

CITY OF MIDLAND, TEXAS
BRIEFING SESSION AGENDA
September 11, 2012 - 9:00 A.M.
Basement Conference Room - City Hall
300 North Loraine
Midland, Texas

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

1. Receive a presentation from Danny Holeva on the recent Celebration of the Arts Festival.
2. Receive a presentation from Community Services on the creation of a Midland Youth Advisory Council.
3. Receive a presentation and discuss parking lot improvements and car rentals at Midland International Airport.

AGENDA FOR CITY COUNCIL MEETING
September 11, 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 - MPD Chaplain Sandra Fussell and 9-11 remembrance.
2. Pledge of Allegiance

PRESENTATIONS

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

PUBLIC COMMENT

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

CONSENT AGENDA

5. Consider a motion approving the following minutes:
 - a. Regular Meeting of August 21, 2012.
 - b. Regular Meeting of August 27, 2012.
 - c. Regular Meeting of August 28, 2012.
6. Consider a resolution authorizing the purchase of an annual supply of polymer for dewatering used for treatment of City drinking water, from the lowest bidder meeting bid standards, Atlantic Coast Polymers, Incorporated, for a total price of \$44,000.00; and accepting the City Manager's recommendation that certain bidders did not meet bid standards. (GENERAL SERVICES) (2012 - 278)

7. Consider a resolution authorizing the purchase of an annual supply of Earthtec for treating City of Midland drinking water from the sole bidder, Chameleon Industries, Incorporated, for a total price of \$120,000.00. (GENERAL SERVICES) (2012 - 279)
8. Consider a resolution authorizing the purchase of an annual supply of potassium permanganate for treating City of Midland drinking water from the sole bidder, F2 Industries, L.L.C., for a total price of \$21,400.00. (GENERAL SERVICES) (2012 - 280)
9. Consider a resolution authorizing the purchase of an annual supply of chlorine for treating City of Midland drinking water from the sole bidder, DPC Industries, Incorporated, for a total cost of \$213,904.00. (GENERAL SERVICES) (2012 - 281)
10. Consider a resolution authorizing the purchase of twenty-five (25) tons of powdered activated carbon for treating City of Midland drinking water from the sole bidder, F2 Industries, L.L.C., for a total cost of \$39,000.00. (GENERAL SERVICES) (2012 - 282)
11. Consider a resolution authorizing the purchase of an annual supply of polymer for treating City of Midland drinking water from the sole bidder, Polydyne, Incorporated, for a total price of \$75,420.00. (GENERAL SERVICES) (2012 - 283)
12. Consider a resolution authorizing the purchase of an annual supply of liquid anhydrous ammonia for treating City of Midland drinking water from the sole bidder, Shrieve Chemical Company, for a total price of \$158,000.00. (GENERAL SERVICES) (2012 - 284)
13. Consider a resolution rejecting the single bid received for bid number 5301-13 for an annual supply of aluminum sulfate for purifying City of Midland drinking water. (GENERAL SERVICES) (2012 - 285)
14. Consider a resolution authorizing the City Manager to purchase or exchange real property described as Lots 1 through 6, Block 38, Original Town Addition, an addition to the City of Midland, Texas, and purchase or exchange the real property in Block 39, Original Town Addition, an addition to the City of Midland, Midland County, Texas, with Midland County, Texas and purchase or exchange the real property being all of Block 55, Original Town Addition, an addition to the City of Midland, Midland County, Texas with Midland County, Texas; authorizing the City Manager to sell or exchange the 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 and sell or exchange the real property consisting of all of

Block 50, Original Town Addition, an addition to the City of Midland, Midland County, Texas with Midland County, Texas; and authorizing the City Manager to execute a sublease on real property situated in Section 3, Block 39, T-2-S, T&P RR Co. Survey, Midland County, Texas; and authorizing the City Manager to execute all documents necessary to implement this resolution; and directing the City Treasurer to pay all closing costs upon receipt of proper invoice or statement approved by the City Manager. (GENERAL SERVICES) (2012 - 286)

15. Consider a resolution reappointing Price Robinson and Jeff Meiner to the Board of Managers of the Midland Emergency Communication District. (CITY MANAGER'S OFFICE) (2012 - 287)
16. Consider a resolution approving the budget of the Midland Emergency Communication District for the fiscal year ending September 30, 2013. (CITY MANAGER'S OFFICE) (2012 - 288)
17. Consider a motion to cast a vote for the four incumbent trustees in the Texas Municipal League-Intergovernmental Risk Pool Board election. (CITY MANAGER'S OFFICE)
18. Consider a resolution authorizing the execution of a contract with Keep Midland Beautiful, Incorporated, for litter reduction, education, and beautification programs. (CITY SECRETARY'S OFFICE) (2012 - 289)
19. Consider a resolution authorizing the execution of an agreement with the Permian Basin Community Centers for mental health, mental retardation, and substance abuse services. (CITY SECRETARY) (2012 - 290)
20. Consider a resolution authorizing the execution of a contract with Midland Teen Court, Incorporated, for the operation of a Teen Court Program. (CITY SECRETARY) (2012 - 291)
21. Consider a resolution authorizing the execution of a contract with the Midland Hispanic Chamber of Commerce to promote the City's growth and development. (CITY SECRETARY'S OFFICE) (2012 - 292)
22. Consider a resolution authorizing the execution of a contract with the Midland Community College District to promote economic growth and development. (CITY SECRETARY) (2012 - 293)
23. Consider a resolution authorizing the execution of an agreement with the Arts Council of Midland for the encouragement, promotion, improvement and application of the arts in the City. (CITY SECRETARY'S OFFICE) (2012 - 294)

24. Consider a resolution authorizing the execution of a contract with COM Aquatics, Incorporated, for advertising, promotion and solicitation of aquatic activities in Midland. (CITY SECRETARY'S OFFICE) (2012 - 295)
25. Consider a resolution authorizing an agreement with the Commemorative Air Force, Incorporated, to promote tourism and the hotel industry in the city. (CITY SECRETARY'S OFFICE) (2012 - 296)
26. Consider a resolution authorizing the execution of a contract with the Downtown Midland Management District to promote tourism and the convention and hotel industry in downtown Midland; City to award the sum of \$50,000.00 from hotel/motel funds. (CITY SECRETARY'S OFFICE) (2012 - 297)
27. Consider a resolution authorizing the execution of a contract with the George W. Bush Childhood Home, Incorporated, to promote tourism and the convention and hotel industry in the City of Midland. (CITY SECRETARY'S OFFICE) (2012 - 298)
28. Consider a resolution authorizing the execution of a contract with the Midland Chamber of Commerce to promote tourism and the convention and hotel industry in the City. (CITY SECRETARY'S OFFICE) (2012 - 299)
29. Consider a resolution authorizing the execution of a contract with the Midland Chamber of Commerce for the management of the Midland Center and Centennial Plaza. (CITY SECRETARY'S OFFICE) (2012 - 300)
30. Consider a resolution authorizing the execution of a contract with the Midland Community Theatre, Incorporated for the promotion of the theatre arts in the City. (CITY SECRETARY'S OFFICE) (2012 - 301)
31. Consider a resolution authorizing the execution of a contract with the Midland Soccer Association for the promotion and solicitation of soccer activities. (CITY SECRETARY'S OFFICE) (2012 - 302)
32. Consider a resolution authorizing the execution of a contract with the Museum of the Southwest to promote tourism and the convention and hotel industry in the City of Midland. (CITY SECRETARY'S OFFICE) (2012 - 303)
33. Consider a resolution authorizing the execution of a contract with the Permian Basin Petroleum Museum, Library and Hall of Fame, Incorporated, for advertising, promotion and solicitation of oil industry activities in the City of Midland. (CITY SECRETARY'S OFFICE) (2012 - 304)
34. Consider a resolution authorizing the acceptance of \$138,260.00 in reimbursement funds from the Texas Department of State Health Services to assist the Health and Senior Service Division with the delivery of Public Health

Emergency Preparedness Services; and authorizing the execution of acceptance documents. (COMMUNITY SERVICES) (2012 - 305)

35. Consider a resolution authorizing the acceptance of reimbursement funds from the Texas Department of State Health Services in the amount of \$55,815.00 to assist the Health and Senior Services Division with the delivery of local public health services; and authorizing the execution of acceptance documents. (COMMUNITY SERVICES) (2012 - 306)
36. Consider a resolution authorizing the acceptance of reimbursement funds from the Texas Department of State Health Services in the amount of \$150,358.00 to assist the Health and Senior Service Division with the delivery of immunizations; and authorizing the execution of acceptance documents. (COMMUNITY SERVICES) (2012 - 307)
37. Consider a resolution authorizing the City of Midland to accept a donation in the amount of \$31,649.00 from the Friends of the I-20 Wildlife Preserve and Jenna Welch Nature Study Center in order to assist in the construction of the I-20 Wildlife Preserve Pavilion and Restrooms Project, and appropriating funds. (COMMUNITY SERVICES) (2012 - 308)
38. Consider a resolution authorizing the execution of a Community Development Block Grant Contract with Casa de Amigos for a Home Cleaning Program in the amount of \$25,000.00; the purpose of this program is to provide home cleaning services to 200 indigent senior citizens and handicapped households; the program will begin on October 1, 2012 and end on September 30, 2013. (DEVELOPMENT SERVICES) (2012 - 309)
39. Consider a resolution authorizing the execution of a Community Development Block Grant contract with Community and Senior Services of Midland, Incorporated, for the Southeast Senior Center Nutrition Program in the amount of \$45,000.00; the program will be provided daily in coordination with other activities; the purpose of this program is to promote better mental and physical health for seniors through nutritious meals and socialization; the program will begin on October 1, 2012 and end on September 30, 2013. (DEVELOPMENT SERVICES) (2012 - 310)
40. Consider a resolution allocating \$125,000.00 from the General Fund (001) Nondepartemental (150) Interfund Transfer (0199) General Construction Fund (6299) to the Zoning Code Update Project (9009). (DEVELOPMENT SERVICES) (2012 - 311)
41. Consider a resolution authorizing a right-of-way crossing license with the City of Midland, Texas and DCP Midstream, LP; said right-of-way license is for the purpose of installing one (1) eight inch (8") natural gas pipeline; the pipeline is located within the City of Midland right-of-way, Section 22 and 27, Block 40, T-1-

S, T&P RR Co. Survey, City of Midland, Midland County, Texas; the license term is for twenty (20) years, commencing with the date of this license and may renew at the end of the term for one additional twenty (20) year term upon 90 days written request prior to expiration. (ENGINEERING SERVICES) (2012 - 312)

42. Consider a resolution authorizing the execution of a Public Improvement Development Agreement with Real Property Resources, Inc. for development of Legends Park Addition, City and County of Midland, Texas (Generally located west of the Scharbauer Sports Complex and south of Deauville Boulevard); and appropriating funds in the amount of \$609,614.00 therefor; said agreement being authorized by Section 395.081 of the Texas Local Government Code. (ENGINEERING SERVICES) (2012 - 313)
43. Consider a resolution approving plans and specifications and authorizing advertisement for bids for the Sparks Park Improvements Project; said project will be for improvements to currently unpaved right-of-way and constructing curb-and-gutter. (ENGINEERING SERVICES) (2012 - 314)
44. Consider a resolution approving plans and specifications and authorizing advertisement for bids for the Douglas Avenue and "D" Street Water and Sewer Improvements Project; said project will be for the installation of new water and sewer mains along Douglas Avenue and "D" Street. (ENGINEERING SERVICES) (2012 - 315)

SECOND READINGS

45. Consider an ordinance on second reading changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 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)
46. 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 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)

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

PUBLIC HEARINGS

49. At approximately 10:30 a.m. hold a public hearing to consider a resolution of the City Council of Midland, Texas making a finding, pursuant to Chapter 26 of the Texas Parks and Wildlife Code, that there is no feasible and prudent alternative to the change in use of approximately 0.5 acres located on the southwest portion of Windlands Park (approximately 1,800 feet west of "A" Street and 500 feet north of Ventura Drive) from public park use to a water reclamation facility for the purpose of providing irrigation water to Midland College and Windlands Park. (COMMUNITY SERVICES) (2012 - 316)
50. At approximately 10:33 a.m. hold a public hearing and consider an ordinance changing the zoning use classification of the property described as Lot 3, Block 28, Plantation Hills, Section 15, City and County of Midland, Texas (Generally located on the north side of West Loop 250 North, approximately 300 feet west of Garfield Street), which is presently zoned PD, Planned District for a shopping center, by permitting said property to be used under a Specific Use Permit with Term for the sale of all alcoholic beverages in a restaurant for on-premises

consumption; making said permit subject to certain conditions and restrictions contained herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9058)

51. At approximately 10:36 a.m. hold a public hearing regarding a proposed Oil and Gas Permit to RSP Permian, L.L.C. (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Bus Barn #2603D) located 690 feet from the north line and 1080 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south of the Briarwood Avenue, approximately 600 feet west of Roadrunner Trail.) No further action will be taken on this item. (DEVELOPMENT SERVICES)
52. At approximately 10:39 a.m. hold a public hearing regarding a proposed Oil and Gas Permit to RSP Permian, L.L.C. (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Bus Barn #2611D) located 590 feet from the north line and 1040 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south of the Briarwood Avenue, approximately 560 feet west of Roadrunner Trail.) No further action will be taken on this item. (DEVELOPMENT SERVICES)
53. At approximately 10:42 a.m. hold a public hearing regarding a proposed Oil and Gas Permit to RSP Permian, L.L.C. (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Bus Barn #2612D) located 640 feet from the north line and 1040 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south of the Briarwood Avenue, approximately 560 feet west of Roadrunner Trail.) No further action will be taken on this item. (DEVELOPMENT SERVICES)
54. At approximately 10:45 a.m. hold a public hearing regarding a proposed Oil and Gas Permit to RSP Permian, L.L.C. (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Bus Barn #2613D) located 740 feet from the north line and 1040 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south of the Briarwood Avenue, approximately 560 feet west of Roadrunner Trail.) No further action will be taken on this item. (DEVELOPMENT SERVICES)
55. At approximately 10:48 a.m. hold a public hearing regarding a proposed Oil and Gas Permit to RSP Permian, L.L.C. (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Bus Barn #2614D) located 790 feet from the north line and 1040 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the

south of the Briarwood Avenue, approximately 560 feet west of Roadrunner Trail.) No further action will be taken on this item. (DEVELOPMENT SERVICES)

56. At approximately 10:51 a.m. hold a public hearing and consider an ordinance adopting a site plan for a 7.37-acre tract of land out of Lot 3, Block 1, Cross Pointe Addition, City and County of Midland, Texas (Generally located approximately 550 feet north of Briarwood Avenue on the west side of Holiday Hill Road); subject to the following conditions and restrictions; 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) (9059)
57. At approximately 10:54 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 108.712-acre tract out of Section 37, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, and more specifically described in Section One hereof, which is presently zoned FD, Future Development District, to be used as a PD, Planned District for a housing development (Generally located south of State Highway 191 and west of the Scharbauer Sports Complex); 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) (9060)
58. At approximately 10:57 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 6.774-acre tract of land out of Tracts F and G, Johnson and Moran Addition, City and County of Midland, Texas, which is presently zoned LR-1, Local Retail District, to be used as a PD, Planned District for a shopping center (Generally located on the south side of Cuthbert Avenue, approximately 300 feet west of Andrews Highway); 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) (9061)
59. At approximately 11:00 a.m. hold a public hearing and consider a resolution authorizing the temporary use of land for a philanthropic event on Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas (Generally located on the southwest corner of the intersection of West Loop 250 North and North Midkiff Road); and making said permit subject to certain special conditions and restrictions contained herein. (DEVELOPMENT SERVICES) (2012 - 317)

60. At approximately 11:03 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 14.05-acre tract of land out of Section 19, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, and more specifically described in Section One hereof, which is presently zoned PD, Planned District for Housing Development, to be used as an amended Planned District (Generally located at the south side of West Wadley Avenue, approximately 450 feet east of Sunburst 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) (9062)

DEVELOPMENT SERVICES

61. Consider a resolution granting a variance for Lots 3A, 3B and 3C, Block 1, West 1788 Industrial Park, Section 7, City and County of Midland, Texas (Generally located on the 11700 and 11800 Blocks of Onyx Drive), by permitting construction of commercial buildings where no portion of any building is closer than two hundred sixty (260) feet of an oil and gas well; and authorizing issuance of building permits. (DEVELOPMENT SERVICES) (2012 - 318)

MISCELLANEOUS

62. Consider an ordinance prohibiting parking on the west side of Boulder Drive from the south curb line of Loop 250 service road continuing south a distance of 369 feet to the north curb line of Fargo Avenue, and from the south curb line of Fargo Avenue continuing south a distance of 561 feet, also on the north and south side of Fargo Avenue from the west curb line of Boulder Drive continuing west a distance of 139 feet to the north south alley except to residents whose property abuts such street and have obtained a valid parking permit; authorizing and directing the Traffic Engineer to erect appropriate signs; declaring any vehicle in violation of the provisions of this ordinance a nuisance and providing for the removal of same; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two hundred dollars (\$200.00); and ordering publication (ENGINEERING SERVICES) (9063)
63. Consider an ordinance altering prima facie speed limits along certain streets in the City; authorizing installation of appropriate signs and markings; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two hundred dollars (\$200.00); repealing portions of Ordinance 8384; and ordering publication. (ENGINEERING SERVICES) (9064)
64. Consider an ordinance amending Title III, "Departments", Chapter 1, "Water Department" Section 9 "Optional Litter Abatement and Beautification Fee," of the City Code of Midland, Texas, so as to make said litter abatement and

beautification fee mandatory and to increase the fee from fifty cents (\$0.50) to one dollar (\$1.00); containing a cumulative clause; containing a savings and severability clause; and ordering publication. (SOLID WASTE) (9065)

65. Consider an ordinance of the City of Midland amending Title VIII, "Food Establishments, Health and General Sanitation," Chapter 6, "Garbage, Trash and Rubbish," Section 9, "Collection from Commercial Customers," Subsection (A) of the Midland City Code so as to increase the rates charged to commercial customers for the collection and disposal of garbage, trash and rubbish; containing a cumulative clause; containing a savings and severability clause; establishing an effective date of October 1, 2012; and ordering publication. (SOLID WASTE) (9066)
66. Consider an ordinance amending Title VIII, "Food Establishments, Health and General Sanitation," Chapter 6, "Garbage, Trash and Rubbish," Section 12 "Removal of Garbage, Trash or Waste Other Than by the City," of the City Code of Midland, Texas, so as to clarify rules related to garbage hauler's permits; containing a cumulative clause; containing a savings and severability clause; and ordering publication. (SOLID WASTE) (9067)
67. Consider an ordinance amending Title VIII, "Food Establishments, Health and General Sanitation," Chapter 6, "Garbage, Trash and Rubbish," Section 23 "Placement of Refuse Containers on Apartment and Other Commercial Establishment Premises," of the City Code of Midland, Texas, so as to change the verbiage containing Director of Utilities to Director of Solid Waste; containing a cumulative clause; containing a savings and severability clause; and ordering publication. (SOLID WASTE) (9068)
68. Consider an ordinance amending Title VIII, "Food Establishments, Health and General Sanitation," Chapter 6, "Garbage, Trash and Rubbish," Section 24 "Charges for Dumping or Unloading at Sanitary Landfill Operated by the City of Midland", of the City Code of Midland, Texas, so as to increase the rates charged for dumping or unloading at the sanitary landfill facility operated by the City of Midland and to incorporate a twenty-five dollar (\$25.00) landfill access fee; containing an escalation clause; containing a cumulative clause; containing a savings and severability clause; and ordering publication. (SOLID WASTE) (9069)
69. Consider an ordinance amending Title III, "Departments", Chapter 1, "Water Department", Section 2, "Rates," Subsection (A), "Customers Inside of City Limits," Sub-Subsection 1., "Water Rates," of the City Code of Midland, Texas, so as to increase the rates charged to customers inside the City limits for water; containing a cumulative clause; containing a savings and severability clause; and ordering publication; and the City Manager shall notify all customers outside the City limits as required by state law. (UTILITIES) (9070)

70. Consider an ordinance amending Title III, "Departments", Chapter 1, "Water Department" to include Section 27 "Septage Waste Hauler Discharges and Fees", of the City Code of Midland, Texas, so as to regulate the discharge of septage materials at the City's Water Pollution Control Plant and incorporate a twenty-five dollar (\$25.00) Septage Hauler's Discharge Fee; containing a cumulative clause; containing a savings and severability clause; and ordering publication. (UTILITIES) (9071)
71. Consider a motion authorizing the City Manager and City Attorney to enter into settlement negotiations with Cajun Constructors, Incorporated on all claims related to the City of Midland Water Purification Plant Improvements Project. (CITY ATTORNEY'S OFFICE)
72. Consider a resolution authorizing the City Manager to negotiate and execute a Letter Development Agreement between the City of Midland, Wall Street Lofts, LLC, the Midland Development Corporation ("MDC") and the Midland Tax Increment Reinvestment Zone No. 1 ("TIRZ") regarding the development of a mixed-use multi-family residential and retail building and parking garage and related infrastructure, all to be located on the property currently described as Lots 1-8 and Lots 13-23, Block 53, Original Town Addition, Midland, Midland County, Texas (CITY ATTORNEY'S OFFICE) (2012 - 319)
73. Consider making appointments to various Boards and Commissions.

EXECUTIVE SESSION

74. 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 551.071, Consultation with the City Attorney and Attorney(s) with the law firm of Cotton, Bledsoe, Tighe and Dawson
 - a.1. Discuss contemplated litigation with Cajun Constructors, Incorporated regarding its claims under the construction contract for the City of Midland Water Purification Plant Improvement Project and Progress Pay Application, and the change order requests to said contract.
 - b. Section 551.087 Deliberation Regarding Economic Development Negotiations
 - b.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.

c. Section 551.072 Deliberation Regarding Real Property.

- c.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.
- c.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.
- c.3. Deliberate the purchase, exchange and value of real property in Block 39, Original Town Addition, an addition to the City of Midland, Midland County, Texas.
- c.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.
- c.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 21, 2012**

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 9:00 a.m., August 21, 2012.

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

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

PUBLIC HEARINGS

1. At 9:00 a.m. hold a public hearing for the purpose of allowing the public and other interested groups to make comments regarding the proposed 2012 - 2013 City of Midland budget. (FINANCE)

Finance Director Bob McNaughton gave a brief overview of the item noting that the budget was for October 1, 2012 through September 30, 2013.

Mayor Perry opened the public hearing at 9:04 a.m.

Bob Crites, 606 E. Broadway, asked that the emergency fund money be used so that taxes would not have to be raised because it makes Midland less desirable and Midland is already the most expensive place to live in Texas.

Discussion ensued regarding the rainy day fund balance and how the excess is used to fund capital projects as needed.

Discussion ensued regarding cost allocation from all departments that have revenue sources, that the Airport does not fully reimburse the General Fund, and the potential to charge a franchise fee to rental car companies.

Jose Zertuche, 1309 N. Big Spring, representing Midland County Fair, reported they were a 501(c)4 non profit and were not affiliated with Midland County other than receiving funding and in-kind services from the County.

There being no one else present wishing to speak, the public hearing was closed at 9:21 a.m.

MISCELLANEOUS

2. Consider an ordinance for the Fiscal Year 2012 - 2013 budget. (FINANCE)

ORDINANCE NO. 9052

AN ORDINANCE OF THE CITY OF MIDLAND PROVIDING FUNDS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2012, AND ENDING SEPTEMBER 30, 2013, BY APPROVING THE BUDGET FOR SAID PERIOD AND APPROPRIATING AND SETTING ASIDE THE NECESSARY FUNDS OUT OF THE GENERAL AND OTHER REVENUES AND UNAPPROPRIATED FUND BALANCE OF THE CITY OF MIDLAND FOR SAID FISCAL YEAR FOR THE MAINTENANCE AND OPERATION OF THE VARIOUS DEPARTMENTS AND FOR VARIOUS ACTIVITIES AND IMPROVEMENTS TO THE CITY; AND PROVIDING FOR PARTICIPATION BY THE CITY OF MIDLAND IN THE SUPPLEMENTAL DEATH BENEFITS FUND OF THE TEXAS MUNICIPAL RETIREMENT SYSTEM, TO PROVIDE CERTAIN IN-SERVICE DEATH BENEFITS FOR EMPLOYEES, AND DEATH BENEFITS FOR ANNUITANTS WHOSE LAST EMPLOYMENT BEFORE RETIREMENT WAS WITH THE CITY OF MIDLAND, TEXAS; AND ORDERING PUBLICATION

City Secretary Turner read the caption of Ordinance No. 9052.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 9052 in accordance with the Charter of the City of Midland; seconded by Council Member Trost.

A suggestion was made to have staff compare Midland to other Airports to determine if a franchise fee for rental car companies was feasible and to report back to the City Council.

Discussion continued about the Airport paying for their fair share of the cost allocation. Finance Director McNaughton reported that the Airport not paying their share was a policy decision dating back to the 70's or 80's. The Airport's share has been increased this year, but warned if it is increased too substantially, it could trigger an audit.

A discussion regarding franchise fees ensued with City Manager Sharp noting that franchise fees were addressed as each franchise agreement comes due.

Council Member Sparks requested that a representative from the Chamber of Commerce come forward to explain why they requested such a large increase.

Gaylia Olivas, Vice President of the Midland CVB, reported there were several reasons why they requested the increase such as receiving far less funding than other chambers from comparable cities, the need to produce a new video to represent Midland, and for computer and technology upgrades. She reported they were bidding on hotels for conventions 2-5 years in advance of events and they needed the necessary marketing materials to be competitive with their bids.

Discussion ensued regarding the funding recommended by the Hotel/Motel Tax Advisory Board. It was noted that the board struggled with funding of some of the groups because of the lack of proof of heads in beds. It was suggested that the City Council meet with the Hotel/Motel Tax Advisory Board to share with them the direction the Council would like for the board to take.

Council Member Trost moved to amend the motion to fund Museum of the Southwest at \$20,000 and the Petroleum Museum at \$20,712; seconded by Council Member Dufford.

When asked where the additional funding would come from, City Manager Sharp reported that it would be funded from the unallocated Hotel/Motel funds.

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

Council Member James moved to amend the motion by restoring funding for the Arts Council Subgranting Program to \$115,000; seconded by Council Member Trost.

Discussion ensued about the Hotel/Motel Tax Advisory Board's significant reduction in funding. City Secretary Turner reported that when the board reviewed the list of the previous year's grant recipients they felt a number of the recipients did not produce heads in beds.

City Manager Sharp noted that he visited with Arts Council in Austin and they struggled with the same issues in the past. They held public hearings and determined that as long as an art function was open to the public and was publically advertised it met the criteria and suggested the Council consider a similar outcome.

Council Member James noted he felt the Hotel/Motel Tax Advisory Board did a great job based on the tools they were given and commended them for their job.

City Attorney Stretcher noted that the courts have given leeway to City Council decisions about what promotes tourism.

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

Discussion ensued about the \$2 million budgeted for road maintenance. It was suggested that be considered a capital project and used from those funds. City Manager Sharp noted that the City tries to do maintenance on every City street at least once every seven years and cautioned against using capital funds for maintenance.

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

3. Consider an ordinance for the Fiscal Year 2012 - 2013 Tax Levy. (FINANCE)

ORDINANCE NO. 9053

AN ORDINANCE FIXING THE TAX LEVY FOR THE CITY OF MIDLAND, TEXAS, FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2012 AND ENDING ON SEPTEMBER 30, 2013

City Secretary Turner read the caption of Ordinance No. 9053.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 9053 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, Sparks. NAY: James. ABSTAIN: None. ABSENT: None.

EXECUTIVE SESSION

4. 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.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 11:16 a.m.

All of the business at hand having been completed, the meeting adjourned at 11:50 a.m.

PASSED AND APPROVED the 11th day of September, 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

**MIDLAND CITY COUNCIL
MINUTES
August 27, 2012**

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 9:00 a.m., August 27, 2012.

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

Council Members absent: Council Member Jeff Sparks (District 1).

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

MISCELLANEOUS

1. Consider an ordinance for the Fiscal Year 2012 - 2013 budget. (FINANCE) (First reading held August 21, 2012)

ORDINANCE NO. 9052

AN ORDINANCE OF THE CITY OF MIDLAND PROVIDING FUNDS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2012, AND ENDING SEPTEMBER 30, 2013, BY APPROVING THE BUDGET FOR SAID PERIOD AND APPROPRIATING AND SETTING ASIDE THE NECESSARY FUNDS OUT OF THE GENERAL AND OTHER REVENUES AND UNAPPROPRIATED FUND BALANCE OF THE CITY OF MIDLAND FOR SAID FISCAL YEAR FOR THE MAINTENANCE AND OPERATION OF THE VARIOUS DEPARTMENTS AND FOR VARIOUS ACTIVITIES AND IMPROVEMENTS TO THE CITY; AND PROVIDING FOR PARTICIPATION BY THE CITY OF MIDLAND IN THE SUPPLEMENTAL DEATH BENEFITS FUND OF THE TEXAS MUNICIPAL RETIREMENT SYSTEM, TO PROVIDE CERTAIN IN-SERVICE DEATH BENEFITS FOR EMPLOYEES, AND DEATH BENEFITS FOR ANNUITANTS WHOSE LAST EMPLOYMENT BEFORE RETIREMENT WAS WITH THE CITY OF MIDLAND, TEXAS; AND ORDERING PUBLICATION

City Secretary Turner read the caption of Ordinance No. 9052.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 9052 in accordance with the Charter of the City of Midland; seconded by Council Member Morales.

Council Member Morales requested Rachel Stone of the Midland Hispanic Chamber of Commerce come forward for an update.

Rachel Stone, 208 S. Marienfeld and Renee Rivera provided an update on the Hispanic Chamber of Commerce projects noting that for the past two years the Chamber only made \$1,000 - \$2,000 profit on the Mex Tex Event. They have made changes to their

program and made approximately \$50,000 this year. She gave an update on their Incubator Program noting that it was not a money maker for the chamber but the Incubator businesses made \$615,000 in revenue for the last year and were projecting \$756,000 in revenues for the next year.

Council Member Morales noted that the Chamber was doing a better job with their financials were turning in their monthly reports as required. Rachel added that the MCDC is an occupant of their building and now will be contributing 30% of the expenses.

Council Member Morales moved to direct the City Manager to move \$20,000 from General Fund Miscellaneous to the Hispanic Chamber City Development Funding as allowed by the budget ordinance; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Perry, Dufford, James. NAY: None. ABSTAIN: None. ABSENT: Hailey, Sparks.

Council Member Morales clarified that the additional \$20,000 would allow the Chamber to keep three staff employees and emphasized that the Chamber had cleaned up their books and financials.

Council Member James suggested the funding of this program might better come from the Midland Development Corporation in the future.

Discussion ensued about cost allocation and the Airport. Finance Director McNaughton provided a brief overview and distributed a cost allocation sheet noting that the General Fund provides support to the Airport at a cost of \$2.9 million cut contributes only \$1.4 million.

Council Member James asked for staff to bring back a policy that would embrace continually increasing the amount the Airport pays for General Fund services until they were caught up. Discussion ensued regarding being careful to not drive away business at the Airport and not having unintended consequences if the Airport contribution was increased.

Council Member James asked to move forward with looking at other revenue streams at the Airport within the next 90 days.

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

2. Consider an ordinance for the Fiscal Year 2012 - 2013 Tax Levy. (FINANCE) (August 21, 2012)

ORDINANCE NO. 9053

AN ORDINANCE FIXING THE TAX LEVY FOR THE CITY OF MIDLAND, TEXAS, FOR THE FISCAL YEAR BEGINNING ON OCTOBER 1, 2012 AND ENDING ON SEPTEMBER 30, 2013

City Secretary Turner read the caption of Ordinance No. 9053.

Council Member Morales moved to approve the second and final reading of Ordinance

No. 9053 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford.

Discussion ensued about the difference between the Municipal Court and the Fire Station funding. City Manager Sharp explained that when the City looked at items it wished to fund last year there was not enough money. It was determined that the new Municipal Court would be paid from excess funds and that a Certificate of Obligation would be used to fund the new Fire Station.

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

3. Approved a resolution adopting the Fiscal Year 2012 - 2013 Midland Development Corporation Budget. (FINANCE)

RESOLUTION NO. 2012 - 254

RESOLUTION APPROVING THE FISCAL YEAR 2012-2013 BUDGET OF THE MIDLAND DEVELOPMENT CORPORATION, A TYPE A CORPORATION AS AUTHORIZED BY CHAPTER 504 OF THE TEXAS LOCAL GOVERNMENT CODE

Council Member Hailey moved to adopt Resolution No. 2012 - 254; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James. NAY: None. ABSTAIN: None. ABSENT: Sparks.

4. Adoption of Fiscal Year 2012 - 2013 Midland Football / Soccer and Baseball Development Corporation budget. (FINANCE)

RESOLUTION NO. 2012 - 255

RESOLUTION APPROVING THE FISCAL YEAR 2012-2013 ANNUAL BUDGET FOR THE MIDLAND FOOTBALL/SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION, A TYPE B CORPORATION AS AUTHORIZED BY CHAPTER 505 OF THE TEXAS LOCAL GOVERNMENT CODE

Council Member Hailey moved to adopt Resolution No. 2012 - 255; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James. NAY: None. ABSTAIN: None. ABSENT: Sparks.

Mayor Perry recessed the meeting at 9:34 a.m. noting that Agenda Item number 5 would be held at the Midland College Advance Technology Center at 7:30 p.m.

Mayor Perry reconvened the meeting at 7:35 p.m. at the Midland College Advanced Technology Center with all Council Members present except Council Member Hailey.

5. At approximately 7:30 p.m. reconvene at the Midland College Advanced Technology Center located at 3200 Cuthbert, Midland, Texas, in joint session with leadership from Midland Independent School District, Midland Memorial Hospital, Midland County and Midland College to discuss the vision of the school district.

MISD Superintendent Ryder Warren led the discussion about challenges faced by the school district which included attracting and maintaining qualified employees in light of a housing

shortage and the need to work with the legislature to bring change for school funding and school testing. He briefly reviewed their plans for reconfiguration and asked other community leaders for input as to how their schools should be reconfigured that could best serve the community for the next 50 years.

All of the business at hand having been completed, the meeting adjourned at 9:10 p.m.

PASSED AND APPROVED the 11th day of September, 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

**MIDLAND CITY COUNCIL
MINUTES
August 28, 2012**

BRIEFING SESSION

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 9:01 a.m. on August 28, 2012.

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

Staff members present: City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, Assistant City Manager Jim Nichols, City Secretary Amy Turner, Utilities Director Stuart Purvis, Finance Director Bob McNaughton, Airport Director Marv Esterly, Solid Waste Director Morris Williams, Environmental Compliance Specialist Jill Reed, Assistant Utility Director Holly Rosas, Assistant Code Administration Manager Ron Jenkins, Transportation Manager Gary Saunders, Customer Service Manager Tony Goyang, and Public Information Officer Persephone Dakopolos.

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.

Jay Edwards, representing Parkhill, Smith and Cooper, gave an update report to the City Council including right-of-way purchases, engineering design, progress of pipeline, road borings, test borings, production well borings and foundation work at the elevated storage tanks. He reported that bonds would begin to be sold on September 18 and were expected to close on September 26.

Robert Rendall gave an update on technical changes to the Wholesale Water Delivery Agreement.

Mr. Edwards shared pictures of the project to date.

2. Presentation and discussion regarding the Fiscal Year 2013 Solid Waste Rate Structure.

Director of Solid Waste Morris Williams reviewed the current residential and commercial rates and compared them to other cities and service providers. He discussed the current voluntary litter abatement fee, recycling fee and tipping fee and reviewed proposed increases noting they were recommending a 2% escalator. Council discussion ensued regarding having a periodic review of fees during future briefing sessions.

At 9:55 a.m. Mayor Perry recessed the Briefing Session until after lunch.

Mayor Perry reconvened the Briefing Session with all Council Members present at 11:35 a.m.

3. Presentation and discussion regarding the Water Rate Structure.

Utilities Director Stuart Purvis reported that CRMWD water has increased 44.5 percent. He reviewed the proposed 2013 water rates.

Discussion ensued about slowly lifting restrictions once the pipeline is completed. It was noted that historically once a City has drastically restricted water usage, they typically will see an overall 15 percent reduction in water usage over usage before the restrictions.

City Manager Sharp reported that the State Ag Commissioner is working on what is appropriate landscaping and the City will continue to educate citizens.

Mr. Purvis provided an overview to the proposed Sewer Rates noting it would be based on winter usage. He discussed septic haulers and that the proposal was to raise the amount to \$25 from \$10 noting this would make it safer and that future amendments that would address other issues would be brought back in the future. The proposed increase would begin on October 1.

Discussion ensued about water reuse. Mr. Purvis noted he cannot transfer ownership of the water because it is not treated to a form that could be transferred and the cost of a plan to treat it would be \$44 million.

The foregoing agenda items were discussed by the City Council with no formal action taken. The Briefing Session was adjourned at 12:30 p.m.

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:02 a.m., August 28, 2012.

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

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

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

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. Lawrence Crow of Building Officials Association of Texas presented an award of excellence to the Midland Code Administration Permits & Inspections Staff.

PUBLIC COMMENT

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

Marion Liedtke, 900 North "F" Street, asked the Council to place future park improvements on the agenda for Hill Park. She noted they have formed a committee that would like to see parks improvements and lighting at Hill Park.

Kim Henderson, 4700 Boulder Drive, invited the public to the PDAP Community Forum to be held at Midland College on September 13 from 7-9 p.m.

CONSENT AGENDA

Council Member James moved to approve Consent Agenda items 5 - 27 excluding 15; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

5. Approved a motion approving the following minutes:
 - a. Special Meeting of August 7, 2012.
 - b. Regular Meeting of August 14, 2012.
6. Approved a resolution approving a professional services agreement with Parkhill, Smith and Cooper for the design of Fire Station 10. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 256

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

7. Approved a resolution approving the Phase 2 purchase of playground equipment for 6 parks, a pavilion for Hogan Park and senior wellness stations for the Community Services Department. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 257

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

8. Approved a resolution approving the purchase of a use of force computer based simulator for the Police Department. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 258

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

9. Approved a resolution approving the issuance of a request for proposals (RFP) for cellular services and equipment for the Communication and Information Systems Department. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 259

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

10. Approved a resolution approving the issuance of a request for proposals (RFP) for federal reimbursement opportunities and consultant services for the Health Department. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 260

RESOLUTION AUTHORIZING ISSUANCE OF A REQUEST FOR PROPOSALS FOR FEDERAL REIMBURSEMENT OPPORTUNITIES AND CONSULTANT SERVICES FOR THE HEALTH DEPARTMENT

11. Approved a resolution approving plans and specifications and authorizing advertisement for bids for seat replacement at the Scharbauer Sports Complex for the Community Services Department. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 261

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS TO PROVIDE AND INSTALL NEW SEATING AT THE SCHARBAUER SPORTS COMPLEX

12. Approved a resolution to authorize the City Manager to negotiate and execute a contract for the purchase of property. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 262

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

13. Approved 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. (AIRPORTS)

RESOLUTION NO. 2012 - 263

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

14. Approved 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). (AIRPORTS)

RESOLUTION NO. 2012 - 264

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

16. Approved a resolution authorizing the office of the City Attorney to file all documents, etc. in a lawsuit styled Morales v. Reyes. (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2012 - 266

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

17. Approved a resolution canceling the General City Election which was to be held on November 6, 2012 for City Council Members (CITY SECRETARY'S OFFICE)

RESOLUTION NO. 2012 - 267

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

18. Approved 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. (COMMUNITY SERVICES)

RESOLUTION NO. 2012 - 268

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

19. Approved 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. (ENGINEERING SERVICES)

RESOLUTION NO. 2012 - 269

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

20. Approved 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. Approved 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. Approved a resolution authorizing staff to execute a change order to the Ward Street Bridge Project with Onyx Contractors, LP in the amount of \$132,632.30. (ENGINEERING SERVICES)

RESOLUTION NO. 2012 - 270

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

23. Approved a resolution to accept and appropriate grant funding awarded by TXDOT to the Midland Police Department to conduct a FY2013 Comprehensive STEP Enforcement Project. (POLICE)

RESOLUTION NO. 2012 - 271

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

24. Approved a resolution authorizing the second amendment for the Water Supply Contract with the Colorado River Municipal Water District relocating the delivery point. (UTILITIES)

RESOLUTION NO. 2012 - 272

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

25. Approved 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. (UTILITIES)

RESOLUTION NO. 2012 - 273

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

26. Approved 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. (UTILITIES)

RESOLUTION NO. 2012 - 274

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

27. Approved 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. (UTILITIES)

RESOLUTION NO. 2012 - 275

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

The following item was pulled from consent calendar and considered individually.

15. Consider a resolution authorizing the Mayor to execute the first amendment to the wholesale water delivery agreement between the City of Midland the Midland County Fresh Water Supply District No. 1 (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2012 - 265

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 Stretcher noted in the initial agreement payments would come out of debt service first and then operations and maintenance second. However TCEQ has suggested that those two items be switched. After checking with the Bond Counsel they were okay with the change. The second change was an overlap in contract with CRMWD which was causing a little concern with the bond. To make everyone satisfied, staff recommended changing the date of the trust agreement to match CRMWD.

Council Member Trost moved to adopt Resolution No. 2012 - 265; 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.

SECOND READINGS

28. 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 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

Deputy City Secretary Marisela Garcia read the caption of Ordinance No. 9048.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 9048 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.

29. Consider an ordinance on second reading 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

Deputy City Secretary Marisela Garcia read the caption of Ordinance No. 9049.

Council Member Morales moved to approve the second and final reading of Ordinance No. 9049 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.

30. 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 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

Deputy City Secretary Marisela Garcia read the caption of Ordinance No. 9050.

Council Member Dufford moved to approve the second and final reading of Ordinance No. 9050 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

31. Consider an ordinance on second reading 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

Deputy City Secretary Marisela Garcia read the caption of Ordinance No. 9051.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 9051 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

PUBLIC HEARINGS

32. 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 East Business 20 and Lozoya Road.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9054

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

Planning Division Manager Walker provided an overview of the item noting no letters of objection had been received and that staff recommended approval.

Deputy City Secretary Marisela Garcia read the caption of Ordinance No. 9054.

Mayor Perry opened the public hearing at 10:49 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 9054 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.

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

ORDINANCE NO. 9055

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

Planning Division Manager Walker provided an overview of the item noting the land was owned by the City and the City would like to have a hotel built on the land but needed to have the zoning changed to allow for a hotel. The specific zoning was chosen because it allowed for a hotel of higher than three stories.

Mayor Perry opened the public hearing at 10:53 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Marisela Garcia read the caption of Ordinance No. 9055.

Council Member Sparks moved approval of the first of two readings of Ordinance No. 9055 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

34. At approximately 10:39 a.m. hold a public hearing and consider an ordinance on a request by Fasken Land and Mineral, Ltd. 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. (DEVELOPMENT SERVICES)

ORDINANCE NO. 9056

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

Planning Division Manager Walker gave an overview of the item noting that no letters of objection had been received.

Mayor Perry opened the public hearing at 10:59 a.m.

Bill Skeen and Buck Benson both of Fasken Land and Mineral, Ltd., complimented City staff on helping them to work through the process. Discussion ensued about the location of the well and how Fasken owns both the land and the minerals on this property.

Tate Brown, 5304 London Place, noted his property was due east across Holiday Hill Road. He is opposed to the retail portion of the development because of the noise and traffic it would bring and asked that a sound barrier be placed between the pump jack and their property.

There being no one else wishing to speak, the public hearing was closed.

Deputy City Secretary Marisela Garcia read the caption of Ordinance No. 9056.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 9056 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

35. At approximately 10:42 a.m. hold a public hearing and consider a resolution on a request by Community and Senior Services for a Temporary Land Use Permit for a Philanthropic Event. Generally located on the north side of Scharbauer Drive, approximately 250 feet west of Lamesa Road. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2012 - 276

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

Planning Division Manager Walker noted this was a Temporary Land Use Permit for the 18th Annual Texas Size Garage Sale by Midland Community Services to be held October 19-21 and that no letters of opposition had been received and that staff recommended approval.

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

Council Member Hailey moved to adopt Resolution No. 2012 - 276; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

DEVELOPMENT SERVICES

36. Consider a 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. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2012 - 277

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

Building Official Steve Thorpe provided an overview of the item noting it was an amendment to an existing variance.

Council Member Morales moved to adopt Resolution No. 2012 - 277; 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.

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)

Planning Division Manager Walker gave an overview of the item noting the plat was over 25 acres and did not contain a school or park site but Fasken was talking with MISD about a potential school site. He noted it would be zoned within the next couple of months.

Council Member James moved to approve 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; 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.

38. 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.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9057

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

Deputy City Secretary Marisela Garcia read the caption of Ordinance No. 9057.

Council Member James moved approval of the first of two readings of Ordinance No. 9057 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.

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)

Council Member James moved to approve 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; seconded by Council Member Trost.

Discussion ensued about the location of the site and that the applicant was trying to reach cars traveling down Big Spring with the sign. Many felt that because the business was located in downtown, the signage was appropriate for the area.

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

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)

Council Member Hailey moved to approve 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; 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.

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)

Council Member Morales moved to approve 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; 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.

42. Consider making appointments to various Boards and Commissions.

No appointments were made. City Manager Sharp noted that annual appointments would be discussed during the briefing session at the first meeting in September.

Mayor Perry announced that the Council would hear the third Briefing Session Item during lunch and then would adjourn to Executive Session. He recessed at 11:26 a.m.

EXECUTIVE SESSION

Mayor Perry convened the meeting in executive session at 12:30 p.m.

43. Mayor Perry announced that pursuant to Texas Government Code §551.101, the

Council will hold an Executive Session which is closed to the public to discuss the following matters as permitted under the following Texas Government Code Sections:

a. Section 551.074 Personnel Matters

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

b. Section 551.072 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 60, 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.

All of the business at hand having been completed, the meeting adjourned at 1:20 p.m.

PASSED AND APPROVED the 11th day of September, 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of 4,400 gallons of polymer for dewatering for treating the City's drinking water for the Utilities Department. 5291-13

Purpose:

Approval of a resolution authorizing the purchase of an annual supply of polymer for dewatering for use at the Water Purification Plant.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$44,000.00 Water and Sewer Fund – FY2013

Discussion:

This material is used for the treatment of City drinking water and is ordered on an as needed basis. We are recommending Atlantic Coast Polymers, Inc. for this product. Hercules, Inc. has not provided in-plant testing therefore they do not meet the bid standards. The cost for this product has decreased by \$0.148 per gallon from last year.

Therefore, please consider approval of a resolution authorizing the purchase of polymer for dewatering from Atlantic Coast Polymers, Inc. of Austin, Texas for an estimated annual cost of \$44,000.00.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE PURCHASE OF AN ANNUAL SUPPLY OF POLYMER FOR DEWATERING USED FOR TREATMENT OF CITY DRINKING WATER, FROM THE LOWEST BIDDER MEETING BID STANDARDS, ATLANTIC COAST POLYMERS, INCORPORATED, FOR A TOTAL PRICE OF \$44,000.00; AND ACCEPTING THE CITY MANAGER'S RECOMMENDATION THAT CERTAIN BIDDERS DID NOT MEET BID STANDARDS

WHEREAS, the City Manager approved the specifications and authorized the advertisement for bids for an annual supply of polymer for dewatering used for treatment of City drinking water; and

WHEREAS, Bid No. 5291-13 was opened on August 15, 2012, with Atlantic Coast Polymers, Inc., submitting the lowest bid meeting advertised standards, of \$44,000.00; and

WHEREAS, the Council finds the price proposed by Atlantic Coast Polymers, Inc., to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to authorize the purchase of polymer for dewatering used for treatment of City drinking water from Atlantic Coast Polymers, Inc.;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase from Atlantic Coast Polymers, Inc., an annual supply of polymer for dewatering as described and specified in Exhibit "A" attached hereto and made a part hereof for all legal purposes, for a total cost of \$44,000.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said polymer for dewatering out of funds available in the Fiscal Year 2012 – 2013 Water and Sewer Fund (300) Utilities (300) Purification Plant (0320) 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

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 # 5291-13 Polymer for Dewater OPENED August 15, 2021 Est. Cost: \$45,000.00			Hercules Incorporated 500 Hercules Road Wilmington, DE 19808 Kristin Dugar (302) 594-5347		Atlantic Coast Polymers Inc 6207 Bee Caves Rd, Ste 180 Austin, TX 78746 Stuart Siegele (888) 632-0007		Polydyne Inc One Chemical Plant Road Riceboro, GA 31323 Lawrence Grizzle (912) 880-2035	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
1	4400	Gallon - Polymer for dewatering	8.3800	\$36,872.00	\$10.00	\$44,000.00	\$10.148	\$44,651.20
			Praestol A3043LTR		ACP-915		Clarifloc C-6240	
2	4400	Delivered Cost per gallon	Included	Included	Not Specified	Not Specified	Included	Included
			5-7 Days ARO		4 Days		7-10 Days ARO	
TOTALS:				\$36,872.00		\$44,000.00		\$44,651.20
TOTAL OF LOW BID ITEMS BY VENDOR:				\$0.00		\$0.00		\$0.00

Bidding Summary:

4 Bid requests were issued.

3 Bids listed above

0 NO BIDS were received.

1 Bidders did not respond.
BASF



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of 7,500 gallons of Earthtec for treating the City's drinking water for the Utilities Department. 5292-13

Purpose:

Approval of a resolution authorizing the purchase of an annual supply of Earthtec for use at the Water Purification Plant.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$120,000.00 Water and Sewer Fund – FY2013

Discussion:

This chemical is used for the treatment of City drinking water. We are recommending accepting the single bid from Chameleon Industries, Inc. The cost for the past 3 years has been \$15.50 per gallon. The cost increased by \$0.50 per gallon for FY2013.

Therefore, please consider approval of a resolution authorizing the purchase of the Earthtec from Chameleon Industries, Inc. of Mesquite, Texas for an estimated annual cost of \$120,000.00.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE PURCHASE OF AN ANNUAL SUPPLY OF EARTHTEC FOR TREATING CITY OF MIDLAND DRINKING WATER FROM THE SOLE BIDDER, CHAMELEON INDUSTRIES, INCORPORATED, FOR A TOTAL PRICE OF \$120,000.00

WHEREAS, the City Manager approved the specifications and authorized the advertisement for bids for an annual supply of Earthtec for treating City of Midland drinking water; and

WHEREAS, Bid No. 5292-13 was opened on August 15, 2012, with Chameleon Industries, Inc., submitting the sole bid of \$120,000.00; and

WHEREAS, the Council finds the price proposed by Chameleon Industries, Inc., to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to authorize the purchase of Earthtec for treating City of Midland drinking water from Chameleon Industries, Inc.;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase from Chameleon Industries, Inc., an annual supply of Earthtec as described and specified in Exhibit "A" attached hereto and made a part hereof for all legal purposes, for a total cost of \$120,000.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said Earthtec out of funds available in the Fiscal Year 2012 – 2013 Water and Sewer Fund (300) Utilities (300) Purification Plant (0320) 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

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 # 5292-13 Earthtec OPENED August 15, 2012 Est. Cost: \$116,250.00			Chameleon Industries Inc PO Box 853027 Mesquite, TX 75185-3027 F. I. Garza (972) 880-1493	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
1	7500	Gallon - Earthtec or equal for drinking water	16.0000	\$120,000.00
		Delivery	Within 72 hours	
TOTALS:				\$120,000.00
TOTAL OF LOW BID ITEMS BY VENDOR:				\$120,000.00

Bidding Summary:

2 Bid requests were issued.

1 Bids listed above

0 NO BIDS were received.

1 Bidders did not respond.
 Old Bridge Chemical



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of 10,000 pounds of potassium permanganate for treating the City's drinking water for the Utilities Department. 5293-13

Purpose:

Approval of a resolution authorizing the purchase of an annual supply of Potassium Permanganate for use at the Water Purification Plant.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$21,400.00 Water and Sewer Fund – FY2013

Discussion:

This chemical is used for the treatment of City drinking water. We are recommending accepting the single bid from F2 Industries LLC. The cost decreased from last year's cost by \$0.28 per pound.

Therefore, please consider approval of a resolution authorizing the purchase of the potassium permanganate from F2 Industries LLC of Smyrna, Tennessee for an estimated annual cost of \$21,400.00.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE PURCHASE OF AN
ANNUAL SUPPLY OF POTASSIUM PERMANGANATE
FOR TREATING CITY OF MIDLAND DRINKING
WATER FROM THE SOLE BIDDER, F2 INDUSTRIES,
L.L.C., FOR A TOTAL PRICE OF \$21,400.00**

WHEREAS, the City Manager approved the specifications and authorized the advertisement for bids for Potassium Permanganate for treating City of Midland drinking water; and

WHEREAS, Bid No. 5293-13 was opened on August 15, 2012, with the sole bid being submitted from F2 Industries, L.L.C., at an estimated price of \$21,400.00; and

WHEREAS, the City Council finds it to be in the public interest to purchase said Potassium Permanganate for treating City of Midland drinking water from F2 Industries, L.L.C., at a price not to exceed \$21,400.00;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase from F2 Industries, L.L.C., Potassium Permanganate as described and specified in Exhibit “A” attached hereto and made a part hereof for all legal purposes, for a total cost of \$21,400.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said Potassium Permanganate out of funds available in the Fiscal Year 2012 – 2013 Water and Sewer Fund (300) Utilities (300) Purification Plant (0320) 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

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 # 5293-13 Potassium Permanganate OPENED August 15, 2013 Est. Cost: \$35,000.00			F2 Industries LLC 423 C Smyrna Square Drive Smyrna, TN 37167 William Ferrell Jr (615) 459-4620	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
1	10000	Lbs - Potassium Permanganate	2.1400	\$21,400.00
		Delivery		
			7-10 Days ARO	
			K-OX	
TOTALS:				\$21,400.00
TOTAL OF LOW BID ITEMS BY VENDOR:				\$21,400.00

Bidding Summary:

2 Bid requests were issued.

1 Bids listed above

0 NO BIDS were received.

1 Bidders did not respond.
 American Int'l Chemical



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of 512,000 pounds of chlorine for the Water Purification Plant; 40 – 150 pound cylinders of chlorine; 7 – 1 ton cylinders of chlorine and 50,000 pounds of chlorine for the Paul Davis Well Field for treating the City's drinking water for the Utilities Department. 5295-13

Purpose:

Approval of a resolution authorizing the purchase of an annual supply of chlorine for use at the Water Purification Plant.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$213,904.00 Water and Sewer Fund – FY2013

Discussion:

This chemical is used for the treatment of City drinking water. We are recommending accepting the single bid from DPC Industries, Inc. DPC Industries has been the single bidder for the last 4 years. While the liquid chlorine has increased fractionally in price, the chlorine cylinder cost has remained the same since FY2009. See chart below:

	2009	2010	2011	2012	2013
Liquid Chlorine	.3145	.3435	.346	.354	.359
Chlorine Cylinders	178.00	178.00	178.00	178.00	178.00

Therefore, please consider approval of a resolution authorizing the purchase of the chlorine from DPC Industries, Inc. of Sweetwater, Texas for an estimated annual cost of \$213,904.00.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE PURCHASE OF AN
ANNUAL SUPPLY OF CHLORINE FOR TREATING
CITY OF MIDLAND DRINKING WATER FROM THE
SOLE BIDDER, DPC INDUSTRIES, INCORPORATED,
FOR A TOTAL COST OF \$213,904.00**

WHEREAS, the City Manager approved the specifications and authorized the advertisement for bids for chlorine for treating City of Midland drinking water; and

WHEREAS, Bid No. 5295-13 was opened on August 15, 2012, with the sole bid being submitted by DPC Industries, Inc., at a total price of \$213,904.00; and

WHEREAS, the Council finds the price proposed by DPC Industries, Inc., to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to authorize the purchase of chlorine for treating City of Midland drinking water from DPC Industries, Inc.;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase from DPC Industries, Inc., chlorine as described and specified in Exhibit “A” attached hereto and made a part hereof for all legal purposes, for a total cost of \$213,904.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said chlorine out of funds available in the Fiscal Year 2012 – 2013 Water and Sewer Fund (300) Utilities (300) 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

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 # 5295-13 Chlorine OPENED August 15, 2012 Est. Cost: \$209,600.00			DPC Industries Inc PO Drawer 158 Sweetwater, TX 79556 Michael Stock (325) 236-6633	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
1	512000	Lbs - Chlorine delivered to COM Water Purification Plant	0.3590	\$183,808.00
2	40	150lb Cylinders of Chlorine	178.0000	\$7,120.00
3	14000	Lbs - 1 ton cylinders of Chlorine	0.3590	\$5,026.00
4	50000	Lbs - Chlorine delivered to Paul Davis Wellfield	0.3590	\$17,950.00
		DPC's large delivery truck cannot get all the way in to make the Paul Davis Site deliveries. A Modification to the site or other accomodation will be necessary to make this delivery		
		Delivery	5 Days	
TOTALS:				\$213,904.00
TOTAL OF LOW BID ITEMS BY VENDOR:				\$213,904.00

Bidding Summary:

4 Bid requests were issued.

1 Bids listed above

0 NO BIDS were received.

3 Bidders did not respond.
 Leslie's Poolmart, PDC Chemicals, Polydyne



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of 25 tons of powdered activated carbon for treating the City's drinking water for the Utilities Department. 5299-13

Purpose:

Approval of a resolution authorizing the purchase of an annual supply of powdered activated carbon for use at the Water Purification Plant.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$39,000.00 Water and Sewer Fund – FY2013

Discussion:

Powdered activated carbon is used for the treatment of City drinking water as needed. This chemical is considered a stand-by chemical and will be used only if the water quality diminishes. In FY2009 and FY2012 the City purchased this chemical from F2 Industries for \$1,407.50 per ton and \$1,330.00 per ton respectively. We are recommending accepting the single bid received from F2 Industries, LLC.

Therefore, please consider approval of a resolution authorizing the purchase of powdered activated carbon as needed from F2 Industries, LLC of Smyrna, Tennessee for an estimated annual cost of \$39,000.00.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE PURCHASE OF
TWENTY-FIVE (25) TONS OF POWDERED
ACTIVATED CARBON FOR TREATING CITY OF
MIDLAND DRINKING WATER FROM THE SOLE
BIDDER, F2 INDUSTRIES, L.L.C., FOR A TOTAL COST
OF \$39,000.00**

WHEREAS, the City Manager approved the specifications and authorized the advertisement for bids for twenty-five (25) tons of powdered activated carbon for treating City of Midland drinking water; and

WHEREAS, Bid No. 5299-13 was opened on August 15, 2012, with the sole bid being submitted by F2 Industries, L.L.C., at a total price of \$39,000.00; and

WHEREAS, the Council finds the price proposed by F2 Industries, L.L.C., to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to authorize the purchase of twenty-five (25) tons of powdered activated carbon for treating City of Midland drinking water from F2 Industries, L.L.C.;

**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 from F2 Industries, L.L.C., twenty-five (25) tons of powdered activated carbon as described and specified in Exhibit "A" attached hereto and made a part hereof for all legal purposes, for a total cost of \$39,000.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said twenty-five (25) tons of powdered activated carbon out of funds available in the Fiscal Year 2012 – 2013 Water and Sewer Fund (300) Utilities (300) Purification Plant (0320) 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

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 # 5299-13 Powder Activated Carbon OPENED August 15, 2012 Est. Cost: \$39,500.00			F2 Industries, LLC 423 C Smyrna Square Dr Smyrna, TN 37167 William Ferrell Jr (615) 459-4620	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
1	25	Tons Powdered Activated Carbon.	\$1,560.00	\$39,000.00
		Delivery	7-10 Days	
TOTALS:				\$39,000.00
TOTAL OF LOW BID ITEMS BY VENDOR:				\$39,000.00

Bidding Summary:

3 Bid requests were issued.

1 Bids listed above

0 NO BIDS were received.

2 Bidders did not respond.
 Norit Americas, Carbon Activated Corporation



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of 20,000 gallons of polymer for treating the City's drinking water for the Utilities Department. 5298-13

Purpose:

Approval of a resolution authorizing the purchase of an annual supply of polymer for use at the Water Purification Plant.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$75,420.00 Water and Sewer Fund – FY2013

Discussion:

This chemical is used for the treatment of City drinking water. We are recommending accepting the single bid from Polydyne, Inc. The City has purchased polymer from Polydyne for many years. Although other products have been lower in cost in the past, the City has recommended purchasing this chemical from Polydyne because the NSF rating for Clarifloc C-338 is 50 mg/l allowing greater flexibility for dosing. The cost for polymer per gallon has steadily decreased from FY2011 as shown below:

	2011	2012	2013
Polymer	4.16	3.902	3.771

Therefore, please consider approval of a resolution authorizing the purchase of polymer from Polydyne, Inc. of Riceboro, Georgia for an estimated annual cost of \$75,420.00.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE PURCHASE OF AN
ANNUAL SUPPLY OF POLYMER FOR TREATING
CITY OF MIDLAND DRINKING WATER FROM THE
SOLE BIDDER, POLYDYNE, INCORPORATED, FOR A
TOTAL PRICE OF \$75,420.00**

WHEREAS, the City Manager approved the specifications and authorized the advertisement for bids for an annual supply of polymer for treating City of Midland drinking water; and

WHEREAS, Bid No. 5298-13 was opened on August 15, 2012, with the sole bidder, Polydyne, Inc., submitting a total bid of \$75,420.00; and

WHEREAS, the Council finds the price proposed by Polydyne, Inc., to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to authorize the purchase of polymer for treating City of Midland drinking water from Polydyne, Inc.;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase from Polydyne, Inc., an annual supply of polymer as described and specified in Exhibit "A" attached hereto and made a part hereof for all legal purposes, for a total cost of \$75,420.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said polymer out of funds available in the Fiscal Year 2012 – 2013 Water and Sewer Fund (300) Utilities (300) Purification Plant (0320) 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

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 # 5298-13 Polymer for Drinking Water OPENED August 15, 2012 Est. Cost: \$78,500.00			Polydyne Inc One Chemical Plant Road Riceboro, GA 31323 Lawrence D Grizzle (912) 880-2035	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
1	20000	Gallons - Polymer for drinking water	\$3.771	\$75,420.00
		Delivery	7-10 Days ARO	
		Clarifloc C-338		
TOTALS:				\$75,420.00
TOTAL OF LOW BID ITEMS BY VENDOR:				\$75,420.00

Bidding Summary:

3 Bid requests were issued.

1 Bids listed above

0 NO BIDS were received.

2 Bidders did not respond.
 Ashland, BASF



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of 200,000 pounds of liquid anhydrous ammonia for treating the City's drinking water for the Utilities Department. 5302-13

Purpose:

Approval of a resolution authorizing the purchase of an annual supply of liquid anhydrous ammonia for use at the Water Purification Plant.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$158,000.00 Water and Sewer Fund – FY2013

Discussion:

This chemical is used for the treatment of City drinking water. We are recommending accepting the single bid from Shrieve Chemical Company. Shrieve Chemical Company has either been the low bidder or single bidder since FY2010. The cost for aluminum sulfate did not increase from last year's cost.

Therefore, please consider approval of a resolution authorizing the purchase of the liquid anhydrous ammonia from Shrieve Chemical Company of The Woodlands, Texas for an estimated annual cost of \$158,000.00.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE PURCHASE OF AN
ANNUAL SUPPLY OF LIQUID ANHYDROUS
AMMONIA FOR TREATING CITY OF MIDLAND
DRINKING WATER FROM THE SOLE BIDDER,
SHRIEVE CHEMICAL COMPANY, FOR A TOTAL
PRICE OF \$158,000.00**

WHEREAS, the City Manager approved the specifications and authorized the advertisement for bids for an annual supply of liquid anhydrous ammonia for treating City of Midland drinking water; and

WHEREAS, Bid No. 5302-13 was opened on August 15, 2012, with the sole bid being submitted by Shrieve Chemical Company at an estimated total price of \$158,000.00; and

WHEREAS, the Council finds the price proposed by Shrieve Chemical Company to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to authorize the purchase of liquid anhydrous ammonia for treating City of Midland drinking water from Shrieve Chemical Company;

**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 from Shrieve Chemical Company, liquid anhydrous ammonia as described and specified in Exhibit "A" attached hereto and made a part hereof for all legal purposes, for a total cost of \$158,000.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said anhydrous ammonia liquid out of funds available in the Fiscal Year 2012 – 2013 Water and Sewer Fund (300) Utilities (300) Purification Plant (0320) 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

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 # 5302-13 Anhydrous Ammonia OPENED August 15, 2012 Est. Cost: \$130,000.00			Shrieve Chemical Company 1755 Woodstead Ct. The Woodlands, TX 77380 Craig Utterson (281) 367-4226	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
1	200000	Lbs - Liquid Anydrous Ammonia	\$0.79	\$158,000.00
		Delivery	3 Days ARO	
TOTALS:				\$158,000.00
TOTAL OF LOW BID ITEMS BY VENDOR:				\$0.00

Bidding Summary:

3 Bid requests were issued.

1 Bids listed above

0 NO BIDS were received.

2 Bidders did not respond.
 PDC Chemical, Polydyne



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution rejecting the single bid received from General Chemical Performance Products LLC for 2000 tons of aluminum sulfate for treating the City's drinking water for the Utilities Department and authorizing re-advertisement for bids. 5301-13

Purpose:

Reject the single bid received for aluminum sulfate.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Funding is not required at this time.

Discussion:

The single bid received from General Chemical Performance Products LLC is 33% higher than last year's bid. We should receive a lower bid for aluminum sulfate if we reject the bid received from General Chemical and re-bid this chemical.

Therefore, please consider a resolution rejecting the single bid received from General Chemical Performance Products LLC for aluminum sulfate and authorizing re-advertisement for bids.

RESOLUTION NO.

**RESOLUTION REJECTING THE SINGLE BID
RECEIVED FOR BID NUMBER 5301-13 FOR AN
ANNUAL SUPPLY OF ALUMINUM SULFATE FOR
PURIFYING CITY OF MIDLAND DRINKING WATER**

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for competitive bids for an annual supply of aluminum sulfate for purifying City of Midland drinking water; and

WHEREAS, the single bid received for Request No. 5303-13 exceeded last year's bid by 33%; and

WHEREAS, the General Services Department predicts receipt of lower bids if the Council rejects the bid received for Request No. 5301-13 and authorizes the General Services Department to re-bid the aluminum sulfate; and

WHEREAS, the City Council finds it to be in the public interest to reject the bid on Request No. 5301-13;

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

SECTION ONE. The recitals stated above are hereby adopted.

SECTION TWO. That the bid received on Bid Number 5301-13 for the annual supply of aluminum sulfate for purifying City of Midland drinking water, as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes, is hereby rejected.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 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 # 5301-13 Aluminum Sulfate OPENED August 15, 2012 Est. Cost: \$578,000.00			General Chemical Performance Products LLC 90 East Halsey Road Parsippany, NJ 07054 Parul Kachhia-Patel (800) 631-8050	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
1	2000	Tons Aluminum Sulfate	\$320.00	\$640,000.00
			Dry Ton	
		Delivery	1 -2 Days ARO	
TOTALS:				\$640,000.00
TOTAL OF LOW BID ITEMS BY VENDOR:				\$640,000.00

Bidding Summary:

3 Bid requests were issued.

1 Bids listed above

0 NO BIDS were received.

2 Bidders did not respond.
 Altivia, Chameleon



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Robert Patrick, General Services Director

SUBJECT: Consider a resolution authorizing the City Manager to Negotiate the Transfer and Acceptance of Real Property with Midland County.

Purpose:

To authorize the City Manager to negotiate a land trade with Midland County, specifically transferring ownership of Lots 1-6, Block 41, Original Town Addition, and all of Block 50, Original Town Addition to Midland County, and receiving lots 7-12, Block 39, Original Town Addition, lots 1-6, Block 38, Original Town Addition, All of Block 55, Original Town Addition, and the SW/4 of section 3, Block 39-T2S, Midland Texas from Midland County.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None at this time.

Discussion:

Midland County has agreed to discuss trading properties to assist us with the construction of a new Municipal Court building. Staff needs authorization to negotiate the details and transfer ownership of the properties to facilitate the construction.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE CITY MANAGER TO PURCHASE OR EXCHANGE REAL PROPERTY DESCRIBED AS LOTS 1 THROUGH 6, BLOCK 38, ORIGINAL TOWN ADDITION, AN ADDITION TO THE CITY OF MIDLAND, TEXAS, AND PURCHASE OR EXCHANGE THE REAL PROPERTY IN BLOCK 39, ORIGINAL TOWN ADDITION, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, WITH MIDLAND COUNTY, TEXAS AND PURCHASE OR EXCHANGE THE REAL PROPERTY BEING ALL OF BLOCK 55, ORIGINAL TOWN ADDITION, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS WITH MIDLAND COUNTY, TEXAS; AUTHORIZING THE CITY MANAGER TO SELL OR EXCHANGE THE 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 AND SELL OR EXCHANGE THE REAL PROPERTY CONSISTING OF ALL OF BLOCK 50, ORIGINAL TOWN ADDITION, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS WITH MIDLAND COUNTY, TEXAS; AND AUTHORIZING THE CITY MANAGER TO EXECUTE A SUBLEASE ON REAL PROPERTY SITUATED IN SECTION 3, BLOCK 39, T-2-S, T&P RY. CO. SURVEY, MIDLAND COUNTY, TEXAS; AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS NECESSARY TO IMPLEMENT THIS RESOLUTION; AND DIRECTING THE CITY TREASURER TO PAY ALL CLOSING COSTS UPON RECEIPT OF PROPER INVOICE OR STATEMENT APPROVED BY THE CITY MANAGER

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager to negotiate the terms for the purchase, sale or exchange of real property with Midland County, 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, on behalf of the City of Midland, the terms for the purchase or exchange of real property described as Lots 1 through 6, Block 38, Original Town Addition, an addition to the City of Midland, Texas with Midland County, Texas.

SECTION TWO. That the City Manager is hereby authorized to purchase from or exchange certain real property in Block 39, Original Town Addition, an addition to the City of Midland, Midland County, Texas, with Midland County, Texas.

SECTION THREE. That the City Manager is hereby authorized to purchase from or exchange the real property being all of Block 55, Original Town Addition, an addition to the City of Midland, Midland County, Texas with Midland County, Texas.

SECTION FOUR. That the City Manager is hereby authorized to sell to or exchange the 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, with Midland County, Texas.

SECTION FIVE. That the City Manager is hereby authorized to sell to or exchange the real property consisting of all of Block 50, Original Town Addition, an addition to the City of Midland, Midland County, Texas with Midland County, Texas.

SECTION SIX. That the City Manager is hereby authorized to execute a sublease on real property situated in Section 3, Block 39, T-2-S, T&P Ry. Co. Survey, Midland County, Texas, with Midland County, Texas.

SECTION SEVEN. That the City Manager is authorized to execute all documents necessary to implement this resolution.

SECTION EIGHT. That the City Treasurer is authorized to pay all closing costs upon receipt of proper invoice or statement approved by the City Manager.

SECTION NINE. That the closing shall take place at Lone Star Abstract and Title Company.

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:
CSharp
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Courtney Sharp

SUBJECT: RESOLUTION REAPPOINTING A MEMBER TO THE BOARD OF MANAGERS OF THE MIDLAND EMERGENCY

Purpose:

Consider approval of the reappointment of Price Robinson and Jeff Meiner to the Midland Emergency Communication District Board of Managers.

This approval is requested as directed by Health and Safety Code 772.306(2) which states the district is governed by a board of managers with two members appointed by the governing body of the most populous municipality in the district. Chief Robinson and Jeff Meiner have agreed to serve another term on our Board if the City Council approves this re-appointment.

Recommended City Council Action

☐ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Discussion:

RESOLUTION NO.

**RESOLUTION REAPPOINTING PRICE ROBINSON
AND JEFF MEINER TO THE BOARD OF MANAGERS
OF THE MIDLAND EMERGENCY COMMUNICATION
DISTRICT**

WHEREAS, pursuant to the provisions of V.T.C.A., Health and Safety Code § 772.306, the City Council finds it to be in the public interest to reappoint Price Robinson and Jeff Meiner, whose current terms are expiring, to the Board of Managers of the Midland Emergency Communication District;

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

THAT the City Council of the City of Midland, Texas, pursuant to the provisions of Texas Health and Safety Code, Section 772.306, hereby reappoints Price Robinson and Jeff Meiner to the Board of Managers of the Midland Emergency Communication District, each for a term of two years, commencing November 1, 2012, until November 1, 2014.

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

RESOLUTION NO. 210

**RESOLUTION REAPPOINTING A MEMBER TO THE
BOARD OF MANAGERS OF THE MIDLAND EMERGENCY
COMMUNICATION DISTRICT**

WHEREAS, pursuant to the provisions of Texas Health and Safety Code, Section §772.306, the City Council finds it to be in the public interest to reappoint Price Robinson, whose current term is expiring, to the Board of Managers of the Midland Emergency Communication District;

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

SECTION ONE. That the City Council of the City of Midland, Texas, pursuant to the provisions of Texas Health and Safety Code §772.306, hereby reappoints Price Robinson to the Board of Managers of the Midland Emergency Communication District for a term of two years commencing November 1, 2012, until November 1, 2014.

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 11th day of September, 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

RESOLUTION NO. 211

**RESOLUTION REAPPOINTING A MEMBER TO THE
BOARD OF MANAGERS OF THE MIDLAND EMERGENCY
COMMUNICATION DISTRICT**

WHEREAS, pursuant to the provisions of Texas Health and Safety Code, Section §772.306, the City Council finds it to be in the public interest to reappoint Jeff Meiner, whose current term is expiring, to the Board of Managers of the Midland Emergency Communication District;

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

SECTION ONE. That the City Council of the City of Midland, Texas, pursuant to the provisions of Texas Health and Safety Code §772.306, hereby reappoints Jeff Meiner to the Board of Managers of the Midland Emergency Communication District for a term of two years commencing November 1, 2012, until November 1, 2014.

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 11th day of September, 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



City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Courtney Sharp, City Manager

SUBJECT: RESOLUTION APPROVING THE BUDGET OF THE MIDLAND
EMERGENCY COMMUNICATION DISTRICT

Purpose:

Consider approval of the Midland Emergency Communication District Proposed Budget for fiscal year ending September 30, 2013.

This approval is requested as directed by Health and Safety Code 772.309 which states the annual budget for the 9-1-1 district must be presented to and approved by the governing body of the most populous municipality in the district.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Discussion:

RESOLUTION NO.

**RESOLUTION APPROVING THE BUDGET OF THE
MIDLAND EMERGENCY COMMUNICATION
DISTRICT FOR THE FISCAL YEAR ENDING
SEPTEMBER 30, 2013**

WHEREAS, pursuant to the provisions of V.T.C.A., Health and Safety Code § 772.309, it is necessary that the annual budget for the Midland Emergency Communication District be presented to the City Council of the City of Midland, Texas, for final approval; and

WHEREAS, after reviewing the budget for the Midland Emergency Communication District for the fiscal year ending September 30, 2013, the Council finds it to be in the public interest to approve said budget;

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

That the budget for the Midland Emergency Communication District for the fiscal year ending September 13, 2013, attached hereto as Exhibit "A" and made a part hereof for all legal purposes, is hereby approved in all respects.

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



BUDGET OVERVIEW FISCAL YEAR 2012-2013

Midland Emergency Communication District (MECD) proposes our 2012-2013 Budget with **no increase in service fees**. Fees remain at the residential rate of \$0.55, business rate of \$1.15 and business trunk rate of \$1.70 per line with a maximum of 100 lines.

As you review the attached ***Proposed Budget***, you will find Total Operating Expenses increased \$203,165, while Special Projects Expenses decreased \$968,000. Details are provided below for your information.

Operating Expenses:

Personnel Expenses reflect the largest increase based on one temporary staff position and moving one sub-line item under Personnel from Travel/Auto/Memberships.

Travel/Auto/Memberships reflect an increase based on training requirements for two new staff.

Furniture & Equipment reflect an increase based on computer replacements in the Communications Center.

Other Operating Expenses reflect minimum increases based on cost of services and cost of supplies.

Special Projects:

A \$968,000 decrease is reflected in this line item based on completion of two major projects in 2012. The following special projects are scheduled for this budget year.

- Emergency Awareness Network in MECD Offices
- Purchase of company vehicle for GIS field work
- Secure parking for company vehicle and security for MECD office building

Our efforts this year will be primarily focused on research and development of a network for Phase II Next Generation technology allowing us to accept data messaging as well as voice in the 9-1-1 arena. This phase will concentrate on network infrastructure moving toward Internet Protocol technology. Data messaging is still in the future; however, our goal is to assure our 9-1-1 system is ready when technology is offered. We are committed to staying abreast of changes and continuing to provide the best state-of-the-art 9-1-1 system possible within allowable budget limits for the citizens of Midland County.

I appreciate your continued support and direction as we work together to meet and conquer new challenges.

Joyce Britcher
Director of Communications

RESOLUTION NO. 208

**RESOLUTION APPROVING THE BUDGET OF THE
MIDLAND EMERGENCY COMMUNICATION DISTRICT
FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2013**

WHEREAS, pursuant to the provisions of Article 772.309, Texas Health & Safety Code, Tex. Rev. Civ. Stat., it is necessary that the annual budget for the Midland Emergency Communication District be presented to the City Council of the City of Midland, Texas, for final approval; and

WHEREAS, after reviewing the budget for the Midland Emergency Communication District for the fiscal year ending September 30, 2013, the Council finds it to be in the public interest to approve said budget;

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

THAT the budget for the Midland Emergency Communication District for the fiscal year ending September 30, 2013, attached hereto as Exhibit "A" and made a part hereof for all legal purposes, is hereby approved in all respects.

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 11th day of September, 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 B. Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

ENHANCED 9-1-1 SERVICE FEE FOR FISCAL YEAR 2012-2013 WILL REMAIN THE SAME:
Residential - \$0.55; Business - \$1.15; Business Trunk - \$1.70

**MECD FISCAL YEAR 2012-2013
PROPOSED SUMMARY OF
REVENUES AND EXPENDITURES**

	12 MONTH PROPOSED BUDGET <u>2011-2012</u>	12 MONTH PROPOSED BUDGET <u>2012-2013</u>
<u>REVENUES:</u>		
AT&T	372,000	360,000
Interest	24,000	14,400
Local Exchange Carriers	142,500	171,600
Texas Comptroller Wireless Fees	609,600	648,000
VOIP	16,600	21,600
TOTAL REVENUE	1,164,700	1,215,600
<u>OPERATING EXPENDITURES:</u>		
Personnel	333,245	470,005
Supplies	31,330	33,330
Service and Rentals	150,390	165,150
Office	30,060	39,760
Travel/Auto/Memberships	65,515	75,270
Communications	254,680	254,240
Insurance	4,580	5,240
Contingency	5,000	5,000
Furniture & Equipment	<u>8,530</u>	<u>38,500</u>
TOTAL OPERATING EXPENSES	883,330	1,086,495
<u>SPECIAL PROJECTS:</u>	<u>1,048,500</u>	<u>80,500</u>
<u>NET INCOME (LOSS) FROM OPERATIONS:</u>	-57,810	48,605
<u>TRANSFERS TO APPROPRIATED FUND BALANCES:</u>	<u>-929,700</u>	<u>-929,700</u>
<u>NET INCREASE/DECREASE IN UNAPPROPRIATED BAL:</u>	<u>-987,510</u>	<u>-881,095</u>
<u>UNAPPROPRIATED FUND BAL BEGINNING OF YEAR:</u>	<u>2,700,132</u>	<u>2,701,020</u>
<u>EXPECTED UNAPPROPRIATED FUND BALANCE END OF YEAR:</u>	1,712,622	1,819,925

MECD 2012-2013
BUDGET SUMMARY

	12 MONTH PROPOSED BUDGET <u>2011-2012</u>	12 MONTH PROPOSED BUDGET <u>2012-2013</u>
PERSONNEL	333,245	470,005
SUPPLIES	31,330	33,330
SERVICE AND RENTALS	150,390	165,150
OFFICE	30,060	39,760
TRAVEL/AUTO/MEMBERSHIPS	65,515	75,270
COMMUNICATIONS	254,680	254,240
INSURANCE	4,580	5,240
CONTINGENCY	5,000	5,000
FURNITURE & EQUIPMENT	<u>8,530</u>	<u>38,500</u>
SUB-TOTAL	883,330	1,086,495
SPECIAL PROJECTS	<u>1,048,500</u>	<u>80,500</u>
TOTAL EXPENSES	1,931,830	1,166,995

SPECIAL PROJECTS

Emergency Awareness Network in MECD Offices TVs and Radio Alert	5,500
Company Vehicle for GIS Field Work	30,000
Secure Parking for Company Vehicle and Security for MECD Office Building	45,000

TOTAL SPECIAL PROJECTS	80,500
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APPROPRIATED FUNDS

Wireless Charges		141,000
AT&T	9,000 Yr	
Sprint	36,000 Yr	
Alltel	96,000 Yr	

IP Network Upgrade from CAMA Trunks		350,000
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6 Months Operating Funds		438,700
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TOTAL APPROPRIATED FUNDS		929,700
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City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Courtney Sharp, City Manager

SUBJECT: Consider a Motion to cast a vote for the four incumbent trustees in the Texas Municipal League-Intergovernmental Risk Pool Board election.

Purpose:

Consider casting a vote for the four incumbent trustees of the Texas Municipal League-Intergovernmental Risk Pool Board election.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Courtney Sharp, City Manager

SUBJECT: Consider a Motion to cast a vote for the four incumbent trustees in the Texas Municipal League-Intergovernmental Risk Pool Board election.

Purpose:

Consider casting a vote for the four incumbent trustees of the Texas Municipal League-Intergovernmental Risk Pool Board election.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

N/A

Discussion:

Staff is recommending voting for all four incumbent trustees of the TML-Intergovernmental Risk Pool. It takes several years to understand the complexities of the various insurance programs provided through the Risk Pool.

AUG 20 2012

OFFICIAL BALLOT

CITY of MIDLAND, TEXAS

Texas Municipal League Intergovernmental Risk Pool Board of Trustees Election

This is the official ballot for the election of Places 11 – 14 of the Board of Trustees for the Texas Municipal League Intergovernmental Risk Pool. Each Member of the Pool is entitled to vote for Board of Trustee members. Please record your organization's choices by placing an "X" in the square beside the candidate's name. You can only vote for one candidate for each place.

The officials listed on this ballot have been nominated to serve a six-year term on the TML Intergovernmental Risk Pool (Workers' Compensation, Property and Liability) Board of Trustees.

Ballots must reach the office of David Reagan, Secretary of the Board, no later than September 30, 2012. Ballots received after September 30, 2012, cannot be counted. **The ballot must be properly signed and all pages of the ballot must be mailed to: Trustee Election, David Reagan, Secretary of the Board, P. O. Box 149194, Austin, Texas 78714-9194. If the ballot is not signed, it will not be counted.**

PLACE 11

- ☐ **Bill Agan.** Mayor of Richland Hills (Region 8). Mr. Agan was elected Mayor in May, 2012, for a term of two years. He has served as a city councilmember from 1986 to 1987. He has served on the City's Planning and Zoning Commission, and has served on the City's Charter Review Commission in 1986 and from 2011 to the present. Mr. Agan has owned an auto repair business for 40 years, and has been involved in an insurance business for two years and a real estate business for six years.
- ☒ **Greg Ingham** (Incumbent). City Manager, City of Plainview (Region 3) since 2004. He has previously served as City Manager in Levelland and Littlefield, Texas. Mr. Ingham has served in local government since 1975 and is active in numerous statewide and regional organizations. He has an MPA and is a Certified Public Manager. Mr. Ingham has been a board member of the TML Intergovernmental Risk Pool since 1989. He has served as Chair and Vice-Chair of the Board, and has served as Chair of the Board's Finance Committee.
- ☐ **Kavon Novak.** Alderman, City of Caldwell (Region 10) since 2011. He is a 1991 graduate of Texas A&M University with a Bachelor's Degree in Marketing. He has been a business owner for 14 years in the financial industry and is currently an Investment Consultant with LPL Commerce since 2009. Mr. Novak has been a member of the Caldwell Men's Lions Club for 9 years and is currently the Treasurer. He and his wife of 16 years, Lori, have 4 children. They are members of First Baptist Church in Caldwell and are active in 4-H Shooting Sports and Soccer.
- ☐ **Troy Stegemoeller.** Mayor Pro Tem, City of Idalou (Region 3). Mr. Stegemoeller has served on the City Council since 2008. He has a B.S. in Agriculture Economics from Texas Tech University and is a graduate of Louisiana State University Graduate Banking School. He has been in banking for 32 years, and currently serves as the President of Vista Bank in Idalou. He has served on an advisory committee to Congressman Randy Neugebauer, and has served as finance chair of the Idalou Methodist Church and Treasurer of the local Salvation Army.

WRITE IN CANDIDATE:

PLACE 12



Larry Gilley (Incumbent). City Manager, City of Abilene (Region 6) since June of 2002. He previously served as City Manager for San Marcos (1988 – 2002), Assistant City Manager for San Marcos (1987 – 1988), City Manager for Panhandle (1977 – 1987), and City Manager for Bovina (1976 – 1977). Mr. Gilley has been a Board member of the TML Intergovernmental Risk Pool since 2007, and currently serves as Chair of the Board's Underwriting and Claims Committee. He has an MPA from Southwest Texas University, and a BA from Texas Tech University.



Pete Gonzalez. Deputy City Manager and Chief Financial Officer of the City of Brownsville (Region 12) since June of 2008. He previously served as Director of Finance for Brownsville from 1978 to 2008. He serves as a Board member and Finance Officer for the United Brownsville Corporation. He has a BBA degree in Accounting from Texas A&I University in Kingsville and is a certified government financial manager. Under his leadership, the City of Brownsville has been awarded the Certificate of Achievement for Excellence in Financial Reporting for the past 34 consecutive years.

WRITE IN CANDIDATE:

PLACE 13



Byron Black (Incumbent). Board Chair, Central Appraisal District of Johnson County (Region 8) and member of the Area Metro Ambulance Authority Board. He served as Mayor of Burleson from 1998-2004, previously serving as mayor pro tem and as a Councilmember. He was a member of the Burleson Independent School District Board for 12 years, 9 as President, and served as president of TASB. Mr. Black has served as a Board member of the TML Intergovernmental Risk Pool since 2000, and presently serves as Vice-Chair.



Gary L. Kent. Councilmember for the City of Copperas Cove (Region 9). Mr. Kent has been a resident of Copperas Cove for over fourteen years. He and his wife have three children and two grandchildren. He served 24 years with the U.S. Army, including three combat tours, and retired as a 1st sergeant. He currently serves as police chief for the City of Nolanville and has more than 17 years of law enforcement experience. He is an active member of many community groups, including VFW Post #8577.



Keith Olson. Councilmember, City of Huntsville (Region 14) since 2010, and serves as Chair of the City's Finance Committee. Mr. Olson was born in Houston in 1973, and grew up in Huffman, Texas. He graduated from the University of Houston's Police Academy in 1994. Councilmember Olson sits on various local and regional boards pertaining to private finance. He is currently the owner and operator of Olson's Fine Jewelry, with interests in diamonds and specialty watches.

WRITE IN CANDIDATE:

PLACE 14

☐

Cynthia Kirk. Risk Manager for the City of Bryan (Region 10) since 1984. Ms. Kirk directs the City's workers' compensation, property and casualty coverage, claims administration, and safety/loss control functions. She is past president and currently serves on the Board of Directors of the Texas Chapter of the Public Risk Management Association and of the State and Local Government Benefits Association. She has served on the Board of Directors for the Surplus Lines Stamping Office of Texas and on various committees for the National Public Risk Management Association.

☒

Pat Norriss (Incumbent). Nortex Regional Planning Commission (Region 5). Ms. Norriss served on the Burkburnett City Council for 22 years, including 16 years as mayor. She serves as a board member of the National Association of Regional Councils and has served as president of the Texas Association of Regional Councils of Government. She is also a Board member of Wichita Wilbarger 911 District and Nortex 911 Communication District. Ms. Norriss has served as a Board member of the TML Intergovernmental Risk Pool since 1995, and served as chair of the Board from 2004 - 2006.

☐

Michael S. Nyren. Risk Manager for Capital Metropolitan Transportation Authority in Austin (Region 10) for 17 years. He has earned the designation of Associate in Risk Management and Associate in Risk Management for Public Entities and he serves on the Board of the Risk and Insurance Management Society, Central Texas Chapter. Mr. Nyren has a degree in Government and recently completed the Certified Public Manager Program at Texas State. He also has 30 years of experience in insurance, wellness, safety, security, and risk management.

WRITE IN CANDIDATE:

Certificate

I certify that the vote cast above has been cast in accordance with the will of the majority of the governing body of the public entity named below.

Witness by hand, this _____ day of _____, 2012.

Signature of Authorized Official

Title

Printed Name of Authorized Official

Printed name of Political Entity



City of Midland
Office Memorandum

DATE: 9/11/2012

TO: The Honorable Mayor and City Council Members

FROM: Amy Turner, City Secretary

SUBJECT: Consider a resolution authorizing a contract with Keep Midland Beautiful in the amount of \$50,000 for litter reduction, education, and beautification programs in Midland.

The proposed resolution authorizes the Mayor to execute a contract with Keep Midland Beautiful, Inc. The funding was approved with the adoption of the Fiscal Year 2012-2013 operating budget on August 27, 2012.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
CONTRACT WITH KEEP MIDLAND BEAUTIFUL,
INCORPORATED, FOR LITTER REDUCTION,
EDUCATION, AND BEAUTIFICATION PROGRAMS**

WHEREAS, the Council finds it to be in the public interest to authorize the execution of a contract with Keep Midland Beautiful, Inc., for litter reduction, education, and beautification programs in Midland;

**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 contract with Keep Midland Beautiful, Inc., for litter reduction, education, and beautification programs. Said contract to be in the form 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 make payments to Keep Midland Beautiful, Inc., in the total amount of One Hundred Thousand Dollars (\$100,000.00) from funds available in the following Fiscal Year 2012-2013 Budget Account:

430 (Sanitation) - 300 (Utilities) - 0401 (Nondepartmental) - 6171 (Keep Midland Beautiful)

pursuant to the terms of said contract.

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:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CONTRACT

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

THIS CONTRACT, made and entered into this 12th day of September, 2012, by and between the City of Midland, a municipal corporation of Midland County, Texas, hereinafter referred to as "City," and Keep Midland Beautiful, Inc., a Texas nonprofit corporation, hereinafter referred to as "Consultant" evidences the following:

In consideration of the mutual covenants, agreements and mutual benefits which will accrue to the parties hereof, the parties do hereby agree as follows:

I. DESCRIPTION OF SERVICES

Consultant's services hereunder shall include the following:

A. Consultant shall educate City residents on the benefits and methods of maintaining a clean community and provide activities in schools, neighborhoods, and for business and community groups to reduce littering, encourage waste reduction/recycling and aid in beautification. Specifically, Consultant shall provide the services listed in Exhibit "A" attached hereto and incorporated herein by reference.

B. Consultant understands that it is to work closely with the City Manager of the City or his designee and appropriate City Officials and that it is to perform any and all related tasks required for the successful implementation of its programs as determined by the City Manager in order to fulfill the purposes of this contract.

C. Consultant shall deliver all data, reports and documents which result from its services to the City Manager in such form upon the City Manager's request.

D. Without limiting the general language of the above section, the City Manager shall have the right to demand that the Consultant employ a Certified Public Accountant to make an independent audit of the Consultant's records and books covering the period of this contract. A copy of said audit shall be filed with the City Manager.

II. PERFORMANCE OF WORK

Consultant and its employees or associates shall perform all the work hereunder. Consultant agrees that all its employees or associates who work on this project shall be fully qualified and competent to do the work described hereunder.

III. TERM

The term of this contract shall begin on October 1, 2012, and end on September 30, 2013. All work and written reports are to be completed and delivered to the City by the termination date unless an extension of time, based upon good reasons presented by Consultant, is granted by the City Manager.

Consultant agrees that, in the event it desires to extend the term of this agreement beyond its stated date of expiration, it shall submit a written request for extension to the City Manager of the City of Midland at least 120 days prior to the current expiration date hereof and that such submission shall include the Consultant's anticipated budget, goals and objectives for the extended period as well as the annual report on accomplishments during the current term; provided however, that the City is under no duty or obligation to grant the requested extension, and that before any such extension becomes effective, it must be in writing as an amendment to this agreement and approved by the City Council of the City of Midland.

IV. PAYMENT

The City shall pay Consultant a fee of \$25,000.00 dollars on or about November 7, 2012; January 3, 2013; April 3, 2013; and July 3, 2013; for a total annual sum of \$100,000.00. All work shall be done to the satisfaction of the City Manager and the City shall not be liable for any partial payments or any payment under this contract for work which is unsatisfactory and which has not been approved by the City Manager.

V. CHANGE IN WORK

The City through its City Manager may request, from time to time, changes in the scope or focus of the activities, investigations and studies conducted or to be conducted by Consultant pursuant to this contract; provided, however, that any such change which in the opinion of the Consultant and the City Manager varies significantly from the scope of the work set out herein and which would entail a significant increase in cost or expense to Consultant shall be mutually agreed on by Consultant and the City Manager. Changes in the scope which in the opinion of the Consultant and the City Manager would require additional funding by the City must first be approved by the City Council through a duly adopted resolution.

VI. CONSULTANT'S LIABILITY

Approval of the City shall not constitute nor be deemed a release of responsibility and liability of Consultant, its employees, agents or associates for the accuracy and competency for their designs, reports, information and other documents nor shall approval be deemed to

be the assumption of such responsibility by the City for any defect or error in the documents prepared by the Consultant, its employees or associates.

VII. BOOKS AND RECORDS

Consultant shall provide, on a monthly basis during the term of this agreement, reports showing the disposition of the funds provided by the City under this agreement and that such funds were used only for the purposes stated in this agreement. The report required by this paragraph shall be filed no later than twenty (20) days following the end of the month for which the report is due. Reports shall be filed with the City at the office of the City Secretary. Any and all funds which remain unaccounted for or unspent at the end of the term of this agreement shall, at the City's direction, be returned to the City.

Consultant shall maintain books of account with correct entries of all expenditures of the funds provided under this agreement and of funds allocated from other sources. Consultant shall maintain funds provided by the City in a separate account and may not commingle such funds with any other monies or maintain it in any other account. Any and all books of account of Consultant shall be at all times open to the inspection of the City or any of its officers or duly authorized agents. Upon such inspection, the City or its officers or agents shall be afforded the opportunity on premises to make photographic copies of any and all documentation of books of account, including but not limited to statements of account relating to the disposition of funds provided by the City under this agreement and funds allocated from other sources.

Consultant shall maintain these books of account in Midland County for a period of three (3) years following the expiration of the term for which they are applicable.

VIII. REPORTING

Consultant shall provide by the end of the seventh (7th) month of this agreement a reporting, in a manner consistent with the evaluation plan furnished in the funding application for the fiscal year 2012-2013, for the first six (6) months of this agreement, of its accomplishments and ongoing projects and programs related to the services provided for herein and made or begun in this term.

In the event Consultant desires to extend the term of this agreement beyond its stated date of expiration pursuant to paragraph III, an annual reporting shall be included with the submission and request for extension.

IX. ASSIGNMENT

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

of the City.

**X.
TERMINATION**

The City may terminate this contract upon thirty (30) days written notice to the Consultant, upon Consultant's failure to comply with terms set out in this contract heretofore, with the understanding that all services being performed under this contract shall cease upon the date specified in such notice. Consultant shall invoice the City for all services completed and shall be compensated in accordance with the terms of this contract for all services performed by the Consultant prior to the date specified in such notice.

**XI.
NOTICES**

All notices, communications and reports under this contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail at the following addresses:

City:

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

Consultant:

Executive Director
Keep Midland Beautiful, Inc.
P.O. Box 50432
Midland, Texas, 79710

**XII.
INDEPENDENT CONTRACTOR**

It is expressly understood and agreed that Consultant shall operate hereunder as an independent contractor and not as an officer, agent, servant or employee of the City; that Consultant shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Consultant, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Consultant. No person performing any of the work and services described hereunder by Consultant shall be considered an officer, agent, servant or employee of the City. Further,

it is specifically understood and agreed that nothing in this 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. Consultant 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 Consultant's work. Consultant shall assume exclusive responsibility for the work. Consultant is entirely free to do the work in its own way.

XIII.

INDEMNITY

CONSULTANT 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 CONSULTANT, its agents or employees, or any subcontractor, arising out of, or resulting from Consultant's use of, or activities on, the Agreement Premises, and Consultant 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.

CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL 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 CONSULTANT OR CONSULTANT'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 CONSULTANT 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

XIV.
SOVEREIGN IMMUNITY

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

XV.
ATTORNEY'S 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. 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 LEGAL COUNSEL PRIOR TO ITS EXECUTION.

XVI.
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.

**XVII.
RELEASE**

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

**XVIII.
THIRD-PARTY BENEFICIARY**

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

IN WITNESS WHEREOF, the undersigned duly authorized officials hereby execute this agreement on the day and year first written above.

CITY OF MIDLAND, TEXAS

By _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

KEEP MIDLAND BEAUTIFUL, INC.

By _____

Title _____

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of Keep Midland Beautiful, Inc.

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

Notary Public, State of _____



City of Midland
Office Memorandum

DATE: 9/11/2012

TO: The Honorable Mayor and City Council Members

FROM: Amy Turner, City Secretary

SUBJECT: Consider a resolution authorizing a contract with Permian Basin Community Centers in the amount of \$75,000 for mental health, mental retardation and substance abuse services.

The proposed resolution authorizes the Mayor to execute a contract with Permian Basin Community Centers for Mental Health and Mental Retardation. The funding was approved with the adoption of the Fiscal Year 2012-2013 operating budget on August 27, 2012.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF
AN AGREEMENT WITH THE PERMIAN BASIN
COMMUNITY CENTERS FOR MENTAL HEALTH,
MENTAL RETARDATION, AND SUBSTANCE ABUSE
SERVICES**

WHEREAS, on April 25, 1972, the City of Midland, City of Odessa, Midland County and Ector County by agreement established the Permian Basin Community Centers for Mental Health, Mental Retardation, and Substance Abuse Services; and

WHEREAS, the Council finds that funds are available for mental health, mental retardation and substance abuse services; and

WHEREAS, the Council finds it to be in the public interest to enter into an agreement with the Permian Basin Community Centers for Mental Health and Mental Retardation to provide mental health, mental retardation and substance abuse services;

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

SECTION ONE. That the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, Texas, an agreement with the Permian Basin Community Centers for Mental Health and Mental Retardation to provide for mental health, mental retardation and substance abuse services. Said contract to be in the form 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 the sum of \$75,000.00 from funds available in Fiscal Year 2012-2013 Budget Account 001 (General Fund) - 150 (Nondepartmental) - 0150 (Nondepartmental) - 6050 (Permian Basin Community Centers) pursuant to the terms of said contract.

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:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

THIS AGREEMENT, made and entered into on this 12th day of September, 2012, between the City of Midland, Texas, a home rule municipal corporation, hereinafter called “City,” and the Permian Basin Community Centers for Mental Health and Mental Retardation, an entity organized under the Texas Health & Safety Code, § 531.001 et seq., hereinafter called “MHMR.”

WITNESSETH:

WHEREAS, on April 25, 1972, the City of Midland, City of Odessa, Midland County and Ector County, by agreement, formed the Permian Basin Community Centers for Mental Health and Mental Retardation; and

WHEREAS, the City has budgeted funds in the amount of \$75,000.00 to be used by MHMR for the fiscal year 2012-2013; and

WHEREAS, it is the desire of the parties hereto to combine their efforts for the purpose of providing programs for mental health, mental retardation and substance abuse;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits which will accrue to each of the parties hereof, as well as the general citizenry of the City of Midland, Texas, the parties have agreed and do hereby agree as follows:

I.

SCOPE OF SERVICES

MHMR shall provide the following services:

A. Mental Health - Mental Retardation Services

1. The purpose of the Mental Retardation Residential Program is to prevent or delay the need for a mentally handicapped person to be placed in an institution. A variety of community based services, including Residential Placement, In-Home Support Respite

Care, Interdependent Living Program, and Recreational programs will be provided to give participants the opportunity to become as independent as possible.

Individualized training programs will be developed that teach age-appropriate, functional skills which occur in natural environments.

2. An Early Childhood Intervention Program will be provided to assist families of developmentally delayed infants in stimulating and nurturing the special child.

3. The Mental Health Residential Program will provide transitional or long term residences for chronically psychiatrically disabled adults with support services and staff involvement based on individual needs.

Residences for mental health patients are located in Midland and Odessa. Placements are determined by the individual's preferences and service needs. Staff involvement varies from houseparents, who provide supervision and structure as needed, to staff who are close by and always available, but providing minimal supervision and structure.

4. Additional mental health services include the Crisis Intervention Suicide Prevention Program, Short Term Crisis Stabilization at Hospitals, Outpatient programs for individuals and their families, and school-based youth services.

B. Substance Abuse Services

1. MHMR's Non-Medical Detoxification facility assists addicted, chemically dependent, and acutely intoxicated individuals 18 years or age and older requiring supervision to withdraw from addictive substances.

2. Individuals participate in therapeutic, educational, self-exploration, and supportive activities. Medical and psychiatric services are available 24 hours a day, 365 days a year.

3. Additional substance abuse services are the At-Risk Youth Program, Residential Treatment Program for Adolescents, HIV Testing, Education and Out Reach Services, and Turning Point Primary Care Unit.

II.

PAYMENT

The City shall pay to MHMR the sum of \$75,000.00 for mental health and mental retardation services and substance abuse programs. Payment shall be made on a monthly basis. MHMR shall invoice the City the amount of \$6,250.00 per month. The City shall remit the \$6,250.00 within ten (10) days after invoice.

III.

INDEMNITY

MHMR agrees to assume and does hereby assume all responsibility and liability for damages sustained by persons or property, whether real or asserted, by or from the carrying on of work or in the performance of services performed and to be performed hereunder.

MHMR 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 MHMR, its agents or employees, or any subcontractor, arising out of, or resulting from MHMR's use of, or activities on, the Agreement Premises, and MHMR 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.

MHMR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL 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 MHMR OR MHMR'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 MHMR 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.

IV.

INDEPENDENT CONTRACTOR

It is expressly understood and agreed that MHMR shall operate hereunder as an independent contractor and not as an officer, agent, servant or employee of the City; that MHMR 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 MHMR, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and MHMR. No person performing any of the work and services described hereunder by MHMR 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. MHMR 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 MHMR's work. MHMR shall assume exclusive responsibility for the work. MHMR is entirely free to do the work in its own way.

V.

BOOKS AND RECORDS

MHMR shall provide, on a monthly basis during the term of this agreement, reports and full documentation showing the disposition of the funds provided by the City under this agreement and that such funds were used only for the purposes stated in this agreement. Said report shall be filed in the office of the City Secretary no later than twenty (20) days following the last day of the month for which the report is due. Any and all funds which remain unaccounted for or unspent at the end of the term of this agreement shall, at the City's direction, be returned to the City or be spent by MHMR for the purposes set forth in this agreement.

MHMR shall maintain books of account with correct entries of all expenditures of the funds provided under this agreement and of funds allocated from other sources. MHMR shall maintain funds provided by the City in a separate account and shall not commingle such funds with any other monies or maintain it in any other account. Such books of account shall be at all times open to the inspection of the City or any of its officers or duly authorized agents. Upon inspection by the City or its officers or agents, the inspector shall be afforded the opportunity to make photographic copies of any and all documentation, including but not limited to books of account.

VI.

REPORTING

MHMR shall provide by the end of the seventh (7th) month of this agreement a reporting, in a manner consistent with the evaluation plan furnished in its funding application for the fiscal year 2012-2013 for the first six (6) months of this agreement, of its goals and

objectives reached and new ones begun related to the services provided for herein and made or begun in this term.

In the event MHMR desires to extend the term of this agreement beyond its stated date of expiration pursuant to Paragraph VII, an annual reporting shall be included with the submission and request for extension.

VII.

TERM OF AGREEMENT

The term of this agreement is for a period beginning on October 1, 2012, and ending on September 30, 2013.

MHMR agrees that, in the event it desires to extend the term of this agreement beyond its stated date of expiration, it shall submit a written request for extension to the City Manager of the City of Midland at least 120 days prior to the current expiration date hereof and that said submission shall include MHMR's anticipated budget, goals, and objectives for the extended period; provided, however, that the City is under no duty or obligation to grant the requested extension, and that before any such extension becomes effective, it must be in writing as an amendment to this agreement and approved by the City Council of the City of Midland.

VIII.

DEFAULT

If MHMR shall fail or neglect to do or perform or observe any of the covenants contained herein on its part to be kept and performed and such failure or neglect shall continue for a period of not less than 30 days after the City has notified MHMR in writing of MHMR's default hereunder and MHMR has failed to correct such default within said 30 days, then City may, at its option, immediately or at any time thereafter without demand or notice, cancel this agreement in its entirety. The waiver by City of any breach of any term, condition, or covenant herein contained shall not be deemed a waiver of any subsequent breach of the same, or any other term, condition, or covenant.

IX.

ASSIGNMENT

MHMR 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.

X.

AMENDMENTS

This agreement may be amended by the mutual agreement of the parties hereto in writing to be attached hereto and incorporated into this agreement.

XI.

SOVEREIGN IMMUNITY

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

XII.

ATTORNEY'S FEES

BY EXECUTING THIS AGREEMENT, THE MHMR 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. MHMR SPECIFICALLY AGREES THAT IF MHMR 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, MHMR AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH MHMR MIGHT OTHERWISE BE ENTITLED.

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

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

XIII.

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.

XIV.

RELEASE

NOTWITHSTANDING ANY OTHER PROVISIONS, MHMR HEREBY RELEASES, RELINQUISHES, ACQUITS AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH MHMR 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, OR CITY'S NEGLIGENCE.

XV.

THIRD-PARTY BENEFICIARY

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

EXECUTED by the duly authorized officials of the City and MHMR as of 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 CONTENT
AND COMPLETENESS:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

PERMIAN BASIN COMMUNITY CENTERS
FOR MENTAL HEALTH AND MENTAL
RETARDATION

By _____

Title _____

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the Permian Basin Community Centers for Mental Health and Mental Retardation.

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

Notary Public, State of _____



City of Midland
Office Memorandum

DATE: 9/11/2012

TO: The Honorable Mayor and City Council Members

FROM: Amy Turner, City Secretary

SUBJECT: Consider a resolution authorizing a contract with Midland Teen Court, Inc. in the amount of \$27,500 for a Teen Court Program.

The proposed resolution authorizes the Mayor to execute a contract with Midland Teen Court, Inc. The funding was approved with the adoption of the Fiscal Year 2012-2013 operating budget on August 27, 2012.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
CONTRACT WITH MIDLAND TEEN COURT,
INCORPORATED, FOR THE OPERATION OF A TEEN
COURT PROGRAM**

WHEREAS, the Council finds it to be in the public interest to authorize the execution of a contract for the operation of a Teen Court in Midland which would reduce court time spent on hearing juvenile cases and provide restitution and community compensation;

**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 contract with the Midland Teen Court, Inc., for the operation of a Teen Court Program. Said contract to be in the form 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 Midland Teen Court, Inc., the sum of Twenty-Seven Thousand Five Hundred Dollars (\$27,500.00) from funds available in Fiscal Year 2012-2013 Budget Account 001 (General Fund) - 150 (Nondepartmental) - 0150 (Nondepartmental) - 6055 (Midland Teen Court), pursuant to the terms of said contract and upon request 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:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CONTRACT

STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS
COUNTY OF MIDLAND §

THIS CONTRACT is entered into on this 12th day of September, 2012, by and between the City of Midland, Texas, a home rule municipal corporation, hereinafter called “City,” and Midland Teen Court, Inc., a nonprofit corporation organized under the laws of the State of Texas, hereinafter referred to as “Teen Court.”

WHEREAS, Teen Court and the City desire to maintain a “Teen Court” program; and
WHEREAS, the Teen Court will reduce court time spent on hearing juvenile cases;
and

WHEREAS, a Teen Court will provide restitution and community compensation; and
WHEREAS, a Teen Court will provide a means for young offenders to become
productive citizens;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS,
AGREEMENTS, AND BENEFITS OF BOTH PARTIES TO THIS CONTRACT, IT IS
AGREED AS FOLLOWS:

I.

This contract and its terms and conditions shall be in effect for a period beginning on October 1, 2012, and ending September 30, 2013.

Teen Court agrees that, in the event it desires to extend the term of this agreement beyond its stated date of expiration, it shall submit a written request for extension to the City Manager of the City of Midland at least 120 days prior to the current expiration date hereof and that such submission shall include the Teen Court’s anticipated budget, goals and objectives for the extended period as well as the annual report on accomplishments during the current term; provided however, that the City is under no duty or obligation to grant the requested extension, and that before any such extension becomes effective, it must be in writing as an amendment to this agreement and approved by the City Council of the City of Midland.

II.

Teen Court agrees to operate, administer, manage, maintain and publicly support the Teen Court program. Teen Court shall be responsible for and establish all rules and regulations relating to the operation of said Teen Court program. Teen Court shall hire and supervise a Teen Court coordinator and establish employment policies defining the duties for this position. Said Teen Court coordinator shall not be considered an employee of the City for any purpose. Teen Court shall be responsible for providing any and all support staff including, but not limited to, any and all judges for said Teen Court program.

III.

A. City agrees to pay to Teen Court, within twenty (20) days after the date of execution of this contract, the sum of TWENTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$27,500.00) to be utilized by Teen Court for the purpose of compensating the Teen Court coordinator and for other services provided in conjunction with the Teen Court program during the original term of this contract. In the event that this contract is renewed or extended for additional years, the amount of compensation to be provided by the City to Teen Court shall be determined by the Midland City Council at the time said Council adopts the City's annual budget.

B. Teen Court shall provide any and all liability insurance for the Teen Court coordinator.

IV.

TERMINATION

This contract may be terminated by either party for any reason upon ninety (90) days written notice or by mutual agreement of both parties.

V.

The City and Teen Court understand and agree that the City shall have no duty or obligation to provide participants in the Teen Court program. All participants in the Teen Court program shall be strictly on a voluntary basis and at the discretion of the judges of the City of Midland Municipal Court.

VI.

For purposes of written notification as provided herein, all written notices to the City and the Teen Court shall be addressed as follows:

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

Midland Teen Court, Inc.
615 West Missouri #226
Midland, Texas 79701

VII.

- A. The parties hereto shall comply with all applicable laws.
- B. Teen Court agrees to furnish each year a report of operations and activities to each member of the City Council, City Manager and City Attorney. Such report shall include, but shall not be limited to, the number of participants in the Teen Court program which have become repeat offenders or violators of the laws of the City of Midland, Texas, or the State of Texas.
- C. Teen Court agrees to adopt rules, regulations and written policy relating to and governing the operation of the Teen Court, and seek the approval of such rules, regulations and policies from the City.
- D. **INDEMNITY: TEEN COURT 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 TEEN COURT,** its agents or employees, or any subcontractor, arising out of, or resulting Teen Court's use of, or activities on, the

Agreement Premises, and Teen Court 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.

TEEN COURT SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL 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 TEEN COURT OR TEEN COURT'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 TEEN COURT 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.

E. **INSURANCE**: During the term of this contract, Teen Court shall obtain insurance and provide the City with a certificate of insurance, and shall maintain such insurance in effect during the term of this contract, containing the following amounts: Insurance coverage in the minimum aggregate amount of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) against liability for injury to or the death of any one person and for property damage. Such insurance shall be written with insurance companies authorized to do business in the State of Texas and acceptable to the City and all insurance policies shall include City as an additional insured, and copies of the insurance that has been issued or

certificates evidencing proof of such policy shall be deposited with the City.

F. Teen Court agrees that it will fully comply with all civil rights acts and specifically will not discriminate against any person on the basis of race, color, national origin, sex or by reason of being handicapped.

VIII.

City agrees to participate in the Teen Court's appraisal of the teen court program.

IX.

Teen Court shall provide, on a quarterly basis during the term of this agreement, reports showing the disposition of the funds provided by the City under this agreement and that such funds were used only for the purposes stated in this agreement. Any report required by this paragraph shall be filed no later than twenty (20) days following the end of the quarter for which the report is due. Reports shall be filed with the City at the office of the City Secretary. Any and all funds which remain unaccounted for or unspent at the end of the term of this agreement shall, at the City's direction, be returned to the City.

Teen Court shall maintain books of account with correct entries of all expenditures of the funds provided under this agreement and of funds allocated from other sources. Teen Court shall maintain funds provided by the City in a separate account and may not commingle such funds with any other monies or maintain it in any other account. Any and all books of account of Teen Court shall be at all times open to the inspection of the City or any of its officers or duly authorized agents. Upon such inspection, the City or its officers or agents shall be afforded the opportunity on premises to make photographic copies of any and all documentation of books of account, including, but not limited to statements of account relating to the disposition of funds provided by the City under this agreement and funds allocated from other sources.

Teen Court shall maintain these books of account in Midland County for a period of three (3) years following the expiration of the term for which they are applicable.

X.

Teen Court shall provide by the end of the seventh (7th) month of this agreement a

reporting, in a manner consistent with the evaluation plan furnished in its funding application for the fiscal year 2012-2013, for the first six (6) months of this agreement, of its accomplishments and ongoing projects and programs related to the services provided for herein and made or begun in this term.

In the event Teen Court desires to extend the term of this agreement beyond its stated date of expiration pursuant to Paragraph I, an annual reporting shall be included with the submission and request for extension.

XI.

SOVEREIGN IMMUNITY

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

XII.

ATTORNEY'S FEES

BY EXECUTING THIS AGREEMENT, TEEN COURT 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. TEEN COURT SPECIFICALLY AGREES THAT IF TEEN COURT 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, TEEN COURT AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH TEEN COURT MIGHT OTHERWISE BE ENTITLED.

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

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

XIII.

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.

XIV.

RELEASE

NOTWITHSTANDING ANY OTHER PROVISION, TEEN COURT HEREBY RELEASES, RELINQUISHES, ACQUITS AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS,

CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH TEEN COURT 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.

XV.

THIRD-PARTY BENEFICIARY

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

XVI.

INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Teen Court shall operate hereunder as an independent contractor and not as an officer, agent, servant or employee of the City; that Teen Court 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 Teen Court, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Teen Court. No person performing any of the work and services described hereunder by Teen Court 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. Teen Court 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 Teen Court's work. Teen Court shall assume exclusive responsibility for the work. Teen Court is entirely free to do the work in its own way.

XVII.

ASSIGNMENT

Teen Court 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.

IN WITNESS HEREOF, the undersigned have set their hand on the date first set out above.

THE CITY OF MIDLAND, TEXAS

By _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Amy M. Turner, City Secretary

MIDLAND TEEN COURT, INC.

By _____
President

ATTEST:

Executive Director

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of Midland Teen Court, Inc.

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

Notary Public, State of _____



City of Midland
Office Memorandum

DATE: 9/11/2012

TO: The Honorable Mayor and City Council Members

FROM: Amy Turner, City Secretary

SUBJECT: Consider a resolution authorizing a contract with Midland Hispanic Chamber of Commerce in the amount of \$60,000 to promote growth and development in the City.

The proposed resolution authorizes the Mayor to execute a contract with the Midland Hispanic Chamber of Commerce. The funding was approved with the adoption of the Fiscal Year 2012-2013 operating budget on August 27, 2012.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
CONTRACT WITH THE MIDLAND HISPANIC
CHAMBER OF COMMERCE TO PROMOTE THE
CITY'S GROWTH AND DEVELOPMENT**

WHEREAS, the Midland Hispanic Chamber of Commerce has obtained certain knowledge and expertise in encouraging, fostering, promoting, advertising, and developing the City as a destination for tourism and conventions; and

WHEREAS, the Council finds it to be in the public interest to enter into a contract with the Midland Hispanic Chamber of Commerce to assist in advertising the City and promoting its growth and development;

**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 contract with the Midland Hispanic Chamber of Commerce to advertise the City and promote its growth and development. Said contract to be in the form 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 the Midland Hispanic Chamber of Commerce for the economic development portion of the contract the sum of \$60,000.00 from funds available in Fiscal Year 2012-2013 Budget Account 001 (General Fund) - 150 (Nondepartmental) - 0150 (Nondepartmental) - 6165 (Midland Hispanic Chamber of Commerce) pursuant to the terms of said contract.

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:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

AGREEMENT

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

THIS AGREEMENT, made and entered into on this 12th day of September, 2012, between the City of Midland, Texas, a home rule municipal corporation, hereinafter called “City”, and the Midland Hispanic Chamber of Commerce, a Texas nonprofit corporation, hereinafter called “Chamber”.

W I T N E S S E T H:

WHEREAS, the City, recognizing the need for continued development and economic diversification, has budgeted certain funds to be used pursuant to the authority under Tex. Loc. Gov’t Code Ann. §§ 371.001 - .005 (Vernon Supp. 2006), for the purpose of advertising the municipality and promoting its growth and development; and

WHEREAS, the Chamber has actively promoted business development and economic growth within the City and the surrounding region for the purpose of creating jobs and economic growth and development in the City, and as a result thereof has obtained certain knowledge and expertise in this field of endeavor; and

WHEREAS, it is the desire of the parties hereto to combine their efforts for the purpose of providing an effective economic development program for Midland City Development and for the purpose of providing an effective program which would encourage, promote and foster tourism and the convention and hotel industry in Midland;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits which will accrue to each of the parties hereof, as well as the general citizenry of the City of Midland, Texas, the parties have agreed and do hereby agree as follows:

I.

PROMOTING GROWTH AND DEVELOPMENT

1. The Chamber agrees to advertise the City and promote the City’s growth and development through the development and implementation of programs designed to attract

and foster new business enterprises and designed to assist and encourage the expansion of existing businesses. The Chamber agrees to provide a qualified and competent staff assigned to develop and implement such programs and also assigned to recruit and assist new businesses and industries. Toward this end, the Chamber shall provide all management and administrative services which are necessary to make such programs viable and competitive, and such management and administrative services shall include, but not be limited to, the gathering and dissemination of information about the City and its environs and the various opportunities, programs, and services available.

The duties and responsibilities of the Chamber under this section of this agreement shall be carried out by the Economic Development Department of the Midland Hispanic Chamber of Commerce under the policies and procedures established by the Chamber's Board of Directors. The President of the Midland Hispanic Chamber of Commerce, or his/her designee, shall supervise and manager the day to day operations and business affairs of said Economic Development Department. The Chamber shall provide the necessary office space, furnishings, equipment, supplies, and utilities necessary to perform the duties and responsibilities under this agreement.

2. City agrees to pay to the Chamber as compensation for the services rendered under this section of the agreement a sum of \$60,000.00 during the term of this agreement. Said funds will be divided so that the existing programs and operations will receive \$35,000.00, and the Historically Underutilized Business program (HUB) will receive \$25,000.00. The HUB funds will be prorated based on the date of hire and the start dates of the programs. City shall pay sum in equal monthly installments based on submission of prior month financial statements to include: an unaudited Statement of Financial Position, an unaudited Statement of Activities and Changes in Net Assets, unaudited Statement of Functional Expenses, and an unaudited Statement of Cash Flow. The financial statements should be accompanied by an invoice and received on or before the final day of the month. The financial statements and invoice will be approved by the City Manager. All payments

are contingent on the Chamber's Education Foundation remaining a 501(c)(3) and submission of a current audit for the year ending September 2012.

II.

INDEMNITY

CHAMBER 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 CHAMBER, its agents or employees, or any subcontractor, arising out of, or resulting from, Chamber's use of, or activities on, the Agreement Premises, and Chamber 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.

CHAMBER SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL 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 CHAMBER OR CHAMBER'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 CHAMBER 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.

III.

INDEPENDENT CONTRACTOR

Chamber shall operate hereunder as an independent contractor and not as an officer, agent, servant, or employee of City. Chamber shall have exclusive control of, and the exclusive right to control the details of the work to be performed hereunder and all personnel performing same, and shall be solely responsible for the acts and omissions of its officers, members, agents, servants, employees, subcontractors, program participants, volunteers, licensees, and invitees. In no event shall any person participating in or performing any of the Chamber's duties or responsibilities hereunder 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. Chamber 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 Chamber's work. Chamber shall assume exclusive responsibility for the work. The Chamber is entirely free to do the work in its own way.

IV.

BOOKS AND RECORDS

Chamber shall provide to the City, on a monthly basis during the term of this agreement, reports and full documentation showing the expenditures made pursuant to this agreement and that such funds were used only for the purposes stated in this agreement.

The Chamber shall maintain books of account with correct entries of all expenditures which are made according to the terms of this agreement and of funds allocated from other sources. Any and all books of account of the Chamber shall be at all times open to the inspection of the City or any of its officers or duly authorized agents. Upon such inspection, the City or its officers or agents shall be afforded the opportunity on premises to make photographic copies of any and all documentation relating to all books of account of the Chamber, including, but not limited to, books of account relating to the disposition of funds provided by the City under this agreement.

The Chamber shall maintain these books of account in Midland County for a period of three (3) years following the expiration of the term for which they are applicable.

V.

REPORTING

By the end of the seventh (7th) month of this agreement, Chamber shall submit to the City Manager a reporting of its accomplishments and ongoing projects and programs for the first six (6) months of this agreement related to the services provided for in Section I of this agreement and established or begun in this term. Chamber shall provide a quarterly report at the end of each three-month period of all its activities and expenditures performed under Section II of this agreement. Said reporting shall be in a manner consistent with the evaluation plan submitted with Chamber's funding application for fiscal year 2012-2013. Chamber must comply fully with this provision to be eligible for funds for expenditures made from April 1, 2013 through September 30, 2013.

In the event the Chamber desires to extend the term of this agreement beyond its stated date of expiration pursuant to paragraph VII, a similar annual reporting shall be

included with the submission and request for extension.

VI.

TERM OF AGREEMENT

The term of this agreement is for a period beginning on October 1, 2012, and ending on September 30, 2013.

Chamber agrees that, in the event it desires to extend the term of this agreement beyond its stated date of expiration, it shall submit a written request for extension to the City Manager of the City of Midland at least 120 days prior to the current expiration date hereof and that such submission shall include the Chamber's anticipated budget, goals and objectives for the extended period as well as the annual report on accomplishments during the current term; provided however, that the City is under no duty or obligation to grant the requested extension, and that before any such extension becomes effective, it must be in writing as an amendment to this agreement and approved by the City Council of the City of Midland.

VII.

DEFAULT

If Chamber shall fail or neglect to do or perform or observe any of the covenants contained herein on its part to be kept and performed and such failure or neglect shall continue for a period of not less than 30 days after the City has notified Chamber in writing of Chamber's default hereunder and Chamber has failed to correct such default within said 30 days, then City may, at its option, immediately or at any time thereafter without demand or notice, cancel this agreement in its entirety. The waiver by City of any breach of any term, condition, or covenant herein contained shall not be deemed a waiver of any subsequent breach of the same, or any other term, condition, or covenant.

VIII.

ASSIGNMENT

Chamber 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.

IX.

AMENDMENTS

This agreement may be amended by the mutual agreement of the parties hereto in writing to be attached hereto and incorporated into this agreement.

X.

ATTORNEY'S FEES

BY EXECUTING THIS AGREEMENT, THE CHAMBER 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 CHAMBER SPECIFICALLY AGREES THAT IF THE CHAMBER 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 CHAMBER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CHAMBER MIGHT OTHERWISE BE ENTITLED.

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

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

XI.

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.

XII.

SOVEREIGN IMMUNITY

By executing this agreement, the City is not waving 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.

XIII.

RELEASE

NOTWITHSTANDING ANY OTHER PROVISION HEREIN, CHAMBER HEREBY RELEASES, RELINQUISHES, ACQUITS AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS CLAIMS OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH CHAMBER 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.

XIV.

THIRD-PARTY BENEFICIARY

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

EXECUTED by the duly authorized officials of the City and the Chamber as of 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

APPROVED AS TO CONTENT
AND COMPLETENESS:

Amy M. Turner, City Secretary

MIDLAND HISPANIC
CHAMBER OF COMMERCE

By _____
Chairman of the Board

ATTEST:

Secretary

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the Midland Hispanic Chamber of Commerce.

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

Notary Public, State of _____



City of Midland
Office Memorandum

DATE: 9/11/2012

TO: The Honorable Mayor and City Council Members

FROM: Amy Turner, City Secretary

SUBJECT: Consider a resolution authorizing a contract with Midland Community College District in the amount of \$60,000 to promote growth and development in the City.

The proposed resolution authorizes the Mayor to execute a contract with Midland Community College District. The funding was approved with the adoption of the Fiscal Year 2012-2013 operating budget on August 27, 2012.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
CONTRACT WITH THE MIDLAND COMMUNITY
COLLEGE DISTRICT TO PROMOTE ECONOMIC
GROWTH AND DEVELOPMENT**

WHEREAS, the City Council of Midland, Texas (“Council”) recognizes a need for continued economic development and diversification; and

WHEREAS, the Midland College Small Business Development Center will actively promote business development and economic growth within Midland, Texas; and

WHEREAS, the Council finds it to be in the public interest to enter into a contract with the Midland Community College District to promote small business development in Midland, Texas;

**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 to execute and attest, respectively, on behalf of the City of Midland, Texas, a contract with the Midland Community College District to promote the City’s economic growth and development. Said contract to be in the form 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 the Midland Community College District the sum of \$60,000.00 from funds available in Fiscal Year 2012-2013 Budget Account 001 (General Fund) - 150 (Nondepartmental) - 0150 (Nondepartmental) - 6183 (Midland College Business Economic Development Center) pursuant to the terms of said contract.

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

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

THIS AGREEMENT, made and entered into on this 12th day of September, 2012, between the City of Midland, Texas, a home rule municipal corporation, hereinafter called “City,” and Midland Community College District, hereinafter called “the College.”

W I T N E S S E T H:

WHEREAS, the City, recognizing the need for continued development and economic diversification, has budgeted certain funds to be used pursuant to the authority of Local Government Code §§ 371.001 et seq., for the purpose of advertising the municipality and promoting its growth and development; and

WHEREAS, acting through its Business and Economic Development Center, the College actively promotes business development and economic growth within the City and the surrounding region for the purpose of creating jobs and economic growth and development in the City; and

WHEREAS, it is the desire of the parties hereto to combine their efforts for the purpose of providing an effective economic development program for Midland;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits which will accrue to each of the parties hereof, as well as the general citizenry of the City of Midland, Texas, the parties have agreed and do hereby agree as follows:

I.

PROMOTING GROWTH AND DEVELOPMENT

1. The College agrees to provide, through its Business and Economic Development Center, educational training to interested parties. Training will be in the areas of small business, home ownership, credit repair, and other related areas. The College may specifically provide, in addition to other appropriate services, training in contract writing as it relates to government contracts with small businesses and shall offer small businesses

technical assistance and business plan preparation. Toward this end, the College shall provide all management and administrative services necessary to make its programs viable and competitive.

The duties and responsibilities of the College under this agreement shall be carried out under the policies and procedures it establishes.

2. City agrees to assist the College in the funding of its Business and Economic Development Center by paying to the College as compensation for the services rendered under this section of the agreement a sum of \$60,000.00 during the term of this agreement. Such sum shall be paid by the City to the College in 12 monthly installments each based on invoices or statements received from the College and approved by the City Manager.

3. Ownership of capital assets purchased with City money shall remain with the City. If the College does not continue to use the assets purchased with the funds designated herein for the purposes described in this agreement, the College shall either pay to the City the fair market value of the assets or deliver the assets to the City. Unless it is extended pursuant to Paragraph VI, when this agreement expires or terminates, the College shall return these assets to the City within 30 days of the date of expiration or termination.

II.

INDEMNITY

THE COLLEGE 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 THE COLLEGE, its agents or employees, or any subcontractor, arising out of, or resulting from the College's use of, or activities on, the Agreement

Premises, and the College 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.

THE COLLEGE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL 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 THE COLLEGE OR THE COLLEGE'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND THE COLLEGE 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.

III.

INDEPENDENT CONTRACTOR

It is expressly understood and agreed that College 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 College 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 College, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and College. No person performing any of the work and services described hereunder by College 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. College 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 College’s work. College shall assume exclusive responsibility for the work. College is entirely free to do the work in its own way.

IV.

BOOKS AND RECORDS

The College shall provide to the City, on a monthly basis during the term of this agreement, reports and full documentation showing the expenditures made pursuant to this agreement and that such funds were used only for the purposes stated in this agreement.

The College shall maintain books of account with correct entries of all expenditures which are made according to the terms of this agreement and of funds allocated from other sources. Any and all books of account of the College shall be at all times open to the inspection of the City or any of its officers or duly authorized agents. Upon such inspection, the City or its officers or agents shall be afforded the opportunity on premises to make photographic copies of any and all documentation of books of account, including but not limited to statements of account relating to the disposition of funds provided by the City under this agreement and funds allocated from other sources.

The College shall maintain these books of account in Midland County for a period of three (3) years following the expiration of the term for which they are applicable.

V.

SEMI-ANNUAL REPORTING

By the end of the seventh (7th) month of the term of this agreement, the College shall provide to the City Manager a reporting of its accomplishments and ongoing projects and programs related to the services provided for herein for the first six (6) months of this agreement. Said reporting shall be in a form consistent with the evaluation plan furnished in the College's funding application for fiscal year 2012-2013. The College must comply fully with this provision to be eligible for funds for expenditures made from April 1, 2013 through September 30, 2013.

In the event the College desires to extend the term of this agreement beyond its stated date of expiration pursuant to paragraph VI, a similar annual reporting for the entire term of the contract shall be included with the submission and request for extension.

VI.

TERM OF AGREEMENT

The term of this agreement is for a period beginning on October 1, 2012, and ending on September 30, 2013.

The College agrees that, in the event it desires to extend the term of this agreement beyond its stated date of expiration, it shall submit a written request for extension to the City Manager of the City of Midland at least 120 days prior to the current expiration date hereof and that such submission shall include the College's anticipated budget, goals and objectives for the extended period as well as the annual report on accomplishments during the current term; provided however, that the City is under no duty or obligation to grant the requested extension, and that before any such extension becomes effective, it must be in writing as an amendment to this agreement and approved by the City Council of the City of Midland.

VII.

DEFAULT

If the College shall fail or neglect to do or perform or observe any of the covenants contained herein on its part to be kept and performed and such failure or neglect shall continue for a period of not less than 30 days after the City has notified the College in writing of the College's default hereunder and the College has failed to correct such default within said 30 days, then City may, at its option, immediately or at any time thereafter without demand or notice, cancel this agreement in its entirety. The waiver by City of any breach of any term, condition, or covenant herein contained shall not be deemed a waiver of any subsequent breach of the same, or any other term, condition, or covenant.

VIII.

ASSIGNMENT

The College 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.

IX.

AMENDMENTS

This agreement may be amended by the mutual agreement of the parties hereto in writing to be attached hereto and incorporated into this agreement.

X.

SOVEREIGN IMMUNITY

By executing this agreement, the City is not waving 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.

XI.

ATTORNEY'S FEES

BY EXECUTING THIS AGREEMENT, THE COLLEGE 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 COLLEGE SPECIFICALLY AGREES THAT IF THE COLLEGE 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 COLLEGE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH THE COLLEGE MIGHT OTHERWISE BE ENTITLED.

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

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

XII.

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.

XIII.

RELEASE

NOTWITHSTANDING ANY OTHER PROVISION, COLLEGE HEREBY RELEASES, RELINQUISHES, ACQUITS AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS CLAIMS OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH COLLEGE 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

XIV.

THIRD-PARTY BENEFICIARY

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

EXECUTED by the duly authorized officials of the City and the College as of 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

APPROVED AS TO CONTENT
AND COMPLETENESS:

Amy M. Turner, City Secretary

MIDLAND COMMUNITY COLLEGE
DISTRICT

By _____
Dr. Steve Thomas, President

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the Midland Community College District.

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

Notary Public, State of _____



City of Midland
Office Memorandum

DATE: 9/11/2012

TO: The Honorable Mayor and City Council Members

FROM: Amy Turner, City Secretary

SUBJECT: Consider a resolution authorizing a contract with the Arts Council of Midland in the amount of \$115,000 for encouragement, promotion, improvement, and education of arts in the City.

The proposed resolution authorizes the Mayor to execute a contract with the Arts Council of Midland. The funding was approved with the adoption of the Fiscal Year 2012-2013 operating budget on August 27, 2012.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF
AN AGREEMENT WITH THE ARTS COUNCIL OF
MIDLAND FOR THE ENCOURAGEMENT,
PROMOTION, IMPROVEMENT AND APPLICATION
OF THE ARTS IN THE CITY**

WHEREAS, the City of Midland levies a tax within the City upon the occupancy of any room or space furnished by any hotel or motel; and

WHEREAS, pursuant to the provisions of Texas Tax Code Ann. §§ 351.101 - .107, the City may use such tax revenues for the encouragement, promotion, improvement and application of the arts; and

WHEREAS, the Council finds it to be in the public interest to enter into a contract with the Arts Council of Midland for the encouragement, promotion, improvement and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape, and sound recording, and other arts related to the presentation, performance, execution and exhibition of these major art forms in the City;

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 contract with the Arts Council of Midland for the encouragement, promotion, improvement and application of the arts within the City. Said contract to be in the form 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 the Arts Council of Midland the sum of \$115,000.00 from funds available in Fiscal Year 2012-2013 Budget Account 090 (Hotel/Motel) - 005 (Administration) - 0690 (Hotel/Motel) - 6990 (Miscellaneous) pursuant to the terms of said contract.

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:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

THIS AGREEMENT, made and entered into on this 12th day of September, 2012, between the City of Midland, Texas, a home rule municipal corporation, hereinafter called “City,” and the Arts Council of Midland, a Texas nonprofit corporation having its principal place of business in Midland, Texas, hereinafter called “Contractor”;

W I T N E S S E T H:

WHEREAS, the City levies a tax within the City upon the occupancy of any room or space furnished by any hotel or motel, and pursuant to the provisions of Texas Tax Code Ann. §§ 351.101 - .107, may use such tax revenues for the encouragement, promotion, improvement, and application of the arts; and

WHEREAS, the Contractor has for numerous years encouraged, promoted and fostered the development of the arts within the City of Midland, Texas, and as a result thereof has obtained certain knowledge and expertise in this particular area of endeavor; and

WHEREAS, it is the desire of the parties hereto to combine their efforts for the purpose of providing an effective program for developing, encouraging, promoting, and fostering the arts in Midland;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits which will accrue to each of the parties hereof, as well as the general citizenry of the City of Midland, Texas, the parties have agreed and do hereby agree as follows:

I.

ENCOURAGING, PROMOTING, AND FOSTERING THE ARTS

The Contractor agrees to develop and implement a program for the encouragement, promotion, improvement, and application of the arts in Midland, Texas, which may include instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures,

radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of these major art forms.

II.

COMPENSATION

The City agrees to pay the Contractor as compensation for the services rendered under this agreement the total sum of One Hundred Fifteen Thousand Dollars (\$115,000.00) to be used to sub-grant events in Midland, Texas that encourage, promote, improve or apply the major art forms or similar art forms listed in Section I. The City agrees to pay the sum above, not to exceed a total of One Hundred Fifteen Thousand Dollars (\$115,000.00), within thirty (30) days of the date of the receipt of a written invoice, in conjunction with the requirements of Section V, Books and Records of this agreement. The invoice shall be sent to the City Manager, P.O. Box 1152, Midland, Texas 79702.

III.

INDEMNITY

CONTRACTOR 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 CONTRACTOR, its agents or employees, or any subcontractor, arising out of, or resulting from, Contractor's use of, or activities on, the Agreement Premises, and Contractor 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.

CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL 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 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 AGREEMENT AND CONTRACTOR 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.

IV.

INDEPENDENT CONTRACTOR

Contractor shall operate hereunder as an independent contractor and not as an officer, agent, servant, or employee of City. Contractor shall have exclusive control of, and the exclusive right to control, the details of the work to be performed hereunder and all personnel performing the same, and shall be solely responsible for the acts and omissions of its officers, members, agents, servants, employees, subcontractors, program participants, volunteers, licensees, and invitees. In no event shall any person participating in or performing any of the Contractor's duties or responsibilities hereunder 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. 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 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 Contractor’s work. Contractor shall assume exclusive responsibility for the work. Contractor is entirely free to do the work in its own way.

V.

BOOKS AND RECORDS

Contractor shall provide, on a monthly basis during the term of this agreement, reports showing the disposition of the funds provided by the City under this agreement and that such funds were used only for the purposes stated in this agreement. The report required by this paragraph shall be filed no later than twenty (20) days following the end of the month for which the report is due. Reports shall be filed with the City at the office of the City Secretary. Any and all funds which remain unaccounted for or unspent at the end of the term of this agreement shall, at the City’s direction, be returned to the City.

Contractor shall maintain books of account with correct entries of all expenditures of the funds provided under this agreement and of funds allocated from other sources. Contractor shall maintain funds provided by the City in a separate account and may not commingle such funds with any other monies or maintain it in any other account. Any and all books of account shall be at all times open to the inspection of the City or any of its officers or duly authorized agents. Upon such inspection, the City or its officers or agents shall be afforded the opportunity on premises to make photographic copies of any and all documentation of books of account relating to the disposition of funds provided by the City under agreement and funds allocated from other sources.

Contractor shall maintain these books of account in Midland County for a period of three (3) years following the expiration of the term for which they are applicable.

VI.

REPORTING

Contractor shall provide a quarterly reporting, in a manner consistent with the evaluation plan furnished in the funding application for the fiscal year 2012-2013, at the end of each three month period of this agreement, of its accomplishments and ongoing projects and programs related to the services provided for herein and made or begun in this term.

In the event Contractor desires to extend the term of this agreement beyond its stated date of expiration pursuant to paragraph VII, an annual reporting shall be included with the submission and request for extension.

VII.

TERM OF AGREEMENT

The term of this agreement is for a period beginning on October 1, 2012, and ending on September 30, 2013.

Contractor agrees that, in the event it desires to extend the term of this agreement beyond its stated date of expiration, it shall submit a written request for extension to the City Manager of the City of Midland at least 120 days prior to the current expiration date hereof and that such submission shall include the Contractor's anticipated budget, goals and objectives for the extended period as well as the annual report on accomplishments during the current term; provided however, that the City is under no duty or obligation to grant the requested extension, and that before any such extension becomes effective, it must be in writing as an amendment to this agreement and approved by the City Council of the City of Midland.

VIII.

DEFAULT

If Contractor shall fail or neglect to do or perform or observe any of the covenants contained herein on its part to be kept and performed and such failure or neglect shall continue for a period of not less than thirty (30) days after the City has notified Contractor in writing of Contractor's default hereunder and Contractor has failed to correct such default within said thirty (30) days, then City may, at its option, immediately or any time thereafter without demand or notice, cancel this agreement in its entirety. The waiver by City of any breach of any term, condition, or covenant herein contained shall not be deemed a waiver of any subsequent breach of the same, or any other term, condition or covenant. In the event that City cancels this agreement under the terms of this paragraph, any and all funds which remain unaccounted for or unspent at such time shall be returned to the City.

IX.

ASSIGNMENT

Contractor 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.

X.

AMENDMENTS

This agreement may be amended by the mutual agreement of the parties hereto in writing to be attached hereto and incorporated into this agreement.

XI.

SOVEREIGN IMMUNITY

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

XII.

ATTORNEY'S FEES

BY EXECUTING THIS AGREEMENT, THE ARTS COUNCIL 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. CONTRACTOR SPECIFICALLY AGREES THAT IF CONTRACTOR 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, 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 AGREEMENT. CONTRACTOR FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY

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

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

XIII.

RELEASE

NOTWITHSTANDING ANY OTHER PROVISION, CONTRACTOR HEREBY RELEASES, RELINQUISHES, ACQUITS AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS CLAIMS 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 CITY'S NEGLIGENCE.

XIV.

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.

XV.

THIRD-PARTY BENEFICIARY

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

EXECUTED by the duly authorized officials of the City and the Contractor as of 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

APPROVED AS TO CONTENT
AND COMPLETENESS:

Amy M. Turner, City Secretary

THE ARTS COUNCIL OF MIDLAND

By _____
Executive Director

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the Arts Council of Midland.

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

Notary Public, State of _____



City of Midland
Office Memorandum

DATE: 9/11/2012

TO: The Honorable Mayor and City Council Members

FROM: Amy Turner, City Secretary

SUBJECT: Consider a resolution authorizing a contract with COM Aquatics in the amount of \$22,000 for advertising, promotion and solicitation of aquatic activities in Midland.

The proposed resolution authorizes the Mayor to execute a contract with COM Aquatics, Inc. The funding was approved with the adoption of the Fiscal Year 2012-2013 operating budget on August 27, 2012.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
CONTRACT WITH COM AQUATICS,
INCORPORATED, FOR ADVERTISING, PROMOTION
AND SOLICITATION OF AQUATIC ACTIVITIES IN
MIDLAND**

WHEREAS, the Council finds it to be in the public interest to authorize the execution of a contract with COM Aquatics, Inc., for advertising, promotion and solicitation of aquatic activities in Midland;

**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 contract with COM Aquatics, Inc., for advertising, promotion and solicitation of aquatic activities in Midland. Said contract to be in the form 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 make payments to COM Aquatics, Inc., in the total amount of Twenty-Two Thousand Dollars (\$22,000.00) from funds available in Fiscal Year 2012-2013 Budget Account 090 (Hotel/Motel) - 005 (Administration) - 0690 (Hotel/Motel) - 6990 (Miscellaneous), pursuant to the terms of said contract.

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:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CONTRACT

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

This contract made and effective this 12th day of September, 2012, by and between the City of Midland, Texas, a home rule municipal corporation, hereinafter called “City,” and COM Aquatics, Incorporated, a Texas nonprofit corporation, hereinafter referred to as “Consultant” evidences the following:

WITNESSETH:

WHEREAS, Consultant and the City desire to promote aquatic activities in Midland; and

WHEREAS, Consultant has special knowledge and expertise in promoting such activities;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and mutual benefits which will accrue to each of the parties hereof, as well as the general citizenry of the City of Midland, Texas, the parties have agreed and do hereby agree as follows:

I.

TERM

This contract and its terms and conditions shall be in effect for a period beginning on October 1, 2012, and ending September 30, 2013. This contract may be amended or terminated by mutual agreement of both parties in writing upon thirty (30) days written notice.

II.

SERVICES

Consultant agrees to advertise, promote, and solicit aquatic activities in the City.

III.

PAYMENT

City agrees to pay to the Consultant as compensation for the services rendered under this Agreement the sum of Twenty-Two Thousand Dollars (\$22,000.00), which is to be utilized to advertise, promote and solicit aquatic activities in the City, including the advertisement and promotion of a prize meet in the City. Consultant shall spend not more than Two Thousand Dollars (\$2,000.00) of such sum for associated travel expenses.

The City agrees to pay the sum of Twenty-Two Thousand Dollars (\$22,000.00) by the 10th day after execution of this Agreement.

In the event that this contract is renewed or extended for additional years, the amount of funds to be provided by the City to the Consultant shall be determined by the Midland City Council at the time said Council adopts the City's annual budget.

IV.

INDEMNITY

CONSULTANT 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 CONSULTANT, its agents or employees, or any subcontractor, arising out of, or resulting from Consultant's use of, or activities on, the Agreement Premises, and Consultant 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.

CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL 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 CONSULTANT OR CONSULTANT'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 CONSULTANT 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.

V.

OWNERSHIP OF DOCUMENTS

All reports, information, and other data prepared, assembled or received by Consultant pursuant to the services provided for in this agreement and other related documents or items shall remain the sole property of the Consultant.

VI.

RIGHT OF REVIEW

Consultant shall provide to the City on a quarterly basis during the term of this agreement a report and full documentation showing the disposition of the funds provided by the City under this agreement and that such funds were used only for the purposes stated in Paragraph II of this agreement. Said report shall be filed in the Office of the City Secretary not later than twenty (20) days following the end of the quarter for which the report is due.

Any and all funds which remain unaccounted for or unspent at the end of the term of this agreement shall, at the City's direction, be returned to the City.

The Consultant shall not commingle funds received from the City with any other monies.

Consultant shall maintain books of account with correct entries of all expenditures of funds provided pursuant to this agreement. Any and all documentation relating to funds received pursuant to this agreement shall be at all times open to the inspection of the City or any of its officers or duly authorized agents. Upon such inspection, the City or its officers or agents shall be afforded the opportunity on premises to make photographic copies of any and all documentation relating to funds received pursuant to this agreement.

Consultant shall maintain these books of account in Midland County for a period of three (3) years following the expiration of the term for which they are applicable.

VII.

REPORTING

Consultant shall provide by the end of the seventh (7th) month of this agreement a reporting, in a manner consistent with the evaluation plan furnished in the funding application for the fiscal year 2012-2013, for the first six (6) months of this agreement, of its accomplishments and ongoing projects and programs related to the services provided for herein and made or begun in this term.

In the event Consultant desires to extend the term of this agreement beyond its stated date of expiration pursuant to paragraph I, a similar annual reporting shall be included with the submission and request for extension.

VIII.

ADDRESSES

For purposes of written notification as provided herein, all written notices to the City and to Consultant shall be addressed as follows:

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

COM Aquatics
3003 North "A"
Midland, TX 79705

IX.

INDEPENDENT CONTRACTOR

The City and the Consultant by the execution of this contract do not change the independent status of Consultant. No term or provision hereof or act of Consultant in the performance of this contract shall be construed as making the Consultant the agent, servant, or employee of the City. Consultant is, and shall remain, an independent contractor with full, complete and exclusive authority to advise its own coordinator and staff and to determine the method of performance of the work covered hereby. The fact that the City or City's representative shall have the right to carry out the other prerogatives which are expressly reserved to and vested in the City or the City's representative hereunder, is not intended to and shall not at anytime change or affect the status of the Consultant as an independent contractor with respect to either the City or the City's representatives or to the support staff mentioned herein or to any other person, firm or corporation. 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. Consultant 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 Consultant's work. The Consultant shall have exclusive responsibility for the work. Consultant is entirely free to do the work in its own way.

X.

SOVEREIGN IMMUNITY

By executing this agreement, the City is not waving 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.

XI.

ATTORNEY'S FEES

BY EXECUTING THIS AGREEMENT, CONSULTANT AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE CONSULTANT SPECIFICALLY AGREES THAT IF THE CONSULTANT BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED

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

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

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

XII.

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.

XIII.

RELEASE

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

XIV.

INSURANCE

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

Comprehensive General Liability (including Contractual liability):

Personal Injury	\$1,000,000 per person
and Accidental Death:	\$1,000,000 per occurrence

Property Damage:	\$250,000 per occurrence
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Workers' Compensation:	Statutory limits
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The Workers' Compensation coverage provided by Consultant shall inure to the benefit of employees injured during the course and scope of their employment by Consultant pursuant to this Agreement. All insurance required pursuant to this Agreement shall name the City as an additional insured except Workers' Compensation. All insurance coverage and City's status as an additional insured and the waivers of subrogation, as appropriate, shall be evidenced by one or more certificate(s) of insurance provided to City upon signing of this Agreement. City shall be provided the notice by Consultant's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

XV.

THIRD-PARTY BENEFICIARY

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

XVI.

ASSIGNMENT

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

In witness whereof, the duly authorized undersigned officials have executed this Agreement on the day and year first written above.

CITY OF MIDLAND, TEXAS

By _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Amy M. Turner, City Secretary

COM AQUATICS, INCORPORATED

By _____
Brad Swendig, President

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of COM Aquatics, Incorporated.

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

Notary Public, State of _____



City of Midland
Office Memorandum

DATE: 9/11/2012

TO: The Honorable Mayor and City Council Members

FROM: Amy Turner, City Secretary

SUBJECT: Consider a resolution authorizing a contract with the Commemorative Air Force in the amount of \$50,000 to promote tourism and the hotel industry in Midland.

The proposed resolution authorizes the Mayor to execute a contract with Commemorative Air Force, Inc. The funding was approved with the adoption of the Fiscal Year 2012-2013 operating budget on August 27, 2012.

RESOLUTION NO.

**RESOLUTION AUTHORIZING AN AGREEMENT WITH
THE COMMEMORATIVE AIR FORCE,
INCORPORATED, TO PROMOTE TOURISM AND THE
HOTEL INDUSTRY IN THE CITY**

WHEREAS, the Commemorative Air Force, Inc., promotes tourism and the hotel industry by attracting registrants and tourists to the City; and

WHEREAS, the Council finds it to be in the public interest to enter into a contract with the Commemorative Air Force, Inc., to assist in attracting tourists to the City;

**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 contract with the Commemorative Air Force, Inc., to facilitate its attracting tourists to the City of Midland. Said contract to be in the form 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 the Commemorative Air Force, Inc., the sum of \$50,000.00 from funds available in Fiscal Year 2012-2013 Budget Account 090 (Hotel/Motel) - 005 (Administration) - 0690 (Hotel/Motel) - 6990 (Miscellaneous), pursuant to the terms of said contract.

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:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

THIS AGREEMENT, made and entered into this 12th day of September, 2012, between the City of Midland, Texas, a home rule municipal corporation, hereinafter referred to as "City," and the Commemorative Air Force, Inc., a Texas non-profit corporation, hereinafter referred to as "CAF."

W I T N E S S E T H:

WHEREAS, the City levies a tax within the City upon the occupancy of any room or space furnished by any hotel or motel, and pursuant to the provisions of Texas Tax Code Ann. §§ 351.101 - .107, as amended, may use such tax revenues for advertising and conducting solicitations and promotional programs to attract tourists and registrants to the municipality or its vicinity; and

WHEREAS, CAF has advertised and conducted solicitations for airshows and other events to be held in the City of Midland, Texas, so as to attract tourists and registrants to the City; and

WHEREAS, it is the desire of the parties hereto to combine their efforts for the purpose of attracting tourists to the City so as to promote tourism and the hotel industry;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits which will accrue to each of the parties hereof, as well as the general citizenry of the City of Midland, Texas, the parties have agreed and do hereby agree as follows:

ARTICLE I - ADVERTISEMENT

CAF agrees to advertise for the purpose of attracting tourists and registrants to airshows, the CAF Museum, Texas Medal of Honor, and other events held by the CAF.

ARTICLE II- PAYMENT

In consideration of the CAF promoting the CAF airshows, the Texas Medal of Honor, and the CAF Museum and the City of Midland and the Midland International Airport, the City agrees to pay the CAF the sum of \$50,000.00 during the term of this agreement. Such sum shall be paid to CAF in monthly installments based on invoices or statements received from CAF and approved by the City Manager. However, CAF understands that such monies paid by City to CAF under this section of the agreement are derived from the tax revenues collected under the City hotel occupancy tax ordinance, and that the City has estimated said tax revenues to be collected during the term of this agreement in its budget for the Fiscal Year 2012-2013. If the tax revenues actually collected by the City during any calendar quarter as set forth in the City hotel occupancy tax ordinance falls below the estimated tax revenues to be collected during such calendar quarter under the City budget for the fiscal year 2012-2013 by 8 percent or more, then the City shall have the right to reduce the above described payments to the CAF, upon 30 days notice to the CAF, by the same percentage that such tax revenues actually collected were less than the said estimate of tax revenues to be received.

ARTICLE III - TERM

The term of this agreement is for a period beginning on October 1, 2012 and ending on September 30, 2013.

CAF agrees that, in the event it desires to extend the term of this agreement beyond its stated date of expiration, it shall submit a written request for extension to the City Manager of the City of Midland at least 120 days prior to the current expiration date hereof and that such submission shall include the CAF's anticipated budget, goals and objectives for the extended period as well as the annual report on accomplishments during the current term; provided however, that the City is under no duty or obligation to grant the requested extension, and that before any such extension becomes effective, it must be in writing as an amendment to this agreement and approved by the City Council of the City of Midland.

ARTICLE IV- BOOKS AND RECORDS

CAF shall provide, on a monthly basis during the term of this agreement, reports and full documentation showing the expenditures made pursuant to this agreement and that such funds were used only for the purposes stated in this agreement.

CAF shall maintain books of account with correct entries of all expenditures which are made according to the terms of this agreement and of funds allocated from other sources. Any and all books of account of CAF shall be at all times open to the inspection of the City or any of its officers or duly authorized agents. Upon such inspection, the City or its officers or agents shall be afforded the opportunity on premises to make photographic copies of any and all documentation of books of account, including but not limited to statements of account relating to the disposition of funds provided by the City under this agreement and funds allocated from other sources.

CAF shall maintain these books of account in Midland County for a period of three (3) years following the expiration of the term for which they are applicable.

ARTICLE V - REPORTING

By the end of each three month period of the term of this agreement, CAF shall provide to the City Manager a reporting of its accomplishments and ongoing projects and programs related to the services provided for herein for that quarter. Said reporting shall be in a form consistent with the evaluation plan furnished in the CAF's funding application for Fiscal Year 2012-2013.

In the event the CAF desires to extend the term of this agreement beyond its stated date of expiration pursuant to paragraph III, a similar annual reporting for the entire term of the contract shall be included with the submission and request for extension.

ARTICLE VI - INDEPENDENT CONTRACTOR

It is expressly understood and agreed that CAF 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 CAF 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 CAF, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and CAF. No person performing any of the work and services described hereunder by CAF 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. CAF 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 CAF’s work. CAF shall assume exclusive responsibility for the work. CAF is entirely free to do the work in its own way.

ARTICLE VII - INDEMNITY

CAF 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 CAF, its agents or employees, or any subcontractor, arising out of, or resulting from CAF’s use of, or activities on, the Agreement Premises, and CAF 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.

CAF SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL 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 CAF OR CAF'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 CAF 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 VIII - MUTUAL AGREEMENT

This agreement may be amended by the mutual agreement of the parties hereto in writing to be attached to and incorporated into this agreement.

ARTICLE IX - REGULATIONS

CAF shall adhere to all local, state, and federal laws and regulations that may affect its actions made pursuant to this contract, and shall maintain in effect during the term of this agreement any and all federal, state and local licenses and permits which may be required of CAF generally.

ARTICLE X - ASSIGNMENT

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

ARTICLE XI - WAIVER

The waiver by City of any breach of any term, condition, or covenant herein contained shall not be deemed a waiver of any subsequent breach of the same, or any other term, condition, or covenant.

ARTICLE XII- 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.

ARTICLE XIII- EXECUTION

This contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

ARTICLE XIV - FORCE MAJEURE

Neither City nor CAF shall be required to perform any term, condition or covenant in this contract so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, civil riots, floods and any other cause not reasonably within the control of City or CAF except as herein provided, and which by the exercise of due diligence City or CAF is unable, wholly or in part, to prevent or overcome.

ARTICLE XV - COMPLETE AGREEMENT

This agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties which relate to matters in this agreement.

ARTICLE XVI - SOVEREIGN IMMUNITY

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

ARTICLE XVII- ATTORNEY'S FEES

BY EXECUTING THIS AGREEMENT, CAF 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 CAF SPECIFICALLY AGREES THAT IF THE CAF 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 CAF AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CAF MIGHT OTHERWISE BE ENTITLED.

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

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

ARTICLE XVIII - RELEASE

NOTWITHSTANDING ANY OTHER PROVISION, CAF HEREBY RELEASES, RELINQUISHES, ACQUITS AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS CLAIMS OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH CAF 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 XIX - THIRD PARTY BENEFICIARY

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

CITY OF MIDLAND, TEXAS

By _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Amy M. Turner, City Secretary

COMMEMORATIVE AIR FORCE,
INCORPORATED

By _____
Title _____

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the Commemorative Air Force, Inc.

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

Notary Public, State of _____



City of Midland
Office Memorandum

DATE: 9/11/2012

TO: The Honorable Mayor and City Council Members

FROM: Amy Turner, City Secretary

SUBJECT: Consider a resolution authorizing a contract with the Downtown Midland Management District in the amount of \$50,000 to promote tourism and the hotel industry in Midland.

The proposed resolution authorizes the Mayor to execute a contract with the Downtown Midland Management District. The funding was approved with the adoption of the Fiscal Year 2012-2013 operating budget on August 27, 2012.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
CONTRACT WITH THE DOWNTOWN MIDLAND
MANAGEMENT DISTRICT TO PROMOTE TOURISM
AND THE CONVENTION AND HOTEL INDUSTRY IN
DOWNTOWN MIDLAND; CITY TO AWARD THE SUM
OF \$50,000.00 FROM HOTEL/MOTEL FUNDS**

WHEREAS, the Council finds it to be in the public interest to enter into a contract with the Downtown Midland Management District (“DMMD”) wherein the City grants to the DMMD \$50,000.00 for their efforts in promoting tourism and the convention and hotel industry in Midland, Texas;

**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 contract with the DMMD wherein the City grants to the DMMD \$50,000.00 for their efforts in promoting tourism and the convention and hotel industry in Downtown Midland, said contract being attached hereto as Exhibit “A” and incorporated herein for all legal purposes.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay the Downtown Midland Management District pursuant to the terms of said contract the sum of \$50,000.00 from funds available in the Hotel/Motel Fund (090) Administration (005) Non-Departmental (0690) Miscellaneous (6990) budget account upon receipt of statement or invoice 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:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

AGREEMENT

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

THIS AGREEMENT, made and effective this 12th day of September, 2012, between the City of Midland, Texas, a home rule municipal corporation, hereinafter called “City”, and the Downtown Midland Management District, hereinafter called “District”.

W I T N E S S E T H:

WHEREAS, the City levies a tax within the City upon the occupancy of any room or space furnished by any hotel or motel, and pursuant to the provisions of Tex. Tax Code Ann. §§ 351.101 - .107 (Vernon Supp. 2011), must use such tax revenues to encourage, promote and foster tourism and the convention and hotel industry in the City; and

WHEREAS, the District has for numerous years promoted, fostered, and otherwise advertised the City as a destination for tourism and conventions and as a result thereof has obtained certain knowledge and expertise in this particular area of endeavor; and

WHEREAS, it is the desire of the parties hereto to combine their efforts for the purpose of providing an effective economic development program for Midland’s Hotel and or Motel industry and for the purpose of providing an effective program which would encourage, promote and foster tourism and the convention and hotel industry in Midland;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits which will accrue to each of the parties hereof, as well as the general citizenry of the City of Midland, Texas, the parties have agreed and do hereby agree as follows:

I.

ADVERTISING AND PROMOTION OF THE CITY OF MIDLAND

The City agrees to pay to the District, as compensation for promoting tourism and the convention and hotel industry in the City, the sum of \$50,000.00. Such sum shall be paid in a lump sum by the City Treasurer upon statement or invoice approved by the City Manager. The District shall fund events only in Downtown Midland.

II.

INDEMNITY

DISTRICT 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 DISTRICT, its agents or employees, or any subcontractor, arising out of, or resulting from, District's use of, or activities on, the Agreement Premises, and District 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.

DISTRICT SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL 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 DISTRICT OR DISTRICT'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND DISTRICT 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.

III.

INDEPENDENT CONTRACTOR

District shall operate hereunder as an independent contractor and not as an officer, agent, servant, or employee of City. District shall have exclusive control of, and the exclusive right to control the details of the work to be performed hereunder and all personnel performing same, and shall be solely responsible for the acts and omissions of its officers, members, agents, servants, employees, subcontractors, program participants, volunteers, licensees, and invitees. In no event shall any person participating in or performing any of the District's duties or responsibilities hereunder 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. District 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 District's work. District shall assume exclusive responsibility for the work. The District is entirely free to do the work in its own way.

IV.

BOOKS AND RECORDS

District shall provide to the City, on a monthly basis during the term of this agreement, reports and full documentation showing the expenditures made pursuant to this agreement and that such funds were used in accordance with Chapter 351 of the Texas Tax Code and only for the purposes stated in this agreement.

The District shall maintain books of account with correct entries of all expenditures which are made according to the terms of this agreement and of funds allocated from other sources. Any and all books of account of the District shall be at all times open to the inspection of the City or any of its officers or duly authorized agents. Upon such inspection, the City or its officers or agents shall be afforded the opportunity on premises to make photographic copies of any and all documentation relating to all books of account of the District, including, but not limited to, books of account relating to the disposition of funds provided by the City under this agreement.

The District shall maintain these books of account in Midland County for a period of three (3) years following the expiration of the term for which they are applicable.

V.

REPORTING

By the end of the seventh (7th) month of this agreement, District shall submit to the City Manager a reporting of its accomplishments and ongoing projects and programs for the first six (6) months of this agreement related to the services provided for in Section I of this agreement and established or begun in this term. District must comply fully with this provision to be eligible for funds for expenditures made through September 30, 2013.

In the event the District desires to extend the term of this agreement beyond its stated date of expiration pursuant to paragraph VI, a similar annual reporting shall be included with the submission and request for extension.

VI.

TERM OF AGREEMENT

The term of this agreement is for a period beginning on October 1, 2012, and ending on September 30, 2013.

District agrees that, in the event it desires to extend the term of this agreement beyond its stated date of expiration, it shall submit a written request for extension to the City Manager of the City of Midland at least 120 days prior to the current expiration date hereof

and that such submission shall include the District's anticipated budget, goals and objectives for the extended period as well as the annual report on accomplishments during the current term; provided however, that the City is under no duty or obligation to grant the requested extension, and that before any such extension becomes effective, it must be in writing as an amendment to this agreement and approved by the City Council of the City of Midland.

VII.

DEFAULT

If District shall fail or neglect to do or perform or observe any of the covenants contained herein on its part to be kept and performed and such failure or neglect shall continue for a period of not less than 30 days after the City has notified District in writing of District's default hereunder and District has failed to correct such default within said 30 days, then City may, at its option, immediately or at any time thereafter without demand or notice, cancel this agreement in its entirety. The waiver by City of any breach of any term, condition, or covenant herein contained shall not be deemed a waiver of any subsequent breach of the same, or any other term, condition, or covenant.

VIII.

ASSIGNMENT

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

IX.

AMENDMENTS

This agreement may be amended by the mutual agreement of the parties hereto in writing to be attached hereto and incorporated into this agreement.

X.

ATTORNEY'S FEES

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

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

THE DISTRICT AND OWNER ARE RELYING ON THEIR OWN

JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

XI.

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.

XII.

SOVEREIGN IMMUNITY

By executing this agreement, the City is not waving 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.

XIII.

RELEASE

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

XIV.

THIRD-PARTY BENEFICIARY

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

XV.

NOTICES AND CORRESPONDENCE

Payments and other correspondence or notices made pursuant to this Agreement shall be sent to the respective parties at the following addresses:

To the City of Midland, Texas:

Courtney Sharp,
City Manager
Midland City Hall
P.O. Box 1152
Midland, Texas 79702

To the Downtown Midland
Management District:

Natalie Shelton,
Executive Director
Downtown Midland
Management District
109 North Main
Midland, Texas 79701

EXECUTED by the duly authorized officials of the City and the District as of 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

APPROVED AS TO CONTENT
AND COMPLETENESS:

Amy M. Turner, City Secretary

DOWNTOWN MIDLAND
MANAGEMENT DISTRICT

By _____
W. L. "Scooter" Brown, Chairman

THE STATE OF TEXAS §
§
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared W. L. "SCOOTER" BROWN, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the Downtown Midland Management District.

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

Notary Public, State of _____



City of Midland
Office Memorandum

DATE: 9/11/2012

TO: The Honorable Mayor and City Council Members

FROM: Amy Turner, City Secretary

SUBJECT: Consider a resolution authorizing a contract with the George W. Bush Childhood Home, Inc. in the amount of \$7,500 to promote tourism and the hotel industry in Midland.

The proposed resolution authorizes the Mayor to execute a contract with George W. Bush Childhood Home, Inc. The funding was approved with the adoption of the Fiscal Year 2012-2013 operating budget on August 27, 2012.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
CONTRACT WITH THE GEORGE W. BUSH
CHILDHOOD HOME, INCORPORATED, TO PROMOTE
TOURISM AND THE CONVENTION AND HOTEL
INDUSTRY IN THE CITY OF MIDLAND**

WHEREAS, the Council finds it to be in the public interest to authorize the execution of a contract with the George W. Bush Childhood Home, Inc., to promote tourism and the convention and hotel industry in the City of Midland;

**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 contract with the George W. Bush Childhood Home, Inc., to promote tourism and the convention and hotel industry in the City of Midland. Said contract to be in the form 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 make payments to the George W. Bush Childhood Home, Inc., in the total amount of \$7,500.00 from funds available in Fiscal Year 2012-2013 Budget Account 090 (Hotel/Motel) - 005 (Administration) - 0690 (Hotel/Motel) - 6990 (Miscellaneous), pursuant to the terms of said contract.

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:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CONTRACT

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

This contract made and effective this 12th day of September, 2012, by and between the City of Midland, Texas, a home rule municipal corporation, hereinafter called "City," and George W. Bush Childhood Home, Incorporated, a Texas nonprofit corporation, hereinafter referred to as "Consultant" evidences the following:

WITNESSETH:

WHEREAS, Consultant and the City desire to promote tourism and the convention and hotel industry in the City; and

WHEREAS, Consultant provides a means for promoting said industries by sponsoring activities which draw visitors to Midland;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and mutual benefits which will accrue to each of the parties hereof, as well as the general citizenry of the City of Midland, Texas, the parties have agreed and do hereby agree as follows:

I.

TERM

This contract and its terms and conditions shall be in effect for a period beginning on October 1, 2012, and ending September 30, 2013. This contract may be amended or terminated by mutual agreement of both parties in writing upon thirty (30) days written notice.

II.

SERVICES

Consultant agrees to sponsor, advertise and promote the presidential history of the City of Midland.

III.

PAYMENT

City agrees to pay to the Consultant by the 10th day of each month of the term of this contract an amount equal to the invoices or statements submitted by Consultant for the previous month, and approved by the City Manager, not to exceed a total annual amount of \$7,500.00. This money is to be utilized to promote tourism and the convention and hotel industry in the City of Midland.

In the event that this contract is renewed or extended for additional years, the amount of funds to be provided by the City to the Consultant shall be determined by the Midland City Council at the time said Council adopts the City's annual budget.

IV.

INDEMNITY

CONSULTANT 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 CONSULTANT, its agents or employees, or any subcontractor, arising out of, or resulting from Consultant's use of, or activities on, the Agreement Premises, and Consultant 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.

CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL 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 CONSULTANT OR CONSULTANT'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 CONSULTANT 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.

V.

OWNERSHIP OF DOCUMENTS

All reports, information, and other data prepared, assembled or received by Consultant pursuant to the services provided for in this agreement and other related documents or items shall remain the sole property of the Consultant.

VI.

RIGHT OF REVIEW

Consultant shall provide to the City on a quarterly basis during the term of this agreement a report and full documentation showing the disposition of the funds provided by the City under this agreement and that such funds were used only for the purposes stated in Paragraph II of this agreement. Said report shall be filed in the Office of the City Secretary not later than twenty (20) days following the end of the quarter for which the report is due. Any and all funds which remain unaccounted for or unspent at the end of the term of this agreement shall, at the City's direction, be returned to the City.

The Consultant shall not commingle funds received from the City with any other monies.

Consultant shall maintain books of account with correct entries of all expenditures of funds provided pursuant to this agreement. Any and all documentation relating to funds received pursuant to this agreement shall be at all times open to the inspection of the City or any of its officers or duly authorized agents. Upon such inspection, the City or its officers or agents shall be afforded the opportunity on premises to make photographic copies of any and all documentation relating to funds received pursuant to this agreement.

Consultant shall maintain these books of account in Midland County for a period of three (3) years following the expiration of the term for which they are applicable.

VII.

REPORTING

Consultant shall provide by the end of the seventh (7th) month of this agreement a reporting, in a manner consistent with the evaluation plan furnished in the funding application for the Fiscal Year 2012-2013, for the first six (6) months of this agreement, of its accomplishments and ongoing projects and programs related to the services provided for herein and made or begun in this term.

In the event Consultant desires to extend the term of this agreement beyond its stated date of expiration pursuant to paragraph I, a similar annual reporting shall be included with the submission and request for extension.

VIII.

ADDRESSES

For purposes of written notification as provided herein, all written notices to the City and to Consultant shall be addressed as follows:

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

George W. Bush Childhood Home, Incorporated
Attn: Paul St. Hillaire
P.O. Box 8586
Midland, TX 79708

IX.

INDEPENDENT CONTRACTOR

The City and the Consultant by the execution of this contract do not change the independent status of Consultant. No term or provision hereof or act of Consultant in the performance of this contract shall be construed as making the Consultant the agent, servant, or employee of the City. Consultant is, and shall remain, an independent contractor with full, complete and exclusive authority to advise its own coordinator and staff and to determine the method of performance of the work covered hereby. The fact that the City or City's representative shall have the right to carry out the other prerogatives which are expressly reserved to and vested in the City or the City's representative hereunder, is not intended to and shall not at anytime change or affect the status of the Consultant as an independent contractor with respect to either the City or the City's representatives or to the support staff mentioned herein or to any other person, firm or corporation. It is further 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. Consultant 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

Consultant's work. The Consultant shall have exclusive responsibility for the work. Consultant is entirely free to the work in its own way.

X.

SOVEREIGN IMMUNITY

By executing this agreement, the City is not waving 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.

XI.

ATTORNEY'S FEES

BY EXECUTING THIS AGREEMENT, CONSULTANT AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE CONSULTANT SPECIFICALLY AGREES THAT IF THE CONSULTANT BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM

DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE CONSULTANT AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CONSULTANT MIGHT OTHERWISE BE ENTITLED.

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

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

XII.

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.

XIII.

RELEASE

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

XIV.

ASSIGNMENT

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

XV.

THIRD-PARTY BENEFICIARY

The City'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.

IN WITNESS WHEREOF, the undersigned duly authorized officials hereby execute this agreement on the day and year first written above.

CITY OF MIDLAND, TEXAS

By _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Amy M. Turner, City Secretary

GEORGE W. BUSH CHILDHOOD HOME,
INCORPORATED

By _____

Title _____

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of George W. Bush Childhood Home, Incorporated.

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

Notary Public, State of _____



City of Midland
Office Memorandum

DATE: 9/11/2012

TO: The Honorable Mayor and City Council Members

FROM: Amy Turner, City Secretary

SUBJECT: Consider a resolution authorizing a contract with the Midland Chamber of Commerce in the amount of \$1,332,069 to promote tourism, convention, and the hotel industry in Midland.

The proposed resolution authorizes the Mayor to execute a contract with the Midland Chamber of Commerce. The funding was approved with the adoption of the Fiscal Year 2012-2013 operating budget on August 27, 2012.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
CONTRACT WITH THE MIDLAND CHAMBER OF
COMMERCE TO PROMOTE TOURISM AND THE
CONVENTION AND HOTEL INDUSTRY IN THE CITY**

WHEREAS, the Council finds it to be in the public interest to enter into a contract with the Midland Chamber of Commerce to assist in advertising the City and to assist in enhancing and promoting tourism and the convention and hotel industry in the City;

**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 contract with the Midland Chamber of Commerce to promote tourism and the convention and hotel industry. Said contract to be in the form 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 the Midland Chamber of Commerce pursuant to the terms of said contract the sum of \$1,332,069.00 from funds available in the following Fiscal Year 2012-2013 Budget Accounts in the following amounts:

090 (Hotel/Motel) - 005 (Administration) - 0690 (Hotel/Motel) - 6990
(Miscellaneous): 1,332,069.00

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

THIS AGREEMENT, made and effective this 12th day of September, 2012, between the City of Midland, Texas, a home rule municipal corporation, hereinafter called “City,” and the Midland Chamber of Commerce, a Texas nonprofit corporation, hereinafter called “Chamber.”

W I T N E S S E T H:

WHEREAS, the City also levies a tax within the City upon the occupancy of any room or space furnished by any hotel or motel, and pursuant to the provisions of V.T.C.A., Tax Code § 351.101 *et seq.*, must use such tax revenues to encourage, promote and foster tourism and the convention and hotel industry in the City; and

WHEREAS, the Chamber has for numerous years promoted, fostered, and otherwise advertised the City as a destination for tourism and conventions and as a result thereof has obtained certain knowledge and expertise in this particular area of endeavor; and

WHEREAS, it is the desire of the parties hereto to combine their efforts for the purpose of providing an effective program which would encourage, promote and foster tourism and the convention and hotel industry in Midland;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits which will accrue to each of the parties hereof, as well as the general citizenry of the City of Midland, Texas, the parties have agreed and do hereby agree as follows:

I.

CONVENTION AND VISITORS BUREAU

1. Chamber agrees to provide a qualified and competent staff to be assigned to operate the Convention and Visitors Bureau for the purpose of encouraging, fostering, and developing the visitor industry and increased visitors expenditures from conventions,

meetings, tourism, corporate travel, and special events in the City. In this connection, the Chamber shall provide, through the Convention and Visitors Bureau, all management and administrative services necessary for the general promotional and tourist advertising of the City and its vicinity and conducting a solicitation and operating program to attract conventions and visitors to the City. Such management and administrative services shall include, but not be limited to, the conducting of solicitation programs to acquaint potential users with public meetings and convention facilities; the gathering and dissemination of research materials, planning materials, and promotional meetings, and special events; the meeting with representatives of conventions prior to the event to help ensure a successful convention or special event; the furnishing of facilities, personnel, and materials for the registration of convention delegates and registrants; and the providing of other activities designed to enhance the City's desirability as a visitor destination.

2. Chamber understands that its operation of the Convention and Visitors Bureau is to serve the general public for the promotion of conventions and tourism in the City and that the nature of the operation of said Bureau would tend to equate the acts and deeds of the Chamber's agents and employees as the acts and deeds of the City. Therefore, the Chamber shall notify the City regarding the reassignment or employment of employees working for the Bureau. This shall not be interpreted as changing the status of the Chamber as an independent contractor.

3. Chamber agrees to provide office space for the Convention and Visitors Bureau to be used for the purpose of implementing and carrying out the duties and responsibilities set forth in this section of this agreement. Said office space shall be of adequate size and appropriately located to serve the operational needs of said Bureau. Chamber agrees to allow said Bureau reasonable use of its files and other information relative to convention and tourism activities, and to allow access to equipment inventory to Chamber.

4. City agrees to pay to the Chamber as compensation for the services rendered under this section of the agreement a sum of \$81,839.08 per month during the term of this

agreement, not to exceed a total annual sum of \$982,069.00. Such monthly payment shall be paid by the City to the Chamber on or before the 10th day of each month. City agrees to pay to the Chamber a lump sum of \$210,000.00 on or before October 15, 2012, to be used by the Chamber for SEAM expenditures. The City agrees to pay the Chamber for promoting and operating the Midland Visitors Center, in an amount not to exceed \$140,000.00, upon presentation of a monthly invoice or statement from the Chamber and approved by the City Manager. However, Chamber understands that such monies paid by City to Chamber under this section of the agreement are derived from the tax revenues collected under the City hotel occupancy tax ordinance, and that the City has estimated said tax revenues to be collected during the term of this agreement in its budget for the fiscal year 2012-2013. If the tax revenues actually collected by the City during any calendar quarter as set forth in the City hotel occupancy tax ordinance falls below the estimated tax revenues to be collected during such calendar quarter under the City budget for the fiscal year 2012-2013 by 8 percent or more, then the City shall have the right to reduce the above described monthly payments to the Chamber, upon 30 days notice to the Chamber, by the same percentage that such said tax revenues actually collected were less than the said estimate of tax revenues to be received.

II.

INDEMNITY

CHAMBER 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 CHAMBER, its agents or employees, or any subcontractor, arising out of, or resulting from, Chamber's use of, or activities on, the Agreement Premises, and

Chamber 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.

CHAMBER SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL 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 CHAMBER OR CHAMBER'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 CHAMBER 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.

III.

INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Chamber 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 Chamber 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 Chamber, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Chamber. No person performing any of the work and services described hereunder by Chamber 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. Chamber 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 Chamber’s work. Chamber shall assume exclusive responsibility for the work. Chamber is entirely free to do the work in its own way.

IV.

BOOKS AND RECORDS

Chamber shall provide, on a monthly basis during the term of this agreement, reports and full documentation showing the disposition of the funds provided by the City under this agreement and that such funds were used only for the purposes stated in this agreement. Said monthly report shall be filed with the Office of the City Secretary no later than thirty (30) days following the last day of the month for which the report is due. Any and all funds which remain unaccounted for or unspent at the end of the term of this agreement shall, at the City’s direction, be returned to the City.

The Chamber shall maintain books of account with correct entries of all expenditures of the funds provided under this agreement and of funds allocated from other sources. The Chamber shall maintain funds provided by the City in a separate account and may not commingle such funds with any other monies or maintain it in any other account. Any and all books of account of the Chamber shall be at all times open to the inspection of the City or any of its officers or duly authorized agents. Upon such inspection, the City or its officers

or agents shall be afforded the opportunity on premises to make photographic copies of any and all documentation of books of account, including but not limited to statements of account relating to the disposition of funds provided by the City under this agreement and funds allocated from other sources.

The Chamber shall maintain these books of account in Midland County for a period of three (3) years following the expiration of the term for which they are applicable.

V.

REPORTING

Chamber shall provide quarterly reports of its activities and expenditures performed under Section I of this agreement. Said reports shall be made in a manner consistent with the evaluation plan furnished in the Chamber's funding application for Fiscal Year 2012-2013.

In the event the Chamber desires to extend the term of this agreement beyond its stated date of expiration pursuant to paragraph VII, a similar annual reporting shall be included with the submission and request for extension.

VI.

TERM OF AGREEMENT

The term of this agreement is for a period beginning on October 1, 2012, and ending on September 30, 2013.

Chamber agrees that, in the event it desires to extend the term of this agreement beyond its stated date of expiration, it shall submit a written request for extension to the City Manager of the City of Midland at least 120 days prior to the current expiration date hereof and that such submission shall include the Chamber's anticipated budget, goals and objectives for the extended period as well as the annual report on accomplishments during the current term; provided however, that the City is under no duty or obligation to grant the requested extension, and that before any such extension becomes effective, it must be in writing as an amendment to this agreement and approved by the City Council of the City of Midland.

VII.

DEFAULT

If Chamber shall fail or neglect to do or perform or observe any of the covenants contained herein on its part to be kept and performed and such failure or neglect shall continue for a period of not less than 30 days after the City has notified Chamber in writing of Chamber's default hereunder and Chamber has failed to correct such default within said 30 days, then City may, at its option, immediately or at any time thereafter without demand or notice, cancel this agreement in its entirety. The waiver by City of any breach of any term, condition, or covenant herein contained shall not be deemed a waiver of any subsequent breach of the same, or any other term, condition, or covenant.

VIII.

ASSIGNMENT

Chamber 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

IX.

AMENDMENTS

This agreement may be amended by the mutual agreement of the parties hereto in writing to be attached hereto and incorporated into this agreement.

X.

RELEASE

NOTWITHSTANDING ANY OTHER PROVISION, CHAMBER HEREBY RELEASES, RELINQUISHES, ACQUITS AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH CHAMBER 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.

XI.

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.

XII.

SOVEREIGN IMMUNITY

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

XIII.

THIRD-PARTY BENEFICIARY

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

XIV.

ATTORNEY'S FEES

BY EXECUTING THIS AGREEMENT, CHAMBER 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 CHAMBER SPECIFICALLY AGREES THAT IF THE CHAMBER 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 CHAMBER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CHAMBER MIGHT OTHERWISE BE ENTITLED.

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

EXECUTED by the duly authorized officials of the City and the Chamber as of 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

APPROVED AS TO CONTENT
AND COMPLETENESS:

Amy M. Turner, City Secretary

MIDLAND CHAMBER OF COMMERCE

By _____

Title _____

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the Midland Chamber of Commerce.

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

Notary Public, State of _____



City of Midland
Office Memorandum

DATE: 9/11/2012

TO: The Honorable Mayor and City Council Members

FROM: Amy Turner, City Secretary

SUBJECT: Consider a resolution authorizing a contract with the Midland Chamber of Commerce in the amount of \$605,581 to promote the management of the Midland Center and Centennial Plaza.

The proposed resolution authorizes the Mayor to execute a contract with the Midland Chamber of Commerce. The funding was approved with the adoption of the Fiscal Year 2012-2013 operating budget on August 27, 2012.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
CONTRACT WITH THE MIDLAND CHAMBER OF
COMMERCE FOR THE MANAGEMENT OF THE
MIDLAND CENTER AND CENTENNIAL PLAZA**

WHEREAS, the Midland Chamber of Commerce has obtained certain knowledge and expertise in management of the Midland Center and Centennial Plaza; and

WHEREAS, the Council finds it to be in the public interest to enter into a contract with the Midland Chamber of Commerce for management of the Midland Center and Centennial Plaza;

**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 contract with the Midland Chamber of Commerce for the management of the Midland Center and Centennial Plaza. Said contract to be in the form 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 the Midland Chamber of Commerce the sum of \$605,581.00 from funds available in Fiscal Year 2012-2013 Budget Account 090 (Hotel/Motel Fund) - 005 (Administration) - 0691 (Midland Center/Centennial Plaza) - 6990 (Miscellaneous) pursuant to the terms of said contract.

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:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

MANAGEMENT AND OPERATING AGREEMENT

This Agreement made and effective this 12th day of September, 2012, is between the City of Midland, Texas, a home rule municipal corporation, (“Owner”), and the Midland Chamber of Commerce, a Texas nonprofit corporation, (“Operator”) for the management of the Midland Center.

WITNESSETH:

WHEREAS, the City levies a tax within the City upon the occupancy of any room or space furnished by any hotel or motel, and pursuant to the provisions of Tex. Tax Code Ann. §§ 351.101-.107 (Vernon Supp. 2006), must use such tax revenues to encourage, promote and foster tourism and the convention and hotel industry in the City; and

WHEREAS, the Operator has for numerous years promoted, fostered, and otherwise advertised the City as a destination for tourism and conventions and as a result has obtained certain knowledge and expertise in this particular area of endeavor; and

WHEREAS, it is the desire of the parties hereto to combine their efforts for the purpose of providing an effective program to attract convention delegates and tourists to Midland so as to encourage, promote and foster tourism and the convention and hotel industry;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits which will accrue to each of the parties hereof, as well as the general citizenry of the City of Midland, Texas, the parties have agreed and do hereby agree as follows:

I.

SERVICES TO BE PROVIDED

Operator agrees to undertake full possession, control, management and operation of the property and facilities used as a civic center and exhibition hall known as the Midland Center. Operator further agrees to undertake the management, operation, and promotion of the property used in conjunction with the Midland Center described as Lots 13 through 24, Block 54, Original Town Addition to the City of Midland, known as Centennial Plaza. For purposes of this Agreement, the Midland Center and Centennial Plaza will be referred to

collectively as the “Convention Facilities”.

II.

TERM OF AGREEMENT

The term of this Agreement is for a period beginning on October 1, 2012, and ending on September 30, 2013.

Operator agrees that, in the event it desires to extend the term of this Agreement beyond its stated date of expiration, it shall submit a written request for extension to the City Manager of the City of Midland at least 90 days prior to the current expiration date hereof and that such submission shall include the operator’s anticipated budget, goals and objectives for the extended period as well as the annual report on accomplishments during the current term; provided however, that the Owner is under no duty or obligation to grant the requested extension, and that before any such extension becomes effective, it must be in writing as an amendment to this agreement and approved by the City Council of the City of Midland.

III.

DUTIES OF OPERATOR

The Operator agrees to perform all services necessary for the care, protection, maintenance, and operation of the Convention Facilities, including the following:

- A. Use all reasonable efforts to keep the Convention Facilities utilized by procuring occupants for and users of the Convention Facilities and negotiating and executing on its own behalf all agreements for use of the Convention Facilities in conjunction with the Operator’s continuing efforts to promote, solicit and encourage the selection of Midland, Texas as the location for various conventions and business and civic meetings. The Operator shall have the right to cancel or amend any agreement with third parties for the use of the Convention Facilities without the written consent of the Owner. All agreements made by the Operator for the use of the Convention Facilities shall be fulfilled by the Owner in the event of termination of this Agreement.
- B. Contract with Concessionaire(s) for services Operator wishes to provide for those

utilizing the Convention Facilities.

- C. Collection of all rentals, use fees, concessions and the other income from the Convention Facilities and the payment of same over to Owner as hereinafter provided. Nothing herein contained shall constitute a guarantee by the Operator of the payment of rent or other fees by those using the Convention Facilities.
- D. Maintenance of an office in the Midland Center and the administration of the salaries of all employees of the Operator who are engaged in the management and operation of the Convention Facilities, including a manager. The Operator shall administer all other costs in connection with the management and operation of the Operator's office, including telephone, facsimile, stationery, and similar expenses of the Operator.
- E. Employment and discharge of all servants, employees or contractors engaged in the management and operation of the Convention Facilities.
- F. Purchase of all equipment, tools, appliances, materials, supplies and uniforms necessary for the maintenance or operation of the Midland Center.
- G. Contract for and supervise the making of all renovations, alterations, and decorations for the Convention Facilities; provided that the Operator shall not contract for any nonbudgeted renovation, alteration, or decoration exceeding Two Thousand Dollars (\$2,000) without prior written approval of the Owner.
- H. For purchases of capital assets, Operator shall comply with Chapter 252 of the Local Government Code which is incorporated herein by reference for all legal purposes. Accordingly, purchases of more than \$3,000 but less than \$15,000 can be made only after Operator has contacted two (2) "disadvantaged businesses" as such term is defined by the Code. Purchases requiring more than \$15,000 can be made only after the Operator has complied with the procedures outlined in Chapter 252 for competitive sealed bidding or competitive sealed proposals. Operator shall comply with its own bid procedure approved by the Midland Center Advisory Board with regard to all other purchases.

- I. Contract for all of the services and commodities necessary in the operation and maintenance of the Convention Facilities including water, gas and electricity and the administration of the payment for all such services.
- J. Advertise the availability of the Convention Facilities and the active promotion of the use of said facilities through an active plan to promote, solicit, and encourage the selection of the Convention Facilities as the location for conventions and business and civic meetings.
- K. Prepare and file all returns and other documents required under the Federal Insurance Contributions Act and the Federal Unemployment Tax Act, or any similar federal or state legislation, and of all withholding tax returns required for employees of the Operator engaged in the operation and management of the Convention Facilities, and the administration of payment of all amounts required to be paid under the Federal Insurance Contributions Act and the Federal Unemployment Tax Act, or any similar federal or state legislation, and all withholding taxes.
- L. Comply with the requirements of Section 9-5-20 of the Midland City Code regarding possession and consumption of alcoholic beverages.
- M. Obtain the advice and consent of the Midland Center Advisory Board created and appointed by the City Council of the City of Midland, and the Midland Chamber of Commerce, in connection with employment of personnel, preparation of an operating budget, determination of uses for which the Convention Facilities are made available, major repairs, rental rates and all matters of policy regarding the Convention Facilities.

IV.

COMPENSATION

Owner agrees to pay to Operator a sum of \$605,581.00 for the operation of the Convention Facilities as described in this Agreement. The amount just stated are merely budget estimates and are not intended to limit the amount Owner can pay Operator under this

Agreement. These funds shall be paid by the Owner to Operator based on invoices or statements received from Operator and approved by the City Manager. Water and electrical expenses incurred in maintaining Centennial Plaza, expenses incurred in making structural changes to the Convention Facilities, and unexpected expenses which were not contemplated by this agreement shall be paid directly or reimbursed by Owner upon invoice or statement and approval by the City Manager. Operator understands that all monies paid by Owner to Operator under this Agreement are derived from the tax revenues collected under the City hotel occupancy tax ordinance, and that the Owner has estimated said tax revenues to be collected during the term of this Agreement in its budget for the fiscal year 2012-2013. If the tax revenues actually collected by the Owner during any calendar quarter as set forth in the City hotel occupancy tax ordinance falls below the estimated tax revenues to be collected during such calendar quarter the City budget for the fiscal year 2012-2013 by 8 percent or more, then the Owner shall have the right to reduce the above described payments to the Operator, upon 30 days notice to the Operator, by the same percentage that such tax revenues actually collected were less than the said estimate of tax revenues to be received.

V.

INDEMNITY

OPERATOR WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND OWNER AND ALL OF OWNER'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 OPERATOR, its agents or employees, or any subcontractor, arising out of, or resulting from Operator's use of, or activities on, the Agreement Premises, and Operator will be required to pay any judgment with costs which may be obtained against

Owner or any of its officers, agents or employees, including reasonable attorney's fees.

OPERATOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND OWNER AND ALL OWNER'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 OWNER, 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 OPERATOR OR OPERATOR'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 OPERATOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST OWNER OR ANY OF OWNER'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES

VI.

INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Operator 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 Operator 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 Operator, its officers, agents, employees, contractors

and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Owner and Operator. No person performing any of the work and services described hereunder by Operator 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. Operator 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 Operator’s work. Operator shall assume exclusive responsibility for the work. Operator is entirely free to do the work in its own way.

VII.

BOOKS AND RECORDS

Operator shall maintain books of account with correct entries of all receipts collected and expenditures made according to the terms of this Agreement and of funds allocated from other sources. Operator shall also keep canceled checks, vouchers, invoices and all other supporting documentation covering all items of income and expense related to the management and operation of the Convention Facilities. Any and all books of account of Operator and supporting documentation shall be at all times open to the inspection of the Owner or any of its officers or duly authorized agents. Upon such inspection, the owner or its officers or agents shall be afforded the opportunity on premises to make photographic copies of any and all documentation of books of account, including but not limited to statements of account relating to the disposition of funds provided by the Owner under this Agreement and funds allocated from other sources.

Operator shall maintain these books of account in Midland County for a period of three (3) years following the expiration of the term for which they are applicable.

VIII.

QUARTERLY REPORTING

Operator shall provide, on a quarterly basis during the term of this Agreement, reports and full documentation showing the expenditures made and receipts collected pursuant to this Agreement and, with regard to funds expended, that they were used only for the purposes stated in this Agreement. This report shall also reflect Operator's accomplishments, ongoing projects, and programs related to the services provided for herein for the quarter just completed. Said reporting shall be in a form consistent with the evaluation plan furnished in the Operator's funding application for fiscal year 2012-2013. This report shall be filed with the City Manager no later than thirty (30) days following the last day of the quarter for which the report is due.

IX.

RECEIPTS

All sums received by Operator from the use and operation of the Convention Facilities shall be deposited weekly with the Owner. In conjunction with its deposit, Operator shall also provide Owner with documentation summarizing the revenue activity for the preceding week.

X.

INSPECTION

Owner agrees to conduct a "walk-through" of the Convention Facilities twice a year in the months of September and March. The "walk-through" shall consist of an inspection of the structure and grounds of the Convention Facilities to determine if there is a need for maintenance and repair of the Convention Facilities.

XI.

INSURANCE

- A. The Operator shall procure and maintain comprehensive general liability insurance which covers the Operator and names the Owner as an additional insured and waives

all rights of subrogation in favor of the Owner. Said insurance shall protect Owner and Operator against any and all liability for death, personal injury, and accidental death, loss or damage arising out of or connected with the condition, occupation, or use of the Convention Facilities by Operator, its employees, agents, contractors, licensees, invitees, sublessees, and guests. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Operator and approved by Owner. The insurance provided pursuant to this section shall be in an amount not less than \$1,000,000.00 combined single limit, per occurrence.

- B. In the event Operator sells, furnishes, or allows to be consumed any alcoholic beverages in or on the Convention Facilities, Operator shall procure and maintain legal liquor liability insurance covering Owner and Operator for liability for property damage and personal injury or require that the same be provided and kept in force. Such insurance shall be kept in force at all times when alcoholic beverages are sold, furnished, or consumed in or on the Convention Facilities. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas approved by Operator. The Owner shall be named as an additional insured with Operator on all such insurance policies and all rights of subrogation shall be waived in favor of the Owner on all such policies. The insurance provided pursuant to this section shall be for not less than the amount of \$1,000,000.00 combined single limit, per occurrence. This insurance shall protect Owner and Operator against liability to any person or persons whose property damage or personal injury arises out of or in connection with the use or consumption of alcoholic beverages which are sold, furnished, or consumed in or on the Convention Facilities.
- C. Operator shall carry worker's compensation insurance in the amount required by law. Such insurance shall waive all rights of subrogation in favor of the Owner.
- D. Operator must require any subcontractor with which it contracts to procure and carry

at its expense, throughout the term of that contract, a policy of public liability insurance with limits of not less than \$100,000.00 per person and \$300,000.00 for each single occurrence for bodily injury or death, and \$100,000.00 for each single occurrence for injury to or destruction of property. The Owner and Operator shall be listed on this policy as additional insured. Such policy shall waive all rights of subrogation in favor of the Owner.

XII.

CERTIFICATES OF INSURANCE

- A. Operator shall furnish Owner with certificates of all insurance required by this Agreement. Operator agrees that if it does not keep this insurance in full force and effect as required by this Agreement, Owner may notify Operator of this failure, and if Operator does not deliver to Owner certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, Owner may, at its option, take out and/or pay the premiums on the insurance needed to fulfill Operator's obligations under the provisions of this Agreement. Upon demand from Owner, Operator shall reimburse Owner the full amount of any insurance premiums paid by Owner pursuant to this section, with interest at the rate of 10 percent per annum from the date of Owner's demand until reimbursement by Operator.
- B. Before alcoholic beverages may be sold, furnished, or consumed in Centennial Plaza, Operator must submit a certificate of insurance to Owner's legal department for approval. The certificate must show that all requirements of Section XI, paragraph (B) of this Agreement have been met.

XIII.

EXCLUSIVE AGREEMENT

The Owner, during the term of this Agreement, shall not authorize any other person, firm, or corporation to negotiate or act as manager or operator with respect to any use of the Convention Facilities. The Owner will keep the Operator informed concerning inquiries for

space or availability of the Convention Facilities by any person, firm or corporation. The Operator shall display within the Convention Facilities suitable signs to the effect that the Operator is the managing agent and operator of the Convention Facilities.

XIV.

NONDISCRIMINATION

The Operator, for itself, its legal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the premises that (1) no person on the ground of race, color, national origin, or disability shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of said Convention Facilities, and (2) that in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, or disability shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination.

XV.

INSOLVENCY

If, at any time during the term of this Agreement, there shall be filed by or against Operator in any court pursuant to any statute either of the United States or of any State a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Operator's property or if Operator makes an assignment for the benefit of creditors, this Agreement, at the option of the Owner, may be canceled and terminated in which event neither Operator nor any person claiming through or under Operator by virtue of any statute or of an order of any court shall be entitled to possession of the premises covered hereby but shall forthwith quit and surrender the premises.

XVI.

DEFAULT

If Operator shall fail or neglect to go or perform or observe any of the covenants

contained herein on its part to be kept and performed and such failure or neglect shall continue for a period of not less than 30 days after the Owner has notified Operator in writing of Operator's default hereunder and Operator has failed to correct such default within said 30 days, then Owner may, at its option, immediately or at any time thereafter without demand or notice, cancel this Agreement in its entirety. The waiver by Owner of any breach of any term, condition, or covenant herein contained shall not be deemed a waiver of any subsequent breach of the same, or any other term, condition or covenant.

XVII.

ASSIGNMENT

Operator 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.

XVIII.

AMENDMENTS

This Agreement may be amended by the mutual agreement of the parties hereto in writing to be attached hereto and incorporated into this Agreement.

XIX.

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.

XX.

ATTORNEY'S FEES

BY EXECUTING THIS AGREEMENT, OPERATOR 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 OPERATOR SPECIFICALLY AGREES THAT IF THE OPERATOR 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 OPERATOR AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH OPERATOR MIGHT OTHERWISE BE ENTITLED.

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

XXI.

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.

XXII.

RELEASE

NOTWITHSTANDING ANY OTHER PROVISION, OPERATOR HEREBY RELEASES, RELINQUISHES, ACQUITS 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 OPERATOR 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.

XXIII.

THIRD-PARTY BENEFICIARY

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

EXECUTED by the duly authorized officials of the Owner and the Operator as of 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

APPROVED AS TO CONTENT
AND COMPLETENESS:

Amy M. Turner, City Secretary

MIDLAND CHAMBER OF COMMERCE

By _____

Title _____

ATTEST:

Corporate Secretary

THE STATE OF TEXAS §

§

COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the Midland Chamber of Commerce.

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

Notary Public, State of _____



City of Midland
Office Memorandum

DATE: 9/11/2012

TO: The Honorable Mayor and City Council Members

FROM: Amy Turner, City Secretary

SUBJECT: Consider a resolution authorizing a contract with the Midland Community Theatre in the amount of \$35,000 to promote tourism and the hotel industry in Midland.

The proposed resolution authorizes the Mayor to execute a contract with Midland Community Theatre, Inc. The funding was approved with the adoption of the Fiscal Year 2012-2013 operating budget on August 27, 2012.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
CONTRACT WITH THE MIDLAND COMMUNITY
THEATRE, INCORPORATED FOR THE PROMOTION
OF THE THEATRE ARTS IN THE CITY**

WHEREAS, the City of Midland levies a tax within the City upon the occupancy of any room or space furnished by any hotel or motel; and

WHEREAS, pursuant to the provisions of Texas Tax Code Ann. §§ 351.101 - .108, the City may use such tax revenues for the encouragement, promotion, improvement and application of the arts; and

WHEREAS, the Council finds it to be in the public interest to enter into a contract with the Midland Community Theatre, Inc., for the promotion and application of the theatre arts;

**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 contract with the Midland Community Theatre, Inc., for the promotion and application of the theatre arts within the City. Said contract is on file in the City Secretary's office referenced by the date and number of this resolution.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay the Midland Community Theatre, Inc., the sum of \$35,000.00 from funds available in Fiscal Year 2012-2013 Budget Account 090-005-0690-6179 (Hotel/Motel - Administration - Nondepartmental - Miscellaneous) pursuant to the terms of said contract.

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:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

THIS AGREEMENT, made and effective this 12th day of September, 2012, between the City of Midland, Texas, a home rule municipal corporation, hereinafter called “City”, and the Midland Community Theatre, Inc., a Texas nonprofit corporation having its principal place of business in Midland, Texas, hereinafter called “MCT”;

W I T N E S S E T H:

WHEREAS, the City levies a tax within the City upon the occupancy of any room or space furnished by any hotel or motel, and pursuant to the provisions of Tex. Tax Code Ann. §§ 351.101 - .108, may use such tax revenues for the encouragement, promotion, improvement, and application of the arts; and

WHEREAS, the MCT has for numerous years encouraged, promoted and fostered the development of the theatre arts within the City of Midland, Texas, and as a result thereof has obtained certain knowledge and expertise in this particular area of endeavor; and

WHEREAS, it is the desire of the parties hereto to combine their efforts for the purpose of promoting and fostering the theatre arts in Midland;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, and in consideration of the mutual benefits which will accrue to each of the parties hereof, as well as the general citizenry of the City of Midland, Texas, the parties have agreed and do hereby agree as follows:

I.

ENCOURAGING, PROMOTING, AND FOSTERING THE THEATRE ARTS

MCT agrees to develop publicity materials in order to advertise and promote the theatre arts in the City of Midland.

II.

COMPENSATION

The City agrees to pay MCT as compensation for the services rendered under this agreement the sum of Thirty-Five Thousand Dollars (\$35,000.00) within thirty (30) days of the receipt of a written invoice or statement approved by the City Manager.

III.

LIABILITY

MCT agrees to assume and does hereby assume all responsibility and liability for damages sustained by persons or property, whether real or asserted, by or from the carrying on of work or in the performance of services performed and to be performed hereunder.

IV.

INDEMNITY

MCT 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 MCT, its agents or employees, or any subcontractor, arising out of, or resulting from MCT's use of, or activities on, the Agreement Premises, and MCT 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.

MCT SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL 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 MCT OR MCT'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 MCT 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.

V.

INDEPENDENT CONTRACTOR

MCT shall operate hereunder as an independent contractor and not as an officer, agent, servant, or employee of City. MCT shall have exclusive control of, and the exclusive right to control, the details of the work to be performed hereunder and all personnel performing the same, and shall be solely responsible for the acts and omissions of its officers, members, agents, servants, employees, subcontractors, program participants, volunteers, licensees, and invitees. In no event shall any person participating in or performing any of MCT's duties or responsibilities hereunder be considered an officer, agent, servant, or employee of the City. It is further 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. MCT 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 MCT's work. MCT shall have exclusive responsibility for the work. MCT is entirely free to do the work in its own way.

VI.

DEFAULT

If MCT shall fail or neglect to do or perform or observe any of the covenants

contained herein on its part to be kept and performed and such failure or neglect shall continue for a period of not less than thirty (30) days after the City has notified MCT in writing of MCT's default hereunder and MCT has failed to correct such default within said thirty (30) days, then City may, at its option, immediately or any time thereafter without demand or notice, cancel this agreement in its entirety. The waiver by City of any breach of any term, condition, or covenant herein contained shall not be deemed a waiver of any subsequent breach of the same, or any other term, condition or covenant. In the event that City cancels this agreement under the terms of this paragraph, any and all funds which remain unaccounted for or unspent at such time shall be returned to the City.

VII.

RIGHT OF REVIEW

MCT shall provide to the City on a quarterly basis during the term of this agreement a report and full documentation showing the disposition of the funds provided by the City under this agreement and that such funds were used only for the purposes stated in Paragraph I of this agreement. Said report shall be filed in the Office of the City Secretary not later than twenty (20) days following the end of the quarter for which the report is due. Any and all funds which remain unaccounted for or unspent at the end of the term of this agreement shall, at the City's direction, be returned to the City.

MCT shall not commingle funds received from the City with any other monies.

MCT shall maintain books of account with correct entries of all expenditures of funds provided pursuant to this agreement. Any and all documentation relating to funds received

pursuant to this agreement shall be at all times open to the inspection of the City or any of its officers or duly authorized agents. Upon such inspection, the City or its officers or agents shall be afforded the opportunity on premises to make photographic copies of any and all documentation relating to funds received pursuant to this agreement.

MCT shall maintain these books of account in Midland County for a period of three (3) years following the expiration of the term for which they are applicable.

VIII.

REPORTING

MCT shall provide by the end of the seventh (7th) month of this agreement a reporting, in a manner consistent with the evaluation plan furnished in the funding application for the fiscal year 2012-2013, for the first six (6) months of this agreement, of its accomplishments and ongoing projects and programs related to the services provided for herein and made or begun in this term.

IX.

TERM OF AGREEMENT

The term of this agreement is for a period beginning on October 1, 2012, and ending on September 30, 2013.

X.

ASSIGNMENT

MCT 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.

XI.

AMENDMENTS

This agreement may be amended by the mutual agreement of the parties hereto in writing to be attached hereto and incorporated into this agreement.

XII.

SOVEREIGN IMMUNITY

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

XIII.

ATTORNEY'S FEES

BY EXECUTING THIS AGREEMENT, MCT 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 MCT SPECIFICALLY AGREES THAT IF THE MCT 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 MCT AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH MCT MIGHT OTHERWISE BE ENTITLED.

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

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

XIV.

RELEASE

NOTWITHSTANDING ANY OTHER PROVISIONS, MCT HEREBY RELEASES, RELINQUISHES, ACQUITS AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH MCT 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.

XV.

THIRD-PARTY BENEFICIARY

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

XVI.

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.

EXECUTED by the duly authorized officials of the City and MCT as of 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

APPROVED AS TO CONTENT
AND COMPLETENESS:

Amy M. Turner, City Secretary

MIDLAND Community THEATRE,
INCORPORATED

By _____
Tim Jebsen, Executive Director

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of Midland Community Theatre, Inc.

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

Notary Public, State of _____



City of Midland
Office Memorandum

DATE: 9/11/2012

TO: The Honorable Mayor and City Council Members

FROM: Amy Turner, City Secretary

SUBJECT: Consider a resolution authorizing a contract with the Midland Soccer Association in the amount of \$20,000 to promote tourism and the hotel industry in Midland.

The proposed resolution authorizes the Mayor to execute a contract with Midland Soccer Association. The funding was approved with the adoption of the Fiscal Year 2012-2013 operating budget on August 27, 2012.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
CONTRACT WITH THE MIDLAND SOCCER
ASSOCIATION FOR THE PROMOTION AND
SOLICITATION OF SOCCER ACTIVITIES**

WHEREAS, the Council finds it to be in the public interest to authorize the execution of a contract with the Midland Soccer Association (“MSA”) for the promotion and solicitation of soccer activities;

**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 contract with MSA for the promotion and solicitation of soccer activities, said contract being on file in the City Secretary’s office referenced by the number and date of this resolution.

SECTION TWO. That the City Treasurer is hereby authorized and directed to make payments to MSA in the total amount of \$20,000.00 from funds available in Fiscal Year 2012-2013 Budget Account 090 (Hotel/Motel) - 005 (Administration) - 0690 (Hotel/Motel) - 6990 (Miscellaneous), pursuant to the terms of said contract.

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:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CONTRACT

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

This contract made and effective this 12th day of September, 2012, by and between the City of Midland, Texas, a home rule municipal corporation, hereinafter called "City," and Midland Soccer Association, hereinafter referred to as "Consultant" evidences the following:

WITNESSETH:

WHEREAS, Consultant and the City desire to promote soccer activities in Midland; and

WHEREAS, Consultant has special knowledge and expertise in promoting such activities;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and mutual benefits which will accrue to each of the parties hereof, as well as the general citizenry of the City of Midland, Texas, the parties have agreed and do hereby agree as follows:

I.

TERM

This contract and its terms and conditions shall be in effect for a period beginning on October 1, 2012, and ending September 30, 2013. This contract may be amended or terminated by mutual agreement of both parties in writing upon thirty (30) days written notice.

II.

SERVICES

Consultant agrees to advertise, promote, and solicit soccer activities in the City.

III.

PAYMENT

City agrees to pay to the Consultant by the 10th day after execution of this contract the amount of Twenty Thousand Dollars (\$20,000.00). This money is to be utilized to

advertise, promote and solicit soccer activities in the City. In the event that this contract is renewed or extended for additional years, the amount of funds to be provided by the City to the Consultant shall be determined by the Midland City Council at the time said Council adopts the City's annual budget.

IV.

INDEMNITY

CONSULTANT 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 CONSULTANT, its agents or employees, or any subcontractor, arising out of, or resulting from Consultant's use of, or activities on, the Agreement Premises, and Consultant 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.

CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL 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 CONSULTANT OR CONSULTANT'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 CONSULTANT 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.

V.

OWNERSHIP OF DOCUMENTS

All reports, information, and other data prepared, assembled or received by Consultant pursuant to the services provided for in this Contract and other related documents or items shall remain the sole property of the Consultant.

VI.

RIGHT OF REVIEW

Consultant shall provide to the City on a quarterly basis during the term of this Contract a report and full documentation showing the disposition of the funds provided by the City under this Contract and that such funds were used only for the purposes stated in Paragraph II of this Contract. Said report shall be filed in the Office of the City Secretary not later than twenty (20) days following the end of the quarter for which the report is due. Any and all funds which remain unaccounted for or unspent at the end of the term of this Contract shall, at the City's direction, be returned to the City.

The Consultant shall not commingle funds received from the City with any other monies.

Consultant shall maintain books of account with correct entries of all expenditures of funds provided pursuant to this Contract. Any and all documentation relating to funds received pursuant to this Contract shall be at all times open to the inspection of the City or any of its officers or duly authorized agents. Upon such inspection, the City or its officers or agents shall be afforded the opportunity on premises to make photographic copies of any

and all documentation relating to funds received pursuant to this Contract.

Consultant shall maintain these books of account in Midland County for a period of three (3) years following the expiration of the term for which they are applicable.

VII.

REPORTING

Consultant shall provide by the end of the seventh (7th) month of this Contract a reporting, in a manner consistent with the evaluation plan furnished in the funding application for the fiscal year 2012-2013, for the first six (6) months of this Contract, of its accomplishments and ongoing projects and programs related to the services provided for herein and made or begun in this term.

In the event Consultant desires to extend the term of this Contract beyond its stated date of expiration pursuant to paragraph I, a similar annual reporting shall be included with the submission and request for extension.

VIII.

ADDRESSES

For purposes of written notification as provided herein, all written notices to the City and to Consultant shall be addressed as follows:

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

Midland Soccer Association
1405 W. Illinois
Midland, Texas 79701

IX.

INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Consultant shall operate hereunder as an independent contractor and not as an officer, agent, servant or employee of the City; that Consultant shall have exclusive control of and the exclusive right to control the details of the

services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Consultant, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Consultant. No person performing any of the work and services described hereunder by Consultant shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this 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. Consultant 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 Consultant’s work. Consultant shall assume exclusive responsibility for the work. Consultant is entirely free to do the work in its own way.

X.

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.

XI.

ATTORNEY’S FEES

BY EXECUTING THIS AGREEMENT, CONSULTANT AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY’S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE

CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE CONSULTANT SPECIFICALLY AGREES THAT IF THE CONSULTANT BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE CONSULTANT AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CONSULTANT MIGHT OTHERWISE BE ENTITLED.

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

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

XII.

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.

XIII.

RELEASE

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

XIV.

INSURANCE

Consultant 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:

Comprehensive General Liability (including Contractual liability):

Personal Injury	\$1,000,000 per person
and Accidental Death:	\$1,000,000 per occurrence

Property Damage:	\$250,000 per occurrence
------------------	--------------------------

All insurance required pursuant to this Contract shall name the City as an additional insured and shall provide for a waiver of subrogation as to the City. All insurance coverage and City's status as an additional insured and the waivers of subrogation, as appropriate, shall be evidenced by one or more certificate(s) of insurance provided to City upon signing of this

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

XV.

THIRD-PARTY BENEFICIARY

The City'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.

XVI.

ASSIGNMENT

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

In witness whereof, the undersigned official have executed this Contract on the day and year first written above.

CITY OF MIDLAND, TEXAS

By _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Amy M. Turner, City Secretary

MIDLAND SOCCER ASSOCIATION

By _____

Title _____

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the Midland Soccer Association.

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

Notary Public, State of _____



City of Midland
Office Memorandum

DATE: 9/11/2012

TO: The Honorable Mayor and City Council Members

FROM: Amy Turner, City Secretary

SUBJECT: Consider a resolution authorizing a contract with the Museum of the Southwest in the amount of \$20,000 to promote tourism and the hotel industry in Midland.

The proposed resolution authorizes the Mayor to execute a contract with the Museum of the Southwest. The funding was approved with the adoption of the Fiscal Year 2012-2013 operating budget on August 27, 2012.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
CONTRACT WITH THE MUSEUM OF THE
SOUTHWEST TO PROMOTE TOURISM AND THE
CONVENTION AND HOTEL INDUSTRY IN THE CITY
OF MIDLAND**

WHEREAS, the Council finds it to be in the public interest to authorize the execution of a contract with the Museum of the Southwest to promote tourism and the convention and hotel industry in the City of Midland;

**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 contract with the Museum of the Southwest to promote tourism and the convention and hotel industry in the City of Midland. Said contract to be in the form 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 make payments to the Museum of the Southwest in the total amount of Fifteen Thousand Dollars (\$20,000.00) from funds available in Fiscal Year 2012-2013 Budget Account 090 (Hotel/Motel) - 005 (Administration) - 0690 (Hotel/Motel) - 6990 (Miscellaneous), pursuant to the terms of said contract.

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:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CONTRACT

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

This contract made and effective this 12th day of September, 2012, by and between the City of Midland, Texas, a home rule municipal corporation, hereinafter called “City,” and Museum of the Southwest, a Texas nonprofit corporation, hereinafter referred to as “Consultant” evidences the following:

WITNESSETH:

WHEREAS, Consultant and the City desire to promote tourism and the convention and hotel industry in the City; and

WHEREAS, Consultant provides a means for promoting said industries by sponsoring activities which draw visitors to Midland;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and mutual benefits which will accrue to each of the parties hereof, as well as the general citizenry of the City of Midland, Texas, the parties have agreed and do hereby agree as follows:

I.

TERM

This contract and its terms and conditions shall be in effect for a period beginning on October 1, 2012, and ending September 30, 2013. This contract may be amended or terminated by mutual agreement of both parties in writing upon thirty (30) days written notice.

II.

SERVICES

Consultant agrees to sponsor, advertise and promote art, history and cultural activities in the City of Midland. Such activities shall include, but are not limited to, events such as Septemberfest and promotional projects. Consultant will produce and distribute promotional brochures for area attractions.

III.

PAYMENT

City agrees to pay to the Consultant by the 10th day of each month of the term of this contract an amount equal to the invoices or statements submitted by Consultant for the previous month, and approved by the City Manager in his sole discretion, not to exceed a total amount of \$20,000.00. This money is to be utilized to promote tourism and the convention and hotel industry in the City of Midland.

IV.

INDEMNITY

CONSULTANT 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 CONSULTANT, its agents or employees, or any subcontractor, arising out of, or resulting from Consultant's use of, or activities on, the Agreement Premises, and Consultant 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.

CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL 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 NEGLIGENCE ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH CONSULTANT OR CONSULTANT'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 CONSULTANT 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.

V.

OWNERSHIP OF DOCUMENTS

All reports, information, and other data prepared, assembled or received by Consultant pursuant to the services provided for in this Contract and other related documents or items shall remain the sole property of the Consultant.

VI.

RIGHT OF REVIEW

Consultant shall provide to the City on a quarterly basis during the term of this Contract a report and full documentation showing the disposition of the funds provided by the City under this Contract and that such funds were used only for the purposes stated in Paragraph II of this Contract. Said report shall be filed in the Office of the City Secretary not later than twenty (20) days following the end of the quarter for which the report is due. Any and all funds which remain unaccounted for or unspent at the end of the term of this Contract shall, at the City's direction, be returned to the City.

The Consultant shall not commingle funds received from the City with any other monies.

Consultant shall maintain books of account with correct entries of all expenditures of funds provided pursuant to this Contract. Any and all documentation relating to funds received pursuant to this Contract shall be at all times open to the inspection of the City or any of its officers or duly authorized agents. Upon such inspection, the City or its officers or agents shall be afforded the opportunity on premises to make photographic copies of any and all documentation relating to funds received pursuant to this Contract.

Consultant shall maintain these books of account in Midland County for a period of three (3) years following the expiration of the term for which they are applicable.

VII.

REPORTING

Consultant shall provide by the end of the seventh (7th) month of this Contract a reporting, in a manner consistent with the evaluation plan furnished in the funding application for the fiscal year 2012-2013, for the first six (6) months of this Contract, of its accomplishments and ongoing projects and programs related to the services provided for herein and made or begun in this term.

In the event Consultant desires to extend the term of this Contract beyond its stated date of expiration pursuant to paragraph I, a similar annual reporting shall be included with the submission and request for extension.

VIII.

ADDRESSES

For purposes of written notification as provided herein, all written notices to the City and to Consultant shall be addressed as follows:

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

Museum of the Southwest
1705 West Missouri
Midland, TX 79701-6516

IX.

INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Consultant shall operate hereunder as an independent contractor and not as an officer, agent, servant or employee of the City; that Consultant shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Consultant, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Consultant. No person performing any of the work and services described hereunder by Consultant shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this 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. Consultant 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 Consultant’s work. Consultant shall assume exclusive responsibility for the work. Consultant is entirely free to do the work in its own way.

X.

SOVEREIGN IMMUNITY

By executing this Contract, the City is not waving 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.

XI.

ATTORNEY’S FEES

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

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

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

XII.

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.

XIII.

RELEASE

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

XIV.

THIRD-PARTY BENEFICIARY

The City'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.

XV.

ASSIGNMENT

Consultant shall not, either directly or indirectly, assign all or any part of this agreement or any interest, right or privilege herein, without the prior written consent of the

City. The issue on whether or not to grant consent to an assignment is in the sole discretion of the City.

In witness whereof, the undersigned has set its hand and seal on this the _____ day of _____, 2012.

CITY OF MIDLAND, TEXAS

By _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Amy M. Turner, City Secretary

MUSEUM OF THE SOUTHWEST

By _____
Director

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

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

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

Notary Public, State of _____



City of Midland
Office Memorandum

DATE: 9/11/2012

TO: The Honorable Mayor and City Council Members

FROM: Amy Turner, City Secretary

SUBJECT: Consider a resolution authorizing a contract with the Permian Basin Petroleum Museum in the amount of \$20,712 to promote tourism and the hotel industry in Midland.

The proposed resolution authorizes the Mayor to execute a contract with Permian Basin Petroleum Museum, Library and Hall of Fame, Inc. The funding was approved with the adoption of the Fiscal Year 2012-2013 operating budget on August 27, 2012.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
CONTRACT WITH THE PERMIAN BASIN
PETROLEUM MUSEUM, LIBRARY AND HALL OF
FAME, INCORPORATED, FOR ADVERTISING,
PROMOTION AND SOLICITATION OF OIL INDUSTRY
ACTIVITIES IN THE CITY OF MIDLAND**

WHEREAS, the Council finds it to be in the public interest to authorize the execution of a contract with the Permian Basin Petroleum Museum, Library and Hall of Fame, Inc., for advertising, promotion and solicitation of oil industry activities in the City of Midland;

**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 contract with the Permian Basin Petroleum Museum, Library and Hall of Fame, Inc., for advertising, promotion and solicitation of oil industry activities in the City of Midland. Said contract to be in the form 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 make payments to the Permian Basin Petroleum Museum, Library and Hall of Fame, Inc., in the total amount of \$20,712.00 from funds available in Fiscal Year 2012-2013 Budget Account 090 (Hotel/Motel) - 005 (Administration) - 0690 (Hotel/Motel) - 6990 (Miscellaneous), pursuant to the terms of said contract.

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:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CONTRACT

STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF MIDLAND §

This contract made and effective this 12th day of September, 2012, by and between the City of Midland, Texas, a home rule municipal corporation, hereinafter called “City,” and the Permian Basin Petroleum Museum, Library and Hall of Fame, Incorporated, a Texas nonprofit corporation, hereinafter referred to as “Consultant” evidences the following:

WITNESSETH:

WHEREAS, Consultant and the City desire to promote oil industry activities in Midland; and

WHEREAS, Consultant has special knowledge and expertise in promoting such activities;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and mutual benefits which will accrue to each of the parties hereof, as well as the general citizenry of the City of Midland, Texas, the parties have agreed and do hereby agree as follows:

I.

TERM

This contract and its terms and conditions shall be in effect for a period beginning on October 1, 2012, and ending September 30, 2013. This contract may be amended or terminated by mutual agreement of both parties in writing upon thirty (30) days written notice.

II.

SERVICES

Consultant agrees to advertise, promote, and solicit oil industry activities in the City.

III.

PAYMENT

City agrees to pay to the Consultant by the 10th day after execution of this contract the amount of \$20,712.00. This money shall be paid based on invoices or statements received from Consultant and approved by the City Manager. Such money is to be utilized to advertise, promote and solicit oil industry activities in the City.

In the event that this contract is renewed or extended for additional years, the amount of funds to be provided by the City to the Consultant shall be determined by the Midland City Council at the time said Council adopts the City's annual budget.

IV.

INDEMNITY

CONSULTANT 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 CONSULTANT, its agents or employees, or any subcontractor, arising out of, or resulting from Consultant's use of, or activities on, the Agreement Premises, and Consultant 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.

CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL 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 CONSULTANT OR CONSULTANT'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 CONSULTANT 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.

V.

OWNERSHIP OF DOCUMENTS

All reports, information, and other data prepared, assembled or received by Consultant pursuant to the services provided for in this agreement and other related documents or items shall remain the sole property of the Consultant.

VI.

RIGHT OF REVIEW

Consultant shall provide to the City on a quarterly basis during the term of this agreement a report and full documentation showing the disposition of the funds provided by the City under this agreement and that such funds were used only for the purposes stated in Paragraph II of this agreement. Said report shall be filed in the Office of the City Secretary not later than twenty (20) days following the end of the quarter for which the report is due. Any and all funds which remain unaccounted for or unspent at the end of the term of this agreement shall, at the City's direction, be returned to the City.

The Consultant shall not commingle funds received from the City with any other monies.

Consultant shall maintain books of account with correct entries of all expenditures of funds provided pursuant to this agreement. Any and all documentation relating to funds received pursuant to this agreement shall be at all times open to the inspection of the City or any of its officers or duly authorized agents. Upon such inspection, the City or its officers or agents shall be afforded the opportunity on premises to make photographic copies of any and all documentation relating to funds received pursuant to this agreement.

Consultant shall maintain these books of account in Midland County for a period of three (3) years following the expiration of the term for which they are applicable.

VII.

REPORTING

Consultant shall provide by the end of the seventh (7th) month of this agreement a reporting, in a manner consistent with the evaluation plan furnished in the funding application for the Fiscal Year 2012-2013, for the first six (6) months of this agreement, of its accomplishments and ongoing projects and programs related to the services provided for herein and made or begun in this term.

In the event Consultant desires to extend the term of this agreement beyond its stated date of expiration pursuant to paragraph I, a similar annual reporting shall be included with the submission and request for extension.

VIII.

ADDRESSES

For purposes of written notification as provided herein, all written notices to the City and to Consultant shall be addressed as follows:

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

Permian Basin Petroleum Museum, Library and Hall of Fame, Incorporated
1500 Interstate 20 West
Midland, TX 79701

IX.

INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Consultant 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 Consultant shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Consultant, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Consultant. No person performing any of the work and services described hereunder by Consultant shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this 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. Consultant 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 Consultant’s work. Consultant shall assume exclusive responsibility for the work. Consultant is entirely free to do the work in its own way.

X.

SOVEREIGN IMMUNITY

By executing this agreement, the City is not waving 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.

XI.

ATTORNEY'S FEES

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

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

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

XII.

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.

XIII.

RELEASE

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

XIV.

THIRD-PARTY BENEFICIARY

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

XV.

ASSIGNMENT

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

Executed in duplicate the day and year first written above.

CITY OF MIDLAND, TEXAS

By _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Amy M. Turner, City Secretary

PERMIAN BASIN PETROLEUM MUSEUM,
LIBRARY AND HALL OF FAME,
INCORPORATED

By _____
Executive Director

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of the Permian Basin Petroleum Museum, Library and Hall of Fame, Incorporated.

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

Notary Public, State of _____



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Celestino Garcia RS. / Health Manager

SUBJECT: Consider a resolution authorizing the acceptance of \$138,260.00 in reimbursement funds from Texas Department of State Health Services to assist the Health and Senior Services Division with the delivery of Public Health Emergency Preparedness Services.

Purpose:

Consider a resolution authorizing the acceptance of \$138,260.00 in reimbursement funds from Texas Department of State Health Services Document No. 2013-041409 to assist the Health and Senior Services Division with the delivery of Public Health Emergency Preparedness Services.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$138,260.00 from the Texas Department of State Health Services to reimburse the operating budget of the Health & Senior Services Division.

Discussion:

Midland Health and Senior Services receive annual reimbursement from the Texas Department of State Health Services to help with Public Health Emergency. The \$138,260.00 will be used to reimburse expenses associated with personnel, travel, equipment, supplies, and contractual services.

The reimbursement is provided from federal funds allocated to the state as part of public health emergency practices.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE ACCEPTANCE OF \$138,260.00 IN REIMBURSEMENT FUNDS FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES TO ASSIST THE HEALTH AND SENIOR SERVICE DIVISION WITH THE DELIVERY OF PUBLIC HEALTH EMERGENCY PREPAREDNESS SERVICES; AND AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS

WHEREAS, the City of Midland Health & Senior Services Division will be awarded \$138,260.00 in financial reimbursement from the Texas Department of State Health Services Document Number 2013-041409 to assist the Health and Senior Service Division with the delivery of Public Health Emergency Preparedness Services; and

WHEREAS, the City Council finds it to be in the public interest to accept \$138,260.00 in financial assistance from the Texas Department of State Health Services Document Number 2013-041409 to assist the Health and Senior Service Division with the delivery of Public Health Emergency Preparedness Services;

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

SECTION ONE. That the City of Midland Health and Senior Services Division is authorized to receive \$138,260.00 in financial assistance from the Texas Department of State Health Services to assist the Health and Senior Service Division with the delivery of Public Health Emergency Preparedness Services.

SECTION TWO. That the City Manager is hereby authorized and directed to execute all documents necessary to accept said funds from the Texas Department of State Health Services to assist the Health and Senior Service Division with the delivery of Public Health Emergency Preparedness Services and that said funds are directed to be deposited into the General Fund of the City of Midland.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Celestino Garcia RS. / Health Manager

SUBJECT: Consider a resolution authorizing the acceptance of \$55,815.00 in reimbursement funds from Texas Department of State Health Services to assist the Health and Senior Services Division with the delivery of Public Health Services.

Purpose:

Consider a resolution authorizing the acceptance of \$55,815.00 in reimbursement funds from Texas Department of State Health Services Document No.2013-041409 to assist the Health and Senior Services Division with the delivery of Public Health Services.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$55,815.00 from the Texas Department of State Health Services to reimburse the operating budget of the Health and Senior Services Division.

Discussion:

Midland Health and Senior Services receive annual reimbursement from the Texas Department of State Health Services to help with Public Health Services. The \$55,815.00 will be used to reimburse expenses associated with personnel, training, travel, supplies, and contractual services.

This reimbursement is provided from federal funds allocated to the state as part of public health services.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE ACCEPTANCE OF REIMBURSEMENT FUNDS FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES IN THE AMOUNT OF \$55,815.00 TO ASSIST THE HEALTH AND SENIOR SERVICE DIVISION WITH THE DELIVERY OF LOCAL PUBLIC HEALTH SERVICES; AND AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS

WHEREAS, the City of Midland Health & Senior Services Division will be awarded \$55,815.00 in reimbursement funds from the Texas Department of State Health Services Document Number 2013-041409 to assist the Health & Senior Service Division with the delivery of local public health services; and

WHEREAS, the City Council finds it to be in the public interest to accept \$55,815.00 in reimbursement funds from the Texas Department of State Health Services Document Number 2013-041409 to assist the Health & Senior Service Division with the delivery of local public health services;

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

SECTION ONE. That the City of Midland Health and Senior Services Division is authorized to receive \$55,815.00 in reimbursement funds from the Texas Department of State Health Services to assist the Health & Senior Service Division with the delivery of local public health services.

SECTION TWO. That the City Manager is hereby authorized and directed to execute all documents necessary to accept said funds from the Texas Department of State Health Services to assist the Health & Senior Service Division with the delivery of local public health services and that said funds are directed to be deposited into the General Fund of the City of Midland.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Celestino Garcia RS. / Health Manager

SUBJECT: Consider a resolution authorizing the acceptance of \$150,358.00 in reimbursement funds from Texas Department of State Health Services to assist the Health and Senior Services Division with the delivery of immunizations.

Purpose:

Consider a resolution authorizing the acceptance of \$150,358.00 in reimbursement funds from the Texas Department of State Health Services to assist the Health and Senior Services Division with the delivery of immunizations.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$150,358.00 from the Texas Department of State Health Services will be used to reimburse the operating budget of the Health and Senior Services Division.

Discussion:

Midland Health and Senior Services receive annual reimbursement from the Texas Department of State Health Services to help with immunizations. The 150,358.00 is used to reimburse expenses associated with personnel, training, and travel.

This reimbursement is provided from federal funds allocated to the state as part of immunization services.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE ACCEPTANCE OF REIMBURSEMENT FUNDS FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES IN THE AMOUNT OF \$150,358.00 TO ASSIST THE HEALTH AND SENIOR SERVICE DIVISION WITH THE DELIVERY OF IMMUNIZATIONS; AND AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS

WHEREAS, the City of Midland Health & Senior Services Division will be awarded \$150,358.00 in reimbursement funds from the Texas Department of State Health Services to assist the Health & Senior Service Division with the delivery of immunizations; and

WHEREAS, the City Council finds it to be in the public interest to accept \$150,358.00 in reimbursement funds from the Texas Department of State Health Services to assist the Health & Senior Service Division with the delivery of immunizations;

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

SECTION ONE. That the City of Midland Health and Senior Services Division is authorized to receive \$150,358.00 in reimbursement funds from the Texas Department of State Health Services to assist the Health & Senior Service Division with the delivery of immunizations.

SECTION TWO. That the City Manager is hereby authorized and directed to execute all documents necessary to accept said funds from the Texas Department of State Health Services to assist the Health & Senior Service Division with the delivery of immunizations and that said funds are directed to be deposited into the General Fund of the City of Midland.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Tina Jauz / Community Services Director

SUBJECT: Consider a resolution authorizing the City of Midland to accept \$31,649 as a donation from the Friends of the I-20 Wildlife Preserve and Jenna Welch Nature Study Center, and appropriating said funds to Project No. 8998

Purpose:

To accept additional private funds for the construction of a pavilion and restrooms at the I-20 Wildlife Preserve.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$31,649

Discussion:

During the August 14th City Council Meeting, donated funds were accepted, in the amount of \$21,093, and appropriated to a project for the purpose of constructing a pavilion and restrooms at the I-20 Wildlife Preserve. Since that meeting, the contractor has examined the alternate bids and has identified a cost increase. The two attributing factors are material costs and the cost of labor for construction. The alternate bids were submitted back on the original bid date.

The Friends of the I-20 Wildlife Preserve and Jenna Welch Nature Study Center are willing to cover the cost increases with this donation.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE CITY OF MIDLAND TO ACCEPT A DONATION IN THE AMOUNT OF \$31,649.00 FROM THE FRIENDS OF THE I-20 WILDLIFE PRESERVE AND JENNA WELCH NATURE STUDY CENTER IN ORDER TO ASSIST IN THE CONSTRUCTION OF THE I-20 WILDLIFE PRESERVE PAVILION AND RESTROOMS PROJECT, AND APPROPRIATING FUNDS

WHEREAS, the Council accepted a donation for the construction of the I-20 Wildlife Preserve pavilion and restrooms project on August 14, 2012, from the Friends of the I-20 Wildlife Preserve and Jenna Welch Nature Study Center; and

WHEREAS, the contractor has since examined the alternate bids and has identified a cost increase regarding the construction of the I-20 Wildlife Preserve pavilion and restrooms project; and

WHEREAS, the Friends of the I-20 Wildlife Preserve and Jenna Welch Nature Study Center are willing to cover the cost increase; and

WHEREAS, the Council finds it to be in the public interest to accept a donation from the Friends of the I-20 Wildlife Preserve and Jenna Welch Nature Study Center;

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

THAT the sum of \$31,649.00 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the I-20 Wildlife Preserve Pavilion and Restrooms Project (8998).

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Sylvester Cantu, Community Development Manager

SUBJECT: CDBG Contract with Casa de Amigos

Purpose:

Consider a resolution authorizing the execution of a Community Development Block Grant contract with Casa de Amigos for the Home Cleaning Program in the amount of \$25,000.00; the purpose of this program is to provide home cleaning services to 200 indigent senior citizens and handicapped households; the program will begin on October 1, 2012 and end on September 30, 2013.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None on City's General Fund.

Discussion:

As part of the 2012/13 Community Development Block Grant (CDBG) program, \$25,000 was allocated to the Home Cleaning Program. This program is administered by Casa de Amigos. A total of 200 indigent senior citizens (60 + years of age) and disabled individuals will be served. Casa de Amigos desires access to the CDBG funds and has agreed to the provisions in the proposed contract.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT WITH CASA DE AMIGOS FOR A HOME CLEANING PROGRAM IN THE AMOUNT OF \$25,000.00; THE PURPOSE OF THIS PROGRAM IS TO PROVIDE HOME CLEANING SERVICES TO 200 INDIGENT SENIOR CITIZENS AND HANDICAPPED HOUSEHOLDS; THE PROGRAM WILL BEGIN ON OCTOBER 1, 2012 AND END ON SEPTEMBER 30, 2013

WHEREAS, the City of Midland, Texas, has heretofore allocated \$25,000.00 to Casa de Amigos, to provide home cleaning services to indigent senior citizens and handicapped individuals on a periodic basis; and

WHEREAS, the City Council finds it to be in the public interest to enter into a contract with Casa De Amigos to provide this service with such grant funds;

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 contract with Casa De Amigos to administer and operate a home cleaning program to provide home cleaning services to indigent senior citizens and handicapped individuals on a periodic basis with grant funds received from the United States Department of Housing and Urban Development, said contract to be substantially in the form attached hereto as Exhibit “A,” and made a part hereof for all legal purposes.

SECTION TWO. That the City Treasurer is hereby authorized and directed to make payment to Casa De Amigos pursuant to terms of the contract, not to exceed a total amount of \$25,000.00, from funds available in the 2012/2013 CDBG Project Account number 063-075-7096 for a home cleaning program, upon receipt of proper invoice or statement approved by the City Manager. The final payment must be a minimum of \$2,000.00.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Sylvester Cantu, Community Development
Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**AGREEMENT BETWEEN CITY OF MIDLAND, TEXAS AND
CASA DE AMIGOS, INCORPORATED
FOR THE HOME CLEANING PROGRAM**

This Agreement made by and between the **CITY OF MIDLAND**, a Texas home rule municipal corporation, herein called “City”, and **CASA DE AMIGOS, INC.**, hereinafter called “Corporation”;

I. PURPOSE

The purpose of this Agreement is to state the terms and conditions by which the Corporation shall perform the Home Cleaning Program utilizing Community Development Block Grant (CDBG) funds as described in Exhibit “A”, attached hereto and incorporated herein for all legal purposes. Any change in the performance schedule, purpose or the location of the operation must be approved in advance by the City.

II. PAYMENT

Upon and after the receipt of a notice to proceed from the City, the Corporation is authorized to incur costs against a total amount of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00). Payments shall be made on a reimbursement basis to the Corporation for services and expenses as shown in Exhibit “A”, attached hereto and made a part hereof for all legal purposes. All payments shall be made to the Corporation upon certification by the Corporation and approval by the Community Development Division of the City’s Development Services Department and the City Manager. When reimbursements for personal services are requested, time sheets must be presented by the Corporation to the City, in a form suitable to City. Final payment on the project must be at least Two Thousand (\$2,000.00), and will not be made until all final project reporting is completed.

III. PROCUREMENT STANDARDS

The Corporation will make project procurement in accordance with 24 CFR Part 84 and Part 85 and applicable Texas Statutes. At least ten (10) days before Corporation seeks competitive bids on procurement of over TEN THOUSAND DOLLARS (\$10,000.00) and for any work contracts of over TWO THOUSAND DOLLARS (\$2,000.00) of the above described project, the plans and specifications and other bid documents shall be submitted to the City and reviewed by the City’s Community Development Division for conformance with federal and City requirements.

IV. INDEMNITY

CORPORATION 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 CORPORATION, its agents or employees, or any subcontractor, arising out of, or resulting from, Corporation's use of, or activities on, the Agreement Premises, and Corporation 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.

CORPORATION 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 CORPORATION OR CORPORATION'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 CORPORATION 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.

The Corporation agrees that it will 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 Agreement. When City so desires, the Corporation shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived.

V. INSURANCE

A. Corporation shall carry insurance in the following types and amounts for the duration of this Agreement and furnish Certificates of Insurance along with copies of policy declaration pages and all policy endorsements as evidence hereof to City:

1. Statutory Workers' Compensation; said insurance shall waive subrogation in favor of City;
2. Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of \$1,000,000. The policy must provide contractual liability coverage for liability assumed under this Agreement, products and completed operations coverage, independent contractors coverage, and a waiver of a Transfer of Right of Recovery Against Others in favor of the City. If this coverage is underwritten on a claims made basis, the retroactive date shall be coincident with the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. Corporation shall maintain coverage for the duration of this Agreement and for six months following completion of the construction improvements associated with this Agreement. Corporation shall pay for this extended reporting period coverage. Said insurance shall name City as an additional insured.

B. If insurance policies are not written for amounts specified in Subsection A, above, Corporation shall carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

C. Corporation shall provide City at least thirty (30) days written notice of erosion of the aggregate limit below the minimum required combined single limit coverage.

D. Corporation shall provide all provisions of this Agreement concerning liability, duty, standard of care, together with the indemnification or defense provisions herein, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies.

E. Corporation shall not commence work under this Agreement until it has obtained all required insurance and until such insurance has been reviewed by the City Attorney's Office of the City of Midland.

F. Corporation shall produce an endorsement to each affected policy that contains

language similar to the following:

1. That names City of Midland, Texas, Attn.: CDBG Program Coordinator, 300 N. Loraine, P. O. Box 1152, Midland, Texas, 79702, as additional insured (except for Workers' Compensation and Employee's Liability coverage), with right of subrogation against City waived on each affected policy including Worker's Compensation.
2. That obligates the insurance company to notify City of any non-renewal, cancellation, or material change to the policy, at least thirty (30) calendar days before the change or cancellation;
3. That the "other" insurance clause shall not apply to City where City is an additional insured shown on the policy. It is intended that the policies required in this Agreement, covering both City and Corporation, shall be considered primary coverage, as applicable.

G. Corporation shall not cause any insurance to be canceled or permit any insurance to lapse during the term of this Agreement or the six-month period following completion, in the case of a claims-made policy.

H. City reserves the right to review the insurance requirements of this Article V during the effective period of this Agreement and to make reasonable adjustments to insurance coverages, their limits when deemed necessary and prudent by City based upon changes in statutory law, court decisions, or the claims history of the industry or financial condition of the insurance company as well as that of Corporation. City shall be entitled to review, upon request, and without expense to City, to receive copies of the requisite insurance policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter on any of such policies.

I. All certificates shall include a clause to the effect that the policy may not be canceled, reduced, restricted, or limited until thirty (30) calendar days after City has received written notice of such cancellation or change. During the term of this Agreement, Corporation shall have in effect a general liability insurance policy in an amount of not less than \$1,000,000 combined single limit for bodily injury and property damage. This liability policy shall be endorsed to name the City of Midland as an additional insured. Corporation shall provide City with a Certificate of Insurance evidencing the required coverage upon execution of this Agreement.

VI. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Corporation 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 Corporation shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents employees, contractors, and subcontractors; that the doctrine of respondent superior shall not apply as between City and Corporation, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Corporation. No person performing any work hereunder 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. The Corporation 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. City does not have the power to direct the order in which the work is done. City shall not have the right to control the means, methods or details of Corporation’s work. Corporation shall assume exclusive responsibility for the work. Corporation is entirely free to do the work in its own way.

VII. APPLICABLE LAWS, ORDINANCES

The Corporation shall comply with all applicable laws, ordinances and codes of the United States, State of Texas and the City and shall require all contractors and subcontractors to comply with the same. The Corporation hereby agrees as follows:

- A. The Corporation will comply with the policies, guidelines and requirements of 24 CFR Part 84 and 85 and OMB Circulars A-87 and A-122, as they relate to the application, acceptance and use of federal funds for this federally assisted program. The Corporation will also comply with the Single Audit provisions of OMB Circular A-133 and make the all audits for fiscal years in which CDBG funds are expended available to the City.
- B. The Corporation will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the applicant received federal financial assistance.
- C. The Corporation will comply with Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.602),

which provides that no person in the United States shall, on the ground of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with CDBG funds. Additionally, the Corporation will comply with regulations at 24 CFR 570.613 concerning eligibility restrictions for certain resident aliens.

D. The Corporation will comply with Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), which provides that it is the policy of the United States to provide for fair housing throughout the United States. It prohibits particular discriminatory acts regarding housing if the discrimination is based on race, color, religion, sex, national origin, family status, or mental and physical disability.

E. The Corporation will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u), as amended, and the regulations issued pursuant thereto (24 CFR Part 135) which provides that to the greatest extent feasible opportunities for employment and other economic opportunities be directed to low and very low income City residents and to business concerns which provide economic opportunity to low and very low income persons.

F. The Corporation will obtain and maintain documentation evidencing that program beneficiaries meet CDBG program income eligibility criteria, specifically as required by 24 CFR 570.208. The Corporation shall further comply with the retention of records provisions of 24 CFR 570.502.

G. The Corporation will insure that subcontractors for work or construction activity under this Agreement shall comply with the equal opportunity requirements of Executive Order 11246, as amended.

H. The Corporation will insure that subcontractors for work or construction activity under this Agreement shall comply with 24 CFR Part 84 and 85 and Section 110 of the Housing and Community Development Act of 1974 and the regulations issued pursuant thereto (24 CFR 570.603), which provide for adherence to certain labor standards.

I. No officer, employee or board member of Corporation shall have a financial interest, direct or indirect, in this Agreement or the monies transferred hereunder, or be financially interested, directly or indirectly in the sale to Corporation of any land, materials, supplies or services purchased with any funds transferred hereunder, except on behalf of Corporation as an officer, employee, member, or program participant. The Corporation shall further comply with the conflict of interest provisions of 24 CFR 570.611 and 24 CFR Part 84 and Part 85.

J. The Corporation will insure that funds will not be used to directly or indirectly employ, award contracts to or otherwise engage the services of or fund any subcontractor during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

K. The Corporation shall follow the provisions of 24 CFR Part 84 and Part 85 concerning standards for financial management systems.

L. The Corporation will comply with the property management and disposition requirements of 24 CFR Part 84 and 85 including copyright provisions therein.

M. The Corporation certifies that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the Corporation, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Corporation shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

N. The Corporation shall comply with and shall ensure that its subcontractors comply with the provisions of the Drug-Free Workplace Act, 41 U.S.C, 701, et seq.

O. The Corporation shall follow the provisions of 24 CFR 570.614 Architectural Barriers Act and the Americans with Disabilities Act.

P. The Corporation shall make available to the City, as determined by the City, information and/or data which document compliance, in all phases of its work, with the above paragraphs A through O. The Corporation shall fully cooperate with City when City monitors the services and work performed under this Agreement, which the City may do at any time during the term of this Agreement. The Corporation shall maintain accounts and

records adequate to identify and account for all cost pertaining to the Agreement. Records are to be retained in accordance with 24 CFR Part 84 and Part 85.

VIII. PROGRAM INCOME

It is agreed and understood that except in the disposition of CDBG acquired assets that there will be no program income generated as a result of this Agreement which requires compliance with 24 CFR 570.504.

IX. TRANSFER OF ASSETS

The Corporation shall upon termination or expiration of this Agreement transfer to the City all CDBG funds and all loans and accounts receivable attributable to the use of CDBG funds that the Corporation has on hand at the time of termination. If the Corporation ceases to use any asset acquired with CDBG funds for the purposes described in this Agreement, the Corporation shall either pay to the City the fair market value of the asset or transfer control of the asset to the City.

X. RECOGNITION OF FUNDING

The Corporation shall provide recognition of CDBG funding in its procurement announcements. The Corporation shall post, in a publicly visible location where CDBG assisted activity is provided, an acknowledgment that the City of Midland Community Development Block Grant Program is contributing to the project. The City's Community Development Office will determine if posting is adequate given the scale of the CDBG assisted activity.

XI. PROJECT REPORTS

Monthly status reports are to be prepared by the Corporation and submitted in a timely fashion to the City. A final performance report shall be prepared and submitted promptly after project completion. An inventory of CDBG acquired assets shall be submitted to the City, in a form suitable to the City, on an annual basis and at the end of the Agreement.

XII. TERM OF AGREEMENT

The term of this Agreement shall begin October 1, 2012 and end September 30, 2013, unless an extension of time is granted by the City Council.

XIII. RELEASE

CORPORATION 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.

XIV. GENERAL FUND

It is expressly understood that this Agreement in no way obligates the general fund or any other monies or credits of the City, and is, therefore, expressly contingent on federal funds of the City's CDBG program.

XV. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, CORPORATION 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 CORPORATION SPECIFICALLY AGREES THAT IF THE CORPORATION 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 CORPORATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CORPORATION MIGHT OTHERWISE BE ENTITLED.

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

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

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

XVI. DEFAULT PROVISION

In the event that either the Corporation or the City fails to perform or is unable to perform substantially its obligations under the terms of this Agreement, the non-defaulting party shall notify the defaulting party in writing of such default. Within five (5) days after receipt of such notification, the Corporation and City shall meet to discuss the default, the reasons thereof and the methods to cure default. If the defaulting party has not substantially cured the default within ten (10) days after receipt of such notification, or the City and Corporation have not agreed within such time upon a solution to the default, the non-defaulting party may, at its option, pursue any remedies at law or in equity.

In any event this Agreement may be terminated by the mutual consent of the Corporation and City in writing.

XVII. 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, Corporation or its legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this agreement) of such damages, duly verified, within one hundred and 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 Corporation will settle, the physical and mailing addresses of Corporation at the time and date the claim was presented and the physical and mailing addresses of Corporation for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Corporation 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 Corporation that its 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, Corporation's failure to comply with the requirements herein shall perpetually bar Corporation'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. Corporation agrees that the requirements of this entire agreement are reasonable.

XVIII. SOVEREIGN IMMUNITY

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

XIX. THIRD-PARTY BENEFICIARY

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

XX. ASSIGNMENT

Corporation 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.

XXI. TERMINATION WITHOUT CAUSE

The City shall have the right, at its sole option, to terminate this Agreement at any time, with or without cause, by giving 90 days written notice to Corporation of City's election to so terminate.

XXII. VENUE AND GOVERNING LAW

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. This Agreement shall be governed by and

construed in accordance with the laws and court decision of the State of Texas.

XXIII. PROCUREMENT SUSPENSION AND DEBARMENT

The City has found that the Corporation has not been suspended or debarred from performing work on Federal contracts.

XXIV. 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this the _____ day of _____, 2012.

CITY OF MIDLAND, TEXAS

CASA DE AMIGOS, INC.

By _____
W. Wesley Perry, Mayor

By _____

Name _____

Title _____

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Sylvester Cantu, Community Development
Manager

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 _____, an officer of CASA DE AMIGOS, INC., known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that s/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

SCOPE OF SERVICES- 2012/13 Citywide Home Cleaning Program

Casa de Amigos through its Citywide Community Services (CCS) department will provide "home cleaning" services to 150 indigent senior citizens and handicapped households on a periodic basis once CCS finds that an individual qualifies for assistance. Service is available throughout the city. CCS accepts clients on a referral basis for emergency/urgent deep cleaning and weekly normal cleaning.

The CDBG funds will provide operational support for the deep cleaning and normal cleaning services conducted during the year. The program will be operated from Casa's offices at 1101 E. Garden Lane, and will be administered by CCS's Program Coordinator. It is expected that 100 participants will be serviced each week from October 1, 2012 to September 30, 2013. On the average, one to two hours of service will be required on each unit. Total unduplicated beneficiaries will be 200 during the year.

A minimum 51% of all participants will be low and moderate income and meet the HUD income criteria as documented and verified by Casa staff. Clients that are documented as senior citizens or disabled persons as defined by HUD will be presumed to be a benefit low and moderate-income activity under its limited clientele provisions.

On a monthly basis, Casa will provide program performance and financial reports. For the CDBG Annual Report, Casa will report the number of households assisted as required by the HUD Performance Measurement System. Victor Peña, Executive Director of Casa, is responsible for administration of the program.

BUDGET – CDBG Portion

AMOUNT

Direct Program staff salaries plus benefits

\$25,000

Casa de Amigos will fund an additional \$55,000 with non-CDBG sources for a total direct program budget of \$120,500.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Sylvester Cantu, Community Development Manager

SUBJECT: CDBG Contract with Community and Senior Services of Midland

Purpose:

Consider a resolution authorizing the execution of a Community Development Block Grant contract with Community and Senior Services of Midland, Incorporated, for the Southeast Senior Center Nutrition Program in the amount of \$45,000.00; the program will be provided daily in coordination with other activities; the purpose of this program is to promote better mental and physical health for senior through nutritional means and socialization; the program will begin on October 1, 2012 and end on September 30, 2013.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None on City's General Fund.

Discussion:

As part of the 2012/13 Community Development Block Grant (CDBG) program, \$45,000 was allocated to the Senior Nutrition Program. This program is administered by Community and Senior Services of Midland (CSSM). A total of 200 seniors will be served during the year. CSSM desires access to the CDBG funds and has agreed to the provisions in the proposed contract.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT WITH COMMUNITY AND SENIOR SERVICES OF MIDLAND, INCORPORATED, FOR THE SOUTHEAST SENIOR CENTER NUTRITION PROGRAM IN THE AMOUNT OF \$45,000.00; THE PROGRAM WILL BE PROVIDED DAILY IN COORDINATION WITH OTHER ACTIVITIES; THE PURPOSE OF THIS PROGRAM IS TO PROMOTE BETTER MENTAL AND PHYSICAL HEALTH FOR SENIORS THROUGH NUTRITIOUS MEALS AND SOCIALIZATION; THE PROGRAM WILL BEGIN ON OCTOBER 1, 2012 AND END ON SEPTEMBER 30, 2013

WHEREAS, the City of Midland, Texas, has heretofore allocated \$45,000.00 to the Senior Nutrition Program, to promote better mental and physical health for older persons through nutritious meals and socialization; and

WHEREAS, the City Council finds it to be in the public interest to enter into a contract with Community and Senior Services of Midland, Inc., to provide this service with such grant funds;

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 contract with Community and Senior Services of Midland to administer and operate a Senior Nutrition Program to promote better mental and physical health for older persons through nutritious meals and socialization, said contract to be substantially in the form attached hereto as Exhibit "A," and made a part hereof for all legal purposes.

SECTION TWO. That the City Treasurer is hereby authorized and directed to make payment to Community and Senior Services of Midland, Inc., pursuant to the terms of the contract, not to exceed a total amount of \$45,000.00, from funds available in the 2012/2013 CDBG Project Account number 063-075-7095 for a Senior Nutrition Program, upon receipt of proper invoice or statement approved by the City Manager. The final payment must be

a minimum of \$3,500.00.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Sylvester Cantu, Community Development
Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**AGREEMENT BETWEEN CITY OF MIDLAND, TEXAS AND
COMMUNITY AND SENIOR SERVICES OF MIDLAND, INC.
REGARDING THE SOUTHEAST SENIOR CENTER NUTRITION PROGRAM**

This Agreement made by and between the **CITY OF MIDLAND**, a Texas home rule municipal corporation, herein called “City”, and **COMMUNITY AND SENIOR SERVICES OF MIDLAND, INC.**, hereinafter called “Corporation”;

I. PURPOSE

The purpose of this Agreement is to state the terms and conditions by which the Corporation will carry out the nutrition program for the Southeast Community Senior Center (located at 1803 E. Indiana Avenue) utilizing Community Development Block Grant (CDBG) funds as described in Exhibit “A”, attached hereto and incorporated herein for all legal purposes. Any change in the performance schedule, purpose or the location of the operation must be approved in advance by the City.

II. PAYMENT

Upon and after the receipt of a notice to proceed from the City, the Corporation is authorized to incur costs against a total amount of FORTY-FIVE THOUSAND AND NO/100 DOLLARS (\$45,000.00). Payments shall be made on a reimbursement basis to the Corporation for services and expenses as shown in Exhibit “A”, attached hereto and made a part hereof for all legal purposes. All payments shall be made to the Corporation upon certification by the Corporation and approval by the Community Development Division of the City’s Development Services Department and the City Manager. When reimbursements for personal services are requested, time sheets must be presented by the Corporation to the City, in a form suitable to City. Final payment on the project must be at least Three Thousand, Five Hundred Dollars (\$3,500.00), and will not be made until all final project reporting is completed.

III. PROCUREMENT STANDARDS

The Corporation will make project procurement in accordance with 24 CFR Part 84 and Part 85 and applicable Texas Statutes. At least ten (10) days before Corporation seeks competitive bids on procurement of over TEN THOUSAND DOLLARS (\$10,000.00) and for any work contracts of over TWO THOUSAND DOLLARS (\$2,000.00) of the above described project, the plans and specifications and other bid documents shall be submitted to the City and reviewed by the City’s Community Development Division for conformance with federal and City requirements.

IV. INDEMNITY

CORPORATION 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 CORPORATION, its agents or employees, or any subcontractor, arising out of, or resulting from, Corporation's use of, or activities on, the Agreement Premises, and Corporation 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.

CORPORATION 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 CORPORATION OR CORPORATION'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 CORPORATION 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.

The Corporation agrees that it will 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 Agreement. When City so desires, the Corporation shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived.

V. INSURANCE

A. Corporation shall carry insurance in the following types and amounts for the duration of this Agreement and furnish Certificates of Insurance along with copies of policy declaration pages and all policy endorsements as evidence hereof to City:

1. Statutory Workers' Compensation; said insurance shall provide for a waiver of subrogation in favor of the City;
2. Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of \$1,000,000. The policy must provide contractual liability coverage for liability assumed under this Agreement, products and completed operations coverage, independent contractors coverage, and a waiver of a Transfer of Right of Recovery Against Others in favor of the City. If this coverage is underwritten on a claims made basis, the retroactive date shall be coincident with the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. Corporation shall maintain coverage for the duration of this Agreement and for six months following completion of the construction improvements associated with this Agreement. Corporation shall pay for this extended reporting period coverage. This insurance shall name the City as an additional insured and shall provide a waiver of subrogation in favor of the City.

B. If insurance policies are not written for amounts specified in Subsection A, above, Corporation shall carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

C. Corporation shall provide City at least thirty (30) days written notice of erosion of the aggregate limit below the minimum required combined single limit coverage.

D. Corporation shall provide all provisions of this Agreement concerning liability, duty, standard of care, together with the indemnification or defense provisions herein, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies.

E. Corporation shall not commence work under this Agreement until it has obtained all required insurance and until such insurance has been reviewed by the City Attorney's Office of the City of Midland.

F. Corporation shall produce an endorsement to each affected policy that contains language similar to the following:

1. That names City of Midland, Texas, Attn.: CDBG Program Coordinator, 300 N. Loraine, P. O. Box 1152, Midland, Texas, 79702, as additional insured (except for Workers' Compensation and Employee's Liability coverage), with right of subrogation against City waived on each affected policy including Worker's Compensation.
2. That obligates the insurance company to notify City of any non-renewal, cancellation, or material change to the policy, at least thirty (30) calendar days before the change or cancellation;
3. That the "other" insurance clause shall not apply to City where City is an additional insured shown on the policy. It is intended that the policies required in this Agreement, covering both City and Corporation, shall be considered primary coverage, as applicable.

G. Corporation shall not cause any insurance to be canceled or permit any insurance to lapse during the term of this Agreement or the six-month period following completion, in the case of a claims-made policy.

H. City reserves the right to review the insurance requirements of this Article V during the effective period of this Agreement and to make reasonable adjustments to insurance coverages, their limits when deemed necessary and prudent by City based upon changes in statutory law, court decisions, or the claims history of the industry or financial condition of the insurance company as well as that of Corporation. City shall be entitled to review, upon request, and without expense to City, to receive copies of the requisite insurance policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter on any of such policies.

I. All certificates shall include a clause to the effect that the policy may not be canceled, reduced, restricted, or limited until thirty (30) calendar days after City has received written notice of such cancellation or change. During the term of this Agreement, Corporation shall have in effect a general liability insurance policy in an amount of not less than \$1,000,000 combined single limit for bodily injury and property damage. This liability policy shall be endorsed to name the City of Midland as an additional insured. Corporation shall provide City with a Certificate of Insurance evidencing the required coverage upon execution of this Agreement.

VI. INDEPENDENT CONTRACTOR

It is expressly understood and agreed that Corporation 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 Corporation shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents employees, contractors, and subcontractors; that the doctrine of respondent superior shall not apply as between City and Corporation, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Corporation. No person performing any work hereunder 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. The Corporation 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. City does not have the power to direct the order in which the work is done. City shall not have the right to control the means, methods or details of Corporation’s work. Corporation shall assume exclusive responsibility for the work. Corporation is entirely free to do the work in its own way.

VII. APPLICABLE LAWS, ORDINANCES

The Corporation shall comply with all applicable laws, ordinances and codes of the United States, State of Texas and the City and shall require all contractors and subcontractors to comply with the same. The Corporation hereby agrees as follows:

- A. The Corporation will comply with the policies, guidelines and requirements of 24 CFR Part 84 and 85 and OMB Circulars A-87 and A-122, as they relate to the application, acceptance and use of federal funds for this federally assisted program. The Corporation will also comply with the Single Audit provisions of OMB Circular A-133 and make the all audits for fiscal years in which CDBG funds are expended available to the City.
- B. The Corporation will comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352), which provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the applicant received federal financial assistance.
- C. The Corporation will comply with Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.602), which provides that no person in the United States shall, on the ground of race, color,

national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with CDBG funds. Additionally, the Corporation will comply with regulations at 24 CFR 570.613 concerning eligibility restrictions for certain resident aliens.

D. The Corporation will comply with Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), which provides that it is the policy of the United States to provide for fair housing throughout the United States. It prohibits particular discriminatory acts regarding housing if the discrimination is based on race, color, religion, sex, national origin, family status, or mental and physical disability.

E. The Corporation will comply with Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u), as amended, and the regulations issued pursuant thereto (24 CFR Part 135) which provides that to the greatest extent feasible opportunities for employment and other economic opportunities be directed to low and very low income City residents and to business concerns which provide economic opportunity to low and very low income persons.

F. The Corporation will obtain and maintain documentation evidencing that program beneficiaries meet CDBG program income eligibility criteria, specifically as required by 24 CFR 570.208. The Corporation shall further comply with the retention of records provisions of 24 CFR 570.502.

G. The Corporation will insure that subcontractors for work or construction activity under this Agreement shall comply with the equal opportunity requirements of Executive Order 11246, as amended.

H. The Corporation will insure that subcontractors for work or construction activity under this Agreement shall comply with 24 CFR Part 84 and 85 and Section 110 of the Housing and Community Development Act of 1974 and the regulations issued pursuant thereto (24 CFR 570.603), which provide for adherence to certain labor standards.

I. No officer, employee or board member of Corporation shall have a financial interest, direct or indirect, in this Agreement or the monies transferred hereunder, or be financially interested, directly or indirectly in the sale to Corporation of any land, materials, supplies or services purchased with any funds transferred hereunder, except on behalf of Corporation as an officer, employee, member, or program participant. The Corporation shall further comply with the conflict of interest provisions of 24 CFR 570.611 and 24 CFR Part 84 and Part 85.

J. The Corporation will insure that funds will not be used to directly or indirectly employ, award contracts to or otherwise engage the services of or fund any subcontractor

during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

K. The Corporation shall follow the provisions of 24 CFR Part 84 and Part 85 concerning standards for financial management systems.

L. The Corporation will comply with the property management and disposition requirements of 24 CFR Part 84 and 85 including copyright provisions therein.

M. The Corporation certifies that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the Corporation, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Corporation shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

N. The Corporation shall comply with and shall ensure that its subcontractors comply with the provisions of the Drug-Free Workplace Act, 41 U.S.C, 701, et seq.

O. The Corporation shall follow the provisions of 24 CFR 570.614 Architectural Barriers Act and the Americans with Disabilities Act.

P. The Corporation shall make available to the City, as determined by the City, information and/or data which document compliance, in all phases of its work, with the above paragraphs A through O. The Corporation shall fully cooperate with City when City monitors the services and work performed under this Agreement, which the City may do at any time during the term of this Agreement. The Corporation shall maintain accounts and records adequate to identify and account for all cost pertaining to the Agreement. Records are to be retained in accordance with 24 CFR Part 84 and Part 85.

VIII. PROGRAM INCOME

It is agreed and understood that except in the disposition of CDBG acquired assets that there will be no program income generated as a result of this Agreement which requires compliance with 24 CFR 570.504.

IX. TRANSFER OF ASSETS

The Corporation shall upon termination or expiration of this Agreement transfer to the City all CDBG funds and all loans and accounts receivable attributable to the use of CDBG funds that the Corporation has on hand at the time of termination. If the Corporation ceases to use any asset acquired with CDBG funds for the purposes described in this Agreement, the Corporation shall either pay to the City the fair market value of the asset or transfer control of the asset to the City.

X. RECOGNITION OF FUNDING

The Corporation shall provide recognition of CDBG funding in its procurement announcements. The Corporation shall post, in a publicly visible location where CDBG assisted activity is provided, an acknowledgment that the City of Midland Community Development Block Grant Program is contributing to the project. The City's Community Development Office will determine if posting is adequate given the scale of the CDBG assisted activity.

XI. PROJECT REPORTS

Monthly status reports are to be prepared by the Corporation and submitted in a timely fashion to the City. A final performance report shall be prepared and submitted promptly after project completion. An inventory of CDBG acquired assets shall be submitted to the City, in a form suitable to the City, on an annual basis and at the end of the Agreement.

XII. TERM OF AGREEMENT

The term of this Agreement shall begin October 1, 2012 and end September 30, 2013, unless an extension of time is granted by the City Council.

XIII. RELEASE

CORPORATION HEREBY RELEASES, RELINQUISHES, ACQUITS AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS 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.

XIV. GENERAL FUND

It is expressly understood that this Agreement in no way obligates the general fund or any other monies or credits of the City, and is, therefore, expressly contingent on federal funds of the City's CDBG program.

XV. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, CORPORATION 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 CORPORATION SPECIFICALLY AGREES THAT IF THE CORPORATION 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 CORPORATION AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CORPORATION MIGHT OTHERWISE BE ENTITLED.

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

THE CORPORATION AND CITY ARE RELYING ON THEIR OWN

JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO ITS EXECUTION.

XVI. DEFAULT PROVISION

In the event that either the Corporation or the City fails to perform or is unable to perform substantially its obligations under the terms of this Agreement, the nondefaulting party shall notify the defaulting party in writing of such default. Within five (5) days after receipt of such notification, the Corporation and City shall meet to discuss the default, the reasons thereof and the methods to cure default. If the defaulting party has not substantially cured the default within ten (10) days after receipt of such notification, or the City and Corporation have not agreed within such time upon a solution to the default, the nondefaulting party may, at its option, pursue any remedies at law or in equity.

In any event this Agreement may be terminated by the mutual consent of the Corporation and City in writing.

XVII. 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, Corporation or its legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this agreement) of such damages, duly verified, within one hundred and 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 Corporation will settle, the physical and mailing addresses of Corporation at the time and date the claim was presented and the physical and mailing addresses of Corporation for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Corporation 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 Corporation that its 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, Corporation's failure to comply with the requirements herein shall perpetually bar Corporation'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. Corporation agrees that the requirements of this entire agreement are reasonable.

XVIII. SOVEREIGN IMMUNITY

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

XIX. THIRD-PARTY BENEFICIARY

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

XX. ASSIGNMENT

Corporation 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.

XXI. TERMINATION WITHOUT CAUSE

The City shall have the right, at its sole option, to terminate this Agreement at any time, with or without cause, by giving 90 days written notice to Corporation of City's election to so terminate.

XXII. VENUE AND GOVERNING LAW

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. This Agreement shall be governed by and construed in accordance with the laws and court decision of the State of Texas.

XXIII. PROCUREMENT SUSPENSION AND DEBARMENT

The City has found that the Corporation has not been suspended or debarred from performing work on Federal contracts.

XXIV. 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this the _____ day of _____, 2012.

CITY OF MIDLAND, TEXAS

COMMUNITY AND SENIOR SERVICES
OF MIDLAND, INC.

By _____
W. Wesley Perry, Mayor

By _____

Name _____

Title _____

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Sylvester Cantu, Community Development
Manager

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 _____, an officer of COMMUNITY AND SENIOR SERVICES OF MIDLAND, INC., known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

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

Notary Public, State of Texas

EXHIBIT A

SCOPE OF SERVICES – 2012/13 Southeast Senior Center Nutrition Program

The objective of the Southeast Community Senior Citizen Nutrition program is to promote better mental and physical health for older persons through nutritious meals and socialization. The nutrition program will be provided each day in coordination with recreational, educational, prevention/maintenance and special interest programs of the senior center.

Community and Senior Services of Midland (CSSM), with main offices at 3301 Sinclair St., will carry out the nutrition program from the Southeast Community Senior Center facilities at 1803 E. Indiana. The nutrition program will be provided each day, Monday through Friday (except on holidays), at 11:30 a.m. CSSM, through its central kitchen at 3301 Sinclair, will provide meals which meet the nutritional guidelines set by the Texas Department on Aging and Texas Department of Human Services for elderly nutrition programs. CSSM also provides the meals for the Meals-on-Wheels program, Dellwood Senior Center and Casa de Amigos.

A total of 200 seniors (age 60 years and older) are expected to benefit from the program. Primarily, participants are residents of Southeast Midland, with all being low and moderate-income persons. Daily attendance is expected to average 32 persons per day. It is expected that 8,000 meals will be provided at the Southeast Community Senior Center between October 1, 2012 and September 30, 2013.

Documentation includes an initial assessment form and daily sign-in sheets which are entered into a tracking system. Monthly reports are generated which summarizes beneficiaries, impairment level and income level. For the CDBG Annual Report, CSSM will report the number of households assisted as required by the HUD Performance Measurement System. Kelly Ives, Executive Director of CSSM, is responsible for administration of the program.

BUDGET

Meals for Southeast Center	\$45,000
----------------------------	----------

8,000 Meals @ \$6.02/Meal for a total of \$48,200. This figure includes all costs in preparing meals -- personnel, supplies, food, transportation and administration. CSSM expects to receive \$3,200 from other resources that will be applied to the program.



City Council Agenda

Approved For Agenda:
JNichols
City Manager's Office

MEETING DATE: September 11, 2012

TO: CITY COUNCIL, CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Resolution authorizing the allocation of funds for Professional Services related to the update of the City's Zoning Code

Purpose:

To consider a Resolution authorizing the allocation of \$125,000 to update of the City's Zoning Code.

Recommended City Council Action:

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

\$125,000 from the 2011-2012 Planning Division Budget

Discussion:

Staff has received responses from qualified firms to begin the zoning code update. The responses are currently being evaluated and the most qualified firm will be selected. It is anticipated that work will commence in October of this year. At this time staff is requesting the Council to allocate the sum of \$125,000 from the Fiscal Year 2011-2012 General Fund (001) Non Departmental (150) Interfund Transfer (0199) General Construction Fund (6299) to the Zoning Code Update Project (9009).

Attachment: Draft Resolution

RESOLUTION NO.

**RESOLUTION ALLOCATING \$125,000 FROM THE
GENERAL FUND (001) NONDEPARTEMENTAL (150)
INTERFUND TRANSFER (0199) GENERAL
CONSTRUCTION FUND (6299) TO THE ZONING CODE
UPDATE PROJECT (9009)**

WHEREAS, the City Council finds it to be in the public interest to allocate \$125,000 to the Zoning Code Update Project (9009);

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

THAT the sum of \$125,000.00 is hereby allocated from the General Fund (001) Nondepartmental (150) Interfund Transfer (0199) General Construction Fund (6299) to the Zoning Code Update Project (8977).

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Gary Saunders, Transportation Manager

SUBJECT: Consider a resolution authorizing a right-of-way crossing license with the City of Midland, Texas and DCP Midstream for the purpose of installing one 8" natural gas pipeline within a portion of Briarwood Avenue, within the City of Midland, Texas, Sections 22 and 27, Block 40, T-1-S, T & P RR. CO. Survey, City of Midland, Midland County Texas.

Purpose:

Consider a resolution authorizing a right-of-way crossing license with the City of Midland, Texas and DCP Midstream for the purpose of installing one 8" natural gas pipeline within a portion of Briarwood Avenue, within the City of Midland, Texas, Sections 22 and 27, Block 40, T-1-S, T & P RR. CO. Survey, City of Midland, Midland County Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The City of Midland shall receive Payment of \$490.91 annually for the duration of the Right of Way License Agreement.

Discussion:

The Legal Department has prepared a resolution authorizing the execution of a Right of Way License Agreement between the City of Midland and DCP Midstream for the purpose of placement, operation and maintenance of one 8" natural gas pipeline within a portion of Briarwood Avenue, within the City of Midland, Texas, Sections 22 and 27, Block 40, T-1-S, T & P RR. CO. Survey, City of Midland, Midland County Texas. the City of Midland.

The Agreement shall be for a term of twenty (20) years and may be renewed at the end of the initial Agreement term for one (1) additional twenty (20) year term, upon written request of DCP Midstream on or before ninety (90) days prior to the expiration of the Agreement

term in effect and with written consent of the City of Midland.

Attached is a map indicating location of the proposed natural gas pipeline.

Staff recommends approval of this resolution.

RESOLUTION NO.

RESOLUTION AUTHORIZING A RIGHT-OF-WAY CROSSING LICENSE WITH THE CITY OF MIDLAND, TEXAS AND DCP MIDSTREAM, LP; SAID RIGHT-OF-WAY LICENSE IS FOR THE PURPOSE OF INSTALLING ONE (1) EIGHT INCH (8") NATURAL GAS PIPELINE; THE PIPELINE IS LOCATED WITHIN THE CITY OF MIDLAND RIGHT-OF-WAY, SECTION 22 AND 27, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS; THE LICENSE TERM IS FOR TWENTY (20) YEARS, COMMENCING WITH THE DATE OF THIS LICENSE AND MAY RENEW AT THE END OF THE TERM FOR ONE ADDITIONAL TWENTY (20) YEAR TERM UPON 90 DAYS WRITTEN REQUEST PRIOR TO EXPIRATION

WHEREAS the City Council finds it to be in the public interest to authorize a right-of-way crossing license with DCP Midstream, LP, located within the City of Midland Right-of-Way crossing W. CO. Road\Briarwood, Section 22 and 27, Block 40, T-1-S, T&P RR Co. Survey, City of Midland, Midland County, Texas;

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

THAT the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a right-of-way crossing license with DCP Midstream, LP, said license being substantially in the form attached hereto as Exhibit "A" and incorporated herein for all purposes.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Gary Saunders, Transportation Manager

RIGHT-OF-WAY CROSSING LICENSE

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MIDLAND §

THIS RIGHT-OF-WAY CROSSING LICENSE ("AGREEMENT"), effective this 12th day of September, 2012, by and between THE CITY OF MIDLAND, TEXAS, a home rule municipal corporation, hereinafter called "Licensor", and DCP MIDSTREAM, LP, 10 Desta Drive, Suite 400W, Midland, Texas, 79705, hereinafter called "Licensee".

Licensee desires use of property owned by the Licensor in Midland County, Texas within the City of Midland, Texas, for the purposes of burying a one eight inch (8") natural gas pipeline from under a portion of W. Co. Rd.\Briarwood right-of-way within the City of Midland, Texas, Section 22 and 27, Block 40, T-1-S, T&P RR Co. Survey, City of Midland, Midland County, Texas.

It is the position of the Licensor that Licensee must obtain a license in order to use the public lands of the City. The parties agree the grant herein may be referred to as the "License".

W I T N E S S E T H:

For and in consideration of the execution of this Agreement and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows, to wit:

I. Term

This Agreement shall be for a term of twenty (20) years (the "Initial Term"), commencing with the date of this Agreement, the "Commencement Date," unless terminated earlier as provided hereafter. This Agreement may renew at the end of the Initial Term for one (1) additional term of twenty (20) years, upon the written request of

Licensee received by Licenser on or before ninety (90) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of the Licenser. All work under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective.

Upon termination of this Agreement, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of the Licensee to its original condition, as close thereto as may be practical, subject to the approval of the Licenser upon inspection by Licenser's Transportation Manager, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this license.

II. Financial Considerations

1. In further consideration for the rights herein granted to Licensee, Licensee shall pay to the Licenser the sum of Four hundred, Ninety dollars and Ninety-one cents (\$490.91) per annum, each year payable on or before the anniversary of the commencement date of this license agreement except for the first year of the license agreement. The first year's license fee of \$490.91 shall be due and payable in advance of the commencement date of this license ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall constitute a late payment and Licensee shall pay the Licenser a late charge of five percent (5%).

2. At the same time the first year License Fee is due, Licensee shall pay a non-refundable onetime fee of \$500.00 to the Licensors' Transportation Manager. Said fee shall revert to the Licensors and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.
3. Prior to commencement of any renewal term, the Licensors and Licensee shall negotiate in good faith to agree to an adjustment of the License Fee. If the Licensors and Licensee are unable to reach an agreement regarding an adjustment to the License Fee, then the License Fee shall be determined by Licensors in its sole discretion, provided the new License Fee shall not exceed one hundred fifty percent (150%) of the License Fee paid for the last year of the Initial Term.
4. The License Fee payment shall be made to the Licensors at the office of the Transportation Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

1. Licensors does hereby grant unto Licensee, the right to enter upon certain property of the City of Midland as shown on "Exhibit A" attached hereto and incorporated herein for all purposes, at the location identified on "Exhibit A".
2. Licensee shall install one (1) eight inch (8") natural gas pipeline at the location shown on "Exhibit A".
3. Licensee covenants and agrees that it will repair any of Licensors' roads that

Licensee damages on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

4. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by the Licensor that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of the Licensor's Standard Specifications.

5. Licensee will install the natural gas pipeline at a depth of at least thirty-six inches (36") below the surface to comply with the requirements of the Licensor's Transportation Department.

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

7. Licensor expressly reserves the right to install, repair, or reconstruct streets or roads and all ancillary public uses usual and customary in connection with streets and roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by the Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of the Licensor, in, across, along, over or under any public property occupied by Licensee. In permitting such work to be done, the Licensor shall not be

liable to the Licensee for any damage so caused to the Licensee's system, **NOR SHALL THE LICENSOR BE LIABLE TO THE LICENSEE FOR ANY DAMAGES TO THE LICENSEE'S PIPELINE OR CASING, ARISING OUT OF THE NEGLIGENCE BY THE LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If the Licensor requires the Licensee to remove, alter, change, adapt, or conform its facilities because of changes in the grade of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by the Licensor, the Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by the Licensor, without claim for reimbursement for the cost of the relocation or for damages against the Licensor. If these requirements impose a financial hardship upon the Licensee, the Licensee shall have the right to present alternative proposals for the Licensor's consideration.

8. Licensor expressly reserves the full right to grant other easements or rights of way crossing or running parallel with the rights of way used by Licensee.

9. It is especially provided, however, that as an express condition of this Agreement, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the premises covered hereby cease to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty days (120) notice,

then and in that event, this license shall automatically revert to the Licensor, its successors or assigns, free and clear of any right, title, or interest in the Licensee, or any re-entry by the Licensor.

10. In the event that Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to the Licensor's Transportation Manager for his or her approval. In the event of emergency repairs necessary to restore service, the Licensee shall notify Licensor's Transportation Manager before making any repairs if during a Licensor work day and if not on a work day, the Licensee shall notify the Licensor's Transportation Manager on the first work day after repairs have begun.

11. The Licensor reserves the right to use the surface or subsurface or airspace above the land covered by this Agreement for any public purpose allowed by law and deemed necessary by the Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by the Licensor on, across, along, under or over said right of way occupied by the Licensee. In the event of such work in connection with said public purposes it shall be deemed necessary by the Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline or casing of Licensee, such alteration or change or relocation shall be commenced and completed by the Licensee within one hundred eighty (180) days after being ordered in writing by the Licensor pursuant to directions from the Licensor's City Council without

any claim for reimbursement for the cost of the relocation or damages against the Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding the Licensor, payment for alteration or relocation of its system to which it may be lawfully entitled to under applicable Federal or State laws with respect to relocation payments.

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$100,000.00 per occurrence

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

<u>Worker's Compensation:</u>	<u>Statutory limits</u>
-------------------------------	-------------------------

Contractors Pollution Liability: \$1,000,000.00 per pollution
\$1,000,000.00 per aggregate

This insurance, except Worker's Compensation, shall name the Licensor as an additional insured and all insurance shall waive subrogation in favor of the Licensor.

The Workers' Compensation coverage provided by Licensee shall inure to the

benefit of employees injured during the course and scope of their employment by Licensee pursuant to this Agreement.

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$250,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement. All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name the Licensor as an additional insured on a claims occurred basis. All insurance required pursuant to this Agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the Licensor.

The Commercial General Liability Insurance shall be on a per project or policy aggregate, including completed operations, and shall be on an occurrence basis. The Commercial General Liability Insurance shall name the Licensor as an additional insured and waive all rights of subrogation against the Licensor.

The parties agree that, prior to the execution of the Agreement, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

Licensor shall be provided the notice by Licensee's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Licensor shall not be required to provide any insurance whatsoever pursuant to this Agreement.

Licensee shall contractually require all contractors, subcontractors, and sub-

subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured.

2. **INDEMNITY** - THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR AND ALL OF LICENSOR'S OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, LOSSES, ATTORNEY'S FEES AND EXPENSES OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON, PERSONS OR PROPERTY, ON ACCOUNT OF ANY ACT OF THE LICENSEE, Licensee's contractor or subcontractor, their agents or employees, arising directly or indirectly or in any way connected with the placement, construction, operations, repair, maintenance, replacement or removal of any part of the Licensee's pipeline or casing system in the Licensor's rights of way. The Licensee will be required to pay any judgment with costs which may be obtained against the Licensor or any of its officers, agents, or employees including attorney's fees.

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

PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINE OR CASING SYSTEM DESCRIBED HEREIN.

THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSEE, LICENSEE'S OFFICERS, AGENTS, AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF THE LICENSEE'S PIPELINE OR CASING SYSTEM IN THE LICENSOR'S RIGHT

OF WAY. THE LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

3. **Assignment** - The rights granted by this Agreement inure to the benefit of the Licensee. The rights and privileges shall not be assignable by Licensee, with the exception of an assignment by Licensee to an affiliated entity, without the express written consent of the governing body of the Licensor. Any required consent is to be evidenced by an ordinance or resolution of the governing body of the Licensor that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor.

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

Licensor. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a “Community of Pecuniary Interest” or “An Equal Right of Control” which would give rise to vicarious liability. Licensee shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder. Licensor does not have the power to direct the order in which the work is done. Licensor shall not have the right to control the means, methods or details of Licensee’s work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way.

5. **WAIVER OF ATTORNEY’S FEES - BY EXECUTING THIS AGREEMENT, LICENSEE AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE LICENSOR, REGARDING THE AWARD OF ATTORNEY’S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, OR INTERPRETATION OF THE AGREEMENT. THE LICENSEE SPECIFICALLY AGREES THAT IF THE LICENSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND**

REMEDIES CODE SECTION 37.001, ET. SEQ., AS AMENDED), OR CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE, THE LICENSEE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LICENSEE MIGHT OTHERWISE BE ENTITLED.

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

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

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

deemed to have been performed in Midland County, Texas.

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

8. **Sovereign Immunity** - By executing this Agreement the Licensor is not waiving its right of sovereign immunity. The Licensor is retaining its immunity from suit. The Licensor is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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

10. **Notice** - Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensor as follows: Transportation Manager, City of Midland, P. O. Box 1152, Midland, Texas, 79702.

Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensee as follows: DCP Midstream, LP, Kelley R. Michael, RPL, 10 Desta Drive, Suite 400W, Midland, Texas 79705.

11. **Notice of Alleged Breach; Statutory Prerequisites** - As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Licensee or his legal representative, shall give the City Manager, or any other reasonable official of the Licensor, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the Licensor from any liability whatsoever. The Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

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

LICENSOR:

CITY OF MIDLAND, TEXAS

Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Gary Saunders, Transportation Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

LICENSEE:

DCP MIDSTREAM, LP

Kelley R. Michael, RPL

THE STATE OF TEXAS

§

§

COUNTY OF _____

§

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

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

Notary Public, State of Texas



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 09/11/2012

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 \$609,614 with Real Property Resources, Inc. (Betenbough Homes) for the utility and pavement extensions to serve the Legends Park Addition. The site is generally located on the east side of the future Avalon Dr. south of Deauville Blvd., near the Scharbauer Sports Complex. 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 of 16" Ø oversized water main improvements and paving improvements to serve the Legends Park subdivision. The subject property is located east of the future Avalon Dr. south of Deauville Blvd., near the Scharbauer Sports Complex.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The City's contribution will be \$609,614

Water Distribution Improvements (Oversize)	\$446,768
Paving Improvements (Avalon Dr.)	\$162,846 (17.6%)
Total	\$609,614

That the sum of \$609,614 is hereby appropriated from the following sources in the following amounts to the Avalon Drive Paving and Water Main Extension Project (9011):

Water and Sewer Fund (300) Unappropriated Fund Balance (5650)	\$446,768
2009 GPCO Streets and Drainage Bond Fund (195) Unappropriated Fund Balance (5650)	\$162,846

Discussion:

The Legends Park Addition is located on the east side of the future Avalon Dr. extension, south of Deauville Blvd. near the Scharbauer Sports Complex. The developer is requesting City participation for the construction of oversized water distribution improvements and the paving of Avalon Dr. (half width) to the City of Midland arterial standards.

Water distribution improvements include oversizing the water mains at the following locations:

1. Deauville Blvd. and Avalon Dr. - increase from 8"Ø to 16"Ø;
2. Distribution loop around future school site – increase from 8" Ø to 12"Ø.

The local government code allows for 100% of all oversized costs to be incorporated into the development agreement as the City's portion of the cost.

Paving improvements include the construction of Avalon Dr. to the arterial street standard (half width) from Deauville Blvd. to the southern end of the Legends Park subdivision. The City's contribution to the paving of this development agreement is 17.6% of the total cost

Once constructed, the improvements will serve the Legends Park Addition and allow for future connection to the south and west of Legends Park as development moves in that direction.

Staff recommends approval of the development agreement providing City participation in 100% of the construction cost for the oversized portion of the water main and 17.6% of the half width paving improvements in Avalon Dr. to serve the Legends Park subdivision. Attached is an opinion of probable cost from the engineer of record (AMD Engineering, LLC – Jimmy McDaniel, P.E.) and a location map.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH REAL PROPERTY RESOURCES, INC. FOR DEVELOPMENT OF LEGENDS PARK ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED WEST OF THE SCHARBAUER SPORTS COMPLEX AND SOUTH OF DEAUVILLE BOULEVARD); AND APPROPRIATING FUNDS IN THE AMOUNT OF \$609,614.00 THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

WHEREAS, the developer of Legends Park 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 Real Property Resources, Inc. which sets forth the extent of the City's participation in the construction of public improvements related to the development of Legends Park 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 Real Property Resources, Inc. Said agreement is marked as Exhibit "A", attached hereto and incorporated herein for all purposes.

SECTION TWO. That the sum of \$609,614.00 is hereby appropriated from the following sources in the following amounts to the Avalon Drive Paving and Water Main Extension Project (9011):

2009 GPCO Streets and Drainage Bond Fund (195)
Unappropriated Fund Balance.....\$162,846.00

Water and Sewer Fund (300) Unappropriated
Fund Balance (56550).....\$446,768.00

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay for said agreement, in amount not to exceed \$609,614.00, out of funds that are available in the said budget account upon receipt of proper invoice or statement therefor approved by the City Manager.

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 REAL PROPERTY RESOURCES, INC.
AND THE CITY OF MIDLAND, TEXAS**

THIS PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT (“Agreement”) is made and effective this 11th day of September, 2012, by and between **REAL PROPERTY RESOURCES, INC.** (“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 Legends Park 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 AMD Engineering, LLC. (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 \$609,614.00. 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.

Provided, however, Developer shall not have to comply with said applicable competitive sealed bid procedures where the City's contribution exceeds 30 percent of the total cost of the public improvements if the City's participation is for the oversizing of such improvements in accordance with Section 212.072 of the Texas Local Government Code.

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/person'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:

Real Property Resources, Inc.
6305 82nd St.
Lubbock, Texas 79424
Attn: Kelly Oaks

If to City:

City of Midland
P. O. Box 1152
Midland, Texas 79702
Attn: Director of Development Services

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

REAL PROPERTY RESOURCES, INC.

By: _____
Kelly Oaks, Vice President

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared KELLY OAKS, 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 REAL PROPERTY RESOURCES, INC., in the capacity therein stated.

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

Notary Public, State of Texas

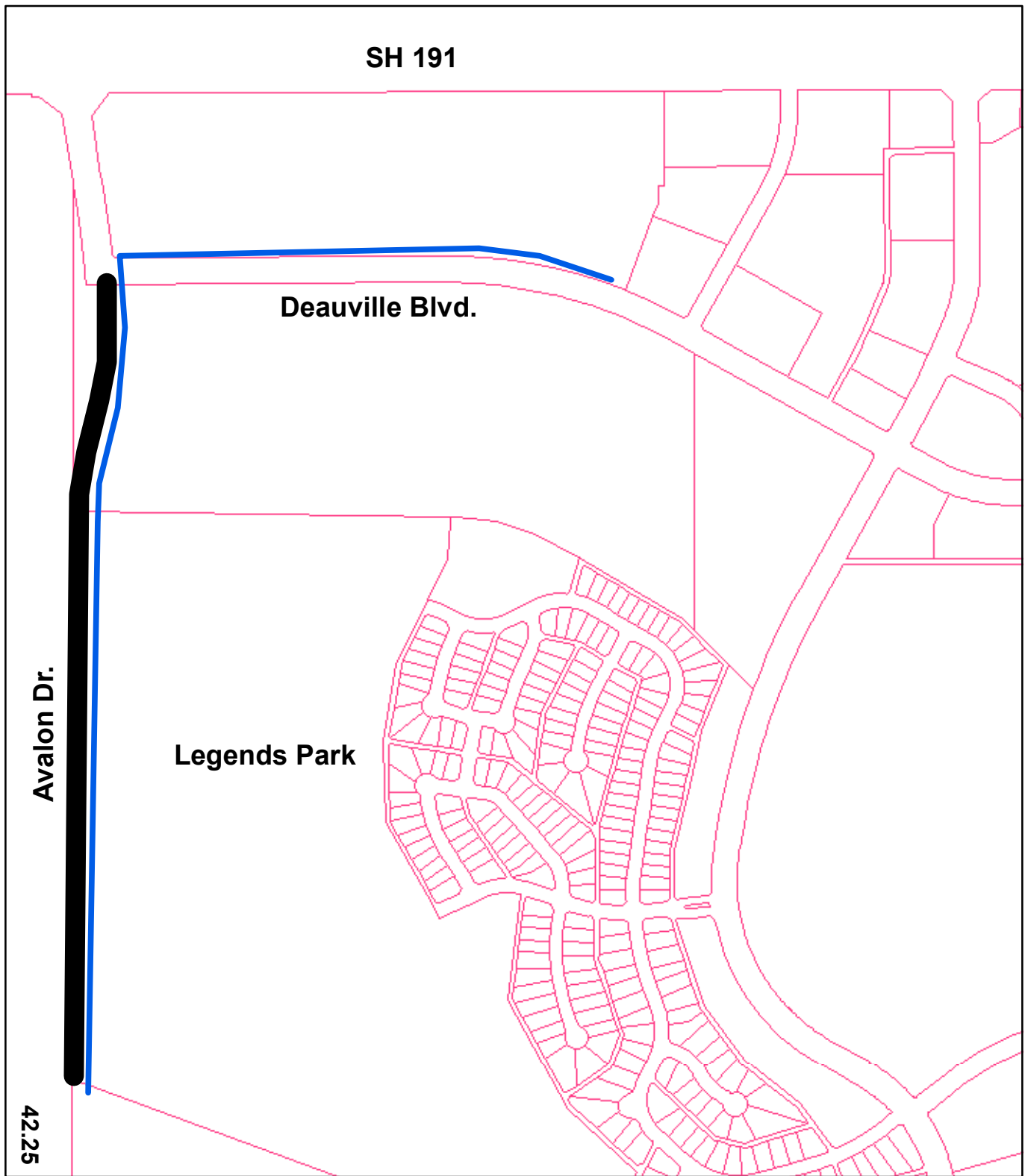
					Area 1										Area 2									
TITLE: Legends Park, Section 4					Belenbough					City of Midland					SBC					City of Midland				
Municipal Utilities Construction																								
					QTY	Unit	Bid Price	Total	QTY	City	Unit	Bid Price	Total	Bid Price	Total	QTY	City	Unit	Bid Price	Total	Bid Price	Total		
					(Fittings Only)										(Fittings Only)									
1	6" C-900 PVC Class 150 water pipe, including all necessary accessories, furnished and installed, complete and in place, per linear foot:				1237	LF	\$ 24.35	\$ 30,120.95																
2	6" C-900 PVC Class 150 water pipe, including all necessary accessories, furnished and installed, complete and in place, per linear foot:				12,102	LF	\$ 27.72	\$ 335,467.44																
3	16" DI water pipe, including all necessary accessories, furnished and installed, complete and in place, per linear foot:				4,993	LF	\$ 77.53	\$ 387,107.29	1,657															
	16" DI water pipe (south of Hall of Fame Boulevard), including all necessary accessories, furnished and installed, complete and in place, per linear foot:				853	LF	\$ 82.53	\$ 70,398.09	853															
5	12" PVC water pipe, including all necessary accessories, furnished and installed, complete and in place, per linear foot:				3,628	LF	\$ 40.71	\$ 147,695.88	3,628															
6	6" gate valve, including all necessary accessories, furnished and installed, complete and in place, per each:				25	Each	\$ 782.00	\$ 19,550.00																
7	8" gate valve, including all necessary accessories, furnished and installed, complete and in place, per each:				35	Each	\$ 1,091.00	\$ 38,185.00																
	16" butterfly valve, including all necessary accessories, furnished and installed, complete and in place, per each:				13	Each	\$ 5,174.00	\$ 67,262.00	5															
9	12" gate valve, including all necessary accessories, furnished and installed, complete and in place, per each:				11	Each	\$ 2,055.00	\$ 22,605.00	11															
10	Standard fire hydrant for 6" water line connection, including all necessary accessories, furnished and installed, complete and in place, per each:				23	Each	\$ 2,961.00	\$ 68,103.00																
11	Cast iron or ductile iron water line fittings, including all necessary accessories, furnished and installed, complete and in place, per pound:				21,403	Lbs	\$ 3.35	\$ 71,700.05	1,912	2,536														
12	30" x 16" tapping sleeve and tapping valve, including all necessary accessories, furnished and installed, complete and in place, per each:				1	Each	\$ 25,000	\$ 25,000.00																
13	Standard City of Midland paving out and repair in accordance with city standards, complete and in place, per square yard:				60	SY	\$ 68.32	\$ 4,099.20																
14	Water line tap for future City meter on 12" line, including 1" tapping saddle and 1" copper domestic service line extended to within 1' of alley right-of-way, 1" corporation stop and curb stop with locking cut-off and meter nut, meter box, all necessary accessories, excavation and backfill, furnished and installed, complete and in place, per each:				36		\$ 731.09	\$ 26,319.24	36															
15	Water line tap for future City meter, including 1" tapping saddle and 1" copper domestic service line extended to within 1' of alley right-of-way, 1" corporation stop and curb stop with locking cut-off and meter nut, meter box, all necessary accessories, excavation and backfill, furnished and installed, complete and in place, per each:				278	Each	\$ 693.00	\$ 192,654.00																
16	24" Storm Drain including all necessary accessories, furnished and installed, complete and in place, per each:				1,440	LF	\$ 48.65	\$ 70,056.00																
17	60" Storm Drain Manhole including all necessary accessories, furnished and installed, complete and in place, per each:				1	Each	\$ 3,908.00	\$ 3,908.00																
SUBTOTAL BASE BID							\$ 1,580,231.14				\$ 218,954.56	\$ 217,293.13				\$ 107,458.52		\$ 229,474.91						

WATER IMPROVEMENTS

217,293¹³
229,474⁹²

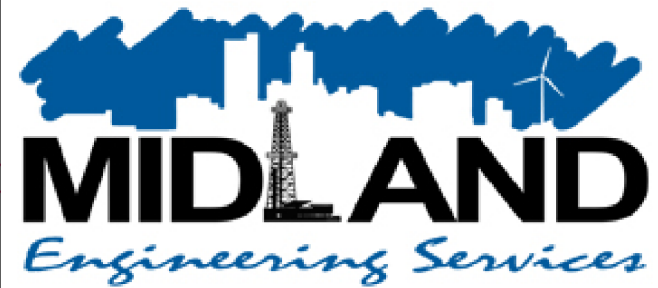
TOTAL

446,768⁰⁵



ENGINEERING DIVISION

Legends Park
Developmetn Agreement



Map by DDB 09/05/2012



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: September 11, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: David D. Beard, P.E. – City Engineer

SUBJECT: Consider a resolution authorizing staff to advertise for bids the Sparks Park Paving Improvements project. The project is located in the vicinity of Sparks Park along E. Hamby Ave. and E. Jax Ave. (District #2 – Hailey)

Purpose:

Authorize staff to advertise for bids for the Sparks Park Paving Improvements project.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

No financial impact at this time. Once bids are opened, staff will return to Council to recommend award of the project. The project will be funded with existing CDBG funds. Additional funds will be allocated on an as-needed basis.

Discussion:

The Sparks Park Paving project consists of constructing curb-and-gutter and roadway pavement within right-of-way that is currently unpaved. The project is located in the CDBG Sparks Park Target Area. The improvements are intended to provide infrastructure to the new homes that will be constructed in the CDBG Sparks Park Target Area.

Attached is a location map.

RESOLUTION NO.

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE SPARKS PARK IMPROVEMENTS PROJECT; SAID PROJECT WILL BE FOR IMPROVEMENTS TO CURRENTLY UNPAVED RIGHT-OF-WAY AND CONSTRUCTING CURB-AND-GUTTER

WHEREAS, plans and specifications have been prepared by the City of Midland for the Sparks Park Improvements Project; and

WHEREAS, the City Council finds it to be in the public interest to approve such plans and specifications for said project and to authorize 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 as prepared by the City of Midland for the Sparks Park Improvements Project are hereby approved, those plans and specifications to be on file in the City Secretary's office referenced by the number and date of this resolution.

SECTION TWO. That the City Manager, or his designee, is hereby authorized to advertise for competitive bids for said project 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:

David Beard, City Engineer

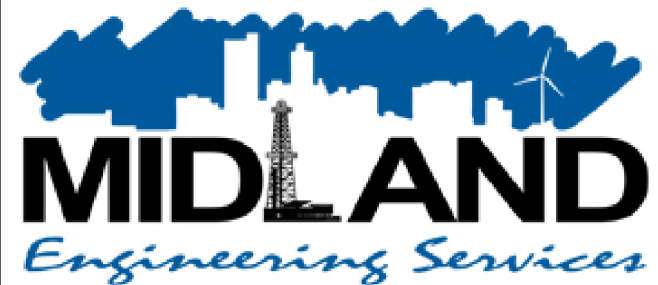
APPROVED AS TO FORM:

Keith Stretcher, City Attorney

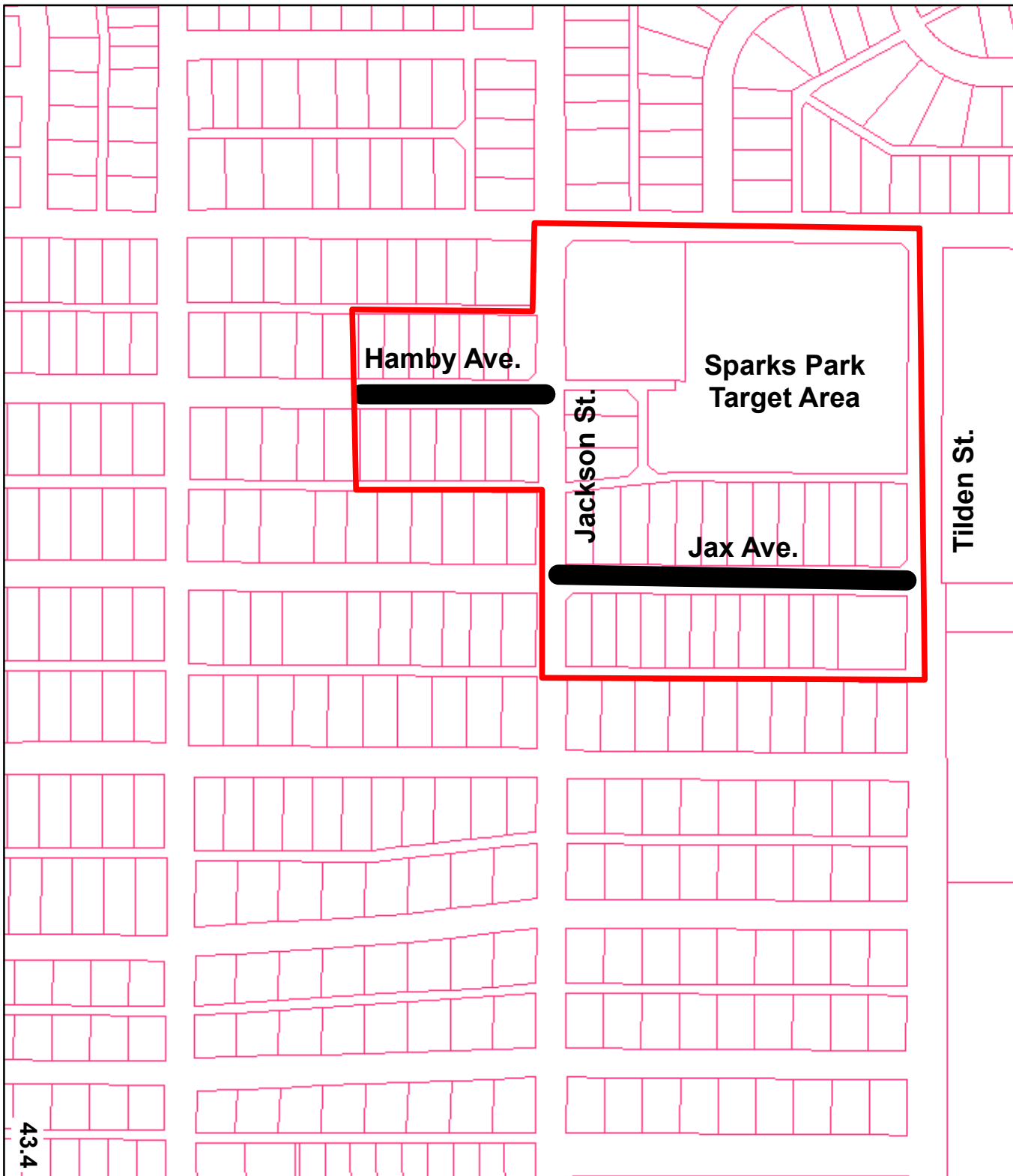
ENGINEERING DIVISION

Sparks Park Target Area

Permission to Advertise
for Bids



Map by DDB 09/05/2012





City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: September 11, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: David D. Beard, P.E. – City Engineer

SUBJECT: Consider a resolution authorizing staff to advertise for bids Douglas Ave. and "D" Street Water & Sewer Improvements project. The project is located in along "D" Street between Douglas Ave. and Storey Ave., and along Douglas Ave. between "B" Street and "D" Street. (District #3 – James)

Purpose:

Authorize staff to advertise for bids for the Douglas Ave. & "D" Street Water & Sewer Improvements project.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

No financial impact at this time. Once bids are opened, staff will return to Council to recommend award and funding of the project.

Discussion:

The Douglas Ave. and "D" Street Water & Sewer Improvements project consists of installing new water and sewer mains along "D" Street between Douglas Ave. and Storey Ave., and along Douglas Ave. between "B" Street and "D" Street. Existing mains will be abandoned in-place. The improvements are intended to replace aging infrastructure in advance of paving improvements.

Attached is a location map.

RESOLUTION NO.

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE DOUGLAS AVENUE AND “D” STREET WATER AND SEWER IMPROVEMENTS PROJECT; SAID PROJECT WILL BE FOR THE INSTALLATION OF NEW WATER AND SEWER MAINS ALONG DOUGLAS AVENUE AND “D” STREET

WHEREAS, plans and specifications have been prepared by the City of Midland for the Douglas Avenue and “D” Street Water and Sewer Improvements Project; and

WHEREAS, the City Council finds it to be in the public interest to approve such plans and specifications for said project and to authorize 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 as prepared by the City of Midland for the Douglas Avenue and “D” Street Water and Sewer Improvements Project are hereby approved, those plans and specifications to be on file in the City Secretary’s office referenced by the number and date of this resolution.

SECTION TWO. That the City Manager, or his designee, is hereby authorized to advertise for competitive bids for said project 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:

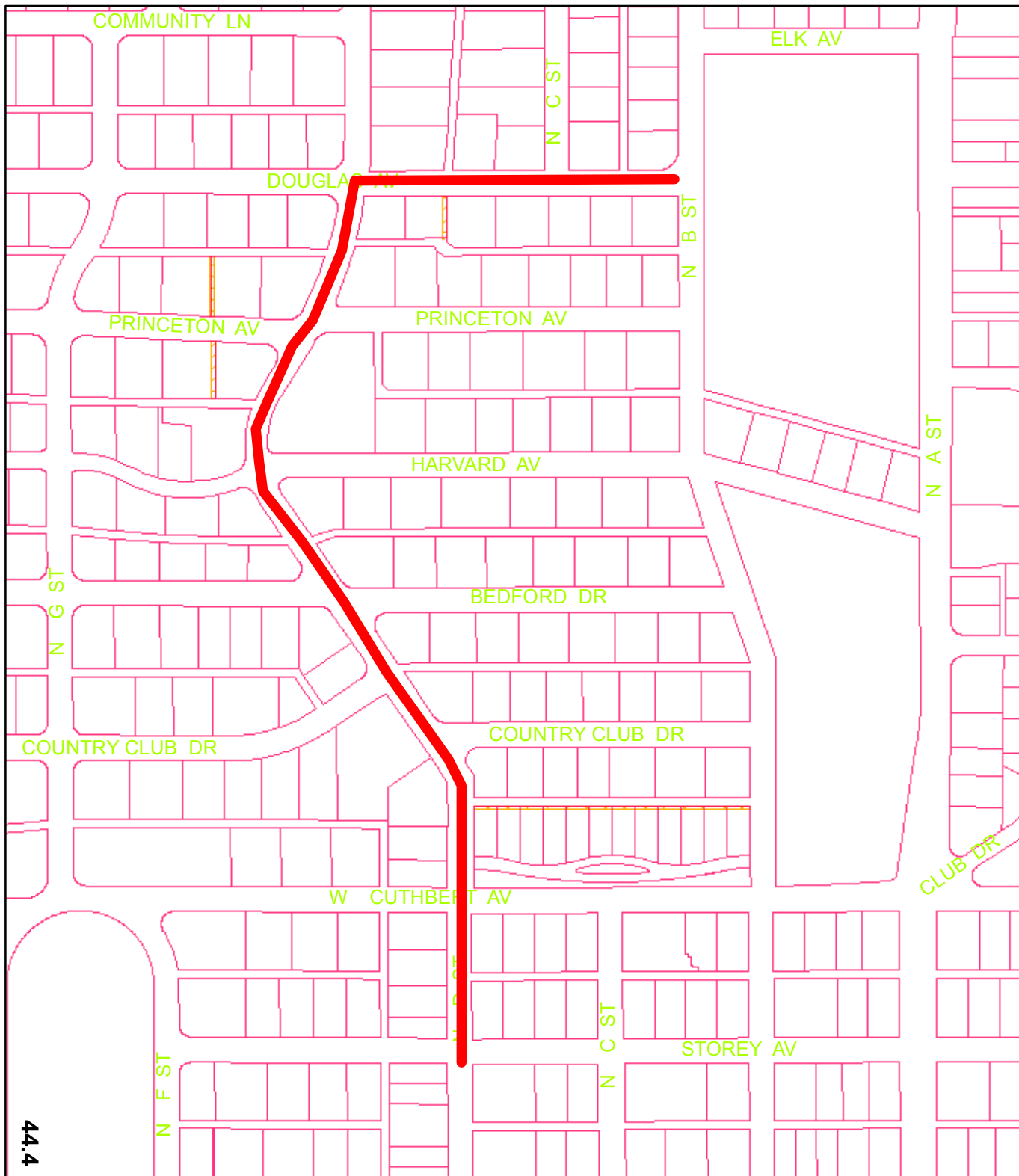
Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

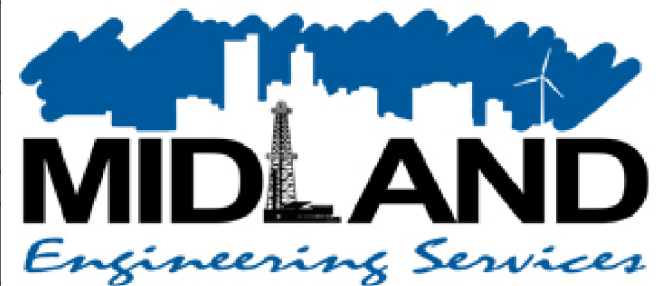
Keith Stretcher, City Attorney



ENGINEERING DIVISION

D Street Utility Improvements

Permission to Advertise
for Bids



Map by DDB 09/05/2012



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading 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 second reading 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. No changes have occurred since first reading.

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 plat to include an addition 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

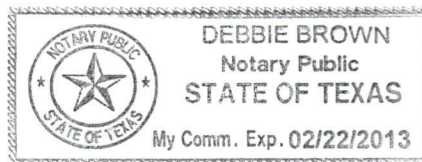
Authorized Agent (signature)

Subscribed and sworn to before me, this 28th day of March, 20 12, to certify which witness my hand and seal of office.

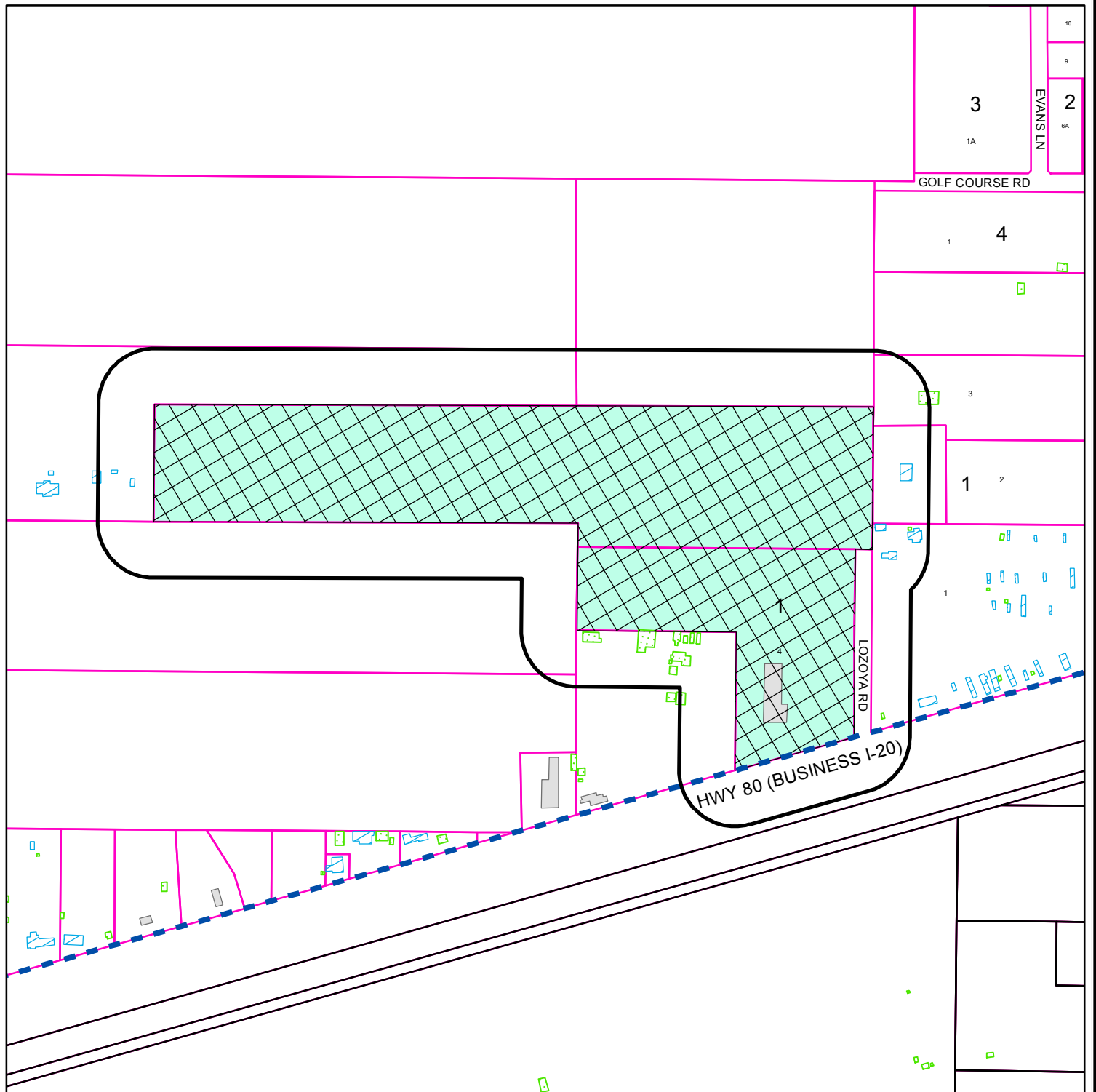
Debbie Brown

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

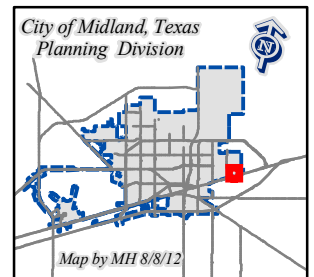
Z - 12 - 002

Scale: 1" = 200'

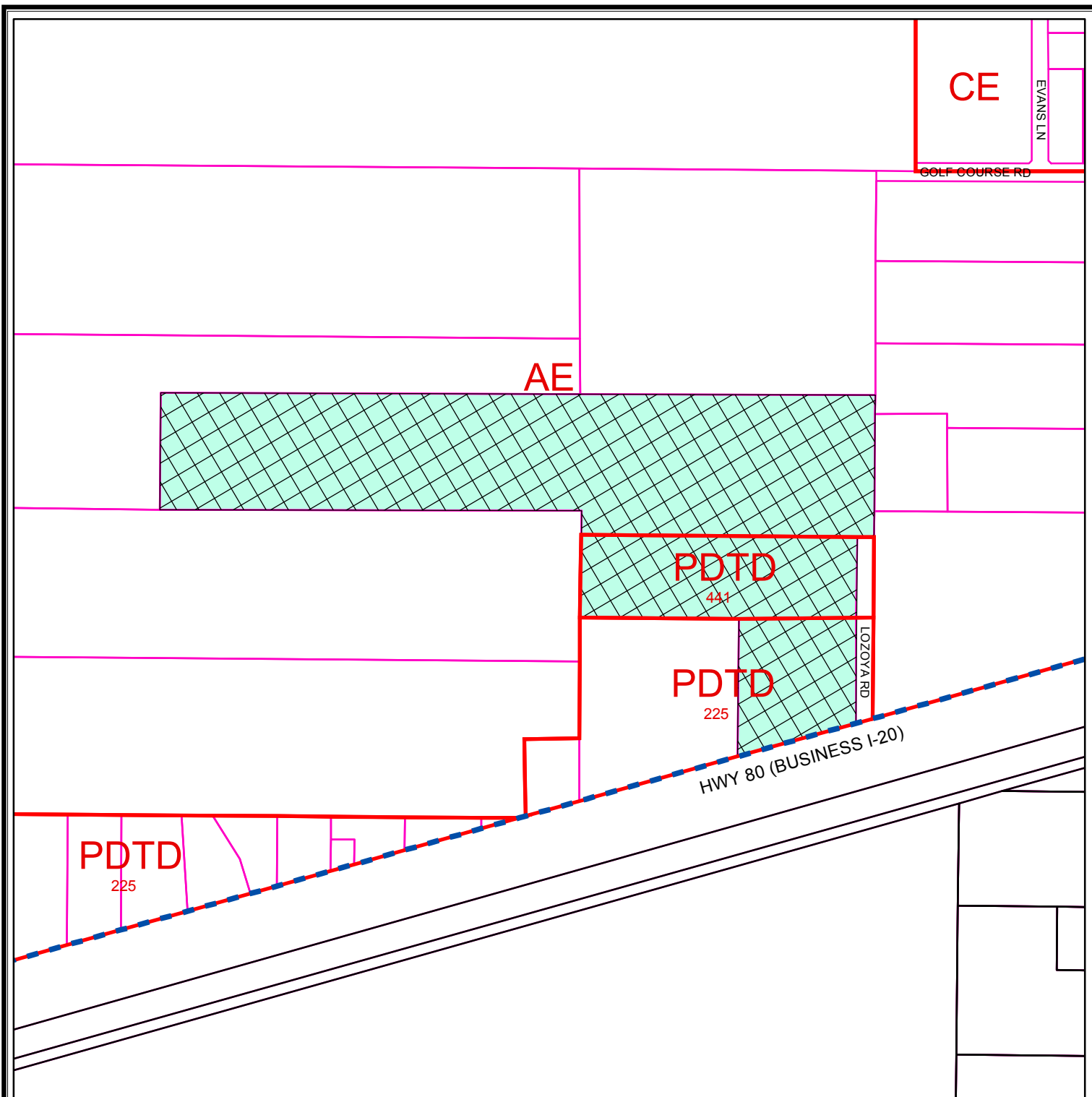
Consider a request for a zone change from AE, Agriculture Estate District, on a 27.00-acre tract of land out of Section 41, Block 38, T-1-S, T & P RR Co. Survey and from two PD, Planned Districts for a Transition District on Lot 4, Block 1, Freeland Addition, Section 4, to C3, Commercial District, City 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, 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: 9/11/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on 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. (Generally located at the southeast corner of the intersection of Sloan Field Boulevard and Windecker Street – City Council District 4)

Purpose:

Consider an ordinance on second reading on 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. No changes have been made to this item since its first reading on August 28, 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 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:

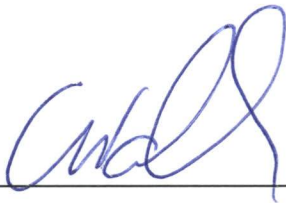
2. This property has frontage along Sloan Field Blvd, Windecker Street, Lindbergh Street, and Banks Dr. It is bounded to the west across Windecker St by a small PDTD, Planned District for a Transition District, and is bounded to the south across Lindbergh St. by a large PDOC, Planned District for an 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.

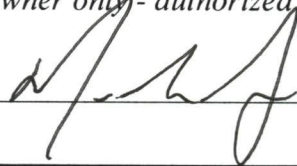
SITE PLAN SUBMITTALS (if applicable):

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.

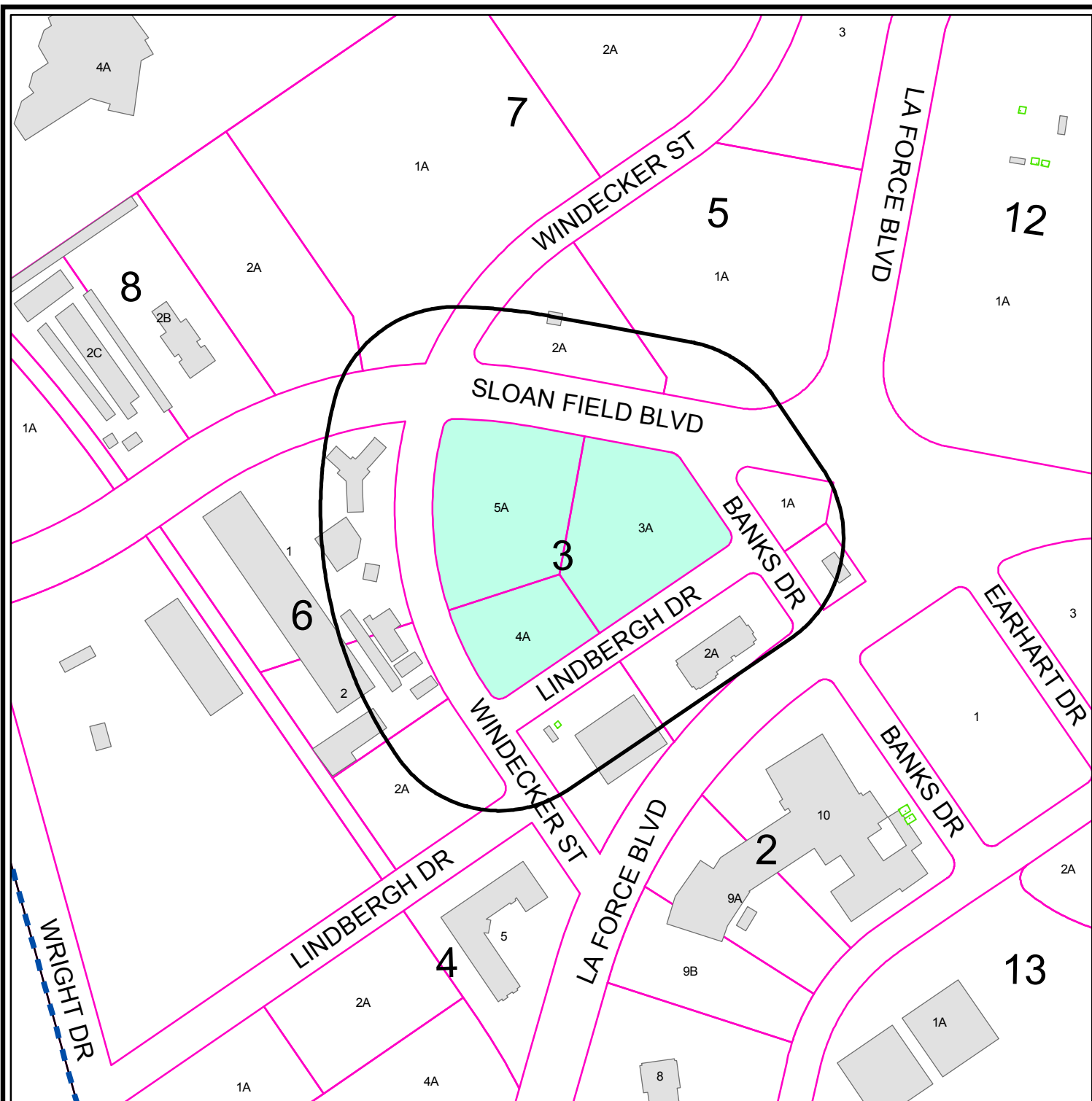
Authorized Agent (signature)

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'

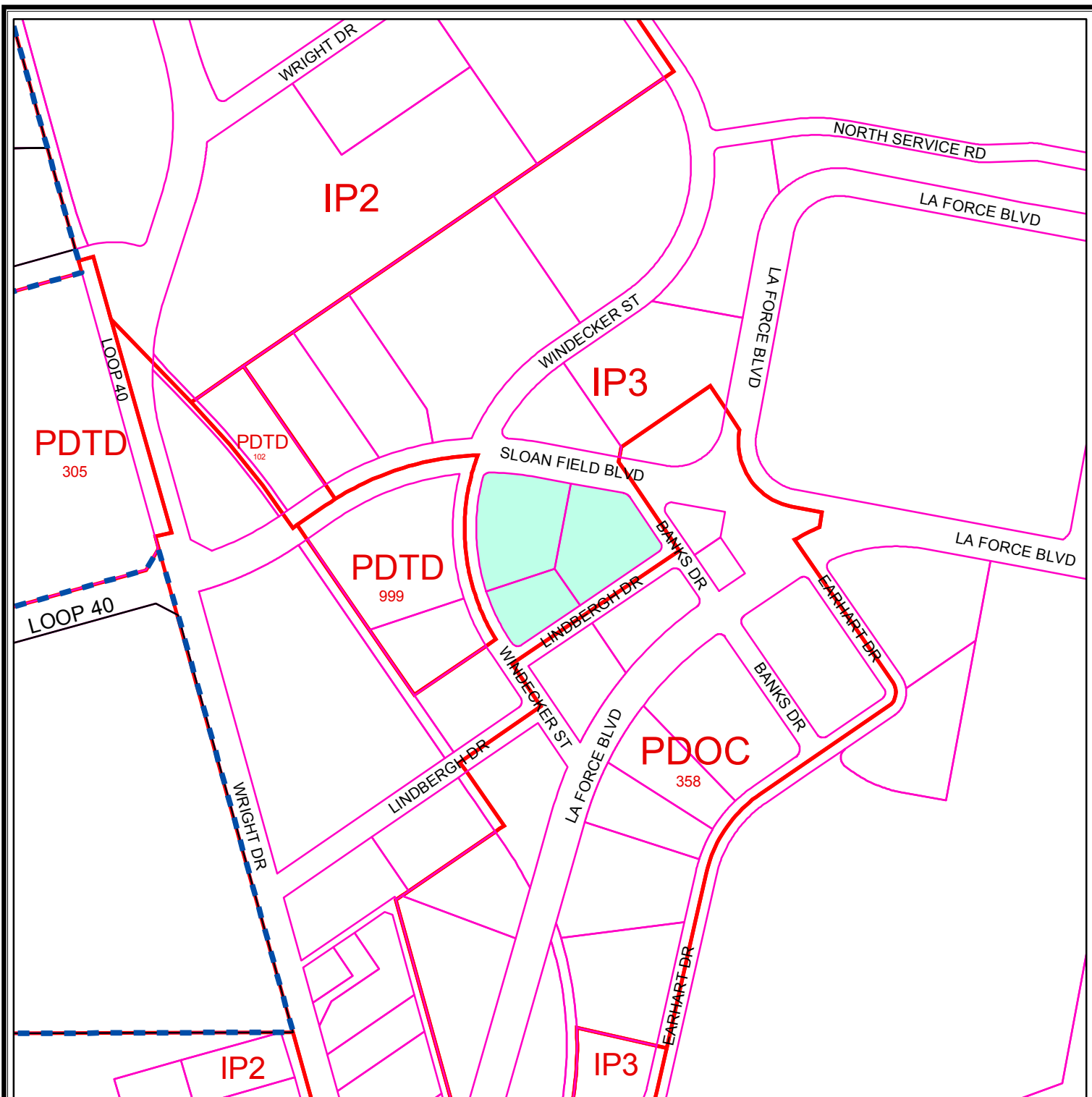
Consider a request for a zone change from IP-3, Industrial Park District, to PD, Planned District for an Office Center on Lots 3A, 4A and 5A, Block 3, Midland International Airport Industrial Park, City and County of Midland, Texas.

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 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: September 11, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading 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; and to LR-2, Local Retail District.

Purpose:

Consider an ordinance on second reading on a request by Fasken Oil and Minerals for a zone change from FD, Future Development District; and to LR-2, Local Retail District.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

This rezoning request is associated with the second phase of development for The Vineyard neighborhood (the first phase is the construction of the two-story office building). This request is for a Planned District for a Housing Development that is intended to be developed with 364 apartment units, and for an LR-2 District adjacent to Holiday Hill Road. A preliminary plat containing over 300 acres has already received City Council approval. We anticipate that additional requests for apartments, retail, a school site, single-family and a retirement center will be presented in the very near future. The City Council voted to approve this ordinance on first reading on August 28, 2012. It is now appropriate to consider this ordinance on second and final reading.

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING 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
MATE PLANNING
61008020847
5400 ARCTIC DRIVE, SUITE 200
FARMERSBURG, MISSISSIPPI 39062
TEL: 601-731-3247
FAX: 601-731-1240

CONTRACTOR:

Issue Date: 07.17.15

Revisions:

Project Name: 11053.02

Drawn By: CDB

Checked By: KES

Notes:

Scale: 1/4"=1'-0"

Sheet Title:

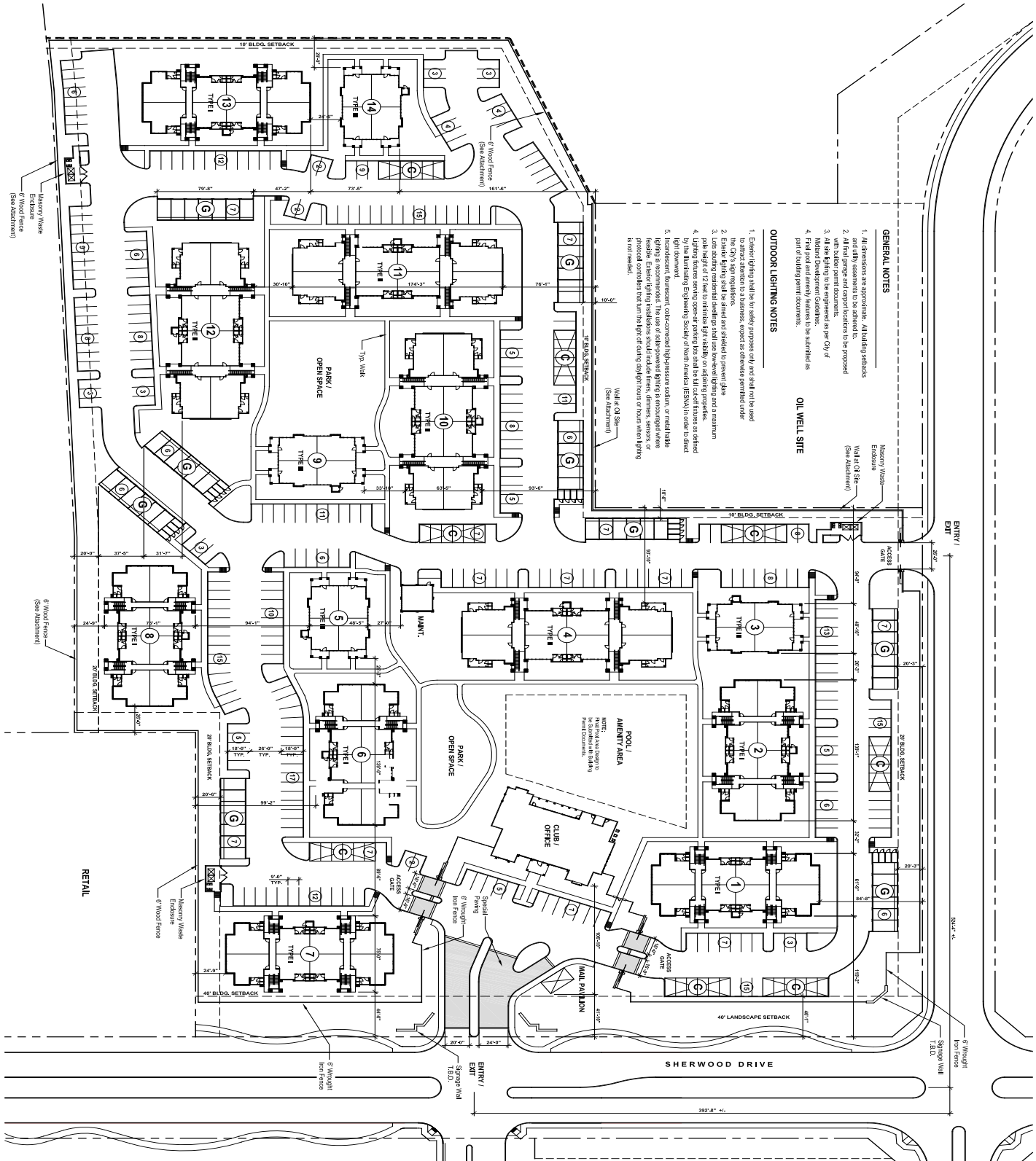
Zoning Site Plan Review

Site Plan

This site plan and the accompanying zoning site plan review 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 zoning site plan review. The architect is not responsible for the results of the zoning site plan review.

Sheet Number:

Sheet L.2



GENERAL NOTES

1. All dimensions are approximate. All building setbacks shall be as shown on this 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 Codebook.
4. All proposed site lighting shall 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 pole 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.



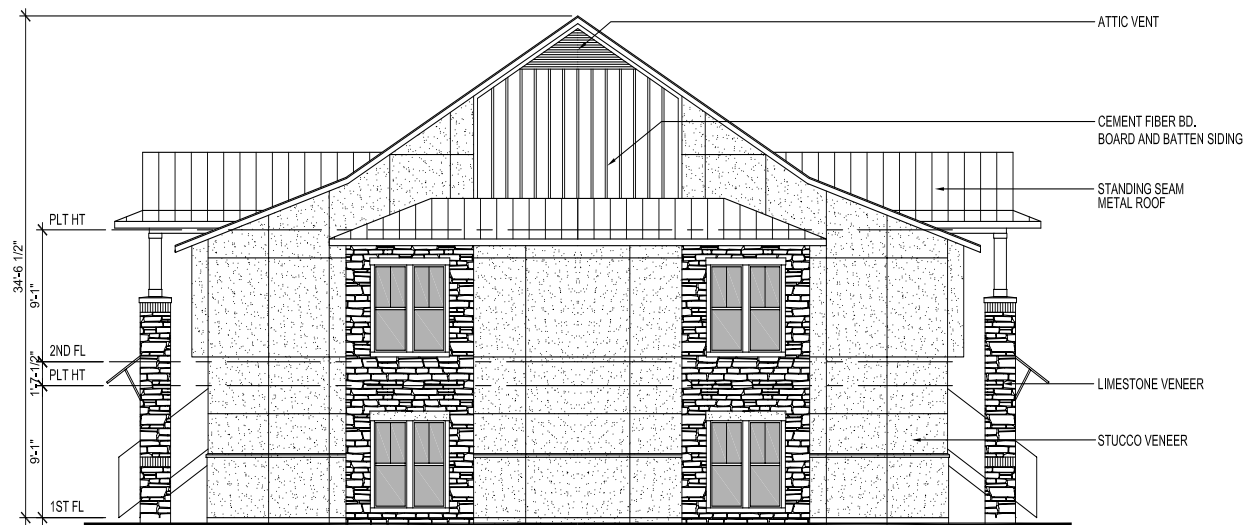
Vineyard Apartments

Midland, Texas



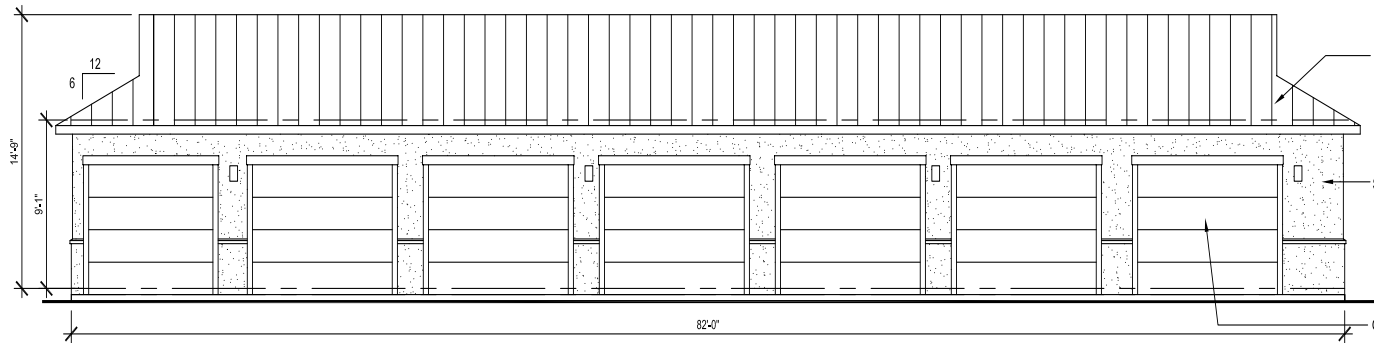
07/17/2012

Building Type One - Front Elevation

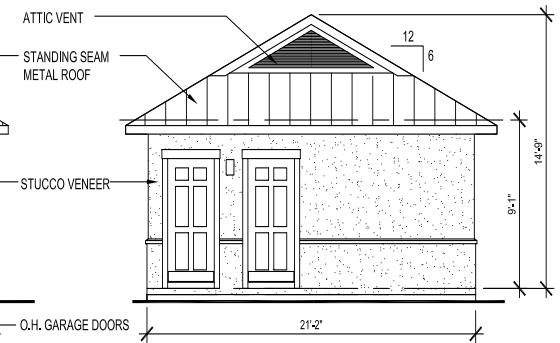


UNIT B-1 FH

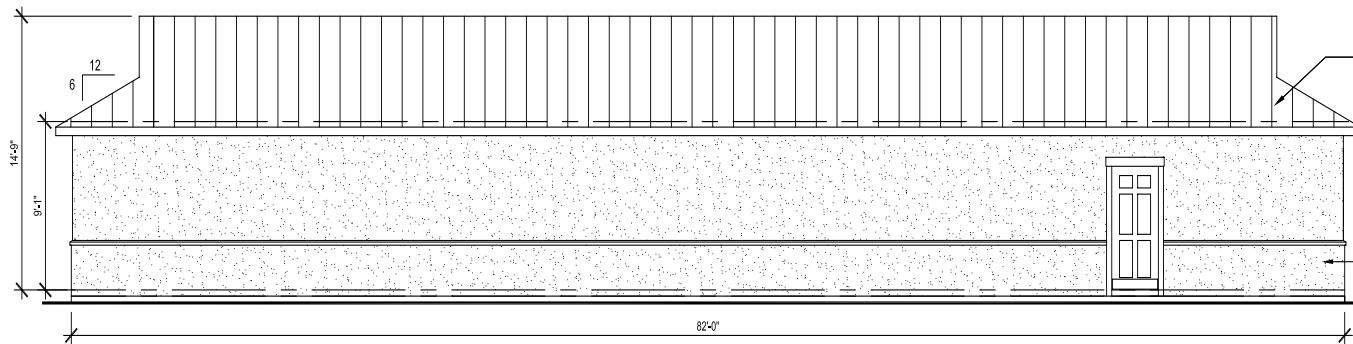
UNIT B-1 FH



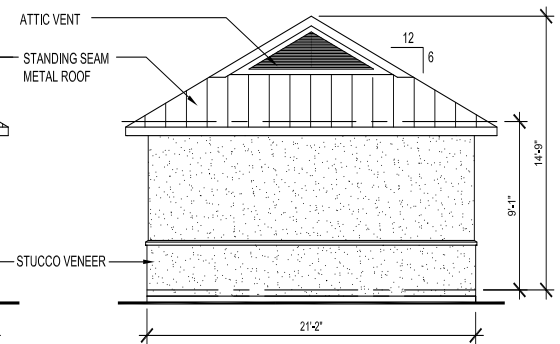
FRONT ELEVATION
(TYPE II SIM)



LEFT ELEVATION
(TYPE II SIM)



REAR ELEVATION
(TYPE II SIM)



RIGHT ELEVATION
(TYPE II SIM)

SCHEMATIC LANDSCAPE PLAN
PLANT PALETTE

COMMON NAME SCIENTIFIC NAME

LARGE TREES

Argan Pine
Bur Oak
Cedar Elm
Lacebark Elm
Live Oak
Texas Red Oak
Japanese Black Pine

Pinus edulis
Quercus macrocarpa
Ulmus crassifolia
Ulmus parvifolia
Quercus virginiana
Quercus texana
Pinus thunbergii

GRASSES

Maiden Grass
Gulf Coast Muhly
Lindeheimer's Muhly
Switchgrass
Little Blue Stem
Mexican Feather Grass

Miscanthus sinensis
Muhlenbergia capillaris
Parthenocymbium
Sagittaria virginiana
Stipa tenuissima

GROUND COVERS

Green Santolina
Aster Jaumei
Santolina virens
Trachelospermum asiaticum

VINES

Cissampelos
Sweet Autumn Clematis
Carolina Jessamine
Bignonia capreolata
Clematis paniculata
Gelsemium sempervirens

PERENNIALS

Lantana
Ruellia species
Mossy Cup Sage
Orange Zinnia
Lantana camara
Ruellia species
Salvia superba
Wedelia hispida

TURF

Buffalo Grass
Hybrid Bermuda

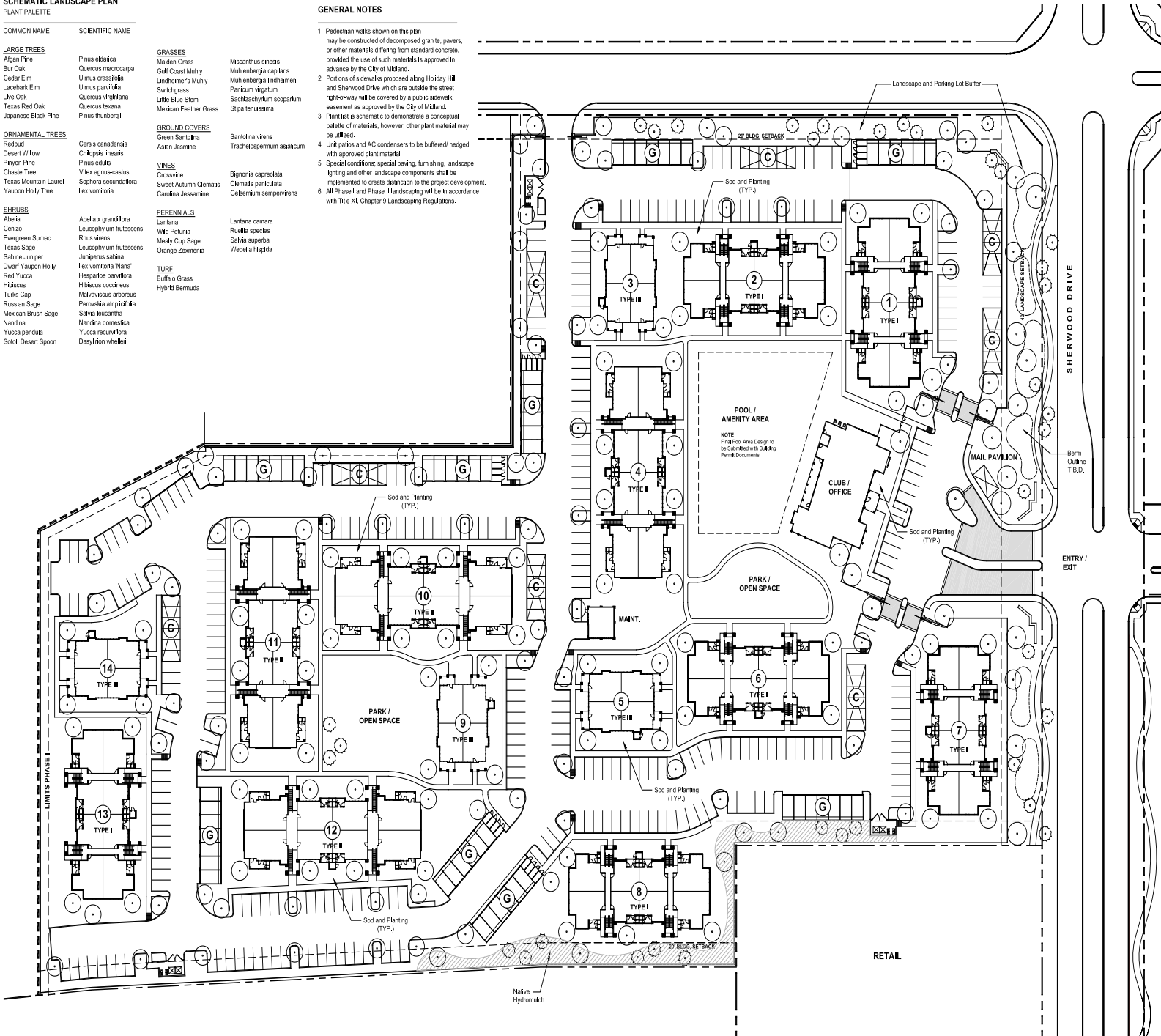
SHRUBS

Abelia
Ceanothus
Evergreen Sumac
Texas Sage
Sabine Juniper
Dwarf Yaupon Holly
Red Yucca
Hibiscus
Turk's 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
Paroskia antipodiana
Salvia leucantha
Nandina domestica
Yucca recurvifolia
Daylily whelket

GENERAL NOTES

1. Pedestrian walks shown on this plan may be constructed of decomposed granite, pavers, or other materials offering 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 list is schematic to demonstrate a conceptual palette of materials, however, other plant material may be utilized.
4. Unit patios 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 XI, Chapter 9 Landscaping Regulations.



The Vineyard Apartments

Sherwood Drive
Midland, Texas 79707

Fasken Oil & Ranch, LTD.



SAGE GROUP, INC.
LANDSCAPE ARCHITECTURE
MASTER PLANNING
SITE PLANNING
6108 BROADWAY
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: RBC

North

Scale: 1"=40'-0"

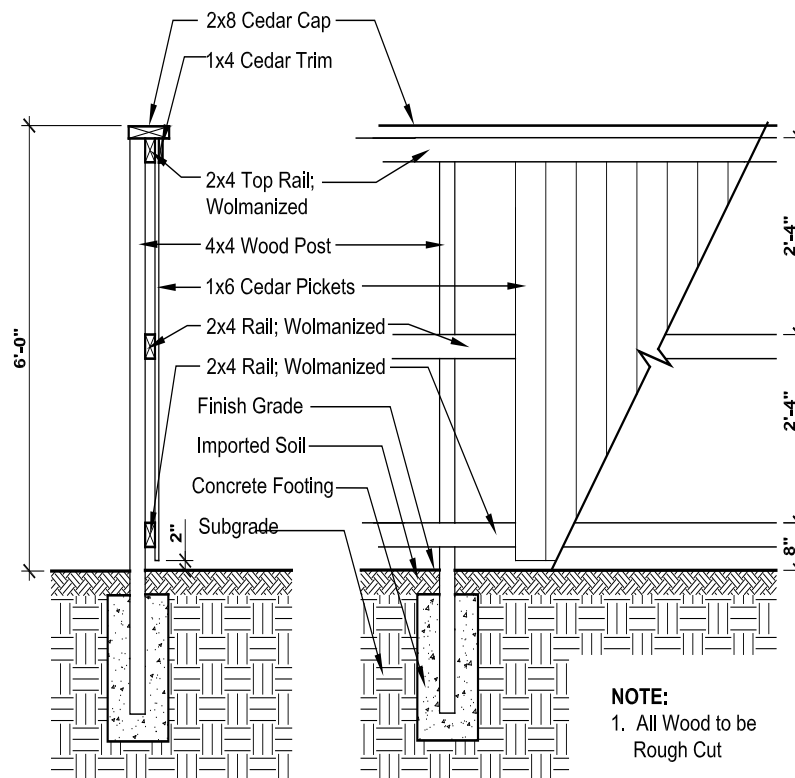
Sheet Title
Zoning Site Plan Review

Landscape

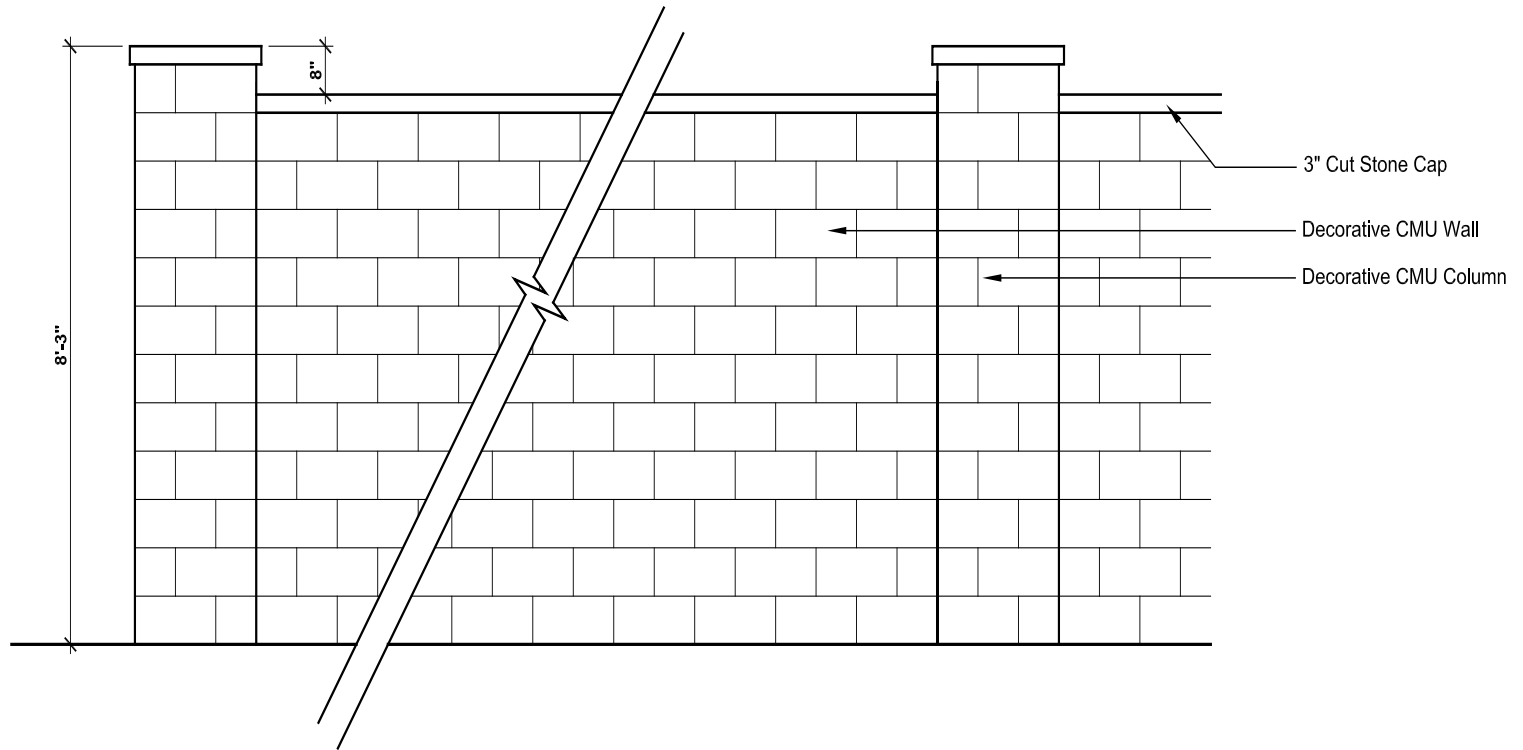
These Drawings and Specifications are to be an instrument of service and shall remain the property of the Landscape Architect. They are not to be used on other projects or extensions to this project except by agreement in writing with the Landscape Architect. The Landscape Architect is not responsible for construction means, methods, sequences or procedures, or for safety precautions and programs to connect 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;

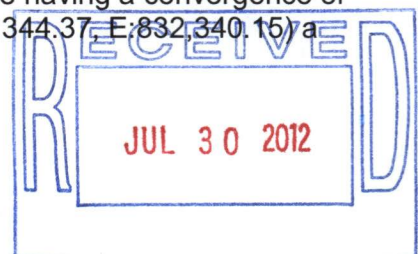
THENCE S 76°39'47" W a distance of 100.04 feet to a point for a corner this tract;

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:

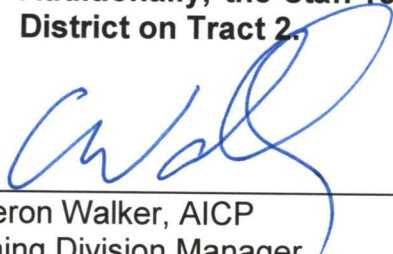
A.

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.

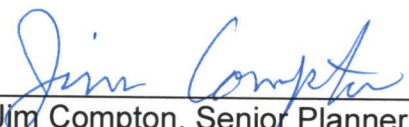
4. All business signs will conform to the regulations of the Sign Code and the Landscape Code.
5. That the driveway on Chatten Way must be approved by the Fire Department.

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 (512) 422-8200 BSKEEN@APTX.COM
Applicant Name (Phone/e-mail)

3811 BEE CAVES RD. #102 AUSTIN, TEXAS 78746
Address Zip Code

* FASKEE 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 (Phone/e-mail) (210) 892-0510 BBENSON@PULMALLAW.COM

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-MF-1
(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: 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.



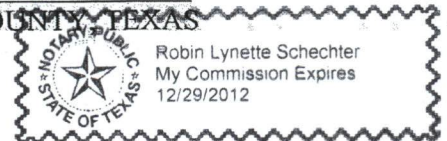
Authorized Agent (signature)

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 Schachter

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

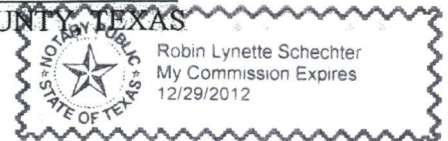
William C. SKEN who, being by me duly sworn, upon oath says: That (s)he is authorized by FORSEN LAND AND MINERAL LTD. the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

[Signature]
Authorized Agent (signature)

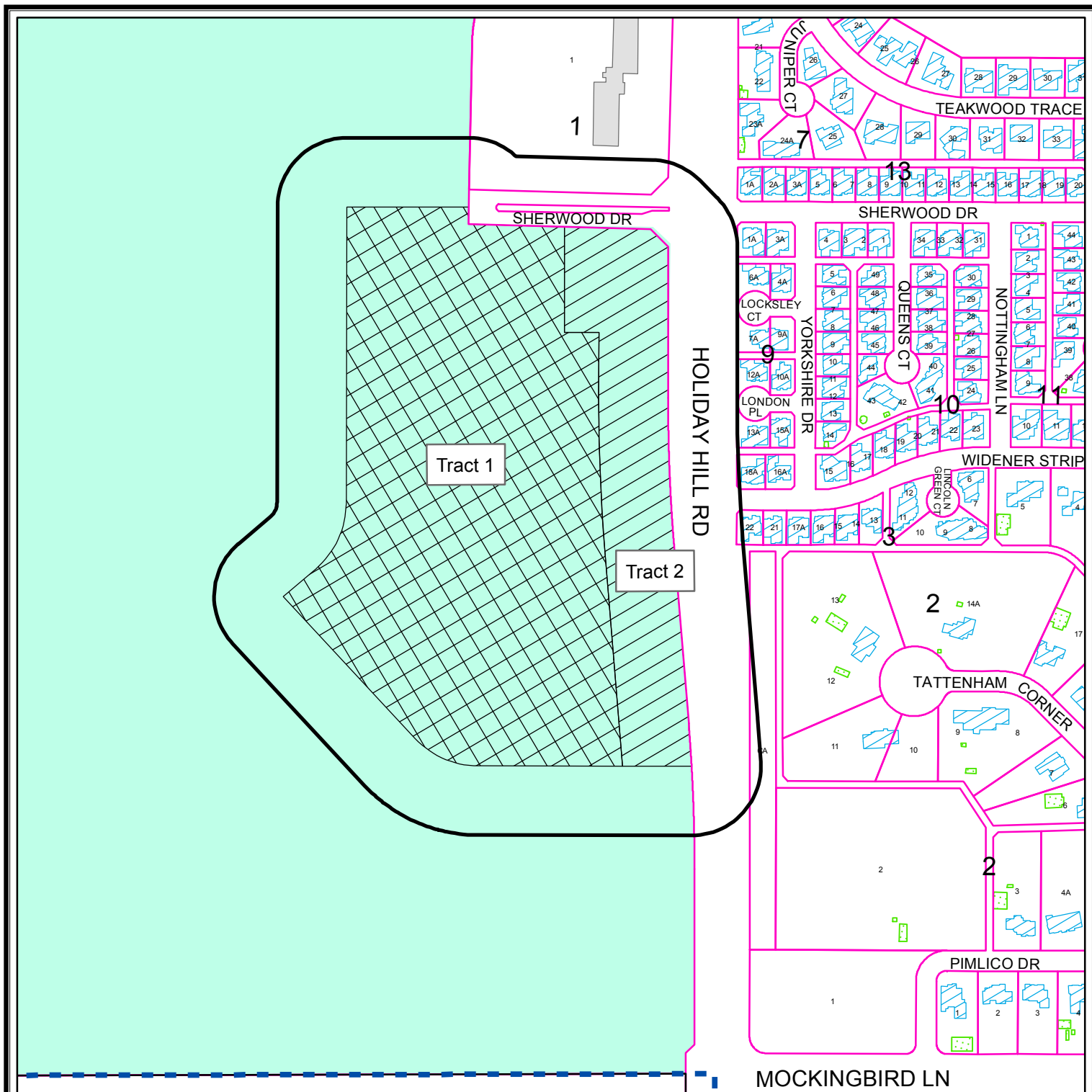
Subscribed and sworn to before me, this 3rd day of July, 20 12, to certify which witness my hand and seal of office.

Robin Lynette Schechter
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS
TRAVIS

FOR OFFICE USE ONLY	
Rec'd By: <u>AZ</u>	Date: <u>7/3/12</u>
Assigned: _____	
For: _____	On: _____



****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

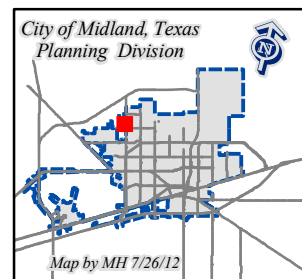
Z - 12 - 028

Scale: 1" = 400'

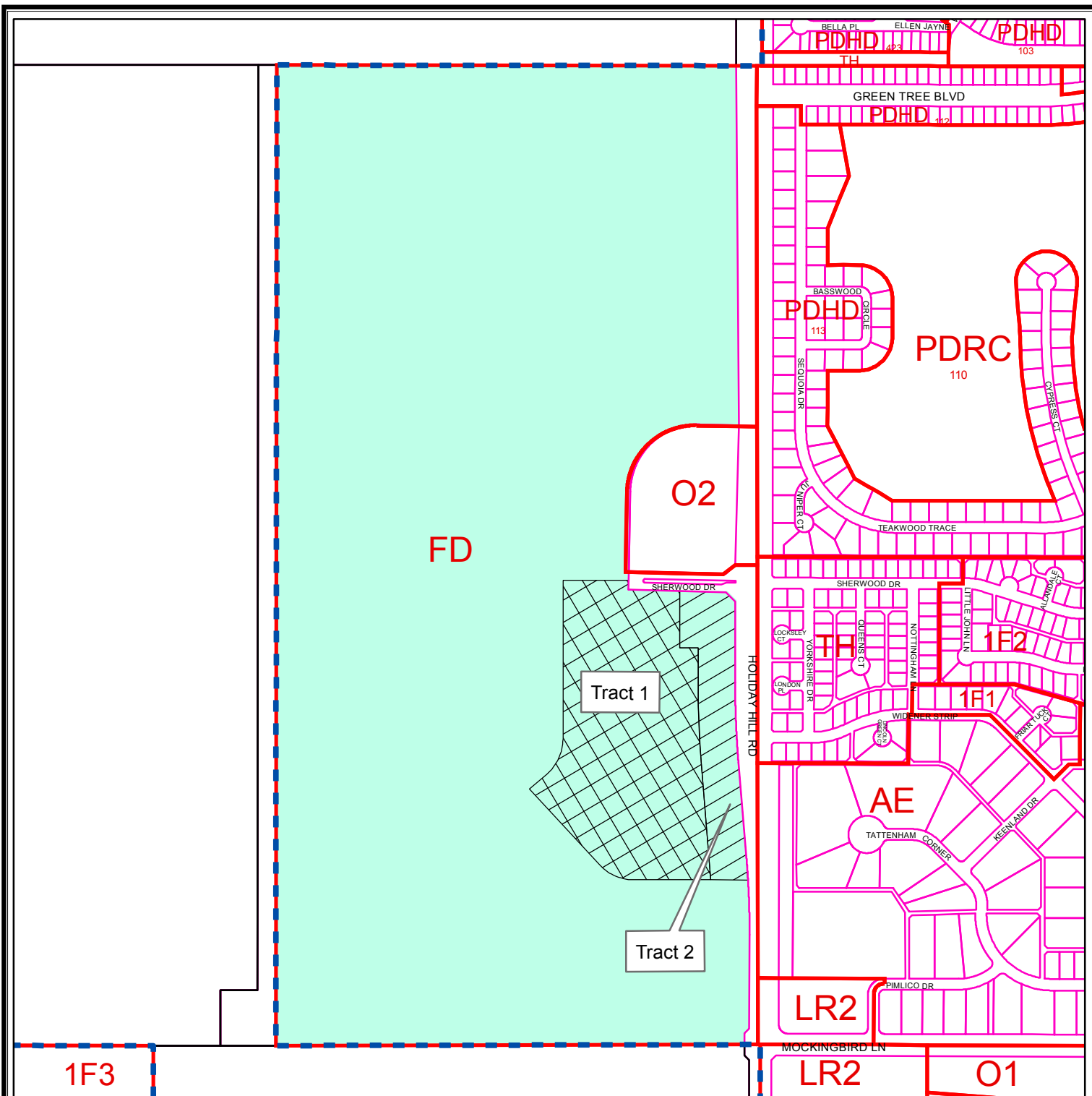
Consider a request for a zone change from FD, Future Development District to PD, Planned District for a Housing Development on a 26.28-acre tract of land (Tract 1) and to LR-2 Local Retail District on a 12.11-acre tract of land (Tract 2), all out of Section 13, Block 40, T-1-S, T & P RR Co. Survey, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- PRIVATE BLDGS
- ACCESSORY BLDGS



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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 R.R. Co. Survey, 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	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: 9/11/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on 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 second reading 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, being \$522.72, has been received. No other changes have occurred since first 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 utilities has indicated that they have no utilities located within this alley and there are no public utilities present, nor is there a planned future need, which would require the creation of an easement.

Attachments:

Application
Map
Land Survey
Appraisal

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



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

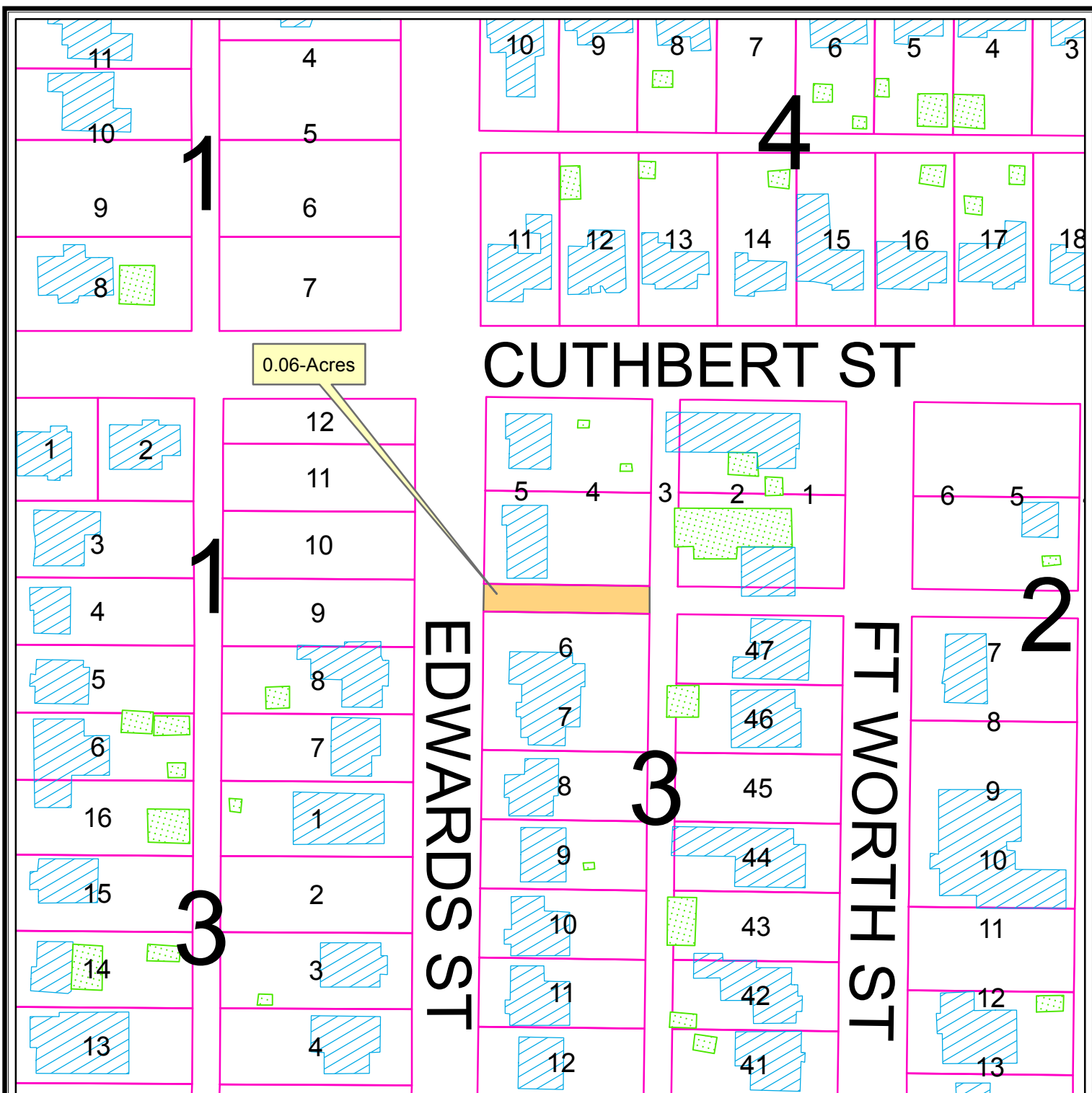
****Application will not be considered for scheduling until reviewed by a planner.****

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: 9/11/2012

TO: City Council / City Manager

FROM: Tina Jauz / Community Services Director

SUBJECT: Consider a Resolution of the City of Midland, Texas making a finding, pursuant to Chapter 26 of the Texas Parks and Wildlife Code, that there is no feasible and prudent alternative to the change in the use of approximately .5 acres located on the southwest portion of Windlands Park from public use to a Water Reclamation Facility for the purpose of providing irrigation water to Midland College and Windlands Park.

Purpose:

Hold a Public Hearing at 10:30 a.m. and consider a resolution to establish a Water Reclamation Facility on a .5 acre portion of Windlands Park.

Recommended City Council Action

☐ Approve ☐ Deny ☒ Directional / Informational

Fiscal Impact:

There is no fiscal impact.

Discussion:

The City of Midland wishes to construct a facility at Windlands Park to reclaim wastewater for use in the irrigation of the Midland College campus as well as Windlands Park. This facility, as permitted by TCEQ, will be designed to strictly limit and control noise and odors and will produce 200,000 gallons per day of high quality treated effluent.

The Texas Parks and Wildlife Code, Chapter 26, states that the City Council must approve requests that require the use of taking of public park land. This statute requires that the City Council must make the following findings before approving such requests:

1. There is no feasible and prudent alternative to the use of taking of such land;
2. The program or project includes all reasonable planning to minimize harm to the land, as a park, recreation area resulting from the use or taking.

The statute states that these regulations do not constitute a mandatory prohibition against the use of the area if the findings are made that justify the approval of a project. The statute requires the advertising of this public hearing by advertising it for three consecutive weeks in a local newspaper, and then holding the hearing at least one week, but not more than two weeks, following the final advertising. The required notices have been advertised as required. Finally, should the City Council approve this request, the statute requires a 30 day delay in the project to allow opportunity for the filing of a petition for judicial review.

To address this items:

1. Alternative sites were investigated to attempt to find suitable locations. Due to the proximity of the Midland Airpark general aviation airport and the height restrictions associated with this facility, as well as the location of the sewer line from which the feed water will be pulled, this was the only location found to be feasible.
2. The facility will be completely enclosed in a structure with odor control. There will be minimal delivery traffic to the facility and it is designed to minimize noise. The facility footprint was designed to be as compact as feasible and located to provide a windbreak for existing soccer fields. The facility is constructed from an earth-toned split-faced cmu to blend in with the surroundings.

RESOLUTION NO.

**RESOLUTION OF THE CITY COUNCIL OF MIDLAND,
TEXAS MAKING A FINDING, PURSUANT TO
CHAPTER 26 OF THE TEXAS PARKS AND WILDLIFE
CODE, THAT THERE IS NO FEASIBLE AND PRUDENT
ALTERNATIVE TO THE CHANGE IN USE OF
APPROXIMATELY .5 ACRES LOCATED ON THE
SOUTHWEST PORTION OF WINDLANDS PARK
(APPROXIMATELY 1,800 FEET WEST OF “A” STREET
AND 500 FEET NORTH OF VENTURA DRIVE) FROM
PUBLIC PARK USE TO A WATER RECLAMATION
FACILITY FOR THE PURPOSE OF PROVIDING
IRRIGATION WATER TO MIDLAND COLLEGE AND
WINDLANDS PARK**

WHEREAS, the City of Midland wishes to construct a 200,000 gallon per day Water Reclamation Facility at Windlands Park to reclaim wastewater for use in the irrigation of the Midland College campus as well as Windlands Park; and

WHEREAS, said Water Reclamation Facility is to be located on a .5 acre tract of land on the southwest portion of Windlands Park, approximately 1,800 feet west of “A” Street and 500 feet north of Ventura Drive, City and County of Midland, Texas, as shown on Exhibit “A” which is attached hereto and incorporated herein; and

WHEREAS, Chapter 26 of the Texas Parks and Wildlife Code requires that anytime a public park is put to a use other than public park use, the governing body must make a finding, after notice and a hearing, that there is no feasible and prudent alternative to the proposed change in use; and

WHEREAS, a public hearing before the City Council was held on this matter in the City Council Chambers on September 11, 2012 at 10:30 a.m. in accordance with Chapter 26 of the Texas Parks and Wildlife Code; and

WHEREAS, notice of such public hearing was published in a newspaper having general circulation in the City of Midland, Texas on August 17, 2012, August 24, 2012, and August 31, 2012, in accordance with Chapter 26 of the Texas Parks and Wildlife Code; and

WHEREAS, notice of the project and the date and place of the public hearing was given in writing to the person, organization, department, or agency that has supervision

of Windlands Park at least thirty (30) days before the date of the public hearing in accordance with Chapter 26 of the Texas Parks and Wildlife Code, as evidenced by the letter attached hereto and incorporated herein as Exhibit “B”; and

WHEREAS, the City Council finds that there is no feasible and prudent alternative to said change in use of said portion of Windlands Park; and

WHEREAS, the City Council finds that said change in use includes all reasonable planning to minimize harm to Windlands Park and its use as a park;

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

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

SECTION TWO. That in accordance with Chapter 26 of the Texas Parks and Wildlife Code, the City Council finds that there is no feasible and prudent alternative to the change in use of approximately a .5 acre tract of land on the southwest portion of Windlands Park, approximately 1,800 feet west of “A” Street and 500 feet north of Ventura Drive in order to provide irrigation water to Midland College and Windlands Park; and that said change in use includes all reasonable planning to minimize harm to the land, as a park, resulting from the Water Reclamation Facility.

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



WADLEY

DENGAR

Satellite Reclaimed Water Facility

Water Reclamation Facility
Windlands Park

VENTURA

OAKLAWN

1 inch = 200 feet

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ANY DECISIONS BASED UPON THE USE OF THIS DATA.
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MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS.
THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY
TOOL IN PERMITTING, CITING, OR OTHER DECISIONS BASED
SOLELY ON THE INFORMATION CONTAINED HEREIN.



July 27, 2012

Courtney Sharp, City Manager
300N. Loraine Street
Midland, Texas 79701

Re: MBR Project Windlands Park

Dear Mr. Sharp,

The Utilities Department has reviewed and approved the project plans and implementation of the Windlands Water Reclamation Facility (WWRF) in conjunction with all corresponding departments within the City of Midland (City) over the last six years. The WWRF is a project to construct a 200,000 gallon per day water reclamation facility to provide irrigation water to Midland College. The facility will be located at Windlands Park. Originally, it was planned to build the facility at the Airport, but height restrictions prohibited this from being the location. Also, the City initiated the TCEQ rule adoption in regards to reclaimed water which is an enormous accomplishment for the City and a positive start to promote water conservation. This project is the first permit to build in the State.

Resolution 2012-134 approved the Construction and construction began June 4, 2012.

It has come to my attention that there may be a an issue with The Texas Parks and Wildlife Code Section 26 which requires the City Council call a public Hearing and approve the request as public land is involved. Notice of this hearing must be by two means. The first is by publication in the legal section of the local newspaper on three separate occasions. The second is written notification to the person, organization, department or agency that has supervision of the land proposed to be used. The Legal office advises that this person is you.

Please consider this letter to be the formal notification required by State law that a public hearing will be scheduled before the Midland City Council Meeting at 10:30 a.m on September 11, 2012 in the Council Chamber, 300 N. Loraine Street, Midland Texas to consider this request.

Sincerely,

Holly McGrath Rosas, Assistant Director of Utilities







City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: September 11, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by Outback Steakhouse amending a Specific Use Permit with Term for on-premise consumption of alcoholic beverages in a Restaurant. Generally located on the north side of W. Loop 250 North, approximately 300 feet west of Garfield Street.

Purpose: Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by Outback Steakhouse amending a Specific Use Permit with Term for on-premise consumption of alcoholic beverages in a Restaurant.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Outback Steakhouse has been operating since May of 1994. The restaurant management is operating with a SUP with term at this time with a maximum seating capacity of 220. The restaurant management has renewed their SUP regularly; with their most recent approval as of April 2012. Restaurant management is requesting an increase of the maximum seating capacity to 268 persons. The restaurant has a floor area of 1,340 square feet, and the proposed hours of operation are Monday through Thursday from 4:00 p.m. to 10:00 p.m., Friday from 4:00 p.m. to 11:00 p.m., Saturday from 3:00 p.m. to 11:00 p.m., and Sunday from 11:30 a.m. to 9:30 p.m. To allow flexibility for the owner, we recommend extending the proposed hours until midnight for seven days a week; Monday through Sunday. The Planning and Zoning Commission and staff recommend approval of

the Amended Specific Use Permit with Term for increased operating hours, and an increase of maximum seating capacity from 220 to 268 persons.

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 3, BLOCK 28, PLANTATION HILLS, SECTION 15, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST LOOP 250 NORTH, APPROXIMATELY 300 FEET WEST OF GARFIELD STREET), WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by the granting of a Specific Use Permit With Term, set out hereinafter, on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned PD, Planned District for a Shopping Center, to-wit:

Lot 3, Block 28, Plantation Hills, Section 15, City and County of Midland, Texas; is hereby changed to permit said property to be used under a Specific Use Permit With Term for the sale of all alcoholic beverages for on-premises consumption in a restaurant, together

with the uses permitted in the present PD, Planned District for a Shopping Center.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

- A. That the restaurant shall not exceed 1,340 contiguous square feet in area, and the seating capacity shall not exceed 268 seats.
- B. That the days and hours of alcoholic beverage sales and consumption shall be limited to the following:

Monday through Friday from 4:00 p.m. until 12:00 a.m. (Midnight);
Saturday from 3:00 p.m. until 12:00 a.m. (Midnight); and
Sunday from 11:00 a.m. to 12:00 a.m. (Midnight).
- C. That the sale of alcoholic beverages for on-premise consumption shall comply with Section 11-1-10(C)(1)(a) of the Midland City Code.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Attorney

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

PLANNING AND ZONING COMMISSION

August 20, 2012

CASE: S-12-012

REQUEST: Hold a public hearing and consider a request for an Amended Specific Use Permit with Term for on-premise consumption of alcoholic beverages in a Restaurant.

APPLICANT: Outback Steakhouse of Florida, LLC

OWNER: New Private Restaurant Properties, LLC

LEGAL DESCRIPTION: Lot 3, Block 28, Plantation Hills, Section 15, City and County of Midland, Texas.

LOCATION: Generally located on the north side of W. Loop 250 North, approximately 300 feet west of Garfield Street.

CURRENT ZONING: PD, Planned District for a Shopping Center

DETAILS OF REQUEST:

1. Outback Steakhouse has been operating north of Loop 250 and west of Garfield Street in Midland since May of 1994. The restaurant was issued an SUP with term at this time with a seating capacity of 220. The restaurant management has renewed their SUP regularly; with their most recent approval as of April 2012. The restaurant management has seen an increase in patronage with the recent growth of population, and would like to request an increase of its maximum seating capacity to 268 persons. The restaurant has a floor area of 1,340 square feet, and the proposed hours of operation are Monday through Thursday from 4:00 p.m. to 10:00 p.m., Friday from 4:00 p.m. to 11:00 p.m., Saturday from 3:00 p.m. to 11:00 p.m., and Sunday from 11:30 a.m. to 9:30 p.m.

SURROUNDING ZONING AND LAND USE:

2. The Restaurant is located in a PD for a shopping center, subject to LR-2, Local Retail District standards. There are six specific use permits for the sale of alcoholic beverages located near the property. One permit is located immediately west of the Outback Steakhouse, and the other five permits are located east of Garfield Street in the Colonnade at Polo Park shopping center.

ANALYSIS:

3. The Outback Steakhouse restaurant has a maximum floor area of 1,340 square feet with seating indoors for 220 persons. The restaurant has been operating with all seats filled during peak hours, and would like to be able to serve customers who are waiting for their tables. To be able to meet this demand, the restaurant management is requesting to increase their maximum seating to 268 persons. The requested hours of operation are Monday through Thursday from 4:00 p.m. to 10:00 p.m., Friday from 4:00 p.m. to 11:00 p.m., Saturday from 3:00 p.m. to 11:00 p.m., and Sunday from 11:30 a.m. to 9:30 p.m. To allow flexibility to the owner, staff recommends extending the hours of operation until midnight for seven days a week; Monday through Sunday.

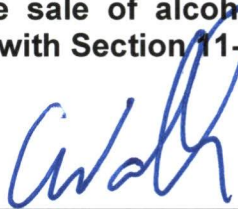
STAFF RECOMMENDATION:

We recommend approval of the request for an Amended Specific Use Permit with Term for on-premise consumption of alcoholic beverages in a Restaurant, together with the uses permitted in the LR-2, Local Retail District, subject to the following conditions:

- A. That the restaurant shall be limited to 1,340 square feet in contiguous area and occupancy shall be limited to 268 seats.
- B. That alcoholic beverages may be sold only during the hours specified as follows:

Monday through Friday from 4:00 p.m. to 12:00 p.m.
Saturday from 3:00 p.m. to 12:00 p.m.
Sunday from 11:30 a.m. to 12:00 p.m.

- C. That the sale of alcoholic beverages for on-premise consumption shall comply with Section 11-1-10(C)(1)(a) of the City Code.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Martin Siwek, City Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A

Case Number: 5-12-012

CITY OF MIDLAND
Planning Division

**APPLICATION FOR A SPECIFIC USE PERMIT WITH TERM
FOR THE SALE OF ALCOHOLIC BEVERAGES
FOR ON-PREMISE CONSUMPTION**

Outback Steakhouse of Florida, LLC 512/473-0300 / khill@jmartinlaw.com

Applicant Name	Phone/e-mail
2202 N West Shore Blvd 5th Flr, Tampa, FL 33607	
Address	Zip Code

New Private Restaurant Properties, LLC	813.282.1225 / carrie.chadbourne@BloominBrands.com
--	--

Property Owner Name	Phone/e-mail
2202 N West Shore Blvd., Ste. 470C, Tampa, FL 33607	
Address	Zip Code

N/A

Operator (if different from Applicant or Property Owner)	Phone/e-mail
N/A	
Address	Zip Code

Type of Business: restaurant

(Restaurant, Bar, Lounge, Nightclub, etc.)

Street address and Legal Description of property on which SUP is desired (complete Lot, Block, and Subdivision, name, or if unplatted, attach a Metes and Bounds description with surveyor's seal.)

Lot 3, Block 28, Plantation Hills, Section 15, an addition to the City of Midland, Midland County, Texas

Current Zoning: PDSC

Max. Floor Area: 1,340 Seating Capacity: 268

CURRENT
~~Proposed~~ hours and days of alcoholic beverage sales: Monday - Thursday: 4p - 12p;
Friday: 4p - 12p; Saturday: 3p - 12p; Sunday: 11:30a - 9:30p

Reason for request: increase number of seats under current specific use permit (Ordinance No. 7339)
from 220 to 268 to accomodate service of alcoholic beverages in new interior wait area

REQUIRED SUBMITTALS

1. Application fee: \$300 X.

2. Site plan – 16 copies (FOLDED) X.
3. On a CD in .pdf and .jpg digital format X.

SIGNATURES:

Applicant: [Signature], AUTHORIZED REPRESENTATIVE Date: 7/31/12

Property Owner: [Signature] Date: 7/31/12

KYLE V. HILL

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.

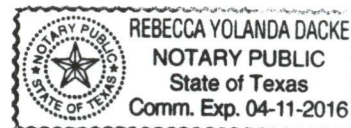
STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared
Kyle V. Hill who, being by me duly sworn, upon oath says: That (s)he is
authorized by New Private Restaurant Properties, LLC, the owner of the above described property, to fully
represent him/her in this application and that (s)he had the legal right, power and authority to sign
said owner's name hereto as his/her attorney in fact.

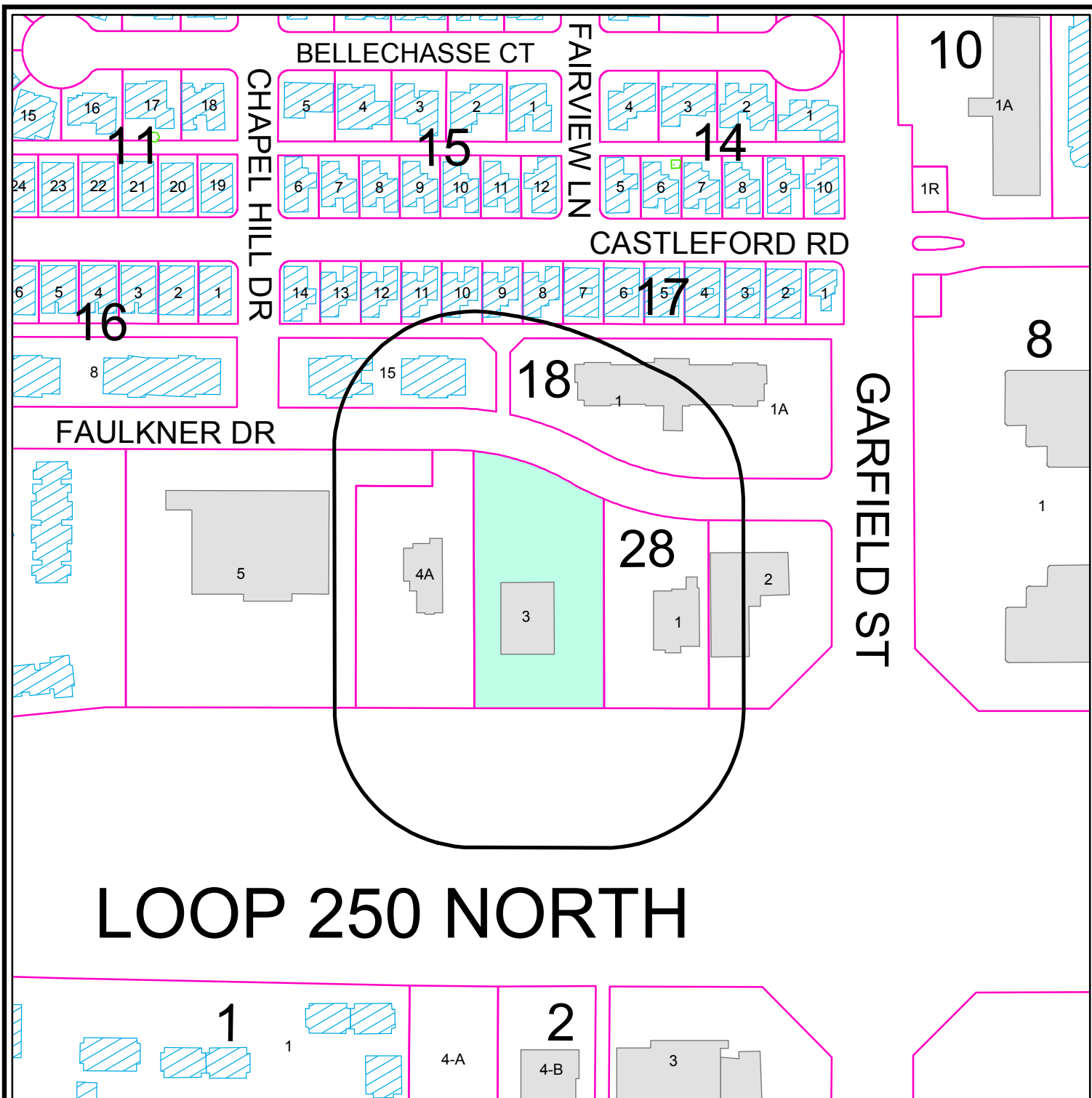
Subscribed and sworn to before me, this 31st day of July, 20 12, to certify which
witness my hand and seal of office.

[Signature]
NOTARY PUBLIC, ~~MIDLAND~~ COUNTY, TEXAS
TRAVIS

FOR OFFICE USE ONLY	
Rec'd By: <u>[Signature]</u>	Date: <u>8/1/12</u>
Assigned: <u>[Signature]</u>	
For: _____	On: _____



****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

S - 12 - 012

Scale: 1" = 200'

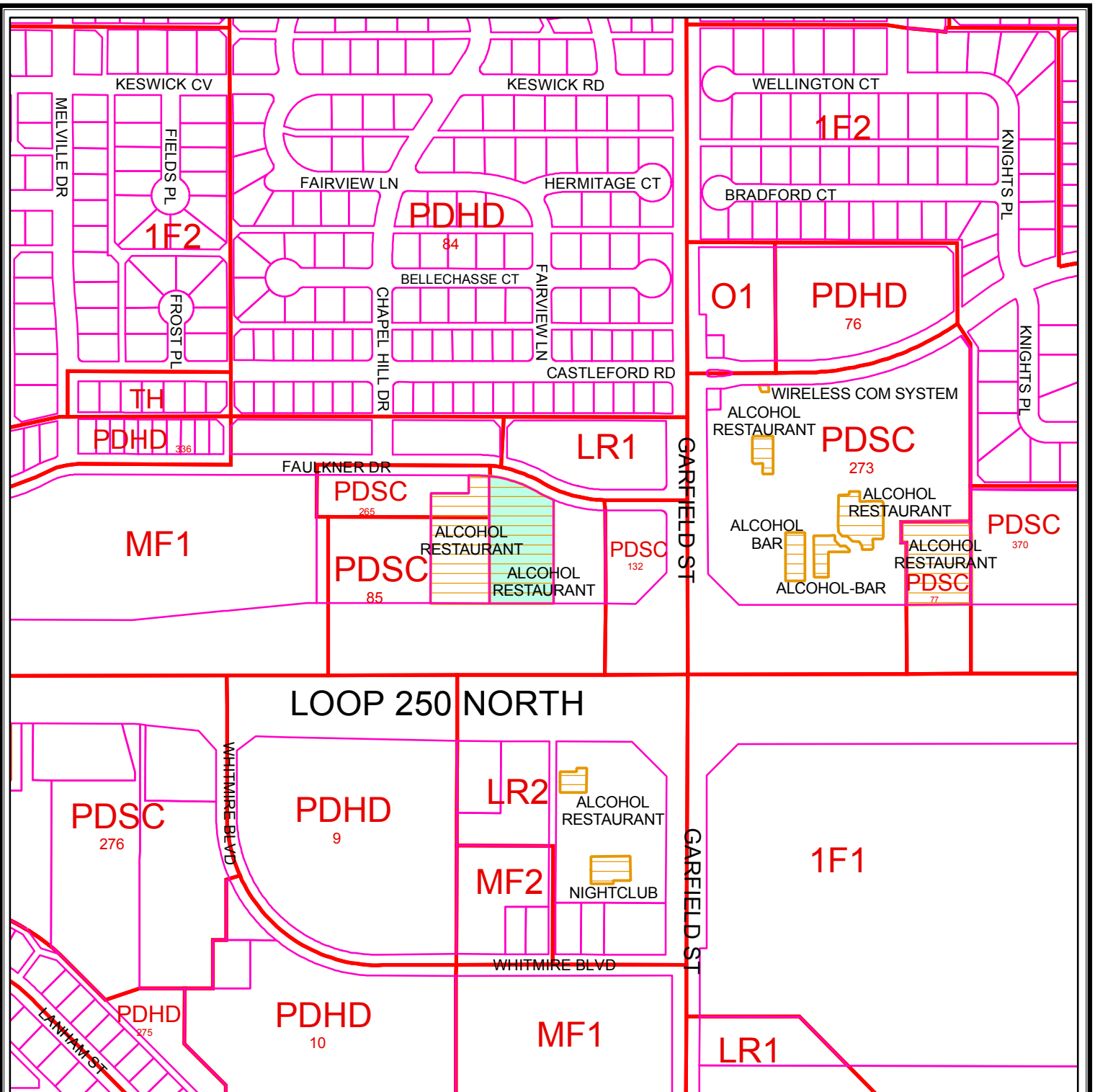
Consider a request for an Amended Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 3, Block 28, Plantation Hills, Section 15, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

S - 12 - 012

Scale: 1" = 400'

Consider a request for an Amended Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 3, Block 28, Plantation Hills, Section 15, City and County of Midland, Texas.

LEGEND

ZONING PARCELS SPECIFIC USE PERMITS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	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

MEETING DATE: September 11, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:36 a.m. regarding a proposed oil and gas permit to RSP Permian, L.L.C. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Bus Barn #2603D) located 690 feet from the north line and 1080 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south of the Briarwood Avenue, approximately 600 feet west of Roadrunner Trail.)

Purpose:

At approximately 10:36 a.m. hold a public hearing on a request from RSP Permian, L.L.C. (Operator), to Drill an Oil and Gas Well within the City Limits (Bus Barn #2603D) located 690 feet from the north line and 1080 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south of the Briarwood Avenue, approximately 600 feet west of Roadrunner Trail.) This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period and at a regularly scheduled meeting.

Recommended City Council Action

Approve Deny X Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval of the application as it was submitted but with the following conditions: *address production method being by rod pump, identify type of fencing to be used around wells, identify dust control method on road, and name specific emergency personnel contacts*. RSP Permian has addressed all of these conditions and updated the application. No variances are being requested.

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



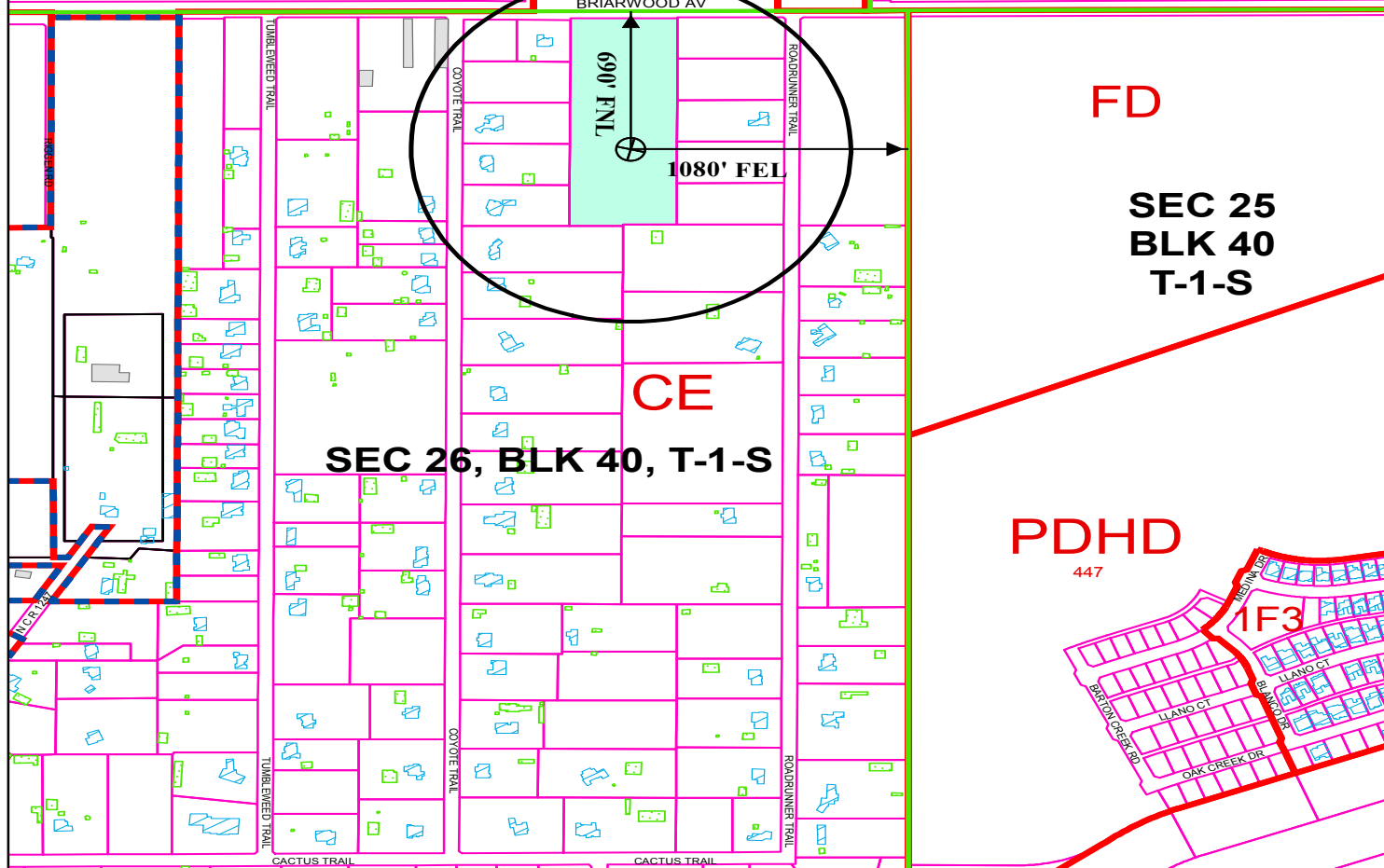
**SEC 23
BLK 40
T-1-S**

FD

CE

**SEC 24
BLK 40
T-1-S**

FD



SEC 26, BLK 40, T-1-S

CE

FD

**SEC 25
BLK 40
T-1-S**

**PDHD
447**

1F3

LOCATION AND ZONING MAP

O - 12 - 010

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 690' FNL and 1080' FEL, Section 26, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

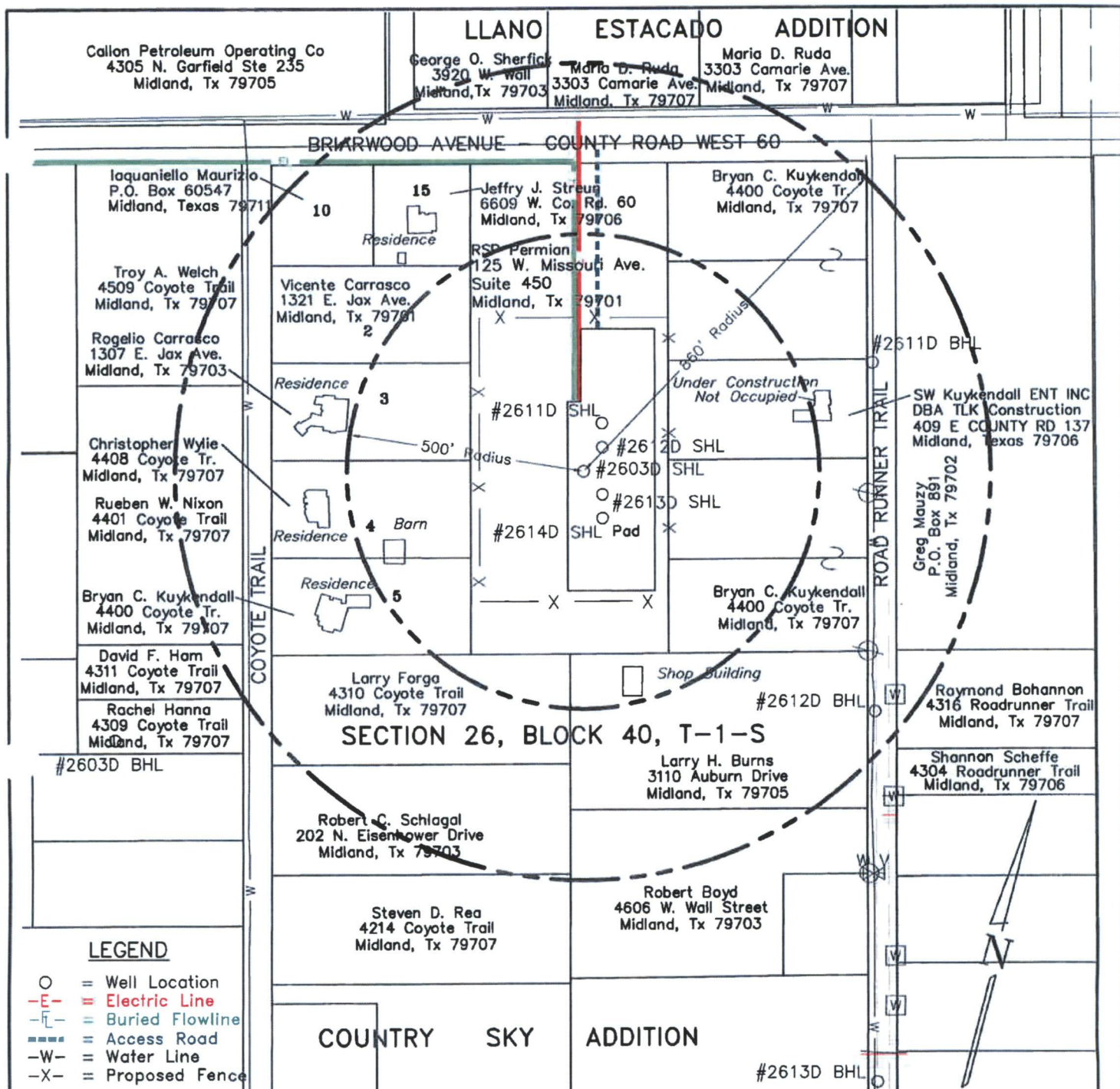
Bus Barn #2603D

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
2F	TWO-FAMILY DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY



**PLAT SHOWING PROPERTY OWNERS WITHIN 500' & 860' RADIUS,
ACCESS ROAD, PIPELINE AND ELECTRIC LINE FOR
PROPOSED BUS BARN #2603D, 690' FNL & 1080' FEL
IN SECTION 26, BLOCK 40, T-1-S, T.&P. RR. CO. SURVEY,
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS**

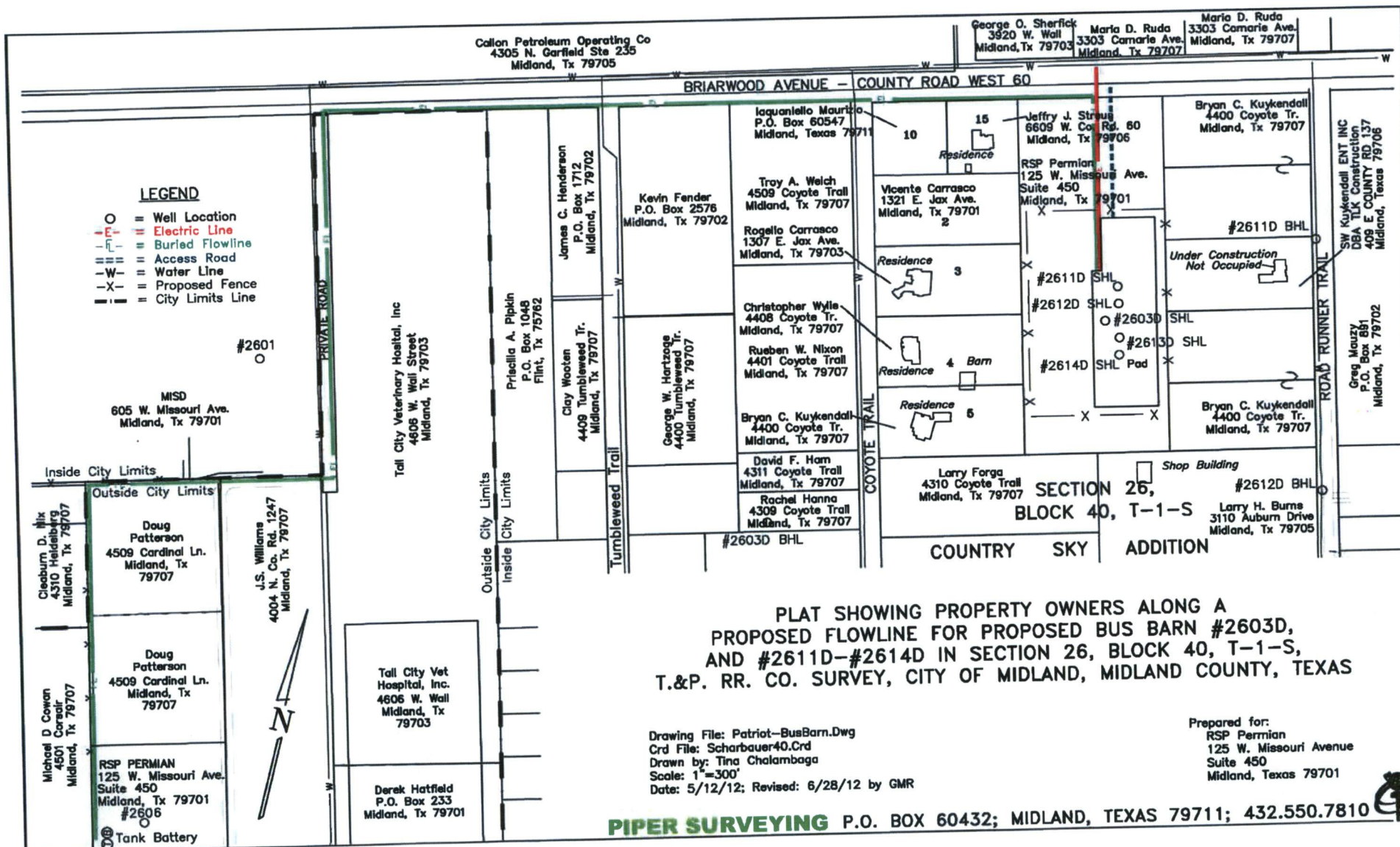
Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, 1983/86 NAD, Central Zone.

I, J. Stan Piper, Registered Professional Land Surveyor do hereby certify that this plat and legal description is true and correct to the best of my knowledge and ability as surveyed on the ground on various dates thru May 8, 2012.

Prepared for:
RSP Permian
125 W. Missouri Avenue
Suite 450
Midland, Texas 79701

J. Stan Piper
Registered Professional Land Surveyor #1974

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



FLOW LINE LOCATION

CASE NO. 0-12-010



City Council Agenda

MEETING DATE: September 11, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:39 a.m. regarding a proposed oil and gas permit to RSP Permian, L.L.C. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Bus Barn #2611D) located 590 feet from the north line and 1040 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south of the Briarwood Avenue, approximately 560 feet west of Roadrunner Trail.)

Purpose:

At approximately 10:39 a.m. hold a public hearing on a request from RSP Permian, L.L.C. (Operator), to Drill an Oil and Gas Well within the City Limits (Bus Barn #2611D) located 590 feet from the north line and 1040 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south of the Briarwood Avenue, approximately 560 feet west of Roadrunner Trail.) This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period and at a regularly scheduled meeting.

Recommended City Council Action

Approve Deny X Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval of the application as it was submitted but with the following conditions: *address production method being by rod pump, identify type of fencing to be used around wells, identify dust control method on road, and name specific emergency personnel contacts.* RSP Permian has addressed all of these conditions and updated the application. No variances are being requested.

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



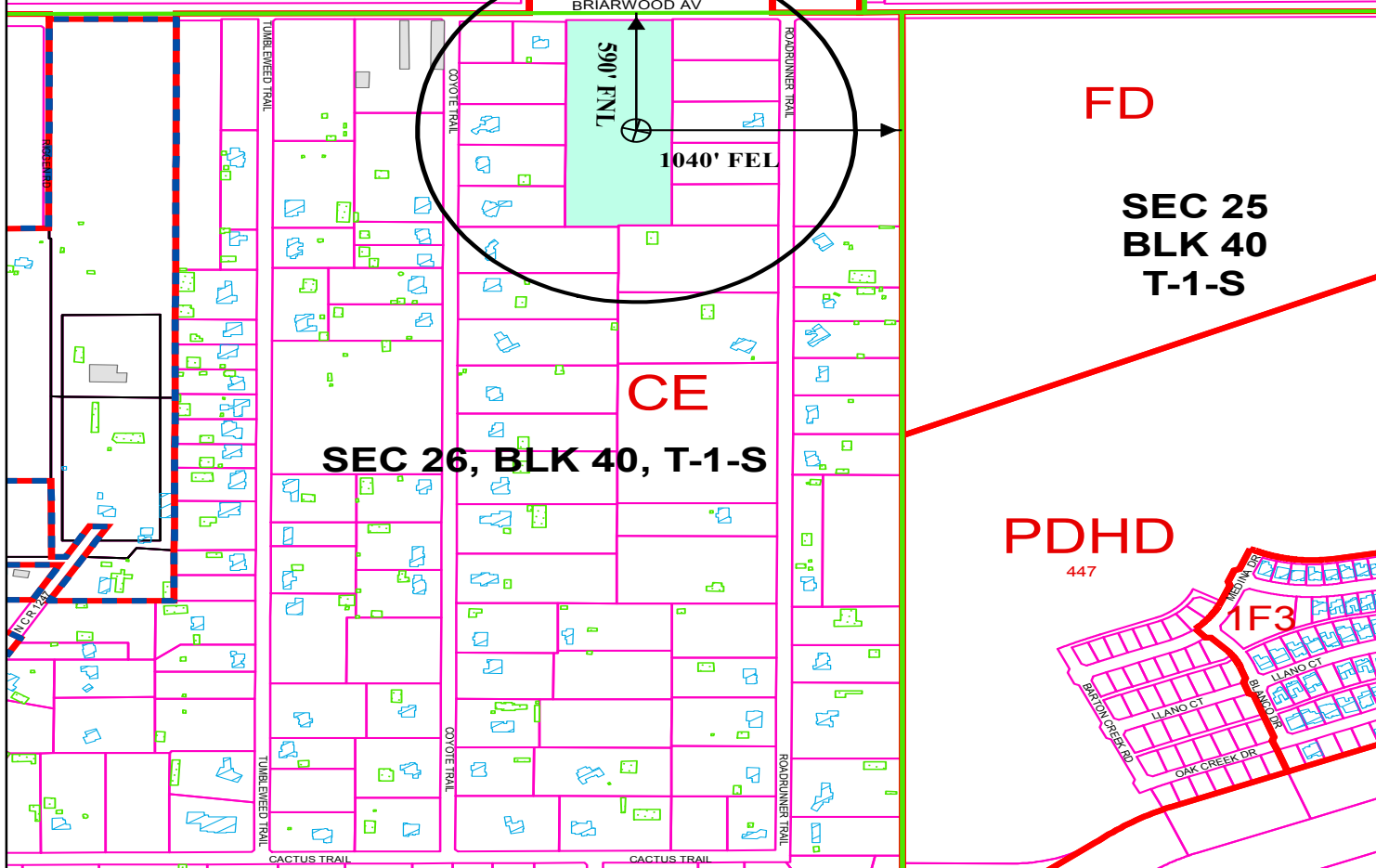
**SEC 23
BLK 40
T-1-S**

FD

CE

**SEC 24
BLK 40
T-1-S**

FD



LOCATION AND ZONING MAP

O - 12 - 011

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 590' FNL and 1040' FEL, Section 26, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Bus Barn #2611D

LEGEND

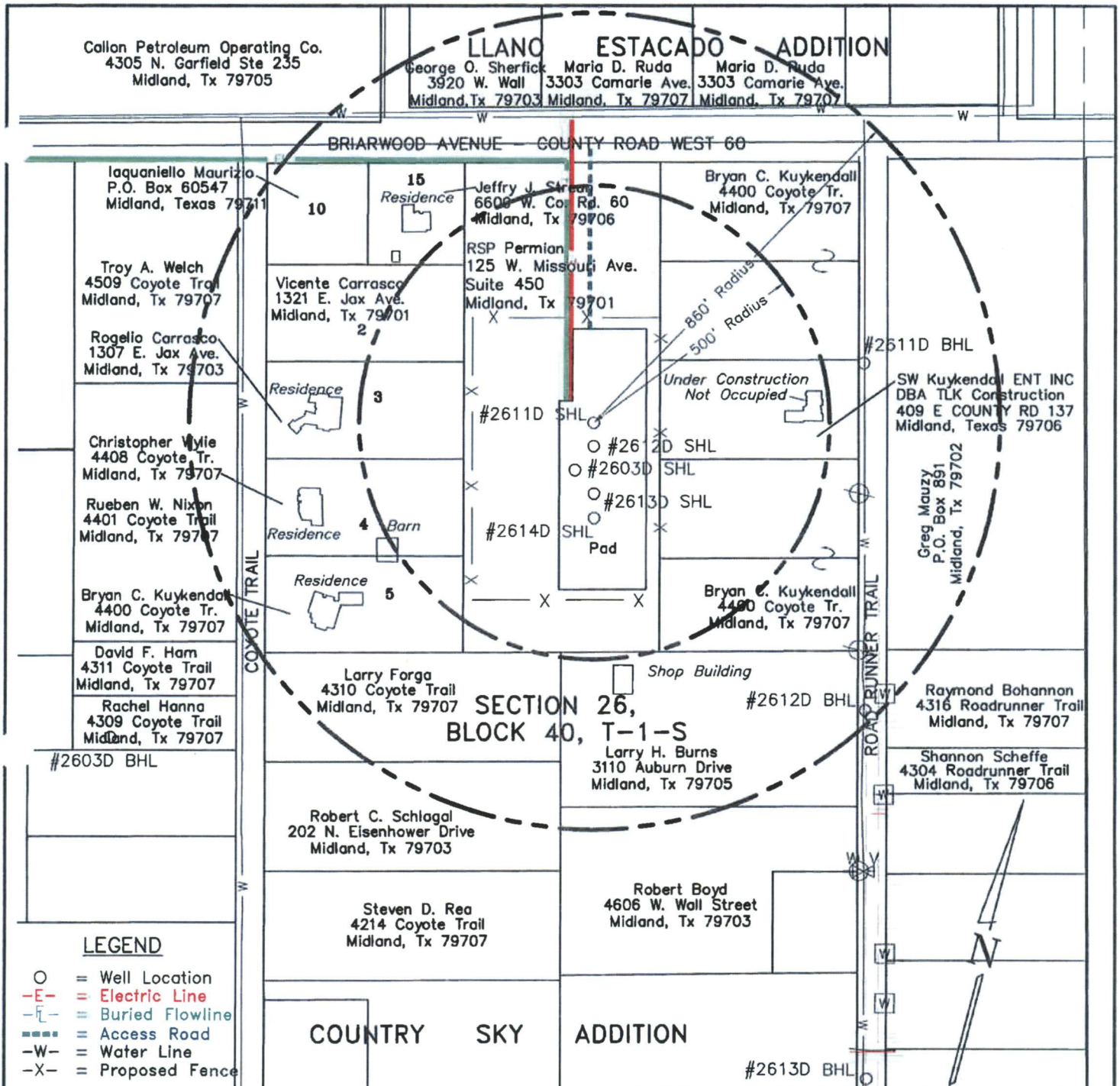
	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT
PD	PLANNED DISTRICT
AE	AGRICULTURE 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
01, 02	OFFICE
NS	NEIGHBORHOOD SERVICE
LR1, LR2, LR3	LOCAL RETAIL
C1, C2, C3	COMMERCIAL
IP, JP1, IP2, IP3	INDUSTRIAL PARK
LI	LIGHT INDUSTRY
HI	HEAVY INDUSTRY

BP	BUSINESS PARK
P	PARKING
01, 02	OFFICE
NS	NEIGHBORHOOD SERVICE
LR1, LR2, LR3	LOCAL RETAIL
C1, C2, C3	COMMERCIAL
IP, JP1, IP2, IP3	INDUSTRIAL PARK
LI	LIGHT INDUSTRY
HI	HEAVY INDUSTRY



**PLAT SHOWING PROPERTY OWNERS WITHIN 500' & 860' RADIUS,
ACCESS ROAD, PIPELINE AND ELECTRIC LINE FOR
PROPOSED BUS BARN #2611D, 590' FNL & 1040' FEL
IN SECTION 26, BLOCK 40, T-1-S, T.&P. RR. CO. SURVEY,
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS**

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, 1983/86 NAD, Central Zone.

I, J. Stan Piper, Registered Professional Land Surveyor do hereby certify that this plat and legal description is true and correct to the best of my knowledge and ability as surveyed on the ground on various dates thru May 8, 2012.

J. Stan Piper
Registered Professional Land Surveyor #1974

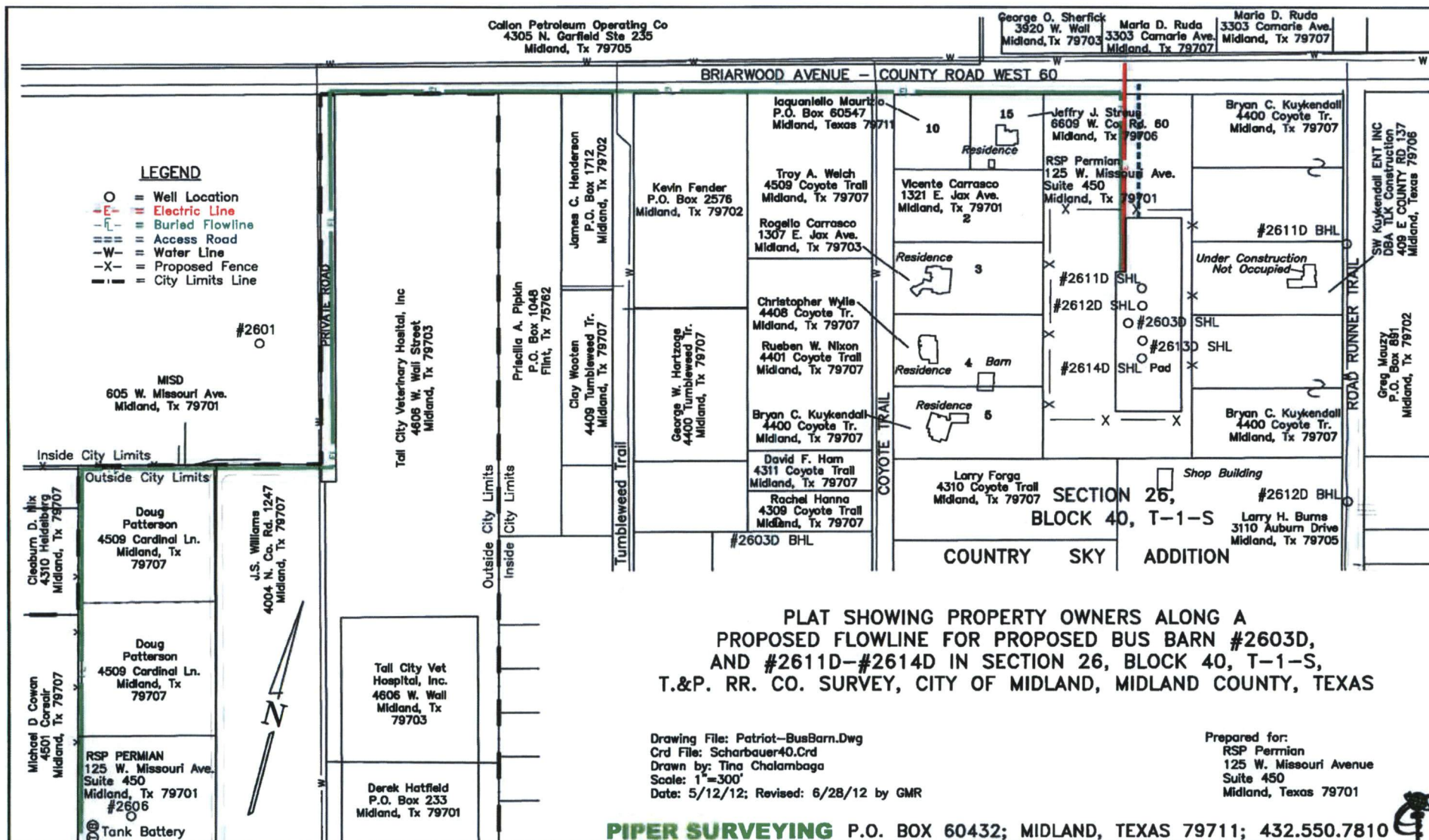
Prepared for:
RSP Permian
125 W. Missouri Avenue
Suite 450
Midland, Texas 79701

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

DRILL SITE MAP

52.3

CASE NO 0-12-011



FLOW LINE LOCATION

CASE NO. 0-12-011



City Council Agenda

MEETING DATE: September 11, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:42 a.m. regarding a proposed oil and gas permit to RSP Permian, L.L.C. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Bus Barn #2612D) located 640 feet from the north line and 1040 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south of the Briarwood Avenue, approximately 560 feet west of Roadrunner Trail.)

Purpose:

At approximately 10:42 a.m. hold a public hearing on a request from RSP Permian, L.L.C. (Operator), to Drill an Oil and Gas Well within the City Limits (Bus Barn #2612D) located 640 feet from the north line and 1040 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south of the Briarwood Avenue, approximately 560 feet west of Roadrunner Trail.) This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period and at a regularly scheduled meeting.

Recommended City Council Action

Approve Deny X Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval of the application as it was submitted but with the following conditions: *address production method being by rod pump, identify type of fencing to be used around wells, identify dust control method on road, and name specific emergency personnel contacts.* RSP Permian has addressed all of these conditions and updated the application. No variances are being requested.

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



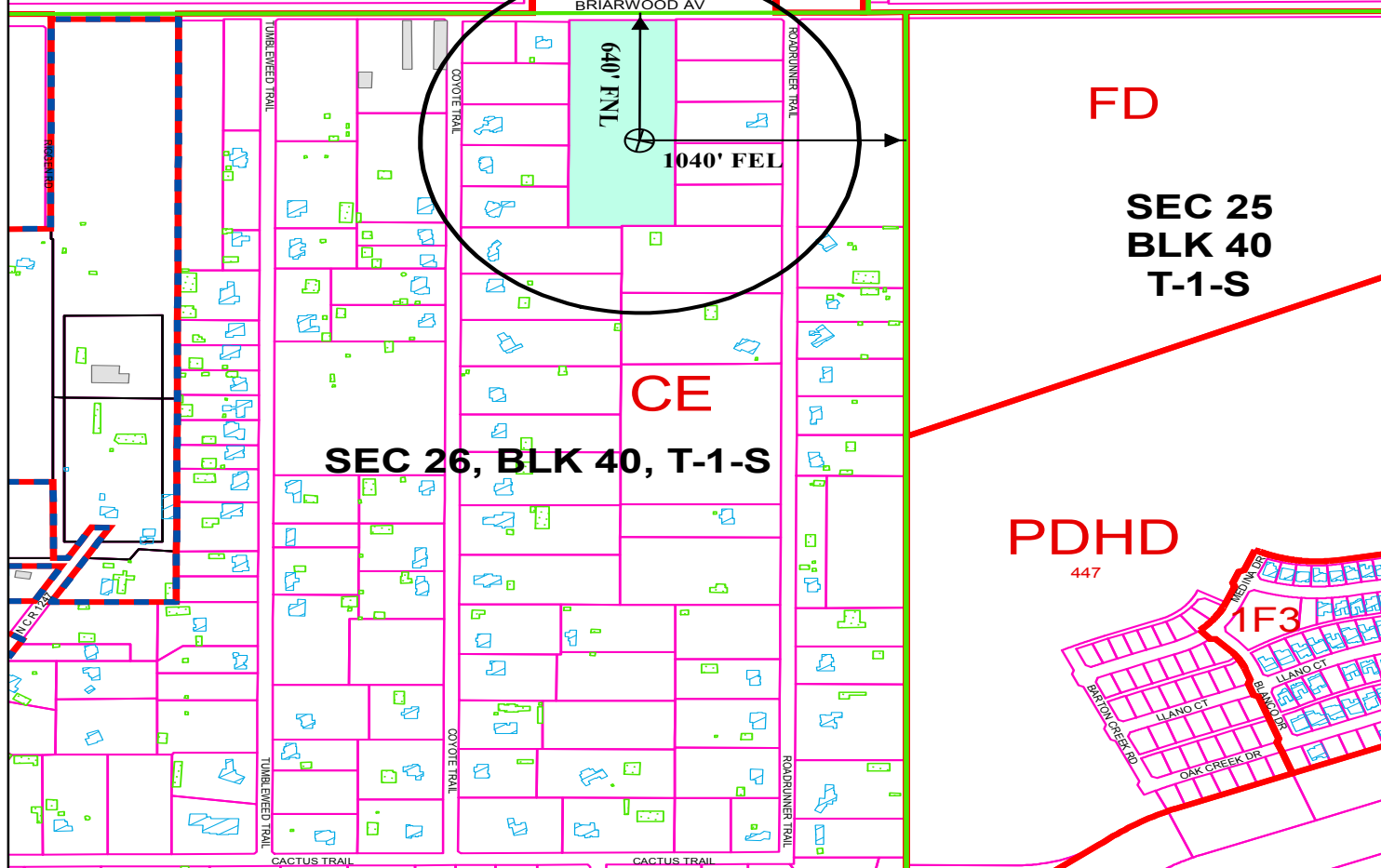
**SEC 23
BLK 40
T-1-S**

FD

CE

**SEC 24
BLK 40
T-1-S**

FD



LOCATION AND ZONING MAP

O - 12 - 012

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 640' FNL and 1040' FEL, Section 26, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Bus Barn #2612D

LEGEND

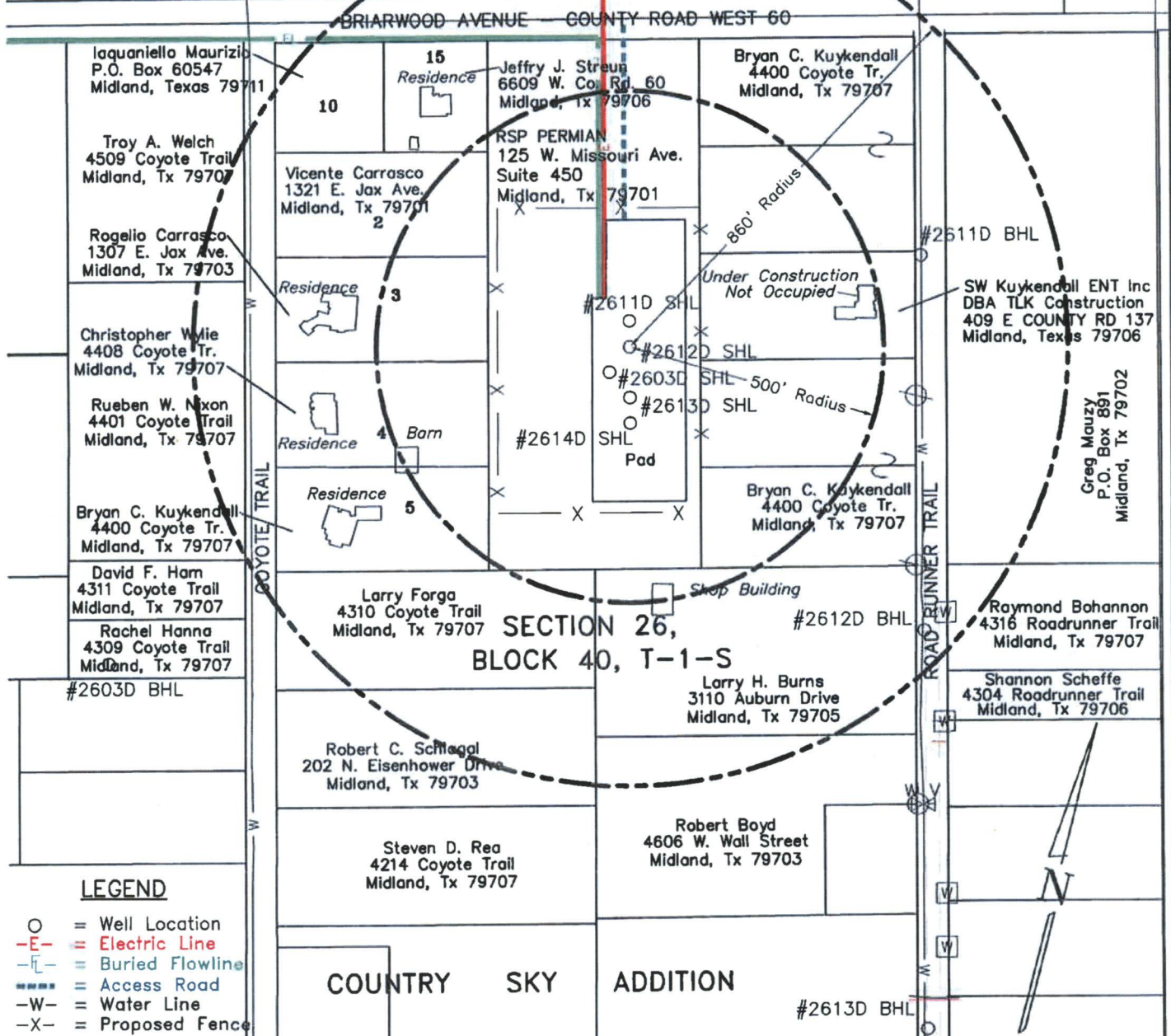
CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
2F	TWO-FAMILY DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY

Callon Petroleum Operating Co
4305 N. Garfield Ste 235
Midland, Tx 79705

LLANO ESTACADO ADDITION
George O. Sherfick 3920 W. Wall
Midland, Tx 79703
Maria D. Ruda 3303 Camarie Ave.
Midland, Tx 79707
Maria D. Ruda 3303 Camarie Ave.
Midland, Tx 79707



LEGEND

- = Well Location
- E- = Electric Line
- FL- = Buried Flowline
- ==== = Access Road
- W- = Water Line
- X- = Proposed Fence

Drawing File: Patriot-BusBarn.Dwg; Drawn by: Tina Chalamaga; Scale: 1"=300'; Date: 5/15/12; Revised: 6/28/12 by GMR

PLAT SHOWING PROPERTY OWNERS WITHIN 500' & 860' RADIUS,
ACCESS ROAD, PIPELINE AND ELECTRIC LINE FOR
PROPOSED BUS BARN #2612D, 640' FNL & 1040' FEL
IN SECTION 26, BLOCK 40, T-1-S, T.&P. RR. CO. SURVEY,
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, 1983/86 NAD, Central Zone.

I, J. Stan Piper, Registered Professional Land Surveyor do hereby certify that this plat and legal description is true and correct to the best of my knowledge and ability as surveyed on the ground on various dates thru May 8, 2012.

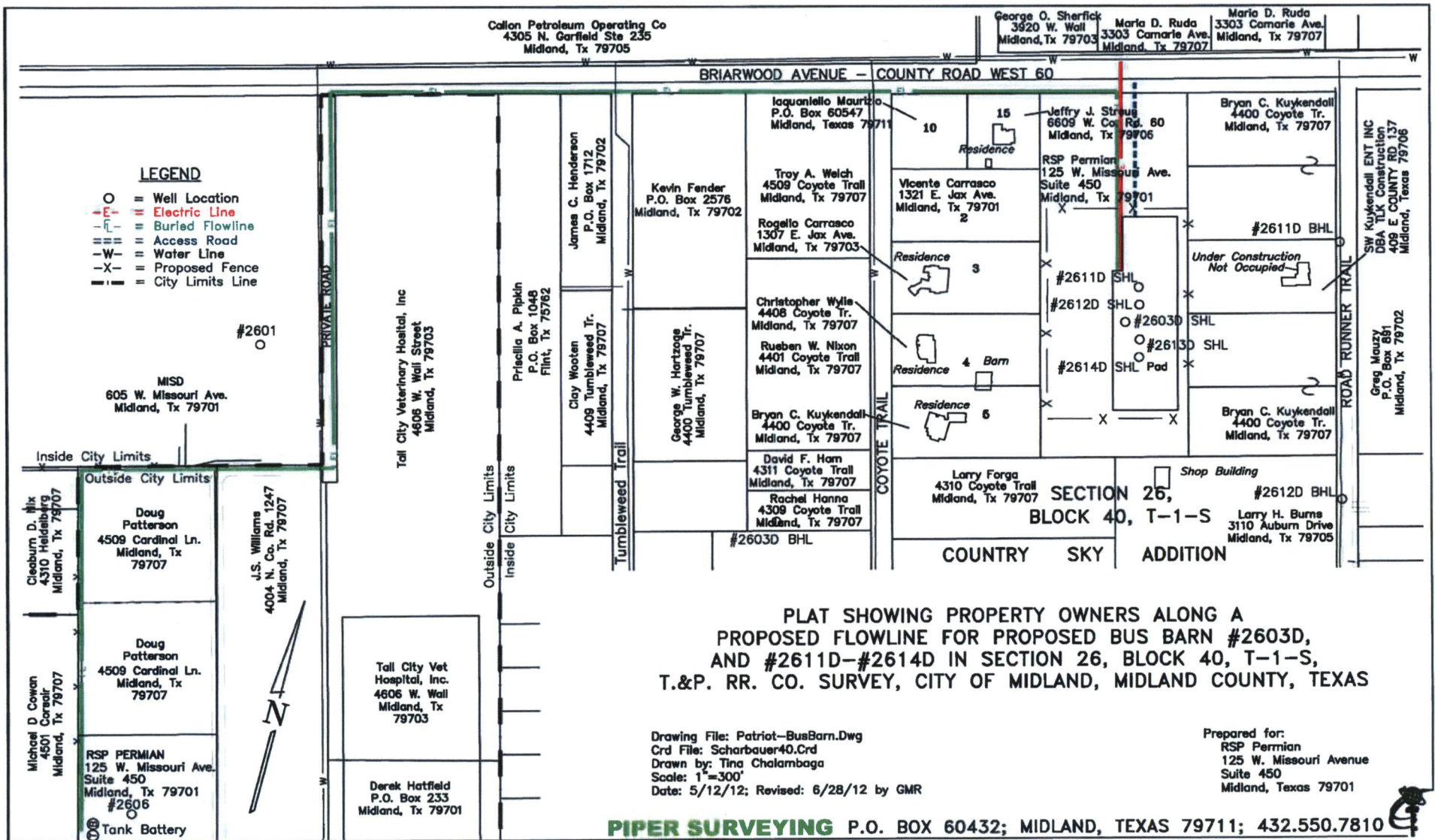
J. Stan Piper
Registered Professional Land Surveyor #1974

Prepared for:
RSP Permian
125 W. Missouri Avenue
Suite 450
Midland, Texas 79701

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

DRILL SITE MAP

CASE NO. 0-12-012 53.3



FLOW LINE LOCATION

CASE NO. 0-12-612



City Council Agenda

MEETING DATE: September 11, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:45 a.m. regarding a proposed oil and gas permit to RSP Permian, L.L.C. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Bus Barn #2613D) located 740 feet from the north line and 1040 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south of the Briarwood Avenue, approximately 560 feet west of Roadrunner Trail.)

Purpose:

At approximately 10:45 a.m. hold a public hearing on a request from RSP Permian, L.L.C. (Operator), to Drill an Oil and Gas Well within the City Limits (Bus Barn #2613D) located 740 feet from the north line and 1040 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south of the Briarwood Avenue, approximately 560 feet west of Roadrunner Trail.) This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period and at a regularly scheduled meeting.

Recommended City Council Action

Approve Deny X Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval of the application as it was submitted but with the following conditions: *address production method being by rod pump, identify type of fencing to be used around wells, identify dust control method on road, and name specific emergency personnel contacts*. RSP Permian has addressed all of these conditions and updated the application. No variances are being requested.

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



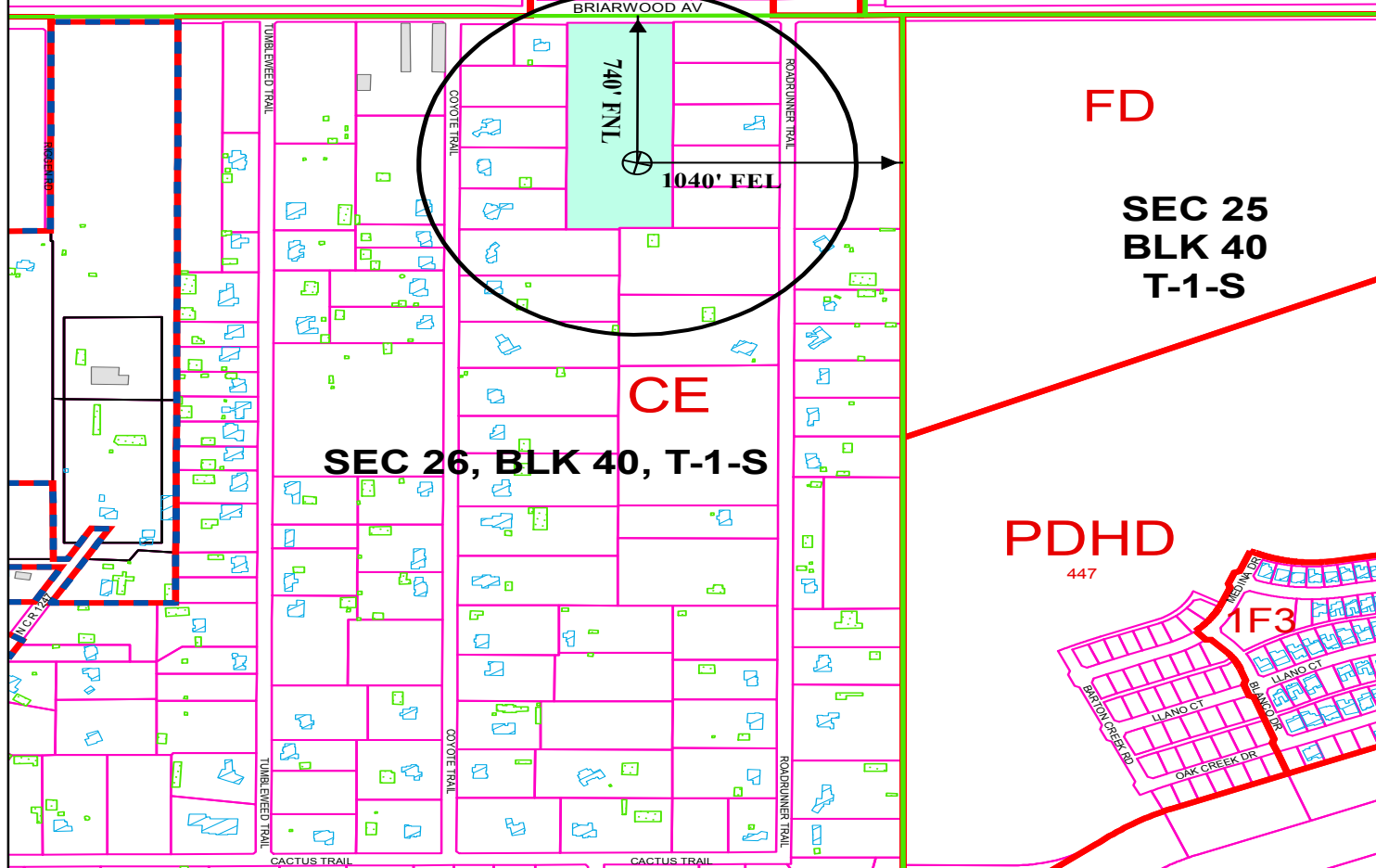
**SEC 23
BLK 40
T-1-S**

FD

CE

**SEC 24
BLK 40
T-1-S**

FD



LOCATION AND ZONING MAP

O - 12 - 013

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 740' FNL and 1040' FEL, Section 26, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

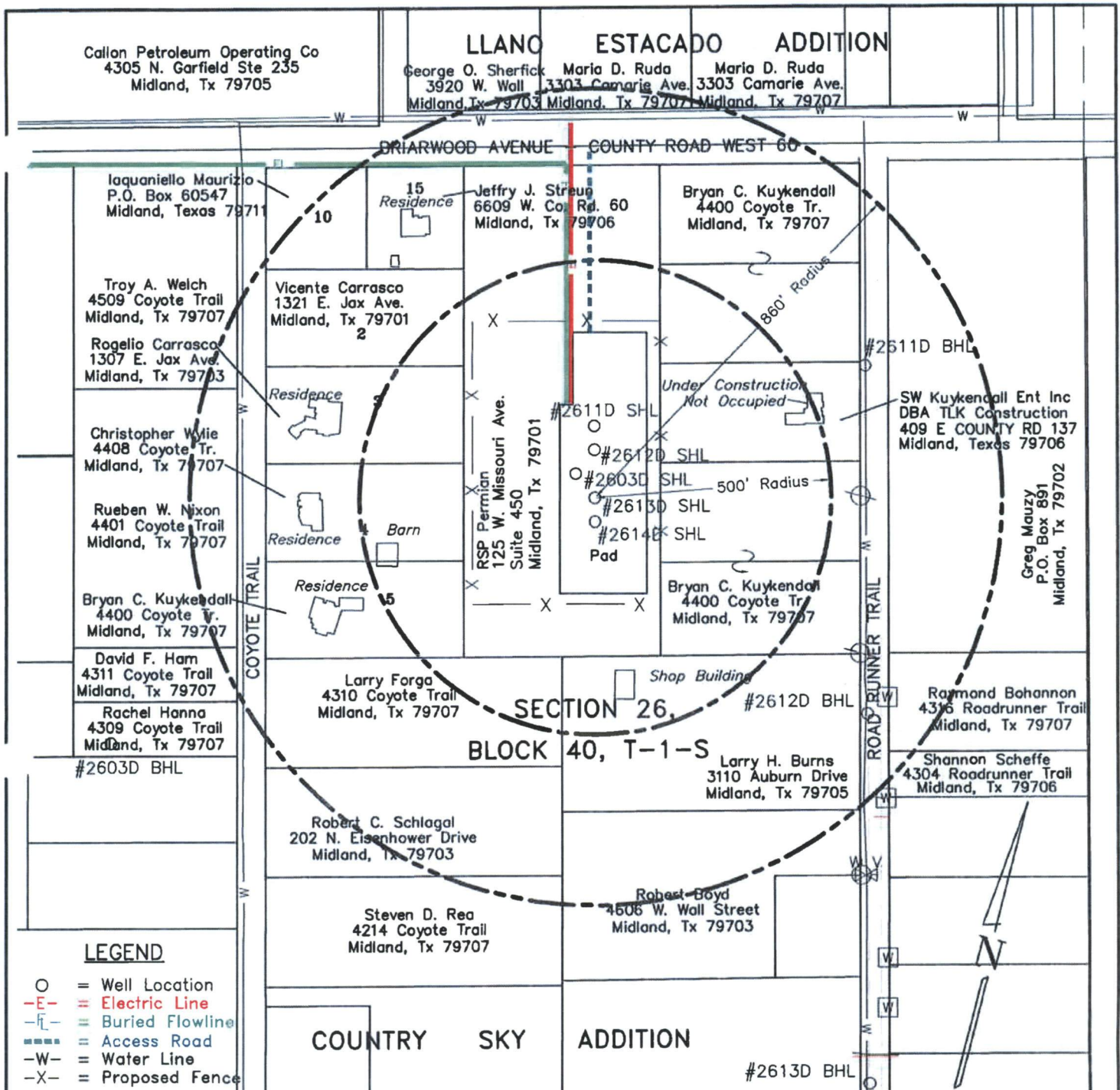
Bus Barn #2613D

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
2F	TWO-FAMILY DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY



Drawing File: Patriot-BusBarn.Dwg; Drawn by: Tina Chalambaga; Scale: 1"=300'; Date: 5/15/12; Revised: 6/28/12 by GMR

**PLAT SHOWING PROPERTY OWNERS WITHIN 500' & 860' RADIUS,
ACCESS ROAD, PIPELINE AND ELECTRIC LINE FOR
PROPOSED BUS BARN #2613D, 740' FNL & 1040' FEL
IN SECTION 26, BLOCK 40, T-1-S, T.&P. RR. CO. SURVEY,
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS**

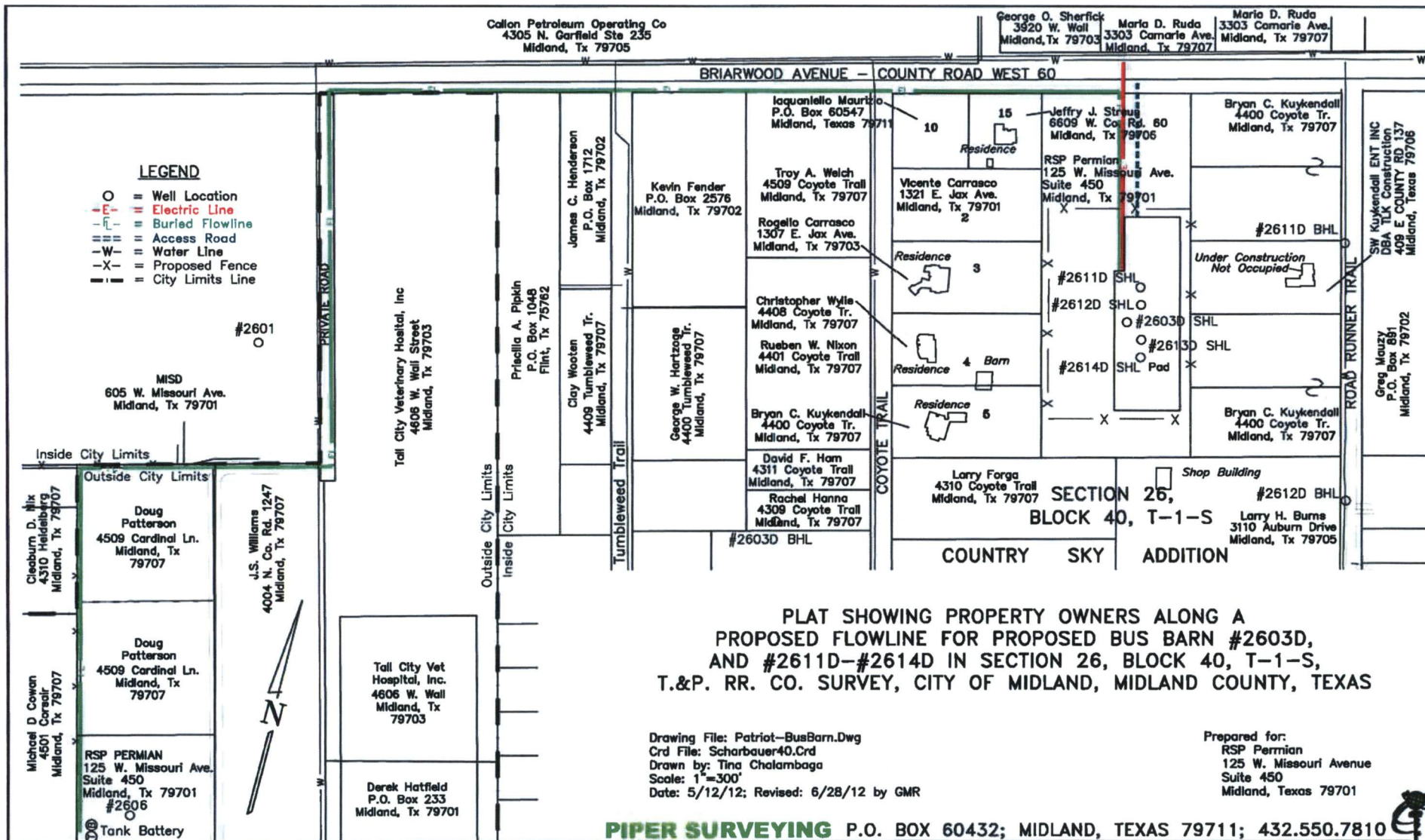
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J. Stan Piper
Registered Professional Land Surveyor #1974

Prepared for:
RSP Permian
125 W. Missouri Avenue
Suite 450
Midland, Texas 79701

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



FLOW LINE LOCATION

CASE NO. 0-12-013



City Council Agenda

MEETING DATE: September 11, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:48 a.m. regarding a proposed oil and gas permit to RSP Permian, L.L.C. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Bus Barn #2614D) located 790 feet from the north line and 1040 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south of the Briarwood Avenue, approximately 560 feet west of Roadrunner Trail.)

Purpose:

At approximately 10:48 a.m. hold a public hearing on a request from RSP Permian, L.L.C. (Operator), to Drill an Oil and Gas Well within the City Limits (Bus Barn #2614D) located 790 feet from the north line and 1040 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south of the Briarwood Avenue, approximately 560 feet west of Roadrunner Trail.) This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period and at a regularly scheduled meeting.

Recommended City Council Action

Approve Deny X Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval of the application as it was submitted but with the following conditions: *address production method being by rod pump, identify type of fencing to be used around wells, identify dust control method on road, and name specific emergency personnel contacts.* RSP Permian has addressed all of these conditions and updated the application. No variances are being requested.

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



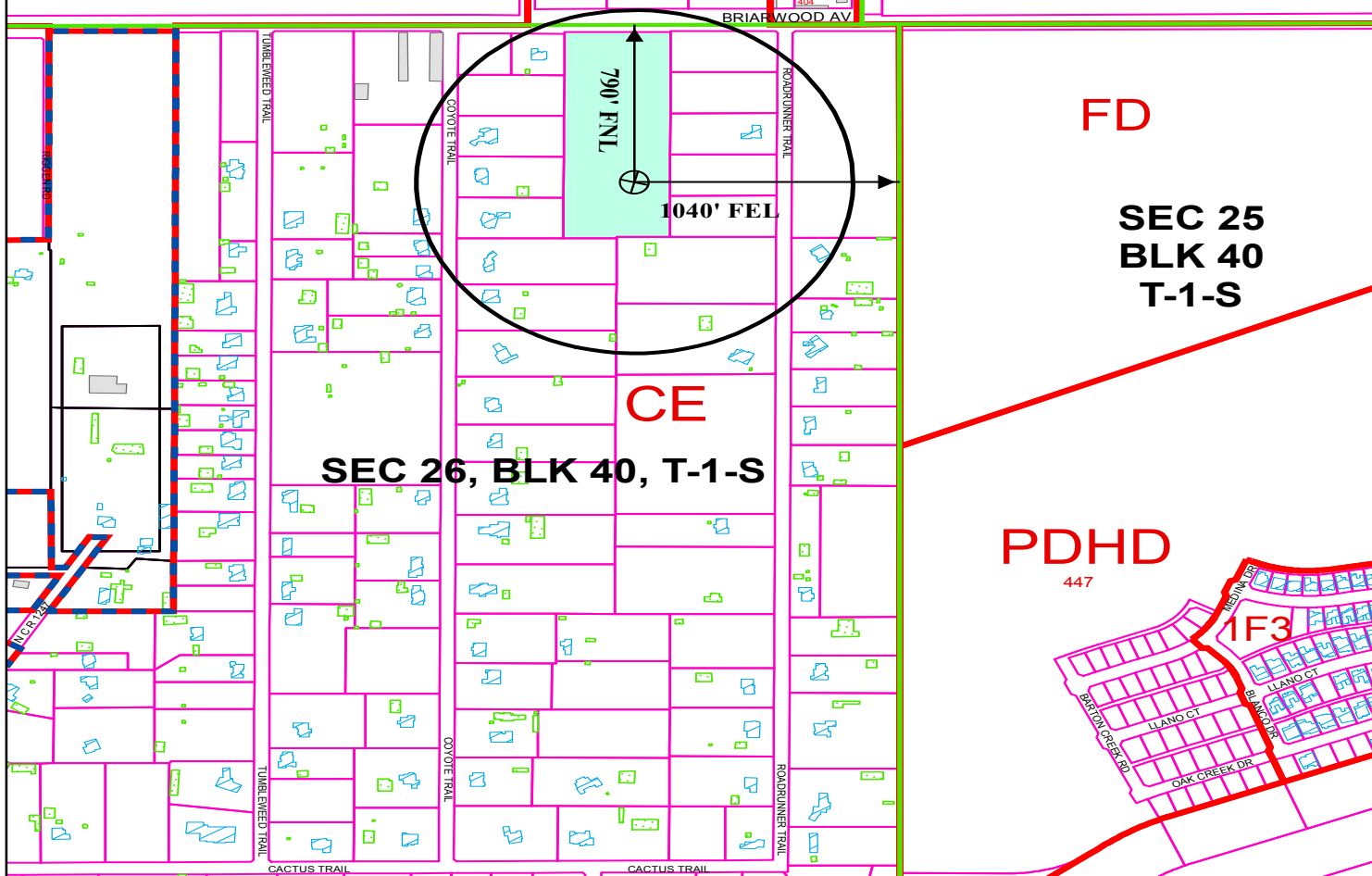
**SEC 23
BLK 40
T-1-S**

FD

CE

**SEC 24
BLK 40
T-1-S**

FD



LOCATION AND ZONING MAP

O - 12 - 014

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 790' FNL and 1040' FEL, Section 26, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

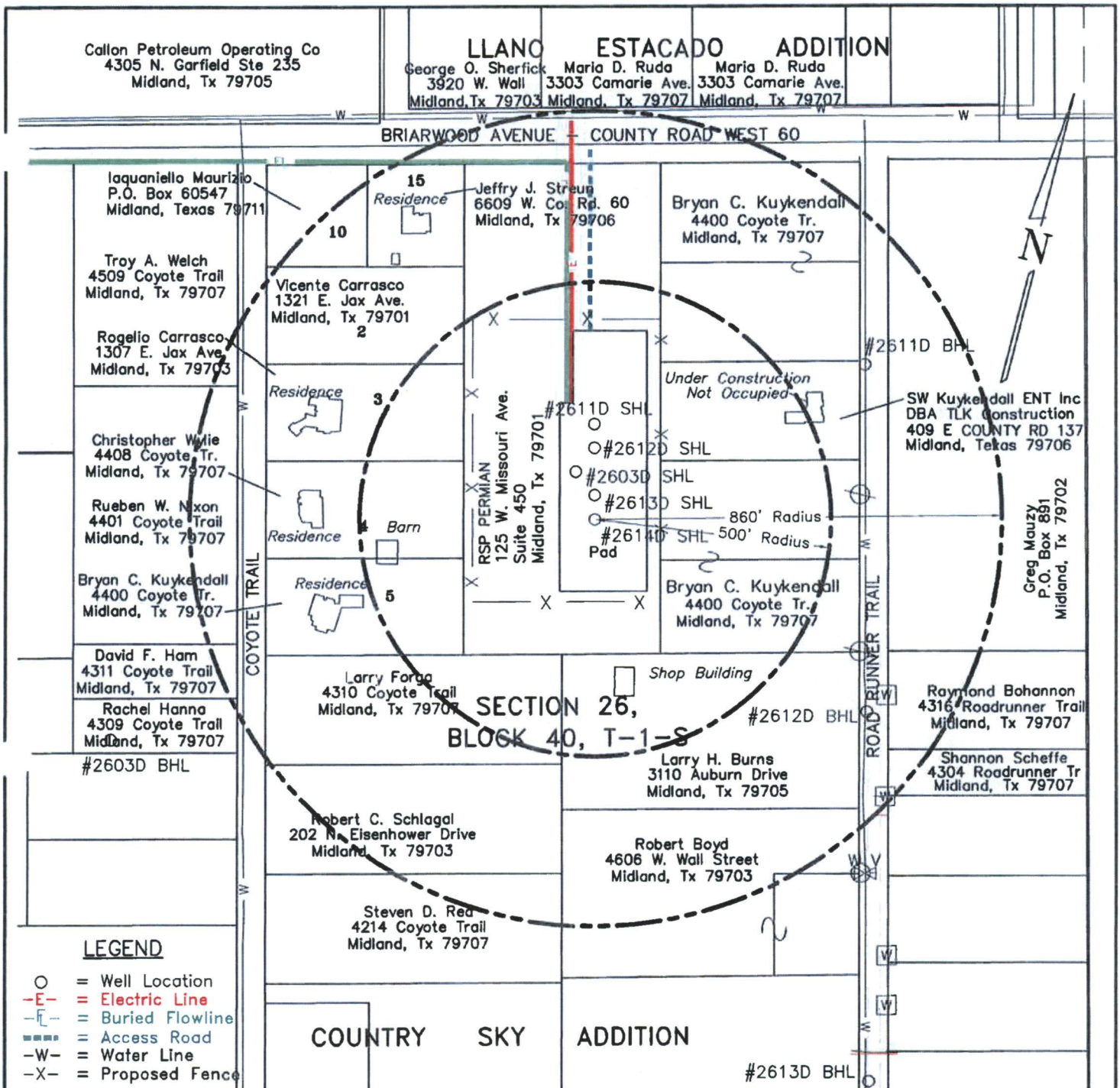
Bus Barn #2614D

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
2F	TWO-FAMILY DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY



Drawing File: Patriot-BusBarn.Dwg; Drawn by: Tina Chalambaga; Scale: 1"=300'; Date: 5/15/12; Revised: 6/28/12 by GMR

**PLAT SHOWING PROPERTY OWNERS WITHIN 500' & 860' RADIUS,
ACCESS ROAD, PIPELINE AND ELECTRIC LINE FOR
PROPOSED BUS BARN #2614D, 790' FNL & 1040' FEL
IN SECTION 26, BLOCK 40, T-1-S, T.&P. RR. CO. SURVEY,
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS**

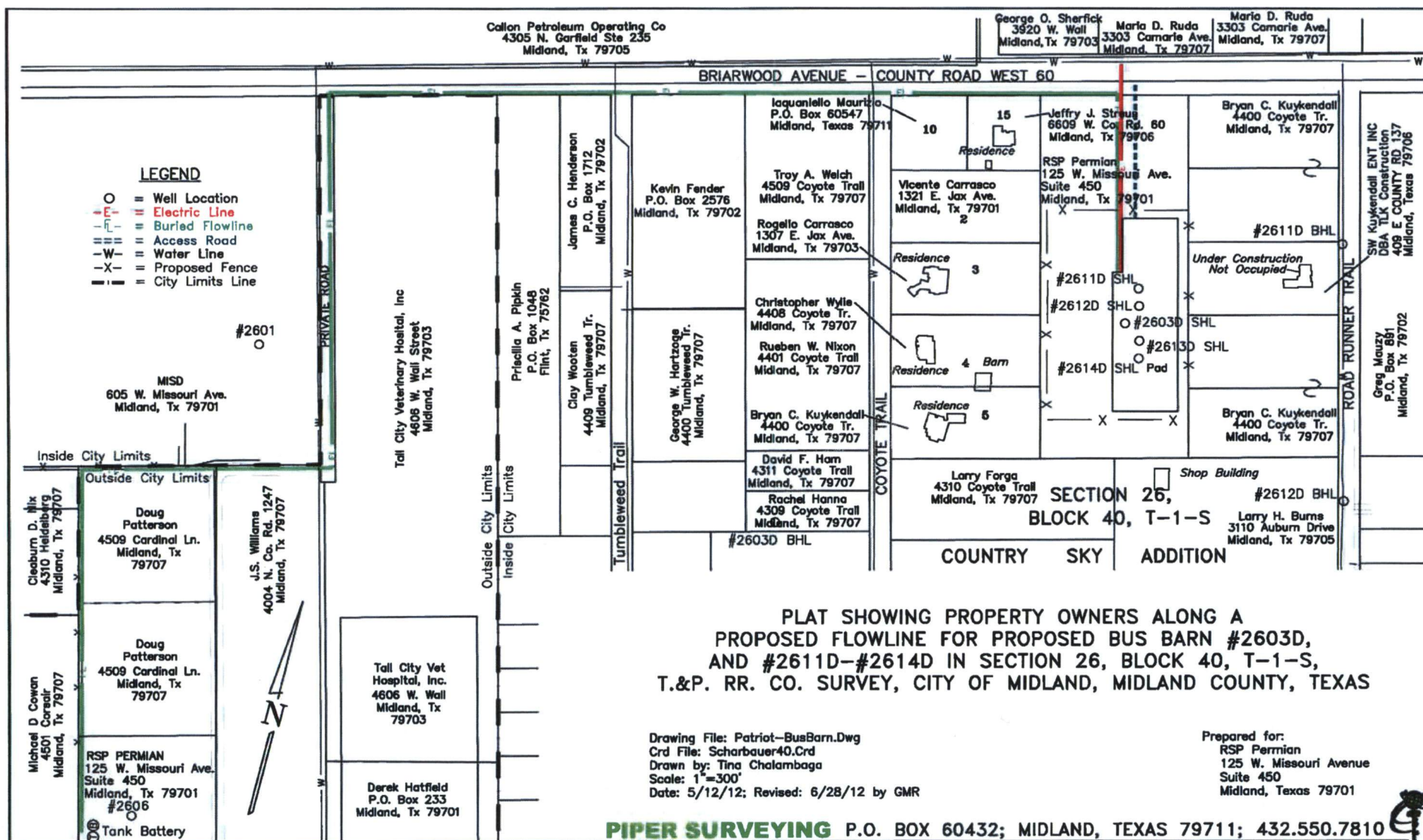
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J. Stan Piper
Registered Professional Land Surveyor #1974

Prepared for:
RSP Permian
125 W. Missouri Avenue
Suite 450
Midland, Texas 79701

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





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: At approximately 10:51 A.M. hold a public hearing and consider an ordinance on a request by Pioneer Apartments for an Apartment Site Plan

Purpose:

At approximately 10:51 A.M. hold a public hearing and consider an ordinance on a request by Pioneer Apartments for an Apartment Site Plan, Lot 3, Block 1, Cross Pointe Addition, City and County of Midland, Texas. (Generally located 550 feet north of Briarwood Avenue on the west side of Holiday Hill Road.)

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 plans to develop this 7.36 acre vacant site zoned MF-1, Multiple Family Dwelling District, with 96 apartment units. The proposed complex contains four, 3-story buildings for housing in addition to a clubhouse with a pool and 197 parking spaces. The property will have frontage on Holiday Hill Road and is located on land annexed into the city this year, to the east of the Bush Tennis Center. The submitted site plan provides a modest density of 13 dwelling units per acre with adequate parking and traffic circulation. The apartment complex is fenced with brick columns and wrought iron with a secure gate beyond the clubhouse (Exhibit – B). This design allows for incoming traffic to clear Holiday Hill Road rather than queuing in or near the road. Landscaping coverage is more than sufficient for the site area with the tree requirement being 25 trees total, calculating for the street frontage and the parking lot. The developer is proposing to plant 13 trees and contribute to the Parks & Recreation Endowment Fund for the tree shortfall considering the current drought. Staff recommends this number is sufficient, however the four parking lot trees (Exhibit – A) should be located at the Holiday Hill Rd. frontage for a total of ten trees along this 335' of frontage. The buildings are constructed with brick and stucco with the clubhouse providing an attractive entryway facing Holiday Hill Road. While the required setback for MF-1 zoning is 20', the nearest apartment building is approximately 300 feet from Holiday Hill Road. Staff concurs with Planning & Zoning Commission approval and recommends the proposed site plan that meets all zoning code regulations for the MF-1, Multiple Family Dwelling District, and indicates a commitment of sensitive design.

Attachments:

Application

Maps

Exhibits A - D

Proposed Ordinance

August 20, 2012 Planning & Zoning Commission Staff Report

ORDINANCE NO.

AN ORDINANCE ADOPTING A SITE PLAN FOR AN 7.37-ACRE TRACT OF LAND OUT OF LOT 3, BLOCK 1, CROSS POINTE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED APPROXIMATELY 550 FEET NORTH OF BRIARWOOD AVENUE ON THE WEST SIDE OF HOLIDAY HILL ROAD); SUBJECT TO THE FOLLOWING CONDITIONS AND RESTRICTIONS; 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, Section 11-1-6(A)(9)(b)(1) of the Midland City Code provides that prior to any development of an apartment project/complex, an applicant must obtain site plan approval under said section; and

WHEREAS, after a full and fair public hearing at which all parties in interest were offered an opportunity to be heard, all pursuant to law, the Council finds it to be in the public interest to adopt a site plan pursuant to Section 11-1-6(A)(9)(b)(1), subject to special conditions and restrictions;

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

SECTION ONE. That a site plan, which is attached hereto as Exhibits “A”, “B”, “C” and “D” and incorporated herein for all purposes, is hereby adopted for the following property:

A 7.37-acre tract out of Lot 3, Block 1, Cross Pointe Addition, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit “E”, which is attached hereto and incorporated herein for all purposes.

SECTION TWO. That the use and development of the property shall be subject to the following conditions and restrictions:

1. That the development shall be significantly consistent with Exhibits “A”, “B”, “C” and “D”.
2. That a provision for a street light at the entrance to the complex is made at Holiday Hill Road.

3. That a blanket refuse easement to the property is granted to the City of Midland.
4. That the air conditioners, dumpsters, and any ground-based utility equipment shall be appropriately screened.
5. That the color elevation of the proposed site plan screen wall for the north, south and west sides must meet administrative approval.
6. That sidewalks are paved to the required standards, including a sidewalk constructed along the property line frontage.
7. That all signage shall meet City of Midland standards.
8. That the developer shall make provisions for fire department access including but not limited to turning radii, adequate fire lane width, hydrant coverage and Knox-Box.
9. That a minimum of 13 trees shall be planted, 10 at the Holiday Hill Road frontage, and the value of 12 trees contributed to the City of Midland Parks and Recreation Fund. All landscaping shall conform to City of Midland regulations in place at the time of development.
10. That this apartment site plan governs only the 7.37-acre tract described herein and does not govern the entirety of the MF-1 zoned Lot 3, Block 1, Cross Pointe Addition. Subsequent apartment developments on this lot are subject to separate site plan review.

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:

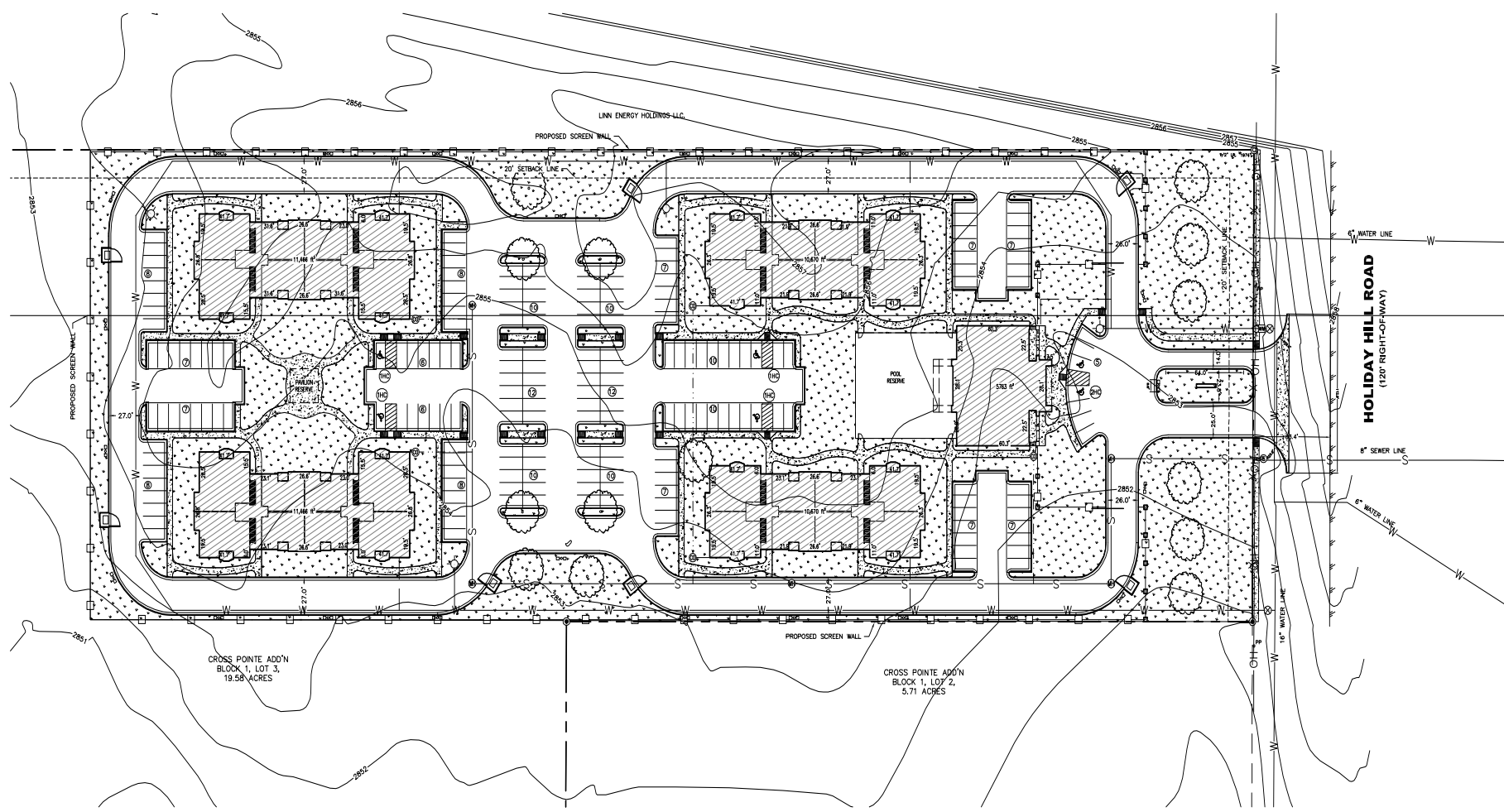
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



INGRESS & EGRESS

- INGRESS & EGRESS BY DOUBLE DRIVEWAY ALONG HOLIDAY HILL ROAD.
- BEYOND CLUBHOUSE, ACCESS TO BE RESTRICTED BY TWO SECURITY GATES.

SCREENING FENCE

A SCREENING FENCE IS PROPOSED TO BE BUILT AROUND THE ENTIRE SITE. THE FENCE WILL BE CONSTRUCTED OF STONE AND BRICK COLUMNS WITH DECORATIVE IRON FENCING BETWEEN.

DRAINAGE

DETENTION FOR THE SITE WILL BE PROVIDED BY A REGIONAL DETENTION BASIN LOCATED IN THE EXISTING DRAINAGE EASEMENT LOCATED TO THE SOUTH OF THIS SITE ALONG BRIARWOOD AVENUE. RUNOFF WILL SURFACE FLOW FROM THE SITE TO THIS BASIN.

LANDSCAPE

- PER CITY OF MIDLAND ORDINANCE, MINIMUM LANDSCAPE AREA = 10% OF LOT AREA LESS STRUCTURE FOOTPRINTS.
- LOT AREA = 120,582 ft^2
- TOTAL STRUCTURE FOOTPRINT: 50,035 ft^2
- REQUIRED LANDSCAPE AREA 27,046.7 ft^2
- PROVIDED LANDSCAPE AREA 107,100 ft^2

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 20' WIDE FIRE LANE HAS BEEN PROVIDED AT THE FRONT OF ALL BUILDINGS. THE FIRE LANE WILL BE IDENTIFIED BY PAINTED STRIPES AND CURBS PER THE CITY OF MIDLAND'S REQUIREMENTS.

SIDEWALKS

- 5' SIDEWALK TO BE PLACED UP TO THE PROPERTY LINE FOR PEDESTRIAN ACCESS TO AND FROM HOLIDAY HILL ROAD.
- 9' SIDEWALK TO BE PLACED IN THE INTERIOR OF THE PROPERTY.

BUILDING SETBACKS

BUILDING SETBACK DISTANCES OF 20 FEET FROM THE PROPERTY LINE WILL BE OBSERVED ALONG HOLIDAY HILL ROAD FRONTAGE AND FROM THE NORTHERN PROPERTY LINE.

BUILDING HEIGHTS

A MAXIMUM BUILDING HEIGHT OF 40'-2" WILL BE OBSERVED.

TRASH ENCLOSURES

TRASH DUMPSTERS TO BE PLACED AS SHOWN. ENCLOSURES TO BE BUILT OF BRICK, AND WILL MATCH DESIGN OF SCREENING WALL.

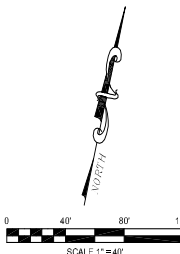
PARKING SPACES

- REQUIRED
- PER THE CITY OF MIDLAND'S PARKING REQUIREMENTS: 2 SPACES FOR EACH DWELLING UNIT IN A ONE-FAMILY RESIDENCE AND 2 SPACES FOR EACH TWO-FAMILY OR APARTMENT UNIT.*
 - 96 UNITS @ 2 SPACES / UNIT = 192 REQUIRED SPACES

- PROVIDED
- 191 REGULAR PARKING
 - 6 HANDICAP PARKING
 - 197 TOTAL PARKING

TREE REQUIREMENTS

- 1 TREE FOR EVERY 30 LINEAR FOOT STREET
- 1 TREE FOR EVERY 15 PARKING SPACES
- 335 LINEAR FOOT OF HOLIDAY HILL ROAD: 11 TREES
- 197 PARKING SPACES: 14 TREES
- TOTAL REQUIRED: 25 TREES
- TREES SHOWN: 13
- PAID INTO TREE FUND: 12



FEMA FIRM INFORMATION					
COMMUNITY NUMBER	PANEL NUMBER	SUFFIX	DATE OF FIRM	FIRM ZONE	BASE FLOOD ELEVATION
480477	68	F	9/16/2005	X	n/s
CURRENTLY, FEMA MAP 480202024F DOES NOT INCLUDE BASE FLOOD ELEVATIONS FOR THIS AREA.					

LEGEND

- DENOTES SET 1/2-INCH IRON ROD W/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
- DENOTES FOUND MONUMENT AS NOTED
- DENOTES FIRE HYDRANT
- DENOTES POWER POLE
- DENOTES PROPERTY LINE
- DENOTES FENCE
- DENOTES OVERHEAD ELECTRIC LINE
- DENOTES PROPOSED WATER LINE
- DENOTES PROPOSED SANITARY SEWER LINE
- DENOTES PROPOSED WATER SERVICE LINE
- DENOTES PROPOSED SEWER SERVICE LINE
- DENOTES EDGE OF ASPHALT
- DENOTES PROPOSED WATER METER
- DENOTES PROPOSED WATER VALVE
- DENOTES PROPOSED FIRE HYDRANT
- DENOTES PROPOSED SEWER MANHOLE
- DENOTES PROPOSED SEWER CLEANOUT
- DENOTES PROPOSED ON SITE LANDSCAPE
- DENOTES PROPOSED LIGHTING
- DENOTES PROPOSED TREE
- DENOTES NUMBER OF PARKING SPACES

WEST COMPANY

OF MIDLAND, INC.

ENGINEERS & PLANNERS & SURVEYORS

110 N. CLARK AVE. SUITE 110

EL PASO, TEXAS 79901-2508

(409) 582-2888 • FAX (409) 582-2888

NO.	DATE	BY	APPROVED
1	07/13/2012	ALM	ALM
2	07/13/2012	ALM	ALM

DATE: JULY 13, 2012

TIME: 08:23

SITE PLAN

PIONEER APARTMENTS

LOT 3, BLOCK 1, CROSS POINTE ADDITION

CITY AND COUNTY OF MIDLAND, TEXAS

PROJECT NUMBER: 2012-0823

SHEET OF 01

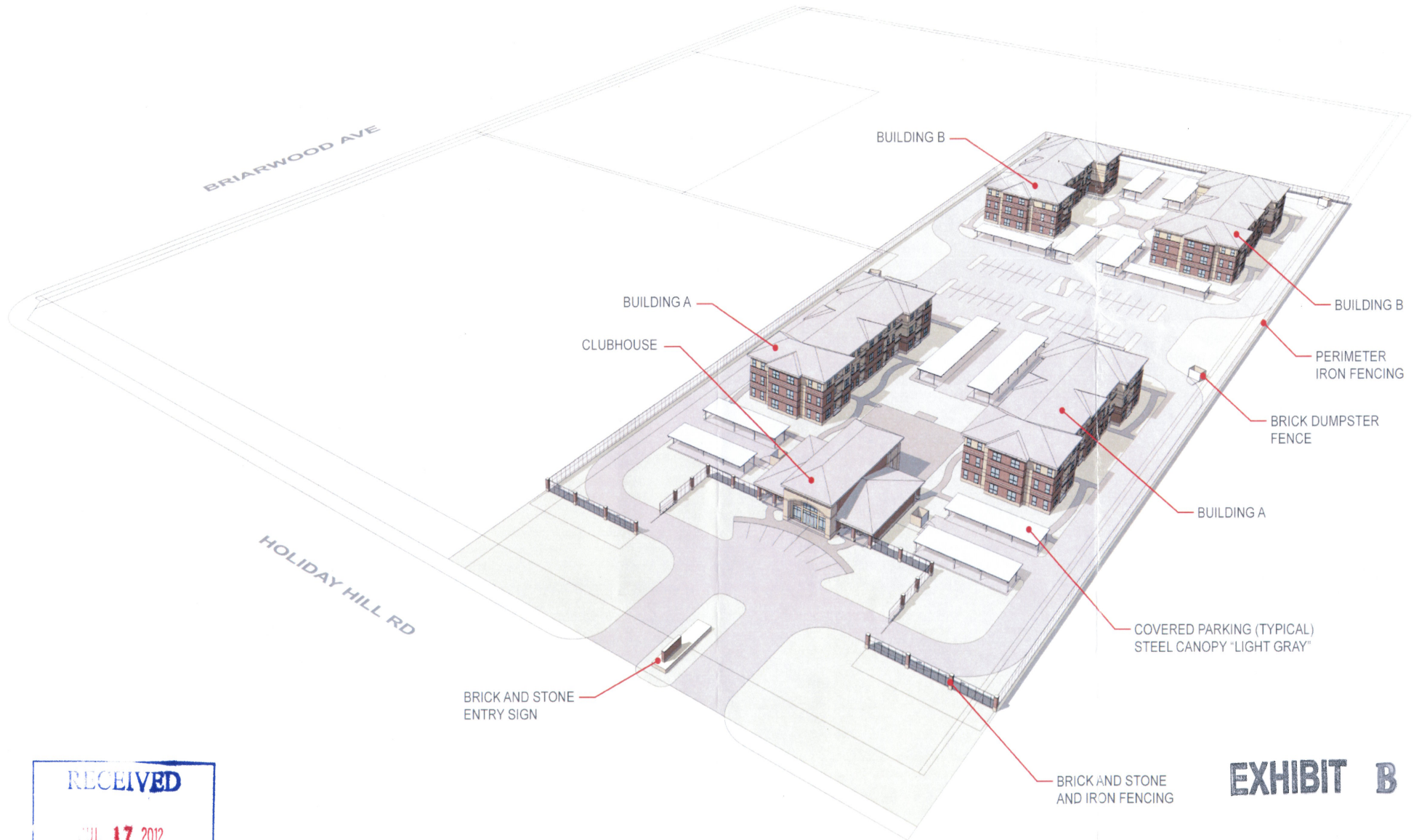


EXHIBIT B

Pioneer Research Apartments-Site Aerial View

PIONEER
NATURAL RESOURCES

RECEIVED

JUL 17 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE



FRONT ELEVATION BUILDING A+B



SIDE ELEVATION BUILDING A



SIDE ELEVATION BUILDING B

RECEIVED

JUL 17 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

Pioneer Research Apartments-Building Elevations

EXHIBIT C

PIONEER
NATURAL RESOURCES

CASE NO. Z-12-031

1/16"=1'-0"

May 23, 2012



FRONT ELEVATION BUILDING A+B

- LIGHT "GRAY" STANDING SEAM METAL ROOF
- "TAN" STUCCO
- LIGHT BEIGE BRICK ACCENT
- TINTED LOW-E GLAZING & WHITE FRAMES
- LIGHT BEIGE BRICK ACCENT
- BROWN KING SIZE BRICK
- LIGHT BEIGE ROCK FACED STONE



SIDE ELEVATION BUILDING A



SIDE ELEVATION BUILDING B

EXHIBIT D

RECEIVED

JUL 17 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

CASE NO. Z-12-031

Pioneer Research Apartments-Building Elevations

PIONEER
NATURAL RESOURCES

PLANNING AND ZONING COMMISSION

August 20, 2012

CASE: Z-12-031, Pioneer Apartments Site Plan.

REQUEST: Proposed Apartment Site Plan.

APPLICANT/OWNER: Andrew Mellen/Pioneer Natural Resources.

LEGAL DESCRIPTION: Lot 3, Block 1, Cross Pointe Addition, City and County of Midland, Texas.

LOCATION: Generally located approximately 550 feet north of Briarwood Avenue on the west side of Holiday Hill Road.

DETAILS OF REQUEST:

1. This site represents a portion of property that was annexed into the City of Midland on April 10, 2012. The zoning was also approved at this time on the entire 19.58 acre lot for MF-1, Multiple Family Dwelling District development. The site plan submitted represents a 7.36 acre portion of land located at the Holiday Hill frontage of Lot 3 (Exhibit – A). The proposed complex contains 96 apartment units divided among four, 3-story buildings. The site plan also includes a clubhouse with a pool and 197 parking spaces.

SURROUNDING ZONING AND LAND USE:

2. This property is located just to the east of a PD, Planned District for a Recreation Center, that is being developed as the Bush Tennis Center. Land to the south of the apartment site is zoned LR-2, Local Retail District, and is not yet developed. The north is also undeveloped and is outside the city limits. To the east is a developed PD, Planned District for a Housing Development, across Holiday Hill Rd.

SITE ANALYSIS:

3. The submitted site plan provides a modest density development of 13 dwelling units per acre with adequate parking and traffic circulation. The

apartment complex is fenced with brick columns and wrought iron with a secure gate beyond the clubhouse (Exhibit – B). This design allows for incoming traffic to clear Holiday Hill Road rather than queuing in or near the road. A Knox-Box will have to be installed at the gates for emergency access. Fire lane widths are sufficient for the buildings' 41' height with the turning radii and fire hydrant coverage to meet fire department standards. The site also includes an adequate provision for solid waste removal with seven trash dumpsters appropriately placed. They are described as being screened with brick to match the proposed screening wall which appears on the north, south and west sides of the site plan. A brick screening wall with what appears as columns in the site plan (Exhibit – A) appears to be acceptable, however, staff requests a color elevation of the proposed wall for administrative review since this will be prominently visible to adjacent future development on three sides. Landscaping coverage is more than sufficient for the site area with the tree requirement being 25 trees total, calculating for the street frontage and the parking lot. The developer is proposing only planting 13 trees and contributing to the Parks & Recreation Fund for the tree shortfall considering the current drought. Staff recommends this number is sufficient, however the four parking lot trees (Exhibit – A) should be located at the Holiday Hill Rd. frontage for a total of ten trees along this 335' of frontage. The buildings are constructed with brick and stucco with the clubhouse providing an attractive entryway facing Holiday Hill Road. While the required setback for MF-1 zoning is 20', the nearest apartment building is approximately 300 feet from Holiday Hill Road. Staff recommends approval of the proposed site plan that meets all zoning code regulations for the MF-1, Multiple Family Dwelling District, and indicates a commitment of sensitive design.

STAFF RECOMMENDATION:

Staff recommends approval of the Proposed Apartment Site Plan, subject to the following conditions:

- A. That the development shall be significantly consistent with the Site Plan (Exhibit – A), the Site Aerial View (Exhibit – B) and the Building Elevations (Exhibits C & D);**
- B. That a provision for a street light at the entrance to the complex is made at Holiday Hill Road;**
- C. That a blanket refuse easement to the property is granted to the City of Midland;**
- D. That the air conditioners, dumpsters, and any ground-based utility equipment shall be appropriately screened;**

- E. That a color elevation of the proposed site plan screen wall for the north, south and west sides must meet administrative approval;
- F. That sidewalks are paved to the required standards, including a sidewalk constructed along the property line frontage;
- G. All signage to meet the City Sign Code;
- H. The developer will have to make provisions for fire department access (turning radii, adequate fire lane width, hydrant coverage, Knox-Box, etc.);
- I. That a minimum of 13 trees are planted (10 at the Holiday Hill Road frontage) and the value of 12 trees contributed to the Parks & Recreation Fund with all landscaping conforming to City regulations in place at the time of development;
- J. That this apartment site plan governs only this 7.36 acre site and not the entirety of the MF-1 zoned Lot 3, Block 1, Cross Pointe Addition. Subsequent apartment developments on this lot are subject to a separate site plan review.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Ken Van Dyne, Senior Planner
Department of Development Services

Attachments:

Application
Site Plan – Exhibit A
Aerial View – Exhibits B
Building Elevations – Exhibit C & D
Maps

Case Number: 2-12-031

CITY OF MIDLAND
Planning Division

APPLICATION TO APPROVE AN APARTMENT SITE PLAN

Applicant: Andrew L. Mellen

Address: 110 W. Louisiana Ave., Suite 110 687-0865
Street Address Midland Tex. 79701 (Phone/e-mail)
City State Zip Code

Property Owner: Pioneer Natural Resources, Inc.

Address: 303 W. Wall Suite 101
Street Address Midland Texas 79701 (Phone/e-mail)
City State Zip Code

Street address and Legal Description of **SITE PLAN** (complete Lot, Block, and Subdivision Name description below, or, if not in a recorded plat, attach a sealed Metes and Bounds Description:

Lot 3, Block 1, Cross Pointe Addition

Current Classification: MF-1, MULTIPLE FAMILY DWELLING DISTRICT

Requested Classification: ~~Planned District~~ MF-1 use
(List by tracts if more than one zoning district is requested)

Reason for request: Approve site plan for a proposed multi-family development

Describe how conditions affecting the property have changed since it was designated its present zone: n/a

Will a Specific Use Permit with Term for alcoholic beverage sales be needed? Yes X No

2012-0823

FEES:

Single, Planned District amendment: **\$550**. Multiple, PD proposal: add **\$75** per district.

SUBMITTALS:

16 copies of the PD site plan (FOLDED): _____ x _____

Site Plan in digital format .pdf and .jpg: _____ x _____

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

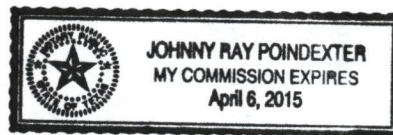
Andrew L. Mellen who, being by me duly sworn, upon oath says: That (s)he is authorized by Danny Barker, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

[Signature]
Authorized Agent (signature)

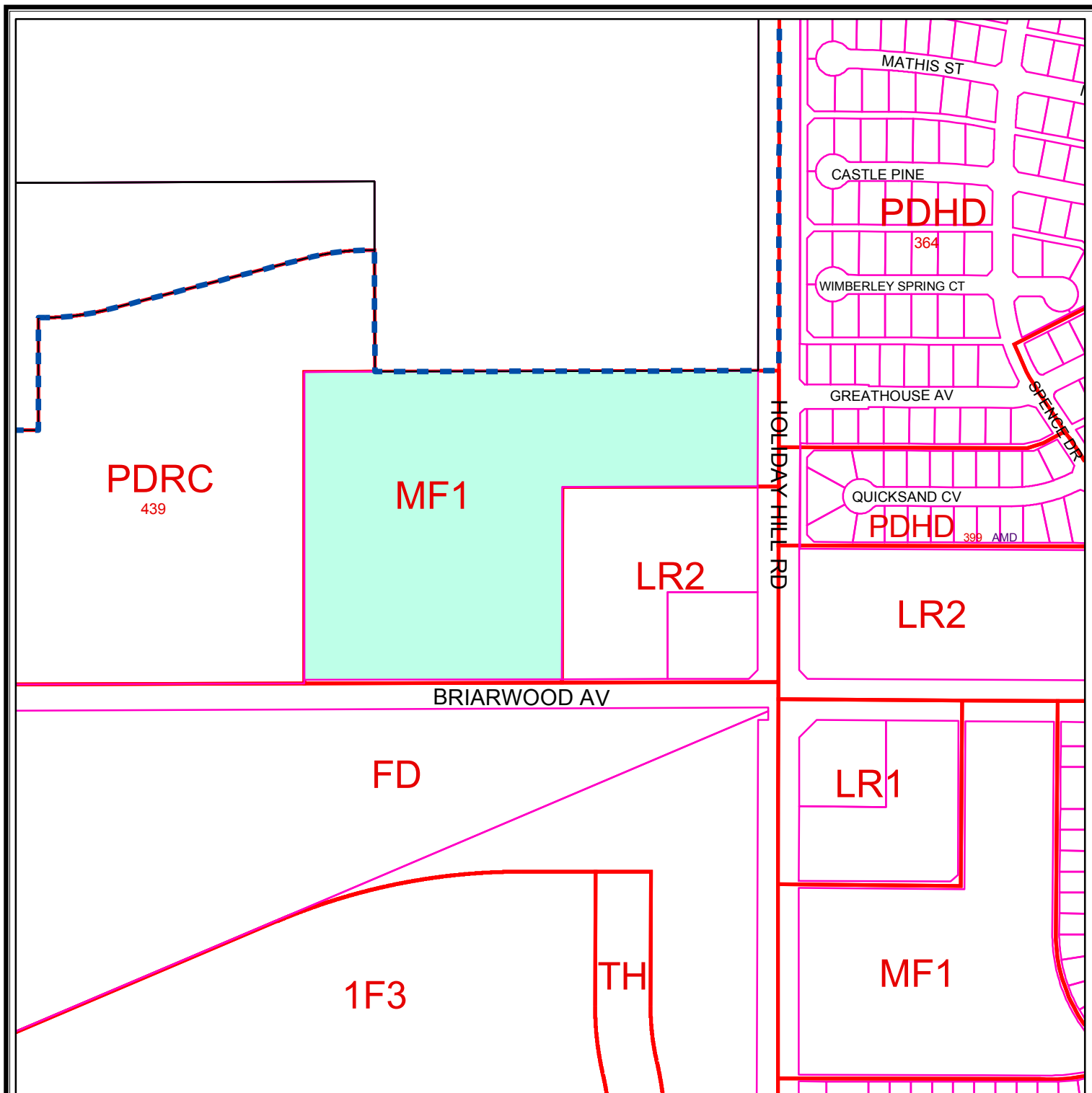
Subscribed and sworn to before me, this _____ day of _____, 20 __, to certify which witness my hand and seal of office.

[Signature]
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>7/17</u>	Date: <u>7/17/12</u>
Assigned: <u>KV</u>	
For: <u>P+Z</u>	On: <u>6/20/12</u>



****Application will not be considered for scheduling until reviewed by a planner. ****



ZONING MAP

Z - 12 - 031

Scale: 1" = 400'

Consider a request for approval of an Apartment Site Plan on Lot 3, Block 1, Cross Pointe Addition, 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: September 11, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: At approximately 10:54 a.m. hold a public hearing and consider an ordinance on a request by Betenbough Homes for a zone change from FD, Future Development District to PD, Planned District for a Housing Development.

Purpose:

Hold a public hearing at approximately 10:54 a.m. and consider an ordinance on a request by Betenbough Homes for a zone change from FD, Future Development District to PD, Planned District for a Housing Development.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

For the last two years Betenbough Homes has been constructing homes in the Legends Park neighborhood, west of the Scharbauer Sports Complex. The City Council recently annexed over 100 acres to allow continued expansion. The land was zoned FD District upon annexation, as development plans were not finalized at that time. The development plans are now finalized, and a preliminary plat has been approved. The applicant is requesting a zone change to a Planned District for a Housing Development, subject to 1F-3 District regulations. The Planned District designation is needed to describe the manner in which planned common areas are to be developed.

One common area toward the north end of the neighborhood performs dual duty as a detention basin and a neighborhood park owned and operated by a home owners association. Another common area is planned along the west property line, adjacent to Avalon Drive. It will be developed with a seven-foot solid screening fence constructed of brick and wood, together with desert theme landscaping, to screen the rear of residential lots that abut Avalon Drive. These elements are illustrated on the attached Exhibit A. The Planning and Zoning Commission voted unanimously to recommend approval of this request, and no opposition was noted at the public hearing.

Attachments:

September 4, 2012 P&Z Staff Report
Proposed Ordinance and Exhibit A

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 108.712-ACRE TRACT OUT OF SECTION 37, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED SOUTH OF STATE HIGHWAY 191 AND WEST OF THE SCHARBAUER SPORTS COMPLEX); 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 FD, Future Development 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:

A 108.712-acre tract out of Section 37, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract is more specifically described by metes and bounds in Exhibit “B”, which is attached hereto and incorporated herein.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That the development of this property shall conform to the use and development regulations of the 1F-3, One-Family Dwelling District.
2. That the detention basins shall be developed in accordance with the conditions on Exhibit “A”, which is attached hereto and incorporated herein.
3. That the common area adjacent to Avalon Drive shall be developed with a screening fence as shown on Exhibit “A”. The fence shall be a minimum of seven feet in height, and shall consist of a two-foot tall masonry knee wall topped with a five-foot wooden fence. The common area and adjacent right-of-way shall be developed in a desert landscaping theme. No building permits shall be issued for lots abutting Avalon Drive until this common area is developed as described herein.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance

with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

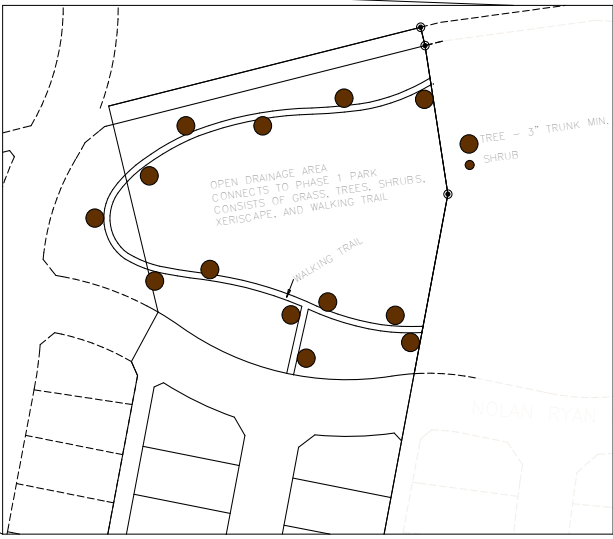
APPROVED AS TO FORM:

Keith Stretcher, City Attorney

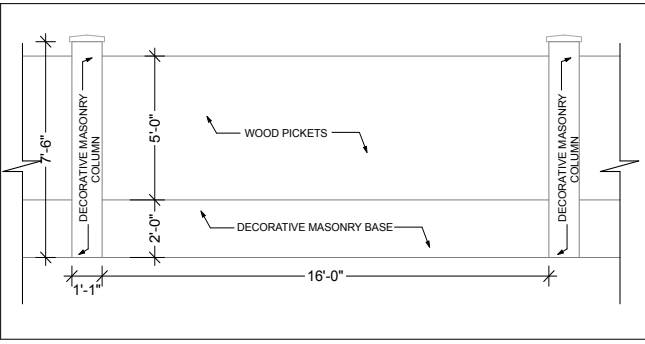


ENTRANCE COMMON AREA AND DRAINAGE AREA

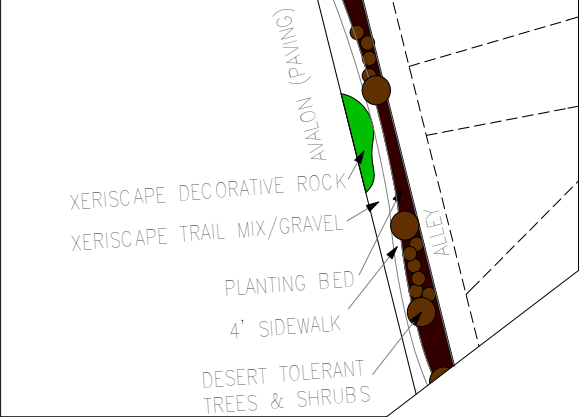
NORTHWEST DRAINAGE AREA



FENCE ELEVATION



AVALON COMMON AREA DETAIL



**BETENBOUGH
HOMES**

PLAN:

ADDRESS:

CUSTOMER:

LEGENDS PARK

BETENBOUGH HOMES

D1

ENTRANCE SIGN
SCALE: NOTED

PLANNING AND ZONING COMMISSION

September 4, 2012

CASE: Z-12-025.

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.

APPLICANT: Betenbough Homes

REPRESENTATIVE: Kelly Oaks.

LEGAL DESCRIPTION: A 108.712-acre tract out of Section 37, Block 40, T-1-S, T&P RR Company Survey, Midland County, Texas.

LOCATION: West side of Tradewinds Boulevard at the west end of Legends Boulevard.

CURRENT ZONING: FD, Future Development District.

ASSOCIATED CASE: P-11-091, Legends Park, Section 4.

DETAILS OF REQUEST:

1. Betenbough Homes has been developing the Legends Park neighborhood located west of the Scharbauer Sports Complex for the last two years. The City Council annexed this 108 acre tract this past April to allow the continued growth of this neighborhood. Since there was no development plan available at that time, the land was zoned Future Development District. We have now received a development plan, which is shown on the associated preliminary plat that the Planning and Zoning Commission approved April 2, 2012. The applicant is now proposing to rezone this land to Planned District for a Housing Development, subject to the development regulations of the 1F-3 District. A planned district is needed to adopt site plans illustrating the manner in which the common areas are to be developed.

ANALYSIS:

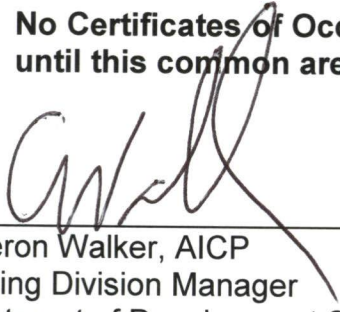
2. The existing portion of the Legends Park neighborhood is already zoned Planned District for a Housing Development, subject to the 1F-3 District regulations. The Planned District includes site plans illustrating common areas that serve the dual purpose of a detention basin and an open space with walking trails and other amenities for the residents. This proposed Planned District is virtually identical to

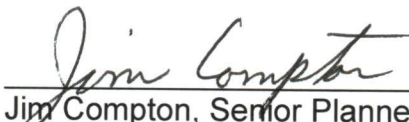
the existing Planned District. The northern detention basin would be owned and maintained by the existing home owners association. It is our understanding that the southern detention basin will be owned and maintained by MISD. This design can be seen on Exhibit A, which also includes the fencing and landscaping details. The only difference with this new proposal is associated with the proposed lot pattern, which has lots backing toward Avalon Drive. This is a new arterial street that will abut the west plat boundary. To visually screen the rear of these lots from public view, the associated plat will establish a 10-foot wide common area that will be developed with a screening fence and a desert landscaping design. This will be a solid six-foot tall fence consisting of a two-foot knee wall constructed of brick, topped with a four-foot wooden fence. Pilasters are planned to be spaced on 40-foot centers. This fence will provide an attractive and sustainable visual screen of the rear yards.

STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from FD, Future Development District to PD, Planned District for a Housing Development, subject to the following conditions:

- A. The development of this property shall conform to the regulations of the 1F-3, One-Family Dwelling District, except as otherwise stated below.**
- B. The detention basin and common areas will be developed in accordance to the conditions shown on the attached Exhibit A.**
- C. No Certificates of Occupancy shall be issued for lots abutting Avalon Drive until this common area is developed as described herein.**


Cameron Walker, AICP
Planning Division Manager
Department of Development Services


Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibit A

Case Number: 212-025

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Betenbough Homes (806) 797-9494
Applicant Name (Phone/e-mail)
6305 82nd Street Lubbock TX 79424
Address Zip Code

- -
Property Owner Name (Phone/e-mail)
- -
Address Zip Code

Kelly Oaks (806) 543-8815 / kellyo@betenbough.com
Representative Name (Phone/e-mail)
6305 82nd Street Lubbock TX 79424
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. (attached)

PRESENT ZONE: FD REQUESTED ZONE: PD
(List by tracts if more than one district is requested)

Reason for Zone Change Request: _____

Present Use of Property: FD - Undeveloped

Proposed Use of Property: Development of expansion of Legends Park

How will zone change affect the public health, safety and welfare? -

Describe how conditions affecting the property have changed since present zoning designation:

Is a Specific Use Permit with Term for alcoholic beverages sales needed? ____ Yes X No

APPLICATION FEES:

- Single, standard zone change: **\$400**. Multiple, standard zone change: add **\$100** per additional district.
- Single PD, Planned District zone change: **\$550**. Multiple PD proposal: add **\$100** per district.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS *(if applicable):*

16 copies (FOLDED) of the PD site plan: _____

Site Plan in digital format .pdf and .jpg: _____

SIGNATURE *(by property owner only - authorized agent must sign affidavit below)*

Property Owner (signature): _____ Date: _____

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

_____ 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.

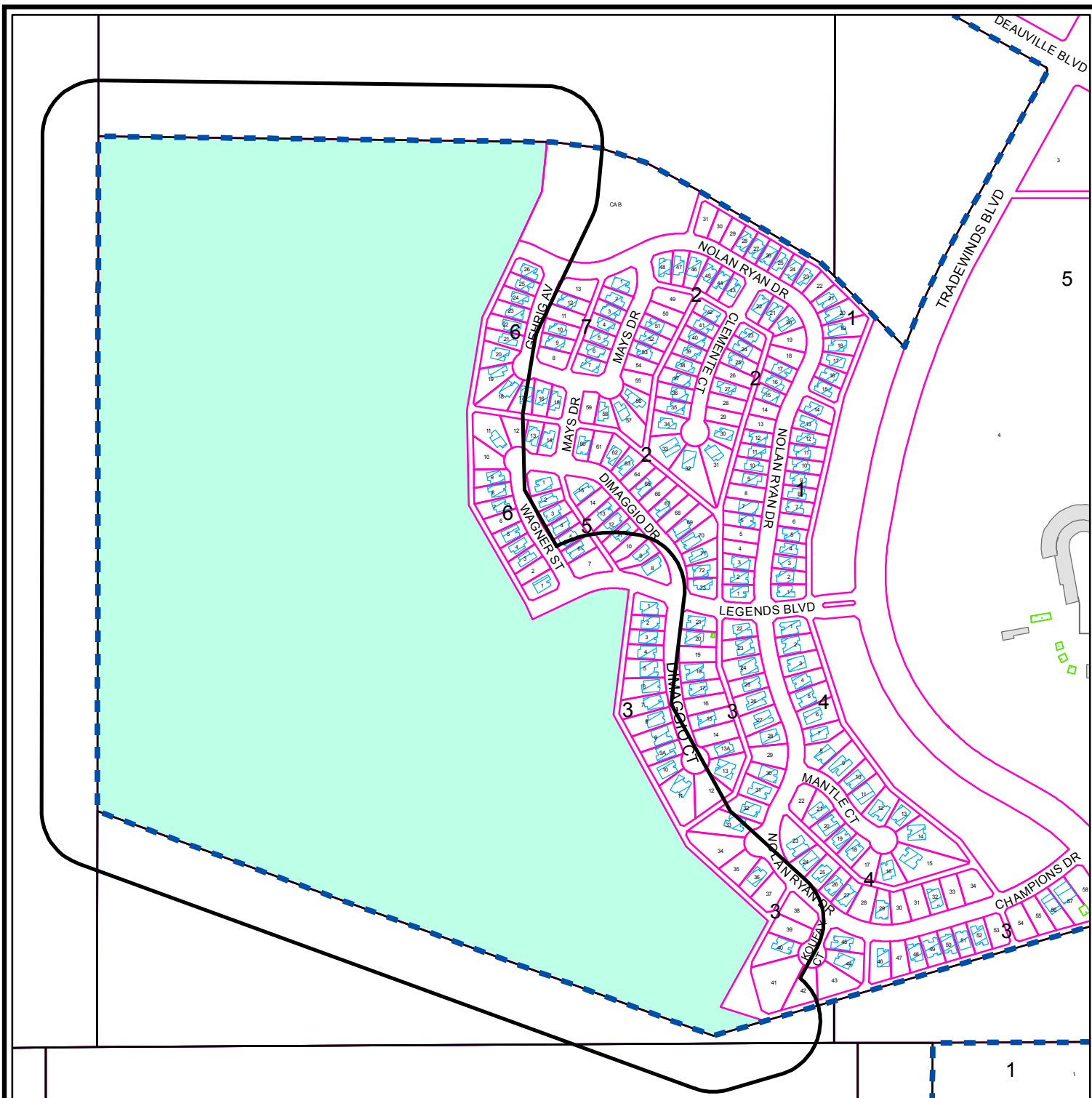
Authorized Agent (signature)

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>RS</u>	Date: <u>6/19/12</u>
Assigned: _____	
For: _____	On: _____

****Application will not be considered for scheduling until reviewed by a planner.****



OWNER NOTIFICATION WITHIN CITY LIMITS ONLY

Z - 12 - 025

Scale: 1" = 500'

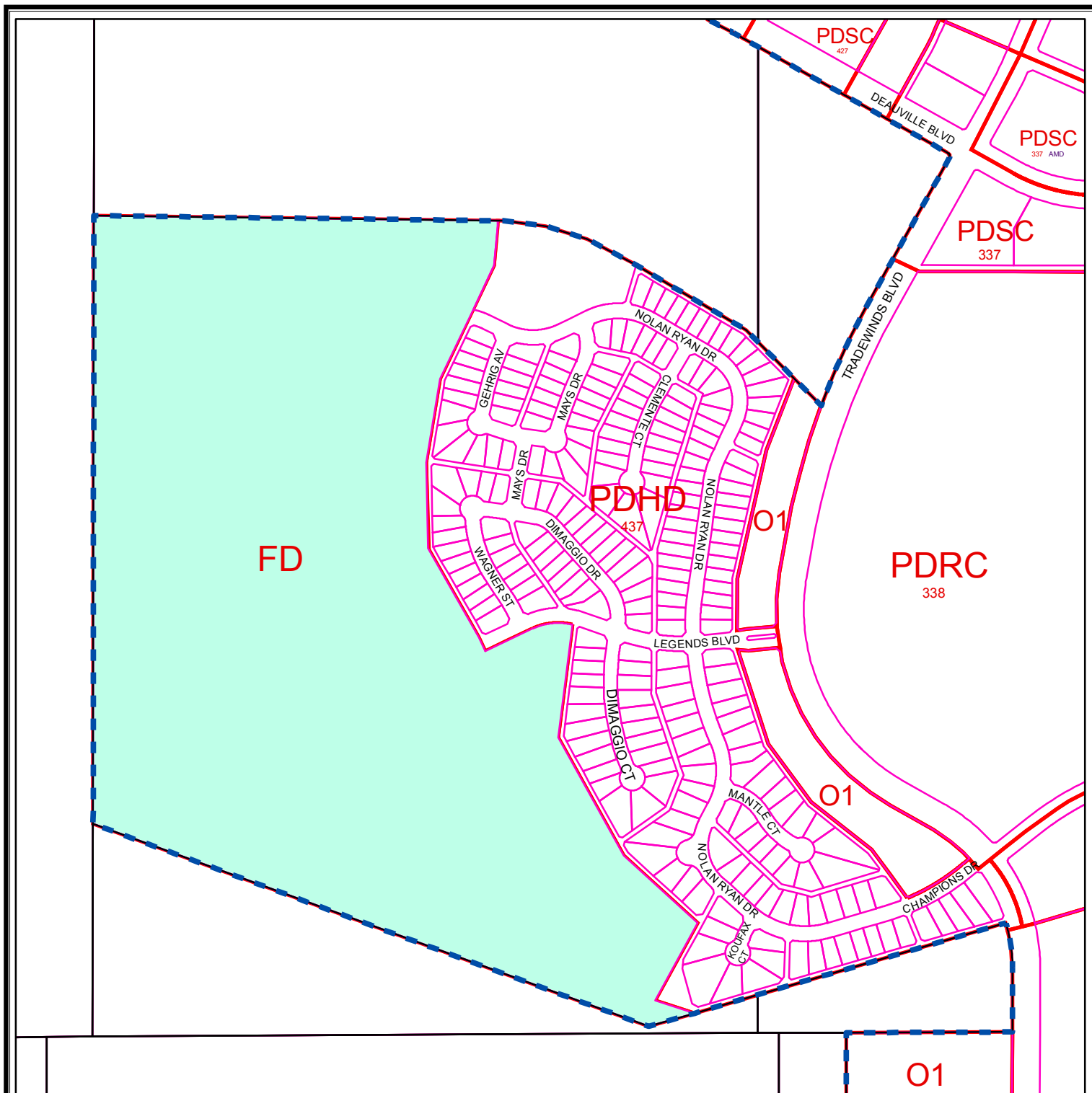
Consider a request for a zone change from FD, Future Development, to PD, Planned Districts for a Housing Development on 108.712-acres out of Section 37, Block 40, T-1-S, T & P RR Co. Survey, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- COUNTY PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 12 - 025

Scale: 1" = 550'

Consider a request for a zone change from FD, Future Development, to PD, Planned Districts for a Housing Development on 108.712-acres out of Section 37, Block 40, T-1-S, T & P RR Co. Survey, City and County of Midland, Texas.

LEGEND

- | | |
|---|---|
| ZONING | CITY PARCELS |
| CITY LIMITS | COUNTY PARCELS |

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	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: September 11, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, AICP

SUBJECT: At approximately 10:57 A.M. hold a public hearing and consider an ordinance on a request by Cuthbert Plaza, LLC. ON APPEAL for a zone change from LR-1, Local Retail District to PD, Planned District for a Shopping Center

Purpose:

At approximately 10:57 A.M. hold a public hearing and consider an ordinance on a request by Cuthbert Plaza, LLC. ON APPEAL for a zone change from LR-1, Local Retail District to PD, Planned District for a Shopping, on Lot 6.774-acres out of Tracts F & G, Johnson and Moran Addition, City and County of Midland, Texas. (Generally located on the south side of Cuthbert Avenue, approximately 300 feet west of Andrews Hwy. - District 2)

Recommended City Council Action:

☐ Approve

☒ Deny

☐ Direction/Informational

Fiscal Impact:

No City funds will be required to process this request.

Discussion:

On July 16, 2012 the Planning and Zoning Commission conducted a public hearing to consider this zone change from LR-1, Local Retail District to PD, Planned District for a Shopping Center. The applicant's intention to repurpose this aged facility includes a number of independent requests to redevelop this property with a mix of uses. The Commission voted unanimously on a motion to approve the zone change request with amendments to include, from the Planning & Zoning Staff Report, Conditions A – F, H - I and K, and added that the area for outdoor sales should be limited to non-profit groups. Non-conforming signs could remain in place. However, the Commission recommended that no off-premise advertising should be permitted and the electronic sign would not be allowed. The applicant's appeal is directed at the desire to install the electronic message (billboard) center sign. Staff concurs with the Planning & Zoning Commission's denial of this aspect of the request as there are already three legal non-conforming signs on the property. The applicant's appeal would bring the sign further out of compliance:

11-7a-9. Non-conforming signs

(C) Loss of legal non-conforming status. A non-conforming sign shall immediately lose its non-conforming designation and must be brought into compliance with these regulations, or be removed, if:

- 1. The sign structure is replaced; this shall not prevent the replacement of the face(s) to accommodate a new business, express a different message, or upgrade conditions, except that no such sign may be modified or otherwise converted to an electronic message center*

Staff continues to recommend approval of the zone change request that would permit a limited amount of light industrial uses (Exhibit – C) provided they were contained within the building and the outdoor sales area, as was approved by the Planning & Zoning Commission, subject to the satisfaction of Conditions A – F, H - I and K, and added that the area for outdoor sales be limited to non-profit use in the July 16, 2012 Planning and Zoning Commission Staff Report.

Attachments: July 16, 2012 P&Z Staff Report, Maps, Appeal Request Letter, Exhibits A - C

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 6.774-ACRE TRACT OF LAND OUT OF TRACTS F AND G, JOHNSON AND MORAN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED LR-1, LOCAL RETAIL DISTRICT, TO BE USED A PD, PLANNED DISTRICT FOR A SHOPPING CENTER (GENERALLY LOCATED ON THE SOUTH SIDE OF CUTHBERT AVENUE, APPROXIMATELY 300 FEET WEST OF ANDREWS HIGHWAY); 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 PD, Planned District for a Shopping Center, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned LR-1, Local Retail District, and it shall be used as a PD, Planned District for Shopping Center, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 6.774-acre tract out of Tracts F and G, Johnson and Moran 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 for a shopping center, unless expressly stated otherwise, shall be governed by LR-2, Local Retail District, regulations.
2. That the Industrial Park District manufacturing uses listed on Exhibit “C”, which attached hereto and incorporated herein, is permitted provided that not less than 20% of the building area associated with the use must be used for retail space associated with the Industrial Park use. For each use, each area dedicated for the manufacture of a product on-site must be allocated as retail space for that product.
3. That any manufacturing operations may take place only within the existing building.
4. That all City of Midland Building Code and Fire Code regulations shall be met prior to commencing any new manufacturing use.
5. That all activities are bound by nuisance reducing performance measures as outlined in the Industrial Park regulations in Section 11-1-6(B)(10)(f) of the Midland City Code.
6. That the remodeled construction is consistent with the site plan, attached hereto and incorporated herein as Exhibit “A”, and the building elevations, attached hereto and incorporated herein as Exhibit “B”, excepting notes and references to signage and temporary land use.
7. That the area designated for outdoor sales, Area B, shall be enclosed in with a permanent fence on the north and east sides (material to decorative to match the proposed building elevations or similar, composed of concrete/brick and wrought iron or similar but not wood) with materials subject to administrative approval by City of Midland staff.
8. That the landscaping shall conform to City of Midland regulations in effect at the time of redevelopment.
9. That the placement of dumpsters and adequate screening is in accordance with City of Midland regulations.

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:

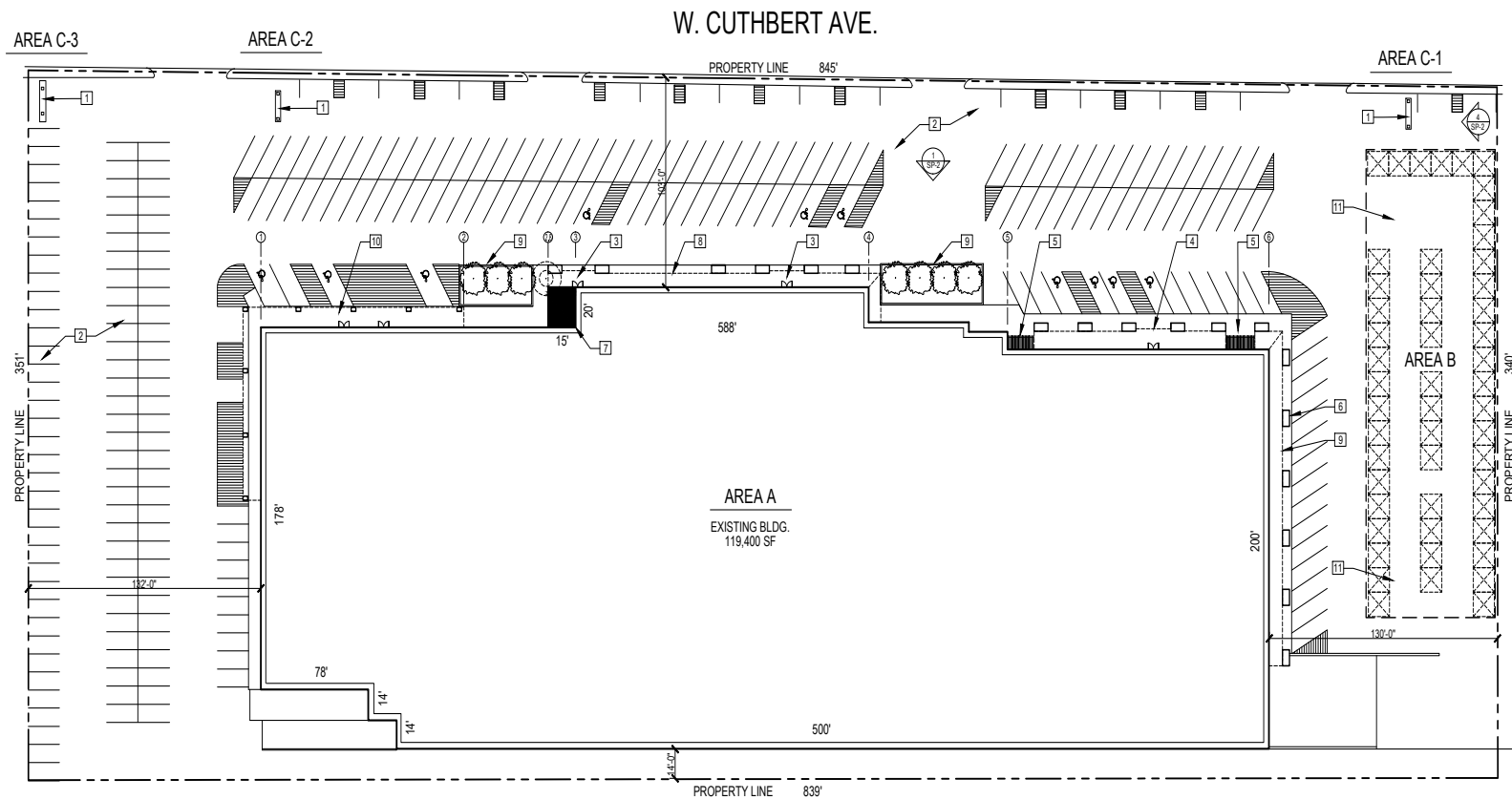
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



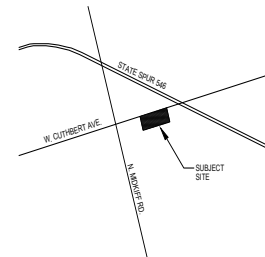
PROJECT DATA

SITE AREA:	6.774 ACRES
PARCEL NUMBER:	R000027223
LEGAL DESCRIPTION:	BLKS. F & G, LESS 2.62 AC. ADDN. JOHNSON & MORAN ACRES: 6.774
EXISTING ZONING:	LR-1
PROPOSED ZONING:	LR-2
EXISTING USE:	RETAIL
EXISTING PARKING:	348 STALLS
EXISTING ACCESSIBLE PARKING:	10 STALLS
EXISTING BUILDING AREA:	119,100 SF
PROPOSED BUILDING EXPANSION:	300 SF
TOTAL BUILDING AREA:	119,400 SF

KEY NOTES

- 1 EXISTING MONUMENT SIGN TO BE REMODELED WITH NEW CMU BASE AND STUCCO FASCIA TO MATCH NEW BUILDING DESIGN.
- 2 EXISTING PARKING LOT TO REMAIN.
- 3 NEW TENANT ENTRANCE CANOPY WITH CMU PILASTERS AND STUCCO FASCIA.
- 4 REMODELED TENANT ENTRANCE CANOPY.
- 5 PAINTED METAL TRELLIS.
- 6 REMODELED PILASTERS WITH NEW CMU BASE AND STUCCO FINISH.
- 7 EXPANDED BUILDING AREA. REMOVE EXISTING TREE.
- 8 EXISTING ROOF OVER HANG WITH NEW ROOFING.
- 9 NEW SMOOTH-FACED CMU LANDSCAPING WALL AT EXISTING TREES.
- 10 NO WORK PROPOSED AT THE HASTINGS BUILDING.
- 11 PROPOSED OUTDOOR SALES ACTIVITY AREA TO CONTAIN TEMPORARY STRUCTURES SUITABLE TO PROVIDE SHADE AND FUNCTION FOR GROUPS SELLING FARM AND CRAFT ITEMS. THE SIZE, LAYOUT AND DESIGN OF THE TEMPORARY STRUCTURES ARE SUBJECT TO APPROVAL BY THE MIDLAND PLANNING AND ZONING STAFF AND COMMISSION AS REQUIRED.

VICINITY MAP



NOTE

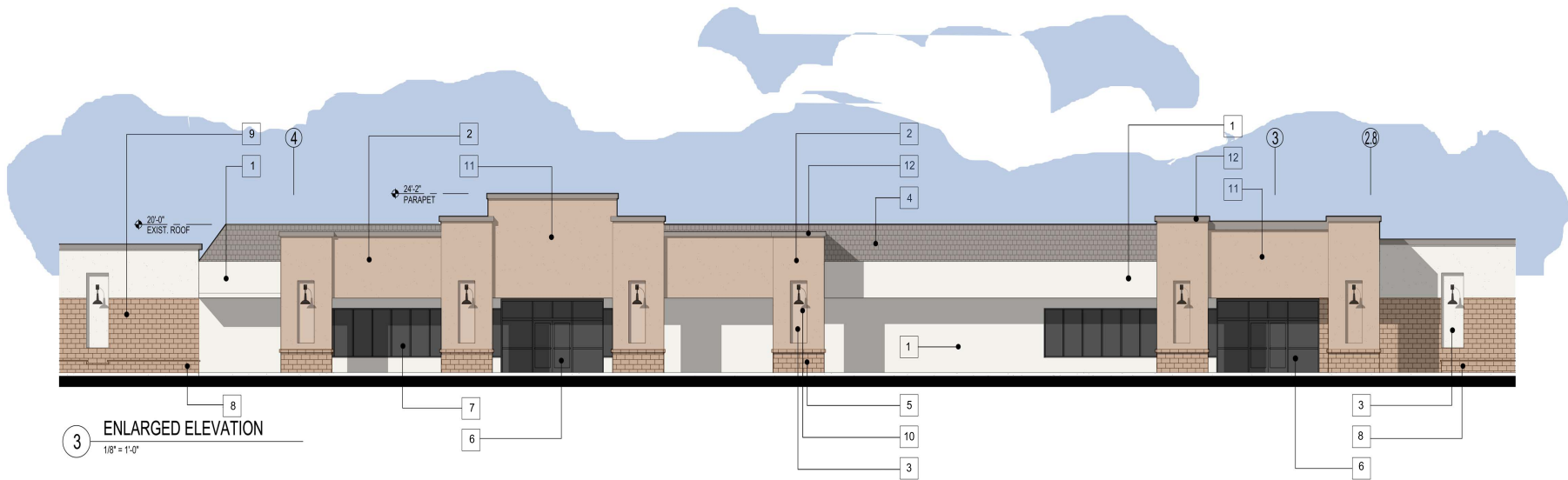
THIS PLAN WAS PREPARED BASED ON THE EXISTING SITE PLAN PREPARED BY FAYE & ASSOCIATES, ARCHITECTS AND PLANNERS ON 01/10/03. ALL DIMENSIONS INDICATED ARE APPROXIMATE AND SHOULD BE FIELD VERIFIED.



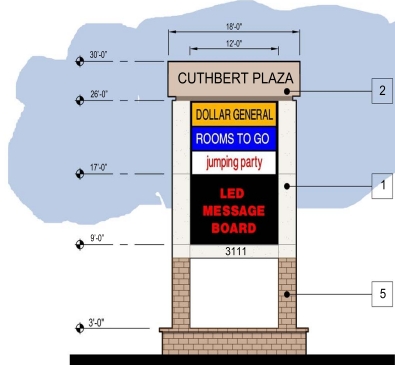
1 EXISTING NORTH ELEVATION
NOT TO SCALE



2 PROPOSED NORTH ELEVATION
NOT TO SCALE



3 ENLARGED ELEVATION
1/8" = 1'-0"



4 MONUMENT SIGN ELEVATION
1/8" = 1'-0"



5 EXISTING PHOTO



6 EXISTING PHOTO



7 EXISTING PHOTO

ARCHITECTURAL KEY NOTES

- 1 NEW STUCCO FINISH TO MATCH EXISTING - STUCCO COLOR 1.
- 2 NEW STUCCO FASCIA - STUCCO COLOR 2.
- 3 STUCCO RECESS AT NEW PILASTER - STUCCO COLOR 2.
- 4 EXISTING ROOF OVERHANG TO REMAIN WITH NEW ROOFING.
- 5 NEW SPLIT-FACED CMU PILASTER - COLOR TO MATCH EXISTING.
- 6 NEW GLAZED STOREFRONT SYSTEM TO MATCH EXISTING.
- 7 EXISTING GLAZED STOREFRONT SYSTEM TO REMAIN.
- 8 NEW SMOOTH-FACED CMU LANDSCAPING WALL AT EXISTING TREES.
- 9 NEW SPLIT-FACED CMU FASCIA - COLOR TO MATCH EXISTING.
- 10 NEW DECORATIVE LIGHT FIXTURE.
- 11 NEW TENANT SIGNAGE LOCATION.
- 12 PAINTED METAL COPING.

Exhibit A

Awning, manufacturing and wholesale,- cloth, metal, wood and plastic
Beverage, wholesale
Candy, manufacture and wholesale
Chair, manufacture and wholesale
Dry Goods, wholesale and storage
Drug, manufacture and wholesale
Electric appliance, manufacture and wholesale
Furniture, manufacture and wholesale
Government buildings and facilities
Hardware, manufacture and wholesale
Job printing and accessory processes
Mattress factory and wholesale
Plumbing shops
Storage warehouse
Venetian blind, manufacture and wholesale
Wood products, wholesale

PLANNING AND ZONING COMMISSION

July 16, 2012

CASE: Z-12-022, Cuthbert Plaza LLC.

REQUEST: Hold a public hearing and consider a request for a zone change from LR-1, Local Retail District to PD, Planned District for a Shopping Center.

APPLICANT/OWNER: Cuthbert Plaza LLC.

LEGAL DESCRIPTION: 6.774-acres out of Tracts F & G, Johnson and Moran Addition, City and County of Midland, Texas.

LOCATION: Generally located on the south side of Cuthbert Avenue, approximately 300 feet west of Andrews Highway.

CURRENT ZONING: LR-1, Local Retail District.

DETAILS OF REQUEST:

1. The applicant is requesting to rezone this property in order to expand the uses currently permitted within the 119,000 square foot building on site and the surrounding parking lot area. The current zoning is LR-1, Local Retail District, with the request to permit the uses allowed under the LR-2, Local Retail District designation. The applicant would also like the flexibility to manufacture any of the potential items sold onsite which would add IP, Industrial Park District, uses to this retail area, although the applicant has offered the limitations on the type of manufacture on site with a provided list (Exhibit – C), and indicated that these activities would be limited to *Area A*, within the existing building (Exhibit – A). *Area B*, located at the east side of the parking lot, is proposed for outdoor sales to be conducted by non-profit groups and by individuals selling farm crop items and crafts. The proposed operations for this outdoor sales area would be limited to three days per week and no more than 48 consecutive hours, with the exception that this limitation would not apply to non-profit groups. All products, regardless of the seller, would have to be removed from the outdoor sales area each night. The property currently has three free-standing signs on its W. Cuthbert Ave. frontage. The applicant is also requesting to remodel all three signs to match the proposed building façade (Exhibit – B), increase the overall height of the signs, and add a 96 square foot electronic message center (EMC) sign to the easternmost sign for the purpose of off-premise advertising.

SURROUNDING ZONING AND LAND USE:

2. This property is located along a busy section of Cuthbert Avenue between Andrews Hwy. and Midkiff Rd. This collector street corridor contains a number of zoning districts with the majority being a variation of Local Retail. A few exceptions include; Memorial Christian Church in a 1F-1, One Family Dwelling District, and Southwest Plaza office building in a PD, Planned District for an Office Center, both located across Cuthbert. Midland College's Advanced Technology Center (ATC) also faces the western end of the subject property from across Cuthbert. A PD, Planned District for a Shopping Center, contains a number of small retailers to the west and Community National Bank, in an LR-1, Local Retail District, is adjacent to the east property line. Behind the property is a residential area zoned as a PD, Planned District for a Housing Development. The subject property, Cuthbert Plaza, is a single building containing current retailers; Rooms To Go, Hastings, Dollar General, and Jumping Party. The remainder of the site is covered by a paved parking lot.

ANALYSIS:

3. The applicant's intention to repurpose this aged facility includes a number of independent requests to redevelop this property with a mix of uses. The request to rezone the property from an LR-1, Local Retail District, to a PD, Planned District for a Shopping Center, also comes with the unique request to permit a narrow list of IP, Industrial Park District, manufacturing uses within the current building. For consideration to permit manufacturing uses within a retail area, it is prudent to examine the Industrial Park District regulations and consider the measures that this zoning district provides for lessening the potential impact on neighboring property owners. After a review of the code, staff would support the short list of IP, Industrial Park District, uses (Exhibit – C), provided all activities related to any of the manufacturing activities is wholly contained within the existing building (Exhibit – A) and that these activities are bound by nuisance reducing performance measures as outlined in *Section 11-1-6 IP Industrial Park District regulations, paragraph (f)* concerning noise, vibration, smoke, etc.
4. Concerning the applicant's request for the outdoor sales at the east side of the parking lot, this use of property for outdoor retail sales does not appear in the City Code as a permitted use until the less restrictive C-2, Commercial District. However, these outdoor sales are tied to the primary retail business on the property. Outdoor sales in the form of a farm/craft market, conducted by multiple parties, are considered as temporary land uses and renewed annually. However, staff appreciates consideration to establish such a market with a planned district in mind. While staff yields a recommendation in favor of the outdoor sales use, the reservation for such an area in a planned district's site plan provides an ability to accommodate for ongoing pedestrian use in a parking lot. Staff's recommendation for the potential outdoor sales area would be to enclose the

area with some type of permanent decorative fencing (3'-4' in height, matching brick, wrought iron) to separate this market area from the adjacent traffic areas at minimum on the north and east sides. The fence would have the benefit of making the market area attractive and professional looking, improve the safety between vehicles and pedestrians, and minimize blowing items from becoming a nuisance.

5. The third request concerns the signage. The property currently has three free standing signs along a single street frontage. City Sign Code permits only one free standing sign per street frontage which makes at least two of the business signs non-conforming signs, meaning they can only have face changes to the existing name plates with no other alterations or modifications made. Staff did not receive elevation data on the existing signs, but they may also be non-conforming individually for height and area (although this may only be the case with the westernmost sign) and collectively, by exceeding the maximum 300 square foot area permitted in this district. If the request for an electronic message center (EMC) sign was requested on the single, remaining sign however, it could not be used to advertise as an off-premise sign. Doing so would violate the sign code as off-premise signs are not permitted within the city limits (except billboards, which require a specific use permit with term approval). The code also includes the term "on-premise sign" as a portion of the definition of an EMC sign. The requested area of the EMC sign is 96 square feet and the maximum permitted is 75 square feet. In any case, the sign code states that a sign loses its legal non-conforming status if the sign is modified or otherwise converted to an electronic message center. Additionally, the maximum height for any freestanding sign along a non-arterial street is 15 feet and Cuthbert Ave. is a collector street. There are several signs that appear higher than the 15' maximum in the area; however, 30' in height may look excessive in this area. Staff recognizes the applicant need to draw business to the property and would support two free standing signs along this property of nearly 850' of frontage. Staff yields to the Commission with respects to the signage request.

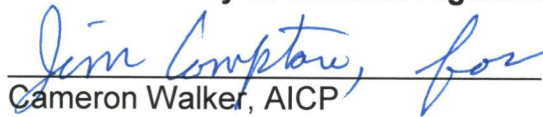
STAFF RECOMMENDATION:

Staff recommends approval of this request for a zone change from an LR-1, Local Retail District, to a PD, Planned District for a Shopping Center, subject to the following conditions:

- A. That this Planned District for a Shopping Center, unless expressly stated otherwise, shall be governed by LR-2, Local Retail District, regulations;
- B. That a narrow list of IP, Industrial Park District, manufacturing uses may be permitted (Exhibit – C), provided that not less than 20% of the building area associated with a listed IP, Industrial Park, use must be used for retail space associated with the IP, Industrial Park, use. for each use each area

dedicated for the manufacture of a product on-site, must be allocated as retail space for that product;

- C. That any manufacturing operations may take place only within the existing building;
- D. That all City Building and Fire Codes are met prior to commencing any new manufacturing use;
- E. That all activities are bound by nuisance reducing performance measures as outlined in Section 11-1-6 IP Industrial Park District regulations, paragraph (f);
- F. That the remodeled construction is consistent with the Site Plan (Exhibit A) and Building Elevations (Exhibits B) excepting notes and references to signage and the temporary land use;
- G. That any outdoor sales area will be governed by hours and operations to be established by any future temporary land use permit approved for such use and may be permitted in Area B (Exhibit A) and that site plan shall be subject to administrative review;
- H. That the area designated for outdoor sales, *Area B* (Exhibit A), shall be enclosed in with a permanent fence on the north and east sides (material to decorative to match the proposed building elevations or similar, composed of concrete/brick and wrought iron or similar and not wood) with materials subject to administrative approval;
- I. That the landscaping shall conform to City regulations in place at the time of redevelopment;
- J. That the issue of non-conforming signs must be addressed at the time the signs are modified and must meet City Sign Code;
- K. That the placement of dumpsters and adequate screening is in accordance with City of Midland regulations;


Cameron Walker, AICP
Planning Division Manager
Department of Development Services


Ken Van Dyne, Senior Planner
Department of Development Services

Attachments:

Application
Site Plan – Exhibit A
Elevations – Exhibits B
Proposed Industrial Park District Uses –
Exhibit C
Maps

Case Number: 2-12-022

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Cuthbert Plaza LLC (602) 957-5332

Applicant Name (Phone/e-mail)

1916 S. Gilbert Road, Suite 5, Mesa, AZ 85204

Address Zip Code

Cuthbert Plaza LLC (602) 957-5332

Property Owner Name (Phone/e-mail)

1916 S. Gilbert Road, Ste.5, Mesa, AZ 85204

Address Zip Code

Robert Rendall (432) 688-0246

Representative Name (Phone/e-mail) rrendall@stubbemanlawfirm.com

550 W. Texas Ave., Ste, 800, Midland, TX 79701

Address Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. 3111 W. Cuthbert

6.774 acres out of Blocks F & G

Johnson & Moran Addition

PRESENT ZONE: LR-1 REQUESTED ZONE: PDSC

(List by tracts if more than one district is requested)

Reason for Zone Change Request: To expand uses of property

Present Use of Property: Commercial - Retail

Proposed Use of Property: Commercial - Retail (Please see attachment)

How will zone change affect the public health, safety and welfare? None

Describe how conditions affecting the property have changed since present zoning designation:
The property has aged and is in need of repurposing

Is a Specific Use Permit with Term for alcoholic beverages sales needed? Yes X No

APPLICATION FEES:

- Single, standard zone change: \$400. Multiple, standard zone change: add \$100 per additional district.
- Single PD, Planned District zone change: \$550. Multiple PD proposal: add \$100 per district.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS (if applicable):

16 copies (FOLDED) of the PD site plan: _____

Site Plan in digital format .pdf and .jpg: _____

SIGNATURE (by property owner only; authorized agent must sign affidavit below)

Property Owner (signature):

Tim Ernst
Managing Member

Date: 6/6/2012

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

Robert Randall, Jr. who, being by me duly sworn, upon oath says: That (s)he is authorized by Tim Ernst, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

[Signature]

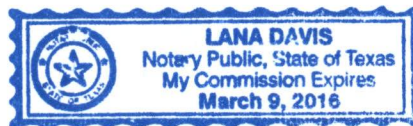
Authorized Agent (signature)

Subscribed and sworn to before me, this 6th day of June, 2012, to certify which witness my hand and seal of office.

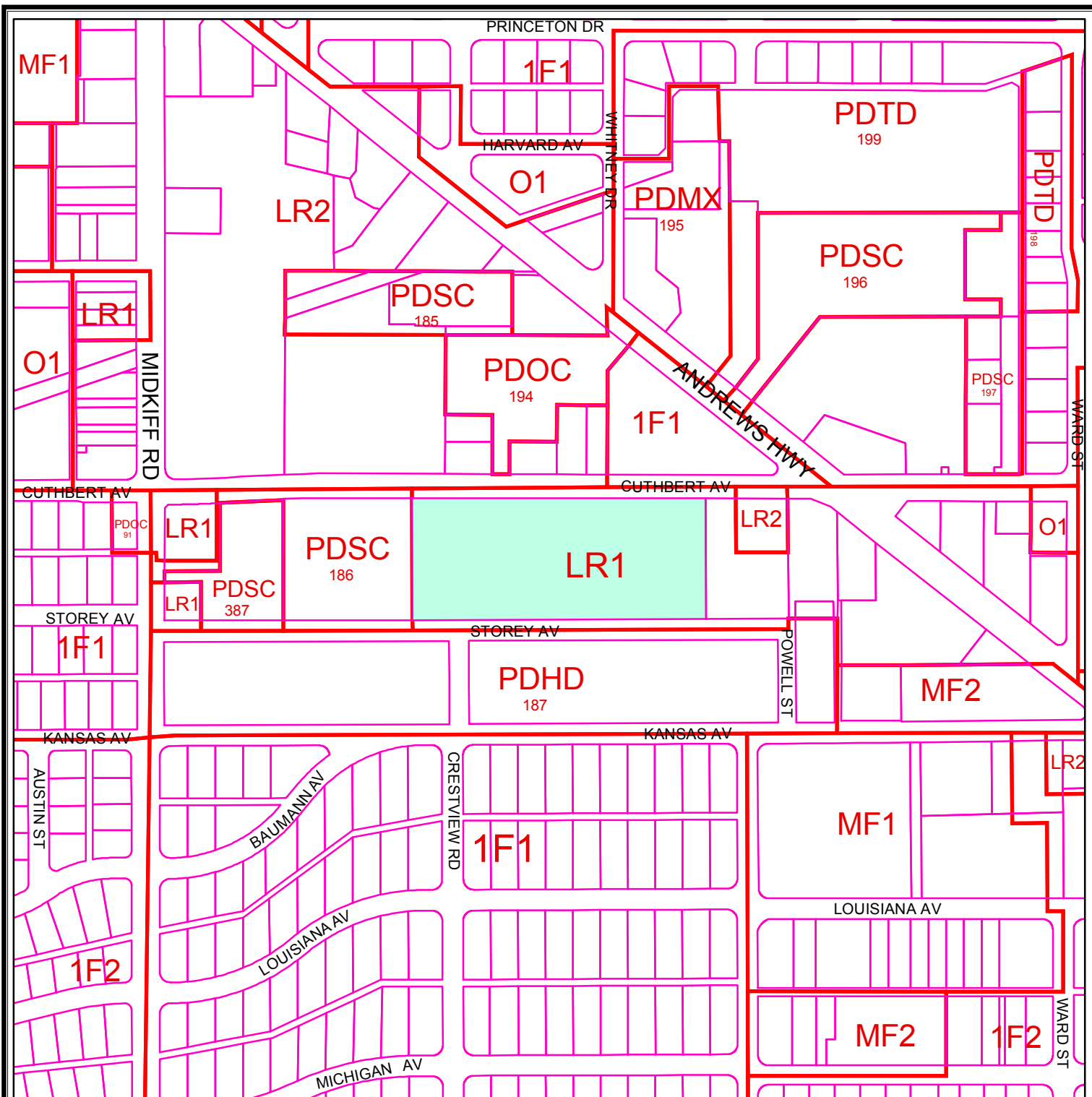
Lana Davis

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>CW</u>	Date: <u>6/7/12</u>
Assigned: <u>KV</u>	
For: _____	On: _____



****Application will not be considered for scheduling until reviewed by a planner.****



ZONING MAP

Z - 12 - 022

Scale: 1" = 400'

Consider a request for a zone change from LR-1 Local District, to PD, Planned District for a Shopping Center on 6.774-acres out of Tracts F & G, Johnson and Moran Addition, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
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MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: September 11, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 11:00 a.m. on a request by Sears for approval of a Temporary Land Use Permit for a Philanthropic Event. Generally located on the southwest corner of the intersection of W. Loop 250 North and N. Midkiff Road.

Purpose:

Hold a public hearing at approximately 11:00 a.m. on a request by Terry Henshaw for approval of 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:

The 99 is a walkthrough theater that reenacts the five leading causes of death in teenagers and young adults, many of which are influenced by drug and alcohol related incidents. The applicant is requesting a temporary land use permit for the purposes of setting up a 22,000 sq. ft. tent in the Sear's parking lot at Midland Park Mall. The tent will be divided up into rooms illustrating the leading causes of death among teenagers and young adults. This event will take place from October 5th through October 28th, but will only be held on Friday through Saturday from 7:00 p.m. until 12:00 a.m.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE TEMPORARY USE
OF LAND FOR A PHILANTHROPIC EVENT ON LOT 1,
BLOCK 17, SKYLINE TERRACE, UNIT 2, CITY AND
COUNTY OF MIDLAND, TEXAS (GENERALLY
LOCATED ON THE SOUTHWEST CORNER OF THE
INTERSECTION OF WEST LOOP 250 NORTH AND
NORTH MIDKIFF ROAD); AND MAKING SAID
PERMIT SUBJECT TO CERTAIN SPECIAL
CONDITIONS AND RESTRICTIONS CONTAINED
HEREIN**

WHEREAS, pursuant to Section 11-1-6(D) of the City Code of Midland, Texas, Sears has applied for authorization to temporarily use land for an outdoor amusement function on Lot 1, Block 17, Skyline Terrace, Unit 2, 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 Sears is hereby authorized by the City Council to have a philanthropic event on the following described land:

Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas.

SECTION TWO. That said temporary use shall be allowed within the area designated herein, subject to the following conditions and restrictions:

- A. That the days and hours of operation of the event shall be limited to the following:

Friday, October 5, 12, 19 and 26, 2012 from 7:00 p.m. to 12:00 a.m. (Midnight);
Saturday, October 6, 13, 20 and 27, 2012 from 7:00 p.m. to 12:00 a.m. (Midnight); and
Sunday, October 7, 14, 21 and 28, 2012 from 7:00 p.m. to 12:00 a.m. (Midnight).
- B. That the event site and access arrangements shall conform in all respects to the site plan attached hereto as Exhibit "A" and incorporated herein for all purposes.
- C. That Terry Henshaw, a representative of The 99, shall coordinate with

Midland Park Mall to provide security.

- D. That a minimum of seven (7) portable restrooms shall be provided.
- E. That the event must comply with all requirements of the Fire Code. The applicant must call for an inspection by the Fire Marshal prior to commencing operation of the event.
- F. That the applicant shall obtain approval from the Utilities Department for a refuse collection and clean-up plan prior to the event.
- G. That the Code Administration Division shall be notified no later than 48 hours preceding the event.
- H. That Terry Henshaw, a representative of The 99, 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

This exhibit is provided for illustrative purposes only, and shall not be deemed to be a warranty, representation or agreement by J. Landmark that the Center, Common Areas, buildings and/or services will be as illustrated on this exhibit or that any tenants which may be referenced on this exhibit will be as illustrated on this exhibit. J. Landmark reserves the right to modify the site configuration and occupants of the Center at any time.

RECEIVED
AUG 17 2012
CITY OF MIDLAND
PLANNING DIVISION OFFICE

EXHIBIT A

Modified: December 28, 2011

CASE NO. M-12-018

▲ Primary Entrances ▲ Secondary Access

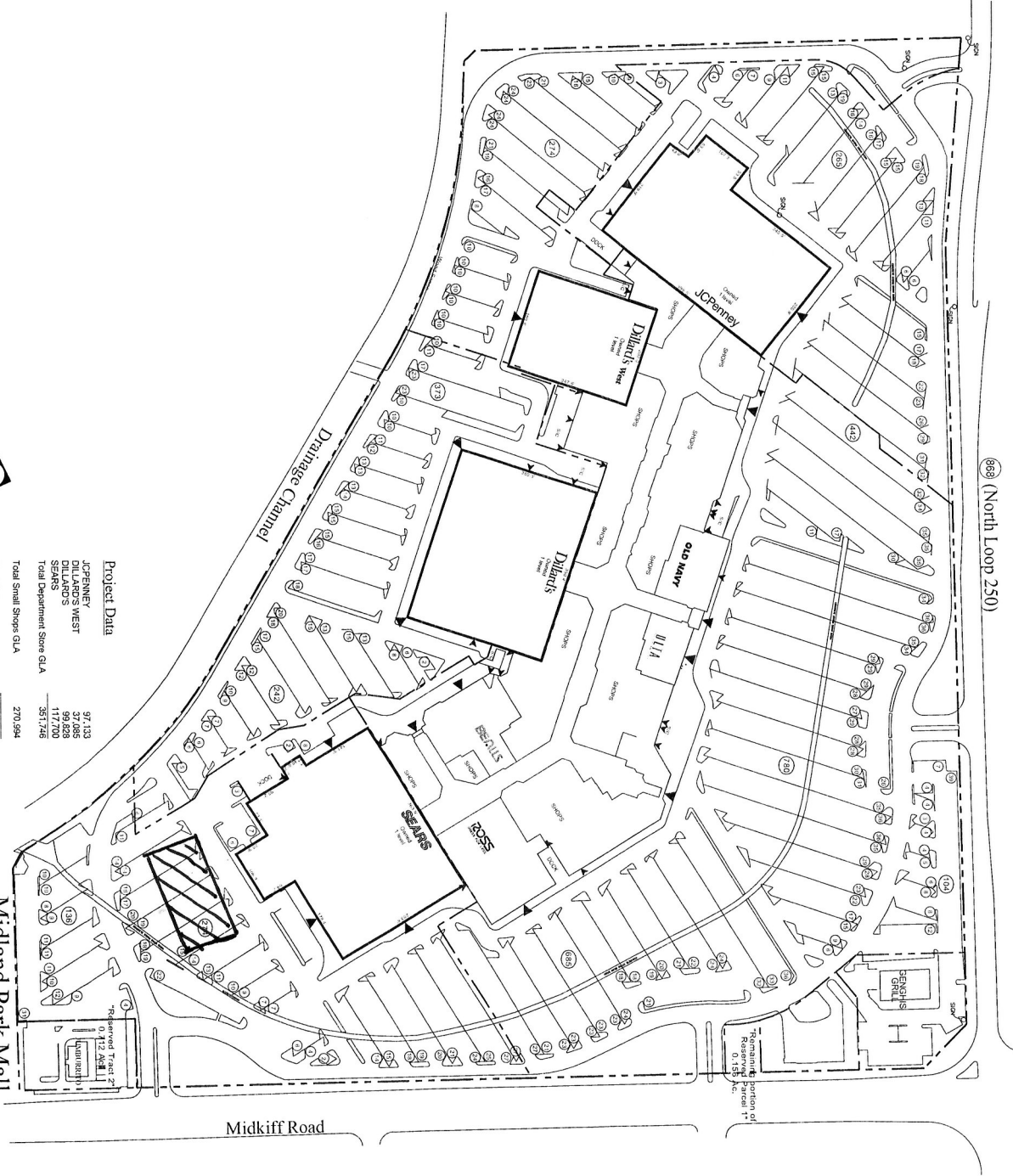
Site Plan
0 100 200

Project Data

JCPENNEY	97,133
DILLARD'S WEST	37,085
DILLARD'S	99,828
SEARS	117,700
Total Department Store GLA	351,746
Total Small Shops GLA	270,994
Total GLA	622,740
TOTAL PARKING SPACES: 3,575	
SPACE/1000 SF OF GLA: 5.74	

Midland Park Mall
4511 N. Midkiff Dr.
Midland, TX 79705
CORP # 2580

SIMON



CITY OF MIDLAND, TEXAS
Planning Division

TEMPORARY LAND USE PERMIT APPLICATION

Submission Requirements: Application shall be submitted to the Planning Division not less than eighteen (18) days prior to the City Council meeting at which action is desired.

Application is hereby made to the City Council for a Temporary Land Use Permit:

Name of Applicant: TERRY HENSHAW "The 99" Phone: 918-606-3988
E-mail: TERRY@Whatisthe99.com
Applicant's Address: 2866 E. 89, TULSA, OK. 74137
Property Owner: SEARS Holdings Corporation Phone: 432-699-8880
E-mail: gregg.morgan@searshc.com
Owner's Address: 4511 N. Midkiff Road

Other required information:

1. Street address and legal description of property: _____
2. Zoning District: PDSC, Planned District for a Shopping Center
3. Type of temporary use requested: Philanthropic Event
4. Duration of temporary use: Oct. 5 - Oct. 28 - 2012 (Only on Friday, Saturday & Sundays)
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: 12 nights Total Oct. 5 - Oct. 28
Friday, Saturday, Sunday 7:00pm - 12:00am (Last Group @ 11:00pm)
45 min. walk through Reality Theater,
6. Will alcoholic beverages be sold? _____ Yes X No
7. A detailed Site Plan is required (16 copies needed (FOLDED), plus digital - .jpg and .pdf).
Show existing buildings, parking, access arrangements, surrounding streets, activity areas, areas of alcoholic beverage sales, proposed street closures, etc.
Site Plan received: _____ Yes _____ No

8. Are you requesting the temporary closure of any streets? _____ Yes X No

If yes, you must:

- A. Obtain and complete the "Special Event and Street Closure Application", available in the Transportation Division office (5th Floor, City Hall).
- B. Provide the City with a **general liability insurance certificate**, naming the **City** as an **Additional Insured**, in the amount of one million dollars (\$1,000,000) for the term of the closure.

9. Other information: Number of security guards provided: VOLUNTEER SECURITY 20-40
Number of restrooms provided: SEVEN
Type of music (carnival, live, etc.): _____
Showmobile requested _____ Days and hours _____

10. A **\$500.00 Clean-up Deposit** and a **\$500.00 Damage Deposit** are required for all events. Checks need to be dated day of event. Inspection of site after the event for trash and damage is a City responsibility. The deposits, or a portion thereof, may be refunded following inspection.

Clean-up Deposit received: __ (Y) __ (N) **Clean-up Deposit refunded:** __ (Y) __ (%) __ (N)

Damage Deposit received: __ (Y) __ (N) **Damage Deposit refunded:** __ (Y) __ (%) __ (N)

11. A **\$200 Application Review fee** is required. **Fee received:** _____ Yes _____ No
\$25.00 for each additional event date.

Owner or Operator (if other than Applicant) responsible for ensuring that the conditions of this permit will be observed:

TERRY HENSHAW 2846 E. 89 TULSA, OK. 74137
Printed Name of Owner/Operator Address Zip Phone
918-606-3988

Terry Henshaw
Signature of Owner/Operator

8/17/12
Date

Terry Henshaw
Signature of Applicant

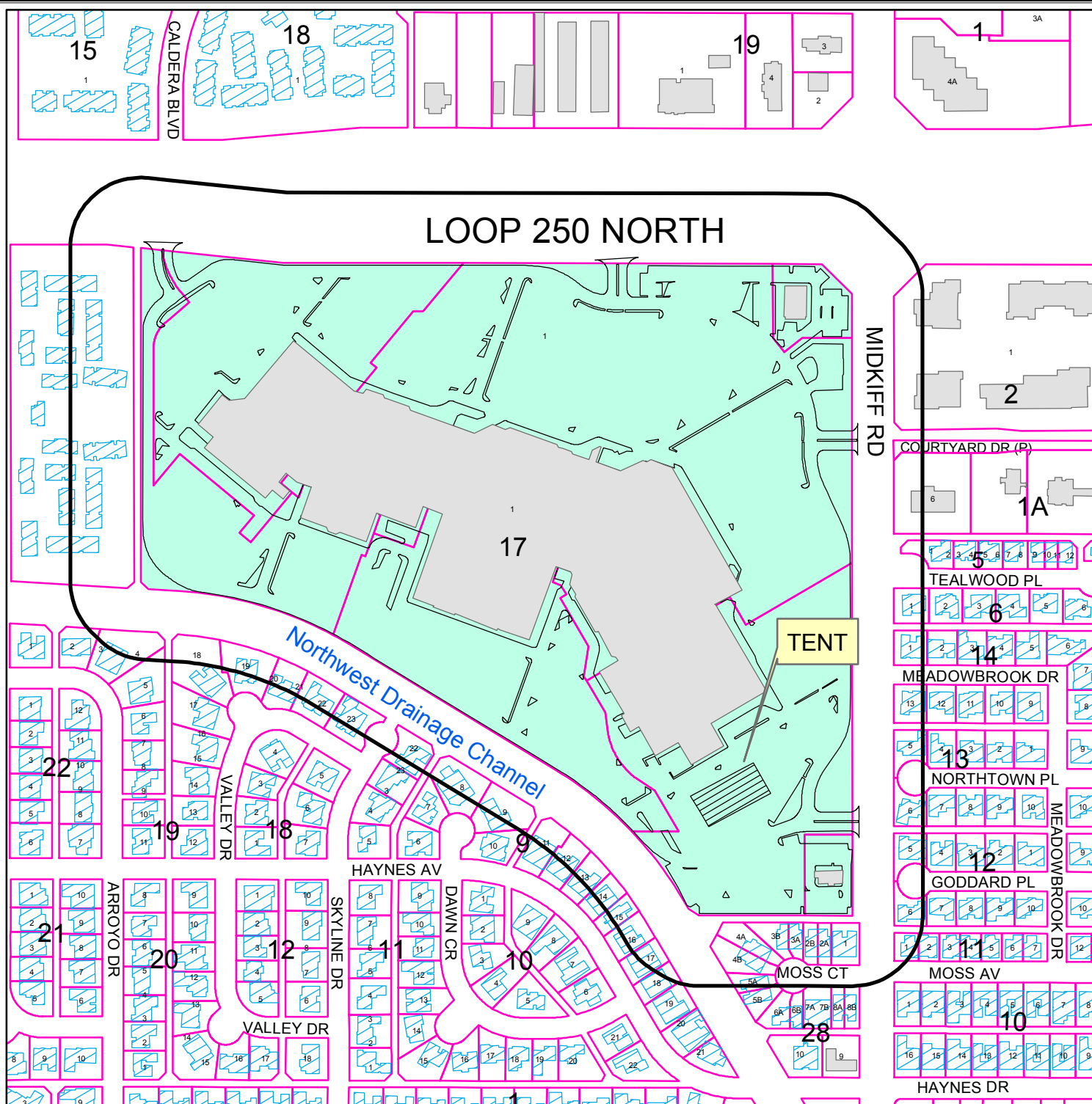
8/17/12
Date

Doug Morgan
Signature of Property Owner, if other than Applicant

8/17/12
Date

****Application will not be considered for scheduling until reviewed by a planner.****

FOR OFFICE USE ONLY	
Received By: <u>PS</u>	Date: <u>8/20/2012</u>
Assigned: _____	
For: _____	On: _____



PROPERTY OWNER NOTIFICATION MAP

M - 12 - 018

Scale: 1" = 400'

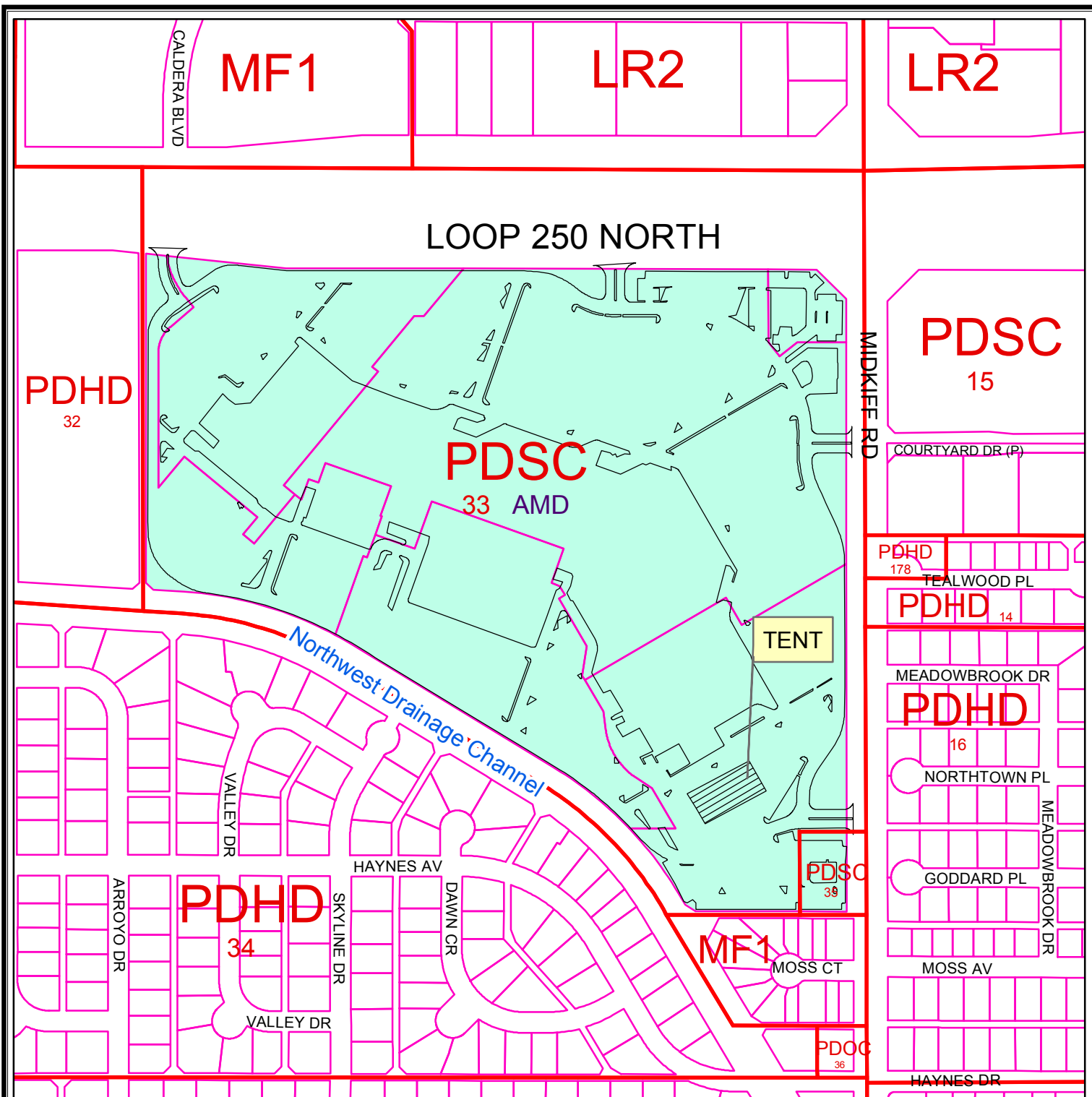
Consider a request for a Temporary Land Use Permit for a Philanthropic Event on Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS



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ZONING MAP

M - 12 - 018

Scale: 1" = 400'

Consider a request for a Temporary Land Use Permit for a Philanthropic Event on Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas.

LEGEND

ZONING

PARCELS

ZONING DISTRICTS:

FD
PD
AE
CE
1F1, 1F2, 1F3
MH
TH
2F
MF1, MF2

FUTURE DEVELOPMENT
PLANNED DISTRICT
AGRICULTURE ESTATE
COUNTRY ESTATE
ONE-FAMILY DWELLING
MOBILE HOME DWELLING
TOWNHOUSE DWELLING
TWO-FAMILY DWELLING
MULTIPLE FAMILY DWELLING

BP
P
01, 02
NS
LR1, LR2, LR3
C1, C2, C3
IP, JP1, IP2, IP3
LI
HI

BUSINESS PARK
PARKING
OFFICE
NEIGHBORHOOD SERVICE
LOCAL RETAIL
COMMERCIAL
INDUSTRIAL PARK
LIGHT INDUSTRY
HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: September 11, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 11:03 a.m. and consider an ordinance on a request by Weidner Investments for a zone change from PD, Planned District for a Housing Development to Amended Planned District. (Generally located on the south side of Wadley Avenue, approximately 450 feet east of Sunburst Avenue.

Purpose:

Hold a public hearing at approximately 11:03 a.m. and consider an ordinance on a request by Weidner Investments for a zone change from PD, Planned District for a Housing Development to Amended Planned District.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

This 14-acre tract is located on the south side of Wadley Avenue, east of Sunburst Drive. It is zoned Planned District for a Housing Development, subject to the MF-1 District regulations. Further, a site plan(s) must be approved in the same manner as a zone change before any apartment development can occur. The applicant has provided the attached Exhibits A through D to comply with the site plan requirement. Exhibits E and F are renderings of the proposed development.

Exhibit A is a plan view of the apartment complex that will be accessible from both Wadley Avenue and Preston Drive. A total of 15 apartment buildings (plus a clubhouse/office) would contain 290 dwelling units, with a mix of one-, two- and three-bedroom units. The proposed density is 20.6 dwelling units per acre, or just under the amount recently approved along south Loop 250. The indicated building setbacks meet or exceed the minimum distances required by the Zoning Code. Exhibits B, C and D illustrate front and side yard elevations. The applicant states that his company built the Palms at Briarwood, and this project will look very similar (please see Exhibits E and F). These apartment buildings are planned to be three stories tall. Exterior building materials include Stucco and cement fiber board, with composition shingles on a roof that includes both hip and gable designs. The Planning and Zoning Commission recommended unanimous approval of this request, despite concerns noted regarding the use of water wells for irrigation purposes and a suggestion that the Wadley Avenue Driveway be moved. The Traffic Division supports the driveway at the location currently proposed.

Attachments:

August 20, 2012 P&Z Staff Report
Proposed Ordinance and Exhibits A-D

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 14.05-ACRE TRACT OF LAND OUT OF SECTION 19, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED AT THE SOUTH SIDE OF WEST WADLEY AVENUE, APPROXIMATELY 450 FEET EAST OF SUNBURST 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:

A 14.05-acre tract of land out of Section 19, Block 39, 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 “E”, which is attached hereto and incorporated herein.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That the development of this property with an apartment complex shall conform to the conditions shown on Exhibits “A”, “B”, “C” and “D”, which are attached hereto and incorporated herein.
2. That the maximum number of dwelling units shall not exceed 290, and the maximum density shall not exceed 21 units per acre.
3. That the development of this property shall comply with all applicable City of Midland regulations regarding signs, landscaping and outdoor lighting.
4. That the pads for solid waste containers shall be screened as specified in the City of Midland zoning code.
5. That the maximum building height shall not exceed three stories or 50 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:

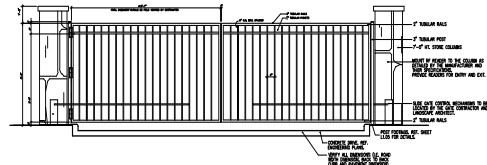
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

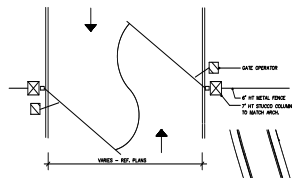
James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

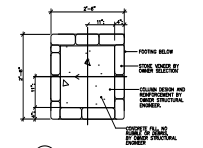
Keith Stretcher, City Attorney



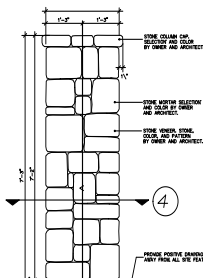
5 DOUBLE SWING GATES



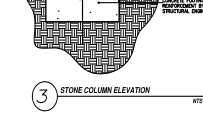
6 DOUBLE SWING GATES



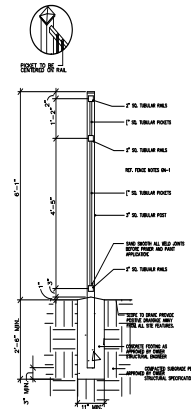
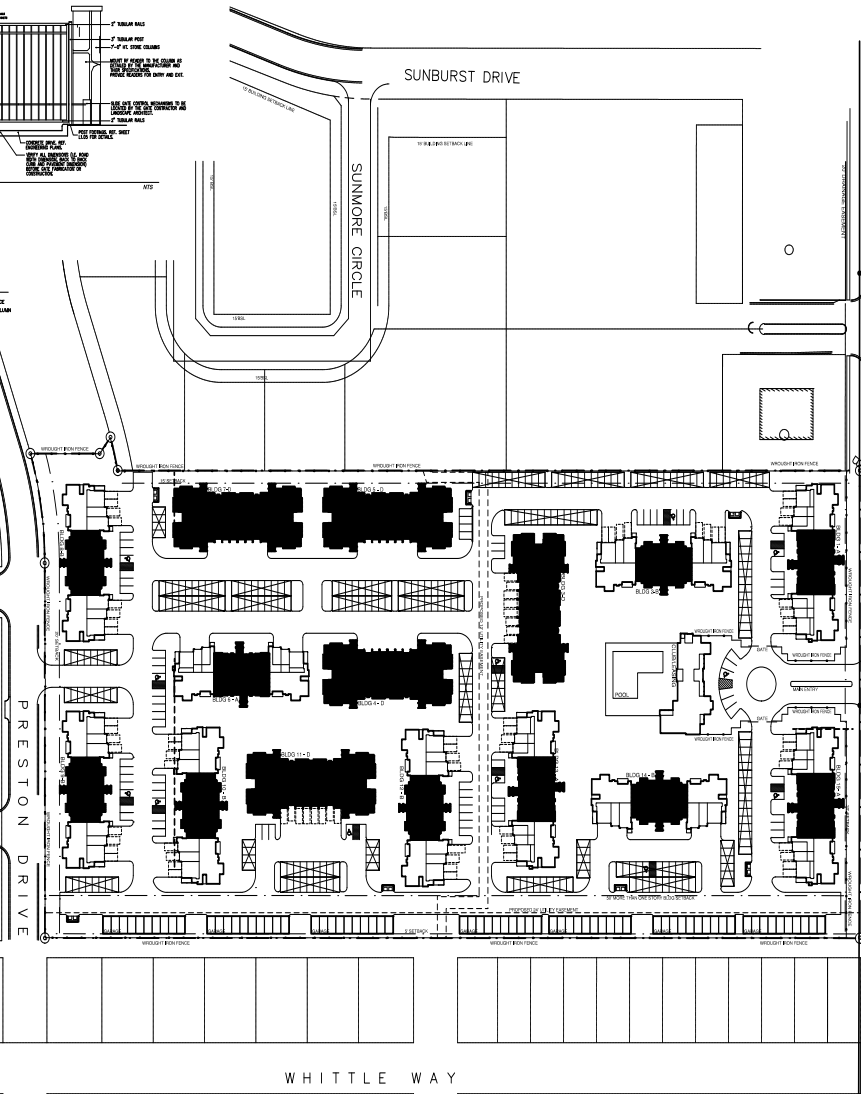
4 STONE COLUMN SECTION



4 STONE COLUMN ELEVATION



3 STONE COLUMN ELEVATION



2 8" WID. WROUGHT IRON PERIMETER FENCE SECTION

UNIT TABULATION					
UNIT	AREA	NO.	sq. ft.	sq. ft.	TOTAL AREA
A1	1,100	40	44,000	18,370	62,370
A2	1,100	40	44,000	18,370	62,370
A3	1,100	40	44,000	18,370	62,370
A4	1,100	40	44,000	18,370	62,370
A5	1,100	40	44,000	18,370	62,370
A6	1,100	40	44,000	18,370	62,370
A7	1,100	40	44,000	18,370	62,370
A8	1,100	40	44,000	18,370	62,370
A9	1,100	40	44,000	18,370	62,370
A10	1,100	40	44,000	18,370	62,370
A11	1,100	40	44,000	18,370	62,370
A12	1,100	40	44,000	18,370	62,370
A13	1,100	40	44,000	18,370	62,370
A14	1,100	40	44,000	18,370	62,370
A15	1,100	40	44,000	18,370	62,370
A16	1,100	40	44,000	18,370	62,370
A17	1,100	40	44,000	18,370	62,370
A18	1,100	40	44,000	18,370	62,370
A19	1,100	40	44,000	18,370	62,370
A20	1,100	40	44,000	18,370	62,370
A21	1,100	40	44,000	18,370	62,370
A22	1,100	40	44,000	18,370	62,370
A23	1,100	40	44,000	18,370	62,370
A24	1,100	40	44,000	18,370	62,370
A25	1,100	40	44,000	18,370	62,370
A26	1,100	40	44,000	18,370	62,370
A27	1,100	40	44,000	18,370	62,370
A28	1,100	40	44,000	18,370	62,370
A29	1,100	40	44,000	18,370	62,370
A30	1,100	40	44,000	18,370	62,370
A31	1,100	40	44,000	18,370	62,370
A32	1,100	40	44,000	18,370	62,370
A33	1,100	40	44,000	18,370	62,370
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A35	1,100	40	44,000	18,370	62,370
A36	1,100	40	44,000	18,370	62,370
A37	1,100	40	44,000	18,370	62,370
A38	1,100	40	44,000	18,370	62,370
A39	1,100	40	44,000	18,370	62,370
A40	1,100	40	44,000	18,370	62,370
A41	1,100	40	44,000	18,370	62,370
A42	1,100	40	44,000	18,370	62,370
A43	1,100	40	44,000	18,370	62,370
A44	1,100	40	44,000	18,370	62,370
A45	1,100	40	44,000	18,370	62,370
A46	1,100	40	44,000	18,370	62,370
A47	1,100	40	44,000	18,370	62,370
A48	1,100	40	44,000	18,370	62,370
A49	1,100	40	44,000	18,370	62,370
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A51	1,100	40	44,000	18,370	62,370
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A54	1,100	40	44,000	18,370	62,370
A55	1,100	40	44,000	18,370	62,370
A56	1,100	40	44,000	18,370	62,370
A57	1,100	40	44,000	18,370	62,370
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A60	1,100	40	44,000	18,370	62,370
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A62	1,100	40	44,000	18,370	62,370
A63	1,100	40	44,000	18,370	62,370
A64	1,100	40	44,000	18,370	62,370
A65	1,100	40	44,000	18,370	62,370
A66	1,100	40	44,000	18,370	62,370
A67	1,100	40	44,000	18,370	62,370
A68	1,100	40	44,000	18,370	62,370
A69	1,100	40	44,000	18,370	62,370
A70	1,100	40	44,000	18,370	62,370
A71	1,100	40	44,000	18,370	62,370
A72	1,100	40	44,000	18,370	62,370
A73	1,100	40	44,000	18,370	62,370
A74	1,100	40	44,000	18,370	62,370
A75	1,100	40	44,000	18,370	62,370
A76	1,100	40	44,000	18,370	62,370
A77	1,100	40	44,000	18,370	62,370
A78	1,100	40	44,000	18,370	62,370
A79	1,100	40	44,000	18,370	62,370
A80	1,100	40	44,000	18,370	62,370
A81	1,100	40	44,000	18,370	62,370
A82	1,100	40	44,000	18,370	62,370
A83	1,100	40	44,000	18,370	62,370
A84	1,100	40	44,000	18,370	62,370
A85	1,100	40	44,000	18,370	62,370
A86	1,100	40	44,000	18,370	62,370
A87	1,100	40	44,000	18,370	62,370
A88	1,100	40	44,000	18,370	62,370
A89	1,100	40	44,000	18,370	62,370
A90	1,100	40	44,000	18,370	62,370
A91	1,100	40	44,000	18,370	62,370
A92	1,100	40	44,000	18,370	62,370
A93	1,100	40	44,000	18,370	62,370
A94	1,100	40	44,000	18,370	62,370
A95	1,100	40	44,000	18,370	62,370
A96	1,100	40	44,000	18,370	62,370
A97	1,100	40	44,000	18,370	62,370
A98	1,100	40	44,000	18,370	62,370
A99	1,100	40	44,000	18,370	62,370
A100	1,100	40	44,000	18,370	62,370

- NOTES**
- INDICATES THREE STORY PORTION
 - INDICATES TANGENT PARKING SPACE
 - INDICATES CARPORT SPACE
- PARKING**
- SURFACE PARKING: 10 SPACES
 - CARPORT PARKING: 100 SPACES
 - TANGENT PARKING: 100 SPACES
 - TOTAL PARKING COUNT: 210 SPACES



REVISIONS

NO.	DATE	DESCRIPTION
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

WADLEY APARTMENTS

in MIDLAND, TX for:



4144 N. Central Expy.
Suite 855
Dallas, TX 75204
214.550.8878
bgoarchitects.com

DATE

07-05-12

PROJECT

12147

SHEET NUMBER

A1

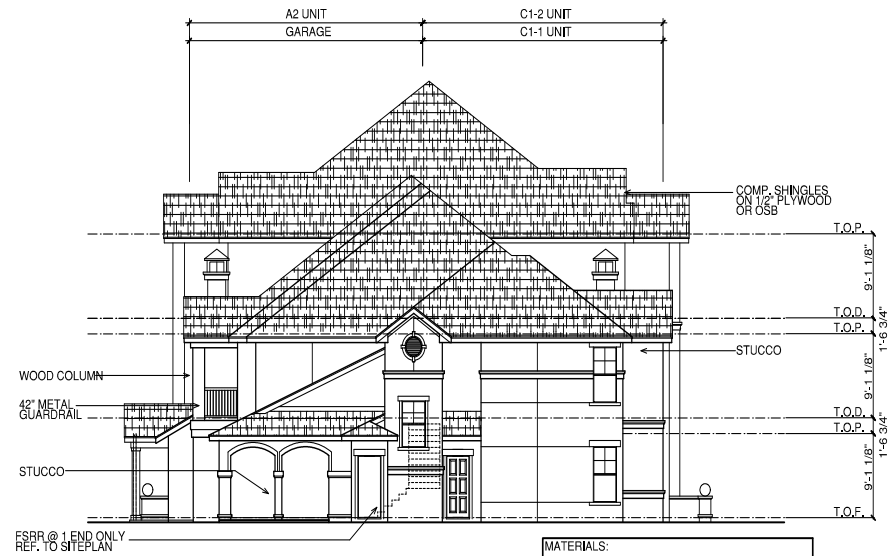
SITE PLAN

COPYRIGHT © BGO architects. All Rights Reserved.



BUILDING 'A' - FRONT ELEVATION
SCALE: 1/16"=1'-0"

MATERIALS:
100% STUCCO EXTERIOR
100% FIBER CEMENT BREEZWAYS / BALCONIES



BUILDING 'A' - END ELEVATION
SCALE: 1/16"=1'-0"



BUILDING 'A' - BACK ELEVATION
SCALE: 1/16"=1'-0"

PLANNING AND ZONING COMMISSION

August 20, 2012

CASE: Z-12-029.

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: David Miller.

OWNER: Weidner Investments.

LEGAL DESCRIPTION: A 14.04-acre tract out of Section 19, Block 39, T-1-S, T&P RR Company Survey, Midland County, Texas.

LOCATION: South side of Wadley Avenue, approximately 450 feet east of Sunburst Drive.

ASSOCIATED CASE: P-12-057, Wydewood Estates, Section 33.

DETAILS OF REQUEST:

1. This property was zoned Planned District for a Housing Development in 2006. This district is subject to the regulations of the MF-1, Multiple-Family Dwelling District. Further, before any development can occur, site plans must be approved in the same manner as a zone change. The applicant desires to construct apartments on this property. Consequently, the applicant has submitted the attached Exhibits A-D to meet the site plan requirement. Exhibits E and F are renderings supplied by the applicant.

SURROUNDING ZONING AND LAND USE:

2. This tract is bounded on the north by Wadley Avenue, an arterial street, and on the south by Preston Drive, a neighborhood collector street. The area to the north, across Wadley Avenue, is zoned for medium density residential development, and is fully developed. The area to the east is zoned Planned District for a Housing Development, MF-1 District, and 2F District; it is fully developed, including apartments in the MF-1 District. The area to the south is zoned 1F-3 District, and is developed with Bush Elementary School and a City-owned detention basin. The land to the west is comprised of several Planned Districts for Shopping Centers, and is developed with various retail uses.

ANALYSIS:

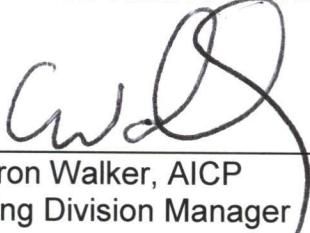
3. Exhibit A is a plan view of the proposed apartment development. Primary access will be from Wadley Avenue. This gives access to a clubhouse and office. Access to the residences will be controlled with an electric gate. A secondary access will be from Preston Drive, which is also regulated by a gate. These gates will be designed to provide access to emergency vehicles. There are 15 apartment buildings and one clubhouse/office. Also, there is a row of garages located along the east property line. A total of 290 units are planned, which yields a density of 20.6 units per acre. Driving aisles are 26 feet wide, which meets the requirements of the Fire Department for three-story apartment buildings. The Zoning Code requires a minimum front yard building setback of 20 feet from Wadley Avenue and Preston Drive, a minimum side yard of 15 feet on the west side, and a minimum 50-foot setback between any building wall and the lot line of any land zoned for single-family use on the east side. All building locations meet or exceed these requirements. A six-foot tall wrought iron fence is planned around the entire perimeter of the property. The application does not include a detailed landscaping plan. However, there is sufficient open space shown on Exhibit A to ensure that 20 percent of this site can be landscaped. A detailed landscaping plan will be reviewed through the building permit process. Also missing are details of proposed business signs or outdoor lighting. We recommend that signs on this property adhere to the Sign Code and the Outdoor Lighting Code. There are several pad sites located throughout this complex for solid waste containers. The City Code requires that these sites be screened on three sides with a six-foot tall masonry fence finished to match the abutting buildings.

Exhibit B is a front elevation view of one of the apartment building designs. It is very similar to two other proposed designs. The applicant advises that the proposed apartments will appear very similar to The Palms at Briarwood. All apartment buildings are planned to be three stories in height. The maximum ridge height is not labeled on Exhibit B. We advised the applicant that this distance must be labeled, and that the maximum height is 50 feet. Exterior building materials are listed as Stucco and cement fiber board, with composition shingles on a roof design that includes both a hip and a gable design. There are also overhead garages doors shown in this elevation. Exhibit C is a side and the rear elevation of the same building design. Exhibit D illustrates a front elevation view with a slightly different design. Exhibits E and F are colored renderings of the buildings and site plans, and are included for reference purposes only.

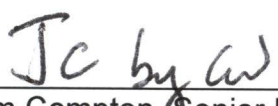
STAFF RECOMMENDATION:

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. The development of this property with an apartment complex shall conform to the conditions shown on the attached Exhibits A-F, except as otherwise stated below.
- B. The maximum number of dwelling units shall not exceed 290, and the density shall not exceed 21 dwelling units per acre.
- C. The development of this property shall conform to the regulations of the Sign Code, the Landscaping Code and the Outdoor Lighting Code.
- D. Pads for solid waste containers shall be screened as specified in the Zoning Code.
- E. The elevation views are amended to include the maximum building height, which cannot exceed 50 feet.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A through F

Case Number: 2-12-029

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

DAVID R. MILLER 806.797.3162 / david.miller@mcdougal.com
Applicant Name (Phone/e-mail)
5001 West Loop 289, Lubbock, TX 79414
Address Zip Code
WEIDNER Investments ~~9757 NE Juanita Dr #300~~ 425.821.3844
Property Owner Name (Phone/e-mail)
9757 NE Juanita Dr. #300, Kirkland, WA 98034
Address Zip Code
DAVID R. MILLER
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. WADLEY 14.105 AC
WYDE WOOD ESTATES, SECTION 29
SECTION 19, Block 39, T-1-S, T. & P. RR.

PRESENT ZONE: PDHD REQUESTED ZONE: AMENDED PDHD.
(List by tracts if more than one district is requested)

Reason for Zone Change Request: _____

Present Use of Property: VACANT

Proposed Use of Property: Apartment Homes.

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:
N/A.

Is a Specific Use Permit with Term for alcoholic beverages sales needed? ____ Yes X No

APPLICATION FEES:

- Single, standard zone change: **\$400**. Multiple, standard zone change: add **\$100** per additional district.
- Single PD, Planned District zone change: **\$550**. Multiple PD proposal: add **\$100** per district.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS (if applicable):

16 copies (FOLDED) of the PD site plan: ✓

Site Plan in digital format .pdf and .jpg: ✓

SIGNATURE (by property owner only - authorized agent must sign affidavit below)

Property Owner (signature):

David R Miller

Date:

July 6, 2012

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS

COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

David Miller

who, being by me duly sworn, upon oath says: That (s)he is authorized by Weidner Investments, 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.

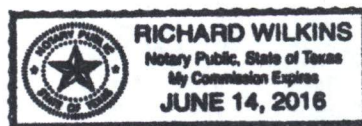
Authorized Agent (signature)

Subscribed and sworn to before me, this 6 day of July, 20 12, to certify which witness my hand and seal of office.

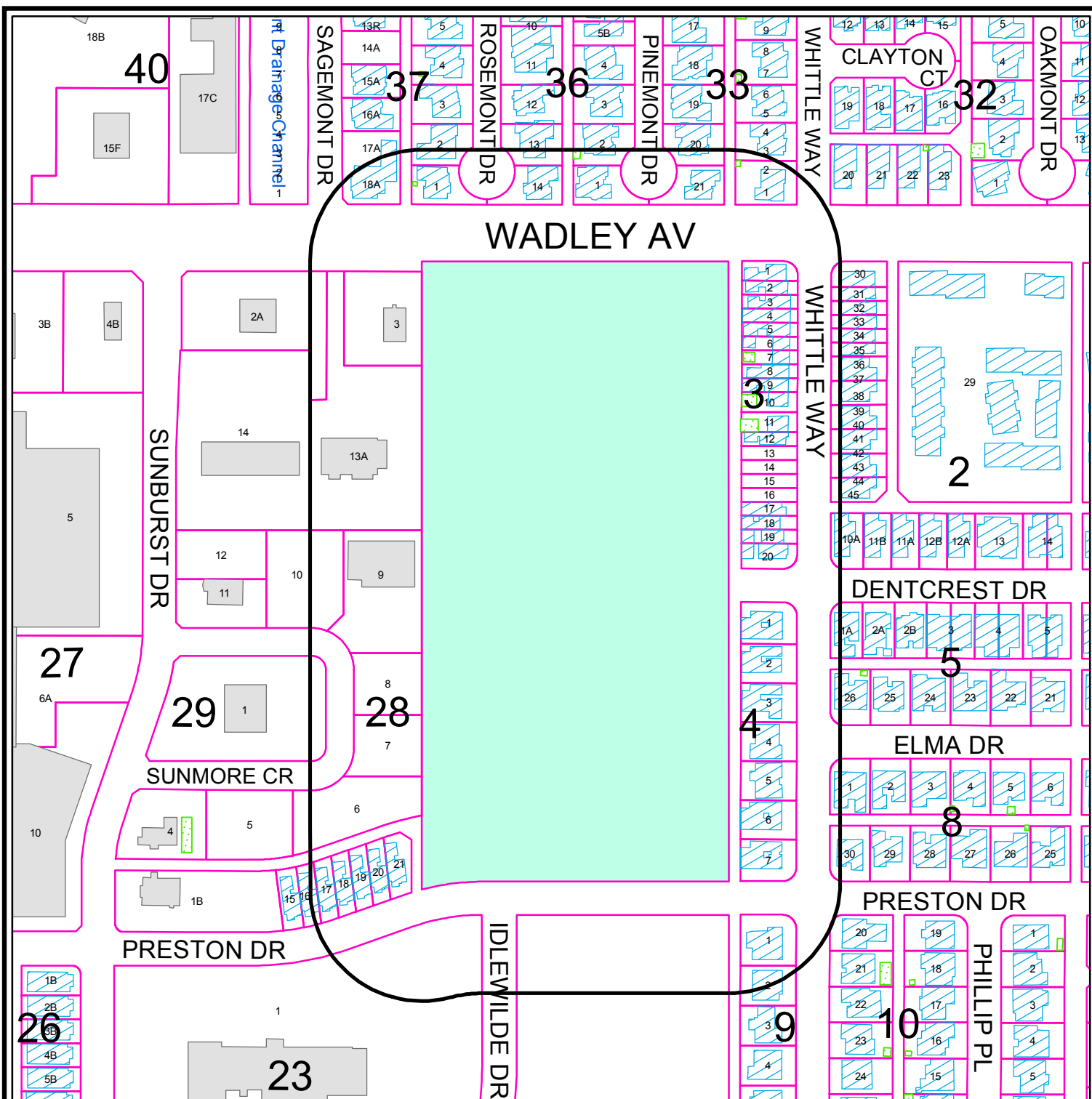
Bill Wilkins

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>JC</u>	Date: <u>7/6/12</u>
Assigned: <u>JC</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 - 029

Scale: 1" = 250'

Consider a request for a zone change from PD, Planned Districts for a Housing Development, to an Amended Planned District on 14.05-acres out of Section 19, Block 39, T-1-S, T & P RR Co. Survey, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC. IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Steve Thorpe, Acting Assistant Development Services Director

SUBJECT: Resolution to grant a variance to Ordinance 8769 (January 1, 2010 Oil and Gas Well Drilling Ordinance) to allow building permits for commercial buildings, to be issued in the future, where the proposed building, either in whole or part is no closer than 260 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 commercial buildings, to be issued in the future, where the proposed building, either in whole or part is no closer than 260 feet of an existing oil and gas wells. The lots included in this request are 3A, 3B, 3C Block 1 West 1788 Industrial Park Section 7.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None

Discussion:

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

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

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

Attachments: Signed Letter; Survey

RESOLUTION NO.

RESOLUTION GRANTING A VARIANCE FOR LOTS 3A, 3B AND 3C, BLOCK 1, WEST 1788 INDUSTRIAL PARK, SECTION 7, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE 11700 AND 11800 BLOCKS OF ONYX DRIVE), BY PERMITTING CONSTRUCTION OF COMMERCIAL BUILDINGS WHERE NO PORTION OF ANY BUILDING IS CLOSER THAN TWO HUNDRED SIXTY (260) FEET OF AN OIL AND GAS WELL; AND AUTHORIZING ISSUANCE OF A BUILDING PERMITS

WHEREAS, pursuant to Section 6-1-23(H)(2)(c) of the City Code of Midland, Texas, the owner of the property described in Section One hereof has applied for a variance in order to receive a building permits for the construction of commercial buildings where no portion of any building is closer than two hundred sixty (260) feet of an oil and gas well; and

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

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

SECTION ONE. That a variance is hereby granted for Lots 3A, 3B and 3C, Block 1, West 1788 Industrial Park, Section 7, City and County of Midland, Texas, by permitting construction of commercial buildings where no portion of any building is closer than two hundred sixty (260) feet of an oil and gas well.

SECTION TWO. That the Building Official is hereby authorized and directed to issue a building permits to the applicant and to other appropriate parties, entities, individuals, successors or assigns for such purpose with the following notation: "This building permit is issued for a structure to be constructed on a lot or tract located within five hundred feet of a previously permitted Oil and Gas Well but no portion of any building shall be closer than two hundred sixty (260) feet of a previously permitted Oil and Gas Well."

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

City of Midland at a regular meeting on the _____ day of _____, A.D., 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

That I, Paul Taguanicello (Owner Lot 3A, 3B, and 3C, Block 1, West 1788 Industrial Section 7) recognize that I am applying for a building permit to construct a commercial building 260' from a previously permitted oil well as shown the attached plan titled "Building Location Proximity to Previously Permitted Oil Well Variance Request" prepared by Newton Engineering, PC dated 8-24-2012. This is my formal request for a variance to build within 500' from a previously permitted oil well as required in Ordinance No. 8769 6-1-23H.2.c.



Signature

08/27/12

Date

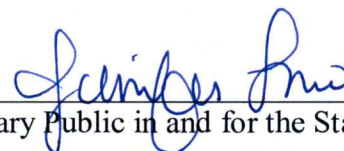
STATE OF TEXAS §

COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared IAQ 11700, LTD, (Paul Taguanicello) known to me (or proved to me through _____ [description of identity card or other document]) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same in the capacity stated, as the act of the corporation, for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office this 27th day of August, A.D., 20 12.




Notary Public in and for the State of Texas



NEWTON ENGINEERING, PC
F-13856
4908 N. Midriff Rd.
Midland, Texas 79705
(432) 770-0499

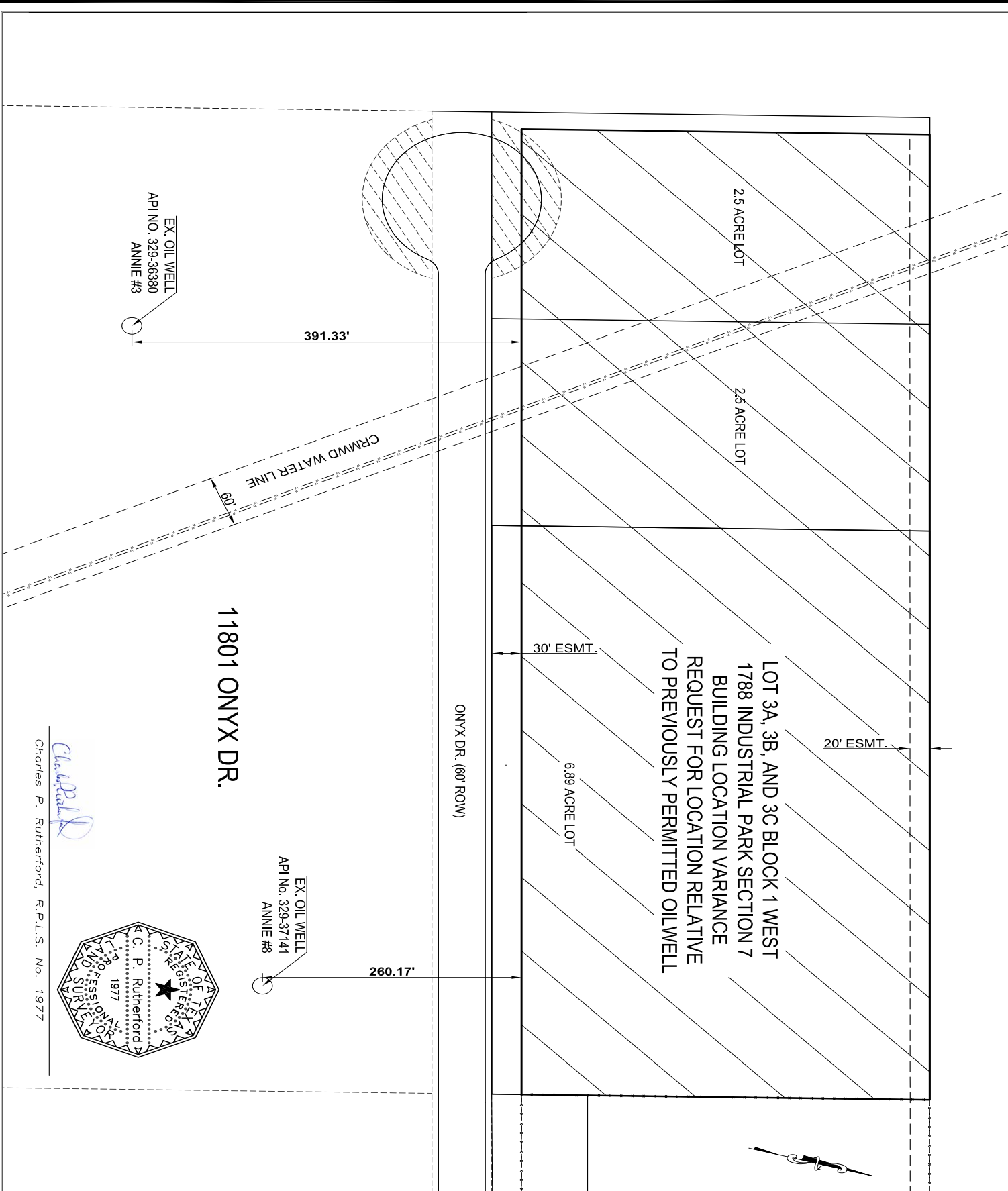
City of Midland,
Texas

BUILDING LOCATION
PROXIMITY TO
PREVIOUSLY
PERMITTED OIL
WELL VARIANCE
REQUEST

Revision
No. Date

Project No. 12461010
Date: AUGUST 24, 2012
Created By: JMM
Scale: 1"=60'

Sheet:
1





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Gary Saunders, Transportation Manager

SUBJECT:

Consider an ordinance prohibiting parking on the west side of Boulder Drive from the south curb line of Loop 250 service road continuing south a distance of 369 feet to the north curb line of Fargo Avenue, and from the south curb line of Fargo Avenue continuing south a distance of 561 feet, also on the north and south side of Fargo Avenue from the west curb line of Boulder Drive continuing west a distance of 139 feet to the north south alley. Except to residents that have obtained a valid parking permit.

Purpose:

Consider an ordinance prohibiting parking on the west side of Boulder Drive from the south curb line of Loop 250 service road continuing south a distance of 369 feet to the north curb line of Fargo Avenue, and from the south curb line of Fargo Avenue continuing south a distance of 561 feet, also on the north and south side of Fargo Avenue from the west curb line of Boulder Drive continuing west a distance of 139 feet to the north south alley. Except to residents that have obtained a valid parking permit.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Approximately \$2,925.00 for installation cost of signs, posts and pavement markings including materials, equipment and labor.

Discussion:

The Legal Department has prepared an ordinance on a request from adjacent property owners and tenants prohibiting parking on the west side of Boulder Drive from the south

curb line of Loop 250 service road continuing south a distance of 369 feet to the north curb line of Fargo Avenue, and from the south curb line of Fargo Avenue continuing south a distance of 561 feet, also on the north and south side of Fargo Avenue from the west curb line of Boulder Drive continuing west a distance of 139 feet to the north south alley. Except to residents that have obtained a valid parking permit.

Attached is a map indicating location of the proposed parking restriction.

Staff recommends approval of this ordinance.

ORDINANCE NO.

AN ORDINANCE PROHIBITING PARKING ON THE WEST SIDE OF BOULDER DRIVE FROM THE SOUTH CURB LINE OF LOOP 250 SERVICE ROAD CONTINUING SOUTH A DISTANCE OF 369 FEET TO THE NORTH CURB LINE OF FARGO AVENUE, AND FROM THE SOUTH CURB LINE OF FARGO AVENUE CONTINUING SOUTH A DISTANCE OF 561 FEET, ALSO ON THE NORTH AND SOUTH SIDE OF FARGO AVENUE FROM THE WEST CURB LINE OF BOULDER DRIVE CONTINUING WEST A DISTANCE OF 139 FEET TO THE NORTH SOUTH ALLEY EXCEPT TO RESIDENTS WHOSE PROPERTY ABUTS SUCH STREET AND HAVE OBTAINED A VALID PARKING PERMIT; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO ERECT APPROPRIATE SIGNS; DECLARING ANY VEHICLE IN VIOLATION OF THE PROVISIONS OF THIS ORDINANCE A NUISANCE AND PROVIDING FOR THE REMOVAL OF SAME; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION

WHEREAS, the Council finds that in order to expedite the orderly flow of traffic, to eliminate traffic congestion, to promote traffic safety, and to preserve the residential character of neighborhoods in the area of certain streets, it is in the public interest to regulate and restrict parking in the manner and on the portions of those streets described herein;

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

SECTION ONE. That on any of the streets or places described in Section Two hereof, no person shall stop, stand or park a motor vehicle. However, the owner or operator of a motor vehicle who resides on property immediately adjacent to said street or place and who has affixed to such vehicle a valid parking permit issued pursuant to the provisions of this ordinance shall not be prohibited from parking on any of the streets or places described in Section Two. It shall be an exception to the provisions of this ordinance that such person stopped or parked said vehicle because it was necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic control device.

SECTION TWO. The streets or places which are restricted by the terms of this ordinance are as follows:

- a. Boulder Drive – on the west side of Boulder Drive from the south curb line of Loop 250 service road continuing south a distance of 369 feet to the north curb line of Fargo Avenue, on the south curb line of Fargo Avenue continuing south a distance of 561 feet.
- b. Fargo Avenue – on the north and south side of Fargo Avenue from the west

curb line of Boulder Drive continuing west a distance of 139 feet to the north south alley.

SECTION THREE. A parking permit shall be issued by the Chief of Police or his designee upon application and payment of the fee authorized in Section Four hereof, only to the owner or operator of a motor vehicle who resides on property immediately adjacent to the street or place described in Section Two hereof.

SECTION FOUR. The Chief of Police is authorized to establish an annual residential parking permit fee to cover only the administrative costs of permits issued pursuant to the provisions of this ordinance.

SECTION FIVE. That all existing ordinances, or any part thereof, in conflict with this ordinance are hereby expressly repealed.

SECTION SIX. The repeal of the ordinances, or parts of ordinances, effectuated by the enactment of this ordinance shall not be construed as abating any actions pending under or by virtue of such ordinances; or as discontinuing, abating, modifying or altering any penalty accruing or to accrue; or as affecting the liability of any person, firm or corporation; or as waiving any right of the municipality under any section or provision existing at the time of the passage of this ordinance.

SECTION SEVEN. That in the event any vehicle shall be found parked in violation of the provisions of this ordinance, the same shall be a nuisance per se, and shall be removed by any police officer and taken to some place designated by the Chief of Police for such purpose, and be kept by such officer until the application for its redemption shall be made by the owner or his duly authorized agent, who shall be entitled to the possession thereof upon payment to the City of Midland of the charges specified in Section 2 of Chapter 3 of Title VI of the City Code of Midland, Texas. In the event any vehicle so impounded should not be redeemed by the owner or his duly authorized agent after notice as provided in Section 4 of Chapter 3 of Title VI of said Code, then such vehicle shall be disposed of in accordance with Sections 3 and 8 of Chapter 3 of Title VI of said Code.

SECTION EIGHT. When any vehicle is parked in violation of the provisions of this ordinance, such fact shall be prima facie evidence that the person in whose name said vehicle is registered is guilty of a violation of the parking provision herein contained.

SECTION NINE. That the Traffic Engineer is hereby authorized and directed to

erect appropriate signs and markings at the designated locations, in conformance with the State Highway Department's manual and specifications, where applicable, indicating and carrying out the provisions of this ordinance.

SECTION TEN. 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 ELEVEN. 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 TWELVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two hundred dollars (\$200.00).

SECTION THIRTEEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular

meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

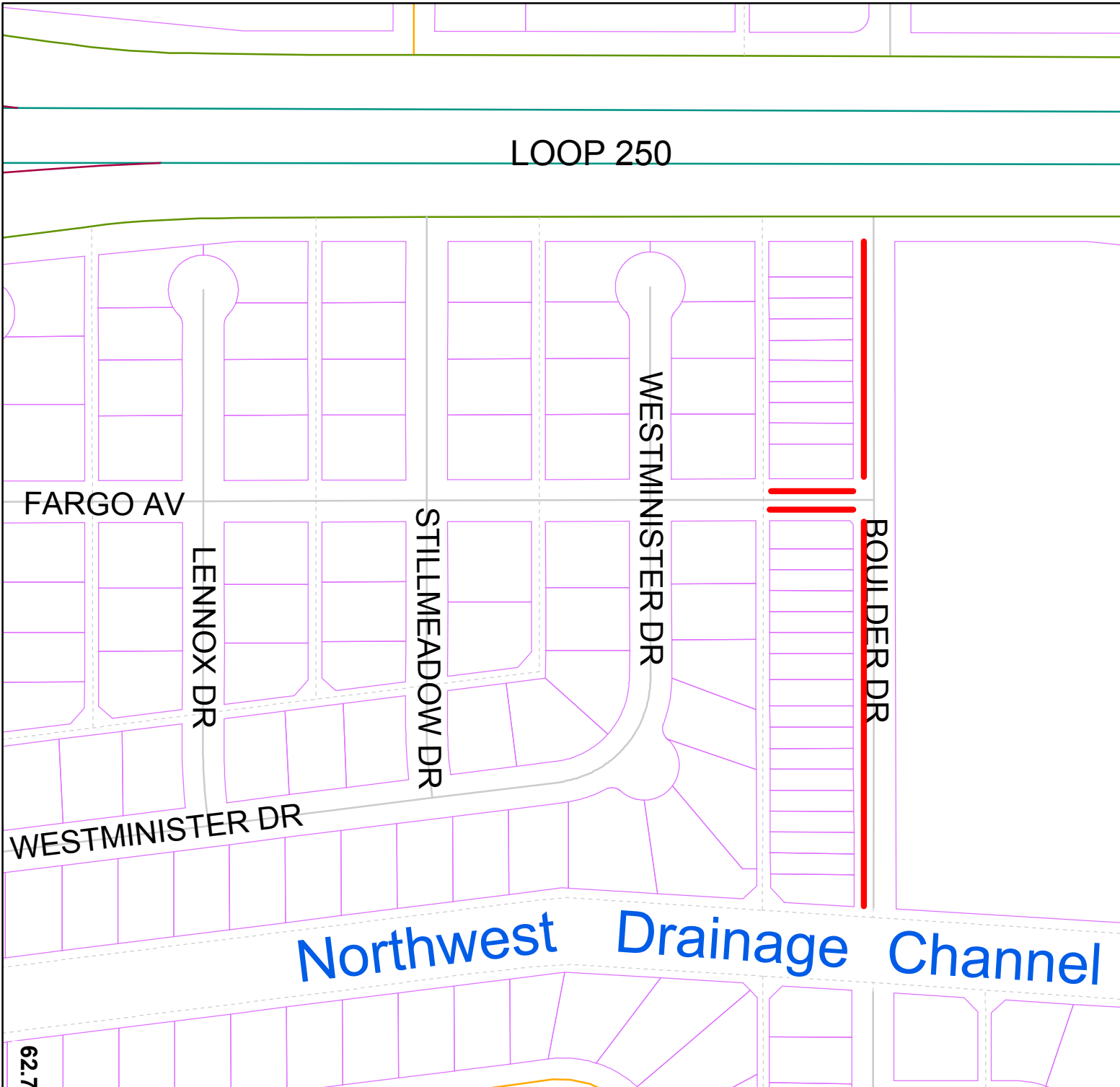
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Gary Saunders, Transportation Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



BOULDER DRIVE
& FARGO AVENUE

Proposed
permit parking
only





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Gary Saunders, Transportation Manager

SUBJECT: Consider an ordinance amending existing ordinance no. 8019 establishing a 45 mph speed limit on a portion of Briarwood Avenue west of Holiday Hill Road

Purpose:

Consider an ordinance amending existing ordinance no. 8019 establishing a 45 mph speed limit on a portion of Briarwood Avenue west of Holiday Hill Road

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Approximately \$1,000.00 for installation cost of signs, posts and pavement markings including materials, equipment and labor.

Discussion:

The Legal Department has prepared an ordinance amending the existing ordinance No 8019 establishing a 45 mph speed limit on a portion of Briarwood Avenue as follows:

Briarwood Avenue (both directions):

45 mph from the centerline of Holiday Hill Rd continuing West a distance of one mile.

Attached is a map indicating limits of this proposed 45mph speed limit.

Staff recommends approval of this ordinance.

ORDINANCE NO.

AN ORDINANCE ALTERING PRIMA FACIE SPEED LIMITS ALONG CERTAIN STREETS IN THE CITY; AUTHORIZING INSTALLATION OF APPROPRIATE SIGNS AND MARKINGS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00); REPEALING PORTIONS OF ORDINANCE 8384; AND ORDERING PUBLICATION

WHEREAS, under Section 542.202 and Section 545.356 of the Texas Transportation Code, the City Council is authorized to make certain findings based upon engineering and traffic investigations and to alter the prima facie speed limits on City streets or portions thereof; and

WHEREAS, the City Traffic Engineer has made studies and surveys of the traffic flowing along certain streets within the City limits of Midland, Texas; and

WHEREAS, the Council finds and determines from the above mentioned studies that certain streets, as hereinafter described in this ordinance, should be speed zoned to rates hereinafter set out in this ordinance;

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

SECTION ONE. That no person shall drive a vehicle on those certain streets as set out below at a speed greater than is reasonable or prudent under the circumstances then existing. The speed limits specified in this Section shall be lawful, but any speed in excess of the limits specified in this Section shall be prima facie evidence that the speed is not reasonable or prudent and is unlawful. The speed of motor vehicles on those streets as set out below is hereby established at the rate or rates shown opposite the affected streets or roads, to wit:

“A” Street (both directions)

35 mph - from the centerline of Wall Avenue to the centerline of Scharbauer Drive

40 mph - from the centerline of Scharbauer Drive to the centerline of Wadley Avenue

45 mph - from the centerline of Wadley Avenue to the centerline of Veterans Airpark Lane

45 mph - from the centerline of Loop 250 to the centerline of Soloman Lane

40 mph - from the centerline of Soloman Lane to the centerline of Mockingbird Lane
Veterans Airpark Lane (both directions)

45 mph - from the centerline of Big Spring Street to the centerline of “A” Street
Briarwood Avenue (both directions)

35 mph - from the centerline of Midland Drive to the centerline of Amistad Drive

40 mph - from the centerline of Amistad Drive to the centerline of Holiday Hill Road

45 mph - from the centerline of Holiday Hill Road to a point one (1) mile west of the centerline of Holiday Hill Road

60 mph - from a point one (1) mile west of the centerline of Holiday Hill Road to the City Limit.

Garfield Street (both directions)

35 mph - from the centerline of Carter Avenue to the centerline of Wall Avenue

20 mph - from the centerline of Ohio Avenue to the centerline of Tennessee Avenue

35 mph - from the centerline of Tennessee Avenue to the centerline of Wadley Avenue

40 mph - from the centerline of Wadley Avenue to the centerline of Loop 250

45 mph - from the centerline of Loop 250 to the centerline of Bluebird Lane

Holiday Hill Road (both directions)

45 mph - from the centerline of Loop 250 to the centerline of Briarwood Avenue

Industrial Avenue (both directions)

35 mph - from the centerline of Marienfeld Street to the centerline of Cotton Flat Road

40 mph - from the centerline of Cotton Flat Road to the centerline of Midkiff Road

Midkiff Road (both directions)

45 mph - from the centerline of Mockingbird Lane to the centerline of Loop 250

40 mph - from the centerline of Loop 250 to the centerline of Wall Street

35 mph - from the centerline of Wall Street to the centerline of Industrial Avenue

40 mph - from the centerline of Industrial Avenue to a point 2500 feet south of the centerline of Industrial Avenue

45 mph - from a point 2500 feet south of the centerline of Industrial Avenue to the south City limits

Northgate Avenue (both directions)

35 mph - from the centerline of Northcrest Drive to the centerline of Briarwood Avenue

Scharbauer Drive (both directions)

35 mph - from the centerline of Golf Course Road to the centerline of Lamesa Road

Soloman Lane (both directions)

40 mph - from the centerline of Big Spring Street to the centerline of "A" Street

Terrell Street (both directions)

35 mph - from the centerline of Florida Avenue to the centerline of Front Street

Wadley Avenue (both directions)

45 mph - from the centerline of Fairgrounds Road to the centerline of Lamesa Road

35 mph - from the centerline of Lamesa Road to the centerline of Big Spring Street

40 mph - from the centerline of Big Spring Street to the centerline of Midkiff Road

45 mph - from the centerline of Midkiff Road to the centerline of Loop 250

35 mph - from the centerline of Loop 250 to the centerline of Crowley Boulevard

SECTION TWO. That the above speed zoning is based upon findings and determinations of the City Council made as a result of certain traffic surveys and studies made by the City Traffic Engineer.

SECTION THREE. That the Traffic Engineer of the City of Midland is hereby authorized and directed to install appropriate speed zone signs commensurate with the provisions of this ordinance.

SECTION FOUR. That any person violating the prima facie speed limits established by this ordinance shall, upon conviction, be punished by a fine of not less than one Dollar

(\$1.00) nor more than Two Hundred Dollars (\$200.00), as fully prescribed by Section 542.401 of the Texas Transportation Code.

SECTION FIVE. That all existing ordinances, or any part thereof, specifically Ordinance No. 8384, in conflict with this ordinance are hereby expressly repealed.

Not repealed, amended, or in any way affected by this ordinance are those ordinances establishing speed limits in school zones or school crossings.

SECTION SIX. That repeal of the ordinances, or parts of ordinances, effectuated by the enactment of this ordinance shall not be construed as abating any actions pending under or by virtue of such ordinances; or as discontinuing, abating, modifying or altering any penalty accruing or to accrue; or as affecting the liability of any person, firm or corporation; or as waiving any right of the municipality under any section or provision existing at the time of the passage of this ordinance.

SECTION SEVEN. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION EIGHT. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

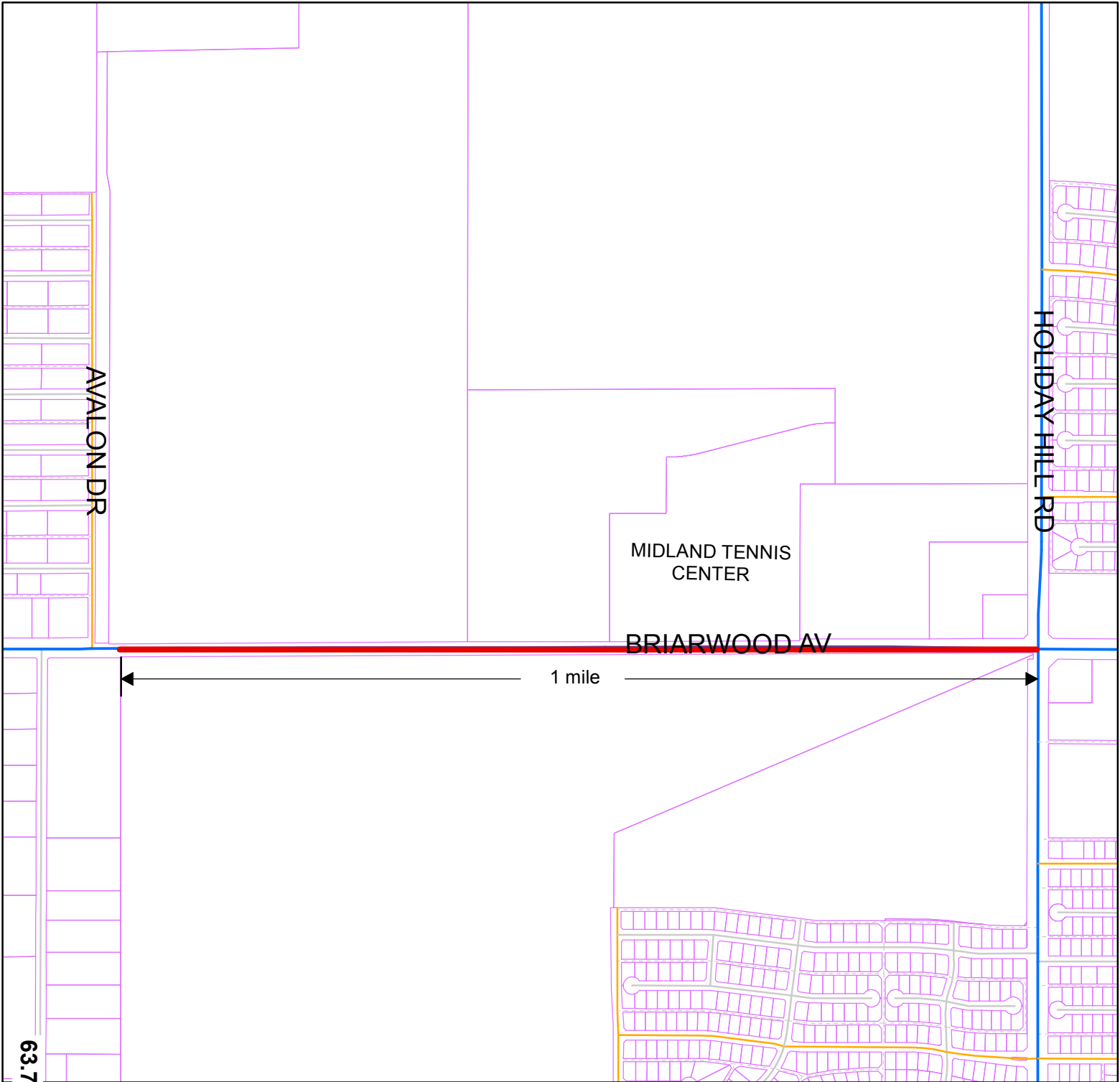
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Gary Saunders, Transportation Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



BRIARWOOD AVENUE

Proposed 45 M.P.H.
Speed Zone





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Morris Williams, Solid Waste Director

SUBJECT: Consider an ordinance amending Title III, Chapter 1, Section 9 of the City Code.

Purpose:

Consider an ordinance amending Title III, "Department", Chapter 1, "Water Department", Section 9, "Optional Litter Abatement and Beautification Fee" to impose a mandatory Litter a, Health and General Sanitation", Chapter 6, "Garbage, Trash and Rubbish", Section 23, "Placement of refuse containers on apartment and other commercial establishment premises" to replace the verbiage containing Director of Utilities to Director of Solid Waste.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The inception of a mandatory Litter Abatement fee of \$1.00 per account should generate an estimated \$420,000.

Discussion:

The current revenue from the optional Litter Abatement and Beautification Fee is not funding the programs that we have in place for litter abatement. Additionally, the Solid Waste and Landfill divisions are supplementing the Litter Abatement division. The inception of a mandatory fee will allow for the programs to be funded by the revenues brought in by the fee.

3-1-9 Optional Litter Abatement and Beautification Fee.

Modify:

3-1-9. - Optional Litter Abatement and Beautification Fee.

(A)

An Optional Litter Abatement and Beautification Fee is hereby established and shall be charged to each utility customer.

(B)

Each month all utility customers shall be assessed an Optional Litter Abatement and Beautification Fee of \$0.50.

(C)

If a utility customer elects not to pay the Optional Litter Abatement and Beautification Fee of \$0.50, their water service will not be discontinued, nor will the utility customer be subjected to arrest or criminal proceedings.

(D)

The combined utility bill shall be designed to allow the customer to elect, by an affirmative act, not to pay the \$0.50 Optional Litter Abatement and Beautification Fee.

(E)

If a customer chooses not to pay the Optional Litter Abatement and Beautification Fee, the election must be made on a monthly basis

To:

3-1-9. - Litter Abatement and Beautification Fee.

(A)

A Litter Abatement and Beautification Fee is hereby established and shall be charged to each utility customer.

(B)

Each month all utility customers shall be assessed a Litter Abatement and Beautification Fee of \$1.00.

ORDINANCE NO.

AN ORDINANCE AMENDING TITLE III, “DEPARTMENTS”, CHAPTER 1, “WATER DEPARTMENT” SECTION 9 “OPTIONAL LITTER ABATEMENT AND BEAUTIFICATION FEE,” OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO MAKE SAID LITTER ABATEMENT AND BEAUTIFICATION FEE MANDATORY AND TO INCREASE THE FEE FROM FIFTY CENTS (\$0.50) TO ONE DOLLAR (\$1.00); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION

WHEREAS, Title III, “Departments”, Chapter 1, “Water Department” Section 9 “Optional Litter Abatement and Beautification Fee,” of the City Code of Midland, Texas, contains an optional Litter Abatement and Beautification Fee of Fifty Cents (\$0.50); and

WHEREAS, the City Council finds it to be in the public interest to amend said Ordinance, thus making said fee mandatory, and increasing said fee to One Dollar (\$1.00);

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

SECTION ONE. That Title III, “Departments”, Chapter 1, “Water Department” Section 9 “Optional Litter Abatement and Beautification Fee,” of the City Code of Midland, Texas, shall be amended to read as follows:

3-1-9. Mandatory Litter Abatement and Beautification Fee.

(A) A Mandatory Litter Abatement and Beautification Fee of One Dollar (\$1.00) is hereby established and shall be charged to each utility customer.

(B) Each month all utility customers shall be assessed a Mandatory Litter Abatement and Beautification Fee of One Dollar (\$1.00) which shall be reflected on their monthly utility bill.

(C) Payment of the Mandatory Litter Abatement and Beautification Fee is mandatory.

SECTION TWO. Any person wishing to appeal the payment of the Mandatory Litter Abatement and Beautification Fee established by this Ordinance may do so. Any person may appeal to the City Manager, or his designee, prior to paying the fee or after paying the fee. If a person wishes to appeal after payment of the fee, the person shall appeal to the City

Manager, or his designee, in writing within ten (10) calendar days of paying the fee. The City Manager or his designee, shall provide a full and meaningful review process. The City Manager, or his designee, shall provide a fair opportunity for any person to challenge the accuracy and legal validity of their fee obligation. The City Manager, or his designee, shall also provide a clear and certain remedy for any erroneous or unlawful fee collection to ensure that the opportunity to contest the fee is a meaningful one. Options that the City Manager, or his designee, shall consider in providing a clear and certain remedy are a refund of any excess fee paid, as well as other factors such as ensuring that a person, if eligible, may continue to receive utility services regardless of the outcome of any appeal filed hereunder. Any person may appeal to the City Manager, or his designee, if the person believes that he or she cannot afford the fees. The person may seek an exemption from all or part of the fee. The City shall not file criminal charges against any person if any fee described in this Ordinance is not paid. The City shall not file criminal charges against a person in an attempt to collect the fee.

The City Manager, or his designee, shall make his decision in writing within ten (10) days of receiving the appeal. A person shall incur no financial hardship by exercising his or her right to appeal. Said fee shall not be required from a person that cause a loss of livelihood, or substantial damage to a business.

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 effective date of this Ordinance shall be October 1, 2012.

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 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 FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Morris Williams, Solid Waste Director

SUBJECT: Consider an ordinance amending Title VIII, Chapter 6, Section 9 of the City Code.

Purpose:

Consider an ordinance amending Title VIII, "Food Establishments, Health and General Sanitation", Chapter 6, "Garbage, Trash and Rubbish", Section 9, "Collection from commercial customers."

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Increase revenue in the Sanitation Fund to cover operating and capital costs of the Solid Waste Department.

Discussion:

The solid waste and landfill rates are being increased to compensate for the rising operating costs of the Solid Waste Department. Currently, the City of Midland's commercial solid waste rates and landfill tipping fees are lower than the competitive market and are not capturing the revenue to cover the operating costs of the department.

8-6-9 Collection from commercial customers

Commercial rate for one container with twice per week pickup: Currently \$51.00 – Proposed \$62.00. All rates will be based off the \$62.00 base rate.

Remove Table 1. STANDARD COMMERCIAL LOCATIONS: THREE YARD CONTAINERS and replace and replace with the table below.

Number of Containers	Rate (plus current tax rate)
Twice a week service (Monday and Thursday or Tuesday and Friday)	

0.25	\$15.50
0.5	\$31.00
0.75	\$46.50
1	\$62.00
2	\$117.80
3	\$173.60
4	\$229.40
5	\$285.20
6	\$341.00
7	\$396.80
8	\$452.60
9	\$508.40
10	\$564.20
11	\$620.00
12	\$675.80
13	\$731.60
14	\$787.40
15	\$843.20
16	\$899.00
17	\$954.80
18	\$1,010.60
19	\$1,066.40
20	\$1,122.20
21	\$1,178.00
22	\$1,233.80
23	\$1,289.60
24	\$1,345.40
25	\$1,401.20
Three Times a week service (Monday, Wednesday, and Friday)	
0.25	\$23.25
0.5	\$46.50
0.75	\$69.75
1	\$93.00
2	\$176.70
3	\$260.40
4	\$344.10
5	\$427.80
6	\$511.50
7	\$595.20
8	\$678.90
9	\$762.60
10	\$846.30

11	\$930.00
12	\$1,013.70
13	\$1,097.40
14	\$1,181.10
15	\$1,264.80
16	\$1,348.50
17	\$1,432.20
18	\$1,515.90
19	\$1,599.60
20	\$1,683.30
21	\$1,767.00
22	\$1,850.70
23	\$1,934.40
24	\$2,018.10
25	\$2,101.80
Four times a week service (Monday, Tuesday, Thursday, and Friday)	
0.25	\$31.00
0.5	\$62.00
0.75	\$93.00
1	\$124.00
2	\$235.60
3	\$347.20
4	\$458.80
5	\$570.40
6	\$682.00
7	\$793.60
8	\$905.20
9	\$1,016.80
10	\$1,128.40
11	\$1,240.00
12	\$1,351.60
13	\$1,463.20
14	\$1,574.80
15	\$1,686.40
16	\$1,798.00
17	\$1,909.60
18	\$2,021.20
19	\$2,132.80
20	\$2,244.40
21	\$2,356.00
22	\$2,467.60
23	\$2,579.20

24	\$2,690.80
25	\$2,802.40
Five times a week service (Monday through Friday)	
0.25	\$38.75
0.5	\$77.50
0.75	\$116.25
1	\$155.00
2	\$294.50
3	\$434.00
4	\$573.50
5	\$713.00
6	\$852.50
7	\$992.00
8	\$1,131.50
9	\$1,271.00
10	\$1,410.50
11	\$1,550.00
12	\$1,689.50
13	\$1,829.00
14	\$1,968.50
15	\$2,108.00
16	\$2,247.50
17	\$2,387.00
18	\$2,526.50
19	\$2,666.00
20	\$2,805.50
21	\$2,945.00
22	\$3,084.50
23	\$3,224.00
24	\$3,363.50
25	\$3,503.00

Remove Table II. Compactors and replace with current “Table II. Roll Off Open Top Containers/Compactors” listed below.

TABLE II. ROLL OFF OPEN TOP CONTAINERS/COMPACTORS.

Three days (1 pick up)	OT 165.00	(Plus applicable tax & disposal fee)
One week (1 pick up)	OT 185.00	(Plus applicable tax & disposal fee)
One month (1 pick up per week)	OT 675.00	(Plus applicable tax & disposal fee)
Additional collections	OT 125.00 Each	(Plus applicable tax & disposal fee)

The term "OT" as used in Table II, Roll off open top containers/compactors, shall mean an open top container or compactor. For roll off open top containers and compactors, the charge will be five dollars per day rental, \$25.00 delivery fee, and \$125.00 per pull (pickup) plus applicable tax and disposal fee. These rates are for rental, delivery, and listed pickups only and do not include the per ton disposal charges.

Remove Table IV. Six and Eight Yard Containers.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF MIDLAND AMENDING TITLE VIII, "FOOD ESTABLISHMENTS, HEALTH AND GENERAL SANITATION," CHAPTER 6, "GARBAGE, TRASH AND RUBBISH," SECTION 9, "COLLECTION FROM COMMERCIAL CUSTOMERS," SUBSECTION (A) OF THE MIDLAND CITY CODE SO AS TO INCREASE THE RATES CHARGED TO COMMERCIAL CUSTOMERS FOR THE COLLECTION AND DISPOSAL OF GARBAGE, TRASH AND RUBBISH; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; ESTABLISHING AN EFFECTIVE DATE OF OCTOBER 1, 2012; AND ORDERING PUBLICATION

WHEREAS, currently, the City of Midland's commercial solid waste rates and landfill tipping fees are lower than competitive market rates and insufficient to capture the revenue necessary to cover the operating costs of the Solid Waste Department; and

WHEREAS, increasing the rates charged to commercial customers for the collection and removal of garbage, trash and waste will help to compensate for the rising operational costs at the Solid Waste Department; and

WHEREAS, the City Council finds it to be in the public interest to amend the rates charged to commercial customers for the collection and removal of garbage, trash and rubbish;

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

SECTION ONE. That Title VIII, "Food Establishments, Health and General Sanitation," Chapter 6, "Garbage, Trash and Rubbish," Section 9, "Collection from Commercial Customers," Subsection (A) of the City Code of Midland, Texas, shall be amended to read as follows:

(A) The charges for collection and removal of garbage, trash, or waste from all commercial customers which have refuse containers furnished by the City shall be as follows:

TABLE 1. STANDARD COMMERCIAL LOCATIONS:

THREE YARD CONTAINERS.

Commercial rates: (Includes apartments and mobile home parks)

No. of Containers	Rate (plus current tax rate)
Twice a week service (Monday and Thursday or Tuesday and Friday)	
0.25	\$15.50
0.5	\$31.00
0.75	\$46.50
1	\$62.00
2	\$117.80
3	\$173.60
4	\$229.40
5	\$285.20
6	\$341.00
7	\$396.80
8	\$452.60
9	\$508.40
10	\$564.20
11	\$620.00
12	\$675.80
13	\$731.60
14	\$787.40
15	\$843.20
16	\$899.00
17	\$954.80
18	\$1,010.60
19	\$1,066.40
20	\$1,122.20

21	\$1,178.00
22	\$1,233.80
23	\$1,289.60
24	\$1,345.40
25	\$1,401.20

Three Times a week service (Monday, Wednesday, and Friday

0.25	\$23.25
0.5	\$46.50
0.75	\$69.75
1	\$93.00
2	\$176.70
3	\$260.40
4	\$344.10
5	\$427.80
6	\$511.50
7	\$595.20
8	\$678.90
9	\$762.60
10	\$846.30
11	\$930.00
12	\$1,013.70
13	\$1,097.40
14	\$1,181.10
15	\$1,264.80
16	\$1,348.50
17	\$1,432.20

18	\$1,515.90
19	\$1,599.60
20	\$1,683.30
21	\$1,767.00
22	\$1,850.70
23	\$1,934.40
24	\$2,018.10
25	\$2,101.80

Four times a week service (Monday, Tuesday, Thursday, and Friday)

0.25	\$31.00
0.5	\$62.00
0.75	\$93.00
1	\$124.00
2	\$235.60
3	\$347.20
4	\$458.80
5	\$570.40
6	\$682.00
7	\$793.60
8	\$905.20
9	\$1,016.80
10	\$1,128.40
11	\$1,240.00
12	\$1,351.60
13	\$1,463.20
14	\$1,574.80
15	\$1,686.40

16	\$1,798.00
17	\$1,909.60
18	\$2,021.20
19	\$2,132.80
20	\$2,244.40
21	\$2,356.00
22	\$2,467.60
23	\$2,579.20
24	\$2,690.80
25	\$2,802.40

Five times a week service (Monday through Friday)

0.25	\$38.75
0.5	\$77.50
0.75	\$116.25
1	\$155.00
2	\$294.50
3	\$434.00
4	\$573.50
5	\$713.00
6	\$852.50
7	\$992.00
8	\$1,131.50
9	\$1,271.00
10	\$1,410.50
11	\$1,550.00
12	\$1,689.50

13	\$1,829.00
14	\$1,968.50
15	\$2,108.00
16	\$2,247.50
17	\$2,387.00
18	\$2,526.50
19	\$2,666.00
20	\$2,805.50
21	\$2,945.00
22	\$3,084.50
23	\$3,224.00
24	\$3,363.50
25	\$3,503.00

If a commercial location, an apartment complex or mobile home park requires more than one whole three-yard container, any additional whole three-yard container will be billed at ten percent (10%) less than the first whole three-yard container.

TABLE II. ROLL OFF OPEN TOP CONTAINERS/COMPACTORS.

Three days (1 pick up)	OT 165.00	(Plus applicable tax & disposal fee)
One week (1 pick up)	OT 185.00	(Plus applicable tax & disposal fee)
One month (1 pick up per week)	OT 675.00	(Plus applicable tax & disposal fee)
Additional collections	OT 125.00 Each	(Plus applicable tax & disposal fee)

The term "OT" as used in TABLE II. ROLL OFF OPEN TOP CONTAINERS/COMPACTORS, shall mean an open top container or compactor. For roll off open top containers and compactors, the charge will be Five Dollars (\$5.00) per day rental, Twenty-Five Dollars (\$25.00) delivery fee, and One Hundred Twenty-Five Dollars (\$125.00) per pull (pickup) plus applicable tax and disposal fee. These rates are for rental, delivery and listed pickups only and do not include the per ton disposal charges.

SECTION TWO. That this ordinance shall be effective on October 1, 2012.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by law as an alternative method of publication.

SECTION SIX. The City Manager shall notify all customers outside the City limits of the rate changes as required by state law.

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:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

MEETING DATE: 9/11/2012

Approved for Agenda:
JNichols
City Manager's Office

TO: City Council / City Manager

FROM: Morris Williams, Solid Waste Director

SUBJECT: Consider an ordinance amending Title VIII, Chapter 6, Section 12 of the City Code.

Purpose:

Consider an ordinance amending Title VIII, "Food Establishments, Health and General Sanitation", Chapter 6, "Garbage, Trash and Rubbish", Section 12, "Removal of garbage, trash, or waste other than by the City" to better define the Garbage Hauler's permit.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

N/A

Discussion:

The Garbage Hauler's Permit is not explicitly defined as to who shall operate with permits as opposed to who shall not. The modification of this section will further define and explain who shall require a permit to haul garbage within the City of Midland.

8-6-12 Removal of garbage, trash or waste other than by the City.

8-6-12 (A)

Remove the following paragraphs:

"A garbage hauler's permit entitles the holder to collect, remove and dispose of garbage from the premises of others with their consent. The holder of such a permit shall not collect, remove or dispose of trash or waste and shall not make any agreement with another to collect, remove or dispose of trash or waste without the proper consent.

A trash hauler's permit entitles the holder to collect, remove and dispose of trash from the premises of others with their consent. The holder of such a permit shall not collect, remove or dispose of garbage or waste and shall not make any agreement with another to collect, remove or dispose of garbage or waste without having the proper consent."

Modify:

A commercial hauler's permit entitles the holder to collect, remove and dispose of garbage, trash or waste from the premises of others with their consent.

To:

A garbage hauler's permit entitles the holder to collect, remove and dispose of garbage, trash or waste from the premises of others with their consent.

8-6-12 (B)

Modify:

1.

Application for permits shall be filed with the Superintendent of Solid Waste, stating the name and address of the applicant and the type of permit applied for, and shall be accompanied by the payment of the following fees:

For each garbage hauler's permit, \$100.00 per year for each vehicle.

For each trash hauler's permit, \$50.00 per year for each vehicle.

For each commercial hauler's permit, \$500.00 per year for each vehicle.

2.

All permits shall be issued for one year and may be renewed for successive years upon approval by the superintendent of solid waste and payment for each vehicle at the same fee as for an original permit.

To:

1.

Application for permits shall be filed with the Director of Solid Waste, stating the name and address of the applicant and the type of permit applied for, and shall be accompanied by the payment of the following fees:

For each garbage hauler's permit, \$500.00 per year for each vehicle.

2.

All permits shall be issued for one calendar year beginning in January and ending in December, and may be renewed for successive years upon approval by the Director of Solid Waste and payment for each vehicle at the same fee as for an original permit.

8-6-12 (C)

Modify:

Identifying vehicles.

The solid waste superintendent shall assign and/or record an identifying number of each vehicle operated under a garbage hauler's, trash hauler's, or commercial hauler's permit, and the permit holder shall paint or decal the appropriate identifying number in a plainly visible place on the left side of the vehicle to which such number applies and/or any other location on the vehicle deemed appropriate for identification purposes.

To:

Identifying vehicles.

The solid waste superintendent shall assign and/or record an identifying number of each vehicle operated under a garbage hauler's permit, and the permit holder shall paint or decal the appropriate identifying number in a plainly visible place on the left side of the vehicle to which such number applies and/or any other location on the vehicle deemed appropriate for identification purposes.

8-6-12 (D)

Modify:

2.

No person shall dispose of any trash removed under a trash hauler's permit, garbage haulers permit or a commercial hauler's permit except as authorized and approved, in writing, by all appropriate regulatory bodies.

To:

2.

No person shall dispose of any trash removed under a garbage haulers permit except as authorized and approved, in writing, by all appropriate regulatory bodies.

ORDINANCE NO.

AN ORDINANCE AMENDING TITLE VIII, “FOOD ESTABLISHMENTS, HEALTH AND GENERAL SANITATION,” CHAPTER 6, “GARBAGE, TRASH AND RUBBISH,” SECTION 12 “REMOVAL OF GARBAGE, TRASH OR WASTE OTHER THAN BY THE CITY,” OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO CLARIFY RULES RELATED TO GARBAGE HAULER’S PERMITS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION

WHEREAS, the City Council finds it to be in the public interest to amend Title VIII, “Food Establishments, Health and General Sanitation,” Chapter 6, “Garbage, Trash and Rubbish,” Section 12 “Removal of Garbage, Trash or Waste Other than by the City,” of the City Code of Midland, Texas, so as to clarify rules related to garbage hauler’s permits;

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

SECTION ONE. That Title VIII, “Food Establishments, Health and General Sanitation,” Chapter 6, “Garbage, Trash and Rubbish,” Section 12 “Removal of Garbage, Trash or Waste Other than by the City,” of the City Code of Midland, Texas, shall be amended to read as follows:

8-6-12. Removal of Garbage, trash or waste other than by the City.

The owner or person in charge of any commercial premises may remove, or contract for the removal of garbage, trash or waste, with an entity other than the City solid waste division, if the hauler complies with the requirements of this Section. Garbage, trash or waste collection for residential premises will be provided by the City solid waste division unless otherwise approved.

- (A) *Permits required.* No person (other than the City and its employees acting in the scope of their employment) shall collect, remove or dispose of garbage, trash or waste from any premises within the City, except premises owned or controlled by the person, without first obtaining a permit. Said person shall obtain all appropriate permits from federal, state, and city solid waste

authorities. All federal, state, and city solid waste regulations must be adhered to.

A garbage hauler's permit entitles the holder to collect, remove and dispose of garbage, trash or waste from the premises of others with their consent.

(B) *Application, insurance and fees.*

1. Application for permits shall be filed with the Director of Solid Waste, stating the name and address of the applicant and the type of permit applied for, and shall be accompanied by the payment of the following fees:

For each garbage hauler's permit, \$500.00 per year for each vehicle.

2. All permits shall be issued for one calendar year beginning January 1 and ending December 31, and may be renewed for successive years upon approval by the Director of Solid Waste and payment for each vehicle at the same fee as for an original permit.
3. Before issuing any permit or renewal for vehicles over one ton capacity the solid waste superintendent shall inspect the vehicle proposed to be used and shall certify whether the vehicle complies with the requirements of this Chapter and the solid waste superintendent shall issue or refuse the permit in accordance with such certification. Provided, that the City Council has determined that there is a present public need and necessity for such additional service and that the applicant is qualified both financially and morally to engage in a public service.
4. No person shall hold a permit or do any act for which such permit is required without having in effect a policy of public liability insurance issued by a company authorized to do business in the state in the

amount of \$100,000.00 for death of or injury to any one person in one accident, \$300,000.00 for death or injury to more than one person in any one accident and \$10,000.00 property damage.

(C) *Identifying Vehicles.* The solid waste superintendent shall assign and/or record an identifying number of each vehicle operated under a garbage hauler's permit, and the permit holder shall paint or decal the appropriate identifying number in a plainly visible place on the left side of the vehicle to which such number applies and/or any other location on the vehicle deemed appropriate for identification purposes.

(D) *Equipment and methods of disposal.*

1. Each vehicle operating under any permit shall be fully enclosed or shall be enclosed at the sides and equipped with a tarpaulin and methods of fastening the same so as to avoid spilling garbage, trash or waste, disseminating odors, or attracting insects. Such vehicle shall be kept closed or covered at all times when in use except as may be necessary for loading and unloading.

It shall be unlawful for any person to operate, or allow his employee to operate, any vehicle not complying with this paragraph.

2. No person shall dispose of any trash removed under a garbage haulers permit except as authorized and approved, in writing, by all appropriate regulatory bodies.
3. The driver of any vehicle licensed hereunder shall immediately gather up and place in his vehicle any garbage or trash which is spilled from such vehicle in transit or spilled from the vehicle while loading.
4. All vehicles carrying garbage or trash may be inspected by the division of solid waste at any time to determine whether they are properly

equipped and kept in a sanitary condition.

- (E) *Revocation of permits.* After five days notice, any permit may be revoked or suspended at any time by the superintendent of solid waste for violation of any provision of this Chapter, or for failure to carry out any lawful agreement for the removal of garbage or trash. The licensee may appeal to the City Council from the decision of the superintendent of solid waste.

SECTION TWO. 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 THREE. 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 FOUR. The effective date of this Ordinance shall be October 1, 2012.

SECTION FIVE. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by 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 FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Morris Williams, Solid Waste Director

SUBJECT: Consider an ordinance amending Title VIII, Chapter 6, Section 23 of the City Code.

Purpose:

Consider an ordinance amending Title VIII, "Food Establishments, Health and General Sanitation", Chapter 6, "Garbage, Trash and Rubbish", Section 23, "Placement of refuse containers on apartment and other commercial establishment premises" to replace the verbiage containing Director of Utilities to Director of Solid Waste.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

N/A

Discussion:

The Solid Waste and Landfill divisions were under the direction of the Utilities Department and were managed by the Director of Utilities. Since the divisions are now managed by the Solid Waste Department, the Director of Solid Waste is now managing those divisions and the enforcing this section of the City Code.

8-6-23 Placement of refuse containers on apartment and other commercial establishment premises.

Change all verbiage from "Director of Utilities" to "Director of Solid Waste".

ORDINANCE NO.

AN ORDINANCE AMENDING TITLE VIII, "FOOD ESTABLISHMENTS, HEALTH AND GENERAL SANITATION," CHAPTER 6, "GARBAGE, TRASH AND RUBBISH," SECTION 23 "PLACEMENT OF REFUSE CONTAINERS ON APARTMENT AND OTHER COMMERCIAL ESTABLISHMENT PREMISES," OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO CHANGE THE VERBIAGE CONTAINING DIRECTOR OF UTILITIES TO DIRECTOR OF SOLID WASTE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION

WHEREAS, the City Council finds it to be in the public interest to amend Title VIII, "Food Establishments, Health and General Sanitation," Chapter 6, "Garbage, Trash and Rubbish," Section 23 "Placement of Refuse Containers on Apartment and Other Commercial Establishment Premises," of the City Code of Midland, Texas, so as to change the verbiage containing Director of Utilities to Director of Solid Waste;

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

SECTION ONE. That Title VIII, "Food Establishments, Health and General Sanitation," Chapter 6, "Garbage, Trash and Rubbish," Section 23 "Placement of Refuse Containers on Apartment and Other Commercial Establishment Premises," of the City Code of Midland, Texas, shall be amended to read as follows:

8-6-23. Placement of refuse containers on apartment and other commercial establishment premises.

- (A) The owner or person in charge of an apartment complex shall provide, at a minimum, three cubic yards of refuse container space on the premises for each 15 individual apartment units. An individual apartment unit shall mean an efficiency, one, two or three bedroom apartment. Refuse container space shall be sufficient so that material placed within the container remains at or below the lip of the container. If at any time material protrudes beyond the lip of the container, the owner or person in charge of the premises is in violation of this Section.

- (B) The owner or person in charge of a commercial establishment other than an apartment complex shall provide sufficient refuse container space so that material placed within the container remains at or below the lip of the container. If at any time material protrudes beyond the lip of the container, the owner or person in charge of the premises is in violation of this Section.
- (C) The Director of Solid Waste of the City of Midland shall give written notice of a violation of this Section to the owner or person in charge of the apartment or other commercial establishment, and, if said establishment is serviced by a commercial trash hauler under Section 8-6-12 of the Midland City Code, duplicate notice shall be provided to the commercial trash hauler. The notice shall be hand delivered or sent by certified mail, return receipt requested, and shall advise the recipient that the City's placement of an additional refuse container is imminent and contain the protest procedure set out in this Section.
- (D) Issuance of a notice of violation of this Section imposes a duty on the owner or person in charge of the commercial establishment or apartment complex to eliminate material protruding beyond the lip of the container by either (1) providing additional refuse containers or (2) immediately arranging for additional trash pickups.
- (E) Twenty-four hours after the delivery of the notice of violation, excluding weekends and holidays, the Director of Solid Waste may, in his/her discretion, cause additional refuse containers to be placed on the violator's premises. In such an event:
 - (1) The owner or person in charge of the commercial establishment or apartment complex may protest the placement of refuse containers on the premises to the Director of Solid Waste no later than the fifth day following placement, excluding weekends and holidays.
 - (2) Process to protest placement of refuse containers:
 - (a) The owner or person in charge of the commercial establishment or apartment complex must notify the City's Director of Solid Waste in writing of their intention to protest no later than the fifth day of

- placement of an additional refuse container or containers by the City, excluding weekends and holidays.
- (b) The protest shall be heard, and a decision issued by the Director of Solid Waste, in writing, no later than seven days after the placement of the containers by the City, excluding weekends and holidays.
 - (c) Grounds for removal of the City's additional refuse container(s) may include evidence that the owner or person in charge has provided additional refuse container space or additional pickups of existing containers.
 - (d) If the Director of Solid Waste finds in favor of the owner or the person in charge, the City shall promptly remove any refuse container placed on the premises pursuant to this Section, without any charge being assessed against the premises.
 - (e) If the Director of Utilities finds in favor of the City, the Director may:
 - (1) leave the container(s) on the premises; (2) in the case of premises served by City, provide for more frequent pickups; or (3) effect a combination of these, whichever is deemed by the Director to be more appropriate.
- (3) Process to Appeal Decision of Director of Solid Waste. If the Director of Utilities finds in favor of the City, and the owner or person in charge wishes to appeal the decision, the owner or person in charge shall provide written notice of appeal to the City Manager no later than two days following receipt of the Director's decision, excluding weekends and holidays. The City Manager or his designee shall hear the appeal within three days of receipt of the notice of appeal, excluding weekends and holidays. The City Manager shall provide his decision, in writing, within 24 hours of hearing the appeal. The City Manager's decision is final.
- (4) Normal commercial rates for collection pursuant to Section 8-6-9 of the

Midland City Code shall begin to accrue the day following the conclusion of all protests and appeals.

SECTION TWO. 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 THREE. 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 FOUR. The effective date of this Ordinance shall be October 1, 2012.

SECTION FIVE. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by 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 FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Morris Williams, Solid Waste Director

SUBJECT: Consider an ordinance amending Title VIII, Chapter 6, Section 24 of the City Code.

Purpose:

Consider an ordinance amending Title VIII, "Food Establishments, Health and General Sanitation", Chapter 6, "Garbage, Trash and Rubbish", Section 24, "Charges for dumping or unloading at sanitary landfill operated by the City of Midland" to increase the landfill tipping fee and imposing a Landfill Access Fee.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Increase revenue in the Sanitation Fund to cover operating and capital costs of the Solid Waste Department.

Discussion:

The landfill rates are being increased to compensate for the rising operating costs of the Solid Waste Department. Currently, the City of Midland's landfill tipping fees are lower than the competitive market and are not capturing the revenue to cover the operating costs of the department. The Landfill Access Fee is being imposed to encourage haulers to get their garbage hauler's permit, establish minimum standards for solid waste collection and transport activities, and to monitor the hauler's who are hauling within the City of Midland.

8-6-24 Charges for dumping or unloading at sanitary landfill operated by the City of Midland.

Landfill rate at cost per ton: Currently \$28.25 – Proposed \$31.00 (Note: both of these fees include the mandatory \$1.25 state tipping fee.)

(A) Landfill Charges

- (1) Automobiles: Currently \$6.75 – Proposed \$7.44
- (2) Pickup trucks (1/2 ton): Currently \$13.50 – Proposed \$14.88
- (3) Trucks and trailers: Currently \$27.00 – Proposed \$29.75
- (4) Currently \$27.00 – Proposed \$29.75.

Landfill Access Fee of \$25 per vehicle/per visit at the landfill. This fee can be waived when a vehicle has a valid City of Midland garbage hauler's permit.

ORDINANCE NO.

AN ORDINANCE AMENDING TITLE VIII, "FOOD ESTABLISHMENTS, HEALTH AND GENERAL SANITATION," CHAPTER 6, "GARBAGE, TRASH AND RUBBISH," SECTION 24 "CHARGES FOR DUMPING OR UNLOADING AT SANITARY LANDFILL OPERATED BY THE CITY OF MIDLAND", OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO INCREASE THE RATES CHARGED FOR DUMPING OR UNLOADING AT THE SANITARY LANDFILL FACILITY OPERATED BY THE CITY OF MIDLAND AND TO INCORPORATE A TWENTY-FIVE DOLLAR (\$25.00) LANDFILL ACCESS FEE; CONTAINING AN ESCALATION CLAUSE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION

WHEREAS, municipal landfill operating expenses, including but not limited to the costs of equipment and the construction of new landfill cells, necessitate an increase in the rates charged for dumping or unloading at the sanitary landfill facility operated by the City of Midland, and the uniform imposition of a Landfill Access Fee of Twenty-Five Dollars (\$25.00); and

WHEREAS, the City Council finds it to be in the public interest to adopt an ordinance increasing the rates charged for dumping or unloading at the sanitary landfill facility operated by the City of Midland, and establishing a uniformly applied Landfill Access Fee of Twenty-Five Dollars (\$25.00);

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

SECTION ONE. That Title VIII, "Food Establishments, Health and General Sanitation," Chapter 6, "Garbage, Trash and Rubbish," Section 24, "Charges for Dumping or Unloading at Sanitary Landfill Operated by the City of Midland," Subsection (A) "Landfill Charges," of the City Code of Midland, Texas, shall be amended to read as follows:

- (A) *Landfill Charges:* That the following schedule of fees shall be charged by the City of Midland to any person that unloads or dumps any refuse or debris at any sanitary landfill facility operated by the City of Midland in accordance with the type and size of vehicle used by any such person for such purposes,

to wit:

- (1) Automobiles: \$7.44
- (2) Pickup trucks (½ ton): \$14.88
- (3) Trucks and Trailers: \$29.75/ton
- (4) Holders of valid garbage hauler's permits, commercial hauler's permits, or trash hauler's permits under 8-6-12 of the Midland City Code: \$29.75/ton

SECTION TWO. All Landfill Charges referenced in Section One above will increase by Two Percent (2%) each year on the anniversary of the effective date of this Ordinance unless otherwise modified by the City Council.

SECTION THREE. That Title VIII, "Food Establishments, Health and General Sanitation," Chapter 6, "Garbage, Trash and Rubbish," Section 24, "Charges for Dumping or Unloading at Sanitary Landfill Operated by the City of Midland," of the City Code of Midland, Texas, shall be amended to include Subsection (E) which will read as follows:

(E) *Landfill Access Fee.*

1. In addition to other applicable fees and charges, a Twenty-Five Dollar (\$25.00) Landfill Access Fee will be applied to all vehicles each time they enter the sanitary landfill premises to dispose of garbage, trash or any type of waste.
2. Vehicles owned by the City of Midland and operated by city employees acting within the course and scope of their employment with the City of Midland shall not be subject to the Landfill Access Fee.
3. Upon application and the payment of Five Hundred Dollars (\$500.00), owners or lawful operators of vehicles entering the sanitary landfill facility for the purpose of disposing of garbage, trash or any type of waste may purchase a Landfill Access Permit, good for one vehicle, to be affixed to the vehicle.
 - a. Possession of a Landfill Access Permit allows the permittee

unlimited access to the sanitary landfill facility without being charged a Landfill Access Fee, during normal business hours, during a calendar year beginning January 1, and ending December 31, of the year during which the permit is purchased. All other applicable fees will still be charged.

- b. The cost of Landfill Access Permits purchased after March 31, June 30, and September 30, will be pro-rated as appropriate.
4. A Landfill Access Permit shall be issued by the Director of Solid Waste upon application and payment of the fee authorized in this Ordinance. The Landfill Access Permit shall be affixed to the vehicle.
5. After five days notice, any Landfill Access Permit may be revoked or suspended, without reimbursement of any payment made for said permit, at any time by the Director of Solid Waste for violation of any applicable local, state or federal rule or regulation. The permittee may appeal to the City Manager from the decision of the Director of Solid Waste.

SECTION FOUR. Any person or operator wishing to appeal the payment of any fees, or the revocation of any permit, established by this Ordinance may do so. Any person or operator may appeal to the City Manager, or his designee, prior to paying the fees or after paying the fees. If a person or operator wishes to appeal after payment of the fees, the person or operator shall appeal to the City Manager, or his designee, in writing within ten (10) calendar days of paying the fees. The City Manager or his designee, shall provide a full and meaningful review process. The City Manager, or his designee, shall provide a fair opportunity for any person or operator to challenge the accuracy and legal validity of their fee obligation. The City Manager, or his designee, shall also provide a clear and certain remedy for any erroneous or unlawful fee collection to ensure that the opportunity to contest the fee is a meaningful one. Options that the City Manager, or his designee, shall consider in providing a clear and certain remedy are a refund of any excess fees paid, as well as other

factors such as ensuring that a person may continue the operation of his or her business. Any person or operator may appeal to the City Manager, or his designee, if the person or operator believes that he or she cannot afford the fees. The person or operator may seek an exemption from all or part of the fees. The City shall not file criminal charges against any person or operator if any fees described in this Ordinance are not paid. The City shall not file criminal charges against a person or operator in an attempt to collect the fees.

The City Manager, or his designee, shall make his decision in writing within ten (10) days of receiving the appeal. A person or operator shall incur no financial hardship by exercising his or her right to appeal. Said fees shall not be required from a person or operator that cause a loss of livelihood, or damage to a business.

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 effective date of this Ordinance shall be October 1, 2012.

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 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 FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Consider an Ordinance Amending Title III. "Departments", Chapter 1, "Water Department", Section 2, "Rates", Subsection (A), "Customers Inside of City Limits", of the City Code of Midland, Texas, so as to Change the Rates Charged for Water and Sewer Services; Containing a Cumulative Clause; Containing a Savings and Severability Clause; and Ordering Publication; and the City Manager Shall Notify All Customers Outside the City Limits as Required by State Law.

Purpose:

To consider an Ordinance Amending Title III. "Departments", Chapter 1, "Water Department", Section 2, "Rates", Subsection (A), "Customers Inside of City Limits", of the City Code of Midland, Texas, so as to Change the Rates Charged for Water and Sewer Services; Containing a Cumulative Clause; Containing a Savings and Severability Clause; and Ordering Publication; and the City Manager Shall Notify All Customers Outside the City Limits as Required by State Law.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The increased rates should generate sufficient revenue to compensate for additional raw water costs.

Discussion:

Current inside city water rates and structure are as follows:

Commercial customers using greater than 10,000 gallons for indoor use:

Base Rate (includes first 2,000 gallons)	\$14.35
Water usage between 2-10,000 gallons/month	\$3.26 per thousand gallons
Water usage between 10-25,000 gallons/month	\$3.91 per thousand gallons
Water usage above 25,000 gallons/month	\$4.50 per thousand gallons

Apartments:

Charge per unit for first 2,000 gallons/month pursuant to criteria for calculating apartments	\$11.50 per unit
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Residential customers:

Base Rate (includes first 2,000 gallons)	\$14.35
Water usage between 2-10,000 gallons/month	\$3.26 per thousand gallons
Water usage between 10-25,000 gallons/month	\$19.55 per thousand gallons
Water usage above 25,000 gallons/month	\$22.50 per thousand gallons

All rates are subject to a 2.5% increase on an annual basis unless modified by the City Council.

Proposed inside city water rates and structure are as follows:

Commercial customers using greater than 10,000 gallons for indoor use:

Base Rate (includes first 2,000 gallons)	\$14.71
Water usage between 2-10,000 gallons/month	\$3.50 per thousand gallons
Water usage between 10-25,000 gallons/month	\$4.60 per thousand gallons
Water usage above 25,000 gallons/month	\$6.20 per thousand gallons

Apartments:

Charge per unit for first 2,000 gallons/month pursuant to criteria for calculating apartments	\$11.50 per unit
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Residential customers:

Base Rate (includes first 2,000 gallons)	\$14.71
Water usage between 2-10,000 gallons/month	\$3.50 per thousand gallons
Water usage between 10-25,000 gallons/month	\$23.00 per thousand gallons
Water usage above 25,000 gallons/month	\$31.00 per thousand gallons

All rates are subject to a 2.5% increase on an annual basis unless modified by the City Council.

ORDINANCE NO.

AN ORDINANCE AMENDING TITLE III, "DEPARTMENTS", CHAPTER 1, "WATER DEPARTMENT", SECTION 2, "RATES," SUBSECTION (A), "CUSTOMERS INSIDE OF CITY LIMITS," SUB-SUBSECTION 1., "WATER RATES," OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO INCREASE THE RATES CHARGED TO CUSTOMERS INSIDE THE CITY LIMITS FOR WATER; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION; AND THE CITY MANAGER SHALL NOTIFY ALL CUSTOMERS OUTSIDE THE CITY LIMITS AS REQUIRED BY STATE LAW

WHEREAS, the rates or charges for water services provided by the City of Midland need to be revised in order to adequately compensate the City for such service; and

WHEREAS, the City Council of the City of Midland, Texas, finds it to be in the public interest to revise and change the rates or charges for water services provided by the City of Midland;

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

SECTION ONE. That Title III, "Departments," Chapter One, "Water Department" Section 2, "Rates," Subsection (A), "Customers Inside of City Limits," Sub-subsection 1, "Water Rates," of the City Code of Midland, Texas, shall be amended to hereafter read as follows:

3-1-2 **RATES:**

(A) Customers Inside of City Limits:

1. Water Rates: The monthly water rates or charges for services furnished by the City's waterworks system shall be as follows:
 - (a) Except for sub-section (b) below, for all customers other than apartments, the following charges shall apply:
 - i. The minimum charge shall be \$14.71 for the first 2,000 gallons or less;
 - ii. \$3.50 per 1,000 gallons for all water usage exceeding 2,000 gallons up

- to 10,000 gallons;
- iii. \$23.00 per 1,000 gallons for all water usage exceeding 10,000 gallons up to 25,000 gallons;
- iv. \$31.00 per 1,000 gallons for all water usage exceeding 25,000 gallons.
- (b) For all non-residential customers other than apartments, with non-irrigation demands for January and February exceeding 10,000 gallons per month (as determined by the City Manager or his designee), and who are also identified on Attachment "A," the following charges shall apply:
 - i. The minimum charge shall be \$14.71 for the first 2,000 gallons or less;
 - ii. \$3.50 per 1,000 gallons for all water usage exceeding 2,000 gallons up to 10,000 gallons;
 - iii. \$4.60 per 1,000 gallons for all water usage exceeding 10,000 gallons up to 25,000 gallons;
 - iv. \$6.20 per 1,000 gallons for all water usage exceeding 25,000 gallons.
 - v. The City Manager may amend Attachment "A" as he finds necessary.
- (c) All water rates will increase by 2.50% each year on the anniversary of the effective date of this ordinance unless otherwise modified by the City Council.
- (d) For apartments, the minimum charge shall be \$11.95 per unit for the first 2,000 gallons or less per unit such that the minimum charge for an apartment complex of 100 units would be \$1,195.00 for the first 200,000 gallons or less of water used. Apartment units shall be calculated pursuant to Subsection (B) of this Section.

SECTION TWO. That this ordinance shall be effective on October 1, 2012.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by law as an alternative method of publication.

SECTION SIX. The City Manager shall notify all customers outside the City limits of the rate changes as required by state law.

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:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 9/11/2012

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Consider an Ordinance Amending Title III. "Departments", Chapter 1, "Water Department", to Include Section 27 "Septage Waste Hauler Discharges and Fees", of the City Code of Midland, Texas, so as to Incorporate a Twenty-Five (\$25.00) Septage Haulers Discharge Fee; Containing a Cumulative Clause; Containing a Savings and Severability Clause; and Ordering Publication.

Purpose:

Consider an Ordinance Amending Title III. "Departments", Chapter 1, "Water Department", to Include Section 27 "Septage Waste Hauler Discharges and Fees", of the City Code of Midland, Texas, so as to Incorporate a Twenty-Five (\$25.00) Septage Haulers Discharge Fee; Containing a Cumulative Clause; Containing a Savings and Severability Clause; and Ordering Publication.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The fiscal impact of this should be minimal.

Discussion:

Currently the City of Midland accepts septic loads from any location with a charge of \$10 per load regardless of size. This places us as the lowest cost alternative in the region. It also places an enormous burden on plant staff due to the number and size of vehicles seeking service.

The proposal is to increase the rates from \$10 per load to \$25 per load to bring us into equity with some of the facilities in the region. Additionally, it is proposed that there be a stipulation that the plant will only accept septage loads that wholly and entirely originate in Midland County, as witnessed by their required TCEQ manifest, or from political subdivisions with which the City has an agreement to accept such loads.

ORDINANCE NO.

AN ORDINANCE AMENDING TITLE III, “DEPARTMENTS”, CHAPTER 1, “WATER DEPARTMENT” TO INCLUDE SECTION 27 “SEPTAGE WASTE HAULER DISCHARGES AND FEES”, OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO REGULATE THE DISCHARGE OF SEPTAGE MATERIALS AT THE CITY’S WATER POLLUTION CONTROL PLANT AND INCORPORATE A TWENTY-FIVE DOLLAR (\$25.00) SEPTAGE HAULER’S DISCHARGE FEE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION

WHEREAS, the City Council finds it to be in the public interest to adopt an ordinance regulating the discharge of septage materials at the City’s Water Pollution Control Plant and establishing a uniformly applied Septage Hauler’s Discharge Fee of Twenty-Five Dollars (\$25.00);

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

SECTION ONE. That Title III, “Departments”, Chapter 1, “Water Department” is amended to include Section 27, “Septage Waste Hauler Discharges and Fees” which shall read as follows:

3-1-27. Septage Waste Hauler Discharges and Fees.

(A) *Origin of Septage Materials:* The Water Pollution Control Plant operated by the City of Midland may accept Septage Materials in loads originating exclusively from the following:

- (1) Midland County, Texas - loads accepted must be shown to have originated completely within Midland County, Texas, as shown on appropriate manifests; or
- (2) Municipalities with which the City of Midland has a duly executed interlocal agreement to accept Septage Materials.

(B) *Content of Loads:* Loads accepted must consist completely and exclusively of Septage Materials. Loads containing any materials other than Septage Materials will

not be accepted.

(C) Septage Hauler's Discharge Fee: In addition to any other applicable fees and charges, a Twenty-Five Dollar (\$25.00) Septage Hauler's Discharge Fee will be applied to all vehicles each time they enter the Water Pollution Control Plant operated by the City of Midland to dispose of Septage Materials.

SECTION TWO. Any person wishing to appeal the payment of any fee established by this Ordinance may do so. Any person may appeal to the City Manager, or his designee, prior to paying the fee or after paying the fee. If a person wishes to appeal after payment of the fee, the person shall appeal to the City Manager, or his designee, in writing within ten (10) calendar days of paying the fee. The City Manager or his designee, shall provide a full and meaningful review process. The City Manager, or his designee, shall provide a fair opportunity for any person to challenge the accuracy and legal validity of their fee obligation. The City Manager, or his designee, shall also provide a clear and certain remedy for any erroneous or unlawful fee collection to ensure that the opportunity to contest the fee is a meaningful one. Options that the City Manager, or his designee, shall consider in providing a clear and certain remedy are a refund of any excess fee paid, as well as other factors such as ensuring that a person may continue the operation of his or her business. Any person may appeal to the City Manager, or his designee, if the person believes that he or she cannot afford the fees. The person may seek an exemption from all or part of the fee. The City shall not file criminal charges against any person if any fees described in this Ordinance are not paid. The City shall not file criminal charges against a person in an attempt to collect the fees.

The City Manager, or his designee, shall make his decision in writing within ten (10) days of receiving the appeal. A person shall incur no financial hardship by exercising his or her right to appeal. Said fees shall not be required from a person that cause a loss of livelihood, or damage to a business.

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 effective date of this Ordinance shall be October 1, 2012.

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 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 FORM:

Keith Stretcher, City Attorney



DATE: September 6, 2012

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: Cajun Constructors, Incorporated

Cajun Constructors, Incorporated has filed a claim regarding the City's Water Purification Plant Improvements Project. We have placed this item on your executive session so that we may discuss it with you in more detail.

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

Keith Stretcher

KS/lo



City of Midland
Office Memorandum

DATE: 9/11/2012

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: CONSIDER RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A LETTER DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIDLAND, WALL STREET LOFTS, LLC, THE MIDLAND DEVELOPMENT CORPORATION ("MDC") AND THE MIDLAND TAX INCREMENT REINVESTMENT ZONE NO. 1 ("TIRZ") REGARDING THE DEVELOPMENT OF A MIXED-USE MULTI-FAMILY RESIDENTIAL AND RETAIL BUILDING AND PARKING GARAGE AND RELATED INFRASTRUCTURE, ALL TO BE LOCATED ON THE PROPERTY CURRENTLY DESCRIBED AS LOTS 1-8 AND LOTS 13-23, BLOCK 53, ORIGINAL TOWN ADDITION, MIDLAND, MIDLAND COUNTY, TEXAS

RESOLUTION NO.

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A LETTER DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIDLAND, WALL STREET LOFTS, LLC, THE MIDLAND DEVELOPMENT CORPORATION (“MDC”) AND THE MIDLAND TAX INCREMENT REINVESTMENT ZONE NO. 1 (“TIRZ”) REGARDING THE DEVELOPMENT OF A MIXED-USE MULTI-FAMILY RESIDENTIAL AND RETAIL BUILDING AND PARKING GARAGE AND RELATED INFRASTRUCTURE, ALL TO BE LOCATED ON THE PROPERTY CURRENTLY DESCRIBED AS LOTS 1-8 AND LOTS 13-23, BLOCK 53, ORIGINAL TOWN ADDITION, MIDLAND, MIDLAND COUNTY, TEXAS

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager to negotiate and execute a Letter Development Agreement between the City of Midland, Wall Street Lofts, LLC, the MDC and the TIRZ;

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 negotiate and execute, on behalf of the City of Midland, a Letter Development Agreement between the City of Midland, Wall Street Lofts, LLC, the MDC and the TIRZ regarding the development of a mixed-use multi-family residential and retail building and a parking garage and related infrastructure, all to be located on the property described in the caption hereof. Said agreement shall be on file in the office of the City Secretary referenced by the date and number 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 FORM:

Keith Stretcher, City Attorney

AIRPORT PLANNING & DEVELOPMENT BOARD
 (Advisory; Membership - 10: Terms - 3 Years Expiring 3-3-4)
 Ex-Officio Members are the City Manager and the City Attorney.
 The Secretary is the Director of Aviation.

SPECIAL COMPOSITION REQUIREMENTS: Resident of Midland County

MEMBER	TERM EXPIRE SEPT. 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 6)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Ronald Schwisow	Yes	100%	6	No		
Herbert Blankinship	Yes	83%	5	No		
Jerry Walton	Yes	50%	3	Yes		
Mike Owen	No 09/13	83%	5			
Gregory F. Baiano	No 09/13	67%	4			
John T. Echols	No 09/13	83%	5			
Dallas L. Smith	No 09/13	50%	3			
Earl Erdmann	No 09/14	100%	6			
Brooks Smith	No 09/14	0%	0			
Don "Woody" Woodward	No 09/14	33%	2			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
J. Ross Lacy	One other board	
Ronnie Lynch	One other board	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: J. Ross Lacy

Address: P.O. Box 3266

Midland TX 79702

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ²³ years.

Professional and/or Community Activities:

President, Midland Co. Young Republicans

Member, Young Professionals of Midland

Member, UTPB School of Business Advisory Board

What is your personal vision for the City?

With the current economic growth that Midland is experiencing, I would like to see the city continue to embark on new innovated ideas that focus on garnering new industries to the region and continue to support the oil and gas industry. We need to also focus on promoting young professionals in the city to engage and support various projects within the community.

Please specify any time constraints you may have.

I do not have any time constraints that would not allow me to attend meetings regularly.

Date: 8/16/2012

Phone: 432-254-1126 (Home)

432-683-5542 (Business)

Email: j.rosslacy@gmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Self Employed / Lacy Capital, LLC.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Airport Planning and Development Board

Please tell us why you are interested in serving on this board or commission.

With the recent announcement of XCOR Aerospace moving to the Midland Airport, Midland is in a unique position to use this newfound partnership for economic growth and garner national attention to the region. The next few years are going to be exciting

for the airports and industrial park, which will just be another feather in the hat for Midland.

What contribution would you most like to make?

I would like to work on obtaining the Spaceport License for the airport. Also would like to work on continuing improve our airport system and work to get another hotel around the airport. The Midland Industrial Park can only benefit greatly in the next few years as of companies follow XCOR and move to the region.

Additional pertinent information or references:**(2) Name of Board/Commission:**

Midland-Odessa Urban Transit District Board

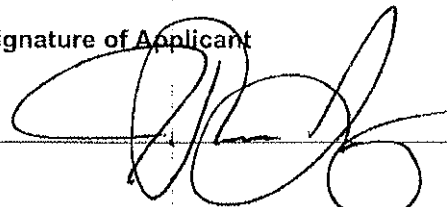
What contribution would you most like to make?

The Board did great in obtaining funding to make 349 a four lane road to Lamesa, however we need to make all entry roads into the region more accessible. Oilfield traffic is at an all time worst in the region causing unprecedented damage to our roads and making traffic accidents horrible. Working to obtain funding to make 349 a four lane road in south Midland Co. would be a major focus.

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433

Submit Via Email

Print Application



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: _____

Address: _____

(City)

(State)

(Zip)

I am ____ I am not ____ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ____ years.

Professional and/or Community Activities:

What is your personal vision for the City?

Please specify any time constraints you may have.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Please tell us why you are interested in serving on this board or commission.

Date: _____

Phone: _____ (Home)

_____ (Business)

Email: _____

Are you a graduate of Midland 101? ____yes ____no

Occupation: _____

What contribution would you most like to make?

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Applications may be submitted online via email or print in order to send by mail or fax:

**City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433**

CITY DEVELOPMENT ADVISORY COMMITTEE
(Advisory)
(Membership - 5; Terms - 2 Years Expiring 2 Even & 3 Odd)

SPECIAL COMPOSITION REQUIREMENTS: None

MEMBER	TERM EXPIRE SEPT. 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 3)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy	Yes			N/A		
Vicky Hailey	Yes	100%	3	Yes		
Reggie Lawrence	Yes	100%	3	Yes		
Alonda Massey	No 09/13	100%	3			
Tim Bryson	No 09/13	100%	3			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Stella Clifton	Only this board	
Eric F. Nordwald Sr.	Five other boards	

2012-014



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Stella Clifton

Address: 3319 Cimmaron Ave.

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ⁴⁴ years.

Professional and/or Community Activities:

Leadership Midland 2004

Meals on Wheels

Date: 8/14/2012

Phone: 432-697-3663 (Home)

432-571-4127 (Business)

Email: stella.clifton@dshs.state.tx.us

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Congregate Settings Coordinator for the State of Te

What is your personal vision for the City?

I would love for Midland to thrive with the younger adults. If they would return to Midland after completing College to begin their career.

Please specify any time constraints you may have.

None at this time.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

City Development Advisory Committee

Please tell us why you are interested in serving on this board or commission.

I want to be apart of watching new businesses develop and grow within the community.

What contribution would you most like to make?

I work for the Department of State Health so I have become very familiar with the development of Midland and the various population

Additional pertinent information or references:

I worked for the Housing Authority of the City of Midland for four years as a property manager.

I worked for Casa de Amigos writing grants for agency funding.

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Stella Clifton

Digitally signed by Stella Clifton
DN: cn=Stella Clifton, o=DSHS, ou,
email=stella.clifton@dshs.state.tx.us, c=US
Date: 2012.08.14 17:08:36 -05'00'

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

[Submit Via Email](#)

[Print Application](#)



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

8/13/2012

PLEASE TYPE OR PRINT CLEARLY:

Eric F Nordwald Sr.

Name: _____

4902 Rio Grande Dr.

Address: _____

Midland TX 79707

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland³ years.

Professional and/or Community Activities:

NRA, General Contractors of America, Midland's YMCA, Our Lady of Guadalupe Catholic Church in Midland, Spartan & Tough

Mudder Races, Nuclear Contracting Opportunities & Nuclear Construction Safety

What is your personal vision for the City?

My vision of Midland is a city that people want to move to because of leading technology, opportunity for growth, secure employment, high demand of talent and respectable town to raise a family

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Building Codes Review Committee

City Development Advisory Committee

Construction Board of Adjustments and Appeals

Please tell us why you are interested in serving on this board or commission.

I have 12 yrs Construction experience with residential, commercial & Industrial industries. I am interested in bettering Midland and becoming a City Council member. I have a vast knowledge w/ building codes through out many cities within the US.

Date: _____

979.3249753

Phone: _____ (Home)

575.394.5763

_____ (Business)

efnordwald@gmail.com

Email: _____

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Nuclear Operations/Construction Manager

What contribution would you most like to make?
First and foremost I would like to build a youth center. I also would contribute as a spokesmen.

Additional pertinent information or references:
I am going to attach my resume as additional information.

(2) Name of Board/Commission:
Planning and Zoning Commissioning

Midland Football, Soccer and Baseball Complex Development

Midland Higher Education Facilities Corporation

What contribution would you most like to make?
My contribution would be thinking and acting as a father of younger people that will grow within the community.

Additional pertinent information or references:
Attached resume.

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433

[Submit Via Email](#)

[Print Application](#)

Eric F Nordwald Sr.
4902 Rio Grande Dr. Midland TX 79707
efnordwald@gmail.com
979-324-9753

SUMMARY OR EXPERIENCE

Over twelve years of experience on both commercial and industrial projects. In the capacity of Construction Manager, responsibilities include leading the Construction Team, providing leadership for production and recommendation of profit margin. My construction expertise extends to carry forward to final operational stages of the project, providing construction and maintenance management in both commercial and industrial fields. In the Industrial and Commercial industries, vast experiences and responsibilities were exercised in the coordination of all field activities, as well as commissioning and start up functions. All projects required continuous safety participation. Provide safety instruction and Safety presentation analysis. I have a comprehensive understanding of Plant construction techniques and procedures including use of construction tools for various projects and field safety coordination with Subcontractors and Client Representatives. I have specialized experience in new construction, construction management, large capital projects and maintenance projects. I have managed all fronts of construction starting with safety management, project controls, field execution and profit / loss responsibility.

PROJECT TYPES

Nuclear Enrichment Facilities
Commercial Structures
Formwork Tunnels
Housing Projects

ACTIVITIES

Construction Management
Construction Planning
Cost Control
Quality Assurance
Building Planning
Scheduling
Estimating
Coordination
Safety Training

TRAINING

Plant Safety
QA/QC Weld Track
Request for Information (RFI)
Field Change Order (FCO)
Subcontract Management
P3 Scheduling (Primavera Certificate 5.0)

Eric F. Nordwald Sr.

I am seeking a position in Construction Management. I have the experience, the determination, and can-do attitude that is essential to managing risk on every conceivable project. This includes the timely management of the project's cost, schedule, planning, vendors, subcontractors, technical information and other key elements. From pre-construction through project completion, I will systematically monitor work as it progresses and will manage both variances and trends for elements of scope, cost and timing.

Industry Experience:

URENCO USA Eunice, NM

February 2012 – Current

Commissioning & Acceptance Coordinator - Project: National Enrichment Facility

- Current holder of CAA and "L" clearance, qualified as a Construction Supervisor, Construction Engineer and Building Manager
- Commissioning structural, electrical and mechanical systems from construction and turning them over to engineering, maintenance and plant operations.
- Working directly with Operations and Construction Management on a day to day basis to establish plant requirements and provide the owner with the highest quality product(s).
- Generating, revising and performing test on mechanical systems for plant acceptance.
- Creating procedures for civil, structural and mechanical related items to insure quality guidelines during installation.
- Establishing code regulatory specifications for nuclear site building components.
- Providing plant maintenance with adequate documentation and tribal knowledge of accepted site equipment.

Baker Concrete Construction Inc. Eunice, NM

December 2009 – February 2012

Project Manager - Project: National Enrichment Facility (NEF) Separations Building Module Extension

- Responsible Project Manager for conducting the acceptance of a \$100M Nuclear Enrichment Building
- Managed from ground breaking through closure process for structural, mechanical & electrical portions
- Effectively communicate accurate and timely information to the Operations Manager and all project participants to bring the project to completion on time and budge.
- Performed tasks such as inspections, work plan implementation, coordinating trades, managing schedule, tracking cost, provided guidance for specification and procedure understanding along with building a strong relationship with the client respected vendors.
- Assisted in planning the tie-in process for new mechanical systems to existing working systems without interruptions.
- Directly supervised and trained nuclear-safety for 200+ site personnel.
- Provided material and equipment management for multiple site wide projects with a minimal staff experiencing tremendous savings and results

Baker Concrete Construction Inc. Eunice, NM

March 2010 – July 2010

Project Manager - Project: NEF Uranium Bi-product Cylinder Pad

- Manager of a \$2.0M Slab-on-Grade Uranium Storage Pad
- Performed project scheduling, sub and general contractor negotiations including financial responsibility for both firm fix and Time/Material budgets
- Worked directly with URENCO Engineering and provided recommendations on field related discrepancies

Baker Concrete Construction Inc. Houston, TX

January 2009 – December 2009

Project Manager - Project: MD Anderson Administrative Building

- Oversight on report processes based on Earned Value Management (EVM) concepts
- Develop, implement, reconcile and maintain valuable project control databases and reports
- Became fluent in creating and tracking schedules, proposed change orders, submittals, subcontracts, RFI's, and LEED material.

Baker Concrete Construction Inc. Houston, TX

September 2008 – February 2009

Estimator

- Estimated turn-key projects for both Commercial and Industrial work ranging from \$5M up to \$65M
- Estimated with the use of On Screen Take-off (OST) and Timberline system spread sheet.
- Worked with Field Supervisors and Project Managers to ensure understanding and accurate proposals
- Interacted with owners on potential projects for relationship purposes' and a understanding of there expectations

Dee Shoring Inc. Richmond, VA

October 2006 – September 2008

Estimator

- Bid work for turnkey projects (shoring, forming, concrete & excavation)
 - High rises (*Wachovia Bank Headquarters*, Charlotte, N.C., *Rialto Suites*, Daytona, FL.)
 - Stadiums (ASU Kidd Brewer stadium in Tennessee)
 - Hospitals, schools, apartments and condos
 - Department stores, warehouses and parking garages
- Negotiated contracts

Asst. Project Manager – Projects: VCU Health & Engineering Building, VCU Gymnasium, Center Point School

- Performed building control and jobsite managing on multiple projects
- Supervised and trained all field engineers on total Station and related computer programs
- Achieved working relationships with owners engineers while resolving RFI's and change orders
- Gained much knowledge with awarding and working with sub-contractors for scheduling and financial purposes

Yates Construction Daytona Beach, FL

April 2006 – October 2006

Project Coordinator - **Projects:** Bella Vista Apartment Complex and Palma Bella Condos, Daytona Beach, FL

- Managed general contractor's layout for high rise apartment projects
- Supervised MEP field work along with drawing review for discrepancies
- Quality control and labor foreman

Dick Pacific Construction Co. Waikola, HI

Feb 2005 – March 2006

Carpenter Superintendent / Quality Control – **Projects:** Hilton Condominiums

- Supervised framing and trim construction crews on Hilton timeshare resorts as the General Contractor which consisted of exposed timber framed building projects
- Performed quality control for the project
- Coordinated mechanical, electrical and plumbing trades
- Trained employee safety and coordinated new hire orientations

St. Louis Carpenters Union St. Louis, MO

Feb 2000 - Feb 2005

Carpenter Superintendent

- Projects ranged from residential houses to large commercial and government structures.
- Performed work for the general contractor; framing, trim, welding, concrete, mechanical, electrical, plumbing, roofing, structural steel, flooring, painting & jobsite management

Education and Training:

- Attending the University of Texas Permian Basin for a Bachelors Degree in Industrial Technology
- St. Louis Carpenters Union – Apprenticeship Program & Certification in Construction Management
- East Central Community College – General Studies
- CPR and first aid certified
- Completed Supervisory Skills, Incident and Injury Free, and Lean Construction Training
- Trained and well experienced with industrial Work Plan's, procedures and specifications
- Experienced with P3 scheduling

References upon Request

- | | | | |
|-----------------------|--------------|--|---|
| • Robin Franke | 505.975.8420 | rfranke@nefnm.com | (Company: URENCO USA) |
| • John Beaver | 713.408.6568 | jbeaver1963@yahoo.com | (Company: T-Rex Engineering & Construction, LC) |
| • David Blickenderfer | 602.885.8566 | dvblick22@hotmail.com | (Company: Baker Concrete Construction Inc.) |
| • Keith Stephenson | 505.975.0351 | kstephenson@nefnm.com | (Company: Legacy Consulting) |
| • George Kaime | 541.261.7361 | george.kaime@fdthomas.com | (Company: FD Thomas) |

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS
(Decision Making)
Membership - 7; Terms - 4 Years expiring 2-2-2-1)

SPECIAL COMPOSITION REQUIREMENTS: 1 Plumbing/Mechanical Industry, 1 Electrical Contracting, 1 Architect, 1 Engineer/Superintendent of Construction, 3 Any Categories, 2 Alternate members from any category. RESIDENT OF CITY.

MEMBER	TERM EXPIRE SEPT. 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 0)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Don Woodward (At-Large)	Yes			Yes		NO MEETINGS
Richard D. Dunham	No 09/13					
Greg Turner	No 09/13					
Chris Repman	No 09/14					
Jay K. Bradford	No 09/14					
<u>ALTERNATES:</u>						
Vacancy						
Vacancy						

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Eric F. Nordwald Sr.	Five other boards	
Scott Young	One other board	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

8/13/2012

PLEASE TYPE OR PRINT CLEARLY:

Eric F Nordwald Sr.

Name: _____

4902 Rio Grande Dr.

Address: _____

Midland TX 79707

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland³ _____ years.

Professional and/or Community Activities:

NRA, General Contractors of America, Midland's YMCA, Our Lady of Guadalupe Catholic Church in Midland, Spartan & Tough

Mudder Races, Nuclear Contracting Opportunities & Nuclear Construction Safety

What is your personal vision for the City?

My vision of Midland is a city that people want to move to because of leading technology, opportunity for growth, secure employment, high demand of talent and respectable town to raise a family

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Building Codes Review Committee

City Development Advisory Committee

Construction Board of Adjustments and Appeals

Please tell us why you are interested in serving on this board or commission.

I have 12 yrs Construction experience with residential, commercial & Industrial industries. I am interested in bettering Midland and becoming a City Council member. I have a vast knowledge w/ building codes through out many cities within the US.

Date: _____

979.3249753

Phone: _____ (Home)

575.394.5763

(Business)

efnordwald@gmail.com

Email: _____

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Nuclear Operations/Construction Manager

What contribution would you most like to make?
First and foremost I would like to build a playground for children. I also would contribute as a spokesmen.

Additional pertinent information or references:
I am going to attach my resume as additional information.

(2) Name of Board/Commission:
Planning and Zoning Commissioning

Midland Football, Soccer and Baseball Complex Development

Midland Higher Education Facilities Corporation

What contribution would you most like to make?
My contribution would be thinking and acting as a father of younger people that will grow within the community.

Additional pertinent information or references:
Attached resume.

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



Applications may be submitted online via email or print in order to send by mail or fax:

**City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433**

[Submit Via Email](#)

[Print Application](#)

Eric F Nordwald Sr.
4902 Rio Grande Dr. Midland TX 79707
efnordwald@gmail.com
979-324-9753

SUMMARY OR EXPERIENCE

Over twelve years of experience on both commercial and industrial projects. In the capacity of Construction Manager, responsibilities include leading the Construction Team, providing leadership for production and recommendation of profit margin. My construction expertise extends to carry forward to final operational stages of the project, providing construction and maintenance management in both commercial and industrial fields. In the Industrial and Commercial industries, vast experiences and responsibilities were exercised in the coordination of all field activities, as well as commissioning and start up functions. All projects required continuous safety participation. Provide safety instruction and Safety presentation analysis. I have a comprehensive understanding of Plant construction techniques and procedures including use of construction tools for various projects and field safety coordination with Subcontractors and Client Representatives. I have specialized experience in new construction, construction management, large capital projects and maintenance projects. I have managed all fronts of construction starting with safety management, project controls, field execution and profit / loss responsibility.

PROJECT TYPES

Nuclear Enrichment Facilities
Commercial Structures
Formwork Tunnels
Housing Projects

ACTIVITIES

Construction Management
Construction Planning
Cost Control
Quality Assurance
Building Planning
Scheduling
Estimating
Coordination
Safety Training

TRAINING

Plant Safety
QA/QC Weld Track
Request for Information (RFI)
Field Change Order (FCO)
Subcontract Management
P3 Scheduling (Primavera Certificate 5.0)

Eric F. Nordwald Sr.

I am seeking a position in Construction Management. I have the experience, the determination, and can-do attitude that is essential to managing risk on every conceivable project. This includes the timely management of the project's cost, schedule, planning, vendors, subcontractors, technical information and other key elements. From pre-construction through project completion, I will systematically monitor work as it progresses and will manage both variances and trends for elements of scope, cost and timing.

Industry Experience:

URENCO USA Eunice, NM

February 2012 – Current

Commissioning & Acceptance Coordinator - Project: National Enrichment Facility

- Current holder of CAA and "L" clearance, qualified as a Construction Supervisor, Construction Engineer and Building Manager
- Commissioning structural, electrical and mechanical systems from construction and turning them over to engineering, maintenance and plant operations.
- Working directly with Operations and Construction Management on a day to day basis to establish plant requirements and provide the owner with the highest quality product(s).
- Generating, revising and performing test on mechanical systems for plant acceptance.
- Creating procedures for civil, structural and mechanical related items to insure quality guidelines during installation.
- Establishing code regulatory specifications for nuclear site building components.
- Providing plant maintenance with adequate documentation and tribal knowledge of accepted site equipment.

Baker Concrete Construction Inc. Eunice, NM

December 2009 – February 2012

Project Manager - Project: National Enrichment Facility (NEF) Separations Building Module Extension

- Responsible Project Manager for conducting the acceptance of a \$100M Nuclear Enrichment Building
- Managed from ground breaking through closure process for structural, mechanical & electrical portions
- Effectively communicate accurate and timely information to the Operations Manager and all project participants to bring the project to completion on time and budge.
- Performed tasks such as inspections, work plan implementation, coordinating trades, managing schedule, tracking cost, provided guidance for specification and procedure understanding along with building a strong relationship with the client respected vendors.
- Assisted in planning the tie-in process for new mechanical systems to existing working systems without interruptions.
- Directly supervised and trained nuclear-safety for 200+ site personnel.
- Provided material and equipment management for multiple site wide projects with a minimal staff experiencing tremendous savings and results

Baker Concrete Construction Inc. Eunice, NM

March 2010 – July 2010

Project Manager - Project: NEF Uranium Bi-product Cylinder Pad

- Manager of a \$2.0M Slab-on-Grade Uranium Storage Pad
- Performed project scheduling, sub and general contractor negotiations including financial responsibility for both firm fix and Time/Material budgets
- Worked directly with URENCO Engineering and provided recommendations on field related discrepancies

Baker Concrete Construction Inc. Houston, TX

January 2009 – December 2009

Project Manager - Project: MD Anderson Administrative Building

- Oversight on report processes based on Earned Value Management (EVM) concepts
- Develop, implement, reconcile and maintain valuable project control databases and reports
- Became fluent in creating and tracking schedules, proposed change orders, submittals, subcontracts, RFI's, and LEED material.

Baker Concrete Construction Inc. Houston, TX

September 2008 – February 2009

Estimator

- Estimated turn-key projects for both Commercial and Industrial work ranging from \$5M up to \$65M
- Estimated with the use of On Screen Take-off (OST) and Timberline system spread sheet.
- Worked with Field Supervisors and Project Managers to ensure understanding and accurate proposals
- Interacted with owners on potential projects for relationship purposes' and a understanding of there expectations

Dee Shoring Inc. Richmond, VA

October 2006 – September 2008

Estimator

- Bid work for turnkey projects (shoring, forming, concrete & excavation)
 - High rises (*Wachovia Bank Headquarters*, Charlotte, N.C., *Rialto Suites*, Daytona, FL.)
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Dick Pacific Construction Co. Waikola, HI

Feb 2005 – March 2006

Carpenter Superintendent / Quality Control – Projects: Hilton Condominiums

- Supervised framing and trim construction crews on Hilton timeshare resorts as the General Contractor which consisted of exposed timber framed building projects
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St. Louis Carpenters Union St. Louis, MO

Feb 2000 - Feb 2005

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- Projects ranged from residential houses to large commercial and government structures.
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Education and Training:

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- St. Louis Carpenters Union – Apprenticeship Program & Certification in Construction Management
- East Central Community College – General Studies
- CPR and first aid certified
- Completed Supervisory Skills, Incident and Injury Free, and Lean Construction Training
- Trained and well experienced with industrial Work Plan's, procedures and specifications
- Experienced with P3 scheduling

References upon Request

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| • Robin Franke | 505.975.8420 | rfranke@nefnm.com | (Company: URENCO USA) |
| • John Beaver | 713.408.6568 | jbeaver1963@yahoo.com | (Company: T-Rex Engineering & Construction, LC) |
| • David Blickenderfer | 602.885.8566 | dvblick22@hotmail.com | (Company: Baker Concrete Construction Inc.) |
| • Keith Stephenson | 505.975.0351 | kstephenson@nefnm.com | (Company: Legacy Consulting) |
| • George Kaime | 541.261.7361 | george.kaime@fdthomas.com | (Company: FD Thomas) |

2012-015



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Scott Young

Address: 1212 Breckenridge Ct.

Midland, TX 79705

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ²⁴ years.

Professional and/or Community Activities:

Date: 8/9/2012

Phone: 432-978-2372 (Home)

432-520-0820 (Business)

Email: syoung@randcoindustries.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Commercial Construction

What is your personal vision for the City?

I want Midland to continue its positive growth and diversification of different industries.

I think Midland is an excellent place to raise a family and run a business.

I believe Midland is growing and will continue to grow and I would like to be more involved with the city government.

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Construction Board of Adjustments and Appeals

Please tell us why you are interested in serving on this board or commission.

I want to get involved with our community and the direction that Midland is growing. I was born here in Midland and plan on staying the rest of my life and would like to help do my part to make our community a better place to work and live.

What contribution would you most like to make?

I am part of a small business in the construction industry and think that my knowledge in the industry would be beneficial for the city.

Additional pertinent information or references:

(2) Name of Board/Commission:

Zoning Board of Adjustments and Airport Zoning Board of Adjustments

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Scott Young

Digitally signed by Scott Young
DN: cn=Scott Young, o=Young's Building Systems,
ou, email=syoung@randcoindustri.com, c=US
Date: 2012.08.09 16:45:33 -05'00'

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

[Submit Via Email](#)

[Print Application](#)

HOTEL/MOTEL TAX ADVISORY BOARD
(Advisory)
Membership - 7; Terms - 2 Years Staggered)

SPECIAL COMPOSITION REQUIREMENTS: Representative of Midland Hotel/Motel Assn.; Members Familiar with Chpt 351 "Municipal Hotel Occupancy Taxes" of Texas Tax Code.

MEMBER	TERM EXPIRE SEPT. 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 3)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Tyler Wolfe	Yes	100%	3	No		
Jon S. Blair	Yes	100%	3	Yes		
Karmen Hendrix Bryant	No 09/13	100%	3			
David Baur	No 09/13	100%	3			
Lisa Grissom	No 09/13	100%	3			
Steve Jones	No 09/13	100%	3			
Alex Singh--Hotel/Motel Assn. Rep. 12/11	No 12/31/13	100%	3			
Vicky Hailey (Liaison Officer)		33%	1			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Annabell Ramirez	Only this board	
Brian L. Smith	Only this board	

2012-020



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Annabell Ramirez

Address: 504 N. Dallas

Midland TX 79701

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ¹⁵ years.

Professional and/or Community Activities:

Board member for Keep Midland Beautiful & March of Dimes, Volunteer with MISD Education Foundation, HEB Feast of Sharing, Community Pachangas, St. Ann's Church Fair, Our Lady of Guadalupe Church Fair

What is your personal vision for the City?

A city where all areas are thriving and growing with the development of Midland. I envision the Scharbauer Sports Complex, Downtown Midland and other city parks as event driven locations that will make Midland a tourist destination.

Please specify any time constraints you may have.

Available anytime.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Hotel/Motel Tax Advisory Board

Please tell us why you are interested in serving on this board or commission.

I am interested in learning how hotel/motel tax dollars are used for the promotion of Midland and also to encourage the growth and development of new and existing events that will bring visitors to Midland.

Date: 8/22/2012

Phone: (432) 528-9709 (Home)

(432) 682-2960 (Business)

Email: annabell@midlandhcc.com

Are you a graduate of Midland 101? ☒ yes ☐ no

Occupation:

What contribution would you most like to make?

I have many years of experience in planning and working on various successful events. I believe that my knowlegde in event planning will be beneficial to the board in deciding how to best distribute city funds.

Additional pertinent information or references:

Doreen Wornack, Keep Midland Beautiful (432) 687-7400

Jani Owen, MISD Education Foundation (432) 689-1000

Dolores Vick, Chevron (432) 687-7164

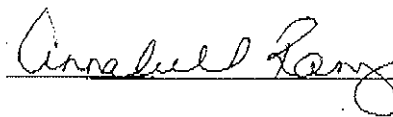
(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433





APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Brian L. Smith

Address: 5514 Champlons Drive

Midland TX 79706

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ³ years.

Professional and/or Community Activities:

--Midland Downtown Rotary Club, Meals on Wheels, Junior High/High School basketball official.

As the RockHounds' Public Relations Director, I am responsible for implementing the franchise's community engagement plan, including mascot appearances, civic donations, and the Scoring in Schools program, which annually reaches more than 10,000 kids.

What is your personal vision for the City?

Over the past three years, the City has undergone significant, and fascinating, changes. As we continue to grow together, I look forward to a community that is able to achieve great milestones and create a very high and fun quality of life for all of its residents while maintaining the strong core values of family and fellowship that have guided us through the best and worst times.

Please specify any time constraints you may have.

The RockHounds' season (April-September) is my priority each year.

Date: 8/27/2012

Phone: 432.520.2255 (Home)

(Business)

Email: BSmith@midlandrockhounds.org

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Public Relations Director, Midland RockHounds

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Hotel/Motel Tax Advisory Board

Please tell us why you are interested in serving on this board or commission.

I believe that community stewardship is a responsibility that each person bears, and I want to play an active role in creating a city of which all of my friends and neighbors can be proud.

What contribution would you most like to make?

With the other board members, I would ensure that the community's limited resources are allocated with maximum efficiency, so as to allow the greatest number of people and businesses to be positively impacted by the Board's decisions.

Additional pertinent information or references:

Mr. Monty Hoppel, General Manager--Midland RockHounds; 432.520.2255

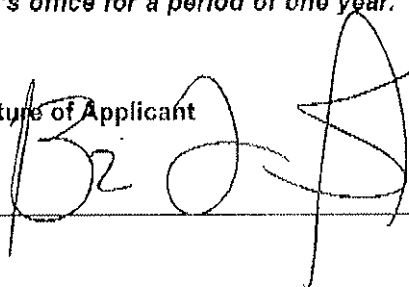
Mr. Bob Forgey; 432.638.8319

Mr. Bobby Burns, President and CEO--Midland Chamber of Commerce; 432.683.3381

(2) Name of Board/Commission:**What contribution would you most like to make?****Additional pertinent information or references:**

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



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City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

HOUSING AUTHORITY COMMISSION
(Membership - 5; Terms - 2 Years expiring 2 even & 3 odds)

SPECIAL COMPOSITION REQUIREMENTS: No member may be an officer or employee of the City of Midland

MEMBER	TERM EXPIRE OCT 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 11)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Rosie Gransberry	Yes			No		DID NOT RECEIVED ATTENDANCE RECORD
Norma Duran	Yes			Yes		Ms. Norma Duran would like to serve again
Gregory Maes	No 10/13					
Carla Repman	No 10/13					
James A. Blischke	No 10/13					
<u>ALTERNATE:</u>						
Dennis Bade	No 10/13					

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
	Only this board	

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION

**Decision Making
(Membership - 7; Terms - 2)**

SPECIAL COMPOSITION REQUIREMENTS: Resident of City.

MEMBER	TERM EXPIRE NOV. 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 4)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Ken Marks, Vice Pres.	Yes	100%	4	No		
James G. Smith	Yes	100%	4	No		
Mike Thompson	No 11/13	75%	3			
Tim Bryson	No 11/13	50%	2			
Wesley D. Bownds	No 11/13	100%	4			
John James	No 11/13	50%	2			
Rick Davis (MISD Resp.)	No 11/13	75%	3			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Eric F. Nordwald Sr.	Five other boards	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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8/13/2012

PLEASE TYPE OR PRINT CLEARLY:

Eric F Nordwald Sr.

Name: _____

4902 Rio Grande Dr.

Address: _____

Midland TX 79707

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland³ _____ years.

Professional and/or Community Activities:

NRA, General Contractors of America, Midland's YMCA, Our Lady of Guadalupe Catholic Church in Midland, Spartan & Tough

Mudder Races, Nuclear Contracting Opportunities & Nuclear Construction Safety

What is your personal vision for the City?

My vision of Midland is a city that people want to move to because of leading technology, opportunity for growth, secure employment, high demand of talent and respectable town to raise a family

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Building Codes Review Committee

City Development Advisory Committee

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Please tell us why you are interested in serving on this board or commission.

I have 12 yrs Construction experience with residential, commercial & Industrial industries. I am interested in bettering Midland and becoming a City Council member. I have a vast knowledge w/ building codes through out many cities within the US.

Date: _____

979.3249753

Phone: _____ (Home)

575.394.5763

(Business)

efnordwald@gmail.com

Email: _____

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Nuclear Operations/Construction Manager

What contribution would you most like to make?
First and foremost I would like to build a youth center. I also would contribute as a spokesmen.

Additional pertinent information or references:
I am going to attach my resume as additional information.

(2) Name of Board/Commission:
Planning and Zoning Commissioning

Midland Football, Soccer and Baseball Complex Development

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efnordwald@gmail.com
979-324-9753

SUMMARY OR EXPERIENCE

Over twelve years of experience on both commercial and industrial projects. In the capacity of Construction Manager, responsibilities include leading the Construction Team, providing leadership for production and recommendation of profit margin. My construction expertise extends to carry forward to final operational stages of the project, providing construction and maintenance management in both commercial and industrial fields. In the Industrial and Commercial industries, vast experiences and responsibilities were exercised in the coordination of all field activities, as well as commissioning and start up functions. All projects required continuous safety participation. Provide safety instruction and Safety presentation analysis. I have a comprehensive understanding of Plant construction techniques and procedures including use of construction tools for various projects and field safety coordination with Subcontractors and Client Representatives. I have specialized experience in new construction, construction management, large capital projects and maintenance projects. I have managed all fronts of construction starting with safety management, project controls, field execution and profit / loss responsibility.

PROJECT TYPES

Nuclear Enrichment Facilities
Commercial Structures
Formwork Tunnels
Housing Projects

ACTIVITIES

Construction Management
Construction Planning
Cost Control
Quality Assurance
Building Planning
Scheduling
Estimating
Coordination
Safety Training

TRAINING

Plant Safety
QA/QC Weld Track
Request for Information (RFI)
Field Change Order (FCO)
Subcontract Management
P3 Scheduling (Primavera Certificate 5.0)

Eric F. Nordwald Sr.

I am seeking a position in Construction Management. I have the experience, the determination, and can-do attitude that is essential to managing risk on every conceivable project. This includes the timely management of the project's cost, schedule, planning, vendors, subcontractors, technical information and other key elements. From pre-construction through project completion, I will systematically monitor work as it progresses and will manage both variances and trends for elements of scope, cost and timing.

Industry Experience:

URENCO USA Eunice, NM

February 2012 – Current

Commissioning & Acceptance Coordinator - Project: National Enrichment Facility

- Current holder of CAA and "L" clearance, qualified as a Construction Supervisor, Construction Engineer and Building Manager
- Commissioning structural, electrical and mechanical systems from construction and turning them over to engineering, maintenance and plant operations.
- Working directly with Operations and Construction Management on a day to day basis to establish plant requirements and provide the owner with the highest quality product(s).
- Generating, revising and performing test on mechanical systems for plant acceptance.
- Creating procedures for civil, structural and mechanical related items to insure quality guidelines during installation.
- Establishing code regulatory specifications for nuclear site building components.
- Providing plant maintenance with adequate documentation and tribal knowledge of accepted site equipment.

Baker Concrete Construction Inc. Eunice, NM

December 2009 – February 2012

Project Manager - Project: National Enrichment Facility (NEF) Separations Building Module Extension

- Responsible Project Manager for conducting the acceptance of a \$100M Nuclear Enrichment Building
- Managed from ground breaking through closure process for structural, mechanical & electrical portions
- Effectively communicate accurate and timely information to the Operations Manager and all project participants to bring the project to completion on time and budge.
- Performed tasks such as inspections, work plan implementation, coordinating trades, managing schedule, tracking cost, provided guidance for specification and procedure understanding along with building a strong relationship with the client respected vendors.
- Assisted in planning the tie-in process for new mechanical systems to existing working systems without interruptions.
- Directly supervised and trained nuclear-safety for 200+ site personnel.
- Provided material and equipment management for multiple site wide projects with a minimal staff experiencing tremendous savings and results

Baker Concrete Construction Inc. Eunice, NM

March 2010 – July 2010

Project Manager - Project: NEF Uranium Bi-product Cylinder Pad

- Manager of a \$2.0M Slab-on-Grade Uranium Storage Pad
- Performed project scheduling, sub and general contractor negotiations including financial responsibility for both firm fix and Time/Material budgets
- Worked directly with URENCO Engineering and provided recommendations on field related discrepancies

Baker Concrete Construction Inc. Houston, TX

January 2009 – December 2009

Project Manager - Project: MD Anderson Administrative Building

- Oversight on report processes based on Earned Value Management (EVM) concepts
- Develop, implement, reconcile and maintain valuable project control databases and reports
- Became fluent in creating and tracking schedules, proposed change orders, submittals, subcontracts, RFI's, and LEED material.

Baker Concrete Construction Inc. Houston, TX

September 2008 – February 2009

Estimator

- Estimated turn-key projects for both Commercial and Industrial work ranging from \$5M up to \$65M
- Estimated with the use of On Screen Take-off (OST) and Timberline system spread sheet.
- Worked with Field Supervisors and Project Managers to ensure understanding and accurate proposals
- Interacted with owners on potential projects for relationship purposes' and a understanding of there expectations

Dee Shoring Inc. Richmond, VA

October 2006 – September 2008

Estimator

- Bid work for turnkey projects (shoring, forming, concrete & excavation)
 - High rises (*Wachovia Bank Headquarters*, Charlotte, N.C., *Rialto Suites*, Daytona, FL.)
 - Stadiums (ASU Kidd Brewer stadium in Tennessee)
 - Hospitals, schools, apartments and condos
 - Department stores, warehouses and parking garages
- Negotiated contracts

Asst. Project Manager – Projects: VCU Health & Engineering Building, VCU Gymnasium, Center Point School

- Performed building control and jobsite managing on multiple projects
- Supervised and trained all field engineers on total Station and related computer programs
- Achieved working relationships with owners engineers while resolving RFI's and change orders
- Gained much knowledge with awarding and working with sub-contractors for scheduling and financial purposes

Yates Construction Daytona Beach, FL

April 2006 – October 2006

Project Coordinator - **Projects:** Bella Vista Apartment Complex and Palma Bella Condos, Daytona Beach, FL

- Managed general contractor's layout for high rise apartment projects
- Supervised MEP field work along with drawing review for discrepancies
- Quality control and labor foreman

Dick Pacific Construction Co. Waikola, HI

Feb 2005 – March 2006

Carpenter Superintendent / Quality Control – **Projects:** Hilton Condominiums

- Supervised framing and trim construction crews on Hilton timeshare resorts as the General Contractor which consisted of exposed timber framed building projects
- Performed quality control for the project
- Coordinated mechanical, electrical and plumbing trades
- Trained employee safety and coordinated new hire orientations

St. Louis Carpenters Union St. Louis, MO

Feb 2000 - Feb 2005

Carpenter Superintendent

- Projects ranged from residential houses to large commercial and government structures.
- Performed work for the general contractor; framing, trim, welding, concrete, mechanical, electrical, plumbing, roofing, structural steel, flooring, painting & jobsite management

Education and Training:

- Attending the University of Texas Permian Basin for a Bachelors Degree in Industrial Technology
- St. Louis Carpenters Union – Apprenticeship Program & Certification in Construction Management
- East Central Community College – General Studies
- CPR and first aid certified
- Completed Supervisory Skills, Incident and Injury Free, and Lean Construction Training
- Trained and well experienced with industrial Work Plan's, procedures and specifications
- Experienced with P3 scheduling

References upon Request

- | | | | |
|-----------------------|--------------|--|---|
| • Robin Franke | 505.975.8420 | rfranke@nefnm.com | (Company: URENCO USA) |
| • John Beaver | 713.408.6568 | jbeaver1963@yahoo.com | (Company: T-Rex Engineering & Construction, LC) |
| • David Blickenderfer | 602.885.8566 | dvblick22@hotmail.com | (Company: Baker Concrete Construction Inc.) |
| • Keith Stephenson | 505.975.0351 | kstephenson@nefnm.com | (Company: Legacy Consulting) |
| • George Kaime | 541.261.7361 | george.kaime@fdthomas.com | (Company: FD Thomas) |

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

SPECIAL COMPOSITION REQUIREMENTS:

MEMBER	TERM EXPIRE JAN. 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 0)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy	Yes-2007			No		NO MEETINGS
Vacancy	Yes-2007			No		
Vacancy	Yes-2007			No		
Vacancy	Yes-2009			No		
Steve Jones	Yes			No		
Cathy Oestmann	Yes			No		
Curt Kamradt	Yes			Yes		

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Katey Howard	One other board	
Eric F. Nordwald Sr.	Five other boards	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Katey Howard

Address: 2500 W Cuthbert

Midland Texas 79701

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 24 years.

Professional and/or Community Activities:

Leadership Midland graduate 2012 - awarded the American Gladiator award for hard work; Aphasia Center Chocolate Decadence

Board Member; Usher, worship choir member and high school volunteer at Stonegate Fellowship; Secretary for the Permian Basin

Bicycle Association; Associate member of the Permian Basin Home Builders Association

What is your personal vision for the City?

To see Midland thrive and maintain an exceptional quality of life in every economic condition.

Please specify any time constraints you may have.

No lunch meeting time constraints.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Parks and Recreation Commission

Please tell us why you are interested in serving on this board or commission.

Being very active in sports and outdoor activities in and around the Permian Basin I believe my experience and love for the outdoors will help bring new ideas and enthusiasm to the board.

Date: 8/20/2012

Phone: 432-638-0826 (Home)

432-694-2595 x 113 (Business)

Email: kateyhoward@gmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Insurance Agent - Mims & Smith Insurance

What contribution would you most like to make?

New ideas, willingness to work, enthusiasm to see projects through from beginning to end.

Additional pertinent information or references:

Brenda Smith - President and Owner at Mims & Smith Insurance 432-694-2595 ext 102

Stephanie Martin - Events Manager Midland Chamber of Commerce 432-683-3381

Lisa Anderson - President Permian Basin Bicycle Association 432-208-8330

(2) Name of Board/Commission:

Midland Higher Education Facilities Corporation

What contribution would you most like to make?

As a graduate of Midland High, Midland College and UTPB I believe in higher education and its importance to our community.

I want to see our higher education facilities succeed and believe my compassion and ideas will benefit the board.

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Kately Howard

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

8/13/2012

PLEASE TYPE OR PRINT CLEARLY:

Eric F Nordwald Sr.

Name: _____

4902 Rio Grande Dr.

Address: _____

Midland TX 79707

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland³ years.

Professional and/or Community Activities:

NRA, General Contractors of America, Midland's YMCA, Our Lady of Guadalupe Catholic Church in Midland, Spartan & Tough

Mudder Races, Nuclear Contracting Opportunities & Nuclear Construction Safety

What is your personal vision for the City?

My vision of Midland is a city that people want to move to because of leading technology, opportunity for growth, secure employment, high demand of talent and respectable town to raise a family

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Building Codes Review Committee

City Development Advisory Committee

Construction Board of Adjustments and Appeals

Please tell us why you are interested in serving on this board or commission.

I have 12 yrs Construction experience with residential, commercial & Industrial industries. I am interested in bettering Midland and becoming a City Council member. I have a vast knowledge w/ building codes through out many cities within the US.

Date: _____

979.3249753

Phone: _____ (Home)

575.394.5763

(Business)

efnordwald@gmail.com

Email: _____

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Nuclear Operations/Construction Manager

What contribution would you most like to make?
First and foremost I would like to build a youth center. I also would contribute as a spokesmen.

Additional pertinent information or references:
I am going to attach my resume as additional information.

(2) Name of Board/Commission:
Planning and Zoning Commissioning

Midland Football, Soccer and Baseball Complex Development

Midland Higher Education Facilities Corporation

What contribution would you most like to make?
My contribution would be thinking and acting as a father of younger people that will grow within the community.

Additional pertinent information or references:
Attached resume.

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



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City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433

[Submit Via Email](#)

[Print Application](#)

Eric F Nordwald Sr.
4902 Rio Grande Dr. Midland TX 79707
efnordwald@gmail.com
979-324-9753

SUMMARY OR EXPERIENCE

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PROJECT TYPES

Nuclear Enrichment Facilities
Commercial Structures
Formwork Tunnels
Housing Projects

ACTIVITIES

Construction Management
Construction Planning
Cost Control
Quality Assurance
Building Planning
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Coordination
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Plant Safety
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Subcontract Management
P3 Scheduling (Primavera Certificate 5.0)

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Industry Experience:

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February 2012 – Current

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- Working directly with Operations and Construction Management on a day to day basis to establish plant requirements and provide the owner with the highest quality product(s).
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March 2010 – July 2010

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January 2009 – December 2009

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September 2008 – February 2009

Estimator

- Estimated turn-key projects for both Commercial and Industrial work ranging from \$5M up to \$65M
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- Worked with Field Supervisors and Project Managers to ensure understanding and accurate proposals
- Interacted with owners on potential projects for relationship purposes' and a understanding of there expectations

Dee Shoring Inc. Richmond, VA

October 2006 – September 2008

Estimator

- Bid work for turnkey projects (shoring, forming, concrete & excavation)
 - High rises (*Wachovia Bank Headquarters*, Charlotte, N.C., *Rialto Suites*, Daytona, FL.)
 - Stadiums (ASU Kidd Brewer stadium in Tennessee)
 - Hospitals, schools, apartments and condos
 - Department stores, warehouses and parking garages
- Negotiated contracts

Asst. Project Manager – Projects: VCU Health & Engineering Building, VCU Gymnasium, Center Point School

- Performed building control and jobsite managing on multiple projects
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Yates Construction Daytona Beach, FL

April 2006 – October 2006

Project Coordinator - Projects: Bella Vista Apartment Complex and Palma Bella Condos, Daytona Beach, FL

- Managed general contractor's layout for high rise apartment projects
- Supervised MEP field work along with drawing review for discrepancies
- Quality control and labor foreman

Dick Pacific Construction Co. Waikola, HI

Feb 2005 – March 2006

Carpenter Superintendent / Quality Control – Projects: Hilton Condominiums

- Supervised framing and trim construction crews on Hilton timeshare resorts as the General Contractor which consisted of exposed timber framed building projects
- Performed quality control for the project
- Coordinated mechanical, electrical and plumbing trades
- Trained employee safety and coordinated new hire orientations

St. Louis Carpenters Union St. Louis, MO

Feb 2000 - Feb 2005

Carpenter Superintendent

- Projects ranged from residential houses to large commercial and government structures.
- Performed work for the general contractor; framing, trim, welding, concrete, mechanical, electrical, plumbing, roofing, structural steel, flooring, painting & jobsite management

Education and Training:

- Attending the University of Texas Permian Basin for a Bachelors Degree in Industrial Technology
- St. Louis Carpenters Union – Apprenticeship Program & Certification in Construction Management
- East Central Community College – General Studies
- CPR and first aid certified
- Completed Supervisory Skills, Incident and Injury Free, and Lean Construction Training
- Trained and well experienced with industrial Work Plan's, procedures and specifications
- Experienced with P3 scheduling

References upon Request

- | | | | |
|-----------------------|--------------|--|---|
| • Robin Franke | 505.975.8420 | rfranke@nefnm.com | (Company: URENCO USA) |
| • John Beaver | 713.408.6568 | jbeaver1963@yahoo.com | (Company: T-Rex Engineering & Construction, LC) |
| • David Blickenderfer | 602.885.8566 | dvblick22@hotmail.com | (Company: Baker Concrete Construction Inc.) |
| • Keith Stephenson | 505.975.0351 | kstephenson@nefnm.com | (Company: Legacy Consulting) |
| • George Kaime | 541.261.7361 | george.kaime@fdthomas.com | (Company: FD Thomas) |

MIDLAND HOUSING FINANCE CORPORATION
 (Decision Making)
 Membership - 5; Terms - 2 Years expiring 1-2-2)

SPECIAL COMPOSITION REQUIREMENTS: Resident of City.

MEMBER	TERM EXPIRE SEPT 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy	Yes			No		DID NOT RECEIVED ATTENDANCE RECORD
Adrienne Valencia	Yes			No		
Melissa Wicker	Yes			No		
Jerry Morales (Liaison Officer)	Yes			No		
Nathan Miller	Yes			Yes		

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Fran V. Wallace	Only this board	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Fran V Wallace

Address: 2605 Whitney Dr

Midland Tx 79705

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 7 1/2 years.

Professional and/or Community Activities:

None of the Above. I married and moved to Midland in 05. My husband was born here in Midland and also went to school here in Midland. His work required traveling to other states and I joined him. He is now retired.

What is your personal vision for the City?

This city has grown so quickly and seems to be bursting at the seams. As the city grows there is a need for teamwork to organize and prepare and help our city to meet its needs within the government and the health and prosperity and needs of our people here in Midland.

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Midland Housing Authority Commission

Please tell us why you are interested in serving on this board or commission.

This will give me the opportunity to meet and get acquainted with the people of Midland and help the elderly and those with lower income needs.

Date: 8/24/2012

Phone: 432-699-4271 (Home)

(Business)

Email: dww42@sbcglobal.net

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Retired

What contribution would you most like to make?

To serve this position to the best of my ability. I have no idea what this position entails but I am sure that I am capable of working together and fulfilling whatever is required.

Additional pertinent information or references:

I am a graduate of Timken Vocational High School in Ohio. Attended many learning Seminars on many of the positions I have held in the past. Completed some courses in Criminal Justice online with the University of Phoenix. Organization and management are my best skills. I type, use computer and different software. Great phone etiquette.

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Barbco Inc in Canton Ohio 330-488-9400 (Barbera, Jim, David or Tony) 15 Yrs

Staffing Resources in Midland Tx 432-684-0527 (Fran) 07 and 08

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

James V Wallace

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

[Submit Via Email](#)

[Print Application](#)

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD
(Ad Hoc)

SPECIAL COMPOSITION REQUIREMENTS:

MEMBER	TERM EXPIRE SEPT 2012?	ATTEN- DANCE %	MEETINGS ATTENDED	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy	Yes			N/A		
Richard Hatchett						
W. L. "Scooter" Brown						
Ken Burgess						
Jim Hightower						
Ted H. Jones						
Mitch Malouf						
Christi Newton						
Dan Rush						

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD
(Membership - 6; Terms - 2 Years Staggered)

SPECIAL COMPOSITION REQUIREMENTS: None

MEMBER	TERM EXPIRE SEPT 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 9)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Willie Barber	Yes	100%	9	No		
Raymond McCarthy	Yes	78%	7	No		
Michael Trost	Yes	78%	7	No		
John James	No 09/13	56%	5			
Karen York	No 09/13	33%	8			
Guy McKenzie	No 09/13	33%	8			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Rebecca Bell	Only this board	
J. Ross Lacy	One other board	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Rebecca Bell
Address: 1103 Gulf Avenue
Midland TX 79705
(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 23 years.

Professional and/or Community Activities:

Member, United Way of Midland Board of Directors (chair of the Needs Assessment Committee), graduate of Leadership Midland.
past member of Samaritan Counseling Center Board of Directors, graduate of Non-Profit Management Center's "Generations"
program, former member and chair of the Midland Chamber of Commerce Education Committee

What is your personal vision for the City?

I love Midland and can't think of a better place to live. I would like to see Midland continue to excel in providing the conveniences, culture, education and services of a medium-sized metropolitan area.

Please specify any time constraints you may have.

No time constraints other than the third Thursday of every month when the United Way of Midland meets.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Midland Odessa Urban Transit Board (EZ Rider Board)

Please tell us why you are interested in serving on this board or commission.

Public transportation is a vital component of any metropolitan area. While it has only been a few years that Midland/Odessa has provided public transportation to citizens, I can already see it helping to connect people with community services. I would like

Date: 8/31/2012

Phone: 432/853-7099 (Home)

432/685-4556 (Business)

Email: rbell@midland.edu

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Midland College Administrator

to see public transportation continue to increase to provide access to more locations within the two communities.

What contribution would you most like to make?

I see my role on the Board in an advisory capacity. However, I am willing to also "roll up my sleeves" to work to get a job done.

Additional pertinent information or references:

Referred by council member John James

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Rebecca C. Bell

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433

Submit Via Email

Print Application



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As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: J. Ross Lacy

Address: P.O. Box 3266

Midland TX 79702

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ²³ years.

Professional and/or Community Activities:

President, Midland Co. Young Republicans

Member, Young Professionals of Midland

Member, UTPB School of Business Advisory Board

What is your personal vision for the City?

With the current economic growth that Midland is experiencing, I would like to see the city continue to embark on new innovated ideas that focus on garnering new industries to the region and continue to support the oil and gas industry. We need to also focus on promoting young professionals in the city to engage and support various projects within the community.

Please specify any time constraints you may have.

I do not have any time constraints that would not allow me to attend meetings regularly.

Date: 8/16/2012

Phone: 432-254-1126 (Home)

432-683-5542 (Business)

Email: j.rosslacy@gmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Self Employed / Lacy Capital, LLC.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Airport Planning and Development Board

Please tell us why you are interested in serving on this board or commission.

With the recent announcement of XCOR Aerospace moving to the Midland Airport, Midland is in a unique position to use this newfound partnership for economic growth and garner national attention to the region. The next few years are going to be exciting

for the airports and industrial park, which will just be another feather in the hat for Midland.

What contribution would you most like to make?

I would like to work on obtaining the Spaceport License for the airport. Also would like to work on continuing improve our airport system and work to get another hotel around the airport. The Midland Industrial Park can only benefit greatly in the next few years as of companies follow XCOR and move to the region.

Additional pertinent information or references:**(2) Name of Board/Commission:**

Midland-Odessa Urban Transit District Board

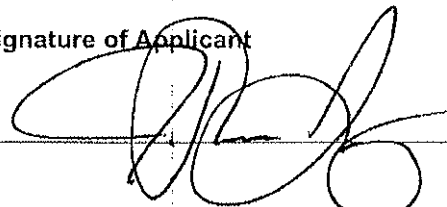
What contribution would you most like to make?

The Board did great in obtaining funding to make 349 a four lane road to Lamesa, however we need to make all entry roads into the region more accessible. Oilfield traffic is at an all time worst in the region causing unprecedented damage to our roads and making traffic accidents horrible. Working to obtain funding to make 349 a four lane road in south Midland Co. would be a major focus.

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433

Submit Via Email

Print Application

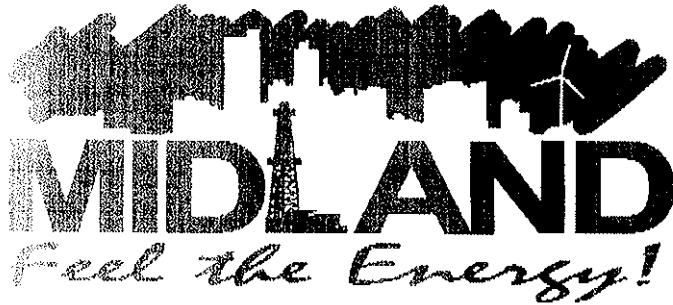
OIL AND GAS ADVISORY COMMITTEE
(Advisory)
(Membership – 5; Terms – 3 Years expiring 2-2-1)

SPECIAL COMPOSITION REQUIREMENTS: 3 petroleum engineers or geologists, 2 with property development or real estate experience.

MEMBER	TERM EXPIRE SEPT 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 5)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy –(Petro Eng.)	Yes			N/A		
D. Patrick Darden (Petroleum Engineer)	Yes	100%	5	Yes		
Don Eubank (Drilling Engineer)	Yes	60%	3	Yes		
Paul Brown	No 09/14	80%	4			
David Rosen	No 09/14	80%	4			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Russell Richards	One other board	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Russell Richards

Address: 4407 Cherrywood Drive

Midland TX 79707
(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 29 years.

Date: 8/31/2012

Phone: 432-689-8199 (Home)

432-682-5241 (Business)

Email: richards@gwdc.com

Are you a graduate of Midland 101? ☒ yes ☐ no

Occupation: Petroleum Geologist

Professional and/or Community Activities:

West Texas Geological Society - Officer (2004-08) including President 2007-08.

Congregational Boards and Committees - current and previous service - multiple years

What is your personal vision for the City?

A City that is thriving through managed growth and development; while recognizing limitations due to infrastructure and available resources (especially water). A City that is supportive of business development and growth (in addition to oil and gas). A City that respects an individual's rights while considering what is best for the entire population. A city that our children want to return to!

Please specify any time constraints you may have.

I generally have a flexible - self directed schedule. Regular meetings are not an issue with some notice given.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Planning and Zoning Commission

Please tell us why you are interested in serving on this board or commission.

Decisions / recommendations made by this commission are critical to the City's future. Process should be well thought out with consideration given to the multiple consequences of development.

What contribution would you most like to make?

Actively participate in decision making process, with the ultimate outcome being in the best interest of the City as a whole.

Additional pertinent information or references:**(2) Name of Board/Commission:**

Oil and Gas Advisory Committee

What contribution would you most like to make?

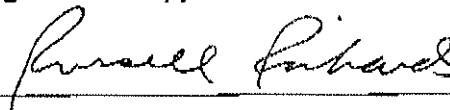
Utilize my thirty plus years industry experience to contribute to the drilling permit application approval process.

Determine how to best resolve conflicts between surface utilization and mineral development.

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

PARKS AND RECREATION COMMISSION
(Advisory)
Membership - 9; Terms - 3 Years expiring 3-3-3)

SPECIAL COMPOSITION REQUIREMENTS: Resident of City, taxpayer & qualified voter.

MEMBER	TERM EXPIRE SEPT. 2012	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 7)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Berry Simpson	Yes		0			
Amanda McCann	Yes		6			8/27/12 Ms. McCann would like to serve again.
David Ham	Yes		7			
Charlie A. Spence	No 09/13		4			
Susan Nichols	No 09/13		5			
Eric L. West	No 09/13		7			
Kenny Harper	No 09/13		5			
P. Lourcey Sams	No 09/14		6			
Tina Corbett	No 09/14		6			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Trevor L. Elza	One other board	
Bart Hotchkiss	One other board	
Katey Howard	One other board	
Edward Mayberry	Only this board	
Cash A. Pullin	Only this board	
Ronn Reeger	One other board	

2012-011



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Trevor L. Elza

Address: 2604 Spartan Dr.

Midland TX 79705

(City) (State) (Zip)

Date: 8/8/2012

Phone: (432)230-6718 (Home)

(432)685-4440 (Business)

Email: trevor.elza@ml.com

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ⁵ years.

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Financial Advisor

Professional and/or Community Activities:

Midland Bible Church, Midland Softball and Soccer Associations, Permian Basin Petroleum Association

Formerly a partner in a Midland Tax Preparation business, Currently an advisor at Merrill Lynch

What is your personal vision for the City?

For Midland to be a place the residents are proud to call home. A place young people want to return to to raise their families and begin their careers.

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Parks and Recreation Commission

Please tell us why you are interested in serving on this board or commission.

Outdoor activities and recreation are vital to the growth and maturity of children. I also believe that Midland has a lot more to offer to the adult sports enthusiast in the way of outdoor activities.

What contribution would you most like to make?

I would enjoy giving my thoughts and ideas to the group to see what makes sense for our town. I would also like to help with some of the more mundane work behind the scenes when needed.

Additional pertinent information or references:

(2) Name of Board/Commission:

Midland Development Corporation

What contribution would you most like to make?

Assist in analyzing and brainstorming the viability and cost/benefit analysis for new and existing Midland businesses.

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Trevor Elza

Digitally signed by Trevor Elza
DN: cn=Trevor Elza, o=Merrill Lynch, ou,
email=trevor.elza@ml.com, c=US
Date: 2012.08.08 09:06:39 -05'00'

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: bart hotchkiss

Address: 1701 community lane

midland 79701

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 41 years.

Professional and/or Community Activities:

computer sales, real estate, Murray's Deli, The Fire Place

United Way campaign board, Hospice Midland Board, P & Z Commission 6 years, Council 2 years

volunteer: Keep Midland Beautiful '85 - current, Museum of the Southwest '74 - '80, Tree Keepers 2008 - current

What is your personal vision for the City?

I feel that we need to become very proactive to be able to address our two major issues: 1. water 2. Boom & bust cycles

Please specify any time constraints you may have.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Parks & recreation

Planning & Zoning

Senior Citizens Center Planning (if such a board is created) not just for selfish reasons

Please tell us why you are interested in serving on this board or commission.

to better our city for future generations

Date: 7/12/2012

Phone: 423-684-6140 (Home)

(Business)

Email: bhotch@grandecom.net

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: retired

What contribution would you most like to make?

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

East Hetchkins

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433

Submit Via Email

Print Application



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Katey Howard

Address: 2500 W Cuthbert

Midland Texas 79701

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 24 years.

Professional and/or Community Activities:

Leadership Midland graduate 2012 - awarded the American Gladiator award for hard work; Aphasia Center Chocolate Decadence

Board Member; Usher, worship choir member and high school volunteer at Stonegate Fellowship; Secretary for the Permian Basin

Bicycle Association; Associate member of the Permian Basin Home Builders Association

What is your personal vision for the City?

To see Midland thrive and maintain an exceptional quality of life in every economic condition.

Please specify any time constraints you may have.

No lunch meeting time constraints.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Parks and Recreation Commission

Please tell us why you are interested in serving on this board or commission.

Being very active in sports and outdoor activities in and around the Permian Basin I believe my experience and love for the outdoors will help bring new ideas and enthusiasm to the board.

Date: 8/20/2012

Phone: 432-638-0826 (Home)

432-694-2595 x 113 (Business)

Email: kateyhoward@gmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Insurance Agent - Mims & Smith Insurance

What contribution would you most like to make?

New ideas, willingness to work, enthusiasm to see projects through from beginning to end.

Additional pertinent information or references:

Brenda Smith - President and Owner at Mims & Smith Insurance 432-694-2595 ext 102

Stephanie Martin - Events Manager Midland Chamber of Commerce 432-683-3381

Lisa Anderson - President Permian Basin Bicycle Association 432-208-8330

(2) Name of Board/Commission:

Midland Higher Education Facilities Corporation

What contribution would you most like to make?

As a graduate of Midland High, Midland College and UTPB I believe in higher education and its importance to our community.

I want to see our higher education facilities succeed and believe my compassion and ideas will benefit the board.

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Kately Howard

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

2012-001



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Edward Mayberry

Address: 3606 Hyde Park

Midland TX 79707

(City)

(State)

(Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 20 years.

Professional and/or Community Activities:

Youth Pastor at the Goodwill Baptist Church

Founder of a Non-Profit Youth Mentor Program (youth in control)

Volunteer YMCA youth coach

What is your personal vision for the City?

My personal vision for the City of Midland is to encourage Community Leaders, Parents, Teachers, Business Owners, etc. to invest more time, capital, support to the molding and training of young MISD students. I would like to see young mentoring programs training and preparing youth to be leaders of Midland.

Please specify any time constraints you may have.

None

Date: 1/18/2012

Phone: 432-425-6122 (Home)

432-689-0135 (Business)

Email: edwardmayberry@yahoo.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Admin. Ast. State of Texas TDCJ

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Parks and Recreation

Please tell us why you are interested in serving on this board or commission.

I would like to serve on a parks and recreation board because I believe it will allow me to gain useful information concerning the future plans for Midland. I also would hope to find networking opportunities with community leaders in an effort to work together to better Midland.

What contribution would you most like to make?

I believe I will contribute energy and youthful insight on specific areas and or topics.

Additional pertinent information or references:

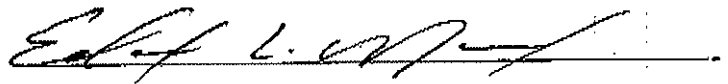
Mark Coffman: Midland Lee high boys basketball coach: 432-689-1643

Eddie Vancant: YMCA activity director: 432-682-2551

(2) Name of Board/Commission:**What contribution would you most like to make?****Additional pertinent information or references:**

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

2012-017



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Cash A. Pullin

Address: 2414 Haynes

Midland TX 79705
(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 15 years.

Professional and/or Community Activities:

West texas Geological Society, American Association of Petroleum Geologists, Hope Lutheran Church Member, Midland Maddog Run

Date: 8/17/2012
Phone: 432-413-0254 (Home)
432-688-3217 (Business)
Email: cpullin@claytonwilliams.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Geologist

What is your personal vision for the City?

I would like to help ensure a future for the city by making it more appealing to a young, professional demographic so the city can thrive

Please specify any time constraints you may have.

N/A

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Parks and Recreation

Please tell us why you are interested in serving on this board or commission.

I would like to see the city become more outdoor friendly, especially to the cycling and jogging communities by upgrading and making our existing parks and recreational facilities more accessible and desirable to those who enjoy the outdoors.

What contribution would you most like to make?

I would like to make more cycling and jogging routes at our parks and throughout the city that would help bring in the young demographic I stated above that may also be more health conscious.

Additional pertinent information or references:

Cycled Cactus and Crude MS150

Ran Habitat Home Run Half Marathon, Crossroads Half Marathon, 3M Austin Half Marathon, and many 5ks and 10ks

Have several upcoming bike races and duathlons

(2) Name of Board/Commission:

N/A

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Cash Pullin

Digitally signed by Cash Pullin
DN: cn=Cash Pullin, o=Clayton Williams Energy, Inc.,
ou, email=cpullin@claytonwilliams.com, c=US
Date: 2012.08.17 08:03:54 -05'00'

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

2012-010



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Ronn Reeger

Address: 112 S Loraine Ste 440
Midland TX 79701
(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 12 years.

Professional and/or Community Activities:

Have been involved, at times with numerous activities, primarily as they relate to entertainment opportunities for events, entities and institutions.

Date: 8/8/2012

Phone: 432-279-0083 (Home)
432-618-075 (Business)

Email: ronn@promisingprojects.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Business Owner - Promising Projects

What is your personal vision for the City?

To see Midland leverage the growth caused by the success of the oil & gas industry into opportunities in other sectors and to see the downtown area revitalized.

Please specify any time constraints you may have.

None known at this time.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Planning and Zoning Board

Please tell us why you are interested in serving on this board or commission.

It is an opportunity to be more closely involved with the decisions that affect the future growth of Midland via the planning of the interaction between residential and commercial entities.

What contribution would you most like to make?

A willingness to help out our city by serving on this board.

Additional pertinent information or references:

(2) Name of Board/Commission:

Parks and Recreation Committee

What contribution would you most like to make?

A willingness to share the insights gained from my experiences that relate to parks and recreation in serving our city.

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Ronn Reeger

Digitally signed by Ronn Reeger
DN: cn=Ronn Reeger, o=Promising Projects, ou,
email=ronn@promisingprojects.com, c=US
Date: 2012.08.08 07:47:39 -05'00'

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

[Submit Via Email](#)

[Print Application](#)

PERMIAN BASIN AIRPORT BOARD
(Advisory)
Membership - 30; Terms - 1 Year)
Ex-Officio Members: City Manager, City Attorney

SPECIAL COMPOSITION REQUIREMENTS: 10 Members of the Airport Planning & Development Board, A Resident of the following Cities: San Angelo, Abilene, Carlsbad, NM, Roswell NM, Artesia, NM, Hobbs NM, Fort Stockton, Seminole, Sweetwater, Pecos, 3 Residents of Odessa, Big Spring, Lamesa, Andrews, Monahans and Snyder.

MEMBER	TERM EXPIRE SEPT. 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 4)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
David Hardwick (Ft. Stockton)	Yes	0%	0			
Larry Shed (Hobbs, NM)	Yes	0%	0			
Earl Erdmann	Yes	100%	4			
Richard Campbell	Yes	0%	0			
Robert Garst	Yes	75%	3			
Ronald Schwisow	Yes	75%	3			
Herbert Blankinship	Yes	50%	2			
Jerry Walton	Yes	75%	3			
Mike Owen	Yes	100%	4			
Gregory F. Baiano	Yes	25%	1			
John T. Echols	Yes	75%	3			
Dallas L. Smith	Yes	50%	2			
Don Woodward	Yes	25%	1			
Larry Gill (Abilene)	Yes	25%	1			
Elvin Brownlee III (Andrews)	Yes	75%	3			
Jim Little (Big Spring)	Yes	100%	4			
Donald R. Bethel (Lamesa)	Yes	50%	2			
Henry Cutbirth (Monahans)	Yes	50%	2			
Willie Taylor (Odessa)	Yes	50%	2			
Gloria Pena (Odessa)	Yes	75%	3			
Barbara Graff (Odessa)	Yes	75%	3			
Isabelle Blanchard (Pecos)	Yes	50%	2			
Luis E. Elguezabal (San Angelo)	Yes	0%	0			
Lex Hinds (Seminole)	Yes	0%	0			
73.71 id Harrell (Snyder)	Yes	0%	0			
in Wortham (Sweetwater)	Yes	0%	0			

MEMBER	TERM EXPIRE SEPT. 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 4)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Lance Goodrich (Artesia, NM)	Yes	25%	1			
Bob Forrest (Carlsbad, NM)	Yes	0%	0			
Larry Fry (Roswell, NM)	Yes	25%	1			9/4/12 Received letter recommending Larry Fry to be reappointed.

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES



CITY OF ROSWELL

P.O. BOX 1838 + ROSWELL, NM USA 88202-1838 + TEL: 575.624.6700 + FAX: 575.624.6709 + www.roswell-nm.gov

August 31, 2012

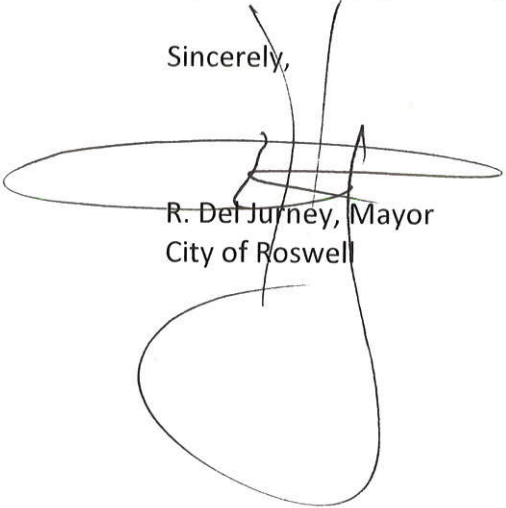
City of Midland
Amy M. Turner, City Secretary
P.O. Box 1152
Midland, Texas 79702

Dear Ms. Turner,

I would like to recommend the reappointment of Mr. Larry Fry to the Permian Basin Airport Board for the term of October 1, 2012 through September 30, 2013.

If you have any questions, please do not hesitate to contact me.

Sincerely,



R. Del Jurney, Mayor
City of Roswell

PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH AND MENTAL RETARDATION
(Decision Making)

Membership - 2 (City); Terms - 2 Years)

SPECIAL COMPOSITION REQUIREMENTS: Appointed from City of Midland, City of Odessa, Midland County and Ector County.

MEMBER	TERM EXPIRE JUNE 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 11)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Janet R. Pritchett (City)	Yes	100%	11	Yes		
Larry Edgerton (City)	No 06/13	100%	11			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES

PLANNING AND ZONING COMMISSION
(Advisory & Decision Making)
Membership - 9; Terms - 3 Years expiring 3-4-4)

SPECIAL COMPOSITION REQUIREMENTS: Resident Citizen of City, own real property inside city limits & qualified voter.

MEMBER	TERM EXPIRE SEPT. 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 19)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Becky Ferguson, Chairman	Yes	79%	15	No		
Bill Woodruff	Yes	79%	3	No		
Kevin Wilton	Yes	53%	10	Yes		8/27/12 Mr. Wilton would like to serve again.
Royce Watkins	Yes	74%	14	Yes		
Karen York	Yes	47%	9	Yes		
Jane Wolf	No 09/13	74%	14			
Cindy Lanning	No 09/13	58%	11			
Jay Norris	No 09/14	58%	11			
Galen Gatten, Vice Chairman	No 09/14	79%	15			
<u>ALTERNATE:</u>						
Tony Carrillo	No 09/14	0%	0			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Abraham Gutierrez	Only this board	
Bart Hotchkiss	One other board	
Sharla Hotchkiss	Only this board	
Ronnie Lynch	One other board	
Brandon D. McMorries	Only this board	
Eric F. Nordwald Sr.	Five other boards	
Robert Porter	Only this board	
Ronn Reeger	One other board	
Russell Richards	One other board	

2012-024

CITY OF MIDLAND
APPLICATION FOR CITY BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: ABRAHAM GUTIERREZ
Address: 1209 S. FORT WORTH
MIDLAND, TX 79701

Date: 8/30/12
Phone: 432-695-4030(Home)
432-522-1313(Business)
I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 28 years.

Occupation: OWNER INSURANCE + FINANCIAL SERVICES AGENCY

Professional and/or Community Activities: I have been an ACTIVE COMMUNITY member with numerous NON-PROFIT organizations and served on several taxing entity project committees. I'm also a member of the Young Professional of Midland and the WEST TEXAS INSURANCE AND FINANCIAL SERVICE ORGANIZATIONS.

What is your personal vision for the City? MY VISION FOR THE CITY IS TO provide quality services AT A GREAT PRICE WITH EXCEPTIONAL customer service. FORESEE THE FUTURE AND PLAN accordingly.

Please specify any time constraints you may have. _____

Please list below the Board(s) or Commission(s) on which you are interested in serving:
(A complete listing is attached to this application)

(1) Name of Board/Commission: PLANNING AND ZONING COMMISSION

Please tell us why you are interested in serving on this board or commission.

I truly believe in giving back to this wonderful city.

What contribution would you most like to make?

My experience in dealing with several city and county strategic projects has provided me more knowledge of how the city works. My business experience is also something I can bring to the table.

Additional pertinent information or references:

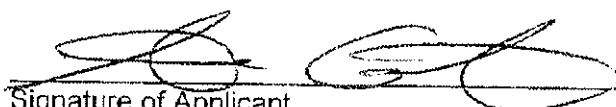
(2) Name of Board/Commission: _____

Please tell us why you are interested in serving on this board or commission.

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 685-7430.


Signature of Applicant

Please return this form to:

City of Midland
City Secretary's Office
P. O. Box 1152
Midland, TX 79702

FAX: (432) 685-7433 (During business hours only)



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: bart hotchkiss
Address: 1701 community lane
midland 79701
(City) (State) (Zip)

Date: 7/12/2012
Phone: 423-684-6140 (Home)
(Business)
Email: bhotch@grandecom.net

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ⁴¹ years.

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: retired

Professional and/or Community Activities:

computer sales, real estate, Murray's Deli, The Fire Place

United Way campaign board, Hospice Midland Board, P & Z Commission 6 years, Council 2 years

volunteer: Keep Midland Beautiful '85 - current, Museum of the Southwest '74 - '80, Tree Keepers 2008 - current

What is your personal vision for the City?

I feel that we need to become very proactive to be able to address our two major issues: 1. water 2. Boom & bust cycles

Please specify any time constraints you may have.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Parks & recreation

Planning & Zoning

Senior Citizens Center Planning (if such a board is created) not just for selfish reasons

Please tell us why you are interested in serving on this board or commission.

to better our city for future generations

What contribution would you most like to make?

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

East Hetchkins

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433

Submit Via Email

Print Application



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Sharla Hotchkiss
Address: 1701 Community Lane
Midland Texas 79701
(City) (State) (Zip)

Date: 8/30/2012
Phone: 432-684-6140 (Home)
(Business)
Email: hotchkiss@grandecom.net

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 41 years.

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: nonprofit consultant, trainer

Professional and/or Community Activities:

Keep Texas Beautiful Bd (past president, Director Emeritus), Texas Workforce Inv. Council (Vice Chr), Keep Midland Beautiful &
TreeKeepers, PB Master Gardener, PBRPC Solid Waste Adv. Comm., Bush Childhood Home Fundraising, 1st Methodist Church,
Jr.League, Vision 2020 Steering Committee, local NP involvement. Lead strategic planning, training for NPO's. Facilitator.

What is your personal vision for the City?

Midland is a progressive, proactive City with a positive partnership between citizens, elected officials and City staff.

Please specify any time constraints you may have.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Planning and Zoning

Please tell us why you are interested in serving on this board or commission.

Our City is growing and facing the challenges of creating infrastructure to support this growth. My prior experience on P&Z enables me to immediately be of value to the Commission. I enjoyed serving before and look forward to working with the excellent staff.

What contribution would you most like to make?

Broad community involvement gives me insight in the needs of the City. I bring skills in organizational development, strategic planning and facilitation. I am level-headed, experienced and want to see our City grow in an organized and progressive manner.

I offer proven leadership to help meet the Commission's goals.

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant



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City Secretary's Office
PO Box 1152
Midland, TX 79702
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[Submit Via Email](#)

[Print Application](#)



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Name: _____

Address: _____

(City) (State) (Zip)

I am ____ I am not ____ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ____ years.

Professional and/or Community Activities:

What is your personal vision for the City?

Please specify any time constraints you may have.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Please tell us why you are interested in serving on this board or commission.

Date: _____

Phone: _____ (Home)

(Business)

Email: _____

Are you a graduate of Midland 101? ____yes ____no

Occupation: _____

What contribution would you most like to make?

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant

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City Secretary's Office
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APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Brandon D. McMorries
 Address: P.O. Box 52687
Midland TX 79710
 (City) (State) (Zip)

Date: 8/29/2012

Phone: (432) 664-8264 (Home)
(432) 618-0286 (Business)

Email: bdtarzantx@yahoo.com

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 12 years.

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Real Estate Agent/ Real Estate Appraiser

Professional and/or Community Activities:

Past volunteer for Meals On Wheels. Member of the West Texas Writers club. Occasionally assist the Mid-Town Soldiers Boxing Club. Member of the National, State, and Local Association of Realtors. A State Certified General Real Estate Appraiser.

What is your personal vision for the City?

A city that is conducive to business, open to ideas, and progressive in nature while maintaining a harmonious balance with it's residents, and addresses the needs of it's citizens. It'd also be nice to have better synchronized traffic lights, and superior downtown parking to further promote downtown revitalization.

Please specify any time constraints you may have.

My schedule is typically flexible with enough notice. Occasional out of town trips happen.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Planning and Zoning Commission

Please tell us why you are interested in serving on this board or commission.

I feel the need to give back to my community, and this is an area where my expertise and real world experience can be very useful while the position would provide interesting challenges.

What contribution would you most like to make?

A common sense approach to the regulation of real estate development, and optimal utilization of vacant and improved properties for their highest and best use for the betterment of the city as a whole.

Additional pertinent information or references:

Former member of the Property Tax Consultants State Advisory Council. Part-time instructor for the real estate department of Midland College. Self-employed for 17 years.

(2) Name of Board/Commission:**What contribution would you most like to make?**

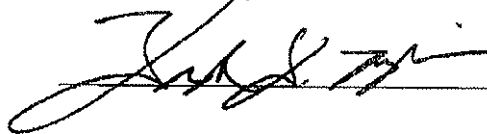
Additionally, I've been an active Realtor for about 8 years.

Additional pertinent information or references:

I have over 20 years of real estate appraisal experience ranging from complex commercial property to farm and ranch property to single family homes in locations as varied as large cities such as Dallas to mid size cities such as College Station to small towns such as Throckmorton. I was a partner in McMorries Homes, which built single family homes for about 6 years. See above paragraph.

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Signature of Applicant



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City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433





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8/13/2012

PLEASE TYPE OR PRINT CLEARLY:

Eric F Nordwald Sr.

Name: _____

4902 Rio Grande Dr.

Address: _____

Midland TX 79707

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ³ years.

Professional and/or Community Activities:

NRA, General Contractors of America, Midland's YMCA, Our Lady of Guadalupe Catholic Church in Midland, Spartan & Tough

Mudder Races, Nuclear Contracting Opportunities & Nuclear Construction Safety

What is your personal vision for the City?

My vision of Midland is a city that people want to move to because of leading technology, opportunity for growth, secure employment, high demand of talent and respectable town to raise a family

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Building Codes Review Committee

City Development Advisory Committee

Construction Board of Adjustments and Appeals

Please tell us why you are interested in serving on this board or commission.

I have 12 yrs Construction experience with residential, commercial & Industrial industries. I am interested in bettering Midland and becoming a City Council member. I have a vast knowledge w/ building codes through out many cities within the US.

Date: _____

979.3249753

Phone: _____ (Home)

575.394.5763

(Business)

efnordwald@gmail.com

Email: _____

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Nuclear Operations/Construction Manager

What contribution would you most like to make?
First and foremost I would like to build a youth center. I also would contribute as a spokesmen.

Additional pertinent information or references:
I am going to attach my resume as additional information.

(2) Name of Board/Commission:
Planning and Zoning Commissioning

Midland Football, Soccer and Baseball Complex Development

Midland Higher Education Facilities Corporation

What contribution would you most like to make?
My contribution would be thinking and acting as a father of younger people that will grow within the community.

Additional pertinent information or references:
Attached resume.

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Signature of Applicant



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PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433

[Submit Via Email](#)

[Print Application](#)

Eric F Nordwald Sr.
4902 Rio Grande Dr. Midland TX 79707
efnordwald@gmail.com
979-324-9753

SUMMARY OR EXPERIENCE

Over twelve years of experience on both commercial and industrial projects. In the capacity of Construction Manager, responsibilities include leading the Construction Team, providing leadership for production and recommendation of profit margin. My construction expertise extends to carry forward to final operational stages of the project, providing construction and maintenance management in both commercial and industrial fields. In the Industrial and Commercial industries, vast experiences and responsibilities were exercised in the coordination of all field activities, as well as commissioning and start up functions. All projects required continuous safety participation. Provide safety instruction and Safety presentation analysis. I have a comprehensive understanding of Plant construction techniques and procedures including use of construction tools for various projects and field safety coordination with Subcontractors and Client Representatives. I have specialized experience in new construction, construction management, large capital projects and maintenance projects. I have managed all fronts of construction starting with safety management, project controls, field execution and profit / loss responsibility.

PROJECT TYPES

Nuclear Enrichment Facilities
Commercial Structures
Formwork Tunnels
Housing Projects

ACTIVITIES

Construction Management
Construction Planning
Cost Control
Quality Assurance
Building Planning
Scheduling
Estimating
Coordination
Safety Training

TRAINING

Plant Safety
QA/QC Weld Track
Request for Information (RFI)
Field Change Order (FCO)
Subcontract Management
P3 Scheduling (Primavera Certificate 5.0)

Eric F. Nordwald Sr.

I am seeking a position in Construction Management. I have the experience, the determination, and can-do attitude that is essential to managing risk on every conceivable project. This includes the timely management of the project's cost, schedule, planning, vendors, subcontractors, technical information and other key elements. From pre-construction through project completion, I will systematically monitor work as it progresses and will manage both variances and trends for elements of scope, cost and timing.

Industry Experience:

URENCO USA Eunice, NM

February 2012 – Current

Commissioning & Acceptance Coordinator - Project: National Enrichment Facility

- Current holder of CAA and "L" clearance, qualified as a Construction Supervisor, Construction Engineer and Building Manager
- Commissioning structural, electrical and mechanical systems from construction and turning them over to engineering, maintenance and plant operations.
- Working directly with Operations and Construction Management on a day to day basis to establish plant requirements and provide the owner with the highest quality product(s).
- Generating, revising and performing test on mechanical systems for plant acceptance.
- Creating procedures for civil, structural and mechanical related items to insure quality guidelines during installation.
- Establishing code regulatory specifications for nuclear site building components.
- Providing plant maintenance with adequate documentation and tribal knowledge of accepted site equipment.

Baker Concrete Construction Inc. Eunice, NM

December 2009 – February 2012

Project Manager - Project: National Enrichment Facility (NEF) Separations Building Module Extension

- Responsible Project Manager for conducting the acceptance of a \$100M Nuclear Enrichment Building
- Managed from ground breaking through closure process for structural, mechanical & electrical portions
- Effectively communicate accurate and timely information to the Operations Manager and all project participants to bring the project to completion on time and budge.
- Performed tasks such as inspections, work plan implementation, coordinating trades, managing schedule, tracking cost, provided guidance for specification and procedure understanding along with building a strong relationship with the client respected vendors.
- Assisted in planning the tie-in process for new mechanical systems to existing working systems without interruptions.
- Directly supervised and trained nuclear-safety for 200+ site personnel.
- Provided material and equipment management for multiple site wide projects with a minimal staff experiencing tremendous savings and results

Baker Concrete Construction Inc. Eunice, NM

March 2010 – July 2010

Project Manager - Project: NEF Uranium Bi-product Cylinder Pad

- Manager of a \$2.0M Slab-on-Grade Uranium Storage Pad
- Performed project scheduling, sub and general contractor negotiations including financial responsibility for both firm fix and Time/Material budgets
- Worked directly with URENCO Engineering and provided recommendations on field related discrepancies

Baker Concrete Construction Inc. Houston, TX

January 2009 – December 2009

Project Manager - Project: MD Anderson Administrative Building

- Oversight on report processes based on Earned Value Management (EVM) concepts
- Develop, implement, reconcile and maintain valuable project control databases and reports
- Became fluent in creating and tracking schedules, proposed change orders, submittals, subcontracts, RFI's, and LEED material.

Baker Concrete Construction Inc. Houston, TX

September 2008 – February 2009

Estimator

- Estimated turn-key projects for both Commercial and Industrial work ranging from \$5M up to \$65M
- Estimated with the use of On Screen Take-off (OST) and Timberline system spread sheet.
- Worked with Field Supervisors and Project Managers to ensure understanding and accurate proposals
- Interacted with owners on potential projects for relationship purposes' and a understanding of there expectations

Dee Shoring Inc. Richmond, VA

October 2006 – September 2008

Estimator

- Bid work for turnkey projects (shoring, forming, concrete & excavation)
 - High rises (*Wachovia Bank Headquarters*, Charlotte, N.C., *Rialto Suites*, Daytona, FL.)
 - Stadiums (ASU Kidd Brewer stadium in Tennessee)
 - Hospitals, schools, apartments and condos
 - Department stores, warehouses and parking garages
- Negotiated contracts

Asst. Project Manager – Projects: VCU Health & Engineering Building, VCU Gymnasium, Center Point School

- Performed building control and jobsite managing on multiple projects
- Supervised and trained all field engineers on total Station and related computer programs
- Achieved working relationships with owners engineers while resolving RFI's and change orders
- Gained much knowledge with awarding and working with sub-contractors for scheduling and financial purposes

Yates Construction Daytona Beach, FL

April 2006 – October 2006

Project Coordinator - Projects: Bella Vista Apartment Complex and Palma Bella Condos, Daytona Beach, FL

- Managed general contractor's layout for high rise apartment projects
- Supervised MEP field work along with drawing review for discrepancies
- Quality control and labor foreman

Dick Pacific Construction Co. Waikola, HI

Feb 2005 – March 2006

Carpenter Superintendent / Quality Control – Projects: Hilton Condominiums

- Supervised framing and trim construction crews on Hilton timeshare resorts as the General Contractor which consisted of exposed timber framed building projects
- Performed quality control for the project
- Coordinated mechanical, electrical and plumbing trades
- Trained employee safety and coordinated new hire orientations

St. Louis Carpenters Union St. Louis, MO

Feb 2000 - Feb 2005

Carpenter Superintendent

- Projects ranged from residential houses to large commercial and government structures.
- Performed work for the general contractor; framing, trim, welding, concrete, mechanical, electrical, plumbing, roofing, structural steel, flooring, painting & jobsite management

Education and Training:

- Attending the University of Texas Permian Basin for a Bachelors Degree in Industrial Technology
- St. Louis Carpenters Union – Apprenticeship Program & Certification in Construction Management
- East Central Community College – General Studies
- CPR and first aid certified
- Completed Supervisory Skills, Incident and Injury Free, and Lean Construction Training
- Trained and well experienced with industrial Work Plan's, procedures and specifications
- Experienced with P3 scheduling

References upon Request

- | | | | |
|-----------------------|--------------|--|---|
| • Robin Franke | 505.975.8420 | rfranke@nefnm.com | (Company: URENCO USA) |
| • John Beaver | 713.408.6568 | jbeaver1963@yahoo.com | (Company: T-Rex Engineering & Construction, LC) |
| • David Blickenderfer | 602.885.8566 | dvblick22@hotmail.com | (Company: Baker Concrete Construction Inc.) |
| • Keith Stephenson | 505.975.0351 | kstephenson@nefnm.com | (Company: Legacy Consulting) |
| • George Kaime | 541.261.7361 | george.kaime@fdthomas.com | (Company: FD Thomas) |



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Name: Robert Porter

Address: 415 Wall St.(suite 416)

Midland Texas 79701
(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 42 years.

Professional and/or Community Activities:

Stamp Collecting & Coin Collecting.

Date: 6/26/2012

Phone: (432)254-3516 (Home)
(Business)

Email: robertaaronporter@yahoo.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation:

What is your personal vision for the City?

I would personally like to see Midland Expand even more in the near future.

Please specify any time constraints you may have.

n/a

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Planning and Zoning Commission.

Please tell us why you are interested in serving on this board or commission.

Would like to share my opinions and make decisions regarding the future development in the community.

What contribution would you most like to make?

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433

Submit Via Email

Print Application

2012-010



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Ronn Reeger

Address: 112 S Loraine Ste 440
Midland TX 79701
(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 12 years.

Professional and/or Community Activities:

Have been involved, at times with numerous activities, primarily as they relate to entertainment opportunities for events, entities and institutions.

Date: 8/8/2012

Phone: 432-279-0083 (Home)
432-618-075 (Business)

Email: ronn@promisingprojects.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Business Owner - Promising Projects

What is your personal vision for the City?

To see Midland leverage the growth caused by the success of the oil & gas industry into opportunities in other sectors and to see the downtown area revitalized.

Please specify any time constraints you may have.

None known at this time.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Planning and Zoning Board

Please tell us why you are interested in serving on this board or commission.

It is an opportunity to be more closely involved with the decisions that affect the future growth of Midland via the planning of the interaction between residential and commercial entities.

What contribution would you most like to make?

A willingness to help out our city by serving on this board.

Additional pertinent information or references:

(2) Name of Board/Commission:

Parks and Recreation Committee

What contribution would you most like to make?

A willingness to share the insights gained from my experiences that relate to parks and recreation in serving our city.

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Ronn Reeger

Digitally signed by Ronn Reeger
DN: cn=Ronn Reeger, o=Promising Projects, ou,
email=ronn@promisingprojects.com, c=US
Date: 2012.08.08 07:47:39 -05'00'

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

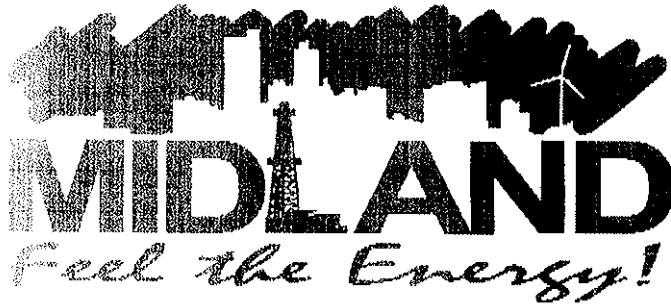
PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

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APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Name: Russell Richards

Address: 4407 Cherrywood Drive

Midland TX 79707
(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 29 years.

Date: 8/31/2012

Phone: 432-689-8199 (Home)

432-682-5241 (Business)

Email: richards@gwdc.com

Are you a graduate of Midland 101? ☒ yes ☐ no

Occupation: Petroleum Geologist

Professional and/or Community Activities:

West Texas Geological Society - Officer (2004-08) including President 2007-08.

Congregational Boards and Committees - current and previous service - multiple years

What is your personal vision for the City?

A City that is thriving through managed growth and development; while recognizing limitations due to infrastructure and available resources (especially water). A City that is supportive of business development and growth (in addition to oil and gas). A City that respects an individual's rights while considering what is best for the entire population. A city that our children want to return to!

Please specify any time constraints you may have.

I generally have a flexible - self directed schedule. Regular meetings are not an issue with some notice given.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Planning and Zoning Commission

Please tell us why you are interested in serving on this board or commission.

Decisions / recommendations made by this commission are critical to the City's future. Process should be well thought out with consideration given to the multiple consequences of development.

What contribution would you most like to make?

Actively participate in decision making process, with the ultimate outcome being in the best interest of the City as a whole.

Additional pertinent information or references:**(2) Name of Board/Commission:**

Oil and Gas Advisory Committee

What contribution would you most like to make?

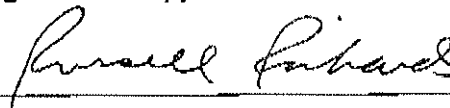
Utilize my thirty plus years industry experience to contribute to the drilling permit application approval process.

Determine how to best resolve conflicts between surface utilization and mineral development.

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

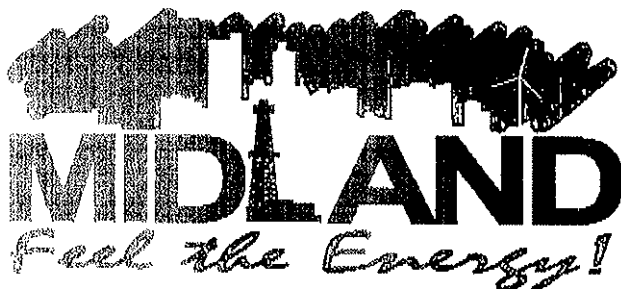
TAX INCREMENT REINVESTMENT ZONE BOARD
(Decision Making)
Membership - 12; Terms - 2 Years)

SPECIAL COMPOSITION REQUIREMENTS: None

MEMBER	TERM EXPIRE MARCH 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 4)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Neil Florer (College)	Yes	75%	3	No		
Dan Rush (City)	Yes	50%	2	No		
Mark T. Wellen (City)	Yes	100%	4	No		
Jay Reynolds, (Hospital)	Yes	25%	1	No		
Ralph Way (College)	Yes	75%	3	No		
Randy Prude (County)	Yes	75%	3	Yes		
Judge Mike Bradford (County)	Yes	25%	1	Yes		
C. Mark Wheeler (City)	Yes	0%	0	Yes		
Bob Lanier (City)	Yes	100%	4	Yes		
John Kennedy (City)	Yes	100%	4	Yes		
Brent Kennedy (City)	Yes	25%	1	Yes		
Pete Hulder (Hospital)	No 03/13	100%	4			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Michael Blonkvist	Only this board	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Michael Blonkvist

Address: 555 W Texas, Suite 120

Midland TX 79701

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 27 years.

Professional and/or Community Activities:

YPE, Midland Chamber of Commerce Board, George Bush Childhood Board, Hillcrest School Board

I am very involved in my bible study at my church

Date: 8/20/2012

Phone: (432) 413-3883 (Home)

(432) 687-8967 (Business)

Email: michael.blonkvist@rbc.com

Are you a graduate of Midland 101? ☒ yes ☐ no

Occupation: Financial Advisor

What is your personal vision for the City?

I want to see Midland set in place solid foundations that will allow it to grow the right way for years to come

Please specify any time constraints you may have.

Because I am part of an investment team I can usually have someone fill in for me if I need to leave

Please list below the Board(s) or Commission(s) on which you are interested in serving:

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(1) Name of Board/Commission:

Midland TIRZ

Please tell us why you are interested in serving on this board or commission.

I am very interested in learning about how cities use tax dollars. I want to learn how they distribute them and reinvest them throughou

2012 AUG 20 PM 3:10

What contribution would you most like to make?

My time and effort at first. After I have a good understanding about what goes on with the TIRZ I will be able to contribute my experience.

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant



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**ZONING BOARD OF ADJUSTMENT
AND
AIRPORT ZONING BOARD OF ADJUSTMENT
(Decision Making)
Membership - 5; Terms - 2 Years expiring 3 odd & 2 even)**

SPECIAL COMPOSITION REQUIREMENTS: None

MEMBER	TERM EXPIRE SEPT. 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 2)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Trudi Edwards	Yes	0%	0	No		
Manny Ribera	Yes	100%	2	No		
Todd Byars	Yes	100%	2	Yes		8/30/12 Mr. Byars called and said he would like to be reappointed.
Ken Morgan	Yes	50%	1	Yes		
Carla Repman	No 09/13	100%	2			
<u>ALTERNATES:</u>						
Vacancy	Yes - 2006					
Vacancy	Yes - 2007					
Vacancy	Yes - 2007					
Vacancy	Yes - 2009					

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Scott Young	One other board	

2012-015



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Name: Scott Young

Address: 1212 Breckenridge Ct.

Midland, TX 79705

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 24 **years.**

Professional and/or Community Activities:

Date: 8/9/2012

Phone: 432-978-2372 (Home)

432-520-0820 (Business)

Email: syoung@randcoindustries.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Commercial Construction

What is your personal vision for the City?

I want Midland to continue its positive growth and diversification of different industries.

I think Midland is an excellent place to raise a family and run a business.

I believe Midland is growing and will continue to grow and I would like to be more involved with the city government.

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Construction Board of Adjustments and Appeals

Please tell us why you are interested in serving on this board or commission.

I want to get involved with our community and the direction that Midland is growing. I was born here in Midland and plan on staying the rest of my life and would like to help do my part to make our community a better place to work and live.

What contribution would you most like to make?

I am part of a small business in the construction industry and think that my knowledge in the industry would be beneficial for the city.

Additional pertinent information or references:

(2) Name of Board/Commission:

Zoning Board of Adjustments and Airport Zoning Board of Adjustments

What contribution would you most like to make?

Additional pertinent information or references:

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Signature of Applicant

Scott Young

Digitally signed by Scott Young
DN: cn=Scott Young, o=Young's Building Systems,
ou, email=syoung@randcoindustri.com, c=US
Date: 2012.08.09 16:45:33 -05'00'

Applications may be submitted online via email or print in order to send by mail or fax:

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