AGENDA FOR CITY COUNCIL MEETING
November 08, 2011 – 10:00 AM
Council Chambers - 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 Blake Collins, Midland First Assembly Of God-Youth Minister

2. Pledge of Allegiance

PRESENTATIONS

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

    a. Presentation of Commendation to Irece Jordan.

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 City Council Meeting of October 25, 2011.

6. Consider a resolution to proceed with Fiscal Year 2012 General Purpose Certificates of Obligation Issue. (Finance)

RESOLUTION NO. 2011 - 261

RESOLUTION APPROVING AND AUTHORIZING PUBLICATION OF NOTICE OF INTENTION TO ISSUE SERIES 2012 CERTIFICATED OF OBLIGATION IN AN AMOUNT NOT TO EXCEED THIRTY-ONE MILLION ONE HUNDRED

FIFTY THOUSAND AND NO/100 DOLLARS ($31,150,000.00); AND AUTHORIZING AND DIRECTING THE CITY SECRETARY TO CAUSE NOTICES TO BE PUBLISHED AND POSTED

7. Consider a resolution approving the City of Midland's Fiscal Year 2012 Investment Policy. (Finance)

RESOLUTION NO. 2011 - 262
RESOLUTION APPROVING THE CITY OF MIDLAND'S FISCAL YEAR 2012 INVESTMENT POLICY

8. Receive information and possibly discuss fourth quarter Fiscal Year 2011 Investment Report. (Finance)

9. Consider a resolution approving Fiscal Year 2011 Miscellaneous write-offs. (Finance)

RESOLUTION NO. 2011 - 263
RESOLUTION AUTHORIZING THE CITY TREASURER TO WRITE OFF AS UNCOLLECTIBLE CERTAIN DELINQUENT ACCOUNTS FOR MISCELLANEOUS ACCOUNTS RECEIVABLE AND INSUFFICIENT FUNDS CHECKS

10. Consider a resolution approving Fiscal Year 2011 Water, Sewer and Sanitation write-offs. (Finance)

RESOLUTION NO. 2011 - 264
RESOLUTION AUTHORIZING THE CITY TREASURER TO WRITE OFF AS UNCOLLECTIBLE CERTAIN DELINQUENT ACCOUNTS FOR WATER, SEWER, AND GARBAGE COLLECTION SERVICES

11. Consider a resolution approving Fiscal Year 2011 EMS write-offs. (Finance)

RESOLUTION NO. 2011 - 265
RESOLUTION AUTHORIZING THE CITY TREASURER TO WRITE OFF AS UNCOLLECTIBLE CERTAIN DELINQUENT ACCOUNTS FOR EMERGENCY MEDICAL SERVICES RECEIVABLES

12. Consider a resolution casting the City of Midland ballots for the Midland Central Appraisal District Board of Directors. (Finance)

RESOLUTION NO. 2011 - 266
RESOLUTION CASTING THE CITY OF MIDLAND'S VOTES FOR DIRECTORS OF THE MIDLAND CENTRAL APPRAISAL DISTRICT AND DIRECTING THE CITY MANAGER TO FILE THE APPROPRIATE DOCUMENTS.

13. Consider a resolution allocating funds to the CGI System Upgrade Project (8817). (Finance)

RESOLUTION NO. 2011 - 267
RESOLUTION ALLOCATING $216,220.00 TO THE CGI SYSTEMS UPGRADE PROJECT (8817)

14. Consider a resolution approving the sole source purchase of 1250 MXUs for the Automated Meter Reader System for the Customer Service Division. (General Services)

RESOLUTION NO. 2011 - 268
RESOLUTION APPROVING THE PURCHASE OF ONE THOUSAND TWO HUNDRED FIFTY (1,250) TRANSMITTERS FOR USE WITH THE CITY'S AUTOMATED WATER METER READER SYSTEM FROM WESTERN INDUSTRIAL SUPPLY, L.L.C., OF ODESSA, TEXAS, FOR $150,000.00; AND ACCEPTING THE CITY MANAGER'S RECOMMENDATION THAT
SAID TRANSMITTERS ARE PROPRIETARY IN NATURE AND AVAILABLE ONLY FROM A SOLE SOURCE

15. Consider a resolution approving the purchase of an ambulance manufactured by Frazer, Ltd. through HGAC from Sterling McCall Ford, their licensed dealers, for the Garage Division. (General Services)

RESOLUTION NO. 2011 - 269
RESOLUTION APPROVING THE PURCHASE OF AN AMBULANCE THROUGH THE HOUSTON GALVESTON AREA COUNCIL OF GOVERNMENTS (HGAC) AT A TOTAL COST OF $166,900.00; AND THIS ITEM WAS NOT BID BUT PURCHASED THROUGH A COUNCIL OF GOVERNMENTS

16. Consider a resolution approving plans and specifications and authorizing advertisement for request for proposals for a storage area network. (CISD)

RESOLUTION NO. 2011 - 270
RESOLUTION AUTHORIZING ISSUANCE OF A REQUEST FOR PROPOSALS FOR THE CONSTRUCTION OF A STORAGE AREA NETWORK AT 601 NORTH LORAINE, MIDLAND, TEXAS, FOR THE COMMUNICATIONS AND INFORMATION SERVICES DEPARTMENT

17. Consider a resolution approving plans and specifications and authorizing advertisement for request for proposals for an Internet Service Provider. (CISD)

RESOLUTION NO. 2011 - 271

RESOLUTION AUTHORIZING ISSUANCE OF A REQUEST FOR PROPOSALS FOR AN INTERNET SERVICE PROVIDER FOR THE COMMUNICATIONS AND INFORMATION SERVICES DEPARTMENT

18. Consider a resolution authorizing the acceptance of $150,358.00 in reimbursement funds from the Texas Department of State Health Services to reimburse the Health and Senior Services Division for the delivery of Immunization Services; and authorizing the execution of acceptance documents. (Community Services)

RESOLUTION NO. 2011 - 272

RESOLUTION AUTHORIZING THE ACCEPTANCE OF FUNDS FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES TO REIMBURSE THE CITY OF MIDLAND HEALTH AND SENIOR SERVICE DIVISION FOR THE DELIVERY OF IMMUNIZATION SERVICES; AND AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS

19. Consider a resolution authorizing the acceptance of $101,889.00 in reimbursement funds from the Texas Department of State Health Services to assist the Health and Senior Services Division with the delivery of Bioterrorism Preparedness Program Services; and authorizing the execution of acceptance documents. (Community Services)

RESOLUTION NO. 2011 - 273

RESOLUTION AUTHORIZING THE ACCEPTANCE OF $101,889.00 IN REIMBURSEMENT FUNDS FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES TO ASSIST THE HEALTH AND SENIOR SERVICE DIVISION WITH THE DELIVERY OF PUBLIC HEALTH EMERGENCY PREPAREDNESS SERVICES; AND AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS

20. Consider a resolution authorizing the acceptance of $55,814.00 in reimbursement funds from the Texas Department of State Health Services to assist the Health and Senior Services Division with the delivery of Local Public Health Services; and authorizing the execution of acceptance documents. (Community Services)

RESOLUTION NO. 2011 - 274

RESOLUTION AUTHORIZING THE ACCEPTANCE OF REIMBURSEMENT FUNDS FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES IN THE AMOUNT OF $55,814.00 TO ASSIST THE HEALTH AND SENIOR SERVICE DIVISION WITH THE DELIVERY OF LOCAL PUBLIC HEALTH SERVICES; AND AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS

21. Consider a motion on a request by West Company of Midland for Bizzell-Kiser

Addition (Section 9), to approve items requested for deferral, and to waive the associated public improvement guarantee. This subdivision is generally located on the south side of Wolcott Avenue between Fort Worth Street and Terrell Street. The total value of the deferrals is $91,399.12. (Engineering)

22. Consider a resolution authorizing the City Manager to advertise a Request for Qualification (RFQ) for firms to provide professional services (engineering and surveying) for the paving and drainage improvements along Briarwood Avenue from Holiday Hill Road to Heidelberg Lane (approximately 2 miles) (Engineering)

RESOLUTION NO. 2011 - 275

RESOLUTION AUTHORIZING THE CITY MANAGER TO ADVERTISE A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES FOR PAVING AND DRAINAGE IMPROVEMENTS ALONG BRIARWOOD AVENUE FROM HOLIDAY HILL ROAD TO HEIDELBERG LANE; AUTHORIZING THE CITY MANAGER TO NEGOTIATE A PROFESSIONAL SERVICES AGREEMENT FOR SAID SERVICES; AND PROVIDING THAT SAID AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL

23. Consider a resolution authorizing the City Manager to advertise a Request for Qualification (RFQ) for firms to provide professional services (engineering and surveying) for the paving and drainage improvements along Mockingbird Lane from Holiday Hill Road to Midland Drive (approximately one mile). (Engineering)

RESOLUTION NO. 2011 - 276

RESOLUTION AUTHORIZING THE CITY MANAGER TO ADVERTISE A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES FOR PAVING AND DRAINAGE IMPROVEMENTS ALONG MOCKINGBIRD LANE FROM HOLIDAY HILL ROAD TO MIDLAND DRIVE; AUTHORIZING THE CITY MANAGER TO NEGOTIATE A PROFESSIONAL SERVICES AGREEMENT FOR SAID SERVICES; AND PROVIDING THAT SAID AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL

24. Consider a resolution approving an amendment to the existing professional services agreement with Parkhill, Smith & Cooper and appropriating funds project for landfill support services. (Solid Waste)

RESOLUTION NO. 2011 - 277

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT TASK ORDER WITH PARKHILL, SMITH & COOPER, INCORPORATED, OF MIDLAND, TEXAS, FOR PROFESSIONAL LANDFILL SUPPORT SERVICES , AT AN ESTIMATED TOTAL COST OF $152,390.00; AND APPROPRIATING FUNDS

25. Consider a resolution approving award of the Water System Improvements: Rehabilitation & Lead Abatement of Airport and Shell Elevated Storage Tanks Project to A & M Construction and Utilities, Inc. and appropriate funds. (Utilities)

RESOLUTION NO. 2011 - 278

RESOLUTION AWARDING THE WATER SYSTEM IMPROVEMENTS: REHABILITATION AND LEAD ABATEMENT OF AIRPORT AND SHELL ELEVATED STORAGE TANKS PROJECT TO A & M CONSTRUCTION AND UTILITIES, INCORPORATED, AT A TOTAL COST OF $1,432,500.00; AND APPROPRIATING FUNDS

26. Consider a resolution establishing the dates of regular City Council Meetings to be held in calendar year 2012. (City Manager)

RESOLUTION NO. 2011 - 279

RESOLUTION ESTABLISHING THE DATES OF THE REGULAR CITY COUNCIL MEETINGS TO BE HELD DURING THE CALENDAR YEAR 2012

SECOND READINGS

27. Consider an ordinance on second reading on a request by SBC, LP. for a zone change from FD, Future Development District to PD, Planned District for a Housing Development on a 16.63-acre tract of land out of Section 25, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the northwest corner of the intersection of Crowley Boulevard and Rio Grande Avenue.) (Planning)

ORDINANCE NO. 8951

ORDINANCE NO. 8951

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 16.63-ACRE TRACT OF LAND (BEING 19.04 ACRES INCLUSIVE OF DEDICATED RIGHTS-OF-WAY) OUT OF SECTION 25, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE NORTHWEST CORNER OF CROWLEY BOULEVARD AND RIO GRANDE AVENUE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

28. Consider an ordinance on second reading on a request by City of Midland for zone change from 1F-2, One-Family Dwelling District to 1F-3, One Family Dwelling District on Lots 9 through 14, Block 1; Lots 1 through 8, Block 2; Lots 3 through 8, Block 3; Lots 1 through 8 Block 4, Glenn Frances Addition; of Lots 3 through 10, Block 4 and Lots 1 thorough 9, Block 5, Glenmore Heights; and of the N/E 5 acres of Block 79, East Midland, city and County of Midland, Texas (Generally located near the southwest corner of the intersection of E. Golf Course Road and Tilden Street.) (Planning)

ORDINANCE NO. 8952

ORDINANCE NO. 8952
AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 9-14, BLOCK 1, LOTS 1-8, BLOCK 2, LOTS 3-8, BLOCK 3, LOTS 1-8, BLOCK 4, GLENN FRANCES ADDITION; LOTS 3-10, BLOCK 4, LOTS 1-9, BLOCK 5, GLENMORE HEIGHTS; AND THE NORTHEAST 5 ACRES OF BLOCK 79, EAST MIDLAND, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 1F-2, ONE-FAMILY DWELLING DISTRICT, TO BE USED AS A 1F-3, ONE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF EAST GOLF COURSE ROAD AND TILDEN STREET); 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

PUBLIC HEARINGS

29. At approximately 10:36 A.M. hold a public hearing and consider an ordinance on a request by Bourbon St. D.C. for a Specific use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a lounge, on Lot 24, Block 53, Original Town, City and County of Midland, Texas. (Generally located on the southeast corner of the intersection of N. Main Street and E. Texas Avenue.) (Planning)

ORDINANCE NO. 8953

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 24, BLOCK 53, ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF NORTH MAIN STREET AND EAST TEXAS AVENUE), 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 LOUNGE FOR ON-PREMISES CONSUMPTION; MAKING

SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

30. At approximately 10:39 A.M. hold a public hearing and consider an ordinance on a request by Alan Hale for a zone change from PD, Planned District for a Housing Development to an Amended Planned District on a 2.52-acre portion of Lot 3A, Block 1, Trinity Towers Manor, Sections 3, City and County of Midland, Texas. (Generally located near the northeast corner of the intersection of N. Loop 250 West and Sinclair Avenue on Manor Village Circle.) (Planning)

ORDINANCE NO. 8954

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 3A, BLOCK 1, TRINITY TOWERS MANOR, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED NEAR THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH LOOP 250 WEST AND SINCLAIR AVENUE ON MANOR VILLAGE CIRCLE); 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

31. At approximately 10:45 A.M. hold a public hearing and consider a resolution on a request by Joe Smith / Oregon Trail Trees for a Temporary Land Use Permit for Outdoor Christmas Tree Sales on the remainder of Lot 1, Block 1, Scotsdale Addition, Section Two, City and County of Midland, Texas. (Generally located on the west side of N. Midland Drive, approximately 160 feet south of W. Dengar Avenue.) (Planning)

RESOLUTION NO. 2011 - 280

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR OUTDOOR CHRISTMAS TREE SALES ON LOT 1, BLOCK 1, SCOTSDALE ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDLAND DRIVE, APPROXIMATELY 160 FEET SOUTH OF WEST DENGAR AVENUE); AND MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

DEVELOPMENT SERVICES

32. Consider an ordinance establishing intersection stops at various locations within the City of Midland, Texas; requiring and authorizing the posting of appropriate signs at intersections; 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)

ORDINANCE NO. 8955

AN ORDINANCE ESTABLISHING INTERSECTION STOPS AT VARIOUS LOCATIONS WITHIN THE CITY OF MIDLAND, TEXAS; REQUIRING AND AUTHORIZING THE POSTING OF APPROPRIATE SIGNS AT INTERSECTIONS; 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

33. Consider an ordinance removing yield signs at various locations within the City of Midland, Texas; requiring and authorizing the posting of appropriate signs at intersections; 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)

ORDINANCE NO. 8956

AN ORDINANCE ESTABLISHING YIELD RIGHT OF WAY SIGNS AT VARIOUS LOCATIONS WITHIN THE CITY OF MIDLAND, TEXAS; REQUIRING AND AUTHORIZING THE POSTING OF APPROPRIATE SIGNS AT SAID INTERSECTIONS; 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

MISCELLANOUS

34. Consider a request from Bluestem Energy for a Permit to Drill an Oil and Gas Well within the City Limits located 1021' FNL and 2310' FWL, Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. (Generally located on the east side of the N. Midland Drive, approximately 3/4 mile north of Mockingbird Lane.) (Planning)

RESOLUTION NO. 2011 - 281

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO BLUESTEM ENERGY HOLDINGS, LLC (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 1021 FEET FROM THE NORTH LINE AND 2310 FEET FROM THE WEST LINE, SECTION 8, BLOCK “X”, T-1-S, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF NORTH MIDLAND DRIVE,

APPROXIMATELY 3/4 OF A MILE NORTH OF MOCKINGBIRD LANE)

35. Consider a request from Bluestem Energy for a Permit to Drill and Oil and Gas Well within the City Limits located 1021' FNL and 1041' FWL, Section 8, Block "X", H.P> Hilliard Survey, Midland County, Texas. (Generally located on the west side of the N. Midkiff Road, approximately 3/34 mile north of Mockingbird Lane.) (Planning)

RESOLUTION NO. 2011 - 282

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO BLUESTEM ENERGY HOLDINGS, LLC (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 1021 FEET FROM THE NORTH LINE AND 1041 FEET FROM THE WEST LINE, SECTION 8, BLOCK “X”, T-1-S, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF NORTH MIDLAND DRIVE, APPROXIMATELY 3/4 OF A MILE NORTH OF MOCKINGBIRD LANE)

36. Consider a request from Bluestem Energy for a Permit to Drill an Oil and Gas Well within the City Limits located 1650' FNL and 2310' FEL, Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. (Generally located on the west side of the N. Midkiff Road, approximately 3/4 mile north of Mockingbird Lane.) (Planning)

RESOLUTION NO. 2011 - 283

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO BLUESTEM ENERGY HOLDINGS, LLC (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 1650 FEET FROM THE NORTH LINE AND 2310 FEET FROM THE EAST LINE, SECTION 8, BLOCK “X”, T-1-S, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDKIFF ROAD, APPROXIMATELY 3/4 OF A MILE NORTH OF MOCKINGBIRD LANE)

37. Consider a request from Bluestem Energy for a Permit to Drill an Oil and Gas Well within the City Limits located 1650' FNL and 990' FEL, Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. (Generally located on the west side of the N. Midkiff Road, approximately 3/4 mile north of Mockingbird Lane.) (Planning)

RESOLUTION NO. 2011 - 284

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO BLUESTEM ENERGY HOLDINGS, LLC (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 1650 FEET FROM THE NORTH LINE AND 990 FEET FROM THE EAST LINE, SECTION 8, BLOCK “X”, T-1-S, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDKIFF ROAD, APPROXIMATELY 3/4 OF A MILE NORTH OF MOCKINGBIRD LANE)

38. Consider a request from Bluestem Energy for a Permit to Drill an Oil and Gas Well within the City Limits located 2310' FSL and 990' FEL, Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. (Generally located on the west side of the N. Midkiff Road, approximately 1/2 mile north of Mockingbird Lane.) (Planning)

RESOLUTION NO. 2011 - 285

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO BLUESTEM ENERGY HOLDINGS, LLC ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 2310 FEET FROM THE SOUTH LINE AND 990 FEET FROM THE EAST LINE, SECTION 8, BLOCK "X", T-1-S, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDKIFF ROAD, APPROXIMATELY ½ MILE NORTH OF MOCKINGBIRD LANE)

39. Consider a resolution authorizing the execution of a road repair agreement with Bluestem Energy Holdings, LLC. (Planning)

RESOLUTION NO. 2011 - 286

RESOLUTION AUTHORIZING THE EXECUTION OF A ROAD REPAIR AGREEMENT WITH BLUESTEM ENERGY HOLDINGS, LLC REGARDING ITS APPLICATIONS TO DRILL OIL AND GAS WELLS WITHIN THE CITY LIMITS IN SECTION 8, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS

40. Consider a resolution authorizing the City Manager to enter into a Professional Services Agreement with Freese and Nichols, Inc. to evaluate and recommend potential water use reduction programs and appropriate funds. (Utilities)

RESOLUTION NO. 2011 - 287

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH FREESE & NICHOLS, INCORPORATED, FOR THE EVALUATION AND RECOMMENDATION OF POTENTIAL WATER USE REDUCTION PROGRAMS, AT A TOTAL COST OF $170,880.00 ; AND APPROPRIATING FUNDS

41. Consider a motion authorizing the City Manager and City Attorney to develop an ordinance prohibiting texting while driving.

42. Consider a motion regarding a request from Tall City Blues Fest to increase the 2011-12 Hotel/Motel Occupancy Tax allocation in the amount of $9,608.97 to the Midland Center to cover expenses incurred by the Tall City Blues Fest. (City Manager)

43. Resolution retaining the law firm of Cotton, Bledsoe, Tighe and Dawson, P.C.

regarding Heritage Consolidated, LLC, (City Attorney)

RESOLUTION NO. 2011 - 288

RESOLUTION AUTHORIZING THE CITY ATTORNEY AND ATTORNEY(S) WITH THE LAW FIRM OF COTTON, BLEDSOE, TIGHE, AND DAWSON, P.C., TO HANDLE ALL LEGAL MATTERS RELATED TO A 45.99 ACRE TRACT OF LAND LOCATED IN SECTION 15, BLOCK 39, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AS DESCRIBED IN VOLUME 2311, PAGE 306 OF THE DEED RECORDS OF MIDLAND COUNTY, TEXAS (WHICH INCLUDES BUT IS NOT LIMITED TO THE REMAINDER OF LOT 1A, BLOCK 1, MIDLAND AIRPARK, SECTION 2, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS; AND LOT 2, BLOCK 1, MIDLAND AIRPARK SECTION 2, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS; AND LOT 4, BLOCK 1, MIDLAND AIRPARK, SECTION 3, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS); THE CITY ATTORNEY AND THE LAW FIRM ARE AUTHORIZED TO FILE LITIGATION, EMPLOY ALL NECESSARY EXPERTS, RESPOND TO SETTLEMENT OFFERS, AND TO EXECUTE ALL MOTIONS AND DISCOVERY DOCUMENTS AND TO MAKE ALL COURT APPEARANCES ON BEHALF OF THE CITY OF MIDLAND

44. Consider a resolution regarding Mountain States Legal Foundation. (City Attorney)

RESOLUTION NO. 2011 - 289

RESOLUTION AUTHORIZING THE OFFICE OF THE CITY ATTORNEY TO EXECUTE ALL DOCUMENTS NECESSARY TO REQUEST ASSISTANCE FROM THE MOUNTAIN STATES LEGAL FOUNDATION, LOCATED AT 2596 SOUTH LEWIS WAY, LAKEWOOD, COLORADO 80227, REGARDING THE DUNES SAGEBRUSH LIZARD AND THE U.S. FISH AND WILDLIFE SERVICE; AND THIS RESOLUTION SPECIFICALLY AUTHORIZES THE DISCLOSURE TO THE MOUNTAIN STATES LEGAL FOUNDATION'S BOARD OF LITIGATION AND BOARD OF DIRECTORS THAT THE CITY OF MIDLAND HAS REQUESTED THE MOUNTAIN STATES LEGAL FOUNDATION'S LEGAL ASSISTANCE AND THE FACTS AND LEGAL ISSUES INVOLVED IN THE CITY OF MIDLAND'S REQUEST REGARDING THE DUNES SAGEBRUSH LIZARD AND THE U.S. FISH AND WILDLIFE SERVICE

45. Consider a resolution authorizing an Economic Development Agreement between the City of Midland and the
Midland Development Corporation (MDC) for improvements to State Highway 349. (Legal)

RESOLUTION NO. 2011 - 290

RESOLUTION AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF

MIDLAND AND THE MIDLAND DEVELOPMENT CORPORATION FOR IMPROVEMENTS TO STATE HIGHWAY 349, AS AUTHORIZED BY CHAPTER 501 OF THE TEXAS LOCAL GOVERNMENT CODE

46. Consider a resolution authorizing an Advance Funding Agreement between the City of Midland and the Texas Dept. of Transportation (TxDOT) for improvements to State Highway 349. (Legal)

RESOLUTION NO. 2011 - 291

RESOLUTION AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE AN ADVANCE FUNDING AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR IMPROVEMENTS TO STATE HIGHWAY 349; AND AUTHORIZING THE MAYOR TO EXECUTE ANY RELATED DOCUMENTS NECESSARY FOR SAID IMPROVEMENTS

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

EXECUTIVE SESSION

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

a. Section 551.071, Consultation with the City Attorney:

1. Discuss with the City Attorney and Attorney(s) with the law firm of Cotton, Bledsoe, Tighe & Dawson, P.C., contemplated litigation involving a 45.99 Acre Tract of Land located in Section 15, Block 39, T-1-S T&P RR Co. Survey, Midland County, Texas and more specifically described in Volume 2311, Page 306 of the Deed Records of Midland County, Texas.

2. Discuss with the City Attorney contemplated litigation with the U.S. Fish and Wildlife Service regarding the Dunes Sagebrush Lizard.

3. Discuss with the City Attorney and Attorneys with the law firm of Cotton, Bledsoe, Tighe, and Dawson, litigation styled in Re: Heritage Consolidated, LLC, Case No. 10-36484-hdh, Chapter 11, Jointly Administered in the United States Bankruptcy Court, Northern District of Texas, Dallas Division.

b. Section 551.072, Deliberation Regarding Real Property

4. The Midland City Council shall conduct a closed meeting to deliberate the purchase and value of real property described as all

of Block 7, Original Town Addition, City and County of Midland, Texas.

49. Extra Materials

Respectfully Submitted,

Courtney B. Sharp
City Manager

MIDLAND CITY COUNCIL
MINUTES
OCTOBER 25, 2011

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 9:17 a.m. on October 25, 2011.

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

Council Members absent: Council Member Scott Dufford (At-Large) and Council Member Vicky Hailey (District 2) (Hailey arrived at 9:27 a.m.).

Staff members present: City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, Assistant City Manager Jim Nichols, City Secretary Amy Turner, Development Services Director Rick Crownover, Utilities Director Stuart Purvis, Chief Information Officer Sharlett Chowning, Airport Director Marv Esterly, Community Services Director Tina Jauz, General Services Director Robert Patrick, Finance Director Bob McNaughton, City Engineer David Beard, Assistant Parks & Recreation Director Kimberly Cornelsen, Transportation Manager Gary Saunders, and Assistant Fire Chief Fritz Niggeler.

BRIEFING SESSION

1. Discuss Issuance of Certificate of Obligation Bonds for Communications, Fire Station, Municipal Court, Parks & Recreation, Information Systems, Streets, Water and Wastewater. (Finance).

   City Manager Sharp gave a brief overview of the City's Strategic Plan and outlined some of the expenditures that would be covered by issuing bonds that included an additional fire station, a new Municipal Court, street paving, radio interoperability, technology upgrades, and park improvements.

   Finance Director McNaughton explained that staff is proposing two issues, one supported by ad valorem taxes and the other supported by the water and sewer system. He reviewed a spreadsheet explaining how the money is proposed to be distributed. He reviewed the preliminary schedule of events and noted that staff would come before Council on November 8th for authorization to proceed with the certificate of obligation issue.

   A discussion ensued regarding the impact on fund balances. Finance Director McNaughton clarified that the pledged 25% would continue to be held.

The foregoing agenda item was discussed by the City Council with no formal action taken. The Briefing Session was adjourned at 9:38 a.m.

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:02 a.m., October 25, 2011.

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

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

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

MISCELLANEOUS

1. The invocation was voiced by Reverend Daniel Hernandez of Mid-Cities Community Church.

2. The Pledge of Allegiance to the Flag was stated.

3. Presentation of special events, organizations, individuals, or periods of time.

No presentations were made.

PUBLIC COMMENT

4. Mayor Perry opened the floor for public comments to allow individuals to address the City Council on city-related issues and projects.

Randal Henson, 2012 Warehouse Road, noted that he is a local builder and that he owns property and had purchased a trailer to haul his own trash. He stated he was told he had to obtain a hauler's permit from the City, which he did. He noted that there are five other people who are hauling trash and who do not have a hauler's permit and asked that the issue be addressed.

There were no other requests by citizens to speak.

CONSENT AGENDA

Council Member Morales moved to approve Consent Agenda items 5-14 and 16; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

5. Approved the minutes of the regular City Council meeting of October 11, 2011.

6. Adopted Resolution No. 2011-245. Caption of said resolution is as follows:

RESOLUTION NO. 2011-245

A RESOLUTION NOMINATING A CANDIDATE FOR THE MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS; AND DIRECTING THE CITY MANAGER TO DELIVER A COPY OF THIS RESOLUTION TO THE MIDLAND CENTRAL APPRAISAL DISTRICT.

7. Adopted Resolution No. 2011-246. Caption of said resolution is as follows:

RESOLUTION NO. 2011-246

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR AN UPGRADE TO THE CONTROL ROOM AT CITIBANK BALL PARK

8. Adopted Resolution No. 2011-247. Caption of said resolution is as follows:

RESOLUTION NO. 2011-247

A RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE REMOVAL AND REPLACEMENT OF THE VIDEO DISPLAY SCREEN AT GRANDE COMMUNICATIONS STADIUM

9. Adopted Resolution No. 2011-248. Caption of said resolution is as follows:

RESOLUTION NO. 2011-248

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE REPLACEMENT OF CONTROL ROOM EQUIPMENT AT GRANDE COMMUNICATIONS STADIUM

10. Adopted Resolution No. 2011-249. Caption of said resolution is as follows:

RESOLUTION NO. 2011-249

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE REMOVAL AND REPLACEMENT OF THE SAFETY PADS ON THE FENCE RAILS AT CITIBANK BALL PARK

11. Adopted Resolution No. 2011-250. Caption of said resolution is as follows:

RESOLUTION NO. 2011-250

RESOLUTION AUTHORIZING THE CITY MANAGER AND THE CITY ATTORNEY TO NEGOTIATE AND EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH

PRIORITY POWER MANAGEMENT, L.L.C., FOR AGGREGATION, CONSULTING AND NEGOTIATION SERVICES REGARDING THE CITY'S ELECTRICITY SUPPLY

12. Adopted Resolution No. 2011-251. Caption of said resolution is as follows:

RESOLUTION NO. 2011-251
RESOLUTION AUTHORIZING THE ACCEPTANCE OF A ROUTINE AIRPORT MAINTENANCE PROGRAM GRANT FROM THE TEXAS DEPARTMENT OF TRANSPORTATION TO PROVIDE AN AUTOMATED WEATHER OBSERVING SYSTEM; AUTHORIZING THE MAYOR, CITY MANAGER AND CITY ATTORNEY TO EXECUTE ALL GRANT DOCUMENTS

13. Approved a preliminary plat of Grandridge Estates, being a 19.04-acre tract of land out of Section 25, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the northwest corner of the intersection of Crowley Boulevard and Rio Grande Avenue.) (Planning)

14. Approved a request by West Company of Midland for Country Sky Addition (Section 11), to approve items requested for deferral ($141,220), waive the public improvement guarantee associated with the deferred items, and enter into an agreement to accept compensation to construct public infrastructure. This subdivision is generally located on the southwest side of the intersection of Briarwood Ave. and Roadrunner Trail, Approximately 350' west of Avalon Dr. (Engineering)

16. Adopted Resolution No. 2011-252. Caption of said resolution is as follows:

RESOLUTION NO. 2011-252
RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDER NUMBER TWO WITH RED RIVER CONSTRUCTION COMPANY, INCORPORATED, ADDING $486,604.00 FOR ADDITIONAL WORK TO THE EXISTING CONTRACT FOR IMPROVEMENTS AT THE MIDLAND INTERNATIONAL AIRPORT AND FOR THE PAUL DAVIS WELL SITES IMPROVEMENTS PROJECT; AND APPROPRIATING $486,604.00; THE ORIGINAL CONTRACT WAS FOR $3,877,740.00; THIS CHANGE ORDER BRINGS THE TOTAL CONTRACT PRICE TO $4,750,756.00

The following items were pulled from consent calendar and considered individually.

15. Consider a motion on a request by West Company of Midland for Northview Addition (Section 12), to approve items requested for deferral ($47,564.00), waive the public guarantee associated with the deferred items and enter into an agreement to accept compensation to construct public infrastructure. This subdivision is generally located on the southwest side of the intersection of Mockingbird Lane and Whitman Drive. (Engineering)

Council Member Sparks spoke about the deferrals noting that the deferral for the sewer really is a waiver because once someone has built a septic system there would be no reason to tie into the sewer line. He pointed out that the other deferral is for the water line noting that the owner does not plan to tie into the water line and it is primarily for future water usage and fire protection. He proposed that rather than have the owner pay the entire cost of the water line he only be charged 50 percent of the cost, that he give the right-of-way so that the line can go in when development happens on the property to the west, that he pay his portion of paving, and asked if possible, that the City Council approval the final plat so that he does not have to wait until the next Planning & Zoning meeting.

Following discussion, Council Member Sparks moved to only charge the owner 50 percent of the cost to install the water line. Due to a lack of a second, the motion died.

Discussion revealed that if the water line is not installed, the money would go in escrow until the time development to the west happened. If the line was installed before the property to the west was developed, the City would pay for the other 50 percent of the cost.

Council Member Sparks moved to approve the request by West Company of Midland for Northview Addition (Section 12), to approve items requested for deferral, waive the public guarantee associated with the deferred items, enter into an agreement to accept compensation to construct public infrastructure, to only charge 50 percent of the cost for the water line, to have the owner dedicate the right-of-way for the water line to be

completed in the future, and to authorize the City Manager to negotiate a development agreement; seconded by Council Member Trost.

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

17. Consider a resolution authorizing the City Manager to advertise a Request for Proposals (RFP) for firms to deliver potable water from any source to the City of Midland; authorizing the City Manager to negotiate a professional services agreement for said services; and providing that said agreement shall not become effective until approved by the City Council. (Utilities)

Following discussion, Council Member Trost moved to adopt Resolution No. 2011-253; seconded by Council Member Sparks.

Mayor Perry spoke briefly about water issues and the need to ensure that every option is placed on the table for consideration.

The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford. Caption of said resolution is as follows:

RESOLUTION NO. 2011-253

RESOLUTION AUTHORIZING ISSUANCE OF A REQUEST FOR PROPOSALS FOR FIRMS TO DELIVER POTABLE WATER TO THE CITY OF MIDLAND, IN QUANTITIES SUFFICIENT TO MEET THE CITY'S WATER NEEDS, FROM ANY AVAILABLE SOURCE; AUTHORIZING THE CITY MANAGER TO NEGOTIATE AN AGREEMENT WITH THE CHOSEN FIRM FOR THE PERFORMANCE OF SAID SERVICES; AND SAID AGREEMENT SHALL NOT BE EXECUTED UNTIL APPROVED BY THE CITY COUNCIL

18. Consider a resolution authorizing the City Manager to advertise a Request for Proposals (RFP) for firms to develop and operate the T-Bar Well Field; authorizing the City Manager to negotiate a professional services agreement for said services; and providing that said agreement shall not become effective until approved by the City Council. (Utilities)

Following brief discussion, Council Member Trost moved to adopt Resolution No. 2011-254; seconded by Council Member Sparks.

Discussion ensued regarding the time frame of the RFP. City Manager Sharp noted that the RFP's were due before Thanksgiving and that Staff would come back before Council at the first part of the year.

The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford. Caption of said resolution is as follows:

RESOLUTION NO. 2011-254

RESOLUTION AUTHORIZING ISSUANCE OF A REQUEST FOR PROPOSALS FOR FIRMS TO DEVELOP AND OPERATE THE T-BAR RANCH WELL FIELD LOCATED IN LOVING COUNTY, TEXAS AND IN WINKLER COUNTY, TEXAS; AUTHORIZING THE CITY MANAGER TO NEGOTIATE A PROFESSIONAL SERVICES AGREEMENT WITH THE CHOSEN FIRM FOR THE PERFORMANCE OF SAID SERVICES; AND SAID AGREEMENT SHALL NOT BE EXECUTED UNTIL APPROVED BY THE CITY COUNCIL

19. Consider a resolution approving the acceptance of a bid made for the purchase of real property described as Lots 7 & 8, Block 34, Greenwood Addition, City of Midland, Midland County, Texas, commonly known as 309 South Stonewall. (Code Administration)

Following discussion, Council Member Sparks moved to not accept the bid for the purchase of the property commonly known as 309 South Stonewall; seconded by Council Member Trost.

Discussion ensued about the bid being too low noting that the value of the property on the tax role was listed as $1540. An argument was raised that a new owner would begin

to pay taxes. Opposing arguments noted that if this property was sold for $250 it would lower the value of the other properties and their taxes would go down as well.

The motion to reject the bid was approved by the following vote: AYE: Trost, Hailey, Perry, James, and Sparks. NAY: Morales. ABSTAIN: None. ABSENT: Dufford.

20. Consider a resolution regarding a lease at the Midland International Airport with Lucky Air, L.L.C.

Council Member Morales noted that he received calls from the Airport Board regarding the wording of the resolution and asked why the Airport Manager would negotiate a lease at the airport when the resolution says that the City Manager would negotiate the lease.

City Manager Sharp clarified that the negotiations are handled by the most experienced person and he often relies on the expertise of his department managers.

Discussion ensued about how negotiations are handled noting that often the department, Legal and City Manager's office are all involved at some point. The role of the Airport Board was also discussed.

Council Member Sparks moved to adopt Resolution No. 2011-256; seconded by Council Member Morales.

Following discussion, Council Member Sparks moved to call the question; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

The original motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford. Caption of said resolution is as follows:

RESOLUTION NO. 2011-256

RESOLUTION AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO NEGOTIATE A LEASE AGREEMENT WITH LUCKY AIR, LLC, FOR THE USE OF CERTAIN LAND AT THE MIDLAND INTERNATIONAL AIRPORT; LUCKY AIR, L.L.C., WILL CONSTRUCT A HANGAR ON THE LEASED PREMISES; AND THE LEASE WILL NOT BE EFFECTIVE UNTIL APPROVED BY A RESOLUTION OF THE MIDLAND CITY COUNCIL

Mayor Perry moved forward Agenda Item number 23.

SECOND READINGS

23. Consider an ordinance on second reading prohibiting parking at anytime on a portion of the west side of Northrup Drive north of Sinclair Avenue and on the south side of Sinclair Avenue between Northrup Drive and Hughes Street except to residents who have obtained a valid parking permit. (Transportation) (First reading held October 11, 2011)

City Secretary Turner read the caption of Ordinance No. 8950.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 8950 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks.

Council Member Trost moved to amend the motion and waive the $5 fee for permits; seconded by Council Member Hailey. The motion to amend failed by the following vote: AYE: Morales, Trost, and Hailey. NAY: Perry, James, and Sparks. ABSTAIN: None. ABSENT: Dufford.

The original motion carried by the following vote: AYE: Morales, Hailey, Perry, James, and Sparks. NAY: Trost. ABSTAIN: None. ABSENT: Dufford. Caption of said ordinance is as follows:

ORDINANCE NO. 8950

AN ORDINANCE PROHIBITING PARKING ON THE WEST SIDE OF NORTHRUP DRIVE FROM A POINT 242 FEET SOUTH OF THE CENTERLINE OF GULF AVENUE, INCLUDING 1907 NORTHRUP DRIVE, CONTINUING NORTH TO THE SOUTH CURB LINE OF NEELY AVENUE AND ON THE SOUTH SIDE OF SINCLAIR AVENUE BETWEEN NORTHRUP DRIVE AND HUGHES STREET EXCEPT TO RESIDENTS

WHOSE PROPERTY ABUTS SUCH STREET AND HAVE OBTAINED A VALID PARKING PERMIT; AUTHORIZING AND DIRECTING THE TRAFFIC ENGINEER TO ERECT APPROPRIATE SIGNS; DECLARING ANY VEHICLE IN VIOLATION OF THE PROVISIONS OF THIS ORDINANCE A NUISANCE AND PROVIDING FOR THE REMOVAL OF SAME; CONTAINING A CUMULATIVE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS ($200.00); AND ORDERING PUBLICATION

Mayor Perry moved forward Public Hearings.

PUBLIC HEARINGS

24. Consider a request by SBC, LP. for a zone change from FD, Future Development District to PD, Planned District for a Housing Development on a 16.63-acre tract of land.

Planning Division Manager Walker gave an overview of the item noting it was creating a new neighborhood that is an extension of the Grandridge area near Lowe's. He noted the Planning Commission recommended unanimous approval.

Mayor Perry opened the public hearing at 11:10 a.m.

Doug Henson, 1811 Heritage, distributed pictures of the two variances they were requesting. The first variance was for a 5 foot setback rather than a 20-25 foot setback. He felt this was appropriate in light of water restrictions as it reduces the amount of landscaping. He explained that the second variance was for the elimination of a backyard which would instead be replaced with a garage. He noted that the only people affected by the variances would be the homeowners who desired this type of construction and explained that this is the continuation of a product that has been well accepted.

There being no one else present wishing to speak, the public hearing was closed at 11:14 a.m.

City Secretary Turner read the caption of Ordinance No. 8951.

Council Member James moved approval of the first of two readings of Ordinance No. 8951 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey.

Following discussion, the motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford. Caption of said ordinance is as follows:

ORDINANCE NO. 8951

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 16.63-ACRE TRACT OF LAND (BEING 19.04 ACRES INCLUSIVE OF DEDICATED RIGHTS-OF-WAY) OUT OF SECTION 25, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE NORTHWEST CORNER OF CROWLEY BOULEVARD AND RIO GRANDE AVENUE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

25. Consider a request by City of Midland for a zone change from 1F-2, One-Family Dwelling District to 1F-3, One-Family Dwelling. (Planning)

Planning Division Manager Walker gave an overview of the item noting that this would provide affordable housing in the central part of Midland. He explained that the Planning & Zoning Commission received comments from the neighborhood residents objecting to the proposal with a majority of the comments objecting to the building materials. He stated one letter of objection had been received and distributed copies of the letter to the Council.

Community Development Manager Sylvester Cantu showed maps of the target areas selected.

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

Rene Larez 1314 E. Golf Course Road, stated that more lights would make it feel more crowded and asked if this were being built in one of the Council Member's neighborhoods if they would want these homes to be built.

Council Member James clarified that the resident did not want to stop anything from being built but wanted one house built per lot.

Patrick Aleman, 1312 E. Golf Course Road, stated he did not feel that was the appropriate use for the land and felt building conventional houses would be a better option.

Rene Larez, stated that if this were to be approved it would be better to consolidate lots on Jackson but not on Hamby.

Patrick Aleman, asked Council to reject the request and deny the application.

There being no one else present wishing to speak, the public hearing was closed at 11:30 a.m.

City Secretary Turner read the caption of Ordinance No. 8952.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 8952 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks.

David Diaz and Alynda Best were invited forward to answer questions. Discussion revealed that the homes would be siding with partial brick and could be all brick if the homeowner chooses. Ms. Best clarified that landscaping would be up to homeowners but they encourage the homeowner to wait until the water restrictions are lifted. She also noted that there would be a complete fence in the back.

David Diaz noted that most of their homes are purchased by single parent families and having a smaller yard is important as it can be a burden to the homeowner if there is too much landscaping.

Following discussion, Council Member James moved to amend the motion to not consolidate the lots on the Hamby block; seconded by Council Member Hailey. The motion to amend failed by the following vote: AYE: Hailey and James. NAY: Morales, Trost, Perry and Sparks. ABSTAIN: None. ABSENT: Dufford.

The original motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford. Caption of said ordinance is as follows:

ORDINANCE NO. 8952

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 9-14, BLOCK 1, LOTS 1-8, BLOCK 2, LOTS 3-8, BLOCK 3, LOTS 1-8, BLOCK 4, GLENN FRANCES ADDITION; LOTS 3-10, BLOCK 4, LOTS 1-9, BLOCK 5, GLENMORE HEIGHTS; AND THE NORTHEAST 5 ACRES OF BLOCK 79, EAST MIDLAND, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 1F-2, ONE-FAMILY DWELLING DISTRICT, TO BE USED AS A 1F-3, ONE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF EAST GOLF COURSE ROAD AND TILDEN STREET); 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

26. Public hearing regarding a request by Bluestem Energy Holdings, LLC. (Evans "J" #1) for a Permit to drill an Oil and Gas Well within the City Limits located 2322' FSL and 2310' FEL, Section 8, Block "X", H. P. Hilliard Survey, Midland County, Texas. (Generally located on the west side of the N. Midkiff Road, approximately ½ mile north of Mockingbird Lane.) (Planning)

Oil and Gas Compliance Officer Ron Jenkins gave an overview of the item noting that this is the same location as the other Bluestem Energy wells that were discussed at the last City Council meeting.

Mayor Perry opened the public hearing at 11:49 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

No further action was taken on this item.

27. Public hearing regarding a request by Callon Petroleum (Annie #3) for a Permit to drill an Oil and Gas Well within the City Limits located 849' FNL and 2087' FEL, Section 48, Block 41, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the west side S. FM 1788, approximately 1 mile south of State Hwy 191.) (Planning)

Oil and Gas Compliance Officer Jenkins gave an overview of the item noting that the applicant is requesting a variance for landscaping and a waiver for the road repair agreement because no City roads would be used. He stated that the Oil and Gas Advisory Committee had approved the item and that one citizen made a general comment expressing concern about approving wells within the city limits.

Mayor Perry opened the public hearing at 11:52 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

No further action was taken on this item.

28. Public hearing regarding a request by Callon Petroleum (Annie #8) for a Permit to drill an Oil and Gas Well within the City Limits located 671' FNL and 1197' FEL, Section 48, Block 41, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the west side S. FM 1788, approximately 1 mile south of State Hwy 191.) (Planning)

Oil and Gas Compliance Officer Jenkins gave an overview of the item noting the applicant was requesting a variance from the 500 foot rule because the closest building was 328 feet to the south. He noted that they were also requesting landscaping and road repair waivers.

Mayor Perry opened the public hearing at 11:55 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

No further action was taken on this item.

Council Member Morales suggested that when landscaping is waived a contribution could be made to the Park Endowment Fund instead.

29. Consider a request by McClatchy Bros Inc. for a Temporary Land Use Permit for a Pipe Yard on a 22.31-acre tract of land. (Planning)

Planning Division Manager Walker gave an overview of the item noting that Staff recommended approval but would not recommend a second renewal.

Mayor Perry opened the public hearing at 12:00 noon.

Randal Henson, 2012 Warehouse Road, stated that last year he was against this item and had thought about purchasing the property. He explained that there is a lot of 18-wheeler traffic up and down the road which produces a lot of dust. He said it is difficult to breathe sometimes because there is so much dust.

Richard Minnix, McClatchy Bros, clarified that it is not just his trucks that drive that road but there are a lot of other businesses that create the truck traffic. He stated this is just a temporary use for one more year until he can find a bigger plot of land.

Randal Henson requested that the city post a speed limit sign on the road to help slow traffic.

There being no one else present wishing to speak, the public hearing was closed at 12:13 p.m.

Council Member Trost moved approval of Resolution No. 2011-257; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales,

Trost, Hailey, Perry, James, and Sparks. NAY: Hailey. ABSTAIN: None. ABSENT: Dufford. Caption of said resolution is as follows:

RESOLUTION NO. 2011-257

A RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR A PIPE YARD ON A 22.31-ACRE TRACT OF LAND OUT OF THE SOUTHWEST QUARTER OF SECTION 5, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF WEST INTERSTATE 20 AND WAREHOUSE ROAD); MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

30. Consider a request by Midland Community Theatre for a Temporary Land Use Permit for an Outdoor Event on a 4.68-acre tract of land. (Planning)

Planning Division Manager Walker gave an overview of the item noting that this was for a single event to be held by the Midland Community Theatre as a fundraiser on their property with outdoor music, cooking, and the sale of alcoholic beverages. He noted that overflow parking would be sent to Midland College and that one officer would be on site at all times. He stated that no letters of objection had been received.

Mayor Perry opened the public hearing at 12:16 p.m. There being no one present wishing to speak, the public hearing was immediately closed.

Council Member Hailey moved approval of Resolution No. 2011-258; seconded by Council Member Trost.

Tim Jebsen, of Midland Community Theatre was invited forward to speak. He noted cooking would happen overnight on Friday and that all music and activities would take place on Saturday.

The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford. Caption of said resolution is as follows:

RESOLUTION NO. 2011-258

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR AN OUTDOOR EVENT ON A 4.68-ACRE TRACT OF LAND OUT OF SECTION 15, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF WEST WADLEY AVENUE, APPROXIMATELY 1,000 FEET EAST OF NORTH GARFIELD STREET); AND MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

31. Consider allowing continued taxation of Tangible Personal Property in Transit per Senate Bill 1 and consider a resolution to constitute “official action by governing body” as required. (Finance)

Finance Director McNaughton gave an overview of the item noting that to continue taxing tangible personal property the City Council needs to take action.

Mayor Perry opened the public hearing at 12:20 p.m.

Jerry Bundick, 3312 Haynes, explained that tangible personal property in transit is property that is imported, acquired and brought into State of Texas and later transported somewhere else in state or out of state within 175 days. He noted that the loss of the funds would not be a major impact to the City of Midland. He further clarified that if the Council were to take no action the exemption would go into effect immediately and the City could no longer collect taxes for those goods.

There being no one else present wishing to speak, the public hearing was closed at 12:32 p.m.

Council Member James moved approval of Resolution No. 2011-259; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, and James. NAY: Sparks. ABSTAIN: None. ABSENT: Dufford. Caption of said resolution is as follows:

RESOLUTION NO. 2011-259

A RESOLUTION PROVIDING FOR THE CONTINUED TAXATION OF GOODS-IN-TRANSIT AS ALLOWED UNDER SENATE BILL NUMBER 1 WHICH WAS ENACTED BY THE TEXAS LEGISLATURE IN THE 82ND LEGISLATURE FIRST SPECIAL SESSION

Mayor Perry returned to the unheard Second Readings.

SECOND READING (CONTINUED)

21. Consider an ordinance on second reading on a request by Insignia Hospitality Group, Inc. for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District. (Planning) (First reading held October 11, 2011)

City Secretary Turner read the caption of Ordinance No. 8948.

Council Member Trost moved to approve the second and final reading of Ordinance No. 8948 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford. Caption of said ordinance is as follows:

ORDINANCE NO. 8948

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 8 AND 9, BLOCK 3, WESTRIDGE PARK ADDITION, SECTION 16, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED NEAR THE NORTHEAST CORNER OF CATALINA DRIVE AND DEAUVILLE 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

22. Consider an ordinance on second reading providing the maximum time limit for parking upon a portion of "N" Street of two hours and repealing Ordinance No. 6757. (Transportation) (First reading held October 11, 2011)

City Secretary Turner read the caption of Ordinance No. 8949.

Council Member Sparks moved to approve the second and final reading of Ordinance No. 8949 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, and Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford. Caption of said ordinance is as follows:

ORDINANCE NO. 8949

AN ORDINANCE PROVIDING THE MAXIMUM TIME LIMIT FOR PARKING ON A PORTION OF “N” STREET FROM THE SOUTH CURB LINE OF TENNESSEE AVENUE, SOUTH TO THE EAST/WEST ALLEY BETWEEN OHIO AVENUE AND ILLINOIS AVENUE 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

MISCELLANEOUS

32. Consider a resolution authorizing issuance of an operating certificate for My Shuttle Home MODE. (Police)

Council Member Hailey moved to adopt Resolution No. 2011-260; seconded by Council Member Trost.

Council Member James noted that he would be abstaining from voting on this item.

The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, and Sparks. NAY: None. ABSTAIN: James. ABSENT: Dufford. Caption of said resolution is as follows:

RESOLUTION NO. 2011-260

RESOLUTION AUTHORIZING AN OPERATING CERTIFICATE FOR ELF HOLDINGS, INC. D.B.A. MY SHUTTLE HOME MODE, TO OPERATE A SHUTTLE SERVICE BUSINESS; SETTING FORTH CONDITIONS ACCOMPANYING THE CERTIFICATE; AND ESTABLISHING THE TERMS OF THE CERTIFICATE

33. Consider a motion regarding a request from Tall City Blues Fest to increase the 2011-12 Hotel/Motel Occupancy Tax allocation in the amount of $9,608.97 to the Midland Center to cover expenses incurred by the Tall City Blues Fest. (City Manager)

Council Member Trost moved to approve a request from Tall City Blues Fest to increase the 2011-12 Hotel/Motel Occupancy Tax allocation in the amount of $9.608.97 to the Midland Center to cover expenses incurred by the Tall City Blues Fest; seconded by Council Member Hailey.

Discussion ensued about if the Council should consider hearing this item or if they should be sent to the Hotel/Motel Board.

Discussion revealed that Hotel/Motel funds have provided $15,000 to Tall City Blues Fest with an additional $10,000 from the City Council for a total thus far of $25,000 and that the request is for an additional $9,608.97.

Discussion ensued about the amount that has been contributed to other organizations. Council Member James noted that supporting this item would be consistent with the interest in moving activities to the downtown and felt it was a reasonable request.

A brief discussion was held regarding giving money to the DMMD for distribution for events such as this so that they would not have to compete with other agencies for Hotel/Motel funding.

Lisa Grissom, 3600 N. Midland Drive, noted that in her presentation to the City Council she explained that there would not be a 2012 event if the 2011 losses were not covered. She noted that the $9,000 is for fees charged for the use of the Midland Center and Centennial Plaza. She explained that if those fees could be waived then the 2012 festival could happen. She felt that the Council could support this item because it promotes tourism to the downtown and asked that the fees be waived. She explained that she came to the City Council rather than the Hotel/Motel Board because of the timing of the festival.

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

Council member James requested that the item be placed on the next agenda for reconsideration when the full Council would be present.

34. Consideration of appointments to various Boards and Commissions.

No appointments were made.

RECESS/EXECUTIVE SESSION

36. Mayor Perry announced that the meeting would be recessed to the conference room for lunch and an update would be received regarding Citywide development issues.

37. Mayor Perry announced that pursuant to Texas Government Code Section 551.101, the Council would now hold an Executive Session, closed to the public, to discuss the following matters as permitted under the following Texas Government Code Sections:

Section 551.071, Consultation with the City Attorney

Discuss with the City Attorney and Attorneys with the law firm of Cotton, Bledsoe, Tighe, and Dawson, litigation styled In Re: Heritage Consolidated, LLC, Case No. 10-36484-hdh, Chapter 11, Jointly Administered, in the United States Bankruptcy Court, Northern District of Texas, Dallas Division.

Discuss with the City Attorney a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.

Discuss with the City Attorney and Attorney(s) with the law firm of Cotton, Bledsoe, Tighe and Dawson contemplated litigation regarding a 45.99 acre tract of land located in Section 15, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas.

Mayor Perry recessed the meeting to Executive Session at 12:59 p.m. The entire Council met in executive session until 2:50 p.m.

All of the business at hand having been completed, the meeting adjourned at 2.50 p.m.

PASSED AND APPROVED the 8th day of November, 2011.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Bob McNaughton, Director of Finance**

SUBJECT: **Approval and Notice of Intent to Issue 2012 Debt**

Purpose:

Resolution approving as to amount and purpose and authorize publication of notice of intent to issue 2012 Certificates of Obligation.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

None

Discussion:

Notice of the issue is to be posted at City Hall on December 17 and remain posted until sale of the Certificates on January 24, 2012. Additionally, notice is to be published in the Midland Reporter Telegram on December 17 and December 24.

Attachment 1 is a schedule of events leading to the issuance of the Certificates.

Attachment 2 is a summary of uses of the Certificates.

Attachment 3 is the Notice of Intent to Issue for Publication.

RESOLUTION NO.

RESOLUTION APPROVING AND AUTHORIZING PUBLICATION OF NOTICE OF INTENTION TO ISSUE SERIES 2012 CERTIFICATED OF OBLIGATION IN AN AMOUNT NOT TO EXCEED THIRTY-ONE MILLION ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ($31,150,000.00); AND AUTHORIZING AND DIRECTING THE CITY SECRETARY TO CAUSE NOTICES TO BE PUBLISHED AND POSTED

WHEREAS, the City Council of the City of Midland, Texas, has determined that certificates of obligation should be issued under and pursuant to the provisions of V.T.C.A., Local Government Code, Subchapter C of Chapter 271, as amended, for the purpose of paying contractual obligations to be incurred for the construction, improvement, and acquisition of public works and equipment, to wit: (i) acquiring and installing a voice and data communication system for public services, including police and fire departments, (ii) improving, constructing and equipping fire fighting facilities, (iii) improving, constructing and equipping park and recreational facilities, (iv) improving and equipping the City's information technology system, (v) constructing and improving streets, including drainage, landscaping, curbs, gutters, sidewalks, signage and traffic signalization incidental thereto and the acquisition of land and rights-of-way therefor and (vi) paying for professional services in relation to such projects and the financing thereof; and

WHEREAS, prior to the issuance of such certificates, the City Council is required to publish notice of its intention to issue the same in a newspaper of general circulation in the City, said notice stating (i) the time and place the Council tentatively proposes to pass the ordinance authorizing the issuance of the certificates, (ii) the maximum amount proposed to be issued, (iii) the purposes for which the certificates are to be issued, and (iv) the manner in which the Council proposes to pay the certificates;

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

SECTION ONE. That the City Secretary is hereby authorized and directed to cause notice to be published of the Council's intention to issue certificates of obligation in the principal amount not to exceed THIRTY-ONE MILLION ONE HUNDRED FIFTY THOUSAND DOLLARS ($31,150,000.00) for the purpose of paying contractual obligations to be incurred for the construction, improvement and acquisition of public works and equipment, to wit: (i) acquiring and installing a voice and data communication system for public services, including police and fire departments, (ii) improving, constructing and equipping fire fighting facilities, (iii) improving, constructing and equipping park and recreational facilities, (iv) improving and equipping the City's information technology system, (v) constructing and improving streets, including drainage, landscaping, curbs, gutters, sidewalks, signage and traffic signalization incidental thereto and the acquisition of land and rights-of-way therefor and (vi) paying for professional services rendered in relation to such projects and the financing thereof, such certificates to be payable from ad valorem taxes and a limited pledge of the net revenues of the City's water and sewer system. The notice hereby approved and authorized to be published shall read substantially in the form and content as shown in Exhibit "A" attached hereto and incorporated herein for all legal purposes.

SECTION TWO. That the City Secretary shall cause the aforesaid notice to be published in a newspaper of general circulation in the City, once a week for two (2) consecutive weeks, the date of the first publication to be at least thirty-one (31) days prior to the date stated therein for the final passage of the ordinance authorizing the issuance of the certificates of obligation.

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., 2011, 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:

_____
Robert McNaughton, Director of Finance

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City of Midland

Preliminary Schedule of Events
For Certificates of Obligation, Series 2012

Date	Event
Wednesday, November 2, 2011	Review with Finance and Audit Committee
Tuesday, November 8, 2011	Direction from City Council on proceeding with Certificate of Obligation issue
Tuesday, November 8, 2011 or Tuesday, December 13, 2011	City Council act on Resolution to publish Notice of Intention to issue Certificates of Obligation
Wednesday, November 9, 2011	Initiate preparation of Preliminary Official Statement
Saturday, December 24, 2011	Last date for 1st publication of Notice of Intention to issue Certificates of Obligation (1st publication must precede January 24, 2012 date for authorization by at least **31** days). 2nd publication must occur on same day of following week.
Tuesday, December 27, 2011	Submit Preliminary Official Statement and information to rating agencies
Wednesday, January 4, 2012 - Tuesday, January 10, 2012	Discussions with rating agencies
Monday, January 16, 2012	Receive ratings Distribute Preliminary Official Statement
Monday, January 23, 2012	If negotiated sale – pricing of issue by underwriters, overseen by First Southwest Company
Tuesday, January 24, 2012	City Council: Sale of Certificate of Obligation issue; Ordinance Authorizing Issuance of Certificates of Obligation
Thursday, February 23, 2012	Delivery of Certificates of Obligation, receipt of proceeds by City

SOURCES AND USES OF FUNDS

Midland, Texas
Certificates of Obligation, Series 2012
Current Rates as of 10/27/2011 +60bps
(preliminary)

==========

Dated Date	02/23/2012
Delivery Date	02/23/2012

Sources:	General Purpose Portion	Water & Sewer Supported Portion	Total
Bond Proceeds:			
Par Amount	14,375,000.00	16,775,000.00	31,150,000.00
	14,375,000.00	16,775,000.00	31,150,000.00

Uses:	General Purpose Portion	Water & Sewer Supported Portion	Total
Project Fund Deposits:			
Project Fund	14,185,000.00	16,550,000.00	30,735,000.00
Delivery Date Expenses:			
Cost of Issuance	103,000.00	122,000.00	225,000.00
Underwriter's Discount	87,000.00	103,000.00	190,000.00
	190,000.00	225,000.00	415,000.00
	14,375,000.00	16,775,000.00	31,150,000.00

Note: preliminary

BOND DEBT SERVICE

Midland, Texas
Certificates of Obligation, Series 2012
Current Rates as of 10/27/2011 +60bps
(preliminary)

Period Ending	Principal	Interest	Debt Service
09/30/2013	355,000	2,013,317.27	2,368,317.27
09/30/2014	1,075,000	1,289,549.23	2,364,549.23
09/30/2015	1,120,000	1,242,774.71	2,362,774.71
09/30/2016	1,170,000	1,193,975.77	2,363,975.77
09/30/2017	1,225,000	1,142,939.32	2,367,939.32
09/30/2018	1,275,000	1,089,665.37	2,364,665.37
09/30/2019	1,330,000	1,034,153.92	2,364,153.92
09/30/2020	1,390,000	976,191.87	2,366,191.87
09/30/2021	1,450,000	915,672.66	2,365,672.66
09/30/2022	1,510,000	852,596.30	2,362,596.30
09/30/2023	1,580,000	786,749.69	2,366,749.69
09/30/2024	1,645,000	718,026.29	2,363,026.29
09/30/2025	1,715,000	646,426.11	2,361,426.11
09/30/2026	1,790,000	571,736.03	2,361,736.03
09/30/2027	1,875,000	493,636.42	2,368,636.42
09/30/2028	1,950,000	412,127.27	2,362,127.27
09/30/2029	2,035,000	327,208.59	2,362,208.59
09/30/2030	2,125,000	238,560.75	2,363,560.75
09/30/2031	2,220,000	145,970.63	2,365,970.63
09/30/2032	2,315,000	49,331.68	2,364,331.68
	31,150,000	16,140,609.88	47,290,609.88

Note: preliminary

BOND DEBT SERVICE

Midland, Texas
General Purpose Portion
Current Rates as of 10/27/2011 +60bps
(preliminary)

Period Ending	Principal	Interest	Debt Service
09/30/2013	165,000	929,074.01	1,094,074.01
09/30/2014	495,000	595,070.02	1,090,070.02
09/30/2015	515,000	573,547.35	1,088,547.35
09/30/2016	540,000	551,065.74	1,091,065.74
09/30/2017	565,000	527,518.65	1,092,518.65
09/30/2018	590,000	502,906.09	1,092,906.09
09/30/2019	615,000	477,228.05	1,092,228.05
09/30/2020	640,000	450,484.53	1,090,484.53
09/30/2021	670,000	422,568.98	1,092,568.98
09/30/2022	695,000	393,481.40	1,088,481.40
09/30/2023	730,000	363,115.24	1,093,115.24
09/30/2024	760,000	331,363.96	1,091,363.96
09/30/2025	790,000	298,334.12	1,088,334.12
09/30/2026	825,000	263,919.15	1,088,919.15
09/30/2027	865,000	227,905.96	1,092,905.96
09/30/2028	900,000	190,294.55	1,090,294.55
09/30/2029	940,000	151,084.92	1,091,084.92
09/30/2030	980,000	110,170.53	1,090,170.53
09/30/2031	1,025,000	67,444.82	1,092,444.82
09/30/2032	1,070,000	22,801.25	1,092,801.25
	14,375,000	7,449,379.32	21,824,379.32

Note: preliminary

BOND DEBT SERVICE

Midland, Texas
Water & Sewer Supported Portion
Current Rates as of 10/27/2011 +60bps
(preliminary)

Period Ending	Principal	Interest	Debt Service
09/30/2013	190,000	1,084,243.26	1,274,243.26
09/30/2014	580,000	694,479.21	1,274,479.21
09/30/2015	605,000	669,227.36	1,274,227.36
09/30/2016	630,000	642,910.03	1,272,910.03
09/30/2017	660,000	615,420.67	1,275,420.67
09/30/2018	685,000	586,759.28	1,271,759.28
09/30/2019	715,000	556,925.87	1,271,925.87
09/30/2020	750,000	525,707.34	1,275,707.34
09/30/2021	780,000	493,103.68	1,273,103.68
09/30/2022	815,000	459,114.90	1,274,114.90
09/30/2023	850,000	423,634.45	1,273,634.45
09/30/2024	885,000	386,662.33	1,271,662.33
09/30/2025	925,000	348,091.99	1,273,091.99
09/30/2026	965,000	307,816.88	1,272,816.88
09/30/2027	1,010,000	265,730.46	1,275,730.46
09/30/2028	1,050,000	221,832.72	1,271,832.72
09/30/2029	1,095,000	176,123.67	1,271,123.67
09/30/2030	1,145,000	128,390.22	1,273,390.22
09/30/2031	1,195,000	78,525.81	1,273,525.81
09/30/2032	1,245,000	26,530.43	1,271,530.43
	16,775,000	8,691,230.56	25,466,230.56

Note: preliminary

EXHIBIT A

NOTICE OF INTENTION TO ISSUE
CITY OF MIDLAND, TEXAS
CERTIFICATES OF OBLIGATION

TAKE NOTICE that the City Council of the City of Midland, Texas, shall convene at 10:00 A.M. on the 24th day of January, 2012, at Midland City Hall at 300 N. Loraine, Midland, Texas, and, during such meeting, the City Council will consider the final passage of an ordinance authorizing the issuance of certificates of obligation in an amount not to exceed THIRTY-ONE MILLION ONE HUNDRED FIFTY THOUSAND DOLLARS ($31,150,000) for the purpose of paying contractual obligations to be incurred for the construction, improvement, and acquisition of public works and equipment, to wit: (i) acquiring and installing a voice and data communication system for public services, including police and fire departments, (ii) improving, constructing and equipping fire fighting facilities, (iii) improving, constructing and equipping park and recreational facilities, (iv) improving and equipping the City's information technology system, (v) constructing and improving streets, including drainage, landscaping, curbs, gutters, sidewalks, signage and traffic signalization incidental thereto and the acquisition of land and rights-of-way therefor and (vi) paying professional services rendered in relation to such projects and the financing thereof, such certificates to be payable from ad valorem taxes and a limited pledge of the net revenues of the City's water and sewer system. The certificates are to be issued and this notice is given under and pursuant to the provisions of V.T.C.A., Local Government Code, Subchapter C of Chapter 271, as amended.

Amy Turner
City Secretary
City of Midland, Texas

City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Bob McNaughton, Director of Finance**

SUBJECT: **Resolution approving Fiscal Year 2012 Investment Policy**

Purpose:

Provide for approval of City's Investment Policy.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

Management of City funds under the proposed investment policy has provided returns of 1.1811% during the past year as compared to .0841% for Three Month Treasury Bills and State chartered pools returning .1303% to .1284%.

Discussion:

The Public Funds Investment Act (PFIA), Chapter 2256, Texas Government Code as amended by S.B. 1 (effective 09-01-11) requires that each investing entity adopt a written investment policy, and review and amend the policy annually (both actions to be by written instrument).

The attached policy was reviewed and approved by the Finance and Audit Committee on 11-2-11.

RESOLUTION NO.

RESOLUTION APPROVING THE CITY OF MIDLAND'S FISCAL YEAR 2012 INVESTMENT POLICY

WHEREAS, Chapter 2256 of the Texas Government Code, known as the Public Funds Investment Act, provides for the investment of City funds in certain authorized securities; and

WHEREAS, by Resolution No. 2010-306 the City Council previously approved an investment policy for the City of Midland, Texas; and

WHEREAS, the City Council having reviewed the terms, instruments, and strategies, finds it to be in the public interest to approve an investment policy which authorizes the investment of City funds and provides for the preservation of City capital;

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

SECTION ONE. That the City of Midland Fiscal Year 2012 Investment Policy, being on file in the office of the City Secretary and referenced by the number and date of this Resolution, which provides for the investment of City funds and the preservation of City capital, is hereby approved.

SECTION TWO. That Resolution No. 2010-306 is hereby repealed and rescinded.

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., 2011, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

_____
Robert McNaughton, Director of Finance

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

CITY OF MIDLAND

INVESTMENT POLICY

November 1, 2011

INVESTMENT POLICY

I. SCOPE

This policy is developed in accordance with the Public Funds Investment Act of 1987 as amended (the Act). This investment policy applies to all investment activities of the City of Midland. This policy serves to satisfy the statutory requirements to define and adopt a formal investment policy. This policy is to be used in conjunction with the Act to prescribe the investment activities of the City of Midland.

FUNDS INCLUDED:

All financial assets of all funds of the City of Midland, Texas at the present time and any funds to be created in the future shall be administered in accordance with the provisions of the Act and this policy. For investment purposes, all funds of the City shall be combined in a common pool, placed in a segregated fund, or placed with external manager(s), except as provided by applicable federal or state statute, City ordinance, or other law. In the common pool(s), investment earnings (losses) shall be proportionately allocated according to the source of funds.

FUNDS EXCLUDED:

None

II. STRATEGY AND OBJECTIVES

The following objectives apply to both the common pool or discrete funds. The primary investment strategy for segregation of funds from the common pool is to further insure liquidity, i.e. bond funds for capital projects. Other funds with reduced liquidity needs may be segregated for longer term investments, i.e. for bond reserve funds. Separate fund segregation may be done to satisfy other ordinance or statute provisions.

The basic strategy, to be reviewed not less than quarterly, is to concentrate the portfolio(s) with shorter average maturity in periods of rising rates and consider longer maturities as rates fall.

The strategy to maintain most of the total portfolio in the common fund is to provide greater investment flexibility and enhance liquidity compared to small individual funds.

SUITABILITY and the PUBLIC TRUST:

All participants in the investment process shall act responsibly as custodians of the public trust, and they shall avoid any transactions that might impair public confidence. Investments shall be made not for speculation but for safety of capital, liquidity, as well as the probable income to be derived, taking not only the individual transaction but the portfolio as a whole into consideration.

II. STRATEGY AND OBJECTIVES (continued)

SAFETY:

The primary objective of the City's investment policy is the preservation of capital. Each investment transaction shall seek to avoid capital losses from securities defaults and/or erosion of market value. The market value of each investment shall be determined monthly based upon the last market day of the month from the Wall Street Journal or Bloomberg service where required. These valuations will be a part of the quarterly reports submitted annually to an independent auditor.

LIQUIDITY AND MARKETABILITY:

The City's investment portfolio(s) will remain sufficiently liquid to enable the City to meet operating requirements that might be reasonably anticipated. Liquidity shall be achieved by matching investment maturities with forecasted cash flow requirements. Liquidity and marketability will be ensured by investing in securities with active secondary markets.

DIVERSIFICATION:

The City's investment portfolio(s) shall be diversified by type of investment and maturities to reduce risks resulting from undue investment concentration.

Funds held for future capital projects shall be invested in securities that can be reasonably expected to produce sufficient income to offset inflationary construction cost increases. However, such funds shall never be exposed to market price risks or default risks that would jeopardize the assets available to accomplish their stated objective, or be invested in a manner inconsistent with applicable federal and state regulations.

YIELD:

The City's investment portfolio shall be structured with the objective of equaling or exceeding the rate of return on three month U.S. Treasury Bills. The investment program shall seek to augment returns above this threshold consistent with the Strategy and Objectives and Eligible Investments identified herein.

ACTIVE PORTFOLIO MANAGEMENT:

The City intends to pursue a moderately active versus a passive portfolio management philosophy. Securities may be sold before they mature if market conditions present an opportunity for the City to benefit from the transaction.

DELEGATION:

Management responsibility for the investment program is hereby delegated to the Treasurer of the City of Midland, or in his absence, Assistant Treasurer, or such other person specifically designated by the Treasurer. Day-to-day securities transactions will be done by the Investments Manager with coordination of the Treasurer. To insure internal control and integrity of each investment made under this policy, the City Manager, Deputy

III. RESPONSIBILITY AND CONTROL (continued)

DELEGATION (continued)

City Manager, or the City Attorney, shall review investment transactions within seven days.

The Finance and Audit Committee, composed of at least two City Council Members, the Treasurer, and the City Manager, shall meet, as a minimum, quarterly to review general investment strategies and investment results. The Finance and Audit Committee shall provide and keep minutes of its meetings relating to this investment policy. The Finance and Audit Committee shall include in its deliberations such topics as: economic outlook, portfolio diversification, maturity structure, potential risk to the City's funds, authorized brokers and dealers, and the target rate of return on the investment portfolio.

QUARTERLY REPORTS:

The Treasurer shall submit quarterly an investment report on the investment portfolio to the City Manager and Council in accordance with the Act. The report shall present the portfolio's investments including rate of return, beginning market value, additions and changes, and ending market value, and include an appendix that discloses all transactions during the past quarter.

ANNUAL REPORTS:

The Treasurer shall present an annual report of the investment program and investment activity to Council. The annual report shall include a detail of the portfolio, transactions for the year, and recommendations regarding the policy.

CONFLICTS OF INTEREST:

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Employees and investment officials shall disclose to the City Manager any material financial interest in financial institutions that conduct business within this jurisdiction, and they shall further disclose any large personal financial/investment positions that could be related to the performance of the City's portfolio. Officers and employees shall subordinate their personal investment transactions to those of this jurisdiction, particularly with regard to the timing of purchases and sales.

IV. INVESTMENTS

ELIGIBLE INVESTMENTS:

Assets of funds of the government of the City of Midland may be invested with final stated maturities not to exceed ten years with no more than 30% exceeding seven years, except upon concurrence and written approval of the Director of Finance and City Manager in

IV. INVESTMENTS (continued)

ELIGIBLE INVESTMENTS: (continued)

which case assets with final stated maturities of more than seven years may not exceed 50%, and dollar weighted average portfolio maturity not to exceed five years in:

1. Obligations of the United States or its agencies and instrumentalities:

   A. United States of America Treasury Securities;

   B. Farmers Home Administration ("FmHA") obligations backed by the full faith and credit of the United States;

   C. Federal Home Loan Bank ("FHLBs") obligations;

   D. Federal National Mortgage Association ("Fannie Mae" or "FNMA") obligations;

   E. Farm Credit System Obligations;

   F. Federal Home Loan Mortgage Corporation ("Freddie Mac" or "FHLMC") obligations, i.e. discount notes or debentures;

2. Direct obligations of the State of Texas or its agencies:

   Texas State, City, County, or School District General Obligation Bonds with a remaining maturity of ten years or less having been rated as to investment quality by Moody's or Standard and Poor's (nationally recognized investment rating firms) and having received a rating of no less than "A" or its equivalent;

3. Certificates of Deposit issued by state and national banks domiciled in this state:

   Certificates of Deposit issued by state and national banks domiciled in this state that are:

   (1) guaranteed or insured by the Federal Deposit Insurance Corporation, or its successor; or

   (2) secured by obligations that are described in V.T.C.A., Local Government Code Sections 105.001 et seq;

4. Fully collateralized repurchase agreements having a defined termination date:

   Fully collateralized direct repurchase agreements and reverse repurchase agreements having a defined termination date of no more than ninety (90) days from the date such investment is purchased, and secured by obligations of the United States or its agencies and instrumentalities which have a market value of not less than the amount of the funds disbursed and held by a custodian for the City. Repurchase agreements must be purchased through a primary government securities dealer, as defined by the Federal Reserve, or a bank domiciled in Texas;

IV. INVESTMENTS (continued)

ELIGIBLE INVESTMENTS: (continued)

4. Fully collateralized repurchase agreements having a defined termination date: (continued)

   Any investments made with funds resulting from a reverse repurchase agreement must mature within the period of the reverse repurchase agreement.

5. Investment Pools and Money Market Mutual Funds:

   A. Investment Pools of public or private sponsorship as provided in the Act and approved by Council;

   B. Money Market Mutual Funds as authorized by the Act of both public and private sponsorship and approved by Council;

6. Other securities or obligations:

   Other such securities or obligations as authorized by State statute and approved by the City Council.

RATINGS

Any investment requiring a minimum rating from one of the recognized rating agencies shall be monitored for negative changes in rating that may affect the suitability of that investment for the City. Monitoring shall consist of quarterly reviews of changes in ratings by nationally recognized rating agencies. Should such an investment be negatively impacted by a change in rating to one lower than specified, such investment will be liquidated in accordance with PFIA Section 2256.021

V. SELECTION OF BANKS AND DEALERS

SELECTION PROCESS:

The City depository shall be selected through the City's banking services procurement process and in compliance with state law.

INSURABILITY:

Banks seeking to establish eligibility for the City's competitive certificate of deposit purchase program shall submit audited financial statements, evidence of Federal Insurance and other information as required by the Treasurer.

PRIMARY DEALERS AND APPROVED LIST:

For brokers and dealers, the Treasurer shall select only those dealers reporting to the Market Reports Division of the Federal Reserve Bank of New York ("Primary Government

V. SELECTION OF BANKS AND DEALERS (continued)

PRIMARY DEALERS AND APPROVED LIST (continued)

Security Dealers") and certain "secondary" dealers possessing adequate financial condition to conduct public business. All brokers and dealers must have the ability to consummate each transaction on a delivery vs. payment or equivalent basis. All brokers and dealers must be authorized by the Finance and Audit Committee, and the complete list will be reviewed and approved annually by the Committee. All brokers and dealers must comply with provisions of the Act prior to any transaction with the City.

VI. SAFEKEEPING AND CUSTODY

INSURANCE OR COLLATERAL:

All deposits and investments of City funds in bank accounts, certificates of deposit, and repurchase agreements shall be secured by pledged collateral with a market value equal to no less than 100% of the deposits or investments less amounts insured by the FDIC.

Evidence of the pledged collateral shall be maintained by the Treasurer or a third party financial institution. Repurchase or reverse repurchase agreements shall be limited to those brokers or dealers that have executed an agreement with the Treasurer. All repurchase or reverse repurchase agreements shall be executed on a delivery vs. payment basis, or held by a custodian for the City.

SAFEKEEPING AGREEMENT:

All safekeeping arrangements shall be in accordance with a safekeeping agreement approved by the City of Midland. The agreement shall include and clearly define the procedural steps for gaining access to the collateral should the City of Midland determine that the City's funds are in jeopardy. The safekeeping institution, or Trustee, shall be the Federal Reserve Bank or an entity not affiliated with the firm pledging the collateral. The safekeeping agreement shall include the signature of the City of Midland, the firm pledging the collateral, and the Trustee.

COLLATERAL DEFINED:

The City of Midland shall accept only the following securities as collateral:

A. FDIC insurance coverage.

B. Securities allowed under V.T.C.A., Local Government Code Sections 105.001 et seq., shall be eligible to be pledged as collateral.

DELIVERY VERSUS PAYMENT:

Obligations of the United States or its agencies and instrumentalities or other securities of Section IV shall be purchased using the delivery vs. payment method. Pursuant to such method, funds shall not be wired or paid until verification has been obtained that the

VI. SAFEKEEPING AND CUSTODY (continued)

DELIVERY VERSUS PAYMENT: (continued)

correct security has been received by the City of Midland or its designated Trustee. The security shall be held in the name of the City. The Trustee's records shall reflect that the City owns such securities. In the event that the security is held by Trustee, the safekeeping receipts shall be delivered to the City Treasurer.

VII. MANAGEMENT AND INTERNAL CONTROLS

The Treasurer shall establish a system of internal controls which shall be periodically reviewed by an independent auditor. Such controls shall be designed to safeguard the City's funds from fraud, employee error, misrepresentation by third parties, unanticipated changes in financial markets, or imprudent actions by employees.

The Finance and Audit Committee will review this policy at least annually and recommend changes as needed to the Council. Council will review and approve the policy annually.

Resolution No.

City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Bob McNaughton, Director of Finance**

SUBJECT: **Fourth Quarter FY 2011 Investment Report**

Purpose:

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

Recommended City Council Action

☐ Approve ☐ Deny ☒ Direction/Informational

Fiscal Impact:

None

Discussion:

Report indicates compliance with all PFIA requirements.

Results for fourth quarter FY 2011 indicate the yield on the portfolio for the quarter was 1.1197% as compared to the benchmark 3 month Treasury yield of .0261% and pool yields of .0802% to .0853%. The effective interest rate on the portfolio at September 30, 2011 was 1.178%. Average maturity was 38.48 months at the end of the quarter.

The positive amounts in the Portfolio Summary associated with Unrealized Gains/Losses in Portfolio and Change in Unrealized Gains/(Losses) are an indicator of market movements to lower rates. Some of the unrealized gains may be realized during Fiscal Year 2012.

Unrealized gains in the portfolio attributable to market conditions at the end of the quarter were $329,150. Unrealized gains or losses do not necessarily result in cash gains or losses, but do reflect changes in the market value of portfolio securities.

CITY OF MIDLAND

INVESTMENT PORTFOLIO REPORT

FOURTH QUARTER FY2011

AS OF 09/30/2011

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

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

Robert McNaughton
Director of Finance

Rolly Hughes
Asst. Treasurer

Brenda C. Brown
Comptroller

Portfolio Summary
4th Quarter Fiscal 2011

	4th Quarter	Year to Date
Weekly Average Portfolio	$187,270,489	$185,338,670
Yield on Portfolio (annualized)	1.1197%	1.2182%
Cash Gains/(Losses)	$0	($68,750)
Yield including Gains/(Losses) (annualized)	1.1197%	1.1811%
Unrealized Gains/(Losses) in Portfolio	$329,150	$329,150
Change from Previous Period	$1,370,960	$582,180
3 Mo T-Bill yield on Average Portfolio	0.0261%	0.0841%
Texpool yield on Average Portfolio	0.0802%	0.1284%
TexStar yield on Average Portfolio	0.0853%	0.1303%

City of Midland
Listing of Investments
September 30, 2011

Investment Type	Maturity Date	Fund Owner-ship	Coupon Interest Rate	Principal	Beginning Market Value	Change in Position from Previous Quarter	Current Market Value	Accrued Interest to Date	Unrealized Profit/ Loss	Cumulative Unrealized Profit/ Loss
CASH	30-Sep-11	pooled	0.0000%	1,827,119.28	1,653,014.58	174,104.70	1,827,119.28	-	-	-
LOGIC	30-Sep-11	pooled	0.1404%	122,071.27	122,028.35	42.92	122,071.27	-	-	-
LOGIC	30-Sep-11	fund 365	0.1404%	29.03	29.03	-	29.03	-	-	-
LOGIC	30-Sep-11	fund 366	0.1404%	15,099.23	15,093.92	5.31	15,099.23	-	-	-
LOGIC	30-Sep-11	fund 389	0.1404%	1,413.33	1,412.83	0.50	1,413.33	-	-	-
LOGIC	30-Sep-11	fund 397	0.1404%	5,742.23	5,740.22	2.01	5,742.23	-	-	-
LOGIC	30-Sep-11	fund 501	0.1404%	13,660.34	13,655.54	4.80	13,660.34	-	-	-
LOGIC	30-Sep-11	fund 531	0.1404%	1,358.70	1,358.23	0.47	1,358.70	-	-	-
LOGIC	30-Sep-11	fund 532	0.1404%	5,575.75	5,573.80	1.95	5,575.75	-	-	-
TEXPOOL	30-Sep-11	pooled	0.0843%	58,125,592.82	49,898,317.36	8,227,275.46	58,125,592.82	-	-	-
TEXPOOL	30-Sep-11	fund 157	0.0843%	171,589.10	173,053.74	(1,464.64)	171,589.10	-	-	-
TEXPOOL	30-Sep-11	fund 158	0.0843%	2,548.69	2,548.13	0.56	2,548.69	-	-	-
TEXPOOL	30-Sep-11	fund 159	0.0843%	4,618.95	4,617.93	1.02	4,618.95	-	-	-
TEXPOOL	30-Sep-11	fund 165	0.0843%	90,432.85	94,913.73	(4,480.88)	90,432.85	-	-	-
TEXPOOL	30-Sep-11	fund 167	0.0843%	3,680.93	3,680.04	0.89	3,680.93	-	-	-
TEXPOOL	30-Sep-11	fund 168	0.0843%	4,695.74	4,694.72	1.02	4,695.74	-	-	-
TEXPOOL	30-Sep-11	fund 169	0.0843%	6,856.56	6,855.16	1.40	6,856.56	-	-	-
TEXPOOL	30-Sep-11	fund 185	0.0843%	8,148.54	8,146.85	1.69	8,148.54	-	-	-
TEXPOOL	30-Sep-11	fund 186	0.0843%	200,281.88	243,235.41	(42,953.53)	200,281.88	-	-	-
TEXPOOL	30-Sep-11	fund 187	0.0843%	20,776.31	34,770.26	(13,993.95)	20,776.31	-	-	-
TEXPOOL	30-Sep-11	fund 188	0.0843%	116,314.90	116,291.04	23.86	116,314.90	-	-	-
TEXPOOL	30-Sep-11	fund 189	0.0843%	84,083.48	84,066.24	17.24	84,083.48	-	-	-
TEXPOOL	30-Sep-11	fund 365	0.0843%	12,463.93	12,461.31	2.62	12,463.93	-	-	-
TEXPOOL	30-Sep-11	fund 375	0.0843%	484,627.69	484,528.26	99.43	484,627.69	-	-	-
TEXPOOL	30-Sep-11	fund 389	0.0843%	1,296,058.60	1,297,392.46	(1,333.86)	1,296,058.60	-	-	-
TEXPOOL	30-Sep-11	fund 397	0.0843%	1,522,390.52	1,524,077.84	(1,687.32)	1,522,390.52	-	-	-
TEXPOOL	30-Sep-11	fund 446	0.0843%	-	1,637.23	(1,637.23)	-	-	-	-
TEXPOOL	30-Sep-11	fund 501	0.0843%	3,561,746.93	3,546,306.84	15,440.09	3,561,746.93	-	-	-
TEXPOOL	30-Sep-11	fund 531	0.0843%	200,588.88	200,547.76	41.12	200,588.88	-	-	-
TEXPOOL	30-Sep-11	fund 621	0.0843%	11,843,094.65	10,702,801.83	1,140,292.82	11,843,094.65	-	-	-
TEXPOOL	30-Sep-11	fund 641	0.0843%	7,705.53	7,703.92	1.61	7,705.53	-	-	-
TEXSTAR	30-Sep-11	pooled	0.0906%	35,141,514.29	32,042,284.66	3,099,229.63	35,141,514.29	-	-	-
TEXSTAR	30-Sep-11	fund 182	0.0906%	39,139.30	41,930.36	(2,791.06)	39,139.30	-	-	-
TEXSTAR	30-Sep-11	fund 184	0.0906%	386,832.33	386,748.14	84.19	386,832.33	-	-	-
TEXSTAR	30-Sep-11	fund 190	0.0906%	180,004.32	220,683.25	(40,086.71)	180,596.53	-	-	-
TEXSTAR	30-Sep-11	fund 191	0.0906%	745,048.04	849,710.36	(104,811.33)	744,899.03	-	-	-
TEXSTAR	30-Sep-11	fund 192	0.0906%	124,629.18	124,796.44	27.16	124,823.60	-	-	-
TEXSTAR	30-Sep-11	fund 193	0.0906%	26,199.89	26,292.42	5.72	26,298.14	-	-	-
TEXSTAR	30-Sep-11	fund 194	0.0906%	298,851.01	399,522.06	(102,350.59)	297,171.47	-	-	-
TEXSTAR	30-Sep-11	fund 195	0.0906%	4,757,901.66	4,734,556.41	1,030.69	4,735,587.10	-	-	-
TEXSTAR	30-Sep-11	fund 196	0.0906%	2,009,183.98	2,869,639.34	(860,455.36)	2,009,183.98	-	-	-
TEXSTAR	30-Sep-11	fund 380	0.0906%	1,607,104.21	3,586,660.27	(1,979,556.06)	1,607,104.21	-	-	-
TEXSTAR	30-Sep-11	fund 621	0.0906%	573,832.66	573,707.76	124.90	573,832.66	-	-	-
				125,650,607.51	116,127,086.02	9,500,263.26	125,627,349.28	-	-	
FHLB NOTE	24-May-17	pooled	2.2500%	-	4,968,810.00	(4,968,810.00)	-	-	-	-
FHLB NOTE	01-Dec-17	pooled	2.3750%	-	4,892,130.00	(4,892,130.00)	-	-	-	-

City of Midland
Listing of Investments
September 30, 2011

Investment Type	Maturity Date	Fund Owner-ship	Coupon Interest Rate	Principal	Beginning Market Value	Change in Position from Previous Quarter	Current Market Value	Accrued Interest to Date	Unrealized Profit/ Loss	Cumulative Unrealized Profit/ Loss
FFCB	27-Sep-19	pooled	3.2500%	-	9,891,130.00	(9,891,130.00)	-	-	-	-
FHLB NOTE	24-Aug-20	pooled	3.3500%	-	9,926,800.00	(9,926,800.00)	-	-	-	-
FHLB NOTE	24-Aug-20	pooled	3.2500%	-	9,860,130.00	(9,860,130.00)	-	-	-	-
FHLB NOTE	08-Sep-20	pooled	3.3500%	-	4,898,805.00	(4,898,805.00)	-	-	-	-
FFCB	28-Aug-18	pooled	2.3600%	5,000,000.00	-	4,984,830.00	4,984,830.00	11,961.64	(15,170.00)	(15,170.00)
FHLB NOTE	14-Sep-18	pooled	2.3500%	5,000,000.00	-	5,015,410.00	5,015,410.00	5,472.60	15,410.00	240.00
FHLB NOTE	08-Sep-20	pooled	3.1000%	10,000,000.00	9,643,870.00	357,460.00	10,001,330.00	19,534.25	1,330.00	1,570.00
FHLB NOTE	21-Jun-21	pooled	3.8000%	5,000,000.00	4,941,425.00	83,105.00	5,024,530.00	53,095.89	24,530.00	26,100.00
FHLB NOTE	29-Jun-21	pooled	3.7500%	10,000,000.00	9,935,090.00	221,270.00	10,156,360.00	96,575.34	156,360.00	182,460.00
FFCB	16-Aug-21	pooled	3.4400%	10,000,000.00	-	10,059,160.00	10,059,160.00	43,353.42	59,160.00	241,620.00
FHLB NOTE	02-Sep-21	pooled	3.6000%	10,000,000.00	-	10,021,240.00	10,021,240.00	28,602.74	21,240.00	262,860.00
FHLB NOTE	07-Sep-21	pooled	3.2400%	10,000,000.00	-	10,066,290.00	10,066,290.00	21,304.11	66,290.00	329,150.00
				65,000,000.00	68,958,190.00	(3,629,040.00)	65,329,150.00	279,900.00	329,150.00	
				190,650,607.51	185,085,276.02	5,871,223.26	190,956,499.28	279,900.00	329,150.00	

CITY OF MIDLAND
INTERNAL INVESTMENT PORTFOLIO
As of 9/30/2011

	Cum. % Maturing	% Maturing	Principal	Net Book Value	Effective Interest Rate	Market Value
AGING SCHEDULE - TOTAL PORTFOLIO:						
0 - 60 DAYS	65.9%	65.9%	$ 125,650,607.51	$ 125,650,607.51	0.0854%	$ 125,627,349.28
61 - 120 DAYS	65.9%	0.0%	-	-	0.0000%	-
121 - 180 DAYS	65.9%	0.0%	-	-	0.0000%	-
181 - 365 DAYS	65.9%	0.0%	-	-	0.0000%	-
365 - 546 DAYS	65.9%	0.0%	-	-	0.0000%	-
547 - 730 DAYS	65.9%	0.0%	-	-	0.0000%	-
730 - 1095 DAYS	65.9%	0.0%	-	-	0.0000%	-
3 - 5 YEARS	65.9%	0.0%	-	-	0.0000%	-
5 - 7 YEARS	71.2%	5.3%	10,000,000.00	10,000,000.00	2.3550%	10,000,240.00
7 - 10 YEARS	100.0%	28.9%	55,000,000.00	55,000,000.00	3.4600%	55,328,910.00
OVER 10 YEARS	100.0%	0.0%	-	-	0.0000%	-
TOTAL		100.0%	$ 190,650,607.51	$ 190,650,607.51		$ 190,956,499.28

TOTAL PORTFOLIO BY INVESTMENT TYPE:

CASH	1.0%	$ 1,827,119.28	$ 1,827,119.28	0.0000%	$ 1,827,119.28
LOGIC	0.1%	164,949.88	164,949.88	0.1404%	164,949.88
TEXPOOL	40.8%	77,768,297.48	77,768,297.48	0.0843%	77,768,297.48
TEXSTAR	24.1%	45,890,240.87	45,890,240.87	0.0706%	45,866,982.64
FGIC	0.0%	-	-	0.0000%	-
C.D.'s	0.0%	-	-	0.0000%	-
T-BILL's	0.0%	-	-	0.0000%	-
SLMA's	0.0%	-	-	0.0000%	-
T-NOTE's	0.0%	-	-	0.0000%	-
FHLB NOTE	26.2%	50,000,000.00	50,000,000.00	0.0000%	50,285,160.00
FNMA	0.0%	-	-	0.0000%	-
FFCB	7.9%	15,000,000.00	15,000,000.00	0.0000%	15,043,990.00
FHLMC	0.0%	-	-	0.0000%	-
SLUG's	0.0%	-	-	0.0000%	-
	100.0%	$ 190,650,607.51	$ 190,650,607.51		$ 190,956,499.28

EFFECTIVE INTEREST RATE FOR TOTAL PORTFOLIO: $190,650,607.51 @ 1.1780%

AVERAGE MATURITY IN MONTHS 38.48

Transaction List Fiscal 2011

Bot/ Sold	Type Security	Rate	Trade Date	Settlement Date	Maturity Date	Broker	Face Amount	Price %	32's	Principal Amount	Original Price
Q1 FISCAL 2011											
Bot	FHLB	2.250%	05-Nov-10	24-Nov-10	24-May-17	FTN	5,000,000.00	100	0.0000	5,000,000.00	
Bot	FHLB	2.375%	08-Nov-10	01-Dec-10	01-Dec-17	BOSC	5,000,000.00	100	0.0000	5,000,000.00	
Bot	FHLB	2.450%	10-Nov-10	02-Dec-10	02-Jun-17	BOSC	10,000,000.00	100	0.0000	10,000,000.00	
Q3 FISCAL 2011											
Sold	FHLMC	3.000%	01-Jun-11	02-Jun-11	19-Jul-17	BOSC	5,000,000.00	100	0.0000	5,000,000.00	100.00
Bot	FHLB	3.800%	01-Jun-11	21-Jun-11	21-Jun-21	BOSC	5,000,000.00	100	0.0000	5,000,000.00	
Sold	FHLB	2.450%	15-Jun-11	16-Jun-11	02-Jun-17	BOSC	10,000,000.00	99	0.3125	9,931,250.00	100.00
Bot	FHLB	3.750%	15-Jun-11	29-Jun-11	29-Jun-21	BOSC	10,000,000.00	100	0.0000	10,000,000.00	
Q4 FISCAL 2011											
Sold	FFCB	3.250%	04-Aug-11	05-Aug-11	27-Sep-19	BOSC	10,000,000.00	100	0.0000	10,000,000.00	100.00
Bot	FHLB	3.600%	04-Aug-11	02-Sep-11	02-Sep-21	BOSC	10,000,000.00	100	0.0000	10,000,000.00	
Sold	FFCB	3.350%	04-Aug-11	05-Aug-11	24-Aug-20	VS	10,000,000.00	100	0.0000	10,000,000.00	100.00
Bot	FHLB	3.440%	04-Aug-11	16-Aug-11	16-Aug-21	VS	10,000,000.00	100	0.0000	10,000,000.00	
Sold	FHLB	3.250%	16-Aug-11	17-Aug-11	24-Aug-20	BOSC	10,000,000.00	100	0.0000	10,000,000.00	100.00
Bot	FHLB	3.240%	16-Aug-11	07-Sep-11	07-Sep-21	BOSC	10,000,000.00	100	0.0000	10,000,000.00	
Sold	FHLB	2.250%	19-Aug-11	22-Aug-11	24-May-17	VS	5,000,000.00	100	0.0000	5,000,000.00	100.00
Bot	FFCB	2.360%	19-Aug-11	28-Aug-11	28-Aug-18	VS	5,000,000.00	100	0.0000	5,000,000.00	
Bot	FHLB	2.350%	22-Aug-11	14-Sep-11	14-Sep-18	FTN	5,000,000.00	100	0.0000	5,000,000.00	

City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Bob McNaughton, Director of Finance**

SUBJECT: **Resolution approving Fiscal Year 2011 Miscellaneous write-offs**

Purpose:

Provide for authorization to remove uncollectible Miscellaneous Accounts Receivable and NSF checks incurred prior to September 30, 2010 from the City's accounts.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

Remove $33,294.40 in Miscellaneous Receivables and $3,607.24 in NSF checks from accounts of the City. Write-offs have been provided for during budgetary process.

Discussion:

Miscellaneous receivable accounts were submitted to the receiving Department and subsequently deemed to be uncollectible. This amount consists of $7,983.98 in the General Fund, $6,875.72 in Water and Sewer, $1,451.55 at the Airport, $2,456.45 in the Medical / Dental Self-Insurance Fund and $14,526.70 in the Garage Fund.

NSF checks received by various General Fund Departments were $1,277.79. Sanitation received $1,591.75, Golf Course Fund $532.45 and the Airport received $205.25.

All NSF checks are turned over to the District Attorney's office if still uncollectible. The City Attorney's office reviews all items.

Details of miscellaneous receivables and NSF checks proposed for write-off may be found in the City Secretary's Office.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE CITY TREASURER TO WRITE OFF AS UNCOLLECTIBLE CERTAIN DELINQUENT ACCOUNTS FOR MISCELLANEOUS ACCOUNTS RECEIVABLE AND INSUFFICIENT FUNDS CHECKS

WHEREAS, there are now on the City's records certain delinquent accounts for Miscellaneous Accounts Receivable in the amount of $33,294.40 and insufficient funds checks in the amount of $3,607.24 which are deemed to be uncollectible; and

WHEREAS, a diligent effort has been made to collect said accounts and the insufficient funds checks as shown on Exhibit "A", attached hereto and made a part hereof for all legal purposes; and

WHEREAS, it is recommended by the City Manager that said accounts and insufficient funds checks be written off as uncollectible;

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

SECTION ONE. That the City Treasurer is hereby authorized to write off as uncollectible the delinquent accounts receivable and insufficient funds checks shown on the attached Exhibit "A" in the total amounts of $33,294.40 and $3,607.24, respectively, such write off to be made against the allowance for uncollectible accounts in the following funds in the following amounts:

	Miscellaneous Receivables	Insufficient Funds Checks
General Fund	$7,983.98	$1,277.79
Water and Sewer Fund	$6,875.72	$0.00
Sanitation Fund	$0.00	$1,591.75
Golf Course Fund	$0.00	$532.45
Airport Fund	$1,451.55	$205.25
Garage Fund	$14,526.70	$0.00
Medical/Dental Fund	$2,456.45	$0.00

SECTION TWO. That such accounts being at least one year old at September 30, 2011, the elimination thereof from the City's books shall be done as of said date.

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., 2011, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

_____
Robert McNaughton, Director of Finance

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City of Midland
Writeoff Preliminary List
Accounting Period 12 / 2011

Invoice Number	Customer Label	Invoice Date	nvoice Balanc	Fund	
RE,150,02010085096	APLUMB01-A PLUMBING & SEWER SVC, L.L.C.	10/01/2010	5.00	001	Plumbing Permits
RE,150,SUN02010100063	APLUMB01-A PLUMBING & SEWER SVC, L.L.C.	10/01/2010	30.00	001	Plumbing Permits
RE,150,02009105154	READY01-READY ROOTER & PLUMBING	10/01/2010	50.00	001	Plumbing Permits
RE,150,02009115127	READY01-READY ROOTER & PLUMBING	10/01/2010	25.00	001	Plumbing Permits
RE,150,02010025084	READY01-READY ROOTER & PLUMBING	10/01/2010	25.00	001	Plumbing Permits
RE,150,02010085105	BULL04-BULLDOG ELECTRIC	10/01/2010	15.00	001	Temporary Electrical & Gas Permi
RE,150,02010010362	MAIN01-MAIN STREET SANTA ANA	10/01/2010	50.00	001	Joint Alley Agreement
RE,150,02010010373	WPJV01-WALL & PECOS JOINT VENTURE	10/01/2010	122.00	001	Joint Alley Agreement
RE,150,02010075006	ARCO01-BP AMERICA C/O DANIEL HIDALGO	10/01/2010	24.00	001	Water Sample Tests
RE,150,02010095008	CITY06-CITY OF PRESIDIO	10/01/2010	12.00	001	Water Sample Tests
RE,150,02009125013	FAR01-FAR WEST TEXAS LEASING	10/01/2010	24.00	001	Water Sample Tests
RE,150,02010065023	REDFORD01-REDFORD WATER PROJECT	10/01/2010	24.00	001	Water Sample Tests
RE,150,02010095010	REDFORD01-REDFORD WATER PROJECT	10/01/2010	12.00	001	Water Sample Tests
RE,150,02010085026	SIER02-DS WATERS OF AMERICA	10/01/2010	24.00	001	Water Sample Tests
RE,150,02010085027	STUDY01-STUDY BUTTE WATER SUPPLY	10/01/2010	84.00	001	Water Sample Tests
RE,150,02010030331	OSBORN01-CALEB OSBORN	10/01/2010	4,152.40	001	EMERGENCY RESPONSE COST
RE,150,02010070347	MIRANDA01-TOPAZIO GUADALUPE MIRANDA	10/01/2010	1,468.00	001	Damages to City Property
RE,150,02009110354	PRADO01-ROGELIO PRADO, JR.	10/01/2010	1,594.79	001	Damages to City Property
RE,150,02009120354	UNI02-UNITRON INSURANCE	10/01/2010	242.79	001	Damages to City Property
	Total General Fund		7,983.98		
RE,150,02010080053	CAST14-ESTER CASTILLO	10/01/2010	15.00	300	Sewer taps
RE,150,02010090053	CAST14-ESTER CASTILLO	10/01/2010	25.00	300	Sewer taps
RE,150,02010010067	DAVI10-LORENZA DAVILLA	10/01/2010	350.00	300	Sewer taps
RE,150,02010070138	JONES10-ELAINE JONES	10/01/2010	25.00	300	Sewer taps
RE,150,02010080138	JONES10-ELAINE JONES	10/01/2010	25.00	300	Sewer taps
RE,150,02010040155	LOPEZ19-ZENON DANIEL LOPEZ	10/01/2010	25.00	300	Sewer taps
RE,150,02010050157	LOPEZ19-ZENON DANIEL LOPEZ	10/01/2010	25.00	300	Sewer taps
RE,150,02010060157	LOPEZ19-ZENON DANIEL LOPEZ	10/01/2010	25.00	300	Sewer taps
RE,150,02010070160	LOPEZ19-ZENON DANIEL LOPEZ	10/01/2010	25.00	300	Sewer taps
RE,150,02010080160	LOPEZ19-ZENON DANIEL LOPEZ	10/01/2010	25.00	300	Sewer taps
RE,150,02010090162	LOPEZ19-ZENON DANIEL LOPEZ	10/01/2010	25.00	300	Sewer taps
RE,150,02010100161	LOPEZ19-ZENON DANIEL LOPEZ	10/01/2010	25.00	300	Sewer taps
RE,150,02010040161	MARTINEZ05-CHRIS MARTINEZ	10/01/2010	25.00	300	Sewer taps
RE,150,02010050163	MARTINEZ05-CHRIS MARTINEZ	10/01/2010	25.00	300	Sewer taps
RE,150,02010060163	MARTINEZ05-CHRIS MARTINEZ	10/01/2010	25.00	300	Sewer taps
RE,150,02010070167	MARTINEZ05-CHRIS MARTINEZ	10/01/2010	25.00	300	Sewer taps
RE,150,02010080167	MARTINEZ05-CHRIS MARTINEZ	10/01/2010	25.00	300	Sewer taps
RE,150,02010090169	MARTINEZ05-CHRIS MARTINEZ	10/01/2010	25.00	300	Sewer taps
RE,150,02010100168	MARTINEZ05-CHRIS MARTINEZ	10/01/2010	25.00	300	Sewer taps
RE,150,02009100246	RUIZ08-ADALBERTO RUIZ	10/01/2010	25.00	300	Sewer taps
RE,150,02010080360	KENT02-KENT'S COMPLETE VACUUM SERVICE	10/01/2010	20.00	300	2 SEPTAGE LOADS/JULY 2010
RE,150,02010010282	TALON01-TALON LPE	10/01/2010	1,000.00	300	ROW LIC/3201 PRINCETON
RE,150,02010060333	MIRANDA01-TOPAZIO GUADALUPE MIRANDA	10/01/2010	535.00	300	Damages to City Property
RE,150,02010090349	ORTEGA02-ANGEL ORTEGA	10/01/2010	4,265.72	300	Damages to City Property
RE,150,02009100329	THOMPSON10-APRIL THOMPSON	10/01/2010	240.00	300	Damages to City Property
	Total Water and Sewer Fund		6,875.72		

City of Midland
Writeoff Preliminary List
Accounting Period 12 / 2011

Invoice Number	Customer Label	Invoice Date	nvoice Balanc	Fund	
RE,150,02010030332	ASH01-APRIL M. ASHMORE	10/01/2010	1,451.55	500	Damage to City Property
	Total Airport Fund		1,451.55		
RE,150,02007030029	BUTL02-MIKE BUTLER	10/01/2010	274.75	701	Insurance
RE,150,02008020031	BUTL02-MIKE BUTLER	10/01/2010	228.00	701	Insurance
RE,150,02008030104	GREENWD04-TOMMY GREENWOOD	10/01/2010	1,214.00	701	Insurance
RE,150,02010100163	MADRID01-ANTONIO MADRID	10/01/2010	736.00	701	Insurance
RE,150,02010100163	MADRID01-ANTONIO MADRID	10/01/2010	3.70	701	Insurance
	Total Medical Dental Self Insurance Fund		2,456.45		
RE,150,02010070365	BERRY01-LISA ANN BERRY	10/01/2010	2,269.67	750	Damages to City Property
RE,150,02010050342	CRUZ01-ANDREA CRUZ	10/01/2010	343.00	750	Damages to City Property
RE,150,02010030330	DELAO01-REFUGIO DELAO	10/01/2010	5,656.20	750	Damages to City Property
RE,150,02009110355	MCCAS01-MELODY MCCALISTER	10/01/2010	1,730.59	750	Damages to City Property
RE,150,02010040332	SCOTT06-EDWARD RANDALL SCOTT	10/01/2010	583.80	750	Damages to City Property
RE,150,02010070364	SULL01-ANTHONY RAY SULLIVAN	10/01/2010	1,368.88	750	Damages to City Property
RE,150,02010030342	WILSON05-JOSHUA PHILLIP WILSON	10/01/2010	2,574.56	750	Damages to City Property
	Total Garage Fund		14,526.70		
		Sum:	33,294.40		

LISTING OF NSF CHECKS BEFORE 10/1/2010

DATE	NAME	DEPT	BANK	CHECK AMOUNT	SUBTOTAL FOR AGENCY	SUBTOTAL PER FUND
06/24/10	DESHAW, STEPHEN	ACCT	WNB	75.00		
10/23/09	ZUBIA, CECILIA		TXBANK	50.00		
			TOTAL ACCOUNTING		$ 125.00	
10/29/09	DEAN, LAUREL	AC	WELLS FARGO	15.00		
03/11/10	EDWARDS, THERESA	AC	CITIBANK	50.00		
10/19/09	KRYFKO, SHARION	AC	FCB	94.00		
			TOTAL ANIMAL SERVICES		$ 159.00	
08/23/10	ODOM, STEPHEN/HUGHES, LINDA	AMB	BOA	15.12		
03/19/10	WELLS, MARIE	AMB	WELLS FARGO	20.00		
05/20/10	WILLIAMSON, J B OR DORTHY	AMB		55.17		
			TOTAL AMBULANCE		$ 90.29	
02/22/10	LAURA LYONS SALES	CM	TEX STAR	12.00		
			TOTAL CITY MANAGER		$ 12.00	
04/05/10	WHITE'S PROPERTY	CODE	BOA	100.00		
			TOTAL CODE		$ 100.00	
10/06/09	FREE, BRIAN OR SHARLA	H	CITIBANK	10.00		
08/30/10	OLGIN, MARY/AGUILAR, TREY	H	FNB	10.00		
06/04/10	PRUCELL, CHRISTOPHER OR CYNTHIA	H	CCFCU	100.00		
05/26/10	COOPER, BARBARA/DAVIS, MATTIE	H	CHASE	95.00		
			TOTAL HEALTH		$ 215.00	
03/16/10	SANCHEZ, DANIEL OR BEATRICE	INS	WELLS FARGO	119.00		
			TOTAL INS		$ 119.00	
02/10/10	PBS SEPM	MID C		97.50		
			TOTAL MID C		$ 97.50	
06/25/10	PRIETO, MARIA	MLK	CCFCU	340.00		
			TOTAL MLK		$ 340.00	
01/28/10	ARGUELLO, NORMA OR MARTIN	POL	WELLS FARGO	20.00		
			TOTAL POLICE		$ 20.00	
					TOTAL GENERAL FUND	**$ 1,277.79**

LISTING OF NSF CHECKS BEFORE 10/1/2010

10/29/09	BUELNA, ROBERTO OR JESSICA	LF	BOA	13.12	
07/15/10	DIAZ, ISAAC OR BRENDA	LF	CITIBANK	13.12	
04/13/10	ELITE DESIGNS AND CONSTRUCTION	LF	WELLS FARGO	14.70	
11/17/09	HERIG, ALAN	LF	MTCU	130.46	
11/24/09	MASTERCRAFT FURNITURE REPAIR	LF	MY COMM CU	71.66	
05/24/10	MONTEZ, JULIETA	LF	FCB	134.92	
05/24/10	MONTEZ, JULIETA	LF	FCB	162.22	
05/25/10	MONTEZ, JULIETA	LF	FCB	82.42	
05/26/10	MONTEZ, JULIETA	LF	FCB	73.76	
03/11/10	OLANO, AGUSTIN	LF	CHASE	13.12	
03/12/10	OLANO, AGUSTIN	LF	CHASE	20.47	
01/08/10	SIGNATURE REMODELING	LF	WELLS FARGO	196.61	
09/22/10	TARANGO, MARTHA	LF	FCB	229.42	
08/11/10	TEXAS FENCE & WELDING	LF	LSSB BIG SPRING	14.43	
07/30/10	VILLANUEVA, ANGELICA	LF	MY COMM CU	59.86	
10/27/09	XXTREME ROOFERZ	LF	HERITAGE FCU	111.56	
11/20/09	XXTREME ROOFERZ	LF	HERITAGE FCU	249.90	
				TOTAL FOR LANDFILL	**$ 1,591.75**
06/01/10	MALTSBERGER, JOHN	GC	WELLS FARGO	93.00	
11/19/09	NGUYEN, MISTY	GC	FCB KILLEEN	439.45	
				TOTAL FOR GOLF COURSE	**$ 532.45**
08/19/10	ANCHONDO, SAMUEL	TER	TRANSPECOS BK	50.00	
08/25/10	COX, RICHARD T	TER	COSDEN CU	12.50	
02/11/10	FONDY, DALE	TER	SNB	38.75	
01/28/10	MACHALE, ROBERT	TER	WASHINGTON MUTAL	74.00	
07/21/10	STEPHENS, BRYAN OR KENDRA	TER	SB ODESSA	30.00	
				TOTAL FOR AIRPORT	**$ 205.25**
				GRAND TOTAL ALL FUNDS	**$ 3,607.24**

City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Bob McNaughton,, Director of Finance**

SUBJECT: **Resolution approving Fiscal Year 2011 Water, Sewer and Sanitation write-offs**

Purpose:

Provide for authorization to remove uncollectible Water, Sewer and Sanitaiton Accounts Receivable incurred prior to September 30, 2009 from the City's accounts

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

Remove $114,419.11 in Water and Sewer and $23,592.50 in Sanitation Accounts Receivable from accounts of the City. Write-offs have been provided for during budgetary process. Write-offs are provided for during budgetary process

Discussion:

The accounts which are proposed for "write-off" are accounts which became inactive during FY09. The total proposed write-off off for this period is $138,011.61.

Total service charges for water, sewer, and refuse in FY09 were $48,11 million. The proposed "write-off" for FY09 is 0.2869% of net billings. Attached is a comparison of revenue and "write-offs" from FY04 thru FY09.

Should any of these people apply for new service, we will collect on these accounts.

A detail of the proposed write-offs may be found in the City Secretary's Office.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE CITY TREASURER TO WRITE OFF AS UNCOLLECTIBLE CERTAIN DELINQUENT ACCOUNTS FOR WATER, SEWER, AND GARBAGE COLLECTION SERVICES

WHEREAS, there are now on the City's records certain delinquent accounts for water, sewer, and garbage collection services in the amount of $138,011.61 which are deemed to be uncollectible; and

WHEREAS, a diligent effort has been made to collect the accounts on file in the City Secretary's Office; and

WHEREAS, the Council finds it to be in the public interest to write off these delinquent accounts;

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

SECTION ONE. That the City Treasurer is hereby authorized to write off as uncollectible the delinquent accounts on file in the City Secretary's Office referenced by the date and number of this Resolution in the total amount of $138,011.61, wherein $114,419.11 of said write-off is to be made against the reserve for uncollectible accounts in the Water and Sewer Fund, and the remaining $23,592.50 against the reserve for uncollectible accounts in the Sanitation Fund.

SECTION TWO. That such accounts being at least two years old at September 30, 2011, the elimination thereof from the City's books shall be done as of said date.

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., 2011, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

_____
Robert McNaughton, Director of Finance

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City of Midland
Water, Sewer and Sanitation
Analysis of Write-offs
Fiscal Year 2004 through Fiscal Year 2009

	FY'04	FY'05	FY'06	FY'07	FY'08	FY'09
Revenue:						
Water and Sewer Billings	$ 28,913,785	$ 30,551,030	$ 32,930,037	$ 34,262,357	$ 39,561,940	$ 39,559,106
Less Discounts;Plus Penalties	(1,814,951)	(978,048)	269,686	290,524	331,853	325,571
Net Water and Sewer Billings	27,098,834	29,572,982	33,199,724	34,552,881	39,893,792	39,884,677
Less Write-offs	(64,883)	(68,413)	(75,559)	(99,477.57)	(105,467.08)	(114,419.11)
	27,033,951	29,504,569	33,124,165	34,453,403	39,788,325	39,770,258
Sanitation Billings	6,047,689	6,459,331	6,518,518	7,342,762	7,758,688	8,157,506
Less Discounts; Plus Penalties	(287,122)	(191,749)	56,921	61,233	64,492	66,463
Net Sanitation Billings	5,760,567	6,267,582	6,575,439	7,403,995	7,823,180	8,223,969
Less Write-offs	(15,167)	(14,499)	(14,965)	(21,316)	(20,682.11)	(23,592.50)
	5,745,400	6,253,083	6,560,474	7,382,679	7,802,498	8,200,377
Total Net Revenue	$ 32,779,351	$ 35,757,652	$ 39,684,639	$ 41,836,082	$ 47,590,823	$ 47,970,635
Percentage of Write-off to Net Billings	0.2436%	0.2313%	0.2276%	0.2879%	0.2644%	0.2869%
Total amount Written-off	$ 80,050	$ 82,912	$ 90,524	$ 120,785	$ 126,149	$ 138,012

City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Bob McNaughton,, Director of Finance**

SUBJECT: **Resolution approving Fiscal Year 2011 EMS write-offs**

Purpose:

Provide for authorization to remove uncollectible EMS Accounts Receivable incurred prior to September 30, 2010 from the accounts of the City.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

Remove $1,194,829.44 in EMS Accounts Receivable from the accounts of the City. Write-offs are provided for during budgetary process

Discussion:

These amounts represent receivables incurred prior to September 30, 2010. All accounts have been submitted to Midland Memorial Hospital's collection agency.

The FY'10 amount to be written off for amounts billed during FY'10 is 37.5% of EMS revenue billed for FY'10 ($1,194,829.44 of $3,185,882).

FY'10 amounts to be written off for FY'10 services billed net of Medicare ($176,284.30) and Medicaid ($169,812.50) mandated write-offs is 29.89% of FY'10 EMS revenue ($848,733 of $2,839,785).

This write-off contains only amounts billed by MMH under the interlocal agreement and a detail of accounts proposed for write-off may be found in the City Secretary's Office.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE CITY TREASURER TO WRITE OFF AS UNCOLLECTIBLE CERTAIN DELINQUENT ACCOUNTS FOR EMERGENCY MEDICAL SERVICES RECEIVABLES

WHEREAS, there are now on the City's records certain delinquent accounts for Emergency Medical Services (EMS) Receivables in the amount of $1,194,829.44 which are deemed to be uncollectible; and

WHEREAS, a diligent effort has been made to collect said accounts as shown on file in the office of the City Secretary referenced by date and number of this Resolution; and

WHEREAS, it is recommended by the City Manager that said accounts be written off as uncollectible;

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

SECTION ONE. That the City Treasurer is hereby authorized to write off as uncollectible the delinquent EMS accounts shown on file in the office of the City Secretary, referenced by the number and date of this Resolution.

SECTION TWO. That such accounts being at least one year old at September 30, 2011, the elimination thereof from the City's books shall be done as of said date.

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., 2011, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

_____
Robert McNaughton, Director of Finance

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City of Midland
Emergency Medical Service
Comparative Revenue and Expense Analysis
Actual Fiscal Years 2006 through 2010

	FY'06	FY'07	FY'08*	FY'09**	FY'10	Five Year Average
REVENUE:						
BILLINGS	2,011,614	2,186,037	2,686,557	3,276,956	3,185,882	2,669,409
LESS WRITE-OFFS	949,033	949,486	1,227,680	1,291,113	1,194,829	1,122,428
NET REVENUE	1,062,581	1,236,550	1,458,877	1,985,842	1,991,053	1,546,981
% WRITE-OFF	0.4718	0.4343	0.4570	0.3940	0.3750	0.4205
EXPENDITURES:						
PERSONNEL	712,801	752,601	780,553	935,735	961,533	828,645
SUPPLIES, EQUIPMENT, etc.	531,107	460,484	502,525	551,949	611,491	531,511
TOTAL EXPENDITURES	1,243,908	1,213,085	1,283,077	1,487,684	1,573,024	1,360,156
RATIO OF NET REVENUE TO EXPENDITURES	0.8542	1.0193	1.1370	1.3349	1.2657	1.1374

* $387,898.68 of the amount written-off for this year was attributable EMS runs made during FY'08 but not billed until FY'09. Adjusted for this amount, the FY'08 percentage of accounts written-off would be 33.12%.

** Net of Medicare ($200,656.29) and Mdeicaid ($202,782.13) mandated write-offs, the percentage write-off for FY'09 would have been 30.89%

City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Bob McNaughton, Director of Finance**

SUBJECT: **Vote for Midland Central Appraisal District (MCAD) Board of Directors**

Purpose:

Cast City of Midland votes for Mr. Fred Poe to serve on the MCAD Board of Directors

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

None

Discussion:

Subsequent to nominations from the taxing jurisdictions, we are now required to elect Midland Central Appraisal District Board of Directors. The number of votes available to be cast by each jurisdiction is based on total assessed value from all taxing entities that use MCAD.

The City Council, during the October 25, 2011, City Council meeting, nominated Mr. Fred Poe as the City's representative. Mr. Fred Poe would be one of the five representatives.

The City of Midland has 846 of the total 5,000 votes.

Attached is a copy of the official ballot to be completed by the City Manager.

RESOLUTION NO.

RESOLUTION CASTING THE CITY OF MIDLAND'S VOTES FOR DIRECTORS OF THE MIDLAND CENTRAL APPRAISAL DISTRICT AND DIRECTING THE CITY MANAGER TO FILE THE APPROPRIATE DOCUMENTS

WHEREAS, pursuant to the Tax Code Procedure for the election of the directors for the Midland Central Appraisal District, it has been determined by the Chief Appraiser that the City of Midland is entitled to 846 votes; and

WHEREAS, the Council finds and determines that it should cast the City's votes for the candidate nominated for the Board of Directors by the City;

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

SECTION ONE. That the City of Midland hereby casts 846 votes for Fred Poe for the office of Director of the Midland Central Appraisal District.

SECTION TWO. That the City Manager is hereby authorized and directed to indicate this action on the official ballot received from the Chief Appraiser of the Midland Central Appraisal District and to deliver said ballot, together with a certified copy of this resolution, to the Chief Appraiser on or before November 15, 2011.

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., 2011, 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 CENTRAL APPRAISAL DISTRICT
4631 ANDREWS HWY.
P. O. BOX 908002 MIDLAND, TEXAS 79708-0002
(432) 699-4991 FAX (432) 689-7185

JERRY BUNDICK
RPA, RTA
Chief Appraiser

October 26, 2011

Mayor Wes Perry
City of Midland
P O Box 1152
Midland, TX 79702

COPY

RE: Election of Board of Directors for Midland Central Appraisal District

Dear Mayor Perry:

Enclosed please find an Official Ballot and a (sample) Resolution for the election of the Board of Director members for the Midland Central Appraisal District.

Each voting unit must cast its vote by written Resolution and submit it to the Chief Appraiser before January 15, 2012. The unit may cast its votes among any number of candidates. A voting unit must cast its votes for a person nominated and named on the ballot. There is no provision for write-in candidates. The five individuals with the most votes will be elected to the Board of Directors.

If you have any questions, please do not hesitate to contact me. Thank you.

Respectfully,

Jerry Bundick

Jerry Bundick, RPA
Chief Appraiser

JB/cc
Enclosures

cc: Mr. Courtney Sharp, City Manager
Mr. Bob McNaughton, Finance Director

OFFICIAL BALLOT

BOARD OF DIRECTOR ELECTIONS FOR 2012-2013
MIDLAND CENTRAL APPRAISAL DISTRICT
MIDLAND COUNTY, TEXAS

The jurisdiction may cast all of its votes for one candidate or distribute the votes among any of the candidates listed below. There is not a provision for write-in candidates. Please write in the number of votes for each candidate and attach this ballot to your written resolution.

Each jurisdiction has the following number of votes

MIDLAND INDEPENDENT SCHOOL DISTRICT	3,199
CITY OF MIDLAND	846
MIDLAND COUNTY	696
GREENWOOD INDEPENDENT SCHOOL DISTRICT	259
TOTAL	5,000

CANDIDATES	NUMBER OF VOTES
ROBERT KMIEC	
PAUL ANDERSON	
FRED W. POE	
GERALD STEPHENSON	
MICHAEL KAUFMAN	

City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Bob McNaughton, Director of Finance**

SUBJECT: **Allocation of funds to CGI Project**

Purpose:

Compliance with Governmental Accounting Board Statement (GASB) 51, "Accounting and Financial Reporting for Intangible Assets."

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

Allocate $216,220 from 2011 General Fund budget to CGI Upgrade Project (8817)

Discussion:

GASB Statement 51 requires capitalization of personnel costs of City employees working to bring the CGI Upgrade Project to completion. These expenses total $331,220.

Budget dollars totaling $115,000 were placed in the Project for these expenses in May 2010, leaving the Project $216,220 short of covering personnel expenses.

The allocation of these dollars do not represent any additional expense to the City and will result in a reduction of General Fund budget dollars and a corresponding increase in Project budget dollars.

RESOLUTION NO.

RESOLUTION ALLOCATING $216,220.00 TO THE CGI SYSTEMS UPGRADE PROJECT (8817)

WHEREAS, the Council finds it to be in the public interest to allocate $216,220.00 to the CGI Systems Upgrade Project (8817) ;

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

THAT the sum of $216,220.00 is hereby allocated from the General Fund (001) Non-departmental (150) Inter-fund Transfer (0199) General Construction Fund (6299) to the CGI Upgrade Project (8817).

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., 2011 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: **November 8, 2011**

TO: **CITY COUNCIL, CITY MANAGER**

FROM: **Regina Stephenson, Purchasing Manager**

SUBJECT: **4153-12 MXU's for Automated Water Meter Reader System**

Purpose:

Approval of a resolution authorizing the purchase of MXU's (radios) for the AMR system.

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:
$150,000.00 Water & Sewer Fund

Discussion:

We are currently installing new water meters with automatic meter read encoders that require a radio to communicate with the recording equipment. The recording equipment is from Sensus and the receivers are proprietary, therefore, the transmitters (MXUs) have to be compatible making them a sole source procurement. This type of procurement is exempted from the sealed bid requirements in the Local Government Code under Section 252.022 GENERAL EXEMPTIONS, Paragraph (7) "a procurement of items that are available fromonly one source including (A) items that are available from only one source because of patents, copyrights, secret processes or natural monopolies". The local distributor for Sensus water meter products is Western Industrial Supply of Odessa, Texas.

Therefore, please consider approval of a resolution authorizing the purchase of 1,250 MXUs from Western Industrial Supply LLC of Odessa, Texas for a total cost of $150,000.00.

RESOLUTION NO.

RESOLUTION APPROVING THE PURCHASE OF ONE THOUSAND TWO HUNDRED FIFTY (1,250) TRANSMITTERS FOR USE WITH THE CITY'S AUTOMATED WATER METER READER SYSTEM FROM WESTERN INDUSTRIAL SUPPLY, L.L.C., OF ODESSA, TEXAS, FOR $150,000.00; AND ACCEPTING THE CITY MANAGER'S RECOMMENDATION THAT SAID TRANSMITTERS ARE PROPRIETARY IN NATURE AND AVAILABLE ONLY FROM A SOLE SOURCE

WHEREAS, the City of Midland has received a quote from Western Industrial Supply, L.L.C., for One Thousand Two Hundred Fifty (1,250) transmitters for use with the City's automated water meter reader system, at a total cost of $150,000.00; and

WHEREAS, it is the City Manager's recommendation that said transmitters are proprietary in nature and available only from a sole source; and

WHEREAS, the Council finds the price for said transmitters from Western Industrial Supply, L.L.C., to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase said transmitters from Western Industrial Supply, L.L.C.;

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

SECTION ONE. That the City Council hereby accepts the City Manager's recommendation that said transmitters are proprietary in nature and available only from a sole source.

SECTION TWO. That the City Manager is hereby authorized and directed to purchase said transmitters from Western Industrial Supply, L.L.C., at a total cost not to exceed $150,000.00.

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay for said transmitters from funds available in the Fiscal Year 2011 – 2012 Water and Sewer Fund (300) Finance (035) Meter Shop (0340) Water Meters (2195) 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., 2011, 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

Sensus
10004 Wurzbach #177
San Antonio, Tx. 78230

T: 210-696-8706
F: 210-696-8896
www.sensus.com

SENSUS
The Measure of the Future

September 9, 2011

To Whom It May Concern:

Sensus Inc. U.S.A. is pleased to announce that Western Industrial Supply is the exclusive Authorized Distributor of Sensus Inc. products in West Texas and Eastern New Mexico (and this includes Tower Gateway Base Station, Regional Network Interface, 520 Transmitters. Omni, and iPerl Meters). Please contact Western Industrial Supply for all of your Sensus Inc. U.S.A. needs. Purchasing Sensus Inc. products from the authorized distributor in your area ensures that your products will be properly supported and warranted.

We look forward to the opportunity of providing your firm with quality water measurement equipment and support in the near future. Please feel free to contact me at 210-696-8706 regarding this or any other matter.

Sincerely

Greg Taylor
District Manager
Sensus Inc. U.S.A.

Regina Stephenson

From: Tony Goyang
Sent: Thursday, October 27, 2011 10:28 AM
To: Regina Stephenson
Cc: Bob McNaughton
Subject: FW: Sensus MXU's

Regina,
After reviewing the proposals below, I recommend option 3, for 1,250 MXUs' as the most cost effective to the City. The MXUs' will be installed in new developments, and subsequent additions in existing AMR areas. Please let me know if have any questions.
Thanks,

Tony Goyang
Division Manager
City of Midland, TX.
432.685.7328

MIDLAND
Customer Service

From: Barnett, Kirk [mailto:kbarnett@West-Ind.com]
Sent: Wednesday, October 26, 2011 9:11 PM
To: Tony Goyang
Cc: Beavers, Steve; Clinton, Michael
Subject: Sensus MXU's

Tony,
I wanted to follow up with you regarding the conversation you had with Mike Clinton recently about new pricing for the Sensus MXU's. Sensus has been generous to hold your pricing at 2007 levels until June of this year thus saving you thousands of dollars. Sensus has across the board updated its pricing structure for all customers to 2011 price levels with discounts being given to customers who order in larger quantities. I have spoken to Sensus and I can offer you special pricing that will be good until December 1, 2011.

1-999	$130.00
1000-1249	$125.00
>1249	$120.00

Mike was discussing a new price point of $135 so if you were to take advantage of the 1000 unit price you could save $10,000 or more depending on the quantity purchased. I know that saving money in these times is important so I hope that you will take full advantage of this offer before Sensus brings your pricing to their 2011 levels. If you have any questions please do not hesitate to call me.

Best Regards,
Kirk

Kirk Barnett
Western Industrial Supply, LLC
Cell: 806.236.5046

WESTERN INDUSTRIAL SUPPLY, LLC

E-mail: kbarnett@West-Ind.com
1220 South West 5th Avenue | Amarillo, TX 79101 | 806.376.5467

Email quotations: Due to the extreme volatility of raw material, energy, and transportation costs, the prices shown on this quotation are only valid for 30 days, or as stipulated. Western Industrial Supply, LLC is not responsible for manufacturer's ability to ship material or hold prices. Quoted prices do not include taxes. Western Industrial Supply, LLC Standard Terms & Conditions of Sale apply to all quotes.

City Council Agenda

Approved For Agenda:
THudson
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL, CITY MANAGER**

FROM: **Regina Stephenson, Purchasing Manager**

SUBJECT: **4289-12 Ambulance**

Purpose:

Approval of a resolution authorizing the purchase of a cab, chassis and ambulance body for use by the Midland Fire Department.

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:
$166,900.00 Garage Fund

Discussion:

This ambulance is a scheduled replacement unit. The ambulance is available on the Houston-Galveston Area Council (H-GAC). We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases.

Therefore, please consider approval of a resolution authorizing the purchase of a Type 1 Ambulance through H-GAC. This ambulance is manufactured by Frazer, Ltd and will be purchased from their State of Texas licensed dealer, Sterling McCall Ford of Houston, Texas, for a total cost of $166,900.00.

RESOLUTION NO.

RESOLUTION APPROVING THE PURCHASE OF AN AMBULANCE THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (HGAC) AT A TOTAL COST OF $166,900.00; AND THIS ITEM WAS NOT BID BUT PURCHASED THROUGH A COUNCIL OF GOVERNMENTS

WHEREAS, the Houston-Galveston Area Council (HGAC) is a cooperative purchasing agency with which the City participates on purchases; and

WHEREAS, Sterling McCall Ford has submitted a total proposed cost to the City of $166,900.00 for the purchase of an ambulance through the HGAC, as shown on the pricing worksheet attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the Council finds the price proposed by Sterling McCall Ford through the HGAC for said ambulance to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase said ambulance through the HGAC;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase said ambulance referred to above through the Houston-Galveston Area Council, at a total estimated cost of $166,900.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said ambulance from funds available in the Fiscal Year 2011 – 2012 Garage Fund (750) General Services (040) Garage (0752) Light and Medium Trucks (8820) 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., 2011, 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

FRAZER

The Leader in Generator Powered EMS Modules

October 20, 2011

Dennis Yates
City of Midland
Email: dyates@midlandtexas.gov

Quote # 7372A

Mr. Yates,

Per your request we are quoting one (1) Frazer Type I 14' Generator Powered Module mounted on a 2012 Ford F-450 diesel chassis with an air suspension system. For your convenience all pricing has been itemized below.

Frazer Type I 14' Generator Powered Module	$	80,000.00
2012 Ford F-450 6.7L diesel chassis w/ factory aluminum wheels	$	40,750.00
Granning or Monroe air suspension system (discuss this)	$	6,500.00
Heat shielding for diesel chassis	$	1,500.00
Delivery of completed unit	$	1,250.00
Optional items (listed below)	$	35,900.00
HGAC fee	$	1,000.00
Total	$	166,900.00

Optional items:

Paint module Pierce Red #80 (FLNA3021)	$	1,050.00
Paint chassis Pierce Red #80 (FLNA3021)	$	2,350.00
Striping and lettering w/ gold leaf	$	3,250.00
3M diamond grade lime yellow conspicuity w/ red overlay on entire rear of module including rear entry doors (14.75" at bottom of doors does not have conspicuity)	$	1,500.00
3M Opticom off door switch	$	1,800.00
(8) Whelen 600 series red LEDs w/ chrome flanges on upper corners	$	incl.
(5) Whelen 600 series front wall LEDs w/ chrome flanges (R-C-R-C-R)	$	incl.
(3) Whelen 600 series rear wall LEDs w/ chrome flanges (R-A-R)	$	incl.
(2) Whelen 600 series red wheel well LEDs w/ chrome flanges	$	incl.
(4) Whelen 400 series red grille & intersect LEDs	$	incl.
120VAC, 250 watt quartz halogen side scene lights on (2) switches	$	incl.
Treadplate on front corners, wheel wells, and rear	$	incl.
Rear inside/outside storage compartment w/ angle on ceiling and (4) coat hooks ((2) on angle and (2) shipped loose)	$	200.00
Full length vertical divider w/ horizontal shelf in O2 compartment (3/16" thick)	$	200.00
Front back board compartment w/ (2) shelves in lieu of standard	$	100.00
Single laydown O2 box w/ insert between it and front back board compartment	$	200.00
Wider electric step at side entry door (discuss this)	$	incl.
Ramp at rear entry doors	$	incl.
ArcRite running boards on chassis	$	600.00
Buell dual 10" & 12" air horns through the front bumper w/ 1.9 CFM fast recovery compressor and ON/OFF switch on console	$	2,350.00

MDT plate w/ swivel on console	$	350.00
4 position console layout: MDT plate w/ swivel – radio plate- double switch panel	$	N/C
Large map holder on rear of console	$	175.00
Furnish and install GE C1016 SS 2000 siren/light control module in radio compartment in lieu of standard siren (ID# 21912)	$	1,000.00
(2) 3 receptacle 12 volt outlets w/o medical diode isolators (at action wall & on passenger's side of console)	$	200.00
Coax locations: (2) terminating in electrical compartment, (1) terminating at action wall (1) terminating at radio plate in console	$	N/C
Blue cushions	$	N/C
EVS Captain's chair w/ built-in child safety seat	$	700.00
Setup for "M" oxygen cylinder	$	N/C
Special location for shelf & duplex outlet in front I/O	$	N/C
Ribbed rubber on floor of front I/O	$	25.00
3 high glove box/end rail combination at end of squad bench	$	450.00
Squad bench cabinet w/ padding on the end	$	600.00
Calsak holder above squad bench	$	450.00
Furnish Stryker Power-PRO XT cot w/ head end storage flat, 3 stage IV pole and antler and bar	$	14,975.00
175-3 single position cot mount	$	incl.
Cot plates and hook for Stryker Power-PRO	$	N/C
30 amp Kussmaul auto-eject on side of module above electrical compartment	$	850.00
Oxygen regulator	$	175.00
Install your Knox Box 2650 in electrical compartment	$	225.00
Furnish and install Knox MedVault (model #5501), wire battery hot	$	1,525.00
Radio speakers in module off chassis radio w/ volume control at action wall	$	450.00
Add compartment light in electrical compartment, install light in radio compartment in special location	$	150.00
Fire extinguisher and bracket shipped loose	$	N/C

Of course this module has standard Frazer features including all aluminum powder coated cabinets, seamless cushions, horizontally mounted "M" oxygen cylinder setup, filtered air conditioning, 100% vinyl flooring, protective cot plates, all LED emergency lighting, LED interior ceiling lights, Impact self-contained suction, on-board battery charger, double-pane entry door windows, and stainless steel grab handles, just to name a few.

Per TMVCC we are quoting these through our licensed franchise dealer, Sterling McCall Ford.

Thank you for the opportunity to quote this job. If you have any questions please call me at 888-372-9371.

Best Regards,

Laura Richardson

Laura Richardson
Frazer, Ltd.

LGR:AF

HGACBuy	CONTRACT PRICING WORKSHEET For MOTOR VEHICLES Only	Contract No.:	AM04-10	Date Prepared:	10/20/11

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both the PO and the Worksheet MUST be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

Buying Agency:	City of Midland	Contractor:	Sterling McCall Ford
Contact Person:	Dennis Yates	Prepared By:	Tim Kettle
Phone:	(432) 685-7451	Phone:	281-588-5000
Fax:	(432) 685-7494	Fax:	281-588-5150
Email:	dyates@midlandtexas.gov	Email:	tkettle@sterlingmccallford.com

Product Code:	LA08	Description:	Type I 14' on Ford F-450 Diesel DRW Cab/Chassis, Gen Pwrd Mod

A. Product Item Base Unit Price Per Contractor's H-GAC Contract: 122000

B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in description if applicable.
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
1184- Monroe Tru-Ride air suspension system	$6,000.00	566 Install a vertical divider in the O2 compartment from the sl	$175.00
114 -Running boards for Ford F-350, F-450 or F-550	$450.00	5- (1) large aluminum map holder on rear of console	$175.00
1- Heat shielding for diesel chassis	$1,500.00	175- Radio speakers in module off chassis radio with volume c	$450.00
521- This unit gets a single 30A auto eject shore power receptac	$850.00	188- Squad bench cabinet w/ padding on end	$600.00
477- Module has single color paint scheme - NOT white	$850.00	206 3 high powder coated aluminum glove box holder/ end rail	$450.00
485- Chassis has single color paint scheme - NOT white	$2,900.00	501- This unit gets a 3M Opticom on the front wall	$1,800.00
1185- Upgrade to gold leaf lettering with outline (iats)	$500.00	89- Buell dual 10" & 12" air horns through front bumper	$800.00
1179- Double 8" 3M reflective stripe with non-reflective pinstri	$2,700.00	99- Mount a fast recovery compressor for the air horn system b	$1,200.00
1207 Deliver unit from factory to destination per mile (x555)	$1,250.00	1305- Stryker Power-PRO XT cot w/ head end storage flat, 3	$14,984.00
1167- 3M diamond grade conspicuity tape in Chevron pattern o	$1,500.00		
366- Blue EVS captain's chair with built-in child safety seat	$700.00	**Subtotal From Additional Sheet(s):**	800
199- 22 pocket acrylic organizer above the above squad bench	$450.00	**Subtotal B:**	$41,084.00

C. Unpublished Options - Itemize below / attach additional sheet(s) if necessary.
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
Install your Knox Box 2642 in electrical compartment	$291.00		
Furnish and install Knox MedVault	$1,525.00	**Subtotal From Additional Sheet(s):**	
Furnish and install GE V1016 SS 2200 siren/light control modu	$1,000.00	**Subtotal C:**	2816

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).	**For this transaction the percentage is:**	2%

D. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C)

Quantity Ordered:	1	X	**Subtotal of A + B + C:**	$165,900.00	=	**Subtotal D:** $165,900.00

E. H-GAC Order Processing Charge (Amount Per Current Policy) **Subtotal E:** 1000

F. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges

Description	Cost	Description	Cost
		Subtotal F:	0

Delivery Date:		**G. Total Purchase Price (D+E+F):**	$166,900.00

HGACBuy	CONTRACT PRICING WORKSHEET For MOTOR VEHICLES Only	Contract No.:	AM04-10	Date Prepared:	10/20/11

This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both the PO and the Worksheet MUST be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.

Buying Agency:	City of Midland	Contractor:	Sterling McCall Ford
Contact Person:	Dennis Yates	Prepared By:	Tim Kettle
Phone:	(432) 685-7451	Phone:	281-588-5000
Fax:	(432) 685-7494	Fax:	281-588-5150
Email:	dyates@midlandtexas.gov	Email:	tkettle@sterlingmccallford.com

Product Code:		Description:	

A. Product Item Base Unit Price Per Contractor's H-GAC Contract:

B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in description if applicable.
(Note: Published Options are options which were submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
621- Install (2) coat hooks on a length of 1" x 3" angle on the rc	$200.00		
1210- Exterior compartment and/ or structure modification (eac	$500.00		
28- 3 receptacle 12VDC outlet, no medical diode isolator on pa	$100.00		
		Subtotal From Additional Sheet(s):	
		Subtotal B:	800

C. Unpublished Options - Itemize below / attach additional sheet(s) if necessary.
(Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)

Description	Cost	Description	Cost
		Subtotal From Additional Sheet(s):	
		Subtotal C:	0

Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).	For this transaction the percentage is:	0%

D. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C)

Quantity Ordered:	1	X Subtotal of A + B + C:	800	=	Subtotal D:	800

E. H-GAC Order Processing Charge (Amount Per Current Policy) Subtotal E:

F. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges

Description	Cost	Description	Cost
		Subtotal F:	0

Delivery Date:		G. Total Purchase Price (D+E+F):	800

City Council Agenda

Approved For Agenda:
THudson
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL, CITY MANAGER**

FROM: **Regina Stephenson, Purchasing Manager**

SUBJECT: **Storage Area Network (SAN) RFP**

Purpose:

Approval of a resolution authorizing the issuance of a request for proposal for a storage area network (SAN).

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:
No funding required at this time.

Discussion:

Please consider approval of a resolution approving the issuance of a request for proposals for a storage area network for the Communications and Information Services Department. The estimated cost is $90,000.00. Please see the attached memo from Sharlett Chowning for further discussion.

CITY OF MIDLAND
Communication and Information Services Department
Interoffice Memorandum

Date: October 31, 2011
To: Tommy Hudson, Deputy City Manager
From: Sharlett Chowning, CIO
Subject: Consider a resolution approving plans and specifications and authorizing advertisement for request for proposals for a storage area network..

The Communications and Information Services Department is implementing a disk storage system. Currently storage is on each server. We currently have a specific amount of physical disk located on each server. Many times there may be excess capacity on one device while there is a shortage of capacity on another. By combining the storage for all applications on a storage area network (SAN), the city will be able to take advantage of excess capacity on one system to use on a disk strapped application.

Further, as the City moves toward more virtual servers, disk space will not be available on the server. This “pool” of disk will allow servers to be spun up for test environments without the need to purchase additional disk space. This will result in a more efficient use of total disk throughout the environment.

CISD is asking for approval to issue a Request for Proposal to vendors to provide 25 terabytes of disk and to provide the management of this disk for the best value for the City.

RESOLUTION NO.

RESOLUTION AUTHORIZING ISSUANCE OF A REQUEST FOR PROPOSALS FOR THE CONSTRUCTION OF A STORAGE AREA NETWORK AT 601 NORTH LORAINE, MIDLAND, TEXAS, FOR THE COMMUNICATIONS AND INFORMATION SERVICES DEPARTMENT

WHEREAS, a request for proposals has been prepared for the construction of a storage area network at 601 North Loraine, Midland, Texas, for the Communications and Information Services Department; and

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

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

SECTION ONE. That the request for proposals for the construction of a storage area network at 601 North Loraine, Midland, Texas, for the Communications and Information Services Department is hereby approved, said request for proposals being on file with the office of the City Secretary, referenced by the date and number of this Resolution.

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

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2011, 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
Purchasing Division

THE CITY OF MIDLAND

CONTRACT
Contract No.

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

1. **Cost:** Total Proposal: $ _____ DOLLARS

2. **Scope of Work:** The Contractor shall perform all work described for labor, material, equipment and supervision necessary to install a Storage Area Network (SAN) at 601 N. Loraine for the Communications and Information Services Department 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..... Intentionally Omitted.
EXHIBIT D..... Intentionally Omitted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. **Clean Up:** Contractor shall promptly remove from Owner's premises all materials condemned by the Owner's Representative on account of failure to conform to the contract, whether actually

incorporated in the work or not, and Contractor shall at its own expense promptly replace such condemned materials with other materials conforming to the requirements of the contract. Contractor shall also bear the expense of restoring all work of other contractors damaged by any such removal or replacement. If Contractor does not remove and replace any such condemned materials within a reasonable time after a written notice by the Owner, Owner may remove and replace such at Contractor's expense.

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

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

12.1. Defective work not remedied; or

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

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

12.4. Damages to another contractor or subcontractor.

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

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

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

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

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

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

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

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

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

19. **Insurance**

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

Commercial General Liability (including Contractual liability):	
-Personal Injury:	$1,000,000.00 per person
	$1,000,000.00 per occurrence
-Property Damage:	$500,000.00 per occurrence
Business Automobile Liability:	$250,000.00 combined single limit - Personal Injury and Property Damage
Worker's Compensation:	Statutory limits
Employers' Liability:	$500,000.00 per accident or occurrence

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

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

The Business Automobile Liability insurance provided by Contractor shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and

employee non-ownership, and the amount of such policy shall be a minimum of $250,000.00 covering any vehicle used for the execution of the work that is the subject of this Contract.

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

The parties agree that, prior to the execution of the Contract, Contractor shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, the following endorsement:

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

Owner shall be provided the notice by Contractor's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Owner shall not be required to provide any insurance whatsoever pursuant to this Contract.

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

IMPORTANT NOTICE

If for any reason your insurance agency or provider cannot supply the endorsements on the certificate EXACTLY as shown in the above paragraph entitled "Insurance" and on the included example, a letter from the provider shall be included with the certificate with those reasons stated.

You must carry Worker's Compensation Insurance to be considered 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.

20. **Assignment**: Contractor shall not, either directly or indirectly, assign all or any part of this Contract or any interest, right or privilege herein, without the prior written consent of the Owner. The

issue on whether or not to grant consent to an assignment is in the sole discretion of the Owner.

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

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

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

the work. Contractor is entirely free to do the work in its own way.

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

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

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

Contract No: Contract No.(file #)

OWNER, City of Midland

Courtney B. Sharp, City Manager

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

CONTRACTOR

Contractor Corporate Acknowledgment: Contract: Contract No.Contract No.(file #)

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 _____, 2011.

_____

Notary Public, State of Texas

If you received a paper copy of this Request for Proposals, it is also available in Word Form format that allows fill in your pc. To obtain a soft copy contact Purchasing@midlandtexas.gov or call (432) 685-7234

Request for Proposals

RFP _____

for

Storage Area Network (SAN)

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

Proposals May be Mailed or Delivered to:

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

No Late Proposals Will Be Accepted

Pre-bid meeting

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SCHEDULE OF EVENTS

RFP _____

For

Storage Area Network (San)

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

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

NOTE:

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

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SPECIAL TERMS AND CONDITIONS

Proposal Requirements /Terms

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

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

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

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

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

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

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

Conditions

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

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

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

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

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

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

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

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

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

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

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

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1. GENERAL INFORMATION

1.1. INTRODUCTION

The City of Midland (Information Services Department) (hereinafter referred to as "the City") is pleased to invite you to submit a proposal for a Storage Area Network (SAN) and future maintenance as specified herein. Proposals submitted in response to the specifications contained herein shall comply with the following instructions and procedures.

Request for Proposal Standard Information

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

1.2. INITIAL EVALUATION

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

1.3. DISCUSSION/NEGOTIATION

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

1.4. BEST AND FINAL OFFER

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

1.5. AWARD

1.5.1. The City may award a contract or purchase order to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the City.

1.5.2. The City will be solely responsible for the determination of what constitutes best value in accordance with the applicable Section 252.043 of the Local Government Code.

1.6. TRADE SECRETS

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

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

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

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

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

1.6.2.2. An affidavit from the offeror's legal counsel attesting to and explaining the validity of the trade secret claim must be attached to each proposal containing trade secrets. In addition, offerors submitting a proposal containing trade secrets must be prepared to pay all legal costs and fees associated with defending the claim for trade secret protection in the event of an open records request from another party.

1.6.3. Documents not meeting all of the requirements of (1) and (2) will be available for public

inspection, including copyrighted materials.

1.7. LATE PROPOSALS

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

1.8. PREPARING A RESPONSE

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

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

Section 1.9 is optional:

1.9. PRE-PROPOSAL CONFERENCE:

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

1.10. CLARIFICATION/ INTERPRETATION

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

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

FAX: (432) 685-0523

e-mail: purchasing@midlandtexas.gov

1.11. FORMAT FOR INQUIRIES:

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

1.12. INTERPRETATION:

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

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

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

1.13. PROPOSAL ORGANIZATION AND SUBMISSION

Offerors must organize proposals into sections following the format of this RFP, with tabs separating each section. If no exception, explanation, or clarification is required in the offeror's response to a specific subsection, the offeror shall indicate so in the point-by-point response with the following:

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

Section 1.14 is optional:

1.14. ALTERNATE PROPOSALS

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

1.15. SUBMITTING A SEALED PROPOSAL

1.15.1. Number of copies and Location:

1.15.1.1. Offerors must submit one original, 4 hard copies and one (1) soft copy (PDF or Word) to the City Secretary. Sealed Proposals must be received by the date before the time stated on the face of the Request for Proposal Cover Page, local time. Sealed Proposals received after this time will not be accepted for consideration. Facsimile copies are not acceptable.

1.15.1.2. A mailing label is included in the RFP. Please be sure to use it on the outermost package of the RFP whether it is an envelope, box or overnight package, so that it is visible when received by the City.

1.15.2. Each Offeror who submits a proposal represents that:

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

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

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

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

The 120 day period (how long will it take to evaluate and take to Council-we have had a couple that took a year!) can be changed.

1.15.4. A proposal may not be modified, withdrawn or canceled by the offeror for a 120-day period following the deadline for proposal submission,

or receipt of best and final offer, if required, as defined in the Schedule of Events, and offeror so agrees in submitting the proposal.

1.16. RIGHTS RESERVED

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

A) waive any formality;

b) cancel or terminate this RFP;

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

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

1.17. BONDING REQUIREMENTS

See Exhibit C

1.18. OFFEROR INTERVIEW / PRODUCT DEMONSTRATION

After receipt of all proposals and before the determination of the award, respondents may be required to make an oral presentation and product demonstration in Midland, Texas to clarify their response or to

further define their offer. Oral presentations and product demonstrations, if requested, shall be at the offeror's expense.

(Section 1.19 is optional based on whether or not subcontractors will be involved.)

1.19. SUBCONTRACTING

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

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

1.20. INSURANCE REQUIREMENTS

See Exhibit B

1.21. CONTRACTOR'S RESPONSIBILITIES

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

1.22. OFFEROR COMPETITION

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

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

1.23. CONTRACT PROVISIONS AND TERMS

1.23.1. Contract Execution

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

1.23.2. Terms and Conditions

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

1.23.3. Exceptions to Contract Terms & Conditions

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

1.23.4. The initial contract(s) term is for a period of ____3_____ years. Renewals of the contract may be made at ___1____ year intervals, not to exceed a total of (7) seven years, at the City's option.

Section 1.15.3 is optional depending on the nature of the project.

1.23.5. Contract Extension

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

customer of comparable volume.

Section 1.23.6 is optional depending on the nature of the project. The rates need to be adjusted per project.

1.23.6. Escalation

Annual pricing adjustments to contract extensions following the initial contract term, if applicable, shall neither exceed seventy-five percent (75%) of the rate of increase in the cost of living as reflected in the Federal Bureau of Labor Statistics, Consumer Price Index (CPI) for all Urban Consumers (1982-84=100; through November 1991 = 137.8) or any other index which may be substituted in the future nor five percent (5%) of the previous year's contract whichever is less. The CPI for the latest twelve (12) month period of the contract will be the CPI base on which later adjustments are computed. Each time an adjustment is made, the earlier CPI base will be replaced by the adjusted CPI base. The percentage of adjustment to contract prices shall in no event exceed the percentage change in the index.

2. PROPOSAL WAIVERS:

2.1. WAIVER OF ATTORNEY FEES:

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

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

By Execution and submission of this proposal, the offeror hereby represents and warrants to the City of Midland that the offeror has read and understands the Proposal Documents and the Contract Documents and this proposal is made in accordance with the Proposal Documents.

Offeror acknowledges that it understands all terms within the proposal Documents that include the waiver provisions, and that it had the right to consult with counsel regarding all of the above documents.

2.2. WAIVER:

BY SUBMITTING A PROPOSAL, EACH OFFEROR AGREES TO AND DOES HEREBY WAIVE ANY CLAIM THE OFFEROR HAS OR MAY HAVE AGAINST THE CITY OF MIDLAND, TEXAS AND THE CITY'S EMPLOYEES, AGENTS AND OFFICERS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE FOLLOWING:

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

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

3. ACCEPTANCE OR REJECTION OF ANY PROPOSALS; AND

4. AWARD OF THE CONTRACT.

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

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

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

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

3. SCOPE OF PROJECT

3.1. Design and provide a primary storage area network [SAN] solution that observes industry standards and best practices.

3.2. Provide and install the primary storage area network solution within the City of Midland's Data center located at 601 N. Loraine Street in Midland, Texas.

3.3. SAN must contain iSCSI topology.

3.4. SAN must include server connectivity, controllers, disk drives, drivers and all pertinent control systems required to make the system operational. Individual hardware components must be fully redundant and hot-swappable to ensure maximum data availability, including storage controllers, disk drives, power supplies, NICS, fans and power cords.

3.5. The proposed solution must be certified to work with the current versions of VMWare, Vsphere, Exchange Server, Microsoft SQL Server, and Hyper-V.

3.6. The SAN should have 25Tb of RAW disk storage (additional if copy-on-first-write is used) see section 4.10.; consisting of at least 9Tb high speed (15,000 rpm) SAS drives with the remaining storage will consist of 7,200 rpm SATA drives.

3.6.1. Drive configurations will use RAID 5. The SAS drive array will have two hot spare drives and the SATA drive array will have two hot spare drives. The drives will be configured to rebuild automatically in case of a hard drive failure.

3.7. The SAN must be online-expandable and provide for "in-the-box" growth to add additional useable storage capacity without affecting system performance and data availability to users.

3.8. Vendors will be required to provide written evidence of their current authorized reseller status for their proposed solution.

3.9. Hardware

3.9.1. Provide an itemized list of hardware required for the proposed solution.

3.9.2. Provide a detailed specification sheet of the SAN hardware including but not limited to: Type and number of number of Processing Units, RAM, Network Interface Cards, Storage Controllers, Spindles, Drive Capacities, and the online-expandable limits

of the proposed solution.

3.10. Software

3.10.1. Provide an itemized list of software for the proposed solution.

3.10.2. Indicate any 3rd party software licensing that is not included in the scope and cost of the proposed solution.

3.11. Installation & Implementation

3.11.1. The vendor shall be required to supply rack mounted system components in the City's Data Center, located at 601 N. Loraine Street, Midland, Texas. The vendor shall be required to provide all materials to install the SAN system.

3.11.2. The Vendor must provide an end-to-end installation and implementation of all SAN components.

3.11.3. The Vendor must provide site preparation and oversee the installation & implementation processes. Vendor must supply, in writing, the electrical supply requirements of their proposed solution. Including, but not limited to, circuit and receptacle information, at minimum of sixty (60) days prior to the scheduled installation date.

3.11.4. The Vendor will be required to provide a turn-key solution which shall include, but is not limited to the tasks outline below:

- Install storage arrays in an existing 19" 4 post rack
- Install and configure array management software
- Install and configure storage groups
- Create and configure SANS for replication
- Migrate servers and data to the storage area network
- Install and configure SAN connectivity software on:
  3 VMWare servers and a Tivoli Storage Manager server
- Configure failover and failback conditions
- Configure automatic notifications on SAN events including drive failures, RAID degradation, and other pre-failure events.
- Provide a written test and acceptance plan
- Provide benchmark test information on similar unit configuration with RFP submission.
  The benchmark test will include disk read, disk write transfer rates
  Post install benchmark testing will be compared to the test submitted with the RFP. The Post install benchmark must meet or exceed the pre install benchmark performance before acceptance.
  NOTE: Benchmark tests must be performed from a device outside the SAN, internal benchmark test will not be accepted.
- A member of the City of Midland Information Services Department will work with the vendor to install the SAN.

3.11.5. The Vendor must install and implement all of the software functionality, such as, but not limited: to software integration for backups; SAN management software and; storage management software.

3.12. SAN Management & Storage Management System

3.12.1. The SAN management and storage management systems must be easy to use and intuitive to minimize training time.

3.12.2. The systems must provide performance monitoring tools including processes for automatic notifications via email, SMS, and paging.

3.13. Training

3.13.1. Vendor must provide a comprehensive and fully documented "passing of the mantle" training, so that the City IT staff can support the fully configured SAN after the implementation is completed. Administrative and support training will be given after the implementation of the SAN has been completed.

3.14. Warranty and Maintenance

The materials, supplies and equipment furnished under any resulting award shall be covered by the manufacturer's most favorable commercial warranty, for a minimum period of three (3) years. Each vendor shall plainly set forth the specific warranty(ies) for the items proposed in their submission.

3.14.1. Vendor shall include in their submission a provision for on-site maintenance and warranty service to begin at the time of completion (as determined by the City).

3.14.2. 3 years of Mission Critical Support (7x24, 4 hours on-site) including all related software, software maintenance, and hardware maintenance, with no license limitations on number of servers .

3.14.3. Option for 5 years of Mission Critical Support (7x24, 4 hours on-site) including all related software, software maintenance, and hardware maintenance, with no license limitations on number of servers.

3.14.4. Option for 7 years of Mission Critical Support (7x24, 4 hours on-site) including all related software, software maintenance, and hardware maintenance, with no license limitations on number of servers.

3.14.5. Provide a copy of your proposed on-site maintenance and warranty agreement.

3.14.6. Provide on-site maintenance and warranty service that meets the response time requirements of:

- Four (4) hours on-site for major malfunctions (emergency service)

- Next business day on-site for minor malfunctions.

- Three (3) to five (5) business days for adds, moves and or changes to the system requiring an on-site technician.

- Adds, moves and or changes that can be performed using remote access shall be performed the same business day, or within twenty-four (24) hours of the request. [Note: remote access to the systems shall be controlled by the City]

3.14.7. Provide a copy of your emergency response and service policy.

3.15. Acceptance Plan
- All tasks described in 3.11.4 must be complete.
- Test notifications (section 3.12.2) must be sent and received to users and groups as well as a forced event to show that automatic notifications are functioning properly.
- Training as described in section 3.13 and sub sections will be completed.
- Post installation benchmark tests must meet or exceed the benchmark test results sent with the RFP.

4. NARRITIVE

4.1. Does your solution provide Automatic disk load balancing? YES ☐ NO ☐

4.2. Automatic controller load balancing? YES ☐ NO ☐

4.3. Automatic port load balancing? YES ☐ NO ☐

4.4. When additional disks, enclosures, or storage controllers are added, will access to the SAN be disrupted for any amount of time? YES ☐ NO ☐
If so, please describe processes and give estimates.

_____

_____

4.5. Does your solution provide for online data migration to different disks? YES ☐ NO ☐
If so, how will performance and snapshot/replication protection be affected?

_____

_____

4.6. Describe the process of asset retirement, include processes for disks, enclosures, and controllers:

_____

_____

4.7. What is the total amount of disk space (in percentage) that is necessary for successful replication? Include required disk space for the target and primary drives.

_____

_____

4.8. Does your solution provide snapshot technology? YES ☐ NO ☐
Does it require separate licensing? YES ☐ NO ☐

4.9. Describe snapshot restoration and granularity available within that restore, also include what authorizations are required to restore data:

4.10. State whether the quoted solution uses copy-on-first-write technology when maintaining snapshots, meaning that new data, when placed on disk, must be located where the previous version of that data was located, so that old data must be moved out of the way before writing the new data to disk.

4.11. If copy-on-first-write is used, then provide 80% more raw physical disk spindles to handle the extra back-end IO load so that the quoted solution is comparable to a non-copy-on-first-write solution. If fewer spindles are needed to create an accurate comparison, provide proof that a lower number of additional disks will be acceptable.

4.12. Is thin provisioning available? YES ☐ NO ☐
Do the controls prevent one volume from monopolizing free space? YES ☐ NO ☐

4.13. Does controller failover without loss of access to physical disk drives? YES ☐ NO ☐

4.14. Will Controller failure or re-boot compromise data integrity of snapshots? YES ☐ NO ☐

4.15. Is performance maintained in the event of a controller failure? YES ☐ NO ☐

4.16. Do firmware upgrades require downtime? YES ☐ NO ☐

4.17. Does the solution have the ability to automatically fail over to a remote site? YES ☐ NO ☐

4.18. How is replication handled when failing back to the production SAN from a remote site?

4.19. Does SAN software provide application recovery for remote replicas for SQL, Exchange, and running VMWare virtual machines independent of any backup application?
YES ☐ NO ☐

4.20. Is your SAN solution compatible with storage-vendor-agnostic backup and archive processes?
YES ☐ NO ☐

4.21. Is centralized management included with access to performance logs? YES ☐ NO ☐

4.22. Does software include local snapshots, instant restore from snapshots, remote snapshots, cloning , including read-write access to volumes made from remote replicas without disrupting replication?

YES ☐ NO ☐

4.23. Will a restoration of a primary volume from a snapshot cause a loss of performance during and after the restore? YES ☐ NO ☐

4.24. Is there an automatic mechanism to undo changes made during a restore to get the system back to the pre-restore state? YES ☐ NO ☐
Please describe.

_____

_____

4.25. In the event that very large amounts of data are changed quickly, will the solution facilitate the use of tape or removable disk as a means of transferring the data to be replicated to the remote site?

YES ☐ NO ☐

If so, after the replicas have been copied to the remote storage SAN will that remote SAN maintain those replicas by replicating only future changes? YES ☐ NO ☐

4.26. Can a new volume be created on-demand out of an existing volume, remote replica, clone, or snapshot?

YES ☐ NO ☐

If so, describe the process and impact to the solution.

_____

_____

4.27. Can additional storage controllers be added without displacing previously purchased controllers?

YES ☐ NO ☐

4.28. What is the expected life-span of the proposed solution?

_____

_____

5. REQUIREMENTS

5.1. 25Tb RAW Disk storage (additional if copy-on-first-write is used) with iSCSI connectivity. Include any switching equipment required to connect the SAN to the server heads and/or network; also include configuration, installation, and training fees (onsite).

5.2. 3 years of Mission Critical Support (7x24, 4 hours on-site) including all related software, software maintenance, and hardware maintenance, with no license limitations on number of servers.

5.3 Option for 5 years of Mission Critical Support (7x24, 4 hours on-site) including all related software, software maintenance, and hardware maintenance, with no license limitations on number of servers.

5.4 Option for 7 years of Mission Critical Support (7x24, 4 hours on-site) including all related software, software maintenance, and hardware maintenance, with no license limitations on number of servers.

5.5 Completeness of price to avoid cost unpredictability:

5.5.1 - Software must include server-resident software for unlimited servers for multipathing, Windows server configuration onto the SAN, application recovery integration for snapshots, clones, and remote replicas for SQL, Exchange and running VMware virtual machines.

5.5.2 - Software must include command line access, performance logging and management, centralized management of the vendors' storage solutions.

5.5.3 - Software must include local snapshots, instant restore from snapshots, remote snapshots, cloning (including read-write access to volumes made from remote replicas without disrupting replication, for testing replication)

5.5.4 - Software must include off-site replication for disaster recovery including remote replicas for SQL, Exchange and running VMware virtual machines.

5.6 Include an extensive list of prices for optional software and services that are not included in the proposal.

6. VENDOR QUALIFICATIONS

Section 5 needs to be tailored to each project.

6.1. INFORMATION VERIFICATION

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

6.2. RIGHT TO REJECT

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

6.3. VENDOR CAPABILITIES

In determining the capabilities of an offeror to perform the services specified herein, the following informational requirements must be met by the offeror and will be weighed by the City. (Note: Each item

must be thoroughly addressed. Taking exception to any requirements listed in this Section may disqualify the proposal):

6.3.1. References

6.3.1.1. Offeror shall provide a minimum of ___5___ Texas references that are using services of the type proposed in this RFP. The references should fall within the categories identified below. At a minimum, the offeror shall provide the company name, the location where the services were provided, contact person(s), customer telephone number, a complete description of the service type, and dates the services were provided. The City reserves the right to use any information or additional references deemed necessary to establish the ability of the offerors to perform the conditions of the contract. Negative references may be grounds for proposal disqualification.

6.3.1.2. These references should include City government and universities where the offeror, preferably within the last __2__ years, has successfully completed (a SAN implementation.).

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

Section 6.3.1 is optional, depending on the nature of the project and needs to be tailored accordingly.

6.3.2. Vendor Stability

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

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

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

6.3.2.4. Offerors shall specify how long the company submitting the proposal has been in business (supplying proposed equipment) _____.

7. EVALUATION PROCESS

Section 7 needs to be tailored to each project.

7.1. EVALUATION PROCEDURE

7.1.1. Committee Actions

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

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

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

7.2. EVALUATION CRITERIA

The evaluation committee will review and evaluate the offers according to the following criteria:

These should be customized appropriately to fit the requirements of the RFP. Those below are only intended as examples

7.2.1. Company Service Qualifications

7.2.2. Three references

7.2.3. Years in business

7.2.4. Project Manager

7.2.5. Implementation Plan

7.2.6. Training Requirements

7.2.7. Organization

7.2.8. Technical Abilities

7.2.9. Cost Analysis

8. PROPOSAL CONTENTS

This needs to be structured to coincide with the requirements set forth in the RFP

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

8.1. THE RFP

8.2. THE COST SUMMARY OR PROPOSAL FORM

8.3. REQUESTED ATTACHMENTS

8.3.1. References

8.3.2. Sample Maintenance Contract and Warranty Terms

8.3.3. Itemized Hardware List

8.3.4. Detailed Hardware Specification Sheet

8.3.5. Itemized Software List

8.3.6. Implementation Plan

8.3.7. Written Test Plan

8.3.8. Acceptance Plan

8.3.9. Benchmark Information

8.3.10. Financial Information

8.3.11. Evidence of Authorized Reseller Status

8.3.12. Section 4 (Narrative) Questions

8.3.13. Signed Execution of Offer

EXECUTION OF OFFER

Date:

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

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

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

This offer consists of pages number 1 through _____.

Offeror/ COMPANY: _____

SIGNATURE (INK): _____

NAME: (TYPED/PRINTED) _____

TITLE: _____

STREET: _____

CITY/STATE/ZIP: _____

TELEPHONE: _____ FAX: _____

E-MAIL ADDRESS: _____

City Council Agenda

Approved For Agenda:
THudson
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL, CITY MANAGER**

FROM: **Regina Stephenson, Purchasing Manager**

SUBJECT: **Internet Service Provider RFP**

Purpose:

Approval of a resolution authorizing the issuance of a request for proposals for an internet service provider.

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:
No funding required at this time.

Discussion:

Please consider approval of a resolution approving the issuance of a request for proposals for an internet service provider for the Communications and Information Services Department. The estimated cost is $50,000.00. Please see the attached memo from Sharlett Chowning for further discussion.

CITY OF MIDLAND
Communication and Information Services Department
Interoffice Memorandum

Date: October 31, 2011
To: Tommy Hudson, Deputy City Manager
From: Sharlett Chowning, CIO
Subject: Consider a resolution approving plans and specifications and authorizing advertisement for request for proposals for an Internet Service Provider

The City of Midland's primary Internet Services Provider (ISP) is NTS Communications. NTS furnishes one point of presences into the city at the Police and Communications Building. They currently provide 6 MB of bandwidth for use by the entire city. The contract with NTS is expiring and the city needs to take this opportunity to investigate other options for internet services.

Currently, the city has a secondary internet provider, Grande, who provides 5 MB of bandwidth. The contract with Grande was entered into in January 2011 and will not expire until January 2013.

An ISP provides more than just the physical connection to the Internet. It must also provide the city with IPv4 addresses to be used to address the city to the outside world. The ISP would also serve as the primary and/or secondary domain name service which is the index that allows others to find the city on the Internet.

CISD is asking for approval to issue a Request for Proposal to vendors to provide various levels of bandwidth for use by the city. The amount of bandwidth will be determined by the amount budgeted for the current ISP of $15,360.

RESOLUTION NO.

RESOLUTION AUTHORIZING ISSUANCE OF A REQUEST FOR PROPOSALS FOR AN INTERNET SERVICE PROVIDER FOR THE COMMUNICATIONS AND INFORMATION SERVICES DEPARTMENT

WHEREAS, a request for proposals has been prepared for an internet service provider for the Communications and Information Services Department; and

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

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

SECTION ONE. That the request for proposals for an internet service provider for the Communications and Information Services Department are hereby approved, said request for proposals being on file with the office of the City Secretary, referenced by the date and number of this Resolution.

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

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2011, 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

INTERNET SERVICE PROVIDER AGREEMENT

_____, with its principal office at _____, hereinafter called "Provider", and the City of Midland, Texas, located at 300 North Loraine, Midland, Texas 79701, hereinafter called "Customer".

WHEREAS, Provider agrees to provide internet service provider services, as described in Exhibit "A" to Customer and;

WHEREAS, Customer has requested that Provider provide the services described in Exhibit "A" and Customer desires to receive said services.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the parties agree as follows:

1. Provider agrees to furnish to Customer the internet service provider services as set forth in its proposal titled Internet Service Provider, presented to Customer in accordance with City of Midland Bid No. _____, a copy of said proposal being attached hereto as Exhibit "A", said Exhibit "A" being made a portion of this agreement as if set forth verbatim herein.

2. This agreement shall be effective on the ____ day of _____, 20_, and continue for a period of thirty-six (36) months. The agreement may be extended, on the same terms and conditions, for seven (7) additional periods of 12 months each, upon Customer giving notice to Provider of intent to continue the contract under the same terms and conditions. Provider shall effect full cutover and/or installation of the services described in Exhibit "A" not later than _____.

3. During the term of the contract Provider shall charge and Customer shall pay that amount set forth in Exhibit "A". In the event Provider obtains from the Texas Public Utility Commission and/or the Federal Communications Commission, as appropriate, authority to lower its rate tariffs, the charges set forth in Exhibit "A" shall be lowered to reflect such decrease.

4. The technical specifications for the services provided by Provider and any requirements for interconnection to be provided by Customer shall be set forth in Exhibit "A".

5. Customer acknowledges that billings are done on a monthly basis and that the service must be paid within 30 days of delivery of invoice to Customer. Payments not received within 30 days of the date of delivery of invoice will result in the right of Provider to cancel and terminate the service provided herein.

6. No term or provision of this agreement shall be deemed waived, and no breach or default shall be deemed excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. No consent by any party to, or waiver of, a breach or default by the other, whether expressed or implied, shall constitute a consent to, waiver of, or excuse for, any different or subsequent breach or default.

7. Should Customer claim any exemption of any sales, use, or other tax, then Customer shall provide such exemption information to Provider. Provider will be allowed to maintain a copy of such information in its offices in _____. It will be the responsibility of Customer to make sure that its proof of exempt status remains current.

8. Should Customer dispute any of the monthly charges on its monthly invoice, it shall notify Provider immediately, and not later than 15 business days from receipt of invoice thereof, of the disputed charges. Customer shall set forth in writing all details of charges under dispute, but shall pay any undisputed charges according to the terms hereof. After resolution of any disputed charges, the balance agreed to be due and owing to Provider shall be paid within 10 calendar days.

9. Neither Provider nor Customer are liable to the other for any consequential, indirect, special, or incidental damages whatsoever, including, without limitation, any loss of revenue, goodwill, or profits or claims by third parties or otherwise in connection with or related to any of the services provided pursuant to this agreement.

10. Provider warrants that the equipment it uses is suitable for the use intended, and Customer warrants and represents that it is fully authorized to contract for the services under this agreement. PROVIDER MAKES NO OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED.

11. If the performance of the respective obligations of Provider or a Customer shall be prevented or interfered with by reason of any fire, flood, epidemic, earthquake, or any other act of God, explosion, strike or other disputes, riot or civil disturbance, war (whether declared or undeclared) of armed conflict, any municipal ordinance, or state or federal law, governmental order or regulation, or order of any Court of competent jurisdiction, or other similar forces not within the control of Provider as the case may be, then Customer and/or ___Provider as the case may be, shall not be liable to the other for its failure to perform such obligations hereunder.

12. If any term or provision of this agreement shall be found to be illegal or unenforceable, then, not withstanding such illegality or unenforceability, this agreement shall remain in full force and effect and such term or provision shall be deemed to be deleted. In addition, this agreement shall be terminated upon the determination of governmental entity having jurisdiction over the services provided under this agreement, and the relationship of the parties and/or services provided hereunder are contrary to the existing law. This agreement may be executed in two or more counterparts, each of which shall be deemed an original. It shall not be necessary in making proof of this agreement to produce or account for more than one of such counterparts.

13. Notwithstanding anything to the contrary herein, in the event the City Council of the City of Midland fails to appropriate sufficient funds for any of the Customer's fiscal years occurring during the term

of this agreement, which appropriations are for the purpose of paying the monthly or other charges set forth in this agreement or for services similar to those described herein, the term of this agreement shall end at midnight on September 30 of the Customer's fiscal year for which appropriations were made without further liability to Provider except for payment of monthly charges due and payable for services provided to Customer to the date of termination. Furthermore, notwithstanding anything herein to the contrary, Customer shall have the right to terminate services from Provider for any reason not earlier than ninety (90) days after providing written notice to Provider of the Customer's desire for termination. Customer shall have the right to terminate services for Provider for cause not earlier than thirty (30) days after providing written notice to Provider of the Customer's desire for termination.

14. All notices required by this agreement shall be assumed to have been delivered when addressed to each party as set out in Exhibit "A" as attached hereto, in a proper wrapper, postage prepaid and sent either express or overnight delivery or registered or certified mail, return receipt requested.

15. Except as otherwise provided herein, the remedies provided for in this agreement are in addition to any other remedies available at law or in equity by statute or otherwise.

16. **INDEMNITY: THE PROVIDER SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CUSTOMER AND ALL OF THE CUSTOMER'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 PROVIDER, 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 AGREEMENT, AND PROVIDER WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE CUSTOMER OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.**

THE PROVIDER SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CUSTOMER AND ALL OF THE CUSTOMER'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 CUSTOMER, THE CUSTOMER'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 PROVIDER OR THE PROVIDER'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 PROVIDER WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE CUSTOMER OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

THE PROVIDER AGREES THAT HE WILL INDEMNIFY AND SAVE THE CUSTOMER 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 AGREEMENT. WHEN CUSTOMER SO DESIRES, THE PROVIDER SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. THE PROVIDER, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS THE CUSTOMER 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 PROVIDER OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS AGREEMENT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE CUSTOMER OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES.

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

If the Provider should fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Customer, then the Provider does hereby agree as part of the

consideration for the awarding of this agreement, the Customer may withhold permanently from Provider's total compensation, the sum of _____ Dollars ($_____), not as a penalty but as liquidated damages for the breach of the agreement as herein set forth for each calendar day that the Provider shall be in default after the time stipulated for completing the work.

TIME IS OF THE ESSENCE IN THIS AGREEMENT.

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

19◘ **Warranty:** Neither the final payment nor any provision in this agreement shall relieve the Provider 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 Customer shall give notice of observed defects with reasonable promptnes◘

20◘ **Remedy:** The Customer 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:

Defective work not remedied; or

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

Failure of the Provider to make payments promptly to subcontractors or for material or labor which the Customer may pay as an agent for the Provider; or

Damages to another provider or subcontractor.

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

21◘ **Payment:** After all work is completed by the Provider, and the Customer has inspected

and approved that work, the Customer shall within thirty-one (31) days thereafter issue payment to the Provider in the amount of the agreement.

22◘ **No Third Party Beneficiary:** The Customer'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.

23◘ **<u>WAIVER OF ATTORNEY FEES</u>: BY EXECUTING THIS AGREEMENT, PROVIDER AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CUSTOMER, 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 PROVIDER SPECIFICALLY AGREES THAT IF THE PROVIDER 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 PROVIDER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH PROVIDER MIGHT OTHERWISE BE ENTITLED.**

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

SOVEREIGN IMMUNITY.

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

25◘ **Insurance**

Provider 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" or "per policy" aggregate, including completed operations, and shall be on an occurrence basis.

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

The Business Automobile Liability insurance provided by Provider shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of $250,000.00

covering any vehicle used for the execution of the work that is the subject of this Agreement.

All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name the Customer 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 Customer.

The parties agree that, prior to the execution of the Agreement, Provider shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, the following endorsement:

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

Customer shall be provided the notice by Provider's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. Customer shall not be required to provide any insurance whatsoever pursuant to this Agreement.

Provider shall contractually require all providers, 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 providers, 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).

IMPORTANT NOTICE

If for any reason your insurance agency or provider cannot supply the endorsements on the certificate EXACTLY as shown in the above paragraph entitled "Insurance" and on the included example, a letter from the provider shall be included with the certificate with those reasons stated.

You must carry Worker's Compensation Insurance to be considered for this agreement.

If you cannot provide Worker's Compensation Insurance as required by State of Texas statute we respectfully request that you "No Bid" this work.

26. **Assignment**: Provider 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 Customer. The issue on whether or not to grant consent to an assignment is in the sole discretion of the Customer.

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

28◘ **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.

29◘ **Independent Contractor:** It is expressly understood and agreed that Provider shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the Customer; that Provider 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, providers and subcontractors; that the doctrine of respondeat superior shall not apply as between Customer and Provider, its officers, agents, employees, providers and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between Customer and Provider. No person performing any of the work and services described hereunder by Provider shall be considered an officer, agent, servant or employee of the Customer. 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. Provider 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 Customer does not have the power to direct the order in which the work is done. The Customer shall not have the right to control the means, methods or details of the Provider's work. Provider shall assume exclusive responsibility for the work. Provider is entirely free to do the work in its own way.

30. **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, Provider or his legal representative, shall give the City Manager, or any other reasonable official of the Customer, 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 Provider will settle, the physical and mailing addresses of Provider at the time and date the claim was presented and the physical and mailing addresses of Provider for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Provider 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 Customer from any liability whatsoever. The Customer is under no obligation to provide notice to Provider that Provider's notice is insufficient. Customer 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, Provider's failure to comply with the requirements herein shall perpetually bar Provider's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if Customer has actual or constructive notice or knowledge of said claim or alleged damages. Provider agrees that the requirements of this entire Agreement are reasonable.

31◘ **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.

CUSTOMER, City of Midland

Courtney B. Sharp, City Manager

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

PROVIDER

Provider Corporate Acknowledgment: Agreement:

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 _____, 2011.

_____
Notary Public, State of Texas

If you received a paper copy of this Request for Proposals, it is also available in Word Form format that allows fill in your pc. To obtain a soft copy contact Purchasing@midlandtexas.gov or call (432) 685-7234

Request for Proposals

RFP _____

for

Internet and Networked Services

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

Proposals May be Mailed or Delivered to:

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

No Late Proposals Will Be Accepted

A Pre-PROPOSAL Meeting will be required

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SCHEDULE OF EVENTS

RFP _____

For

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

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

NOTE:

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

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SPECIAL TERMS AND CONDITIONS

Proposal Requirements /Terms

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

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

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

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

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

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

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

Conditions

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

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

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

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

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

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

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

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

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

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

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

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1. GENERAL INFORMATION

1.1. INTRODUCTION

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

Request for Proposal Standard Information

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

1.2. INITIAL EVALUATION

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

1.3. DISCUSSION/NEGOTIATION

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

1.4. BEST AND FINAL OFFER

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

1.5. AWARD

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

1.6. TRADE SECRETS

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

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

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

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

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

1.6.2.2. An affidavit from the offeror's legal counsel attesting to and explaining the validity of the trade secret claim must be attached to each proposal containing trade secrets. In addition, offerors submitting a proposal containing trade secrets must be prepared to pay all legal costs and fees associated with defending the claim for trade secret protection in the event of an open records request from another party.

1.6.3. Documents not meeting all of the requirements of (1) and (2) will be available for public

inspection, including copyrighted materials.

1.7. LATE PROPOSALS

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

1.8. PREPARING A RESPONSE

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

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

1.9. PRE-PROPOSAL CONFERENCE:

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

1.10. CLARIFICATION/ INTERPRETATION

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

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

FAX: (432) 685-0523

e-mail: purchasing@midlandtexas.gov

1.11. FORMAT FOR INQUIRIES:

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

1.12. INTERPRETATION:

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

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

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

1.13. PROPOSAL ORGANIZATION AND SUBMISSION

Offerors must organize proposals into sections following the format of this RFP, with tabs separating each section. If no exception, explanation, or clarification is required in the offeror's response to a specific subsection, the offeror shall indicate so in the point-by-point response with the following:

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

Section 1.14 is optional:

1.14. OFFER PRICING

Offerors must respond to this RFP by utilizing the RFP Cost Summary. The cost summary will be used as the primary representation of each offeror's cost, and will be used extensively during proposal evaluations. Additional information should be included as necessary to explain in detail the offeror's cost.

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

1.15. ALTERNATE PROPOSALS

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

1.16. SUBMITTING A SEALED PROPOSAL

1.16.1. Number of copies and Location:

1.16.1.1. Offerors must submit one original and a soft copy to be reprinted by the user, to the City Secretary. Sealed Proposals must be received by the date before the time stated on the face of the Request for Proposal Cover Page, local time. Sealed Proposals received after this time will not be accepted for consideration. Facsimile copies are not acceptable.

1.16.1.2. A mailing label is included in the RFP. Please be sure to use it on the outermost package of the RFP whether it is an envelope, box or overnight package, so that it is visible when received by the City.

1.16.2. Each Offeror who submits a proposal represents that:

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

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

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

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

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

1.17. RIGHTS RESERVED

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

A) waive any formality;

b) cancel or terminate this RFP;

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

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

1.18. BONDING REQUIREMENTS

See Exhibit C

1.19. OFFEROR INTERVIEW / PRODUCT DEMONSTRATION

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

1.20. SUBCONTRACTING

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

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

1.21. INSURANCE REQUIREMENTS

See Exhibit B

1.22. CONTRACTOR'S RESPONSIBILITIES

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

1.23. OFFEROR COMPETITION

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

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

1.24. CONTRACT PROVISIONS AND TERMS

1.24.1. Contract Execution

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

1.24.2. Terms and Conditions

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

1.24.3. Exceptions to Contract Terms & Conditions

Offerors should notify the City of any terms within the sample contract that either precludes them from responding to the RFP or add unnecessary cost. This notification must be made by the deadline for receipt of written inquiries as stated in the Schedule of Events.

The initial contract(s) term is for a period of _____3____ years. Renewals of the contract may be made at ____1___ year intervals, not to exceed a total of (7) seven years, at the City's option.

1.24.4. Contract Extension

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

1.24.5. Escalation

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

2. PROPOSAL WAIVERS:

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

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

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

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

1. **THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY PROPOSAL;**

2. **WAIVER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE PROPOSAL DOCUMENTS OR THE CONTRACT DOCUMENTS;**
3. **ACCEPTANCE OR REJECTION OF ANY PROPOSALS; OR**
4. **AWARD OF THE CONTRACT.**

BY SUBMITTING A PROPOSAL, THE OFFEROR ACKNOWLEDGES THAT THE OFFEROR UNDERSTANDS ALL OF THE TERMS OF THE PROPOSALDING DOCUMENTS AND CONSENTS TO THE PROPOSALDING PROCESS AND THE POSSIBILITY OF A NEGATIVE ASSESSMENT.

BY SUBMITTING A PROPOSAL, THE OFFEROR ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE OFFEROR AND THE CITY OF MIDLAND, TEXAS.

THE OFFEROR AGREES THAT THIS IS THE INTENTIONAL RELINQUISHMENT OF A PRESENTLY EXISTING KNOWN RIGHT.

BY SIGNING AND SUBMITTING THE EXECUTION OF OFFER SUBSEQUENT TO THIS REQUEST FOR PROPOSALS, OFFEROR AGREES TO THE ABOVE WAIVERS.

3. SCOPE OF PROJECT

Purpose and Background

The City of Midland is seeking a qualified Internet Service Provider (ISPs) for Internet and networked connection services to replace the existing 6MB service. The City of Midland Internet use is inbound and outbound. City owned facilities, such as parks, city hall, fire stations, the police station and municipal court may be provided with free public internet. All proposals must include a detailed plan for meeting the City of Midland's requirements for Internet service. Included in the plan must be the vendor's support capabilities and circuit ability for meeting the following requirements Internet Service, Reporting and Support. The details of each are outlined below.

Scope of Work

It is the City's intent that the successful firm will be involved for the full duration of the design development, operation, and management of this endeavor. The successful Service Provider (ISP) will provide internet access to the Police Communications Building located at 601 N. Loraine RM 101 Midland, Texas 79701, designated as the initial breakout location. The City reserves the right to add additional breakout locations in the future, should it become necessary. Should the City determine the need for additional breakout location(s), the Service Provider will be notified and granted first right of refusal to provide Internet access at the new location(s). The addition of additional breakout locations will require negotiation of costs to add and connect the new location(s). All equipment, components, and software necessary to route the traffic to the demarcation point at the breakout location(s) will be the responsibility of the City.

4. REQUIREMENTS

NOTE: Where the term "required Field" appears in the requirements, the intent is that the user may not leave that field blank and leave the current record. The blank required fields shall be flagged for easy identification of the fields left blank.

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

Charge

**Will be at an additional cost. These added costs shall be listed on the cost summary/price sheet proposal page (whichever is attached)

	Feature	Included In Package*	Will Add or Modify **	Exception Detail
4.1.	**INTERNET SERVICE**			
4.1.1.	Service Provider(s) will provide, install and maintain all equipment necessary to connect to the Internet via industry standard TCP/IP Ethernet at the location(s) and bandwidth(s) specified, or provide available bandwidth options. Full bandwidth is needed at all times. The ISP must provide a Committed Information Rate of 20 Mbps. If purchasing a minimum of 40 Mbps or 60 Mbps the minimum is that rate of speed	☐	☐	
4.1.1.1.	6Mbps full duplex dedicated communications fully expandable to 100 Mbps	☐	☐	
4.1.1.2.	10Mbps full duplex dedicated communications fully expandable to 100 Mbps	☐	☐	
4.1.1.3.	20Mbps full duplex dedicated communications fully expandable to 100 Mbps	☐	☐	
4.1.1.4.	40 Mbps full duplex dedicated communications fully expandable to 100 Mbps	☐	☐	
4.1.2.	Service Providers will provide unfettered Internet access for a minimum of 150 usable, publicly accessible, IP V4 addresses according to InterNIC policy and a primary and/or secondary DNS.			
4.1.3.	Service Provider(s) will provide free public internet at city owned facilities including but not limited to the following buildings: City Hall, City owned parks and community centers, the Health Department, Fire Stations, the Police Building and Municipal Court.			
4.1.4.	**SERVICES REQUIRED**	☐	☐	
4.1.4.1.	Service Provider(s) will provide the necessary labor, parts, transportation, and technical expertise to implement the entire project	☐	☐	

4.1.4.1.1. Service Provider(s) will provide a project manager who will be a single point of contact for network implementation. Following initial implementation and upon satisfactory testing and acceptance, Service Provider will provide a single point of contact for account management.			
4.1.4.1.2. Service Provider(s) will conduct a pre-installation site visit and planning meeting to assist in defining space, environment, power, cabling, port assignments and configuration of the network connections	☐	☐	
4.1.4.1.3. Service Provider(s) will guarantee a minimum 99.9% uptime (excluding scheduled maintenance) for the provided connections within any given thirty (30) day consecutive period.	☐	☐	
4.1.4.1.4. Service Provider(s) will provide, install and maintain all equipment that demarcates the network connections.	☐	☐	
4.1.4.1.5. Service Provider(s) will provide 24x7x365 proactive monitoring of network availability, connectivity points and customer connections.	☐	☐	
4.1.4.1.6. Service Provider(s) will notify City of Midland of any detected service disruption within fifteen (15) minutes via email, phone or pager.	☐	☐	
4.1.4.1.7. The Service Provider(s) shall commit to mutually agreed upon performance and response standards for problem resolution and guarantee the agreed upon level of service:	☐	☐	
4.1.3.1.7.1 <u>Network Down:</u> Qualified service technician to be actively troubleshooting within 15 minutes of being notified. Actual repair to be completed within two hours or Service Provider(s) will call City of Midland to provide status and initiate escalation procedures.	☐	☐	
4.1.3.1.7.2. <u>Network Problem:</u> Qualified service technician to be actively troubleshooting within 30 minutes of being notified. Actual repair to be completed within three hours. The Service Provider(s) will call City of Midland to provide status and initiate escalation procedures each hour after the initial notification.	☐	☐	

4.1.4.1.8. The City of Midland reserves the right to negotiate liquidated damages into the awarded bidder's Service Level Agreement as protection against non-performance of obligations under this proposal	☐	☐	
4.1.4.1.9. The Service Provider(s) will limit scheduled maintenance activities to the hours between 1:00 am and 6:00 am and provide City of Midland with at least forty-eight (48) hours advance notice of any scheduled maintenance activity.	☐	☐	
4.1.3.1.10. Service Provider(s) will provide 24x7x365 toll free telephone customer support.	☐	☐	
4.1.3.1.11. The Service Provider(s) will provide a maintenance log file or database that provides all details of service calls and maintenance actions performed. This information must be accessible to City of Midland upon request.	☐	☐	
4.1.3.1.12. The Service Provider(s) will provide the ability for City of Midland personnel with access to real-time and historical Internet connection statistics to determine connection performance including uptime as well as peak and average utilization. Alternatively, utilization reports will be available on a predetermined scheduled basis at no additional cost.	☐	☐	
4.1.3.1.13. The Service Provider(s) will provide a local point of presence.	☐	☐	
4.1.3.1.14. Service Provider(s) will conduct quarterly meetings with City of Midland personnel to review service delivery availability and performance.	☐	☐	
4.1.5 USE OF PREMISES			
4.1.5.1. The Service Provider(s) will confine operations at the site to the areas directed by City of Midland.	☐	☐	
4.1.5.2. The Service Provider(s) shall maintain the work area in a safe and clean condition throughout the installation.	☐	☐	
4.1.5.3. The City of Midland will provide access to all work areas required.	☐	☐	
4.1.5.5. Service Provider(s) will conform to City of Midland's security practices.	☐	☐	
4.1.6. COMPLETION OF WORK	☐	☐	
4.1.6.1. The Service Provider(s) will clean the installation site and remove any and all excess materials.	☐	☐	

4.1.6.2. The Service Provider(s) shall correct any damage to property that may have occurred as a result of installation	☐	☐	
4.1.6.3. The Service Provider(s) will provide City of Midland a completion notice upon completion of the installation of Service. The City will have 30 calendar days to perform testing. Upon successful testing, the City will provide the Service Provider with a written (E-mail acceptable) Notice of Acceptance. If testing identifies discrepancies, the Service Provider will be notified within three business days. Service Provider will then have up to ten business days to correct discrepancies. Upon notification that repairs are complete, the City will have ten business days to conduct additional testing.	☐	☐	
4.1.7. PRICING AND BILLING REQUIREMENTS The Funding of this service will be subject to an annual appropriation by City of Midland City Council.			
4.1.7.1. The contract will be guaranteed for three years from the date of the Notice of Acceptance with four additional one year terms at the sole discretion of the City of Midland.	☐	☐	
4.1.7.2. The price schedule should reflect the first year from Notice of Acceptance. Each subsequent year will begin on the year date anniversary of the Notice of Acceptance.	☐	☐	
4.1.7.3. The Service Provider(s) will assist City of Midland in feasibility studies relative to Internet connection capacity upgrades.	☐	☐	
4.1.7.4. The Service Provider(s) will allow City of Midland to combine, upgrade, downgrade or deactivate breakout locations without any early termination charges, penalties or fees.	☐	☐	
4.1.7.5. A billing account representative will be assigned to City of Midland	☐	☐	
4.1.7.6. The Service Provider shall provide a single invoice rather than multiple invoices.	☐	☐	
4.1.7.7. Billing will be itemized per location and per Internet connection.	☐	☐	
4.1.7.8. Partial months of service will be prorated to the day.	☐	☐	

5. NARRATIVE

If you choose to respond in writing, one (1) original, one (1) electronic version of the proposal should be returned in a sealed envelope bearing the name and address of the respondent.

6. VENDOR QUALIFICATIONS

6.1. INFORMATION VERIFICATION

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

6.2. RIGHT TO REJECT

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

6.3. VENDOR CAPABILITIES

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

6.3.1. Qualifications and Experience

6.3.1.1. Briefly introduce your firm, providing a summary of the administration, organization and staffing of your firm, including multiple offices, if applicable.

6.3.1.2. Identify the project manager. Include any professional designations and affiliations, certifications and licenses, etc.

6.3.1.3. Describe the experience of the firm in the last four years in performing services in similar size and scope.

6.3.1.4. The same information must be provided for any associate firm.

6.3.2. Methodology- including technical approach and understanding of the scope of the project.

6.3.2.1 Proposals must include a narrative description of the Firms' plan for accomplishing the work and services to be provided to the City.

6.3.2.2. Proposals must indicate a clear understanding of the scope of work, including a detailed project plan for this engagement outlying major tasks and responsibilities, time frames, and staff assigned for each category of the scope of work identified above.

6.3.2.3. Proposals shall identify progress reports that will be made available during the process and key decision points.

6.3.2.4. Proposals shall clearly distinguish the vendor's duties and responsibilities and those of the City. Absence of this distinction shall mean the vendor is assuming full responsibility for all tasks.

6.3.3. References

6.3.3.1. Offeror shall provide a minimum of 5 references that are using services of the type proposed in this RFP. The references should fall within the categories identified below. At a minimum, the offeror shall provide the company name, the location where the services were provided, contact person(s), customer telephone number, a complete description of the service type, and dates the services were provided. The City reserves the right to use any information or additional references deemed necessary to establish the ability of the offerors to perform the conditions of the contract. Negative references may be grounds for proposal disqualification.

6.3.3.2. These references should include Texas City government and universities where the offeror, preferably within the last 10 years, has successfully completed Internet and Networked Services.

6.3.4. Vendor Stability

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

6.3.4.2. Provide financial statements, preferably audited, for the 4 consecutive years immediately preceding the issuance of this RFP.

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

6.3.4.4. Offerors shall specify how long the company submitting the proposal has been in business providing Internet and Networked Services.

7. EVALUATION PROCESS

7.1. COMMITTEE ACTIONS

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

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

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

7.2. EVALUATION CRITERIA

The evaluation committee will review and evaluate the offers according to the following criteria:

1. **Company Information and References: 30%**
2. **Bandwidth: 30%**
3. **Problem resolution procedure: 10%**
4. **Pricing: 10%**
5. **Point of Presence: 10%**

8. PROPOSAL CONTENTS

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

1. **Company information and references**
2. **Addendum if needed**
3. **Attached RPF cost summary form**
4. **Requested attachments**
5. **Problem resolution procedures**
6. **Points of presence**
7. **Signed execution of offer**

EXECUTION OF OFFER

FOR

RFP _____

Date:

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

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

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

This offer consists of pages number 1 through _____.

Offeror/ COMPANY: _____

SIGNATURE (INK): _____

NAME: (TYPED/PRINTED) _____

TITLE: _____

STREET: _____

CITY/STATE/ZIP: _____

TELEPHONE: _____ FAX: _____

E-MAIL ADDRESS: _____

City of Midland - RFP Cost Summary

BID NO.:

FOR: Internet and Network Connection services

CLOSES:

ITEM	Unit	DESCRIPTION	Year 1	Year 2	Year 3	Year 4	Annual Total	Grand Total
1. A	6Mbps	Full duplex dedicated communications line and Internet bandwidth with expandability to 100 Mbps Monthly Service Fee						
		Installation		-	-	-		
1. B	10Mbps	Full duplex dedicated communications line and Internet bandwidth with expandability to 100 Mbps Monthly Service Fee						
		Installation		-	-	-		
1.C	20Mbps	Full duplex dedicated communications line and Internet bandwidth with expandability to 100 Mbps Monthly Service Fee						
		Installation		-	-	-		
1.D.	40Mbps	Full duplex dedicated communications line and Internet bandwidth with expandability to 100 Mbps Monthly Service Fee						
		Installation		-	-	-		
		TOTALS:						
		Discount if all awarded to your company…**Discounted Total:**					%	

Please see Notes Below:

1 Where the preferred or name brand is not being bid, please indicate the brand and model offered.

2 Proposed substitutions shall be accompanied by technical literature fully describing the materials/ products being offered.

3 The City of Midland shall be the sole judge in determining what constitutes approved equals.

4 **DISCOUNTS:** Bidders are encouraged to offer a discount for a total bid award of all items actually purchased.

5 Quantities shown may be increased or decreased to the actual quantities required to complete the project.

6 Successful bidder agrees to extend pricing for six weeks after placement of order for any additional materials.

7 A single contact or "Project Manager" shall be assigned by the successful bidder to oversee and coordinate the project with the City's Representative.

8 Bidders warrant availability of all items within one week of request for delivery of current and additional items.

9 Bidders shall state the availability of materials listed that are currently not in stock that is more than one week.

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

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

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

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

B. WAIVER

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

1. THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY BID;

2. WAIVER OR DELETION OF ANY OF THE REQUIREMENTS UNDER THE BID DOCUMENTS OR THE CONTRACT DOCUMENTS;

3. ACCEPTANCE OR REJECTION OF ANY BIDS; AND

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).

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

the apparent extent thereof, the amount of damages sustained, the amount for which the Bidder will settle, the physical and mailing addresses of Bidder at the time and date the claim was presented and the physical and mailing addresses of Bidder for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Bidder relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the Owner from any liability whatsoever. The Owner is under no obligation to provide notice to Bidder that

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

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

12 **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	Date
Authorized Signature	Date
Print Above Name	Date

City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **City Council/City Manager**

FROM: **Celestino Garcia/Health Manager**

SUBJECT: **Reimbursement Funds for Immunizations Services**

Purpose:

Accept reimbursement funds from Texas Department of State Health Services Document No. 2011-039638-001 to assist Health & Senior Services Division with the delivery of services.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

$150,358.00 from the Texas Department of State Health Services to reimburse the operating budget of Health & Senior Services Division.

Discussion:

Midland Health & Senior Services receives annual reimbursement from the Texas Department of State Health Services to help with Immunization Services. The $150,358.00 is used to reimburse personnel, travel, and equipment.

This reimbursement is provided from federal funds allocated to the state as part of public health emergency practices.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE ACCEPTANCE OF FUNDS FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES TO REIMBURSE THE CITY OF MIDLAND HEALTH AND SENIOR SERVICE DIVISION FOR THE DELIVERY OF IMMUNIZATION SERVICES; AND AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS

WHEREAS, the City of Midland Health & Senior Services Division will be awarded $150,358.00 in financial reimbursement from the Texas Department of State Health Services Document Number 2011-039638-001 to reimburse the Health & Senior Service Division for the delivery of immunization services; and

WHEREAS, the City Council finds it to be in the public interest to accept $150,358.00 in financial assistance from the Texas Department of State Health Services to reimburse the Health & Senior Service Division for the delivery of immunization services;

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

SECTION ONE. That the City of Midland Health and Senior Services Division is authorized to receive $150,358.00 in financial assistance from the Texas Department of State Health Services to reimburse the Health & Senior Service Division for the delivery of immunization services.

SECTION TWO. That the City Manager is hereby authorized and directed to execute all documents necessary to accept said funds from the Texas Department of State Health Services to reimburse the Health & Senior Service Division for the delivery of immunization services and that said funds are directed to be deposited into the General Fund of the City of Midland.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2011, 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: **November 8, 2011**

TO: **City Council/City Manager**

FROM: **Celestino Garcia/Health Manager**

SUBJECT: **Reimbursement Funds from Public Health Emergency Preparedness (PHEP)**

Purpose:

Accept reimbursement funds from Texas Department of State Health Services Document No. 2011-038943-001 to assist Health & Senior Services Division with the delivery of services.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

$101,889.00 from the Texas Department of State Health Services to reimburse the operating budget of the Health & Senior Services Division.

Discussion:

Midland Health & Senior Services receives annual reimbursement from the Texas Department of State Health Services to help with Public Health Emergency. The $101,889.00 is used to reimburse expenses associated with personnel, travel, equipment and supplies.

This reimbursement is provided from federal funds allocated to the state as part of public health emergency practices.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE ACCEPTANCE OF $101,889.00 IN REIMBURSEMENT FUNDS FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES TO ASSIST THE HEALTH AND SENIOR SERVICE DIVISION WITH THE DELIVERY OF PUBLIC HEALTH EMERGENCY PREPAREDNESS SERVICES; AND AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS

WHEREAS, the City of Midland Health & Senior Services Division will be awarded $101,889.00 in financial reimbursement from the Texas Department of State Health Services Document Number 2011-038943-001 to assist the Health and Senior Service Division with the delivery of Public Health Emergency Preparedness Services; and

WHEREAS, the City Council finds it to be in the public interest to accept $101,889.00 in financial assistance from the Texas Department of State Health Services Document Number 2011-038943-001 to assist the Health and Senior Service Division with the delivery of Public Health Emergency Preparedness Services;

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

SECTION ONE. That the City of Midland Health and Senior Services Division is authorized to receive $101,889.00 in financial assistance from the Texas Department of State Health Services to assist the Health and Senior Service Division with the delivery of Public Health Emergency Preparedness Services.

SECTION TWO. That the City Manager is hereby authorized and directed to execute all documents necessary to accept said funds from the Texas Department of State Health Services to assist the Health and Senior Service Division with the delivery of Public Health Emergency Preparedness Services and that said funds are directed to be deposited into the General Fund of the City of Midland.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2011, 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: **November 8, 2011**

TO: **City Council/City Manager**

FROM: **Celestino Garcia/Health Manager**

SUBJECT: **Reimbursement funds from Local Public Health System**

Purpose:

Accept reimbursement funds from Texas Department of State Health Services Document No. 2011-039493-001 to assist Health & Senior Services Division with the delivery of services.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

$55,814.00 from the Texas Department of State Health Services to reimburse the operating budget of the Health & Senior Services Division.

Discussion:

Midland Health & Senior Services receives annual reimbursement from the Texas Department of State Health Services to help with the Local Public Health System. The $55,814.00 is used to reimburse expenses associated with personnel, travel, and equipment.

This reimbursement is provided from federal funds allocated to the state as part of public health practices.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE ACCEPTANCE OF REIMBURSEMENT FUNDS FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES IN THE AMOUNT OF $55,814.00 TO ASSIST THE HEALTH AND SENIOR SERVICE DIVISION WITH THE DELIVERY OF LOCAL PUBLIC HEALTH SERVICES; AND AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS

WHEREAS, the City of Midland Health & Senior Services Division will be awarded $55,814.00 in reimbursement funds from the Texas Department of State Health Services Document Number 2011-039493-001 to assist the Health & Senior Service Division with the delivery of local public health services; and

WHEREAS, the City Council finds it to be in the public interest to accept $55,814.00 in reimbursement funds from the Texas Department of State Health Services Document Number 2011-039493-001 to assist the Health & Senior Service Division with the delivery of local public health services;

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

SECTION ONE. That the City of Midland Health and Senior Services Division is authorized to receive $55,814.00 in reimbursement funds from the Texas Department of State Health Services to assist the Health & Senior Service Division with the delivery of local public health services.

SECTION TWO. That the City Manager is hereby authorized and directed to execute all documents necessary to accept said funds from the Texas Department of State Health Services to assist the Health & Senior Service Division with the delivery of local public health services and that said funds are directed to be deposited into the General Fund of the City of Midland.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2011, 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:
JNichols
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **David D. Beard, P.E. – City Engineer**

SUBJECT: **Consider a motion on a request by West Company of Midland for Bizzell-Kiser Addition (Section 9), to approve items requested for deferral, and to waive the associated public improvement guarantee. This subdivision is generally located on the south side of Wolcott Ave. between Fort Worth St. and Terrell St. (District #2 - Hailey).**

Purpose:

To recommend approval for deferral of the following items:

Paving Improvements	$79,099.12
4' Sidewalk (615LF @ $5/SF)	$12,300.00

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

Total value of deferral (recommended items)	**$91,399.12**

Staff will be working with council, in the near future, to develop a policy to trigger when the deferred improvements will be required to be constructed.

Discussion:

The Bizell-Kiser Addition (Section 9) is located on the south side of Wolcott Ave. between Fort Worth St. and Terrell St.

West Company of Midland is proposing to plat the property and defer construction of paving improvements and sidewalks. Below is a summary of the deferral request along with a discussion of public improvements related to the development of land associated with this plat:

Deferral Request

1. Paving and Curb & Gutter: The applicant is requesting deferral of paving improvements and curb & gutter. A majority of this addition was developed while in the county and later annexed into the City. The zoning for this plat is 1F3 (Single Family - 3), which requires the developer to construct the pavement full width including curb & gutter. However, Wolcott Ave. is currently paved to the county road standard and has right-of-way width of only 40'.

   Considering the narrow right-of-way and that the existing pavement is consistent with local streets in the area, staff takes no exception to this deferral request.

2. Sidewalk: The applicant is requesting deferral of sidewalks. Sidewalk construction is typically accomplished during the building permit phase (home builder constructs the sidewalk). It is not anticipated that sidewalks will be required in this development.

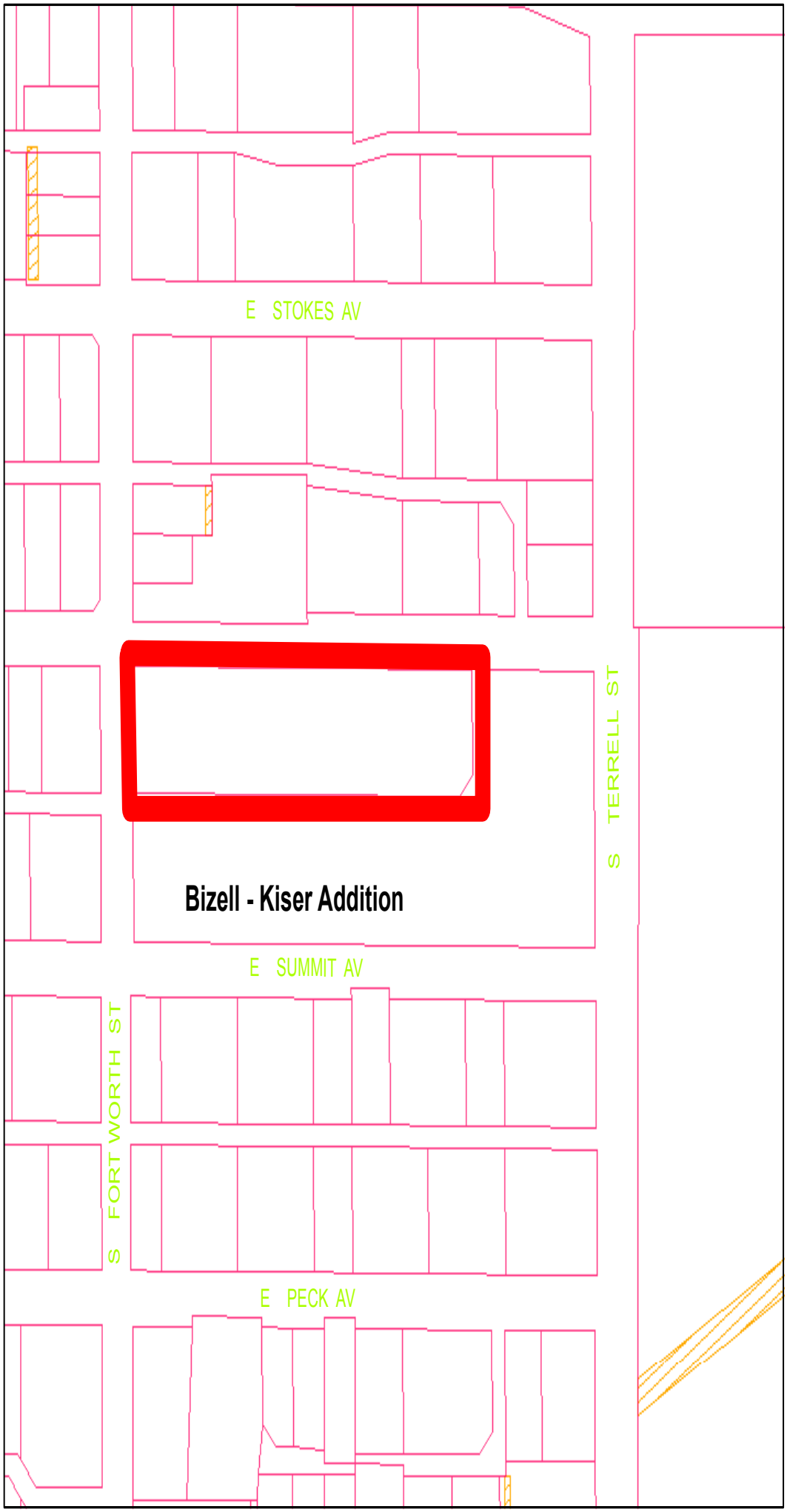
Public Improvements

1. Wastewater Collection: City of Midland wastewater service is available and accessible .

2. Water Distribution: City of Midland water service is available and accessible.

3. Drainage: Current drainage is in general conformance with the City of Midland – Master Drainage Plan. In addition, the excess runoff due to development is negligible.

Attached is a location map, along with a deferral justification, and cost estimate from West Company of Midland.



ENGINEERING DIVISION

Bizell - Kiser Addition (Section 9)

Request for Deferral

N

MIDLAND Engineering Services

Map by DDB 10/31/2011

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **David D. Beard, P.E. – City Engineer**

SUBJECT: **Consider a resolution authorizing the City Manager to advertise a Request for Qualification (RFQ) for firms to provide professional services (engineering and surveying) for the paving and drainage improvements along Briarwood Ave. from Holiday Hill Rd. to Heidelberg Ln. - approximately 2 miles. (District #4 – Trost)**

Purpose:

To advertise a request for qualification to provide professional services (engineering and surveying) for the paving and drainage improvements along Briarwood Ave. from Holiday Hill Rd. to Heidelberg Ln. (west of the MISD Bus Barn).

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

No financial impact at this time. Once an engineer is selected, staff will return to Council to request that money will be allocated for the Professional Services Agreement and Construction. It is anticipated that the project will be funded through deferral agreements and active development projects adjacent to the project area.

Discussion:

Recently, several plats have been processed and construction projects initiated in the vicinity of Briarwood Ave. Additionally, staff have had several conversations and meetings with property owners and developers along the Brairwood Ave. corridor. In the best interest of the City of Midland, staff recommends to start the process of upgrading Brairwood Ave. from Holiday Hill Rd. to Heildleberg Ln. to the City of Midland arterial standard.

Attached is a location map, and sample RFQ to be advertised in the news paper.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE CITY MANAGER TO ADVERTISE A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES FOR PAVING AND DRAINAGE IMPROVEMENTS ALONG BRIARWOOD AVENUE FROM HOLIDAY HILL ROAD TO HEIDELBERG LANE; AUTHORIZING THE CITY MANAGER TO NEGOTIATE A PROFESSIONAL SERVICES AGREEMENT FOR SAID SERVICES; AND PROVIDING THAT SAID AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager, or his designee, to advertise a request for qualifications for professional services for paving and drainage improvements along Briarwood Avenue from Holiday Hill Road to Heidelberg Lane; and

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager, or his designee, to negotiate a professional services agreement with the most qualified provider of said professional services;

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

SECTION ONE. That the request for qualifications for said professional services, which is attached hereto as Exhibit "A" and incorporated herein for all purposes, is hereby approved.

SECTION TWO. That the City Manager, or his designee, is hereby authorized and directed to advertise said request for qualifications and to negotiate a professional services agreement for said professional services with the most qualified provider. Provided, however, that no such agreement shall become effective until approved by the City Council.

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., 2011, 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

L:\Resolutions\Engineering\2011\Authorize Briarwood Avenue RFQ.wpd

Date

XXXXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

Attn: XXXXXXXXXXX

Re: Request for Qualifications (RFQ)

The City of Midland, (hereinafter "City") is seeking concise letters of interest and a Statement of Qualifications (SOQ) from parties interested in assisting the City's Engineering Division by providing Professional Services (engineering, surveying, and administration) for the design of drainage and pavement improvements for the Briarwood Ave. corridor between Holiday Hill Rd. and Heidelberg Ln. (approximately 2 miles).

SERVICES

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

1. Provide engineering, surveying and administrative services in connection with the paving and drainage improvements to the City of Midland arterial standard of Briarwood Ave. (CR 60) corridor from Holiday Hill Rd. to Heidelberg Ln.
    a. Preparing preliminary engineering estimates, including project alternatives and associated opinions of probable cost;
    b. Perform essential surveying work and prepare field notes to assist in acquiring necessary rights-of-way;
    c. Accomplish required topographic surveying and engineering work to develop a detailed set of construction drawings and technical specifications;
    d. Provide technical assistance in the bid and award process;
    e. Work with City staff to administer the project (project meetings, periodic on-sit observation, construction meetings, prepare change orders, review pay requests).

Exhibit "A"

QUALIFICATIONS

The Statement of Qualifications should include:

1. Resumes of proposed project team including at least one professional with a minimum of five (5) years' experience in the development, management and oversight of paving construction projects;
2. Demonstrated familiarity with Texas regulations pertaining to paving and drainage design;
3. References including project descriptions and client contact information for recent similar projects in which the proposed project team were directly involved;
4. Estimated time for completion of the project;
5. Availability of key personnel and ability to commit their time throughout the life of the project;
6. Proposed team's familiarity with Texas regulatory requirements, City of Midland pavement and drainage design.

SELECTION

The City will make its selection from those responding to this RFQ. If deemed necessary by the City, interviews with the firms deemed most qualified, may be conducted. Once a selection is made, the chosen firm will be requested to submit a detailed scope of work and cost estimate to perform the services. If a mutually satisfactory agreement cannot be reached with the selected professional, negotiations will be terminated with that firm and the negotiation process may be initiated with the next most qualified firm. The process may be repeated until a mutually satisfactory agreement is reached. The City maintains the right to terminate the selection process at any time if they feel it is in the best interest of the project. At such time as an agreement is reached, City staff will make a recommendation to the City Council to execute a contract pursuant to the agreement and subject to the availability of funding. The City reserves the right to accept or reject any or all proposals and to accept what in the judgment of the Mayor and City Council is the most advantageous proposal.

SUBMITTAL

Three (3) copies of the Statement of Qualifications should be submitted. The submittal should not include fees or any other cost estimates. The entire qualification package can be no more than 20, one-sided pages. Text is to be presented in Times 12 format with minimum margins of one-inch on all sides. The total page number shall include all corporate brochures and materials that may be submitted with the Statement of Qualifications. Failure to include all requested information in the qualifications package

or follow the format guidelines included herein shall be grounds for disqualification from consideration.

Statements of Qualifications are to be submitted no later than 5:00 p.m., on December 31, 2011, to the following:

City of Midland Engineering Division PO Box 1152 Midland, Texas 79702 Attn: David D. Beard, P.E.	Street Address: 300 North Loraine Midland, Texas 79701

Only timely submittals received from invited firms will be considered.

WAIVER

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

BY SUBMITTING A STATEMENT OF QUALIFICATIONS, EACH SUBMITTER AGREES TO AND DOES HEREBY WAIVE ANY CLAIM THE SUBMITTER HAS OR MAY HAVE AGAINST THE CITY AND/OR THE CITY'S EMPLOYEES, AGENTS AND OFFICERS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE FOLLOWING:

1. THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY STATEMENT OF QUALIFICATIONS.

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

3. ACCEPTANCE OR REJECTION OF ANY STATEMENT OF QUALIFICATION.

4. AWARD OF CONTRACT.

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

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

B. WAIVER OF ATTORNEY FEES

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

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

By execution and submission of a Statement of Qualifications under this RFQ, the submitter hereby represents and warrants to the City that the submitter has read and understands the RFQ and the Statement of Qualifications is submitted in accordance with this RFQ. The submitter acknowledges that it understands all terms within the proposal documents, which include the waiver provisions, and that it had the right to consult with counsel regarding all of the above documents.

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

SOVEREIGN IMMUNITY

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

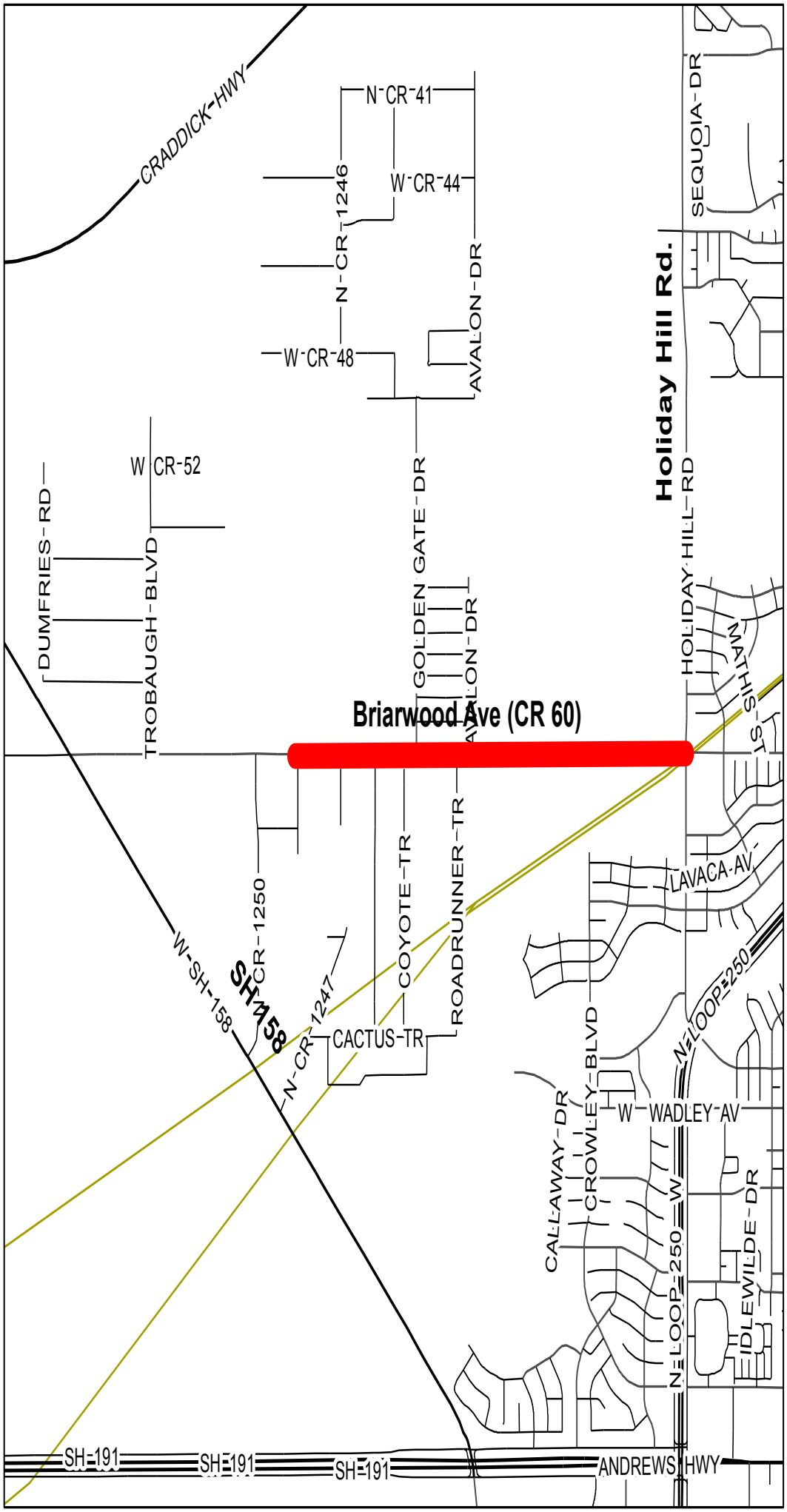
QUESTIONS REGARDING THIS REQUEST

Questions should be directed to:

David D. Beard, P.E.
Phone No. (432) 685-7286
Fax No. (432) 685-1786

Very truly yours,

David D. Beard, P.E.
City Engineer



ENGINEERING DIVISION

Briarwood Ave - CR 60
(Holiday Hill Rd. to Heidleberb Ln.)

Request for Qualifications

N

MIDLAND Engineering Services

Map by DDB 10/31/2011

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **David D. Beard, P.E. – City Engineer**

SUBJECT: **Consider a resolution authorizing the City Manager to advertise a Request for Qualification (RFQ) for firms to provide professional services (engineering and surveying) for the paving and drainage improvements along Mockingbird Ln. from Holiday Hill Rd. to Midland Dr. – approximately 1 mile. (District #1 – Sparks)**

Purpose:

To advertise a request for qualification to provide professional services (engineering and surveying) for the paving and drainage improvements along Mockingbird Ln. from Holiday Hill Rd. to Midland Dr.

Recommended City Council Action:

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

No financial impact at this time. Once an engineer is selected, staff will return to Council to request that money will be allocated for the Professional Services Agreement and Construction. It is anticipated that the project will be funded through deferral agreements and active development projects adjacent to the project area.

Discussion:

Recently, several plats have been submitted in the vicinity of the intersection of Mockingbird Ln. and Holiday Hill Rd. Additionally, staff have had several conversations and meetings with property owners and developers in the vicinity of this intersection. In the best interest of the City of Midland, staff recommends to start the process of upgrading Mockingbird Ln. from Holiday Hill Rd. to Midland Dr. to the City of Midland arterial standard.

Attached is a location map, and sample RFQ to be advertised in the news paper.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE CITY MANAGER TO ADVERTISE A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES FOR PAVING AND DRAINAGE IMPROVEMENTS ALONG MOCKINGBIRD LANE FROM HOLIDAY HILL ROAD TO MIDLAND DRIVE; AUTHORIZING THE CITY MANAGER TO NEGOTIATE A PROFESSIONAL SERVICES AGREEMENT FOR SAID SERVICES; AND PROVIDING THAT SAID AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager, or his designee, to advertise a request for qualifications for professional services for paving and drainage improvements along Mockingbird Lane from Holiday Hill Road to Midland Drive; and

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager, or his designee, to negotiate a professional services agreement with the most qualified provider of said professional services;

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

SECTION ONE. That the request for qualifications for said professional services, which is attached hereto as Exhibit "A" and incorporated herein for all purposes, is hereby approved.

SECTION TWO. That the City Manager, or his designee, is hereby authorized and directed to advertise said request for qualifications and to negotiate a professional services agreement for said professional services with the most qualified provider. Provided, however, that no such agreement shall become effective until approved by the City Council.

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., 2011, 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

L:\Resolutions\Engineering\2011\Authorize Mockingbird Lane RFQ.wpd

Date

XXXXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

Attn: XXXXXXXXXXX

Re: Request for Qualifications (RFQ)

The City of Midland, (hereinafter "City") is seeking concise letters of interest and a Statement of Qualifications (SOQ) from parties interested in assisting the City's Engineering Division by providing Professional Services (engineering, surveying, and administration) for the design of drainage and pavement improvements for the Mockingbird Ln. corridor between Holiday Hill Rd. and Midland Dr. (approximately 1 mile).

SERVICES

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

1. Provide engineering, surveying and administrative services in connection with the paving and drainage improvements to the City of Midland arterial standard of Mockingbird Ln. corridor from Holiday Hill Rd. to Midland Dr.
    a. Preparing preliminary engineering estimates, including project alternatives and associated opinions of probable cost;
    b. Perform essential surveying work and prepare field notes to assist in acquiring necessary rights-of-way;
    c. Accomplish required topographic surveying and engineering work to develop a detailed set of construction drawings and technical specifications;
    d. Provide technical assistance in the bid and award process;
    e. Work with City staff to administer the project (project meetings, periodic on-sit observation, construction meetings, prepare change orders, review pay requests).

Exhibit "A"

QUALIFICATIONS

The Statement of Qualifications should include:

1. Resumes of proposed project team including at least one professional with a minimum of five (5) years' experience in the development, management and oversight of paving construction projects;
2. Demonstrated familiarity with Texas regulations pertaining to paving and drainage design;
3. References including project descriptions and client contact information for recent similar projects in which the proposed project team were directly involved;
4. Estimated time for completion of the project;
5. Availability of key personnel and ability to commit their time throughout the life of the project;
6. Proposed team's familiarity with Texas regulatory requirements, City of Midland pavement and drainage design.

SELECTION

The City will make its selection from those responding to this RFQ. If deemed necessary by the City, interviews with the firms deemed most qualified, may be conducted. Once a selection is made, the chosen firm will be requested to submit a detailed scope of work and cost estimate to perform the services. If a mutually satisfactory agreement cannot be reached with the selected professional, negotiations will be terminated with that firm and the negotiation process may be initiated with the next most qualified firm. The process may be repeated until a mutually satisfactory agreement is reached. The City maintains the right to terminate the selection process at any time if they feel it is in the best interest of the project. At such time as an agreement is reached, City staff will make a recommendation to the City Council to execute a contract pursuant to the agreement and subject to the availability of funding. The City reserves the right to accept or reject any or all proposals and to accept what in the judgment of the Mayor and City Council is the most advantageous proposal.

SUBMITTAL

Three (3) copies of the Statement of Qualifications should be submitted. The submittal should not include fees or any other cost estimates. The entire qualification package can be no more than 20, one-sided pages. Text is to be presented in Times 12 format with minimum margins of one-inch on all sides. The total page number shall include all corporate brochures and materials that may be submitted with the Statement of Qualifications. Failure to include all requested information in the qualifications package

or follow the format guidelines included herein shall be grounds for disqualification from consideration.

Statements of Qualifications are to be submitted no later than 5:00 p.m., on December 31, 2011, to the following:

City of Midland Engineering Division PO Box 1152 Midland, Texas 79702 Attn: David D. Beard, P.E.	Street Address: 300 North Loraine Midland, Texas 79701

Only timely submittals received from invited firms will be considered.

WAIVER

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

BY SUBMITTING A STATEMENT OF QUALIFICATIONS, EACH SUBMITTER AGREES TO AND DOES HEREBY WAIVE ANY CLAIM THE SUBMITTER HAS OR MAY HAVE AGAINST THE CITY AND/OR THE CITY'S EMPLOYEES, AGENTS AND OFFICERS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE FOLLOWING:

1. THE ADMINISTRATION, EVALUATION OR RECOMMENDATION OF ANY STATEMENT OF QUALIFICATIONS.

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

3. ACCEPTANCE OR REJECTION OF ANY STATEMENT OF QUALIFICATION.

4. AWARD OF CONTRACT.

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

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

B. WAIVER OF ATTORNEY FEES

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

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

By execution and submission of a Statement of Qualifications under this RFQ, the submitter hereby represents and warrants to the City that the submitter has read and understands the RFQ and the Statement of Qualifications is submitted in accordance with this RFQ. The submitter acknowledges that it understands all terms within the proposal documents, which include the waiver provisions, and that it had the right to consult with counsel regarding all of the above documents.

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

SOVEREIGN IMMUNITY

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

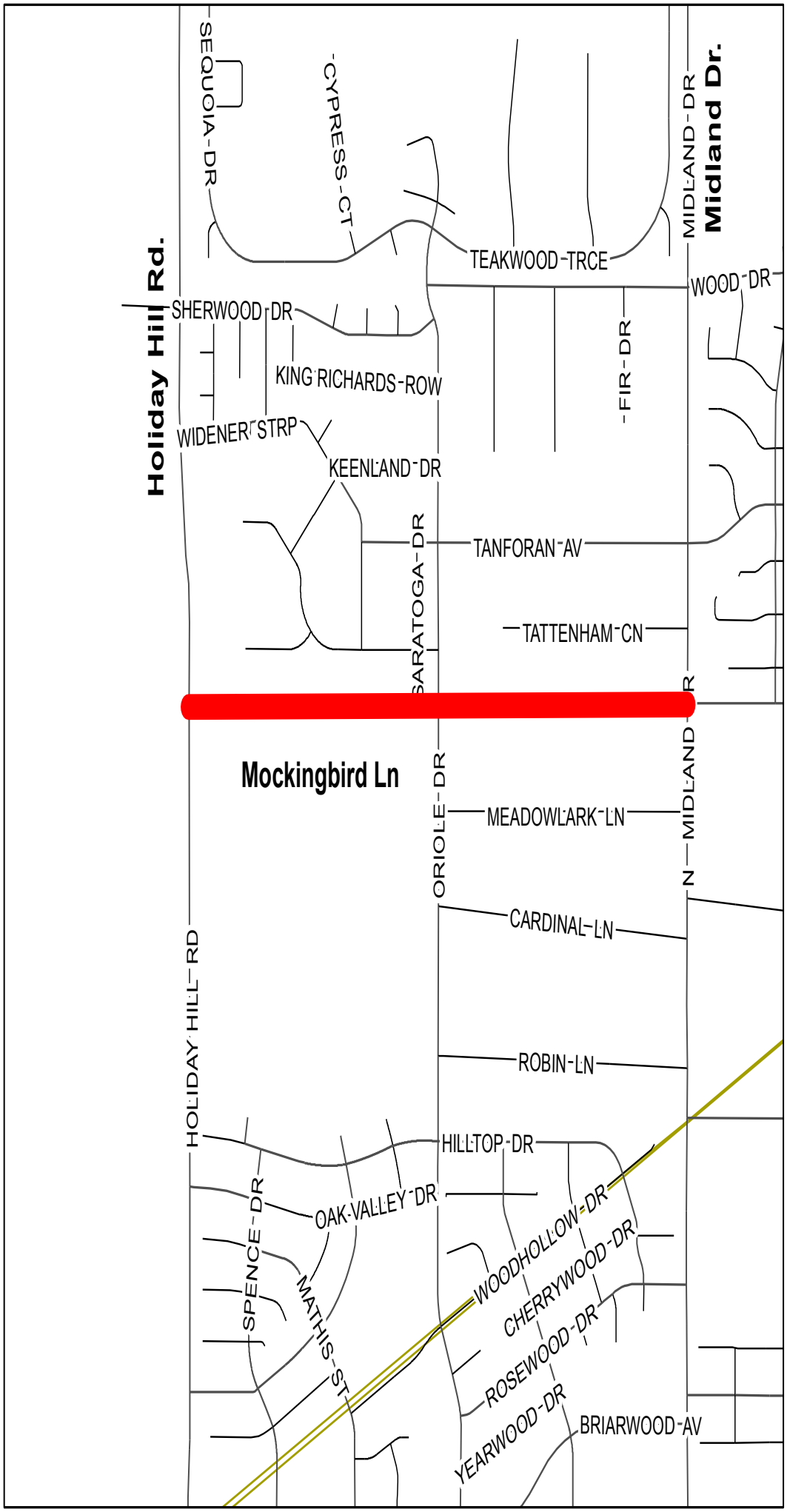
QUESTIONS REGARDING THIS REQUEST

Questions should be directed to:

David D. Beard, P.E.
Phone No. (432) 685-7286
Fax No. (432) 685-1786

Very truly yours,

David D. Beard, P.E.
City Engineer



ENGINEERING DIVISION

Mockingbird Ln.
(Holiday Hill Rd. to Midland Dr.)

Request for Qualifications

N

MIDLAND
Engineering Services

Map by DDB 10/31/2011

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Morris Williams Jr., Director of Solid Waste**

SUBJECT: **Approve a task order for the Existing Professional Services Agreement with Parkhill Smith and Cooper and Appropriating Funds**

Purpose:

Consider a resolution approving a task order for the existing professional services agreement with Parkhill Smith & Cooper and Appropriating Funds Project for landfill support services.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

The sum of $152,390 would be appropriated from the Sanitation Fund (430) Unappropriated Fund Balance (5650) to the Landfill Solid Waste Support II Project (8972).

Discussion:

This task order will provide landfill support services by Parkhill Smitth and Cooper for the upcoming year to ensure that the city remains in compliance with the requirements that have been set forth by the Texas Commission on Environmental Quality. These are activities that have historically been supported by contract engineering firms with expertise in the area of solid waste manatement. This is a task-type contract that is utilized only as additional tasks are added. The consultants are to be paid for work actually performed.

The original contract was approved by resolution number 2009-346 in January 2010. Parkhill Smith & Cooper has provided responsive and cost effective support to the Solid Waste Department and staff therefore request the approval of this task order.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT TASK ORDER WITH PARKHILL, SMITH & COOPER, INCORPORATED, OF MIDLAND, TEXAS, FOR PROFESSIONAL LANDFILL SUPPORT SERVICES , AT AN ESTIMATED TOTAL COST OF $152,390.00; AND APPROPRIATING FUNDS

WHEREAS, the City Manager advertised a Request for Qualifications for professional landfill support services ("Professional Services"); and

WHEREAS, Parkhill, Smith & Cooper, Inc., of Midland, Texas, has agreed to perform said Professional Services for an estimated $152,390.00; and

WHEREAS, the Council finds that Parkhill, Smith & Cooper, Inc., of Midland, Texas, is qualified to perform said Professional Services; and

WHEREAS, the Council finds that the professional fees proposed by Parkhill, Smith & Cooper, Inc., of Midland, Texas, are consistent with and not higher than the recommended practices and fees published by the applicable professional associations and do not exceed any maximum provided by law; and

WHEREAS, the Council finds that Parkhill, Smith & Cooper, Inc., of Midland, Texas, provides professional services for a fair and reasonable price; and

WHEREAS, the Council finds it to be in the public interest to execute a professional services contract with Parkhill, Smith & Cooper, Inc., of Midland, Texas, as the most highly qualified provider for such services based on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services;

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

SECTION ONE. That the Mayor is hereby authorized and directed to execute, on behalf of the City of Midland, a professional services agreement with Parkhill, Smith & Cooper, Inc., of Midland, Texas, for said Professional Services, said agreement being attached hereto as Exhibit "1" and incorporated herein for all legal purposes.

SECTION TWO. That the sum of $152,390.00 is hereby appropriated from the Sanitation Fund (430) Unappropriated Fund Balance (5650) to the Landfill Solid Waste Support II Project (8972).

SECTION THREE. That the City Treasurer is hereby authorized and directed to make payments to Parkhill, Smith & Cooper, Inc., of Midland, Texas, for professional services pursuant to the terms of said Agreement in an amount not to exceed $152,390.00 from funds appropriated herein upon receipt of proper invoices or statements approved by the City Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2011, 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

PROFESSIONAL SERVICES AGREEMENT
TASK ORDER
FOR PERFORMANCE OF
LANDFILL SUPPORT SERVICES

THIS AGREEMENT is made and effective the 9th day of November, 2011, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "City,"and PARKHILL, SMITH & COOPER, INCORPORATED, hereinafter referred to as "Company."

ARTICLE I.
PURPOSE

The purpose of this Agreement is to state the terms and conditions under which Company shall perform Landfill Support Services as enumerated on the Fee Estimate attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

ARTICLE II.
SERVICES TO BE PERFORMED

1. Company shall provide those services described in the Scope of Services attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

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

ARTICLE III.
FINANCIAL CONSIDERATIONS

City agrees to pay Company in an amount not to exceed $152,390.00 for the professional services described in Exhibit "A." City agrees to pay Company for Labor, Incidental Direct Costs and SubCompany Costs as set forth in Exhibit "A" upon presentation of a monthly invoice. The invoice shall set out Labor fees for the month and those Incidental Direct Costs and SubCompany Costs described in Exhibit "A"incurred during the previous month. The City Manager or Interim City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of receipt of the monthly invoice, City shall pay the full amount of such invoice; provided, however, that if City objects to any portion of an invoice, City shall notify Company of City's objection and the grounds therefor within 30 days of the date of receipt of the invoice, and the parties immediately shall make

every effort to settle the disputed portion of the invoice. City in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV.
TERM

The term of this Agreement shall be from November 9, 2011, until November 8, 2013, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V.
TERMINATION

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

ARTICLE VI.
CONTRACT PERSONAL

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

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

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

ARTICLE VIII.
INDEPENDENT CONTRACTOR

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

ARTICLE IX.
INSURANCE

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

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 or policy aggregate, including completed operations, and shall be on an occurrence basis.

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

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

All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name the City as an additional insured 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 City.

The parties agree that, prior to the execution of the Agreement, Company shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, the following endorsement:

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

City shall be provided the notice by Company's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. City shall not be required to provide any insurance whatsoever pursuant to this Agreement.

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

ARTICLE X.
ATTORNEY FEES

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

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

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

ARTICLE XI.
SOVEREIGN IMMUNITY

By executing this Agreement the City is not waiving its sovereign immunity and

retains all immunity from suit. The City is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF SOVEREIGN IMMUNITY**.

ARTICLE XII.
NO THIRD PARTY BENEFICIARIES

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

ARTICLE XIII.
RELEASE

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

ARTICLE XIV.
GENERAL PROVISIONS

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

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

C. Notice. Any notice or demand that shall be made regarding this Agreement, shall be made in writing and delivered either in person or by certified or registered mail. Notice

by mail shall be complete upon deposit of the paper, postage prepaid, in a post office or official depository under the care and custody of the United States Postal Service addressed as follows:

If to City:	City Manager's Office P.O. Box 1152 Midland, Texas 79702
If to Company:	Parkhill, Smith & Cooper, Inc. Attn: Robert Holder, PE 4222 85th Street Lubbock, Texas 79423

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

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

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

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

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

ARTICLE XV.
NOTICE OF ALLEGED BREACH: STATUTORY PREREQUISITES

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Company or his legal representative, shall give the City Manager, or any other reasonable official of the City,

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

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

ARTICLE XVI.
ASSIGNMENT

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By:_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

Company :
PARKHILL, SMITH & COOPER, INC.

By: _____

Title: _____

STATE OF TEXAS §
§
COUNTY OF MIDLAND §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day of _____, A.D., 2011.

_____
Notary Public, State of Texas

_____
Printed Name

My Commission Expires:_____

L:\Contracts\Solid Waste\2011\PSA PSC Landfill Support.wpd

PSC

PARKHILLSMITH&COOPER

October 18, 2011

Mr. Morris Williams
Solid Waste Director
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

Re: City of Midland Landfill
MSW Permit No. 1605B
FY 2012 and FY 2013 Fee Estimates - Revised

Dear Mr. Williams:

As you requested, we have prepared an engineering scope of services and associated fee estimates for compliance related items at the City of Midland Landfill. We have provided additional fees for groundwater sampling events that were not included in our original estimate. Separate fee estimates for FY 2012 and FY 2013 are as follows:

- Professional Engineering Services Fees – FY 2012 (revised) $80,890
  - Air Permit Compliance Certification $1,500
  - Air General Operating Permit Renewal $2,000
  - Greenhouse Gas Reporting..... $1,600
  - Annual Volume Report..... $4,100
  - Piezometer Well Permit Modification $5,000
  - Groundwater Monitoring (GWM) $55,060
  - GWM – Last 2011 Event (revised) $11,900

- Professional Engineering Services Fees – FY 2013..... $71,500
  - Air Permit Compliance Certification $1,800
  - Greenhouse Gas Reporting..... $1,700
  - Annual Volume Report..... $4,200
  - Groundwater Monitoring (GWM) $48,550
  - GWM – Last 2012 Event (revised) $15,120

Fees for professional engineering services are based on the following scopes of services:

Amarillo
El Paso
Las Cruces
Lubbock
Midland

4222 85th Street Lubbock, Texas 79423 806.473.2200 Fax 806.473.3500

Air Permit Compliance Certification

The landfill's Federal Title V air permit requires the facility to submit an annual compliance certification to report deviations, if any, from the permit during the previous year. Our fee is based on the following scope of services:

- Determine deviations during previous operating year
- Prepare permit compliance certification form
- Prepare designated official and responsible official form
- Submit certification forms to regulatory agencies

Air General Operating Permit Renewal

Renewal of the facility's Authorization to Operate (ATO) under the General Operating Permit (GOP) is required every five years. However, the TCEQ requires renewals to be submitted anywhere from 18-months to 6-months prior to the expiration date of the ATO. Midland's ATO expires June 22, 2012 which places the deadline for submittal to December 22, 2011. Our fee is based on the following scope of services:

- Update all GOP forms and verify applicability to the site
- Prepare permit binders for renewal forms
- Review forms with city staff
- Incorporate comments from city staff
- Submit GOP renewal forms to TCEQ

Greenhouse Gas Reporting

As part of the EPA's new Greenhouse Gas (GHG) reporting rule, the City of Midland's landfill is subject to annual emissions reporting. Our fee is based on the following scope of services:

- Process waste acceptance data from previous year
- Perform emission calculations
- Generate draft GHG report
- Review draft report with city staff
- Incorporate comments from city staff
- Submit final GHG report to EPA
- Prepare report documentation for recordkeeping

Annual Volume Report

Using survey data provided by city staff, we will analyze the past year's waste volume and determine compaction rates, waste acceptance rates, and life projections of currently active cells. Our fee is based on the following scope of services:

- Process survey data from city staff
- Determine waste volume in place from previous operating year

- Calculate compaction and waste acceptance rates
- Determine projected life of active cells
- Prepare summary of data for use by city staff

Piezometer Well Permit Modification

Based on the Groundwater and Surface Water Protection Plan, a permit modification will be needed after one year of groundwater level observations at the newly installed piezometers. If the piezometer wells are down gradient of the landfill, they will be added to the monitoring network. If the wells are up gradient of the landfill, they will not be added to the monitoring network. Our proposed fee is based on the following scope of services:

- Analyze groundwater level observations to determine water table gradient
- Prepare revised permit documents to add or to not add piezometer wells to network
- Request permit modification from TCEQ
- Submit response to any notice of deficiency from TCEQ
- Finalize permit modification

Groundwater Monitoring

Activities associated with groundwater monitoring are the most labor intensive of the services outlined in this letter. Our fee is based on the following scope of services:

- Sample monitoring wells in detection or background monitoring
- Laboratory testing of samples for associated constituents
- Compile and submit electronic files to TCEQ
- Perform statistical analysis of testing results
- Prepare and submit analytical reports to TCEQ
- Measure groundwater levels in piezometer wells
- Create background database update report

Our proposed fees for groundwater monitoring vary based on the number of wells being sampled, which wells are in background or detection, and the possible addition of new piezometer wells. The fee for groundwater monitoring does not include additional assessment monitoring, sampling or testing, verification re-sampling or testing, or compiling and submitting alternate source demonstrations.

Groundwater Monitoring – Last 2011/2012 Events (revised)

Although the physical groundwater monitoring activities occur in their respective fiscal years, billing for the last events occurs in the next fiscal year. This line item is for the last events of FY 2011 and FY 2012 which will be billed in FY 2012 and FY 2013, respectively. Our fee is based on the following scope of services:

- Sample monitoring wells in detection or background monitoring
- Laboratory testing of samples for associated constituents
- Compile and submit electronic files to TCEQ
- Perform statistical analysis of testing results

- Prepare and submit analytical reports to TCEQ
- Measure groundwater levels in piezometer wells
- Create background database update report

Our proposed fees for groundwater monitoring vary based on the number of wells being sampled, which wells are in background or detection, and the possible addition of new piezometer wells. The fee for groundwater monitoring does not include additional assessment monitoring, sampling or testing, verification re-sampling or testing, or compiling and submitting alternate source demonstrations.

We appreciate the opportunity to provide engineering services to the City of Midland to help maintain your municipal solid waste operations. We would be happy to discuss these services in more detail at your convenience.

If you need any additional information, please call me at (806) 473-3526.

Sincerely,

PARKHILL, SMITH & COOPER, INC.

By R. Holly Holder
Robert H. (Holly) Holder, PE
Firm Principal

cc: Ms. Jill Reed, PE, City of Midland

RHH/TM/lf
X:\2009\2861.09\ADMIN\CONTRACTS\FEES\FY12 FY13 Fee Estimates\MW_hh_rev101811.docx

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Stuart T. Purvis, Director of Utilities**

SUBJECT: **Approve Award of the Water System Improvements: Rehabilitation & Lead Abatement of Airport and Shell Elevated Storage Tanks Project to A & M Construction and Utilities, Inc. and Appropriate Funds**

Purpose:

Consider a resolution approving award of the Water System Improvements: Rehabilitation & Lead Abatement of Airport and Shell Elevated Storage Tanks Project to A & M Construction and Utilities, Inc. and appropriate funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

Award amount is $1,432,500 from the Water and Sewer Fund.

Discussion:

Council approved this project for advertisement at their September 14 meeting. Six bids were received ranging from $1,432,500 to $2,213,450. The lowest bid was from A & M Construction and Utilities, Inc. Their firm was reviewed by the design engineer, Parkhill, Smith & Cooper, Inc., and determined to be qualified to perform the work.

The elevated towers in our water system were last recoated over 10 years ago. Due to the moist environment on the interior of these towers, significant corrosion has taken place since that time. This has led to the need for repair and recoating. The existing primer on the towers has tested positive for lead so they will need to be blasted to bare metal before recoating can occur.

Many antennas for cell phone coverage and our own network have been located on these towers over time. Unfortunately, the towers were not designed to hold these devices and their associated cabling. Part of this project will include the addition of cable and antenna brackets to ensure that

these installations can be properly accommodated in the future.

Staff recommends approval of the award.

RESOLUTION NO.

RESOLUTION AWARDING THE WATER SYSTEM IMPROVEMENTS: REHABILITATION AND LEAD ABATEMENT OF AIRPORT AND SHELL ELEVATED STORAGE TANKS PROJECT TO A & M CONSTRUCTION AND UTILITIES, INCORPORATED, AT A TOTAL COST OF $1,432,500.00; AND APPROPRIATING FUNDS

WHEREAS, the Utilities Department advertised the Water System Improvements: Rehabilitation & Lead Abatement of Airport and Shell Elevated Storage Tanks Project for competitive bids; and

WHEREAS, A&M Construction and Utilities, Inc., has submitted the lowest and most responsible bid for the performance of said project in the total amount of $1,432,500.00, as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the City Council finds it to be in the public interest to execute a contract with A&M Construction and Utilities, Inc., for said project;

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

SECTION ONE. That the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with A&M Construction and Utilities, Inc., for said project at a cost not to exceed $1,432,500.00, said contract being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the sum of $1,432,500.00 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Airport and Shell Elevated Water Tower Rehabilitation Project (8971).

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay A&M Construction and Utilities, Inc., pursuant to the terms of said contract from funds appropriated herein upon receipt of proper invoices or statements approved by the City

Manager.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2011, 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

L:\Resolutions\Utilities\2011\Award Water System Improvements Shell Airport.wpd

PARKHILLSMITH&COOPER

October 21, 2011

Mr. Stuart Purvis
Director of Utilities
City of Midland
300 North Loraine 5th Floor
Midland, TX 79701

Re: Recommendation for Award of Construction Contract
Rehabilitation and Lead Abatement of Airport and Shell ESTs
Project No. W11-100/8971

Dear Mr. Purvis:

We have reviewed the bids for the above referenced project received on October 19, 2011 and determined that all bids were submitted in accordance with guidelines established in the Bid Documents and those procedures adopted by the City of Midland. All bids have been determined to be tabulated properly and are consistent with those figures recorded during the bid opening. Completed bid tabulation forms are enclosed for your reference.

We recommend that the Construction Contract for the Rehabilitation and Lead Abatement of Airport and Shell ESTs be awarded to the low bidder, A & M Construction and Utilities, Inc., including Bid Proposals A and B Bid and the Additive Alternative for the **Total Contract Amount of $1,432,500.00**. We feel that this company's qualifications and capacity to complete the project to the satisfaction of the City of Midland and PSC are adequate.

Please contact me if you have questions or wish to discuss this matter further.

Sincerely,

PARKHILL, SMITH & COOPER, INC.

By _____
A. Zane Edwards, PE
Firm Principal

AZE/tb
Enclosures
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Amarillo
El Paso
Lubbock
Midland

4222 85th Street Lubbock, Texas 79423 806.473.2200 Fax 806.473.3500

PARKHILLSMITH&COOPER

PSC

City of Midland
Water System Improvements- Rehabilitation & Lead Abatement of Airport and Shell

Elevated Storage Tank
Project No. W11-100/8971

				A & M Construction 4950 Grisham Dr. Rowlett, TX 75088		TMI Coatings 3291 Terminal Dr. St. Paul, MN 5512		Luckinbill, Inc. PO Box 186 Enid, OK 73702		UCL, Inc. 2025 Stapleton Ct. Cincinnati, OH 45240		NG Painting, Inc. 1225 Bandera Hwy, Ste. A2 Kerrville, TX 78028		Classic Protective Coatings N 7670 State Hwy 25 Menomonie, WI 54751	
Item No.	Proposal A - Shell EST	Quantity	Unit	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
1	Mobilization/Demobilization	1	LS	$20,000.00	$20,000.00	$44,600.00	$44,600.00	$14,000.00	$14,000.00	$20,000.00	$20,000.00	$1,000.00	$1,000.00	$10,000.00	$10,000.00
2	Containment (Emission Control)	1	LS	$50,000.00	$50,000.00	$140,000.00	$140,000.00	$100,000.00	$100,000.00	$75,000.00	$75,000.00	$150,000.00	$150,000.00	$48,000.00	$48,000.00
3	Solid Waste Disposal	1	LS	$20,000.00	$20,000.00	$15,000.00	$15,000.00	$12,000.00	$12,000.00	$4,000.00	$4,000.00	$10,000.00	$10,000.00	$14,000.00	$14,000.00
4	Interior Surface Prep	1	LS	$75,000.00	$75,000.00	$106,500.00	$106,500.00	$68,000.00	$68,000.00	$78,900.00	$78,900.00	$100,000.00	$100,000.00	$125,000.00	$125,000.00
5	Interior Surface Coating	1	LS	$75,000.00	$75,000.00	$69,550.00	$69,550.00	$76,000.00	$76,000.00	$63,500.00	$63,500.00	$100,000.00	$100,000.00	$54,000.00	$54,000.00
6	Exterior Surface Prep	1	LS	$175,000.00	$175,000.00	$243,500.00	$243,500.00	$240,000.00	$240,000.00	$418,000.00	$418,000.00	$500,000.00	$500,000.00	$211,000.00	$211,000.00
7	Exterior Surface Coating	1	LS	$178,000.00	$178,000.00	$162,500.00	$162,500.00	$170,000.00	$170,000.00	$250,000.00	$250,000.00	$100,000.00	$100,000.00	$213,900.00	$213,900.00
8	Tank Modifications	1	LS	$75,000.00	$75,000.00	$77,000.00	$77,000.00	$198,440.00	$198,440.00	$75,000.00	$75,000.00	$100,000.00	$100,000.00	$292,900.00	$292,900.00
9	Pit Repair (Welding)	30	HR	$50.00	$1,500.00	$75.00	$2,250.00	$80.00	$2,400.00	$100.00	$3,000.00	$100.00	$3,000.00	$125.00	$3,750.00
10	Pit Repair (Plating)	150	SF	$60.00	$9,000.00	$50.00	$7,500.00	$120.00	$18,000.00	$40.00	$6,000.00	$20.00	$3,000.00	$10.00	$1,500.00
11	Structural Repair	1000	LB	$50.00	$50,000.00	$12.00	$12,000.00	$15.60	$15,600.00	$15.00	$15,000.00	$20.00	$20,000.00	$2.00	$2,000.00
12	Footing Repair	1	LS	$5,000.00	$5,000.00	$9,000.00	$9,000.00	$3,000.00	$3,000.00	$3,500.00	$3,500.00	$1,000.00	$1,000.00	$3,000.00	$3,000.00
13	Tank Logo	2	EA	$4,000.00	$8,000.00	$2,250.00	$4,500.00	$10,000.00	$20,000.00	$4,500.00	$9,000.00	$3,000.00	$6,000.00	$5,000.00	$10,000.00
	TOTAL BASE BID				**$741,500.00**		**$893,900.00**		**$937,440.00**		**$1,020,900.00**		**$1,094,000.00**		**$989,050.00**
Item No.	Proposal B- Airport EST	Quantity	Unit	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
1	Mobilization/Demobilization	1	LS	$20,000.00	$20,000.00	$34,400.00	$34,400.00	$14,000.00	$14,000.00	$20,000.00	$20,000.00	$1,000.00	$1,000.00	$10,000.00	$10,000.00
2	Containment (Emission Control)	1	LS	$40,000.00	$40,000.00	$96,500.00	$96,500.00	$100,000.00	$100,000.00	$60,000.00	$60,000.00	$100,000.00	$100,000.00	$30,000.00	$30,000.00
3	Solid Waste Disposal	1	LS	$15,000.00	$15,000.00	$8,900.00	$8,900.00	$10,000.00	$10,000.00	$4,000.00	$4,000.00	$10,000.00	$10,000.00	$10,000.00	$10,000.00
4	Interior Surface Prep	1	LS	$65,000.00	$65,000.00	$83,500.00	$83,500.00	$52,000.00	$52,000.00	$60,000.00	$60,000.00	$60,000.00	$60,000.00	$93,000.00	$93,000.00
5	Interior Surface Coating	1	LS	$70,000.00	$70,000.00	$61,500.00	$61,500.00	$42,000.00	$42,000.00	$20,000.00	$20,000.00	$40,000.00	$40,000.00	$65,000.00	$65,000.00
6	Exterior Surface Prep	1	LS	$135,000.00	$135,000.00	$161,000.00	$161,000.00	$93,000.00	$93,000.00	$200,000.00	$200,000.00	$200,000.00	$200,000.00	$155,500.00	$155,500.00
7	Exterior Surface Coating	1	LS	$135,000.00	$135,000.00	$112,500.00	$112,500.00	$115,000.00	$115,000.00	$130,000.00	$130,000.00	$100,000.00	$100,000.00	$175,900.00	$175,900.00
8	Tank Modifications	1	LS	$20,000.00	$20,000.00	$104,100.00	$104,100.00	$220,800.00	$220,800.00	$88,000.00	$88,000.00	$70,000.00	$70,000.00	$290,100.00	$290,100.00
9	Pit Repair (Welding)	20	HR	$50.00	$1,000.00	$85.00	$1,700.00	$80.00	$1,600.00	$100.00	$2,000.00	$100.00	$2,000.00	$120.00	$2,400.00
10	Pit Repair (Plating)	50	SF	$60.00	$3,000.00	$50.00	$2,500.00	$120.00	$6,000.00	$50.00	$2,500.00	$20.00	$1,000.00	$10.00	$500.00
11	Structural Repair	1000	LB	$50.00	$50,000.00	$12.00	$12,000.00	$15.60	$15,600.00	$15.00	$15,000.00	$5.00	$5,000.00	$2.00	$2,000.00
12	Footing Repair	1	LS	$5,000.00	$5,000.00	$6,500.00	$6,500.00	$2,100.00	$2,100.00	$3,000.00	$3,000.00	$1,000.00	$1,000.00	$3,000.00	$3,000.00
13	Tank Logo	2	EA	$4,000.00	$8,000.00	$2,250.00	$4,500.00	$10,000.00	$20,000.00	$4,000.00	$8,000.00	$3,000.00	$6,000.00	$5,000.00	$10,000.00
	TOTAL BASE BID				**$567,000.00**		**$689,600.00**		**$692,100.00**		**$612,500.00**		**$596,000.00**		**$847,400.00**
	ADDITIVE ALTERNATE BID														
A1	Structural Repair	10,000	LB	$10.00	$100,000.00	$5.00	$50,000.00	$1.56	$15,600.00	$12.00	$120,000.00	$5.00	$50,000.00	$20.00	$200,000
A2	New Fence and Shell Tower	590	LF	$40.68	$24,000.00	$25.00	$14,750.00	$63.00	$37,170.00	$35.00	$20,650.00	$30.00	$17,700.00	$300.00	$177,000
	TOTAL ALTERNATE BID				**$124,000.00**		**$64,750.00**		**$52,770.00**		**$140,650.00**		**$67,700.00**		**$377,000**
	TOTAL BASE BIDS + Alternate				**$1,432,500.00**		**$1,648,250.00**		**$1,682,310.00**		**$1,774,050.00**		**$1,757,700.00**		**$2,213,450.00**

City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: **November 2, 2012**

TO: **CITY COUNCIL**

FROM: **Courtney B. Sharp, City Manager**

SUBJECT: **2012 Regular City Council Meeting Schedule**

Purpose:

Consider a resolution approving the 2012 City Council Meeting Dates.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction / Information

Fiscal Impact:

None

Discussion:

Attached is the 2012 list outlining the Council Meeting Dates.

2012 CITY COUNCIL MEETINGS

- January 10
- January 24
- February 14
- February 28
- March 20
- April 10
- April 24
- May 8
- May 22
- June 12
- July 10
- July 24
- August 14
- August 28
- September 11
- September 25
- October 9
- October 23
- November 13
- December 11

RESOLUTION NO.

RESOLUTION ESTABLISHING THE DATES OF THE REGULAR CITY COUNCIL MEETINGS TO BE HELD DURING THE CALENDAR YEAR 2012

WHEREAS, the Midland City Council finds it to be in the public interest to establish the dates whereby the Midland City Council will meet in regular session during the calendar year 2012;

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

THAT the dates for the regular City Council meetings to be held during the 2012 calendar year as shown on Exhibit "A", attached hereto and made a part hereof for all legal purposes, are hereby adopted.

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., 2011, 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:
JNichols
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **Z-11-042, SBC, L.P.**

Purpose:

Consider an ordinance on second and final reading on a request by SBC, L.P. for a zone change from FD, Future Development District to PD, Planned District for a Housing Development.

Recommended City Council Action

X Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

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

Discussion:

SBC, L.P. wishes to subdivide a 19-acre tract into 39 residential lots and several common areas. The planned district specifies that the land will be subject to the 1F-2 District regulations, except that the minimum front yard setback would be five feet, and there is no setback required for rear entry garage doors. A perimeter fence is planned that would enclose the subdivision, except for two street access points. The City Council held a public hearing on October 25th, 2011 and approved the ordinance on first reading. It is now appropriate to consider the ordinance on second and final reading.

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **October 25, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **Z-11-042, SBC L.P.**

Purpose:

Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request for a zone change from FD, Future Development District to PD, Planned District for a Housing Development.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

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

Discussion:

SBC L.P. wishes to develop a 16-acre tract located at the intersection of Crowley Boulevard and Rio Grande Avenue with single-family homes. The land was zoned FD District when it was annexed in 2009. This planned district would be subject to the regulations of the 1F-2 District, except that a five-foot front yard setback is being requested. Further, the associated plat includes common areas that would be developed with screening fences, which are needed to screen the lots that back toward the abutting streets. Four styles of decorative screening fences are shown on the attached Exhibit A. The character of this development will mimic that of the Grandridge Park neighborhood on the north side of Wadley Avenue, west of Lowe's. The Planning and Zoning Commission recommended unanimous approval, and one letter of opposition has been received.

Attachments:
October 3, 2011 P&Z Staff Report
Proposed Ordinance and Exhibit A

Planning and Zoning Commission
Minutes
October 3, 2011

Z-11-042 - Hold a public hearing and consider a request by **SBC, L.P.** for a *zone change* from FD, Future Development District to PD, Planned District for a Housing Development on a 16.63-acre tract of land out of Section 25, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the northwest corner of the intersection of Crowley Boulevard and Rio Grande Avenue.)

Mr. Compton presented the staff report for the proposed 39 residential lots and some common areas.

Chairman Carney opened the public hearing for comments from the floor.

Doug Henson, SBC Corporation, spoke in favor of the request, illustrating the location of the houses and asking for a variance on the footage for a garage door from the lot line. Staff responded favorably.

There being no one else wishing to speak in favor or in opposition of the item, Chairman Carney closed the public hearing.

Following discussion, the suggestion was made that no Certificate of Occupancy shall be issued for any residence until the associated phase of development has received final plat approval. Condition C will be reworded and Condition D added.

Commissioner Watkins made a motion for approval subject to Conditions A through D, seconded by Commissioner Wilton. The motion carried by the following vote: AYE: Watkins, Wilton, Lanning, Gatten, Carney and Wolf. NAY: None. ABSTAIN: None. ABSENT: Ferguson, Woodruff and York.

PLANNING AND ZONING COMMISSION

October 3, 2011

CASE: Z-11-042.

REQUEST: Consider a request for a zone change from FD, Future Development District to PD, Planned District for a Housing Development.

APPLICANT/OWNER: SBC, L.P.

REPRESENTATIVE: Parkhill, Smith and Cooper.

LEGAL DESCRIPTION: A 16.63-acre tract out of Section 25, Block 40, T-1-S, T&P RR Company Survey, Midland County, Texas.

LOCATION: Northwest corner of Crowley Boulevard and Rio Grande Avenue.

ASSOCIATED CASE: P-11-033, Grandridge Estates.

DETAILS OF REQUEST:

1. We have received a development proposal from SBC, L.P. that includes 39 residential lots and several common areas. Typically, when plats contain common areas, site plans are needed to illustrate the manner in which they will be developed. In this case, one common area will be developed with a screening fence adjacent to surrounding streets. It is in the public interest to regulate the characteristics of such fences since they are visible to the public, and to ensure the fence will be of a substantial design for long life. Additionally, the developer is requesting a reduction in front yard setback from 20 to five feet.

SURROUNDING ZONING AND LAND USE:

2. The only existing development abutting this land is the Los Patios Addition located to the east. The other three sides of this tract abut undeveloped land. A preliminary plat of Heritage Oaks, Section 2 has been approved on the land to the west, but construction has not yet begun.

ANALYSIS:

3. The Comprehensive Plan identifies this land as being suitable for single-family development. While the proposed front yard setback of five feet is 15 feet shy of the minimum, there would be no sense of overcrowding due to the wider streets shown on the associated plat. Further, the plat design, with a six-foot tall screening fence, will create a virtually enclosed neighborhood. The only people affected by the reduced setbacks will be the future residents. Therefore, we have no objection to the reduced front yard setbacks.

4. Please refer to the attached Exhibit A. This drawing illustrates the manner in which the common areas would be developed. The exterior fence would be located in Common Areas A and B. The area between the fence and the street paving would be landscaped and irrigated, and a public sidewalk would be constructed. The remaining common areas are to be landscaped. Exhibit A includes four different fence designs, although they are all six feet in height. The applicant is requesting the flexibility to use all three types of fence designs in Common Areas A and B. The Type D fence will definitely be used on the zero lot line between lots. The staff sees no objection to any of these proposed designs. However, we would specify that the perimeter fence not include the use of CMU as a masonry product.

STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from FD, Future Development District to PD, Planned District for a Housing Development, subject to the satisfaction of the following conditions:

A. That the development of this property shall be subject to the regulations of the 1F-2, One-Family Dwelling District, except as otherwise stated below.

B. That any of the fences shown as Type A, Type B, Type C or Type D on Exhibit A shall be constructed in Common Areas A and B. However, CMU blocks shall be excluded from the definition of "masonry" for the perimeter fences. The remaining common areas shall be landscaped and maintained in a healthy, growing condition.

C. That no Certificate of Occupancy shall be issued for any residence until the perimeter fence, public sidewalks and landscaping adjacent to Navasota Drive, Frio Drive, Crowley Boulevard and Rio Grande Avenue are completed.

Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibit A

Case Number: Z-11-042

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

SBC, L.P. (432) 522-2040
Applicant Name Contact #s

1811 Heritage Boulevard, Suite 100, Midland, Texas 79707
Address Zip Code

Same
Property Owner Name Contact #s

Address Zip Code

Parkhill, Smith & Cooper, Inc. (432) 697-1447
Representative Name Contact #s

1700 W. Wall, Ste 100, Midland, Texas 79701
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 Metes & Bounds description

PRESENT ZONE: FD REQUESTED ZONE: PDHD
(List by tracts if more than one district is requested)

Reason for Zone Change or PD Amendment: To develop property

Present Use of Property: Pasture

Proposed Use of Property: Residential Subdivision

How will zone change affect the public health, safety and welfare? It will have no affect.

Describe how conditions affecting the property have changed since present zoning designation: Property is ready for development.

Will a Specific Use Permit with Term for alcoholic beverages sales be needed: ___ Yes _X_ 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: X

Site Plan on a CD in .pdf and .jpg format: X

SIGNATURE *(by property owner only - authorized agent must sign affidavit below)*

Property Owner (signature): _____ Date: _____

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Eric L. West, P.E. who, being by me duly sworn, upon oath says: That (s)he is authorized by SBC, L.P. 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.

Eric L. West

Authorized Agent (signature)

Subscribed and sworn to before me, this 19th day of August, 20 11, to certify which witness my hand and seal of office.

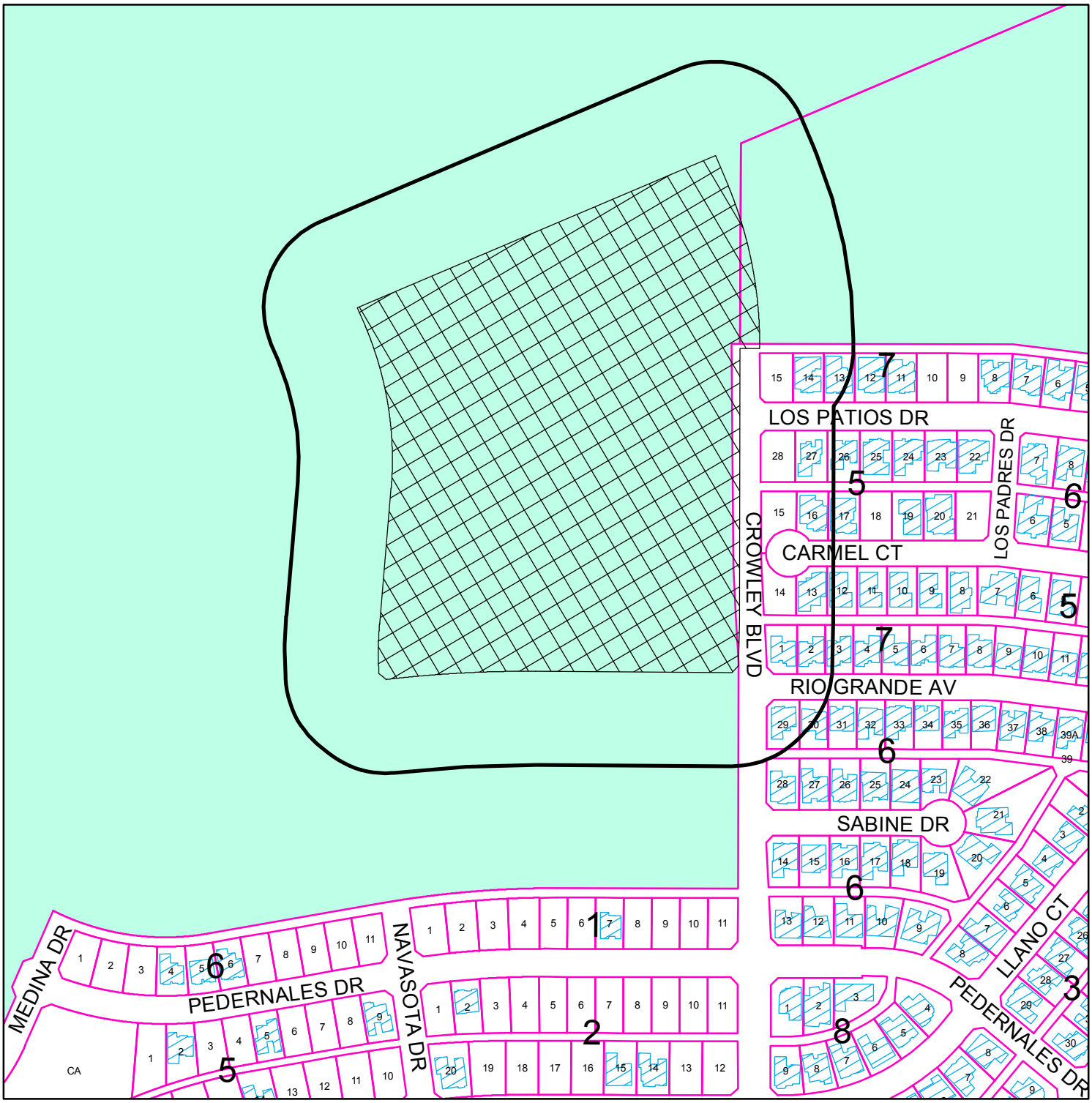
Darcy Y. Knight

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY
Rec'd By: JC Date: 8/26/11
Assigned: _____
For: _____ On: _____

NOTARY PUBLIC STATE OF TEXAS
DARCY Y. KNIGHT
Notary Public, State of Texas
My Commission Expires
JUNE 14, 2015

****Application will not be considered for scheduling until reviewed by a planner.****



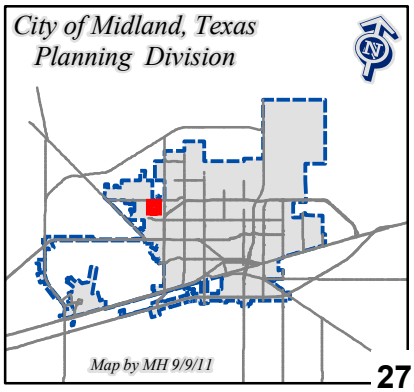
PROPERTY OWNER NOTIFICATION MAP

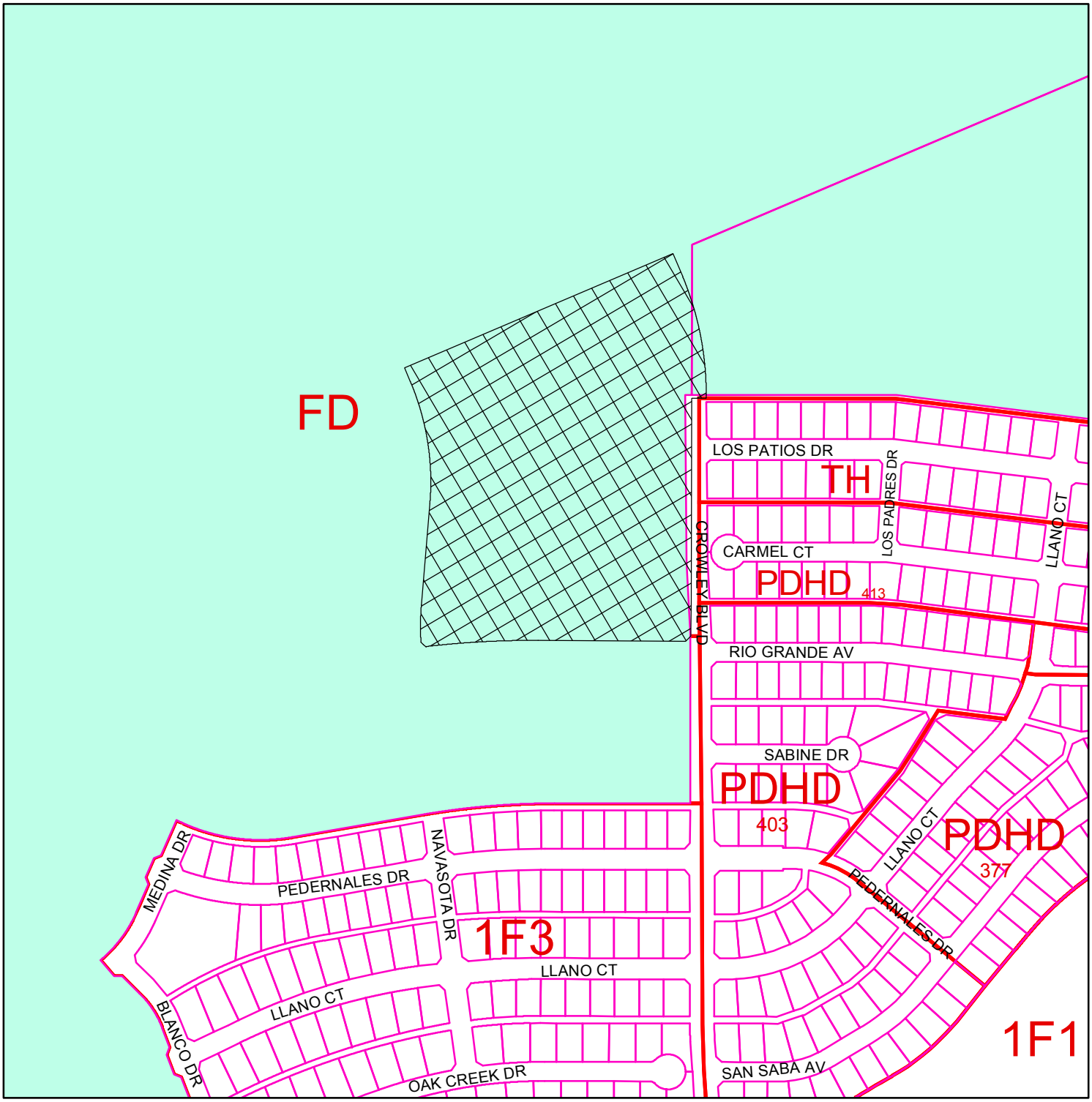
Z - 11 - 042 **Scale: 1" = 200'**

Consider a request for a zone change from FD, Future Development District, to PD, Planned District for a Housing Development on a 16.63-acre tract of land out of Section 25, Block 40, T-1-S, T & P RR Co. Survey, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS





ZONING MAP

Z - 11 - 042 **Scale: 1" = 400'**

Consider a request for a zone change from FD, Future Development District, to PD, Planned District for a Housing Development on a 16.63-acre tract of land out of Section 25, Block 40, T-1-S, T & P RR Co. Survey, City and County of Midland, Texas.

LEGEND

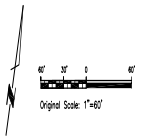
ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

Planned District Site Plan

GRANDRIDGE ESTATES



PD Site Plan Submitted to City of Midland P&Z on August 26, 2011.

NOTES:

- SHADED AREAS DENOTED BY TO BE LANDSCAPED & IRRIGATED.
- SHADED AREAS DENOTED BY TO BE PAVED.
- SHADED AREAS DENOTED BY TO BE SIDEWALK.
- SCREEN WALL DENOTED BY
- BUILDING SETBACK LINE
- ZERO LOT LINE DENOTED BY
- HOME OWNERS ASSOCIATION WILL MAINTAIN ALL LANDSCAPED AND IRRIGATED AREAS AS INDICATED.
- MAXIMUM NUMBER OF RESIDENTIAL UNITS SHALL NOT EXCEED 68.
- STREET PAVING WIDTHS ARE APPROXIMATE AS ILLUSTRATED.
- MAXIMUM HEIGHT OF BERMS/LANDSCAPING IN PUBLIC R-O-W NOT TO EXCEED 30 INCHES.
- ALL UTILITIES TO BE UNDERGROUND.

SBC CORPORATION

Unplatted

FRIO DRIVE

CROWLEY BLVD

C.R.M.W.D. EASEMENT

CANDLESTICK COURT

FULTON COURT

RIVER FRONT COURT

CROSLEY DRIVE

NAVASOTA DRIVE

COMISKEY COURT

RIO GRANDE AVENUE

LOS PATIOS

CARMEL C

RIO GRAN

HOI

2' Common Area for Fence - C.A. "B"

2' Common Area for fence (C.A. "A")

10' Common Area "A"

10' Common Area "B"

10' Common Area "C"

10' Common Area "D"

10' Common Area "E"

10' Common Area "F"

10' Common Area "G"

10' Common Area "H"

10' Common Area "I"

10' Common Area "J"

10' Common Area "K"

10' Common Area "L"

10' Common Area "M"

10' Common Area "N"

10' Common Area "O"

10' Common Area "P"

15'R Common Area "Q"

15'R Common Area "R"

15'R Common Area "S"

15'R Common Area "T"

12' UTIL & DRN ESMT

20' UTIL & DRN ESMT

10' Typ.

9' Typ.

22' Typ.

20'

60'

25' max.

WOOD

BRICK

6'-0" min.

2'-8" min.

TYPE "A"

TYPE "B"

BRICK/MASONRY

TYPE "C"

BRICK/WOOD

SCREEN WALL FENCE ELEVATIONS

NO SCALE

SCREEN WALLS TO BE A COMBINATION OF THE ABOVE ELEMENTS

10' BUILDING SETBACK/EASEMENT (Typ.) FOR MAINTENANCE, ROOF OVERHANG & DRAINAGE ON ALL LOTS AND COMMON AREAS EXCEPT AS NOTED.

ALLEY

25'

10'

HOUSE

COMMON AREA

8' BRICK SCREEN WALL (TYPE "C")

HOUSES MUST BE BUILT ON ZERO LOT LINE (HATCHED LINE) AND HOUSE OR SCREENING WALL MUST CONTINUE TO ALLEY & FRONT SETBACK LINE.

5' BUILDING SETBACK (Typ.)

STREET

LOT AND C.A. DETAILS

Not to Scale

GRANDRID 27.11

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 16.63-ACRE TRACT OF LAND (BEING 19.04 ACRES INCLUSIVE OF DEDICATED RIGHTS-OF-WAY) OUT OF SECTION 25, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE NORTHWEST CORNER OF CROWLEY BOULEVARD AND RIO GRANDE AVENUE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of "Planned Districts" under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a Planned District for a Housing Development, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned FD, Future Development District, and it shall be used as a Planned District for a Housing Development,

subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

> A 16.63-acre tract of land (being 19.04 acres inclusive of dedicated rights-of-way) out of Section 25, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "B", which is attached hereto and incorporated herein.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That this property shall be subject to the regulations of the 1F-2, One-Family Dwelling District, except as otherwise stated below.

2. That the minimum front yard setback for principle buildings shall be five feet from the front lot lines.

3. That any of the four fence types (Types "A", "B", "C" or "D", as shown on Exhibit "A") must be constructed in Common Area "A" and Common Area "B", as illustrated on Exhibit "A", which is attached hereto and incorporated herein. Provided, however, the definition of "masonry" as it applies to the fences shall not include concrete masonry units (commonly referred to as "CMU" blocks).

4. That the land between Common Areas "A" and "B" and the abutting street paving shall be landscaped and maintained by a homeowners association.

5. That no Certificate of Occupancy shall be issued for any lot that abuts Common Areas "A" or "B" until the screening fence listed in Condition No. 3 above is constructed.

6. That all lots in this planned district shall be exempt from the requirement that rear-entry garages must observe a minimum five-foot setback from the rear lot line.

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., 2011; 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., 2011, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2011.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **Z-11-045, City of Midland**

Purpose:

Consider an ordinance on second reading for a City-Initiated zone change from 1F-2 District to 1F-3 District.

Recommended City Council Action

X Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

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

Discussion:

The City of Midland has partnered with Habitat for Humanity and the Midland Community Development Corporation to provide affordable housing near the southwest corner of E. Golf Course Road and Tilden Street. While most of the lots are already platted, they are too small to meet the size requirements of the 1F-2 District. A rezoning to a 1F-3 District will bring the non-conforming lots into compliance. The City Council approved the ordinance in first reading on October 25, 2011. It is now appropriate to consider this ordinance on second and final reading.

Attachments:
Location Map

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **October 25, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **Z-11-045, City of Midland**

Purpose:

Hold a public hearing at approximately 10:36 a.m. and consider an ordinance on a City-Initiated proposal for a zone change from 1F-2, One-Family Dwelling District to 1F-3, One-Family Dwelling District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City in processing this application.

Discussion:

The City of Midland is partnering with Habitat for Humanity and the Midland Community Development Corporation to provide affordable housing in an area located at the southwest corner of E. Golf Course Road and Tilden Street. Most of this property is already platted; however, the lots do not meet the minimum size requirement of the existing 1F-2 District, which is 7,000 square feet. A zone change to a 1F-3 District, with a minimum lot size of 5,500 square feet, will bring all of the lots into zoning compliance. There is also a replat associated with this redevelopment plan. Several persons spoke against this request at the Planning and Zoning Commission meeting, but the Commission recommended unanimous approval. Most speakers requested information as to the type of homes that are planned.

Attachments:

October 3, 2011 Staff Report

Planning and Zoning Commission
Minutes
October 3, 2011

Z-11-045 - Hold a public hearing and consider a request by **City of Midland** for a *zone change* from 1F-2, One-Family Dwelling District to 1F-3, One-Family Dwelling District on Lots 9 through 14, Block 1; Lots 1 through 8, Block 2; Lots 3 through 8, Block 3; Lots 1 through 8, Block 4, Glenn Frances Addition; of Lots 3 through 10, Block 4 and Lots1 through 9, Block 5, Glenmore Heights; and of the N/E 5 acres of Block 79, East Midland, City and County of Midland, Texas. (Generally located near the southwest corner of the intersection of E. Golf Course Road and Tilden Street.)

The representative yielded to the staff for a report. Mr. Compton reviewed the zone change request, stating that the 39 lots will be brought into conformance. No letters of objection were received.

Chairman Carney opened the public hearing and John Cooper, 1409 Chestnut, expressed concern regarding the type of residences to be built in the area. Corine Rabb, 1403 E. Chestnut, stated that she would like to have homes built that look nice.

Community Development Manager Sylvester Cantu explained that the area is part of the CDBG Target Program with the objective of housing development. He stated that homeowners must meet certain criteria and that part of the houses will be under Habitat for Humanity and part under the Midland Community Development Corporation.

Edward Velarde, 1318 E. Golf Course Rd., also expressed concern about the devaluation of property values if the houses are built and asked whether he or his neighbors could purchase the property.

Patrick Aleman, 1312 E. Golf Course Rd., voiced his objection to the building of houses in that area. Rene Larez, 1314 E. Golf Course Rd., voiced a desire to purchase the lots behind his house.

There being no one else wishing to speak in favor or in opposition of the item, Chairman Carney closed the public hearing.

Following discussion, Commissioner Lanning motioned for approval, seconded by Commissioner Wilton. The motion carried by the following vote: AYE: Lanning, Wilton, Gatten, Carney, Watkins and Wolf. NAY: None. ABSTAIN: None. ABSENT: Ferguson, Woodruff and York.

PLANNING AND ZONING COMMISSION

October 3, 2011

CASE: Z-11-045.

REQUEST: Consider a request for a zone change from 1F-2, One-Family Dwelling District to 1F-3, One-Family Dwelling District.

APPLICANT/OWNER: City of Midland.

LEGAL DESCRIPTION: Lots 9 - 14, Block 1; Lots 1 - 8, Block 2; Lots 3 - 8, Block 3; Lots 1 - 8, Block 4, Glenn Frances Addition; and on Lots 3 – 10, Block 4, and Lots 1 – 9, Block 5, Glenmore Heights; and of the N/E 5 acres of Block 79, East Midland, City and County of Midland, Texas.

LOCATION: Generally located near the southwest corner of the intersection of E. Golf Course Road and Tilden Street.

CURRENT ZONING: 1F-2, One-Family Dwelling District.

ASSOCIATED CASE: P-11-019, Glen Francis, Section 2.

DETAILS OF REQUEST:

1. This is a City-Initiated zone change that is being proposed to provide Midland with more affordable housing in a partnership with Habitat for Humanity and the Midland Community Development Corporation. Also on the October 3rd agenda is a preliminary plat application that illustrates the proposed development plan. The purpose of this zone change is to maximize the amount of new housing that can be provided on the available land.

SURROUNDING ZONING AND LAND USE:

2. This property is bound by Golf Course Road on the north, Tilden Street on the east, Jax Avenue on the south and extends west of Jackson Street on the west. All of the subject property is vacant except for a church. Coleman High School is located east across Tilden Street. The surrounding land is zoned 1F-2 District, which is developed with single-family homes.

ANALYSIS:

3. Most of the subject property is already platted. However, the lots do not meet the minimum width requirements of the 1F-2 District, which requires lots at least 65 feet wide, 100 feet deep and 7,000 square feet in area. A zone change will bring these non-conforming lots into compliance with the existing zoning. However, the proposed 1F-3 District allows lots that are 50 feet wide, 100 feet deep with 5,500 square feet of area. Approval of this zone change request will maximize the number of affordable housing lots. This tract is large enough stand on its own and avoids any spot zoning issue, in our opinion.

STAFF RECOMMENDATION:

We recommend approval of this City-Initiated request to rezone this property from a 1F-2, One-Family Dwelling District to 1F-3, One-Family District.

Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps

Case Number: Z-11-045

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

City of Midland
Applicant Name (Phone/e-mail)

Address Zip Code

Same
Property Owner Name (Phone/e-mail)

Address Zip Code

Same
Representative Name (Phone/e-mail)

Address Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. _____

PRESENT ZONE: IF-2 Dist. REQUESTED ZONE: IF-3 District
(List by tracts if more than one district is requested)

Reason for Zone Change Request: low to moderate income housing

Present Use of Property: _____

Proposed Use of Property: _____

How will zone change affect the public health, safety and welfare? _____

Describe how conditions affecting the property have changed since present zoning designation: _____

Is a Specific Use Permit with Term for alcoholic beverages sales needed? ____ Yes ✓ No

APPLICATION FEES:

- Single, standard zone change: **$400**. Multiple, standard zone change: add **$100** per additional district.
- Single PD, Planned District zone change: **$550**. Multiple PD proposal: add **$100** per district.
- If a Traffic Impact Analysis is required, a fee of up to $500.00 will be assessed.

SITE PLAN SUBMITTALS *(if applicable)*:

16 copies (FOLDED) of the PD site plan: N/A

Site Plan in digital format .pdf and .jpg: _____

SIGNATURE *(by property owner only - authorized agent must sign affidavit below)*

Property Owner (signature): _____ Date: _____

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared _____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

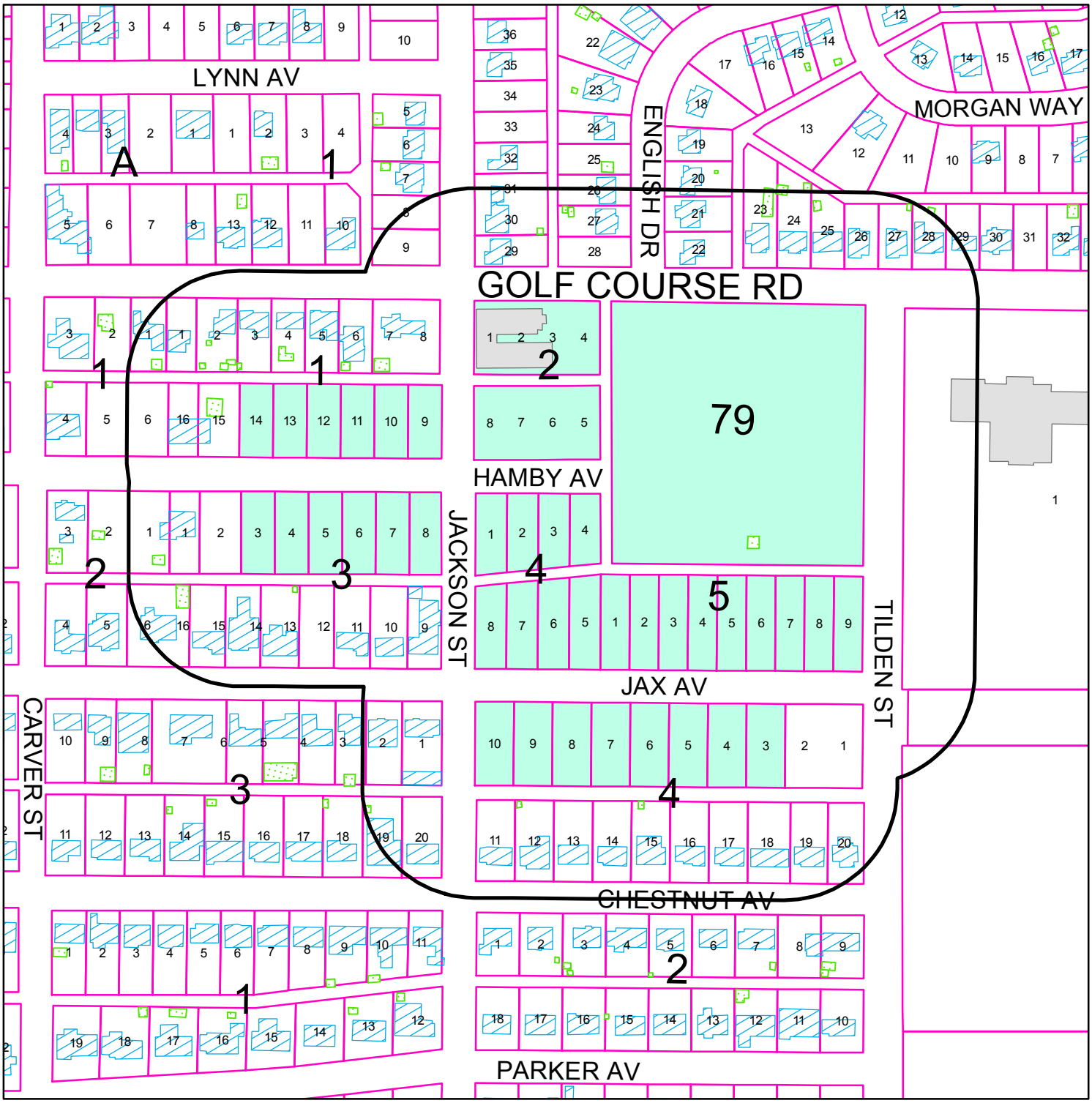
_____
Authorized Agent (signature)

Subscribed and sworn to before me, this _____ day of _____, 20 ___, to certify which witness my hand and seal of office.

_____
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY
Rec'd By: JC Date: 9/13/11
Assigned: JC
For: _____ On: _____

****Application will not be considered for scheduling until reviewed by a planner.****



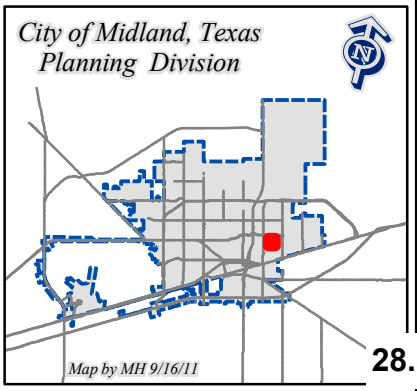
PROPERTY OWNER NOTIFICATION MAP

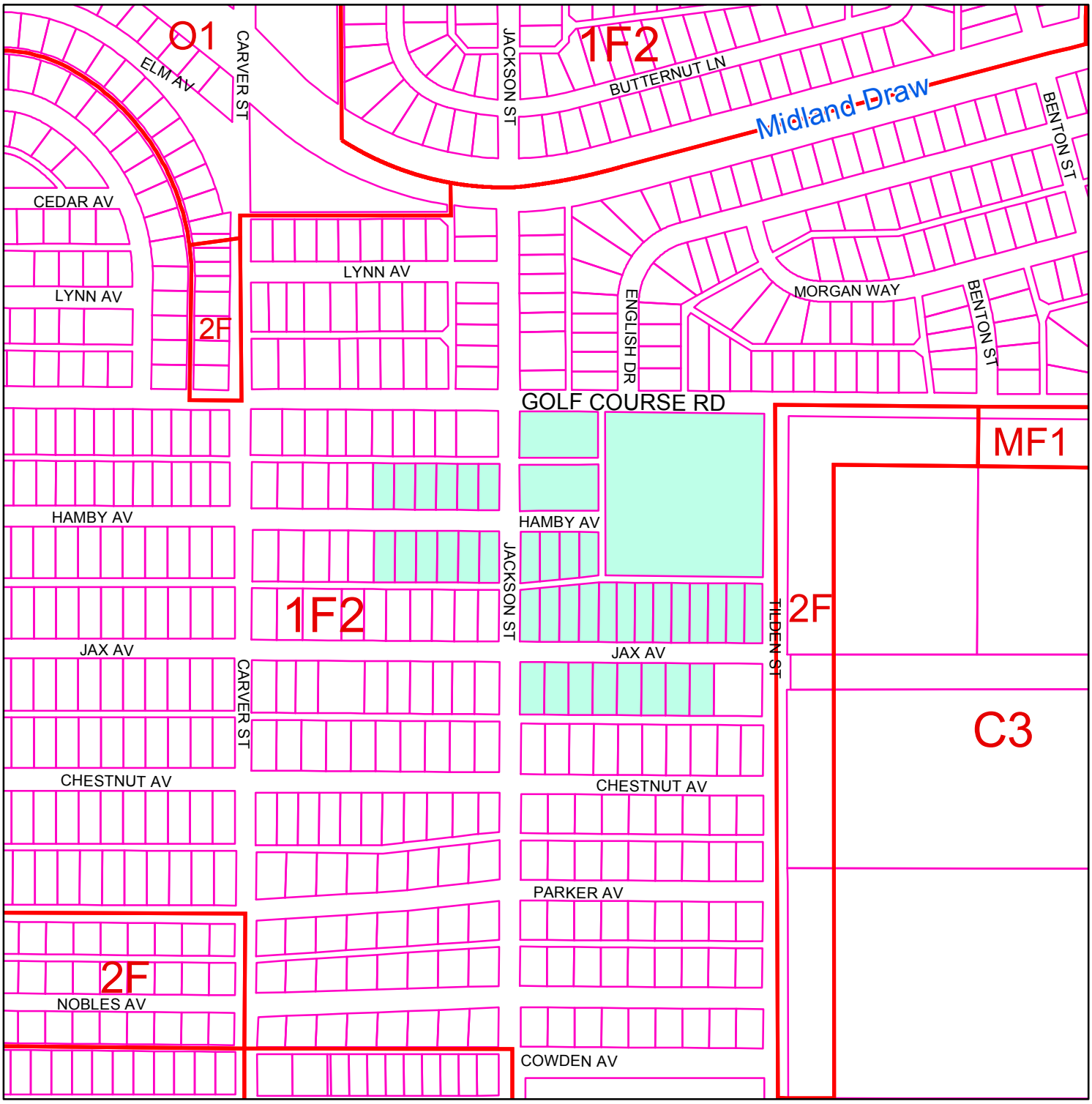
Z - 11 - 045 **Scale: 1" = 250'**

Consider a request for a zone change from 1F-2, One Family Dwelling District, to 1F-3, One-Family Dwelling District on Lots 9 - 14, Block 1; Lots 1 - 8, Block 2; Lots 3 - 8, Block 3; Lots 1 - 8, Block 4, Glenn Frances Addition; of Lots 3 – 10, Block 4, and Lots 1 – 9, Block 5, Glenmore Heights; and of the N/E 5 acres of Block 79, East Midland, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS





ZONING MAP

Z - 11 - 045 **Scale: 1" = 400'**

Consider a request for a zone change from 1F-2, One Family Dwelling District, to 1F-3, One-Family Dwelling District on Lots 9 - 14, Block 1; Lots 1 - 8, Block 2; Lots 3 - 8, Block 3; Lots 1 - 8, Block 4, Glenn Frances Addition; of Lots 3 – 10, Block 4, and Lots 1 – 9, Block 5, Glenmore Heights; and of the N/E 5 acres of Block 79, East Midland, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 9-14, BLOCK 1, LOTS 1-8, BLOCK 2, LOTS 3-8, BLOCK 3, LOTS 1-8, BLOCK 4, GLENN FRANCES ADDITION; LOTS 3-10, BLOCK 4, LOTS 1-9, BLOCK 5, GLENMORE HEIGHTS; AND THE NORTHEAST 5 ACRES OF BLOCK 79, EAST MIDLAND, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 1F-2, ONE-FAMILY DWELLING DISTRICT, TO BE USED AS A 1F-3, ONE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF EAST GOLF COURSE ROAD AND TILDEN STREET); 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 1F-3, 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 1F-2, One-Family Dwelling District, and it shall be used as an 1F-3, One-Family Dwelling District, said property being described as follows:

> Lots 9-14, Block 1, Lots 1-8, Block 2, Lots 3-8, Block 3, Lots 1-8, Block 4, Glenn Frances Addition; Lots 3-10, Block 4, Lots 1-9, Block 5, Glenmore Heights; and the northeast 5 acres of Block 79, East Midland, 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., 2011; 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., 2011, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2011.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **S-11-016, Bourbon St D.C.**

Purpose:

Hold a public hearing at approximately 10:36 a.m. and consider an ordinance on a request by Bourbon St. D.C. for a Specific Use Permit with Term for on-premise consumption of all alcoholic beverages in a lounge.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

The applicant plans to open a new lounge offering beer and wine for on-premise consumption and occasional live music at the southeast corner of Main Street and Texas Avenue in a 1,608 square foot portion of the building; the remainder of the building will not be used by the lounge. Proposed hours of operation are 12 noon to 1:30 a.m., seven days a week, with a maximum occupancy of 80 persons.

Attachments:
October 17, 2011 Planning & Zoning Commission Staff Report
Proposed Ordinance

Planning and Zoning Commission
Minutes
October 17, 2011

S-11-016 - Hold a public hearing and consider a request by **Bourbon ST. D.C.** for a *Specific Use Permit with Term* for the sale of all alcoholic beverages, for on-premises consumption, in a lounge, on Lot 24, block 53, Original Town, City and County of Midland, Texas. (Generally located on the southeast corner of the intersection of North Main Street and East Texas Avenue.)

Chairman Carney opened the public hearing at 4:13 p.m.

The applicant yielded to staff. Senior Planner Ken Van Dyne gave an overview of the item noting the hours of sale would be from 12 p.m. to 1:30 a.m., 7 days a week. The request was to sell alcoholic beverages in a downtown location and staff believed this would add another use for nighttime activity downtown and would keep people downtown after 5 p.m. Staff recommended approval subject to conditions A through C.

A motion for approval was made by Commissioner York, subject to conditions A through C; seconded by Commissioner Ferguson. The motion carried by the following vote: AYE: Lanning, Gatten, Carney Ferguson, Watkins and York. NAY: None. ABSTAIN: None. ABSENT: Wolf, Wilton and Woodruff

PLANNING AND ZONING COMMISSION

October 17, 2011

CASE: S-11-016.

REQUEST: Hold a public hearing and consider a request for a Specific Use Permit with Term for on-premise consumption of all alcoholic beverages in a Lounge.

APPLICANT: Marcelino C. Armendariz.

OWNER: Amber Almodova.

LEGAL DESCRIPTION: Lot 24, Block 53, Original Town, City and County of Midland, Texas.

LOCATION: Generally located on the southeast corner of the intersection of N. Main Street and E. Texas Avenue.

CURRENT ZONING: C-1, Central Area District.

ASSOCIATED CASES: S-09-012, S-11-010.

DETAILS OF REQUEST:

1. The applicant plans to open a lounge offering beer and wine for on-premise consumption and occasional live music in a 1,608 square foot portion of the building on the southeast corner of Main Street and Texas Avenue; the remainder of the building is not used by the bar. Proposed hours of operation are 12 noon to 1:30 a.m., seven days a week, with a maximum occupancy of 80 persons.

SURROUNDING ZONING AND LAND USE:

2. The building is located on Main Street across from the Midland Center and immediately south of the Justice Department office. In the vicinity are numerous offices, a restaurant, and on the block to the south is the post office. Residential lofts and Frog's Cigar Bar are located one block to the north. On the northwest corner of Main Street and Texas Avenue is the Ritz Theater which is closed and being renovated.

ANALYSIS:

3. The request is to sell alcoholic beverages at this downtown location, which is being redeveloped with the proposed lounge. The lot does not offer any on-site parking; however, there are no minimum parking spaces required in the C-1, Central Area District. Staff concurs that the proposal fits in with on-going efforts to revitalize the downtown area by offering diverse evening activities.

STAFF RECOMMENDATION:

Staff recommends approval of this request for a Specific Use Permit with Term for the sale and on-premise consumption of alcoholic beverages in a Lounge, subject to the following conditions:

A. That the maximum area of the Lounge shall be 1,608 square feet and the occupancy shall be 80 persons;

B. That the days and hours of alcoholic beverage sales and consumption shall not exceed the following: Each day of the week from 12 noon until 1:30 a.m.;

C. That the operation of the Lounge shall conform to all laws established by the City of Midland and the State of Texas.

Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Ken Van Dyne, Senior Planner
Department of Development Services

Attachments:

Application
Site Plan – Exhibit A
Maps

Case Number: S-11-016

CITY OF MIDLAND
Planning Division

APPLICATION FOR A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALCOHOLIC BEVERAGES FOR ON-PREMISE CONSUMPTION

BOURBON ST., D.C. — 432-661-2778, 432-689-3233
Applicant Name — Phone/e-mail
120 N. MAIN ST, MIDLAND, TX. 79701
Address — Zip Code

AMBER ALMODOVA — 432-634-1580
Property Owner Name — Phone/e-mail
120 N. MAIN ST, MIDLAND, TX. 79701
Address — Zip Code

MARCELINO ARMENDARIZ — BOURBON. ARMENDARIZ@YAHOO.COM
Operator (if different from Applicant or Property Owner) — Phone/e-mail
120 N. MAIN ST, MIDLAND, TX. 79701
Address — Zip Code

Type of Business: BAR/LOUNGE
(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.)
120 N. MAIN ST, MIDLAND, TX. 79701
BLOCK 053 LOT 024, ADDN. ORIGINAL TOWN
ACRES 0.080

Current Zoning: C-1 CENTRAL AREA DISTRICT

Max. Floor Area: 1,608 sq Seating Capacity: 80 sq

Proposed hours and days of alcoholic beverage sales: 7 DAYS A WEEK, 12:00pM - 1:30AM

Reason for request: PUB - SALE of BEER AND WINE

RECEIVED
SEP 7 2011
CITY OF MIDLAND
PLANNING DIVISION OFFICE

REQUIRED SUBMITTALS

2. Site plan – 16 copies (FOLDED) ____.
3. On a CD in .pdf and .jpg digital format ____.

SIGNATURES:

Applicant: M.C. Quiroz Date: 8-19-11

Property Owner: Amber Almodova Date: 8-19-11

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 Marcelino Armendariz & Amber Almodova who, being by me duly sworn, upon oath says: That (s)he is authorized by Amber Almodova, 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.

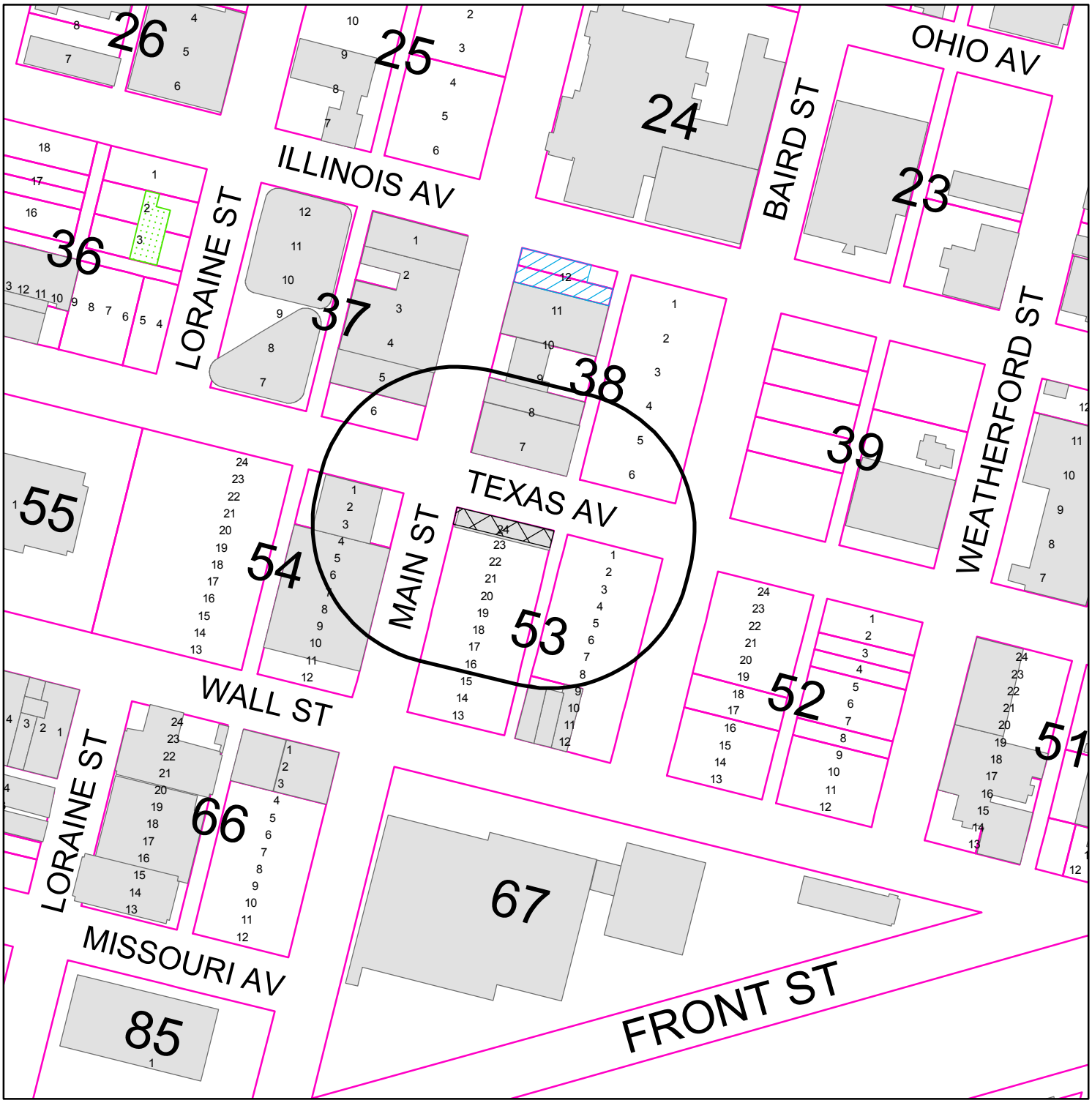
Subscribed and sworn to before me, this 19 day of August, 20 11, to certify which witness my hand and seal of office.

Patricia M. Faulk
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY
Rec'd By: K. V. Date: 9/26/11
Assigned: K.V.
For: P+Z On: ~~10/3/11~~ 10/17/11

PATRICIA M FAULK
Notary Public, State of Texas
My Commission Expires
June 30, 2014

****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

S - 11 - 016 **Scale: 1" = 200'**

Consider a request for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a lounge, on Lot 24, Block 53, Original Town, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS

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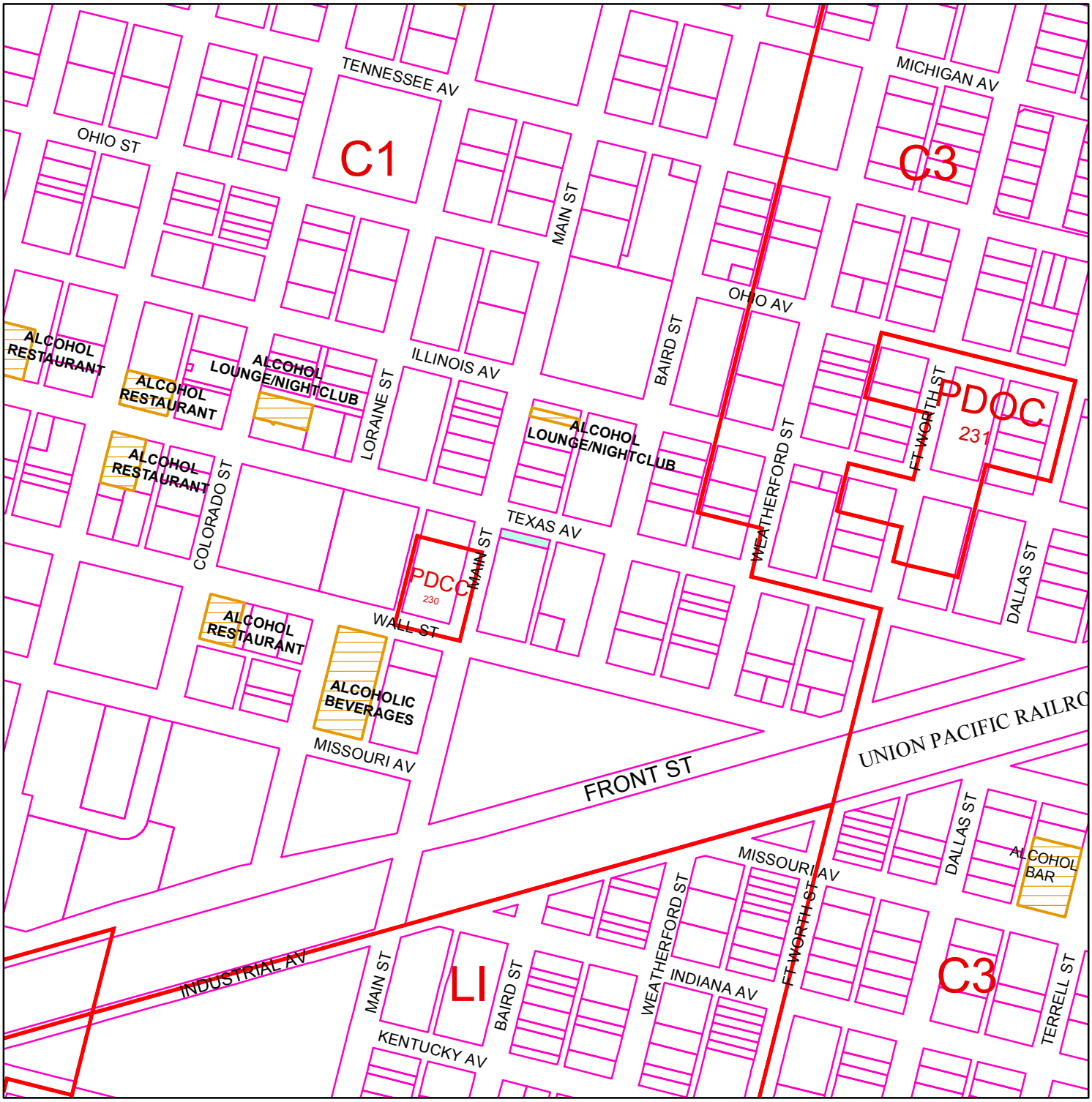
WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS
THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN



ZONING MAP

S - 11 - 016 **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 lounge, on Lot 24, Block 53, Original Town, City and County of Midland, Texas.

LEGEND

ZONING | PARCELS | SPECIFIC USE PERMITS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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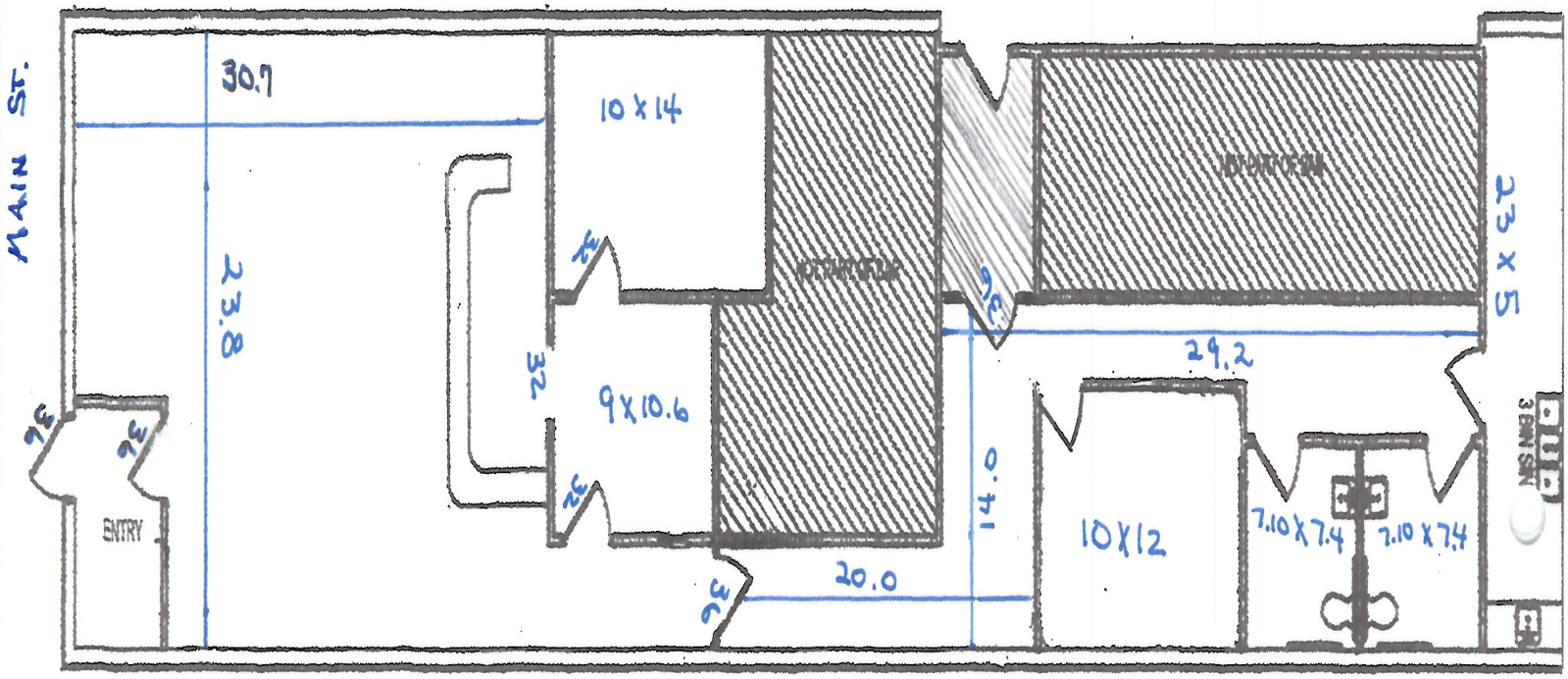
TEXAS AVE.



SITE PLAN

EXHIBIT A

CASE NO. S-11-016

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 24, BLOCK 53, ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF NORTH MAIN STREET AND EAST TEXAS AVENUE), 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 LOUNGE FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by the granting of a Specific Use Permit With Term, set out hereinafter, on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned C-1, Central Area District, to-wit:

Lot 24, Block 53, Original Town, City and County of Midland, Texas;

is hereby changed to permit said property to be used under a Specific Use Permit Without Term for the sale of all alcoholic beverages for on-premises consumption in a lounge, together with the uses permitted in the present C-1, Central Area District.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

A. That the maximum area of the lounge shall be 1,608 contiguous square feet (identified as the unshaded area of Exhibit "A", which is attached hereto and incorporated herein); the maximum occupancy shall be 80 persons.

B. That the days and hours of alcoholic beverage sales and consumption shall be limited to Monday through Sunday from 12:00 p.m. (Noon) to 1:30 a.m. of the following day, unless otherwise prohibited by law.

C. That the operation of the lounge 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., 2011; 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., 2011, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2011.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

L:\Ordinances\Planning\Specific Use Permit\2011\S-11-016.Bourbon St., D.C. - Alcohol Sales.wpd

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **Z-11-044, Alan Hale (Manor Park, Inc.)**

Purpose:

Hold a public hearing at approximately 10:39 a.m. and consider an ordinance on a request by Alan Hale for a zone change from a Planned District for a Housing Development to an Amended Planned District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

Manor Park is planning to construct two assisted living/care center buildings for senior citizens on a 2.52-acre site of vacant land located within the Manor Park Community. Proposed to house up to 44 residents in these single-story buildings, this use would be classified as a nursing home facility which staff believes would remain consistent with the area's historical development and a complementary use in the neighboring community. Staff concurs that rezoning will continue to maintain the property's long-standing, retiree-community vision by adopting the new development use and site plan as an Amended Planned District, subject to development in accordance with Exhibits A and B.

Attachments:
Maps
October 31, 2011 Planning & Zoning Commission Staff Report
Exhibit A – Site Plan
Exhibit B – Elevations
Proposed Ordinance

PLANNING AND ZONING COMMISSION

October 31, 2011

CASE: Z-11-044.

REQUEST: Hold a public hearing and consider a request for a zone change from a Planned District for a Housing Development to an Amended Planned District.

APPLICANT/OWNER: Alan Hale (Manor Park, Inc.).

REPRESENTATIVE: West Company.

LEGAL DESCRIPTION: Lot 3A, Block 1, Trinity Towers Manor, Section 3, City and County of Midland, Texas.

LOCATION: Generally located near the northeast corner of the intersection of N. Loop 250 West and Sinclair Avenue on Manor Village Circle.

ASSOCIATED CASES: Z-02-018.

DETAILS OF REQUEST:

1. This 2.52-acre portion of land within Lot 3A is the last large area for development within the 65-acre site that makes up the Manor Park retirement community. The applicant wishes to construct an Assisted Living/Care Center for Senior Citizens to provide for the needs of current and future community residents. Manor Park proposes to expand this service by constructing two buildings that would provide bedrooms and the associated care facilities for a total of 44 residents. Current zoning does not provide for a nursing or custodial care home. Therefore, the purpose of this zone change is to provide for the requested use and to adopt the site plan associated with the new buildings as an Amended Planned District.

SURROUNDING ZONING AND LAND USE:

2. The area immediately surrounding the 2.52-acre site for the two proposed buildings is a fully developed neighborhood consisting of residential housing and community buildings for use by Manor Park residents. To the northwest of the proposed buildings' location is another Planned District for

a Housing Development and to the north and northeast are One-Family Dwelling Districts, all of which are fully-developed in this area. To the east/southeast is Pioneer Park and to the south lie the vacant rear lots of several One-Family Dwelling District lots with frontages on Andrews Highway. Westward is the majority of the Manor Park Community with Loop 250 nearly one-half mile west.

ANALYSIS:

3. In considering whether to allow the proposed use of a nursing home / custodial care facility on this site, it is important to consider the history and context of the Manor Park Development. Spanning nearly 30 years, this aesthetically pleasing community has grown to approximately 65 acres upon the success of meeting the needs of many seniors within the City of Midland. Providing a range of housing, recreational and senior care services in varying degrees in numerous community buildings over the years; staff believes that the additional two buildings would remain consistent with the area's historical development and the proposed use would be a complementary use of this property.

SITE PLAN:

4. The proposed two-building development creates a new site plan for this 2.52 acre portion of the 65-acre Manor Park property. In examining the site plan (Exhibit-A), staff found the site to meet parking, traffic circulation, landscaping, screening, and other city regulations. The building exteriors will be primarily 4" veneer brick faces as well as brick chimneys. The roofline of the building will be less than 28' and the material will be shingled to match adjacent building roofs (Exhibit-B). With the height and appearance closely matching the surroundings of the site, staff believes the buildings offer a contextual fit architecturally and their use complements the ongoing goals of the Manor Park Community. Staff recommends approval.

STAFF RECOMMENDATION:

Staff recommends approval of the zone change from a Planned District for a Housing Development to an Amended Planned District, subject to the following condition:

A. That this property shall be developed in accordance with Exhibits A and B;

B. That the maximum height of the building shall not exceed 28 feet;

C. **That a blanket refuse easement is granted to the City of Midland for access to, and removal of waste from, this property;**

D. **That the landscaping shall conform to City regulations in place at the time of development;**

E. **That the air conditioners and dumpsters shall be appropriately screened;**

F. **That Ordinance 8126 is amended by this action.**

Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Ken Van Dyne, Senior Planner
Department of Development Services

Attachments:

Application
Exhibit – A (Site Plan)
Exhibit – B (Elevations)
Maps

Case Number: Z-11-044

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Alan Hale
Applicant Name (Phone/e-mail)

Address Zip Code

Alan Hale 432-689-9898
Property Owner Name (Phone/e-mail)

2208 North Loop 250 West Midland, TX 79703
Address Zip Code

Andrew L. Mellen 432-687-0865
Representative Name (Phone/e-mail)

110 W. Louisiana Ave Suite 110 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. Metes and Bounds attached

PRESENT ZONE: PDHD REQUESTED ZONE: ~~MF-2~~ Amended PD
(List by tracts if more than one district is requested)

Reason for Zone Change Request: To be able to build Assisted Living

Present Use of Property: Raw Land

Proposed Use of Property: Care Center For Seniors - Assisted Living

How will zone change affect the public health, safety and welfare? No change

Describe how conditions affecting the property have changed since present zoning designation:
No Changes

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)*:

3 ~~16~~ copies (FOLDED) of the PD site plan: ✓

Site Plan in digital format .pdf and .jpg: ✓

SIGNATURE *(by property owner only - authorized agent must sign affidavit below)*

Property Owner (signature): _____ Date: _____

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared Andrew L. Mellen Jr who, being by me duly sworn, upon oath says: That (s)he is authorized by Alan Hale, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Andrew L. Mellen Jr
Authorized Agent (signature)

Subscribed and sworn to before me, this 8th day of September, 20 11, to certify which witness my hand and seal of office.

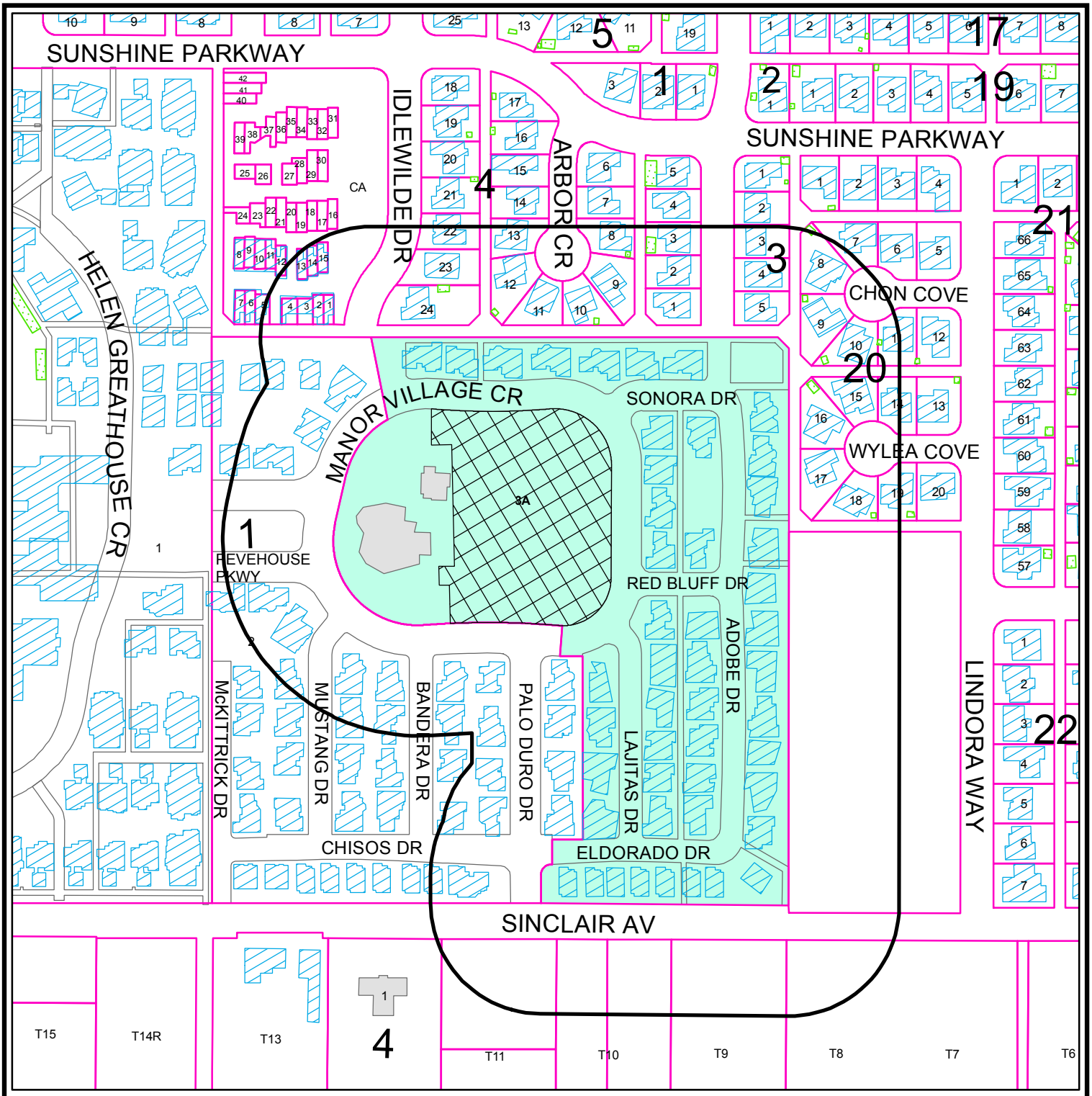
Debbie Brown
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY
Rec'd By: P+Z Date: 9/8/11
Assigned: KV
For: P+Z On: 10/17/11

NOTARY PUBLIC STATE OF TEXAS
DEBBIE BROWN
Notary Public
STATE OF TEXAS
My Comm. Exp. 02/22/2013

****Application will not be considered for scheduling until reviewed by a planner.****

P+Z 10/31/11
CC 11/16/11



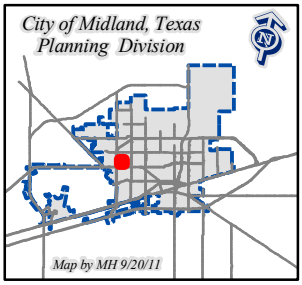
PROPERTY OWNER NOTIFICATION MAP

Z - 11 - 044 **Scale: 1" = 250'**

Consider a request for a zone change from PD, Planned District for a Housing Development, to an Amended Planned District on Lot 3A, Block 1, Trinity Towers Manor, Section 3, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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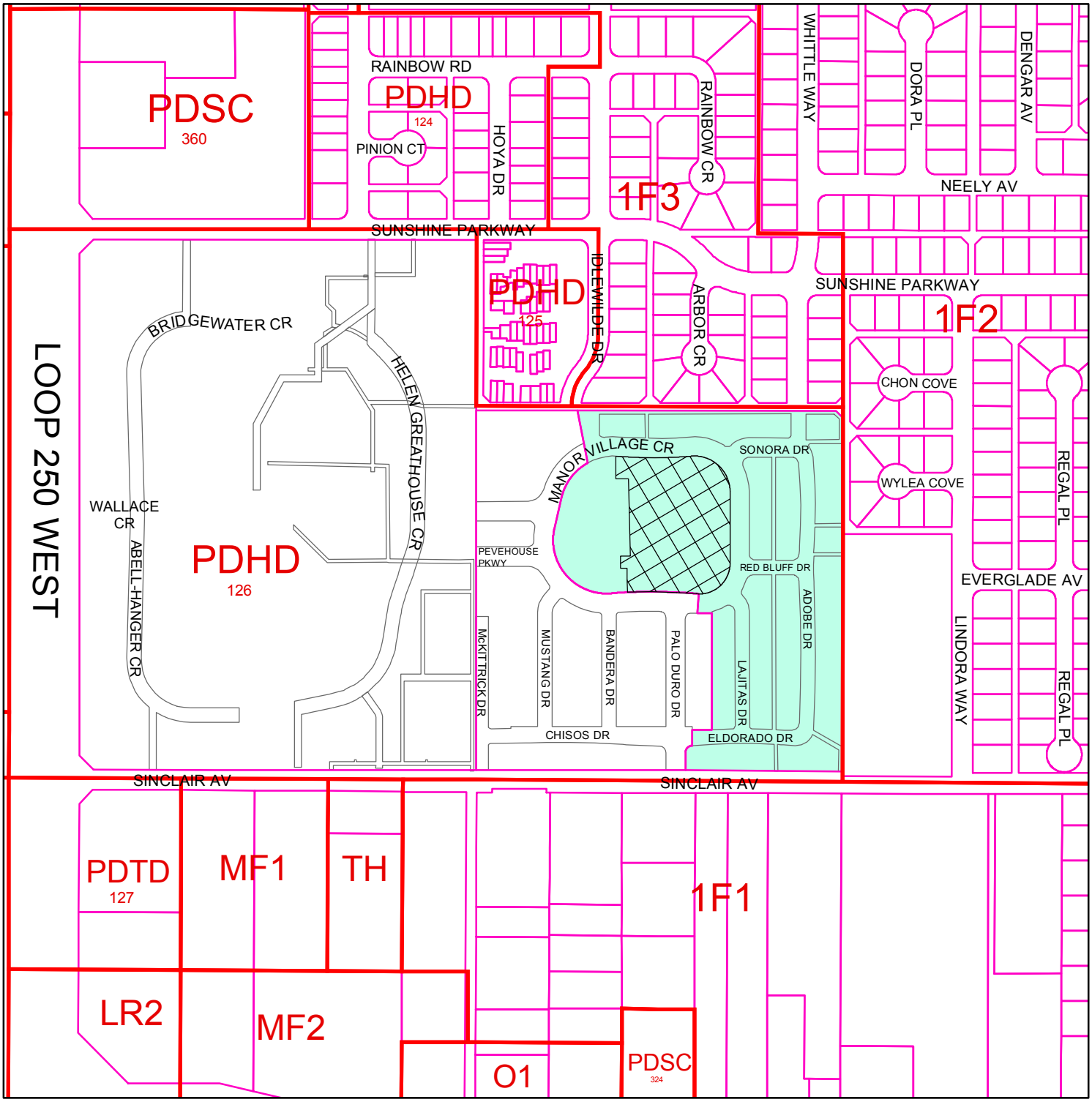

ZONING MAP

Z - 11 - 044 **Scale: 1" = 400'**

Consider a request for a zone change from PD, Planned District for a Housing Development, to an Amended Planned District on Lot 3A, Block 1, Trinity Towers Manor, 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	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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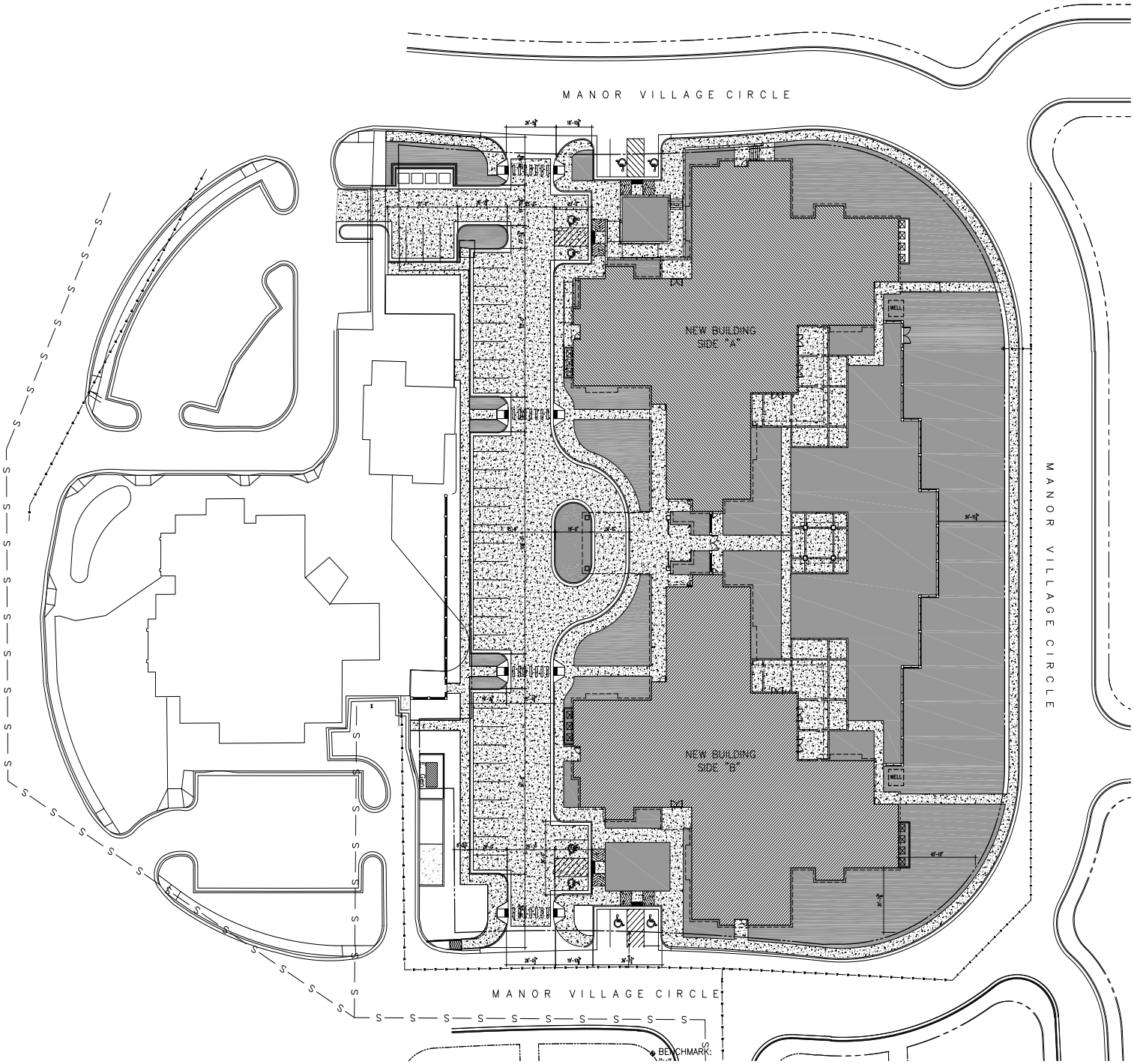


1 SITE PLAN
1"=20'-0"

LEGEND

- NEW BUILDING
- CONCRETE WALKWAYS AND DRIVEWAYS
- LANDSCAPE AREA
- WATERLINE

BREAKDOWN OF PROJECT AREAS

STRUCTURE FOOTPRINT	: 35,553 S.F.
BUILDING AREAS	: 29,428 S.F.
LANDSCAPE ARES	: 42,980
PARKING PROVIDED	: 40 SPACES
HANDICAP PARKING	: 8 SPACES

THESE DRAWINGS ARE FOR INTERIM REVIEW AND PRICING ONLY.
"NOT INTENDED FOR CONSTRUCTION"
RWA - 8/22/11

30.9
1102 Avenue
Midland
432.682.1252
432.682.1257 fax
rwa
rhotenberry
wellen
architects

MANOR PARK HOUSEHOLDS
MIDLAND, TEXAS

JOB NO. 0933

DRAWING TITLE
SITE PLAN

REVISIONS

DATE 8/22/11
DRAWN BY ACC
CHECKED BY JRR

SHEET NO.
SD1.1

© COPYRIGHT 2010 Rhotenberry Wellen Architects

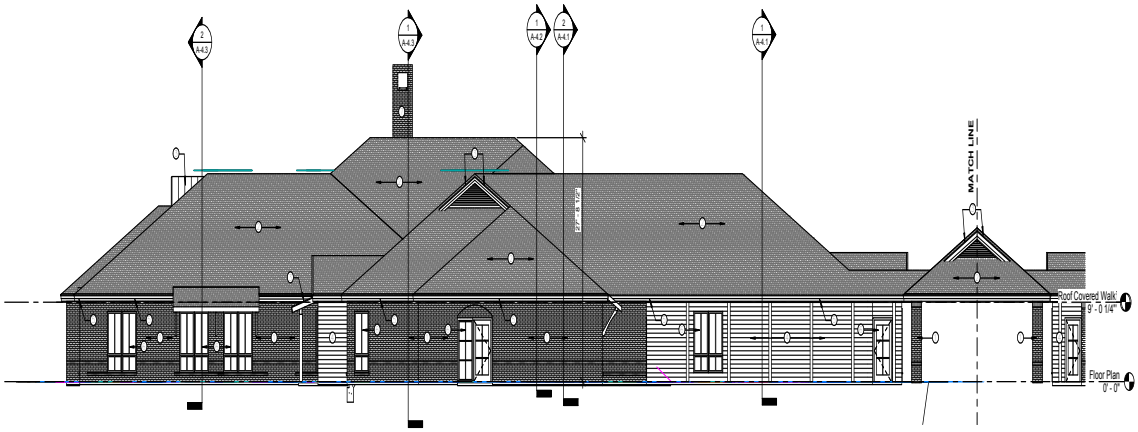
KEYNOTES

1 4"VENEER FACE BRICK
2 COMPOSITION SHINGLE ROOF AS SPECIFIED TO MATCH ADJACENT BUILDING ROOFS.
3 COPPER STANDING SEAM ROOF AS SPECIFIED
4 PAINTED HARDBOARD SIDING AS SPECIFIED
5 PAINTED HARDBOARD FASCIA AS SPECIFIED
6 ALUMINUM CLAD WOOD WINDOW AND/OR DOOR AS SCHEDULED. REFER TO SHEET A-2.0 FOR MORE INFORMATION.
7 BRICK CHIMNEY

2 North Elevation "A"
1/8" = 1'-0"

1 South Elevation "A"
1/8" = 1'-0"

3 East Elevation "A"
1/8" = 1'-0"



4 West Elevation "A"
1/8" = 1'-0"

1102 West Texas Avenue
Midland, Texas 79701
432 . 682 . 1257
432 . 682 . 1257 fax

rwa
rhotenberry
weller
architects

THESE DRAWINGS ARE FOR INTERIM REVIEW AND PRICING ONLY.
"NOT INTENDED FOR CONSTRUCTION"
RWA - 8-19-11

Manor Park Households
Midland, Texas

JOB NO. 0933

DRAWING TITLE
Elevations

REVISIONS
△
△
△
△

DATE 07/09/02
DRAWN BY Author
CHECKED BY Checker

IT: RhotenberryWellerArchitects

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 3A, BLOCK 1, TRINITY TOWERS MANOR, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED NEAR THE NORTHEAST CORNER OF THE INTERSECTION OF NORTH LOOP 250 WEST AND SINCLAIR AVENUE ON MANOR VILLAGE CIRCLE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS ($2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of "Planned Districts" under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of an Amended Planned District, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned PD, Planned District for a Housing Development, and it shall be used as an Amended Planned District, subject to the special conditions and restrictions hereinafter set out, said property being described as

follows:

Lot 3A, Block 1, Trinity Towers Manor, Section 3, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That the new construction on this property shall be developed in accordance with Exhibits "A" and "B", which are attached hereto and incorporated herein.

2. That the maximum building height shall not exceed 28 feet.

3. That a blanket refuse easement is granted to the City of Midland for access to and removal of waste from this property.

4. That the landscaping shall conform to City of Midland regulations in place at the time said new construction is commenced.

5. That the air conditioners and dumpsters shall be appropriately screened.

6. That City of Midland Ordinance No. 8126 is hereby amended by this ordinance.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars ($2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ___day of _____, A.D., 2011; 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., 2011, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2011.

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, AICP**

SUBJECT: **M-11-022; Joe L. Smith, Oregon Trail Trees.**

Purpose:

Hold a public hearing at approximately 10:45 a.m. and consider a resolution on a request by Joe L. Smith for approval of a Temporary Land Use Permit for Outdoor Christmas Tree Sales.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

No City funds will be used in connection with this permit.

Discussion:

Mr. Smith has sold Christmas Trees at various locations in the city for over twenty years. This year his proposed site is located in the north parking area of La Casa Verde Nursery located at 2615 N. Midland Drive. As shown on the site plan, there will be a fenced-in tree display area, and a tree storage area.

Proposed days and hours are: November 23, 2011 through December 24, 2011
10:00 a.m. to 10:00 p.m. daily

Staff believes that parking will be sufficient at this site to accommodate expected patrons; the winter season is not a busy time for La Casa Verde.

Staff recommend approval of this request.

Attachments:

Application, Maps, Exhibit A - Site Plan

Case No.: M-11-022

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: Joe L. Smith/Oregon Trail Trees Phone: 687.6354
E-mail: bsmith325@suddenlink.net

Applicant's Address: 1602 W. Dengar, Midland, TX 79705

Property Owner: La Casa Verde Nursery Phone: 520.2144
Mark Crisp E-mail: _____

Owner's Address: 2615 N. Midland Drive, Midland, TX 79707

Other required information:

1. Street address and legal description of property: La Casa Verde Nursery North Parking Lot - 2615 North Midland Drive
2. Zoning District: _____
3. Type of temporary use requested: Christmas Tree Lot
4. Duration of temporary use: _____
   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: 11/23/11 to 12/24/11 10:00am - 10:00pm
6. Will alcoholic beverages be sold? _____ Yes __X__ No
7. A detailed Site Plan is required (16 copies needed (FOLDED), plus digital - .jpg and .pdf). Show existing buildings, parking, access arrangements, surrounding streets, activity areas, areas of alcoholic beverage sales, proposed street closures, etc.
   Site Plan received: _____ Yes _____ No

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: None

   Number of restrooms provided: None

   Type of music (carnival, live, etc.): None

   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**: X 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:

Joe L. Smith — 1602 W. Dengar, Midland, TX 79705 — 687.6354 / 631.4975

Printed Name of Owner/Operator — Address — Zip — Phone

Joe L. Smith — 10/28/11

Signature of Owner/Operator — Date

Signature of Applicant — Date

Patricia Crisp — 10/26/11

Signature of Property Owner, if other than Applicant — Date

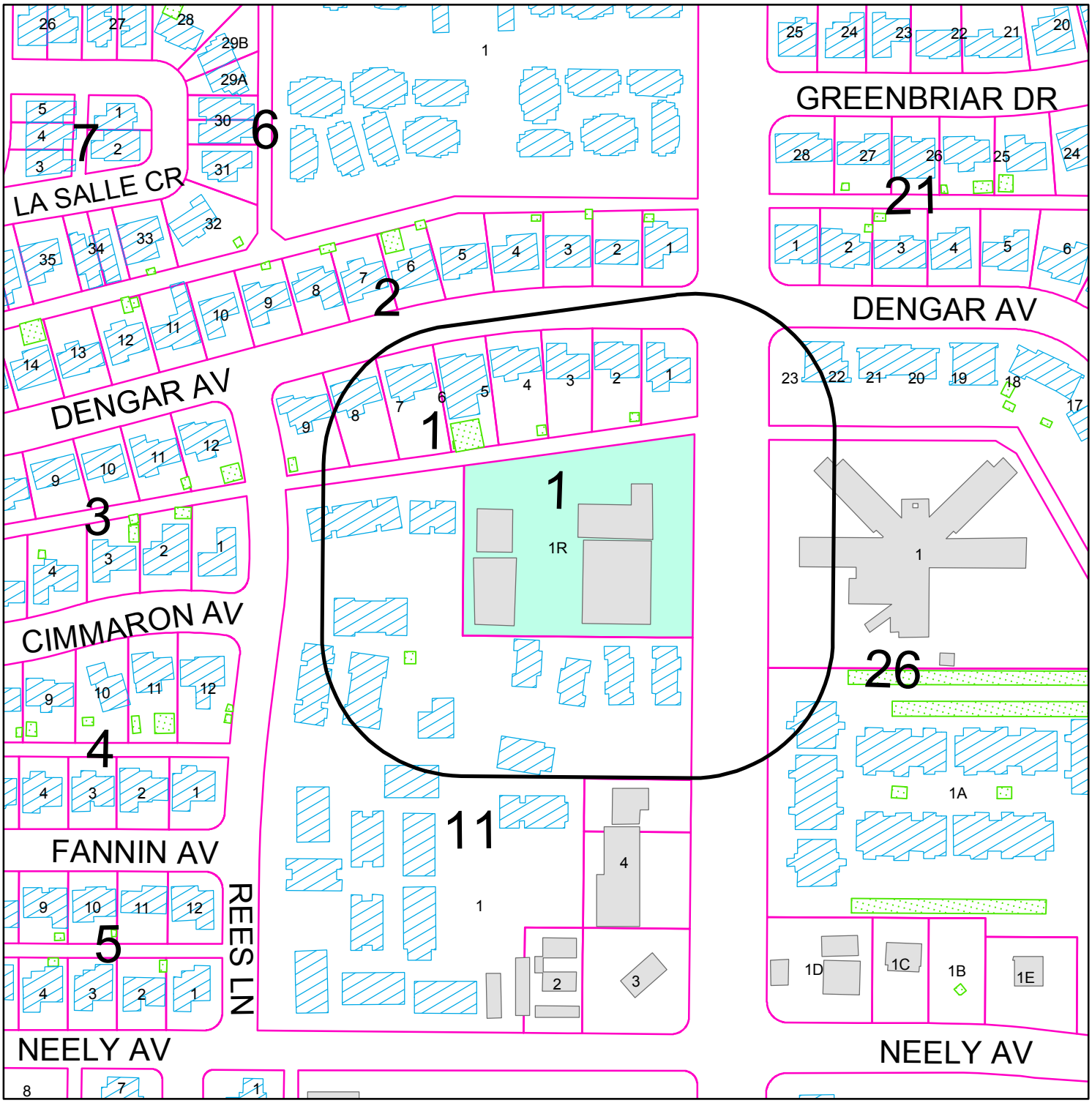
****Application will not be considered for scheduling until reviewed by a planner.****

FOR OFFICE USE ONLY

Received By: KS Date: 10/26/11

Assigned: _____

For: CC On: 11/8/11



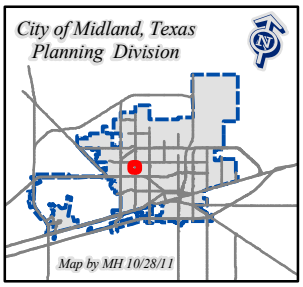
PROPERTY OWNER NOTIFICATION MAP

M - 11 - 022 **Scale: 1" = 200'**

Consider a request for a Temporary Land Use Permit for Outdoor Christmas Tree Sales on the remainder of Lot 1, Block 1, Scotsdale Addition, Section Two, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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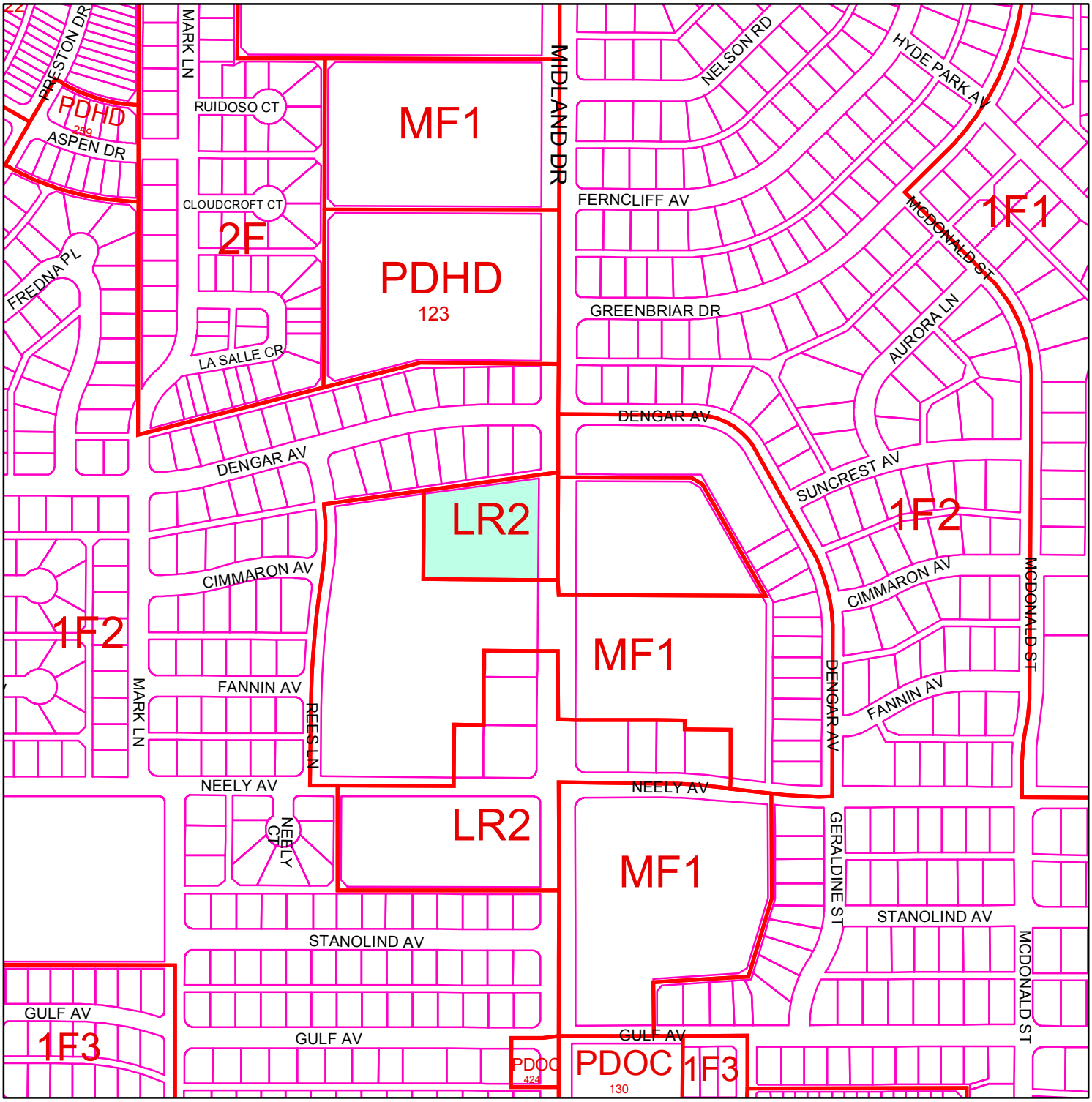

ZONING MAP

M - 11 - 022 **Scale: 1" = 400'**

Consider a request for a Temporary Land Use Permit for Outdoor Christmas Tree Sales on the remainder of Lot 1, Block 1, Scotsdale Addition, Section Two, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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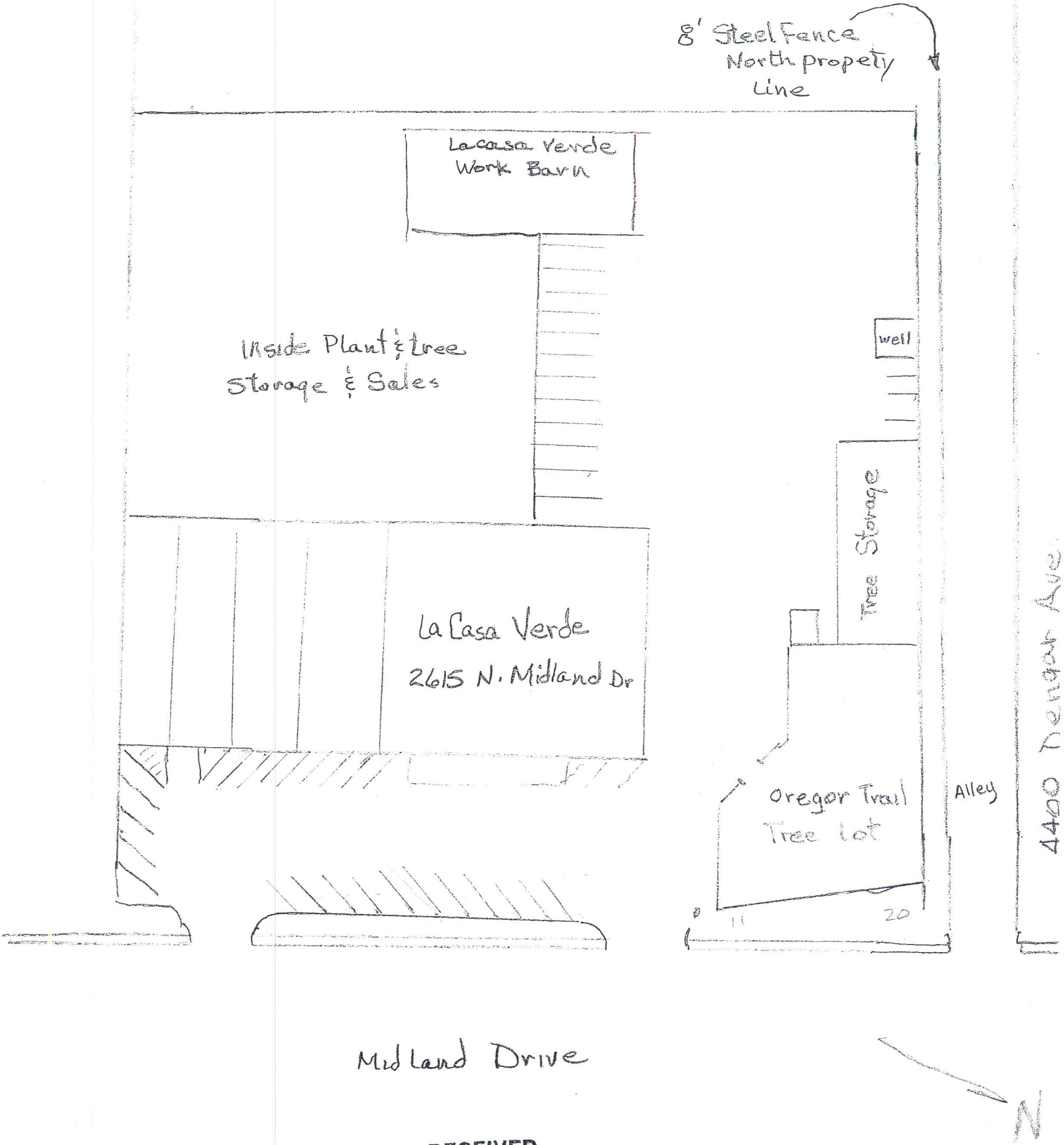


SITE PLAN

RECEIVED
NOV - 1 2010
PLANNING & DEVELOPMENT
CITY OF MIDLAND

CASE NO. M-11-022

RESOLUTION NO.

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR OUTDOOR CHRISTMAS TREE SALES ON LOT 1, BLOCK 1, SCOTSDALE ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDLAND DRIVE, APPROXIMATELY 160 FEET SOUTH OF WEST DENGAR AVENUE); 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, Joe L. Smith / Oregon Trail Trees has applied for authorization to temporarily use land for outdoor Christmas Tree sales on Lot 1, Block 1, Scotsdale Addition, Section 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 Joe L. Smith / Oregon Trail Trees is hereby authorized by the City Council to have outdoor Christmas Tree sales on the following described land:

On Lot 1, Block 1, Scotsdale Addition, Section 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 use of the specified site for temporary outdoor Christmas Tree sales shall conform in all respects to the site plan, which is attached hereto as Exhibit "A" and incorporated herein for all purposes.

B. That the days and hours of said temporary use shall be limited to November 23, 2011 through December 24, 2011; 10:00 a.m. until 10:00 p.m. daily.

C. That the tree sales facilities and any remaining trees shall be removed no later than December 31, 2011.

D. That the applicant shall obtain approval from the Utilities Department for a refuse collection and clean-up plan prior to November 23, 2011.

E. That said temporary use shall comply with all requirements of the Fire Code; the applicant must call for an inspection by the Fire Marshal prior to commencing sales.

F. That the Code Administration Division shall be notified no later than 48 hours preceding the beginning of operations.

G. That the operator, Joe L. Smith, shall be responsible for ensuring that the conditions of this permit are observed.

SECTION THREE. The City Council reserves at all times the full right and power to revoke said temporary use for violation of any of its terms or any misrepresentations contained in the application, after a hearing of which the holder of said temporary use has been given at least one (1) day notice.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2011, 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:
JNichols
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Gary Saunders, Transportation Manager**

SUBJECT: **Ordinance - Stop Signs**

Purpose:
To approve an ordinance authorizing the installation of stop signs at various intersections throughout the City of Midland.

Recommended City Council Action:
X Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:
Approximately $550 for installation cost of signs including materials, equipment, and labor.

Discussion:
The Legal Department has prepared an ordinance authorizing the installation of stop signs at various intersections throughout the City of Midland. This ordinance has been requested to assign right-of-way for the motorist at each intersection in compliance with the Texas Manual on Uniform Traffic Control Devices. The proposed intersections are currently controlled by yield signs and are listed as follows:

On Camp Street at Dakota Avenue for north/south traffic.

On Edwards Street at Cedar Avenue for north/south traffic.

On Godfrey Street at Tanner Drive for north/south traffic.

On Princeton Avenue at Idlewilde Drive for east/west traffic.

On Tejas at Shawnee for east/west traffic.

Attached is a map indicating the location of each proposed stop sign.

Staff recommend approval of this ordinance.

ORDINANCE NO.

AN ORDINANCE ESTABLISHING INTERSECTION STOPS AT VARIOUS LOCATIONS WITHIN THE CITY OF MIDLAND, TEXAS; REQUIRING AND AUTHORIZING THE POSTING OF APPROPRIATE SIGNS AT INTERSECTIONS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS ($200.00); AND ORDERING PUBLICATION

WHEREAS, the Council finds that the unusual character and volume of traffic on various intersecting streets within the City require that operators of motor vehicles traveling along said streets to stop before entering said intersections; and

WHEREAS, the Council finds it to be in the public interest to authorize and require the establishment of stop signs at said intersections;

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

SECTION ONE. In addition to all other stop signs, stop signs at the intersections enumerated in the following list are hereby ordered to be erected and are hereby validated and fully authorized, whether the same have already been placed and are existing upon said intersections, or shall be placed there hereafter, and all persons operating vehicles upon or over the streets of the City of Midland shall obey such stop signs. All streets located in the column under the word "On" are the streets on which stop signs are hereby ordered and authorized at their intersection with the streets listed on the same line and in the column immediately to the right headed by the word "At".

ON	AT
"A" St.	Indiana Ave.
"A" St.	Mockingbird Ln.
"A" St.	Soloman Ln.
Aberdeen Dr.	Spraberry Dr.
Adams St.	Indiana Ave.
Adams St.	Pennsylvania Ave.
Adams St.	Wall St.
Advance Ave.	Industrial Ave.
Ainslee St.	Bedford Dr.
Ainslee St.	Cuthbert Ave.

ON	AT
Ainslee St.	Kansas Ave.
Ainslee St.	Louisiana Ave.
Ainslee St.	Princeton Ave.
Airport 20 Rd.	La Force Blvd.
Alice St.	Barkley Ave.
Alice St.	Delano Ave.
Alice St.	Franklin Ave.
Almont Pl.	Gunnison Dr.
Alpine St.	Cuthbert Ave.
Alpine St.	Louisiana Ave.
Andrews Hwy. Frontage	Godfrey St.
Andover Ave.	Ward St.
Anetta Dr.	Eisenhower Dr.
Anetta Dr.	Raymond Rd.
Anetta Dr.	Spraberry Dr.
Anetta Dr.	Waverly Dr.
Angelina Dr.	Haynes Ave.
Apache Dr.	Waverly Dr.
Apperson Dr.	Maxwell Ave.
Apperson Dr.	Whitney Dr.
Apple Creek Rd.	Mathis St.
Apple Creek Rd.	Oak Valley Dr.
Arapahoe Rd.	Elkins Rd.
Arbor Cir.	Sunshine Pkwy.
Arroyo Dr.	Haynes Ave.
Ashwood Ct.	Heritage Blvd.
Aspen Dr.	Mark Ln.
Aster Ave.	Avalon Dr.
Aster Ave.	Golden Gate Dr.
Atlanta St.	Gist Ave.
Atlanta St.	Hicks Ave.
Auburn Ct.	Ward St.
Auburn Dr.	Whitney Dr.
Aurora Ln.	McDonald Dr.
Aurora Ln.	Suncrest Ave.
Austin St.	Bedford Dr.
Austin St.	Cuthbert Ave.
Avalon Dr.	Briarwood Ave.
Avondale Dr.	McDonald Dr.
Avondale Dr.	Raymond Dr.
“B” St.	Cuthbert Ave.
“B” St.	Harvard Ave.
“B” St.	Indiana Ave.
“B” St.	Kansas Ave.
“B” St.	Louisiana Ave.
“B” St.	Michigan Ave.
“B” St.	Missouri Ave.
Baird St.	California Ave.
Baird St.	Hicks Ave.
Baird St.	Indiana Ave.

ON	AT
Baird St.	Kentucky Ave.
Baird St.	Longview Ave. (northbound)
Baird St.	Longview Ave. (southbound)
Baird St.	Louisiana Ave.
Baird St.	Main St.
Baird St.	Michigan Ave.
Baird St.	New Jersey Ave.
Baird St.	New York Ave.
Baird St.	Taylor Ave.
Baldwin St.	Brunson Ave.
Baldwin St.	Holloway Ave.
Baldwin St.	Kentucky Ave.
Baltic Ave.	Dormard Ave.
Baltic Ave.	Pacific Ave.
Banks Dr.	La Force Blvd.
Banks Dr.	Sloan Field Blvd.
Barber St.	Dormard Ave.
Barber St.	Golf Course Rd.
Barber St.	Magnolia Ave.
Barber St.	Shandon Ave.
Barkley Ave.	Crestview Rd.
Barkley Ave.	Powell St.
Baumann Ave.	Alpine St.
Baybrook Dr./Ct.	Rockwood Dr.
Baybrook Dr./Pl.	Valwood Dr.
Bedford Ave.	Alpine St.
Bedford Ave.	Austin St.
Bedford Ave.	Delmar St.
Bedford Ave.	E. Broadway St.
Bedford Ave.	“G” St.
Bedford Ave.	Godfrey St. (westbound)
Bedford Ave.	Idlewilde Dr.
Bedford Dr.	Lanham St.
Bedford Ave.	Maberry St.
Bedford Ave.	Manor St.
Bedford Ave.	McDonald St.
Bedford Dr.	Mogford St.
Bedford Ave.	“N” St.
Bedford Ave.	Tarleton St.
Belair Dr.	Stonybrook Dr.
Bellechasse Ct.	Chapel Hill Dr.
Belmont St.	Gist Ave.
Belmont St.	Griffin Ave.
Belmont St.	Hicks Ave.
Benton St.	Golf Course Rd.
Benton St.	Indiana Ave.
Benton St.	New York Ave.
Benton St.	Oak Ave.
Bentwood Dr.	Crescent Dr.
Bentwood Dr.	Cuthbert Ave.

ON	AT
Bentwood Dr.	Graceland Dr.
Bentwood Dr.	Ric Dr.
Billingsley Blvd.	Caldera Blvd.
Bishops Castle Dr.	Castleford Rd.
Bluebird Ln.	Midkiff Rd.
Blue Bonnet Ave.	Avalon Dr.
Blue Bonnet Ave.	Golden Gate Dr.
Boeing Dr.	Neely Ave.
Boeing Dr.	Sentinel Dr.
Bonham St.	Cuthbert Ave.
Boulder Dr.	Haynes Ave.
Bowie Dr.	Bentwood Dr.
Boyd Ave.	Godfrey St.
Boyd Ave.	Lanham St.
Boyd Ave.	Mogford St.
Boyd Ave.	"N" St.
Boeing Dr.	Fannin Ave.
Boyd Ave.	Tarleton St.
Brazos Ave.	Amistad Dr.
Breckenridge Dr.	Durango Dr.
Brentwood Dr.	Homestead Blvd.
Broadway St.	Cuthbert Ave.
Brookdale Dr.	Anetta Dr.
Brookdale Dr.	Eisenhower Dr.
Brooks Dr. (both intersections)	Raymond Rd.
Brownwood Dr.	Bentwood Dr.
Bryant St.	Humble Ave.
Burchill Dr.	Anetta Dr.
Burchill Dr.	Erie Dr.
Burchill Dr.	Parkdale Dr.
Burchill Dr.	Pasadena Dr.
Burleson St.	Brunson Ave.
Burleson St.	Kentucky Ave.
Burleson St.	Washington Ave.
Butler Ave.	Baird St.
Butler Ave.	Main St.
Butternut Ln.	Jackson St.
Butternut Ln.	Oak Ave.
"C" St. (northbound traffic)	College Ave.
"C" St.	Cuthbert Ave.
"C" St.	Golf Course Rd.
"C" St.	Gulf Ave.
"C" St. (southbound traffic)	Indiana Ave.
"C" St.	Louisiana Ave.
"C" St.	Michigan Ave.
"C" St.	Missouri Ave.
Calhoun St.	Indiana Ave.
California Ave.	Carver St.
California Ave.	Main St.
California Ave.	Marienfeld St.

ON	AT
California Ave.	Tilden St.
California Ave.	Webster St.
Camarie Ave.	Lanham St.
Camarie Ave.	Mogford St.
Camarie Ave.	Tarleton St.
Camarie Ave.	Ward St.
Camarie Ave.	Whitney Dr.
Camp St.	Carter Ave.
Camp St.	Dakota Ave.
Camp St.	Griffin Ave.
Camp St.	Industrial Ave.
Canadian Ave.	Amistad Dr.
Canemont Dr.	Tremont Ave.
Cantebury Dr.	Polo Pkwy.
Canyon Dr. (both intersections)	Raymond Rd.
Canyon/Devonian Dr.	Spraberry Dr.
Cardinal Ln.	Oriole Dr.
Carlton St.	Kentucky Ave.
Carnation Ave.	Avalon Dr.
Carnation Ave.	Golden Gate Dr.
Carrizo St.	Cuthbert Ave.
Carrizo St.	Louisiana Ave.
Carrizo St.	Michigan Ave.
Carrizo St.	Missouri Ave.
Carrizo St.	Nobles Ave.
Carrizo St.	Ohio Ave.
Carrizo St.	Storey Ave.
Carrizo St.	Tennessee Ave.
Carter Ave.	Garfield St.
Carver St.	Dormard Ave.
Carver St.	Golf Course Rd.
Carver St.	Indiana Ave.
Castle Pine Rd.	Spence Dr.
Castleford Rd.	Lancashire Rd.
Castleford Rd.	Los Alamitos Rd.
Castleford Rd.	Melville Dr.
Castleford Rd.	Polo Pkwy.
Castlerock Ct.	Durango Dr.
Cedar Ave.	Cottonwood Ave.
Cedar Ave.	Main St.
Cedar Ave.	Tyler St.
Cedar Spring Dr.	Devonian Dr.
Cedar Spring Dr.	Raymond Rd.
Cessna Dr.	Fannin Ave.
Cessna Dr.	Neely Ave.
Cessna Dr.	Sentinel Dr.
Cessna Dr.	Shell Ave.
Cessna Dr.	Stanolind Ave.
Chapel Hill Dr.	Bluebird Ln.
Chapel Hill Dr.	Keswick Rd.

ON	AT
Chatham Ct.	Ward St.
Cherokee Dr.	Eisenhower Dr.
Cherry Ln.	Carver St.
Cherrywood Dr.	Lemonwood Dr.
Cherrywood Dr.	Northcrest Dr.
Cherrywood Ct.	Oriole Dr.
Chestnut Ave.	Carver St.
Cimmaron Ave.	Dengar Ave.
Cimmaron Ave.	"I" St.
Cimmaron Ave.	Mogford St.
Cimmaron Ave.	Lanham St.
Cimmaron Ave.	Mark Ln.
Cimmaron Ave.	McDonald Dr.
Cimmaron Ave.	Racquet Club Dr.
Cimmaron Ave.	Shandon Ave.
Cimmaron Ave.	Tarleton St.
Cimmaron Ave.	Ward St.
Cimmaron Ave.	Wedgewood St.
Cimmaron Ave.	Ward St.
Cimmaron Ave.	Whitney Dr.
Cindy Pl.	Wydewood Dr.
Claremont Dr.	Tremont Ave.
Clarewood Dr.	Greenville Cir.
Clarewood Dr.	Wood Dr.
Clark St.	Brunson Ave.
Clark St.	Kentucky Ave.
Clay St.	Indiana Ave.
Cloudcroft Ct.	Mark Ln.
Club Dr.	Nobles Ave.
Co. Rd. 1220 S.	Industrial Ave.
Co. Rd. 83	Co. Rd. 1162
Collins Ave.	Main St.
Colorado St.	Cuthbert Ave.
Colorado St.	Dakota Ave.
Colorado St.	Francis Ave.
Colorado St.	Gist Ave.
Colorado St.	Hicks Ave.
Colorado St.	Kansas Ave.
Colorado St.	Louisiana Ave.
Colorado St.	Michigan Ave.
Colorado St.	New Jersey Ave.
Colorado St.	New York Ave.
Colorado St.	Pennsylvania Ave.
Colorado St.	Rhode Island Ave.
Commerce Dr.	I-20 N. Frontage Rd.
Commerce Dr.	Industrial Ave.
Community Ln.	"H" St.
Community Ln.	"N" St.
Compton Dr.	Haynes Ave.
Concho Dr.	Amistad Dr.

ON	AT
Concord Ave.	Lanham St.
Connell St.	Carter Ave.
Connell St.	Industrial Ave.
Conroe Ct.	Rio Grande Dr.
Conroe St.	Lavaca Ave.
Conroe St.	Rio Grande Dr.
Cotton Flat Rd.	Industrial Ave.
Cottonwood Ave.	Golf Course Rd.
Cottonwood Ave.	Main St.
Country Club Dr.	E. Broadway St.
Country Club Dr.	W. Broadway St.
Country Club Dr.	"D" St.
Country Club Dr.	Delmar St.
Country Club Dr.	"G" St.
Country Club Dr.	Idlewilde Dr.
Country Club Dr.	"L" St.
Country Club Dr.	Lanham St.
Country Club Dr.	Mogford St.
Country Club Dr.	"N" St.
Country Club Dr.	Ward St.
Cowden Ave.	Carver St.
Cowden Ave.	Dallas St.
Cowden Ave.	Edwards St.
Cowden Ave.	Main St.
Cranston Pl.	Crowley Blvd.
Crenshaw Dr.	Palmer Dr.
Crescent Dr.	Bentwood Dr.
Crescent Dr.	Eisenhower Dr.
Crescent Dr.	Glenwood Dr.
Crest Dr.	Club Dr.
Crestdale St.	Crestgate Ave.
Crested Butte Ct.	Gunnison Dr.
Crestfield St.	Crestgate Ave.
Crestgate Ave.	Crestdale St.
Crestgate Ave.	Crestfield St.
Crestgate Ave.	Crestway Ln.
Crestgate Ave.	Gateway St.
Crestmont Dr.	Tremont Ave.
Crestmont Dr.	Whittle Way
Crestview Rd.	Delano Ave.
Crestview Rd.	Kansas Ave.
Crestview Rd.	Kessler Ave.
Crestview Rd.	Louisiana Ave.
Crestview Rd.	Mariana Ave.
Crestview Rd.	Michigan Ave.
Crestview Rd.	Ohio Ave.
Crestview Rd.	Roosevelt Ave.
Crestview Rd.	Storey Ave.
Crestview Rd.	Travis Ave.
Crestway Ln.	Crestgate Ave.

ON	AT
Crista Ln.	Bluebird Ln.
Crista Ln.	Caldera Blvd.
Crockett Ave.	Bentwood Dr.
Crockett Ave.	Edgewood Dr.
Crockett Ave.	Goliad Dr.
Crowley Blvd.	Grassland Blvd.
Crowley Blvd.	Hereford Blvd.
Crowley Blvd.	Heritage Blvd.
Crowley Blvd.	Highland Blvd.
Crowley Blvd.	Wadley Ave.
Culver Dr.	Neely Ave.
Culver Dr.	Sentinel Dr.
Cumberland Dr.	Neely Ave.
Cumberland Dr.	Ventura Ave.
Cunningham Dr.	Holly Dr.
Cunningham Dr.	Howard Dr.
Cuthbert Ave.	Carver St.
Cuthbert Ave.	Maberry St.
Cuthbert Ave.	Main St.
Cuthbert Ave.	Mogford St.
"D" St.	College Ave.
"D" St.	Cuthbert Ave.
"D" St.	Douglas Ave.
"D" St.	Golf Course Rd.
"D" St.	Harvard Ave.
"D" St.	Humble Ave.
"D" St.	Louisiana Ave.
"D" St.	Michigan Ave.
"D" St.	Missouri Ave.
"D" St.	Neely Ave.
Dahlia Ave.	Avalon Dr.
Dahlia Ave.	Golden Gate Dr.
Dakota Ave.	Johnston St.
Dakota Ave.	Main St.
Dakota Ave.	Marshall St.
Dakota Ave.	Weatherford St.
Dallas St.	Cuthbert Ave.
Dallas St.	Garden Ln.
Dallas St.	Golf Course Rd.
Dallas St.	Hicks Ave.
Dallas St.	New Jersey Ave.
Dallas St.	New York Ave.
Dallas St.	Louisiana Ave.
Dallas St.	Nobles Ave.
Dallas St.	Ohio Ave.
Dallas St.	Parker Ave.
Dallas St.	Taylor Ave.
Dartmouth Dr.	Culpepper Dr.
Daventry Rd.	Castleford Rd.
Daventry Rd.	Lancashire Rd.

ON	AT
Davis Ave.	Carver St.
Davis Ave.	Lamesa Rd.
Davis Ave.	Lee St.
Dawn Cir. (both intersections)	Haynes Ave.
Deeanna Ln.	Crowley Blvd.
Deeanna Ln.	Hereford Blvd.
Deer Run Ave.	Hilltop Dr.
Delano Ave.	E. Circle Dr.
Delano Ave.	Holly Dr.
Delano Ave.	Powell St.
Delano Ave.	Roosevelt Dr.
Delano Ave.	Tanner Dr.
Delmar Dr.	Leddy Dr.
Delmar Dr.	Cuthbert Ave.
Delmar Dr.(northbound only)	Lockheed Ave.
Delmar St.	Storey Ave.
Dengar Ave.	Barber St.
Dengar Ave.	Edwards St.
Dengar Ave.	"I" St.
Dengar Ave.	Lanham St.
Dengar Ave.	Loma Dr.
Dengar Ave.	Main St.
Dengar Ave.	Mark Ln.
Dengar Ave.	Neely Ave.
Dengar Ave.	Pecos St.
Dengar Ave.	Tarleton St.
Dengar Ave.	Ward St.
Dengar Ave.	Whitney Dr.
Dengar Ave.	Wydewood Dr.
Dentcrest Dr.	Tremont Ave.
Dentcrest Dr.	Whittle Way
Dentcrest Dr. (southern most intersection)	Whittle Way
Denton St.	Cuthbert Ave.
Denton St.	Douglas Ave.
Desta Dr. (both intersections)	Smith Rd.
Devlin Pl.	Crowley Blvd.
Devonian Dr.	Cedar Spring Rd.
Devonian Dr.	Monty Dr.
Devonian Dr.	Raymond Rd.
Devonian Dr.	Tanner Dr.
Dormard Ave.	Boardwalk
Dormard Ave.	Edwards St.
Dormard Ave.	Loma Ave.
Dormard Ave.	Main St.
Douglas Ave.	Alpine St.
Douglas Ave.	"B" St.
Douglas Ave.	"D" St.
Douglas Ave.	Delmar Ave.
Douglas Ave.	"H" St.
Douglas Ave.	"J" St.

ON	AT
Douglas Ave.	"L" St.
Douglas Ave.	McDonald St.
Douglas Ave.	"N" St.
Douglas Ave.	Tarleton St.
Douglas Ave.	Ward St.
Douglas Ave.	Whitney Dr.
Douglas Ave.	Northrup Dr.
Dowdle Dr.	Neely Ave.
Dowdle Dr.	Ventura Ave.
Downing Ave.	Norwood St.
Drexel Ct.	Heritage Blvd.
Dunbar St.	Cuthbert Ave.
Durant Dr.	Maxwell Dr.
Durant Dr.	Ward St.
Durant Dr.	Whitney Dr.
Dyer Cir.	Haynes Ave.
"E" St.	College Ave.
"E" St.	Indiana Ave.
"E" St.	Missouri Ave.
"E" St.	Washington Ave.
E. Broadway St.	Cuthbert Ave.
E. Broadway St.	Harvard Ave.
E. Broadway St.	Louisiana Ave.
E. Broadway St.	Michigan Ave.
E. Circle Dr.	Delano Ave.
E. Industrial Loop	Industrial Ave.
Earhart Dr. (both intersections)	La Force Blvd.
Edgewood Dr.	Monty Dr.
Eastview Dr.	Bluebird Ln. (northbound)
Eastwood Dr.	Ric Dr.
Edgebrook Dr./Ct.	Rockwood Dr.
Edgebrook Dr./Pl.	Valwood Dr.
Edgemont Dr.	Tremont Ave.
Edgemont Dr.	Whittle Way
Edgewood Dr.	Cuthbert Ave.
Edgewood Dr.	Dewberry Dr.
Edgewood Dr.	Eisenhower Dr.
Edwards St.	Cedar Ave.
Edwards St.	Cuthbert Ave.
Edwards St.	Dormard Ave.
Edwards St.	Golf Course Rd.
Edwards St.	Mississippi Ave.
Edwards St.	Oak Ave.
Edwards St.	Parker Ave.
Edwards St.	Pecan Ave.
Edwards St.	Pine Ave.
Edwards St.	Spruce Ave.
Eisenhower Dr.	Anetta Dr.
Eisenhower Dr.	Edgewood Dr.
Eisenhower Dr.	Industrial Ave.

ON	AT
Elm Ave.	Main St.
Elma Dr.	Aspen Dr.
Elma Dr.	Whittle Way
Elma Dr.	Wydewood Dr.
Emerson Dr.	Ward St.
Emerson Ln.	Ward St.
English Dr.	Benton St.
English Dr.	Golf Course Rd.
Erie Dr.	Eisenhower Dr.
Erie Dr.	Meadow Dr.
Estes Ave.	Carver St.
Estes Ave.	Main St.
Estes Ave.	Marienfeld St.
Estes Ave.	Pecos St.
Estes Ave.	Whitaker St.
Evergreen Ave.	Avalon Dr.
Evergreen Ave.	Golden Gate Dr.
Exeter Ave.	Ward St.
"F" St.	College Ave.
"F" St.	Cuthbert Ave.
"F" St.	Kentucky Ave.
"F" St.	Louisiana Ave.
"F" St.	Michigan Ave.
"F" St.	Missouri Ave.
Fairbanks Dr.	Mark Ln.
Fairfax Ct.	Ward St.
Fairgate Dr.	Mark Ln.
Fairhaven Ct.	Whittle Way
Fairview Ln.	Chapel Hill Dr.
Fairwood Dr./Ct.	Rockwood Dr.
Fairwood Dr./Pl.	Valwood Dr.
Fannin Ave.	Dengar Ave.
Fannin Ave.	Lanham St.
Fannin Ave.	Mark Ln.
Fannin Ave.	McDonald Dr.
Fannin Ave.	Mogford St.
Fannin Ave.	Tarleton St.
Fannin Ave.	Ward St.
Fannin Ave.	Whitney Dr.
Fargo Ave.	Boulder Dr.
Fargo Ave.	Norwood St.
Fargo Ave.	Stillmeadow Dr.
Fasken Dr.	Anetta Dr.
Fern Ave.	Avalon Dr.
Fern Ave.	Golden Gate Dr.
Fieldcrest Ln.	Northfield Dr.
Fisher St.	Francis Ave.
Fort Worth St.	Cuthbert Ave.
Fort Worth St.	Gist Ave. (northbound)
Fort Worth St.	Golf Course Rd.

ON	AT
Fort Worth St.	Hicks Ave.
Fort Worth St.	Indiana Ave.
Fort Worth St.	Longview Ave. (northbound)
Fort Worth St.	Louisiana Ave.
Fort Worth St.	Michigan Ave.
Fort Worth St.	Mississippi Ave.
Fort Worth St.	New Jersey Ave.
Fort Worth St.	New York Ave.
Fort Worth St.	Parker Ave.
Fort Worth St.	Peck Ave. (southbound)
Fort Worth St.	Stokes Ave. (northbound)
Fort Worth St.	Stokes Ave. (southbound)
Fort Worth St.	Summit Ave. (northbound)
Fort Worth St.	Summit Ave. (southbound)
Fort Worth St.	Taylor Ave.
Fort Worth St.	Wolcott Ave. (northbound)
Fort Worth St.	Wolcott Ave. (southbound)
Fox Hollow Ct.	Greenbriar Dr.
Francis Ave.	Camp Dr.
Francis Ave.	Colorado St.
Francis Ave.	Main St.
Franklin Ave.	E. Circle Dr.
Franklin Ave.	Williams St.
Fredna Pl.	Dengar Ave.
Fredna Pl.	Neely Ave.
Fringewood Dr.	Homestead Blvd.
Frontier Dr.	Fannin Ave.
Frontier Dr.	Lanham St.
Frontier Dr.	Ward St.
Frontier Dr.	Whitney Dr.
“G” St.	Bedford Ave.
“G” St.	Community Ave.
“G” St.	Cuthbert Ave.
“G” St.	Douglas Ave.
“G” St.	Golf Course Rd.
“G” St.	Harvard Ave.
“G” St.	Louisiana Ave.
“G” St.	Michigan Ave.
“G” St.	Missouri Ave.
Garden Ln.	Dallas St.
Garden Ln.	Terrell St.
Garfield St.	Bluebird Ln.
Garfield St.	Carter Ave.
Gaston Dr.	Delano Ave.
Gaston Dr.	Raymond Rd.
Gateway St.	Caldera Blvd.
George Ave.	Marienfeld St.
Geraldine St.	Neely Ave.
Gist Ave.	E. Industrial Loop
Gist Ave.	Main St.

ON	AT
Gist Ave.	Terrell St.
Gladewood Dr.	Homestead Blvd.
Gladewood Dr.	Prairie Ridge Dr.
Gladiola Ave.	Avalon Dr.
Gladiola Ave.	Golden Gate Dr.
Glen Mist Dr.	Fringewood Dr.
Glen Mist Dr.	Gladewood Dr.
Gleneagles Ct.	Greenbriar Dr.
Gleneagles Dr.	Greenbriar Dr.
Gleneagles Dr.	Mark Ln.
Goddard Dr.	Ward St.
Goddard Pl.	Whitney Dr.
Godfrey Ct.	Godfrey St.
Godfrey St.	Cuthbert Ave.
Godfrey St.	Douglas Ave.
Godfrey St.	Haynes Ave.
Godfrey St.	Louisiana Ave.
Godfrey St.	Neely Ave.
Godfrey St.	Northfield Dr.
Godfrey St.	Roosevelt Ave.
Godfrey St.	Shandon Ave.
Godfrey St.	St. Andrews Dr.
Godfrey St.	Tanner Dr.
Golden Gate Dr.	Briar Wood Ave.
Golf Course Rd.	Main St.
Golf Course Rd.(westbound)	Scharbauer Dr.
Goliad Dr.	Crockett Ave.
Goliad Dr.	Cuthbert Ave.
Goode St.	Carter Ave.
Goode St.	Francis Ave.
Gossett St.	Missouri Ave.
Graceland Dr.	Bentwood Dr.
Graceland Dr.	Eisenhower Dr.
Graham Dr.	Palmer Dr.
Grassland Blvd.	Crowley Blvd.
Grassland Blvd.	W. Heritage Blvd.
Greathouse Ave.	Hilltop Dr.
Greathouse Ave.	Mathis St.
Greathouse Ave.	Spence Dr.
Greenbriar Ave.	Hyde Park Ave.
Greenbriar Dr.	Radcliff Ct.
Greenbriar Dr.	Springfield Ct.
Greenbriar Dr.	St. Andrews Dr.
Greenridge	Heritage Blvd.
Greenville Dr.	Valwood Dr.
Griffin Ave.	Dallas St.
Griffin Ave.	Goode St.
Griffin Ave.	Johnston St.
Griffin Ave.	Main St.
Griffin Ave.	Weatherford St.

ON	AT
Guadalupe St.	Rio Grande Ave.
Gulf Ave.	Cessna Dr.
Gulf Ave.	Culver Dr.
Gulf Ave.	Godfrey St.
Gulf Ave.	“I” St.
Gulf Ave.	“L” St.
Gulf Ave.	Lanham St.
Gulf Ave.	McDonald Dr.
Gulf Ave.	Mark Ln.
Gulf Ave.	Mogford St.
Gulf Ave.	“N” St.
Gulf Ave.	Northrup Dr.
Gulf Ave.	Tarleton Dr.
Gulf Ave.	Ward St.
Gulf Ave.	Whitney Dr.
“H” St.	College Ave.
“H” St.	Golf Course Rd.
“H” St.	Humble Ave.
“H” St.	Indiana Ave.
“H” St.	Michigan Ave.
“H” St.	Missouri Ave.
“H” St.	Neely Ave.
“H” St.	Ohio Ave.
“H” St.	Princeton Ave.
Hamby Ave.	Carver St.
Hamby Ave.	Main St.
Hamby Ave.	Marienfeld St.
Hamby Ave.	Tyler St.
Harlowe Dr.	Devonian Dr.
Hart Ave.	Main St.
Hart Ave.	Marienfeld St.
Harvard Ave.	“D” St.
Harvard Ave.	Delmar St.
Harvard Ave.	“H” St.
Harvard Ave.	Idlewilde Dr.
Harvard Ave.	“L” St.
Harvard Ave.	Lanham St.
Harvard Ave.	Maberry St.
Harvard Ave.	“N” St.
Harvard Ave.	Whitney Dr.
Hathaway Ct.	Heritage Blvd.
Haynes Ave.	Godfrey St.
Haynes Ave.	Lanham St.
Haynes Ave.	Norwood St.
Haynes Ave.	Skyline Dr.
Haynes Ave.	Ward St.
Haynes Dr.	Ward St.
Haynes Dr.	Whitney Dr.
Haywood Dr.	Prairie Ridge Dr.
Heartland Ave.	Hereford Blvd.

ON	AT
Heartland Ave./Ct.	Heritage Blvd.
Henderson St.	Rochester St.
Hereford Blvd.	Crowley Blvd.
Hereford Blvd.	Grassland Blvd.
Heritage Blvd.	Crowley Blvd.
Heritage Blvd.	Grassland Blvd.
Heritage Blvd.	Heartland Ave./Ct.
Heritage Blvd.	Highland Blvd.
Hickory Ave.	Benton St.
Hickory Ave.	Lincoln St.
Hicks Ave.	Jefferson St.
Hicks Ave.	Main St.
Hicks Ave.	Terrell St.
Highland Blvd.	Heritage Blvd.
Hill Ave.	Holly Dr.
Hillcrest Ct.	Hereford Pl.
Hillcrest Ct.	Heritage Blvd.
Hilltop Dr.	Oriole Dr.
Hodges St.	Community Ln.
Hodges St.	Neely Ave.
Hollandale Dr.	Carver St.
Hollandale Dr.	Parkway Dr.
Holloway Ave.	“G” St.
Holloway Ave.	“H” St.
Holly Dr.	Raymond Rd.
Holly Dr.	Travis Ave.
Holmsley St.	Marienfeld St.
Holmsley St.	Pecos St.
Homestead Blvd.	Hereford Blvd.
Howard Dr.(both intersections)	Raymond Rd.
Hoya Dr.	Sunshine Pkwy.
Hughes St.	Neely Ave.
Humble Ave.	Godfrey St.
Humble Ave.	“I” St.
Humble Ave.	“L” St.
Humble Ave.	Lanham St.
Humble Ave.	Mark Lane
Humble Ave.	“N” St.
Humble Ave.	Tarleton St.
Humble Ave.	Western Dr.
Huntington St.	Neely Ave.
Hyde Park Ave.	Godfrey St.
Hyde Park Ave.	Greenbriar Dr.
Hyde Park Ave.	Tarleton St.
“I” St.	Cimmaron Ave.
“I” St.	College Ave.
“I” St.	Golf Course Rd.
“I” St.	Holloway Ave.
“I” St.	Indiana Ave.
“I” St.	Kentucky Ave.

ON	AT
"I" St.	Missouri Ave.
"I" St.	Neely Ave.
Idlewilde Dr.	Cuthbert Ave.
Idlewilde Dr.	Preston Dr.
Illinois Ave.	Carver St.
Illinois Ave.	Lee St.
Illinois Ave.	Terrell St.
Imperial Ave.	Godfrey St.
Imperial Ave.	Tarlton St.
Indiana Ave.	Carver St.
Indiana Ave.	"G" St.
Indiana Ave.	"L" St.
Indiana Ave.	Lee St.
Indiana Ave.	Marienfeld St.
Idlewilde Dr.	Ric Dr.
Industrial Ave.	Carver St.
Industrial Ave.	Lee St.
Industrial Ave.	Main St.
Industrial Ave.	Marienfeld St.
Inwood Ct.	Ward St.
Island Dr.	Greentree Blvd.
Island Dr.	Island Circle/Dr.
Island Dr.	Rustic Tr.
"J" St.	College Ave.
"J" St.	Community Ave.
"J" St.	Golf Course Rd.
"J" St.	Harvard Ave.
"J" St.	Holloway Ave.
"J" St.	Missouri Ave.
Jackson St.	Chestnut Ave.
Jackson St.	Golf Course Rd.
Jackson St.	Indiana Ave.
Jacotte Cir. (both intersections)	Golf Course Rd.
Jadewood Dr.	Homestead Blvd.
Jax Ave.	Carver St.
Jax Ave.	Main St.
Jax Ave.	Marienfeld St.
Jefferson St.	Gist Ave.
Jefferson St.	Indiana Ave.
Jefferson St.	New Jersey Ave.
Jefferson St.	Wall St.
Johnston St.	Carter Ave.
Johnston St.	Industrial Ave.
Jordan Ave.	Godfrey Ct.
"K" St.	College Ave.
"K" St.	Community Ln.
"K" St.	Cuthbert Ave.
"K" St.	Francis Ave.
"K" St.	Golf Course Rd.
"K" St.	Missouri Ave.

ON	AT
"K" St.	Washington Ave.
Kansas Ave.	Alpine St.
Kansas Ave.	Baird St.
Kansas Ave.	E. Broadway
Kansas Ave.	Carrizo St.
Kansas Ave.	"D" St.
Kansas Ave.	"F" St.
Kansas Ave.	Godfrey St.
Kansas Ave.	McDonald St.
Kansas Ave.	Main St.
Kansas Ave.	Marienfeld St.
Kansas Ave.	Pecos St.
Kansas Ave.	Terrell St.
Kansas Ave.	W. Broadway
Keith St.	Cowden Ave.
Keith St.	Humble Ave.
Keith St.	Nobles Ave.
Keith St.	Parker Ave.
Kent St.	Kansas Ave.
Kent St.	Louisiana Ave.
Kent St.	Michigan Ave.
Kentucky Ave.	Bankhead Hwy.
Kentucky Ave.	Carver St.
Kentucky Ave.	"G" St.
Kentucky Ave.	"K" St.
Kentucky Ave.	Lamesa Rd.
Kentucky Ave.	Lee St.
Kentucky Ave.	Main St.
Kentucky Ave.	Marienfeld St.
Kentucky Ave.	Pecos St.
Kentucky Ave.	Tilden St.
Kessler Ave.	Crestview Rd.
Kessler Ave.	Powell St.
Keswick Rd.	Melville Dr.
Key St.	Brunson Ave.
Key St.	Kentucky Ave.
Keystone Ct.	Gunnison Dr.
Kimbrough St.	Delano Ave.
King Richards Row	Oriole Dr.
Kingwood Ct.	Valwood Dr.
Kiowa Dr.	Eisenhower Dr.
"L" St.	Bedford Dr.
"L" St.	Carter Ave.
"L" St.	Cimmaron Ave.
"L" St.	College Ave.
"L" St.	Community Ave.
"L" St.	Cuthbert Ave.
"L" St.	Holloway Ave.
"L" St.	Humble Ave.
"L" St.	Louisiana Ave.

ON	AT
"L" St.	Michigan Ave.
"L" St.	Missouri Ave.
"L" St.	Neely Ave.
"L" St.	Shell Ave.
"L" St.	Sinclair Ave.
"L" St.	Stanolind Ave.
"L" St.	Warwick Pl.
"L" St.	Washington Ave.
La Force Blvd.	Sloan Field Blvd.
La Salle Cir.	Mark Ln.
Lamesa Rd.	Indiana Ave.
Lancashire Rd.	Castleford Rd.
Lancashire Rd.	Polo Parkway
Lanham St.	Cimmaron Ave.
Lanham St.	Cuthbert Ave.
Lanham St.	Fannin Ave.
Lanham St.	Haynes Ave.
Lanham St.	Kansas Ave.
Lanham St.	Louisiana Ave.
Lanham St.	Maxwell Dr.
Lanham St.	Neely Ave.
Lanham St.	Princeton Ave.
Lanham St.	Shandon Ave.
Lanham St.	Shell Ave.
Lanham St.	Storey Ave.
Lanham St.	Ward St.
Laura Dr.	Bentwood Dr.
Laura Dr.	Edgewood Dr.
Lavaca Ave.	Conroe St.
Lavaca Ave.	Spence Dr.
Lawson Ave.	"H" St.
Learmont Dr.	Chapel Hill Dr.
Leddy Dr.	Cedar Spring Dr.
Leddy Dr.	Harlowe Dr.
Leddy Dr.	Mercedes Dr.
Lee St.	New York Ave.
Lee St.	South Ln.
Lee St.	Walnut Ln.
Lehigh Dr.	Norwood St.
Leisure Dr.	Bentwood Dr.
Leisure Dr.	Eisenhower Dr.
Liddon Ave.	Bryant St.
Liddon Ave.	Keith St.
Liddon Ave.	Marienfeld St.
Lincoln St.	Indiana Ave.
Lincoln St.	New York Ave.
Lincoln St.	Oak Ave.
Lincoln St.	Orchard Ln.
Lincoln St.	Pecan Ave.
Lincoln St.	Pine Ave.

ON	AT
Lindbergh Dr.	Banks Dr.
Lindbergh Dr.	Windecker St.
Lindbergh Dr.	Wright Dr.
Lindora Way	Sinclair Ave.
Lindora Way	Sunshine Pkwy.
Livingston St.	Rio Grande Ave.
Lockheed Dr.	Boeing Dr.
Lockheed Dr.	Cessna Dr.
Lockheed Dr.	Lanham St.
Lockheed Dr.	Ward St.
Lockheed Dr.	Whitney Dr.
Loma Dr.	Neely Ave.
Loma Dr.	Pecan Ave.
Longview Ave.	Baird St. (eastbound)
Longview Ave.	Baird St. (westbound)
Longview Ave.	Terrell St. (eastbound)
Loop 250 E. Frontage Rd.	Industrial Ave.
Loraine St.	California Ave.
Loraine St.	Cuthbert Ave.
Loraine St.	Dakota Ave.
Loraine St.	Gist Ave.
Loraine St.	Hicks Ave.
Loraine St.	Kansas Ave.
Loraine St.	Louisiana Ave.
Loraine St.	Michigan Ave.
Loraine St.	New Jersey Ave.
Loraine St.	Pennsylvania Ave.
Los Alamitos Dr.	Lancashire Rd.
Louisiana Ave.	Alpine St.
Louisiana Ave.	Delmar St.
Louisiana Ave.	Lamesa Rd.
Louisiana Ave.	Main St.
Louisiana Ave.	McDonald Dr.
Lynn Ave.	Cottonwood Ave.
Lynn Ave.	Tyler St.
McClintic St.	Community Ave.
McClintic St.	Neely Ave.
McDonald Dr.	Bedford Ave.
McDonald Dr.	Cedar Spring Dr.
McDonald Dr.	Cimmaron Ave.
McDonald Dr.	Cuthbert Ave.
McDonald Dr.	Gulf Ave.
McDonald Dr.	Neely Ave.
McDonald Dr.	Ohio Ave.
McDonald Dr.	Kansas Ave.
McDonald Dr.	Shell Ave.
McDonald Dr.	Spraberry Dr.
McDonald Dr.	Tanner Dr.
McDonald St.	Greenbriar Dr.
McGarvey St.	Kentucky Ave.

ON	AT
McKenzie St.	Carter Ave.
McKenzie St.	Francis Ave.
"M" St.	Holloway Ave.
"M" St.	Indiana Ave.
"M" St.	Louisiana Ave.
"M" St.	Michigan Ave.
"M" St.	Missouri Ave.
"M" St.	Washington Ave.
Maberry St.	Country Club Dr.
Maberry St.	Cuthbert Ave.
Maberry St.	Kansas Ave.
Maberry St.	Neely Ave.
Maberry St.	Storey Ave.
Madison St.	Indiana Ave.
Madison St.	New York Ave.
Madison St.	South Ln.
Madison St.	Wall St.
Magnolia Ave.	Benton St.
Magnolia Ave.	Lincoln St.
Main St.	Cuthbert Ave.
Main St.	Gist Ave.
Main St.	Golf Course Rd.
Mann St.	Kentucky Ave.
Manor Ct.	Douglas Dr.
Manor St.	Cuthbert Ave.
Manor St.	Douglas Dr.
Maple Ave.	Benton St.
Maple Ave.	Lincoln St.
Maple Ave.	Tyler St.
Mariana Ave.	Michigan Ave.
Mariana Ave.	Ohio Ave.
Marienfeld St.	Carter Ave.
Marienfeld St.	Cowden Ave.
Marienfeld St.	Cuthbert Ave.
Marienfeld St.	Louisiana Ave.
Marienfeld St.	Michigan Ave.
Marienfeld St.	Nobles Ave.
Marienfeld St.	Ohio Ave.
Marienfeld St.	Parker Ave.
Mark Ln.	Dengar Ave.
Mark Ln.	Neely Ave.
Mark Ln.	Sinclair Ave.
Mark Ln.	St. Andrews Dr.
Mark Ln.	Whittle Way
Market St.	I-20 N. Frontage Rd.
Market St.	Industrial Ave.
Marmon Dr.	St.
Marmon Dr.	Whitney Dr.
Marshall St.	Gist Ave.
Marshall St.	Hicks Ave.

ON	AT
Marshall St.	Indiana Ave.
Marshall St.	Wall St.
Mathis St.	Briarwood Ave.
Mathis St.	Canadian Ave.
Mathis St.	Spence Dr.
Maxwell Dr.	Lanham St.
Maxwell Dr.	Ward St.
Maxwell Dr.	Whitney Dr.
Mayfield Pl.	Mockingbird Ln.
Meadow Dr.	Anetta Dr.
Meadow Dr.	Comanche Dr.
Meadow Dr.	Erie Dr.
Meadow Dr.	Pasadena Dr.
Meadowbrook Dr.	Moss Ave.
Meadowlark Ln.	Oriole Dr.
Meadowridge Dr.	Skyline Dr.
Melville Dr.	Bluebird Ln.
Melville Dr.	Faulkner Dr.
Mercedes Dr.	Eisenhower Dr.
Merrill Dr.	Norwood St.
Mesquite Ln.	Lee St.
Mesquite Ln.	Tyler St.
Metz Ct.	Ward St.
Metz Dr.	Ward St.
Metz Dr.	Whitney Dr.
Michigan Ave.	Alpine St.
Michigan Ave.	Delmar St.
Michigan Ave.	Godfrey St.
Michigan Ave.	Lamesa Rd.
Michigan Ave.	Main St.
Michigan Ave.	McDonald St.
Michigan Ave.	Powell St.
Michigan Ave.	Terrell St.
Midkiff Rd.	Bluebird Ln.
Midkiff Rd.	Mockingbird Ln.
Midland Dr.	U.S. 80 Service Rd.
Mineola St.	Gist Ave.
Mineola St.	Hicks Ave.
Mineola St.	Indiana Ave.
Mineola St.	Kentucky Ave.
Mineola St.	New Jersey Ave.
Mineola St.	New York Ave.
Mineola St.	Wall St.
Mission Ct.	Godfrey St.
Mississippi Ave.	Baird St.
Mississippi Ave.	Dallas St.
Missouri Ave.	Carver St.
Missouri Ave.	“G” St.
Missouri Ave.	Lee St.
Missouri Ave.	Main St.

ON	AT
Mitchell St.	Delano Ave.
Mockingbird Ln.	"A" St.
Mockingbird Ln.	Midkiff Rd.
Mockingbird Ln.	Oriole Dr.
Mogford St.	Cimmaron Ave.
Mogford St.	Cuthbert Ave.
Mogford St.	Dengar Ave.
Mogford St.	Fannin Ave.
Mogford St.	Kansas Ave.
Mogford St.	Louisiana Ave.
Mogford St.	Michigan Ave.
Mogford St.	Neely Ave.
Mogford St.	Princeton Ave.
Mogford St.	Shandon Ave.
Mogford St.	Storey Ave.
Montgomery Ave.	Main St.
Monty Dr.	Leddy Dr.
Monty Dr.	McDonald St.
Monty Dr.	Mercedes Dr.
Monty Dr.	Raymond Rd.
Moran St.	Carter Ave.
Moran St.	Dakota Ave.
Moran St.	Griffin Ave.
Moran St.	Industrial Ave.
Morgan Way	Golf Course Rd.
Moss Ave.	Ward St.
Moss Ave.	Whitney Dr.
Mulberry Ln.	Madison St.
Murray St.	Princeton Ave.
"N" St.	Bedford Dr.
"N" St.	Brunson Ave.
"N" St.	College Ave.
"N" St.	Community Ln.
"N" St.	Cuthbert Ave.
"N" St.	Harvard Ave.
"N" St.	Holloway Ave.
"N" St.	Humble Ave.
"N" St.	Indiana Ave.
"N" St.	Louisiana Ave.
"N" St.	Michigan Ave.
"N" St.	Missouri Ave.
"N" St.	Neely Ave.
"N" St.	Seaboard Ave.
"N" St.	Sinclair Ave.
"N" St.	Washington Ave.
Neely Ave.	Godfrey St.
Neely Ave.	Tarleton St.
Neely Ave.	Whittle Way
Neely Ave.	Wydewood Dr.
Neely Service Rd.	Cumberland Dr.

ON	AT
Neely Service Rd.	"D" St.
Neely Service Rd.	Oaklawn Dr.
New Jersey Ave.	Camp St.
New Jersey Ave.	Johnston St.
New Jersey Ave.	Main St.
New Jersey Ave.	Marshall St.
New Jersey Ave.	McKenzie St.
New Jersey Ave.	Terrell St.
New York Ave.	Carver St.
New York Ave.	Industrial Ave.
New York Ave.	Main St.
New York Ave.	Marienfeld St.
New York Ave.	Tilden St.
Nobles Ave.	Carver St.
Nobles Ave.	Edwards St.
Nobles Ave.	Main St.
Nobles Ave.	Pecos St.
Noel Ave.	Ward St.
Norman	Bankhead Hwy.
Normandy Ln.	Polo Pkwy.
North Service Rd.	Windecker St.
Northcrest Dr.	Hilltop Dr.
Northfield Ct.	Godfrey St.
Northfield Dr.	Godfrey St.
Northfield Dr.	Skyline Dr.
Northgate Ave.	Briarwood Ave.
Northgate Ave.	Northcrest Dr.
Northrup Dr.	Neely Ave.
Northrup Dr.	Princeton Dr.
Northrup Dr.	Sentinel Dr.
Northtown Pl.	Whitney Dr.
Norwood St.	Lehigh Dr.
Norwood St.	St. Andrews Dr.
"O" St.	Missouri Ave.
Oak Ave.	Butternut Ln.
Oak Ave.	Main St.
Oak Valley Dr.	Greathouse Ave.
Oak Valley Dr.	Oriole St.
Oak Valley Dr.	Spence Dr.
Oaklawn Dr.	Neely Ave.
Oaklawn Dr.	Ventura Ave.
Oakmont Dr.	Tremont Ave.
Ohio Ave.	Alpine St.
Ohio Ave.	Baird St.
Ohio Ave.	"C" St.
Ohio Ave.	"D" St.
Ohio Ave.	Delmar St.
Ohio Ave.	"F" St.
Ohio Ave.	Fort Worth St.
Ohio Ave.	"G" St.

ON	AT
Ohio Ave.	Godfrey St.
Ohio Ave.	"L" St.
Ohio Ave.	Main St.
Ohio Ave.	Marienfeld St.
Ohio Ave.	Mineola St.
Ohio Ave.	"N" St.
Ohio Ave.	Powell St.
Ohio Ave.	Weatherford St.
Orchard Ln.	Carver St.
Orchard Ln.	Lee St.
Oriental Ave.	Ventnor Ave.
Oriole Dr.	Mockingbird Ln.
Oriole Dr.	Tanforan Ave.
Oriole Dr.	Teakwood Trc.
Osage St.	Spruce Ave.
Pacific Ave.	Boardwalk
Pacific Ave.	Carver St.
Pagewood Dr.	Prairie Ridge Dr.
Palmer Dr.	Nicklaus St.
Park Ln.	Holly Dr.
Parker Ave.	Carver St.
Parker Ave.	Main St.
Parkwood Dr.	Brownwood Dr.
Pasadena Dr.	Eisenhower Dr.
Pasadena Dr.	Spraberry Dr.
Peach St.	Kessler Ave.
Pecan Ave.	Cumberland Dr.
Pecan Ave.	"D" St.
Pecan Ave.	"I" St.
Pecan Ave.	"L" St.
Pecan Ave.	Main St.
Pecan Ave.	Oaklawn Dr.
Peck Ave.	Baird St. (westbound)
Peck Ave.	Terrell St. (eastbound)
Pecos St.	Boyd Ave.
Pecos St.	Cuthbert Ave.
Pecos St.	Dormard Ave.
Pecos St.	Indiana Ave.
Pecos St.	Industrial Ave.
Pecos St.	Louisiana Ave.
Pecos St.	Michigan Ave.
Pecos St.	Missouri Ave.
Pecos St.	Neely Ave.
Pecos St.	Ohio Ave.
Pecos St.	Spruce Ave.
Pecos St.	Storey Ave.
Pecos St.	Tennessee Ave.
Pennsylvania Ave.	Carver St.
Pennsylvania Ave.	Lamesa Rd.
Pennsylvania Ave.	Main St.

ON	AT
Pennsylvania Ave.	Marienfeld St.
Pennsylvania Ave.	Tilden St.
Pennsylvania Ave.	Tyler St.
Peterson St.	Oak Ave.
Peterson St.	Pecan Ave.
Pilot Ave.	La Force Blvd.
Pilot Ave.	Wright Dr.
Pine Ave.	Cumberland Dr.
Pine Ave.	"I" St.
Pine Ave. (westbound only)	"L" St.
Pine Ave.	Loma Dr.
Pine Ave.	Main St.
Pine Ave.	Neely Ave.
Pine Ave.	Oaklawn Dr.
Pine Ave.	Pecos St.
Pinemont Dr.	Tremont Ave.
Plaza St.	E. Circle Dr.
Pleasant Dr.	Bentwood Dr.
Pleasant Dr.	Eisenhower Dr.
Pleasant Dr.	Raymond Rd.
Pliska Dr.	North Service Rd.
Polo Club Dr.	Bluebird Ln.
Polo Club Dr.	Polo Pkwy.
Polo Parkway	Lancashire Dr.
Powell St.	Kansas Ave.
Powell St.	Louisiana Ave.
Powell St. (northern most intersection only)	Mariana Ave.
Prairie Ridge Dr.	Jadewood Dr.
Pratt St.	Carter Ave.
Pratt St.	Francis Ave.
Preston Dr.	Aspen Dr.
Preston Dr.	Sunburst Dr.
Preston Dr.	Whittle Way
Preston Dr.	Wydewood Dr.
Princeton Ave.	Alpine St.
Princeton Ave.	Boeing Dr.
Princeton Ave.	"D" St.
Princeton Ave.	Delmar St.
Princeton Ave.	"G" St
Princeton Ave.	Godfrey St.
Princeton Ave.	Idlewilde Dr.
Princeton Ave.	"J" St.
Princeton Ave.	"L" St.
Princeton Ave.	Maberry St.
Princeton Ave.	McDonald St.
Princeton Ave.	"N" St.
Princeton Ave.	Tarleton St.
Princeton Ave.	Ward St.
Princeton Ave.	Whitney Dr.
Princeton Ave.	Woodcrest Dr.

ON	AT
Quicksand Dr.	Mathis St.
Quicksand Dr.	Spence Dr.
Racquet Club Dr.	Cimmaron Dr.
Racquet Club Dr.	Neely Ave.
Radcliff Ct.	Greenbriar Dr.
Rainbow Rd.	Idlewilde Dr.
Raymond Rd.	Anetta Dr.
Raymond Rd. (southernmost intersection)	Canyon Dr.
Redwood Run	Teakwood Trc.
Rees Ln.	Dengar Ave.
Rees Ln.	Neely Ave.
Reeves Cir.	Anetta Dr.
Rhode Island Ave.	Colorado St.
Rhode Island Ave.	Johnston St.
Ric Dr.	Bentwood Dr.
Ric Dr.	Edgewood Dr.
Ric Dr.	Stoneybrook Dr.
Ric Dr.	Storey Ave.
Ridgemont Pl.	Hereford Blvd.
Ridgemont Ct.	Heritage Blvd.
Ridglea Dr.	Cuthbert Ave.
Ridglea Dr.	Nobles Ave.
Rio Grande Dr.	Amistad Dr.
Rio Grande Dr.	Conroe St.
Riverside Dr.	Hilltop Dr.
Riverside Dr.	Oak Valley Dr.
Robin Ln.	Oriole Dr.
Rochester St.	Bankhead Hwy.
Rockwood Dr.	Tanforan Ave./Ct.
Roosevelt Ave.	Mitchell St.
Roosevelt Ave.	Powell St.
Roosevelt Dr.	Crestview Rd.
Roosevelt Dr.	Leddy Dr.
Roosevelt Dr.	McDonald Dr.
Roosevelt Dr.	Raymond Rd.
Rosemont Dr.	Tremont Ave.
Rosewood Dr.	Lemonwood Dr.
Rosewood Dr.	Northcrest Dr.
Rosewood Dr.	Oriole Dr.
Ruby Rd.	Raymond Rd.
Ruidoso Ct.	Mark Ln.
Russell Dr.	Norwood St.
Rustic Trail	Greentree Blvd. (at east and west intersections)
Sage St.	Hollandale Dr.
Sagemont Dr.	Tremont Ave.
San Angelo St.	Louisiana Ave.
San Angelo St.	Michigan Ave.
San Angelo St.	Tennessee Ave.
San Antonio Ave.	Amistad Dr.

ON	AT
Scharbauer Dr.	Main St.
Seaboard Ave.	Godfrey St.
Seaboard Ave.	"H" St.
Seaboard Ave.	"I" St.
Seaboard Ave.	"L" St.
Seaboard Ave.	Lanham St.
Seaboard Ave.	Mogford St.
Seaboard Ave.	"N" St.
Seaboard Ave.	Tarleton St.
Seaboard Ave.	Whitney Dr.
Secor St.	Ohio Ave.
Seminole Dr.	Eisenhower Dr.
Sentinel Dr.	Maberry St.
Sentinel Dr.	Murray St.
Sentinel Dr.	Whitney Dr.
Sequoia St.	Green Tree Blvd.
Shadylane Dr.	Bentwood Dr.
Shadyview Pl.	Tanforan Ave.
Shandon Ave.	Cimmaron Ave.
Shandon Ave.	Godfrey St.
Shandon Ave.	Lanham St.
Shandon Ave.	Loma Dr.
Shandon Ave.	Main St.
Shandon Ave.	Mogford St.
Shandon Ave.	Tarleton St.
Shandon Ave.	Ward St.
Shandon Ave.	Whitney Dr.
Shell Ave.	Godfrey St.
Shell Ave.	"I" St.
Shell Ave.	"L" St.
Shell Ave.	"N" St.
Shell Ave.	McDonald St. (westernmost intersection)
Shell Ave.	Tarleton St.
Shell Ave.	Upland St.
Shirley Ln.	"D" St.
Shirley Ln.	Oaklawn Dr.
Shirley Ln.	Cumberland Dr.
Sinclair Ave.	Culver Dr.
Sinclair Ave.	Godfrey St.
Sinclair Ave.	Hughes St.
Sinclair Ave.	Huntington St.
Sinclair Ave.	Lanham St.
Sinclair Ave.	Lindora Way
Sinclair Ave.	"N" St.
Sinclair Ave.	Northrup Drive
Sinclair Ave.	Tarleton St.
Sinclair Ave.	Ward St.
Sinclair Ave.	Wydewood Dr.
Skyline Dr.	Haynes Ave.

ON	AT
Skyline Dr.	Northfield Dr.
Smith Rd. (both intersections)	Desta Dr.
Soloman Ln.	"A" St.
Solomon Ln.	Lamesa Rd.
South St.	Carver St.
South St.	Lamesa Rd.
Sparks St.	Princeton Ave.
Spartan Dr.	Fannin Ave.
Spartan Dr.	Neely Ave.
Spence Dr.	Canadian Ave.
Spence Dr.	Hilltop Dr.
Spence Dr.	Rio Grande Ave.
Spraberry Dr.	Anetta Dr.
Spraberry Dr.	Canyon/Devonian Dr.
Spraberry Dr.	Pleasant Dr.
Spraberry Dr.	Raymond Rd.
Springfield Ct.	Greenbriar Dr.
Spring Meadow Ln.	Meadowpark Dr.
Spring Meadow Ln.	Pine Meadow Dr.
Spruce Ave.	Loma Dr.
Spruce Ave.	Main St.
Spruce Ave.	Neely Ave.
Spruce Ave.	Pecos St.
Spur Dr.	I-20 N. Frontage Rd.
St. Andrews Ct.	Godfrey St.
St. Andrews Dr.	Godfrey St.
St. Andrews Dr.	Mark Ln.
St. Andrews Dr.	Norwood St.
Stanolind Ave.	"D" St.
Stanolind Ave.	Godfrey St.
Stanolind Ave.	"H" St.
Stanolind Ave.	"I" St.
Stanolind Ave.	"L" St.
Stanolind Ave.	Lanham St.
Stanolind Ave.	Mark Ln.
Stanolind Ave.	McDonald Dr.
Stanolind Ave.	Mogford St.
Stanolind Ave.	Tarleton St.
Stanolind Ave.	Wedgewood St.
Stanolind Ave.	Western Dr.
Stanolind Ave.	Whitney Dr.
Sterling Pl.	Crowley Blvd.
Sterling Ct.	Heritage Blvd.
Stewart Ave.	Tarleton St.
Stillmeadow Dr.	Fargo Ave.
Stokes Ave.	Baird St. (westbound)
Stokes Ave.	Terrell St. (eastbound)
Stonecrest	Hereford Blvd.
Stonecrest	Windrift
Stoneleigh Rd.	Lancashire Rd.

ON	AT
Stonewall St.	Indiana Ave.
Stonewall St.	New York Ave.
Stoneybrook Dr.	Ric Dr.
Stoneybrook Dr.	Shadylane Dr.
Storey Ave.	"B" St.
Storey Ave.	Bentwood Dr.
Storey Ave.	"D" St.
Storey Ave.	Edgewood Dr.
Storey Ave.	"F" St.
Storey Ave.	"G" St.
Storey St.	Godfrey St.
Storey Ave.	Lanham St.
Storey Ave.	Maberry St.
Storey Ave.	Marienfeld St.
Storey Ave.	McDonald St.
Storey Ave.	Powell St.
Storey Ave.	Stoneybrook Dr.
Storey Ave.	Ward St.
Stutz Ct.	Ward St.
Stutz Dr.	Ward St.
Stutz Dr.	Whitney Dr.
Summit Ave.	Baird St. (westbound)
Summit Ave.	Terrell St. (eastbound)
Sunburst Dr.	Preston Dr.
Sunburst Dr.	Sunshine Pkwy.
Suncrest Ave.	Dengar Ave.
Sundance Pl.	Crowley Blvd.
Sundance Ct.	Heritage Blvd.
Sunnyside Dr.	Stonybrook Dr.
Sunset Blvd.	Michigan Ave.
Sunset Blvd.	Ohio Ave.
Sunshine Pkwy.	Idlewilde Dr.
Sunshine Pkwy.	Wydewood Dr.
Sweetbriar Dr.	Ric Dr.
Sycamore Ave.	Holly Dr.
Tanforan Ave.	Oriole Dr.
Tanforan Ave.	Widener Strip
Tanner Dr.	Devonian Dr.
Tanner Dr.	Leddy Dr.
Tanner Dr.	McDonald St.
Tanner Dr.	Raymond Rd.
Tarleton St.	Cuthbert Ave.
Tarleton St.	Neely Ave.
Tarleton St.	Shandon Ave.
Taylor Ave.	Main St.
Taylor Ave.	Marshall St.
Taylor Ave.	Mineola St.
Taylor Ave.	Terrell St.
Teakwood Tr.	Oriole Dr.
Tejas	Shawnee

ON	AT
Telluride Dr./Ct.	Durango Dr.
Tennessee Ave.	Baird St.
Tennessee Ave.	"C" St.
Tennessee Ave.	Colorado St.
Tennessee Ave.	"D" St.
Tennessee Ave.	E. Broadway St.
Tennessee Ave.	"F" St.
Tennessee Ave.	Fort Worth St.
Tennessee Ave.	"G" St.
Tennessee Ave.	Loraine St.
Tennessee Ave.	"L" St.
Tennessee Ave.	"M" St.
Tennessee Ave.	Main St.
Tennessee Ave.	Marienfeld St.
Tennessee Ave.	"N" St.
Tennessee Ave.	Terrell St.
Tennessee Ave.	W. Broadway
Terrace Ave.	Neely Ave.
Terrace Ave.	Ward St.
Terrell St.	Cuthbert Ave.
Terrell St.	Gist Ave.
Terrell St.	Golf Course Rd.
Terrell St.	Hicks Ave.
Terrell St.	Illinois Ave.
Terrell St.	Louisiana Ave.
Terrell St.	Parker Ave.
Terrell St.	Taylor Ave.
Texas Ave.	Carver St.
Texas Ave.	Lee St.
Thames Ct.	Lancashire Rd.
Thomas Ave.	Crestview Rd.
Thomas Ave.	Raymond Rd.
Tilden St.	Golf Course Rd.
Tilden St.	Indiana Ave.
Tilden St.	Orchard Ln.
Timberglen Pl./Cir.	Valwood Dr.
Travis Ave.	Crestview Rd.
Travis Ave.	Holly Dr.
Travis Ave.	Waverly Dr.
Tremont Ave.	Dentcrest Dr.
Tremont Ave.	Edgemont Dr.
Tremont Ave.	Mark Ln.
Tremont Ave.	Sagemont Dr.
Tremont Ave.	Whittle Way
Trinity Dr.	Godfrey St.
Trinity Ct.	Greenbriar Dr.
Trinity Meadows Dr.	Skyline Dr.
Trinity Meadows Pl.	Skyline Dr.
Truman St.	Delano Ave.
Truman St.	Franklin Ave.

ON	AT
Truman St.	Mariana Ave.
Tyler St.	Cuthbert Ave.
Tyler St.	Garden Ln.
Tyler St.	Golf Course Rd.
Tyler St.	Hamby Ave.
Tyler St.	Illinois Ave.
Tyler St.	Indiana Ave.
Tyler St.	Oak Ave.
Tyler St.	Orchard Ln.
Tyler St.	Pine Ave.
Tyler St.	South Ln.
Tyler St.	Wall St.
U.S. 80 Service Rd.	County Rd. 1162
U.S. 80 Service Rd.	Elkins Rd.
U.S. 80 Service Rd.	Todd Rd.
Upland St.	Baumann Ave.
Upland St.	Bedford Ave.
Upland St.	Cuthbert Ave.
Upland St.	Kansas Ave.
Upland St.	Louisiana Ave.
Upland St.	Michigan Ave.
Upland St.	Ohio Ave.
Upland St.	Princeton Ave.
Valley Dr.	Haynes Ave.
Valwood Dr.	Tanforan Ave.
Ventnor Ave.	Boardwalk
Ventnor Ave.	Carver St.
Ventura Ave.	"I" St.
Ventura Ave.	"L" St.
Vermont Ave.	Pacific Ave.
Versailles Dr.	Burchill Dr.
Versailles Dr.	Devonian Dr.
Versailles Dr.	Eisenhower Dr.
Versailles Dr.	Meadow Dr.
Virginia Ave.	Pacific Ave.
Vista West Pkwy.	Bluebird Ln.
Vista West Pkwy.	Caldera Blvd.
W. Broadway St.	Cuthbert Ave.
W. Broadway St.	Harvard Ave.
W. Broadway St.	Louisiana Ave.
W. Broadway St.	Michigan Ave.
W. Circle Dr.	Delano Ave.
W. Industrial Loop	Industrial Ave.
Walcott Ave.	Main St.
Wall St.	Carver St.
Wall St.	Lee St.
Walnut Ln.	Carver St.
Ward St.	Auburn Dr.
Ward St.	Cuthbert Ave.
Ward St.	Fannin Ave.

ON	AT
Ward St.	Haynes Ave.
Ward St.	Haynes Dr.
Ward St.	Louisiana Ave.
Ward St.	Michigan Ave.
Ward St.	Neely Ave.
Ward St.	Princeton Ave.
Ward St.	Sentinel Dr.
Warehouse Rd.	Industrial Ave.
Washington Ave.	"B" St.
Washington Ave.	"C" St.
Washington Ave.	Carver St.
Washington Ave.	"D" St.
Washington Ave.	"G" St.
Washington Ave.	"L" St.
Washington Ave.	Lee St.
Washington Ave.	Main St.
Washington Ave.	"N" St.
Washington Ave.	Pecos St.
Washington Ave.	Tilden St.
Watson St.	Cuthbert Ave.
Watson St.	Pecos St.
Waverly Dr.	Anetta Dr.
Waverly Dr.	Raymond Rd.
Weatherford St.	Cuthbert Ave.
Weatherford St.	Golf Course Rd.
Weatherford St.	Hicks Ave.
Weatherford St.	Indiana Ave.
Weatherford St.	Kentucky Ave.
Weatherford St.	Louisiana Ave.
Weatherford St.	Michigan Ave.
Weatherford St.	Mississippi Ave.
Weatherford St.	New Jersey Ave.
Weatherford St.	New York Ave.
Weatherford St.	Taylor Ave.
Webster St.	Indiana Ave.
Webster St.	New York Ave.
Wedgewood Ct.	Godfrey St.
Wedgewood St.	Godfrey St.
Wedgewood St.	Humble Ave.
Wedgewood St.	Neely Ave.
Wedgewood St.	Shell Ave.
Western Dr.	Golf Course Rd.
Western Dr.	Neely Ave.
Western Dr.	Stanolind Ave.
Westminster Dr.	Norwood St.
Westview Dr.	Bluebird Ln. (northbound)
Whitaker St.	Cuthbert Ave.
Whitaker St.	Kansas Ave.
Whitman Dr.	Bluebird Ln.
Whitney Dr.	Haynes Dr.

ON	AT
Whitney Dr.	Maxwell Dr.
Whitney Dr.	Moss Ave.
Whitney Dr.	Neely Ave.
Whittle Way	Preston Dr.
Whittle Way	Sunshine Pkwy.
Whittle Way	Tremont Ave.
Willingham Dr.	McDonald St.
Wilshire Dr.	Eisenhower Dr.
Wilshire Dr.	Graceland Dr.
Wilshire Dr.	Parkdale Dr.
Wimberley Spring Ct.	Spence Dr.
Windecker St.	La Force Blvd.
Windecker St.	Sloan Field Blvd.
Windecker St.	Wright Dr.
Windridge Cr.	Mockingbird Ln. (both intesections)
Windrift	Crowley Blvd.
Winfield Rd.	Humble Ave.
Winfield Rd.	"I" St.
Winfield Rd.	"L" St.
Wolcott Ave.	Baird St.
Wolcott Ave.	Terrell St. (eastbound)
Wolcott Ave.	Main St.
Wood Dr.	Oriole Dr.
Wood Dr.	Valwood Dr.
Woodbar Ct.	Northcrest Dr.
Woodcrest Dr.	Cuthbert Ave.
Woodcrest Dr.	Princeton Ave.
Woodcrest Dr.	Ric Dr.
Woodhaven Ct.	Skyline Dr.
Woodhaven Dr.	Skyline Dr.
Woodhollow Dr.	Hilltop Dr. / Lemonwood Dr.
Woodhollow Dr.	Mathis St.
Woodhollow Dr.	Northcrest Dr.
Woodhollow Dr.	Oriole Dr.
Woodland Park Ave.	"A" St.
Woodland Park Ave.	Breckenridge Dr.
Woodland Park Ave.	Gunnison Dr.
Wright Dr.	Sloan Field Blvd.
Wydewood Dr.	Dengar Dr.
Wydewood Dr.	Everglade Ave.
Wydewood Dr.	Neely Ave.
Wydewood Dr.	Sinclair Ave.

SECTION TWO. That 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. 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 hundred dollars ($200.00).

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., 2011; 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., 2011, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2011.

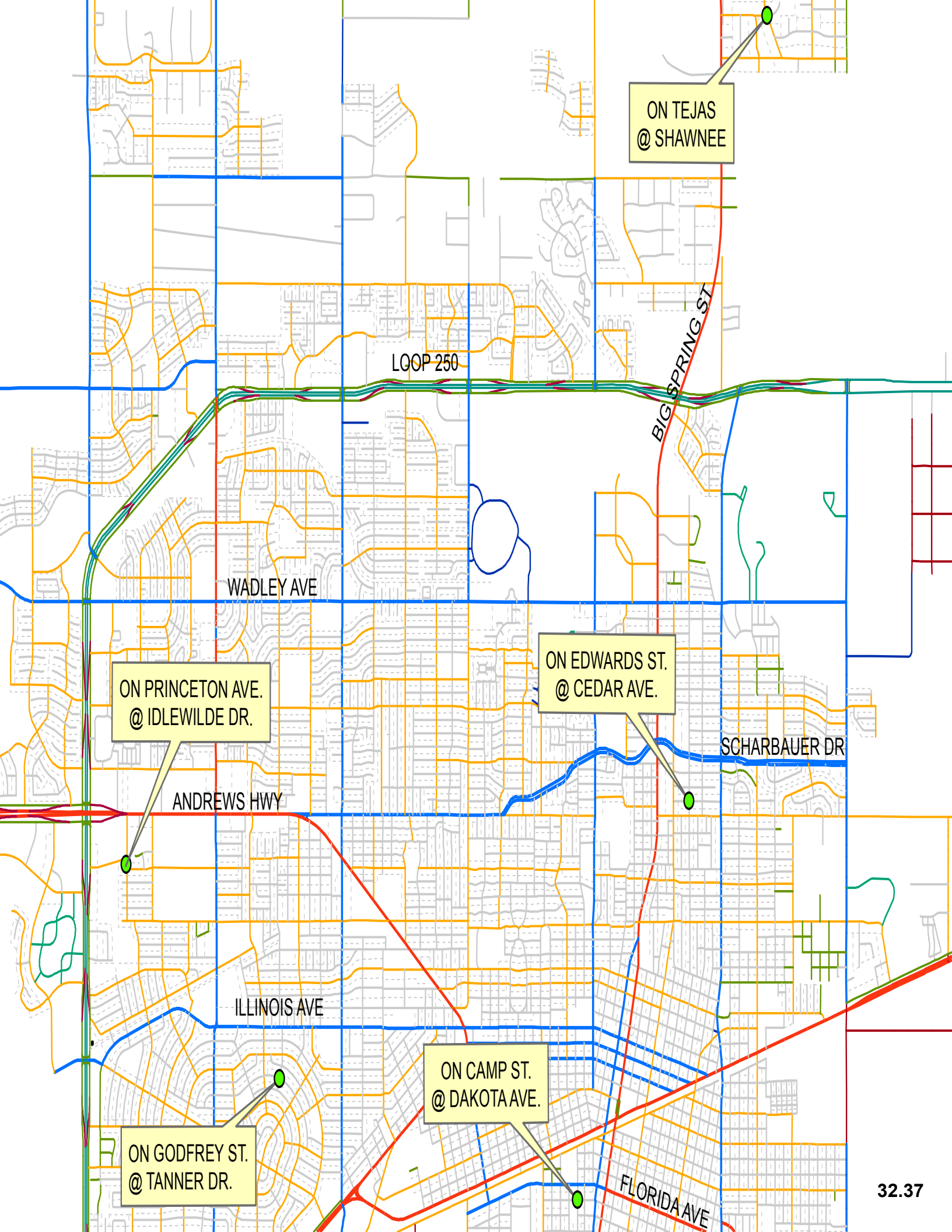
_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney


ON TEJAS
@ SHAWNEE
LOOP 250
BIG SPRING ST
WADLEY AVE
ON EDWARDS ST.
@ CEDAR AVE.
ON PRINCETON AVE.
@ IDLEWILDE DR.
SCHARBAUER DR
ANDREWS HWY
ILLINOIS AVE
ON CAMP ST.
@ DAKOTA AVE.
ON GODFREY ST.
@ TANNER DR.
FLORIDA AVE

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Gary Saunders, Transportation Manager**

SUBJECT: **Ordinance – Yield Signs**

Purpose:
To approve an ordinance authorizing the removal of yield signs at various intersections throughout the City of Midland.

Recommended City Council Action:
X Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:
Approximately $125 labor cost for removal of yield signs at each intersection.

Discussion:
The Legal Department has prepared an ordinance establishing the removal of yield signs at various intersections within the City of Midland. Stop signs are recommended for installation at each intersection and are therefore listed in the proposed stop sign ordinance. The proposed intersections for removal of the yield signs are as follows:

On Camp Drive at Dakota Avenue for north/south traffic.

On Edwards Street at Cedar Avenue for north/south traffic.

On Godfrey Street at Tanner Drive for north/south traffic.

On Princeton Avenue at Idlewilde Drive for east/west traffic.

On Tejas at Shawnee for east/west traffic.

Attached is a map indicating the location of each intersection.

Staff recommend approval of this ordinance.

ORDINANCE NO.

AN ORDINANCE ESTABLISHING YIELD RIGHT OF WAY SIGNS AT VARIOUS LOCATIONS WITHIN THE CITY OF MIDLAND, TEXAS; REQUIRING AND AUTHORIZING THE POSTING OF APPROPRIATE SIGNS AT SAID INTERSECTIONS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS ($200.00); AND ORDERING PUBLICATION

WHEREAS, the Council finds that the unusual character and volume of traffic on various intersecting streets within the City requires that operators of motor vehicles traveling along said streets yield the right of way to other oncoming vehicles before entering said intersections; and

WHEREAS, the Council finds it to be in the public interest to authorize and require the establishment of yield right of way signs at said intersections;

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

SECTION ONE. In addition to all other yield right of way signs, yield right of way signs at the intersections enumerated in the following list are hereby ordered to be erected and are hereby validated and fully authorized, whether the same have already been placed and are existing upon said intersections, or shall be placed there hereafter, and all persons operating vehicles upon or over the streets of the City of Midland, Texas, shall obey such yield right of way signs. All streets located in the column under the word "On" are the streets on which yield right of way signs are hereby ordered and authorized at their intersection with the streets listed on the same line and in the column immediately to the right headed by the word "At".

ON	AT
Abbey Pl.	Everglade Ave.
Aberdeen Dr.	Cedar Springs Dr.
Aberdeen Dr.	Ruby Dr.
Acklen Dr.	Roosevelt Dr.
Adams St.	Garden Ln.

ON	AT
Adams St.	Illinois Ave.
Adams St.	Kentucky Ave.
Adams St.	New York Ave.
Adams St.	Walnut Ln.
Adams St.	Washington Ave.
Alcove Ct.	Douglas St.
Alice St.	Kessler Ave.
Alice St.	Mariana Ave.
Allen St.	New Jersey Ave.
Allen St.	Taylor Ave.
Amelia Dr.	Anetta Dr.
Amelia Dr.	Fairmont Dr.
Amigo Dr.	Goliad Dr.
Amigo Dr.	Storey Ave.
Andrews Hwy. Frontage	McDonald Ave.
Angelina Drive	Lehigh Drive
Arrowhead Trail	Vista West Pkwy
Arroyo Dr.	Northfield Dr.
Aspen Dr.	Dentcrest Dr.
Atlanta St.	California Ave.
Atlanta St.	New York Ave.
Auburn Pl.	Lanham St.
Austin St.	Baumann Ave.
Austin St.	Kansas Ave.
Avondale Dr.	Leddy Dr.
Azalea Dr.	Rosewood Dr.
“B” St.	Tennessee Ave.
Baird St.	Griffin Ave.
Baird St.	Washington Ave.
Baldwin St.	College Ave.
Baldwin St.	Indiana Ave.
Baldwin St.	Washington Ave.
Barber St.	Cedar Ave.
Barber St.	Hickory Ave.
Barber St.	Maple Ave.
Barber St.	Oak Ave.
Barber St.	Pecan Ave.
Barber St.	Pine Ave.
Barber St.	Spruce Ave.
Baumann Ave.	Godfrey St.
Baumann Ave.	Kansas Ave.
Baumann Ave.	McDonald St.
Beckley Dr.	Cedar Spring Dr.
Beckley Dr.	Sprayberry Dr.
Bedford Dr.	“B” St.
Bedford Dr.	“D” St.
Bedford Dr.	Ward St.
Bedford Dr.	W. Broadway St.
Bedford Dr.	Woodcrest Dr.
Belmont St.	Collins Ave.

ON	AT
Belmont St.	Longview Ave.
Belmont St.	Rhode Island Ave.
Belmont St.	Stokes Ave.
Belmont St.	Summit Ave.
Belmont St.	Wolcott Ave.
Belton Pl.	Concho Dr.
Benton St.	California Ave.
Benton St.	Morgan Way
Benton St.	Pine Ave.
Blakemore Ct.	Northfield Dr.
Bonham St.	Kansas Ave.
Bonham St.	Willingham Dr.
Boyd Ave.	"C" St.
Boyd Ave.	"D" St.
Boyd Ave.	Cessna Dr.
Boyd Ave.	McDonald St.
Boyd Ave.	Sparks St.
Boyd Ave.	Upland St.
Boulder Dr.	Arroyo Dr.
Brazos Ave.	Conroe St.
Brazos Ave.	Spence Dr.
Brazos Ct.	Conroe St.
Briarpath Dr.	Rosewood Dr.
Brookdale Dr.	Bentwood Dr.
Brunson Ave.	"L" St.
Brunson Ave.	Mann St.
Bryant St.	Eugene Ave.
Bryant St.	George Ave.
Bryant St	Hamby Ave.
Bryant St.	Hart Ave.
Bryant St.	Jax Ave.
Buchanan Pl.	Rio Grande Ave.
Bunch St.	California Ave.
Burchill Dr.	Brookdale Dr.
Burchill Dr.	Comanche Dr.
Burchill Dr.	Pleasant Dr.
Burchill Dr.	Wilshire Dr.
Burleson St.	College Ave.
Burleson St.	Holloway Ave.
Butternut Ln.	Pecan Ave.
"C" St. (southbound traffic)	College Ave.
"C" St.	Douglas Ave.
"C" St. (northbound traffic)	Indiana Ave.
Caldera Dr.	Melvill Dr.
Calhoun St.	California Ave.
Calhoun St.	Kentucky Ave.
Calhoun St.	Orchard Ln.
Calhoun St.	Pennsylvania Ave.
Calhoun St,.	Washington Ave.
California Ave.	Dallas St.

ON	AT
California Ave.	Jackson St.
California Ave.	Weatherford St.
Camp St.	Collins Ave.
Camp St.	Francis Ave.
Camp St.	Marlin St.
Camp St.	New Jersey Ave.
Canadian Ave.	Spence Dr.
Candle Tree Cove	Melville Dr.
Canemont Dr.	Clairmont Dr.
Canterbury Dr.	Kensington Ln.
Carlton St.	Brunson Ave.
Carlton St.	College Ave.
Carlton St.	Holloway Ave.
Carlton St.	Washington Ave.
Cascade Ct.	Douglas St.
Casper Ct.	Trevino St.
Castleford Rd.	Chapel Hill Dr.
Castleford Rd.	Lancashire Rd.
Centerview	Greenridge
Centerview	Windrift
Century Dr.	Comanche Dr.
Cessna Dr.	Shell Ave.
Chapel Hill Dr.	Faulkner Dr.
Cherrywood Dr.	Briarpath Dr.
Chickasaw	Pueblo Rd.
Choate Pl.	Trinity Dr.
Cimmaron Ave.	Godfrey St.
Cimmaron Ave.	Rees Ln.
Claremont Dr.	Mark Ln.
Clark St.	Franklin Ave.
Clark St.	Washington Ave.
Clay St.	California Ave.
Clay St.	Orchard Ln.
Club Dr.	Crest Dr.
College Ave.	Clark St.
College Ave.	“G” St.
College Ave.	Indiana Ave.
Collins Ave.	Johnston St.
Collins St.	McKenzie St.
Collins St.	New Jersey St.
Collins St.	Pratt St.
Colorado St.	Collins Ave.
Colorado St.	Taylor Ave.
Colorado St.	Washington Ave.
Columbian Dr.	Canyon Dr.
Columbian Dr.	Howard Dr.
Columbian Dr.	Waverly Dr.
Community Ln.	“D” St.
Compton Dr.	Lehigh Dr.
Concho Dr.	Mathis St.

ON	AT
Concho Dr.	Spence Dr.
Connell St.	Collins Ave.
Connell St.	Dakota Ave.
Connell St.	Griffin Ave.
Connell St.	New Jersey Ave.
Connell St.	Taylor Ave.
Conroe St.	Canadian Ave.
Copus St.	Pecan Ave.
Cord Dr.	Apperson Dr.
Cottonwood Ave.	Barber St.
Cottonwood Ave.	Edwards St.
Country Club Dr.	"B" St.
Country Club Dr.	Woodcrest Dr.
Cowden Ave.	Jackson St.
Crenshaw Dr.	Palmer Dr.
Crescent Dr.	Dewberry Dr.
Crest Dr.	Ridglea Dr.
Culver Dr.	Fannin Ave.
Cunningham Dr.	Canyon Dr.
Cunningham Dr.	Waverly Dr.
Cuthbert Ave.	Jackson St.
"D" St.	Indiana Ave.
Dakota Ave.	Baird St.
Dakota Ave.	Dallas St.
Dakota Ave.	Fort Worth St.
Dakota Ave.	Jefferson St.
Dakota Ave.	Mineola St.
Dakota Ave.	Terrell St.
Dallas St.	Hamby Ave.
Dallas St.	Indiana Ave.
Dallas St.	Kansas Ave.
Dallas St.	Kentucky Ave.
Dallas St.	Michigan Ave.
Dallas St.	Pennsylvania Ave.
Dallas St.	Washington Ave.
Dartmouth Dr.	Culpepper Dr.
Debbie Cove	Fredna Pl.
Dellwood St.	Baumann Ave.
Dellwood St.	Kansas Ave.
Dengar Ave.	Mark Ln.
Dengar Ave.	Neely Ave.
Dentcrest Dr.	Wydewood Dr.
Denton St.	Bedford Ave.
Devonshire Ct.	Richmond Dr.
Dewberry Dr.	Leisure Dr.
Donald St.	Illinois Ave.
Donald St.	Wall St.
Donald St.	Willeys Ave.
Douglas Ave.	Austin St.
Douglas Dr.	Cessna Dr.

ON	AT
Douglas Dr.	Culver Dr.
Douglas Dr.	Delmar St.
Douglas Dr.	Upland St.
Downing Ave.	Stratton Dr.
Dukes Dr.	Polo Parkway
Dunbar St.	Willingham Dr.
E. Broadway St.	Storey Ave.
Eastwood Dr.	Storey Ave.
Edgewood Dr.	Glenwood Dr.
Edwards St.	Oak Ave.
Edwards St.	Pecan Ave.
Edwards St.	Shandon Ave.
Eisenhower Dr.	Comanche Dr.
Elizabeth Ave.	Baldwin St.
Elizabeth Ave.	Carlton St.
Elizabeth Ave.	Clark St.
Elizabeth Ave.	Key St.
Elizabeth Ave.	Mann St.
Elk Ave.	"B" St.
Elm Ave.	Barber St.
Elm Ave.	Edwards St.
Emerson Ct.	Lanham St.
Emerson Dr.	Lanham St.
Emerson Pl.	Whitney Dr.
Erie Dr.	Devonian Dr.
Erie Dr.	Graceland Dr.
Estes Ave.	Colorado St.
Estes Ave.	Dallas St.
Estes Ave.	Jackson St.
Eugene Ave.	Marienfeld St.
Everglade Ave.	Lindora Way
Everglade Ave.	Wydewood Dr.
"F" St.	Indiana Ave.
Fairmont Dr.	Anetta Dr.
Fairmont Dr.	Waverly Dr.
Fairview Ln.	Keswick Rd.
Falcon Pl.	Concho Dr.
Fannin Ave.	Rees Ln.
Fieldcrest Ln.	Woodhaven Dr.
Fields Place	Keswick Rd.
Fiesta Ave.	Edwards St.
Flair Ct.	Lanham St.
Floyd Ct.	Trevino St.
Fort Worth St.	California Ave.
Fort Worth St.	Kentucky Ave.
Fort Worth St.	Pennsylvania Ave.
Fort Worth St.	Washington Ave.
Francis Ave.	Baird St.
Francis Ave.	Belmont St.
Francis Ave.	Colorado St.

ON	AT
Franklin Ave.	Crestview Rd.
Franklin Ave.	Kelly St.
Franklin Ave.	Powell St.
“G” St.	Industrial Ave.
Garden Ln.	Dallas St.
Garden Ln.	Fort Worth St.
Garden Ln.	Terrell St.
Gaston Dr.	Godfrey St.
George Ave.	Pecos St.
Geraldine St.	Gulf Ave.
Glenwood Dr.	Leisure Dr.
Goddard Ct.	Lanham St.
Goddard Dr.	Lanham St.
Goddard Pl.	Meadowbrook Dr.
Godfrey St.	Avondale Dr.
Goliad Dr.	Ric Dr.
Gossett St.	Indiana Ave.
Griffin Ave.	Colorado St.
Griffin Ave.	Fort Worth St.
Griffin Ave.	Terrell St.
Gulf Ave.	“D” St.
Gulf Ave.	Hughes St.
Gulf Ave.	Huntington St.
Gulf Ave.	Mogford St.
“H” St.	Bedford Dr.
“H” St.	Tennessee Ave.
“H” St.	Washington Ave.
Hamby Ave.	Edwards St.
Hamby Ave.	Ft. Worth St.
Hamby Ave.	Jackson St.
Harlowe Dr.	Mercedes Dr.
Harlowe Dr.	Monty Dr.
Harmony Dr.	Baumann Ave.
Harmony Dr.	Kansas Ave.
Harvard Ave.	Cessna Dr.
Harvard Ave.	Woodcrest Dr.
Hickory Ave.	Edwards St.
Hicks Ave.	Camp St.
Hicks Ave.	Jefferson St.
Hicks Ave.	Johnston St.
Hicks Ave.	Moran St.
Highsky Dr.	Hyde Park Ave.
Hill Ave.	Crestview Rd.
Hogan Ct.	Trevino St.
Holloway Ave.	Clark St.
Houston Ave.	Lee St.
Houston Ave.	Madison St.
Hoya Dr.	Rainbow Rd.
Hudson Ave.	Pecan Ave.
Hughes St.	Fannin Ave.

ON	AT
Humble Ave.	Cessna Dr.
Humble Ave.	Huntington St.
Humble Ave.	Main St.
Humble Ave.	Upland St.
Hyde Park Ave.	Ferncliff Ave.
"I" St.	Washington Ave.
Idlewilde Dr.	Storey Ave.
Illinois Ave.	Thomason Dr.
Imperial Ave.	Cimmaron Ave.
Indiana Ave.	Carlton St.
Irwin Ct.	Crenshaw Dr.
Island Dr. (northbound)	Island Dr./Cir.
"J" St.	Kentucky Ave.
"J" St.	Washington Ave.
Jackson St.	Cherry Ln.
Jackson St.	Garden Ln.
Jackson St.	Illinois Ave.
Jackson St.	Jax Ave.
Jackson St.	Kentucky Ave.
Jackson St.	New York Ave.
Jackson St.	Nobles Ave.
Jackson St.	Parker Ave.
Jackson St.	Pennsylvania Ave.
Jackson St.	Texas Ave.
Jackson St.	Wall St.
Jackson St.	Walnut Ln.
Jackson St.	Washington Ave.
Jax Ave.	Fort Worth St.
Jax Ave.	Terrell St.
Jefferson St.	California Ave.
Jefferson St.	Kentucky Ave.
Jefferson St.	New York Ave.
Jefferson St.	Pennsylvania Ave.
Jefferson St.	Washington Ave.
Jesse St.	Illinois Ave.
Jesse St.	Wall St.
Johnston St.	Francis Ave.
Johnston St.	Montgomery Ave.
Jordan Ave.	Wedgewood St.
Joy Dr.	Bentwood Dr.
"K" St.	Carter Ave.
"K" St.	Holloway Ave.
"K" St.	Industrial Ave.
Kanawha	Navajo
Kansas Ave.	"C" St.
Kansas Ave.	Delmar St.
Kansas Ave.	Fort Worth St.
Kansas Ave.	"G" St.
Keith St.	Eugene Ave.
Keith St.	George Ave.

ON	AT
Keith St.	Hamby Ave.
Keith St.	Hart Ave.
Keith St.	Jax Ave.
Kerth St.	Ohio Ave.
Kensington Ln.	Polo Parkway
Kentucky Ave.	"B" St.
Kentucky Ave.	Benton St.
Kentucky Ave.	"C" St.
Kentucky Ave.	Clay St.
Kentucky Ave.	"D" St.
Kentucky Ave.	"E" St.
Kentucky Ave.	"H" St.
Kentucky Ave.	Lincoln St.
Kentucky Ave.	Stonewall St.
Kentucky Ave.	Tyler St.
Kentucky Ave.	Webster St.
Key St.	Washington Ave.
Kingston Dr.	Southampton Ln.
Knights Pl.	Castleford Rd.
"L" St.	Kentucky Ave.
Lamesa Rd.	New York Ave.
Lanham St.	Ainslee St.
Lanham St.	Dartmouth Dr.
Learmont Dr.	Keswick Rd.
Leddy Dr.	Edgewood Dr.
Lee St.	California Ave.
Lee St.	Garden Ln.
Lee St.	Walnut Ln.
Lennox Dr.	Fargo Ave.
Lennox Dr.	Westminster Dr.
Lincoln St.	California Ave.
Lincoln St.	Garden Ln.
Lincoln St.	Illinois Ave.
Lincoln St.	Pennsylvania Ave.
Lincoln St.	Texas Ave.
Lincoln St.	Wall St.
Lincoln St.	Washington Ave.
Lincoln St.	Willeys Ave.
Lockheed Ave.	Alpine St.
Lockheed Dr.	Ainslee St.
Lockheed Dr.	Culver Dr.
Lockheed Dr.	Murray St.
Lockheed Dr.	Northrup Dr.
Lockheed Dr.	Sparks St.
Loma Dr.	Alta Ave.
Loma Vista St.	Orchard Ln.
Loraine St.	Collins Ave.
Loraine St.	Cowden Ave.
Loraine St.	Frances Ave.
Loraine St.	Griffin Ave.

ON	AT
Loraine St.	Hamby Ave.
Loraine St.	Jax Ave.
Loraine St.	New York Ave.
Loraine St.	Washington Ave.
Lynn Ave.	Jackson St.
McKenzie St.	Griffin St.
McKenzie St.	Montgomery Ave.
McKenzie St.	New Jersey Ave.
McKenzie St.	Taylor Ave.
"M" St.	Brunson Ave.
"M" St.	College Ave.
"M" St.	Kentucky Ave.
"M" St.	Ohio Ave.
Maberry St.	Cimmaron Ave.
Maberry St.	Fannin Ave.
Maberry St.	Frontier Dr.
Maberry St.	Sinclair Ave.
Madison St.	California Ave.
Madison St.	Industrial Ave.
Madison St.	Kentucky Ave.
Madison St.	Walnut Ln.
Magnolia Ave.	Butternut Ln.
Magnolia Ave.	Edwards St.
Magnolia Ave.	Peterson St.
MaMar Ave.	Cessna Dr.
Manor St.	Storey Ave.
Maple Ave.	Butternut Ln.
Maple Ave.	Edwards St.
Maple Ave.	Peterson St.
Mariana Ave.	Powell St.
Mariana Ave.	Roosevelt Ave.
Marienfeld St.	Dakota Ave.
Marshall St.	California Ave.
Marshall St.	New York Ave.
Marshall St.	Pennsylvania Ave.
Marshall St.	Texas Ave.
Marshall St.	Washington Ave.
Meadow Dr.	Brookdale Dr.
Meadow Dr.	Graceland Dr.
Meadow Dr.	Parkdale Dr.
Meadow Dr.	Pleasant Dr.
Meadowridge Dr.	Arroyo Dr.
Mercedes Dr.	Devonian Dr.
Meredith Pl.	Concho Dr.
Merrill Ct.	Stratton Dr.
Merrill Dr.	Stratton Dr.
Metz Pl.	Lanham St.
Michigan Ave.	Kent St.
Miller Dr.	Crenshaw Dr.
Miller Dr./Ct.	Trevino St.

ON	AT
Mimosa Ct.	Rosewood Dr.
Mineola St.	California Ave.
Mineola St.	Pennsylvania Ave.
Mineola St.	Texas Ave.
Mineola St.	Washington Ave.
Mississippi Ave.	Terrell St.
Missouri Ave.	Jefferson St.
Missouri Ave.	Madison St.
Missouri Ave.	Marshall St.
Missouri Ave.	Mineola St.
Mitchell St.	Franklin Ave.
Mogford St.	Humble Ave.
Mogford St.	Lockheed Dr.
Mogford St.	Shell Ave.
Mogford St.	Sinclair Ave.
Montgomery Ave.	Belmont St.
Montgomery Ave.	Camp St.
Moran St.	Collins St.
Moran St.	Francis St.
Moran St.	McKenzie St.
Moran St.	Montgomery Ave.
Moran St.	New Jersey Ave.
Moran St.	Taylor Ave.
Morgan Way	English Dr.
"N" St.	Carter Ave.
"N" St.	Kentucky Ave.
"N" St.	New Jersey Ave.
"N" St.	Rhode Island Ave.
Nash Ave.	Copus St.
Nash Ave.	Hudson Ave.
Nasworthy Pl.	Rio Grande Ave.
Navajo Rd.	Shawnee
Newcastle Dr.	Wellington Ct.
New Jersey Ave.	"L" St.
New Jersey Ave.	Wayside Dr.
New York Ave.	Calhoun St.
New York Ave.	Clay St.
Nicklaus St.	Crenshaw Dr.
Northrup Dr.	Fannin Ave.
Northtown Ct.	Lanham St.
Northtown Pl.	Meadowbrook Dr.
Oakmont Dr.	Whittle Way
Oakridge Ct.	Gateway St.
Oakridge Dr.	Gateway St.
Ojibwa	Pueblo Rd.
Ojibwa	Tejas Rd.
Oxford St.	Ohio Ave.
Parkhurst Dr.	Fargo Ave.
Parkhurst Dr.	Westminster Dr.
Patman Pl.	Concho Dr.

ON	AT
Pecan Ave.	Oaklawn Dr.
Pecan Ave.	Pecos St.
Pecan Ave.	Tyler St.
Pecos St.	Liddon Ave.
Pennsylvania Ave.	Atlanta St.
Pennsylvania Ave.	Baird St.
Pennsylvania Ave.	Benton St.
Pennsylvania Ave.	Clay St.
Permian Ct.	Manor St.
Pine Ave.	Peterson Ave.
Pine Ave.	Oaklawn Dr.
Pinemont Dr.	Springmont Dr.
Placid Ct.	Manor St.
Player Ct.	Trevino St.
Pleasant Dr.	Waverly Dr.
Pratt St.	Dakota Ave.
Pratt St.	McKenzie St.
Pratt St.	New Jersey St.
Pratt St.	Taylor Ave.
Princeton Ave.	Austin St.
Princeton Ave.	"B" St.
Princeton Ave.	Cessna Dr.
Princeton Ave.	Denton St.
Purple Sage Trl.	Whitman Dr.
Pylant St.	Ohio Ave.
Rebel Dr.	Cimmaron Ave.
Rebel Dr.	Godfrey St.
Reo Dr.	Auburn Dr.
Rhode Island Ave.	Camp St.
Rhode Island Ave.	Connell St.
Rhode Island Ave.	"L" St.
Rhode Island Ave.	McKenzie St.
Rhode Island Ave.	Moran St.
Rhode Island Ave.	Pratt St.
Richmond Ct.	Castleford Rd.
Richmond Dr.	Castleford Rd.
Rockylane Dr.	Leisure Dr.
Roosevelt Dr.	Edgewood Dr.
Roosevelt Dr.	Mercedes Dr.
Rosemont Dr.	Sagemont Dr.
Rosita Dr.	Alicia Ct.
Ruby Dr.	Canyon Dr.
Russell Ct.	Stratton Dr.
Russell Dr.	Stratton Dr.
Sagemont Dr.	Pinemont Dr.
Salisbury Pl.	Trinity Dr.
San Antonio Ave.	Conroe St.
San Antonio Ave.	Spence Dr.
Sand Hill Cr.	Vista West Pkwy.
Sandlewood St.	Baumann Ave.

ON	AT
Sandlewood St.	Kansas Ave.
Scharbauer Dr.	Golf Course Rd.
Seaboard Ave.	Cessna Dr.
Seaboard Ave.	Huntington St.
Sentinel Ave.	Alpine St.
Sentinel Ave.	Delmar St.
Sentinel Ave.	Tarleton St.
Sentinel Ave.	Upland St.
Shell Ave.	"C" St.
Shell Ave.	"D" St.
Shell Ave.	Huntington St.
Shell Ave.	Sparks St.
Sherwood Dr.	Oriole Dr.
Sinclair Ave.	"C" St.
Sinclair Ave.	"D" St.
Sinclair Ave.	Cessna Dr.
Sinclair Ave.	McDonald St.
Sinclair Ave.	Pecos St.
Sinclair Ave.	Sparks St.
Sinclair Ave.	Upland St.
Southampton Ln.	Newcastle Dr.
Sparks St.	Country Club Dr.
Sparks St.	Humble Ave.
Springmont Dr.	Whittle Way
Spruce Ave.	Tyler St.
Spyglass Cr.	Purple Sage Tr.
St. Andrews Dr.	Dentcrest Dr.
Stanolind Ave.	Huntington St.
Stewart Ave.	Shandon Ave.
Stillmeadow Dr.	Westminster Dr.
Storey Ave.	Alpine St.
Storey Ave.	Bonham St.
Storey Ave.	"C" St.
Storey Ave.	"F" St.
Storey Ave.	"G" St.
Storey Ave.	"K" St.
Stratton Dr.	St. Andrews Dr.
Stutz Dr.	Maxwell Dr.
Stutz Pl.	Lanham St.
Suncrest Ave.	McDonald St.
Sundown Cr.	Purple Sage Tr.
Sunnyside Dr.	Storey Ave.
Sweetbriar Dr.	Storey Ave.
Sycamore Ave.	Crestview Rd.
Tamarind Dr.	Melville Dr.
Tammy Cove	Fredna Pl.
Tanglewood Dr.	Leisure Dr.
Tanner Dr.	Mercedes Dr.
Tarleton St.	Storey Ave.
Taylor Ave.	Camp St.

ON	AT
Taylor Ave.	Jefferson St.
Tennessee Ave.	Dallas St.
Tennessee Ave.	Weatherford St.
Terrace Ave.	Lanham St.
Terrace Ave.	Maberry St.
Terrace Ave.	Mogford St.
Texas Ave.	Donald St.
Texas Ave.	Jackson St.
Texas Ave.	Tilden St.
Thomas St.	Ohio Ave.
Thornridge Dr.	Leisure Dr.
Thornridge Dr.	Shadylane Dr.
Tilden St.	Illinois Ave.
Timber Ln.	Oakridge Dr.
Travis Ave.	Powell St.
Travis Ave.	Walker St.
Travis Ave.	Williams St.
Trevino St.	Crenshaw Dr.
Trevino St.	Graham Dr.
Trevino St.	Nicklaus St.
Trinity Dr.	Milbrook Pl.
Trinity Dr.	Wedgwood St.
Trinity Meadows Dr.	Fieldcrest Ln.
Trinity Meadows Pl.	Northfield Dr.
Truman St.	Kessler Ave.
Tyler St.	California Ave.
Tyler St.	Chestnut Ave.
Tyler St.	Cottonwood Ave.
Tyler St.	Cowden Ave.
Tyler St.	Dormard Ave.
Tyler St.	Estes Ave.
Tyler St.	Industrial Ave.
Tyler St.	Jax Ave.
Tyler St.	Magnolia Ave.
Tyler St.	Missouri Ave.
Tyler St.	New York Ave.
Tyler St.	Nobles Ave.
Tyler St.	Parker Ave.
Tyler St.	Texas Ave.
Tyler St.	Walnut Ln.
Tyler St.	Washington Ave.
Upland St.	Storey Ave.
Valley Dr.	Skyline Dr.
Vista West Pkwy.	Purple Sage Trl.
W. Broadway St.	Storey Ave.
W. Circle Dr.	Franklin Ave.
Walcott Ave.	Loraine St.
Walcott Ave.	Whitaker St.
Wall Ave.	Tilden St.
Walnut Ln.	Lincoln St.

ON	AT
Walnut Ln.	Terrell St.
Washington Ave.	Benton St.
Washington Ave.	Clay St.
Washington Ave.	"F" St.
Washington Ave.	Madison St.
Washington Ave.	Mann St.
Washington Ave.	McGarvey St.
Washington Ave.	Stonewall St.
Washington Ave.	Webster St.
Watson Ct.	Crenshaw Dr.
Wayside Dr.	Taylor Ave.
Weatherford St.	Hamby Ave.
Weatherford St.	Jax Ave.
Weatherford St.	Kansas Ave.
Weatherford St.	Parker Ave.
Weatherford St.	Pennsylvania Ave.
Weatherford St.	Washington Ave.
Webster St.	Pennsylvania Ave.
Wedgewood St.	Hyde Park Ave.
West Circle Dr.	Roosevelt Ave.
Westcliff Dr.	Princeton Ave.
Westminister Dr.	Fargo Ave.
Willeys Ave.	Jackson St.
Willeys Ave.	Jesse St.
Willeys Ave.	Tilden St.
Willingham Dr.	Manor St.
Willowwood Dr.	Leisure Dr.
Woodcrest Dr.	Storey Ave.
Woodhollow Dr.	Briarpath Dr.

SECTION TWO. The Traffic Engineer is hereby authorized and directed to erect and install appropriate signs and markings at the designated locations in accordance with the State Highway Department's Manual and Specifications, indicating and carrying out the provisions of this ordinance.

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 hundred dollars ($200.00).

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., 2011; 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., 2011, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2011.

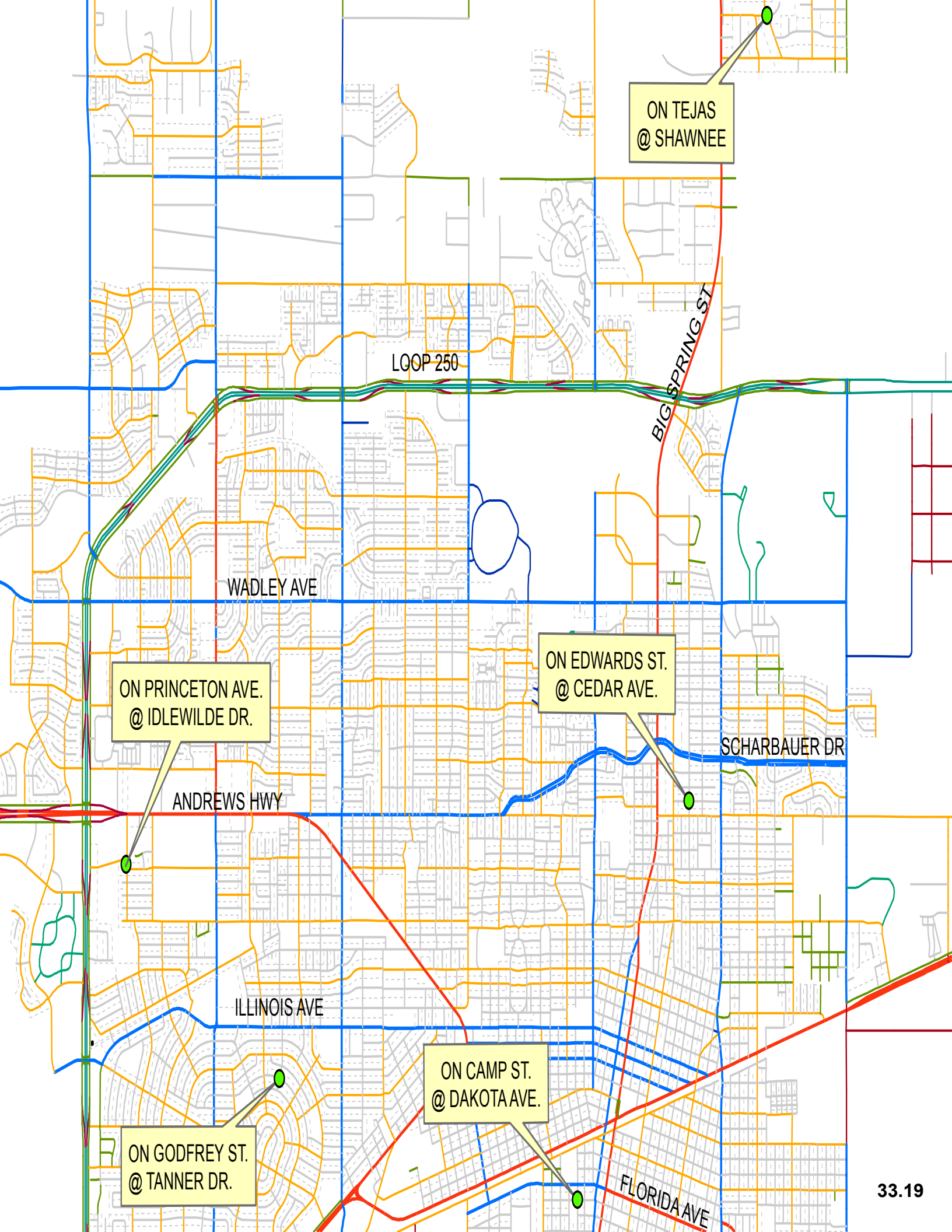
_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney


ON TEJAS
@ SHAWNEE
LOOP 250
BIG SPRING ST
WADLEY AVE
ON EDWARDS ST.
@ CEDAR AVE.
ON PRINCETON AVE.
@ IDLEWILDE DR.
SCHARBAUER DR
ANDREWS HWY
ILLINOIS AVE
ON CAMP ST.
@ DAKOTA AVE.
ON GODFREY ST.
@ TANNER DR.
FLORIDA AVE

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **O-11-001; consider a resolution approving an oil and gas well drilling permit for Bluestem Energy (Evans "C" #1) on the east side of Midland Drive, north of Mockingbird Lane.**

Purpose:

To consider a resolution on a request from Bluestem Energy to drill an oil and gas well on property located 1,021' FNL and 2,310' FWL of the land described as Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. Council held a public hearing on September 27, 2011; therefore, it is now appropriate to consider a resolution since the required 30-day comment period has passed. No public comments were received.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

N/A

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval. The applicant is requesting a variance from the landscaping requirement. Bluestem expects to work with the surface owner to landscape around the well site, consistent with the surface owners housing development plan. Staff is in support.

Attachments: Application; Location map; Drill site location.

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
07/22/2011	Bluestem Energy Holdings, LLC	301 Commerce St, Ste.2001, Fort Worth, TX 76102

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432)687-4414
Wendell Brown	400 W. Illinois, Ste. 1630, Midland,TX 79701	Rep. Fax (432)682-4497
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: Wendell Brown, No.1 (432)687-4414, No.2 (432)889-5080

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B: Wendell Brown, No.1 (432)687-4414, No.2 (432)889-5080

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*** Robert Rendall ***, 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*** Robert Rendall ***, 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 "C" #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:

1021' FNL and 2310' 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:** None

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 buried in the proposed corridors as shown on Exhibit N.

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit 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

By: _____

Wendell Brown, Consultant

COUNTY OF MIDLAND }

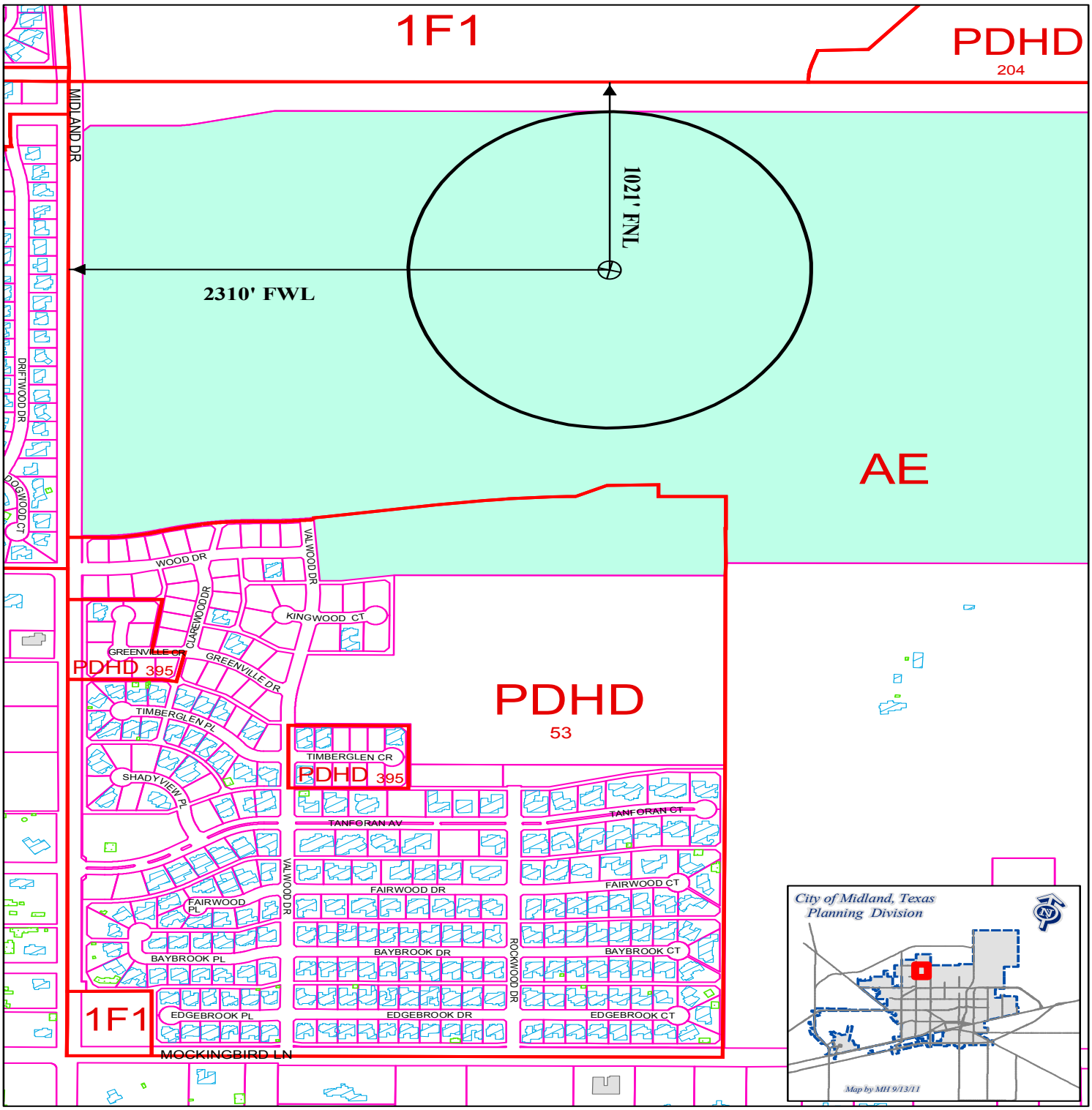
STATE OF TEXAS }

Wendell Brown, 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.

_____

Notary Public, State of Texas

PAM KIRBY
MY COMMISSION EXPIRES
May 1, 2012



LOCATION AND ZONING MAP

O - 11 - 001 **Scale: 1" = 600'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 1021' FNL and 2310' FWL, Section 8, Block "X", H. P. Hilliard Survey, Midland County, Texas.

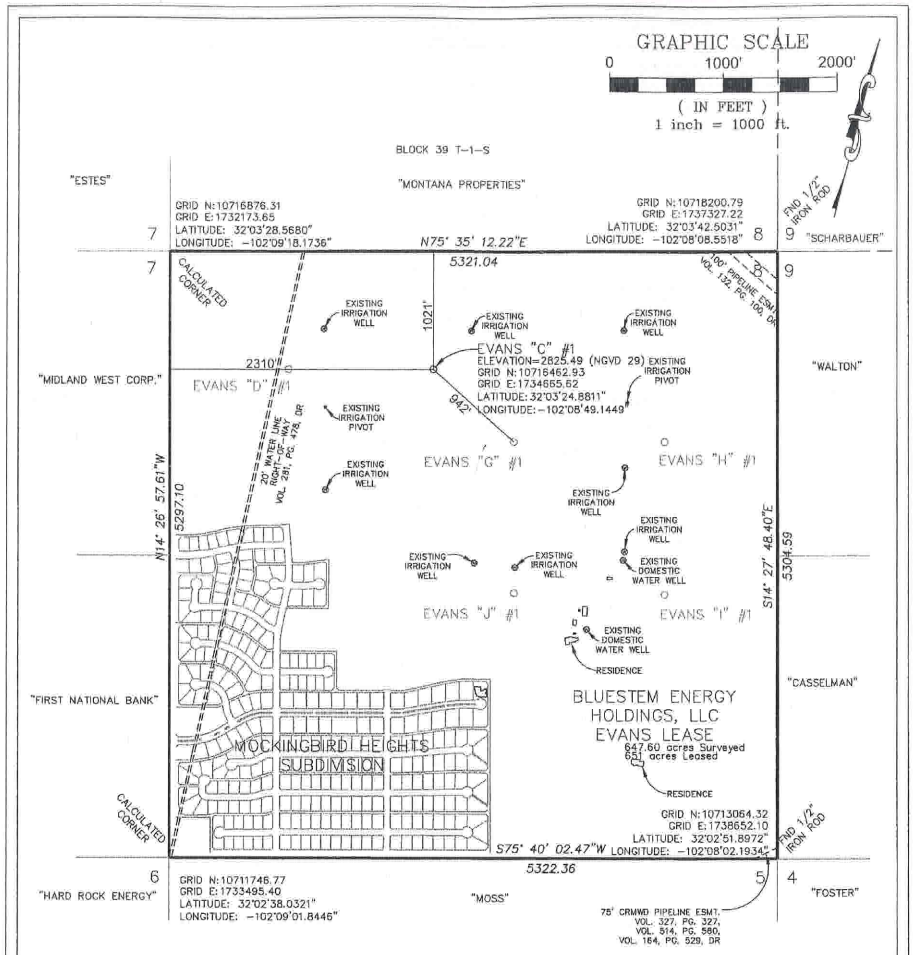
Evans "C" #1

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
SURVEY SEC.	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	

ZONING DISTRICTS:

		BP	BUSINESS PARK
FD	FUTURE DEVELOPMENT	P	PARKING
PD	PLANNED DISTRICT	01, O2	OFFICE
AE	AGRICULTURE ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY



NOTE:

COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS NORTH 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 5TH DAY OF AUGUST, 2011

Max A. Schumann Jr

MAX A. SCHUMANN, JR.
RPLS 137

STATE OF TEXAS
REGISTERED
MAX A. SCHUMANN, JR.
137
PROFESSIONAL
LAND SURVEYOR

LOCATION PLAT

BLUESTEM ENERGY HOLDINGS, LLC

WELL NO. EVANS "C" #1
EVANS LEASE

1021 FEET FROM THE NORTH AND
2310 FEET FROM THE WEST LINE

SECTION 8, ABSTRACT 17, BLOCK X,
T-1-S, H.P. HILLIARD SURVEY,

MIDLAND COUNTY, TEXAS

QUAD: NORTHWEST MIDLAND
SCALE: 1" = 1000'

PROJECT: 727470JD
JOB NO: 72,747-A

SCHUMANN ENGINEERING CO., INC.

REGISTERED PROFESSIONAL LAND SURVEYORS
LICENSED STATE LAND SURVEYORS

REGISTERED PROFESSIONAL CIVIL ENGINEERS
TEXAS and NEW MEXICO

Civil Engineering ~ Land Surveying

408 N. PECOS STREET - P. O. BOX 504
MIDLAND, TEXAS 79702-0504

Office (432) 684-5548
Fax (432) 684-6973

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO BLUESTEM ENERGY HOLDINGS, LLC ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 1021 FEET FROM THE NORTH LINE AND 2310 FEET FROM THE WEST LINE, SECTION 8, BLOCK "X", T-1-S, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF NORTH MIDLAND DRIVE, APPROXIMATELY 3/4 OF A MILE NORTH OF MOCKINGBIRD LANE)

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 September 27, 2011; 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 1021 feet from the north line and 2310 feet from the west line, Section 8, Block "X", T-1-S, 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.

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., 2011, 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

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on November 8, 2011, considered the application of Bluestem Energy Holdings, LLC, dated July 22, 2011, 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 Bluestem Energy Holdings, LLC , dated July 22, 2011, and filed with the Midland City Secretary, a copy of which is attached here to as Exhibit "A" and incorporated herein for all legal purposes.

The location of Bluestem Energy Holdings, LLC, Evans "C" #1 oil and gas well shall be 1,021 feet from the north line and 2,310 feet from the west line, Section 8, Blk 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 Bluestem Energy Holdings, LLC. , attached hereto as Exhibit "A". Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "B" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "C", and incorporated into and made a part of this permit for all purposes.

Exhibit "A"

This permit shall be effective from November 8, 2011, through November 8, 2012, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of November, 2011.

CITY OF MIDLAND, TEXAS

BY:_____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____day of November, 2011.

Bluestem Energy Holdings, LLC

By:_____

James C. Gresham, Jr. CPL

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

(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 polices.

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.

$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.

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: _____
James C. Gresham, Jr. CPL

Bluestem Energy Holdings, LLC
301 Commerce Street, STE. 2001
Ft. Worth, Texas 76102
(817)872-9800

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

(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 mcfd. 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 H_2S gas. If required by the Railroad Commission, equipment for the monitoring of H_2S 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 H_2S produced from the Well. If the results of the H_2S testing proves to be one hundred (100) PPM H_2S or greater, the Operator is responsible for determining the one hundred (100) PPM H_2S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H_2S 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 H_2S radius of exposure is greater than fifteen (15) feet:

i.

H_2S 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 H_2S 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 H_2S 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.

H_2S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H_2S 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 H_2S 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. WAIVED by City Council on November 8, 2011.

When this area is developed at a future time by the surface owner Bluestem Energy will landscape and irrigate the area surrounding the well site, consistent with surface owner housing development plan. In no event will the plan be of lesser quality than as contained in the Ordinance 8769.

(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: _____
James C. Gresham, Jr. CPL

Bluestem Energy Holdings, LLC
301 Commerce Street, Ste. 2001
Ft. Worth, Texas 76102
(817)872-9800

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **O-11-002; consider a resolution approving an oil and gas well drilling permit for Bluestem Energy (Evans "D" #1) on the east side of Midland Drive, north of Mockingbird Lane.**

Purpose:

To consider a resolution on a request from Bluestem Energy to drill an oil and gas well on property located 1,021' FNL and 1,041' FWL of the land described as Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. Council held a public hearing on September 27, 2011; therefore, it is now appropriate to consider a resolution since the required 30-day comment period has passed. No public comments were received.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

N/A

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval. The applicant is requesting a variance from the landscaping requirement. Bluestem expects to work with the surface owner to landscape around the well site, consistent with the surface owners housing development plan. Staff is in support.

Attachments: Application; Location map; Drill site location.

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
07/22/2011	Bluestem Energy Holdings, LLC	301 Commerce St, Ste.2001, Fort Worth, TX 76102

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432)687-4414
Wendell Brown	400 W. Illinois, Ste. 1630, Midland, TX 79701	Rep. Fax (432)682-4497
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: Wendell Brown, No.1 (432)687-4414, No.2 (432)889-5080

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B: Wendell Brown, No.1 (432)687-4414, No.2 (432)889-5080

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*** Robert Rendall ***, 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*** Robert Rendall ***, 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 "D" #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:

1021' FNL and 1041' 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:** None

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 buried in the proposed corridors as shown on Exhibit N.

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit 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

By: _____

Wendell Brown, Consultant

COUNTY OF MIDLAND }

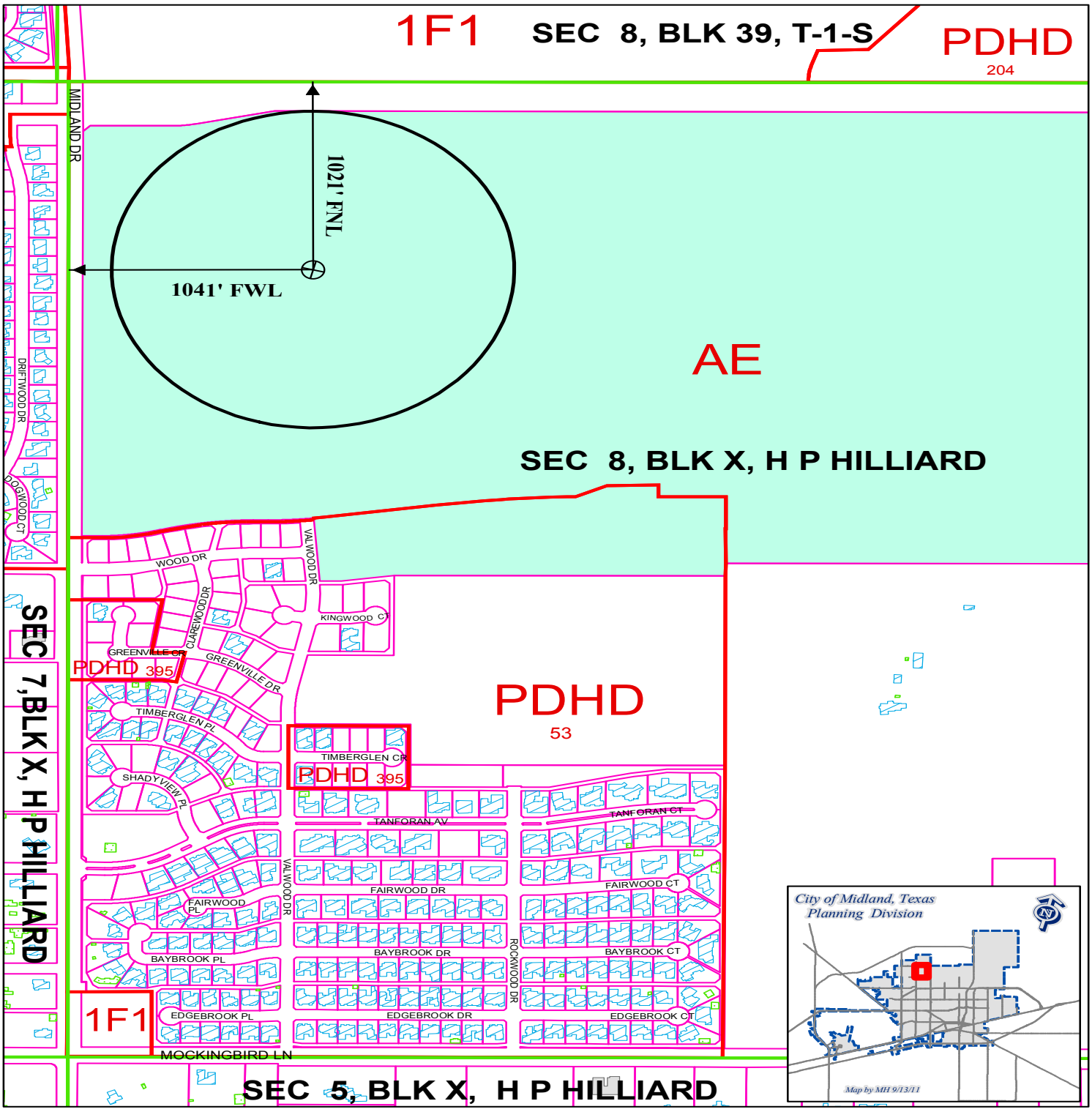
STATE OF TEXAS }

Wendell Brown, 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.

Pam Kirby

Notary Public, State of Texas

PAM KIRBY
MY COMMISSION EXPIRES
May 1, 2012



LOCATION AND ZONING MAP

O - 11 - 002 **Scale: 1" = 600'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 1021' FNL and 1041' FWL, Section 8, Block "X", H. P. Hilliard Survey, Midland County, Texas.

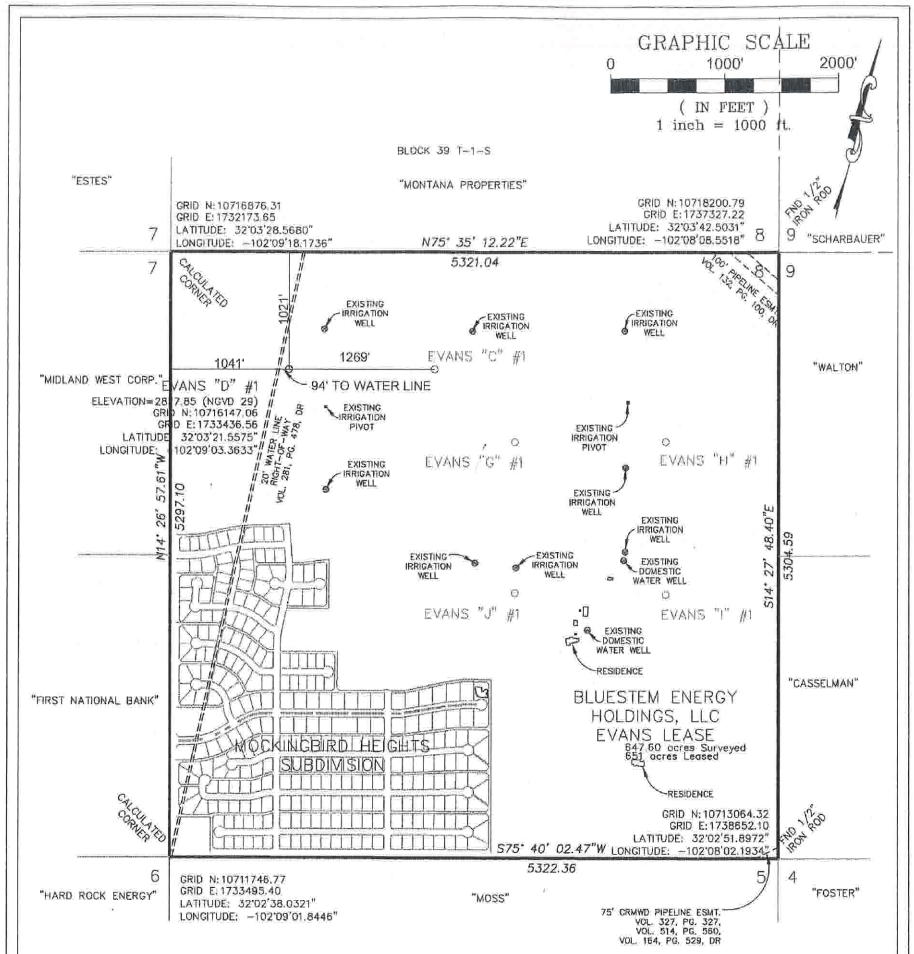
Evans "D" #1

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
SURVEY SEC.	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	

ZONING DISTRICTS:

		BP	BUSINESS PARK
FD	FUTURE DEVELOPMENT	P	PARKING
PD	PLANNED DISTRICT	01, O2	OFFICE
AE	AGRICULTURE ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY



NOTE:

COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS NORTH 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 5TH DAY OF AUGUST, 2011

Max A. Schumann, Jr.

MAX A. SCHUMANN, JR.
RPLS 137

STATE OF TEXAS
REGISTERED
MAX A. SCHUMANN, JR.
137
PROFESSIONAL
LAND SURVEYOR

SCHUMANN ENGINEERING CO., INC.

REGISTERED PROFESSIONAL LAND SURVEYORS
LICENSED STATE LAND SURVEYORS

REGISTERED PROFESSIONAL CIVIL ENGINEERS
TEXAS and NEW MEXICO

Civil Engineering ~ Land Surveying

408 N. PECOS STREET - P. O. BOX 504
MIDLAND, TEXAS 79702-0504

Office (432) 684-5548
Fax (432) 684-6973

LOCATION PLAT

BLUESTEM ENERGY HOLDINGS, LLC

WELL NO. EVANS "D" #1
EVANS LEASE

1021 FEET FROM THE NORTH AND
1041 FEET FROM THE WEST LINE

SECTION 8, ABSTRACT 17, BLOCK X,
T-1-S, H.P. HILLIARD SURVEY,

MIDLAND COUNTY, TEXAS

QUAD: NORTHWEST MIDLAND
SCALE: 1" = 1000'

PROJECT: 727470JD
JOB NO: 72,747-B

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO BLUESTEM ENERGY HOLDINGS, LLC ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 1021 FEET FROM THE NORTH LINE AND 1041 FEET FROM THE WEST LINE, SECTION 8, BLOCK "X", T-1-S, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF NORTH MIDLAND DRIVE, APPROXIMATELY 3/4 OF A MILE NORTH OF MOCKINGBIRD LANE)

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 September 27, 2011; 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 1021 feet from the north line and 1041 feet from the west line, Section 8, Block "X", T-1-S, 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.

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., 2011, 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

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on November 8, 2011, considered the application of Bluestem Energy Holdings, LLC, dated July 22, 2011, 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 Bluestem Energy Holdings, LLC , dated July 22, 2011, and filed with the Midland City Secretary, a copy of which is attached here to as Exhibit "A" and incorporated herein for all legal purposes.

The location of Bluestem Energy Holdings, LLC, Evans "D" #1 oil and gas well shall be 1,021 feet from the north line and 1,041 feet from the west line, Section 8, Blk 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 Bluestem Energy Holdings, LLC. , attached hereto as Exhibit "A". Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "B" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "C", and incorporated into and made a part of this permit for all purposes.

Exhibit "A"

This permit shall be effective from November 8, 2011, through November 8, 2012, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of November, 2011.

CITY OF MIDLAND, TEXAS

BY:_____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____day of November, 2011.

Bluestem Energy Holdings, LLC

By:_____

James C. Gresham, Jr. CPL

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

(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 polices.

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.

$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.

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: _____
James C. Gresham, Jr. CPL

Bluestem Energy Holdings, LLC
301 Commerce Street, STE. 2001
Ft. Worth, Texas 76102
(817)872-9800

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

(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 mcfd. 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 H_2S gas. If required by the Railroad Commission, equipment for the monitoring of H_2S 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 H_2S produced from the Well. If the results of the H_2S testing proves to be one hundred (100) PPM H_2S or greater, the Operator is responsible for determining the one hundred (100) PPM H_2S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H_2S 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 H_2S radius of exposure is greater than fifteen (15) feet:

i.

H_2S 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 H_2S 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 H_2S 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.

H_2S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H_2S 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 H_2S 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. WAIVED by City Council on November 8, 2011.

When this area is developed at a future time by the surface owner Bluestem Energy will landscape and irrigate the area surrounding the well site, consistent with surface owner housing development plan. In no event will the plan be of lesser quality than as contained in the Ordinance 8769.

(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: _____
James C. Gresham, Jr. CPL

Bluestem Energy Holdings, LLC
301 Commerce Street, Ste. 2001
Ft. Worth, Texas 76102
(817)872-9800

City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **O-11-003; consider a resolution approving an oil and gas well drilling permit for Bluestem Energy (Evans "G" #1) on the east side of Midland Drive, north of Mockingbird Lane.**

Purpose:

To consider a resolution on a request from Bluestem Energy to drill an oil and gas well on property located 1,650' FNL and 2,310' FEL of the land described as Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. Council held a public hearing on September 27, 2011; therefore, it is now appropriate to consider a resolution since the required 30-day comment period has passed. No public comments were received.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

N/A

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval. The applicant is requesting a variance from the landscaping requirement. Bluestem expects to work with the surface owner to landscape around the well site, consistent with the surface owners housing development plan. Staff is in support.

Attachments: Application; Location map; Drill site location.

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
07/22/2011	Bluestem Energy Holdings, LLC	301 Commerce St, Ste.2001, Fort Worth, TX 76102

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432)687-4414
Wendell Brown	400 W. Illinois, Ste. 1630, Midland,TX 79701	Rep. Fax (432)682-4497
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: Wendell Brown, No.1 (432)687-4414, No.2 (432)889-5080

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B: Wendell Brown, No.1 (432)687-4414, No.2 (432)889-5080

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*** Robert Rendall ***, 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*** Robert Rendall ***, 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 "G" #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:

1650' FNL and 2310' FEL, 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:** None

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 buried in the proposed corridors as shown on Exhibit N.

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit 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

By: _____

Wendell Brown, Consultant

COUNTY OF MIDLAND }

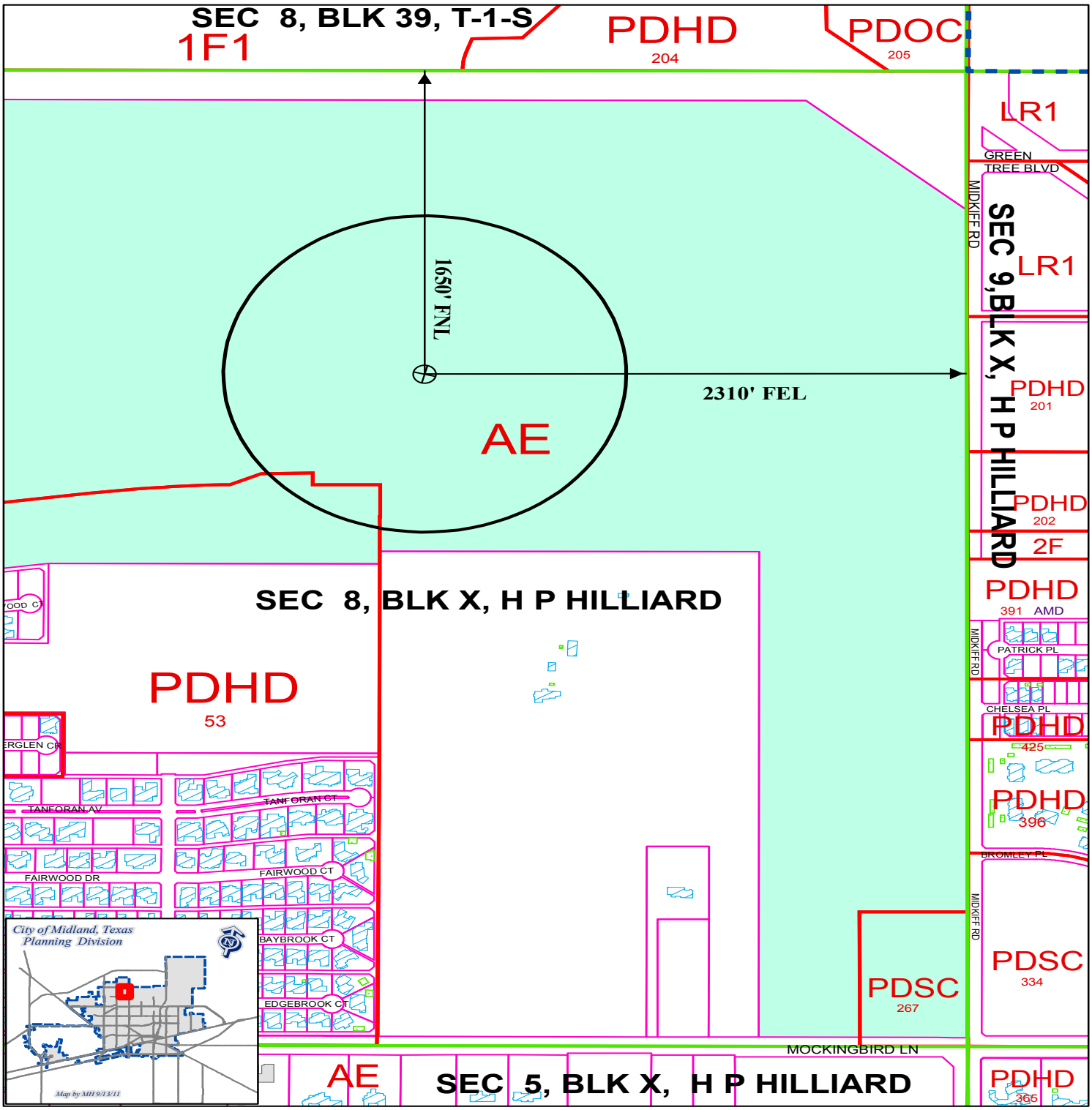
STATE OF TEXAS }

Wendell Brown, 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.

_____

Notary Public, State of Texas

PAM KIRBY
MY COMMISSION EXPIRES
May 1, 2012



LOCATION AND ZONING MAP

O - 11 - 003 **Scale: 1" = 600'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 1650' FNL and 2310' FEL, Section 8, Block "X", H. P. Hilliard Survey, Midland County, Texas.

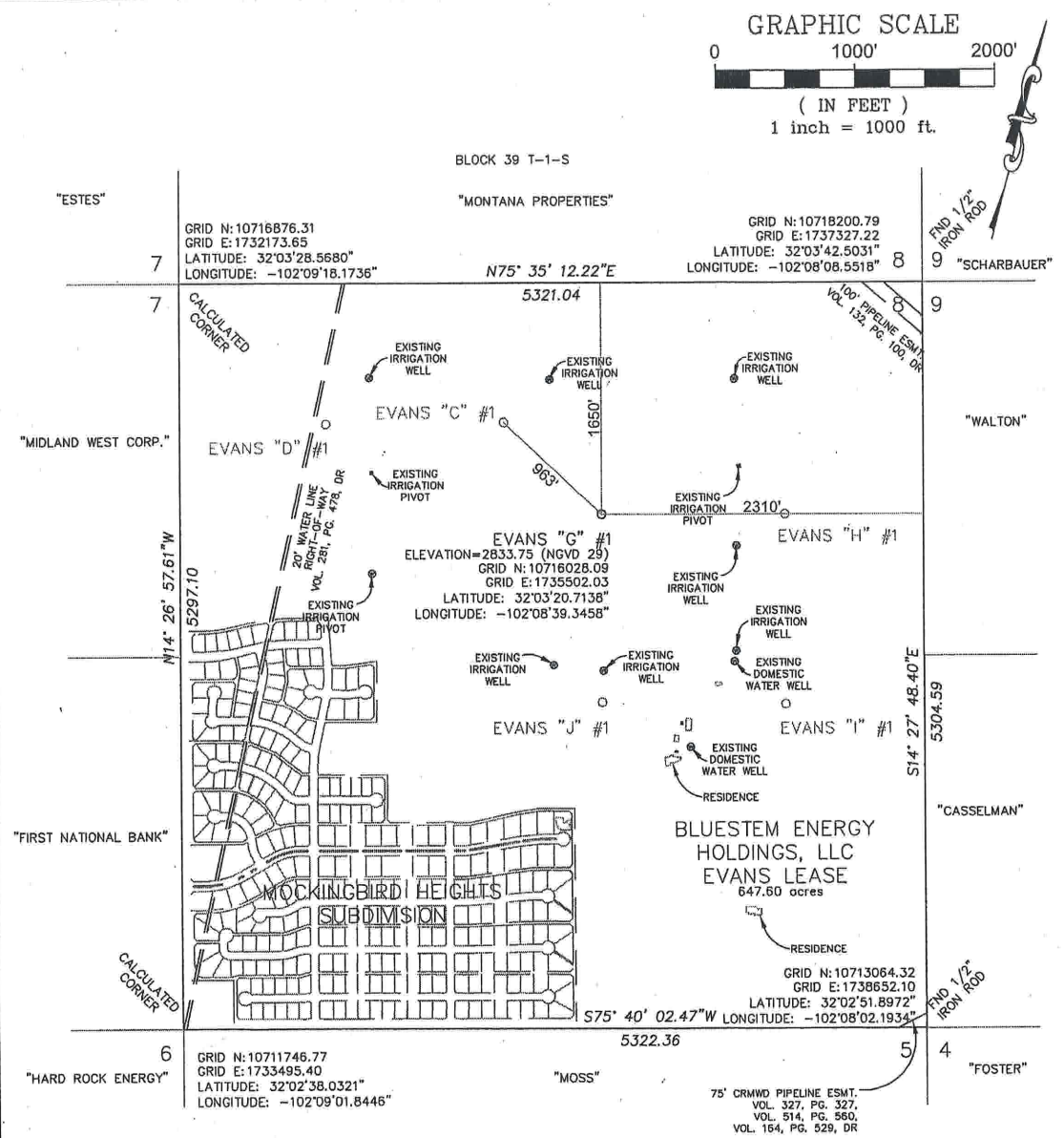
Evans "G" #1

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
SURVEY SEC.	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	

ZONING DISTRICTS:

		BP	BUSINESS PARK
FD	FUTURE DEVELOPMENT	P	PARKING
PD	PLANNED DISTRICT	01, O2	OFFICE
AE	AGRICULTURE ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY



NOTE:

COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS NORTH 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 26TH DAY OF JULY, 2011

Max A. Schumann Jr.

MAX A. SCHUMANN, JR.
RPLS 137

STATE OF TEXAS
REGISTERED
MAX A. SCHUMANN, JR.
137
PROFESSIONAL
LAND SURVEYOR

LOCATION PLAT

BLUESTEM ENERGY HOLDINGS, LLC

WELL NO. EVANS "G" #1
EVANS LEASE

1650 FEET FROM THE NORTH AND
2310 FEET FROM THE EAST LINE

SECTION 8, ABSTRACT 17, BLOCK X,
T-1-S, H.P. HILLIARD SURVEY,

MIDLAND COUNTY, TEXAS

QUAD: NORTHWEST MIDLAND
SCALE: 1" = 1000'

PROJECT: 72747OJD
JOB NO: 72,747-C

SCHUMANN ENGINEERING CO., INC.

REGISTERED PROFESSIONAL LAND SURVEYORS
LICENSED STATE LAND SURVEYORS

REGISTERED PROFESSIONAL CIVIL ENGINEERS
TEXAS and NEW MEXICO

Civil Engineering ~ Land Surveying

408 N. PECOS STREET - P. O. BOX 504
MIDLAND, TEXAS 79702-0504

Office (432) 684-5548
Fax (432) 684-6973

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO BLUESTEM ENERGY HOLDINGS, LLC ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 1650 FEET FROM THE NORTH LINE AND 2310 FEET FROM THE EAST LINE, SECTION 8, BLOCK "X", T-1-S, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDKIFF ROAD, APPROXIMATELY 3/4 OF A MILE NORTH OF MOCKINGBIRD LANE)

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 September 27, 2011; 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 1650 feet from the north line and 2310 feet from the east line, Section 8, Block "X", T-1-S, 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.

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., 2011, 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

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on November 8, 2011, considered the application of Bluestem Energy Holdings, LLC, dated July 22, 2011, 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 Bluestem Energy Holdings, LLC, dated July 22, 2011, and filed with the Midland City Secretary, a copy of which is attached here to as Exhibit "A" and incorporated herein for all legal purposes.

The location of Bluestem Energy Holdings, LLC, Evans "G" #1 oil and gas well shall be 1,650 feet from the north line and 2,310 feet from the east line, Section 8, Blk 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 Bluestem Energy Holdings, LLC, attached hereto as Exhibit "A". Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "B" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "C", and incorporated into and made a part of this permit for all purposes.

Exhibit "A"

This permit shall be effective from November 8, 2011, through November 8, 2012, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of November, 2011.

CITY OF MIDLAND, TEXAS

BY:_____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____day of November, 2011.

Bluestem Energy Holdings, LLC

By:_____

James C. Gresham, Jr. CPL

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

(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 polices.

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.

$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.

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: _____
James C. Gresham, Jr. CPL

Bluestem Energy Holdings, LLC
301 Commerce Street, STE. 2001
Ft. Worth, Texas 76102
(817)872-9800

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

(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 mcfd. 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 H_2S gas. If required by the Railroad Commission, equipment for the monitoring of H_2S 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 H_2S produced from the Well. If the results of the H_2S testing proves to be one hundred (100) PPM H_2S or greater, the Operator is responsible for determining the one hundred (100) PPM H_2S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H_2S 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 H_2S radius of exposure is greater than fifteen (15) feet:

i.

H_2S 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 H_2S 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 H_2S 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.

H_2S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H_2S 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 H_2S 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. WAIVED by City Council on November 8, 2011.

When this area is developed at a future time by the surface owner Bluestem Energy will landscape and irrigate the area surrounding the well site, consistent with surface owner housing development plan. In no event will the plan be of lesser quality than as contained in the Ordinance 8769.

(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: _____
James C. Gresham, Jr. CPL

Bluestem Energy Holdings, LLC
301 Commerce Street, Ste. 2001
Ft. Worth, Texas 76102
(817)872-9800

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **O-11-004; consider a resolution approving an oil and gas well drilling permit for Bluestem Energy (Evans "H" #1) on the east side of Midland Drive, north of Mockingbird Lane.**

Purpose:

To consider a resolution on a request from Bluestem Energy to drill an oil and gas well on property located 1,650' FNL and 990' FEL of the land described as Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. Council held a public hearing on September 27, 2011; therefore, it is now appropriate to consider a resolution since the required 30-day comment period has passed. No public comments were received.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

N/A

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval. The applicant is requesting a variance from the landscaping requirement. Bluestem expects to work with the surface owner to landscape around the well site, consistent with the surface owners housing development plan. Staff is in support.

Attachments: Application; Location map; Drill site location.

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
07/22/2011	Bluestem Energy Holdings, LLC	301 Commerce St, Ste.2001, Fort Worth, TX 76102

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432)687-4414
Wendell Brown	400 W. Illinois, Ste. 1630, Midland,TX 79701	Rep. Fax (432)682-4497
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: Wendell Brown, No.1 (432)687-4414, No.2 (432)889-5080

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B: Wendell Brown, No.1 (432)687-4414, No.2 (432)889-5080

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*** Robert Rendall ***, 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*** Robert Rendall ***, 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 "H" #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:

1650' FNL and 990' FEL, 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:** None

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 buried in the proposed corridors as shown on Exhibit N.

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit 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

By: _____

Wendell Brown, Consultant

COUNTY OF MIDLAND }

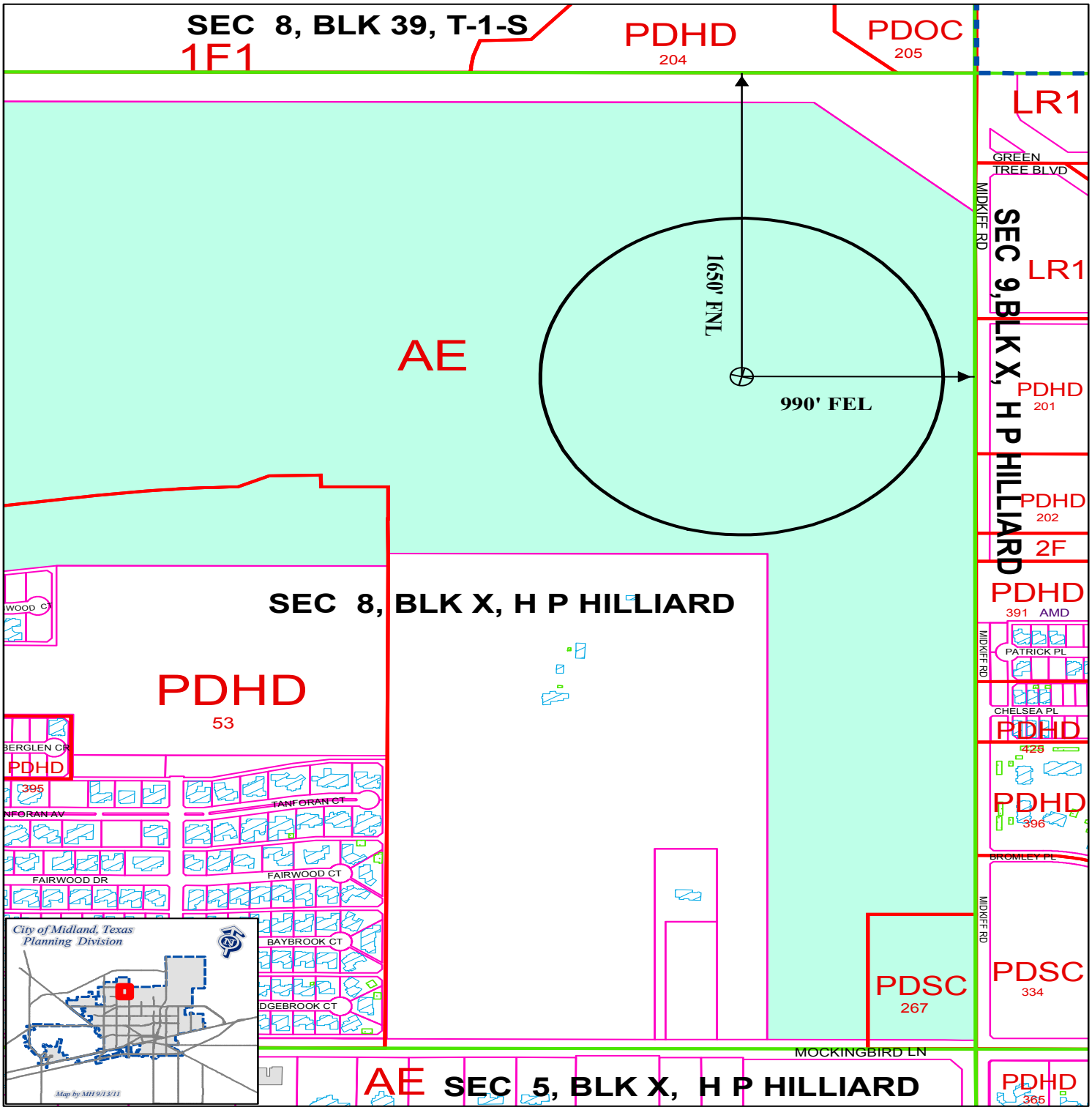
STATE OF TEXAS }

Wendell Brown, 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.

Pam Kirby

Notary Public, State of Texas

PAM KIRBY
MY COMMISSION EXPIRES
May 1, 2012



LOCATION AND ZONING MAP

O - 11 - 004 **Scale: 1" = 600'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 1650' FNL and 990' FEL, Section 8, Block "X", H. P. Hilliard Survey, Midland County, Texas.

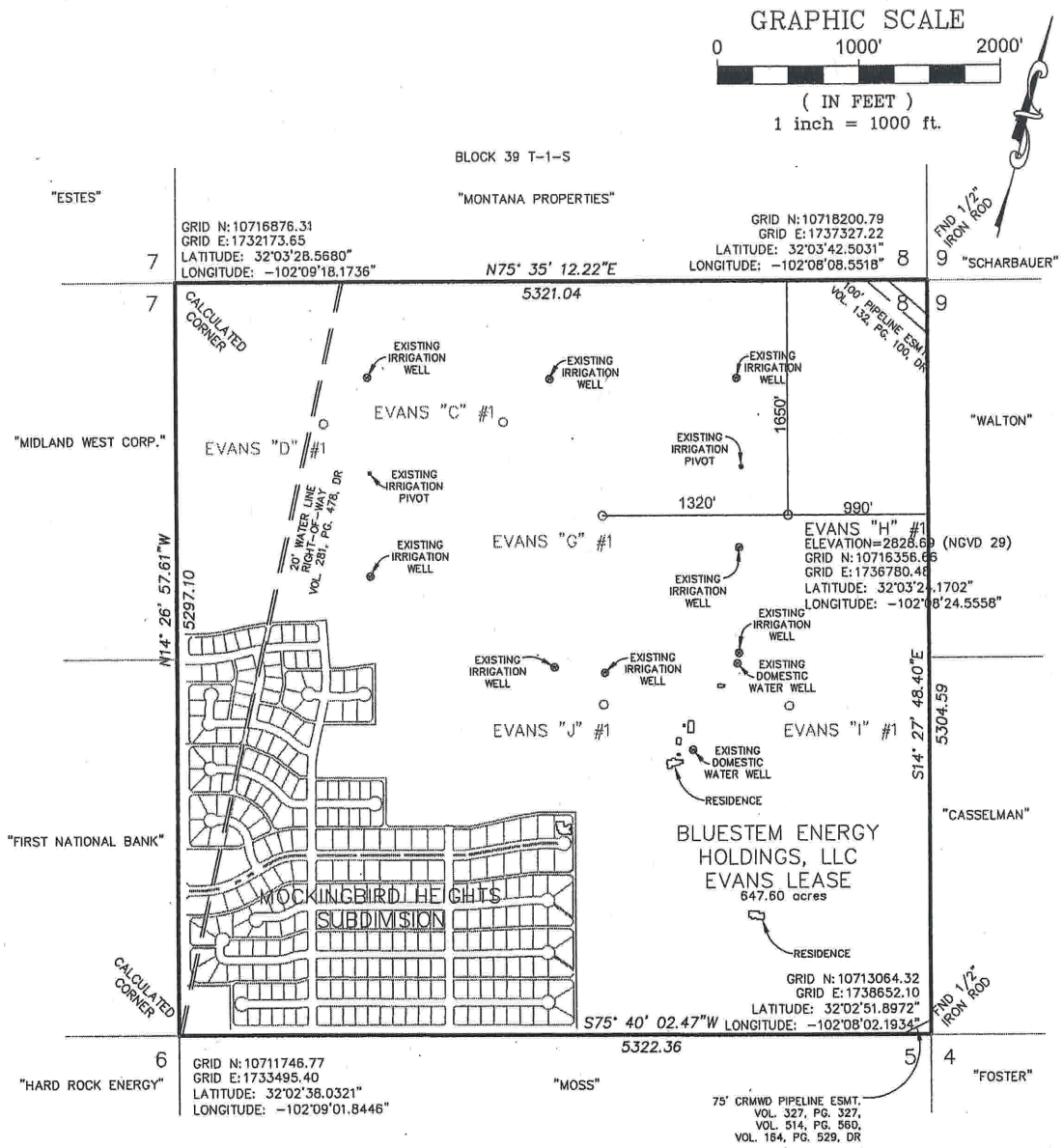
Evans "H" #1

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
SURVEY SEC.	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	

ZONING DISTRICTS:

		BP	BUSINESS PARK
FD	FUTURE DEVELOPMENT	P	PARKING
PD	PLANNED DISTRICT	01, O2	OFFICE
AE	AGRICULTURE ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY



NOTE:

COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS NORTH 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 26TH DAY OF JULY, 2011

Max A. Schumann Jr.

MAX A. SCHUMANN, JR.
RPLS 137

STATE OF TEXAS
REGISTERED
MAX A. SCHUMANN, JR.
137
PROFESSIONAL
LAND SURVEYOR

LOCATION PLAT

BLUESTEM ENERGY HOLDINGS, LLC

WELL NO. EVANS "H" #1
EVANS LEASE

1650 FEET FROM THE NORTH AND
990 FEET FROM THE EAST LINE

SECTION 8, ABSTRACT 17, BLOCK X,
T-1-S, H.P. HILLIARD SURVEY,

MIDLAND COUNTY, TEXAS

QUAD: NORTHWEST MIDLAND
SCALE: 1" = 1000'

PROJECT: 727470JD
JOB NO: 72,747-D

SCHUMANN ENGINEERING CO., INC.

REGISTERED PROFESSIONAL LAND SURVEYORS
LICENSED STATE LAND SURVEYORS

REGISTERED PROFESSIONAL CIVIL ENGINEERS
TEXAS and NEW MEXICO

Civil Engineering ~ Land Surveying

408 N. PECOS STREET - P. O. BOX 504
MIDLAND, TEXAS 79702-0504

Office (432) 684-5548
Fax (432) 684-6973

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO BLUESTEM ENERGY HOLDINGS, LLC ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 1650 FEET FROM THE NORTH LINE AND 990 FEET FROM THE EAST LINE, SECTION 8, BLOCK "X", T-1-S, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDKIFF ROAD, APPROXIMATELY 3/4 OF A MILE NORTH OF MOCKINGBIRD LANE)

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 September 27, 2011; 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 1650 feet from the north line and 990 feet from the east line, Section 8, Block "X", T-1-S, 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.

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., 2011, 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

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on November 8, 2011, considered the application of Bluestem Energy Holdings, LLC, dated July 22, 2011, 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 Bluestem Energy Holdings, LLC, dated July 22, 2011, and filed with the Midland City Secretary, a copy of which is attached here to as Exhibit "A" and incorporated herein for all legal purposes.

The location of Bluestem Energy Holdings, LLC, Evans "H" #1 oil and gas well shall be 1,650 feet from the north line and 990 feet from the east line, Section 8, Blk 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 Bluestem Energy Holdings, LLC, attached hereto as Exhibit "A". Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "B" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "C", and incorporated into and made a part of this permit for all purposes.

Exhibit "A"

This permit shall be effective from November 8, 2011, through November 8, 2012, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of November, 2011.

CITY OF MIDLAND, TEXAS

BY:_____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____day of November, 2011.

Bluestem Energy Holdings, LLC

By:_____

James C. Gresham, Jr. CPL

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

(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 polices.

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.

$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.

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: _____
James C. Gresham, Jr. CPL

Bluestem Energy Holdings, LLC
301 Commerce Street, STE. 2001
Ft. Worth, Texas 76102
(817)872-9800

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

(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 mcfd. 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 H_2S gas. If required by the Railroad Commission, equipment for the monitoring of H_2S 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 H_2S produced from the Well. If the results of the H_2S testing proves to be one hundred (100) PPM H_2S or greater, the Operator is responsible for determining the one hundred (100) PPM H_2S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H_2S 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 H_2S radius of exposure is greater than fifteen (15) feet:

i.

H_2S 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 H_2S 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 H_2S 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.

H_2S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H_2S 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 H_2S 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. WAIVED by City Council on November 8, 2011.

When this area is developed at a future time by the surface owner Bluestem Energy will landscape and irrigate the area surrounding the well site, consistent with surface owner housing development plan. In no event will the plan be of lesser quality than as contained in the Ordinance 8769.

(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: _____
James C. Gresham, Jr. CPL

Bluestem Energy Holdings, LLC
301 Commerce Street, Ste. 2001
Ft. Worth, Texas 76102
(817)872-9800

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **O-11-005; consider a resolution approving an oil and gas well drilling permit for Bluestem Energy (Evans "I" #1) on the east side of Midland Drive, north of Mockingbird Lane.**

Purpose:

To consider a resolution on a request from Bluestem Energy to drill an oil and gas well on property located 2,310' FSL and 990' FEL of the land described as Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas. Council held a public hearing on September 27, 2011; therefore, it is now appropriate to consider a resolution since the required 30-day comment period has passed. No public comments were received.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

N/A

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval. The applicant is requesting a variance from the landscaping requirement. Bluestem expects to work with the surface owner to landscape around the well site, consistent with the surface owners housing development plan. Staff is in support.

Attachments: Application; Location map; Drill site location.

MIDLAND
Planning Division

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date	Operator Name (must match W-1)	Operator Address
07/22/2011	Bluestem Energy Holdings, LLC	301 Commerce St, Ste.2001, Fort Worth, TX 76102

Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432)687-4414
Wendell Brown	400 W. Illinois, Ste. 1630, Midland,TX 79701	Rep. Fax (432)682-4497
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: Wendell Brown, No.1 (432)687-4414, No.2 (432)889-5080

24/7 Answering Services - No. 1 (Tele.): **No. 2 (Tele.):**

Option B: Wendell Brown, No.1 (432)687-4414, No.2 (432)889-5080

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*** Robert Rendall ***, 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*** Robert Rendall ***, 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 "I" #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:

2310' FSL and 990' FEL, 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:** None

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 buried in the proposed corridors as shown on Exhibit N.

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit 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

By: _____

Wendell Brown, Consultant

COUNTY OF MIDLAND }

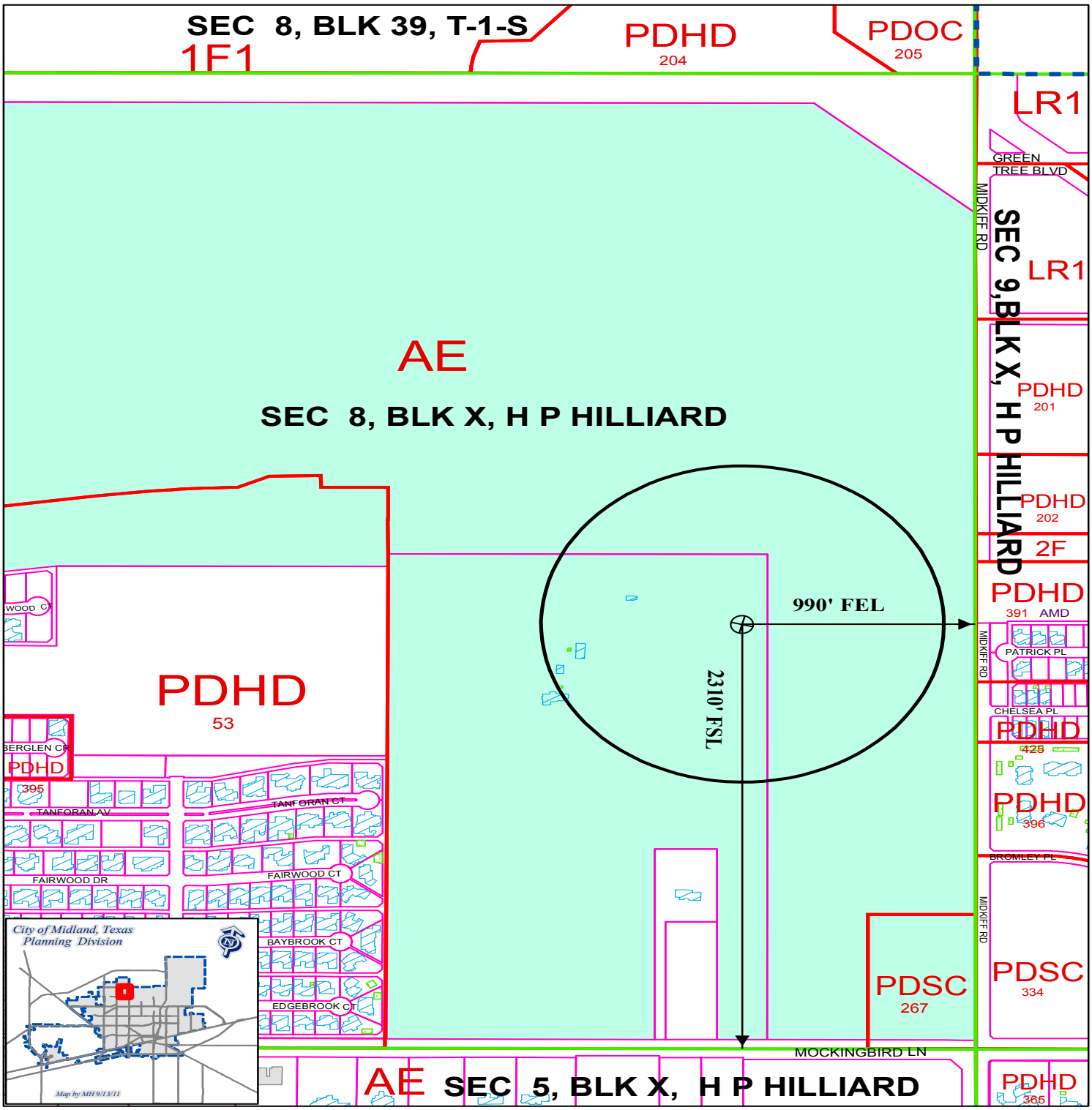
STATE OF TEXAS }

Wendell Brown, 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.

Pam Kirby

Notary Public, State of Texas

PAM KIRBY
MY COMMISSION EXPIRES
May 1, 2012



LOCATION AND ZONING MAP

O - 11 - 005 **Scale: 1" = 600'**

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 2310' FSL and 990' FEL, Section 8, Block "X", H. P. Hilliard Survey, Midland County, Texas.

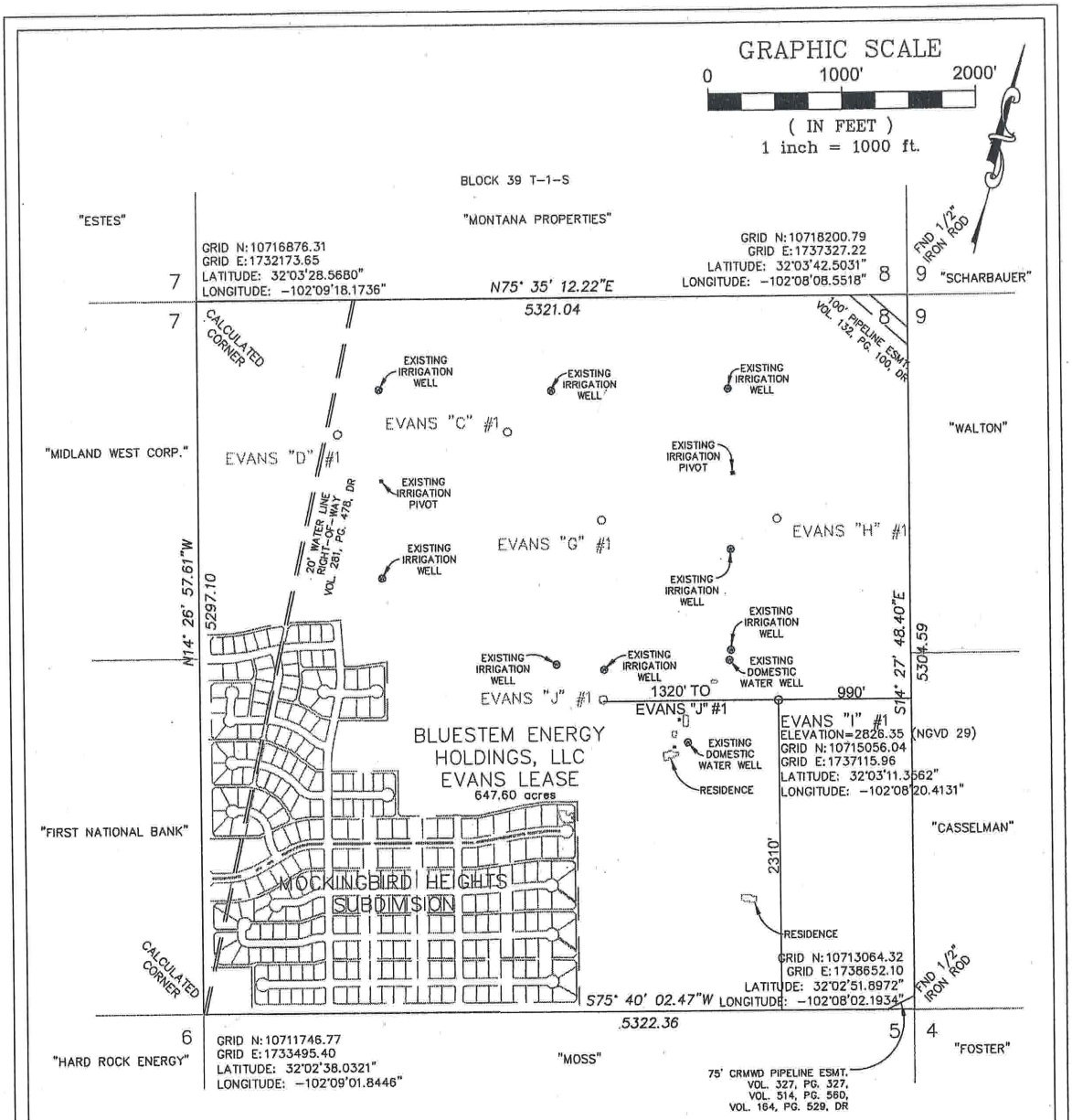
Evans "I" #1

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
SURVEY SEC.	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	

ZONING DISTRICTS:

		BP	BUSINESS PARK
FD	FUTURE DEVELOPMENT	P	PARKING
PD	PLANNED DISTRICT	01, O2	OFFICE
AE	AGRICULTURE ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2 ,LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP ,IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY



NOTE:

COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS NORTH 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 26TH DAY OF JULY, 2011

MAX A. SCHUMANN, JR.
RPLS 137

STATE OF TEXAS
REGISTERED
MAX A. SCHUMANN, JR.
137
PROFESSIONAL
LAND SURVEYOR

LOCATION PLAT

BLUESTEM ENERGY HOLDINGS, LLC

WELL NO. EVANS "I" #1
EVANS LEASE

2310 FEET FROM THE SOUTH AND
990 FEET FROM THE EAST LINE

SECTION 8, ABSTRACT 17, BLOCK X,
T-1-S, H.P. HILLIARD SURVEY,

MIDLAND COUNTY, TEXAS

QUAD: NORTHWEST MIDLAND
SCALE: 1" = 1000'

PROJECT: 727470JD
JOB NO: 72,747-E

SCHUMANN ENGINEERING CO., INC.

REGISTERED PROFESSIONAL LAND SURVEYORS
LICENSED STATE LAND SURVEYORS

REGISTERED PROFESSIONAL CIVIL ENGINEERS
TEXAS and NEW MEXICO

Civil Engineering ~ Land Surveying

408 N. PECOS STREET - P. O. BOX 504
MIDLAND, TEXAS 79702-0504

Office (432) 684-5548
Fax (432) 684-6973

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO BLUESTEM ENERGY HOLDINGS, LLC ("OPERATOR") TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 2310 FEET FROM THE SOUTH LINE AND 990 FEET FROM THE EAST LINE, SECTION 8, BLOCK "X", T-1-S, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDKIFF ROAD, APPROXIMATELY ½ MILE NORTH OF MOCKINGBIRD LANE)

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 September 27, 2011; 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 2310 feet from the south line and 990 feet from the east line, Section 8, Block "X", T-1-S, 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.

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., 2011, 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

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on November 8, 2011, considered the application of Bluestem Energy Holdings, LLC, dated July 22, 2011, 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 Bluestem Energy Holdings, LLC, dated July 22, 2011, and filed with the Midland City Secretary, a copy of which is attached here to as Exhibit "A" and incorporated herein for all legal purposes.

The location of Bluestem Energy Holdings, LLC, Evans "I" #1 oil and gas well shall be 2,310 feet from the south line and 990 feet from the east line, Section 8, Blk 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 Bluestem Energy Holdings, LLC, attached hereto as Exhibit "A". Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "B" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "C", and incorporated into and made a part of this permit for all purposes.

Exhibit "A"

This permit shall be effective from November 8, 2011, through November 8, 2012, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of November, 2011.

CITY OF MIDLAND, TEXAS

BY:_____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____day of November, 2011.

Bluestem Energy Holdings, LLC

By:_____

James C. Gresham, Jr. CPL

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

(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 polices.

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.

$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.

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: _____
James C. Gresham, Jr. CPL

Bluestem Energy Holdings, LLC
301 Commerce Street, STE. 2001
Ft. Worth, Texas 76102
(817)872-9800

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

(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 mcfd. 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 H_2S gas. If required by the Railroad Commission, equipment for the monitoring of H_2S 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 H_2S produced from the Well. If the results of the H_2S testing proves to be one hundred (100) PPM H_2S or greater, the Operator is responsible for determining the one hundred (100) PPM H_2S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H_2S 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 H_2S radius of exposure is greater than fifteen (15) feet:

i.

H_2S 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 H_2S 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 H_2S 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.

H_2S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H_2S 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 H_2S 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. WAIVED by City Council on November 8, 2011.

When this area is developed at a future time by the surface owner Bluestem Energy will landscape and irrigate the area surrounding the well site, consistent with surface owner housing development plan. In no event will the plan be of lesser quality than as contained in the Ordinance 8769.

(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: _____
James C. Gresham, Jr. CPL

Bluestem Energy Holdings, LLC
301 Commerce Street, Ste. 2001
Ft. Worth, Texas 76102
(817)872-9800

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Cameron Walker, Planning Division Manager**

SUBJECT: **O-11-001 through O-11-005; consider a resolution approving a road repair agreement between the City of Midland and Bluestem Energy Holdings, LLP. related to proposed oil and gas well permits (Evans "C" #1, "D" #1, "G" #1, "H" #1 and "I" #1) on the east side of Midland Drive, north of Mockingbird Lane.**

Purpose:

Consider a resolution approving a road repair agreement between the City of Midland and Bluestem Energy Holdings, LLP.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

This agreement will cover the cost of road damages to Midkiff Road that are attributable to Bluestem Energy in association with five requested drilling permits. The amount of the certificate of deposit is $75,000; this is the amount specified in the City's oil and gas drilling regulations.

Discussion:

Bluestem Energy has met the requirements contained in the City code related to this matter. Staff recommends approval.

Attachments:

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A ROAD REPAIR AGREEMENT WITH BLUESTEM ENERGY HOLDINGS, LLC REGARDING ITS APPLICATIONS TO DRILL OIL AND GAS WELLS WITHIN THE CITY LIMITS IN SECTION 8, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a road repair agreement with Bluestem Energy Holdings, LLC;

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

THAT the Mayor is hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, Texas, a road repair agreement with Bluestem Energy Holdings, LLC. Said agreement shall be substantially similar in form as that of Exhibit "A", which is attached hereto 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., 2011, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

L:\Resolutions\Planning\Oil & Gas Well Permits - After January 1, 2010\2011\Bluestem - Road Repair Agreement.wpd

ROAD REPAIR AGREEMENT

Bluestem Energy Holdings, LLC ("Bluestem") intends to use portions of the State Highway Loop 250 and N. Midkiff Road, ("Access Route") to access its Evans oil and gas lease as provided in its applications for the wells listed herein. The initial five wells to be drilled are the Bluestem Evans "C" #1, Evans "D" #1, Evans "G" #1, Evans "H" #1, and Evans "I" #1. Bluestem as operator agrees to pay actual road repair costs up to a maximum amount of Seventy-Five Thousand and no /hundred dollars ($75,000.00) per calendar year for damage done to Access Route and the lease entrance gate to the extent that any such damage is verifiably attributable to traffic servicing the Evans Lease. Bluestem will not be obligated to pay for any damage to Access Route attributable to other parties or for damage associated with normal wear and tear. Bluestem will not be required to pay road repair in excess of $75,000 per calendar year per well it operates within the city limits in Section 8 Block X, H.P. Hilliard Survey, Midland County Texas. In the event such letter of credit, certificate of deposit or surety bond is not restored to $75,000.00 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 Permits shall be suspended on such date and the Operator's right to operate under Oil and Gas Well Permits shall immediately cease until the Operator files the required letter of credit, or certificate of deposit or surety bond.

Bluestem and the City of Midland agree that documentation of any road damage determined to be caused by Bluestem's use of Access Route to access the Evans Lease shall be presented to Bluestem. If the Operator does not agree the Operator may file a written objection with the City Manager with ten (10) days of being notified of the road damage. The City Manager shall review the objections and give Bluestem the opportunity to be heard and present facts that Bluestem deems relevant. 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) General Conditions of all Oil and Gas Well Permits, in order to remedy such situation under ordinance 8769, 6-1-23 "Oil & Gas Well Permits". The amount drawn from the certificate of deposit shall not exceed the limits previously described by this agreement.

AGREED TO AND ACCEPTED BY THE FOLLOWING PARTIES

Bluestem Energy Holdings, LLC	City of Midland, Texas
Date: _____	Date: _____
By: _____	By: _____
John M. Cherry, Executive Vice President	Mayor: W. Wesley Perry

Exhibit "A"

City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: **November 8, 2011**

TO: **CITY COUNCIL/CITY MANAGER**

FROM: **Stuart T. Purvis, Director of Utilities**

SUBJECT: **Approve Award of a Professional Services Agreement with Freese and Nichols, Inc. to Evaluate and Recommend Potential Water Use Reduction Programs**

Purpose:

Consider a resolution authorizing the City Manager to enter into a Professional Services Agreement with Freese and Nichols, Inc. to evaluate and recommend potential water use reduction programs and appropriate funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

Award amount is $170,880 from the Water and Sewer Fund

Discussion:

The Council approved an RFQ to be issued for a firm to evaluate and recommend potential water use reduction programs during their meeting on July 12, 2011. Freese and Nichols exhibited the most comprehensive response to that request and has been selected for this project. They will provide the City an analysis of programs, both internal and external, that are intended to result in the overall reduction of water use for the City at the lowest cost to the Utility. Programs will be evaluated from across the state as well as from the southwest region of the country.

Once this list is compiled and edited, with the input of a citizen advisory group, a presentation will be made to Council with recommendations of programs to be implemented. This presentation will include costs, anticipated savings, and resources required for the successful implementation of a water conservation program in the City.

Staff recommends approval of this contract.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH FREESE & NICHOLS, INCORPORATED, FOR THE EVALUATION AND RECOMMENDATION OF POTENTIAL WATER USE REDUCTION PROGRAMS, AT A TOTAL COST OF $170,880.00; AND APPROPRIATING FUNDS

WHEREAS, the Utilities Department advertised a Request for Qualifications for firms to evaluate and recommend potential water use reduction programs ("Professional Services"); and

WHEREAS, Freese and Nichols, Inc., proposes to perform said Professional Services for a fee not to exceed $170,880.00; and

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

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

WHEREAS, the Council authorizes the Mayor to execute a professional services agreement with Freese and Nichols, Inc., for the performance of said Professional Services;

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

SECTION ONE. That the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a professional services agreement with Freese and Nichols, Inc., for performance of said Professional Services, said agreement being attached hereto as Exhibit "1" and incorporated herein for all legal purposes.

SECTION TWO. That the sum of $170,880.00 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Evaluate Water Use Reduction Project (8973).

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

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2011, 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

PROFESSIONAL SERVICES AGREEMENT
WATER CONSERVATION REDUCTION PLAN

THIS AGREEMENT is made and effective the 9th day of November, 2011, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "City,"and FREESE AND NICHOLS, INCORPORATED, hereinafter referred to as "Company."

ARTICLE I.
PURPOSE

The purpose of this Agreement is to state the terms and conditions under which Company shall evaluate and recommend potential water use reduction programs.

ARTICLE II.
SERVICES TO BE PERFORMED

1. Company shall provide those services described in the Scope of Services attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

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

ARTICLE III.
FINANCIAL CONSIDERATIONS

City agrees to pay Company in an amount not to exceed $170,880.00 for the professional services described in Exhibit "A." City agrees to pay Company for Labor, Incidental Direct Costs and Subcontractor Costs as set forth in Exhibit "A" upon presentation of a monthly invoice. The invoice shall set out Labor fees for the month and those Incidental Direct Costs and Subcontractor Costs described in Exhibit "A"incurred during the previous month. The City Manager or Interim City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of receipt of the monthly invoice, City shall pay the full amount of such invoice; provided, however, that if City objects to any portion of an invoice, City shall notify Company of City's objection and the grounds therefor within 30 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. City in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV.
TERM

The term of this Agreement shall be from November 9, 2011, until November 8, 2012, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V.
TERMINATION

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

ARTICLE VI.
CONTRACT PERSONAL

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

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

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

ARTICLE VIII.
INDEPENDENT CONTRACTOR

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

ARTICLE IX.
INSURANCE

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

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 or policy aggregate, including completed operations, and shall be on an occurrence basis.

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

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

All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name the City as an additional insured 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 City.

The parties agree that, prior to the execution of the Agreement, Company shall provide one or more certificates of insurance showing that the requirements of this article have been met, and specifically containing, without limitations, the following endorsement:

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

City shall be provided the notice by Company's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage. City shall not be required to provide any insurance whatsoever pursuant to this Agreement.

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

ARTICLE X.
ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, THE PARTIES AGREE TO WAIVE AND DO HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM THEY HAVE OR MAY HAVE IN THE FUTURE AGAINST THE OTHER, 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 PARTIES SPECIFICALLY AGREE THAT IF ONE OR THE OTHER 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, EACH PARTY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH THEY MIGHT OTHERWISE BE ENTITLED.

THE PARTIES AGREE THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. THE PARTIES ACKNOWLEDGE THAT THEY UNDERSTAND ALL TERMS AND CONDITIONS OF THE AGREEMENT. THE PARTIES FURTHER ACKNOWLEDGE AND AGREE THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN THE CITY AND THE COMPANY. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

ARTICLE XI.
SOVEREIGN IMMUNITY

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

ARTICLE XII.
NO THIRD PARTY BENEFICIARIES

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

ARTICLE XIII.
RELEASE

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

ARTICLE XIV.
GENERAL PROVISIONS

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

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

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

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

If to Company: Freese & Nichols, Inc,
Attn: Simone F. Kiel, P.E.
4055 International Plaza, Ste. 200
Fort Worth, Texas 76109-4895

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

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

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

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

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

ARTICLE XV.
NOTICE OF ALLEGED BREACH:
STATUTORY PREREQUISITES

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

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

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

ARTICLE XVI.
ASSIGNMENT

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By:_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

Company :
FREESE & NICHOLS, INC.

By: _____

Title: _____

STATE OF TEXAS §
§
COUNTY OF _____ §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day of _____, A.D., 2011.

_____
Notary Public, State of Texas

_____
Printed Name

My Commission Expires:_____

L:\Contracts\Utilities\Agreement\2011\PSA Freese & Nichols Water Conservation.wpd

SCOPE OF SERVICES

BACKGROUND

The City of Midland is experiencing drought conditions with the possibility of limited supplies. In order to meet this challenge the City would like to develop a water conservation reduction incentive program. This study provides the necessary research and evaluations of potential conservation strategies to identify the strategies most appropriate for Midland.

ARTICLE I

BASIC SERVICES: FNI will render the following professional services to the City of Midland in the preparation of the Evaluation of Water Conservation Reduction Incentive Programs.

Task 1: Meetings and Public Coordination

1.1 Meetings

a. Hold a kick-off meeting with the City of Midland.

b. Attend up to two (2) additional meetings with Midland staff.

c. Conduct up to three (3) teleconferences with Midland staff.

1.2 Citizen Advisory Group on Conservation

a. Assist the city in organizing a citizen advisory group to provide comments on the programs and implementation.

b. Attend three (3) Citizen Advisory Group on Conservation (CAGC) meetings. Prepare presentations and solicit input.

1.3 Present findings of study to City Council

Deliverables: Meeting minutes

Task 2: Assessment of Midland's Current Water Use and Conservation Programs

2.1 Gather Midland's water use data for the past five (5) years.

a. Examine water use by type of use, monthly patterns and location.

i. Using geocoded water data identify areas with higher than average winter (indoor) water use and areas with higher summer (outdoor) water use.

b. Review water loss records reported to the TWDB

c. Review Midland's water quality for constituents that may impact specific conservation strategies (e.g., total dissolved solids, hardness)

d. Review Midland's current rate structure.

i. Prepare a comparison of rate structure to similar cities in the area (Odessa, San Angelo)

2.2 Review Midland's existing conservation programs.

a. Water Conservation and Drought Contingency Plan

b. Current conservation programs and data on savings

c. Review existing ordinances regarding irrigation, landscaping and development

Deliverables: Memorandum on Midland's current water use and conservation potential

Task 3: Assessment of Potential Water Conservation Strategies

3.1 Conduct teleconferences with up to six (6) cities with successful conservation programs in arid climates. Potential cities may include Albuquerque, Santa Fe, San Antonio, Austin, Phoenix and Las Vegas.

a. Gather data on their programs, including water savings, implementation costs, participation, institutional challenges and public acceptances.

3.2 Review published literature on conservation practices, including the TWDB Report 362, Best Management Practices.

3.3 Identify existing reuse customers and with Midland staff input, identify potential additional customers for reuse water. At a screening level, identify infrastructure improvements necessary to serve potential customers.

3.4 Financial Evaluation of Conservation Measures

a. Collect cost data of conservation programs from multiple sources, including cities contacted through the teleconferences, published data and vendors.

b. Evaluate cost-effectiveness for conservation measures on a ten year basis

3.5 Develop a screening matrix of conservation strategies. Considerations include, but are not limited to, quantity of water saved, technical effectiveness, cost, time to implement, and institutional considerations.

Deliverables: Conservation Screening Matrix

Task 4: Identify Strategies Appropriate for Midland

4.1 Based on the screening matrix and input from Midland staff, select a suite of conservation strategies that are appropriate for Midland. Group strategies by target areas (indoor/outdoor water use), time to implement and cost to implement.

4.2 Impact to Revenues and Rates

a. Determine the potential impacts to water and wastewater revenues under the current revenues system.

b. Evaluate using the water rate structure as both a conservation strategy and revenue stream.

4.3 Develop a draft implementation timeline showing projected water savings, implementation costs and impacts to revenues.

4.4 Prepare a draft report with the findings. Finalize report with Midland's comment

Deliverables: 5 copies of a Draft report and 15 copies of the Final report

Fee Estimate for Conservation Program Study
October 18, 2011

Task	Labor Task Description	Principal	Project Manager	Senior Staff	Mid-Level Staff	Technican	Total hours	Labor	Expenses	Subconsultant	TOTAL
Task 1: Meetings and Public Coordination											
	1.1 Meetings		48	12	48		108	$ 16,354	$ 1,940	$ 2,000	$ 20,294
	1.2 CAGC Meetings and Presentations		48	12	60		120	$ 17,744	$ 2,365	$ 6,000	$ 26,109
	1.3 City Council Presentation	2	8		16		26	$ 3,866	$ 915	$ 3,500	$ 8,281
Task 2: Assessment of Current Water Use and Programs											
	2.1 Water use data evaluations		4		40	16	60	$ 7,118	$ 540		$ 7,658
	2.2 Existing conservation program		4	8	16		28	$ 3,922	$ 452	$ 2,000	$ 6,374
Task 3: Assessment of Potential Conservation Strategies											
	3.1 Teleconferences with other cities		4	8	16		28	$ 3,922	$ 1,052	$ 8,000	$ 12,974
	3.2 Review published literature		2	16	8		26	$ 3,966	$ 1,234	$ 10,000	$ 15,200
	3.3 Potential reuse opportunities		4	8	12		24	$ 3,459	$ 216		$ 3,675
	3.4 Financial evaluation		16	16	40		72	$ 10,236	$ 648		$ 10,884
	3.5 Screening matrix		16	16	48		80	$ 11,162	$ 920	$ 2,000	$ 14,082
Task 4: Strategies Appropriate for Midland											
	4.1 Suite of strategies for Midland		4	8	16		28	$ 3,922	$ 452	$ 2,000	$ 6,374
	4.2 Impact to revenues		16		4		20	$ 3,393	$ 180		$ 3,573
	4.3 Implementation timeline		4	8	16		28	$ 3,922	$ 452	$ 2,000	$ 6,374
	4.4 Draft and Final reports	4	16	48	60	8	136	$ 20,384	$ 2,643	$ 6,000	$ 29,027
	TOTAL	**6**	**194**	**160**	**400**	**24**	**784**	**$ 113,371**	**$ 14,009**	**$ 43,500**	**$ 170,880**

COMPENSATION

Compensation to Freese and Nichols shall be based on the following Schedule of Charges: Not to Exceed: The total fee for Basic Services in Attachment SC shall be computed on the basis of the Schedule of Charges, but shall not exceed One Hundred Seventy Thousand Eight Hundred Eighty Dollars ($170,880). If FNI sees the Scope of Services changing so that Additional Services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify OWNER for OWNER's approval before proceeding. Additional Services shall be computed based on the Schedule of Charges.

Schedule of Charges:

Position	Min	Max	Position	Min	Max
PRINICIPAL	171.89	404.95	3D VISUALIZATION COORDINATOR	133.22	172.40
GROUP MANAGER	173.25	292.20	ENVIRONMENTAL SCIENTIST VII	166.57	228.00
ENGINEER VIII	211.94	269.12	ENVIRONMENTAL SCIENTIST VI	142.03	183.80
ENGINEER VII	184.60	238.89	ENVIRONMENTAL SCIENTIST V	126.56	163.78
ENGINEER VI	161.72	227.34	ENVIRONMENTAL SCIENTIST IV	102.38	152.84
ENGINEER V	132.60	190.29	ENVIRONMENTAL SCIENTIST III	92.17	125.61
ENGINEER IV	116.26	166.22	ENVIRONMENTAL SCIENTIST II	66.40	85.55
ENGINEER III	97.52	149.46	ENVIRONMENTAL SCIENTIST I	57.39	78.57
ENGINEER II	88.80	119.11	ARCHITECT VI	137.56	184.49
ENGINEER I	84.40	114.99	ARCHITECT V	122.23	158.18
ELECTRICAL ENGINEER VI	168.98	208.74	ARCHITECT IV	106.89	134.80
ELECTRICAL ENGINEER V	133.22	168.13	ARCHITECT III	104.30	134.98
ELECTRICAL ENGINEER IV	116.14	150.30	ARCHITECT II	82.32	106.53
ELECTRICAL ENGINEER III	102.28	132.36	ARCHITECT I	69.38	89.78
ELECTRICAL ENGINEER II	99.37	128.59	LANDSCAPE ARCHITECT V	119.68	154.89
ELECTRICAL ENGINEER I	88.62	114.69	LANDSCAPE ARCHITECT INTERN II	76.48	98.98
MECHANICAL ENGINEER VI	161.04	208.40	LANDSCAPE ARCHITECT INTERN I	74.26	96.10
MECHANICAL ENGINEER V	143.75	186.03	PLANNER VI	150.67	214.03
MECHANICAL ENGINEER IV	126.47	163.54	PLANNER V	124.48	161.10
MECHANICAL ENGINEER III	100.45	129.99	PLANNER IV	98.29	127.20
MECHANICAL ENGINEER II	91.47	118.37	PLANNER III	81.96	103.38
MECHANICAL ENGINEER I	84.37	109.19	PLANNER II	72.41	93.71
PROGRAM MANAGER II	166.50	214.95	PLANNER I	69.08	89.40
PROGRAM MANAGER I	116.28	152.92	HYDROLOGIST VI	142.12	183.91
CONSTRUCTION CONTRACT ADMIN III	113.75	187.94	HYDROLOGIST V	122.90	159.04
CONSTRUCTION CONTRACT ADMIN II	98.07	159.05	HYDROLOGIST IV	103.68	134.54
CONSTRUCTION CONTRACT ADMIN I	71.51	116.72	HYDROLOGIST III	89.73	116.12
CONSTRUCTION DOCUMENT COORDINATOI	81.37	105.30	HYDROLOGIST II	80.75	104.50
DOCUMENT CONTROL CLERK	58.45	103.71	SENIOR GEOLOGIST	108.47	140.37
SR DESIGNER	146.24	185.84	GEOTECHNICAL ENGINEER VI	175.97	227.73
DESIGNER II	121.07	160.97	RIGHT OF WAY AGENT	83.66	108.26
DESIGNER I	106.09	137.29	PUBLIC INVOLVEMENT COORDINATOR	77.50	119.77
SR CADD DESIGNER	118.52	153.38	WORD PROCESSING/SECRETARIAL	51.45	84.12
CADD DESIGNER	114.09	158.39	OPERATIONS ANALYST	108.89	150.75
TECHNICIAN IV	89.31	120.17	CONTRACT ADMINISTRATOR	67.01	84.27
TECHNICIAN III	74.48	107.27	PROJECT CONTROL SPECIALIST	63.81	82.58
TECHNICIAN II	60.20	90.70	INFORMATION SERVICES SUPERVISOR	65.72	85.05
TECHNICIAN I	54.93	71.09	INFORMATION SERVICES CLERK III	48.37	62.60
GIS ANALYST V	104.41	133.51	INFORMATION SERVICES CLERK II	37.49	48.51
GIS ANALYST IV	100.14	132.30	INFORMATION SERVICES CLERK I	37.45	43.11
GIS ANALYST III	77.14	107.02	CO-OP	38.50	87.47
GIS ANALYST II	62.30	79.42			
GIS ANALYST I	50.58	65.45			

The ranges and individual salaries will be adjusted annually.

RATES FOR INHOUSE SERVICES

Computer and CAD		Calcomp Plotter		Print Shop	
PC CAD Stations	$10.00 per hr.	Bond	$2.50 per plot	Color Copies & Printing	$0.50 per single side copy
		Other	$5.00 per plot		$1.00 per double side copy
		Color	$5.75 per plot		
				Black & White Copies & Printing	$0.10 per single side copy
Testing Apparatus					$0.20 per double side copy
Density Meter	$700.00 per month				
Gas Detection	$20.00 per test			Binding	$5.75 per book

OTHER DIRECT EXPENSES:
Other direct expenses are reimbursed at actual cost times a multiplier of 1.1. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office and other miscellaneous exepenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members. For Resident Representative services performed by non-FNI employees and CAD services performed In-house by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

FNI _____

OWNER _____

City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: **October 25, 2001**

TO: **CITY COUNCIL**

FROM: **COURTNEY SHARP**

SUBJECT: **Consider a motion regarding a request from Tall City Blues Fest to increase the 2011-12 Hotel/Motel Occupancy Tax allocation in the amount of $9,608.97 to the Midland Center to cover expenses incurred by the Tall City Blues Fest**

Purpose:

Lisa Grissom, Producer of the Tall City Blues Fest is requesting fees be waived that were incurred during this year's Blues Fest.

Recommended City Council Action

☐ Approve ☐ Deny ☒ Direction/Informational

Fiscal Impact:

Ms. Grissom is requesting a waiver in the amount of $9,608.97. If Council approves, instead of waiving the fees, Staff recommends allocating this amount from the Hotel/Motel fund and paying the Midland Center for the cost incurred by the Blues Fest.

TALL CITY BLUES FEST
DOWNTOWN MIDLAND, TX

October 13, 2011

City of Midland
ATTN: Courtney Sharp
300 N. Loraine
Midland, TX 79701

Dear Courtney:

As Producer of Tall City Blues Fest 2011, I am writing to respectfully request that the Council consider waiving the following facility expenses for the use of Midland Center and Centennial Plaza during Tall City Blues Fest 2011.

Midland Center Facility Rental $4,484
Centennial Plaza Rental $3,000
5% Gate Receipts $1,000 (maximum $1,000)
10% Net Beer/Wine Sales $1,124.97 (no maximum)

TOTAL $9,608.97

Thank you for your consideration!

Lisa Grissom
Producer, Tall City Blues Fest
www.tallcitybluesfest.com
www.facebook.com/tallcitybluesfest
www.twitter.com/tallcityblues

08/26/11

Tall City Blues Fest
Profit and Loss Standard
January 1 through August 26, 2011

		Jan 1 - Aug 26, '11
Ordinary Income/Expense		
Income		
2011 Sponsorships		86,900.00
2012 Sponsorships		5,000.00
Advance Ticket Sales		
VIP Passes	3,600.00	
Weekend Fest Passes	6,594.00	
1/2 Price WFP's	560.00	
2 for 1 VIP's	2,982.00	
Ticket Paks	7,299.00	
Juke Joint Passes	320.00	
Total Advance Ticket Sales		21,355.00
Gate Receipts		21,220.00
Net Beer Sales		11,249.74
Net Silent Auction Proceeds		6,280.36
Ad Sales		2,450.00
Vendor Fees		5,500.70
Donations		4,900.00
Blues Society		625.00
Unsorted Square Receipts		0.00
Misc Sales		778.85
Total Income		166,259.65
Cost of Goods Sold		
Cost of Goods Sold		0.00
Total COGS		0.00
Gross Profit		166,259.65
Expense		
2012 Expenses		665.68
Advertising		44,162.94
Net BBQ Cook-Off		1,106.73
Bank Fees		
Square Fees	667.72	

Tall City Blues Fest
Profit and Loss Standard
January 1 through August 26, 2011

		Jan 1 - Aug 26, '11
Paypal Fees	288.04	
Bank Fees - Other	312.67	
Total Bank Fees		1,268.43
Charitable Donations		13,034.46
Contract Labor		
TCBF Coordinators	5,900.00	
Contract Labor - Other	6,221.73	
Total Contract Labor		12,121.73
Dues & Subscriptions		174.99
Equipment Rental		2,476.56
Facilities Expenses		17,841.11
Festival Supplies		549.29
Insurance		4,224.00
Licenses & Permits		488.00
Marketing Expense		3,576.64
Meals and Entertainment		1,928.52
Misc Expense		68.80
Music Memorabilia Museum		1,625.00
Office Supplies		1,165.35
Performance Fees		
Lodging	11,928.12	
Performance Fees - Other	21,300.00	
Total Performance Fees		33,228.12
Postage		71.03
Printing		6,974.24
Professional Services		
Security	17,383.50	
Catering	19,018.20	
Concert Promoter Fees	12,591.97	
Producer Fees	5,450.00	
Graphic & Design	5,500.00	
Professional Services - Ot...	5,717.00	

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Tall City Blues Fest
Profit and Loss Standard
January 1 through August 26, 2011

		Jan 1 - Aug 26, '11
Total Professional Services		65,660.67
Technical Production		26,883.16
Travel Expense		
Fuel	305.70	
Lodging	44.85	
Total Travel Expense		350.55
Total Expense		239,646.00
Net Ordinary Income		-73,386.35
Net Income		-73,386.35

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Tall City Blues Fest
Profit and Loss Standard
January through December 2010

		Jan - Dec '10
Ordinary Income/Expense		
Income		
2011 Sponsorships		8,850.00
Total Income		8,850.00
Gross Profit		8,850.00
Expense		
Bank Fees		9.50
Contract Labor		50.00
Equipment Rental		700.00
Licenses & Permits		40.00
Marketing Expense		689.60
Office Supplies		221.83
Performance Fees		1,750.00
Printing		125.27
Professional Services		
Producer Fees	5,250.00	
Total Professional Servi...		5,250.00
Total Expense		8,836.20
Net Ordinary Income		13.80
Net Income		**13.80**

08/26/11

Tall City Blues Fest
Transaction Detail by Account
January 1 through August 26, 2011

Date	Num	Name	Memo	Amount	Balance
Charitable Donations					
03/16/11	1016	Midland Chamber	Night @ Oscars Sponsorship	100.00	100.00
04/28/11	1022	Midland Chamber	to Foundation	20.00	120.00
05/11/11	WD		MHS Scholarships	900.00	1,020.00
05/16/11	1023	Midland Need to Read	Annual Style Show	60.00	1,080.00
07/30/11			MNTR Special Offer	40.00	1,120.00
07/30/11			ADA Special Offer	15.00	1,135.00
07/30/11			MHCC Beer Sales %	1,687.46	2,822.46
07/30/11			MC 10% Gate Proceeds	2,122.00	4,944.46
07/30/11			MC 10% Advance WFP	660.00	5,604.46
07/31/11			Midland College On-Site Reg's	930.00	6,534.46
07/31/11			MHS DECA Scholarship	1,000.00	7,534.46
07/31/11			ECISD Scholarships	5,500.00	13,034.46
Total Charitable Donations				13,034.46	13,034.46
TOTAL				**13,034.46**	**13,034.46**

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Tall City Blues Fest
Transaction Detail by Account
January 1 through August 26, 2011

Date	Num	Name	Memo	Amount	Balance
Facilities Expenses					
06/16/11	1041	Ken's Rental Center	Tents for Mixer	612.15	612.15
07/12/11	1055	Ken's Rental Center	Deposit for Fest Tents	1,336.81	1,948.96
07/30/11			Midland Center Beer Sales %	1,124.97	3,073.93
08/01/11			Ken's Rental Center	2,802.68	5,876.61
08/01/11			Crown Equipment	1,230.50	7,107.11
08/01/11			Hilton Banquet Rooms	2,250.00	9,357.11
08/01/11			Midland Center/Centennial Plaza	8,484.00	17,841.11
Total Facilities Expenses				17,841.11	17,841.11
TOTAL				**17,841.11**	**17,841.11**

08/26/11

Tall City Blues Fest
Transaction Detail by Account
January 1 through August 26, 2011

Date	Num	Name	Memo	Amount	Balance
Marketing Expense					
02/28/11	REIMB	Ronn Reeger	STD Cards/Stickers	98.97	98.97
03/02/11	1011	Cauble Sportswear		311.65	410.62
03/14/11	1014	Cauble Sportswear	TCBF Decals	238.15	648.77
03/16/11	1013	Midland Chamber	Mailing List	100.00	748.77
03/16/11		BIGSTOCKPHOTO.COM	Stock Photos for Multimedia Presentat...	49.00	797.77
03/17/11	1017	Cauble Sportswear	TCBF Hats	103.92	901.69
03/22/11	REIMB	Lisa Grissom	iMovie	16.17	917.86
03/22/11	REIMB	Lisa Grissom	iTunes Songs	3.23	921.09
03/29/11		MOO INC PRINTING	STD Cards	108.96	1,030.05
03/30/11		REMINDER BAND INC.		117.69	1,147.74
04/05/11		Barnes & Noble	Presentation Zen	37.88	1,185.62
05/03/11	REIMB	Lisa Grissom	Keynote & MP3 Downloads	41.08	1,226.70
05/09/11		Headway Themes	Website Developer Tools	131.20	1,357.90
05/09/11		Rocket Genius	Website Forms Tool	29.25	1,387.15
05/09/11		Headway Themes	Website Developer Tools	25.00	1,412.15
05/25/11	1027	Cauble Sportswear	Promo Shirts	678.12	2,090.27
05/25/11	1028	Cauble Sportswear	Promo Hats	272.79	2,363.06
05/27/11		Rocket Genius	Website Forms Tool Upgrade	149.00	2,512.06
06/03/11	1035	Cauble Sportswear	Promo Shirts	395.59	2,907.65
06/08/11	REIMB	Ronn Reeger	STD Cards	34.99	2,942.64
06/08/11	REIMB	Ronn Reeger	Supporter Wall	20.00	2,962.64
06/10/11			Shopping Cart Plug-in	39.00	3,001.64
06/13/11	1038	Midland Chamber	TCBF Mixer	300.00	3,301.64
06/20/11	1045	Panacore Corp	Newswire Distribution	275.00	3,576.64
Total Marketing Expense				3,576.64	3,576.64
TOTAL				**3,576.64**	**3,576.64**

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Tall City Blues Fest
Transaction Detail by Account
January 1 through August 26, 2011

Date	Num	Name	Memo	Amount	Balance
Meals and Entertainment					
02/25/11			SELL Conf-The Omlettry	23.11	23.11
02/25/11			SELL Conf-TGI Friday's	15.00	38.11
03/01/11		Sealy Flats		19.10	57.21
03/07/11	REIMB	Ronn Reeger	SELL Conf in Austin	17.30	74.51
03/14/11		CANCUN GRILL	w/ Chris Jones re: BBQ Cook-Off	27.44	101.95
03/17/11		Hilton Midland Plaza	w/ Beau Dameron re: TCBF TX Hold 'E...	8.00	109.95
03/22/11	REIMB	Lisa Grissom	Charles Bailey re: VIP	5.93	115.88
03/24/11		Burgers, Fries & Cherry ...	w/ RR re: Chamber Mixer	19.38	135.26
04/01/11		Hilton Midland Plaza	w/ Daniel Schlegel & Sarah Bellian re: ...	33.04	168.30
04/04/11		Sealy Flats		22.73	191.03
04/25/11	REIMB		Peter Bawa re: TCBF Educ Coord	4.87	195.90
04/30/11			Cash Tip for $22.73 @ Sealy Flats	5.00	200.90
05/02/11		Hilton Midland Plaza	w/ Daniel Schlegel & Sarah Bellian re: ...	32.04	232.94
05/04/11		Hilton Midland Plaza	Coordinator's Luncheon	116.88	349.82
05/06/11		Sedona Grill	w/ Denise Barnett re: Capital Campaign	27.18	377.00
05/09/11		Sealy Flats	San Angelo Blues Fest	22.47	399.47
05/12/11		JASON'S DELI	for MHS Scholarship Receipients	164.32	563.79
05/13/11		HARVEST CAFFE	w/ Paul Cain	7.12	570.91
05/18/11		Reyna's	w/ Cauble Sportswear re: Fest Merch	22.37	593.28
05/23/11		THE GROUND FLOOR	w/ Christie Davis re: TCBF	14.61	607.89
06/01/11		Cattle Baron	w/ LuAnn Morgan re: TCBF	30.87	638.76
06/06/11		Hilton Midland Plaza	Coordinator's Luncheon	192.12	830.88
06/13/11		Hilton Midland Plaza	Poster Design Judging Luncheon	35.98	866.86
06/13/11	REIMB	Promising Projects	w/ Nang re: TCBF Mixer Catering	14.80	881.66
06/16/11		Starbucks	w/ Josh Dye re: GIS COM Site Facility P...	2.44	884.10
06/20/11		THE GROUND FLOOR	w/ Dennis Morris re: sponsorships	5.25	889.35
06/30/11		Hilton Midland Plaza	TCBF Coordinator's Luncheon	154.42	1,043.77
07/05/11	1051		BNI Luncheon re: TCBF/ADA Offer	11.00	1,054.77
07/14/11		Strawberry Fields	re: ticket deliveries/posters	15.48	1,070.25
07/15/11		EDDIE'S CATFISH CO.	re: Tix Outlet	15.51	1,085.76
07/19/11		WALL STREET BAR & GRIL	w/ Donna Bruno re: TCBF Fundraising	29.82	1,115.58
07/22/11		Harrigan's	Bob FM Radio Promo	12.19	1,127.77
07/26/11		Subway	Working Sat lunch w/ Christie Davis	12.52	1,140.29
07/27/11		GERARDOS BISTRO	Lunch w/ Jeni Little re: TCBF Supplies ...	5.24	1,145.53
07/28/11		Subway	Working lunch w/ Christie Davis	12.48	1,158.01
07/28/11		McAlister's Deli	working lunch w/ Christie Davis	14.17	1,172.18
08/01/11	REIMB	Ronn Reeger	TCBF Debriefing	17.04	1,189.22
08/01/11	1074	Lone Star Bar	VIP Kick-Off Party Bar Tab	600.00	1,789.22
08/09/11	REIMB	Promising Projects	SELL Conf	19.17	1,808.39
08/10/11	REIMB	Ronn Reeger	Gerardo's w/ Bo Z.	36.01	1,844.40
08/10/11	REIMB	Ronn Reeger	Hilton	10.58	1,854.98
08/10/11	REIMB	Ronn Reeger	Triple Threat	24.30	1,879.28
08/10/11	REIMB	Ronn Reeger	Sedona Grill	49.24	1,928.52
Total Meals and Entertainment				1,928.52	1,928.52
TOTAL				**1,928.52**	**1,928.52**

08/26/11

Tall City Blues Fest
Transaction Detail by Account
January 1 through August 26, 2011

Date	Num	Name	Memo	Amount	Balance
Printing					
03/31/11		4OVER, INC.	Postcards	45.91	45.91
04/04/11		4OVER, INC.	Posters	205.76	251.67
06/08/11		TICKETPRINTINGCOM		247.56	499.23
06/10/11		4OVER, INC.	Postcards	49.08	548.31
06/24/11		TICKETPRINTINGCOM		163.66	711.97
07/05/11		4OVER, INC.	Posters	228.22	940.19
07/15/11		ADMIT ONE PRODUCTS	VIP Wristbands/Drink Tickets	295.92	1,236.11
07/18/11		TICKETPRINTINGCOM	Wristbands	591.55	1,827.66
07/18/11		ADMIT ONE PRODUCTS	Ticket Envelopes	38.77	1,866.43
07/20/11		ACCESSTAGS	VIP Credentials	650.00	2,516.43
07/20/11		ARNETT DESIGNS INC	Satin Badge Credentials	492.77	3,009.20
07/20/11		ADMIT ONE PRODUCTS		-132.30	2,876.90
07/25/11		4OVER, INC.	Banners	209.34	3,086.24
08/08/11	1095	Hunt Advertising		3,888.00	6,974.24
Total Printing				6,974.24	6,974.24
TOTAL				**6,974.24**	**6,974.24**

Tall City Blues Fest
Transaction Detail by Account
January 1 through August 26, 2011

Date	Num	Name	Memo	Amount	Balance
Professional Services					
Security					
08/01/11			Citadel Security	5,108.50	5,108.50
08/05/11	WD		County Security	6,775.00	11,883.50
08/08/11	WD		Private Security	2,500.00	14,383.50
08/09/11	1096	Citadel Security	Private Security	3,000.00	17,383.50
Total Security				17,383.50	17,383.50
Catering					
07/06/11	1048	Chad Nepveaux		3,000.00	3,000.00
07/28/11	1067	Chad Nepveaux		2,500.00	5,500.00
08/01/11			Shrimp & Crawfish	3,750.00	9,250.00
08/01/11			Barn Door Catering	9,768.20	19,018.20
Total Catering				19,018.20	19,018.20
Concert Promoter Fees					
01/20/11	TXFR	Promising Projects	10% Southwell Tix Purchase	20.00	20.00
07/30/11			Promising Projects Beer Sales %	1,124.97	1,144.97
07/30/11			Roy Nelson	120.00	1,264.97
07/30/11			TCTB Properties	500.00	1,764.97
07/30/11			Enertia Software	250.00	2,014.97
07/30/11			Balance of 10% 2010 Sponsorships	6,320.00	8,334.97
07/30/11			10% Gate Proceeds	2,122.00	10,456.97
07/30/11			10% Advance Tix Sales	2,135.00	12,591.97
Total Concert Promoter Fees				12,591.97	12,591.97
Producer Fees					
03/17/11		Promising Projects		500.00	500.00
05/26/11	TXFR	Promising Projects		250.00	750.00
06/08/11		Promising Projects		500.00	1,250.00
06/09/11		Promising Projects		300.00	1,550.00
06/15/11		Promising Projects		200.00	1,750.00
06/22/11		Promising Projects		500.00	2,250.00
07/05/11		Promising Projects		500.00	2,750.00
07/11/11		Promising Projects		1,500.00	4,250.00
07/21/11		Promising Projects		200.00	4,450.00
08/01/11	TXFR	Promising Projects		1,000.00	5,450.00
Total Producer Fees				5,450.00	5,450.00
Graphic & Design					
02/04/11	1009	Plan A Advertising		150.00	150.00
03/31/11	1018	Ebie Landreth		100.00	250.00
07/14/11	1053	Hunt Advertising	Deposit on Fest Program	1,200.00	1,450.00
07/30/11			Logo Design	250.00	1,700.00
07/30/11			Website Design	1,000.00	2,700.00
07/30/11			Website Maintenance	1,600.00	4,300.00
08/08/11	1095	Hunt Advertising		1,200.00	5,500.00
Total Graphic & Design				5,500.00	5,500.00
Professional Services - Other					
03/03/11		The Biztruth		599.00	599.00
03/14/11		Ava Diamond	Public Speaking/Multimedia Presentat...	500.00	1,099.00
03/18/11		Ava Diamond	Public Speaking/Multimedia Presentat...	500.00	1,599.00
03/25/11		Ava Diamond	Public Speaking/Multimedia Presentat...	500.00	2,099.00
03/30/11		The Biztruth		599.00	2,698.00
05/12/11		The Biztruth		599.00	3,297.00
07/19/11	1064	GB Associates		1,200.00	4,497.00
07/30/11			Featured Artist Commission	1,000.00	5,497.00
07/30/11			Signs for Festival	220.00	5,717.00
Total Professional Services - Other				5,717.00	5,717.00

Tall City Blues Fest
Transaction Detail by Account
January 1 through August 26, 2011

Date	Num	Name	Memo	Amount	Balance
Total Professional Services				65,660.67	65,660.67
TOTAL				65,660.67	65,660.67

08/26/11

Tall City Blues Fest
Transaction Detail by Account
January 1 through August 26, 2011

Date	Num	Name	Memo	Amount	Balance
Technical Production					
07/15/11	1062	Western Audio Works	Main Stage Sound Deposit	2,000.00	2,000.00
07/15/11	1060	Donnie Brooks	COM Stage Sound Deposit	1,000.00	3,000.00
07/28/11		QUICKBEAM SYSTEMS INC	Stage/Lighting/Backline	6,200.00	9,200.00
07/30/11			Taco Mgmt	1,500.00	10,700.00
08/01/11	1089	Donnie Brooks	COM Stage Sound	2,500.00	13,200.00
08/01/11			Bosworth Company	4,250.00	17,450.00
08/01/11			Robert Cadwallader Keyboard Repairs	798.66	18,248.66
08/02/11	1077	QUICKBEAM SYSTEMS INC		6,027.00	24,275.66
08/02/11	1081	Western Audio Works		2,000.00	26,275.66
08/04/11		Taco Mgmt		607.50	26,883.16
Total Technical Production				26,883.16	26,883.16
TOTAL				**26,883.16**	**26,883.16**

08/26/11

Tall City Blues Fest
Balance Sheet Standard
As of August 26, 2011

	Aug 26, '11
ASSETS	
Current Assets	
Checking/Savings	
WF Checking	1,660.28
Total Checking/Savings	1,660.28
Other Current Assets	
Receivables	10,000.00
Receivable from Personal	2,450.45
Total Other Current Assets	12,450.45
Total Current Assets	14,110.73
TOTAL ASSETS	**14,110.73**
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Other Current Liabilities	
Payable to Promising Proj...	15,336.97
Bridge Loans	2,500.00
Payable to Partners/Vendo...	69,646.31
Total Other Current Liabilit...	87,483.28
Total Current Liabilities	87,483.28
Total Liabilities	87,483.28
Equity	
Retained Earnings	13.80
Net Income	-73,386.35
Total Equity	-73,372.55
TOTAL LIABILITIES & EQUITY	**14,110.73**

08/26/11

Tall City Blues Fest
Transaction Detail by Account
January 1 through August 26, 2011

Date	Num	Name	Memo	Amount	Balance
Payable to Promising Projects					
01/05/11	TXFR	Promising Projects	Gap Loan	25.00	25.00
01/13/11	TXFR	Promising Projects	Gap Loan	100.00	125.00
01/19/11	TXFR	Promising Projects	Gap Loan	150.00	275.00
01/20/11	TXFR	Promising Projects	Gap Loan	10.00	285.00
02/14/11	TXFR	Promising Projects	Gap Loan	65.00	350.00
02/23/11	TXFR	Promising Projects	Roy Nelson	-60.00	290.00
03/07/11	TXFR	Promising Projects	Enertia Software	-250.00	40.00
03/07/11	TXFR	Promising Projects	TCTB Properties	-500.00	-460.00
03/07/11	TXFR	Promising Projects	5% Rebate on TCTB	250.00	-210.00
03/07/11	TXFR	Promising Projects	5% Rebate on Enertia	125.00	-85.00
07/30/11			10% Sponsorships to date	870.00	785.00
07/30/11			Balance of 10% 2011 Sponsorships	6,320.00	7,105.00
07/30/11			Beer Sales %	1,124.97	8,229.97
07/30/11			10% Gate & Advance Tix Sales	4,257.00	12,486.97
07/30/11			Logo Design & Website Design & ...	2,850.00	15,336.97
08/10/11			10% 2012 Sponsorships To Date	500.00	15,836.97
08/15/11	TXFR	Promising Projects	10% Touchwood Resources Spons...	-250.00	15,586.97
08/15/11	TXFR	Promising Projects	10% Roger Clark Sponsorship	-250.00	15,336.97
Total Payable to Promising Projects				15,336.97	15,336.97
TOTAL				**15,336.97**	**15,336.97**

08/26/11

Tall City Blues Fest
Transaction Detail by Account
January 1 through August 26, 2011

Date	Num	Name	Memo	Amount	Balance
Payable to Partners/Vendors					
07/30/11			MNTR Special Offer	40.00	40.00
07/30/11			ADA Special Offer	15.00	55.00
07/30/11			Permian Distributing	3,955.83	4,010.83
07/30/11			Beer Sales %'s Payable	2,812.43	6,823.26
07/30/11			TCBF Coordinator Pay	3,000.00	9,823.26
07/30/11			Net Due to Private Collector	2,606.00	12,429.26
07/30/11			MC 10% Gate & Advance WFP	2,782.00	15,211.26
07/31/11			Midland College Net On-Site Reg's	550.00	15,761.26
07/31/11			MHS & ECISD Scholarships	6,500.00	22,261.26
08/01/11			Ken's Rental Center	57,279.85	79,541.11
08/01/11			Ken's Rental Center	826.30	80,367.41
08/01/11			Robert Cadwallader Keyboard Repairs	798.66	81,166.07
08/15/11	1099	Chad Nepveaux	Final Balance	-3,750.00	77,416.07
08/15/11	1100	Energi Personnel	Christie Davis	-420.75	76,995.32
08/18/11	WD		Reimb Roy Gillean for water	-60.00	76,935.32
08/23/11	1101	MHCC	Permian Dist Invoice	-3,955.83	72,979.49
08/23/11	1102	Crown Equipment		-1,230.50	71,748.99
08/23/11	1103	Ken's Rental Center		-1,802.68	69,946.31
08/25/11	1104	Peter Bawa		-300.00	69,646.31
Total Payable to Partners/Vendors				69,646.31	69,646.31
TOTAL				**69,646.31**	**69,646.31**

City of Midland

Office Memorandum

DATE: November 8, 2011

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: Resolution retaining the law firm of Cotton, Bledsoe, Tighe and Dawson, P.C.

We have placed this item on your executive session agenda so that we may discuss it with you in more detail.

If you have any questions or if I may be of any assistance, do not hesitate to contact me.

Keith Stretcher

KS/lo

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RESOLUTION NO.

RESOLUTION AUTHORIZING THE CITY ATTORNEY AND ATTORNEY(S) WITH THE LAW FIRM OF COTTON, BLEDSOE, TIGHE, AND DAWSON, P.C., TO HANDLE ALL LEGAL MATTERS RELATED TO A 45.99 ACRE TRACT OF LAND LOCATED IN SECTION 15, BLOCK 39, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AS DESCRIBED IN VOLUME 2311, PAGE 306 OF THE DEED RECORDS OF MIDLAND COUNTY, TEXAS (WHICH INCLUDES BUT IS NOT LIMITED TO THE REMAINDER OF LOT 1A, BLOCK 1, MIDLAND AIRPARK, SECTION 2, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS; AND LOT 2, BLOCK 1, MIDLAND AIRPARK SECTION 2, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS; AND LOT 4, BLOCK 1, MIDLAND AIRPARK, SECTION 3, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS); THE CITY ATTORNEY AND THE LAW FIRM ARE AUTHORIZED TO FILE LITIGATION, EMPLOY ALL NECESSARY EXPERTS, RESPOND TO SETTLEMENT OFFERS, AND TO EXECUTE ALL MOTIONS AND DISCOVERY DOCUMENTS AND TO MAKE ALL COURT APPEARANCES ON BEHALF OF THE CITY OF MIDLAND

WHEREAS, the City Council finds it to be in the public interest to authorize the City Attorney and attorney(s) with the Law Firm of Cotton, Bledsoe, Tighe, and Dawson, P.C. to handle all legal matter related to a 45.99 acre tract of land located in Section 15, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas, (which includes but is not limited to the remainder of Lot 1A, Block 1, Midland Airpark, Section 2, an addition to the City of Midland, Midland County, Texas; and Lot 2, Block 1, Midland Airpark Section 2, an addition to the City of Midland, Midland County, Texas; and Lot 4, Block 1, Midland Airpark, Section 3, an addition to the City of Midland, Midland County, Texas);

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

SECTION ONE. That the City Attorney and the Law Firm of Cotton, Bledsoe, Tighe, and Dawson, P.C., are hereby authorized to handle all legal matters and to file litigation, employ all necessary experts, respond to settlement offers, and to execute all motions and

discovery documents on behalf of the City of Midland, regarding a 45.99 acre tract of land located in Section 15, Block 39, T-1-S, T&P RR Co. Survey, Midland County, Texas, as described in Volume 2311, Page 306, of the Deed Records of Midland, County, Texas (which includes but is not limited to the remainder of Lot 1A, Block 1, Midland Airpark, Section 2, an addition to the City of Midland, Midland County, Texas; and Lot 2, Block 1, Midland Airpark Section 2, an addition to the City of Midland, Midland County, Texas; and Lot 4, Block 1, Midland Airpark, Section 3, an addition to the City of Midland, Midland County, Texas).

SECTION TWO. That the City Treasurer is hereby authorized and directed, upon receipt of proper invoice or statement, approved by the City Attorney, to pay the Law Firm of Cotton, Bledsoe, Tighe, and Dawson, P.C. out of funds available in the City's General Liability Self-Insurance Fund.

On motion of Council member _____, seconded by Council member _____, the above and foregoing resolution was adopted by the City Council of the City of Midland at a regular meeting on the _____ day of _____, A.D., 2011, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

_____
W. Wesley Perry, Mayor

ATTEST:

_____
Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

_____
Courtney Sharp, City Manager

_____
Robert McNaughton, Director of Finance

APPROVED AS TO FORM:

_____
Keith Stretcher, City Attorney

City of Midland

Office Memorandum

DATE: November 8, 2011

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: Mountain States Legal Foundation

We have placed this item on your executive session agenda so that we may discuss it with you in more detail.

If you have any questions or if I may be of any assistance, do not hesitate to contact me.

Keith Stretcher

KS/lo

L:\Keith\Memos\Council\2011\Sagebrush Lizard.Docx

RESOLUTION NO.

RESOLUTION AUTHORIZING THE OFFICE OF THE CITY ATTORNEY TO EXECUTE ALL DOCUMENTS NECESSARY TO REQUEST ASSISTANCE FROM THE MOUNTAIN STATES LEGAL FOUNDATION, LOCATED AT 2596 SOUTH LEWIS WAY, LAKEWOOD, COLORADO 80227, REGARDING THE DUNES SAGEBRUSH LIZARD AND THE U.S. FISH AND WILDLIFE SERVICE; AND THIS RESOLUTION SPECIFICALLY AUTHORIZES THE DISCLOSURE TO THE MOUNTAIN STATES LEGAL FOUNDATION'S BOARD OF LITIGATION AND BOARD OF DIRECTORS THAT THE CITY OF MIDLAND HAS REQUESTED THE MOUNTAIN STATES LEGAL FOUNDATION'S LEGAL ASSISTANCE AND THE FACTS AND LEGAL ISSUES INVOLVED IN THE CITY OF MIDLAND'S REQUEST REGARDING THE DUNES SAGEBRUSH LIZARD AND THE U.S. FISH AND WILDLIFE SERVICE

WHEREAS, that the Midland City Council finds it to be in the public interest to request the assistance of the Mountain States Legal Foundation regarding the Dunes Sagebrush Lizard and the U.S. Fish and Wildlife Service;

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

SECTION ONE. That the City Attorney is hereby authorized and directed to execute on behalf of the City of Midland, Texas all documents necessary to request assistance from the Mountain States Legal Foundation regarding the Dunes Sagebrush Lizard and the U.S. Fish and Wildlife Service.

SECTION TWO. That the City Attorney is hereby authorized and directed to execute all documents authorizing disclosure to the Mountain States Legal Foundation's Board of Litigation and Board of Directors that (1) the City of Midland has requested the Mountain States Legal Foundation's assistance and (2) all the facts and legal issues involved in the City of Midland's request involving the Dunes Sagebrush Lizard and the U.S. Fish and Wildlife Service.

SECTION THREE. That the Representation Agreement between the City of Midland, Texas, and Mountain States Legal Foundation will not be effective until approved

by a resolution of the Midland City Council

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., 2011, 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 of Midland

CITY ATTORNEY'S OFFICE

Office Memorandum

DATE: November 4, 2011

TO: The Honorable Mayor and City Council Members

FROM: John Ohnemiller, First Assistant City Attorney

SUBJECT: Economic Development Agreement between the City of Midland and the Midland Development Corporation (MDC) for improvements to State Highway 349

At the September 30 meeting of the MDC, the Board of Directors authorized the execution of an agreement with the appropriate party for improvements to State Highway 349. Specifically, the MDC agreed to contribute $270,000 to assist in the widening of State Highway 349 between Midland and Lamesa.

Texas Department of Transportation (TxDOT) guidelines restrict TxDOT from entering into a funding agreement with the MDC directly. However, TxDOT can contract with the City of Midland for said improvements. The proposed resolution authorizes the Mayor, on behalf of the City, to (1) negotiate and execute an agreement with the MDC regarding the improvements, and to (2) negotiate and execute an agreement with TxDOT regarding the improvements. This structure will allow for the MDC's funds to pass through the City to TxDOT and thereby facilitate the construction of the improvements to State Highway 349.

If you have any questions, please do not hesitate to contact me or City Attorney Keith Stretcher.

JO/lo

L:\John\Memos\Council\2011\MDC - City State Highway 349 Improvements.wpd

RESOLUTION NO.

RESOLUTION AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE AN ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIDLAND AND THE MIDLAND DEVELOPMENT CORPORATION FOR IMPROVEMENTS TO STATE HIGHWAY 349, AS AUTHORIZED BY CHAPTER 501 OF THE TEXAS LOCAL GOVERNMENT CODE

WHEREAS, on September 30, 2011, the Midland Development Corporation authorized the execution of an economic development agreement with the appropriate party for improvements to State Highway 349; and

WHEREAS, the City Council must consider and approve all economic development agreements approved by the Midland Development Corporation before the agreements can become effective; and

WHEREAS, the City Council finds it to be in the public interest to authorize the Mayor to negotiate and execute an economic development agreement between the City of Midland and the Midland Development Corporation said improvements;

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

SECTION ONE. That the Mayor is hereby authorized and directed to negotiate and execute, on behalf of the City of Midland, an economic development agreement with the Midland Development Corporation for improvements to State Highway 349. Said agreement shall be on file in the office of the City Secretary referenced by the date and number of this resolution.

SECTION TWO. That upon the City of Midland's receipt of funds from the Midland Development Corporation for said improvements, said funds shall be deposited into General Fund of the City of Midland; and that upon such deposit, said funds shall be appropriated to the State Highway 349 Improvements Project (8974).

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., 2011, 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 of Midland

CITY ATTORNEY'S OFFICE

Office Memorandum

DATE: November 4, 2011

TO: The Honorable Mayor and City Council Members

FROM: John Ohnemiller, First Assistant City Attorney

SUBJECT: Advance Funding Agreement between the City of Midland and the Texas Dept. of Transportation (TxDOT) for improvements to State Highway 349

The proposed resolution authorizes the Mayor, on behalf of the City, to negotiate and execute an agreement with TxDOT for improvements to State Highway 349 between Midland and Lamesa. A companion item on your agenda authorizes the Mayor to also negotiate and execute an agreement with the MDC regarding the improvements.

The two agreements are necessary because TxDOT guidelines restrict it from contracting with the MDC directly. This structure will allow for the MDC's funds to pass through the City to TxDOT and thereby facilitate the construction of the improvements to State Highway 349.

If you have any questions, please do not hesitate to contact me or City Attorney Keith Stretcher.

JO/lo

L:\John\Memos\Council\2011\City - TxDOT State Highway 349 Improvements.wpd

RESOLUTION NO.

RESOLUTION AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE AN ADVANCE FUNDING AGREEMENT WITH THE TEXAS DEPARTMENT OF TRANSPORTATION FOR IMPROVEMENTS TO STATE HIGHWAY 349; AND AUTHORIZING THE MAYOR TO EXECUTE ANY RELATED DOCUMENTS NECESSARY FOR SAID IMPROVEMENTS

WHEREAS, the City Council finds it to be in the public interest to authorize the Mayor to negotiate and execute an economic development agreement between the City of Midland and the Texas Department of Transportation for improvements to State Highway 349;

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

SECTION ONE. That the Mayor is hereby authorized and directed to negotiate and execute, on behalf of the City of Midland, an agreement with the Texas Department of Transportation for improvements to State Highway 349. Said agreement shall be 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 Texas Department of Transportation, pursuant to the terms of said agreement, from funds available in the State Highway 349 Improvements Project (8974) 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., 2011, 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 of Midland

City Secretary's Office

Interoffice Memorandum

Date: November 3, 2011

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 November 3, 2011. Remaining expirations and vacancies are listed below:

AIRPORT PLANNING AND DEVELOPMENT BOARD – Three terms expiring on September 30, 2011.

BUILDING CODES REVIEW COMMITTEE – Nine terms expiring on December 31, 2011.

CITY DEVELOPMENT ADVISORY COMMITTEE – Three terms expiring on September 31, 2011.

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS – One vacancy expired on September 30, 2008, two terms expiring on September 30, 2011 and two vacancies for Alternate terms expired on September 30, 2007.

HOTEL/MOTEL TAX ADVISORY BOARD – Three terms expiring on September 30, 2011 and one term expiring on December 31, 2011.

HOUSING AUTHORITY COMMISSION – One vacancy expiring in October 2011, two terms expiring in October 2011 and one Alternate term expiring in October 2011.

MIDLAND CENTER ADVISORY BOARD – Four terms expiring on September 30, 2011.

MIDLAND DEVEOPMENT CORPORATION – One vacancy expiring on January 14, 2013.

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION – Seven terms expiring in November 2011.

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION – Three vacancies expired on January 1, 2007, one term expired on January 1, 2009 and three terms expired on January 1, 2010.

MIDLAND HOUSING FINANCE CORPORATION –Two vacancies expired on September 30, 2010 and two terms expiring on September 30, 2011.

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD – One vacancy.

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD – Three terms expiring on September 30, 2011.

OIL AND GAS ADVISORY COMMITTEE – Two terms expiring on September 30, 2011.

PARKS AND RECREATION COMMISSION – One vacancy expiring September 30, 2012 and three terms expiring on September 30, 2011.

PERMIAN BASIN AIRPORT BOARD – Two terms expired on September 30, 2010 (Carlsbad and Hobbs New Mexico) and twenty-six terms expiring on September 30, 2011.

PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH AND MENTAL RETARDATION – One term expired in June 2011.

PLANING AND ZONING COMMISSION – Three terms expiring on September 30, 2011.

TAX INCREMENT REINVESTMENT ZONE BOARD – One term expired on March 20, 2009 (one College representative), seven terms expired on March 20, 2010 and two terms expired March 20, 2011. (Four City representatives, two Hospital representatives, two County representatives and one College representative.)

ZONING BOARD OF ADJUSTMENT AND AIRPORT ZONING BOARD OF ADJUSTMENT- Three terms expiring on September 30, 2011, one vacancy for Alternate term expired on September 30, 2006, two vacancies for Alternate term expired on September 30, 2007 and one vacancy for Alternate term expired September 30, 2009.

Should you have any questions, please call me on 685-7432.

BOARDS AND COMMISSIONS OF THE CITY OF MIDLAND

November 8, 2011

AIRPORT PLANNING AND DEVELOPMENT BOARD

(Advisory)
(Membership-10; Terms - 3 Years expiring 3-3-4.)

	Appt Date	Term Expires	Eligibility Expires
Earl Erdmann, Chairman	**09/08**	**Sept 30 2011**	**Sept 30 2014**
Richard Campbell, Co-Chairman	**09/05**	**Sept 30 2011**	**Sept 30 2011**
Robert Garst	**09/05**	**Sept 30 2011**	**Sept 30 2011**
Ronald Schwisow	09/06	Sept 30 2012	Sept 30 2012
Herbert Blankinship	09/06	Sept 30 2012	Sept 30 2012
Jerry Walton	11/09	Sept 30 2012	Sept 30 2015
Mike Owen	10/07	Sept 30 2013	Sept 30 2013
Gregory F. Baiano	09/10	Sept 30 2013	Sept 30 2016
John T. Echols	09/10	Sept 30 2013	Sept 30 2016
Dallas L. Smith	09/10	Sept 30 2013	Sept 30 2016

Ex-Officio members are Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

ANIMAL SERVICES ADVISORY COMMISSION

(Advisory)
(Membership - 6; Terms - 4 Years)

	Appt Date	Term Expires	Eligibility Expires
Dr. Tom Green (Veterinarian)	10/07*	Sept 30 2013	Sept 30 2017
Kelly Spencer	09/09	Sept 30 2013	Sept 30 2017
Laura Hollifield	09/08*	Sept 30 2013	Sept 30 2017
Justin Petty	04/07*	Sept 30 2013	Sept 30 2017
Tony Carrillo	09/09	Sept 30 2013	Sept 30 2017
Paul O'Neill	09/09	Sept 30 2013	Sept 30 2017

BUILDING CODES REVIEW COMMITTEE

(Membership – 9; Terms – 2 Years)

	Appt Date	Term Expires	Eligibility Expires
James Riggen	**12/09**	**Dec 31 2011**	**Dec 31 2013**
Chris Repman	**12/09**	**Dec 31 2011**	**Dec 31 2013**
John Cooper	**12/09**	**Dec 31 2011**	**Dec 31 2013**
Bill Routh	**12/09**	**Dec 31 2011**	**Dec 31 2013**
Tom Woodruff	**12/09**	**Dec 31 2011**	**Dec 31 2013**
Ron Ainsworth	**12/09**	**Dec 31 2011**	**Dec 31 2013**
Walter Pate	**12/09**	**Dec 31 2011**	**Dec 31 2013**
Robert Harrington	**12/09**	**Dec 31 2011**	**Dec 31 2013**
Jerry Morales	**12/09**	**Dec 31 2011**	**Dec 31 2013**

***** **Indicates appointment to an unexpired term.**

CITY DEVELOPMENT ADVISORY COMMITTEE

(Advisory)
(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd)

	Appt Date	Term Expires	Eligibility Expires
Lena Margita	**10/09**	**Sept 30 2011**	**Sept 30 2013**
Debra Lawrence	**03/06***	**Sept 30 2011**	**Sept 30 2011**
Abraham Gutierrez	**10/07**	**Sept 30 2011**	**Sept 30 2011**
Vicky Hailey	09/10	Sept 30 2012	Sept 30 2014
Reggie Lawrence	09/10	Sept 30 2012	Sept 30 2014

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

(Decision Making)
(Membership - 7; Terms - 4 Years expiring 2-2-2-1)
To sunset December 31, 2011

	Appt Date	Term Expires	Eligibility Expires
Vacancy (At Large)		**Sept 30 2008**	
Joe Molina, Jr.	**09/03**	**Sept 30 2011**	**Sept 30 2011**
James W. Riggen (Architect)	**09/99**	**Sept 30 2011**	**Sept 30 2011**
Richard D. Dunham	10/05	Sept 30 2013	Sept 30 2013
Greg Turner	03/11*	Sept 30 2013	Sept 30 2021
Chris Repman	10/07*	Sept 30 2014	Sept 30 2018
Jay K. Bradford	09/10	Sept 30 2014	Sept 30 2018

ALTERNATES:

Vacancy	**Sept 30 2007**	
Vacancy	**Sept 30 2007**	

HOTEL/MOTEL TAX ADVISORY BOARD

(Advisory)
(Membership - 7; Terms - 2 Years Staggered)

	Appt Date	Term Expires	Eligibility Expires
Lisa Grissom	**09/09**	**Sept 30 2011**	**Sept 30 2013**
Alice Church	**04/11***	**Sept 30 2011**	**Sept 30 2015**
Alex Singh-Hotel/Motel Assn. Rep.	**09/09**	**Dec 31 2011**	**Assn. Appt.**
Steve Jones	**02/09***	**Sept 30 2011**	**Sept 30 2013**
Tyler Wolfe	04/11*	Sept 30 2012	Sept 30 2012
Jon S. Blair	02/09*	Sept 30 2012	Sept 30 2014
David Baur	09/10	Sept 30 2012	Sept 30 2014
Vicky Hailey (Liaison Officer)			

* **Indicates appointment to an unexpired term.**

HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd.)

	Appt Date	Term Expires	Eligibility Expires
Vacancy-(Edward M. Penz,) Chairman	**09/10***	**Oct 2011**	**Oct 2015**
Carla Repman, Vice Chairman	**09/09**	**Oct 2011**	**Oct 2013**
James A. Blischke	**01/10**	**Oct 2011**	**Oct 2013**
Rosie Gransberry	06/08*	Oct 2012	Oct 2012
Norma Duran	11/08*	Oct 2012	Oct 2014

ALTERNATES:

Gregory Maes	**09/10***	**Oct 2011**	**Oct 2015**

JOINT ECONOMIC DEVELOPMENT TASK FORCE

(Ad Hoc)

	Appt. Date
(Midland)	
Wes Perry	01/08
LuAnn Morgan	12/00
Keith Stretcher	12/00
Tommy Hudson	08/07
John Breier	01/04
(Odessa)	
Larry Melton	08/01
Jim Morris	11/00
Richard Morton	01/02
Joel Roberts	11/00
Neil McDonald	11/00

MANAGED COMPETITION COMMITTEE

(Ad Hoc)

	Appt. Date
Jon Morgan	01/02
Wes Perry	01/02
Roy Nelson	01/02
Hugh “Andy” Shaffer	12/03
Scott Dufford	01/02
Ted Tipton	04/04
Kevin Sparks	11/07
Scott Lovett	04/10
P. Lourcey Sams	04/10

Ex-Officio members are the Mayor and the City Manager.

* **Indicates appointment to an unexpired term.**

MIDLAND CENTER ADVISORY BOARD

(Advisory & Decision Making)
(Membership - 9; Terms - 3 Years expiring 3-2-2.)

		Appt Date	Term Expires	Eligibility Expires
Ed Zachary	**(CC)**	**10/05**	**Sept 30 2011**	**N/A**
Tom Reed, Chairman	**(CC)**	**05/04**	**Sept 30 2011**	**N/A**
Patricia S. Blackwell	**(City)**	**10/07***	**Sept 30 2011**	**Sept 30 2014**
Paula Mitchell	**(City)**	**09/08**	**Sept 30 2011**	**Sept 30 2014**
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
Jerry Morales (Liaison Officer)				

Ex-Officio members are the City Manager and Executive Director of the Chamber of Commerce.

MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

Five Directors, Elected by Local Taxing Entities.
City Nominates/Cast Vote for one Director
(Terms - 2 Years)

	Appt Date	Term Expires
Fred Poe	12/95	Dec 31 2011

MIDLAND DEVELOPMENT CORPORATION

(Membership - 5; Terms -3 Years - Staggered)

	Appt Date	Term Expires	Eligibility Expires
Vacancy – (J. David Mims, 1st Vice Chair)	**01/07**	**Jan 14 2013**	**Jan 14 2013**
Michael Trost	02/11*	Jan 14 2013	Jan 14 2019
Cary J. Love	12/09	Jan 14 2013	Jan 14 2016
Laura Roman	01/08	Jan 14 2014	Jan 14 2014
Robert Rendall, Chairman	01/09*	Jan 14 2014	Jan 14 2017

***** **Indicates appointment to an unexpired term.**

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION

(Decision Making)
Membership - 7; Terms - 2 Years)

	Appt Date	Term Expires	Eligibility Expires
Ken Marks, Vice President	**10/07**	**Nov 2011**	**Nov 2011**
C. Michael Dobey	**10/07**	**Nov 2011**	**Nov 2011**
James G. Smith	**12/07**	**Nov 2011**	**Nov 2011**
Wesley D. Bownds	**02/09***	**Nov 2011**	**Nov 2013**
John James	**08/08***	**Nov 2011**	**Nov 2013**
Alan Krenek	**09/10***	**Nov 2011**	**Nov 2015**
Rick Davis (MISD Resp.)	**10/10***	**Nov 2011**	**Nov 2015**

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

	Appt Date	Term Expires	Eligibility Expires
Vacancy		**Jan 1 2007**	
Vacancy		**Jan 1 2007**	
Vacancy		**Jan 1 2007**	
Vacancy		**Jan 1 2009**	
Cathy Oestmann	**11/05***	**Jan 1 2010**	**Jan 1 2010**
Curt Kamradt	**11/05***	**Jan 1 2010**	**Jan 1 2010**
Steve Jones	**09/08***	**Jan 1 2010**	**Jan 1 2012**

MIDLAND HOUSING FINANCE CORPORATION

(Decision Making)
(Membership - 5; Terms - 2 Years - Staggered)

	Appt Date	Term Expires	Eligibility Expires
Vacancy – (Jasper McKee)	**02/05***	**Sept 30 2010**	
Vacancy - (Damon L. Blakeley)	**07/07***	**Sept 30 2010**	
Adrianne Valencia	**10/07**	**Sept 30 2011**	**Sept 30 2011**
Melissa Wicker	**10/07**	**Sept 30 2011**	**Sept 30 2011**
Jerry Morales (Liaison Officer)	10/08	Sept 30 2012	Sept 30 2012

* **Indicates appointment to an unexpired term.**

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD

(Ad Hoc)

	Appt. Date
Vacancy	
Richard Hatchett	11/08
W. L. "Scooter" Brown	09/04
Ken Burgess	09/04
Jim Hightower	11/08
Ted H. Jones	09/04
Mitch Malouf	11/08
Christi Newton	09/04
Dan Rush	09/04

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making)

(Membership - 6; Terms - 2 Years Staggered)

	Appt Date	Term Expires	Eligibility Expires
John H. James	**09/09**	**Sept 30 2011**	**Sept 30 2013**
Karen York	**06/09***	**Sept 30 2011**	**Sept 30 2013**
Guy McKenize	**03/11***	**Sept 30 2011**	**Sept 30 2015**
Willie Barber	09/08	Sept 30 2012	Sept 30 2012
Raymond McCarthy	09/08	Sept 30 2012	Sept 30 2012
Michael Trost	09/08	Sept 30 2012	Sept 30 2012

OIL AND GAS ADVISORY COMMITTEE

(Advisory)

(Membership – 5; Terms – 3 Years expiring 2-2-1)

	Appt Date	Term Expires	Eligibility Expires
Bart Hotchkiss	**03/10**	**Sept 30 2011**	**Sept 30 2014**
Andrew Ellis (Petroleum Eng.)	**03/10**	**Sept 30 2011**	**Sept 30 2014**
Richard D. Dunham (Realtor/Petro Eng.)	01/10	Sept 30 2013	Sept 30 2016
D. Patrick Darden (Petroleum Eng.)	02/10	Sept 30 2012	Sept 30 2015
Don Eubank (Drilling Eng.)	04/10	Sept 30 2012	Sept 30 2015

***** **Indicates appointment to an unexpired term.**

PARKS AND RECREATION COMMISSION

(Advisory)
(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	Appt Date	Term Expires	Eligibility Expires
Vacancy –(Barry Beal, Jr.)	**09/09**	**Sept 30 2012**	**Sept 30 2015**
P. Lourcey Sams	**09/08**	**Sept 30 2011**	**Sept 30 2014**
Berry Simpson	**09/10***	**Sept 30 2011**	**Sept 30 2017**
Tina Corbett	**09/08**	**Sept 30 2011**	**Sept 30 2014**
David Ham	09/06	Sept 30 2012	Sept 30 2012
Charles A. Spence	01/10*	Sept 30 2013	Sept 30 2016
Susan Nichols	02/06*	Sept 30 2013	Sept 30 2013
Eric L. West	10/07	Sept 30 2013	Sept 30 2013
Richard J. McGrath	09/10	Sept 30 2013	Sept 30 2016

PERMIAN BASIN AIRPORT BOARD

(Advisory)
(Membership - 30; Terms - 1 year.)

	Appt. Date	Term Expires
10 Members of the Airport Planning and Development Board		
Bob Forrest (Carlsbad, NM)	**10/04**	**Sept 30 2010**
Larry Shed (Hobbs, NM)	**10/01**	**Sept 30 2010**
Larry Gill (Abilene)	**10/10**	**Sept 30 2011**
Elvin Brownlee III (Andrews)	**12/10***	**Sept 30 2011**
Jim Little (Big Spring)	**09/03**	**Sept 30 2011**
David Hardwick (Ft. Stockton)	**10/07**	**Sept 30 2011**
Donald R. Bethel (Lamesa)	**02/91**	**Sept 30 2011**
Henry Cutbirth (Monahans)	**09/05**	**Sept 30 2011**
Willie Taylor (Odessa)	**02/00**	**Sept 30 2011**
Gloria Pena (Odessa)	**03/03***	**Sept 30 2011**
Barbara Graff (Odessa)	**06/10***	**Sept 30 2011**
Isabelle Blanchard (Pecos)	**10/10**	**Sept 30 2011**
Luis E. Elguezabal (San Angelo)	**10/07**	**Sept 30 2011**
Lex Hinds (Seminole)	**10/08**	**Sept 30 2011**
David Harrell (Snyder)	**10/07**	**Sept 30 2011**
Glenn Wortham (Sweetwater)	**10/07**	**Sept 30 2011**
Lance Goodrich (Artesia, NM)	**09/09**	**Sept 30 2011**
Larry Fry (Roswell, NM)	**09/00**	**Sept 30 2011**

Ex-Officio members are the City Manager and the City Attorney. The Secretary is the Director of Aviation.

***** **Indicates appointment to an unexpired term.**

PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH AND MENTAL RETARDATION

(Decision Making)
(Membership - 2 (City); Terms - 2 Years)

	Appt Date	Term Expires	Eligibility Expires
Larry Edgerton	**07/10***	**June 2011**	**June 2015**
Janet R. Pritchett (City)	05/09*	June 2012	June 2014

PERSONNEL BOARD OF APPEALS

(Decision Making)
(Membership - 3; No designated terms.)

	Appt. Date
John James	03/08
Hugh A. “Andy” Shaffer	09/05
Michael Trost	01/10

PLANNING AND ZONING COMMISSION

(Advisory & Decision Making)
(Membership - 9; Terms - 3 Years)

	Appt Date	Term Expires	Eligibility Expires
Becky Ferguson, Vice Chairman	**03/04***	**Sept 30 2011**	**Sept 30 2011**
Brian Carney, Chairman	**10/05**	**Sept 30 2011**	**Sept 30 2011**
Galen Gatten	**09/08**	**Sept 30 2011**	**Sept 30 2014**
Kevin Wilton	09/08*	Sept 30 2012	Sept 30 2015
Bill Woodruff	02/05*	Sept 30 2012	Sept 30 2012
Royce Watkins	02/08*	Sept 30 2012	Sept 30 2015
Karen York	01/10*	Sept 30 2012	Sept 30 2018
Jane Wolf	03/09*	Sept 30 2013	Sept 30 2016
Cindy Lanning	09/10	Sept 30 2013	Sept 30 2016

- **Indicates appointment to an unexpired term.**

TAX INCREMENT REINVESTMENT ZONE BOARD

(Decision Making)
(Membership - 12; Terms - 2 Years, or 3 Years if appointed after 3/1/07)

	Appt Date	Term Expires	Eligibility Expires
Neil Florer (College)	**07/01**	**Mar 20 2009**	**Mar 20 2009**
Dan Rush (City)	**07/01**	**Mar 20 2010**	**Mar 20 2010**
Mark T. Wellen (City), Vice Chairman	**07/01**	**Mar 20 2010**	**Mar 20 2010**
Jay Reynolds (Hospital)	**03/02**	**Mar 20 2010**	**Mar 20 2010**
Ralph Way (College)	**07/01**	**Mar 20 2010**	**Mar 20 2010**
Jimmy Davis (Hospital)	**03/07**	**Mar 20 2010**	**Mar 20 2013**
Randy Prude (County)	**03/07**	**Mar 20 2010**	**Mar 20 2013**
Judge Mike Bradford (County)	**01/07***	**Mar 20 2010**	**Mar 20 2014**
C. Mark Wheeler (City), Treasurer	**04/08**	**Mar 20 2011**	**Mar 20 2014**
Bob Lanier (City), Secretary	**04/03**	**Mar 20 2011**	**Mar 20 2011**
Brent Kennedy (City)	06/09	Mar 20 2012	Mar 20 2015
John L. Kennedy (City)	10/09*	Mar 20 2012	Mar 20 2018

Ex-Officio member is President, Board of Trustees, Midland Independent School District

ZONING BOARD OF ADJUSTMENT AND AIRPORT ZONING BOARD OF ADJUSTMENT

(Decision Making)
(Membership - 5; Terms - 2 Years expiring 3 odd & 2 even.)

	Appt Date	Term Expires	Eligibility Expires
Trudi Edwards	**10/07**	**Sept 30 2011**	**Sept 30 2011**
Manny Ribera	**10/07**	**Sept 30 2011**	**Sept 30 2011**
Carla Repman	**01/10***	**Sept 30 2011**	**Sept 30 2015**
Todd Byars	02/08*	Sept 30 2012	Sept 30 2014
Ken Morgan	01/10*	Sept 30 2012	Sept 30 2014

ALTERNATES: (not applicable to Airport Zoning)

Vacancy	**Sept 30 2006**
Vacancy	**Sept 30 2007**
Vacancy	**Sept 30 2007**
Vacancy	**Sept 30 2009**

* **Indicates appointment to an unexpired term.**

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. 2011?	ATTEN-DANCE %	MEETINGS ATTENDED (Out of 4)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Earl Erdmann	Yes	75%	3	Yes		8/8/11 Mr. Erdmann called and wants to be reappointed
Richard Campbell	Yes	100%	4	No		
Robert Garst	Yes	100%	4	No		
Ronald Schwisow	No 09/12	75%	3			
Herbert Blankinship	No 09/12	100%	4			
Jerry Walton	No 09/12	50%	2			
Mike Owen	No 09/13	100%	4			
Gregory F. Baiano	No 09/13	75%	3			
John T. Echols	No 09/13	100%	4			
Dallas L. Smith	No 09/13	100%	4			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Alan Cotton	Two other boards	
Jay H. Norris	One other board	
Brooks Smith	Only this board	
Greg Turner	Six other boards	
Don (Woody) Woodward	Four other boards	

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. 2011?	ATTEN-DANCE %	MEETINGS ATTENDED (Out of 3)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Dr. Tom Green (Veterinarian)	No					
Kelly Spencer	No					
Laura Hollifield	No					
Justin Petty	No					
Tony Carrillo	No					
Paul O'Neill	No				685-7422	

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES

BUILDING CODES REVIEW COMMITTEE
(Membership – 9; Terms – 2 Years)

SPECIAL COMPOSITION REQUIREMENTS:

MEMBER	TERM EXPIRE DEC. 2011?	ATTEN-DANCE %	MEETINGS ATTENDED	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
James Riggen	Yes			Yes		8/18/11 Mr. James Riggen wants to be reappointed.
Chris Repman	Yes			Yes		8/26/11 Mr. Chris Repman wants to be reappointed.
John Cooper	Yes			Yes		
Bill Routh	Yes			Yes		
Tom Woodruff	Yes			Yes		
Ron Ainsworth	Yes			Yes		
Walter Pate	Yes			Yes		9/21/11 Mr. Pate wants to be reappointed.
Robert Harrington	Yes			Yes		
Jerry Morales	Yes			Yes		

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES

CITY DEVELOPMENT ADVISORY COMMITTEE
(Advisory)
(Membership - 5; Terms - 2 Years Expiring 2 Even & 3 Odd)

SPECIAL COMPOSITION REQUIREMENTS: None

MEMBER	TERM EXPIRE SEPT. 2011?	ATTEN-DANCE %	MEETINGS ATTENDED (Out of 4)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Lena Margita	Yes	100%	4	Yes		8/10/11 Ms. Margita called and stated she wants to be reappointed.
Debra Lawrence	Yes	100%	4	No		
Abraham Gutierrez	Yes	100%	4	No		
Vicky Hailey	No 09/12	100%	4			
Reggie Lawrence	No 09/12	75%	3			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Tim Bryson	One other board	
Alan Cotton	Two other boards	
Benjamin Dillard	One other board	
Kenny Harper	One other board	
Alonda Massey	Only this board	
Don "Woody" Woodward	Four other boards	

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. 2011?	ATTEN-DANCE %	MEETINGS ATTENDED (Out of 0)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy (At-Large)	Yes - 2008			No		
Joe Molina Jr.	Yes			No		
James W. Riggen (Architect) Chair	Yes			No		
Richard D. Dunham	No 09/13					
Greg Turner	No 09/13					
Chris Repman	No 09/14					
Jay K. Bradford	No 09/14					
ALTERNATES:						
Vacancy				N/A		
Vacancy				N/A		

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Greg Turner	Six other boards	
Don (Woody) Woodward	Four other boards	

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. 2011?	ATTEN-DANCE %	MEETINGS ATTENDED (Out of 3)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Lisa Grissom	Yes	100%	3	Yes		8/17/11 Ms. Lisa Grissom wants to be reappointed.
Alice Church	Yes	100%	3	Yes		
Alex Singh--Hotel/Motel Assn. Rep. 12/11	Yes	100%	3			
Steve Jones	Yes	100%	3	Yes		9/21/11 Mr. Jones wants to be reappointed.
Tyler Wolfe	No 09/12	100%	3			
Jon S. Blair	No 09/12	100%	3			
David Baur	No 09/12	100%	3			
Vicky Hailey (Liaison Officer)	No	100%	3			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Karmen Hendrix Bryant	One other board	
Don (Woody) Woodward	Four other boards	

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 2011?	ATTEN-DANCE %	MEETINGS ATTENDED (Out of 11)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Edward M. Penz	Yes	100%	11	Yes		8/23/11 Received a letter from Mr. Edward Penz stating he is resigning.
James A. Blischke	Yes	82%	9	Yes		8/8/11 Mr. Jim Blischke called and stated he wants to be reappointed.
Carla Repman	Yes	100%	11	Yes		8/18/11 Ms. Carla Repman called and stated she wants to be reappointed.
Rosie Gransberry	No 10/12	64%	7			
Norma Duran	No 10/12	73%	8			
ALTERNATE:						
Gregory Maes	Yes	64%	7	Yes		8/9/11 Mr. Gregory Maes called and stated he wants to be reappointed.

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Dennis Bade	Only this board	

MANAGED COMPETITION COMMITTEE
(Ad Hoc)

SPECIAL COMPOSITION REQUIREMENTS: Ex-Officio members are the Mayor and the City Manager

MEMBER	TERM EXPIRE SEPT. 2011	ATTEN-DANCE %	MEETINGS ATTENDED (Out of)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Jon Morgan	No					
Wes Perry	No					
Roy Nelson	No					
Hugh "Andy" Shaffer	No					
Scott Dufford	No					
Ted Tipton	No					
Kevin Sparks	No					
Scott Lovett	No					
P. Lourcey Sams	No					

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES

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. 2011?	ATTEN-DANCE %	MEETINGS ATTENDED (Out of)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Ed Zachary (CC)						
Tom Reed, Chairman (CC)	Yes					
Patricia Blackwell (City)	Yes					8/5/11 Received a call from Ms. Patricia Blackwell wants to be reappointed.
Paula Mitchell (City)	Yes					
Brent Blackburn	No 09/11					
Charles Spence (CC)	No 09/11					
Lorri Lyon West (City)	No 09/11					
Jerry Morales (Liaison Officer)						

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Steve Melzer	Only this board	
Greg Turner	Other boards	

MIDLAND DEVELOPMENT CORPORATION
(Membership - 5; Terms -3 Years)

SPECIAL COMPOSITION REQUIREMENTS:

MEMBER	TERM EXPIRE JAN. 2012?	ATTEN-DANCE %	MEETINGS ATTENDED (Out of)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Michael Trost	No 01/13					
Cary J. Love	No 01/13					
J. David Mims, 1st Vice Pres.	No 01/13					
Laura Roman	No 01/14					
Robert Rendall, Chairman	No 01/14					

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION

Decision Making

(Membership - 7; Terms - 2)

SPECIAL COMPOSITION REQUIREMENTS: Resident of City.

MEMBER	TERM EXPIRE NOV. 2011?	ATTEN-DANCE %	MEETINGS ATTENDED (Out of 6)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Ken Marks, Vice Pres.	Yes	100%	6	No		
C. Michael Dobey	Yes	83%	5	No		
James G. Smith	Yes	83%	5	No		
Wesley D. Bownds	Yes	67%	4	Yes		8/15/11 Received an email from Mr. Wesley Bownds stating he would like to be reappointed.
John James	Yes	83%	5	Yes		
Alan Krenek	Yes	33%	2	Yes		8/22/11 Received an email from Mr. Alan Krenek stating he would like to be reappointed.
Rick Davis (MISD Resp.)	Yes	33%	2	Yes		8/12/11 Received an email from Mr. Rick Davis stating he would like to be reappointed.

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Tim Bryson	One other board	
Amanda McCann	One other board	
Mike Thompson	One other board	

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

SPECIAL COMPOSITION REQUIREMENTS:

MEMBER	TERM EXPIRE JAN. 2011?	ATTEN-DANCE %	MEETINGS ATTENDED (Out of 0)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy	Yes-2007	N/A	N/A	No		**NO MEETINGS
Vacancy	Yes-2007			No		
Vacancy	Yes-2007			No		
Vacancy	Yes-2009			No		
Steve Jones	Yes			No		
Cathy Oestmann	Yes			No		
Curt Kamradt	Yes			Yes		

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Alan Cotton	Two other boards	

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 2011?	ATTEN-DANCE %	MEETINGS ATTENDED (Out of)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy	Yes			N/A		**NO MEETINGS
Vacancy	Yes			N/A		
Adrianne Valencia	Yes			No		
Melissa Wicker	Yes			No		
Jerry Morales (Liaison Officer)	No 09/12					

APPLICANTS: (Listed Alphabetically

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Nathan Miller	One other board	

MIDLAND MUNCIPAL MANAGEMENT DISTRICT BOARD
(Ad Hoc)

SPECIAL COMPOSITION REQUIREMENTS:

MEMBER	TERM EXPIRE SEPT 2011?	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
Greg Turner	Six other boards	

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD
(Membership - 6; Terms - 2 Years Staggered)

SPECIAL COMPOSITION REQUIREMENTS: None

MEMBER	TERM EXPIRE SEPT 2011?	ATTEN-DANCE %	MEETINGS ATTENDED (Out of 9)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
John James	Yes	89%	8	Yes		10/11/11 Mr. James stated he wants to be reappointed.
Karen York	Yes	100%	9	Yes		8/4/11 Ms. York called and stated she wants to be reappointed.
Guy McKenzie	Yes	67%	6	Yes		9/21/11 Wants to be reappointed.
Willie Barber	No 09/12	78%	7			
Raymond McCarthy	No 09/12	78%	7			
Michael Trost	No 09/12	100%	9			

APPLICANTS: (Listed Alphabetically

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Annabel M. Holguin	One other board	
Greg Turner	Six other boards	

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 2011?	ATTEN-DANCE %	MEETINGS ATTENDED (Out of 3)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Bart Hotchkiss	Yes	100%	3	Yes		9/21/11 Mr. Hotchkiss does not want to be reappointed.
Andrew Ellis (Petroleum Engineer)	Yes	67%	2	Yes		8/30/11 Mr. Ellis states he does not want to be reappointed.
Richard D Dunham (Realtor/Petroleum Engineer)	No 09/13	100%	3	Yes		
D. Patrick Darden (Petroleum Engineer)	No 09/12	100%	3			
Don Eubank (Drilling Engineer)	No 09/12	100%	3			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Paul T. Brown (Petroleum Engineer)	Only this board	
Benjamin Dillard (President - Southland Energy Partners)	One other board	
Nathan Miller (Petroleum Engineer)	One other board	
David Rosen (Geologist/Realtor)	Only this board	

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. 2011	ATTEN-DANCE %	MEETINGS ATTENDED (Out of 3)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy	Yes		0	N/A		
P. Lourcey Sams	Yes	100%	3	Yes		8/8/11 Mr. P. Lourcey Sams called wants to be reappointed.
Berry Simpson	Yes	67%	2	Yes		
Tina Corbett	Yes	100%	3	Yes		
David Ham	No 09/12	67%	2			
Charlie A. Spence	No 09/13	100%	3			
Susan Nichols	No 09/13	100%	3			
Eric L. West	No 09/13	100%	3			
Richard J. McGrath	No 09/13	67%	2			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Karmen Hendrix Bryant	One other board	
Kenny Harper	One other board	
Amanda McCann	One other board	
Guy McKenzie	One other board	
Mike Thompson	One other board	

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. 2011?	ATTEN-DANCE %	MEETINGS ATTENDED (Out of 4)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
David Hardwick (Ft. Stockton)	Yes	0%	0			
Larry Shed (Hobbs, NM)	Yes	0%	0			
Earl Erdmann	Yes	100%	4			
Richard Campbell	Yes	75%	3			
Robert Garst	Yes	100%	4			
Ronald Schwisow	Yes	25%	1			
Herbert Blankinship	Yes	100%	4			
Jerry Walton	Yes	75%	3			
Mike Owen	Yes	50%	2			
Gregory F. Baiano	Yes	75%	3			
John T. Echols	Yes	50%	2			
Dallas L. Smith	Yes	50%	2			
Larry Gill (Abilene)	Yes	0%	0			
Elvin Brownlee III (Andrews)	Yes	0%	0			9/23/11 Received letter reappointing Mr. Elvin Brownlee.
Jim Little (Big Spring)	Yes	100%	4			8/3/11 Received letter reappointing Mr. Jim Little.
Donald R. Bethel (Lamesa)	Yes	25%	1			8/4/11 Received letter appointing Mr. Dave Nix.
Henry Cutbirth (Monahans)	Yes	50%	2			8/30/11 Received letter reappointing Mr. Henry Curbirth.
Willie Taylor (Odessa)	Yes	50%	2			9/21/11 Received letter reappointing Mr. Willie Taylor.
Gloria Pena (Odessa)	Yes	75%	3			9/21/11 Received letter reappointing Ms. Gloria Pena.
Barbara Graff (Odessa)	Yes	100%	4			9/21/11 Received letter reappointing Ms. Barbara Graff.
Isabelle Blanchard (Pecos)	Yes	50%	2			
Luis E. Elguezabal (San Angelo)	Yes	0%	0			8/22/11 Received letter reappointing Mr. Luis E. Elguezabal.
Lex Hinds (Seminole)	Yes	0%	0			8/10/11 Received letter reappointing Mr. Lex Hinds.
David Harrell (Snyder)	Yes	0%	0			
n Wortham (Sweetwater)	Yes	25%	1			8/22/11 Received letter of reappointing Mr. Glenn Wortham.
e Goodrich (Artesia, NM)	Yes	100%	4			8/3/11 Received letter reappointing Mr. Lance Goodrich.

MEMBER	TERM EXPIRE SEPT. 2011?	ATTEN-DANCE %	MEETINGS ATTENDED (Out of 4)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Bob Forrest (Carlsbad, NM)	Yes	0%	0			
Larry Fry (Roswell, NM)	Yes	0%	0			8/22/11 Received letter reappointing Mr. Larry Fry.

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES

PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH AND MENTAL RETARDATION
(Decision Making)
Membership - 2 (City); Terms - 2 Years)

SPECIAL COMPOSITION REQUIREMENTS: Appointed from City of Midland, City of Odessa, Midland County and Ector County.

MEMBER	TERM EXPIRE JUNE 2011?	ATTEN-DANCE %	MEETINGS ATTENDED (Out of 8)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Larry Edgerton (City)	Yes	75%	6			8/8/11 Mr. Larry Edgerton called wants to be reappointed.
Janet R. Pritchett (City)	No 06/10	38%	3			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Greg Turner	Six other boards	

PERSONNEL BOARD OF APPEALS
(Decision Making)
Membership - 3; No designated term)

SPECIAL COMPOSITION REQUIREMENTS: 2 Council Members & 1 At-Large

MEMBER	TERM EXPIRE SEPT. 2011?	ATTEN-DANCE %	MEETINGS ATTENDED (Out of)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
John James						
Michael Trost						
Hugh A. "Andy" Shaffer						

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES

PLANNING AND ZONING COMMISSION
(Advisory & Decision Making)
Membership - 9; Terms - 3 Years expiring 3-4-4)

SPECIAL COMPOSITION REQUIREMENTS: Resident Citizen of City, own real property inside city limits & qualified voter.

MEMBER	TERM EXPIRE SEPT. 2011?	ATTEN-DANCE %	MEETINGS ATTENDED (Out of 22)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Becky Ferguson, Vice Chairman	Yes	81%	18	No		
Brian Carney, Chairman	Yes	86%	19	No		
Galen Gatten	Yes	77%	17	Yes		8/16/11 Mr. Galen Gatten called and wants to be reappointed.
Kevin Wilton	No 09/12	72%	16			
Bill Woodruff	No 09/12	45%	10			
Royce Watkins	No 09/12	72%	15			
Karen York	No 09/12	68%	16			
Jane Wolf	No 09/13	72%	16			
Cindy Lanning	No 09/13	76%	16			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Cliff Chalmers	Only this board	
Antonio (Tony) Carrillo	Only this board	
Adam C. Cunyus	One other board	
T. J. Henson	Only this board	
Gary Jackson	Only this board	
Jay H. Norris	One other board	
Brooks Smith	Only this board	
Greg Turner	Six other boards	
Don (Woody) Woodward	Four other boards	

TAX INCREMENT REINVESTMENT ZONE BOARD
(Decision Making)
Membership - 12; Terms - 2 Years)

SPECIAL COMPOSITION REQUIREMENTS: None

MEMBER	TERM EXPIRE MARCH 2011?	ATTEN-DANCE %	MEETINGS ATTENDED (Out of 3)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Neil Florer (College)	Yes	67%	2	No		
Dan Rush (City)	Yes	67%	2	No		
Mark T. Wellen (City)	Yes	100%	3	No		
Jay Reynolds, (Hospital)	Yes	100%	3	No		
Ralph Way (College)	Yes	100%	3	No		
Jimmy Davis (Hospital)	Yes	0%	0	Yes		
Randy Prude (County)	Yes	100%	3	Yes		
Judge Mike Bradford (County)	Yes	33%	1	Yes		
C. Mark Wheeler (City)	Yes	67%	2	Yes		8/17/11 Mr. Mark Wheeler does not want to be reappointed.
Bob Lanier (City)	Yes	100%	3	Yes		
John Kennedy (City)	No 03/12	100%	3			
Brent Kennedy (City)	No 03/12	67%	2			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Annabel M. Holguin	One other board	

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. 2011?	ATTEN-DANCE %	MEETINGS ATTENDED (Out of)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Trudi Edwards	Yes			No		**NO MEETINGS
Manny Ribera	Yes			No		
Carla Repman	Yes			Yes		8/26/11 Ms. Carla Repman wants to be reappointed.
Todd Byars	No 09/12					
Ken Morgan	No 09/12					
ALTERNATES:						
Vacancy	Yes – 2006					
Vacancy	Yes - 2007					
Vacancy	Yes - 2007					
Vacancy	Yes - 2009					

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Annabel M. Holguin	One other board	
Greg Turner	Six other boards	

MIDLAND CENTER & CENTENNIAL PLAZA

To: Midland City Council

RE: Midland Center Advisory Board Appointees

This is a request that the City Council add an addenda item to their upcoming meeting. We have four (4) persons that require Council approval to serve on our Advisory Board for the upcoming year. The names of the appointees are listed below:

Pat Blackwell (returning board member)

Paula Mitchell (returning board member)

Greg Turner (new appointee)

Tracy Bacon (new appointee)

Thank you in advance for your help. Please contact me with any questions.

Sincerely,

Bradley A Barnett

Brad Barnett
Vice President of Midland Center
432-599-1390 (cell)
brad@visitmidlandtexas.com

cc: Bobby Burns

105 N. Main Street
Midland, Texas 79701

432.682.6234 office
432.686.9830 fax
visitmidlandtexas.com

MIDLAND
CONVENTION & VISITORS BUREAU

October 26, 2011

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

Dear City Manager Sharp;

Enclosed are the quarterly reports on the Midland Convention and Visitors Bureau (CVB) and the Midland Center. The reports include our new sales and servicing activity report and progress on our goals and objectives in a year to date summary of this information. Detailed backup for these reports is available from the Chamber offices at your request.

If you have any questions or would like additional information, please call me anytime. Also, feel free to call Gaylia Olivas for the Midland Convention and Visitors Bureau or Bobby Burns for the Midland Center at 683-3381 and we would be glad to provide whatever you need.

We welcome your attendance at any of the CVB Advisory Board meetings, Midland Chamber of Commerce Board of Director meetings, Midland Center Advisory Board meetings, Midland Convention and Visitors Bureau Travel & Tourism meetings or Sports & Entertainment Association of Midland (SEAM) meetings. Please call or Email (bobby@midlandtxchamber.com; golivas@visitmidlandtexas.com) for the day and time of the next scheduled meeting in which you are interested.

Sincerely,

Robt. E. Burns
President/CEO

RB/nc
Enclosures

Cc: Courtney Sharp

Midland Convention and Visitors Bureau
109 N. Main Midland, Texas 79701 (432) 683-3381 Fax (432) 686-3556 (800) 624-6435
www.visitmidlandtexas.com
Our mission: Encourage economic growth by developing, promoting, enhancing and supporting Midland as a vibrant visitor destination

CVB Sales and Servicing Activity Report
Future Business Sales Efforts

Reporting Period: **July, 2011 - September, 2011**

Percentage of Year: **100%**

The Midland Convention & Visitors Bureau will encourage economic growth by developing, promoting, enhancing and supporting Midland as a vibrant visitor destination.

Percentage Breakdown per Month:

October - 8%	*November - 16%*	December - 25% (1st Quarter)
January - 33%	*February - 41%*	March - 50% (2ndQuarter)
April - 58%	*May- 66%*	June - 75% (3rd Quarter)
July - 83%	*August - 91%*	September - 100% (4th Quarter/Yearly)

Return on Investment (ROI)

The return on investment calculations determines the dollar amount brought into the city of Midland for every dollar in funding received by CVB. According to the Standard CVB Performance Reporting: A Handbook for CVBs by the Destination Marketing Association International (2005), CVBs calculate their return on investment (ROI) by the following ROI formula (page 40):

Return on Investment = visitor spending (DVS) generated by the CVB's efforts (Leads Secured) / total CVB operating costs

ROI ON LEADS SECURED THROUGH CVB SALES EFFORTS

	CURRENT	PREVIOUS	VARIANCE
Total DVS on Leads Secured	**$46,500**	$1,846,775	2.52%
Total CVB Operating Cost per year	**$575,000**	$676,868	85%
Return on Investment	**8.09**		
ROI Goal	**4**		
% of ROI Goal	**202%**		
Total # of Room Nights secured	**115**	2,830	4.06%
Room Night Goal	**4,600**		
% of Goal Achieved	**2.5%**		

BREAKDOWN OF LEADS INFORMATION

LEADS SECURED	CURRENT	PREVIOUS	VARIANCE
# of Leads Secured			
Association	0	1	0.0%
SMERF	1	2	50.0%
Sports	0	5	0.0%
Entertainment	0	0	0.0%
Group Tour	0	0	0.0%
Total # of Leads Secured	**1**	**8**	**12.5%**
# of Room Nights Secured			
Association	0	225	0.0%
SMERF	115	175	65.7%
Sports	0	2,430	0.0%
Entertainment	0	0	0.0%
Group Tour	0	0	0.0%
Total # of Room Nights Secured	**115**	**2,830**	**4.1%**
DVS on Leads Secured			
Association	$0	$63,300.00	0.0%
SMERF	$46,500	$93,750	49.6%
Sports	$0	$1,689,725	0.0%
Entertainment	$0	$0	0.0%
Group Tour	$0	$0	0.0%
Total DVS on Leads Secured	**$46,500**	**$1,846,775**	**2.5%**
Est. # of Day Visitors			
Association	0	5	
SMERF	50	0	22.7%
Sports	0	1,960	
Entertainment	0	0	
Group Tour	0	0	
Total Est. # of Day Visitors	**50**	**1,965**	**2.5%**
Est. # of Overnight Visitors			
Association	0	115	
SMERF	150	105	22.7%
Sports	0	4,775	
Entertainment	0	0	
Group Tour	0	0	
Total Est. # of Overnight Visitors	**150**	**4,995**	**3.0%**

TOTAL LEADS PURSUED

	CURRENT	PREVIOUS	VARIANCE
# of Leads Pursued			
Association	0	1	0.0%
SMERF	2	2	100.0%
Sports	0	1	0.0%
Entertainment	0	0	0.0%
Group Tour	0	1	0.0%
Total # of Leads Pursued	**2**	**5**	**40.0%**
# of Room Nights Submitted			
Association	0	225	0.0%
SMERF	570	55	1,036.4%
Sports	0	1,890	0.0%
Entertainment	0	0	0.0%
Group Tour	0	22	0.0%
Total # of Room Nights Submitted	**570**	**2,192**	**26.0%**
DVS on Leads Pursued			
Association	$0	$63,300	0.0%
SMERF	$222,750	$15,750	1,414.3%
Sports	$0	$1,341,900	0.0%
Entertainment	$0	$0	0.0%
Group Tour	$0	$11,880	0.0%
Total DVS on Leads Pursued	**$222,750**	**$1,432,830**	**15.5%**

LEADS LOST

	CURRENT	PREVIOUS	VARIANCE
# of Leads Lost			
Association	0	1	0.0%
SMERF	2	2	100.0%
Sports	0	4	0.0%
Entertainment	0	0	0.0%
Group Tour	0	0	0.0%
Total # of Leads Lost	**2**	**7**	**28.6%**
DVS on Leads Lost			
Association	$0	$236,250	0.0%
SMERF	$332,250	$42,375	1,414.3%
Sports	$0	$2,549,750	0.0%
Entertainment	$0	$0	0.0%
Group Tour	$0	$0	0.0%
Total DVS on Leads Lost	**$332,250**	**$2,828,375**	**11.7%**

CVB SERVICING REPORT - CURRENT FISCAL YEAR SERVICING EFFORTS

Reporting Period: **July, 2011 - September, 2011**

Note: The following data includes all events serviced by the Midland CVB in a variety of methods.

These events include both new and retained business secured and servicing, whether bid on in the same or previous fiscal year, or an event that required only servicing support.

	CURRENT	PREVIOUS	VARIANCE
# of Events Serviced			
Association	1	3	33.3%
SMERF	3	14	21.4%
Sports	11	14	78.6%
Entertainment	3	2	150.0%
Group Tour	0	2	0.0%
Total # of Events Serviced	**18**	**35**	**51.4%**
# of Room Nights			
Association	432	123	351.2%
SMERF	624	515	121.2%
Sports	5,758	7,076	81.4%
Entertainment	629	151	416.6%
Group Tour	0	15	
Total # of Room Nights	**7,443**	**7,880**	**94.5%**
DVS for Serviced Events			
Association	$99,600	$34,080	292.3%
SMERF	$279,150	$264,675	105.5%
Sports	$4,951,740	$6,674,515	74.2%
Entertainment	$323,575	$336,535	96.1%
Group Tour	$0	$5,670	
Total DVS for Serviced Events	**$5,654,065**	**$7,315,475**	**77.3%**
Day Visitors			
Association	10	15	66.7%
SMERF	189	602	31.4%
Sports	9,262	9,813	94.4%
Entertainment	2,821	2,896	97.4%
Group Tour	0	0	
Day Visitors	**12,282**	**13,326**	**92.2%**

CVB SERVICING REPORT (CONTINUED)

	CURRENT	PREVIOUS	VARIANCE
Overnight Visitors			
Association	180	73	246.6%
SMERF	450	502	89.6%
Sports	3,686	7,762	47.5%
Entertainment	525	459	114.4%
Group Tour	0	21	
Overnight Visitors	**4,841**	**8,817**	**54.9%**
RFPs Submitted			
Association	0	1	0.0%
SMERF	4	4	100.0%
Sports	4	1	400.0%
Entertainment	1	0	0.0%
Group Tour	1	1	100.0%
Total RFPs Submitted	**10**	**7**	**142.9%**

Note: RFPs, which assist event planners with affordable and competitive rates, are vital to the sales and servicing process. While there may not be direct competition from another city at the time of the RFP, the CVB is competing to make events viable through aggressive funding of hotel/motel rates and meeting space cost. Because of efforts through the RFP process, the CVB is able to capture new events and retain other events for the city outside a traditional bid process. If pricing cost for our many events is not affordable, the event planner could cancel the event and/or then seek a more attractive city, therefore negatively creating competition.

TOURISM INFORMATION PROVIDED

	CURRENT	PREVIOUS	VARIANCE
Collateral Provided			
Events	**3,425**	1,521	**225.2%**
Hotels	**3,625**	8,908	**0.4%**
Individuals	**2,622**	2,172	**1.2%**
Individuals (ORHVC)	**1,011**	614	**1.6%**
Total Collateral Provided	**10,683**	**14,559**	**0.7%**

Inquiries	
Total CVB	**1,467**
Total ORHVC	**1,245**
Total Inquiries	**2,712**

MIDLAND CENTER
September 2011

	September 11 Actual	September 11 Budget	Month Variance	YTD Actual	YTD Budget	YTD Variance	Annual Budget
REVENUE							
Room Revenue	$ 12,613	$ 10,025	$ 2,588	$ 116,360	$ 120,302	$ (3,942)	$ 120,302
Catering Comm.	2,525	3,008	$ (484)	34,088	36,100	$ (2,012)	36,100
Plaza Revenue	-	783	$ (783)	5,500	9,400	$ (3,900)	9,400
Alcohol Comm.	188	518	$ (331)	4,753	6,220	$ (1,467)	6,220
Elect. Comm.	-	527	$ (527)	1,329	6,320	$ (4,991)	6,320
Equip. Rental	1,407	527	$ 880	24,507	6,320	$ 18,187	6,320
Sales Tax	28	-	$ 28	423	-	$ 423	-
Labor & Supplies	40	445	$ (405)	2,063	5,338	$ (3,275)	5,338
TOTAL REVENUE	**$ 16,799**	**$ 15,833**	**$ 965**	**$ 189,022**	**$ 190,000**	**$ (978)**	**$ 190,000**
DISBURSEMENTS							
ADMINISTRATIVE	$ 42,226	$ 31,573	$ 10,652	$ 357,818	$ 378,882	$ (21,064)	$ 378,882
UTILTIES	4,701	4,488	$ 213	39,709	53,860	$ (14,151)	53,861
OFFICE	10,125	2,750	$ 7,375	27,016	33,000	$ (5,984)	33,000
MAINTENANCE	10,418	4,122	$ 6,296	40,941	49,460	$ (8,519)	49,460
PROMOTIONAL	1,829	953	$ 876	4,829	11,438	$ (6,609)	11,438
PLAZA OPERATIONS	1,239	2,447	$ (1,208)	12,692	29,359	$ (16,667)	29,359
TOTAL DISBURSEMENTS	**$ 70,538**	**$ 46,333**	**$ 24,205**	**$ 483,005**	**$ 555,999**	**$ (72,994)**	**$ 556,000**

YTD Collected Revenue	**YTD Budget: $190,000/ Actual: 189,022.28**	G
Revenue collections are $978 under goal as compared to same time 2010 - we were $3,704 under goal. With outstanding collections due at the end of September of approximately $8,000, Midland Center would have exceed it's revenue goal for this fiscal year.		
YTD Expenses	**YTD Budget: $555,999/ Actual: $483,005**	G
Expenses are $72,995 under budget as compared to $109,086 under budget end of the year in 2010. Budget's are prepared expecting worse case scenarios each year and Midland Center staff continues to provide excellent service and care of the property at the lowest possible costs. These funds are returned to the the City each year.		
YTD Events	**YTD Events 2010-2011 - 308 with 440 event days** **YTD Events 2009-2010 - 262 with 398 event days**	G
2011 booked considerably more events and event days. Plaza bookings increased after renovations were completed and oil related companies returned to off-site employee and safety meetings. Center returned $72,995 to COM reflecting Center staff diligence in conserving operation funds. Center was closest to meeting revenue goal as it has been in the last four years.		

MIDLAND CENTER
Actual vs. Budget
For the Twelve Months Ending September 30, 2011

	Current Month Actual	Current Month Budget	Year to Date Actual	Year to Date Budget	Year to Date Variance	Annual Budget
REVENUE						
Room Revenue	$ 12,613.00	$ 10,025.13	$ 116,360.23	$ 120,302	(3,942)	$ 120,302
Catering Comm.	2,524.60	3,008.37	34,088.23	36,100	(2,012)	36,100
Plaza Revenue	0.00	783.37	5,500.00	9,400	(3,900)	9,400
Alcohol Comm.	187.50	518.37	4,753.00	6,220	(1,467)	6,220
Elect. Comm.	0.00	526.63	1,329.00	6,320	(4,991)	6,320
Equip. Rental	1,406.50	526.63	24,506.50	6,320	18,187	6,320
Sales Tax	27.55	0.00	422.76	0	423	0
Labor & Supplies	40.00	444.87	2,062.56	5,338	(3,275)	5,338
TOTAL REVENUE	**16,799.15**	**15,833.37**	**189,022.28**	**190,000**	**(978)**	**190,000**
DISBURSEMENTS						
PERSONNEL						
Salaries	32,167.22	20,333.33	262,486.04	244,000	18,486	244,000
Contract Labor	345.60	1,313.75	5,880.00	15,765	(9,885)	15,765
Health Insurance	3,072.98	3,188.50	36,075.35	38,262	(2,187)	38,262
Retirement	3,522.73	2,436.50	26,947.48	29,238	(2,291)	29,238
Workman's Comp	0.00	1,399.88	0.00	16,799	(16,799)	16,799
Payroll Tax	2,717.78	1,864.33	21,731.32	22,372	(641)	22,372
Auto/Phone Allowanc	399.58	1,037.16	4,697.47	12,446	(7,749)	12,446
Sub-total	**42,225.89**	**31,573.45**	**357,817.66**	**378,882**	**(21,064)**	**378,882**
UTILITIES						
Electricity	4,211.21	3,569.25	30,644.95	42,831	(12,186)	42,831
Water / Garbage	411.37	713.87	5,583.92	8,566	(2,982)	8,566
Gas	78.12	205.25	3,479.95	2,463	1,017	2,463
Sub-total	**4,700.70**	**4,488.37**	**39,708.82**	**53,860**	**(14,151)**	**53,860**
OFFICE						
Supplies	245.79	275.00	2,843.69	3,300	(456)	3,300
Communications	3,276.65	733.37	10,028.26	8,800	1,228	8,800
Postage	0.00	366.63	570.86	4,400	(3,829)	4,400
Professional Services	110.00	458.37	6,109.29	5,500	609	5,500
Office Equipment	6,124.66	733.37	6,722.14	8,800	(2,078)	8,800
Professional Develop	367.90	183.37	742.15	2,200	(1,458)	2,200
Sub-total	**10,125.00**	**2,750.11**	**27,016.39**	**33,000**	**(5,984)**	**33,000**
MAINTENANCE						
Building	8,093.92	1,666.63	19,634.00	20,000	(366)	20,000
Equipment	707.31	166.63	3,548.43	2,000	1,548	2,000
Electrical	0.00	100.00	1,390.17	1,200	190	1,200
Janitorial	1,248.88	750.00	5,350.26	9,000	(3,650)	9,000
Technology	368.00	250.00	368.00	3,000	(2,632)	3,000
Botanical	0.00	33.37	0.00	400	(400)	400
Liability Insurance	0.00	605.00	7,148.00	7,260	(112)	7,260
Plumbing	0.00	216.63	372.19	2,600	(2,228)	2,600
Event/Booth Expenses	0.00	333.37	3,130.08	4,000	(870)	4,000
Sub-total	**10,418.11**	**4,121.63**	**40,941.13**	**49,460**	**(8,519)**	**49,460**
PROMOTIONAL						
Dues / Subscriptions	0.00	41.63	886.00	500	386	500
Brochures	0.00	53.13	0.00	638	(638)	638

MIDLAND CENTER
Actual vs. Budget
For the Twelve Months Ending September 30, 2011

	Current Month Actual	Current Month Budget	Year to Date Actual	Year to Date Budget	Year to Date Variance	Annual Budget
Advertising	658.75	275.00	2,438.55	3,300	(861)	3,300
Marketing / Travel	999.15	333.37	999.15	4,000	(3,001)	4,000
Meetings	171.45	250.00	505.18	3,000	(2,495)	3,000
Sub-total	**1,829.35**	**953.13**	**4,828.88**	**11,438**	**(6,609)**	**11,438**
PLAZA OPERATIONS						
Supplies	0.00	134.87	271.80	1,618	(1,346)	1,618
Botanical	300.00	300.00	3,806.85	3,600	207	3,600
General Equipment	0.00	153.38	0.00	1,842	(1,842)	1,842
Plumbing	0.00	83.37	878.56	1,000	(121)	1,000
Electrical	0.00	125.00	0.00	1,500	(1,500)	1,500
Utilities	939.38	1,650.00	7,734.97	19,800	(12,065)	19,800
Sub-total	**1,239.38**	**2,446.62**	**12,692.18**	**29,360**	**(16,668)**	**29,360**
MIDLAND CENTER CAPITAL						
Sub-total	**0.00**	**0.00**	**0.00**	**0**	**0**	**0**
CENTENNIAL PLAZA CAPITAL						
Sub-total	**0.00**	**0.00**	**0.00**	**0**	**0**	**0**
TOTAL DISBURSE	**70,538.43**	**46,333.31**	**483,005.06**	**556,000**	**(72,995)**	**556,000**
NET RECEIPTS OV	**$ (53,739.28)**	**$ (30,499.94)**	**$ (293,982.78)**	**$ (366,000)**	**72,017**	**$ (366,000)**

Keith Stretcher

From: Lewis F. McLain, Jr. [news@citybase.net]
Sent: Tuesday, November 01, 2011 7:22 AM
To: Keith Stretcher
Subject: [News] Abilene: city stops property demolitions to comply with state supreme court

City Stops Property Demolitions to Comply with State Supreme Court

Reported by: Katie Thompson
Big Country
Monday, October 31 2011

There was a case out of Dallas recently, where a woman sued the city for demolishing her boarded up home.

The Texas Supreme Court later ruled that the city cannot be allowed to protect and revoke property rights.

Now Abilene has stopped demolishing properties to comply ... While Dallas tries to send the issue back to court.

Some Abilene residents feel the ruling is the right one.

"It's just like getting rid of a house that can be fixed or rented or used by somebody else," Says Robert Tijerina.

Tijerina has lived in Abilene for eleven years. In a quiet neighborhood, across the street from a rundown, condemned property. Right now that property will remain standing.

"There could be a safety threat to the neighborhood if a house is left standing longer than it should," Says Assistant City Attorney Kelley Messer.

The City of Abilene is no longer demolishing homes like these to comply with a ruling out of the Texas Supreme Court.

Despite the appearance of the home, Tijerina says he supports the decision.

"To me it's like just going up under you and taking your house away, regardless of it's condition," says Tijerina.

The city of Abilene says the decision, if not reversed, could have serious consequences.

It has now along with seventeen other cities, filed briefings in support of a re-hearing.

"We are now having to reassess how we handle dangerous structures so that we can limit potential liability to the city," Says Messer.

If the ruling stands, it could potentially allow for those whose homes have previously been demolished, to seek compensation.

Right now there are 20 properties on the agenda for the Abilene Board of Building Standards meeting set to take place this Wednesday.

Owners of those properties will face decision on what happens next.