

**CITY OF MIDLAND, TEXAS
BRIEFING SESSION AGENDA
September 24, 2013 - 8:30 A.M.
BASEMENT CONFERENCE ROOM
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 Commemorative Air Force (CAF) regarding AIRSHO and matters related to CAF funding.
2. Receive a presentation from staff regarding the City's new website.
3. Consider a proposal for a revised zoning plan for the "Window Pane" area.

AGENDA FOR CITY COUNCIL MEETING
September 24, 2013 – 10:00 AM
Council Chamber - City Hall

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

OPENING ITEMS

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

PRESENTATIONS

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

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 September 10, 2013.
 - b. Special meeting of September 17, 2013.
6. Consider a resolution authorizing the purchase of three complete Side-wheel Roll Irrigation Systems for use at the Spraberry Farm facilities from Mesa Irrigation Company, of Lamesa, Texas, at a total cost of \$51,250.00. (PURCHASING) (2013 - 313)
7. Consider a resolution authorizing the purchase of an annual supply of polymer for dewatering for treating City of Midland drinking water from Polydyne, Incorporated, for a total price of \$40,867.20. (PURCHASING) (2013 - 314)

8. Consider a resolution authorizing the purchase of an annual supply of copper sulfate solution for treating City of Midland drinking water from the low bidder, Chemrite, Incorporated, for a total price of \$66,675.00. (PURCHASING) (2013 - 315)
9. Consider a resolution authorizing the purchase of an annual supply of potassium permanganate for treating City of Midland drinking water from the low bidder, F2 Industries, L.L.C., for a total price of \$21,400.00. (PURCHASING) (2013 - 316)
10. 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 \$207,134.00. (PURCHASING) (2013 - 317)
11. Consider a resolution authorizing the purchase of an annual supply of polymer for treating City of Midland drinking water from Polydyne, Incorporated, for a total price of \$77,160.00. (PURCHASING) (2013 - 318)
12. Consider a resolution authorizing the purchase of twenty-five (25) tons of powdered activated carbon for treating City of Midland drinking water from Brenntag Southwest, Incorporated, for a total cost of \$26,450.00. (PURCHASING) (2013 - 319)
13. Consider a resolution authorizing the purchase of an annual supply of aluminum sulfate for purifying City of Midland drinking water from the low bidder, Chameleon Industries, Incorporated, for a total price of \$496,960.00. (PURCHASING) (2013 - 320)
14. Consider a resolution authorizing the purchase of an annual supply of liquid ammonium sulfate for treating City of Midland drinking water from Brenntag Southwest, Incorporated, at a total cost of \$11,000.00. (PURCHASING) (2013 - 321)
15. Consider a resolution approving plans and specifications and authorizing advertisement for bids for the renovation of two stairwells at Grande Communications Stadium; and allocating \$250,000.00 to the Grande Stairwell Project (9065). (PURCHASING) (2013 - 322)
16. Consider a resolution authorizing the execution of an agreement with the Commemorative Air Force, Incorporated, for the staging of an airshow at the Midland International Airport; the agreement allows the Commemorative Air Force to host an airshow on Midland International Airport property, sets required insurance levels as well as administering emergency response personnel; the airshow will commence Friday, October 11, 2013 and conclude on Sunday, October 13, 2013. (AIRPORTS) (2013 - 323)
17. Consider a resolution authorizing the City Manager to negotiate and execute a Partial Assignment of the Commercial Land/Use Agreement between Deer Horn Aviation Ltd., Co. and the City of Midland, Texas to Ross Midland LLC, Denver,

Colorado. (AIRPORTS) (2013 - 324)

18. Consider a resolution of the City of Midland, Texas establishing a Spaceport Development Corporation as authorized by Chapter 507 of the Texas Local Government Code; the Spaceport Development Corporation is created in coordination with and in conjunction with Midland County, Texas; the Spaceport Development Corporation shall be known as the Midland Spaceport Development Corporation and shall be governed by Chapter 507 of the Texas Local Government Code; the Spaceport Development Corporation shall be governed by a board of seven directors and four of the directors shall be Midland City Council Members and three of the directors shall be appointed by Midland County, Texas; and appointing four (4) members to the Board of Directors. (AIRPORTS) (2013 - 325)
19. Consider a resolution of the City of Midland, Texas, authorizing the Mayor to seek a thirty-day extension from the Office of Aerospace and Aviation within the Economic Development and Tourism Division of the Office of the Governor for projects that provide for the development of spaceports in Texas; the Economic Development and Tourism Division of the Office of the Governor is the administering agency for the Spaceport Trust Fund and the City is seeking a thirty-day extension to apply for said funds; the Mayor is authorized and directed to file a request for an extension with Keith Graf, Director of the Office of Aerospace and Aviation; the Mayor is also authorized and directed to send a copy of his letter to the Honorable Tom Craddick, Texas House of Representatives, District 82, and the Honorable Kel Seliger, Texas State Senator, District 31. (AIRPORTS) (2013 - 326)
20. Consider a resolution authorizing the execution of a 2014 Routine Airport Maintenance Program Agreement between the City of Midland, Texas and the Texas Department of Transportation to provide an Automated Weather Observing System at Midland Airpark; and appropriating necessary funds. (AIRPORTS) (2013 - 327)
21. Consider a resolution appropriating \$138,100.00 to the Technology Acquisitions 2013 Project (9066). (CISD) (2013 - 328)
22. 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) (2013 - 329)
23. Consider a resolution authorizing an agreement with the Commemorative Air Force, Incorporated to promote tourism and the hotel industry in the City; and the City shall provide a maximum of \$50,000.00 in funding from the City's Hotel/Motel Fund. (CITY SECRETARY'S OFFICE) (2013 - 330)
24. Consider a resolution approving the issuance of a permit to Rust Oil Corporation ("Operator") to drill an oil and gas well within the City limits located 2,183 feet from the south line and 1,616 feet from the east line, Section 9, Block "X", H.P.

Hilliard Survey, City and County of Midland, Texas (Generally located on the west side of the extension of North Garfield Street, approximately ½ mile north of Mockingbird Lane); and providing that said permit does not require a new Road Repair Agreement but shall be consolidated under an existing Road Repair Agreement. (DEVELOPMENT SERVICES) (2013 - 331)

25. Consider a resolution authorizing an amendment to Resolution 2012-425 to increase the appropriation of funds for the Home Investment Partnership Program Reservation System Participant Homebuyer Assistance Program from \$41,600.00 to \$249,600.00; no local match is required. (DEVELOPMENT SERVICES) (2013 - 332)
26. Consider a resolution authorizing a right-of-way license between the City of Midland, Texas and Vitol Midstream Pipeline LLC; said right-of-way license is for entering the City of Midland's right-of-way for the purpose of placing, installing, constructing, operating, repairing, maintaining, replacing and removing one (1) pipeline, for the transportation of oil and gas materials and to have the right of ingress and egress at convenient points for such purpose; the pipeline is located within the City of Midland right-of-way, Sections 4, 9, 16, and 21, Block 37, T-3-S, T&P RR Co. Survey, 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. (Deferred from the September 10, 2013 meeting.) (ENGINEERING SERVICES) (2013 - 299)
27. Consider a resolution authorizing the execution of a Public Improvement Development Agreement with Wireline Accessories and Sales, LLC for water distribution and wastewater collection improvements to Ranchland Acres Addition, Section 4; and appropriating funds therefor; said agreement being authorized by Section 395.081 of the Texas Local Government Code. (ENGINEERING SERVICES) (2013 - 333)
28. Consider a resolution authorizing the execution of a Public Improvement Development Agreement with 2010 Midland Properties, JV LLC for development of Covington Addition, City and County of Midland, Texas (Generally located along the northwest corner of State Highway 191 and Farm-to-Market Road 1788); and appropriating funds in the amount of \$285,367.00 therefor; said agreement being authorized by Section 395.081 of the Texas Local Government Code. (ENGINEERING SERVICES) (2013 - 334)
29. Consider a resolution authorizing the execution of a Temporary Water and Sewer Service Agreement between the City of Midland and PFP Indus Group, LLC for services to an approximate 8.96-acre tract of land out of the north half of Section 12, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas; said property is outside the City limits; PFP Indus Group, LLC has executed a letter agreeing to annexation if and when the property is annexed; PFP Indus Group, LLC shall be charged a rate for service which is one and one-half times the rate charged customers in the City limits; and ordering recordation by the City

Secretary. (ENGINEERING SERVICES) (2013 - 335)

30. Consider a resolution authorizing the execution of a Temporary Water and Sewer Service Agreement between the City of Midland and PFP Indus Group, LLC for services to an approximate 8.47-acre tract of land out of the north half of Section 12, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas; said property is outside the City limits; PFP Indus Group, LLC has executed a letter agreeing to annexation if and when the property is annexed; PFP Indus Group, LLC shall be charged a rate for service which is one and one-half times the rate charged customers in the City limits; and ordering recordation by the City Secretary. (ENGINEERING SERVICES) (2013 - 336)
31. Consider a resolution authorizing the City of Midland Police Department in conjunction with the Midland County Sheriff's Department to accept the Fiscal Year 2013 Justice Assistance Grant funds totaling \$29,554.00; the City of Midland will receive \$17,732.00 (60%) and Midland County will receive \$11,822.00 (40%) of the grant funds; authorizing the execution of acceptance documents; and appropriating funds. (POLICE) (2013 - 337)
32. Consider a resolution accepting the Fiscal Year 2014 Victim Coordinator and Liaison Grant from the Texas Attorney General; this grant is to be used by the Midland Police Department to maintain a victim assistance liaison position; authorizing the execution of acceptance documents; and depositing the funds into the General Fund. (POLICE) (2013 - 338)
33. Consider a resolution accepting a grant in the amount of \$34,100.00 from the Texas Department of Transportation in order to conduct a Fiscal Year 2013-2014 Comprehensive Special Traffic Enforcement Program for intersection traffic control enforcement, speed enforcement, and driving while intoxicated enforcement; said grant award requires a City cash match in the amount of \$3,750.00; providing that the grant funds shall be used to pay overtime to police officers working on said program; authorizing the execution of acceptance document; and appropriating grant funds. (POLICE) (2013 - 339)
34. Consider a resolution approving the budget of the Midland Emergency Communication District for the Fiscal Year ending September 30, 2014. (POLICE) (2013 - 340)
35. Consider a resolution accepting a modification to the Fiscal Year 2013 Grant Award from the Southwest Border High Intensity Drug Trafficking Areas Program in the amount of \$10,304.00; these funds will be directed to the Fiscal Year 2013 High Intensity Drug Trafficking Areas Grant Project 7107; and appropriating funds. (POLICE) (2013 - 341)
36. Consider a resolution accepting a donation of \$10,000.00 from the Westwood Trust-Yarborough Foundation; the donated funds will be deposited in the Invest-in-a-Vest Project to purchase bullet proof vest for police officers; and appropriating said funds. (POLICE) (2013 - 342)

37. Consider a resolution authorizing the execution of a 1-year Effluent Farm Lease Renewal Agreement between the City of Midland, Texas, and Spraberry CGC, Incorporated, for operation of the Spraberry Effluent Farm. (UTILITIES) (2013 - 343)
38. Consider a resolution authorizing the execution of a 1-year Effluent Farm Lease Renewal Agreement between the City of Midland, Texas, and Kevin Cook, for operation of the Spraberry Effluent Farm. (UTILITIES) (2013 - 344)
39. Consider a resolution authorizing the execution of a 5-year Lease Renewal Agreement between the City of Midland, Texas, and D.K. Boyd Land and Cattle Company, at the T-Bar Ranch in Winkler County and Loving County, Texas. (UTILITIES) (2013 - 345)

SECOND READINGS

40. 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 9.10-acre tract of land which is presently zoned AE, Agriculture Estate District, to be used as an LR-2, Local Retail District; by permitting a 57.51-acre tract of land which is presently zoned AE, Agriculture Estate District, to be used as a PD, Planned District for a Housing Development; said tracts being out of Section 19, Block 38, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas (Generally located on the north side of East Loop 250 North, approximately 1/4 of a mile east of North Fairgrounds 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)(First reading held September 10, 2013.)(9180)
41. Consider an ordinance on second reading changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lot 5, Block 2, Westridge Park Addition, Section 8, City and County of Midland, Texas, which is presently zoned PD, Planned District for a Shopping Center, to be used as an LR-1, Local Retail District (Generally located on the southeast corner of Andrews Highway and Tradewinds Boulevard); containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES)(First reading held September 10, 2013.)(9181)
42. Consider an ordinance on second reading amending Title X, "Traffic Regulations", Chapter Four, "Traffic Control Devices", Section 11, "School Zones and Crossings", of the Midland City Code, so as to designate each school zone and school crossing within the City and regulate the speed and movement of traffic therein; authorizing and directing the Traffic Engineer to install appropriate

signs and markings; repealing Ordinance No. 9042; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two hundred dollars (\$200.00); and ordering publication. (ENGINEERING SERVICES)(First reading held September 10, 2013.)(9183)

PUBLIC HEARINGS

43. At approximately 10:30 A.M. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 1.612-acre portion of Lot 7, Block 3, Gateway Plaza, Section 2, City and County of Midland, Texas, which is presently zoned O-1, Office District, to be used as an O-2, Office District (Generally located on the north side of Starboard Drive, approximately 350 feet east of South Tradewinds Boulevard); 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) (9184)
44. At approximately 10:33 A.M. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 0.938-acre portion of Lot 2, Block 2, Wallco Addition, Section 3, City and County of Midland, Texas, which is presently zoned O-2, Office District, to be used as an LR-2, Local Retail District (Generally located on the southwest corner of the intersection of North Big Spring Street and Veterans Airpark Lane); 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) (9185)
45. At approximately 10:36 A.M. hold a public hearing and consider an ordinance changing the zoning use classification of the property described as a 3,038 square foot portion of Lot 19A, Block 5, North Park, Section 16, City and County of Midland, Texas (Generally located on the north side of West Loop 250 North, approximately 750 feet west of Whitman Drive), 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) (9186)
46. At approximately 10:39 A.M. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lots 1-11 and Lots 26-28, Block 1, and Lots 1-13, Block 2, Adobe Meadows, Section 1, and Lots 10-12, the west 0.109 acres of Lot 13, and the west 2.967 acres of Tract "A", Block 8, Adobe Meadows, Section 3, City and County of Midland, Texas, which is presently zoned 2F, Two-

Family Dwelling District, to be used as a 1F-3, One-Family Dwelling District; by permitting Lots 5-10, Block 9, Adobe Meadows, Section 4, City and County of Midland, Texas, which is presently zoned 2F Two-Family Dwelling District, to be used as a 1F2, One-Family Dwelling District; by permitting the east 0.058 acres of Lot 13, Lots 14-16, and the east 4.057 acres of Tract "A", Block 8, Adobe Meadows, Section 3, City and County of Midland, Texas, which is presently zoned PD, Planned District for a Housing Development, to be used as a 1F-3, One-Family Dwelling District (Generally located on the east side of State Highway 349, north of the east extension of Mockingbird Lane); 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) (9187)

47. At approximately 10:42 A.M. hold a public hearing and consider an ordinance adopting a site plan for a 10.79-acre tract of land out of Section 1, Block 39, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas (Generally located on the east side of South Lamesa Road, approximately 1,000 feet north of East Interstate Highway 20); 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) (9188)
48. At approximately 10:45 A.M. hold a public hearing and consider a resolution authorizing the temporary use of land for an outdoor tent sale 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) (2013 - 346)

MISCELLANEOUS

49. Consider an ordinance vacating and abandoning a 2.40-acre drainage easement and a 6.32-acre drainage easement within the San Francisco Avenue, Rodeo Street, Magellan Street and Mockingbird Lane rights-of-way, all out of Adobe Meadows, Sections 3 and 5, City and County of Midland, Texas (Generally located on the east side of State Highway 349, north of the east extension of Mockingbird Lane); adopting the appraisal by the City Manager of \$29,589.00; waiving the fee for the cost of the drainage easements; and ordering recordation by the City Secretary. (DEVELOPMENT SERVICES) (9189)
50. Consider a motion for approval of a proposed preliminary plat of Adobe Meadows, Section 6, being a replat of Lots 1-58, Block 1, Lots 1-13, Block 2, Lots 2-10, Block 3, Lots 1-7, Block 4, and Lots 1-27, Block 5, Adobe Meadows, Section 1; of Tract "A" and Lots 10-16, Block 8, Adobe Meadows, Section 3; Lots 33-56, Block 5 and Lots 1-14, Block 9, Adobe Meadows, Section 4; Lots 11-21, Block 3, Lots 8-16, Block 4, Lots 28-32, Block 5, Lots 1-12 and Lots 14-25, Block 6, Lots 1-32, Block 7, and Lots 1-9, Block 8, Adobe Meadows, Section 5; and the to be vacated rights-of-way being 0.703-acres of Baca Circle, 0.103-acres of

Baca Street, 0.181-acres of Cerrillos Avenue, 0.57-acres of Cerrillos Court, 0.123-acres of Conquistador Court, 0.014-acres of Gallop Court, 0.002-acres of Guadalupe Street, 0.614-acres of Magellan Street, 0.409-acres of San Francisco Avenue, 0.079-acres of St. Michael Court and 1.301-acres of adjacent alleys, all in the City and County of Midland, Texas. (Generally located on the side of Highway 349, north of east the extension Mockingbird Lane.) (DEVELOPMENT SERVICES)

51. Consider a motion approving an interpretation to an Oil and Gas Well Drilling Permit from Bluestem Energy Holdings, LLC within the City limits, (Evans E 1) located 2,073 feet from the north line and 1,009 feet from the west line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the east side of the North Midland Drive, approximately $\frac{3}{4}$ mile north of Mockingbird Lane.) (DEVELOPMENT SERVICES)
52. Consider a resolution authorizing the execution of a contract with the Midland Hispanic Chamber of Commerce to promote the City's growth and development. (Deferred from September 10, 2013 meeting.) (CITY SECRETARY'S OFFICE) (2013 - 347)
53. Consider a motion making appointments to various Boards and Commissions.

EXECUTIVE SESSION

54. 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:

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
September 10, 2013**

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 September 10, 2013.

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

Council Members absent: Mayor W. Wesley Perry, Council Member John James (District 3) (James arrived at 9:04).

Staff members present: City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, Assistant City Manager Jim Nichols, Assistant to the City Manager Robert Patrick, City Secretary Amy Turner, Community Services Director Tina Jauz, Airports Director Marv Esterly, Assistant Airports Director Justine Ruff, Parks & Recreation Manager Laurie Williams, City Engineer David Beard, Senior Planner Jim Compton, Assistant Code Administration Manager Ron Jenkins, Assistant Parks & Recreation Manager Andy Cedillo, Aquatics Coordinator Joe Jolly and Public Information Officer Sara Higgins.

1. Receive a presentation from Community Services regarding renovations at Doug Russell Pool.

Community Services Director Tina Jauz reported that in 2012 Council appropriated \$1.2 million to renovate the Doug Russell Pool. They hired Kimley-Horn and Associates to evaluate the pool and they were present to provide a report.

Mark Hatchel reported on public pools in Midland and the surrounding area noting that Washington Park will need to be updated within the next five years. Doug Russell was built for competitive purposes and no longer has that need. He reviewed the needs of the pool just to bring it up to date and make it ADA compliant; noting those repairs alone would cost \$1.2 million.

Mr. Hatchel provided another option which would include addressing future needs of the pool. For \$3.2 million, the pool could be renovated to include open and enclosed body flumes, zero beach, children's play structure, renovation of the bathhouse, a lazy river, additional seating, and shade structures with larger pavilions.

Staff was asked to bring back the annual cost of maintenance if such an option were to be pursued and different scenarios if entrance fees were increased.

2. Review and discuss the creation of a Spaceport Development Corporation.

City Manager Sharp reported staff was contacted by the Governor's office asking the City to consider setting up a spaceport development corporation noting there was a pot of money available to the City that only Midland and one other city would be eligible to access.

Airports Director Marv Esterly reviewed the legislation noting it is likely Midland could receive about \$2-3 million if the corporation were to be created by the end of September. When asked what would happen if the corporation were not created until after that date, Mr. Esterly reported the money will likely no longer be available and it is uncertain when it would be funded again.

Staff was asked to provide Council with examples of projects that have been done or can be done with the money. Staff believed there would be no cost to the City, outside of legal fees, to set up the corporation.

Mr. Esterly emphasized that the City cannot set it up on its own but it requires a combination of one or more cities and one or more counties. He suggested partnering with Midland County noting it would require a seven member Board of Directors.

Council indicated a desire to move forward.

The foregoing agenda items were discussed by the City Council with no formal action taken.

The Briefing Session was adjourned at 9:56 a.m.

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:06 a.m., September 10, 2013.

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

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

The Agenda Items were heard in the following order: 1, 2, 3, 4, 5b, 5c, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 32, 5a, 6, 15, 27, 31a, 31b, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 46.

OPENING ITEMS

1. Invocation – Deputy City Manager Tommy Hudson
2. Pledge of Allegiance

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - a. Council Member James presented a Proclamation for Direct Support Professionals / Personal Attendants Recognition Week.
 - b. Council Member Morales presented a Proclamation for Christmas in Action Day.

PUBLIC COMMENT

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

Ryder Warren, Midland ISD Superintendent, provided a beginning of school report noting they have 23,394 children enrolled in their schools. MISD has moved in 47 new portable classrooms. He commended City staff for working with his staff with paperwork and inspections for the new classrooms. They have hired 600 new teachers. He met with staff at Henderson Elementary and they now have their drop-off/pick-up times down to 10 minutes due to their redesign of the process. They formed a partnership with the church next door that is allowing their staff to use their parking lot and will continue to do so through the construction of the parking lot at Henderson Elementary. Council Member James asked about the Scharbauer Foundation Grant program and Mr. Warren reported that they have 280 teachers receiving up to \$500 monthly in rental stipends through the program, and he can directly attribute the last 100 teachers were hired as a direct result of the program. They have approached another charitable foundation to see if they will do a similar grant program for support staff which would include lunch room workers, custodians and bus drivers who are forced to pay the same high rents. In about a month they will be installing their first 25-30 modular homes. He addressed upcoming town hall meetings and asked Council to participate with the school district in those meetings.

Rachel Stone, 1902 N. Pecos, spoke about trash in the City.

There were no other citizens requesting to speak.

CONSENT AGENDA

Council Member Love moved to approve Consent Agenda items 5 - 36 excluding 5a, 6, 15, 27, 31a, 31b, 33, 34, 35, 36; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

5. Approved a motion approving the following minutes:
 - b. Regular meeting of August 26, 2013.

c. Regular meeting of August 27, 2013.

7. Approved a resolution approving the sole source purchase of nine (9) - Edge 2-4N-TX Camera Processors, eight (8) - Vector Detector Assemblies, four (4) - Vector 2 channel processors and one (1) - Vector setup tool iPad from Iteris, Inc. of Santa Ana, California for the Transportation Division. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 279

RESOLUTION AUTHORIZING THE PURCHASE OF NINE (9) EDGE 2-4N-TX CAMERA PROCESSORS, EIGHT (8) VECTOR DETECTOR ASSEMBLIES, FOUR (4) VECTOR 2 CHANNEL PROCESSORS, AND ONE (1) VECTOR SETUP TOOL IPAD, FROM ITERIS, INCORPORATED, OF SANTA ANA, CALIFORNIA, FOR THE TRANSPORTATION DIVISION; SAID PURCHASE WAS NOT BID BUT PURCHASED AS A SOLE SOURCE; AND THE COSTS FOR THE RADIOS SHALL BE APPROXIMATELY \$80,900.00

8. Approved a resolution approving plans and specifications and authorizing advertisement for bids for concession stand expansion and rebidding the indoor batting cage facility at the Scharbauer Sports Complex for the Community Services Department. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 280

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR CONCESSION STAND EXPANSION AND AN INDOOR BATTING CAGE FACILITY AT THE SCHARBAUER SPORTS COMPLEX

9. Approved a resolution appropriating funds for the reimbursement of the Airport's share of approved Passenger Facility Charge (PFC) projects. (AIRPORTS)

RESOLUTION NO. 2013 - 281

RESOLUTION AUTHORIZING THE APPROPRIATION OF PASSENGER FACILITY CHARGE (PFC) FUNDS IN THE AMOUNT OF \$311,483.00 TO REIMBURSE THE AIRPORT OPERATING FUND FOR THE EXPENDITURE OF FUNDS ON PFC ELIGIBLE PROJECTS AT THE MIDLAND INTERNATIONAL AIRPORT; AUTHORIZING THE REIMBURSEMENT OF AIRPORT FUNDS

10. Approved a resolution authorizing a contract with Midland Crime Stoppers, Inc. in the amount of \$30,000 for the operation of a Crime Stoppers Program. (CITY SECRETARY'S OFFICE)

RESOLUTION NO. 2013 - 282

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH CRIME STOPPERS OF MIDLAND, INCORPORATED, FOR THE OPERATION OF A CRIME STOPPERS PROGRAM WHICH WILL ALLOW CITIZENS TO ASSIST IN THE DETECTION AND RESOLUTION OF CRIMES

11. Approved a resolution authorizing a contract with Keep Midland Beautiful in the amount of \$100,000 for litter reduction, education, and beautification programs in Midland. (CITY SECRETARY'S OFFICE)

RESOLUTION NO. 2013 - 283

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

12. Approved a resolution authorizing a contract with Midland Teen Court, Inc. in the amount of \$27,500 for a Teen Court Program. (CITY SECRETARY'S OFFICE)

RESOLUTION NO. 2013 - 284

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

13. Approved 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. (CITY SECRETARY'S OFFICE)

RESOLUTION NO. 2013 - 285

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

14. Approved a resolution authorizing a contract with Midland College in the amount of \$70,000 to promote growth and development in the City. (CITY SECRETARY'S OFFICE)

RESOLUTION NO. 2013 - 286

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

16. Approved a resolution authorizing a contract with COM Aquatics in the amount of \$27,000 for advertising, promotion and solicitation of aquatic activities in Midland. (CITY SECRETARY'S OFFICE)

RESOLUTION NO. 2013 - 288

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

17. Approved 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. (CITY SECRETARY'S OFFICE)

RESOLUTION NO. 2013 - 289

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

18. Approved a resolution authorizing a contract with the George W. Bush Childhood Home, Inc. in the amount of \$12,000 to promote tourism and the hotel industry in Midland. (CITY SECRETARY'S OFFICE)

RESOLUTION NO. 2013 - 290

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

19. Approved a resolution authorizing a contract with the Midland Chamber of Commerce in the amount of \$741,050 for the management of the Midland Center and Centennial Plaza. (CITY SECRETARY'S OFFICE)

RESOLUTION NO. 2013 - 291

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH THE MIDLAND CHAMBER OF COMMERCE FOR THE MANAGEMENT OF THE MIDLAND CENTER AND CENTENNIAL PLAZA

20. Approved 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. (CITY SECRETARY'S OFFICE)

RESOLUTION NO. 2013 - 292

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH THE MIDLAND SOCCER ASSOCIATION FOR THE PROMOTION AND SOLICITATION OF SOCCER ACTIVITIES

21. Approved a resolution authorizing a contract with the Midland Softball Association in the amount of \$126,850 to promote tourism and the hotel industry in Midland. (CITY SECRETARY'S OFFICE)

RESOLUTION NO. 2013 - 293

A RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT WITH THE MIDLAND SOFTBALL ASSOCIATION FOR THE PROMOTION AND SOLICITATION OF UNITED STATES SPECIALTY SPORTS ASSOCIATION (USSA) ACTIVITIES.

22. Approved a resolution authorizing a contract with the Museum of the Southwest in the amount of \$35,000 to promote tourism and the hotel industry in Midland. (CITY SECRETARY'S OFFICE)

RESOLUTION NO. 2013 - 294

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

23. Approved a resolution authorizing a contract with the Permian Basin Petroleum Museum in the amount of \$20,916 to promote tourism and the hotel industry in Midland. (CITY SECRETARY'S OFFICE)

RESOLUTION NO. 2013 - 295

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.

24. Approved a resolution authorizing the execution of a Professional Services Agreement between the City of Midland, Texas, and Midland Sports, Incorporated, in the amount of \$98,000, for professional marketing, promotion, and management services at the Scharbauer Sports Complex. (COMMUNITY SERVICES)

RESOLUTION NO. 2013 - 296

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS AND MIDLAND SPORTS, INCORPORATED IN THE AMOUNT OF \$98,000.00, FOR PROFESSIONAL MARKETING, PROMOTION, AND MANAGEMENT SERVICES AT THE SCHARBAUER SPORTS COMPLEX

25. Approved 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 nutritional means and socialization; the program will begin on October 1, 2013 and end on September 30, 2014. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 297

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, 2013 AND END ON SEPTEMBER 30, 2014

26. Approved 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 \$30,000.00; the purpose of this program is to provide home cleaning services to 200 senior citizens and handicapped households; the program will begin on October 1, 2013 and end on September 30, 2014. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 298

RESOLUTION AUTHORIZING THE EXECUTION OF A COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT WITH CASA DE AMIGOS FOR A HOME CLEANING PROGRAM IN THE AMOUNT OF \$30,000.00; 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, 2013 AND END ON SEPTEMBER 30, 2014

28. Approved a resolution authorizing the execution of a Public Improvement Development Agreement with West Terminal Addition, Inc. (Steve Sanchez) for the future design and construction of a water main extension along the west side of FM 1788 to serve the West Terminal Addition - Section 2; said agreement being authorized by Section

395.081 of the Texas Local Government Code. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 300

RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH DJK, INC. FOR WATER MAIN IMPROVEMENTS TO WEST TERMINAL ADDITION, SECTION 2; AND APPROPRIATING FUNDS THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

29. Approved a resolution authorizing the execution of a Public Improvement Development Agreement with Sonoma Housing Advisors, LLC (James R. Fisher) in the amount of \$50,000 for the future design and construction of paving improvements to serve the Tahoe Lakes Addition. The subject property is generally located along the east side of Lamesa Rd. approximately 1,800' north of I-20. Said agreement being authorized by Section 395.081 of the Texas Local Government Code. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 301

RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH CHICORY COURT MIDLAND, LP FOR PAVING IMPROVEMENTS TO LATTA STREET; AND APPROPRIATING FUNDS THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

30. Approved a resolution authorizing the execution of an addendum to the Public Improvement Development Agreement with Vineyard Reserve, LLC for development of Vineyard Addition; and appropriating funds in the amount of \$78,750 therefor; said agreement being authorized by Section 395.081 of the Texas Local Government Code. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 302

RESOLUTION AUTHORIZING THE EXECUTION OF AN ADDENDUM TO THE PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH VINEYARD RESERVE, LLC FOR DEVELOPMENT OF VINEYARD ADDITION; AND APPROPRIATING FUNDS IN THE AMOUNT OF \$78,750 THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

32. Approved a resolution authorizing staff to execute a change order to the Water, Wastewater, and Fire Hydrant Taps project with TEC Excavation in the amount of \$120,000. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 304

RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDER NUMBER ONE WITH TEC EXCAVATION, INC. REGARDING THE WATER, WASTEWATER AND FIRE HYDRANT TAPS PROJECT; SAID CHANGE ORDER TO PROVIDE FOR ADDITIONAL WORK; APPROPRIATING FUNDS; AND AUTHORIZING PAYMENT IN THE AMOUNT OF \$120,000.00

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

5. Consider a motion approving the following minutes:

- a. Regular meeting of August 20, 2013.

Council Member Morales moved to approve the minutes of the regular meeting of August 20, 2013; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James. NAY: None. ABSTAIN: Sparks. ABSENT: Perry.

6. Consider a resolution rejecting the single bid received from Campbell Construction for the Animal Services Building Renovation Project and authorizing re-advertisement for bids for the Community Services Department. (GENERAL SERVICES)

RESOLUTION NO. 2013 - 278

RESOLUTION REJECTING THE SINGLE BID RECEIVED FOR BID NUMBER 6606-13 FOR THE ANIMAL SERVICES BUILDING RENOVATION PROJECT; AND AUTHORIZING THE CITY MANAGER TO RE-BID SAID PROJECT

Purchasing Manager Regina Stephenson reported the item could be rebid in as little as 17 days noting they usually take longer to allow contractors more time to bid. Community Services Director Tina Jauz noted staff anticipates bringing back results at the first meeting in October.

Council Member Morales moved to adopt Resolution No. 2013 - 278; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

15. Consider a resolution authorizing a contract with the Arts Council of Midland in the amount of \$100,000 for the encouragement, promotion, improvement, and education of arts in the City. (CITY SECRETARY'S OFFICE)

RESOLUTION NO. 2013 - 287

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

Council Member Trost asked the Arts Council to give a report on their subgrant program.

Laura Roman and Danny Holeva, Chairperson and Executive Director of the Arts Council of Midland, reported that they submitted a request for \$125,000 for their Arts subgranting program and the Hotel/Motel Tax Advisory Board recommended approving \$100,000. They have received \$239,762.92 in grant requests and respectfully requested the Council to grant them their original grant amount of \$125,000 or more. She noted each grantee must have their program open and available to the public and do some type of community outreach to encourage attendance from people who live outside of the area.

Council Member James moved to adopt Resolution No. 2013 - 287 with amendment of increasing the amount to \$125,000 and taking the additional \$25,000 from the unappropriated Hotel/Motel fund balance; seconded by Council Member Dufford. The

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

27. Consider a resolution authorizing a Right-of-Way Agreement and Surface Use Agreement with Vitol. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 299

RESOLUTION AUTHORIZING A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND, TEXAS AND VITOL MIDSTREAM PIPELINE LLC; SAID RIGHT-OF-WAY LICENSE IS FOR ENTERING THE CITY OF MIDLAND'S RIGHT-OF-WAY FOR THE PURPOSE OF PLACING, INSTALLING, CONSTRUCTING, OPERATING, REPAIRING, MAINTAINING, REPLACING AND REMOVING ONE (1) PIPELINE, FOR THE TRANSPORTATION OF OIL AND GAS MATERIALS AND TO HAVE THE RIGHT OF INGRESS AND EGRESS AT CONVENIENT POINTS FOR SUCH PURPOSE; THE PIPELINE IS LOCATED WITHIN THE CITY OF MIDLAND RIGHT-OF-WAY, SECTIONS 4, 9, 16, AND 21, BLOCK 37, T-3-S, T&P RR CO. SURVEY, 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

GIS Division Manager Bill Hodge reported that Vitol Midstream requested the item be pulled and moved to the next meeting so that their attorneys could have time to review the contract first.

Council Member Dufford moved to defer this item to the next Council Meeting; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

- 31.
- a. Consider a motion on a request by West Engineering Company of Midland, Inc. for the Southern Addition—Section 8, to approve items requested for deferral in the amount of \$8667.00, and to enter into an agreement to accept funds in lieu of constructing public infrastructure. The subject property is generally located on the east side of South Fort Worth Street, approximately 50 feet south of Washington Avenue.

Council Member Love asked if the applicant was deferring putting in sidewalks. City Engineer David Beard reported he will be putting in the sidewalks and that the deferral is for paving. He further clarified that part "a" of this item is for deferral and part "b" is for the method of collecting.

Council Member Morales moved to approve a motion on a request by West Engineering Company of Midland, Inc. for the Southern Addition—Section 8, to approve items requested for deferral in the amount of \$8667.00, and to enter into an agreement to accept funds in lieu of constructing public infrastructure. The subject property is generally located on the east side of South Fort Worth Street, approximately 50 feet south of Washington Avenue; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

- b. Consider a resolution authorizing the execution of a Public Improvement Development Agreement with Ralph Olano for the future design and construction of paving improvements to serve the Southern Addition — Section 8; and appropriating funds therefor; said agreement being authorized by Section 395.081 of the Texas Local Government Code.

RESOLUTION NO. 2013 - 303

RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH RAFAEL OLANO FOR PAVING IMPROVEMENTS TO SOUTH FORT WORTH STREET; AND APPROPRIATING FUNDS THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

Council Member Love moved to adopt Resolution No. 2013 - 303; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

33. Consider a resolution approving a Discharge License with Baker Hughes, Inc. (UTILITIES)

RESOLUTION NO. 2013 - 305

RESOLUTION AUTHORIZING THE EXECUTION OF A SANITARY SEWER DISCHARGE LICENSE AGREEMENT WITH BAKER HUGHES, INCORPORATED, FOR THE PURPOSE OF DISCHARGING TREATED WASTEWATER AT 2065 MARKET STREET, BUILDING A, MIDLAND, TEXAS

Interim Utilities Director Holly Rosas reported that she requested this item be pulled because there was an error in Agenda Items Numbers 33, 34, 35, and 36 on page 2, part 2, paragraph 2. Each Discharge License indicated the amount of 74 cents per thousand. It should read 71 cents per thousand. Each Discharge License has been corrected and a copy of each corrected license has been given to the City Council.

It was clarified that approval of Agenda Item Numbers 33, 34, 35, and 36 would include the corrected discharge license with an amount of 71 cents per thousand as indicated.

Council Member Trost moved to adopt Resolution No. 2013 - 305; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

34. Consider a resolution approving a Discharge License with Baker Hughes, Inc. (UTILITIES)

RESOLUTION NO. 2013 - 306

RESOLUTION AUTHORIZING THE EXECUTION OF A SANITARY SEWER DISCHARGE LICENSE AGREEMENT WITH BAKER HUGHES, INCORPORATED, FOR THE PURPOSE OF DISCHARGING TREATED WASTEWATER AT 2101 MARKET STREET, BUILDING B, MIDLAND, TEXAS

Council Member James moved to adopt Resolution No. 2013 - 306; seconded by Council Member Trost. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

35. Consider a resolution approving a Discharge License with Baker Hughes, Inc. (UTILITIES)

RESOLUTION NO. 2013 - 307

RESOLUTION AUTHORIZING THE EXECUTION OF A SANITARY SEWER DISCHARGE LICENSE AGREEMENT WITH BAKER HUGHES, INCORPORATED, FOR THE PURPOSE OF DISCHARGING TREATED WASTEWATER AT 2103 MARKET STREET, BUILDING C, MIDLAND, TEXAS

Council Member James moved to adopt Resolution No. 2013 - 307; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

36. Consider a resolution approving a Discharge License with Baker Hughes, Inc. (UTILITIES)

RESOLUTION NO. 2013 - 308

RESOLUTION AUTHORIZING THE EXECUTION OF A SANITARY SEWER DISCHARGE LICENSE AGREEMENT WITH BAKER HUGHES, INCORPORATED, FOR THE PURPOSE OF DISCHARGING TREATED WASTEWATER AT 2105 MARKET STREET, BUILDING D, MIDLAND, TEXAS

Council Member Love moved to adopt Resolution No. 2013 - 308; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

SECOND READINGS

37. Consider an ordinance on second reading on a request by Timothy Rogers & Sandra Javelly for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on a 929 square foot portion of Lots 7 through 9, Block 58, Original Town, City and County of Midland, Texas. (Generally located on the northeast corner of the intersection of W. Wall Street and N. Pecos Street.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9177

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS A 929 SQUARE FOOT PORTION OF LOTS 7-9, BLOCK 58, ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF WEST WALL STREET AND NORTH PECOS STREET), WHICH IS PRESENTLY ZONED C-1, CENTRAL AREA DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Reyes read the caption of Ordinance No. 9177.

Council Member Love moved to approve the second and final reading of Ordinance No. 9177 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

38. Consider an ordinance on second reading on a request by Jay Stewart for a zone change from PD, Planned District for a Housing Development on Lot 2, and from LR-2, Local Retail District, on Lot 4, to PD, Planned District for a Housing Development, all out of Block 8, Westridge Park Addition, Section 23; City and County of Midland, Texas. (Generally located near the southwest corner of the intersection of Deauville Boulevard and Tradewinds Boulevard.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9178

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 2 AND 4, BLOCK 8, WESTRIDGE PARK ADDITION, SECTION 23, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR HOUSING DEVELOPMENT, IN PART, AND LR-2, LOCAL RETAIL DISTRICT, IN PART, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED NEAR THE SOUTHWEST CORNER OF THE INTERSECTION OF DEAUVILLE BOULEVARD AND TRADEWINDS BOULEVARD); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Reyes read the caption of Ordinance No. 9178.

Council Member Love moved to approve the second and final reading of Ordinance No. 9178 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

39. Consider an ordinance on second reading establishing a maximum two-hour limit on parking during weekdays between the hours of 8:00 A.M. and 6:00 P.M. on a portion of the south side of Ohio Avenue from the west curb line of Colorado Street west to the north/south alley. (ENGINEERING SERVICES)

ORDINANCE NO. 9179

AN ORDINANCE PROVIDING THE MAXIMUM TIME LIMIT FOR PARKING ON A PORTION OF THE SOUTH SIDE OF OHIO AVENUE FROM THE WEST CURB LINE OF COLORADO STREET WEST TO THE NORTH/SOUTH ALLEY TO TWO HOURS; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO ERECT APPROPRIATE SIGNS; DECLARING ANY VEHICLE IN VIOLATION OF THE PROVISIONS OF THIS ORDINANCE A NUISANCE AND PROVIDING FOR THE REMOVAL OF SAME; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY

OR FINE OF TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION

Deputy City Secretary Reyes read the caption of Ordinance No. 9179.

Council Member James moved to approve the second and final reading of Ordinance No. 9179 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

PUBLIC HEARINGS

40. At approximately 10:30 A.M. hold a public hearing and consider an ordinance on a request by Development Contractors for a zone change from AE, Agriculture Estate, to LR-2, Local Retail District on a 9.10-acre tract of land (Tract 1) and to PD, Planned District for a Housing Development on a 57.51-acre tract of land (Tract 2), all out of Section 19, Block 38, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the north side of EAST Loop 250 North, approximately ¼ mile east of North Fairgrounds Road.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9180

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 9.10-ACRE TRACT OF LAND WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT; BY PERMITTING A 57.51-ACRE TRACT OF LAND WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; SAID TRACTS BEING OUT OF SECTION 19, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF EAST LOOP 250 NORTH, APPROXIMATELY 1/4 OF A MILE EAST OF NORTH FAIRGROUNDS 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

Planner Martin Siwek gave a brief overview of the item. He answered questions indicating that TxDOT did not require additional right of way and that this is located in District 1.

Mayor Pro Tem Sparks opened the public hearing at 11:09 a.m.

John Newton, 4908 N. Midkiff, reported he was available to address any questions or concerns.

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

Deputy City Secretary Reyes read the caption of Ordinance No. 9180.

Council Member Trost moved approval of the first of two readings of Ordinance No. 9180 in accordance with the Charter of the City of Midland; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Morales, Trost,

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

41. At approximately 10:33 A.M. hold a public hearing and consider an ordinance on a request by Brent Shields for a zone change from PD, Planned District for a Shopping Center to LR-2, Local Retail District on Lot 5, Block 2, Westridge Park Addition, Section 8, City and County of Midland, Texas. (Generally located on the southeast corner of the intersection of Andrews Highway and Tradewinds Boulevard.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9181

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 5, BLOCK 2, WESTRIDGE PARK ADDITION, SECTION 8, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN LR-1, LOCAL RETAIL DISTRICT (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF ANDREWS HIGHWAY AND TRADEWINDS BOULEVARD); 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

Senior Planner Jim Compton gave an overview of the item noting the history of changes to the planned district. This change would use an LR-1 which would accommodate the developers' needs and disallow for a car wash.

Council Member Love indicated his discomfort in giving up oversight.

Senior Planner Compton indicated staff makes decisions of this nature regularly as part of their duty. City Manager Sharp indicated that staff is trying to make approval as easy as possible on the development community but had no issues with keeping this as a planned district.

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

Deputy City Secretary Reyes read the caption of Ordinance No. 9181.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 9181 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Dufford, James, Sparks. NAY: Love, Trost. ABSTAIN: None. ABSENT: Perry.

MISCELLANEOUS

42. Consider a resolution authorizing the Mayor to negotiate and execute a contract with the Midland Hispanic Chamber of Commerce to promote growth and development in the City. (CITY SECRETARY'S OFFICE)

RESOLUTION NO. 2013 - 309

RESOLUTION AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE A CONTRACT WITH THE MIDLAND HISPANIC CHAMBER OF COMMERCE TO

PROMOTE THE CITY'S GROWTH AND DEVELOPMENT

City Manager Sharp reported that the advisory board recommended funding no money to the Hispanic Chamber of Commerce and had previously stated when he brought back contracts for Council approval, this item would also be discussed because all contracts go into effect on October 1. He reported that staff met with members of the Hispanic Chamber last year and their monthly financials are now acceptable to staff and their audit of 2012 should be done within the next month or so. He clarified that the Hispanic Chamber is not paid their monthly amount until staff is satisfied with their reporting.

Council Member Love stated that although the Hispanic Chamber has had problems in the past, he is emboldened by the steps they have taken to rectify the problem and is in support of the program.

Council Member James moved to defer the item to the next Council Meeting; seconded by Council Member Trost.

Discussion ensued about having to review this particular contract every year, that Council needs to give certainty to the businesses that are housed in the incubator program, and the need to create a checks and balance system.

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

Council Member Love moved to adopt Resolution No. 2013 - 309; seconded by Council Member Morales. The motion failed by the following vote: AYE: Love, Morales. NAY: Trost, Dufford, James, Sparks. ABSTAIN: None. ABSENT: Perry.

43. Consider a motion on a proposed preliminary plat of Sunset Ridge Addition, being a 66.61-acre tract of land out of Section 19, Block 38, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the north side of E. Loop 250 North, approximately $\frac{1}{4}$ mile east of N. Fairgrounds Road.) (DEVELOPMENT SERVICES)

Planner Martin Siwek gave a brief overview of the item noting that any preliminary plats over 25 acres that do not have a public site are required to be brought before Council for approval. The plan includes two common areas for drainage.

Council Member Love moved to approve a motion on a proposed preliminary plat of Sunset Ridge Addition, being a 66.61-acre tract of land out of Section 19, Block 38, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the north side of E. Loop 250 North, approximately $\frac{1}{4}$ mile east of N. Fairgrounds Road.); seconded by Council Member Trost.

Discussion ensued about the alleys being unpaved and dumpsters would be located in the alleys but garage access would be from the front. Utilities will be extended from Fairgrounds Road which can potentially open up development for the entire area.

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

44. Consider an ordinance on a request for the vacation of portions of rights-of-way being 0.703-acres of Baca Circle, 0.103-acres of Baca Street, 0.181-acres of Cerrillos Avenue, 0.57-acres of Cerrillos Court, 0.123-acres of Conquistador Court, 0.014-acres of Gallop Court, 0.002-acres of Guadalupe Street, 0.614-acres of Magellan Street, 0.409-acres of San Francisco Avenue, 0.079-acres of St. Michael Court and 1.301-acres of adjacent alleys, all contained within Adobe Meadows, Sections 1, 3, 4 and 5, City and County of Midland, Texas.(Generally located on the east side of State Hwy 349, north of east extension of Mockingbird Lane.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9182

AN ORDINANCE VACATING AND ABANDONING A 0.703-ACRE PORTION OF BACA CIRCLE, A 0.103-ACRE PORTION OF BACA STREET, A 0.181-ACRE PORTION OF CERRILLOS AVENUE, A 0.57-ACRE PORTION OF CERRILLOS COURT, A 0.123-ACRE PORTION OF CONQUISTADOR COURT, A 0.014-ACRE PORTION OF GALLOP COURT, A 0.002-ACRE PORTION OF GUADALUPE STREET, A 0.614-ACRE PORTION OF MAGELLAN STREET, A 0.409-ACRE PORTION OF SAN FRANCISCO AVENUE, A 0.079- ACRE PORTION OF ST. MICHAEL COURT, AND A 1.301 ACRES OF ADJACENT ALLEYS, ALL OUT OF ADOBE MEADOWS, SECTIONS 1, 3, 4 AND 5, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF STATE HIGHWAY 349, NORTH OF THE EAST EXTENSION OF MOCKINGBIRD LANE); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$12,502.00; WAIVING THE FEE FOR THE COST OF THE RIGHT-OF-WAY; AND ORDERING RECORDATION BY THE CITY SECRETARY

Planner Martin Siwek gave an overview of the item noting the zoning cases will come before Council on the 24th of September and that the amount of land that is being requested for rights-of-way and being vacated are equal so staff is requesting waiving fees.

Deputy City Secretary Reyes read the caption of Ordinance No. 9182.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 9182 in accordance with the Charter of the City of Midland; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

45. Consider an ordinance amending Title X, "Traffic Regulations", Chapter Four, "Traffic Control Devices", Section 11, "School Zones and Crossings", of the Midland City Code, so as to designate each scho9183ol zone and school crossing within the City and regulate the speed and movement of traffic therein; authorizing and directing the Traffic Engineer to install appropriate signs and markings; repealing Ordinance No.8920; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two hundred dollars (\$200.00); and ordering publication. (ENGINEERING SERVICES)

ORDINANCE NO. 9183

AN ORDINANCE AMENDING TITLE X, "TRAFFIC REGULATIONS", CHAPTER FOUR, "TRAFFIC CONTROL DEVICES", SECTION 11, "SCHOOL ZONES AND CROSSINGS", OF THE MIDLAND CITY CODE, SO AS TO DESIGNATE EACH SCHOOL ZONE AND SCHOOL CROSSING WITHIN THE CITY AND REGULATE THE SPEED AND MOVEMENT OF TRAFFIC THEREIN; AUTHORIZING AND DIRECTING

THE TRAFFIC ENGINEER TO INSTALL APPROPRIATE SIGNS AND MARKINGS; REPEALING ORDINANCE NO. 9042; 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

Transportation Manager Gary Saunders gave an overview of the item noting the purpose was to remove Premier Charter High School from the school zones crossing list because their campus on the northwest corner of Golf Course and Big Spring moved to their other location on Golf Course and Midland Drive.

Deputy City Secretary Reyes read the caption of Ordinance No. 9183.

Council Member Morales moved approval of the first of two readings of Ordinance No. 9183 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

EXECUTIVE SESSION

47. 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:

Mayor Pro Tem Sparks noted there were no items to be discussed in Executive Session. The meeting would move to the basement conference room to consider Agenda Item Number 46 appointments to boards and commissions. He recessed the meeting at 12:16 p.m.

REGULAR SESSION (Continued)

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

Mayor Pro Tem Sparks reconvened the meeting at 12:39 p.m. with the same Council Members present.

Council Member James reported he received a call from Cindy Lanning indicating she was not interested in serving as Chair of the Planning and Zoning Commission. Council Member Trost reported that Galen Gatten had been appointed Chair.

Discussion ensued about the role of alternates on Planning & Zoning and the potential for expanding the alternate pool to grow new members. It was suggested to have alternates attend alternating meetings and step in if any member was vacant and to have an informal training indicating this is a pro-growth Council.

Council Member James moved to appoint Chase Gardaphe, Arthur Hobbs and Reggie Lawrence to the **Planning & Zoning Commission** as alternates with Lawrence and Gardaphe serving alternate meetings, and to remove Royce Watkins and Tony Carrillo; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, and James. NAY: None. ABSTAIN: Sparks. ABSENT: Perry

Council Member James moved to appoint Nellwyn Barnett to the **City Development Advisory Committee**, to have the committee meet quarterly to review the grantees, and to have the committee develop a marketing effort and develop review guidelines; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry

Council Member James moved to appoint Jan Artley and Ellen Ramsey to the **Hotel/Motel Tax Advisory Board**; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry

Council Member Trost moved to appoint Bart Hotchkiss and Cynthia Savage to the **Parks & Recreation Commission**; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry

Council Member Trost moved to appoint Kelly "Bo" Cockerell to replace Herbert Blankinship on the **Airport Planning and Development Board**; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry

Council Member Dufford moved to confirm appointment of Jim Little (Big Spring), Don Bethel (Lamesa), Henry Cutbirth (Monahans), Isabelle Blanchard (Pecos), Luis Elguezabal (San Angelo), Lex Hinds (Seminole), Glenn Wortham (Sweetwater), Lance Goodrich (Artesia, NM), and Larry Fry (Roswell, NM) to the **Permian Basin Airport Board**; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry

All of the business at hand having been completed, the meeting adjourned at 1:24 p.m.

PASSED AND APPROVED the 24th day of September, 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

**MIDLAND CITY COUNCIL
MINUTES
September 17, 2013**

The City Council convened in a Special Session in the Council Chamber, City Hall, Midland, Texas, at 8:30 a.m. on September 17, 2013.

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

Council Members absent: None.

SPECIAL SESSION

1. Consider a motion to elect a chairman to preside. (CITY ATTORNEY'S OFFICE)

Mayor Perry noted that he, Council Member Dufford and Council Member Sparks would all be abstaining from participating in Agenda Items 2, 3 and 4. He entertained motions for a chairperson to preside over the meeting.

Council Member Trost moved to appoint Council Member Love as the chair to preside over the meeting; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Perry, Dufford, James. NAY: None. Abstain: Love, Sparks. ABSENT: None.

EXECUTIVE SESSION

5. Chairman Love announced that pursuant to Texas Government Code §551.101, the Council will hold an Executive Session which is closed to the public to discuss the following matters as permitted under the following Texas Government Code Sections:
 - a. Section 551.087 Deliberate Economic Development Negotiations
 - a.1. Discuss business prospects that the City seeks to have, locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives. The Council will discuss Energy Tower, LLC.

Chairman Love recessed the meeting to Executive Session at 8:33 a.m. He reconvened the meeting to Special Session at 9:10 a.m.

SPECIAL SESSION (Continued)

2. Consider a resolution authorizing the City Manager to execute a Term Sheet with Energy Tower, LLC, to facilitate the negotiation of final definitive agreements relating to the disposition and redevelopment of property commonly known as the proposed Energy Tower and City Center development (with an associated downtown parking garage and a proposed new Midland Center) in downtown Midland, Texas and negotiate and execute the final definitive agreements. The Term Sheet describes a property

transfer in downtown Midland, an agreement under Chapter 380 of the Texas Local Government Code, and describes an agreement with the Midland Tax Increment Reinvestment Zone Number One (1) and a lease. The Term Sheet also discusses the use of hotel-motel tax funds generated solely from Energy Tower and the use of the sales and use tax generated solely from Energy Tower. (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2013 - 310

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A TERM SHEET WITH ENERGY TOWER, LLC, TO FACILITATE THE NEGOTIATION OF FINAL DEFINITIVE AGREEMENTS RELATING TO THE DISPOSITION AND REDEVELOPMENT OF PROPERTY COMMONLY KNOWN AS THE PROPOSED ENERGY TOWER AND CITY CENTER DEVELOPMENT (WITH AN ASSOCIATED DOWNTOWN PARKING GARAGE AND A PROPOSED NEW MIDLAND CENTER) IN DOWNTOWN MIDLAND, TEXAS AND NEGOTIATE AND EXECUTE THE FINAL DEFINITIVE AGREEMENTS; THE TERM SHEET DESCRIBES A PROPERTY TRANSFER IN DOWNTOWN MIDLAND, AN AGREEMENT UNDER CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE, AND DESCRIBES AN AGREEMENT WITH THE MIDLAND TAX INCREMENT REINVESTMENT ZONE NUMBER ONE (1) AND A LEASE; THE TERM SHEET ALSO DISCUSSES THE USE OF HOTEL-MOTEL TAX FUNDS GENERATED SOLELY FROM ENERGY TOWER AND THE USE OF THE SALES AND USE TAX GENERATED SOLELY FROM ENERGY TOWER

Council Member James moved to adopt Resolution No. 2013 - 310 with the amendment to change the Midland Development Corporation cap to \$10 million to be paid up to \$1 million per year on invoice over a ten year period; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, James. NAY: None. ABSTAIN: Perry, Dufford, Sparks. ABSENT: None.

3. Consider a resolution authorizing the City Manager to negotiate and execute an economic development agreement with the Midland Development Corporation as authorized by Chapter 380 of the Texas Local Government Code and Chapters 501 and 504 of the Texas Local Government Code regarding infrastructure, parking facilities and site development, related to the Proposed Energy Tower and City Center Development with an associated downtown parking garage and proposed new Midland Center. (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2013 - 311

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN ECONOMIC DEVELOPMENT AGREEMENT WITH THE MIDLAND DEVELOPMENT CORPORATION AS AUTHORIZED BY CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE AND CHAPTERS 501 AND 504 OF THE TEXAS LOCAL GOVERNMENT CODE REGARDING INFRASTRUCTURE, PARKING FACILITIES AND SITE DEVELOPMENT, RELATED TO THE PROPOSED ENERGY TOWER AND CITY CENTER DEVELOPMENT WITH AN ASSOCIATED DOWNTOWN PARKING GARAGE AND PROPOSED NEW MIDLAND CENTER.

Council Member James moved to adopt Resolution No. 2013 - 311; seconded by Council Member Morales.

Council Member Trost confirmed that this negotiated agreement will reflect the amendment made and no further amendment to this item was necessary.

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

4. Consider a resolution authorizing the City Manager to negotiate and execute an amendment to the Memorandum of Understanding with the Midland Tax Increment Reinvestment Zone Number One (1) increasing the Tax Increment Reinvestment Zone (TIRZ) property valuation cap from \$260,000,000.00 to \$1,000,000,000.00 and negotiating and executing an agreement with the Tax Increment Reinvestment Zone regarding Energy Tower and to develop and adopt a Project Plan. (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2013 - 312

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING WITH THE MIDLAND TAX INCREMENT REINVESTMENT ZONE NUMBER ONE (1) INCREASING THE TIRZ PROPERTY VALUATION CAP FROM \$260,000,000.00 TO \$1,000,000,000.00 AND NEGOTIATING AND EXECUTING AN AGREEMENT WITH THE TIRZ REGARDING ENERGY TOWER AND TO DEVELOP AND ADOPT A PROJECT PLAN.

Council Member James moved to adopt Resolution No. 2013 - 312; seconded by Council Member Trost.

Council Member James encouraged the City Manager to continue working on communicating with the citizens the actions taken by Council. He noted there is little risk to the citizens of Midland because of the way it has been created. If this project proves to be the catalyst they expect, he also recommended that once the obligations have been met, the TIRZ be disbanded.

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

All of the business at hand having been completed, the meeting adjourned at 9:19 a.m.

PASSED AND APPROVED the 24th day of September, 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of 3 – Sidewheel Roll Irrigation Systems for the Spraberry Farm.

Purpose:

Approval of a resolution authorizing the purchase of three complete side wheel roll irrigation systems for use at the Spraberry Farm operation.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$51,250.00 Water and Sewer Fund – FY2014

Discussion:

We are recommending the low bidder, Mesa Irrigation. The side wheel roll irrigation systems will be assembled by City personnel.

Therefore, please consider approval of a resolution authorizing the purchase of three side wheel roll irrigation systems and parts from Mesa Irrigation Company of Lamesa, Texas for a total cost of \$51,250.00

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE PURCHASE OF
THREE COMPLETE SIDE-WHEEL ROLL IRRIGATION
SYSTEMS FOR USE AT THE SPRABERRY FARM
FACILITIES FROM MESA IRRIGATION COMPANY,
OF LAMESA, TEXAS, AT A TOTAL COST OF \$51,250.00**

WHEREAS, the City Manager approved plans and specifications and authorized advertisement for bids for three complete side-wheel roll irrigation systems for use at the Spraberry Farm Facilities; and

WHEREAS, Bid No. 6870-14 was opened on August 30, 2013, with the lowest and most responsible bid being submitted by Mesa Irrigation Company of Lamesa, Texas, at a total cost of \$51,250.00, as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes;

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 three complete side-wheel roll irrigation systems for use at the Spraberry Farm Facilities as specified in the bid tabulation, from Mesa Irrigation Company of Lamesa, Texas, at an estimated total price not to exceed \$51,250.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Mesa Irrigation Company from funds available in the Fiscal Year 2013 – 2014 Water and Sewer Fund (300) Utilities (300) Spraberry Farm (0315) Irrigation Equipment (8425) budget account upon proper receipt of invoices or statements approved by the City Manager.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, Purchasing Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 6870-14 Side Wheel Roll Irrigation System Spraberry Farm OPENED August 30, 2013 Est. Cost: \$150,000.00			Consolidated Pipe & Tube PO Box 5695 Lubbock, TX 79408 Karl Menix (806) 763-9591		Mesa Irrigation 1609 N Hwy 87 Lamesa, TX 79331 Alisa Coleman (806) 872-5479	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL
1	3	Complete new sidewheel systems complete w/ 5/32" nozzles. (Plant Far	16,231.2500	\$48,693.75	\$13,950.00	\$41,850.00
2	10	5" x 20' Torque pipe for SWR w/sprinkler, riser & leveler (Spraberry)	211.2500	\$2,112.50	\$225.00	\$2,250.00
3	20	5" x 40' Standard SWR pipe complete w/wheel, sprinkler, risers (Spraberry)	366.2500	\$7,325.00	\$340.00	\$6,800.00
4	1	Lot Freight	Included	Included	\$350.00	\$350.00
		Delivery	10-15 Days ARO		3 Weeks	
TOTALS:				\$58,131.25		\$51,250.00

Bidding Summary:

11 Bid requests were issued.

2 Bids listed above

0 NO BIDS were received.

9 Bidders did not respond.

Benmark Supply, Carter & Company Irrigation, South Plains Implement, Gicon Pumps & Equipment
 Ewing Irrigation, Valley Irrigation & Pumps, Odessa Pumps, Straub Corporation, J-R's Water Well



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of an estimated annual supply of 4,400 gallons of Polymer for dewatering to treat the City's drinking water for the Utilities Department.

Purpose:

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

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$40,867.20 Water and Sewer Fund – FY2014

Discussion:

This material is used for the treatment of City drinking water and is ordered on an as needed basis. We are recommending the low bidder, Polydyne, Inc. The cost for this product has decreased by \$0.712 per gallon from last year.

Therefore, please consider approval of a resolution authorizing the purchase of an estimated annual supply of polymer for dewatering from Polydyne, Inc. of Riceboro, Georgia for an estimated annual cost of \$40,867.20.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE PURCHASE OF AN ANNUAL SUPPLY OF POLYMER FOR DEWATERING FOR TREATING CITY OF MIDLAND DRINKING WATER FROM POLYDYNE, INCORPORATED, FOR A TOTAL PRICE OF \$40,867.20

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

WHEREAS, Bid No. 6790-14 was opened on August 14, 2013, with the lowest and most responsive bid submitted from Polydyne, Inc., in the total amount of \$40,867.20; 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 dewatering 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 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 \$40,867.20.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said polymer out of funds available in the Fiscal Year 2013 – 2014 Water and Sewer Fund (300) Utilities (300) Purification Plant (0320) Chemicals and Insecticides (2330) 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., 2013, by

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, Purchasing Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 6790-14 Polymer OPENED August 14, 2013 Est. Cost: \$45,000.00			Polydyne Inc 1 Chemical Plant Road Riceboro, GA 31323 Lawrence D Grizzle (912) 880-2035		Hercules Incorporated 500 Hercules Road, Bldg 8145 Wilmington, DE 19808 John Schumann (302) 594-5347		
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL	
1	4400	Gal - Polymer for Dewatering	9.2880	\$40,867.20	\$11.19	\$49,236.00	
			Clarifloc C-6240		1.28/lb		
					Praestol K110LTR		
		Delivery	7-10 Days ARO		7-10 Days ARO		
TOTALS:				\$40,867.20		\$49,236.00	

Bidding Summary:

7 Bid requests were issued.

2 Bids listed above

2 NO BIDS were received.

GEO Specialty Chemicals, Brenntag Southwest

3 Bidders did not respond.

Ashland, BASF, Atlantic Coast Polymers Inc



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of an estimated annual supply of 7,500 gallons of Earthtec or equal to treat the City's drinking water for the Utilities Department.

Purpose:

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

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$66,675.00 Water and Sewer Fund – FY2014

Discussion:

This chemical is used for the treatment of City drinking water. The Utilities staff recommends the purchase of Copper Sulfate solution ($\text{CuSO}_4 \cdot 5\text{H}_2\text{O}$) from the low bidder, Chemrite, Inc. $\text{CuSO}_4 \cdot 5\text{H}_2\text{O}$ is used as an algaecide and is equivalent to the Earthtec product. The cost for the $\text{CuSO}_4 \cdot 5\text{H}_2\text{O}$ is \$7.11 per gallon less than last year's cost for the Earthtec brand.

Therefore, please consider approval of a resolution authorizing the purchase of an estimated annual supply of Copper Sulfate solution ($\text{CuSO}_4 \cdot 5\text{H}_2\text{O}$) from Chemrite, Inc. of Buford, Georgia for an estimated annual cost of \$66,675.00.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE PURCHASE OF AN ANNUAL SUPPLY OF COPPER SULFATE SOLUTION FOR TREATING CITY OF MIDLAND DRINKING WATER FROM THE LOW BIDDER, CHEMRITE, INCORPORATED, FOR A TOTAL PRICE OF \$66,675.00

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

WHEREAS, Copper Sulfate Solution is equivalent to Earthtec and significantly less expensive; and

WHEREAS, Bid No. 6791-14 was opened on August 14, 2013, with Chemrite, Inc., submitting the lowest and most responsible bid of \$66,675.00 for 7,500 gallons of Copper Sulfate Solution; and

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

WHEREAS, the City Council finds it to be in the public interest to authorize the purchase of Copper Sulfate Solution for treating City of Midland drinking water from Chemrite, 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 Chemrite, Inc., an annual supply of Copper Sulfate Solution as described and specified in Exhibit “A” attached hereto and made a part hereof for all legal purposes, for a total cost of \$66,675.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said Copper Sulfate Solution out of funds available in the Fiscal Year 2013 – 2014 Water and Sewer Fund (300) Utilities (300) Purification Plant (0320) Chemicals and Insecticides (2330) 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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, Purchasing Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 6791-14 Earthtec OPENED August 14, 2013 Est. Cost: \$116,250.00			Chameleon Industries Inc PO Box 853027 Mesquite, TX 75185-3027 F.I. Garza (972) 880-1493		Chemrite Inc 5202 Belle Wood Ct, Ste 104 Buford, GA 30518 Aaron Opp (770) 271-5576	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL
1	7500	Gal - Earthtec	17.0000	\$127,500.00	\$8.89	\$66,675.00
					Delivered in one-way totes on common carrier. Driver's will not be able to pump product to City's tanks.	
		Delivery	48 Hours		4-5 Days ARO	
TOTALS:				\$127,500.00		\$66,675.00

Bidding Summary:

4 Bid requests were issued.

2 Bids listed above

1 NO BIDS were received.

Brenntag Southwest Inc

1 Bidders did not respond.

Old Bridge Chemical



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of an estimated annual supply of 10,000 gallons of Potassium Permanganate to treat the City's drinking water for the Utilities Department.

Purpose:

Approval of a resolution authorizing the purchase of an estimated 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 – FY2014

Discussion:

This chemical is used for the treatment of City drinking water. We are recommending accepting the low bidder, F2 Industries LLC. This year's cost remains the same as last year's cost.

Therefore, please consider approval of a resolution authorizing the purchase of an estimated annual supply of 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 LOW 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. 6792-14 was opened on August 14, 2013, with the lowest and most responsible bid being submitted from F2 Industries, L.L.C., at \$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 2013 – 2014 Water and Sewer Fund (300) Utilities (300) Purification Plant (0320) Chemicals and Insecticides (2330) 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., 2013, by the following vote:

Council members voting "AYE":

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, Purchasing Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 6792-14 Potassium Permanganate OPENED August 14, 2013 Est. Cost: \$35,000.00			Chemrite Inc 5202 Belle Wood Ct, Ste 104 Buford, GA 30518 Aaron Opp (770) 271-5576		AIC 135 Newbury Street Framingham, MA 01701 Nicholas Glum (508) 270-1852		F2 Industries 423 C Smyrna Square Dr. Smyrna, TN 37167 William Ferrel Jr (615) 459-4620		Brenntag Southwest 1632 Haden Road Houston, TX 77015 Gayle Tullier (713) 330-8570	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
1	10000	Lbs - Potassium Permanganate	2.1490	\$21,490.00	\$2.340	\$23,400.00	\$2.14	\$21,400.00	\$2.25	\$22,500.00
							K-OX			
		Delivery	4-5 Days ARO		3-5 Days ARO		7-10 Days ARO		3-5 Days ARO	
TOTALS:				\$21,490.00		\$23,400.00		\$21,400.00		\$22,500.00

Bidding Summary:

5 Bid requests were issued.

4 Bids listed above

0 NO BIDS were received.

1 Bidders did not respond.
American Int'l Chemical



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of an estimated annual supply of 562,000 gallons of Chlorine for the Water Purification Plant and the Paul Davis Wellfield; 10-150 pound cylinders and 15 – 1 ton cylinders of Chlorine for the T-Bar and Airport Wellfield to treat the City's drinking water for the Utilities Department.

Purpose:

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

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$207,134.00 Water and Sewer Fund – FY2014

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 5 years. The cost of chlorine has decreased from last year's cost. See chart below:

	2009	2010	2011	2012	2013	2014
Liquid Chlorine	.3145	.3435	.346	.354	.359	.347
Chlorine Cylinders	178.00	178.00	178.00	178.00	178.00	171.00

Therefore, please consider approval of a resolution authorizing the purchase of an estimated annual supply of chlorine from DPC Industries, Inc. of Sweetwater, Texas for an estimated annual cost of \$207,134.00.

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 \$207,134.00**

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. 6793-14 was opened on August 14, 2013, with the sole bid being submitted by DPC Industries, Inc., at a total price of \$207,134.00; 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 \$207,134.00.

SECTION TWO. That upon receipt of proper invoice or statement approved by the City Manager, the City Treasurer is hereby authorized and directed to pay for said chlorine out of funds available in the following Fiscal Year 2013 – 2014 Water and Sewer Fund (300) Utilities (300) budget accounts: Paul Davis Well Field (0305) Chemicals and Insecticides (2330); Airport Well Field (0306) Chemicals and Insecticides (2330); Purification Plant (0320) Chemicals and Insecticides (2330).

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

Council members voting "AYE":

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, Purchasing Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 6793-14 Chlorine OPENED August 14, 2013 Est. Cost: \$180,000.00			DPC Industries PO Drawer 158 Sweetwater, TX 79556 Mike Stock (325) 236-6633	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
1	512000	Lbs - Chlorine for Water Purification Plant	0.3470	\$177,664.00
1	10	150 Lb - Cylinders of Chlorine	171.0000	\$1,710.00
1	30000	1 ton Cylinders of Chlorine	0.3470	\$10,410.00
1	50000	Chlorine for Paul Davis Wellfield	0.3470	\$17,350.00
		Delivery	3-5 Days	
TOTALS:				\$207,134.00

Bidding Summary:

5 Bid requests were issued.

1 Bids listed above

1 NO BIDS were received.

Brenntag Southwest

3 Bidders did not respond.

Leslie's Poolmart, PDC Chemicals, Polydyne



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of an estimated annual supply of 20,000 gallons of Polymer to treat the City's drinking water for the Utilities Department.

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:

\$77,160.00 Water and Sewer Fund – FY2014

Discussion:

This chemical is used for the treatment of City drinking water. We are recommending purchasing this chemical from Polydyne, Inc. The low bidder, BASF Corporation, has not completed in-plant testing and demonstration of their product, consequently, their bid is considered non-responsive.

Therefore, please consider approval of a resolution authorizing the purchase of an estimated annual supply of polymer from Polydyne, Inc. of Riceboro, Georgia for an estimated annual cost of \$77,160.00.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE PURCHASE OF AN
ANNUAL SUPPLY OF POLYMER FOR TREATING
CITY OF MIDLAND DRINKING WATER FROM
POLYDYNE, INCORPORATED, FOR A TOTAL PRICE
OF \$77,160.00**

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. 6795-14 was opened on August 14, 2013, with the lowest and most responsive bid submitted from Polydyne, Inc., in the total amount of \$77,160.00; 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 \$77,160.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said polymer out of funds available in the Fiscal Year 2013 – 2014 Water and Sewer Fund (300) Utilities (300) Purification Plant (0320) Chemicals and Insecticides (2330) 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., 2013, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, Purchasing Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 6795-14 Polymer OPENED August 14, 2013 Est. Cost: \$78,500.00			Hercules Incorporated 500 Hercules Road, Bulding 8145 Wilmington, DE 19808 John Schumman (302) 594-5347		Polydyne Inc One Chemical Plant Road Riceboro, GA 31323 Lawrence Grizzle (912) 880-2035		BASF Corporation 100 Park Ave Florham Park, NJ 07932 Joanne Kuchinski (800) 322-3885		Brenntag Southwest 1632 Haden Road Houston, TX 77015 Gayle Tullier (713) 330-8570	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
1	20000	Gallons - Polymer to treat water	5.9400	\$118,800.00	\$3.858	\$77,160.00	\$3.47	\$69,400.00	\$5.03	\$100,600.00
			(.66/lb)				(.40/lb)			
			Praestol 186K		Clarifloc C-338		BASF Mafnafluc Lt7999		Full truckload shipments	
		Delivery	7-10 Days ARO		3-7 Days ARO		7-10 Days		4-10 Days ARO	
TOTALS:				\$118,800.00		\$77,160.00		\$69,400.00		\$100,600.00

Bidding Summary:

7 Bid requests were issued.

4 Bids listed above

1 NO BIDS were received.

GEO Specialty Chemicals

2 Bidders did not respond.

Ashland, Atlantic Coast Polymers Inc



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of an estimated annual supply of 25 tons of Powdered Activated Carbon to treat the City's drinking water for the Utilities Department.

Purpose:

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

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$26,450.00 Water and Sewer Fund – FY2014

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. We recommend accepting the low bid from Brenntag Southwest, Inc.

Therefore, please consider approval of a resolution authorizing the purchase of an estimated annual supply of powdered activated carbon from Brenntag Southwest, Inc. of Houston, Texas for an estimated annual cost of \$26,450.00.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE PURCHASE OF
TWENTY-FIVE (25) TONS OF POWDERED
ACTIVATED CARBON FOR TREATING CITY OF
MIDLAND DRINKING WATER FROM BRENNTAG
SOUTHWEST, INCORPORATED, FOR A TOTAL COST
OF \$26,450.00**

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. 6796-14 was opened on August 14, 2013, with the lowest and most responsible bid being submitted by Brenntag Southwest, Inc., at a total price of \$26,450.00; and

WHEREAS, the Council finds the price proposed by Brenntag Southwest, Inc., 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 Brenntag Southwest, 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 Brenntag Southwest, Inc., 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 \$26,450.00.

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 2013 – 2014 Water and Sewer Fund (300) Utilities (300) Purification Plant (0320) Chemicals and Insecticides (2330) 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., 2013, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, Purchasing Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 6796-14 Powdered Activated Carbon OPENED August 14, 2013 Est. Cost: \$39,500.00			Standard Purification 551 N US Hwy 41 Dunnellon, FL 34432 Tony Julian (352) 465-5959		Carbon Activated Corp 250 E Manville Street Compton, CA 90220 Shanadi Liyanage (310) 885-4555		F2 Industries 423 C Smyrna Square Dr. Smyrna, TN 37167 William Ferrel Jr (615) 459-4620		Brenntag Southwest 1632 Haden Road Houston, TX 77015 Gayle Tullier (713) 330-8570		Prominent Systems Inc 8910 Lawndale St. Unit E Houston, TX 77012 Dan Indrasena (832) 538-0922		Cabot Norit Americas Inc PO Box 790 Marshall, TX 75671 Nikki Vineyard (903)935-4794	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
1	25	Tons - Powdered activated carbon	1,518.0000	\$37,950.00	\$1,540.000	\$38,500.00	\$1,560.00	\$39,000.00	\$1,058.00	\$26,450.00	\$1,430.00	\$35,750.00	\$3,840.00	\$96,000.00
							PaCarb		(Dry Ton)		(.715/lb)			
		Delivery	5-7 Days ARO				7-10 Days ARO		3-4 Days ARO		5-10 Days ARO			
TOTALS:				\$37,950.00		\$38,500.00		\$39,000.00		\$26,450.00		\$35,750.00		\$96,000.00

Bidding Summary:

7 Bid requests were issued.

6 Bids listed above

0 NO BIDS were received.

1 Bidders did not respond.

Cal-Pacific Carbon



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of an estimated annual supply of 10,000 gallons of Aluminum Sulfate to treat the City's drinking water for the Utilities Department.

Purpose:

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

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$496,960.00 Water and Sewer Fund – FY2014

Discussion:

Aluminum sulfate is used for treatment of City drinking water. We are recommending accepting the low bidder, Chameleon Industries, Inc. The cost for this chemical has decreased by \$4.02 per ton from last year's cost.

Therefore, please consider approval of a resolution authorizing the purchase of an estimated annual supply of aluminum sulfate from Chameleon Industries, Inc. of Mesquite, Texas for an estimated annual cost of \$496,960.00.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE PURCHASE OF AN
ANNUAL SUPPLY OF ALUMINUM SULFATE FOR
PURIFYING CITY OF MIDLAND DRINKING WATER
FROM THE LOW BIDDER, CHAMELEON
INDUSTRIES, INCORPORATED, FOR A TOTAL PRICE
OF \$496,960.00**

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

WHEREAS, Bid No. 6798-14 was opened on August 14, 2013, with Chameleon Industries, Inc., submitting the lowest and most responsible bid of \$496,960.00; 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 Aluminum Sulfate for purifying 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 Aluminum Sulfate as described and specified in Exhibit "A" attached hereto and made a part hereof for all legal purposes, for a total cost of \$496,960.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said Aluminum Sulfate out of funds available in the Fiscal Year 2013 – 2014 Water and Sewer Fund (300) Utilities (300) Purification Plant (0320) Chemicals and Insecticides (2330) 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., 2013, by
the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, Purchasing Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 6798-14 Aluminum Sulfate OPENED August 14, 2013 Est. Cost:			General Chemical Performance Products 90 East Halsey Road Parsippany, NJ 07054 Elizabeth Ryno (800) 631-8050		Chameleon Industries Inc PO Box 853027 Mesquite, TX 75185-3027 F.I. Garza (972) 880-1493		Brenntag Southwest 1632 Haden Road Houston, TX 77015 Gayle Tullier (713) 330-8570	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
1	2000	Tons - Aluminum sulfate for treating drinking water	270.0000	\$540,000.00	\$248.480	\$496,960.00	\$449.00	\$898,000.00
			(Dry Ton)				(Dry Ton)	
		Delivery	1-2 Days ARO		48 Hours ARO		3-5 Days ARO	
TOTALS:				\$540,000.00		\$496,960.00		\$898,000.00

Bidding Summary:

5 Bid requests were issued.

3 Bids listed above

1 NO BIDS were received.

GEO Specialty Chemicals

1 Bidders did not respond.

Altivia



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of an estimated annual supply of 10,000 gallons of Liquid Ammonium Sulfate to treat the City's drinking water for the Utilities Department.

Purpose:

Approval of a resolution authorizing the purchase of an estimated annual supply of liquid ammonium sulfate for use at the Water Purification Plant.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$11,000.00 Water and Sewer Fund – FY2014

Discussion:

This chemical is used for the treatment of City drinking water. Staff recommends accepting the low bidder, Brenntag Southwest, Inc. The cost for this product has decreased by \$0.04 per gallon from last year's cost.

Therefore, please consider approval of a resolution authorizing the purchase or an estimated annual supply of ammonium sulfate from Brenntag Southwest, Inc. of Houston, Texas for an estimated annual cost of \$11,000.00.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE PURCHASE OF AN
ANNUAL SUPPLY OF LIQUID AMMONIUM SULFATE
FOR TREATING CITY OF MIDLAND DRINKING
WATER FROM BRENNTAG SOUTHWEST,
INCORPORATED, AT A TOTAL COST OF \$11,000.00**

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

WHEREAS, Bid No. 6799-14 was opened on August 14, 2013, with the lowest and most responsible bid being submitted by Brenntag Southwest, Inc., at a total price of \$11,000.00; and

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

WHEREAS, the City Council finds it to be in the public interest to authorize the purchase of liquid ammonium sulfate for treating City of Midland drinking water from Brenntag Southwest, 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 Brenntag Southwest, Inc., liquid ammonium sulfate as described and specified in Exhibit "A" attached hereto and made a part hereof for all legal purposes, for a total cost of \$11,000.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said liquid ammonium sulfate out of funds available in the Fiscal Year 2013 – 2014 Water and Sewer Fund (300) Utilities (300) Airport Well Field (0306) Chemicals and Insecticides (2330) budget account upon receipt of proper invoice or statement approved by the City Manager.

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

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, Purchasing Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 6799-14 Ammonium Sulfate OPENED August 14, 2013 Est. Cost: \$11,400.00			General Chemical Performance 90 East Halsey Road Parsippany, NJ 07054 Elizabeth Ryno (800) 631-8050		Brenntag Southwest Inc 1632 Haden Road Houston, TX 77015 Gayle Tullier (713) 330-8570	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL
1	10000	Gallons - Liquid Ammonium Sulfate for treating drinking water	1.5600	\$15,600.00	\$1.10	\$11,000.00
						For full truckload quantities
						*Price for less than truckload quantities (2,000 gallons) is \$1.43 a gallon
		Delivery	2-3 Days ARO		3-4 Days ARO	
TOTALS:				\$15,600.00		\$11,000.00

Bidding Summary:

10 Bid requests were issued.

2 Bids listed above

0 NO BIDS were received.

8 Bidders did not respond.

Priester-Mell & Nicholson Inc, Polydyne Inc, Hercules Incorporated, PVS Technologies, Kemira Water Solutions
 PDC Chemical, Shrieve Chemical, Altivia



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving plans and specifications and authorizing advertisement for bids and appropriating funds for the renovation of two (2) stairwells at Grande Stadium at the Scharbauer Sports Complex for the Community Services Department.

Purpose:

Approval of a resolution approving plans and specifications and authorizing advertisement for bids and allocating funds for the renovation of two (2) stairwells at Grande Stadium at the Scharbauer Sports Complex.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$250,000.00 Sports Complex Construction Fund

Discussion:

The steel substructure in both stairwells is rusting and the concrete stair treads need to be replaced. One stairwell will remain open at all times. Please see the attached memo from Tina Jauz, Community Services Director, for further discussion.

Therefore, please consider approval of a resolution approving plans and specifications and authorizing advertisement for bids and allocating funds for the renovation of two (2) stairwells at Grande Stadium at the Scharbauer Sports Complex.

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: September 10, 2013
To: Tommy Hudson, Deputy City Manager
From: Tina Jauz, Community Services Director
Subject: Scharbauer Sports Complex – Grande Stairwell Renovation

The Community Services Department is seeking approval to bid a project at the Scharbauer Sports Complex football stadium and allocate approved funds to a project.

The stairwell renovation at Grande Football Stadium will be identical in scope to the renovations completed at the Baseball facility. The original stairwell construction did not allow adequate drainage, causing rust in the steel substructure. The steel substructure will be reconfigured to allow adequate drainage. The project will also include replacement of the concrete stair treads, which are showing age due to the original methods of construction.

\$250,000 was included in the 2012 budget to complete the reconstruction of the stairwells. In order to best facilitate the painting contract that is currently in place, this project was scheduled to begin after Grande's painting was complete. The painting contractors have now completed their work at Grande and they are now painting at the baseball stadium. The funds from the 2012 approved budget will need to be moved into a project prior to the end of the FY.

Bids for this construction will be opened in October with construction beginning shortly after.

The plans specify that only one stairwell can be closed at any given time in order to minimize interference with the football season.

Funds will be allocated from the Scharbauer Sports Complex Fund (620) Sports Complex (620) Interfund Transfer (0629) Sports Complex Construction Fund (6398) to the Grande Stairwell Project (9065).

RESOLUTION NO. _____

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE RENOVATION OF TWO STAIRWELLS AT GRANDE COMMUNICATIONS STADIUM; AND ALLOCATING \$250,000.00 TO THE GRANDE STAIRWELL PROJECT (9065)

WHEREAS, plans and specifications have been prepared for the renovation of two stairwells at Grande Communications Stadium; and

WHEREAS, the City Council finds it to be in the public interest to approve said plans and specifications, and authorizes the City Manager to advertise for competitive bids; and

WHEREAS, the City Council finds it to be in the public interest to allocate \$250,000.00 to the Grande Stairwell Project (9065);

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

SECTION ONE. That the plans and specifications for the renovation of two stairwells at Grande Communications Stadium are hereby approved, those plans and specifications being substantially in the form as those on file with the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the City Manager, or his designee, is hereby authorized to advertise for competitive bids for said work, pursuant to the statutes of the State of Texas for accomplishing the work set forth in the above approved plans and specifications.

SECTION THREE. That the sum of \$250,000.00 is hereby allocated from the Scharbauer Sports Complex Fund (620) Sports Complex (620) Inter-fund Transfer (0629) Sports Complex Construction Fund (6398) to the Grande Stairwell Project (9065).

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, Purchasing Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



THE CITY OF MIDLAND

CONTRACT

Contract No.6986-14

THIS CONTRACT, effective the _____ day of _____, 20____, by and between the City of Midland, hereinafter referred to as the "City", and _____, hereinafter referred to as the "Contractor", is made for the following considerations:

1. **Cost:** Total Proposal: \$ _____ DOLLARS
2. **Scope of Work:** The Contractor shall perform all work described for renovation of 2 stairwells at Grande Stadium at the Scharbauer Sports Complex of this Contract in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

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

EXHIBIT B..... Intentionally Omitted

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

EXHIBIT D..... Wage Scale

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

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

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

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

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

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

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

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

8. **INDEMNITY: THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY AND ALL OF THE CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES,**

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

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

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

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

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

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

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

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

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

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

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

16. **Payment:** After all work is completed by the Contractor, and the City has inspected and approved that work, the City shall within thirty-one (31) days thereafter issue payment to the Contractor in the amount of the contract and subsequent verified Change Orders. The City shall be the final judge of when work is completed by the Contractor. The City shall not make periodic payments to the Contractor, but shall make payment pursuant to this paragraph only after all work is completed by the Contractor. For contracts exceeding \$25,000 and construction time exceeds ninety days, requests for progress payments may be made to the extent of the materials and labor completed at the end of each month. Upon approval by the Owner's Representative the request and invoice shall be forwarded for

payment less 5% retainage. The total of these payments shall not exceed 95% of the total contract amount.

17. **No 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.

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

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

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

19. **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.

20. **Insurance**

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Worker's Compensation: Statutory limits

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

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

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

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

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

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

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

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

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

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

22. **RELEASE: NOTWITHSTANDING ANY OTHER PROVISIONS, CONTRACTOR 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 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.**

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

occurred in Midland County, Texas.

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

25. **Notice of Alleged Breach; Statutory Prerequisites:** As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, Contractor or his legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Contract) of such damages, duly verified, within one-hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Contractor will settle, the physical and mailing addresses of Contractor at the time and date the claim was presented and the physical and mailing addresses of Contractor for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Contractor relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. The City is under no obligation to provide notice to Contractor that Contractor'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, Contractor's failure to comply with the requirements herein shall perpetually bar Contractor's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if the City has actual or constructive notice or knowledge of said claim or alleged damages. Contractor agrees that the requirements of this entire Contract are reasonable.

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

27. **Termination At Will:** The City may terminate this Contract at will for no or any reason upon giving at least one hundred eighty (180) days written notice to the Contractor. The parties to this Contract understand and agree that it is in the City's sole discretion to cancel the Contract during the term of the Contract without penalty to the City. The Contractor has no expectation and has received no guarantees that this Contract will not be terminated before the end of the Contract term. The parties have bargained for the flexibility of terminating this Contract upon tender of the requisite notice at any time during the term of the Contract. All work and services under the Contract shall be suspended upon termination of the Contract becoming effective.

Contract No: 6986-14

City of Midland

CONTRACTOR

Courtney B. Sharp, City Manager

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

Contractor Corporate Acknowledgment: Contract: Contract No.6986-14

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared
, an officer of _____,

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 20__.

Notary Public, State of Texas



Contractor's Name _____

PROPOSAL
Bid #6986-14
Renovation of 2 Stairwells at Grande Stadium

To: Purchasing Agent
City of Midland
Midland, Texas

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

Materials Portion Incorporated Into Project _____ DOLLARS

Labor Portion Incorporated Into Project _____ DOLLARS

Other Costs Not Incorporated Into Project _____ DOLLARS

Total Proposal _____ DOLLARS

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

VENDOR CONTACT:

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

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

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

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

AWARD

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

BID WAIVERS:

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

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

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

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

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

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

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

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

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

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

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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

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

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

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

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

1. GENERAL REQUIREMENTS

SEE SPECIFICATIONS FOR SPECIFIC REQUIREMENTS FOR MATERIALS,
PRODUCTS, HANDLING AND INSTALLATION

2. CODES:

ALL FABRICATION, ERECTION AND DESIGN OF STRUCTURAL MEMBERS SHALL
MEET THE MINIMUM STANDARDS OF THE FOLLOWING CODES:

- A. INTERNATIONAL BUILDING CODE (IBC) 2003
- B. AMERICAN CONCRETE INSTITUTE (ACI): ACI 318-05 & ALL OTHER ACI
STANDARDS
- C. AMERICAN INSTITUTE OF STEEL CONSTRUCTION (AISC) MANUAL OF STEEL
CONSTRUCTION - ALLOWABLE STRESS - NINTH EDITION
- D. AMERICAN SOCIETY OF CIVIL ENGINEERS - STANDARD 7-05
- E. AMERICAN WELDING SOCIETY (AWS)
- F. CONCRETE REINFORCING STEEL INSTITUTE (CRSI)
- G. ASTM SPECIFICATIONS
- H. AMERICAN IRON AND STEEL INSTITUTE (AISI)
- I. WIRE REINFORCEMENT INSTITUTE (WRI)

3. DESIGN LOADS

A. ALL APPLICABLE DEAD LOADS:

B. LIVE LOADS:

FLOOR LIVE LOAD 100 PSF

4. MATERIAL PROPERTIES

STEEL

MISC METAL ASTM A36- 36 KSI

CONCRETE

STAIRS 3000 PSI AT 28 DAYS

REINFORCING

GRADE 60 ASTM A-615

BOLTS

ANCHOR BOLTS ASTM A307

WELDS

E70XX

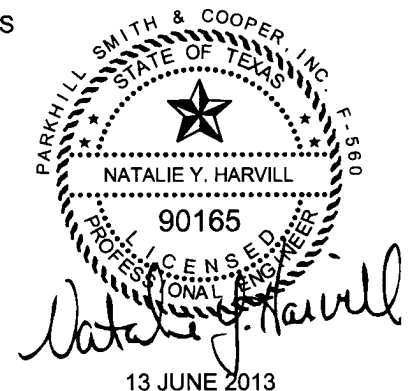
5. REINFORCEMENT AND MISC STEEL

A. UNLESS OTHERWISE NOTED, CONCRETE COVER OVER STEEL

REINFORCEMENT SHALL CONFORM TO THE MINIMUMS REQUIRED BY THE
CURRENT EDITION OF ACI 318.

B. REINFORCEMENT DETAILING AND PLACEMENT SHALL CONFORM TO ACI 318
AND ACI 315, EXCEPT WHERE OTHERWISE INDICATED.

C. SUBSTITUTION OF EXPANSION ANCHORS FOR EMBEDDED ANCHORS
SHOWN ON THE DRAWINGS WILL NOT BE PERMITTED.



SCHARBAUER
SPORTS COMPLEX
FOOTBALL
MIDLAND, TX



PARKHILL SMITH & COOPER

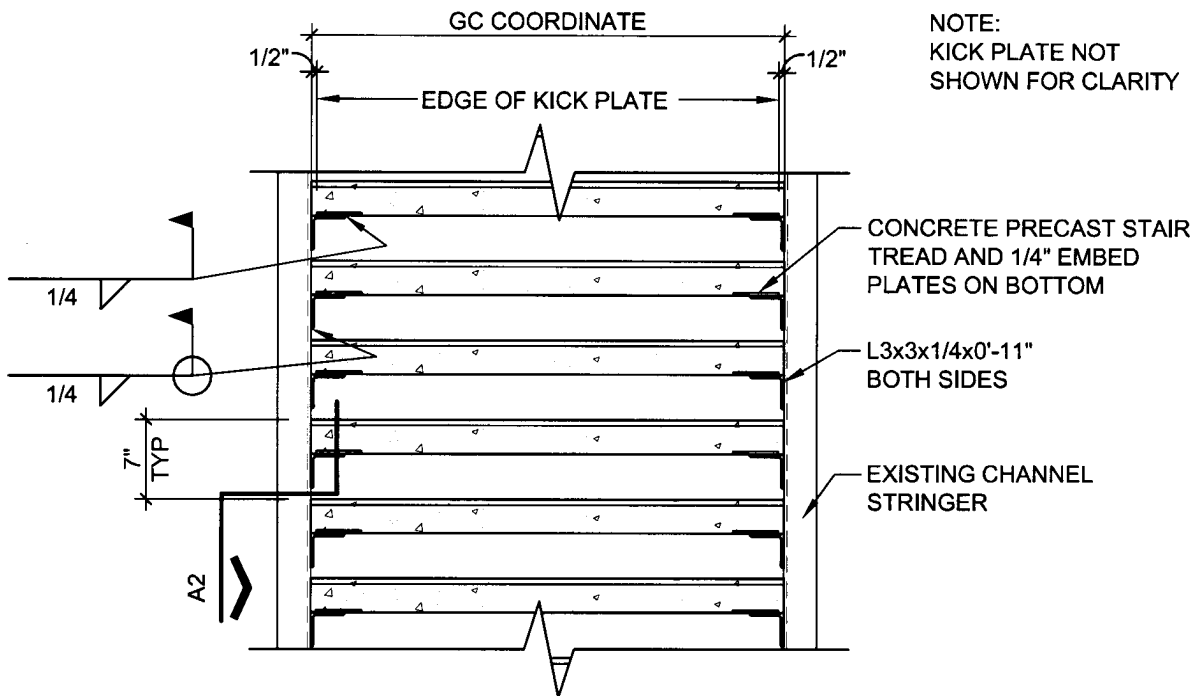
STAIR REPAIR

Issue: -
Project No: 4502.06

Date: JUNE 13, 2013
Sheet: S-1

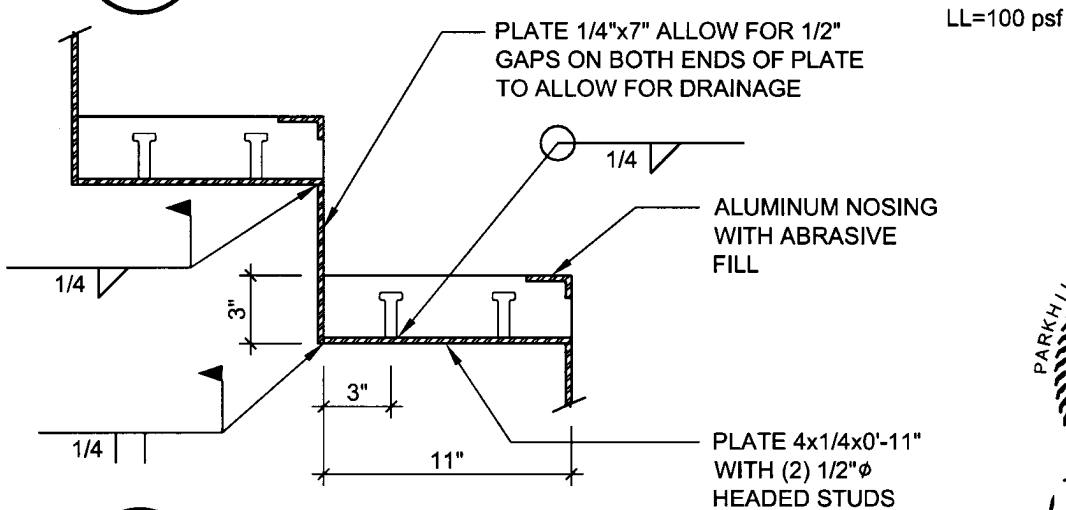
NOTE:
ALL EXISTING STAIR TREADS
MUST BE REMOVED, REUSE
STRINGER

NOTE:
KICK PLATE NOT
SHOWN FOR CLARITY



A1 SECTION

3/4"=1'-0"



A2 SECTION

1 1/2"=1'-0"

PARKHILL SMITH & COOPER, INC. F-560
STATE OF TEXAS
NATALIE Y. HARVILL
90165
PROFESSIONAL ENGINEER
Natalie Y. Harvill
13 JUNE 2013

SCHARBAUER
SPORTS COMPLEX
FOOTBALL
MIDLAND, TX



PARKHILL SMITH & COOPER

STAIR REPAIR

Issue: -
Project No: 4502.06

Date: JUNE 13, 2013
Sheet: S-2

EXHIBIT C

Bonding Requirements

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

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

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

BID BOND

THE STATE OF TEXAS §

SURETY NO. _____

COUNTY OF MIDLAND §

KNOW ALL MEN BY THESE PRESENTS, THAT _____

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

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

_____ DOLLARS

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

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

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

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

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

IN WITNESS THEREOF, THE SAID PRINCIPAL AND SURETY do sign and seal this instrument, this

_____ day of _____, 20____.

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

PAYMENT BOND

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____,

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

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

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

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

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

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

PERFORMANCE BOND

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

SURETY'S NO. _____

KNOW ALL MEN BY THESE PRESENTS, THAT _____

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

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

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

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

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

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

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

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

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

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

Principal

Surety

By _____

By _____

Address _____

Address _____

APPROVED AS TO FORM:

City Attorney

NOTE: ATTACH POWER OF ATTORNEY

EXHIBIT "D"

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

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

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

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

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

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

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

If you have previously submitted a form, it is NOT necessary to send another, unless the status has changed. If submitting due to change in previous status, please note change in status on the front of the form.

Upon completion of the form, sign and submit with bid or mail to:

City of Midland

Attn: City Secretary

P. O. Box 1152

Midland, Texas 79702

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

OFFICE USE ONLY

Date Received

1 Name of person doing business with local governmental entity.

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

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

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

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

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

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

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

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

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

Complete all areas below. Incomplete affidavits may be rejected.

Local Business Name: _____

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

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

Reseller Permit Number: _____

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

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

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

☐ Yes ☐ No

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

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

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

NOTICE TO BIDDERS

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

IF THE SELECTED BIDDER/CONTRACTOR CANNOT MEET THE ABOVE REQUIREMENTS, THEN THE CITY RESERVES THE RIGHT TO AWARD THIS PURCHASE TO ANOTHER BIDDER.

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

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



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the execution of the 2013 Airsho Agreement between the City of Midland, Texas and the Commemorative Air Force (CAF).

Purpose:

Consider a resolution authorizing the execution of the 2013 Airsho Agreement between the City of Midland, Texas and the Commemorative Air Force (CAF).

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Discussion:

The CAF will use portions of the Airport for staging and conducting the Airsho and its ancilliary activities. The CAF Airsho will commence Friday, October 11, 2013, and will conclude at approximately 5:30 p.m. Sunday, October 13, 2013. The Federal Aviation Administration (FAA) has approved all necessary waivers and the Transportation Security Administration (TSA) has approved all security measures.

The agreement allows the CAF to host an airshow on Midland International Airport property, sets required insurance levels as well as requiring emergency response personnel.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE COMMEMORATIVE AIR FORCE, INCORPORATED, FOR THE STAGING OF AN AIRSHOW AT THE MIDLAND INTERNATIONAL AIRPORT; THE AGREEMENT ALLOWS THE COMMEMORATIVE AIR FORCE TO HOST AN AIRSHOW ON MIDLAND INTERNATIONAL AIRPORT PROPERTY, SETS REQUIRED INSURANCE LEVELS AS WELL AS ADMINISTERING EMERGENCY RESPONSE PERSONNEL; THE AIRSHOW WILL COMMENCE FRIDAY, OCTOBER 11, 2013 AND CONCLUDE ON SUNDAY, OCTOBER 13, 2013

WHEREAS, the Commemorative Air Force, Inc., would like to use portions of the Midland International Airport to conduct an airshow and for public display of aircraft for the benefit of the general public commencing on October 11, 2013 and ending on October 13, 2013; and

WHEREAS, the Federal Aviation Administration has approved all necessary waivers and the Transportation Security Administration has approved all security measures; and

WHEREAS, the City finds it to be in the public interest to authorize the execution of an agreement to allow for said airshow;

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

THAT the Mayor and the City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, an agreement with the Commemorative Air Force, Inc., for the staging of an airshow at the Midland International Airport. 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., 2013, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**AIRSHOW AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS
AND THE COMMEMORATIVE AIR FORCE, INC.**

THIS AGREEMENT, effective the 25th day of September, 2013, by and between the City of Midland, Texas, a home rule municipal corporation of the State of Texas, hereinafter called the “City”, and the Commemorative Air Force, Inc., a Texas non-profit corporation, hereafter referred to as “CAF”,

W I T N E S S E T H :

WHEREAS, the City and CAF entered into that certain Lease Agreement dated July 4, 1990, and effective July 1, 1990, hereafter referred to as “the Lease”, for the lease of certain land and improvements located at Midland International Airport, hereafter referred to as “the Airport”; and

WHEREAS, Section 8.10 of the Lease requires that CAF conduct at least two air shows at the Airport during each calendar year pursuant to provisions of a written agreement between the City and CAF; and

WHEREAS, CAF and City desire to enter an agreement for the conduct of an airshow at the Airport to commence Friday, October 11, 2013, at approximately 7:30 a.m. until approximately 5:30 p.m. Sunday, October 13, 2013, hereafter referred to as “the Airshow”. The Airshow shall be governed by The Airshow Event Ground Operations Plan, submitted by the guidelines of 14 CFR Part 139 Program Policy and Guidance, attached hereto as “Exhibit B”.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises

and conditions contained herein, the City and CAF hereby agree as follows:

1. USE OF AIRPORT: CAF shall have the right to use the Leased Premises as described in Section 1.01(a) of the Lease, as well as the areas and facilities at the Airport designated by City's Director of Airports ("Director") for the purpose of conducting the Airshow.

If conditions are: 500 feet above ground level (AGL) or below, and/or one statute mile in visibility or below, Runway 10/28 and any associated safety areas and protection zones shall be turned back over to the City of Midland to support commercial arrivals and departures and any emergency aircraft. If the observed conditions are at/below the above criteria prior to 11:00AM Local the airshow may be put on hold to see if conditions improve. If conditions are not above these minimums at 11:00AM Local Runway 10/28 will be turned back over to the city no later than 12:00 PM Local. This is to include all pyrotechnic detonation, cleanup activities, and sufficient time for DOA operations and maintenance personnel to return the runway back to a CFR 139 compliant surface. A request for an extension may be made but must be approved by the Director of Airports or his/her representative.

2. PRESHOW SET-UP: CAF shall be permitted to commence its set-up activities on Airport property not located within the area of the Leased Premises on Tuesday, October 8, 2013, at such times as agreed by Director. A representative of CAF shall be at the Airport at all times during set-up activities.

3. DESCRIPTION OF AIRSHOW: CAF represents that the Airport will be used solely for the purpose of staging and conducting the Airshow and its ancillary activities. Such flight shall be conducted only northwest of Runway 16 Right/34 Left. Any parachute events shall be northwest of Taxiway "E" and in no case closer than 50' feet from the crowd line. CAF shall not move or operate or permit the movement or operation of any aircraft involved in the performance of the Airshow without qualified safety personnel being present. Such safety personnel shall be provided solely at the cost of CAF.

4. CAF RESPONSIBILITIES: Except as otherwise set forth in this Agreement or as agreed in writing by the City, CAF shall be responsible for making all arrangements for the Airshow, but not limited to, the following:

- a. CAF shall be responsible for parking or arranging for the parking of all aircraft which are part of the Airshow and its ancillary activities. CAF shall also be solely responsible for the movement of or arranging for the management of movement and parking of such aircraft while in the parking areas and on aprons at the Airport. All such aircraft parking and movement shall be coordinated in advance with the Director and the Manager of the Air Traffic Control Tower.
- b. CAF shall at its sole expense obtain all licenses, permits, clearances, or other like authorizations required by any and all Federal, State, or local

governmental agencies, including but not limited to the Federal Aviation Administration (FAA), that are necessary for the conduct of an Airshow. The CAF shall obtain the appropriate Certification of Waiver or Authorization from the FAA prior to the Airshow and shall at all times be solely responsible for compliance with all provisions of the Waiver. A copy of said Waiver shall be attached to this Agreement as Exhibit “A” and shall be incorporated herein by reference and made a part hereof for all legal purposes.

- c. CAF shall provide for suitable automobile parking areas in such locations as approved by the Director and shall be responsible for all roadway signage and directions of spectators and vehicles to the public parking areas. CAF shall have the option to collect or permit the collection of a fee for such parking at the time the vehicles are being parked. Procedures for direction and control of vehicles on Airport property shall be coordinated with, approved by, and under the direction of the Midland Police Department’s Airport Division (“Airport Police”); however, CAF shall be solely responsible for arranging and providing adequate personnel to conduct such parking operations under the direction of the Airport Police.
- d. CAF shall remove or cause the removal of all litter and trash deposited on Airport property as a result of the Airshow during and immediately after the

conclusion of the Airshow or by such time as agreed by the Director.

- e. CAF shall supply portable sanitation facilities, including but not limited to, toilets and trash containers, in sufficient numbers to accommodate those anticipated to attend the Airshow, and will provide the personnel to clean up and remove all facilities installed for the event immediately upon conclusion of the Airshow.
- f. Subject to Section 5, below, CAF shall be solely responsible for arranging for the hiring of sufficient numbers of commissioned peace officers to provide security, crowd control, and traffic control during the set-up, during the Airshow, and for a reasonable time before and after the Airshow. All security, crowd control, and traffic control activities occurring on Airport property shall be coordinated through and approved by the Director and the Airport Police. At no time during the conduct of the Airshow shall the CAF permit the number of police forces required by the Director and/or FAA to secure the crowd line within the AOA or other secured areas of the Airport be permitted to go below the required levels.
- g. CAF shall be solely responsible for obtaining authorization from the appropriate authority to close and/or barricade any public right of way, including any public streets or highways, for purposes of crowd or traffic control. The City does not by entering the Agreement waive any of CAF's

obligations with respect to obtaining the City's consent to close City rights of way or to otherwise divert the flow and direction of vehicular and pedestrian traffic on City-owned rights of way from the manner designated by City ordinance or other applicable law.

- h. Subject to Section 5, below, CAF shall be solely responsible for the arranging with the City's Fire Chief for the hiring of sufficient numbers of fire fighters, health and medical personnel, and emergency medical technicians (EMT's) or paramedics to be on-site during the Airshow to handle possible fire and/or medical emergencies. CAF shall be solely responsible for providing facilities to serve as first aid stations.
- i. CAF shall be solely responsible for arranging for and supervising all concessions. At no time shall concession vendors be permitted to set up within the A0A or on other City property not within the Leased Premises except as authorized in writing by the Director. Removal of all concession facilities set up for the Airshow on Airport property not within the Leased Premises shall commence immediately after the conclusion of the Airshow and be completed no later than four (4) hours after the conclusion of the Airshow unless otherwise agreed by the Director. All concession vendors shall have all required state and/or local health and/or food vending permits visibly displayed within their concession areas. CAF shall not permit any

concession vendor to operate on any City-owned property, regardless of location, unless that concession vendor has in its possession all required permits.

- j. CAF shall not permit any vendor to possess, sell or offer in any manner “dummy” grenades or any other such device that might reasonably cause unnecessary alarm or disrupt the public safety, or result in a response from federal, state or local authorities or emergency personnel. CAF shall indemnify, defend and hold City harmless from any and all suits or claims for damages, of whatsoever nature, resulting from a vendor’s possession, sale or offering of a device described in this provision and/or any incident, of whatsoever nature, resulting therefrom.
- k. CAF shall be solely responsible for providing or arranging for the provision of adequate amounts of drinking water and ice to accommodate those attending the Airshow.
- l. CAF shall be solely responsible for arranging for all parties who are to perform in the Airshow.
- m. CAF shall be solely responsible for arranging clean up of any fluid spills in the AOA on, but not limited to, runways, taxiways, public ramps on or before Monday, October 14, 2013.
- n. CAF shall be solely responsible for the payment of all costs associated with

the carrying out of the obligations and responsibilities described in subparagraphs a. through m. above.

5. MINIMUM EMERGENCY PERSONNEL STAFFING: CAF acknowledges and understands the Airport will be open and operational for commercial traffic during the hours of the Airshow. A notice to Airmen (NOTAM) will be issued closing the Airport to all general aviation traffic. The Airport will remain open and operational only for commercial traffic. CAF further acknowledges and agrees that in order to adequately protect the secured areas of the Airport and to provide for adequate public safety for those attending and participating in the Airshow, a minimum number of qualified off-duty fire/paramedic personnel and qualified off-duty police personnel need to be hired to be within the A0A and other secured areas of the Airport, during the operating hours of the Airshow and for at least two (2) hours before and two (2) hours after the operating hours of the Airshow. In light of the foregoing acknowledgments, CAF shall at all times during the Airshow in which spectators are permitted to access the A0A have on-site no fewer than the following public safety personnel:

- a. Four (4) off-duty Midland Fire Department emergency medical technicians or paramedics;
- b. Two (2) off-duty Midland Fire Department fire fighters;
- c. One (1) off-duty Midland Fire Department command personnel with the rank of captain or higher;
- d. Two (2) fire inspectors;

- e. Fifteen (15) off-duty officers of the Midland Police Department, all of whom have been trained and certified in accordance with TSA regulations to provide security protection within the secured areas of the Airport.

CAF shall be solely responsible for contracting with and paying the above described personnel; provided, however, that in the event CAF fails to hire sufficient numbers of people to provide the above minimum staffing requirements during the hours of operation of the Airshow, City may, at its sole discretion, assign fire and/or police personnel sufficient to maintain the above required levels. CAF shall, within ten (10) days after receipt of an invoice, reimburse the City for all costs incurred by the City in assigning additional off-duty fire and/or police personnel to work at the Airshow in accordance with this section, such as costs to include, but not limited to wages, benefits, F.I.C.A., workers compensation insurance, unemployment insurance and retirement fund contributions. Furthermore, CAF shall indemnify, defend, and hold City harmless from and against any and all claims made by any person hired by CAF to provide medical, fire and/or police protection during the Airshow relating to failure to comply with any Federal or State law or regulation governing wage and hour rates, including, but not limited to, the Federal Fair Labor Standards Act. The CAF acknowledges and understands that the staffing level set forth in this section is a minimum requirement needed to secure the A0A and other secured areas of the Airport used for the Airshow and shall not be construed as a prohibition against the CAF hiring additional public safety personnel at the CAF's own discretion; provided, however, that the CAF shall hire only additional personnel who have

been certified in accordance with the applicable law to perform the duties required by the CAF.

6. CITY EQUIPMENT AND PERSONNEL PROVIDED AT CITY'S EXPENSE:

City agrees to provide to CAF for use at the Airshow the following equipment and services at no charge to CAF:

- a. One (1) Midland Fire Department ambulance;
- b. One (1) Midland Fire Department fire engine in addition to those stationed at the Airport;
- c. Additional sweeping of runways, taxiways, and public ramps within the AOA prior to the Airshow to comply with FAA requirements;
- d. Mowing of City-owned areas off the Leased Premises designated by the Director for parking if deemed necessary by the City in City's sole discretion; however, parking areas not on City property shall be solely the responsibility of CAF.

Notwithstanding the above, City shall not be liable to CAF if in the opinion of the City's Fire Chief and/or Director of Airports the equipment and/or personnel described in a., b., and c., above, are required in the public interest to be reassigned to perform other duties as the result of a fire or other unforeseen event away from the Airshow site; provided, further that except as agreed by the City manager, CAF agrees to reimburse the City within ten (10) days after invoice for any services or supplies provided by City which are not specifically listed in this Section 6.

7. INSURANCE:

- a. Liability Coverage: The CAF shall purchase additional Airshow liability

insurance with a combined single limit coverage in an amount not less than \$10,000,000 per occurrence which shall remain in full force and effect during the Airshow, and shall name the City as an additional insured. Such policy shall be endorsed to either (a) waive any alcohol liability exclusion or (b) include alcohol liability coverage. (see paragraph d below). Such insurance shall not exclude losses and claims related to the operation of non-commercial, privately owned, or experimental aircraft. In addition, CAF shall obtain an endorsement on its insurance policies which shall insure the CAF and City against claims made against any Airshow performer or concession vendor resulting from an injury to person or property of any third party caused by the negligent act or omission of said performer or vendor and their respective employees, agents and representatives. CAF further agrees that all non-City owned motor vehicles which CAF or any performer or vendor will utilize within the airport's Aircraft Operating Area shall be covered by automobile liability insurance in the amounts required by the Texas Motor Vehicle Safety Responsibility Act, Chapter 601 of the Texas Transportation Code. All liability insurance shall name the City as an additional insured.

- b. Fire Insurance: Unless otherwise provided within the coverage of the Airshow liability insurance described in Paragraph 7, above, CAF shall

purchase fire and casualty insurance with coverage limits at not less than \$100,000, which shall provide coverage for loss or damage to property owned by the City or the United States of America, including, but not limited to any buildings, improvements, runways, taxiways, ramps, or gates not located within the Leased Premises, which damage is caused by the CAF or any Airshow performer or participant. City shall be named as a loss payee on such policy and the policy shall contain an endorsement waiving the insurance carrier's right of subrogation against the City with respect to such damages. All liability insurance shall name the City as an additional insured.

- c. Certificates of Insurance: A Certificate of Insurance evidencing such additional coverage and all required waivers and endorsements shall be provided to the Director no later than ten (10) days prior to the Airshow. If any or all of such Certificates of Insurance are not provided to the Director prior to the Airshow, the Director may disallow the staging and conducting of the Airshow and its ancillary activities or that portion of the Airshow which does not meet the above described insurance requirements. All certificates of insurance required herein shall name the City of Midland as an additional insured.
- d. Alcohol Liability Coverage: The requirement of an endorsement on CAF's

policy regarding alcohol liability may be satisfied by the contractor hired by CAF to provide the alcohol service delivering to the City a certificate of insurance naming the City as an additional insured for the Airshow and indicating alcohol liability coverage in an amount not less than \$1,000,000 combined single limit; provided, however, said contractor has the exclusive rights to serve alcoholic beverages at the Airshow.

8. **INDEMNIFY AND HOLD HARMLESS:** 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.

9. DAMAGE TO CITY PROPERTY: CAF shall be solely responsible for the cost of repair and/or replacement of City property owned by the City, the United States of America, or any other Airport tenant, including but not limited to any buildings, grounds, improvements, runways, taxiways, ramps, or gates, which are damaged or destroyed by the CAF and/or Airshow performers or participants. All such repairs shall be conducted

by the City and billed, at the City's cost, to CAF. For damages of less than \$10,000, CAF shall reimburse the City for the costs of repairing such damages within thirty (30) days after presentation of an invoice by the City to CAF. Costs in excess of \$10,000, shall be repaid in accordance with a schedule agreed by City, but in any case not later than one year after the date of ordinance. CAF shall not be responsible for damage to runways, taxiways, or ramps which results through normal wear and tear of such improvements caused by regular Airport operations or damage caused by oversized aircraft directed to the damaged area of the airfield by someone other than the CAF or its representatives.

10. 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.

11. ACCESS TO AIRCRAFT OPERATIONS AREAS (A0A) AND OTHER SECURED AREAS: The Director, in consultation with CAF's representative, shall determine which security gate(s) will be used by Airshow participants and spectators for the purpose of entering and leaving the A0A and other secured areas of the Airport. CAF shall be solely responsible for securing the designated gates and for permitting only persons related to Airshow activities to enter the security gates. Furthermore, CAF shall have a representative on-site at the Airport at all times while Airshow participants and concession vendors are needing access to the Airport's secured areas and shall at no time

permit such persons to be unescorted. Not later than ten (10) days prior to the Airshow, CAF shall provide to the Director a list of all organizations or companies providing concessions or other services who will need access to the Airport's secured areas.

12. BROADCAST AND ADVERTISING RIGHTS: CAF shall have exclusive control and supervision of the sales and content of all advertising and all radio, television, broadcasting, or recording and transcription rights, and other media contracts, and shall have the sole right to proceeds derived therefrom.

13. CITY NOT A CO-SPONSOR: CAF understands and agrees that execution of this Agreement by City in no way creates any partnership or joint venture between the City and CAF, nor shall City be deemed to be a co-sponsor by virtue of having signed this Agreement. CAF and its members and representatives shall at no time make any express or implied representation to any person that the City is acting as a co-sponsor or is in any way financially or otherwise responsible for the conduct of the Airshow.

14. FEES FOR ADMISSION AND CONCESSION RECEIPTS: CAF shall have the exclusive right to handle, control, and keep custody of receipts and funds derived from sales for admission to the Airshow, or from any other source in any way connected therewith, and shall have the sole right to all proceeds derived therefrom; provided, however, the CAF remain liable to collect and pay all lawfully imposed sales taxes.

15. USE OF PYROTECHNICS: CAF shall be permitted to locate and detonate fireworks, dynamite, flashpots, or other incendiary devices (hereafter collectively called

“Fireworks”) during the period of the Airshow, on airport property, after obtaining written approval from the Director of Airports and the City’s Fire Marshal, which permission shall not be granted until (1) the CAF has notified the Director of Airports and the City’s Fire Marshal in writing of the location of all Fireworks to be installed for detonation during the Airshow and the time at which the events involving the detonation of Fireworks will occur, (2) the CAF has delivered to the City the certificates of insurance indicating the required insurance coverage set forth in Section 7 of this Agreement, and (3) the CAF has delivered to the Director a letter indicating the name of the operator who will be supervising the operation of the Fireworks to be installed and detonated as part of the Airshow performance, which letter shall be accompanied by copies of any licenses or permits required by Texas or federal law. At no time shall CAF locate or detonate, or permit the location or detonation of, any Fireworks in such place or manner as to risk injury to or cause interference with aircraft, runways, taxiways, or aprons or with Airport patrons or personnel. In addition, at no time shall the CAF locate or store, or permit the location or storage of, Fireworks within the safety areas of any active runway or taxiway at the Airport. The installation and detonation of all Fireworks to be detonated during the Airshow shall be conducted and/or supervised by a properly licensed pyrotechnic operator if required by Article 5.43-4, Texas Insurance Code, as they relate to the storage, transportation, sale, installation, and display of Fireworks. The pyrotechnic portion of the Airshow shall be immediately suspended upon notification of the CAF by proper fire

safety authorities of non-compliance with the provisions of the public display permit or any State or Federal law or regulation regarding the use of Fireworks on the Airport. CAF shall be solely responsible for the location of all above or below ground structures, including but not limited to, water, sewer, gas, or oil pipeline, electric or telephone cable, or other utility cables, which might be detrimentally affected by the detonation of Fireworks in their vicinity. CAF shall be solely responsible for damage to all structures, whether above or below ground, including buildings, fences, pipelines, utilities, roads, etc., whether publicly or privately owned, caused by the activities related to the Airshow, and shall indemnify, defend, and hold City harmless from claims made by anyone for damage to person or property resulting from the detonation of any fireworks during the Airshow. "Fireworks", as used in this Section, shall also include all items defined as "Fireworks" as that term is defined in Texas Occupations Code §2154.001.

The pyrotechnic portion of the Airshow shall be immediately suspended upon notification of the CAF by proper fire safety authorities of non-compliance with the provisions of the public display permit or any State or Federal law or regulation regarding the use of Fireworks on the Airport. CAF will coordinate the detonation of Fireworks with the Director to ensure scheduled airline operations will continue unimpeded. The Fireworks portion of the show shall be immediately suspended upon notification of the CAF by the Director that pyrotechnic activity may impede air carrier operations at the Airport.

16. NOTICES TO AIRMEN (NOTAMS): The CAF shall cooperate with and timely provide all requested information to the Director necessary for the Director to issue proper Notices to Airmen (NOTAMs) regarding the closure of the Airport during the flying portion of the Airshow. The City, through its Department of Airports, will be the only agency to issue the NOTAMs. **CAF will coordinate the airshow to ensure that all scheduled air carriers serving the airport and airline operations will continue unimpeded during the Airshow.** CAF also agrees that any aircraft which may experience an emergency situation during the time of the Airshow will be allowed to use the Airport without hindrance.

17. FAA OR TSA VIOLATIONS: CAF shall neither conduct nor permit the conduct of activities related to the Airshow which would compromise the Airport's compliance with FAA or TSA regulations, or any other applicable laws or regulations. CAF agree to indemnify City against civil fines assessed by the FAA or TSA against City for violation of FAA or TSA regulations which are the result of the acts or omissions of the CAF, any of its members, or other participants of the Airshow who are not employees of City acting within the scope of their employment.

18. ADA REQUIREMENTS: The CAF shall be solely responsible for adhering to all requirements stated in the American's Disability Act (ADA) as well as all applicable Federal, State and local laws and ordinances.

19. SALES AND AMUSEMENT TAXES: CAF shall be solely responsible for the

collection of any sales and/or amusement taxes required by any Federal, State or local law, regulation or ordinance in connection with the sale of admissions and concessions at the Airshow. CAF agrees to indemnify, defend, and hold City harmless against any suits or claims brought by any governmental entity as the result of non-payment of any such sales or amusement taxes.

20. RELATIONSHIP TO LEASE: The use of the Airport and the Leased Premises by CAF for the Airshow shall at all times remain subject to the provisions of the Lease, which Lease remains in effect and is no way amended by virtue of the execution of this Agreement.

21. DEFAULT: Failure of the CAF to comply with any provision of this Agreement shall constitute an event of default which shall entitle the City to cancel this Agreement, and consequently the Airshow, and to seek such other remedies as may be available to the City at law or in equity. Furthermore, an event of default under this Agreement shall constitute an event of default in the Lease and shall entitle City to invoke such remedies as City may have available to it pursuant to Article 15 of the Lease.

22. FUELING OF AIRCRAFT: CAF, its members, invitees and guests shall not be relieved from the payment of any part of the cost of fuels which constitutes a fuel flowage fee for fuel purchased by and/or distributed by CAF, its members, invitees, or guests; however, City agrees that CAF and its members shall be relieved of payment to City of any part of the cost of fuel constituting a fuel flowage fee for fuel used in operating

historical military aircraft and ground vehicles participating in the Airshow for a period commencing October 7, 2013, until October 16, 2013. Fuel provided to CAF members for aircraft not performing in the Airshow are not exempt from the fuel flowage fee. CAF shall not self-fuel nor permit the self-fueling of any aircraft except aircraft owned by the CAF. CAF shall not permit any party who does not have a current Airport fueling agreement to enter the Leased Premises or the Airport to perform fueling operations for any aircraft. The CAF shall contract with a third party fixed base operator operating at the Airport who has a current Airport Fueling Agreement with the City to provide fueling services for CAF's members, employees, and invitees, which contract will at all times be subject to said Airport Fueling Agreement. At no time shall the CAF permit the fueling of any aircraft to be operated at the Airport by any person who has not been properly certified and tested by the Department of Airports or the FAA to perform fueling services at the Airport.

23. SEVERABILITY: If any of the provisions of this Agreement shall be held illegal, invalid, or otherwise unenforceable, the remainder of the Agreement shall not be affected thereby and shall be read as if the invalid portion were not part of this Agreement.

24. 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.

25. ENTIRE AGREEMENT; WRITTEN AMENDMENTS: This Agreement contains the entire understanding between the parties hereto and supersedes all other oral and written agreements or understandings between them. No modification or addition hereto or waiver of cancellation of any provisions hereof shall be valid except by a written instrument signed by both parties.

26. RELEASE: **NOTWITHSTANDING ANY OTHER PROVISIONS, CAF 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 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.**

27. SPECIAL PERFORMANCE FOR OCTOBER 11, 2013: City understands and agrees that the CAF may conduct a brief aeronautical performance on Friday, October 11, 2013 from 9:30 a.m. until 12:30 p.m., for special guests of the CAF. Except

for the actual flying activities, no activities will be permitted outside the CAF's leased premises. CAF agrees that all provisions of this agreement shall be applicable and in effect for the performance on Friday, October 11, 2013, except for Sections 4(f), 4(g), 4(h), and 5. The CAF shall be responsible for coordinating with the Manager of the Midland Air Traffic Control Tower regarding the time the performance will occur and the permitted area of operations.

28. REMOVAL OF AIRSHO EQUIPMENT AND FACILITIES: All CAF

Airsho equipment and facilities shall be removed from non-leased areas by 1700L on Monday, October 15, 2013.

29. 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 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 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 CITY AND THE CAF. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

30. **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 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 or Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. CAF 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 CAF's work. CAF shall assume exclusive responsibility for the work. CAF is entirely free to do the work in its own way.

31. 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.

32. AS IS LANGUAGE: BY EXECUTING THIS AGREEMENT THE CAF AGREES AND ACKNOWLEDGES THE CAF IS LEASING THE LEASED PREMISES **“AS IS” WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED BEING MADE BY THE CITY, THAT THE LEASED PREMISES ARE FIT FOR A PARTICULAR PURPOSE.** THE CAF ACKNOWLEDGES, BY EXECUTING THIS AGREEMENT, THAT CAF IS NOT RELYING UPON ANY REPRESENTATION MADE BY THE CITY WITH RESPECT TO THE CONDITION OF THE LEASED PREMISES, BUT IS RELYING UPON CAF’S EXAMINATION OF THE LEASED PREMISES. CAF ALSO RECOGNIZES BY EXECUTING THIS AGREEMENT, THAT THE CAF IS AGREEING TO ACCEPT THE LEASED PREMISES **“AS IS”**, THAT CAF AGREES TO MAKE CAF’S OWN APPRAISAL OF THE LEASED PREMISES AND TO ACCEPT THE RISK THAT CAF MAY BE WRONG. THE CITY GIVES NO ASSURANCES, EXPRESS OR IMPLIED CONCERNING THE VALUE OR CONDITION OF THE LEASED PREMISES. IN NO EVENT SHALL CAF HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, THE CAF WILL TAKE THE LEASED PREMISES UNDER THE EXPRESS UNDERSTANDING THE LEASED PREMISES ARE ACCEPTED **“AS IS” AND WITH ALL FAULTS**, EXCLUDING EXPRESS OR IMPLIED WARRANTIES.

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

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, CAF's failure to comply with the requirements herein shall perpetually bar CAF'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. CAF agrees that the requirements of this entire agreement are reasonable.

34. 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 caused this agreement to be executed by persons duly authorized, on the day and year first written above.

CITY OF MIDLAND, TEXAS

THE COMMEMORATIVE AIR
FORCE, INC.

W. Wesley Perry, Mayor

Stephan Brown, President

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

THE STATE OF TEXAS

§

§

COUNTY OF MIDLAND

§

BEFORE ME, the undersigned authority, on this day personally appeared STEPHAN 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 COMMEMORATIVE AIR FORCE, INC.

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

Notary Public in and
for the State of Texas



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the City Manager to negotiate and execute a partial assignment of the Commercial Land/Use Agreement between Deer Horn, LTD Co. and The City of Midland, Texas to Ross Aviation, Denver, Colorado.

Purpose:

Consider a resolution authorizing the City Manager to negotiate and execute a partial assignment of the Commercial Land/Use Agreement between Deer Horn, LTD Co. and The City of Midland, Texas to Ross Aviation, Denver, Colorado.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

N/A

Discussion:

Recently, the Department of Airports received a Letter of Request (see attached) from Deer Horn to assign their fueling and hangar services portion of their operation at Midland International to Ross Aviation of Denver, Colorado. The deal between Deer Horn and Ross has been completed and they are now seeking approval from The City, which according to their agreement, shall not be unreasonably withheld. Of course, the two parties are eager to complete this transaction.

The Department of Airports concurs with the assignment and respectfully requests Council's consideration to allow the City Manager to formalize and execute all documentation pertaining to this assignment.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE CITY MANAGER
TO NEGOTIATE AND EXECUTE A PARTIAL
ASSIGNMENT OF THE COMMERCIAL LAND/USE
AGREEMENT BETWEEN DEER HORN AVIATION
LTD., CO. AND THE CITY OF MIDLAND, TEXAS TO
ROSS MIDLAND LLC, DENVER, COLORADO**

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager to negotiate and execute a partial assignment of the Commercial Land/Use Agreement between Deer Horn Aviation Ltd., Co. and Ross Midland LLC;

**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 partial assignment of the Commercial Land/Use Agreement between Deer Horn Aviation Ltd., Co. and Ross Midland LLC.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Deer Horn Aviation Ltd., Co.
P. O. Box 60248
Midland, Texas 79711

Ross Midland LLC
3303 East First Avenue
Suite 815
Denver, Colorado 80206

September 5, 2013

Mr. Marv Esterly
Director of Airports
P. O. Box 60305
Midland, Texas 79711

Dear Mr. Esterly:

As we discussed and as you requested, please accept this letter as a request by Deer Horn Aviation Ltd., Co., as Seller, and Ross Midland LLC, as Buyer, to approve the following with respect to Buyer acquiring certain assets of Seller's fixed base operations at the Midland International Airport:

The assignment by Seller and assumption by Buyer of that certain Commercial Land and Fixed Base Operator Lease Agreement dated January 7, 2003 by and between Seller and the City of Midland (the "City") without modification to the rental rate or other material terms thereof;

Assignment by Seller and assumption by Buyer of the Airport Fueling Agreement dated January 7, 2003, with one modification to the term of the agreement to make it coterminous with the Fixed Base Operator Lease Agreement;

Consent to a Sublease Agreement for the sublease by Seller from Buyer of the portion of the real property to be subleased to Seller by Buyer after the closing for the operation of certain businesses of Seller ; and

An Estoppel Certificate and, if applicable, Consent to Leasehold Mortgage or Deed of Trust.

Thank you for your consideration on these matters and for your effort in delivering this request to the appropriate City officials for their consideration.

Marv Esterly
Director of Airports
City of Midland
Page 2

Sincerely,

Deer Horn Aviation Ltd., Co.

By: Robin Williams
Robin Williams, Manager

Ross Midland LLC

By: Jeff W. Ross
Jeffrey W. Ross, President



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the formation of a Spaceport Development Corporation under Title 12. Planning and Development, Texas Statutes and Codes, Chapter 507.

Purpose:

Consider a resolution authorizing the formation of a Spaceport Development Corporation under Title 12. Planning and Development, Texas Statutes and Codes, Chapter 507.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

N/A

Discussion:

During the September 10, 2013, City Council Briefing session, Council indicated to staff their interest in forming a Spaceport Development Corporation (SDC) as authorized by the Texas Statutes and Codes, Chapter 507.

Chapter 507 authorizes a municipality, along with another municipality or county, to form a SDC. The formation of the corporation will allow the protection and development of Midland's soon to be spaceport. In addition, the formation allows Midland to apply for State funding from the Texas Spaceport Trust Fund for the development of infrastructure pertaining to the spaceport.

General powers of the SDC includes, ability to raise and expend revenues; authority to issue bonds; authority to acquire property; authority to relocate rail, utility or other facilities; authority to engage in affordable housing programs; authority to impose restrictions on mineral extraction; authority to implement job training; and authority to develop courses, curricula, and programs of study relating to aerospace at area colleges and universities.

RESOLUTION NO. _____

**RESOLUTION OF THE CITY OF MIDLAND, TEXAS
ESTABLISHING A SPACEPORT DEVELOPMENT
CORPORATION AS AUTHORIZED BY CHAPTER 507
OF THE TEXAS LOCAL GOVERNMENT CODE; THE
SPACEPORT DEVELOPMENT CORPORATION IS
CREATED IN COORDINATION WITH AND IN
CONJUNCTION WITH MIDLAND COUNTY, TEXAS;
THE SPACEPORT DEVELOPMENT CORPORATION
SHALL BE KNOWN AS THE MIDLAND SPACEPORT
DEVELOPMENT CORPORATION AND SHALL BE
GOVERNED BY CHAPTER 507 OF THE TEXAS LOCAL
GOVERNMENT CODE; THE SPACEPORT
DEVELOPMENT CORPORATION SHALL BE
GOVERNED BY A BOARD OF SEVEN DIRECTORS
AND FOUR OF THE DIRECTORS SHALL BE MIDLAND
CITY COUNCIL MEMBERS AND THREE OF THE
DIRECTORS SHALL BE APPOINTED BY MIDLAND
COUNTY, TEXAS; AND APPOINTING FOUR (4)
MEMBERS TO THE BOARD OF DIRECTORS**

WHEREAS, the City Council finds it to be in the public interest to create a Spaceport Development Corporation, as authorized by Chapter 507 of the Texas Local Government Code;

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

SECTION ONE. That the Midland City Council in coordination with Midland County, Texas hereby creates a Spaceport Development Corporation as authorized by Chapter 507 of the Texas Local Government Code.

SECTION TWO. That the Spaceport Development Corporation shall be known as the Midland Spaceport Development Corporation.

SECTION THREE. That the Midland Spaceport Development Corporation shall be governed by Chapter 507 of the Texas Local Government Code.

SECTION FOUR. That the Midland Spaceport Development Corporation shall be governed by a board of seven directors. Four of the directors shall be appointed by the Midland City Council and shall be members of the City Council at the time of their appointment. The other three members of the Board of Directors shall be appointed by Midland County, Texas. The term for each director shall be two years and that term shall expire on June 1st of each odd-numbered year.

SECTION FIVE. That the Board of Directors shall elect a presiding officer from among its members. The Board of Directors may provide for the election of other officers.

SECTION SIX. That the Board of Directors of the Midland Spaceport Development Corporation shall meet at least once every three months and at the call of the presiding officer or a majority of the directors.

SECTION SEVEN. That the Midland Spaceport Development Corporation shall be subject to the Texas Open Meetings Act.

SECTION EIGHT. That the Midland City Secretary shall post the agenda of the Midland Spaceport Development Corporation at the Midland City Hall and the Midland County Courthouse and keep the minutes of the Midland Spaceport Development Corporation.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the submission of a Spaceport Trust Fund application to the State of Texas.

Purpose:

Consider a resolution authorizing the submission of a Spaceport Trust Fund application to the State of Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Potentially \$2-3 million in State Grant funding from the Spaceport Trust Fund.

Discussion:

During the September 10, 2013, City Council Briefing session, Council indicated to staff their interest in applying for State funding from the Texas Spaceport Trust Fund for the development of Midland's spaceport.

The State of Texas authorized a total of \$15,000,000 as a contingency rider to the 2014 budget to be placed in the Texas Spaceport Trust Fund. Recently, the Department of Airports received a call from Mr. Keith Graf, Director of Aerospace, Aviation and Defense of the Texas Governor's Office, informing the Airport of the possible availability of these funds for Midland's spaceport development. Applications are required to be received by the Governor's Office by September 30, 2013.

The Department of Airports has put together a list of projects that we feel are needed for the development of the spaceport and that will meet State eligibility requirements.

RESOLUTION NO. _____

RESOLUTION OF THE CITY OF MIDLAND, TEXAS, AUTHORIZING THE MAYOR TO SEEK A THIRTY-DAY EXTENSION FROM THE OFFICE OF AEROSPACE AND AVIATION WITHIN THE ECONOMIC DEVELOPMENT AND TOURISM DIVISION OF THE OFFICE OF THE GOVERNOR FOR PROJECTS THAT PROVIDE FOR THE DEVELOPMENT OF SPACEPORTS IN TEXAS; THE ECONOMIC DEVELOPMENT AND TOURISM DIVISION OF THE OFFICE OF THE GOVERNOR IS THE ADMINISTERING AGENCY FOR THE SPACEPORT TRUST FUND AND THE CITY IS SEEKING A THIRTY-DAY EXTENSION TO APPLY FOR SAID FUNDS; THE MAYOR IS AUTHORIZED AND DIRECTED TO FILE A REQUEST FOR AN EXTENSION WITH KEITH GRAF, DIRECTOR OF THE OFFICE OF AEROSPACE AND AVIATION; THE MAYOR IS ALSO AUTHORIZED AND DIRECTED TO SEND A COPY OF HIS LETTER TO THE HONORABLE TOM CRADDICK, TEXAS HOUSE OF REPRESENTATIVES, DISTRICT 82, AND THE HONORABLE KEL SELIGER, TEXAS STATE SENATOR, DISTRICT 31

WHEREAS, the City Council finds it to be in the public interest to authorize the Mayor to seek a thirty-day extension from the Office of Aerospace and Aviation within the Economic Development and Tourism Division of the Office of the Governor for projects that provide for the development of spaceports in Texas;

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

SECTION ONE. That the Economic Development and Tourism Division of the Office of the Governor is the Administering Agency for the Spaceport Trust Fund and the City is seeking a thirty-day extension to apply for said funds.

SECTION TWO. That the Mayor is authorized and directed to file a request for an extension with Keith Graf, Director of the Office of Aerospace and Aviation.

SECTION THREE. That the Mayor is authorized and directed to send a copy of the letter requesting an extension to apply for said funds, to the Honorable Tom Craddick, Texas House of Representatives, District 82.

SECTION FOUR. That the Mayor is authorized and directed to send a copy of the

letter requesting an extension to apply for said funds to the Honorable Kel Seliger, Texas State Senator, District 31.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

MIDLAND INTERNATIONAL AIRPORT SPACEPORT

SPACEPORT PROJECT DEVELOPMENT PLAN IMPROVEMENTS AND ESTIMATED COSTS/FUNDING

1. Pre-Launch Mission Prep Area – The Prep Area operations will consist of fueled launch vehicles firing their rocket engines as part of a pre-launch checklist. This improvement project has been designed and is ready to be constructed. This project will include construction of embankment, installation of LED pavement edge lights and concrete pavement capable of supporting the launch vehicle and its support vehicles/equipment. The use of concrete is necessary to reduce the potential for fire risk if the rocket propellant were to come into contact with the pavement surface. See attached Exhibit 1 for location of the Pre-Launch Mission Prep Area.

Estimated Project Cost: \$900,000

Requested Funding Amount: \$900,000

2. Spaceport R&D Facility Preparation – The existing Spaceport R&D Facility will house the launch vehicles as well as provide the facilities for the R&D on the launch vehicle and rocket engines. This improvement project will include installation of fire suppression system, installation of insulation in the metal panel roof and walls, building code upgrades, mechanical/plumbing/electrical upgrades, etc. See attached Exhibit 2 for location of the Spaceport R&D Facility.

Estimated Project Cost: \$2,750,000

Requested Funding: \$ 750,000

Local Funding (MDC): \$2,000,000

3. Rocket Engine Test Stand Facility – The rocket engine test stand facility will be used as part of the R&D operations for the spaceport. This facility will be used to perform static firing tests of rocket engines at the spaceport. The facility rocket engine test stand will be constructed of reinforced concrete. The test stand will be approximately 60'x18' in size located at ground level and include anchorage devices. Electrical service will be installed to the facility to provide the necessary power to the site. This will require both above ground and below ground cabling, transformers and associated electrical equipment. See attached Exhibit 3 for location of the Rocket Engine Test Stand Facility.

Estimated Project Cost: \$350,000

Requested Funding: \$350,000

4. Altitude Chamber Complex – An altitude chamber complex will be part of the spaceport at Midland International Airport. This complex will provide the capability to test launch vehicle components, cockpits and space suits at various altitude pressures. The complex will include an

Equipment Chamber, Suit Checkout Chamber and a Mockup Chamber. A Vacuum Chamber will also be constructed as part of the complex to permit rapid evacuation of the test chambers. Safety equipment for fire and smoke suppression will be installed within each chamber intended for human occupancy. An emergency generator will also be installed as part of the complex. See attached Exhibit 4 for location of the Altitude Chamber Complex.

Estimated Project Cost:	\$3,000,000
Requested Funding:	\$ 750,000
Local Funding (MDC):	\$2,250,000

5. Access Roadway to Spaceport Facilities – An access roadway will be constructed to provide vehicle access to the spaceport R&D Facility and Altitude Chamber Complex. The roadway will connect the spaceport facilities to the existing Earhart Drive roadway. This roadway will be an asphalt surface roadway, constructed using base material and a bituminous asphalt surface course. Necessary surface water drainage facilities will be constructed as a part of this project. See attached Exhibit 5 for location of the access Roadway to the Spaceport Facilities.

Estimated Project Cost:	\$500,000
Requested Funding:	\$500,000

6. Ready Propellant Storage Area and Bulk Propellant Storage Area – The rocket propellant will be stored in two locations. The Ready Propellant Storage Area will be located adjacent to the Spaceport R&D Facility. The Bulk Propellant Storage Area will be located near the Spaceport R&D Facility, but across from the apron at a distance necessary to meet safety requirements for the volume of storage. The storage areas will be constructed of reinforced concrete for the foundations and pads. The Ready Propellant Storage Area will be approximately 20'x150' and will include an awning style cover over portions of the area. An asphalt access roadway will be constructed from the main access roadway to the spaceport facilities to the Ready Propellant Storage Area to provide access by propellant tankers to the ground storage tanks. See attached Exhibit 6 for location of the Propellant Storage Areas.

Estimated Project Cost:	\$455,000
Requested Funding:	\$455,000

7. Spaceport R&D Facility Vehicle Parking Area A – An asphalt surface vehicle parking area will be constructed on the west side of the R&D Facility for use by the R&D Facility employees. This parking area will be designed to support standard passenger cars and trucks. A portion of the parking area will be constructed to support transport trucks delivering parts to the airside of the R&D Facility. This parking area will be approximately 200'x200', providing for approximately 100 parking spaces along with access ways. This parking area will be an asphalt surface, constructed using base material and a bituminous asphalt surface course. See attached Exhibit 7 for location of the Spaceport R&D Facility Vehicle Parking Area A.

Estimated Project Cost: \$280,000
Requested Funding: \$280,000

8. Spaceport R&D Facility Parking Area B – An asphalt surface vehicle parking area will be constructed along the north or front side of the facility to provide an area for the R&D Facility visitor parking. This parking area will be designed to support standard passenger cars and trucks. This parking area will be approximately 300'x50', providing for approximately 25-30 parking spaces with access way. This parking area will be an asphalt surface, constructed using base material and a bituminous asphalt surface course. See attached Exhibit 8 for location of the Spaceport R&D Facility Vehicle Parking Area B.

Estimated Project Cost: \$200,000
Funding Requested: \$200,000



Pre-Launch Mission Prep Area

EXHIBIT 1



Spaceport R&D Facility Preparation

0 50 100 200 300 400 Feet

EXHIBIT 2



Rocket Engine Test Stand
Facility

EXHIBIT 3

Altitude Chamber Complex

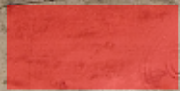


EXHIBIT 4



Access Roadway to
Spaceport Facilities



Access Roadway to Ready Propellant Storage Area

Ready Propellant Storage Area

Bulk Propellant Storage Area



EXHIBIT 6



Spaceport R&D Facility Parking
Area A

0 50 100 200 300 400 Feet

EXHIBIT 7

Spaceport R&D Facility Parking
Area B



EXHIBIT 8



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the execution of a 2014 Routine Airport Maintenance Program (RAMP) Agreement between the City of Midland, Texas and Texas Department of Transportation (TXDOT), and appropriate necessary funds.

Purpose:

Consider a resolution authorizing the execution of a 2014 Routine Airport Maintenance Program (RAMP) Agreement between the City of Midland, Texas and Texas Department of Transportation (TXDOT), and appropriate necessary funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

NADIN Connection Fees:

\$11,860.00 - Airport Funds

\$11,860.00 - TXDOT RAMP Fees

That the sum of \$11,860.00 is hereby appropriated from the Airport Restricted Assets Fund (509) Unappropriated Fund Balance (5650) to the Improvements at Midland Airpark AWOS Maintenance Project (7121).

Discussion:

On April 23, 2003, the Department of Airports received approval from TXDOT to add Midland Airpark to their current contract with Vaisala, Inc. to provide AWOS (Automated Weather Observing System) at Texas airports. The AWOS is a group of sensors which measure, collect and disseminate weather data to help meteorologists, pilots and flight dispatchers prepare and monitor weather forecasts, plan flight routes, and provide necessary minute-to-minute information for correct takeoffs and landings.

TXDOT signed a contract directly with Vaisala for all airports interested in participating. In doing so, costs were reduced and instead of getting reimbursed, we pay our share in one payment directly to TXDOT.

The cost of maintenance associated with the AWOS system is \$23,720.00 annually. Participating in a RAMP Grant with TXDOT cuts this cost in half.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
2014 ROUTINE AIRPORT MAINTENANCE PROGRAM
AGREEMENT BETWEEN THE CITY OF MIDLAND,
TEXAS AND THE TEXAS DEPARTMENT OF
TRANSPORTATION TO PROVIDE AN AUTOMATED
WEATHER OBSERVING SYSTEM AT MIDLAND
AIRPARK; AND APPROPRIATING NECESSARY
FUNDS**

WHEREAS, the Automated Weather Observing System (AWOS) is a group of sensors which measure, collect, and disseminate weather data to help meteorologists, pilots, and flight dispatchers prepare and monitor weather forecasts, plan flight routes, and provide necessary minute to minute information for correct takeoffs and landings; and

WHEREAS, the Texas Department of Transportation currently contracts with Vaisala, Inc. in order to provide AWOS at Texas airports, and has approved adding the Midland Airpark to their current contract; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a 2014 Routine Airport Maintenance Program (RAMP) Agreement between the City of Midland, Texas and the Texas Department of Transportation to provide an Automated Weather Observing System at Midland Airpark;

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

SECTION ONE. That the City of Midland, Texas, acting through its Mayor and City Council, hereby authorizes the execution of a 2014 RAMP Agreement between the City of Midland, Texas and the Texas Department of Transportation to provide an Automated Weather Observing System at Midland Airpark.

SECTION TWO. That the Mayor and the City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, an agreement with the Texas Department of Transportation to provide an Automated Weather Observing System at Midland Airpark. Said agreement shall be on file in the office of the City Secretary, referenced by the date and number of this resolution.

SECTION THREE. That the sum of \$11,860.00 is hereby appropriated from the Airport Restricted Assets Fund (509) Unappropriated Fund Balance (5650) to the Improvements at Midland Airpark AWOS Maintenance Project (7121).

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**TEXAS DEPARTMENT OF TRANSPORTATION
GRANT FOR ROUTINE AIRPORT MAINTENANCE PROGRAM**

(State Assisted Airport Routine Maintenance)

**TxDOT Project No.: AM 2014MDLN
TxDOT CSJ No.: M1406MDLN**

Part I - Identification of the Project

TO: The City of Midland, Texas

FROM: The State of Texas, acting through the Texas Department of Transportation

This Grant is made between the Texas Department of Transportation, (hereinafter referred to as the "State"), on behalf of the State of Texas, and the City of Midland, Texas, (hereinafter referred to as the "Sponsor").

This Grant Agreement is entered into between the State and Sponsor shown above, under the authority granted and in compliance with the provisions of the Transportation Code Chapter 21.

The project is for **airport maintenance** at the Midland Airpark Airport.

Part II - Offer of Financial Assistance

1. For the purposes of this Grant, the annual routine maintenance project cost, Amount A, is estimated as found on Attachment A, Scope of Services, attached hereto and made a part of this grant agreement.

State financial assistance granted will be used solely and exclusively for airport maintenance and other incidental items as approved by the State. Actual work to be performed under this agreement is found on Attachment A, Scope of Services. State financial assistance, Amount B, will be for fifty percent (50%) of the eligible project costs for this project or \$50,000.00, whichever is less, per fiscal year and subject to availability of state appropriations.

Scope of Services, Attachment A, of this Grant, may be amended, subject to availability of state funds, to include additional approved airport maintenance work. Scope amendments require submittal of an Amended Scope of Services, Attachment A.

Services will not be accomplished by the State until receipt of Sponsor's share of project costs.

Only work items as described in Attachment A, Scope of Services of this Grant are reimbursable under this grant.

Work shall be accomplished by August 31, 2013, unless otherwise approved by the State.

2. The State shall determine fair and eligible project costs for work scope. Sponsor's share of estimated project costs, Amount C, shall be as found on Attachment A and any amendments.

It is mutually understood and agreed that if, during the term of this agreement, the State determines that there is an overrun in the estimated annual routine maintenance costs, the State may increase the grant to cover the amount of the overrun within the above stated percentages and subject to the maximum amount of state funding.

The State will not authorize expenditures in excess of the dollar amounts identified in this Agreement and any amendments, without the consent of the Sponsor.

3. Sponsor, by accepting this Grant certifies and, upon request, shall furnish proof to the State that it has sufficient funds to meet its share of the costs. The Sponsor grants to the State the right to audit any books and records of the Sponsor to verify expended funds.

Upon execution of this Agreement and written demand by the State, the Sponsor's financial obligation (Amount C) shall be due in cash and payable in full to the State. State may request the Sponsor's financial obligation in partial payments. Should the Sponsor fail to pay their obligation, either in whole or in part, within 30 days of written demand, the State may exercise its rights under Paragraph V-3. Likewise, should the State be unwilling or unable to pay its obligation in a timely manner, the failure to pay shall be considered a breach and the Sponsor may exercise any rights and remedies it has at law or equity.

The State shall reimburse or credit the Sponsor, at the financial closure of the project, any excess funds provided by the Sponsor which exceed Sponsor's share (Amount C).

4. The Sponsor specifically agrees that it shall pay any project costs which exceed the amount of financial participation agreed to by the State. It is further agreed that the Sponsor will reimburse the State for any payment or payments made by the State which are in excess of the percentage of financial assistance (Amount B) as stated in Paragraph II-1.
5. Scope of Services may be accomplished by State contracts or through local contracts of the Sponsor as determined appropriate by the State. All locally contracted work must be approved by the State for scope and reasonable cost. Reimbursement requests for locally contracted work shall be submitted on forms provided by the State and shall include copies of the invoices for materials or services. Payment shall be made for no more than 50% of allowable charges.

The State will not participate in funding for force account work conducted by the Sponsor.

6. This Grant shall terminate upon completion of the scope of services.

Part III - Sponsor Responsibilities

1. In accepting this Grant, if applicable, the Sponsor guarantees that:
 - a. it will, in the operation of the facility, comply with all applicable state and federal laws, rules, regulations, procedures, covenants and assurances required by the State in connection with this Grant; and
 - b. the Airport or navigational facility which is the subject of this Grant shall be controlled by the Sponsor for a period of at least 20 years; and
 - c. consistent with safety and security requirements, it shall make the airport or air navigational facility available to all types, kinds and classes of aeronautical use without discrimination between such types, kinds and classes and shall provide adequate public access during the period of this Grant; and
 - d. it shall not grant or permit anyone to exercise an exclusive right for the conduct of aeronautical activity on or about an airport landing area. Aeronautical activities include, but are not limited to scheduled airline flights, charter flights, flight instruction, aircraft sales, rental and repair, sale of aviation petroleum products and aerial applications. The landing area consists of runways or landing strips, taxiways, parking aprons, roads, airport lighting and navigational aids; and
 - e. it shall not enter into any agreement nor permit any aircraft to gain direct ground access to the sponsor's airport from private property adjacent to or in the immediate area of the airport. Further, Sponsor shall not allow aircraft direct ground access to private property. Sponsor shall be subject to this prohibition, commonly known as a "through-the-fence operation," unless an exception is granted in writing by the State due to extreme circumstances; and
 - f. it shall not permit non-aeronautical use of airport facilities without prior approval of the State; and
 - g. the Sponsor shall submit to the State annual statements of airport revenues and expenses when requested; and
 - h. all fees collected for the use of the airport shall be reasonable and nondiscriminatory. The proceeds from such fees shall be used solely for the development, operation and maintenance of the airport or navigational facility; and
 - i. an Airport Fund shall be established by resolution, order or ordinance in the

treasury of the Sponsor, or evidence of the prior creation of an existing airport fund or a properly executed copy of the resolution, order, or ordinance creating such a fund, shall be submitted to the State. The fund may be an account as part of another fund, but must be accounted for in such a manner that all revenues, expenses, retained earnings, and balances in the account are discernible from other types of moneys identified in the fund as a whole. All fees, charges, rents, and money from any source derived from airport operations must be deposited in the Airport Fund and shall not be diverted to the general revenue fund or any other revenue fund of the Sponsor. All expenditures from the Airport Fund shall be solely for airport purposes. Sponsor shall be ineligible for a subsequent grant or loan by the State unless, prior to such subsequent approval of a grant or loan, Sponsor has complied with the requirements of this subparagraph; and

- j. the Sponsor shall operate runway lighting at least at low intensity from sunset to sunrise; and
 - k. insofar as it is reasonable and within its power, Sponsor shall adopt and enforce zoning regulations to restrict the height of structures and use of land adjacent to or in the immediate vicinity of the airport to heights and activities compatible with normal airport operations as provided in Tex. Loc. Govt. Code Ann. Sections 241.001 et seq. (Vernon and Vernon Supp.). Sponsor shall also acquire and retain aviation easements or other property interests in or rights to use of land or airspace, unless sponsor can show that acquisition and retention of such interest will be impractical or will result in undue hardship to Sponsor. Sponsor shall be ineligible for a subsequent grant or loan by the State unless Sponsor has, prior to subsequent approval of a grant or loan, adopted and passed an airport hazard zoning ordinance or order approved by the State.
 - l. mowing services will not be eligible for state financial assistance. Sponsor will be responsible for 100% of any mowing services.
- 2. The Sponsor, to the extent of its legal authority to do so, shall save harmless the State, the State's agents, employees or contractors from all claims and liability due to activities of the Sponsor, the Sponsor's agents or employees performed under this agreement. The Sponsor, to the extent of its legal authority to do so, shall also save harmless the State, the State's agents, employees or contractors from any and all expenses, including attorney fees which might be incurred by the State in litigation or otherwise resisting claim or liabilities which might be imposed on the State as the result of those activities by the Sponsor, the Sponsor's agents or employees.
 - 3. The Sponsor's acceptance of this Offer and ratification and adoption of this Grant shall be evidenced by execution of this Grant by the Sponsor. The Grant shall comprise a contract, constituting the obligations and rights of the State of Texas and the Sponsor with respect to the accomplishment of the project and the operation and maintenance of the airport.

If it becomes unreasonable or impractical to complete the project, the State may void this agreement and release the Sponsor from any further obligation of project costs.

4. Upon entering into this Grant, Sponsor agrees to name an individual, as the Sponsor's Authorized Representative, who shall be the State's contact with regard to this project. The Representative shall receive all correspondence and documents associated with this grant and shall make or shall acquire approvals and disapprovals for this grant as required on behalf of the Sponsor, and coordinate schedule for work items as required.
5. By the acceptance of grant funds for the maintenance of eligible airport buildings, the Sponsor certifies that the buildings are owned by the Sponsor. The buildings may be leased but if the lease agreement specifies that the lessee is responsible for the upkeep and repairs of the building no state funds shall be used for that purpose.
6. Sponsor shall request reimbursement of eligible project costs on forms provided by the State. All reimbursement requests are required to include a copy of the invoices for the materials or services. The reimbursement request will be submitted no more than once a month.
7. The Sponsor's acceptance of this Agreement shall comprise a Grant Agreement, as provided by the Transportation Code, Chapter 21, constituting the contractual obligations and rights of the State of Texas and the Sponsor with respect to the accomplishment of the airport maintenance and compliance with the assurances and conditions as provided. Such Grant Agreement shall become effective upon the State's written Notice to Proceed issued following execution of this agreement.

PART IV - Nomination of the Agent

1. The Sponsor designates the State as the party to receive and disburse all funds used, or to be used, in payment of the costs of the project, or in reimbursement to either of the parties for costs incurred.
2. The State shall, for all purposes in connection with the project identified above, be the Agent of the Sponsor. The Sponsor grants the State a power of attorney to act as its agent to perform the following services:
 - a. accept, receive, and deposit with the State any and all project funds granted, allowed, and paid or made available by the Sponsor, the State of Texas, or any other entity;
 - b. enter into contracts as necessary for execution of scope of services;
 - c. if State enters into a contract as Agent: exercise supervision and direction of the project work as the State reasonably finds appropriate. Where there is an

irreconcilable conflict or difference of opinion, judgment, order or direction between the State and the Sponsor or any service provider, the State shall issue a written order which shall prevail and be controlling;

- d. receive, review, approve and pay invoices and payment requests for services and materials supplied in accordance with the State approved contracts;
- e. obtain an audit as may be required by state regulations; the State Auditor may conduct an audit or investigation of any entity receiving funds from TxDOT directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- f. reimburse sponsor for approved contract maintenance costs no more than once a month.

PART V - Recitals

- 1. This Grant is executed for the sole benefit of the contracting parties and is not intended or executed for the direct or incidental benefit of any third party.
- 2. It is the intent of this grant to not supplant local funds normally utilized for airport maintenance, and that any state financial assistance offered under this grant be in addition to those local funds normally dedicated for airport maintenance.
- 3. This Grant is subject to the applicable provisions of the Transportation Code, Chapters 21 and 22, and the Airport Zoning Act, Tex. Loc. Govt. Code Ann. Sections 241.001 et seq. (Vernon and Vernon Supp.). Failure to comply with the terms of this Grant or with the rules and statutes shall be considered a breach of this contract and will allow the State to pursue the remedies for breach as stated below.
 - a. Of primary importance to the State is compliance with the terms and conditions of this Grant. If, however, after all reasonable attempts to require compliance have failed, the State finds that the Sponsor is unwilling and/or unable to comply with any of the terms of this Grant, the State, may pursue any of the following remedies: (1) require a refund of any financial assistance money expended pursuant to this Grant, (2) deny Sponsor's future requests for aid, (3) request the Attorney General to bring suit seeking reimbursement of any financial assistance money expended on the project pursuant to this Grant, provided however, these remedies shall not limit the State's authority to enforce its rules, regulations or

orders as otherwise provided by law, (4) declare this Grant null and void, or (5) any other remedy available at law or in equity.

- b. Venue for resolution by a court of competent jurisdiction of any dispute arising under the terms of this Grant, or for enforcement of any of the provisions of this Grant, is specifically set by Grant of the parties in Travis County, Texas.
- 4. The State reserves the right to amend or withdraw this Grant at any time prior to acceptance by the Sponsor. The acceptance period cannot be greater than 30 days after issuance unless extended by the State.
- 5. This Grant constitutes the full and total understanding of the parties concerning their rights and responsibilities in regard to this project and shall not be modified, amended, rescinded or revoked unless such modification, amendment, rescission or revocation is agreed to by both parties in writing and executed by both parties.
- 6. All commitments by the Sponsor and the State are subject to constitutional and statutory limitations and restrictions binding upon the Sponsor and the State (including Sections 5 and 7 of Article 11 of the Texas Constitution, if applicable) and to the availability of funds which lawfully may be applied.

Part VI - Acceptances

Sponsor

The City of Midland, Texas, does ratify and adopt all statements, representations, warranties, covenants, agreements, and all terms and conditions of this Grant.

Executed this _____ day of _____, 20__.

The City of Midland, Texas

Sponsor

Witness Signature

Sponsor Signature

Witness Title

Sponsor Title

Certificate of Attorney

I, _____, acting as attorney for the City of Midland, Texas, do certify that I have fully examined the Grant and the proceedings taken by the Sponsor relating to the acceptance of the Grant, and find that the manner of acceptance and execution of the Grant by the Sponsor, is in accordance with the laws of the State of Texas.

Dated at _____, Texas, this _____ day of _____, 20__.

Witness Signature

Attorney's Signature

Witness Title

Acceptance of the State

Executed by and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs and grants heretofore approved and authorized by the Texas Transportation Commission.

STATE OF TEXAS
TEXAS DEPARTMENT OF TRANSPORTATION

By: _____

Date: _____

Attachment A
Scope of Services
TxDOT CSJ No.: M1406MDLN

Eligible Scope Items:	Estimated Costs	State Share	Sponsor Share
	Amount A	Amount B	Amount C
GENERAL MAINTENANCE	\$20,000.00	\$10,000.00	\$10,000.00
SPECIAL PROJECT	\$0.00	\$0.00	\$0.00
SPECIAL PROJECT	\$0.00	\$0.00	\$0.00
SPECIAL PROJECT	\$0.00	\$0.00	\$0.00
MISC - AWOS Maintenance	\$3,720.00	\$1,860.00	\$1,860.00
Total	\$23,720.00	\$11,860.00	\$11,860.00

Accepted by: The City of Midland, Texas

Signature

Title: _____

Date: _____

Notes: (explanations of any specifications or variances as needed for above scope items) _____

MISCELLANEOUS: TxDOT to contract for AWOS maintenance, Sponsor to contract for AWOS AviMet Data Link, AWOS repairs/parts replacement.

GENERAL MAINTENANCE: As needed, Sponsor may contract for services/purchase materials for routine maintenance/improvement of airport pavements, signage, drainage, approach aids, lighting systems, utility infrastructure, fencing, herbicide/application, sponsor owned and operated fuel systems, hangars, buildings, terminal buildings and security systems; professional services for environmental compliance, approved project design. Special projects to be determined and added by amendment.

Only work items as described in Attachment A, Scope of Services of this Grant are reimbursable under this grant.

CERTIFICATION OF AIRPORT FUND

TxDOT CSJ No.: M1406MDLN

The City of Midland does certify that an Airport Fund has been established for the Sponsor, and that all fees, charges, rents, and money from any source derived from airport operations will be deposited for the benefit of the Airport Fund and will not be diverted for other general revenue fund expenditures or any other special fund of the Sponsor and that all expenditures from the Fund will be solely for airport purposes. The fund may be an account as part of another fund, but must be accounted for in such a manner that all revenues, expenses, retained earnings, and balances in the account are discernible from other types of moneys identified in the fund as a whole.

The City of Midland, Texas

(Sponsor)

By: _____

Title: _____

Date: _____

State of Texas Single Audit Requirements

I, _____, do certify that the City of Midland will comply with all
(Designated Representative)

requirements of the State of Texas Single Audit Act if the City of Midland spends or receives more than \$500,000 in any funding sources during this fiscal year. And in following those requirements, the City of Midland will submit the report to the audit division of the Texas Department of Transportation. If your entity did not meet the threshold of \$500,000.00 in grant expenditures, please submit a letter indicating that your entity is not required to have a State Single Audit performed for the most recent audited fiscal year.

Signature

Title

Date

DESIGNATION OF SPONSOR'S AUTHORIZED REPRESENTATIVE

TxDOT CSJ Number: M1406MDLN

The City of Midland designates, _____
(Name, Title)

as the Sponsor's authorized representative, who shall receive all correspondence and documents associated with this grant and who shall make or shall acquire approvals and disapprovals for this grant as required on behalf of the Sponsor.

The City of Midland, Texas
(Sponsor)

By: _____

Title: _____

Date: _____

DESIGNATED REPRESENTATIVE

Mailing Address: _____

Overnight Mailing Address: _____

Telephone/Fax Number: _____

Email address: _____



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Sharlett Chowning, Chief Information Officer

SUBJECT: Consider a resolution allocating \$138,100 from the Fiscal Year 2012-2013 General Fund (001) NonDepartmental (150) Interfund Transfer (0199) General Construction Fund (6299) budget account to the Technology Acquisitions 2013 Project (9066). (CISD)

Purpose:

Consider a resolution allocating \$138,100 from the Fiscal Year 2012-2013 General Fund (001) NonDepartmental (150) Interfund Transfer (0199) General Construction Fund (6299) budget account to the Technology Acquisitions 2013 Project (9066). (CISD)

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Allocate \$138,100 from the Fiscal Year 2012-2013 General Fund (001) NonDepartmental (150) Interfund Transfer (0199) General Construction Fund (6299) budget account to the Technology Acquisitions 2013 Project (9066). (CISD)

RESOLUTION NO. _____

**RESOLUTION APPROPRIATING \$138,100.00 TO THE
TECHNOLOGY ACQUISITIONS 2013 PROJECT (9066)**

WHEREAS, the City Council finds it to be in the public interest to appropriate \$138,100.00 to the 2013 Technology Acquisitions Project (9066);

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

SECTION ONE. That the sum of \$138,100.00 is hereby appropriated from the Fiscal Year 2012-2013 General Fund (001) Non-departmental (150) Inter-fund Transfer (0199) General Construction Fund (6299) budget account to the Technology Acquisitions 2013 Project (9066).

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Sharlett Chowning, Chief Information Officer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City of Midland
Office Memorandum

DATE: 9/24/2013

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 \$1,547,684 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 2013-2014 operating budget on August 26, 2013.

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 \$1,547,684.00 from funds available in the following Fiscal Year 2013-2014 Budget Accounts in the following amounts:

090 (Hotel/Motel) - 005 (Administration) - 0690 (Hotel/Motel) - 6990
(Miscellaneous): 1,547,684.00

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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

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 25th day of September, 2013, 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 \$96,057.00 per month during the term of this

agreement, not to exceed a total annual sum of \$1,152,684.00. 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 \$250,000.00 on or before October 15, 2013, to be used by the Chamber for SEAM expenditures. The City agrees to pay the Chamber for promoting and operating the Midland Visitors Center, a sum of \$12,083.33 per month during the term of this Agreement, not to exceed a total annual sum of \$145,000.00. Such monthly payment shall be paid by the City to the Chamber on or before the 10th day of each month. At the end of the contract period, Chamber shall provide invoices supporting expenditures made. Any amounts paid to Chamber that do not have supporting invoices shall be reimbursed to the City. 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 2013-2014. 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 2013-2014 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 2013-2014.

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, 2013, and ending on September 30, 2014.

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 _____, 2013.

Notary Public, State of _____



City of Midland
Office Memorandum

DATE: 9/24/2013

TO: The Honorable Mayor and City Council Members

FROM: Amy Turner, City Secretary

SUBJECT: Consider a resolution authorizing a contract with the Commemerative 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 2013-2014 operating budget on August 26, 2013.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING AN AGREEMENT WITH
THE COMMEMORATIVE AIR FORCE,
INCORPORATED TO PROMOTE TOURISM AND THE
HOTEL INDUSTRY IN THE CITY; AND THE CITY
SHALL PROVIDE A MAXIMUM OF \$50,000.00 IN
FUNDING FROM THE CITY'S HOTEL/MOTEL FUND**

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 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 2013-2014 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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

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 25th day of September, 2013, 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 2013-2014. 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 2013-2014 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, 2013 and ending on September 30, 2014.

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 2013-2014.

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 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 CAF SPECIFICALLY AGREES THAT IF THE CAF BRINGS OR COMMENCES, OR IS A PARTY OR PARTICIPATES IN 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 CITY AND THE CAF. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

ARTICLE 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, DAMAGES, 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 CONTENT
AND COMPLETENESS:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

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 _____, 2013.

Notary Public, State of _____



City Council Agenda

Approved for Agenda:
RPatrick
City Manager's Office

MEETING DATE: September 24, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Coordinator

SUBJECT: Consider a resolution approving the issuance of a permit to Rust Oil Corporation (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Moss Partnership "9" No. 1 located 2,183 feet from the south line and 1,616 feet from the east line located in Section 9, Block X, H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of the extension of North Garfield Street, approximately 1/2 mile north of Mockingbird Lane.)

Purpose:

To consider a resolution approving the issuance of a permit to Rust Oil Corporation (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Moss Partnership "9" No. 1) located 2,183 feet from the south line and 1,616 feet from the east line located in Section 9, Block X, H.P. Hilliard Survey, City and County of Midland, Texas. The required 30-day public comment has passed and the Council may consider this request. No letters of objection received.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval of the application with a notation to the operators certification, send additional letters for the notification, include an updated road repair agreement, correction of the concept plan concerning floodplain and include address in the emergency action plan. Rust Oil Corporation has addressed the recommendations and updated the application. Concerning landscaping and irrigation variance request the committee recommends landscaping be installed within two years and acceptance of Rust Oil Corporation offer to provide security for pedestrian traffic by Midland Classical Academy during school hours on Whitman Drive during the mobilizing of the drilling operations.

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

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO RUST OIL CORPORATION (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 2,183 FEET FROM THE SOUTH LINE AND 1,616 FEET FROM THE EAST LINE, SECTION 9, BLOCK “X”, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF THE EXTENSION OF NORTH GARFIELD STREET, APPROXIMATELY ½ MILE NORTH OF MOCKINGBIRD LANE); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

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

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

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

WHEREAS, Operator has submitted an application to the City of Midland to drill an

oil and gas well on the property described in Section Two hereof; and

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on August 13, 2013; and

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

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

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

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

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

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 2,183 feet from the south line and 1,616 feet from the east line, Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

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

On motion of Council member _____, seconded by Council member

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant to the City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on September 24, 2013, considered the application of Rust Oil Corporation, dated February 23, 2012, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Rust Oil Corporation, dated February 23, 2012, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Rust Oil Corporation, Moss Partnership "9" No. 1 oil and gas well shall be 2,183 feet from the south line and 1,651 feet from the east line, Section 9, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Rust Oil Corporation, which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from September 24, 2013, through September 24, 2014, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

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

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

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

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

Landscaping is not required at this time but will be required within two years from September 24, 2013. Operator shall notify the City Manager within 180 days (March 28, 2015) in writing if the landscaping is not to be completed prior to expiration of the two year period. If landscaping is not completed prior to the two year period this permit shall automatically terminate without any action of the City Council required.

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS ____ day of September, 2013.

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS ____ day of September, 2013.

Rust Oil Corporation

By: _____

CB Rust, President

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

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

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

b.

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

c.

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

d.

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

e.

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

f.

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

g.

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

2.

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

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

a.

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

b.

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

c.

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

d.

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

e.

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

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

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

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

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

3.

Insurance.

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

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

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

x.

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

xi.

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

b.

Standard Commercial General Liability Policy.

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

c.

Excess or Umbrella Liability.

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

Environmental Pollution Liability Coverage.

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

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

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

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

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

iii.

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

f.

Automobile Liability Insurance.

i.

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

ii.

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

g.

Certificates of Insurance.

i.

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

ii.

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

iii.

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

iv.

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

v.

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

vi.

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

Indemnification.

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

Notice.

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

Notice addresses are as follows:

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

OPERATOR: _____
CB Rust, President

401 W Texas, Suite 801
Midland, Texas 79701
(432) 687-1333

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

(L)

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

1.

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

2.

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

3.

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

4.

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

5.

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

6.

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

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

7.

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

8.

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

9.

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

10.

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

11.

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

12.

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

13.

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

14.

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

15.

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

16.

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

17.

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

18.

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

a.

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

b.

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

19.

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

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

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

20.

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

21.

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

22.

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

23.

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

24.

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

25.

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

a.

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

i.

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

ii.

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

iii.

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

b.

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

i.

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

ii.

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

iii.

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

26.

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

27.

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

a.

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

b.

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

c.

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

(i)

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

(ii)

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

(iii)

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

(iv)

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

(v)

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

28.

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

29.

Signs.

a.

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

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

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

b.

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

c.

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

30.

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

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

31.

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

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

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

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

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

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

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

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

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

32.

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

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

33.

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

34.

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

a.

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

b.

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

c.

The cellar shall be filled or closed; and

d.

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

35.

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

36.

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

a.

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

b.

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

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

c.

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

d.

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

M.

Fencing and landscaping.

1.

Fences.

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

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

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

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

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

2.

Landscaping.

Landscaping is not required at this time but will be required within two years from September 24, 2013. Operator shall notify the City Manager within 180 days (March 28, 2015) in writing if the landscaping is not to be completed prior to expiration of the two year period. If landscaping is not completed prior to the two year period this permit shall automatically terminate without any action of the City Council required.

(N)

Cleanup and Maintenance.

1.

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

2.

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

3.

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

4.

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

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same

information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

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

O.

Drilled and Abandoned Wells.

1.

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

2.

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

a.

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

b.

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

c.

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

d.

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

e.

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

f.

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

g.

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

h.

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

3.

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

a.

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

b.

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

c.

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

4.

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

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must

be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

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

(Q)

Measurement.

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

(R)

Effect of denial of oil and gas well permit.

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

(S)

Amendment to Oil and Gas Well Permit.

1.

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

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

a.

An amendment fee of \$1,000.00.

b.

A description of the proposed amendments.

c.

Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).

d.

Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.

e.

Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

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

4.

Standard of review.

a.

No Material Change from Existing Permit. If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.

b.

Material Change from Existing Permit. If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well

Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

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

U.

Assignability; Transfer Permit.

1.

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

2.

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

a.

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

b.

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

c.

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

3.

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

4.

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

5.

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

V.

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

W.

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

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

X.

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

Y.

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

Z.

Takings determination.

1.

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

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

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

4.

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

Notice addresses are as follows:

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

OPERATOR: _____
CB Rust, President

Rust Oil Corporation
401 West Texas, Suite 801
Midland, Texas 79701
(432) 687-1333



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

RECEIVED

MAY 30 2013

CITY OF MIDLAND
PLANNING DIVISION

I. General Information

Date	Operator Name (must match W-1)	Operator Address
2.23.12	RUST OIL CORPORATION	6300 RIDGLEA PL, 904 FORT WORTH, TX 76116
Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. 432.681.1333
ROGER STONE	401 W. TEXAS - SUITE 801 MIDLAND, TX 79701	Rep. Fax 432.381.7839
Fee: \$4,000.00 Rec'd Yes ☒ No ☐		

Permit Compliance Contact (Choose 1):

Option A:

24/7 Answering Services - No. 1 (Tele.): 432.681.1333 No. 2 (Tele.): 432.381.7710

Option B:

Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):

CURTIS LEONARD - 432.664.6607 - 2 SADDLE CLUB DRIVE - MIDLAND, 79705
CB RUST - 817.990.4019 - 152 CROWN RIDGE CT - FORT WORTH, 76133

Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]). SMITH HUGHES 9 #1

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

1. VARIOUS (See EXHIBIT C)

2.

3.

ATTACHED AS EXHIBIT C is (a Title Opinion by _____, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

CITY STREET; UNDEVELOPED; OWNER IS NORTH MIDLAND PARTNERSHIP, WHICH HAS ENTERED INTO A SURFACE USE AGREEMENT WITH RUST OIL CORP.

ATTACHED AS EXHIBIT D is (a Title Opinion by _____, a licensed Texas Attorney/a Take-off from _____, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].

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

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

IV. Well & Operations Information

Proposed Well Name: MOSS PARTNERSHIP "9" NO. 1

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

17" hole to 300'; 13 7/8" casing to 300'; cemented to surface; 11" hole to 5200'; 8 5/8" casing to 5200'; cemented to surface; 7 7/8" hole to 11500'; cemented to base 8 5/8"

Legal Description of Proposed Well Site:

2183' FSL & 10110 FEL OF SECTION 9, BLK. X, H. P. HILLIARD SURVEY

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

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

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

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

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

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

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

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

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

- (1) Drilling: NONE
- (2) Operations: GEXA ENERGY
440 VOLT ELECTRICITY

Description of water source to be used during Drilling:

FRESH WATER WELLS CURRENTLY IN PLACE ON DEDICATED SURFACE AREA

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

SEE EXHIBIT N FOR DETAILS OF ROUTING OF ELEC. & PIPE LINES

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

SEE EXHIBIT O; PITS WILL BE DEEP BURIED TO COMPLY WITH CITY REQUIREMENTS

V. Additional Required Exhibits

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

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

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

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

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

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

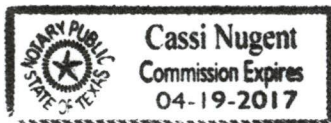
Rust Oil Corporation
[NAME OF COMPANY]

By C. Rust
Its President

State of Texas))

County of Midland)

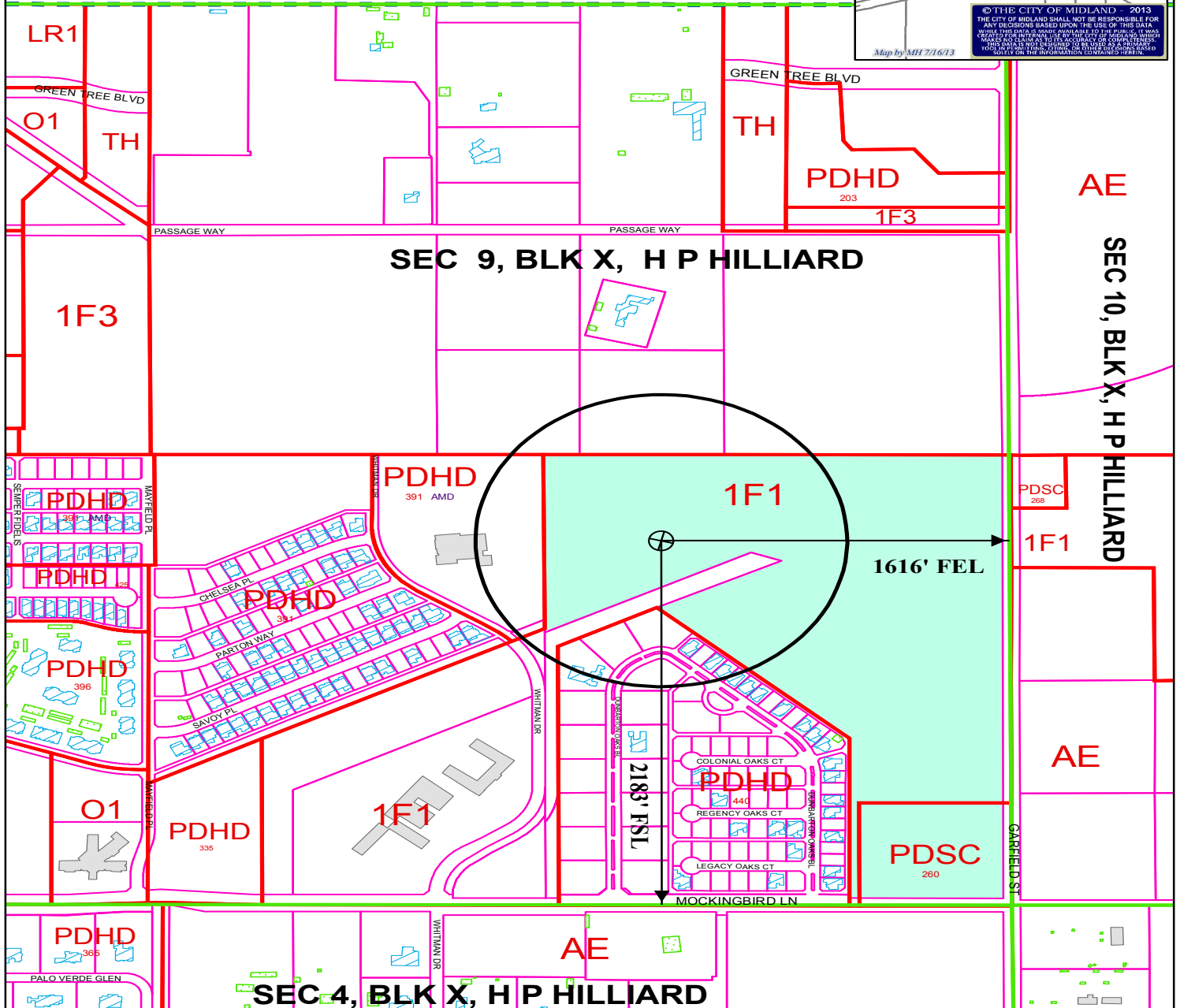
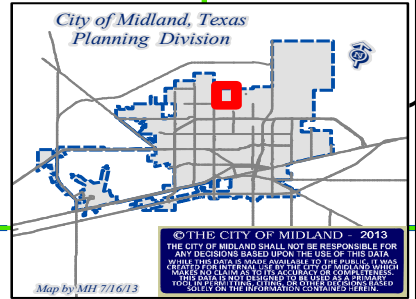
, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.



Cassi Nugent
Notary Public, State of Texas

[SEAL]

SEC 9, BLK 39, T-1-S



LOCATION AND ZONING MAP

O - 13 - 013

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 2183' FSL and 1616' FEL, Section 9, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas.

Moss Partnership "9" No. 1

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

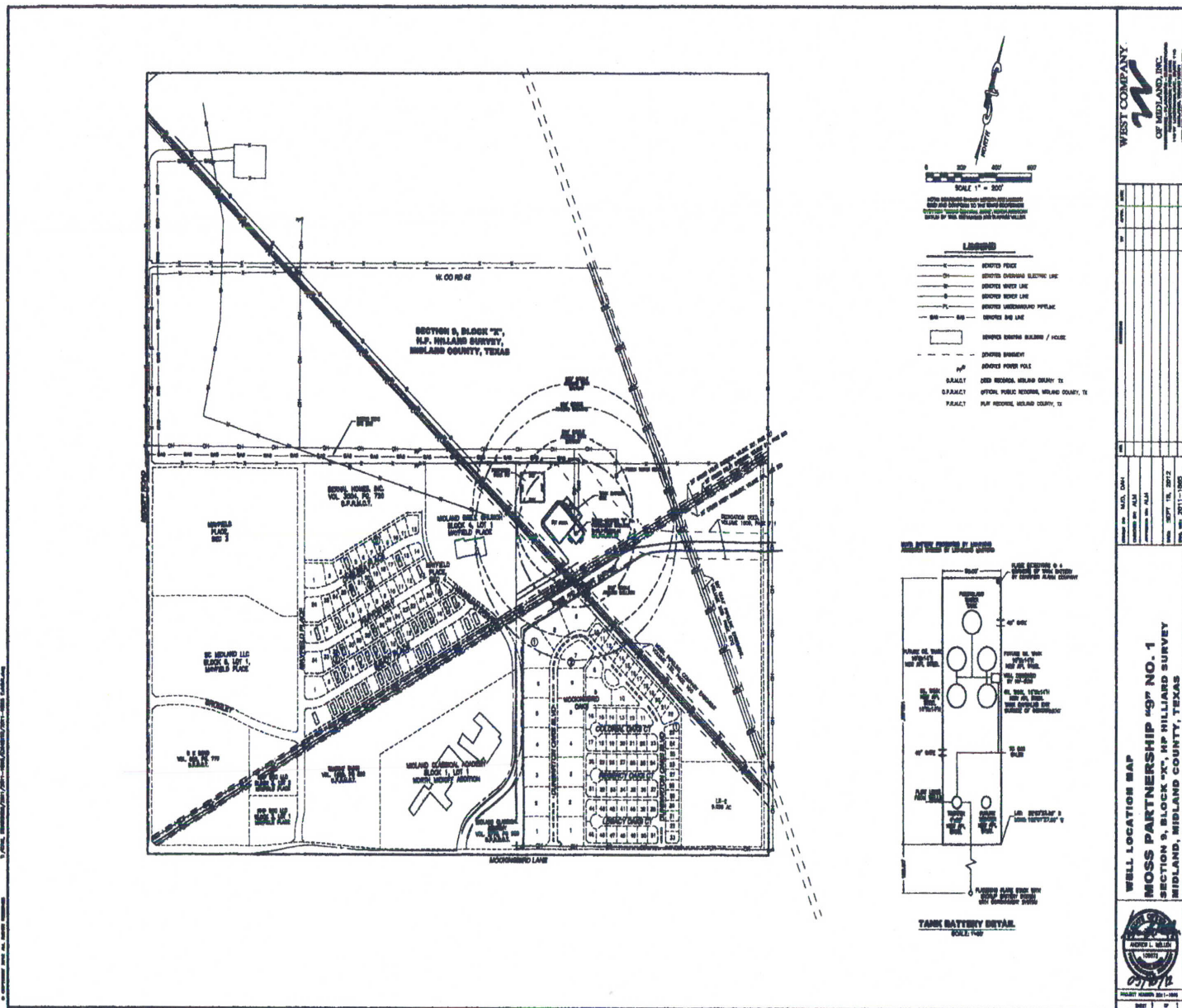
ZONING DISTRICTS:

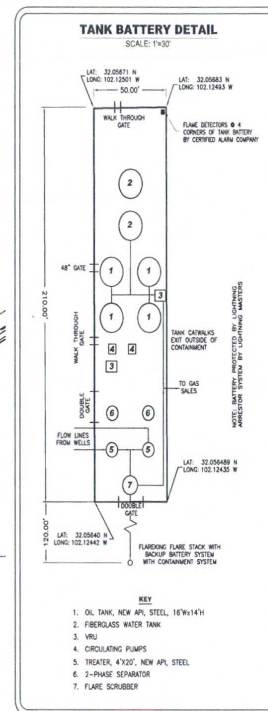
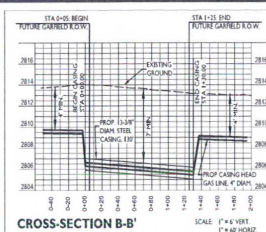
FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
2F	TWO-FAMILY DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY

CITY OF MIDLAND
PLANNING DIVISION OFFICE

O-13-013

MOSS PARTNERSHIP "9" NO 1





CITY OF MIDLAND
PLANNING DIVISION OFFICE



**MAVERICK
ENGINEERING**

1909 West Wall Street, Suite "K"
Midland, Texas 79701 FIRM: F-15089
Tel: (432) 262-0616 Fax: (432) 262-1475
www.MaverickEndties.com

WELL LOCATION MAP

MOSS PARTNERSHIP "9" #1
SECTION 9, BLOCK "X", H.P. HILLIARD SURVEY
CITY AND COUNTY OF MIDLAND, TEXAS



City Council Agenda

Approved for Agenda:
rpatrick
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Sylvester Cantu, Community Development Manager

SUBJECT: HOME homebuyer assistance program

Purpose:

Consider a resolution to increase the appropriation of funds previously authorized by Resolution No. 2012-425 for the HOME Investment Partnerships Program Reservation System Participant homebuyer assistance program from \$41,600.00 to \$249,600.00.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No City funds will be used directly on the program. The program facilitates some new housing construction which increases property tax valuations.

Discussion:

Resolution No. 2012-425 authorized the City to access up to \$41,600 of HOME Investment Partnerships Program Reservation System Participant for the homebuyer assistance program. Because of demand for the funding, we need to increase program funds by \$208,000 to a total of \$249,600.00. This will enable us to assist on the purchase of up to 12 newly constructed homes at a maximum \$20,000.00 per home and be able to access up 4% of that amount for administrative costs. This program does not require any local match.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING AN AMENDMENT TO
RESOLUTION 2012-425 TO INCREASE THE
APPROPRIATION OF FUNDS FOR THE HOME
INVESTMENT PARTNERSHIP PROGRAM
RESERVATION SYSTEM PARTICIPANT HOMEBUYER
ASSISTANCE PROGRAM FROM \$41,600.00 TO
\$249,600.00; NO LOCAL MATCH IS REQUIRED**

WHEREAS, by Resolution 2012-425, the Council previously authorized the City to access up to \$41,600.00 of HOME Investment Partnership Program Reservation System Participant (RSP) for the homebuyer assistance program; and

WHEREAS, because of the demand for funding, program funds need to increase by \$208,000.00 to a total of \$249,600.00 to assist with the purchase of up to 12 newly constructed homes at a maximum of \$20,000.00 per home to be able to access up to 4% of that amount for administrative costs; and

WHEREAS, authorization is needed to increase the appropriation of funds previously authorized by \$208,000.00; and

WHEREAS, the City Council finds it to be in the public interest to authorize an amendment to Resolution 2012-425 to increase the appropriated funds for the HOME Investment Partnerships Program Reservation System Participant Program by \$208,000.00 in order to meet the demand for funding to assist with the purchase of up to 12 newly constructed homes;

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 execute all documents necessary to authorize an amendment to Resolution 2012-425 to increase the appropriated funds for the HOME Investment Partnerships Program Reservation System Participant Program by \$208,000.00 in order to meet the demand for funding to assist with the purchase of up to 12 newly constructed homes.

SECTION TWO. That the sum of \$208,000 is hereby appropriated from the Home

Grant Fund (050) Unappropriated Fund Balance (5650) to the HOME RSP'13B Project (7106).

SECTION THREE. That the City Treasurer is hereby authorized and directed to make the appropriate accounting transfers to indicate said amendments to Resolution 2012-425 to increase the appropriated funds for the HOME Investment Partnerships Program Reservation System Participant Program by \$208,000.00.

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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Sylvester Cantu, Community Development
Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 9/27/2013

TO: City Council / City Manager

FROM: Bill Hodge, GIS Manager

SUBJECT:

Consider a Resolution Authorizing a Right-of-Way Agreement and a Surface Damage Agreement with Vitol Midstream LLC for the installation and maintenance of one (1) pipeline, not to exceed twelve (12) inches in diameter, for petroleum and petroleum by-products, located in Block 37, Sections 4, 9, 16, and 21, T3S, T&P Survey Co, Midland, TX.

Purpose:

Consider a Resolution Authorizing a Right-of-Way Agreement and a Surface Damage Agreement with Vitol Midstream LLC for the installation and maintenance of one (1) pipeline, not to exceed twelve (12) inches in diameter, for petroleum and petroleum by-products, located in Block 37, Sections 4, 9, 16, and 21, T3S, T&P Survey Co, Midland, TX.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Application fee: \$ 500.00 (one-time)

Annual Lease Rate: \$ 24/rod/year for 1,285.63 rods = \$ 12,856.30

Surface Damage Rate: \$ 10/rod for 1,285.63 rods = \$ 1,285.63 (one-time)

Discussion:

This Right-of-Way contract is proposed for one (1) 20 year period, with one renewal.

The easement will be 30 feet total, with an additional 20 feet allowed for use during the construction phase. The pipeline will be constructed outside of City Limits across the City's Spraberry Farm and will be placed and maintained in order to provide a minimum of 36 inches of cover to natural ground.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND, TEXAS AND VITOL MIDSTREAM PIPELINE LLC; SAID RIGHT-OF-WAY LICENSE IS FOR ENTERING THE CITY OF MIDLAND'S RIGHT-OF-WAY FOR THE PURPOSE OF PLACING, INSTALLING, CONSTRUCTING, OPERATING, REPAIRING, MAINTAINING, REPLACING AND REMOVING ONE (1) PIPELINE, FOR THE TRANSPORTATION OF OIL AND GAS MATERIALS AND TO HAVE THE RIGHT OF INGRESS AND EGRESS AT CONVENIENT POINTS FOR SUCH PURPOSE; THE PIPELINE IS LOCATED WITHIN THE CITY OF MIDLAND RIGHT-OF-WAY, SECTIONS 4, 9, 16, AND 21, BLOCK 37, T-3-S, T&P RR CO. SURVEY, 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 license with Vitol Midstream Pipeline LLC, located within the City of Midland Right-of-Way, Sections 4, 9, 16, and 21, Block 37, T-3-S, T&P RR Co. Survey, Midland County, Texas;

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

THAT the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a right-of-way license with Vitol Midstream Pipeline LLC, said license being substantially in the form attached hereto as Exhibit "A" and incorporated herein for all purposes.

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

Council members voting "AYE":

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Bill Hodge, GIS Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

RIGHT-OF-WAY LICENSE

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

THIS RIGHT-OF-WAY LICENSE (“AGREEMENT”), effective this 25th day of September, 2013, by and between THE CITY OF MIDLAND, TEXAS, a home rule municipal corporation, hereinafter called “Licensor”, and VITOL MIDSTREAM PIPELINE, L.L.C., 4906 Amb Caffery Parkway, Building B., Suite 201, Lafayette, Louisiana 70508, hereinafter called “Licensee”.

Licensee desires use of property owned by the Licensor in Midland County, Texas outside the City of Midland, Texas, for purposes set forth below.

It is the position of the Licensor that Licensee must obtain a license in order to use the public lands of the City. The parties agree the grant herein may be referred to as the “License”.

W I T N E S S E T H:

For and in consideration of the execution of this Agreement and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows, to wit:

I. Term

This Agreement shall be for a term of 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 Licensor on or before ninety (90) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of the Licensor. All work under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective.

Either party may terminate this Agreement at will for any or no reason upon giving at least three hundred sixty five (365) days written notice to the Licensor. The parties to this Agreement understand and agree that it is in the Licensor's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the Licensor. The Licensee has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of Agreement becoming effective.

Upon termination of this Agreement, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of the Licensee to its original condition, as close thereto as may be practical, subject to the approval of the Licensor upon inspection by Licensor's GIS Manager, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this license.

II. Financial Considerations

1. In further consideration for the rights herein granted to Licensee, Licensee shall pay to the Licensors the sum of THIRTY THOUSAND EIGHT HUNDRED FIFTY FIVE and 12/100 Dollars (\$30,855.12) 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 THIRTY THOUSAND EIGHT HUNDRED FIFTY FIVE and 12/100 Dollars (\$30,855.12) 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 Licensors a late charge of five percent (5%). Licensee shall also pay a one-time surface damage fee to the Licensors for the sum of TWELVE THOUSAND EIGHT HUNDRED FIFTY SIX and 30/100 Dollars (\$12,856.30), payable before the commencement date of this license agreement.

2. At the same time the first year License Fee is due, Licensee shall pay a non-refundable onetime fee of \$500.00 to the Licensors' GIS 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 twenty-five percent (25%) of the License Fee paid for the last year of the Initial Term.

4. The License Fee payment shall be made to the Licensor at the office of the GIS Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

1. Licensor does hereby grant unto Licensee, the right to enter upon certain property of the City of Midland in Midland County, Texas, being thirty (30) feet from the pipeline center location, with an additional 35 (thirty-five) feet allowed for used during construction, reverting to 30 (thirty) feet total width after completion as shown on Exhibit "A," attached hereto and incorporated herein for the purpose of placing, constructing, operating, repairing, maintaining, replacing and removing, thereon, along the hereinafter described pipeline location, a 12 (twelve) inch oil and gas pipeline, for the transportation of oil and gas materials and to have the right of ingress and egress at convenient points for such purpose.

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

3. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by the Licensor that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of the Licensor's Standard

Specifications.

4. Licensee covenants and agrees that it will bury the pipelines to be constructed hereunder at least thirty-six inches (36") in depth. All backfill used in burying such line shall be compacted to a density of ninety percent (90%), except where such pipeline crosses under a paved or traveled portion of the City of Midland right of way where such backfill shall be compacted to a density of ninety-five percent (95%). The City of Midland shall be afforded the opportunity to test the density on all backfill.

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

6. Licensor expressly reserves the right to install, repair, or reconstruct streets or roads and all ancillary public uses usual and customary in connection with streets and roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by the Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground or overhead installation or improvement that may be deemed necessary or proper by the governing body of the Licensor, in, across, along, over or under any public property occupied by Licensee. In permitting such work to be done, the Licensor shall not be liable to the Licensee for any damage so caused to the Licensee's system, **NOR SHALL THE LICENSOR BE LIABLE TO THE LICENSEE FOR ANY DAMAGES TO THE LICENSEE'S PIPELINE OR CASING, ARISING OUT OF THE**

NEGLIGENCE BY THE LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS. If the Licensor requires the Licensee to remove, alter, change, adapt, or conform Licensee's facilities because of changes in the grade of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by the Licensor, the Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by the Licensor, without claim for reimbursement for the cost of the relocation or for damages against the Licensor. If these requirements impose a financial hardship upon the Licensee, the Licensee shall have the right to present alternative proposals for the Licensor's consideration.

7. Licensor expressly reserves the full right to grant other easements or rights of way crossing or running parallel with the rights of way used by Licensee.

8. It is especially provided, however, that as an express condition of this Agreement, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the premises covered hereby cease to be used for the purposes enumerated herein for any period of twelve (12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty days (120) notice, then and in that event, this license shall automatically revert to the Licensor, its successors or assigns, free and clear of any right, title, or interest in the Licensee, or any re-entry by the Licensor.

9. In the event that Licensee desires to reconstruct, repair, maintain, replace or remove any pipeline or casing system built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to the Licensor's GIS Manager for his or her approval. In the event of emergency repairs necessary to restore service, the Licensee shall notify Licensor's GIS Manager before making any repairs if during a Licensor work day and if not on a work day, the Licensee shall notify the Licensor's GIS Manager on the first work day after repairs have begun.

10. The Licensor reserves the right to use the surface or subsurface or airspace above the land covered by this Agreement for any public purpose allowed by law and deemed necessary by the Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by the Licensor on, across, along, under or over said right of way occupied by the Licensee. In the event of such work in connection with said public purposes it shall be deemed necessary by the Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipeline or casing of Licensee, such alteration or change or relocation shall be commenced and completed by the Licensee within one hundred eighty (180) days after being ordered in writing by the Licensor pursuant to directions from the Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against the Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding the Licensor, payment for alteration or relocation of its

system to which it may be lawfully entitled to under applicable Federal or State laws with respect to relocation payments.

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$100,000.00 per occurrence

Business Automobile Liability: \$1,000,000.00 combined single limit -
Personal Injury and Property Damage

Worker's Compensation: Statutory limits

Employers' Liability: \$1,000,000.00 per accident or occurrence

Umbrella Liability: \$10,000,000.00 per aggregate or occurrence

Professional Liability: \$2,000,000.00 per claim or 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 \$1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement. All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name the Licensor as an additional insured on a claims occurred basis. All insurance required pursuant to this Agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the Licensor.

The parties agree that, prior to the execution of the Agreement, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

Licensor shall be provided the notice by Licensee's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Licensor shall not be required to provide any insurance whatsoever pursuant to this Agreement.

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured.

Licensee certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Senate Bill 425, passed during the 82nd regular session of the Texas Legislature, and effective January 1, 2012.

2. INDEMNITY - THE LICENSEE SHALL INDEMNIFY AND HOLD

HARMLESS AND DEFEND THE LICENSOR AND ALL OF LICENSOR'S OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, 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 Licensors. Any required consent is to be evidenced by an ordinance or resolution of the governing body of the Licensors that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensors.

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 Licensors; 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 Licensors and Licensee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Licensors and Licensee. No person performing any of the work and services described hereunder shall be considered an officer, agent, servant or employee of the Licensors. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Licensee shall be an independent contractor under this Agreement and shall assume all of the rights,

obligations and liabilities applicable to it as such independent contractor hereunder. Licensor does not have the power to direct the order in which the work is done. Licensor shall not have the right to control the means, methods or details of Licensee's work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way.

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

OTHERWISE BE ENTITLED.

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

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

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

7. **RELEASE** - **NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS,**

FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LICENSOR'S NEGLIGENCE.

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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

10. **Notice** - Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensor as follows: GIS Manager, City of Midland, P. O. Box 1152, Midland, Texas, 79702.

Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensee as follows: Vitol Midstream Pipeline, L.L.C., James C. Dyer, IV, Vice President, c/o SunCoast Land Services, Inc., 4906 Amb Caffery Parkway, Building B, Suite 201, Lafayette, Louisiana, 70508.

11. **Notice of Alleged Breach; Statutory Prerequisites** - As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Licensee or his legal representative, shall give the City Manager, or any other reasonable official of the Licensor, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the Licensor from any liability whatsoever. The Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if Licensor has actual or constructive notice or knowledge of said claim or alleged damages. Licensee agrees that the requirements of this entire Agreement are reasonable.

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

LICENSOR:

CITY OF MIDLAND, TEXAS

Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Bill Hodge, GIS Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

LICENSEE:

VITOL MIDSTREAM PIPELINE, L.L.C.

James C. Dyer, IV, Vice President

THE STATE OF TEXAS

§

§

COUNTY OF _____

§

BEFORE ME, the undersigned authority, on this day personally appeared James C. Dyer, IV, an officer of VITOL MIDSTREAM PIPELINE, L.L.C., known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

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

Notary Public, State of Texas

Exhibit "B"
Vitol Midstream Pipeline, L.L.C.
TX-MD-0009.00000
The City of Midland, Texas
Midland County, Texas

Being the centerline of a proposed pipeline easement situated in Midland County, Texas being out of the Texas & Pacific Railroad Company Survey being out of Section 4 of Block 37, Township 3 South as described in a vesting deed to The City of Midland, Texas as recorded in Volume 760, Page 466 of the Deed Records of Midland County, Texas (D.R.M.C.T.) and the said proposed easement centerline being described by metes and bounds as follows to-wit:

BEGINNING S 13°24'37" E 275.25 feet from the northwest corner of the aforesaid referred to Section 4 being the POINT OF ENTRY having UTM Zone 14 coordinate values of N 11,594,801.63 and E 748,061.65;

THENCE N 76°35'23" E at 74.01 feet to an angle point;

THENCE S 13°49'00" E at 2,295.57 feet to an angle point;

THENCE S 58°49'00" E at 60.62 feet to an angle point;

THENCE S 13°49'00" E at 65.23 feet to an angle point;

THENCE S 31°11'00" W at 60.62 feet to an angle point;

THENCE S 13°49'00" E at 1,606.34 feet to an angle point;

THENCE S 13°54'53" E at 958.09 feet the south line of the aforesaid referred to Section 4 being the POINT OF EXIT having UTM Zone 14 coordinate values of N 11,589,953.20 and E 749,331.93 from which the southwest corner of Section 4 bears S 76°38'36" W 111.18 feet.

This centerline contains 5,120.48 feet or 310.33 rods, more or less.

Dwg.No. TX-MD-0009.00000 shown as Exhibit "A" was prepared in conjunction with this centerline description.

NOTE: This legal description is the the result of a survey made on the ground under my direct supervision and the subsequent mapping is the result of that survey made in conjunction with record title information as furnished by others and should not be construed to be a boundary survey. The R.O.W. acquisition Exhibits reflect the survey as shown in the vesting deed and may not reflect the current Survey and Abstract per the Texas General Land Office records. The coordinates and bearings depicted herein are cited as U.S. Survey Feet and referenced to UTM Zone 14, North American Datum of 1983 based on Trimble V.R.S. Network in Midland, TX.

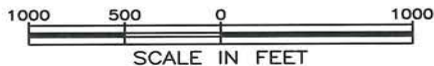


Eagleton Engineering

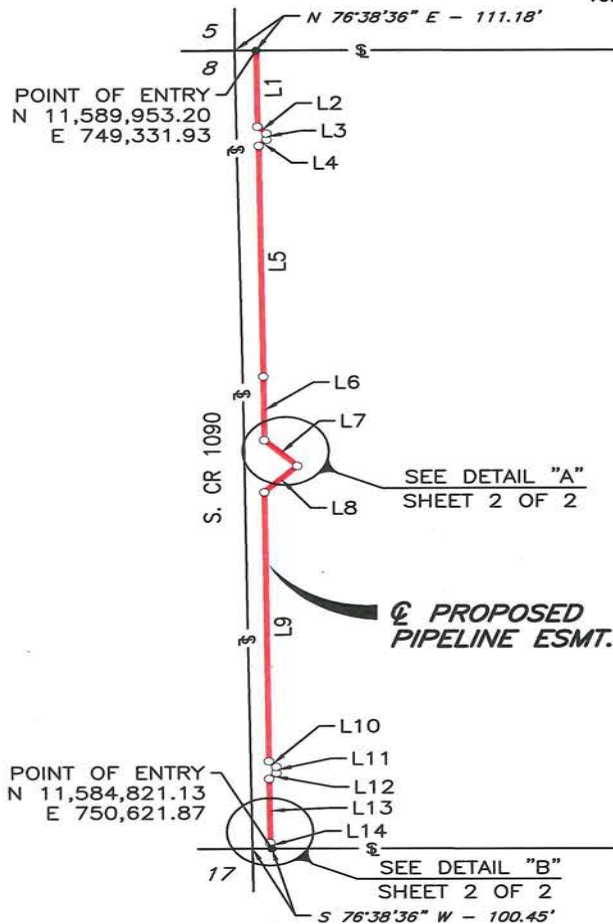
George E Griffith
R.P.L.S. No. 1903
April 3, 2013

Eagleton Engineering
2900 N Loop West, Suite 1000
Houston, TX 77092
713-871-8787

MIDLAND COUNTY, TEXAS
TEXAS & PACIFIC RAILROAD COMPANY SURVEY
SECTION 9, BLOCK 37, TOWNSHIP 3 SOUTH
THE CITY OF MIDLAND, TEXAS
TRACT NO. TX-MD-0011.00000
 VOLUME 1278 PAGE 577 O.P.R.M.C.T.
 CENTERLINE IS 5,502.72 FEET OR 333.50 RODS LONG
 EASEMENT ACREAGE IS 3.79 ACRES
 TEMPORARY WORKSPACE ACREAGE IS 4.42 ACRES
 ADDITIONAL TEMPORARY WORKSPACE ACREAGE IS 0.45 ACRES



(TX-MD-0009.00000)
 THE CITY OF MIDLAND, TEXAS
 VOL. 760 PG. 466 D.R.M.C.T.



LINE TABLE		
LINE No.	DIRECTION	LENGTH
L1	S 13°54'53" E	502.62'
L2	S 58°59'56" E	65.26'
L3	S 13°59'56" E	40.71'
L4	S 31°00'04" W	57.83'
L5	S 13°59'56" E	1,534.44'
L6	S 13°49'55" E	421.73'
L7	S 58°37'15" E	242.25'
L8	S 31°22'45" W	243.66'
L9	S 14°03'07" E	1,780.74'
L10	S 59°03'07" E	54.33'
L11	S 14°03'07" E	39.94'
L12	S 30°56'53" W	54.33'
L13	S 14°03'07" E	424.39'
L14	S 25°23'21" E	40.49'

(TX-MD-0013.00000)
 THE CITY OF MIDLAND, TEXAS
 VOL. 1160 PG. 622 D.R.M.C.T.

NOTES

- All bearings, distances and coordinates are shown as U.S. Survey Feet and referenced to the "Universal Transverse Mercator System", Zone 14, North American Datum of 1983 based on TRIMBLE V.R.S. Network in Midland, TX.
- The R.O.W. acquisition exhibits reflect the survey as shown in the vesting deed and may not reflect the current survey and abstract per the Texas General Land Office records.
- A centerline description was prepared in conjunction with this plat.

I, George E. Griffith, do hereby certify that this plat correctly represents a survey made on the ground this date under my supervision and that this plat accurately depicts the evidence as found by this survey.

George E. Griffith
 R.P.L.S. No. 1903
 April 3, 2013



EXHIBIT "A" SHEET 1 OF 2

VITOL MIDSTREAM PIPELINE, L.L.C.

PLAT OF A PROPOSED PIPELINE EASEMENT ACROSS
 THE CITY OF MIDLAND, TEXAS

MIDLAND COUNTY, TEXAS
 SCALE 1"=1000' PROJ. NO. VIT-031 DWG. NO. TX-MD-0011.00000 REV.



NO.	REVISION	DATE	DRAWN BY	DATE
			BEB	03/13
			CHECKED BY	DATE
			KJJ	03/13
			ENGR. APPD.	DATE
			PROJ. MGR. APPD.	DATE
			ALIGN. DWG.	
0	ISSUED	04/13		

MIDLAND COUNTY, TEXAS
TEXAS & PACIFIC RAILROAD COMPANY SURVEY
SECTION 9, BLOCK 37, TOWNSHIP 3 SOUTH
THE CITY OF MIDLAND, TEXAS
TRACT NO. TX-MD-0011.00000

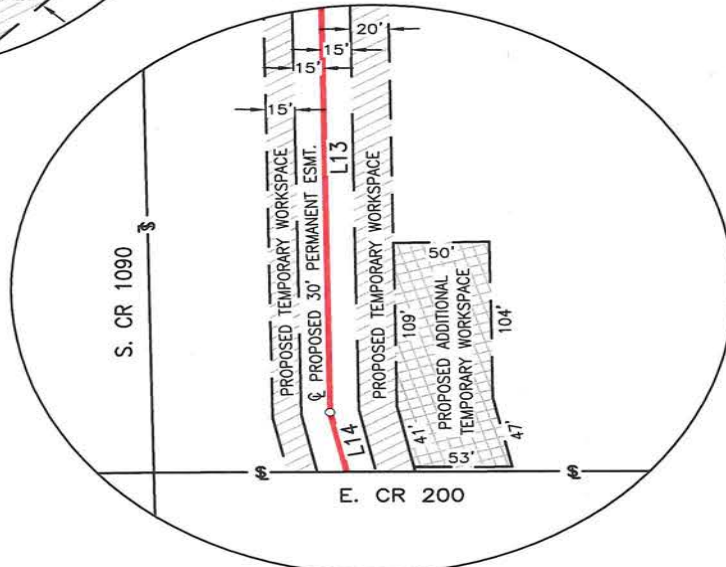
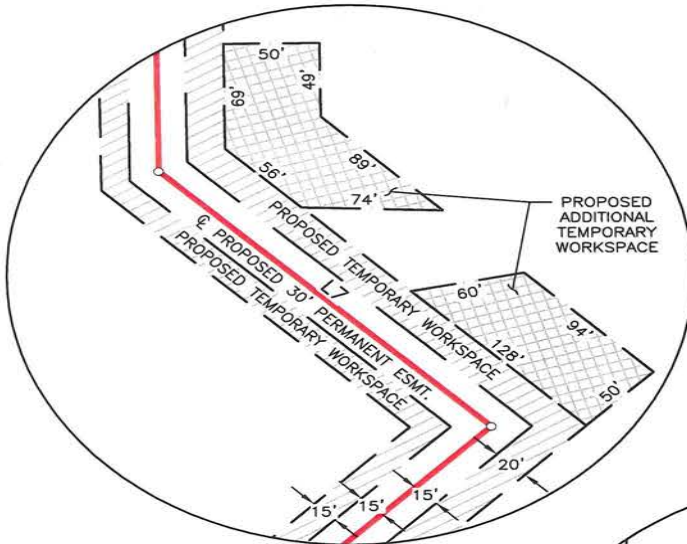
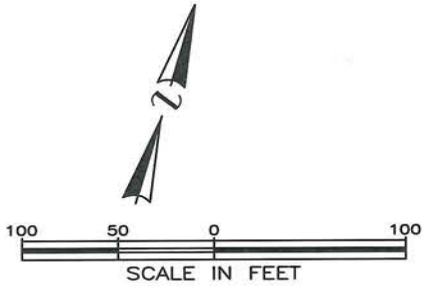


EXHIBIT "A" SHEET 2 OF 2

VITOL MIDSTREAM PIPELINE, L.L.C.

PLAT OF A PROPOSED PIPELINE EASEMENT ACROSS
THE CITY OF MIDLAND, TEXAS

MIDLAND COUNTY, TEXAS

SCALE 1"=100'	PROJ. NO. VIT-031	DWG. NO. TX-MD-0011.00000	REV. 26.26
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NO.	REVISION	DATE	DRAWN BY	DATE	 2900 N. Loop West, Suite 1000 Houston, Tx. 77092 Phone: 713-871-8787
			BEB	03/13	
			CHECKED BY	DATE	
			KJJ	03/13	
			ENGR. APPD.	DATE	
			PROJ. MGR. APPD.	DATE	
0	ISSUED	04/13	ALIGN. DWG.		

2013 12:52:37 PM BRUCE, BRIAN C:\PROJECTS\VT-031\MAPPING\PLATS\TX-MD-0011.00000_DETAIL.DWG

Exhibit "B"
Vitol Midstream Pipeline, L.L.C.
TX-MD-0011.00000
The City of Midland, Texas
Midland County, Texas

Being the centerline of a proposed pipeline easement situated in Midland County, Texas being out of the Texas & Pacific Railroad Company Survey being out of Section 9 of Block 37, Township 3 South as described in a vesting deed to The City of Midland, Texas as recorded in Volume 1278, Page 577 of the Official Public Records of Midland County, Texas (O.P.R.M.C.T.) and the said proposed easement centerline being described by metes and bounds as follows to-wit:

BEGINNING N 76°38'36" E 111.18 feet from the northwest corner of the aforesaid referred to Section being the POINT OF ENTRY having UTM Zone 14 coordinate values of N 11,589,953.20 and E 749,331.93;

THENCE S 13°54'53" E at 502.62 feet to an angle point;

THENCE S 58°59'56" E at 65.26 feet to an angle point;

THENCE S 13°59'56" E at 40.71 feet to an angle point;

THENCE S 31°00'04" W at 57.83 feet to an angle point;

THENCE S 13°59'56" E at 1,534.44 feet to an angle point;

THENCE S 13°49'55" E at 421.73 feet to an angle point;

THENCE S 58°37'15" E at 242.25 feet to an angle point;

THENCE S 31°22'45" W at 243.66 feet to an angle point;

THENCE S 14°03'07" E at 1,780.74 feet to an angle point;

THENCE S 59°03'07" E at 54.33 feet to an angle point;

THENCE S 14°03'07" E at 39.94 feet to an angle point;

THENCE S 30°56'53" W at 54.33 feet to an angle point;

THENCE S 14°03'07" E at 424.39 feet to an angle point;

THENCE S 25°23'21" E at 40.49 feet the south line of the aforesaid referred to Section 9 being the POINT OF EXIT having UTM Zone 14 coordinate values of N 11,584,821.13 and E 750,621.87 from which the southwest corner of Section 9 bears S 76°38'36" W 100.45 feet.

This centerline contains 5,502.72 feet or 333.50 rods, more or less.

Dwg.No. TX-MD-0011.00000 shown as Exhibit "A" was prepared in conjunction with this centerline description.

NOTE: This legal description is the the result of a survey made on the ground under my direct supervision and the subsequent mapping is the result of that survey made in conjunction with record title information as furnished by others and should not be construed to be a boundary survey. The R.O.W. acquisition Exhibits reflect the survey as shown in the vesting deed and may not reflect the current Survey and Abstract per the Texas General Land Office records. The coordinates and bearings depicted herein are cited as U.S. Survey Feet and referenced to UTM Zone 14, North American Datum of 1983 based on Trimble V.R.S. Network in Midland, TX.

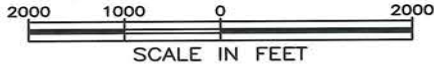


Eagleton Engineering

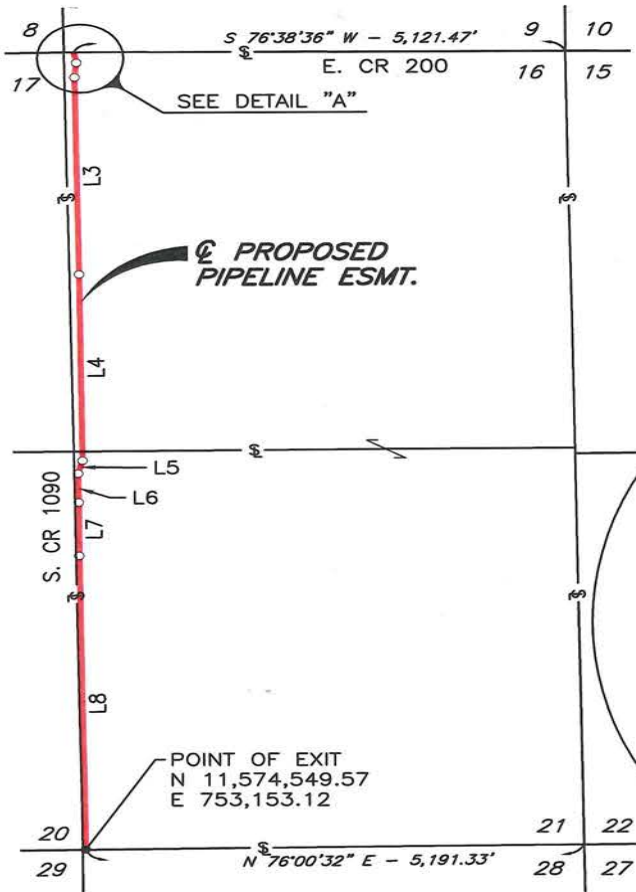
George E Griffith
R.P.L.S. No. 1903
April 3, 2013

Eagleton Engineering
2900 N Loop West, Suite 1000
Houston, TX 77092
713-871-8787

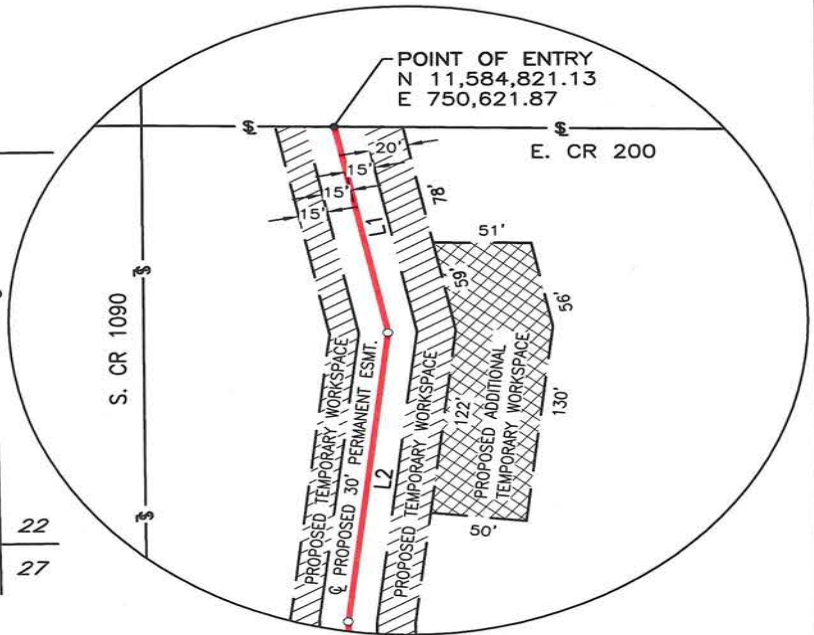
MIDLAND COUNTY, TEXAS
TEXAS & PACIFIC RAILROAD COMPANY SURVEY
SECTIONS 16 & 21, BLOCK 37, TOWNSHIP 3 SOUTH
THE CITY OF MIDLAND, TEXAS
TRACT NO. TX-MD-0013.00000
 VOLUME 1160 PAGE 622 D.R.M.C.T.
 CENTERLINE IS 10,589.63 FEET OR 641.80 RODS LONG
 EASEMENT ACREAGE IS 7.29 ACRES
 TEMPORARY WORKSPACE ACREAGE IS 8.51 ACRES
 ADDITIONAL TEMPORARY WORKSPACE ACREAGE IS 0.21 ACRES



(TX-MD-0011.00000)
 THE CITY OF MIDLAND, TEXAS
 VOL. 1278 PG. 577
 O.P.R.M.C.T.



LINE TABLE		
LINE No.	DIRECTION	LENGTH
L1	S 25°23'21" E	138.47'
L2	S 07°34'47" E	192.96'
L3	S 14°02'54" E	2,613.62'
L4	S 13°59'28" E	2,481.15'
L5	S 01°56'33" W	177.39'
L6	S 14°16'40" E	381.01'
L7	S 13°36'12" E	706.20'
L8	S 14°13'31" E	3,898.83'



NOTES

- All bearings, distances and coordinates are shown as U.S. Survey Feet and referenced to the "Universal Transverse Mercator System", Zone 14, North American Datum of 1983 based on TRIMBLE V.R.S. Network in Midland, TX.
- The R.O.W. acquisition exhibits reflect the survey as shown in the vesting deed and may not reflect the current survey and abstract per the Texas General Land Office records.
- A centerline description was prepared in conjunction with this plat.

I, George E. Griffith, do hereby certify that this plat correctly represents a survey made on the ground this date under my supervision and that this plat accurately depicts the evidence as found by this survey.

George E. Griffith
 R.P.L.S. No. 1903
 April 3, 2013



REVISION			DRAWN BY		DATE		 2900 N. Loop West, Suite 1000 Houston, TX 77002 Phone: 713-571-8787	EXHIBIT "A"		
NO.	REVISION	DATE	BEB	CHECKED BY	03/13			VITOL MIDSTREAM PIPELINE, L.L.C.		
			KJJ	ENGR. APPD.	03/13			PLAT OF A PROPOSED PIPELINE EASEMENT ACROSS THE CITY OF MIDLAND, TEXAS		
				PROJ. MGR. APPD.				MIDLAND COUNTY, TEXAS		
				ALIGN. DWG.				SCALE 1"=2000'		
0	ISSUED	04/13						PROJ. NO. VIT-031	DWG. NO. TX-MD-0013.00000	REV.

2013 12:57:47 PM BRUCE, BRIAN C:\PROJECTS\VT-031\MAPPING\PLATS\TX-MD-0013.00000_REV.DWG

Exhibit "B"

Vitol Midstream Pipeline, L.L.C.
TX-MD-0013.00000
The City of Midland, Texas
Midland County, Texas

Being the centerline of a proposed pipeline easement situated in Midland County, Texas being out of the Texas & Pacific Railroad Company Survey, being out of Sections 16 & 21 of Block 37, Township 3 South as described in a vesting deed to The City of Midland, Texas as recorded in Volume 1160, Page 622 of the Deed Records of Midland County, Texas (D.R.M.C.T.) and the said proposed easement centerline being described by metes and bounds as follows to-wit:

BEGINNING S 76°38'36" W 5,121.47 feet from the northeast corner of the aforesaid referred to Section 16 being the POINT OF ENTRY having UTM Zone 14 coordinate values of N 11,584,821.13 and E 750,621.87;

THENCE S 25°23'21" E at 138.47 feet to an angle point;

THENCE S 07°34'47" E at 192.96 feet to an angle point;

THENCE S 14°02'54" E at 2,613.62 feet to an angle point;

THENCE S 13°59'28" E at 2,481.15 feet to an angle point;

THENCE S 01°56'33" W at 177.39 feet to an angle point;

THENCE S 14°16'40" E at 381.01 feet to an angle point;

THENCE S 13°36'12" E at 706.20 feet to an angle point;

THENCE S 14°13'31" E at 3,898.83 feet the south line of the aforesaid referred to Section 21 being the POINT OF EXIT having UTM Zone 14 coordinate values of N 11,574,549.57 and E 753,153.12 from which the southeast corner of Section 21 bears N 76°00'32" E 5,191.33 feet.

This centerline contains 10,589.63 feet or 641.80 rods, more or less.

Dwg.No. TX-MD-0013.00000 shown as Exhibit "A" was prepared in conjunction with this centerline description.

NOTE: This legal description is the the result of a survey made on the ground under my direct supervision and the subsequent mapping is the result of that survey made in conjunction with record title information as furnished by others and should not be construed to be a boundary survey. The R.O.W. acquisition Exhibits reflect the survey as shown in the vesting deed and may not reflect the current Survey and Abstract per the Texas General Land Office records. The coordinates and bearings depicted herein are cited as U.S. Survey Feet and referenced to UTM Zone 14, North American Datum of 1983 based on Trimble V.R.S. Network in Midland, TX.

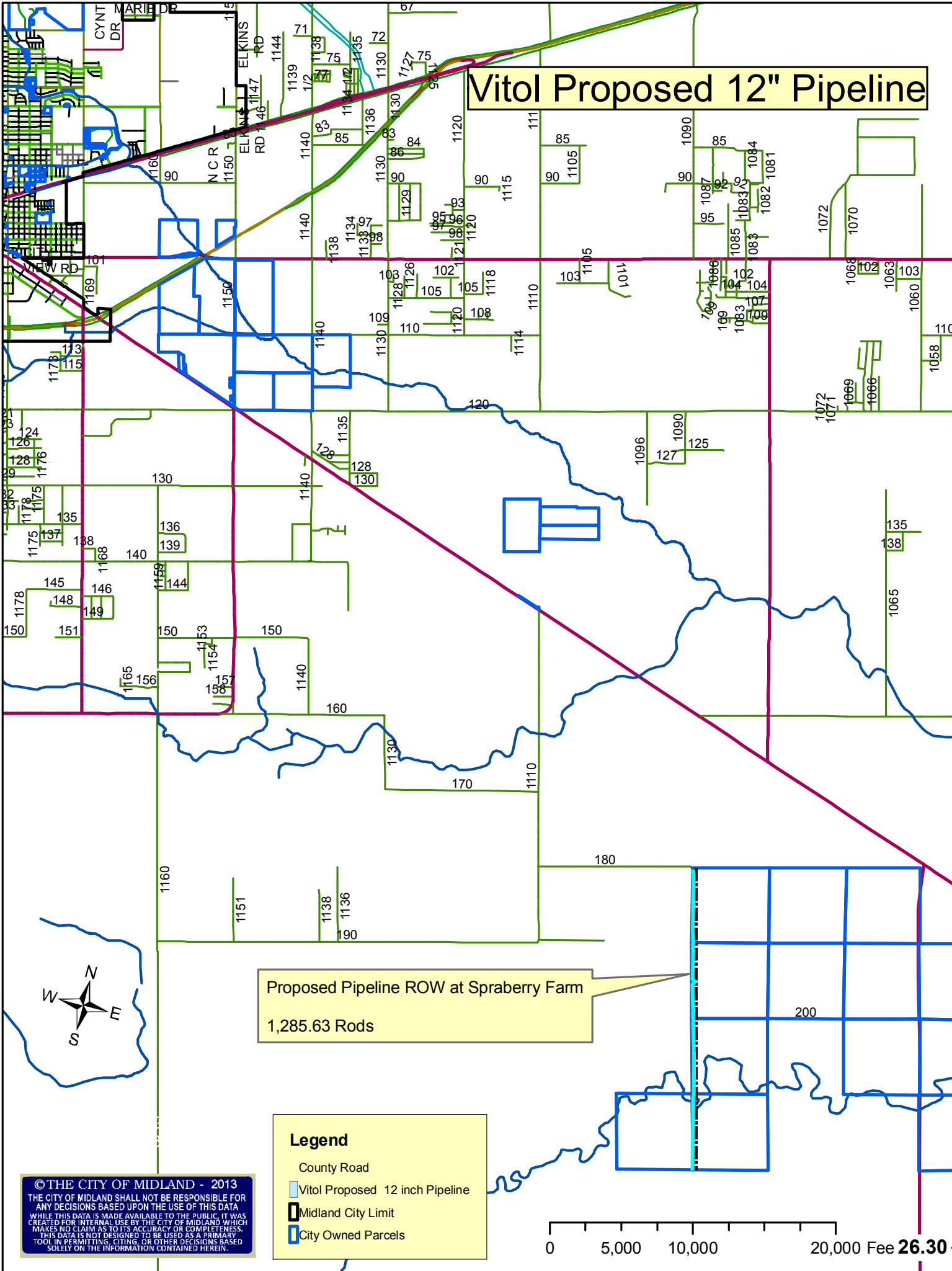


Eagleton Engineering

George E Griffith
R.P.L.S. No. 1903
April 3, 2013

Eagleton Engineering
2900 N Loop West, Suite 1000
Houston, TX 77092
713-871-8787

Vitol Proposed 12" Pipeline



Proposed Pipeline ROW at Spraberry Farm
1,285.63 Rods

- Legend**
- County Road
 - Vitol Proposed 12 inch Pipeline
 - Midland City Limit
 - City Owned Parcels

©THE CITY OF MIDLAND - 2013
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

0 5,000 10,000 20,000 Fee **26.30**



City Council Agenda

Approved for Agenda:
RPatrick
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: David Beard, City Engineer

SUBJECT: Consider a resolution authorizing the execution of a Public Improvement Development Agreement with Wireline Accessories and Sales, LLC for the future design and construction of water distribution and wastewater collection improvements in the amount of \$67,433 to serve the Ranchland Acres Addition - Section 4. The subject property is generally located along the south frontage road of I-20 approximately 400' west of Midland Dr. Said agreement being authorized by Section 395.081 of the Texas Local Government Code. (District #4 - Trost)

Purpose:

Consider a resolution authorizing the execution of a Public Improvement Development Agreement with Wireline Accessories and Sales, LLC for the future design and construction of water distribution and wastewater collection improvements in the amount of \$67,433 to serve the Ranchland Acres Addition - Section 4. The subject property is generally located along the south frontage road of I-20 approximately 400' west of Midland Dr. Said agreement being authorized by Section 395.081 of the Texas Local Government Code. (District #4 - Love)

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

That upon receipt of \$67,433 from developer said funds shall be deposited into the Water and Sewer Fund (300) the sum of \$67,433 shall be appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Ranchland Acres, Section 4 ,Public Improvement Development Agreement Project (9061)

Discussion:

Wireline Accessories and Sales, LLC is proposing to plat the property and defer construction of the public improvements for the Ranchland Acres Addition - Section 4. Based on the deferral approved

at a previous council meeting, the applicant has agreed to enter into a Public Improvement Development Agreement with the City of Midland requiring a financial contribution in the amount of \$67,433 towards the future construction of water and wastewater utility construction to serve this property. Engineering staff supports the approval of this Development Agreement.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
PUBLIC IMPROVEMENT DEVELOPMENT
AGREEMENT WITH WIRELINE ACCESSORIES AND
SALES, LLC FOR WATER DISTRIBUTION AND
WASTEWATER COLLECTION IMPROVEMENTS TO
RANCHLAND ACRES ADDITION, SECTION 4; AND
APPROPRIATING FUNDS THEREFOR; SAID
AGREEMENT BEING AUTHORIZED BY SECTION
395.081 OF THE TEXAS LOCAL GOVERNMENT CODE**

WHEREAS, an adjoining landowner of Ranchland Acres Addition, Section 4, Wireline Accessories and Sales, LLC (“Wireline”), has requested City participation in water distribution and wastewater collection improvements to Ranchland Acres Addition, Section 4; 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 Wireline to participate in water distribution and wastewater collection improvements to Ranchland Acres Addition, Section 4, and thereby promote the health, safety, and public welfare and provide for efficient and well-planned urban growth and development; and

WHEREAS, the City Council finds it to be in the public interest to execute an agreement with Wireline which sets forth the extent of the landowner’s participation in the construction of public improvements; and

WHEREAS, the City has not adopted an impact fee, any obligation incurred or owed by the adjoining landowner, Wireline, shall constitute payment of a proportional share of the cost of the capital improvements constructed as provided for in Section 395.081 of the Texas Local Government Code;

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

SECTION ONE. That the recitals stated above are hereby adopted and approved for all purposes.

SECTION TWO. That the City Manager and City Secretary are hereby authorized

and directed to execute and attest, respectively, on behalf of the City of Midland, a public improvement development agreement with Wireline Accessories and Sales, LLC. Said agreement is attached hereto as Exhibit “A” and is incorporated herein for all purposes.

SECTION THREE. That the City Treasurer is hereby authorized and directed, upon receipt of \$67,433 from Wireline Accessories and Sales, LLC under said agreement, to deposit said funds into the Water and Sewer Fund (300) of the City of Midland; and that said funds shall be appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Ranchland Acres, Section 4, Public Improvement Development Agreement Project (9056).

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Engineering Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT
BETWEEN WIRELINE ACCESSORIES AND SALES, LLC
AND THE CITY OF MIDLAND, TEXAS**

THIS AGREEMENT (“Agreement”) is made and effective as of the 25th day of September, 2013, by and between Wireline Accessories and Sales, LLC (“Developer”) and the City of Midland, Texas (“City”), a home rule municipal corporation.

WITNESSETH:

WHEREAS, the City and Developer find it to be to their mutual advantage to enter into this agreement for the construction of appropriate and necessary public facilities; and

WHEREAS, the City finds that in accordance with Section 395.081 of the Texas Local Government Code that the City will benefit by allowing the Developer to participate in water distribution and wastewater collection improvements along the Interstate 20 service road and South County Road 1221 and thereby promote the health, safety, and public welfare and provide for efficient and well-planned urban growth and development;

NOW, THEREFORE, in consideration of the covenants, conditions, and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree to the terms set forth in this Agreement:

I.

The Developer agrees to pay to the City its proportional share of the cost of the public improvements to be constructed as described in Section II hereof. The Developer’s proportional share for the water distribution and wastewater collection improvements shall be \$94.98 per foot of development that abuts the Interstate 20 service road and South County Road 1221, not to exceed a total of \$67,433.00.

Developer’s payment of \$67,433.00 shall be due at or before the time of final approval of the plat regarding the public improvements described herein. The City agrees to place the funds paid

by Developer under this Agreement in a separate project account of the City. The City shall manage the project account and agrees to only expend funds therefrom for costs appropriate and necessary for the construction of the public improvements described in Section II.

In the event the City does not commence construction of the public improvements described in Section II within twenty (20) years of the date of this Agreement, and diligently continue such construction to completion, then the City agrees to repay all funds received from Developer hereunder without interest or penalty.

II.

The public improvements to be constructed by the City shall be generally described as follows: The installation of water distribution and wastewater collection improvements along the Interstate 20 service road and South County Road 1221 adjacent to Ranchland Acres Addition, Section 4.

Costs appropriate and necessary for said public improvements shall include costs for mobilization, trenching, installation of pipe and necessary appurtenances, backfill, testing, construction staking, and contingencies.

III.

The Developer agrees that its payment(s) pursuant to Section I above, constitutes only Developer's public improvement obligation for water distribution and wastewater collection improvements within Ranchland Acres Addition, Section 4, Midland County, Texas, and the City agrees that such payment(s) constitute all of Developer's public improvement obligation for said portion of said utility improvements.

IV.

This Agreement may be modified or amended only by the mutual written consent of the parties hereto.

V.

This Agreement contains the complete and entire agreement between the parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations and understandings, if any, between the parties respecting such matters.

VI.

Except as may be otherwise specifically provided in this Agreement, all notices required or permitted hereunder shall be in writing as follows:

If to Developer:

Chris McIntosh
Wireline Accessories and Sales, LLC
P.O. Box 60118
Midland, Texas 79711

If to City:

Director of Engineering Services
City of Midland
P.O. Box 1152
Midland, Texas 79702

VII.

Any clause, sentence, provision, paragraph or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal or ineffective shall not impair, invalidate or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph or article so held to be invalid, illegal or ineffective.

VIII.

This Agreement shall be construed under the laws of the State of Texas. Exclusive venue for any cause of action shall be in Midland County, Texas. All the obligations and undertakings of the parties shall be deemed to have occurred in Midland County, Texas.

IX.

In the event of any conflict between the parties hereto such that either party brings or commences any legal action or proceeding related to this Agreement, including but not limited to any action pursuant to the provisions of the Texas Uniform Declaratory Judgments Act (TEX. CIV. PRAC. & REM. CODE § 37.001 *et seq.*, as amended), the parties hereto agree to waive any and all rights to recovery of attorneys fees to which the prevailing party might otherwise be entitled.

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

RECOVERY OF ATTORNEY'S FEES TO WHICH DEVELOPER MIGHT OTHERWISE BE ENTITLED.

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

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

X.

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

XI.

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

XII.

The parties agree that this Agreement is made under the authority of Section 395.081 of the Texas Local Government Code and the laws of the State of Texas and Ordinances and the Charter of the City of Midland. The City finds in accordance with Section 395.081 of the Texas Local Government Code that the City of Midland will benefit by allowing the Developer to participate in funding the public improvements described herein. The City finds that this benefit will promote the public health, safety, and public welfare of the citizens of Midland. The City finds that the benefit the City of Midland receives will be efficient and well-planned urban growth and development, in coordination with public services. The benefit is also that this agreement will help preserve and increase the ad valorem tax base of the City. The City finds that the Developer's land adjoins the capital improvement or is within four (4) miles of the capital improvement. Four (4) miles is the specified distance required in Section 395.081 of the Texas Local Government Code.

EXECUTED in duplicate the day and year first above written.

CITY OF MIDLAND, TEXAS

By: _____
Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

WIRELINE ACCESSORIES AND SALES,
LLC

By: _____

Printed Name: _____

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 Wireline Accessories and Sales, LLC.

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

Notary Public, State of Texas



110 West Louisiana Avenue

Suite 110

Midland, Texas 79701

T: 432.687.0865

F: 432.687.0868

www.team-west.com

March 14, 2013

ATTN: City of Midland Engineering Department

300 N. Loraine

P.O. Box 1152

Midland, TX 79702

Dear City of Midland Engineering:

Chris Macintosh, owner of 2.68 acres of land has requested that West Company submit a deferral on his behalf. Property is further described as:

RANCHLAND ACRES, SECTION 4

BEING A REPLAT OF LOTS 5 AND 6, BLOCK 1, RANCHLAND ACRES REPLAT OF LOTS 1-3, BLOCK 1; LOTS 2, 3 & 6-8, BLOCK 4; LOTS 1,8 & 9, BLOCK 5; LOTS 1,2 & 5-7, BLOCK 6; LOTS 1-3, BLOCK 7; LOTS 1-3, BLOCK 8; AND LOTS 1-4, BLOCK 9, CITY AND COUNTY OF MIDLAND, TEXAS.

Sewer

West Company of Midland Inc., on behalf of Chris Macintosh is here by requesting that the City Council defer public improvements for the installation of an offsite sanitary sewer main line along the south side of West I-20 and east side of County Road 1221 – proposed 705 LF of new sewer line along subject property (RE: Appendix – WATER/SEWER/SIDEWALK IMPROVEMENT EXHIBIT). The remaining linear feet of main extension required to service this property would be approximately 1,170' (in addition to the 705 LF mentioned above).

RE: Appendix for City of Midland GIS Map

Water

West Company of Midland Inc., on behalf of Chris Macintosh is here by requesting that the City Council defer public improvements for the installation of an offsite water main line across and along the south side of West I-20 – proposed 710 LF of new water line along subject property (RE: Appendix – WATER/SEWER/SIDEWALK IMPROVEMENT EXHIBIT). Also, on behalf of Chris Macintosh, we are requesting fire hydrant coverage also be deferred. The remaining linear feet of main extension required to service this property would be approximately 557 LF (in addition to the 710 LF mentioned above). A portion of the extension would involve a very expensive boring under West I-20 and a portion of existing Rail $\pm$ 290 LF.

RE: Appendix for City of Midland GIS Map AND Aerial Site Location

Chris Macintosh – Wireline Accessories
Re: Deferral Package
March 14, 2013



Paving

West Company of Midland Inc., on behalf of Chris Macintosh is here by requesting that the City Council defer public improvements for the installation of paving and curb/gutter along County Road 1221 also known as S. Chisholm Trail – property frontage of exactly 416'. The existing roadways currently match surrounding conditions within a 1 mile radius of the site (asphalt roads without curb and gutter).

RE: Appendix for COM Spreadsheet Break Out

Sidewalk

West Company of Midland Inc., on behalf of Chris Macintosh is here by requesting that the City Council defer public improvements for the installation of sidewalk along West I-20 and County Road 1221– property frontage of exactly 687'. At this time, there is no apparent need to provide sidewalk along the property frontage.

Sidewalk Deferral		
Description	Unit Cost	Total Cost
687.00 LF 5' Sidewalk	\$5.00 LF	\$ 3,435.00
Additional 15% Contingency		\$ 515.25
Total		\$ 3,950.25

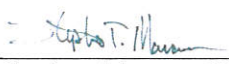
Drainage

Per the preliminary plat comments dated 03/04/2013, a drainage study will be required prior to development of the site. At the time construction documents become available for site improvements, a drainage study will be provided as part of the city submittal.

We appreciate the opportunity to submit this deferral and look forward to working with you on this project.

Sincerely,

West Company of Midland, Inc.

By: 
Stephen Marcum, P.E. – smarcum@team-west.com

Title: Assistant Project Manager

Date: March 14, 2013



Chris Macintosh – Wireline Accessories
Re: Deferral Package
March 14, 2013



Enclosures:

WATER/SEWER/SIDEWALK IMPROVEMENT EXHIBIT
COM Spreadsheet Break Out
City of Midland GIS Maps
Preliminary Plat
Aerial Site Location (Google Maps)

IH 20 (300' R.O.W.)

710 LF OF PROPOSED WATER LINE

705 LF OF PROPOSED SEWER LINE

687 LF OF PROPOSED SIDEWALK

CHISHOLM TRAIL (S. COUNTY ROAD 1221) (60' R.O.W.)

WATER/SEWER/SIDEWALK
IMPROVEMENT EXHIBIT

Summary of Public Improvement Deferral - Opinion of Probable Cost

Location:	Ranchland Acres, Section 4
Engineer:	West Company of Midland

Summary	Total
Wastewater Main Improvements	\$72,296.13
Water Main Improvements	\$52,845.50
Paving Improvements	\$102,447.72
Construction Total	\$227,589.34

Wastewater Main Deferral - Opinion of Probable Cost

Location: Ranchland Acres, Section 4
 Engineer: West Company of Midland

Wastewater	Quantity	Unit	Unit Price	Total
12" SDR 35 PVC		LF	25.00	0.00
8" SDR 35 PVC	705	LF	15.00	10575.00
6" SDR 35 PVC		LF	13.00	0.00
Trenching/Backfill 0'-5'		LF	20.00	0.00
Trenching/Backfill 5'-8'	352.5	LF	22.00	7755.00
Trenching/Backfill 8'-10'	352.5	LF	25.00	8812.50
Trenching/Backfill 10'-12'		LF	30.00	0.00
Trenching 12'-14'		LF	35.00	0.00
Imported Backfill Material	856.58	TN	15.00	12848.63
Imported Backfill Material - Unit Weight	120.00	PCF		
Replacement Manhole		EA	5000.00	0.00
New Manhole	2	EA	3500.00	7000.00
Remove Manhole		EA	1000.00	0.00
Manhole Extra Depth (MH>5')		VF	400.00	0.00
Connect to Existing MH		EA	500.00	0.00
24" Bore & Steel Encasement		LF	480.00	0.00
18" Bore & Steel Encasement		LF	360.00	0.00
12" Bore & Steel Encasement		LF	240.00	0.00
4" Wastewater Service	1	EA	550.00	550.00
6" Wastewater Service		EA	750.00	0.00
Volume - Flowable Fill (3 Sac) - Depth Below	0.00	CY	105.00	0.00
Depth of Flowable Fill (ft)	1.00	FT		
Asphalt Pavement Repair		LF	20.00	0.00
Concrete Pavement Repair		LF	25.00	0.00
Erosion Protection (\$/100LF)	7.05	LS	500.00	3525.00
Trench Protection (Trenching > 5')	705	LF	2.00	1410.00
Traffic Control / Job Site Safety	7.05	LF	150.00	1057.50
Construction Staking (\$/100LF)	7.05	LF	250.00	1762.50
Contingency (nearest \$1000)	15%			8000.00
Construction Total				\$63,296.13
ROW Acquisition	0	LS	1	0.00
Engineering & Surveying	10%			6000.00
Construction Administration	5%			3000.00
TOTAL				\$72,296.13

Water Main Deferral - Opinion of Probable Cost

Location: Ranchland Acres, Section 4
 Engineer: West Company of Midland

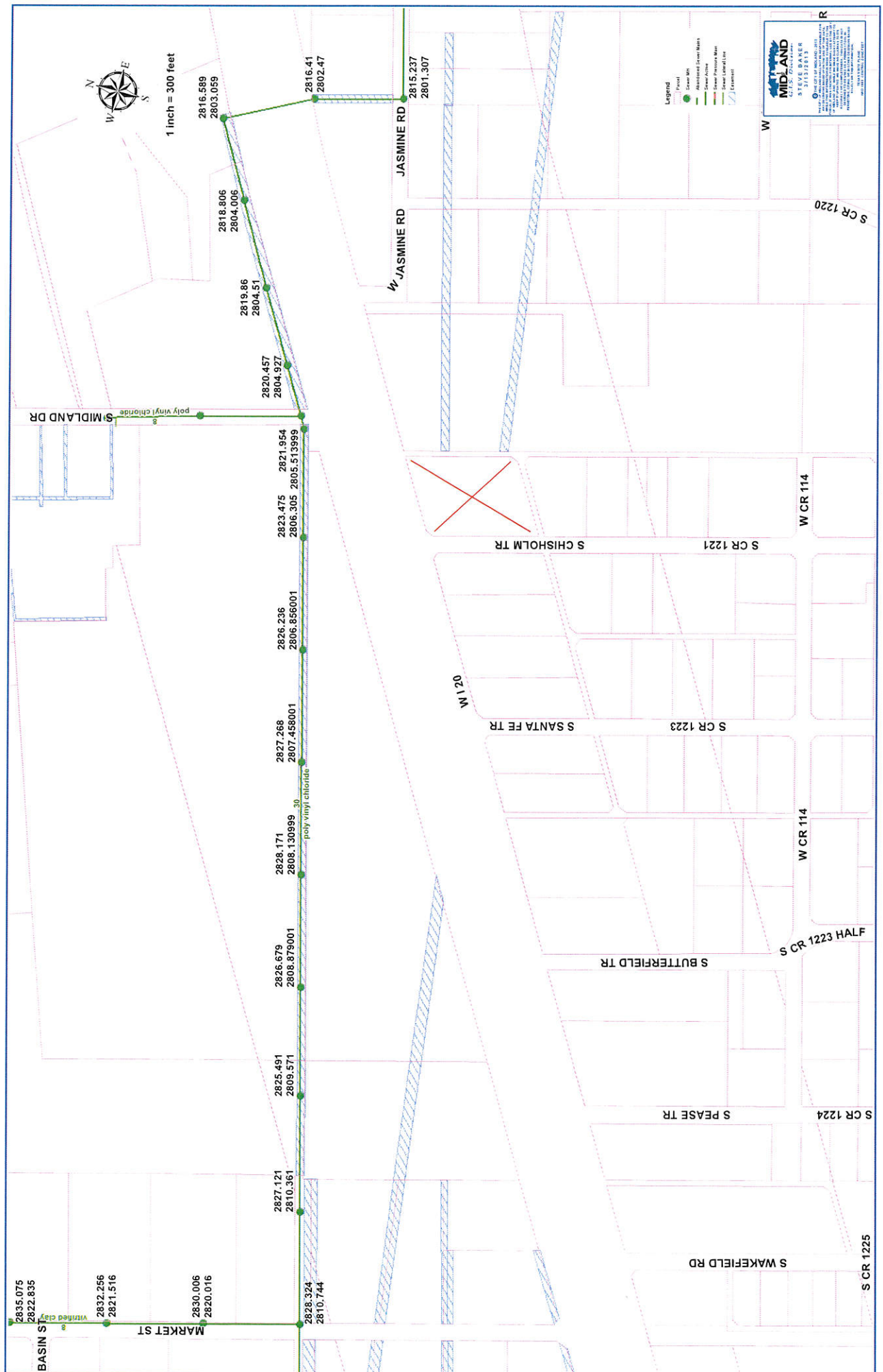
Wastewater	Quantity	Unit	Unit Price	Total
12" C-900 DR 18		LF	42.00	0.00
8" C-900 DR 18	710	LF	30.00	21300.00
6" C-900 DR 18		LF	24.00	0.00
Imported Backfill Material	447.30	TN	15.00	6709.50
Imported Backfill Material - Unit Weight	120.00	PCF		
Lower Water Main Under Existing Utiliy		EA	1000.00	0.00
14" Tapping Sleeve		EA	3250.00	0.00
12" Tapping Sleeve		EA	2500.00	0.00
8" Tapping Sleeve		EA	1500.00	0.00
6" Tapping Sleeve		EA	1200.00	0.00
12" Gate Valve		EA	1700.00	0.00
12" Gate Valve (MJ x F)		EA	2000.00	0.00
8" Gate Valve		EA	1100.00	0.00
8" Gate Valve (MJ x F)		EA	1100.00	0.00
6" Gate Valve		EA	1000.00	0.00
6" Gate Valve (MJ x F)		EA	1000.00	0.00
Fire Hydrant	1	EA	3000.00	3000.00
Wet Connection		EA	2500.00	0.00
Ductile Iron Fittings		TN	4000.00	0.00
12" Joint Restraint		EA	200.00	0.00
8" Joint Restraint		EA	150.00	0.00
6" Joint Restraint		EA	100.00	0.00
24" Bore & Steel Encasement		LF	240.00	0.00
18" Bore & Steel Encasement		LF	180.00	0.00
12" Bore & Steel Encasement		LF	120.00	0.00
1" Water Service (short)	1	EA	600.00	600.00
2" Water Service (long)		EA	1100.00	0.00
Volume - Flowable Fill (3 Sac)	0.00	CY	105.00	0.00
Depth of Flowable Fill (ft)	1.00	FT		
Asphalt Pavement Repair		LF	25.00	0.00
Concrete Pavement Repair		LF	35.00	0.00
Erosion Protection (\$/100LF)	7.1	LS	1000.00	7100.00
Traffic Control / Job Site Safety	7.1	LF	150.00	1065.00
Construction Staking (\$/100LF)	7.1	LS	10.00	71.00
Contingency (nearest \$1000)	15%			6000.00
Construction Total				\$45,845.50
ROW Acquisition		LS	1	0.00
Engineering & Surveying	10%			5000.00
Construction Administration	5%			2000.00
TOTAL				\$52,845.50

Paving Deferral - Opinion of Probable Cost

Location: Ranchland Acres, Section 4
 Engineer: West Company of Midland

Paving Width	30
Length of Paving	416
Base Rock Depth - Bottom Lift (in)	8
Base Rock Depth - Top Lift (in) - (6" min - 8" max)	10
Base Rock Unit Weight (95% Standard Proctor)	135
Base Rock waste	5%
HMAC thickness (in)	3
HMAC waste	5%

Paving	Quantity	Unit	Unit Price	Total
ROW Preparation	416	LF	10.00	4160.00
24" Curb & Gutter	832	LF	15.00	12480.00
Excavation	739.56	CY	5.00	3697.78
Scarify / Shape / Compact Sub-grade	1479.11	SY	3.50	5176.89
Base Rock - Bottom Lift (Material Only)	628.99	TN	9.50	5975.42
Base Rock - Top Lift (Material Only)	697.79	TN	9.50	6628.99
Shape / Compact Base Rock - Bottom Lift	1479.11	SY	3.50	5176.89
Shape / Compact Base Rock - Top Lift	1201.78	SY	3.50	4206.22
Tack Coat	1201.78	SY	1.00	1201.78
HMAC (Material Only)	208.21	TN	80.00	16656.64
Installation of HMAC Surface Course	1201.78	SY	4.00	4807.11
Erosion Protection (\$/100 LF)	4.16	LS	1000.00	4160.00
Construction Staking (\$/100LF)	4.16	LS	500.00	2080.00
Traffic Control / Job Site Safety (\$/100LF)	4.16	LS	250.00	1040.00
Contingency (nearest \$1000)	15%			12000.00
Construction Total				\$89,447.72
ROW Acquisition	0	LS	1	0.00
Engineering & Surveying	10%			9000.00
Construction Administration	5%			4000.00
TOTAL				\$102,447.72



RANCHLAND ACRES, SECTION 4

[illegible]

KNOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

ACKNOWLEDGEMENT
THE STATE OF TEXAS
COUNTY OF MIDLAND

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

PRELIMINARY
NOT BE RECORDED
FOR ANY PURPOSE

Surveyor's Office
Know All Land Owners
That I, **Thomas H. Hostetler**, the Professional Land Surveyor of the State of Texas, do hereby certify that this document is a true and correct copy of the original as the same appears on my actual and accurate survey of the **City of Houston**, in the County of **Harris**, State of **Texas**, and that the same is a true and correct copy of the original as the same appears on my actual and accurate survey of the **City of Houston**, in the County of **Harris**, State of **Texas**.

My Commission Expires **12/31/2011**
My Registration Number is **10000**

SEAL OF THE PROFESSIONAL LAND SURVEYOR OF THE STATE OF TEXAS
THOMAS H. HOSTETLER
10000

Morlock
Registration Number

OWNER:
WIRELINE ACCESSORIES AND SALES, LLC
P.O. BOX 60118
MIDLAND, TEXAS 79711

OF MIDLAND, INC.
ENGINEERS • PLANNERS • SURVEYORS
REGISTRATION: FB04 2164
110 W. LOUISIANA AVE., SUITE 110
MIDLAND, TEXAS 79701
(432) 687-0805 • FAX (432) 687-0806

**RANCHLAND ACRES,
SECTION 4**

CERTIFICATE OF APPROVAL

This is to certify that the above and foregoing plat was approved by proper action of the City Planning and Zoning Commission of the City of Midland, Texas on this _____ day of _____, 2013.

ROYCE WATKINS CHAIRMAN

CAMERON WALKER SECRETARY

NOTICE:

1. SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION OF CITY ORDINANCE AND STATE LAW AND SUBJECT TO FINES AND WITHHOLDING OF UTILITIES AND BUILDING PERMITS.
2. APPROVAL OF A SITE PLAN BY THE CITY OF MIDLAND MAY BE REQUIRED BEFORE THE DEVELOPMENT OF ANY LOT AND BEFORE A BUILDING PERMIT MAY BE OBTAINED.
3. COORDINATES, BEARINGS, DISTANCES AND AREAS SHOWN HEREON ARE NEAREST GRID AND SHALL CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS, CENTRAL ZONE, NORTH AMERICAN DATUM.

UNITED STATES DEPARTMENT OF COMMERCE

This plot has been checked for accessibility of utilities.

ATMOS ENERGY Print Name:

ONCOR ELECTRIC DELIVERY

STUDENT NAME: _____

DEADLINE COMMUNICATIONS

[illegible]

SLAUGHTER AND LITHIUM IONS

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ENGINEERING DIVISION

**Ranchland Acres
(Section 4)**

Development Agreement



Map by DDB 09/19/2013



City Council Agenda

Approved for Agenda:
rpatrick
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: David Beard,

SUBJECT: Consider a resolution authorizing the execution of a Public Improvement Development Agreement with 2010 Midland Properties, JV LLC for the installation of water distribution improvements, in the amount of \$285,367, to serve the Covington Addition. The subject property is generally located along the northwest corner of SH 191 and FM 1788. Said agreement being authorized by Section 395.081 of the Texas Local Government Code. (District #4 - Trost)

Purpose:

Consider a resolution authorizing the execution of a Public Improvement Development Agreement with 2010 Midland Properties, JV LLC for the installation of water distribution improvements, in the amount of \$285,367, to serve the Covington Addition. The subject property is generally located along the northwest corner of SH 191 and FM 1788. Said agreement being authorized by Section 395.081 of the Texas Local Government Code. (District #4 - Love)

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

That the sum of \$285,367 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Water and Sewer Construction Fund (305) Engineering Services (080) Covington Addition Water Improvements Project (9067).

Discussion:

2010 Midland Properties is proposing to plat the property and construct water distribution improvements to serve the Covington Addition. In order to provide water to their development, the developer is requesting City participation for the water main construction outside of the plat boundary and partial participation along the north boundary line along with necessary over-sizing to meet future development demands. Based on the construction drawings and opinion of probable

cost provided by the engineer, staff supports the approval of a development agreement in the amount of \$285,367

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
PUBLIC IMPROVEMENT DEVELOPMENT
AGREEMENT WITH 2010 MIDLAND PROPERTIES, JV
LLC FOR DEVELOPMENT OF COVINGTON
ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS
(GENERALLY LOCATED ALONG THE NORTHWEST
CORNER OF STATE HIGHWAY 191 AND FARM-TO-
MARKET ROAD 1788); AND APPROPRIATING FUNDS
IN THE AMOUNT OF \$285,367.00 THEREFOR; SAID
AGREEMENT BEING AUTHORIZED BY SECTION
395.081 OF THE TEXAS LOCAL GOVERNMENT CODE**

WHEREAS, the developer of Covington 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 2010 Midland Properties, JV LLC which sets forth the extent of the City's participation in the construction of public improvements related to the development of the Covington 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 2010 Midland Properties, JV LLC. Said agreement is marked as Exhibit "A", attached hereto and incorporated herein for all purposes.

SECTION TWO. That the sum of \$285,367.00 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Water and Sewer Construction Fund (305) Engineering Services (080) Covington Addition Water

Improvements Project (9067).

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay for said agreement, in amount not to exceed \$285,367.00, 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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Engineering Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT
BETWEEN 2010 MIDLAND PROPERTIES, JV LLC
AND THE CITY OF MIDLAND, TEXAS**

THIS PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT (“Agreement”) is made and effective this 25th day of September, 2013, by and between **2010 MIDLAND PROPERTIES, JV LLC** (“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 Covington 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 Dunaway Associates, L.P. (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 \$285,367.00. 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.

7. Developer will indemnify and hold harmless and defend City and all of City's officers, agents and employees from all suits, actions, claims, damages, personal injuries, including accidental death, losses, property damage and expenses of any character whatsoever, including attorney's fees, brought for or on account of any injuries or damages received or sustained by any person or persons or property, on account of any negligent act of Developer, its agents or employees, or any subcontractor, in the execution, supervision and operations growing out of or in any way connected with the performance of this Agreement,

and Developer will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including attorney's fees.

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

8. The Developer agrees to indemnify and save the City harmless from all claims growing out of any demands of subcontractors, laborers, workmen, mechanics, materialmen, and suppliers of machinery and parts thereof, equipment, power tools, all supplies, including

commissary incurred in the furtherance of the performance of this contract. When City so desires, the Developer shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived.

9. Developer shall obtain and maintain continuously in effect at all times during the construction of the public improvements described in Paragraph 2, above, at Developer's sole expense, at least the following minimum insurance with a carrier or carriers licensed to do business in the State of Texas and satisfactory to the City.

A. The following requirements shall be met in regard to workers' compensation insurance coverage: Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/persons's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The Developer shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Developer providing services on the project, for the duration

of the project.

C. The Developer must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the Developer's current certificate of coverage ends during the duration of the project, the Developer must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The Developer shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The Developer shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The Developer shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Developer knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. The Developer shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The Developer shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the Developer, prior to that person beginning work on the

project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide the Developer, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) obtain from each other person with whom it contracts, and provide to the Developer:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the Developer is representing to the governmental entity that all employees of the Developer who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Developer's failure to comply with any of these provisions is a breach of

contract by the Developer which entitles the governmental entity to declare the contract void if the Developer does not remedy the breach within 10 days after receipt of notice of breach from the governmental entity.

Developer shall also comply with the following:

L. Comprehensive General Liability Insurance against claims for bodily injury, death, or property damage occurring on, in or about the Property, in at least the amount of \$250,000.00 per individual, \$1,000,000.00 per occurrence and \$100,000.00 with respect to property damage; said insurance shall name the City as an additional insured and shall waive all rights of subrogation against the City.

M. Automobile Liability Coverage on all motor vehicles owned, leased and/or operated by the Developer or its employees in amounts of not less than \$1,000,000.00 combined single limit or equivalent, provided, however, separate automobile coverage shall not be required if such coverage is provided under the Developer's comprehensive general liability policy. The insurance shall name the City as an additional insured and waive all rights of subrogation against the City.

All insurance herein required shall apply as primary and not in excess of or contributing with other insurance which the Developer may carry.

10. **All insurance required pursuant to Paragraph 9, except worker's compensation, shall name the City as an additional insured.** The comprehensive general liability policy shall provide contractual liability coverage sufficiently broad so as to include the liability assumed by the Developer in the indemnity and hold harmless provisions included in this Agreement. Developer's insurance as required by this Agreement shall not be subject to cancellation or material alteration until at least thirty (30) days written notice has been provided to the City. Developer shall furnish to the City a certificate of insurance showing City as an additional insured and evidencing that all of the herein stated requirements have been met. **All insurance coverage required pursuant to Paragraph 9 shall include in its provisions a waiver of any rights of subrogation against City.**

DEVELOPER SHALL CONTRACTUALLY REQUIRE ALL CONTRACTORS, SUBCONTRACTORS, AND SUB-SUBCONTRACTORS THAT WORK ON ANY PORTION OF THE WORK THAT IS THE SUBJECT OF THIS PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT TO OBTAIN INSURANCE COVERAGE THAT MEETS OR EXCEEDS THE MINIMUM AMOUNTS SPECIFIED HEREIN. ALL CONTRACTORS, SUBCONTRACTORS, AND SUB-SUBCONTRACTORS SHALL OBTAIN INSURANCE POLICIES THAT PROVIDE BLANKET WAIVERS OF SUBROGATION IN FAVOR OF THE CITY OF MIDLAND AND POLICIES THAT NAME THE CITY OF MIDLAND AS AN ADDITIONAL INSURED (EXCEPT WORKERS COMPENSATION).

11. Insurance must be approved by the City Attorney's office prior to this Agreement being executed.

12. This Agreement may be modified or amended only by the mutual consent of the parties hereto.

13. This Agreement contains the complete and entire agreement between the parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations and understandings, if any, between the parties respecting such matters.

14. Except as may be otherwise specifically provided in this Agreement, all notices required or permitted hereunder shall be in writing as follows:

If to Developer:

2010 Midland Properties, JV LLC

3008 W. Lancaster Ave.
Fort Worth, Texas 76107
Attn: Jarrett F. Smith

If to City:

City of Midland
P.O. Box 1152
Midland, Texas 79702
Attn: City Engineer

15. Any clause, sentence, provision, paragraph or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal or ineffective shall not impair, invalidate or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph or article so held to be invalid, illegal or ineffective.

16. This Agreement shall be construed under the laws of the State of Texas and all obligations of the parties hereunder are performable in Midland County, Texas. Exclusive venue for any cause of action shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas.

17. In the event of any conflict between the parties hereto such that either party brings or commences any legal action or proceeding related to this Agreement, including but not limited to any action pursuant to the provisions of the Texas Uniform Declaratory Judgments Act (TEX. CIV. PRAC. & REM. CODE §37.001 et seq., as amended), the parties hereto agree to waive any and all rights to recovery of attorneys fees to which the prevailing party might otherwise be entitled.

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

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

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

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

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

The City shall not have the right to control the means, methods or details of the Developer's work. Developer shall assume exclusive responsibility for the work. Developer is entirely free to do the work in its own way.

19. RELEASE: DEVELOPER HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER ARISING UNDER OR ASSOCIATED WITH THIS AGREEMENT WHICH DEVELOPER HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO QUANTUM MERUIT, DUE PROCESS AND TAKINGS CLAUSES UNDER THE TEXAS AND UNITED STATES CONSTITUTION, TORT CLAIMS OR CITY'S NEGLIGENCE.

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

21. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Developer or its legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of

this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Developer will settle, the physical and mailing addresses of Developer at the time and date the claim was presented and the physical and mailing addresses of Developer for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Developer relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. The City is under no obligation to provide notice to Developer that Developer's notice is insufficient. The City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

22. This agreement is made under the authority of Section 395.081 of the Texas Local Government Code and the laws of the State of Texas and Ordinances and the Charter of the City of Midland. The City finds in accordance with Section 395.081 of the Texas Local Government Code that the City of Midland will benefit from allowing the Developer

to connect to the capital improvements. The City finds that this benefit will promote the public health, safety, and public welfare of the citizens of Midland. The City finds that the benefit the City of Midland receives will be efficient and well-planned urban growth and development, in coordination with public services. The benefit is also that this agreement will help preserve and increase the ad valorem tax base of the City. The City finds that the Developer's land adjoins the capital improvement or is within five (5) miles of the capital improvement. The five (5) miles is the specified distance required in Section 395.081 of the Texas Local Government Code.

23. Notwithstanding any other provision hereof, the City shall not be obligated to provide payment to Developer under this Agreement until Developer has met all requirements of this Agreement, including, but not limited to, the City's approval of the improvement work as set forth in Paragraph 4 and the City's determination that Developer has furnished satisfactory evidence that all obligations described in Paragraph 8 have been paid, discharged or waived. Determination of whether Developer has furnished satisfactory evidence that all such obligations have been paid, discharged or waived shall be in the sole discretion of the City.

EXECUTED in duplicate the day and year first above written.

CITY OF MIDLAND, TEXAS

By: _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Engineering Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

2010 MIDLAND PROPERTIES, JV LLC

By: _____
Jarrett F. Smith, President

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared JARRETT F. SMITH, 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 2010 MIDLAND PROPERTIES, JV LLC, in the capacity therein stated.

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

Notary Public, State of Texas

Covington Tract

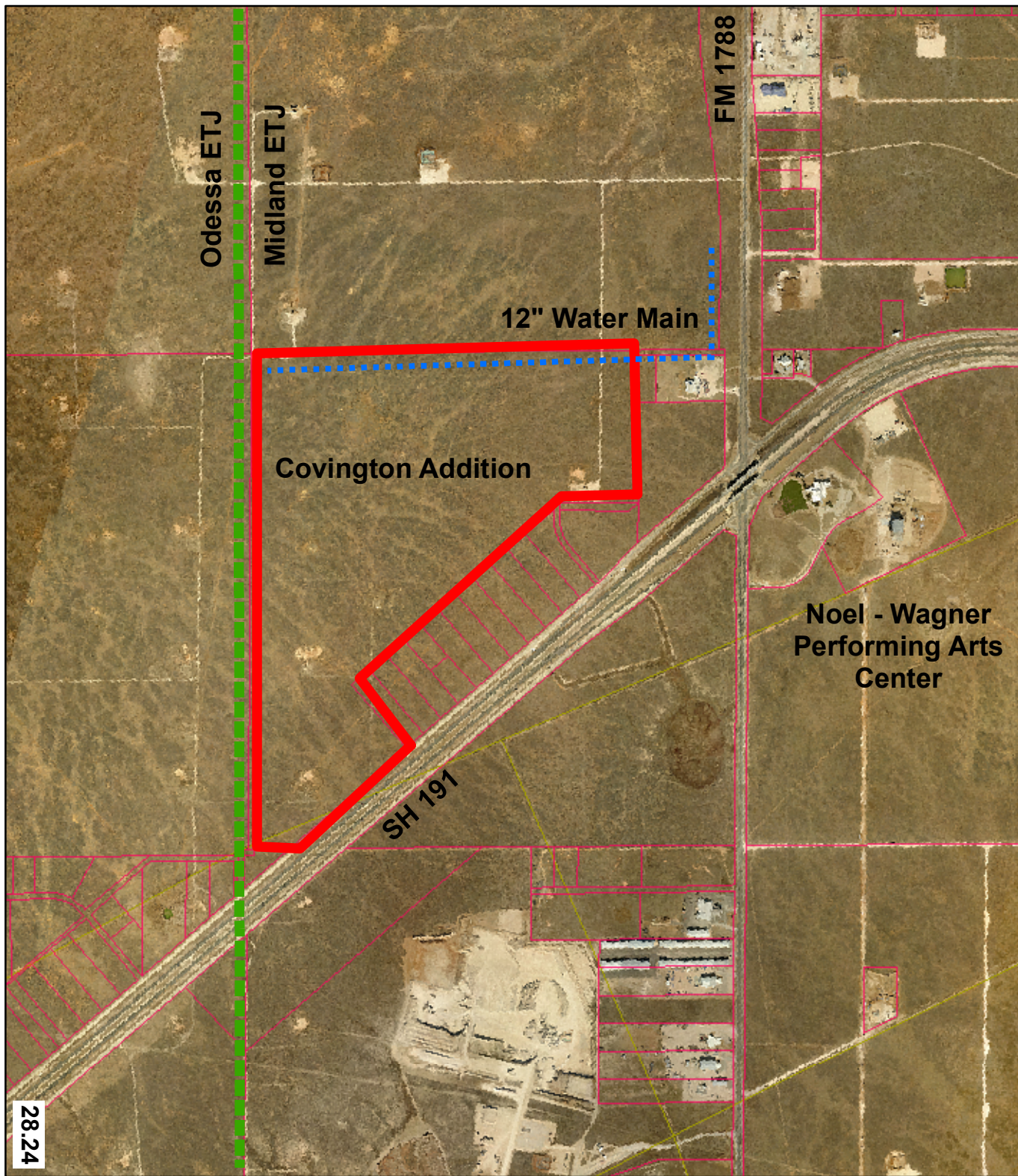
Water Line Improvements

Midland, TX

ENGINEER'S OPINION OF PROBABLE COSTS
AS OF SEPTEMBER 10, 2013

ITEM NO.	DESCRIPTION	UNITS	QUANTITY	PRICE	Total	DEVELOPER SHARE	DEVELOPER COST	MIDLAND SHARE	MIDLAND COST
	WATER - Internal								
1	6" C-900 PVC	LF	300	\$ 25.00	\$ 7,500.00	100.00%	\$ 7,500.00	0%	\$ -
2	8" C-900 PVC	LF	9,620	\$ 30.00	\$ 288,600.00	100%	\$ 288,600.00	0%	\$ -
3	12" C-900 PVC	LF	7,181	\$ 30.00	\$ 215,430.00	100%	\$ 215,430.00	0%	\$ -
3A	Oversize 8"-12" (\$42-\$30 = \$12)	LF	11,981	\$ 12.00	\$ 143,772.00	0%	\$ -	100%	\$ 143,772.00
3B	12" C-900 PVC (North Boundary)	LF	4,800	\$ 30.00	\$ 144,000.00	50%	\$ 72,000.00	50%	\$ 72,000.00
4	6" Ductile Iron	LF	1,620	\$ 35.00	\$ 56,700.00	100%	\$ 56,700.00	0%	\$ -
4A	Ductile Iron Fittings	TN	6	\$ 4,000.00	\$ 23,840.00	100%	\$ 23,840.00	0%	\$ -
5	Imported Backfill Material	TN	15,228	\$ 15.00	\$ 228,420.00	100%	\$ 228,420.00	0%	\$ -
7	12" Joint Restraint	EA	139	\$ 200.00	\$ 27,800.00	100%	\$ 27,800.00	0%	\$ -
8	8" Joint Restraint	EA	190	\$ 150.00	\$ 28,500.00	100%	\$ 28,500.00	0%	\$ -
9	6" Joint Restraint	EA	279	\$ 100.00	\$ 27,900.00	100%	\$ 27,900.00	0%	\$ -
10	2" Water Service (short)	EA	42	\$ 1,500.00	\$ 63,000.00	100%	\$ 63,000.00	0%	\$ -
11	2" Water Service (long)	EA	21	\$ 2,500.00	\$ 52,500.00	100%	\$ 52,500.00	0%	\$ -
12	6" Gate Valve	EA	70	\$ 910.00	\$ 63,700.00	100%	\$ 63,700.00	0%	\$ -
13	8" Gate Valve	EA	12	\$ 1,100.00	\$ 13,200.00	100%	\$ 13,200.00	0%	\$ -
14	12" Gate Valve	EA	11	\$ 2,000.00	\$ 22,000.00	100%	\$ 22,000.00	0%	\$ -
15	Fire Hydrant	EA	11	\$ 3,390.00	\$ 37,290.00	100%	\$ 37,290.00	0%	\$ -
16	Erosion Protection - Straw Waddle	LF	16,500	\$ 4.00	\$ 66,000.00	100%	\$ 66,000.00	0%	\$ -
17	Erosion Protection - Inlet Protection	EA	2	\$ 150.00	\$ 300.00	100%	\$ 300.00	0%	\$ -
18	Construction Staking (\$/100)	LS	233	\$ 100.00	\$ 23,300.00	100%	\$ 23,300.00	0%	\$ -
	WATER - Connection at 1788								
1	12" C-900 PVC	LF	1,100	\$ 42.00	\$ 46,200.00	0%	\$ -	100%	\$ 46,200.00
2	Imported Backfill Material	TN	693	\$ 15.00	\$ 10,395.00	0%	\$ -	100%	\$ 10,395.00
3	16" Joint Restraint	EA	1	\$ 250.00	\$ 250.00	0%	\$ -	100%	\$ 250.00
4	12" Gate Valve	EA	3	\$ 2,000.00	\$ 6,000.00	0%	\$ -	100%	\$ 6,000.00
5	Erosion Protection - Straw Waddle	LF	1,000	\$ 4.00	\$ 4,000.00	0%	\$ -	100%	\$ 4,000.00
6	Construction Staking (\$/100)	LS	11	\$ 100.00	\$ 1,100.00	0%	\$ -	100%	\$ 1,100.00
7	Traffic Control (\$/100)	LF	11	\$ 150.00	\$ 1,650.00	0%	\$ -	100%	\$ 1,650.00
	TOTAL				\$ 1,603,347.00		\$ 1,317,980.00		\$ 285,367.00
	<i>Cost Sharing</i>						82.20%		17.80%

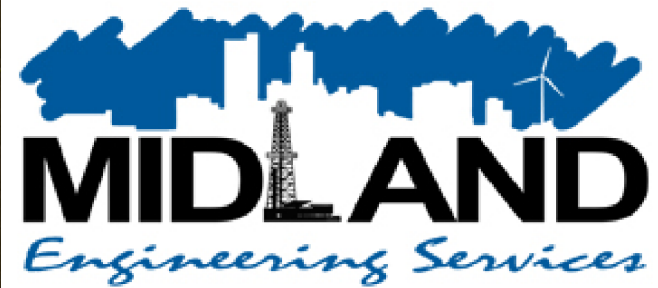
Total (Base Bid) \$ 1,603,347.00 \$ 1,317,980.00 \$ 285,367.00



ENGINEERING DIVISION

Covington Addition

Development Agreement



Map by DDB 09/19/2013

COVINGTON ADDITION

BEING A 307.7 ACRE TRACT IN SECTION 37, BLOCK 41,
T-1-S, & T&P RR Co. SURVEY, CITY AND COUNTY OF
MIDLAND, TEXAS

LINE	BEARING	DISTANCE
L1	S 171°29'48" E	277.7
L2	N 79°42'25" E	272.8
L3	S 79°41'48" W	283.9
L4	S 171°18'14" E	283.9
L5	N 82°20'58" E	269.9
L6	N 07°54'18" W	292.4
L7	N 122°22'27" W	282.9
L8	N 79°32'38" E	284.4
L9	N 52°38'43" E	285.9
L10	N 39°40'54" W	283.9
L11	N 31°43'35" W	302.7

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	50.00	132.99	97.11	N 89°41'50" E	152°23'57"
C2	50.00	86.75	76.27	S 32°36'12" W	99°24'37"
C3	113.50	298.34	285.38	S 72°28'07" E	147°11'18"
C4	1965.00	308.16	307.08	S 28°24'22" W	16°34'43"
C5	630.00	319.87	316.39	S 50°03'07" E	29°05'09"
C6	630.00	30.45	30.41	S 77°32'20" E	6°24'48"
C7	570.00	347.11	341.77	S 31°32'51" E	34°53'29"
C8	1030.00	550.10	501.18	S 12°42'24" E	27°27'08"
C9	1030.00	242.42	246.82	S 04°25'47" E	1°45'43"
C10	970.00	242.44	240.68	S 03°59'18" E	29°13'38"
C11	1030.00	255.91	255.25	S 05°54'11" E	14°14'08"
C12	970.00	332.89	331.25	S 15°57'24" W	19°39'43"
C13	1030.00	255.97	255.31	S 25°48'25" W	14°14'19"
C14	1030.00	67.79	67.78	S 32°48'59" E	3°48'00"
C15	970.00	150.89	150.84	S 30°14'31" W	8°54'26"
C16	550.00	465.01	451.28	N 79°49'44" W	48°28'32"
C17	410.00	185.84	185.12	N 84°20'08" W	17°27'20"
C18	610.00	203.69	202.74	N 82°37'45" W	19°07'54"
C19	610.00	147.38	147.03	S 80°32'58" W	11°30'37"
C20	550.00	150.89	150.89	S 29°52'41" W	15°01'18"
C21	50.00	126.58	93.39	S 86°38'07" E	14°04'01"
C22	50.00	123.71	84.39	S 29°28'41" E	14°11'13"
C23	580.00	169.20	168.68	S 43°03'20" W	16°43'14"
C24	520.00	122.68	197.86	S 41°43'46" W	14°04'02"
C25	580.00	20.10	20.10	S 52°24'31" E	1°09'00"
C26	580.00	218.54	217.23	S 64°11'48" W	21°35'20"
C27	520.00	238.03	235.95	S 61°52'36" W	26°13'38"
C28	480.00	180.05	178.99	S 80°44'10" W	21°29'30"
C29	420.00	157.54	156.82	S 85°44'10" W	21°29'30"
C30	885.00	262.38	261.60	S 17°01'18" W	15°15'43"
C31	885.00	33.97	33.08	S 25°36'51" W	1°05'24"
C32	835.00	193.45	193.02	S 33°12'45" W	1°16'22"
C33	335.00	147.80	146.32	S 32°27'49" W	25°13'41"
C34	265.00	147.86	145.78	S 56°46'41" W	31°05'31"
C35	765.00	169.08	168.74	S 32°54'26" W	12°39'48"
C36	915.00	114.20	107.46	S 12°28'58" W	32°11'54"
C37	915.00	102.43	102.37	S 08°49'48" E	8°24'50"
C38	885.00	268.35	267.52	S 04°13'53" E	15°36'33"
C39	835.00	301.89	300.25	N 01°41'08" E	29°43'05"
C40	765.00	137.37	137.18	N 08°53'31" E	10°17'17"
C41	765.00	465.00	475.02	N 16°20'22" E	36°10'20"
C42	440.00	115.62	108.90	S 34°43'12" E	41°09'30"
C43	500.00	358.71	351.07	N 34°45'02" W	41°06'20"
C44	25.00	50.74	51.38	N 88°28'11" W	148°32'30"
C45	835.00	254.12	253.14	N 25°58'37" E	17°26'13"

UTILITY COMPANY'S CERTIFICATE

This plot has been checked for accessibility of utilities.

John Hamilton *Steve Hamilton*
AT&T ENERGY Print Name:

LOREN ROBBINS
ONCOR ELECTRIC DELIVERY Print Name:

Carlos Vega *Carlos Vega*
SUDENCO Print Name:

Sherry Sanders *Sherry Sanders*
GRANDE COMMUNICATIONS Print Name:

JEFFREY R. HENDERSON
ARBT-TEXAS Print Name:

JEFFREY R. HENDERSON
SERVING UTILITIES Print Name:

STATE OF TEXAS
COUNTY OF MIDLAND

KNOW ALL MEN BY THESE PRESENTS THAT I, THE UNDERSIGNED, BEING THE
PRESENT OWNER OF THE LAND SHOWN ON THIS PLAT AND DESIGNATED AS
"COVINGTON ADDITION", MIDLAND COUNTY, TEXAS, BEING A SUBDIVISION OF 307.7
ACRES IN SECTION 37, BLOCK 41, T-1-S, & T&P RR CO. SURVEY, MIDLAND COUNTY,
TEXAS DO HEREBY DEDICATE TO THE USE OF THE PUBLIC FOREVER ALL SIDEWALKS,
ALLEYS, WATER COURSES, EASEMENTS, AND PUBLIC PLACES SHOWN HEREON FOR
THE PURPOSE AND CONSIDERATION THEREIN EXPRESSED, AND AN EASEMENT OF
INGRESS AND EGRESS FOR GARAGE AND TRASH COLLECTION PURPOSES IS HEREBY
GRANTED.

2010 MIDLAND PROPERTIES, JV LLC

By: *J. Smith*
JARETT F. SMITH, OWNER

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON
September 10, 2013, BY JARETT F. SMITH.

Joni Baca
NOTARY PUBLIC, STATE OF TEXAS

Joni Baca
PRINTED NAME OF NOTARY

TOBI BACA
Notary Public, State of Texas
My Commission Expires
August 18, 2015

CERTIFICATE OF APPROVAL

This is to certify that the above and foregoing plat of "Covington
Addition", was approved by proper action of the Planning and Zoning
Commission of the City of Midland, Texas on this _____ day of
2013.

GALEN GATTEN, CHAIRMAN

JIM COMPTON, SECRETARY
SURVEYOR'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

That I, Marcus L. Hostas, a Registered Professional Land Surveyor of the State of
Texas, do hereby certify that this plat was prepared from an actual and accurate
survey of the land and that the corner monuments shown thereon were properly
located under my personal supervision, in accordance with the Subdivision
Regulations of the City of Midland, Texas.

9/10/13
Marcus L. Hostas
Marcus L. Hostas, R.P.L.S.
Registration Number - 5643

STATE OF TEXAS
MIDLAND COUNTY
LAND SURVEYOR
5643

Dated:
Jarett F. Smith
2010 Midland Properties, JV LLC
13300 Highway 19
Midland, Texas 79707
(432) 563-1144

WEST COMPANY

OF MIDLAND, INC.
ENGINEERS, PLANNERS, ARCHITECTS
REGISTRATION FIRM 194
1101 COURTESY DRIVE, SUITE 110
MIDLAND, TEXAS 79701
(432) 697-0885 FAX (432) 697-0886
SEPTEMBER 2013

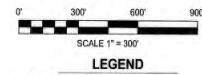
PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS

NO. _____ CABINET _____

DATE _____ PAGE _____

COVINGTON ADDITION

- NOTICE:
1. SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION OF CITY ORDINANCE AND STATE LAW AND SUBJECT TO FINES AND WITHDRAWAL OF UTILITIES AND BUILDING PERMITS.
 2. APPROVAL OF A SITE PLAN BY THE CITY OF MIDLAND MAY BE REQUIRED BEFORE THE DEVELOPMENT OF ANY LOT AND BEFORE A BUILDING PERMIT MAY BE OBTAINED.
 3. COORDINATES, BEARINGS, DISTANCES AND AREAS SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM 1983.



- DENOTES SET 1/2" IRON ROD W/RED PLASTIC CAP MARKED "WEST CO. MIDLAND"
- DENOTES FOUND MONUMENT AS NOTED
- DENOTES WELL HEAD
- - - DENOTES BOUNDARY
- - - DENOTES SURROUNDING PROPERTY
- - - DENOTES EASEMENT LINE



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 9/10/2013

TO: City Council / City Manager

FROM: David Beard, City Engineer

SUBJECT: Consider a resolution authorizing the execution of a Temporary Water and Sewer Service Agreement between the City of Midland and PFP Indus Group, LLC (OptiBlend) for services to an approximate 8.96 acre tract of land out of the north half of Section 12, Block 40, T 2 S, T&P RR Co. Survey, Midland County, Texas; said property is outside the City limits; PFP Indus Group, LLC has executed a letter agreeing to annexation if and when the property is annexed; PFP Indus Group, LLC shall be charged a rate for service which is one and one half times the rate charged customers in the City limits; and ordering recordation by the City Secretary. (Midland ETJ)

Purpose:

Consider a resolution authorizing the execution of a Temporary Water and Sewer Service Agreement between the City of Midland and PFP Indus Group, LLC (OptiBlend) for services to an approximate 8.96 acre tract of land out of the north half of Section 12, Block 40, T 2 S, T&P RR Co. Survey, Midland County, Texas; said property is outside the City limits; PFP Indus Group, LLC has executed a letter agreeing to annexation if and when the property is annexed; PFP Indus Group, LLC shall be charged a rate for service which is one and one half times the rate charged customers in the City limits; and ordering recordation by the City Secretary.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The City will receive monthly payment for water services equal to 150% of the cost for water services inside the City Limits. This revenue will be deposited to the Water and Sewer Fund.

Discussion:

PFP Indus Group, LLC is proposing to expand their facilities at their property generally located outside the City Limits, west of S Loop 250 W and between W I-20 and W Industrial Avenue. More specifically, the subject property is located approximately 1230 feet west of Agri Road at 6300 W County Road 112 (a.k.a. Empresa Drive). The purpose to this Temporary Water Service Agreement is to allow the developer to connect to the City of Midland water distribution system adjacent to their site. In addition, the owner has agreed to voluntarily annex at the time the City deems appropriate.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A TEMPORARY WATER AND SEWER SERVICE AGREEMENT BETWEEN THE CITY OF MIDLAND AND PFP INDUS GROUP, LLC FOR SERVICES TO AN APPROXIMATE 8.96-ACRE TRACT OF LAND OUT OF THE NORTH HALF OF SECTION 12, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; SAID PROPERTY IS OUTSIDE THE CITY LIMITS; PFP INDUS GROUP, LLC HAS EXECUTED A LETTER AGREEING TO ANNEXATION IF AND WHEN THE PROPERTY IS ANNEXED; PFP INDUS GROUP, LLC SHALL BE CHARGED A RATE FOR SERVICE WHICH IS ONE AND ONE-HALF TIMES THE RATE CHARGED CUSTOMERS IN THE CITY LIMITS; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, pursuant to Resolution No. 2003-285, the City Council may enter into an agreement to provide water and sewer service outside the City limits when such service will benefit the City of Midland and its economic development opportunities; and

WHEREAS, PFP Indus Group, LLC owns an approximate 8.96-acre tract of land located in the north half of Section 12, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, such land being situated outside the corporate limits of the City; and

WHEREAS, the City Council finds it to be in the public interest and of an economic benefit to the City of Midland to authorize the execution of a temporary water and sewer service agreement;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, Texas, a temporary water and sewer service agreement with PFP Indus Group, LLC, the property owner of an approximate 8.96-acre tract of land located in the north half of Section 12, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, for temporary water and sewer service outside the City limits, said agreement being attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION TWO. That the City Secretary is hereby authorized and directed to file a certified copy of this Resolution in the Deed Records of Midland County, Texas.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Engineering Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

STATE OF TEXAS §
COUNTY OF MIDLAND §

WITNESSETH

2. Customer shall construct and provide at its sole expense, according to City specifications, all necessary extensions of lines, fittings and appurtenances thereto and thereafter be responsible for the maintenance thereof. The City agrees to allow the water and sewer lines to be

temporarily attached or connected to the City's water and sewer lines, upon certification by the City's Director of Utilities that the lines constructed by Customer comply with City specifications.

3. Customer agrees that all lines, fittings and appurtenances which are to be constructed by the Customer to the property described in Paragraph One of this Contract, must comply with the regulations contained in Title IV, "Building Regulations", Chapter 3, "Plumbing Code", of the City Code of Midland, Texas.

4. In consideration of City's allowing Customer to temporarily connect or attach its water or sewer lines to the City's water or sewer lines, Customer agrees to pay for any services used promptly and when due, at the rates established by ordinance from time to time by the City Council for customers outside the City, which rate is presently one and one-half (1-1/2) times the rates established for customers inside the City. The City shall have the right to terminate service and this Agreement for nonpayment by Customer in accordance with standard City procedures as well as reasons stated in this Agreement. The City shall provide notice of rate increases as required by law.

5. Customer further agrees to pay the current rates established in the City of Midland Water/Wastewater/Fire Hydrant Tap Project.

6. Customer agrees to pay the City an inspection fee of THIRTY AND NO/100 DOLLARS (\$30.00) per connection to the water and sewer lines installed on or to serve the property described in Paragraph One, as the cost of reimbursing the City for inspecting and approving the Customer's water and sewer lines and appurtenances prior to acceptance by the City. This fee shall be paid before service is provided to the property.

7. It is expressly understood and agreed that any extension of water or sewer lines from Customer's property described above so as to service any other persons or property is expressly prohibited unless approved in writing by the City.

8. It is expressly understood and agreed that the following undesirable plumbing practices are prohibited by State regulations:

(i) No direct connection between the public drinking water supply and a potential source of contamination is permitted. Potential sources of contamination shall be isolated from the public water system by an air-gap or an appropriate backflow prevention device.

(ii) No cross-connection between the public drinking water supply and a private water system is permitted. These potential threats to the public drinking water supply shall be eliminated at the service connection by the installation of an air-gap or a reduced pressure-zone backflow prevention device.

(iii) No connection which allows water to be returned to the public drinking water supply is permitted.

(iv) No pipe or pipe fitting which contains more than 8.0% lead may be used for the installation or repair of plumbing at any connection which provides water for human use.

(v) No solder or flux which contains more than 0.2% lead can be used for the installation or repair of plumbing at any connection which provides water for human use.

9. The Customer shall allow the property to be inspected for possible cross-connections and other undesirable plumbing practices. These inspections shall be conducted by City or its designated agent prior to initiating service and periodically thereafter upon prior written notice and at City's sole expense. The inspections shall be conducted during the City's normal business hours. The City shall notify the Customer in writing of any cross-connection or other undesirable plumbing practice which has been identified during the initial inspection or the periodic reinspection. The Customer shall immediately correct any undesirable plumbing practice on the property. The

Customer shall, at its expense, properly install, test and maintain any backflow prevention device required by the City.

10. Customer agrees that it shall not allow any unauthorized connection to any sewer line that is constructed pursuant to the provisions of this Agreement, or provide water service to any person, corporation, partnership or other entity on the above described property without the written permission of the City Manager. Customer also agrees that violation of the terms of this paragraph, or violation of any applicable federal, state or local rule or regulation, constitute grounds for immediate termination of this Agreement and immediate cessation of water and/or sewer services.

11. It is expressly agreed and understood that all present or future ordinances and regulations applicable to water customers and related to water service within the City limits are incorporated by reference as express conditions of this Agreement; and that the Customer expressly agrees to be bound by all such ordinances or regulations of City related to water or sewer service as if Customer were in fact within the corporate limits and that any violation of any such ordinance or regulation by the Customer, its agents, servants, or employees, shall constitute a breach of this Agreement and be grounds for the immediate cancellation by the City of this Agreement and/or discontinuance of the services furnished hereunder.

12. **ATTORNEY FEES - BY EXECUTING THIS AGREEMENT, CUSTOMER AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR**

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

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

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

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

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

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

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

17. If the Customer fails to comply with the terms of this Agreement, the City shall, at its option, either terminate service immediately or properly install, test, and maintain an appropriate backflow prevention device at the service connection. Any expenses associated with the enforcement or termination of this Agreement shall be billed to the Customer.

18. Notwithstanding any other provisions, the City may terminate this Agreement at will for any reason, or no reason, and without penalty by giving at least one hundred eighty (180) days written notice to the Customer. The City and Customer have bargained for this flexibility. The parties understand that it is in City's sole and absolute discretion to terminate this Agreement by giving the requisite notice. The Customer also understands and acknowledges that Customer has no property right in water and sewer service by virtue of this Agreement. All water and sewer service shall cease and be suspended immediately upon termination of the Agreement becoming effective.

19. Customer understands and agrees that the City has entered into this Agreement with the explicit intention of annexing the property served by this Agreement, and would not have agreed to provide temporary water and sewer service in the absence of Customer's agreement that Customer will not contest, oppose or seek to delay said annexation proceedings in any manner. By executing this Agreement, Customer is requesting annexation by the City. The customer has provided the City a letter which is attached hereto and marked as Exhibit "B" requesting annexation.

20. All notices hereunder must be given in writing by certified mail return receipt requested. All notices under this agreement shall be sent as follows:

To the City of Midland, Texas:

Jose Ortiz
Engineering Services Director
P.O. Box 1152
Midland, Texas 79702

To Customer:

Asoke Deysarkar
PFP Indus Group, LLC
14227 Fern Dr.
Houston, Texas 77079

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

CUSTOMER SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS

OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH CUSTOMER OR CUSTOMER'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND CUSTOMER WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

22. This Agreement may not be assigned without the written consent of the Midland City Council. The decision on whether or not to approve an assignment shall be in the sole discretion of the Midland City Council.

23. The parties agree that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

24. It is expressly understood and agreed that Customer shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that Customer shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Customer, its officers, agents, employees, contractors and subcontractors; and that nothing

herein shall be construed as creating a partnership or joint enterprise between City and Customer. No person performing any of the work and services described hereunder by Customer shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this agreement is intended or shall be construed as creating a “Community of Pecuniary Interest” or “An Equal Right of Control” which would give rise to vicarious liability. Customer shall be an independent contractor under this agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. The City does not have the power to direct the order in which the work is done. The City shall not have the right to control the means, methods or details of the Customer’s work. Customer shall assume exclusive responsibility for the work. Customer is entirely free to do the work in its own way.

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

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

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

CITY OF MIDLAND, TEXAS

By _____
Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Engineering Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CUSTOMER:
PFP INDUS GROUP, LLC

By _____

Title _____

STATE OF TEXAS

§
§
§

COUNTY OF MIDLAND

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as his act and deed on behalf of PFP INDUS GROUP, LLC, for the purposes and consideration therein expressed.

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

Notary Public, in and for
the State of Texas



ENGINEERING DIVISION

Temporary Water & Wastewater Agreement

PFP Indus Group LLC



Map by DDB 09/19/2013

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

Attn: Jose Ortiz, Engineering Director

Re: Water & Sewer Service Agreement

Dear Mr. Ortiz,

We are aware and understand that it is the City's policy to NOT provide water and sewer service outside of the City Limits, such as at our property location, but that each request for such service is considered on a case-by-case basis. We also understand that the referenced agreement must be approved by the City Council at a regular meeting and that by signing the agreement, we verify that we have no opposition to being annexed into the City at such time as the City wishes to do so. Please proceed with placement of the agreement on the next City Council meeting.

Very truly yours,

A.Y. Deysarkar

Signature of Owner of Property

Address of site or legal description of property:
8.960 acres, N/2, Sec: 12, Blk: 40, T2S, Midland
County, Texas

Contact information for land owner:

Asoke Deysarkar

PFP Indus Group, LLC

14227 Fern Dr.

Houston, Texas 77079

Estimated Monthly Water Usage:

0 gallons*

*The lot is currently undeveloped but a future expansion is planned.

TEMPORARY WATER AND SEWER SERVICE AGREEMENT

STATE OF TEXAS

§

§

COUNTY OF MIDLAND

§

This Agreement, effective this ____ day of _____, 20__, by and between the City of Midland, Texas ("City"), a home rule municipal corporation, acting by and through its duly authorized City Manager and City Secretary, and PFP Indus Group, LLC ("Customer");

WITNESSETH

WHEREAS, Customer owns a tract of land, which is described herein below, such land being situated outside the corporate limits of the City; and

WHEREAS, Customer desires to use water and sewer facilities owned and operated by the City to serve the property; and

WHEREAS, the City Council has determined that the temporary provision of water and sewer service will be of an economic benefit to the City;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the rates, fees and deposits paid and to be paid by Customer to City, and the mutual covenants herein, the parties hereto agree as follows:

1. City agrees to furnish temporary water and sewer service for use by Customer on the property described as 8.960 acres, N/2, Sec: 12, Blk: 40, T2S, Midland County, Texas, and as shown on the diagram attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

2. Customer shall construct and provide at its sole expense, according to City specifications, all necessary extensions of lines, fittings and appurtenances thereto and thereafter be responsible for the maintenance thereof. The City agrees to allow the water and sewer lines to be temporarily attached or connected to the City's water and sewer lines, upon certification by the City's Director of Utilities that the lines constructed by Customer comply with City specifications.

3. Customer agrees that all lines, fittings and appurtenances which are to be constructed by the Customer to the property described in Paragraph One of this Contract, must comply with the regulations contained in Title IV, "Building Regulations", Chapter 3, "Plumbing Code", of the City Code of Midland, Texas.

4. In consideration of City's allowing Customer to temporarily connect or attach its water or sewer lines to the City's water or sewer lines, Customer agrees to pay for any services used promptly and when due, at the rates established by ordinance from time to time by the City Council for customers outside the City, which rate is presently one and one-half (1-1/2) times the rates established for customers inside the City. The City shall have the right to terminate service and this Agreement for nonpayment by Customer in accordance with standard City procedures as well as reasons stated in this Agreement. The City shall provide notice of rate increases as required by law.

5. Customer further agrees to pay the regular rates established in the City of Midland Water/Wastewater/Fire Hydrant Tap Project.

6. Customer agrees to pay the City an inspection fee of THIRTY AND NO/100 DOLLARS (\$30.00) for the water and sewer lines installed on or to serve the property described in Paragraph One, as the cost of reimbursing the City for inspecting and approving the Customer's water and sewer lines and appurtenances prior to acceptance by the City. This fee shall be paid before service is provided to the property.

7. It is expressly understood and agreed that any extension of water or sewer lines from Customer's property described above so as to service any other persons or property is expressly prohibited unless approved in writing by the City.

8. It is expressly understood and agreed that the following undesirable plumbing practices are prohibited by State regulations:

(i) No direct connection between the public drinking water supply and a potential source of contamination is permitted. Potential sources of contamination shall be isolated from the public water system by an air-gap or an appropriate backflow prevention device.

(ii) No cross-connection between the public drinking water supply and a private water system is permitted. These potential threats to the public drinking water supply shall be eliminated at the service connection by the installation of an air-gap or a reduced pressure-zone backflow prevention device.

(iii) No connection which allows water to be returned to the public drinking water supply is permitted.

(iv) No pipe or pipe fitting which contains more than 8.0% lead may be used for the installation or repair of plumbing at any connection which provides water for human use.

(v) No solder or flux which contains more than 0.2% lead can be used for the installation or repair of plumbing at any connection which provides water for human use.

9. The Customer shall allow the property to be inspected for possible cross-connections and other undesirable plumbing practices. These inspections shall be conducted by City or its designated agent prior to initiating service and periodically thereafter upon prior written notice and at City's sole expense. The inspections shall be conducted during the City's normal business hours. The City shall notify the Customer in writing of any cross-connection or other undesirable plumbing practice which has been identified during the initial inspection or the periodic reinspection. The Customer shall immediately correct any undesirable plumbing practice on the property. The Customer shall, at its expense, properly install, test and maintain any backflow prevention device required by the City.

10. Customer agrees that it shall not allow any unauthorized connection to any sewer line that is constructed pursuant to the provisions of this Agreement, or provide water service to any person, corporation, partnership or other entity on the above described property without the written permission of the City Manager. Customer also agrees that violation of the terms of this paragraph, or violation of any applicable federal, state or local rule or regulation, constitute grounds for immediate termination of this Agreement and immediate cessation of water and/or sewer services.

11. It is expressly agreed and understood that all present or future ordinances and regulations applicable to water customers and related to water service within the City limits are incorporated by reference as express conditions of this Agreement; and that the Customer expressly agrees to be bound by all such ordinances or regulations of City related to water or sewer service as if Customer were in fact within the City limits and that any violation of any such ordinance or regulation by the Customer, its agents, servants, or employees, shall constitute a breach of this Agreement and be grounds for the immediate cancellation by the City of this Agreement and/or discontinuance of the services furnished hereunder.

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

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

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

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

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

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

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

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

17. If the Customer fails to comply with the terms of this Agreement, the City shall, at its option, either terminate service immediately or properly install, test, and maintain an appropriate backflow prevention device at the service connection. Any expenses associated with the enforcement or termination of this Agreement shall be billed to the Customer.

18. Notwithstanding any other provisions, the City may terminate this Agreement at will for any reason, or no reason, and without penalty by giving at least one hundred eighty (180) days written notice to the Customer. The City and Customer have bargained for this flexibility. The parties understand that it is in City's sole and absolute discretion to terminate this Agreement by giving the requisite notice. The Customer also understands and acknowledges that Customer has no property right in water and sewer service by virtue of this Agreement. All water and sewer service shall cease and be suspended immediately upon termination of the Agreement becoming effective.

19. Customer understands and agrees that the City has entered into this Agreement with the explicit intention of annexing the property served by this Agreement, and would not have agreed to provide temporary water and sewer service in the absence of Customer's agreement that Customer will not contest, oppose or seek to delay said annexation proceedings in any manner. By executing this Agreement, Customer is requesting annexation by the City. The customer has provided the City a letter which is attached hereto and marked as Exhibit "B" requesting annexation.

20. All notices hereunder must be given in writing by certified mail return receipt requested. All notices under this agreement shall be sent as follows:

City of Midland, Texas	<u>Asoke Deysarkar</u>
Jose Ortiz, Director of Engineering Services	<u>PFP Indus Group, LLC</u>
Midland City Hall	<u>14227 Fern Dr.</u>
P.O. Box 1152	<u>Houston, Texas 77079</u>
Midland, Texas 79702	

21. CUSTOMER WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CUSTOMER, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM, CUSTOMER'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND CUSTOMER WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

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22. This Agreement may not be assigned without the written consent of the Midland City Council. The decision on whether or not to approve an assignment shall be in the sole discretion of the Midland City Council.

23. The parties agree that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

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

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

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

ATTEST:

CITY OF MIDLAND, TEXAS

Amy M. Turner, Interim City Secretary

By _____
Courtney Sharp, City Manager

APPROVED AS TO FORM:

CUSTOMER:

PFP Indus Group, LLC

Keith Stretcher, City Attorney

By Asoke K. Deysarkar
Asoke K Deysarkar, Manager/Member

STATE OF TEXAS

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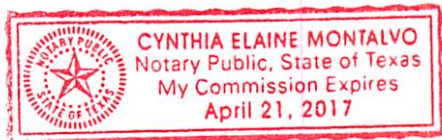
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COUNTY OF MIDLAND

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BEFORE ME, the undersigned authority, on this day personally appeared Asoke K Deysarkar, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as his act and deed on behalf of PFP Indus Group, LLC, for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 22 day of August,
A.D., 2013.



Cynthia Montalvo

Notary Public, in and for
the State of Texas

EXHIBIT "A"

200' 0 200'
SCALE : 1" = 200'



WYNTEX PROPERTIES, LLC
(8.94 AC)
DOC. NO. 2011-6338
O.P.R.M.C.T.

8.960 Acres

20' City of Midland
Waterline Easement

EXISTING 12" WATERLINE

WEST COUNTY ROAD 112

6215 W.C.R. 112

ENG. _____ E.T. _____
SVY. _____ DFT. _____
LCA JOB No. 2012-054



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

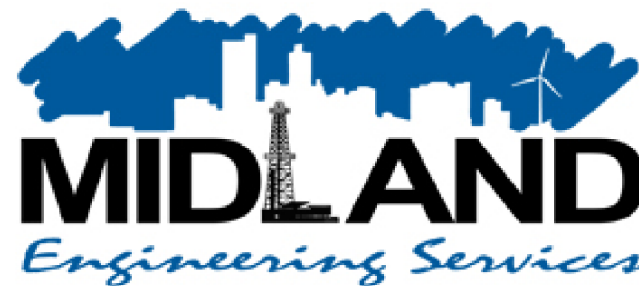
Phone # (432) 332-5058 E-Mail : lca@lcaodessa.com F-001363
521 North Texas, Odessa Tx. 79761
Copyright 2013 LCA



ENGINEERING DIVISION

Temporary Water & Wastewater Agreement

PFP Indus Group LLC



Map by DDB 09/19/2013



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 9/10/2013

TO: City Council / City Manager

FROM: David Beard, City Engineer

SUBJECT: Consider a resolution authorizing the execution of a Temporary Water and Sewer Service Agreement between the City of Midland and PFP Indus Group, LLC (OptiBlend) for services to an approximate 8.47 acre tract of land out of the north half of Section 12, Block 40, T 2 S, T&P RR Co. Survey, Midland County, Texas; said property is outside the City limits; PFP Indus Group, LLC has executed a letter agreeing to annexation if and when the property is annexed; PFP Indus Group, LLC shall be charged a rate for service which is one and one half times the rate charged customers in the City limits; and ordering recordation by the City Secretary. (Midland ETJ)

Purpose:

Consider a resolution authorizing the execution of a Temporary Water and Sewer Service Agreement between the City of Midland and PFP Indus Group, LLC (OptiBlend) for services to an approximate 8.47 acre tract of land out of the north half of Section 12, Block 40, T 2 S, T&P RR Co. Survey, Midland County, Texas; said property is outside the City limits; PFP Indus Group, LLC has executed a letter agreeing to annexation if and when the property is annexed; PFP Indus Group, LLC shall be charged a rate for service which is one and one half times the rate charged customers in the City limits; and ordering recordation by the City Secretary.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The City will receive monthly payment for water services equal to 150% of the cost for water services inside the City Limits. This revenue will be deposited to the Water and Sewer Fund.

Discussion:

PFP Indus Group, LLC is proposing to expand their facilities at their property generally located outside the City Limits, west of S Loop 250 W and between W I-20 and W Industrial Avenue. More specifically, the subject property is located approximately 1230 feet west of Agri Road at 6215 W County Road 112 (a.k.a. Empresa Drive). The purpose to this Temporary Water Service Agreement is to allow the developer to connect to the City of Midland water distribution system adjacent to their site. In addition, the owner has agreed to voluntarily annex at the time the City deems appropriate.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A TEMPORARY WATER AND SEWER SERVICE AGREEMENT BETWEEN THE CITY OF MIDLAND AND PFP INDUS GROUP, LLC FOR SERVICES TO AN APPROXIMATE 8.47-ACRE TRACT OF LAND OUT OF THE NORTH HALF OF SECTION 12, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; SAID PROPERTY IS OUTSIDE THE CITY LIMITS; PFP INDUS GROUP, LLC HAS EXECUTED A LETTER AGREEING TO ANNEXATION IF AND WHEN THE PROPERTY IS ANNEXED; PFP INDUS GROUP, LLC SHALL BE CHARGED A RATE FOR SERVICE WHICH IS ONE AND ONE-HALF TIMES THE RATE CHARGED CUSTOMERS IN THE CITY LIMITS; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, pursuant to Resolution No. 2003-285, the City Council may enter into an agreement to provide water and sewer service outside the City limits when such service will benefit the City of Midland and its economic development opportunities; and

WHEREAS, PFP Indus Group, LLC owns an approximate 8.47-acre tract of land located in the north half of Section 12, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, such land being situated outside the corporate limits of the City; and

WHEREAS, the City Council finds it to be in the public interest and of an economic benefit to the City of Midland to authorize the execution of a temporary water and sewer service agreement;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, Texas, a temporary water and sewer service agreement with PFP Indus Group, LLC, the property owner of an approximate 8.47-acre tract of land located in the north half of Section 12, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, for temporary water and sewer service outside the City limits, said agreement being attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION TWO. That the City Secretary is hereby authorized and directed to file a certified copy of this Resolution in the Deed Records of Midland County, Texas.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Engineering Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

WITNESSETH

2. Customer shall construct and provide at its sole expense, according to City specifications, all necessary extensions of lines, fittings and appurtenances thereto and thereafter be responsible for the maintenance thereof. The City agrees to allow the water and sewer lines to be

temporarily attached or connected to the City's water and sewer lines, upon certification by the City's Director of Utilities that the lines constructed by Customer comply with City specifications.

3. Customer agrees that all lines, fittings and appurtenances which are to be constructed by the Customer to the property described in Paragraph One of this Contract, must comply with the regulations contained in Title IV, "Building Regulations", Chapter 3, "Plumbing Code", of the City Code of Midland, Texas.

4. In consideration of City's allowing Customer to temporarily connect or attach its water or sewer lines to the City's water or sewer lines, Customer agrees to pay for any services used promptly and when due, at the rates established by ordinance from time to time by the City Council for customers outside the City, which rate is presently one and one-half (1-1/2) times the rates established for customers inside the City. The City shall have the right to terminate service and this Agreement for nonpayment by Customer in accordance with standard City procedures as well as reasons stated in this Agreement. The City shall provide notice of rate increases as required by law.

5. Customer further agrees to pay the current rates established in the City of Midland Water/Wastewater/Fire Hydrant Tap Project.

6. Customer agrees to pay the City an inspection fee of THIRTY AND NO/100 DOLLARS (\$30.00) per connection to the water and sewer lines installed on or to serve the property described in Paragraph One, as the cost of reimbursing the City for inspecting and approving the Customer's water and sewer lines and appurtenances prior to acceptance by the City. This fee shall be paid before service is provided to the property.

7. It is expressly understood and agreed that any extension of water or sewer lines from Customer's property described above so as to service any other persons or property is expressly prohibited unless approved in writing by the City.

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(iv) No pipe or pipe fitting which contains more than 8.0% lead may be used for the installation or repair of plumbing at any connection which provides water for human use.

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11. It is expressly agreed and understood that all present or future ordinances and regulations applicable to water customers and related to water service within the City limits are incorporated by reference as express conditions of this Agreement; and that the Customer expressly agrees to be bound by all such ordinances or regulations of City related to water or sewer service as if Customer were in fact within the corporate limits and that any violation of any such ordinance or regulation by the Customer, its agents, servants, or employees, shall constitute a breach of this Agreement and be grounds for the immediate cancellation by the City of this Agreement and/or discontinuance of the services furnished hereunder.

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

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

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

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

17. If the Customer fails to comply with the terms of this Agreement, the City shall, at its option, either terminate service immediately or properly install, test, and maintain an appropriate backflow prevention device at the service connection. Any expenses associated with the enforcement or termination of this Agreement shall be billed to the Customer.

18. Notwithstanding any other provisions, the City may terminate this Agreement at will for any reason, or no reason, and without penalty by giving at least one hundred eighty (180) days written notice to the Customer. The City and Customer have bargained for this flexibility. The parties understand that it is in City's sole and absolute discretion to terminate this Agreement by giving the requisite notice. The Customer also understands and acknowledges that Customer has no property right in water and sewer service by virtue of this Agreement. All water and sewer service shall cease and be suspended immediately upon termination of the Agreement becoming effective.

19. Customer understands and agrees that the City has entered into this Agreement with the explicit intention of annexing the property served by this Agreement, and would not have agreed to provide temporary water and sewer service in the absence of Customer's agreement that Customer will not contest, oppose or seek to delay said annexation proceedings in any manner. By executing this Agreement, Customer is requesting annexation by the City. The customer has provided the City a letter which is attached hereto and marked as Exhibit "B" requesting annexation.

20. All notices hereunder must be given in writing by certified mail return receipt requested. All notices under this agreement shall be sent as follows:

To the City of Midland, Texas:

Jose Ortiz
Engineering Services Director
P.O. Box 1152
Midland, Texas 79702

To Customer:

Asoke Deysarkar
PFP Indus Group, LLC
14227 Fern Dr.
Houston, Texas 77079

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

CUSTOMER SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS

OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH CUSTOMER OR CUSTOMER'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND CUSTOMER WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

22. This Agreement may not be assigned without the written consent of the Midland City Council. The decision on whether or not to approve an assignment shall be in the sole discretion of the Midland City Council.

23. The parties agree that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

24. It is expressly understood and agreed that Customer shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that Customer shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Customer, its officers, agents, employees, contractors and subcontractors; and that nothing

herein shall be construed as creating a partnership or joint enterprise between City and Customer. No person performing any of the work and services described hereunder by Customer shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this agreement is intended or shall be construed as creating a “Community of Pecuniary Interest” or “An Equal Right of Control” which would give rise to vicarious liability. Customer shall be an independent contractor under this agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. The City does not have the power to direct the order in which the work is done. The City shall not have the right to control the means, methods or details of the Customer’s work. Customer shall assume exclusive responsibility for the work. Customer is entirely free to do the work in its own way.

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

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

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

CITY OF MIDLAND, TEXAS

By _____
Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Engineering Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CUSTOMER:
PFP INDUS GROUP, LLC

By _____

Title _____

STATE OF TEXAS

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§

COUNTY OF MIDLAND

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BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as his act and deed on behalf of PFP INDUS GROUP, LLC, for the purposes and consideration therein expressed.

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

Notary Public, in and for
the State of Texas



ENGINEERING DIVISION

Temporary Water & Wastewater Agreement

PFP Indus Group LLC



Map by DDB 09/19/2013

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

Attn: Jose Ortiz, Engineering Director

Re: Water & Sewer Service Agreement

Dear Mr. Ortiz,

We are aware and understand that it is the City's policy to NOT provide water and sewer service outside of the City Limits, such as at our property location, but that each request for such service is considered on a case-by-case basis. We also understand that the referenced agreement must be approved by the City Council at a regular meeting and that by signing the agreement, we verify that we have no opposition to being annexed into the City at such time as the City wishes to do so. Please proceed with placement of the agreement on the next City Council meeting.

Very truly yours,

A.V. Deysarkar

Signature of Owner of Property

Address of site or legal description of property:
6215 W. County Road 112, Midland, Texas, 79706
8.470 acres, N/2, Sec: 12, Blk: 40, T2S, Midland
County, Texas

Contact information for land owner:

Asoke Deysarkar

PFP Indus Group, LLC

14227 Fern Dr.

Houston, Texas 77079

Estimated Monthly Water Usage:

16,200 Gallons

TEMPORARY WATER AND SEWER SERVICE AGREEMENT

STATE OF TEXAS

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COUNTY OF MIDLAND

§

This Agreement, effective this ____ day of _____, 20__, by and between the City of Midland, Texas ("City"), a home rule municipal corporation, acting by and through its duly authorized City Manager and City Secretary, and PFP Indus Group, LLC ("Customer");

WITNESSETH

WHEREAS, Customer owns a tract of land, which is described herein below, such land being situated outside the corporate limits of the City; and

WHEREAS, Customer desires to use water and sewer facilities owned and operated by the City to serve the property; and

WHEREAS, the City Council has determined that the temporary provision of water and sewer service will be of an economic benefit to the City;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the rates, fees and deposits paid and to be paid by Customer to City, and the mutual covenants herein, the parties hereto agree as follows:

1. City agrees to furnish temporary water and sewer service for use by Customer on the property described as 8.470 acres, N/2, Sec: 12, Blk: 40, T2S, Midland County, Texas, and as shown on the diagram attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

2. Customer shall construct and provide at its sole expense, according to City specifications, all necessary extensions of lines, fittings and appurtenances thereto and thereafter be responsible for the maintenance thereof. The City agrees to allow the water and sewer lines to be temporarily attached or connected to the City's water and sewer lines, upon certification by the City's Director of Utilities that the lines constructed by Customer comply with City specifications.

3. Customer agrees that all lines, fittings and appurtenances which are to be constructed by the Customer to the property described in Paragraph One of this Contract, must comply with the regulations contained in Title IV, "Building Regulations", Chapter 3, "Plumbing Code", of the City Code of Midland, Texas.

4. In consideration of City's allowing Customer to temporarily connect or attach its water or sewer lines to the City's water or sewer lines, Customer agrees to pay for any services used promptly and when due, at the rates established by ordinance from time to time by the City Council for customers outside the City, which rate is presently one and one-half (1-1/2) times the rates established for customers inside the City. The City shall have the right to terminate service and this Agreement for nonpayment by Customer in accordance with standard City procedures as well as reasons stated in this Agreement. The City shall provide notice of rate increases as required by law.

5. Customer further agrees to pay the regular rates established in the City of Midland Water/Wastewater/Fire Hydrant Tap Project.

6. Customer agrees to pay the City an inspection fee of THIRTY AND NO/100 DOLLARS (\$30.00) for the water and sewer lines installed on or to serve the property described in Paragraph One, as the cost of reimbursing the City for inspecting and approving the Customer's water and sewer lines and appurtenances prior to acceptance by the City. This fee shall be paid before service is provided to the property.

7. It is expressly understood and agreed that any extension of water or sewer lines from Customer's property described above so as to service any other persons or property is expressly prohibited unless approved in writing by the City.

8. It is expressly understood and agreed that the following undesirable plumbing practices are prohibited by State regulations:

(i) No direct connection between the public drinking water supply and a potential source of contamination is permitted. Potential sources of contamination shall be isolated from the public water system by an air-gap or an appropriate backflow prevention device.

(ii) No cross-connection between the public drinking water supply and a private water system is permitted. These potential threats to the public drinking water supply shall be eliminated at the service connection by the installation of an air-gap or a reduced pressure-zone backflow prevention device.

(iii) No connection which allows water to be returned to the public drinking water supply is permitted.

(iv) No pipe or pipe fitting which contains more than 8.0% lead may be used for the installation or repair of plumbing at any connection which provides water for human use.

(v) No solder or flux which contains more than 0.2% lead can be used for the installation or repair of plumbing at any connection which provides water for human use.

9. The Customer shall allow the property to be inspected for possible cross-connections and other undesirable plumbing practices. These inspections shall be conducted by City or its designated agent prior to initiating service and periodically thereafter upon prior written notice and at City's sole expense. The inspections shall be conducted during the City's normal business hours. The City shall notify the Customer in writing of any cross-connection or other undesirable plumbing practice which has been identified during the initial inspection or the periodic reinspection. The Customer shall immediately correct any undesirable plumbing practice on the property. The Customer shall, at its expense, properly install, test and maintain any backflow prevention device required by the City.

10. Customer agrees that it shall not allow any unauthorized connection to any sewer line that is constructed pursuant to the provisions of this Agreement, or provide water service to any person, corporation, partnership or other entity on the above described property without the written permission of the City Manager. Customer also agrees that violation of the terms of this paragraph, or violation of any applicable federal, state or local rule or regulation, constitute grounds for immediate termination of this Agreement and immediate cessation of water and/or sewer services.

11. It is expressly agreed and understood that all present or future ordinances and regulations applicable to water customers and related to water service within the City limits are incorporated by reference as express conditions of this Agreement; and that the Customer expressly agrees to be bound by all such ordinances or regulations of City related to water or sewer service as if Customer were in fact within the City limits and that any violation of any such ordinance or regulation by the Customer, its agents, servants, or employees, shall constitute a breach of this Agreement and be grounds for the immediate cancellation by the City of this Agreement and/or discontinuance of the services furnished hereunder.

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

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

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

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

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

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

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

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

17. If the Customer fails to comply with the terms of this Agreement, the City shall, at its option, either terminate service immediately or properly install, test, and maintain an appropriate backflow prevention device at the service connection. Any expenses associated with the enforcement or termination of this Agreement shall be billed to the Customer.

18. Notwithstanding any other provisions, the City may terminate this Agreement at will for any reason, or no reason, and without penalty by giving at least one hundred eighty (180) days written notice to the Customer. The City and Customer have bargained for this flexibility. The parties understand that it is in City's sole and absolute discretion to terminate this Agreement by giving the requisite notice. The Customer also understands and acknowledges that Customer has no property right in water and sewer service by virtue of this Agreement. All water and sewer service shall cease and be suspended immediately upon termination of the Agreement becoming effective.

19. Customer understands and agrees that the City has entered into this Agreement with the explicit intention of annexing the property served by this Agreement, and would not have agreed to provide temporary water and sewer service in the absence of Customer's agreement that Customer will not contest, oppose or seek to delay said annexation proceedings in any manner. By executing this Agreement, Customer is requesting annexation by the City. The customer has provided the City a letter which is attached hereto and marked as Exhibit "B" requesting annexation.

20. All notices hereunder must be given in writing by certified mail return receipt requested. All notices under this agreement shall be sent as follows:

City of Midland, Texas	<u>Asoke Deysarkar</u>
Jose Ortiz, Director of Engineering Services	<u>PFP Indus Group, LLC</u>
Midland City Hall	<u>14227 Fern Dr.</u>
P.O. Box 1152	<u>Houston, Texas 77079</u>
Midland, Texas 79702	

21. **CUSTOMER WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CUSTOMER, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM, CUSTOMER'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND CUSTOMER WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.**

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

22. This Agreement may not be assigned without the written consent of the Midland City Council. The decision on whether or not to approve an assignment shall be in the sole discretion of the Midland City Council.

23. The parties agree that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

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

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

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

ATTEST:

CITY OF MIDLAND, TEXAS

Amy M. Turner, Interim City Secretary

By _____
Courtney Sharp, City Manager

APPROVED AS TO FORM:

CUSTOMER:
PFP Indus Group, LLC

Keith Stretcher, City Attorney

By Asoke K. Deysarkar
Asoke K Deysarkar, Manager/Member

STATE OF TEXAS

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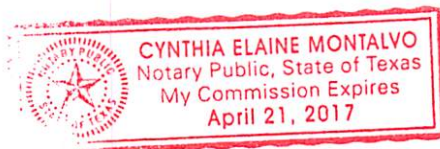
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COUNTY OF MIDLAND

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BEFORE ME, the undersigned authority, on this day personally appeared Asoke K Deysarkar, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as his act and deed on behalf of PFP Indus Group, LLC, for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 22 day of August,
A.D., 2013.



Cynthia E Montalvo
Notary Public, in and for

the State of Texas

EXHIBIT "A"

200' 0 200'
SCALE : 1" = 200'



8.960 Acres

EXISTING 12" WATERLINE

WEST COUNTY ROAD 112

6215 W.C.R. 112
8.470 Acres



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

Phone # (432) 332-5058 E-Mail : lca@lcaodessa.com F-001363
521 North Texas, Odessa Tx. 79761

Copyright 2013 LCA

ENG. _____ E.T. _____
SVY. _____ DFT. _____
LCA JOB No. 2012-054



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Price Robinson, Police Chief

SUBJECT: Consider a Resolution to Accept and Appropriate Grant Funding Awarded Through the FY2013 Justice Assistance Grant Program

Purpose:

Consider a Resolution to Accept and Appropriate Grant Funding Awarded Through the FY2013 Justice Assistance Grant Program

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

That the sum of \$29,554 is hereby appropriated from the Department of Justice Grant Fund (074) Unappropriated Fund Balance (5650) to the following projects in the following amounts:

JAG 13 City Portion (7122) \$17,732

JAG 13 County Portion (7123) \$11,822

Discussion:

The City of Midland Police Department has received notice that we, in conjunction with Midland County, have been awarded a federal grant in the amount of \$29,554.00 through the 2013 Justice Assistance Grant. The Attorney General of Texas has determined that Texas counties are responsible for more than 50% of the costs incurred for the prosecution and incarceration of Part I violent crimes. The Office of the Attorney General has certified this fact to the Bureau of Justice Assistance. The effect of the Attorney General's certification is that cities and counties have to file a joint application with the Bureau of Justice Assistance, with the cities and counties agreeing to the funding allocations among them. The end result is that the City of Midland will receive \$17,732.00 (60%) and Midland County will receive \$11,822.00 (40%).

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE CITY OF MIDLAND POLICE DEPARTMENT IN CONJUNCTION WITH THE MIDLAND COUNTY SHERIFF'S DEPARTMENT TO ACCEPT THE FISCAL YEAR 2013 JUSTICE ASSISTANCE GRANT FUNDS TOTALING \$29,554.00; THE CITY OF MIDLAND WILL RECEIVE \$17,732.00 (60%) AND MIDLAND COUNTY WILL RECEIVE \$11,822.00 (40%) OF THE GRANT FUNDS; AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS; AND APPROPRIATING FUNDS

WHEREAS, the City of Midland Police Department, in conjunction with the Midland County Sheriff's Department, has received notice it had been awarded \$29,554.00 through the FY2013 Justice Assistance Grant Program, with said grant funds to be used to purchase law enforcement equipment, technology and other material directly related to basic law enforcement; and

WHEREAS, the City of Midland and Midland County were required to allocate the percentage of funds to be received by each law enforcement entity, and said entities filed a joint application with the Bureau of Justice Assistance to receive said grant funds; and

WHEREAS, the \$29,554.00 in grant funds will be divided so that the City of Midland will receive \$17,732.00 (60%) and Midland County will receive \$11,822.00 (40%) of the grant funds; and

WHEREAS, the grant funds will be used by the Midland Police Department to purchase equipment, technology, and other material directly related to basic law enforcement; and

WHEREAS, the Council finds it to be in the public interest to accept the grant award and to appropriate the grant funds;

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

SECTION ONE. That the City of Midland hereby accepts the grant award of \$29,554.00, which will be divided so that the City of Midland will receive \$17,732.00 (60%) and Midland County will receive \$11,822.00 (40%) of the grant funds as made by the

FY2013 Justice Assistance Grant Program. Said grant funds shall be used by the Midland Police Department to purchase equipment, technology and other material directly related to basic law enforcement.

SECTION TWO. That the City Manager, or his designee, is hereby authorized and directed to evidence the City of Midland's acceptance by executing all necessary documents in order to accept the grant award.

SECTION THREE. That the sum of \$29,554 is hereby appropriated from the Department of Justice Grant Fund (074) Unappropriated Fund Balance (5650) to the following projects in the following amounts:

JAG 13 City Portion (7122)
..... \$17,732.00

JAG 13 County Portion (7123)
..... \$11,822.00

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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Price Robinson, Police Chief

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Price Robinson, Police Chief

SUBJECT: Consider a Resolution to Accept Funding Awarded Through the FY2014 Victim Coordinator Liaison Grant Program

Purpose:

Consider a Resolution to Accept Funding Awarded Through the FY2014 Victim Coordinator Liaison Grant Program

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

That the grant awarded in the sum of \$42,000.00 by the FY2014 Victim Coordinator Liaison Grant to the Midland Police Department is hereby accepted and deposited into the General Fund (001)

Discussion:

The Texas Crime Victims' Grant Program was created by Texas Code of Criminal Procedure, Articles 56.54 and 56.541. The Texas Code of Criminal Procedure, Article 56.33, designates the Office of the Attorney General as the administering agency. The source of the funds is a biennial appropriation by the Texas Legislature from a fund collected from court costs and fees. These funds are constitutionally dedicated by Article I, Section 31, of the Texas Constitution. In the latter part of 1989, State law mandated that all local law enforcement agencies designate an individual to serve as a representative to consult with the Texas Attorney General, to ensure that victims, guardians of victims, or relatives of deceased victims were afforded the rights granted to them.

RESOLUTION NO. _____

**RESOLUTION ACCEPTING THE FISCAL YEAR 2014
VICTIM COORDINATOR AND LIAISON GRANT FROM
THE TEXAS ATTORNEY GENERAL; THIS GRANT IS
TO BE USED BY THE MIDLAND POLICE
DEPARTMENT TO MAINTAIN A VICTIM ASSISTANCE
LIAISON POSITION; AUTHORIZING THE EXECUTION
OF ACCEPTANCE DOCUMENTS; AND DEPOSITING
THE FUNDS INTO THE GENERAL FUND**

WHEREAS, the Midland Police Department has received notice of grants awarded through the FY2014 Victim Coordinator and Liaison Grant Program, in the amount of \$42,000.00, which are administered by the Office of the Texas Attorney General; and

WHEREAS, the Midland Police Department will use these funds to maintain a victim assistance liaison; and

WHEREAS, the Council finds it to be in the public interest to accept the grant award; and

WHEREAS, the City of Midland will not use the existence of the Office of the Texas Attorney General grant awards to offset or decrease total salaries, expenses and allowances for the City of Midland Police Department at or after the time the grants are awarded; and

WHEREAS, in the event of loss or misuse of Office of the Texas Attorney General funds, the City assures that the funds will be returned to the Office of the Texas Attorney General in full;

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

SECTION ONE. That the City of Midland, acting through its Mayor and City Council, hereby accepts the grant awards of \$42,000.00 for the FY2014 Victim Coordinator and Liaison Grant Program, with said funds to be used by the Midland Police Department to maintain a victim assistance liaison.

SECTION TWO. That the City Manager, or his designee, is hereby authorized and directed to evidence the City of Midland's acceptance of said grants by executing all necessary documents in order to accept the grants.

SECTION THREE. That the grant awarded in the sum of \$42,000 by the FY2014 Victim Coordinator Liaison Grant to the Midland Police Department is hereby accepted and deposited into the General Fund (001).

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Price Robinson, Police Chief

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Price Robinson, Police Chief

SUBJECT: Consider a Resolution to Accept and Appropriate Grant Funding Awarded by TXDOT to the Midland Police Department to Conduct a FY2014 Comprehensive STEP Enforcement Project

Purpose:

Consider a Resolution to Accept and Appropriate Grant Funding Awarded by TXDOT to the Midland Police Department to Conduct a FY2014 Comprehensive STEP Enforcement Project

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

That the amount in the Fiscal Year 2013–2014 General Fund (001) NonDepartmental (150) Interfund Transfer (0199) General Construction Fund (6299) budget account is hereby reduced by \$37,850 and the General Fund (001) Police (110) Special Operations - STEP (0109) Overtime (1080) budget account is increased by \$37,850

Discussion:

The Texas Department of Transportation has awarded \$34,100.00 in grant funding to the Midland Police Department to conduct a Comprehensive STEP program. The grant requires a \$3,750.00 cash match. The project will begin October 1, 2013, and end September 30, 2014. The Comprehensive STEP has three components—intersection traffic control (ITC) enforcement, Speed enforcement, and DWI enforcement. These TXDOT funds will be used to pay overtime to the officers working on this project.

RESOLUTION NO. _____

RESOLUTION ACCEPTING A GRANT IN THE AMOUNT OF \$34,100.00 FROM THE TEXAS DEPARTMENT OF TRANSPORTATION IN ORDER TO CONDUCT A FISCAL YEAR 2013-2014 COMPREHENSIVE SPECIAL TRAFFIC ENFORCEMENT PROGRAM FOR INTERSECTION TRAFFIC CONTROL ENFORCEMENT, SPEED ENFORCEMENT, AND DRIVING WHILE INTOXICATED ENFORCEMENT; SAID GRANT AWARD REQUIRES A CITY CASH MATCH IN THE AMOUNT OF \$3,750.00; PROVIDING THAT THE GRANT FUNDS SHALL BE USED TO PAY OVERTIME TO POLICE OFFICERS WORKING ON SAID PROGRAM; AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENT; AND APPROPRIATING GRANT FUNDS

WHEREAS, the Midland Police Department has received notice of a grant award of \$34,100.00 from the Texas Department of Transportation to be used to conduct a Fiscal Year 2013-2014 Comprehensive Special Traffic Enforcement Program; and

WHEREAS, the grant award requires a cash match from the City of Midland in the amount of \$3,750.00; and

WHEREAS, the Midland Police Department will use the grant funds to pay its police officers overtime for working extra intersection traffic control enforcement, speed enforcement and DWI enforcement duty from October 1, 2013 until September 30, 2014; and

WHEREAS, the Council finds it to be in the public interest to accept the grant award and to appropriate the grant funds;

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

SECTION ONE. That the City of Midland, acting through its Mayor and City Council, hereby accepts the grant award of \$34,100.00 from the Texas Department of Transportation. Said grant funds shall be used by the Midland Police Department to conduct a Fiscal Year 2013-2014 Comprehensive Special Traffic Enforcement Program.

SECTION TWO. That the Mayor, City Manager, Director of Finance and Chief of Police of the City of Midland are hereby authorized and directed to evidence the City of

Midland's acceptance by executing all necessary documents in order to accept the grant award.

SECTION THREE. That the amount in the Fiscal Year 2013-2014 General Fund (001) NonDepartmental (150) Interfund Transfer (0199) General Construction Fund (6299) budget account is hereby reduced by \$37,850 and the General Fund (001) Police (110) Special Operations - STEP (0109) Overtime (1080) budget account is increased by \$37,850.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Price Robinson, Police Chief

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Price Robinson, Police Chief

SUBJECT: Consider a Resolution approving the budget of the Midland Emergency Communication District for the Fiscal Year ending September 30, 2014

Purpose:

Consider a Resolution approving the budget of the Midland Emergency Communication District for the Fiscal Year ending September 30, 2014.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No fiscal impact to the City of Midland

Discussion:

This approval is requested as directed by the Health and Safety Code 772.309 which states that 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.

RESOLUTION NO. _____

**RESOLUTION APPROVING THE BUDGET OF THE
MIDLAND EMERGENCY COMMUNICATION
DISTRICT FOR THE FISCAL YEAR ENDING
SEPTEMBER 30, 2014**

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, 2014, 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, 2014, 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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Price Robinson, Police Chief

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



BUDGET OVERVIEW FISCAL YEAR 2013-2014

Midland Emergency Communication District (MECD) proposes our 2013-2014 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 decreased \$135,540, while Special Projects Expenses increased \$199,500. Details are provided below for your information.

Operating Expenses:

Personnel Expenses reflect the largest decrease. This number is based on losing a temporary position created last budget year to prepare for changes in Director.

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

Special Projects:

A \$199,500 increase is reflected in this line item based on completion of one major project. The following special project is scheduled for this budget year.

- Upgrade Computer Equipment at PSAP to move to Windows 7 platform

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.

Vonda Gafford
Director of Communications

ENHANCED 9-1-1 SERVICE FEE FOR FISCAL YEAR 2013-2014 WILL REMAIN THE SAME:
Residential - \$0.55; Business - \$1.15; Business Trunk - \$1.70

**MECD FISCAL YEAR 2013-2014
PROPOSED SUMMARY OF
REVENUES AND EXPENDITURES**

	12 MONTH PROPOSED BUDGET <u>2012-2013</u>	12 MONTH PROPOSED BUDGET <u>2013-2014</u>
<u>REVENUES:</u>		
AT&T	360,000	342,000
Interest	14,400	13,200
Local Exchange Carriers	171,600	162,000
Texas Comptroller Wireless Fees	648,000	696,000
VOIP	<u>21,600</u>	<u>24,000</u>
TOTAL REVENUE	1,215,600	1,237,200
<u>OPERATING EXPENDITURES:</u>		
Personnel	470,005	335,670
Supplies	33,330	29,930
Service and Rentals	165,150	163,430
Office	39,760	42,100
Travel/Auto/Memberships	75,270	66,535
Communications	254,240	263,110
Insurance	5,240	6,180
Contingency	5,000	5,000
Furniture & Equipment	<u>38,500</u>	<u>37,000</u>
TOTAL OPERATING EXPENSES	1,086,495	948,955
<u>SPECIAL PROJECTS:</u>	<u>80,500</u>	<u>280,000</u>
<u>NET INCOME (LOSS) FROM OPERATIONS:</u>	48,605	8,245
<u>TRANSFERS TO APPROPRIATED FUND BALANCES:</u>	<u>-929,700</u>	<u>-1,191,000</u>
<u>NET INCREASE/DECREASE IN UNAPPROPRIATED BAL:</u>	<u>-881,095</u>	<u>1,182,755</u>
<u>UNAPPROPRIATED FUND BAL BEGINNING OF YEAR:</u>	<u>2,701,020</u>	<u>2,774,150</u>
<u>EXPECTED UNAPPROPRIATED FUND BALANCE END OF YEAR:</u>	1,819,925	1,591,395

MECD 2013-2014
BUDGET SUMMARY

	12 MONTH PROPOSED BUDGET <u>2012-2013</u>	12 MONTH PROPOSED BUDGET <u>2013-2014</u>
PERSONNEL	470,005	335,670
SUPPLIES	33,330	29,930
SERVICE AND RENTALS	165,150	163,430
OFFICE	39,760	42,100
TRAVEL/AUTO/MEMBERSHIPS	75,270	66,535
COMMUNICATIONS	254,240	263,110
INSURANCE	5,240	6,180
CONTINGENCY	5,000	5,000
FURNITURE & EQUIPMENT	<u>38,500</u>	<u>37,000</u>
SUB-TOTAL	1,086,495	948,955
SPECIAL PROJECTS	<u>80,500</u>	<u>280,000</u>
TOTAL EXPENSES	1,166,995	1,228,955

MECD BUDGET ACCOUNTS

SPECIAL PROJECTS

Upgrade Computer Equipment at PSAPs	270,000
Security for MECD Office	10,000

TOTAL SPECIAL PROJECTS	280,000
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APPROPRIATED FUNDS

Wireless Charges		141,000	141,000
AT&T	9,000 Yr		
Sprint	36,000 Yr		
Alltel	96,000 Yr		
IP Network Upgrade from CAMA Trunks		350,000	500,000
6 Months Operating Funds		438,700	550,000
TOTAL APPROPRIATED FUNDS		929,700	1,191,000



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Price Robinson, Police Chief

SUBJECT: Approve a resolution to accept a modification to the FY2013 grant award in the amount of \$10,304 from the Southwest Border High Intensity Drug Trafficking Areas (HIDTA) Program and appropriate funds

Purpose:

Approve a resolution to accept a modification to the FY2013 grant award in the amount of \$10,304 from the Southwest Border High Intensity Drug Trafficking Areas (HIDTA) Program and appropriate funds

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No fiscal impact on the City of Midland

That the modification to the Fiscal Year 2013 H.I.D.T.A. grant in the amount of \$10,304 is hereby accepted and directed to be deposited into the General Fund (001) of the City, and;
That the sum of \$10,304 is hereby appropriated from to the General Fund (001) Unappropriated Fund Balance (5650) to the FY'2013 H.I.D.T.A. Grant Project (7107)

Discussion:

The purpose of the High Intensity Drug Trafficking Area (HIDTA) program, as authorized by the Anti-Drug Act of 1988, is to enhance and coordinate drug control efforts among federal, state, and local law enforcement agencies. The program provides agencies with resources in the way of technology, equipment, and funding in order to better combat drug trafficking. The Midland Police Department has been part of the West Texas Region of the Southwest Border HIDTA since August 2008.

RESOLUTION NO.

RESOLUTION ACCEPTING A MODIFICATION TO THE FISCAL YEAR 2013 GRANT AWARD FROM THE SOUTHWEST BORDER HIGH INTENSITY DRUG TRAFFICKING AREAS PROGRAM IN THE AMOUNT OF \$10,304.00; THESE FUNDS WILL BE DIRECTED TO THE FISCAL YEAR 2013 HIGH INTENSITY DRUG TRAFFICKING AREAS GRANT PROJECT 7107; AND APPROPRIATING FUNDS

WHEREAS, the City of Midland, Texas, has received a modification to the Fiscal Year 2013 grant award from the Southwest Border High Intensity Drug Trafficking Areas (HIDTA) program to enhance and coordinate drug control efforts among federal, state, and local law enforcement agencies; and

WHEREAS, the Southwest Border HIDTA program provides agencies with resources in the way of technology, equipment, and funding in order to better combat drug trafficking; and

WHEREAS, the modification to the Fiscal Year 2013 grant award in the amount of \$10,304.00 from the Southwest Border HIDTA program will be directed to the Fiscal Year 2013 HIDTA Grant Project 7107; and

WHEREAS, the City Council finds it to be in the public interest to accept said grant award;

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

SECTION ONE. That the City of Midland, Texas, acting through its Mayor and City Council, hereby accepts the modification to the Fiscal Year 2013 Southwest Border HIDTA program grant award in the amount of \$10,304.00 to be used for the purpose of enhancing and coordinating drug control efforts among federal, state, and local law enforcement agencies to better combat drug trafficking.

SECTION TWO. That the Mayor, Director of Finance and Chief of Police of the City of Midland, Texas, are hereby authorized and directed to evidence the City of Midland's acceptance by executing all necessary documents in order to accept said grant funds.

SECTION THREE. That the modification to the Fiscal Year 2013 H.I.D.T.A. grant in the amount of \$10,304 is hereby accepted and directed to be deposited into the General Fund (001) of the City, and; that the sum of \$10,304 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the FY'2013 H.I.D.T.A. Grant Project (7107).

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Price Robinson, Police Chief

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Price Robinson, Police Chief

SUBJECT: Consider a resolution accepting a donation of \$10,000 from the Westwood Trust - Yarborough Foundation

Purpose:

Consider a resolution accepting a donation of \$10,000 from the Westwood Trust - Yarborough Foundation

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

City of Midland Police Department will receive \$10,000.

That the sum of \$10,000 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the General Construction Fund (005) Police (110) Bulletproof Vest Project (8312)

Discussion:

The City of Midland Police Department has received notice that we have been awarded \$10,000 from the Westwood Trust - Yarborough Foundation. The funds will be deposited in the Invest-in-a-Vest project to purchase bulletproof vests for the police officers.

RESOLUTION NO. _____

**RESOLUTION ACCEPTING A DONATION OF
\$10,000.00 FROM THE WESTWOOD TRUST-
YARBOROUGH FOUNDATION; THE DONATED
FUNDS WILL BE DEPOSITED IN THE INVEST-IN-A-
VEST PROJECT TO PURCHASE BULLET PROOF VEST
FOR POLICE OFFICERS; AND APPROPRIATING SAID
FUNDS**

WHEREAS, the Council finds it to be in the public interest to accept a donation of
\$10,000.00 from the Westwood Trust - Yarborough Foundation; and

WHEREAS, said funds will be deposited in the Invest-in-a-Vest project to purchase
bulletproof vests for police officers; and

WHEREAS, the Council finds it to be in the public interest to appropriate said funds;

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

THAT the sum of \$10,000 is hereby appropriated from the General Fund (001)
Unappropriated Fund Balance (5650) to the General Construction Fund (005) Police (110)
Bulletproof Vest Project (8312).

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Price Robinson, Police Chief

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Holly McGrath-Rosas, Assistant Director of Utilities

SUBJECT: Consider a Resolution Approving a One Year Extension of the Contract with Sprayberry CGC, Inc. at the Spraberry Effluent Farm

Purpose:

Consider a resolution approving a one year extension of the contract with Sprayberry CGC, Inc. at the Spraberry Effluent Farm.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No additional fiscal impact.

Discussion:

The lease on the majority of the Spraberry Effluent Farm is with Sprayberry CGC, Inc.. This contract is set to expire on December 31, 2013. Our permit to operate these farms, along with the Water Pollution Control Plant, is currently under review by the TCEQ. It is not anticipated that the City will receive the final permit before December 31, 2013. Because we do not know what terms will be included in the new permit, it is in the best interest of the City to extend this contract, under the existing terms, until December 31, 2014. This allows any changes in the terms of our permit to be incorporated into the contract as it is bid and awarded.

It is therefore recommended that this lease be extended until that time.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
1-YEAR EFFLUENT FARM LEASE RENEWAL
AGREEMENT BETWEEN THE CITY OF MIDLAND,
TEXAS, AND SPRABERRY CGC, INCORPORATED,
FOR OPERATION OF THE SPRABERRY EFFLUENT
FARM**

WHEREAS, the City Council by Resolution No. 2001-377, passed on December 11, 2001, authorized the execution of a Lease Agreement with Spraberry CGC, Inc., for operation of the Spraberry Effluent Farm; and

WHEREAS, said Lease Agreement, as previously amended, will expire on December 31, 2013; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a 1-year renewal of said agreement with Spraberry CGC, Inc., for operation of the Spraberry Effluent Farm;

**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, a 1-year Effluent Farm Operations Renewal Agreement with Spraberry CGC, Inc., said agreement being attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Holly McGrath Rosas, Interim Director of Utilities

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

STATE OF TEXAS

§

§

COUNTY OF MIDLAND

§

SPRABERRY FARM RENEWAL AGREEMENT

This Agreement is effective this 25th day of September, 2013, by and between the City of Midland, Texas, hereinafter referred to as “City”, and Spraberry CGC, Incorporated, hereinafter referred to as “Operator”;

W I T N E S S E T H:

WHEREAS, City owns certain land as hereinafter described, which is used in the disposal of effluent waste water through farming programs, and said City is desirous of leasing to Operator such lands for such farming operations; and

WHEREAS, Operator will engage in farming operations on such land and desires to Agreement said land for such farming purposes and assist the City in the disposal of effluent waste water through farming programs;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE RIGHTS, covenants and agreements herein contained, City does hereby grant, devise and let to Operator, and Operator does hereby hire, take and lease from City the following premises, upon the following terms and conditions, to wit:

1. City does grant, demise and lease unto Operator Sections 2, 3, 4, 9, 10 and 11, Block 37, TWP-3-S, T&P Ry. Co. Survey, Midland County, Texas, hereinafter referred to as the “Site”, for farming operations as herein described.

2. The term of this Agreement shall be from January 1, 2014, through December 31, 2014. The City, in its sole discretion, may agree to extend the term of the Agreement for an additional five (5) years.

3. Operator, in consideration of the use of the Site and the rights granted herein, does covenant and agree to pay the City the lump sum of \$76,600.00, in equal quarterly payments on March 31, 2014, June 30, 2014, September 30, 2014, and December 31, 2014. The payment due hereunder shall be paid in person to the City’s Director of Utilities or mailed to City’s Director of Utilities at P.O. Box 1152, Midland, Texas 79702.

4. City shall furnish, operate and maintain thirteen (13) center-pivot irrigation systems for use in such farming operations. The City shall maintain such equipment in a good and usable condition and pay all maintenance costs necessary to keep such equipment

in a good and usable condition. City shall pay all power costs necessary for the operation of the center-pivot irrigation systems.

5. Operator agrees to farm and cultivate all tillable acreage at the Site in a good and farm-like manner during this Agreement. All plowed fields shall be maintained by Operator in a manner that will minimize erosion. In order to maintain the irrigated land, Operator will be required to aerate all irrigated land at least twice per year with the City's aerator to a minimum fifteen (15) inch depth. Operator must furnish a minimum of two (2) 180-horse power tractors and one (1) no-till drill.

6. City shall pay the cost of fertilizer on such premises as required by City's soil sample analysis. If fields are maintained in good condition, the fertilizer supplier will apply dry fertilizer using hauling/spreading equipment. If fields are too rough for fertilizer supplier's equipment, the Operator will be responsible for fertilizer application. The determination as to the field's condition shall be in the City's sole discretion.

7. City shall purchase all seed for permanent and forage crops cultivated at the Site and shall arrange for delivery of the seed to the Site. Operator shall prepare a cropping plan on a yearly basis. However, City shall have sole discretion as to crop selection for the Site. Operator shall properly store seed, prepare seed beds and sow seed in a manner agreed upon by Operator and City's Director of Utilities.

8. City shall maintain permanent fencing around the perimeter of the Site. Operator shall maintain interior fencing and construct and pay for temporary fencing as may be required for operations.

9. City shall deliver, at its sole discretion, effluent generated by the City's wastewater treatment system to the Site. The volume of and quality of effluent furnished hereunder shall be in compliance with all provisions of permit No. 10223-01, as issued by the Texas Natural Resource Conservation Commission to the City of Midland, Texas, for the disposal of its effluent, and all applicable statutes, rules, regulations and ordinances. In the event that Operator fails to have crops ready to receive such effluent, City shall have the absolute right to enter upon the Site, without notice, and operate said premises in a manner so as to allow the proper discharge of such effluent upon said premises. City shall have the right to discharge effluent upon said premises in excess of an amount that the Operator requires. City shall have the sole right to determine the time and the quantity of the effluent to be delivered. In any event, City shall not be liable in any manner under this agreement for failure to deliver effluent or for the amount delivered or for the quality of said effluent as herein described.

10. Proceeds from any and all settlements or awards arising out of damages proximately caused by any oilfield operation, pipeline operation or related activity on the Site shall be divided and shared between the Operator and City, with Operator being entitled to

one-half (½) of such proceeds and City being entitled to one-half (½) of such proceeds. It is understood that at no time will Operator receive any proceeds from oil and gas royalties.

11. Operator shall not use the Site for any purpose other than that which is authorized herein without the prior written consent of City. 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 City. The issue on whether or not to grant consent to an assignment is in the sole discretion of the City.

12. Operator's obligations pursuant to this Agreement shall be and stand secured by a lien upon all crops cultivated and harvested at the Site and all proceeds from their sale, that may now or hereafter be present.

13. Operator shall act in accordance with the requirements of City of Midland Permit No. 10223-01 as issued by the Texas Natural Resource Conservation Commission, a copy of which has been provided to the Operator. Failure to so act shall be grounds for the immediate termination of this Agreement.

14. Operator shall not construct underground water lines or any other permanent improvements on the Site without the prior written consent of City. Such consent will not be unreasonably withheld.

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

Commercial General Liability (including Contractual liability):

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

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

Worker's Compensation: Statutory limits

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

The Business Automobile Liability insurance provided by Operator shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum

of \$250,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement.

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

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

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

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

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

16. INDEMNITY - OPERATOR 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 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 CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

OPERATOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL

SUITS, ACTIONS, CLAIMS, DAMAGES, ACCIDENTAL DEATH, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF 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 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 CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

17. In the event that City or Operator should default in the performance of this Agreement or materially breach any of its provisions, the other party shall have the right to terminate this Agreement upon sixty (60) days written notice to the offending party of its intention to do so. For purposes of this Agreement, the term "material breach" may include, but is not limited to, the following:

- a. Breach, violation or failure to perform, observe or keep any covenant, agreement or term or condition of this Agreement by any party obligated hereunder to observe, keep or perform such condition, term, agreement or covenant, and such default continues for a period of ten (10) days after written notice thereof is given by any aggrieved party hereto to the other party.
- b. Bankruptcy of Operator through voluntary or involuntary proceedings or an assignment made for the benefit of its creditors.
- c. Failure of Operator or any of its heirs, successors or assigns to operate the property described herein in such a manner so as to allow City to discharge its effluent upon the Site, and such failure continues for a period of ten (10) days after notice thereof is given by the City to Operator.

In the event of breach by Operator, City shall have the right, following sixty (60) days written notice, to reenter the Site and remove Operator, its employees and agents therefrom, without prejudice to any legal remedies which may be used for the collection of rent. All and

every claim for damages by Operator for or by reason of such reentry is hereby expressly waived. In the event of reentry, City may and is hereby fully empowered to take possession and sell at the current market price any remaining crops at the Site, and apply funds received to any and all rents due or to any damages sustained by Operator's breach.

This section shall not be construed as limiting the City's right to terminate the Agreement as described in Section 2.

18. In the event that either party is prevented from completing performance of its obligations hereunder by Acts of God or any other occurrence whatsoever which is beyond the control of either party hereto and which, by the exercise of due diligence City or Operator is unable, wholly or in part, to prevent or overcome, then such party shall be excused from performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

19. **GOVERNING LAW & VENUE** - This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas.

20. **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.**

21. **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 City; 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 City and Operator, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City 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 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. Operator 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 Operator's work. Operator shall assume exclusive responsibility for the work. Operator is entirely free to do the work in its own way.

22. 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 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 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 CITY AND THE OPERATOR. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

23. 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.

24. All notices and communications required or permitted under this Agreement, including address changes, shall be in writing and any communication or delivery hereunder shall be deemed to have been duly made if actually delivered, transmitted by telecopier or if mailed by registered or certified mail, postage prepaid, addressed as follows:

City	Operator
City Manager Midland City Hall P.O. Box 1152 Midland, Texas 79702 Phone: 915/685-7201 Fax: 915/686-1643	Spraberry CGC, Inc. 2504 SCR 1110 Midland, Texas 79706

25. RELEASE - NOTWITHSTANDING ANY OTHER PROVISIONS, OPERATOR 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 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 CITY'S NEGLIGENCE.

26. 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, Operator or his legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one-hundred-twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Operator will settle, the physical and mailing addresses of Operator at the time and date the claim was presented and the physical and mailing addresses of Operator for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Operator 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 Operator that Operator's notice is insufficient. City reserves the right to request reasonable additional information

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

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Operator's failure to comply with the requirements herein shall perpetually bar Operator'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. Operator agrees that the requirements of this entire Agreement are reasonable.

27. **TERMINATION AT WILL** - The City may terminate this Agreement at will for no or any reason upon giving at least one hundred eighty (180) days written notice to the Operator. The parties to this Agreement understand and agree that it is in the City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the City. The Operator has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

28. **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.

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

30. **AS IS - OPERATOR ENTERS INTO THIS AGREEMENT WITH THE UNDERSTANDING THAT THE PROPERTY THAT IS THE SUBJECT OF THIS AGREEMENT COMES "AS IS AND WITH ALL FAULTS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED BEING MADE BY CITY THAT THE PROPERTY IS FIT FOR A PARTICULAR PURPOSE. THE OPERATOR ACKNOWLEDGES THAT OPERATOR IS NOT RELYING UPON ANY REPRESENTATION MADE BY CITY WITH RESPECT TO THE CONDITION OF THE PROPERTY, BUT IS RELYING UPON OPERATOR'S EXAMINATION OF THE PROPERTY. OPERATOR ALSO RECOGNIZES THAT THE OPERATOR ENTERS INTO THIS AGREEMENT**

WITH THE UNDERSTANDING THAT THE PROPERTY COMES “AS IS AND WITH ALL FAULTS,” THAT OPERATOR AGREES TO MAKE OPERATOR’S OWN APPRAISAL OF THE PROPERTY AND TO ACCEPT THE RISK THAT OPERATOR MAY BE WRONG. CITY GIVES NO ASSURANCES, EXPRESS OR IMPLIED, CONCERNING THE CONDITION OF THE PROPERTY THAT IS THE SUBJECT OF THIS AGREEMENT. IN NO EVENT SHALL OPERATOR HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, THE OPERATOR ENTERS INTO THIS AGREEMENT UNDER THE EXPRESS UNDERSTANDING THE PROPERTY IS ACCEPTED “AS IS AND WITH ALL FAULTS,” EXCLUDING EXPRESS OR IMPLIED WARRANTIES.

31. **COMPLIANCE WITH ALL FEDERAL, STATE AND LOCAL LAWS -** Operator shall at all times during the term of this Agreement comply with applicable federal, state, and local laws regarding Operator’s activities pursuant to this Agreement, including but not limited to all applicable sections of the Municipal Code of Midland, Texas, as may be amended, said sections being hereby incorporated by reference and made a part of this Agreement for all legal purposes. Failure to abide by any such law mentioned herein constitutes grounds for the immediate termination of this Agreement.

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

33. This Agreement replaces and supercedes any prior agreement(s) between the parties regarding the subject matter contemplated herein.

34. **SURRENDER UPON EXPIRATION/TERMINATION** - It is further agreed between the parties hereto that, at the expiration or termination of this Agreement, Operator shall and will quietly and peacefully surrender and yield up the said premises, with the appurtenances thereto, unto City, in as good order and repair as the same now are in, reasonable wear and tear excepted.

EXECUTED this _____ day of _____, 2013.

CITY OF MIDLAND, TEXAS

By _____

Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Holly McGrath Rosas, Interim Utilities Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

SPRABERRY CGC, INCORPORATED

By:_____

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 and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of Spraberry CGC, Incorporated.

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

Notary Public, State of _____



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Holly McGrath-Rosas, Assistant Director of Utilities

SUBJECT: Consider a Resolution Approving a One Year Extension of the Contract with Kevin Cook for Part of Section 12, Block 37, TWP-3-S, T&P RR Co. Survey Located at the Spraberry Effluent Farm

Purpose:

Consider a resolution approving a one year extension of the farm lease agreement with Kevin Cook for part of Section 12, Block 37, TWP-3-S, T&P RR Co. Survey located at the Spraberry Effluent Farm.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No additional fiscal impact.

Discussion:

The lease on a part of Section 12, Block 37, TWP-3-S, T&P RR Co. Survey located at the Spraberry Effluent Farm with Kevin Cook is set to expire on December 31, 2013. Our permit to operate these farms, along with the Water Pollution Control Plant, is currently under review by the TCEQ. It is not anticipated that the City will receive the final permit before December 31, 2013. Because we do not know what terms will be included in the new permit, it is in the best interest of the City to extend this contract, under the existing terms, until December 31, 2014. This allows any changes in the terms of our permit to be incorporated into the contract as it is bid and awarded.

It is therefore recommended that this lease be extended until that time.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
1-YEAR EFFLUENT FARM LEASE RENEWAL
AGREEMENT BETWEEN THE CITY OF MIDLAND,
TEXAS, AND KEVIN COOK, FOR OPERATION OF THE
SPRABERRY EFFLUENT FARM**

WHEREAS, the City Council by Resolution No. 2002-115, passed on April 23, 2002, authorized the execution of a Lease Agreement with Kevin Cook for operation of the Spraberry Farm; and

WHEREAS, said Lease Agreement, as previously amended, will expire on December 31, 2013; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a 1-year renewal of said agreement with Kevin Cook for operation of the Spraberry Farm;

**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, a 1-year Effluent Farm Operations Renewal Agreement with Kevin Cook, said agreement being attached hereto as Exhibit "1" and incorporated herein for all legal purposes.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Holly McGrath Rosas, Interim Director of Utilities

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

STATE OF TEXAS
COUNTY OF MIDLAND

§
§
§

SPRABERRY FARM RENEWAL AGREEMENT

This Agreement is effective this 25th day of September, 2013, by and between the City of Midland, Texas, hereinafter referred to as "City," and Kevin Cook, hereinafter referred to as "Operator";

W I T N E S S E T H:

WHEREAS, City owns certain land as hereinafter described, which is used in the disposal of effluent waste water through farming programs, and said City is desirous of leasing to Operator such lands for such farming operations; and

WHEREAS, Operator will engage in farming operations on such land and desires to lease said land for such farming purposes and assist the City in the disposal of effluent waste water through farming programs;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE RIGHTS, covenants and agreements herein contained, City does hereby grant, devise and let to Operator, and Operator does hereby hire, take and lease from City the following premises, rights and easements upon the following terms and conditions, to wit:

1. City does grant, devise and Agreement unto Operator a part of Section 12, Block 37, TWP-3-S, T&P Ry. Co. Survey, Midland County, Texas, hereinafter referred to as the "Site", for farming operations as herein described. The site is defined as all of Section 12 except the pond areas and the office area shown on Exhibit "A", attached hereto and incorporated herein for all purposes.
2. The term of this Agreement shall be from January 1, 2014, through December 31, 2014.
3. Operator, in consideration of the use of the Site and the rights granted herein, does covenant and agree to pay the City the lump sum of \$20,551.00. The payment due hereunder shall be remitted at or before the execution of this Agreement. Payment shall be mailed to City's Director of Utilities, P.O. Box 1152, Midland, Texas 79702.
4. City shall furnish, operate and maintain two (2) center-pivot irrigation systems for use in such farming operations. The City shall maintain such equipment in a good and usable condition and pay all maintenance costs necessary to keep such equipment in a good and

usable condition. City shall pay all power costs necessary for the operation of the center-pivot irrigation systems.

5. Operator shall operate and maintain one side wheel roll system. City will supply effluent water to the side wheel roll system, Operator shall be responsible for all other costs of operation. Operator shall also provide goats in sufficient numbers to control weeds and salt cedar growth within the Lagoon Area.

6. Operator agrees to farm and cultivate all tillable acreage at the Site in a good and farm-like manner during the term of this Agreement. All plowed fields shall be maintained by Operator in a manner that will minimize erosion. In order to maintain the irrigated land, Operator will be required to aerate all irrigated land at least twice during the term of this Agreement with the City's aerator to a minimum fifteen (15) inch depth.

7. City shall pay the cost of fertilizer on such premises as required by City's soil sample analysis. If fields are maintained in good condition, the fertilizer supplier will apply dry fertilizer using hauling/spreading equipment. If fields are too rough for fertilizer supplier's equipment, the Operator will be responsible for fertilizer application. The determination as to the field's condition shall be in the City's sole discretion.

8. City shall purchase all seed for permanent and forage crops cultivated at the Site and shall arrange for delivery of the seed to the Site. Operator shall prepare a cropping plan. However, City shall have sole discretion as to crop selection for the Site. Operator shall properly store seed, prepare seed beds and sow seed in a manner agreed upon by Operator and City's Director of Utilities.

9. City shall maintain permanent fencing around the perimeter of the Site. Operator shall maintain interior fencing and construct and pay for temporary fencing as may be required for operations.

10. City shall deliver, at its sole discretion, effluent generated by the City's wastewater treatment system to the Site. The volume of and quality of effluent furnished hereunder shall be in compliance with all provisions of permit No. 10223-01, as issued by the Texas Natural Resource Conservation Commission to the City of Midland, Texas, for the disposal of its effluent, and all applicable statutes, rules, regulations and ordinances. In the event that Operator fails to have crops ready to receive such effluent, City shall have the absolute right to enter upon the Site, without notice, and operate said premises in a manner so as to allow the proper discharge of such effluent upon said premises. City shall have the right to discharge effluent upon said premises in excess of an amount that the Operator requires. City shall have the sole right to determine the time and the quantity of the effluent to be delivered. In any event, City shall not be liable in any manner under this Agreement for failure to deliver effluent or for the quantity or quality of said effluent as herein described. The parties

agree that the effluent is accepted by the Operator AS IS and with all faults and there are no express or implied warranties of merchantability or fitness.

11. Proceeds from any and all settlements or awards arising out of damages proximately caused by any oilfield operation, pipeline operation or related activity on the Site shall be divided and shared between the Operator and City, with Operator being entitled to one-half (1/2) of such proceeds and City being entitled to one-half (1/2) of such proceeds. It is understood that at no time will Operator receive any proceeds from oil and gas royalties.

12. Operator shall not use the premises for any purpose other than that which is authorized herein without the prior written consent of City. Operator shall not at any time during the term of this Agreement, in any manner, either directly or indirectly, assign, or transfer this Agreement or sublease any part of the premises or improvements thereon without the prior written consent of the City. The issue on whether or not to grant consent to any assignment, transfer or sublease is in the sole discretion of the City.

13. Operator's obligations pursuant to this Agreement shall be and stand secured by a lien upon all crops cultivated and harvested at the Site and all proceeds from their sale, that may now or hereafter be present.

14. Operator shall act in accordance with the requirements of City of Midland Permit No. 10223-01 as issued by the Texas Natural Resource Conservation Commission, a copy of which has been provided to the Operator. Failure to so act shall be grounds for the immediate termination of this Agreement.

15. Operator shall not construct underground water lines or any other permanent improvements on the premises without the prior written consent of City. Such consent will not be unreasonably withheld.

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

Commercial General Liability (including Contractual liability):

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

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

Worker's Compensation: Statutory limits

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

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

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

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

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

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

The Operator certifies that the certificate of insurance provided as required herein complies with the requirements of Senate Bill 425, passed during the 82nd regular session of the Texas Legislature, and effective January 1, 2012. The City may, but shall not be obligated to, waive requirements under this section, as agreed by the parties.

17. INDEMNITY - OPERATOR 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 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 CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

OPERATOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, ACCIDENTAL DEATH, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF 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 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 CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

18. In the event that City or Operator should default in the performance of this Agreement or materially breach any of its provisions, the other party shall have the right to terminate this Agreement upon sixty (60) days written notice to the offending party of its intention to do so. Nothing contained herein constitutes a waiver of the right of City to damages occasioned by breach of this Agreement. For purposes of this Agreement, the term "material breach" may include, but is not limited to, the following:

- a. Breach, violation or failure to perform, observe or keep any covenant, agreement or term or condition of this Agreement by any party obligated hereunder to observe, keep or perform such condition, term, agreement or covenant, and such default continues for a period of ten (10) days after written notice thereof is given by any aggrieved party hereto to the other party.
- b. Bankruptcy of Operator through voluntary or involuntary proceedings or an assignment made for the benefit of its creditors.
- c. Failure of Operator or any of its heirs, successors or assigns to operate the property described herein in such a manner so as to allow City to discharge

its effluent upon the Site, and such failure continues for a period of ten (10) days after notice thereof is given by the City to Operator.

In the event of breach by Operator, City shall have the right, following sixty (60) days written notice, to reenter the site and remove Operator, its employees and agents therefrom, without prejudice to any legal remedies which may be used for the collection of rent. All and every claim for damages by Operator for or by reason of such reentry is hereby expressly waived. In the event of reentry, City may and is hereby fully empowered to take possession and sell at the current market price any remaining crops at the Site, and apply funds received to any and all rents due or to any damages sustained by Operator's breach.

19. In the event that either party is prevented from completing performance of its obligations hereunder by Acts of God or any other occurrence whatsoever which is beyond the control of either party hereto and which, by the exercise of due diligence City or Operator is unable, wholly or in part, to prevent or overcome, then such party shall be excused from performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

20. **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.

21. **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 City; 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 City and Operator, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City 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 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. Operator 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 Operator's work. Operator shall assume exclusive responsibility for the work. Operator is entirely free to do the work in its own way.

22. 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 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 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 CITY AND THE OPERATOR. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

23. 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.**

24. 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.

25. **RELEASE** - NOTWITHSTANDING ANY OTHER PROVISIONS, OPERATOR 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 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 CITY'S NEGLIGENCE.

26. **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, Operator or his legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one-hundred-twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Operator will settle, the physical and mailing addresses of Operator at the time and date the claim was presented and the physical and mailing addresses of Operator for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Operator 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 Operator that Operator's notice is insufficient. City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Operator's failure to comply with the requirements herein shall perpetually bar Operator'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. Operator agrees that the requirements of this entire Agreement are reasonable.

27. **NOTICE** - All notices and communications required or permitted under this contract, including address changes, shall be in writing and any communication or delivery hereunder

shall be deemed to have been duly made if actually delivered, transmitted by telecopier or if mailed by registered or certified mail, postage prepaid, addressed as follows:

City

Operator

City Manager
Midland City Hall
P.O. Box 1152
Midland, Texas 79702
Phone: 432/685-7201
Fax: 432/686-1643

Kevin Cook
P.O. Box 914
Stanton, Texas 79782
432/425-1823

28. **TERMINATION AT WILL** - The City may terminate this Agreement at will for no or any reason upon giving at least one hundred eighty (180) days written notice to the Operator. The parties to this Agreement understand and agree that it is in the City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the City. The Operator has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

29. **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.

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

31. **AS IS** - **OPERATOR ENTERS INTO THIS AGREEMENT WITH THE UNDERSTANDING THAT THE PROPERTY THAT IS THE SUBJECT OF THIS AGREEMENT COMES "AS IS AND WITH ALL FAULTS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED BEING MADE BY CITY THAT THE PROPERTY IS FIT FOR A PARTICULAR PURPOSE. THE OPERATOR ACKNOWLEDGES THAT OPERATOR IS NOT RELYING UPON ANY REPRESENTATION MADE BY CITY WITH RESPECT TO THE CONDITION OF THE PROPERTY, BUT IS RELYING UPON OPERATOR'S EXAMINATION OF THE PROPERTY. OPERATOR ALSO**

RECOGNIZES THAT THE OPERATOR ENTERS INTO THIS AGREEMENT WITH THE UNDERSTANDING THAT THE PROPERTY COMES “AS IS AND WITH ALL FAULTS,” THAT OPERATOR AGREES TO MAKE OPERATOR’S OWN APPRAISAL OF THE PROPERTY AND TO ACCEPT THE RISK THAT OPERATOR MAY BE WRONG. CITY GIVES NO ASSURANCES, EXPRESS OR IMPLIED, CONCERNING THE CONDITION OF THE PROPERTY THAT IS THE SUBJECT OF THIS AGREEMENT. IN NO EVENT SHALL OPERATOR HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, THE OPERATOR ENTERS INTO THIS AGREEMENT UNDER THE EXPRESS UNDERSTANDING THE PROPERTY IS ACCEPTED “AS IS AND WITH ALL FAULTS,” EXCLUDING EXPRESS OR IMPLIED WARRANTIES.

32. **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS** - Operator shall at all times during the term of this Agreement comply with applicable federal, state, and local laws regarding Operator’s activities pursuant to this Agreement, including but not limited to all applicable sections of the Municipal Code of Midland, Texas, as may be amended, said sections being hereby incorporated by reference and made a part of this Agreement for all legal purposes. Failure to abide by any such law mentioned herein constitutes grounds for the immediate termination of this Agreement.

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

34. **PRIOR AGREEMENTS** - This Agreement replaces and supercedes any prior agreement(s) between the parties regarding the subject matter contemplated herein.

35. **SURRENDER UPON EXPIRATION/TERMINATION** - It is further agreed between the parties hereto that, at the expiration or termination of this Agreement, Operator shall and will quietly and peacefully surrender and yield up the said premises, with the appurtenances thereto, unto City, in as good order and repair as the same now are in, reasonable wear and tear excepted.

EXECUTED this _____ day of _____, 2013.

CITY OF MIDLAND, TEXAS

By _____
Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Holly McGrath Rosas, Interim Utilities Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

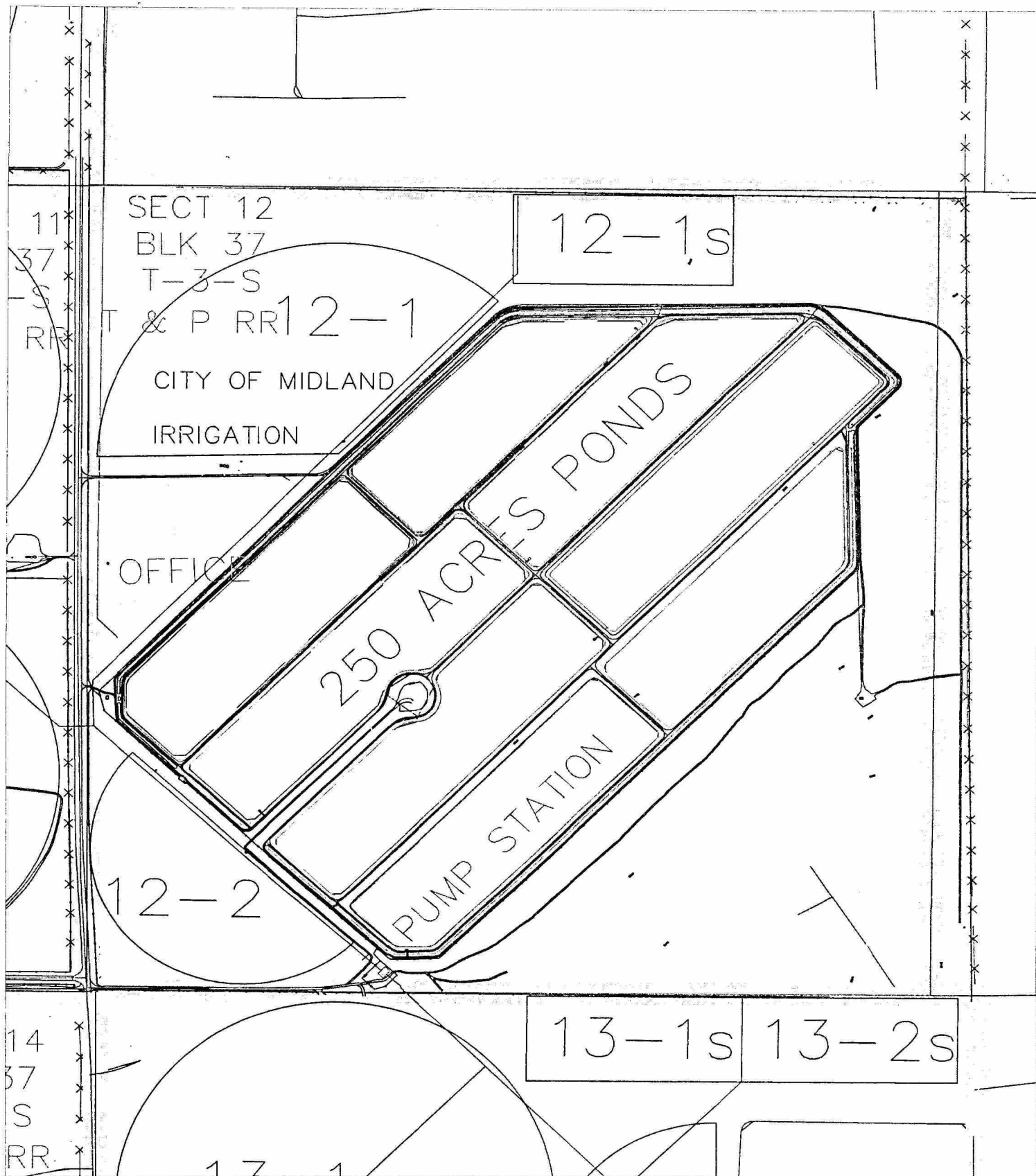
Kevin Cook, Operator

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared Kevin Cook, 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.

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

Notary Public, State of Texas



"EXHIBIT A"



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: September 24, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Holly McGrath Rosas, Interim Director of Utilities

SUBJECT: Consider a Resolution Approving an Extension of the Contract with D.K. Boyd for the Surface Usage of the City Property Know as T-Bar Ranch.

Purpose:

Consider a resolution approving an Extension of the Contract with D.K. Boyd for the Surface Usage of the City Property known as T-Bar Ranch.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

Revenue in the amount of \$5,000/yr.

Discussion:

T-Bar Ranch is property owned by the City of Midland in Winkler County. It is approximately 20,000 acres and was purchased in the early 1960's as a future water supply for the City. D.K. Boyd owns the surrounding ranchland and was the sole bidder when the contract was originally placed in 1998.

Since that time he has proven to be an excellent steward of this property for the City and has overseen our interests there faithfully. There have already been two extensions of five (5) years and this contract will further extend his lease by an additional five (5) years under the same terms as the initial contract.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
5-YEAR LEASE RENEWAL AGREEMENT BETWEEN
THE CITY OF MIDLAND, TEXAS, AND D.K. BOYD
LAND AND CATTLE COMPANY, AT THE T-BAR
RANCH IN WINKLER COUNTY AND LOVING
COUNTY, TEXAS**

WHEREAS, the City Council by Resolution No. 98-322, passed on September 22, 1998, authorized the execution of a Lease Agreement with D.K. Boyd Land and Cattle Co., for ranching operations at the T-Bar Ranch; and

WHEREAS, said Lease Agreement, as previously amended, will expire on September 30, 2013; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a 5-year renewal of said lease agreement with D.K. Boyd Land and Cattle Co., for ranching operations at the T-Bar Ranch;

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

THAT the Mayor and City Secretary, are hereby authorized and directed to execute and attest, respectively, on behalf of the City, a 5-year Lease Renewal Agreement with D.K. Boyd Land and Cattle Co., said agreement being attached hereto as Exhibit "1" and incorporated herein for all legal purposes.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Holly McGrath Rosas, Interim Director of Utilities

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

LEASE RENEWAL AGREEMENT

**THE STATE OF TEXAS
COUNTY OF MIDLAND**

THAT THIS “AGREEMENT” made and entered into this 25th day of September, 2013, by and between the City of Midland, Texas, a home rule municipal corporation hereinafter called “Lessor,” and D.K. BOYD LAND AND CATTLE CO., hereinafter called “Lessee;”

WITNESSETH

For and in consideration of the execution of this Agreement and the mutual promises and covenants of the parties hereto, it is mutually promised, understood, and agreed as follows, to wit:

1. Lessor does hereby let and lease to the Lessee for a period of approximately five (5) years, as hereinafter provided and Lessee does hereby lease from Lessor the grazing rights to the surface of the T-Bar Ranch, containing approximately 20,229 acres located in Winkler and Loving Counties, Texas, more specifically described in Exhibit “A” attached hereto and made a part of this Agreement for all purposes. However, the City Council may grant an extension for an additional five year period at the end of the original contractual period. If the City desires to make such an extension, the City shall notify the Lessor in writing at least thirty (30) days prior to the end of the original contractual period.
2. Lessee shall have the right of occupancy of said T-Bar Ranch between the dates of September 25, 2013 (the “Commencement Date”), and September 25, 2018, both dates inclusive.

3. Lessee shall pay to Lessor as rent the sum of \$5,000.00 per year for the term of the Agreement, with the rent due and payable on the 1st day of October of each and every year until the termination of this Agreement. “The yearly rental payments shall be made to the City of Midland, Texas, at the office of the Director of Utilities at the Midland City Hall, P.O. Box 1152, Midland, Texas, 79702.”

4. Lessee’s failure to pay to Lessor the full amount of any yearly rent payment due under this Agreement within thirty (30) days after said payment is due shall be an event of default under the terms of this Agreement.

5. The Lessor reserves the right to develop the leased premises as a water field without any payment due the Lessee. This reservation specifically includes, but is not limited to, any testing that the Lessor deems necessary.

6. The Lessor shall be entitled to receive all fees for any damages to the surface of the leased premises that may occur as the result of the exploration and production of oil, gas and other minerals. The Lessee will have the right to collect damages for any improvements Lessee has placed on the ranch and for any damages to Lessee’s livestock.

7. As additional consideration to Lessor for the Lease herein granted to Lessee, Lessee hereby accepts the following duties, responsibilities, and authority regarding the leased premises:

- a. Lessee will use all reasonable efforts to protect Lessor’s surface estate and water rights on the leased premises from damage which may be caused by or result from the exploration and production of oil, gas and other minerals.
- b. Lessee will use all reasonable efforts to prevent unauthorized oil, gas and

mineral exploration activities and operations on the leased premises and to prevent unauthorized use of the surface and water rights on the leased premises. Lessee or Lessee's employee shall reside within three (3) miles of the leased premises.

- c. Lessee will use all reasonable efforts to collect, on behalf of the Lessor, all damages to which Lessor is entitled from the use of its surface estate and water rights in the exploration and production of oil, gas and other minerals. Lessee shall collect such damages in accordance with the current Schedule of Damages for the T-Bar Ranch, adopted by the City Council for the City of Midland, Texas. Lessee shall immediately forward all damages collected to Lessor. In the event that a permit, license, easement or other permission is needed from the Lessor before the use of its surface estate or water rights would be authorized, Lessee will use all reasonable efforts to prevent the use of such surface or water rights until the use is authorized by Lessor.
- d. Lessee shall prepare surface damage documents etc. for Lessor review prior to submittal to persons desiring to use Lessor's surface estate and/or water rights in the exploration and production of oil, gas and other minerals.
- e. Lessee will keep Lessor informed of any operations on the leased premises which may, in any manner or for any reason, be causing damage to Lessor's surface estate or water rights on the leased premises.

8. No hunting or fishing shall be permitted on said leased premises except said hunting or fishing as may be done by Lessor's agents, employees, invitees and guests. Lessor reserves

the right to hunt and fish on said leased premises as much as it may desire, and to have its agents, employees, invitees and guests participate therein. It is expressly agreed to by the Lessee that Lessor may lease the premises for hunting purposes, and whether or not to lease for hunting purposes is left solely to the discretion of the Lessor. Lessor shall receive all payments for a hunting lease.

9. The Lessee, at all times during the term of this Agreement, shall permit inspection of the leased premises at all reasonable hours by the Lessor, and Lessor's agents and representatives.

10. The Lessee shall permit the Lessor or its agents, employees or representatives to enter upon the leased premises at all reasonable hours for the purpose of making any improvements or repairs that the Lessor deems necessary.

11. All of Lessee's activities on the leased premises shall be conducted in accordance with the high standards of range management.

12. The Lessee agrees to maintain at his own expense the four windmills that are currently on the leased premises during the term of this Agreement and at the termination of this Agreement return the four windmills in good condition to the Lessor, reasonable wear and tear excepted.

13. Any improvements that Lessee wishes to place on the leased premises must be approved by the Lessor in writing. The Lessee agrees to maintain all improvements which shall be placed on the leased premises, and at the termination of this Agreement return the improvements to Lessor in good condition, reasonable wear and tear excepted.

14. The Lessee at his sole expense agrees to repair all water tanks at the windmills. If the

Lessee determines that the water tanks are beyond repair, the Lessee shall at his own expense place a tank capable of holding water at the windmills.

15. Lessee agrees to build and maintain new inside fences at his sole expense which will divide the ranch into pastures, and at the termination of this Agreement return the same to Lessor in good condition. The Lessee at his sole expense shall remove all of the old inside fences.

16. The Lessee shall have the right to use existing water wells and/or water test holes previously drilled by the Lessor so long as the uses do not interfere with the Lessor's testing, development or use of water on the leased premises. The use of water from the leased premises by the Lessee shall be only for livestock that are on the leased premises and Lessee's domestic use. No water shall be sold, leased, given or diverted from the leased premises by the Lessee.

17. Lessee shall advise the Lessor by October 1 of each year of all improvements made by the Lessee during the past year and the planned improvements for the next year.

18. Lessee shall not assign this Agreement nor sublet the leased premises, or any part thereof, without the written consent of the Lessor, such consent not to be unreasonably withheld.

19. Lessee will practice good conservation practices so as to maintain the grass cover on the leased premises and will not overstock the leased premises so as to cause damage to the carrying capacity of the leased premises. Lessee will carry out such practices as reasonably prudent ranchers in the area used to contain and control noxious vegetation and will take such reasonable steps as are deemed necessary by prudent ranchers to prevent the

introduction of noxious vegetation to the leased premises. Noxious vegetation, as used herein, includes, but is not limited to, cockleburrs.

20. At Lessee's sole cost and expense, Lessee agrees to maintain all exterior fences in good repair, and at the termination of this Agreement return the same in good condition.

21. Notwithstanding any provision herein to the contrary, it is agreed that no default or breach of covenant shall be deemed to have occurred on the part of the Lessee until ten (10) days after written notice of such default or breach shall have been actually received by the Lessee, and the Lessee within such time shall have failed to remedy such default or breach; but at the expiration of such ten day period Lessor shall immediately have the right, at its option, to take any desired action to enforce its rights hereunder, unless the Lessee shall have, within such ten day period, begun action necessary to remedy such default or breach, is continuing and shall thereafter continue, diligently to prosecute such action to completion, except that in any event the payment of rental or other payments of money due from the Lessee to the Lessor shall be paid within said ten days.

22. If Lessor fails to perform any of Lessor's covenants, agreements, or obligations specified in this Agreement within thirty (30) days after written notice thereof from Lessee to Lessor or interrupt Lessee's quiet enjoyment and peaceful possession of the leased premises (Lessee not then being in default under this Agreement), Lessee may: (a) cure Lessor's default and deduct the cost of such cure from the next rent accruing under this Agreement; (b) terminate this Agreement by written notice to Lessor; or (c) pursue any available remedies against Lessor by actions at law or in equity.

23. Lessee is prohibited from directly or indirectly owning, acquiring or managing any

mineral interest of any kind in the minerals located beneath the surface of the T-Bar Ranch.

24. Standard General Conditions

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$500,000.00 per occurrence

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

Worker's Compensation: Statutory limits

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

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

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

The Workers' Compensation coverage provided by Lessee shall inure to the benefit

of employees injured during the course and scope of their employment by Lessee pursuant to this Agreement.

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

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

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

The Lessee certifies that the certificate of insurance provided as required herein complies with the requirements of Senate Bill 425, passed during the 82nd regular session of the Texas Legislature, and effective January 1, 2012. Lessor may, but shall not be required to, waive requirements under this paragraph "a. INSURANCE", as agreed by the parties.

b. **ASSIGNMENT** - Lessee 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 Lessor. The issue on whether or not to grant consent to an assignment is in the sole discretion of the Lessor.

c. **RELEASE** - NOTWITHSTANDING ANY OTHER PROVISIONS, LESSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LESSOR, LESSOR'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LESSEE 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 LESSOR'S NEGLIGENCE.

d. **GOVERNING LAW AND VENUE** - This Agreement shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas.

e. **INDEPENDENT CONTRACTOR** - It is expressly understood and agreed

that Lessee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the Lessor; that Lessee 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 Lessor and Lessee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Lessor and Lessee. No person performing any of the work and services described hereunder by Lessee shall be considered an officer, agent, servant or employee of the Lessor. 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. Lessee 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 Lessor does not have the power to direct the order in which the work is done. The Lessor shall not have the right to control the means, methods or details of the Lessee’s work. Lessee shall assume exclusive responsibility for the work. Lessee is entirely free to do the work in its own way.

f. 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, Lessee or his legal representative, shall

give the City Manager, or any other reasonable official of the Lessor, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one-hundred-twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Lessee will settle, the physical and mailing addresses of Lessee at the time and date the claim was presented and the physical and mailing addresses of Lessee for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Lessee 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 Lessor from any liability whatsoever. The Lessor is under no obligation to provide notice to Lessee that Lessee's notice is insufficient. Lessor 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, Lessee's failure to comply with the requirements herein shall perpetually bar Lessee's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if Lessor has actual or constructive notice or knowledge of said

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

g. **INDEMNITY - LESSEE WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND LESSOR AND ALL OF LESSOR'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 LESSEE, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM, LESSEE'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND LESSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LESSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.**

LESSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND LESSOR AND ALL OF LESSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, ACCIDENTAL DEATH, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES,

BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF LESSOR, LESSOR'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 LESSEE OR LESSEE'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 LESSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST LESSOR OR ANY OF LESSOR'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

h. **SOVEREIGN IMMUNITY** - By executing this Agreement the Lessor is not waiving its right of sovereign immunity. The Lessor is retaining its immunity from suit. The Lessor is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.**

i. **THIRD-PARTY BENEFICIARY** - The Lessor'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.

j. **TERMINATION AT WILL** - The Lessor may terminate this Agreement at will for no or any reason upon giving at least One-Hundred-Eighty (180) days written notice to the Lessee. The parties to this Agreement understand and agree that it is in the Lessor's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the Lessor. The Lessee has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

k. **ATTORNEY'S FEES - BY EXECUTING THIS AGREEMENT, LESSEE AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE LESSOR, 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 LESSEE SPECIFICALLY AGREES THAT IF THE LESSEE 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 LESSEE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LESSEE MIGHT OTHERWISE BE ENTITLED.

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

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

l. **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.

m. **FEDERAL WAGE REQUIREMENTS** - If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations are hereby incorporated by reference and

made a part of this Agreement, and all terms and requirements under said laws, by such incorporation, are made terms and requirements of this Agreement, to which the parties to this Agreement have agreed to be bound.

n. **AS IS** - LESSEE ENTERS INTO THIS AGREEMENT WITH THE UNDERSTANDING THAT THE PROPERTY THAT IS THE SUBJECT OF THIS AGREEMENT COMES **“AS IS AND WITH ALL FAULTS”** WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED BEING MADE BY LESSOR THAT THE PROPERTY IS FIT FOR A PARTICULAR PURPOSE. THE LESSEE ACKNOWLEDGES THAT LESSEE IS NOT RELYING UPON ANY REPRESENTATION MADE BY LESSOR WITH RESPECT TO THE CONDITION OF THE PROPERTY, BUT IS RELYING UPON LESSEE’S EXAMINATION OF THE PROPERTY. LESSEE ALSO RECOGNIZES THAT THE LESSEE ENTERS INTO THIS AGREEMENT WITH THE UNDERSTANDING THAT THE PROPERTY COMES **“AS IS AND WITH ALL FAULTS,”** THAT LESSEE AGREES TO MAKE LESSEE’S OWN APPRAISAL OF THE PROPERTY AND TO ACCEPT THE RISK THAT LESSEE MAY BE WRONG. LESSOR GIVES NO ASSURANCES, EXPRESS OR IMPLIED, CONCERNING THE CONDITION OF THE PROPERTY THAT IS THE SUBJECT OF THIS AGREEMENT. IN NO EVENT SHALL LESSEE HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, THE LESSEE ENTERS INTO THIS AGREEMENT UNDER THE EXPRESS UNDERSTANDING THE PROPERTY IS ACCEPTED **“AS IS AND WITH**

ALL FAULTS,” EXCLUDING EXPRESS OR IMPLIED WARRANTIES.

o. **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS** - Lessee shall at all times during the term of this Agreement comply with applicable federal, state, and local laws regarding Lessee’s activities pursuant to this Agreement, including but not limited to all applicable sections of the Municipal Code of Midland, Texas, as may be amended, said sections being hereby incorporated by reference and made a part of this Agreement for all legal purposes. Failure to abide by any such law mentioned herein constitutes grounds for the immediate termination of this Agreement.

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

EXECUTED this _____ day of _____, 2013.

CITY OF MIDLAND, TEXAS

By _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Holly McGrath Rosas, Interim Utilities Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

D.K. BOYD LAND AND CATTLE CO.

By: _____
D.K. Boyd

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared **D.K. BOYD**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that s/he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of **D.K. BOYD LAND AND CATTLE CO.**

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

Notary Public, State of _____



City Council Agenda

Approved for Agenda:
RPatrick
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Jim Compton, Acting Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by Development Contractors Inc. for a zone change from AE, Agricultural Estate District, to LR-2, Local Retail District on a 9.10-acre tract of land (Tract 1) and to PD, Planned District for a Housing Development on a 57.51-acre tract of land (Tract 2), all out of Section 19, Block 38, T-1-S, T & P RR Co. Survey, City and County of Midland, Texas. (Generally located on the north side of E. Loop 250 North, approximately ¼ mile east of Fairgrounds Road.)

Purpose:

Consider an ordinance on second reading on a request by Development Contractors Inc. for a zone change from AE, Agricultural Estate District, to LR-2, Local Retail District on a 9.10-acre tract of land (Tract 1) and to PD, Planned District for a Housing Development on a 57.51-acre tract of land (Tract 2), all out of Section 19, Block 38, T-1-S, T & P RR Co. Survey, 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 approving this request.

Discussion:

This item was approved on first reading at the September 10th Council meeting. The applicant is seeking to rezone the property for the development of approximately 200 residential lots and seven retail lots along the Loop 250 Frontage Road. No changes have been made to this item since its first reading, and therefore, staff is recommending approval of this request.

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 9.10-ACRE TRACT OF LAND WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT; BY PERMITTING A 57.51-ACRE TRACT OF LAND WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; SAID TRACTS BEING OUT OF SECTION 19, BLOCK 38, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF EAST LOOP 250 NORTH, APPROXIMATELY 1/4 OF A MILE EAST OF NORTH FAIRGROUNDS 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 an LR-2, Local Retail District, and a PD, Planned District for a Housing Development, 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, and it shall be used as an LR-2, Local Retail District, said property being described

as follows:

A 9.10-acre tract of land out of Section 19, Block 38, 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 “A”, which is attached hereto and incorporated herein.

SECTION TWO. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned AE, Agriculture Estate District, and it shall be used as a PD, Planned District for a Housing Development, said property being described as follows:

A 57.51-acre tract of land out of Section 19, Block 38, 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 “B”, which is attached hereto and incorporated herein.

Special Conditions and Restrictions:

1. That this planned district shall be subject to 1F-3, One-Family Dwelling District, zoning regulations.
2. That a homeowners’ association is required to be formed to govern all common areas.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more

sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant to the City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



NEWTON ENGINEERING, LLC

4908 N. Midkiff Rd.
Midland, Texas 79705
(432) 770-0499

F-13856

July 22, 2013
Field Notes
For
Sunset Ridge Rezone – LR-2
9.10 acres

All of that certain tract or parcel of land situated in the Southwest Quarter of Section 19, Block 38, T-1-S, Texas and Pacific Railroad Company Survey and being 9.10 acres out a called 66.63 acre tract recorded in Volume 2771, Page 180, Official Public Records of Midland County, Texas and being more particularly described as follows:

Beginning at the Southeast corner of this tract on the North line of State Loop No. 250 right-of-way. A ½ inch iron rod found at the Southeast corner of the said called 66.63 acres and the Southwest corner of the Mrs. Mary E. Weist called 151.687 acres as described in deed recorded in Volume 748, Page 403, Deed Records of Midland County, Texas bears N 75°37'22" E, 160.00 feet.

Thence N 14°30'57" W along the East line of this tract, 410.34 feet to its Northeast corner.

Thence S 75°29'03" W along the North line of this tract, 989.43 feet to the Northwest corner of this tract.

Thence S 14°30'57" E along the West line of this tract, 372.08 feet to the Southwest corner of same in the said North right-of-way line of State Loop Number 250. A ½ inch iron rod found at the Southwest corner of the said 66.63 acres bears S 79°56'56" W, 77.75 feet.

Thence N 79°56'56" E along the South line of this tract and the said North line of Loop 250, 475.43 feet and N 75°37'22" E, 515.45 feet to the place of beginning and containing 9.10 acres of land.

I, Charles P. Rutherford, Registered Professional Land Surveyor, do hereby state that this field note description and its accompanying plat correctly represents the results of a survey made on the ground under my supervision and direction and that it was made according to the laws and the Rules and Regulations of the Texas Board of Professional Land Surveying.

Charles P. Rutherford
Charles P. Rutherford, Registered Professional Land Surveyor, No. 1977 Date 7/22/2013



rev. 07/22/2013

CASE NO. 2-13-029



July 22, 2013
Field Notes
For
Sunset Ridge Rezone – PD
57.51 acres

All of that certain tract or parcel of land situated in the Southwest Quarter of Section 19, Block 38, T-1-S, Texas and Pacific Railroad Company Survey and being 57.51 acres out a called 66.63 acre tract recorded in Volume 2771, Page 180, Official Public Records of Midland County, Texas and being more particularly described as follows:

Beginning at a ½ inch iron rod found at the Northeast corner of this tract, same being the Northeast corner of the said called 66.63 acres and the inside Ell corner in the West line of the Mrs. Mary E. Weist called 151.687 acres as described in deed recorded in Volume 748, Page 403, Deed Records of Midland County, Texas.

Thence S 75°34'58" W along the North line of this tract and the upper South line of the said called 151.687 acres, 1,229.37 feet to a ½ inch iron rod found the Northwest corner of this tract and the Northeast corner of a called 4.83 acre tract as described in deed from Milestone Drilling Company to Texas Electric Service Company, recorded in Volume 850, Page 619, Deed Records of Midland County, Texas.

Thence S 14°30'57" E along the most West line of this tract, the West line of the said 66.63 acres and the East line of the said called 4.83 acres, 2,327.26 feet to a ½" iron rod found at the Southwest corner of this tract, the Southwest corner of the said 66.63 acres and the Southeast corner of the said called 4.83 acres on the North line of State Loop 250.

Thence N 79°56'56" E along the South line of this tract and the said North line of Loop 250, 80.24 feet to the most Easterly Southwest corner of this tract.

Thence N 14°30'50" W along the Easterly West line of this tract, 372.08 feet to an inside ell corner in the upper South line of this tract.

Thence N 75°29'03" E along the South line of this tract, 989.43 feet to an inside Ell corner in the said upper South line of this tract.

Thence S 14°30'57" E along the most Westerly East line of this tract, 410.34 feet to the most Westerly Southeast corner on the South line of this said called 66.63 acres and on the North line of said North Loop 250.

Thence N 75°37'22" E along the South line of this tract, said South line of the called 66.63 acres and the said north line of Loop 250, 160.00 feet to a ½ inch iron rod found at the Southeast corner of this tract and the Southeast corner of the said called 151.687 acres.



NEWTON ENGINEERING, P.C.

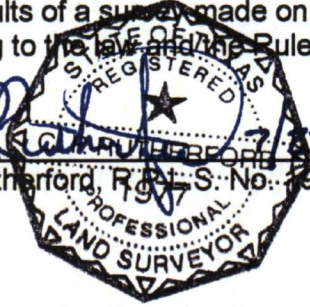
4908 N. Midkiff Rd.
Midland, Texas 79705
(432) 770-0499

F-13856

Page 2, Sunset Ridge Rezone – PD - 57.51 acres

Thence N 14°30'57" W along the East line of this tract and the said West line of the called 151.687 acres, 2,370.03 feet to the place of beginning and containing 57.51 acres of land.

I, Charles P. Rutherford, Registered Professional Land Surveyor, do hereby state that this field note description and its accompanying plat correctly represents the results of a survey made on the ground under my supervision and direction and that it was made according to the law and the Rules and Regulations of the Texas Board of Professional Land Surveying.


Charles P. Rutherford, R.P.L.S. No. 1977 Date 7/22/2013

07/22/2013

CASE NO. Z-13-019 40.8

PLANNING AND ZONING COMMISSION

August 19, 2013

CASE: Z-13-029.

REQUEST: Hold a public hearing and consider a request for a zone change from AE, Agricultural Estate District to PD, Planned District for a Housing Development and LR-2, Local Retail District.

APPLICANT/OWNER: Development Contractors.

REPRESENTATIVE: Newton Engineering.

LEGAL DESCRIPTION: A 9.10-acre tract of land (Tract 1) and a 57.51 acre tract of land (Tract 2), all out of Section 19, Block 38, T-1-S, T & P RR Co. Survey, City and County of Midland, Texas.

LOCATION: Generally located on the north side of E. Loop 250 North, approximately ¼ mile east of N. Fairgrounds Road.

CURRENT ZONING: AE, Agricultural Estate District.

RELATED CASE: P-13-028

DETAILS OF REQUEST:

1. This property is presently zoned AE, Agricultural Estate District. The applicant is proposing to rezone this property to a PD, Planned District for a Housing Development, and LR-2, Local Retail District. This Planned District will be for a related preliminary plat that will include approximately 200 residential lots with two common areas. Additionally, the property fronting onto Loop 250 would be zoned LR-2, Local Retail District with seven lots.

SURROUNDING ZONING AND LAND USE:

2. The property is located about 1,600 feet east of N. Fairgrounds Rd. and is immediately north of E. Loop 250 North. The property is located within a large AE, Agricultural Estate District and all property is currently vacant.

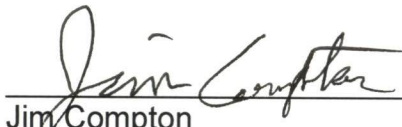
ANALYSIS:

3. The purpose of the Planned District is to govern the use of the Common Areas "A" and "B" labeled on the preliminary plat. A Planned District is required when Common Areas are provided and must be managed by a Home Owner's Association. A set of restrictive covenants must be provided as a condition of final plat approval, which will be addressed with the preliminary plat report. The seven lots along the Loop 250 frontage will provide for LR-2, Local Retail uses.

STAFF RECOMMENDATION:

Staff recommends approval of the zone change from AE, Agricultural Estate District to PD, Planned District for a Housing Development and LR-2, Local Retail District.

- A. That the underlying zoning for Tract 2, the PD, Planned District for a Housing Development, shall be subject to 1F-3, One-Family Dwelling District regulations.
- B. That the formation of a Home Owner's Association is required to govern all common areas.



Jim Compton
Acting Planning Manager
Department of Development Services



Martin Siwek, City Planner
Department of Development Services

Attachments:

Application
Maps

Case Number: 2-13-029

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Development CONTRACTORS, INC	(817) 706-7141
Applicant Name	Contact #s
2501 SOUTH ADAMS ST., FORT WORTH, TEXAS 76088	
Address	Zip Code
DEVELOPMENT CONTRACTORS, INC	
Property Owner Name	Contact #s
Address	Zip Code
John M. Newton	(432) 438-7784
Representative Name	Contact #s
4908 N. MIDKIFF RD.	79705
Address	Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision, or if unplatted, attach a Metes and Bounds description with surveyor's seal). Describe by tracts if more than one zoning district is requested:

See attached. REQUESTING 57.51 ACRES TO BE ZONED PD for housing
conforming to 1F-3 AND 9.10 ACRES TO BE ZONED LR-2.

PRESENT ZONE: NONE REQUESTED ZONE: PD AND LR-2
(List by tracts if more than one district is requested)

Reason for Zone Change or PD Amendment: To conform to development

Present Use of Property: Pasture

Proposed Use of Property: Residential/Hotel/Retail

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 district.
 - Single PD, Planned District zone change: **\$550**. Multiple PD proposal: add **\$100** per district.
- 80% of fee will be refunded if no P&Z public hearing is called; if no City Council public hearing is called, then 30% of fee will be refunded.*
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS (if applicable):

16 copies of the PD site plan:

Site Plan on a CD in .pdf and .jpg format:

NA

N/A

SIGNATURE (by property owner only - authorized agent must sign affidavit below)

Property Owner (signature):

Jim Mani

Date:

7/23/13

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS

COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

_____ 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.

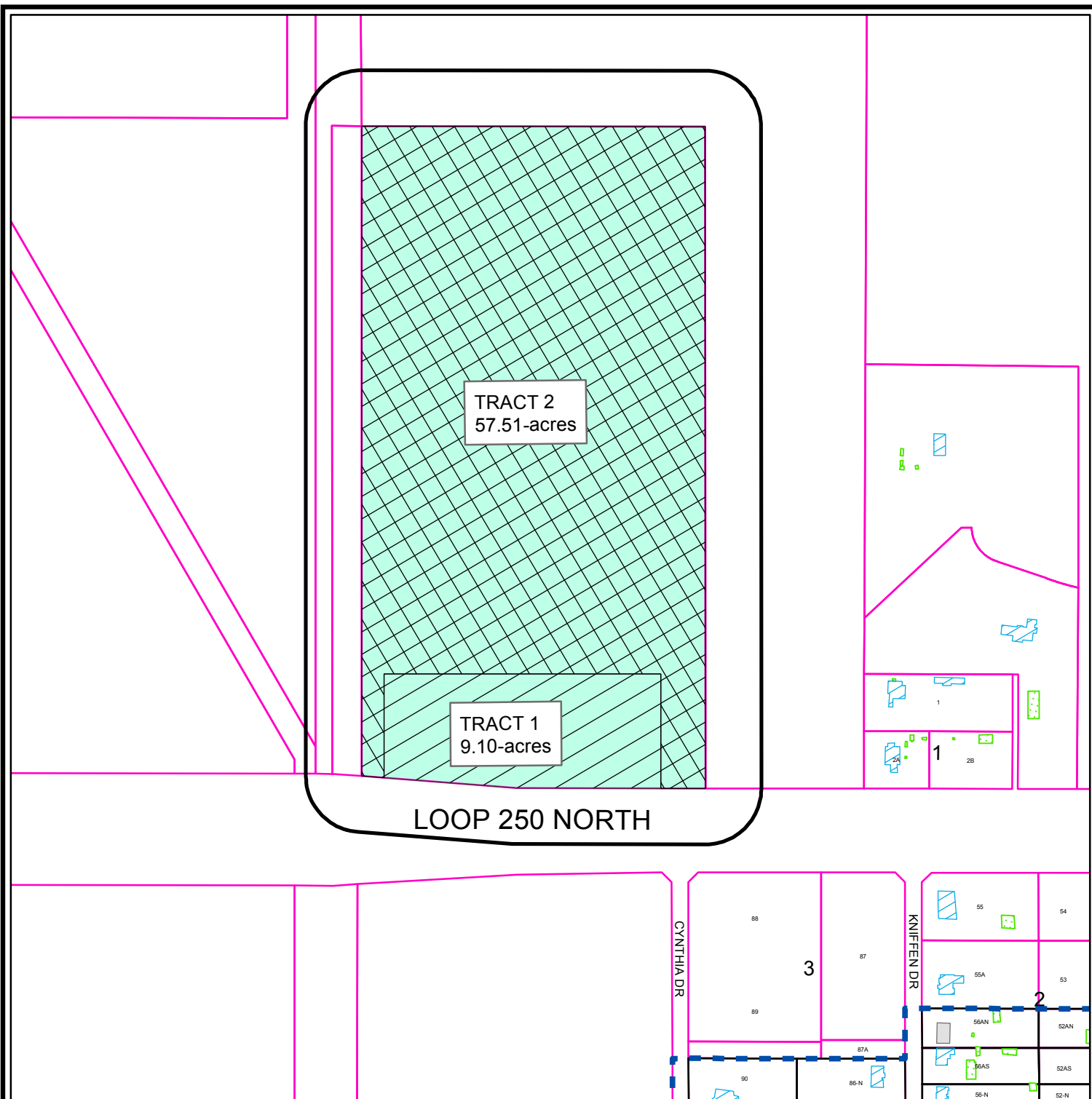
Authorized Agent (signature)

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: _____	Date: _____
Assigned: <u>MS</u>	
For: <u>P&Z</u>	On: <u>8/19/13</u>

****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

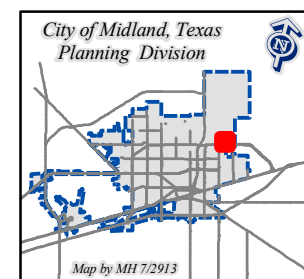
Z - 13 - 029

Scale: 1" = 500'

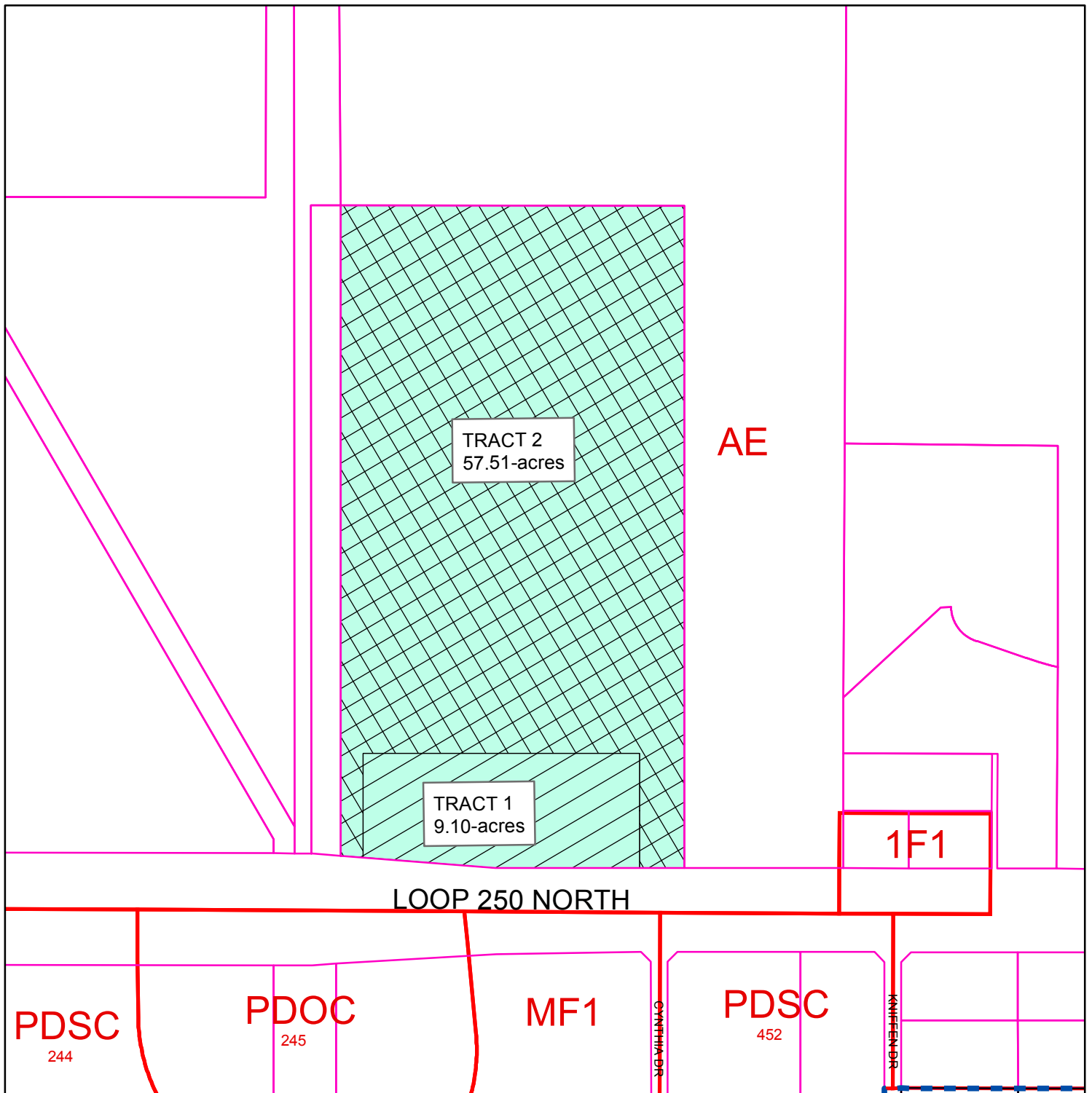
Consider a request for a zone change from AE, Agriculture Estate, to LR-2, Local Retail District on a 9.10-acre tract of land (Tract 1) and to PD, Planned District for a Housing Development on a 57.51-acre tract of land (Tract 2), all out of Section 19, Block 38, T-1-S, T & P RR Co. Survey, City and 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 - 13 - 029

Scale: 1" = 500'

Consider a request for a zone change from AE, Agriculture Estate, to LR-2, Local Retail District on a 9.10-acre tract of land (Tract 1) and to PD, Planned District for a Housing Development on a 57.51-acre tract of land (Tract 2), all out of Section 19, Block 38, 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	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:
RPatrick
City Manager's Office

MEETING DATE: September 24, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Jim Compton, Acting Planning Division Manager

SUBJECT: Consider an ordinance for second reading on a request by Brent Shields for a zone change from PD, Planned District for a Shopping Center to LR-1, Local Retail District on Lot 5, Block 2, Westridge Park Addition, Section 8, City and County of Midland, Texas (Generally located on the southeast corner of Andrews Highway and Tradewinds Boulevard, District 4).

Purpose:

Consider an ordinance for second reading on a request by Brent Shields for a zone change from PD, Planned District for a Shopping Center to LR-1, 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 property is located in the northwest corner of the Sam's Wholesale Club parking lot, which was zoned Planned District for a Shopping Center in 1986. Two zone changes adopting site plans for a fueling station have been approved here, and the staff recently received a third. Each site plan illustrates a slightly different design, but for the same land use. The staff recommended that the applicant apply for an LR-2 District to allow the developer to proceed without having to submit yet another site plan. The Planning and Zoning Commission recommended unanimous approval of an LR-1 District, which disallows car washes but allows fueling stations, and indicated to staff they were pleased with this approach. The City Council approved this request by a 4-2 vote on September 10th, 2013. This ordinance is now reading for second and final reading consideration.

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 5, BLOCK 2, WESTRIDGE PARK ADDITION, SECTION 8, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN LR-1, LOCAL RETAIL DISTRICT (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF ANDREWS HIGHWAY AND TRADEWINDS BOULEVARD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of Districts under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of an LR-1, 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 PD, Planned District for a Shopping Center, and it shall be used as an LR-1, Local Retail District, said property being described as follows:

Lot 5, Block 2, Westridge Park Addition, Section 8, City and County of Midland, Texas.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are

used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the

following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant to the City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Case Number: 2-13-030

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Brent Shields 901-384-0404 / brentshields@carlsonconsulting.net
Applicant Name (Phone/e-mail)

7068 LedgeStone Commons, Bartlett, TN 38133

Address

Zip Code

Sam's Real Estate Business Trust

479-273-4000

Property Owner Name

(Phone/e-mail)

702 SW 8th Street, Bentonville, AR 72716

Address

Zip Code

Barry Young, Senior Manager - Project Design & Management

479-204-3407 / barry.young@wal-mart.com

Representative Name

(Phone/e-mail)

2001 Southeast 10th Street, Bentonville, AR 72716

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 Legal Description. Address has not yet been assigned.

PRESENT ZONE: Underlying LR-2 - PD

REQUESTED ZONE: LR-2

(List by tracts if more than one district is requested)

Reason for Zone Change Request: As requested by the Planning Department, the rezoning of this parcel will be favorable to the planning department and the Sam's Club in terms of project submittal requirements. The base zoning of LR-2 also provides Fueling Stations as an approved use.

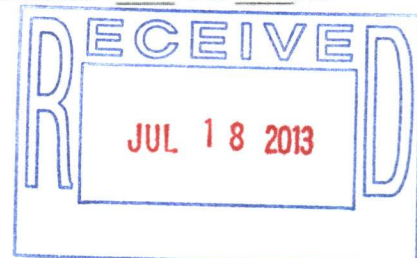
Present Use of Property: Currently Undeveloped.

Proposed Use of Property: Fueling Station

How will zone change affect the public health, safety and welfare? No effects are foreseen.

Describe how conditions affecting the property have changed since present zoning designation:
The City of Midland has adopted regulations within their zoning code to regulate the proposed development of this lot in the same manner as the PD intended.

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

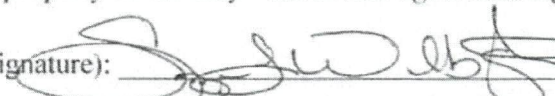
Site Plan in digital format .pdf and .jpg:

N/A

SIGNATURE (by property owner only - authorized agent must sign affidavit below)

Property Owner (signature):

Date:

 7/16/13
Sonya Webster, Directory of Walmart Special Projects

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>JC</u>	Date: <u>7-18-13</u>
Assigned: <u>JC</u>	
For: <u>P+Z</u>	On: <u>8-19-13</u>

****Application will not be considered for scheduling until reviewed by a planner.****

PLANNING AND ZONING COMMISSION

August 19, 2013

CASE: Z-13-030.

REQUEST: Hold a public hearing and consider a request for a zone change from PD, Planned District for a Shopping Center to LR-2, Local Retail District.

APPLICANT: Brent Shields.

OWNER: Sam's Real Estate Trust.

LEGAL DESCRIPTION: Lot 5, Block 2, Westridge Park Addition, Section 8, City and County of Midland, Texas.

LOCATION: Southeast Corner of Andrews Highway and Tradewinds Boulevard.

DETAILS OF REQUEST:

1. This general area was zoned PD, Planned District for a Shopping Center in 1986. At that time, an indoor shopping mall was planned. As time passed, the actual development deviated from the initial plan, and the mall concept was abandoned. Since then, the subject property has been rezoned twice. Each rezoning included a site plan for a self-service gasoline station. The owner still wishes to construct a self-service facility, but wishes to have eight gas pump islands instead of the six currently allowed. Rather than continue with the review of planned district site plans to accommodate minor amendments, the staff recommended that the owner apply for a zone change to an LR-2, Local Retail District. In this fashion, the owner may proceed with their plans without being tied to a site plan.

SURROUNDING ZONING AND LAND USE:

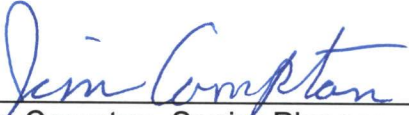
2. This property is located at the intersection of Andrews Highway (SH 191) and Tradewinds Boulevard, a primary collector street. The property is already platted. East of this property is a credit union and the AT&T call center. To the south is Sam's Wholesale Club. The area to the west is zoned Planned District for a Shopping Center, and is developed with a restaurant and a hotel.

ANALYSIS:

3. The underlying zoning district for all of the Planned Districts in this area is the LR-2 District. This use allows self-service and full service gasoline stations by right. Since this zoning was initially approved, the Zoning Code has been amended to address most of the issues that are addressed by Planned Districts. These matters include exterior building materials, some architectural review, landscaping, outdoor lighting, signage and location and screening of dumpsters. This tract is only 0.808 acres in area, a small percentage of the total retail area. By rezoning to an LR-2 District, the applicant is able to proceed without the burden of a site plan, but sufficient administrative site plan review requirements are in place to ensure the public interest is protected. For these reasons, we believe that this request is reasonable.

STAFF RECOMMENDATION:

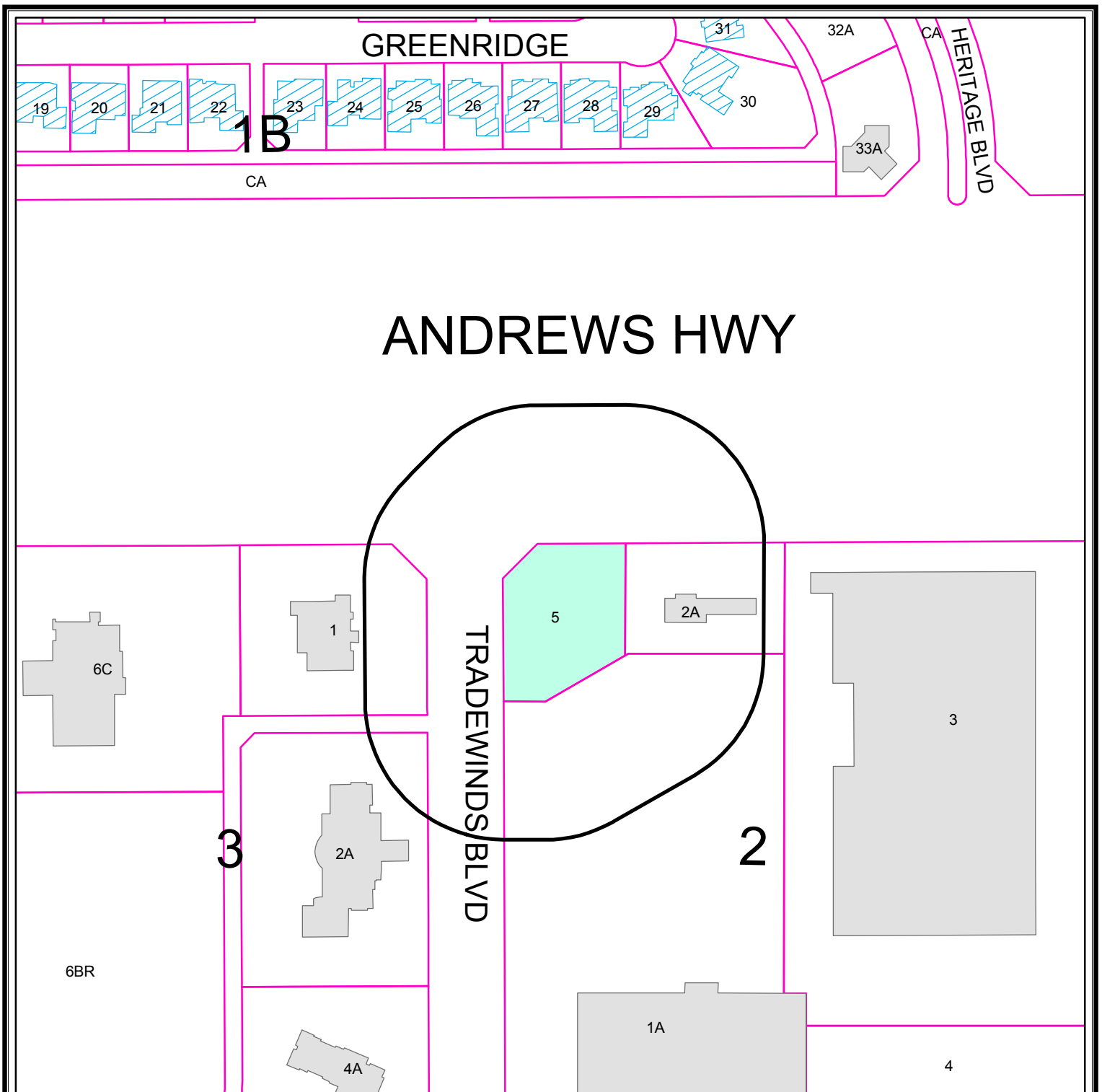
We recommend approval of this request for a zone change from PD, Planned District for a Shopping Center to LR-2, Local Retail District.



Jim Compton, Senior Planner
Acting Planning Division Manager
Department of Development Services

Attachments:

Application
Maps



PROPERTY OWNER NOTIFICATION MAP

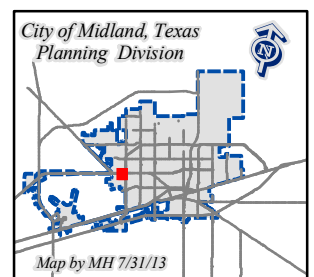
Z - 13 - 030

Scale: 1" = 200'

Consider a request for a zone change from PD, Planned District for a Shopping Center, to Local Retail District on Lot 5, Block 2, Westridge Park Addition, Section 8, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS



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**SHEPPARD SURVEYING
COMPANY, INC.**

1013 Energy Dr.
Abilene, Texas 79602
Voice: 325.695.6277
Fax: 325.695.3299

RECEIVED

JUL 18 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

STATE OF TEXAS
MIDLAND COUNTY
CITY OF MIDLAND

METES AND BOUND DESCRIPTION OF 0.808 ACRES OF LAND BEING ALL OF LOT 5, BLOCK 2, WESTRIDGE PARK ADDITION, SECTION 8, AS SHOWN BY PLAT RECORDED IN PLAT RECORDS OF MIDLAND COUNTY, NUMBER 21450, CABINET G, PAGE 6, DATED NOVEMBER 20, 2001.

BEGINNING AT A ½" REBAR WITH CAP MARKED "PLS 1974" RECOVERED ON THE EAST RIGHT OF WAY OF TRADEWINDS BOULEVARD (110' WIDE) FOR THE NORTHWEST CORNER OF LOT 1A, BLOCK 2, AND THE SOUTHWEST CORNER OF SAID LOT 5, AND OF THIS TRACT. SAID REBAR BEING FLUSH WITH THE PAVEMENT AND 5.5" FROM THE BACK OF A CONCRETE CURB. PER PLAT THIS CORNER IS AT N=10694235.98 AND E= 1731029.55, STATE PLANE COORDINATES, TEXAS CENTRAL ZONE, 4203.

THENCE N 14°46'37" W WITH SAID RIGHT OF WAY FOR A DISTANCE OF 177.45' TO A ½" REBAR WITH CAP MARKED "PLS 1974", RECOVERED FOR AN ANGLE POINT IN SAID RIGHT OF WAY LINE. FROM THIS POINT THE NORTHWEST CORNER OF A CONCRETE PAD BEARS S 26°11'50" E AT 12.5'.

THENCE N 30°13'23" E FOR A DISTANCE OF 70.71' TO A ½" REBAR WITH CAP MARKED "PLS 1974" RECOVERED ON THE SOUTH RIGHT OF WAY LINE OF ANDREWS HIGHWAY (STATE HIGHWAY 191) WITH A RIGHT OF WAY OF 500' WIDE, FOR THE NORTHWEST CORNER OF SAID LOT 5 AND OF THIS TRACT.

THENCE N 75°13'23" E ALONG SAID RIGHT OF WAY FOR A DISTANCE OF 127.72' TO A POINT IN A NEW CONCRETE SIDEWALK FOR THE NORTHWEST CORNER OF LOT 2A, THE NORTHEAST CORNER OF SAID LOT 5, AND OF THIS TRACT. FROM THIS POINT A "X" MARKED IN SAID SIDEWALK BEARS N 2°11'10" E AT 1.40' AND A ½" REBAR WITH CAP MARKED "PLS 1974" BEARS N 75°13'23" E AT 230.00' RECOVERED FOR THE NORTHEAST CORNER OF SAID LOT 2A.

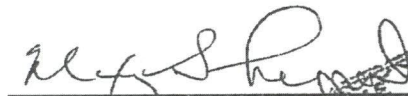
THENCE S 14°22'29" E FOR A DISTANCE OF 161.81' TO A "+" RECOVERED ON A CONCRETE CURB ON THE NORTH LINE OF LOT 1A, BLOCK 2, SECTION 3, WESTRIDGE PARK ADDITION, FOR THE SOUTHWEST CORNER OF AFORESAID LOT 2A, THE SOUTHEAST CORNER OF SAID LOT 5 AND OF THIS TRACT.

THENCE S 45°35'50" W FOR A DISTANCE OF 133.60' TO A "+" RECOVERED ON A CONCRETE CURB FOR AN ANGLE POINT IN THE SOUTH LINE OF SAID LOT 5 AND OF THIS TRACT.

THENCE S 75°35'50" W FOR A DISTANCE OF 60.45' TO THE PLACE OF BEGINNING AND CONTAINING 0.808 ACRE OF LAND, (35,229 SQUARE FEET)

ALL BEARINGS AND DISTANCES ARE GRID NAD 83, TEXAS CENTRAL ZONE 4203 AS BASED UPON OPUS SOLUTION NEAR THE NORTHWEST CORNER OF THIS TRACT. COMBINED GRID SCALE FACTOR IS 0.99987.

I, MAXEY SHEPPARD, A REGISTERED PROFESSIONAL LAND SURVEYOR, OF TEXAS, HEREBY CERTIFY THAT THE FOREGOING DESCRIPTION AND ATTACHED PLAT REPRESENT A SURVEY MADE ON THE GROUND, UNDER MY DIRECT SUPERVISION.


MAXEY SHEPPARD, RPLS 3697



S:\C&G SURVEY\BOUNDARY\MIDLAND COUNTY\MIDLAND\WESTRIDGE PARK ADDN\WESTRIDGE LOT 2 BLK 5
MIDLAND.doc





City Council Agenda

JNichols
City Manager's Office

MEETING DATE: 9/24/2013

TO: City Council / City Manager

FROM: Gary Saunders, Transportation Manager

SUBJECT: Consider an ordinance on second reading amending Title X, "Traffic Regulations", Chapter Four, "Traffic Control Devices", Section 11, "School Zones and Crossings", of the Midland City Code, so as to designate each school zone and school crossing within the City and regulate the speed and movement of traffic therein; authorizing and directing the Traffic Engineer to install appropriate signs and markings; repealing Ordinance No.9042; 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.

Purpose:

Consider an ordinance on second reading amending Title X, "Traffic Regulations", Chapter Four, "Traffic Control Devices", Section 11, "School Zones and Crossings", of the Midland City Code, so as to designate each school zone and school crossing within the City and regulate the speed and movement of traffic therein; authorizing and directing the Traffic Engineer to install appropriate signs and markings; repealing Ordinance No.9042; 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.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Approximately \$300.00 for labor and equipment cost to remove existing signs and posts.

Discussion:

The Legal Department has prepared an ordinance to be considered on second reading amending the existing ordinance for "School Zones and Crossings" within the City of Midland authorizing the removal of the existing school zone on a portion of Big Spring Street for Premier Charter High School as follows:

Premier Charter High School:

30 m.p.h. - 7:30 to 9:00 a.m. and 2:00 to 3:30 a.m. on Big Spring Street from a point 200 feet south of the centerline of Golf Course Road to a point 70 feet north of the centerline of Eugene Avenue.

The removal of this school zone from the existing ordinance is necessary due to relocation of this school campus to another site within the City of Midland.

Staff recommends approval of this ordinance.

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE X, "TRAFFIC REGULATIONS", CHAPTER FOUR, "TRAFFIC CONTROL DEVICES", SECTION 11, "SCHOOL ZONES AND CROSSINGS", OF THE MIDLAND CITY CODE, SO AS TO DESIGNATE EACH SCHOOL ZONE AND SCHOOL CROSSING WITHIN THE CITY AND REGULATE THE SPEED AND MOVEMENT OF TRAFFIC THEREIN; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO INSTALL APPROPRIATE SIGNS AND MARKINGS; REPEALING ORDINANCE NO. 9042; 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, Section 10-1-1(A)(43) of the City Code of Midland, Texas, defines school crossings as any crosswalk on a public street designated as such by Ordinance of the Council and marked by signs or pavement markings identifying it as a school crossing, and Section 10-1-1(A)(44) of the City Code defines school zones as areas, whether adjacent to schools or not, when properly marked by signs or pavement markings designating them as school zones; and

WHEREAS, the City Traffic Engineer has recommended the establishment of certain locations within the City to be designated as school zones, and/or crossing areas and certain changes in existing school zones, all based on engineering and traffic investigations; and

WHEREAS, the Council finds it to be in the public interest to follow the recommendations of the City Traffic Engineer in this matter;

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

SECTION ONE. That Section 11, "School Zones and Crossings", Chapter 4, "Traffic Control Devices", Title X, "Traffic Regulations", of the City Code of Midland, Texas, be amended and retitled so as to hereafter read as follows:

10-4-11: SCHOOL ZONES AND CROSSINGS

(A) The following described areas or locations are hereby designated "School Crossing Areas" and no person shall drive a motor vehicle in such areas or locations at a speed

greater than is reasonable and prudent under the circumstances then existing. The speed limits specified hereinafter shall be lawful, but any speed in excess of the limits specified below during the hours set out hereinafter for each location or when flashing lights are in place and operative shall be prima facie evidence that the speed is not reasonable or prudent and is unlawful on the days schools are in session.

1. Alamo Junior High School - 25 mph - 7:30 to 9:00 a.m. and 3:30 to 4:30 p.m.

On Illinois Avenue from a point 211 feet east of the centerline of McDonald Street to a point 200 feet west of the centerline of McDonald Street.
2. Anson Jones Elementary School - 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

On Illinois Avenue from a point 210 feet east of the centerline of Stoneybrook Drive to a point 210 feet west of the centerline of Stoneybrook Drive.
3. Ben Milam Elementary School
 - (a) 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.
 - (1) On Wadley Avenue from a point 293 feet east of the centerline of Edwards Street at its easternmost intersection with Wadley Avenue to a point 280 feet west of the centerline of Edwards Street at its easternmost intersection with Wadley Avenue.
 - (2) On Main Street from a point 175 feet north of the centerline of Dormard Avenue to a point 175 feet south of the centerline of Dormard Avenue.
 - (3) On Lamesa Road from a point 115 feet north of the centerline of Spruce Avenue at its northernmost intersection with Lamesa Road to a point 295 feet south of the centerline of Spruce Avenue at its northernmost intersection with Lamesa Road.
 - (b) 30 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

On Big Spring Street from a point 330 feet north of the centerline of Dormard Avenue to a point 225 feet south of the centerline of Dormard Avenue.
4. Bonham Elementary School and Alamo Junior High School - 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

On Midland Drive from a point 185 feet north of the centerline of Storey Avenue to a point 185 feet south of the centerline of Storey Avenue.
5. Bowie Elementary School - 20 mph - 7:00 to 9:00 a.m. and 2:30 to 5:30 p.m.
 - (a) On Douglas Avenue from a point 205 feet east of the centerline of "D" Street to a point 175 feet west of the centerline of "D" Street.
 - (b) On Golf Course Road from a point 190 feet east of the centerline of "C" Street to a point 130 feet west of the centerline of "C" Street.

6. Burnett Elementary School - 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.
On Thomason Drive from a point 232 feet east of the centerline of Raymond Drive to a point 200 feet west of the centerline of Raymond Drive.
7. Bush Elementary School
 - (a) 20 mph - 7:00 - 9:00 a.m. and 2:30 to 4:30 p.m.
On Whittle Way from a point 175 feet north of the centerline of Preston Avenue to a point 200 feet south of the centerline of Preston Avenue.
 - (b) 30 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.
On Wadley Avenue from a point 200 feet east of the centerline of Whittle Way to a point 200 feet west of the centerline of Whittle Way
8. Crockett Elementary School - 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.
 - (a) On Lamesa Road from a point 135 feet south of the centerline of Parker Avenue at its southernmost intersection with Lamesa Road to a point 200 feet north of the centerline of Parker Avenue at its southernmost intersection with Lamesa Road.
 - (b) On Cuthbert Avenue from a point 200 feet east of the centerline of Dallas Street to a point 180 feet west of the centerline of Dallas Street.
 - (c) On Main Street from a point 230 feet north of the centerline of Parker Avenue at its northernmost intersection with Main Street to a point 230 feet south of the centerline of Parker Avenue at its southernmost intersection with Main Street.
 - (d) On Golf Course Road from a point 150 feet east of the centerline of Fort Worth Street to a point 140 feet west of the centerline of Fort Worth Street.
9. DeZavala Elementary School - 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.
 - (a) On Lamesa Road from a point 300 feet north of the centerline of Louisiana Avenue to a point 250 feet south of the centerline of Louisiana Avenue.
 - (b) On Louisiana Avenue from a point 200 feet west of the centerline of Lamesa Road to a point 150 feet east of the centerline of Lamesa Road.
 - (c) On Garden Lane from a point 180 feet west of the centerline of Lee Street to a point 191 feet east of the centerline of Lee Street.
 - (d) On Walnut Lane from a point 184 feet west of the centerline of Lee Street to a point 196 feet east of the centerline of Lee Street.

10. Fannin Elementary School - 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.
 - (a) On Neely Avenue from a point 290 feet east of the centerline of Lanham Street to a point 300 feet west of the centerline of Lanham Street.
 - (b) On Garfield Street from a point 466 feet south of the centerline of Cimmaron Drive to a point 135 feet north of the centerline of Dengar Avenue.
 - (c) On Ward Street from a point 150 feet north of the centerline of Fannin Avenue to a point 160 feet south of the centerline of Fannin Avenue.
11. Greathouse Elementary School - 25 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.
 - (a) On Briarwood Avenue from a point 540 feet east of the centerline of Mathis Street to a point 450 feet west of the centerline of Mathis Street.
 - (b) 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m. On Oriole Drive from a point 220 feet north of the centerline of Woodhollow Drive to a point 198 feet south of the centerline of Woodhollow Drive.
12. Hillander Private School - 20 mph - 7:30 to 9:00 a.m. and 3:00 to 4:00 p.m.

On Neely Avenue from a point 220 feet east of the centerline of “I” Street to a point 210 feet west of the centerline of “I” Street.
13. Lamar Elementary School - 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

On Illinois Avenue from a point 330 feet east of the centerline of Crestview Road to a point 240 feet west of the centerline of Crestview Road.
14. Lee Freshman High School - 20 mph - 7:30 to 9:30 a.m. and 3:30 to 4:30 p.m.

On Scharbauer Drive from a point 195 feet west of the centerline of Butternut Lane to a point 202 feet east of the centerline of Butternut Lane.
- 14a. Midland Academy Charter School - 20 m.p.h. - 7:30 to 9:00 a.m. and 2:30 to 4:30 p.m.
 - (a) On Baird Street from a point 97 feet north of the centerline of Michigan Avenue to a point 145 feet south of the centerline of Tennessee Avenue.
 - (b) On Michigan Avenue from a point 180 feet east of the centerline of Weatherford Street to a point 180 feet west of the centerline of Baird Street.
 - (c) On Tennessee Avenue from a point 180 feet east of the centerline of Weatherford Street to a point 180 feet west of the centerline of Baird Street.

- (d) On Weatherford Street from a point 95 feet north of the centerline of Michigan Avenue to a point 165 feet south of the centerline of Tennessee Avenue.
- 15. Midland Christian School - 20 mph - 7:30 to 8:30 a.m. and 3:00 to 4:30 p.m.

On Neely Avenue from a point 175 feet east of the centerline of Culver Drive to a point 225 feet west of the centerline of Culver Drive.
- 16. Midland Freshman High School - 25 mph - 7:30 to 9:30 a.m. and 3:30 to 4:30 p.m.

On Rankin Highway from a point 265 feet north of the centerline of Hicks Avenue to a point 170 feet south of the centerline of Hicks Avenue.
- 17. Pease Elementary School - 25 mph - 7:00 to 9:00 a.m. and 2:30 to 5:30 p.m.

On Fairgrounds Road from a point 200 feet north of the centerline of Pecan Avenue to a point 200 feet south of the centerline of Pecan Avenue.
- 18. Quanah Parker Elementary School
 - (a) 30 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

On Midland Drive from a point 340 feet north of the centerline of St. Andrews Drive to a point 350 feet south of the centerline of St. Andrews Drive.
 - (b) 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

On Godfrey Drive from a point 150 feet north of the centerline of St. Andrews Drive to a point 135 feet south of the centerline of St. Andrews Drive.
- 19. Sam Houston Elementary School - 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.
 - (a) On Cuthbert Avenue from a point 335 feet east of the centerline of “N” Street at its easternmost intersection with Cuthbert Avenue to a point 297 feet west of the centerline of “N” Street at its easternmost intersection with Cuthbert Avenue.
 - (b) On Garfield Street from a line 50 feet north of the centerline of Storey Avenue to a line 60 feet north of the centerline of Country Club Drive at its southernmost intersection with Garfield Street.
 - (c) On Michigan Avenue from a point 180 feet east of the centerline of North “N” Street to a point 180 feet west of the centerline of North “N” Street.
- 20. San Jacinto Junior High School - 20 mph - 7:30 to 9:00 a.m. and 3:30 to 4:30 p.m.

- (a) On Golf Course Road from a point 208 feet east of the centerline of “N” Street to a point 185 feet west of the centerline of “N” Street.
 - (b) On Garfield Street from a point 287 feet south of the centerline of Community Lane to a point 287 feet north of the centerline of Community Lane.
- 21. Santa Rita Elementary School - 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.
 - (a) On Bluebird Lane from a point 215 feet east of the centerline of Whitman Street to a point 200 feet west of the centerline of Whitman Street.
 - (b) On Bluebird Lane from a point 375 feet east of the centerline of Garfield Street to a point 375 feet west of the centerline of Garfield Street.
 - (c) On Garfield Street from a point 245 feet south of the centerline of Bluebird Lane to the centerline of Bluebird Lane.
 - (d) On Polo Parkway from a point 50 feet east of the centerline of Canterbury to a point 160 feet south of the centerline of Castleford Road at its southernmost intersection with Polo Parkway.
- 22. South Elementary School -
 - (a) 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

On Big Spring Street from a point 220 feet north of the centerline of Dakota Street to a point 165 feet south of the centerline of Dakota Street.
 - (b) 20 mph - 7:00 to 8:00 a.m. and 3:00 to 4:00 p.m.
 - (1) On Goode Street from a point 312 feet north of the centerline of Griffin Avenue to a point 175 feet south of the centerline of Griffin Avenue.
 - (2) On Griffin Avenue from a point 203 feet east of the centerline of Goode Street to a point 188 feet west of the centerline of Goode Street.
- 23. Travis Elementary School -
 - (a) 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

On Terrell Street from a point 160 feet north of the centerline of Gist Avenue to a point 150 feet south of the centerline of Gist Avenue.
 - (b) 30 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

On Lamesa Road from a point 230 feet north of the centerline of Gist Avenue

to a point 230 feet south of the centerline of Gist Avenue.

24. Washington Elementary School - 20 mph - 7:00 to 9:00 a.m. and 2:30 to 5:30 p.m.

- (a) On Lamesa Road from a point 225 feet north of the centerline of Wall Street to a point 225 feet south of the centerline of Wall Street.
- (b) On Lee Street from a point 200 feet north of the centerline of Wall Street to a point 195 feet south of the centerline of Wall Street.
- (c) On Indiana Avenue from a point 225 feet west of the centerline of Tilden Street to a point 210 feet east of the centerline of Tilden Street.

25. West Elementary School - 20 mph - 7:00 to 9:00 a.m. and 2:30 to 4:30 p.m.

On Garfield Street from a point 160 feet north of the centerline of Missouri Avenue to a point 250 feet south of the centerline of Indiana Avenue.

- (B) The following described locations or areas within the City of Midland are hereby designated “School Zones”, and no person shall drive a motor vehicle in such areas or locations at a speed greater than is reasonable and prudent under the circumstances then existing. The speed limits specified hereinafter shall be lawful, but any speed in excess of the limits so specified during the hours set forth hereinafter for each location or when flashing lights are in place and operative shall be prima facie evidence that the speed is not reasonable or prudent and is unlawful, on the days schools are in session.

1. Abell Junior High School - 20 mph - 7:00 a.m. - 4:30 p.m.

- (a) On Heritage Boulevard from the centerline of Wadley Avenue to a point 170 feet south of the centerline of Highland Boulevard/Highland Court.
- (b) On Highland Boulevard from the centerline of Heritage Boulevard to a point 830 feet west of the centerline of Heritage Boulevard.
- (c) On Wadley Avenue from a point 100 feet east of the centerline of Heritage Boulevard to a point 830 feet west of the centerline of Heritage Boulevard.

2. Anson Jones Elementary School - 20 mph - 7:00 a.m. - 4:30 p.m.

- (a) Stoneybrook Drive - from a point 88 feet north of the centerline of Shadylane Drive to the centerline of Shadylane Drive.
- (b) Shadylane Drive - from a point 160 feet north of the centerline of Thomason Drive to a point 150 feet east of the centerline of Thornridge Drive.
- (c) Thornridge Drive - from a point 160 feet north of the centerline of Thomason Drive to the centerline of Shadylane Drive.

3. Ben Milam Elementary School - 20 mph - 7:00 a.m. - 4:30 p.m.

- (a) Shandon Avenue - from a point 230 feet west of the centerline of Edwards Street to a point 300 feet east of the centerline of Barber Drive.
 - (b) Dengar Avenue - from a point 230 feet west of the centerline of Edwards Street to the centerline of Edwards Street.
 - (c) Dengar Avenue - from the centerline of Barber Drive to a point 295 feet east of the centerline of Barber Drive
 - (d) Dormard Avenue - from a point 300 feet west of the centerline of Edwards Street to a point 230 feet east of the centerline of Barber Drive.
 - (e) Edwards Street - from a point 205 feet south of the centerline of Dormard Avenue to a point 160 feet north of the centerline of Shandon Avenue.
 - (f) Barber Drive - from a point 175 feet south of the centerline of Dormard Avenue to a point 155 feet north of the centerline of Shandon Avenue.
4. Bonham Elementary School and Alamo Junior High School - 20 mph - 7:00 a.m. - 4:30 p.m.
- (a) Cuthbert Avenue - from a point 235 feet west of the centerline of Delmar Street to a point 185 feet east of the centerline of Bonham Street.
 - (b) Storey Avenue - from a point 450 feet west of the centerline of Delmar Street to the centerline of McDonald Street.
 - (c) Storey Avenue - from the centerline of Bonham Street to a point 220 feet east of the centerline of Bonham Street.
 - (d) Delmar Street - from a point 195 feet south of the centerline of Storey Avenue to the centerline of Storey Avenue.
 - (e) Delmar Street - from a point 170 feet north of the centerline of Cuthbert Avenue to the centerline of Cuthbert Avenue.
 - (f) McDonald Street - from a point 200 feet south of the centerline of Storey Avenue to a point 115 feet north of the centerline of Cuthbert Avenue.
 - (g) Bonham Street - from a point 170 feet south of the centerline of Storey Avenue to a point 118 feet north of the centerline of Cuthbert Avenue.
 - (h) Dunbar Street - from a point 115 feet north of the centerline of Cuthbert Avenue to the centerline of Cuthbert Avenue.
5. Bowie Elementary School - 20 mph - 7:00 a.m. to 5:30 p.m.

- (a) Elk Avenue - from the centerline of “B” Street to the centerline of “A” Street.
 - (b) Douglas Avenue - from a point 90 feet east of the centerline of “C” Street to the centerline of “B” Street.
 - (c) Douglas Avenue - from the centerline of “A” Street to a point 195 feet east of the centerline of “A” Street.
 - (d) Princeton Avenue - from a point 255 feet west of the centerline of “B” Street to the centerline of “B” Street.
 - (e) “B” Street - from a point 150 feet north of the centerline of Elk Avenue to a point 160 feet south of the centerline of Princeton Avenue.
 - (f) “A” Street - from a point 140 feet north of the centerline of Elk Avenue to a point 175 feet south of the centerline of Douglas Avenue.
6. Bunch Elementary School - 20 mph - 7:30 a.m. to 4:30 p.m.
- (a) Pennsylvania Avenue - from a point 165 feet east of the centerline of Carver Street to a point 190 feet east of the centerline of Jackson Street.
 - (b) Adams Street - from the centerline of Pennsylvania Avenue to a point 135 feet north of the centerline of Pennsylvania Avenue.
 - (c) Jackson Street - from a point 140 feet north of the centerline of Pennsylvania Avenue to a point 215 feet north of the centerline of Cloverdale Road.
 - (d) California Avenue - from the centerline of Jackson Street to a point 200 feet east of the centerline of Jackson Street.
7. Burnett Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.
- (a) Spraberry Drive - from a point 175 feet north of the centerline of Devonian Drive to a point 130 feet north of the centerline of Pleasant Drive.
 - (b) Ruby Drive - from the centerline of Canyon Drive to a point 165 feet north of the centerline of Devonian Drive.
 - (c) Raymond Drive - from a point 185 feet north of the centerline of Canyon Drive to a point 50 feet north of the centerline of Pleasant Drive.
 - (d) Devonian Drive - from a point 230 feet west of the centerline of Spraberry Drive to the centerline of Spraberry Drive.
 - (e) Canyon Drive - from the centerline of Spraberry Drive to a point 280 feet east of the centerline of Raymond Drive.
 - (f) Pasadena Drive - from the centerline of Spraberry Drive to a point 230

feet west of the centerline of Spraberry Drive.

- (g) Howard Drive - from the centerline of Raymond Drive to a point 295 feet east of the centerline of Raymond Drive.
8. Bush Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.
- (a) Idlewilde Drive - from a point 90 feet north of the centerline of Rainbow Road to the north curb line of Preston Drive.
 - (b) Preston Drive - from a point 150 feet east of the centerline of Idlewilde Drive to a point 150 feet west of the centerline of Sunburst Drive.
 - (c) Sunburst Drive - from a point 90 feet north of the centerline of Rainbow Road to a point 150 feet north of the centerline of Preston Drive.
9. Carver Center - 20 mph - 7:00 a.m. to 4:30 p.m.
- (a) Carver Street - from a point 175 feet north of the centerline of Texas Avenue to a point 160 feet south of the centerline of Wall Street.
 - (b) Texas Avenue - from a point 150 feet west of the centerline of Carver Street to the centerline of Carver Street.
 - (c) Adams Street – from a point 150 feet south of the centerline of Wall Street to the centerline of Wall Street.
 - (d) Jesse Street – from a point 100 feet north of the centerline of Wall Street to the centerline of Wall Street.
10. Coleman High School - 20 mph - 7:00 a.m. to 4:30 p.m.
- (a) Golf Course Road - from a point 60 feet west of the centerline of Benton Street to a point 120 feet west of the centerline of Tilden Street.
 - (b) Tilden Street - from a point 70 feet north of the centerline of Jax Street to the centerline of Golf Course Road.
11. Crockett Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.
- (a) Jax Avenue - from a point 190 feet west of the centerline of Fort Worth Street to the centerline of Terrell Street.
 - (b) Parker Avenue - from a point 190 feet west of the centerline of Fort Worth Street to a point 155 feet east of the centerline of Terrell Street.
 - (c) Fort Worth Street - from the centerline of Parker Avenue to a point 160 feet south of the centerline of Hamby Avenue.
 - (d) Terrell Street - from the centerline of Parker Avenue to a point 100 feet north of the centerline of Jax Avenue.
 - (e) Dallas Street - from the centerline of Parker Avenue to a point 180 feet

south of the centerline of Parker Avenue.

12. DeZavala Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.
 - (a) Orchard Lane - from the centerline of Lee Street to a point 175 feet east of the centerline of Lee Street.
 - (b) Lee Street - from a point 325 feet north of the centerline of Mesquite Street to a point 50 feet north of the centerline of South Street.
 - (c) Mesquite Street - from the centerline of Lee Street to a point 175 feet east of the centerline of Lee Street.
13. Emerson Elementary School and Goddard Junior High School - 20 mph - 7:00 a.m. to 4:30 p.m.
 - (a) Haynes Drive - from a point 175 feet east of the centerline of Lanham Street to a point 150 feet west of the centerline of Ward Street.
 - (b) Ward Street - from a point 250 feet south of the centerline of Haynes Drive to a point 135 feet north of the centerline of Emerson Place.
 - (c) Moss Avenue - from a point 465 feet east of the centerline of Whitney Drive to the centerline of Ward Street.
 - (d) Goddard Drive - from a point 185 feet east of the centerline of Ward Street to the centerline of Ward Street.
 - (e) Emerson Drive - from a point 185 feet east of the centerline of Ward Street to the centerline of Ward Street.
 - (f) Lanham Street - from a point 85 feet north of the centerline of Goddard Street to a point 140 feet south of the centerline of Haynes Drive.
14. Fannin Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.
 - (a) Cimmaron Avenue - from a point 285 feet west of the centerline of Lanham Street to a point 250 feet east of the centerline of Mogford Street.
 - (b) Frontier Avenue - from a point 295 feet west of the centerline of Lanham Street to the centerline of Lanham Street.
 - (c) Fannin Avenue - from a point 255 feet west of the centerline of Lanham Street to a point 325 feet east of the centerline of Mogford Street.
 - (d) Lanham Street - from a point 160 feet south of the centerline of Fannin Avenue to a point 180 feet north of the centerline of Cimmaron Avenue.
 - (e) Mogford Street - from a point 155 feet south of the centerline of Fannin Avenue to a point 170 feet north of the centerline of Cimmaron Avenue.

15. Greathouse Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.
- (a) On Mathis Street - from a point 515 feet north of the centerline of Briarwood Avenue to a point 100 feet north of the centerline of Greathouse Avenue.
 - (b) On Greathouse Avenue - from a point 180 feet south of the centerline of Mathis Street to a point 450 feet north of the centerline of Mathis Street.
 - (c) On Quicksand Drive - from the centerline of Mathis Street south a distance of 180 feet.
 - (d) On Woodhollow Drive - from the centerline of Mathis Street north a distance of 390 feet.
16. Henderson Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.
- (a) Bentwood Drive - from a point 265 feet north of the centerline of Graceland Drive to a point 138 feet south of the centerline of Joy Drive.
 - (b) Wilshire Drive - from the centerline of Graceland Drive to a point 160 feet north of the centerline of Graceland Drive.
 - (c) Erie Drive - from the centerline of Graceland Drive to a point 205 feet north of the centerline of Graceland Drive.
 - (d) Eisenhower Drive - from a point 135 feet north of the centerline of Graceland Drive to a point 135 feet south of the centerline of Graceland Drive.
 - (e) Graceland Drive - from a point 130 feet west of the centerline of Bentwood Drive to a point 135 feet east of the centerline of Eisenhower Drive.
17. Hillander Private School - 20 mph - 7:30 to 9:00 a.m., 11:00 a.m. to 12:30 p.m., and 1:45 to 4:00 p.m.
- (a) Wadley Avenue - from a point 275 feet east of the centerline of "I" Street to a point 560 feet west of the centerline of "I" Street.
 - (b) "I" Street - from a point 170 feet north of the centerline of Wadley Avenue to a point 215 feet south of the centerline of Wadley Avenue.
18. Jane Long Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.
- (a) Devonian Drive - from a point 180 feet north of the centerline of Tanner Drive to a point 200 feet south of the centerline of Cedar Spring Drive.
 - (b) Leddy Drive - from the centerline of Cedar Spring Drive to a point 165 feet north of the centerline of Tanner Drive.
 - (c) Tanner Drive - from a point 250 feet west of the centerline of Devonian

Drive to a point 215 feet east of the centerline of Leddy Drive.

- (d) Beckley Drive - from the centerline of Cedar Spring Drive to a point 150 feet south of the centerline of Cedar Spring Drive.
 - (e) Aberdeen Drive - from the centerline of Cedar Spring Drive to a point 250 feet south of the centerline of Cedar Spring Drive.
 - (f) Mercedes Drive - from a point 240 feet west of the centerline of Devonian Drive to the centerline of Devonian Drive.
 - (g) Avondale Drive - from the centerline of Leddy Drive to a point 85 feet east of the centerline of Leddy Drive.
 - (h) Cedar Spring Drive - from a point 125 feet west of the centerline of Devonian Drive to a point 185 feet east of the centerline of Leddy Drive.
19. Lamar Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.
- (a) Kessler Avenue - from a point 120 feet east of the centerline of Midkiff Road to a point 220 feet east of the centerline of Crestview Road.
 - (b) Peach Street - from a point 165 feet south of the centerline of Illinois Avenue to the centerline of Kessler Avenue.
 - (c) Crestview Road - from a point 185 feet south of the centerline of Illinois Avenue to a point 170 feet south of the centerline of Kessler Avenue.
 - (d) Barkley Street - from a point 180 feet east of the centerline of Crestview Road to the centerline of Crestview Road.
20. Lee Freshman High School - 20 mph - 7:30 a.m. to 4:30 p.m.
- (a) Oak Avenue - from a point 150 feet west of the centerline of Butternut Lane to a point 200 feet east of the centerline of Lincoln Street.
 - (b) Lincoln Street - from a point 145 feet north of the centerline of Oak Avenue to a point 145 feet north of the centerline of Magnolia Avenue.
 - (c) Maple Avenue - from a point 229 feet east of the centerline of Lincoln Street to the centerline of Lincoln Street.
 - (d) Butternut Lane - from a point 150 feet north of the centerline of Oak Avenue to a point 50 feet north of the centerline of Magnolia Avenue.
21. Midland Christian School - 20 mph - 7:30 a.m. to 4:30 p.m.
- (a) Culver Drive - from a point 35 feet south of the centerline of Sinclair Avenue to a point 135 feet north of the centerline of Gulf Avenue.
 - (b) Gulf Avenue - from a point 190 feet east of the centerline of Culver

Drive to the centerline of Culver Drive.

- (c) Northrup Drive - from a point 384 feet south of the centerline of Sinclair Avenue to a point 135 feet north of the centerline of Gulf Avenue.
 - (d) Sinclair Avenue - from a point 158 feet east of the centerline of Culver Drive to the centerline at Northrup Drive.
22. Midland Classical Academy School - 20 m.p.h. - 7:30 a.m. to 4:00 p.m.
- (a) Whitman Drive - from a point 87 feet north of the centerline of Mockingbird Lane to a point 650 feet south of the centerline of Savoy Place.
23. Midland Freshman High School - 20 mph - 7:30 a.m. to 4:30 p.m.
- (a) Main Street - from a point 180 feet north of the centerline of Hicks Avenue to a point 180 feet south of the centerline of Gist Avenue.
 - (b) Baird Street - from the centerline of Hicks Avenue to a point 150 feet north of the centerline of Hicks Avenue.
 - (c) Weatherford Street - from the centerline of Hicks Avenue to a point 150 feet north of the centerline of Hicks Avenue.
 - (d) Hicks Avenue - from a point 200 feet west of the centerline of Main Street to a point 175 feet east of the centerline of Weatherford Street.
 - (e) Montgomery Avenue - from the centerline of Main Street to a point 210 feet west of the centerline of Main Street.
 - (f) Gist Avenue - from a point 200 feet west of the centerline of Main Street to a point 1040 feet east of the centerline of Main Street.
24. Midland High School - 20 mph - 7:00 a.m. to 4:30 p.m.
- (a) Ohio Avenue - from a point 150 feet east of the centerline of San Angelo Street to the centerline of "A" Street.
 - (b) "C" Street - from a point 130 feet south of the centerline of Illinois Avenue to the centerline of Illinois Avenue.
 - (c) "D" Street - from a point 115 feet south of the centerline of Illinois Avenue to a point 45 feet north of the centerline of Ohio Avenue;
 - (d) Illinois Avenue - from a point 267 feet west of the centerline of "E" Street to a point 430 feet east of the centerline of "A" Street.
 - (e) "A" Street - from a point 85 feet south of the centerline of Tennessee Avenue to a point 280 feet south of the centerline of Illinois Avenue.
 - (f) Carrizo Street - from a point 145 feet north of the centerline of Illinois

Avenue to a point 145 feet south of the centerline of Illinois Avenue.

- (g) Tennessee Avenue - from a point 103 feet west of the centerline of “B” Street to a point 60 feet east of the centerline of “A” Street.

- 25. Midland Montessori School - 20 mph - 7:30 a.m. to 4:30 p.m.

On Austin Street from a point 200 feet north of the centerline of Cuthbert Avenue to a point 80 feet south of the centerline of Bedford Avenue.

- 26. Pease Elementary School - 20 mph - 7:00 a.m. to 5:30 p.m.

- (a) Magnolia Avenue - from a point 280 feet west of the centerline of Benton Street to a point 295 feet east of the centerline of Peterson Street.
- (b) Hickory Avenue - from a point 340 feet west of the centerline of Benton Street to the centerline of Benton Street.
- (c) Scharbauer Drive - from a point 335 feet west of the centerline of Benton Street to a point 290 feet east of the centerline of Peterson Street.
- (d) Benton Street - from a point 215 feet north of the centerline of Scharbauer Drive to a point 290 feet east of the centerline of Peterson Street.
- (e) Peterson Street - from the centerline of Scharbauer Drive to a point 200 feet north of the centerline of Magnolia Avenue.

- 27. Quanah Parker Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.

- (a) St. Andrews Drive - from a point 150 feet west of the centerline of Casady Court to a point 140 feet west of the centerline of Norwood Street.
- (b) Greenbriar Drive - from a point 150 feet south of the centerline of St. Andrews Drive to the centerline of St. Andrews Drive.
- (c) Merrill Drive - from a point 150 feet west of the centerline of Norwood Street to the centerline of Norwood Street.
- (d) Russell Drive - from a point 175 feet west of the centerline of Norwood Street to the centerline of Norwood Street.
- (e) Norwood Street - from the centerline of St. Andrews Drive to a point 150 feet north of the centerline of Russell Drive.

- 28. Rusk Elementary School and Lee High School

- (a) 20 mph - 7:00 a.m. to 4:30 p.m.

- (1) Neely Avenue - from a point 175 feet west of the centerline of

McDonald Street to a point 250 feet east of the centerline of Tarleton Street.

- (2) McDonald Street - from a point 155 feet south of the centerline of Neely Avenue to a point 115 feet north of the centerline of Cimmaron Avenue.
- (3) Wedgewood Street - from a point 200 feet south of the centerline of Neely Avenue to the centerline of Cimmaron Avenue.
- (4) Cimmaron Avenue - from a point 205 feet west of the centerline of McDonald Street to a point 170 feet east of the centerline of Shandon Avenue.
- (5) Fannin Avenue - from the centerline of McDonald Street to a point 200 feet west of the centerline of McDonald Street.
- (6) Shandon Avenue - from a point 235 feet north of the centerline of Cimmaron Avenue to the centerline of Cimmaron Avenue.
- (7) Imperial Avenue - from a point 235 feet north of the centerline of Cimmaron Avenue to the centerline of Cimmaron Avenue.
- (8) Godfrey Street - from a point 145 feet south of the centerline of Neely Avenue to a point 158 feet north of the centerline of Rebel Drive.

(b) 20 mph - 7:00 a.m. to 4:30 p.m.

- (1) Dengar Avenue - from a point 250 feet east of the centerline of Tarleton Street to the centerline of Tarleton Street.
- (2) Fannin Avenue - from the centerline of Tarleton Street to a point 240 feet east of the centerline of Tarleton Street.
- (3) Cimmaron Avenue - from the centerline of Tarleton Street to a point 295 feet east of the centerline of Tarleton Street.
- (4) Tarleton Street - from a point 175 feet south of the centerline of Neely Avenue to a point 140 feet north of the centerline of Dengar Avenue.

29. St. Ann's School

(a) 20 mph - 7:30 a.m. to 8:30 a.m. and 3:00 p.m. to 4:00 p.m.

Illinois Avenue - from a point 195 feet west of the centerline of "N" Street to a point 175 feet east of the centerline of "M" Street.

(b) 20 mph - 7:00 a.m. to 4:00 p.m.

- (1) Texas Avenue - from a point 195 feet west of the centerline of

- “N” Street to a point 30 feet west of the centerline of “L” Street.
- (2) “N” Street - from the centerline of Illinois Avenue to a point 180 feet south of the centerline of Texas Avenue.
- (3) “M” Street - from the centerline of Illinois Avenue to a point 180 feet south of the centerline of Texas Avenue.
30. Sam Houston Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.
- (a) Louisiana Avenue - from a point 540 feet east of the centerline of Garfield Street to a point 40 feet east of the centerline of “L” Street.
- (b) “L” Street - from a point 238 feet south of the centerline of Louisiana Avenue to a point 150 feet north of the centerline of Louisiana Avenue.
- (c) “N” Street - from a point 315 feet south of the centerline of Louisiana Avenue to a point 750 feet north of the centerline of Louisiana Avenue.
- (f) “M” Street - from a point 250 feet south of the centerline of Louisiana Avenue to the centerline of Louisiana Avenue.
31. San Jacinto Junior High School - 20 mph - 7:30 a.m. to 4:30 p.m.
- (a) Community Lane - from a point 160 feet east of the centerline of Garfield Street to a point 120 feet east of the centerline of “N” Street.
- (b) Douglas Avenue - from the centerline of “N” Street to a point 190 feet east of the centerline of “N” Street.
- (c) Hodges Street - from the centerline of Community Lane to a point 225 feet north of the centerline of Community Lane.
- (d) “N” Street - from a point 340 feet north of the centerline of Community Lane to a point 170 feet south of the centerline of Douglas Avenue.
32. Santa Rita Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.
- Whitman Drive - from a point 760 feet north of the centerline of Bluebird Lane and continuing north along Whitman Drive for 920 feet.
33. Scharbauer Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.
- (a) Crowley Boulevard - from a point 250 feet south of the centerline of Hereford Boulevard to a point 575 feet north of the centerline of Hereford Boulevard.
- (b) Hereford Boulevard - from a point 250 feet south of the centerline of Homestead Boulevard to a point 136 feet north of the centerline of Crowley Boulevard.
- (c) Homestead Boulevard - from the centerline of Hereford Boulevard to a point 425 feet west of the centerline of Hereford Boulevard.

34. South Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.
- (a) Dakota Avenue - from a point 155 feet west of the centerline of Colorado Street to a point 240 feet east of the centerline of Main Street.
 - (b) New Jersey Avenue - from a point 205 feet west of the centerline of Colorado Street to a point 235 feet east of the centerline of Main Street.
 - (c) Colorado Street - from a point 145 feet south of the centerline of New Jersey Avenue to a point 230 feet north of the centerline of Dakota Avenue.
 - (d) Loraine Street - from a point 230 feet south of the centerline of New Jersey Avenue to the centerline of New Jersey Avenue.
 - (e) Loraine Street - from the centerline of Dakota Avenue to a point 175 feet north of the centerline of Dakota Avenue.
 - (f) Main Street - from a point 120 feet south of the centerline of New Jersey Avenue to a point 200 feet north of the centerline of Dakota Avenue.
35. Travis Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.
- (a) Gist Avenue - from a point 190 feet west of the centerline of Marshall Street to a point 170 feet east of the centerline of Atlanta Street.
 - (b) Marshall Street - from the centerline of Gist Avenue to a point 205 feet north of the centerline of Gist Avenue.
 - (c) Jefferson Street - from the centerline of Gist Avenue to a point 215 feet north of the centerline of Gist Avenue.
 - (d) Atlanta Street - from the centerline of Gist Avenue to a point 190 feet north of the centerline of Gist Avenue.
36. Trinity Private School
- (a) 25 mph - 7:30 a.m. to 8:30 a.m.; and 2:45 p.m. to 4:45 p.m.
Wadley Avenue - from a point 150 feet west of the centerline of Godfrey Street to the centerline of Tarleton Street.
 - (b) 20 mph - 7:30 a.m. to 8:30 a.m.; and 2:45 p.m. to 4:45 p.m.
Godfrey Street - from a point 150 feet south of the centerline of Wadley Avenue to a point 265 feet south of the centerline of Trinity Drive.
Jordan Avenue - from a point 150 feet south of the centerline of Wadley Avenue to the centerline of Wadley Avenue.
37. Washington Elementary School - 20 mph - 7:00 a.m. to 5:30 p.m.
- (a) Wall Street - from a point 150 feet west of the centerline of Carver

Street to the centerline of Calhoun Street.

- (b) Tilden Street - from a point 155 feet north of the centerline of Wall Street to a point 100 feet north of the centerline of Indiana Avenue.
- (c) Donald Street - from a point 100 feet north of the centerline of Wall Street to the centerline of Wall Street.
- (d) Lincoln Street – from a point 100 feet north of the centerline of Wall Street to the centerline of Wall Street.
- (e) Jackson Street – from a point 100 feet north of centerline of Wall Street to the centerline of Wall Street.

38. West Elementary School - 20 mph - 7:00 a.m. to 4:30 p.m.

- (a) Missouri Avenue - from a point 165 feet west of the centerline of Garfield Street to a point 255 feet east of the centerline of “N” Street.
- (b) Indiana Avenue - from a point 265 feet west of the centerline of Garfield Street to a point 550 feet east of the centerline of “N” Street.
- (c) “N” Street - from a point 200 feet north of the centerline of Missouri Avenue to a point 215 feet south of the centerline of Indiana Avenue.
- (d) “O” Street - from a point 165 feet north of the centerline of Missouri Avenue to the centerline of Missouri Avenue.

SECTION TWO. The Traffic Engineer is hereby authorized and directed to erect and install appropriate signs and markings at the designated locations, in conformance with the State Highway Department’s manual and specifications, indicating and carrying out the provisions of this ordinance.

SECTION THREE. That Ordinance No. 8920 is hereby expressly repealed; and 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. That the repeal of the ordinance or parts of ordinances effectuated by the enactment of this ordinance shall not be construed as abating any actions now pending under or by virtue of such ordinances or as discontinuing, abating, modifying, or altering any

penalty accruing 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 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 hundred dollars (\$200.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

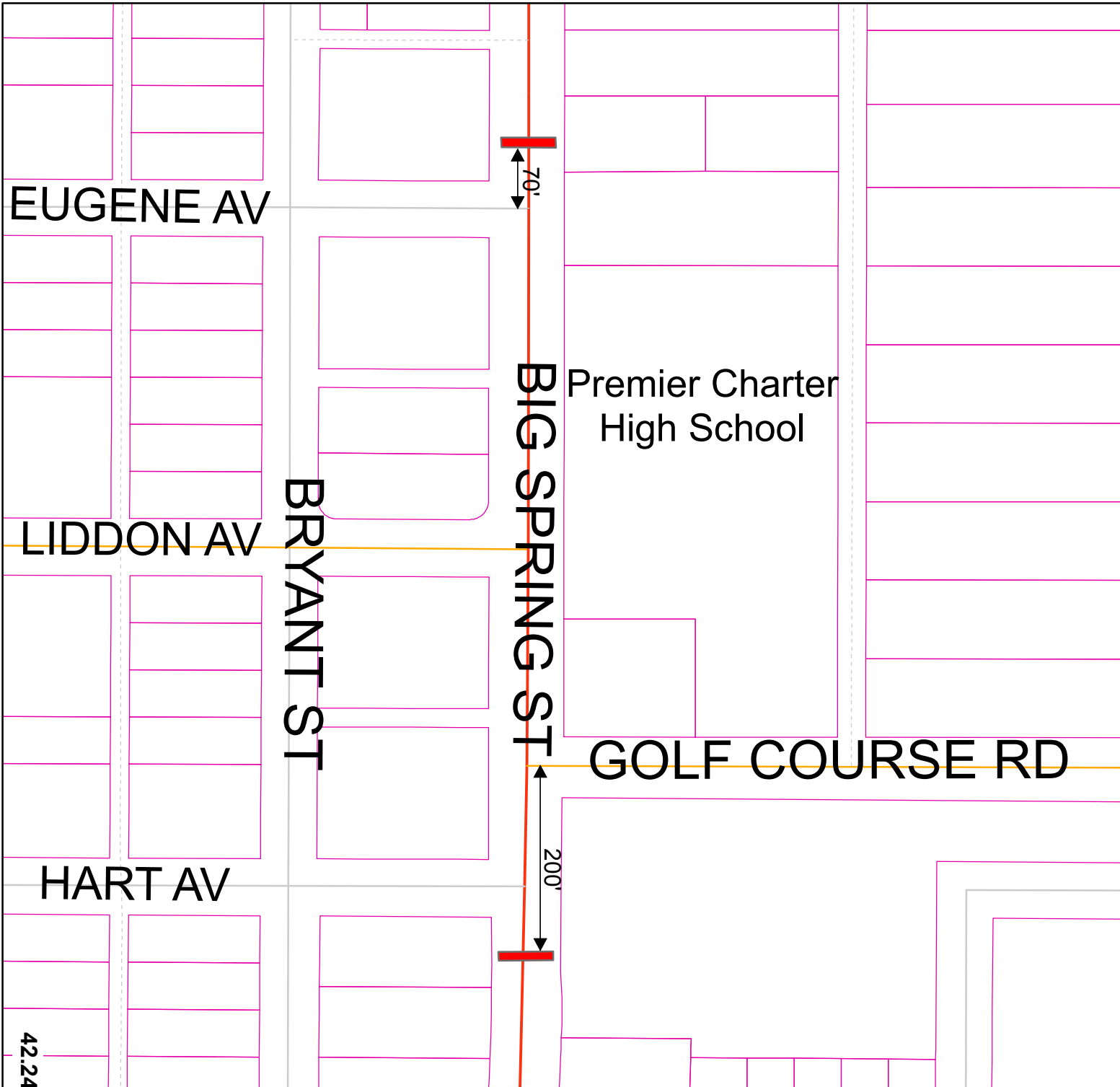
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Gary Saunders, Transportation Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



TRANSPORTATION
DIVISION

Premier Charter
High School

Proposed 30 m.p.h.
School Zone
7:30 -9:00 a.m.
and 2:00 - 3:30 p.m.
to be removed



Map by TC 7/26/11



City Council Agenda

Approved for Agenda:
RPatrick
City Manager's Office

MEETING DATE: September 24, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Jim Compton, Acting Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by Bobby Hill- Grace Partnership LLC for a zone change from O-1, Office District to O-2, Office District on the east 1.612-acres of Lot 7, Block 3, Gateway Plaza, Section 2, City and County of Midland, Texas. (Generally located on the north side of Starboard Drive, approximately 350 feet east of S. Tradewinds Boulevard.)

Purpose: Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by Bobby Hill- Grace Partnership LLC for a zone change from O-1, Office District to O-2, Office District on the east 1.612-acres of Lot 7, Block 3, Gateway Plaza, Section 2, City and County of Midland, Texas. District – 4.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

The applicant is requesting a zone change on the above described property from O-1, Office District to O-2, Office District. The applicant is proposing to build a hotel at this location, which is a permitted use under the O-1 zoning regulations. The proposed structure is to be a four story hotel, and the O-1 District limits building height to a maximum of two and one half standard stories. The request in zone change is specifically to allow for increased building height permitted under the O-2 District regulations, which allows up to a maximum of seven standard stories. Both the O-1 and the O-2, Office Districts allow for administrative site plan review by staff, and requires the developer to adhere to the building material requirements of the City's Ch. 10 Site Plan Review Standards. Staff finds this request reasonable as the potential land uses are not affected, and therefore recommend approval.

Attachments: Maps.

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 1.612-ACRE PORTION OF LOT 7, BLOCK 3, GATEWAY PLAZA, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED O-1, OFFICE DISTRICT, TO BE USED AS AN O-2, OFFICE DISTRICT (GENERALLY LOCATED ON THE NORTH SIDE OF STARBOARD DRIVE, APPROXIMATELY 350 FEET EAST OF SOUTH TRADEWINDS BOULEVARD); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of Districts under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of an O-2, Office 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 O-1, Office District, and it shall be used as an O-2, Office District, said property being described as follows:

A 1.612-acre portion of Lot 7, Block 3, Gateway Plaza, Section 2, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "A", which is attached hereto and incorporated herein.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are

used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the

following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant to the City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

John F. Watson & Company

PROFESSIONAL LAND SURVEYORS & PLANNERS

200 N. Loraine, Suite 220, Midland, Texas 79701, (432) 520-2400, Fax (432) 520-2404

www.windearthwater.com

GATEWAY PLAZA, SECTION 10 (REPLAT OF LOT 7, BLOCK 3, SECTION 2) – 1.612 ACRES – ZONING CHANGE

LEGAL DESCRIPTION: BEING 1.612 ACRES OF LAND LYING IN AND BEING SITUATED OUT OF SECTION 1, BLOCK 40, T-2-S, T & P RR Co. SURVEY, IN MIDLAND COUNTY, TEXAS AND BEING A PORTION OF LOT 7, BLOCK 3, GATEWAY PLAZA, SECTION 2, AN ADDITION TO THE CITY OF MIDLAND RECORDED IN CABINET I, PAGE 65 OF THE PLAT RECORDS OF MIDLAND COUNTY, TEXAS; SAID 1.612 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS AND AS SURVEYED UNDER THE SUPERVISION OF JOHN F. WATSON & COMPANY IN APRIL-JULY, 2013:

BEGINNING at a point (N(Y) 10681551.04', E(X) 1734239.35') in the northwest r-o-w line of Starboard Drive for the southerly common corner of Lot 6 of said Block 3 and said Lot 7 and the southeast corner hereof and from which a 1/2 inch iron rod with cap found bears North 62°10'17" East a distance of 0.22 feet;

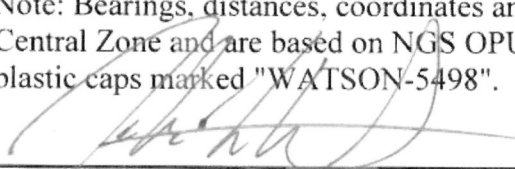
THENCE South 59°45'18" West a distance of 218.32 feet along said r-o-w line to a point for the southwest corner hereof;

THENCE North 14°21'15" West a distance of 362.84 feet crossing said Lot 7 to a point in the common line of Lot 8 of said Block 3 and said Lot 7 for the northwest corner hereof;

THENCE North 74°52'35" East a distance of 210.00 feet along the common line of said Lots 7 and 8 and the common line of Lot 10 of said Block 3 and said Lot 7 to a point for the northerly common corner of said Lots 6 and 7 and the northeast corner hereof;

THENCE South 14°21'15" East a distance of 305.88 feet along the common line of said Lots 6 and 7 to the **POINT OF BEGINNING** and containing 1.612 acres of land, more or less;

Note: Bearings, distances, coordinates and acreage shown hereon are Grid, NAD83(CORS96), Texas Central Zone and are based on NGS OPUS Ssolutions. "Iron rods set" are 1/2 inch iron rebar with blue plastic caps marked "WATSON-5498".


John F. Watson
Texas Registered Professional Land Surveyor
RPLS No. 5498
Job no. 13-0211,

July 29, 2013

RECEIVED

JUL 31 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE



CASE NO. 2-13-033 43.5

PLANNING AND ZONING COMMISSION

September 3, 2013

CASE: Z-13-033.

APPLICANT/OWNER: Grace Partnership, LLC.

REPRESENTATIVE: Maverick Engineering.

LEGAL DESCRIPTION: The east 1.612-acres of Lot 7, Block 3, Gateway Plaza, Section 2, City and County of Midland, Texas.

LOCATION: Generally located on the north side of Starboard Drive, approximately 350 feet east of S. Tradewinds Boulevard.

CURRENT ZONING: O-1, Office District.

ASSOCIATED CASE: P-13-058.

DETAILS OF REQUEST:

1. The applicant is requesting a zone change on the above described property from O-1, Office District to O-2, Office District. The applicant is proposing to build a hotel at this location, which is a permitted use under the O-1 zoning regulations. The proposed hotel is to be a four story hotel, and the O-1 District limits building height to a maximum of two and one half standard stories. The request in zone change is specifically to allow for increased in building height permitted under the O-2 District regulations.

SURROUNDING ZONING AND LAND USE:

2. This property is located at the northeast corner of the intersection of Starboard Drive and Tradewinds Boulevard. Immediately north of this property are two large tracts zoned as PD, Planned Districts for Housing Developments. East of this property is a LR-2, Local Retail District, and a PD, Planned District for a Shopping Center, which received site plan approval for the construction of a five story hotel. South of this property is a large LR-3, Local Retail District which is currently vacant, and west of this property is another large PD, Planned District for a Housing Development. The property to the west had a site plan previously approved for apartments. The northern most PD, Planned District for a Housing Development has had apartments constructed at that location. The new movie theater is being constructed at the southeast corner of the intersection of Starboard Drive and Liberty Drive.

ANALYSIS:

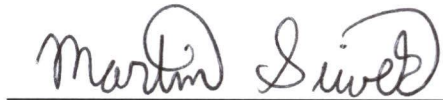
3. This area is currently undergoing development for both office and retail uses. Planned Districts have previously been approved granting an increase in height to the other developments in the area. The hotel along Starboard Drive has been permitted up to five stories, and the new movie theater has been granted an increase in height up to 52 feet, or approximately five stories. The primary purpose of the request to rezone the property from O-1, Office District regulations to O-2, Office District regulations is to allow for an increase in building height for a proposed four story hotel. The O-2 District regulations does allow for a maximum building height of up to seven stories, and allows for more flexibility with combining retail uses in office space than does its related O-1, Office District zoning class. Land uses permitted between these two districts are essentially equivalent, with a distinguishing difference between the two districts being maximum building height. Both the O-1 and the O-2, Office Districts allow for administrative site plan review by staff, and requires the developer to adhere to the building material requirements of the City's Ch. 10 Site Plan Review Standards.

STAFF RECOMMENDATION:

Staff recommends approval for this zone change from O-1, Office District to O-2 Office District.



Jim Compton
Acting Planning Division Manager
Department of Development Services



Martin Siwek, City Planner
Department of Development Services

Attachments:

Application
Maps

Case Number: 2-13-033

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Bobby Hill - Grace Partnership LLC

Applicant Name

(Phone/e-mail)

P.O. Box 14738, Odessa, Texas 79768

Address

Zip Code

(same as above)

Property Owner Name

(Phone/e-mail)

Address

Zip Code

Andrew L. Mellen, P.E.

Representative Name

262-0616 amellen@maverickentities.com

(Phone/e-mail)

1909 W. Wall, Suite 'K', Midland, Texas 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. see attached metes and bounds

PRESENT ZONE: 01

REQUESTED ZONE: 02

(List by tracts if more than one district is requested)

Reason for Zone Change Request: The proposed 4-storey hotel will exceed the height regulations for Zone 01 (2 1/2 stories)

Present Use of Property: undeveloped

Proposed Use of Property: 4-storey hotel

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:

n/a
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 who, being by me duly sworn, upon oath says: That (s)he is authorized by Bobby Hill, 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.

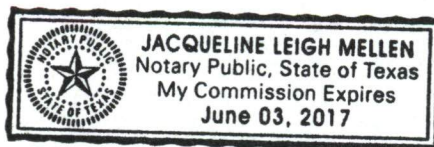
Andrew L. Mellen

Authorized Agent (signature)

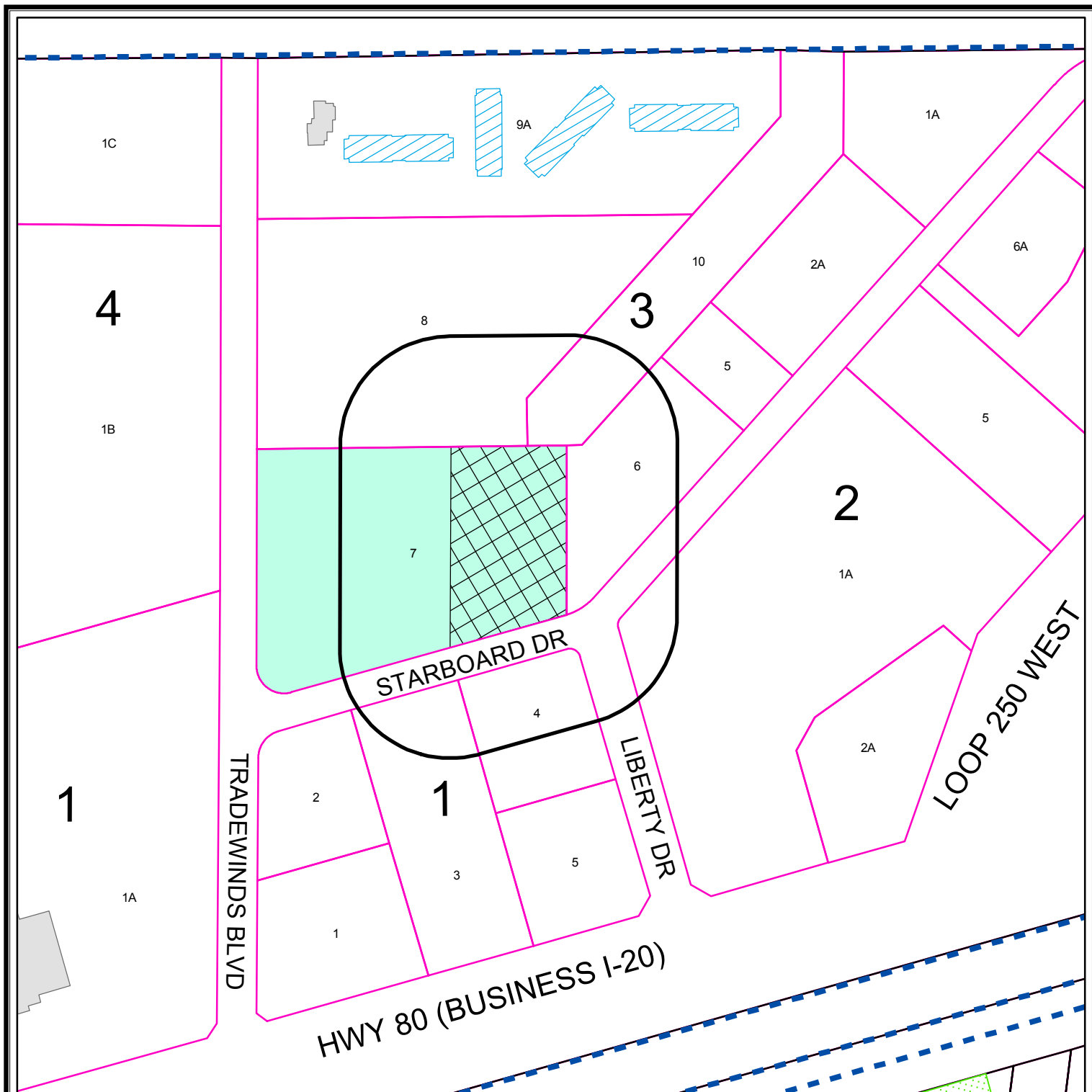
Subscribed and sworn to before me, this 31 day of July, 20 13, to certify which witness my hand and seal of office.

Jacqueline Leigh Mellen
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>PS</u>	Date: <u>7/31</u>
Assigned: <u>MS</u>	
For: <u>A2</u>	On: <u>9/3/13</u>



****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

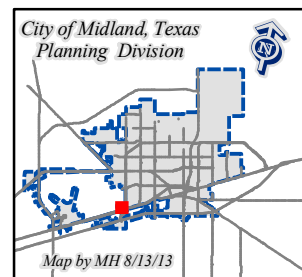
Z - 13 - 033

Scale: 1" = 250'

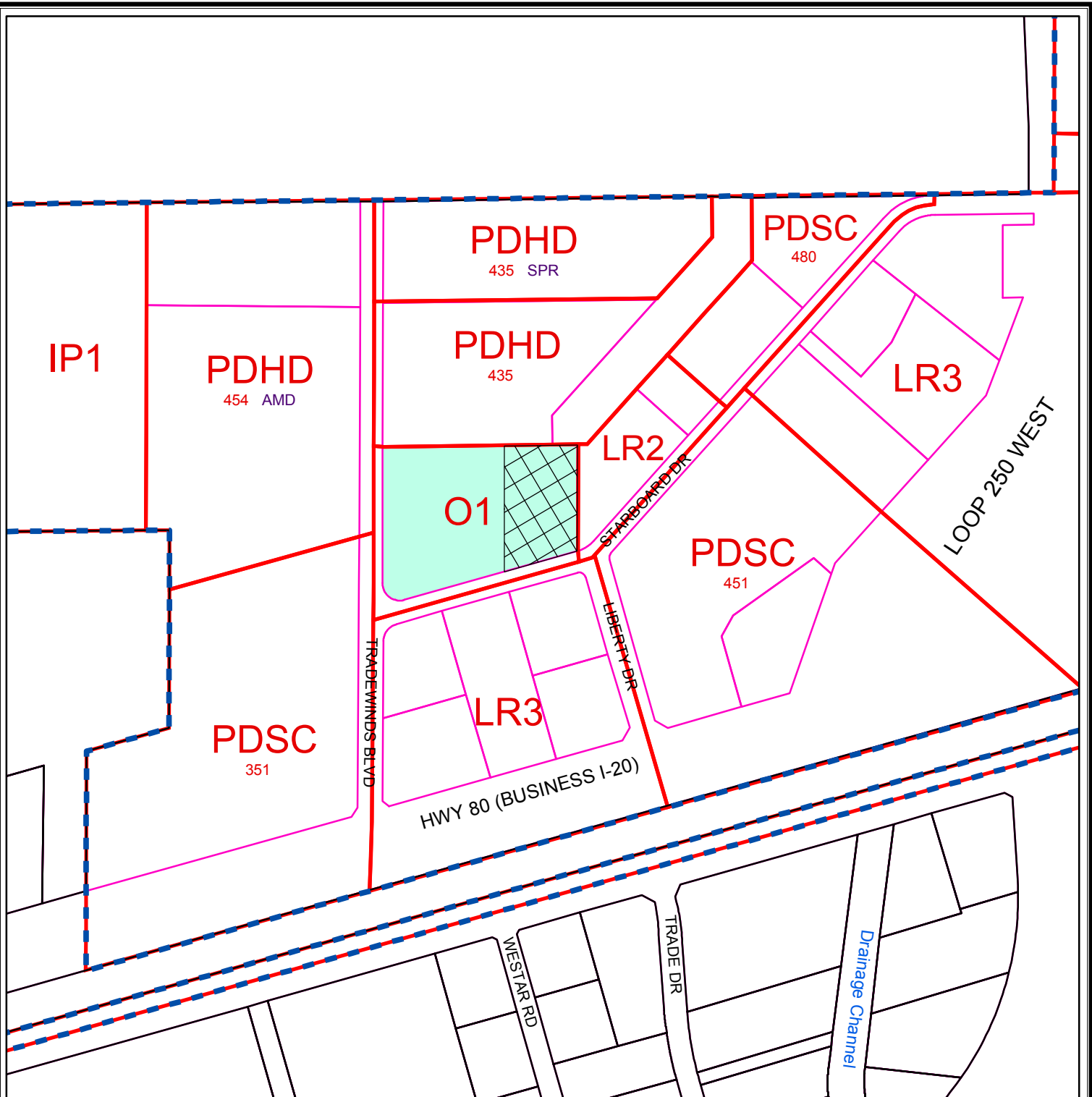
Consider a request for a zone change from O-1, Office District, to O-2, Office District on the east 1.612-acres of Lot 7, Block 3, Gateway Plaza, Section 2, City and County of Midland, Texas.

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 - 13 - 033

Scale: 1" = 400'

Consider a request for a zone change from O-1, Office District, to O-2, Office District on the east 1.612-acres of Lot 7, Block 3, Gateway Plaza, Section 2, 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:
RPatrick
City Manager's Office

MEETING DATE: September 24, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Jim Compton, Acting Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by North Financial Building Partners, Ltd. for a zone change from O-2, Office District, to LR-2, Local Retail District, on the north 0.938-acres of Lot 2, Block 2, Wallco Addition, Section 3, City and County of Midland, Texas. (Generally located on the southwest corner of the intersection of N. Big Spring Street and Veterans Airpark Lane. - District – 3).

Purpose:

Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by North Financial Building Partners, Ltd. for a zone change from O-2, Office District, to LR-2, Local Retail District, on the north 0.938-acres of Lot 2, Block 2, Wallco Addition, Section 3, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The applicant's property is located on the southwest corner of the intersection of Veterans Airpark Lane and N. Big Spring Street. The currently vacant property, now Lot 2, Block 2, Wallco Addition, Section 3, was recently replatted as part of a larger plat that was approved and recorded on August 2, 2013. Before the replat, the property was zoned LR-2, Local Retail District. After the replat, because of the extension of the north property line, the property acquired a portion of an O-2, Office District. Rezoning should

ideally follow to ensure that zoning boundaries match with property boundaries established by the plat. Rather than the property have both LR-2 and O-2 zoning districts, this zone change will establish a single zoning classification for this lot, LR-2 District, which will combine with an existing LR-2 District to the north. Even though this realignment request is a minor shift in zoning boundaries, we believe it is important to follow this policy. The Planning and Zoning Commission voted for approval, and staff concurs.

Attachments:

Application

Maps

September 3, 2013 Staff Report

Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 0.938-ACRE PORTION OF LOT 2, BLOCK 2, WALLCO ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED O-2, OFFICE DISTRICT, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF NORTH BIG SPRING STREET AND VETERANS AIRPARK LANE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of Districts under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of an LR-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 O-2, Office District, and it shall be used as an LR-2, Local Retail District, said property being described as follows:

A 0.938-acre portion of Lot 2, Block 2, Wallco Addition, Section 3, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "A", which is attached hereto and incorporated herein.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant to the City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Legal description of the tract within Wallco Addition, Section 3
for zoning change for North Financial Building Partners

BEING a description of a 0.938 acre or 40,872.60 square foot tract of land out of the Northeast part of Lot 1, Block 2, Wallco Addition, Section 2, an addition to the City of Midland, according to the map or plat thereof recorded in Cabinet "D", Page 152, of the Plat Records of Midland County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a ½" iron rod found in the curved South right-of-way line of Veterans Airpark Lane the Northeast corner of the VFW 2.48 acre tract, and the original northern most corner of said Lot 1 for the northern most corner of this tract;

THENCE along a curve to the right having a radius of 1150.16 feet, arc length of 253.51 feet, chord distance of 252.99 feet, chord bearing of S 49°20'47" E, and delta of 12°37'43" to a ½" iron rod found for the southeast corner of this tract;

THENCE S 74°23'15" W along the most northerly south line of said Lot 1 a distance of 285.69 feet to a ½" iron rod found for the most easterly southwest corner of this tract;

THENCE S 80°12'45" W a distance of 86.06 feet to a ½" iron rod found for the most westerly southwest corner of this tract, also being the most southerly corner of said VFW 2.48 acre tract;

THENCE N 33°14'37" E along a northeasterly line of said Lot 1 and the southeasterly line of said VFW 2.48 acre tract a distance of 306.50 feet to the POINT OF BEGINNING.

X Bruce R. Pennell 8/14/13
Registered Professional
Land Surveyor No. 4170



EXHIBIT A

CASE NO. 2-13-0341

PLANNING AND ZONING COMMISSION

September 3, 2013

CASE: Z-13-034.

REQUEST: Hold a public hearing and consider a request for a zone change from O-2, Office District, to LR-2, Local Retail District.

APPLICANT: Bruce Pennell.

OWNER: North Financial Building Partners, Ltd.

REPRESENTATIVE: Bruce Pennell.

LEGAL DESCRIPTION: On the north 0.938-acres of Lot 2, Block 2, Wallco Addition, Section 3, City and County of Midland, Texas.

LOCATION: Generally located on the southwest corner of the intersection of N. Big Spring Street and Veterans Airpark Lane.

CURRENT ZONING: O-2, Office District.

DETAILS OF REQUEST:

1. The applicant's property is located on the southwest corner of the intersection of Veterans Airpark and Big Spring Street. The currently vacant property has recently been platted as Lot 2, Block 2, in Wallco Addition, Section 3. The replat qualified for Administrative Approval, and the final plat was recorded on August 2, 2013. This lot was zoned LR-2, but with the lot lines extending further north in the replat, obtained the O-2 zoning district as well. Zoning was not addressed during replatting, but an application to rezone was submitted during the final plat submittal. The intent of this rezoning is to ensure that the zoning boundary aligns with the new property boundary. The owner, North Financial Building Partners, Ltd., would like to rezone the portion of their property from O-2, Office District, to the LR-2 District.

SURROUNDING ZONING AND LAND USE:

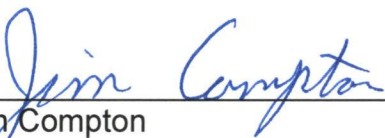
2. The applicant's property is on the west side of Big Spring Street, a state highway, and south of Veterans Airpark Lane, a collector street. To the north is an LR-2, Local Retail District, which this rezoning will be merged with. The O-2, Office District, is the zoning both to the west and the south. Finally, to the east across Big Spring is a PDOC, Planned District for Office Center.

ANALYSIS:

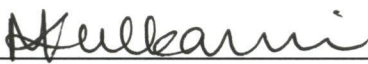
3. Rezoning should ideally follow replatting to ensure that zoning boundaries match with property boundaries established by the approved plat. After the recent replat of Wallco Addition, Section 3, Lot 2, Block 2, now has two different zoning districts: LR-2, Local Retail District and O-2, Office District. Approval of this request would establish a single zoning classification for Lot 2, and will combine with the LR-2 District to the north. Even though this realignment request is a minor shift in zoning boundaries, we believe it is important to follow this policy. For these reasons, we find the zone change request to be reasonable.

STAFF RECOMMENDATION:

Staff recommends approval of this request for a zone change from O-2, Office District, to LR-2, Local Retail District.



Jim Compton
Acting Planning Division Manager
Department of Development Services



Madhuri Kulkarni, City Planner
Department of Development Services

Attachments:

Application
Maps

2-13-034
Case Number: P13037
WALCO Section 3

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Bruce Pennell 432-528-1027 saxet44@aol.com
Applicant Name (Phone/e-mail)

P.O. Box 51622, Midland, TX 79710
Address

Zip Code

North Financial Building Partners, Ltd. 432-818-0300 bfloyd@crowquest.com
Property Owner Name (Phone/e-mail)

303 Veterans Air Park Lane
Address

Zip Code

Bruce Pennell 432-528-1027 saxet44@aol.com
Representative Name (Phone/e-mail)

P.O. Box 51622, Midland, TX 79710
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 field notes for case number P13037

PRESENT ZONE: 02

REQUESTED ZONE: LR2

(List by tracts if more than one district is requested)

Reason for Zone Change Request: To make the zoning consistent with the lot it is being combined in to. See case number P13037

Present Use of Property: Vacant

Proposed Use of Property: Vacant

How will zone change affect the public health, safety and welfare? None

Describe how conditions affecting the property have changed since present zoning designation:
None

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: _____

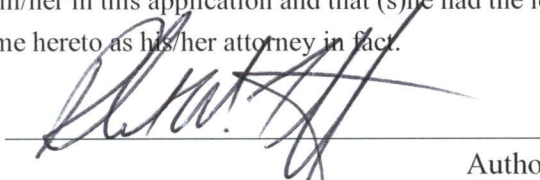
If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS

COUNTY OF MIDLAND

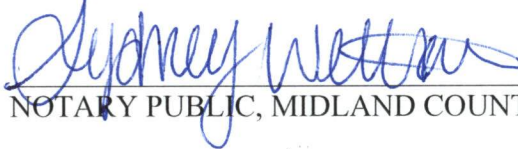
Before me, the undersigned authority, on this day personally appeared

Robert W. Floyd who, being by me duly sworn, upon oath says: That (s)he is authorized by North Financial Building Partners, 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.

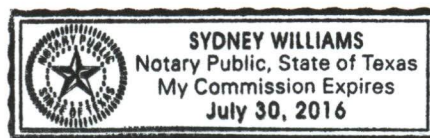


Authorized Agent (signature)

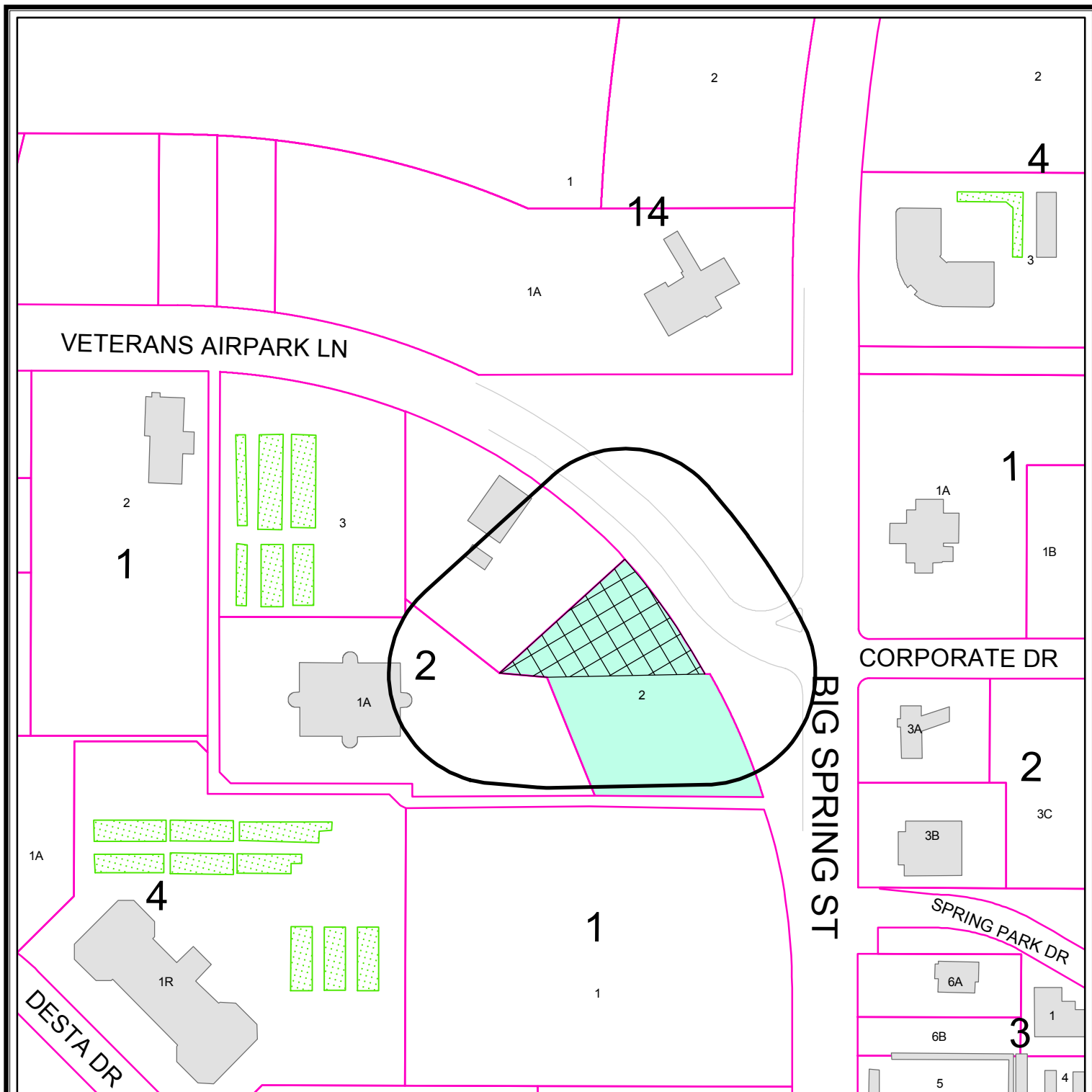
Subscribed and sworn to before me, this 31st day of July, 20 13, to certify which witness my hand and seal of office.


NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>DS</u>	Date: <u>7/31</u>
Assigned: <u>MK</u>	
For: <u>P+Z</u>	On: <u>7/31/13</u>



****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

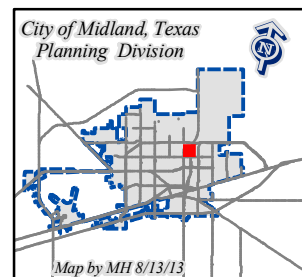
Z - 13 - 034

Scale: 1" = 200'

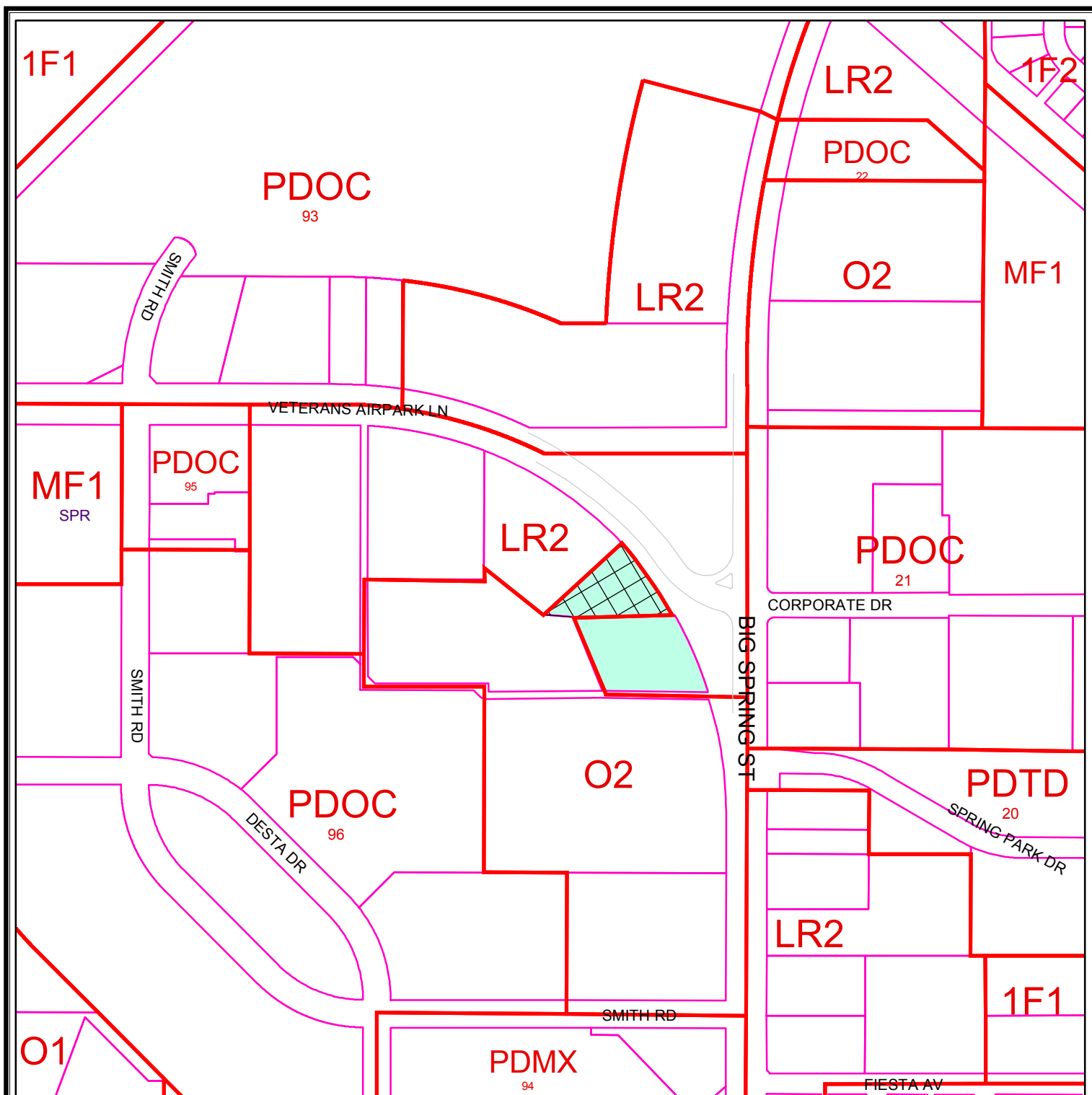
Consider a request for a zone change from O-2, Office District, to LR-2 Local Retail District on the north 0.938-acres of Lot 2, Block 2, Wallco Addition, Section 3, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- ACCESSORY BLDGS



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 THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CULING, OR OTHER DECISION
 SOLELY ON THE INFORMATION CONTAINED HEREIN



ZONING MAP

Z - 13 - 034

Scale: 1" = 400'

Consider a request for a zone change from O-2, Office District, to LR-2 Local Retail District on the north 0.938-acres of Lot 2, Block 2, Walco Addition, Section 3, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
RPatrick
City Manager's Office

MEETING DATE: September 24, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Jim Compton, Acting Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:36 a.m. and consider an ordinance on a request by Palio's Westbound Inc. for a Specific Use Permit with Term for on-premise consumption of alcoholic beverages in a restaurant on a 3,038 square foot portion of Lot 19A, Block 5, North Park, Section 16, City and County of Midland, Texas. (Generally located on the north side of w. Loop 250 North, approximately 750 feet west of Whitman Drive.)

Purpose: Hold a public hearing at approximately 10:36 a.m. and consider an ordinance on a request by Palio's Westbound Inc. for a Specific Use Permit with Term for on-premise consumption of alcoholic beverages in a restaurant on a 3,038 square foot portion of Lot 19A, Block 5, North Park, Section 16, City and County of Midland, Texas. District – 1.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Palio's Pizza Café recently opened its new location in The Commons shopping center, and is requesting a specific use permit with term for the sale of on premise consumption for alcoholic beverages in a restaurant. The restaurant has a serviceable area of approximately 2,200 square feet, and the applicant is requesting 114 seats. Hours of the sale and consumption of alcoholic beverages being requested by the applicant include Monday thru Thursday from 11:00 a.m. – 10:00 p.m., Friday and Saturday from 11:00 a.m. – 11:00 p.m., and Sunday from 11:00 a.m. – 9:00 p.m. The Building Official has set the seating capacity for this establishment at 114 seats. To allow flexibility to the owner, staff recommends extending the hours of beverage service until midnight for seven days a week; Monday thru Sunday.

Attachments: Exhibit A

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS A 3,038 SQUARE FOOT PORTION OF LOT 19A, BLOCK 5, NORTH PARK, SECTION 16, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST LOOP 250 NORTH, APPROXIMATELY 750 FEET WEST OF WHITMAN DRIVE), 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:

A 3,038 square foot portion of Lot 19, Block 5, North Park, Section 16, 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 be limited to 2,200 contiguous square feet.
- B. That seats shall be limited to a maximum of 114.
- C. That the days and hours of alcoholic beverage sales and consumption shall be limited to Monday through Sunday from 11:00 a.m. to 12:00 a.m. (Midnight).
- D. That the sale and on-premise consumption of alcoholic beverages shall conform to all applicable laws established by the City of Midland and the State of Texas.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

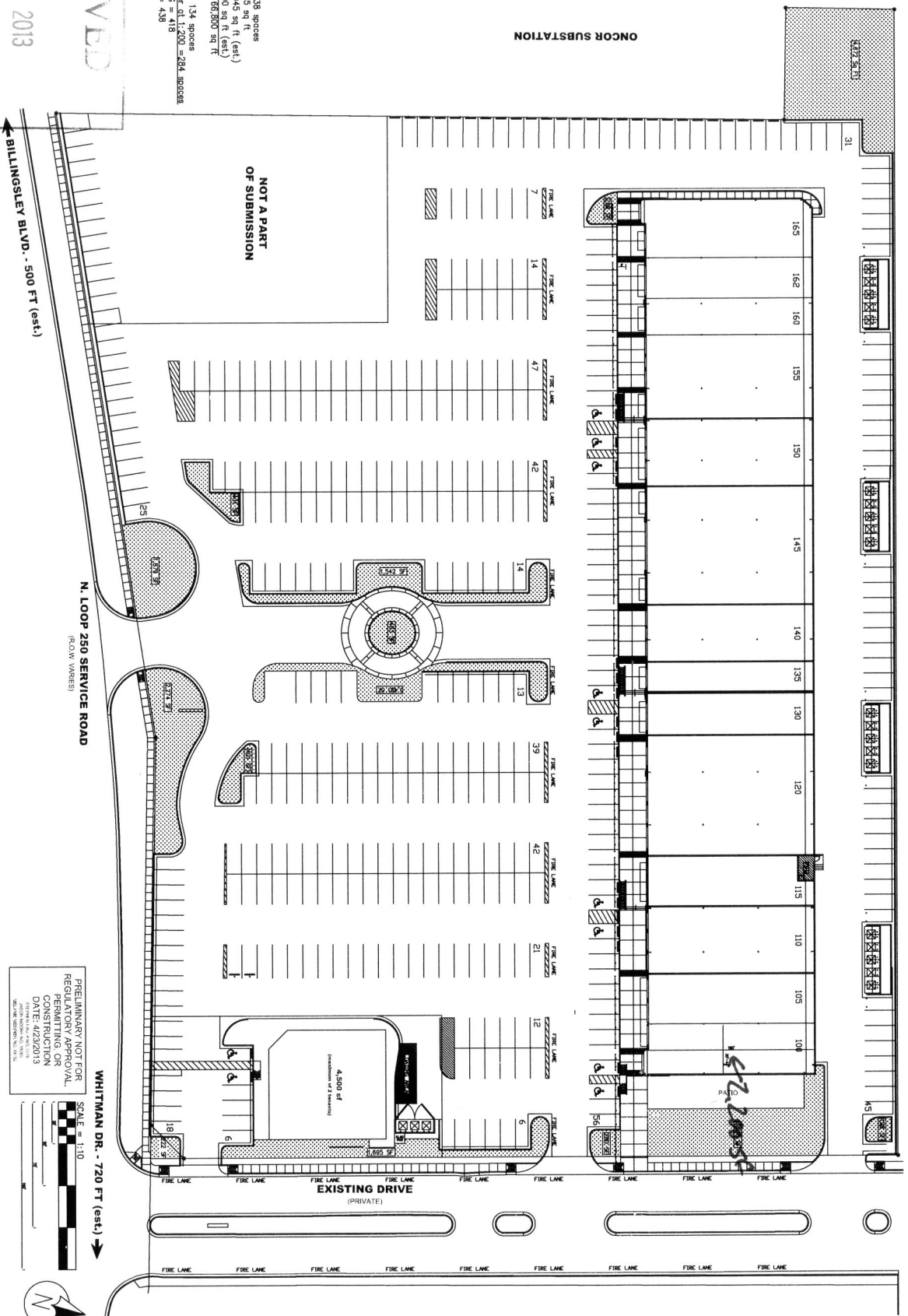
APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant to the City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

BLUERIDGE APARTMENTS



PARKING TABULATION

Total Parking Shown = 438 spaces
 Total Building = 10,045 sq ft (est.)
 West Pod Building = 4,500 sq ft (est.)
 East Pod Building = 4,500 sq ft (est.)
 TOTAL BUILDING AREA = 66,800 sq ft
 West Pod req'd at 1:75 = 134 spaces
 East Pod/Shopping Center at 1:200 = 284 spaces
 Total Building = 438 spaces
 TOTAL PARKING SHOWN = 438

RECEIVED

JUL 17 2013

CITY OF MIDLAND
 PLANNING DIVISION OFFICE

PRELIMINARY NOT FOR
 REGULATORY APPROVAL
 PERMITTING OR
 CONSTRUCTION
 DATE: 4/23/2013
 CITY OF MIDLAND - CIVIL DIVISION
 3000 MIDLAND AVENUE, SUITE 100
 MIDLAND, TEXAS 79701

WHITMAN DR. - 720 FT (est.)

CASE NO. 513-D1D

PLANNING AND ZONING COMMISSION

September 3, 2013

CASE: S-13-010

REQUEST: Hold a public hearing and consider a request for a Specific Use Permit with Term for on-premise consumption of alcoholic beverages in a Restaurant.

APPLICANT: Palio's Westbound Inc.

OWNER: Northpark Commons, LLC.

LEGAL DESCRIPTION: A 3,038 square foot portion of Lot 19A, Block 5, North Park Section 16, City and County of Midland, Texas.

LOCATION: Generally located on the north side of W. Loop 250 North, approximately 750 feet west of Whitman Drive.

CURRENT ZONING: PD, Planned District for a Shopping Center

DETAILS OF REQUEST:

Palio's Westbound Inc. has recently opened in its new location for Palio's Pizza Café at the above described property, and is requesting a specific use permit with term for the sale of on premise consumption for alcoholic beverages in a restaurant. The restaurant floor area is approximately 3,038 square feet, and the applicant is requesting seating for 114 seats. This floor area would include only the internal area of the suite, and would not include service on the patio.

SURROUNDING ZONING AND LAND USE:

The restaurant is located in a PD, Planned District for a Shopping Center, subject to LR-2, Local Retail District standards. There is one specific use permit for the sale of alcoholic beverages for on premise consumption located near this property, which is immediately on the south side of W. Loop 250 North at the Ward Street intersection. This restaurant is located at the recently developed The Commons shopping center immediately south of the Blue Ridge apartments.

ANALYSIS:

Palio's Pizza Café will have a maximum of 2,200 contiguous square feet of floor area. The Building Official has determined that the seating capacity will be set at 114 seats based on the serviceable square footage and the number of restrooms available for patrons. Staff has no objections to the requested hours of service Monday thru Thursday from 11:00 a.m. until 10:00 p.m., Friday and Saturday from 11:00 a.m. until 11:00 p.m., and Sunday from 11 a.m. until 9 p.m. To allow flexibility to the owner, staff recommends extending the hours of operation until midnight for seven days a week; Monday thru Sunday.

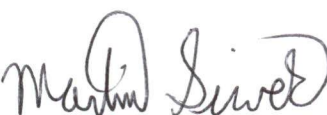
STAFF RECOMMENDATION:

We recommend approval of the request for a Specific Use Permit with Term for on-premise consumption of alcoholic beverages in a Restaurant, together with the uses permitted in the LR-2, Local Retail District, subject to the following conditions:

- A. That the restaurant shall be limited to 2,200 square feet in contiguous area.**
- B. Seating shall be limited to 114 seats for the restaurant area.**
- C. That alcoholic beverages may be sold only during the hours specified as follows:**
 - Monday thru Sunday from 11:00 a.m. to 12:00 a.m. (Midnight)**
- D. That the sale of alcoholic beverages for on-premise consumption shall comply with state and local laws.**



Jim Compton
Acting Planning Division Manager
Department of Development Services



Martin Siwek, City Planner
Department of Development Services

Attachments:

Application
Maps
Exhibit A

Case Number: S-13-010

CITY OF MIDLAND
Planning Division

**APPLICATION FOR A SPECIFIC USE PERMIT WITH TERM
FOR THE SALE OF ALCOHOLIC BEVERAGES
FOR ON-PREMISE CONSUMPTION**

Palio's Westbound, Inc. (325) 374-6524 palioswestbound@yahoo.com
Applicant Name Phone/e-mail

4112 Creek Hill Ln. Corinth, TX 76208
Address Zip Code

Northpark Commons, LLC (806) 745-9718 rchili@gracorealestate.com
Property Owner Name Phone/e-mail

P.O. Box 65207, Lubbock, TX 79464
Address Zip Code

Palio's Pizza Cafe palioswestbound@yahoo.com
Operator (if different from Applicant or Property Owner) Phone/e-mail

2900 W. Loop 250 North, Suite 100, Midland, TX 79705
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.)

2900 W. Loop 250 North, Suite 100, Midland, TX 79705
Lot 19A in Block 5, North Park, Section 16,
City of Midland, Midland County, Texas

Current Zoning: PDSC

Max. Floor Area: 2200 sq. ft. Seating Capacity: 114 1 male 1 female bathroom

Proposed hours and days of alcoholic beverage sales: Mon. 11-10, Tues. 11-10, Wed. 11-10
Thurs. 11-10, Fri. 11-11, Saturday 11-11, Sunday 11-9

Reason for request: Convenience of Customers

REQUIRED SUBMITTALS

1. Application fee: \$300 ✓.

2. Site plan – 16 copies (FOLDED) ✓.
3. On a CD in .pdf and .jpg digital format ✓.

SIGNATURES:

Applicant: Michelle Turner Date: 7/13/13
Property Owner: Ronald S. Childress Date: 7/13/13
Ronald S. Childress

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

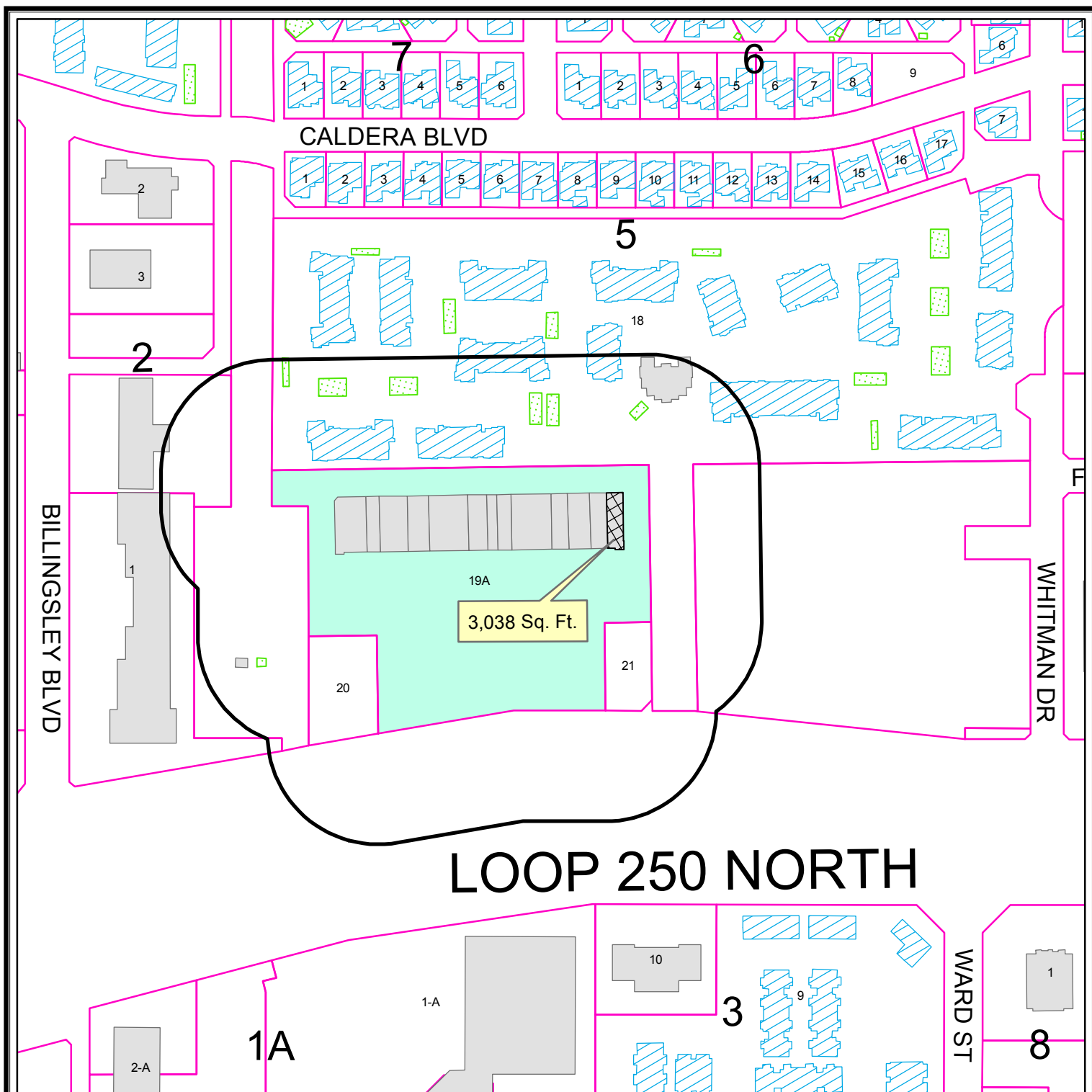
Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Subscribed and sworn to before me, this _____ day of _____, 20 ____, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>PS</u>	Date: <u>7/17</u>
Assigned: <u>MS</u>	
For: <u>P+Z</u>	On: <u>9/3/13</u>

****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

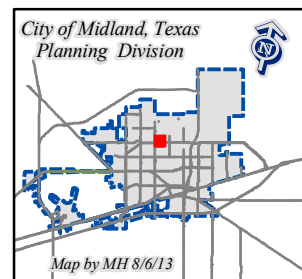
S - 13 - 010

Scale: 1" = 250'

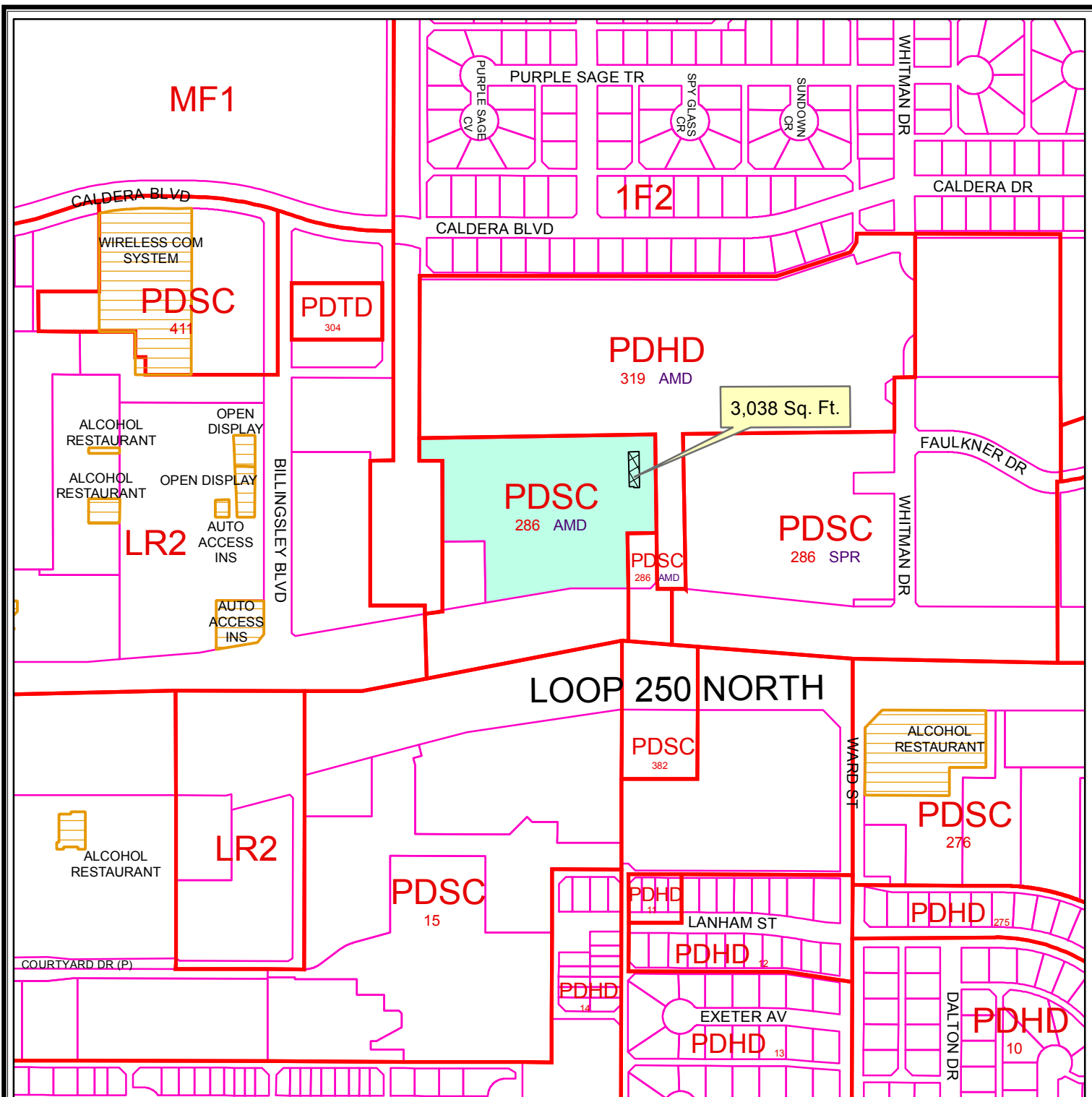
Consider a request for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on 3,038 square feet portion of Lot 19A, Block 5, North Park, Section 16, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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 THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA
 WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS
 THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CIZING, OR OTHER DECISION, SOLELY ON THE INFORMATION CONTAINED HEREIN



ZONING MAP

S - 13 - 010

Scale: 1" = 400'

Consider a request for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on 3,038 square feet portion of Lot 19A, Block 5, North Park, Section 16, City and County of Midland, Texas.

LEGEND

ZONING PARCELS SPECIFIC USE PERMITS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

© THE CITY OF MIDLAND 2013; THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA. WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.





City Council Agenda

Approved for Agenda:
RPatrick
City Manager's Office

MEETING DATE: September 24, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Jim Compton, Acting Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:39 a.m. and consider an ordinance on a request by D.R. Horton-Texas, LTD. for a zone change from 2F, Two-Family Dwelling District on Lots 1 thru 11 and Lots 26 thru 28, Block 1, on Lots 1 thru 13, Block 2, Adobe Meadows, Section 1; and on Lots 10 thru 12, the west 0.109-acres of Lot 13, the west 2.967-acres of Tract "A", Block 8, Adobe Meadows, Section 3; to 1F-3, One-Family Dwelling District; and from 2F, Two-Family Dwelling District on Lots 5 thru 10, Block 9, Adobe Meadows, Section 4, to 1F-2, One-Family Dwelling District; and from PD, Planned District for a Housing Development on the east 0.058-acres of Lot 13, Lots 14 thru 16 and the east 4.057-acres of Tract "A", Block 8, Adobe Meadows, Section 3, to 1F-3, One-Family Dwelling District, City and County of Midland, Texas. (Generally located on the east side of State Hwy 349, north of east extension of Mockingbird Lane.)

Purpose: Hold a public hearing at approximately 10:39 a.m. and consider an ordinance on a request by D.R. Horton-Texas, LTD. for a zone change from 2F, Two-Family Dwelling District on Lots 1 thru 11 and Lots 26 thru 28, Block 1, on Lots 1 thru 13, Block 2, Adobe Meadows, Section 1; and on Lots 10 thru 12, the west 0.109-acres of Lot 13, the west 2.967-acres of Tract "A", Block 8, Adobe Meadows, Section 3; to 1F-3, One-Family Dwelling District; and from 2F, Two-Family Dwelling District on Lots 5 thru 10, Block 9, Adobe Meadows, Section 4, to 1F-2, One-Family Dwelling District; and from PD, Planned District for a Housing Development on the east 0.058-acres of Lot 13, Lots 14 thru 16 and the east 4.057-acres of Tract "A", Block 8, Adobe Meadows, Section 3, to 1F-3, One-Family Dwelling District, City and County of Midland, Texas. District – 1.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

The Adobe Meadows Sections 1, 3, 4, and 5 final plats were approved in the early 1980s. The corresponding zoning was also approved and implemented during this time frame. The described property is currently vacant and has gone undeveloped, and the applicants are requesting to make the above described zone changes for a proposed residential replat. The purpose of the request is to alter zoning boundaries to conform to the proposed lotting patterns and sizes, and realignment of rights-of-way the developer plans on making to the existing subdivision plats. The proposed realignment of lotting patterns, sizes, and rights-of-way do not affect the lot density to the development, and therefore staff is recommending approval of this request.

Attachments: September 3rd P&Z report, Maps

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-11 AND LOTS 26-28, BLOCK 1, AND LOTS 1-13, BLOCK 2, ADOBE MEADOWS, SECTION 1, AND LOTS 10-12, THE WEST 0.109 ACRES OF LOT 13, AND THE WEST 2.967 ACRES OF TRACT "A", BLOCK 8, ADOBE MEADOWS, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 2F, TWO-FAMILY DWELLING DISTRICT, TO BE USED AS A 1F-3, ONE-FAMILY DWELLING DISTRICT; BY PERMITTING LOTS 5-10, BLOCK 9, ADOBE MEADOWS, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 2F, TWO-FAMILY DWELLING DISTRICT, TO BE USED AS A 1F-2, ONE-FAMILY DWELLING DISTRICT; BY PERMITTING THE EAST 0.058 ACRES OF LOT 13, LOTS 14-16, AND THE EAST 4.057 ACRES OF TRACT "A", BLOCK 8, ADOBE MEADOWS, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS A 1F-3, ONE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF STATE HIGHWAY 349, NORTH OF THE EAST EXTENSION OF MOCKINGBIRD LANE); 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 two 1F-3, One-Family Dwelling Districts, and a 1F-2, One-Family Dwelling 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 2F, Two-Family Dwelling District, and it shall be used as an 1F-3, One-Family Dwelling District, said property being described as follows:

Lots 1-11 and Lots 26-28, Block 1, and Lots 1-13, Block 2, Adobe Meadows, Section 1, and Lots 10-12, the west 0.109 acres of Lot 13, and the west 2.967 acres of Tract "A", Block 8, Adobe Meadows, Section 3, City and County of Midland, Texas.

SECTION TWO. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned 2F, Two-Family Dwelling District, and it shall be used as a 1F-2, One-Family Dwelling District, said property being described as follows:

Lots 5-10, Block 9, Adobe Meadows, Section 4, City and County of Midland, Texas.

SECTION THREE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned PD, Planned District for a Housing Development, and it shall be used as a 1F-3, One-Family Dwelling District, said property being described as follows:

The east 0.058 acres of Lot 13, Lots 14-16, and the east 4.057 acres of Tract "A", Block 8, Adobe Meadows, Section 3, City and County of Midland, Texas.

SECTION FOUR. That the property described herein is more specifically described by metes and bounds in Exhibits "A" through "I", which are attached hereto and incorporated herein.

SECTION FIVE. That City of Midland Ordinance No. 6108 is hereby amended by this ordinance.

SECTION SIX. 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 SEVEN. 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 EIGHT. 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 NINE. 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 TEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant to the City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

John F. Watson & Company

PROFESSIONAL LAND SURVEYORS & PLANNERS

200 N. Loraine, Suite 220, Midland, Texas 79701, (432) 520-2400, Fax (432) 520-2404

www.windearthwater.com

RE-ZONING 7.570 ACRES (2F to 1-F3) ADOBE MEADOWS, SECTION 1

LEGAL DESCRIPTION: BEING 7.570 ACRES OF LAND, LYING IN AND BEING SITUATED OUT OF SECTION 12, BLOCK "X" OF THE H.P. HILLIARD SURVEY, IN MIDLAND COUNTY, TEXAS AND BEING ALL OF THAT CERTAIN 7.61 ACRE TRACT, DESCRIBED IN SECTION SIXTEEN IN ORDINANCE NO. 6108 OF THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, SAID 7.570 ACRES OF LAND ALSO BEING A PORTION OF ADOBE MEADOWS, SECTION 1, A SUBDIVISION IN MIDLAND COUNTY, TEXAS RECORDED IN CABINET C, PAGE 170 OF THE PLAT RECORDS OF MIDLAND COUNTY, TEXAS, SAID 7.570 ACRES OF LAND ALSO BEING A PORTION OF THAT CERTAIN 61.761 ACRE TRACT CONVEYED TO D.R. HORTON - TEXAS, LTD. BY DEED RECORDED AS DOCUMENT NUMBER 2012-20566 OF THE OFFICIAL RECORDS OF MIDLAND COUNTY, TEXAS; SAID 7.570 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS AND AS SURVEYED UNDER THE SUPERVISION OF JOHN F. WATSON & COMPANY IN AUGUST, 2012 THROUGH JULY, 2013:

BEGINNING at a point (N(Y) 10718344.58', E(X) 1753836.87') in the east right-of-way (r-o-w) line of State Highway 349 Business for the northwest corner of said Adobe Meadows, Section 1 and the northwest corner hereof;

THENCE North 75°32'22" East along the north line of said Adobe Meadows, Section 1 a distance of 742.19 feet to a point for the northerly common corner of that certain 44.41 acre tract described in Section Fifteen of said Ordinance No. 6108 and the said 7.61 acre tract and northeast corner hereof;

THENCE along the common line of the said 44.41 acre tract and the said 7.61 acre tract the following six (6) calls:

1. South 56°53'28" East a distance of 420.00 feet to a point for an angle point hereof;
2. South 14°27'41" East a distance of 150.00 feet to a point for an ell corner hereof;
3. South 75°32'19" West a distance of 6.11 feet to a point for the point of curvature of a curve to the right;
4. Along said curve turning to the right an arc length of 113.04 feet, a radius of 136.14 feet and a chord bearing of North 80°40'47" West a distance of 109.82 feet at end of curve and an interior corner hereof;
5. South 33°06'30" West a distance of 22.00 feet to a point for the point of curvature of a curve to the left;
6. Along said curve turning to the left an arc length of 132.58 feet, a radius of 289.39 feet and a chord bearing of South 19°59'05" West a distance of 131.42 feet to a point for the easterly common corner of that certain 16.51 acre tract described in Section Eighteen of said Ordinance No. 6108 and the said 7.61 acre tract and southeast corner hereof;

THENCE along the common line of the said 16.51 acre tract and the said 7.61 acre tract the following two (2) calls:

1. North 56°53'28" West a distance of 303.40 feet to a point for an angle point hereof;
2. South 75°32'21" West a distance of 623.04 feet to a point in the east r-o-w line of said State Highway 349 Business and the west line of said Adobe Meadows, Section 1 for the westerly common corner of the said 16.51 acre tract and the said 7.61 acre tract and the southwest corner hereof;

RECEIVED

AUG 21 2013

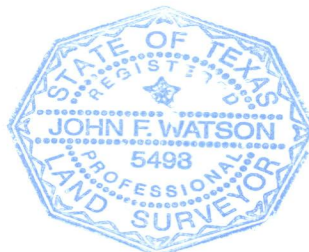
CITY OF MIDLAND
PLANNING DIVISION OFFICE

CASE NO. 2-13-036

THENCE North 14°34'34" West along the east r-o-w line of said State Highway 349 Business and the west line of said Adobe Meadows, Section 1 a distance of 315.00 feet to the **POINT OF BEGINNING** and containing 7.570 acres of land, more or less.

Note: Bearings, distances and acreage shown hereon are Grid, NAD83, Texas Central Zone.

I hereby certify that the foregoing description and plat attached hereto is a representation of a survey completed on the ground under my supervision and is true and correct to the best of my knowledge and belief.


John F. Watson, RPLS
Registered Professional Land Surveyor No. 5498
State of Texas

July 29, 2013

JFWCO Job No. 12-0216

John F. Watson & Company

PROFESSIONAL LAND SURVEYORS & PLANNERS

200 N. Loraine, Suite 220, Midland, Texas 79701, (432) 520-2400, Fax (432) 520-2404

www.windearthwater.com

RE-ZONING 0.387 ACRES (MF-1 to 1F-3) ADOBE MEADOWS, SECTION 1

LEGAL DESCRIPTION: BEING 0.387 ACRES OF LAND, LYING IN AND BEING SITUATED OUT OF SECTION 12, BLOCK "X" OF THE H.P. HILLIARD SURVEY, IN MIDLAND COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN 16.51 ACRE TRACT DESCRIBED IN SECTION EIGHTEEN IN ORDINANCE NO. 6108 OF THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, SAID 0.387 ACRES OF LAND ALSO BEING A PORTION OF ADOBE MEADOWS, SECTION 1, A SUBDIVISION IN MIDLAND COUNTY, TEXAS RECORDED IN CABINET C, PAGE 170 OF THE PLAT RECORDS OF MIDLAND COUNTY, TEXAS, SAID 0.387 ACRES OF LAND ALSO BEING A PORTION OF THAT CERTAIN 61.761 ACRE TRACT CONVEYED TO D.R. HORTON – TEXAS, LTD. BY DEED RECORDED AS DOCUMENT NUMBER 2012-20566 OF THE OFFICIAL RECORDS OF MIDLAND COUNTY, TEXAS; SAID 0.387 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS AND AS SURVEYED UNDER THE SUPERVISION OF JOHN F. WATSON & COMPANY IN AUGUST, 2012 THROUGH JULY, 2013:

BEGINNING at a point (N(Y) 10718034.74', E(X) 1753917.43') in the east right-of-way (r-o-w) line of State Highway 349 Business for the common westerly corner of Adobe Meadows, Section 2, a subdivision in Midland County, Texas recorded in Cabinet C, Page 171 of said plat records and said Adobe Meadows, Section 1 and the most westerly southwest corner hereof;

THENCE North 14°34'34" West along the east r-o-w line of said State Highway 349 Business and the west line of said Adobe Meadows, Section 1 a distance of 5.14 feet to a point for the westerly common corner of that certain 7.61 acre tract described in Section Sixteen of said Ordinance No. 6108 and the said 16.51 acre tract and the northwest corner hereof;

THENCE along the common line of said 7.61 acre tract and said 16.51 acre tract the following six (6) calls:

1. North 75°32'21" East a distance of 623.04 feet to a point for an angle point hereof;
2. South 56°53'28" East a distance of 303.40 feet to a point in a curve to the left and ell corner hereof;
3. Along said curve turning to the left an arc length of 14.19 feet, a radius of 289.39 feet and a chord bearing of South 05°27'19" West a distance of 14.19 feet to a point for point of compound curve;
4. Along said compound curve turning to the left an arc length of 68.95 feet, a radius of 220.71 feet and a chord bearing of South 04°53'59" East a distance of 68.67 feet to a point and an interior corner hereof;
5. North 75°32'22" East a distance of 493.18 feet to a point for the northeast corner hereof;
6. South 14°25'02" East a distance of 9.98 feet to a point in the common line of said Adobe Meadows, Section 2 and said Adobe Meadows, Section 1 for the southeast corner hereof from which the northerly common corner of Adobe Meadows, Section 5, a subdivision in Midland County, Texas recorded in Cabinet D, Page 305 of said plat records and said Adobe Meadows, Section 2 bears North 75°32'22" East a distance of 15.30 feet;

THENCE along the common line of said Adobe Meadows, Section 2 and said Adobe Meadows, Section 1 the following six (6) calls:

1. South 75°32'22" West a distance of 522.76 feet to a point in a curve to the right for the most southerly southwest corner hereof;
2. Along said curve turning to the right an arc length of 88.63 feet, a radius of 250.71 feet and a chord bearing of North 06°04'35" West a distance of 88.17 feet to a point of compound curve;



CASE NO. Z-13-c46.9

"2" 1361

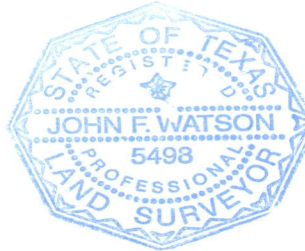
3. Along said compound curve turning to the right an arc length of 19.28 feet, a radius of 319.39 feet and a chord bearing of North 06°55'21" East a distance of 19.28 feet to a point for an interior corner hereof;
4. North 56°53'24" West a distance of 127.46 feet to a point for the point of curvature of a curve to the left;
5. Along said curve turning to the left an arc length of 282.24 feet, a radius of 339.95 feet and a chord bearing of North 80°40'29" West a distance of 274.20 feet to a point at end of curve;
6. South 75°32'22" West a distance of 464.89 feet to the **POINT OF BEGINNING** and containing 0.387 acres of land, more or less.

Note: Bearings, distances and acreage shown hereon are Grid, NAD83, Texas Central Zone.

I hereby certify that the foregoing description and plat attached hereto is a representation of a survey completed on the ground under my supervision and is true and correct to the best of my knowledge and belief.



John F. Watson, RPLS
Registered Professional Land Surveyor No. 5498
State of Texas



July 29, 2013

JFWCO Job No. 12-0216

John F. Watson & Company

PROFESSIONAL LAND SURVEYORS & PLANNERS

200 N. Loraine, Suite 220, Midland, Texas 79701, (432) 520-2400, Fax (432) 520-2404

www.windearthwater.com

RE-ZONING 0.174 ACRES (1F-2 to 1F-3) ADOBE MEADOWS, SECTION 1 AND ADOBE MEADOWS, SECTION 5

LEGAL DESCRIPTION: BEING 0.174 ACRES OF LAND, LYING IN AND BEING SITUATED OUT OF SECTION 12, BLOCK "X" OF THE H.P. HILLIARD SURVEY, IN MIDLAND COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN 38.23 ACRE TRACT DESCRIBED IN SECTION FOURTEEN IN ORDINANCE NO. 6108 OF THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, SAID 0.174 ACRES OF LAND ALSO BEING A PORTION OF ADOBE MEADOWS, SECTION 1, A SUBDIVISION IN MIDLAND COUNTY, TEXAS RECORDED IN CABINET C, PAGE 170 OF THE PLAT RECORDS OF MIDLAND COUNTY, TEXAS AND A PORTION OF ADOBE MEADOWS, SECTION 5, A SUBDIVISION IN MIDLAND COUNTY, TEXAS RECORDED IN CABINET D, PAGE 305 OF SAID PLAT RECORDS, SAID 0.174 ACRES OF LAND ALSO BEING A PORTION OF THAT CERTAIN 61.761 ACRE TRACT CONVEYED TO D.R. HORTON – TEXAS, LTD. BY DEED RECORDED AS DOCUMENT NUMBER 2012-20566 OF THE OFFICIAL RECORDS OF MIDLAND COUNTY, TEXAS; SAID 0.174 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS AND AS SURVEYED UNDER THE SUPERVISION OF JOHN F. WATSON & COMPANY IN AUGUST, 2012 THROUGH JULY, 2013:

BEGINNING at a point (N(Y) 10718943.68', E(X) 1756160.05') in the north line of said Adobe Meadows, Section 1 for the northerly common corner of that certain 44.41 acre tract described in Section Fifteen of said Ordinance No. 6108 and the said 38.23 acre tract for the northwest corner hereof;

THENCE North 75°32'22" East along the north line of said Adobe Meadows, Section 1 a distance of 10.00 feet to a point for the northerly common corner of Adobe Meadows, Section 4, a subdivision in Midland County, Texas recorded in Cabinet C, Page 182 of said plat records and said Adobe Meadows, Section 1 and the northeast corner hereof;

THENCE South 14°27'38" East along the common line of said Adobe Meadows, Section 4 and said Adobe Meadows, Section 1, passing at a distance of 620.00 feet the southerly common corner of said Adobe Meadows, Section 4 and said Adobe Meadows, Section 1 and the northerly common corner of said Adobe Meadows, Section 5 and said Adobe Meadows, Section 4, continuing with the common line of said Adobe Meadows, Section 4 and said Adobe Meadows, Section 5, passing at a distance of 728.58 feet the southerly common corner of said Adobe Meadows, Section 4 and said Adobe Meadows, Section 5, continuing in all a distance of 758.66 feet to a point in the curving common line of the said 44.41 acre tract and the said 38.23 acre tract for the southeast corner hereof;

THENCE along the common line of the said 44.41 acre tract and the said 38.23 acre tract the following two (2) calls:

1. Along said curve turning to the right an arc length of 10.02 feet, a radius of 564.83 feet and a chord bearing of South 72°05'32" West a distance of 10.02 feet to a point for the southerly common corner of the said 44.41 acre tract and the said 38.23 acre tract and the southwest corner hereof;
2. North 14°27'38" West a distance of 759.26 feet to the **POINT OF BEGINNING** and containing 0.174 acres of land, more or less;

Note: Bearings, distances and acreage shown hereon are Grid, NAD83, Texas Central Zone.



CASE NO. 2-13-03 46.11

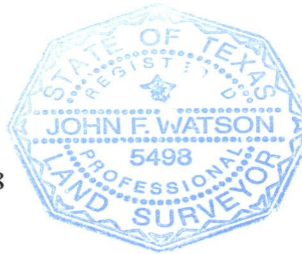
"3"

1961

I hereby certify that the foregoing description and plat attached hereto is a representation of a survey completed on the ground under my supervision and is true and correct to the best of my knowledge and belief.



John F. Watson, RPLS
Registered Professional Land Surveyor No. 5498
State of Texas



July 29, 2013

JFWCO Job No. 12-0216

John F. Watson & Company

PROFESSIONAL LAND SURVEYORS & PLANNERS

200 N. Loraine, Suite 220, Midland, Texas 79701, (432) 520-2400, Fax (432) 520-2404

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RE-ZONING 0.300 ACRES (1F-3 to 1F-2) ADOBE MEADOWS, SECTION 5

LEGAL DESCRIPTION: BEING 0.300 ACRES OF LAND, LYING IN AND BEING SITUATED OUT OF SECTION 12, BLOCK "X" OF THE H.P. HILLIARD SURVEY, IN MIDLAND COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN 44.41 ACRE TRACT DESCRIBED IN SECTION FIFTEEN IN ORDINANCE NO. 6108 OF THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, SAID 0.300 ACRES OF LAND ALSO BEING A PORTION OF ADOBE MEADOWS, SECTION 5, A SUBDIVISION IN MIDLAND COUNTY, TEXAS RECORDED IN CABINET D, PAGE 305 OF THE PLAT RECORDS OF MIDLAND COUNTY, TEXAS, SAID 0.300 ACRES OF LAND ALSO BEING A PORTION OF THAT CERTAIN 61.761 ACRE TRACT CONVEYED TO D.R. HORTON – TEXAS, LTD. BY DEED RECORDED AS DOCUMENT NUMBER 2012-20566 OF THE OFFICIAL RECORDS OF MIDLAND COUNTY, TEXAS; SAID 0.300 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS AND AS SURVEYED UNDER THE SUPERVISION OF JOHN F. WATSON & COMPANY IN AUGUST, 2012 THROUGH JULY, 2013:

BEGINNING at a point (N(Y) 10718211.56', E(X) 1756359.18') in the curving common line of that certain 38.23 acre tract described in Section Fourteen of said Ordinance No.6108 and the said 44.41 acre tract at the intersection of the southerly prolongation of the common line of Adobe Meadows, Section 4, a subdivision in Midland County, Texas recorded in Cabinet C, Page 182 of said plat records and said Adobe Meadows, Section 5 for the northwest corner hereof from which the southerly common corner of said Adobe Meadows, Section 4 and said Adobe Meadows, Section 5 bears North 14°27'38" West a distance of 30.08 feet;

THENCE along the common line of said 38.23 acre tract and said 44.41 acre tract the following two (2) calls:

1. Along said curve turning to the left an arc length of 158.96 feet, a radius of 564.83 feet and a chord bearing of North 63°31'19" East a distance of 158.43 feet to a point at end of curve;
2. North 55°27'35" East a distance of 65.15 feet to a point for the common westerly south corner of that certain 6.13 acre tract described in Section Sixteen of said Ordinance No. 6108 and said 38.23 acre tract;

THENCE along the common line of said 6.13 acre tract and said 44.41 acre tract the following three (3) calls:

1. North 55°27'35" East a distance of 65.00 feet to a point for the point of curvature of a curve to the right;
2. Along said curve turning to the right an arc length of 97.41 feet, a radius of 564.81 feet and a chord bearing of North 60°24'02" East a distance of 97.29 feet to a point for the northeast corner hereof;
3. South 14°25'02" East a distance of 37.45 feet to a point in the proposed centerline of proposed San Francisco Avenue for the southeast corner hereof;

THENCE along the proposed centerline of said proposed San Francisco Avenue the following three (3) calls:

1. South 54°02'43" West a distance of 141.84 feet to a point for the point of curvature of a curve to the right;
2. Along said curve turning to the right an arc length of 112.63 feet, a radius of 300.00 feet and a chord bearing of South 64°48'03" West a distance of 111.97 feet to a point at end of curve;

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CITY OF MIDLAND
PLANNING DIVISION OFFICE

CASE NO. Z-13-46.13

"4" 1261

3. South $75^{\circ}33'23''$ West a distance of 129.10 feet to a point in the said southerly prolongation of the common line of said Adobe Meadows, Section 4 and said Adobe Meadows, Section 5 for the southwest corner hereof;

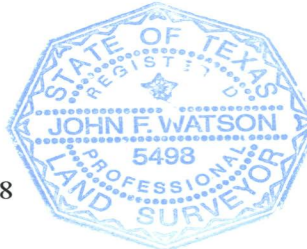
THENCE North $14^{\circ}27'38''$ West along the said southerly prolongation of the common line of said Adobe Meadows, Section 4 and said Adobe Meadows, Section 5 a distance of 7.17 feet to the **POINT OF BEGINNING** and containing 0.300 acres of land, more or less;

Note: Bearings, distances and acreage shown hereon are Grid, NAD83, Texas Central Zone.

I hereby certify that the foregoing description and plat attached hereto is a representation of a survey completed on the ground under my supervision and is true and correct to the best of my knowledge and belief.



John F. Watson, RPLS
Registered Professional Land Surveyor No. 5498
State of Texas



July 29, 2013

JFWCO Job No. 12-0216

John F. Watson & Company

PROFESSIONAL LAND SURVEYORS & PLANNERS

200 N. Loraine, Suite 220, Midland, Texas 79701, (432) 520-2400, Fax (432) 520-2404

www.windearthwater.com

RE-ZONING 1.422 ACRES (2F to 1F-2) ADOBE MEADOWS, SECTION 4

LEGAL DESCRIPTION: BEING 1.422 ACRES OF LAND, LYING IN AND BEING SITUATED OUT OF SECTION 12, BLOCK "X" OF THE H.P. HILLIARD SURVEY, IN MIDLAND COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN 6.13 ACRE TRACT DESCRIBED IN SECTION SIXTEEN IN ORDINANCE NO. 6108 OF THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, SAID 1.422 ACRES OF LAND ALSO BEING A PORTION OF ADOBE MEADOWS, SECTION 4, A SUBDIVISION IN MIDLAND COUNTY, TEXAS RECORDED IN CABINET C, PAGE 182 OF THE PLAT RECORDS OF MIDLAND COUNTY, TEXAS, SAID 1.422 ACRES OF LAND ALSO BEING A PORTION OF THAT CERTAIN 159.82 ACRE TRACT CONVEYED TO CURT AND TAMMY ALVIN BY DEED RECORDED IN VOLUME 1147, PAGE 573 OF THE OFFICIAL RECORDS OF MIDLAND COUNTY, TEXAS; SAID 1.422 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS AND AS SURVEYED UNDER THE SUPERVISION OF JOHN F. WATSON & COMPANY IN AUGUST, 2012 THROUGH JULY, 2013:

BEGINNING at a point (N(Y) 10718343.86', E(X) 1756537.64') in the common line of Adobe Meadows, Section 5, a subdivision in Midland County, Texas recorded in Cabinet D, Page 305 of said plat records and said Adobe Meadows, Section 4 at the intersection of the most westerly common line of that certain 38.23 acre tract described in Section Fourteen of said Ordinance No. 6108 and the said 6.13 acre tract and the southwest corner hereof from which the southerly common corner of said Adobe Meadows, Section 4 and said Adobe Meadows, Section 5 bears South 60°58'42" West a distance of 212.68 feet;

THENCE along the common line of the said 38.23 acre tract and the said 6.13 acre tract the following seven (7) calls:

1. North 34°32'25" West a distance of 9.98 feet to a point for the point of curvature of a curve to the right;
2. Along said curve turning to the right an arc length of 110.02 feet, a radius of 3040.79 feet and a chord bearing of North 33°30'13" West a distance of 110.01 feet to a point for the northwest corner hereof;
3. North 55°27'35" East a distance of 189.57 feet to a point for an angle point hereof;
4. North 75°32'22" East a distance of 316.67 feet to a point for the northeast corner hereof;
5. South 44°38'09" East a distance of 19.40 feet to a point for the point of curvature of a curve to the right;
6. Along said curve turning to the right an arc length of 97.68 feet, a radius of 185.47 feet and a chord bearing of South 29°32'57" East a distance of 96.55 feet to a point at end of curve;
7. South 14°27'38" East a distance of 10.00 feet to a point in the common line of said Adobe Meadows, Section 5 and said Adobe Meadows, Section 4 for the southeast corner hereof;

THENCE along the common line of said Adobe Meadows, Section 5 and said Adobe Meadows, Section 4 the following three (3) calls:

1. South 75°32'22" West a distance of 225.04 feet to a point for the point of curvature of a curve to the left;
2. Along said curve turning to the left an arc length of 208.46 feet, a radius of 594.83 feet and a chord bearing of South 65°29'58" West a distance of 207.39 feet to a point at end of curve;
3. South 55°27'35" West a distance of 64.97 feet to the **POINT OF BEGINNING** and containing 1.422 acres of land, more or less;

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PLANNING DIVISION OFFICE

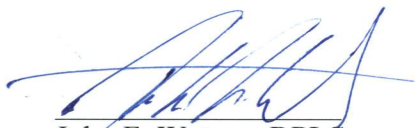
CASE NO. 2-13-036
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115"

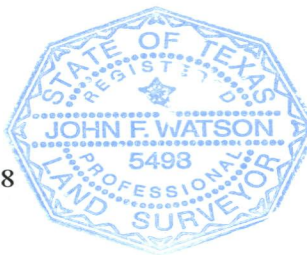
1061

Note: Bearings, distances and acreage shown hereon are Grid, NAD83, Texas Central Zone.

I hereby certify that the foregoing description and plat attached hereto is a representation of a survey completed on the ground under my supervision and is true and correct to the best of my knowledge and belief.



John F. Watson, RPLS
Registered Professional Land Surveyor No. 5498
State of Texas



July 29, 2013

JFWCO Job No. 12-0216

John F. Watson & Company

PROFESSIONAL LAND SURVEYORS & PLANNERS

200 N. Loraine, Suite 220, Midland, Texas 79701, (432) 520-2400, Fax (432) 520-2404

www.windearthwater.com

RE-ZONING 0.392 ACRES (2F to 1F-2) ADOBE MEADOWS, SECTION 3 AND ADOBE MEADOWS, SECTION 5

LEGAL DESCRIPTION: BEING 0.392 ACRES OF LAND, LYING IN AND BEING SITUATED OUT OF SECTION 12, BLOCK "X" OF THE H.P. HILLIARD SURVEY, IN MIDLAND COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN 6.13 ACRE TRACT DESCRIBED IN SECTION SIXTEEN IN ORDINANCE NO. 6108 OF THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, SAID 0.392 ACRES OF LAND ALSO BEING A PORTION OF ADOBE MEADOWS, SECTION 3, A SUBDIVISION IN MIDLAND COUNTY, TEXAS RECORDED IN CABINET C, PAGE 178 OF THE PLAT RECORDS, OF MIDLAND COUNTY, TEXAS AND A PORTION OF ADOBE MEADOWS, SECTION 5, A SUBDIVISION IN MIDLAND COUNTY, TEXAS RECORDED IN CABINET D, PAGE 305 OF SAID PLAT RECORDS, SAID 0.392 ACRES OF LAND ALSO BEING A PORTION OF THAT CERTAIN 61.761 ACRE TRACT CONVEYED TO D.R. HORTON – TEXAS, LTD. BY DEED RECORDED AS DOCUMENT NUMBER 2012-20566 OF THE OFFICIAL RECORDS OF MIDLAND COUNTY, TEXAS; SAID 0.392 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS AND AS SURVEYED UNDER THE SUPERVISION OF JOHN F. WATSON & COMPANY IN AUGUST, 2012 THROUGH JULY, 2013:

BEGINNING at a point (N(Y) 10718343.86', E(X) 1756537.64') in the common line of Adobe Meadows, Section 4, a subdivision in Midland County, Texas recorded in Cabinet C, Page 182 of said plat records and said Adobe Meadows, Section 5 at the intersection of the most westerly common line of that certain 38.23 acre tract described in Section Fourteen of said Ordinance No. 6108 and the said 6.13 acre tract and the northwest corner hereof from which the southerly common corner of said Adobe Meadows, Section 4 and said Adobe Meadows, Section 5 bears South 60°58'42" West a distance of 212.68 feet;

THENCE along the common line of said Adobe Meadows, Section 4 and said Adobe Meadows, Section 5 and the common line of said Adobe Meadows, Section 4 and said Adobe Meadows, Section 3 the following three (3) calls:

1. North 55°27'35" East a distance of 64.97 feet to a point for the point of curvature of a curve to the right;
2. Along said curve turning to the right an arc length of 208.46 feet, a radius of 594.83 feet and a chord bearing of North 65°29'58" East a distance of 207.39 feet to a point at end of curve;
3. North 75°32'22" East a distance of 225.04 feet to a point in the most easterly common line of the said 38.23 acre tract and the said 6.13 acre tract for the northeast corner hereof;

THENCE South 14°27'38" East along the most easterly common line of the said 38.23 acre tract and the said 6.13 acre tract a distance of 28.31 feet to a point in the proposed centerline of proposed San Francisco Avenue for the southeast corner hereof;

THENCE along the proposed centerline of said proposed San Francisco Avenue the following three (3) calls:

1. South 75°30'33" West a distance of 146.38 feet to a point for the point of curvature of a curve to the left;
2. Along said curve turning to the left an arc length of 112.39 feet, a radius of 300.00 feet and a chord bearing of South 64°46'38" West a distance of 111.73 feet to a point at end of curve;

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AUG 21 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE

CASE NO. 2-13-03 46.17

"6" 10/1

3. South 54°02'43" West a distance of 74.05 feet to a point in the common line of that certain 44.41 acre tract described in Section Fifteen of said Ordinance No. 6108 and the said 6.13 acre tract for the most easterly southwest corner hereof;

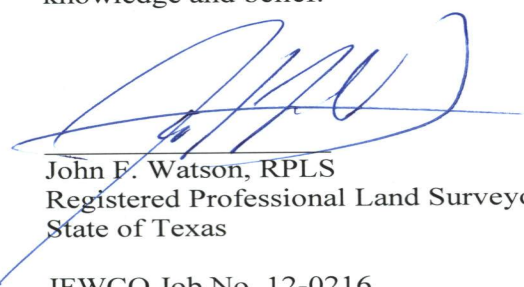
THENCE along the common line of the said 44.41 acre tract and the said 6.13 acre tract the following three (3) calls:

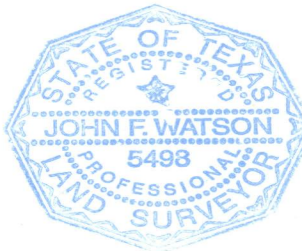
1. North 14°25'02" West a distance of 37.45 feet to a point in a curve to the left for an interior corner hereof;
2. Along said curve turning to the left an arc length of 97.41 feet, a radius of 564.81 feet and a chord bearing of South 60°24'02" West a distance of 97.29 feet to a point at end of curve;
3. South 55°27'35" West a distance of 65.00 feet to a point for the westerly south common corner of the said 38.23 acre tract and the said 6.13 acre tract and the most westerly southwest corner hereof;

THENCE North 34°32'25" West along the common line of the said 38.23 acre tract and the said 6.13 acre tract a distance of 30.02 feet to the **POINT OF BEGINNING** and containing 0.392 acres of land, more or less;

Note: Bearings, distances and acreage shown hereon are Grid, NAD83, Texas Central Zone.

I hereby certify that the foregoing description and plat attached hereto is a representation of a survey completed on the ground under my supervision and is true and correct to the best of my knowledge and belief.


John F. Watson, RPLS
Registered Professional Land Surveyor No. 5498
State of Texas



July 29, 2013

JFWCO Job No. 12-0216

John F. Watson & Company

PROFESSIONAL LAND SURVEYORS & PLANNERS

200 N. Loraine, Suite 220, Midland, Texas 79701, (432) 520-2400, Fax (432) 520-2404

www.windearthwater.com

RE-ZONING 0.010 ACRES (1F-2 to 1F-3) ADOBE MEADOWS, SECTION 1 AND ADOBE MEADOWS, SECTION 5

LEGAL DESCRIPTION: BEING 0.010 ACRES OF LAND, LYING IN AND BEING SITUATED OUT OF SECTION 12, BLOCK "X" OF THE H.P. HILLIARD SURVEY, IN MIDLAND COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN 38.23 ACRE TRACT DESCRIBED IN SECTION FOURTEEN IN ORDINANCE NO. 6108 OF THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, SAID 0.010 ACRES OF LAND ALSO BEING A PORTION OF ADOBE MEADOWS, SECTION 3, A SUBDIVISION IN MIDLAND COUNTY, TEXAS RECORDED IN CABINET C, PAGE 178 OF THE PLAT RECORDS OF MIDLAND COUNTY, TEXAS, SAID 0.010 ACRES OF LAND ALSO BEING A PORTION OF THAT CERTAIN 61.761 ACRE TRACT CONVEYED TO D.R. HORTON – TEXAS, LTD. BY DEED RECORDED AS DOCUMENT NUMBER 2012-20566 OF THE OFFICIAL RECORDS OF MIDLAND COUNTY, TEXAS; SAID 0.010 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS AND AS SURVEYED UNDER THE SUPERVISION OF JOHN F. WATSON & COMPANY IN AUGUST, 2012 THROUGH JULY, 2013:

BEGINNING at a point (N(Y) 10718553.73', E(X) 1757237.50') in the southwest line of that certain 2.636 acre tract conveyed to Texas Electric Service Company (TESCO) by deed recorded in Volume 514, Page 221 of the Deed Records of Midland County, Texas designated on said subdivision plat of Adobe Meadows, Section 3, as Lot 17, Block 8 at the intersection of the common line of that certain 8.23 acre tract described in Section Seventeen of said Ordinance No. 6108 and the said 38.23 acre tract for the southeast corner hereof from which the north corner of that certain 1.58 acre tract conveyed to said Texas Electric Service Company (TESCO) by deed recorded in Volume 765, Page 695 of said deed records designated on said subdivision plat of Adobe Meadows, Section 3, as Lot 18, Block 8 bears South 44°34'22" East a distance of 389.01 feet;

THENCE South 75°32'26" West along the common line of the said 8.23 acre tract and the said 38.23 acre tract a distance of 239.82 feet to a point for the easterly south common corner of that certain 6.13 acre tract described in Section Sixteen of said Ordinance No. 6108 and the said 38.23 acre tract and the southwest corner hereof;

THENCE North 14°27'38" West along the common line of the said 8.23 acre tract and the said 38.23 acre tract a distance of 1.69 feet to a point in the proposed centerline of proposed San Francisco Avenue for the northwest corner hereof;

THENCE North 75°30'33" East along the proposed centerline of said proposed San Francisco Avenue a distance of 238.77 feet to a point in the southwest line of the said TESCO 2.636 acre tract for the northeast corner hereof;

THENCE South 44°34'22" East along the southwest line of the said TESCO 2.636 acre tract a distance of 2.11 feet to the **POINT OF BEGINNING** and containing 0.010 acres of land, more or less;

Note: Bearings, distances and acreage shown hereon are Grid, NAD83, Texas Central Zone.

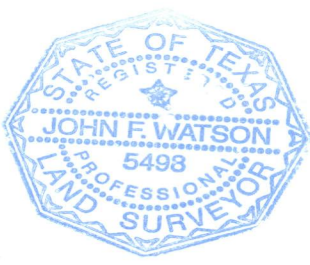
I hereby certify that the foregoing description and plat attached hereto is a representation of a survey completed on the ground under my supervision and is true and correct to the best of my knowledge and belief.



CASE NO. 2-13-036 46.19

"7" 151


John F. Watson, RPLS
Registered Professional Land Surveyor No. 5498
State of Texas



July 29, 2013

JFWCO Job No. 12-0216

John F. Watson & Company

PROFESSIONAL LAND SURVEYORS & PLANNERS

200 N. Loraine, Suite 220, Midland, Texas 79701, (432) 520-2400, Fax (432) 520-2404

www.windearthwater.com

RE-ZONING 5.533 ACRES (PDHD to 1-F3) ADOBE MEADOWS, SECTION 3

LEGAL DESCRIPTION: BEING 5.533 ACRES OF LAND, LYING IN AND BEING SITUATED OUT OF SECTION 12, BLOCK "X" OF THE H.P. HILLIARD SURVEY, IN MIDLAND COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN 8.23 ACRE TRACT DESCRIBED IN SECTION SEVENTEEN IN ORDINANCE NO. 6108 OF THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, SAID 5.533 ACRES OF LAND ALSO BEING A PORTION OF ADOBE MEADOWS, SECTION 3, A SUBDIVISION IN MIDLAND COUNTY, TEXAS RECORDED IN CABINET C, PAGE 178 OF THE PLAT RECORDS OF MIDLAND COUNTY, TEXAS, SAID 5.533 ACRES OF LAND ALSO BEING A PORTION OF THAT CERTAIN 61.761 ACRE TRACT CONVEYED TO D.R. HORTON – TEXAS, LTD. BY DEED RECORDED AS DOCUMENT NUMBER 2012-20566 OF THE OFFICIAL RECORDS OF MIDLAND COUNTY, TEXAS; SAID 5.533 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS AND AS SURVEYED UNDER THE SUPERVISION OF JOHN F. WATSON & COMPANY IN AUGUST, 2012 THROUGH JULY, 2013:

BEGINNING at a point (N(Y) 10717823.90', E(X) 1757131.04') in the centerline of Mockingbird Lane and the south line of said Adobe Meadows, Section 3 for the southerly common corner of that certain 6.13 acre tract described in Section Sixteen of said Ordinance No. 6108 and the said 8.23 acre tract for the southwest corner hereof;

THENCE along the common line of said 6.13 acre tract and said 8.23 acre tract the following two (2) calls:

1. North 14°25'02" West a distance of 680.13 feet to a point for the northwest corner hereof;
2. North 75°32'21" East a distance of 45.00 feet to a point for the easterly south common corner of that certain 38.23 acre tract described in Section Fourteen of said Ordinance No. 6108 and said 6.13 acre tract;

THENCE North 75°32'21" East along the common line of said 38.23 acre tract and said 8.23 acre tract a distance of 239.82 feet to a point in the southwest line of that certain 2.636 acre tract conveyed to Texas Electric Service Company (TESCO) by deed recorded in Volume 514, Page 221 of the Deed Records of Midland County, Texas designated on said subdivision plat of Adobe Meadows, Section 3, as Lot 17, Block 8 for the northeast corner hereof;

THENCE South 44°34'22" East along the southwest line of the said TESCO 2.636 acre tract a distance of 389.01 feet to a point for the north corner of that certain 1.58 acre tract conveyed to said Texas Electric Service Company (TESCO) by deed recorded in Volume 765, Page 695 of said deed records designated on said subdivision plat of Adobe Meadows, Section 3, as Lot 18, Block 8 and an ell corner hereof;

THENCE along the northwest and west line of the said TESCO 1.58 acre tract and the southerly prolongation of the west line of the said TESCO 1.58 acre tract the following three (3) calls:

1. South 45°40'34" West a distance of 188.87 feet to a point and angle point hereof;
2. South 15°47'07" West a distance of 34.68 feet to a point and angle point hereof;
3. South 14°06'20" East passing at a distance of 169.85 feet a point in the north line of said Mockingbird Lane for the southwest corner of the said TESCO 1.58 acre tract, continuing in all with said southerly prolongation a distance of 219.86 feet to a point in the south line of said Adobe Meadows, Section 3 and the centerline of said Mockingbird Lane for the southeast corner hereof;

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CITY OF MIDLAND
PLANNING DIVISION OFFICE

CASE NO. 2-13-056 46.21
"8" 1011

THENCE South 75°35'01" West along the south line of said Adobe Meadows, Section 3 and the centerline of said Mockingbird Lane a distance of 297.89 feet to the **POINT OF BEGINNING** and containing 5.533 acres of land, more or less;

Note: Bearings, distances and acreage shown hereon are Grid, NAD83, Texas Central Zone.

I hereby certify that the foregoing description and plat attached hereto is a representation of a survey completed on the ground under my supervision and is true and correct to the best of my knowledge and belief.



John F. Watson, RPLS
Registered Professional Land Surveyor No. 5498
State of Texas



July 29, 2013

JFWCO Job No. 12-0216

John F. Watson & Company

PROFESSIONAL LAND SURVEYORS & PLANNERS

200 N. Loraine, Suite 220, Midland, Texas 79701, (432) 520-2400, Fax (432) 520-2404

www.windearthwater.com

RE-ZONING 4.312 ACRES (2F to 1F-3) ADOBE MEADOWS, SECTION 3 AND ADOBE MEADOWS, SECTION 5

LEGAL DESCRIPTION: BEING 4.312 ACRES OF LAND, LYING IN AND BEING SITUATED OUT OF SECTION 12, BLOCK "X" OF THE H.P. HILLIARD SURVEY, IN MIDLAND COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN 6.13 ACRE TRACT DESCRIBED IN SECTION SIXTEEN IN ORDINANCE NO. 6108 OF THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS, SAID 4.312 ACRES OF LAND ALSO BEING A PORTION OF ADOBE MEADOWS, SECTION 3, A SUBDIVISION IN MIDLAND COUNTY, TEXAS RECORDED IN CABINET C, PAGE 178 OF THE PLAT RECORDS, OF MIDLAND COUNTY, TEXAS AND A PORTION OF ADOBE MEADOWS, SECTION 5, A SUBDIVISION IN MIDLAND COUNTY, TEXAS RECORDED IN CABINET D, PAGE 305 OF SAID PLAT RECORDS, SAID 4.312 ACRES OF LAND ALSO BEING A PORTION OF THAT CERTAIN 61.761 ACRE TRACT CONVEYED TO D.R. HORTON – TEXAS, LTD. BY DEED RECORDED AS DOCUMENT NUMBER 2012-20566 OF THE OFFICIAL RECORDS OF MIDLAND COUNTY, TEXAS; SAID 4.312 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS AND AS SURVEYED UNDER THE SUPERVISION OF JOHN F. WATSON & COMPANY IN AUGUST, 2012 THROUGH JULY, 2013:

BEGINNING at a point (N(Y) 10717754.18', E(X) 1756859.86') in the centerline of Mockingbird Lane and the south line of said Adobe Meadows, Section 5 for the southerly common corner of that certain 44.41 acre tract described in Section Fifteen of said Ordinance No. 6108 and the said 6.13 acre tract for southwest corner hereof;

THENCE North 14°25'02" West along the common line of the said 44.41 acre tract and the said 6.13 acre tract a distance of 633.54 feet to a point in the proposed centerline of proposed San Francisco Avenue for the northwest corner hereof;

THENCE along the proposed centerline of said proposed San Francisco Avenue the following three (3) calls:

1. North 54°02'43" East a distance of 74.05 feet to a point for the point of curvature of a curve to the right;
2. Along said curve turning to the right an arc length of 112.39 feet, a radius of 300.00 feet and a chord bearing of North 64°46'38" East a distance of 111.73 feet to a point at end of curve;
3. North 75°30'33" East a distance of 146.38 feet to a point in the common line of that certain 38.23 acre tract described in Section Fourteen of said Ordinance No. 6108 and the said 6.13 acre tract for the northeast corner hereof;

THENCE South 14°27'38" East along the common line of the said 38.23 acre tract and the said 6.13 acre tract a distance of 1.69 feet to a point in the north line of that certain 8.23 acre tract described in Section Seventeen of said Ordinance No. 6108 for the most easterly south common corner of said 38.23 acre tract and said 6.13 acre tract and an ell corner hereof;

THENCE along the common line of the said 8.23 acre tract and the said 6.13 acre tract the following two (2) calls:

1. South 75°32'21" West a distance of 45.00 feet to a point for an interior corner hereof;
2. South 14°25'02" East a distance of 680.13 feet to a point in the south line of said Adobe Meadows, Section 3 and the centerline of said Mockingbird Lane for the southerly common corner of the said 8.23 acre tract and the said 6.13 acre tract and southeast corner hereof;

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CITY OF MIDLAND
PLANNING DIVISION OFFICE

CASE NO. 2-13-03646.23

"9" 1031

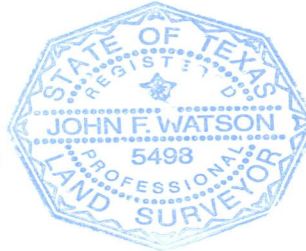
THENCE South 75°35'01" West along the south line of said Adobe Meadows, Section 3 and the centerline of said Mockingbird Lane, passing at a distance of 269.71 feet the southerly common corner of said Adobe Meadows, Section 3 and said Adobe Meadows, Section 5, continuing in all a distance of 280.00 feet to the **POINT OF BEGINNING** and containing 4.312 acres of land, more or less;

Note: Bearings, distances and acreage shown hereon are Grid, NAD83, Texas Central Zone.

I hereby certify that the foregoing description and plat attached hereto is a representation of a survey completed on the ground under my supervision and is true and correct to the best of my knowledge and belief.



John F. Watson, RPLS
Registered Professional Land Surveyor No. 5498
State of Texas



July 29, 2013

JFWCO Job No. 12-0216

Case Number: 2-13-036

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

D. R. Horton – Texas, Ltd.	(817) 230-0800
Applicant Name	(Phone/e-mail)
6751 N. Freeway, Fort Worth, TX	76131
Address	Zip Code
Same as Applicant & Curt Alvin	(432) 620-9222
Property Owner Name	(Phone/e-mail)
109 Blackberry Court, Midland, Texas	79705
Address	Zip Code
Parkhill, Smith & Cooper, Inc.,	(432) 697-1447
Representative Name	(Phone/e-mail)
1700 W. Wall, Suite 100, 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. See attached Metes and Bounds.

PRESENT ZONE: 2F, MF-1, 1F-2, 1F-3, REQUESTED ZONE: 1F-3 and 1F-2
and PDHD (List by tracts if more than one district is requested)

Reason for Zone Change Request: This area is presently undeveloped. 1F-3 and 1F-2 zoning is consistent with current development plans as the current zoning is also for residential development.

Present Use of Property: Pasture or Range Land

Proposed Use of Property: Residential Subdivision

How will zone change affect the public health, safety and welfare? It will not affect the public health, safety, and welfare.

Describe how conditions affecting the property have changed since present zoning designation: Change is only a slight modification to existing plan to develop subdivision.

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

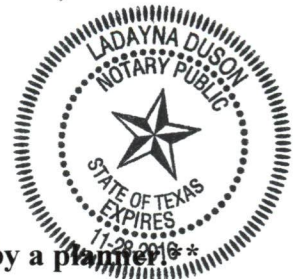
Jared Squyres, EIT who, being by me duly sworn, upon oath says: That (s)he is authorized by D.R. Horton - Texas, Ltd, & Curt Alvin, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Jared A. Squyres
Authorized Agent (signature)

Subscribed and sworn to before me, this 22nd day of July, 20 13, to certify which witness my hand and seal of office.

Ladayna Duseon
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: _____	Date: _____
Assigned: _____	
For: _____	On: _____



****Application will not be considered for scheduling until reviewed by a planner****

PLANNING AND ZONING COMMISSION

September 3, 2013

CASE: Z-13-036.

REQUEST: Hold a public hearing and consider a request for a zone change from 2F, Two-Family Dwelling District to 1F-2, One-Family Dwelling District, and from PD, Planned District for a Housing Development to 1F-3, One-Family Dwelling District.

OWNER/APPLICANT: D.R. Horton-Texas, Ltd.

REPRESENTATIVE: Parkhill Smith and Cooper.

LEGAL DESCRIPTION: Lots 1 thru 11 and Lots 26 thru 28, Block 1, on Lots 1 thru 13, Block 2, Adobe Meadows, Section 1; and on Lots 10 thru 12, the west 0.109-acres of Lot 13, the west 2.967-acres of Tract "A", Block 8, Adobe Meadows, Section 3; Lots 5 thru 10, Block 9, Adobe Meadows, Section 4, Lot 13, Lots 14 thru 16 and the east 4.057-acres of Tract "A", Block 8, Adobe Meadows, Section 3, City and County of Midland, Texas.

LOCATION: Generally located on the east side of State Hwy 349, north of east extension of Mockingbird Lane.

CURRENT ZONING: 2F, Two-Family Dwelling District, 1F-3, One-Family Dwelling District, 1F-2, One-Family Dwelling District, PD, Planned District for a Housing Development.

ASSOCIATED CASE: P-13-046, V-13-014.

DETAILS OF REQUEST:

1. The Adobe Meadows Sections 1, 3, 4, and 5 final plats were approved in the early 1980s. The corresponding zoning was also approved and implemented during this time frame. The described property is currently vacant and has gone undeveloped. The applicants are requesting to make the above described zone changes for a proposed residential replat. The purpose of the request is to alter zoning boundaries to conform to the proposed lot pattern and sizes, and realignment of rights-of-way the developer plans on making to the existing subdivisions.

SURROUNDING ZONING AND LAND USE:

2. This property has two medium sized 2F, Two-Family Dwelling Districts with one located off of SH 349 and Cerrillos Avenue. The 2F, Two-Family Dwelling District is located along San Francisco Avenue and east of Baca Street. The large contiguous zoned district located in the middle of the existing plat is currently zoned 1F-3, One-Family Dwelling District, and the northeastern-most portion of the existing plat is zoned as a medium-sized 1F-2, One-Family Dwelling District. Lastly, the southeastern-most portion of the property is currently zoned as a PD, Planned District for a Housing Development. Immediately north of this property is a large AE, Agriculture Estate District, and to the south are two small TH, Townhouse Districts, a small MF-1, Multiple-Family Dwelling District, and a large 1F-3, One-Family Dwelling District.

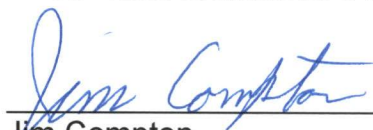
ANALYSIS:

3. This area of the City is currently zoned for residential lot development with minimum lot areas of 5,000 square feet, 5,500 square feet, and 7,000 square feet. The applicant's request for a zone change is to adjust the existing boundaries to conform to a proposed layout of future platted lots. The change in lot configuration will not change the density of the previously approved plat.

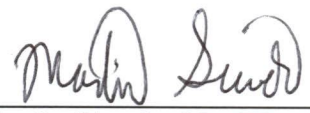
STAFF RECOMMENDATION:

Staff recommends the approval of the requested zone change subject to the following conditions:

- A. That ordinance 6108 is hereby amended.



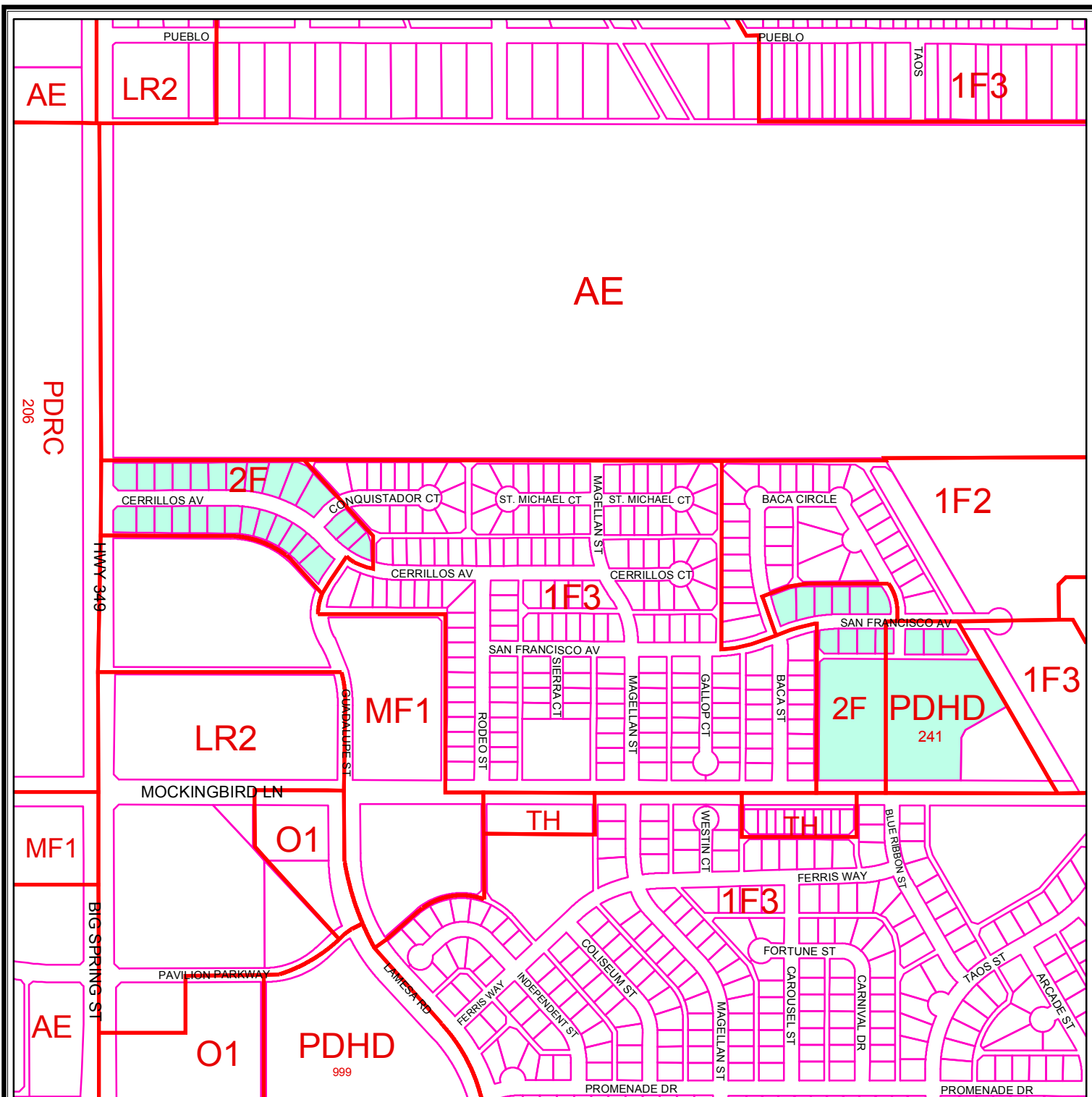
Jim Compton
Acting Planning Division Manager
Department of Development Services



Martin Siwek, City Planner
Department of Development Services

Attachments:

Application
Maps



Z - 13 - 036

Scale: 1" = 550'

Consider a request for a zone change from 2F, Two-Family Dwelling District on Lots 1 thru 11 and Lots 26 thru 28, Block 1, on Lots 1 thru 13, Block 2, Adobe Meadows, Section 1; and on Lots 10 thru 12, the west 0.109-acres of Lot 13, the west 2.967-acres of Tract "A", Block 8, Adobe Meadows, Section 3; to 1F-3, One-Family Dwelling District; and from 2F, Two-Family Dwelling District on Lots 5 thru 10, Block 9, Adobe Meadows, Section 4, to 1F-2, One-Family Dwelling District; and from PD, Planned District for a Housing Development on the east 0.058-acres of Lot 13, Lots 14 thru 16 and the east 4.057-acres of Tract "A", Block 8, Adobe Meadows, Section 3, to 1F-3, One-Family Dwelling District, City and County of Midland, Texas.

ZONING MAP

LEGEND

ZONING

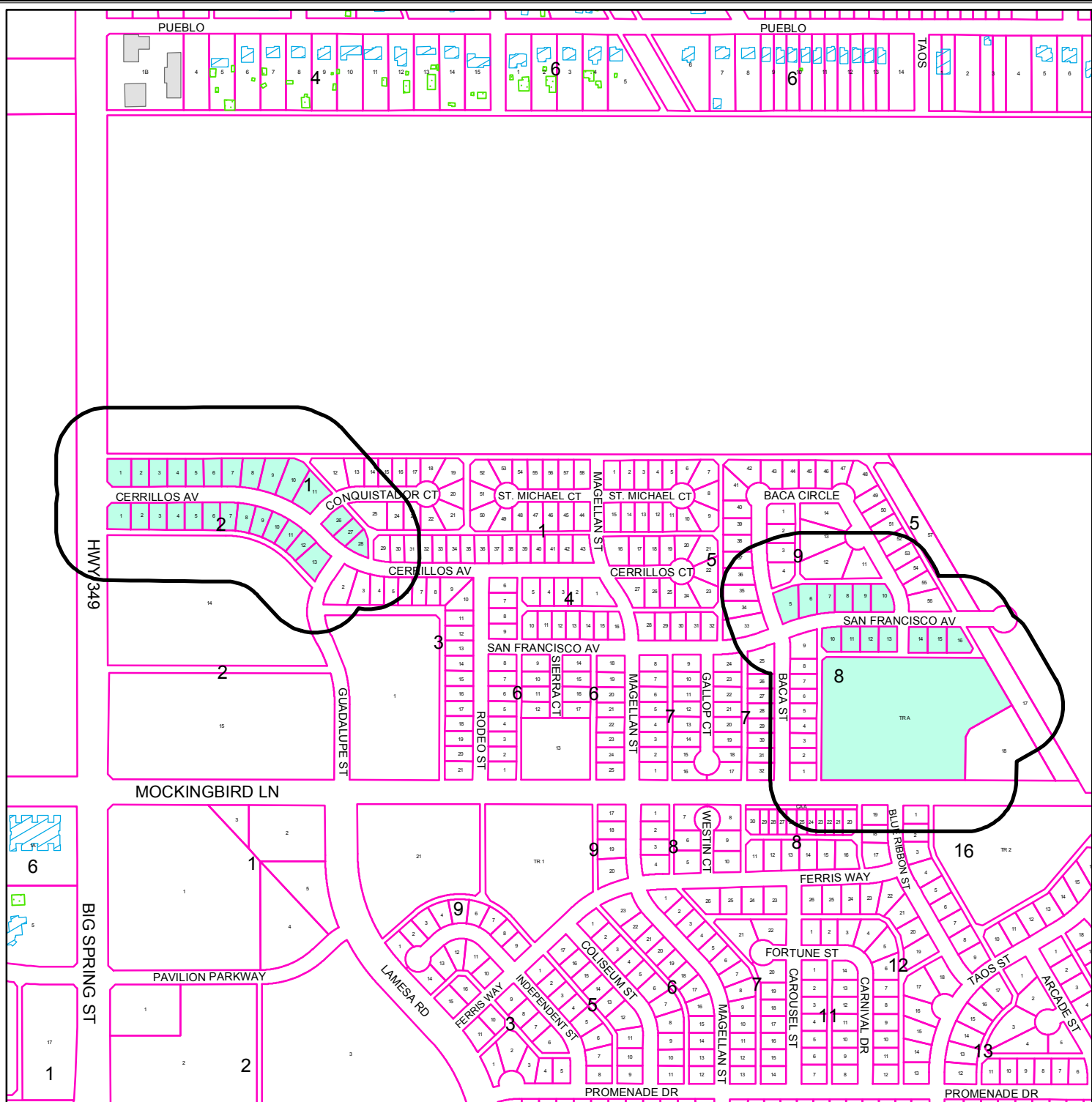
PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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PROPERTY OWNER NOTIFICATION MAP

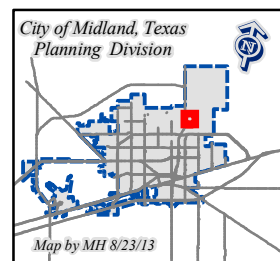
Consider a request for a zone change from 2F, Two-Family Dwelling District on Lots 1 thru 11 and Lots 26 thru 28, Block 1, on Lots 1 thru 13, Block 2, Adobe Meadows, Section 1; and on Lots 10 thru 12, the west 0.109-acres of Lot 13, the west 2.967-acres of Tract "A", Block 8, Adobe Meadows, Section 3; to 1F-3, One-Family Dwelling District; and from 2F, Two-Family Dwelling District on Lots 5 thru 10, Block 9, Adobe Meadows, Section 4, to 1F-2, One-Family Dwelling District; and from PD, Planned District for a Housing Development on the east 0.058-acres of Lot 13, Lots 14 thru 16 and the east 4.057-acres of Tract "A", Block 8, Adobe Meadows, Section 3, to 1F-3, One-Family Dwelling District, City and County of Midland, Texas.

Z - 13 - 036

Scale: 1" = 550'

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDG



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City Council Agenda

Approved for Agenda:
RPatrick
City Manager's Office

MEETING DATE: September 24, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Jim Compton, Acting Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:42 a.m. and consider an ordinance on a request by Sonoma Housing Advisors LLC for a for a Site Plan Review for an MF-1, Multiple-Family Dwelling District on a 10.79-acre tract of land out of Section 1, Block 39, T-2-S, T & P RR Co. Survey, City and County of Midland, Texas. (Generally located on the east side of S. Lamesa Road, approximately 1,000 feet north of E. Interstate Hwy 20.)

Purpose: Hold a public hearing at approximately 10:42 a.m. and consider an ordinance on a request by Sonoma Housing Advisors LLC for a for a Site Plan Review for an MF-1, Multiple-Family Dwelling District on a 10.79-acre tract of land out of Section 1, Block 39, T-2-S, T & P RR Co. Survey, City and County of Midland, Texas. District – 2.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

This property is presently zoned MF-1, Multiple-Family Dwelling District, and the applicant is seeking site plan approval for the development of an apartment complex. This proposed project is approximately a 10-acre site located within a 23-acre MF-1, Multiple-Family Dwelling District. The applicant has provided a site plan that includes a total of 156 proposed units over 10.79-acres.

This yields a density of 16.0 units an acre and adheres to the zoning density requirement of the MF-1 district. The complex will have seven tenant buildings, and all will be three stories with a maximum building height of 50 feet. The buildings are proposed to be composed of hardi-plank siding, stone masonry, and composite shingles. Seventy five feet of setback shall be observed along Latta Street, approximately 25 feet of setback along Wayside Drive, and approximately 75 feet of setback along the southern property boundary. Ingress and egress to the property is proposed from Albert Avenue and Latta Street. Staff recommends approval of the proposed site plan based on the adequate amount of unit density, setback, and building materials.

Attachments: Exhibits A, B, C, D, E, F and Maps.

ORDINANCE NO. _____

AN ORDINANCE ADOPTING A SITE PLAN FOR A 10.79-ACRE TRACT OF LAND OUT OF SECTION 1, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF SOUTH LAMESA ROAD, APPROXIMATELY 1,000 FEET NORTH OF EAST INTERSTATE HIGHWAY 20); 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 Exhibit “A” and incorporated herein for all purposes, is hereby adopted for the following property:

A 10.79-acre tract out of Section 1, Block 39, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit “F”, 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 significantly conform to the site plan attached hereto as Exhibit “A”.
2. That the development shall significantly conform to Exhibits “B”, “C”, “D” and “E”, which are attached hereto and incorporated herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all

other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular

meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant to the City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

LAMESA ROAD
(120' R.O.W.)

BUILDING SCHEDULE

TYPE A	10,080 S.F. x 2 = 24 UNITS EACH
TYPE B	12,222 S.F. x 3 = 20 UNITS EACH
TYPE C	11,300 S.F. x 2 = 24 UNITS EACH
CLUB	4,432 S.F.
6 CAR GARAGE	1,563 S.F. x 2
8 CAR GARAGE	2,052 S.F. x 2
10 CAR GARAGE	2,541 S.F. x 2

PARKING SCHEDULE

OPEN	184 SPACES
GARAGE	48 SPACES
CARPORT	84 SPACES

WAYSIDE DRIVE
(40' R.O.W.)

LATTA STREET
(60' R.O.W.)

N 75°41'51" E 879.12'

25' SETBACK

8-CAR GARAGE

2 CARPORTS

6-CAR GARAGE

10 CARPORTS

12 CARPORTS

8-CAR GARAGE

4 CARPORTS

4 CARPORTS

8-CAR GARAGE

10-CAR GARAGE

8 CARPORTS

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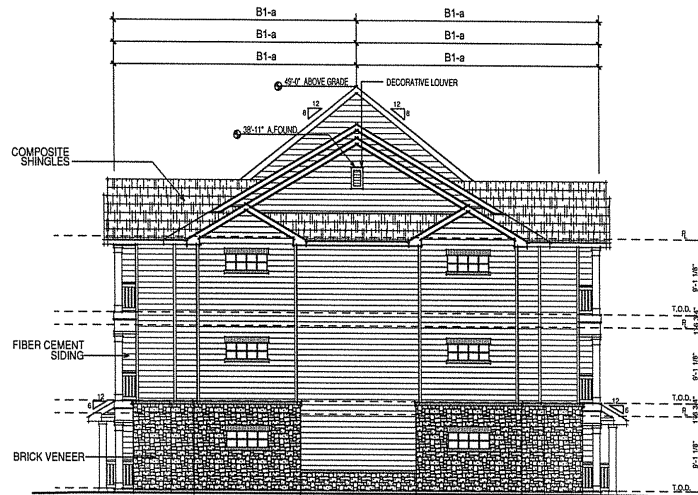
8 CARPORTS

10-CAR GARAGE

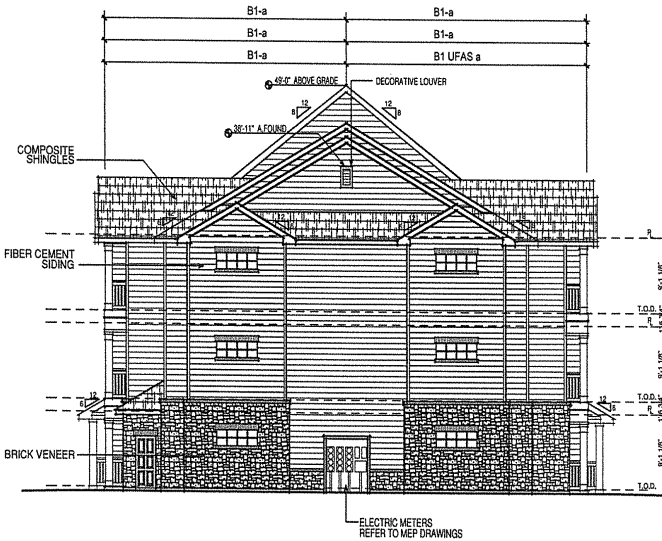
8 CARPORTS

10-CAR GARAGE

8 CARPORTS



2 BUILDING 'A' SIDE ELEVATION
SCALE 1/8"=1'-0"



3 BUILDING 'A' SIDE ELEVATION
SCALE 1/8"=1'-0"



1 BUILDING 'A' FRONT ELEVATION (SIM COND. FOR BACK ELEV.)
SCALE 1/8"=1'-0"

REVISIONS

CHAMPION HOMES AT TAHOE LAKES
Luxury Apartments in Midland, Texas for
Odyssey Residential Holdings, LP and HSI, Incorporated

REVIEW PRINTS NOT TO
BE USED FOR RE-CONSTRUCTION

BGO
architects

4202 Beltway
Addicks, TX 75001
214.520.8878
bgoarchitects.com

DATE
04-19-13

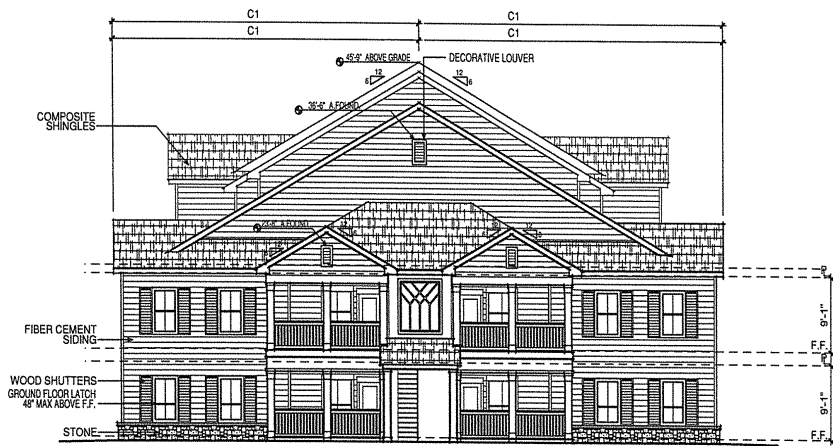
PROJECT
12188

SHEET NUMBER

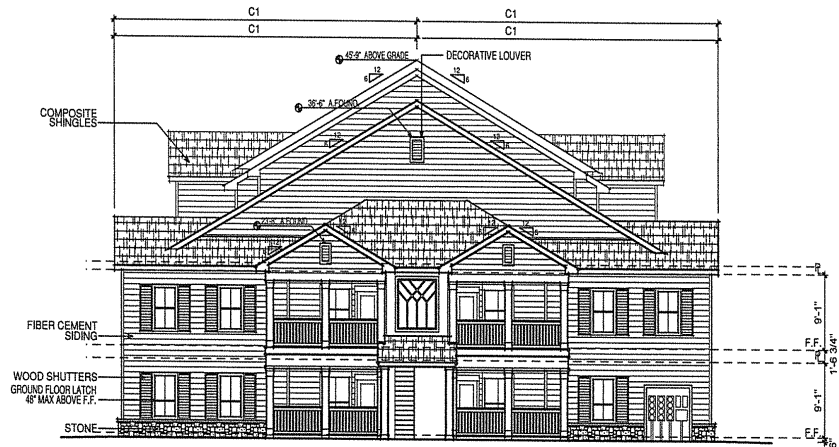
A-1

BUILDING 'A'
ELEVATIONS

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3 BUILDING 'B' END ELEVATION
SCALE 1/8"=1'-0"



2 BUILDING 'B' END ELEVATION
SCALE 1/8"=1'-0"



1 BUILDING 'B' ELEVATION
SCALE 1/8"=1'-0"

REVISIONS

CHAMPION HOMES AT TAHOE LAKES
Luxury Apartments in Midland, Texas for
Odyssey Residential Holdings, LP and HSI, Incorporated

REVIEW PRINTS NOT TO BE USED FOR CONSTRUCTION

BGO
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4202 Beltway
Addicks, TX 75001
214.520.8878
bgoarchitects.com

DATE
04-19-13

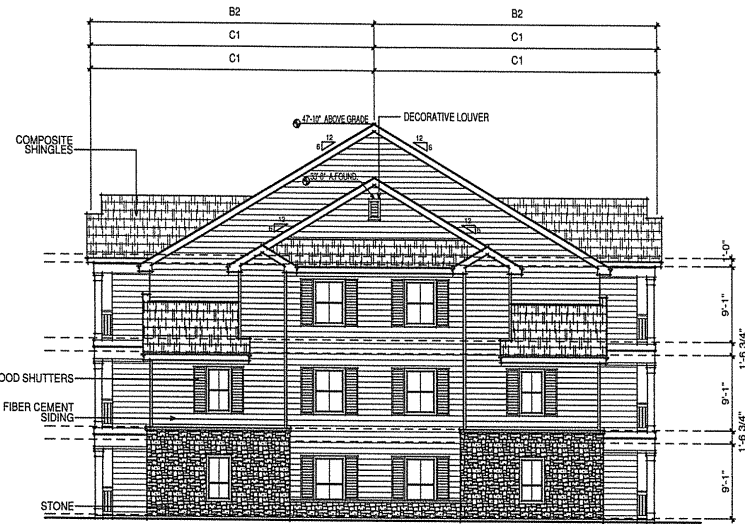
PROJECT
12188

SHEET NUMBER

A-2

BUILDING 'B'
ELEVATIONS

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2 BUILDING 'C' END ELEVATION (SIM COND. FOR OPP. END ELEV.)
SCALE 1/8"=1'-0"



1 BUILDING 'C' FRONT ELEVATION (SIM COND. FOR BACK ELEV.)
SCALE 1/8"=1'-0"

REVISIONS

CHAMPION HOMES AT TAHOE LAKES
Luxury Apartments in Midland, Texas for
Odyssey Residential Holdings, LP and HSI, Incorporated

REVIEW PRINTS NOT TO BE USED FOR CONSTRUCTION

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bgoarchitects.com

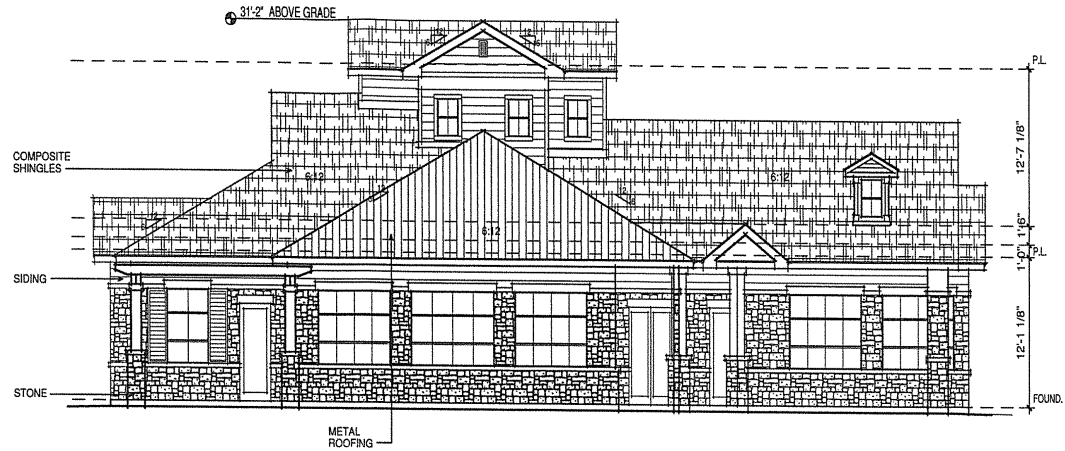
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PROJECT
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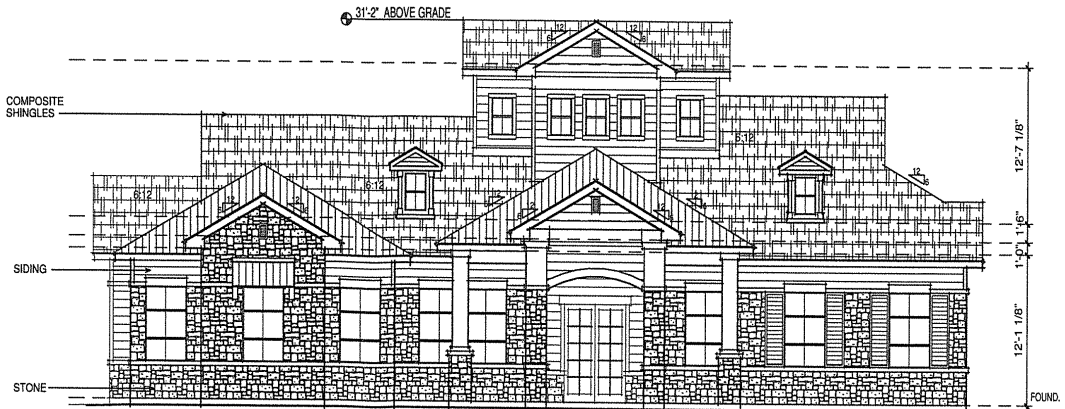
SHEET NUMBER

A-3
BUILDING 'C'
ELEVATIONS

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2 BACK ELEVATION
SCALE 3/16"=1'-0"



1 FRONT ELEVATION
SCALE 3/16"=1'-0"

REVISIONS

CHAMPION HOMES AT TAHOE LAKES
Luxury Apartments in Midland, Texas for
Odyssey Residential Holdings, LP and HSI, Incorporated

REVIEW PRINTS NOT TO
BE USED FOR PERMITTING
OR CONSTRUCTION

BGO
architects

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Addison, TX 75001
972.520.8878
bgoarchitects.com

DATE
06-28-13

PROJECT
12188

SHEET NUMBER

A-4

CLUB ELEVATIONS

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ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

FIRM # 001363

**521 NORTH TEXAS • ODESSA, TEXAS 79761
(432) 332-5058 or 580-8812 • FAX (432) 332-8812**

Legal Description
For a 10.79 Acre Tract of Land Located in
Section 1, Block 39, T-2-S, T&P RR Company Survey,
Midland County, Texas

Boundary Being More Fully Described By Metes and Bounds As Follows:

BEGINNING at (Y=10,688,001.62' and X=1,761,996.58') the southwest corner of this tract a west line of that certain 101.30 acre tract recorded in Volume 3111, Page 857, Midland County Deed Records;

THENCE North 14°20'17" West, a distance of 60.0 feet to an ell corner of this tract;

THENCE South 75°39'43" West, a distance of 20.0 feet to an ell corner of this tract;

THENCE North 14°20'17" West, a distance of 469.98 feet to a cutback corner of this tract;

THENCE North 30°40'47" East, a distance of 14.14 feet to the cutback corner in the south right-of-way of Latta Street;

THENCE North 75°41'51" East with the south right of way line of said Latta Street, a distance of 829.12 feet to a ½" iron rod with plastic cap marked "LCA ODESSA TX" set for a point of curvature in the south right of way line of said Latta Street, being a point of curvature in the north line of this tract;

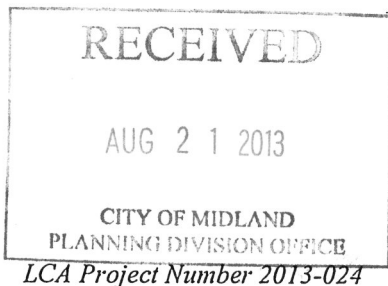
THENCE along a curve to the left in a northeasterly direction with the south right of way line of said Latta Street, said curve having a radius length of 330.00 feet, an arc length of 132.63 feet, a delta angle of 23°01'37" and a chord length of 131.74 feet bearing North 64°11'02" East to a ½" iron rod with plastic cap marked "LCA ODESSA TX" set for the northeast corner of this tract;

THENCE South 42°34'20" East through said 101.30 acre tract, a distance of 168.30 feet to a ½" iron rod with plastic cap marked "LCA ODESSA TX" set for the southeast corner of this tract;

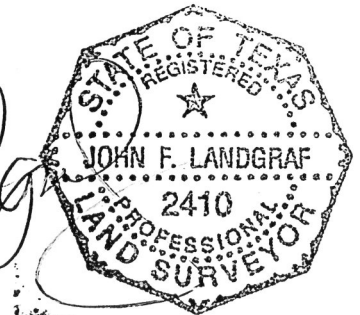
THENCE South 32°04'31" West through said 101.30 acre tract, a distance of 605.40 feet to a ½" iron rod with plastic cap marked "LCA ODESSA TX" set for a point of deflection in the south line of this tract;

THENCE South 75°39'43" West through said 101.30 acre tract, a distance of 589.32 feet to the Point of Beginning containing 10.79 surface acres of land. Bearings are relative to the Texas Coordinate System, 1983 NAD, Central Zone.

This document was prepared under 22 TAC 663.21, and is not to be used to convey or establish interest in real property except those rights and interest implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.



LCA, Inc.
John F. Landgraf
John F. Landgraf, RPLS 2410
21 August, 2013



CASE NO. 2-13-038

PLANNING AND ZONING COMMISSION

September 3, 2013

CASE: Z-13-038.

REQUEST: Hold a public hearing and consider a request for a Site Plan Review for an MF-1, Multiple-Family Dwelling District.

APPLICANT: Sonoma Housing Advisors, LLC.

OWNER: Davidheiser Family Trust.

REPRESENTATIVE: LCA.

LEGAL DESCRIPTION: A 10.79-acre tract of land out of Section 1, Block 39, T-2-S, T & P RR Co. Survey, City and County of Midland, Texas.

LOCATION: Generally located on the east side of S. Lamesa Road, approximately 1,000 feet north of E. Interstate Hwy 20.

CURRENT ZONING: MF-1, Multiple-Family Dwelling District.

DETAILS OF REQUEST:

1. This property is presently zoned MF-1, Multiple-Family Dwelling District, and the applicant is seeking site plan approval for the development of an apartment complex. This proposed project is approximately a 10-acre site located within a 23-acre MF-1, Multiple-Family Dwelling District.

SURROUNDING ZONING AND LAND USE:

2. The property is located south of Latta Street and just east of Lamesa Road. Immediately to the north of this property is a medium sized MF-1, Multiple-Family Dwelling District with an existing apartment complex, and to the south of this property is a medium sized MH, Manufactured Home Dwelling District. West of this property is a large LR-2, Local Retail District. Most of the surrounding properties are currently vacant and unplatted.

ANALYSIS:

3. Apartments are a permitted use in the MF-1, Multiple-Family Dwelling District with a density of 16.0 units/acre. The applicant has provided a site plan that includes a total of 156 proposed units over 10.79-acres. This yields a density of 16.0 units an acre and adheres to the zoning density requirement. The surrounding zoning and land uses would provide minimal conflict for this proposed project.

SITE PLAN:

4. Exhibit A is a plan view of the apartment complex. Access to this property will be from Albert Avenue and Latta Street. Tenant buildings are set back approximately 75 feet along Latta Street, approximately 25 feet along Wayside Drive, and approximately 75 feet along the southern property boundary. All tenant buildings will be three story buildings with a maximum building height of 50 feet.
5. Exhibit B, C, D represent the elevation views of the proposed tenant buildings labeled A, B, and C. The exterior of these buildings is shown as stone masonry, hardiplank siding, and composite shingle roofing. Exhibit E is an elevation view of the club house, which is also composed of stone masonry, hardiplank siding, and composite shingles.

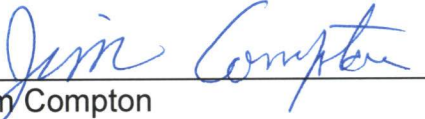
PARKING:

6. The site plan is providing for 184 open parking spaces, 48 garage spaces, and 84 carport spaces for a total of 316 spaces. The zoning regulations call for two spaces per dwelling unit which meets the City's requirements.

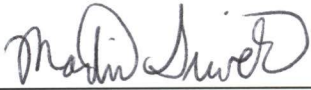
STAFF RECOMMENDATION:

Staff recommends approval of the proposed site plan subject to the following conditions.

- A. That the proposed development shall significant conform to the attached site plan Exhibit A.
- B. That the proposed development shall significantly conform to Exhibits B, C, D, and E.



Jim Compton
Acting Planning Division Manager
Department of Development Services



Martin Siwek, City Planner
Department of Development Services

Attachments:

Application

Maps

Exhibits A, B, C, D, and E.

Case Number: 2-13-038

**CITY OF MIDLAND
PLANNING DIVISION
APPLICATION FOR SITE PLAN REVIEW**

Applicant:

Name: Sonoma Housing Advisors, LLC

Address: 5430 LBJ Freeway, Ste. 1200 – Dallas, Tx Zip Code: 75240

Phone Number(s): 972-663-9368 Fax: 972-663-9301

Property Owner:

Name: Davidheiser Family Trust

Address: 1222 Calle Las Casas, Thousand Oaks, CA Zip Code: 91360

Phone Number(s): _____ Fax: _____

Legal Description of Property: (Complete Lot and Block or metes and bounds description)
Lot 1, Block 1, Tahoe Lakes Addition

Staff only: This request qualifies for ☐ Planned District Process ☐ Administrative Review

Panned District Site Plan Review

Items Required from Applicant:

\$300.00 application fee

Received date: _____

16 copies of the site plan

Received date: _____

Site Plan on a CD in .pdf and .jpg format

Received date: _____

Ordinance number and date approved: _____

Administrative Site Plan Review

Items required from Applicant:

\$200.00 application fee

Received date: _____

5 copies of the site plan

Received date: _____

Date approved: _____ By: _____

Property Owner:

Date: _____

By: (Representative)

J. M. Tuecke

Date: 28 June 2013

(If Representative signs for the Property Owner, then signature must be notarized below)

State of Texas §

County of Midland §

Before me, the undersigned authority, on this day personally appeared Joe M. Tucker who, being by me duly sworn, upon oath says: That he is authorized by Davidheiser Family Trust, the owner of the above described property, to fully represent him in this application and that he has the legal right, power and authority to sign said owner's name hereto as his attorney in fact.

J. M. Tuecke

(Signature of Affiant)

Subscribed and sworn to before me, by the said Joe M. Tucker, this 28 day of June, 2013, to certify which witness my hand and seal of office.



Shani Dawson

Notary Public, Midland County, Texas

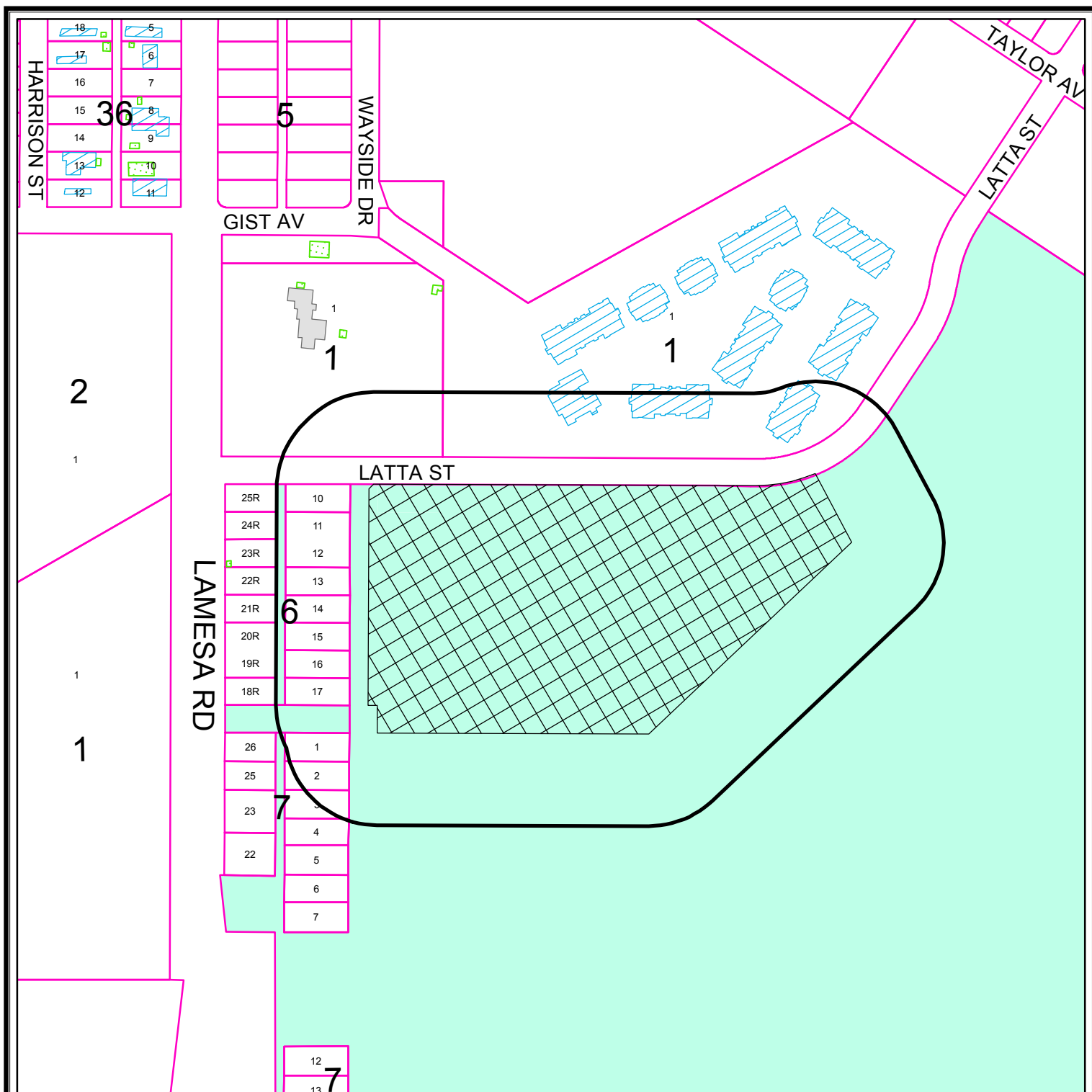
FOR OFFICE USE ONLY

Rec'd BY: RS DATE: 8/20

ASSIGNED: MS

FOR: PtZ ON: 9/3/13

***Application will not be scheduled for hearing until reviewed by a planner.**



PROPERTY OWNER NOTIFICATION MAP

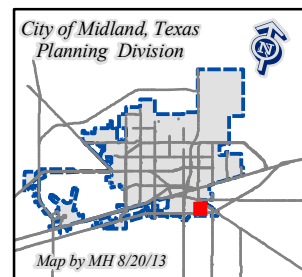
Z - 13 - 038

Scale: 1" = 300'

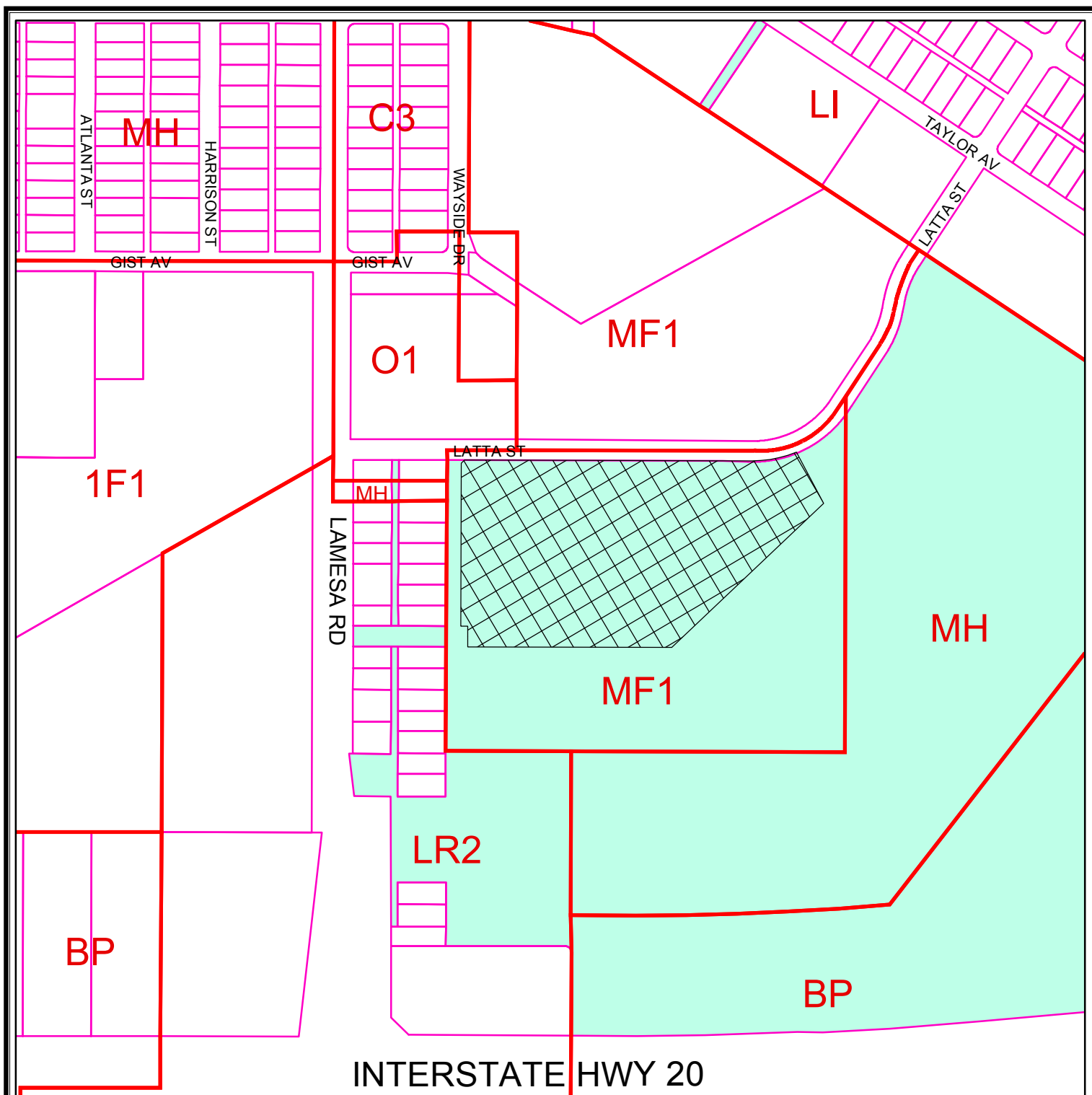
Consider a request for a Site Plan Review on a 10.79-acre tract of land out of Section 1, Block 39, T-2-S, T & P RR Co. Survey, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 13 - 038

Scale: 1" = 400'

Consider a request for a Site Plan Review on a 10.79-acre tract of land out of Section 1, Block 39, T-2-S, T & P RR Co. Survey, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
RPatrick
City Manager's Office

MEETING DATE: September 24, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Jim Compton, Acting Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:45 a.m. and consider a resolution on a request by Robert Ahola for a Temporary Land Use Permit for an Outdoor Tent Sale on Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas (Generally located on the southwest corner of the intersection of W. Loop 250 North and N. Midkiff Road.)

Purpose:

Hold a public hearing at approximately 10:45 a.m. and consider a resolution on a request by Robert Ahola for a Temporary Land Use Permit for an Outdoor Tent Sale.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

No City funds are required to approve this request.

Discussion:

This is a request for approval for an Outdoor Tent Sale to be located in the northeast corner of the Midland Park Mall parking lot, as shown on Exhibits A and B. The 4,000 square foot (40' x 100') tent would be in place during the entire 40 day sale, with sale items including rugs and artwork. The requested days and hours of operation are October 16, 2013 through November 24, 2013, from 9:00 a.m. until 10:00 p.m. daily. All prior similar sales at the Mall have been restricted to three weeks. The tent location will not impact the traffic sight triangle; however, sixty eight parking spaces would be displaced. A small travel trailer is also proposed to be occupied by a security guard. There are no other similar permits that are active during the requested term. The attached resolution requires the operator to call for a safety inspection by the Fire Marshal's office prior to opening.

Attachments: Application, Maps, Proposed Resolution, and Exhibits A and B

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE TEMPORARY USE
OF LAND FOR AN OUTDOOR TENT SALE 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, Robert Ahola has applied for authorization to temporarily use land for an outdoor tent sale 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 Robert Ahola is hereby authorized by the City Council to have an outdoor tent sale on the following described land:

On 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 the outdoor tent sale shall be limited to October 16, 2013 through November 24, 2013, from 9:00 a.m. until 10:00 p.m. daily.
- B. That the tent location and size shall conform to the conditions shown on Exhibits "A" and "B", which are attached hereto and incorporated herein for all purposes.
- C. That the tent shall not exceed 4,000 square feet in area.
- D. That a travel trailer may be located on the property as shown on Exhibit "A" for on-site security guard housing during the sale.
- E. That the applicant shall call for an inspection by the Fire Marshal prior to commencing operation of the sale.

SECTION THREE. The City Council reserves at all times the full right and power to revoke said temporary use for violation of any of its terms or any misrepresentations contained in the application, after a hearing of which the holder of said temporary use has been given at least one (1) day notice.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant to the City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

PREPARED BY:
USA SPECIALTY MARKETING
www.USATENTSALES.com

For inquiries concerning booking locations
Please contact Kerry Yagemann
(727) 446-2432 ext. 205

TENT SPECIFICATIONS:

TENT TYPE: FRAME TENT
COLOR: WHITE
SIZE: 40ft. X 100ft.
LETTERING: "RUG & ART SALE" PROFESSIONALLY SILK-SCREENED IN RED ON CANOPY
MATERIALS: ALUMINUM POLES AND FRAME, FIRE RESISTANT VINYL CANOPY
WEATHER CERTIFICATION: WINDS UP TO 90 MPH

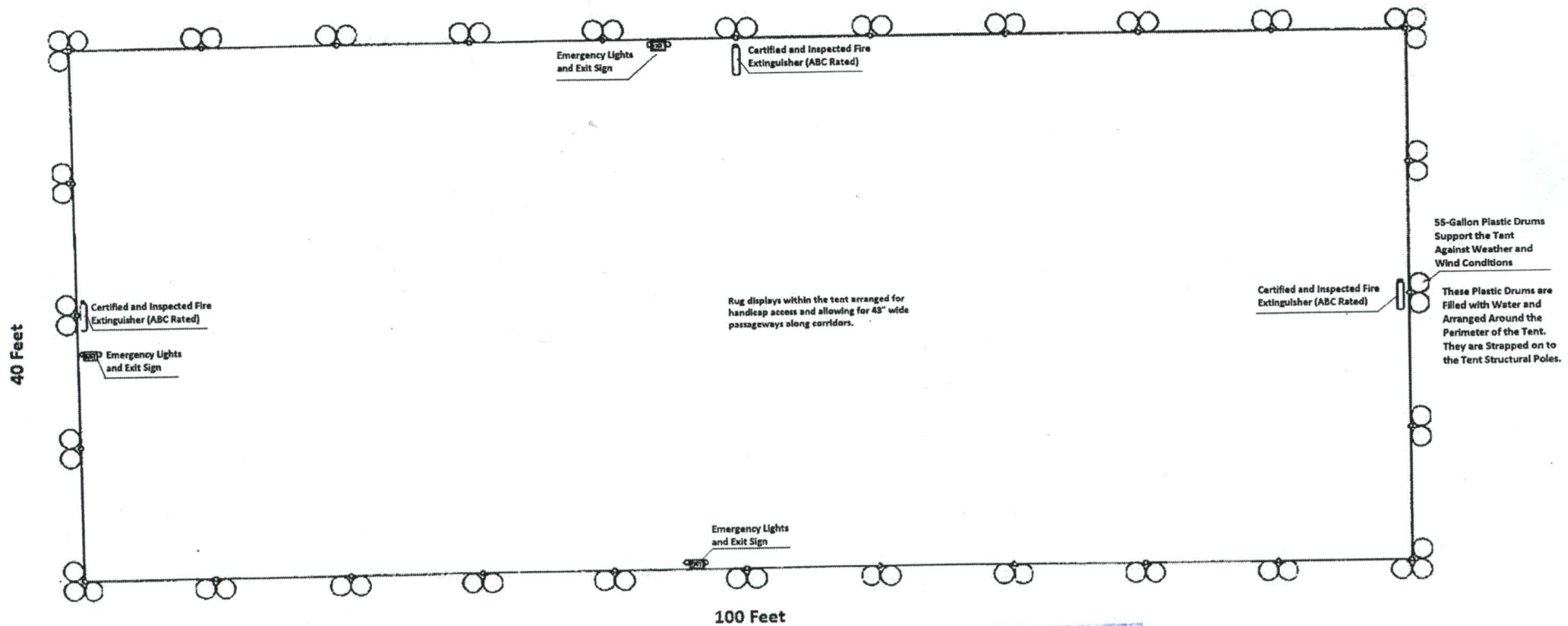
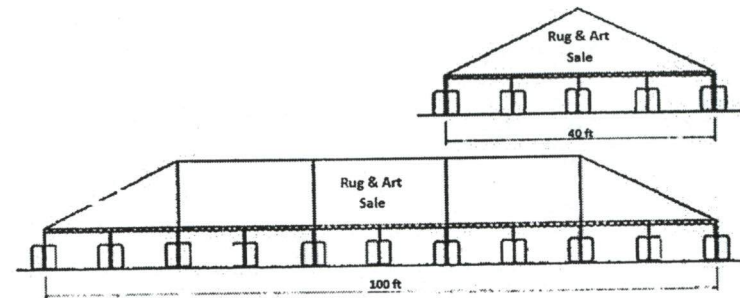


EXHIBIT B

CASE NO. M-13-019

Case No.:

M-13-019

CITY OF MIDLAND, TEXAS Planning Division

TEMPORARY LAND USE PERMIT APPLICATION

Submission Requirements: Application shall be submitted to the Planning Division not less than twenty-eight (28) days prior to the City Council meeting at which action is desired.

Application is hereby made to the City Council for a Temporary Land Use Permit:

Name of Applicant: Robert Ahola Phone: (707) 337-9967
E-mail: aholarugs@yahoo.com

Applicant's Address: 612 S. Lincoln Ave, Clearwater, FL 33756

Property Owner: Simon Properties Phone: (708) 349-1647
E-mail: dlanglands@simon.com

Owner's Address: Midland Park Mall - 4511 N. Midkiff Dr, Midland, TX 79705

Other required information:

1. Street address and legal description of property: 4511 N. Midkiff Dr, Midland, TX 79705
Midland Park Mall

2. Zoning District: PDSC

3. Type of temporary use requested: Sale of Rugs & Artwork - Outdoor Promotional Sale

4. Duration of temporary use: 40 Days
If more than One (1) day and is located within any residential district or is located within 1000 feet of any residential district, then a public hearing is required.

5. Proposed days and hours: 16 Oct 2013 - 24 Nov 2013 9 AM - 10 PM

6. Will alcoholic beverages be sold? Yes ☒ No

7. A detailed Site Plan is required (16 copies needed (FOLDED), plus digital - .jpg and .pdf). Show existing buildings, parking, access arrangements, surrounding streets, activity areas, areas of alcoholic beverage sales, proposed street closures, etc.

Site Plan received: Yes ☐ No ☐

8. Are you requesting the temporary closure of any streets? _____ Yes ☒ No

If yes, you must:

A. Obtain and complete the "Special Event and Street Closure Application", available in the Transportation Division office (5th Floor, City Hall).

B. Provide the City with a **general liability insurance certificate**, naming the City as an **Additional Insured**, in the amount of one million dollars (\$1,000,000) for the term of the closure.

9. Other information: Number of security guards provided: 0

Number of restrooms provided: 0

Type of music (carnival, live, etc.): N/A

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:

Simon Properties 4511 N. Midland Park Dr, Midland Park, TX 79705 (708) 349-1647
Printed Name of Owner/Operator Address Zip Phone

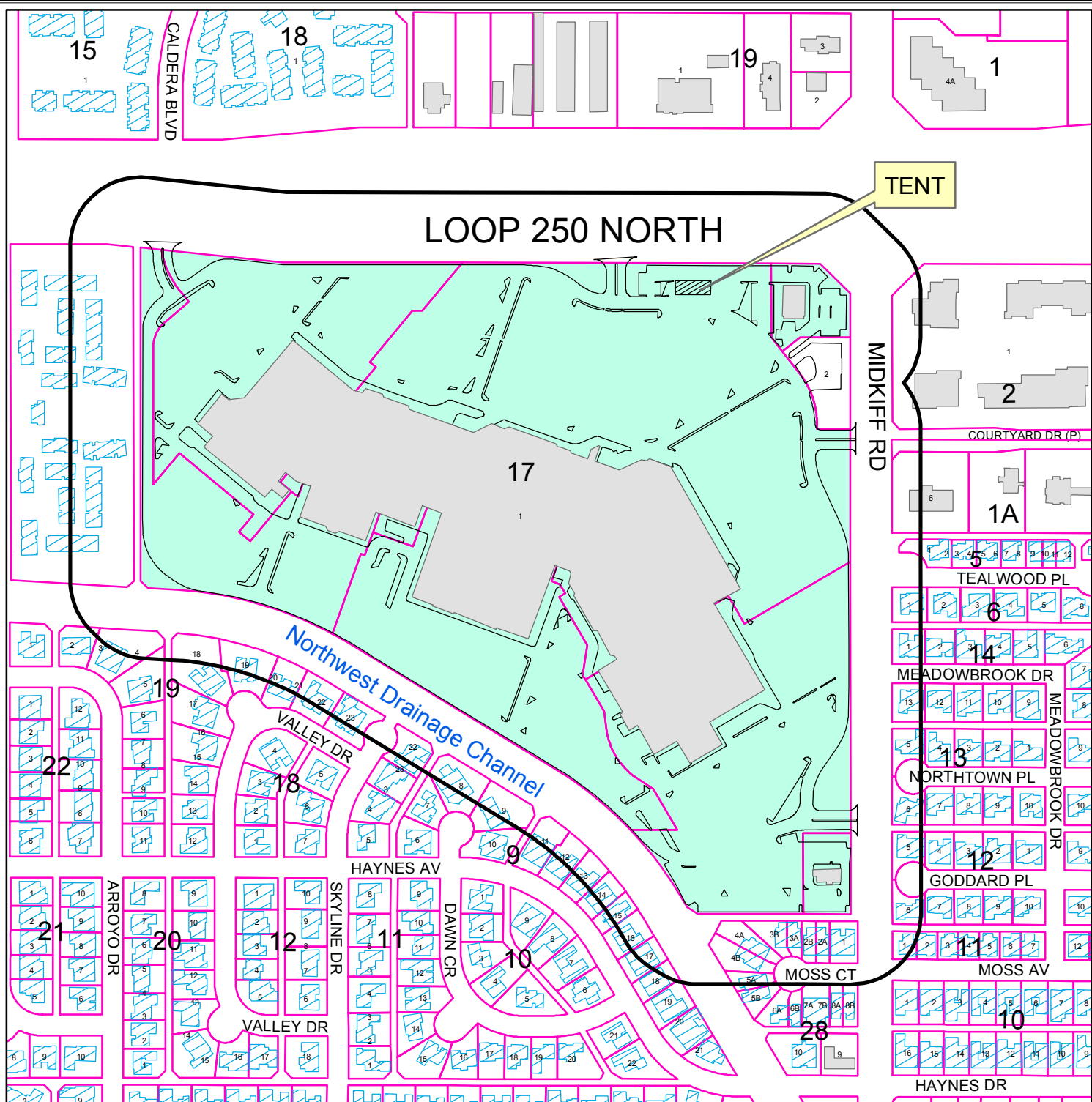
See attachments
Signature of Owner/Operator Date

Robert A. Hobbs
Signature of Applicant Date

See attachments
Signature of Property Owner, if other than Applicant Date

****Application will not be considered for scheduling until reviewed by a planner.****

FOR OFFICE USE ONLY	
Received By: <u>DS</u>	Date: <u>9/4/13</u>
Assigned: <u>SC</u>	
For: <u>CC</u>	On: <u>9/24/13</u>



PROPERTY OWNER NOTIFICATION MAP

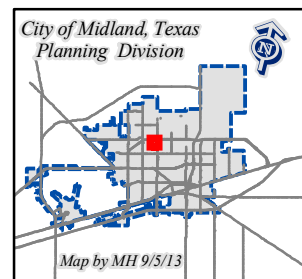
M - 13 - 019

Scale: 1" = 400'

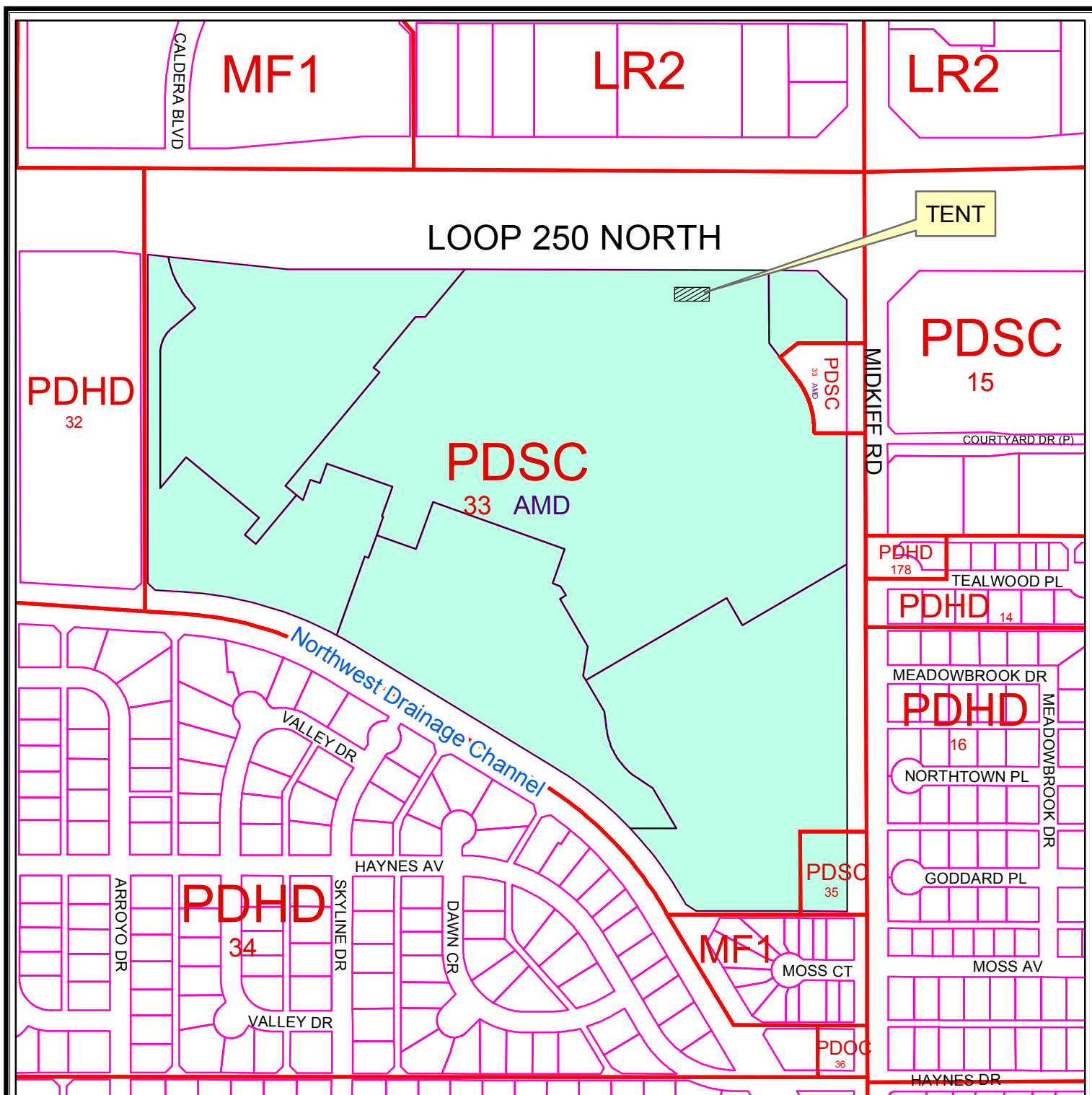
Consider a request for a Temporary Land Use Permit for a Tent Sale on Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS



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ZONING MAP

M - 13 - 019

Scale: 1" = 400'

Consider a request for a Temporary Land Use Permit for a Tent Sale on Lot 1, Block 17, Skyline Terrace, Unit 2, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
RPatrick
City Manager's Office

MEETING DATE: September 24, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Jim Compton, Acting Planning Division Manager

SUBJECT: Consider an ordinance on a request by D.R. Horton and Curt Alvin for the vacation of drainage easements being a 2.40-acre tract and a 6.32-acre tract of land located within the dedicated rights-of-way of San Francisco Avenue, Rodeo Street, Magellan Street and Mockingbird Lane, all contained within Adobe Meadows, Sections 3 and 5, City and County of Midland, Texas. (Generally located on the east side of State Hwy 349, north of east extension of Mockingbird Lane.)

Purpose: Consider an ordinance on a request by D.R. Horton and Curt Alvin for the vacation of drainage easements being a 2.40-acre tract and a 6.32-acre tract of land located within the dedicated rights-of-way of San Francisco Avenue, Rodeo Street, Magellan Street and Mockingbird Lane, all contained within Adobe Meadows, Sections 3 and 5, City and County of Midland, Texas. (Generally located on the east side of State Hwy 349, north of east extension of Mockingbird Lane.) District – 1.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City for processing this application.

Discussion:

The applicants, D.R. Horton and Curt Alvin, are requesting to vacate the above described drainage easements for the future development of a residential subdivision. The applicant is seeking to rezone and replat the property, alleys, and rights-of-way that are contained

within the existing platted lot configuration. The purpose of the vacation, replat, and rezone applications are to allow for adjustments in configuration of rights-of-way, lotting size and pattern. The amount of drainage easements requesting to be vacated have been assessed by the City Manager's Office as an equivalent amount of rights-of-way to be dedicated with the forthcoming residential replat. The above described drainage easements were dedicated by separate instrument before the original platting of the Adobe Meadow Subdivisions 1, 3, 4, and 5. These drainage easements were incorporated into the existing rights-of-way and will be accounted for with the dedication of new rights-of-way with the related Adobe Meadows Section 6 proposed plat. Therefore, staff recommends approval of this request with no assessed fee to be charged to the applicants.

Attachments: Maps, Exhibits A and B.

ORDINANCE NO.

AN ORDINANCE VACATING AND ABANDONING A 2.40-ACRE DRAINAGE EASEMENT AND A 6.32-ACRE DRAINAGE EASEMENT WITHIN THE SAN FRANCISCO AVENUE, RODEO STREET, MAGELLAN STREET AND MOCKINGBIRD LANE RIGHTS-OF-WAY, ALL OUT OF ADOBE MEADOWS, SECTIONS 3 AND 5, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF STATE HIGHWAY 349, NORTH OF THE EAST EXTENSION OF MOCKINGBIRD LANE); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$29,589.00; WAIVING THE FEE FOR THE COST OF THE DRAINAGE EASEMENTS; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 2.40-acre drainage easement and a 6.32-acre drainage easement within San Francisco Avenue, Rodeo Street, Magellan Street and Mockingbird Lane rights-of-way, all out of Adobe Meadows, Sections 3 and 5, City and County of Midland, Texas, are 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 said drainage easements 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 said drainage easements at \$29,589.00, as shown in Exhibit "C" attached hereto and incorporated herein by reference; and

WHEREAS, the Council finds it to be in the public interest to waive the fee for the cost of said drainage easements in exchange for the abutting property owner's dedication of right-of-way of equal value to the City through the plat of Adobe Meadows, Section 6; and

WHEREAS, the Council finds it to be in the public interest to abandon and vacate said drainage easements described herein;

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

SECTION ONE. That the 2.40-acre drainage easement and the 6.32-acre drainage easement within San Francisco Avenue, Rodeo Street, Magellan Street and Mockingbird Lane rights-of-way, all out of Adobe Meadows, Sections 3 and 5, City and County of Midland, Texas, as described in Exhibits “A” and “B” attached hereto and made a part hereof for all legal purposes, are 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 drainage easements.

SECTION TWO. That the fee for the cost of said drainage easements vacated and abandoned herein to the adjoining property owner is hereby waived in exchange for the abutting property owner’s dedication of right-of-way of equal value to the City through the plat of Adobe Meadows, Section 6.

SECTION THREE. That 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., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council

member _____, on the ____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS ____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant to the City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

18077

DRAINAGE EASEMENT

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

KNOW ALL MEN BY THESE PRESENTS:

THAT RAMCON CORPORATION, for and in consideration of the enhancement in value of their remaining abutting property, does hereby give and grant to The City of Midland, Midland County, Texas, a drainage easement on a 2.40 acre tract of land in Section 12, Block "X", H. P. Hilliard Survey, Midland County, Texas, being further described as follows:

BEGINNING at a point in the eastern boundary of proposed Rodeo Drive, in Section 12, Block "X", H. P. Hilliard Survey, Midland County, Texas, for the southwest corner this tract, from which point the southwest corner of said Section 12 bears S15°06'20"E, 535.56 feet and S74°53'40"W, 1538.00 feet;

THENCE N15°06'20"W, 60.00 feet to a point in the eastern boundary of said proposed Rodeo Drive, for the northwest corner this tract;

THENCE N74°51'04"E, along the northern boundary of proposed San Francisco Avenue, 879.96 feet to a point of curvature this tract;

THENCE along the curved boundary to the left, Delta Angle = 20°04'47", Radius = 534.71 feet, Tangent Length = 94.67 feet, and an Arc Length of 187.39 feet, to a point of tangency this tract;

THENCE N54°46'17"E, 130.19 feet to a point of curvature this tract;

THENCE along the curved boundary to the right, Delta Angle = 20°04'47", Radius = 594.83 feet, Tangent Length = 105.31 feet, and an Arc Length of 208.46 feet, to a point of tangency this tract;

THENCE N74°51'04"E, 255.00 feet to a point for the northeast corner this tract;

THENCE S15°08'56"E, at 60.00 feet pass the southern boundary of proposed San Francisco Avenue, in all, 160.16 feet to a point for the southeast corner this tract;

THENCE S74°53'40"W, 50.00 feet to a point for an exterior corner this tract;

THENCE N15°08'56"W, 100.12 feet to a point in the southern boundary of proposed San Francisco Avenue, for an interior corner this tract;

THENCE S74°51'04"W, along the southern boundary of proposed San Francisco Avenue, 205.00 feet to a point of curvature this tract;

THENCE along the curved boundary to the left, Delta Angle = 20°04'47", Radius = 534.83 feet, Tangent Length = 94.69 feet, and an Arc Length of 187.44 feet to a point of tangency this tract;

THENCE S54°46'17"W, 130.19 feet to a point of curvature this tract;

THENCE along the curved boundary to the right, Delta Angle = $20^{\circ}04'47''$, Radius = 594.71 feet, tangent length = 105.31 feet, and an Arc length of 208.42 feet, to a point of tangency this tract;

THENCE $S74^{\circ}51'04''W$, 880.00 feet to the place of beginning and containing 2.40 acres of land.

TO HAVE AND TO HOLD the above described premises, together with all the rights and appurtenances thereto in anywise belonging unto the said public generally for the purposes hereinabove recited.

IN WITNESS WHEREOF, this instrument is executed this 25th DAY OF August, A.D., 1983.

RAMCON CORPORATION

BY: Paul Rochester
TITLE: Off

THE STATE OF TEXAS §
COUNTY OF MIDLAND §

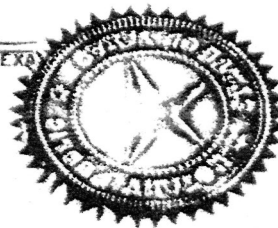
Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Paul Rochester, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of Ramcon Corporation, a Texas Corporation, for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 29th day of August, A.D., 1983.

Kim Marie Buchanan
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
(Kim Marie Buchanan)

APPROVED AS TO FORM:

Joe Neussre
Joe Neussre, City Attorney



RECEIVED

SEP 10 2013

CITY OF MIDLAND
PLANNING DEPARTMENT

Page 2 of 2

CASE NO: V-13-015

Filed for Record on the 6 day of September, A.D. 1983, at 4:25 o'clock P.M.
Duly Recorded this the 7 day of September, A.D. 1983, at 4:25 o'clock P.M.

INSTRUMENT NO. 18077

ROSENELLE CHERRY, COUNTY CLERK
MIDLAND COUNTY, TEXAS

By Deputy, Deputy

18078

DRAINAGE EASEMENT

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

KNOW ALL MEN BY THESE PRESENTS:

THAT RAMCON CORPORATION, for and in consideration of the enhancement in value of their abutting property, does hereby give and grant to The City of Midland, Midland County, Texas, a drainage easement on a 6.32 acre tract of land in Section 12, Block "X", H. P. Hilliard Survey, Midland County, Texas, being further described as follows:

BEGINNING at a point for the southeast corner this tract, said point being the southeast corner of Section 12, Block "X", H. P. Hilliard Survey, Midland County, Texas;

THENCE S74°53'40"W, along the south line of said Section 12, said line being the centerline of proposed Mockingbird Lane, 3927.20 feet to a point for the southwest corner this tract;

THENCE N15°06'20"W, 50.00 feet to a point in the northern boundary of proposed Mockingbird Lane, for the most westerly northwest corner this tract;

THENCE N74°53'40"E, along the northern boundary of proposed Mockingbird Lane, 110.00 feet to a point in the western boundary of proposed Rodeo Drive, for an interior corner this tract;

THENCE N15°06'20"W, along the western boundary of proposed Rodeo Drive, 655.52 feet to a point for the most northerly northwest corner this tract;

THENCE N74°53'40"E, 60.00 feet to a point in the eastern boundary of proposed Rodeo Drive, for an exterior corner this tract;

THENCE S15°06'20"E, along the eastern boundary of proposed Rodeo Drive, 655.52 feet to a point in the northern boundary of proposed Mockingbird Lane, for an interior corner this tract;

THENCE N74°53'40"E, along the northern boundary of proposed Mockingbird Lane, 530.00 feet to a point in the western boundary of proposed Magellan Drive, for an interior corner this tract;

THENCE N15°06'20"W, along the western boundary of proposed Magellan Drive, 545.96 feet to a point of curvature this tract;

THENCE along the curved boundary to the left, Delta Angle = 22°28'23", Radius = 287.77 feet, Tangent Length = 57.17 feet, and an Arc Length of 112.87 feet, to a point on the curve this tract;

THENCE N74°51'04"E, 64.00 feet to a point in the eastern boundary of proposed Magellan Drive, for the most northerly northeast corner this tract;

THENCE along the curved boundary to the right, Delta Angle = 18°26'22", Radius = 347.77 feet, Tangent Length = 56.45 feet, and an Arc Length of 111.92 feet, to a point of tangency this tract;

THENCE S15°06'20"E, along the eastern boundary of proposed Magellan Drive, 546.01 feet to a point in the northern boundary of proposed Mockingbird Lane, for an interior corner this tract;

THENCE N74°53'40"E, along the northern boundary of proposed Mockingbird Lane, 3167.06 feet to a point in the eastern line of said Section 12, for the most easterly northeast corner this tract;

THENCE S15°16'00"E, along the eastern line of said Section 12, 50.00 feet to the place of beginning and containing 6.32 acres of land.

TO HAVE AND TO HOLD the above described premises, together with all the rights and appurtenances thereto in anywise belonging unto the said public generally for the purposes hereinabove recited.

IN WITNESS WHEREOF, this instrument is executed this 27th DAY OF July, A.D., 1983.

RAMCON CORPORATION

BY: [Signature]
Paul Rochester
TITLE: Vice President

THE STATE OF TEXAS §
ECTOR §
COUNTY OF ~~XANDER~~ §

Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Paul Rochester, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of Ramcon Corporation, a Texas Corporation, for the purposes and consideration therein expressed and in the capacity therein stated.

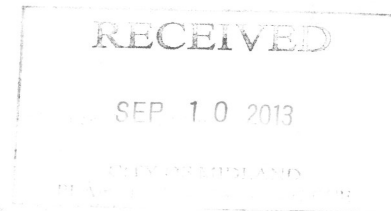
GIVEN UNDER MY HAND AND SEAL OF OFFICE this 27th day of July, A.D., 1983.



[Signature]
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
(Mary Jo Clark)

APPROVED AS TO FORM:

[Signature]
JOE NEUSSE, CLAY ATTORNEY



Page 2 of 2

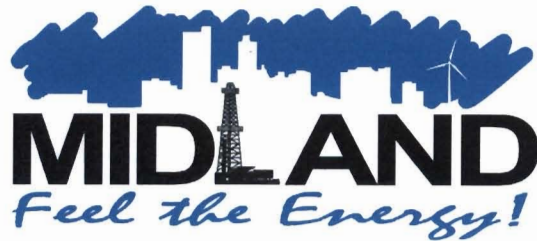
CASE NO. V-13-015

Filed for Record on the 6 day of September A.D. 1983, at 4:20 o'clock P.M.
Duly Recorded this the 7 day of September A.D. 1983, at 4:40 o'clock A.M.

ROSENELLE CHERRY, COUNTY CLERK
MIDLAND COUNTY, TEXAS

By [Signature], Deputy

INSTRUMENT NO. 18078



Office of the City Manager

September 16, 2013

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 2.40-acre drainage easement and a 6.32-acre drainage easement within San Francisco Avenue, Rodeo Street, Magellan Street and Mockingbird Lane rights-of-way, all out of Adobe Meadows, Sections 3 and 5, 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 \$29,589.00.

Very truly yours,

Courtney Sharp
City Manager

Exhibit "C"

L:\Ordinances\Planning\Vacate & Abandon\2013\Adobe Meadows, Sec 3 & 5 - Appraisal Letter.wpd

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:
See attached legal descriptions.
- II. Reason for Request: The area in question is being asked for vacation so that the street alignments can be altered from the previously platted versions.
- 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 request will not affect the public health, safety, and welfare of the area as the land is not currently developed. Also, the vacation is being requested to reorient previously dedicated rights-of-way.

IV. REQUIRED ITEMS:

1. Applicant(s) Information:

Name: D.R. Horton - Texas, Ltd.

Address: 6751 N. Freeway

Phone: (817) 230-0800

Street
Forth Worth
City

TX
State

76131
Zip Code

2. Sealed metes and bounds description of property to be vacated (included on the map) and total square feet of vacation. Include ownership, legal-and deed information for adjacent property owners.

3. Application Fee: **\$300.00**

Required items attached? Date Received: 1. _____ 2. _____ 3. _____

The City of Midland will take no action on this request, until items 1-3 are received.

- V. Clearance is needed from the following utility companies: City of Midland / Atmos Energy
Caprock Energy / Oncor 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. If the vacation request involves only a portion of a section right-of-way, such that approval would not affect the public's ability to travel along said right-of-way, then the request will be scheduled for consideration by the City Council. No public hearing will be needed.
2. If the vacation request involves an entire section of right-of-way, such that approval would cause the public to lose all rights to use it, then the following procedures apply:
 - a. Nearby land owners who have a reasonable expectation to use said right-of-way, as determined by the Transportation Division, must first agree to the proposed vacation. It is the applicant's responsibility to obtain a letter of concurrence signed by the affected landowners.
 - b. If all letters are received indicating that the affected landowners agree to the request, then a public hearing before the City Council will be scheduled. The Transportation Division will mail public notice of the hearing to landowners within 400 feet of the affected right-of-way.
 - c. If a request is approved, the right-of-way shall be divided into two equal parts, with each half becoming the property of the respective abutting owner. If the applicant desires to own the entire width, he or she must negotiate with the opposite landowner.

Signature of applicant: 

Date: 7/25/13

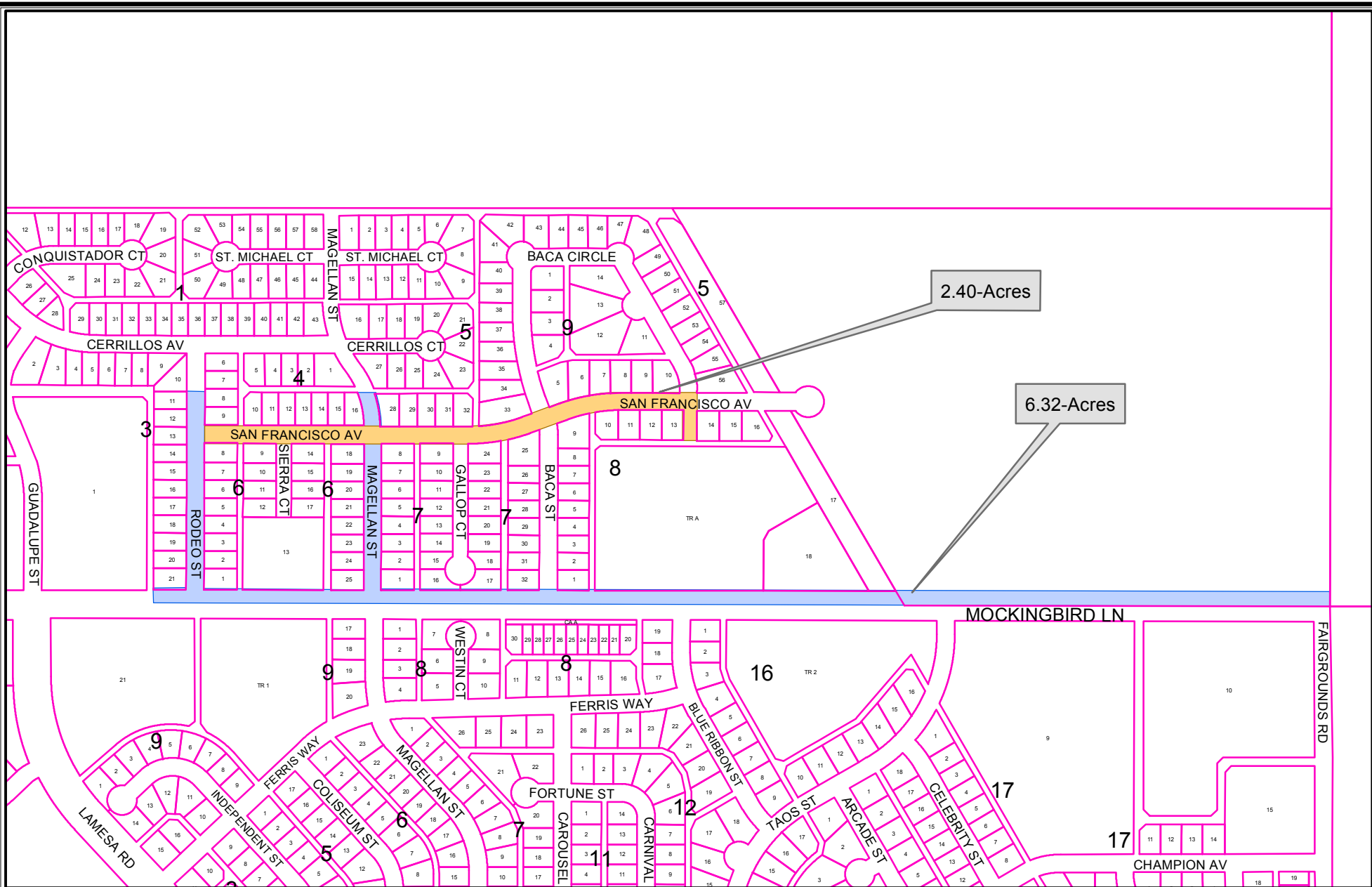
Signature of Other Affected Property Owners: 

Date: 8-14-13

_____, _____
_____, _____
_____, _____

****Application will not be considered for scheduling until all required items are reviewed by City Staff.****

FOR OFFICE USE ONLY	
Rec'd. By: <u>MS</u>	Date: <u>8/15/13</u>
Assigned: <u>MS</u>	
For: <u>CC</u>	On: <u>9/24/13</u>



V - 13 - 015

Scale: 1" = 450'

Consider a request for the vacation of drainage easements being a 2.40-acre tract and a 6.32-acre tract of land located within the dedicated rights-of-way of San Francisco Avenue, Rodeo Street, Magellan Street and Mockingbird Lane, all contained within Adobe Meadows, Sections 3 and 5, City and County of Midland, Texas.

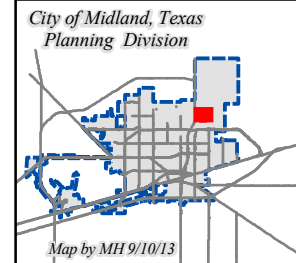
LOCATION MAP

LEGEND

- CITY LIMITS
- PARCEL
- VACATION BOUNDARY 2.40-ACRES
- VACATION BOUNDARY 6.32-ACRES



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City Council Agenda

Approved for Agenda:
RPatrick
City Manager's Office

MEETING DATE: September 24, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Jim Compton, Acting Planning Division Manager

SUBJECT: Consider a motion approving a proposed preliminary plat of Adobe Meadows, Section 6 on a request by D.R. Horton being a replat Lots 1 – 58, Block 1, Lots 1 – 13, Block 2, Lots 2 – 10, Block 3, Lots 1 – 7, Block 4, and Lots 1 -27, Block 5, Adobe Meadows, Section 1; of Tract “A” and Lots 10 – 16, Block 8, Adobe Meadows, Section 3; Lots 33 – 56, Block 5 and Lots 1 – 14, Block 9, Adobe Meadows, Section 4; Lots 11-21, Block 3, Lots 8 – 16, Block 4, Lots 28 – 32, Block 5, Lots 1 – 12 and Lots 14 - 25, Block 6, Lots 1 – 32, Block 7, and Lots 1 – 9, Block 8, Adobe Meadows, Section 5; and the to be vacated rights-of-way being 0.703-acres of Baca Circle, 0.103-acres of Baca Street, 0.181-acres of Cerrillos Avenue, 0.57-acres of Cerrillos Court, 0.123-acres of Conquistador Court, 0.014-acres of Gallop Court, 0.002-acres of Guadalupe Street, 0.614-acres of Magellan Street, 0.409-acres of San Francisco Avenue, 0.079-acres of St. Michael Court and 1.301-acres of adjacent alleys, all in the City and County of Midland, Texas. (Generally located on the side of Hwy 349, north of east the extension Mockingbird Lane.)

Purpose:

Consider a motion approving a proposed preliminary plat of Adobe Meadows, Section 6 on a request by D.R. Horton being a replat Lots 1 – 58, Block 1, Lots 1 – 13, Block 2, Lots 2 – 10, Block 3, Lots 1 – 7, Block 4, and Lots 1 -27, Block 5, Adobe Meadows, Section 1; of Tract “A” and Lots 10 – 16, Block 8, Adobe Meadows, Section 3; Lots 33 – 56, Block 5 and Lots 1 – 14, Block 9, Adobe Meadows, Section 4; Lots 11-21, Block 3, Lots 8 – 16, Block 4, Lots 28 – 32, Block 5, Lots 1 – 12 and Lots 14 - 25, Block 6, Lots 1 – 32, Block 7, and Lots 1 – 9, Block 8, Adobe Meadows, Section 5; and the to be vacated rights-of-way being 0.703-acres of Baca Circle, 0.103-acres of Baca Street, 0.181-acres of Cerrillos Avenue, 0.57-acres of Cerrillos Court, 0.123-acres of Conquistador Court, 0.014-acres of Gallop Court, 0.002-acres of Guadalupe Street, 0.614-acres of Magellan Street, 0.409-acres of San Francisco Avenue, 0.079-acres of St. Michael Court and 1.301-acres of adjacent alleys, all in the City and County of Midland, Texas. District – 1.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

This proposed residential replat is located east of State Highway 349 and immediately north of the eastward extension of Mockingbird Lane. The City Subdivision Code requires any preliminary plat of 25 acres or more without a publicly owned school or park to be approved by the City Council. This proposed preliminary plat is approximately 72 acres and spans five different zoning districts. Common areas A and B will serve as space for demarcation of the subdivision, and common area C will serve as space for a proposed pavilion. The purpose of this replat is to meet the request of the developer to realign lotting patterns, alleys, and rights-of-way. Staff recommends approval of the proposed preliminary plat Adobe Meadows, Section 6.

Attachment: September 3rd P&Z Report, Preliminary Plat, Maps.

PLANNING AND ZONING COMMISSION

September 3, 2013

CASE: P-13-046 Adobe Meadows, Section 6.

STATUS: Proposed Preliminary Plat.

APPLICANT/OWNER: D.R. Horton and Curt Alvin

REPRESENTATIVE: Parkhill Smith & Cooper.

LEGAL DESCRIPTION: Being Lots 1 – 58, Block 1, Lots 1 – 13, Block 2, Lots 2 – 10, Block 3, Lots 1 – 7, Block 4, and Lots 1 – 27, Block 5, Adobe Meadows, Section 1; of Tract “A” and Lots 10 – 16, Block 8, Adobe Meadows, Section 3; Lots 33 – 56, Block 5 and Lots 1 – 14, Block 9, Adobe Meadows, Section 4; Lots 11-21, Block 3, Lots 8 – 16, Block 4, Lots 28 – 32, Block 5, Lots 1 – 12 and Lots 14 - 25, Block 6, Lots 1 – 32, Block 7, and Lots 1 – 9, Block 8, Adobe Meadows, Section 5; and the to be vacated rights-of-way being 0.703-acres of Baca Circle, 0.103-acres of Baca Street, 0.181-acres of Cerrillos Avenue, 0.57-acres of Cerrillos Court, 0.123-acres of Conquistador Court, 0.014-acres of Gallop Court, 0.002-acres of Guadalupe Street, 0.614-acres of Magellan Street, 0.409-acres of San Francisco Avenue, 0.079-acres of St. Michael Court and 1.301-acres of adjacent alleys, all in the City and County of Midland, Texas.

LOCATION: Generally located on the east side of State Hwy 349, north of east extension of Mockingbird Lane.

CURRENT ZONING: 2F, Two-Family Dwelling District, 1F-3 One-Family Dwelling District, 1F-2, One-Family Dwelling District, and PD, Planned District for a Housing Development.

RELATED CASES: Z-13-036, V-13-014.

DETAILS OF REQUEST:

1. The applicants are requesting to replat Adobe Meadows, Sections 1, 3, 4, and 5. The applicants are seeking to reconfigure lotting sizes and patterns, and rights-of-way alignments. The new lotting configuration will be for approximately 270 lots. Changes in rights-of-way alignments include extension of residential streets San Miguel Avenue and Cerrillos Avenue. Both proposed dedicated streets include 60 feet of dedicated right-of-way. Baca Street is being realigned and will include 60 feet of dedicated right-of-way. The project will contain the two common areas A and B at the entrance from Highway 349 to serve as demarcations for the subdivision, and common area C will serve as space for a proposed pavilion. The applicants are forming a Home Owner's Association and have provided the restrictive covenants for approval by the Commission. This plat will also require Council approval because of the acreage requirement per the City's Subdivision Code.

DRAINAGE:

2. An approved drainage study shall be required as a condition of final plat approval.

PUBLIC IMPROVEMENTS:

3. Public improvements that need to be addressed as a condition of final plat include paving to the extent of the plat, extension of water and sewer, and fire hydrants all to City standards.

STAFF RECOMMENDATION:

Staff recommends approval of the proposed preliminary plat of Adobe Meadows, Section 6 subject to the following conditions:

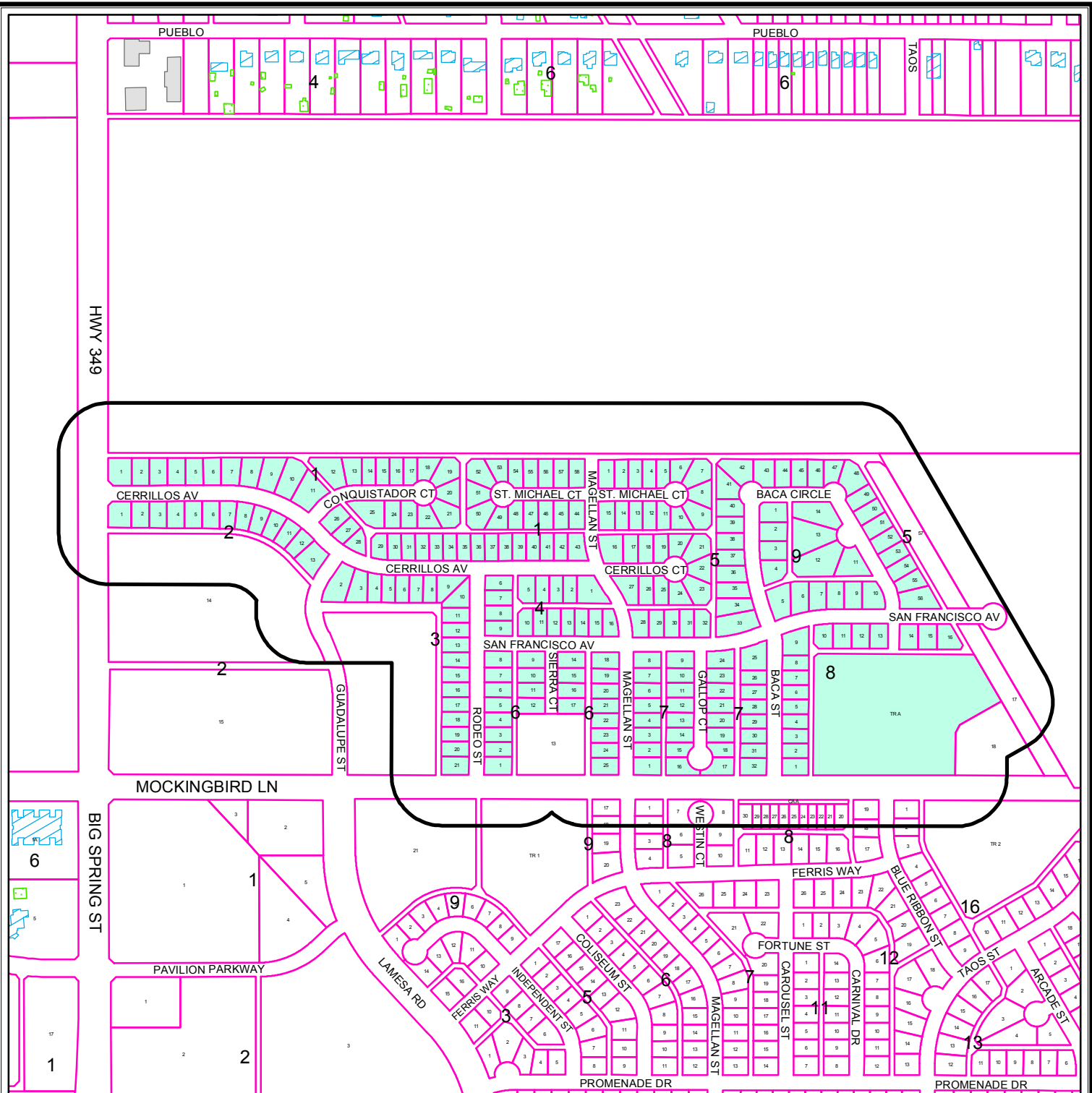
- A. That the required public improvements are adequately addressed.**
- B. That a drainage plan is approved as a condition of final plat approval.**
- C. That the vacation of all alleys, rights-of-way, and easements are completed as a condition of final plat approval.**
- D. City Council approval will be a condition of final plat approval.**
- E. That a Declaration of restrictive covenants is approved.**

Jim Compton
Acting Planning Division Manager
Department of Development Services

Martin Siwek, City Planner
Department of Development Services

Attachments:

Preliminary Plat Application
Maps
Proposed Preliminary Plat



PROPERTY OWNER NOTIFICATION MAP

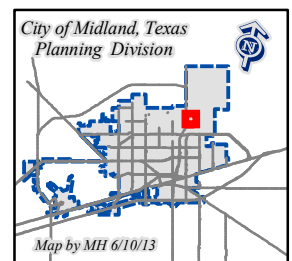
P - 13 - 046

Scale: 1" = 550'

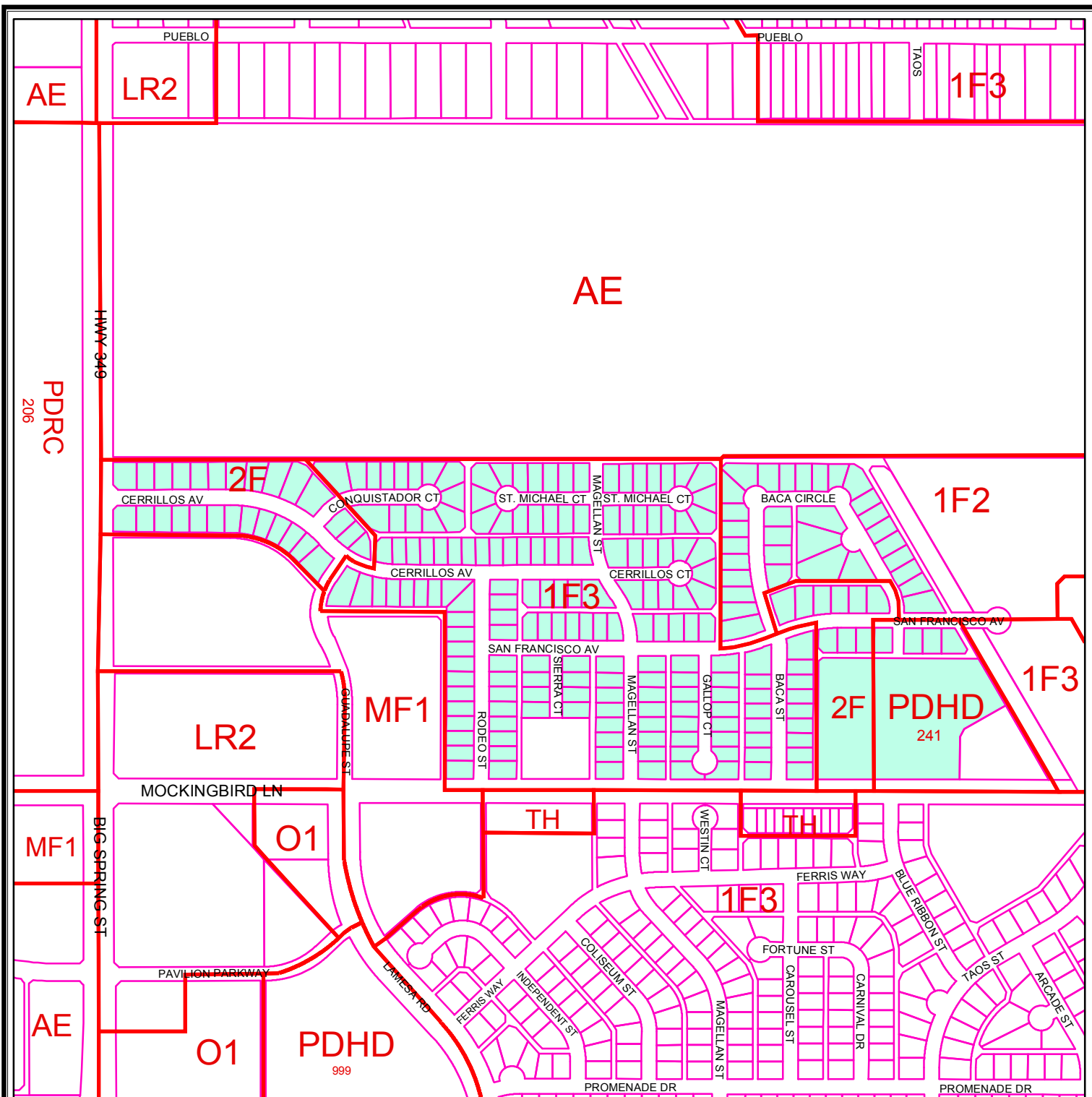
Proposed plat of Adobe Meadows, Section 6, being a replat of Lots 1 – 58, Block 1, Lots 1 – 13, Block 2, Lots 2 – 10, Block 3, Lots 1 – 7, Block 4, and Lots 1 -27, Block 5, Adobe Meadows, Section 1; of Tract "A" and Lots 10 – 16, Block 8, Adobe Meadows, Section 3; Lots 33 – 56, Block 5 and Lots 1 – 14, Block 9, Adobe Meadows, Section 4; Lots 11-21, Block 3, Lots 8 – 16, Block 4, Lots 28 – 32, Block 5, Lots 1 – 12 and Lots 14 - 25, Block 6, Lots 1 – 32, Block 7, and Lots 1 – 9, Block 8, Adobe Meadows, Section 5; and the to be vacated rights-of-way being 0.703-acres of Baca Circle, 0.103-acres of Baca Street, 0.181-acres of Cerrillos Avenue, 0.57-acres of Cerrillos Court, 0.123-acres of Conquistador Court, 0.014-acres of Gallop Court, 0.002-acres of Guadalupe Street, 0.614-acres of Magellan Street, 0.409-acres of San Francisco Avenue, 0.079-acres of St. Michael Court and 1.301-acres of adjacent alleys, all in the City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDG



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P - 13 - 046

Scale: 1" = 550'

Proposed plat of Adobe Meadows, Section 6, being a replat of Lots 1 – 58, Block 1, Lots 1 – 13, Block 2, Lots 2 – 10, Block 3, Lots 1 – 7, Block 4, and Lots 1 – 27, Block 5, Adobe Meadows, Section 1; of Tract “A” and Lots 10 – 16, Block 8, Adobe Meadows, Section 3; Lots 33 – 56, Block 5 and Lots 1 – 14, Block 9, Adobe Meadows, Section 4; Lots 11-21, Block 3, Lots 8 – 16, Block 4, Lots 28 – 32, Block 5, Lots 1 – 12 and Lots 14 - 25, Block 6, Lots 1 – 32, Block 7, and Lots 1 – 9, Block 8, Adobe Meadows, Section 5; and the to be vacated rights-of-way being 0.703-acres of Baca Circle, 0.103-acres of Baca Street, 0.181-acres of Cerrillos Avenue, 0.57-acres of Cerrillos Court, 0.123-acres of Conquistador Court, 0.014-acres of Gallop Court, 0.002-acres of Guadalupe Street, 0.614-acres of Magellan Street, 0.409-acres of San Francisco Avenue, 0.079-acres of St. Michael Court and 1.301-acres of adjacent alleys, all in the City and County of Midland, Texas.

ZONING MAP

LEGEND

ZONING

PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
RPatrick
City Manager's Office

MEETING DATE: September 24, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Coordinator

SUBJECT: Consider a motion approving an interpretation to an oil and gas well drilling permit from Bluestem Energy Holdings, LLC *within the City Limits*, (Evans E 1) located 2,073 feet from the north line and 1,009 feet from the west line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the east side of the North Midland Drive, approximately $\frac{3}{4}$ mile north of Mockingbird Lane.)

Purpose:

Consider a motion approving an interpretation of Resolution 2013-014 an oil and gas well drilling permit from Bluestem Energy holdings, LLC within the City Limits, (Evans E 1) located 2,073 feet from the north line and 1,009 feet from the west line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. Council approved the proposed drill site on January 8, 2013; however the applicant is requesting consideration of a safety and noise pollution issue.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

The change proposed by Bluestem Energy Holdings, LLC is to install sound barriers during the drilling phase of this well. Bluestem Energy Holdings states it is the company desires to lessen the burden and inconvenience of drilling operations noise pollution that will be experienced by the neighborhood. The sound barrier would be constructed similar to the size and orientation of the Bluestem N #1 permit.

Attachments: Application; Location map; Exhibit - Drill site map, Exhibit- Letter, Exhibit- Sound Barrier- N 1

0-12-021



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 09/17/2012	Operator Name (must match W-1) Bluestem Energy Holdings, LLC	Operator Address 400 W. Illinois Ave, Ste. 900 Midland, Texas 79701
Representative Name Jim Mason	Representative Address (within Midland City Limits) 400 W. Illinois Ave, Ste. 900 Midland, Texas 79701	Rep. Tele. (432) 770-8322 Rep. Fax (817) 872-9888
Fee: \$4,000.00 Rec'd Yes ___ No ___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134 24/7 Answering Services - No. 1 (Tele.): _____ No. 2 (Tele.): _____ Option B: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134 Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Same as above Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]):		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
1. Evans Resources, LP, P.O. Box 7962, Midland, TX 79708		
2. Joy D. Anguish Trust and David D. Anguish Trust, P.O. Box 2749, Longview, TX 75606		
3. Anguish Partnership, P.O. Box 63, Midland, TX 79702		
ATTACHED AS EXHIBIT C is (a Title Opinion by <u>Robert Rendall</u> , a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use		
General Description of Current Surface Use (within 860 feet of proposed surface location): Farming		
ATTACHED AS EXHIBIT D is (a Title Opinion by <u>Robert Rendall</u> , a licensed Texas Attorney/a Take-off from _____, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].		



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

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

IV. Well & Operations Information

Proposed Well Name: Evans E 1

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

See attached Exhibit V

Legal Description of Proposed Well Site:

2073' FNL and 1009' FWL, Sec. 8, Blk. X, Hilliard Survey

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

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

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

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

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

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

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

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

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

- (1) Drilling: None
- (2) Operations: Oncor is the electricity transmission provider. The actual electricity provider will be a function of the best available rates and reliability of the provider.

Description of water source to be used during Drilling:

Evans water wells located in N/2 of Sec. 8, Blk. X, Hilliard Survey

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

All electric lines will be overhead for the immediate future. Ultimately, electrical lines will be buried in the proposed corridors as shown on Exhibit N, in accordance with the Surface Agreement dated November 3, 2010 between Operator and the Surface Owner.

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

See Exhibit O

V. Additional Required Exhibits

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

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

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

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

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

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

Bluestem Energy Holdings, LLC

[NAME OF COMPANY]

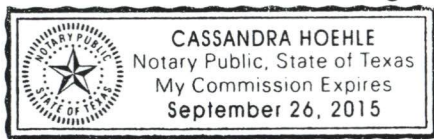
By Jim Mason

Its District Production Manager

State of Texas

County of Midland

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



Cassandra Hoehle
Notary Public, State of Texas

[SEAL]

RECEIVED

NOV 14 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

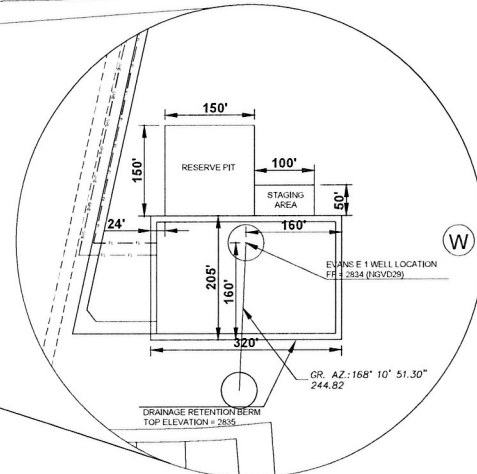
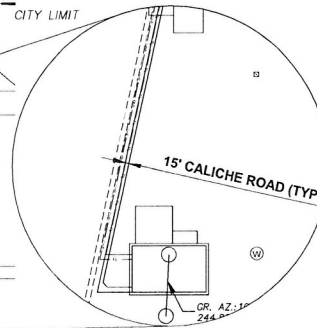
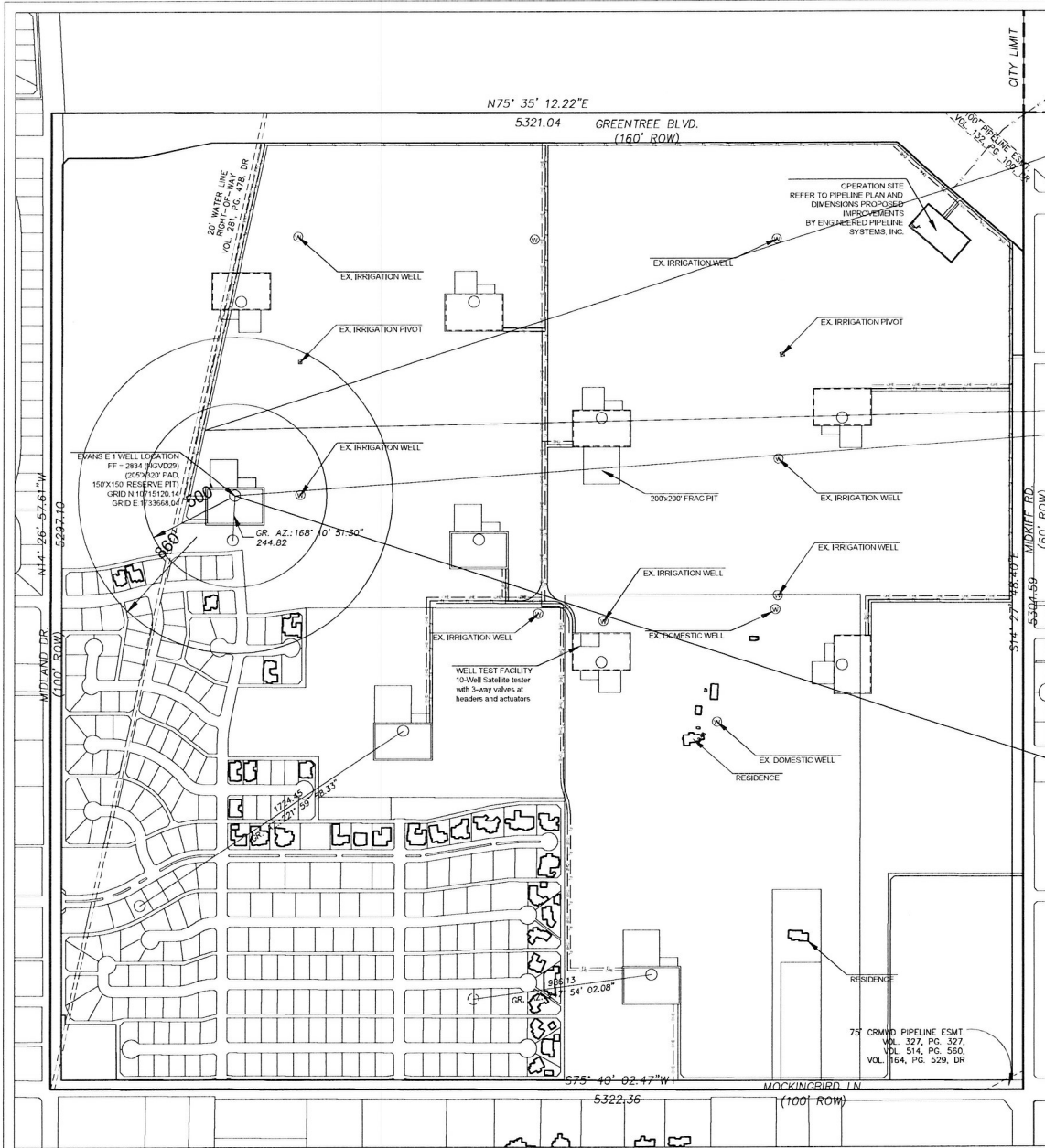
SCALE: 1" = 600'

SITE PLAN

PROJECT: 727470JD
JOB NO: 72,747-F

BLUESTEM ENERGY HOLDINGS, LLC
WELL NO. EVANS E 1
EVANS LEASE SHL
2073 FEET FROM THE NORTH AND
1009 FEET FROM THE WEST LINE
SECTION 8, ABSTRACT 17, BLOCK X,
H.P. HILLIARD SURVEY, MIDLAND
COUNTY, TEXAS

NEWTON ENGINEERING, P.C.
F-13856
4008 N. Midland Rd.
Midland, Texas 79705
(432) 770-0489



NOTE:

COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES AND COORDINATES ARE SHOWN IN GRID FEET.

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS LOCATION WAS THIS DAY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND THAT THIS PLAT IS A CORRECT REPRESENTATION THEREOF.

DATED THIS 3rd DAY OF OCTOBER, 2012

Charles P. Rutherford
Charles P. Rutherford, R.P.L.S. No. 1977



DRILL SITE MAP

0-12-021

BLUESTEM | ENERGY

September 5, 2013

CITY MANAGER'S OFFICE
RECEIVED

SEP 09 2013

CITY of MIDLAND, TEXAS

Mr. Courtney Sharp
City Manager - City of Midland
300 N. Loraine
Midland, TX 79702

RE: Request for Additional Materials to be included to Drilling Permit
Evans E #1 Well
2073' FNL & 1009' FEL of Sec. 8, Blk. X, Abs. 17, H.P. Hilliard Survey
Midland County, TX

Dear Mr. Sharp:

Bluestem Energy Holdings, LLC, ("Bluestem") intends to drill the referenced well sometime before the end of the year. Even though this well does not require the installation of a sound barrier during the drilling phase of this well, management has decided to bear the extra expense and include this for this well. Our decision was based on our desire to be a prudent operator and do what we can to lessen the burden and inconvenience of drilling operations noise pollution that will be experienced by the neighborhood.

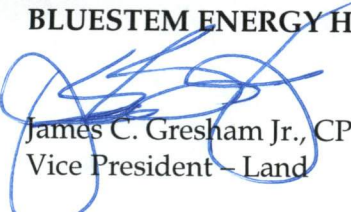
The anticipated sound barrier constructed for the referenced well will be similarly sized and oriented as the Bluestem N #1 application currently on file with the City of Midland.

Please accept this letter as our Request to install a sound barrier during the time that drilling operations are being conducted for the referenced well.

Thank you for your assistance in this regard and continued support of Bluestem.

Sincerely:

BLUESTEM ENERGY HOLDINGS, LLC


James C. Gresham Jr., CPL
Vice President - Land

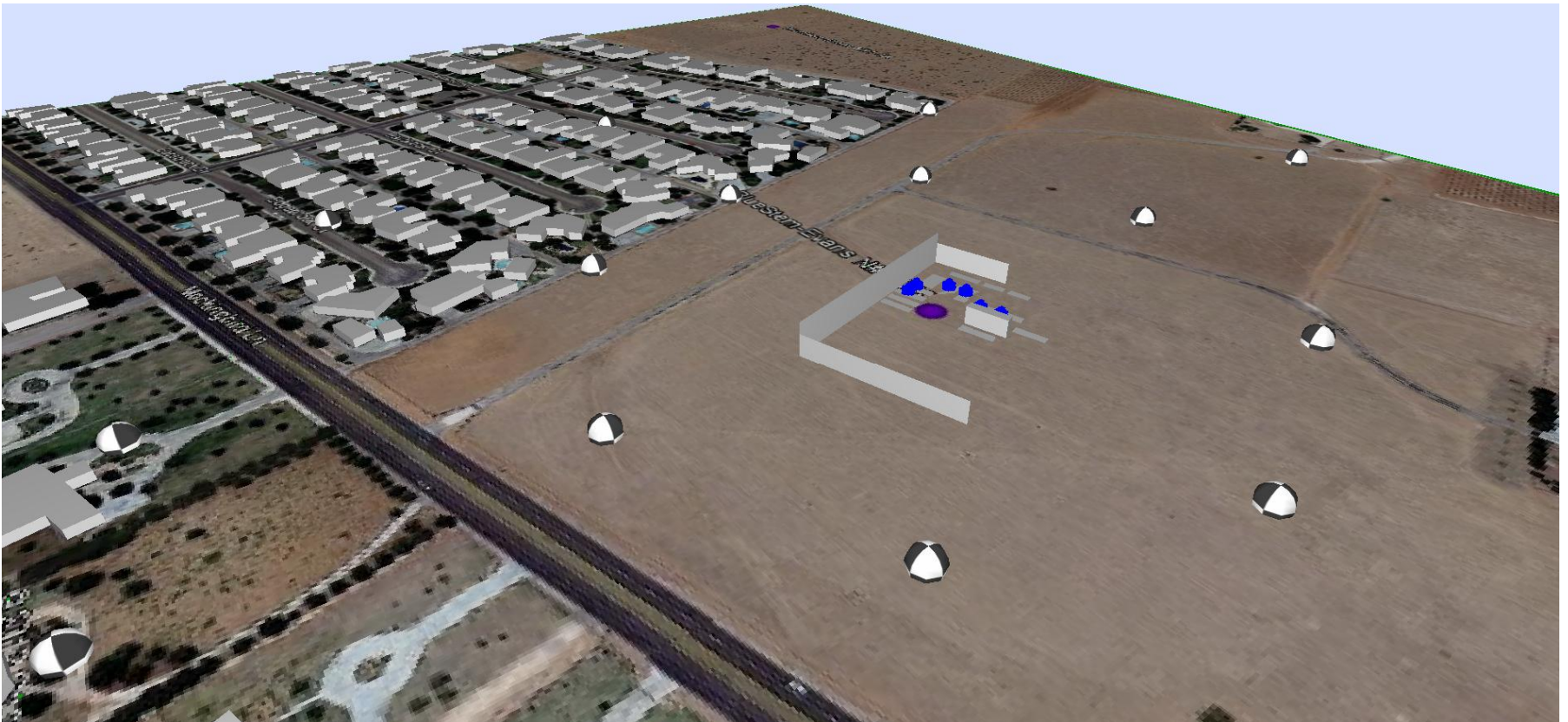
Accepted this _____ day of _____ 2013.

CITY OF MIDLAND

By: _____

Courtney Sharp

Evans N#1 Pad: Isometric View of UDI Drill with 16 foot Wall & 24 foot Wall





City of Midland
Office Memorandum

DATE: 9/24/2013

TO: The Honorable Mayor and City Council Members

FROM: Amy Turner, City Secretary

SUBJECT: Consider a resolution authorizing a contract with the Midland Hispanic Chamber of Commerce 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. If Council desires to fund the Chamber, the amount needs to be added to both the resolution and the contract.

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 contract the sum of \$_____ from funds available in the Fiscal Year 2013-2014 General Fund (001) NonDepartmental (0150) (NonDepartmental) (0150) Midland Hispanic Chamber of Commerce (6165) budget account.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

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 25th day of September, 2013, 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 \$_____ during the term of this agreement. Said funds will be divided so that the existing programs and operations will receive \$_____, and the Historically Underutilized Business program (HUB) will receive \$_____. 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 2013.

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

The Chamber shall submit monthly to the City Manager a reporting of its accomplishments and ongoing projects and programs for the services provided for in Section I of this agreement and established or begun in this term. Chamber shall provide a monthly report 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 2013-2014. Chamber must comply fully with this provision to be eligible for funds for expenditures made from April 1, 2014 through September 30, 2014.

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, 2013, and ending on September 30, 2014.

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, 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.

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 CONTENT
AND COMPLETENESS:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

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 _____, 2013.

Notary Public, State of _____

City of Midland
City Secretary's Office
Interoffice Memorandum

Date: September 19, 2013
To: The Honorable Mayor Perry and Council
From: Amy M. Turner, City Secretary
Subject: Membership - Boards and Commissions

Attached is an updated membership listing for the City's Boards and Commissions effective August 27, 2013. Remaining expirations and vacancies are listed below:

AIRPORT PLANNING AND DEVELOPMENT BOARD – One term expired on September 30, 2012 and four terms expiring on September 30, 2013.

ANIMAL SERVICES ADVISORY COMMISSION – One vacancy which will expire on September 30, 2013 and One term expiring on September 30, 2013.

CITY DEVELOPMENT ADVISORY COMMITTEE – One terms expired on September 30, 2012 and one vacancy expiring on September 30, 2014.

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS – Two vacancies for Alternate terms expired on September 30, 2007 and two terms expiring on September 30, 2013.

HOTEL/MOTEL TAX ADVISORY BOARD – One vacancy which will expire on September 30, 2013.

HOUSING AUTHORITY COMMISSION – One vacancy as Alternate term expiring in October 2015 and three terms expiring on September 30, 2013.

MIDLAND CENTER ADVISORY BOARD –Three terms expiring on September 30, 2013.

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION – Two terms expired in November 2011 and five terms expiring on September 30, 2013.

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION – Three vacancies expired on January 1, 2007, one term expired on January 1, 2009, and two terms expired on January 1, 2010.

MIDLAND HOUSING FINANCE CORPORATION –One vacancy expired on September 30, 2010, two terms expired on September 30, 2011 and one term expired on September 30, 2012.

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD – One vacancy.

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD – Two terms expired on September 30, 2012 and three terms expiring on September 30, 2013.

PERMIAN BASIN AIRPORT BOARD – Two terms expired on September 30, 2010 (Carlsbad and Hobbs New Mexico), one term expired on September 30, 2011 and one term expiring on September 30, 2013.

TAX INCREMENT REINVESTMENT ZONE BOARD –Three terms expired on March 20, 2010, one term expired March 20, 2011, one terms expired on March 20, 2012 and two terms expired on March 20, 2013. (Four City representatives, two Hospital representatives and two County representatives.)

ZONING BOARD OF ADJUSTMENT AND AIRPORT ZONING BOARD OF ADJUSTMENT- One term expired on September 30, 2011, one term expired on September 30, 2012, two terms expiring on September 13, 2013, one vacancy for Alternate term expired on September 30, 2006, one vacancy for Alternate term expired September 30, 2009 and two terms expiring on September 30, 2013.

+BOARDS AND COMMISSIONS OF THE CITY OF MIDLAND

September 24, 2013

AIRPORT PLANNING AND DEVELOPMENT BOARD

(Advisory)

(Membership-10; Terms - 3 Years expiring 3-3-4.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ronald Schwisow	09/06	Sept 30 2012	Sept 30 2012
Mike Owen	10/07	Sept 30 2013	Sept 30 2013
Gregory F. Baiano	09/10	Sept 30 2013	Sept 30 2016
John T. Echols	09/10	Sept 30 2013	Sept 30 2016
Dallas L. Smith	09/10	Sept 30 2013	Sept 30 2016
Earl Erdmann, Chairman	09/08	Sept 30 2014	Sept 30 2014
J. Ross Lacy	09/12*	Sept 30 2014	Sept 30 2020
Don "Woody" Woodward	11/11	Sept 30 2014	Sept 30 2017
Jerry Walton	11/09	Sept 30 2015	Sept 30 2015
Kelly "Bo" Cockerell	09/13*	Sept 30 2015	Sept 30 2018

Ex-Officio members are Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

ANIMAL SERVICES ADVISORY COMMISSION

(Advisory)

(Membership - 6; Terms - 4 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy-Tony Carrillo	09/09	Sept 30 2013	Sept 30 2017
Dr. Tom Green (Veterinarian)	10/07*	Sept 30 2013	Sept 30 2017
Kelly Spencer	09/09	Sept 30 2013	Sept 30 2017
Laura Hollifield	09/08*	Sept 30 2013	Sept 30 2017
Justin Petty	04/07*	Sept 30 2013	Sept 30 2017
Paul O'Neill	09/09	Sept 30 2013	Sept 30 2017

BUILDING CODES REVIEW COMMITTEE

(Membership – 9; Terms – 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
James Rigger	12/09	Dec 31 2013	Dec 31 2013
Chris Repman	12/09	Dec 31 2013	Dec 31 2013
John Cooper	12/09	Dec 31 2013	Dec 31 2013
Bill Routh	12/09	Dec 31 2013	Dec 31 2013
Tom Woodruff	12/09	Dec 31 2013	Dec 31 2013
Ron Ainsworth	12/09	Dec 31 2013	Dec 31 2013
Walter Pate	12/09	Dec 31 2013	Dec 31 2013
Robert Harrington	12/09	Dec 31 2013	Dec 31 2013
Jerry Morales	12/09	Dec 31 2013	Dec 31 2013

CITY DEVELOPMENT ADVISORY COMMITTEE

(Advisory)

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Tim Bryson	11/11	Sept 30 2013	Sept 30 2015
Vacancy-(Alonda Massey)	11/11	Sept 30 2013	Sept 30 2015
Nellwyn Barnett	09/13*	Sept 30 2014	Sept 30 2018
Avery I. Pullins	02/13*	Sept 30 2015	Sept 30 2017
Reggie Lawrence	09/10*	Sept 30 2014	Sept 30 2014

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

(Decision Making)

(Membership - 7; Terms - 4 Years expiring 2-2-2-1)

Position to include: 1. Registered Architectural or Builder Superintendent, 2. Registered Structural Engineer, 3. Registered Mechanical and Plumbing, 4. Registered Electrical Engineer, 5. Registered Fire Protection Engineer

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>	<u>Position</u>
Richard D. Dunham	10/05	Sept 30 2013	Sept 30 2013	1
Greg Turner	03/11*	Sept 30 2013	Sept 30 2021	4
Don Woodward (At Large)	11/11*	Sept 30 2016	Sept 30 2020	5
Chris Repman	10/07*	Sept 30 2014	Sept 30 2018	3
Jay K. Bradford	09/10	Sept 30 2014	Sept 30 2018	2

ALTERNATES:

Vacancy	Sept 30 2007	Any
Vacancy	Sept 30 2007	Any

HOTEL/MOTEL TAX ADVISORY BOARD

(Advisory)

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy		Sept 30 2013	Sept 30 2014
Alex Singh-Hotel/Motel Assn. Rep.	09/09	Dec 31 2013	Assn. Appt.
Annabell Ramirez	09/12	Sept 30 2014	Sept 30 2016
Brian Smith	09/12	Sept 30 2014	Sept 30 2016
Jan Artley	09/13	Sept 30 2015	Sept 30 2017
Ellen K. Ramsey	09/13	Sept 30 2015	Sept 30 2015
Karmen Hendrix Bryant	02/12*	Sept 30 2015	Sept 30 2017

* Indicates appointment to an unexpired term.

HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Gregory Maes	11/11	Oct 2013	Oct 2015
Carla Repman, Vice Chairman	09/09	Oct 2013	Oct 2013
James A. Blischke	01/10	Oct 2013	Oct 2015
Dennis Bade	09/12	Oct 2014	Oct 2016
Norma Duran	11/08*	Oct 2014	Oct 2014

ALTERNATES:

Vacancy	Oct 2013	Oct 2015
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JOINT ECONOMIC DEVELOPMENT TASK FORCE

(Ad Hoc)

	<u>Appt. Date</u>
(Midland)	
Wes Perry	01/08
LuAnn Morgan	12/00
Keith Stretcher	12/00
Tommy Hudson	08/07
John Breier	01/04
(Odessa)	
Larry Melton	08/01
Jim Morris	11/00
Richard Morton	11/02
Joel Roberts	11/00
Neil McDonald	11/00

MANAGED COMPETITION COMMITTEE

(Ad Hoc)

	<u>Appt. Date</u>
Jon Morgan	01/02
Wes Perry	01/02
Roy Nelson	01/02
Hugh "Andy" Shaffer	12/03
Scott Dufford	01/02
Ted Tipton	04/04
Kevin Sparks	11/07
Scott Lovett	04/10
P. Lourcey Sams	04/10

Ex-Officio members are the Mayor and the City Manager.

MIDLAND CENTER ADVISORY BOARD

(Advisory & Decision Making)

(Membership - 9; Terms - 3 Years expiring 3-2-2.)

		<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Brent Blackburn	(City)	09/09*	Sept 30 2013	Sept 30 2016
Charles Spence	(CC)	11/07	Sept 30 2013	N/A
Lorri Lyon West	(City)	09/10	Sept 30 2013	Sept 30 2016
Patricia S. Blackwell	(City)	10/07*	Sept 30 2014	Sept 30 2014
Paula Mitchell	(City)	09/08	Sept 30 2014	Sept 30 2014
Vicky Hailey	(CC)	01/13*	Sept 30 2014	N/A
Tracy Bacon	(CC)	12/11	Sept 30 2014	N/A
Jerry Morales (Liaison Officer)				

Ex-Officio members are the City Manager and Executive Director of the Chamber of Commerce.

MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

Five Directors, Elected by Local Taxing Entities.

City Nominates/Cast Vote for one Director

(Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>
Chad Clark	3/12*	Dec 31 2013

MIDLAND DEVELOPMENT CORPORATION

(Membership - 5; Terms -3 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Laura Roman, Chairman	01/08	Jan 14 2014	Jan 14 2014
Robert Rendall	01/09*	Jan 14 2014	Jan 14 2017
Michael Trost	02/11*	Jan 14 2016	Jan 14 2019
Cary J. Love	12/09	Jan 14 2016	Jan 14 2016
Gary Douglas	11/11*	Jan 14 2016	Jan 14 2019

MIDLAND FRESH WATER SUPPLY DISTRICT #1

(Ad Hoc)

(3 Non Voting Members)

Appt Date

Wes Perry
Gary Harris
Wayne Merritt

05/12
05/12
05/12

**MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX
DEVELOPMENT CORPORATION**

(Decision Making)

Membership - 7; Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ken Marks, Vice President	10/07	Nov 2011	Nov 2011
James G. Smith	12/07	Nov 2011	Nov 2011
Mike Thompson	11/11	Nov 2013	Nov 2015
Tim Bryson	11/11	Nov 2013	Nov 2015
Wesley D. Bownds	02/09*	Nov 2013	Nov 2013
John James	08/08*	Nov 2013	Nov 2013
Rick Davis (MISD Resp.)	10/10*	Nov 2013	Nov 2015

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2009	
Cathy Oestmann	11/05*	Jan 1 2010	Jan 1 2010
Steve Jones	09/08*	Jan 1 2010	Jan 1 2012
Curt Kamradt	11/05*	Jan 1 2014	Jan 1 2014

* Indicates appointment to an unexpired term.

MIDLAND HOUSING FINANCE CORPORATION

(Decision Making)

(Membership - 5; Terms - 2 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy - (Damon L. Blakeley)	07/07*	Sept 30 2010	
Adrienne Valencia	10/07	Sept 30 2011	Sept 30 2011
Melissa Wicker	10/07	Sept 30 2011	Sept 30 2011
Jerry Morales (Liaison Officer)	10/08	Sept 30 2012	Sept 30 2012
Nathan Miller	11/11*	Sept 30 2012	Sept 30 2016

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD

(Ad Hoc)

Appt. Date

Vacancy	
Richard Hatchett	11/08
W. L. "Scooter" Brown	09/04
Ken Burgess	09/04
Jim Hightower	11/08
Ted H. Jones	09/04
Mitch Malouf	11/08
Christi Newton	09/04
Dan Rush	09/04

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making)

(Membership - 6; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Willie Barber	09/08	Sept 30 2012	Sept 30 2012
Michael Trost	09/08	Sept 30 2012	Sept 30 2012
John H. James	09/09	Sept 30 2013	Sept 30 2013
Karen York	06/09*	Sept 30 2013	Sept 30 2013
Guy McKenize	03/11*	Sept 30 2013	Sept 30 2015
Rebecca Bell	09/12	Sept 30 2014	Sept 30 2016

OIL AND GAS ADVISORY COMMITTEE

(Advisory)

(Membership – 5; Terms – 3 Years expiring 2-2-1)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Lance Friday (Real Estate)	09/12*	Sept 30 2013	Sept 30 2019
Russell Richards (Petroleum Eng.)	09/12	Sept 30 2015	Sept 30 2018
Perry Dan Taylor (Real Estate)	09/12	Sept 30 2015	Sept 30 2018
Paul Brown (Petroleum Eng.)	11/11	Sept 30 2014	Sept 30 2017
David Rosen (Petroleum Eng.)	11/11	Sept 30 2014	Sept 30 2017

PARKS AND RECREATION COMMISSION

(Advisory)

(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Charles A. Spence	01/10*	Sept 30 2013	Sept 30 2016
Kenny Harper	03/12*	Sept 30 2013	Sept 30 2019
P. Lourcey Sams	09/08	Sept 30 2014	Sept 30 2014
Tina Corbett	09/08	Sept 30 2014	Sept 30 2014
Katey Howard	09/12*	Sept 30 2014	Sept 30 2020
Amanda McCann	11/11*	Sept 30 2015	Sept 30 2018
Edward Mayberry	09/12	Sept 30 2015	Sept 30 2018
Cynthia Savage	09/13	Sept 30 2016	Sept 30 2019
Bart Hotchkiss	09/13	Sept 30 2016	Sept 30 2019

PERMIAN BASIN AIRPORT BOARD

(Advisory)

(Membership - 30; Terms - 1 year.)

	<u>Appt. Date</u>	<u>Term Expires</u>
10 Members of the Airport Planning and Development Board		
Bob Forrest (Carlsbad, NM)	10/04	Sept 30 2010
Larry Shed (Hobbs, NM)	10/01	Sept 30 2010
Larry Gill (Abilene)	10/10	Sept 30 2011
David Hardwick (Ft. Stockton)	10/07	Sept 30 2012
Elvin Brownlee III (Andrews)	12/10*	Sept 30 2013
Frankie Rolfe (Kermit)	09/12	Sept 30 2013
Willie Taylor (Odessa)	02/00	Sept 30 2013
Gloria Pena (Odessa)	03/03*	Sept 30 2013
Barbara Graff (Odessa)	06/10*	Sept 30 2013
John Rogotzke (Snyder)	01/12	Sept 30 2013

* Indicates appointment to an unexpired term.

PERMIAN BASIN AIRPORT BOARD CON'T

	<u>Appt. Date</u>	<u>Term Expires</u>
Jim Little (Big Spring)	09/03	Sept 30 2014
Don Bethel (Lamesa)	02/91	Sept 30 2014
Henry Cutbirth (Monahans)	09/05	Sept 30 2014
Isabelle Blanchard (Pecos)	10/10	Sept 30 2014
Luis E. Elguezabal (San Angelo)	10/07	Sept 30 2014
Lex Hinds (Seminole)	10/08	Sept 30 2014
Glenn Wortham (Sweetwater)	10/07	Sept 30 2014
Lance Goodrich (Artesia, NM)	09/09	Sept 30 2014
Larry Fry (Roswell, NM)	09/00	Sept 30 2014

Ex-Officio members are the City Manager and the City Attorney. The Secretary is the Director of Aviation.

**PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH
AND MENTAL RETARDATION**

(Decision Making)

(Membership - 2 (City); Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Janet R. Pritchett (City)	05/09*	June 2014	June 2014
Larry Edgerton	07/10*	June 2015	June 2015

PERSONNEL BOARD OF APPEALS

(Decision Making)

(Membership - 3; No designated terms.)

	<u>Appt. Date</u>
John James	03/08
Hugh A. "Andy" Shaffer	09/05
Michael Trost	01/10

PLANNING AND ZONING COMMISSION

(Advisory & Decision Making)
(Membership - 9; Terms - 3 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Jay Norris	11/11	Sept 30 2014	Sept 30 2017
Galen Gatten, Vice Chairman	09/08	Sept 30 2014	Sept 30 2014
Warren Lvey	10/12*	Sept 30 2014	Sept 30 2020
Kevin Wilton	09/08*	Sept 30 2015	Sept 30 2017
Karen York	10/10*	Sept 30 2015	Sept 30 2018
Sharla Hotchkiss	10/12	Sept 30 2015	Sept 30 2018
Brad Bullock	07/13*	Sept 30 2015	Sept 30 2021
Jane Wolf	03/09*	Sept 30 2016	Sept 30 2016
Cindy Lanning	09/10	Sept 30 2016	Sept 30 2016

ALTERNATES:

Chase Gardaphe	09/13*	Sept 30 2014	Sept 30 2021
Arthur B. Hobbs	09/13	Sept 30 2015	Sept 30 2017
Reggie Lawrence	09/13	Sept 30 2015	Sept 30 2017
Arthur B. Hobbs	09/13	Sept 30 2015	Sept 30 2017

TAX INCREMENT REINVESTMENT ZONE BOARD

(Decision Making)

(Membership - 12; Terms - 2 Years, or 3 Years if appointed after 3/1/07)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Mark T. Wellen (City), Chairman	07/01	Mar 20 2010	Mar 20 2010
Randy Prude (County)	03/07	Mar 20 2010	Mar 20 2013
Ken Burgess (City)	10/12*	Mar 20 2013	Mar 20 2018
Judge Mike Bradford (County)	01/07*	Mar 20 2010	Mar 20 2014
Bob Lanier (City), Secretary	04/03	Mar 20 2011	Mar 20 2011
Pete Hulder (Hospital)	03/10	Mar 20 2016	Mar 20 2016
Michael Blonkvist (City)	09/12*	Mar 20 2014	Mar 20 2020
John L. Kennedy (City)	10/09*	Mar 20 2015	Mar 20 2018
Link Grimes (City)	12/12*	Mar 20 2015	Mar 20 2021
Charlene McBride (College)	12/12	Mar 20 2016	Mar 20 2019
Steve Castle (College)	04/13*	Mar 20 2015	Mar 20 2021
Russell Meyer (Hospital)	12/12	Mar 20 2016	Mar 20 2019

Ex-Officio member is President, Board of Trustees, Midland Independent School District

* Indicates appointment to an unexpired term.

ZONING BOARD OF ADJUSTMENT
AND
AIRPORT ZONING BOARD OF ADJUSTMENT

(Decision Making)

(Membership - 5; Terms - 2 Years expiring 3 odd & 2 even.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Manny Ribera	10/07	Sept 30 2011	Sept 30 2011
Ken Morgan	01/10*	Sept 30 2012	Sept 30 2014
Carla Repman	01/10*	Sept 30 2013	Sept 30 2015
Scott Young	0912*	Sept 30 2013	Sept 30 2017
Todd Byars	02/08*	Sept 30 2014	Sept 30 2014

ALTERNATES: (not applicable to Airport Zoning)

Vacancy		Sept 30 2006	
Vacancy		Sept 30 2009	
Annabel Holguin	11/11	Sept 30 2013	Sept 30 2015
Greg Turner	11/11	Sept 30 2013	Sept 30 2015

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. 2013?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 10)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Ronald Schwisow	Yes	80%	8	No		
Mike Owen	Yes	90%	9	No		
Gregory F. Baiano	Yes	50%	5	Yes		9/3/13 Mr. Baiano called and stated he wants to serve again
John T. Echols	Yes	80%	8	Yes		
Dallas L. Smith	Yes	70%	7	Yes		
Earl Erdmann	No 09/14	100%	10			
J. Ross Lacy	No 09/14	90%	9			
Don "Woody" Woodward	No 09/14	20%	2			
Jerry Walton	No 09/15	60%	6			
Kelly "Bo" Cockerell	09/15					

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Neilwyn Barnett	One other board	
Troy A. Gifford	Only this board	
Vicki L. Hurt	Only this board	
John Trischitti III	One other board	
Keith Valentine	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: _____

Address: _____

(City)

(State)

(Zip)

I am ____ I am not ____ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ____ years.

Professional and/or Community Activities:

What is your personal vision for the City?

Please specify any time constraints you may have.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Please tell us why you are interested in serving on this board or commission.

Date: _____

Phone: _____ (Home)

_____ (Business)

Email: _____

Are you a graduate of Midland 101? ____yes ____no

Occupation: _____

What contribution would you most like to make?

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Applications may be submitted online via email or print in order to send by mail or fax:

**City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433**



**APPLICATION FOR CITY OF MIDLAND
BOARDS/COMMISSIONS/COMMITTEES**

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Troy A. Gifford

Address: 4519 Lanham St.

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 35 years.

Professional and/or Community Activities:

I previously served as the Director of Finance for the City of Midland from April 1983 to June 2003 (the longest serving

Dir. of Fin. in Midland).

What is your personal vision for the City?

I see Midland continuing to become THE Shinning Star, not only of West Texas, But all of TEXAS.

Please specify any time constraints you may have.

I do Not have any time constraints, and I am in good health.

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.

I want to use my experience to help the continued Development of the Midland Airport System; Both MAF and MDD.

Date: 8/29/2013

Phone: 432-694-5693 (Home)

-NA- (Business)

Email: droffigam@sbcglobal.net

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Personal Investments - retired

What contribution would you most like to make?

I believe that my experience with the financial aspects of the Airport System; as well as those of a pilot and aircraft owner/operator will serve to enhance the actions of the Board, the Council, and the CITY.

Additional pertinent information or references:

I have been a pilot since 1973, an airplane owner since 1976, and an instrument instructor since 1978.

I believe that Commercial and General Aviation are vital to Midland.

In General Aviation; both Corporate and Private ownership/operations are Vital to our Economy, both at MAF and MDD.

(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

Troy A. Lippard

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: Vicki L. Hurt

Address: 30 Oaklawn Park

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 60+ years.

Professional and/or Community Activities:

Midland Chamber of Commerce Board member, Central YMCA Board Chairman, Salvation Army Board member. Served as Human Resources VP for The Kent Companies

Date: 8/12/2013

Phone: 432-683-3107 (Home)

432-528-0190 (Business)

Email: vbailey1@sbcglobal.net

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: retired

What is your personal vision for the City?

Adjustment to our current challenges while continuing to value our traditions and history.

Please specify any time constraints you may have.

Occasional travel.

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, Permian Basin Airport Board

Please tell us why you are interested in serving on this board or commission.

As a commercially rated pilot and aircraft owner as well as frequent commercial traveler, I am very interested in the viability of our airports.

What contribution would you most like to make?

Helping keep our air traffic safe and economically beneficial to the city.

Additional pertinent information or references:

Gregg Baiano

Dallas Smith

(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

Vicki L Hurt

Digitally signed by Vicki L Hurt
DN: cn=Vicki L Hurt, o, ou,
email=vbailey1@sbglobal.net, c=US
Date: 2013.08.11 14:42:43 -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: John Trischitti III
Address: 301 W. Missouri
 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 ³ years.

Professional and/or Community Activities:

Midland Need to Read Board Member

Salvation Army board Member

Golf Course Road Church of Christ

What is your personal vision for the City?

I feel that Midland can be a trendsetting city not only for West Texas and the Permian Basin but for the state as well. We can continue to grow and evolve and create an environment that is a great place to live and raise a family.

Please specify any time constraints you may have.

With enough advanced notice, any time should be workable

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 Football-Soccer and Baseball Complex Development Corporation

Please tell us why you are interested in serving on this board or commission.

I would like to get more involved in the business of Midland and give back to my community in service and time.

Date: 8/20/2013
Phone: 214/934-5442 (Home)
 432/688-4333 (Business)
Email: libadm01@co.midland.tx.us

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Midland County Public Library Director

What contribution would you most like to make?

To help guide the future of this complex and the direction of the revenue that it generates.

Additional pertinent information or references:

County Judge Mike Bradford

Mayor Wes Perry

(2) Name of Board/Commission:

Airport Planning and Development Board

What contribution would you most like to make?

To highlight the importance of this facility for our area and make sure it is receiving the attention and maintenance it deserves.

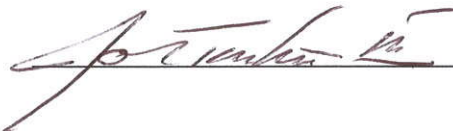
Additional pertinent information or references:

County Judge Mike Bradford

Mayor Wes Perry

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: Keith Valentine

Address: 2411 Culpeper Drive

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 3.5 years.

Professional and/or Community Activities:

Member- State Bar of Texas, Oil & Gas and General Counsel Sections; Member- State Bar of Michigan, Environmental Law
Section; Member- Young Professionals in Energy

Date: 8/23/2013

Phone: 770-4750 (Home)
688-3047 (Business)

Email: kvalentine@claytonwilliams.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Attorney

What is your personal vision for the City?

I envision the City as a model for fostering growth and prosperity through providing essential services, such as police, fire, transportation, and infrastructure, in a professional and cost-effective way. Non-essential functions should be handled by the private sector, in order to keep taxes low and maintain a functional city government.

Please specify any time constraints you may have.

My job requires occasional travel. Also, family commitments make it difficult to be available some evenings.

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.

I would like to assist the City, and the Airport Director, with promoting the airports, especially MAF, to make Midland commercial aviation more competitive as compared to the surrounding airports. I would like to see MAF be the airport of choice for residents of

Midland, West Texas, and Southern New Mexico not only out of convenience, but economics as well.

What contribution would you most like to make?

I would devote my time and effort to accomplishing the goals listed above, and helping the City and Airport Director in any other way that I can.

Additional pertinent information or references:

I am a former Midland Police Officer (2004-2006), and am a graduate of Leadership Midland in 2012.

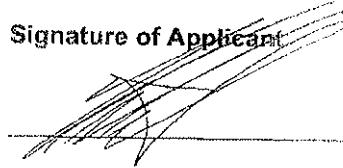
(2) Name of Board/Commission:

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

ANIMAL SERVICES ADVISORY COMMISSION
(Advisory)
Membership - 6; Terms - 4 Years)

SPECIAL COMPOSITION REQUIREMENTS: 1 Licensed Veterinarian, 1 County or Municipal Official, 1 Employee of an Animal Welfare Org., 1 Animal Shelter Employee, 2 Citizens

MEMBER	TERM EXPIRE SEPT. 2013?	ATTEN-DANCE %	MEETINGS ATTENDED (Out of 2)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy	No	0%	0	No		
Dr. Tom Green (Veterinarian)	Yes	50%	1	Yes		
Kelly Spencer	Yes	50%	1	Yes		
Laura Hollifield	Yes	0%	0	Yes		
Justin Petty	Yes	0%	0	Yes		
Paul O'Neill	Yes	100%	2	Yes	685-7422	

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Molly S. Clark	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: Molly S Clark
 Address: 23 Suffolk Dr
Midland Texas 79705
 (City) (State) (Zip)

Date: 8-27-13

Phone: 683-4517 (Home)
559-6338 (Business)

Email: clarkclane@aol.com

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 30 years.

Are you a graduate of Midland High? ☐ yes ☒ no

Occupation: Office Manager

Professional and/or Community Activities:

Oil & Gas Office Manager, Production Clerk, Bookkeeper for Family Business. My community Service work includes, United Way,
Project Graduation, Little League Baseball, MHS Football Boosters, Fannin, SJ, MFHS & MHS PTA member & Officer, PTA Lifeline
Member

What is your personal vision for the City?

I would love to see the city of Midland grow into its population by providing affordable housing for the new residents, building
walking, running & biking trails for residence, and building a recreational facility for our youth to hang out, getting them off the
streets. I would love to see our city become more conservationist minded.

Please specify any time constraints you may have.

I volunteer at Midland High and work part-time but am very flexible.

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:

Animal Services Advisory Commission

Please tell us why you are interested in serving on this board or commission.

I love Midland, was born and raised here and want to make it a better place. I love animals and have helped many find their way
home. I have lived both in the county & City and know the challenges Animal Control faces with strays. I want to help with

those challenges so we can continue to improve our animal control services & the life of the animals involved.

What contribution would you most like to make?

Adding new ideas and improving on existing ones. Animal Control has made such an improvement in their services to Midland and the animals involved in the last few years because of new ideas that have been introduced. I would like to build on those improvements. Having 2 rescue dogs gives me insight into the challenges faced by our city.

Additional pertinent information or references:

I have an MBA in Marketing which gives me the education to provide structure to the new ideas and implement them further.

References: Pat Schneider 686-2082, Dana Gellejos 425-0308

(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

Melley S. Clark

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

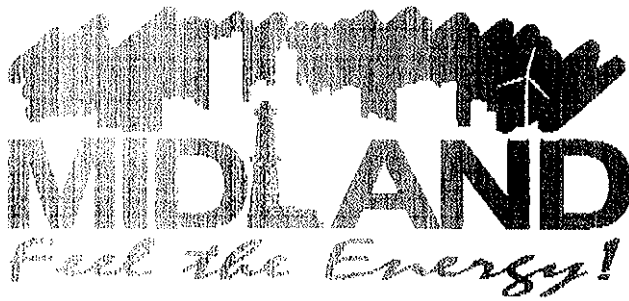
BUILDING CODES REVIEW COMMITTEE
(Membership – 9; Terms – 2 Years)

SPECIAL COMPOSITION REQUIREMENTS:

MEMBER	TERM EXPIRE DEC. 2013?	ATTEN- DANCE %	MEETINGS ATTENDED	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
James Rigger	Yes			No		NOT MEETINGS
Chris Repman	Yes			No		
John Cooper	Yes			No		
Bill Routh	Yes			No		
Tom Woodruff	Yes			No		
Ron Ainsworth	Yes			No		
Walter Pate	Yes			No		
Robert Harrington	Yes			No		
Jerry Morales	Yes			No		

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Lewis Hassler	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: Lewis Hassler
Address: 2304 Loop40
City: _____ State: Texas Zip: 79706
(City) (State) (Zip)

Date: 8/13/2013
Phone: 432-254-1311 (Home)
432-617-6544 (Business)
Email: lewis.hassler@stateenergy.com

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 3 years.

Are you a graduate of Midland High? ☐ Yes ☒ No

Occupation: Operations Supervisor Alamos Energy

Professional and/or Community Activities:

Leadership Midland, have participated in supporting local non profit groups as well as leadership Odessa

What is your personal vision for the City?

To see Midland continue to grow, prosper and provide a safe living environment for all citizens.

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.net/)

(1) Name of Board/Commission:

Building Codes Review

Zoning Board committee

Parks and Recreation

Please tell us why you are interested in serving on this board or commission.

I want to serve my community and learn more about the Permian Basin region,

What contribution would you most like to make?

Just to make a difference and give back to community.

Additional pertinent information or references:

Stephanie Merila Midland Chamber

Paul Reynolds Atmos Energy

Cody Childers Nabors Energy co

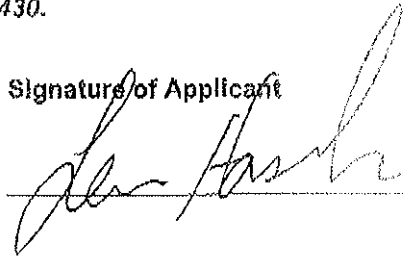
(2) Name of Board/Commission:

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

CITY DEVELOPMENT ADVISORY COMMITTEE
(Advisory)
(Membership - 5; Terms - 2 Years Expiring 2 Even & 3 Odd)

SPECIAL COMPOSITION REQUIREMENTS: None

MEMBER	TERM EXPIRE SEPT. 2013?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 3)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy						
Tim Bryson	Yes	67%	2	Yes		8/22/13 Mr. Bryson called and wants to serve again.
Nellwyn Barnett	No					
Avery I. Pullins	No					
Reggie Lawrence	No					

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Delma Eckert	One other board	
Chase Gardaphe	One other board	
Lewis Hassler	Two other boards	
Jeremy Lukas	Only this board	
Heather Massey	One other board	
R. Shaun Rainey	One other board	
Joshua Sparks	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: Delma Eckert

Address: 4704 Mimosa Ct

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 ⁸ years.

Professional and/or Community Activities:

UTPB Alumni

Stonegate Fellowship

PTA at Carver Elementary School

What is your personal vision for the City?

I would like to see a city with growth that accommodates the needs of young families so that citizens will have a community that serves their needs and also attract a family oriented community.

Please specify any time constraints you may have.

I have a full time job but it is flexible.

Date: 9/3/2013

Phone: 4325708972 (Home)

4325708972 (Business)

Email: delma.eckert@yahoo.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Administrative Manager

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.

The development and growth of Midland is important to me and my family.

What contribution would you most like to make?

I would like to voice opinions and concerns of city development as shared by other young professional families.

Additional pertinent information or references:

(2) Name of Board/Commission:

Midland Center Advisory Board

What contribution would you most like to make?

Through my employment I understand issues regarding employment of personnel and operating budgets.

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

Delma Eckert

Digitally signed by Delma Eckert
DN: cn=Delma Eckert, o, ou,
email=delma.eckert@yahoo.com, c=US
Date: 2013.09.03 11:10:54 -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](#)



**APPLICATION FOR CITY OF MIDLAND
BOARDS/COMMISSIONS/COMMITTEES**

07-16-12P93921-ARNV

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: Chase Gardaphe

Address: 1320 N. Fairgrounds Rd.

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 < 1 years.

Professional and/or Community Activities:

I am involved in the development of Stonegate Manufactured Housing Community to provide truly affordable housing to the residents of Midland. I am also involved in the Midland Polo Club.

Date: 05/22/2013

Phone: (832) 766-3656 (Home)

(432) 242-1552 (Business)

Email: Chase.Stonegate@gmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Real Estate Development

What is your personal vision for the City?

I would like to see a shift in the city to the East to allow downtown to be the true center of the city. I would also like to help Midland become an exciting and innovative city that is able to provide housing for people in all occupations.

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:

City Development Advisory Committee

Please tell us why you are interested in serving on this board or commission.

I want to be involved with the city and encourage younger citizens to get involved in the future of Midland.

What contribution would you most like to make?

Additional pertinent information or references:

(2) Name of Board/Commission:

Planning and Zoning Commission

What contribution would you most like to make?

I would like to help ensure that Midland is growing in the right direction and that the development that is approved is something the City of Midland will be proud of 10, 15 and 50 years down the road.

Additional pertinent information or references:

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Signature of Applicant



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City Secretary's Office

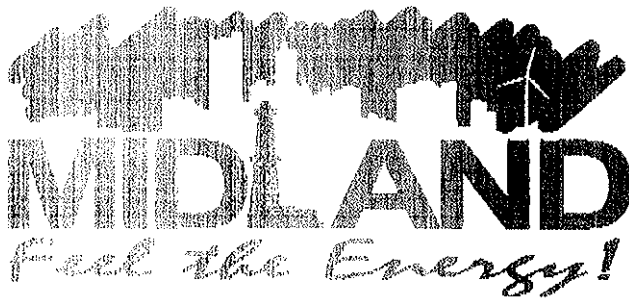
PO Box 1152

Midland, TX 79702

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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: Lewis Hassler
Address: 2304 Loop40
City: _____ State: Texas Zip: 79706
(City) (State) (Zip)

Date: 8/13/2013
Phone: 432-254-1311 (Home)
432-617-6544 (Business)
Email: lewis.hassler@stetsonenergy.com

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 3 years.

Are you a graduate of Midland High? ☐ Yes ☒ No

Occupation: Operations Supervisor Alamos Energy

Professional and/or Community Activities:

Leadership Midland, have participated in supporting local non profit groups as well as leadership Odessa

What is your personal vision for the City?

To see Midland continue to grow, prosper and provide a safe living environment for all citizens.

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.org/)

(1) Name of Board/Commission:

Building Codes Review

Zoning Board committee

Parks and Recreation

Please tell us why you are interested in serving on this board or commission.

I want to serve my community and learn more about the Permian Basin region,

What contribution would you most like to make?

Just to make a difference and give back to community.

Additional pertinent information or references:

Stephanie Merila Midland Chamber

Paul Reynolds Atmos Energy

Cody Childers Nabors Energy co

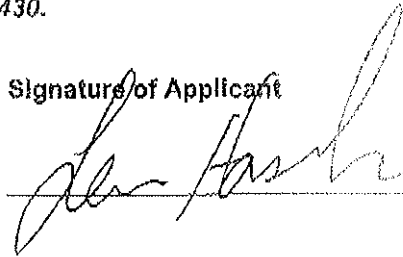
(2) Name of Board/Commission:

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 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: Jeremy Lukas

Address: 11601 B West County Rd 33

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 6 years.

Professional and/or Community Activities:

Fairmont Park Church of Christ(advertising board, song leader), His Kids, Face the Race, NMSS Awareness Night, MDA Awareness

Date: 2/5/2013

Phone: 432-978-3742 (Home)

432-520-2255 (Business)

Email: j Lukas@midlandrockhounds.org

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Assistant GM-Midland RockHounds

What is your personal vision for the City?

To grow and diversify our local economy through new local business, outside franchise and national companies, and become the hub

Draw and diversify our Midlanders demographics by attracting new families, cultures, and ethnicity groups to the Permian Basin.

To help Midland keep up with the times(strike iron while it's hot) through improved infrastructure, amenities, affordable housing, and f

Please specify any time constraints you may have.

after 5pm April-September

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 Board

Please tell us why you are interested in serving on this board or commission.

I have been in West Texas for 11 years now, with 6 years of those spent in Midland. I am excited for the future of the city, but acknow

I would like to improve and utilize current buildings and places of businesses, work to bring in and attract outside vendors and franchi

What contribution would you most like to make?

Facilitate and work with local businesses, strategize with local people in not only creating a long-term plan, but short term plans as we

Additional pertinent information or references:

Reference- Monty Hoppel (Midland RockHounds)

Pat Darden (Legacy Reserves)

Scott Sheppard (Fairmont Park Church of Christ)

(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

Jeremy Lukas

Digitally signed by Jeremy Lukas
DN: cn=Jeremy Lukas, o=Midland RockHounds,
ou, email=jlukas@midlandrockhounds.org, c=US
Date: 2013.02.05 16:42:43 -06'00'

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](#)

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2013-018



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: Heather Massey

Address: 400 W. Illinois Suite 1630

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 ² years.

Professional and/or Community Activities:

Leadership Midland Graduate 2013 MAAS Committee

Just obtained my Texas Real Estate License

Young Professionals of Midland Member

What is your personal vision for the City?

Continued growth and development especially in the downtown area.

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:

City Development Advisory Board

Please tell us why you are interested in serving on this board or commission.

If feel it best ties into my vision for the development and continued growth in Midland.

Date: 8/19/2013
Phone: 4325590058 (Home)
4326874414 (Business)
Email: hjmassey@gmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Executive Assistant to Scooter Brown

What contribution would you most like to make?

Help shape the development of Midland, buy attracting new businesses & revitalizing the downtown area.

Additional pertinent information or references:

Scooter Brown 432-687-4414

Stephanie Martin 432-934-4734

(2) Name of Board/Commission:

Midland Center Advisory Board

What contribution would you most like to make?

Help the Midland Center expand with the changing community. Making sure it has up to date facilities, technology etc.

Additional pertinent information or references:

Brad Barnett (Midland Center)

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

Heather Massey

Digitally signed by Heather Massey
DN: cn=Heather Massey, o=Haley Properties, ou=Haley
Properties, email=hmassey@haleyproperties.com, c=US
Date: 2013.08.19 12:03:18 -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](#)

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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: R. Shaun Rainey

Address: 7 Bristol Court

Midland Texas 79705

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 2.5 **years.**

Professional and/or Community Activities:

President Elect of the Midland County Young Lawyers Association; Member of the State Bar of Texas, State Bar of New Mexico,

Midland County Bar Association, Texas Young Lawyers Association, St. Luke's United Methodist Church

2013 Graduate of Leadership Midland

Date: 9/1/2013

Phone: 254-2203 (Home)

687-8688 (Business)

Email: srainey@cbtd.com

Are you a graduate of Midland 101? ☐ yes ☐ no

Occupation: Attorney, Cotton, Bledsoe, Tighe & Dawson, P.C.

What is your personal vision for the City?

Growing up in West Texas, there is a sense of community and respect which brought me back upon the completion of my law and undergraduate degrees. In order to maximize the ample opportunity and continue to foster West Texas values which make this home, Midland must work to structure growth and development to meet the needs of our community both present and future.

Please specify any time constraints you may have.

As an attorney, my schedule affords flexibility unless a hearing or trial is scheduled by the court.

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.

Issues regarding the continued growth and development are of utmost importance in the continued growth of the city. This is vital not just for the expansion of the city, but also the reworking of interior portions of the city to meet changing needs and demographics.

What contribution would you most like to make?

Assist the city with structured growth and to help alleviate potential issues between adjacent and neighboring property owners.

Additional pertinent information or references:

(2) Name of Board/Commission:

City Development Advisory Committee

What contribution would you most like to make?

Provide insight and information into the expenditure of funds for development of the city and infrastructure.

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

Digitally signed by Shaun Rainey
DN: cn=Shaun Rainey, o, ou, email=srainey@cbtd.com, c=US
Date: 2013.09.03 13:59:50 -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: Joshua Sparks
Address: 3603 Bermuda Ct
Midland TX 79707
(City) (State) (Zip)

Date: 8/28/2013
Phone: 432-352-1555 (Home)
432-685-0277 (Business)
Email: jrspark07@hotmail.com

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 24 **years.**

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Chemical Engineer

Professional and/or Community Activities:

Midland County Young Republicans, Young Professionals in Midland, Young Professionals in Energy

Midland Community Theater, First Baptist Church Choir

What is your personal vision for the City?

I would like to see Midland grow, but grow in a healthy and sustainable way. I am confident that the businesses and the character of the people already here in Midland will continue to attract new, young, and enthusiastic families to our area if the city is able to offer and provide affordable housing and sufficient opportunities for entertainment to encourage a great family lifestyle.

Please specify any time constraints you may have.

I work during business hours Monday - Friday and, periodically, will have meetings for my other organizations in the evenings. But I have the privilege of being able to attend meetings at any time during the day, if given enough prior notice.

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 am interested in serving on the Planning and Zoning Commission because I care about the future development of Midland.

I am young and likely will be living here for many years to come, so it is in my best interest to develop this city in a sustainable and

responsible way.

What contribution would you most like to make?

I would like to contribute a youthful perspective to the commission. I am open-minded and try to be fair and considerate of all others, which are characteristics I consider to be important for the Planning and Zoning Commission. Also, my hard-working attitude and responsibility will aid the commission in fulfilling its duties.

Additional pertinent information or references:

In case it isn't obvious, my father is Jeff Sparks, the Midland City Councilman for District 1.

(2) Name of Board/Commission:

City Development Advisory Committee

What contribution would you most like to make?

I would like to contribute my new ideas and youthful perspective to the committee. The more ideas and more different thoughts on our city's development, the better overall choices the committee will be able to make to ensure that its decisions are best for the city as a whole.

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

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. 2013?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 0)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Richard D. Dunham	Yes			No		NO MEETINGS
Greg Turner	Yes			Yes		
Chris Repman	No 09/14					
Jay K. Bradford	No 09/14					
Don Woodward (At-Large)	No 09/16					
<u>ALTERNATES:</u>						
Vacancy				No		
Vacancy				No		

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES

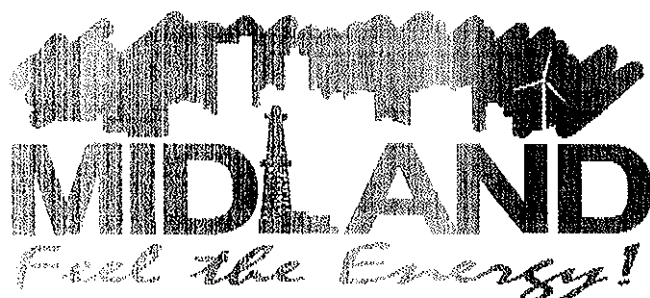
HOTEL/MOTEL TAX ADVISORY BOARD
(Advisory)
Membership - 7; Terms - 2 Years Staggered)

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. 2013?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 4)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy						
Alex Singh--Hotel/Motel Assn. Rep. 12/11	Yes	100%	4	Yes		
Annabell Ramirez	No 09/14	75%	3			
Brian Smith	No 09/14	75%	3			
Karmen Hendrix Bryant	No					
Jan Artley	No					
Ellen K. Ramsey	No					

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Rachel Stone	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: Rachel L. Stone

Address: 1902 N. Pecos

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 ⁴⁷ years.

Professional and/or Community Activities:

Former: MISD Education Foundation, MISD Headstart Board, MC BAC Advisory Board, MC Coppell Learning Facility Advisory Board

Current: Midland Recording Library for the Blind, Midland CVB Advisory Board, SHARE Board, American Diabetes Assoc

Date: 8/17/2013

Phone: 432-657-1805 (Home)

432-652-2060 (Business)

Email: rls@midlandhcc.com

Are you a graduate of Midland HS? ☐ yes ☒ no

Occupation: President/CEO

What is your personal vision for the City?

With our robust economy many changes have come to our city. This includes many new faces with diverse backgrounds. I would like to see Midland embrace the many cultures and showcase them. While we do not have the big attractions of the bigger cities, Midland has a lot to offer. One way is to offer downtown events where we can showcase the many cultures that make Midland.

Please specify any time constraints you may have.

3rd Monday of the month (11:30am-1:30pm)

2nd & 3rd Tuesday of the month (Noon-1:00pm)

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 Advisory Board

Midland Center Advisory Board

Please tell us why you are interested in serving on this board or commission.

Both of these advisory board play a big role in promoting the arts & events in our community. I have over 20 years of event planning experience and I believe that my experience will bring a different prospect when decisions are being made.

What contribution would you most like to make?

A perspective from an event planner, especially when it is a non-profit organization.

Additional pertinent information or references:

Jami Owen, MISD Education Foundation Exec Dir: (432) 689-1982

Billy Castaneda, Standard Sales, Co.: (432) 550-2380

Simone Rivas, KWES: (432) 349-7047

(2) Name of Board/Commission:

Midland Center Advisory Board

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 by 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 2013?	ATTEN-DANCE %	MEETINGS ATTENDED (Out of 9)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Carla Repman	Yes	89%	8	No		
Gregory Maes	Yes	50%	4	Yes		
James A. Blischke	Yes	89%	8	Yes		8/22/13 *Mr. Blishke called and want to serve again
Dennis Bade	No 09/14	67%	6			
Norma Duran	No 09/15	50%	4			
<u>ALTERNATE:</u>						
Vacancy		0%	0	No		

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Paul Culver	One other board	
Hazel Lamar	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: Paul Culver
Address: 4603 Pleasant Dr
 Midland TX 79703
 (City) (State) (Zip)

Date: 8/22/2013
Phone: 432 697-2881 (Home)
 432 934-1021 (Business)
Email: paul.culver@yahoo.com

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ⁴ years.

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Realtor

Professional and/or Community Activities:

I have been involved in real estate and mortgage lending for the past twenty five years. Three of those years I worked for the Texas Department of Housing and Community Affairs and have overseen many city projects aiding the low-income and elderly with regards to housing.

What is your personal vision for the City?

I would love to see Midland continue to grow but with housing opportunities for young new professionals as well as low-income and elderly citizens. I have been in Midland for four years but grew up here and think its a great city.

Please specify any time constraints you may have.

None that would interfere with board duties.

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.

I have experience with the inner working of housing authorities and would love to provide input.

What contribution would you most like to make?

To use my experience in anyway possible to promote housing.

Additional pertinent information or references:

Worked in HUD's HOME program in planning and grant administration.

(2) Name of Board/Commission:

Midland Housing Finance Commission

What contribution would you most like to make?

Again, to use my experience working with cities and their housing authorities to promote housing.

Additional pertinent information or references:

Experience with TDHCA HOME Program.

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

Digitally signed by Paul Culver

DN: cn=Paul Culver, o, ou, email=paul.culver@yahoo.com, c=US

Date: 2013.08.22 18:46:19 -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: HAZEL LAMAR

Address: 700 W. Scharbauer Drive #218
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:

Date: 8-14-2013

Phone: 432-222-1189 (Home)

(Business)

Email: _____

Are you a graduate of Midland High? ☐ yes ☒ no

Occupation: Dis able

What is your personal vision for the City?

To make things better. To find ways
to make things better

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:

The Housing Authority of the city of
Midland

Please tell us why you are interested in serving on this board or commission.

I am a resident within the Housing
Authority and it's required.

I would like to do what ever I can to make it better

What contribution would you most like to make?

I would like to do what ever I can to make it better

Additional pertinent information or references:

(2) Name of Board/Commission:

The Housing Authority of the City of Midland

What contribution would you most like to make?

Listen to Ideas and come up with the better best one.

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

Hazel L. Mason

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

HOUSING AUTHORITY OF THE CITY OF MIDLAND
700 WEST SCHARBAUER DRIVE
MIDLAND, TEXAS 79705
PHONE: 432-682-0011
FAX: 432-685-1976

August 14, 2013

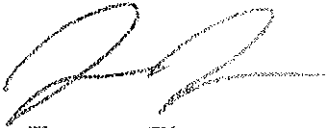
City of Midland
City Secretary Office
PO Box 1152
Midland, TX 79702

Dear City Secretary Office:

The City of Midland Housing Authority is requesting that Carla Repman term is extended for an additional 90 days. The Board of Commissioners is in the process of transferring ownership of Langtry Village. Carla Repman is one of the principal in this transaction.

Should you require additional information, please let me know.

Sincerely,



Teressa Thompson
Executive Director
Midland Housing Authority

HOUSING AUTHORITY OF THE CITY OF MIDLAND
700 WEST SCHARBAUER DRIVE
MIDLAND, TEXAS 79705
PHONE: 432-682-0011
FAX: 432-685-1976

August 14, 2013

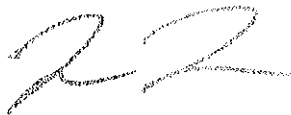
City of Midland
City Secretary Office
PO Box 1152
Midland, TX 79702

Dear City Secretary Office:

Would you please consider the application from Hazel Lamar to serve on the Board of Commissioners for the City of Midland Housing Authority? The Housing Authority is required to have a resident commissioner on the board.

Should you require additional information, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read 'Teressa', with a stylized flourish extending to the right.

Teressa Thompson
Executive Director
Midland Housing Authority

MIDLAND CENTER ADVISORY BOARD
 (Advisory & Decision Making)
 Membership - 7; Terms - 3 Years expiring 3-2-2)
 Ex-Officio members: City Manager & Exec. Director of Chamber of Commerce

SPECIAL COMPOSITION REQUIREMENTS: Resident citizen, taxpayer & qualified voter of City.

MEMBER	TERM EXPIRE SEPT. 2013?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 3)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Brent Blackburn	Yes	67%	2	Yes		
Charles Spence (CC)	Yes	33%	1	Yes		
Lorri Lyon West (City)	Yes	33%	1	Yes		9/3/13 Ms. West called and stated she would like to serve again.
Tracy Bacon (CC)	No 09/14	67%	2			
Vickey Hailey (CC)	No 09/14	67%	2			
Patricia Blackwell (City)	No 09/14	100%	3			
Paula Mitchell (City)	No 09/14	100%	3			
Jerry Morales (Liaison Officer)						

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Delma Eckert	One other board	
Heather Massey	One other board	
Rachel Stone	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: Delma Eckert

Address: 4704 Mimosa Ct

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 ⁸ years.

Professional and/or Community Activities:

UTPB Alumni

Stonegate Fellowship

PTA at Carver Elementary School

What is your personal vision for the City?

I would like to see a city with growth that accommodates the needs of young families so that citizens will have a community that serves their needs and also attract a family oriented community.

Please specify any time constraints you may have.

I have a full time job but it is flexible.

Date: 9/3/2013

Phone: 4325708972 (Home)

4325708972 (Business)

Email: delma.eckert@yahoo.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Administrative Manager

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.

The development and growth of Midland is important to me and my family.

What contribution would you most like to make?

I would like to voice opinions and concerns of city development as shared by other young professional families.

Additional pertinent information or references:

(2) Name of Board/Commission:

Midland Center Advisory Board

What contribution would you most like to make?

Through my employment I understand issues regarding employment of personnel and operating budgets.

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

Delma Eckert

Digitally signed by Delma Eckert
DN: cn=Delma Eckert, o, ou,
email=delma.eckert@yahoo.com, c=US
Date: 2013.09.03 11:10:54 -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](#)

2013-018



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: Heather Massey
Address: 400 W. Illinois Suite 1630
Midland TX 79701
(City) (State) (Zip)

Date: 8/19/2013
Phone: 4325590058 (Home)
4326874414 (Business)
Email: hjmassey@gmail.com

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 2 **years.**

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Executive Assistant to Scooter Brown

Professional and/or Community Activities:

Leadership Midland Graduate 2013 MAAS Committee

Just obtained my Texas Real Estate License

Young Professionals of Midland Member

What is your personal vision for the City?

Continued growth and development especially in the downtown area.

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:

City Development Advisory Board

Please tell us why you are interested in serving on this board or commission.

If feel it best ties into my vision for the development and continued growth in Midland.

What contribution would you most like to make?

Help shape the development of Midland, buy attracting new businesses & revitalizing the downtown area.

Additional pertinent information or references:

Scooter Brown 432-687-4414

Stephanie Martin 432-934-4734

(2) Name of Board/Commission:

Midland Center Advisory Board

What contribution would you most like to make?

Help the Midland Center expand with the changing community. Making sure it has up to date facilities, technology etc.

Additional pertinent information or references:

Brad Barnett (Midland Center)

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

Heather Massey

Digitally signed by Heather Massey
DN: cn=Heather Massey, o=Haley Properties, ou=Haley
Properties, email=hmassey@haleyproperties.com, c=US
Date: 2013.08.19 12:03:18 -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

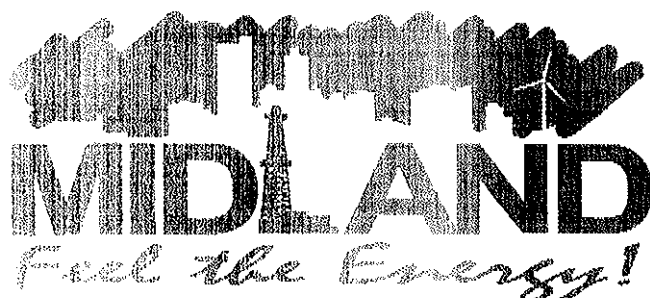
PO Box 1152

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: Rachel L. Stone

Address: 1902 N. Pecos

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 ⁴⁷ years.

Professional and/or Community Activities:

Former: MISD Education Foundation, MISD Headstart Board, MC BAC Advisory Board, MC Coppell Learning Facility Advisory Board

Current: Midland Recording Library for the Blind, Midland CVB Advisory Board, SHARE Board, American Diabetes Assoc

Date: 8/17/2013

Phone: 432-657-1805 (Home)

432-652-2060 (Business)

Email: rls@midlandhcc.com

Are you a graduate of Midland HS? ☐ yes ☒ no

Occupation: President/CEO

What is your personal vision for the City?

With our robust economy many changes have come to our city. This includes many new faces with diverse backgrounds. I would like to see Midland embrace the many cultures and showcase them. While we do not have the big attractions of the bigger cities, Midland has a lot to offer. One way is to offer downtown events where we can showcase the many cultures that make Midland.

Please specify any time constraints you may have.

3rd Monday of the month (11:30am-1:30pm)

2nd & 3rd Tuesday of the month (Noon-1:00pm)

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 Advisory Board

Midland Center Advisory Board

Please tell us why you are interested in serving on this board or commission.

Both of these advisory board play a big role in promoting the arts & events in our community. I have over 20 years of event planning experience and I believe that my experience will bring a different prospect when decisions are being made.

What contribution would you most like to make?

A perspective from an event planner, especially when it is a non-profit organization.

Additional pertinent information or references:

Jami Owen, MISD Education Foundation Exec Dir: (432) 689-1982

Billy Castaneda, Standard Sales, Co.: (432) 550-2380

Simone Rivas, KWES: (432) 349-7047

(2) Name of Board/Commission:

Midland Center Advisory Board

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 by Email

Print Application

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION

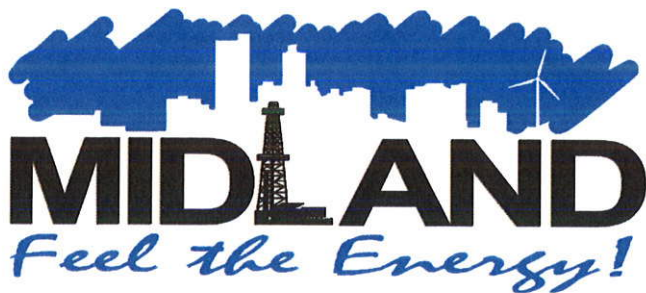
**Decision Making
(Membership - 7; Terms - 2)**

SPECIAL COMPOSITION REQUIREMENTS: Resident of City.

MEMBER	TERM EXPIRE NOV. 2013?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Ken Marks, Vice Pres.	Yes			No		
James G. Smith	Yes			No		
Wesley D. Bownds	Yes			No		
John James	Yes			No		
Mike Thompson	Yes			Yes		8/13/13 Mr. Thompson called wants to serve again.
Tim Bryson	Yes			Yes		8/22/13 Mr. Bryson called wants to serve again.
Rick Davis (MISD Resp.)	Yes			Yes		

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Brad Barnett	One other board	
Kelly "Bo" Cockerell	One other board	
Joe Guerra, Jr	One other board	
John Ory	One other board	
John Trischitti III	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: Brad Barnett

Address: 5101 North A St. #342

Midland 79705

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 8 years.

Professional and/or Community Activities:

Member of the TxAVF (Texas Association of Venues & Facilities) & IFMA (International Facility Managers Association.)

Teaching and supply preaching at Fannin Terrance Baptist Church. Former Moderator for the Basin Baptist Network.

Leadership Midland (Class of 2013)

What is your personal vision for the City?

For our community to continue to grow while retaining our west Texas, family friendly feel. To work to be proactive to be able to handle our growth. It's critical that we continue to grow our quality of life and not just the size of our city.

Please specify any time constraints you may have.

Schedule is generally flexible.

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:

Tax Increment Reinvestment Zone Board

Please tell us why you are interested in serving on this board or commission.

A passion for seeing downtown Midland revitalized.

Date: 8/13/2013

Phone: 432-599-1390 (cell) (Home)

432-682-6234 (Business)

Email: brad@themidlandcenter.com

Are you a graduate of Midland 101? ☒ yes ☐ no

Occupation: Vice President (Facility Manger) Midland Center

What contribution would you most like to make?

Assist in shaping the future of downtown Midland (the heart and soul of our community.)

Additional pertinent information or references:

Reference: Chamber of Commerce President & CEO Bobby Burns

(2) Name of Board/Commission:

Midland Football-Soccer and Baseball Complex Development Corporation

What contribution would you most like to make?

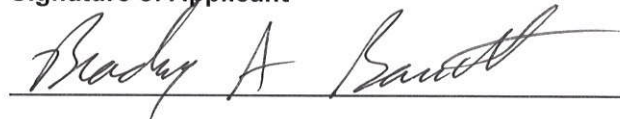
Work to continue to promote this amazing facility we have. Background in facility management gives me an clear understanding of needs for our sports facility.

Additional pertinent information or references:

Reference: Monty Hoppel

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: Kelly "Bo" Cockerell

Address: 8312 E County Rd 85 Unit A

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 7 years.

Professional and/or Community Activities:

I spend my time and earn my living by preaching the Gospel and planning and promoting events right here in Midland.

Date: 8/31/2013

Phone: (432) 230-7099 (Home)

(432) 230-7099 (Business)

Email: kcockerell@gmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Pastor / Event Promoter

What is your personal vision for the City?

Midland is a great place live and work and I would like to continue to help promote the best Midland has to offer. As more and more people come here to work, live and do life, it is important that we stay on top of the "business of Midland" so we can continue to have a prosperous and lively community.

Please specify any time constraints you may have.

I am self-employed and have total control over my schedule.

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.

Airports are a crucial component of prosperous cities. As we continue to grow our airports are going to need to grow with us and I would like to help guide and influence them so they can help make Midland more than just an employment destination.

What contribution would you most like to make?

I am plugged in to the entertainment and activities subculture in Midland and can bring insight into what can help make an airport more than just a transit system.

Additional pertinent information or references:

Many on the Midland City Council have first hand experience with me through events I have co-produced and know of my creativity and ingenuity.

(2) Name of Board/Commission:

Midland Football-Soccer and Baseball Complex Development Corporation

What contribution would you most like to make?

As an event planner and promoter I have firsthand knowledge of how important a great venue like the Scharbauer Sports Complex is to the vitality of this community. I would like to help guide the future of the sports complex so it can continue to help make Midland an awesome place to live and play.

Additional pertinent information or references:

Many on the Midland City Council have firsthand experience with me through events I have co-produced and know of my creativity and ingenuity.

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

Kelly Cockerell

Digitally signed by Kelly Cockerell
DN: cn=Kelly Cockerell, o, ou,
email=kcockerell@gmail.com, c=US
Date: 2013.08.31 09:23:10 -05'00'

Applications may be submitted online via email or print in order to send by mail or fax:

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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

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: Joe Guerra Jr.

Address: 2506 Candle Tree Cove
Midland Texas 79705
(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 28 **years.**

Professional and/or Community Activities:

I am currently working with Energen Resources in the Drilling Department, I facilitate there Hydraulic Frac Disclosures and handle pre regulatory/post regulatory issues that come up on the drilling or production side. Prior to Energen, I worked 27 years with the RR in Regulatory, Environmental and Technical. I have extensive knowledge of Oil & Gas regulations. I am currently in Midland 101.

What is your personal vision for the City?

My personal vision for the city is to have a population say that they are proud of there transportation, city services, roads and bridges activities that are enjoyable, clean, etc. I want people that drive through Midland to say, "Yes I remember that city, they are the ones with the tall buildings that are lit up at night in colors." That makes the City stand out.

Please specify any time constraints you may have.

I do not have no time constraints, just some notice any time a meeting will be held.

Date: 1/17/2013
Phone: 432-686-8445 (Home)
432-556-0857 (Business)
Email: joe.guerra@att.net

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Drilling/Completion Tech for Energen Resources Cc

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:

Oil and Gas Advisory Committee

Midland Football/Soccer/Baseball Corporation

Please tell us why you are interested in serving on this board or commission.

I want to serve on the Oil/Gas Committee because I feel that I can offer in regards to regulatory issues pertaining to drilling and prod inside the city limits, also currently working for an oil and gas company helps alot.

What contribution would you most like to make?

Offer my expertise on oil and gas regulation and other general issues that came up that might play a part in making decisions pertaining to drilling inside the city limits of Midland.

Additional pertinent information or references:

Midland 101

(2) Name of Board/Commission:

Midland Football/Soccer/Baseball

What contribution would you most like to make?

I am a arbiter of issues, I was an official in college softball for almost 15 years and one of my greatest asset was having to watch, listen and make decisions based on the play. This is what this would be all about.

Additional pertinent information or references:

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Signature of Applicant

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City Secretary's Office
PO Box 1152
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Print Application



it is necessary to continue to develop this gem to constantly improve the quality of life for existing residences and those to come.

What contribution would you most like to make?

I bring a history of community leadership experience, strategic thinking and financial expertise that can lend to providing new, unique and sometimes unthought of perspectives to initiatives.

Additional pertinent information or references:

Bobby Burns - Midland Chamber of Commerce President

Dr. Steven Thomas - Midland College President

Vicki Jay - Executive Director of Shared Spaces Midland

(2) Name of Board/Commission:

Tax Increment Reinvestment Zone Board

What contribution would you most like to make?

To see that the incremental revenue is being collected and allocated in a manner that is consistent with the future plans of the city.

I would also like to see these tax dollars be redeployed into projects that add value to the citizens of Midland.

Additional pertinent information or references:

Bobby Burns - Midland Chamber of Commerce President

Dr. Steven Thomas - Midland College President

Vicki Jay - Executive Director of Shared Spaces Midland

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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

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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: John Trischitti III
Address: 301 W. Missouri
 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 ³ years.

Professional and/or Community Activities:

Midland Need to Read Board Member

Salvation Army board Member

Golf Course Road Church of Christ

What is your personal vision for the City?

I feel that Midland can be a trendsetting city not only for West Texas and the Permian Basin but for the state as well. We can continue to grow and evolve and create an environment that is a great place to live and raise a family.

Please specify any time constraints you may have.

With enough advanced notice, any time should be workable

Date: 8/20/2013
Phone: 214/934-5442 (Home)
 432/688-4333 (Business)
Email: libadm01@co.midland.tx.us

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Midland County Public Library Director

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 Football-Soccer and Baseball Complex Development Corporation

Please tell us why you are interested in serving on this board or commission.

I would like to get more involved in the business of Midland and give back to my community in service and time.

What contribution would you most like to make?

To help guide the future of this complex and the direction of the revenue that it generates.

Additional pertinent information or references:

County Judge Mike Bradford

Mayor Wes Perry

(2) Name of Board/Commission:

Airport Planning and Development Board

What contribution would you most like to make?

To highlight the importance of this facility for our area and make sure it is receiving the attention and maintenance it deserves.

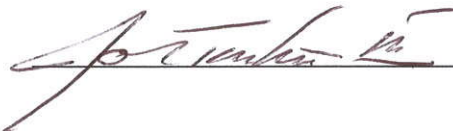
Additional pertinent information or references:

County Judge Mike Bradford

Mayor Wes Perry

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](#)

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

SPECIAL COMPOSITION REQUIREMENTS:

MEMBER	TERM EXPIRE JAN. 2013?	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	No 01/14					

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Tom Parks	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: TOM PARKS

Address: 3508 TRINITY MEADOWS DRIVE

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 11 years.

Professional and/or Community Activities:

I retired this summer after more than 50 years of teaching and administration, mostly in higher education. My Ph.D. is in higher education. I served as associate director of the John Ben Shepperd Institute at UTPB and retired as Associate Dean.

What is your personal vision for the City?

To continue in its solid progress in leadership and service to the good people of Midland, responding to emerging needs in a responsible, deliberative, and conscientious process that is transparent and fiscally accountable.

Please specify any time constraints you may have.

None.

Date: 8/20/13

Phone: 697-6530 (Home)

____ (Business)

Email: tparks9@suddenlink.net

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: UNIVERSITY ADMINISTRATOR, PROFESSOR

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 HIGHER EDUCATION FACILITIES CORP.

Please tell us why you are interested in serving on this board or commission.

This service reflects my lifelong interest and commitment to higher education and my permanent dedication to the City of MIDLAND.

What contribution would you most like to make?

To provide leadership and service to meet emerging needs of higher education facilities and to offer an experienced voice in terms of short-term and long-range planning.

Additional pertinent information or references:

DR. DAVID WAITS, PRESIDENT, UTPB

MR. BOBBY BURNS, CHAIRMAN, MIDLAND CHAMBER OF COMMERCE

(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

Tom Parks

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 HOUSING FINANCE CORPORATION
 (Decision Making)
 Membership - 5; Terms - 2 Years expiring 1-2-2)

SPECIAL COMPOSITION REQUIREMENTS: Resident of City.

MEMBER	TERM EXPIRE SEPT 2013?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy	Yes			No		NO MEETINGS
Adrianne 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
Paul Culver	One other board	
Paul McCord	Only this board	

2013-021



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: Paul Culver
Address: 4603 Pleasant Dr
Midland TX 79703
(City) (State) (Zip)

Date: 8/22/2013
Phone: 432 697-2881 (Home)
432 934-1021 (Business)
Email: paul.culver@yahoo.com

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ⁴ years.

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Realtor

Professional and/or Community Activities:

I have been involved in real estate and mortgage lending for the past twenty five years. Three of those years I worked for the Texas Department of Housing and Community Affairs and have overseen many city projects aiding the low-income and elderly with regards to housing.

What is your personal vision for the City?

I would love to see Midland continue to grow but with housing opportunities for young new professionals as well as low-income and elderly citizens. I have been in Midland for four years but grew up here and think its a great city.

Please specify any time constraints you may have.

None that would interfere with board duties.

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.

I have experience with the inner working of housing authorities and would love to provide input.

What contribution would you most like to make?

To use my experience in anyway possible to promote housing.

Additional pertinent information or references:

Worked in HUD's HOME program in planning and grant administration.

(2) Name of Board/Commission:

Midland Housing Finance Commission

What contribution would you most like to make?

Again, to use my experience working with cities and their housing authorities to promote housing.

Additional pertinent information or references:

Experience with TDHCA HOME Program.

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

Digitally signed by Paul Culver

DN: cn=Paul Culver, o, ou, email=paul.culver@yahoo.com, c=US

Date: 2013.08.22 18:46:19 -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](#)

2013-004



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: Paul M McCord

Address: 4202 Gleneagles Dr

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 14 years.

Professional and/or Community Activities:

Business and Housing Consultant for the Business and Economic Center of Midland College

Date: 4/12/2013

Phone: 432-260-0206 (Home)

432-684-4309 (Business)

Email: pmccord@mccordandassociates.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Business/Housing Consultant

What is your personal vision for the City?

Want to see the city continue to grow as an oil and gas center but also believe it important for the city to find ways to diversity its employer base in order to insure long-term stability. I also believe that finding ways to encourage and create affordable housing is critical to the city's continued expansion and development.

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:

Housing Finance Corporation

Please tell us why you are interested in serving on this board or commission.

I have the opportunity to witness the needs of affordable housing in the community as a business and housing counselor for the BEDC of Midland Collage as I work with and counsel want to be homeowners and small business owners.

What contribution would you most like to make?

At this point I can't give specifics as I don't know what MHFC is concentrating on or where their specific focus is. I do believe that with my extensive business and finance background combined with my past four years working with low to moderate income potential homeowners I have a solid background from which to make meaningful contributions.

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

Paul McCord

Digitally signed by Paul McCord
DN: cn=Paul McCord, o, ou,
email=pmccord@mccordandassociates.com, c=US
Date: 2013.04.12 12:57:25 -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](#)

SPECIAL COMPOSITION REQUIREMENTS:

MEMBER	TERM EXPIRE SEPT 2013?	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 2013?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 9)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Willie Barber	Yes	11%	1	No		
Michael Trost	Yes	89%	8	No		
John James	Yes	78%	7	No		
Karen York	Yes	100%	9	No		
Guy McKenzie	Yes	89%	8	Yes		
Rebecca Bell	No 09/14					

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES

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 2013?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 9)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Lance Friday –(Real Estate)	Yes		7	Yes		8/21/13 Ron Jenkins sent a memo that Mr. Friday wants to serve again.
Russell Richards (Petroleum)	No 09/15	100%	8			He was appointed on
Perry Dan Taylor (Real Estate)	No 09/15	100%	8			
Paul Brown (Petroleum)	No 09/14	100%	9			
David Rosen (Petroleum)	No 09/14	89%	8			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Joe Guerra Jr	One other board	
Thomas Wolfmueller	Only this board	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Name: Joe Guerra Jr.
Address: 2506 Candle Tree Cove
 Midland Texas 79705
 (City) (State) (Zip)

Date: 1/17/2013
Phone: 432-686-8445 (Home)
 432-556-0857 (Business)
Email: joe.guerra@att.net

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 28 **years.**

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Drilling/Completion Tech for Energen Resources Cc

Professional and/or Community Activities:

I am currently working with Energen Resources in the Drilling Department, I facilitate there Hydraulic Frac Disclosures and handle pre regulatory/post regulatory issues that come up on the drilling or production side. Prior to Energen, I worked 27 years with the RR in Regulatory, Environmental and Technical. I have extensive knowledge of Oil & Gas regulations. I am currently in Midland 101.

What is your personal vision for the City?

My personal vision for the city is to have a population say that they are proud of there transportation, city services, roads and bridges activities that are enjoyable, clean, etc. I want people that drive through Midland to say, "Yes I remember that city, they are the ones with the tall buildings that are lit up at night in colors." That makes the City stand out.

Please specify any time constraints you may have.

I do not have no time constraints, just some notice any time a meeting will be held.

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:

Oil and Gas Advisory Committee
 Midland Football/Soccer/Baseball Corporation

Please tell us why you are interested in serving on this board or commission.

I want to serve on the Oil/Gas Committee because I feel that I can offer in regards to regulatory issues pertaining to drilling and prod inside the city limits, also currently working for an oil and gas company helps alot.

What contribution would you most like to make?

Offer my expertise on oil and gas regulation and other general issues that came up that might play a part in making decisions pertaining to drilling inside the city limits of Midland.

Additional pertinent information or references:

Midland 101

(2) Name of Board/Commission:

Midland Football/Soccer/Baseball

What contribution would you most like to make?

I am a arbiter of issues, I was an official in college softball for almost 15 years and one of my greatest asset was having to watch, listen and make decisions based on the play. This is what this would be all about.

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
FAX: (432) 685-7433

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[Print Application](#)



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Name: Thomas Wolfmueller

Address: 2205 Harvard Ave

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 ² years.

Professional and/or Community Activities:

AADE Member

Treasurer at Grace Lutheran Church

Date: 8/13/2013

Phone: 432-557-7122 (Home)

(Business)

Email: twolfmueller@gmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Drilling Engineer

What is your personal vision for the City?

I think there can be a solution to problems dealing with drilling wells in the city limits that will be agreeable to both parties.

Please specify any time constraints you may have.

I am open to meetings with some notice. I would like a weeks notice of meetings if possible

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:

Oil and Gas Advisory Committee

Please tell us why you are interested in serving on this board or commission.

I would like to help both citizens and operators come to mutually agreeable solutions to drilling in the city limits.

What contribution would you most like to make?

I have knowledge of drilling in many parts of the United States. My knowledge of drilling would be an asset to the committee.

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

Thomas Wolfmueller

Digitally signed by Thomas Wolfmueller
DN: cn=Thomas Wolfmueller
Date: 2013.08.13 14:28:30 -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](#)

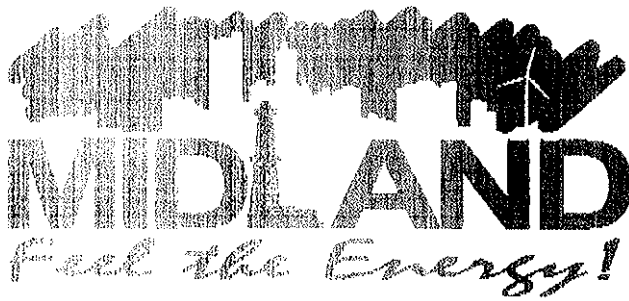
PARKS AND RECREATION COMMISSION
(Advisory)
Membership - 9; Terms - 3 Years expiring 3-3-3)

SPECIAL COMPOSITION REQUIREMENTS: Resident of City, taxpayer & qualified voter.

MEMBER	TERM EXPIRE SEPT. 2013	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 6)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Kenny Harper	Yes	83%	5	Yes		
Charlie A. Spence	Yes	100%	6	Yes		
P. Lourcey Sams	No 09/14	100%	6			
Tina Corbett	No 09/14	67%	4			
Katey Howard	No 09/14	83%	5			
Amanda McCann	No 09/15	83%	5			
Edward Mayberry	No 09/15	83%	5			
Cynthia Savage						
Bart Hotchkiss						

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Lewis Hassler	Two other boards	
Denessa Leary	Only this board	
Sarah Marston	Only this board	
Ty Sisco	Only this board	
Taylor Spalla	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: Lewis Hassler
Address: 2304 Loop40
City: _____ State: Texas Zip: 79706
(City) (State) (Zip)

Date: 8/13/2013
Phone: 432-254-1311 (Home)
432-617-6544 (Business)
Email: lewis.hassler@stateenergy.com

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 3 years.

Are you a graduate of Midland High? ☐ Yes ☒ No

Occupation: Operations Supervisor Alamos Energy

Professional and/or Community Activities:

Leadership Midland, have participated in supporting local non profit groups as well as leadership Odessa

What is your personal vision for the City?

To see Midland continue to grow, prosper and provide a safe living environment for all citizens.

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

Zoning Board committee

Parks and Recreation

Please tell us why you are interested in serving on this board or commission.

I want to serve my community and learn more about the Permian Basin region,

What contribution would you most like to make?

Just to make a difference and give back to community.

Additional pertinent information or references:

Stephanie Merila Midland Chamber

Paul Reynolds Atmos Energy

Cody Childers Nabors Energy co

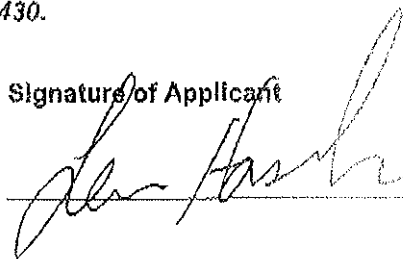
(2) Name of Board/Commission:

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 of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

2013-032



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: DENESSA LEARY
Address: 6827 ISLAND CIRCLE
MIDLAND TX 79707
(City) (State) (Zip)

Date: 9/1/2013
Phone: 432-967-1768 (Home)
(Business)
Email: DLEARY6827@AOL.COM

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ²² years.

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: HEALTH & FITNESS COORDINATOR

Professional and/or Community Activities:

Currently on the Parks & Recreation Endowment Fund Committee, Kiwanis Park Renovation Committee Member, Tall City Triathlon Committee 3 years, former Green Tree North HOA President, ACE Certified Personal Trainer, Healthy Kids Day Committee

What is your personal vision for the City?

I would like to see the continued growth and expansion we are currently experiencing. Outdoor activities for all ages, entertainment, housing, roads, downtown business and the continued future water planning needs are critical in supporting and sustaining the future of Midland.

Please specify any time constraints you may have.

None, I am able to set my working hours.

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 Committee

Please tell us why you are interested in serving on this board or commission.

The city has a plan for the introduction of more outdoor activities. I would like to be a part of this vision. I am in the health and wellness industry and I am always working to get the community outdoors more and move. If we build it, it will be used.

What contribution would you most like to make?

I feel with my background in health and wellness, I would be a valuable member on the Parks and Recreation committee. Outdoor activities help a city in keeping their residents active. If there are choices of things that a resident could do with or without the family they make a big impact. Our city needs more outdoor user friendly activities and I would like to help make that a reality.

Additional pertinent information or references:

Please feel free to contact Lourcey Sams @ 432-559-6415. I have been working with Mr. Sams on the Parks and Recreation Endowment Fund Committee. Mr. Sams currently serves on the Parks and Recreation committee.

(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

Denessa Leary

Digitally signed by Denessa Leary
DN: cn=Denessa Leary, o, ou,
email=dleary6827@aol.com, c=US
Date: 2013.09.02 22:13:20 -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: Sarah Marston

Address: 1607 North N. Street

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 ³² years.

Professional and/or Community Activities:

2011-2012 Midland 101 Graduate, lifetime member of Crestview Baptist Church, member of Event Service Professionals Association of America, member of the Texas Association of Convention and Visitors Bureau.

Midland CVB employee overseeing the Sports and Entertainment Association of Midland (SEAM) Board.

What is your personal vision for the City?

I want my city to be a safe and friendly city for my kids and the children of our future.

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

Please tell us why you are interested in serving on this board or commission.

I would like to represent the City of Midland and help our youth learn and grow with our city/community. Being apart of something that helps Midland and our kids would honor me and my family, I have two daughters 3 and 4 years old. I want a better Midland,

Date: 8/14/2013
Phone: 432-349-9479 (Home)
432-686-3568 (Business)
Email: sarah@visitmidlandtexas.com

Are you a graduate of Midland 101? ☒ yes ☐ no

Occupation: Sports Sales Manager, Midland CVB

for everyone.

What contribution would you most like to make?

My skills with Sports, Sales, Tourism, Recruitment, Public Relations would be most beneficial to this committee.

Additional pertinent information or references:

formerly, worked as Community Relations Director for the Midland RockHounds/ Odessa Jackalopes 2003-2005

Jamie Richardson, Asasistant GM of Midland RockHounds, 520-2255

Gaylia Olivas, VP of Midland CVB 683-3381

(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 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: Ty Sisco
Address: 1700 W. Wall St.
 Midland TX 79701
 (City) (State) (Zip)

Date: 8/27/2013
Phone: 432-235-3879 (Home)
 432-697-1447 (Business)
Email: tsisco@team-psc.com

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ³ years.

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Landscape Architect

Professional and/or Community Activities:

Leadership Midland - Class of 2013, West Texas Food Bank - Volunteer, American Society of Landscape Architects - Member

State of Texas TCEQ - Licensed Irrigator

What is your personal vision for the City?

I would like to help improve Midland's parks and create new opportunities for outdoor activity for our ever growing population. With the current water restrictions and the inevitable lack of water in our region, most citizens will not be able to maintain outdoor spaces conducive for sports or other outdoor activities. The City parks are a great place to provide these opportunities for its residents.

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.

I have knowledge/skills in the design and construction of parks and play environments and I am also the father who sees the need for improvement and expansion of the existing City park facilities.

What contribution would you most like to make?

I would like to bring experience and technical expertise to the commission. With over 10 years experience in the design and construction of parks and recreational facilities, I feel uniquely qualified to help plan and implement improvements to the existing parks and recreation system.

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

Ty Sisco

Digitally signed by Ty Sisco
DN: cn=Ty Sisco, o=Parkhill, Smith and Cooper Inc.,
ou=Landscape Architect, email=tsisco@team-psc.com, c=US
Date: 2013.09.03 10:16:24 -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

2013-031



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: Taylor Spalla

Address: 4426 Lanham St.

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 0.1 years.

Professional and/or Community Activities:

J.D. (May 2013, Magna Cum Laude) (Texas Tech); M.B.A. (May 2013) (Texas Tech); Bachelor of Arts in Business and Political

Science (2009) (Southwestern University); and Editor-in-Chief, Texas Tech Administrative Law Journal (Volume 14).

Young Professionals in Energy and Young Republicans of Midland.

What is your personal vision for the City?

(1) To increase the quality of life through fiscally conservative projects that promote community involvement and being active.

(2) To promote and allow for economic growth in a form that is beneficial to the City and its citizens.

Please specify any time constraints you may have.

Because of my current constraints of only my job, I am able to provide a strong commitment to any commission the City

Council selects me for.

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 am interested in this Commission because I believe I can best utilize my law degree, M.B.A., and prior political experience

to benefit the City. I am more interested in this position, as opposed to others, because I can provide a beneficial impact to my vision

Date: 8/27/2013

Phone: 210-508-5503 (Home)

432-683-4691 (Business)

Email: taylor.spalla@gmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Law Clerk (Awaiting results of July 2013 Bar Exam)

for the city while engaging in activities that I enjoy doing.

What contribution would you most like to make?

Being new to the City, I will provide an input that is free of bias, preconceptions, and agendas and will work to provide the City Council with informative and open guidance.

Additional pertinent information or references:

Prior to law school, I worked as a campaign staffer (political side) for a Texas gubernatorial campaign.

(2) Name of Board/Commission:

Parks and Recreation Commission

What contribution would you most like to make?

Through my constant desire to workout, run, and play athletic events, I have the ability to provide meaningful recommendations. Additionally, I am able to provide a more youthful perspective to help better meet the needs and desires of the influx of the youth demographic.

Additional pertinent information or references:

As a former high school and college baseball player, I understand the facilities and opportunities we must supply to the community to provide a meaningful experience for all.

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

Paul Taylor Spalla

Digitally signed by Paul Taylor Spalla
DN: cn=Paul Taylor Spalla, o, ou,
email=taylor.spalla@gmail.com, c=US
Date: 2013.09.02 21:03:49 -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. 2013?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 4)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Larry Gill (Abilene)	Yes	0%	0	Yes		
Elvin Brownlee III (Andrews)	Yes	50%	2	Yes		
Jim Little (Big Spring)	No	75%	3	Yes		8/27/13 Received letter from City of Big Spring reappointing Jim Little
David Hardwick (Ft. Stockton)	Yes	0%	0	Yes		
Frankie Rolfe (Kermit)	Yes	0%	0	Yes		
Donald R. Bethel (Lamesa)	No	50%	2	Yes		8/30/13 Received letter from City of Lamesa reappointing Don Bethel
Henry Cutbirth (Monahans)	No	75%	3	Yes		
Willie Taylor (Odessa)	Yes	50%	2	Yes		
Gloria Pena (Odessa)	Yes	75%	3	Yes		
Barbara Graff (Odessa)	Yes	75%	3	Yes		
Isabelle Blanchard (Pecos)	No	50%	2	Yes		8/22/13 Received a letter from City of Pecos reappointing Isabelle Blanchard
Luis E. Elguezabal (San Angelo)	No	0%	0	Yes		
Lex Hinds (Seminole)	No	0%	0	Yes		9/1/13 Received a letter from City of Seminole reappointing Lex Hinds
John Rogotzke (Snyder)	Yes	50%	2	Yes		
Glenn Wortham (Sweetwater)	No	0%	0	Yes		8/27/13 Received a letter from City of Sweetwater reappointing Glenn Wortham
Lance Goodrich (Artesia, NM)	No	50%	2	Yes		8/27/13 Received a letter from City of Artesia reappointing Lance Goodrich
Bob Forrest (Carlsbad, NM)	Yes	0%	0	Yes		
Larry Shed (Hobbs, NM)	Yes	0%	0	Yes		
Larry Fry (Roswell, NM)	No	25%	1	Yes		8/29/13 Received a letter from City of Roswell reappointing Larry Fry

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES



NORMA A. GRIMALDO
City Secretary

September 11, 2013

Amy M. Turner
City Secretary
City of Midland
P.O. Box 1152
Midland, TX 79702

Dear Amy:

On September 10, 2013, the Odessa City Council reappointed Barbara Graff, Willie Taylor and Gloria Pena to serve another term to the Permian Basin Airport Board.

Hope you are doing well!

Sincerely,

Norma Aguilar-Grimaldo, TRMC, CMC
City Secretary

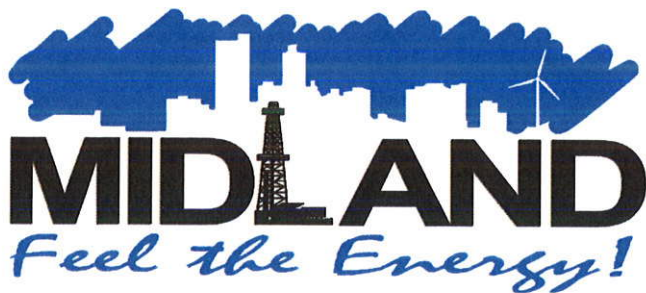
TAX INCREMENT REINVESTMENT ZONE BOARD
(Decision Making)
Membership - 12; Terms - 3 Years)

SPECIAL COMPOSITION REQUIREMENTS: None

MEMBER	TERM EXPIRE MARCH 2013?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 6)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Mark T. Wellen (City)	Yes	100%	6	No		
Randy Prude (County)	Yes	67%	4	No		
Bob Lanier (City)	Yes	83%	5	No		
Judge Mike Bradford (County)	Yes	33%	2	Yes		
Ken Burgess (City)	Yes	67%	4	Yes		
Michael Blonkvist (City)	No 09/14	50%	3			
John Kennedy (City)	No 03/15	67%	4			
Pete Hulder (Hospital)	No 03/16	83%	5			
Link Grimes (City)	No 03/15	67%	4			
Charlene McBride (College)	No 03/16	33%	2			
Steve Castle (College)	No 03/15	33%	2			
Russell Meyer (Hospital)	No 03/16	33%	2			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Brad Barnett	One other board	
Guy McKenize	Only this board	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Name: Brad Barnett

Address: 5101 North A St. #342

Midland 79705

(City)

(State)

(Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ⁸ years.

Professional and/or Community Activities:

Member of the TxAVF (Texas Association of Venues & Facilities) & IFMA (International Facility Managers Association.)

Teaching and supply preaching at Fannin Terrance Baptist Church. Former Moderator for the Basin Baptist Network.

Leadership Midland (Class of 2013)

What is your personal vision for the City?

For our community to continue to grow while retaining our west Texas, family friendly feel. To work to be proactive to be able to handle our growth. It's critical that we continue to grow our quality of life and not just the size of our city.

Please specify any time constraints you may have.

Schedule is generally flexible.

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:

Tax Increment Reinvestment Zone Board

Please tell us why you are interested in serving on this board or commission.

A passion for seeing downtown Midland revitalized.

Date: 8/13/2013

Phone: 432-599-1390 (cell) (Home)

432-682-6234 (Business)

Email: brad@themidlandcenter.com

Are you a graduate of Midland 101? ☒ yes ☐ no

Occupation: Vice President (Facility Manger) Midland Center

What contribution would you most like to make?

Assist in shaping the future of downtown Midland (the heart and soul of our community.)

Additional pertinent information or references:

Reference: Chamber of Commerce President & CEO Bobby Burns

(2) Name of Board/Commission:

Midland Football-Soccer and Baseball Complex Development Corporation

What contribution would you most like to make?

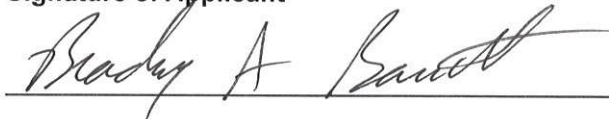
Work to continue to promote this amazing facility we have. Background in facility management gives me an clear understanding of needs for our sports facility.

Additional pertinent information or references:

Reference: Monty Hoppel

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](#)



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Name: Guy McKenzie

Address: 2612 Spartan

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 35 years.

Professional and/or Community Activities:

Kiwanis Club President, United Way Board, Big Brothers Big Sisters Board, Housing Commission, EZ Rider Board,

Citizen Action Committee for Public Transaction, Keep Midland Beautiful, Challenge Day in Public Schools

Date: 9/2/1013

Phone: 432-520-8903 (Home)

432-770-1990 (Business)

Email: primesourceguy@suddenlink.net

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Real Estate Manager, Financial Consultant.

What is your personal vision for the City?

Continued diversification of our economy, economic impact analyses, economic adjustment to meet the needs of our bustling city.

Please specify any time constraints you may have.

Minimal

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:

Tax Increment Reinvestment Zone Board.

Please tell us why you are interested in serving on this board or commission.

Interested in helping to find ways to use these funds for economic development and diversification. I would like to help in the planning and distribution of these funds.

What contribution would you most like to make?

To be an active member and to contribute with ideas and visions that I feel are in the best interest of the City .

Additional pertinent information or references:

Mike Davis - President - Compass Bank 432-210-6445

Chris Kelly - Business Manager - Mid-Cities Community Church

Garth Wright - President - Security Bank -

(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

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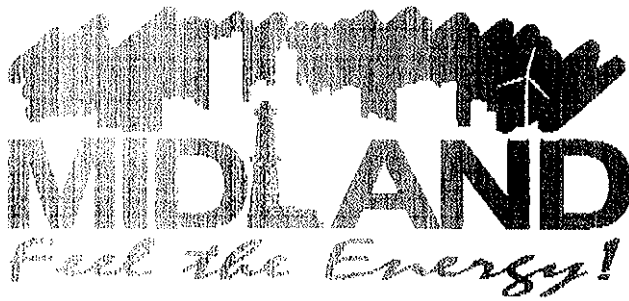
**ZONING BOARD OF ADJUSTMENT
AND
AIRPORT ZONING BOARD OF ADJUSTMENT
(Decision Making)
Membership - 5; Terms - 2 Years expiring 3 odd & 2 even)**

SPECIAL COMPOSITION REQUIREMENTS: None

MEMBER	TERM EXPIRE SEPT. 2013?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 5)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Manny Ribera	Yes	50%	3	No		
Ken Morgan	Yes	0%	0	Yes		
Scott Young	Yes	100%	5	Yes		
Carla Repman	Yes	100%	5	Yes		
Todd Byars	No 09/14	100%	5			
<u>ALTERNATES:</u>						
Vacancy	Yes - 2006			No		
Vacancy	Yes - 2007			No		
Annabel Holguin	Yes	0%	0	Yes		
Greg Turner	Yes	0%	0	Yes		

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Lewis Hassler	Two other boards	
John Ory	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: Lewis Hassler
Address: 2304 Loop40
City: _____ State: Texas Zip: 79706
(City) (State) (Zip)

Date: 8/13/2013
Phone: 432-254-1311 (Home)
432-647-6544 (Business)
Email: lewis.hassler@stateenergy.com

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 3 years.

Are you a graduate of Midland High? ☐ Yes ☒ No

Occupation: Operations Supervisor Alamos Energy

Professional and/or Community Activities:

Leadership Midland, have participated in supporting local non profit groups as well as leadership Odeasa

What is your personal vision for the City?

To see Midland continue to grow, prosper and provide a safe living environment for all citizens.

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

Zoning Board committee

Parks and Recreation

Please tell us why you are interested in serving on this board or commission.

I want to serve my community and learn more about the Permian Basin region,

What contribution would you most like to make?

Just to make a difference and give back to community.

Additional pertinent information or references:

Stephanie Merila Midland Chamber

Paul Reynolds Atmos Energy

Cody Childers Nabors Energy co

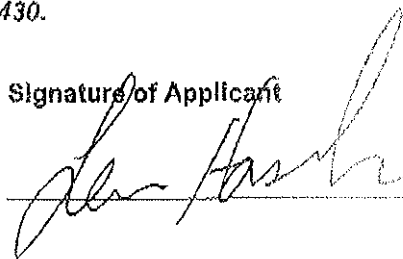
(2) Name of Board/Commission:

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

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it is necessary to continue to develop this gem to constantly improve the quality of life for existing residences and those to come.

What contribution would you most like to make?

I bring a history of community leadership experience, strategic thinking and financial expertise that can lend to providing new, unique and sometimes unthought of perspectives to initiatives.

Additional pertinent information or references:

Bobby Burns - Midland Chamber of Commerce President

Dr. Steven Thomas - Midland College President

Vicki Jay - Executive Director of Shared Spaces Midland

(2) Name of Board/Commission:

Tax Increment Reinvestment Zone Board

What contribution would you most like to make?

To see that the incremental revenue is being collected and allocated in a manner that is consistent with the future plans of the city.

I would also like to see these tax dollars be redeployed into projects that add value to the citizens of Midland.

Additional pertinent information or references:

Bobby Burns - Midland Chamber of Commerce President

Dr. Steven Thomas - Midland College President

Vicki Jay - Executive Director of Shared Spaces Midland

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Signature of Applicant



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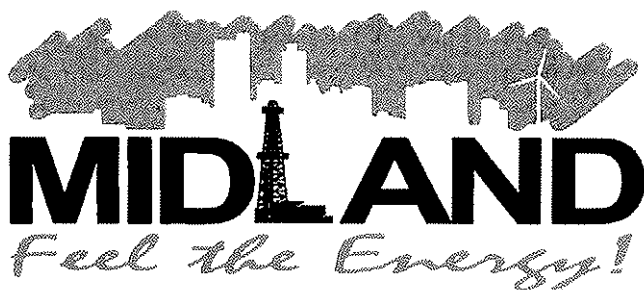
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PLEASE TYPE OR PRINT CLEARLY:

Name: Melissa Wicker

Address: 2302 Lockheed

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 33 years.

Professional and/or Community Activities:

Board Member of Midland Chamber of Commerce, Board Member of Safe Place, Advisory Board Member of Junior League of
Midland, Member of Midland Housing Trust Committee, and Member of the Midland Housing Committee

Date: 9/9/2013

Phone: 432-687-6789 (Home)

432-689-0000 (Business)

Email: mwicker@primewestcorp.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Mortgage Loan Officer / President of Permian Basin

What is your personal vision for the City?

My vision is to see the city continue to grow. The City of Midland has provided my family and I many opportunities through the years
I would like to see those opportunities continue for our current residence and future residence.

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 Center Advisory Board

Please tell us why you are interested in serving on this board or commission.

I would like to be involved with the Midland Center to continue the legacy that the center has provided to our city and see the
growth or expansion of the facility for our community.

What contribution would you most like to make?

I would like to contribute my time and knowledge of the city to help maintain growth for the Midland Center.

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

Melissa Wicker

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Midland, TX 79702
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APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Name: Michael Harris

Address: PO Box 81046

Midland TX 79708

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 2.5 years.

Professional and/or Community Activities:

My community activities have been fostered through my employer, Concho Resources. We have done multiple trash pick ups and sponsored a habitat for humanity house. I am a CPA and participate in local professional activities sponsored by PASPB.

Date: 8/29/2013

Phone: 432 230 0547 (Home)

432 221 0316 (Business)

Email: mharris@concho.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Accountant - CPA

What is your personal vision for the City?

I believe the current growth in Midland will continue. I envision Midland developing a metropolitan feel (downtown renovation and more large companies headquartered here), however retaining the West Texas friendliness. We have to embrace the changes that come with economic and population growth, but also understand the importance of the core values Midland has long established

Please specify any time constraints you may have.

My job does place some time constraints during quarter ends, however, in general, with planning I am usually have the flexibility to take an hour or two during my lunch or afternoon.

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 Football-Soccer and Baseball Complex Development Corporation

Please tell us why you are interested in serving on this board or commission.

I think the continued development of the complex shows Midland's commitment to growth. I think there will be a positive look back related to the complex, but its development is crucial to that success.

What contribution would you most like to make?

I would like to contribute my time and expertise to help effectively utilize the proceeds available for the construction of the complex.

Additional pertinent information or references:

(2) Name of Board/Commission:

Parks and Recreation Commission

What contribution would you most like to make?

I think as the young professional population in Midland continues to expand, something this group is looking for are places to take their children. I believe this generation will realize that their children need to be more active and having good facilities is paramount to supporting that goal.

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

mharris@conchoresource
s.com

Digitally signed by mharris@conchoresources.com
DN: cn=mharris@conchoresources.com
Date: 2013.09.06 11:06:56 -05'00'

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APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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PLEASE TYPE OR PRINT CLEARLY:

Name: WILLIE A TARLETON
Address: PO BOX 80701
MIDLAND TEXAS 79708
(City) (State) (Zip)

Date: 9/18/2013
Phone: (432) 694-0188 (Home)
(432) 689-1762 (Business)
Email: tarleton@midlandisd.net

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ¹⁵ years.

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: MISD DIRECTOR OF TRANSPORTATION

Professional and/or Community Activities:

Past Chairman of the Board for EZ Rider (3) years. Past Board member of Airport Planning and Development.

What is your personal vision for the City?

My vision is for the City of Midland is to continue to look at a five to ten year plan to keep up with the future growth of the city.

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:

AIRPORT PLANNING AND DEVELOPMENT BOARD

Please tell us why you are interested in serving on this board or commission.

My expertise in serving on this Board before will enable me to serve the City of Midland with an open mind and understanding.

What contribution would you most like to make?

My contribution will be to help insure that the airport continues to provide first class service to the citizens of Midland.

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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NORMA A. GRIMALDO
City Secretary

September 11, 2013

Amy M. Turner
City Secretary
City of Midland
P.O. Box 1152
Midland, TX 79702

Dear Amy:

On September 10, 2013, the Odessa City Council reappointed Barbara Graff, Willie Taylor and Gloria Pena to serve another term to the Permian Basin Airport Board.

Hope you are doing well!

Sincerely,

Norma Aguilar-Grimaldo, TRMC, CMC
City Secretary