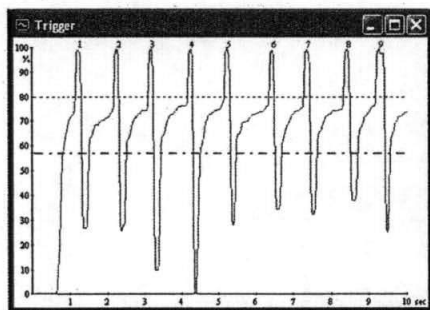
The Ability to record Telemetry data for the Trainee (Shooter)

- Ti** Different devices can be attached to the weapon or trainee to give feedback.

Trigger Graph

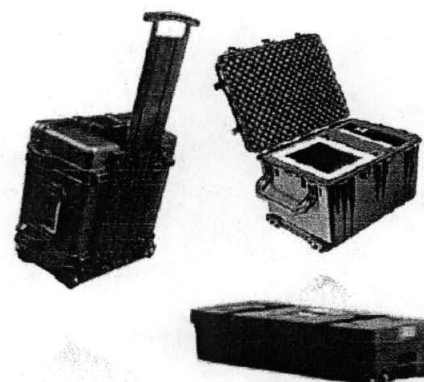
Heart Rate

Respiratory Rate



Travel Cases for the Devices and screen

- Ti** The system comes with 2 travel cases to fit the complete system and a screen case of additional cables and screen. All three will fit in a standard Patrol car for ease of transport and storage.



INTERACTIVE CLASSROOM SIMULATOR

PowerPoint based

Unlimited Keypads

Self Creation of Training Content

Repeatable Training

Electronic Polling and Testing

Immediate Student Feedback

Non-Hardware Dependent

Courseware available by experts in the field

Load existing PowerPoint lessons making them interactive

Free Software

Ti *Ti Training is offering the Training Room to fulfill the Classroom training Bid specifications.*

The system comes with :

- Ti** *Training Room Software (Free to load on any computer)*
- Ti** *24 keypads*
- Ti** *1 - Receiver*
- Ti** *1 - carrying Case*
- Ti** *1 - PDF copy of the manual*

Tr Training Room

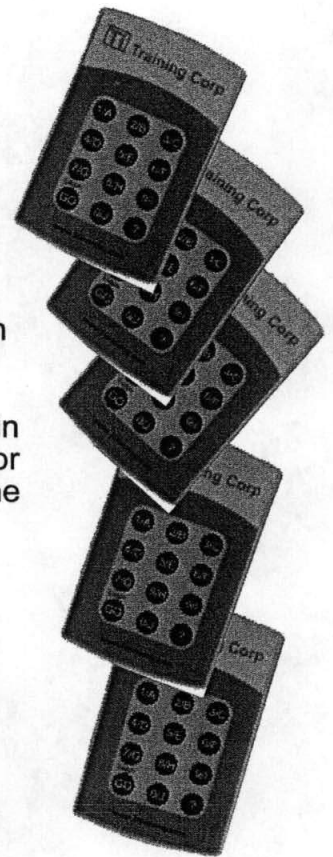
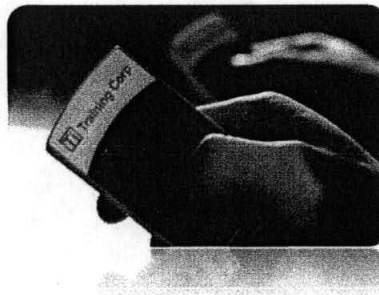
The Training Room is a keypad system that allows an instructor to have everyone in the class connected to the system in real time. While presenting material in either video or verbal format the instructor can poll the class, test on a topic, or can create a discussion on student responses. This powerful training tool helps tremendously in the retention levels of a class and will keep the entire class focused and alert.

The students can answer true or false, multiple choice, or rank answers in order. When presenting; an instructor knows if his class is following along or should more time be spent on one topic. If there is no need to remediate, the class moves forward with total understanding, saving time and money.

INTERACTIVE CLASSROOM SIMULATOR

Features Highlights

- TI** PowerPoint based for ease of use
- TI** Unlimited Keypads
- TI** Self Creation of Training Content
- TI** Repeatable Training
- TI** Electronic Polling and Testing
- TI** Immediate Student Feedback
- TI** Non-Hardware Dependent
- TI** Inexpensive
- TI** Courseware available by experts in the field
- TI** Load existing PowerPoint lessons making them interactive
- TI** Free Software



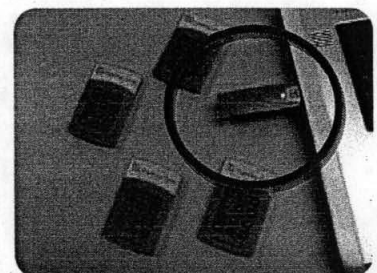
Training Room-Complete Integration into Microsoft Office Suite



Use Microsoft PowerPoint®, the presentation standard to create student interaction points specific to you.
Track response information and view reporting results with Microsoft Excel® and Microsoft Word®.
Create and import question lists with Microsoft Word®.
Communicate and share collected information with Microsoft Outlook.

RF Receiver:

The Training Room receiver is a small USB connection device. It can be used in multiple environments since it fits any computer. The Tr Software is free and can be loaded on an unlimited number of agency computers. Training content can be authored offline. When presenting, the addition of the receiver and keypads provide a dynamic, interactive experience.



The Training Table is a group of Subject Matter Experts in the Law Enforcement, Fire and Public Safety fields that have come together with Ti Training to create training content for your use. This training content comes in the form of Play only DVD's and also in a totally interactive classroom setting when used in conjunction with the Training Room classroom simulator. In the interactive version you have questions, quizzes, and final test for the students to take throughout the training session. Also, with the full interactive version you receive a Media Player CD with the entire course for use in embedding part into your own training lessons. As the Ti Training video content library grows so will the Training Table and the knowledge that is available to you and your department.



Sample Courseware



Training Corp



BID REQUEST

Use of Force Computer Based Simulator

BID NO: 5331-12

OPENING TIME: 11:00 AM CLOSING DATE: 08/08/12

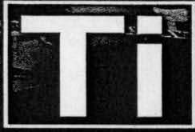
TERMS and CONDITIONS



Ti Training has read all of the terms and conditions for a contract to be issued and agrees to and can conform to all conditions.


Gregory Otte
President

“The Strongest Element in Training”



Training Corp



CONTRACTOR INFORMATION

FULL LEGAL FIRM/COMPANY NAME: Ti Training Corp.

BUSINESS STREET ADDRESS: 14998 West 6th Ave. Suite 500 Golden, CO 80410

BUSINESS MAILING ADDRESS: 14998 West 6th Ave. Suite 500 Golden, CO 80410

BUSINESS TELEPHONE NUMBER: 303-414-3555 Toll Free: 1-800-634-1936

BUSINESS FAX NUMBER: 303-414-3556

WEB SITE www.Titraining.com

COUNTY: Jefferson

MINORITY OWNED: NO

.....
NATURE OF BUSINESS: Design, Mfg., Sales and Maintenance of LE Simulators

PRINCIAPALS:

NAME: Gregory Otte Ext 205 Greg@Titraining.com TITLE: President

NAME: Joe Mason Ext.202 Joe@Titraining.com TITLE: Vice President

NAME: Ned Partridge Ext 222 Ned@Titraining.com TITLE: Director of Sales

.....
YEARS EST: 2006

FEDERAL TAX ID # 11-3774326

CCR# X9HJR5

DUNS # 7806 80802

GSA# GS-35F0127U



"The Strongest Element in Training"

14998 West 6th Ave. Unit 500 Golden, CO 80401 www.Titraining.com 800.634.1936 8.35

Executive Summary

Ti Training Corp. (Ti) produces hardware, software and content for Law Enforcement and Public Safety Training Professionals. Ti manufactures and markets training simulation systems for instruction and skills application in both the classroom and simulation training room. In addition to the simulators, Ti also creates training content to be utilized with the simulators or as a stand-alone product. The strength of Ti is the ability to be a resource and a solution for the assurance that learning is taking place. In the Public Safety arena there is a never-ending thirst and requirement for new and continual training. Ti offers one-stop purchasing alternatives to this market creating a captive market and a repeat customer base.



Ti Training understands the Law Enforcement market. We are a simulation and content training company that is focused only on the Law Enforcement (LE) and the Public Safety community. We have Task Force meetings bi-monthly to get direct input as to the LE concerns and needs. We respond to the needs and can immediately have solutions to the current training needs. Having Up to date training material is key and Ti Training is delivering new content on a regular bases.

Company Summary

Ti Training located in Golden, Colorado (Denver) at the foot of the Rocky Mountains. Ti occupies a 9,000 square foot facility housing, offices, production area, an award winning video studio, R&D and a complete training facility. The employee owners have over 100 years of Law Enforcement simulation and video experience.



- The Company is employee owned.
- Ti Training was established in 2006
- The President has 16 years of LE simulation leadership.
- The VP of Operations has 30 years of LE sales & 10 years in simulation.
- The VP of Training has 16 years for LE simulation Training experience.
- The VP of Business Development has 18 years in LE simulation sales.
- The VP of Sales has 14 years of federal contracting & LE simulators.
- The entire Management team has worked together for over a decade.
- Ti Training has Agents and representatives in the US & around the World.
- Ti Training Holds a GSA contract and many state approved Vender lists.
- Ti Training holds a Good Standing certificate in the state of Colorado.

Ti Training Mission Statement

Ti Training provides the law enforcement and municipal communities a highly interactive learning experience, with new technologies, high quality products, relevant content and reliable professional support. Ti Training forms long term partnerships with our customers, vendors and subject matter authors to create a trust and an open dialog between the customer and the company. Ti Training continues to stay abreast of current topics and find solutions with a fresh, innovative training approach. Our goal is to have solutions for agencies of every size and budget while earning a fair profit for our employee-owners and shareholders. We will always embrace and execute sound, ethical business practices.



The logo and company name were taken from the periodic Table, it is the symbol for Titanium. Pound for pound the strongest metal in the world. Ti Training has the tag line that we are "The Strongest Element in Training"

The Strongest Element in Training

H																	He
Li	Be											B	C	N	O	F	Ne
Na	Mg											Al	Si	P	S	Cl	Ar
K	Ca	Sc	Ti	V	Cr	Mn	Fe	Co	Ni	Cu	Zn	Ga	Ge	As	Se	Br	Kr
Rb	Sr	Y	Zr	Nb	Mo	Tc	Ru	Rh	Pd	Ag	Cd	In	Sn	Sb	Te	I	Xe
Cs	Ba		Hf	Ta	W	Re	Os	Ir	Pt	Au	Hg	Tl	Pb	Bi	Po	At	Rn
Fr	Ra		Rf	Db	Sg	Bh	Hu	Mt	Ds	Rg	Uub						
La	Ce	Pr	Nd	Pm	Sm	Eu	Gd	Tb	Dy	Ho	Er	Tm	Yb	Lu			
Ac	Th	Pa	U	Np	Pu	Am	Cm	Bk	Cf	Es	Fm	Md	No	Lr			

4	22	Titanium
Ti		Atomic number: 22 Atomic Mass: 47.867 Melting Point: 1933.15 K Boiling Point: 3568 K Number of Protons: 22 Number of Electrons: 22 Classification: Transition Metal Crystal Structure: Hexagonal
Titanium is Latin and refers to the Titans, the mythological "first sons of the earth". It is strong, lustrous, corrosion-resistant and can be found in the earth's crust as well as in meteorites and the sun...		
<i>"Your Training has Begun!"</i>		

Products - Ti Training® has four products:

- **Training Lab®** - State of the art use-of-force training simulator
- **Training Room®** - Classroom interactive training simulator.
- **Training Table®** - Subject Matter experts delivering content in multi medias
- **Training Studio®** - The latest in video Equipment, Studio and Staff



TL Training Lab



Tr Training Room



Tt Training Table



Ts Training Studio

Services

- **System Training** - Operation and simulation instructor training
- **Customer Service** - Support is 24/7 phone, on-line and site visits
- **Training Classes** - Teaching at conference, agencies and written papers
- **Video Productions** - Producing training content, product videos & print media



Training Corp.

"The Strongest Element in Training"

Training Lab Master Instructor Initial Certification Course

Instructor Todd R. Brown

Phone Office: 800-634-1936
Wireless: 720-939-5075

Office 14998 W 6th Ave. #500
Golden, CO. 80401

E-mail Todd@Titraining.com

Requirements:

Certified Law Enforcement Instructor

Description:

The purpose of this course of instruction is to train selected students in the set-up, function, operation, and maintenance of the Training Lab and Training Room interactive simulation systems, manufactured by Ti Training Corp. These systems represent the most advanced training devices available. These systems utilize the latest advances video, laser, RF and programming technology to provide an intuitive, easy to maintain training tools. These tools are designed to aid in teaching Public Safety Personnel to effectively and safely perform their duties.

This course begins with classroom theory and progresses to "hands on", proficiency based exercises. We at Ti Training Corp recognize that even the most advanced technology is useless in the hands of someone who cannot effectively operate and maintain that technology. Therefore, this course is focused on ensuring every person attending this course attains each of the goals listed below.

Successful completion of this course when combined with successful completion of the on-line portion of the course will certify the student as a "Master" instructor in simulation training and allow the student to certify "Instructor" level students within their agency. Additionally, semester hour credits from an accredited college will be awarded as well as an equivalent P.O.S.T. continuing education hours. This will allow the student to transfer credit to any University and/or submit to their local P.O.S.T. organization to satisfy continuing educational requirements for maintenance of their Peace Officer certifications.

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Goals:

- The system Operator/Instructor will be able to effectively set up, operate these systems.
- The system Operator/Instructor will have a thorough knowledge of the system's specifications.
- The system Operator/Instructor will be able to effectively apply the principals of simulation training in order to maximize student learning potential, retention and performance.
- The system Operator/Instructor will be able to effectively integrate these systems with their agencies policies, requirements and overall curriculum.

Course Sections:

This course will consist of the following sections. Successful completion of every section is required for certification.

■ Course Introduction

- Instructor and Student Introductions
- Course Overview
- Certification Requirements

■ System Overview

- System Demonstration
- Components
- Graphical User Interface (GUI)
- Environmental Requirements

■ System Operation

- Set up and Calibration
- Assigning Devices
- Selecting Training Material (Scenarios)
- Playing, Branching, and Operation of Optional Features (EnviroSim, Telemetry, etc.)
- System Debriefing Functions
- Report Generation/Documentation of Training Evolutions

■ Scenario Creation

■ Effective Simulation Training

- Requirements
- Briefing
- Debriefing
- Documenting

■ Troubleshooting/Diagnostics

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Evaluation:

Each person attending his course will be evaluated in interactive environments including electronic testing and proficiency based exercises. Evaluations are conducted throughout the course and the syllabus can be adjusted as necessary to ensure each participant completes each evaluation successfully.

Expectations While Attending This Course:

- ☐ Punctual and complete attendance is required for completion and certification. Should the need arise to miss any portion of this course, please notify your instructor immediately.
- ☐ Your instructor understands the need for you to maintain contact with those not attending this course (your agency, your family, etc.). However, while in the course please turn your cellular phones, pagers and any other communication devices to their "silent" mode. This will reduce disruptions to your peers.
- ☐ Active participation is required to learn and retain the information presented in this course. We expect you to ask questions. The only question that we cannot answer is the one that is not asked.

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Course Schedule:

The schedule is a guideline for this course. It may be adjusted, as necessary, to maximize the use of the time available. Regular breaks are a part of this schedule.

Day 1

Section	Time
Course Introduction	0900 - 1000
System Overview	1000- 1200
LUNCH	1200 - 1300
System Operation/Componentss/SetUp	1300 - 1500
Day 1 Review	1500 -

Day 2

Section	Time
System Operation (Cont.)	0900 -1200
LUNCH	1200 - 1300
Effective Simulation Training	1300 - 1500
Day 2 Review	1500 -

Day 3

Section	Time
Scenario Creation	0900 -1200
LUNCH	1200 - 1300
Scenario Creation	1300 - 1500
Day 3 Review	1500 -



LIMITED WARRANTY

1. Ti Training's Simulation Products (Product or Products) are warranted to the original purchaser (Purchaser) to be free from defects in material and workmanship for a period for one year (12 months) from the date of shipment to the Purchaser.

2. TI TRAINING does not warrant: (a) any product, components or parts not manufactured or assembled by TI TRAINING; (b) any prototype, pilot production, or custom products; (c) defects caused by failure to operate the product in a suitable operating environment within the Product's rated capacity and limits; (d) damage due to use of the Products for purposes or with equipment other than those for which it was designed, (e) damage caused by disasters and accidents such as but not limited to fire, flood, wind, rain, lightning, negligence, over-temperature, over-voltage, misapplication of electrical power, and misapplication of live-fire; (f) damage cause by unauthorized attachments, modification and repair to Product's software or hardware including but not limited to the use of any software on the Products that has not been specifically approved by TI TRAINING in writing (excluding Purchaser edited-scenarios), the insertion or removal of circuit or peripheral boards without express approval from TI TRAINING in writing, and the insertion or removal of any I/O connectors when the Product is powered without express approval from TI TRAINING; (g) damage during shipment; (h) normal wear and tear or cosmetic damage to the product; (i) damage due to improper maintenance; (j) any other abuse, misuse, neglect, mishandling, alteration, or faulty installation by the Purchaser; and (k) compatibility with other components or electrical devices.

3. If the Purchaser discovers within the warranty period a failure of the Products to conform to specifications or a defect in material or workmanship, it must promptly notify TI TRAINING in writing within seven days of the discovery. Within a reasonable time after both notification and the timely return of the Products or defective parts associated therewith carriage paid to TI TRAINING, TI TRAINING will correct any defect in material or workmanship, with either new or used replacement parts provided TI TRAINING is satisfied that the failure was due to a defect in workmanship or material and not because of any reason indicated in the preceding paragraph. Final determination of warranty eligibility shall be made by TI TRAINING and if a warranty claim is considered invalid for any reason, the Buyer will be charged for services performed and expenses incurred by TI TRAINING in repairing, handling and shipping the returned Products or part(s).

4. The warranty period of any replacement or repaired Products or part(s) shall terminate concurrently with the termination of this Limited Warranty.

5. Concerning parts or components of the Products not manufactured by TI TRAINING, the Purchaser shall have the benefit, insofar as it may be transferred to the Purchaser, of any rights or warranties that TI TRAINING may have relative to the supplier of said parts or components. TI TRAINING's liability concerning said parts and components is limited to making the benefit of such rights and warranties available to the Purchaser as indicated.

6. User-level repairs conducted by or for the Purchaser that are not under the express direction of TI TRAINING whether to hardware or software voids the Limited Warranty.

7. TI TRAINING shall not be liable for any failure to perform its obligations hereunder that are due to any circumstances beyond its control including, but not limited to, any inability to obtain any necessary import or export licenses or any other licenses or consents of any governmental or other authority.

8. This Limited Warranty and all contracts and documents pertaining to the Products shall be construed under Colorado law. The venue for any disputes arising under the Limited Warranty or any contracts and documents pertaining to the Products shall be any court of

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competent jurisdiction seat within a fifty mile radius of Denver, Colorado. Any action brought for breach of warranty must be commenced within 14 months following the delivery of the Products.

9. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

10. In no case shall TI TRAINING be liable for any special, incidental, or consequential damages based upon breach of warranty, breach of contract, negligence, strict tort or any other legal theory. Such damages include but are not limited to loss of profits, loss of savings or revenue, loss of use of the product or any associated equipment, cost of capital, cost of any substitute equipment, facilities or services, downtime, the claims of third parties including customers, or injury to property. This limitation does not apply to damages caused by breach of the warranty of title and to claims for personal injury. Some states do not allow limits on warranties, or on remedies for breach of certain transactions. In such states, the limits in this paragraph and in other paragraphs may not apply.

11. Unless modified in a writing signed by both TI TRAINING and the Purchaser, the Limited Warranty and any associated written agreements executed contemporaneously herewith are understood to be the complete and exclusive agreement between the parties superseding all prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this agreement. No employees of TI TRAINING or any other party is authorized to make any warranty in addition to those made in this Limited Warranty.

12. This Limited Warranty and associated agreements allocate the risks of product failure between TI TRAINING and the Purchaser. This allocation is recognized by both parties and is reflected in the price of the Products. The Purchaser acknowledges that it has read this agreement, understands it and by its acceptance of the Products is bound by its terms.

REPAIR AND REPLACEMENT POLICY

WARRANTY REPAIR: If a repair is necessary under and during the term of the warranty, contact TI TRAINING's Customer Service Department to receive a Return Material Authorisation (RMA) Number and return instructions prior to shipping the defective Product(s) or parts to TI TRAINING. The RMA must be referenced on all documentation relating to the return (i.e. shipping documents, shipping label, purchase order, correspondence, etc.). The following information is needed when requesting an RMA Number:

1. Model number and option.
2. Serial number,
3. Description of failure,
4. Shipping information,
5. Point of contact and phone number,
6. Billing information, and
7. Purchase order number (required if out-of-warranty).

All costs associated with shipping, taxes, freighting, packaging and handling of the Product(s) and/or parts shall be borne by Ti Training.

A failed system/part under warranty comes back to the depot for repair, if that same system/part should fail as second time within 90 days of repair, the part would be replaced.

OUT-OF-WARRANTY REPAIR: In addition to the requirements provided above concerning warranty repairs, all out-of-warranty repairs require that the Purchaser issue a purchase order to TI TRAINING authorizing the repair and agreeing to cover all costs related thereto.

The purchase order number should refer to the RMA Number which is assigned by TI TRAINING's Customer Service Department.

All costs associated with shipping, taxes, freighting, packaging and handling of the Product(s) and/or parts shall be borne by the Purchaser.

TI TRAINING SOFTWARE SUPPORT & UPDATE POLICY

- I. The software delivered with the Products includes both TI TRAINING and third-party software.
- II. The buyer acknowledges that TI TRAINING is not responsible for any third party software other than providing a work-around for failure of the Products or TI TRAINING software resulting from third party software.
- III. Loading of any software other than (i) scenarios generated by the customer using TI TRAINING authoring tools, and (ii) software supplied by TI TRAINING with or for the Products must be approved by TI TRAINING.
- IV. LOADING ANY SOFTWARE WITHOUT THE WRITTEN PRIOR APPROVAL OF TI TRAINING WILL RESULT IN AN IMMEDIATE TERMINATION OF THE LIMITED WARRANTY, AND ALL CONSEQUENCES INCLUDING ALL REPAIR AND REPLACEMENT COSTs SHALL BE BORNE BY THE PURCHASOR.
- V. In order to facilitate efficient software support, the customer shall provide a direct telephone line access to the system which is capable of transferring data using high speed modems with dial-in capability. The buyer acknowledges that without the availability of such telephone line, TI TRAINING can not guaranty any time frame for software support, and a fault may involve the sending back of the CPU to TI TRAINING for repair at the buyer's cost.
- VI. TI TRAINING may from time to time provide Software updates which are limited to same product enhancements and fault repairs. Releases of new TI TRAINING Software products will be available for separate purchase at an upgrade price to be established at the time of the release.
- VII. Engineering Change Notices (ECN's) in the form of written notice and/or file replacements will be issued when necessary to update software modules which have been modified to repair a fault. Ti Training's correction of any software fault in Ti Training's products may require an operating system upgrade to the current revision level by the customer. Upgrades to operating system software should only be performed when directed in writing by TI TRAINING.

TI TRAINING hereby reserves the right to make without notice such minor modifications in specifications, designs or materials as it may deem necessary or desirable by experience.



Texas Municipal League of Cities – Austin, TX
Todd Townsend
(512) 491-2300 Ext. 554
TTownsend@tmlirp.org

Jefferson County Sheriff's
Capt. Danny Wolker
(409) 726-2516
dwalker@co.jefferson.tx.us

Phoenix PD - AZ
Richard Brethour
(602) 534-7781
richard.brethour@phoenix.gov
Multiple systems

Liberty County Sheriff
Capt. David Edwards
(912) 408-3106
D_edwards@libertyso.org

Oklahoma CLEET – Ada, OK
Chris Sutterfield Senior Training Inst
(405) 239-5159
CSutterf@CLEET.state.OK.us
Multiple systems

TSA – Federal Air Marshals
Rodney Smith
(609) 813-3451
Rodney.S.Smith@DHS.gov
30 systems

National Institute of Justice/ NLECTC
Kevin Vermillion
(606) 436-0054
kvermillion@srtbrc.org
Multiple systems

Little Rock Police Department
Sergeant Heath Helton
Training Division
501-918-4305
hhelton@littlerock.org

TASER International – Scottsdale, AZ
VP Rick Guibault
800-978-2737 ext. 2065
Sarge@TASER.com

Texas Sheriff's Association
Tod Depp
(512) 445-2316
Tod@txsheriffs.org

Tomball Police Department
Robert S. Hauck, Chief of Police
(281) 290-1302 (Direct)
rhauck@ci.tomball.tx.us

Broken Arrow Police Dept.
Sgt. Mike Shaw
(918) 451-8200 Ext. 8766
MShaw@brokenarrowOK.gov

Citrus County Sheriff's Office - Inverness, FL
Phil Royal
(352) 726-4488 X 252
proyal@sheriffcitrus.org

DOI/National Park Service's - Lake Mead, NV
John Tesar - LE Specialist
(703) 293-8944
John_Tesar@NPS.gov

San Diego Sheriff's Dept.
Capt. Will Brown
(858) 974-2179
will.brown@sdsheriff.org

Knoxville PD - TN
Lt. Jeff Stiles
(865) 215-1308
jstiles@cityofknoxville.org

Torrance PD - CA
Rich Christiansen
(310) 618-5501
rchristian@torrnet.com

San Joaquin Delta College - Stockton, CA.
Director Jared Zwickey
(209) 954-5372
jzwickey@deltacollege.edu

Federal Reserve Bank - Chicago
Lt. David Hartsfield
(312) 322-2370
david.hartsfield@chi.frb.org

Training Lab - Use of Force Simulator		Comm. Price List	GSA
TL-100	Training Lab Interactive Use of Force Simulator -(Specify Permanent or Portable)	\$42,000	\$37,380.00
Weapons			
TL-110	Training Lab Laser Insert	\$1,200	\$1,068
TL-129	End cap set for Training lab laser insert, 40 cal	\$50	\$35.60
TRS-XXX	Air Recoil conversion kit for Pistol w /1 magazine - Glock, Sig Sauer, Beretta, S&W	\$2,950	\$2,314.00
TRS-AR15	Air Recoil Conversion kit for rifle w/ 1 magazine - AR-15, M16, M4	\$2,950	\$2,314.00
TRS - Mag	Extra Magazine For Recoil Kits	\$225	\$200.00
TL-201	TASER X-26 laser fitted, includes 1 Laser Cartridge	\$2,200	\$1,958.00
TL-202	TASER Cartridge Only with Laser Insert	\$800	\$712.00
TL-203	Shotgun Drop in Adapter with Laser Insert, Non-Ejectable	\$1,400	\$1,068.00
TL-164	Red Glock Training Weapon, Model 17P	\$850	\$756.50
**TL-233	"Air-Soft" Style M9 Pistol with Laser insert	\$1,599	\$1,599
Training Lab - Options			
TL-112	Training Lab Laser OC Canister	\$1,400	\$1,068.00
TL-119	G-2 Tactical Flashlight, Black with IR Filter	\$250	\$222.50
TL-206	"Shadow Fire" Hostile Fire Simulator	\$3,400	\$2,403.00
**TL-Tab	Remote System Instructor Access Tablet	\$1,500	\$1,500.00
TL-206D	Return Fire Simulator with full Pan & Tilt , Monitor and Joystick	\$8,900	\$8,900.00
**TL-246	Stress Vest Hostile Fire Simulation Package (1-Vest,1-Laser box, 1-Aux Box)	\$4,200	\$4,200
**TL-244	Stress Vest - Stand alone	\$2,000	\$2,000
**TL-218	Auxiliary Device control box	\$950	\$950.00
**TLS-10	LED Light Bar or Strobe Light for Control box	\$500	\$500.00
TL-168970	Deluxe Ceiling Mount - Projector mount tray, pole and Ceiling panel	\$600	\$600.00
TL-126	50" Projector Cable wrapped with HD/FL connections (25' Standard w/ system)	\$300	\$300.00
**TL-222	Live Fire Laser system	\$4,900	\$4,900.00
TPT-GL22	Trigger Pull Trainer	\$2,600	\$2,314.00
**TL-192	"The Firing Line"-Full Marksmanship / COF with Ballistics and World Designer	\$4,250	\$3,825.00
**TL-3D	"True Distance 3D" Option, includes 40-3D scenarios, 2 pr. 3D glasses	\$9,500	\$8,550.00

Training Room - Classroom Trainer			
TR-101	Training Room system: Software, receiver, 24 keypads, case, manual, 1 course	\$2,725	\$2,425.25
TR-102	TR 101 plus: 6 hours on site instruction/training	\$4,975	\$4,427.75
TR-002	Training Room RF Handheld keypad, each	\$89	\$79.21
TR-003	Training Room RF receiver only	\$450	\$400.00

Extended Warranty		
1YW	Additional One Year Warranty for Training Lab Simulator	5% of Invoice

System Instructor Training & Video Production			
TS-400	3 day System Instructor/Operator Cert. Training at customer site for RULETC sys.	\$3,000	\$3,000.00
VP- 10	Custom Video production of 10 Scenarios - on site	\$9,500	\$8,455.00
VP-20	Custom Video production of 20 Scenarios - on site	\$13,500	\$12,015.00

* Quantity of 3 plus, additional discounts call for quotation. ** Not on GSA Schedule



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 8/28/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the issuance of a Request for Proposals (RFP) for Cellular Services and equipment for the Communication and Information Systems Department. RFP 5418-13

Purpose:

Consider a resolution authorizing the release of a request for proposals for cellular services and equipment.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Funding is not required at this time.

Discussion:

Please consider approving a resolution authorizing the issuance of a request for proposals for cellular services and equipment for the City of Midland. The estimated cost for 2 years is \$480,000. Please see the attached memo from the Communication and Information Systems Department for additional information.



August 6, 2012

To: Regina Stephenson

cc: Sharlett Chowning

From: Jennifer Frescaz

Subject: Cellular RFP

To follow is a Request for Proposal for cellular service. Currently we purchase cellular services and equipment from AT&T Mobility via the Texas Department of Information Resources contract. While this pricing is competitive, it is in the best interest of the City of Midland to explore all opportunities to ensure the organization receives the best pricing, service and equipment options.

This RFP specifies a two-year commitment with three additional one-year options. The estimated fiscal impact for a two-year commitment is approximately \$480,000.

Attachments

RESOLUTION NO.

**RESOLUTION AUTHORIZING ISSUANCE OF A
REQUEST FOR PROPOSALS FOR CELLULAR
SERVICES FOR VOICE, DATA AND MESSAGING
SERVICES AND OTHER TRADITIONAL CELLULAR
SERVICES AND EQUIPMENT FOR THE CITY OF
MIDLAND**

WHEREAS, a request for proposals has been prepared for cellular services and equipment for the Communications and Information Systems 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 cellular services and equipment for the Communications and Information Systems 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., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**CELLUAR SERVICES AND EQUIPMENT
AGREEMENT
#5418-13**

THIS AGREEMENT is made and effective the ____th day of _____, 2012, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "City," and _____, hereinafter referred to as "Company."

**ARTICLE I.
PURPOSE**

The purpose of this Agreement is to state the terms and conditions under which Company shall provide Cellular Services and equipment for the City of Midland.

**ARTICLE II.
SERVICES TO BE PERFORMED**

1. Company shall provide Cellular Services and equipment as described in the Scope of Services attached hereto as Exhibit "1" and incorporated herein for all legal purposes.
2. Company represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in Exhibit "1."

**ARTICLE III.
FINANCIAL CONSIDERATIONS**

City agrees to pay Company in an amount not to exceed \$_____ for the services described in Exhibit "1." City agrees to pay Company for Labor, Incidental Direct Costs and Sub-contractor Costs as set forth in Exhibit "1" upon presentation of a monthly invoice. The invoice shall set out Labor fees for the month and those Incidental Direct Costs and Sub-contractor Costs described in Exhibit "1" incurred during the previous month. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of receipt of the monthly invoice, City shall pay the full amount of such invoice; provided, however, that if City objects to any portion of an invoice, City shall notify Company of City's objection and the grounds therefor within 30 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. City in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV. TERM

The term of this Agreement shall be from _____, 2012, until _____, 201____, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION

Either party may terminate this Agreement at will, for no or any reason, upon giving the other party One-Hundred-Eighty (180) days written notice. The parties to this Agreement understand and agree that it is in either party's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the other party. All work and services under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective. The parties have bargained for the flexibility to terminate the Agreement upon giving the requisite notice.

ARTICLE VI. CONTRACT PERSONAL

This Agreement provides for personal or professional services, and the Company shall not assign this Agreement, in whole or in part, without the prior written consent of City. It is understood that any necessary engineering services shall be subcontracted by the Company.

ARTICLE VII. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Company shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that Company shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Company, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Company. No person performing any of the work and services described hereunder by Company shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which

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

ARTICLE VIII. INSURANCE

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

Commercial General Liability (including contractual liability):

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

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

Worker's Compensation: Statutory limits

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

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

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

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

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

Company shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the policy requirements and minimum

amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers compensation).

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

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

ARTICLE IX. FEDERAL WAGE REQUIREMENTS

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

ARTICLE X. ATTORNEY FEES

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

COMPANY AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. COMPANY ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE COMPANY FURTHER ACKNOWLEDGES AND AGREES

THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE COMPANY. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

**ARTICLE XI.
SOVEREIGN IMMUNITY**

By executing this Agreement the City is not waiving its sovereign immunity and retains all immunity from suit. The City is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.**

**ARTICLE XII.
NO THIRD PARTY BENEFICIARIES**

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

**ARTICLE XIII.
RELEASE**

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

**ARTICLE XIV.
GENERAL PROVISIONS**

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

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 Company: [Company NAME]
[Company ADDRESS]

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.

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.

H. Indemnity. COMPANY WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES,

LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, its agents or employees, or any subcontractor, arising out of, or resulting from, Company's use of, or activities on, the Agreement Premises, and Company will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including reasonable attorney's fees.

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

**ARTICLE XV.
NOTICE OF ALLEGED BREACH:
STATUTORY PREREQUISITES**

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

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

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

ARTICLE XVI. ASSIGNMENT

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Courtney B. Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Company :
[Company NAME]

By:

Title:

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of [Company NAME].

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

Notary Public, State of Texas

Printed Name

My Commission Expires: _____

Request for Proposals

RFP 5418-13

For

CELLULAR SERVICES

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

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SCHEDULE OF EVENTS

RFP 5418-13

For

CELLULAR SERVICES

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 (COMMUNICATIONS AND INFORMATION SYSTEMS, CISD) (hereinafter referred to as "the City") is pleased to invite you to submit a proposal for a **CELLULAR SERVICES** as specified herein. Proposals submitted in response to the specifications contained herein shall comply with the following instructions and procedures.

Request for Proposal Standard Information

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

1.2. INITIAL EVALUATION

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

1.3. DISCUSSION/NEGOTIATION

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

1.4. BEST AND FINAL OFFER

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

1.5. AWARD

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

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

1.6. TRADE SECRETS

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

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

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

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

the proposal.

- 1.6.2.1. The proposal may not contain trade secret matter in the cost or price.
- 1.6.2.2. An affidavit from the offeror's legal counsel attesting to and explaining the validity of the trade secret claim must be attached to each proposal containing trade secrets. In addition, offerors submitting a proposal containing trade secrets must be prepared to pay all legal costs and fees associated with defending the claim for trade secret protection in the event of an open records request from another party.
- 1.6.3. Documents not meeting all of the requirements of (1) and (2) will be available for public inspection, including copyrighted materials.**

1.7. LATE PROPOSALS

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

1.8. PREPARING A RESPONSE

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

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

1.9. PRE-PROPOSAL CONFERENCE:

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

1.10. CLARIFICATION/ INTERPRETATION

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

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

FAX: (432) 685-0523

e-mail: purchasing@midlandtexas.gov

1.11. FORMAT FOR INQUIRIES:

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

1.12. INTERPRETATION:

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

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

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

1.13. PROPOSAL ORGANIZATION AND SUBMISSION

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

“(Offeror’s Name)”, understands and will comply.

1.14. OFFER PRICING

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

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

1.15. ALTERNATE PROPOSALS

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

1.16. SUBMITTING A SEALED PROPOSAL

1.16.1. Number of copies and Location:

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

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

1.16.2. Each Offeror who submits a proposal represents that:

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

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

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

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

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

1.17. RIGHTS RESERVED

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

- A) waive any formality;
- b) cancel or terminate this RFP;
- c) reject any or all proposals received in response to this document;
- d) waive any undesirable, inconsequential, or inconsistent provisions of this document, which would not have significant impact on any proposal; not award, or if awarded, terminate any contract if the City determines adequate City funds are not available.

1.18. BONDING REQUIREMENTS

See Exhibit 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 Service 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 2 years. Renewals of the contract may be made at 1 year intervals, not to exceed a total of **(5) five** years, at the City's option.

1.24.5. Contract Extension

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

1.24.6. Escalation

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

2. PROPOSAL WAIVERS:

2.1. WAIVER OF ATTORNEY FEES:

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

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

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

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

2.2. WAIVER:

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

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

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

3. ACCEPTANCE OR REJECTION OF ANY PROPOSALS; AND

4. AWARD OF THE CONTRACT.

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

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

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

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

3. SCOPE OF PROJECT

The City of Midland is seeking a qualified cellular services provider to provide cellular service for voice, data and messaging features. The City of Midland utilizes cellular devices including smart-phones, data cards, mobile wifi devices and tablets, as well as regular voice and messaging devices. To date, the total number of cellular devices in use by the City of Midland is 441. These devices are used by City of Midland personnel in many capacities including public works, organization management and public safety. In addition, many public safety employees require connection availability throughout Midland County. Therefore it is imperative to the citizens who occupy the City of Midland and Midland County that the public safety employees have superior quality in voice and data connections throughout the area.

Please use the attached Table 1 for a breakdown of mobile devices.

4. REQUIREMENTS

NOTE: WHERE THE TERM "REQUIRED FIELD" APPEARS IN THE REQUIREMENTS, THE INTENT IS THAT THE USER MAY NOT LEAVE THAT FIELD BLANK AND LEAVE THE CURRENT RECORD. THE BLANK REQUIRED FIELDS SHALL BE FLAGGED FOR EASY IDENTIFICATION OF THE FIELDS LEFT BLANK.

*INCLUDED MEANS THAT IF THE FEATURE OR REQUIREMENT IS NOT NORMALLY INCLUDED, BUT WILL BE AT NO EXTRA CHARGE

**WILL BE AT AN ADDITIONAL COST. THESE ADDED COSTS SHALL BE LISTED ON THE COST SUMMARY/PRICE SHEET PROPOSAL PAGE (WHICHEVER IS ATTACHED)

4.1. SERVICES REQUIRED:

4.1.1. The Service Provider must provide reliable quality service and coverage throughout the entire area of Midland County with zero to limited outages.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

4.1.2. Rates for **Traditional cellular services** must include the following features:

- Nationwide Service
- Basic Voicemail
- Call Waiting
- Call Forwarding
- Wireless E-911 (This service must be provided as a Traditional Cellular services when mandated by law)
- Caller ID
- Long Distance
- 3-Way Calling

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

4.1.3 Rates for **Enhanced cellular services** must include Traditional cellular services plus:

- Unlimited Data Access for Internet/Email
- Unlimited Text Messaging
- Free Mobile to Mobile Calling
- Voice Dialing
- No Answer/Busy Transfer
- Voice Information Services

- Multi-Media Messaging

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

- 4.1.4. The Service Provider must provide technical assistance and support service to the City staff throughout the term of the contract.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

- 4.1.5. The Service Provider must provide public IP addresses for data connection used in City of Midland laptops.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

- 4.1.6. The Service Provider must provide support for establishing connection with the Public Safety System connection management application. This may require a unique configuration from the cellular service provider. Ongoing technical support for this configuration is also necessary on an as-needed basis.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

- 4.1.7. The Service Provider must provide a SMPP/SNPP enterprise messaging option for public safety text messages sent from the City of Midland computer aided dispatch interface to the employees.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

-
- 4.1.8 The City of Midland will have the option to retain all existing telephone numbers or request new phone numbers or a combination of new and existing numbers at its sole discretion.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

4.2. INSTALLATION:

- 4.2.1. Service Provider(s) will provide and assist with the installation or conversion of all mobile devices including configuration for laptop data devices and smart-phones.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

- 4.2.2. Service Provider will provide a representative who will be a single point of contact for implementation. Following initial implementation and upon satisfactory testing and acceptance, Service Provider will provide a single point of contact for account management.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

- 4.2.3. The Service Provider will provide training for devices if necessary at no additional cost to the City of Midland.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

4.3. SERVICE PROVIDER NETWORK:

- 4.3.1. Service Provider(s) will notify City of Midland of any detected service disruption within one (1) hour via email.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

- 4.3.2. The Service Provider(s) shall commit to mutually agreed upon performance and response standards for problem resolution and guarantee the agreed upon level of service:

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

- 4.3.3. The Service Provider(s) will limit scheduled maintenance activities to the hours between 1:00 am and 6:00 am and provide City of Midland with at least forty-eight (48) hours advance notice of any scheduled maintenance activity.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

- 4.3.4. The Service Provider(s) will provide 24x7x365 toll free telephone customer support.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

- 4.3.5. The Service Provider(s) will provide a maintenance log file or database that provides all

details of service calls and maintenance actions performed. This information must be accessible to City of Midland upon request.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

4.4. BILLING:

4.4.1. The Funding of this service will be subject to an annual appropriation by City of Midland City Council.

4.4.2 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.

4.4.3. The contract will be guaranteed for two (2) years from the date of the Notice of Acceptance with three additional one (1) year terms at the sole discretion of the City of Midland.

4.4.4. The price schedule should reflect the first year from Notice of Acceptance. Each subsequent year will begin on the year date anniversary of the Notice of Acceptance.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

4.4.5. The Service Provider will provide detailed billing each month at no additional charge. Detailed billing will include at least the following items:

- Dates of use
- Department
- User Name
- Total Charges
- User Telephone number
- Total monthly charge
- Number of minutes used
- Total SMS messages used
- Total Multi-media messages used

- Total kb of data usage

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

4.4.6. The Service Provider will provide a paperless billing option.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

4.4.7. The Service Provider will provide a billing account representative to be assigned to City of Midland.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

4.4.8. The Service Provider shall provide a single invoice for the billing account rather than multiple invoices.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

4.4.9. The monthly billing statement must be available online and all statements will be itemized city department.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

4.4.10. Partial months of service will be prorated to the day.

Included in Package

☐

Will add or Modify

☐

Not Included

☐

Comments:

5. VENDOR QUALIFICATIONS

5.1. INFORMATION VERIFICATION

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

5.2. RIGHT TO REJECT

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

5.3. VENDOR CAPABILITIES

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

5.3.1. References

- 5.3.1.1. Offeror shall provide a minimum of **5** references that are using services of the type proposed in this RFP. The references should fall within the categories identified below. At a minimum, the offeror shall provide the company name, the location where the services were provided, contact person(s), customer telephone number, a complete description of the service type, and dates the services were provided. The City reserves the right to use any information or additional references deemed necessary to establish the ability of the offerors to perform the conditions of the contract. Negative references may be grounds for proposal disqualification.
- 5.3.1.2. These references should include City government and universities where the offeror, preferably within the last **7** years, has successfully provided cellular services.
- 5.3.1.3. These references should include municipalities, colleges and universities or state-funded organizations.

5.3.2. Vendor Stability

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

- 5.3.2.2. Provide financial statements, preferably audited, for the **4** consecutive years immediately preceding the issuance of this RFP.
- 5.3.2.3. Provide copies of any quarterly financial statements that have been prepared since the end of the period reported by your most recent annual report.
- 5.3.2.4. Offerors shall specify how long the company submitting the proposal has been in business **providing cellular services.**

6. EVALUATION PROCESS

6.1. EVALUATION PROCEDURE

6.1.1. Committee Actions

- 6.1.1.1. The evaluation committee will separate proposals into “responsive” and “non-responsive” proposals. Non-responsive proposals will be eliminated from further consideration.
- 6.1.1.2. The evaluation committee will evaluate the remaining proposals and determine whether to award the contract to the best proposal or to seek a best and final offer before awarding a contract. Selection and award will be based on the offeror’s proposal and other items outlined in this RFP.
- 6.1.1.3. Responses must be complete and address all the criteria listed. Information or materials presented by offerors outside the formal response or subsequent “best and final offer,” if requested, will not be considered and will have no bearing on any award.

6.2. EVALUATION CRITERIA

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

- 6.2.1. Problem resolution procedure and enterprise customer support including priority technical support: 25%**
- 6.2.2. Service Coverage area- ability to provide reliable service and connectivity in Midland County: 20%**
- 6.2.3. Ability to Assist in billing services and provide accuracy in pricing, orders and billing: 20%**
- 6.2.4. Company Information and References: 15%**
- 6.2.5. Ability to provide on-site new phone deployment: 10%**
- 6.2.6. Pricing 5%**
- 6.2.7. Point of Presence: 5%**

If any proposal earns less than 70% of any single evaluation criteria, the proposal will be disqualified. The City reserves the right to award a contract by total cost or by item.

The City may award a contract or purchase order to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the City. The City will be solely responsible for the determination of what constitutes best value in accordance with the applicable Section 252.043 of the Local Government Code.

7. PROPOSAL CONTENTS

This needs to be structured to coincide with the requirements set forth in the RFP

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

- 7.1. THE RFP**
- 7.2. THE COST SUMMARY OR PROPOSAL FORM**
- 7.3. REQUESTED ATTACHMENTS**
 - 7.3.1. References**
 - 7.3.2. Resumes**
 - 7.3.3. Business Plan**
 - 7.3.4. Financial Information**
 - 7.3.5. Signed Execution of Offer**

8. TEXAS PUBLIC INFORMATION ACT

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

EXECUTION OF OFFER

Date: _____

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

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

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

This offer consists of pages number 1 through _____.

Offeror/ COMPANY: _____

SIGNATURE (INK): _____

NAME: (TYPED/PRINTED) _____

TITLE: _____

STREET: _____

CITY/STATE/ZIP: _____

TELEPHONE: _____ FAX: _____

E-MAIL ADDRESS: _____

TABLE 1
Breakdown of City of Midland Cellular Devices

Number of Devices	Type of Device	Requires Voice	Requires Unlimited Data	Requires Messaging	Requires Unlimited Messaging	Requires Enterprise Paging/ Messaging
117	Regular Devices	117	0	117	25	15
53	iPhones	53	53	53	53	53
237	Data Lines- aircards	0	237	0	0	0
10	iPads/Tablets	0	10	0	0	0
6	Mobile WIFI Devices	0	6	0	0	0
18	Pay Per Use Devices	18	18	0	0	0

441 **Total number of Devices**

COST SUMMARY

Device Cost

Number of Devices	Type of Device	Type of Device	Cost per Device (if any)	Total Cost	Grand Totals
117	Regular Devices				
53	iPhones				
237	Data Lines-aircards				
10	iPads/Tablets				
6	Mobile WIFI Devices				
18	Pay Per Use Devices				
441	Total number of Devices				

Please use the above table for price quote for devices. Include the cost per device (if any) and grand total at the bottom of the table. Use the table below to show rate plan cost.

Company Name: _____

Signature: _____

Print Signature: _____

Rate Plan

Requires Voice	Requires Unlimited Data	Requires Messaging	Total Monthly Cost	Requires Unlimited Messaging	Total Monthly Cost for Messaging (if any)	Requires Enterprise Paging/ Messaging	Total Monthly Cost for E-page (if any)	Grand Total with Features
117	0	117		25		15		
53	53	53		53		53		
0	237	0		0		0		
0	10	0		0		0		
0	6	0		0		0		
18	18	0		0		0		
Grand Totals								

Please use the above table for price quote. Include the monthly recurring, cost per phone line, total recurring monthly cost and total monthly cost with added features all by device. If necessary, create your own table based on the total number of devices and added features, reflecting any discounts, etc. Complete the grand total at the bottom of the table.

Company Name: _____

Signature: _____

Print Signature: _____

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

If you have previously submitted a form, it is NOT necessary to send another, unless the status has changed. If submitting due to change in previous status, please note change in status on the front of the form.

Upon completion of the form, sign and submit with bid or mail to:

City of Midland

Attn: City Secretary

P. O. Box 1152

Midland, Texas 79702

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

OFFICE USE ONLY

Date Received

1 Name of person doing business with local governmental entity.

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

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

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

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

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.

[illegible]

6

Signature of person doing business with the governmental entity

Date _____

Adopted 11/02/2005

CITY OF MIDLAND

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

Affidavit of Eligibility

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

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

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

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

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: _____

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

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

Reseller Permit Number: _____

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

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

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

☐ Yes ☐ No

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

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

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

**No-Bid
Response
For
Request #: 5418-13 Cellular Services**

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

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

Fax to: (432) 685-0523

or

Email: purchasing@midlandtexas.gov

Please Check all reasons below that apply:

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

Company Name: _____

Authorized Officer or Agent Signature: _____

Telephone Number: _____ Fax: _____

Email Address: _____

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



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 8/28/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the issuance of a Request for Proposals (RFP) for Federal Reimbursement Opportunities and Consultant Services for the Health Department. RFP 5438-12

Purpose:

Consider a resolution approving the release of a request for proposals for Federal Reimbursement Opportunities and Consultant Services.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Funding is not required at this time.

Discussion:

Please consider the approval of a resolution authorizing the issuance of a request for proposals for Federal Reimbursement Opportunities and Consultant Services for the Health Department. The estimated cost for 2 years is \$49,000. Please see the attached memo from Tina Jauz, Community Services Director, for additional information.

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: August 15, 2012
To: Tommy Hudson, Deputy City Manager
From: Celestino Garcia, Health and Senior Services Manager
Subject: Federal Reimbursement Consultant Services

The Midland Health Department is seeking permission to obtain Requests for Proposals from companies interested in assisting the city with federal reimbursement services.

Medicaid administrative claiming is a federal match program which reimburses health departments for certain activities that improve citizen's access to the Medicaid Program.

The Midland Health Department is already providing such Medicaid administrative services by referring citizens to providers or with interagency coordination. For example, a service can be as simple as staff helping citizens who have come to the Health Department or who have phoned seeking direction. Staff assists them in finding a doctor, recruiting providers, or working with another agency to improve Medicaid services being offered to our citizens.

The Federal government, in return, will reimburse a percentage of local dollars spent in staff time. The consultant would be responsible for collecting that information and then filing the paperwork with the Federal government seeking the reimbursement. The consultant would invoice the city quarterly with revenue being based on a percentage of what reimbursements the Health Department generates.

RESOLUTION NO.

**RESOLUTION AUTHORIZING ISSUANCE OF A
REQUEST FOR PROPOSALS FOR FEDERAL
REIMBURSEMENT OPPORTUNITIES AND
CONSULTANT SERVICES FOR THE HEALTH
DEPARTMENT**

WHEREAS, a request for proposals has been prepared for Federal Reimbursement Opportunities and Consultant Services for the Health 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 Federal Reimbursement Opportunities and Consultant Services for the Health 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., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**FEDERAL REIMBURSEMENT OPPORTUNITIES AND CONSULTANT SERVICES
AGREEMENT
#5438-12**

THIS AGREEMENT is made and effective the ____th day of _____, 2012, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "City," and _____, hereinafter referred to as "Company."

**ARTICLE I.
PURPOSE**

The purpose of this Agreement is to state the terms and conditions under which Company shall provide Federal Reimbursement Opportunities and Consultant Services for the City.

**ARTICLE II.
SERVICES TO BE PERFORMED**

1. Company shall provide Federal Reimbursement Opportunities and Consultant Services as described in the Scope of Services attached hereto as Exhibit "1" and incorporated herein for all legal purposes.
2. Company represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in Exhibit "1."

**ARTICLE III.
FINANCIAL CONSIDERATIONS**

City agrees to pay Company in an amount not to exceed \$_____ for the services described in Exhibit "1." City agrees to pay Company for Labor, Incidental Direct Costs and Sub-contractor Costs as set forth in Exhibit "1" upon presentation of a monthly invoice. The invoice shall set out Labor fees for the month and those Incidental Direct Costs and Sub-contractor Costs described in Exhibit "1" incurred during the previous month. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of receipt of the monthly invoice, City shall pay the full amount of such invoice; provided, however, that if City objects to any portion of an invoice, City shall notify Company of City's objection and the grounds therefor within 30 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. City in any event

shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV. TERM

The term of this Agreement shall be from _____, 2012, until _____, 201____, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION

Either party may terminate this Agreement at will, for no or any reason, upon giving the other party One-Hundred-Eighty (180) days written notice. The parties to this Agreement understand and agree that it is in either party's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the other party. All work and services under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective. The parties have bargained for the flexibility to terminate the Agreement upon giving the requisite notice.

ARTICLE VI. CONTRACT PERSONAL

This Agreement provides for personal or professional services, and the Company shall not assign this Agreement, in whole or in part, without the prior written consent of City. It is understood that any necessary engineering services shall be subcontracted by the Company.

ARTICLE VII. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Company shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that Company shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Company, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Company. No person performing any of the work and services described hereunder by Company shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which

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

ARTICLE VIII. INSURANCE

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

Commercial General Liability (including contractual liability):

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

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

Worker's Compensation: Statutory limits

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

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

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

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

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

Company shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the policy requirements and minimum

amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of the City of Midland and policies that name the City of Midland as an additional insured on a claims occurred basis (except workers compensation).

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

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

ARTICLE IX. FEDERAL WAGE REQUIREMENTS

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

ARTICLE X. ATTORNEY FEES

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

COMPANY AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. COMPANY ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE COMPANY FURTHER ACKNOWLEDGES AND AGREES

THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE COMPANY. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

**ARTICLE XI.
SOVEREIGN IMMUNITY**

By executing this Agreement the City is not waiving its sovereign immunity and retains all immunity from suit. The City is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.**

**ARTICLE XII.
NO THIRD PARTY BENEFICIARIES**

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

**ARTICLE XIII.
RELEASE**

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

**ARTICLE XIV.
GENERAL PROVISIONS**

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

LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, its agents or employees, or any subcontractor, arising out of, or resulting from, Company's use of, or activities on, the Agreement Premises, and Company will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including reasonable attorney's fees.

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

**ARTICLE XV.
NOTICE OF ALLEGED BREACH:
STATUTORY PREREQUISITES**

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

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

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

ARTICLE XVI. ASSIGNMENT

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Courtney B. Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Company :
[Company NAME]

By:

Title:

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed on behalf of [Company NAME].

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

Notary Public, State of Texas

Printed Name

My Commission Expires: _____

Request for Proposals

RFP 5438-12

**For
FEDERAL REIMBURSEMENT OPPORTUNITIES AND CONSULTANT SERVICES**

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

SCHEDULE OF EVENTS

RFP 5438-12

For

FEDERAL REIMBURSEMENT OPPORTUNITIES AND CONSULTANT SERVICES

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, and 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 (HEALTH & SENIOR SERVICES) (hereinafter referred to as "the City") is pleased to invite you to submit a proposal for a FEDERAL REIMBURSEMENT OPPORTUNITIES AND CONSULTANT SERVICES as specified herein. Proposals submitted in response to the specifications contained herein shall comply with the following instructions and procedures.

Request for Proposal Standard Information

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

1.2. INITIAL EVALUATION

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

1.3. DISCUSSION/NEGOTIATION

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

1.4. BEST AND FINAL OFFER

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

1.5. AWARD

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

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

1.6. TRADE SECRETS

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

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

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

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

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

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

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

1.7. LATE PROPOSALS

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

1.8. PREPARING A RESPONSE

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

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

1.9. CLARIFICATION/ INTERPRETATION

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

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

FAX: (432) 685-0523

e-mail: purchasing@midlandtexas.gov

1.10. 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.

1.11. 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.

1.12. 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.

1.13. OFFER PRICING

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

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

1.14. ALTERNATE PROPOSALS

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

1.15. SUBMITTING A SEALED PROPOSAL

1.15.1. Number of copies and Location:

- 1.15.1.1. Offerors must submit one original, 2 hard copies and one (1) soft copy (PDF or Word) to the City Secretary. Sealed Proposals must be received by the date before the time stated on the face of the Request for Proposal Cover Page, local time. Sealed Proposals received after this time will not be accepted for consideration. Facsimile copies are not acceptable.
- 1.15.1.2. A mailing label is included in the RFP. Please be sure to use it on the outermost package of the RFP whether it is an envelope, box or overnight package, so that it is visible when received by the City.

1.15.2. Each Offeror who submits a proposal represents that:

- 1.15.2.1. The proposal is based upon an understanding of the specifications and requirements described in this RFP.
- 1.15.2.2. 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.
- 1.15.2.3. 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.

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

1.15.4. 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.

1.16. 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.

1.17. 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.

1.18. SUBCONTRACTING

1.18.1. 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.

1.18.2. 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.

1.19. INSURANCE REQUIREMENTS

See Agreement

1.20. 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.

1.21. 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.

1.22. CONTRACT PROVISIONS AND TERMS

1.22.1. Contract Execution

1.22.1.1. 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.

1.22.2. Terms and Conditions

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

1.22.3. 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.

1.22.4. The initial contract(s) term is for a period of two (2) years. Renewals of the contract may be made at two (2) year intervals, not to exceed a total of seven (7) years, at the City's option.

1.22.5. 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.

1.22.6. Escalation

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

2. PROPOSAL WAIVERS:

2.1. WAIVER OF ATTORNEY FEES:

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

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

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

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

2.2. WAIVER:

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

- 1. THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY PROPOSAL;**
- 2. WAIVER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE PROPOSAL DOCUMENTS OR THE CONTRACT DOCUMENTS;**

3. ACCEPTANCE OR REJECTION OF ANY PROPOSALS; AND

4. AWARD OF THE CONTRACT.

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

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

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

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

3. SCOPE OF PROJECT

Midland Health and Senior Services is seeking the necessary professional consulting services from an experienced and knowledgeable source to implement a Practice Management and to assist in recovering federal dollars including reimbursements with Medicaid Administrative Claiming (MAC) for services rendered to Midland Health and Senior Services. The consultant or consulting firm must be willing to accept this engagement on a contingency fee basis. The consultant or consulting firm will be compensated only for new or enhanced revenues received by the City of Midland deemed to be a direct result of the consultant work.

4. REQUIREMENTS

NOTE: Where the term "required Field" appears in the requirements, the intent is that the user may not leave that field blank and leave the current record. The blank required fields shall be flagged for easy identification of the fields left blank.

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

**Will be at an additional cost. These added costs shall be listed on the cost summary/price sheet proposal page (whichever is attached)

Feature	Included In Package*	Will Add or Modify**	Exception Detail
4.1.	<u>GENERAL FEDERAL REIMBURSEMENT OPPORTUNITIES AND CONSULTANT SERVICES</u>		

- 4.1.1. The Contractor will be responsible for the following:
- 4.1.2. Contractor must specialize in completing MAC Claims for the health department.
- 4.1.3. Contractor has experienced financial experts that will prepare the MAC claims.
- 4.1.4. Contractor completes and submits a quarterly MAC claim for costs associated with Medicaid related activities on behalf of health department.
- 4.1.5. Contractor provides a detailed and thorough review of these costs be performed so that the City of Midland can maximize its recovery of appropriate monies related to all of its programs.
- 4.1.6. Contractor promotes the use of up-to-date, integrated grantee accounting systems and procedures within organizational entities, so that shared direct and indirect costs can be identified and allocated across all programs and activities. ☐ ☐
- 4.1.7. Contractor will complete and submit the City of Midland MAC claim each quarter before submission deadlines.
- 4.1.8. Contractor must have established relationships at the City level on federal programs in the state of Texas.
- 4.1.9. Contractor shall provide toll free telephone support.
- 4.1.10. Contractor shall be present in the event of Federal Audit.
- 4.1.11. The Contract for this Requirements study will be a deliverable-based using a **fixed fee** pricing model.
- 4.1.12. The terms and conditions of Statement of Work and Contract will be fully negotiated.

4.1.13. MINIMUM QUALIFICATIONS

- 4.1.14. Minimum five years experience in preparing MAC claims for local health departments.
- 4.1.15. Minimum five years experience in gathering and documenting financial information for MAC claims.
- 4.1.16. Minimum five years experience in auditing clients financial information. ☐ ☐
- 4.1.17. Experience working with State of Texas Automated Information Reporting Systems (STAIRS) For MAC claiming.
- 4.1.18.** Experience working in Federal CMS Region 6 and more specifically in the State of Texas.
-

4.1.18.1. level 4 PROJECT PERSONNEL

- 4.1.18.2. The Contractor shall provide qualified staff to perform the activities described in the RFP and maintain appropriate staffing levels throughout the term of the contract.
- 4.1.18.3. Identify the project personnel of your organization who would perform work for the City under this contract and describe their experience and qualifications.
- 4.1.18.4. Contractor shall provide lobbying support on reimbursement programs for state and local governments. ☐ ☐
- 4.1.18.5. Contractor shall provide a Project Lead for the duration of the contract. The minimum qualifications and responsibilities for the listed Project lead are as follows:
- 4.1.18.6. Must be full time employee of the contractor.
- 4.1.18.7. At least five years experience managing a project of similar scope to the one described in this RFP.
- 4.1.18.8. At least five years working with the City government financial department or Auditor's office.

4.1.18.8.1. level 5 PERSONNEL AVAILABILITY

- 4.1.18.8.2. Provide the name of the proposed Project Lead and his/her name. Provide a summary that demonstrates how the person meets the stated qualifications and will be able to fulfill the Project Lead position.
- 4.1.18.8.3. Key personnel and other operational staff assigned to the contract shall be made available to the Department for meetings during the Department's normal business hours. The contractor shall also make these personnel available outside of the Department's normal business hours and on weekends with prior notice from the Department. ☐ ☐
- 4.1.18.8.4. The contractor's key personnel and other operational staff shall be available for all regularly scheduled meetings between the contractor and the Department, unless the Department has granted prior approval otherwise.
- 4.1.18.8.5. The contractor shall ensure that the staff attending all meetings between the Department and the contractor has the authority to represent and commit the contractor regarding work planning, problem resolution and program development.
-

4.1.18.8.5.1. Level 6 MEDICAID ADMINISTRATIVE CLAIMING (MAC) EXPERIENCE

4.1.18.8.5.2. Prior success in submission of MAC claims.

4.1.18.8.5.3. Describe how your organization would compute and submit MAC claims to the City of Midland Health Department.

4.1.18.8.5.4. Contractor shall be responsible for obtaining the quarterly eligibility rate data on behalf of the Department and ensure that the correct population is being captured. ☐ ☐

4.1.18.8.5.5. Contractor shall be responsible for ensuring that the Department is accurately reimbursed for all MAC dollars.

4.1.18.8.5.5.1. Level STAFF TRAINING

4.1.18.8.5.5.2. Upon request, Contractor may train personnel of the Department in the process of performing and participating in the random moment time study. The training shall be provided throughout the term of the contract. Contractor shall conduct annual trainings as well as web-based refresher training as needed. Contractor shall supply recorded trainings for those employees that are not able to attend training. ☐

4.1.18.8.5.5.3. Describe how your organization would train personnel of the Department to perform and participate in the following:

4.1.18.8.5.5.4. Training on the Time Codes

4.1.18.8.5.5.5. State RMS System

4.1.18.8.5.5.6. Training description shall include timeframe for training and frequency of training.

4.1.18.8.5.5.6.1. Level 8 CLAIM COMPILATION AND SUBMISSION

4.1.18.8.5.5.6.2. Contractor shall be responsible for obtaining the quarterly financial information from the city specified contact, submitting the quarterly claim to city in timely manner, submitting approved claim to HHSC by specified deadline. Work with HHSC to ensure accurate and prompt payment. ☐ ☐

4.1.18.8.5.5.6.3. Contractor shall work with Financial office to ensure revenues are documented correctly.

4.1.18.8.5.5.6.4. Contractor shall have access to the STAIRS system and be coded as a secondary financial contact, responsible for ensuring participant list is certified on a quarterly basis and ensure all financial information entered into STAIRS is accurate and reasonable.

5. VENDOR QUALIFICATIONS

5.1. INFORMATION VERIFICATION

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

5.2. RIGHT TO REJECT

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

5.3. VENDOR CAPABILITIES

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

5.3.1. References

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

These references should include City government and universities where the offeror, preferably within the last five (5) years, has successfully completed **FEDERAL REIMBURSEMENT OPPORTUNITIES AND CONSULTANT SERVICES**

5.3.2. Vendor Stability

- 5.3.2.1. Offerors shall demonstrate their financial stability to supply, install and support the services specified.
- 5.3.2.2. Provide financial statements, preferably audited, for the two (2) consecutive years immediately preceding the issuance of this RFP.
- 5.3.2.3. Provide copies of any quarterly financial statements that have been prepared since the end of the period reported by your most recent annual report.
- 5.3.2.4. Offerors shall specify how long the company submitting the proposal has been in business (doing similar projects) .

6. EVALUATION PROCESS

6.1. EVALUATION PROCEDURE

6.1.1. Committee Actions

- 6.1.1.1. The evaluation committee will separate proposals into "responsive" and "non-responsive" proposals. Non-responsive proposals will be eliminated from further consideration.
- 6.1.1.2. The evaluation committee will evaluate the remaining proposals and determine whether to award the contract to the best proposal or to seek a best and final offer before awarding a contract. Selection and award will be based on the offeror's proposal and other items outlined in this RFP.
- 6.1.1.3. Responses must be complete and address all the criteria listed. Information or materials presented by offerors outside the formal response or subsequent "best and final offer," if requested, will not be considered and will have no bearing on any award.

6.2. EVALUATION CRITERIA

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

6.2.1. Company Service Qualifications

- 6.2.2. Three references**
- 6.2.3. Years in business**
- 6.2.4. Project Manager**
- 6.2.5. Implementation Plan**
- 6.2.6. Training Requirements**
- 6.2.7. Organization**
- 6.2.8. Technical Abilities**
- 6.2.9. Cost Analysis**

7. PROPOSAL CONTENTS

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

- 7.1. THE RFP**
- 7.2. THE COST SUMMARY OR PROPOSAL FORM**
- 7.3. REQUESTED ATTACHMENTS**
 - 7.3.1. References**
 - 7.3.2. Financial Information**
 - 7.3.3. Signed Execution of Offer**

8. TEXAS PUBLIC INFORMATION ACT

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

EXECUTION OF OFFER

Date: _____

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

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

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

This offer consists of pages number 1 through ____.

Offeror/ COMPANY: _____

SIGNATURE (INK): _____

NAME: (TYPED/PRINTED) _____

TITLE: _____

STREET: _____

CITY/STATE/ZIP: _____

TELEPHONE: _____ FAX: _____

E-MAIL ADDRESS: _____

City of Midland, Texas
RFP 5438-12
Cost Summary

Months	Description	Cost per Month	Total Cost
24	Federal Reimbursement Opportunities Consultant Services	\$ _____	\$ _____

Company Name

Signature

Print Signature

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

If you have previously submitted a form, it is NOT necessary to send another, unless the status has changed. If submitting due to change in previous status, please note change in status on the front of the form.

Upon completion of the form, sign and submit with bid or mail to:

City of Midland

Attn: City Secretary

P. O. Box 1152

Midland, Texas 79702

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

OFFICE USE ONLY

Date Received

1 Name of person doing business with local governmental entity.

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

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

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

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

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor or other person doing business with local governmental entity

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

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

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

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

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

D. Describe each affiliation or business relationship.

6

Signature of person doing business with the governmental entity

Date

Adopted 11/02/2005

CITY OF MIDLAND

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

Affidavit of Eligibility

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

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

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

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

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: _____

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

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

Reseller Permit Number: _____

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

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

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

☐ Yes ☐ No

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

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

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

**No-Bid
Response
For**

Request #: 5438-12 Federal Reimbursement Consultant Services

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

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

Fax to: (432) 685-0523

or

Email: purchasing@midlandtexas.gov

Please Check all reasons below that apply:

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

Company Name: _____

Authorized Officer or Agent Signature: _____

Telephone Number: _____ Fax: _____

Email Address: _____

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



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 8/28/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving plans and specifications and authorizing advertisement for bids for seat replacement at the Scharbauer Sports Complex for the Community Services Department.

Purpose:

Approval of a resolution approving plans and specifications and authorizing advertisement for bids for seat replacement at the Scharbauer Sports Complex.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Funding is not required at this time.

Discussion:

Please consider approval of a resolution approving plans and specifications and authorizing advertisement for bids for labor, material, equipment and supervision necessary to provide and install seating at the Scharbauer Sports Complex. Please see the attached memo from Tina Jauz, Community Services Director, for additional information.

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: August 15, 2012
To: Tommy Hudson, Deputy City Manager
From: Tina Jauz, Community Services Director
Subject: Seating for the Scharbauer Sports Complex

The Parks and Recreation Division is seeking City Council authorization to publicize a bid for replacement seating at the Scharbauer Sports Complex to include all of Grande and Citibank stadiums.

The 4B Board, along with staff, recommends bidding the project for replacement of 8,751 seats between the two stadiums. After further review, staff has determined replacing all the seats in both stadiums, at the same time, would result in a potential savings of over \$500,000. You may remember the initial plan of replacing a few sections in each stadium over a period of eight years.

With moving in this new direction, staff recommends utilizing the original seat specifications for the current bid. Numerous stakeholders, including the 4B Board, season ticket holders, MISD spectators, RockHounds administration, and the general public, were in favor of the original seating versus those that were purchased in 2011.

The project was recommended in the FY2012-2013 budget as a capital item. Staff is working ahead to seek bids, therefore if the item is approved in the budget, the bid could be awarded in October, funds appropriated, and Citibank seats could be installed prior to the Spring 2013 RockHounds Season and prior to the 2013 Sockers and the fall MISD football season.

RESOLUTION NO.

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS TO PROVIDE AND INSTALL NEW SEATING AT THE SCHARBAUER SPORTS COMPLEX

WHEREAS, plans and specifications have been prepared to provide and install new seating at the Scharbauer Sports Complex; and

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

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

SECTION ONE. That the plans and specifications to provide and install new seating at the Scharbauer Sports Complex are hereby approved, those plans and specifications being substantially in the form as those on file with the office of the City Secretary, referenced by the date and number of this Resolution.

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

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

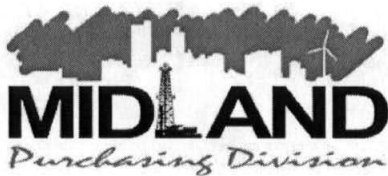
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



THE CITY OF MIDLAND

CONTRACT

Contract No.5458-13

THIS CONTRACT, effective the _____ day of _____, 20____, by and between the City of Midland, hereinafter referred to as the "Owner", and _____, hereinafter referred to as the "Contractor", is made for the following considerations:

1. **Cost:** Total Proposal: \$ _____ DOLLARS

2. **Scope of Work:** The Contractor shall perform all work described for labor, material, equipment and supervision necessary to provide and install seating at the Scharbauaer Sports Complex in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

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

EXHIBIT B..... Intentionally Omitted

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

EXHIBIT D..... Wage Scale

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

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

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

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

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

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

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

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

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

19. **Insurance**

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Worker's Compensation: Statutory limits

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

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

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

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

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

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

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

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

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

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

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

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

occurred in Midland County, Texas.

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

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

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

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

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

26. **Termination At Will:** The Owner may terminate this Contract at will for no or any reason upon giving at least one hundred eighty (180) days written notice to the Contractor. The parties to this Contract understand and agree that it is in the Owner's sole discretion to cancel the Contract during the term of the Contract without penalty to the Owner. The Contractor has no expectation and has received no guarantees that this Contract will not be terminated before the end of the Contract term. The parties have bargained for the flexibility of terminating this Contract upon tender of the requisite notice at any time during the term of the Contract. All work and services under the Contract shall be suspended upon termination of the Contract becoming effective.

Contract No: 5458-13

OWNER, City of Midland

CONTRACTOR

Courtney B. Sharp, City Manager

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

Contractor Corporate Acknowledgment: Contract No.5458-13

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared

_____, an officer of _____,

known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

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

Notary Public, State of Texas



Contractor's Name

PROPOSAL Bid #5458-13

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:

Materials Portion Incorporated Into Project _____ DOLLARS

Labor Portion Incorporated Into Project _____ DOLLARS

Other Costs Not Incorporated Into Project _____ DOLLARS

Total Proposal _____ DOLLARS

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 OWNER, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE CONTRACT. THE BIDDER SPECIFICALLY AGREES THAT IF THE BIDDER BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS CONTRACT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS CONTRACT,

INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET. SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE BIDDER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH BIDDER MIGHT OTHERWISE BE ENTITLED.

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

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

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

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

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

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

C. Notice of Alleged Breach; Statutory Prerequisites: As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, Bidder or his legal representative, shall give the City Manager, or any other reasonable official of the Owner, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Contract) of such damages, duly verified, within one-hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages

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

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

_____	_____	_____
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).**

SECTION 12610

STADIUM SEATING

PART 1 - GENERAL

1.1 SUMMARY

- A. This section includes the following:
 - 1. Self-rising seat, blow-molded plastic stadium chairs with armrest for exterior installation of the following styles:
 - a. Contoured seat and back for Football Stadium.
 - b. True slat back and simulated slat seat for Baseball Stadium.

1.2 PERFORMANCE REQUIREMENTS

- A. General: The completed stadium chair installation shall provide the following minimum performance requirements:
 - 1. All plastic components shall be exterior grade plastics.
 - 2. All paint systems shall be suitable for outdoor exposure.
 - 3. All mechanical fastening devices shall be non-corrosive materials.
 - 4. All seat hinge assemblies shall be non-corrosive materials.
 - 5. All fasteners shall be threaded except for mounting number plates. Threaded fastener engagement shall be into threaded metal.
 - 6. Seat hinge assembly shall raise, without assistance, the seat pan to within one inch plus or minus of the end of the armrest.
 - 7. The Easy Access Chair end standard shall have a hinged armrest that allows a patron to access the chair from the side and then place the armrest in the normal seating position.
 - 8. Wheelchair Companion and Infill Chairs: Provide stadium chairs mounted to a painted steel assembly with casters. Stadium chair design shall match the adjacent fixed stadium chairs. The tubular steel beam assembly shall anchor to threaded inserts in the concrete treads or metal platforms.
 - a. Number of Chairs Per Assembly: Provide assemblies for mounting two chairs and assemblies for mounting three chairs.
 - 9. The seating envelope shall fold-up into a depth that maintains the clear aisle access way width required by NFPA, 101 "Life Safety Code", chapter titled "New Assembly Occupancies".
 - 10. At expansion joints that fall within a row of stadium chairs, the manufacturer shall accommodate for the movement of the expansion joint without any detrimental effects on the performance of the stadium chair.
 - 11. Install as many chairs as possible to fill the entire row in each seating section. As the minimum install the chair quantities defined on the Architectural Drawings.

1.3 SUBMITTALS

- A. Required with the Bid
 - 1. Base bids on chair quantities included in the Chair Summary included at the end of this Section.

-
2. Provide Unit Prices for each chair type and size, complete with all accessories, including removable stretcher mounted chairs.
 - a. Unit Prices will be used to adjust the Contract Sum for adjustments to the quantities indicated in the Chair Summary.
 - b. Future Orders: Provide the order lead time and unit price (with a yearly escalation factor) for a period of five (5) years, for any component purchased to replace the extra stock after Substantial Completion of the Project.
 3. Product Literature for each type of chair proposed, including standard specifications for exterior treatments for cast iron, cast aluminum, steel, and plastic.
 4. Anchor bolt information.
 5. Pricing for Listed Alternates: Provide separate pricing for each of the listed alternates
 6. Samples: Submit custom color samples to match the Architect's color sample for the selection of colors for plastic components and ferrous or non-ferrous metal components. Submit one assembled stadium chair, in color selected, one chair on a tubular steel assembly, and one easy access chair. Approved seating samples can be used as part of the work.
- B. Required after Award of Contract:
1. Product Data: Submit technical data, performance test data certified by an independent testing laboratory and product information describing durability and maintenance requirements as applicable for the following items:
 - a. Anchor bolts.
 - b. Chair assembly.
 - c. Plastic materials and additives.
 - d. Padding and upholstery.
 - e. Coating materials and application procedures.
 - f. Armrests and cup holders.
 2. Shop Drawings: Submit shop drawings of the complete seating bowl showing tread and riser mounting details and aisle locations. Show joints between precast treads and risers and attachments. Show low riser height mounting bracket if required. Provide drawings of end standard design with logo, seat and back design, seat assembly, and seat and row identification graphics.
 - a. Provide shop drawings for seat attachment at unique conditions such as angled corners or where chairs span across a control or expansion joint.
 - b. Show detail of end standard for "Easy-Access" hinged armrest chairs.
 - c. Show details of wheelchair companion seating assembly and mounting details. Include the layout of mounting points in the concrete.
 3. Seating Chart: Submit a seating chart that shows the total quantity of seats, seat widths, aisle widths, and mounting conditions. Each seat shall be represented by a rectangle. Following approval of the seating chart the Owner will furnish the numbering system for seat and row identification.
 4. Seating Manifest: Provide seating manifest to Owner as follows: Owner will use seating manifest to determine location and allocation of seating for marketing and distribution of tickets.
 - a. Preliminary Seating Manifest: Submit a preliminary seating manifest no more than 30 days after completion of seating bowl construction that shows the total quantity of seats, seat widths, aisle widths, and mounting conditions. This drawing shall be based on verified field measurements. Each seat shall be represented by a rectangle. Following approval of the preliminary seating manifest, the Owner will furnish the numbering system for seat and row

identification. View and scale of chart shall be coordinated with the Architect.

- b. Final Seating Manifest: 45 days after the manufacturer has received the numbering system from the Owner, provide a complete seating manifest for the stadium chairs.

1.4 QUALITY ASSURANCE

- A. Life Safety: The new seating layout and installation shall comply with the requirements of the NFPA 101 Life Safety Code; chapter titles "New Assembly Occupancies".
- B. Seat Widths: Seat widths shall be adjusted within a row so that the standards are in general alignment with one row to another, whether aisles are of constant or converging widths. Install narrower chairs at end of the rows adjacent to aisle steps, if required.
 - 1. Minimum width of chairs shall be 19 inches.
- C. "Easy Access" seating, evenly distributed throughout the seating bowl, shall be understood to mean stadium seating with an armrest design that complies with all applicable requirements of the American with Disabilities Act, and the Performance Requirements of this specification. Each such seat shall be provided with access identification.
- D. Materials (Flammability) shall satisfy applicable test, codes, standards, or requirements as follows:
 - 1. Polyethylene shall meet the Federal Motor Vehicle Standard No. 302 which specifies a burning rate of less than 4 inches per minute.
- E. Pre-Installation Conference: Prior to commencing the seating installation meet at the project site to review the installation.
- F. Single Source Responsibility: Stadium seating shall be provided by a single manufacturer.

1.5 WARRANTY

- A. General: The warranty shall be in addition to and not a limitation of other rights the Owner may have against the Contractor, Installer, or Manufacturer, under the Contract Documents.
- B. Warranty: Provide warranty signed by an officer of the seating manufacturer that provides the replacement of stadium chairs found to be defective in appearance or unusable due to defects in performance. Warrant shall provide material and installation.
 - 1. General Warranty Period: 12 months after the Date of Substantial Completion of the project.
 - 2. Special Warranties: Provide the following special warranties:
 - a. Standards: 10 year period against failure of the material, corrosion, and excessive color change as determined by the Architect.
 - b. Hinge Mechanism: 5 year period against failure of the hinge to provide for automatic rising.
 - c. Plastic Components: 3 year period against cracking, crazing, or other failure of backs and seats, and excessive color change as determined by the Architect.

1.6 SCHEDULING

- A. Coordinate Work of this Section with the construction of the seating bowl precast concrete and installation of handrails and guardrails.

-
- B. Provide detailed schedule in Critical Path Method (CPM) for fabrication and installation of seats. Include decision dates for input to manufacturer on logo design, seat and row identification numbers, and completion of supporting construction.

1.7 DELIVERY, STORAGE AND HANDLING

- A. Deliver seating components in manufacturer's unopened cartons clearly labeled with manufacturer's name and contents of cartons.
- B. Packaging and shipping methods shall prevent painted seating standards from coming in contact with each other as well as other painted metal components by utilizing protective covering over each component. Maintain the protective covering on each metal component until after metal component is installed. Coating failures resulting from improper packaging, shipping, and handling during installation shall be repaired or replaced prior to installing plastic components.
- C. Protect seating units from physical damage and abuse by other trades. Replace damaged units.

1.8 PROJECT CONDITIONS

- A. Environmental Limitations: Do not install interior suite chairs until spaces are enclosed and weatherproof, wet work in space is complete and dry; finishes, including painting, are complete; and work above ceilings is complete. Do not install seating until ambient temperature and humidity conditions are continuously maintained at the levels anticipated for final occupancy.
- B. Field Measurements: Verify seating layout by field measurements before seating fabrication and indicate measurements on Seating Manifest. Coordinate fabrication schedule with construction progress to avoid delaying the Work.

1.9 MAINTENANCE

- A. Maintenance Manuals: Provide maintenance manuals that describe procedures for the cleaning and service of the stadium chairs. Manual shall include replacement part numbers and procedures for their replacement.
- B. Extra Stock: Provide the following seating components that are manufactured from the same lot as the installed components. Prorate quantities among sizes, types and colors furnished for each stadium.
 - 1. Seats: 2 percent.
 - 2. Backs: 2 percent.
 - 3. Center Standards: 2 percent.
 - 4. End Standards: 2 percent.
 - 5. Hinge Components: 2 percent.
 - 6. Fasteners and mounting hardware: 10 percent.
 - 7. Easy access armrest: 2 percent.

PART 2 - PRODUCTS

2.1 ACCEPTABLE MANUFACTURERS

- A. Manufacturers: The following manufacturers are acceptable subject to complying with the specified requirements:
 - 1. American Seating.
 - 2. Camatic Seating.
 - 3. Hussey Seating.
 - 4. GDS Seating.
 - 5. County Roads Seating.

2.2 MATERIALS

- A. Anchor Bolts: The Seating Manufacturer shall provide stainless steel anchor bolts for floor mounted riser and tread mounted seating. The Seating Manufacturer shall provide all necessary materials for a complete seating installation.
- B. Plastic Components: Plastic seat and back components shall be double-wall construction, high density polyethylene plastic formulated with ultra-violet inhibitors to minimize chalking and fading of the finish colors.
- C. Steel Shapes and Plates: ASTM A36/A36M; coated as specified for chair standards.
- D. Standards: Provide floor mounted standards unless floor mounting is required. Provide manufacturer's "low riser" unit if required to accommodate concrete substrate anchorage.
 - 1. If required, provide steel transfer plate to accommodate concrete substrate anchorage.
 - 2. Chair Standard Design: End of row standards shall be custom for this project.
- E. Standard Finish: Manufacturer's standard polyester powder coating or high solids urethane applied over a properly prepared surface. The cure film shall meet the following performance requirements.
 - 1. Impact Resistance: 160 foot-pounds per ASTM D2794.
 - 2. Crosshatch Adhesion: No loss (Rating 5B) per ASTM D3359B.
 - 3. Salt Spray Resistance: No blistering, cracking or delamination after 1000 hours of exposure per ASTM D117.
 - 4. Humidity Resistance: No blistering, cracking or delamination after 1000 hours of exposure per ASTM D2247.
 - 5. UV Resistance: No blistering, crackling, delamination, or chalking after 1000 hours of exposure per ASTM G53.
- F. Hinge Mechanism: Provide automatic lifting of the seat to a $\frac{3}{4}$ fold position, allowing for manually lifting the seat to a full fold position regardless of stadium chair design.
 - 1. Hinge mechanism shall perform to the requirements of ASTM F851, Test Method for Self-Rising Seat Mechanisms plus the performance, requirements required by this specification section.
- G. Seat and Row Identification: Aluminum plates with identification graphics in color, font, and design as selected by Architect.
 - 1. Seat Identification: Securely affix to recess in center of seat back.
 - 2. Row Identification: Securely affix to the end of each row, including "Easy Access Chair" end.
- H. Cup Holders: Cup holders shall be mounted to the back of each standard on stadium chair and to the front rails in the front rows. Acceptable Manufacturer of cup holders includes Caddy Products.
 - 1. Color of cup holder shall match the color of the chair standard.

-
2. Advertising for cup holders shall be provided by the Owner. The cup holder manufacturer shall apply advertising on the cup holder in the factory prior to shipping the cup holder to the chair manufacturer.

2.3 FINISHES

- A. Plastic Component Colors:
 1. Baseball Stadium: Hussey Seating Blue, No. CL64229UV1.
 2. Football Stadium: Color as selected by the Architect.
- B. Cast Iron and/or Ferrous and Non-Ferrous Metal Components: Manufacturer's standard factory applied coating system including surface preparation and primer in the following finishes:
 1. Colors of Logo: Match Team Logos.
 2. Colors of Standards:
 - a. Baseball Stadium: Hussey Seating Color Blue RAL 5011.
 - b. Football Stadium: Color as selected by the Architect.

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Examine substrates and conditions with installer present for compliance with requirements for construction tolerances, material properties as the affect anchors and fasteners. Do not proceed with installation until unsatisfactory conditions have been corrected.

3.2 INSTALLATION

- A. General: Install stadium chairs in locations indicated and fasten securely to substrates according to manufacturer's recommendation and approved submittals.
- B. Install chairs with end standards aligned from first to last row.
- C. Fasteners: Seats and backs shall be connected to hinge mechanisms and cast iron standards using screws of sufficient length for attachment, but not protruding from face of nut any more than 1/8 inch. Provide a finished end with no burrs or sharp edges.
- D. Lubricate seat hinge mechanism for smooth and quiet operation.
- E. Adapter Plates: Anchor adapter plates to floor to span expansion joints and horizontal joints.

3.3 ADJUSTMENT AND CLEANING

- A. Adjust self-rising seat mechanisms to align seats in each row when in upright position.
- B. Before final inspection, thoroughly clean stadium chairs using the manufacturer's recommended procedure.
- C. Repair minor abrasions and imperfections in finishes with coating that matches factory-applied finish.
- D. Replace padding damaged during installation.

3.4 FIELD QUALITY CONTROL

- A. Manufacturer or its assigned agent shall provide supervision of the Work and perform field inspection prior to request for final punchlist.
 - 1. Correct identified defect or irregularities.

END OF SECTION

EXHIBIT C

Bonding Requirements

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

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

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

BID BOND

THE STATE OF TEXAS §

SURETY NO. _____

COUNTY OF MIDLAND §

KNOW ALL MEN BY THESE PRESENTS, THAT _____

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

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

_____ DOLLARS

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

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

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

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

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

PERFORMANCE BOND

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____

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

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

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

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

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

If you have previously submitted a form, it is NOT necessary to send another, unless the status has changed. If submitting due to change in previous status, please note change in status on the front of the form.

Upon completion of the form, sign and submit with bid or mail to:

City of Midland

Attn: City Secretary

P. O. Box 1152

Midland, Texas 79702

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

OFFICE USE ONLY

Date Received

1 Name of person doing business with local governmental entity.

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

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

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

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

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor or other person doing business with local governmental entity

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

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

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

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

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

D. Describe each affiliation or business relationship.

6

Signature of person doing business with the governmental entity

Date

CERTIFICATE OF INSURANCE:

PRODUCER INSURANCE COMPANY PHONE	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE APPROVED BY THE POLICIES BELOW.												
INSURED VENDOR COMPANY	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2" style="text-align: center;">COMPANIES AFFORDING COVERAGE</th> </tr> <tr> <td style="width: 30%;">COMPANY LETTER A</td> <td>COMPANY NAME</td> </tr> <tr> <td>COMPANY LETTER B</td> <td></td> </tr> <tr> <td>COMPANY LETTER C</td> <td></td> </tr> <tr> <td>COMPANY LETTER D</td> <td></td> </tr> <tr> <td>COMPANY LETTER E</td> <td></td> </tr> </table>	COMPANIES AFFORDING COVERAGE		COMPANY LETTER A	COMPANY NAME	COMPANY LETTER B		COMPANY LETTER C		COMPANY LETTER D		COMPANY LETTER E	
COMPANIES AFFORDING COVERAGE													
COMPANY LETTER A	COMPANY NAME												
COMPANY LETTER B													
COMPANY LETTER C													
COMPANY LETTER D													
COMPANY LETTER E													

>COVERAGES*****

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

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

DESCRIPTION OF OPERATIONS / LOCATIONS/ VEHICLES/ SPECIAL ITEMS

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

> CERTIFICATE HOLDER <*****> CERTIFICATE HOLDER <*****>

City of Midland
P.O. BOX 1152
MIDLAND, TX
79702-1152

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES

AUTHORIZED REPRESENTATIVE

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

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

**No-Bid
Response
For
Request #: 5458-13 Stadium Seats**

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

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

Fax to: (432) 685-0523
or
Email: purchasing@midlandtexas.gov

Please Check all reasons below that apply:

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

Company Name: _____

Authorized Officer or Agent Signature: _____

Telephone Number: _____ Fax: _____

Email Address: _____

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



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 8/28/2012

TO: City Council / City Manager

FROM: Robert Patrick, General Services Director

SUBJECT: Consider a resolution to authorize the City Manager to negotiate and execute a contract for the purchase of property for future Fire Station usage.

Purpose:

To request Council approval to authorize the City Manager to negotiate and execute a contract for the purchase of property for future Fire Station usage.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$275,000 of 2012 Certificate of Obligation funds.

Discussion:

Staff is finalizing negotiations for the sale of properties for future Fire Station usage, and needs City Council approval to close the sale of the real property.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND FILE ALL DOCUMENTS, AND MAKE ALL PAYMENTS NECESSARY FOR THE PURCHASE OF PROPERTY LOCATED IN THE 4500 BLOCK OF SINCLAIR AVENUE, MIDLAND, TEXAS, FOR A FIRE STATION, AT A COST OF APPROXIMATELY \$151,000.00 PLUS ASSOCIATED CLOSING COSTS; AND APPROPRIATING FUNDS; AND DIRECTING THAT SAID PROPERTY SHALL BE CLOSED AT LONESTAR ABSTRACT AND TITLE COMPANY, INCORPORATED; AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE THE TERMS AND EXECUTE AND FILE ALL DOCUMENTS NECESSARY FOR THE PURCHASE OF PROPERTY LOCATED IN THE 4500 BLOCK OF THOMASON DRIVE, MIDLAND, TEXAS, FOR A FIRE STATION

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager to execute all documents necessary for the purchase of property located in the 4500 Block of Sinclair Avenue, Midland, Texas, for \$151,000.00 plus closing costs, and to negotiate the terms and execute all documents necessary for the purchase of property located in the 4500 block of Thomason Drive, Midland, Texas;

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

SECTION ONE. That the City Manager is hereby authorized to negotiate the terms and execute all documents necessary for the purchase of property located in the 4500 block of Thomason Drive, Midland, Texas.

SECTION TWO. That the sum of \$275,000.00 is hereby appropriated from the 2012 GPCO Fire Facilities Bond Fund (161) Unappropriated Fund Balance (5650) to the Fire Station Land Acquisition Project (8013).

SECTION THREE. That the City Manager is hereby authorized to execute all documents necessary for the purchase of property located in the 4500 Block of Sinclair Avenue, Midland, Texas, for approximately \$151,000.00 plus closing costs.

SECTION FOUR. That the City Manager is hereby authorized to make all payments necessary for the purchase of property located in the 4500 Block of Sinclair Avenue,

Midland, Texas, for \$151,000.00 plus closing costs, from funds appropriated herein.

SECTION FIVE. That the closing for the purchase of the property located in the 4500 Block of Sinclair Avenue, Midland, Texas, shall take place at Lonestar Abstract and Title Co., Inc.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 8/28/2012

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the City Manager to execute a Consent Agreement between Western National Bank and the City of Midland, Texas as required by Article 8(K) of the OGM Aviation, L.L.C.'s Lease Agreement.

Purpose:

Consider a resolution authorizing the City Manager to execute a Consent Agreement between Western National Bank and the City of Midland, Texas as required by Article 8(K) of the OGM Aviation, L.L.C.'s Lease Agreement to encumber its leasehold interest in the lease by pledging said lease as collateral for a loan to construct a hangar on the premises.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Discussion:

Recently, OGM Aviation, L.L.C. entered into a Land Lease Agreement with the City of Midland for the purpose of constructing a private hangar within the confines of the lease tract. In order to construct these improvements, OGM Aviation will borrow from Western National Bank a portion of the cost to construct this facility. Western National Bank is requiring OGM to pledge as collateral its' interest in the Lease. Article 8(K) of the Lease Agreement required City Council's approval, of which would not be unreasonably withheld to encumber the leasehold. Execution of this Consent Agreement will allow OGM Aviation to secure necessary funding and to begin the construction of their hangar once plans have been approved by the City Building Official.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A CONSENT AGREEMENT BETWEEN
WESTERN NATIONAL BANK, THE CITY OF
MIDLAND, TEXAS AND OGM AVIATION, L.L.C., AS
AUTHORIZED BY ARTICLE 8(K) OF OGM AVIATION,
L.L.C.'S LEASE AGREEMENT IN ORDER TO ALLOW
WESTERN NATIONAL BANK TO ENCUMBER OGM
AVIATION, L.L.C.'S LEASEHOLD INTEREST BY
PLEDGING SAID LEASE AS COLLATERAL FOR A
LOAN TO CONSTRUCT A HANGAR ON THE
PREMISES AT THE MIDLAND INTERNATIONAL
AIRPORT**

WHEREAS, the City Council previously approved the execution of a land lease agreement with OGM Aviation, L.L.C., for the purpose of constructing a private hangar; and

WHEREAS, the Western National Bank as a condition of the loan for the construction of a private hangar is requiring OGM Aviation, L.L.C. to pledge as collateral its' leasehold interest; and

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager to execute a Consent Agreement between Western National Bank, the City of Midland, Texas, and OGM Aviation, L.L.C.;

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

THAT the City Manager is hereby authorized and directed to execute a Consent Agreement with Western National Bank and OGM Aviation, L.L.C., authorizing Western National Bank to encumber OGM Aviation, L.L.C.'s leasehold interest by pledging said lease as collateral for a loan to construct a hangar on the premises. Said agreement shall be on file in the office of the City Secretary referenced by the number and date of this resolution.

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

Council members voting "AYE":

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**CONSENT AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS,
WESTERN NATIONAL BANK, AND OGM AVIATION, L.L.C.**

THIS AGREEMENT, effective the 29th day of August, 2012, by and between the City of Midland, Texas, a home rule municipal corporation of the State of Texas, hereinafter called the "City", Western National Bank, hereafter referred to as "Bank", and OGM Aviation, L.L.C., hereinafter called "Lessee".

W I T N E S S E T H :

WHEREAS, the City and Lessee entered into a Hangar Lease Agreement "the Lease", for the purpose of the construction of a hangar and the use of said hangar during the term of the Lease, located at Midland International Airport, hereafter referred to as "the Airport"; and

WHEREAS, the Lessee in order to construct the improvements on the property subject to this Lease, Lessee will borrow from the Bank a portion of the costs of said improvements; and

WHEREAS, the Bank is requiring Lessee to pledge as collateral its interest in the Lease; and

WHEREAS, the City Council must consent to the pledging of said Lease in writing which is the purpose of this Agreement;

NOW, THEREFORE, for and in consideration of the covenants and conditions herein stated, City, Bank, and Lessee agree as follows:

ARTICLE 1.

The City hereby consents as required by Article 8(K) of the Lease for Lessee to encumber its leasehold interest in the Lease by the pledging of said Lease as collateral for a loan by Bank. Bank will after the City's consent require Lessee to execute a Deed of

Trust, Mortgage, and Security Agreement covering the leasehold interest of Lessee.

ARTICLE 2.

Bank as a condition of this Agreement and the City agrees to use its best efforts to give Bank notice of any default by Lessee under the terms of the Lease in order that the Bank can protect its security interest in the leasehold. Said notice by the City would be given to Bank at least fifteen (15) days before the City would take action to terminate said Lease so the Bank would have the option to cure any default by Lessee and protect its security interest. The Director of Airports shall be responsible for giving the bank a notice of default by Lessee.

ARTICLE 3.

A copy of the Lease after it has been executed by all parties will be attached to this Consent Agreement for referenced purposes. The Director of Airports shall be responsible for attaching an executed copy of the Lease to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by persons duly authorized, on the day and year first written above.

CITY OF MIDLAND, TEXAS

WESTERN NATIONAL BANK

Courtney Sharp, City Manager

Kevin Plaisted, Assistant Vice
President

ATTEST:

OGM AVIATION L.L.C.:

Amy M. Turner, City Secretary

Paul Wright, Managing Partner

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marvin Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared KEVIN PLAISTED 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 WESTERN NATIONAL BANK.

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

Notary Public in and
for the State of Texas

THE STATE OF TEXAS
COUNTY OF MIDLAND

§
§
§

BEFORE ME, the undersigned authority, on this day personally appeared PAUL WRIGHT 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 OGM AVIATION, L.L.C.

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

Notary Public in and
for the State of Texas



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 8/28/2012

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the execution of Amendment #2 to Parkhill, Smith & Cooper's Professional Services Agreement

Purpose:

Consider a resolution authorizing the execution of Amendment #2 to Parkhill, Smith & Cooper's Professional Services Agreement to include the project described as Commercial Space Launch Site Application (9005).

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Total Maximum Amount Authorized - \$ 628,502

Appropriation Language

That the sum of \$628,502.00 is hereby appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the Commercial Space Launch Site Application (9005).

Discussion:

Parkhill, Smith and Cooper has assembled a team of experts to complete the FAA commercial space launch site application required to allow XCOR Aerospace and other commercial space launch companies to utilize Midland International Airport for horizontal take off and landing suborbital launch vehicles. It is the responsibility of the City to demonstrate to the FAA Office of Commercial Space Transportation (AST) that these types of vehicles can be operated out of the Midland Airport safely with no undue risk to the public. The application will consist of an Environmental Assessment, Baseline Noise Assessment and Sonic Boom Analysis. The team will consist of Cardno TEC, Blue Ridge Research and Consulting, LLC (BRRC) and SilverWing Enterprises, LLC.

This application process is scheduled for 9 months. The Department of Airports will fund this work utilizing Airport revenue and will meet with FAA officials on September 6, 2012, to request assistance from the Airport Improvement Program.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF
AMENDMENT NUMBER TWO TO THE
PROFESSIONAL SERVICES AGREEMENT WITH
PARKHILL, SMITH & COOPER, INCORPORATED,
WITH SUCH AMENDMENT AUTHORIZING THE
INCLUSION OF THE PROJECT DESCRIBED AS
COMMERCIAL SPACE LAUNCH SITE APPLICATION;
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 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. to include the project described as Commercial Space Launch Site Application. 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 \$628,502.00 is hereby appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the Commercial Space Launch Site Application (9005).

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

Council members voting "AYE":

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

AMENDMENT NO. 2
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).

AND WHEREAS, the City of Midland, Texas desires to perform the improvements listed in the Recitals of the Agreement as Item 19 Launch Site Application and Environmental Analysis:

THIS AGREEMENT WITNESSETH:

- A. The Recitals of the Agreement shall be amended to include the following Items as follows:
 - 19. Launch Site Application and Environmental Analysis
- B. Exhibit B, Article 4 - PAYMENTS TO THE ARCHITECT/ENGINEER, the following shall be added to paragraph 4.01b.A.2:

“Item 19 Launch Site Application and Environmental Analysis

- 2b. The total compensation for Engineering/Architectural Services under Item 19 of the Recitals on Page 1 shall be compensated at the Standard Hourly Rates Method of Payment. The following shall be the amounts not to exceed without written authorization from the Owner (see attached for Sub-consultant Tasks):

a.	PSC Labor and Direct Expenses	\$ 20,000
b.	Sub-consultant Tasks 1-10	\$ 406,102
c.	Sub-consultant Task 11	<u>\$ 202,400</u>
	Total Maximum Amount Authorized	\$ 628,502

(Sub-consultant charges at cost times a factor of 1.10)

IN WITNESS WHEREOF, the City of Midland, Texas and Parkhill, Smith & Cooper, Inc. have hereto set their hands this 28th day of August, 2012.

OWNER:

CITY OF MIDLAND, TEXAS

ARCHITECT/ENGINEER:

PARKHILL, SMITH & COOPER, INC.

By: W. Wesley Perry

Title: Mayor

Date Signed: _____

Address for giving notices:

P.O. Box 1152
Midland, Texas 79702
Phone: (432) 685-7357

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

[illegible][illegible]

		TASK 1		TASK 2		TASK 3		TASK 4		TASK 5		TASK 6		TASK 7		TASK 8		Task 9		TASK 10		TASK 11			
		Project Management (Schedule, status reports, telecons, other admin)		Baseline Noise Assessment and Sonic Boom Analysis		Preliminary Draft EA		Draft EA		Public Meeting		Preliminary Final EA		Final EA		FONSI		Admin Record		Licensing Application Project Management		SilverWing Subcontract			
CATEGORY	Rate	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	Hours	Cost	TOTAL	
Project Director	\$175.00	20	3,500.00	8	1,400.00	20	3,500.00	10	1,750.00		0.00	10	1,750.00	8	1,400.00	8	1,400.00		0.00	10	1,750.00		0.00	94	16,450.00
Project Manager	\$155.97	90	14,037.22	60	9,358.15	100	15,596.91	60	9,358.15	40	6,238.76	60	9,358.15	40	6,238.76	40	6,238.76	10	1,559.69	60	9,358.15		0.00	560	87,342.70
QA/QC-Technical Reviewer	\$150.00		0.00	20	3,000.00	24	3,600.00	16	2,400.00		0.00	8	1,200.00	8	1,200.00	4	600.00		0.00		0.00		0.00	80	12,000.00
Senior Planner/Engineer	\$138.62		0.00	30	4,158.68	100	13,862.26	40	5,544.90	40	5,544.90	20	2,772.45	40	5,544.90		0.00		0.00	40	5,544.90		0.00	310	42,973.00
Senior Scientist	\$121.31		0.00		0.00	80	9,704.48		0.00		0.00		0.00		0.00		0.00		0.00		0.00		0.00	80	9,704.48
Staff Planner/Engineer	\$104.00		0.00		0.00	80	8,319.95	20	2,079.99	60	6,239.96	40	4,159.97		0.00		0.00	40	4,159.97		0.00		0.00	240	24,959.84
Staff Scientist	\$86.67		0.00		0.00	80	6,933.82		0.00		0.00		0.00		0.00		0.00		0.00		0.00		0.00	80	6,933.82
Junior Planner/Engineer	\$69.33		0.00		0.00	60	4,159.58		0.00		0.00		0.00		0.00		0.00		0.00		0.00		0.00	60	4,159.58
Junior Scientist	\$51.97		0.00		0.00	70	3,637.88		0.00		0.00		0.00		0.00		0.00		0.00		0.00		0.00	70	3,637.88
Technical Editor/Publications Specialis	\$56.33		0.00		0.00	80	4,506.31		0.00	60	3,379.73	10	563.29	10	563.29	10	563.29		0.00	24	1,351.89		0.00	194	10,927.79
Contract Administrator	\$69.33	8	554.61		0.00		0.00		0.00		0.00		0.00		0.00		0.00		0.00		0.00		0.00	8	554.61
Clerical	\$38.99	8	311.94		0.00		0.00		0.00	10	389.92		0.00		0.00		0.00		0.00		0.00		0.00	18	701.86
TOTAL LABOR			18,403.77		17,916.82		73,821.18		21,133.04		21,793.28		19,803.86		14,946.96		8,802.05		5,719.67		18,004.94		0.00		220,345.56
																								0	0.00
																								0	0.00
REIMBURSABLES / ODCS / OPEN MARKET ITEMS																								0	0.00
Travel			2,958.00		0.00		0.00		0.00		4,247.00		0.00		0.00		0.00		0.00		0.00		0.00	0	7,205.00
Reproduction			0.00		0.00		0.00		394.00		1,810.00		0.00		0.00		394.00		0.00		0.00		0.00	0	2,598.00
Equipment Usage			0.00		0.00		0.00		0.00		0.00		0.00		0.00		0.00		0.00		0.00		0.00	0	0.00
Subcontractors			0.00		113,921.00		0.00		0.00		0.00		0.00		0.00		0.00		0.00		0.00		160,000.00	0	273,921.00
Materials/Supplies			0.00		0.00		0.00		0.00		0.00		0.00		0.00		0.00		0.00		0.00		0.00	0	0.00
Miscellaneous			500.00		0.00		500.00		500.00		2,750.00		500.00		0.00		950.00		0.00		0.00		0.00	0	5,700.00
Material Handling G&A			518.70		17,088.15		75.00		134.10		1,321.05		75.00		0.00		201.60		0.00		0.00		24,000.00		43,413.60
TOTAL ODCs			3,976.70		131,009.15		575.00		1,028.10		10,128.05		575.00		0.00		1,545.60		0.00		0.00		184,000.00		332,837.60
																									0.00
SUBTOTAL COSTS			22,380.47		148,925.97		74,396.18		22,161.14		31,921.33		20,378.86		14,946.96		10,347.65		5,719.67		18,004.94		184,000.00		553,183.16
TOTAL COSTS			22,380.47		148,925.97		74,396.18		22,161.14		31,921.33		20,378.86		14,946.96		10,347.65		5,719.67		18,004.94		184,000.00		553,183.16

List of Assumptions for the Scope of Services

1. **Task 1:** Includes the preparation of project schedules, monthly status reports, and monthly teleconferences for updates and project progress reporting.
2. **Task 1:** The Project Manager and Deputy Project Manager would participate in the monthly teleconferences to provide updates and project progress reporting.
3. **Task 1:** Includes one full day of travel to and from MAF for kick-off meeting including the Project Manager and Deputy Project Manager.
4. **Task 2:** See attached Blue Ridge Research and Consulting, LLC (BRRC) detailed proposal, Appendix A.
5. **Task 3:** Includes the preparation of the Preliminary-Draft EA and the response to FAA comments and preparation of a Revised Preliminary-Draft EA
6. **Task 4:** This task includes the preparation of a "camera-ready" version of the Draft EA; preparation of the Draft EA and NOA; includes the print and distribution of up to 5 hard copies and 5 CD-ROMs of the Draft EA to the Federal agencies; 2 hard copies and 2 CD-ROMs to 2 libraries;
7. **Task 5:** Includes the effort for the Project Manager, Deputy Project Manager, and one support staff to prepare for and attend one public comment meeting; publication of the NOA for the Draft EA in up to 2 newspapers; one full day of travel to and from Midland, Texas.
8. **Task 6:** Includes the effort to address public comments on the Draft EA; prepare two versions of the Preliminary Final EA;
9. **Task 7:** This task includes the preparation of a "camera-ready" version of the Final EA.
10. **Task 8:** This task includes the preparation of the Draft and Revised FONSI; includes the print and distribution of up to 5 hard copies and 5 CD-ROMs of the Final EA and publication of the Final EA/FONSI/NOA; 2 hard copies and 2 CD-ROMs to 2 libraries.
11. **Task 9:** Includes the cost of preparing the Admin Record in accordance with FAA/AST Admin Record Guidance
12. **Task 10:** This cost includes the project management, file management, and client coordination for the Licensing Application.
13. **Task 11:** See attached SilverWing Enterprises, LLC detailed proposal, Appendix B and Addendum.
14. **Task 11:** Time and Materials; cost not to exceed \$184, 000; includes Cardno TEC G&A.
15. This scope of services does not include detailed studies such as wetland identification and delineation, archaeological surveys, Phase I ESA, historic structures surveys. All other resource areas to be addressed in the EA (with the exception of noise) will be based on readily available information and the site visit. If agencies determine additional studies are necessary such as wetland identification and delineation, these studies would be coordinated under a separate scope of work for an additional cost.
16. This scope of services assumes that rocket engine testing and construction of the test pad is consistent with the Airport Layout Plan (ALP) and that work associated with the ALP is not necessary.

Appendix A

Blue Ridge Research and Consulting, LLC (BRRC) is pleased to provide the following noise analyses to support the effort on the Environmental Assessment (EA) for the Midland International Airport (MAF) Launch Site Operator License. The complete noise analysis encompasses multiple tasks, which are outlined in the following two sections, organized under Launch Vehicle Noise and Baseline Noise Contours. In order to evaluate the noise impact due to the proposed actions to operate the Lynx, XCOR's commercial reusable launch vehicle from MAF, baseline noise contours are essential. The current noise impact of existing operations, determined through baseline noise contours, allows a comparison to be made between the current and proposed operations based on Federal Aviation Administration (FAA) Order 1050.1E, which defines a significant impact as a proposed action causing "an increase in noise of DNL 1.5 dB or more at or above DNL 65 dB noise exposure" when compared to the baseline. To provide a thorough noise analysis, additional impact criteria will be examined, which include the impact to personnel and surrounding structures. The tasks are based on our recent telephone and email communications and are summarized below:

Launch Vehicle Noise

Task 1: Data Collection

BRRC will collaborate with XCOR and MFA to ensure the data collected is accurate and complete. The necessary data includes the following vehicle and site specific parameters: vehicle configuration including strap-on engines\motors, length, and diameter; engine\motor parameters including manufacturer, model, propellant, thrust (S.L.), exhaust velocity (S.L.), Mach number at nozzle exit, and nozzle exit diameter; site specific trajectory parameters including latitude, longitude, altitude, thrust, weight, and fuel burn; the proposed operations including the number of launches and day/night split; and any available baseline noise data including airport operation modeling input data such as DNL grid files, and GIS shapefiles.

Task 2: Launch Vehicle Noise Modeling with Graphics

BRRC will develop noise contours for assessing the noise impact due to the proposed action to conduct Lynx operations at MAF using collected data and advanced acoustic models. The community impact is determined based on the resulting far-field noise predictions, evaluated at distances greater than 1000 ft from the launch pad. The complete noise analysis will utilize a fixed set of noise metrics encompassing the maximum unweighted overall sound pressure level (OASPL) or L_{max}, maximum A Weighted OASPL (LA_{max}), A Weighted sound exposure level (SEL), and A Weighted Day-Night Average Sound Level (DNL). Noise contour graphics will utilize Google Earth satellite images for inclusion in the BRRC technical report and GIS contour files will be provided for the EA.

Task 3: Static Run-ups Noise Modeling with Graphics

BRRC will develop noise contours for the noise impact due to static run-ups and engine testing of the Lynx launch vehicle. The community impact will be assessed using the same acoustic models and noise metrics which are used for assessing launch noise impact. Similar noise contour graphics will be presented in the BRRC technical report, and GIS contour files will be provided for the EA.

Task 4: Sonic Boom Noise Modeling with Graphics

BRRC will model the sonic boom impacts due to launch operations of the Lynx launch vehicle using the acoustic modeling tool, PCBoom. The metrics used to assess the sonic boom noise impact are pounds per square foot (psf) for the single event impact and C-weighted DNL for the cumulative impact. Launch operations will be spread out over the flight corridor. BRRC will develop sonic boom contours utilizing Google Earth satellite images for inclusion into the BRRC technical report.

Task 5: Screening Estimates for Community and Structures

Noise contours and structural vibration/damage thresholds will be used to provide an initial screening estimate for potential impacts to nearby housing. This screening will be used to determine the scope of the potential problem, but it will not determine specific impacts. BRRC will provide graphics to assist the discussions to determine the scope of the potential impacts. Noise contours will be prepared by BRRC for use by external experts to determine the impact to resources such as wildlife.

Task 6: Technical Report

A technical report will be prepared that details the development of the launch vehicle noise contours. The memo will be provided to Cardno TEC for review and submission to the Federal Aviation Administration Office of Commercial Space Transportation (FAA/AST) and MAF (including two revisions to comments). This report will include all of the basic modeling assumptions pertaining to the launch vehicle noise modeling. BRRC will provide graphics and noise files to Cardno TEC.

Task 7: PEIS Technical Review and Inputs

BRRC will provide input and review to Cardno TEC on the noise analysis sections of the EA and its appendices where required.

Assumptions

One primary assumption for scoping the level of effort is that BRRC will be provided with the following full trajectory data for each vehicle for our analysis: time, latitude, longitude, altitude, velocity, acceleration, thrust, weight, nozzle exit velocity, nozzle diameters, and number of engines. Data collection must be completed before modeling can proceed. Specific point analysis is not included in this estimate. No travel time and/or expenses are included in this estimate.

Launch Vehicle Noise Effort Cost

Our total firm fixed price cost for the launch vehicle noise effort is \$49,044.

Baseline Noise Contours

Task 1: Site Visit Data Collection Meetings for Baseline Noise Contour Development

BRRC will conduct a site visit to MAF at the start of the project to collect operational data pertaining to civil and military aircraft arrival and departure operations. This will involve coordinating with MAF Tower and military personnel to obtain the required operational data including flight operations by aircraft type, runway usage, flight track usage, and day-night split. From this site visit, we will develop a database of flight operations for both civil and military aircraft. All flight operations at MAF will be recorded including commercial and general aviation.

Task 2: Develop Operational Modeling Input and Data Validation Package

Prior to conducting the noise modeling, the raw flight operations data collected will be reduced into specific formats used by the aircraft noise models. This will involve reducing the flight track information into straight-line and arc segments, assigning arrival and departure profile data to all study aircraft and organizing departure and arrival operations by runway, flight track and day-night percent usage. When this data has been reduced into a useable format, it will be presented in a Draft Data Validation Package for review by MAF representatives; any necessary changes (single revision to comments) will be made to the data. The Final Data Validation Package will represent the inputs to the noise models.

Task 3: Aircraft Noise Modeling and Analysis

BRRC will develop two aircraft noise models, one for civil aircraft using the FAA's Integrated Noise Model (INM) and one for military aircraft using the Department of Defense's Noisemap program. These are the official models for analyzing civil and military aircraft noise. Outputs from both models will be combined to generate the overall DNL contours that define the baseline noise environment at MAF. GIS shape files of the overall DNL contours will be provided to Cardno TEC.

Task 4: Memo Report

A memo report will be prepared which details the development of the baseline noise contours for MAF. The memo will be provided to Cardno TEC for review and submission to FAA/AST and MAF (including two revisions to comments). This report will include all of the basic modeling assumptions pertaining to flight operations at MAF. This report will also include two background maps provided by Cardno TEC: (1) an area map for MAF and vicinity, and (2) baseline DNL contour map.

Task 5: EA Technical Review and Inputs

BRRC will provide a technical review of the EA document.

Assumptions

Baseline noise contour analysis will be developed specifically to evaluate the potential noise impacts from XCOR Lynx proposed action. This noise modeling effort will be limited to assessing the noise impacts, which is less than that required for commercial aviation Part 150 studies or DoD AICUZ studies. Nominal ground tracks and flight profiles will be developed from ATK interviews (no radar analysis will be performed). More detailed commercial and military aircraft ground tracks and profiles may be developed from ATK-provided radar data and pilot interviews for an additional firm fixed price of \$34,799. Radar data must be provided in a formatted text data file. Only noise sources from fixed wing aircraft will be modeled. Data collection must be completed before modeling can proceed.

Noise contours will be prepared by BRRC for use by external experts to determine the impact to resources and other uses including population counts. BRRC will not develop MFA base maps. Specific point analysis is not included in this estimate.

Travel time and/or expenses are included for two BRRC representatives to travel to MAF in this estimate. No additional travel is included.

Baseline Noise Contour Cost

Our total firm fixed price cost to develop baseline noise contours is \$64,878.

Summary

BRRC's total firm fixed price cost for this effort is **\$113,921**.

Appendix B

SilverWing Enterprises, LLC (SilverWing) is pleased to submit the following proposal based on an evaluation of the Preliminary MAF Launch Application drafted by Parkhill, Smith & Cooper, Inc. against the FAA/AST Part 420 Spaceport Licensing requirements and SilverWing Enterprises, LLC (SWE) assuming the lead role in preparation and submission of the license application.

- SWE will provide the services of Stephen E. Matier, Senior Engineer and Project Manager, to perform consulting services to Cardno TEC in support of a spaceport launch site operator's license (LSOL) with respect to the XCOR Lynx Mark II vehicle for the Midland International Airport. Services shall primarily be related to providing Mr. Matier's expertise and insight related to commercial spaceport strategic development, licensing and operations planning and execution;
- The proposed level-of-effort to pursue the FAA/AST LSOL for the Midland Airport is defined in the project schedule below. It is understood that SWE will lead the Spaceport Facility Licensing, and Operational Planning. An estimated percent of resource allocation for Mr. Matier is provided over a 15 month time period for completion of the LSOL submission and approval and is contingent upon the support of the customer and other supporting agencies.
- Please note line item 5 of the schedule includes a 240 hour estimate for the flight safety analysis and Ec determination by a subcontractor to SWE.
- Please note line item 7 is the six month review period allocated for review of submission to the FAA and is an FAA requirement. This duration is likely to be significantly shortened through incremental submission to and review by the FAA.

ID	Task Name	% Resource Allocation	Qtr 4, 2012	Qtr 1, 2013	Qtr 2, 2013	Qtr 3, 2013	Qtr 4, 2013	Qtr 1, 2014	Qtr 2, 2014
			12	12	12	12	12	12	12
			Sep	Oct	Nov	Dec	Jan	Feb	Mar
1	Midland Airport LSOL								
2	Lead Licensing and Operational Planning								
3	Conduct Gap Analysis	75							
4	LSOL Data Collection	50							
5	LSOL Data Creation- includes Flight Safety and Ec r	100							
6	LSOL Compilation	100							
7	LSOL Submission to FAA	5							
8	FAA-AST Site Visit	100							
9	LSOL Deficiency Resolution	75							
10	LSOL License Approval	100							

Total estimate over 15 months – 1,464 hours

Estimated Expenses for travel - \$6,000

- Assume 8 site visits from Albuquerque, NM to Midland, TX
- Given standard GSA CONUS per diem rates for Midland over two days including rental car and assumed airfare of \$400 roundtrip
- Fees: Mr. Matier's services shall be provided at the fully burdened rate of \$120 per hour plus Cardno TEC authorized expenses. This rate aligns closest with the skillsets and effort as defined in SilverWing Enterprises Rate Sheet for the Senior Project Manager.

Total estimated cost – \$181,680

Addendum:

Task 11 will be performed under T&M under a 9 month period not to exceed \$184,000; includes Cardno TEC G&A.

SilverWing will make every effort to make the T&M ceiling work. There have been a number of lessons learned that Midland will benefit from, from current SilverWing assignments and this should translate into savings. The biggest risk and unknown for SilverWing's part of the project (licensing cost and schedule, specifically) though is the flight safety and Ec determination. The population center around Midland against the allowable estimate of casualty is a very complex analysis. SilverWing will likely get into numerous iterations trying to find a flight corridor that will work. AST is extremely strict about the proof inside these calculations. XCOR will be doing a basic 3 degree-of-freedom (DoF) flight model for their vehicle. SilverWing laying that over the population center, roadways, traffic and everything else though will make it difficult. It is the spaceports though that need to determine the Ec as a part of their license. SilverWing does not guarantee we can achieve an Ec below 30 x E-6 and cannot without extensive analysis. It is obviously much easier to find a flight corridor over water or as they did in New Mexico (for Spaceport America), over the White Sands Missile Range.

Agreed on August 17, 2012



DATE: August 22, 2012

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: Proposed First Amendment to the Wholesale Water Delivery Agreement between the Midland County Fresh Water Supply District No. 1 and the City of Midland

In the Wholesale Water Delivery Agreement between the Midland County Fresh Water Supply District No. 1 and the City of Midland dated May 30, 2012, the Trustee was authorized to make payments in the following order:

1. To the Debt Service Fund;
2. To the Operation and Maintenance Fund;
3. To the Repair and Replacement Fund;
4. To the Expansion Fund; and
5. All remaining amounts to be deposited as directed by the City

In negotiations with the Texas Commission on Environmental Quality, they suggested that the Operation and Maintenance Fund receive the initial funds. In order to comply with this request, the Trust Agreement will have to be amended. If the proposed amendment is approved, the Trustee will make payments in the following order:

1. To the Operation and Maintenance Fund;
2. To the Debt Service Fund;
3. To the Repair and Replacement Fund;
4. To the Expansion Fund; and
5. All remaining amounts to be deposited as directed by the City

I have discussed the proposed amendment with our Bond Counsel and financial advisors and they are of the opinion that this change will have no impact on the City.

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

Keith Stretcher

KS/lo

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE MAYOR TO
EXECUTE THE FIRST AMENDMENT TO THE
WHOLESALE WATER DELIVERY AGREEMENT
BETWEEN THE CITY OF MIDLAND AND THE
MIDLAND COUNTY FRESH WATER SUPPLY
DISTRICT NO. 1**

WHEREAS, the Council finds it to be in the public interest to authorize the Mayor to execute the First Amendment to the Wholesale Water Delivery Agreement between the City of Midland and the Midland County Fresh Water Supply District No. 1;

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

THAT the Mayor is hereby authorized and directed to execute on behalf of the City of Midland the First Amendment to the Wholesale Water Delivery Agreement between the City of Midland and the Midland County Fresh Water Supply District No. 1. Said amendment is attached hereto, marked as Exhibit "A", and incorporated herein for all purposes.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**FIRST AMENDMENT TO
WHOLESALE WATER DELIVERY AGREEMENT**

STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS:
COUNTY OF MIDLAND §

WHEREAS, the Wholesale Water Delivery Agreement (the "Agreement") was entered into between the City of Midland, Texas, a Texas home-rule City (the "City") and the Midland County Fresh Water Supply District No. 1, a fresh water supply district created pursuant to Chapter 53 of the Texas Water Code and the provisions of Article XVI, Section 59 of the Texas Constitution (the "District") on May 30, 2012;

WHEREAS, since the execution of the Agreement the District and the City have determined that the provision of paragraph 6.3 should be modified in order to conform to the provisions of the Trust Indenture ("Trust Indenture") proposed to be executed between the District and Wells Fargo Bank, N.A., the Trustee upon the Closing of the sale by the District of the Midland County Fresh Water Supply District No. 1 Revenue Notes (City of Midland Project) Series 2012A and the Midland County Fresh Water Supply District No. 1 Revenue Refunding Bonds (City of Midland Project) Series 2012 (herein together referred to as the "Parity Debt") to secure the payment of principal of and interest on all Parity Debt defined in Trust Indenture;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements hereof set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Flow of Funds. The provision of Section 6.3 – Flow of Funds of the Agreement is wholly amended to read as follows:

"The Trustee shall apply payments from the City pursuant to this Agreement on the date such payments are received in the amounts and in the order specified in the Trust Indenture. Such payments shall be used for the purposes identified in the Trust Indenture."

Executed effective on the 28th day of August, 2012.

(Signature Pages Follow)

ATTEST:

Amy M. Turner, City Secretary

CITY:

CITY OF MIDLAND, TEXAS:

By: _____

Printed Name: W. Wesley Perry

Title: Mayor

Date: _____

STATE OF TEXAS §
COUNTY OF MIDLAND §

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

[SEAL]

Notary Public of State of Texas
My commission expires: _____

Approved as to Content:

By: _____

Printed Name: Courtney B. Sharp

Title: City Manager

Date: _____

Approved as to Form:

By: _____

Printed Name: Keith Stretcher

Title: City Attorney

Date: _____

ATTEST:

Donald W. McClure
Secretary

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

By: _____
Printed Name: Jose Cuevas
Title: President
Date: _____

STATE OF TEXAS §
COUNTY OF MIDLAND §

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

[SEAL]

Notary Public of State of Texas
My commission expires: _____

City of Midland
CITY ATTORNEY'S OFFICE
Office Memorandum

DATE: August 22, 2012

TO: The Honorable Mayor and City Council Members

FROM: Natasha Brooks, Assistant City Attorney

SUBJECT: Elizabeth Morales v. Denisse Reyes; Alfredo Alvarado; City of Midland;
United States Customs and Border Patrol, Hidalgo County, Texas; Cause No.
CL-12-2444-G

Plaintiff Elizabeth Morales has sued Denisse Reyes; Alfredo Alvarado; United States Customs and Border Patrol; and the City in the County Court at Law # 7 in Hidalgo County, Texas. The lawsuit arises from a vehicular accident which occurred on August 6, 2010. The Plaintiff alleges that Defendant, Mr. Alvarado, while in the course and scope of his employment with the City of Midland, collided with the Plaintiff's vehicle causing personal injuries to the Plaintiff. However, the Defendant, Mr. Alvarado has never been employed with the City of Midland, and it appears that the City has been mistakenly added to this lawsuit.

The proposed resolution authorizes the City Attorney's office to file all necessary documents, employ experts and make all appearances necessary for the defense of this lawsuit.

If you have any questions or if I may be of any assistance, please do not hesitate to contact me at 685-7256.

NB

RESOLUTION NO.

RESOLUTION AUTHORIZING THE OFFICE OF THE CITY ATTORNEY TO FILE ALL DOCUMENTS, EMPLOY ALL NECESSARY EXPERTS AND MAKE ALL NECESSARY APPEARANCES TO REPRESENT THE CITY OF MIDLAND IN A LAWSUIT STYLED ELIZABETH MORALES V. DENISSE REYES; ALFREDO ALVARADO; CITY OF MIDLAND; UNITED STATES CUSTOMS AND BORDER PATROL; CITY OF EDINBURG, TEXAS; COUNTY COURT AT LAW #7, HIDALGO COUNTY, TEXAS; CAUSE NO. CL-12-2444-G; AND AUTHORIZING THE PAYMENT OF ALL COSTS

WHEREAS, Elizabeth Morales has filed a cause of action against Denisse Reyes; Alfredo Alvarado; City of Midland; United States Customs and Border Patrol in the County Court at Law # 7 in Hidalgo County, Texas; and

WHEREAS, the City Council of the City of Midland finds it to be in the public interest to authorize the City Attorney to execute all documents, employ all necessary experts and make all appearances in representing the City of Midland in said lawsuit;

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

SECTION ONE. That the City Attorney is hereby authorized to file all motions and other documents, and to make all appearances necessary to provide a defense in the litigation styled Elizabeth Morales v. Denisse Reyes; Alfredo Alvarado; City of Midland; United States Customs and Border Patrol, Hidalgo County, Texas; Cause No. CL-12-2444-G. Any such actions taken by the City Attorney prior to the adoption of this resolution are hereby ratified and approved.

SECTION TWO. That the City Attorney is hereby authorized to employ all experts which may be necessary in the defense of said lawsuit.

SECTION THREE. That the City Attorney is hereby authorized to respond to all settlement offers from the Plaintiff in said lawsuit.

SECTION FOUR. That the City Treasurer is hereby authorized, upon receipt of proper invoice or statement, approved by the City Manager or the City Attorney, to pay court

costs and any experts employed by the City Attorney out of funds available in the General Liability Self-Insurance Fund.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City of Midland
Office Memorandum

DATE: 8/28/2012

TO: The Honorable Mayor and City Council Members

FROM: Amy M. Turner, City Secretary

SUBJECT: Consider a resolution canceling the General City Election which was to be held on November 6, 2012 for City Council Members

The proposed resolution, in accordance with Section 2.053 of the Election Code, cancels the general election to be held on November 6 for the District 1 and District 2 seats and two At-Large seats. At the same time, the resolution acknowledges receipt of certification that the candidates are unopposed, and declares the unopposed candidates elected to office.

The paperwork related to the candidates' taking office will be generated as if the election had taken place. The District 1, District 2 and At-Large Council Members will be sworn in on January 7, 2013.

RESOLUTION NO.

RESOLUTION CANCELING THE GENERAL CITY ELECTION WHICH WAS TO BE HELD ON NOVEMBER 6, 2012, FOR ELECTION OF TWO COUNCIL MEMBERS AT-LARGE, ONE COUNCIL MEMBER REPRESENTING DISTRICT 1, AND ONE COUNCIL MEMBER REPRESENTING DISTRICT 2, AS THE REQUIREMENTS OF THE TEXAS ELECTION CODE ARE COMPLIED WITH; AUTHORIZING THE CITY SECRETARY TO POST NOTICE; ACCEPTING AND APPROVING THE CITY SECRETARY'S CERTIFICATION; AND DECLARING THE UNOPPOSED CANDIDATES ELECTED TO OFFICE

WHEREAS, the City Council finds it to be in the public interest to cancel the general City election which was to be held on November 6, 2012, for two City Council Members At-Large, a City Council Member representing District 1, and a City Council Member representing District 2; and

WHEREAS, the City Secretary has certified that the two candidates for the position of Council Member At-Large are unopposed, and that the candidates for the positions of Council Member District 1 and Council Member District 2 are also unopposed;

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

SECTION ONE. That the following candidates who are unopposed in the November 6, 2012 general City election are declared elected to office, and shall be issued a certificate of election following the time the elections would have been canvassed:

A. Scott Dufford, Council Member At-Large

Jerry F. Morales, Council Member At-Large

W. Jeffrey Sparks, Council Member District 1

John B. Love, III, Council Member District 2.

SECTION TWO. That the November 6, 2012 general City election is canceled with respect to the two At-Large, District 1 and District 2 City Council positions, and the City Secretary is directed to cause a copy of this resolution to be posted on election day at each polling place used in the election.

SECTION THREE. That the City Secretary's certification that the specified candidates are unopposed is hereby accepted and approved. That the Certification is attached hereto, marked as Exhibit "A", and incorporated herein for all purposes.

SECTION FOUR. That the four (4) Council Members shall serve in office until the Monday before the first City Council meeting in January of 2016.

SECTION FIVE. That this resolution shall serve as an order under Section 2.053 of the Texas Election Code.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CERTIFICATION OF UNOPPOSED CANDIDATES

I, Amy M. Turner, certify that I am the City Secretary of the City of Midland and the authority responsible for preparing the ballot for the November 6, 2012 City election. I further certify that no proposition is to appear on the ballot, that no person has made a declaration of write-in candidacy, and all of the following candidates are unopposed:

A. Scott Dufford, Council Member - At-Large
Jerry F. Morales, Council Member – At-Large
W. Jeffrey Sparks, Council Member – District 1
John B. Love, III, Council Member – District 2

Amy M. Turner, City Secretary
City of Midland, Texas

Dated this **24th** day of **August, 2012**

(SEAL)

Exhibit "A"



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 8/28/2012

TO: City Council / City Manager

FROM: Tina Jauz / Community Services Director

SUBJECT: Consider a resolution authorizing the execution of a professional services agreement with Midland Sports, Incorporated, of Midland, Texas, for professional marketing, promotion, and management services at the Scharbauer Sports Complex at a cost of \$68,000

Purpose:

To enter into a one-year agreement with Midland Sports, Inc. (Midland RockHounds), for marketing and management of the Scharbauer Sports Complex.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$68,000 from the Scharbauer Sports Complex Operating Budget

Discussion:

In December 2011, the City Council approved entering into a nine-month contract with Midland Sports, Inc. At that time they had just completed a one-year agreement. The nine-month contract allowed the city to move to a Fiscal Year contract instead of a calendar year contract.

On August 15, the 4B Board discussed and reviewed the marketing agreement. They approved a recommendation to the City Council to continue with the RockHounds management and marketing.

The one-year contract includes a payment of \$68,000. There is no automatic renewal.

During the year, staff will manage the contract while continuing to provide all maintenance and capital improvements.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF MIDLAND, TEXAS AND MIDLAND
SPORTS, INCORPORATED IN THE AMOUNT OF
\$68,000.00, FOR PROFESSIONAL MARKETING,
PROMOTION, AND MANAGEMENT SERVICES AT
THE SCHARBAUER SPORTS COMPLEX**

WHEREAS, the City Council of the City of Midland, Texas finds it to be in the public interest to enter into an agreement with Midland Sports, Inc., for professional marketing, promotion, and management services at the Scharbauer Sports Complex;

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

THAT the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland an agreement with Midland Sports, Inc. in the amount of \$68,000.00, for professional marketing, promotion, and management services at the Scharbauer Sports Complex. Said agreement to be on file in the City Secretary's office referenced by the number and date of this resolution.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



THE CITY OF MIDLAND

CONTRACT

THIS CONTRACT, effective this 1st day of October, 2012, by and between the City of Midland, hereinafter referred to as the "Owner", and Midland Sports, Incorporated, hereinafter referred to as the "Contractor", is made for the following considerations:

1 Cost: Total Proposal: SIXTY-EIGHT THOUSAND AND NO/100 DOLLARS (\$68,000.00)

2 Scope of Work: The Contractor shall perform all work described for the Marketing, Promotion and Management of the City of Midland Scharbauer Sports Complex in the following documents, attached hereto and incorporated herein by reference all legal purposes.

EXHIBIT A..... Plan and Services

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

4 Contract Term: The contract term is for a term beginning October 1, 2012, and ending September 30, 2013. There shall be no automatic renewal of this Contract.

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

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

6.1 All work shall be done in strict conformity with the contract.

6.2 The Contractor shall have control of the day to day operations of the Scharbauer Sports Complex, subject to the right of the City to inspect the facility to insure that the Contractor is properly carrying out the terms of this contract. The Contractor agrees that all of its employees shall

be fully qualified and competent to do the work required under the terms of this Contract. As related only to this Contract, Owner at all times shall have first priority for use of the Scharbauer Sports Complex, and in the event of a conflict between Owner's use and any use scheduled by Contractor, Owner's priority shall control.

7 All minor detail of the work not specifically mentioned in Exhibit "A" but obviously necessary for the proper completion of the work shall be considered as incidental to and a part of the work for which the prices are named in the contract. The Contractor will not be entitled to any additional compensation therefor unless specifically stated otherwise. Otherwise the term "extra work" as used in this contract shall mean and include all work that may be required by Owner to be done by the Contractor to accomplish any part of the work as shown in Exhibit "A".

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

8 INDEMNITY: CONTRACTOR WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND BOTH THE OWNER AND THE MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION, AND ALL OF EITHER PARTY'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 CONTRACTOR, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM, CONTRACTOR'S USE OF, OR ACTIVITIES ON, THE CONTRACT PREMISES, AND CONTRACTOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST OWNER OR THE MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION, OR ANY OF EITHER PARTY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND BOTH THE OWNER AND THE MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION, AND ALL OF EITHER PARTY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, ACCIDENTAL DEATH, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF THE OWNER, OR THE MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION, OR ANY OF EITHER PARTY'S, OWNER'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH CONTRACTOR OR CONTRACTOR'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE

PERFORMANCE OF THIS CONTRACT AND CONTRACTOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE OWNER OR THE MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION, OR ANY OF EITHER PARTY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

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

9 RELEASE: NOTWITHSTANDING ANY OTHER PROVISIONS, CONTRACTOR HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES BOTH THE OWNER AND THE MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION, TOGETHER WITH EITHER PARTY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH CONTRACTOR HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OWNER'S NEGLIGENCE, OR THE MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION'S NEGLIGENCE.

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

11 Payment: As consideration for the services which the Contractor shall provide to the Owner, the Contractor shall receive \$5,666.66 paid monthly for a total cost of \$68,000.00. Each payment shall be made prior to the tenth day of each month.

11.1 Any sums due and payable hereunder which are not paid within twenty (20) days of the due date shall bear interest at the rate of 5% per annum, from the date due until the date of payment.

12 Severability: In case any one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this contract shall be considered as if such invalid, illegal or unenforceable provision had never been contained in this contract.

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

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

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

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

15 Independent Contractor: It is expressly understood and agreed that Contractor shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the Owner; that Contractor shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between

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

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

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

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

18 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:

<u>Commercial General Liability</u> (including Contractual liability):	
-Personal Injury:	\$1,000,000.00 per person
	\$1,000,000.00 per occurrence

-Property Damage:	\$500,000.00 per occurrence
<u>Business Automobile Liability:</u>	\$250,000.00 combined single limit - Personal Injury and Property Damage
<u>Worker's Compensation:</u>	Statutory limits
<u>Employers' Liability:</u>	\$500,000.00 per accident or occurrence

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

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.

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

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

The parties agree that, prior to the execution of the Contract, Contractor shall provide one or more certificates of insurance showing that the requirements of this article have been met, with language similar to the following:

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

Owner 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. Owner shall not be required to provide any insurance whatsoever pursuant to this Contract.

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).

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

20 Termination at Will: The Owner may terminate this Contract at will for no or any reason upon giving at least One Hundred Eighty (180) days' written notice to the Contractor. The parties to this Contract understand and agree that it is in the Owner's sole discretion to cancel the Contract during the term of the Contract without penalty to the Owner. The Contractor has no expectation and has received no guarantees that this Contract will not be terminated before the end of the Contract term. The parties have bargained for the flexibility of terminating this Contract upon tender of the

requisite notice at any time during the term of the Contract. All work and services under the Contract shall be suspended upon termination of the Contract becoming effective.

21 Sovereign Immunity: By executing this Contract the Owner is not waiving its right of sovereign immunity. The Owner is retaining its immunity from suit. The Owner is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.**

22 Compliance with Federal, State and Local Laws: Contractor shall at all times during the term of this Contract comply with applicable federal, state, and local laws regarding Contractor's activities pursuant to this Contract. Failure to abide by any such law mentioned herein constitutes grounds for the immediate termination of this Contract.

23 Monthly Activity Reports: Contractor shall provide monthly activity reports, showing all activities undertaken at the Scharbauer Sports Complex, to the City Secretary, on or before the 20th day of each month.

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

OWNER, City of Midland

CONTRACTOR, Midland Sports, Inc.

W. Wesley Perry, Mayor

Monty Hoppel, General Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT AND
COMPLETENESS:

Tina Jauz, Director of Community Services

ATTEST:

Amy Turner, City Secretary

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared MONTY HOPPEL, an officer of MIDLAND SPORTS, INCORPORATED, 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 _____, 20____.

Notary Public, State of Texas



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 08/28/2012

TO: City Council / City Manager

FROM: David D. Beard, P.E.

SUBJECT: Consider a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of \$265,558 with Playa del Pueblo LTD. The site is generally located on the north side of I-20 approximately 300' east of Terrell Street. Said agreement being authorized by Section 395.081 of the Texas Local Government Code.

Purpose:

Consider a developer agreement for the City to participate in the installation on wastewater main improvements and oversized water main to serve the Playa Del Pueblo development. The subject property is located on the north side of I-20 approximately 300' east of Terrell Street.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The City's share will be \$265,558 (approximately 69.7% of the total project).

Wastewater City Participation	\$258,940
Oversize Water Main (8"Ø to 12"Ø)	\$6,618
Total	\$265,558

That the sum of \$265,558 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Playa Del Pueblo Wastewater Main Extension Project (8000)

Discussion:

The Playa Del Pueblo site is located on the north side of I-20 approximately 300' east of Terrell Street. The developer will be constructing a new wastewater main along the north frontage of I-20. Then bore under I-20 and connect to the existing 36" wastewater main on the south side of I-20. Once constructed, the new main allow development of currently unserved area north of the interstate in the vicinity of Lamesa Road.

In addition, the City will participate in the oversized portion (8"Ø to 12"Ø) of the water main construction serving the Playa Del Pueblo site.

Staff recommends approval of the development agreement providing City participation in the construction of the wastewater main oversized water main to serve the Playa Del Pueblo site. Attached is an opinion of probable cost from the engineer of record (LCA - Joe M. Tucker P.E.) and a location map.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH PLAYA DEL PUEBLO, LTD. FOR DEVELOPMENT OF PLAYA DEL PUEBLO ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF INTERSTATE 20, APPROXIMATELY 300 FEET EAST OF TERRELL STREET); AUTHORIZING THE EXECUTION OF ALL DOCUMENTS NECESSARY FOR THE CITY OF MIDLAND'S PARTICIPATION IN SAID DEVELOPMENT; AND APPROPRIATING FUNDS IN THE AMOUNT OF \$265,558.00 THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

WHEREAS, the developer of Playa Del Pueblo Addition, City and County of Midland, Texas, has requested City participation in the development of this addition; and

WHEREAS, the City Code allows City participation; 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 the developer to connect to capital improvements by promoting the health, safety, and public welfare and providing for efficient and well-planned urban growth and development; and

WHEREAS, the City Council finds it to be in the public interest to execute a development agreement with Playa Del Pueblo, Ltd. which sets forth the extent of the City's participation in the construction of public improvements related to the development of the Playa Del Pueblo Addition, and to appropriate funds therefor;

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, Texas, a Public Improvement Development Agreement with Playa Del Pueblo, Ltd. Said agreement is marked as Exhibit "A", attached hereto and incorporated herein for all purposes.

SECTION TWO. That the sum of \$265,558.00 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Playa Del Pueblo

Wastewater Main Extension Project (8000).

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay for said agreement, in amount not to exceed \$265,558.00, out of funds that are available in the said budget account upon receipt of proper invoice or statement therefor approved by the City Manager.

SECTION FOUR. That the City Manager is hereby authorized and directed to execute all documents necessary for the City's participation in said development, including, but not limited to, a deed of trust, a promissory note, or any other such documents or legal instruments.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT
BETWEEN PLAYA DEL PUEBLO, LTD.
AND THE CITY OF MIDLAND, TEXAS**

THIS PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT (“Agreement”) is made and effective this 29th day of August, 2012, by and between **PLAYA DEL PUEBLO, LTD.** (“Developer”) and the **CITY OF MIDLAND, TEXAS** (“City”), a home rule municipal corporation.

W I T N E S S E T H:

WHEREAS, the City and Developer find it to be to their mutual advantage to enter into this Public Improvement Development Agreement for the construction of appropriate and necessary public facilities;

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 Developer does hereby agree to the terms set forth in this Agreement:

1. The Developer desires to develop the Property described as Playa Del Pueblo Addition. Pursuant thereto, the Developer agrees to make certain public improvements as set forth below. The improvements are more particularly described in specifications and contract documents related to the construction of the public improvements related to the development of the Property prepared by Landgraf, Crutcher & Associates, Inc. (hereafter collectively called “the Specifications”). The Specifications are incorporated herein by reference and made a part hereof for all purposes, and Developer shall comply with the Specifications in the performance of all work pursuant to this Agreement. No amendment to the Specifications may be made without the written approval of the City Manager.

2. The public improvements to be constructed by Developer pursuant to this Agreement shall be generally described as follows:

See Exhibit “A”, attached hereto and incorporated herein by reference.

3. Developer must submit any bids it receives for the proposed public improvements to the City for approval prior to engaging any contractor or subcontractor in such work, which approval shall not be unreasonably withheld. If City fails to object within ten (10) days (excluding weekends and City holidays) after receipt from the Developer of the bid tabulations and written notification of whom the Developer intends to award the contract, the bid which the Developer indicated it is accepting shall be deemed to have been accepted by the City. The City reserves the right to reject any and all bids for work that involves City participation. In rejecting any bid pursuant to the provisions of this Paragraph 3, the City shall issue a notice of rejection in writing to the Developer stating each and every ground or reason relied upon by the City for such rejection.

4. Upon completion of the improvements called for in Paragraph 2, the Developer shall notify the City’s Director of Development Services for inspection. Project inspection for required public improvements will be done by the City during the construction phase. The City’s Director of Development Services shall cause such work to be inspected within five (5) days, excluding weekends and holidays, of being notified by the Developer. Notwithstanding anything herein to the contrary, project inspection must be completed prior to water or sewer systems being backfilled. If the Director of Development Services determines that all work has been completed in conformance with the Specifications, then the Director of Development Services shall give his approval for that improvement work.

5. After completion and acceptance of all work, the Developer must furnish to City an affidavit of all bills paid with respect to the completed work.

6. In consideration of the obligations incurred by the Developer pursuant to this Agreement, the City agrees to participate in the funding of the construction of the public improvements listed in Exhibit "A" attached hereto and incorporated herein by reference said amount to be no more than \$265,558.00. Such funding will be structured as a recourse loan to the Developer, the terms of which are a subordinate deed of trust, balloon payment at maturity, a term of 25 years from the date of distribution of the loan funds and a zero interest rate. In no case shall the City's contributions to the public improvements required to be constructed on the Property exceed 30 percent of the actual cost of all the public improvements associated with the development without Developer complying with the applicable competitive sealed bid procedures set forth in state law and the ordinances and regulations of the City of Midland, Texas. If the City's contribution for public improvements for any contract exceeds 30 percent of the total cost of all public improvements associated with such contract and such public improvements were constructed without complying with said applicable competitive sealed bid procedures, then the City's maximum contribution under this contract for such phase shall not exceed 30 percent of the actual cost of all public improvements associated with the particular contract.

7. Developer 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, including accidental death, losses, property damage and expenses of any character whatsoever, including attorney's fees, brought for or on account of any injuries or damages

received or sustained by any person or persons or property, on account of any negligent act of Developer, its agents or employees, or any subcontractor, in the execution, supervision and operations growing out of or in any way connected with the performance of this Agreement, and Developer will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including attorney's fees.

DEVELOPER 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, INCLUDING 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 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 DEVELOPER OR DEVELOPER'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 DEVELOPER WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

8. The Developer agrees to indemnify and save the City harmless from all claims growing out of any demands of subcontractors, laborers, workmen, mechanics, materialmen, and suppliers of machinery and parts thereof, equipment, power tools, all supplies, including commissary incurred in the furtherance of the performance of this contract. When City so desires, the Developer shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived.

9. Developer shall obtain and maintain continuously in effect at all times during the construction of the public improvements described in Paragraph 2, above, at Developer's sole expense, at least the following minimum insurance with a carrier or carriers licensed to do business in the State of Texas and satisfactory to the City.

A. The following requirements shall be met in regard to workers' compensation insurance coverage: Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/persons's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage

vendors, office supply deliveries, and delivery of portable toilets.

B. The Developer shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Developer providing services on the project, for the duration of the project.

C. The Developer must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the Developer's current certificate of coverage ends during the duration of the project, the Developer must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The Developer shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The Developer shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The Developer shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Developer knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. The Developer shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The Developer shall contractually require each person with whom it contracts to provide services on a project, to:

- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
- (2) provide to the Developer, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
- (3) provide the Developer, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (4) obtain from each other person with whom it contracts, and provide to the Developer:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the Developer is representing to the governmental entity that all employees of the Developer who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage

agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Developer's failure to comply with any of these provisions is a breach of contract by the Developer which entitles the governmental entity to declare the contract void if the Developer does not remedy the breach within 10 days after receipt of notice of breach from the governmental entity.

Developer shall also comply with the following:

L. Comprehensive General Liability Insurance against claims for bodily injury, death, or property damage occurring on, in or about the Property, in at least the amount of \$250,000.00 per individual, \$1,000,000.00 per occurrence and \$100,000.00 with respect to property damage; said insurance shall name the City as an additional insured and shall waive all rights of subrogation against the City.

M. Automobile Liability Coverage on all motor vehicles owned, leased and/or operated by the Developer or its employees in amounts of not less than \$1,000,000.00 combined single limit or equivalent, provided, however, separate automobile coverage shall not be required if such coverage is provided under the Developer's comprehensive general liability policy. The insurance shall name the City as an additional insured and waive all rights of subrogation against the City.

All insurance herein required shall apply as primary and not in excess of or contributing with other insurance which the Developer may carry.

10. All insurance required pursuant to Paragraph 9, except worker's compensation, shall name the City as an additional insured. The comprehensive general liability policy shall provide contractual liability coverage sufficiently broad so as to include the liability assumed by the Developer in the indemnity and hold harmless provisions included in this Agreement. Developer's insurance as required by this Agreement shall not be subject to cancellation or material alteration until at least thirty (30) days written notice has been provided to the City. Developer shall furnish to the City a certificate of insurance

showing City as an additional insured and evidencing that all of the herein stated requirements have been met. **All insurance coverage required pursuant to Paragraph 9 shall include in its provisions a waiver of any rights of subrogation against City.**

DEVELOPER SHALL CONTRACTUALLY REQUIRE ALL CONTRACTORS, SUBCONTRACTORS, AND SUB-SUBCONTRACTORS THAT WORK ON ANY PORTION OF THE WORK THAT IS THE SUBJECT OF THIS PUBLIC IMPROVEMENT DEVELOPMENT 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).

11. Insurance must be approved by the City Attorney's office prior to this Agreement being executed.

12. This Agreement may be modified or amended only by the mutual consent of the parties hereto.

13. 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.

14. 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:

Playa Del Pueblo, Ltd.
208 S. Marienfeld, Suite 1123
Midland, Texas 79701
Attn: David Diaz

If to City:

City of Midland
P. O. Box 1152
Midland, Texas 79702
Attn: City Engineer

15. 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.

16. This Agreement shall be construed under the laws of the State of Texas and all obligations of the parties hereunder are performable in Midland County, Texas. Exclusive venue for any cause of action 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.

17. 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.

18. It is expressly understood and agreed that Developer 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 Developer 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 Developer, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Developer. No person performing any of the work and services described hereunder by Developer shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this contract is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Developer shall be an independent contractor under this contract and shall assume

all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. The City does not have the power to direct the order in which the work is done. The City shall not have the right to control the means, methods or details of the Developer's work. Developer shall assume exclusive responsibility for the work. Developer is entirely free to do the work in its own way.

19. RELEASE: DEVELOPER 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 ARISING UNDER OR ASSOCIATED WITH THIS AGREEMENT WHICH DEVELOPER HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO QUANTUM MERUIT, DUE PROCESS AND TAKINGS CLAUSES UNDER THE TEXAS AND UNITED STATES CONSTITUTION, TORT CLAIMS OR CITY'S NEGLIGENCE.

20. 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.

21. 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, Developer or its legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one (1) original and seven (7) 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 Developer will settle, the physical and mailing addresses of Developer at the time and date the claim was presented and the physical and mailing addresses of Developer for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Developer 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 Developer that Developer'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, Developer's failure to comply with the requirements herein shall perpetually bar Developer'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. Developer agrees that the requirements of this entire agreement are reasonable.

22. 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 from allowing the Developer to connect to the capital improvements. 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 five (5) miles of the capital improvement. The five (5) miles is the specified distance required in Section 395.081 of the Texas Local Government Code.

23. Notwithstanding any other provision hereof, the City shall not be obligated to provide payment to Developer under this Agreement until Developer has met all requirements of this Agreement, including, but not limited to, the City's approval of the improvement work as set forth in Paragraph 4 and the City's determination that Developer has furnished satisfactory evidence that all obligations described in Paragraph 8 have been paid, discharged or waived. Determination of whether Developer has furnished satisfactory evidence that all such obligations have been paid, discharged or waived shall be in the sole discretion of the City.

EXECUTED in duplicate the day and year first above written.

CITY OF MIDLAND, TEXAS

By: _____

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

PLAYA DEL PUEBLO, LTD.

By: _____
David Diaz, Executive Director

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared DAVID DIAZ, 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 PLAYA DEL PUEBLO, LTD., in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of

_____, 2012.

Notary Public, State of Texas



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

FIRM # 001363

521 NORTH TEXAS • ODESSA, TEXAS 79761

(432) 332-5058 or 580-8812 • FAX (432) 332-8812

2 May 2012

Mr. David Beard P.E.
City of Midland
P.O. Box 1152
Midland, TX 79702

Re: Playa del Pueblo - City of Midland Participation
LCA Job No. 2010-080

Dear David:

The subject project includes construction of a 12" water main across the front of the property and a deep 12" sewer line to the east, where it will be bored under Interstate 20 to connect to an existing City of Midland main. The sewer was run to the east at the City's request with the understanding that the City would participate in the additional expense. The additional expense of the sewer is calculated based on the alternative of constructing a lift station and force main back to the existing line to the west. The construction of this additional sewer work is estimated to be \$258,940. In addition, the cost of material of a 12" water line vs. an 8" water line is calculated to be \$6,618. A breakdown of the additional expense is attached. Please proceed with preparing a Development Agreement for reimbursement of this additional expense of \$265,558.

We appreciate your consideration of this request. If you have any questions or need additional information, please contact me.

Sincerely,

LCA.

Joe M. Tucker, P.E.

Attachment

Cost Differential
12" water main vs. 8" water main

12" Waterline			8" Waterline		
Qty.	Material	Unit Price	Qty.	Material	Unit Price
550 L.F.	12" C900 DR18 pipe	18	550 L.F.	8" C900 DR18 pipe	8.38
2 EA.	12" 45° Bend	225	2 EA.	8" 45° Bend	116.00
2 EA.	12" x 8" Tee	297	2 EA.	8" x 8" Tee	199.00
1 EA.	12" x 6" Tee	266	1 EA.	8" x 6" Tee	174.00
1 EA.	12" Gate Valve	1,830	1 EA.	8" gate valve	931.00
1 EA.	12" Plug	110	1 EA.	8" Plug	62.00

Total \$13,024 \$6,406.00

Waterline City Participation \$6,618

All unit prices are as quoted by Western Industrial Supply on 1 May 2012

Cost Differential

Sewer - Gravity line to the East vs. Force Main to the West

1622 L.F.	12" Sewer (trenched)	90	145,980	430 L.F.	8" Gravity Sewer line	30	12,900
268 L.F.	12" Sewer (in casing)	45	12,060	2 EA.	Manholes	4,000	8,000
268 L.F.	Bore w/ 24" casing	550	147,400	1 EA.	Lift Station Materials	42,000	42,000
5 EA	Manholes (deep)	6000	30,000	1 EA.	Lift Station Labor	20,000	20,000
1 EA	Tie to existing MH	2000	2,000	980 L.F.	4" Force Main	20	19,600
1 EA	Contingency	34000	34,000	1 EA	Contingency	9,500	10,000

Total \$371,440 \$112,500

Sewerline Participation Cost \$258,940

Total City of Midland Participation: \$265,558


Joseph M. Tucker
 2 May 2012

ENGINEERING DIVISION

Playa Del Pueblo

Development Agreement

Playa Del Pueblo

12" Water Main

12" Wastewater Main

Lamesa Rd

I-20

Existing 36" Wastewater Main

N



Map by DDB 07/15/2012



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 08/28/2012

TO: City Council / City Manager

FROM: David D. Beard, P.E., City Engineer

SUBJECT: Consider a motion on a request by Schumann Engineering for Ruedas Addition (Section 2), to approve items requested for deferral in the amount of \$153,150.00, and to waive the associated public improvement guarantee. (City of Midland – ETJ)

Purpose:

Consider a motion on a request by Schumann Engineering for Ruedas Addition (Section 2) to approve items requested for deferral in the amount of \$153,150.00, and to waive the associated public improvement guarantee.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Wastewater Collection	\$58,650.00
Water Distribution	\$94,500.00
Paving Construction	\$ 0.00
Sidewalk Construction	\$ 0.00

Total value of deferral (recommended items) \$153,150.00

Cash deposit or other acceptable security \$0.00

Deferral recommendations are based on the model Deferral Process previously presented at the council briefing.

Discussion:

The Ruedas Addition (Section 2) is positioned in the City of Midland ETJ, located on the west side of N CR 1140 (2 miles east of Todd Dr.) approximately 500' north of Loop 250.

Schumann Engineering is proposing to plat the property and defer the public improvements. Below is a discussion of the public infrastructure and deferral request related to the development of the property associated with this plat:

1. Water Distribution: The applicant is requesting deferral of water distribution improvements.
 - The nearest connection to the City of Midland's water distribution system is near the intersection of Old Lamesa Rd. and Loop 250 (distance greater than 1 mile).
 - The likelihood of infrastructure construction based on the distance from the existing distribution facilities results in a 100% reduction in cash deposit or other acceptable security.
2. Wastewater Collection: The applicant is requesting a deferral of wastewater collection improvements.
 - The nearest connection to the City of Midland's wastewater collection system is near the intersection of Old Lamesa Rd. and Loop 250 (distance greater than 1 mile).
 - The likelihood of infrastructure construction based on the distance from the existing distribution facilities results in a 100% reduction in cash deposit or other acceptable security.
3. Paving: Access to the site is provided along N CR 1140 (2 miles east of Todd Dr.) and Loop 250.
 - The nearest connection to the City of Midland's pavement system is at Fairgrounds Rd. and Loop 250 (distance greater than 1 mile).
 - The likelihood of infrastructure construction based on the distance from the existing pavement system results in a 100% reduction in cash deposit or other acceptable security.
 - Both the Loop 250 frontage road and N CR 1140 are paved to TxDOT standards.
4. Drainage: A Drainage Study for this site has not been submitted.
 - A Drainage Study will be required prior to final platting.
5. Sidewalk: The applicant is requesting deferral of sidewalks.
 - Sidewalk construction is typically accomplished during the building permit phase (builder constructs the sidewalk). Currently, there are no sidewalks

along N CR 1140. If sidewalks are required in the future, they will be addressed when a building permit application is submitted.

Staff supports this deferral request. Attached is a location map, along with a deferral justification, and cost estimate from Schumann Engineering.



SCHUMANN ENGINEERING CO., INC.

Civil Engineering ~ Land Surveying

Max A. Schumann, Jr.
President
Cynthia Ann Klatt
Manager

408 North Pecos Street ~ P. O. Box 504 ~ Midland, Texas 79702-0504
Office (432) 684-5548 ~ Fax (432) 684-6973

July 26, 2012

David Beard, P.E.
City of Midland
P.O. Box 1152
Midland, TX 79702

RE: Ruedas Addition, Section 2

Dear Mr. Beard:

On behalf of our clients, Rafael and Yadira Ruedas, we respectfully request the following:

- 1.) A deferral for the extension of the water supply and the wastewater system, per section XI Chapter 2 11-2-5(A)3(b)(2)&(3), Non-accessible water and wastewater facilities. The tracts in this area are too far from domestic water and sanitary sewer lines. The distance to the nearest water and wastewater facilities is approximately 2.8 miles. The tracts are developed with septic systems, which is typical for the area.

We have enclosed engineering cost estimates for the public improvements, for which we are requesting a deferral. The roads are currently built to County Specifications.

We respectfully request that this item be placed on the next City Council meeting agenda. If you have any questions or need additional information, please do not hesitate to contact us. Thank you for your consideration.

Sincerely,


Benito Sanchez, P.E.

Enclosure

cc: Rafael and Yadira Ruedas
3401 N. CR 1140
Midland, TX 79705

Jim Compton, City Planner
City of Midland Planning Department
P.O. Box 1152
Midland, TX 79702

RUEDAS ADDITION
Section 2
Engineering Cost Estimate

8/2/2012

Description	Quantity	Unit	Unit Price	Estimate Cost
Sewer				
8" SDF-35 PVC	900	LF	\$50.00	\$45,000.00
Manholes	2	EA	\$3,000.00	\$6,000.00
Misc	0	EA	\$2,000.00	\$0.00
Construction Cost of Sewer				\$51,000.00
15% Contingency				\$7,650.00
Total Sewer				\$58,650.00
Water Line				
8" Water Line	900	LF	\$50.00	\$45,000.00
Fire Hydrants				\$0.00
Construction Cost of Water				\$45,000.00
10% Contingency				\$4,500.00
Total Water				\$94,500.00
Road and Sidewalks				
Road to City Standards				\$0.00
4' sidewalk				\$0.00
Curb and Gutter				\$0.00
Construction Cost of Road				\$0.00
10% Contingency				\$0.00
Total Road				\$0.00
TOTAL COST				\$153,150.00

RUEDAS ADDITION SECTION 2

A REPLAT OF LOTS 1 AND 2,
RUEDAS ADDITION,
AN ADDITION TO THE COUNTY OF
MIDLAND, TEXAS.

STATE OF TEXAS:
COUNTY OF MIDLAND:
NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:
THAT I DO HEREBY ADOPT THIS PLAT DESIGNATING THE HEREINABOVE DESCRIBED PROPERTY AS RUEDAS
ADDITION, SECTION 2, AN ADDITION TO THE CITY OF MIDLAND, AND DO HEREBY DEDICATE TO THE PUBLIC
USE FOREVER THE STREETS, ALLEY, AND EASEMENTS, (AND PARKWAYS) SHOWN HEREON.
WITNESS MY HAND AT MIDLAND, TEXAS, THIS _____ DAY OF _____, 2012.

RAFAEL RUEDAS

NOTES:

1. SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION
OF CITY ORDINANCE AND STATE LAW AND SUBJECT TO FINES AND WITHHOLDING OF
UTILITIES AND BUILDING PERMITS.
2. APPROVAL OF A SITE PLAN BY THE CITY OF MIDLAND MAY BE REQUIRED BEFORE
THE DEVELOPMENT OF ANY LOT AND BEFORE A BUILDING PERMIT MAY BE OBTAINED.
3. BEARINGS AND DISTANCES SHOWN ARE BASED ON GPS OBSERVATIONS AND
THESE OBSERVATIONS WERE MADE ON THE DATE OF THE SURVEY. THE COORDINATE SYSTEM IS
NAD 83. THE CONVERSION ANGLE AT THE POINT OF BEGINNING IS -40°51'31".
THE COMBINED SCALE FACTOR IS 0.999932013.

SET MONUMENTS ARE A 1/2" REINFORCING BAR WITH YELLOW PLASTIC CAP STAMPED
"SCHUMANN ENGINEERING" UNLESS OTHERWISE NOTED.

STATE OF TEXAS:
COUNTY OF MIDLAND:
THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THIS _____ DAY OF
_____, 20____, RAFAEL RUEDAS.

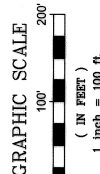
NOTARY PUBLIC
MIDLAND COUNTY, TEXAS

OWNER:
RAFAEL RUEDAS
3401 N. CO. ROAD 1140
MIDLAND, TEXAS 79705
(432) 238-0260

PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS
NO. _____ CABINET _____
DATE _____ PAGE _____

SCHUMANN ENGINEERING CO., INC.
REGISTERED PROFESSIONAL LAND SURVEYORS
LICENSED STATE LAND SURVEYORS
TEXAS AND NEW MEXICO
Civil Engineering ~ Land Surveying
408 N. PECOS STREET - P. O. BOX 504
MIDLAND, TEXAS 79702-0004
Office (432) 884-5548
Fax (432) 884-8973

FOR REVIEW ONLY



NO.	DATE	DESCRIPTION	BY	APP. NO.
3	7/18/2012	PREPARED FINAL PLAT	BS	
2	11/17/2011	PREPARED PRELIMINARY PLAT	KDS	
1	9/2/2011	RECONFIGURE SKETCH PLAN	KDS	

DATE	07/18/2011
DRAWN BY	KDS/BS
CHECKED BY	MAS
DATE	7/26/2011
DRAWING NO.	72.687
SHEET	1 of 1

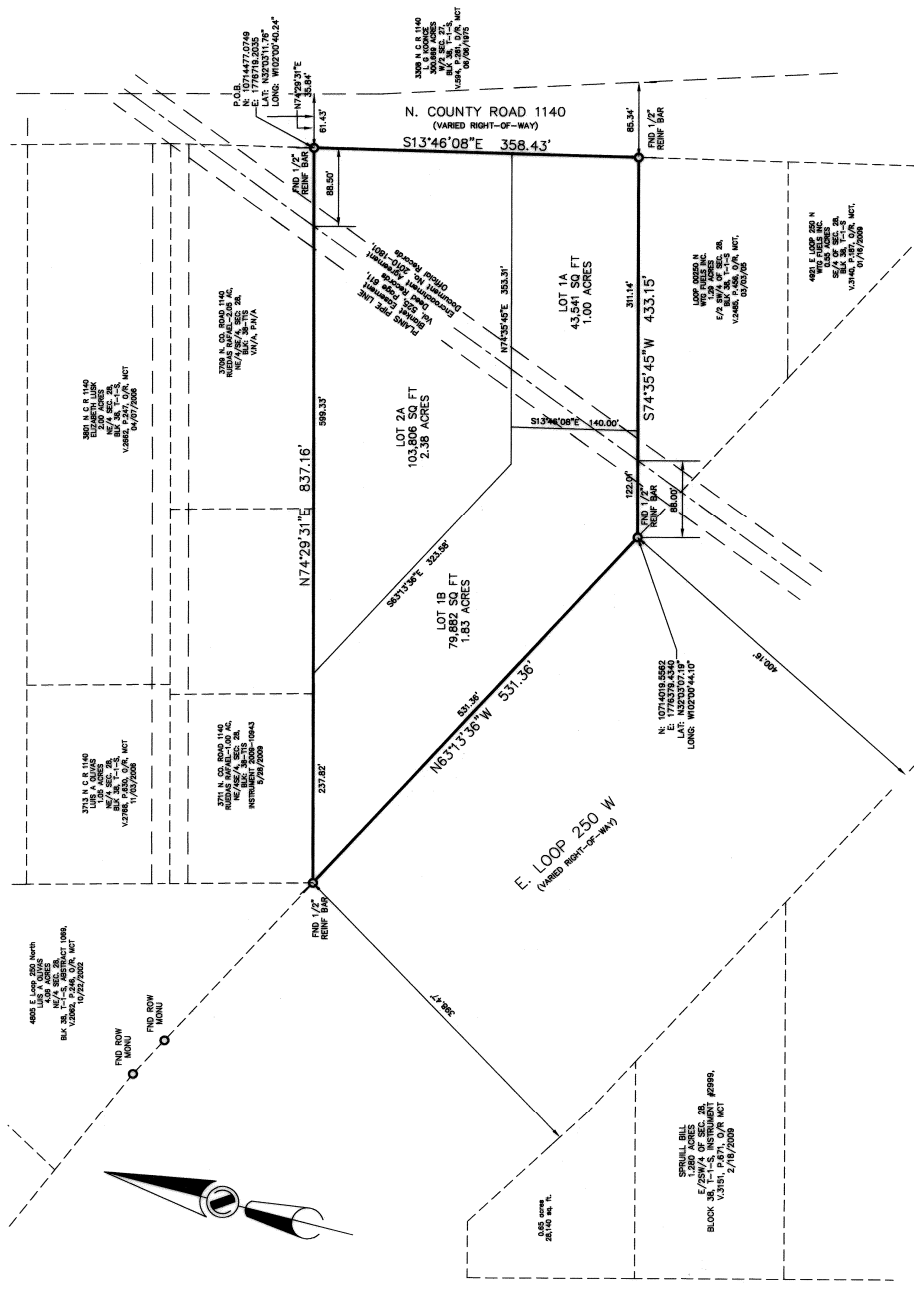
THAT I, R. J. DAIN, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY
CERTIFY THAT I PREPARED THIS PLAT FROM AN ACTUAL AND ACCURATE
SURVEY OF THE LAND AND THAT THE CORNER MONUMENTS SHOWN THEREON
WAS LOCATED AND SET BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION
AND IN ACCORDANCE WITH THE SUBDIVISION REGULATIONS OF THE CITY OF MIDLAND,
TEXAS.

CERTIFICATE OF APPROVAL
FOR APPROVAL BY THE COMMISSION:
THIS IS TO CERTIFY THAT THE ABOVE AND FOREGOING PLAT OF RUEDAS ADDITION,
SECTION 2, WAS APPROVED BY PROPER ACTION OF THE CITY PLANNING AND
ZONING COMMISSION OF THE CITY OF MIDLAND, ON THIS _____ DAY OF
_____, 2012.

THIS PLAT HAS BEEN CHECKED FOR ACCESSIBILITY OF UTILITIES.

SIGNED: _____
ONCOR ELECTRIC DELIVERY COMPANY LUIS AGUILAR
SIGNED: _____
AT&T TEXAS ENRIQUE MOURAGON
SIGNED: _____
AT&M ENERGY MARK LEB
SIGNED: _____
SUDDENLINK COMMUNICATIONS BILL BENTLEY
SIGNED: _____
SHARYLAND UTILITIES LP DOUG MAREE
SIGNED: _____
GRANDE COMMUNICATIONS SHERRY SANDERS

SIGNED: _____
CHAIRMAN BECKY FERGUSON
ATTEST: _____
SECRETARY CAMERON WALKER

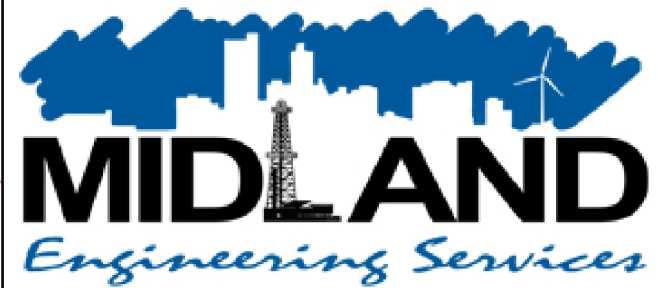


ENGINEERING DIVISION

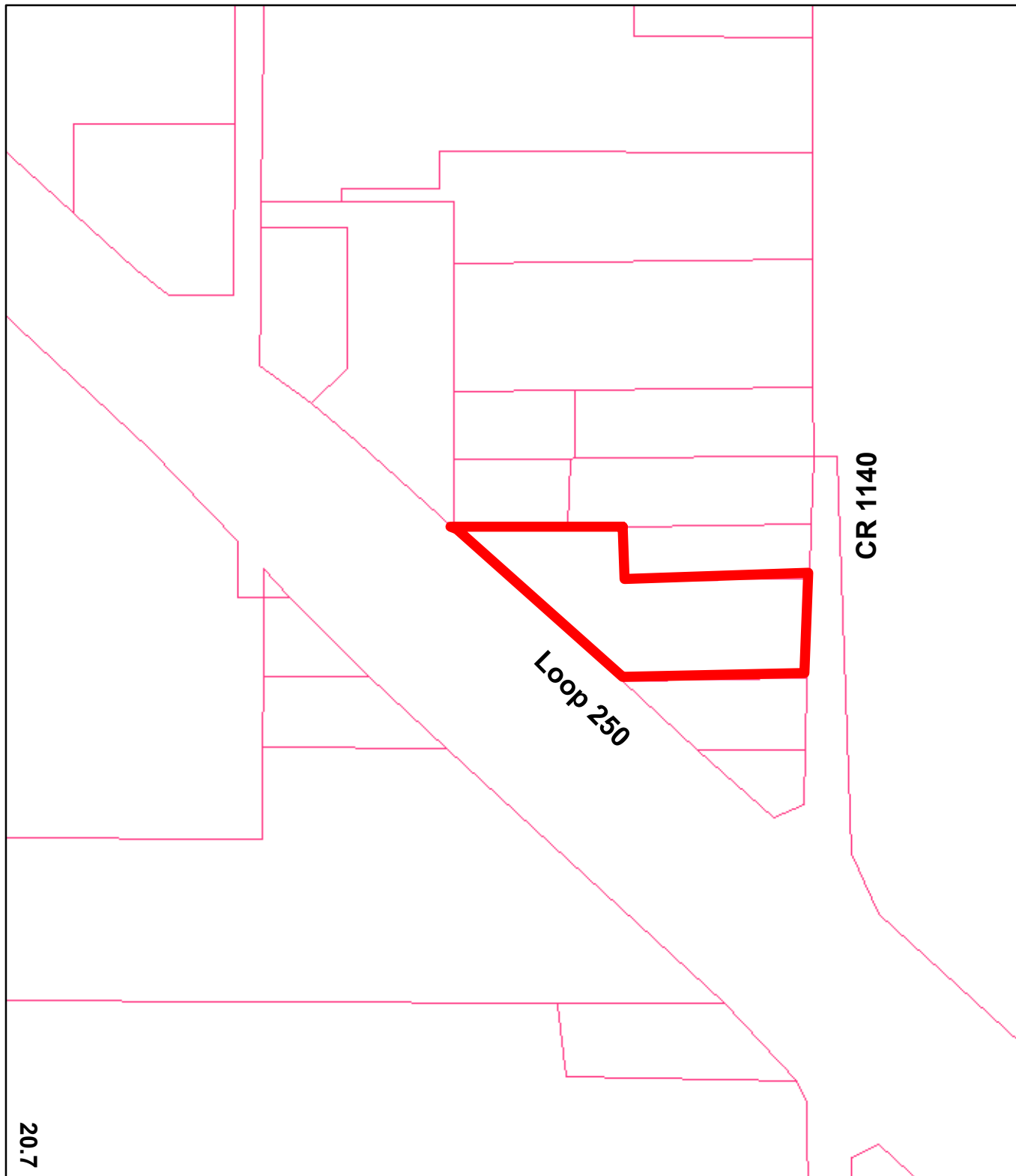
Ruedas Addition (Section 2)

Request for Deferral

N



Map by DDB 08/24/2012





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 08/28/2012

TO: City Council / City Manager

FROM: David D. Beard, P.E.

SUBJECT: Consider a motion on a request by Schumann Engineering Co. Inc. for Country Sky Addition (Section 15), to approve items requested for deferral in the amount of \$288,674.40, and to waive the associated public improvement guarantee. (City of Midland)

Purpose:

Consider a motion on a request by Schumann Engineering for Country Sky Addition (Section 15), to approve items requested for deferral in the amount of \$543,016.80, and to waive the associated public improvement guarantee.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Wastewater Collection	\$271,400.00
Water Distribution	\$0.00
Paving Construction	\$0.00
Sidewalk Construction	\$17,274.40

Total value of deferral (recommended items)	\$288,674.40
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Cash deposit or other acceptable security	\$0.00
---	--------

Deferral recommendations are based on the model Deferral Process previously presented at the council briefing.

Discussion:

The Country Sky Addition (Section 15) is positioned in the City of Midland, located on the corner of Cactus Trail and Coyote Trail (approximately 0.8 miles south of Briarwood Ave. and 1.3 miles west of Holiday Hill Rd.).

Schumann Engineering is proposing to plat the property and defer the public improvements. Below is a discussion of the public infrastructure and deferral request related to the development of the property associated with this plat:

1. Water Distribution: Water is currently available in both Cactus Trail and Coyote Trail. A PID assessment may be required for this property.
2. Wastewater Collection: The applicant is requesting a deferral of wastewater collection improvements.
 - The nearest connection to the City of Midland's wastewater collection system is a manhole on a trunk line in Jal Draw where the Draw intersects with a future extension of Wadley Avenue (distance greater than 1 mile).
 - The likelihood of infrastructure construction based on the distance from the existing collection facilities results in a 100% reduction in cash deposit or other acceptable security.
3. Paving: Both Cactus Trail and Coyote Trail are paved to County standards, which is a 24-foot wide pavement surface with no curb-and-gutter. The applicant is requesting a deferral of paving and curb-and-gutter.
 - The nearest connection to the City of Midland's City-standard paving, with curb-and-gutter, is on North Holiday Hill Rd. where it intersects with Briarwood Avenue (distance greater than 1 mile).
 - The likelihood of infrastructure construction based on the distance from the existing City-standard pavement results in a 100% reduction in cash deposit or other acceptable security.
4. Drainage: A Drainage Study for this site has not been submitted.
 - A Drainage Study will be required prior to final platting.
5. Sidewalk: The applicant is requesting deferral of sidewalks.
 - Sidewalk construction is typically accomplished during the building permit phase (builder constructs the sidewalk). Currently, there are no sidewalks along Cactus Trail or Coyote Trail, or elsewhere within the subdivision. If sidewalks are required in the future, they will be addressed when a building permit application is submitted.

Staff supports this deferral request. Attached is a location map, along with a deferral justification, and cost estimate from Schumann Engineering.



SCHUMANN ENGINEERING CO., INC.

Civil Engineering ~ Land Surveying

Max A. Schumann, Jr.
President
Cynthia Ann Klatt
Manager

408 North Pecos Street ~ P. O. Box 504 ~ Midland, Texas 79702-0504
Office (432) 684-5548 ~ Fax (432) 684-6973

July 13, 2012

David Beard, P.E.
City of Midland
P.O. Box 1152
Midland, TX 79702

RE: Country Sky Addition, Section 15

Dear Mr. Beard:

On behalf of our clients, Ray and Holly Scrivner, we respectfully request the following:

- 1.) A waiver for the installation of sanitary sewer, per section XI Chapter 2 11-2-5(A)3(b)(3), Non-accessible wastewater facilities. The nearest sanitary sewer is more than 4000 feet from the property.
(see attachment)
- 2.) A waiver for the installation of paving, sidewalk and curb and gutter. There is existing pavement in place, but no sidewalk or curb and gutter anywhere in this established subdivision. The use of any installed sidewalk is unlikely, as the property is located outside the greater Midland area.

Our client will be tying into the existing water service.

We have enclosed engineering cost estimates for the public improvements, for which we are requesting a waiver. The roads are currently built to City Specifications.

We respectfully request that this item be placed on the next City Council meeting agenda. If you have any questions or need additional information, please do not hesitate to call. Thank you for your consideration.

Sincerely,


Benito Sanchez, P.E.

Enclosure

cc: Ray and Holly Scrivner
6708 Cactus Trail
Midland, TX 79707



Jim Compton, City Planner
City of Midland Planning Department
P.O. Box 1152
Midland, TX 79702

QUAIL RIDGE ADDITION SECTION 3
Waiver Cost Estimates

Description	Quantity	Unit	Unit Price	Estimate Cost
Sewer				
8" SDF-35 PVC	4600	LF	\$50.00	\$230,000.00
Manholes	2	EA	\$3,000.00	\$6,000.00
Construction Cost of Sewer				\$236,000.00
15% Contingency				\$35,400.00
Total Sewer				\$271,400.00
Water Line				
8" Water Line				\$0.00
Fire Hydrants				\$0.00
Construction Cost of Water				\$0.00
10% Contingency				\$0.00
Total Water				\$0.00
Road and Sidewalks				
Road to City Standards				\$0.00
4' sidewalk	604	LF	\$13.00	\$7,852.00
Curb and Gutter	604	LF	\$13.00	\$7,852.00
Construction Cost of Road				\$15,704.00
10% Contingency				\$1,570.40
Total Road				\$17,274.40
TOTAL COST				\$288,674.40

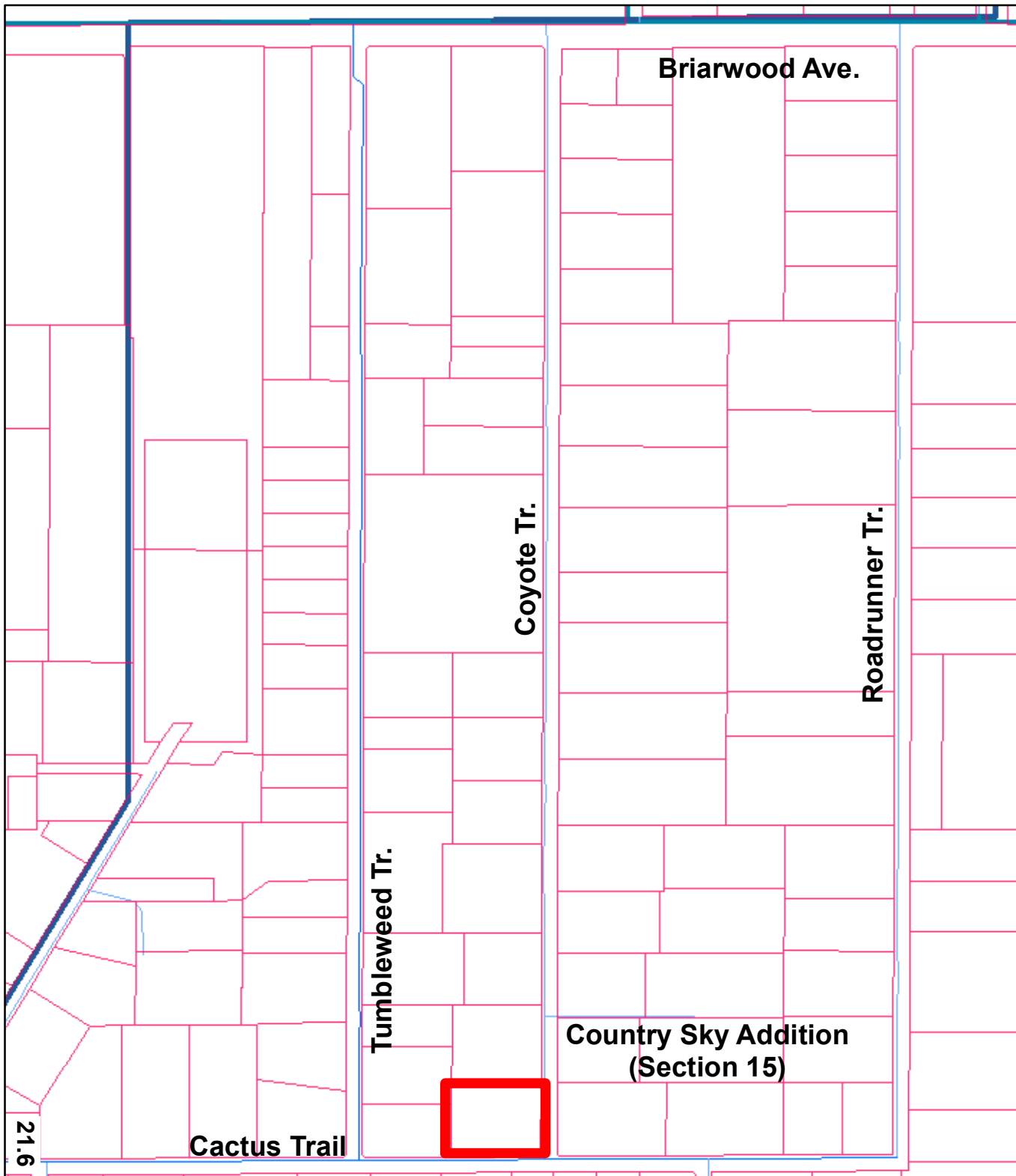
7-13-12



Google earth

feet 3000
km 1

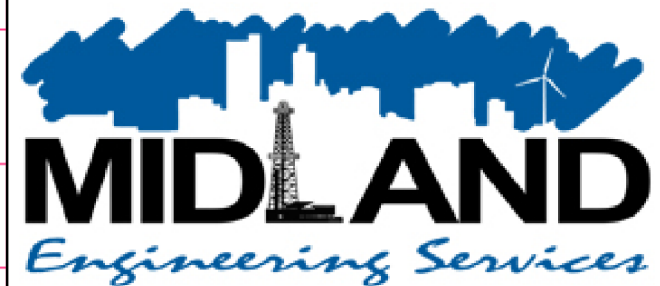




ENGINEERING DIVISION

Country Sky Addition (Section 15)

Request for Deferral



Map by DDB 08/25/2012



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/28/2012

TO: City Council / City Manager

FROM: David D. Beard, P.E. – City Engineer

SUBJECT: Consider a resolution authorizing staff to execute a change order to the Ward Street Bridge Project with Onyx Contractors, Inc. in the amount of \$145,622.00. (District #1 – Sparks)

Purpose:

Consider a resolution authorizing staff to execute a change order to the Ward Street Bridge project, to reconstruct the alley along the north side of the Jal Draw between Ward St. and Garfield St. in the amount of \$145,622.00.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The Ward Street Bridge project was awarded to Onyx Contractors, Inc. at the April 10, 2012 council meeting. Funds in the amount of \$735,179.00 (base bid + 15%) were allocated for this project.

Contract Amount	\$630,286.00
<u>Change Order #3 + 10%</u>	<u>\$145,622.00</u>

Contract Amt. + CO#3	\$775,908.00
<u>Original Allocation</u>	<u>\$735,179.00</u>

Allocation Requested	\$40,729.00
----------------------	-------------

Funds are available in the Jal Draw Channel Lining Project (8880).

Discussion:

As a part of the Jal Draw Channel Lining project, the alley along the south side of the draw was reconstructed and paved. The purpose of this change order is to reconstruct and pave the alley along the north side of the draw to match the previously constructed alley.

The proposed change order is 23% of the original contract amount. Staff is recommending approval of this change order and to allocate the necessary funds. Attached is a copy of the bid schedule for the additional work and a location map.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF
CHANGE ORDER NUMBER THREE WITH ONYX
CONTRACTORS OPERATIONS, LP REGARDING THE
WARD STREET BRIDGE REHABILITATION AND
GARFIELD STREET BRIDGE RAIL RETROFIT
PROJECT; SAID CHANGE ORDER TO PROVIDE FOR
THE RECONSTRUCTION OF THE ALLEY ALONG THE
NORTH SIDE OF JAL DRAW BETWEEN WARD
STREET AND GARFIELD STREET; AND
AUTHORIZING PAYMENT IN THE AMOUNT OF
\$145,622.00**

WHEREAS, the City Council by Resolution No. 2012-111, passed on April 10, 2012, authorized the execution of a contract with Onyx Contractors Operations, LP regarding the Ward Street Bridge Rehabilitation and Garfield Street Bridge Rail Retrofit Project; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of Change Order No. 3 to the contract with Onyx Contractors Operations, LP to provide for the reconstruction of the alley along the north side of Jal Draw between Ward Street and Garfield Street;

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

SECTION ONE. That the City Manager, or his designee, and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, Change Order No. 3 to the contract with Onyx Contractors Operations, LP regarding said project. A copy of said change order is attached hereto as Exhibit "A" and incorporated herein for all purposes.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Onyx Contractors Operations, LP, in an amount not to exceed \$145,622.00, for services pursuant to said change order out of funds available in the Jal Draw Channel Lining Project (8880) budget account upon receipt of proper invoice or statement therefor approved by the City Manager.

On motion of Council member _____, seconded by Council member

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CHANGE ORDER

Order No. 3 (three)

Date: August 28, 2012

Contract Date: April 17, 2012

NAME OF PROJECT: Ward Street Bridge Rehabilitation and

Garfield Street Bridge Retrofit

PROJECT NUMBER: P12-001-8880

OWNER: City of Midland

CONTRACTOR: Onyx Contractors Operations, LP

The following changes are hereby made to the CONTRACT DOCUMENTS:

Justification:

Construct alley on the north side of the Jal Draw from Ward St. to Garfield St. See attached unit price schedule.

Change to CONTRACT PRICE:

Original UNIT PRICE CONTRACT: \$ 639,200.00

Current UNIT PRICE CONTRACT adjusted by previous CHANGE ORDER: \$ 615,200.00

The UNIT PRICE CONTRACT due to this CHANGE ORDER will be:

☒ (increased) ☐ (decreased) by: \$ 132,632.30

The new UNIT PRICE CONTRACT including this CHANGE ORDER will be: \$ 747,832.30

Change to CONTRACT TIME:

The CONTRACT TIME will be ☒ (increased) ☐ (decreased) by: 30 (thirty) calendar days.

Approvals Required:

To be effective this Order must be approved by the Midland City Council if it changes the scope or objective of the PROJECT, or as may otherwise be required by the GENERAL PROVISIONS AND SUPPLEMENTAL CONDITIONS.

Requested by: City of Midland

Approved by: Tony S. Dunn, Project Manager, (Onyx)

Accepted by: David D. Beard, P.E., City Engineer (COM)

G:\Engineering Services\In-House Design\P12-01-8880 WARD ST BRIDGE\Pay Estimates & Change Orders\Change Order\CO #3 - North Alley Extension\Change Order 3.doc

UNIT PRICE SCHEDULE

P12-01 / 8880 Ward St. Bridge (D-45); Jal Draw North Alley Paving From Wadley to Garfield

The estimated quantities shown in this Unit Price Schedule are approximate only and are to be used as a basis for estimating probable cost of the work to be completed. The materials furnished may differ somewhat from these estimates. Payment shall be for the actual amount of such work completed and the material furnished. The various items in the Unit Price Schedule shall be paid at the unit price X quantity installed. These unit prices or lump sums shall be full compensation for furnishing all materials, equipment, labor, tools, power and transportation necessary to complete the installation.

Change Order Items:

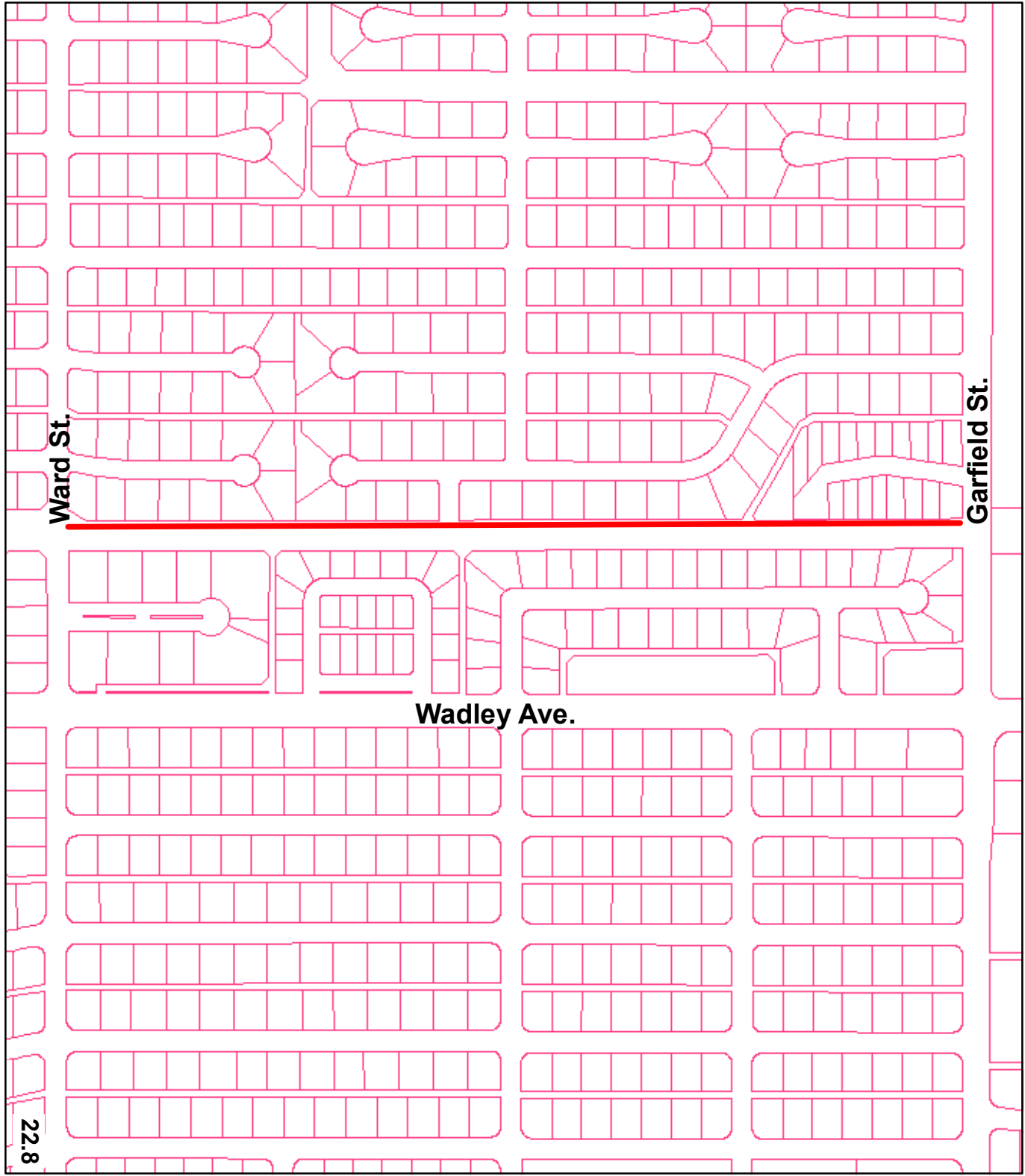
Item	Description	Quantity	Unit	Unit Price	Amount
1	Remove existing pavement surface	4100	SY	3 ⁰⁰	12,300. ⁰⁰
2	Reshape new/existing base material (labor only)	4100	SY	5.15	21,115. ⁰⁰
3	Apply prime coat and 2" HMAC surface (labor only)	4100	SY	12.15	49,815. ⁰⁰
4	Construct 2' concrete valley gutter (labor only)	2550	LF	16. ⁶⁸	42,534. ⁰⁰
5	Construct 6' concrete valley gutter (labor only)	90	LF	31. ⁸⁷	2,868. ³⁰
6	Sawcut and remove existing driveway	160	LF	10. ⁰⁰	1,600. ⁰⁰
7	Job site safety & traffic control	1	LS	2,400. ⁰⁰	2,400. ⁰⁰
8	Construction Staking	1	LS	\$0.00	\$0.00
TOTAL COST:					<u>132,632.30</u>

ONYX CONTRACTORS LP
CONTRACTOR

GRANT CLOUD
NAME (PRINTED)

Grant Cloud
SIGNATURE

8/9/12
DATE



**ENGINEERING SERVICES
DEPARTMENT**

**Ward Street Bridge
Change Order #3**

**North Alley Repaving
(Between Ward St & Garfield St.)**





City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: 8/28/2012

TO: City Council / City Manager

FROM: Price Robinson, Police Chief

SUBJECT: Consider a Resolution to Accept and Appropriate Grant Funding Awarded by TXDOT to the Midland Police Department to Conduct a FY2013 Comprehensive STEP Enforcement Project

Purpose:

Consider a resolution to accept and appropriate grant funding awarded by TXDOT to the Midland Police Department to conduct a FY2013 Comprehensive STEP enforcement project

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

That the amount in the Fiscal Year 2012–2013 General Fund (001) NonDepartmental (150) Interfund Transfer (0199) General Construction Fund (6299) budget account is hereby reduced by \$28,715 and the General Fund (001) Police (110) Special Operations - STEP (0109) Overtime (1080) budget account is increased by \$28,715

Discussion:

The Texas Department of Transportation has made available \$23,876 in grant funding to the Midland Police Department to conduct a Comprehensive STEP program. The grant requires a \$4,839 cash match. The project will begin October 1, 2012, and end September 30, 2013. The Comprehensive STEP has two components—intersection traffic control (ITC) enforcement and DWI enforcement. These TXDOT funds will be used to pay overtime to the officers working on this project.

RESOLUTION NO.

RESOLUTION ACCEPTING A GRANT IN THE AMOUNT OF \$23,876.00 FROM THE TEXAS DEPARTMENT OF TRANSPORTATION IN ORDER TO CONDUCT A FISCAL YEAR 2012-2013 COMPREHENSIVE SPECIAL TRAFFIC ENFORCEMENT PROGRAM FOR INTERSECTION TRAFFIC CONTROL ENFORCEMENT AND DRIVING WHILE INTOXICATED ENFORCEMENT; SAID GRANT AWARD REQUIRES A CITY CASH MATCH IN THE AMOUNT OF \$4,839.00; PROVIDING THAT THE GRANT FUNDS SHALL BE USED TO PAY OVERTIME TO POLICE OFFICERS WORKING ON SAID PROGRAM; AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENT; AND APPROPRIATING GRANT FUNDS

WHEREAS, the Midland Police Department has received notice of a grant award of \$23,876.00 from the Texas Department of Transportation to be used to conduct a Fiscal Year 2012-2013 Comprehensive Special Traffic Enforcement Program; and

WHEREAS, the grant award requires a cash match from the City of Midland in the amount of \$4,839.00; and

WHEREAS, the Midland Police Department will use the grant funds to pay its police officers overtime for working extra intersection traffic control enforcement and DWI enforcement duty from October 1, 2012 until September 30, 2013; and

WHEREAS, the Council finds it to be in the public interest to accept the grant award and to appropriate the grant funds;

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

SECTION ONE. That the City of Midland, acting through its Mayor and City Council, hereby accepts the grant award of \$23,876.00 from the Texas Department of Transportation. Said grant funds shall be used by the Midland Police Department to conduct a Fiscal Year 2012-2013 Comprehensive Special Traffic Enforcement Program.

SECTION TWO. That the Mayor, City Manager, Director of Finance and Chief of Police of the City of Midland are hereby authorized and directed to evidence the City of

Midland's acceptance by executing all necessary documents in order to accept the grant award.

SECTION THREE. That the amount in the Fiscal Year 2012-2013 General Fund (001) NonDepartmental (150) Interfund Transfer (0199) General Construction Fund (6299) budget account is hereby reduced by \$28,715.00 and the General Fund (001) Police (110) Special Operations - STEP (0109) Overtime (1080) budget account is increased by \$28,715.00

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/28/2012

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Consider a Resolution Authorizing the Second Amendment for the Water Supply Contract with the Colorado River Municipal Water District Relocating the Delivery Point.

Purpose:

Consider a Resolution Authorizing the Second Amendment for the Water Supply Contract with the Colorado River Municipal Water District Relocating the Delivery Point.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No fiscal impact with this item.

Discussion:

The Colorado River Municipal Water District, CRMWD, has a 15 million gallon reservoir located on the Water Purification Plant property. This reservoir is typically used by them as overflow storage, when they attempt to deliver more water than we need. The City would like to purchase this reservoir, putting it under our control, so that CRMWD could deliver water to the reservoir instead of "on demand" to the plant. Their ability to fill it during off-peak hours, usually in the middle of the night, for our use during peak electrical hours would result in lower power costs to them translating to lower water costs to us.

This item will modify the delivery point in the 1966 Water Supply Contract with CRMWD from the interior of the plant to the fence line of the plant.

This is the first of four items necessary to complete this transaction.

RESOLUTION NO.

**RESOLUTION AUTHORIZING A SECOND
AMENDMENT TO THE EXISTING WATER SUPPLY
CONTRACT WITH THE COLORADO RIVER
MUNICIPAL WATER DISTRICT; THIS AMENDMENT
RELOCATED THE WATER DELIVERY POINT UNDER
THE CONTRACT**

WHEREAS, the City Council, by Ordinance No. 4233, in May of 1966, authorized the execution of a Water Supply Contract with the Colorado River Municipal Water District; and

WHEREAS, both the City and the Colorado River Municipal Water District wish to amend said Agreement relocating the water delivery point; and

WHEREAS, the Council finds it to be in the public interest to so amend said Water Supply Contract;

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

THAT the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, an Amendment to the existing Water Supply Contract with the Colorado River Municipal Water District, said Amendment to be on file in the City Secretary's office referenced by the number and date of this Resolution.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Stuart Purvis, Director of Utilities

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

SECOND AMENDMENT TO WATER SUPPLY CONTRACT

THIS SECOND AMENDMENT TO THE WATER SUPPLY CONTRACT (hereinafter called the "Amendment") made and entered into this _____ day of August 2012, by and between the Colorado River Municipal Water District (the "District"), a conservation and reclamation district and political subdivision of the State of Texas and the City of Midland (the "City") a municipal corporation in Midland County, Texas.

WITNESSETH

WHEREAS, the District and the City are parties to that certain Water Supply Contract (the "Contract") dated May 10, 1966; and

WHEREAS, the City is upgrading the facilities at its water treatment plant to better serve its citizens; and

WHEREAS, under separate documents including a Memorandum of Agreement, Special Warranty Deed and Bill of Sale all dated the _____ day of August 2012 the City and District have made certain agreements including the transfer of certain facilities constructed by District to the City; and

WHEREAS, said facilities will become a part of the operation of the City's water treatment plant; and

WHEREAS, this has necessitated a change in the point of deliver and delivery pressure in the Contract between the District and the City.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the District and the City agree as follows:

Section 1. The Contract shall be amended by replacing the following Sections in their entirety to read as follows:

"Section 3. POINT OF DELIVERY. The Point of Delivery of water to be delivered hereunder shall be at the at the flow meter installed on the District's existing 30-inch pipeline on the City's water treatment plant site just south of the south right-of-way of Bluebird Lane. City agrees to construct, maintain and operate at its own cost and expense at such Point of Delivery all equipment and facilities necessary to receive such water from District's water supply pipelines. City further agrees to grant and convey to District any necessary easements and rights-of-way in the public streets, roads, public property, and alleys of City as may be required for installing and maintaining District's water supply pipelines and other facilities to deliver water to the

Point of Delivery; and City further agrees to cooperate with District in procuring from Midland County any necessary easements and rights-of-way for installing and maintaining District's water supply pipelines in the public roads and in other lands belonging to or under the control of Midland County."

"Section 4. PRESSURE. Water delivered hereunder shall be delivered to City by District at the Point of Delivery at a pressure sufficient to cause the contract quantity of water to flow over the weir elevation of 2834.50 feet MSL in the 15 million gallon reservoir transferred to the City from the District.

Section 2. Except as amended hereby, the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused this Amendment to be duly executed as of the date first written which is the date of this Amendment.

COLORADO RIVER MUNICIPAL WATER DISTRICT

By: _____
Jim R. Purcell, President

Attested:

James T. Weaver, Secretary-Treasurer

CITY OF MIDLAND

By: _____
Wes Perry, Mayor

Attested:

City Secretary



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/28/2012

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Consider a Resolution Authorizing the Execution of a Special Warranty Deed Conveying the 15 million gallon Raw Water Reservoir located on the Water Purification Plant Site from the Colorado River Municipal Water District to the City of Midland for the Sum of \$557,000 and Appropriate Funds

Purpose:

Consider a Resolution authorizing the execution of a Special Warranty Deed conveying the 15 million gallon Raw Water Reservoir located on the Water Purification Plant site from the Colorado River Municipal Water District to the City of Midland for the sum of \$557,000 and appropriate funds

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Purchase amount is \$557,000 from the Water and Sewer Fund. That the sum of \$557,000 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Raw Water Reservoir Project (8003).

Discussion:

The Colorado River Municipal Water District, CRMWD, constructed a reservoir on the Water Purification Plant (WPP) Site in the late 1960's. This reservoir was originally used for the storage of water from Lakes Spence and Thomas, but due to design inefficiencies and increased water deliveries from Lake Ivie it's use has been impaired. The Raw Water Project currently under construction at the WPP will eliminate these deficiencies and allow us to use this reservoir more effectively. This reservoir can be filled by the CRMWD during off-peak power usage times for our use during peak times. This will result in electrical cost savings as well as providing buffer storage of water in case of CRMWD system upsets.

This is the second of four items necessary to make this transfer.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE PURCHASE OF THE FIFTEEN MILLION GALLON RAW WATER RESERVOIR, LOCATED ON THE CITY'S WATER PURIFICATION PLANT SITE, FROM THE COLORADO RIVER MUNICIPAL WATER AUTHORITY, FOR \$557,000.00; ALL CLOSING COSTS TO BE BORNE BY THE CITY OF MIDLAND; AND ORDERING RECORDATION BY THE CITY SECRETARY; AND APPROPRIATING FUNDS

WHEREAS, the Council finds it to be in the public interest to purchase the fifteen million gallon raw water reservoir, located on the City's Water Purification Plant Site, from the Colorado River Municipal Water Authority, for \$557,000.00, and to appropriate the necessary funds;

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

SECTION ONE. That the City Manager, on behalf of the City of Midland, Texas, is hereby authorized and directed to execute all documents necessary to purchase the fifteen million gallon raw water reservoir, located on the City's Water Purification Plant Site and as shown on Exhibit "A" attached hereto and incorporated herein for all legal purposes, from the Colorado River Municipal Water Authority, for \$557,000.00.

SECTION TWO. That the sum of \$557,000.00 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Raw Water Reservoir Project (8003).

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay the Colorado River Municipal Water Authority an amount not to exceed \$557,000.00 from funds appropriated herein, upon receipt of a duly executed Special Warranty Deed conveying said property, approved by the City Manager, an un-executed copy of said Special Warranty Deed being attached hereto as Exhibit "B" and incorporated herein for all legal purposes.

SECTION FOUR. That all closing costs, attorney's fees, and title insurance shall be paid by the City of Midland, Texas. Said closing shall be conducted at Lonestar Abstract

and Title Company of Midland, Texas.

SECTION FIVE. That the City Secretary is hereby authorized and directed to file the duly executed Special Warranty Deed in the Deed Records of Midland County, Texas.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Stuart Purvis, Director of Utilities

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

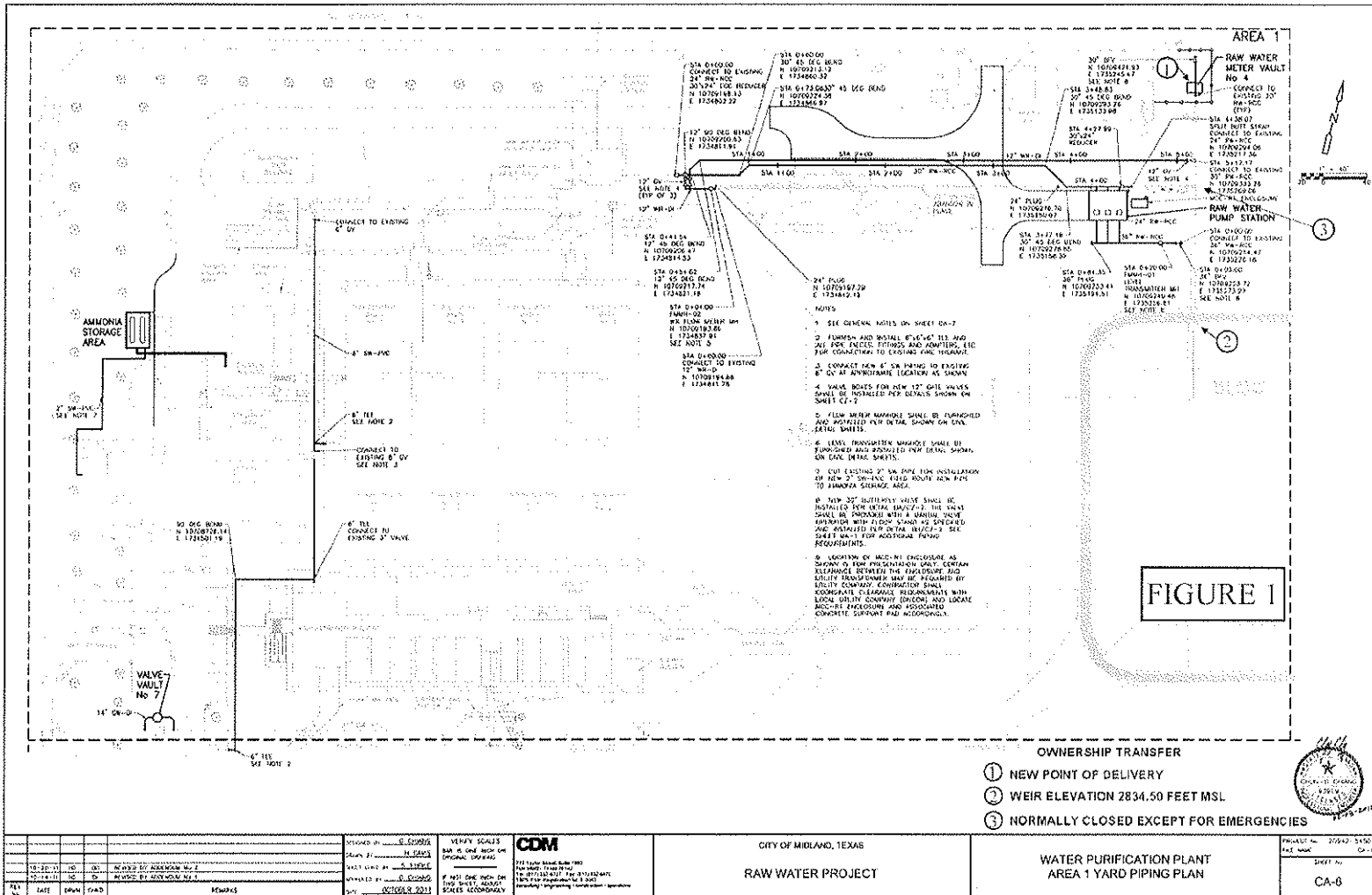


Exhibit "A"

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

GF AB00010 rem/wp

SPECIAL WARRANTY DEED

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF MIDLAND

§

THAT THE UNDERSIGNED, COLORADO RIVER MUNICIPAL WATER DISTRICT, hereinafter referred to as "**GRANTOR**", whether one or more, for and in consideration of the sum of TEN DOLLARS (\$10.00) cash, and other good and valuable consideration in hand paid by the Grantee, herein named, the receipt and sufficiency of which is hereby fully acknowledged and confessed, has **GRANTED, SOLD and CONVEYED**, and by these presents does hereby **GRANT, SELL and CONVEY** unto **THE CITY OF MIDLAND TEXAS, A TEXAS HOME RULE MUNICIPAL CORPORATION**, herein referred to as "**GRANTEE**", whether one or more, the lot, tract or parcel of land situated in Midland County, Texas, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES

This conveyance is made and accepted subject to any and all validly existing encumbrances, conditions, and restrictions, relating to the hereinabove described property as now reflected by the records of the Midland County Clerk's office.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Grantee, Grantee's heirs, executors, administrators, successors and/or assigns forever; and Grantor does hereby bind Grantor, Grantor's heirs, executors, administrators, successors and/or assigns, to **WARRANT AND FOREVER DEFEND** all and singular the said premises unto the said Grantee, Grantee's heirs, executors, administrators, successors and/or assigns, against every person whomsoever claiming or to claim the same or any part thereof, by, through or under us, but not otherwise.

Current ad valorem taxes on said property having been prorated, the payment thereof is assumed by Grantee.

EXECUTED this _____ day of August, 2012.

**COLORADO RIVER MUNICIPAL WATER
DISTRICT**

By: JIM PURCELL
Its: President

Grantee's Address:

P.O. Box 1152
Midland, Texas 79702

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

The foregoing instrument was acknowledged before me on the _____ day of August, 2012,
by Jim Purcell, President of Colorado River Municipal Water District.

NOTARY PUBLIC IN AND FOR:
THE STATE OF TEXAS

For a 43.88 acre tract commonly known as the "City of Midland Water Treatment Plant" in the City of Midland, Texas and located in the southwest quarter of Block "X" H.P. Hilliard Survey Section 5, Midland County, Texas and being more fully described as follows;

Beginning at a found metal fence corner post in the south line of Bluebird Lane and the west line of John P. Butler Park for the northeast corner of the herein described tract and having a coordinate of $X = 1,735,636.58$ ft., $Y = 10,709,532.81$ ft., a $\frac{1}{2}$ " iron rod found for the northeast corner of said Butler park in the west line of a 20 ft. alley bears $N 75^{\circ} 41' 26''$ E a distance of 1209.56 ft.,

Thence along a chain link fence for the east line of the herein described tract same being the west line of said Butler Park as follows;

S $58^{\circ} 31' 13''$ E a distance of 25.69 ft. to a metal fence post,

S $14^{\circ} 31' 21''$ E a distance of 440.68 ft. to a metal fence post,

S $37^{\circ} 50' 20''$ E a distance of 107.74 ft. to a metal fence post and

S $14^{\circ} 28' 50''$ E a distance of 706.39 ft. to a found metal fence corner post for the southeast corner of the herein described tract in the north line of a 20 ft. alley,

Thence S $75^{\circ} 41' 25''$ W along a chain link fence and the north line of said alley a distance of 1313.34 ft. to a found metal fence corner post in same,

Thence N $13^{\circ} 55' 46''$ W along a chain link fence a distance of 29.42 ft. to a found metal fence corner post,

Thence S $75^{\circ} 42' 56''$ W along a chain link fence a distance of 39.84 ft. to a found metal fence corner post,

Thence S $15^{\circ} 09' 26''$ E along a chain link fence a distance of 29.62 ft. to a found metal fence corner post in the north line of said alley,

Thence S $75^{\circ} 45' 54''$ W along a chain link fence and the north line of said alley a distance of 180.73 ft. to a found metal fence corner post in same for the southwest corner of the herein described tract and also in the east line of Midland Drive,

Thence N $14^{\circ} 28' 54''$ W along a chain link fence and said east line a distance of 1094.37 ft. to a metal fence post,

Thence N $11^{\circ} 23' 18''$ W along a chain link fence a distance of 149.31 ft. to a metal fence post,

Thence N $27^{\circ} 03' 49''$ E along a chain link fence a distance of 26.87 feet to a found metal fence post in the south line of said Bluebird Lane,

Thence N $75^{\circ} 40' 08''$ E along a chain link fence and the south line of said Bluebird Lane a distance of 1010.07 ft. to a metal fence post in same,

Thence S $16^{\circ} 52' 35''$ E along a chain link fence a distance of 48.0 ft. to a metal fence post,

Thence N $75^{\circ} 40' 08''$ E a distance of 55.0 ft. to a point,

Thence N $16^{\circ} 52' 35''$ W a distance of 48.0 ft. to a point in the south line of said Bluebird Lane,

Thence N $75^{\circ} 40' 08''$ E along the south line of said Bluebird Lane a distance of 381.46 ft. to the place of beginning and containing 43.88 acres.

Bearings, distances and coordinates are based on the Texas State Coordinate System, Central Zone, NAD 83.



Richard A. Shelton 7-11-12
 Richard A. Shelton, RPLS
 City of Midland, Texas
 432-685-7295



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/28/2012

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Consider a Resolution Authorizing the Execution of a Bill of Sale Conveying the Appurtenances Associated with the 15 million gallon Raw Water Reservoir located on the Water Purification Plant Site from the Colorado River Municipal Water District to the City of Midland

Purpose:

Consider a Resolution authorizing the execution of a Bill of Sale conveying the appurtenances associated with the 15 million gallon Raw Water Reservoir located on the Water Purification Plant site from the Colorado River Municipal Water District to the City of Midland

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No Fiscal Impact

Discussion:

The Colorado River Municipal Water District, CRMWD, also installed piping and valves when the 15 million gallon reservoir located on the Water Purification Plant site was built. This will transfer ownership of all of those pipes and valves to the City of Midland. The cost of these items is included in the cost of the reservoir.

This is the third of four items necessary for this transaction.

RESOLUTION NO.

**RESOLUTION APPROVING A BILL OF SALE
CONVEYING TO THE CITY OF MIDLAND ALL
APPURTENANCES ASSOCIATED WITH THE
PURCHASE OF THE FIFTEEN MILLION GALLON
RAW WATER RESERVOIR, LOCATED ON THE CITY'S
WATER PURIFICATION PLANT SITE, FROM THE
COLORADO RIVER MUNICIPAL WATER
AUTHORITY; AND ORDERING RECORDATION BY
THE CITY SECRETARY**

WHEREAS, the Council finds it to be in the public interest to approve a Bill of Sale conveying to the City of Midland, all appurtenances associated with the purchase of the fifteen million gallon raw water reservoir, located on the City's Water Purification Plant site, from the Colorado River Municipal Water Authority;

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

SECTION ONE. That the Bill of Sale conveying to the City of Midland, all appurtenances associated with the purchase of the fifteen million gallon raw water reservoir, located on the City's Water Purification Plant site, from the Colorado River Municipal Water Authority is hereby approved, an un-executed copy of said Bill of Sale 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 the duly executed Bill of Sale referenced herein in the Deed Records of Midland County, Texas.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Stuart Purvis, Director of Utilities

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

GF AB00010 bmr/wp

BILL OF SALE

THE STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF MIDLAND §

THAT the undersigned, **COLORADO RIVER MUNICIPAL WATER DISTRICT**, ("SELLER"), for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed; does hereby **GRANT, BARGAIN, SELL AND TRANSFER to THE CITY OF MIDLAND TEXAS, A TEXAS HOME RULE MUNICIPAL CORPORATION("PURCHASER")**, whose mailing address is: P.O. Box 1152 , Midland, Texas 79702, their heirs and assigns, all of that certain equipment, flowlines, pipes and their fittings, valves, controls, electronics, computer hardware and software, telecommunication lines and equipment, water servicing control and impoundment gear, and containment equipment, all located on or under the following described real property located in Midland County, Texas, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES.

TO HAVE AND TO HOLD, all and singular, the said personal property to Purchaser, to their own use forever.

The Seller hereby binds itself, its successors, heirs and assigns, to warrant and defend the title to all of the herein described property unto Purchaser, their heirs, successors and assigns forever against every person whomsoever lawfully claiming or to claim such herein described property or any part thereof.

WITNESS EXECUTION HEREOF this the _____ day of August, 2012.

**COLORADO RIVER MUNICIPAL
WATER DISTRICT**

By: _____
Jim Purcell, President

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

This instrument was acknowledged before me on this the _____ day of August, 2012, by Jim Purcell, President of the COLORADO RIVER MUNICIPAL WATER DISTRICT.

Notary Public in and for
The State of Texas

Field Notes

For a 43.88 acre tract commonly known as the "City of Midland Water Treatment Plant" in the City of Midland, Texas and located in the southwest quarter of Block "X" H.P. Hilliard Survey Section 5, Midland County, Texas and being more fully described as follows;

Beginning at a found metal fence corner post in the south line of Bluebird Lane and the west line of John P. Butler Park for the northeast corner of the herein described tract and having a coordinate of X= 1,735,636.58 ft., Y= 10,709,532.81 ft., a ½" iron rod found for the northeast corner of said Butler park in the west line of a 20 ft. alley bears N 75° 41' 26" E a distance of 1209.56 ft.,

Thence along a chain link fence for the east line of the herein described tract same being the west line of said Butler Park as follows;

S 58° 31' 13" E a distance of 25.69 ft. to a metal fence post,

S 14° 31' 21" E a distance of 440.68 ft. to a metal fence post,

S 37° 50' 20" E a distance of 107.74 ft. to a metal fence post and

S 14° 28' 50" E a distance of 706.39 ft. to a found metal fence corner post for the southeast corner of the herein described tract in the north line of a 20 ft. alley,

Thence S 75° 41' 25" W along a chain link fence and the north line of said alley a distance of 1313.34 ft. to a found metal fence corner post in same,

Thence N 13° 55' 46" W along a chain link fence a distance of 29.42 ft. to a found metal fence corner post,

Thence S 75° 42' 56" W along a chain link fence a distance of 39.84 ft. to a found metal fence corner post,

Thence S 15° 09' 26" E along a chain link fence a distance of 29.62 ft. to a found metal fence corner post in the north line of said alley,

Thence S 75° 45' 54" W along a chain link fence and the north line of said alley a distance of 180.73 ft. to a found metal fence corner post in same for the southwest corner of the herein described tract and also in the east line of Midland Drive,

Thence N 14° 28' 54" W along a chain link fence and said east line a distance of 1094.37 ft. to a metal fence post,

Thence N 11° 23' 18" W along a chain link fence a distance of 149.31 ft. to a metal fence post,

Thence N 27° 03' 49" E along a chain link fence a distance of 26.87 feet to a found metal fence post in the south line of said Bluebird Lane,

Thence N 75° 40' 08" E along a chain link fence and the south line of said Bluebird Lane a distance of 1010.07 ft. to a metal fence post in same,

Thence S 16° 52' 35" E along a chain link fence a distance of 48.0 ft. to a metal fence post,

Thence N 75° 40' 08" E a distance of 55.0 ft. to a point,

Thence N 16° 52' 35" W a distance of 48.0 ft. to a point in the south line of said Bluebird Lane,

Thence N 75° 40' 08" E along the south line of said Bluebird Lane a distance of 381.46 ft. to the place of beginning and containing 43.88 acres.

Bearings, distances and coordinates are based on the Texas State Coordinate System, Central Zone, NAD 83.



Richard A. Shelton 7-11-12
Richard A. Shelton, RPLS
City of Midland, Texas
432-685-7295

File# AB00010

**LONE STAR ABSTRACT & TITLE CO., INC.
ABTRACTOR'S CERTIFICATE**

THE STATE OF TEXAS }

COUNTY OF MIDLAND }

LONE STAR ABSTRACT & TITLE CO., INC. does hereby certify that they have checked all instruments of record or filed for record in Midland County, Texas, from and including March 15, 1967, at 8:00 o'clock a.m. down through July 24, 2012, affecting the title to:

For a 43.88 acre tract commonly known as the "City of Midland Water Treatment Plant" in the City of Midland, Texas and located in the southwest quarter of Block "X" H.P. Hilliard Survey Section 5, Midland County, Texas and being more fully described as follows; Beginning at a found metal fence corner post in the south line of Bluebird Lane and the west line of John P. Butler Park for the northeast corner of the herein described tract and having a coordinate of X= 1,735,636.58 ft., Y= 10,709,532.81 ft., to a 1/2" iron rod found for the northeast corner of said Butler park in the west line of a 20 ft. alley bears N 75° 41' 26" E a distance of 1209.56 ft.,

Thence along a chain link fence for the east line of the herein described tract same being the west line of said Butler Park as follows;

**S 58° 31' 13" E a distance of 25.69 ft. to a metal fence post,
S 14° 31' 21" E a distance of 440.68 ft. to a metal fence post,
S 37° 50' 20" E a distance of 107.74 ft. to a metal fence post and
S 14° 28' 50" E a distance of 706.39 ft. to a found metal fence corner post for the southeast corner of the herein described tract in the north line of a 20 ft. alley,**

Thence S 75° 41' 25" W along a chain link fence and the north line of said alley a distance of 1313.34 ft. to a found metal fence corner post in same,

Thence N 13° 55' 46" W along a chain link fence a distance of 29.42 ft. to a found metal fence corner post,

Thence S 75° 42' 56" W along a chain link fence a distance of 39.84 ft. to a found metal fence corner post,

Thence S 15° 09' 26" E along a chain link fence a distance of 29.62 ft. to a found metal fence corner post in the north line of said alley,

**Thence S 75° 45' 54" W along a chain link fence and the north line of said alley a distance of 180.73 ft. to a found metal fence corner post in same for the southwest corner of the herein described tract and also in the east line of Midland Drive,
Thence N 14° 28' 54" W along a chain link fence and said east line a distance of 1094.37 ft. to a metal fence post,
Thence N 11° 23' 18" W along a chain link fence a distance of 149.31 ft. to a metal fence post,
Thence N 27° 03' 49" E along a chain link fence a distance of 26.87 feet to a found metal fence post in the south line of said Bluebird Lane,
Thence N 75° 40' 08" E along a chain link fence and the south line of said Bluebird Lane a distance of 1010.07 ft. to a metal fence post in same,
Thence S 16° 52' 35" E along a chain link fence a distance of 48.0 ft. to a metal fence post,
Thence N 75° 40' 08" E a distance of 55.0 ft. to a point,
Thence N 16° 52' 35" W a distance of 48.0 to a point in the south line of said Bluebird Lane,
Thence N 75° 40' 08" E along the south line of said Bluebird Lane a distance of 381.46 ft. to the place of beginning and containing 43.88 acres.**

and find title vested in Fee Simple in:

City of Midland, Texas

SUBJECT TO:

- Warranty Deed executed by J.B. Ashmun, H.T. Hilliard and Joseph I. O'Neill, Jr. to The City of Midland, a home rule municipal corporation, dated March 13, 1967, and recorded March 15, 1967, in Volume 479, Page 265, Deed Records of Midland County, Texas.

NAME CHECK:

City of Midland, Texas

and except as herein shown, we have discovered no liens, suits pending, mortgages, judgments or other instruments of record or filed for record in Midland County, Texas, affecting the title to said above described real estate, during said time.

This certificate does not include nor does it cover any easements, right of way, pipelines, restrictions, covenants or other matters that run with the land. This certificate does not cover any matters that pertain to mineral reservations, exceptions, royalty interest, working interests or any matter that pertains to the mineral or subsurface estate.

This certificate does not cover any matters pertaining to rights of parties in possession and is issued with the express understanding, evidenced by acceptance of same, that the undersigned does not undertake to give or express any opinion as to the validity of the title herein described, but is simply reporting hereby as to the recitals of instruments found of record and that the undersigned will incur no liability by reason of the issuance, delivery and/or use of this certificate. Notice is hereby given pursuant to Section 17.506 of the Texas Deceptive Trade Practices Act. Lone Star Abstract & Title Co., Inc. hereby notifies the deliverer or user of this certificate that Lone Star Abstract & Title Co., Inc. has prepared this Abstractor's Certificate (written information) from official government records or some other source and that Lone Star Abstract & Title Co., Inc. is relying on this information in the preparation and delivery of this Abstractor's Certificate. The deliverer or user of this certificate expressly waives the right to sue the undersigned based on liability under tort law, contract law, or the Texas Deceptive Trade Practices Act.

Deliverer or user of this certificate, by acceptance of same, undertakes to indemnify and hold harmless Lone Star Abstract & Title Co., Inc., its successors and/or assigns, from any and all claims as a result of the failure whatsoever in the title of said property. It is the intention of the parties hereto that Lone Star Abstract & Title Co., Inc. shall prepare an Abstractor's Certificate covering the property herein and shall do nothing else. Lone Star Abstract & Title Co., Inc. makes no other representations either impliedly or expressly.

WITNESS OUR HAND at Midland, Texas, this the 1st day of August, 2012.

LONE STAR ABSTRACT & TITLE CO., INC.



TROY MCKAY
VICE PRESIDENT &
ABSTRACT MANAGER



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/28/2012

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Consider a Resolution Authorizing the Execution of a Memorandum of Agreement with the Colorado River Municipal Water District for Modifications to the 15 million gallon Raw Water Reservoir located on the Water Purification Plant Site Necessary for the Transfer of Ownership.

Purpose:

Consider a Resolution authorizing the execution of a Memorandum of Agreement with the Colorado River Municipal Water District for modifications to the 15 million gallon Raw Water Reservoir located on the Water Purification Plant site necessary for the transfer of ownership.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No fiscal impact.

Discussion:

The purchase of the Raw Water Reservoir and associated piping will require the relocation of the flow meter to the property boundary. It will also require assurances that the current communications, including the levels of the reservoir and the position of the valve, will continue to be communicated to the District. These items have been accounted for in the Raw Water Project.

This is the fourth of four items necessary for the transfer of this reservoir.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
MEMORANDUM OF AGREEMENT WITH THE
COLORADO RIVER MUNICIPAL WATER DISTRICT
("CRMWD") ASSOCIATED WITH THE WATER
SUPPLY CONTRACT EXECUTED WITH CRMWD IN
1966, AS AMENDED**

WHEREAS, the Council finds it to be in the public interest to authorize the execution of a Memorandum of Agreement with the CRMWD associated with the Water Supply Contract executed with CRMWD in 1966;

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

THAT the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a Memorandum of Agreement with the CRMWD, said Memorandum of Agreement being attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Stuart Purvis, Director of Utilities

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**MEMORANDUM OF AGREEMENT
BETWEEN THE
CITY OF MIDLAND, TEXAS
AND THE
COLORADO RIVER MUNICIPAL WATER DISTRICT**

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

THIS AGREEMENT (hereinafter called the "AGREEMENT") made and entered into this ____ day of August 2012, by and between the Colorado River Municipal Water District (the "District"), a conservation and reclamation district and political subdivision of the State of Texas and the City of Midland (the "City") a municipal corporation in Midland County, Texas.

WITNESSETH

WHEREAS, the District and the City are parties to that certain Water Supply Contract (the "Contract") dated May 10, 1966; and

WHEREAS, the District under said Contract built certain facilities to provide raw water to the City; and

WHEREAS, the City is upgrading the facilities at its water treatment plant to better serve its citizens; and

WHEREAS, the City desires to acquire a portion of the facilities constructed by the District under the Contract to incorporate into the City's Water Treatment plant upgrades; and

WHEREAS, the District has determined that the facilities that the City wants to acquire are solely for the purpose of supplying water to the City and are surplus to the District's overall operation.

WHEREAS, under separate documents including a Second Amendment to the Water Supply Contract, Special Warranty Deed and Bill of Sale all dated the ____ day of August 2012 the City and District have made certain agreements including the transfer of certain facilities constructed by District to the City; and

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the District and the City agree as follows:

The City will provide and install a new flow meter, meter vault, 30-inch butterfly valve and 30-inch pipe as required for Raw Water Meter Vault No.4 (the "Meter") as shown on **Figure 1**. The City will transfer ownership of the Meter to the

District upon completion. The Meter shall become the property of the District and the new Point of Delivery for water delivered under the Contract.

The flow meter shall be of a type acceptable to the District, and shall be accurate to $\pm 2\%$ of the actual flow rate from 0 to 18 million gallons per day. City will also make available 120 VAC power within the vault for the District's telemetry equipment.

The City will provide ingress and egress to Meter location so that District personnel may read, calibrate and maintain the meter as needed. City shall modify the existing fence around the Water Treatment Plant to allow District personnel to have outside access to the Meter location from Bluebird Lane.

The City shall modify the existing reservoir inlet structure by reducing the elevation of the internal baffle (weir elevation) to elevation 2834.50 feet MSL.

The District shall pump water directly into the reservoir under normal conditions. The existing valve connecting the incoming 30-inch pipeline with the Water Treatment Plant shall remain closed unless there is an emergency. Should such an emergency occur the City shall notify the District regarding the nature of the emergency and its expected duration prior to opening the valve to take the water directly into the water treatment plant.

City will provide the District a location mutually agreeable to both the City and District within the grounds of the Water Treatment Plant for the District to install and maintain a telemetry station. This telemetry station may include a small antenna tower, an equipment box and electronic equipment for gathering and transmitting SCADA signals. City will provide ingress and egress for District personnel to access this telemetry station. City will provide a 4-20 mA signal to the District, proportional to the water elevation in the reservoir, as one of these signals. City shall also make nominal 120 VAC power available to the District for this telemetry station.

City shall provide reasonable written notice to the District prior to conducting any significant modifications or upgrades to the Water Treatment Plant that may affect the District's delivery operations. City and District will coordinate such changes to minimize potential adverse effects on the water delivery process.

IN WITNESS WHEREOF, the parties hereto, acting under authority of their respective governing bodies, have caused this Agreement to be duly executed in several counterparts, each of which shall constitute a duplicate original, all as of the day and year first above written.

THE CITY OF MIDLAND, TEXAS

By _____
Wes Perry, Mayor

ATTEST:

City Secretary

**THE COLORADO RIVER
MUNICIPAL WATER DISTRICT**

By _____
Jim R. Purcell, President

ATTEST:

James T. Weaver, Secretary-Treasurer



① NEW POINT OF DELIVERY
② WEIR ELEVATION 2834.50 FEET MSL
③ NORMALLY CLOSED EXCEPT FOR EMERGENCIES





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 28, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by Andrew Mellen for a zone change from PD, Planned District for a Housing Development to Amended Planned District. (Generally located on the east side of Loop 250, between Graceland and Leisure Drive.)

Purpose:

Consider an ordinance on second reading on a request by Andrew Mellen for a zone change from PD, Planned District for a Housing Development to Amended Planned District. No changes have occurred since first reading.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

In 2011, the City Council rezoned this 9.5 acre tract from MF-1 District to Planned District for a Housing Development to allow an increase in density from 16 to 21 dwelling units per acre. Site plan approval is also required prior to any development. We have received this application along with the attached Exhibits A and B to satisfy the site plan review requirement. Exhibit A is a plan view showing nine buildings and 200 dwelling units. The overall density is 21 units per acre. There is no access to Loop 250. The principle access will be from Beal Parkway, with secondary driveways on Leisure and Graceland Drives. A 5,000 square foot office and club house is planned, along with a swimming pool and other outdoor space. Internal driving aisles meet the minimum width requirement of 26 feet required by the Fire Department. Building setbacks meet or exceed the requirements set in the Zoning Code. Two detention basins on the east side of the lot will increase the setback adjacent to the zoned but vacant residential land on the east side of Beal Parkway.

Exhibit B includes elevation views of the apartments. Both two and three story apartments are planned, with a maximum roof ridge height of 38 feet (50 feet is allowed). Exterior building materials include brick veneer, stone, horizontal siding and glazing. Both hip and gable roof designs are planned with composition shingles on the roof. The Planning and Zoning Commission recommended unanimous approval of this request, and no opposition was noted. The staff finds this request to be consistent with recent apartment approvals.

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1, BLOCK 161, WILSHIRE PARK ADDITION, SECTION 9, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF LOOP 250, BETWEEN LEISURE DRIVE AND GRACELAND DRIVE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of an Amended Planned District, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned PD, Planned District for a Housing Development, and it shall be used as an Amended Planned District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

Lot 1, Block 161, Wilshire Park Addition, Section 9, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That the development of this property with multi-family dwelling units shall conform to the site plans attached hereto and incorporated herein as Exhibits “A” and “B”, except as otherwise stated below.
2. That the development of this property shall conform to the City of Midland Sign Code, Outdoor Lighting Code and Landscaping Code.
3. That no driveways onto the Loop 250 service road shall be allowed.
4. That a screening fence shall be constructed between the west property line and the Loop 250 right-of-way line prior to the issuance of a Certificate of Occupancy. Said fence shall be constructed of masonry with a minimum height of six feet, with masonry pilasters spaced at 40-foot intervals. The masonry shall be a product manufactured by Fence-Crete or an equivalent product and shall be tan in color.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance

with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the ____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS ____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

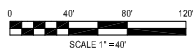
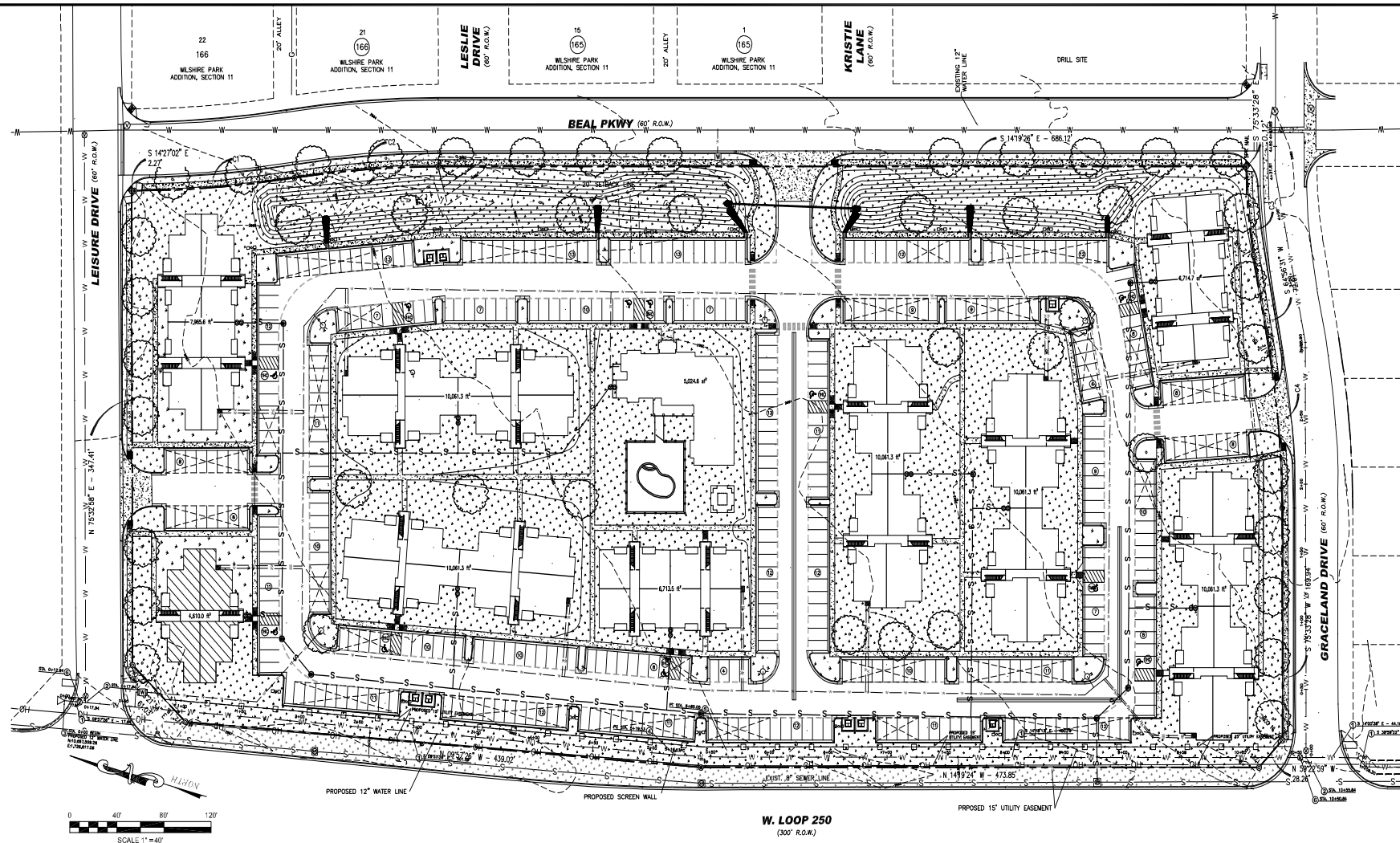
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



LEGEND

⊙	DECKS FOUND 1/2" HIGH NON RED W/ND PLASTIC CAP W/IMPED "NEST COL MOUNT"
⊙	DECKS FOUND W/IMPED AS NOTED
⊙	DECKS SHOWN ON "X"
⊙	DECKS POWER POLE
⊙	DECKS POWER MANHOLE
⊙	DECKS PROPERTY LINE
—	DECKS OVERHEAD ELECTRIC LINE
—	DECKS SEWER LINE
—	EXISTING WATER LINE
—	DECKS PROPOSED SCREEN WALL
—	DECKS PROPOSED WATER LINE
—	DECKS PROPOSED SEWER LINE
—	DECKS PROPOSED WATER SERVICE LINE
—	DECKS PROPOSED SEWER SERVICE LINE
⊙	PROPOSED WATER METER
⊙	PROPOSED SEWER CLEANOUT
⊙	PROPOSED FIRE HYDRANT
⊙	PROPOSED WATER VALVE
⊙	PROPOSED SEWER VALVE
⊙	PROPOSED SEWER MANHOLE
⊙	PROPOSED CONCRETE
⊙	PROPOSED ON SITE LANDSCAPE
⊙	PROPOSED OFF SITE LANDSCAPE
⊙	DECKS PROPOSED LIGHTING
⊙	DECKS PROPOSED TREE
⊙	DECKS NUMBER OF PARKING SPACES

CURVE TABLE

CURVE	RADIUS	DELTA	ARC	BEARING	CHORD
C1	1015.66'	07°41'33"	136.26'	S 18°17'49" E	136.26'
C2	896.78'	07°49'09"	122.38'	S 18°14'01" E	122.29'
C3	352.29'	10°36'59"	65.27'	S 70°15'00" W	65.18'
C4	615.79'	10°36'59"	114.09'	N 70°14'59" E	113.93'

INGRESS & EGRESS

- BEAL PARKWAY TO BE EXTENDED FROM LEISURE DR. TO GRACELAND DR. LENGTH OF BEAL PARKWAY BEING IMPROVED IS APPROXIMATELY 950 FEET.
- MAIN ENTRANCE WILL BE A 30' DRIVEWAY OFF OF BEAL PARKWAY.
- A NORTHERN ENTRANCE WILL BE PROVIDED BY A 24' DRIVEWAY OFF OF LEISURE DRIVE.
- A SOUTHERN ENTRANCE WILL BE PROVIDED BY A 24' DRIVEWAY OFF OF GRACELAND DRIVE.

DRAINAGE

ALL ON SITE DRAINAGE FROM THE SITE WILL BE CONVEYED BY SURFACE FLOW TO FOUR BASINS BEING CONSTRUCTED ALONG THE EAST SIDE OF THE PROPERTY. OUTFALL FROM THE BASINS WILL BE VIA SHEET FLOW FROM THE SOUTHERNMOST INTO THE BEAL PARKWAY CURB AND GUTTER SYSTEM. DRAINAGE WILL BE DESIGNED IN COMPLIANCE WITH THE CITY OF MIDLAND STORM DRAINAGE DESIGN MANUAL.

LANDSCAPE

- PER CITY OF MIDLAND ORDINANCE, MINIMUM LANDSCAPE AREA = 10% OF LOT AREA LESS STRUCTURE FOOTPRINTS.
- TOTAL LOT AREA = 413,929.72 sq ft
- TOTAL STRUCTURE FOOTPRINT: 81,338.3 sq ft
- REQUIRED LANDSCAPE AREA: 33,249.1 sq ft
- PROVIDED LANDSCAPE AREA: 65,588.5 sq ft

SITE UTILITIES

NECESSARY UTILITIES ARE CURRENTLY IN PLACE. SOME ADDITIONAL IMPROVEMENTS TO EXISTING UTILITY INFRASTRUCTURE MAY BE REQUIRED BY THE CITY OF MIDLAND.

FIRE PROTECTION

A 26" WIDE FIRE LINE HAS BEEN PROVIDED AT THE FRONT OF ALL BUILDINGS. THE FIRE LINE WILL BE IDENTIFIED BY PAINTED STRIPES AND CURBS PER THE CITY OF MIDLANDS REQUIREMENTS.

SIDEWALKS

FOUR-FOOT WIDE SIDEWALKS WILL BE CONSTRUCTED ONE FOOT OFF OF THE PROPERTY LINE ALONG LEISURE DRIVE, BEAL PARKWAY, AND GRACELAND DRIVE PROPERTY FRONTAGE.

BUILDING SETBACKS

BUILDING SETBACK DISTANCES OF 20 FEET FROM THE PROPERTY LINE WILL BE OBSERVED ALONG W. LOOP 250, LEISURE DRIVE, BEAL PARKWAY, AND GRACELAND DRIVE ROAD FRONTAGES.

BUILDING HEIGHTS

A MAXIMUM BUILDING HEIGHT OF 38 FEET WILL BE OBSERVED.

TRASH ENCLOSURES

TRASH DUMPSTERS TO BE PLACED AS SHOWN. ENCLOSURES TO BE BUILT OF FENCE-CRETE OR CMU, AND WILL MATCH DESIGN OF SCREENING WALL.

PARKING SPACES

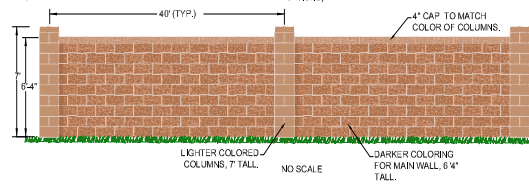
- REQUIRED:
- PER THE CITY OF MIDLANDS PARKING REQUIREMENTS: 2 SPACES FOR EACH DWELLING UNIT IN A ONE-FAMILY RESIDENCE AND 2 SPACES FOR EACH TWO-FAMILY OR APARTMENT UNIT.
 - 200 UNITS @ 2 SPACES / UNIT = 400 REQUIRED SPACES
- PROVIDED:
- 406 REGULAR PARKING
 - 10 HANDICAP PARKING
 - 416 TOTAL PARKING

TREE REQUIREMENTS

- 1 TREE FOR EVERY 30 LINEAR FOOT STREET
- 1 TREE FOR EVERY 15 PARKING SPACES
- 385 LINEAR FOOT OF LEISURE DRIVE: 13 TREES
- 917 LINEAR FOOT OF BEAL PARKWAY: 31 TREES
- 918 LINEAR FOOT OF LOOP 250: 31 TREES
- 406 PARKING SPACES: 20 TREES
- TOTAL REQUIRED: 94 TREES
- PROVIDED: 47 TREES
- 47 TREES TO BE BUNKED WITH THE CITY OF MIDLAND TREE FUND.

PROPOSED SCREENING WALL

A SCREENING WALL IS TO BE CONSTRUCTED BETWEEN THE APARTMENT COMPLEX AND THE W. LOOP 250 SERVICE ROAD. WALL IS PROPOSED TO BE CONSTRUCTED OUT OF FENCE-CRETE PRE-CAST CONCRETE FENCE PANELS. (WWW.FENCECRETE.COM FOR PRODUCT GALLERY AND SPECIFICATIONS).



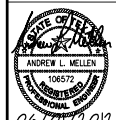
FEMA FIRM INFORMATION

COMMUNITY NUMBER	PANEL NUMBER	SUFFIX	DATE OF FIRM	FIRM ZONE	BASE FLOOD ELEVATION
480477	182	F	9/16/2005	X	n/a

CURRENTLY, FEMA MAP 48329C0180Z DOES NOT INCLUDE BASE FLOOD ELEVATIONS FOR THIS AREA.

SITE PLAN

MESQUITE TERRACE APARTMENTS
LOT 1, BLOCK 161, WILSHIRE PARK, SECTION 9
MIDLAND, TEXAS



NO.	DATE	BY	DATE	REVISIONS
1	2012-08-24	ALM		
2	2012-08-24	ALM		
3	2012-08-24	ALM		
4	2012-08-24	ALM		
5	2012-08-24	ALM		
6	2012-08-24	ALM		
7	2012-08-24	ALM		
8	2012-08-24	ALM		
9	2012-08-24	ALM		
10	2012-08-24	ALM		



FRONT ELEVATION - BLDG. TYPE II

BUILDING # 2

MATERIAL LEGEND	
(A)	BRICK ACME RAVENS CREEK
(B)	STONE ACME AUTUMN BLEND CHOPPED
(C)	SIDING (PATIO, BALC, BRZWy) SW 6114 BAGEL
(D)	SIDING SW 6117 SMOKEY TOPAZ
(E)	ROOF - COMP. SHINGLE BARKWOOD
(F)	FASCIA, DOORS AND TRIM SW 6076 TURKISH COFFEE
(G)	PARAPET BAND AND COLUMNS SW 2833 ROYCROFT VELLUM



FRONT ELEVATION - BLDG. TYPE I

BUILDINGS # 5,9

12 JUL12

ARCHON CORPORATION
ARCHITECTURE / PLANNING
2929 CARLISLE STREET
SUITE 130 - DALLAS, TX
75204 214/526-0731

MESQUITE TERRACE APARTMENTS

SENIOR HOUSING

200 UNITS

MIDLAND, TEXAS

PLANNING AND ZONING COMMISSION

July 16, 2012

CASE: Z-12-020.

REQUEST: Hold a public hearing and consider a request for a zone change from PD, Planned District for a Housing Development to Amended Planned District.

APPLICANT: Andrew Mellen.

OWNER: G. Granger MacDonald.

REPRESENTATIVE: West Company of Midland.

LEGAL DESCRIPTION: Lot 1, Block 161, Wilshire Park Addition, Section 9, City and County of Midland, Texas.

LOCATION: East side of Loop 250, between Leisure and Graceland Drives.

CURRENT ZONING: PD, Planned District for a Housing Development.

DETAILS OF REQUEST:

1. The City Council recently rezoned this property from MF-1 District to a Planned District for a Housing Development, subject to the regulations of the MF-1 District, except that the density was increased from 16 to 21 dwelling units per acre. Additionally, a site plan must be approved prior to the issuance of a building permit. The owner wishes to construct 200 apartment units on this site, and has submitted the attached Exhibits A and B to conform to the planned district conditions.

SURROUNDING ZONING AND LAND USE:

2. This property is located adjacent to the northbound service road of Loop 250, between Leisure and Graceland Drives. Much of the frontage of Loop 250 was rezoned in 1995 to promote new growth, but it has been slow in developing. The predominant zoning classification is Planned District for Shopping Centers, subject to retail district regulations and site plan approval. The land to the east is zoned for single-family use, and Beal Parkway provides a transition between the business and residential districts. A zone change to allow townhouse construction two blocks to the south is still pending.

ANALYSIS:

3. Exhibit A is a plan view of this proposed development. No driveway access is planned from Loop 250, a condition that the staff supports. The main entrance will be from Beal Parkway, which the applicant will construct from the current southern terminus to Leisure Drive. One driveway each is planned on Leisure Drive and Graceland Drive. All driveways must conform to Midland design standards. Nine separate buildings with a maximum of 200 dwelling units are proposed. This places the density at 21.0 units per acre, consistent with the Planned District requirements. Additionally, a 5,000 square foot office and club house, a swimming pool and other outdoor space is planned. A note on Exhibit A states that all drive aisles will be at least 26 feet wide, which is the minimum width required by the Fire Code. Another note states that the minimum building setback line will be 20 feet from all four abutting streets. However, the fence along Loop 250 is only 15 feet from the property line. Given the landscaping buffer shown between the fence and the Loop 250, staff has no objection. Exhibit A also shows two detention basins on the east side of the property, which will increase the building setback to 130 feet, except for the extreme northeast and southeast lot corners. This additional separation will improve the transition to the single-family area to the east. The minimum building setback is listed on Exhibit A as 20 feet, which is consistent with the Zoning Code requirements. Exhibit A contains a table stating that 94 trees are required under the Landscape Code. The applicant intends to install half of these, and provide funding for the remaining trees through the Parks Endowment fund. Finally, the applicant proposes to construct a screening fence along Loop 250. This will be a six-foot tall solid fence constructed of precast fence panels, with pilasters placed every 40 feet. No other fencing is shown on the site plan.

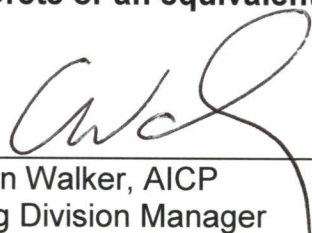
ELEVATION VIEWS:

4. Exhibit B illustrates a typical elevation view of the apartment buildings. The office/clubhouse will be a single story building, and the other apartments will be two and three stories tall, with a maximum building height of 38 feet. This is well below the maximum permitted height of 50 feet. Exterior building materials are listed as brick veneer, stone, horizontal siding and glazing. Both hip and gable roof designs will be covered with a composition shingle, except the clubhouse will have tile shingles. These materials are similar to those listed in recent applications of this nature.

STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from PD, Planned District for a Housing Development to Amended Planned District, subject to the following conditions:

- A. That the development of this property as multi-family dwelling units shall conform to the attached site plans, Exhibit A and B, in all respects, unless as otherwise stated below.
- B. The development of this property shall conform to the City of Midland Sign Code, Outdoor Lighting Code and Landscaping Code.
- C. No driveways onto Loop 250 shall be permitted.
- D. The screening fence located between the west property line and the Loop 250 right-of-way must be completed before the first Certificate of Occupancy is issued to this property. This fence shall be constructed of masonry with a minimum height of six feet, with masonry pilasters spaced every 40 feet. The specific material is a product manufactured by Fence-Crete or an equivalent, and shall be tan in color.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A and B

Case Number: Z-12-020

CITY OF MIDLAND
Planning Division

APPLICATION TO AMEND A PLANNED DISTRICT

Applicant: ANDREW L. MELLEN, JR.

Address: 110 W. LOUISIANA AVE., STE. 110 687-0865
Street Address (Phone/e-mail)
MIDLAND TEX 79701
City State Zip Code

Property Owner: G. GRANGER MACDONALD

Address: 2951 FALL CREEK RD.
Street Address (Phone/e-mail)
KERRVILLE TEX 78028
City State Zip Code

Street address and Legal Description of Planned District (complete Lot, Block, and Subdivision Name description below, or, if not in a recorded plat, attach a sealed Metes and Bounds Description:

LOT 1, BLOCK 161, WILSHIRE PARK, SECTION 9

Current PD Classification: PDHD

Requested PD Classification: PDHD
(List by tracts if more than one zoning district is requested)

Reason for amendment request: THE PROPERTY OWNER WISHED TO CONSTRUCT
AN APARTMENT COMPLEX ON THE SITE.

Describe how conditions affecting the property have changed since it was designated its present zone: THE PROPERTY OWNER HAS A SITEPLAN FOR THE PLANNED DISTRICT

Will a Specific Use Permit with Term for alcoholic beverage sales be needed? Yes X No

FEES:

Single, Planned District amendment: **\$550**. Multiple, PD proposal: add **\$75** per district.

SUBMITTALS:

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

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

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

Property Owner (signature): _____ Date: _____

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

STATE of TEXAS

COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

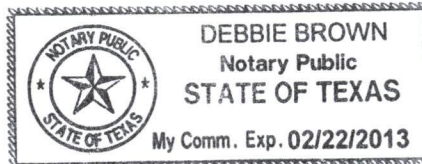
Andrew L. Mellen Jr. who, being by me duly sworn, upon oath says: That (s)he is authorized by Granger MacDonald, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Andrew L. Mellen Jr.
Authorized Agent (signature)

Subscribed and sworn to before me, this 25th day of May, 20 12, to certify which witness my hand and seal of office.

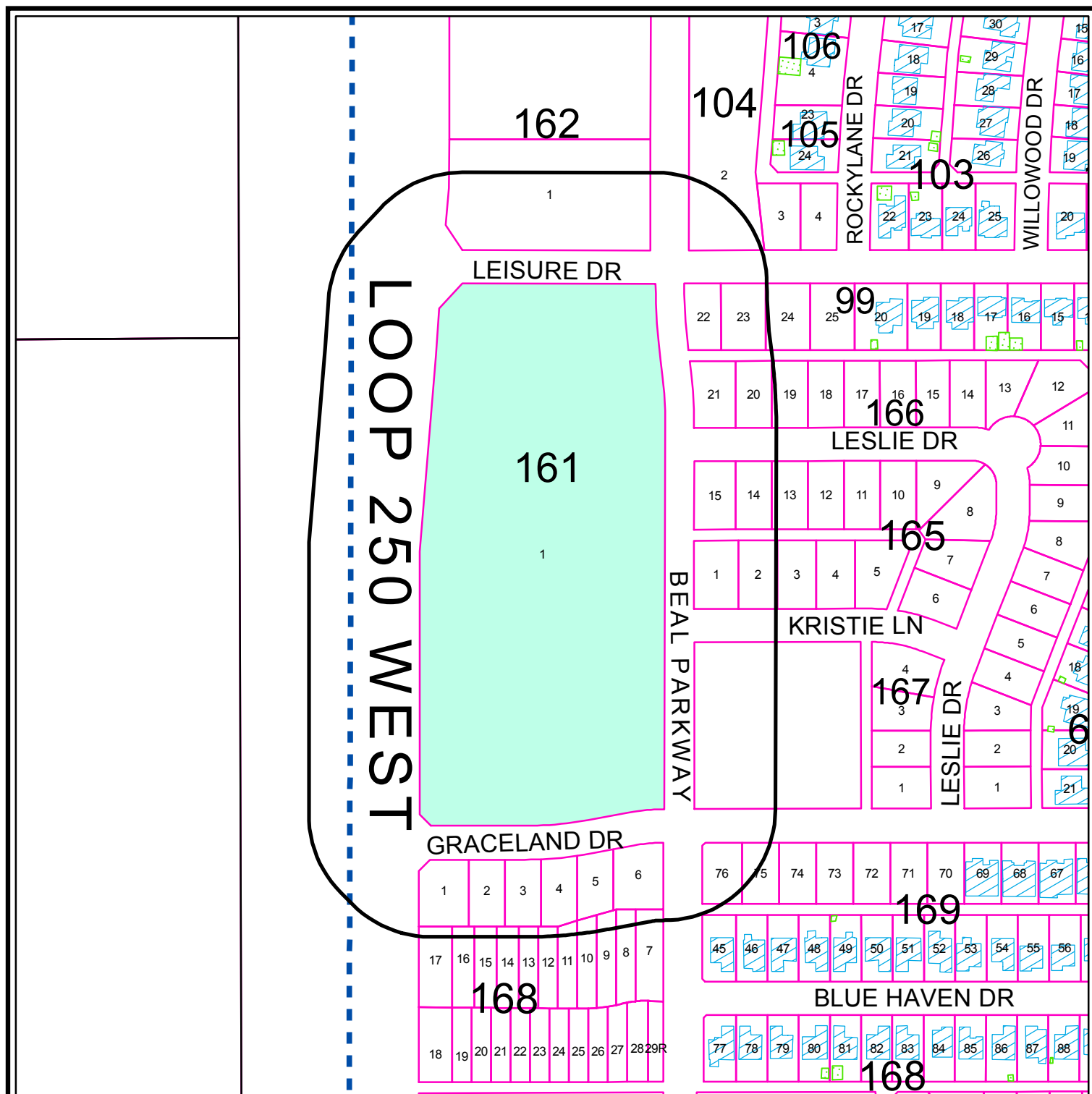
Debbie Brown
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>TS</u>	Date: <u>5/25/12</u>
Assigned: _____	
For: _____	On: _____



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

2012-0824
28.12



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 020

Scale: 1" = 250'

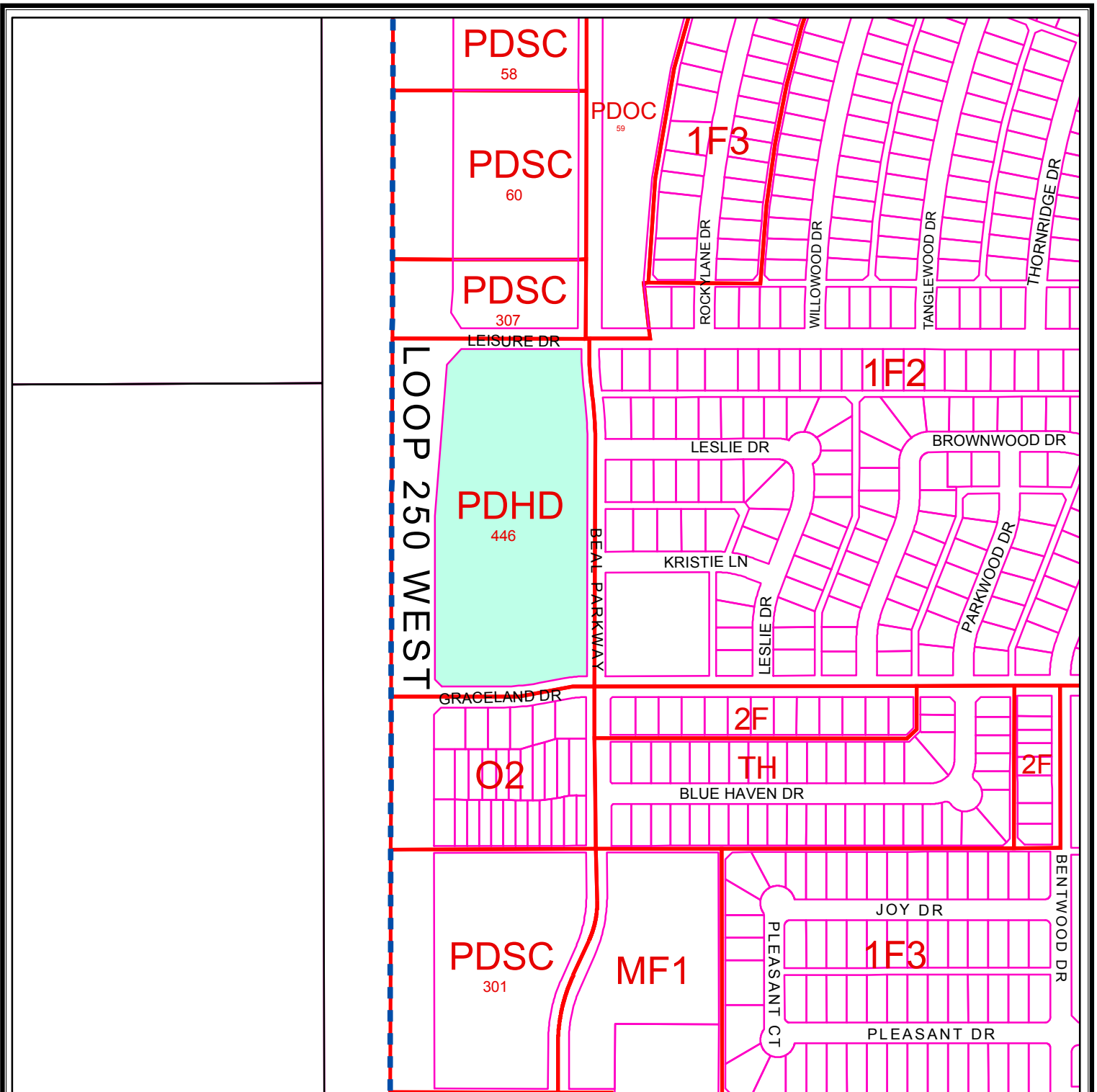
Consider a request for a zone change from PD, Planned District for a Housing Development, to an Amended Planned District on Lot 1, Block 161, Wilshire Park Addition, Section 9, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- COUNTY PARCEL
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 12 - 020

Scale: 1" = 400'

Consider a request for a zone change from PD, Planned District for a Housing Development, to an Amended Planned District on Lot 1, Block 161, Wilshire Park Addition, Section 9, City and County of Midland, Texas.

LEGEND

ZONING

CITY LIMITS

CITY PARCELS

COUNTY PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 28, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, AICP

SUBJECT: Consider an ordinance on second reading on a request by Barbara Ann Harris amending the zoning of Lot 4, Block 192, Southern Addition, City and County of Midland, Texas. (Generally located on the west side of S. Marshall Street, approximately 150 feet south of E. Florida Avenue.)

Purpose: Consider an ordinance on a second reading on a request by Barbara Ann Harris amending the zoning of Lot 4, Block 192, Southern Addition, City and County of Midland, Texas. No changes have occurred since first reading.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process this zone change.

Discussion:

This property is adjacent to a linear LR-3, Local Retail District that includes land on both sides of E. Florida Avenue.

This lot lies at the edge of the LR-3 District boundary. It is zoned 1F-2, One Family Dwelling District and it has been used as an automotive repair shop for over three decades. While the building(s) is currently vacant it would be extremely challenging to turn it into a residential use to conform to the current zoning. The use of the property has been non-residential for at least two generations of neighborhood residents, staff believes this amendment to the LR-3 District to include another lot is reasonable. The LR-3 District permits indoor retail sales as well as limited outdoor sales; however, due to the size of this lot outdoor sales and storage is less likely. No letters of objection have been received; the Planning and Zoning Commission recommends approval.

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 4, BLOCK 192, SOUTHERN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 1F-2, ONE-FAMILY DWELLING DISTRICT, TO BE USED AS AN LR-3, LOCAL RETAIL DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF MARSHALL STREET, APPROXIMATELY 150 FEET SOUTH OF EAST FLORIDA AVENUE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of Districts under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of an LR-3, Local Retail District, as set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned 1F-2, One-Family Dwelling District, and it shall be used as a LR-3, Local Retail District, said property being described as follows:

Lot 4, Block 192, Southern Addition, City and County of Midland, Texas.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are

used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the

following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

PLANNING AND ZONING COMMISSION

July 16, 2012

CASE: Z-12-021, Barbara Ann Harris.

STATUS: Hold a public hearing and consider a zone change.

APPLICANT/OWNER: Barbara Ann Harris.

LEGAL DESCRIPTION: Being Lot 4, Block 192, Southern Addition, City and County of Midland, Texas.

LOCATION: Generally located on the west side of S. Marshall Street, approximately 150 feet south of E. Florida Avenue.

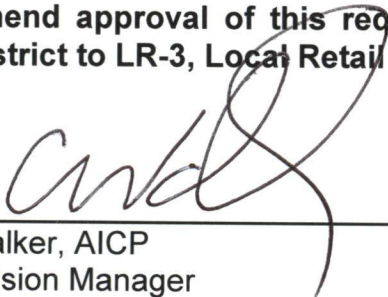
CURRENT ZONING: 1F-2, One Family Dwelling District.

DISCUSSION:

1. This property is adjacent to a linear LR-3, Local Retail District that includes land on both sides of E. Florida Avenue. The area has been developed with retail and office uses for decades. A City Fire Station is also in the vicinity.
2. The property being considered for rezoning lies at the edge of the LR-3 District boundary; this single lot is zoned 1F-2, One Family Dwelling District. It has been used as a service garage and automotive repair shop for over three decades. While the building(s) is currently vacant it would be extremely challenging to turn it into a residential use to match the current zoning. Since the development and use of the property has been non-residential for at least two generations of neighborhood residents, staff believes this amendment to the LR-3 District to include another lot is reasonable.

STAFF RECOMMENDATION:

We recommend approval of this request to approve a zone change from 1F-2, One Family Dwelling District to LR-3, Local Retail District.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Attachment:

Application
Maps

Case Number: Z-12-021

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Barbara Ann Harris 432-559-0033
Applicant Name (Phone/e-mail)
408 ECR 127 Midland, TX 79706
Address Zip Code

Barbara Ann Harris (Executrix) 432-559-0033
Property Owner Name (Phone/e-mail)
408 ECR 127 Midland, TX 79706
Address Zip Code

Representative Name (Phone/e-mail)
Address Zip Code
Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. Blk 192 Lot 004 Addn: Southern
906 Marshall ST Midland, TX 79701

PRESENT ZONE: IF2 REQUESTED ZONE: LR3
(List by tracts if more than one district is requested)
Reason for Zone Change Request: Best use of property

Present Use of Property: Vacant

Proposed Use of Property: Business with living quarters

How will zone change affect the public health, safety and welfare? Add a facility for more business

Describe how conditions affecting the property have changed since present zoning designation:

Is a Specific Use Permit with Term for alcoholic beverages sales needed? ____ Yes ☒ No

APPLICATION FEES:

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

SITE PLAN SUBMITTALS (if applicable):

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

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

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

Property Owner (signature): *Barbara Ann Harris* Date: 6-5-2012

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

STATE of TEXAS

COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

_____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

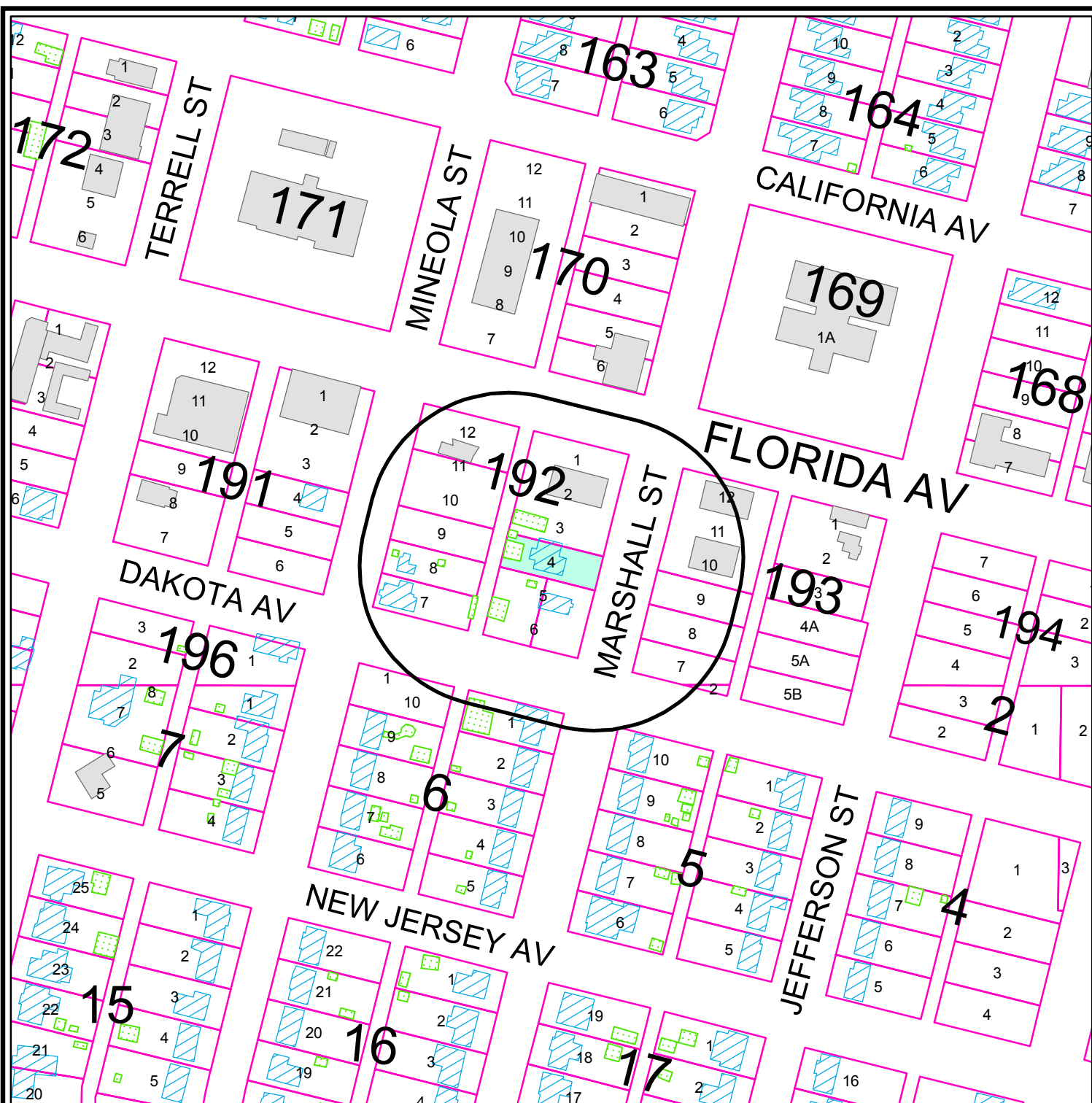
Authorized Agent (signature)

Subscribed and sworn to before me, this _____ day of _____, 20 ____, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>CW</u>	Date: <u>6/5/12</u>
Assigned: <u>CW</u>	
For: <u>P+Z</u>	On: <u>7/16/12</u>

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



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 021

Scale: 1" = 200'

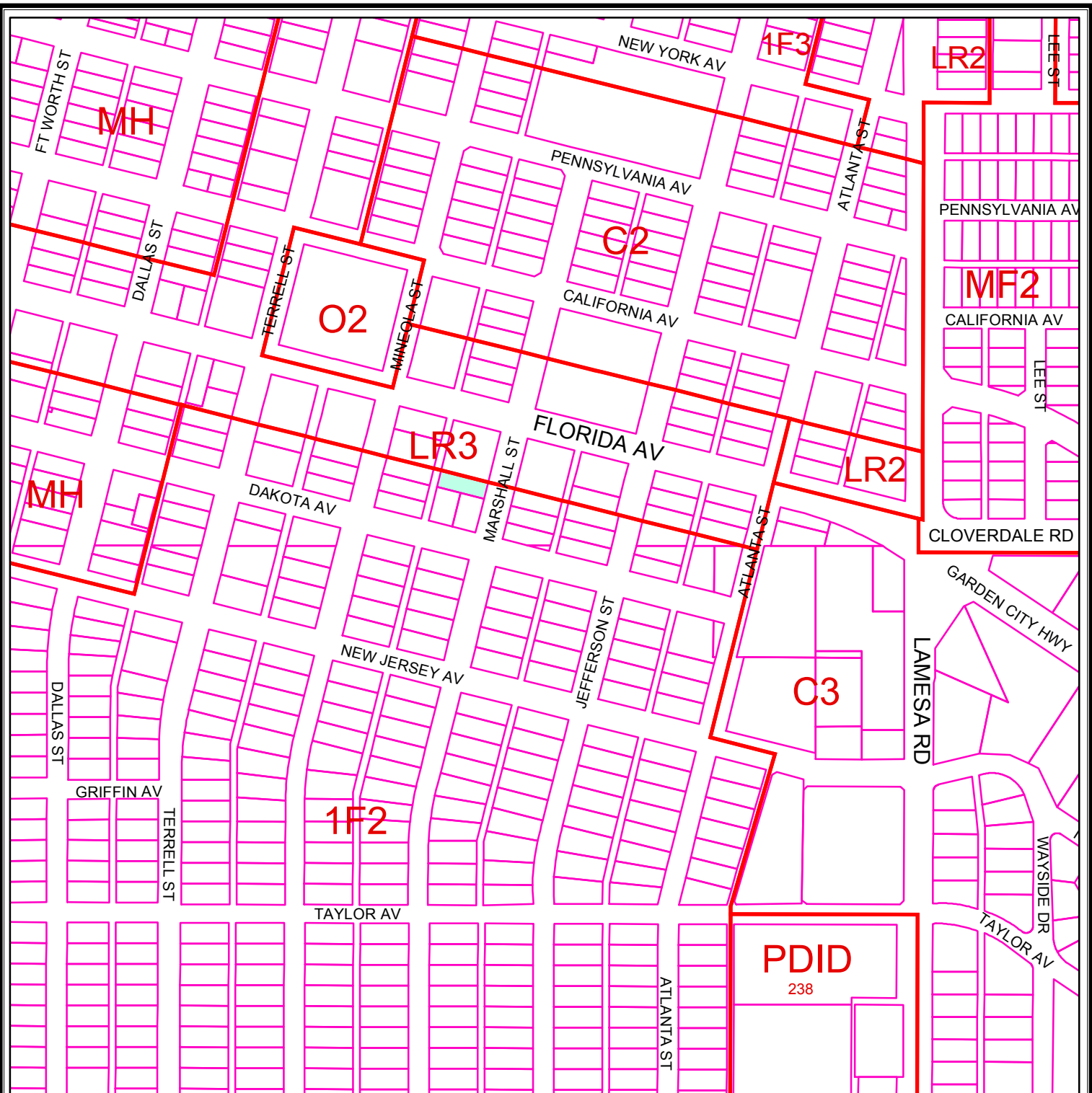
Consider a request for a zone change from 1F-2, One Family Dwelling District, to LR-3, Local Retail District on Lot 4, Block 192, Southern Addition, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 12 - 021

Scale: 1" = 400'

Consider a request for a zone change from 1F-2, One Family Dwelling District, to LR-3, Local Retail District on Lot 4, Block 192, Southern Addition, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/28/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by MARC Inc. and B&R Metal Buildings for a zone change from 2F, Two-Family Dwelling District to PD, Planned District for a Housing Development. (Generally located at the northwest corner of Tarleton Street and Shell Avenue.)

Purpose:

Consider an ordinance on second reading on a request by MARC Inc. and B&R Metal Buildings for a zone change from 2F, Two-Family Dwelling District to PD, Planned District for a Housing Development. No changes have been made to this item since its first reading on August 14, 2012.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-3, BLOCK 1, BISHOP ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 2F, TWO-FAMILY DWELLING DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF TARLETON STREET AND SHELL AVENUE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a Planned District for a Housing Development, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned 2F, Two-Family Dwelling District, and it shall be used as a Planned District for a Housing Development, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

Lots 1-3, Block 1, Bishop Addition, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That this planned district shall be subject to the zoning regulations of the 1F-3, One-Family Dwelling District, except as stated below.
2. That the minimum lot width in this planned district shall be 45 feet.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on

first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

ROADRUNNER 3 @ BRAND.COM.NET

Case Number: 2-12-030

CITY OF MIDLAND
Planning Division

MARC INC

APPLICATION TO CHANGE ZONING CLASSIFICATION

B+R METAL BLOGS 432-620-0003
Applicant Name (Phone/e-mail)

10006 MIDLAND TX 79702
Address Zip Code

B+R METAL BLOGS 432-620-0003
Property Owner Name (Phone/e-mail)

Box 10006 MIDLAND TX 79702
Address Zip Code

ROGER WELLS 432-620-0003
Representative Name (Phone/e-mail)

Box 10006 MIDLAND TX 79702
Address Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately.

3504 Shell Avenue
LOTS 1, 2 & 3 Bishop Addition

LOT 1 is MARC + 2 & 3 ROGER WELLS

PRESENT ZONE: _____ REQUESTED ZONE: _____

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

Reason for Zone Change Request: TO BUILD 3-2000'-2500' PATIO
HOUSES

Present Use of Property: 1 - HOME - 2F

Proposed Use of Property: PDHD

How will zone change affect the public health, safety and welfare? N/A

Describe how conditions affecting the property have changed since present zoning designation:

BEST OF BLOCK is all Duplexes & PATIO HOMES

Is a Specific Use Permit with Term for alcoholic beverages sales needed? _____ Yes X No

ROADRUNNER 3 @ BRAND.COM.NET

APPLICATION FEES:

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

SITE PLAN SUBMITTALS (if applicable):

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

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

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

Property Owner (signature):

[Handwritten Signature]

Date:

9 July 12

[Handwritten Signature] President Bd of Directors, MORE, Inc.

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

STATE of TEXAS

COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

_____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

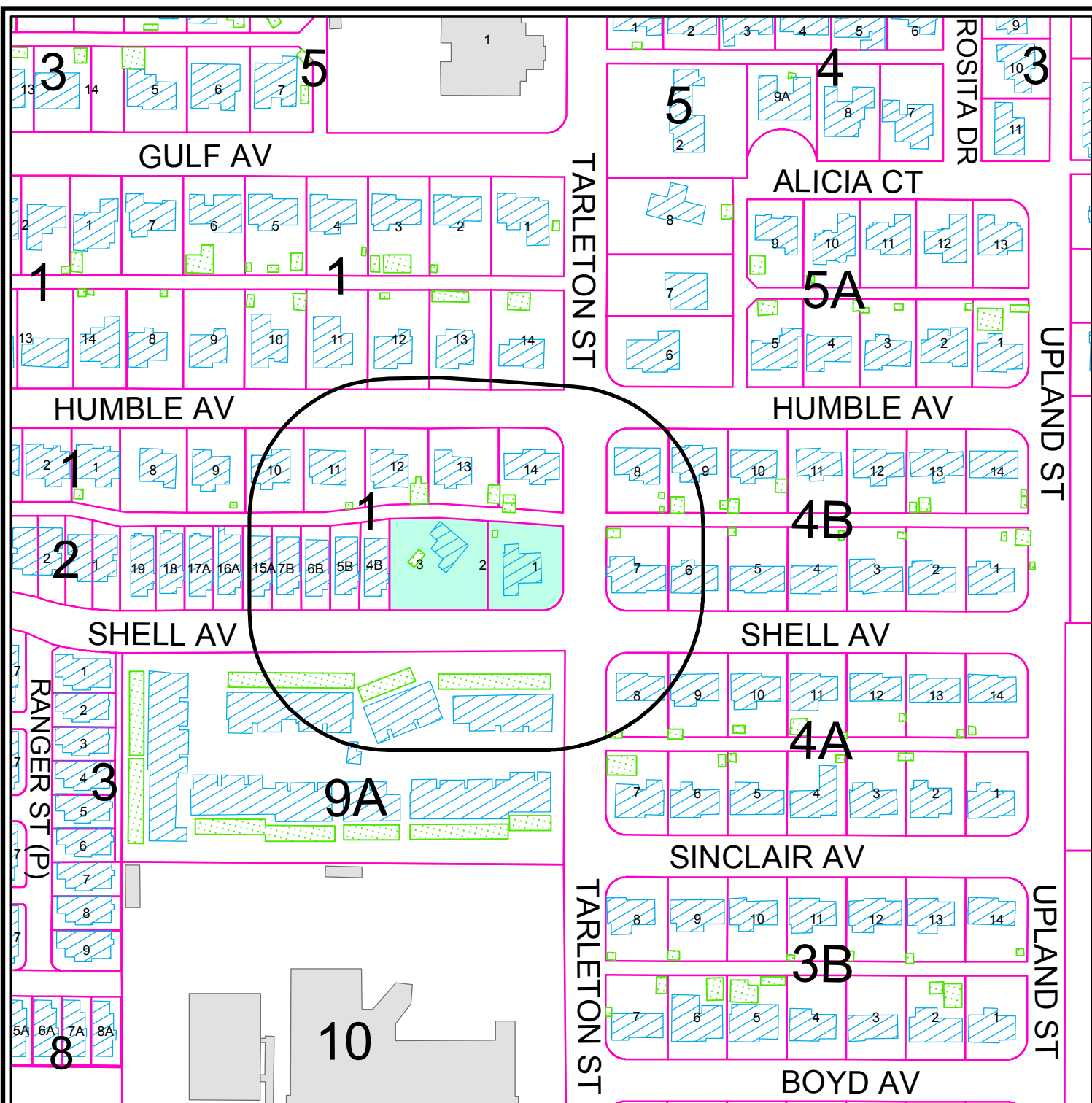
Authorized Agent (signature)

Subscribed and sworn to before me, this _____ day of _____, 20 __, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <i>CW</i>	Date: <i>8/6/12</i>
Assigned: <i>MS</i>	
For: <i>P+2</i>	On: <i>8/6/12</i>

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



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 030

Scale: 1" = 200'

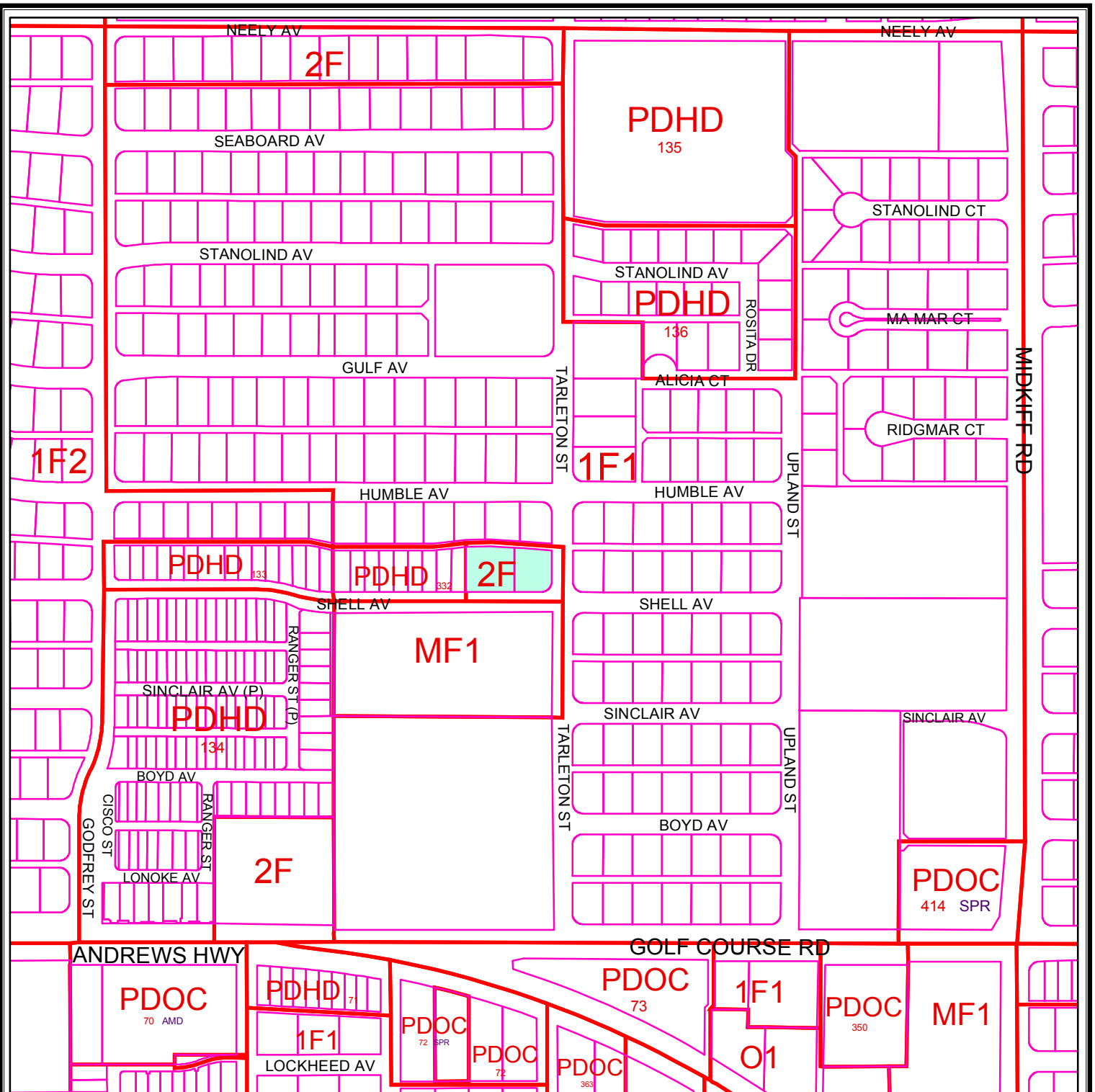
Consider a request for a zone change from 2F, Two Family Dwelling District, to PD, Planned District for a Housing Development Lots 1 – 3, Block 1; Bishop Addition, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 12 - 030

Scale: 1" = 400'

Consider a request for a zone change from 2F, Two Family Dwelling District, to PD, Planned District for a Housing Development Lots 1 – 3, Block 1; Bishop Addition, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/28/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by Jim Roachelle for a zone change from LR-2, Local Retail District to PD, Planned District for a Housing Development. (Generally located at the northwest corner of W. Illinois Avenue and Delmar Street. – District 4)

Purpose:

Consider an ordinance on second reading on a request by Jim Roachelle for a zone change from LR-2, Local Retail District to PD, Planned District for a Housing Development. Agreement was made to try to separate the two buildings on the site plan by at least 15-17 feet at first reading on August 14, 2012.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

The applicant plans to develop this vacant property with two apartment buildings that will provide 52 dwelling units just to the east of the large retail area that is located at the northeast corner of Illinois Avenue and Midland Drive. The proposed 3-story height exceeds the 2 ½ stories permitted with the current zoning. Additionally, the density would be 24 dwelling units / acre and exceed the City Code's current maximum of 16 dwelling units / acre in a multi-family development. Therefore, this request is to rezone the property as a Planned District for a Housing Development and adopt the associated building elevations and site plan to provide for the height and density while guiding how the development occurs. In addition to the apartment buildings, the applicant's proposed plan also includes 5 enclosed garages and 20 storage units for the use of tenants. The area provided for landscaping is adequate with the total tree count required by the landscaping code being 27 trees. While the trees are not shown, planning staff will work with the developer on placement and options to offset the total tree requirement by contributing to the Park Endowment Fund in order to accommodate the required parking. The parking shown at 104 spaces, currently meets the minimum requirements. The only point of concern is the building separation distance, which is not specifically identified. City code will require that this distance is 30 feet due to the positioning of the entry/exit doors and the height of the buildings. The proposed building height of 42 ½ feet would make this development one story higher than the adjacent Avalon Springs Apartments to the east, but not out of scale for a building that shares a corner lot with a large, multiple building, mall area. The addition of on-site storage facilities for tenants creates an appropriate alley screening for this development and serves as a privacy wall for the apartments to the north. The apartment building materials will be a mix of stone veneer, stucco and siding. Two additional dumpsters would be required to service the 52-unit apartment complex. Finally, the requested density of 24 dwelling units/acre versus the permitted maximum of 16 dwelling units/acre, would not pose a problem in this location. First, it is a small development of only 52 units; second, the infrastructure here has a large carrying capacity with both Illinois Avenue and Midland Drive being arterial class roads; and third, the large developed area at the northeast of this major intersection is largely vacant. Staff concurs with the Planning & Zoning Commission and recommends approval of this rezoning for a complementary use with the neighboring apartments and an opportunity to address the City's housing needs.

Attachments:

Application

Maps

Site Plan – Exhibit A

Building Elevations – Exhibits B – D

Building Rendering – Exhibit E

Proposed Ordinance

August 6, 2012 Planning & Zoning Commission Staff Report

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 3A, BLOCK 15A, OXFORD HEIGHTS, SECTION 8, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED LR-2, LOCAL RETAIL DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED AT THE NORTHWEST CORNER OF WEST ILLINOIS AVENUE AND DELMAR STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a Planned District for a Housing Development, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned LR-2, Local Retail District, and it shall be used as a Planned District for a Housing Development, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

Lot 3A, Block 15A, Oxford Heights, Section 8, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That the development of said property shall conform to the regulations of the MF-1, Multi-Family District zoning regulations.
2. That the development shall be consistent with the Site Plan (Exhibit "A"), the Building Elevations (Exhibits "B", "C" and "D"), and the Building Rendering (Exhibit "E"). Said Exhibits are attached hereto and incorporated herein.
3. That the maximum height of the apartment building shall not exceed 43 feet.
4. That the minimum distance separating the two buildings shall not be less than that permitted by the City of Midland Building Code and shall include permanent lighting sources to illuminate, 24 hours a day, the pedestrian-level areas between the two buildings.
5. That the landscaping shall conform to City of Midland regulations in place at the time of development.
6. That four, 3 cubic yard, waste containers are adequately placed on the property in accordance with the Midland City Code.
7. That the air conditioners, dumpsters and any ground-based utility equipment shall be appropriately screened.
8. That the total number of dwelling units shall not exceed 52 units.
9. That the use of the on-site storage and the enclosed parking garages shall be reserved for tenant use only and shall not be rented out as a separate business enterprise nor subleased by tenants.
10. That sidewalks shall be paved to the required standards.
11. That all signage shall be in compliance with the City of Midland sign code.
12. That all City of Midland Building Code and Fire Code requirements shall be met.
13. That driveway cuts and dimensions shall be in accordance with the Midland City Code.
14. That water and sewer connections must be approved by the City Engineer.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council

member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

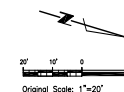
James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OXFORD HEIGHTS SECTION 8

Lot 3-A
Block 15A



PD Site Plan:
Submitted to City of Midland P&Z
on June 13, 2012.

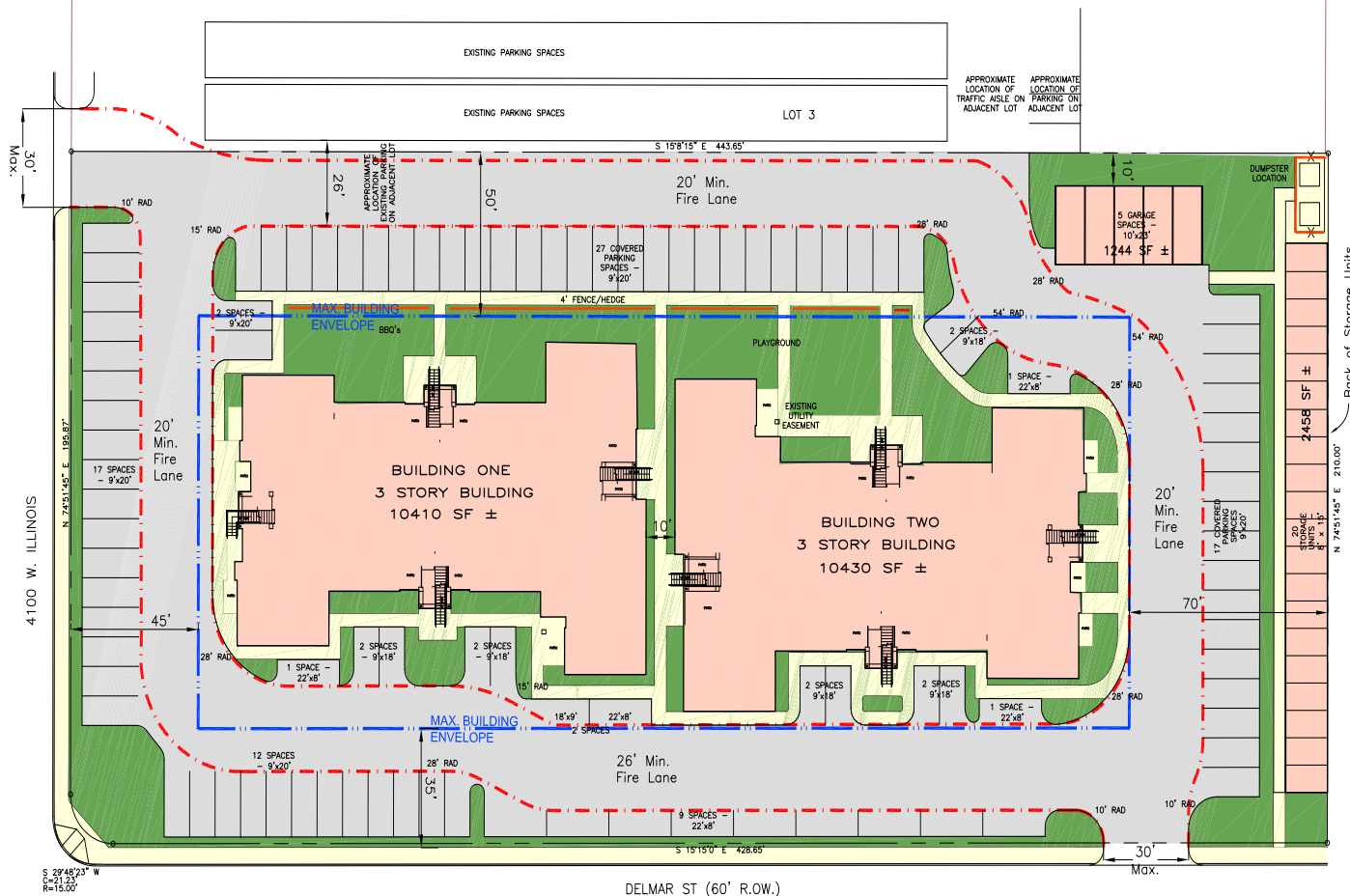
NOTES:

- BUILDING FOOTPRINT, PARKING AND LANDSCAPING SHOWN ARE FOR ILLUSTRATIVE PURPOSES ONLY. FINAL SITE DESIGNS TO BE REVIEWED BY THE CITY OF MIDLAND PRIOR TO ISSUING BUILDING PERMITS.
- SHADED AREAS DENOTED BY [Pattern] TO BE PAVED OR OTHER DRIVING SURFACE.
- SHADED AREAS DENOTED BY [Pattern] TO BE CONCRETE.
- SHADED AREAS DENOTED BY [Pattern] TO BE IRRIGATED & LANDSCAPED INCLUDING TREES OR SHRUBS - WHICH MAY BE ENHANCED BY OTHER LANDSCAPE MATERIALS.
- SHADED AREAS DENOTED BY [Pattern] ARE BUILDINGS.
- SHADED AREAS DENOTED BY [Pattern] ARE SCREEN WALLS.
- AREAS DENOTED BY [Pattern] ARE FIRE LANES.
- LANDSCAPED AREA (NOT INCLUDING R.O.W.S) WILL BE A MINIMUM OF 10% OF TOTAL LOT AREA, LESS THE BUILDING AREA.
- EXTERIOR BUILDING MATERIALS SHALL BE DECORATIVE OR PAINTED CMU, FACE BRICK, PRECAST CONCRETE, TILT-WALL, STUCCO, GLAZING OR SIMILAR CONSTRUCTION AND PER THE ELEVATION EXHIBITS.
- ROOF MATERIALS MAY INCLUDE COMPOSITE SHINGLES.
- ALL SIGNS SHALL BE IN CONFORMANCE WITH SECTION 11-7a OF THE MIDLAND CITY CODE.
- ALL EXTERIOR LIGHTING SHALL ADHERE TO THE STANDARDS OUTLINED IN SECTION 11-10 OF THE MIDLAND CITY CODE.
- HVAC UNITS WILL BE LOCATED ON THE GROUND AND SURROUNDED BY A SCREEN WALL.
- UNPROTECTED OPENINGS ON BUILDING SIDES FACING EACH OTHER WILL BE RESTRICTED PER CITY CODE AND BASED ON THE ACTUAL DISTANCE BETWEEN BUILDINGS.

SITE DATA

SITE AREA	93,311 SF ±
BUILDING AREA (Foot Print)	24,542 SF ±
BUILDING AREA (Total Floor Space)	66,222 SF ±
LANDSCAPE AREA REQUIRED	6,876 SF ±
LANDSCAPED AREA SHOWN	20,370 SF ±
PARKING SPACES REQUIRED	104
PARKING SPACES PLANNED	104
H.C. PARKING SPACES REQUIRED	5

**OXFORD HEIGHTS
ADDITION
SECTION 8**



DELMAR ST (60' R.O.W.)

PARKING

52 TOTAL UNITS
2 SPACES PER UNIT
104 SPACES REQUIRED



WEST ELEVATION



SOUTH ELEVATION



NORTH ELEVATION



EAST ELEVATION

Exhibit - B

**BUILDING ONE
EXTERIOR ELEVATIONS**
Scale: 1/8" = 1'-0"

DANZE & DAVIS
ARCHITECTS, INC.
4701 Spicewood Springs Road, Suite 200 Phone 512.343.0714 Fax 512.343.0718
WWW.DANZE-DAVIS.COM

WESTWOOD VILLAGE APARTMENTS
4100 W. Illinois
Midland, Texas



JUN 12 2012

Job No. C2794

DRAWN BY: RAH
DATE: 06-12-2012
CHKD. BY:
REVISED:

A4.0

PLANNED DISTRICT EXHIBIT

COPYRIGHT 2012 DANZE & DAVIS ARCHITECTS, INC. THESE DRAWINGS AND THE IDEAS HEREON ARE THE PROPERTY OF THE ARCHITECT AND MAY NOT BE USED WITHOUT HIS EXPRESSED CONSENT.



EAST ELEVATION



NORTH ELEVATION



SOUTH ELEVATION



WEST ELEVATION

Exhibit - C

**BUILDING TWO
EXTERIOR ELEVATIONS**
Scale: 1/8" = 1'-0"

DANZE & DAVIS
ARCHITECTS, INC.
4701 Spicewood Springs Road, Suite 200 Phone 512.343.0714 Fax 512.343.0718
WWW.DANZE-DAVIS.COM

WESTWOOD VILLAGE APARTMENTS
4100 W. Illinois
Midland, Texas

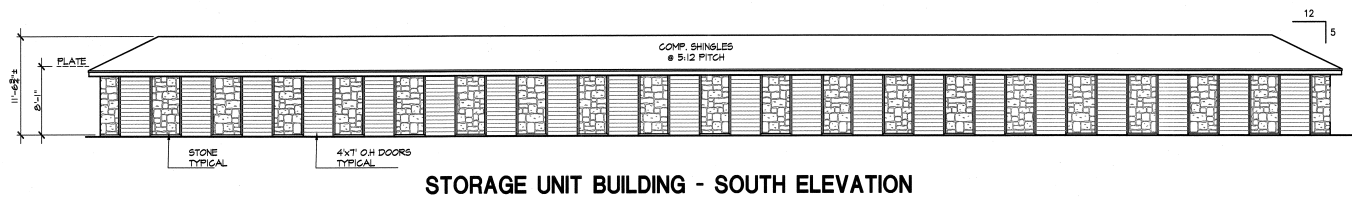


Job No. C2794
DRAWN BY: RAH
DATE: 06-12-2012
CHKD. BY:
REVISED:
JUN 12 2012

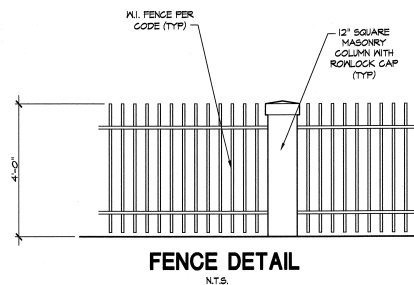
A4.1

PLANNED DISTRICT EXHIBIT

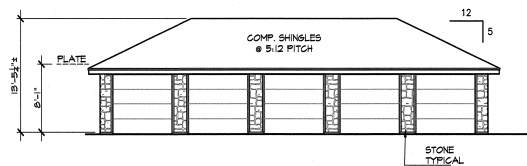
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STORAGE UNIT BUILDING - SOUTH ELEVATION



FENCE DETAIL
N.T.S.



GARAGES - EAST ELEVATION

Exhibit - D

EXTERIOR ELEVATIONS
Scale: 1/8" = 1'-0"

PLANNED DISTRICT EXHIBIT

Job No. C2794
DRAWN BY: RAH
DATE: 06-12-2012
CHKD. BY: .
REVISED: .



JUN 12 2012

WESTWOOD VILLAGE APARTMENTS
4100 W. Illinois
Midland, Texas

DANZE & DAVIS
ARCHITECTS, INC.
4701 Spicewood Springs Road, Suite 200 Phone 512.343.0714 Fax 512.343.0718
WWW.DANZE-DAVIS.COM

A4.2



CITY OF MIDLAND

Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

JIM ROACHELLE / ACS 925-250-7118
Applicant Name (Phone/e-mail)

2861 CRESTON RD WALNUT CREEK, CA 94597
Address Zip Code

EMB NORTH, LLC / EMB TEXAS VENTURE, LLC 510-728-1102
Property Owner Name (Phone/e-mail)

20632 REDWOOD ROAD, SUITE B CASTRO VALLEY, CA 94546
Address Zip Code

BILL COURTNEY 510-728-1102
Representative Name (Phone/e-mail)

SAME AS PROPERTY OWNER
Address Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately.

4100 W. ILLINOIS AVENUE
LOT 3-A, BLOCK 15A, OXFORD HEIGHTS - SECTION 8

PRESENT ZONE: LR-2 REQUESTED ZONE: PD HD
(List by tracts if more than one district is requested)

Reason for Zone Change Request: INCREASED DENSITY TO 24 UNITS PER ACRE

Present Use of Property: VACANT PARCEL ADJACENT TO WESTWOOD VILLAGE SHOPPING CENTER.

Proposed Use of Property: MULTI-FAMILY APARTMENTS AND SUPPORT AMENITIES PERMANENT HOUSING TO THE AREA.

How will zone change affect the public health, safety and welfare? PROVIDE MUCH NEEDED PERMANENT HOUSING TO THE AREA.

Describe how conditions affecting the property have changed since present zoning designation:
AN INCREASE OF JOBS IN THE REGION HAS CREATED DEMAND FOR MORE PERMANENT HOUSING.

Is a Specific Use Permit with Term for alcoholic beverages sales needed? Yes ☒ No

APPLICATION FEES:

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

SITE PLAN SUBMITTALS (if applicable):

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

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

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

Property Owner (signature):

[Handwritten Signature]
Managing Member - ENS North, LLC

Date: 6/3/12

ENS North, LLC

ENS North, LLC

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

STATE of TEXAS

COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

_____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

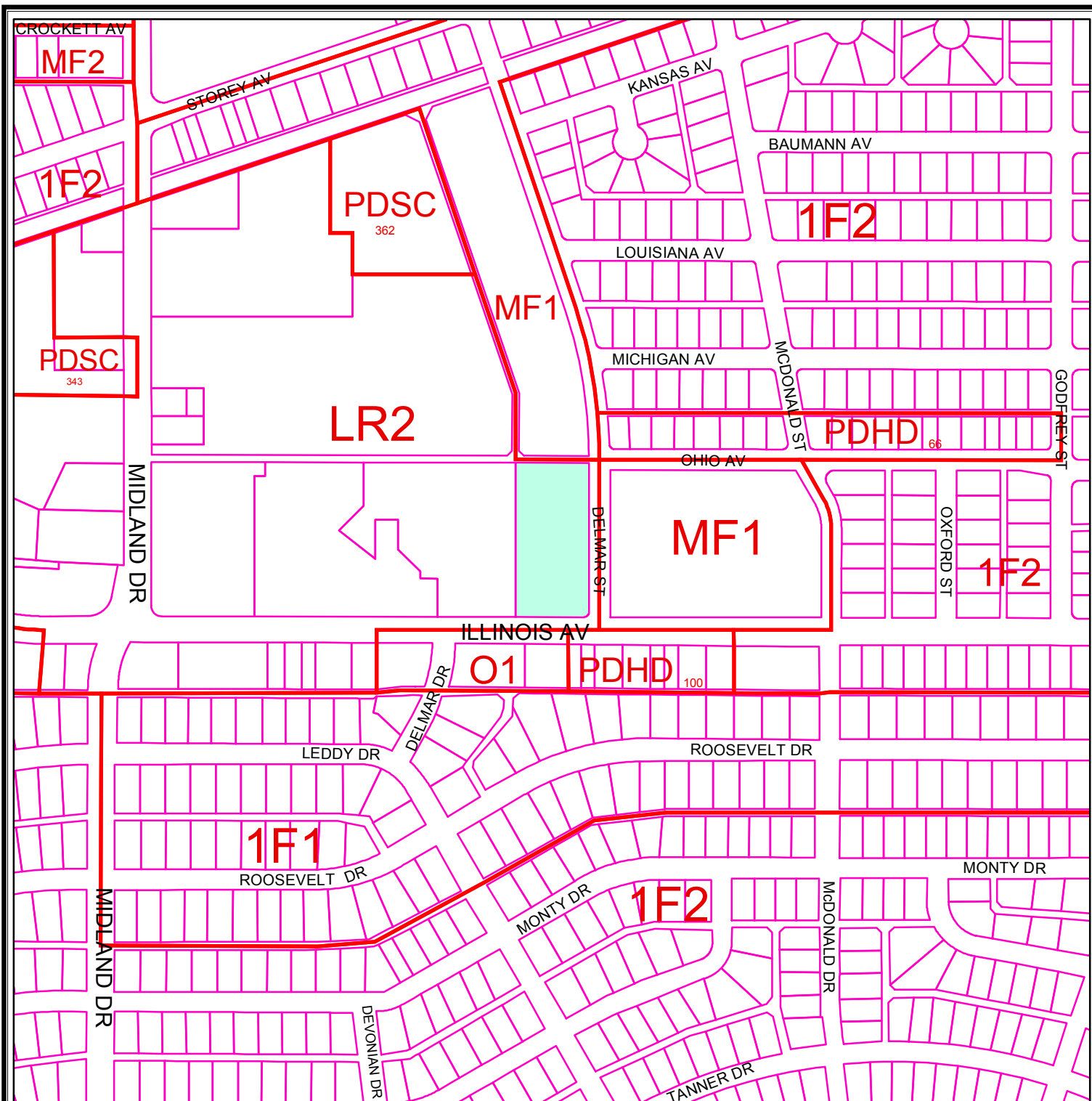
Authorized Agent (signature)

Subscribed and sworn to before me, this _____ day of _____, 20 ____, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>VS</u>	Date: <u>6/13/12</u>
Assigned: <u>KV</u>	
For: <u>Pt 2</u>	On: <u>8/6/12</u>

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



ZONING MAP

Z - 12 - 023

Scale: 1" = 400'

Consider a request for a zone change from LR-2, Local District, to PD, Planned District for a Housing Development on Lot 3A, Block 15A, Oxford Heights, Section 8, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/28/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: At approximately 10:33 A.M. hold a public hearing and consider an ordinance on a request by Danny Barker for a zone change from AE, Agriculture Estate District and from two PD, Planned Districts for a Transition District, all to a single C-3, Commercial District. (Generally located on the northwest corner of the intersection of E. Business 20 and Lozoya Road. – District 2)

Purpose:

Consider an ordinance on a request by Danny Barker for a zone change from AE, Agriculture Estate District and from two PD, Planned Districts for a Transition District, all to a single C-3, Commercial District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

Pioneer Natural Resources is requesting to remove the split zoning on their property as they plan to include an additional 27-acre tract located north of their currently developed (11-acres of property with Business 20 frontage) for the expansion of their current business operations. When the original PD, Planned District for a Transition District was approved, the subject property was not owned by Pioneer and the large area it defined along the Highway 80 frontage was accurately defined by the mix of uses still visible today. (A pipe yard is located just to the west of this property and a mobile home park is to the east.) However, as Pioneer Resources expands its current operations, their business has been consistent with the more narrowly defined C-3, Commercial District, uses of the transitional district. The storage of oil field services supplies and equipment is a C-3 use. The use of the 27 acres currently zoned AE would be consistent with their current operations and C-3 uses and provide additional parking for trucks and equipment. Staff recommends the single C-3 rezoning as it is consistent with current ongoing uses in the area.

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 27.00-ACRE TRACT OF LAND OUT OF SECTION 41, BLOCK 38, T-1-S, T&P RR CO. SURVEY, AND LOT 4, BLOCK 1, FREELAND ADDITION, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, IN PART, PD, PLANNED DISTRICT FOR A TRANSITION DISTRICT, IN PART, AND AS A SEPARATE PD, PLANNED DISTRICT FOR A TRANSITION DISTRICT, IN PART, TO BE USED AS A C-3, COMMERCIAL DISTRICT (GENERALLY LOCATED ON THE NORTHWEST CORNER OF THE INTERSECTION OF EAST BUSINESS INTERSTATE 20 AND LOZOYA ROAD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of Districts under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a C-3, Commercial District, as set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned AE, Agriculture Estate District, in part, PD, Planned District for a Transition District, in part, and as a separate PD, Planned District for a Transition District, in part, and it shall be used as a C-3, Commercial District, said property being described as follows:

A 27.00-acre tract of land out of Section 41, Block 38, T-1-S, T&P RR Co. Survey, and Lot 4, Block 1, Freeland Addition, Section 4, City and County of Midland, Texas, said 27.00-acre tract being more specifically described by metes and bounds in Exhibit "A", which is attached hereto and incorporated herein.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That any new construction and uses shall be governed by C-3, Commercial District regulations.
2. That City of Midland Ordinance No. 6766 is hereby amended by this ordinance.
3. That City of Midland Ordinance No. 8874 is hereby repealed 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., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

LEGAL DESCRIPTION of a 33.86 acre tract of land being a portion of that certain called 31.71 tract of land as described in the deed to Dorothy M. Crawford filed of record in Volume 587, Page 581 of the Deed Records of Midland County, and that certain called 38.84 acre tract of land as described in the deed to Dorothy M. Crawford filed of record in Volume 1560, Page 304 of the Deed Records of Midland County, and the Northernmost 6.86 acres out of Lot 4, Block 1, Freeland Addition as recorded in Cabinet "E", Page 341 of the Plat Records of Midland County, located in the North Half of Section 41, Block 38, Township-1-South, Texas & Pacific Railroad Company Survey, Midland County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at the Northeast corner of this tract a 1/2" Iron Rod with red plastic cap marked "West Co. Midland" set in the East line of said 31.71 acre Crawford and in the West line of Freeland Addition, Section 3 as recorded Cabinet "E", Page "302" of the Plat Records of Midland County, Texas from which the calculated Northwest corner of said Section 41 bears N 14°01'34" W a distance of 797.33 feet and S 75°58'26" W a distance of 3,825.96 feet;

THENCE S 14°01'34" E with the West line of said Freeland Addition, Section 3 and the West line of a called 2.00 acre tract as described in the deed to Emerald Terrace, Inc. as recorded in Volume 1566, Page 521, of the Official Public Records of Midland County, and with the West line of Lot 1, Block 1, Freeland Addition, Section 1 as recorded in Cabinet "D", Page "284" of the Plat Records of Midland County a distance of 511.66 feet to a 1/2" Iron Rod marked "Schumann" found at the Southeast corner of said 31.71 acre tract and at the Northeast corner of Lozoya Road right-of-way as recorded in Cabinet "E", Page 341, of the Plat Records of Midland County, Texas,

THENCE S 75°58'26" W with the South line of said 31.71 acre tract and the North of said Lozoya Road right-of-way a distance of 60.00 feet to a 1/2" Iron Rod found for the Northwest corner of said Lozoya Road right-of-way, and for the Northeast corner of said Lot 4, Block 1, Freeland Addition, Section 4, and for an interior corner of this tract;

THENCE S 14°01'33" E with the West line of said Lozoya Road right-of-way and with the East line said Lot 4, Block 1, Freeland Addition, Section 4 a distance of 300.00 feet to a 1/2" Iron Rod with red plastic cap marked "West Co. Midland" set for the Southeast corner of this tract;

THENCE S 75°58'31" W in and across said Lot 4, Block 1, Freeland Addition, Section 4 and with the North line of the tract to Farwest Corp. as recorded in Volume 1384, Page 496, of the Deed Records of Midland County a distance of 995.35 feet to a 1/2" Iron Rod marked "Schumann" found in the West line of a that certain called 34.69 tract of land as described in the deed to Dorothy M. Crawford filed of record in Volume 1779, Page 129 of the Official Public Records of Midland County and at a corner of said Lot 4, Block 1, Freeland Addition, Section 4, and for the most Southerly Southwest corner of this tract;

THENCE N 14°01'27" W with the East line of said 34.69 acre Crawford tract and with the West line of said Lot 4, Block 1, Freeland Addition, Section 4 a distance of 299.90 feet to a 1/2" Iron Rod found for the Northwest corner of said Lot 4, Block 1, Freeland Addition, Section 4;

THENCE N 13°50'28" W with the East line of said 34.69 acre Crawford tract a distance of 86.08 feet to a 1/2" Iron Rod with red plastic cap marked "West Co. Midland" set for the Northeast corner of said 34.69 acre Crawford tract for an interior corner of this tract the Southeast corner of a said 38.84 acre Crawford tract;

THENCE S 75°39'19" W with the North line of said 34.69 acre Crawford tract and the South line of said 38.84 acre tract a distance of 1,520.24 feet to a 1/2" Iron Rod with red plastic cap marked "West Co. Midland" set for the most Westerly Southwest corner of this tract;

Case Number: 42-12-0002

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Danny Barker

Applicant Name	(Phone/e-mail)
303 W. Wall St., Suite 101	Midland, Tex. 79701
Address	Zip Code

Pioneer Natural Resources

Property Owner Name	(Phone/e-mail)
303 W. Wall St., Suite 101	Midland, Tex. 79701
Address	Zip Code

Andrew L. Mellen, P.E.

687-0865

Representative Name	(Phone/e-mail)
110 W. Louisiana Ave., Ste. 110	Midland, Tex. 79701
Address	Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. Proposed Lot 5, Block 1, Freeland Add'n, Sec 9

SEE ATTACHED METES AND BOUNDS

PRESENT ZONE: AE REQUESTED ZONE: C3
(List by tracts if more than one district is requested)

Reason for Zone Change Request: Expansion of Pioneer Natural Resources' Lozoya Road Facility

Present Use of Property: bare earth and caliche parking areas

Proposed Use of Property: caliche truck parking area

How will zone change affect the public health, safety and welfare? Increased employment opportunities and improvements to Lozoya Road.

Describe how conditions affecting the property have changed since present zoning designation: Pioneer has increased employment and activity at the site, and now needs additional parking for trucks and equipment

Is a Specific Use Permit with Term for alcoholic beverages sales needed? Yes ☒ No

APPLICATION FEES:

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

SITE PLAN SUBMITTALS (if applicable):

16 copies (FOLDED) of the PD site plan: N/A
Site Plan in digital format .pdf and .jpg: N/A

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

Property Owner (signature): _____ Date: _____

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

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

Andrew L. Mellen, Jr who, being by me duly sworn, upon oath says: That (s)he is authorized by Danny Barker, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Andrew L. Mellen, Jr

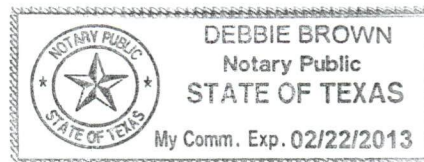
Authorized Agent (signature)

Subscribed and sworn to before me, this 28th day of March, 20 12, to certify which witness my hand and seal of office.

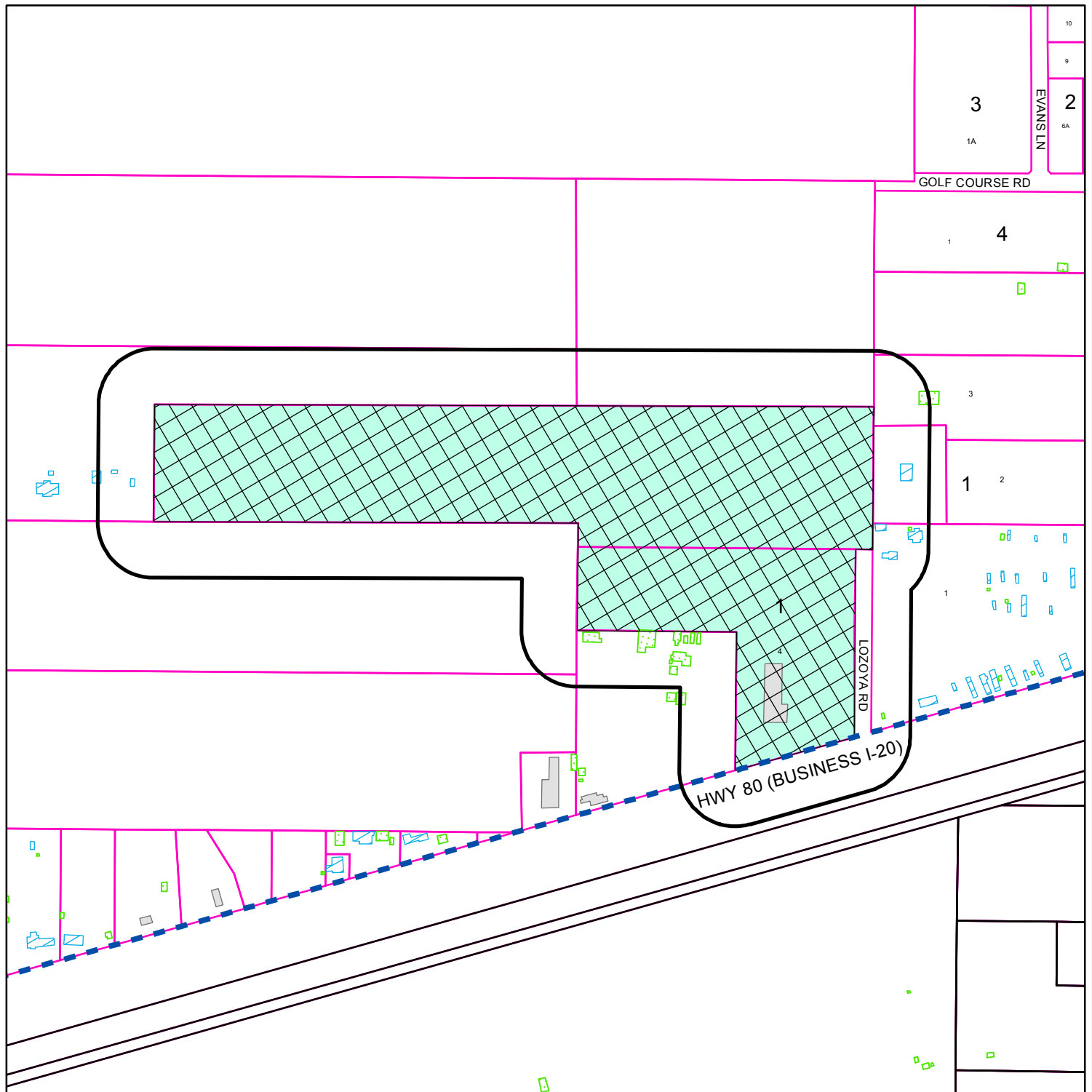
Debbie Brown

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>KV</u>	Date: <u>3/29/12</u>
Assigned: <u>KV</u>	
For: <u>P+Z</u>	On: <u>8/20/12</u>



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



PROPERTY OWNER NOTIFICATION MAP

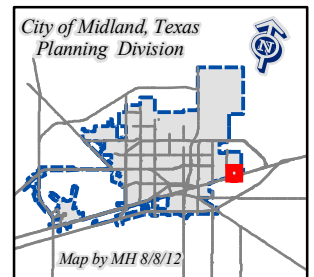
Z - 12 - 002

Scale: 1" = 200'

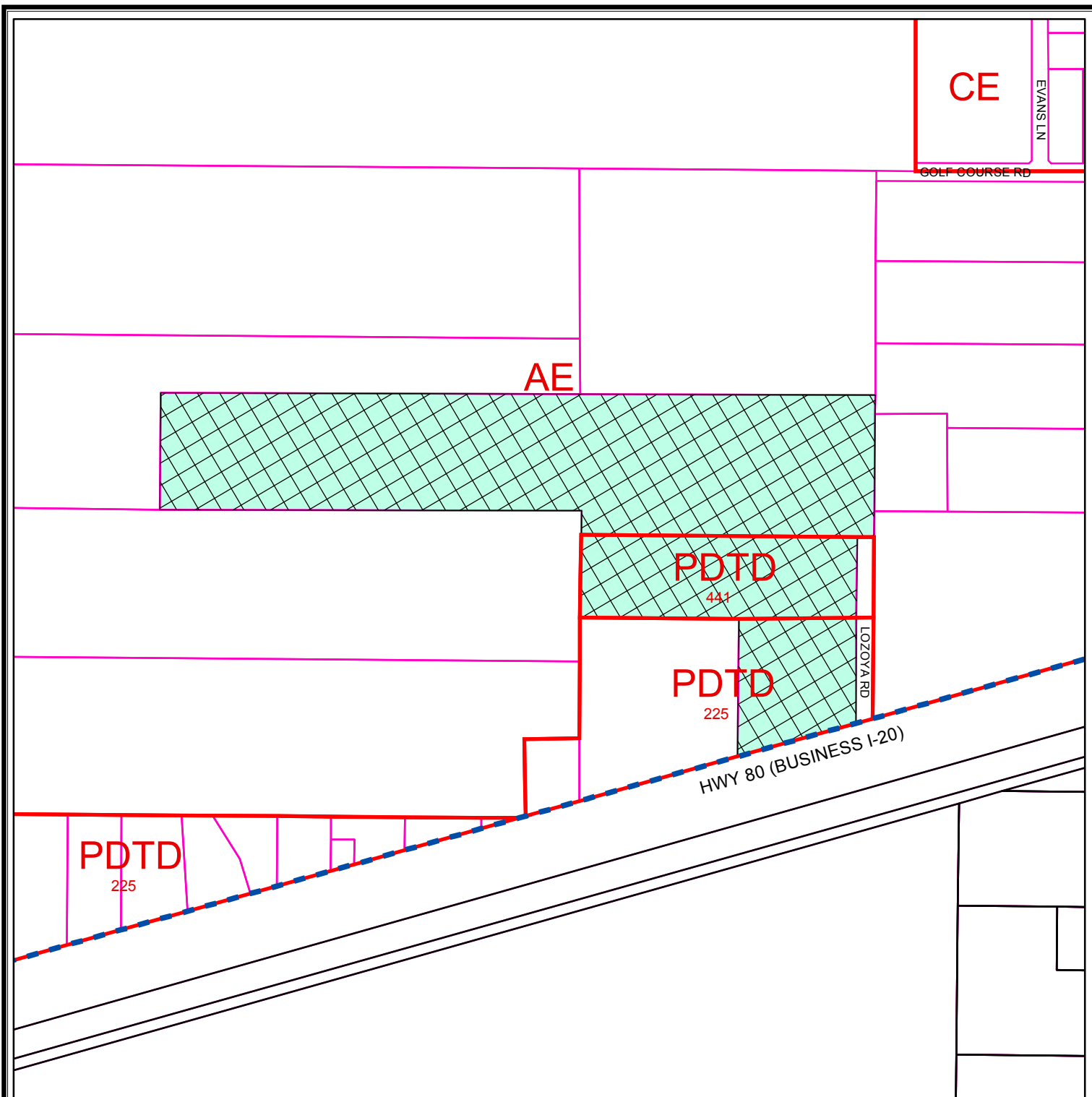
Consider a request for a zone change from AE, Agriculture Estate District, on a 27.00-acre tract of land out of Section 41, Block 38, T-1-S, T & P RR Co. Survey and from two PD, Planned Districts for a Transition District on Lot 4, Block 1, Freeland Addition, Section 4, to C3, Commercial District, City 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

Z - 12 - 002

Scale: 1" = 500'

Consider a request for a zone change from AE, Agriculture Estate District, on a 27.00-acre tract of land out of Section 41, Block 38, T-1-S, T & P RR Co. Survey and from two PD, Planned Districts for a Transition District on Lot 4, Block 1, Freeland Addition, Section 4, to C3, Commercial District, City and County of Midland, Texas.

LEGEND

- | | |
|---|---|
| ZONING | CITY PARCELS |
| CITY LIMITS | COUNTY PARCELS |

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 28, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:36 a.m. and consider an ordinance for a zone change from IP-3, Industrial Park District, to a PDOC, Planned District for an Office Center. (Generally located near the southeast corner of the intersection of Sloan Field Boulevard and Windecker Street.)

Purpose:

Hold a public hearing at approximately 10:36 a.m. and consider an ordinance for a zone change from IP-3, Industrial Park District, to a PDOC, Planned District for an Office Center.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

This is a city initiated request to rezone this property to accommodate future development of a hotel. As there is still a significant amount of vacant land available to support IP-3 uses, this rezoning would not cause any foreseeable future zoning constraints. The Planning and Zoning Commission approved this request unanimously. Staff recommends approval of this zone change in order to accommodate the use and development of the property for future development of a hotel.

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 3A, 4A AND 5A, BLOCK 3, MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED IP-3, INDUSTRIAL PARK DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR AN OFFICE CENTER (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF SLOAN FIELD BOULEVARD AND WINDECKER STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a Planned District for an Office Center, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned IP-3, Industrial Park District, and it shall be used as a Planned District for an Office Center, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

Lots 3A, 4A and 5A, Block 3, Midland International Airport Industrial Park, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That this Planned District shall be subject to O-2, Office District zoning regulations.
2. That prior to any development, this property shall be subject to future site plan review in the same manner as a zone change.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Planning and Zoning Commission
Minutes
August 6, 2012

Z-12-024 - Hold a public hearing and consider a request by **City of Midland / Airport** for a *zone change* from IP-3, Industrial Park District to PD, Planned District for an Office Center on Lots 3A, 4A and 5A, Block 3, Midland International Airport Industrial Park, City and County of Midland, Texas. (Generally located near the southeast corner of the intersection of Sloan Field Boulevard and Windecker Street.)

Applicant yielded to staff. Planner Martin Siwek gave an overview of the request for zone change and provided an updated page two to the Commission. The City of Midland is looking to rezone the property for a future development of a hotel. There were no letters of objection and staff recommended approval.

Vice Chairman Gatten opened the public hearing.

With no one else wishing to speak in favor or in opposition of the request, Vice-Chairman Gatten closed the public hearing.

Vice Chairman Gatten asked if the City would be selling the property after the zone change. Marv Esterly, Director of Airports stated the property will be put out for RFP and sold with the intention of a hotel being built on the property.

A motion for approval for a zone change was made by Commissioner Wolf; seconded by Commissioner Watkins. The motion carried by the following vote: AYE: Gatten, Norris, Wolf, Lanning, York, Watkins and Wilton. NAY: None. ABSTAIN: None. ABSENT: Ferguson, Woodruff and Carrillo.

PLANNING AND ZONING COMMISSION

August 6, 2012

CASE: Z-12-024

REQUEST: Hold a public hearing and consider a request for a zone change from IP-3, Industrial Park District, to a PDOC, Planned District for an Office Center.

APPLICANT/OWNER: City of Midland (Airport)

REPRESENTATIVE: City of Midland

LEGAL DESCRIPTION: Lots 3A, 4A and 5A, Block 3, Midland International Airport Industrial Park, City and County of Midland, Texas.

LOCATION: Generally located near the southeast corner of the intersection of Sloan Field Boulevard and Windecker Street.

CURRENT ZONING: IP-3, Industrial Park District

DETAILS OF REQUEST:

1. The applicant plans to develop these three lots, a total of 3.99 acres, with a hotel. The current zoning does not permit this use; therefore the applicant, the City of Midland, is seeking to rezone this property from IP-3, Industrial Park District, to the PDOC, Planned District for an Office Center that permits this use.

SURROUNDING ZONING AND LAND USE:

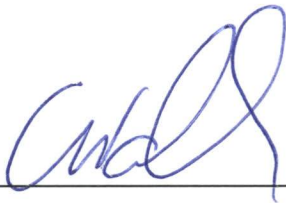
2. This property has frontage along Sloan Field Blvd, Windecker Street, Lindbergh Street, and Banks Dr. It is bounded to the west across Windecker St by a small PDTD, Planned District for a Transition District, and is bounded to the south across Lindbergh St. by a large PDOC, Planned District for an Office Center. To the northwest of Sloan Field Blvd is a small PDTD, Planned District for a Transition District. To the north and east of these lots is a large IP-3, Industrial Park District, which contains the Midland International Airport.

ANALYSIS:

3. The City's request to rezone this property to accommodate the use as a hotel would make productive use of these vacant tracts of land. As there is still vacant land available to support IP-3 uses, this rezoning would not cause any foreseeable future zoning constraints. Staff recommends approval of this zone change in order to accommodate the use and development of the property for future development of a hotel.

STAFF RECOMMENDATION:

Staff recommends approval of this request for a zone change from IP-3, Industrial Park District, to a PDOC, Planned Development Office Center. Prior to any development, this land will be subject to future site plan review in the same manner as a zone change.



Cameron Walker, Planning Division Manager

Department of Development Services



Martin Siwek, City Planner

Department of Development Services

Attachments:

Application

Case Number: 2-12-024

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

City of Midland (Airport)
Applicant Name (Phone/e-mail)

Address Zip Code
Same
Property Owner Name (Phone/e-mail)

Address Zip Code
Marv Esterly
Representative Name (Phone/e-mail)

Address Zip Code
Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. Lots 3A, 4A, 5A Block 3, Midland International Airport-Industrial Park

PRESENT ZONE: IP-3 REQUESTED ZONE: PDOC
(List by tracts if more than one district is requested)
Reason for Zone Change Request: Potential use for a hotel.

Present Use of Property: Vacant

Proposed Use of Property: Hotel site

How will zone change affect the public health, safety and welfare? _____

Describe how conditions affecting the property have changed since present zoning designation: _____

Is a Specific Use Permit with Term for alcoholic beverages sales needed? ____ Yes ____ No

APPLICATION FEES:

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

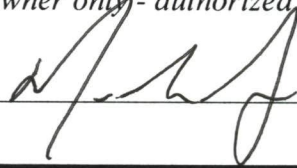
SITE PLAN SUBMITTALS (if applicable):

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

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

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

Property Owner (signature):



Date: 6/14/2012

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

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

_____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

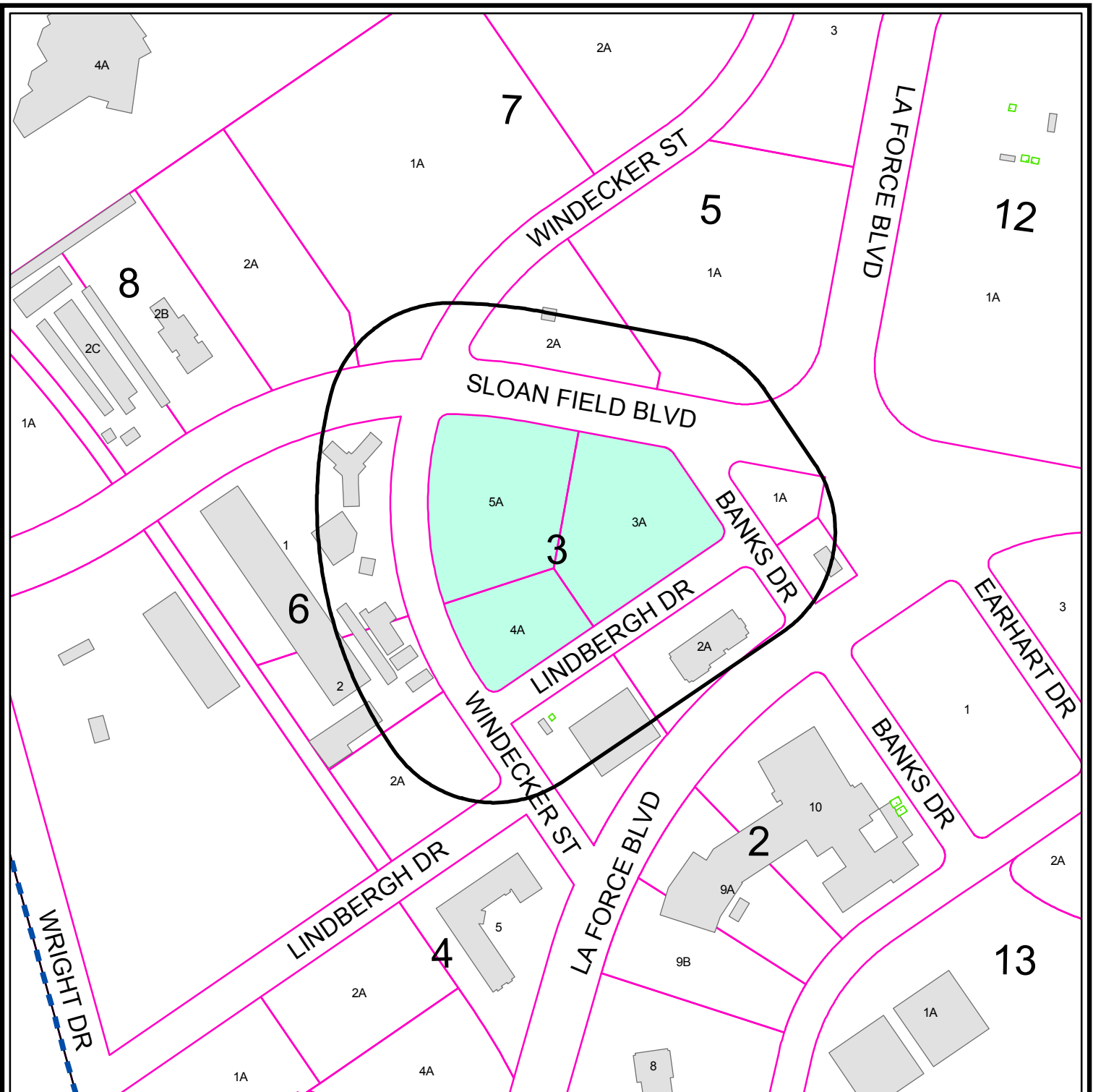
Authorized Agent (signature)

Subscribed and sworn to before me, this _____ day of _____, 20 ____, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>CW</u>	Date: <u>7/13/12</u>
Assigned: <u>MS</u>	
For: <u>P+Z</u>	On: <u>8/6/12</u>

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



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 024

Scale: 1" = 250'

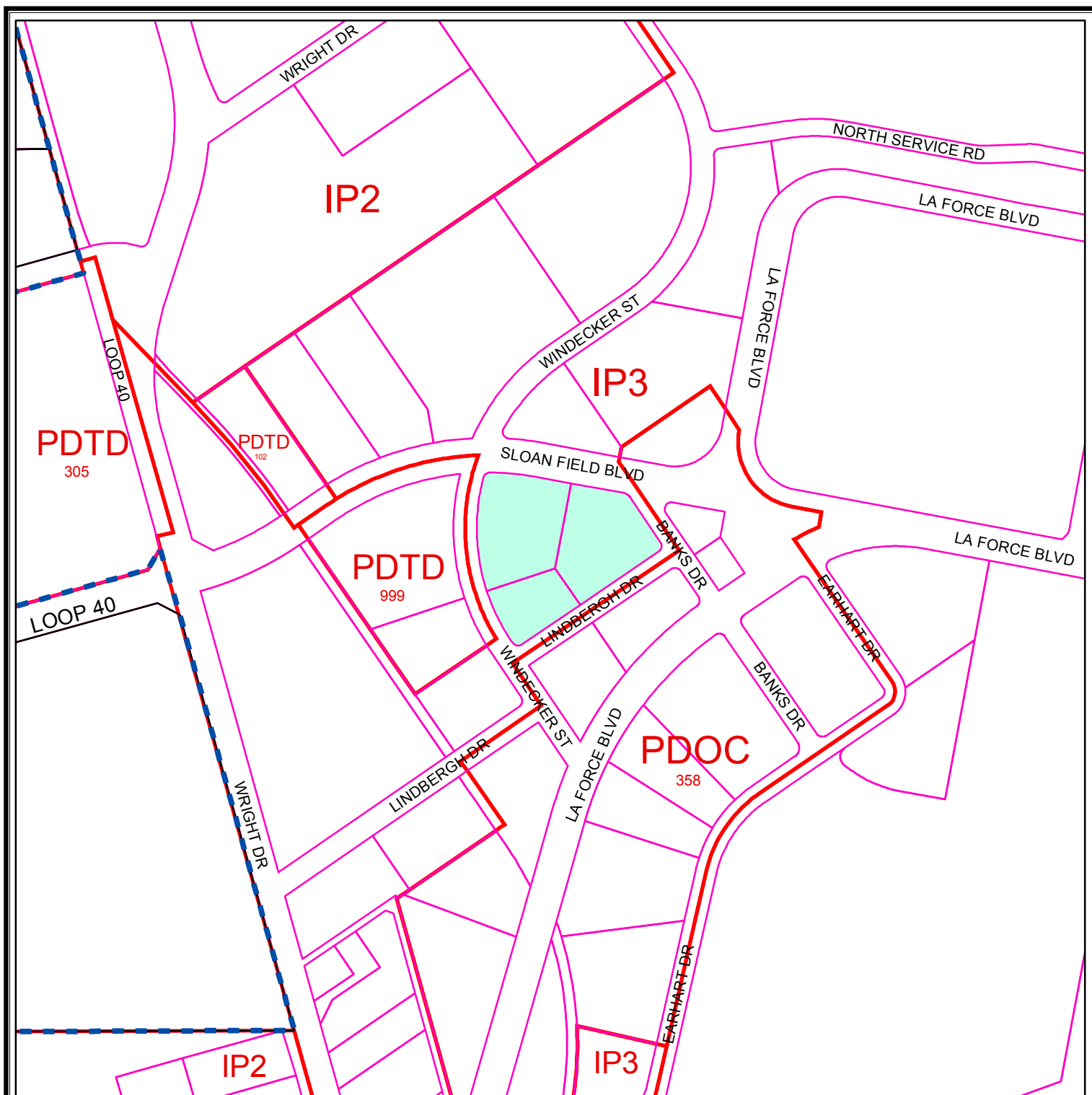
Consider a request for a zone change from IP-3, Industrial Park District, to PD, Planned District for an Office Center on Lots 3A, 4A and 5A, Block 3, Midland International Airport Industrial Park, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- COUNTY PARCEL
- PUBLIC BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 12 - 024

Scale: 1" = 400'

Consider a request for a zone change from IP-3, Industrial Park District, to PD, Planned District for an Office Center on Lots 3A, 4A and 5A, Block 3, Midland International Airport Industrial Park, City and County of Midland, Texas.

LEGEND

- | | |
|---|---|
| ZONING | CITY PARCELS |
| CITY LIMITS | COUNTY PARCELS |

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 28, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: At approximately 10:39 a.m. hold a public hearing and consider an ordinance on a request by Fasken Land and Minerals for a zone change from FD, Future Development District to PD, Planned District for a Housing Development on Tract 1; and to LR-2, Local Retail District on Tract 2.

Purpose:

Hold a public hearing at approximately 10:39 a.m. and consider an ordinance on a request by Fasken Oil and Minerals for a zone change from FD, Future Development District to PD, Planned District for a Housing Development on Tract 1, and to LR-2, Local Retail District on Tract 2.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

This request represents the next development phase for The Vineyard Addition, a planned development located on the west side of Holiday Hill Road, near the intersection with Sherwood Drive. The first phase, the construction of a two-story office building, is well underway. The proposed Planned District on Tract 1 is for the construction of 364 apartment units in 14 buildings, along with a clubhouse/office. The proposed apartments are represented by Exhibits A-G. These will be two-story market-rate apartments with a density of just under 17 units per acre.

Driveway access will be from Sherwood Drive and Chatten Way Drive, with access to the residences controlled by electric gates. The 382 off-street parking spaces exceed the required two spaces per dwelling unit. Exhibits B and C illustrate elevation drawings of the apartments, and Exhibit D is an elevation view of garages. Exterior building materials include Stucco and limestone veneer, wood and cement fiberboard siding and a standing seam metal roof. The entire property will be fenced with wood and wrought iron fences, except that an eight-foot tall masonry fence will surround the existing well sites.

Tract 2 is proposed to be rezoned to an LR-2 District. This tract is located at the intersection of Sherwood Drive and Holiday Hill Road, and extends southward. It contains 7.67 net acres. The size and location of this proposed retail tract meet the recommendations contained in the Comprehensive Plan. The adjacent apartments discussed above will provide a reasonable transition between this retail tract and the anticipated single-family development farther to the west.

Attachments:

August 6, 2012 P&Z Report
Exhibits A-G

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 26.28-ACRE TRACT OF LAND (“TRACT 1”) WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; BY PERMITTING A 12.11-ACRE TRACT OF LAND (“TRACT 2”) WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT; SAID TRACTS BEING LOCATED IN SECTION 13, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS; SAID TRACTS BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS MADE A PART HEREOF; SAID TRACTS ARE GENERALLY LOCATED ON THE WEST SIDE OF HOLIDAY HILL ROAD AT ITS INTERSECTION WITH SHERWOOD DRIVE; PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of Districts under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a PD, Planned District for a Housing Development, and an LR-2, Local Retail District, as set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the

hereinafter described property is concerned, which is presently zoned FD, Future Development District, and it shall be used as a PD, Planned District for a Housing Development, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 26.28-acre tract of land ("Tract 1") out of Section 13, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "H", which is attached hereto and incorporated herein.

SECTION TWO. That Tract 1 shall be subject to the following special conditions and restrictions:

1. That this planned district shall be subject to the regulations of the MF-1, Multiple-Family Dwelling District, except as otherwise stated below.
2. That the maximum dwelling unit density shall not exceed 17 dwelling units per acre.
3. That development shall conform to the conditions shown on Exhibits "A" through "G", which are attached hereto and incorporated herein.
4. That development of this property shall conform to the conditions contained in the City of Midland Sign Code and the City of Midland Landscaping Code.

SECTION THREE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned FD, Future Development District, and it shall be used as an LR-2, Local Retail District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 12.11-acre tract of land ("Tract 2") out of Section 13, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "T", which is attached hereto and incorporated herein.

SECTION FOUR. 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 FIVE. 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 SIX. 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 SEVEN. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION EIGHT. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular

meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

The Vineyard Apartments
Sherwood Drive
Midland, Texas 79707
Fasken Oil & Ranch, LTD.

Not for Regulatory
Approval, Permitting
or Construction

SAGE GROUP, INC.
LANDSCAPE ARCHITECTURE
DATE: 11/15/2016
SAN ANTONIO, TX 78214
TEL: 210.451.3247
FAX: 210.451.1240

CONTRACT:

Issue Date: 07.11.16

Revisions:

Project Name: 11050.02

Drawn By: CDB

Checked By: KES

Notes:

Scale: 1/4"=1'-0"

Sheet Title:

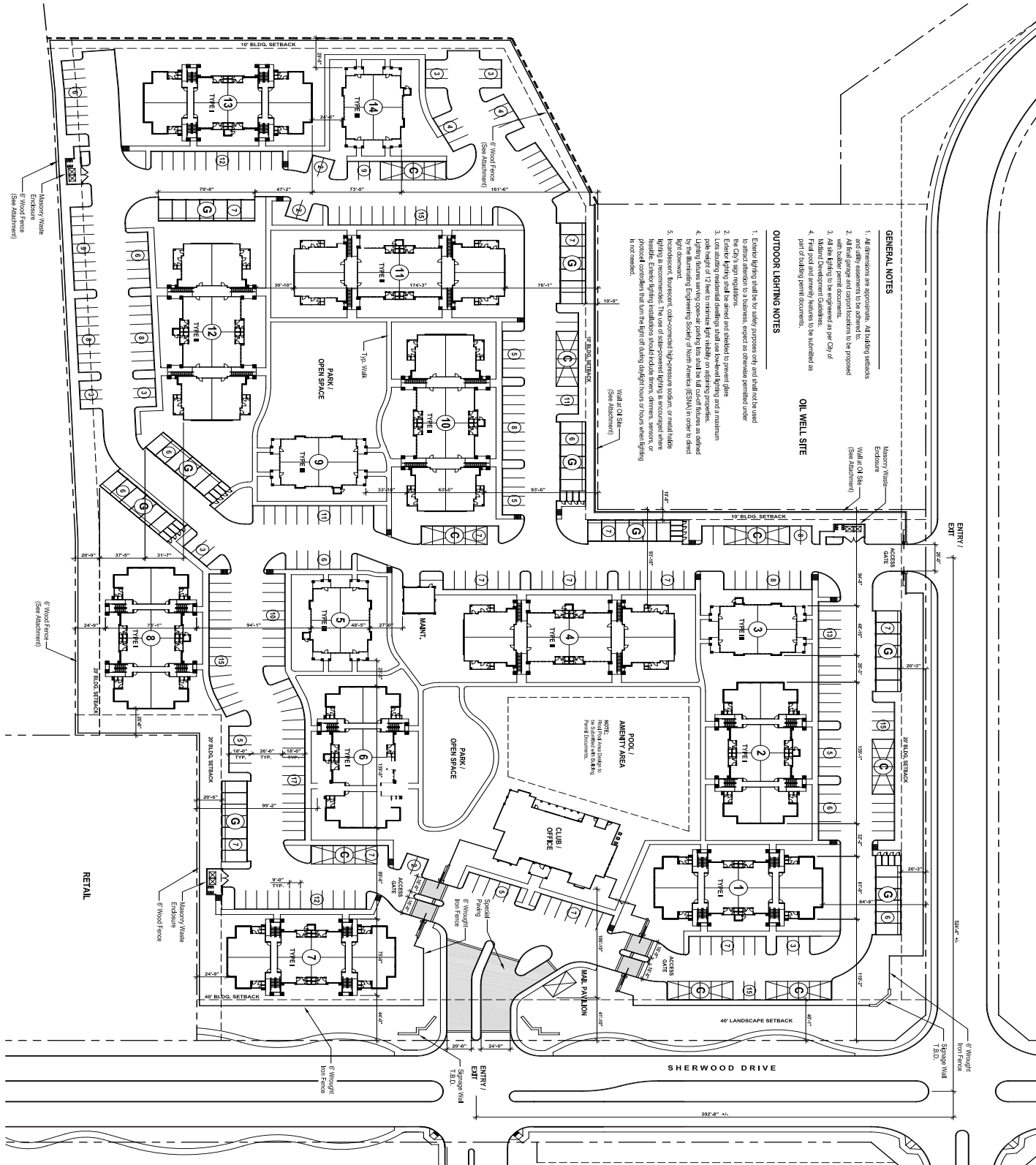
Zoning Site Plan Review

Site Plan

This site plan and the accompanying site plan notes are prepared by the architect and are not to be used for any other purpose without the written consent of the architect. The architect is not responsible for the accuracy of the information provided by the owner or for the results of the site plan review.

Sheet Number:

Sheet L.2



GENERAL NOTES

1. All dimensions are approximate. All building setbacks shall be as shown on the site plan.
2. All final garage and carport locations to be proposed with building permit documents.
3. All site lighting to be engineered as per City of Midland Development Code.
4. All site lighting to be submitted as part of building permit documents.

OIL WELL SITE

OUTDOOR LIGHTING NOTES

1. Exterior lighting shall be for safety purposes only and shall not be used to attract attention to a business, except as otherwise permitted under the City's sign regulations.
2. Exterior lighting shall be aimed and shielded to prevent glare.
3. All exterior lighting shall be installed at a maximum height of 12 feet to minimize light spillage or light trespass.
4. Lighting fixtures serving open-air parking lots shall be full cut-off fixtures as defined by the Illuminating Engineering Society of North America (IESNA) in order to direct light downward.
5. All exterior lighting shall be installed in a manner that minimizes light spillage and light trespass. The use of safety-related lighting is encouraged where feasible. Exterior lighting installations should include timers, dimmers, sensors, or photo-cell controllers that turn the light off during daylight hours or hours when lighting is not needed.

Wall at Oil Well

(See Attachment)

Wall at Oil Well

(See Attachment)

Wall at Oil Well

(See Attachment)

Wall at Oil Well

(See Attachment)

Wall at Oil Well

(See Attachment)

Wall at Oil Well

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Wall at Oil Well

(See Attachment)

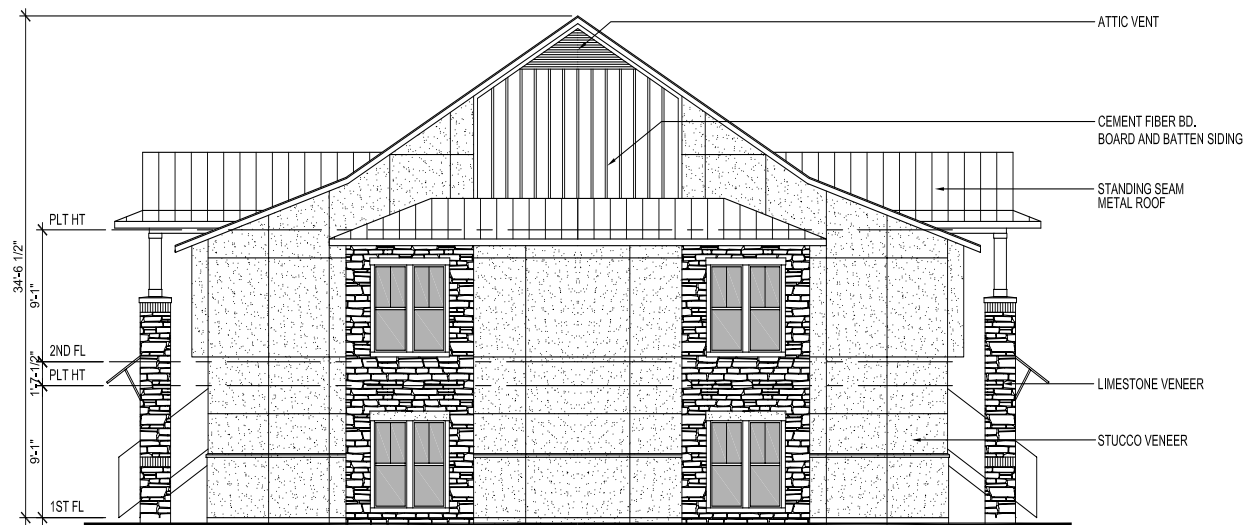
Wall at Oil Well

(See Attachment)

Wall at Oil Well

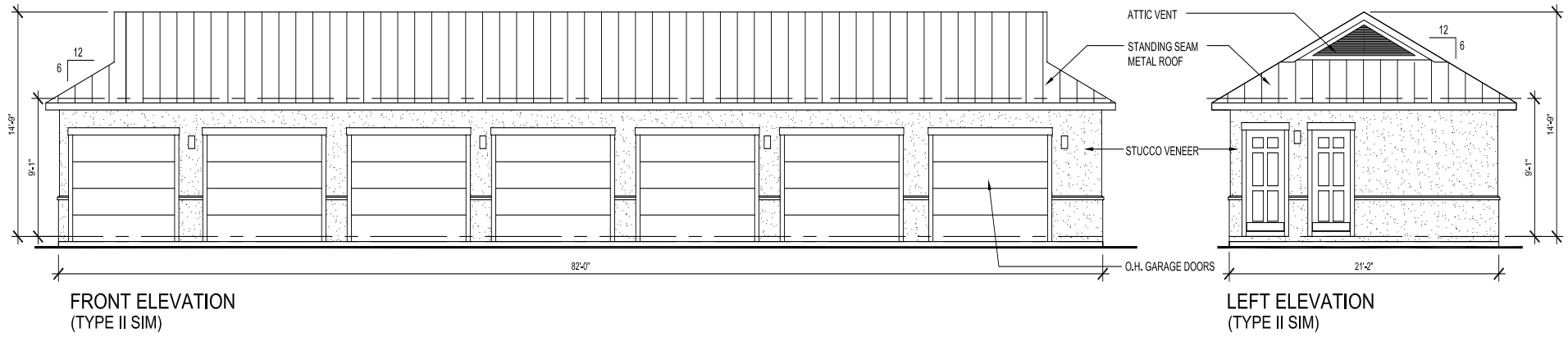
(See Attachment)





UNIT B-1 FH

UNIT B-1 FH



COMMON NAME	SCIENTIFIC NAME
-------------	-----------------

LARGE TREES

Afgan Pine
 Bur Oak
 Cedar Elm
 Lacebark Elm
 Live Oak
 Texas Red Oak
 Japanese Black Pine

Pinus eldarica
Quercus macrocarpa
Ulmus crassifolia
Ulmus parvifolia
Quercus virginiana
Quercus texana
Pinus thunbergii

Maiden Grass
Gulf Coast Muhly
Lindheimer's Muhly
Switchgrass
Little Blue Stem
Mexican Feather Grass

Miscanthus sinensis
Muhlenbergia capillaris
Muhlenbergia lindheimeri
Panicum virgatum
Sachizachyrium scoparium
Stipa tenuissima

Green Santoína
Asian Jasmine

Santolina virens
Trachelospermum asiaticum

Crossvine
Sweet Autumn Clematis
Carolina Jessamine

Bignonia capreolata
Clematis paniculata
Gelsemium sempervirens

Abelia

Cenizo
 Evergreen Sumac
 Texas Sage
 Sabine Juniper
 Dwarf Yaupon Holly
 Red Yucca
 Hibiscus
 Turks Cap
 Russian Sage
 Mexican Brush Sage
 Nandina
 Yucca pendula
 Sotol; Desert Spoon

Abelia x grandiflora
Leucophyllum frutescens
Rhus virens
Leucophyllum frutescens
Juniperus sabina
Ilex vomitoria 'Nana'
Hesperaloe parviflora
Hibiscus coccineus
Malvaviscus arboreus
Perovskia atriplicifolia
Salvia leucantha
Nandina domestica
Yucca recurviflora
Dasyfron wherryi

Lantana

Lantana camara
Ruellia species
Salvia superba
Wedelia hispida

Buffalo Grass

1. Pedestrian walks shown on this plan may be constructed of decomposed granite, pavers, or other materials differing from standard concrete, provided the use of such materials is approved in advance by the City of Midland.
2. Portions of sidewalks proposed along Holiday Hill and Sherwood Drive which are outside the street right-of-way will be covered by a public sidewalk easement as approved by the City of Midland.
3. Plant is schematic to demonstrate a conceptual palette of materials, however, other plant material may be utilized.
4. Uplift pants and AC condensers to be buffered/hedged with approved plant material.
5. Special conditions: special paving, furnishing, landscape lighting and other landscape components shall be implemented to create distinction to the project development.
6. All Phase I and Phase II landscaping will be in accordance with Title IX, Chapter 9 Landscaping Regulations.



SAGE GROUP, INC.
LANDSCAPE ARCHITECTURE
MASTER PLANNING
SITE PLANNING
6106BROADWAY
SAN ANTONIO, TX 78216
TEL 210.493.3747
FAX 210.493.3749

Not for Regulatory
Approval, Permitting
or Construction

Consultants:

Issue Date 07.17.12

Revisions

Project Number: 11033.00

Drawn By CDB

Checked By	RBD
------------	-----

North



Scale: 1"=40'-0"

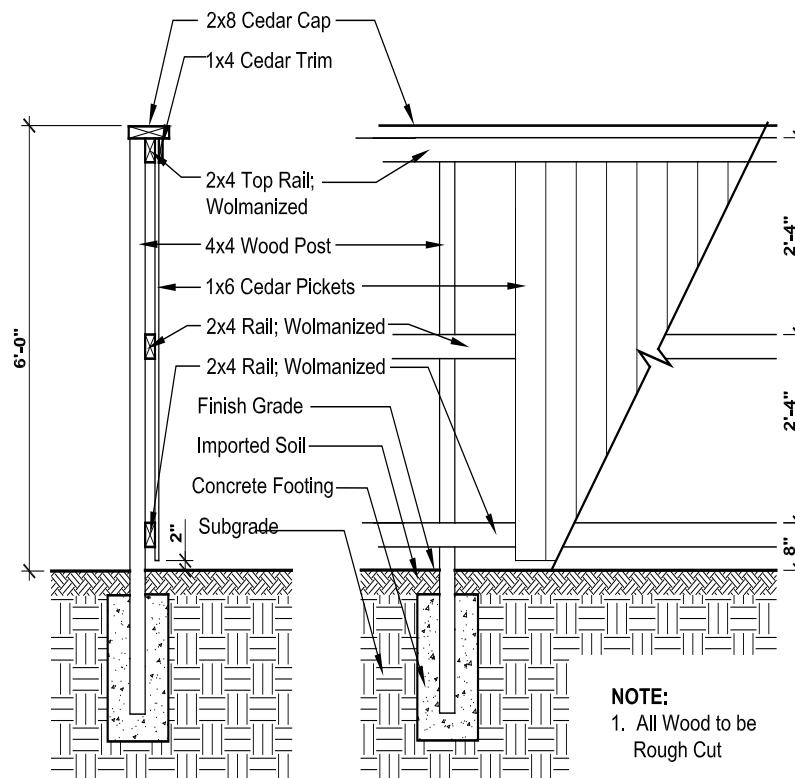
Sheet Title
Zoning Site Plan Review

Landscape

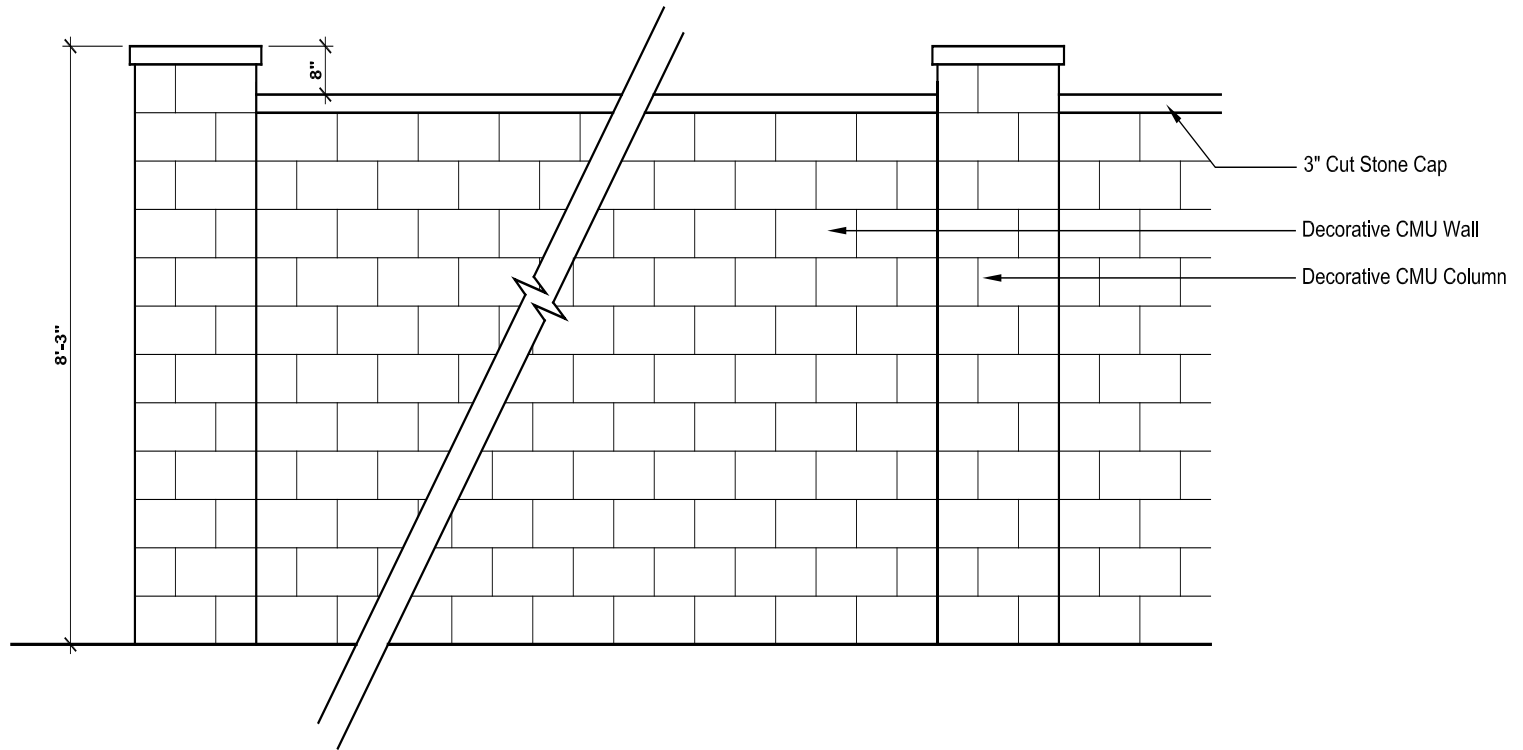
These Drawings and Specifications are to be an instrument of service and shall remain the property of the Landscape Architect. They are not to be used on other projects or extensions to this project except by agreement in writing with the Landscape Architect. The Landscape Architect is not responsible for construction means, methods, sequences or procedures, or for safety precautions and programs in connection with the project.

Sheet Number

Sheet **L.3**



Wood Fence



○ **Wall at Oil Site**



110 W. Louisiana Ave. Suite. 110
MIDLAND TEXAS 79701-3414
OFFICE (432) 687-0865 FAX (432) 687-0868
www.team-west.com

July 18, 2012

Multi-family, Planned District MF-1 Zoning

FIELD NOTES OF A 26.28 ACRE TRACT OF LAND LOCATED IN SECTION 13, BLOCK 40, T-1-S, T & P RR. COMPANY SURVEY, MIDLAND COUNTY, TEXAS:

BEGINNING at a point in the center of a proposed 60-foot right-of-way located in Section 13, Block 40, T-1-S, T & P RR Company Survey, Midland County, Texas, for the Southeast corner this tract, from which the Southeast corner of said Section 13 bears N 76°38' 44" E, 269.28 feet and S 13°20'47" E, 889.43 feet:

THENCE S 76°38'44" W, along the centerline of a proposed 60-foot right-of-way, 417.42 feet to a point of curvature this tract:

THENCE Northwesterly along the curved centerline of a proposed 60-foot right-of-way, Delta Angle=47°01'22", Radius Length = 250.00 feet, Chord Bearing = N 79°50'36" W, Chord Length = 199.47 feet and an Arc Length of 205.18 feet to a point of tangency this tract:

THENCE N 56°19'55" W, along the centerline of a proposed 60-foot right-of-way, 560.26 feet to a point for the southwest corner this tract:

THENCE N 36°05'27" E, along the centerline of a 60-foot right-of-way, 123.82 feet to a point of curvature this tract:

THENCE Northwesterly along the curved centerline of a 60-foot right-of-way, Delta Angle = 49°25'40", Radius Length = 250.00 feet, Chord Bearing = N 11°22'37" E, Chord Length = 209.04 feet and an Arc Length of 215.67 feet to a point of tangency this tract:

THENCE N 13°20'13" W, along the centerline of a proposed 60-foot right-of-way, 844.59 feet to a point for the Northwest corner of this tract:

THENCE N 76°39'47" E, along the centerline of a proposed 100-foot right-of-way, 350.00 feet to a point for a corner this tract:

THENCE S 13°20'13" E, 50.00 feet to a found ½-inch iron rod with cap marked "WEST CO. MIDLAND" located in the Southern boundary of Sherwood Drive and in the Southwest corner of The Vineyard Addition as recorded in Cabinet "I", Page 83, Midland County Plat Records for a corner this tract;

THENCE N 76°39'47" E, along the Southern boundary of said Sherwood Drive, 280.00 feet to a point for a corner this tract:

RECEIVED

JUL 27 2012

CITY OF MIDLAND

THENCE S 13°20'13" E, 300.00 feet to a point for a corner this tract:

THENCE N 76°39'47" E, 100.04 feet to a point for the Northeast Corner this tract:

THENCE S 13°20'47" E, 188.33 feet to a point of curvature this tract:

THENCE Southeasterly along the curved boundary, Delta Angle = 04°53'13", Radius Length = 5260.00 feet, Chord Bearing = S 15°47'23" E, Chord Length = 448.51 feet and an Arc Length of 448.64 feet to a point of tangency this tract;

THENCE S 18°14'00" E, 512.38 feet to a point of curvature this tract;

THENCE Southeasterly along the curve boundary, Delta Angle = 01°18'00", Radius Length = 4740.00 feet, Chord Bearing = S 17°35'00" E, Chord Length = 107.54 feet and an Arc Length of 107.54 feet to the Place Of Beginning and containing 26.28 acres.

NOTE: All bearings, distances, coordinates, and acreage's shown hereon are based upon the Texas Coordinate System (NAD83) Texas North Central Zone having a convergence of -2°00'00.02", a combined grid factor of 0.999894214 at (N:6,717,344.37, E:832,340.15) a point near the southeast corner of this project.

Fasken Oil and Ranch, Ltd.
Multi-family, Planned District MF-1 Zoning
Job No. 2012-0802





110 W. Louisiana Ave. Suite. 110
MIDLAND TEXAS 79701-3414
OFFICE (432) 687-0865 FAX (432) 687-0868
www.team-west.com

July 30, 2012

Local Retail, LR-2 Zoning

FIELD NOTES OF A 12.11 ACRE TRACT OF LAND OUT OF SECTION 13, BLOCK 40, T-1-S, T & P RR. COMPANY SURVEY, MIDLAND COUNTY, TEXAS:

BEGINNING at a point in the eastern boundary of Section 13, Block 40, T-1-S, T & P RR Company Survey, Midland County, Texas and in the center of a proposed 60-foot right-of-way, for the Southeast corner of this tract, from which the Southeast corner of said Section 13 bears S 13°20'47" E a distance of 889.53 feet;

THENCE S 76°38'44" W, along the centerline of a proposed 60-foot right-of-way a distance of 269.33 feet to a point for the Southwest corner this tract;

THENCE Northwesterly along the curved boundary, Delta Angle=01°18'00", Radius Length=4740.00 feet, Chord Bearing= N 17°35'00" W, Chord Length= 107.54 feet and an Arc Length of 107.54 feet to a point of tangency this tract;

THENCE N 18°14'00" W a distance of 512.38 feet to a point of curvature this tract;

THENCE Northwesterly along the curved boundary, Delta Angle= 04°53'13", Radius Length= 5260.00 feet, Chord Bearing= N 15°47'23" W, Chord Length= 448.51 feet and an Arc Length of 448.64 feet to a point of tangency this tract;

THENCE N 13°20'47" W a distance of 188.33 feet to a point for a corner this tract;

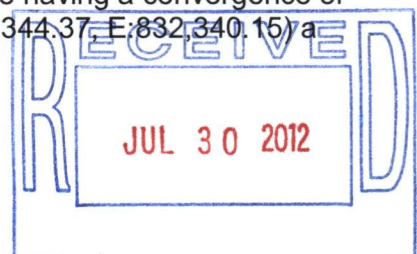
THENCE S 76°39'47" W a distance of 100.04 feet to a point for a corner this tract;

THENCE N 13°20'13" W a distance of 300.00 feet to a point in the Southern Right-of-Way of Sherwood Drive and in the Southern boundary of "The Vineyard Addition" as recorded in Cabinet "I", Page 88, Midland County Plat Records for the Northwest corner this tract;

THENCE N 76°39'47" E, along the Southern right-of-way of Sherwood Drive a distance of 439.99 feet to a point in the eastern boundary of said Section 13, for a corner this tract;

THENCE S 13°20'47" E a distance of along the eastern boundary of said Section 13, 1554.18 feet to the Place of Beginning and containing 12.11 acres of land.

NOTE: All bearings, distances, coordinates, and acreage's shown hereon are based upon the Texas Coordinate System (NAD83) Texas North Central Zone having a convergence of -2°00'00.02", a combined grid factor of 0.999894214 at (N:6,717,344.37 E:832,340.15) a point near the southeast corner of this project.



Fasken Oil and Ranch, Ltd.
Local Retail, LR-2 Zoning, Net 7.67 Acres
Job No. 2012-0802

T:\Civil Drawings\2012\2012-0802\LR-2 Field Notes.docx



Planning and Zoning Commission
Minutes
August 6, 2012

Z-12-028 - Hold a public hearing and consider a request by **Fasken Land & Minerals, Ltd.** for a zone change from FD, Future Development District to PD, Planned District for a Housing Development on a 26.28-acre tract of land (Tract 1) and to LR-2, Local Retail District on a 12.11-acre tract of land out of (Tract 2), all out of Section 13, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the west side of Holiday Hill Road, approximately 880 feet north of Mockingbird Lane.)

Bill Skeen, 3811 Bee Caves Rd. Austin, Texas, representing Fasken Land and Mineral LTD, introduced himself and made himself available for questions.

Senior Planner Jim Compton gave an overview of the request for zone change. He stated the overall plan was very comprehensive due to 10 different zoning classifications. The applicant was only requesting zone change for two tracts, tract one as a PD Planned District and tract two as an LR-2.

Staff recommended approval for zone change of tract one subject to conditions A, 1 through 5 and zone change for tract 2.

Vice Chairman Gatten opened the public hearing.

With no one wishing to speak in favor or in opposition of the request, Vice-Chairman Gatten closed the public hearing.

After further discussion a motion for approval for a zone change of tract one subject to conditions A, 1 through 5 and zone change for tract 2 was made by Commissioner Watkins; seconded by Commissioner Norris. The motion carried by the following vote: AYE: Gatten, Norris, Wolf, Lanning, York, Watkins and Wilton. NAY: None. ABSTAIN: None. ABSENT: Ferguson, Woodruff and Carrillo.

PLANNING AND ZONING COMMISSION

August 6, 2012

CASE: Z-12-028.

REQUEST: Hold a public hearing and consider a request for a zone change from FD, Future Development District to PD, Planned District for a Housing Development (MF-1); and LR-2, Local Retail District.

OWNER: Fasken Land and Minerals.

APPLICANT: Bill Skeen.

REPRESENTATIVE: West Company of Midland.

LEGAL DESCRIPTION: A 38.39-acre tract out of Section 13, Block 40, T&P RR Company Survey, Midland County, Texas.

LOCATION: West side of Holiday Hill Road, north of Mockingbird Lane.

CURRENT ZONING: FD, Future Development District.

ASSOCIATED CASE: P-12-029, The Vineyard Addition, Section 2.

DETAILS OF REQUEST:

1. Bill Skeen and Fasken Land and Mineral have prepared a land use plan on approximately one-half section of land on the west side of Holiday Hill Road, extending between Mockingbird Lane and Green Tree Boulevard. Construction

of the first phase of development, a two-story office building located at the northwest corner of Holiday Hill Road and Sherwood Drive, is nearing completion. This development plan includes 10 different zoning classifications located on 11 tracts of land, which emphasizes the diversity of this plan. It includes land uses ranging from single-family, multiple-family, office, a retirement center, school and park site, storage units and retail uses. However, at this time, the applicant's request is limited to only two parcels. Tract 1 is proposed to be zoned to PD, Planned District for a Housing Development, where apartment development is planned. Tract 2, adjacent to Holiday Hill Road, is proposed to be zoned LR-2 District. A preliminary plat application is anticipated to be submitted soon.

SURROUNDING ZONING AND LAND USE:

2. This property is bounded on the east by Holiday Hill Road and on the south by Mockingbird Lane, both of which are arterial streets. The northern boundary aligns with Sherwood Avenue. There are two active oil/gas wells within this property. The area to the north is zoned FD District, and is vacant except for oil and gas wells. The land to the east includes the southern portion of the Green Tree and the Green Hill Terrace neighborhoods. The land to the south is outside the City limit, and is vacant. The land to the west is also outside the City limit, and is only developed with oil and gas wells.

ANALYSIS:

3. Tract 1 is proposed to be developed with apartments. The applicant has submitted several site plans attached as Exhibits A-G. This tract is located just west of a proposed retail district that would face Holiday Hill Road. This apartment development would provide a good transition between the proposed retail zoning and single-family development anticipated to the west. It also has adequate collector street access. Primary access to this site will be from Sherwood Drive, where an electric gate will be installed. A secondary means of ingress and egress will be on Chatten Way Drive. This secondary access point must be approved by the Fire Department.

Exhibit A is a plan view of this property. It illustrates a total of 14 apartment buildings, a 6,000 square foot clubhouse, a cabana and detached garages and carports. While these apartments will likely be built in two phases, a total of 364 dwelling units are planned. Tract 1 contains approximately 22 net acres, which results in an overall density of 16.5 dwelling units per acre. The minimum parking requirement is two spaces for each dwelling unit. Phase one will contain 176 units, which requires 352 spaces; however, 382 spaces are provided. Parking for Phase Two is not listed, but it must meet the minimum standard of the Zoning Code. Exhibit A shows two signs located at the entrance from Sherwood Drive, but no other sign details are provided. We recommend that all

signs conform to the Sign Code. Several sites for solid waste containers are shown throughout the site. All sites are to be surrounded on three sides with a masonry fence. A note on Exhibit A states that all outdoor lighting will conform to the Outdoor Lighting Code so as to avoid a nuisance to abutting properties.

Exhibits B and C illustrate the architectural design of the apartments. Each building will be two stories tall, with a maximum roof ridge height of just under 35 feet. The maximum permitted height in the MF-1 District is three stories or 50 feet. Exterior building materials include Stucco and limestone veneer, wood siding and cement fiber board with standing seam metal roofs. Exhibit D is an illustration of the garages, which are built of materials that match the buildings. Exhibit E is a landscape plan that appears to meet the Landscape Code requirements. A detailed plan will be reviewed through the building permit process. Exhibits F and G illustrate a six-foot wooden fence and an eight-foot masonry fence, respectively. Exhibit A shows that the entire development will be fenced with either a wood or wrought iron fence. The one exception is the abutting well sites, which will be fenced with the eight-foot masonry fence. The staff finds the fencing plan to be reasonable.

LR-2, Local Retail District:

4. The applicant is also requesting an LR-2 District on Tract 2, located along the west side of Holiday Hill Road and south of Sherwood Drive. The proposed retail district contains 12.11 gross acres (including adjacent rights-of-way), but the net acreage is 7.67 acres. The size and location of this district is consistent with Comprehensive Plan recommendations, and the staff finds this request to be reasonable.

STAFF RECOMMENDATION:

The staff recommends approval of this request for a zone change from FD, Future Development District to PD, Planned District for Housing Development on Tract 1, subject to the following conditions:

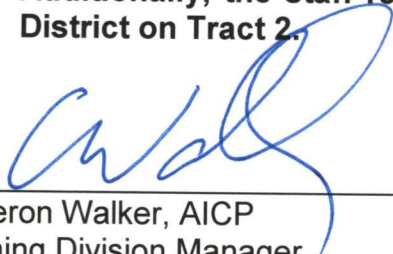
A.

1. That this Planned District shall be subject to the regulations of the MF-1, Multi-Family Dwelling District, except as otherwise stated below.
2. That the maximum density shall not exceed 17 dwelling units per acre.
3. That all development shall conform to the conditions shown on the attached Exhibits A through G in all respects.

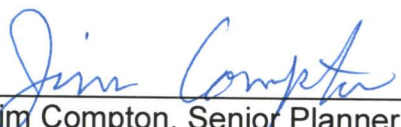
4. All business signs will conform to the regulations of the Sign Code and the Landscape Code.
5. That the driveway on Chatten Way must be approved by the Fire Department.

B.

1. Additionally, the staff recommends approval of a zone change to an LR-2 District on Tract 2.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A through G

①

Case Number: Z-12-028

CITY OF MIDLAND

Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

William C. SKEEN

Applicant Name

(512) 422-8200 BSKEEN@APTX.COM

(Phone/e-mail)

3811 BEE CAVES RD. #102

Address

AUSTIN, TEXAS 78746

Zip Code

★ FASKEE LAND AND MINERAL LTD.

Property Owner Name

(432) 687-1777

(Phone/e-mail)

303 WEST WALL STREET, SUITE 1800 MIDLAND, TEXAS 79701-5116

Address

Zip Code

William C. SKEEN / Buck BENSON

Representative Name

(512) 422-8200 BSKEEN@APTX.COM

(Phone/e-mail)

(210) 892-0510 BBENSON@PULMALLAW.COM3811 BEE CAVES ROAD, #102

Address

AUSTIN, TEXAS 78746

Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. SEE ATTACHED METES AND BOUNDS

DescriptionPRESENT ZONE: FDREQUESTED ZONE: PD-MF-1

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

Reason for Zone Change Request: FOR DEVELOPMENTPresent Use of Property: PASTURE / OIL AND GAS OPERATIONSProposed Use of Property: MULTIFAMILY

How will zone change affect the public health, safety and welfare? THIS REQUEST DOES NOT ADVERSELY AFFECT THE HEALTH, SAFETY OR WELFARE OF THE GENERAL PUBLIC.

Describe how conditions affecting the property have changed since present zoning designation:

DEVELOPMENT IS STARTING TO OCCUR IN THE IMMEDIATE PROXIMITY TO THE PROPERTY.Is a Specific Use Permit with Term for alcoholic beverages sales needed? Yes ☒ No

APPLICATION FEES:

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

SITE PLAN SUBMITTALS (if applicable):

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

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

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

Property Owner (signature): _____ Date: _____
CHARLES F. HEDGES JR.

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 **TRAVIS**

Before me, the undersigned authority, on this day personally appeared

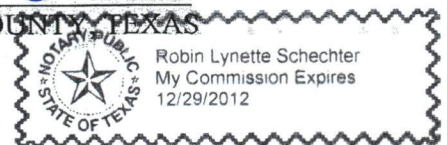
William C. SKEN who, being by me duly sworn, upon oath says: That (s)he is authorized by **FORLEN LAND AND MINERAL LTD.** the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Authorized Agent (signature)

Subscribed and sworn to before me, this **3rd** day of **July**, 20**12**, to certify which witness my hand and seal of office.

Robin Lynette Schechter
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS
TRAVIS

FOR OFFICE USE ONLY	
Rec'd By: AZ	Date: 7/3/12
Assigned: KV	
For: P+Z	On: 8/6/12



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

② Case Number: 2-12-028

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

William C. Skeen (512) 422-8200 BSKEEN@APTX.COM
Applicant Name (Phone/e-mail)

3811 BEE CAVES RD, #102 AUSTIN, TEXAS 78746
Address Zip Code

FASKEN LAND AND MINERAL LTD. (432) 687-1777
Property Owner Name (Phone/e-mail)

303 WEST WALL STREET, SUITE 1800 MIDLAND TEXAS 79701-5116
Address Zip Code

William C. Skeen / Buck Benson (512) 422-8200 BSKEEN@APTX.COM
Representative Name (210) 842-0510 B.BENSON@PULMANLAW.COM
(Phone/e-mail)

3811 BEE CAVES ROAD, #102 AUSTIN, TEXAS 78746
Address Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. SEE ATTACHED METES AND BOUNDS
DESCRIPTION

PRESENT ZONE: FD REQUESTED ZONE: PD-LR-2
(List by tracts if more than one district is requested)

Reason for Zone Change Request: FOR DEVELOPMENT

Present Use of Property: PASTURE / OIL AND GAS OPERATIONS

Proposed Use of Property: LOCAL RETAIL / RESTAURANT

How will zone change affect the public health, safety and welfare? THIS REQUEST DOES NOT ADVERSELY AFFECT THE HEALTH, SAFETY, OR WELFARE OF THE GENERAL PUBLIC.

Describe how conditions affecting the property have changed since present zoning designation: DEVELOPMENT IS STARTING TO OCCUR IN THE IMMEDIATE PROXIMITY TO THE PROPERTY

Is a Specific Use Permit with Term for alcoholic beverages sales needed? Yes No

APPLICATION FEES:

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

SITE PLAN SUBMITTALS (if applicable):

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

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

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

Property Owner (signature): _____ Date: _____
CHARLES F. HEDGES JR.

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 **TRAVIS**

Before me, the undersigned authority, on this day personally appeared

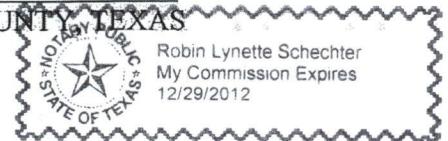
William C. SKEN who, being by me duly sworn, upon oath says: That (s)he is authorized by **FORSEN LAND AND MINERAL LTD.** the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Authorized Agent (signature)

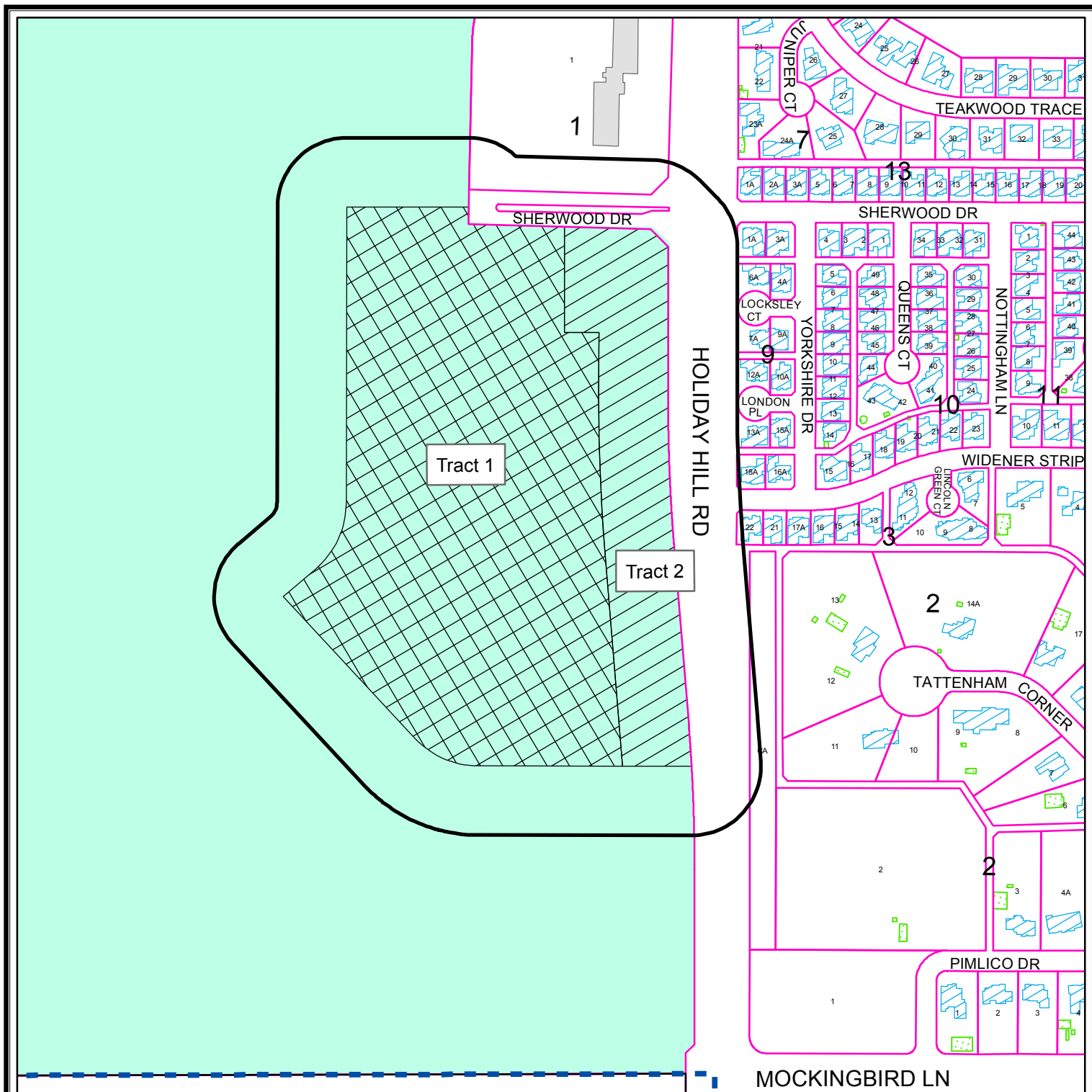
Subscribed and sworn to before me, this **3rd** day of **July**, 20 **12**, to certify which witness my hand and seal of office.

Robin Lynette Schechter
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS
TRAVIS

FOR OFFICE USE ONLY	
Rec'd By: AZ	Date: 7/3/12
Assigned: _____	
For: _____	On: _____



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



PROPERTY OWNER NOTIFICATION MAP

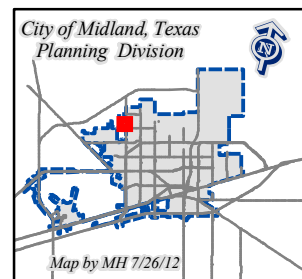
Z - 12 - 028

Scale: 1" = 400'

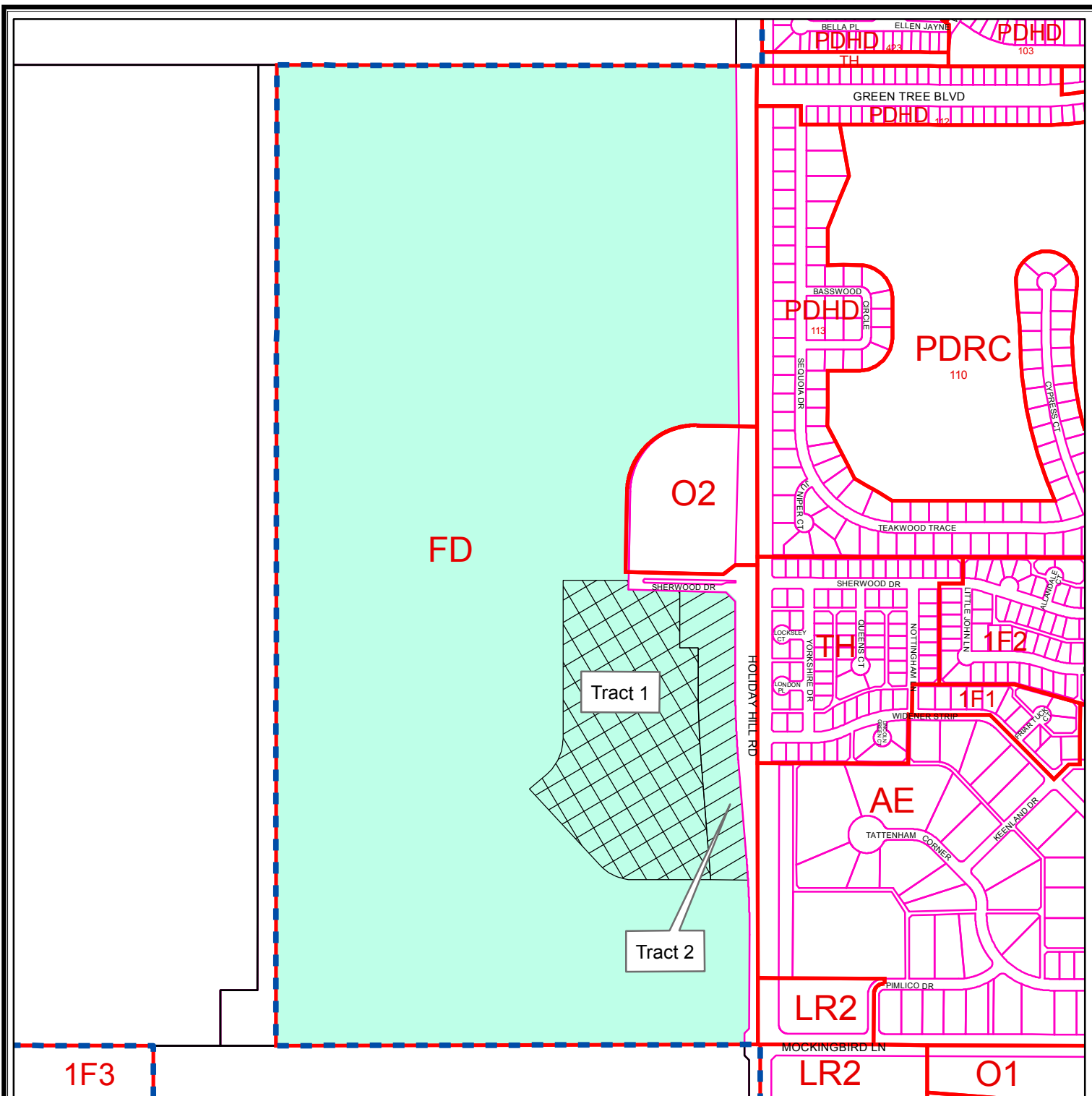
Consider a request for a zone change from FD, Future Development District to PD, Planned District for a Housing Development on a 26.28-acre tract of land (Tract 1) and to LR-2 Local Retail District on a 12.11-acre tract of land (Tract 2), all out of Section 13, Block 40, T-1-S, T & P RR Co. Survey, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- PRIVATE BLDGS
- ACCESSORY BLDGS



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 THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA. WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CULING, OR OTHER DECISION, SOLELY ON THE INFORMATION CONTAINED HEREIN.



ZONING MAP

Z - 12 - 028

Scale: 1" = 700'

Consider a request for a zone change from FD, Future Development District to PD, Planned District for a Housing Development on a 26.28-acre tract of land (Tract 1) and to LR-2 Local Retail District on a 12.11-acre tract of land (Tract 2), all out of Section 13, Block 40, T-1-S, T & P RRR Co. Survey, City and County of Midland, Texas.

LEGEND

- | | |
|---|--|
| ZONING | CITY PARCELS |
| CITY LIMITS | COUNTY PARCELS |

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 28, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:42 a.m. and consider 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.)

Purpose:

Hold a public hearing at approximately 10:42 a.m. and consider a Resolution on a request by Community and Senior Services for a Temporary Land Use Permit for a Philanthropic Event.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Community and Senior Services is planning its 18th annual fund raiser. It will consist of a three day garage sale in the warehouse located at 407 E. Scharbauer Drive. The proposed days and hours of operation are as follows:

Friday, October 19th from 10:00 a.m. until 3:00 p.m.

Saturday, October 20th from 10:00 a.m. until 3:00 p.m.

Sunday, October 21st from 2:00 p.m. until 4:00p.m.

No street closures have been requested, no outdoor music is planned and alcoholic beverage sales will not occur. To address limited parking, two vans will shuttle customers between the Super Mercado parking lot and the garage sale. Seven off-duty police officers will provide security on Friday and Saturday, and two will be present on Sunday. Two public restrooms are available on site.

Attachments: Application, Maps, Exhibit A

RESOLUTION NO.

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

WHEREAS, pursuant to Section 11-1-6(D) of the City Code of Midland, Texas, Community and Senior Services, Inc. has applied for authorization to temporarily use land for a Philanthropic Event (Garage Sale) on the west 51.5 feet of Lot 5, Lots 6-10, and the east 22 feet of Lot 11, Block 8, Loma Linda Replat, City and County of Midland, Texas; and

WHEREAS, the Council finds and determines that such temporary use shall be allowed;

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

SECTION ONE. That Community and Senior Services, Inc. is hereby authorized by the City Council to have a Philanthropic Event (Garage Sale) on the following described land:

The west 51.5 feet of Lot 5, all of Lots 6-10, and the east 22 feet of Lot 11, Block 8, Loma Linda Replat, City and County of Midland, Texas;

SECTION TWO. That said temporary use shall be allowed within the area designated herein, subject to the following conditions and restrictions:

- A. That the days and hours of operations shall be limited to the following:
Friday, October 19, 2012 from 10:00 a.m. to 3:00 p.m.;
Saturday, October 20, 2012 from 10:00 a.m. to 3:00 p.m.; and
Sunday, October 21, 2012 from 2:00 p.m. to 4:00 p.m.
- B. That the operation of the Philanthropic Event (Garage Sale) shall conform to the site plan attached hereto as Exhibit "A" and incorporated herein.
- C. That a minimum of two (2) public restrooms shall be provided on this site.

- D. That a minimum of seven (7) certified peace officers shall be provided during the operating hours of the event on Friday and Saturday, and a minimum of two (2) certified peace officers shall be provided during the operating hours of the event on Sunday.
- E. That no music shall be played during the event.
- F. That no sales or consumption of alcoholic beverages shall be permitted.
- G. That customer parking shall be available in the Super Mercado grocery store parking lot to the west.
- H. That all entrance and exit points must be clearly marked and a clear path must be maintained at all times.
- I. That the applicant shall obtain approval from the Solid Waste Department for a refuse collection and clean-up plan prior to the event.
- J. That Kelly Ives, Executive Director of Community and Senior Services, Inc., shall be responsible for ensuring that the conditions of this permit are observed.

SECTION THREE. The City Council reserves at all times the full right and power to revoke said temporary use for violation of any of its terms or any misrepresentations contained in the application, after a hearing of which the holder of said temporary use has been given at least one (1) day notice.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

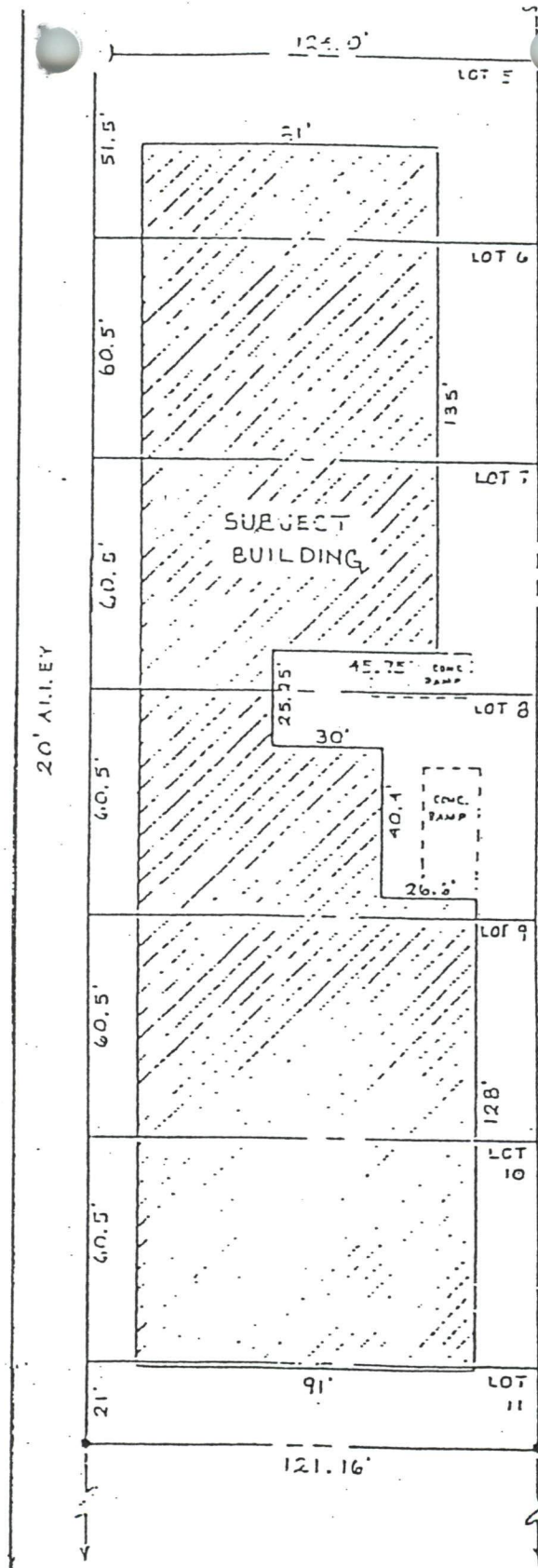
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



← SCHARBAUER DRIVE →

SITE PLAN

SITE PLAN

SCALE: 1" = 50.0'

CASE NO. M-12-015

EXHIBIT A

CITY OF MIDLAND, TEXAS

Planning Division

TEMPORARY LAND USE PERMIT APPLICATION

Submission Requirements: Application shall be submitted to the Planning Division not less than eighteen (18) days prior to the City Council meeting at which action is desired.

Application is hereby made to the City Council for a temporary land use (Carnival, Circus, Fair, Tent Sale, Mobile Food Vendor, etc.):

Name of Applicant: COMMUNITY & SENIOR SERVICES INC Phone: 432-689-6693

Applicant's Address: 3301 SINCLAIR AVE., MIDLAND, TX 79707

Property Owner: COMMUNITY & SENIOR SERVICES, INC. Phone: 432-689-6693

Owner's Address: 3301 SINCLAIR AVE., MIDLAND, TX 79707

Other required information:

1. Street address and legal description of property: 407 E. SCHARBAUER, MIDLAND, TX
WEST 51.5 FEET OF LOT 5, ALL OF LOT 6 THROUGH 10 AND THE EAST 22 FEET OF
LOT 11, BLOCK 8, LOMA LINDA REPLAT., CITY AND COUNTY OF MIDLAND, TX
2. Zoning District: LR-2
3. Type of temporary use requested (Carnival, Fair, etc): PHILANTHROPIC EVENT
(GARAGE SALE)
4. Duration of temporary use: THREE DAY
If event does not exceed One (1) day (must conclude by 10:00 p.m.), then no public hearing is required. If more than One (1) day and is located within any residential district or is located within 1000 feet of any residential district, then a public hearing is required.
5. Proposed days and hours: OCTOBER 19, 20, 21, 2012
6. Will alcoholic beverages be sold? _____ Yes X No
7. A detailed Site Plan is required on CD in .jpg and .pdf format (16 copies needed). Show existing buildings, parking, access arrangements, surrounding streets, activity areas, areas of alcoholic beverage sales, proposed street closures, etc.
Site Plan received: X Yes _____ No

8. Are you requesting the temporary closure of any streets? _____ Yes X No

If yes, you must:

- A. Obtain and complete the "Special Event and Street Closure Application", available in the Transportation office (5th Floor, City Hall).
- B. Provide the City with a **general liability insurance certificate**, naming the **City** as an **Additional Insured**, in the amount of one million dollars (\$1,000,000) for the term of the closure.

9. Other information: Number of security guards provided: 7 (FRI & SAT)
Number of restrooms provided: 2 (SUN)
Type of music (carnival, live, etc.): TWO
Showmobile requested N/A Days and hours N/A

10. A \$500.00 Clean-up Deposit and a \$500.00 Damage Deposit are required for all outdoor events. Checks need to be dated day of event. Inspection of site after the event for trash and damage is a City responsibility. The deposits, or a portion thereof, may be refunded following inspection.

Clean-up Deposit received: __ (Y) __ (N) Clean-up Deposit refunded: __ (Y) __ (%) __ (N)

Damage Deposit received: __ (Y) __ (N) Damage Deposit refunded: __ (Y) __ (%) __ (N)

11. A \$200 Application Review fee is required. Fee received: _____ Yes _____ No
\$25.00 for each additional event date. \$250.00

Owner or Operator (if other than Applicant) responsible for ensuring that the conditions of this permit will be observed:

HELLY IVESI EXECUTIVE DIRECTOR, 3301 SINCLAIR AVE., MIDLAND, TX
Printed Name of Owner/Operator Address Zip Phone 79207

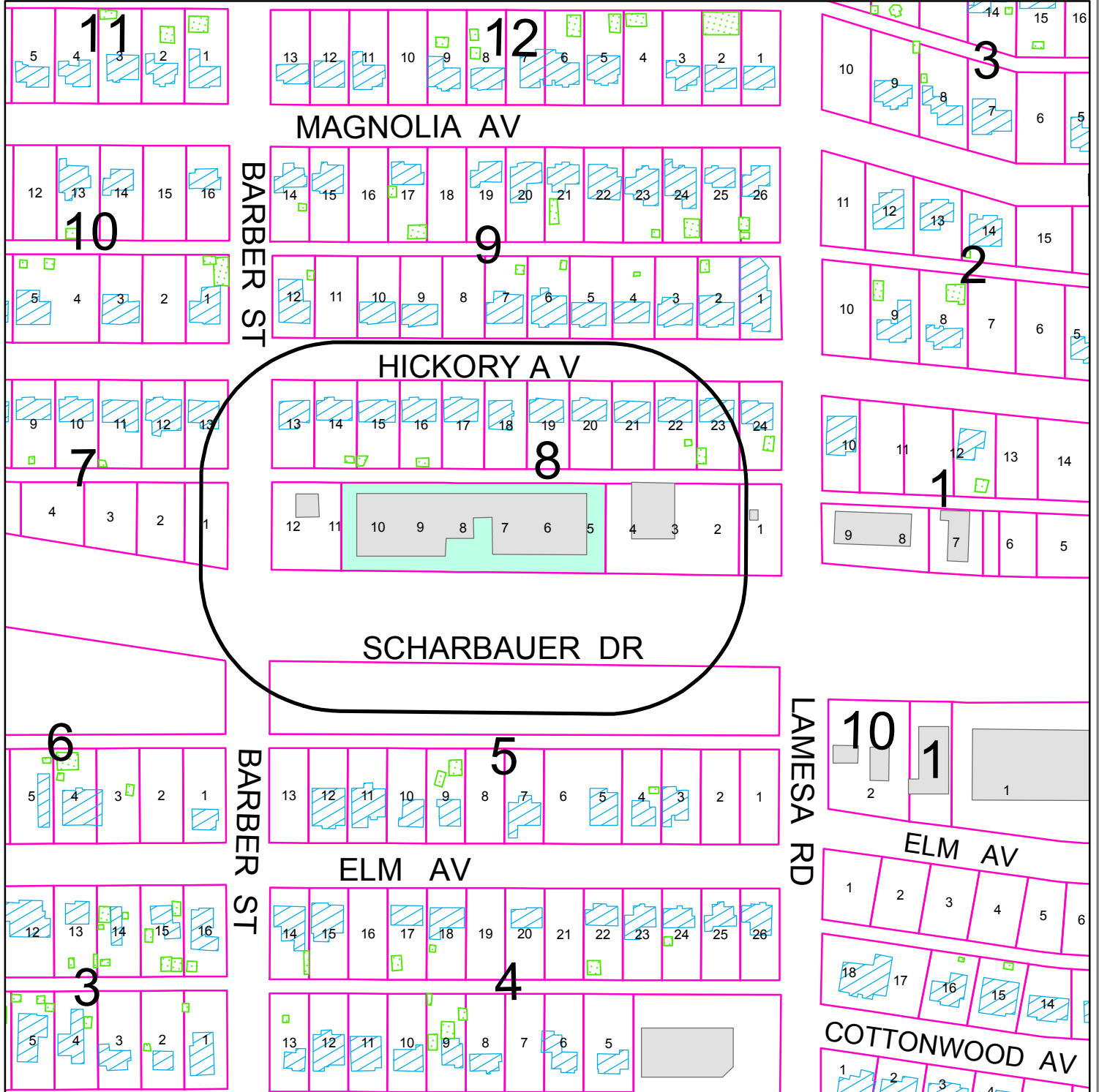
HELLY IVESI
Signature of Owner/Operator Date 6/20/12

6/20/12
Signature of Applicant Date

N/A N/A
Signature of Property Owner, if other than Applicant Date

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

FOR OFFICE USE ONLY	
Received By: <u>CW</u>	Date: <u>6/22/12</u>
Assigned: <u>MS</u>	
For: _____	On: _____



PROPERTY OWNER NOTIFICATION MAP

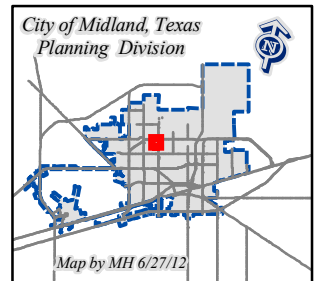
M - 12 - 015

Scale: 1" = 200'

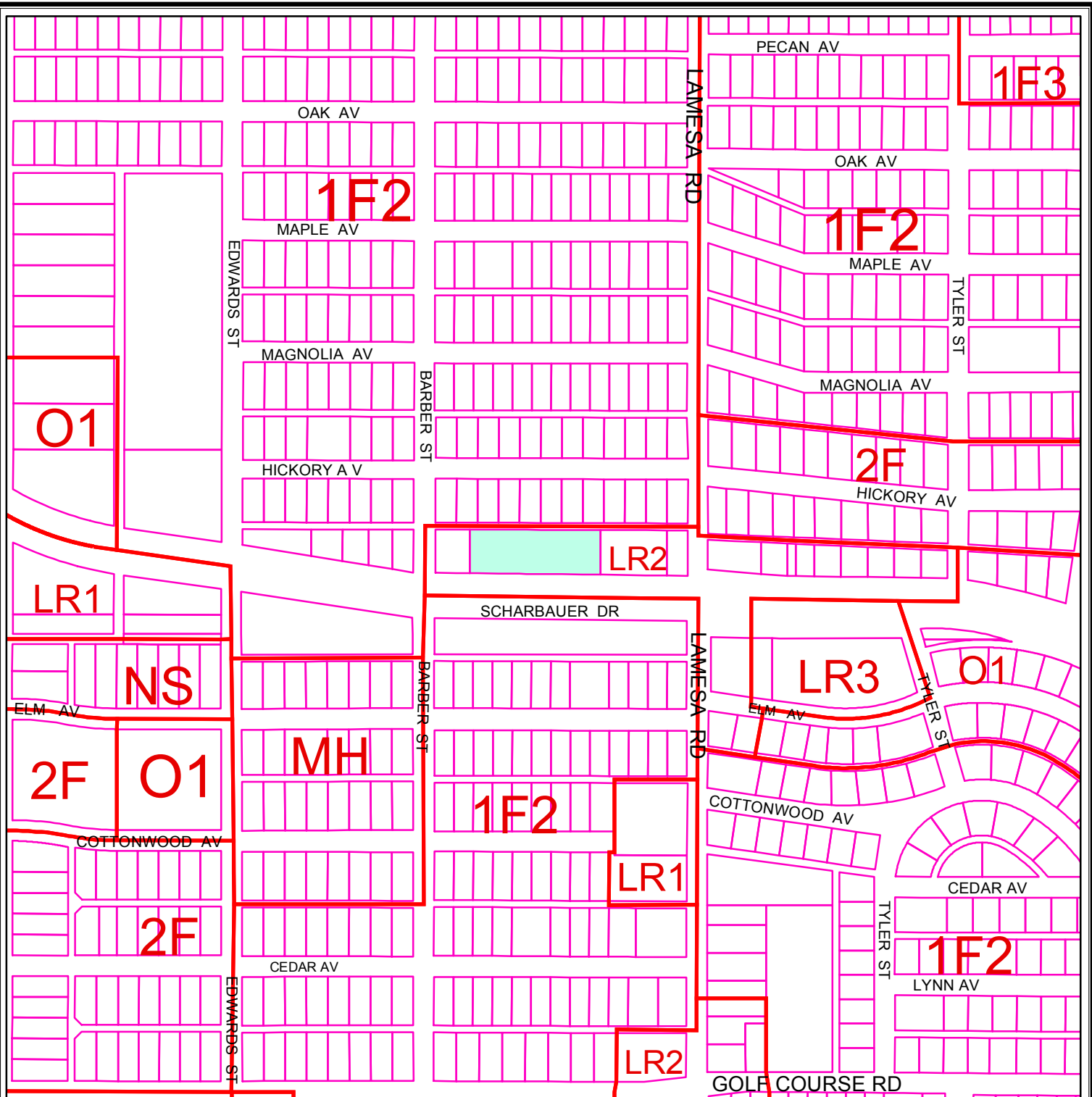
Consider a request for a Temporary Land Use Permit for a Philanthropic Event (Garage Sale) on the west 51.5 feet of Lot 5, all of Lots 6 -10, and the east 22 feet of Lot 11, Block 8, Loma Linda Replat, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

M - 12 - 015

Scale: 1" = 400'

Consider a request for a Temporary Land Use Permit for a Philanthropic Event (Garage Sale) on the west 51.5 feet of Lot 5, all of Lots 6 - 10, and the east 22 feet of Lot 11, Block 8, Loma Linda Replat, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 28, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Steve Thorpe, Building Official

SUBJECT: Resolution to grant a variance to Ordinance 8769 (January 1, 2010 Oil and Gas Well Drilling Ordinance) to allow building permits for single- or multi-family residences or commercial buildings, to be issued in the future, where the proposed building, either in whole or part is no closer than 135 feet of an existing oil and gas well.

Purpose: Resolution to grant a variance to Ordinance 8769 (January 1, 2010 Oil and Gas Well Drilling Ordinance) to allow building permits for single- or multi-family residences or commercial buildings, to be issued in the future, where the proposed building, either in whole or part is no closer than 135 feet of an existing oil and gas wells in Sections 1, 12 and all of 13 of Blk 40. T-1-S, T & P RR Company Survey. There is an existing variance that allows commercial and residential structure to be constructed no closer than 250 feet to the permitted wells in the eastern half of Section 13. Additionally, the existing variance allows construction of public streets a minimum of 100 feet from permitted wells within the eastern half of Section 13; Fasken Land and Mineral is also requesting a variance be granted for construction of public streets up to, but not closer than, 100 feet from any producing well in Sections 1, 12 and the western half of 13 of Blk 40, T-1-S, T & P RR Company Survey. Sections 1, 12 and western half of Section 13 are not currently within the city limits, but are in the City of Midland ETJ.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact: N/A

Discussion:

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

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

On March 8, 2011, City Council granted variances allowing residential and commercial buildings to be constructed up to 250 feet from 4 permitted well sites and public streets to be constructed up to 100 feet from 4 permitted well sites on the Fasken property. Based on this previous variance approval and the code language we feel this request should be granted.

The 4 wells mentioned above were permitted under Ordinance 8769, they are identified as- Fee "AX" No. 1301, 1307, 1309, 1315. Additionally, there are 4 wells permitted under Ordinance 8498 Fee "AX" No. 1302, 1308, 1310, 1316, located in the eastern half of Section 13.

Attachments: Final Signed Letter; Petition, Plat, Development Plan

RESOLUTION NO.

RESOLUTION GRANTING A VARIANCE TO FASKEN LAND AND MINERALS, LTD. BY AUTHORIZING ISSUANCE OF BUILDING PERMITS FOR ANY SINGLE- OR MULTI-FAMILY RESIDENTIAL OR COMMERCIAL BUILDINGS WITHIN 135 FEET OF ANY EXISTING OIL AND GAS WELL WITHIN SECTIONS 1, 12 AND 13, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND, TEXAS; AND AUTHORIZING A VARIANCE FOR CONSTRUCTION OF PUBLIC STREETS UP TO 100 FEET FROM EXISTING OIL AND GAS WELLS WITHIN SAID SECTIONS

WHEREAS, Fasken Land and Minerals, Ltd. has applied for a variance in order to receive building permits for any single- or multi-family residential or commercial buildings within 135 feet of any existing oil and gas well within the property described in Section One hereof; and

WHEREAS, Fasken Land and Minerals, Ltd. has applied for a variance for construction of public streets up to 100 feet from permitted oil and gas wells within the property described in Section Two hereof; and

WHEREAS, the City Council finds and determines that granting variances for such purposes will not present a health or safety risk to the applicant or subsequent occupants of the structures or the users of such public streets;

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

SECTION ONE. That a variance is hereby granted to Fasken Land and Minerals, Ltd., its successors and assigns, for any single- or multi-family residential or commercial buildings within 135 feet of any existing oil and gas well within Sections 1, 12 and 13, Block 40, T-1-S, T&P RR Co. Survey.

SECTION TWO. That a variance is hereby granted to Fasken Land and Minerals, Ltd., its successors and assigns, for construction of public streets up to 100 feet from existing oil and gas wells within Sections 1, 12 and 13, Block 40, T-1-S, T&P RR Co. Survey.

SECTION THREE. That the Building Official is hereby authorized and directed to

issue building permits to the applicant for such purposes, and to other appropriate parties, entities or individuals.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

PULMAN, CAPPUCCIO, PULLEN & BENSON, LLP
ATTORNEYS & COUNSELORS

DEVIN D. "BUCK" BENSON
(210) 892-0510
bbenson@pulmanlaw.com

2161 NW MILITARY HIGHWAY, SUITE 400
SAN ANTONIO, TEXAS 78213
WWW.PULMANLAW.COM
TELEPHONE: (210) 222-9494
TELECOPIER: (210) 892-1610

Dallas / Fort Worth Office:
201 Main Street, Suite 600
Fort Worth, Texas 76102
T: (817) 289-9494
F: (210) 892-1610

August 3, 2012

Via e-mail: rjenkins@midlandtexas.gov

Mr. Ron Jenkins
City of Midland, Oil and Gas Compliance Officer
P.O. Box 1152
Midland, TX 79702

Re: Variance Request to Comply with Ordinance-Specified Setback from Drill Sites

Dear Mr. Jenkins:

We represent Fasken Land and Minerals, Ltd. ("FLM"). As you are no doubt aware, FLM owns property in and around Midland, both within the city limits and in the city's extraterritorial jurisdiction ("ETJ"). FLM drills and operates oil and gas wells on some of its properties.

FLM owns land west of Green Tree Country Club Estates which is referred to as Sections 1, 12, and 13. All of these lands are within the platting authority of the City of Midland. *See* MIDLAND, TEX., CODE OF ORDINANCES, part 2. Municipal Code, title XI, ch. 2, § 1(A-E) (2010). The eastern half of Section 13 is within the City of Midland, Block 40, T-1-S, T&P RR Co. Survey. The western half of Section 13 and all of Sections 1 and 12 are in the ETJ. For your reference and convenience, please see the attached plat map, marked Exhibit "A."

FLM is developing the eastern half of Section 13 for several uses including single-family residential, multi-family residential, and commercial. There are a number of permitted producing wells within the eastern half of Section 13, including well numbers 1301, 1307, 1309, and 1315 (the "four wells"). Exh. A.

In January 2011, on behalf of FLM, Mr. Max Richardson, vice president of West Company of Midland, Inc., a surveying and engineering firm in Midland, sent a letter to Mr. Cameron Walker, Planning Division Manager for COM regarding the four wells. Exh. B. In his letter, Mr. Richardson requested a variance to permit to allow "issuance of a building permit and the construction of commercial and residential structures which are at least 250 feet from a *producing* well bore, and will permit the platting and construction of public streets which are at least 100 feet from a *producing* well bore." Exh. B (emphasis in original).

City of Midland municipal code contains statutorily prescribed setbacks. The Code states:

In no event shall a building permit be issued by the City of Midland for any private residence or commercial building to be constructed, either in whole or in part, within . . . 135 feet of an existing oil and gas well or within 150 feet of a previously permitted tank battery.

MIDLAND, TEX., CODE OF ORDINANCES, part 2. Municipal Code, title VI, ch. 1, § 23(h)(2)(c) (2010).

Well numbers 1301, 1307, 1309, and 1315 were approved and permitted by the Midland City Council on March 8, 2011. *See* Exh. C (comprising of Oil and Gas Well Permits for the referenced wells). The permit includes approval for the “variance for development of commercial and residential structures of 250 feet from permitted well and construction of public streets up to 100 feet from permitted well . . . and incorporated into and made a part of this permit for all purposes.” Exh. C, pp. 1, 5, 9, 13.

However, as the development project has moved farther along, we now realize that our proposed, and approved, setback variance is impractical. In fact, the setback allowed by city ordinance is more suitable for the development of the property.

As always, FLM is dedicated to the safety of its employees and the community. Allowing FLM’s request to adhere to the requirement that buildings be built 135 feet from existing wells will in no way harm or endanger the residents of Midland or the public in general.

The City of Midland has authority under Texas Local Government Code section 42 to exercise platting regulating authority both within its city limits and in the ETJ. In addition, the City’s code expressly enumerates such power:

(D) *Authority.* In addition to its other responsibilities, the City planning and zoning commission of the City of Midland . . . is vested with the authority to review, approve and disapprove[,] and, except in the case of final plats, conditionally approve applications for the platting or subdivision of land, including preliminary plats, final plats, amended plats, and vacations of plats, except as specified otherwise by Sections 11-2-3(D)(11) and 11-2-3(I)(2) herein.

(E) *Jurisdiction.*

1. These regulations apply to all subdivisions of land located within the corporate limits of the City and within the City’s extraterritorial jurisdiction, as provided by law, except as expressly stated herein.

MIDLAND, TEX., CODE OF ORDINANCES, part 2. Municipal Code, title XI, ch. 2, § 1(D–E) (2010).

Page 3
Client No.: 4012.010
August 3, 2012

On behalf of our client, we ask the City Council of Midland, under its authority to regulate plats within the city limits and the ETJ, consider and approve a blanket variance request for Sections 1, 12, and 13 which will allow continuing legal issuance of building permits for any single- or multi-family residence or commercial building to be constructed in the future, either in whole or in part, to within 135 feet of an existing oil and gas well within Sections 1, 12, and 13

In addition, we ask the City Council of Midland to affirm and extend the previously granted variance for construction of public streets up to 100 feet from permitted wells within the eastern half of Section 13 to include a variance for construction of public streets up to, but not closer than, 100 feet from any producing well in Sections 1, 12, and all of 13.

This request incorporates the areas presently within the City of Midland's city limits as well as the areas currently in the ETJ. Our goal is that, at such time as the City annexes those areas, they will also be included and grandfathered in this variance.

Should you have any questions regarding this request, please contact me personally at (210) 222-9494 or bbenson@pulmanlaw.com. I await your response.

Very truly yours,



Buck Benson

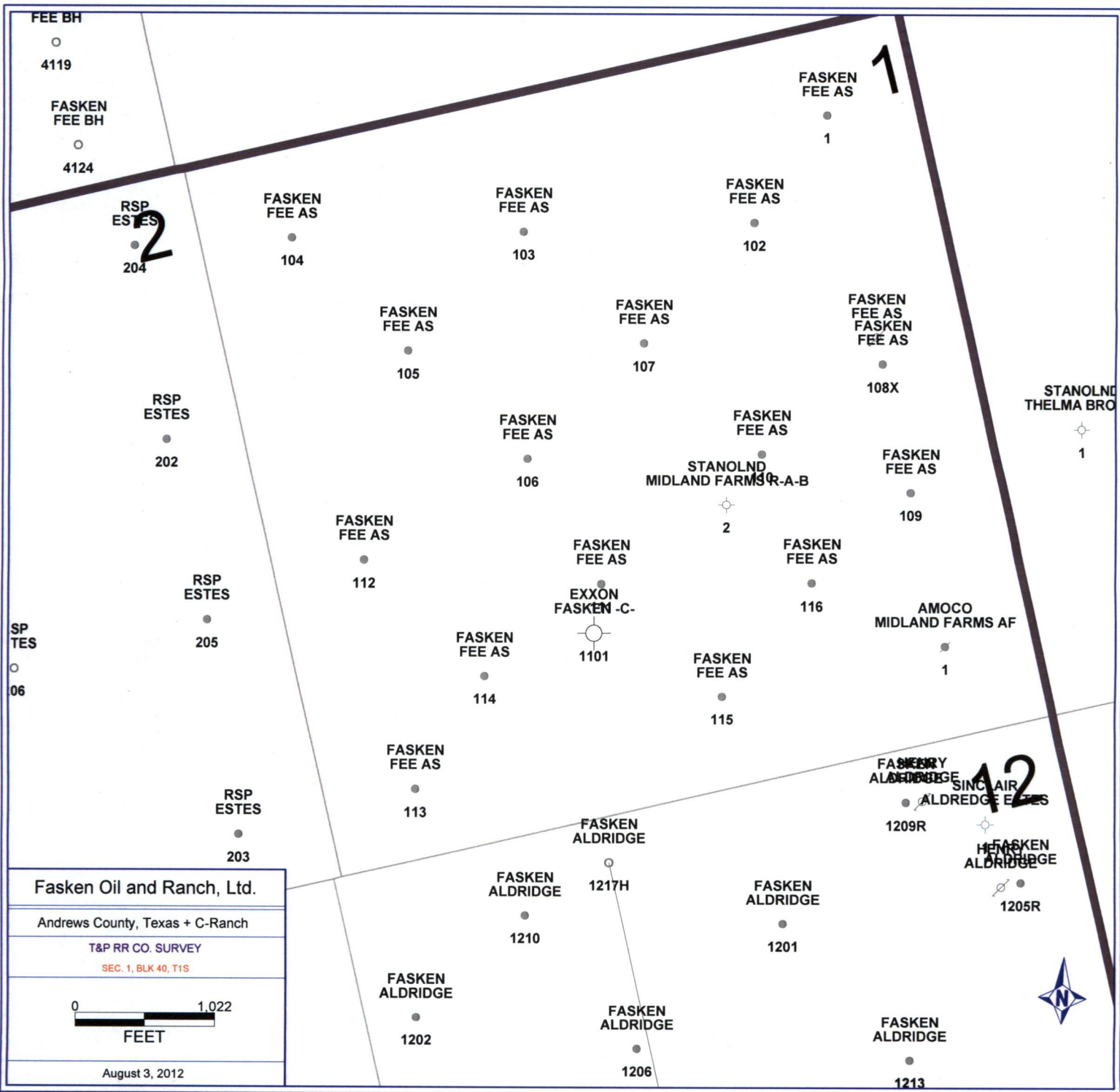
enclosures

cc: *Via e-mail: kstretcher@midlandtexas.gov*

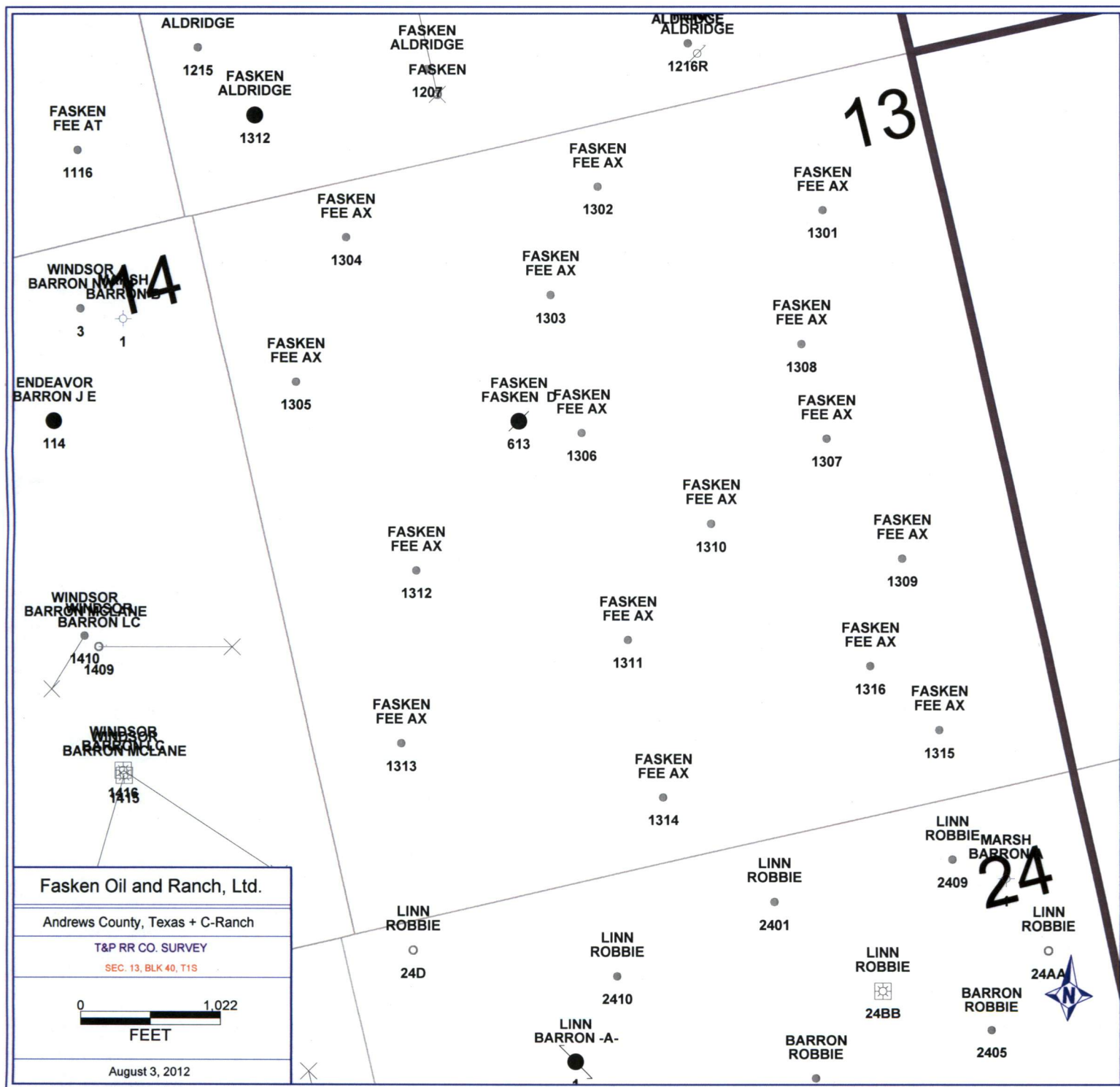
Mr. Keith Stretcher
City of Midland, City Attorney
City Attorney's Office
P.O. Box 1152
Midland, TX 79702

Via e-mail: chuckh@forl.com

Mr. Charles F. Hedges
Vice President and General Counsel
Fasken Oil and Ranch, Ltd.



PETRA 8/3/2012 11:35:49 AM





110 W. LOUISIANA AVE. SUITE 110 MIDLAND, TEXAS 79701-3414
OFFICE (432) 687-0865 FAX (432) 687-0868
Web Page: www.team-west.com

January 25, 2011

Mr. Cameron Walker
Planning Division Manager
City of Midland
P.O. Box 1152
Midland, Texas 79702

RE: Request for Variance from Drill Sites

Dear Mr. Walker;

Fasken Oil and Ranch, Ltd., has applied for four new well permits from the City of Midland, for wells to be drilled and operated in the E ½ of Section 13, Block 40, T-1-S, T & P RR Co Survey, Midland County, Texas, on land owned by its sister company, Fasken Land and Minerals, Ltd. Assuming that these four wells are successfully completed, there will then be eight (8) producing wells in the E ½ of Section 13, which is entirely within the city limits of Midland and which Fasken Land and Minerals, Ltd., is in the process of developing for single family residential, multi-family residential, and commercial use. Much time and energy has been utilized in the preparation of a land plan around and incorporating the eight drill sites.

To move forward with a viable development, and as to the four wells which are currently producing in the E ½ of Section 13 and the four wells for which permits have been requested, we must respectfully request a variance from the provisions of the city's drilling ordinance which will permit the issuance of a building permit and the construction of commercial and residential structures which are at least 250 feet from a *producing* well bore, and will permit the platting and construction of public streets which are at least 100 feet from a *producing* well bore. The requested variance would relate only to building permits for structures, and platting of streets in the vicinity of wells which are already producing at the time of the issuance of the building permit or the recording of the plat, so that no *drilling* activities will take place in close proximity to such structures or streets. In view of the fact that each of the eight wells in question is, or will be, producing from the "Wolfberry" zones, the requested setbacks will provide a safe distance between the wells and the adjacent structures and roads.

It is our understanding that a request will be made that the council vote on the issuance of the four drilling permits at the March 8, 2011 meeting, with the permits to be issued on March 11, 2011, and we request that the variance request be considered at the same meeting. We thank you in advance for your assistance in this request.

Respectfully submitted,

West Company of Midland, Inc.

Max W. Richardson, PE

cc: Fasken Oil and Ranch, Ltd.

Job No. 2010-1034

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on March 8, 2011, considered the application of Fasken Oil and Ranch, Ltd., dated October 25, 2010, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Fasken Oil and Ranch, Ltd., dated October 25, 2010, and filed with the Midland City Secretary, a copy of which is attached here to as Exhibit "A" and incorporated herein for all legal purposes.

The location of Fasken Oil and Ranch, Ltd., Fee "AX" No. 1301 oil and gas well shall be 975 feet from the north line and 875 feet from the east line, Section 13, Blk 40, T-1-S, T & P-RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Fasken Oil and Ranch, Ltd., attached hereto as Exhibit "A". Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "B" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "C", and incorporated into and made a part of this permit for all purposes. Included is approved petition of variance for development of commercial and residential structures of 250 feet from permitted well and construction of public streets up to 100 feet from permitted well, marked as Exhibit "D", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from March 11, 2011, through March 10, 2012, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 11 day of March, 2011.

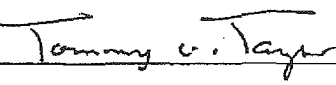
CITY OF MIDLAND, TEXAS

BY: 

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS 15th day of March, 2011.

Fasken Oil and Ranch, Ltd.

By: 

Tommy E. Taylor



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 10-25-2010	Operator Name (must match W-1) Fasken Oil and Ranch, Ltd.	Operator Address 303 W. Wall St., Ste. 1800 Midland, TX 79701
Representative Name Tommy E. Taylor	Representative Address (within Midland City Limits) 1407 Daventry Midland, TX 79705	Rep. Tele. 432-556-2228 Rep. Fax 432-687-1570
Permit Compliance Contact (Choose 1): Option A: Jimmy Carlile 24/7 Answering Services - No. 1 (Tele.): 432-563-8318 No. 2 (Tele.): 432-687-1777 Option B: Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Same as above Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]):		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
1. Fasken Land and Minerals, Ltd.		
2.		
3.		
ATTACHED AS EXHIBIT C is (a Title Opinion by Edmund Anderson, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location):		
Private ranch land / oil and gas operations.		
ATTACHED AS EXHIBIT D is (a Title Opinion by Edmund Anderson, a licensed Texas Attorney/a Take-off from _____, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].		
ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting a 860 foot radius from the proposed well's surface location. [See § J(10)].		
ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].		

IV. Well & Operations Information

Proposed Well Name: Fee "AX" No. 1301

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

See attached Exhibit V

Legal Description of Proposed Well Site:

975' FNL and 875' FEL, Sec. 13, Blk. 40, T-1-S, T&P RR Company Survey

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

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

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

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

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

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

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

(1) Drilling: None

(2) Operations: None

Description of water source to be used during Drilling:

Fasken water wells located in w/2 of Sec. 13, Blk. 40, T-1-S

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

All electric lines will be buried in the proposed corridors as shown on Exhibit N.

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

See Exhibit G

V. Additional Required Exhibits

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

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OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on March 8, 2011, considered the application of Fasken Oil and Ranch, Ltd., dated October 25, 2010, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Fasken Oil and Ranch, Ltd., dated October 25, 2010, and filed with the Midland City Secretary, a copy of which is attached here to as Exhibit "A" and incorporated herein for all legal purposes.

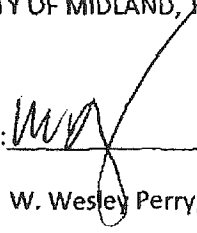
The location of Fasken Oil and Ranch, Ltd., Fee "AX" No. 1307 oil and gas well shall be 2640 feet from the north line and 865 feet from the east line, Section 13, Blk 40, T-1-S, T & P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Fasken Oil and Ranch, Ltd., attached hereto as Exhibit "A". Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "B" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "C", and incorporated into and made a part of this permit for all purposes. Included is approved petition of variance for development of commercial and residential structures of 250 feet from permitted well and construction of public streets up to 100 feet from permitted well, marked as Exhibit "D", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from March 11, 2011, through March 10, 2012, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 11 day of March, 2011.

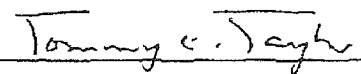
CITY OF MIDLAND, TEXAS

BY: 

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS 15th day of March, 2011.

Fasken Oil and Ranch, Ltd.

By: 

Tommy E. Taylor



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
10-25-2010	Fasken Oil and Ranch, Ltd.	303 W. Wall St., Ste. 1800 Midland, TX 79701
Representative Name	Representative Address (within Midland City Limits)	Rep. Tel. 432-556-2228
Tommy E. Taylor	1407 Daventry Midland, TX 79705	Rep. Fax 432-687-1570
Permit Compliance Contact (Choose 1):		
Option A: Jimmy Carlile		
24/7 Answering Services - No. 1 (Tel.): 432-563-8318 No. 2 (Tel.): 432-687-1777		
Option B:		
Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):		
Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):		
Same as above		
Other Permitted Wells in City (ATTACH EXHIBIT B (see § J(26))):		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
1. Fasken Land and Minerals, Ltd.		
2.		
3.		
ATTACHED AS EXHIBIT C is (a Title Opinion by Edmund Anderson, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____ a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location):		
Private ranch land / oil and gas operations.		
ATTACHED AS EXHIBIT D is (a Title Opinion by Edmund Anderson, a licensed Texas Attorney/a Take-off from _____, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].		
ATTACHED AS EXHIBIT E is a (map/p luv/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 luv/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].		
ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].		

IV. Well & Operations Information

Proposed Well Name: Fee "AX" No. 1307

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

See attached Exhibit V

Legal Description of Proposed Well Site:

2640' FNL and 865' FEL, Sec. 13, Blk. 40, T-1-S, T&P RR Company Survey

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

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

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

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

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

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

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

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

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

- (1) Drilling: None
- (2) Operations: None

Description of water source to be used during Drilling:

Fasken water wells located in w/2 of Sec. 13, Blk. 40, T-1-S

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

All electric lines will be buried in the proposed corridors as shown on Exhibit N.

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(33)]:

See Exhibit G

V. Additional Required Exhibits

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OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on March 8, 2011, considered the application of Fasken Oil and Ranch, Ltd., dated October 25, 2010, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Fasken Oil and Ranch, Ltd., dated October 25, 2010, and filed with the Midland City Secretary, a copy of which is attached here to as Exhibit "A" and incorporated herein for all legal purposes.

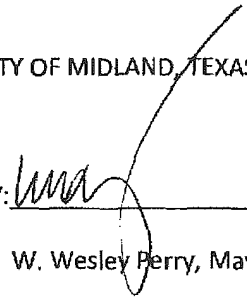
The location of Fasken Oil and Ranch, Ltd., Fee "AX" No. 1309 oil and gas well shall be 1775 feet from the south line and 875 feet from the east line, Section 13, Blk 40, T-1-S, T & P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Fasken Oil and Ranch, Ltd., attached hereto as Exhibit "A". Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "B" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "C", and incorporated into and made a part of this permit for all purposes. Included is approved petition of variance for development of commercial and residential structures of 250 feet from permitted well and construction of public streets up to 100 feet from permitted well, marked as Exhibit "D", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from March 11, 2011, through March 10, 2012, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

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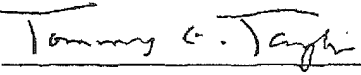
CITY OF MIDLAND, TEXAS

BY: 

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS 15th day of March, 2011.

Fasken Oil and Ranch, Ltd.

BY: 

Tommy E. Taylor



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 9-16-2010	Operator Name (must match W-1) Fasken Oil and Ranch, Ltd.	Operator Address 303 W. Wall St., Ste. 1800 Midland, TX 79701
Representative Name Tommy E. Taylor	Representative Address (within Midland City Limits) 1407 Daventry Midland, TX 79705	Rep. Tele. 432-556-2228 Rep. Fax 432-687-1570
Permit Compliance Contact (Choose 1): Option A: Jimmy Carlile 24/7 Answering Services - No. 1 (Tele.): 432-563-8318 No. 2 (Tele.): 432-687-1777 Option B: Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Same as above Other Permitted Wells in City (ATTACH EXHIBIT B (see § J(26))).		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): 1. Fasken Land and Minerals, Ltd. 2. 3.		
ATTACHED AS EXHIBIT C is (a Title Opinion by Edmund Anderson, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that (Operator) has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): Private ranch land / oil and gas operations.		
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ATTACHED AS EXHIBIT E is a (map/p lot/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 lot/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].		
ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].		

IV. Well & Operations Information
Proposed Well Name: Fee "AX" No. 1309.
Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary) [See § J(11) and § L(4)]:
See attached Exhibit V
Legal Description of Proposed Well Site:
1775' FSL and 875' FEL, Sec. 13, Blk. 40, T-1-S, T&P RR Company Survey
ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)]. ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)]. ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)]. ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)]. ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)]. ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)]. ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)]. ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].
Description of Public Utilities required during (1) drilling and (2) operations:
(1) Drilling: None (2) Operations: None
Description of water source to be used during Drilling:
Fasken water wells located in w/2 of Sec. 13, Blk. 40, T-1-S
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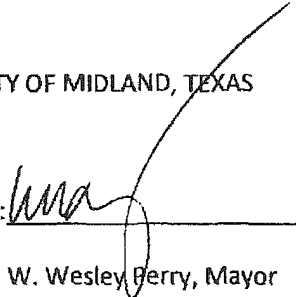
The location of Fasken Oil and Ranch, Ltd., Fee "AX" No. 1315 oil and gas well shall be 500 feet from the south line and 890 feet from the east line, Section 13, Blk 40, T-1-S, T & P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Fasken Oil and Ranch, Ltd., attached hereto as Exhibit "A". Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "B" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "C", and incorporated into and made a part of this permit for all purposes. Included is approved petition of variance for development of commercial and residential structures of 250 feet from permitted well and construction of public streets up to 100 feet from permitted well, marked as Exhibit "D", and incorporated into and made a part of this permit for all purposes.

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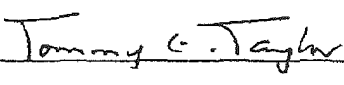
CITY OF MIDLAND, TEXAS

BY: 

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS 15th day of March, 2011.

Fasken Oil and Ranch, Ltd.

By: 

Tommy E. Taylor



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 10-25-2010	Operator Name (must match W-1) Fasken Oil and Ranch, Ltd.	Operator Address 303 W. Wall St., Ste. 1800 Midland, TX 79701
Representative Name Tommy E. Taylor	Representative Address (within Midland City Limits) 1407 Daventry Midland, TX 79705	Rep. Tele. 432-556-2228 Rep. Fax 432-687-1570
Permit Compliance Contact (Choose 1): Option A: Jimmy Carlile 24/7 Answering Services - No. 1 (Tele.): 432-563-8318 No. 2 (Tele.): 432-687-1777 Option B: Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): Emergency Contact Representative (Name, Address, 24-Hour Tel. No.): Same as above Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]):		
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Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): 1. Fasken Land and Minerals, Ltd. 2. 3.		
ATTACHED AS EXHIBIT C is (a Title Opinion by Edmund Anderson, 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)].		
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ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].		

IV. Well & Operations Information

Proposed Well Name: Fee "AX" No. 1315

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

See attached Exhibit V

Legal Description of Proposed Well Site:

500' FSL and 890' FEL, Sec. 13, Blk. 40, T-1-S, T&P RR Company Survey.

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

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

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

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

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

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

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

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

- (1) Drilling: None
- (2) Operations: None

Description of water source to be used during Drilling:

Fasken water wells located in w/2. of Sec. 13, Blk. 40, T-1-S

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

All electric lines will be buried in the proposed corridors as shown on Exhibit N.

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

See Exhibit G

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)].

PETITION

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, a notary public in and for the State of Texas, on this day personally appeared Charles F. Hedges, Jr., known to me, and who, after being by me duly sworn on oath stated:

1. That the eastern half of Section 13 is within the City of Midland, Block 40, T-1-S, T&P RR Co. Survey and the western half of Section 13 and all of Sections 1 and 12 are in the extraterritorial jurisdiction of the City of Midland; and
2. That the surface of the lands within Sections 1, 12, and 13, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas is all owned entirely by Fasken Land and Minerals, Ltd., a Texas limited partnership; and
3. That the sole general partner of Fasken Land and Minerals, Ltd. is Fasken Management, LLC; and
4. That Charles F. Hedges, Jr. is Vice President of Fasken Management, LLC and is authorized on behalf of Fasken Land and Minerals, Ltd. to petition the City of Midland, Texas for variances to the setback requirement set forth in Section 6-1-23 (H)(2)(c) of the City's oil and gas drilling ordinance; and
5. That Fasken Land and Minerals, Ltd. does hereby petition the City of Midland for the setback variances requested in the letter dated August 3, 2012, from Mr. Buck Benson, Attorney-at-Law, Pulman, Cappuccio, Pullen & Benson, LLP, to Mr. Ron Jenkins, Oil and Gas Compliance Officer of the City of Midland, a copy of which is attached hereto as Exhibit "A."

[Signature on Following Page]

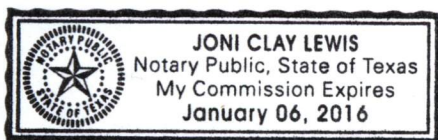
Fasken Land and Minerals, Ltd., a Texas limited partnership,
by Fasken Management, LLC, its sole general partner

By: Charles F. Hedges, Jr.
Charles F. Hedges, Jr.,
Vice President

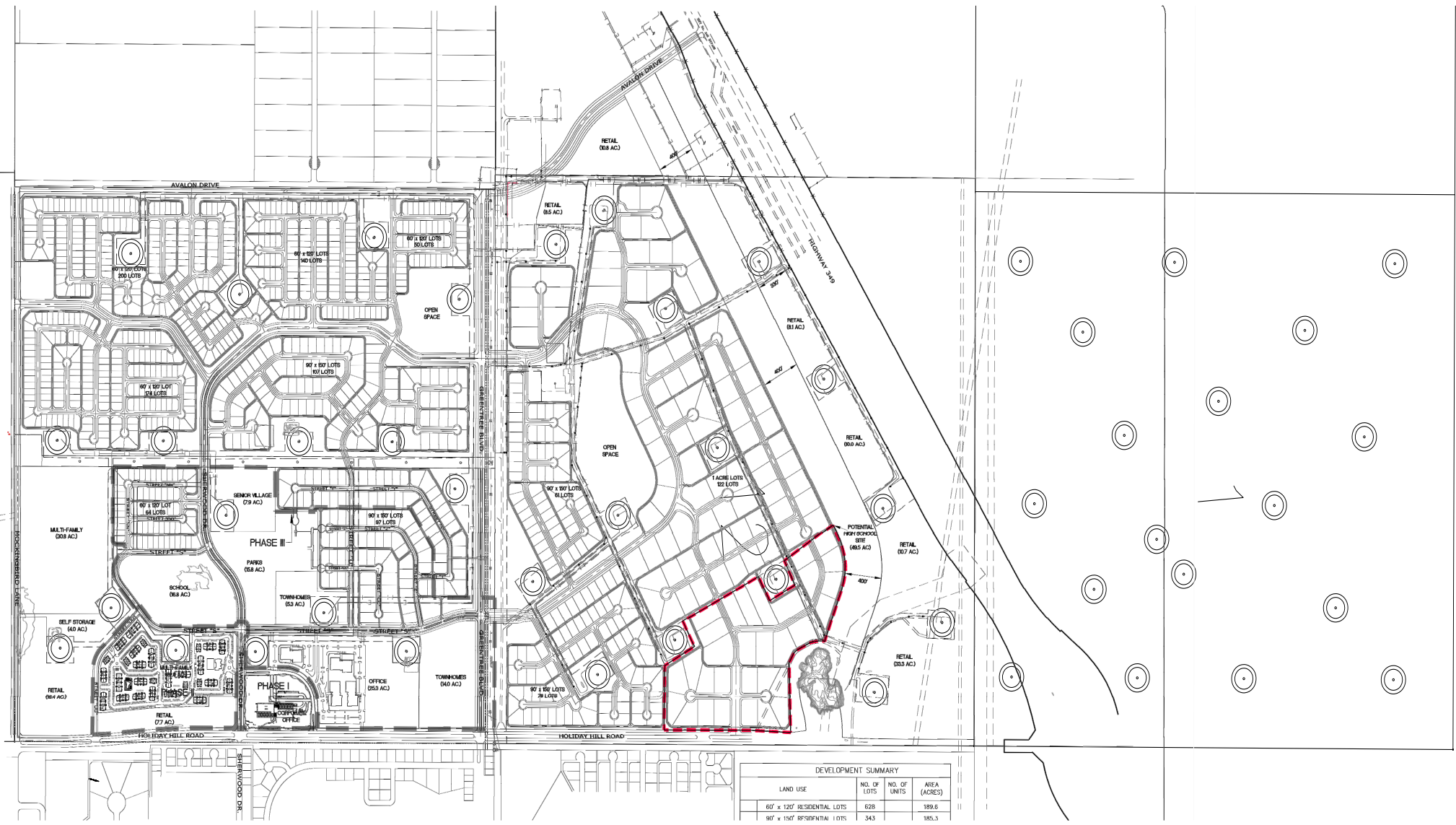
STATE OF TEXAS §

§
COUNTY OF MIDLAND §

This instrument was acknowledged before me on August 3, 2012, by Charles F. Hedges, Jr.,
Vice President of Fasken Management, LLC.



Joni Clay Lewis
Notary Public in and for the State of Texas



DEVELOPMENT SUMMARY			
LAND USE	NO. OF LOTS	NO. OF UNITS	AREA (ACRES)
60' x 120' RESIDENTIAL LOTS	628		189.6
90' x 150' RESIDENTIAL LOTS	343		105.3

BEING A 36.46 ACRE TRACT OF LAND OUT OF THE EAST HALF OF SECTION 13, BLOCK 40
T-1-S, T AND P R.R. COMPANY SURVEY, MIDLAND COUNTY, TEXAS:

FASKEN OIL AND RANCH LTD.

LIN ENERGY HOLDINGS, LLC

AX NO. 1

LOT 28

LOT 3

LOT 3

LOT 5

THE VINEYARD ADDITION

HOLIDAY HILL ROAD

GREEN TREE COUNTRY CLUB ESTATE

WFLI

SURVEYOR'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

That I, Marcus L. Hostas, a Registered Professional Land Surveyor of the State of Texas, do hereby certify that this plot was prepared from an actual and accurate survey of the land and that the corner monuments shown thereon were properly located under my personal supervision, in accordance with the Subdivision Regulations of the City of Midland, Texas.

Marcus L. Hostas, R.P.L.S.
Registration Number - 5643



WEST COMPANY

OF MIDLAND, INC.
ENGINEERS - PLANNERS - SURVEYORS
REGISTRATION NUMBER F-2184
110 W. LOUISIANA AVE., SUITE 110
MIDLAND, TEXAS 79701
TEL: (432) 687-0868 FAX: (432) 687-0868
AUGUST, 2012

AUGUST, 2012

T: /CIVIL DRAWINGS/2012-0802/20120802 FASKEN PREL.DWG

LEGEND

© DENOTES SET 1/2-INCH IRON ROD W/RED
PLASTIC CAP MARKED "WEST CO. MIDLAND"
© DENOTES FOUND MONUMENT AS NOTED

NOTICE

SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION OF CITY ORDINANCE AND STATE LAW AND SUBJECT TO FINES AND WITHHOLDING OF UTILITIES AND

2) AS 3. A SITE PLAN BY THE CITY OF
MI BE REQUIRED BEFORE THE
DE OF ANY LOT AND BEFORE A
BL MIT MAY BE OBTAINED.

3) A 31 S, DISTANCES AND AREA'S SHOWN
H BASED UPON THE TEXAS STATE
P DINATE SYSTEM, TEXAS NORTH
C 4E (NAD83) COORDINATES.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 28, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a motion to approve the preliminary plat of The Vineyard Addition, Section 2, a 300.36-acre tract out of Section 13, Block 40, T-1-S, T&P RR Company Survey, Midland County, Texas. (Generally located on the west side of Holiday Hill Road, between Mockingbird Lane and Green Tree Boulevard.)

Purpose:

Consider a motion to approve the preliminary plat of The Vineyard Addition, Section 2.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

The staff has received a preliminary plat application on a 300-acre tract of land owned by Fasken Land and Mineral. It is located on the west side of Holiday Hill Road, between Mockingbird Lane and the westward extension of Green Tree Boulevard. This preliminary plat application requires City Council approval because it contains common areas and because it exceeds 25 acres in area and there is no publicly owned school or park site (although these potential areas are identified on this plat).

Proposed land uses include single-family, multi-family, office and retail, as well as a school and park site and a retirement center. There are also existing oil wells within this planned neighborhood. The staff has reviewed this proposal, and finds that it conforms to the recommendations of the Comprehensive Plan and the requirements of the Major Thoroughfare Plan and the Subdivision Code. The Planning and Zoning Commission recommended conditional approval of this application on August 20, 2012. We find this proposal to be reasonable.

Attachments:

August 20, 2012 P&Z Staff Report
Proposed Preliminary Plat

Case Number: P-12-029

CITY OF MIDLAND
Planning Division

PRELIMINARY PLAT APPLICATION

I. APPLICATION

Legal Description of Plat (or see attached metes and bounds) The Vineyard Addition,
Section 2, East half Section 13, Block 40, T15, T&P R.R. Company Survey,
Midland County, Texas

Property Owner:

Fasken Oil and Ranch, Ltd.

(Name)

432-687-1777

(Phone/e-mail)

303 W. Wall, Suite 1800

(Street Address)

Midland, Texas 79701

(City, State, Zip)

Developer Information (if different from Owner)

(Name)

(Phone/e-mail)

(Street Address)

(City, State, Zip)

Representative Information (if acting as Agent, see Note on page 2):

West Company of Midland, Inc.

(Name)

432-682-0588

(Phone/e-mail)

110 W. Louisiana, Suite 110

(Street Address)

Midland, Texas 79701

(City, State, Zip)

II. FEES

Standard Plat or Residential Replat

For plats up to 50 acres:

\$250.00

For plats over 50 acres, \$1.00 for each additional acre, up to \$500.00

TOTAL

\$ 500.00 ✓

III. SUBMITTAL INFORMATION

Submittal Date: Minimum of 24 days prior to the Planning and Zoning Commission meeting at which consideration is desired.

Check items if submitted with this application form

1. Application Fee: ☒
2. Copies: (FOLDED) (16 prints) ☒
3. Digital file: (.jpg and .pdf format) ☒
4. Drainage plan: (submitted to Engineering Div.) ☐

For Office Use

Only Rec'd By/

Date

_____/_____
_____/_____
_____/_____
_____/_____

The Preliminary Plat shall be considered officially received in the Planning office only when it is in compliance with the provisions of the City of Midland Subdivision Code and when items 1 - 4 above are received.

All materials, including exhibits, submitted in support of an application, or displayed during a public hearing, shall remain the property of the City of Midland.

2012-0802

IV. REQUEST FOR A VARIANCE

The following variances are requested: (attach additional sheets if necessary)

1. Sidewalk deferral: If property is located within the City Limits and is currently undeveloped, do you intend to seek a deferral from the Building Code requirement to construct public sidewalks?

YES ☐ NO ☒

2. Street/Alley alignment, width or length: _____

3. Other: _____

V. REQUEST FOR A DEVELOPMENT AGREEMENT

Do you expect to request a development agreement with the City? YES ☒ NO ☐ If yes contact the City Engineer @ 432-685-7286.

VI. PROVISIONS

The Planning and Zoning Commission may approve, disapprove, or conditionally approve a preliminary plat. Conditional approval is subject to conformity with prescribed conditions and is considered disapproval of the plat until said conditions are met. Approval of a preliminary plat shall be considered to be approval of the general arrangement of lots, streets and alleys and the width of streets and alleys, but is not considered to be final acceptance of the subdivision plat. In some cases, a preliminary plat must be considered by the City Council, and any approval by the Planning and Zoning Commission shall be considered a recommendation to the City Council.

VII. 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.

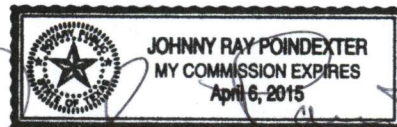
STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Max W. Richardson who, being by me duly sworn, upon oath says: That (s)he is authorized by Fasken Oil and Ranch, Ltd., 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.

Max W. Richardson
Authorized Agent (signature)

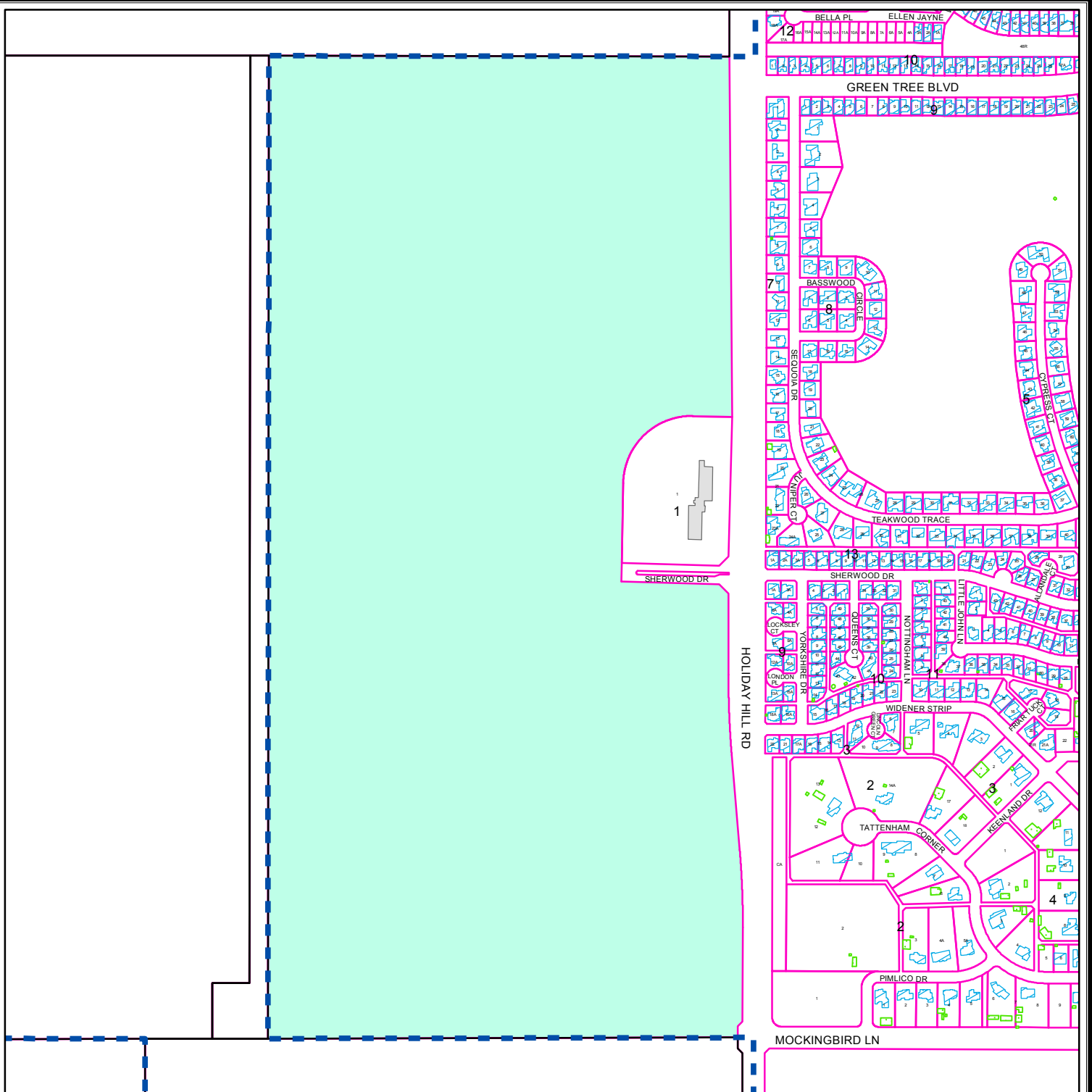
Subscribed and sworn to before me, this 27 day of June, 20 12, to certify which witness my hand and seal of office.

FOR OFFICE USE ONLY	
Rec'd BY: <u>AZ</u>	DATE: <u>7/3/12</u>
RES REPLAT: YES ☐	NO ☐
ASSIGNED: <u>KV</u>	
FOR: <u>P+E</u>	ON: <u>8/6/12</u>
Council Action Required: <u>Y</u>	N ☐



NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

****Application will not be scheduled for hearing until reviewed by a planner.****



LOCATION MAP

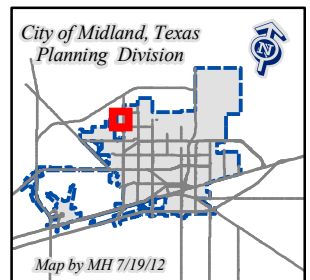
P - 12 - 029

Scale: 1" = 750'

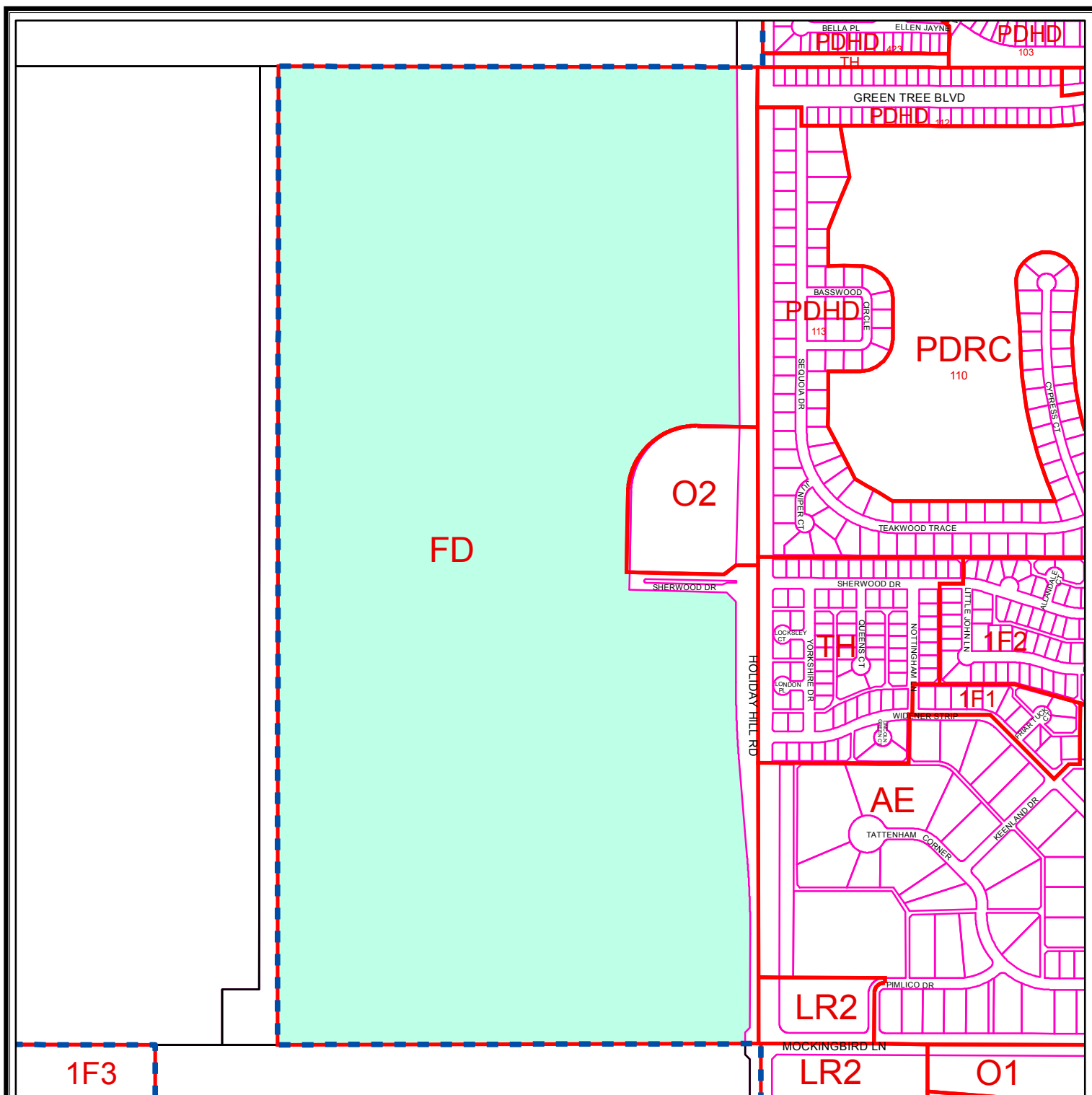
Proposed plat of The Vineyard Addition 2, being a 300.37-acre tract of land out of Section 13, Block 40, T-1-S, T & P RR Co. Survey, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- COUNTY PARCEL
- CITY PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

P - 12 - 029

Scale: 1" = 700'

Proposed plat of The Vineyard Addition 2, being a 300.37-acre tract of land out of Section 13, Block 40, T-1-S, T & P RR Co. Survey, City and County of Midland, Texas.

LEGEND

ZONING

CITY LIMITS

CITY PARCELS

COUNTY PARCELS

ZONING DISTRICTS:

FD FUTURE DEVELOPMENT
PD PLANNED DISTRICT
AE AGRICULTURE ESTATE
CE COUNTRY ESTATE
1F1, 1F2, 1F3 ONE-FAMILY DWELLING
MH MOBILE HOME DWELLING
TH TOWNHOUSE DWELLING
2F TWO-FAMILY DWELLING
MF1, MF2 MULTIPLE FAMILY DWELLING

BP BUSINESS PARK
P PARKING
O1, O2 OFFICE
NS NEIGHBORHOOD SERVICE
LR1, LR2, LR3 LOCAL RETAIL
C1, C2, C3 COMMERCIAL
IP, IP1, IP2, IP3 INDUSTRIAL PARK
LI LIGHT INDUSTRY
HI HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 8/28/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on a request by Ciprino & Francisca Garcia for the vacation of a 0.06-acre portion of the east/west 20-foot alley adjacent to the north side of Lot 6, Block 3, Edwards Addition, City and County of Midland, Texas. (Generally located on the east side of Edwards Street, approximately 140 feet south of Cuthbert Street. - District 2)

Purpose:

Consider an ordinance on a request by Ciprino & Francisca Garcia for the vacation of a 0.06-acre portion of the east/west 20-foot alley adjacent to the north side of Lot 6, Block 3, Edwards Addition, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

There is no cost to the City associated with this application. A payment to the City for the assessed value of \$522.72, must be received prior to second reading.

Discussion:

This land has never been used as a public alley and the applicant would like to be able to make use of the property adjacent to their home. A letter has been received from the adjacent property owner expressing no interest in any portion of the proposed alley to be vacated. Additionally, communication with local utility companies has indicated that they have no utilities located within this alley, nor is there a planned future need, which would require the creation of an easement.

Attachments:

Application
Map

ORDINANCE NO.

AN ORDINANCE VACATING AND ABANDONING A 0.06-ACRE PORTION OF THE EAST/WEST 20-FOOT ALLEY ADJACENT TO THE NORTH SIDE OF LOT 6, BLOCK 3, EDWARDS ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF EDWARDS STREET, APPROXIMATELY 140 FEET SOUTH OF CUTHBERT STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$522.72; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 0.06-acre portion of the east/west 20-foot alley adjacent to the north side of Lot 6, Block 3, Edwards Addition, City and County of Midland, Texas, is no longer needed for public use; and

WHEREAS, Section 272.001 of the Texas Local Government Code provides that a political subdivision may not convey, sell, or exchange its interest in land without observing notice and bid requirements, unless the conveyance is to one or more abutting property owners; and

WHEREAS, an application for vacating the right-of-way has been received by the City from the abutting property owner; and

WHEREAS, the City Manager has appraised the value of the City's property interest in the right-of-way at \$522.72, as shown in Exhibit "B" attached hereto and incorporated herein by reference; and

WHEREAS, the Council finds it to be in the public interest to abandon and vacate the right-of-way described herein;

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

SECTION ONE. That the 0.06-acre portion of the east/west 20-foot alley adjacent to the north side of Lot 6, Block 3, Edwards Addition, City and County of Midland, Texas, as described in Exhibit "A" attached hereto and made a part hereof for all legal purposes, is hereby vacated and abandoned for all public purposes. Provided, however, that the City is hereby only abandoning the public interest in said property and this ordinance in no way

affects any private easement or access easement which abutting property owners may have in said right-of-way.

SECTION TWO. That this Ordinance shall not be effective until the City of Midland has received from the property owner(s) the sum of \$522.72.

SECTION THREE. That upon the City's receipt of the sum set forth in Section Two hereof, the City Secretary is hereby authorized and directed to file a certified copy of this Ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

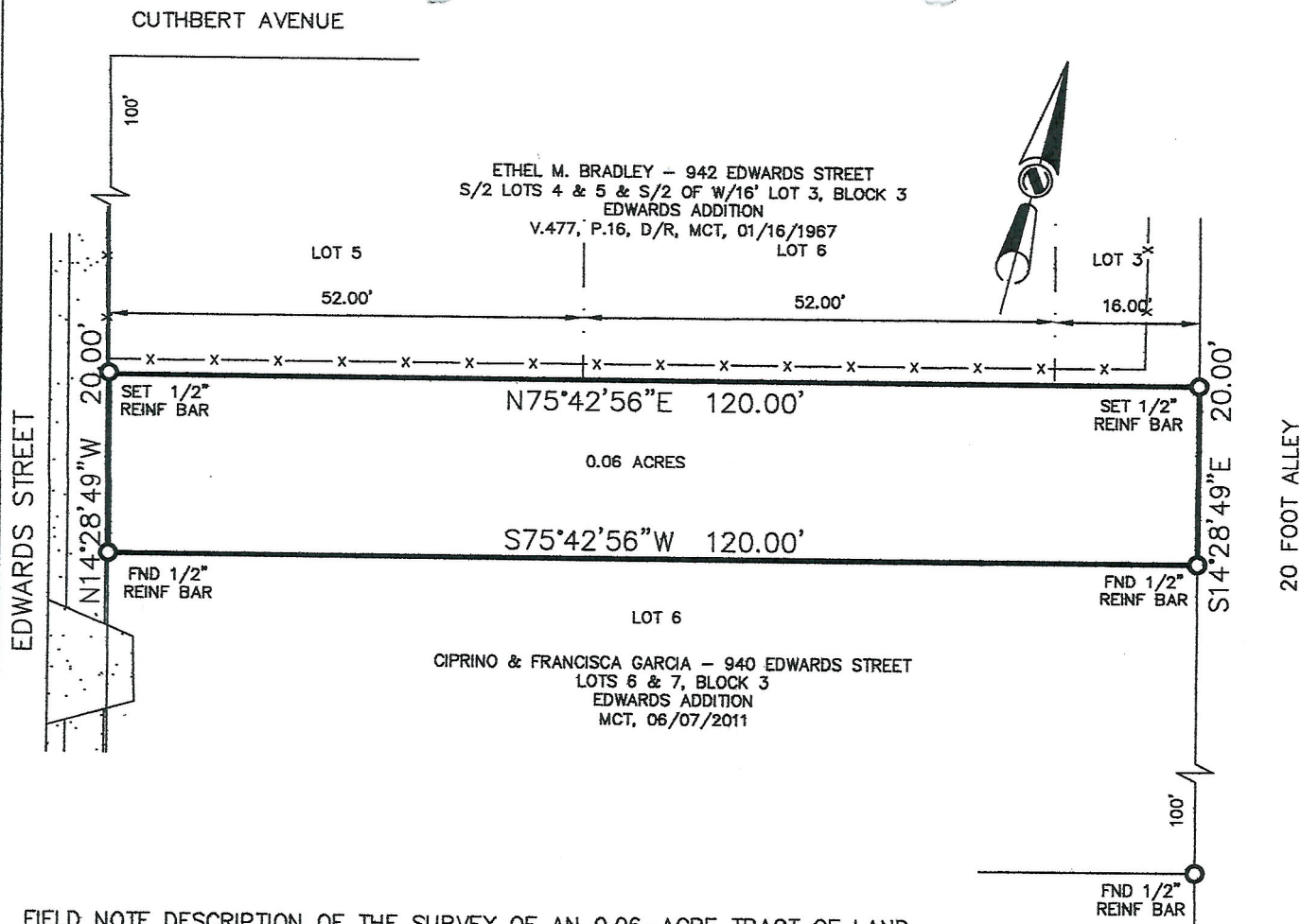
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



FIELD NOTE DESCRIPTION OF THE SURVEY OF AN 0.06-ACRE TRACT OF LAND BEING A 20 FOOT ALLEY BETWEEN LOT 6 AND THE SOUTH HALF OF LOTS 4, AND 5 AND SOUTH HALF OF WEST 16 FEET OF LOT 3, BLOCK 3, EDWARDS ADDITION, AN ADDITION TO THE CITY OF MIDLAND, AS PER PLAT OF RECORD IN VOLUME 91, PAGE 519, PLAT RECORDS, MIDLAND COUNTY, TEXAS, SAID 0.06-ACRE TRACT DESCRIBED MORE PARTICULARLY BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2" REINF BAR FOUND FOR THE SOUTHWEST CORNER OF THIS TRACT IN THE EAST RIGHT-OF-WAY LINE OF EDWARDS STREET, SAME BEING THE NORTHWEST CORNER OF SAID LOT 6;

THENCE NORTH 14°28'49" WEST 20.00 FEET ALONG THE EAST RIGHT-OF-WAY LINE OF EDWARDS STREET TO A 1/2" REINF BAR SET FOR THE NORTHWEST CORNER OF THIS TRACT;

THENCE NORTH 75°42'56" EAST 120.00 FEET TO A 1/2" REINF BAR SET FOR THE NORTHEAST CORNER OF THIS TRACT IN THE WEST LINE OF A 20 FOOT ALLEY;

THENCE SOUTH 14°28'49" EAST 20.00 FEET ALONG THE WEST LINE OF SAID 20 FOOT ALLEY TO A 1/2" REINF BAR FOUND FOR THE SOUTHEAST CORNER OF THIS TRACT;

THENCE SOUTH 75°42'56" WEST 120.00 FEET TO THE PLACE OF BEGINNING.

TO THE LIENHOLDERS, CIPRINO GARCIA & FRANCISCA GARCIA

(OWNER) OF THE PREMISES AND TO THE ISSUING TITLE INSURANCE UNDERWRITER: THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND OF THE PROPERTY LEGALLY DESCRIBED HEREON AND THAT THERE ARE NO KNOWN DISCREPANCIES, CONFLICTS, SHORTAGES IN AREA, BOUNDARY LINE CONFLICTS, ENCROACHMENTS, OVERLAPPING OF IMPROVEMENTS, EASEMENTS OR RIGHTS-OF-WAY,



SKETCH FOR VACATE

AN 0.06-ACRE TRACT OF LAND BEING A 20 FOOT ALLEY BETWEEN LOT 6 AND THE SOUTH HALF OF LOTS 4 AND 5



August 17, 2012

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 0.06-acre portion of the east/west 20-foot alley adjacent to the north side of Lot 6, Block 3, Edwards Addition, City and County of Midland, Texas

Dear Members of the City Council:

The above-referenced property has been appraised in accordance with Chapter 272 of the Texas Local Government Code. The fair market value of the property is \$522.72. The property can be vacated and recorded in the Midland County Clerk's office when the City of Midland has received this amount from the adjoining property owner(s).

Very truly yours,

James R. Nichols for CS

Courtney Sharp
City Manager

Exhibit "B"

L:\Ordinances\Planning\Vacate & Abandon\2012\Edwards Addition Appraisal Letter.wpd



Case Number: V-12-006

CITY OF MIDLAND
Planning Division

APPLICATION TO VACATE RIGHT-OF-WAY

I. Application is hereby made to the City Council to vacate the following public right-of-way or easement:
0.06 Acre portion of an East/West alley in Block 3, Edwards Addition
(see plat)

II. Reason for Request: This land is and has not been used as an alley and we would
like to be able to use it.

III. Reasons, in applicant's opinion, why the requested vacation will not adversely affect the public welfare or will contribute to it in a positive way:
This land is and has not been used as an alley. Therefore, it would not
adversely affect the public welfare. It would contribute more to the tax
base of the City.

IV. REQUIRED ITEMS:

1. Applicant(s) Information: (Attach extra sheets as necessary.)

Name: Ciprino and Francisca Garcia

Address: 4700 Polo Parkway Apt. 140

Phone: 432-853-2881

Street

Midland

Texas

79705

City

State

Zip Code

2. Metes and bounds description of property to be vacated.

3. Map showing property to be vacated and its relationship to the applicant's property.

4. Right-of-way Release Letter(s) signed by adjacent property owner(s). (See attached)

5. Letter(s) of Concurrence signed by adjacent property owner(s). (See attached)

6. Application Fee: **\$300.00**

Required items Attached? Date Received: 1. ✓ 2. ✓ 3. ✓ 4. ✓ 5. ✓ 6. ✓

V. Clearance is needed from the following utility companies: City of Midland / Atmos Energy

Caprock Energy / TXU Electric / AT&T / Suddenlink Cable TV Co. / Grande Communications

The City will route the request to these companies, but it is the applicant's responsibility to ensure clearance has been obtained and to work out any issues that may arise.

VI. Policies:

1. The applicant(s) shall be responsible for obtaining written concurrence from the owner(s) of any property adjacent to the affected right-of-way and for submitting said concurrence with the application. Following receipt of a complete application, the request shall proceed according to either (A) or (B) as follows:
 - A. If the portion of right-of-way under consideration may be vacated without affecting the traveling public, then the request shall be scheduled for deliberation by the City Council. No public hearing shall be required.
 - B. If the portion of right-of-way under consideration has been or is being used by the public, then the City shall send written notification of the request to all property owners within 1,000 feet a public hearing before City Council will be held. Any opposition to the requested closure must be in writing. Approval of a request with 20% or more opposition from notified landowners shall require a three-fourths vote of the City Council.

Signature of applicant: Francisca Garcia Date: 5/11/12

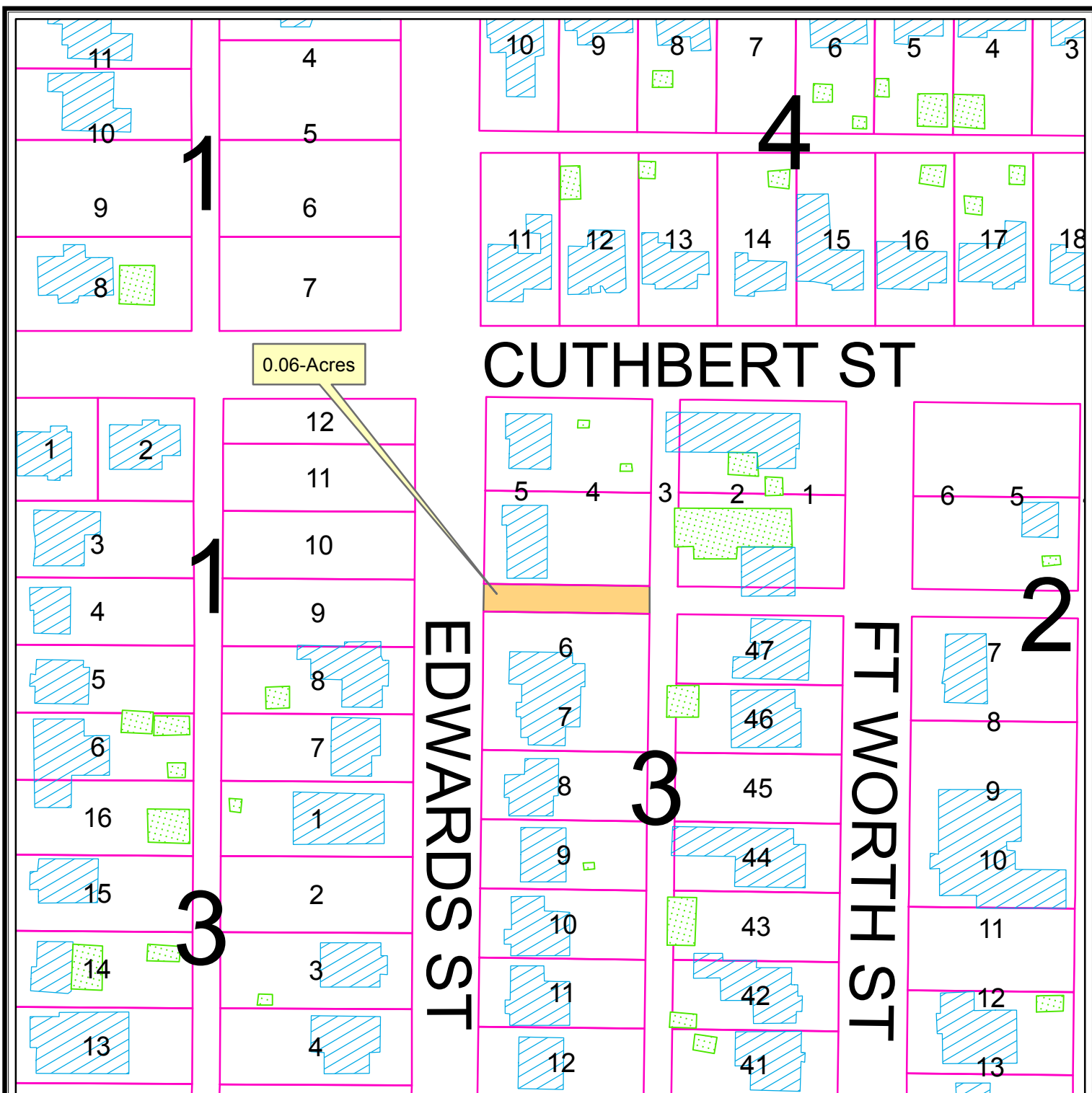
****Application will not be considered for scheduling until reviewed by a planner.****

To be completed by City of Midland staff:

According to the policy guidelines outlined above, a public hearing will ____ will not ☒ be required.

FOR OFFICE USE ONLY	
Rec'd. By: <u>S.O.</u>	Date: <u>5-14-12</u>
Assigned: <u>KV</u>	
For: <u>CC</u>	On: <u>6/26/12</u>

Revised 9/1/06



LOCATION MAP

V - 12 - 006

Scale: 1" = 100'

Consider a request for the vacation of a 0.06-acre portion of the east/west 20 foot alley adjacent to the north side of Lot 6, Block 3, Edwards Addition, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 28, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a motion appealing the Building Official's denial of a sign permit application by Basin Burger. Generally located on the southwest corner of the intersection of W. Louisiana Avenue and N. Colorado Street.

Purpose: Consider a motion appealing the Building Official's denial of a sign permit application by Basin Burger.

Recommended City Council Action

☐ Approve

☐ Deny

☒ Direction/Informational

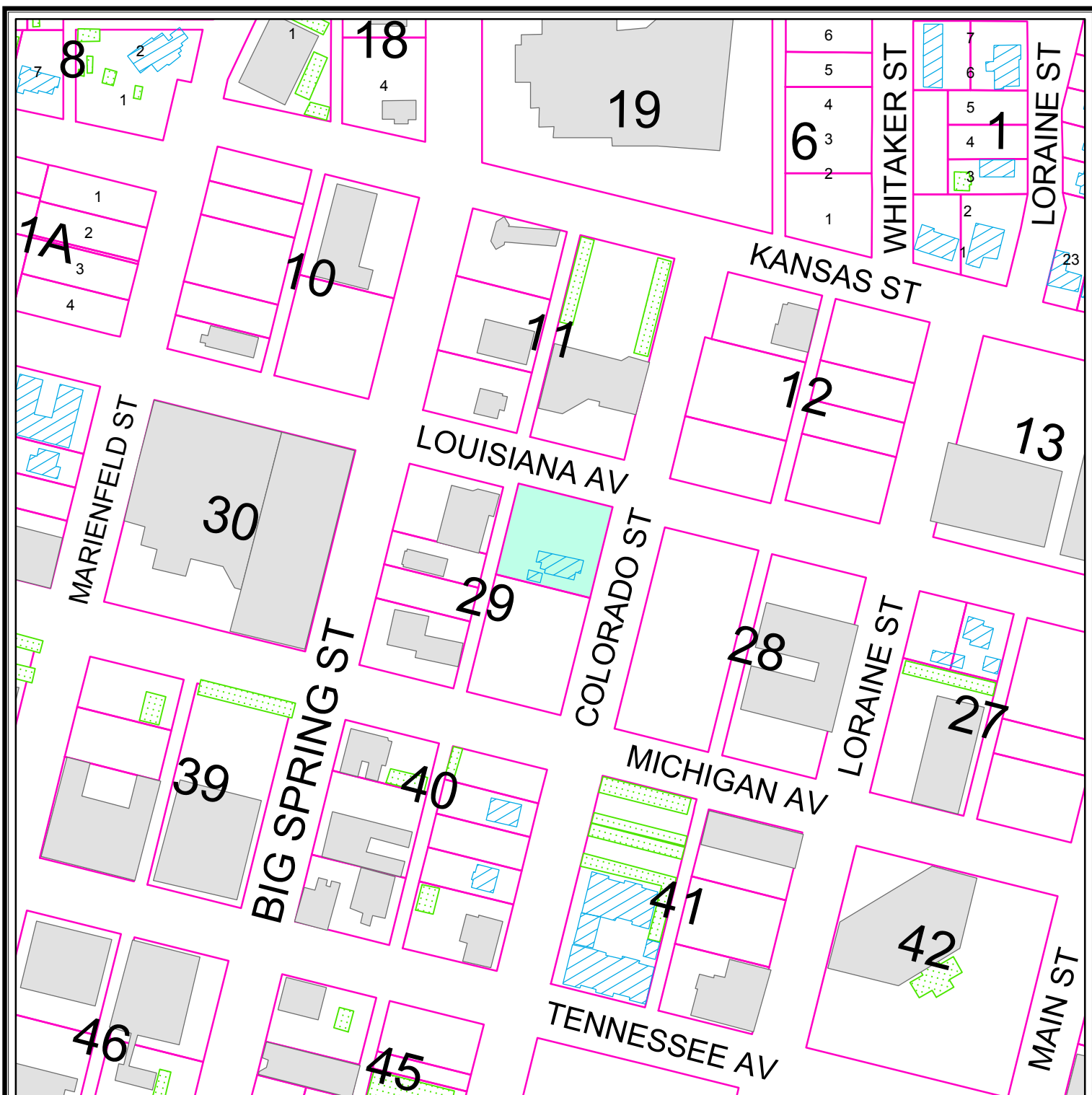
Fiscal Impact:

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

Discussion:

The applicant recently requested a sign permit for a 30 foot tall pole sign sited on the property located on the southwest corner of the intersection of W. Louisiana Avenue and N. Colorado Street. The Building Official denied the sign request as it is not in compliance with the City Sign Code. The City Sign Code limits the height of signs to 15 feet when not located along an arterial street. This item is being placed on the City Council agenda in order for the property owner to appeal the decision of the Building Official. If the Council chooses to allow the proposed sign, then direction should be given to the Building Official's office to issue the requested sign permit.

Attachments: map, sign design



LOCATION MAP

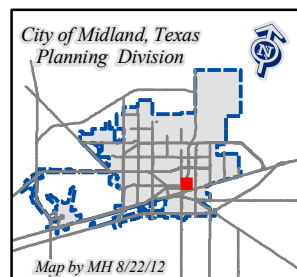
M - 12 - 022

Scale: 1" = 200'

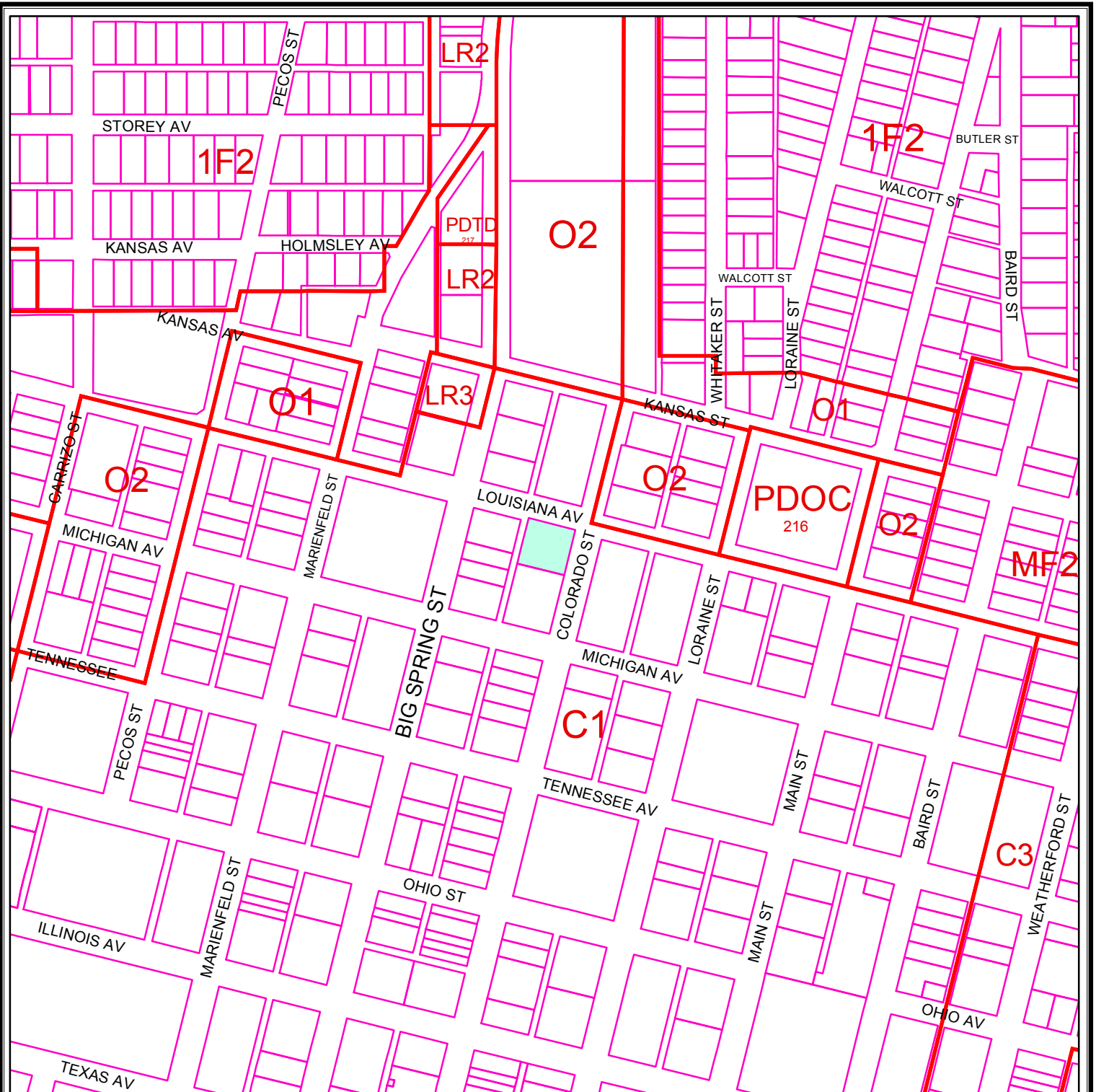
Consider a motion appealing the decision by the City Building Official to deny a proposed sign permit on Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

M - 12 - 022

Scale: 1" = 400'

Consider a motion appealing the decision by the City Building Official to deny a proposed sign permit on Lot 1A, Block 29, Homestead Addition, Section 8, City and County of Midland, Texas.

LEGEND

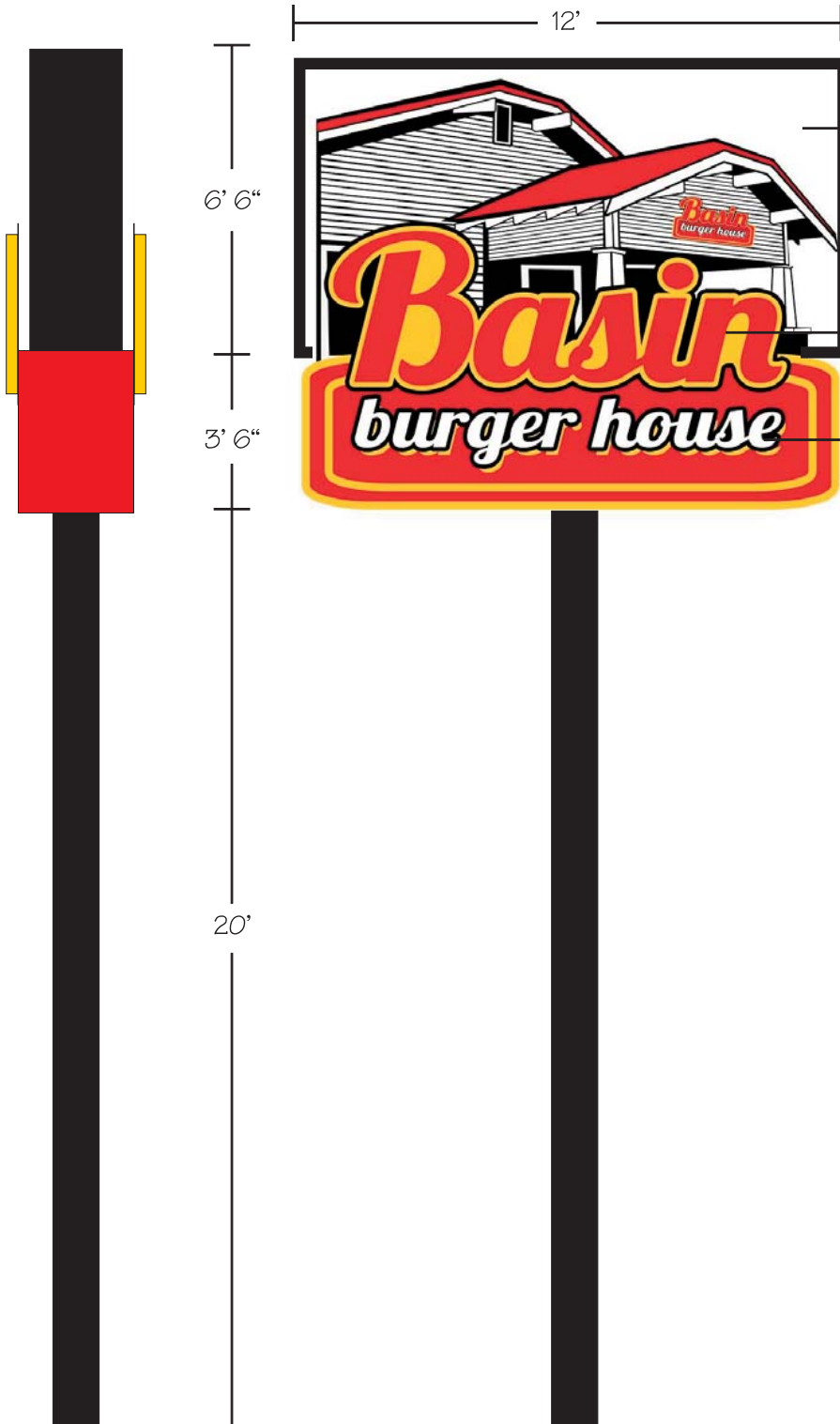
ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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BASIN BURGER HOUSE MIDLAND, TX



TOP SIGN SECTION IS A 6' 6" X 12'
D/F INTERNALLY ILLUMINATED SIGN
CABINET WITH FLEX FACES - ILLUMINATION
BY MEANS OF HO FLUORESCENT LAMPS

'BASIN' LETTERS ARE 3" DEEP ALUMINUM
CANS WITH D/S EXPOSED NEON LETTERING
MOUNTED TO THE "BURGER HOUSE" CAN
AND WILL PROJECT IN FRONT OF THE TOP SIGN

BOTTOM SIGN SECTION IS A 3' 6" X 12'
ALUMINUM CABINET "BURGER HOUSE"
LETTERS ARE 3" DEEP ALUMINUM CANS
WITH S/S EXPOSED NEON LETTERS
PAINTED YELLOW STRIPES HAVE YELLOW
NEON BORDER TUBING

*CUSTOMER IS RESPONSIBLE FOR OBTAINING ALL
APPROVALS FROM LANDLORD - SIGN CONSTRUCTION
CANNOT BEGIN UNTIL CSSi HAS RECEIVED COPIES
OF THESE APPROVALS

*USE OF THE DRAWING BY ANY ONE OTHER THAN
CITY SIGN SERVICES, INC. IS UNAUTHORIZED AND IS
A VIOLATION OF OUR COPY RIGHTS

APPROVED: _____

☐ AS SUBMITTED

☐ AS NOTED

☐ NOT APPROVED RESUBMIT

DATE: _____

01

EXTERIOR ELEVATION: POLE SIGN
SCALE: 1/4" = 1' 0"



**CITY SIGN
SERVICES, INC.**

3914 ELM ST. - DALLAS, TX 75226

214-826-4475 citysignservices.c 39.4

CONTACT: KENNETH WAITS EMAIL: CSS1956@AOL.COM



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 28, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a motion directing staff to begin the annexation of approximately 43 acres of land upon request of the property owners.

Purpose:

Consider a motion directing staff to begin the annexation of approximately 43 acres of land upon request of the property owners.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

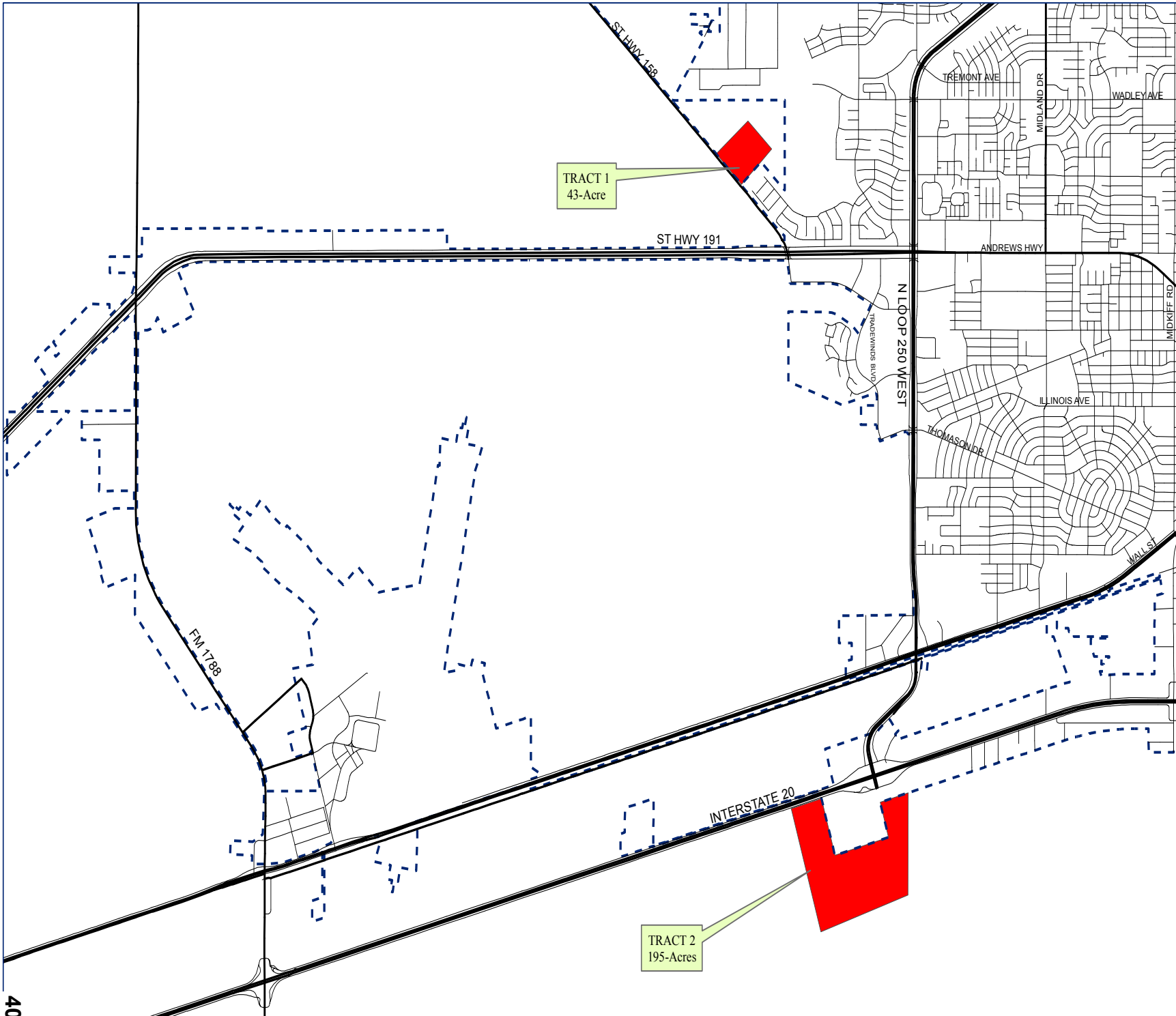
Additional land to be developed under City regulations in a growth area.

Discussion:

Staff has received letters from property owners seeking to be annexed in order to develop their properties. The request has come from the SBC, Inc. and Cumberland & Western, Inc. for an approximate 43-acre tract located near south of SH 191 and west of the Sports Complex.

Staff is requesting Council's direction to begin the annexation process. As a reminder, staff is proceeding with the requested annexation of the Schlumberger Land and the SBC land where the Chevron Office building will be developed.

Attachment: Map



TRACT 1
43-Acre

TRACT 2
195-Acres

Proposed Annexations

August 28, 2012

LEGEND

-  Streets
-  City Limits
-  Annexation Tracts



PLANNING DIVISION
Map by MH

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: August 28, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a motion directing staff to begin the annexation of approximately 195 acres of land upon request of the property owners.

Purpose:

Consider a motion directing staff to begin the annexation of approximately 195 acres of land upon request of the property owners.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

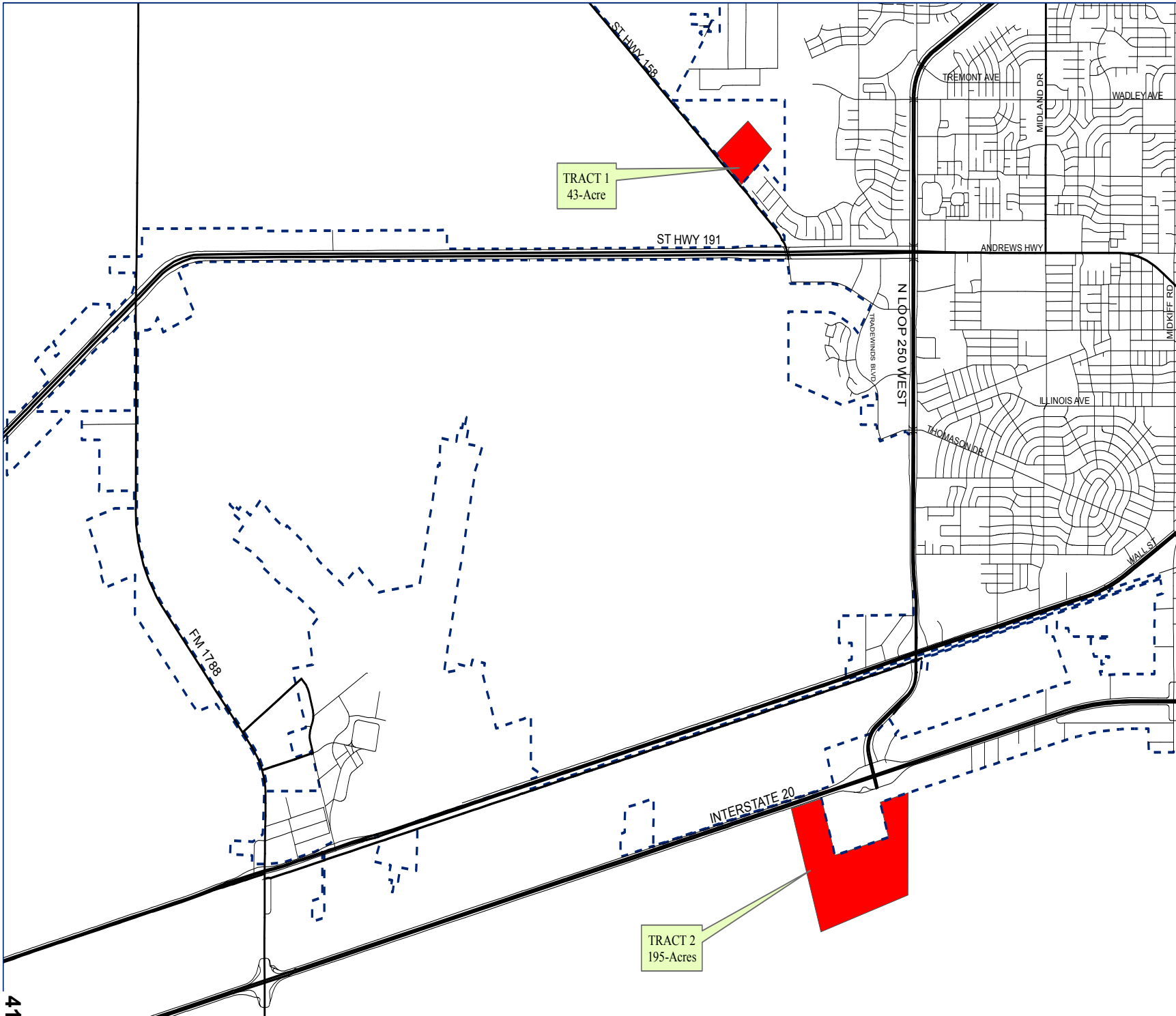
Additional land to be developed under City regulations in a growth area.

Discussion:

Staff has received letters from property owners seeking to be annexed in order to develop their properties. The request has come from the Darla Vuelte Cattle Company, Inc. for an approximate 195-acre tract located near the southwest corner of I-20 and W. Loop 250.

Staff is requesting Council's direction to begin the annexation process. As a reminder, staff is proceeding with the requested annexation of the Schlumberger Land and the SBC land where the Chevron Office building will be developed.

Attachment: Map



Proposed Annexations

August 28, 2012

LEGEND

- Streets
- City Limits
- Annexation Tracts



PLANNING DIVISION
Map by MH

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City of Midland
City Secretary's Office
Interoffice Memorandum

Date: August 23, 2012
To: The Honorable Mayor Perry and Council
From: Amy M. Turner, City Secretary
Subject: Membership - Boards and Commissions

Attached is an updated membership listing for the City's Boards and Commissions effective August 28, 2012. Remaining expirations and vacancies are listed below:

CITY DEVELOPMENT ADVISORY COMMITTEE – One vacancy expiring on September 30, 2013.

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS – Two vacancies for Alternate terms expired on September 30, 2007.

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION – Two terms expired in November 2011.

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION – Three vacancies expired on January 1, 2007, one term expired on January 1, 2009, two terms expired on January 1, 2010 and one term expired on January 1, 2012.

MIDLAND HOUSING FINANCE CORPORATION – One vacancy expired on September 30, 2010 and two terms expired on September 30, 2011.

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD – One vacancy.

OIL AND GAS ADVISORY COMMITTEE - One vacancy.

PARKS AND RECREATION COMMISSION – One term expired on September 30, 2011.

PERMIAN BASIN AIRPORT BOARD – Two terms expired on September 30, 2010 (Carlsbad and Hobbs New Mexico) and two terms expired on September 30, 2011.

PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH AND MENTAL RETARDATION – One term expiring in June 2012.

PLANING AND ZONING COMMISSION – One term expired on September 30, 2011.

TAX INCREMENT REINVESTMENT ZONE BOARD – One term expired on March 20, 2009 (one College representative), seven terms expired on March 20, 2010, two terms expired March 20, 2011 and two terms expired on March 20, 2012. (Four City representatives, two Hospital representatives, two County representatives and one College representative.)

ZONING BOARD OF ADJUSTMENT AND AIRPORT ZONING BOARD OF ADJUSTMENT-

Two terms expired on September 30, 2011, one vacancy for Alternate term expired on September 30, 2006 and one vacancy for Alternate term expired September 30, 2009.

BOARDS AND COMMISSIONS OF THE CITY OF MIDLAND

August 28, 2012

AIRPORT PLANNING AND DEVELOPMENT BOARD

(Advisory)

(Membership-10; Terms - 3 Years expiring 3-3-4.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ronald Schwisow	09/06	Sept 30 2012	Sept 30 2012
Herbert Blankinship	09/06	Sept 30 2012	Sept 30 2012
Jerry Walton	11/09	Sept 30 2012	Sept 30 2015
Mike Owen	10/07	Sept 30 2013	Sept 30 2013
Gregory F. Baiano	09/10	Sept 30 2013	Sept 30 2016
John T. Echols	09/10	Sept 30 2013	Sept 30 2016
Dallas L. Smith	09/10	Sept 30 2013	Sept 30 2016
Earl Erdmann, Chairman	09/08	Sept 30 2014	Sept 30 2014
Brooks Smith	11/11	Sept 30 2014	Sept 30 2017
Don "Woody" Woodward	11/11	Sept 30 2014	Sept 30 2017

Ex-Officio members are Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

ANIMAL SERVICES ADVISORY COMMISSION

(Advisory)

(Membership - 6; Terms - 4 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Dr. Tom Green (Veterinarian)	10/07*	Sept 30 2013	Sept 30 2017
Kelly Spencer	09/09	Sept 30 2013	Sept 30 2017
Laura Hollifield	09/08*	Sept 30 2013	Sept 30 2017
Justin Petty	04/07*	Sept 30 2013	Sept 30 2017
Tony Carrillo	09/09	Sept 30 2013	Sept 30 2017
Paul O'Neill	09/09	Sept 30 2013	Sept 30 2017

BUILDING CODES REVIEW COMMITTEE

(Membership – 9; Terms – 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
James Rigger	12/09	Dec 31 2013	Dec 31 2013
Chris Repman	12/09	Dec 31 2013	Dec 31 2013
John Cooper	12/09	Dec 31 2013	Dec 31 2013
Bill Routh	12/09	Dec 31 2013	Dec 31 2013
Tom Woodruff	12/09	Dec 31 2013	Dec 31 2013
Ron Ainsworth	12/09	Dec 31 2013	Dec 31 2013
Walter Pate	12/09	Dec 31 2013	Dec 31 2013
Robert Harrington	12/09	Dec 31 2013	Dec 31 2013
Jerry Morales	12/09	Dec 31 2013	Dec 31 2013

* Indicates appointment to an unexpired term.

CITY DEVELOPMENT ADVISORY COMMITTEE

(Advisory)

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
(Vacancy)-Lena Margita	10/09	Sept 30 2013	Sept 30 2013
Vicky Hailey	09/10	Sept 30 2012	Sept 30 2014
Reggie Lawrence	09/10	Sept 30 2012	Sept 30 2014
Alonda Massey	11/11	Sept 30 2013	Sept 30 2015
Tim Bryson	11/11	Sept 30 2013	Sept 30 2015

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

(Decision Making)

(Membership - 7; Terms - 4 Years expiring 2-2-2-1)

Position to include: 1. Registered Architectural or Builder Superintendent, 2. Registered Structural Engineer, 3. Registered Mechanical and Plumbing, 4. Registered Electrical Engineer, 5. Registered Fire Protection Engineer

		<u>Expires</u>	<u>Appt Date</u>	<u>Term Expires</u>	<u>Position</u>
Don Woodward (At Large)	11/11*	Sept 30 2012	Sept 30 2020		5
Richard D. Dunham	10/05	Sept 30 2013	Sept 30 2013		1
Greg Turner	03/11*	Sept 30 2013	Sept 30 2021		4
Chris Repman	10/07*	Sept 30 2014	Sept 30 2018		3
Jay K. Bradford	09/10	Sept 30 2014	Sept 30 2018		2

ALTERNATES:

Vacancy	Sept 30 2007	Any
Vacancy	Sept 30 2007	Any

HOTEL/MOTEL TAX ADVISORY BOARD

(Advisory)

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Tyler Wolfe	04/11*	Sept 30 2012	Sept 30 2012
Jon S. Blair	02/09*	Sept 30 2012	Sept 30 2014
Karmen Hendrix Bryant	02/12*	Sept 30 2013	Sept 30 2017
David Baur	09/10	Sept 30 2013	Sept 30 2014
Lisa Grissom	9/09	Sept 30 2013	Sept 30 2013
Steve Jones	02/09*	Sept 30 2013	Sept 30 2013
Alex Singh-Hotel/Motel Assn. Rep.	09/09	Dec 31 2013	Assn. Appt.
Vicky Hailey (Liaison Officer)			

- Indicates appointment to an unexpired term.

HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Rosie Gransberry	06/08*	Oct 2012	Oct 2012
Norma Duran	11/08*	Oct 2012	Oct 2014
Gregory Maes	11/11	Oct 2013	Oct 2015
Carla Repman, Vice Chairman	09/09	Oct 2013	Oct 2013
James A. Blischke	01/10	Oct 2013	Oct 2013

ALTERNATES:

Dennis Bade	11/11	Oct 2013	Oct 2015
-------------	-------	----------	----------

JOINT ECONOMIC DEVELOPMENT TASK FORCE

(Ad Hoc)

	<u>Appt. Date</u>
(Midland)	
Wes Perry	01/08
LuAnn Morgan	12/00
Keith Stretcher	12/00
Tommy Hudson	08/07
John Breier	01/04
(Odessa)	
Larry Melton	08/01
Jim Morris	11/00
Richard Morton	01/02
Joel Roberts	11/00
Neil McDonald	11/00

MANAGED COMPETITION COMMITTEE

(Ad Hoc)

	<u>Appt. Date</u>
Jon Morgan	01/02
Wes Perry	01/02
Roy Nelson	01/02
Hugh "Andy" Shaffer	12/03
Scott Dufford	01/02
Ted Tipton	04/04
Kevin Sparks	11/07
Scott Lovett	04/10
P. Lourcey Sams	04/10

Ex-Officio members are the Mayor and the City Manager.

- **Indicates appointment to an unexpired term.**

MIDLAND CENTER ADVISORY BOARD

(Advisory & Decision Making)

(Membership - 9; Terms - 3 Years expiring 3-2-2.)

		<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Brent Blackburn	(City)	09/09*	Sept 30 2013	Sept 30 2016
Charles Spence	(CC)	11/07	Sept 30 2013	N/A
Lorri Lyon West	(City)	09/10	Sept 30 2013	Sept 30 2016
Patricia S. Blackwell	(City)	10/07*	Sept 30 2014	Sept 30 2014
Paula Mitchell	(City)	09/08	Sept 30 2014	Sept 30 2014
Greg Turner	(CC)	12/11	Sept 30 2014	N/A
Tracy Bacon	(CC)	12/11	Sept 30 2014	N/A
Jerry Morales (Liaison Officer)				

Ex-Officio members are the City Manager and Executive Director of the Chamber of Commerce.

MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

Five Directors, Elected by Local Taxing Entities.

City Nominates/Cast Vote for one Director

(Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>
Chad Clark	3/12*	Dec 31 2013

MIDLAND DEVELOPMENT CORPORATION

(Membership - 5; Terms -3 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Michael Trost	02/11*	Jan 14 2013	Jan 14 2019
Cary J. Love	12/09	Jan 14 2013	Jan 14 2016
Gary Douglas	11/11*	Jan 14 2013	Jan 14 2019
Laura Roman	01/08	Jan 14 2014	Jan 14 2014
Robert Rendall, Chairman	01/09*	Jan 14 2014	Jan 14 2017

- Indicates appointment to an unexpired term.

MIDLAND FRESH WATER SUPPLY DISTRICT #1

(Ad Hoc)

(3 Non Voting Members)

	<u>Appt Date</u>
Wes Perry	05/12
Gary Harris	05/12
Wayne Merritt	05/12

**MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX
DEVELOPMENT CORPORATION**

(Decision Making)

Membership - 7; Terms - 2 Years)

	<u>Appt Date</u>	<u>Eligibility Term Expires</u>	<u>Expires</u>
Ken Marks, Vice President	10/07	Nov 2011	Nov 2011
James G. Smith	12/07	Nov 2011	Nov 2011
Mike Thompson	11/11	Nov 2013	Nov 2015
Tim Bryson	11/11	Nov 2013	Nov 2015
Wesley D. Bownds	02/09*	Nov 2013	Nov 2013
John James	08/08*	Nov 2013	Nov 2013
Rick Davis (MISD Resp.)	10/10*	Nov 2013	Nov 2015

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2009	
Cathy Oestmann	11/05*	Jan 1 2010	Jan 1 2010
Steve Jones	09/08*	Jan 1 2010	Jan 1 2012
Curt Kamradt	11/05*	Jan 1 2012	Jan 1 2012

- Indicates appointment to an unexpired term.

MIDLAND HOUSING FINANCE CORPORATION

(Decision Making)

(Membership - 5; Terms - 2 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy - (Damon L. Blakeley)	07/07*	Sept 30 2010	
Adrienne Valencia	10/07	Sept 30 2011	Sept 30 2011
Melissa Wicker	10/07	Sept 30 2011	Sept 30 2011
Jerry Morales (Liaison Officer)	10/08	Sept 30 2012	Sept 30 2012
Nathan Miller	11/11*	Sept 30 2012	Sept 30 2016

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD

(Ad Hoc)

Appt. Date

Vacancy	
Richard Hatchett	11/08
W. L. "Scooter" Brown	09/04
Ken Burgess	09/04
Jim Hightower	11/08
Ted H. Jones	09/04
Mitch Malouf	11/08
Christi Newton	09/04
Dan Rush	09/04

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making)

(Membership - 6; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Willie Barber	09/08	Sept 30 2012	Sept 30 2012
Raymond McCarthy	09/08	Sept 30 2012	Sept 30 2012
Michael Trost	09/08	Sept 30 2012	Sept 30 2012
John H. James	09/09	Sept 30 2013	Sept 30 2013
Karen York	06/09*	Sept 30 2013	Sept 30 2013
Guy McKenize	03/11*	Sept 30 2013	Sept 30 2015

- Indicates appointment to an unexpired term.

OIL AND GAS ADVISORY COMMITTEE

(Advisory)

(Membership – 5; Terms – 3 Years expiring 2-2-1)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy (Richard D Dunham) (Petro Eng.)	01/10	Sept 30 2013	Sept 30 2016
D. Patrick Darden (Petroleum Eng.)	02/10	Sept 30 2012	Sept 30 2015
Don Eubank (Drilling Eng.)	04/10	Sept 30 2012	Sept 30 2015
Paul Brown	11/11	Sept 30 2014	Sept 30 2017
David Rosen	11/11	Sept 30 2014	Sept 30 2017

PARKS AND RECREATION COMMISSION

(Advisory)

(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Berry Simpson	09/10*	Sept 30 2011	Sept 30 2017
Amanda McCann	11/11*	Sept 30 2012	Sept 30 2018
David Ham	09/06	Sept 30 2012	Sept 30 2012
Charles A. Spence	01/10*	Sept 30 2013	Sept 30 2016
Susan Nichols	02/06*	Sept 30 2013	Sept 30 2013
Eric L. West	10/07	Sept 30 2013	Sept 30 2013
Kenny Harper	03/12*	Sept 30 2013	Sept 30 2019
P. Lourcey Sams	09/08	Sept 30 2014	Sept 30 2014
Tina Corbett	09/08	Sept 30 2014	Sept 30 2014

PERMIAN BASIN AIRPORT BOARD

(Advisory)

(Membership - 30; Terms - 1 year.)

	<u>Appt. Date</u>	<u>Term Expires</u>
10 Members of the Airport Planning and Development Board		
Bob Forrest (Carlsbad, NM)	10/04	Sept 30 2010
Larry Shed (Hobbs, NM)	10/01	Sept 30 2010
Larry Gill (Abilene)	10/10	Sept 30 2011
Isabelle Blanchard (Pecos)	10/10	Sept 30 2011
Elvin Brownlee III (Andrews)	12/10*	Sept 30 2012
Jim Little (Big Spring)	09/03	Sept 30 2012
David Hardwick (Ft. Stockton)	10/07	Sept 30 2012
Don Bethel (Lamesa)	02/91	Sept 30 2012

Henry Cutbirth (Monahans) 09/05 Sept 30 2012

- Indicates appointment to an unexpired term.

PERMIAN BASIN AIRPORT BOARD CON'T

	<u>Appt. Date</u>	<u>Term Expires</u>
Willie Taylor (Odessa)	02/00	Sept 30 2012
Gloria Pena (Odessa)	03/03*	Sept 30 2012
Barbara Graff (Odessa)	06/10*	Sept 30 2012
Luis E. Elguezabal (San Angelo)	10/07	Sept 30 2012
Lex Hinds (Seminole)	10/08	Sept 30 2012
Glenn Wortham (Sweetwater)	10/07	Sept 30 2012
John Rogotzke (Snyder)	01/12	Sept 30 2012
Lance Goodrich (Artesia, NM)	09/09	Sept 30 2012
Larry Fry (Roswell, NM)	09/00	Sept 30 2012

Ex-Officio members are the City Manager and the City Attorney. The Secretary is the Director of Aviation.

PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH AND MENTAL RETARDATION

(Decision Making)

(Membership - 2 (City); Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Janet R. Pritchett (City)	05/09*	June 2012	June 2014
Larry Edgerton	07/10*	June 2013	June 2015

PERSONNEL BOARD OF APPEALS

(Decision Making)

(Membership - 3; No designated terms.)

	<u>Appt. Date</u>
John James	03/08
Hugh A. "Andy" Shaffer	09/05
Michael Trost	01/10

- Indicates appointment to an unexpired term.

PLANNING AND ZONING COMMISSION

(Advisory & Decision Making)
(Membership - 9; Terms - 3 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Becky Ferguson, Chairman	03/04*	Sept 30 2011	Sept 30 2011
Kevin Wilton	09/08*	Sept 30 2012	Sept 30 2015
Bill Woodruff	02/05*	Sept 30 2012	Sept 30 2012
Royce Watkins	02/08*	Sept 30 2012	Sept 30 2015
Karen York	01/10*	Sept 30 2012	Sept 30 2018
Jane Wolf	03/09*	Sept 30 2013	Sept 30 2016
Cindy Lanning	09/10	Sept 30 2013	Sept 30 2016
Jay Norris	11/11	Sept 30 2014	Sept 30 2017
Galen Gatten, Vice Chairman	09/08	Sept 30 2014	Sept 30 2014

ALTERNATES:

Tony Carrillo	11/11	Sept 30 2014	Sept 30 2017
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TAX INCREMENT REINVESTMENT ZONE BOARD

(Decision Making)
(Membership - 12; Terms - 2 Years, or 3 Years if appointed after 3/1/07)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Neil Florer (College)	07/01	Mar 20 2009	Mar 20 2009
Dan Rush (City)	07/01	Mar 20 2010	Mar 20 2010
Mark T. Wellen (City), Vice Chairman	07/01	Mar 20 2010	Mar 20 2010
Jay Reynolds (Hospital)	03/02	Mar 20 2010	Mar 20 2010
Ralph Way (College)	07/01	Mar 20 2010	Mar 20 2010
Randy Prude (County)	03/07	Mar 20 2010	Mar 20 2013
Judge Mike Bradford (County)	01/07*	Mar 20 2010	Mar 20 2014
C. Mark Wheeler (City), Treasurer	04/08	Mar 20 2011	Mar 20 2014
Bob Lanier (City), Secretary	04/03	Mar 20 2011	Mar 20 2011
Brent Kennedy (City)	06/09	Mar 20 2012	Mar 20 2015
John L. Kennedy (City)	10/09*	Mar 20 2012	Mar 20 2018
Pete Hulder (Hospital)	03/10	Mar 20 2013	Mar 20 2016

Ex-Officio member is President, Board of Trustees, Midland Independent School District

- Indicates appointment to an unexpired term.

ZONING BOARD OF ADJUSTMENT
AND
AIRPORT ZONING BOARD OF ADJUSTMENT

(Decision Making)

(Membership - 5; Terms - 2 Years expiring 3 odd & 2 even.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Trudi Edwards	10/07	Sept 30 2011	Sept 30 2011
Manny Ribera	10/07	Sept 30 2011	Sept 30 2011
Todd Byars	02/08*	Sept 30 2012	Sept 30 2014
Ken Morgan	01/10*	Sept 30 2012	Sept 30 2014
Carla Repman	01/10*	Sept 30 2013	Sept 30 2015
<u>ALTERNATES:</u> (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.

Amy Turner

From: Lena Margita [lmargita@gmail.com]
Sent: Wednesday, August 08, 2012 3:08 PM
To: Amy Turner
Cc: Reggie Lawrence
Subject: Letter of Resignation - City Development Board

Hi Amy,

I will be moving from the area at the end of the month and therefore need to resign my position on the board. I have enjoyed working with you and know that with Reggie - I am leaving the board in good hands.

I would like to recommend my replacement. I think if asked he would willingly serve on either that or another board - and since I just have another year left it would be a good break in for him. Glenn Pitchford is the Director of Information Systems at Permian Basin Community Centers. He currently sits on the board at Hope House, formerly on the board at the Recording Library, and he is very active in Leadership Midland.

Contact info:

Glenn Pitchford
432-570-3343
gpitchford@pbmhm.com

I thank Mayor Perry for the appointment and experience. I have truly enjoyed it.

--

Lena J Margita

"Leaders aren't born, they are made. They are made by hard effort, which is the price all of us must pay to achieve any goal which is worthwhile." -
Vince Lombardi

The cost of the battle determines the value of the victory.

♥†♥ "If we ever forget that we are one nation under God, then we will be a nation gone under." ♥†♥

-Ronald Reagan

Our country is now taking so steady a course as to show by what road it will pass to destruction, to wit: by consolidation of power first, and then corruption, its necessary consequence.

~ Thomas Jefferson