

CITY OF MIDLAND, TEXAS
BRIEFING SESSION AGENDA
November 13, 2012 - 9:00 a.m.
City Hall - Basement Conference Room
300 North Loraine
Midland, Texas

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

1. Receive a presentation from Airport on proposed development and the space port program.
2. Presentation of Water Conservation Program.

AGENDA FOR CITY COUNCIL MEETING
November 13, 2012 – 10:00 AM
Council Chamber - City Hall

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

OPENING ITEMS

1. Invocation - Pastor Daniel Stephens, Mid-Cities Community Church
2. Pledge of Allegiance

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - a. Presentation of a Proclamation for Texas Recycles Day.

PUBLIC COMMENT

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

CONSENT AGENDA

5. Consider a motion approving the following minutes:
 - a. Regular Meeting of October 23, 2012.
6. Consider a resolution authorizing the execution of a Professional Services Agreement with Vandergriff Group Architects, P.C., of Midland, Texas, for professional architectural and engineering services to determine the current and future needs of the City Hall Facility; and appropriating \$80,000.00. (GENERAL SERVICES) (2012 - 364)
7. Consider a resolution authorizing the renewal of a Marketing Agreement with Utility Service Partners Private Label, Incorporated, dba Service Line Warranties of America, allowing the offer of utility service line warranties to Midland residents. (GENERAL SERVICES) (2012 - 365)

8. Consider a resolution awarding the Sparks Park Target Area Development Paving Improvements Project to Reece Albert, Incorporated, of Midland, Texas, at a total cost of \$402,482.25; and appropriating funds. (GENERAL SERVICES) (2012 - 366)
9. Consider a resolution approving the purchase of a fire truck pumper through the Houston-Galveston Area Council of Governments (HGAC) at a total cost of \$574,988.00; and this item was not bid but purchased through a Council of Governments. (GENERAL SERVICES) (2012 - 367)
10. Consider a resolution approving the purchase of an 836H Landfill Compactor DCA1 through the Buyboard at a total cost of \$899,802.83; and this item was not bid but purchased through a Council of Governments. (GENERAL SERVICES) (2012 - 368)
11. Consider a resolution approving an agreement with Justice Benefits, Incorporated, of Dallas, Texas, to provide federal reimbursement opportunities and consultant services for the Health and Senior Services Division of the Community Services Department; said firm to receive eighteen percent of funds recovered. (GENERAL SERVICES) (2012 - 369)
12. Consider a resolution approving plans and specifications and authorizing advertisement for competitive bids for expansion of the maintenance building, construction of an indoor batting cage, and construction of a storage area at the Scharbauer Sports Complex. (GENERAL SERVICES) (2012 - 370)
13. Consider a resolution authorizing the execution of an Airport Fueling Agreement with W-T Hangar LLC in order to store and dispense all forms of aviation propellants and fuels from fixed dispensers only to W-T Hangar LLC's aircraft at the Midland International Airport, Midland County, Texas; and authorizing the City Manager to negotiate insurance terms as they relate to said agreement and to modify the agreement accordingly prior to execution of the agreement. (AIRPORTS) (2012 - 371)
14. Consider a resolution authorizing the execution of an Amendment to the Land Lease Agreement with W-T Hangar, LLC for hangar development located on a 0.48 acre tract of land located in Lot 4B, Block 11, Midland International Airport Industrial Park Addition, Section 6, an addition to the City of Midland, Midland County, Texas; said amendment to include leasing an additional .34 acre apron tract in the new hanger development area for the purpose of installing a fueling facility. (AIRPORTS) (2012 - 372)
15. Consider a resolution authorizing the execution of Amendment Number Three to the Professional Services Agreement with Parkhill, Smith & Cooper, Incorporated, for improvements contained in the Airport Capital Improvement Program; said amendment to include the following projects: Terminal Vehicle Parking Expansion, Taxiway P Aircraft Run-Up, and Wildlife Hazard Management Plan; and appropriating \$180,552.00. (AIRPORTS) (2012 - 373)

16. Consider a resolution authorizing the execution of an Independent Professional Consultant Contract with Frances Stapp to provide curator management and other services to the Heritage District. (COMMUNITY SERVICES) (2012 - 374)
17. Consider a resolution authorizing the Friends of Midland Soccer to raise funds on behalf of the City of Midland for the development of additional soccer fields, lights, concessions, playgrounds, and parking at Beal Park; upon completion of the soccer complex the City of Midland would be responsible for the operation and maintenance. (COMMUNITY SERVICES) (2012 - 375)
18. Consider a resolution granting a variance for Lot 6B, Block 2, Gateway Plaza, Section 6, City and County of Midland, Texas (Commonly known as 5511 Starboard Drive), by permitting construction of commercial buildings where no portion of any building is closer than one hundred ninety-six (196) feet of an oil and gas well; and authorizing issuance of building permits. (DEVELOPMENT SERVICES) (2012 - 376)
19. Consider a resolution authorizing an amendment to Resolution 2011-072 which authorized the appropriation of funds for the HOME Investment Partnership Program Reservation System Participant Program for reconstruction projects. (DEVELOPMENT SERVICES) (2012 - 377)
20. Consider a resolution authorizing the execution of a Public Improvement Development Agreement with Midland Rentals, LLC for development of Floyd Acres Addition, City and County of Midland, Texas (Generally located along Beal Parkway, south of Anetta Drive and west of Beal Park); and appropriating funds in the amount of \$324,116.00 therefor; said agreement being authorized by Section 395.081 of the Texas Local Government Code. (ENGINEERING SERVICES) (2012 - 378)
21. Consider a motion on a request by West Company of Midland, Inc. for Mesquite Terrace Apartments, to approve items requested for deferral in the amount of \$28,750.00, and to waive the associated public improvement guarantee. (ENGINEERING SERVICES)
22. Consider a resolution authorizing the execution of a reimbursement agreement with Union Pacific Railroad Company ("Union Pacific") for the relocation of certain City of Midland facilities under Industrial Avenue; and authorizing payment to John Plott Company, Incorporated as the contractor who has performed the work. (ENGINEERING SERVICES) (2012 - 379)
23. Consider a motion on a request by Landgraf, Crutcher & Associates, Inc. (LCA). for David Heiser Addition, to approve items requested for deferral in the amount of \$65,650, and to waive the associated public improvement guarantee. (District #2 - Hailey) (ENGINEERING SERVICES)
24. Consider a resolution appropriating \$124,750.00 from the General Fund for the Outdoor Weather Service Notification System; this outdoor notification system

project was initiated in last year's fiscal budget and those funds were deposited in the General Fund at the close of budget. (FIRE) (2012 - 380)

25. Consider a resolution appointing individuals to serve as volunteers to enforce automobile parking restrictions as authorized by Chapter 681 of the Texas Transportation Code. (POLICE) (2012 - 381)
26. Consider a resolution accepting a grant award in the amount of \$1,780.00 from the Texas Alcoholic Beverage Commission to be used by the Midland Police Department to enforce underage drinking laws; authorizing the execution of acceptance documents; and allocating grant funds; no cash match is required. (POLICE) (2012 - 382)
27. Consider a resolution authorizing the implementation of flow-based sewer rates, based on December 2012, January 2013, and February 2013 water usage; and becoming effective October 1, 2013; and authorizing the City Manager to conduct the appropriate studies and submit to the City Council the necessary ordinances therefore. (UTILITIES) (2012 - 383)
28. Consider a resolution approving additional funding for the Interlocal Agreement between the City of Midland, the City of San Angelo and the City of Abilene as approved on April 8, 2011 regarding long-term water supplies; and appropriating \$500,000.00. (UTILITIES) (2012 - 384)
29. Consider a resolution authorizing the Department of Utilities to cause to be published, in the Midland Reporter Telegram, all notices required pursuant to Chapter 26 of the Texas Parks and Wildlife Code of a public hearing regarding the City's intent to execute a Temporary Right-of-Way License with Oncor Electric Delivery Company, L.L.C., across a portion of Windlands Park; and directing the Utilities Director to comply with all requirements of Chapter 26 of the Texas Parks and Wildlife Code. (UTILITIES) (2012 - 385)

MISCELLANEOUS

30. Consider a resolution approving the issuance of a permit to RSP Permian, L.L.C. ("Operator") to drill an oil and gas well within the City limits located 690 feet from the north line and 1,080 feet from the east line, Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas (Generally located on the south side of Briarwood Avenue, approximately 600 feet west of Roadrunner Trail). (#Bus Barn2603D) (DEVELOPMENT SERVICES) (2012 - 386)
31. Consider a resolution approving the issuance of a permit to RSP Permian, L.L.C. ("Operator") to drill an oil and gas well within the City limits located 590 feet from the north line and 1,040 feet from the east line, Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas (Generally located on the south side of Briarwood Avenue, approximately 560 feet west of Roadrunner Trail). (#Bus Barn 2611D) (DEVELOPMENT SERVICES) (2012 - 387)

32. Consider a resolution approving the issuance of a permit to RSP Permian, L.L.C. ("Operator") to drill an oil and gas well within the City limits located 640 feet from the north line and 1,040 feet from the east line, Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas (Generally located on the south side of Briarwood Avenue, approximately 560 feet west of Roadrunner trail). (#Bus Barn 2612D) (DEVELOPMENT SERVICES) (2012 - 388)
33. Consider a resolution approving the issuance of a permit to RSP Permian, L.L.C. ("Operator") to drill an oil and gas well within the City limits located 740 feet from the north line and 1,040 feet from the east line, Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas (Generally located on the south side of Briarwood Avenue, approximately 560 feet west of Roadrunner Trail). (#Bus Barn 2613D) (DEVELOPMENT SERVICES) (2012 - 389)
34. Consider a resolution approving the issuance of a permit to RSP Permian, L.L.C. ("Operator") to drill an oil and gas well within the City limits located 790 feet from the north line and 1,040 feet from the east line, Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas (Generally located on the south side of Briarwood Avenue, approximately 560 feet west of Roadrunner Trail). (#Bus Barn 2614D) (DEVELOPMENT SERVICES) (2012 - 390)
35. Consider a resolution authorizing the execution of a Road Repair Agreement with RSP Permian, L.L.C. regarding its applications to drill oil and gas wells (#2603D, #2611D, #2612D, #2613D and #2614D) within the City limits in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (DEVELOPMENT SERVICES) (2012 - 391)
36. Consider a resolution authorizing a right-of-way license between the City of Midland, Texas and RSP Permian, L.L.C.; said right-of-way license is for the purpose of entering the City of Midland's right-of-way for the purpose of placement, operation and maintenance of a four (4) inch poly pipeline and two (2) four (4) inch polyflow pipelines contained within a thirteen and three/eighths (13 3/8) inch steel casing pipe, in a portion of Briarwood Avenue; the pipeline is located within the City of Midland right-of-way, Section 26, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas; the license term is for twenty-five (25) years, commencing with the date of this license and shall automatically renew at the end of the term for one additional twenty-five (25) year term upon 90 days written request prior to expiration. (ENGINEERING SERVICES) (2012 - 392)
37. Consider an ordinance amending Title III, "Departments", Chapter 1, "Water Department", Section 2, "Rates," Subsection (A), "Customers Inside of City Limits," Sub-Subsection 1., "Water Rates," of the City Code of Midland, Texas, so as to decrease the rates charged to customers inside the City Limits for water; containing a cumulative clause; containing a savings and severability clause; and ordering publication; and the City Manager shall notify all customers outside the City limits as required by state law. (UTILITIES) (9076)

38. Consider an ordinance extending the boundaries of the City of Midland, Texas, by adding thereto certain areas adjoining the present City limits, being a 283.36-acre tract of land out of Sections 11 and 12, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof (Generally located on the northeast corner of the intersection of West Interstate Highway 20 and South County Road 1250); and approving a public service plan. (DEVELOPMENT SERVICES) (9077)
39. Consider an ordinance extending the boundaries of the City of Midland, Texas, by adding thereto certain areas adjoining the present City limits, being a 75.90-acre tract of land out of Sections 37 and 38, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof (Generally located on the southwest corner of the intersection of Tradewinds Boulevard and Deauville Boulevard); and approving a public service plan. (DEVELOPMENT SERVICES) (9078)
40. Consider an ordinance extending the boundaries of the City of Midland, Texas, by adding thereto certain areas adjoining the present City limits, being a 30.98-acre tract of land out of Section 35, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof (Generally located on the east side of State Highway 158, approximately ½ mile northwest of State Highway 191); and approving a public service plan. (DEVELOPMENT SERVICES) (9079)
41. Consider an ordinance extending the boundaries of the City of Midland, Texas, by adding thereto certain areas adjoining the present City limits, being a 193.29-acre tract of land out of Sections 11 and 12, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof (Generally located on the south side of Interstate 20, south of South Loop 250 West); and approving a public service plan. (DEVELOPMENT SERVICES) (9080)
42. Consider a resolution approving the issuance of a permit to Rust Oil Corporation ("Operator") to drill an oil and gas well within the City Limits located 2,173 feet from the south line and 1,651 feet from the east line, Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas (Generally located on the west side of the extension of North Garfield Street, approximately ½ mile north of Mockingbird Lane). (DEVELOPMENT SERVICES) (2012 - 393)
43. Consider a resolution authorizing the execution of a Road Repair Agreement with Rust Oil Corporation regarding its application to drill an oil and gas well within the City Limits located 2,173 feet from the south line and 1,651 feet from the east line, Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. (DEVELOPMENT SERVICES) (2012 - 394)
44. Consider a 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 2,314 feet from the north line and 2,340 feet from the west line, Section

8, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas (Generally located on the east side of North Midland Drive, approximately ½ mile north of Mockingbird Lane); and providing that said permit does not require a new road repair agreement but shall be consolidated under an existing road repair agreement. (DEVELOPMENT SERVICES) (2012 - 395)

45. Consider a resolution authorizing acceptance of a mineral deed from the estate of Robert B. Holt; and authorizing the City Manager to execute all documents necessary to settle all claims of the City of Midland 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. (CITY ATTORNEY'S) (2012 - 396)
46. Consider a motion making appointments to various Boards and Commissions.

SECOND READINGS

47. Consider an ordinance on second reading changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lot 4A, Block 3, Westridge Park Addition, Section 15, City and County of Midland, Texas, which is presently zoned PD, Planned District for a Shopping Center, to be used as an Amended Planned District (Generally located on the west side of Tradewinds Boulevard, approximately 630 feet south of Andrews Highway); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9074)
48. Consider an ordinance on second reading vacating and abandoning a 0.032-acre portion of West Ohio Street right-of-way adjacent to Lot 12, Block 26, Original Town Addition, City and County of Midland, Texas (Generally located on the southeast corner of the intersection of West Ohio Street and North Colorado Street); adopting the appraisal by the City Manager of \$2,100.00; and ordering recordation by the City Secretary. (DEVELOPMENT SERVICES) (9075)

PUBLIC HEARINGS

49. At approximately 10:29 a.m. hold a public hearing and consider a resolution of the City Council of the City of Midland, Texas, providing for the annexation of certain sparsely populated property; the owner has requested that the property be annexed; said property is adjacent to and contiguous to the present boundary limits of the City of Midland; said property being a 30.98-acre tract of land out of Section 35, Block 40, T-1-S, T&P RR Co. Survey, Midland County Texas; the Midland City Council hereby grants the petition for annexation as authorized by Section 43.028 of the Texas Local Government Code; and authorizing and directing the City Secretary to file a certified copy of this resolution and all exhibits in the Midland County Deed Records maintained by the Midland County Clerk. (DEVELOPMENT SERVICES) (2012 - 397)

50. At approximately 10:30 a.m. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 22.46-acre tract of land out of Section 1, Block 39, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas, which is presently zoned MH, Manufactured Home District, in part, and LR-2, Local Retail District, in part, to be used as an MF-1, Multiple-Family Dwelling District (Generally located on the east side of Lamesa Road, approximately 1,100 feet north of Interstate 20); containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9081)
51. At approximately 10:33 a.m. hold a public hearing and consider an ordinance changing the zoning use classification of the property described as Lot 7, less the west 5 feet, and Lots 8, 9 and 10, Block 20, Belmont Addition, City and County of Midland, Texas (Generally located on the northeast corner of the intersection of Rankin Highway and West Francis Avenue), which is presently zoned LR-3, Local Retail District, by permitting said property to be used under a specific use permit with term for the sale of all alcoholic beverages in a restaurant for on-premises consumption; making said permit subject to certain conditions and restrictions contained herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9082)
52. At approximately 10:36 a.m. hold a public hearing and consider an ordinance changing the zoning use classification of the property described as Lot 1A, Block 2, Gateway Plaza, City and County of Midland, Texas (Generally located on the northeast corner of the intersection of West Business 20 and Liberty Drive), which is presently zoned PD, Planned District for a Shopping Center, by permitting said property to be used under a Specific Use Permit with Term for the sale of all alcoholic beverages in a theater/amusement center for on-premises consumption; making said permit subject to certain conditions and restrictions contained herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9083)
53. At approximately 10:39 a.m. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lots 1-8, the north 8 feet of the west 75 feet of Lot 9, the east 65 feet of Lots 9-12, and Lots 13-23, Block 53, Original Town, City and County of Midland, Texas, which is presently zoned C-1, Central Area District, to be used as a PD, Planned District for a Housing Development (Generally located north of Wall Street, south of Texas Avenue, east of Main Street, and west of Baird Street); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative

clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9084)

54. At approximately 10:42 a.m. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lot 1A, Block 5, S.W. Estes Addition, Section 2, City and County of Midland, Texas, which is presently zoned 1F-2, One-Family Dwelling District, to be used as a PD, Planned District for an Office Center (Generally located on the southwest corner of West Cuthbert Avenue and Whitaker Street); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9085)
55. At approximately 10:45 a.m. hold a public hearing and consider a 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) (2012 - 398)
56. At approximately 10:48 a.m. hold a public hearing regarding a proposed oil and gas permit to Linn Operating, Inc. (Operator), for a permit to drill an oil & gas well within the City Limits, (Robbie 24D) located 262 feet from the north line and 467 feet from the west line located in Section 24, Block 40, T-1-S, T&P RR Co., Survey, City and County of Midland, Texas. (Generally located on the east side of Avalon Drive, approximately 250 feet south of the extension of Mockingbird Lane.) (DEVELOPMENT SERVICES)
57. At approximately 10:51 a.m. hold a public hearing regarding a proposed oil and gas permit to Endeavor Energy Resources, L.P. (Operator), for a permit to drill an oil & gas well within the City Limits, (Chaps No. 2) located 2,167 feet from the north line and 600 feet from the west line, southeast quarter of the northwest quarter of Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the south side of the Passage Way, approximately 600 feet east of North Midkiff Road.) (DEVELOPMENT SERVICES)
58. At approximately 10:54 a.m. hold a public hearing regarding a proposed oil and gas permit to Endeavor Energy Resources, L.P. (Operator), for a permit to drill an oil & gas well within the City Limits, (Chaps No. 3) located 2,167 feet from the north line and 1950 feet from the west line, southwest quarter of the northwest quarter of Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the south side of the Passage Way, approximately 1,950 feet east of North Midkiff Road.) (DEVELOPMENT SERVICES)

59. At approximately 10:57 a.m. hold a public hearing and consider an ordinance establishing the zoning classification of the area indicated as being a 283.36-acre tract of land out of Sections 11 and 12, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof, as a BP, I-20 Business Park District; said tract is generally located on the northeast corner of the intersection of West Interstate 20 and South County Road 1250; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9086)
60. At approximately 11:00 a.m. hold a public hearing and consider an ordinance establishing the zoning classification of the area indicated as being a 29.82-acre tract of land out of Sections 37 and 38, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas ("Tract 2A"), and being more specifically described by metes and bounds in Section One hereof, as a PD, Planned District for an Office Center; establishing the zoning classification of the area indicated as being a 21.87-acre tract of land ("Tract 2B"), and being more specifically described by metes and bounds in Section Two hereof, as a PD, Planned District for an Office Center; establishing the zoning classification of the area indicated as being a 16.13-acre tract of land ("Tract 2C"), and being more specifically described by metes and bounds in Section Three hereof, as a PD, Planned District for a Housing Development; establishing the zoning classification of the area indicated as being a 11.71-acre tract of land ("Tract 2D"), and being more specifically described by metes and bounds in Section Four hereof, as an LR-2, Local Retail District; establishing the zoning classification of the area indicated as being a 2.29-acre tract of land ("Tract 2E"), and being more specifically described by metes and bounds in Section Five hereof, as an LR-2, Local Retail District; Tracts 2B-2E are all out of Section 37, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas; said tracts are generally located on the southwest corner of the intersection of Tradewinds Boulevard and Deauville Boulevard; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9087)
61. At approximately 11:03 a.m. hold a public hearing and consider an ordinance establishing the zoning classification of the area indicated as being a 3.623-acre tract of land ("Tract 3A"), and being more specifically described by metes and bounds in Section One hereof, as a PD, Planned District for a Housing Development; establishing the zoning classification of the area indicated as being a 27.347-acre tract of land ("Tract 3B"), and being more specifically described by metes and bounds in Section Two hereof, as a 1F-1, One-Family Dwelling District; said tracts are all out of Section 35, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas; said tracts are generally located on the east side of State Highway 158, approximately ½ mile northwest of State Highway 191; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9088)

62. At approximately 11:06 a.m. hold a public hearing and consider an ordinance establishing the zoning classification of the area indicated as being a 193.29-acre tract of land out of Sections 11 and 12, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, and being more specifically described by metes and bounds in Section One hereof, as an FD, Future Development District; said tract is generally located on the south side of Interstate Highway 20 south of South Loop 250 West; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9089)
63. At approximately 11:09 a.m. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lot 1A, Block 4, Gateway Plaza, Section 4, City and County of Midland, Texas, which is presently zoned PD, Planned District for a Housing Development, to be used as an amended Planned District (Generally located on the west side of Tradewinds Boulevard, approximately 800 feet north of West Business Interstate 20); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9090)
64. At approximately 11:12 a.m. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 10.215-acre tract of land which is presently zoned FD, Future Development District, to be used as a 1F-1, One-Family Dwelling District; by permitting a 1.695-acre tract of land which is presently zoned FD, Future Development District, to be used as a PD, Planned District for a Housing Development; said tracts being located in Section 35, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas; said tracts being more specifically described by metes and bounds made a part hereof; said tracts are generally located on the northeast side of State Highway 158 at the west extension of Homestead Boulevard; providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9091)
65. At approximately 11:15 a.m. hold a public hearing and consider a resolution authorizing the temporary use of land for an outdoor amusement function on the west 90 feet of Lots 10-12, Block 61, and on Lot 1 and the north 30 feet of Lot 2, Block 60 ½, and a 10 foot by 80 foot vacated portion of Carrizo Street, all out of Original Town, City and County of Midland, Texas (Generally located on the south side of West Wall Street, on both sides of Carrizo Street); and making said permit subject to certain special conditions and restrictions contained herein. (DEVELOPMENT SERVICES) (2012 - 399)

EXECUTIVE SESSION

66. 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
 - a.1. Discuss with the City Attorney and attorney(s) with the Cotton, Bledsoe, Tighe and Dawson law firm 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.

Respectfully Submitted,

Courtney B. Sharp
City Manager

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

**MIDLAND CITY COUNCIL
MINUTES
October 23, 2012**

BRIEFING SESSION

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 9:01 a.m. on October 23, 2012.

Council Members present: Mayor Pro Tem 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: Mayor W. Wesley Perry (arrived at 9:01 a.m.), Council Member Scott Dufford (At-Large), and Council Member Michael Trost (District 4) (arrived at 9:05 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, Solid Waste Director Morris Williams, Downtown Development Director Genora Young, Acting Engineering Director David Beard, Assistant City Engineer Jeff Cohen, Transportation Manager Gary Saunders, Planning Division Manager Cameron Walker, Building Official Steve Thorpe, and Multimedia Developer Ryan Stout.

1. Receive a presentation from Charlene Romero McBride of the Hispanic Cultural Center of Midland, regarding program updates and capital projects.

Charlene Romero McBride of the Hispanic Cultural Center noted her thankfulness for the building. She noted they were planning to focus on larger community events, reviewed programs they offer, and provided an update on events held in the last year. She explained the improvements and updates to the building and explained their upcoming patio project that will create a second renting venue that could generate revenue.

Discussion ensued about their upcoming event Festival of Goblins, Souls, and Skulls.

2. Receive an update regarding the Tradewinds Boulevard Status.

Senior Planner Ken VanDyne provided brief introduction and history of the Tradewinds Corridor reporting all of the changes that are happening in the area including Betenbough Homes, the new apartment complex and the future movie complex. He explained they hired a consultant to perform a traffic study of the area.

Brook Baca, Dunaway and Associates, introduced himself.

Barry Hudson, Senior Planner for Dunaway and Associates, provided an overview of the land use and proposed land use in the Gateway and Tradewinds Corridor and the recently approved roadway plan.

They reviewed 23 intersections with primary focus of what the proposed impact would be to streets and to the surrounding area. He reviewed the expected number of trips noting it would peak at over 15,000 in the afternoon hours. The figure did not include any special events at the sports complex. He reviewed other intersections throughout area and explained the proposed changes and intersection improvements and briefly reviewed their findings and recommendations.

Discussion ensued about TXDOT funding, potential MDC funding, and how Plano handled a similar situation.

The foregoing agenda items were discussed by the City Council with no formal action taken. The Briefing Session was adjourned at 10:05 a.m.

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:06 a.m., October 23, 2012.

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

Council Members absent: 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.

The Agenda Items were heard in the following order:

OPENING ITEMS

1. Invocation - Pastor Curtis Benninghoff, First United Pentecostal Church
2. Pledge of Allegiance

PRESENTATIONS

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

PUBLIC COMMENT

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

John Love, 1613 E. Oak, in reference to Agenda Item numbers 16 and 17 asked Council to consider studying the entire drainage system and not just those two areas.

CONSENT AGENDA

Council Member Morales moved to approve Consent Agenda items 5 - 19 excluding 11, 12, 16, 17, 18, 19; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

5. Approved a motion approving the following minutes:
 - a. Regular Meeting of October 9, 2012.
 - b. Special Meeting of October 16, 2012.
6. Approved a resolution approving a contract with WR Construction, Inc. of Lubbock, Texas for the construction of the commons area fence at the Scharbauer Sports Complex for the Community Services Department. 5247-12 (GENERAL SERVICES)

RESOLUTION NO. 2012 - 344

RESOLUTION AWARDING A CONTRACT FOR THE CONSTRUCTION OF THE COMMONS AREA FENCE AT THE SCHARBAUER SPORTS COMPLEX TO WR CONSTRUCTION, INCORPORATED, OF LUBBOCK, TEXAS, AT A TOTAL COST OF \$194,000.00; AND ALLOCATING FUNDS

7. Approved a resolution approving a contract with American Seating Company of Grand Rapids, Michigan to provide and install seating at the Scharbauer Sports Complex for the Community Services Department. 5458-13 (GENERAL SERVICES)

RESOLUTION NO. 2012 - 345

RESOLUTION AWARDING A CONTRACT TO PROVIDE AND INSTALL SEATING AT THE SCHARBAUER SPORTS COMPLEX TO AMERICAN SEATING COMPANY AT A TOTAL COST OF \$960,902.00

8. Approved a resolution approving a master agreement with Helena Chemical of Stanton, Texas for fertilizer for the Spraberry Farm. 5508-13 (GENERAL SERVICES)

RESOLUTION NO. 2012 - 346

RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT FOR THE PURCHASE OF FERTILIZER OF ASSORTED TYPES AND IN ASSORTED VOLUMES FOR OPERATIONS AT THE SPRABERRY FARM, FROM HELENA CHEMICAL COMPANY OF STANTON, TEXAS, AT AN ESTIMATED TOTAL COST OF \$114,750.00

9. Approved a resolution approving the purchase of an estimated annual supply of 2000 tons of Aluminum Sulfate from Chameleon Industries, Inc. of Mesquite, Texas for the Water Purification Plant. 5589-13 (GENERAL SERVICES)

RESOLUTION NO. 2012 - 347

RESOLUTION AUTHORIZING THE PURCHASE OF AN ANNUAL SUPPLY OF ALUMINUM SULFATE FOR PURIFYING CITY OF MIDLAND DRINKING WATER FROM THE LOW BIDDER, CHAMELEON INDUSTRIES, INCORPORATED, FOR A

TOTAL PRICE OF \$505,000.00

10. Approved a resolution approving the 2013 City Council Meeting Dates (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2012 - 348

RESOLUTION ESTABLISHING THE DATES OF THE REGULAR CITY COUNCIL MEETINGS TO BE HELD DURING THE CALENDAR YEAR 2013; AND CHANGING THE REGULAR CITY COUNCIL MEETING OF DECEMBER 11, 2012 TO DECEMBER 18, 2012

13. Approved a motion on a request by Bradshaw and Associates, Inc. for Country Sky Addition (Section 16), to approve items requested for deferral in the amount of 18,745.00, and to waive the associated public improvement guarantee. (ENGINEERING SERVICES)
14. Approved a motion to create a one year blanket deferral for wastewater collection and paving improvements within the Country Sky Addition, and to waive the associated public improvement guarantee. (ENGINEERING SERVICES)
15. Approved 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 associated with extending Tradewinds Blvd. from Thomason Dr. to the Gateway Plaza development. (ENGINEERING SERVICES)

RESOLUTION NO. 2012 - 351

RESOLUTION AUTHORIZING THE CITY MANAGER TO ADVERTISE A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES FOR PAVING, UTILITY AND DRAINAGE IMPROVEMENTS ASSOCIATED WITH THE EXTENSION OF TRADEWINDS BOULEVARD FROM THOMASON DRIVE TO THE GATEWAY PLAZA ADDITION; 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

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

11. Consider a resolution appropriating funds to Atmos RRM (Rate Review Mechanism). (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2012 - 349

RESOLUTION APPROPRIATING FUNDS FROM THE GENERAL LIABILITY SELF-INSURANCE FUND TO THE ATMOS RATE REVIEW MECHANISM PROJECT (8923) IN THE AMOUNT OF \$200,000.00; SAID FUNDS REPRESENT REIMBURSEMENT FROM ATMOS FOR CONSULTING/LEGAL FEES ASSOCIATED WITH THE STEERING COMMITTEE'S ANALYSIS OF THEIR RATE REVIEW MECHANISM COSTS; THERE IS NO IMPACT TO THE GENERAL FUND

Following brief discussion regarding reimbursement of project funds, Council Member Sparks moved to adopt Resolution No. 2012 - 349; seconded by Council Member

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

12. Consider a resolution authorizing the execution of an addendum to the agreement with Midland Sports, Incorporated for Baseball Park and Office Space at the Scharbauer Sports Complex. (COMMUNITY SERVICES)

RESOLUTION NO. 2012 - 350

RESOLUTION AUTHORIZING THE EXECUTION OF AN ADDENDUM TO THE AGREEMENT WITH MIDLAND SPORTS, INCORPORATED FOR BASEBALL PARK AND OFFICE SPACE AT THE SCHARBAUER SPORTS COMPLEX

Community Services Director Tina Jauz gave an overview of the item noting that the City had identified areas that could be used for additional advertising revenue and the amendment was to list those areas within the agreement.

Council Member Trost moved to adopt Resolution No. 2012 - 350; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

16. Consider a resolution authorizing the City Manager to advertise a Request for Qualification (RFQ) for firms to provide professional services to develop a drainage study for the Midland Draw from A Street to Loop 349. (ENGINEERING SERVICES)

RESOLUTION NO. 2012 - 352

RESOLUTION AUTHORIZING THE CITY MANAGER TO ADVERTISE A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES FOR THE DEVELOPMENT OF A DRAINAGE STUDY FOR MIDLAND DRAW FROM "A" STREET TO LOOP 349; 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

Council Member Hailey, in follow-up to the public comment, asked that a city wide drainage study be considered.

Discussion ensued about the two areas proposed to be studied noting they would help with future development. In the late 90's a City wide drainage study was prepared and solutions developed that were still viable but needed funding to implement.

Council Member Sparks moved to adopt Resolution No. 2012 - 352; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

17. Consider a resolution authorizing the City Manager to advertise a Request for Qualification (RFQ) for firms to provide professional services to develop a drainage study for the Jal Draw from CJ Kelly Park to Loop 349. (ENGINEERING SERVICES)

RESOLUTION NO. 2012 - 353

RESOLUTION AUTHORIZING THE CITY MANAGER TO ADVERTISE A REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL SERVICES FOR THE DEVELOPMENT

OF A DRAINAGE STUDY FOR JAL DRAW FROM C.J. KELLY PARK TO LOOP 349; 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

Council Member Trost moved to adopt Resolution No. 2012 - 353; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

18. Consider a resolution to approve amendments to the Midland Police Department General Orders. (POLICE)

RESOLUTION NO. 2012 - 354

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS, APPROVING CERTAIN AMENDMENTS TO THE GENERAL ORDERS OF THE MIDLAND POLICE DEPARTMENT; AND PROVIDING THAT THE CITY COUNCIL IS THE POLICYMAKING AUTHORITY OF THE CITY OF MIDLAND

Council Member Sparks asked for an explanation of the Police Department Vision Statement. Police Chief Price Robinson noted that the Vision Statement had been refreshed and now reflected the department in the core ways they do business. The Vision Statement is "The Midland Police Department will be recognized as a progressive law enforcement agency striving for a safer community and a better quality of life to ensure Midland is a safe place to live, visit, and conduct business." The Mission Statement is "The Midland Police Department will develop personnel and manage resources to promote effective partnerships with the community to improve the quality of life through the delivery of fair and impartial police services while maintaining an atmosphere of respect for human dignity."

When asked what it meant to be progressive, Chief Robinson responded that it meant to advocate change and progress as opposed to maintaining things the way they were. It could be in the area of technology, policies, equipment, etc. They have been accredited for the last 18 years as a top tier agency.

City Manager Sharp noted that he has charged all departments in the City to be the best of the best in the State of Texas and to be a benchmark City. He noted the Police Department is flagship with the certification committee and that they will be going next month to be reaccredited. He explained that the assessors who recently reviewed the Police Department had very high remarks of the Police Department especially in leadership. He noted the Department is being progressive enough to address the needs of the City and citizens now and into the future.

Discussion ensued as to whether there truly was no fiscal impact as stated in the staff memo. Police Chief Price responded that to the City there would be no Fiscal Impact as the increase for hiring off-duty officers as security to events would be borne by the company hiring the officers.

Discussion ensued regarding the change to Chapter 11, Section 11, with Chief Robinson clarifying the change was due to changes in state law.

Discussion ensued regarding probation for promotions and transfers. It was noted that employees who failed to make probation would be returned to their old position.

Council Member Sparks moved to adopt Resolution No. 2012 - 354; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

19. Consider a resolution approving an amendment to a task order with Arcadis U.S., Inc. and appropriate funds. (UTILITIES)

RESOLUTION NO. 2012 - 355

RESOLUTION APPROPRIATING \$78,000.00 TO THE RE-EVALUATION OF T-BAR AND PAUL DAVIS WELL FIELDS PROJECT AND APPROPRIATING \$65,900.00 TO THE SPRABERRY GROUNDWATER PROJECT

Following brief discussion, Council Member Trost moved to adopt Resolution No. 2012 - 355; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

PUBLIC HEARINGS

20. At approximately 10:30 A.M. hold a public hearing and consider an ordinance on a request by Sagestar Development and Construction, LLC for a zone change from PD, Planned District for a Shopping Center to an Amended Planned District on Lot 4A, Block 3, Westridge Park Addition, Section 15, City and County of Midland, Texas. (Generally located on the west side of Tradewinds Boulevard, approximately 630 feet south of Andrews Hwy.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9074

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 4A, BLOCK 3, WESTRIDGE PARK ADDITION, SECTION 15, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF TRADEWINDS BOULEVARD, APPROXIMATELY 630 FEET SOUTH OF ANDREWS HIGHWAY); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Planning Division Manager Cameron Walker gave an overview of the item noting the proposed development was for a hotel, that the building material met City Code, and that no letters of objection had been received.

Mayor Perry opened the public hearing at 10:58 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Reyes read the caption of Ordinance No. 9074.

Council Member Sparks moved approval of the first of two readings of Ordinance No. 9074 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

21. At approximately 10:33 A.M. hold a public hearing and consider a resolution on a request by Justine Blair Sosa for a Temporary Land Use Permit for an Outdoor Amusement Function on Lots 9 and 10, Block 2, Highland Addition, City and County of Midland, Texas. (Generally located on the east side of N. Big Spring Street, approximately 130 feet north of W. Cuthbert Avenue.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2012 - 356

RESOLUTION AUTHORIZING THE TEMPORARY USE OF LAND FOR AN OUTDOOR AMUSEMENT FUNCTION ON LOTS 9 AND 10, BLOCK 2, HIGHLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF NORTH BIG SPRING STREET, APPROXIMATELY 130 FEET NORTH OF WEST CUTHBERT AVENUE); AND MAKING SAID PERMIT SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS CONTAINED HEREIN

Planning Division Manager Walker provided an overview of the item noting it was for a temporary land use permit for a private party to be held on October 27 from 2 p.m. to 1:30 a.m. One letter of objection had been received from the business next door, Tony's Bakery who stated concern for parking on his property, traffic flow and debris pick-up following the event. Mr. Walker explained that a TLUP application requires two checks, one for damages to public property and the second for property clean-up.

Mayor Perry opened the public hearing at 11:04 a.m.

Corvet Sosa Padilla and Justine Blair Sosa stated they were the applicants. They clarified the actual party would not begin until 8 p.m. and that Tony's Bakery closes at 2 p.m. on Saturday.

There being no one else wishing to speak, the public hearing was closed at 11:06 a.m.

Council Member Hailey moved to adopt Resolution No. 2012 - 356; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

MISCELLANEOUS

22. Consider an ordinance for the vacation of a 1,400 square foot portion of the right-of-way of West Ohio Street adjacent to Lot 12, Block 26, Original Town, City and County of Midland, Texas. (Generally located on the southeast corner of the intersection of West Ohio Street and North Colorado Street.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9075

AN ORDINANCE VACATING AND ABANDONING A 0.032-ACRE PORTION OF WEST OHIO STREET RIGHT-OF-WAY ADJACENT TO LOT 12, BLOCK 26, ORIGINAL

TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF WEST OHIO STREET AND NORTH COLORADO STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$2,100.00; AND ORDERING RECORDATION BY THE CITY SECRETARY

Planning Division Manager Walker noted the item was a request by the Brass Monkey. They are acquiring the right-of-way that the City is not utilizing nor does any franchise utility use, in order to provide additional parking. The appraised value is \$2,100 and payment will be made prior to the second reading.

Deputy City Secretary Reyes read the caption of Ordinance No. 9075.

Council Member Hailey moved approval of the first of two readings of Ordinance No. 9075 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, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

23. Approved a motion deferring consideration of the issuance of permits to RSP Permian, LLC to drill five (5) Oil and Gas Wells (#2603D, #2611D, #2612D, #2613D and #2614D) within the City limits, all located within Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas; and deferring consideration of the associated Road Repair Agreement and Right-of-Way License (Generally located on the south side of Briarwood Avenue, approximately 560 feet west of Roadrunner Trail). (DEVELOPMENT SERVICES)

Oil and Gas Compliance Officer Ron Jenkins reported that the public had been notified of the delay and this item would be heard on November 13, 2012.

Council Member Morales moved to approve a motion deferring consideration of the issuance of permits to RSP Permian, LLC to drill five (5) Oil and Gas Wells (#2603D, #2611D, #2612D, #2613D and #2614D) within the City limits, all located within Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas; and deferring consideration of the associated Road Repair Agreement and Right-of-Way License (Generally located on the south side of Briarwood Avenue, approximately 560 feet west of Roadrunner Trail); seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

24. Approved a motion making appointments to various Boards and Commissions.

Council Member Trost moved to appoint Warren Ivey to replace Becky Ferguson effective December 1, 2012, Sharla Hotchkiss to replace Bill Woodruff effective December 1, 2012, and to reappoint Karen York to the Planning & Zoning Commission; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Dufford.

EXECUTIVE SESSION

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

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

a. Section 551.087, Deliberation Regarding Economic Development Negotiations

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

The meeting was recessed at 11:16 a.m. to Executive Session.

All of the business at hand having been completed, the meeting adjourned at 11:58 a.m.

PASSED AND APPROVED the 13th day of November, 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 11/13/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving a professional services agreement with Vandergriff Group Architects, PC for architectural engineering services to determine the current and future needs of the City Hall facility.

Purpose:

To request Council approval to authorize the City Manager to execute a Professional Services Agreement to perform architectural services to determine the current and future needs of the City Hall Facility.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Not to exceed \$80,000. To be funded from General Fund Unappropriated Fund Balance.

Discussion:

Please consider approval of a resolution authorizing the City Manager to execute a Professional Services agreement with Vandergriff Group Architects, PC. Staff has met with Mr. Vandergriff, and determined a schedule of work to be performed to ascertain the future needs of City Hall, and for Vandergriff Group Architects to assist in evaluating potential options.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH VANDERGRIFF GROUP ARCHITECTS, P.C., OF MIDLAND, TEXAS, FOR PROFESSIONAL ARCHITECTURAL AND ENGINEERING SERVICES TO DETERMINE THE CURRENT AND FUTURE NEEDS OF THE CITY HALL FACILITY; AND APPROPRIATING \$80,000.00

WHEREAS, the Request for Qualifications was advertised for architectural and engineering services regarding current and future needs of the City Hall facility (“Professional Services”); and

WHEREAS, Vandergriff Group Architects, P.C., proposes to perform said Professional Services for a fee not to exceed \$80,000.00; and

WHEREAS, the Council finds Vandergriff Group Architects, P.C., 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 Vandergriff Group Architects, P.C., to provide said Professional Services; and

WHEREAS, the Council authorizes the City Manager to execute a professional services agreement with Vandergriff Group Architects, P.C., for the performance of said Professional Services;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a professional services agreement with Vandergriff Group Architects, P.C., for performance of said Professional Services, said agreement being on file in the office of the City Secretary referenced by the date and number of this Resolution.

SECTION TWO. That the sum of \$80,000.00 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the City Hall Study Project

(9021).

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

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

PROFESSIONAL SERVICES AGREEMENT
FOR ARCHITECTURAL SERVICES

THIS AGREEMENT is made and effective the 14th day of November, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "OWNER,"and, Vandergriff Group Architects, PC, hereinafter referred to as "CONSULTANT."

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which CONSULTANT shall perform consulting services to determine the current and 20 year future needs of City Hall offices, and evaluation and recommendation of either expansion of current facilities or the purchase and repurposing of existing Buildings in Midland Texas, or land procurement and new construction of a City Hall office Building.

ARTICLE II. SERVICES TO BE PERFORMED

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

ARTICLE III. FINANCIAL CONSIDERATIONS

OWNER agrees to pay CONSULTANT according to the schedule set forth in Exhibit "A" upon presentation of a monthly invoice. The invoice shall set out service fees for the month and those Additional Expenses and Reimbursable Expenses described in Exhibit "A" incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. CONSULTANT shall perform professional services as outlined in the "Services to be Performed" for a fee of \$74,410 (breakdown of fees is located in Exhibit "A".) which fee for basic services shall in no event exceed eighty thousand dollars(\$80,000). Within 60 days of the date CONSULTANT's invoice is received by OWNER, OWNER shall pay the full amount of such invoice; provided, however, that if OWNER objects to any portion of an invoice, OWNER shall notify CONSULTANT of OWNER's objection and the grounds therefor within 30 days of the

date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. OWNER in any event shall pay every portion of the invoice that is not in dispute within the 60-day period for payment.

ARTICLE IV. TERM

The term of this Agreement shall be from November 14th, 2012 until March 14th, 2013, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

Either party may terminate this Agreement at will for no or any reason upon giving at least one-hundred-eighty (180) days written notice to the other party. The parties to this Agreement understand and agree that either party may cancel the Agreement during the term of the Agreement without penalty. The parties have no expectation and have received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of the Agreement becoming effective.

ARTICLE VI. ASSIGNMENT

Neither party shall, 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 other party.

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

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

ARTICLE VIII. INDEPENDENT CONTRACTOR

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

ARTICLE IX. INSURANCE

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

<u>Worker's Compensation:</u>	Statutory limits
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<u>Employers' Liability:</u>	\$500,000.00 per accident or occurrence
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The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on an occurrence basis.

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

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

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

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

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

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

ARTICLE X. ATTORNEY FEES

BY EXECUTING THIS AGREEMENT, CONSULTANT AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE OWNER, REGARDING THE AWARD OF ATTORNEY'S FEES,

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

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

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

ARTICLE XI. SOVEREIGN IMMUNITY

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

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

ARTICLE XIII. RELEASE

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

ARTICLE XIV. GENERAL PROVISIONS

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

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

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

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

If to CONSULTANT: Gary Vandergriff
Vandergriff Group Architects, PC
312 North Big Spring, Suite #100
Midland, Texas 79701

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

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

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

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

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

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

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

CONSULTANT:

By: _____
Courtney B. Sharp, City Manager

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

Keith Stretcher, City Attorney

Project Scope and Compensation

Project Scope

- A. Program Space Needs for City Hall
 - 1. Catalogue existing space by department totals – (some functions may be discussed but it is not the intent of this report to break down the program room by room or function by function. Although a detailed functional analysis may be warranted).
 - 2. Through various interviews, determine current space needs by department. understanding most departments are currently underserved.
 - 3. Through various interviews, determine current building size requirements. The current building space program will provide for current needs with dispersed, vacant or underutilized space for systematic growth over the short term. The twenty year plan would be developed by factoring current space needs. Twenty year factoring can be determined through a 5/10 year look back of space needs to project 20 year straight line projections; or other more subjective factoring such as expansion policies, growth policies, city population trends, centralization/de-centralization of services, shared services, employment projections, and comparisons with other municipalities.
- B. Prepare a study of the existing City Hall building and site for expansion; for both current needs and future expansion for the 20 year plan. This may be a combination of onsite and offsite development. Study parking needs in conjunction with building needs.
 - 1. Review owner furnished building and site plans and prepare graphics from these archives.
- C. Study existing Midland downtown building inventory for potential purchase, rehabilitation, renovation and/or expansion. Review available parking.
 - 1. Review four potential locations.
 - 2. Develop commentary on each location with generalization on available building square footage, degree of difficulty, functional adequacy and estimated cost.
 - 3. Summarize this type of relocation with discussion of repurposing the existing City Hall building for other civic needs or disposition of assets in total.
 - 4. Additional locations shall constitute Additional Services.

Deliverables

- A. *Program space needs for City Hall.*
 - 1. Prepare square footage tabulation by department showing occupied existing square footage, current additional square footage requirements, short term expansion square foot requirements, and 20 year plan factoring.
 - 2. It is currently planned to show needs by department only; however a more detailed program can be developed on a required function by function or room by room basis.
 - 3. Submittal for this building space program will be produced in excel format, with “dated edits” as information is obtained.
- B. *Study existing City Hall for expansion.* Provide color coded floor plans for existing Floors 1 thru 5 showing departmental group occupancies; along with any planned building expansion with suggested departmental occupancies. Provide site plan of owned or proposed purchased real estate with building locations and surface and/or elevated parking.

1. Owner will provide base plans for this work.
- C. *Existing Midland building inventories - for each selected location.*
 1. Provide footprint graphics only of the building and available site. Show any meaningful adjacencies.
 2. Provide written commentary on each location based on available (limited) data, interviews, and known archives. Discuss each existing building available square footage and its potential for adaptation for an expanded City Hall.
 3. Plans associated with this discussion will be footprint only, with building location and the potential for both surface and/or elevated parking.
 4. It is the intent of this study of the existing available downtown building inventory to identify potential locations with merit that offer adequate building space, and are manageable renovation projects. This study will provide adequate data for understanding each locations potential but will not be supported by a detailed analysis.
- D. Cost estimates for each solution.
 1. Expand current City Hall site; consisting of new building costs, renovation costs, site costs and parking garage costs (if any) using cost per square foot basis.
 2. New ground up building and site; consisting of new construction costs, general costs associated with future expansion; and site costs including any proposed parking solutions. Costs are presented on a cost per square foot basis using historical data from similar projects.
 3. Existing Midland building inventories; for each location – prepare a general cost analysis of the location including building renovation costs, general costs for any known remediation work, such as ADA upgrades, building upgrades, including HVAC and electrical, general demolition costs and site costs.

General Notes - Cost Estimating

1. Costs produced as a result of this report will be derived from a costs per square foot basis as opposed to unit pricing or detailed material take-offs with applied unit pricing.
2. Hiring of a third party cost estimator is advisable as additional reimbursable expense to this proposal.
3. Contingencies and cost betas may exceed 20% to 30% with this limited analysis.
4. This type of general costing information can be supplemented with additional detail on a project specific basis. This additional detail would constitute additional services.

BASIC COMPENSATION

Basic Compensation shall consist of the following:

- A. Architect compensation for basic services is documented in Article III of Professional Services Agreement.
- B. Compensation for Additional Services. Architect's Compensation for Additional Services shall be hourly as per the following rate schedule.
 - a. Hourly Fee Schedule

Principal Architect	\$175.00
Project Architect	\$160.00
Project Manager	\$150.00
Construction Administrator	\$120.00
Intern Architect	\$ 90.00
Technical Drafting	\$ 90.00
Clerical/Administrative	\$ 70.00
Other disciplines – Refer to Item B. Below	
 - b. Other outside consultants retained by Vandergriff Group billed as additional services will be reimbursed at cost to the Architect plus 10%.
 - c. Hourly rates may be reviewed on an annual basis and adjusted per the firm's rate schedule at the time of review.
- C. Reimbursable Expenses

In addition to basic services, reimbursable expenses, including expense of reproduction of drawings and deliverables, shipping, travel (if any), and third party cost estimating are defined as "Reimbursable", and billed at cost plus 10% for handling. Reimbursables are estimated not-to-exceed \$4,000.

VANDERGRIF GROUP ARCHITECTS, PC
EXHIBIT A

Consultant Fees-Worksheet of Proposed Time

A. Expand City Hall Study

1. Create base line drawings. Floors 1-5 and site plan.	30 hours @	\$90 per hour	\$2,700
Work from City archives.			
Field verify	20 hours @	\$90 per hour	\$1,800
2. Departmental interviews or work with owner furnished data to determine space needs.			
Principal Architect	32 hours @	\$175 per hour	\$5,600
Technical Support	32 hours @	\$90 per hour	\$2,880
3. Prepare excel spread of departmental space program with revisions and calculate expansion projections with square footage totals.			
Principal Architect	16 hours @	\$175 per hour	\$2,800
Technical Support	24 hours @	\$90 per hour	\$2,160
Clerical	8 hours @	\$70 per hour	\$560
4. Prepare Expansion Plans with graphics for existing location. Graphics will be building blocks.			
Principal Architect	20 hours @	\$175 per hour	\$3,500
Technical Support	6 hours @	\$90 per hour	\$540
5. Prepare commentary on "Ground-Up" new building with suggested site size, building size, and required parking (no graphics planned).			
Principal Architect	10 hours @	\$175 per hour	\$1,750
Clerical	4 hours @	\$70 per hour	\$280

EXPAND CITY HALL STUDY:	Consultant Fees Subtotal	\$24,570
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B. Study repurposing of existing buildings-for each location.

1. Collect and organize available data. Determine rough useable building square footage.			
Principal Architect	16 hours @	\$175 per hour	\$2,800
Technical Support	8 hours @	\$90 per hour	\$720
Clerical	2 hours @	\$70 per hour	\$140
2. Interview available sources for known building conditions, previous rehabilitation studies, deficiencies and adjacencies.			
Principal Architect	6 hours @	\$175 per hour	\$1,050
Technical Support	4 hours @	\$90 per hour	\$360

VANDERGRIF GROUP ARCHITECTS, PC

EXHIBIT A

3. Prepare commentary on adequacy of location for the relocated City Hall. (2 page commentary with noted site and building foot print plan).

Principal Architect	6 hours @	\$175 per hour	\$1,050
Technical Support	2 hours @	\$90 per hour	\$180
Existing Building Subtotal-Per Location:			\$6,300
Existing Building Study x 4 Locations:			\$25,200

C. Cost Analysis.

1. Expand City Hall.

Principal Architect	10 hours @	\$175 per hour	\$1,750
Technical Support	6 hours @	\$90 per hour	\$540
Clerical	2 hours @	\$70 per hour	\$140
Subtotal:			\$2,430

2. Build new City Hall.

Principal Architect	10 hours @	\$175 per hour	\$1,750
Technical Support	4 hours @	\$90 per hour	\$360
Clerical	2 hours @	\$70 per hour	\$140
Subtotal:			\$2,250

3. Remodel another downtown building.

Principal Architect	12 hours @	\$175 per hour	\$2,100
Technical Support	4 hours @	\$90 per hour	\$360
Clerical	2 hours @	\$70 per hour	\$140
Subtotal:			\$2,600
Remodel Subtotal x 4 Locations:			\$10,400

Cost Analysis Total:	\$15,080
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Note: I'd like to pass thru these fees to a 3rd party cost estimator but I could prepare estimates in house.

Rough Draft Presentation to City Administration

Principal Architect	4 hours @	\$175 per hour	\$700
Technical Support	4 hours @	\$90 per hour	\$360
Revisions - Allow			\$3,000
Prepare and conduct 2 formal presentations			\$1,500
Presentation Total:			\$5,560

TOTAL ALL SERVICES:	\$70,410
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REIMBURSEABLES - ALLOW:	\$4,000
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City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 11/13/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution to determine the direction of the marketing agreement with Utility Service Partners Private Label, Inc. dba Service Line Warranties of America.

Purpose:

To request Council approval of a marketing agreement that will allow Utility Service Partners to continue to provide utility service line warranties to Midland residents.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The marketing agreement calls for a 35 cent per household upfront brand license fee estimated to be \$15,648 in revenues each year for three years, along with revenue of 12% license fee from Utility Service Partners warranty subscriptions, originally estimated to be approximately \$56,000(based on \$10% penetration rate of 37,500 customers) the first year in general fund revenues. Actual revenue estimates are \$17,192.01 to date. Utility Service Partners has agreed to revise their letter to minimize customer concerns and complaints received by the City.

Discussion:

Please consider approval of the renewal of a marketing agreement which would allow Utility Service partners to use the City of Midland's name and logo on letterhead and marketing materials related to utility service line warranties. Current monthly fees to customers for the warranties are \$4.50 per water line, and \$5.95 per sewer line.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE RENEWAL OF A
MARKETING AGREEMENT WITH UTILITY SERVICE
PARTNERS PRIVATE LABEL, INCORPORATED, DBA
SERVICE LINE WARRANTIES OF AMERICA,
ALLOWING THE OFFER OF UTILITY SERVICE LINE
WARRANTIES TO MIDLAND RESIDENTS**

WHEREAS, on February 28, 2012, the Midland City Council authorized the execution of a marketing agreement with Utility Service Partners Private Label, Inc., dba Service Line Warranties of America allowing Utility Service Partners Private Label, Inc., dba Service Line Warranties of America to offer service line warranties to Midland residents; and

WHEREAS, said agreement was for a term of one (1) year, but renews automatically unless either party notifies the other at least ninety (90) days prior to the expiration of the annual term that it does not wish to renew the agreement; and

WHEREAS, the City Council finds it to be in the public interest to renew the marketing agreement with Utility Service Partners Private Label, Inc., dba Service Line Warranties of America;

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

THAT the City Council hereby directs that the herein-referenced marketing agreement with Utility Service Partners Private Label, Inc., dba Service Line Warranties of America should renew for one (1) more term.

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

Council members voting "AYE":

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



The City of _____ recently coordinated efforts with the National League of Cities (NLC) to inform residents of a new, optional utility service line warranty program made available through the NLC by its administrator, Service Line Warranties of America (SLWA). This warranty may ultimately save you money in these difficult economic times. To learn more, please visit www.cityof_____/NLC or visit SLWA directly at their web site listed below.



T1 P1*****AUTO**5-DIGIT 26301

John Smith
987 Main Street
Anytown, ST 12345



March 1, 2012

Contact ID: 1234567

Re: Optional Coverage for Residents

Reminder - Please disregard if you have already enrolled

Dear [Customer Name]:

As you may know, homeowners in the City of _____ are responsible for the maintenance and repair of the buried, outside sewer service line that runs from your home to the utility connection.

The Service Line Warranty Program, available through an initiative between the National League of Cities (NLC) and SLWA, offers a Sewer Line Warranty which will protect you from any repairs needed on your outside, buried sewer line for a small monthly fee. If you should need a repair, simply call the 24-hour hotline and SLWA will dispatch a local plumber no later than 48 hours, but typically within 24 hours*. There are no service fees or deductibles. Repair costs are covered up to \$4,000 per incident, plus an additional \$4,000 allowance for public street cutting, if needed.

SLWA is proud to have been selected by the NLC as an Enterprise Programs Partner. The National League of Cities, representing over 218 million Americans, is the nation's oldest and largest organization devoted to strengthening and promoting cities as centers of opportunity, leadership and governance. You may receive letters from other companies promoting similar warranty programs; however, the SLWA Service Line Warranty Program is the only one that has been endorsed by the NLC.

SLWA is offering a discounted price of \$_____ per month to residents who enroll by [Date]. This represents a savings of over [X]% on the standard monthly price. If you elect to pay annually, the price will be discounted further to \$_____, which is over a [X]% savings.

SLWA offers several billing frequencies and payment options, including invoice, credit card and direct debit from your checking account. Please note that no public funds were used in the creation or mailing of this letter.

To enroll, or to learn more about this program, please call SLWA at **1-800-000-0000**, Monday through Friday, 9:00 am to 5:00 pm, or return the bottom portion of this letter in the enclosed, self-addressed, postage-paid envelope. You can also link to more information from the City of _____ homepage at www.cityof_____/NLC or visit SLWA's website at www.SLWofA.com.

The City of _____ has coordinated efforts with the National League of Cities and SLWA solely for the purpose of providing its residents with a discounted rate. The City of _____ has no responsibility or liability for the warranty program being provided by Service Line Warranties of America.

Sincerely,

Tru Dee Bamberg
Vice President
Service Line Warranties of America

*Complete warranty terms and conditions will be provided following enrollment or you can view them online at www.SLWofA.com. You may terminate your participation in a warranty program at any time. You have 30 days from the date you enroll to receive a full refund. After 30 days, you will be reimbursed the pro rata share of any amount you paid for any portion of the warranty period subject to cancellation. See enclosed brochure for further details.

-- ✂ Cut here

[LETTERCD]



John Smith
987 Main Street
Anytown, ST 12345
Contact ID: 1234567

To enroll or to view the terms and conditions please visit www.SLWofA.com.

Please mark your selection:

☐ Yes! Please enroll me in the outside sewer line warranty for just \$_____ per month

☐ I want to save even more! I will pay just \$_____ per year for the sewer line warranty

Signature: _____

Date: _____



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 11/13/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving a contract for Sparks Park Target Area Development – Paving Improvements for the Engineering Services Department. RFB 5736-13

Purpose:

Approval of a resolution approving a contract for Sparks Park Target Area Development – Paving Improvements.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$402,482.25 from Bond Funds

Discussion:

Two bids were received for the Sparks Park Target Area Development – Paving project. We recommend awarding the base bid to the low bidder, Reece Albert, Inc., of Midland, Texas.

Therefore, please consider approval of a resolution awarding a contract for the base bid for the Sparks Park Target Area Development – Paving project to Reece Albert, Inc. of Midland, Texas for a total cost of \$402,482.25.

RESOLUTION NO.

**RESOLUTION AWARDING THE SPARKS PARK
TARGET AREA DEVELOPMENT PAVING
IMPROVEMENTS PROJECT TO REECE ALBERT,
INCORPORATED, OF MIDLAND, TEXAS, AT A TOTAL
COST OF \$402,482.25; AND APPROPRIATING FUNDS**

WHEREAS, the City Manager advertised the Sparks Park Target Area Development Paving Improvements Project for competitive bids; and

WHEREAS, Reece Albert, Inc., has submitted the lowest and most responsible bid for the performance of said project in the total amount of \$402,482.25, 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 Reece Albert, 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 Reece Albert, Inc., for said project at a cost not to exceed \$402,482.25, 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 \$144,148.00 is available in the Sparks Park Target Area Infrastructure Project (7052).

SECTION THREE. That the sum of \$258,335.00 is hereby appropriated from the following sources in the following amounts to the Sparks Park Target Area Infrastructure Project (7052): 2009 GPCO Streets and Drainage Bond Fund (195) Unappropriated Fund Balance (5650) - \$138,975.00; 2007 GPCO Streets and Drainage Bond Fund (191) Unappropriated Fund Balance (5650) - \$44,378.00; 2005 GPCO Streets and Drainage Bond Fund (186) Unappropriated Fund Balance (5650) \$70,273.00; 1999 Street Improvements Bond Fund (159) Unappropriated Fund Balance (5650) - \$4,709.00.

SECTION FOUR. That the City Treasurer is hereby authorized and directed to pay Reece Albert, Inc., pursuant to the terms of said contract from funds available in the Sparks Park Target Area Infrastructure Project (7052) budget account, and 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., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT

AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Project # CD-37-7052 (Sparks Park Paving Improvements)

Project # CD-37-7052 (Sparks Park Paving Improvements)				REECE ALBERT		JONES BROS.	
		Quantity	Unit	Unit Price	Total	Unit Price	Amount
Road Items							
Item	Description						
1	ROW Preparation	1	LS	\$10,575.00	\$10,575.00	\$50,100.00	\$50,100.00
2	8" Cement Stabilized Subgrade at 5.5% Cement Stabilization	4650	SY	\$10.10	\$46,965.00	\$22.00	\$102,300.00
3	Additional Base Material	500	TON	\$10.00	\$5,000.00	\$33.75	\$16,875.00
4	Asphaltic Prime Coat	4650	SY	\$1.45	\$6,742.50	\$2.00	\$9,300.00
5	1-3/4" HMA Paving	4650	SY	\$18.30	\$85,095.00	\$13.75	\$63,937.50
6	Concrete Valley Gutter	18	SY	\$106.00	\$1,908.00	\$82.95	\$1,493.10
7	Concrete Fillet	2	EA	\$2,500.00	\$5,000.00	\$4,600.00	\$9,200.00
8	Curb & Gutter	2555	LF	\$30.10	\$76,905.50	\$27.80	\$71,029.00
9	Adjust Valve Box	1	EA	\$425.00	\$425.00	\$410.00	\$410.00
10	Adjust Manholes	2	EA	\$815.00	\$1,630.00	\$830.00	\$1,660.00
11	Erosion Control	1	LS	\$11,400.00	\$11,400.00	\$5,100.00	\$5,100.00
12	Job Site Safety & Traffic Control	1	LS	\$12,500.00	\$12,500.00	\$12,000.00	\$12,000.00
		ROAD BID:		\$264,146.00		\$343,404.60	
Alley Items							
Item	Description	Quantity	Unit	Unit Price	Amount	Unit Price	Amount
1	6" Compacted Subgrade and 6" Concrete w/ Fibermesh	1225	SY	\$77.05	\$94,386.25	\$122.00	\$149,450.00
2	6" Compacted Subgrade and 8" Caliche Base Outside of Alley Concrete	1120	SY	\$23.30	\$26,096.00	\$104.00	\$116,480.00
3	Asphaltic Prime Coat Outside of Alley Concrete	1120	SY	\$1.45	\$1,624.00	\$4.85	\$5,432.00
4	Alley Approach	5	EA	\$3,246.00	\$16,230.00	\$4,600.00	\$23,000.00
		ALLEY BID:		\$138,336.25		\$294,362.00	
		BASE BID:		\$402,482.25		\$637,766.60	
Road Items (Alternate)							
Item	Description	Quantity	Unit	Unit Price	Amount	Unit Price	Amount
1	6" Compacted Subgrade	4650	SY	\$5.41	\$25,156.50	\$15.00	\$69,750.00
2	8" Flexibale Caliche Base	4650	SY	\$9.95	\$46,267.50	\$24.50	\$113,925.00
		ROAD ALT:		\$71,424.00		\$183,675.00	
Alley Items (Alternate)							
Item	Description	Quantity	Unit	Unit Price	Amount	Unit Price	Amount
1	Alley Section - 6" Subgrade & 8" Caliche Base	2245	SY	\$14.70	\$33,001.50	\$28.70	\$64,431.50
2	Asphaltic Prime Coat	2245	SY	\$1.40	\$3,143.00	\$4.90	\$11,000.50
		ALLEY BID:		\$36,144.50		\$75,432.00	



MEMO

TO: Regina Stephenson; City of Midland, Purchasing Manager
FR: David D. Beard, P.E.; City of Midland, City Engineer
DA: 1 November 2012
RE: Sparks Park Target Area Development - Paving Improvements ♦ Recommend Award
Project No. CD 37 / 7052 ♦ RFB 5736-13

Regina --

I have reviewed the bid tabulation for the Sparks Park Target Area Development - Paving Improvements project. Reece Albert, Inc. is the apparent low bidder. Reece Albert, Inc. has a track record of successfully completing work in the City of Midland and the surrounding areas. In addition, the unit prices appear to be in line with current pricing and trends. Therefore, I am recommending award of the Sparks Park Target Area Development - Paving Improvements project to Reece Albert, Inc. in the amount of \$402,482.25.

The original CDBG allocation for this project was \$492,939 for engineering, paving and utility construction. To-date, \$348,791 has been expended leaving \$144,148 to complete the construction.

Original CDBG Allocation	\$492,939
Sparks Park Utility Improvements	\$279,502
Engineering (PSC)	\$ 69,053
Misc.	\$ 236
Total Expended Funds	\$348,791

Available Funds \$144,148 - (\$492,939 - \$348,791)

To award the project, an additional \$258,335 must be appropriated to the Sparks Park Target Area Paving Improvements Project.

Base Bid	\$402,483
Available Funds	\$144,148
Required Appropriation	\$258,335

City of Midland

David D. Beard, P.E.
City Engineer

CONTRACT

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

THIS CONTRACT, made and entered into this _____ day of _____, 2012, by and between the City of Midland of the County of Midland and State of Texas, acting through its Mayor thereunto duly authorized so to do, Party of the First Part, hereinafter termed OWNER, and _____ of the City Midland, County of Midland, State of Texas, Party of the Second Part, herein-after termed CONTRACTOR.

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Party of the first Part (OWNER), and under the conditions expressed in the bond bearing even date herewith, the said Party of the Second Part (CONTRACTOR), hereby agrees with the said Party of the First Part (OWNER) to commence and complete the construction of certain improvements described as follows: Sparks Park Target Area Development – Paving Improvements ; Project No. CD 37/7052 together with appurtenances and incidentals.

Conditions of the Contract and at his (or their) own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendent, labor, insurance and other accessories and services necessary to complete the said construction in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to the Contractors, General and Special Conditions of Agreement, Plans and other drawings and printed or written explanatory matter thereof, and the Specifications and addenda therefore as prepared by Engineering and Transportation Department of the City of Midland, Texas, herein entitled the ENGINEER, together with the CONTRACTOR'S written Proposal, the General Conditions of the Contract, and the Performance and Payment Bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Contract.

The CONTRACTOR hereby agrees to commence work within 30 (thirty) days after the written notice to do so and to substantially complete the same within Forty-Five (45) calendar days after receipt of notice to proceed, subject to such extensions of time as are provided by the General and Special Conditions.

The OWNER agrees to pay the CONTRACTOR in current funds the price or prices shown in the proposal, which forms a part of this Contract, such payments to be subject to the General and Special Conditions of the Contract.

The SUM TOTAL of this Contract shall be: _____.

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

<u>Worker's Compensation:</u>	Statutory limits
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<u>Employers' Liability:</u>	\$500,000.00 per accident or occurrence
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The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on an occurrence basis.

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

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

All insurance required pursuant to this Contract shall provide for a waiver of subrogation in favor of the Owner. 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. 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.

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

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

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

WAIVER OF ATTORNEY FEES

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.

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.

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.

IN WITNESS WHEREOF, the parties to these presents have executed this Agreement in the year and day first above written.

Parties of the First Part (Owner)

ATTEST:

By: _____
W. Wesley Perry, Mayor

Amy Turner, City Secretary

APPROVED AS TO FORM:

By: _____
Keith Stretcher, City Attorney

By: _____
Party of the Second Part (CONTRACTOR)

By: _____
Title

THE 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 foregoing instrument, and acknowledged to me that he executed the same as an 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 _____ day of _____, 20 12

Notary Public

Form Revised August 2012



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 11/13/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of a fire truck pumper through HGAC from Siddons-Martin Emergency Group for the Garage Division. File 5803-13

Purpose:

Approval of a resolution authorizing the purchase of a Fire Truck Pumper for use by the Midland Fire Department.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$574,988.00 from the Garage Fund

Discussion:

This is a scheduled replacement unit. This product 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 Fire Truck from Siddons-Martin Emergency Group, Inc. through H-GAC for a total of \$574,988.00.

RESOLUTION NO.

**RESOLUTION APPROVING THE PURCHASE OF A
FIRE TRUCK PUMPER THROUGH THE HOUSTON-
GALVESTON AREA COUNCIL OF GOVERNMENTS
(HGAC) AT A TOTAL COST OF \$574,988.00; 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, Siddons-Martin Emergency Group, Inc., has submitted a total proposed cost to the City of \$574,988.00 for the purchase of a Fire Truck Pumper 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 Siddons-Martin Emergency Group, Inc., through the HGAC for said Fire Truck Pumper to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase said Fire Truck Pumper 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 Fire Truck Pumper referred to above through the Houston-Galveston Area Council, at a total estimated cost of \$574,988.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said Fire Truck Pumper from funds available in the Fiscal Year 2012 – 2013 Garage Fund (750) General Services (040) Garage (0752) Fire Fighting Equipment (8470) 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., 2012, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



CONTRACT PRICING WORKSHEET

For MOTOR VEHICLES only

Contract
No.:

FS12-11

Date
Prepared:

10/11/2012

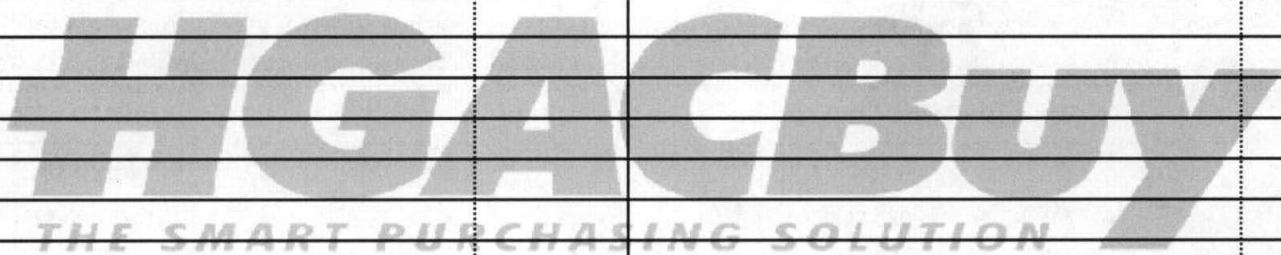
This Form must be prepared by Contractor and given to End User. The H-GAC administrative fee shall be shown in Section F. End User issues PO to Contractor, and MUST also fax a copy of PO, together with completed Pricing Worksheet, to H-GAC @ 713-993-4548. Please type or print legibly.

Buying Agency:	City of Midland	Contractor:	Siddons-Martin Emergency Group
Contact Person:	Fritz Niggeler	Prepared By:	Pat Siddons
Phone:	432-685-7331	Phone:	281-442-6806
Fax:		Fax:	281-442-0850
Email:	fniggeler@midlandtexas.gov	Email:	pat@siddonsfire.com

Product Code:	wc04	Description:	Pierce Pumper
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A. Product Item Base Unit Price Per Contractor's H-GAC Contract: 286,100.55

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
			215606.45
 THE SMART PURCHASING SOLUTION			
Subtotal From Additional Sheet(s):			
Subtotal B:			215606.45

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
			71281
Subtotal From Additional Sheet(s):			
Subtotal C:			71281

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: 14%

D. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C): 572988

Quantity Ordered:	1	X Subtotal of A + B + C + D:	572988	=	Subtotal D:	572988
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E. H-GAC Fee Calculation (From Current Fee Tables): Subtotal E: 2000

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

Description	Cost	Description	Cost
			0
Subtotal F:			0

Delivery Date: **G. Total Purchase Price (D+E+F):** 574988



Proposal Option List

Customer : Midland Fire Department
Representative Siddons Pat
Organization : Siddons-Martin Emergency Group
Requirements
Description : Midland 2013 Pumper
Body : Pumper, Med, Alum, 2nd Gen
Chassis : Velocity Chassis (Big Block), 2010

Bid Number : 424
DB Version: 02.00.0307.0000
Bid Date : 10/01/2012
Job Number :

Line	Option	Option Description	Published	Unpublished
1	0584456	Manufacture Location: Appleton, Wisconsin	0.00	
2	0584452	Pierce Saber SLT Pumper	286,100.55	
3	0588609	Up Grade to Velocity	115,975.00	
4	0581835	Boiler Plates, Pumper, USE OPTION 671399	0.00	
5	0018007	Single Source Compliance, USE OPTION 661794	0.00	
6	0520877	Comparison Report Required	0.00	
		Fill in Blank - 25308		
7	0533316	Comply NFPA 1901 Changes Effective Jan 1, 2009, With Exceptions	0.00	
8	0533347	Pumper/Pumper with Aerial Device Fire Apparatus	0.00	
9	0588611	Vehicle Certification, Pumper	0.00	
10	0681282	Agency, Apparatus Certification, Pumper/Tanker, U.L. USE OPTION 661778	0.00	
11	0008036	Career/Paid Department	0.00	
12	0536644	Customer Service Website	0.00	
13	0537375	Unit of Measure, US Gallons	0.00	
14	0529326	Bid Bond, 10%, Pierce Built Chassis	0.00	
15	0540326	Performance Bond, Not Requested	0.00	
16	0000007	Approval Drawing	0.00	
17	0002928	Electrical Diagrams	0.00	
18	0564202	Velocity Chassis (Big Block), 2010	0.00	
19	0000110	Wheelbase	0.00	
		Wheelbase - 228.50		
20	0000070	GVW Rating	0.00	
		GVW rating - 49,800		
21	0000203	Frame Rails, 13.38 x 3.50 x .375, DLX/Qtm/Enf/AXT/Imp/Vel/Dash CF	0.00	
22	0060637	Frame Liner, Inv "L" 12.68" x 3.00" x .25", AXT/Vel/Imp, Full Length	0.00	1574
23	0508849	Axle, Front, Oshkosh TAK-4, Non Drive, 22,800 lb, Imp/Vel/Dash CF	0.00	
24	0010427	Suspension, Front TAK-4, 22,800 lb, DLX/Enf/Qtm/AXT/Imp/Vel/Dash CF	14,437.00	
25	0087572	Shock Absorbers, KONI, on TAK-4 DLX/Qtm/AXT/Enf/Imp/Vel/Dash CF	0.00	
26	0000322	Oil Seals, Front Axle	0.00	
27	0686052	Tires, Front, Michelin, XFE (wb), 425/65R22.50, 20 ply, Fire Service Speed Rtnq	0.00	
28	0052887	Wheels, Front, Alcoa, 22.50" x 12.25", Aluminum, Dura-Bright, Hub Pilot	1,932.00	
29	0530466	Axle, Rear, Meritor RS26-185, 27,000 lb, Imp/Vel/Dash CF	0.00	
30	0545719	Top Speed of Vehicle, Non-NFPA Compliant	0.00	
		Top Speed of Vehicle - 75		
31	0122075	Suspen, Rear, Standens, Spring, 27,000 lb, Imp/Vel/Dash CF	2,546.16	
32	0000485	Oil Seals, Rear Axle	0.00	
33	0070728	Tires, Rear, Michelin, XDN2, 12R22.50, 16 ply, Single	0.00	
34	0055237	Wheels, Rear, Alcoa, 22.50" x 8.25", Alum, Dura-Bright, Hub Pilot, Single	3,629.00	
35	0568081	Tire Balancing, Counteract Beads	0.00	
36	0545391	Tire Pressure Monitoring Valve Cap	0.00	
		Qty, Tire Pressure Ind - 6		
37	0003245	Axle Hub Covers w/center hole, S/S, Front Axle	0.00	65
38	0001960	Axle Hub Covers, Rear, S/S, High Hat (Pair)	0.00	125
40	0002045	Mud Flaps, w/logo front & rear	0.00	
41	0544802	Chocks, Wheel, SAC-44-E, Folding	0.00	360
		Qty, Pair - 01		
42	0544806	Mounting Brackets, Chocks, SAC-44-E, Folding, Horizontal	0.00	225
		Location, Wheel chock - under D1		
		Qty, Pair - 01		
43	0010670	ABS Wabco Brake System, Single rear axle	0.00	
44	0030185	Brakes, Knorr/Bendix 17", Disc, Frt, TAK-4, DLX/Enf/Qtm/AXT/Imp/Vel/Dash CF	0.00	
45	0000730	Brakes, Meritor, Cam, Rear, 16.50 x 7.00"	0.00	
46	0058463	Air Compressor, Brake, Bendix 15.8 CFM	0.00	
47	0000785	Brake Reservoirs, Three	0.00	
48	0568012	Air Dryer, Wabco System Saver 1200, 2010	0.00	
49	0000790	Brake Lines, Nylon	0.00	
50	0000858	Inlet/Outlet, Air, w/Disconnect Fitting	0.00	
		Location, Air Coupling(s) - h) DS Pump Panel		
		Qty, Air Coupling (s) - 1		

51	0014130	Air Tank, Additional for Extra Air Horn Capacity	0.00	324
52	0666587	Engine, DDC DD13, 500 hp, 1650 ft-lb, W/OBD, EPA 2013, Velocity	0.00	
53	0001244	High Idle w/Electronic Engine, Custom	0.00	
54	0590300	Engine Brake, Jacobs, DD13	0.00	
		Switch, Engine Brake - f) DD13		
55	0552334	Clutch, Fan, Air Actuated, Horton Drive Master	0.00	
56	0123135	Air Intake, w/Ember separator, Imp/Vel	0.00	
57	0565965	Exhaust System, 5", 2010 DD13, ISX engine, Horizontal, Officer Side	0.00	
58	0521150	Exhaust, Modified for Nederman System, 7.00", 2007/2010 Engines	0.00	180
59	0557543	Radiator, Imp/Vel	0.00	
60	0511426	Cooling Hoses, Silicone	0.00	
61	0051125	Fuel Tank, 75 Gallon, Left Side Fill, DLX/Qtm/AXT/Vel/Imp/Dash CF	0.00	
62	0001129	Lines, Fuel	0.00	
63	0582182	DEF Tank, 4.5 Gallon, DS Fill, Rearward of Rear Axle, DD13, ISL9, ISX, Common Dr	0.00	
64	0552777	Fuel Pump for Repriming	0.00	
65	0552567	Shutoff Valve, Fuel Line @ Fuel Tank	0.00	85
66	0553019	Cooler, Engine Fuel, Imp/Vel, AXT, Qtm, Dash CF	0.00	
67	0510123	Trans, Allison Gen IV 4000 EVS P, Imp/Vel/Vel SLT/Dash CF	0.00	
68	0510876	Transmission, Shifter, 6-Spd, Push Button	0.00	
		Trans, ratio - 4000 EVS, 6Spd		
69	0507303	Transmission Oil Cooler, Champ, Velocity	0.00	
70	0001375	Driveline, Spicer 1810	0.00	
71	0669988	Steering, Sheppard M110 w/tilt, TAK-4, Eaton Pump, w/ Cooler	0.00	
72	0001544	Not Required, Steering assist cylinder on front axle	0.00	
73	0509230	Steering Wheel, 4 Spoke without Controls	0.00	
74	0690274	Logo/Emblem, on Dash	0.00	
		Text, Row One - Midland		
		Text, Row Three - n/a		
		Text, Row Two - Fire Dept.		
75	0536235	Bumper, 19" Extended Steel Painted, Imp/Vel	2,333.00	
76	0510226	Lift & Tow Package, Imp/Vel, AXT, Dash CF	0.00	
77	0522573	No Tow Hooks Required, Due to Lift and Tow package	0.00	
78	0511007	Tray, Hose center, 19" bumper w/outside Air Horns, Imp/Vel	0.00	
		Capacity, Bumper Tray - 21) 150' of 1.75		
		Grating, Bumper extension - Grating, Rubber		
79	0072353	Cover, Alum Treadplate, (notched) For Hose Tray	0.00	275
		Location - center front hose tray		
		Qty, Hose Tray Covers - 1		
		Stay arm, Tray Cover - a) Mech stay arm		
80	0558109	Notch, Front For Recessing Of Q2B, Painted Bumper Only	0.00	1125
		Location - drivers side		
81	0565513	Cab, Velocity 2010, 6010 Raised Roof	0.00	
82	0677478	Rear Wall, Exterior, Cab, Aluminum Treadplate	0.00	
83	0122465	Cab Lift, Elec/Hyd, Imp/Vel	0.00	
84	0123176	Grille, Bright Finished, Front of Cab, Impel/Velocit	0.00	
85	0509756	Bright Finished Housing, Headlights & Front Directional, Velocity	0.00	
86	0087357	Molding, Chrome on Side of Cab	0.00	
87	0521669	Mirrors, Retractable, West Coast Style, Htd/Rmt, w/Htd/Rmt Convex	0.00	
88	0525761	Door, Half-Height, Raised Roof Cab, Brushed Stainless Panel	0.00	
89	0528167	Not Required, Scuffplates, Cab Door, Imp/Vel	0.00	
90	0550229	Storage Pockets w/ Elastic Cover, Recessed, Rotomolded, Imp/Vel	0.00	
91	0510218	Controls, Electric Windows, All Cab Doors, Impel & Velocity	0.00	
92	0555485	Steps, 4-Door Full Tilt Cab, Std, Imp/Vel	0.00	
93	0509649	Lights, Cab and Crew Cab Access Steps, P25, LED w/Bezel, 1 Light Per Step	0.00	
94	0002140	Fenders, S/S on Cab	0.00	
95	0122479	Window, Side of C/C, Fixed, Imp/Vel	0.00	
96	0552935	Trim, Cab Side Windows, Velocity	0.00	
97	0012090	Not Required, Windows, Front/Side of raised roof	0.00	
98	0509287	Windows, Rear CC, (2) 8" x 14", Imp/Vel	0.00	
99	0553196	Trim, Cab Rear Windows, Velocity	0.00	
100	0585486	Tint, Windows, Crew cab, Raised roof, Vel/Imp, Dash CF	0.00	320
101	0199687	Cab Interior, ABS Console, Vinyl Covered Walls, Velocity/Velocit SLT	0.00	
		Color, Cab Interior Vinyl/Fabric - a) Silver/Gray		
102	0509492	Cab Interior, paint color, Imp/Vel	0.00	
		Color, Cab Interior Paint - a) gray		
103	0509532	Floor, Rubber Padded Cab & Crew Cab, Imp/Vel, Dash CF	0.00	
104	0122520	Heater/defroster, Imp/Vel	0.00	
105	0559378	Air Conditioning, Imp/Vel/Vel SLT	0.00	
106	0548173	Grab Handles, Driver and Passenger Door Post, Imp/Vel	0.00	
107	0002526	Light, Engine Comp, All Custom Chassis	0.00	
108	0122516	Fluid Check Access, Imp/Vel, AXT	0.00	
109	0583042	Side Roll and Frontal Impact Protection	8,522.00	
110	0000109	Seating Capacity, Cab	0.00	

		Qty, - 06		
111	0697005	Seat, Driver, Pierce PS6, Premium, Safety, Air Ride Hi-Back	0.00	
112	0696994	Seat, Officer, Pierce PS6, Premium, Safety, Air Ride, SCBA	0.00	
113	0002517	Not Required, Radio Compartment	0.00	
114	0122183	Seat, Rr Facing C/C, DS Outboard, Pierce PS6, Premium, Safety, SCBA	0.00	
115	0102783	Not Required, Seat, Rr Facing C/C, Center	0.00	
116	0122186	Seat, Rr Facing C/C, PS Outboard, Pierce PS6, Premium, Safety, SCBA	0.00	
117	0565245	Seat, Forward Facing C/C, DS Outboard, Safety, Flip Up Cushion	0.00	580
118	0695273	Cabinet, EMS, Forward Facing, Center, 42 Wide x 56 High x 14 Deep, Lt Feature	0.00	1856
		Door, EMS Cabinet - Amdor Roll Up Dr, w/Lock		
		False Floor, EMS Cabinet - False Floor		
		Light, Short EMS Compt - Amdor, Both Sides		
119	0565256	Seat, Forward Facing C/C, PS Outboard, Safety, Flip Up Cushion	0.00	580
120	0042264	Shelf, Adjustable, EMS Compt, 1.25" Lip	0.00	220
		Location - EMS Cabinet		
		Qty, Shelf - 02		
121	0511300	Upholstery, Seats In Cab, All Imperial 1200, Pierce PS6	0.00	
		Color, Cab Interior Vinyl/Fabric - h) Gray/Black		
122	0543991	Bracket, Air Bottle, Hands-Free II, Cab Seats	0.00	
		Qty, - 03		
123	0553393	Seat Belt Height Adjustment, Imp/Vel, Dash CF	0.00	
		Qty, - 06		
124	0547293	Seat Belts, Red	0.00	
125	0691237	Seat Belt Monitoring System	0.00	
126	0543133	Bracket, Helmet Holder, Zico UHH-1	0.00	225
		Qty, Helmet Storage Brkt - 6		
127	0509978	Lights, Dome, Weldon, LED, Two (2) Lights, Dual Light and Lens	0.00	
128	0509984	Lights, Dome CC, (2) Weldon, 8081-8000-13, LED, Red/Clear, Gry Bezel	0.00	
129	0555812	Handlights, (2) Streamlight, Fire Vulcan, 44451 C4 LED, Tail lights, 12v, Orange	0.00	352
		Location, lights - one each side mounted under forward facing outboard seats See Photo in S:Drive job folder.		
130	0544516	Spotlight, Handheld Cab, Specialty Lighting 2150-1	0.00	225
		Location, lights - locate at pick up		
131	0597580	Handlight, Streamlight, Fire Vulcan 44451, C4 LED, Tail lights, 12v, Orange	0.00	1850
		Location, lights - mounted next to officer on dog house same as 24043		
		Qty, Lights - 01		
132	0695283	Handlight, Streamlight, Survivor, 90503, C4 LED, 12v, Orange, Steady Charge	0.00	980
		Location, lights - ds to be mounted next to seat riser so light can be obtained from ground level. same on passenger side. One each side in rear under flip down seats		
		Qty, Lights - 04		
133	0568369	Cab Instruments, Ivory Gauges, Chrome Bezels, Impel/Velocity 2010, Dash CF	0.00	
134	0509511	Air Restriction Indicator, Imp/Vel, AXT, Dash CF	0.00	
135	0543751	Light, Do Not Move Apparatus	0.00	
		Alarm, Do Not Move Truck - al) Steady Alarm		
136	0509042	Messages, Open Door/Do Not Move Truck, Imp/Vel, Vel SLT, AXT, Dash CF	0.00	
137	0509921	Switching, Cab, Membrane, Impel/Velocity/Quantum, AXT MUX, Dash CF	0.00	
		Location, Emerg Sw Pnls - Driver's Side Overhead		
138	0555915	Wiper control, 2-speed with intermittent, Impel/Velocity, Dash CF	0.00	
139	0548006	Wiring, Spare, 15 A 12V DC 2nd	0.00	85
		12vdc power from - a) battery direct		
		Location - EMS cabinet in top area on driver side		
		Qty, - 01		
		Wire termination - t) terminal strip		
140	0548004	Wiring, Spare, 15 A 12V DC 1st	0.00	401
		12vdc power from - a) battery direct		
		Location - three (3) on dash forward and left of officer on the raised portion of the dash and one (1) in upper section of EMS cabinet rear wall		
		Qty, - 04		
		Wire termination - p) 15 amp power point plug		
141	0566101	Recess, Dash Panel, Officer Side, Vel/Imp	0.00	355
142	0594194	Radio, Panasonic CD, NOAA Weatherband, MP3	0.00	653
		Antenna, AM/FM Radio - c) Roof-mounted rubber antenna		
		Location, AM/FM Radio - b) within reach of the officer		
		Speakers, AM/FM Radio - c) Two (2) pairs of speakers		
143	0087852	Vehicle Information Center, 7" Color Display, MUX	0.00	
144	0543930	Vehicle Data Recorder, Dual Module	0.00	
145	0663214	Intercom, Firecom 5100D Single Radio, Wireless, (2 Radio), (Up to 4 Intercom)	0.00	3728
		location, intercom, C Cab - 2) 2 forward facing seats		
146	0009063	Not Required, Radio Interface	0.00	
147	0681360	Headset, Firecom, Wireless, FHW-51 Over The Head, Radio Transmit, No Base	0.00	594
		Location - driver inside sholder		
		Qty, - 01		
148	0681373	Headset, Firecom, Wireless, UHW-51 Under Helmet, Radio Transmit, No Base	0.00	594

		Location - officers seat inside sholder			
		Qty, - 01			
149	0681372	Headset, Firecom, Wireless, UHW-52 Under Helmet, Intercom Only, No Base	:	0.00	1188
		Location - rear crew inside sholders			
		Qty, - 02			
150	0512685	Antenna, Mount Only, For 2-way Radio, DO NOT USE AFTER 3/14/12	:	0.00	150
		Location - cab roof behind the lightbar, one each side			
		Location, Antenna Cable - officer seat box			
		Qty, - 02			
151	0537041	Camera, Safety Vision, MUX Display, Multiple Cameras	*	3,758.00	
		Camera System Audio - Speaker Behind Driver			
		Location, Camera, Safety Vision - 2 Cameras, Auto Switch			
152	0511071	Guard, 4-Way, Rear Vision Camera	*	0.00	85
		Location - rear camera			
		Qty, - 1			
153	0509965	Pierce Command Zone, Advanced Electronics and Control System, Diagnostic LEDs	*	0.00	
154	0509732	Electrical System, Impel/Velosity/Velosity SLT	*	0.00	
155	0079166	Batteries, (4) Exide Grp 31, 950 CCA each, Threaded Stud	*	0.00	
156	0008621	Battery System, Single Start, All Custom Chassis	*	0.00	
157	0123174	Battery Compartment, Imp/Vel	*	0.00	
158	0531338	Charger, Sngl Sys, Kussmaul, Pump Plus 1200, 091-9-1200	*	0.00	1855
159	0012782	Location, Charger, Front Left Body Compartment	*	0.00	
		Location - as high as possible same as 25308			
160	0530951	Location, Battery Charger Indicator, DS Behind Cab Door	*	0.00	
161	0507624	Shoreline, 30A 120V, Kussmaul Auto Eject, "Super"	*	0.00	501
		Color, Kussmaul Cover - b) red			
		Connection, Shoreline - battery charger			
		Qty, Shoreline - 1			
162	0026800	Shoreline Location	*	0.00	
		Location, Shoreline (s) - 25) DS Cab Side			
163	0036802	Sub Feed Breaker Box, For Shoreline	*	0.00	
		Location, CB Panel - next to generator panel			
164	0566294	Alternator, 430 amp, Niehoff C680-1	*	0.00	3805
165	0092582	Load Manager/Sequencer, MUX	*	0.00	
		Enable/Disable Hi-Idle - e) High Idle enable			
166	0511224	Lighting, FMVSS, Cab, P25 LED Cirnc/ID, Imp/Vel	*	0.00	
167	0090155	Lights, Identification/Clearance, Rear, Truck-Lite, 35017R LED	*	0.00	
168	0551870	Lights, Tail, Whelen M6BTT Red LED Stop/Tail, M6T Amber LED, Arrow Dir	*	0.00	320
169	0561471	Lights, Backup, Whelen M6BUW, LED, For Tail Lt Housing	*	0.00	285
170	0664481	Bracket, License Plate & Light, P25 LED	*	0.00	
171	0556842	Bezels, Whelen, (2) M6 chrome Pierce, For mtg (4) Whelen M6 lights	*	0.00	410
172	0589905	Alarm, Back-up Warning, PRECO 1040	*	0.00	
173	0521285	Light, Directional/Marker, Intermediate Light, Truck-Lite Model 60115Y LED	*	0.00	
174	0536455	Lights, Perimeter Scene Cab Exits, Amdor Lumabar, Model H2O, AY-9500-020, 20"	*	0.00	
		location - *			
		Qty, Lights - 04			
175	0547523	Lights, Perimeter Scene, (4) Amdor Lumabar, H2O, AY-9500-020 LED w/Bracket	*	530.61	
		Switch, Location, Perim - cab rocker switch		0	
176	0556360	Lights, Step, P25 LED 4lts	*	0.00	
177	0690471	Light, FRC, 12V SPA510-Q20 LED, Pull Up, Top Mount 1st	:	0.00	4197
		Location - one each side of pump house...as shown on drawing			
		Qty, - 02			
		Switch, Lt Control 1 DC,1 - a) DS Switch Panel			
		Switch, Lt Control 2 DC,2 - g) PS Switch Panel			
		Switch, Lt Control 3 DC,3 - e) Pump Operators Panel			
		Switch, Lt Control 4 DC,4 - e) Pump Operators Panel			
		To Do Not Move Truck Lt - c) Connected to Lt			
178	0692062	Light, Visor, FRC, 12V SPA851-Q20 LED 1st	:	0.00	3305
		Location, driver's/passen - 1DS & 1PS			
		Qty, - 02			
		Switch, Lt Control 1 DC,1 - a) DS Switch Panel			
		Switch, Lt Control 2 DC,2 - g) PS Switch Panel			
		Switch, Lt Control 3 DC,3 - d) No Control			
179	0692056	Light, FRC, 12V SPA530-Q20 LED, Push Up, Side Mount 1st	:	4,197.00	
		Location, lights - one each side rear bulkhead...mounted above taillights			
		Qty, - 02			
		Switch, Lt Control 1 DC,1 - a) DS Switch Panel			
		Switch, Lt Control 2 DC,2 - g) PS Switch Panel			
		Switch, Lt Control 3 DC,3 - e) Pump Operators Panel			
		Switch, Lt Control 4 DC,4 - c) DS Rear of Apparatus			
		To Do Not Move Truck Lt - c) Connected to Lt			
180	0670014	Light, FRC, 12V SPA850-Q20 LED, Flat Mount Fixed 1st	:	3,232.00	

		Location, lights - one each side on the cab roof. Rear edge of the light to line up with the rear edge of the cab door.		
		Qty, - 02		
		Switch, Lt Control 1 DC,1 - a) DS Switch Panel		
		Switch, Lt Control 2 DC,2 - g) PS Switch Panel		
		Switch, Lt Control 3 DC,3 - d) No Control		
		Switch, Lt Control 4 DC,4 - d) No Control		
181	0532358	Not Required, Deck Lights, Other Hose Bed and Rear Lighting	0.00	
182	0060115	Pumper, Med, Alum, 2nd Gen	0.00	
183	0554271	Body Skirt Height, 20"	0.00	
184	0028245	Tank, Water, 750 Gallon, Poly, Med	0.00	
185	0003405	Overflow, 4" Water Tank, Poly	0.00	
186	0028104	Foam Cell Required	0.00	
187	0553729	Not Required, Restraint, Water Tank, Heavy Duty	0.00	
188	0581623	Tank Fill, 2.50" Automatic, On Main Intake Valve, Driver or Pass Side	0.00	5455
		Location, driver's/passen - 1DS & 1PS		
		Qty, - 02		
189	0003424	(No Dump Valve required)	0.00	
190	0048710	Jet Assist Not Req'd	0.00	
191	0030007	(No Dump Chute Required)	0.00	
192	0514778	Not Required, Switch, Tank Dump Master	0.00	
193	0126633	Hose Bed, Alum, Pumper	0.00	
194	0003482	Hose bed Capacity, Additional	0.00	
		Capacity, Hosebed - 1200 ft of 5 inch, 500 ft of 3 inch, 500 ft of 3 inch...Hosebed like 21672		
195	0003488	Divider, Hose Bed, Unpainted	0.00	460
		Qty, Hosebed Dividers - 2		
196	0087562	Cover, Hose Bed, Roller Shutter, Pumper	0.00	5949
		Color, Vinyl Cover - a) red		
197	0013512	Runningboard, 12.75" Deep	0.00	
198	0689621	Tailboard, 16" Deep	0.00	
199	0690037	Wall, Rear, Smooth Aluminum/Body Material	0.00	
		Material Trim/Scuffplate - a) 4-way alum, Bright		
200	0003531	Tow Bar, Under Tailboard	0.00	
201	0590926	Hose Restraint, Running Board, Velcro Straps	0.00	
		Location, Hose Tray, runn - b) LH Side		
		Qty, Tray, Hose - 1		
202	0014112	Tray, Hose, Running Board, Special Capacity	0.00	349
		Capacity, Hose Tray - 50 ft of 5 inch		
		Location, Hose Tray, runn - b) LH Side		
		Qty, Tray, Hose - 1		
203	0003561	Construction, Compt, Alum, Pumper	0.00	
204	0023650	DS 152" Rollup, Full Height Front & Rear, FDLER	0.00	
205	0063658	PS 152" Rollup, Full Height Front & Rear, FDLER	4,149.00	
206	0693122	Doors, Robinson, Roll-up, Side Compartments	0.00	
		Color, Roll-up Door - acc) ROM satin aluminum		
		Latch, Roll-up Door - Lift-bar		
		Qty, Door Accessory - 06		
207	0083701	Rear - Rollup Dr/44.50" FF	0.00	
208	0693124	Door, Robinson, Roll-up, Rear Compartment	0.00	
		Color, Roll-up Door - acc) ROM satin aluminum		
		Latch, Roll-up Door - Lift-bar		
209	0554995	No Body Modification Required	0.00	
210	0545074	Lights, Compt, Amdor, LED, Dual Light Strips, Each Side of Door	0.00	1974
		Location - all compartments. Secure the lights on each side with clamps. they are already loose.		
		Qty, - 07		
211	0562348	Fasteners, Mechanical, Strip Lighting In Compartments	0.00	
212	0687146	Shelf Tracks, Painted	0.00	
		location - ALL COMPARTMENTS		
		Qty, Shelf Track - 06		
213	0687112	Shelves, Adjustable, 500 lb Capacity, Full Width/Depth, Painted	0.00	
		Location, Shelf - 2 IN D-1 UPPER		
		P- 1 UPPER		
		R-1 UPPER		
		2 IN P-1 UPPER		
		1 IN P-1 LOWER		
		2 IN P-3 UPPER		
		Qty, Shelf - 09		
214	0004041	Tray, 500 lb Slide-out, 6" Sides, Floor Mounted	0.00	1025
		Location - D1, D3		
		Qty, Tray (slide-out) - 02		
215	0003982	Tray, 500 lb Slide-out, 2" Sides - Floor Mounted	0.00	621
		Location - R1		

		Qty, Tray (slide-out) - 01		
216	0540335	Toolboard, Swing-out, Alum, .188", No Holes Finish - Painted location - P-2 Location, Pivot - Front Mounting, Toolboard - Adjustable Frt-back Qty - 1	0.00	815
217	0585102	Box, Alum 4-Way, Storage, Open Top, 4" H x 12" W x 94" L, Velcro Straps Fill in Blank - TBD Location - driver side catwalk forward Qty, - 01	325.00	
218	0044006	Pegboard, .188" Alum, Rr Wall Compt,w/Track, Painted Location - D-3 ON REAR WALL UPPER SECTION AND ON SIDE WALLS. Qty, Comp. Accessory - 03	0.00	1345
219	0004016	Rubrail, Aluminum Extruded, Side of Body	0.00	
220	0004024	Fender Crowns, Rear, S/S	0.00	
221	0540092	Hose, Hard Suction, Provided by Fire Department, Pumper NFPA Classification Brand, Model, Age of Tool - Kocheck Length, Hard Suction Hose - 10 foot Qty, Hard Suction Hose - 2 Size, Hard Suction, Hose - 6.00"	0.00	
222	0697637	Handrails, Top Mount (7), four on DS and three on PS	0.00	
223	0004131	Handrails, Beavertail - Full Length	0.00	
224	0004146	Handrail, Rear Below Hose Bed	0.00	
225	0004150	Handrail, Extra - 15-20" Long Location, Handrails - vertical on the driver side sheet at front edge above D3 Qty, Handrails - 01	0.00	
226	0070089	Compt, Air Bottle in Fender Panel, Dbl Wide, Full Width Door Location, Bracket/comp. - two (2) on passenger side and one (1) on driver side forward Qty, Air Bottle Comp - 3	0.00	2346
227	0088099	Insert, Air Bottle Compt, W-Shaped, 2nd Gen Fill in Blank - each of the double wide air bottle compartments Qty, - 03	0.00	233
228	0004225	Ladder, 24' Duo-Safety 900A 2-Sect	0.00	
229	0004230	Ladder, 14' Duo-Safety 775A Roof	0.00	
230	0049958	Ladders Btwn Tank & S.Sht, Ext'd Rr, Encl'd Complete, RPH,PS,Treadplate Exterior Door, Ladder Storage - c) smooth aluminum Latch,Door Ladder Storage - b) "D" Handle latch	3,726.00	
231	0014245	Ladder, Folding, 10' 585A, Duo-Safety, w/Mtg Location, Fold Ladder - d) Ladder comp	0.00	
232	0548184	Pole, Pike 8' Akron, Fiberglass Location - Ladder Compartment Qty, Pike Poles - 1	0.00	
233	0596052	Pole, Pike 6' Akron, Fiberglass, w/D Handle Location - ladder compartment Qty, Pike Poles - 1	0.00	
234	0004361	Tubes, Alum, Pike Pole Storage Location - Ladder Compartment Qty, Pike Pole Tubes - 02	0.00	
235	0004375	Bell, 12" Chrome w/Eagle Location, Acc. Misc. - b) passenger's side	0.00	1009
236	0593072	Steps, Folding, Front of Body, w/LED, Trident Coating, Step - black	0.00	
237	0592994	Steps, Folding, Rear of Body, w/LED, Trident Coating, Step - black	0.00	
238	0591914	Step, Folding - Extra, Body Only, Black, w/LED, Trident Location, Additional Step - Driver's side front bulkhead. REAR SIDE OF LADDER STORAGE TO ASSIST IN GETTING TO HOSEBED Qty, Folding Step - 04	0.00	225
239	0004430	Pump, 1750 CSU Single Stage,Waterous	5,471.00	
240	0004481	Packing, Grafoil, Waterous	0.00	
241	0091446	Pump Setup Charges N/A	0.00	
242	0559769	Transmission, Pump, Waterous C20 Series	0.00	
243	0535256	Shift, Air w/ Manual Over, Split Shaft PTO,Waterous	0.00	
244	0003148	Transmission Lock-up, EVS	0.00	
245	0004547	Auxiliary Cooling System	0.00	
246	0014486	(No Transfer Valve Required on 1 Stage Pump)	0.00	
247	0004513	Valve, Relief Intake, Waterous	0.00	
248	0564941	Controller, Pressure, FRC, Pump Boss, PBA200	0.00	
249	0030166	Primer, Waterous, VPO, Oil Free	0.00	
250	0044561	Manuals, Pump (3)	68.07	
251	0089351	Plumbing, Stainless Steel & Hose (Control Zone)	0.00	

252	0064656	Not Required, Black Iron Pipe with S/S Plumbing	0.00	
253	0004645	Inlets, 6.00" - 1250 GPM or Larger Pump	0.00	
254	0004646	Cap, Long Handle Pump Inlet, NST - VLH	0.00	
255	0084605	Valves, Waterous Side with Akron 8000 Series	0.00	
256	0004660	Inlet, LH Side, 2.50" gated	0.00	
257	0004680	Inlet, RH Side, 2.50" gated	0.00	1093
258	0004687	Valve, Inlet(s) Recess, Top Mount	0.00	
259	0004710	Control, Inlet Valve - At Top Mount Panel	0.00	
260	0092569	No Rear Inlet (Large Dia) Requested	0.00	
261	0092696	No Rear Suction Cap	0.00	
262	0064116	No Rear Inlet Actuation	0.00	
263	0009648	No Rear Intake Relief Valve Req'd	0.00	
264	0092568	No Rear Inlet (auxiliary) Requested	0.00	
265	0563738	Valve, .75 Bleeder, Aux. Side Inlet, Swing Handle	0.00	
266	0029043	Line, 3.00" Tank to Pump	0.00	
267	0024900	Outlet, 2.50" Tank Fill	0.00	
268	0004940	Outlet(s), LH Side, 2.50"	0.00	
		Qty, Discharges - 02		
269	0092570	No Additional Outlet (LH) Requested	0.00	
270	0004945	Outlet(s), RH Side, 2.50"	0.00	
		Qty, Discharges - 01		
271	0092571	No Additional Outlets (RH) Requested	0.00	
272	0005047	Outlet, 4" w/4" Right (Waterous Pump)	3,976.00	
		Valve, Brand - Akron		
273	0025000	Outlet, Front, 2.50" w/2.50" plumb & polished S/S swivel	3,030.00	
		Location, Outlet - b) driver's side		
		Qty, - 1		
274	0004995	Outlet, Rear, 2.50"	0.00	
		Location, Outlet - a) passenger's side		
		Qty, Discharges - 01		
275	0092574	No Rear Outlet (Added) Requested	0.00	
276	0092573	No Hosebed/Running Board Outlet	0.00	
277	0085076	Caps for 1.50" - 3.00" Discharges - VLH	0.00	
278	0563739	Valve, .75 Bleeder, Discharges, Swing Handle	0.00	
279	0005091	Elbows, 45 Degree - 2.50" Outlets LH - VLH	0.00	
280	0035094	No Elbows Req'd (Added LH Outlets)	0.00	
281	0025091	Elbows, 45 Degree - 2.50" Outlets RH - VLH	0.00	
282	0089584	No Elbow req'd (Added RH Outlet not requested)	0.00	
283	0045091	Elbows, 45 Degree - 2.50" Outlets Rear - VLH	0.00	
284	0085695	No Elbows Req'd, Added Rear, Large Outlet	0.00	
285	0005097	Elbow, 30 Degree - 4.00"(F) X 5.00" Storz	0.00	
286	0062133	Control, Outlets, Manual, Pierce HW if applicable	0.00	
287	0090927	Outlet, 3.00" Deluge w/TFT Extend-a-Gun XG18 riser	3,599.00	
288	0029302	No Monitor Requested	0.00	
289	0029304	No Nozzle Req'd	0.00	
290	0005070	Deluge Mount, NPT	0.00	
291	0025140	Not Required, 1.50" Crosslays	0.00	
292	0029196	No 2.50" Crosslay Requested	0.00	
293	0066247	Speed, (2) 1.5" (1) 2.5" w/Poly Tray, Top Mt/Side Cntrl, Std. Cap.	6,539.00	
294	0591147	Hose Restraint, Speedlay, 2" Heavy Nylon Web, Fasteners, Each Side	0.00	
		Nylon Web Color - Black		
		Qty, - 03		
		Restraint Location - Back (towards rear of truck)		
		Type of fastener - Velcro - 1 side of crosslay/deadlay/speedlays		
295	0015216	Reel, Booster, Aluminum - Over Pump, Pass Side	3,987.00	
296	0011060	Switch, Reel Rewind - One at Pump Panel	0.00	
297	0045300	Hose, Booster - 200' of 1.00"/800 PSI	0.00	
298	0005244	Capacity, Hose Reel 200' of 1"	0.00	
299	0007428	Nozzle for Booster Reel Not Req'd	0.00	
300	0015260	Roller Assembly, Additional	0.00	365
		Location - one center of dunnage area and one on drivers side		
		Qty, - 02		
301	0095358	Foam Sys, Husky 12, (Single Agent)	18,724.00	
		Amount of Disc. W/Foam - 6		
		Discharge - front bumper, 3 speedlays, rear discharge, hose reel		
302	0011869	Compressor, Hercules CAF, 200 CFM, PTO	29,271.00	
		Amount of Disc. W/ CAFS - 6		
		CAF with a second pump - No second pump		
		Fill in Blank - Front bumper, 3 speedlays, rear discharge, and hose reel.		
303	0552481	Refill, Foam Tank, Single Tank, Husky 12, Class A Foam	0.00	840
304	0541801	Control, CAF Compressor, Auto On with Pump Engaged, Cab Disable Switch	0.00	230
305	0077387	Control, Husky 12, Auto On with Pump Engaged	0.00	230
306	0031894	Demonstration, Foam System, at Factory	0.00	

Vehicle, Qty, Training, P - 1 vehicle				
307	0005447	Foam Cell, 30 Gallon	1,321.00	
		Foam, Brand Name - national		
		Type of Foam - Class "A"		
308	0505016	Drain, 1.00", Foam Tank #1, Husky 12 Foam System	0.00	
309	0091079	Not Required, Foam Tank #2	0.00	
310	0091112	Not Required, Foam Tank Drain	0.00	
311	0018666	Pump House, Top Mount, 52" w/Walkway "Control Zone"	0.00	6848
		Light, Walkway - Ri-tar LED		
		Light, Walkway Compt - Ri-Tar LED		
312	0032479	Pump Panel Configuration, Control Zone	0.00	
313	0025545	Panel, Pump and Gauge, Black Vinyl, Brushed S/S, Top Cntrl	0.00	495
314	0035574	Panel, Pump Access - Both Sides	0.00	
315	0045500	Raise Pump House Structure, Top Control	0.00	
316	0583824	Light, Pump Compt, Whelen 3SC0CDCR LED White	0.00	
		Qty, - 02		
317	0586382	Engine Indicators, Included With Pressure Controller	0.00	
318	0005601	Throttle Included w/ Pressure Controller	0.00	
319	0549333	Indicators, Engine, Included with Pressure Controller	0.00	
320	0544152	Gauge, Pump Transmission Oil Temperature on Pump Pnl	0.00	
321	0550418	Aux Inlet, PS, Control at Valve	0.00	
322	0511078	Gauges, 4.0" Master, Class 1, 30"-0-600psi	0.00	
323	0511100	Gauge, 2.0" Pressure, Class 1, 30"-0-400psi	0.00	
324	0037928	Gauge, Flowmeter / Pressure, FRC Insight Ultimate, FP4000	11,148.00	
		Discharge W/ Flowmeter - front bumper, 3 speedlaufs, rear 2.5 and hose reel		
		Qty, Gauges/Disc. - 06		
325	0092705	Gauge, Water Level, FRC, WLA200 Series, Tank Vision	0.00	
326	0060753	Water Level Gauge, Whelen PSTANK, LED 1-Light, 4-Level	0.00	1366
		Activation, Water Level G - i) ignition switch		
		Location - one each side of cab between crew door and rear of cab.		
		One on rear of truck		
		Qty, - 03		
327	0092704	Gauge, Foam Level, FRC, Tank Vision, WL2000 series	0.00	
328	0591467	Light Shield, Top Mt, On Scene Solutions Light Stik, LED	0.00	
329	0003931	Microphone & Speaker w/ Plain Door - Top Mt Panel	0.00	364
330	0508025	Air Horns, (2) Hadley 6" Round in Bumper Outside Frame	1,488.00	
		Location, Air Horn (bmpr) - one each side in bumper		
331	0006061	Control, Air Horn, Lanyard	0.00	
		Location, air horn contro - a) drivers side		
332	0549923	Siren, Federal PA300-012MSC 690001, 100 Watt, (No Mic), Other Speaker, Non-NFPA	0.00	
333	0510206	Location, Elec Siren, Recessed Overhead in Console	0.00	
		Location, Elec Siren - Overhead, Above Eng Tunnel DS		
334	0016145	Control, Elec Siren, Horn Ring, PS Push Button	0.00	
335	0550213	Speaker, Code-3 PB100C, Chrome	0.00	
		Connection, Speaker - siren head		
		Qty, Speakers - 1		
336	0548455	Location, Recessed in the Front Bumper, Passenger Side	0.00	
337	0016080	Siren, Federal Q2B	3,474.00	
338	0006097	Location of Siren, Recessed in Bumper	0.00	
		Location, Siren, Mech - a) Left		
339	0026164	Control, Mech Siren, Horn Ring, Push Button on PS Instrument Panel	0.00	
340	0551860	Lightbar, Whelen, Freedom, FN**QLED, 6-R, 4-W, 2-RC, LED Opt	2,995.00	
		Color, Lens, LED's - c)clear		
		Length, Wln Lightbar - 72"		
		Opticom Priority - b) High		
341	0540440	Light, Front Zone, Whelen M6°C, LED, Clear Lens	0.00	
		Color, Lt DS Front - r) red		
		Color, Lt PS Front - r) red		
342	0554452	Light, Front, Whelen M6°C LED, Clear Lens 1st	0.00	
		Color, Lights, Warning - gla) red		
		Control, light - h) front warning		
		Location, lights - Below the front headlights		
		Qty, - 02		
343	0525723	Flasher, Headlight Alternating	0.00	
344	0540692	Lights, Side Zone Lower, Whelen M6°C LED, Clear Lens, 3pr, Ovr 25	0.00	
		Color, Lt Side Front - r) Side Front Lt Red		
		Color, Lt Side Middle - r) Side Middle Lt Red		
		Color, Lt Side Rear - r) Side Rear Lt Red		
		Location, lights frt side - b)each side bumper		
		Location, lights mid - on side of cab between rear door and rear of cab		
		Location, lights rear - one each side		
345	0564655	Lights, Rear Zone Lower, Whelen M6°C LED, Clear Lens, For Tail Lt Housing	0.00	

		Color, Lt DS Rear - r) DS Rear Lt Red		
		Color, Lt PS Rear - r) PS Rear Lt Red		
346	0088745	Light, Rear Zone Upper, Whelen L31HRFN LED Beacon, Red LED	0.00	
		Color, Dome, Rear Warning - b) both domes red		
347	0006551	Pumper LED Lighting Package Up Grade	6,800.00	
348	0006615	Mtg, Rear Warn Lts, On Top of Compt	0.00	
349	0529684	Light, Traffic Directing, Whelen TAL65, 36.01" Long LED	0.00	983
		Activation, Traffic Dir L - c) with the control head		
350	0551728	Location, Traf Dir Lt, Recessed with S/S Trim	0.00	
351	0530282	Location, Traf Dir Lt Controller, Overhead Switch Panel DS Right End	0.00	
352	0086626	Receptacle, 15A 120V 3-Prong SB Dup, 4 place, Shoreline	0.00	330
		Location, Receptacles - EMS CABINET UP HIGH AS POSSIBLE ON REAR WALL. IN D-3 AS HIGH AS POSSIBLE.		
		Qty, Receptacles - 02		
353	0519934	Not Required, Brand, Hydraulic Tool System	0.00	
354	0007150	Bag of Nuts and Bolts	0.00	
		Qty, Bag Nuts and Bolts - 1		
355	0532883	NFPA Required Loose Equipment, Pumper, Provided by Fire Department	0.00	
356	0519913	Not Required, Soft Suction Hose	0.00	
357	0545110	Strainer, Provided by Fire Department, Pumper NFPA Classification	0.00	
358	0533269	Extinguisher, Dry Chemical, Pumper, Provided by Fire Department	0.00	
359	0533278	Extinguisher, 2.5 Gal. Pressurized Water, Pumper, Provided by Fire Department	0.00	
360	0532921	Axe, Flathead, Pumper, Provided by Fire Department	0.00	
361	0532924	Axe, Pickhead, Pumper, Provided by Fire Department	0.00	
362	0559573	Paint, Single Color, Custom	0.00	
		Paint, Color - Red #80		
363	0017241	Paint Chassis Frame Assy. Black, Std.	0.00	
364	0693797	No Paint Required, Aluminum Front Wheels	0.00	
365	0693792	No Paint Required, Aluminum Rear Wheels	0.00	
366	0007230	Compartment, Painted, Spatter gray	0.00	
367	0692431	Reflective Band, 5"- 9"- .5", No Gaps	0.00	384
		Color, Reflect Band - A - i) gold		
		Color, Reflect Band - B - p) black		
		Color, Reflect Band - C - ze) gold		
368	0510041	Reflective across Cab Face, Imp/Vel	0.00	
369	0536954	Stripe, Chevron, Rear, Diamond Grade, Pumper	0.00	
		Color, Rear Chevron DG - fluorescent yellow green		
370	0087342	Jog, "Z"-Shaped, In Reflective Stripe	0.00	
		Qty, - 1		
371	0545179	Stripe, Diamond Grade, Chevron, Front Bumper	0.00	185
		Color, Chevron DG - B - Red		
		Color, Chevron DG - Yellow Green, Fluorescent		
		Size, Chevron Striping - 04		
372	0544966	Stripe, Chevron, Diamond Grade, Rear Compartment, Roll Up, Pumps	0.00	
		Color, Rear Chevron DG - fluorescent yellow green		
373	0065687	Stripe, Reflective, Cab Doors Interior	0.00	
		Color, Reflective - i) gold		
374	0027372	Lettering Specifications, (GOLD STAR Process)	0.00	
375	0686394	Lettering, Gold Leaf, 4.00", Each	0.00	290
		Outline, Lettering - Outline and Shade		
		Qty, Lettering - 07		
376	0686013	Lettering, Reflective, 6.00", Each	0.00	69
		Outline, Lettering - Outline		
		Qty, Lettering - 02		
377	0685977	Lettering, Reflective, 20.00", Each	0.00	79
		Outline, Lettering - Outline and Shade		
		Qty, Lettering - 02		
378	0686282	Lettering, Gold Leaf, 3.00", (21-40)	0.00	69
		Outline, Lettering - Outline and Shade		
379	0685058	Lettering, Reflective, 24.00", Each	0.00	138
		Outline, Lettering - No Outline or Shade		
		Qty, Lettering - 02		
380	0685993	Lettering, Reflective, 10.00", Each	0.00	138
		Outline, Lettering - Outline and Shade		
		Qty, Lettering - 02		
381	0516710	Emblem, Texas Flag Painted on Cab Grille, All Custom Chassis	0.00	942
382	0031972	Manuals, Two (2), Fire Apparatus Parts, Custom Chassis	0.00	
383	0002905	Manuals, Two (2) Chassis Service, Custom	0.00	
384	0032433	Manuals, Two (2) Chassis Operation, Custom	0.00	
385	0030008	Warranty, Basic, 1 Year, Apparatus, WA0008	0.00	
386	0553301	Warranty, Chassis, 3 Year, Velocity/Impel, WA0037	0.00	
387	0696696	Warranty, Engine, Detroit DD13, 5 Year, WA0180	0.00	
388	0684953	Warranty, Steering Gear, Sheppard M110, 3 year WA0201	0.00	

389	0595767	Warranty, Frame, 50 Year, Velocity/Impel, Dash CF, WA0038	0.00
390	0595245	(No Pick Required)	0.00
391	0595698	Warranty, Axle, 3 Year, TAK-4, WA0050	0.00
392	0530524	Warranty, Axle, 2 Year, Meritor, General Service, WA0046	0.00
393	0019914	Warranty, Structure, 10 Year, Custom Cab, WA0012	0.00
394	0595813	Warranty, Paint, 10 Year, Cab, Pro-Rate, WA0055	0.00
395	0524627	Warranty, Electronics, 5 Year, MUX, WA0014	0.00
396	0046369	Warranty, 5-year EVS Transmission, Standard Custom, WA0187	0.00
397	0685945	Warranty, Transmission Cooler, WA0216	0.00
398	0688798	Warranty, Water Tank, Lifetime, UPF, Poly Tank, WA0195	0.00
399	0596025	Warranty, Structure, 10 Year, Body, WA0009	0.00
400	0681118	Warranty, Robinson, Roll-up Door, 7 Year, WA0206	0.00
401	0063510	Warranty, Waterous 5 Yrs	0.00
402	0032998	Warranty, 10 Year S/S Pumping, WA0035	0.00
403	0595820	Warranty, Paint, 10 Year, Body, Pro-Rate, WA0057	0.00
404	0595421	Warranty, Goldstar, 3 Year, Apparatus, WA0018	0.00
405	0683627	Certification, Vehicle Stability, CD0089	0.00
406	0568415	Certification, Engine Installation, Velocity, DDC DD13, CD0087	0.00
407	0686786	Certification, Power Steering, CD0098	0.00
408	0543951	Certification, Cab Integrity, Velocity	0.00
409	0548950	Certification, Cab Door Durability, Velocity/Impel, CD0001	0.00
410	0548967	Certification, Windshield Wiper Durability, Impel/Velocit, CD0005	0.00
411	0548951	Certification, Electric Window Durability, Velocity/Impel, CD0004	0.00
412	0549273	Certification, Seat Belt Anchors and Mounting, Impel/Velocit/Velocit SLT	0.00
413	0548947	Certification, Cab Heater and Defroster, Velocity/Impel, CD0015	0.00
414	0548940	Certification, Cab Air Conditioning Performance, Velocity/Impel, CD0016	0.00
415	0545073	Amp Draw Report, NFPA 2009 Edition	0.00
416	0002758	Amp Draw, NFPA Radio Allowance	0.00
417	0000018	PUMPER, 2ND GEN	0.00
418	0000012	PIERCE CHASSIS	0.00
419	0562778	DD13 ENGINE	0.00
420	0046396	EVS 4000 Series TRANSMISSION	0.00
421	0020011	WATEROUS PUMP	0.00
422	0020009	POLY TANK	0.00
423	0028048	FOAM SYSTEM	0.00
424	0020005	TOP MOUNT	0.00
425	0020007	AKRON VALVES	0.00
426	0020015	Discount City of Midland	-55,576.40

Total List : \$501,707.00 \$ 71,281.00

Summary

Published:	\$501,707.00	88%
Unpublished:	\$71,281.00	12%
Total	\$572,988.00	



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 11/13/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of a compactor through Buyboard from Warren Power & Machinery, Inc. of Midland, Texas for the Garage Division.

Purpose:

Approval of a resolution authorizing the purchase of an 836H Landfill Compactor DCA1 for use by the Landfill.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$899,802.83 from the Garage Fund

Discussion:

This is a scheduled replacement unit. This product is available on the Buyboard. 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 836H Landfill Compactor from Warren Power & Machinery, Inc. of Odessa, Texas through the Buyboard for a total cost of \$899,802.83.

RESOLUTION NO.

**RESOLUTION APPROVING THE PURCHASE OF AN
836H LANDFILL COMPACTOR DCA1 THROUGH THE
BUYBOARD AT A TOTAL COST OF \$899,802.83; AND
THIS ITEM WAS NOT BID BUT PURCHASED
THROUGH A COUNCIL OF GOVERNMENTS**

WHEREAS, the Buyboard is a cooperative purchasing agency with which the City participates on purchases; and

WHEREAS, Warren Power & Machinery, Inc., of Midland, Texas, has submitted a total proposed cost to the City of \$899,802.83 for the purchase of an 836H Landfill Compactor DCA1 through the Buyboard, as shown on the quote attached hereto as Exhibit “A” and incorporated herein for all legal purposes; and

WHEREAS, the Council finds the price proposed by Warren Power & Machinery, Inc., through the Buyboard for said 836H Landfill Compactor DCA1 to be fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to purchase said 836H Landfill Compactor DCA1 through the Buyboard;

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 836H Landfill Compactor DCA1 referred to above through the Buyboard at a total estimated cost of \$899,802.83.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said 836H Landfill Compactor DCA1 from funds available in the Fiscal Year 2012 – 2013 Garage Fund (750) General Services (040) Garage (0752) 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., 2012, by

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



BUYBOARD QUOTE

Quote 134759-01

October 30, 2012

CITY OF MIDLAND
ATTN DENNIS YATES
FLEET SERVICES DIVISION
MIDLAND,
Texas
79702-1152

Dear Sir,

We would like to thank you for your interest in our company and our products, and are pleased to quote the following for your consideration.

836H

We wish to thank you for the opportunity of quoting on your equipment needs. This quotation is valid for 30 days, after which time we reserve the right to re-quote. If there are any questions, please do not hesitate to contact me.

Sincerely,

Adam Allgood
Machine Sales Representative

STANDARD EQUIPMENT

CONSIST NOTE - The standard equipment list includes all - no-charge (NC) items from the Mandatory - Attachment section.

POWERTRAIN - Brakes, Full Hyd., enclosed, wet-disc - service brakes - Case drain filters - Differential, No-Spin (front) - Engine, Cat C18 w/ACERT Technology - ATAAC and ADEM A4 controller - Fuel Priming Pump (electric) - Heat Shield, turbo and exhaust manifold - Muffler, (under hood) - Parking Brake - Precleaner, Engine Air Intake - Radiator, Next Generation Modular (NGMR) - Separated Cooling System - Starting Aid (ether) - Torque converter, impeller clutch with - lockup control system - Transmission, Planetary, with 2F/2R - speed range control

HYDRAULICS - Hydraulic Oil Cooler - Hydraulic System for Bulldozer

ELECTRICAL - Alarm, back-up - Alternator (100-amp) - Batteries, maintenance-free (4-1000CCA) - Deutsch terminal connectors - Electrical converter (12-volt) - Electrical system (24-volt) - Lighting system, halogen (front and rear) - Starter, electric (heavy duty) - Starting receptacle for emergency start

OPERATOR ENVIRONMENT - Air conditioner (roof mounted) - Cab, sound-suppressed and pressurized, - Internal four-post rollover protective - structure (ROPS/FOPS) Radio ready for - (entertainment) includes antenna, - speakers, and converter (12-volt 10-15 - amp) 12-volt power port - Cigar lighter (12-volt) and ashtray - Coat hook - Heater and defroster - Horn, electric - Hydraulic controls (floor mounted) - Lights, (interior cab) - Lunchbox and beverage holders - Monitoring system (EMSIII) - Action alert system, three category - Instrumentation, Gauges: - Engine coolant temperature - Fuel level - Hydraulic oil temperature - Speedometer/Tachometer - Transmission oil temperature - Instrumentation, Warning Indicators: - Brake oil pressure - Electrical system, low voltage - Engine intake / combustion air temp - Engine oil pressure - Engine overspeed - Fuel pressure - Hydraulic oil filter status - Parking brake status - Transmission filter status - Mirrors, rearview (externally mounted) - Seat, Cat Comfort,(cloth) air suspension - Seat belt, retractable, 76mm (3") wide - Steering, assist (wheel) - Tinted glass - Transmission gear (indicator) - Wet-Arm Wipers/Washers (front and rear) - Intermittent Wipers (front and rear)

TIRES, RIMS, AND WHEELS - Wheels (55") with weld-on Stepped Tips, - through hardened inner rim extension, - (8) wear bars on the extension, - (8) wear bars on inside wheel disc, - and 1" wide hardfacing on both edges - of the outer wrapper of the wheel.

GUARDS - Guards, axle (front and rear) - Guards, crankcase and powertrain, - hydraulically powered

BLADES - Bulldozer not included in std equipment

FLUIDS - Antifreeze, premixed 50% concentration - of extended life coolant with freeze - protection to -34C (-29F)

OTHER STANDARD EQUIPMENT - Auto Blade Positioner (ABP) - Demand fan/swing out (hyd. reversible) - Engine, crankcase, 500 hour interval - with CH4 oil - Extended Roof - Ground Electronic clutch pressure - control and remote mounted pressure taps - Hitch, drawbar with pin - Locking engine enclosures - Oil sampling valves - Product Link - Stairways, fixed-L/R (rear access) - Striker bars - Throttle Lock - Vandalism protection caplocks - Venturi stack

MACHINE SPECIFICATIONS

Description	Reference No
836H LANDFILL COMPACTOR DCA1	368-9322
AVAILABLE FROM AURORA PRODUCT DISTRIBUTION CENTER	
Please check availability website for current Lane 1/PDC availability.	
This contains Product Link-Satellite (PL321). Availability varies by country. Please contact your Cat marketing contact with questions.	
Not for use with EU dealer orders.	
Includes:	
284-2329 836H LANDFILL COMPACTOR	284-2329
368-9303 REGIONAL PKG-PRODUCT LINK,ANSI	368-9303
Includes ANSI decals and product link.	
368-9313 SERVICE PKG - PREMIUM, CW	368-9313
Includes heated fuel arrangement, high speed oil change system, Sy-Klone Optimax precleaner, remote mounted disconnect switch, and engine coolant heater (120V).	
368-9308 CAB PKG-BASIC,RUBBER MTD GLASS	368-9308
Includes cab with rubber mounted glass, cab front window guards, standard lights, and STIC steering.	
368-9317 ACCESS and GUARDING PKG-PREMIUM	368-9317
Includes swing left and right side stairway, premium guard actuator, and rear fan and grill guard.	
225-8337 NO SUPPRESSION ARRANGEMENT	225-8337
368-9306 AXLES, NO-SPIN FRONT and REAR	368-9306
345-9710 STRIKER BARS	345-9710
368-9318 FEATURE PKG - VISIBILITY	368-9318
Includes rear vision camera and flashing strobe warning light.	
368-9320 FEATURE PKG - CAB, CAES READY	368-9320
Includes CAES attachment ready option and Gideon cab precleaner.	
305-9186 RADIO, CB (READY)	305-9186
BULLDOZER ARRANGEMENT	260-2014
WHEELS, STEPPED TIP	347-1979
BLADE, STRAIGHT	380-0852
DOMESTIC TRUCK	0P-0436
DIRECT SHIP TO CUSTOMER - WASH	0P-2047

Description

Reference No

Sell Price	\$898,500.00
Ext Warranty	Included
Net Balance Due	\$898,500.00
HET: HET ECTOR COUNTY (0.145%)	\$1,302.83
After Tax Balance	\$899,802.83

WARRANTY

Extended Warranty: CAT Governmental 2 YR / 5000 HR Premier in conjunction
with a 5 YR / 10000 HR Powertrain + Hydraulics, travel time
included for 1 year or 1500 hours

F.O.B/TERMS

Midland Landfill

Accepted by _____ on _____

Signature



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 11/13/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving an agreement with the sole proposer Justice Benefits, Inc. of Dallas, Texas to provide Federal Reimbursement Opportunities and Consultant Services for the Health and Senior Services Division of the Community Services Department. RFP 5438-13

Purpose:

Approval of an agreement for Federal Reimbursement Opportunities and Consultant Services for the Health and Senior Services Division.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Funding is not required.

Discussion:

Resolution 2012-260 approved the issuance of a request for proposals for Federal Reimbursement Opportunities and Consultant Services for the Health and Senior Services Department. Three firms requested a copy of the request for proposals with Justice Benefits, Inc., returning the only proposal. According to Justice Benefits, Inc. the City of Midland will be charged 18% of recovered funds due only after the claims have been paid to the City of Midland.

Therefore, please consider a resolution approving an agreement with Justice Benefits, Inc. of Dallas, Texas for two years for Federal Reimbursement Opportunities and Consultant Services for a fee of 18% of recovered funds.

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: November 2, 2012
To: Tommy Hudson, Deputy City Manager
From: Tina Jauz, Community Services Director
Subject: Justice Benefits for Federal Reimbursement

After reviewing the bid tabulation, the Midland Health Department is recommending an agreement with Justice Benefits Inc. for federal reimbursement.

Medicaid administrative claiming is a federal match program that reimburses health departments for certain activities that improve citizen's access to the Medicaid Program. The Midland Health Department is already providing these services by referral and coordinating medical related provider relations, for example helping people find a doctor, recruiting providers, and working with other agencies to improve Medicaid services being offered to Midland citizens.

The proposal from Justice Benefits states they will require 18% of recoveries on a "no risk" contingent fees basis due only after claims have been paid to the City. The only cost associated with this contract is if Justice Benefits recovers any money for the City they will receive 18% funds recovered.

The services are currently being used by other Health Departments including: Ector County, Wichita Falls, Temple, and Bell County.

RESOLUTION NO.

RESOLUTION APPROVING AN AGREEMENT WITH JUSTICE BENEFITS, INCORPORATED, OF DALLAS, TEXAS, TO PROVIDE FEDERAL REIMBURSEMENT OPPORTUNITIES AND CONSULTANT SERVICES FOR THE HEALTH AND SENIOR SERVICES DIVISION OF THE COMMUNITY SERVICES DEPARTMENT; SAID FIRM TO RECEIVE EIGHTEEN PERCENT OF FUNDS RECOVERED

WHEREAS, a request for proposals was issued for Federal Reimbursement Opportunities and Consultant Services for the Health and Senior Services Division of the Community Services Department; and

WHEREAS, Bid No. 5438-13 was opened on October 3, 2012, with the sole proposal being submitted from Justice Benefits, Inc., of Dallas, Texas, at a cost of 18% of funds recovered, 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 Justice Benefits, Inc., for said services;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Justice Benefits, Inc., for said services at a cost of 18% of funds recovered by Justice Benefits, Inc., said contract being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Justice Benefits, Inc., pursuant to the terms of said contract from funds recovered by Justice Benefits, Inc., upon receipt of proper invoices or statements approved by the City Manager.

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

the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 5438-13 Fed Reimbursement Op & Consultant Services			Justice Benefits Inc 2010 Valley View Lane Dallas, TX 75234 April Farmer (972) 406-3728	
OPENED October 3, 2012 Est. Cost: \$49,000.00				
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
1	1	Cost for Services	18% of the recoveries, due on	
			after claims have been paid	
			to the City of Midland	

Bidding Summary:

3 Bid requests were issued.

1 Bids listed above

1 NO BIDS were received.

Robert S Segal, CPA PA

1 Bidders did not respond.

Maximus

**FEDERAL REIMBURSEMENT OPPORTUNITIES AND CONSULTANT
SERVICES
AGREEMENT
#5438-13**

THIS AGREEMENT is made and effective the 14th day of November, 2012, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "City," and Justice Benefits, Inc., hereinafter referred to as "Company."

**ARTICLE I.
PURPOSE**

The purpose of this Agreement is to state the terms and conditions under which Company shall provide Federal Reimbursement Opportunities and Consultant Services for the City.

**ARTICLE II.
SERVICES TO BE PERFORMED**

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

**ARTICLE III.
FINANCIAL CONSIDERATIONS**

City agrees to pay Company 18% of funds they recover on behalf of the City, pursuant to this agreement up to \$100,000.00 per year for the services described in Exhibit "1." City agrees to pay Company for Labor, Incidental Direct Costs and Sub-contractor Costs as set forth in Exhibit "1" upon presentation of a monthly invoice. The invoice shall set out Labor fees for the month and those Incidental Direct Costs and Sub-contractor Costs described in Exhibit "1" incurred during the previous month. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of receipt of the monthly invoice, City shall pay the full amount of such invoice; provided, however, that if City objects to any portion of an invoice, City shall notify Company of City's objection and the grounds therefor within 30 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the

disputed portion of the invoice. City in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

ARTICLE IV. TERM

The term of this Agreement shall be from November 14, 2012, until November 13, 2014, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION

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

ARTICLE VI. CONTRACT PERSONAL

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

ARTICLE VII. INDEPENDENT CONTRACTOR

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

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

ARTICLE VIII. INSURANCE

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

Commercial General Liability (including contractual liability):

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

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

Worker's Compensation: Statutory limits

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

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

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

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

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

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

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

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

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

ARTICLE IX. FEDERAL WAGE REQUIREMENTS

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

ARTICLE X. ATTORNEY FEES

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

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

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

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

**ARTICLE XI.
SOVEREIGN IMMUNITY**

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

**ARTICLE XII.
NO THIRD PARTY BENEFICIARIES**

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

**ARTICLE XIII.
RELEASE**

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

**ARTICLE XIV.
GENERAL PROVISIONS**

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

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: Justice Benefits, Inc.
 2010 Valley View Lane, Ste 300
 Dallas, TX 75234

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

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

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

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

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

H. Indemnity. **COMPANY WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND**

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

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

I. Company agrees that in the unlikely event any funds recovered by the City as a result of this Agreement be subsequently disallowed, that the related fees paid to Company based on such disallowed reimbursements will be credited against future payments to Company, or be promptly repaid to the City should this agreement be terminated. In any event, the monetary amount of damages and the full extent of Company's liability to the City, if any, shall be strictly limited to the amount of funds paid to, or owed to, Company as a result of this Agreement.

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

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Company or his legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy

of this Agreement) of such damages, duly verified, within one-hundred-twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Company will settle, the physical and mailing addresses of Company at the time and date the claim was presented and the physical and mailing addresses of Company for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Company relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. The City is under no obligation to provide notice to Company that Company's notice is insufficient. City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

ARTICLE XVI. ASSIGNMENT

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Courtney B. Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Company :
Justice Benefits, 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 Justice Benefits, Inc.

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

Notary Public, State of Texas

Printed Name

My Commission Expires: _____



JUSTICE BENEFITS, INC.

JUSTICEBENEFITSINC.COM

Unicare Ltd. DBA Justice Benefits, Inc.

EIN 75-2795617

**Federal Reimbursement Opportunities
And Consultant Services**

RFP 5438-13



Due October 3, 2012 at 11:00 a.m.

2010 Valley View Lane | Suite 300 | Dallas, TX 75234

Toll Free

(800) 835-2164

©2012 Justice Benefits, Inc.

Exhibit "1"

JBI Gets Results!



JUSTICE BENEFITS, INC.

Government Consulting Firm
2010 Valley View Lane
Suite 300
Dallas, TX 75234

Toll Free: (800) 835-2164
Phone: (972) 406-3700
Fax: (972) 406-3790

JusticeBenefitsInc.com

September 26, 2012

City Secretary
City of Midland
300 N. Loraine, Suite 340
Midland, TX 79701

Dear City Secretary:

Justice Benefits, Inc. (JBI), is pleased to submit this Proposal for RFP 5438-13 for Federal Reimbursement Opportunities and Consultant Services for the City of Midland, Texas.

The authorized representative for JBI is April Farmer, Regional Director of Business Development.

*April Farmer
Regional Director of Business Development
Justice Benefits, Inc.
2010 Valley View Lane, Suite 300
Dallas, TX 75234
Phone: 972-406-3728
Fax: 972-406-3729
afarmer@justicebenefitsinc.com*

JBI has built strong relationships with various government entities in the state of Texas and is contracted with over 600 local governments nationwide. JBI has specialized in Medicaid Administrative Claiming (MAC) since 1997. We currently work with four (4) agencies to file MAC claims in Texas. We are very familiar with the federal regulations regarding the MAC program and are in compliance with the Texas Health and Human Services Commission (HHSC) guidelines.

Our company is excited about the opportunity to work with the City of Midland. If you have any questions or need further clarification about any aspect of the proposal, please do not hesitate to call me at (800) 835-2164 ext. 3728. We appreciate the opportunity to assist the staff of the City of Midland Health and Senior Services.

Sincerely,

April Farmer
Regional Director of Business Development

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JUSTICE BENEFITS, INC.

INTRODUCTION

Justice Benefits, Inc. (JBI), is pleased to submit this Proposal for Federal Reimbursement Opportunities and Consultant Services for RFP 5438-13. Our company is excited about the opportunity to work with the City of Midland Health and Senior Services staff.

JBI will be responsible for providing services to complete Medicaid Administrative Claiming (MAC) for the City of Midland Health and Senior Services. JBI understands the importance of MAC for local health departments, particularly during these times of limited budgets. JBI has been instrumental in allowing our clients to maintain their current staffing structure. Without such funds, agencies could lose positions or be forced to stop running a variety of programs and services. Our MAC clients rely heavily on MAC funds for preventative programs and services provided to the public. The quarterly revenue allows them to improve the public's access to the Medicaid Program, improve the use of Medicaid Services by the eligible Medicaid population, and improve the delivery of Medicaid Services.

The MAC claiming process requires close cooperation with the single state agency responsible for Medicaid Services which is the Health and Human Services agency in your state. In Texas, this would be the Health and Human Services Commission (HHSC). If awarded the contract, JBI will work with HHSC and share the necessary documentation in order to allow the City of Midland to begin claiming these much needed MAC dollars. We remain committed to providing excellent service and accurate work in compliance with the Centers for Medicare and Medicaid Services and HHSC guidelines.



JUSTICE BENEFITS, INC.

COMPANY RESPONSIBILITIES

Justice Benefits, Inc. ("JBI") specializes in federal revenue maximization for state and local political entities. JBI was incorporated in 1997 with the objective of helping state and local political entities access federal funding opportunities. JBI's headquarters is located in Dallas, Texas. The company currently serves over 600 clients in 42 states and we have contracts with 200 Texas government entities to provide assistance through various federal reimbursement programs including the State Criminal Alien Assistance Program (SCAAP), Southwest Border Prosecution Initiative (SWBPI), Supplemental Security Income (SSI), Title IV-E Administrative and Maintenance and Legal Claiming, and the National School Lunch Program (NSLP).

Local Health Departments

JBI specializes in enhanced Medicaid Administrative Claiming for local health departments. JBI is the only consulting firm filing MAC claims on behalf of local health departments in Texas. JBI currently works with several local health departments for MAC claiming.

Our MAC clients include: Harris County, Texas (Population: 4M), Denton County, Texas (Population: 663K), Bell County, Texas (Population: 310K), and Ector County, Texas (Population: 137K).

Through our MAC contracts, we offer training on the state Web Based Random Moment Sampling system, identify direct and indirect costs allocated to all programs and activities, review department revenue streams to ensure the agency is not claiming federal funds, assist department in determining reimbursable Medicaid activities, implement and maintain the MAC guidelines specified by HHSC, calculate the quarterly eligibility rate, and prepare and submit the quarterly MAC claim.

Why JBI?

- JBI was established in 1997. JBI has built strong relationships at both the Federal and State levels and is contracted with over 600+ local governments nationwide.
- JBI specializes in Medicaid Administrative Claiming (MAC) and monitors program changes on a state level.
- JBI has a dedicated financial team to ensure the accuracy of your quarterly claims. We stand by our clients during audits!
- JBI has a staff of specialized employees with various government and financial backgrounds. At any given time, multiple staff persons are working on your claim.
- JBI uses proprietary software to accurately compile the quarterly MAC claims.
- Our Government Affairs Department works with Members of Congress and their respective staff on reimbursement programs for state and local governments.



JUSTICE BENEFITS, INC.

- With our continuous lobbying efforts, we meet with senators, governors, and various state officials to gather governmental support for the MAC program.
- We remain committed to providing excellent service and accurate work in compliance with the Centers for Medicare and Medicaid Services and State guidelines.
- JBI completes its contract on a “no risk” contingency fee basis; i.e., JBI is paid a percentage of monies recovered as a direct result of its efforts, only after the claims have been paid and received by the agency.



JUSTICE BENEFITS, INC.

MINIMUM QUALIFICATIONS

JB I has worked in the Federal CMS Region 6 and more specifically with the state of Texas for 15 years to successfully complete MAC claiming for local health departments. JB I has a proven track record of working with the necessary state agency to introduce and ultimately receive approval for MAC claiming. JB I uses the State of Texas Automated Information Reporting System (STAIRS) for MAC claiming. JB I has equal amount of experience in preparing and completing financial information for MAC claims and submitting and auditing MAC claims.



JUSTICE BENEFITS, INC.

PROJECT PERSONNEL

The staff members of JBI are proficient, experienced, and capable of meeting the requirements set forth in the City of Midland proposal. JBI employs five specialty teams who will assist the City of Midland Health and Senior Services on this engagement. They include:

- A MAC Specialist Team
 - Project Lead: Jessica Patterson, Director of MAC Claims
- A Client Relations Team
 - Primary Contact: April Farmer, Regional Account Manager
- A Financial Operations Team
 - Primary Contact: Ashley Stange, MAC Financial Analyst
- A Government Affairs Team
 - Primary Contact: Michael Moore, Director of Government Affairs
- An Information Technology Team
 - Primary Contact: Ilya Tarasuk, IT Support Specialist

Each team has assisted on all of JBI's revenue optimization engagements and they each have a unique set of qualifications, critical to the successful completion of this engagement. JBI's goal is to reduce the workload of department staff so that they can focus on their day-to-day activities. At any given time, JBI has ten staff working on your claim. In addition, agencies that file for MAC without the assistance of JBI typically have to hire additional staff to devote their time and attention to the MAC program. This is not cost effective to the agency and it takes away from the department's daily activities.

JBI greatly reduces the workload required of the agency. JBI maximizes each dollar you are entitled to receive and ensures that all claims will stand up to federal and state audits. The specialized departments will compile the City of Midland's MAC claims to ensure all policies are met and that we have maximized your claim.

JBI's **MAC Specialist team** ensures that each claim follows state guidelines. JBI's staff has extensive financial and governmental (Federal, State and County) experience. JBI's financial experts review each reimbursement claim to ensure that the claims stand up to any audit conducted by the Health and Human Services Commission. Federal and State Programs are subject to strict rules and guidelines. JBI's audit support is of the utmost importance.

JBI's **Financial Operations team** will perform routine audits to ensure our clients follow the MAC guidelines. JBI also has a dedicated financial team to ensure the accuracy of your quarterly claims. Since we have been helping counties file MAC claims since 1997, we understand what should and should not be included in quarterly MAC claims. We also stand by our clients during audits.



JUSTICE BENEFITS, INC.

Our **Government Affairs Department** works with Members of Congress and their respective staff on reimbursement programs for state and local governments. We continually lobby for the MAC program on a state and national basis. We meet with senators, governors, and various state officials to gather governmental support for the MAC program. We also track any new legislation that will have an impact on MAC claiming. Once we become aware of new legislation or policy change, we begin working with our MAC clients to successfully implement any needed changes to the claiming methodology.



JUSTICE BENEFITS, INC.

PERSONNEL AVAILABILITY

The Project Director for the City of Midland's MAC claims will be Ms. Jessica Patterson. Ms. Patterson has been involved in governmental cost accounting since 2005. Ms. Patterson, in the past year alone, has managed the development and completion of over one hundred federal reimbursement engagements. Ms. Patterson has met with numerous State agencies to implement federal reimbursements. She will be available to attend any meetings with the health department in regards to work planning, problem resolution, and program development.

Ms. Ashley Stange, MAC Financial Analyst, will be responsible for the review of all Medicaid Administrative Claiming issues. She will be responsible for the day-to-day operations of the project and will help ensure that the project is implemented successfully. In addition, Ms. Stange will be responsible for ensuring that all tasks in the work plan are executed in keeping with the schedule and client requirements. Work in this area will include:

1. Planning and organizing the project;
2. Communicating project statuses with the client's project liaison;
3. Advising the client of any potential problem areas and recommended solutions;
4. Providing status reports and participating in project meetings to keep officials informed of project progress;
5. Implementing quality control procedures for all deliverables submitted for review; and
6. Ensuring that the client's comments and concerns are incorporated into the deliverables.



JUSTICE BENEFITS, INC.

PROGRAM EXPERIENCE

Project Design

JB I specializes in MAC Claiming and has been successfully completing MAC claims for 15 years. JB I will assist the City of Midland by completing the following steps:

1. Identify reimbursable MAC activities and staff.
2. Gather the necessary financial information.
3. Process and submit the Medicaid Administrative Claim.
4. Ensure Federal and State approval of the Medicaid Administrative Claim.
5. Represent the City Health Department, as necessary, in all negotiation proceedings with the appropriate State agency.
6. Defend the agency's Medicaid Administrative Claim if it is audited by Federal or State representatives.

Timetable

As soon as the proposal is awarded to JB I and the contract is approved, we will commence work. Due to the knowledge we have from identical work with other health departments, we will immediately commence the analysis and preparation of City of Midland's claims.

Work Plan

The work program to prepare the Medicaid Administrative Claim is divided into two phases and a total of ten steps. The first phase is concerned with the preparation of the Medicaid Administrative Claim itself. The second phase is concerned with the presentation of the completed claim to Health Department management and State or Federal officials. Following are descriptions of the ten steps required for completion of both phases of this engagement.

PHASE I Preparation of the Medicaid Administrative Claim

Step 1. Meet with the City of Health Department management staff

- A. Review List of Employees - This is done in order to identify which employees job functions have reimbursable time for the following activities:
 - a. **Medicaid Eligibility Determination.** Assisting an individual in applying for Medicaid, verifying Medicaid eligibility status, explaining Medicaid, gathering information related to the application, etc.
 - b. **Medicaid Outreach.** Outreach campaigns that encourage Medicaid eligible or potentially eligible individuals to apply for Medicaid. Some examples of these



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campaigns are Early and Periodic Screening, Diagnosis and Treatment or the Comprehensive Care Program.

- c. **Referral, Coordination and Monitoring of Medicaid Services.** Helping people find a doctor, schedule doctor appointments, coordinating care, following up on care received, explaining tests, advising on services, monitoring care, etc.
- d. **Medicaid Transportation and Translation.** Arranging, scheduling, accompanying people to Medicaid Services and arranging for or providing translation services to access and understand Medicaid services.
- e. **Medical Related Provider Relations.** Recruiting providers to increase or keep the medical/dental/mental health providers in a community.
- f. **Program Planning, Development and Interagency Coordination.** Working with other agencies to improve Medicaid Services being offered to people.

This step is required in order to determine which employees should participate in the Random Moment Time Study to achieve maximum reimbursement.

- B. **Review accounting system** - This crucial step is necessary in order for JBI staff to understand the proper treatment for items directly billed and the flow of revenue and expense accounts. This step also allows the consultants to familiarize themselves with the data available for use in preparation of the financial portion of the Medicaid Administrative Claim.
- C. **Establish financial contact** - The appointment of an individual within the financial area of the client's organization is imperative for the smooth flow of any engagement. This person's involvement is limited to gathering the appropriate financial reports, and providing liaison support to JBI.
- D. **Establish RMS system and Time Study contact** - This person's involvement is limited to reporting to time study participants pertinent information regarding the RMS system. JBI will also relay periodic information on the status of the time study to this individual.

Step 2. Create Time Study Participant List

This process is actually a derivative of the review list of employees. JBI identifies which employees' job functions have reimbursable time and then recommends which employees should participate in the Time Study. The culmination of this step is the decision of which employees should be time study participants.



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Step 3. Train staff on use of Random Moment Sampling system

In order to accurately record their time, the time study participants must be trained on how to use the RMS system and appropriately code time. JBI will conduct the training sessions for the participants in person or via webinar. The participants will learn what is expected of them and how to use the state RMS system.

Step 4. Obtain Department Financial Reports

JBI will work with the financial contact individual in order to gather the appropriate financial data. We will explain to the financial contact exactly what information will be needed in order to prepare the financial portion of the Medicaid Administrative Claim. Once the financial contact submits the appropriate financial reports to JBI, our staff will begin processing the financial portion of the claim.

Step 5. Calculate the Medicaid Eligibility Rate

JBI will also work with the Health Department to calculate the Medicaid Eligibility Rate. The Health Department will keep a tally of how many unduplicated patients were seen throughout the quarter and also how many unduplicated Medicaid eligible patients were seen throughout the quarter. Once the Health Department submits these numbers to JBI, our staff will be able to apply the Medicaid Eligibility Rate to the claim.

Step 6. Process Initial Medicaid Administrative Claim Draft

Utilizing the knowledge and data obtained through the prior five steps, we can process the Medicaid Administrative Claim in draft form.

PHASE II. Review of Plan, Presentations, and State Approval

Step 7. Review of Initial Medicaid Administrative Claim Draft

This segment of the engagement involves conducting secondary interviews with departmental representatives to review the initial draft of the Medicaid Administrative Claim. Comments received at this time are analyzed and if changes are required they are incorporated into the final claim.

Step 8. Finalize Medicaid Administrative Claim

At this point in the engagement, the JBI consultants assigned to this project, as well as the officers designated to review the results, prepare a final Medicaid Administrative Claim.



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Step 9. Explain Results to Client

JB I is heavily committed to the full and complete understanding and satisfaction of any client's management regarding the initial results of our engagement.

Step 10. Submit Plan to State Agency

JB I will develop a submittal package that will be forwarded to the State Agency. JB I will handle the negotiations and seek approval of the Medicaid Administrative Claim. JB I staff has dealt with the State and Federal negotiators for over fifteen years.



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STAFF TRAINING

The MAC program is very detailed and it is important to stay on top of all policies. To assist with this, JBI provides yearly on-site training with no additional charge for travel or the actual training time. JBI is available for refresher training or training new department staff as needed. JBI also provides webinars for department staff who may be unable to attend training.

JBI will train all appropriate staff on participating in the time study and performing the RMS system as it relates to the MAC program. JBI will be a secondary RMS and financial contact to ensure staff members are answering moments correctly and efficiently. JBI will provide each participant with a packet of information for reference while participating in the MAC program.

JBI's MAC staff has developed a detailed training manual that we utilize to train the department staff. This training helps to ensure that everyone has an understanding of the revenue the MAC program will bring in to their agency. The training demonstrates the importance the department staff plays in this program and is typically only needed at the implementation of the MAC claiming process. JBI will provide training manuals and PowerPoint materials during these training seminars.

In addition, the health department staff can reach our MAC program staff at any time with a toll free telephone number. We want to ensure that the department's staff is not burdened by additional paperwork throughout this process.

Random Moment Time Study

The Random Moment Time Study (RMTS) is a system that measures the amount of time spent on MAC reimbursable activities. Each participant must record selected moments in time and the activities that were performed at that exact moment. A RMTS "Moment" represents one minute at a time that is randomly selected from all available moments within the time study period. The RMTS is a federally accepted, statistically valid, random sampling technique that measures the participant's time performing work activities. The RMTS is a statewide time study sample that significantly reduces staff time needed to record participant activities.

The RMTS reasonably identifies staff time spent on activities during the given quarter. The purpose of the RMTS is to determine the percentage of time the health department incurs assisting individuals to access medically necessary Medicaid funded services through:

1. Medicaid Outreach
2. Medicaid Eligibility Determination
3. Medicaid Referral, Coordination, and Monitoring
4. Medicaid Transportation
5. Medicaid Translation



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6. Medicaid Program Planning, Development & Interagency Coordination
7. Medicaid Provider Relations

Time study moments are randomly selected throughout the entire quarter. A time study moment represents one minute at the selected time. If a participant is sampled for a moment, their only responsibility is to document what they were doing at that precise minute.

Webinars

In addition to on-site trainings, JBI offers quarterly webinars to provide updates regarding policies and procedures with MAC claiming. This is a unique service which has proved beneficial for staff that may be spread out in different buildings or in different areas of the city/county. The JBI webinars are at no additional cost to our clients.

A webinar is used to conduct live meetings or presentations via the internet. In a webinar, each participant sits at his or her own computer and is connected to other participants via the internet. The attendees will simply enter a website address to enter the webinar.



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CLAIM SUBMISSION

Each quarter, JBI will request financial information from the specified contact person and begin working on the MAC claim immediately. As once as the MAC claim is completed, JBI will send the completed claim to the health department in a timely manner. All approved MAC claims will be submitted to the HHSC by the appropriated deadline. JBI will then work with HHSC to ensure claim accuracy and prompt payment to the City of Midland.

JBI will partner with the City of Midland's financial office to ensure all revenues are documented correctly in order to complete the financial portion of the MAC claim. Our Financial Operations team will use the STAIRS system to confirm all financial information is entered correctly and efficiently. JBI will be a secondary financial contact responsible for ensuring the participant list is certified on a quarterly basis.

Monitoring & Improvement of MAC Process

As JBI has been working with health departments to file MAC claims since 1997, we have experienced many changes to our claiming procedures. We adhere to all state and federal guidelines and focus on methods to accurately maximize the MAC dollars. JBI constantly analyzes the methods used in putting our quarterly claims together.

Our financial operations staff utilizes our proprietary software to perform a quality analysis. Our job is to maximize every dollar for our clients, while ensuring it is compiled correctly. JBI's Financial Operations department acts as the final check in the quality assurance process to ensure that the highest standards are maintained when producing financial documents for our clients. To ensure the accuracy of each claim, JBI utilizes a triple check quality assurance process on each document that has been completed. JBI's detailed QA Process includes over 50 specific items that each JBI staff must check.

Consultation with Health and Human Services Commission

JBI understands the importance of working with HHSC on any developments regarding MAC claiming. As the single state agency, they act as the pass through for federal funds as well as the auditing agency for federal programs under their authority. JBI has already established a relationship with HHSC and will continue to work with them to monitor and implement all MAC guidelines and procedures.

Audit Process

JBI has developed a detailed auditing procedure for our MAC clients. It is crucial to have a system of checks and balances in place with Medicaid Administrative Claiming. Prior to JBI coming onsite for an audit, JBI will request that the health department have specific financial documents ready for review.



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JB I will review the quarterly financial data that is used for reimbursement in the MAC claim. The detailed audit reviews what is currently being claimed as well as all other funds related to the department. This process ensures that all allowable reimbursable costs are being claimed. Each year JB I will come on-site and pull a sample of transactions from the supplied data. JB I will then verify the expenditures by reviewing receipts, expense reports, etc.

Once an audit has been completed, JB I will provide the health department with our written recommendations and a corrective action plan, if needed. This allows the health department supervisors to see any needed changes and allows JB I to work with department staff on our recommended action plan.



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REFERENCES

Please feel free to contact the following agencies and individuals to learn more about JBI's consulting services:

1. Harris County, Texas
Thomas Ricciardello
Assistant Chief Financial Officer
2223 West Loop South
Houston, TX 77027
(713) 439-6010
tricciardello@hcphe.org
2. Denton County, Texas
Bing Burton, Ph.D.
Health Director
535 S. Loop 288
Suite 1003
Denton, TX 76205
(940) 349-2900
bing.burton@dentoncounty.com
3. Ector County, Texas
Emma Hudgins
Department Coordinator
221 North Texas
Odessa, TX 79761
(432) 498-4141 ext. 1002
hudgieo@co.ector.tx.us
4. Bell County, Texas
Bonnie Scurzi
Director of Nursing
201 North 8th Street
Temple, TX 76501
(254) 778-4766
bscurzi@bellcountyhealth.org



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COST SUMMARY

Contract Fee Structure

JB I completes its contracts on a “no risk”, contingent fee basis. JB I will do virtually all the work, including: Identifying the opportunities, coordinating with HHSC, applying our claiming methodology (which is Federally approved), providing onsite training for the department staff, documenting the costs, and preparing quarterly claims. During the course of this engagement, JB I will also look for other Federal revenue optimization opportunities within the agency.

JB I does not charge for travel or training. The City of Midland has no risk with JB I’s contract. JB I’s normal fees are twenty two percent (22%) of the recoveries, due only after the claims have been paid to the City of Midland. However, we will offer the City of Midland a significant concession and reduce JB I’s fees to eighteen percent (18%).



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CONCLUSION

JB I specializes in Medicaid Administrative Claiming for local health departments. JB I has completed MAC claims in the state of Texas since 1997. JB I has experienced financial experts that prepare and complete MAC claims. In addition, JB I has a proven track record. Our goal is to reduce the workload required for the City of Midland, maximize each dollar you are entitled to receive, and ensure that all claims will stand up to federal and state audits.

The MAC program is very detailed and is ever changing. Agencies often tell us they don't have the time or knowledge to stay on top of all policy announcements and accurately compile the quarterly claims. State agencies may experience budget issues that prevent them from providing on-site training and support for local agencies. Also, agencies may not have the staff or experience to successfully maximize each MAC claim. That's where JB I's professional services come into the picture. We remain committed to providing excellent service and accurate work to our clients.

We will continue to search for new funding opportunities that benefit other departments in the City of Midland. As you may know, we have experience with other federal revenue programs in Texas and other states, filing claims with juvenile probation departments, county attorneys, county sheriffs, and other programs that prove beneficial to eligible government entities.

JB I looks forward to a successful partnership with the City of Midland on this revenue optimization effort. Our goal is the City of Midland's complete satisfaction at all departmental levels with our work effort, communications, and results.

Summary of Benefits

- JB I has a proven track record. JB I was established in 1997 and we specialize in enhanced Medicaid Administrative Claiming.
- JB I also works with four (4) counties in Texas on MAC claims. We stay on top of MAC guidelines and procedures through the Health and Human Services Commission.
- The City of Midland will not have to hire additional staff to compile the quarterly MAC claims.
- JB I's experienced staff perform routine financial audits to ensure our clients follow all MAC guidelines.
- JB I has a dedicated financial team to ensure the accuracy of your quarterly claims. We stand by our clients during audits.



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- JBI has a staff of highly qualified and specialized employees with various government and financial backgrounds. At any given time, multiple staff are working on your claim.
- Our Government Affairs Team works with Members of Congress and their respective staff on reimbursement programs for state and local governments.
- With our continuous lobbying efforts, we meet with Congress, Governors, and State Associations to gather governmental support for the MAC program.
- We remain committed to providing excellent service and accurate work in compliance with the Centers for Medicare and Medicaid Services and HHSC guidelines.

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 19.

Offeror/ COMPANY: Justice Benefits, Inc.
SIGNATURE (INK): April Farmer
NAME: (TYPED/PRINTED) April Farmer
TITLE: Regional Director of Business Development
STREET: 2010 Valley View Lane, Suite 300
CITY/STATE/ZIP: Dallas, TX 75234
TELEPHONE: (972) 406-3728 FAX: (972) 406-3729
E-MAIL ADDRESS: afarmer@justicebenefitsinc.com

City of Midland, Texas
RFP 5438-13
Cost Summary

Months	Description	Cost per Month	Total Cost
24	Federal Reimbursement Opportunities Consultant Services	\$ _____	\$ 10% fee

Please see the Cost Summary
Section of RFP.

Justice Benefits, Inc.
Company Name

April Farmer
Signature

April Farmer
Print Signature



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 11/13/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving plans and specifications and authorizing advertisement for bids for a maintenance building addition, new storage building and new indoor batting cage facility for the Scharbauer Sports Complex.

Purpose:

Approval of a resolution approving plans and specifications and authorizing advertisement for bids for a maintenance building addition, new storage building and new indoor batting cage facility for the Scharbauer Sports Complex.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Funding is not required at this time.

Discussion:

Please consider approval of a resolution approving plans and specifications and authorizing advertisement for bids for labor, material, equipment and supervision necessary for the construction of a maintenance building addition, new storage building and new indoor batting cage facility at the Scharbauer Sports Complex.

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: November 2, 2012
To: Tommy Hudson, Deputy City Manager
From: Tina Jauz, Community Services Director
Subject: Maintenance Building, Indoor Batting Cage, Storage Area - SSC

The Community Services Department is seeking approval to bid three projects at the Scharbauer Sports Complex. In an effort to secure an affordable bid, the maintenance building expansion (a 2012 approved capital project), the indoor batting cage (a 2013 approved capital project), and the storage area (a 2013 approved capital project), will be bid together.

The maintenance storage area, located on the east side of Grande Stadium, is used by the city to store equipment and office the foreman onsite. The plans would allow for more storage space, including a separate entrance area for MISD to store their equipment. The project doubles the space adding 1,500 square feet.

The indoor batting cage was part of the original plans of the SSC. The project was cut in an effort to keep the project within budget. The same is true for the storage area, to be located near the batting cage at Citibank Ball Park. The storage area will allow the RockHounds to store their novelty items. These two projects are part of the facility standards for all minor league parks as per Major League Baseball guidelines. Local high school and college teams will also use the cage when they rent the facility. The facility could also be used during camps, during games and for all kids.

There is currently \$250,000 in a project to complete the maintenance building expansion and \$370,000 in this year's current budget to complete the batting cage and storage building.

RESOLUTION NO.

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR COMPETITIVE BIDS FOR EXPANSION OF THE MAINTENANCE BUILDING, CONSTRUCTION OF AN INDOOR BATTING CAGE, AND CONSTRUCTION OF A STORAGE AREA AT THE SCHARBAUER SPORTS COMPLEX

WHEREAS, plans and specifications have been prepared for expansion of the maintenance building, construction of an indoor batting cage, and construction of a storage area at the Scharbauer Sports Complex; and

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

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

SECTION ONE. That the plans and specifications for expansion of the maintenance building, construction of an indoor batting cage, and construction of a storage area at the Scharbauer Sports Complex are hereby approved, those plans and specifications being substantially in the form as those on file with the office of the City Secretary, referenced by the date and number of this Resolution.

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

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 11/13/2012

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the execution of Airport Fuel Service Agreement between W-T Hangar, LLC and the City of Midland, Texas

Purpose:

Consider a resolution authorizing the execution of Airport Fuel Service Agreement between W-T Hangar, LLC and the City of Midland, Texas in Lot 4B, Block 11, (Lease Tract 3) Midland International Airport, Industrial Park Addition, Section 6, Midland County, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Discussion:

On June 12, 2012, W-T Hangar, LLC requested and was granted a Land Lease Agreement to Lease Tract #3 in the new hangar development area for the construction of a private hangar. W-T Hangar is now requesting approval to operate their own fueling facilities. Under Airport guidelines a private aircraft owner is allowed to fuel his own aircraft with his own equipment and personnel.

To accommodate this request, the Department of Airports will need to enter into an Airport Fueling Agreement. This is the Airport's standard fueling agreement and is required by all Airport tenants that wish to fuel their own aircraft. It contains rules and regulations that a tenant must abide by in order to operate their own fueling facilities for the fueling of their own aircraft.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF AN AIRPORT FUELING AGREEMENT WITH W-T HANGAR LLC IN ORDER TO STORE AND DISPENSE ALL FORMS OF AVIATION PROPELLANTS AND FUELS FROM FIXED DISPENSERS ONLY TO W-T HANGAR LLC'S AIRCRAFT AT THE MIDLAND INTERNATIONAL AIRPORT, MIDLAND COUNTY, TEXAS; AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE INSURANCE TERMS AS THEY RELATE TO SAID AGREEMENT AND TO MODIFY THE AGREEMENT ACCORDINGLY PRIOR TO EXECUTION OF THE AGREEMENT

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of an airport fueling agreement with W-T Hangar LLC, in order to store and dispense all forms of aviation propellants and fuels from fixed dispensers only to W-T Hangar LLC's Aircraft, at the Midland International Airport, and authorizing the City Manager to negotiate insurance terms as they relate to said agreement; and

WHEREAS, changes have been made to the City's standard lease but that Council accepts the Director of Airports recommendation to modify the City's standard lease in order to facilitate development;

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

SECTION ONE. That the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, the airport fueling agreement with W-T Hangar LLC, in the form shown in Exhibit "A", attached hereto and made a part hereof for all legal purposes.

SECTION TWO. That the City Manager is hereby authorized to negotiate insurance terms as they relate to the airport fueling agreement with W-T Hangar LLC, and to modify the agreement prior to execution.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

AIRPORT FUELING AGREEMENT
FOR CORPORATE NON-COMMERCIAL HANGAR TENANTS

THIS AIRPORT FUELING AGREEMENT FOR CORPORATE NON-COMMERCIAL HANGAR TENANTS (this “**Agreement**”) is made and effective this 14th day of November, 2012 (the “**Effective Date**”), by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, (hereinafter referred to as “**City**”), and W-T HANGAR LLC, a Texas limited liability company (hereinafter referred to as “**Lessee**”), wherein the City hereby grants to Lessee, the hereinafter described rights at the Midland International Airport, hereinafter called the “**Airport**”, in accordance with and subject to the following terms and conditions:

LESSEE:	W-T HANGAR LLC
LESSEE’S ADDRESS:	P.O. Box 10512 Midland, Texas 79702
PRIVILEGE:	To store and dispense all forms of aviation propellants and fuels from fixed dispensers on Lessee’s Premises on the Airport only to Lessee’s own aircraft.
FEES:	See <i>Schedule A</i> attached hereto

COVENANTS AND CONDITIONS

1. This Agreement shall be coterminous with that certain Lease Agreement for Airport Hangar Facility by and between Lessee and the City (the “**Hangar Lease**”). Accordingly, this Agreement shall automatically terminate upon the expiration or earlier termination of said Hangar Lease.
2. From time to time during the term of this Agreement, the City, upon not less than sixty (60) days prior written notice to Lessee shall have the right to make reasonable modifications to the fees and conditions hereof so long as such modifications are

consistent with the fees and conditions being imposed by the City upon all other operators at the Airport whose operations at the Airport are similar to those of Lessee.

3. Lessee shall not operate mobile refueling equipment on the Airport, but shall utilize fixed fuel dispensing hose equipment only. The use and operation of such equipment is subject to all safety regulations and requirements of applicable safety codes, as well as the rules and regulations duly adopted from time to time by the City's City Council, plus any ordinances or resolutions adopted by the City pertaining to the conduct of aviation fueling activities.
4. This Agreement shall not be assigned, sold, conveyed, mortgaged, or pledged without the prior written consent of the Midland City Council, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, without having the obligation to obtain such prior consent, Lessee shall have the right to assign this Agreement in connection with a permitted assignment of the Hangar Lease.
5. In addition to the fueling and defueling regulations set forth herein, Lessee shall comply with all applicable standards and recommendations of the National Fire Protection Association (the "**NFPA**"), including the following, among others: "Standard for Aircraft Fuel Servicing" and "Standard on Airport Ramp Fire Hazard Classifications and Precautions", or any subsequent replacement publications. Lessee shall also comply with all applicable Advisory Circulars, rules, regulations, and orders of the Federal Aviation Administration (FAA) and City relating to aviation fueling activities, and shall consent to inspections of its facilities and personnel by the Federal Aviation Administration and City.

6. Personnel engaged in aviation fueling activities on behalf of Lessee shall be properly trained with regard to safety procedures attendant to such activities, as required by applicable law.
7. Lessee shall store all fuels in a fuel storage facility located in an area approved by City, such approval not to be unreasonably withheld conditioned or delayed. The fuel storage facility shall at all times meet all requirements as to safety, operation, environmental protection, maintenance, construction, and quality control in accordance with Airport, City, County, State, and Federal rules, regulations, laws, resolutions, ordinances, and orders as well as standards of the National Fire Protection Association, and any requirements of the fuel supplier. Lessee shall operate and maintain at its sole expense all of its fueling facilities and equipment.
8. Lessee shall comply with all insurance, operational, quality control, equipment standards, and any other requirements of the Lessee's fuel supplier.
9. Lessee shall conduct its fueling operations in such a manner so as not to annoy, disturb, or be offensive to others at the Airport, or in such a manner as to create a public safety or environmental hazard. Lessee, at Lessee's sole expense, shall conduct any cleanup required by applicable law of any fuel, hazardous material, or hazardous waste resulting from the spilling, dumping, leaking, or disposal of said fuel, material, or waste onto or under any property owned by City from any equipment, barrel, tank container or fuel storage facility owned or operated by Lessee.
10. Lessee shall furnish fixed fueling dispensers having a minimum capacity of 750 gallons of 100 Octane and/or 2,000 gallons of Jet A, provided that City acknowledges that the capacity of Lessee's fixed fueling dispensers may have capacity in excess of such

minimums. Each dispenser shall carry and dispense only one (1) grade of fuel, and be clearly identified to that fuel. Each dispenser shall be equipped (including fire suppression systems required by applicable law), operated and maintained in compliance with applicable law.

11. Lessee shall promptly, upon written demand, repair or replace any property of City damaged by Lessee's operations hereunder.
12. Lessee shall procure all licenses, certificates, permits or other authorization from all governmental agencies, if any, lawfully having jurisdiction over the operations of Lessee at the Airport with regard to aviation fueling activities.
13. Lessee shall pay all taxes, licenses, certifications, permits, examination fees, and excises, which may be lawfully assessed, levied, exacted or imposed on its property or operations hereunder, and shall make all applications, reports and returns required in connection therewith.
14. Lessee shall promptly comply with all present and future laws, ordinances, resolutions, rules, regulations, requirements, orders, and directions which may lawfully apply or pertain to its fueling and fuel storage operations at the Airport, as governed by Airport, City, County, State or Federal authorities.
15. Upon the City's providing Lessee reasonable advance written notice, City shall have the right at any reasonable time to inspect Lessee's equipment, personnel, services rendered, and other activities pursuant to this Agreement.
16. If following the expiration of any applicable notice and/or cure periods hereunder, the City is required or elects to pay any sum or sums or incurs any obligations, fees or expenses by reason of the failure, neglect or refusal of Lessee to perform or fulfill any of

the conditions, covenants or agreements contained in this Agreement, or as a result of an act or omission of Lessee contrary to said conditions, covenants and agreements, Lessee agrees to pay promptly to City, upon written demand, the sum or sums so paid or the penalties so incurred, including all interest, costs, damages, reasonable attorneys' fees and penalties.

17. Lessee agrees to obey the rules and regulations of the City as may be duly enacted from time to time by the City's City Council, provided that such rules and regulations apply to all operators at the Airport whose operations at the Airport are similar to those of Lessee.
18. Lessee is, and shall be, deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, negligent or otherwise, and City shall in no way be responsible therefor.
19. Lessee covenants and agrees to indemnify, hold harmless, and defend City, its officers, agents and employees from and against any and all claims for damages or injury to persons or property arising out of or in connection with the conduct of aviation fueling activities by Lessee, its employees, patrons, contractors or subcontractors. Lessee shall indemnify City against any and all mechanics' and materialmen's liens or any other types of liens imposed upon the Premises arising as a result of Lessee's aviation fueling activities. Lessee shall procure and maintain the insurance as specified in the Hangar Lease.
20. FUELING AND DEFUELING REGULATIONS: The following rules shall govern refueling, defueling and oil servicing of aircraft, and the placing of fuels in storage tanks or dispensers:
 - (a) No person shall smoke or carry lighted cigars, cigarettes, pipes, matches, or any open flame within one hundred. (100) feet of an aircraft being fueled or defueled,

or within one hundred (100) feet of the site of a flammable liquid spill, unless such person is in a building or other enclosed area where smoking is specifically permitted.

- (b) No person shall perform or allow performance of any refueling or defueling operation during an electrical storm.
- (c) All hoses, funnels, and appurtenances used in fueling and defueling operations shall be equipped with a positive grounding device in good order to prevent ignition of flammable liquids, due to static spark.
- (d) No aircraft shall be fueled or defueled unless the aircraft and the fuel dispensing apparatus shall both be electronically grounded as required by Federal Aviation Regulations and National Fire Protection Association standards.
- (e) The use of any material which may cause a static spark is prohibited within one hundred (100) feet of any aircraft being fueled or defueled.
- (f) The fueling and defueling of aircraft and the maintenance of aircraft fueling systems shall not be conducted within twenty-five (25) feet of any hangar or other building, unless conducted in compliance with applicable NFPA standards.
- (g) Airborne radar equipment shall not be operated or ground tested on any areas wherein the directional beam of high intensity radar is within three hundred (300) feet, or low intensity beam is within one hundred (100) feet, of another aircraft, an aircraft fueling operation, an aircraft fueling truck, or aircraft fuel or flammable liquid storage facility.
- (h) It is prohibited to fuel or defuel an aircraft with any equipment or apparatus which is not in a safe, sound and non-leaking condition.
- (i) When a malfunction of fueling equipment is detected, all fueling operations shall cease immediately and the malfunction remedied or entire unit replaced by another. Any malfunctions or irregularities detected on or with an aircraft being serviced will be brought to the attention of the aircraft owner or operator immediately.
- (j) In no event shall fueling or defueling operations resume following a fuel spill until all areas upon which fuel has spilled or flowed over are thoroughly flushed.
- (k) Starting the engine of an aircraft when there is any flammable liquid on the ground in the vicinity of the aircraft is prohibited.

21. FAA AIRPORT LEASE AND AGREEMENT REQUIREMENTS:

- (a) It is hereby specifically understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by Section 308(a) of the Federal

Aviation Act of 1958, as amended and the City reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature.

- (b) Lessee, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of the Premises or any facilities constructed thereon, (2) that in the construction of any improvements on, over or under the Premises and the furnishings of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, City shall have the right to terminate this Agreement and to re-enter and repossess the Premises and the facilities thereon, and hold the same as if said Agreement had never been made or issued.
 - (c) Lessee agrees to furnish services on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit of sale or service; provided that the Lessee may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
22. In the event that any party defaults in its obligations hereunder (the “**Defaulting Party**”), the other party (the “**Non-Defaulting Party**”) may give notice of such default hereunder to the Defaulting Party and the Defaulting Party shall thereupon (if the default is capable of being cured) have thirty (30) days (or such longer period as may reasonably be required under the circumstances, in the event such cure cannot reasonably be accomplished within such thirty (30) day period) to commence correction of such default, and diligently and continuously pursue such correction until completion. In the event correction of such default has not commenced within such thirty (30) day period (or such longer period as may reasonably be required under the circumstances) or in the event the

Defaulting Party has not diligently and continuously pursued the correction of such default, the Non-Defaulting Party, after notifying the Defaulting Party, shall have the right, but not the obligation, to terminate this Agreement upon ten (10) days prior written notice.

23. This Agreement shall be subordinate to the provisions of any existing or future agreements between the City and the United States relative to the operation, maintenance, or development of the Airport.
24. By executing this Agreement, LESSEE AND CITY AGREE TO WAIVE AND DO HEREBY WAIVE ANY CLAIM THEY HAVE OR MAY HAVE AGAINST THE OTHER PARTY, REGARDING THE AWARD OR ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. THE LESSEE AND THE CITY SPECIFICALLY AGREE THAT IF THE LESSEE OR CITY 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), THE LESSEE AND CITY AGREE TO WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH THAT PARTY MIGHT OTHERWISE BE ENTITLED.
25. Any notices to the City required under this Agreement shall be sent by registered or certified mail, postage prepaid, addressed: City of Midland, Texas, Director of Airports,

P. O. Box 60305, Midland, Texas 79711. All payments shall be made to the above address by mail, or in person to the office of the Director of Airports in the Airport Passenger Terminal Building. Any notices to the Lessee required under this Agreement shall be sent by registered or certified mail, postage prepaid, addressed as follows:

Lessee:

W-T HANGAR LLC
P.O. Box 10512
Midland, Texas 79702
S. Javaid Anwar, Manager

26. This Agreement, when taken in conjunction with the Hangar Lease, shall constitute the entire agreement of the parties as to the subject matter contained and may not be changed, modified, discharged or extended, except by written instrument duly executed on behalf of the parties.

[END OF TEXT]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be legally executed in duplicate as of the Effective Date.

THE CITY OF MIDLAND, TEXAS

By: _____
Wesley Perry, Mayor

ATTEST:

Amy Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**APPROVED AS TO CONTENT
AND COMPLETENESS:**

Mary Esterly, Director of Airports

W-T HANGAR LLC

By: _____
S. Javaid Anwar, Manager

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

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

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

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared S. Javaid Anwar, Manager, the sole member of W-T HANGAR LLC, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of said entities.

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

Notary Public, State of Texas

SCHEDULE A

ITEM NO. 1: **FLOWAGE FEE FOR ALL TYPES OF AVIATION FUELS AND PROPELLANTS**

Lessee shall pay to the city a flowage fee of FOUR CENTS (\$.04) PER GALLON for all types of aviation fuels and propellants delivered to the Premises. Payment of the flowage fee is to be made by the Lessee monthly, on or before the TENTH (10th) DAY of each month for the previous month's purchases. Lessee shall furnish to the City copies of all fuel delivery invoices from fuel suppliers monthly at the same time that the monthly flowage fee is paid. A flowage fee shall not be due from Lessee for any aviation fuels purchased from any other fuel vendor on the Airport, which is paying a flowage fee to the City. Upon reasonable advance written notice, Lessee agrees to allow City access to his books and records of fuel purchases/dispensing at any time for audit purposes. At the same time the monthly flowage fee is paid, Lessee shall also provide to city a statement in a form approved by City which provides a breakdown of all aviation fuels dispensed by Lessee during the previous month.

ITEM NO. 2: **DELINQUENT PAYMENTS**

Lessee agrees that in the event payments to the City for fuel-flowage fees are not received by the City by the TENTH (10th) DAY of each month, Lessee shall pay to the City a DELINQUENCY CHARGE of ONE PERCENT (1%) or maximum amount allowed by law, whichever is less, of the amount due to City, for each month, calculated daily, that the amount due remains unpaid. Payments due the City shall be received by the City only on normal business days of Monday through Friday, and shall not be considered late if the date due falls on a weekend or legal City holiday. A yearly schedule of City holidays shall be provided to Lessee upon request. Payment by Lessee and acceptance by City of a Delinquency Charge shall not be construed as a waiver or forfeiture of any other rights or remedies of the City contained elsewhere in this Agreement, or as provided by law. For the purposes of this Item, the date payments are received by the City shall be the U.S. Postal Service cancellation date on the envelope transmitting the payment, or the date such payment is received by an authorized representative of the City if the payment is hand delivered. In the event of a dispute as to the amount to be paid, the City may accept without prejudice the sum tendered and, if a deficiency is later determined, the foregoing Delinquency Charge shall apply only to such deficiency. The City may waive, for good cause any Delinquency Charge upon written application of Lessee.

ITEM NO. 3: AUDIT

Upon reasonable advance written notice, City and its agents shall have the right at all reasonable times and at all ordinary business hours of the day to examine and inspect such books, records, receipts and other data as required to confirm fuel deliveries to Lessee. All such books, records, receipts and other data are required to be kept for a minimum of two (2) years. The cost of such an audit shall be borne by the City unless the audit reveals a discrepancy of more than five percent (5%) between the amounts due as reported by Lessee in accordance with this Agreement, and the amounts due as determined by the audit. In case of a discrepancy of more than five percent (5%) the reasonable, out-of-pocket third party cost of the audit shall be paid by the Lessee, provided that in no event shall such cost exceed an amount equal to One Thousand Five Hundred and No/100 Dollars (\$1,500.00). Any additional payments due from Lessee, as a result of the audit, shall forthwith be paid to the City, with interest thereon at the rate of twelve percent (12%) per annum or the highest maximum amount allowed by law, whichever is lowest, calculated daily, from the date such amounts originally became payable to the City until the date paid. Any overpayment by the Lessee shall be credited against further payments due to City, or will be refunded to Lessee, at the City's option.



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 11/13/2012

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the execution of an Amendment to Land Lease Agreement for Airport Hangar Facility between W-T Hangar, LLC and the City of Midland, Texas in Lot 4B, Block 11, (Lease Tract 3) Midland International Airport, Industrial Park Addition, Section 6, Midland County, Texas.

Purpose:

Consider a resolution authorizing the execution of an Amendment to Land Lease Agreement for Airport Hangar Facility between W-T Hangar, LLC and the City of Midland, Texas in Lot 4B, Block 11, (Lease Tract 3) Midland International Airport, Industrial Park Addition, Section 6, Midland County, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Revenue: \$555.39 per month

Discussion:

On June 12, 2012, W-T Hangar, LLC requested and was granted a Land Lease Agreement to Lease Tract #3 in the new hangar development area for the construction of a private hangar. W-T Hangar is now requesting to lease an additional apron tract under the same terms and conditions of the original agreement for the purpose of installing a fueling facility. Under Airport guidelines a private aircraft owner is allowed to fuel his own aircraft with his own equipment and personnel.

To accommodate this request, the Department of Airports surveyed an additional .34 acre apron tract in the new hangar development area to lease to W-T Hangar. The Department of Airports feels it would be best to amend the current agreement with W-T Hangar LLC to include the additional .34 acre apron tract.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE LAND LEASE AGREEMENT WITH W-T HANGAR, LLC FOR HANGAR DEVELOPMENT LOCATED ON A 0.48 ACRE TRACT OF LAND LOCATED IN LOT 4B, BLOCK 11, MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK ADDITION, SECTION 6, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS; SAID AMENDMENT TO INCLUDE LEASING AN ADDITIONAL .34 ACRE APRON TRACT IN THE NEW HANGER DEVELOPMENT AREA FOR THE PURPOSE OF INSTALLING A FUELING FACILITY

WHEREAS, the City of Midland and W-T Hangar, LLC previously entered into an agreement authorizing the execution of a land lease agreement with W-T Hangar, LLC, to lease land from the City at the Midland International Airport Industrial Park Addition, Section 6; and

WHEREAS, W-T Hangar, LLC is requesting to lease an additional .34 acre apron tract in order to install a fueling facility; and

WHEREAS, the City Council finds it to be in the public interest to amend the land lease agreement between the City of Midland and W-T Hangar, LLC to include leasing an additional .34 acre apron tract in order to install a fueling facility;

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

THAT the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, an amendment to the lease agreement with W-T Hangar, LLC, to include leasing an additional .34 acre apron tract in order to install a fueling facility, in a form substantially similar to Exhibit "A", attached hereto and made a part hereof for all legal purposes.

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

Council members voting "AYE":

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**AMENDMENT TO THE MIDLAND INTERNATIONAL AIRPORT
LEASE AGREEMENT FOR AIRPORT HANGAR FACILITY
BETWEEN THE CITY OF MIDLAND, TEXAS AND W-T HANGAR, LLC**

WHEREAS, the City of Midland and W-T Hangar, LLC previously entered into an agreement authorizing the execution of a land lease with W-T Hangar, LLC, to lease land from the City at the Midland International Airport, Industrial Park Addition, Section 6; and

WHEREAS, said Agreement was duly authorized by Resolution No. 2012-178 of the City Council on June 12, 2012; and

WHEREAS, pursuant to Article 2. **GRANT OF LEASE**, Section A. **Leased Premises** of said Agreement, the City and W-T Hangar, LLC desires to amend the Agreement as shown below;

W I T N E S S E T H:

For and in consideration of the execution of this Agreement and the covenants and conditions of the parties hereto, it is mutually promised, understood and agreed that said land lease agreement with W-T Hangar, LLC is hereby amended, effective on the date when signed by the last party, by adding the following:

Article 2. GRANT OF LEASE, Section A. Leased Premises of the Agreement shall be amended to read as follows:

"A. **Leased Premises:** City agrees to lease to Lessee certain City-owned land located at Midland International Airport, and being more particularly described on Exhibit "B" and Exhibit "B-1", attached hereto and incorporated herein by reference; said land hereinafter being referred to collectively as the "Leased Premises."

Article 6. RENT, Section A. (1) of the Agreement shall be amended to read as follows:

"(1) During the Lease Term, and subject to the provisions of paragraph B below, Lessee agrees to pay to City annual rent for the Leased Premises as follows: Forty Five Cents (\$0.45) per square foot (\$16,170.96 per year), payable monthly (\$1347.58 per month), and due on the first day of each month. For purposes of calculating the amount of rent due under this Agreement, the amount of square footage for ground and facilities being rented is agreed by the parties to be 35,935.46 square feet."

Article 6. RENT, Section B. of the Agreement shall be amended to read as follows:

"B. **Rental Adjustments:** It is agreed and understood that provision must be made herein for an adjustment of the rental rate every three years. Therefore, effective on the third (3rd) anniversary of the Rent Commencement Date, the monthly rent shall be increased only in the same proportion or percentage by which the cost of living has been increased as reflected by the Consumer Price Index for All Items, as maintained by the United States Government's Department of Labor, Bureau of Labor Statistics for the Dallas/Fort Worth SMA; such increase being measured by comparison with such cost-of-living indices at the end of the immediately preceding 36-month period of this lease, as compared with the indices at the commencement of the immediately preceding 36-month period of this lease; provided however, if such calculation results in a rental rate increase in excess of nine percent (9%) for the applicable time period, the rental adjustment shall be capped for such period at nine percent (9%). In no event shall the annual rent be less than \$0.45 per square foot (\$16,170.96). Any additional rent for applicable period shall be due within ten (10) days of Lessee's receipt from City of the calculation of the rental adjustment."

There are no other changes or modifications to the subject Agreement, and all remaining terms shall continue in full force and effect.

Agreed to this _____ day of _____, 2012.

CITY:
CITY OF MIDLAND, TEXAS

Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

W-T Hangar LLC

S. Javaid Anwar, Manager

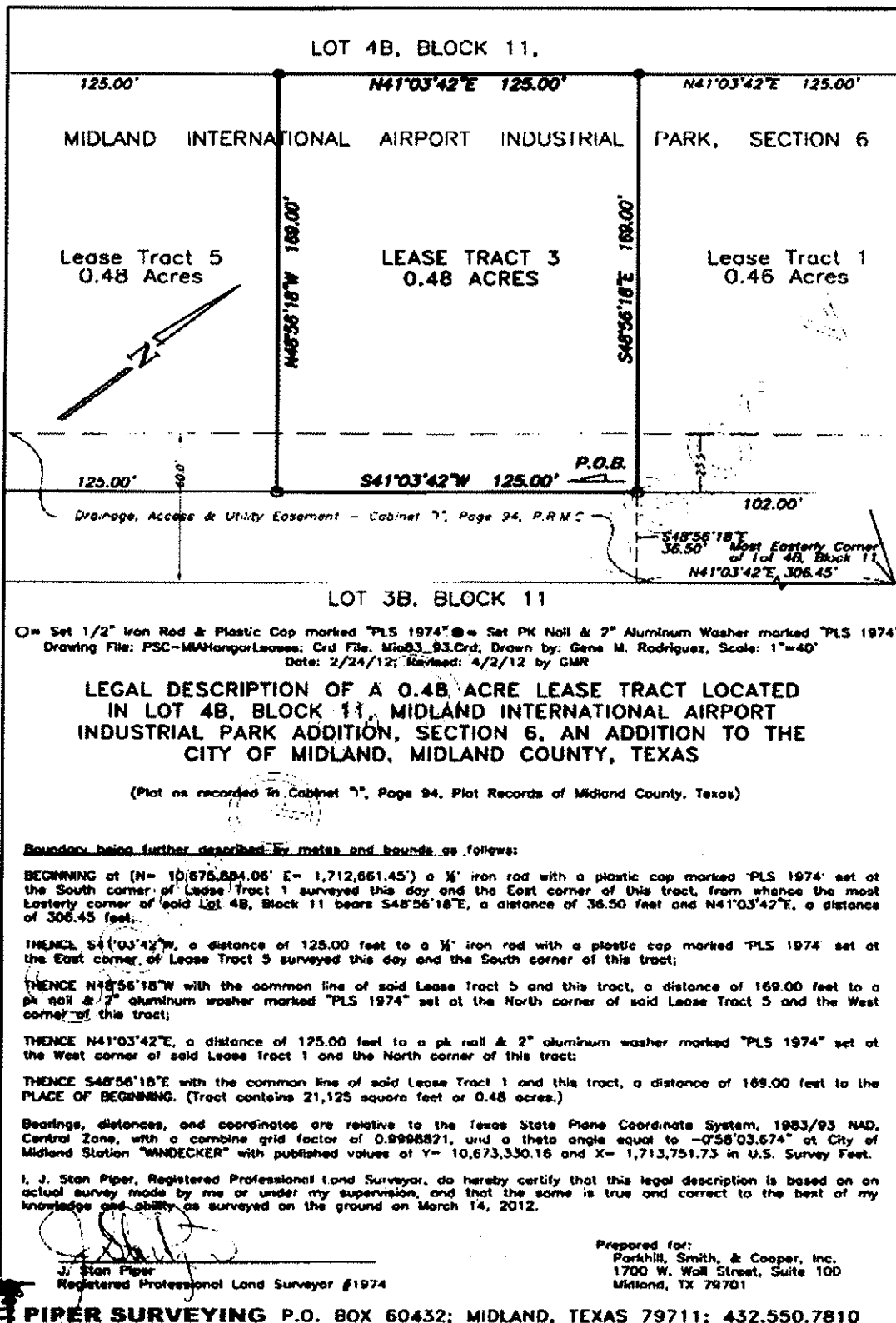
THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

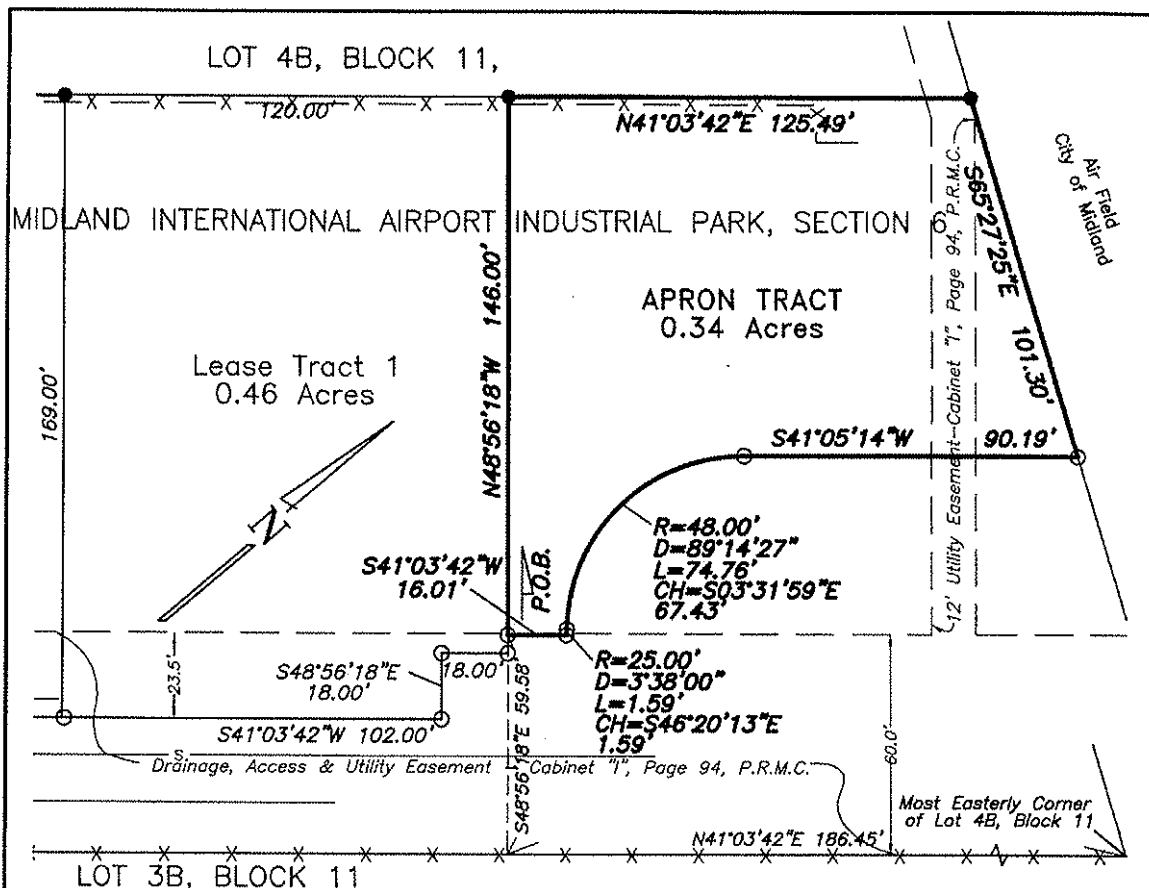
BEFORE ME, the undersigned authority, on this day personally appeared S. Javaid Anwar known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of W-T Hangar LLC

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

Notary Public, State of _____

EXHIBIT B
Leased Premises (legal description)





○ = Set 1/2" Iron Rod & Plastic Cap marked "PLS 1974" ● = Set PK Nail & 2" Aluminum Washer marked "PLS 1974"
Drawing File: PSC-MIAHangarLeases; Crd File: Mia83_93.Crd; Drawn by: G.M.R.; Scale: 1"=40'; Date: 10/10/12

LEGAL DESCRIPTION OF A 0.34 ACRE LEASE TRACT LOCATED IN LOT 4B, BLOCK 11, MIDLAND INTERNATIONAL AIRPORT INDUSTRIAL PARK ADDITION, SECTION 6, AN ADDITION TO THE CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

(Plat as recorded in Cabinet "I", Page 94, Plat Records of Midland County, Texas)

Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,675,969.65' E= 1,712,722.93') a 1/2" iron rod with a plastic cap marked "PLS 1974" found at the most Southerly corner of this tract, from whence the most Easterly corner of said Lot 4B, Block 11 bears S48°56'18"E, a distance of 59.58 feet and N41°03'42"E, a distance of 186.45 feet;

THENCE N48°56'18"W with the common line of Lease Tract 1 previously surveyed and this tract, a distance of 146.00 feet to a pk nail & 2" aluminum washer marked "PLS 1974" found at the North corner of said Lease Tract 1 and the West corner of this tract;

THENCE N41°03'42"E, a distance of 125.49 feet to a pk nail & 2" aluminum washer marked "PLS 1974" set at the North corner of this tract;

THENCE S65°27'25"E, a distance of 101.30 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" set at the East corner of this tract;

THENCE S41°05'14"W, a distance of 90.19 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" set at a point of curvature of this tract;

THENCE around a curve to the left in a Southerly direction with a radius of 48.00 feet, a delta angle of 89°14'27", an arc length of 74.76 feet and a chord distance of 67.43 feet which bears S03°31'49"E to a 1/2" iron rod with a plastic cap marked "PLS 1974" found at an exterior corner of this tract;

THENCE around a curve to the right in a Southeasterly direction with a radius of 25.00 feet, a delta angle of 3°38'00", an arc length of 1.59 feet and a chord distance of 1.59 feet which bears S46°20'13"E to a 1/2" iron rod with a plastic cap marked "PLS 1974" found at an exterior corner of this tract;

THENCE S41°03'42"W, a distance of 16.01 feet to the PLACE OF BEGINNING. (Tract contains 14,861 square feet or 0.34 acres.)

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, 1983/93 NAD, Central Zone, with a combine grid factor of 0.9998821, and a theta angle equal to -0°58'03.674" at City of Midland Station "WINDECKER" with published values of Y= 10,673,330.16 and X= 1,713,751.73 in U.S. Survey Feet.

I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this legal description is based on an actual survey made by me or under my supervision, and that the same is true and correct to the best of my knowledge and ability as surveyed on the ground on October 10, 2012.

J. Stan Piper
Registered Professional Land Surveyor #1974

Prepared for:
Parkhill, Smith, & Cooper, Inc.
1700 W. Wall Street, Suite 100
Midland, TX 79701

PIPER SURVEYING P.O. BOX 60432; MIDLAND, TEXAS 79711; 432.550.7810



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 11/13/2012

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the execution of Amendment #3 to Parkhill, Smith & Cooper's Professional Services Agreement

Purpose:

Consider a resolution authorizing the execution of Amendment #3 to Parkhill, Smith & Cooper's Professional Services Agreement to include the project described as Terminal Vehicle Parking Expansion (9019), Taxiway P Aircraft Run-up (7103) and Wildlife Hazard Management Plan (7104) at Midland International Airport, and appropriate necessary funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

TOTAL	-	\$ 180,552.00
FAA	-	\$ 102,196.80
Airport	-	\$ 78,355.20

Appropriation Language

Terminal Vehicle Parking Expansion (9019)

That the sum of \$67,000.00 is hereby appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the Terminal Vehicle Parking Expansion (9019).

Taxiway P Aircraft Run-up (7103)

That the sum of \$92,000 is hereby appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the Taxiway P Aircraft Run-up (7103).

Wildlife Hazard Management Plan (7104)

That the sum of \$21,552.00 is hereby appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the Wildlife Hazard Management Plan and Cable Upgrade (7104).

Discussion:

The City of Midland, Texas and Parkhill, Smith & Cooper, Inc. have entered into an Agreement for Professional Services dated February 8, 2011, for improvements contained in the Airport Capital Improvement Program. As of this date, said Agreement has been amended twice, and will be amended a third time to include the following projects listed in the Recitals of the Agreement as Item 20 Terminal Vehicle Parking Expansion, Item 21 Taxiway P Aircraft Run-up and Item 22 Wildlife Hazard Management Plan.

Terminal Vehicle Parking Expansion:

On September 11, 2012, the Department of Airports presented a parking lot study regarding recommended changes to Airport Parking and plans for a future Long-Term Covered Parking Lot. Council concurred with the need for additional covered parking. Approving this amendment to PSC Professional Services Agreement, along with the appropriation of funds, will authorize PSC to begin the design.

Taxiway P Aircraft Run-up:

During the 2011 FAA Runway Safety Action Team (RSAT) meeting, it was determined that a run-up on Taxiway P would assist Air Traffic Control (ATC) to better expedite taxiing traffic to Runway 16R and add an additional margin of safety. FAA Airport District Office considers RSAT recommendations high on the priority list of projects to be completed at Airports. The Department of Airports would like to complete this project in 2013. To do this, the Airport would need to appropriate both the FAA's share of the Design Phase in addition to the Airport's share. The Airport would be reimbursed in 2013 for the FAA's share.

Wildlife Hazard Management Plan:

In 2011, the FAA funded 95% of a FAA mandated Wildlife Management Assessment at Airports nationwide. The results of these assessments would determine on whether or not an airport would need to complete a full blown Wildlife Management Plan. The results of Midland International Airport's assessment, like most airports, indicated that a Wildlife Management Plan would be required. To complete this Plan in 2013 it will be necessary for the Airport to front the cost of this Plan. FAA will reimburse 90% of project in 2013.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF AMENDMENT NUMBER THREE TO THE PROFESSIONAL SERVICES AGREEMENT WITH PARKHILL, SMITH & COOPER, INCORPORATED, FOR IMPROVEMENTS CONTAINED IN THE AIRPORT CAPITAL IMPROVEMENT PROGRAM; SAID AMENDMENT TO INCLUDE THE FOLLOWING PROJECTS: TERMINAL VEHICLE PARKING EXPANSION, TAXIWAY P AIRCRAFT RUN-UP, AND WILDLIFE HAZARD MANAGEMENT PLAN; AND APPROPRIATING \$180,552.00

WHEREAS, the City of Midland and Parkhill, Smith & Cooper, Inc., previously entered into an agreement relating to professional services for improvements contained in the Airport Capital Improvement Program at the Midland International Airport; and

WHEREAS, the Department of Airports recommends that certain improvements be made at the Midland International Airport; and

WHEREAS, the City Council finds it to be in the public interest to make certain amendments to said agreement;

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

SECTION ONE. That the Mayor and the City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, an amendment to the professional services agreement with Parkhill, Smith & Cooper, Inc. for the Airport Capital Improvement Program. Said amendment to be on file in the City Secretary's office referenced by the date and number of this resolution.

SECTION TWO. That the sum of \$67,000.00 is hereby appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the Terminal Vehicle Parking Expansion (9019).

SECTION THREE. That the sum of \$92,000.00 is hereby appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the Taxiway P Aircraft Run-up (7103).

SECTION FOUR. That the sum of \$21,552.00 is hereby appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5650) to the Wildlife Hazard Management Plan and Cable Upgrade (7104).

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 11/13/2012

TO: City Council / City Manager

FROM: Tina Jauz / Community Services Director

SUBJECT: Consider a resolution authorizing the execution of a one-year renewal agreement with Francis Stapp, for Curator Services for the Heritage District, including the Scarborough-Linebery Home located at 802 South Main Street.

Purpose:

Approve a one-year contract with Frances Stapp for curator services at the Scarborough-Linebery Home.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Management contract is \$60,000 annually. The Permian Basin Area Foundation pays approximately \$23,000 annually to assist with Ms. Stapp's contract. The remainder of the contract and all maintenance is carried as part of the Parks Division's operating budget.

Discussion:

The Community Services Department and Ms. Stapp are requesting to renew the curator services contract at the Scarborough-Linebery Home and extend it for a one-year term. Ms. Stapp has contracted with the City since 1998; and since that time, has successfully managed 30 volunteers and offered numerous events, meetings, parties, historical tours, etc. The home regularly services 8,000-9,000 citizens annually.

The Scarborough-Linebery Home is the second oldest home in Midland and was gifted to the City of Midland in 1996 from Tome and Evelyn Linebery.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF
AN INDEPENDENT PROFESSIONAL CONSULTANT
CONTRACT WITH FRANCES STAPP TO PROVIDE
CURATOR MANAGEMENT AND OTHER SERVICES
TO THE HERITAGE DISTRICT**

WHEREAS, in an effort to provide the professional services of a Curator to manage, maintain, promote and develop the Heritage District, including the Scarborough/Linebery District, the City Council of the City of Midland, Texas, finds it to be in the public interest to establish and provide Professional Curator Services to the Heritage District, and to authorize the execution of a Professional Consultant Contract to provide Curator Management and Other Services to the Heritage District; and

WHEREAS, the City Council of the City of Midland, Texas, finds it to be in the public interest to execute a Professional Consultant Contract to provide Professional Curator Services;

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

SECTION ONE. That the City Manager is hereby authorized and directed to execute a contract on behalf of the City of Midland for Independent Professional Consultant Services with Frances Stapp to provide Curator Management and Other Services to the Heritage District, said contract is attached hereto, marked as Exhibit “A”, and incorporated herein for all legal purposes.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

INDEPENDENT PROFESSIONAL CONSULTANT
AGREEMENT TO PROVIDE CURATOR SERVICES AND OTHER
SERVICES TO THE HERITAGE DISTRICT

This Agreement is made between the City of Midland, referred to as “City” in this Agreement, and Frances Stapp, hereinafter referred to as “Curator”.

WHEREAS, the City seeks to make special effort for a limited period of time, to promote and develop the image of the Heritage District, which is a special service that the City of Midland does not ordinarily perform, and this Agreement is to serve this purpose; accordingly, the City and Curator agree as follows:

SCOPE OF WORK

I.

The Curator hereby agrees to perform such professional services as are necessary to accomplish the goals of this Agreement of making a special effort for a limited period of time, through a special service that the City of Midland does not ordinarily perform, as set out below:

- (1) The Curator agrees to highlight and promote the historical aspects of Midland to increase and promote tourism as well as enhance the image of the Heritage District; and
- (2) Educate the general public regarding the historical aspects of the City of Midland including the Heritage District.

II.

To complete these goals, the Curator will provide general Curator duties, using independent professional judgment as to the utilization of resources and methods to present and to improve the Heritage District, including:

- (1) Pursuing fund raising activities through public events and grants from public or private foundations or other governmental units;
- (2) Developing and implementing informative tours of the Heritage District;
- (3) Developing and implementing policies regarding the use of the Heritage District through special events, special tours and other functions;
- (4) Maintaining, inventorying and managing all assets of the Heritage District to enhance and preserve the assets of the Heritage District and maintain its image;
- (5) Providing quarterly status reports every March, June, September and December to the City demonstrating progress in meeting these goals with appropriate documentation by the end of each quarter;
- (6) Curator is to use discretion as to the details of how these functions are to be performed, including establishing hours of work, and establishing priorities and routines, which are consistent with the above goals.

III.

The Curator shall at all times act as an independent contractor, and not as an employee or agent of the City. Curator is not authorized to make any commitments or agreements on behalf of the City, nor shall the Curator ever represent that the Curator has such authority. Curator will receive no health insurance or any other employment benefit from the City. Curator will pay all self-employment income tax and social security tax liabilities. This Agreement does not provide any property interest. This Agreement does not provide any expectation of future employment as an employee of the City of Midland. Curator agrees she has no property interest in this Agreement, and Curator agrees she has no expectation of future employment or continued employment with the City as an independent contractor.

IV.

Monthly Fee: City agrees to pay Curator a fee of \$5,000.00 per month for the one year term of this Agreement. City shall make each payment not later than fifteen (15) days after receipt of invoice from Curator and delivery to the Director of Community Services of the City (or his designee) all documents and reports described in Paragraph II above. The invoice should itemize all travel related expenses incurred during the previous month by Curator related to this project. Each invoice shall also include Curator's social security number or tax identification number.

V.

Expenses: Curator will be responsible to provide all equipment necessary to carry out the terms of this Agreement and will pay all expenses incurred subject to the following exceptions. City agrees to reimburse Curator for the cost of travel, meals and lodging, incurred on out-of-town trips which are more than 60 miles from the City of Midland and any other expenses related to the carrying out of the work described above, provided, however, no expenses shall be reimbursed unless detailed as set forth in Paragraph IV, above, and copies of receipts for such expenses are submitted to the City; provided, however, City's obligation to reimburse Curator for the total of such expenses shall not exceed a total of \$100.00 incurred in a one month period for each month of this Agreement unless approval from the City is obtained prior to incurring the additional expense. City agrees to provide Curator with a work space equipped with a desk, chair and telephone to be used by the Curator at Curator's discretion, at no cost to Curator; provided, however, such work space shall be used by Curator solely in furtherance of the scope of work of this Agreement and,

provided further, that Curator shall reimburse City for the cost of all personal long distance calls, which amounts City may elect to offset against Curator's monthly consultant fee.

VI.

Designated Representative. The Director of Community Services is the City's designated representative for this project, and all communications and requests for approvals required relative to this project shall be with or through said Director.

VII.

Ownership of Work Product: City shall have title and ownership of all documents, publications, brochures, reports and data, in any form or media, produced by Curator pursuant to this project, all such works being deemed works-for-hire. City shall have sole ownership of all copyright interests in any documents produced by Curator pursuant to this Agreement.

VIII.

Personnel and Benefits: All services under this Agreement shall be performed by the Curator unless there is prior written approval by the City. Personnel who perform the services under this Agreement shall not be employees of the City. No employment benefits (including health insurance, retirement, etc.) will be provided to the Curator or other personnel who perform services under this Agreement.

IX.

Subcontracting or Assignment: This Agreement is a unique services contract based on advertising and promoting the image of the Heritage District which requires that the

Curator have certain special personal characteristics to successfully advertise and enhance the image of the Heritage District. Any attempt by Curator to subcontract or assign this Agreement shall be void.

X.

Interest of Officers or Employees of City: No officers or employees of the City who exercise any functions or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Agreement which affects his personal interest or have any personal interest or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

XI.

Interest of Contractors: The Curator covenants that she presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Curator further covenants that in the performance of this Agreement no person having any such interest shall be employed.

XII.

Contingent Fees: The Curator warrants that no person or company was employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees, nor

has the Curator paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee any fee, commission, contribution, donation, percentage, gift or any other consideration, contingent upon, or resulting from an award of this Agreement.

XIII.

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

XIV.

Notices/Payment Invoice: Notices, payment invoices, and letters provided for in this Agreement shall be postage prepaid, addressed, if to the City: Director of Community Services, 300 North Loraine, Midland, Texas, 79702; and if to Consultant: Frances Stapp, at the last address, in writing furnished to the Director of Community Services, or to such other respective address as the parties may designate in writing. Notices shall be deemed served on the postmark date which the envelope bears.

XV.

Term: This Agreement shall commence and be effective January 1, 2013, and shall terminate December 31, 2013, except that this Agreement may be terminated at will for any

or no reason by providing the other party written notice of termination not later than thirty (30) days prior to the proposed date of termination. In the event of termination by reason other than mutual consent, the party initiating termination shall pay the other party a fee equivalent to one month fee (\$5,000.00) as a penalty. The “Mutual consent” referred to in this Agreement is solely “at will” and may be withheld for any or no reason, at the sole discretion of one or both of the parties. This Agreement shall be rendered void if the City Council of the City of Midland fails to appropriate funds for the payment of fees stated in this Agreement, provided, however, in the event of a failure to appropriate funds, the termination of this Agreement shall not be effective until September 30 of the last fiscal year for which funds are appropriated.

XVI.

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

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

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

XVII.

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.

XVIII.

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

XIX.

RELEASE: NOTWITHSTANDING ANY OTHER PROVISIONS, CURATOR 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 CURATOR 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.

XX.

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. 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.

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

D. 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.

E. 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.

IN WITNESS WHEREOF, this agreement is effective this 1st day of January, 2013.

THE CITY OF MIDLAND, TEXAS

By: _____
Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CURATOR

Frances Stapp

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared Frances Stapp, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that she executed and delivered the foregoing instrument for the purposes and consideration therein expressed.

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

Notary Public, State of _____



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 11/13/2012

TO: City Council / City Manager

FROM: Tina Jauz / Community Services Director

SUBJECT: Consider a resolution authorizing Friends of Midland Soccer to raise funds on behalf of the City of Midland for development of additional soccer fields, lights, concessions, playgrounds, and parking at Beal Park; upon completion of the soccer complex the City of Midland would be responsible for the operation and maintenance.

Purpose:

Approve Friends of Midland Soccer to fundraise on behalf of the City of Midland.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None at this time.

Discussion:

The Parks and Recreation Commission is recommending to the City Council to allow Friends of Midland Soccer to raise funds on behalf of the City of Midland. The commission listened to a presentation by the group at their November 6 meeting. The goal of the group is to make significant improvements at Beal Park. Included in the plans are up to 79 soccer fields, three playground areas, additional parking, concessions, restrooms, lighting, irrigation, and storage. The group has contracted with Kelly Cook for the design of the park. Please see the attached rendering and letter.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE FRIENDS OF MIDLAND SOCCER TO RAISE FUNDS ON BEHALF OF THE CITY OF MIDLAND FOR THE DEVELOPMENT OF ADDITIONAL SOCCER FIELDS, LIGHTS, CONCESSIONS, PLAYGROUNDS, AND PARKING AT BEAL PARK; UPON COMPLETION OF THE SOCCER COMPLEX THE CITY OF MIDLAND WOULD BE RESPONSIBLE FOR THE OPERATION AND MAINTENANCE

WHEREAS, the Parks and Recreation Commission requests authorization from the Midland City Council to allow the Friends of Midland Soccer to raise funds, on behalf of the City of Midland, in order to make significant improvements at Beal Park; and

WHEREAS, the City of Midland would be responsible for the operation and maintenance of said improvements at Beal Park upon completion; and

WHEREAS, the Midland City Council finds it to be in the public interest to authorize the Friends of Midland Soccer to raise funds, on behalf of the City of Midland, in order to make significant improvements at Beal Park;

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

THAT the Friends of Midland Soccer are hereby authorized to raise funds, on behalf of the City of Midland, in order to make significant improvements at Beal Park.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



September 12, 2012

Tina Jauz
Director of Community Services
City of Midland
300 N. Loraine
Midland, TX 79701

RE: Friends of Midland Soccer – Beal Park Project

Dear Ms. Jauz:

As per our conversation last week, I respectfully submit this formal request seeking approval from the city council to raise funds for the purpose of capital improvements in the form of soccer fields, playgrounds and related infrastructure at Beal Park to be affiliated with the Midland Soccer Association. Over the past several months, I have been working with Roderick Strambler, President of the Midland Soccer Association (MSA), Steve Byrd with the lawfirm of Cotton Bledsoe Tighe & Dawson and Bruce Wallach CPA to form a new charitable entity as to be more attractive to donors and to be a single purpose entity limited in scope to this purpose.

The following highlights some of our proposed goals and improvements to Beal Park:

- Consolidate MSA games to Beal from Butler and Windlands
- Build – (3) 120x60 yard fields, (18) 60x40 yard fields, (14) 40x30 yard fields, (20) 30x20 yard fields and (24) 15x10 yard fields
- (3) playground areas
- Additional parking and roads
- Additional concessions, restrooms, utilities, lighting, irrigation and storage

I welcome the opportunity to discuss these plans, cost estimates and associated logistics in greater detail as you deem appropriate. Included herewith is the latest rendering of the Beal Park project as designed by Kelly Cook with the architectural firm of KDC Associates.

Sincerely,



D. Paul Colwell II
Friends of Midland Soccer (to be formed)
432-230-0663
pcolwell@concho.com



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Steve Thorpe, Building Official

SUBJECT: Resolution to grant a variance to Ordinance 8769 (January 1, 2010 Oil and Gas Well Drilling Ordinance) to allow building permits for commercial buildings, to be issued in the future, where the proposed building, either in whole or part is no closer than 196 feet of an existing oil and gas well.

Purpose: Resolution to grant a variance to Ordinance 8769 (January 1, 2010 Oil and Gas Well Drilling Ordinance) to allow building permits for commercial buildings, to be issued in the future, where the proposed building, either in whole or part is no closer than 196 feet of an existing oil and gas wells. The land is known as Lot 6B, Block 2, Gateway Plaza, Section 6 (being a replat of 2.64 acres out of Lot 6, Block 2, Gateway Plaza), address is 5511 Starboard Drive.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact: N/A

Discussion:

Ordinance 8769 states from the application filing date of the oil and gas well permit, any building permit for construction of a building within 500 feet of the well, requires a distance variance. Upon granting of the variance a building permit for a building meeting the allowed distance may be issued. The ordinance states, *"In no event shall a building permit be issued by the City of Midland for any private residence or commercial building to be constructed, either in whole or in part, within three hundred (300) feet of a previously permitted but undrilled Oil and Gas Well or one hundred thirty-five (135) feet of an existing oil and gas well or within one hundred fifty (150) feet of a previously permitted tank battery."*

Previously variances have been granted for other properties within the city limits to allow permits to be issued for commercial buildings as close as 135 feet of an existing oil and gas well. Therefore staff recommends approval of this variance.

Attachments: Signed Letter; Survey

RESOLUTION NO.

**RESOLUTION GRANTING A VARIANCE FOR LOT 6B,
BLOCK 2, GATEWAY PLAZA, SECTION 6, CITY AND
COUNTY OF MIDLAND, TEXAS (COMMONLY
KNOWN AS 5511 STARBOARD DRIVE), BY
PERMITTING CONSTRUCTION OF COMMERCIAL
BUILDINGS WHERE NO PORTION OF ANY BUILDING
IS CLOSER THAN ONE HUNDRED NINETY-SIX (196)
FEET OF AN OIL AND GAS WELL; AND
AUTHORIZING ISSUANCE OF BUILDING PERMITS**

WHEREAS, pursuant to Section 6-1-23(H)(2)(c) of the City Code of Midland, Texas, the owner of the property described in Section One hereof has applied for a variance in order to receive building permits for the construction of commercial buildings where no portion of any building is closer than one hundred ninety-six (196) feet of an oil and gas well; and

WHEREAS, the City Council finds and determines that granting a variance for such purpose will not present a health or safety risk to the applicant or subsequent occupants of the structures;

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

SECTION ONE. That a variance is hereby granted for Lots 6B, Block 2, Gateway Plaza, Section 6, City and County of Midland, Texas, by permitting construction of commercial buildings where no portion of any building is closer than one hundred ninety-six (196) feet of an oil and gas well.

SECTION TWO. That the Building Official is hereby authorized and directed to issue building permits to the applicant and to other appropriate parties, entities, individuals, successors or assigns for such purpose with the following notation: "This building permit is issued for a structure to be constructed on a lot or tract located within five hundred feet of a previously permitted Oil and Gas Well but no portion of any building shall be closer than one hundred ninety-six (196) feet of a previously permitted Oil and Gas Well."

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

City of Midland at a regular meeting on the _____ day of _____, A.D., 2012, by
the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



110 West Louisiana Avenue
Suite 110
Midland, Texas 79701
T: 432.687.0865
F: 432.687.0868
www.team-west.com

October 23, 2012

Mr. Steve Thorpe
C/O The City of Midland
300 N. Loraine St.
Midland, Tex. 79701

Dear Mr. Thorpe,

I, Porfirio Salazar, as the record owner of the land known as Lot 6B, Block 2, Gateway Plaza, Section 6 (being a re-plat of 2.64 acres out of Lot 6, Block 2, Gateway Plaza), the tract being also designated as 5511 Starboard Drive, Midland, Texas, am writing to request that a variance be granted from Ordinance No. 8769 of the Midland Texas Code of Ordinances, regarding "Oil and gas well permits issued on or after March 1, 2007", with an effective date of January 1, 2010.

The Olga Bank Well #1 oil well by Endeavor Energy Resources, LP has been permitted by the City of Midland, and is located on a well site easement in the northeast corner of my property. As shown in the attached exhibit, developing this lot will require that structures be constructed within the five-hundred foot radius around Olga Bank Well #1. The proposed Salazar Corporate Office Building will be located one-hundred and ninety six feet from the well.

Paragraph G.3 of that section of the city code provides that "An owner of private residences or commercial structures may request a variance from the City Council in order to receive a building permit for the construction of a residence or building within 500 feet of any previously permitted oil and gas well." I therefore request that the city grant us variance from this section of the City Code for the aforementioned property so that I can obtain the necessary building permits to begin construction. To that purpose, I ask that you schedule a public hearing before the Midland City Council to consider this request at the next possible date.

Regards,

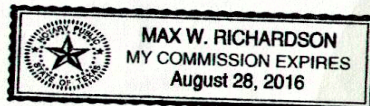
Porfirio Salazar,
Salazar Service & Trucking Corp.

THE STATE OF TEXAS
COUNTY OF MIDLAND

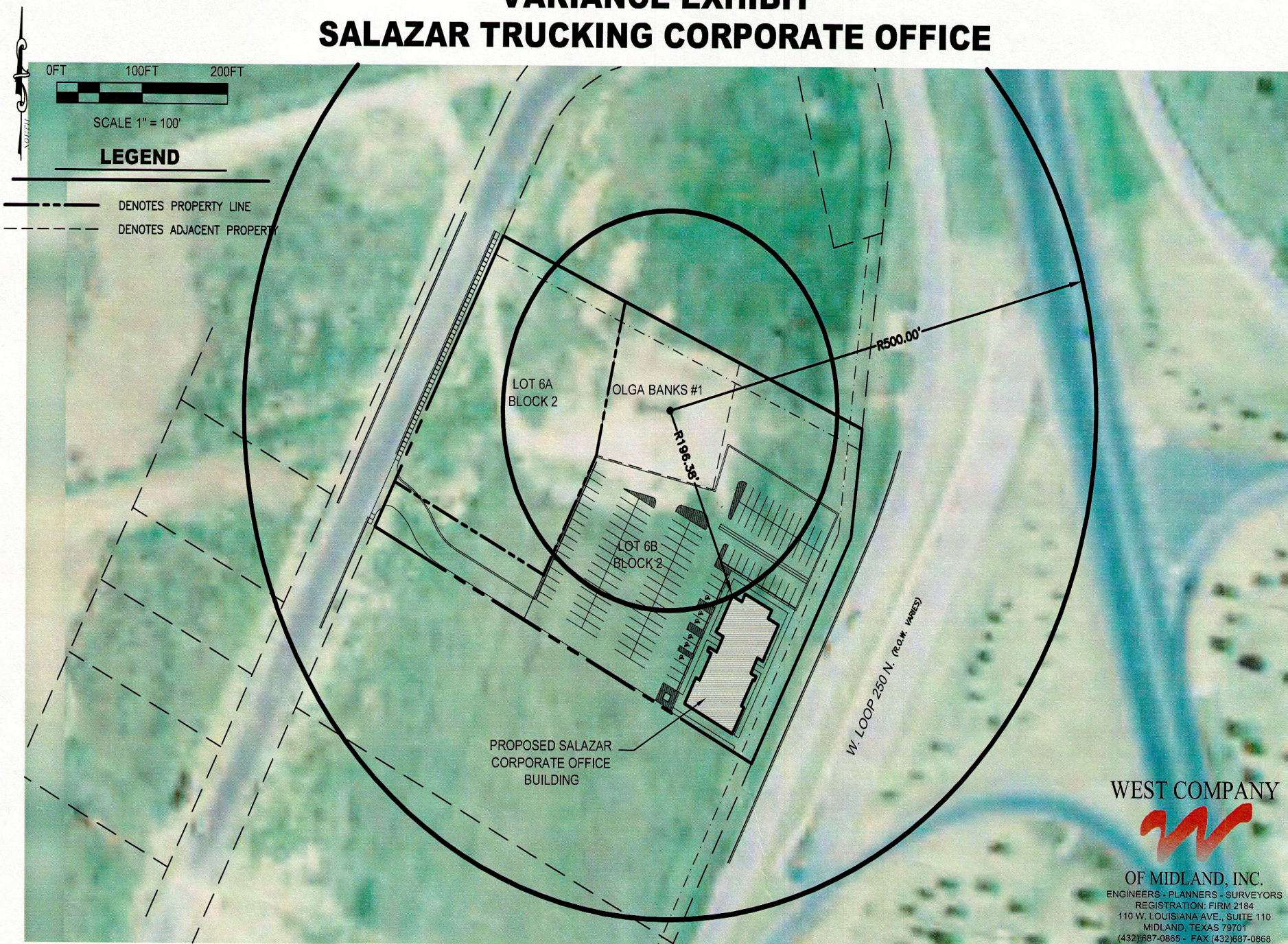
Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Porfirio Salazar, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act as owner, and that he executed the same as the act for the purposes and consideration therein expressed, and in the capacity therein stated. Given under

my hand and seal of office this the 23 day of October, 2012.

Notary Public in and for the State of Texas



VARIANCE EXHIBIT SALAZAR TRUCKING CORPORATE OFFICE



WEST COMPANY



OF MIDLAND, INC.

ENGINEERS - PLANNERS - SURVEYORS
REGISTRATION: FIRM 2184
110 W. LOUISIANA AVE., SUITE 110
MIDLAND, TEXAS 79701
(432) 687-0865 - FAX (432) 687-0868



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 11/13/2012
TO: City Council / City Manager
FROM: Sylvester Cantu, Community Dev. Administrator
SUBJECT: HOME RSP Funds for Homeowner Rehabilitation Assistance

Purpose:

Consider a resolution authorizing an amendment to Resolution 2011-072 authorizing the appropriation of funds for the HOME Investment Partnerships Program Reservation System Participant program.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None.

Discussion:

Resolution # 211-072 authorized \$40,000 in HOME Reservation System Participant (RSP) program funds for reconstruction projects that benefit low income homeowners living in substandard homes. In order to pay for grant related cost items that can be paid with the RSP; we need authorization to increase the appropriation by \$344.00. Forty thousand (\$40,000) has previously been expended on the actual project; the added funds is for advertizing that occurred as part of the program.

RESOLUTION NO.

**RESOLUTION AUTHORIZING AN AMENDMENT TO
RESOLUTION 2011-072 WHICH AUTHORIZED THE
APPROPRIATION OF FUNDS FOR THE HOME
INVESTMENT PARTNERSHIP PROGRAM
RESERVATION SYSTEM PARTICIPANT PROGRAM
FOR RECONSTRUCTION PROJECTS**

WHEREAS, by Resolution 2011-072, the Council previously authorized the City to participate in the Texas Department of Housing and Community Affairs Reservation System Participant (RSP) program that provides Home Investment Partnership Program funds on a case by case basis; and

WHEREAS, by Resolution 2011-072, the Council authorized the City to use Reservation System Participant (RSP) program funds for reconstruction projects that benefit low income homeowners living in substandard homes; and

WHEREAS, in order to pay for grant related cost for advertizing that occurred as part of the program with RSP, authorization is needed to increase the appropriation by \$344.00; and

WHEREAS, the City Council finds it to be in the public interest to authorize an amendment to Resolution 2011-072 to increase the appropriated funds for the HOME Investment Partnerships Program Reservation System Participant Program by \$344.00 in order to pay for grant related cost for advertizing that occurred as part of the program;

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

SECTION ONE. That the City Manager is hereby authorized and directed to execute all documents necessary to authorize an amendment to Resolution 2011-072 to increase the appropriated funds for the HOME Investment Partnerships Program Reservation System Participant Program by \$344.00 in order to pay for grant related cost for advertizing that occurred as part of the program.

SECTION TWO. That the sum of \$344 is hereby appropriated from the Home Grand Fund (050) Unappropriated Fund Balance (5650) to the HOME RSP RHA Program

(7060).

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Sylvester Cantu, Community Development
Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 10/09/2012

TO: City Council / City Manager

FROM: David D. Beard, P.E. – City Engineer

SUBJECT: Consider a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of \$371,586 with Midland Rentals, LLC for the paving and sidewalk improvements to serve the Floyd Acres Addition. The site is generally along Beal Parkway south of Anetta Dr. west of Beal Park. Said agreement being authorized by Section 395.081 of the Texas Local Government Code.

Purpose:

Consider a development agreement for the City to participate with Midland Rentals, LLC. in the paving and sidewalk improvements to serve the Floyd Acres Addition.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Paving & Sidewalk Improvements (Beal Parkway)	\$ 324,116
Requested City Participation	\$ 324,116 (26.74%)

Paving & Sidewalk Improvements (Beal Parkway)	\$ 706,471
Additional Paving & Sidewalk Imp. (Floyd Acres)	\$ 505,450
Total Project OPC (West Company of Midland)	\$1,211,921

That the sum of \$324,116 is hereby appropriated from the 2009 GPCO Streets and Drainage Bond Fund (195) Unappropriated Fund Balance (5650) to the Beal Parkway Improvements Project (9015)

Discussion:

The Floyd Acres Addition is located on the west side of Beal Parkway adjacent to Beal Park. The developer is requesting City participation for the construction of the Beal Parkway and the associated sidewalk serving Beal Park.

Paving improvements include the construction of Beal Parkway (full width) and the associated sidewalk on the east side the proposed street. The City's contribution to the paving of this development agreement is 26.7% of the total cost.

Staff recommends approval of the development agreement providing City participation in construction of the full width paving improvements of Beal Parkway to serve the Floyd Acres Addition.

Attached is an opinion of probable cost based on the information provided by the engineer of record (West Company of Midland – Andrew Mellen, P.E.) and a location map.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH MIDLAND RENTALS, LLC FOR DEVELOPMENT OF FLOYD ACRES ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ALONG BEAL PARKWAY, SOUTH OF ANETTA DRIVE AND WEST OF BEAL PARK); AND APPROPRIATING FUNDS IN THE AMOUNT OF \$324,116.00 THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

WHEREAS, the developer of Floyd Acres Addition, City and County of Midland, Texas, has requested City participation in the development of this addition; and

WHEREAS, the City Code allows City participation; and

WHEREAS, the City Council finds that in accordance with Section 395.081 of the Texas Local Government Code that the City of Midland will benefit from allowing the developer to connect to capital improvements by promoting the health, safety, and public welfare and providing for efficient and well-planned urban growth and development; and

WHEREAS, the City Council finds it to be in the public interest to execute a development agreement with Midland Rentals, LLC which sets forth the extent of the City's participation in the construction of public improvements related to the development of the Floyd Acres Addition, and to appropriate funds therefor;

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

SECTION ONE. That the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, Texas, a Public Improvement Development Agreement with Midland Rentals, LLC. Said agreement is marked as Exhibit "A", attached hereto and incorporated herein for all purposes.

SECTION TWO. That the sum of \$324,116.00 is hereby appropriated from the 2009 GPCO Streets and Drainage Bond Fund (195) Unappropriated Fund Balance (5650) to the Beal Parkway Improvements Project (9015).

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay for said agreement, in amount not to exceed \$324,116.00, out of funds that are available in the said budget account upon receipt of proper invoice or statement therefor approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT
BETWEEN MIDLAND RENTALS, LLC
AND THE CITY OF MIDLAND, TEXAS**

THIS PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT (“Agreement”) is made and effective this 14th day of November, 2012, by and between **MIDLAND RENTALS, LLC** (“Developer”) and the **CITY OF MIDLAND, TEXAS** (“City”), a home rule municipal corporation.

W I T N E S S E T H:

WHEREAS, the City and Developer find it to be to their mutual advantage to enter into this Public Improvement Development Agreement for the construction of appropriate and necessary public facilities;

NOW, THEREFORE, in consideration of the covenants, conditions, and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer does hereby agree to the terms set forth in this Agreement:

1. The Developer desires to develop the Property described as Floyd Acres Addition. Pursuant thereto, the Developer agrees to make certain public improvements as set forth below. The improvements are more particularly described in specifications and contract documents related to the construction of the public improvements related to the development of the Property prepared by West Company of Midland, Inc. (hereafter collectively called “the Specifications”). The Specifications are incorporated herein by reference and made a part hereof for all purposes, and Developer shall comply with the Specifications in the performance of all work pursuant to this Agreement. No amendment to the Specifications may be made without the written approval of the City Manager.

2. The public improvements to be constructed by Developer pursuant to this Agreement shall be generally described as follows:

See Exhibit “A”, attached hereto and incorporated herein by reference.

3. Developer must submit any bids it receives for the proposed public improvements to the City for approval prior to engaging any contractor or subcontractor in such work, which approval shall not be unreasonably withheld. If City fails to object within ten (10) days (excluding weekends and City holidays) after receipt from the Developer of the bid tabulations and written notification of whom the Developer intends to award the contract, the bid which the Developer indicated it is accepting shall be deemed to have been accepted by the City. The City reserves the right to reject any and all bids for work that involves City participation. In rejecting any bid pursuant to the provisions of this Paragraph 3, the City shall issue a notice of rejection in writing to the Developer stating each and every ground or reason relied upon by the City for such rejection.

4. Upon completion of the improvements called for in Paragraph 2, the Developer shall notify the City’s Director of Development Services for inspection. Project inspection for required public improvements will be done by the City during the construction phase. The City’s Director of Development Services shall cause such work to be inspected within five (5) days, excluding weekends and holidays, of being notified by the Developer. Notwithstanding anything herein to the contrary, project inspection must be completed prior to water or sewer systems being backfilled. If the Director of Development Services determines that all work has been completed in conformance with the Specifications, then the Director of Development Services shall give his approval for that improvement work.

5. After completion and acceptance of all work, the Developer must furnish to City an affidavit of all bills paid with respect to the completed work.

6. In consideration of the obligations incurred by the Developer pursuant to this Agreement, the City agrees to participate in the funding of the construction of the public improvements listed in Exhibit "A" attached hereto and incorporated herein by reference said amount to be no more than \$324,116.00. In no case shall the City's contributions to the public improvements required to be constructed on the Property exceed 30 percent of the actual cost of all the public improvements associated with the development without Developer complying with the applicable competitive sealed bid procedures set forth in state law and the ordinances and regulations of the City of Midland, Texas. If the City's contribution for public improvements for any contract exceeds 30 percent of the total cost of all public improvements associated with such contract and such public improvements were constructed without complying with said applicable competitive sealed bid procedures, then the City's maximum contribution under this contract for such phase shall not exceed 30 percent of the actual cost of all public improvements associated with the particular contract.

Provided, however, Developer shall not have to comply with said applicable competitive sealed bid procedures where the City's contribution exceeds 30 percent of the total cost of the public improvements if the City's participation is for the oversizing of such improvements in accordance with Section 212.072 of the Texas Local Government Code.

7. Developer will indemnify and hold harmless and defend City and all of City's officers, agents and employees from all suits, actions, claims, damages, personal injuries, including accidental death, losses, property damage and expenses of any character

whatsoever, including attorney's fees, brought for or on account of any injuries or damages received or sustained by any person or persons or property, on account of any negligent act of Developer, its agents or employees, or any subcontractor, in the execution, supervision and operations growing out of or in any way connected with the performance of this Agreement, and Developer will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including attorney's fees.

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

OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

8. The Developer agrees to indemnify and save the City harmless from all claims growing out of any demands of subcontractors, laborers, workmen, mechanics, materialmen, and suppliers of machinery and parts thereof, equipment, power tools, all supplies, including commissary incurred in the furtherance of the performance of this contract. When City so desires, the Developer shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived.

9. Developer shall obtain and maintain continuously in effect at all times during the construction of the public improvements described in Paragraph 2, above, at Developer's sole expense, at least the following minimum insurance with a carrier or carriers licensed to do business in the State of Texas and satisfactory to the City.

A. The following requirements shall be met in regard to workers' compensation insurance coverage: Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment

or materials, or providing labor, transportation, or other service related to a project. “Services” does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The Developer shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Developer providing services on the project, for the duration of the project.

C. The Developer must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the Developer’s current certificate of coverage ends during the duration of the project, the Developer must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The Developer shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The Developer shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The Developer shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Developer knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. The Developer shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers’ Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The Developer shall contractually require each person with whom it contracts

to provide services on a project, to:

- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
- (2) provide to the Developer, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
- (3) provide the Developer, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (4) obtain from each other person with whom it contracts, and provide to the Developer:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the Developer is representing to the governmental entity that all employees of the Developer who will provide services on the project will be covered by workers'

compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Developer's failure to comply with any of these provisions is a breach of contract by the Developer which entitles the governmental entity to declare the contract void if the Developer does not remedy the breach within 10 days after receipt of notice of breach from the governmental entity.

Developer shall also comply with the following:

L. Comprehensive General Liability Insurance against claims for bodily injury, death, or property damage occurring on, in or about the Property, in at least the amount of \$250,000.00 per individual, \$1,000,000.00 per occurrence and \$100,000.00 with respect to property damage; said insurance shall name the City as an additional insured and shall waive all rights of subrogation against the City.

M. Automobile Liability Coverage on all motor vehicles owned, leased and/or operated by the Developer or its employees in amounts of not less than \$1,000,000.00 combined single limit or equivalent, provided, however, separate automobile coverage shall not be required if such coverage is provided under the Developer's comprehensive general liability policy. The insurance shall name the City as an additional insured and waive all rights of subrogation against the City.

All insurance herein required shall apply as primary and not in excess of or contributing with other insurance which the Developer may carry.

10. **All insurance required pursuant to Paragraph 9, except worker's compensation, shall name the City as an additional insured.** The comprehensive general liability policy shall provide contractual liability coverage sufficiently broad so as to include the liability assumed by the Developer in the indemnity and hold harmless provisions included in this Agreement. Developer's insurance as required by this Agreement shall not be subject to cancellation or material alteration until at least thirty (30) days written notice

has been provided to the City. Developer shall furnish to the City a certificate of insurance showing City as an additional insured and evidencing that all of the herein stated requirements have been met. **All insurance coverage required pursuant to Paragraph 9 shall include in its provisions a waiver of any rights of subrogation against City.**

DEVELOPER SHALL CONTRACTUALLY REQUIRE ALL CONTRACTORS, SUBCONTRACTORS, AND SUB-SUBCONTRACTORS THAT WORK ON ANY PORTION OF THE WORK THAT IS THE SUBJECT OF THIS PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT TO OBTAIN INSURANCE COVERAGE THAT MEETS OR EXCEEDS THE MINIMUM AMOUNTS SPECIFIED HEREIN. ALL CONTRACTORS, SUBCONTRACTORS, AND SUB-SUBCONTRACTORS SHALL OBTAIN INSURANCE POLICIES THAT PROVIDE BLANKET WAIVERS OF SUBROGATION IN FAVOR OF THE CITY OF MIDLAND AND POLICIES THAT NAME THE CITY OF MIDLAND AS AN ADDITIONAL INSURED (EXCEPT WORKERS COMPENSATION).

11. Insurance must be approved by the City Attorney's office prior to this Agreement being executed.

12. This Agreement may be modified or amended only by the mutual consent of the parties hereto.

13. This Agreement contains the complete and entire agreement between the parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations and understandings, if any, between the parties respecting such matters.

14. Except as may be otherwise specifically provided in this Agreement, all notices required or permitted hereunder shall be in writing as follows:

If to Developer:

Midland Rentals, LLC
P.O. Box 795006
Dallas, Texas 75379
Attn: Rick Shirley

If to City:

City of Midland
P.O. Box 1152
Midland, Texas 79702
Attn: City Engineer

15. Any clause, sentence, provision, paragraph or article of this Agreement held by a court of competent jurisdiction to be invalid, illegal or ineffective shall not impair, invalidate or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph or article so held to be invalid, illegal or ineffective.

16. This Agreement shall be construed under the laws of the State of Texas and all obligations of the parties hereunder are performable in Midland County, Texas. Exclusive venue for any cause of action shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas.

17. In the event of any conflict between the parties hereto such that either party brings or commences any legal action or proceeding related to this Agreement, including but not limited to any action pursuant to the provisions of the Texas Uniform Declaratory

Judgments Act (TEX. CIV. PRAC. & REM. CODE §37.001 et seq., as amended), the parties hereto agree to waive any and all rights to recovery of attorneys fees to which the prevailing party might otherwise be entitled.

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

DEVELOPER AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY

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

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

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

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

19. RELEASE: DEVELOPER HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF ACTION OF ANY KIND WHATSOEVER ARISING UNDER OR ASSOCIATED WITH THIS AGREEMENT WHICH DEVELOPER HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO QUANTUM MERUIT, DUE PROCESS AND TAKINGS CLAUSES UNDER THE TEXAS AND UNITED STATES CONSTITUTION, TORT CLAIMS OR CITY'S NEGLIGENCE.

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

21. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Developer or its legal representative, shall give the City Manager, or any other reasonable official of the City,

notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Developer will settle, the physical and mailing addresses of Developer at the time and date the claim was presented and the physical and mailing addresses of Developer for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Developer relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. The City is under no obligation to provide notice to Developer that Developer's notice is insufficient. The City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

22. This agreement is made under the authority of Section 395.081 of the Texas

Local Government Code and the laws of the State of Texas and Ordinances and the Charter of the City of Midland. The City finds in accordance with Section 395.081 of the Texas Local Government Code that the City of Midland will benefit from allowing the Developer to connect to the capital improvements. The City finds that this benefit will promote the public health, safety, and public welfare of the citizens of Midland. The City finds that the benefit the City of Midland receives will be efficient and well-planned urban growth and development, in coordination with public services. The benefit is also that this agreement will help preserve and increase the ad valorem tax base of the City. The City finds that the Developer's land adjoins the capital improvement or is within five (5) miles of the capital improvement. The five (5) miles is the specified distance required in Section 395.081 of the Texas Local Government Code.

23. Notwithstanding any other provision hereof, the City shall not be obligated to provide payment to Developer under this Agreement until Developer has met all requirements of this Agreement, including, but not limited to, the City's approval of the improvement work as set forth in Paragraph 4 and the City's determination that Developer has furnished satisfactory evidence that all obligations described in Paragraph 8 have been paid, discharged or waived. Determination of whether Developer has furnished satisfactory evidence that all such obligations have been paid, discharged or waived shall be in the sole discretion of the City.

EXECUTED in duplicate the day and year first above written.

CITY OF MIDLAND, TEXAS

By: _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

MIDLAND RENTALS, LLC

By: _____
Rick Shirley, Owner

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared RICK SHIRLEY, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of MIDLAND RENTALS, LLC, in the capacity therein stated.

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

Notary Public, State of Texas

Floyd Acres - Beal Parkway
From Anetta Dr. to north end of Beal Parkway (1.0 mile)
Midland, TX

ENGINEER'S OPINION OF PROBABLE COSTS (Revised by DDB)
AS OF NOVEMBER 6, 2012

ITEM NO.	DESCRIPTION	UNITS	QUANTITY	PRICE	Total	DEVELOPER SHARE	DEVELOPER COST	MIDLAND SHARE	MIDLAND COST
BEAL PARKWAY									
1	Pavement Section - 1.75 HMAC / 8"Base / Type "A" Curb	LF	2471.6	\$ 224.24	\$ 554,231.58	50.00%	\$ 277,115.79	50.00%	\$ 277,115.79
2	5' Sidewalk Per COM Standards (west side of Beal Pkwy)	SF	9738.9	\$ 5.00	\$ 48,694.50	100.00%	\$ 48,694.50	0.00%	\$ -
3	8' Sidewalk Per COM Standards (east side of Beal Pkwy)	SF	14680	\$ 5.00	\$ 73,400.00	37.50%	\$ 27,525.00	62.50%	\$ 45,875.00
4	7' Wide Valley Gutter With Aprons Per COM Standards	SF	259	\$ 5.00	\$ 1,295.00	100.00%	\$ 1,295.00	0.00%	\$ -
5	Manhole Frame and Cover Adjustment	SY	4	\$ 300.00	\$ 1,200.00	50.00%	\$ 600.00	50.00%	\$ 600.00
6	Water Valve or Sewer Cleanout Adjustment	EA	6	\$ 175.00	\$ 1,050.00	50.00%	\$ 525.00	50.00%	\$ 525.00
7	Sidewalk Ramp Per COM Type 12: Diagonal Ramp	EA	13	\$ 200.00	\$ 2,600.00	100.00%	\$ 2,600.00	0.00%	\$ -
8	Alley Approach with Ramp per COM Drawing P-10	EA	8	\$ 3,000.00	\$ 24,000.00	100.00%	\$ 24,000.00	0.00%	\$ -
9	Street Sign Base	EA	0	\$ 120.00	\$ -	50.00%	\$ -	50.00%	\$ -
NEVAL / KILYN / RALLEA / HAGEN / LOGAN / PAVILLION COURT									
10	Pavement Section - 1.75 HMAC / 8"Base / Type "A" Curb	LF	1796	\$ 225.85	\$ 405,522.71	100.00%	\$ 405,522.71	0.00%	\$ -
11	5' Sidewalk Per COM Standards (west side of Beal Pkwy)	SY	0	\$ 14.00	\$ -	100.00%	\$ -	0.00%	\$ -
12	8' Sidewalk Per COM Standards (east side of Beal Pkwy)	SF	18287	\$ 5.00	\$ 91,437.40	100.00%	\$ 91,437.40	0.00%	\$ -
14	7' Wide Valley Gutter With Aprons Per COM Standards	SF	1554	\$ 5.00	\$ 7,770.00	100.00%	\$ 7,770.00	0.00%	\$ -
15	Manhole Frame and Cover Adjustment	EA	0	\$ 300.00	\$ -	100.00%	\$ -	0.00%	\$ -
16	Water Valve or Sewer Cleanout Adjustment	EA	0	\$ 175.00	\$ -	100.00%	\$ -	0.00%	\$ -
17	Sidewalk Ramp Per COM Type 12: Diagonal Ramp	EA	0	\$ 200.00	\$ -	100.00%	\$ -	0.00%	\$ -
18	Alley Approach with Ramp per COM Drawing P-10	EA	0	\$ 3,000.00	\$ -	100.00%	\$ -	0.00%	\$ -
19	Street Sign Base	EA	6	\$ 120.00	\$ 720.00	100.00%	\$ 720.00	0.00%	\$ -
					Total (Base Bid)	\$ 1,211,921.19	\$ 887,805.40	\$ 324,115.79	

Cost Sharing

73.26%

26.74%

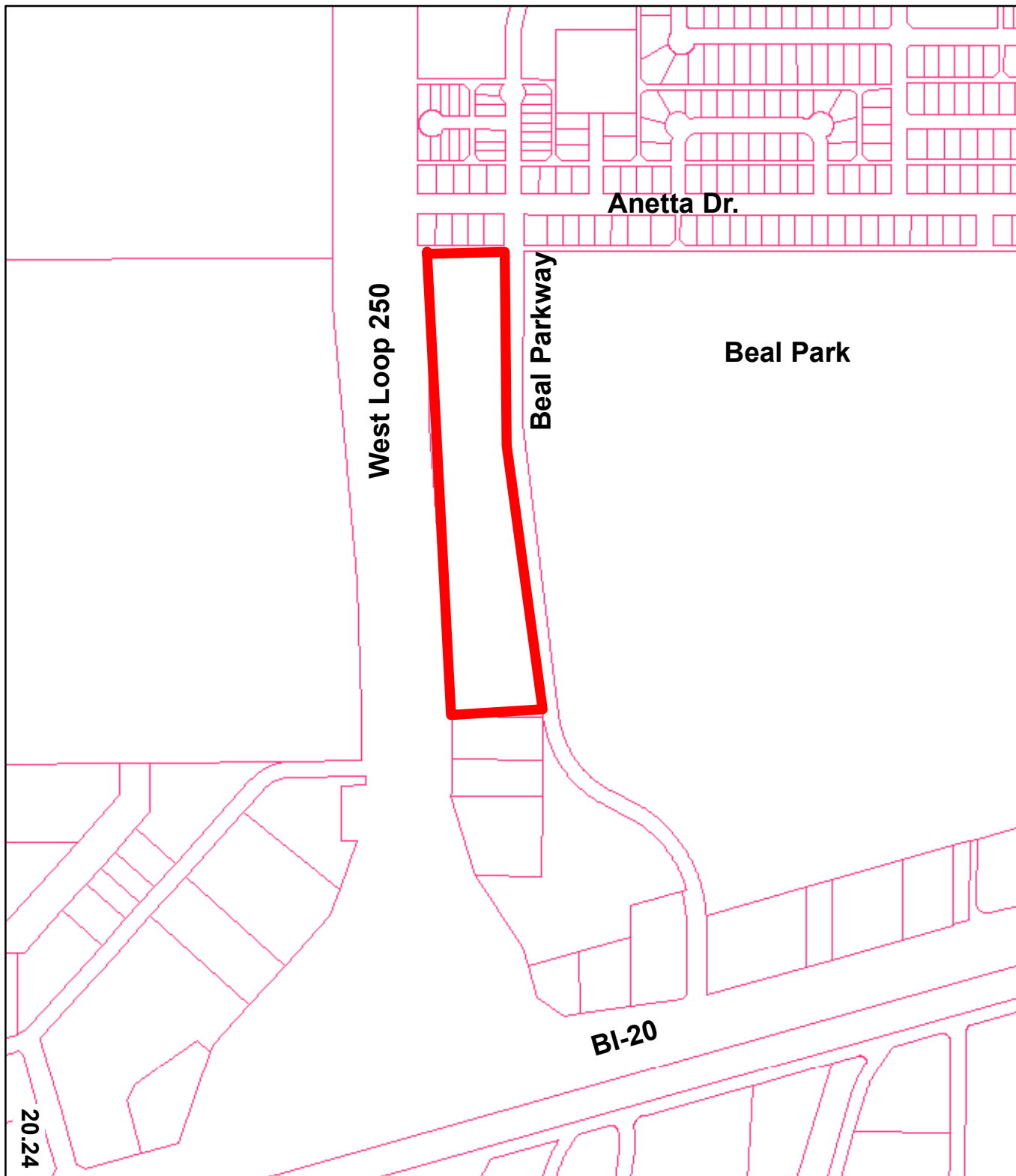
ENGINEERING DIVISION

Floyd Acres Addition

Development Agreement



Map by DDB 11/01/2012





City Council Agenda

Approved for Agenda:
MWilliams
City Manager's Office

MEETING DATE: 11/13/2012

TO: City Council / City Manager

FROM: David D. Beard, P.E.

SUBJECT: Consider a motion on a request by West Company of Midland, Inc. for Wilshire Park Addition (Mesquite Terrace Apartments), to approve items requested for deferral in the amount of \$28,750.00, and to waive the associated public improvement guarantee. (District #3 - James)

Purpose:

Consider a motion on a request by West Company of Midland, Inc. for Wilshire Park Addition (Mesquite Terrace Apartments), to approve items requested for deferral in the amount of \$28,750.00, and to waive the associated public improvement guarantee.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Wastewater Collection	\$0.00
Water Distribution	\$0.00
Paving Construction	\$0.00
Sidewalk Construction	\$28,750.00

Total value of deferral (recommended items)	\$28,750.00
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Cash deposit or other acceptable security	\$0.00
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Discussion:

Wilshire Park is positioned in the City of Midland, located on the corner of West Loop 250 Frontage Road, between Graceland Drive and Leisure Drive (approximately 0.4 miles south of Thomason Drive).

West Company of Midland is proposing to plat the property and defer the public improvements. Below is a discussion of the public infrastructure and deferral request related to the development of the property associated with this plat:

1. Water Distribution: Water utilities are currently available along the proposed Beal Parkway and will be constructed along the Loop 250 Frontage Road as part of this development.
2. Wastewater Collection: Wastewater utilities are currently available along the Loop 250 Frontage Road.
3. Paving: Beal Parkway is to be paved to City of Midland standards, and curb and gutter will be added to the south side of Leisure Drive and north side of Graceland Drive that will also be to City standards.
4. Drainage: A Drainage Study for this site has been approved.
5. Sidewalk: The applicant is requesting deferral of sidewalks along the Loop 250 Frontage.
 - Currently there are no sidewalks along the Loop 250 Service Road north or south of this site. In addition, a privacy fence will be installed along the frontage of the Service Road eliminating access to the site along the west side.

Staff supports this deferral request. Attached is a location map, along with a deferral justification, and cost estimate from West Company of Midland.

ENGINEERING DIVISION

Mesquite Terrace Apartments

Request for Deferral

Loop 250 Frontage Road

Leisure Drive

Mesquite
Terrace
Apartments

Beal Parkway

Graceland Drive

Thomason Drive



Map by JCF 10/30/2012



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 11/13/2012

TO: City Council / City Manager

FROM: David D. Beard, P.E. – City Engineer

SUBJECT: Consider a resolution to authorize the City Manager to execute an agreement to accept \$44,607 in reimbursement funds from Union Pacific Railroad Company for water main relocation, and to disburse the funds to John Plott Company Inc. (City of Midland, ETJ)

Purpose:

Consider a resolution to authorize the City Manager to execute a Reimbursement Agreement with Union Pacific Railroad Company (UPRR) in which UPRR will reimburse the City an amount of \$44,607 for construction of an 8-inch water main that was relocated under Industrial Avenue approximately 600 feet west of Westar Road, and to disburse funds to John Plott Company Inc. for performing the work.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

That, upon receipt of payment from Union Pacific Railroad Company, said fund shall be placed in the Water and Sewer Fund (300) Miscellaneous Suspended Items (1950) account and, upon approval of City Manager, such funds shall be paid from Water and Sewer Fund (300) Miscellaneous Suspended Items (1950) account to John Plott Company, Inc.

Discussion:

Midland Development Corporation agreed to participate in a cost-sharing agreement with Schlumberger Technology Corporation (Resolution No. 2012-122) to construct a City water main that will serve development, including the new Schlumberger facility, south of Industrial Avenue and north of I-20 between Westar Road and South County Road 1250. Under the agreement, Schlumberger would undertake design and construction of the water main as an independent

contractor, subject to approval by the City Engineer. When the water main is complete and acceptable to the City, the City will accept the new main and incorporate the main into its system as part of its water distribution infrastructure.

Construction of the water main includes a 16-inch segment on the north side of Industrial Avenue that is installed under a Union Pacific Railroad Company rail spur serving the Agri-Empresa Inc. industrial site. An existing 8-inch water line is also installed on the south side of Industrial Avenue under the same rail spur.

The UPRR is itself engaged in construction of additional rail lines and spurs along the Industrial Avenue / BI-20 corridor, and is requiring the City to relocate any existing and proposed utilities to comply with the railroad's rules and permits for utility crossings.

In order to minimize the number of rail crossings by City water mains subject to permit rules of the UPRR, engineering staff requested that the design of the new water main include a cross-connection of the existing 8-inch water main to the new main so that the existing portion under the rail spur could be abandoned in-place. The connection of the 8-inch main to the new 16-inch main is by the jack-and-bore method under Industrial Avenue (a TxDOT right-of-way).

UPRR considers the abandonment and re-connection of the existing 8-inch water main a relocation of an existing utility due to their construction and in accordance with their permit requirements. They therefore have agreed to reimburse the City for the cost of design and construction of the cross-connection.

As part of the cost-sharing agreement with MDC, Schlumberger contracted John Plott Company Inc. to construct the City water main, including the 8-inch cross-connection under Industrial Avenue. John Plott contracted West Company of Midland Inc. to design the City water main, including the 8-inch cross-connection. Construction of the 8-inch water main under Industrial Avenue was completed by the contractor in September 2012, and is awaiting final inspection and acceptance by the City Engineer.

Approval of this resolution will authorize the City Manager to execute a Reimbursement Agreement with UPRR and deposit the funds received from UPRR into the Water and Sewer Fund (300) Miscellaneous Suspended Items (1950), and then to pay John Plott Company Inc. from that account for the design and construction work associated with the 8-inch connection under Industrial Avenue.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF
A REIMBURSEMENT AGREEMENT WITH UNION
PACIFIC RAILROAD COMPANY (“UNION PACIFIC”)
FOR THE RELOCATION OF CERTAIN CITY OF
MIDLAND FACILITIES UNDER INDUSTRIAL
AVENUE; AND AUTHORIZING PAYMENT TO JOHN
PLOTT COMPANY, INCORPORATED AS THE
CONTRACTOR WHO HAS PERFORMED THE WORK**

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a reimbursement agreement with Union Pacific for the relocation of certain City of Midland facilities under Industrial Avenue; and

WHEREAS, the City Council finds it to be in the public interest to pay John Plott Company, Inc. for work performed in the relocation of said facilities from the funds received from Union Pacific;

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

SECTION ONE. That the City Manager is hereby authorized and directed to execute a reimbursement agreement Union Pacific Railroad Company for the relocation of certain City of Midland facilities under Industrial Avenue. Said agreement is attached hereto and incorporated herein as Exhibit “A”.

SECTION TWO. That upon receipt of payment from Union Pacific Railroad Company, the funds shall be placed in the Water and Sewer Fund (300) Miscellaneous Suspended Items (1950) account, and upon approval of the City Manager, such funds shall be paid from the Water and Sewer Fund (300) Miscellaneous Suspended Items (1950) account to John Plott Company, Inc.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Bear, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT (herein "Agreement") is made and entered into and effective this 18th day of October, by and between the City of Midland (herein the "Utility"), having a mailing address at 300 N. Loraine Street, Midland, Texas 79701, and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (herein "UPRR"), having a mailing address at 1400 Douglas Street, STOP 1690, Omaha, Nebraska 68179-1690.

WITNESSETH:

WHEREAS, UPRR contemplates the installation of a spur track above, near and/or crossing the Utility's waterline ("Facility") situated at or near railroad Milepost 558.4 Toyah Sub;

WHEREAS, UPRR's contemplated construction/reconstruction/crossing requires the protection or relocation of a portion of the Utility's Facility;

WHEREAS, UPRR has requested the Utility to relocate or protect a portion of its Facility, subject to reimbursement of actual direct costs by UPRR; and

WHEREAS, the Utility, under the terms hereinafter stated, is willing to undertake such relocation or protection of its Facility (herein the "Project").

NOW THEREFORE, in consideration of the promises and mutual covenants herein contained, the Utility hereby agrees to undertake the Project in accordance with the attached **Exhibit "A"**, subject to the following terms and provisions:

1. The parties agree that Exhibit "A" attached hereto and made a part hereof, represents the scope of work for the Project.
2. UPRR may, at its own expense, inspect construction performed by the Utility on the Project, and shall have the right to halt any construction not being done in accordance with Exhibit A.
3. UPRR agrees to reimburse Utility for all actual direct costs incurred by Utility for the Project.
4. The total cost of the Project is estimated to be **Forty-Four Thousand Six Hundred Seven AND NO/100 DOLLARS (\$ 44,607.00)**, as detailed in Exhibit "B" attached hereto and hereby made a part hereof. Utility agrees to provide written notice to UPRR when the Utility becomes aware that actual direct costs will exceed the estimate by more than ten percent (10%).
5. "Actual Direct Costs" are defined as labor, materials, transportation, insurance and overhead charges properly allocable to the Project (not to exceed 3%), supervision, surveys, permits, rental of tools, equipment and machinery employed on the Project. Actual Direct Costs shall not include any profit to the Utility or internal operating expenses. UPRR shall reimburse the Utility for the Actual Direct Cost upon receipt of invoices supported by such evidence of payment made by the Utility as may be reasonably required by UPRR. UPRR shall reimburse the Utility on a progressive payment basis within thirty (30) days after receipt of invoices. Upon completion of

the Project, the Utility shall have ninety (90) days to prepare a final invoice covering all Actual Direct Costs incurred by the Utility for the Project. So far as practicable, separate records shall be maintained by the Utility on all items and accounts which shall constitute the basis of information from which the invoices will be prepared.

6. The Utility shall make diligent efforts to complete the Project on or before October 31, 2012.
7. This Agreement is the only understanding by and between the Utility and UPRR pertaining to the Project, and stands independent of any other agreements between the parties and/or their affiliates.
8. After relocation, the Utility hereby agrees to quitclaim to UPRR any and all interest in the easement or right of way where its Facility is currently located, which right of way is being acquired by UPRR from the current owners of record.
9. The terms of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.
10. Each party warrants that it has the full right and authority to enter into this Agreement. All necessary approvals and authority to enter into this Agreement have been obtained and the person executing this Agreement on behalf of each party has the express authority to do so and in so doing, to bind such party hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

UPRR:

The Utility:

UNION PACIFIC RAILROAD COMPANY

CITY OF MIDLAND, TEXAS

By: _____

By: _____

Name: _____

Name: Courtney Sharp

Title: _____ - Acquisitions

Title: City Manager

EXHIBIT "A"

Scope of Work

Scope of Work to be performed:

Construct an 8-inch water main tie-in across Industrial Avenue, connecting an existing 8-inch water main on the south side to a new 16-inch water main on the north side. The crossing under Industrial Avenue will be made by jack-and-bore techniques with steel casing, and in coordination with new Union Pacific spur track. The following tasks will be completed:

1. Implement traffic control on Industrial Avenue & Agri Road;
2. Excavate entry and receiving pits;
3. Jack-and-bore 16-inch steel casing, 80 LF;
4. Install 8-inch C900 PVC DR-18 water pipe, 100 LF;
5. Install one 8"x8" 90-deg bend, connect to existing 8-inch water main;
6. Install one 8-inch gate valve, connect to new 16-inch water main;
7. Cut-and-plug existing 8-inch water main;
8. Install thrust blocking and joint restraints;
9. Fill, flush, pressure test and chlorinate new 8-inch water main crossing; and,
10. Backfill bore pits, and re-seed & mulch disturbed areas.

Contacts List:

UPRR

John Van Gelder

Union Pacific Railroad Company

1400 Douglas Street, Stop 1690

Omaha, NE 68179

402-554-8532

jmvangel@up.com

Utility

City of Midland, Texas

300 N Loraine Street

Midland, TX 79701

EXHIBIT "B"

Cost Estimate

Waterline Construction:

QTY	Units	Description	Unit Cost	Price
100	LF	8-inch C900 PVC DR18	\$ 65.92	\$ 6,592.00
1	EA	8-inch Gate Valve	\$ 1490.00	\$ 1,490.00
1	LS	Fittings, Cap & Thrust Blocking	\$ 3670.00	\$ 3,670.00
80	LF	16-inch Bore	\$ 267.50	\$ 21,400.00
1	LS	Bore & Receiving Pits	\$ 2550.00	\$ 2,550.00
1	LS	Fill, Flush, Pressure Test and Chlorinate	\$ 150.00	\$ 150.00
1	LS	Connection to Existing Water Line	\$ 4000.00	\$ 4,000.00
1	LS	Traffic Control	\$ 500.00	\$ 500.00
1	LS	Restoration (Grassing / Mulching)	\$200.00	\$ 200.00
Subtotal				\$ 40,552.00

Engineering:

QTY	Units	Description	Unit Cost	Price
1	LS	Engineering	\$ 4055.00	\$ 4,055.00
Subtotal				\$ 4,055.00

Total Project Cost:

TOTAL	\$ 40,607.00
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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 11/13/2012

TO: City Council / City Manager

FROM: David D. Beard, P.E.

SUBJECT: Consider a motion on a request by Landgraf, Crutcher & Associates, Inc. (LCA). for DavidHeiser Addition, to approve items requested for deferral in the amount of \$65,650, and to waive the associated public improvement guarantee. (District #2 - Hailey)

Purpose:

Consider a motion on a request by LCA for DavidHeiser Addition, to approve items requested for deferral in the amount of \$65,650, and to waive the associated public improvement guarantee.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Wastewater Collection	\$0.00
Water Distribution	\$0.00
Paving Construction	\$65,650.00
Sidewalk Construction	\$0.00

Total value of deferral (recommended items)	\$65,650.00
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Cash deposit or other acceptable security	\$0.00
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Discussion:

The DavidHeiser Addition is positioned in the City of Midland, located on the north side of I-20 approximately 1400' west of Fairgrounds Rd.

LCA is proposing to plat the property and defer the public improvements. Below is a discussion of the public infrastructure and deferral request related to the development of the property associated with this plat:

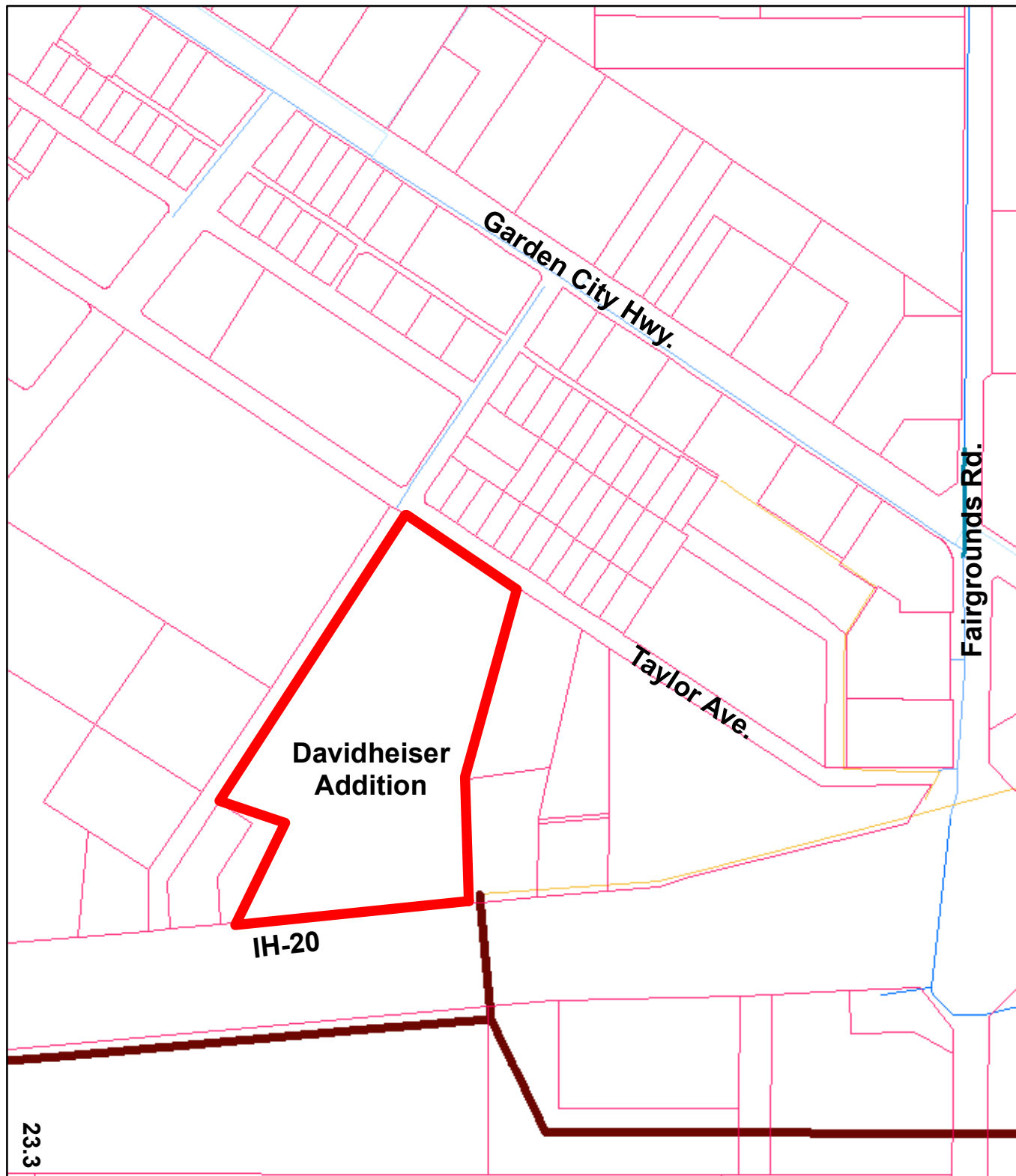
1. Water Distribution: Water utilities are currently available at the intersection of King St. and Taylor Ave. The Owner is proposing to extend water along the frontage of Taylor Ave. to serve this property.
2. Wastewater Collection: Wastewater utilities are currently available at the southeast corner to the property. The Owner is proposing to extend the wastewater main along the frontage of I-20 to serve this property.
3. Paving: Due to shallow pipeline crossings and the current use of the adjacent land, it is unlikely Taylor Ave will be paved in this area. In addition, the owner has agreed to restrict access to his property from Taylor Ave with a physical barrier. The physical barrier will be approved as part of the platting and building permit phase.
4. Drainage: A Drainage Study for this site must be submitted.
5. Sidewalk: The applicant is requesting deferral of sidewalks along I-20 service road and Taylorthe Loop 250 Frontage.
 - Sidewalk construction is typically accomplished during the building permit phase (builder constructs the sidewalk). Currently, there are no sidewalks on the I-20 service road or Taylor Ave. If sidewalks are required in the future, they will be addressed when a building permit application is submitted.

Staff supports this deferral request. Attached is a location map, along with a deferral justification, and cost estimate from LCA.

ENGINEERING DIVISION

Davidheiser Addition

Request for Deferral



Map by DDB 11/07/2012



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

FIRM # 001363

521 NORTH TEXAS • ODESSA, TEXAS 79761

(432) 332-5058 or 580-8812 • FAX (432) 332-8812

David Beard, P.E.
City Engineer - City of Midland
P.O. Box 1152
Midland, Texas 79702

RE: Davidheiser, Section 1

Dear Mr. Beard:

We are representing Nationwide Trailers, who is proposing to plat property and build a sales office in the Davidheiser property between Lamesa Road and Garden City Highway. The property has frontage on the Interstate 20 service road, and Nationwide is proposing to use this frontage for access to their business. The property extends to Taylor Street, an unpaved but dedicated street, at the rear of the property. Nationwide does not propose to use Taylor for access and after conversation with the City, is willing to restrict access from this property to Taylor. We respectfully request deferral of public improvements as per the following breakdown:

Sewer:

No deferral of sewer is requested. We understand that approximately 680' of sewer will need to be constructed across the front of the property.

Water:

No deferral is requested. We understand that approximately 442' of 6" water line will need to be constructed in the Taylor Street right of way.

Paving, Curb & Gutter:

We are requesting that the paving of Taylor Avenue be deferred. Taylor Avenue exists as a caliche road and is developed primarily as the rear property line of industrial use businesses. There is no pavement on Taylor from Latta Street to Fairgrounds Road. When this street was studied in the past, it was found to be impractical to pave, due to the numerous shallow pipelines that are in conflict with the road. The cost of lowering the pipelines dictates that Taylor Street will likely remain unpaved and will be used as is.

Sidewalk:

Sidewalks will be built as lots are developed to city standards.

Sincerely,

A handwritten signature in blue ink that reads 'Joseph M. Tucker'. The signature is stylized with a large, sweeping 'J' and a checkmark-like flourish at the end.

Joseph M. Tucker P.E.
LCA



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

FIRM # 001363

521 NORTH TEXAS • ODESSA, TEXAS 79761

(432) 332-5058 or 580-8812 • FAX (432) 332-8812

Davidheiser Section 1 Improvements Deferral

LCA Project Number 12-101

Description	Cost Each	Unit	Quantity	Total
6" C & G - Taylor Ave	\$12.50	L.F.	884	\$11,050
Base and Pavement	\$30.00	S.Y.	1820	\$54,600
Total				\$65,650



Joseph M. Tucker
7 November 2012



City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: 11/13/2012

TO: City Council / City Manager

FROM: Robert Isbell, Fire Chief

SUBJECT: Consider a resolution to authorize a project fund for the Outdoor Notification System

Purpose:

Fund the outdoor notification system project that was initiated in the last fiscal budget.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

That the sum of \$124,750 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the Warning Sirens Project (9020)

Discussion:

The outdoor warning system purchase, approved in last fiscal year's budget, was not completed due to logistical issues with delivery. The budgeted monies from that allocation were rolled into the general fund at close of budget.

This proposal is to purchase a new system for our critical coverage in outdoor locations only. The proposed system (LAWS) utilizes non-proprietary parts and is supported by a reputable vendor located in Texas. This system will have features that are consistent with our current system as well as with technologies to enhance specific warning notices from the National Weather Service (NWS) as well. The NWS warnings will allow automatic delivery of any warnings the city deems necessary without any interaction from a dispatch center.

RESOLUTION NO.

RESOLUTION APPROPRIATING \$124,750.00 FROM THE GENERAL FUND FOR THE OUTDOOR WEATHER SERVICE NOTIFICATION SYSTEM; THIS OUTDOOR NOTIFICATION SYSTEM PROJECT WAS INITIATED IN LAST YEAR'S FISCAL BUDGET AND THOSE FUNDS WERE DEPOSITED IN THE GENERAL FUND AT THE CLOSE OF BUDGET

WHEREAS, the outdoor notification system project was initiated in last year's fiscal budget; and

WHEREAS, the outdoor notification system will provide critical coverage consistent with our current system as well as with technologies to enhance specific warning notices from the National Weather Service in outdoor locations only; and

WHEREAS, the City Council finds it to be in the public interest to appropriate said funds in order to purchase the outdoor warning system;

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

THAT the sum of \$124,750 is hereby appropriated from the General Fund (001) Unappropriated Fund Balance (5650) to the Warning Sirens (9020).

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT AND
COMPLETENESS:

Robert Isbell, Fire Chief

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Price Robinson, Chief of Police

SUBJECT: Consider a resolution to approve and appoint volunteer candidates from the Citizens Police Academy Alumni as Volunteers Enforcing Parking Restrictions

Purpose:

Consider a resolution to approve and appoint volunteer candidates from the Citizens Police Academy Alumni as Volunteers Enforcing Parking Restrictions

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

None

Discussion:

Volunteer Candidates:	Joe Hathaway	Sue Miller
	Steve Baker	Don McSparran
	Edward Cano	Jerry Bechyne
	Marion Axe	Gene Washam
	Thomas Kingon	Jeanette Darrough
	Susan McVay	Robert Roberts

Since August, 1995, the Midland Police Department's Citizens Police Academy Alumni Association has conducted the disabled parking enforcement program. The volunteers are trained on the legalities and application of the disabled parking laws. They must work in pairs, wear a distinctive uniform, and call dispatchers immediately upon any problems arising at a location. A vehicle is provided by the city, marked as a city vehicle (not a police vehicle) and having signs on the side stating "Parking Enforcement." The volunteers are prohibited from any enforcement activities while in their personal vehicles and while not paired up with another volunteer.

RESOLUTION NO.

**RESOLUTION APPOINTING INDIVIDUALS TO SERVE
AS VOLUNTEERS TO ENFORCE AUTOMOBILE
PARKING RESTRICTIONS AS AUTHORIZED BY
CHAPTER 681 OF THE TEXAS TRANSPORTATION
CODE**

WHEREAS, the Midland Police Department's Citizens Police Academy Alumni Association (CPAAA) has conducted the Disabled Parking Enforcement Program since 1995; and

WHEREAS, the volunteers are trained on the legalities and application of parking laws regarding disabled or handicapped parking; and

WHEREAS, the volunteers must work in pairs, wear distinctive uniforms as established by the CPAAA, and call dispatchers immediately upon encountering any problems when conducting parking enforcement activities; and

WHEREAS, the volunteers are provided a City vehicle (not a police vehicle) with signs on the side stating "Parking Enforcement," and are prohibited from any enforcement activities while in personal vehicles and while not paired up with another volunteer; and

WHEREAS, the City Council finds it to be in the public interest to appoint individuals to enforce parking restrictions pursuant to Texas Transportation Code Section 681.0101;

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

SECTION ONE. That each individual appointed to serve as a volunteer to enforce automobile parking restrictions regarding disabled or handicapped parking must:

1. Be a United States citizen of good moral character who has not been convicted of a felony;
2. Take and subscribe to an oath of office that the City of Midland prescribes; and
3. Successfully complete a training program of at least four hours in length developed by the City of Midland.

SECTION TWO. That an individual appointed as a volunteer to enforce such

parking restrictions, is not a peace officer, has no authority other than the authority applicable to enforce such parking restrictions and may not carry a weapon while performing such duties.

SECTION THREE. That each individual appointed as a volunteer hereunder is not entitled to compensation for performing duties or to indemnification from the City of Midland for injury or property damage the person sustains or liability the person incurs in performing such duties.

SECTION FOUR. That the City of Midland is not liable for any damage arising from an act or omission of a person appointed to perform said duties.

SECTION FIVE. That the City Council approves and appoints the following individuals as volunteers to said parking restrictions as authorized by Section 681.0101 of the Texas Transportation Code:

Joe Hathaway
Sue Miller
Thomas Kingon
Gene Washam

Steve Baker
Edward Cano
Marion Axe
Jeanette Darrough

Don McSparran
Jerry Bechyne
Susan McVay
Robert Roberts

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Price Robinson, Police Chief

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: 11/13/2012

TO: City Council / City Manager

FROM: Price Robinson, Chief of Police

SUBJECT: Consider a resolution to accept and appropriate extra funds for the 2011 Enforcing Underage Drinking Laws Grant

Purpose:

Consider a resolution to accept and appropriate extra funds for the 2011 Enforcing Underage Drinking Laws Grant

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No cost to the City

That the sum of \$1,780 is hereby allocated from the General Fund (001) Nondepartmental (150) Interfund Transfer (0199) General Construction Fund (6299) to the General Construction Fund (005) Police (110) 2011 Enforcing Underage Drinking Laws Project (7064)

Discussion:

MPD officers worked more hours than were allotted by the 2011 Enforcing Underage Drinking Laws grant and the TABC fully reimbursed the City of Midland for those costs.

RESOLUTION NO.

RESOLUTION ACCEPTING A GRANT AWARD IN THE AMOUNT OF \$1,780.00 FROM THE TEXAS ALCOHOLIC BEVERAGE COMMISSION TO BE USED BY THE MIDLAND POLICE DEPARTMENT TO ENFORCE UNDERAGE DRINKING LAWS; AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS; AND ALLOCATING GRANT FUNDS; NO CASH MATCH IS REQUIRED

WHEREAS, the City of Midland, Texas, has heretofore applied to the Texas Alcoholic Beverage Commission for grant funds to be used by the Midland Police Department to enforce underage drinking laws; and

WHEREAS, the City of Midland, Texas, has been awarded \$1,780.00 to combat underage drinking, including prevention strategies and enforcement of certain laws; and

WHEREAS, the Council finds it to be in the public interest to accept the grant offer and execute the grant award thereof;

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

SECTION ONE. That the City of Midland, Texas, acting through its Mayor and City Council, hereby accepts the grant award as made by the Texas Alcoholic Beverage Commission to help the Midland Police Department combat underage drinking.

SECTION TWO. That in the event of loss or misuse of said grant funds, the City of Midland, Texas assures that the funds will be returned to the Texas Alcoholic Beverage Commission in full.

SECTION THREE. That the Mayor, City Manager, Director of Finance and Chief of Police of the City of Midland, Texas, are hereby authorized and directed to evidence the City of Midland's acceptance by executing all necessary documents in order to accept the grant.

SECTION FOUR. That the City Manager is the authorized official to apply for, accept, reject, alter or terminate the grant.

SECTION FIVE. That the sum of \$1,780.00 is hereby allocated from the General

Fund (001) Nondepartmental (150) Interfund Transfer (0199) General Construction Fund (6299) to the General Construction Fund (005) Police (110) 2011 Enforcing Underage Drinking Laws Project (7064).

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 11/13/2012

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Consider a Resolution Authorizing the Implementation of Flow Based Sewer Rates, Based on December 2012, January 2013, and February 2013 Water Usage and Becoming Effective October 1, 2013.

Purpose:

Consider a Resolution Authorizing the implementation of Flow Based Sewer Rates, based on December 2012, January 2013, and February 2013 water usage and becoming effective October 1, 2013.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No fiscal impact until implemented.

Discussion:

Currently, residential customers pay a fixed sewer rate of \$17.82. Commercial customers pay a charge based on the amount of water they use. The revenues generated by this system have never been adequate to fund the wastewater side of the utility. In order to raise revenues such that the wastewater portion of the utility can be self sufficient and to keep water rates down, it is proposed that Flow Based Sewer Rates be implemented.

The Rates will be individual for each residence. Their actual water usage for December, January, and February will be analyzed. The highest month will be discarded. The remaining two will be averaged. The total of these flow values will be utilized to calculate a rate per thousand gallons necessary to generate the necessary revenue. This rate will then be applied to each customer's bill, and, depending on their individual water usage, will generate a unique fixed water rate. This rate will then be mailed to each customer in April to notify them of their fixed rate to be charged beginning October 1st.

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE
IMPLEMENTATION OF FLOW-BASED SEWER RATES,
BASED ON DECEMBER 2012, JANUARY 2013, AND
FEBRUARY 2013 WATER USAGE; AND BECOMING
EFFECTIVE OCTOBER 1, 2013; AND AUTHORIZING
THE CITY MANAGER TO CONDUCT THE
APPROPRIATE STUDIES AND SUBMIT TO THE CITY
COUNCIL THE NECESSARY ORDINANCES
THEREFORE**

WHEREAS, revenues generated by the current sewer rate system are inadequate to fund the City's sewer operations; and

WHEREAS, the City of Midland Utilities Department proposes the implementation of a flow-based sewer rate system wherein the funds needed to adequately fund the City's sewer operations are paid by City of Midland water customers in a unique amount directly proportional to each customer's water usage; and

WHEREAS, under the proposed flow-based sewer rate system, each customer's unique bill for sewer services will be based on an analysis of their water usage for December 2012, January 2013, and February 2013; and

WHEREAS, in order to raise sufficient revenue to adequately fund the City's sewer operations, the City Council finds it to be in the public interest authorize the implementation of a flow-based sewer rate system, based on an analysis of each water customer's water usage for December 2012, January 2013, and February 2013, and becoming effective October 1, 2013;

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

SECTION ONE. That the City Council hereby authorizes the City Manager to conduct the appropriate studies, and to submit to the City Council, all necessary Ordinances.

SECTION TWO. That the City Council hereby authorizes the implementation of a flow-based sewer rate system, based on an analysis of each water customer's water usage for December 2012, January 2013, and February 2013, and becoming effective October 1, 2013.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Stuart Purvis, Director of Utilities

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 11/13/2012

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Consider a Resolution Approving Additional Funding of the Interlocal Agreement Between the City of Midland, the City of San Angelo and the City of Abilene as Approved on April 8, 2011 and Appropriate Funds

Purpose:

Consider a resolution approving additional funding of the Interlocal Agreement between the Cities of Midland, San Angelo and Abilene as approved on April 8, 2011 and appropriate funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Award amount is \$500,000 from the Water and Sewer Fund. That the sum of \$500,000 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Midland / Abilene / San Angelo Interlocal Agreement Project (8980).

Discussion:

This project will fund the initiative with the cities of San Angelo and Abilene to develop long-term, sustainable water supplies for the City of Midland. The City of Midland will be responsible for 1/3 of the total cost of this effort. This is to include engineering and legal costs to identify and evaluate possible options with the final product being a path forward to provide water to the City for the next 100 years.

RESOLUTION NO.

**RESOLUTION APPROVING ADDITIONAL FUNDING
FOR THE INTERLOCAL AGREEMENT BETWEEN THE
CITY OF MIDLAND, THE CITY OF SAN ANGELO AND
THE CITY OF ABILENE AS APPROVED ON APRIL 8,
2011 REGARDING LONG-TERM WATER SUPPLIES;
AND APPROPRIATING \$500,000.00**

WHEREAS, the City Council finds it to be in the public interest to approve the funding of the Interlocal Agreement between the City of Midland, the City of San Angelo and the City of Abilene as approved on April 8, 2011 by Resolution No. 2011-062, and to appropriate \$500,000.00 therefor;

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

SECTION ONE. That an additional \$500,000.00 in funding for the Interlocal Agreement between the City of Midland, the City of San Angelo and the City of Abilene as approved on April 8, 2011 is hereby approved.

SECTION TWO. That the sum of \$500,000.00 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the Midland / Abilene / San Angelo Interlocal Agreement Project (8980).

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Stuart Purvis, Director of Utilities

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 11/13/2012

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Consider a Resolution Authorizing the Department of Utilities to cause to be Published, in the Midland Reporter Telegram, all Notices Required Pursuant to Chapter 26 of the Texas Parks and Wildlife Code of a Public Hearing Regarding the City's Intent to Execute a Temporary Right-of-Way License with Oncor Electric Delivery Company, L.L.C., across a Portion of Windlands Park

Purpose:

Consider a Resolution authorizing the Department of Utilities to cause to be published, in the Midland Reporter Telegram, all Notices required pursuant to Chapter 26 of the Texas Parks and Wildlife Code of a Public Hearing regarding the City's intent to execute a temporary Right-of-Way License with Oncor Electric Delivery Company, L.L.C., across a portion of Windlands Park

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No fiscal impact.

Discussion:

The construction of the Windlands Park Water Reclamation Facility will require the installation of buried power across the park site. This easement will grant the ability to install that line as well as permanently locate it. Oncor will bury this power and the construction contractor will return the site to its original condition.

RESOLUTION NO.

RESOLUTION AUTHORIZING THE DEPARTMENT OF UTILITIES TO CAUSE TO BE PUBLISHED, IN THE MIDLAND REPORTER TELEGRAM, ALL NOTICES REQUIRED PURSUANT TO CHAPTER 26 OF THE TEXAS PARKS AND WILDLIFE CODE OF A PUBLIC HEARING REGARDING THE CITY'S INTENT TO EXECUTE A TEMPORARY RIGHT-OF-WAY LICENSE WITH ONCOR ELECTRIC DELIVERY COMPANY, L.L.C., ACROSS A PORTION OF WINDLANDS PARK; AND DIRECTING THE UTILITIES DIRECTOR TO COMPLY WITH ALL REQUIREMENTS OF CHAPTER 26 OF THE TEXAS PARKS AND WILDLIFE CODE

WHEREAS, Oncor Electric Delivery Company, L.L.C., has requested a right-of-way license for the purpose of installing and maintaining certain overhead and/or underground electric supply and communications facilities to be located in Section 22, Block 39, T-1-S, T&P Ry. Company Survey, Midland County, Texas, which is located in Windlands Park; and

WHEREAS, because the proposed right-of-way license is within park property, Chapter 26 of the Texas Parks and Wildlife Code requires a public hearing regarding the matter; and

WHEREAS, the City Council finds it to be in the public interest to authorize the Utilities Department to cause to be published all required public notices of said public hearing;

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

THAT the Director of Utilities, or his designee, is hereby authorized and required to cause to be published, in the Midland Reporter Telegram, all notices required pursuant to Chapter 26 of the Texas Parks and Wildlife Code of a public hearing regarding the City's intent to execute a right-of-way license with Oncor Electric Delivery Company, L.L.C., across a portion of Windlands Park.

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

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Stuart Purvis, Director of Utilities

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:

JNichols

City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a resolution approving the issuance of a permit to RSP Permian, L.L.C. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Bus Barn #2603D) located 690 feet from the north line and 1080 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south side of Briarwood Avenue, approximately 600 feet west of Roadrunner Trail.)

Purpose:

To consider a resolution approving the issuance of a permit to RSP Permian, L.L.C. (Operator), for a Permit to Drill an Oil and Gas Well within the City Limits (Bus Barn #2603D) located 690 feet from the north line and 1080 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south side of Briarwood Avenue, approximately 600 feet west of Roadrunner Trail.) The required 30-day public comment has passed and the Council may consider this request. Total of twenty one notices were sent to property owners within the 860 ft. notification area. Twelve letters of objection were returned. In addition thirty four letters of objection and fifteen letters of support were received from property owners outside of the 860 ft. notification area.

Recommended City Council Action

X Approve Deny Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommended application approval with the following requirements: address production method being by rod pump, identify type of fencing to be used around wells, dust control method on road, and emergency personnel contact. RSP Permian has addressed these requirements and updated the application. No variances are requested.

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

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO RSP PERMIAN, L.L.C. (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 690 FEET FROM THE NORTH LINE AND 1,080 FEET FROM THE EAST LINE, SECTION 26, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF BRIARWOOD AVENUE, APPROXIMATELY 600 FEET WEST OF ROADRUNNER TRAIL)

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 11, 2012; 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 690 feet from the north line and 1,080 feet from the east line, Section 26, Block 40, T-1-S, T&P RR Co. 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., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on November 13, 2012, considered the application of RSP Permian, L.L.C., dated June 20, 2012, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of RSP Permian, L.L.C., dated June 20, 2012, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of RSP Permian, L.L.C., Bus Barn #2603D oil and gas well shall be 690 feet from the north line and 1080 feet from the east line, Section 26 Blk 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of RSP Permian, L.L.C., which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from November 13 ,2012, through November 13, 2013, 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.

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

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

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

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

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of November, 2012.

RSP Permian, L.L.C.

By: _____

William R. Huck

Vice President /Operations

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

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

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

b.

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

c.

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

d.

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

e.

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

f.

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

g.

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

2.

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

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

a.

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

b.

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

c.

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

d.

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

e.

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

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

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

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

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

3.

Insurance.

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

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

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

x.

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

xi.

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

b.

Standard Commercial General Liability Policy.

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

c.

Excess or Umbrella Liability.

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

Environmental Pollution Liability Coverage.

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

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

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

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

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

iii.

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

f.

Automobile Liability Insurance.

i.

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

ii.

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

g.

Certificates of Insurance.

i.

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

ii.

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

iii.

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

iv.

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

v.

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

vi.

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

Indemnification.

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

Notice.

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

Notice addresses are as follows:

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

OPERATOR: _____
William R. Huck, Vice President/Operations

RSP Permian, L.L.C.
125 W. Missouri, Ste 450
Midland, Texas 79701
(432)818-1300

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

(L)

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

1.

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

2.

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

3.

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

4.

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

5.

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

6.

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

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

7.

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

8.

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

9.

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

10.

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

11.

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

12.

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

13.

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

14.

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

15.

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

16.

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

17.

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

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping.

a.

The City will require tree preservation and/or planting measures.

i.

A minimum number of eight trees shall be required to be planted within 25 feet from the outside perimeter of the wall or walls required herein.

ii.

At least 75 percent of the trees shall be evergreen.

iii.

The minimum size of each tree planted will be at least four inches in diameter measured one foot above ground level.

iv.

All trees that die within three years of the date of project completion will be replaced by another replacement tree. The replacement tree carries the same three-year replacement requirement. A replacement of any tree that dies within three years of planting will be replaced by the Operator or agent and a new three-year guarantee will begin at the time of replacement.

b.

The following list of trees is considered desirable. Planting of trees for this list is acceptable. Other trees will be considered by the City Manager. The approval of additional species will be judged on adaptability, long-term health and growing characteristic of the tree type.

Scientific Name	Common Name
Pinus elarica	Afghan Pine, Mondell Pine
Pinus Sylvestris	Russian Pine
Ulmas Crassifolia	Cedar Elm

c.

Operator may submit a plan in lieu of subparagraphs (M)2.a and b above. The Operator must describe the type, number, and location of trees to be planted under this Section. The City Council may consider any proposal prepared in accordance with this subparagraph. Any alternative plan shall not be effective unless approved by the City Council.

d.

Operator shall submit an irrigation plan detailing the measures to be taken to adequately irrigate all landscaping, including indicating the proposed water source for irrigation, and the proposed efforts to replace dead or dying screening vegetation. Upon request by the Operator, the City may provide access to fresh water to be used for such irrigation if water is readily available and in conformance with City policies and procedures.

e.

In such instances, where City water is not available, a variance may be requested. Additionally, when City water becomes available, the provisions of this subsection shall be required.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the

inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this

Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

- a. An amendment fee of \$1,000.00.
- b. A description of the proposed amendments.
- c. Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).
- d. Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.
- e. Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

- a. **No Material Change from Existing Permit.** If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.
- b. **Material Change from Existing Permit.** If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

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

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then

forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

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

OPERATOR: _____
William R. Huck, Vice President/Operations

RSP Permian, L. L. C.
125 W Missouri, Ste 450
Midland, Texas 79701
(432) 818-1300



0-12-010

APPLICATION FOR OIL AND GAS PERMIT
Bus Barn #2603D
(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 6/20/2012	Operator Name (must match W-1) RSP Permian, L.L.C.	Operator Address 125 W. Missouri, Ste 450 Midland, TX 79701
Representative Name William R. Huck	Representative Address (within Midland City Limits) same as above	Rep. Tele. 432.818.1300 Rep. Fax 432.818.1350
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: 24/7 Answering Services - No. 1 (Tele.): _____ No. 2 (Tele.): _____ Option B: Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): See Exhibit "A"		
Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): See Exhibit "A" RSP Permian, L.L.C. 24/7 Answering Service - 432.818.1300		
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. See Exhibit "C" 2. 3.		
ATTACHED AS EXHIBIT C is (a Title Opinion by _____, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from Jim Spradlin _____, 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): Surface Use: Residential, Vacant Lots Surface Ownership: See Exhibit D		
ATTACHED AS EXHIBIT D is (a Title Opinion by _____, a licensed Texas Attorney/a Take-off from Jim Spradlin _____, 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: Bus Barn #2603D

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See attachment under Exhibit G

Legal Description of Proposed Well Site:

Surface Location: 690' FNL, 1080' FEL, Sec 26, Blk 40, T1S, T&P Survey

Bottom Hole: 1250' FNL, 2070' FEL, Sec 26, Blk 40, T1S, T&P 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: Electrical - Sharyland Utilities L.P.

Description of water source to be used during Drilling:

Water to be trucked onto well site.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

See Exhibit "H"

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: Exhibit O

Trench and encapsulate per RRC Rule 27(C)(10)(v)

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)].

RSP PERMIAN, L.L.C.

By: William R. Huck

WILLIAM R. HUCK, VICE PRESIDENT/OPERATIONS

STATE OF TEXAS §

COUNTY OF MIDLAND §

This instrument was acknowledged before me on the 20th day June, 2012, by William R. Huck, Vice President/Operations of RSP Permian, L.L.C., a Delaware Limited Liability Company, who personally appeared before me and, being first duly sworn, declared he signed the application in the capacity designated, if any, and further stated that he had read the above application and attached exhibits, and the statements therein are true and correct to the best of his knowledge.



Nona Nordstog
Notary Public, State of Texas



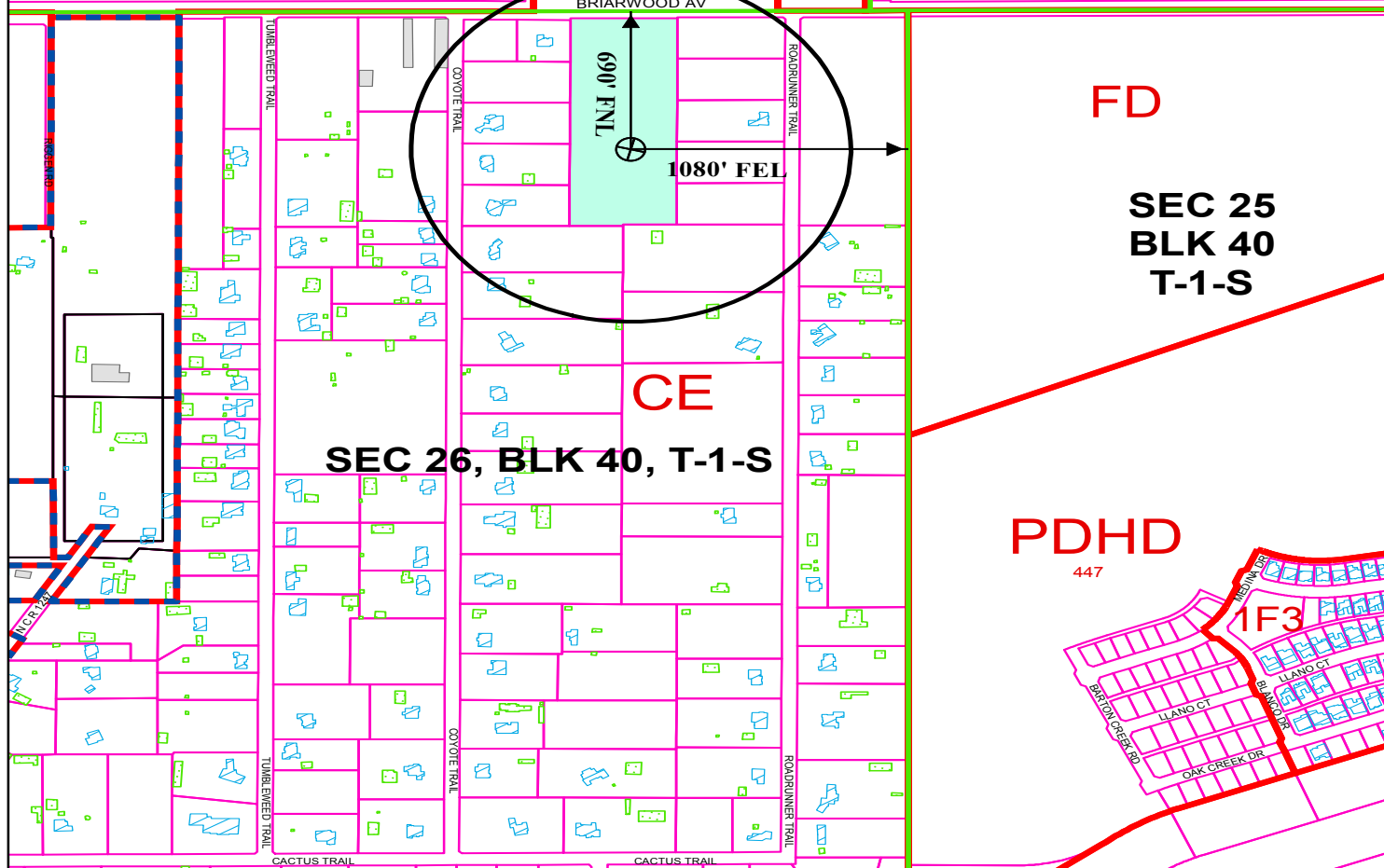
**SEC 23
BLK 40
T-1-S**

FD

CE

**SEC 24
BLK 40
T-1-S**

FD



LOCATION AND ZONING MAP

O - 12 - 010

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 690' FNL and 1080' FEL, Section 26, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Bus Barn #2603D

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

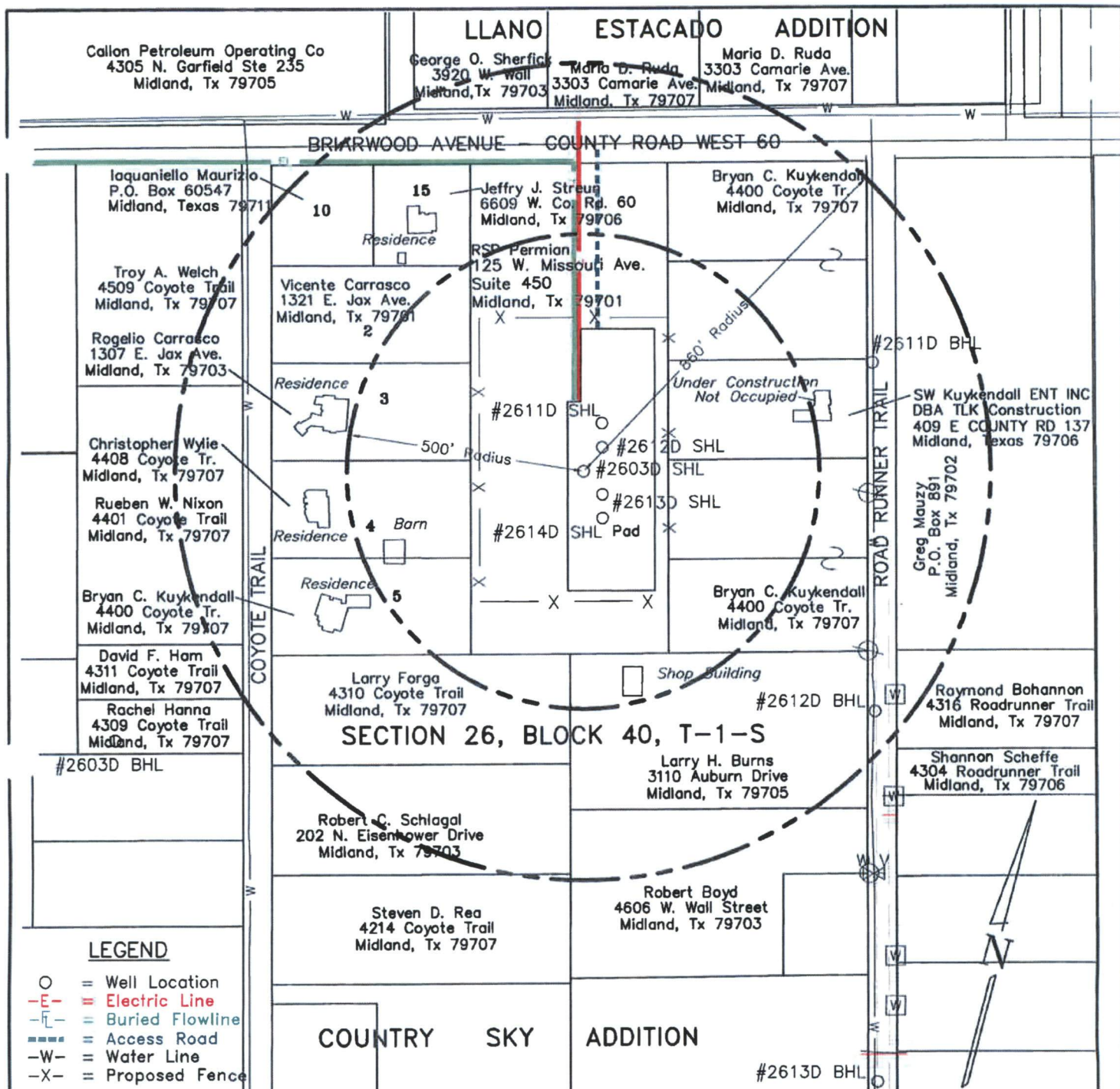
ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT
PD	PLANNED DISTRICT
AE	AGRICULTURE ESTATE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING
MH	MOBILE HOME DWELLING
TH	TOWNHOUSE DWELLING
2F	TWO-FAMILY DWELLING
MF1, MF2	MULTIPLE FAMILY DWELLING

BP	BUSINESS PARK
P	PARKING
01, 02	OFFICE
NS	NEIGHBORHOOD SERVICE
LR1, LR2, LR3	LOCAL RETAIL
C1, C2, C3	COMMERCIAL
IP, JP1, IP2, IP3	INDUSTRIAL PARK
LI	LIGHT INDUSTRY
HI	HEAVY INDUSTRY

BUSINESS PARK
PARKING
OFFICE
NEIGHBORHOOD SERVICE
LOCAL RETAIL
COMMERCIAL
INDUSTRIAL PARK
LIGHT INDUSTRY
HEAVY INDUSTRY

30.41



**PLAT SHOWING PROPERTY OWNERS WITHIN 500' & 860' RADIUS,
ACCESS ROAD, PIPELINE AND ELECTRIC LINE FOR
PROPOSED BUS BARN #2603D, 690' FNL & 1080' FEL
IN SECTION 26, BLOCK 40, T-1-S, T.&P. RR. CO. SURVEY,
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS**

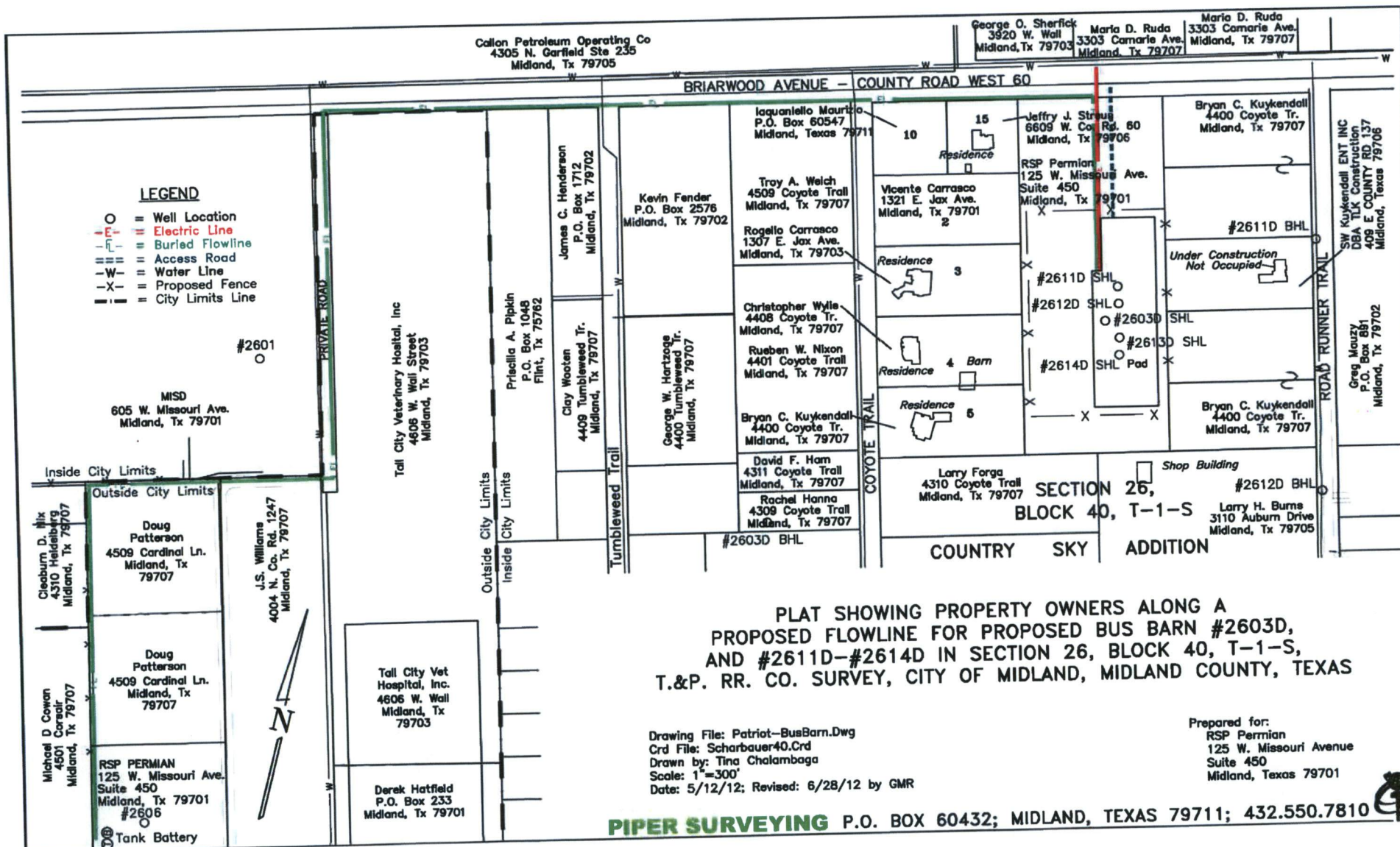
Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, 1983/86 NAD, Central Zone.

I, J. Stan Piper, Registered Professional Land Surveyor do hereby certify that this plat and legal description is true and correct to the best of my knowledge and ability as surveyed on the ground on various dates thru May 8, 2012.

Prepared for:
RSP Permian
125 W. Missouri Avenue
Suite 450
Midland, Texas 79701

J. Stan Piper
Registered Professional Land Surveyor #1974

PIPER SURVEYING P.O. BOX 60432; MIDLAND, TEXAS 79711; 432.550.7810



FLOW LINE LOCATION

CASE NO. 0-12-010



City Council Agenda

Approved for Agenda:

JNichols

City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a resolution approving the issuance of a permit to RSP Permian, L.L.C. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Bus Barn #2611D) located 590 feet from the north line and 1040 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south side of Briarwood Avenue, approximately 560 feet west of Roadrunner Trail.)

Purpose:

To consider a resolution approving the issuance of a permit to RSP Permian, L.L.C. (Operator), for a Permit to Drill an Oil and Gas Well within the City Limits (Bus Barn #2611D) located 590 feet from the north line and 1040 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south side of Briarwood Avenue, approximately 560 feet west of Roadrunner Trail.) The required 30-day public comment has passed and the Council may consider this request. Total of twenty notices were sent to property owners within the 860 ft. notification area. Ten letters of objection were returned. In addition thirty four letters of objection and fifteen letters of support were received from property owners outside of the 860 ft. notification area.

Recommended City Council Action

X Approve Deny Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommended application approval with the following requirements: address production method being by rod pump, identify type of fencing to be used around wells, dust control method on road, and emergency personnel contact. RSP Permian has addressed these requirements and updated the application. No variances are requested.

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

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO RSP PERMIAN, L.L.C. (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 590 FEET FROM THE NORTH LINE AND 1,040 FEET FROM THE EAST LINE, SECTION 26, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF BRIARWOOD AVENUE, APPROXIMATELY 560 FEET WEST OF ROADRUNNER TRAIL)

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 11, 2012; 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 590 feet from the north line and 1,040 feet from the east line, Section 26, Block 40, T-1-S, T&P RR Co. 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., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on November 13, 2012, considered the application of RSP Permian, L.L.C., dated June 20, 2012, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of RSP Permian, L.L.C., dated June 20, 2012, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of RSP Permian, L.L.C., Bus Barn #2611D oil and gas well shall be 590 feet from the north line and 1040 feet from the east line, Section 26 Blk 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of RSP Permian, L.L.C., which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from November 13 ,2012, through November 13, 2013, 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.

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

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

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

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

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of November, 2012.

RSP Permian, L.L.C.

By: _____

William R. Huck

Vice President /Operations

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

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

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

b.

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

c.

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

d.

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

e.

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

f.

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

g.

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

2.

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

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

a.

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

b.

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

c.

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

d.

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

e.

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

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

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

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

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

3.

Insurance.

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

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

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

x.

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

xi.

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

b.

Standard Commercial General Liability Policy.

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

c.

Excess or Umbrella Liability.

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

Environmental Pollution Liability Coverage.

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

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

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

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

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

iii.

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

f.

Automobile Liability Insurance.

i.

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

ii.

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

g.

Certificates of Insurance.

i.

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

ii.

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

iii.

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

iv.

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

v.

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

vi.

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

Indemnification.

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

Notice.

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

Notice addresses are as follows:

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

OPERATOR: _____
William R. Huck, Vice President/Operations

RSP Permian, L.L.C.
125 W. Missouri, Ste 450
Midland, Texas 79701
(432)818-1300

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

(L)

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

1.

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

2.

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

3.

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

4.

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

5.

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

6.

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

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

7.

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

8.

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

9.

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

10.

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

11.

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

12.

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

13.

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

14.

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

15.

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

16.

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

17.

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

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping.

a.

The City will require tree preservation and/or planting measures.

i.

A minimum number of eight trees shall be required to be planted within 25 feet from the outside perimeter of the wall or walls required herein.

ii.

At least 75 percent of the trees shall be evergreen.

iii.

The minimum size of each tree planted will be at least four inches in diameter measured one foot above ground level.

iv.

All trees that die within three years of the date of project completion will be replaced by another replacement tree. The replacement tree carries the same three-year replacement requirement. A replacement of any tree that dies within three years of planting will be replaced by the Operator or agent and a new three-year guarantee will begin at the time of replacement.

b.

The following list of trees is considered desirable. Planting of trees for this list is acceptable. Other trees will be considered by the City Manager. The approval of additional species will be judged on adaptability, long-term health and growing characteristic of the tree type.

Scientific Name	Common Name
Pinus elarica	Afghan Pine, Mondell Pine
Pinus Sylvestris	Russian Pine
Ulmas Crassifolia	Cedar Elm

c.

Operator may submit a plan in lieu of subparagraphs (M)2.a and b above. The Operator must describe the type, number, and location of trees to be planted under this Section. The City Council may consider any proposal prepared in accordance with this subparagraph. Any alternative plan shall not be effective unless approved by the City Council.

d.

Operator shall submit an irrigation plan detailing the measures to be taken to adequately irrigate all landscaping, including indicating the proposed water source for irrigation, and the proposed efforts to replace dead or dying screening vegetation. Upon request by the Operator, the City may provide access to fresh water to be used for such irrigation if water is readily available and in conformance with City policies and procedures.

e.

In such instances, where City water is not available, a variance may be requested. Additionally, when City water becomes available, the provisions of this subsection shall be required.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the

inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this

Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

- a. An amendment fee of \$1,000.00.
- b. A description of the proposed amendments.
- c. Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).
- d. Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.
- e. Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

- a. **No Material Change from Existing Permit.** If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.
- b. **Material Change from Existing Permit.** If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

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

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then

forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

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

OPERATOR: _____
William R. Huck, Vice President/Operations

RSP Permian, L. L. C.
125 W Missouri, Ste 450
Midland, Texas 79701
(432) 818-1300



APPLICATION FOR OIL AND GAS PERMIT

Bus Barn #2611D

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date 6/20/2012	Operator Name (must match W-1) RSP Permian, L.L.C.	Operator Address 125 W. Missouri, Ste 450 Midland, TX 79701
Representative Name William R. Huck	Representative Address (within Midland City Limits) same as above	Rep. Tele. 432.818.1300 Rep. Fax 432.818.1350
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:

24/7 Answering Services - No. 1 (Tele.):

No. 2 (Tele.):

Option B:

Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):
See Exhibit "A"

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):

RSP Permian, L.L.C.
See Exhibit "A" 24/7 Answering Service - 432.818.1300

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. See Exhibit "C"

2.

3.

ATTACHED AS EXHIBIT C is (a Title Opinion by _____, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from Jim Spradlin _____, 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):

Surface Use: Residential, Vacant Lots

Surface Ownership: See Exhibit D

ATTACHED AS EXHIBIT D is (a Title Opinion by _____, a licensed Texas Attorney/a Take-off from Jim Spradlin _____, 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: Bus Barn #2611D

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See attachment under Exhibit G

Legal Description of Proposed Well Site:

Surface Location: 590' FNL, 1040' FEL, Sec 26, Blk 40, T1S, T&P Survey

Bottom Hole: 467' FNL, 467' FEL, Sec 26, Blk 40, T1S, T&P 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: Electrical - Sharyland Utilities L.P.

Description of water source to be used during Drilling:

Water to be trucked onto well site.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

See Exhibit "H"

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: Exhibit O

Trench and encapsulate per RRC Rule 27(C)(10)(v)

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)].

RSP PERMIAN, L.L.C.

By: William R. Huck

WILLIAM R. HUCK, VICE PRESIDENT/OPERATIONS

STATE OF TEXAS §

COUNTY OF MIDLAND §

This instrument was acknowledged before me on the 20th day June, 2012, by William R. Huck, Vice President/Operations of RSP Permian, L.L.C., a Delaware Limited Liability Company, who personally appeared before me and, being first duly sworn, declared he signed the application in the capacity designated, if any, and further stated that he had read the above application and attached exhibits, and the statements therein are true and correct to the best of his knowledge.



Nona Nordstog
Notary Public, State of Texas



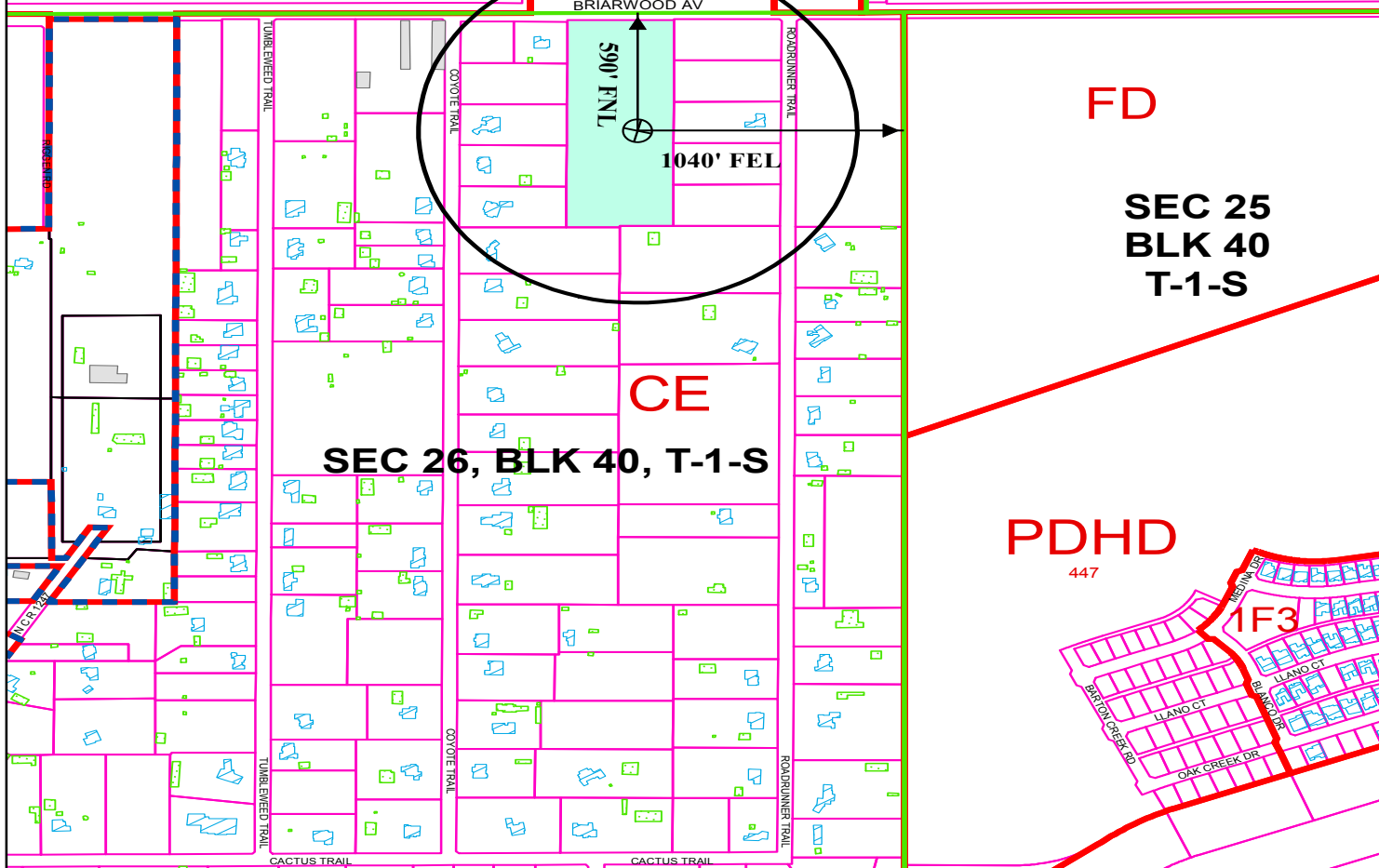
**SEC 23
BLK 40
T-1-S**

FD

CE

**SEC 24
BLK 40
T-1-S**

FD



SEC 26, BLK 40, T-1-S

CE

FD

**SEC 25
BLK 40
T-1-S**

**PDHD
447**

1F3

LOCATION AND ZONING MAP

O - 12 - 011

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 590' FNL and 1040' FEL, Section 26, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Bus Barn #2611D

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

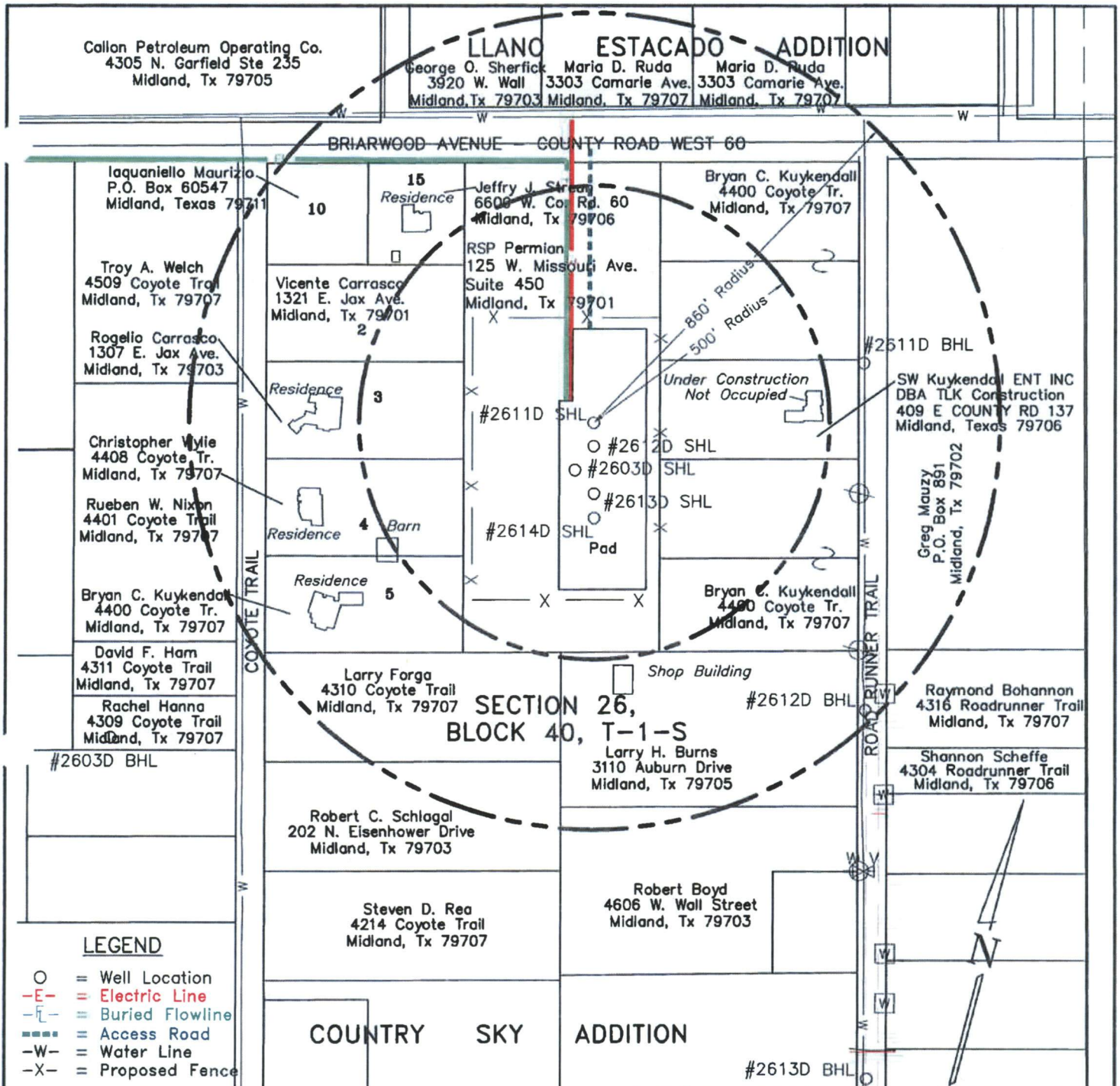
ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT
PD	PLANNED DISTRICT
AE	AGRICULTURE ESTATE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING
MH	MOBILE HOME DWELLING
TH	TOWNHOUSE DWELLING
2F	TWO-FAMILY DWELLING
MF1, MF2	MULTIPLE FAMILY DWELLING

BP	BUSINESS PARK
P	PARKING
01, 02	OFFICE
NS	NEIGHBORHOOD SERVICE
LR1, LR2, LR3	LOCAL RETAIL
C1, C2, C3	COMMERCIAL
IP, JP1, IP2, IP3	INDUSTRIAL PARK
LI	LIGHT INDUSTRY
HI	HEAVY INDUSTRY

BUSINESS PARK
PARKING
OFFICE
NEIGHBORHOOD SERVICE
LOCAL RETAIL
COMMERCIAL
INDUSTRIAL PARK
LIGHT INDUSTRY
HEAVY INDUSTRY

31.41



Drawing File: Patriot-BusBarn.Dwg; Drawn by: Tina Chalambaga; Scale: 1"=300'; Date: 5/15/12; Revised: 6/28/12 by GMR

**PLAT SHOWING PROPERTY OWNERS WITHIN 500' & 860' RADIUS,
ACCESS ROAD, PIPELINE AND ELECTRIC LINE FOR
PROPOSED BUS BARN #2611D, 590' FNL & 1040' FEL
IN SECTION 26, BLOCK 40, T-1-S, T.&P. RR. CO. SURVEY,
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS**

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, 1983/86 NAD, Central Zone.

I, J. Stan Piper, Registered Professional Land Surveyor do hereby certify that this plat and legal description is true and correct to the best of my knowledge and ability as surveyed on the ground on various dates thru May 8, 2012.

J. Stan Piper
Registered Professional Land Surveyor #1974

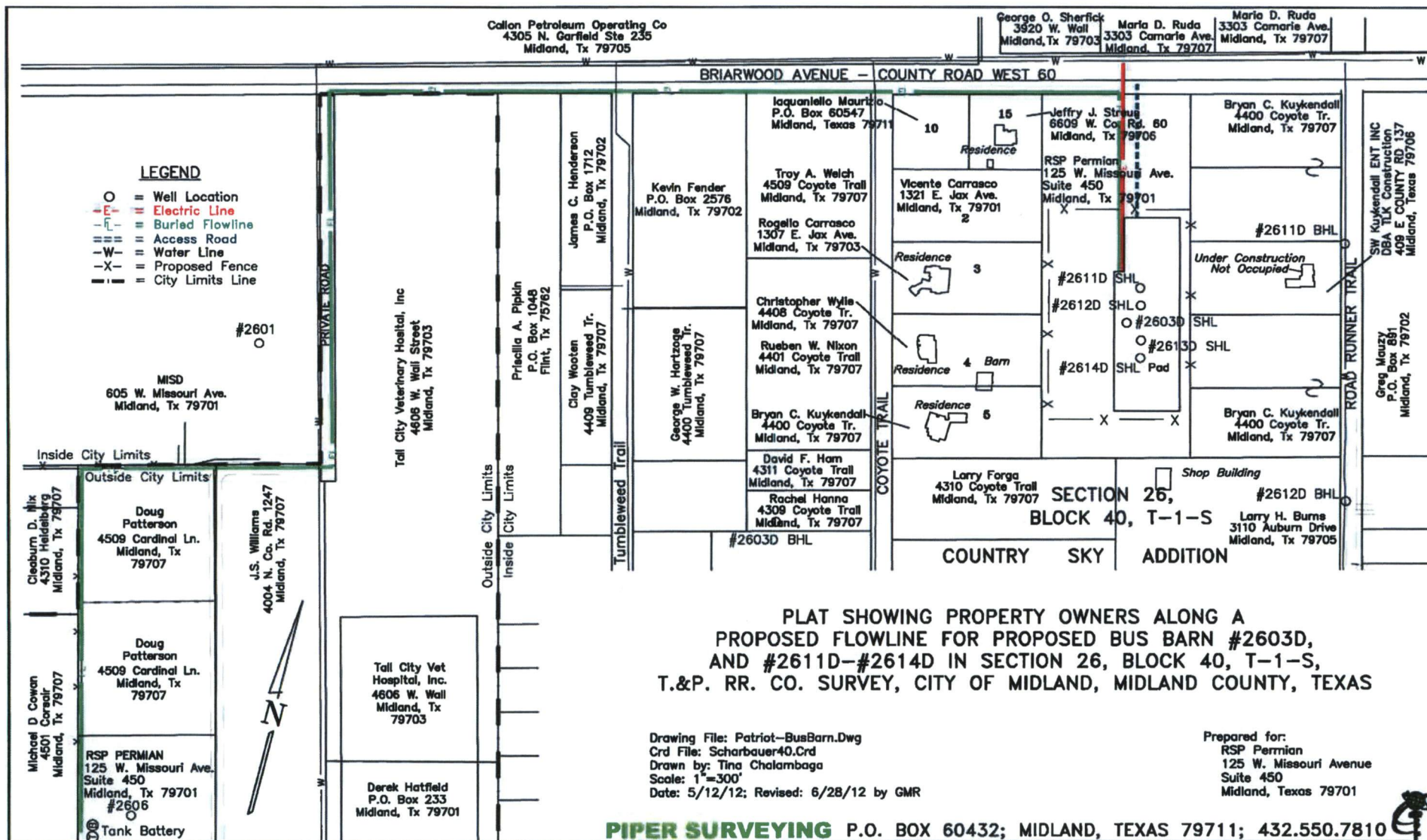
Prepared for:
RSP Permian
125 W. Missouri Avenue
Suite 450
Midland, Texas 79701

PIPER SURVEYING P.O. BOX 60432; MIDLAND, TEXAS 79711; 432.550.7810

DRILL SITE MAP

31.42

CASE NO 0-12-011



FLOW LINE LOCATION

CASE NO. 0-12-011



City Council Agenda

Approved for Agenda:

JNichols

City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a resolution approving the issuance of a permit to RSP Permian, L.L.C. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Bus Barn #2612D) located 640 feet from the north line and 1040 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south side of Briarwood Avenue, approximately 560 feet west of Roadrunner Trail.)

Purpose:

To consider a resolution approving the issuance of a permit to RSP Permian, L.L.C. (Operator), for a Permit to Drill an Oil and Gas Well within the City Limits (Bus Barn #2612D) located 640 feet from the north line and 1040 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south side of Briarwood Avenue, approximately 560 feet west of Roadrunner Trail.) The required 30-day public comment has passed and the Council may consider this request. Total of nineteen notices were sent to property owners within the 860 ft. notification area. Ten letters of objection were returned. In addition thirty four letters of objection and fifteen letters of support were received from property owners outside of the 860 ft. notification area.

Recommended City Council Action

X Approve Deny Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommended application approval with the following requirements: address production method being by rod pump, identify type of fencing to be used around wells, dust control method on road, and emergency personnel contact. RSP Permian has addressed these requirements and updated the application. No variances are requested.

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

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO RSP PERMIAN, L.L.C. (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 640 FEET FROM THE NORTH LINE AND 1,040 FEET FROM THE EAST LINE, SECTION 26, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF BRIARWOOD AVENUE, APPROXIMATELY 560 FEET WEST OF ROADRUNNER TRAIL)

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 11, 2012; 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 640 feet from the north line and 1,040 feet from the east line, Section 26, Block 40, T-1-S, T&P RR Co. 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., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on November 13, 2012, considered the application of RSP Permian, L.L.C., dated June 20, 2012, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of RSP Permian, L.L.C., dated June 20, 2012, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of RSP Permian, L.L.C., Bus Barn #2612D oil and gas well shall be 640 feet from the north line and 1040 feet from the east line, Section 26 Blk 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of RSP Permian, L.L.C., which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from November 13 ,2012, through November 13, 2013, 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.

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

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

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

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

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of November, 2012.

RSP Permian, L.L.C.

By: _____

William R. Huck

Vice President /Operations

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

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

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

b.

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

c.

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

d.

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

e.

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

f.

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

g.

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

2.

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

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

a.

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

b.

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

c.

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

d.

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

e.

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

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

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

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

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

3.

Insurance.

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

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

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

x.

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

xi.

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

b.

Standard Commercial General Liability Policy.

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

c.

Excess or Umbrella Liability.

\$1,000,000	Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
-------------	---

\$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: _____
William R. Huck, Vice President/Operations

RSP Permian, L.L.C.
125 W. Missouri, Ste 450
Midland, Texas 79701
(432)818-1300

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

(L)

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

1.

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

2.

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

3.

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

4.

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

5.

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

6.

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

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

7.

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

8.

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

9.

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

10.

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

11.

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

12.

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

13.

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

14.

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

15.

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

16.

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

17.

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

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten(10)business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping.

a.

The City will require tree preservation and/or planting measures.

i.

A minimum number of eight trees shall be required to be planted within 25 feet from the outside perimeter of the wall or walls required herein.

ii.

At least 75 percent of the trees shall be evergreen.

iii.

The minimum size of each tree planted will be at least four inches in diameter measured one foot above ground level.

iv.

All trees that die within three years of the date of project completion will be replaced by another replacement tree. The replacement tree carries the same three-year replacement requirement. A replacement of any tree that dies within three years of planting will be replaced by the Operator or agent and a new three-year guarantee will begin at the time of replacement.

b.

The following list of trees is considered desirable. Planting of trees for this list is acceptable. Other trees will be considered by the City Manager. The approval of additional species will be judged on adaptability, long-term health and growing characteristic of the tree type.

Scientific Name	Common Name
Pinus elarica	Afghan Pine, Mondell Pine
Pinus Sylvestris	Russian Pine
Ulmas Crassifolia	Cedar Elm

c.

Operator may submit a plan in lieu of subparagraphs (M)2.a and b above. The Operator must describe the type, number, and location of trees to be planted under this Section. The City Council may consider any proposal prepared in accordance with this subparagraph. Any alternative plan shall not be effective unless approved by the City Council.

d.

Operator shall submit an irrigation plan detailing the measures to be taken to adequately irrigate all landscaping, including indicating the proposed water source for irrigation, and the proposed efforts to replace dead or dying screening vegetation. Upon request by the Operator, the City may provide access to fresh water to be used for such irrigation if water is readily available and in conformance with City policies and procedures.

e.

In such instances, where City water is not available, a variance may be requested. Additionally, when City water becomes available, the provisions of this subsection shall be required.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the

inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this

Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

- a. An amendment fee of \$1,000.00.
- b. A description of the proposed amendments.
- c. Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).
- d. Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.
- e. Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

- a. **No Material Change from Existing Permit.** If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.
- b. **Material Change from Existing Permit.** If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

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

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then

forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

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

OPERATOR: _____
William R. Huck, Vice President/Operations

RSP Permian, L. L. C.
125 W Missouri, Ste 450
Midland, Texas 79701
(432) 818-1300



0-12-012

APPLICATION FOR OIL AND GAS PERMIT

Bus Barn #2612D

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 6/20/2012	Operator Name (must match W-1) RSP Permian, L.L.C.	Operator Address 125 W. Missouri, Ste 450 Midland, TX 79701
Representative Name William R. Huck	Representative Address (within Midland City Limits) same as above	Rep. Tele. 432.818.1300 Rep. Fax 432.818.1350
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: 24/7 Answering Services - No. 1 (Tele.): _____ No. 2 (Tele.): _____ Option B: Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): See Exhibit "A" Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): See Exhibit "A" RSP Permian, L.L.C. 24/7 Answering Service - 432.818.1300		
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. See Exhibit "C" 2. 3.		
ATTACHED AS EXHIBIT C is (a Title Opinion by _____, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from Jim Spradlin _____, 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): Surface Use: Residential, Vacant Lots Surface Ownership: See Exhibit D		
ATTACHED AS EXHIBIT D is (a Title Opinion by _____, a licensed Texas Attorney/a Take-off from Jim Spradlin _____, 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: Bus Barn #2612D

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See attachment under Exhibit G

Legal Description of Proposed Well Site:

Surface Location: 640' FNL, 1040' FEL, Sec 26, Blk 40, T1S, T&P Survey

Bottom Hole: 1200' FNL, 467' FEL, Sec 26, Blk 40, T1S, T&P 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: Electrical - Sharyland Utilities L.P.

Description of water source to be used during Drilling:

Water to be trucked onto well site.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

See Exhibit "H"

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

Exhibit O

Trench and encapsulate per RRC Rule 27(C) (10) (v)

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)].

RSP PERMIAN, L.L.C.

By: William R. Huck

WILLIAM R. HUCK, VICE PRESIDENT/OPERATIONS

STATE OF TEXAS §

COUNTY OF MIDLAND §

This instrument was acknowledged before me on the 20th day June, 2012, by William R. Huck, Vice President/Operations of RSP Permian, L.L.C., a Delaware Limited Liability Company, who personally appeared before me and, being first duly sworn, declared he signed the application in the capacity designated, if any, and further stated that he had read the above application and attached exhibits, and the statements therein are true and correct to the best of his knowledge.



Nona Nordstog
Notary Public, State of Texas



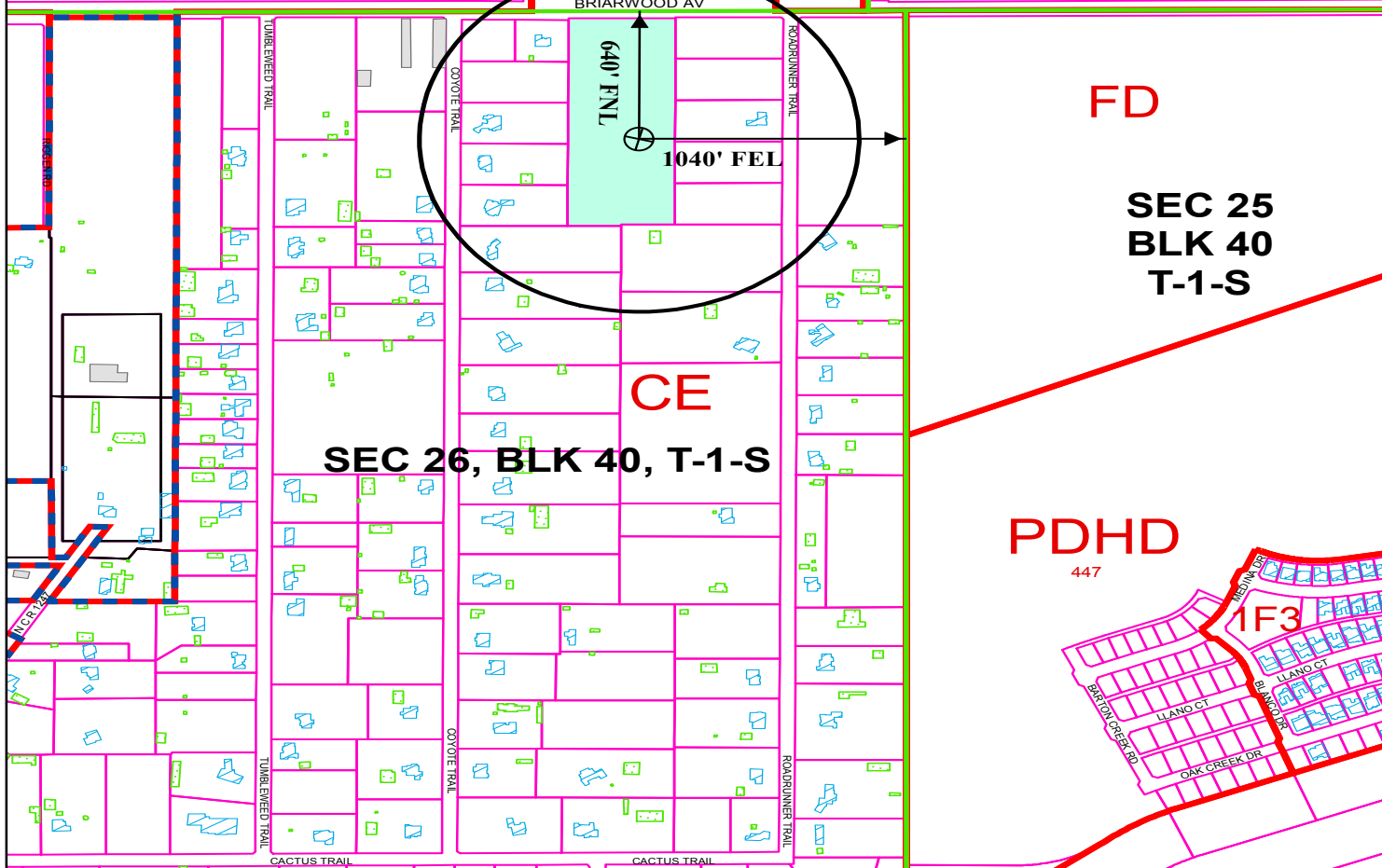
**SEC 23
BLK 40
T-1-S**

FD

CE

**SEC 24
BLK 40
T-1-S**

FD



LOCATION AND ZONING MAP

O - 12 - 012

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 640' FNL and 1040' FEL, Section 26, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Bus Barn #2612D

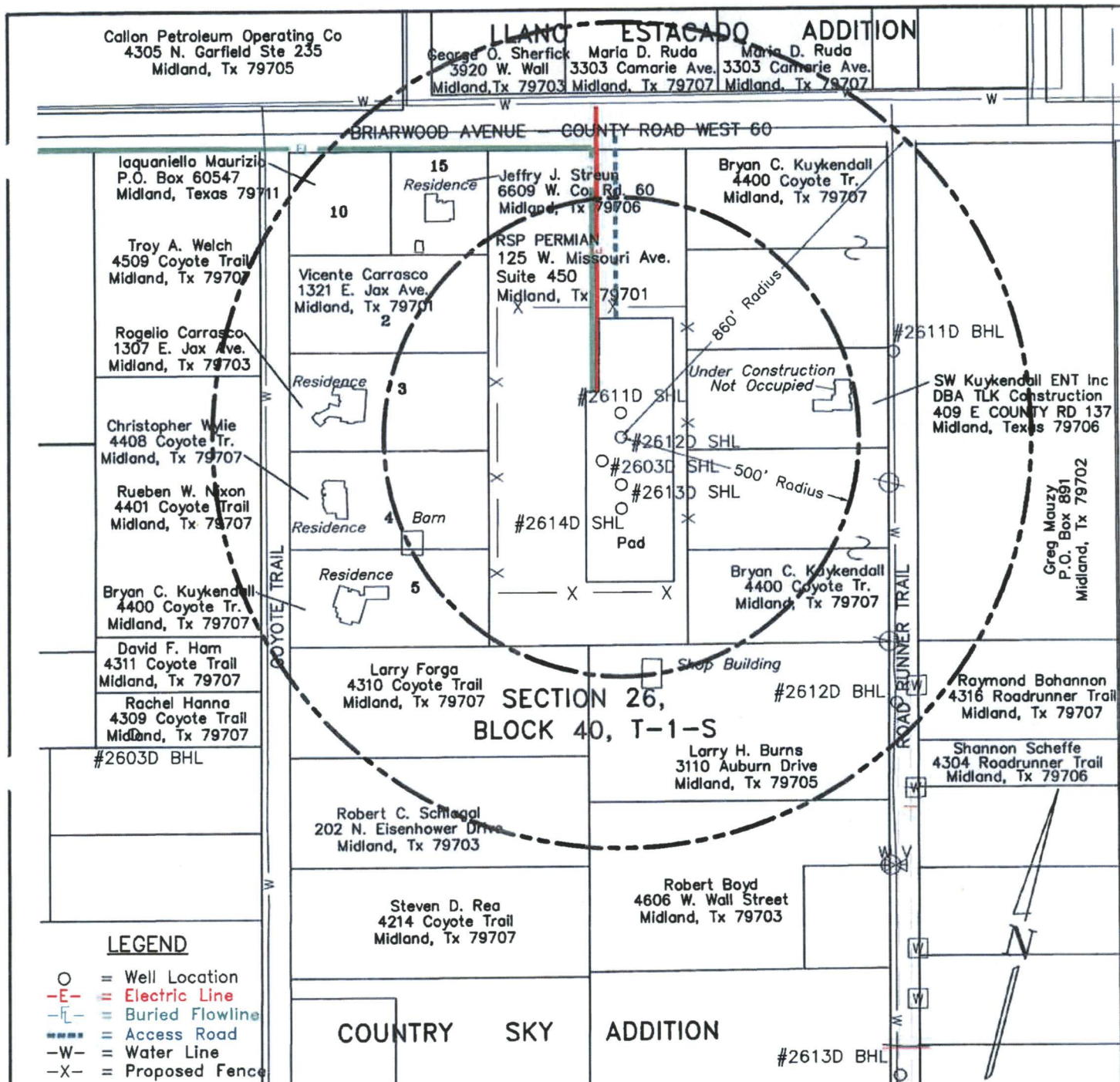
LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
2F	TWO-FAMILY DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY

32.41



Drawing File: Patriot-BusBarn.Dwg; Drawn by: Tina Chalmabaga; Scale: 1"=300'; Date: 5/15/12; Revised: 6/28/12 by GMR

**PLAT SHOWING PROPERTY OWNERS WITHIN 500' & 860' RADIUS,
ACCESS ROAD, PIPELINE AND ELECTRIC LINE FOR
PROPOSED BUS BARN #2612D, 640' FNL & 1040' FEL
IN SECTION 26, BLOCK 40, T-1-S, T.&P. RR. CO. SURVEY,
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS**

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, 1983/86 NAD, Central Zone.

I, J. Stan Piper, Registered Professional Land Surveyor do hereby certify that this plat and legal description is true and correct to the best of my knowledge and ability as surveyed on the ground on various dates thru May 8, 2012.

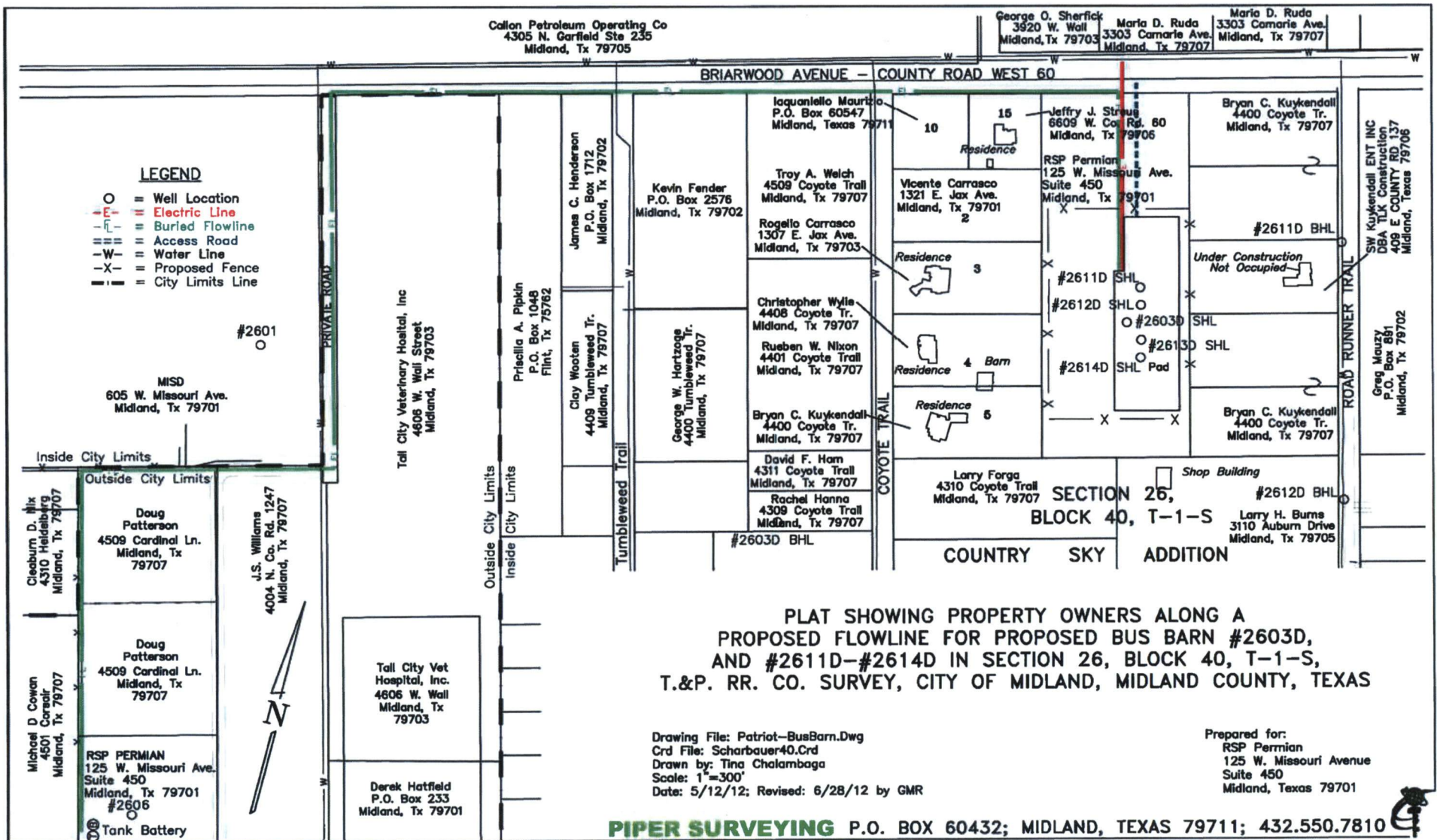
J. Stan Piper
Registered Professional Land Surveyor #1974

Prepared for:
RSP Permian
125 W. Missouri Avenue
Suite 450
Midland, Texas 79701

PIPER SURVEYING P.O. BOX 60432; MIDLAND, TEXAS 79711; 432.550.7810

DRILL SITE MAP

CASE NO. 0-12-012 32.42



FLOW LINE LOCATION

CASE NO. 0-12-612



City Council Agenda

Approved for Agenda:

JNichols

City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a resolution approving the issuance of a permit to RSP Permian, L.L.C. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Bus Barn #2613D) located 740 feet from the north line and 1040 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south side of Briarwood Avenue, approximately 560 feet west of Roadrunner Trail.)

Purpose:

To consider a resolution approving the issuance of a permit to RSP Permian, L.L.C. (Operator), for a Permit to Drill an Oil and Gas Well within the City Limits (Bus Barn #2613D) located 740 feet from the north line and 1040 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south side of Briarwood Avenue, approximately 560 feet west of Roadrunner Trail.) The required 30-day public comment has passed and the Council may consider this request. Total of twenty notices were sent to property owners within the 860 ft. notification area. Eleven letters of objection were returned. In addition thirty three letters of objection and fifteen letters of support were received from property owners outside of the 860 ft. notification area.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommended application approval with the following requirements: address production method being by rod pump, identify type of fencing to be used around wells, dust control method on road, and emergency personnel contact. RSP Permian has addressed these requirements and updated the application. No variances are requested.

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

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO RSP PERMIAN, L.L.C. (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 740 FEET FROM THE NORTH LINE AND 1,040 FEET FROM THE EAST LINE, SECTION 26, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF BRIARWOOD AVENUE, APPROXIMATELY 560 FEET WEST OF ROADRUNNER TRAIL)

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 11, 2012; 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 740 feet from the north line and 1,040 feet from the east line, Section 26, Block 40, T-1-S, T&P RR Co. 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., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on November 13, 2012, considered the application of RSP Permian, L.L.C., dated June 20, 2012, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of RSP Permian, L.L.C., dated June 20, 2012, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of RSP Permian, L.L.C., Bus Barn #2613D oil and gas well shall be 740 feet from the north line and 1040 feet from the east line, Section 26 Blk 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of RSP Permian, L.L.C., which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from November 13 ,2012, through November 13, 2013, 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.

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

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

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

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

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of November, 2012.

RSP Permian, L.L.C.

By: _____

William R. Huck

Vice President /Operations

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

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

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

b.

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

c.

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

d.

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

e.

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

f.

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

g.

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

2.

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

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

a.

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

b.

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

c.

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

d.

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

e.

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

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

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

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

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

3.

Insurance.

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

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

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

x.

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

xi.

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

b.

Standard Commercial General Liability Policy.

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

c.

Excess or Umbrella Liability.

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

Environmental Pollution Liability Coverage.

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

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

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

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

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

iii.

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

f.

Automobile Liability Insurance.

i.

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

ii.

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

g.

Certificates of Insurance.

i.

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

ii.

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

iii.

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

iv.

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

v.

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

vi.

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

Indemnification.

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

Notice.

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

Notice addresses are as follows:

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

OPERATOR: _____
William R. Huck, Vice President/Operations

RSP Permian, L.L.C.
125 W. Missouri, Ste 450
Midland, Texas 79701
(432)818-1300

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

(L)

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

1.

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

2.

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

3.

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

4.

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

5.

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

6.

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

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

7.

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

8.

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

9.

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

10.

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

11.

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

12.

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

13.

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

14.

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

15.

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

16.

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

17.

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

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping.

a.

The City will require tree preservation and/or planting measures.

i.

A minimum number of eight trees shall be required to be planted within 25 feet from the outside perimeter of the wall or walls required herein.

ii.

At least 75 percent of the trees shall be evergreen.

iii.

The minimum size of each tree planted will be at least four inches in diameter measured one foot above ground level.

iv.

All trees that die within three years of the date of project completion will be replaced by another replacement tree. The replacement tree carries the same three-year replacement requirement. A replacement of any tree that dies within three years of planting will be replaced by the Operator or agent and a new three-year guarantee will begin at the time of replacement.

b.

The following list of trees is considered desirable. Planting of trees for this list is acceptable. Other trees will be considered by the City Manager. The approval of additional species will be judged on adaptability, long-term health and growing characteristic of the tree type.

Scientific Name	Common Name
Pinus elarica	Afghan Pine, Mondell Pine
Pinus Sylvestris	Russian Pine
Ulmas Crassifolia	Cedar Elm

c.

Operator may submit a plan in lieu of subparagraphs (M)2.a and b above. The Operator must describe the type, number, and location of trees to be planted under this Section. The City Council may consider any proposal prepared in accordance with this subparagraph. Any alternative plan shall not be effective unless approved by the City Council.

d.

Operator shall submit an irrigation plan detailing the measures to be taken to adequately irrigate all landscaping, including indicating the proposed water source for irrigation, and the proposed efforts to replace dead or dying screening vegetation. Upon request by the Operator, the City may provide access to fresh water to be used for such irrigation if water is readily available and in conformance with City policies and procedures.

e.

In such instances, where City water is not available, a variance may be requested. Additionally, when City water becomes available, the provisions of this subsection shall be required.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the

inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this

Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

- a. An amendment fee of \$1,000.00.
- b. A description of the proposed amendments.
- c. Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).
- d. Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.
- e. Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

- a. **No Material Change from Existing Permit.** If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.
- b. **Material Change from Existing Permit.** If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

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

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then

forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

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

OPERATOR: _____
William R. Huck, Vice President/Operations

RSP Permian, L. L. C.
125 W Missouri, Ste 450
Midland, Texas 79701
(432) 818-1300



0-12-013

APPLICATION FOR OIL AND GAS PERMIT

Bus Barn #2613D

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 6/20/2012	Operator Name (must match W-1) RSP Permian, L.L.C.	Operator Address 125 W. Missouri, Ste 450 Midland, TX 79701
Representative Name William R. Huck	Representative Address (within Midland City Limits) same as above	Rep. Tele. 432.818.1300 Rep. Fax 432.818.1350
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: 24/7 Answering Services - No. 1 (Tele.): No. 2 (Tele.): Option B: Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): See Exhibit "A" Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): RSP Permian, L.L.C. See Exhibit "A" 24/7 Answering Service - 432.818.1300		
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. See Exhibit "C" 2. 3.		
ATTACHED AS EXHIBIT C is (a Title Opinion by _____, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from Jim Spradlin _____, 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): Surface Use: Residential, Vacant Lots Surface Ownership: See Exhibit D		
ATTACHED AS EXHIBIT D is (a Title Opinion by _____, a licensed Texas Attorney/a Take-off from Jim Spradlin _____, 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: Bus Barn #2613D

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See attachment under Exhibit G

Legal Description of Proposed Well Site:

Surface Location: 740' FNL, 1040' FEL, Sec 26, Blk 40, T1S, T&P Survey

Bottom Hole: 1980' FNL, 467' FEL, Sec 26, Blk 40, T1S, T&P 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: Electrical - Sharyland Utilities L.P.

Description of water source to be used during Drilling:

Water to be trucked onto well site.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

See Exhibit "H"

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

Exhibit O

Trench and encapsulate per RRC Rule 27(C)(10)(v)

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)].

RSP PERMIAN, L.L.C.

BY: William R. Huck

WILLIAM R. HUCK, VICE PRESIDENT/OPERATIONS

STATE OF TEXAS §

COUNTY OF MIDLAND §

This instrument was acknowledged before me on the 20th day June, 2012, by William R. Huck, Vice President/Operations of RSP Permian, L.L.C., a Delaware Limited Liability Company, who personally appeared before me and, being first duly sworn, declared he signed the application in the capacity designated, if any, and further stated that he had read the above application and attached exhibits, and the statements therein are true and correct to the best of his knowledge.



Nonna Nordstog

Notary Public, State of Texas



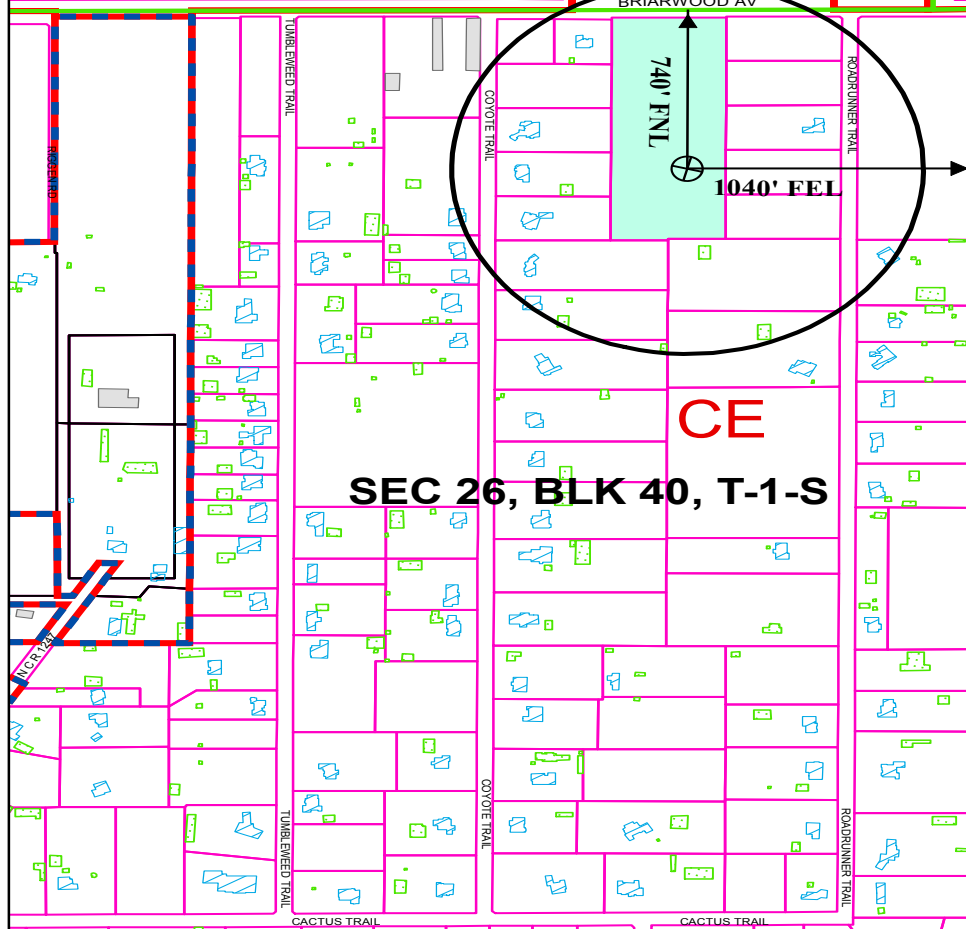
**SEC 23
BLK 40
T-1-S**

FD

CE

**SEC 24
BLK 40
T-1-S**

FD



FD

**SEC 25
BLK 40
T-1-S**

**PDHD
447**

1F3

LOCATION AND ZONING MAP

O - 12 - 013

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 740' FNL and 1040' FEL, Section 26, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Bus Barn #2613D

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

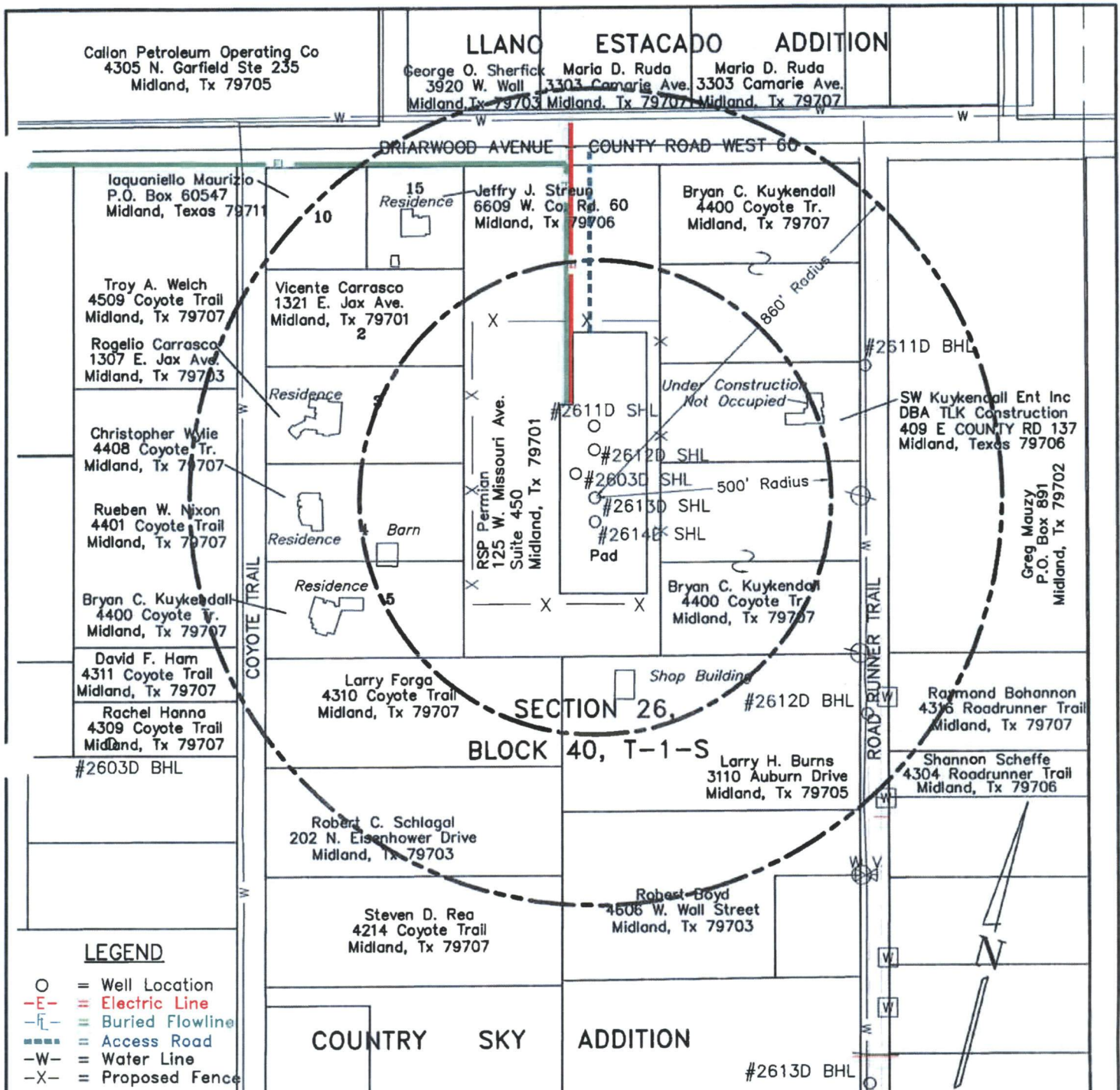
ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT
PD	PLANNED DISTRICT
AE	AGRICULTURE ESTATE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING
MH	MOBILE HOME DWELLING
TH	TOWNHOUSE DWELLING
2F	TWO-FAMILY DWELLING
MF1, MF2	MULTIPLE FAMILY DWELLING

BP	BUSINESS PARK
P	PARKING
01, 02	OFFICE
NS	NEIGHBORHOOD SERVICE
LR1, LR2, LR3	LOCAL RETAIL
C1, C2, C3	COMMERCIAL
IP, JP1, IP2, IP3	INDUSTRIAL PARK
LI	LIGHT INDUSTRY
HI	HEAVY INDUSTRY

BUSINESS PARK
PARKING
OFFICE
NEIGHBORHOOD SERVICE
LOCAL RETAIL
COMMERCIAL
INDUSTRIAL PARK
LIGHT INDUSTRY
HEAVY INDUSTRY

33.41



Drawing File: Patriot-BusBarn.Dwg; Drawn by: Tina Chalambaga; Scale: 1"=300'; Date: 5/15/12; Revised: 6/28/12 by GMR

**PLAT SHOWING PROPERTY OWNERS WITHIN 500' & 860' RADIUS,
 ACCESS ROAD, PIPELINE AND ELECTRIC LINE FOR
 PROPOSED BUS BARN #2613D, 740' FNL & 1040' FEL
 IN SECTION 26, BLOCK 40, T-1-S, T.&P. RR. CO. SURVEY,
 CITY OF MIDLAND, MIDLAND COUNTY, TEXAS**

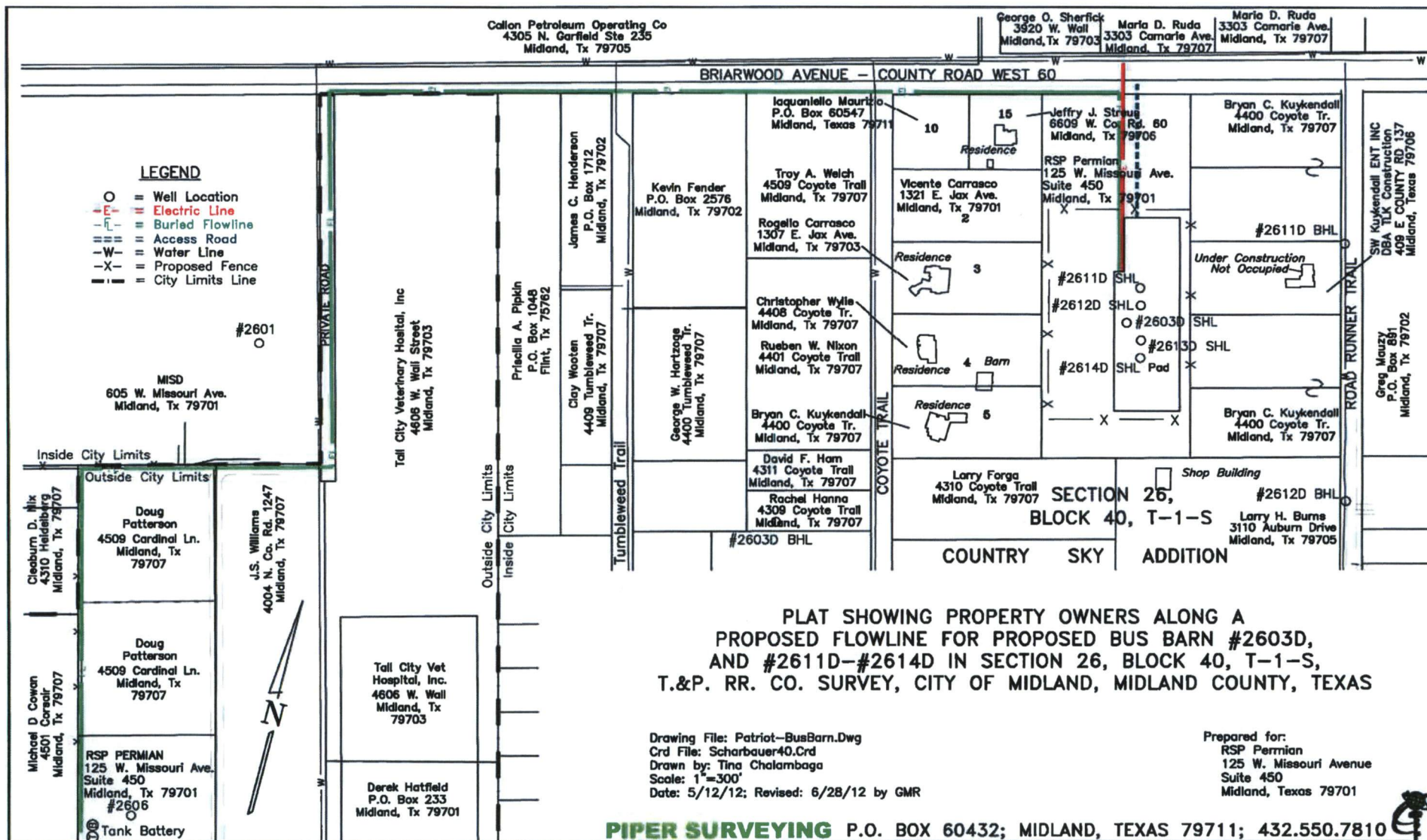
Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, 1983/86 NAD, Central Zone.

I, J. Stan Piper, Registered Professional Land Surveyor do hereby certify that this plat and legal description is true and correct to the best of my knowledge and ability as surveyed on the ground on various dates thru May 8, 2012.

Prepared for:
 RSP Permian
 125 W. Missouri Avenue
 Suite 450
 Midland, Texas 79701

J. Stan Piper
 Registered Professional Land Surveyor #1974

PIPER SURVEYING P.O. BOX 60432; MIDLAND, TEXAS 79711; 432.550.7810



FLOW LINE LOCATION

CASE NO. 0-12-011



City Council Agenda

Approved for Agenda:

JNichols

City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a resolution approving the issuance of a permit to RSP Permian, L.L.C. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Bus Barn #2614D) located 790 feet from the north line and 1040 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south side of Briarwood Avenue, approximately 560 feet west of Roadrunner Trail.)

Purpose:

To consider a resolution approving the issuance of a permit to RSP Permian, L.L.C. (Operator), for a Permit to Drill an Oil and Gas Well within the City Limits (Bus Barn #2614D) located 790 feet from the north line and 1040 feet from the east line located in Section 26, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the south side of Briarwood Avenue, approximately 560 feet west of Roadrunner Trail.) The required 30-day public comment has passed and the Council may consider this request. Total of twenty notices were sent to property owners within the 860 ft. notification area. Thirteen letters of objection were returned. In addition thirty two letters of objection and fifteen letters of support were received from property owners outside of the 860 ft. notification area.

Recommended City Council Action

X Approve Deny Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommended application approval with the following requirements: address production method being by rod pump, identify type of fencing to be used around wells, dust control method on road, and emergency personnel contact. RSP Permian has addressed these requirements and updated the application. No variances are requested.

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

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO RSP PERMIAN, L.L.C. (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 790 FEET FROM THE NORTH LINE AND 1,040 FEET FROM THE EAST LINE, SECTION 26, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF BRIARWOOD AVENUE, APPROXIMATELY 560 FEET WEST OF ROADRUNNER TRAIL)

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 11, 2012; 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 790 feet from the north line and 1,040 feet from the east line, Section 26, Block 40, T-1-S, T&P RR Co. 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., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on November 13, 2012, considered the application of RSP Permian, L.L.C., dated June 20, 2012, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of RSP Permian, L.L.C., dated June 20, 2012, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of RSP Permian, L.L.C., Bus Barn #2614D oil and gas well shall be 790 feet from the north line and 1040 feet from the east line, Section 26 Blk 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of RSP Permian, L.L.C., which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from November 13 ,2012, through November 13, 2013, 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.

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

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

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

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

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of November, 2012.

RSP Permian, L.L.C.

By: _____

William R. Huck

Vice President /Operations

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

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

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

b.

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

c.

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

d.

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

e.

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

f.

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

g.

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

2.

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

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

a.

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

b.

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

c.

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

d.

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

e.

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

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

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

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

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

3.

Insurance.

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

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

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

x.

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

xi.

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

b.

Standard Commercial General Liability Policy.

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

c.

Excess or Umbrella Liability.

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

Environmental Pollution Liability Coverage.

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

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

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

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

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

iii.

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

f.

Automobile Liability Insurance.

i.

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

ii.

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

g.

Certificates of Insurance.

i.

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

ii.

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

iii.

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

iv.

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

v.

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

vi.

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

Indemnification.

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

Notice.

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

Notice addresses are as follows:

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

OPERATOR: _____
William R. Huck, Vice President/Operations

RSP Permian, L.L.C.
125 W. Missouri, Ste 450
Midland, Texas 79701
(432)818-1300

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

(L)

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

1.

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

2.

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

3.

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

4.

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

5.

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

6.

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

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

7.

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

8.

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

9.

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

10.

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

11.

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

12.

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

13.

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

14.

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

15.

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

16.

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

17.

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

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping.

a.

The City will require tree preservation and/or planting measures.

i.

A minimum number of eight trees shall be required to be planted within 25 feet from the outside perimeter of the wall or walls required herein.

ii.

At least 75 percent of the trees shall be evergreen.

iii.

The minimum size of each tree planted will be at least four inches in diameter measured one foot above ground level.

iv.

All trees that die within three years of the date of project completion will be replaced by another replacement tree. The replacement tree carries the same three-year replacement requirement. A replacement of any tree that dies within three years of planting will be replaced by the Operator or agent and a new three-year guarantee will begin at the time of replacement.

b.

The following list of trees is considered desirable. Planting of trees for this list is acceptable. Other trees will be considered by the City Manager. The approval of additional species will be judged on adaptability, long-term health and growing characteristic of the tree type.

Scientific Name	Common Name
Pinus elarica	Afghan Pine, Mondell Pine
Pinus Sylvestris	Russian Pine
Ulmas Crassifolia	Cedar Elm

c.

Operator may submit a plan in lieu of subparagraphs (M)2.a and b above. The Operator must describe the type, number, and location of trees to be planted under this Section. The City Council may consider any proposal prepared in accordance with this subparagraph. Any alternative plan shall not be effective unless approved by the City Council.

d.

Operator shall submit an irrigation plan detailing the measures to be taken to adequately irrigate all landscaping, including indicating the proposed water source for irrigation, and the proposed efforts to replace dead or dying screening vegetation. Upon request by the Operator, the City may provide access to fresh water to be used for such irrigation if water is readily available and in conformance with City policies and procedures.

e.

In such instances, where City water is not available, a variance may be requested. Additionally, when City water becomes available, the provisions of this subsection shall be required.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the

inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this

Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

- a. An amendment fee of \$1,000.00.
- b. A description of the proposed amendments.
- c. Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).
- d. Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.
- e. Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

- a. **No Material Change from Existing Permit.** If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.
- b. **Material Change from Existing Permit.** If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

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

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then

forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

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

OPERATOR: _____
William R. Huck, Vice President/Operations

RSP Permian, L. L. C.
125 W Missouri, Ste 450
Midland, Texas 79701
(432) 818-1300



APPLICATION FOR OIL AND GAS PERMIT

Bus Barn #2614D

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 6/20/2012	Operator Name (must match W-1) RSP Permian, L.L.C.	Operator Address 125 W. Missouri, Ste 450 Midland, TX 79701
Representative Name William R. Huck	Representative Address (within Midland City Limits) same as above	Rep. Tele. 432.818.1300 Rep. Fax 432.818.1350
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: 24/7 Answering Services - No. 1 (Tele.): _____ No. 2 (Tele.): _____ Option B: Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): See Exhibit "A"		
Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): See Exhibit "A" RSP Permian, L.L.C. 24/7 Answering Service - 432.818.1300		
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. See Exhibit "C" 2. 3.		
ATTACHED AS EXHIBIT C is (a Title Opinion by _____, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from Jim Spradlin _____, 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): Surface Use: Residential, Vacant Lots Surface Ownership: See Exhibit D		
ATTACHED AS EXHIBIT D is (a Title Opinion by _____, a licensed Texas Attorney/a Take-off from Jim Spradlin _____, 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: Bus Barn #2614D

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See attachment under Exhibit G

Legal Description of Proposed Well Site:

Surface Location: 790' FNL, 1040' FEL, Sec 26, Blk 40, T1S, T&P Survey

Bottom Hole: 2220' FNL, 1760' FEL, Sec 26, Blk 40, T1S, T&P 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: Electrical - Sharyland Utilities L.P.

Description of water source to be used during Drilling:

Water to be trucked onto well site.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

See Exhibit "H"

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: Exhibit O

Trench and encapsulate per RRC Rule 27(C)(10)(v)

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)].

RSP PERMIAN, L.L.C.

BY: William R. Huck

WILLIAM R. HUCK, VICE PRESIDENT/OPERATIONS

STATE OF TEXAS §

COUNTY OF MIDLAND §

This instrument was acknowledged before me on the 20th day June, 2012, by William R. Huck, Vice President/Operations of RSP Permian, L.L.C., a Delaware Limited Liability Company, who personally appeared before me and, being first duly sworn, declared he signed the application in the capacity designated, if any, and further stated that he had read the above application and attached exhibits, and the statements therein are true and correct to the best of his knowledge.



Nona Nordstog
Notary Public, State of Texas



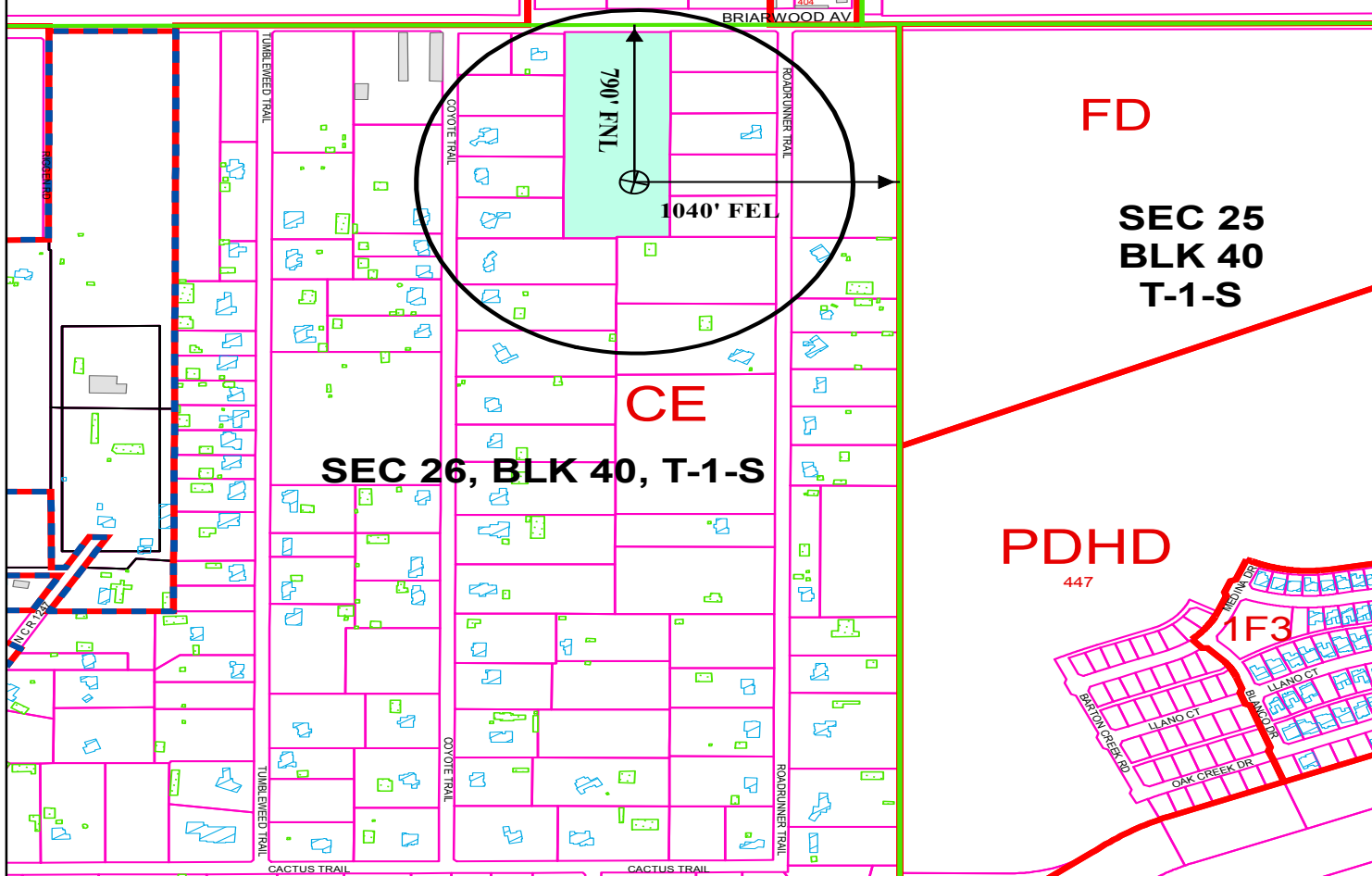
**SEC 23
BLK 40
T-1-S**

FD

CE

**SEC 24
BLK 40
T-1-S**

FD



SEC 26, BLK 40, T-1-S

CE

FD

**SEC 25
BLK 40
T-1-S**

**PDHD
447**

1F3

LOCATION AND ZONING MAP

O - 12 - 014

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 790' FNL and 1040' FEL, Section 26, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

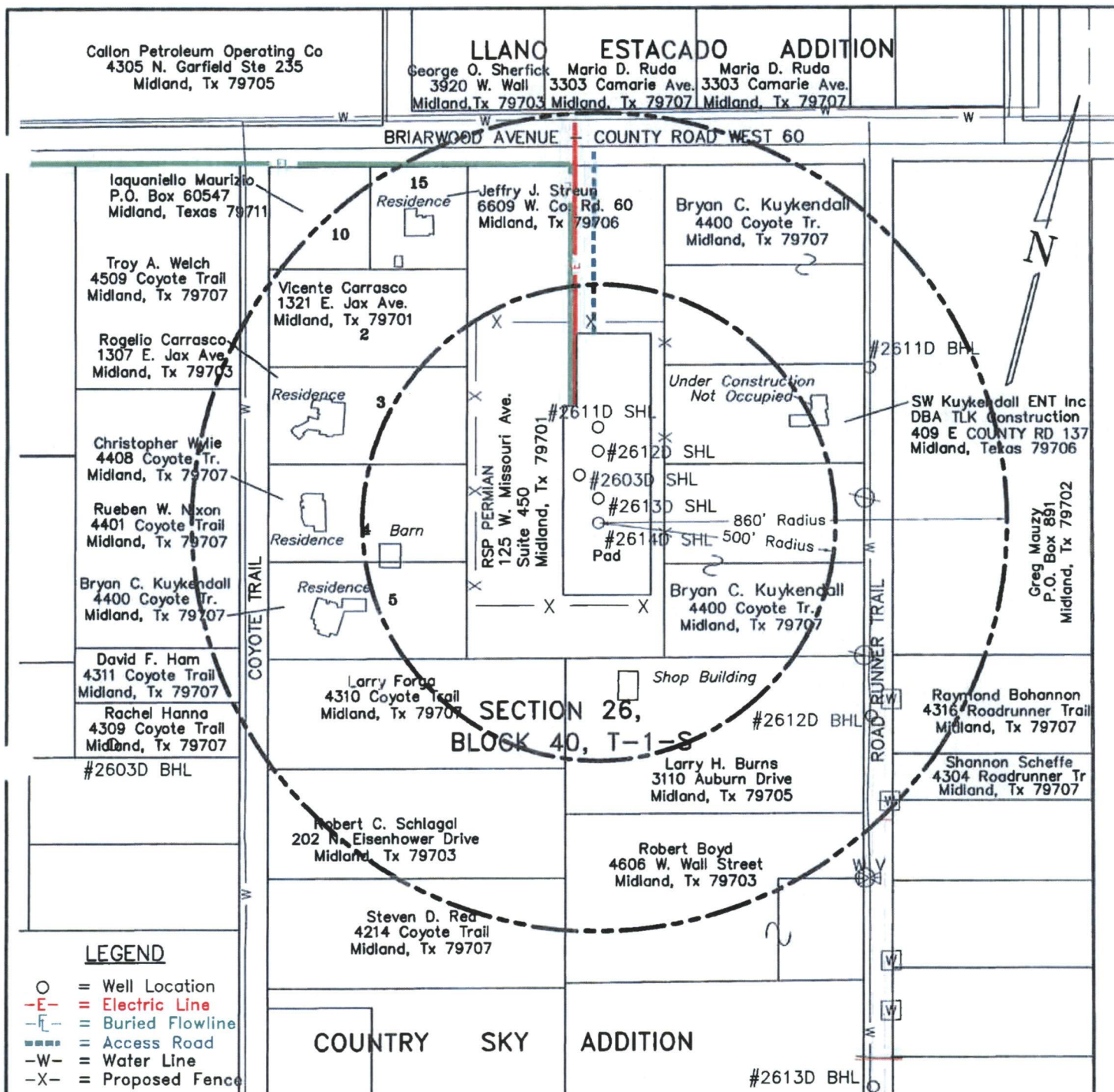
Bus Barn #2614D

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
2F	TWO-FAMILY DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY



Drawing File: Patriot-BusBarn.Dwg; Drawn by: Tina Chalambaga; Scale: 1"=300'; Date: 5/15/12; Revised: 6/28/12 by GMR

**PLAT SHOWING PROPERTY OWNERS WITHIN 500' & 860' RADIUS,
 ACCESS ROAD, PIPELINE AND ELECTRIC LINE FOR
 PROPOSED BUS BARN #2614D, 790' FNL & 1040' FEL
 IN SECTION 26, BLOCK 40, T-1-S, T.&P. RR. CO. SURVEY,
 CITY OF MIDLAND, MIDLAND COUNTY, TEXAS**

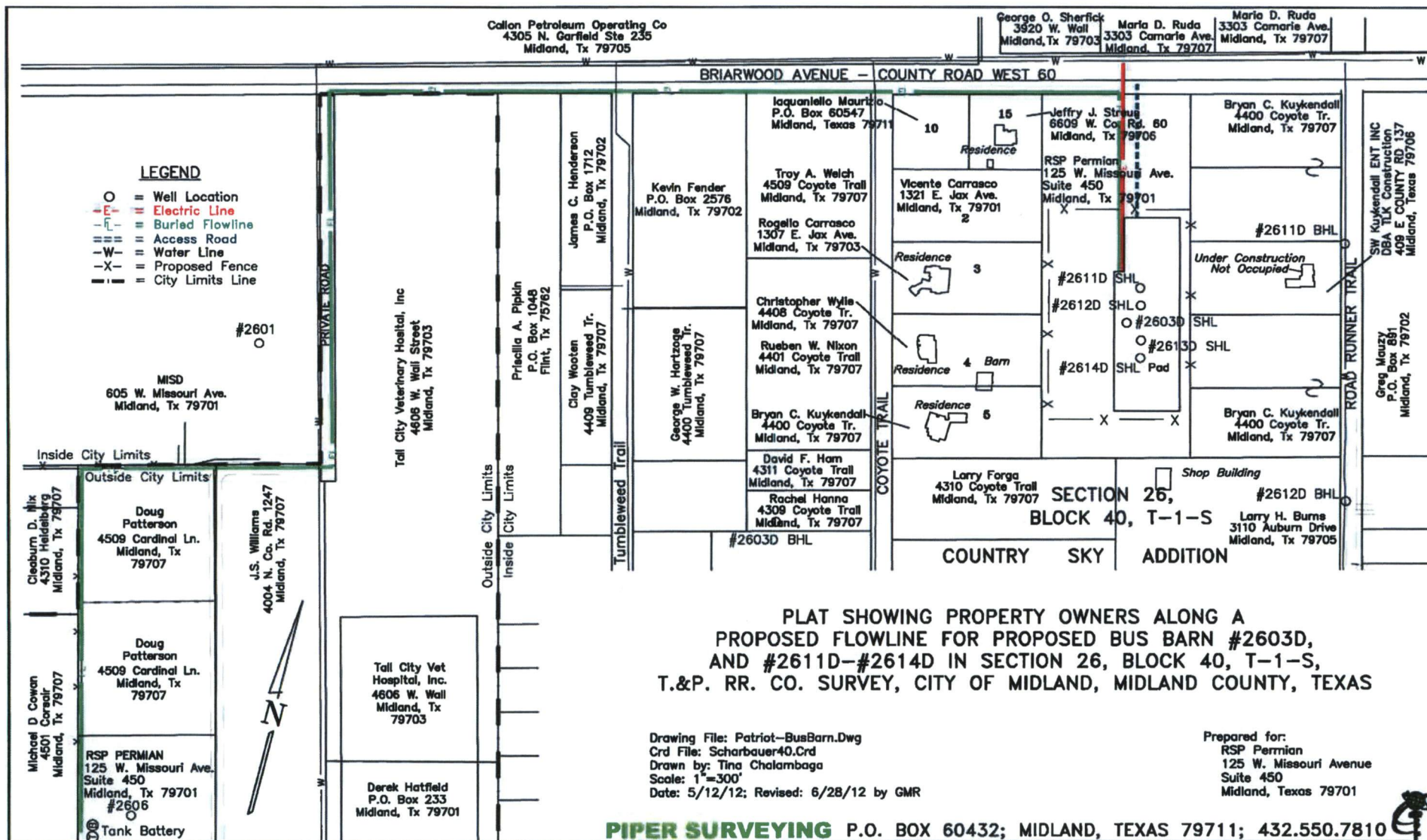
Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, 1983/86 NAD, Central Zone.

I, J. Stan Piper, Registered Professional Land Surveyor do hereby certify that this plat and legal description is true and correct to the best of my knowledge and ability as surveyed on the ground on various dates thru May 8, 2012.

J. Stan Piper
 Registered Professional Land Surveyor #1974

Prepared for:
 RSP Permian
 125 W. Missouri Avenue
 Suite 450
 Midland, Texas 79701

PIPER SURVEYING P.O. BOX 60432; MIDLAND, TEXAS 79711; 432.550.7810



FLOW LINE LOCATION

CASE NO. 0-12-011



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a resolution authorizing the execution of a road repair agreement with RSP Permian, L.L.C., regarding its applications to drill oil and gas wells (Bus Barn #2603D, Bus Barn #2611D, Bus Barn #2612D, Bus Barn #2613D, Bus Barn #2614D) within the City Limits, in Section 26, Block 40, T-1-S, T & P Survey, Midland County, Texas. The Road Repair Agreement will cover Briarwood Avenue and be in the amount of \$75,000.00.

Purpose:

Consider a resolution approving a road repair agreement between the City of Midland and RSP Permian, L.L.C.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

This agreement will cover the cost of road damages to Briarwood Avenue that are attributable to RSP Permian, L.L.C. in association with the above drilling permits. The total amount of the certificate of deposit covering proposed and existing well sites within the City is \$75,000; this is the amount specified in the City's oil and gas drilling regulations.

Discussion:

RSP Permian, L.L.C. has met the requirements contained in the City code related to this matter.

Attachments: Draft agreement

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
ROAD REPAIR AGREEMENT WITH RSP PERMIAN,
L.L.C. REGARDING ITS APPLICATIONS TO DRILL
OIL AND GAS WELLS (#2603D, #2611D, #2612D, #2613D
AND #2614D) WITHIN THE CITY LIMITS IN SECTION
26, BLOCK 40, T-1-S, T&P RR CO. 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 RSP Permian, L.L.C.;

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

THAT the Mayor is hereby authorized and directed to execute on behalf of the City of Midland, Texas, a road repair agreement with RSP Permian, L.L.C. 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., 2012, 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 CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Road Repair Agreement

RSP Permian, L.L.C. ("Operator") intends to use portions of Briarwood Avenue to access its oil and gas lease. 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 of Briarwood Avenue and the lease entrance gate to the extent that any such damage is verifiably attributable to traffic servicing Operator. Operator will not be obligated to pay for any damage to Briarwood Avenue attributable to other parties or for damage associated with normal wear and tear. Operator will not be required to pay road repair expenses in excess of \$25,000.00 per calendar year per well not to exceed a total of \$75,000.00 per calendar year for the #2603D, #2611D, #2612D, #2613D and #2614D wells it plans to operate within the city limits in Section 26, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. Operator has attached to this agreement a letter of credit in the amount of \$75,000.00 which will serve to secure payment of any such road repair expenses for said wells Operator plans to drill within the city limits in Section 26 Block 40, T-1-S, T&P RR Co. 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 the Oil and Gas Well Permits shall immediately cease until the Operator files the required letter of credit or certificate of deposit or surety bond.

Operator and the City of Midland agree that documentation of any road damage determined to be caused by Operator's use of Briarwood Avenue to access any of the wells shall be presented to Operator. If the Operator does not agree, then Operator may file a written objection with the City Manager within ten (10) days of being notified of the road damage. The City Manager shall review the objections and give Operator the opportunity to be heard and present facts that Operator 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) of the General Conditions of all the Oil and Gas Well Permits, in order to remedy such situation under City of Midland Ordinance No. 8769, 6-1-23, "Oil & Gas Well Permits." The amount drawn from the letter of credit, certificate of deposit or surety bond shall not exceed the limits previously described by this agreement.

AGREED TO AND ACCEPTED BY THE FOLLOWING PARTIES:

RSP Permian, L.L.C.

City of Midland

Date: _____

Date: _____

By: _____

By: _____

William R. Huck, Vice President-Operations

Mayor: W. Wesley Perry



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 10/23/2012

TO: City Council / City Manager

FROM: Gary Saunders, Transportation Manager

SUBJECT: Consider a resolution authorizing the execution of a Right-of-Way License Agreement between the City of Midland and RSP Permian, LLC, for the purpose of placement, operation and maintenance of a four (4) inch poly pipeline and two (2) four (4) inch polyflow pipelines contained within a thirteen and three/eighths (13 3/8) inch steel casing pipe, in a portion of Briarwood Avenue right-of-way, Section 26, Block 40, T-1-S, T&P Survey, Midland County, Texas.

Purpose:

Consider a resolution authorizing the execution of a Right-of-Way License Agreement between the City of Midland and RSP Permian, LLC, for the purpose of placement, operation and maintenance of a four (4) inch poly pipeline and two (2) four (4) inch polyflow pipelines contained within a thirteen and three/eighths (13 3/8) inch steel casing pipe, in a portion of Briarwood Avenue right-of-way, Section 26, Block 40, T-1-S, T&P Survey, Midland County, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The City of Midland shall receive payment of \$2,424.20 annually for the duration of the Right-of-Way License Agreement.

Discussion:

The Legal Department has prepared a resolution authorizing the execution of a Right-of-Way License Agreement between the City of Midland and RSP Permian, LLC, for the purpose of placement, operation and maintenance of a four (4) inch poly pipeline and two

(2) four (4) inch polyflow pipelines contained within a thirteen and three/eighths (13 3/8) inch steel casing pipe, in a portion of Briarwood Avenue (W. County Road 60), Section 26, Block 40, T-1-S, T&P RR CO. Survey, Midland County, Texas.

This Agreement shall be for a term of twenty-five (25) years and shall renew at the end of the initial Agreement term for one (1) additional twenty-five (25) year term.

Attached are maps indicating location of the proposed pipeline.

Staff recommends approval of this resolution.

RESOLUTION NO.

RESOLUTION AUTHORIZING A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND, TEXAS AND RSP PERMIAN, L.L.C.; SAID RIGHT-OF-WAY LICENSE IS FOR THE PURPOSE OF ENTERING THE CITY OF MIDLAND'S RIGHT-OF-WAY FOR THE PURPOSE OF PLACEMENT, OPERATION AND MAINTENANCE OF A FOUR (4) INCH POLY PIPELINE AND TWO (2) FOUR (4) INCH POLYFLOW PIPELINES CONTAINED WITHIN A THIRTEEN AND THREE/EIGHTS (13 3/8) INCH STEEL CASING PIPE, IN A PORTION OF BRIARWOOD AVENUE; THE PIPELINE IS LOCATED WITHIN THE CITY OF MIDLAND RIGHT-OF-WAY, SECTION 26, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; THE LICENSE TERM IS FOR TWENTY-FIVE (25) YEARS, COMMENCING WITH THE DATE OF THIS LICENSE AND SHALL AUTOMATICALLY RENEW AT THE END OF THE TERM FOR ONE ADDITIONAL TWENTY-FIVE (25) YEAR TERM UPON 90 DAYS WRITTEN REQUEST PRIOR TO EXPIRATION

WHEREAS the City Council finds it to be in the public interest to authorize a right-of-way license with RSP Permian, L.L.C., located within the City of Midland Right-of-Way, Section 26, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas;

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

THAT the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a right-of-way license with RSP Permian, L.L.C., said license being substantially in the form attached hereto as Exhibit "A" and incorporated herein for all purposes.

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

Council members voting "AYE":

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

APPROVED AS TO CONTENT
AND COMPLETENESS:

Gary Saunders, Transportation Manager

RIGHT-OF-WAY LICENSE

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

THIS RIGHT-OF-WAY LICENSE ("AGREEMENT"), effective this 24th day of October, 2012, by and between THE CITY OF MIDLAND, TEXAS, a home rule municipal corporation, hereinafter called "Licensor", and RSP PERMIAN, L.L.C., 125 W. Missouri Ave., Suite 450, Midland, Texas 79701, hereinafter called "Licensee".

Licensee desires use of property owned by the Licensor in Midland County, Texas within the City of Midland, Texas, for the purposes of entering Licensor's right-of-way for the purpose of placement, operation and maintenance of a four (4) inch poly pipeline and two (2) four (4) inch polyflow pipeline contained within a thirteen and three/eighths (13 3/8) inch steel casing pipe in a portion of Briarwood Avenue right-of-way.

It is the position of the Licensor that Licensee must obtain a license in order to use the public lands of the City. The parties agree the grant herein may be referred to as the "License".

W I T N E S S E T H:

For and in consideration of the execution of this Agreement and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows, to wit:

I. Term

This Agreement shall be for a term of twenty-five (25) years (the "Initial Term"), commencing with the date of this Agreement, the "Commencement Date," unless

terminated earlier as provided hereafter. This Agreement shall automatically renew at the end of the Initial Term for one (1) additional term of twenty-five (25) years, upon the written request of Licensee received by Licensors on or before ninety (90) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of the Licensors. All work under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective.

Upon termination of this Agreement, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of the Licensee to its original condition, as close thereto as may be practical, subject to the approval of the Licensors upon inspection by Licensors's Transportation Manager, which approval shall not be unreasonably withheld. All of said work shall be completed within one hundred and eighty (180) days after termination of this license.

II. Financial Considerations

1. In further consideration for the rights herein granted to Licensee, Licensee shall pay to the Licensors the sum of Two Thousand, Four Hundred and Twenty Four dollars and twenty cents (\$2,424.20) per annum, each year payable on or before the anniversary of the commencement date of this license agreement except for the first year of the license agreement. The first year's license fee of \$2,424.20 shall be due and payable in advance of the commencement date of this license ("License Fee"). Licensee's failure to make the License Fee payment within thirty (30) days after the License Fee is due shall

constitute a late payment and Licensee shall pay the Licensors a late charge of five percent (5%).

2. At the same time the first year License Fee is due, Licensee shall pay a non-refundable onetime fee of \$500.00 to the Licensors Transportation Manager. Said fee shall revert to the Licensors and Licensee shall have no claim to said fee. The fee shall be used to process the application for the License.

3. Prior to commencement of any renewal term, the Licensors and Licensee shall negotiate in good faith to agree to an adjustment of the License Fee. If the Licensors and Licensee are unable to reach an agreement regarding an adjustment to the License Fee, then the License Fee shall be determined by Licensors in its sole discretion, provided the new License Fee shall not exceed one hundred fifty percent (150%) of the License Fee paid for the last year of the Initial Term.

4. The License Fee payment shall be made to the Licensors at the office of the Transportation Manager, P.O. Box 1152, Midland, Texas, 79702. The License Fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including but not limited to ad valorem taxes and special taxes and assessments for public improvements.

III. Use

1. Licensors does hereby grant unto Licensee, the right to enter upon certain property of the City of Midland as shown on "Exhibit A" attached hereto and incorporated herein for all purposes, at the location identified on "Exhibit A".

2. Licensee shall install a four (4) inch poly pipeline and two (2) four (4) inch

polyflow pipeline contained within a thirteen and three/eights (13 3/8) inch steel casing at the location shown on "Exhibit A".

3. Licensee covenants and agrees that it will repair at its sole cost any of Licensor's roads that Licensee damages on Licensor's property so that such roads will comply with Licensor's Standard Specifications.

4. Licensee covenants and agrees that Licensee shall, at its own expense, repair all water lines, sewer lines, service lines and water meters owned by the Licensor that Licensee, its employees, its agents or assigns, damage so that such water lines, sewer lines and water meters shall comply with the requirements of the Licensor's Standard Specifications.

5. Licensee will install the poly pipeline and the polyflow pipeline at a depth of at least thirty-six inches (36") below the surface to comply with the requirements of the Licensor's Transportation Department.

6. Before the Licensee seeks bids on any phase of the repair of public streets, alleys, water lines, sewer lines or any other public utilities, the specifications shall be approved by the Licensor's Transportation Manager.

7. Licensor expressly reserves the right to install, repair, or reconstruct streets or roads and all ancillary public uses usual and customary in connection with streets and roads, expressly including but not limited to drainage facilities and related structures in the rights of way used and occupied by the Licensee.

Licensor reserves the right to lay and permit to be laid, sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any improvement

that may be deemed necessary or proper by the governing body of the Licensor, in, across, along, over or under any public property occupied by Licensee. In permitting such work to be done, the Licensor shall not be liable to the Licensee for any damage so caused to the Licensee's pipelines, **NOR SHALL THE LICENSOR BE LIABLE TO THE LICENSEE FOR ANY DAMAGES TO THE LICENSEE'S PIPELINES, ARISING OUT OF THE NEGLIGENCE BY THE LICENSOR, ITS EMPLOYEES, OFFICERS OR AGENTS, OR LICENSOR'S CONTRACTORS OR SUBCONTRACTORS.** If the Licensor requires the Licensee to remove, alter, change, adapt, or conform its facilities because of changes in the grade of a street or in the location or manner of constructing a water pipe, sewer pipe, or other surface, underground or aboveground structure owned by the Licensor, the Licensee shall make the alterations or changes as soon as practicable, and in no event longer than one hundred eighty (180) days, when ordered in writing by the Licensor, without claim for reimbursement for the cost of the relocation or for damages against the Licensor. If these requirements impose a financial hardship upon the Licensee, the Licensee shall have the right to present alternative proposals for the Licensor's consideration.

8. Licensor expressly reserves the full right to grant other easements or rights of way crossing or running parallel with the rights of way used by Licensee.

9. It is especially provided, however, that as an express condition of this Agreement, and not as a mere covenant, in the event Licensee abandons any equipment or appurtenances to the undertakings contemplated by this License, or the premises covered hereby cease to be used for the purposes enumerated herein for any period of twelve

(12) consecutive months, or longer, other than the time elapsing between the date hereof and construction, and upon giving Licensee one hundred and twenty days (120) notice, then and in that event, this license shall automatically revert to the Licensor, its successors or assigns, free and clear of any right, title, or interest in the Licensee, or any re-entry by the Licensee.

10. In the event that Licensee desires to reconstruct, repair, maintain, replace or remove any pipelines built hereunder, Licensee shall submit the plans and specifications that pertain to the rebuilding or repairs of Licensor's streets and roads and the rebuilding or repairs of any of Licensor's public utilities to the Licensor's Transportation Manager for his or her approval. In the event of emergency repairs necessary to restore service, the Licensee shall notify Licensor's Transportation Manager before making any repairs if during a Licensor work day and if not on a work day, the Licensee shall notify the Licensor's Transportation Manager on the first work day after repairs have begun.

11. The Licensor reserves the right to use the surface, subsurface or airspace above the land covered by this Agreement for any public purpose allowed by law and deemed necessary by the Licensor and to do and permit to be done, any work in connection therewith which may be deemed necessary or proper by the Licensor on, across, along, under or over said right of way occupied by the Licensee. In the event of such work in connection with said public purposes it shall be deemed necessary by the Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipelines of Licensee, such alteration, change or relocation shall be commenced and completed by the Licensee within one hundred eighty (180) days after being ordered in writing by the

Licensor pursuant to directions from the Licensor's City Council without any claim for reimbursement for the cost of the relocation or damages against the Licensor. The relocation or alteration shall be at the sole cost of Licensee. Provided, however, that Licensee shall at all times be entitled to receive from appropriate governmental bodies, excluding the Licensor, payment for alteration or relocation of its pipelines to which it may be lawfully entitled to under applicable Federal or State laws with respect to relocation payments.

IV. Standard General Conditions

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

Commercial General Liability (including Contractual liability):

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

-Property Damage: \$100,000.00 per occurrence

Business Automobile Liability: \$1,000,000.00 combined single limit -
Personal Injury and Property Damage

Worker's Compensation: Statutory limits

Umbrella Liability: \$10,000,000.00 each occurrence and aggregate

Control of Well:	\$10,000,000.00
------------------	-----------------

This insurance, except Worker's Compensation, shall name the Licensor as an additional insured and all insurance shall waive subrogation in favor of the Licensor.

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

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement.

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

The parties agree that, prior to the execution of the Agreement, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

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

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured.

2. **INDEMNITY** - THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR AND ALL OF LICENSOR'S OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, LOSSES, ATTORNEY'S FEES AND EXPENSES OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON, PERSONS OR PROPERTY, ON ACCOUNT OF ANY ACT OF THE LICENSEE, Licensee's contractor or subcontractor, their agents or employees, arising directly or indirectly or in any way connected with the placement, construction, operations, repair, maintenance, replacement or removal of any part of the Licensee's pipelines in the Licensor's rights of way. The Licensee will be required to pay any judgment with costs which may be obtained against the Licensor or any of its officers, agents, or employees including attorney's fees.

THE LICENSEE AGREES THAT LICENSEE WILL INDEMNIFY AND SAVE THE LICENSOR HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF THE PIPELINES DESCRIBED HEREIN.

THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND

DEFEND THE LICENSOR, AND ALL OF LICENSOR'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES AND EXPENSE OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY ON ACCOUNT OF ANY NEGLIGENT ACT OF LICENSOR, LICENSOR'S OFFICERS, AGENTS, AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LICENSEE OR LICENSEE'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT INCLUDING SUCH NEGLIGENT ACTS ARISING FROM OR IN ANY WAY CONNECTED WITH THE PLACEMENT, CONSTRUCTION, OPERATION, REPAIR, MAINTENANCE, REPLACEMENT OR REMOVAL OF ANY PART OF THE LICENSEE'S PIPELINES IN THE LICENSOR'S RIGHT OF WAY. THE LICENSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE LICENSOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

3. **Assignment** - The rights granted by this Agreement inure to the benefit of the

Licensee. The rights and privileges shall not be assignable by Licensee, with the exception of an assignment by Licensee to an affiliated entity, without the express written consent of the governing body of the Licensor. Any required consent is to be evidenced by an ordinance or resolution of the governing body of the Licensor that fully recites the terms and conditions, if any, upon which consent is given. The granting of consent is in the sole discretion of Licensor.

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

Licensor does not have the power to direct the order in which the work is done. Licensor shall not have the right to control the means, methods or details of Licensee's work. Licensee shall assume exclusive responsibility for the work. Licensee is entirely free to do the work in its own way.

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

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

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

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

7. **RELEASE** - NOTWITHSTANDING ANY OTHER PROVISIONS, LICENSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LICENSOR, LICENSOR'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES OR CAUSES OF

ACTION OF ANY KIND WHATSOEVER WHICH LICENSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LICENSOR'S NEGLIGENCE.

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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

10. **Notice** - Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensor as follows: Transportation Manager, City of Midland, P. O. Box 1152, Midland, Texas, 79702.

Any notice or communication required in the administration of this Agreement shall be sent by certified mail, return receipt requested, to the Licensee as follows: RSP Permian, L.L.C., Steven D. Gray, Co-Chief Executive Officer, 125 W. Missouri Ave., Suite 450, Midland, Texas 79701.

11. **Notice of Alleged Breach; Statutory Prerequisites** - As a condition precedent to

filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Licensee or his legal representative, shall give the City Manager, or any other reasonable official of the Licensor, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred eighty (180) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Licensee will settle, the physical and mailing addresses of Licensee at the time and date the claim was presented and the physical and mailing addresses of Licensee for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Licensee relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the Licensor from any liability whatsoever. The Licensor is under no obligation to provide notice to Licensee that Licensee's notice is insufficient. Licensor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Licensee's failure to comply with the requirements herein shall perpetually bar Licensee's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034

of the Texas Government Code, regardless if Licensor has actual or constructive notice or knowledge of said claim or alleged damages. Licensee agrees that the requirements of this entire Agreement are reasonable.

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

LICENSOR:

CITY OF MIDLAND, TEXAS

Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT AND
COMPLETENESS:

Gary Saunders, Transportation Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

LICENSEE:

RSP PERMIAN, L.L.C.

Steven D. Gray, Co-Chief Executive Officer

THE STATE OF TEXAS

§
§
§

COUNTY OF _____

BEFORE ME, the undersigned authority, on this day personally appeared Steven D. Gray, an officer of RSP PERMIAN, L.L.C., known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

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

Notary Public, State of Texas

RSP Permian Proposed Pipeline



Proposed Pipeline

BRIARWOOD

GOLDEN GATE

BLUE BONNET

ASTER

RIGGEN

TUMBLEWEED

COYOTE

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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC. IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.

460 230 0 460 Feet

- Legend**
Street Centerline SDE
SUBTYPE
- Alley
 - Arterial
 - Collector
 - County Road
 - Frontage
 - Interstate
 - Lease Road
 - Misc
 - Park
 - Proposed ROW
 - Residential
 - State Highway
 - State Loop
 - Undeveloped ROW

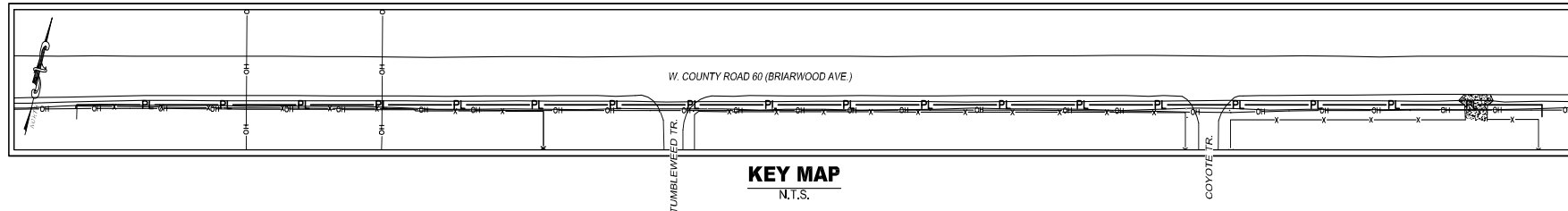
36.22

SECTION 26, BLOCK 40, T1S, T&P SURVEY, MIDLAND COUNTY, TEXAS

RSP PIPELINE PLANS

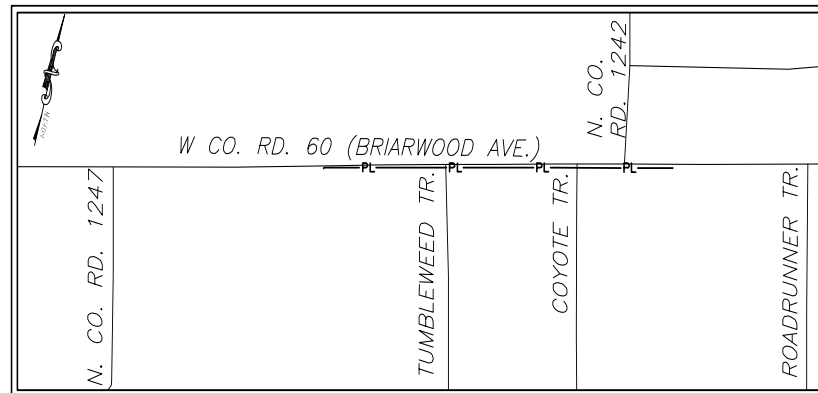


WEST COMPANY
OF MIDLAND, INC.
ENGINEERS - PLANNERS & SURVEYORS
110 W. LOUISIANA AVE., SUITE 110
MIDLAND, TEXAS 79701
(432) 687-0865 • FAX (432) 687-0866



ENGINEER'S NOTES

1. THESE PLANS ARE NOT TO BE USED FOR CONSTRUCTION PURPOSES UNLESS THE APPROVAL BLOCK HAS BEEN SIGNED BY THE APPROPRIATE AGENCIES. ALL WORK SHALL CONFORM TO THE CURRENT SPECIFICATIONS AND STANDARD DETAILS TOGETHER WITH THE SUPPLEMENT OF THE APPROPRIATE AGENCY.
2. A THOROUGH ATTEMPT HAS BEEN MADE TO SHOW THE LOCATIONS OF ALL UNDERGROUND OBSTRUCTIONS AND UTILITY LINES IN THE WORK AREA. HOWEVER, THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY DAMAGE TO OBSTRUCTIONS AND UTILITY LINES ENCOUNTERED DURING CONSTRUCTION AND SHALL DETERMINE THE EXACT LOCATION OF UTILITIES IN THE AREA.
3. THE ENGINEER MAKES NO REPRESENTATION OR GUARANTEE REGARDING EARTHWORK QUANTITIES OR THAT THE EARTHWORK FOR THIS PROJECT WILL BALANCE DUE TO THE VARYING FIELD CONDITIONS, CHANGING SOIL TYPES, ALLOWABLE CONSTRUCTION TOLERANCES, AND CONSTRUCTION METHODS THAT ARE BEYOND THE CONTROL OF THE ENGINEER.
4. PRIOR TO BIDDING THE WORK, THE CONTRACTOR SHALL THOROUGHLY SATISFY HIMSELF AS TO THE ACTUAL CONDITIONS AND EARTHWORK QUANTITIES, IF ANY. NO CLAIM SHALL BE MADE AGAINST THE OWNER/DEVELOPER OR ENGINEER FOR ANY EXCESS OR DEFICIENCY THEREIN ACTUAL OR RELATIVE.
5. THE ENGINEER WILL NOT BE RESPONSIBLE FOR CONSTRUCTION MEANS, METHODS, TECHNIQUES, SEQUENCES OR PROCEDURES OR FOR SAFETY PRECAUTIONS OR PROGRAMS UTILIZED IN CONNECTION WITH THE WORK, AND HE WILL NOT BE RESPONSIBLE FOR THE CONTRACTOR'S FAILURE TO CARRY OUT THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS.
6. OWNER/CONTRACTOR IS RESPONSIBLE FOR SURVEY VERIFICATION OF EXISTING HORIZONTAL AND VERTICAL CONDITIONS PRIOR TO START OF CONSTRUCTION. A DEVIATION IN EXISTING CONDITIONS MUST BE BROUGHT TO THE ATTENTION OF WEST COMPANY BEFORE CONSTRUCTION STARTS. WEST COMPANY WILL NOT BE RESPONSIBLE FOR REMOVAL, REPLACEMENT, OR OTHER MODIFICATIONS THAT MAY BE REQUIRED AS A RESULT OF EXISTING CONDITIONS NOT PROPERLY VERIFIED AND CONFIRMED. SHOULD AN ERROR BE FOUND IN THE HORIZONTAL & VERTICAL CONDITIONS, WEST COMPANY WILL BE NOTIFIED AND CONSTRUCTION WILL NOT PROCEED UNTIL REVISIONS AND/OR MODIFICATIONS HAVE BEEN PREPARED AND SUBMITTED BY WEST COMPANY.



VICINITY MAP
N.T.S.

BENCHMARK

TEMPORARY BENCHMARK: CALLON
NORTHING: 10,703,689.28
EASTING: 1,723,032.32
ELEVATION: 2,858.06'

BEARINGS, DISTANCES AND COORDINATES SHOWN HEREON ARE RELATIVE TO THE TEXAS STATE PLANE COORDINATE SYSTEM, TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.

OWNER

JIM SPRADLIN
RSP PERMIAN
125 W. MISSOURI AVE., STE. 450
MIDLAND, TX 79701
TELEPHONE: (432) 818-1300

ENGINEER

ANDREW L. MELLEN P.E.
WEST COMPANY OF MIDLAND, INC.
110 W. LOUISIANA AVE., STE. 110
MIDLAND, TX 79701
TELEPHONE: (432) 687-0865

SHEET INDEX

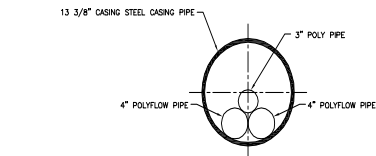
COVER SHEET..... C-1
PLAN & PROFILE..... C-2
DETAILS SHEET..... C-3

COVER SHEET

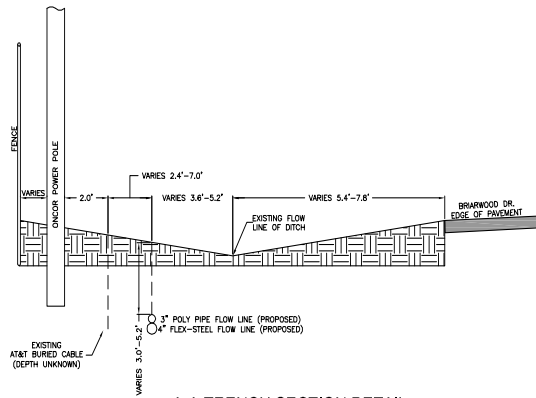
RSP PERMIAN
MIDLAND, TEXAS



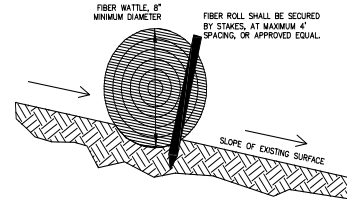
PROJECT NUMBER: 2012-0454
SHEET C-1 OF 3



CARRIER PIPE DETAIL
NOT TO SCALE

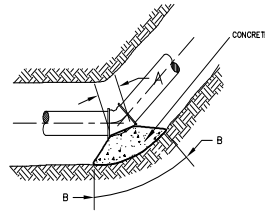


A-A TRENCH SECTION DETAIL
NOT TO SCALE



**FIBER WATTLE EROSION
CONTROL DEVICE**
N.T.S.

NOTE: WATTLE TO BE CONSTRUCTED OF POLYPROPYLENE NETTING, BURLAP OR JUTE FABRIC, FILLED WITH STRAW, HAY, COCONUT FIBER, OR COMPOSTED MATERIAL. WATTLES SHOULD BE PLACED ALONG CONTOURS FOR MAXIMUM EFFECT.



BLOCKING FOR HORIZONTAL BENDS
DESIGN 160 PSI LINE PRESSURE
SOL. BEARING CAP 20/20

DIA. OF PIPE	DEGREE OF BEND											
	11 1/4°			22 1/2°			45°			90°		
	A	B	*C	A	B	*C	A	B	*C	A	B	*C
4"	0'-4"	1'-0"	1'-0"	0'-5"	1'-0"	1'-0"	0'-6"	1'-0"	1'-0"	0'-11"	1'-3"	1'-3"
6"	0'-2"	1'-0"	1'-0"	0'-2"	1'-0"	1'-0"	0'-8"	1'-0"	1'-0"	1'-3"	1'-3"	1'-3"
8"	0'-8"	0'-10"	1'-2"	0'-9"	1'-4"	1'-2"	0'-10"	1'-10"	1'-10"	1'-6"	1'-6"	1'-6"
10"	0'-10"	1'-0"	1'-0"	1'-1"	1'-6"	1'-1"	1'-2"	1'-2"	1'-1"	1'-11"	1'-2"	1'-2"
12"	1'-0"	1'-3"	1'-6"	1'-1"	1'-2"	1'-2"	1'-4"	1'-2"	1'-10"	1'-2"	1'-10"	1'-10"
14"	0'-11"	1'-5"	1'-11"	1'-2"	1'-2"	1'-11"	1'-5"	1'-5"	1'-11"	1'-5"	1'-11"	1'-11"
16"	1'-1"	1'-8"	1'-2"	1'-2"	1'-2"	1'-2"	1'-8"	1'-5"	1'-11"	1'-5"	1'-11"	1'-11"

NOTE:

BLOCKING FOR 14" AND 16" 90° BENDS
AND ALL BENDS LARGER THAN 16" WILL
BE AS SHOWN ON THE PLANS

*C - VERTICAL DEPTH OF CONCRETE
BEARING ON UNDISTURBED EARTH

ALL THRUST BLOCKING SHALL BE CLASS
"A" CONCRETE AND SHALL BE PLACED
AGAINST UNDISTURBED EARTH

FITTINGS SHALL BE POLY WRAPPED
BEFORE BLOCKING IS PLACED

BLOCKING FOR HORIZONTAL BENDS

DETAILS SHEET

**RSP PERMIAN
MIDLAND, TEXAS**



PROJECT NUMBER: 2012-0454

SHEET C-3 OF 3

WEST COMPANY
OF MIDLAND, INC.
ENGINEERS - PLANNERS - SURVEYORS
110 N. LOUISIANA AVE. SUITE 110
MIDLAND, TEXAS 79701
(432) 697-5685 • FAX (432) 697-5686



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 11/13/2012

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Consider an Ordinance Amending Title III. "Departments", Chapter 1, "Water Department", Section 2, "Rates", Subsection (A), "Customers Inside of City Limits", of the City Code of Midland, Texas, so as to Change the Rates Charged for Water and Sewer Services; Containing a Cumulative Clause; Containing a Savings and Severability Clause; and Ordering Publication; and the City Manager Shall Notify All Customers Outside the City Limits as Required by State Law.

Purpose:

Consider an ordinance on first reading for changing the second tier of water rates.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The change in rates is to reflect additional water availability from CRMWD.

Discussion:

Current inside city water rates and structure are as follows:

Commercial customers using greater than 10,000 gallons for indoor use:

Base Rate (includes first 2,000 gallons) \$14.71

Water usage between 2-10,000 gallons/month

\$3.50 per thousand gallons

Water usage between 10-25,000 gallons/month

\$4.60 per thousand gallons

Water usage above 25,000 gallons/month

\$6.20 per thousand gallons

Apartments:

Charge per unit for first 2,000 gallons/month

pursuant to criteria for calculating apartments

\$11.95 per unit

Residential customers:

Base Rate (includes first 2,000 gallons)	\$14.71	
Water usage between 2-10,000 gallons/month		\$3.50 per thousand gallons
Water usage between 10-25,000 gallons/month		\$23.00 per thousand gallons
Water usage above 25,000 gallons/month		\$31.00 per thousand gallons

All rates are subject to a 2.5% increase on an annual basis unless modified by the City Council.

Proposed inside city water rates and structure are as follows:

Commercial customers using greater than 10,000 gallons for indoor use:

Base Rate (includes first 2,000 gallons)	\$14.71	
Water usage between 2-10,000 gallons/month		\$3.50 per thousand gallons
Water usage between 10-25,000 gallons/month		\$4.60 per thousand gallons
Water usage above 25,000 gallons/month		\$6.20 per thousand gallons

Apartments:

Charge per unit for first 2,000 gallons/month pursuant to criteria for calculating apartments	\$11.95 per unit
--	------------------

Residential customers:

Base Rate (includes first 2,000 gallons)	\$14.71	
Water usage between 2-10,000 gallons/month		\$3.50 per thousand gallons
Water usage between 10-25,000 gallons/month		\$4.60 per thousand gallons
Water usage above 25,000 gallons/month		\$31.00 per thousand gallons

All rates are subject to a 2.5% increase on an annual basis unless modified by the City Council.

ORDINANCE NO.

AN ORDINANCE AMENDING TITLE III, "DEPARTMENTS", CHAPTER 1, "WATER DEPARTMENT", SECTION 2, "RATES," SUBSECTION (A), "CUSTOMERS INSIDE OF CITY LIMITS," SUB-SUBSECTION 1., "WATER RATES," OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO DECREASE THE RATES CHARGED TO CUSTOMERS INSIDE THE CITY LIMITS FOR WATER; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION; AND THE CITY MANAGER SHALL NOTIFY ALL CUSTOMERS OUTSIDE THE CITY LIMITS AS REQUIRED BY STATE LAW

WHEREAS, the rates or charges for water services provided by the City of Midland need to be revised in order to adequately compensate the City for such service; and

WHEREAS, the City Council of the City of Midland, Texas, finds it to be in the public interest to revise and change the rates or charges for water services provided by the City of Midland;

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

SECTION ONE. That Title III, "Departments," Chapter One, "Water Department" Section 2, "Rates," Subsection (A), "Customers Inside of City Limits," Sub-subsection 1, "Water Rates," of the City Code of Midland, Texas, shall be amended to hereafter read as follows:

3-1-2 **RATES:**

(A) Customers Inside of City Limits:

1. Water Rates: The monthly water rates or charges for services furnished by the City's waterworks system shall be as follows:
 - (a) Except for sub-section (b) below, for all customers other than apartments, the following charges shall apply:
 - i. The minimum charge shall be \$14.71 for the first 2,000 gallons or less;
 - ii. \$3.50 per 1,000 gallons for all water usage exceeding 2,000 gallons up

- to 10,000 gallons;
- iii. \$4.60 per 1,000 gallons for all water usage exceeding 10,000 gallons up to 25,000 gallons;
- iv. \$31.00 per 1,000 gallons for all water usage exceeding 25,000 gallons.
- (b) For all non-residential customers other than apartments, with non-irrigation demands for January and February exceeding 10,000 gallons per month (as determined by the City Manager or his designee), and who are also identified on Attachment “A,” the following charges shall apply:
 - i. The minimum charge shall be \$14.71 for the first 2,000 gallons or less;
 - ii. \$3.50 per 1,000 gallons for all water usage exceeding 2,000 gallons up to 10,000 gallons;
 - iii. \$4.60 per 1,000 gallons for all water usage exceeding 10,000 gallons up to 25,000 gallons;
 - iv. \$6.20 per 1,000 gallons for all water usage exceeding 25,000 gallons.
 - v. The City Manager may amend Attachment “A” as he finds necessary.
- (c) All water rates will increase by 2.50% each year on the anniversary of the effective date of this ordinance unless otherwise modified by the City Council.
- (d) For apartments, the minimum charge shall be \$11.95 per unit for the first 2,000 gallons or less per unit such that the minimum charge for an apartment complex of 100 units would be \$1,195.00 for the first 200,000 gallons or less of water used. Apartment units shall be calculated pursuant to Subsection (B) of this Section.

SECTION TWO. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION THREE. If any section, subsection, sentence, clause or phrase of this

ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by law as an alternative method of publication.

SECTION FIVE. The City Manager shall notify all customers outside the City limits of the rate changes as required by state law.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, AICP

SUBJECT: Consider an ordinance annexing and adopting a service plan for Tract 1, being a 283.36-acre tract of land out of Sections 11 & 12, Block 40, T-2-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located on the north side of I-20, east of NCR 1250)

Purpose: Consider an ordinance annexing and adopting a service plan for Tract 1, being a 283.36-acre tract of land out of Sections 11 & 12, Block 40, T-2-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located on the north side of I-20, east of NCR 1250)

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process the annexation of this property.

Discussion:

Public hearings were held on October 9th and October 16th, 2012. It is now appropriate for the Council to consider an ordinance annexing and adopting a service plan for this approximate 284-acre tract. As a reminder, this is a voluntary annexation and a development plan is anticipated in the near future.

Attachments:

Map
Proposed Ordinance and Exhibit B: Service Plan

ORDINANCE NO.

AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO CERTAIN AREAS ADJOINING THE PRESENT CITY LIMITS, BEING A 283.36-ACRE TRACT OF LAND OUT OF SECTIONS 11 AND 12, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF WEST INTERSTATE 20 AND SOUTH COUNTY ROAD 1250); AND APPROVING A PUBLIC SERVICE PLAN

WHEREAS, public hearings before the City Council of the City of Midland, Texas, a home rule municipal corporation, where all interested persons were provided an opportunity to be heard on the proposed annexation of the hereinafter described territory, were held in the City Council Chambers on October 9, 2012 and October 16, 2012; and

WHEREAS, notice of such public hearings was published in a newspaper having general circulation in the City of Midland, Texas, and in the below described territory, on September 26, 2012;

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

SECTION ONE. That the following described property adjoining the present boundary lines of the City of Midland, Texas, be and the same is hereby annexed to and incorporated within the boundary of the City of Midland, Texas:

Being a 283.36-acre tract of land out of Sections 11 and 12, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, and being more fully described by metes and bounds attached hereto as Exhibit "A" and incorporated herein by reference for all legal purposes.

SECTION TWO. That the service plan, attached hereto as Exhibit "B", which provides for the extension of municipal services into the area described above in Section One, is hereby approved.

SECTION THREE. That this ordinance be published in the official newspaper in the City of Midland, Texas, and the same shall not be effective until after the publication

thereof.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the day of , A.D., 2012; and passed to second reading on motion of Council member , seconded by Council member , by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member , seconded by Council member , on the day of , A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS day of , A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

FIRM # 001363

521 NORTH TEXAS • ODESSA, TEXAS 79761

(432) 332-5058 or 580-8812 • FAX (432) 332-8812

TRACT 1

**ZONING OF 283.36 ACRES LOCATED IN
SECTIONS 11 AND 12, BLOCK 40, T-2-S,
T&P RR. CO. SURVEY
MIDLAND COUNTY, TEXAS**

Annexation Boundary Being More Particularly Described By Metes and Bounds As Follows:

Beginning at (Y= 10,674,929.48' and 1,726,413.48') at a ½" Iron rod with cap marked 'LCA ODESSA TX' in the north line of that certain 83.94 acre tract of land as recorded as Document Number 2011-25191 of the Official Public Records of Midland County, Texas and the south line of the remainder of that certain 262.16 acre tract as recorded in Volume 3053, Page 260 of said Official Public Records of Midland County, Texas, said corner also being in the east right-of-way line of S. County Road 1250, whence a ½" Iron rod found at the northwest corner of said Section 11 and the northeast corner of Section 10, of said Block 40, bears S 75°41'16" W, a distance of 60.00 feet and N 14°18'44" W, a distance of 2,019.48 feet;

THENCE N 59°44'40" E, along the common line of said 83.94 acre tract and said remainder of the 262.16 acre tract, a distance of 4,623.24 feet to a ½" Iron rod with cap marked 'LCA ODESSA TX' set in the west line of Capstone Business Park as recorded in Cabinet I Page 62 of the Plat records of Midland County, Texas;

THENCE S 29°53'42" E, along the common line of said Capstone Business Park and said 83.94 acre tract, a distance of 442.04 feet to a ½" Iron rod with cap marked 'LCA ODESSA TX' found at the southwest corner of said Capstone Business Park and a northwest corner of said remainder of the 262.16 acre tract;

THENCE N 81°49'30" E, along the south line of said Capstone Business Park and a north line of said remainder of the 262.16 acre tract, a distance of 659.82 feet to a ½" Iron rod with cap marked "LCA ODESSA TX" found at a northeast corner of that certain 49.14 acre tract as recoded as Document Number 2011-11208 of said Official Public Records of Midland County, Texas, a southwest corner of that certain 64.90 acre tract as recorded in Volume 3067 Page 111 of said Official Public Records of Midland County, Texas, and also being in the east line of said Section 11 and the west line of Section 12 of said Block 40;

THENCE N 81°49'30" E, along the north line of said 49.14 acre tract and the south line of said 64.90 acre tract, a distance of 12.38 feet to a ½" Iron rod with cap marked "LCA ODESSA TX";

THENCE S 89°31'05" E, along the north line of said 49.14 acre tract, a distance of 243.68 feet to a point of deflection;

THENCE S 52°51'09" E, along the east line of said 49.14 acre tract, a distance of 141.25 feet to a point of deflection;

THENCE S 35°09'09" E, along the east line of said 49.14 acre tract, a distance of 243.00 feet to a ½" Iron rod with cap marked "PLS 1974" for a point of deflection;

THENCE S 19°58'27" E, along the east line of said 49.14 acre tract, a distance of 207.01 feet to a ½" Iron rod with cap marked "PLS 1974" for a point of deflection;

THENCE S 31°35'47" E, along the east line of said 49.14 acre tract, a distance of 209.31 feet to a ½" Iron rod with cap marked "PLS 1974" for a point of deflection;

THENCE S 41°45'16" E, along the east line of said 49.14 acre tract, a distance of 237.73 feet to a ½" Iron rod with cap marked "PLS 1974" for a point of deflection;

THENCE S 09°09'10" W, along the east line of said 49.14 acre tract, a distance of 270.80 feet to a ½" Iron rod with cap marked "PLS 1974" for a point of deflection;

THENCE S 34°06'54" E, along the east line of said 49.14 acre tract, a distance of 332.00 feet to a ½" Iron rod with cap marked "PLS 1974" for the southeast corner of said 49.14 acre tract in the north right-of-way of Interstate Highway 20;

THENCE S 59°43' 33" W, along the south line of said 49.14 acre tract and the north right-of-way of said Interstate Highway 20, pass the west line of said Section 12 and the east line of said Section 11 at 645.43 feet, whence a 1 ½" Iron pipe found at the common corner of said Sections 11 and 12 bears S 14°16'05" E, a distance of 2,247.50 feet, pass the southwest corner of said 49.14 acre tract and the southeast corner of that certain 78.33 acre tract which is a remainder of that certain 127.39 acre tract as recorded in Volume 2717, Page 565 of said Official Public Records of Midland County, Texas at 1518.90 feet, in all a total distance of 3,735.66 feet to a ½" Iron rod at the southwest corner of said 78.25 acre tract and a southeast corner of said remainder of the 262.16 acre tract;

THENCE N 14°10'22" W, along the west line of said 78.33 acre tract and an east line of said remainder of the 262.16 acre tract, a distance of 800.00 feet to a ½" Iron rod with cap marked "LCA ODESSA TX" at an ell corner of this tract;

THENCE S 59°43'08" W, pass a ½" Iron rod with cap marked "LCA ODESSA TX" found at the easternmost southeast corner of that certain 59.59 acre tract as recorded as Document Number 2011-25191 and the northeast corner of Drill Site 1107 at 62.45 feet, pass a ½" Iron rod with cap marked "LCA ODESSA TX" found at the northwest corner of said Drill Site and the northernmost northeast corner of that certain 12.00 acre tract as recorded as Document Number 2011-25724 at 272.45 feet, pass the northwest corner of said 12.00 acre tract and the northeast corner of that certain 8.00 acre tract as recorded as Document Number 2011-22942 at 797.78 feet, in all a total distance of 1,251.08 feet to a ½" Iron rod with cap marked "LCA ODESSA TX" found at the northwest corner of said 8.00 acre tract and an ell corner of said 59.59 acre tract;

THENCE S 14°10'22" E, along an east line of said 59.59 acre tract and the west line of said 8.00 acre tract, a distance of 800.00 feet to a ½" Iron rod with cap marked "LCA ODESSA TX" found at the western

southeast corner of said 59.59 acre tract and the southwest corner of said 8.00 acre tract in the north right-of-way of said Interstate Highway 20:

THENCE S 59°43'09" W, along the south line of said 59.59 acre tract and the north right-of-way of said Interstate Highway 20, a distance of 1,066.89 feet to a ½" Iron rod with cap marked 'LCA ODESSA TX' at a cutback corner at the intersection of said Interstate Highway 20 and S. County Road 1250;

THENCE N 67°17'48" W, along said cutback, a distance of 24.08 feet to a ½" Iron rod with cap marked 'LCA ODESSA TX' in the said east right-of-way line of S. County Road 1250;

THENCE N 14°18'44" W, along the east right-of-way line of said S. County Road 1250, a distance of 2,455.64 feet to the Point of the Beginning containing 283.36 surface acres of land.

The Coordinates, Bearings, and Distances recited above are relative to the Texas Coordinate System, 1983 NAD (Central Zone) with a combined grid factor of 0.999883998 and a Theta Angle of -00°56'11" at Y=10,679,971.15' and X=1,732,752.34' and are based upon the City of Midland Control Monument "43/93" as published in US Survey Feet as provided by the City of Midland, Texas.

This document was prepared under 22 TAC 663.21, and is not to be used to convey or establish interest in real property except those rights and interest implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

LCA

Aaron S. Burrell, RPLS # 5689
22 October 2012



LCA Project Number 2011-058



Page 3 of 3

CASE NO. Z-12-042

EXHIBIT B
SERVICE PLAN FOR
Tract 1

Being a 283.36-acre tract of land out of Sections 11 & 12, Block 40, T-2-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located on the north side of I-20, east of SCR 1250)

DEVELOPMENT SERVICES

Existing Services: Water service is available to Tract 1. This property is adjacent to the I-20 Service Road and to SCR 1250.

- A. Type of service to be provided upon annexation: Tract 1 is adjacent to the north I-20 service road and to SCR 1250. Engineering services, platting, traffic studies and controls will be required as warranted. Development and utility extension plans, right-of-ways, easements, and other typical development matters will be reviewed at the time plats are prepared for this land.
- B. Capital improvements to begin within 2 1/2 years: None

UTILITIES

Existing Services: Water service is available to Tract 1.

- A. Type of service to be provided upon annexation: None.
- B. Capital improvements to begin within 2 1/2 years: None

POLICE

Existing Services: None

- A. Type of service to be provided upon annexation: emergency and routine call response.
- B. Capital improvements to begin within 2 1/2 years: No improvements anticipated.

FIRE

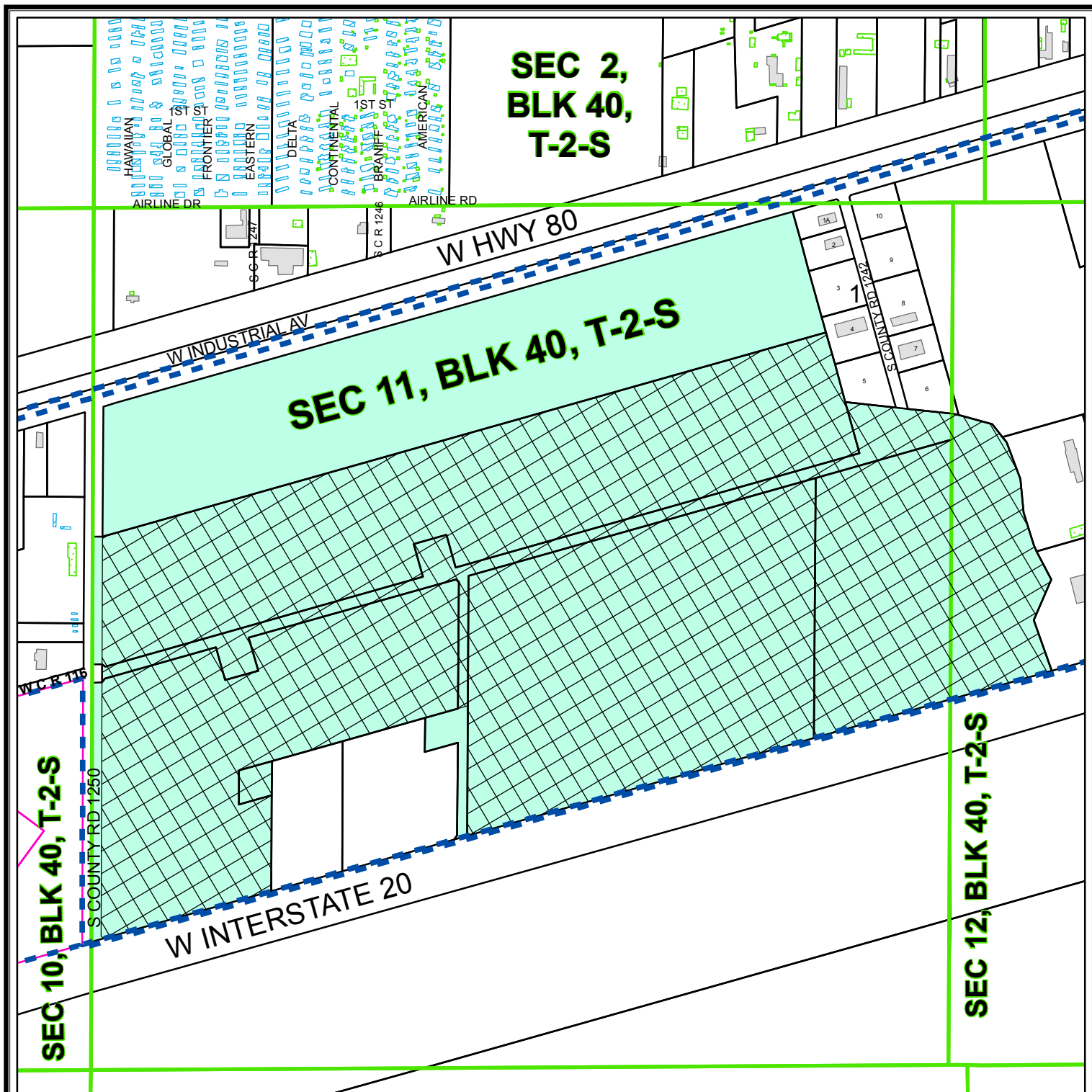
Existing Services: Fire and emergency response provided through agreement with Midland County

- A. Fire and EMS Service to be provided upon the effective date of annexation: All services are currently available and will continue following annexation.
- B. Capital improvements to begin within 2 1/2 years: None anticipated.

COMMUNITY SERVICES

Existing Services: Health and Senior Services
throughout Midland County including on site
septic system permitting

- A. Type of service to be provided upon annexation: Animal Control services including pick up, impoundment, records maintenance, adoption and education will be immediately available.
- B. Capital improvements to begin within 2 1/2 years: None anticipated.



PROPOSED ANNEXATION MAP

M - 12 - 007

Scale: 1" = 850'

TRACT 1

Consider a request for the annexation of a 283.36-acre tract of land out of Sections 11 and 12, Block 40, T-2-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

- ANNEXATION BOUNDARY
- CITY LIMITS
- SURVEY SECTION
- COUNTY PARCEL
- CITY PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC. IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, GRANTING, OR OTHER DECISIONS SOLELY ON THE INFORMATION CONTAINED HEREIN.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, AICP

SUBJECT: Consider an ordinance annexing and adopting a service plan for Tract 2, being a 75.90-acre tract of land out of Sections 37 & 38, Block 40, T-1-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located south of SH 191 and Deauville Boulevard)

Purpose: Consider an ordinance annexing and adopting a service plan for Tract 2, being a 75.90-acre tract of land out of Sections 37 & 38, Block 40, T-1-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located south of SH 191 and Deauville Boulevard)

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process the annexation of this property.

Discussion:

Public hearings were held on October 9th and October 16th, 2012. It is now appropriate for the Council to consider an ordinance annexing and adopting a service plan for this approximate 76-acre tract. As a reminder, this is a voluntary annexation and a development plan is anticipated in the near future.

Attachments:

Map
Proposed Ordinance and Exhibit B: Service Plan

ORDINANCE NO.

AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO CERTAIN AREAS ADJOINING THE PRESENT CITY LIMITS, BEING A 75.90-ACRE TRACT OF LAND OUT OF SECTIONS 37 AND 38, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF TRADEWINDS BOULEVARD AND DEAUVILLE BOULEVARD); AND APPROVING A PUBLIC SERVICE PLAN

WHEREAS, public hearings before the City Council of the City of Midland, Texas, a home rule municipal corporation, where all interested persons were provided an opportunity to be heard on the proposed annexation of the hereinafter described territory, were held in the City Council Chambers on October 9, 2012 and October 16, 2012; and

WHEREAS, notice of such public hearings was published in a newspaper having general circulation in the City of Midland, Texas, and in the below described territory, on September 26, 2012;

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

SECTION ONE. That the following described property adjoining the present boundary lines of the City of Midland, Texas, be and the same is hereby annexed to and incorporated within the boundary of the City of Midland, Texas:

Being a 75.90-acre tract of land out of Sections 37 and 38, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more fully described by metes and bounds attached hereto as Exhibit "A" and incorporated herein by reference for all legal purposes.

SECTION TWO. That the service plan, attached hereto as Exhibit "B", which provides for the extension of municipal services into the area described above in Section One, is hereby approved.

SECTION THREE. That this ordinance be published in the official newspaper in the City of Midland, Texas, and the same shall not be effective until after the publication

thereof.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the day of , A.D., 2012; and passed to second reading on motion of Council member , seconded by Council member , by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member , seconded by Council member , on the day of , A.D., 2012, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS day of , A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Legal Description for a 75.90 Acre Annexation Tract
Located in Sections 37 and 38, Block 40,
T-1-S, T. & P. RR. Co Survey,
Midland County, Texas

Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,692,705.22' E= 1,727,508.15') a ½" iron rod with a plastic cap marked "PLS 1974" set at the Southwest corner of Westridge Park Addition, Section 6, as recorded in Cabinet F, Page 183, Plat Records of Midland County being the Northwest corner of this tract, from whence the Northwest corner of said Section 37, and the Northeast corner of said Section 38 bears S75°15'55"W, a distance of 55.35 feet and N14°25'48"W a distance of 1062.52 feet;

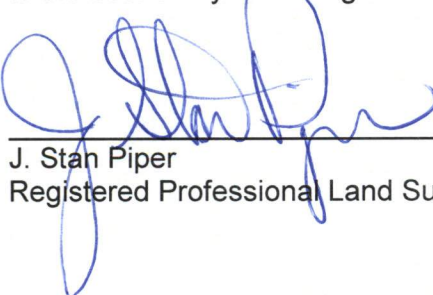
1. THENCE N75°13'55"E with the said South boundary line of Deauville Boulevard, at 120.28 feet pass a ½" iron rod with a plastic cap marked "PLS 1974" set at the Northwest corner of a 25.00 Acre Tract surveyed this day, continuing for a total distance of 1526.06 feet to a ½" iron rod with a plastic cap marked "PLS 1974" found at a point of curvature of said Deauville Boulevard;
2. THENCE with a curve to the right in an Easterly direction with the said South line of Deauville Boulevard, along a radius of 1945.00 feet, a delta angle of 29°30'35", an arc length of 1001.76 feet, and a chord length of 990.72 feet, which bears N89°59'13"E, to a ½" iron rod with a plastic cap marked "PLS 1974" set at a point of tangency;
3. THENCE S75°15'30"E with the said South line of Deauville Boulevard, a distance of 975.96 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at a point of curvature;
4. THENCE with a curve to the right in a Easterly direction with a radius of 15.00 feet, a delta angle of 90°00'00", an arc length of 23.56 feet, and a chord length of 21.21 feet, which bears S30°15'30"E, to a ½" iron rod with a plastic cap marked "PLS 1974" set at a point of tangency;
5. THENCE S14°44'30"W with the West boundary line of Tradewinds Boulevard, a distance of 634.15 feet to a ½" iron rod with a plastic cap with top broken found at a point of curvature;
6. THENCE with a curve to the left in a Southerly direction with said West line of Tradewinds Boulevard, with a radius of 3054.93 feet, a delta angle of 08°55'06", an arc length of 475.51 feet, and a chord length of 475.03 feet which bears S10°16'57"W to a ½" iron rod with a plastic cap marked "RPLS 4413" found at the Southeast corner of this tract;
7. THENCE N59°11'15"W a distance of 424.66 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at a corner of this tract and a 15.3 Acre Tract previously surveyed;
8. THENCE N73°58'32"W with the North line of a 20 foot wide alley and the North line of Legends Park Cabinet I, Page 76, Plat Records, a distance of 516.83 feet to a ½" iron rod with a plastic cap marked "RPLS 4413" found at a corner of this tract and said Legends Park Addition;
9. THENCE N76°33'46"W with the North boundary line of a Storm Water Detention Basin for Legends Park, a distance of 210.44 feet to a corner of this tract and said Legends Park;
10. THENCE N86°55'08"W with the North boundary line of a Storm Water Detention Basin for Legends Park, a distance of 172.71 feet to a corner of this tract and said Legends Park;

JUL 16 2012

11. THENCE S82°28'46"W with the North boundary line of a Storm Water Detention Basin for Legends Park, a distance of 171.39 feet to a corner of this tract and said Legends Park ;
12. THENCE S76°13'03"W with the North boundary line of said 108.712 Acre Tract as described in Instrument 2009-19786 Official Public Records of Midland County, a distance of 1625.90 feet to a ½" iron rod with a plastic cap marked "RPLS 4413" found in the common line of said Sections 37 and 38 at the Northwest corner of said 108.712 Acre Tract;
13. THENCE S75°34'12"W, a distance of 60.00 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the Southwest corner of this tract;
14. THENCE with the said proposed West ROW line, along curve turning to the right in a Northerly direction with a radius of 1560 .00 feet, a delta angle of 13°23'55", an arc length of 364.81 feet, a chord length of 363.98 feet which bears N07°43'51"W, to a ½" iron rod with a plastic cap marked "PLS 1974" set at a point of tangency of said ROW line;
15. THENCE N01°01'53"W with the said proposed West ROW line, at 75.69 feet pass the East line of said Section 38 and the West line of said Section 37, continuing for a total distance of 164.19 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at a point of curvature corner;
16. THENCE with the said proposed West ROW line, along a curve to the left in a Northerly direction, with a radius of 1440.00 feet, a delta angle of 17°39'48", an arc length of 443.93 feet, with a chord length of 442.17 feet, which bears N09°51'47"W to a point of compound curvature of said ROW line;
17. THENCE with curve to the left along said West ROW line in a Northerly direction with a radius of 4440.00 feet, a delta angle of 00°03'17", an arc length of 4.24 feet, and a chord length of 4.24 feet, which bears N18°50'10"W to the Place of Beginning, having an area of 75.90 Acres.

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone, with a combined grid factor of 0.9998958, and a theta angle equal to - 0°54'48.39" at U.S.C. & G. station "MIDLAND" with published values of Y= 10,690,154.70 and X= 1,746,696.78 in U.S. Survey Feet.

I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this legal description is based on an actual survey made by me or under my supervision, and that the same is true and correct to the best of my knowledge and ability as surveyed on the ground July 2, 2012.


J. Stan Piper
Registered Professional Land Surveyor

Prepared for:
Parkhill, Smith, and Cooper, Inc.
1700 West Wall St. Suite 100
Midland, TX 79701

PIPER SURVEYING COMPANY, P.O. BOX 60432, MIDLAND, TX, 79711, 432-550-7810

CASE NO. 11-12-012



EXHIBIT B
SERVICE PLAN FOR
Tract 2

Being a 75.90-acre tract of land out of Sections 37 & 38, Block 40, T-1-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located south of SH 191 and Deauville Boulevard)

DEVELOPMENT SERVICES

Existing Services: Water and sewer services are adjacent to Tract 2 . This property is adjacent to the multiple paved public roads.

- A. Type of service to be provided upon annexation: Tract 2 is adjacent to Deauville Boulevard and the extension of Avalon Drive and Tradewinds Boulevard. Engineering services, platting, traffic studies and controls will be required as warranted. Development and utility extension plans, right-of-ways, easements, and other typical development matters will be reviewed at the time plats are prepared for this land.
- B. Capital improvements to begin within 2 1/2 years: None

UTILITIES

Existing Services: Water and sewer service is adjacent to Tract 2.

- A. Type of service to be provided upon annexation: None.
- B. Capital improvements to begin within 2 1/2 years: None

POLICE

Existing Services: None

- A. Type of service to be provided upon annexation: emergency and routine call response.
- B. Capital improvements to begin within 2 1/2 years: No improvements anticipated.

FIRE

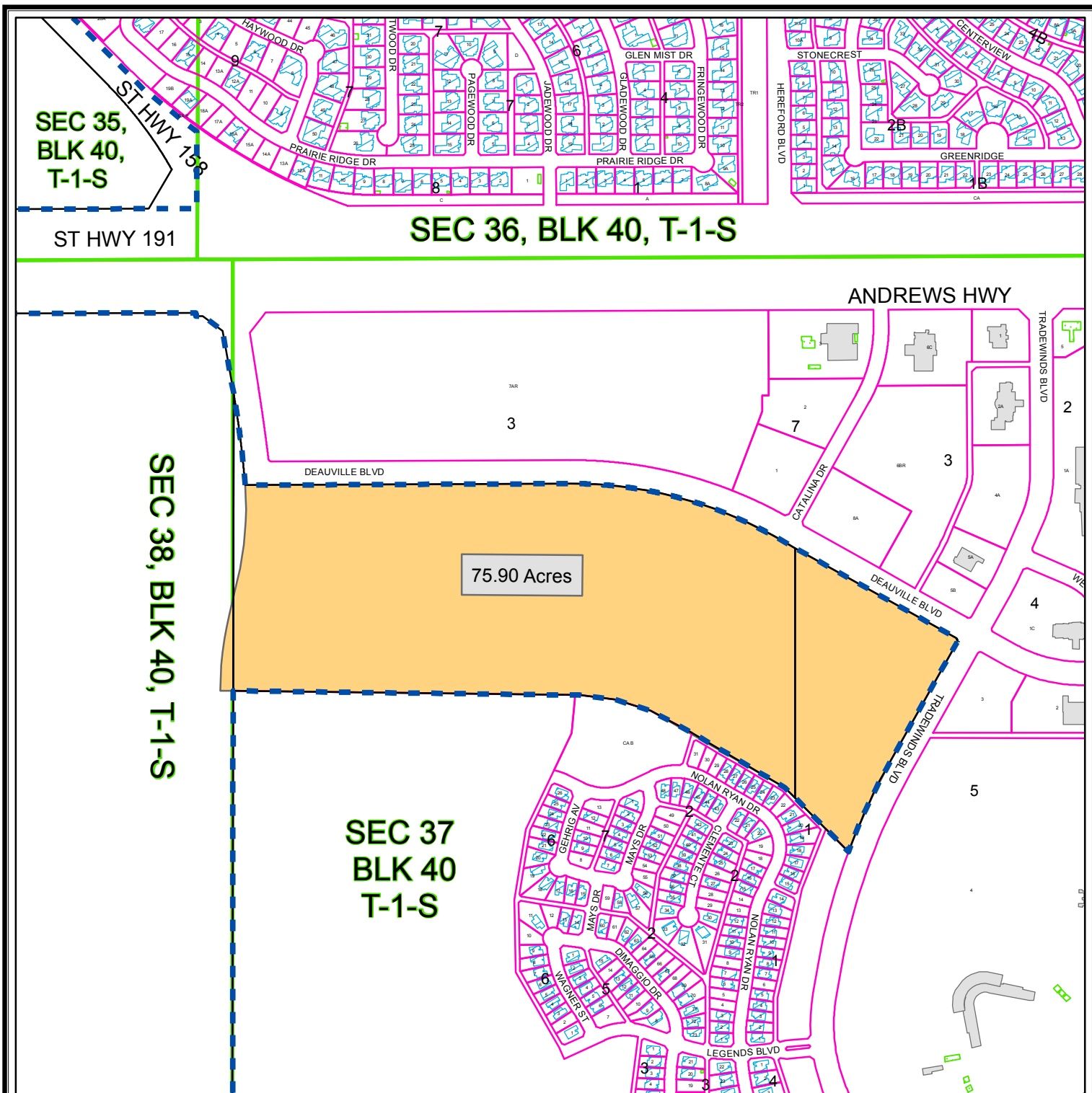
Existing Services: Fire and emergency response provided through agreement with Midland County

- A. Fire and EMS Service to be provided upon the effective date of annexation: All services are currently available and will continue following annexation.
- B. Capital improvements to begin within 2 1/2 years: None anticipated.

COMMUNITY SERVICES

Existing Services: Health and Senior Services
throughout Midland County including on site
septic system permitting

- A. Type of service to be provided upon annexation: Animal Control services including pick up, impoundment, records maintenance, adoption and education will be immediately available.
- B. Capital improvements to begin within 2 1/2 years: None anticipated.



PROPOSED ANNEXATION MAP

M - 12 - 012

Scale: 1" = 650'

TRACT 2

Consider a request for the annexation of a 75.90-acre tract of land out of Sections 37 and 38, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

- ANNEXATION BOUNDARY
- CITY LIMITS
- SURVEY SECTION
- CITY PARCEL
- COUNTY PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS



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City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, AICP

SUBJECT: Consider an ordinance annexing and adopting a service plan for Tract 3, being a 30.98-acre tract of land out of Section 35, Block 40, T-1-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located on the north side of I-20, east of NCR 1250)

Purpose: Consider an ordinance annexing and adopting a service plan for Tract 3, being a 30.98-acre tract of land out of Section 35, Block 40, T-1-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located on the north side of I-20, east of NCR 1250)

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process the annexation of this property.

Discussion:

Public hearings were held on October 9th and October 16th, 2012. It is now appropriate for the Council to consider an ordinance annexing and adopting a service plan for this approximate 31-acre tract. As a reminder, this is a voluntary annexation and a development plan is anticipated in the near future.

Attachments:

Map

Proposed Ordinance and Exhibit B: Service Plan

ORDINANCE NO.

AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO CERTAIN AREAS ADJOINING THE PRESENT CITY LIMITS, BEING A 30.98-ACRE TRACT OF LAND OUT OF SECTION 35, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF (GENERALLY LOCATED ON THE EAST SIDE OF STATE HIGHWAY 158, APPROXIMATELY ½ MILE NORTHWEST OF STATE HIGHWAY 191); AND APPROVING A PUBLIC SERVICE PLAN

WHEREAS, public hearings before the City Council of the City of Midland, Texas, a home rule municipal corporation, where all interested persons were provided an opportunity to be heard on the proposed annexation of the hereinafter described territory, were held in the City Council Chambers on October 9, 2012 and October 16, 2012; and

WHEREAS, notice of such public hearings was published in a newspaper having general circulation in the City of Midland, Texas, and in the below described territory, on September 26, 2012;

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

SECTION ONE. That the following described property adjoining the present boundary lines of the City of Midland, Texas, be and the same is hereby annexed to and incorporated within the boundary of the City of Midland, Texas:

Being a 30.98-acre tract of land out of Section 35, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas, and being more fully described by metes and bounds attached hereto as Exhibit "A" and incorporated herein by reference for all legal purposes.

SECTION TWO. That the service plan, attached hereto as Exhibit "B", which provides for the extension of municipal services into the area described above in Section One, is hereby approved.

SECTION THREE. That this ordinance be published in the official newspaper in the City of Midland, Texas, and the same shall not be effective until after the publication

thereof.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the day of , A.D., 2012; and passed to second reading on motion of Council member , seconded by Council member , by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member , seconded by Council member , on the day of , A.D., 2012, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS day of , A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



110 W. Louisiana Ave. Suite. 110
MIDLAND TEXAS 79701-3414
OFFICE (432) 687-0865 FAX (432) 687-0868
www.team-west.com

TRACT 3A

October 22, 2012

FIELD NOTES OF A 3.623 ACRE TRACT OF LAND OUT OF SECTION 35, BLOCK 40, T-1-S, T & P RR. COMPANY SURVEY, MIDLAND COUNTY, TEXAS:

NOTE: The following bearings, distances, coordinates, and area's shown hereon are based upon the Texas Plane Coordinate System, NAD 83, Texas Central Zone:

BEGINNING at (N:10,695,524.77, E:1,724,716.47) the South corner of the herein described tract a point in the Northerly right of way line of State Highway No. 158;

THENCE N 59°04'32" W with the northerly right of way line of said State Highway No. 158 a distance of 986.13 feet to a point for the West corner of the herein described tract;

THENCE N 30°55'48" E a distance of 160.00 feet to a point for the North corner of the herein described tract a point in the centerline of proposed Mosswood Drive;

THENCE S 59°04'48" E with the centerline of proposed Mosswood Drive a distance of 986.10' to a point in the City of Midland City Limits Line for the East corner of the herein described tract;

THENCE S 30°55'12" W with the City of Midland City Limits Line for a distance of 160.07 feet to the POINT OF BEGINNING.

Subject tract having an area of 3.623 acres.

GRASSLAND ESTATES WEST, SECTION 9

ANNEXED AREA PDHD – 1F1

A blue circular seal for a Professional Land Surveyor in the State of Texas. The seal contains the name 'MARCUS L. NOSTAS' and the number '5643'. A signature is written over the seal, and the date '10/22/12' is handwritten below it.



CASE NO. 2-12-034

EXHIBIT B

**SERVICE PLAN FOR
Tract 3**

Being a 30.98-acre tract of land out of Section 35, Block 40, T-1-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located north side of SH 158, approximately ½ mile northwest of SH 191)

DEVELOPMENT SERVICES

Existing Services: Water and sewer service is adjacent to Tract 3 . This property is adjacent to the multiple paved public roads.

- A. Type of service to be provided upon annexation: Tract 3 is adjacent to SH 158 and existing neighborhood streets located to the east. Engineering services, platting, traffic studies and controls will be required as warranted. Development and utility extension plans, right-of-ways, easements, and other typical development matters will be reviewed at the time plats are prepared for this land.
- B. Capital improvements to begin within 2 1/2 years: None

UTILITIES

Existing Services: Water and sewer service is adjacent to Tract 3.

- A. Type of service to be provided upon annexation: None.
- B. Capital improvements to begin within 2 1/2 years: None

POLICE

Existing Services: None

- A. Type of service to be provided upon annexation: emergency and routine call response.
- B. Capital improvements to begin within 2 1/2 years: No improvements anticipated.

FIRE

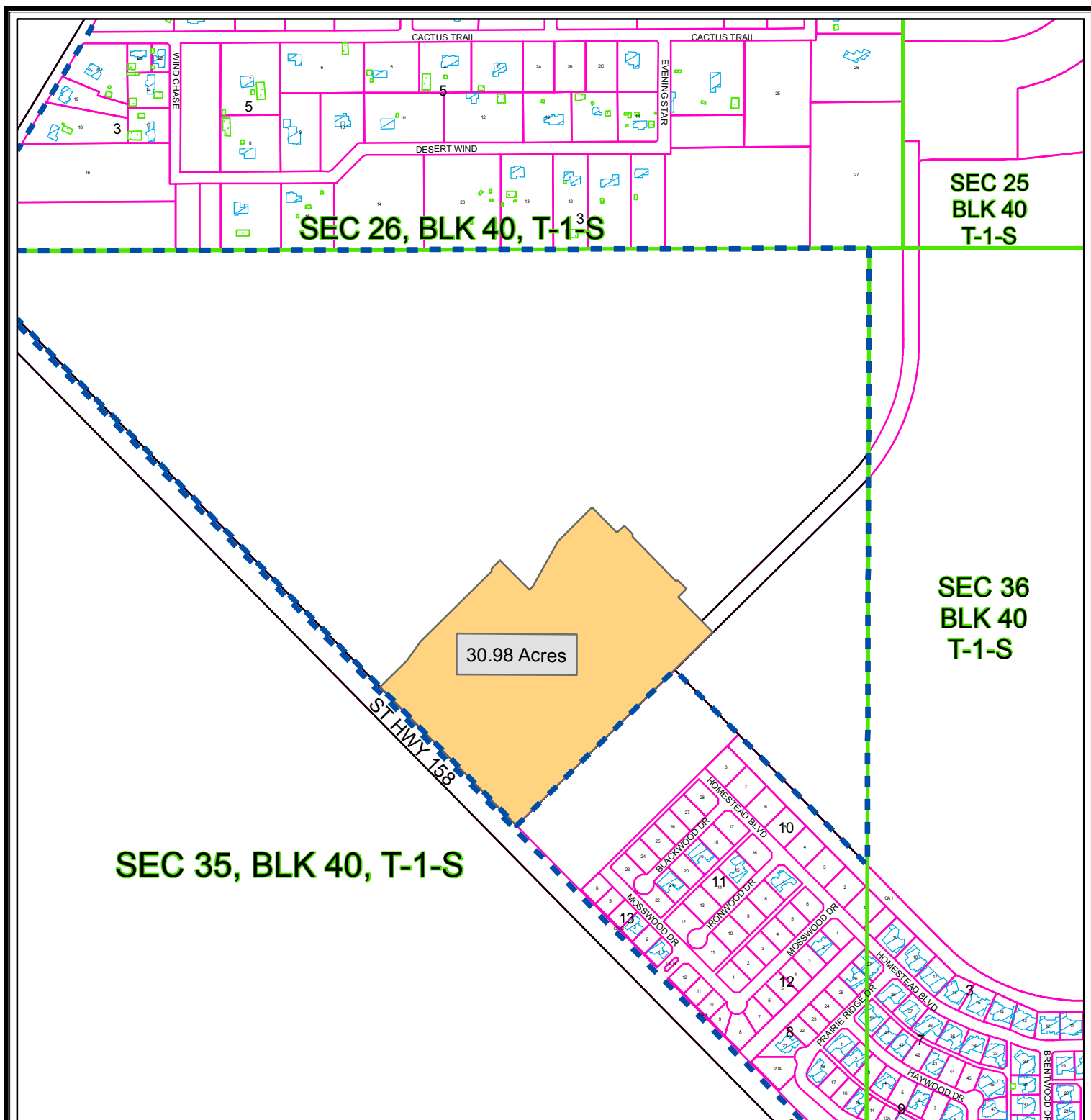
Existing Services: Fire and emergency response provided through agreement with Midland County

- A. Fire and EMS Service to be provided upon the effective date of annexation: All services are currently available and will continue following annexation.
- B. Capital improvements to begin within 2 1/2 years: None anticipated.

COMMUNITY SERVICES

Existing Services: Health and Senior Services
throughout Midland County including on site
septic system permitting

- A. Type of service to be provided upon annexation: Animal Control services including pick up, impoundment, records maintenance, adoption and education will be immediately available.
- B. Capital improvements to begin within 2 1/2 years: None anticipated.



PROPOSED ANNEXATION MAP

M - 12 - 021

Scale: 1" = 700'

TRACT 3

Consider a request for the annexation of a 30.98-acre tract of land out of Section 35, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

- ANNEXATION BOUNDARY
- CITY LIMITS
- CITY PARCEL
- COUNTY PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, AICP

SUBJECT: Consider an ordinance annexing and adopting a service plan for Tract 4, being a 193.29-acre tract of land out of Sections 11 & 12, Block 40, T-2-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located on the south side of the W. Loop 250 intersection at I-20)

Purpose: Consider an ordinance annexing and adopting a service plan for Tract 4, being a 193.29-acre tract of land out of Sections 11 & 12, Block 40, T-2-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located on the south side of the W. Loop 250 intersection at I-20)

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process the annexation of this property.

Discussion:

Public hearings were held on October 9th and October 16th, 2012. It is now appropriate for the Council to consider an ordinance annexing and adopting a service plan for this approximate 193-acre tract. As a reminder, this is a voluntary annexation and a development plan is anticipated in the near future.

Attachments:

Map
Proposed Ordinance and Exhibit B: Service Plan

ORDINANCE NO.

AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO CERTAIN AREAS ADJOINING THE PRESENT CITY LIMITS, BEING A 193.29-ACRE TRACT OF LAND OUT OF SECTIONS 11 AND 12, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF (GENERALLY LOCATED ON THE SOUTH SIDE OF INTERSTATE 20, SOUTH OF SOUTH LOOP 250 WEST); AND APPROVING A PUBLIC SERVICE PLAN

WHEREAS, public hearings before the City Council of the City of Midland, Texas, a home rule municipal corporation, where all interested persons were provided an opportunity to be heard on the proposed annexation of the hereinafter described territory, were held in the City Council Chambers on October 9, 2012 and October 16, 2012; and

WHEREAS, notice of such public hearings was published in a newspaper having general circulation in the City of Midland, Texas, and in the below described territory, on September 26, 2012;

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

SECTION ONE. That the following described property adjoining the present boundary lines of the City of Midland, Texas, be and the same is hereby annexed to and incorporated within the boundary of the City of Midland, Texas:

Being a 193.29-acre tract of land out of Sections 11 and 12, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas, and being more fully described by metes and bounds attached hereto as Exhibit "A" and incorporated herein by reference for all legal purposes.

SECTION TWO. That the service plan, attached hereto as Exhibit "B", which provides for the extension of municipal services into the area described above in Section One, is hereby approved.

SECTION THREE. That this ordinance be published in the official newspaper in the City of Midland, Texas, and the same shall not be effective until after the publication

thereof.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the day of , A.D., 2012; and passed to second reading on motion of Council member , seconded by Council member , by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member , seconded by Council member , on the day of , A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS day of , A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

FIRM # 001363

**521 NORTH TEXAS • ODESSA, TEXAS 79761
(432) 332-5058 or 580-8812 • FAX (432) 332-8812**

Legal Description

For a 193.29 Acre Tract of Land,
Located in Sections 11 & 12, Block 40, T-2-S,
T&P RR Company Survey,
Midland County, Texas

TRACT 4

Boundary Being More Fully Described By Metes and Bounds As Follows:

BEGINNING at a point in the east line of said Section 12, the south right-of-way line of Interstate 20 and the existing City of Midland city limits line for the northeast corner of this tract;

THENCE South $14^{\circ}17'45''$ East with the east line of said Section 12, a distance of 2628.47 feet to a point for the southeast corner of said Section 12 and the northeast corner of Section 13, said Block 40, being the southeast corner of this tract;

THENCE South $75^{\circ}08'38''$ West with the south line of said Section 12 and the north line of said Section 13, a distance of 5285.27 feet to a point for the northeast corner of said Section 14, being a point of deflection in the south line of this tract;

THENCE South $76^{\circ}14'20''$ West with the south line of said Section 12 and the north line of said Section 14, a distance of 194.33 feet to a point for the southwest corner of said Section 12 and the southeast corner of said Section 11, being a point of deflection in the south line of this tract;

THENCE South $75^{\circ}09'10''$ West with the south line of said Section 11 and the north line of said Section 14, a distance of 3235.10 feet to a point in the south line of Tract 20 recorded in Volume 3131, Page 210, Official Records, Midland County, Texas, being a point of deflection in the south line of this tract;

THENCE North $59^{\circ}43'34''$ East with the south line of said Tract 20, at a distance of 3365.73 feet pass the east line of said Section 11 and the west line of said Section 12, continuing for a total distance of 5311.20 feet to a point in the west line of a 100 acre tract recorded in Volume 2422, Page 247, Official Records, Midland County, Texas and in the said City of Midland city limits line, being a point of deflection in the north line of this tract;

THENCE South $30^{\circ}16'41''$ East with the west line of said 100 acre tract and said City of Midland city limits line, a distance of 1049.42 feet to a point for the southwest corner of said 100 acre tract, being a point of deflection in the north line of this tract;

THENCE North $59^{\circ}43'19''$ East with the south line of said 100 acre tract and said City of Midland city limits line, a distance of 2300.29 feet to a point for the southeast corner of said 100 acre tract, being a point of deflection in the north line of this tract;

THENCE North 30°16'41" West with the east line of said 100 acre tract and said City of Midland city limits line, a distance of 1257.69 feet to a point of deflection in the north line of this tract;

THENCE North 59°49'06" East with said City of Midland city limits line, a distance of 1511.98 feet to the Point of Beginning, containing 193.29 acres of land.

Bearings and distances are relative to the Texas Coordinate System, 1983 NAD, Central Zone, with a combined grid factor of 0.9998771. Acreage stated is average surface.

This document was prepared under 22 TAC 663.21, and is not to be used to convey or establish interest in real property except those rights and interest implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

LCA, Inc.



Aaron S. Burrell, R.P.L.S. 5689

22 August, 2012

LCA Project Number 2012-058



CASE NO. 2-12-041

EXHIBIT B
SERVICE PLAN FOR
Tract 4

Being a 193.29-acre tract of land out of Sections 11 & 12, Block 40, T-2-S, T&P RR. Co. Survey,
Midland County, Texas. (Generally located south of the W Loop 250 intersection at I-20)

DEVELOPMENT SERVICES

Existing Services: Water and sewer service is not available to Tract 4 . This property is adjacent to the south I-20 service road.

- A. Type of service to be provided upon annexation: Tract 4 is adjacent to the south I-20 service road. Engineering services, platting, traffic studies and controls will be required as warranted. Development and utility extension plans, right-of-ways, easements, and other typical development matters will be reviewed at the time plats are prepared for this land.
- B. Capital improvements to begin within 2 1/2 years: None

UTILITIES

Existing Services: Water and sewer service is not available to Tract 4.

- A. Type of service to be provided upon annexation: None.
- B. Capital improvements to begin within 2 1/2 years: None

POLICE

Existing Services: None

- A. Type of service to be provided upon annexation: emergency and routine call response.
- B. Capital improvements to begin within 2 1/2 years: No improvements anticipated.

FIRE

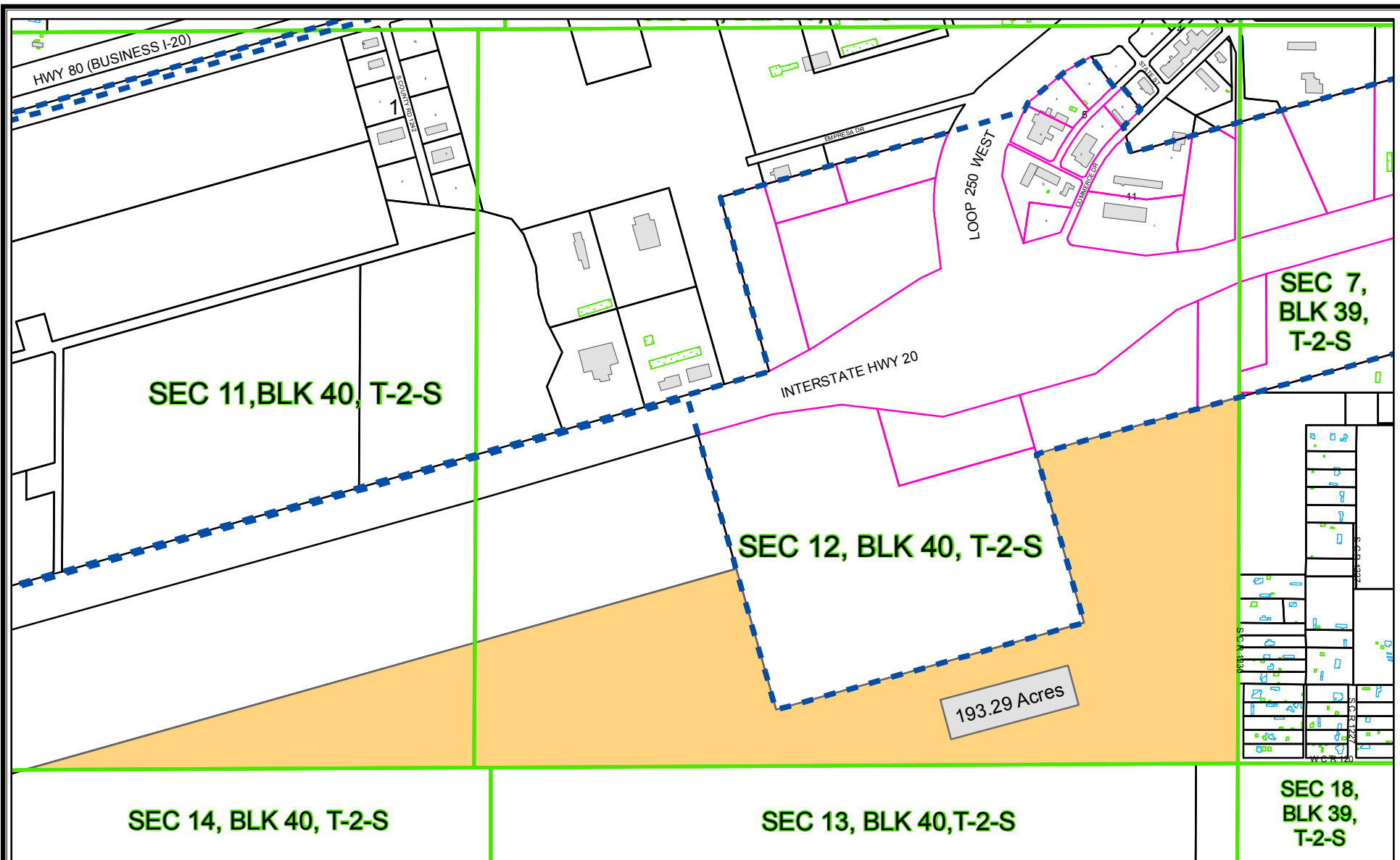
Existing Services: Fire and emergency response provided through agreement with Midland County

- A. Fire and EMS Service to be provided upon the effective date of annexation: All services are currently available and will continue following annexation.
- B. Capital improvements to begin within 2 1/2 years: None anticipated.

COMMUNITY SERVICES

Existing Services: Health and Senior Services
throughout Midland County including on site
septic system permitting

- A. Type of service to be provided upon annexation: Animal Control services including pick up, impoundment, records maintenance, adoption and education will be immediately available.
- B. Capital improvements to begin within 2 1/2 years: None anticipated.



M - 12 - 023

Scale: 1" = 1000'

TRACT 4

Consider a request for the annexation of a 193.29-acre tract of land out of Sections 11 and 12, Block 40, T-2-S, T & P RR Co. Survey, Midland County, Texas.

PROPOSED ANNEXATION MAP

LEGEND

	ANNEXATION BOUNDARY		CITY PARCEL
	CITY LIMITS		PUBLIC BLDGS
	SURVEY SECTION		PRIVATE BLDGS
	COUNTY PARCEL		ACCESSORY BLDGS



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City Council Agenda

Approved for Agenda:

JNichols

City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a resolution approving the issuance of a permit to Rust Oil Corp. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Smith-Hughes "9" No. 1) located 2,173 feet from the south line and 1,651 feet from the east line located in Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of the extension of N. Garfield Street, approximately ½ mile north of Mockingbird Lane.)

Purpose:

To consider a resolution approving the issuance of a permit to Rust Oil Corp. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Smith-Hughes "9" No. 1) located 2,173 feet from the south line and 1,651 feet from the east line located in Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the west side of the extension of N. Garfield Street, approximately ½ mile north of Mockingbird Lane.) The required 30-day public comment has passed and the Council may consider this request. No letters of objection received.

Recommended City Council Action

X Approve Deny Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends application approval with the following recommendations: *include aerial/topographic map, 860 ft map identify owners, concept plan include survey map and describe tank types, update digital copies with drainage plans and survey.* Rust Oil has addressed all of these conditions and updated the application. Concerning the landscaping and irrigation variance request the committee recommends landscaping be installed within two years.

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

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO RUST OIL CORPORATION (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 2,173 FEET FROM THE SOUTH LINE AND 1,651 FEET FROM THE EAST LINE, SECTION 9, BLOCK “X”, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE WEST SIDE OF THE EXTENSION OF NORTH GARFIELD STREET, APPROXIMATELY ½ MILE NORTH OF MOCKINGBIRD LANE)

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 October 9, 2012; and

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

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

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

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

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

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 2,173 feet from the south line and 1,651 feet from the east line, Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on November 13, 2012, considered the application of Rust Oil Corporation, dated April 15, 2012, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Rust Oil Corporation, dated April 15, 2012, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Rust Oil Corporation, Smith-Hughes "9" No. 1 oil and gas well shall be 2,173 feet from the south line and 1,651 feet from the east line, Section 9, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Rust Oil Corporation, which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from November 13, 2012, through November 13, 2013, 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.

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

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

Landscaping is not required at this time but will be required within two years from November 13, 2012. Operator shall notify the City Manager within 180 days (May 13, 2014) in writing if the landscaping is not to be completed prior to expiration of the two year period. If landscaping is not completed prior to the two year period this permit shall automatically terminate without any action of the City Council required.

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

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

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of November, 2012.

Rust Oil Corporation

By: _____

CB Rust, President

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

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

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

b.

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

c.

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

d.

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

e.

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

f.

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

g.

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

2.

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

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

a.

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

b.

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

c.

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

d.

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

e.

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

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

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

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

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

3.

Insurance.

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

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

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

x.

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

xi.

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

b.

Standard Commercial General Liability Policy.

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

c.

Excess or Umbrella Liability.

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

Environmental Pollution Liability Coverage.

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

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

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

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

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

iii.

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

f.

Automobile Liability Insurance.

i.

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

ii.

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

g.

Certificates of Insurance.

i.

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

ii.

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

iii.

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

iv.

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

v.

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

vi.

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

Indemnification.

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

Notice.

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

Notice addresses are as follows:

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

OPERATOR: _____
CB Rust, President

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

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

(L)

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

1.

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

2.

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

3.

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

4.

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

5.

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

6.

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

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

7.

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

8.

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

9.

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

10.

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

11.

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

12.

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

13.

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

14.

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

15.

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

16.

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

17.

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

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping.

Landscaping is not required at this time but will be required within two years from November 13, 2012. Operator shall notify the City Manager within 180 days (May 13, 2014) in writing if the landscaping is not to be completed prior to expiration of the two year period. If landscaping is not completed prior to the two year period this permit shall automatically terminate without any action of the City Council required.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same

information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must

be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

a.

An amendment fee of \$1,000.00.

b.

A description of the proposed amendments.

c.

Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).

d.

Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.

e.

Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

a.

No Material Change from Existing Permit. If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.

b.

Material Change from Existing Permit. If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well

Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

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

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

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

OPERATOR: _____
CB Rust, President

Rust Oil Corporation
401 West Texas, Suite 801
Midland, Texas 79701
(432) 687-1333



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

0-12-019
JUL 26 2012

I. General Information

Date 4.15.12	Operator Name (must match W-1) RUST OIL CORP	Operator Address 6300 Ridglea Place-904 Fort Worth, TX 76116
Representative Name ROGER STONE	Representative Address (within Midland City Limits) 401 W. TEXAS, SUITE 801 MIDLAND, TX 79701	Rep. Tele. 432.687.1333 Rep. Fax 432.381.7839
Fee: \$4,000.00 Rec'd Yes ___ No ___		

Permit Compliance Contact (Choose 1):

Option A:

24/7 Answering Services - No. 1 (Tele.): **432.687.1333** No. 2 (Tele.): **432.381.7710**

Option B:

Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):

CURTIS LEONARD 432.664.6607-2 Saddle Club Dr. Midland, TX 79705
C.B. RUST 817.996.4619-152 Crown Ridge Ct. Ft. Worth, TX 76133Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]). **NONE**

II. Mineral Ownership

Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):

1. **VARIOUS (see Exhibit C)**

2.

3.

ATTACHED AS EXHIBIT C is (a Title Opinion by _____, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from **CURTIS LEONARD** a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].

III. Surface Ownership & Use

General Description of Current Surface Use (within 860 feet of proposed surface location):

CITY STREET; UNDEVELOPED; OWNER IS NORTH MIDLAND PARTNERSHIP, WHICH HAS ENTERED INTO A SURFACE USE AGREEMENT WITH RUST OIL CORP.

ATTACHED AS EXHIBIT D is (a Title Opinion by _____, a licensed Texas Attorney/a Take-off from **DIANE MAGEE**, 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: SMITH-HUGHES "9" NO. 1

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary) [See § J(11) and § L(4)]:

17" hole to 300'; 13 7/8" casing to 300', cemented to surface; 11" hole to 5200'; 8 5/8" casing to 5200', cemented to surface; 7 7/8" hole to 11,500', cemented to base of 8 5/8"

Legal Description of Proposed Well Site:

2173' FSL & 1051' FEL of Section 9, BLK X, H.P. Hilliard Survey

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

- (1) Drilling: NONE
- (2) Operations: GEXA ENERGY
440 VOLT ELECTRICITY

Description of water source to be used during Drilling:

FRESH WATER WELLS CURRENTLY IN PLACE ON DEDICATED SURFACE AREA.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

SEE EXHIBIT N FOR DETAILS OF ROUTING OF ELEC. LINES & PIPELINES

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

SEE EXHIBIT O; PITS WILL BE DEEP BURIED TO COMPLY WITH
CITY REQUIREMENTS

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the Letter of Credit/Certificate of Deposit in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

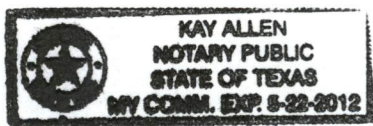
RUST OIL CORPORATION
[NAME OF COMPANY]

By *C. B. Rust*
Its President

County of TARRANT)

State of Texas))

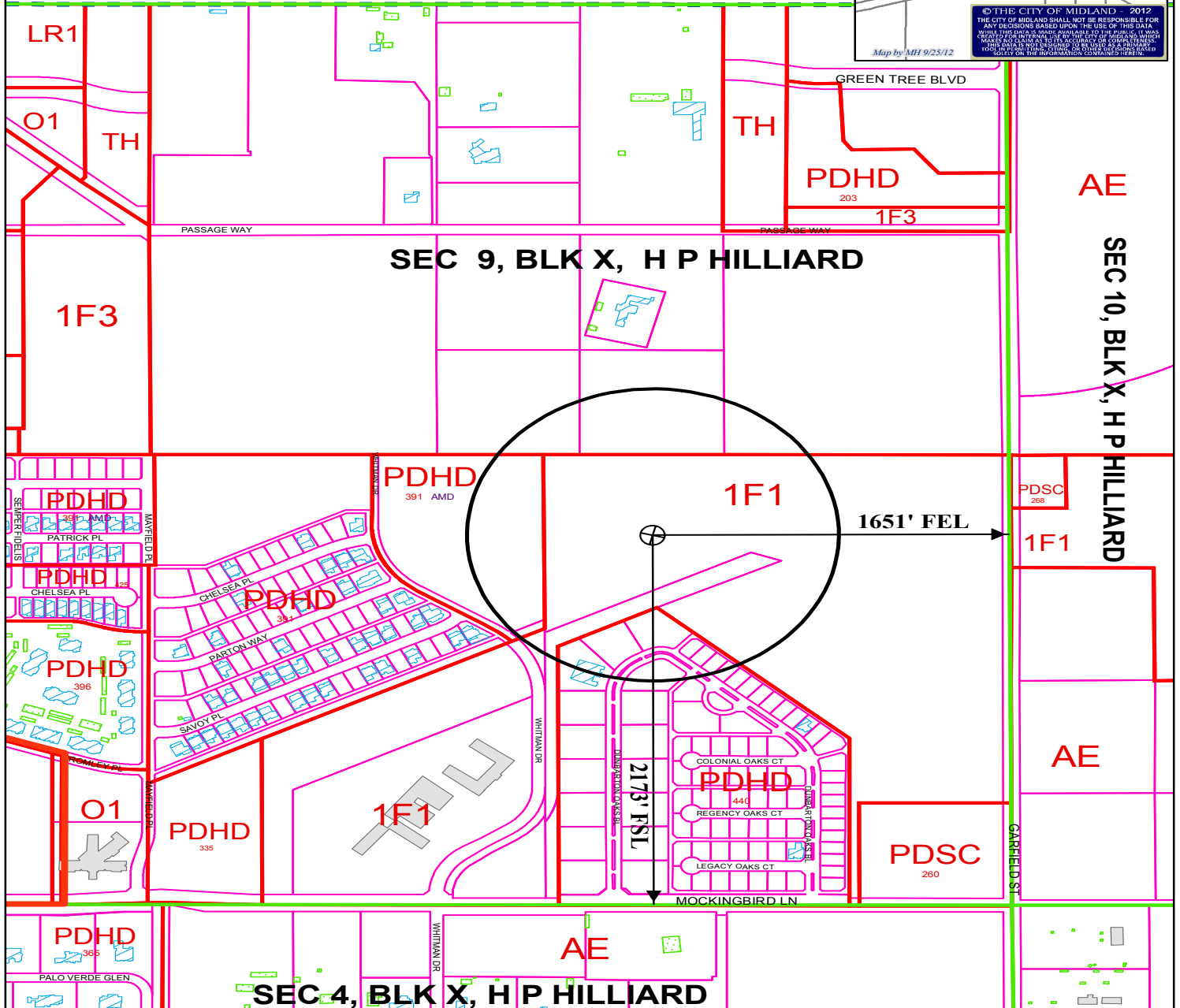
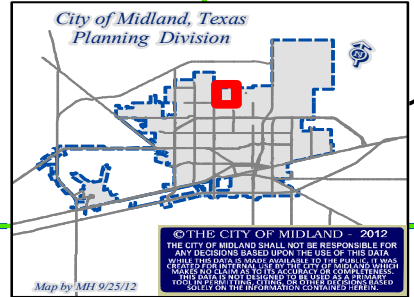
, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.



[SEAL]

Kay Allen
Notary Public, State of Texas

SEC 9, BLK 39, T-1-S



LOCATION AND ZONING MAP

O - 12 - 019

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 2173' FSL and 1651' FEL, Section 9, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas.

Smith-Hughes "9" No. 1

LEGEND

	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.

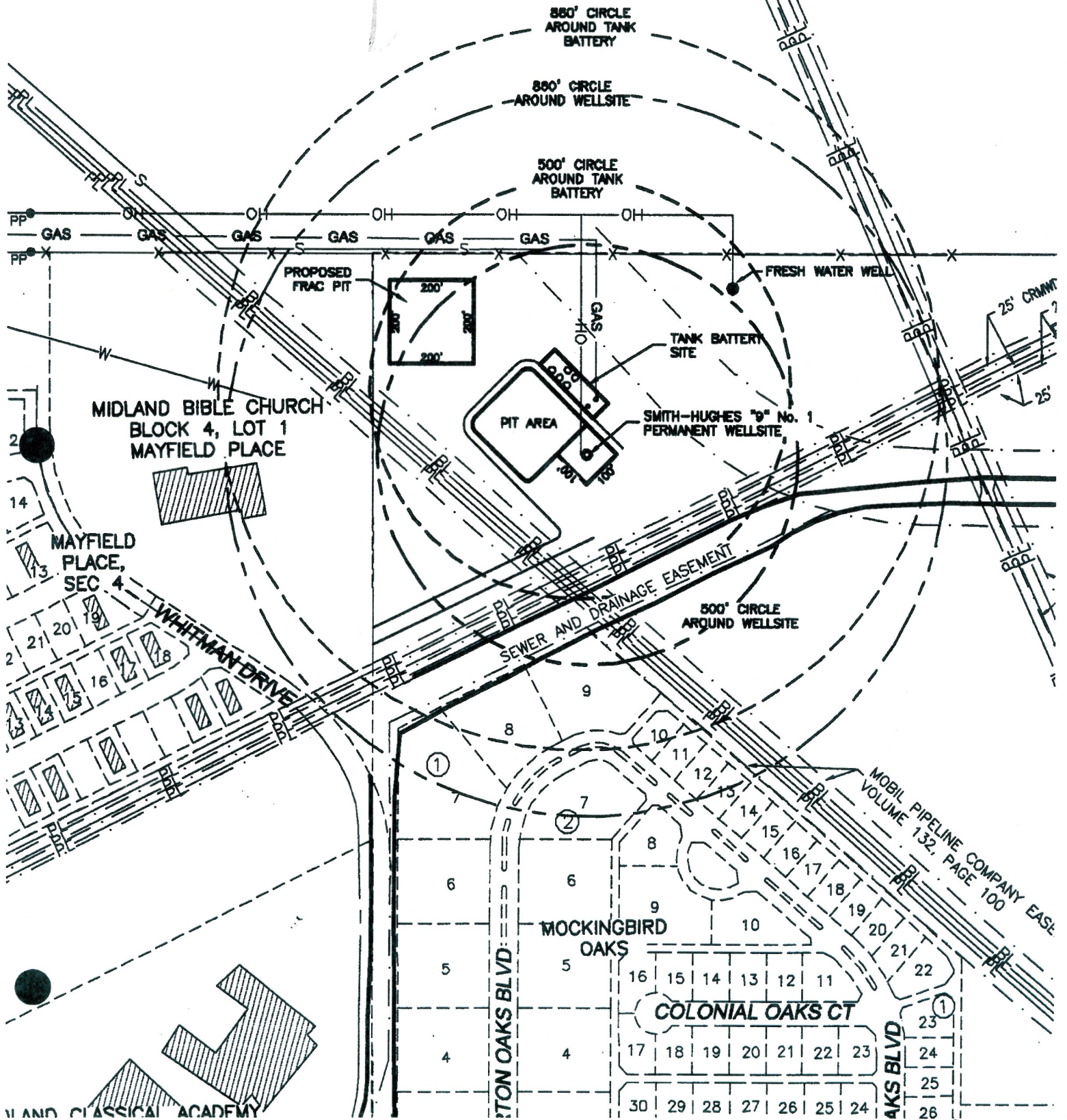
ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
2F	TWO-FAMILY DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY

**SECTION 9, BLOCK "X",
H.P. HILLARD SURVEY,
MIDLAND COUNTY, TEXAS**

EXHIBIT "D"

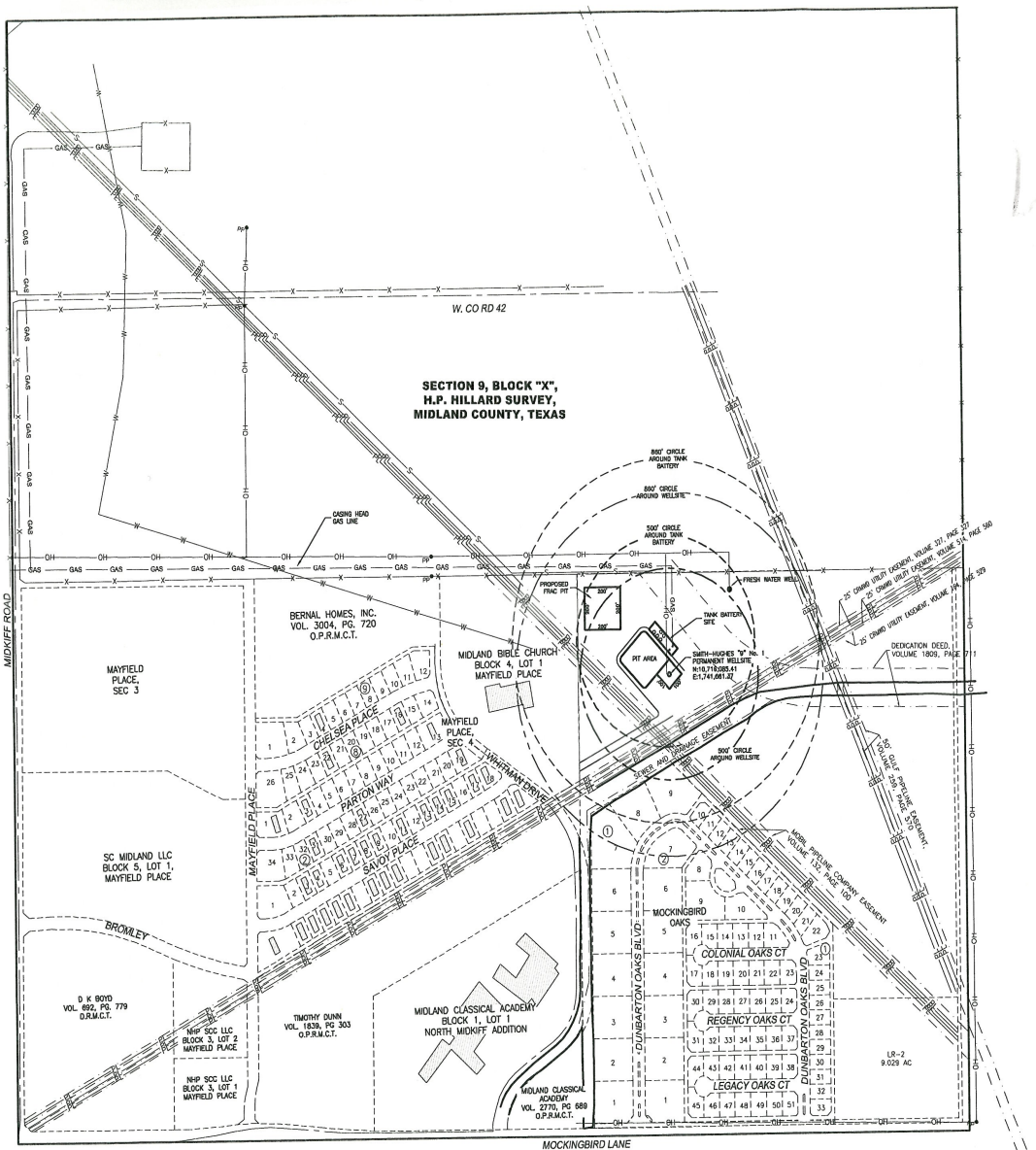
RECEIVED
SEP 17 2012
CITY OF MIDLAND
PLANNING DIVISION OFFICE



DRILL SITE MAP

CASE NO: O-12 42.40

EXHIBIT "2011-1865"

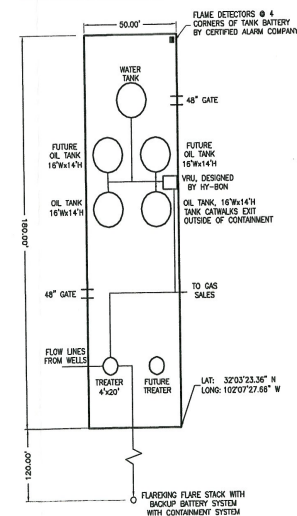


NOTE: BEARINGS SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE TEXAS COORDINATE SYSTEM "TEXAS CENTRAL ZONE", NORTH AMERICAN DATUM OF 1983. DISTANCES ARE SURFACE VALUES.

LEGEND

- | | |
|---|---|
| —X— | DENOTES FENCE |
| —OH— | DENOTES OVERHEAD ELECTRIC LINE |
| —W— | DENOTES WATER LINE |
| —S— | DENOTES SEWER LINE |
| —PL— | DENOTES UNDERGROUND PIPELINE |
| —GAS — GAS | DENOTES GAS LINE |
|  | DENOTES EXISTING BUILDING / HOUSE |
| — — — — — | DENOTES EASEMENT |
| PP | DENOTES POWER POLE |
| D.R.M.C.T. | DEED RECORDS, MIDLAND COUNTY, TX |
| O.P.R.M.C.T. | OFFICIAL PUBLIC RECORDS, MIDLAND COUNTY, TX |
| P.R.M.C.T. | PLAT RECORDS, MIDLAND COUNTY, TX |

NOTE: BATTERY PROTECTED BY LIGHTNING
ARRESTOR SYSTEM BY LIGHTNING MASTERS



TANK BATTERY DETAIL
SCALE: 1"=30'

WEST COMPANY

OF MIDLAND, INC.
ENGINEERS - PLANNERS - SURVEYORS
REGISTRATION FIRM 2164
110 W. LOUISIANA AVE., SUITE 110
MIDLAND, TEXAS 79701

	NO	RESPONSE	BY	DATE
ISSUED BY: MJD, DCH				
RECEIVED BY: ALM				
APPROVED BY: ALM				
DATE: JULY 19, 2012				

WELL LOCATION MAP
SMITH HUGHES "9" NO. 1
SECTION 9, BLOCK "X", HP HILLIARD SURVEY
MIDLAND, MIDLAND COUNT, TEXAS

PROJECT NUMBER: 2011-180

RECEIVED

SEP 17 2012

**CITY OF MIDLAND
PLANNING DIVISION OFFICE**



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a resolution authorizing the execution of a road repair agreement with Rust Oil Corporation regarding its application to drill an oil and gas well within the City Limits, in Section 9, Block "X", H.P. Hilliard Survey, Midland County, Texas. The Road Repair Agreement will cover North Midkiff Road, Mockingbird Lane and Whitman Drive and be in the amount of \$25,000.00.

Purpose:

Consider a resolution approving a road repair agreement between the City of Midland and Rust Oil Corporation.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

This agreement will cover the cost of road damages to North Midkiff Road, Mockingbird Lane and Whitman Drive that are attributable to Rust Oil Corporation in association with the above drilling permit. The total amount of the letter of credit covering the proposed well site is \$25,000; this is the amount specified in the City's oil and gas drilling regulations.

Discussion:

Rust Oil Corporation has met the requirements contained in the City code related to this matter.

Attachments: Draft agreement

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE EXECUTION OF A
ROAD REPAIR AGREEMENT WITH RUST OIL
CORPORATION REGARDING ITS APPLICATION TO
DRILL AN OIL AND GAS WELL WITHIN THE CITY
LIMITS LOCATED 2,173 FEET FROM THE SOUTH
LINE AND 1,651 FEET FROM THE EAST LINE,
SECTION 9, 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 Rust Oil Corporation;

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

THAT the Mayor is hereby authorized and directed to execute on behalf of the City of Midland, Texas, a road repair agreement with Rust Oil Corporation. 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., 2012, 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 CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Road Repair Agreement

Rust Oil Corporation, "Operator," intends to use portions of North Midkiff Road, Mockingbird lane and Whitman Drive to access its oil and gas lease. Operator agrees to pay actual road repair costs up to a maximum amount of Twenty-Five Thousand and no/hundred dollars (\$25,000.00) per calendar year for damage done to North Midkiff Road, Mockingbird lane and Whitman Drive and the lease entrance gate to the extent that any such damage is verifiably attributable to traffic servicing Rust Oil Corporation. Operator will not be obligated to pay for any damage to North Midkiff Road, Mockingbird Lane and Whitman Drive road attributable to other parties or for damage associated with normal wear and tear. Operator will not be required to pay road repair expenses in excess of \$25,000.00 per calendar year for Smith-Hughes "9" No.1 well it plans to drill in Section 9, Block "X", HP Hilliard Survey, City and County of Midland, Texas. Operator has attached to this agreement a Letter of Credit in the amount of \$25,000 which will serve to secure payment of any such road repair expenses for the Smith-Hughes "9" No. 1 well. 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.

Rust Oil Corporation and the City of Midland agree that documentation of any road damage determined to be caused by Operator's use of North Midkiff Road, Mockingbird lane and Whitman Drive to access the Smith-Hughes "9" No. 1 well shall be presented to Operator. If the Operator does not agree, then Operator may file a written objection with the City Manager within ten (10) days of being notified of the road damage. The City Manager shall review the objections and give Operator the opportunity to be heard and present facts that Operator 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 City of Midland Ordinance No. 8769, Section 6-1-23 "Oil & Gas Well Permits". The amount drawn from the letter of credit, certificate of deposit or surety bond shall not exceed the limits previously described by this agreement.

AGREED TO AND ACCEPTED BY THE FOLLOWING PARTIES:

Rust Oil Corporation

City of Midland

By: _____
CB Rust, President

By: _____
Mayor: W. Wesley Perry

Date: _____

Date: _____



City Council Agenda

Approved for Agenda:

JNichols

City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Evans F 1) located 2,314 feet from the north line and 2,340 feet from the west line located in Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the east side of the N. Midland Drive, approximately ½ mile north of Mockingbird Lane.)

Purpose:

To consider a resolution approving the issuance of a permit to Bluestem Energy Holdings, LLC (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Evans F 1) located 2,314 feet from the north line and 2,340 feet from the west line located in Section 8, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the east side of the N. Midland Drive, approximately ½ mile north of Mockingbird Lane.) The required 30-day public comment has passed and the Council may consider this request. No letters of objection received.

Recommended City Council Action

X Approve Deny Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends application approval. Bluestem Energy Holdings, LLC is requesting a landscaping variance of no more than two years; the Oil and Gas Advisory Committee concurs.

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

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 2,314 FEET FROM THE NORTH LINE AND 2,340 FEET FROM THE WEST LINE, SECTION 8, BLOCK “X”, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF NORTH MIDLAND DRIVE, APPROXIMATELY ½ MILE NORTH OF MOCKINGBIRD LANE); AND PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT

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

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

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

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

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

WHEREAS, notice of the public hearing on this matter was provided in accordance with Section 6-1-23(H)(1) and a public hearing was held on October 9, 2012; and

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

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

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

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

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

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 2,314 feet from the north line and 2,340 feet from the west line, Section 8, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

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

On motion of Council member _____, seconded by Council member

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on November 13, 2012, considered the application of Bluestem Energy Holdings, LLC, dated June 4, 2012, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Bluestem Energy Holdings, LLC, dated June 4, 2012, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Bluestem Energy Holdings, LLC, Evans F 1 oil and gas well shall be 2,314 feet from the north line and 2,340 feet from the west line, Section 8, Block X, H.P. Hilliard Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Bluestem Energy Holdings, which is incorporated herein. Further, all operations done under this permit shall be done and accomplished in strict accordance with the Midland City Code, Ordinance 8769, which is hereby incorporated into this permit by reference and made applicable hereto with the same force and effect as if the same were copied fully in this permit. Also, all operations done under this permit shall be done and accomplished in strict accordance and compliance with the General Conditions, which are attached hereto marked as Exhibit "A" and incorporated into and made a part of this permit for all purposes. All operations done and required under this permit shall be done and accomplished in strict accordance and compliance with the Specific Conditions which are attached hereto, marked as Exhibit "B", and incorporated into and made a part of this permit for all purposes.

This permit shall be effective from November 13, 2012, through November 13, 2013, 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.

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

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

Landscaping is not required at this time but will be required within two years from November 13, 2012. Operator shall notify the City Manager within 180 days (May 13, 2014) in writing if the landscaping is not to be completed prior to expiration of the two year period. If landscaping is not completed prior to the two year period this permit shall automatically terminate without any action of the City Council required.

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

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

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of November, 2012.

Bluestem Energy Holdings, LLC

By: _____

Jim Mason, District Production Manager

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

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

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

b.

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

c.

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

d.

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

e.

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

f.

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

g.

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

2.

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

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

a.

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

b.

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

c.

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

d.

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

e.

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

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

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

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

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

3.

Insurance.

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

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

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

x.

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

xi.

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

b.

Standard Commercial General Liability Policy.

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

c.

Excess or Umbrella Liability.

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

Environmental Pollution Liability Coverage.

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

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

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

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

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

iii.

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

f.

Automobile Liability Insurance.

i.

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

ii.

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

g.

Certificates of Insurance.

i.

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

ii.

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

iii.

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

iv.

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

v.

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

vi.

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

Indemnification.

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

Notice.

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

Notice addresses are as follows:

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

OPERATOR: _____
Jim Mason, District Production Manager

Bluestem Energy Holdings, LLC
400 W. Illinois, Ste. 900
Midland, Texas 79701
(432) 770-8322

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

(L)

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

1.

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

2.

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

3.

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

4.

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

5.

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

6.

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

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

7.

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

8.

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

9.

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

10.

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

11.

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

12.

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

13.

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

14.

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

15.

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

16.

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

17.

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

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten(10)business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping.

Landscaping is not required at this time but will be required within two years from November 13, 2012. Operator shall notify the City Manager within 180 days (May 13, 2014) in writing if the landscaping is not to be completed prior to expiration of the two year period. If landscaping is not completed prior to the two year period this permit shall automatically terminate without any action of the City Council required.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same

information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must

be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

a.

An amendment fee of \$1,000.00.

b.

A description of the proposed amendments.

c.

Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).

d.

Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.

e.

Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

a.

No Material Change from Existing Permit. If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.

b.

Material Change from Existing Permit. If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well

Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

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

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

Notice addresses are as follows:

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

OPERATOR: _____
Jim Mason, District Production Manager

Bluestem Energy Holdings, LLC
400 W. Illinois, Ste. 900
Midland, Texas 79701
(432) 770-8322



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 06/04/2012	Operator Name (must match W-1) Bluestem Energy Holdings, LLC	Operator Address 400 W. Illinois Ave, Ste. 900 Midland, TX 79701
Representative Name Jim Mason	Representative Address (within Midland City Limits) 400 W. Illinois, Ste. 900 Midland, TX 79701	Rep. Tele. (432) 770-8322 Rep. Fax (817) 872-9888
Fee: \$4,000.00 Rec'd Yes ___ No ___	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Option A: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134		
24/7 Answering Services - No. 1 (Tele.): _____ No. 2 (Tele.): _____		
Option B: Jim Mason, No. 1 (432) 770-8322, No. 2 (432) 685-0134		
Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):		
Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Same as above		
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]).		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
1. Evans Resources, LP, P.O. Box 7962, Midland, TX 79708		
2. Joy D. Anguish Trust and David D. Anguish, 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 F 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:

2314' FNL and 2340' FWL, Sec. 8, Blk. X, H.P. Hilliard Survey

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

Description of Public Utilities required during (1) drilling and (2) operations:

(1) Drilling: None

(2) Operations: Oncor is the electricity transmission provider. The actual electricity provider will be a function of the best available rates and reliability of the provider.

Description of water source to be used during Drilling:

Evans water wells located in N/2 of Sec. 8, Blk. X, H.P. Hilliard Survey

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

All electric lines will be overhead for the immediate future. Ultimately, electrical lines will be buried in the proposed corridors as shown on Exhibit N, in accordance with the Surface Agreement dated November 3, 2010 between Operator and the Surface Owner.

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit O

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

Bluestem Energy Holdings, LLC

[NAME OF COMPANY]

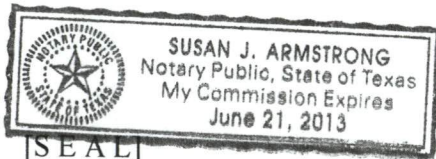
By Jim Mason

Its District Production Manager

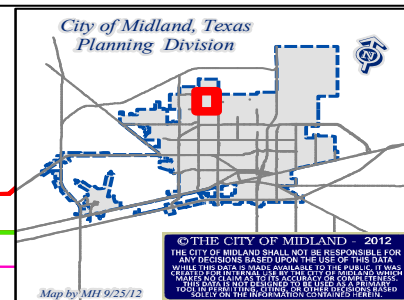
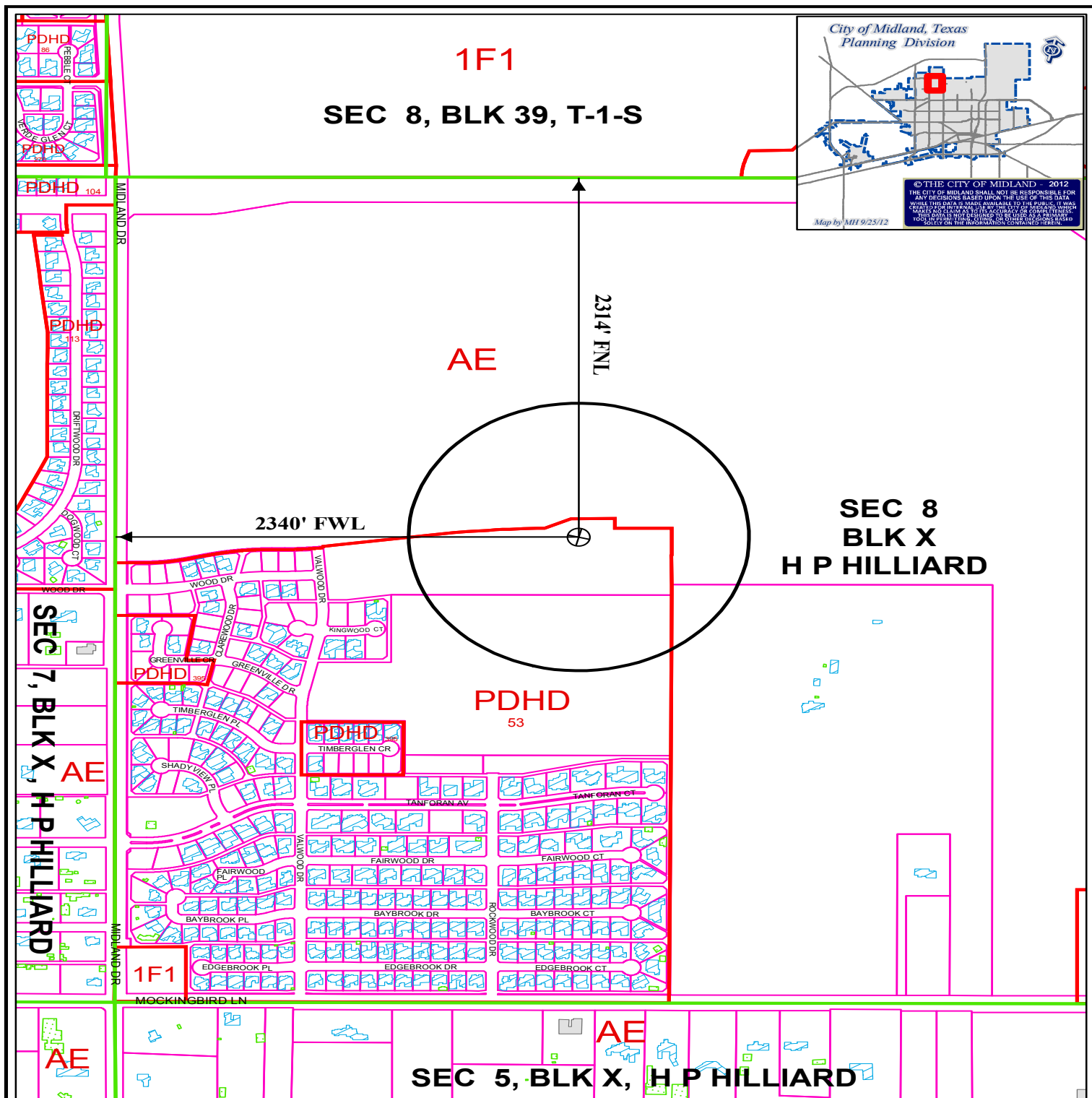
State of Texas

County of Midland

Jim Mason, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.



Susan J. Armstrong
Notary Public, State of Texas



LOCATION AND ZONING MAP

O - 12 - 015

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 2314' FNL and 2340' FWL, Section 8, Block "X", H. P. Hilliard Survey, City and County of Midland, Texas.

Evans F #1

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT
PD	PLANNED DISTRICT
AE	AGRICULTURE ESTATE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING
MH	MOBILE HOME DWELLING
TH	TOWNHOUSE DWELLING
2F	TWO-FAMILY DWELLING
MF1, MF2	MULTIPLE FAMILY DWELLING

BP	BUSINESS PARK
P	PARKING
01, 02	OFFICE
NS	NEIGHBORHOOD SERVICE
LR1, LR2, LR3	LOCAL RETAIL
C1, C2, C3	COMMERCIAL
IP, JP1, IP2, IP3	INDUSTRIAL PARK
LI	LIGHT INDUSTRY
HI	HEAVY INDUSTRY

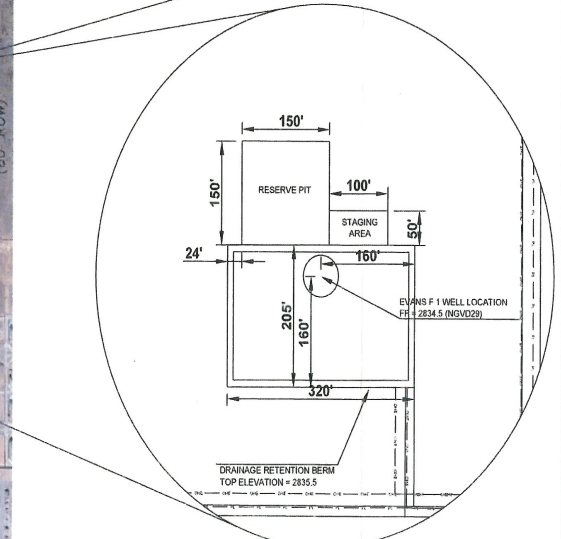
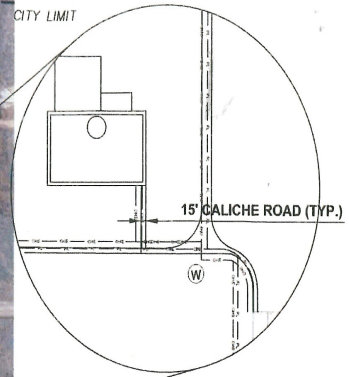
BUSINESS PARK
PARKING
OFFICE
NEIGHBORHOOD SERVICE
LOCAL RETAIL
COMMERCIAL
INDUSTRIAL PARK
LIGHT INDUSTRY
HEAVY INDUSTRY

44.40



RECEIVED
SEP 17 2012
CITY OF MIDLAND
PLANNING DIVISION OFFICE

SCALE: 1" = 600'



NOTE:
OVERHEAD ELECTRIC ———
3" 6" FLOW LINES ———
EDGE OF CALICHE ROAD ———

COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES AND COORDINATES ARE SHOWN IN GRID FEET.

THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS LOCATION WAS THIS DAY MADE ON THE GROUND BY ME OR UNDER MY SUPERVISION AND THAT THIS PLAT IS A CORRECT REPRESENTATION THEREOF.

DATED THIS 7TH DAY OF AUGUST, 2012

Charles P. Rutherford
Charles P. Rutherford, R.P.L.S. No. 1977



SITE PLAN

BLUESTEM ENERGY HOLDINGS, LLC
WELL NO. EVANS F 1
EVANS LEASE
2314 FEET FROM THE NORTH AND
2340 FEET FROM THE WEST LINE
SECTION 8, ABSTRACT 17, BLOCK X,
H.P. HILLIARD SURVEY, MIDLAND
COUNTY, TEXAS

NEWTON ENGINEERING, PC
F-13696
4808 N. Midkiff Rd.
Midland, Texas 79706
(409) 770-0459





BLUESTEM ENERGY HOLDINGS, LLC
WELL NO. EVANS F 1
EVANS LEASE
2314 FEET FROM THE NORTH AND
2340 FEET FROM THE WEST LINE
SECTION 8, ABSTRACT 17, BLOCK X,
H.P. HILLIARD SURVEY, MIDLAND
COUNTY, TEXAS

PROJECT: 727470JD
JOB NO: 72,747-F

NEWTON ENGINEERING, PC
F-13856
4508 N. Midkiff Rd.
Midland, Texas 79705
(432) 770-0499

NOTE:

COURSES, DISTANCES AND COORDINATES SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983. ALL DISTANCES AND COORDINATES ARE SHOWN IN GRID FEET,

THE UNDERSIGNED DOES HEREBY CERTIFY
THAT THIS LOCATION WAS THIS DAY MADE
ON THE GROUND BY ME OR UNDER MY
SUPERVISION AND THAT THIS PLAT IS A
CORRECT REPRESENTATION THEREOF.

DATED THIS 7TH DAY OF AUGUST, 2012

Charles P. Rutherford, R.P.L.S. No. 1977

SEP 17 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

SCALE: 1" = 600'

15' CALICHE ROAD (TYP.)

[illegible]

OVERHEAD ELECTRIC ——— 600 —
3"-6" FLOW LINES ——— 75 —
EDGE OF CALICHE ROAD ——— 100 —

MIDLAND
City Attorney's Office
City of Midland
Office Memorandum

DATE: November 1, 2012

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: RESOLUTION ACCEPTING A MINERAL DEED FROM THE ESTATE OF ROBERT B. HOLT AND AUTHORIZING SETTLEMENT OF THE CITY OF MIDLAND'S CLAIMS 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

We have placed this item on your executive session so that we may discuss it with you in more detail. Mr. Rick Strange with the Cotton, Bledsoe, Tighe & Dawson law firm will also be available to discuss this matter with you in executive session. If you have any questions or if I may be of any assistance do not hesitate to contact me.

Keith Stretcher

KS/lo

RESOLUTION NO.

RESOLUTION AUTHORIZING ACCEPTANCE OF A MINERAL DEED FROM THE ESTATE OF ROBERT B. HOLT; AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS NECESSARY TO SETTLE ALL CLAIMS OF THE CITY OF MIDLAND 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

WHEREAS, the Midland City Council finds it to be in the public interest to authorize acceptance of a mineral deed from the Estate of Robert B. Holt and to settle all claims of the City of Midland involving the 45.99-acre tract of land described in the caption hereof;

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

THAT the Midland City Council hereby authorizes acceptance of a mineral deed from the Estate of Robert B. Holt and hereby authorizes and directs the City Manager to execute all documents necessary to settle all claims of the City of Midland involving the 45.99-acre tract of land described in the caption hereof. A copy of said mineral deed and any and all related settlement documents shall be on file in the Office of the City Secretary.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland
City Secretary's Office
Interoffice Memorandum

Date: November 8, 2012
To: The Honorable Mayor Perry and Council
From: Amy M. Turner, City Secretary
Subject: Membership - Boards and Commissions

Attached is an updated membership listing for the City's Boards and Commissions effective November 13, 2012. Remaining expirations and vacancies are listed below:

AIRPORT PLANNING AND DEVELOPMENT BOARD – Two terms expired on September 30, 2012.

CITY DEVELOPMENT ADVISORY COMMITTEE – One vacancy expiring on September 30, 2013 and two terms expired on September 30, 2012.

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS – Two vacancies for Alternate terms expired on September 30, 2007.

HOUSING AUTHORITY COMMISSION – One vacancy as Alternate term expiring in October 2015

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION – Two terms expired in November 2011.

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION – Three vacancies expired on January 1, 2007, one term expired on January 1, 2009, and two terms expired on January 1, 2010.

MIDLAND HOUSING FINANCE CORPORATION – One vacancy expired on September 30, 2010, two terms expired on September 30, 2011 and one term expired on September 30, 2012.

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD – One vacancy.

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD – Two terms expired on September 30, 2012.

PERMIAN BASIN AIRPORT BOARD – Two terms expired on September 30, 2010 (Carlsbad and Hobbs New Mexico), two terms expired on September 30, 2011 and two terms expired on September 30, 2012.

TAX INCREMENT REINVESTMENT ZONE BOARD – One term expired on March 20, 2009 (one College representative), five terms expired on March 20, 2010, one term expired March 20, 2011 and one terms expired on March 20, 2012. (Four City representatives, two Hospital representatives, two County representatives and one College representative.)

ZONING BOARD OF ADJUSTMENT AND AIRPORT ZONING BOARD OF ADJUSTMENT- One term expired on September 30, 2011, one term expired on September 30, 2012 and one vacancy for Alternate term expired on September 30, 2006 and one vacancy for Alternate term expired September 30, 2009.

BOARDS AND COMMISSIONS OF THE CITY OF MIDLAND

November 13, 2012

AIRPORT PLANNING AND DEVELOPMENT BOARD

(Advisory)

(Membership-10; Terms - 3 Years expiring 3-3-4.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ronald Schwisow	09/06	Sept 30 2012	Sept 30 2012
Herbert Blankinship	09/06	Sept 30 2012	Sept 30 2012
Jerry Walton	11/09	Sept 30 2015	Sept 30 2015
Mike Owen	10/07	Sept 30 2013	Sept 30 2013
Gregory F. Baiano	09/10	Sept 30 2013	Sept 30 2016
John T. Echols	09/10	Sept 30 2013	Sept 30 2016
Dallas L. Smith	09/10	Sept 30 2013	Sept 30 2016
Earl Erdmann, Chairman	09/08	Sept 30 2014	Sept 30 2014
J. Ross Lacy	09/12*	Sept 30 2014	Sept 30 2020
Don "Woody" Woodward	11/11	Sept 30 2014	Sept 30 2017

Ex-Officio members are Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

ANIMAL SERVICES ADVISORY COMMISSION

(Advisory)

(Membership - 6; Terms - 4 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Dr. Tom Green (Veterinarian)	10/07*	Sept 30 2013	Sept 30 2017
Kelly Spencer	09/09	Sept 30 2013	Sept 30 2017
Laura Hollifield	09/08*	Sept 30 2013	Sept 30 2017
Justin Petty	04/07*	Sept 30 2013	Sept 30 2017
Tony Carrillo	09/09	Sept 30 2013	Sept 30 2017
Paul O'Neill	09/09	Sept 30 2013	Sept 30 2017

BUILDING CODES REVIEW COMMITTEE

(Membership – 9; Terms – 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
James Rigger	12/09	Dec 31 2013	Dec 31 2013
Chris Repman	12/09	Dec 31 2013	Dec 31 2013
John Cooper	12/09	Dec 31 2013	Dec 31 2013
Bill Routh	12/09	Dec 31 2013	Dec 31 2013
Tom Woodruff	12/09	Dec 31 2013	Dec 31 2013
Ron Ainsworth	12/09	Dec 31 2013	Dec 31 2013
Walter Pate	12/09	Dec 31 2013	Dec 31 2013
Robert Harrington	12/09	Dec 31 2013	Dec 31 2013

* Indicates appointment to an unexpired term.

Jerry Morales

12/09

Dec 31 2013

Dec 31 2013

CITY DEVELOPMENT ADVISORY COMMITTEE

(Advisory)

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
(Vacancy)-Lena Margita	10/09	Sept 30 2013	Sept 30 2013
Vicky Hailey	09/10	Sept 30 2012	Sept 30 2014
Reggie Lawrence	09/10	Sept 30 2012	Sept 30 2014
Alonda Massey	11/11	Sept 30 2013	Sept 30 2015
Tim Bryson	11/11	Sept 30 2013	Sept 30 2015

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

(Decision Making)

(Membership - 7; Terms - 4 Years expiring 2-2-2-1)

Position to include: 1. Registered Architectural or Builder Superintendent, 2. Registered Structural Engineer, 3. Registered Mechanical and Plumbing, 4. Registered Electrical Engineer, 5. Registered Fire Protection Engineer

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>	<u>Position</u>
Don Woodward (At Large)	11/11*	Sept 30 2016	Sept 30 2020	5
Richard D. Dunham	10/05	Sept 30 2013	Sept 30 2013	1
Greg Turner	03/11*	Sept 30 2013	Sept 30 2021	4
Chris Repman	10/07*	Sept 30 2014	Sept 30 2018	3
Jay K. Bradford	09/10	Sept 30 2014	Sept 30 2018	2

ALTERNATES:

Vacancy	Sept 30 2007	Any
Vacancy	Sept 30 2007	Any

HOTEL/MOTEL TAX ADVISORY BOARD

(Advisory)

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Karmen Hendrix Bryant	02/12*	Sept 30 2013	Sept 30 2017
David Baur	09/10	Sept 30 2013	Sept 30 2014
Lisa Grissom	09/09	Sept 30 2013	Sept 30 2013
Steve Jones	02/09*	Sept 30 2013	Sept 30 2013
Annabell Ramirez	09/12	Sept 30 2014	Sept 30 2016
Brian Smith	09/12	Sept 30 2014	Sept 30 2016
Alex Singh-Hotel/Motel Assn. Rep.	09/09	Dec 31 2013	Assn. Appt.

* Indicates appointment to an unexpired term.

Vicky Hailey (Liaison Officer)

HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Gregory Maes	11/11	Oct 2013	Oct 2015
Carla Repman, Vice Chairman	09/09	Oct 2013	Oct 2013
James A. Blischke	01/10	Oct 2013	Oct 2015
Dennis Bade	09/12	Oct 2014	Oct 2016
Norma Duran	11/08*	Oct 2014	Oct 2014

ALTERNATES:

<u>Vacancy</u>	<u>Oct 2013</u>	<u>Oct 2015</u>
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JOINT ECONOMIC DEVELOPMENT TASK FORCE

(Ad Hoc)

	<u>Appt. Date</u>
(Midland)	
Wes Perry	01/08
LuAnn Morgan	12/00
Keith Stretcher	12/00
Tommy Hudson	08/07
John Breier	01/04
(Odessa)	
Larry Melton	08/01
Jim Morris	11/00
Richard Morton	11/02
Joel Roberts	11/00
Neil McDonald	11/00

MANAGED COMPETITION COMMITTEE

(Ad Hoc)

	<u>Appt. Date</u>
Jon Morgan	01/02
Wes Perry	01/02
Roy Nelson	01/02
Hugh "Andy" Shaffer	12/03
Scott Dufford	01/02
Ted Tipton	04/04
Kevin Sparks	11/07
Scott Lovett	04/10
P. Lourcey Sams	04/10

Ex-Officio members are the Mayor and the City Manager.

* Indicates appointment to an unexpired term.

MIDLAND CENTER ADVISORY BOARD

(Advisory & Decision Making)

(Membership - 9; Terms - 3 Years expiring 3-2-2.)

		<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Brent Blackburn	(City)	09/09*	Sept 30 2013	Sept 30 2016
Charles Spence	(CC)	11/07	Sept 30 2013	N/A
Lorri Lyon West	(City)	09/10	Sept 30 2013	Sept 30 2016
Patricia S. Blackwell	(City)	10/07*	Sept 30 2014	Sept 30 2014
Paula Mitchell	(City)	09/08	Sept 30 2014	Sept 30 2014
Greg Turner	(CC)	12/11	Sept 30 2014	N/A
Tracy Bacon	(CC)	12/11	Sept 30 2014	N/A
Jerry Morales (Liaison Officer)				

Ex-Officio members are the City Manager and Executive Director of the Chamber of Commerce.

MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

Five Directors, Elected by Local Taxing Entities.

City Nominates/Cast Vote for one Director

(Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>
Chad Clark	3/12*	Dec 31 2013

MIDLAND DEVELOPMENT CORPORATION

(Membership - 5; Terms -3 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Michael Trost	02/11*	Jan 14 2013	Jan 14 2019
Cary J. Love	12/09	Jan 14 2013	Jan 14 2016
Gary Douglas	11/11*	Jan 14 2013	Jan 14 2019
Laura Roman	01/08	Jan 14 2014	Jan 14 2014
Robert Rendall, Chairman	01/09*	Jan 14 2014	Jan 14 2017

MIDLAND FRESH WATER SUPPLY DISTRICT #1

(Ad Hoc)

(3 Non Voting Members)

Appt Date

Wes Perry
 Gary Harris
 Wayne Merritt

05/12
 05/12
 05/12

**MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX
 DEVELOPMENT CORPORATION**

(Decision Making)

Membership - 7; Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ken Marks, Vice President	10/07	Nov 2011	Nov 2011
James G. Smith	12/07	Nov 2011	Nov 2011
Mike Thompson	11/11	Nov 2013	Nov 2015
Tim Bryson	11/11	Nov 2013	Nov 2015
Wesley D. Bownds	02/09*	Nov 2013	Nov 2013
John James	08/08*	Nov 2013	Nov 2013
Rick Davis (MISD Resp.)	10/10*	Nov 2013	Nov 2015

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2009	
Cathy Oestmann	11/05*	Jan 1 2010	Jan 1 2010
Steve Jones	09/08*	Jan 1 2010	Jan 1 2012
Curt Kamradt	11/05*	Jan 1 2014	Jan 1 2014

* Indicates appointment to an unexpired term.

MIDLAND HOUSING FINANCE CORPORATION

(Decision Making)

(Membership - 5; Terms - 2 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy - (Damon L. Blakeley)	07/07*	Sept 30 2010	
Adrienne Valencia	10/07	Sept 30 2011	Sept 30 2011
Melissa Wicker	10/07	Sept 30 2011	Sept 30 2011
Jerry Morales (Liaison Officer)	10/08	Sept 30 2012	Sept 30 2012
Nathan Miller	11/11*	Sept 30 2012	Sept 30 2016

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD

(Ad Hoc)

	<u>Appt. Date</u>
Vacancy	
Richard Hatchett	11/08
W. L. "Scooter" Brown	09/04
Ken Burgess	09/04
Jim Hightower	11/08
Ted H. Jones	09/04
Mitch Malouf	11/08
Christi Newton	09/04
Dan Rush	09/04

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making)

(Membership - 6; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Willie Barber	09/08	Sept 30 2012	Sept 30 2012
Michael Trost	09/08	Sept 30 2012	Sept 30 2012
John H. James	09/09	Sept 30 2013	Sept 30 2013
Karen York	06/09*	Sept 30 2013	Sept 30 2013
Guy McKenize	03/11*	Sept 30 2013	Sept 30 2015
Rebecca Bell	09/12	Sept 30 2014	Sept 30 2016

* Indicates appointment to an unexpired term.

OIL AND GAS ADVISORY COMMITTEE

(Advisory)

(Membership – 5; Terms – 3 Years expiring 2-2-1)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Russell Richards (Petroleum Eng.)	09/12	Sept 30 2015	Sept 30 2018
Perry Dan Taylor (Real Estate)	09/12	Sept 30 2015	Sept 30 2018
Lance Friday (Real Estate)	09/12*	Sept 30 2013	Sept 30 2019
Paul Brown (Petroleum Eng.)	11/11	Sept 30 2014	Sept 30 2017
David Rosen (Petroleum Eng.)	11/11	Sept 30 2014	Sept 30 2017

PARKS AND RECREATION COMMISSION

(Advisory)

(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Charles A. Spence	01/10*	Sept 30 2013	Sept 30 2016
Susan Nichols	02/06*	Sept 30 2013	Sept 30 2013
Eric L. West	10/07	Sept 30 2013	Sept 30 2013
Kenny Harper	03/12*	Sept 30 2013	Sept 30 2019
P. Lourcey Sams	09/08	Sept 30 2014	Sept 30 2014
Tina Corbett	09/08	Sept 30 2014	Sept 30 2014
Katey Howard	09/12*	Sept 30 2014	Sept 30 2020
Amanda McCann	11/11*	Sept 30 2015	Sept 30 2018
Edward Mayberry	09/12	Sept 30 2015	Sept 30 2021

PERMIAN BASIN AIRPORT BOARD

(Advisory)

(Membership - 30; Terms - 1 year.)

	<u>Appt. Date</u>	<u>Term Expires</u>
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10 Members of the Airport Planning and Development Board

Bob Forrest (Carlsbad, NM)	10/04	Sept 30 2010
Larry Shed (Hobbs, NM)	10/01	Sept 30 2010
Larry Gill (Abilene)	10/10	Sept 30 2011
Isabelle Blanchard (Pecos)	10/10	Sept 30 2011
David Hardwick (Ft. Stockton)	10/07	Sept 30 2012
Lex Hinds (Seminole)	10/08	Sept 30 2012

PERMIAN BASIN AIRPORT BOARD CON'T

	<u>Appt. Date</u>	<u>Term Expires</u>
Elvin Brownlee III (Andrews)	12/10*	Sept 30 2013
Jim Little (Big Spring)	09/03	Sept 30 2013
Frankie Rolfe (Kermit)	09/12	Sept 30 2013
Don Bethel (Lamesa)	02/91	Sept 30 2013
Willie Taylor (Odessa)	02/00	Sept 30 2013
Gloria Pena (Odessa)	03/03*	Sept 30 2013
Barbara Graff (Odessa)	06/10*	Sept 30 2013
Henry Cutbirth (Monahans)	09/05	Sept 30 2013
Luis E. Elguezabal (San Angelo)	10/07	Sept 30 2013
Glenn Wortham (Sweetwater)	10/07	Sept 30 2013
John Rogotzke (Snyder)	01/12	Sept 30 2013
Lance Goodrich (Artesia, NM)	09/09	Sept 30 2013
Larry Fry (Roswell, NM)	09/00	Sept 30 2013

Ex-Officio members are the City Manager and the City Attorney. The Secretary is the Director of Aviation.

**PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH
AND MENTAL RETARDATION**

(Decision Making)
(Membership - 2 (City); Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Janet R. Pritchett (City)	05/09*	June 2014	June 2014
Larry Edgerton	07/10*	June 2013	June 2015

PERSONNEL BOARD OF APPEALS

(Decision Making)
(Membership - 3; No designated terms.)

	<u>Appt. Date</u>
John James	03/08
Hugh A. "Andy" Shaffer	09/05
Michael Trost	01/10

* Indicates appointment to an unexpired term.

PLANNING AND ZONING COMMISSION

(Advisory & Decision Making)
(Membership - 9; Terms - 3 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Jane Wolf	03/09*	Sept 30 2013	Sept 30 2016
Cindy Lanning	09/10	Sept 30 2013	Sept 30 2016
Jay Norris	11/11	Sept 30 2014	Sept 30 2017
Galen Gatten, Vice Chairman	09/08	Sept 30 2014	Sept 30 2014
Kevin Wilton	09/08*	Sept 30 2015	Sept 30 2017
Royce Watkins	02/08*	Sept 30 2015	Sept 30 2017
Karen York	10/10*	Sept 30 2015	Sept 30 2018
Sharla Hotchkiss	10/12	Sept 30 2015	Sept 30 2018
Warren Lvey	10/12*	Sept 30 2014	Sept 30 2020
<u>ALTERNATES:</u>			
Tony Carrillo	11/11	Sept 30 2014	Sept 30 2017

TAX INCREMENT REINVESTMENT ZONE BOARD

(Decision Making)
(Membership - 12; Terms - 2 Years, or 3 Years if appointed after 3/1/07)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Neil Florer (College)	07/01	Mar 20 2009	Mar 20 2009
Mark T. Wellen (City), Chairman	07/01	Mar 20 2010	Mar 20 2010
Jay Reynolds (Hospital)	03/02	Mar 20 2010	Mar 20 2010
Ralph Way (College)	07/01	Mar 20 2010	Mar 20 2010
Randy Prude (County)	03/07	Mar 20 2010	Mar 20 2013
Judge Mike Bradford (County)	01/07*	Mar 20 2010	Mar 20 2014
Bob Lanier (City), Secretary	04/03	Mar 20 2011	Mar 20 2011
Brent Kennedy (City)	06/09	Mar 20 2012	Mar 20 2015
Pete Hulder (Hospital)	03/10	Mar 20 2016	Mar 20 2016
Michael Blonkvist	09/12*	Mar 20 2014	Mar 20 2020
John L. Kennedy (City)	10/09*	Mar 20 2015	Mar 20 2018
Ken Burgess (City)	10/12*	Mar 20 2013	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.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Manny Ribera	10/07	Sept 30 2011	Sept 30 2011
Ken Morgan	01/10*	Sept 30 2012	Sept 30 2014
Carla Repman	01/10*	Sept 30 2013	Sept 30 2015
Scott Young	09/12*	Sept 30 2013	Sept 30 2017
Todd Byars	02/08*	Sept 30 2014	Sept 30 2014

ALTERNATES: (not applicable to Airport Zoning)

Vacancy		Sept 30 2006	
Vacancy		Sept 30 2009	
Annabel Holguin	11/11	Sept 30 2013	Sept 30 2015
Greg Turner	11/11	Sept 30 2013	Sept 30 2015

* Indicates appointment to an unexpired term.

AIRPORT PLANNING & DEVELOPMENT BOARD
 (Advisory; Membership - 10: Terms - 3 Years Expiring 3-3-4)
 Ex-Officio Members are the City Manager and the City Attorney.
 The Secretary is the Director of Aviation.

SPECIAL COMPOSITION REQUIREMENTS: Resident of Midland County

MEMBER	TERM EXPIRE SEPT. 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 6)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Ronald Schwisow	Yes	100%	6	No		
Herbert Blankinship	Yes	83%	5	No		
Jerry Walton	No 09/15	50%	3	Yes		
Mike Owen	No 09/13	83%	5			
Gregory F. Baiano	No 09/13	67%	4			
John T. Echols	No 09/13	83%	5			
Dallas L. Smith	No 09/13	50%	3			
Earl Erdmann	No 09/14	100%	6			
J. Ross Lacy	No 09/14	N/A	N/A			Appointed September 2012
Don "Woody" Woodward	No 09/14	33%	2			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
J. Ross Lacy	One other board	Appointed 9/25/12
Ronnie Lynch	One other board	
Shannon Smith (Mr.) NEW APPLICATION	One other board	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: _____

Address: _____

(City)

(State)

(Zip)

I am ____ I am not ____ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ____ years.

Professional and/or Community Activities:

What is your personal vision for the City?

Please specify any time constraints you may have.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Please tell us why you are interested in serving on this board or commission.

Date: _____

Phone: _____ (Home)

_____ (Business)

Email: _____

Are you a graduate of Midland 101? ____yes ____no

Occupation: _____

What contribution would you most like to make?

Additional pertinent information or references:

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Applications may be submitted online via email or print in order to send by mail or fax:

**City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433**



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Shannon Smith

Address: 5506 Hillcrest

Midland Texas 79707

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ⁵ years.

Professional and/or Community Activities:

Previously I volunteered as a Court Appointed Special Advocate (CASA) for CASA of West Texas. I currently serve on the Board of Directors for Midland Habitat for Humanity.

Date: 10/3/2012

Phone: 432-689-9998 (Home)

432-687-9110 (Business)

Email: ssmith@fcbtexas.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Commercial Loan Officer

What is your personal vision for the City?

As an oil and gas based economy, I would like to see the city continue to attract a more diversified industrial based as it has done with XCor. In the near tear, affordable and available housing is the most pressing issue. Availability will improve over time due to the continuing construction of housing. Unfortunately, the newer housing appears to be out of reach for lower income individuals.

Please specify any time constraints you may have.

Loan committee on Monday and Thursday mornings until 10:00 a.m. Monthly Habitat Board meetings the third Monday of every month at 5:30 p.m.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Airport Planning and Development Board

Please tell us why you are interested in serving on this board or commission.

One major advantage that Midland has for attracting new industries is the International Airport. Along with the Industrial Park, it serves as a major selling point when attracting diversified industries to the Midland area.

What contribution would you most like to make?

Assist with the planning and future development of both airports to ensure that both facilities are meeting the needs of not only the residents of the area, but to do what is necessary to develop new jobs in the Midland area that are not heavily reliant on the oil and gas industry.

Additional pertinent information or references:

(2) Name of Board/Commission:

Midland Housing Finance Corporation

As a Habitat board member, I am well aware of the need for affordable housing options in Midland. I would explore ways for the corporation to make it easier for families to purchase homes, including down payment assistance for those in need.

What contribution would you most like to make?

I would like to see the commission take a more active role in the community and perhaps partner with other agencies in Midland to assist residents in attaining home ownership. The city has many new people residents that are moving here, and some are obtaining jobs after being out of work for extended periods, which makes it difficult for them to afford down payments on homes.

Additional pertinent information or references:

Alynda Best, Midland Habitat for Humanity

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Shannon Smith

Digitally signed by Shannon Smith
DN: cn=Shannon Smith, o=FirstCapital Bank of
Texas, ou, email=ssmith@fcbtexas.com, c=US
Date: 2012.10.03 18:05:47 -05'00'

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

CITY DEVELOPMENT ADVISORY COMMITTEE
(Advisory)
(Membership - 5; Terms - 2 Years Expiring 2 Even & 3 Odd)

SPECIAL COMPOSITION REQUIREMENTS: None

MEMBER	TERM EXPIRE SEPT. 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 3)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy	Yes			N/A		
Vicky Hailey	Yes	100%	3	Yes		9/6/12 Ms. Hailey called and said she does not want to be reappointed.
Reggie Lawrence	Yes	100%	3	Yes		10/8/12 Mr. Lawrence would like to be reappointed
Alonda Massey	No 09/13	100%	3			
Tim Bryson	No 09/13	100%	3			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Stella Clifton	Only this board	
Eric F. Nordwald Sr.	Five other boards	
W. Roger Beebe NEW APPLICATION	One other board	
Jeremy Bishop NEW APPLICATION	Only this board	

2012-014



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Stella Clifton

Address: 3319 Cimmaron Ave.

(City)

(State)

(Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ⁴⁴ years.

Professional and/or Community Activities:

Leadership Midland 2004

Meals on Wheels

Date: 8/14/2012

Phone: 432-697-3663 (Home)

432-571-4127 (Business)

Email: stella.clifton@dshs.state.tx.us

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Congregate Settings Coordinator for the State of Te

What is your personal vision for the City?

I would love for Midland to thrive with the younger adults. If they would return to Midland after completing College to begin their career.

Please specify any time constraints you may have.

None at this time.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

City Development Advisory Committee

Please tell us why you are interested in serving on this board or commission.

I want to be apart of watching new businesses develop and grow within the community.

What contribution would you most like to make?

I work for the Department of State Health so I have become very familiar with the development of Midland and the various population 

Additional pertinent information or references:

I worked for the Housing Authority of the City of Midland for four years as a property manager.

I worked for Casa de Amigos writing grants for agency funding.

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Stella Clifton

Digitally signed by Stella Clifton
DN: cn=Stella Clifton, o=DSHS, ou,
email=stella.clifton@dshs.state.tx.us, c=US
Date: 2012.08.14 17:08:36 -05'00'

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

[Submit Via Email](#)

[Print Application](#)



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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8/13/2012

PLEASE TYPE OR PRINT CLEARLY:

Eric F Nordwald Sr.

Name: _____

4902 Rio Grande Dr.

Address: _____

Midland TX 79707

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland³ years.

Professional and/or Community Activities:

NRA, General Contractors of America, Midland's YMCA, Our Lady of Guadalupe Catholic Church in Midland, Spartan & Tough

Mudder Races, Nuclear Contracting Opportunities & Nuclear Construction Safety

What is your personal vision for the City?

My vision of Midland is a city that people want to move to because of leading technology, opportunity for growth, secure employment, high demand of talent and respectable town to raise a family

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Building Codes Review Committee

City Development Advisory Committee

Construction Board of Adjustments and Appeals

Please tell us why you are interested in serving on this board or commission.

I have 12 yrs Construction experience with residential, commercial & Industrial industries. I am interested in bettering Midland and becoming a City Council member. I have a vast knowledge w/ building codes through out many cities within the US.

Date: _____

979.3249753

Phone: _____ (Home)

575.394.5763

(Business)

efnordwald@gmail.com

Email: _____

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Nuclear Operations/Construction Manager

What contribution would you most like to make?
First and foremost I would like to build a youth center. I also would contribute as a spokesmen.

Additional pertinent information or references:
I am going to attach my resume as additional information.

(2) Name of Board/Commission:
Planning and Zoning Commissioning

Midland Football, Soccer and Baseball Complex Development

Midland Higher Education Facilities Corporation

What contribution would you most like to make?
My contribution would be thinking and acting as a father of younger people that will grow within the community.

Additional pertinent information or references:
Attached resume.

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



Applications may be submitted online via email or print in order to send by mail or fax:

**City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433**

[Submit Via Email](#)

[Print Application](#)

Eric F Nordwald Sr.
4902 Rio Grande Dr. Midland TX 79707
efnordwald@gmail.com
979-324-9753

SUMMARY OR EXPERIENCE

Over twelve years of experience on both commercial and industrial projects. In the capacity of Construction Manager, responsibilities include leading the Construction Team, providing leadership for production and recommendation of profit margin. My construction expertise extends to carry forward to final operational stages of the project, providing construction and maintenance management in both commercial and industrial fields. In the Industrial and Commercial industries, vast experiences and responsibilities were exercised in the coordination of all field activities, as well as commissioning and start up functions. All projects required continuous safety participation. Provide safety instruction and Safety presentation analysis. I have a comprehensive understanding of Plant construction techniques and procedures including use of construction tools for various projects and field safety coordination with Subcontractors and Client Representatives. I have specialized experience in new construction, construction management, large capital projects and maintenance projects. I have managed all fronts of construction starting with safety management, project controls, field execution and profit / loss responsibility.

PROJECT TYPES

Nuclear Enrichment Facilities
Commercial Structures
Formwork Tunnels
Housing Projects

ACTIVITIES

Construction Management
Construction Planning
Cost Control
Quality Assurance
Building Planning
Scheduling
Estimating
Coordination
Safety Training

TRAINING

Plant Safety
QA/QC Weld Track
Request for Information (RFI)
Field Change Order (FCO)
Subcontract Management
P3 Scheduling (Primavera Certificate 5.0)

Eric F. Nordwald Sr.

I am seeking a position in Construction Management. I have the experience, the determination, and can-do attitude that is essential to managing risk on every conceivable project. This includes the timely management of the project's cost, schedule, planning, vendors, subcontractors, technical information and other key elements. From pre-construction through project completion, I will systematically monitor work as it progresses and will manage both variances and trends for elements of scope, cost and timing.

Industry Experience:

URENCO USA Eunice, NM

February 2012 – Current

Commissioning & Acceptance Coordinator - Project: National Enrichment Facility

- Current holder of CAA and "L" clearance, qualified as a Construction Supervisor, Construction Engineer and Building Manager
- Commissioning structural, electrical and mechanical systems from construction and turning them over to engineering, maintenance and plant operations.
- Working directly with Operations and Construction Management on a day to day basis to establish plant requirements and provide the owner with the highest quality product(s).
- Generating, revising and performing test on mechanical systems for plant acceptance.
- Creating procedures for civil, structural and mechanical related items to insure quality guidelines during installation.
- Establishing code regulatory specifications for nuclear site building components.
- Providing plant maintenance with adequate documentation and tribal knowledge of accepted site equipment.

Baker Concrete Construction Inc. Eunice, NM

December 2009 – February 2012

Project Manager - Project: National Enrichment Facility (NEF) Separations Building Module Extension

- Responsible Project Manager for conducting the acceptance of a \$100M Nuclear Enrichment Building
- Managed from ground breaking through closure process for structural, mechanical & electrical portions
- Effectively communicate accurate and timely information to the Operations Manager and all project participants to bring the project to completion on time and budge.
- Performed tasks such as inspections, work plan implementation, coordinating trades, managing schedule, tracking cost, provided guidance for specification and procedure understanding along with building a strong relationship with the client respected vendors.
- Assisted in planning the tie-in process for new mechanical systems to existing working systems without interruptions.
- Directly supervised and trained nuclear-safety for 200+ site personnel.
- Provided material and equipment management for multiple site wide projects with a minimal staff experiencing tremendous savings and results

Baker Concrete Construction Inc. Eunice, NM

March 2010 – July 2010

Project Manager - Project: NEF Uranium Bi-product Cylinder Pad

- Manager of a \$2.0M Slab-on-Grade Uranium Storage Pad
- Performed project scheduling, sub and general contractor negotiations including financial responsibility for both firm fix and Time/Material budgets
- Worked directly with URENCO Engineering and provided recommendations on field related discrepancies

Baker Concrete Construction Inc. Houston, TX

January 2009 – December 2009

Project Manager - Project: MD Anderson Administrative Building

- Oversight on report processes based on Earned Value Management (EVM) concepts
- Develop, implement, reconcile and maintain valuable project control databases and reports
- Became fluent in creating and tracking schedules, proposed change orders, submittals, subcontracts, RFI's, and LEED material.

Baker Concrete Construction Inc. Houston, TX

September 2008 – February 2009

Estimator

- Estimated turn-key projects for both Commercial and Industrial work ranging from \$5M up to \$65M
- Estimated with the use of On Screen Take-off (OST) and Timberline system spread sheet.
- Worked with Field Supervisors and Project Managers to ensure understanding and accurate proposals
- Interacted with owners on potential projects for relationship purposes' and a understanding of there expectations

Dee Shoring Inc. Richmond, VA

October 2006 – September 2008

Estimator

- Bid work for turnkey projects (shoring, forming, concrete & excavation)
 - High rises (*Wachovia Bank Headquarters*, Charlotte, N.C., *Rialto Suites*, Daytona, FL.)
 - Stadiums (ASU Kidd Brewer stadium in Tennessee)
 - Hospitals, schools, apartments and condos
 - Department stores, warehouses and parking garages
- Negotiated contracts

Asst. Project Manager – Projects: VCU Health & Engineering Building, VCU Gymnasium, Center Point School

- Performed building control and jobsite managing on multiple projects
- Supervised and trained all field engineers on total Station and related computer programs
- Achieved working relationships with owners engineers while resolving RFI's and change orders
- Gained much knowledge with awarding and working with sub-contractors for scheduling and financial purposes

Yates Construction Daytona Beach, FL

April 2006 – October 2006

Project Coordinator - **Projects:** Bella Vista Apartment Complex and Palma Bella Condos, Daytona Beach, FL

- Managed general contractor's layout for high rise apartment projects
- Supervised MEP field work along with drawing review for discrepancies
- Quality control and labor foreman

Dick Pacific Construction Co. Waikola, HI

Feb 2005 – March 2006

Carpenter Superintendent / Quality Control – **Projects:** Hilton Condominiums

- Supervised framing and trim construction crews on Hilton timeshare resorts as the General Contractor which consisted of exposed timber framed building projects
- Performed quality control for the project
- Coordinated mechanical, electrical and plumbing trades
- Trained employee safety and coordinated new hire orientations

St. Louis Carpenters Union St. Louis, MO

Feb 2000 - Feb 2005

Carpenter Superintendent

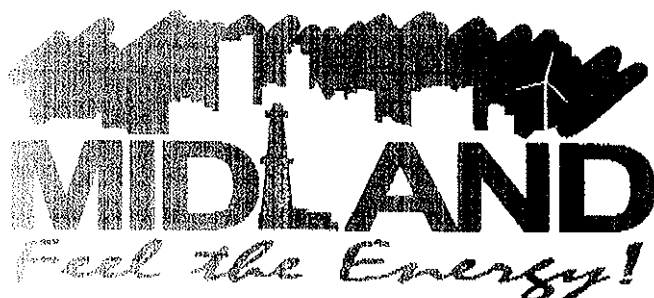
- Projects ranged from residential houses to large commercial and government structures.
- Performed work for the general contractor; framing, trim, welding, concrete, mechanical, electrical, plumbing, roofing, structural steel, flooring, painting & jobsite management

Education and Training:

- Attending the University of Texas Permian Basin for a Bachelors Degree in Industrial Technology
- St. Louis Carpenters Union – Apprenticeship Program & Certification in Construction Management
- East Central Community College – General Studies
- CPR and first aid certified
- Completed Supervisory Skills, Incident and Injury Free, and Lean Construction Training
- Trained and well experienced with industrial Work Plan's, procedures and specifications
- Experienced with P3 scheduling

References upon Request

- | | | | |
|-----------------------|--------------|--|---|
| • Robin Franke | 505.975.8420 | rfranke@nefnm.com | (Company: URENCO USA) |
| • John Beaver | 713.408.6568 | jbeaver1963@yahoo.com | (Company: T-Rex Engineering & Construction, LC) |
| • David Blickenderfer | 602.885.8566 | dvblick22@hotmail.com | (Company: Baker Concrete Construction Inc.) |
| • Keith Stephenson | 505.975.0351 | kstephenson@nefnm.com | (Company: Legacy Consulting) |
| • George Kaime | 541.261.7361 | george.kaime@fdthomas.com | (Company: FD Thomas) |



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: W. Roger Beebe
Address: 902 Interstate 20 West
Midland TX 79701
(City) (State) (Zip)

Date: Oct. 1, 2012

Phone: 817-291-0753 (Home)

432-683-1111 (Business)

Email: rbeebe@rimhospitality.co

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 11 years.

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Hotel Manager

Professional and/or Community Activities:

Past: City of Duncan Hotel Tax Advisory Board Duncan, OK
Hotel/Motel Assoc. of Baton Rouge, Baton Rouge, LA
Bring Cowboys to Arlington, Arlington CVB, Arlington, TX

What is your personal vision for the City?

To enhance a diverse yet unique culture in
a city committed to creating a hometown
where people are unhindered from their personal and
Professional goals.

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

City Development Advisory Committee

Please tell us why you are interested in serving on this board or commission.

To help city leaders create an economic plan that
will take Midland to the next level and help

make Midland an All American City.

What contribution would you most like to make?

I want to contribute my diverse perspectives and time to aid Midland leaders with a new and enthusiastic outlook.

Additional pertinent information or references:

Hotel controller for various hotels from across the country.

(2) Name of Board/Commission:

Planning and Zoning Commission

What contribution would you most like to make?

I want to assist city planners in developing a balanced town with affordable housing and profitable industries.

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Roger Barber

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Jeremy Bishop

Address: 5311 Widener Strip

Midland TX 79707

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 6 years.

Professional and/or Community Activities:

Rotary Club of Midland (Downtown Club), United Way Volunteer, Habitat for Humanity, 2011 Leadership Midland Graduate

Date: 10/5/2012

Phone: 432-269-8480 (Home)

432-687-9129 (Business)

Email: jbishop@fcbtexas.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Lender / Banking

What is your personal vision for the City?

I would like to see Midland grow in population as well as diversity and culture. We have many advantages to attract other businesses and industries outside of the Petroleum industry. I also want to maintain the positive and family-friendly atmosphere that makes this city great to raise children.

Please specify any time constraints you may have.

8:00AM meetings on Monday and Thursday that last until 9:30AM or 10:00AM every week.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

City Development Advisory Committee

Please tell us why you are interested in serving on this board or commission.

I'm interested in the development and growth of our city, as mentioned in my vision for Midland above. I would hope to add insight and direction to the future of the city.

What contribution would you most like to make?

A positive impact on our future development. We are going to eventually leave this city to our children, and I would like to help keep it an attractive place to live for many more generations.

Additional pertinent information or references:

Former Mayor Mike Canon, City Councilman Dufford, County Commissioner Donnelly, School Board President Jay Isaacs.

(2) Name of Board/Commission:

Hotel/Motel Tax Advisory Board

What contribution would you most like to make?

Again, a positive impact on our future development. Choices we make today are going to have a major effect on the City down the road. I would like to help make positive decisions on the funds we have available, and use them to the best of our ability.

Additional pertinent information or references:

Same as above.

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Signature of Applicant

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City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433

[Submit Via Email](#)

[Print Application](#)

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS
(Decision Making)
Membership - 7; Terms - 4 Years expiring 2-2-2-1)

SPECIAL COMPOSITION REQUIREMENTS: 1 Plumbing/Mechanical Industry, 1 Electrical Contracting, 1 Architect, 1 Engineer/Superintendent of Construction, 3 Any Categories, 2 Alternate members from any category. RESIDENT OF CITY.

MEMBER	TERM EXPIRE SEPT. 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 0)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Don Woodward (At-Large)	Yes			Yes		NO MEETINGS
Richard D. Dunham	No 09/13					
Greg Turner	No 09/13					
Chris Repman	No 09/14					
Jay K. Bradford	No 09/14					
<u>ALTERNATES:</u>						
Vacancy						
Vacancy						

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Eric F. Nordwald Sr.	Five other boards	
Scott Young	One other board	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

8/13/2012

PLEASE TYPE OR PRINT CLEARLY:

Eric F Nordwald Sr.

Name: _____

4902 Rio Grande Dr.

Address: _____

Midland TX 79707

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland³ _____ years.

Professional and/or Community Activities:

NRA, General Contractors of America, Midland's YMCA, Our Lady of Guadalupe Catholic Church in Midland, Spartan & Tough

Mudder Races, Nuclear Contracting Opportunities & Nuclear Construction Safety

What is your personal vision for the City?

My vision of Midland is a city that people want to move to because of leading technology, opportunity for growth, secure employment, high demand of talent and respectable town to raise a family

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Building Codes Review Committee

City Development Advisory Committee

Construction Board of Adjustments and Appeals

Please tell us why you are interested in serving on this board or commission.

I have 12 yrs Construction experience with residential, commercial & Industrial industries. I am interested in bettering Midland and becoming a City Council member. I have a vast knowledge w/ building codes through out many cities within the US.

Date: _____

979.3249753

Phone: _____ (Home)

575.394.5763

(Business)

efnordwald@gmail.com

Email: _____

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Nuclear Operations/Construction Manager

What contribution would you most like to make?
First and foremost, I would like to build a youth center. I also would contribute as a spokesman.

Additional pertinent information or references:
I am going to attach my resume as additional information.

(2) Name of Board/Commission:
Planning and Zoning Commissioning

Midland Football, Soccer and Baseball Complex Development

Midland Higher Education Facilities Corporation

What contribution would you most like to make?
My contribution would be thinking and acting as a father of younger people that will grow within the community.

Additional pertinent information or references:
Attached resume.

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



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City of Midland
City Secretary's Office
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Midland, TX 79702
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[Submit Via Email](#)

[Print Application](#)

Eric F Nordwald Sr.
4902 Rio Grande Dr. Midland TX 79707
efnordwald@gmail.com
979-324-9753

SUMMARY OR EXPERIENCE

Over twelve years of experience on both commercial and industrial projects. In the capacity of Construction Manager, responsibilities include leading the Construction Team, providing leadership for production and recommendation of profit margin. My construction expertise extends to carry forward to final operational stages of the project, providing construction and maintenance management in both commercial and industrial fields. In the Industrial and Commercial industries, vast experiences and responsibilities were exercised in the coordination of all field activities, as well as commissioning and start up functions. All projects required continuous safety participation. Provide safety instruction and Safety presentation analysis. I have a comprehensive understanding of Plant construction techniques and procedures including use of construction tools for various projects and field safety coordination with Subcontractors and Client Representatives. I have specialized experience in new construction, construction management, large capital projects and maintenance projects. I have managed all fronts of construction starting with safety management, project controls, field execution and profit / loss responsibility.

PROJECT TYPES

Nuclear Enrichment Facilities
Commercial Structures
Formwork Tunnels
Housing Projects

ACTIVITIES

Construction Management
Construction Planning
Cost Control
Quality Assurance
Building Planning
Scheduling
Estimating
Coordination
Safety Training

TRAINING

Plant Safety
QA/QC Weld Track
Request for Information (RFI)
Field Change Order (FCO)
Subcontract Management
P3 Scheduling (Primavera Certificate 5.0)

Eric F. Nordwald Sr.

I am seeking a position in Construction Management. I have the experience, the determination, and can-do attitude that is essential to managing risk on every conceivable project. This includes the timely management of the project's cost, schedule, planning, vendors, subcontractors, technical information and other key elements. From pre-construction through project completion, I will systematically monitor work as it progresses and will manage both variances and trends for elements of scope, cost and timing.

Industry Experience:

URENCO USA Eunice, NM

February 2012 – Current

Commissioning & Acceptance Coordinator - Project: National Enrichment Facility

- Current holder of CAA and "L" clearance, qualified as a Construction Supervisor, Construction Engineer and Building Manager
- Commissioning structural, electrical and mechanical systems from construction and turning them over to engineering, maintenance and plant operations.
- Working directly with Operations and Construction Management on a day to day basis to establish plant requirements and provide the owner with the highest quality product(s).
- Generating, revising and performing test on mechanical systems for plant acceptance.
- Creating procedures for civil, structural and mechanical related items to insure quality guidelines during installation.
- Establishing code regulatory specifications for nuclear site building components.
- Providing plant maintenance with adequate documentation and tribal knowledge of accepted site equipment.

Baker Concrete Construction Inc. Eunice, NM

December 2009 – February 2012

Project Manager - Project: National Enrichment Facility (NEF) Separations Building Module Extension

- Responsible Project Manager for conducting the acceptance of a \$100M Nuclear Enrichment Building
- Managed from ground breaking through closure process for structural, mechanical & electrical portions
- Effectively communicate accurate and timely information to the Operations Manager and all project participants to bring the project to completion on time and budge.
- Performed tasks such as inspections, work plan implementation, coordinating trades, managing schedule, tracking cost, provided guidance for specification and procedure understanding along with building a strong relationship with the client respected vendors.
- Assisted in planning the tie-in process for new mechanical systems to existing working systems without interruptions.
- Directly supervised and trained nuclear-safety for 200+ site personnel.
- Provided material and equipment management for multiple site wide projects with a minimal staff experiencing tremendous savings and results

Baker Concrete Construction Inc. Eunice, NM

March 2010 – July 2010

Project Manager - Project: NEF Uranium Bi-product Cylinder Pad

- Manager of a \$2.0M Slab-on-Grade Uranium Storage Pad
- Performed project scheduling, sub and general contractor negotiations including financial responsibility for both firm fix and Time/Material budgets
- Worked directly with URENCO Engineering and provided recommendations on field related discrepancies

Baker Concrete Construction Inc. Houston, TX

January 2009 – December 2009

Project Manager - Project: MD Anderson Administrative Building

- Oversight on report processes based on Earned Value Management (EVM) concepts
- Develop, implement, reconcile and maintain valuable project control databases and reports
- Became fluent in creating and tracking schedules, proposed change orders, submittals, subcontracts, RFI's, and LEED material.

Baker Concrete Construction Inc. Houston, TX

September 2008 – February 2009

Estimator

- Estimated turn-key projects for both Commercial and Industrial work ranging from \$5M up to \$65M
- Estimated with the use of On Screen Take-off (OST) and Timberline system spread sheet.
- Worked with Field Supervisors and Project Managers to ensure understanding and accurate proposals
- Interacted with owners on potential projects for relationship purposes' and a understanding of there expectations

Dee Shoring Inc. Richmond, VA

October 2006 – September 2008

Estimator

- Bid work for turnkey projects (shoring, forming, concrete & excavation)
 - High rises (*Wachovia Bank Headquarters*, Charlotte, N.C., *Rialto Suites*, Daytona, FL.)
 - Stadiums (ASU Kidd Brewer stadium in Tennessee)
 - Hospitals, schools, apartments and condos
 - Department stores, warehouses and parking garages
- Negotiated contracts

Asst. Project Manager – Projects: VCU Health & Engineering Building, VCU Gymnasium, Center Point School

- Performed building control and jobsite managing on multiple projects
- Supervised and trained all field engineers on total Station and related computer programs
- Achieved working relationships with owners engineers while resolving RFI's and change orders
- Gained much knowledge with awarding and working with sub-contractors for scheduling and financial purposes

Yates Construction Daytona Beach, FL

April 2006 – October 2006

Project Coordinator - **Projects:** Bella Vista Apartment Complex and Palma Bella Condos, Daytona Beach, FL

- Managed general contractor's layout for high rise apartment projects
- Supervised MEP field work along with drawing review for discrepancies
- Quality control and labor foreman

Dick Pacific Construction Co. Waikola, HI

Feb 2005 – March 2006

Carpenter Superintendent / Quality Control – **Projects:** Hilton Condominiums

- Supervised framing and trim construction crews on Hilton timeshare resorts as the General Contractor which consisted of exposed timber framed building projects
- Performed quality control for the project
- Coordinated mechanical, electrical and plumbing trades
- Trained employee safety and coordinated new hire orientations

St. Louis Carpenters Union St. Louis, MO

Feb 2000 - Feb 2005

Carpenter Superintendent

- Projects ranged from residential houses to large commercial and government structures.
- Performed work for the general contractor; framing, trim, welding, concrete, mechanical, electrical, plumbing, roofing, structural steel, flooring, painting & jobsite management

Education and Training:

- Attending the University of Texas Permian Basin for a Bachelors Degree in Industrial Technology
- St. Louis Carpenters Union – Apprenticeship Program & Certification in Construction Management
- East Central Community College – General Studies
- CPR and first aid certified
- Completed Supervisory Skills, Incident and Injury Free, and Lean Construction Training
- Trained and well experienced with industrial Work Plan's, procedures and specifications
- Experienced with P3 scheduling

References upon Request

- | | | | |
|-----------------------|--------------|--|---|
| • Robin Franke | 505.975.8420 | rfranke@nefnm.com | (Company: URENCO USA) |
| • John Beaver | 713.408.6568 | jbeaver1963@yahoo.com | (Company: T-Rex Engineering & Construction, LC) |
| • David Blickenderfer | 602.885.8566 | dvblick22@hotmail.com | (Company: Baker Concrete Construction Inc.) |
| • Keith Stephenson | 505.975.0351 | kstephenson@nefnm.com | (Company: Legacy Consulting) |
| • George Kaime | 541.261.7361 | george.kaime@fdthomas.com | (Company: FD Thomas) |

2012-015



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Scott Young

Address: 1212 Breckenridge Ct.

Midland, TX 79705

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 24 **years.**

Professional and/or Community Activities:

Date: 8/9/2012

Phone: 432-978-2372 (Home)

432-520-0820 (Business)

Email: syoung@randcoindustries.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Commercial Construction

What is your personal vision for the City?

I want Midland to continue its positive growth and diversification of different industries.

I think Midland is an excellent place to raise a family and run a business.

I believe Midland is growing and will continue to grow and I would like to be more involved with the city government.

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Construction Board of Adjustments and Appeals

Please tell us why you are interested in serving on this board or commission.

I want to get involved with our community and the direction that Midland is growing. I was born here in Midland and plan on staying the rest of my life and would like to help do my part to make our community a better place to work and live.

What contribution would you most like to make?

I am part of a small business in the construction industry and think that my knowledge in the industry would be beneficial for the city.

Additional pertinent information or references:

(2) Name of Board/Commission:

Zoning Board of Adjustments and Airport Zoning Board of Adjustments

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Scott Young

Digitally signed by Scott Young
DN: cn=Scott Young, o=Young's Building Systems,
ou, email=syoung@randcoindustri.com, c=US
Date: 2012.08.09 16:45:33 -05'00'

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

[Submit Via Email](#)

[Print Application](#)

HOUSING AUTHORITY COMMISSION
(Membership - 5; Terms - 2 Years expiring 2 even & 3 odds)

SPECIAL COMPOSITION REQUIREMENTS: No member may be an officer or employee of the City of Midland

MEMBER	TERM EXPIRE OCT 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 11)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Dennis Bade	No 09/14					Council appointed 9/25/2012
Norma Duran	No 09/15					Council reappointed 9/25/2012
Gregory Maes	No 10/13					
Carla Repman	No 10/13					
James A. Blischke	No 10/13					
<u>ALTERNATE:</u>						
Vacancy						

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
	Only this board	

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION

**Decision Making
(Membership - 7; Terms - 2)**

SPECIAL COMPOSITION REQUIREMENTS: Resident of City.

MEMBER	TERM EXPIRE NOV. 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 4)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Ken Marks, Vice Pres.	Yes	100%	4	No		
James G. Smith	Yes	100%	4	No		
Mike Thompson	No 11/13	75%	3			
Tim Bryson	No 11/13	50%	2			
Wesley D. Bownds	No 11/13	100%	4			
John James	No 11/13	50%	2			
Rick Davis (MISD Resp.)	No 11/13	75%	3			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Eric F. Nordwald Sr.	Five other boards	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

8/13/2012

PLEASE TYPE OR PRINT CLEARLY:

Eric F Nordwald Sr.

Name: _____

4902 Rio Grande Dr.

Address: _____

Midland TX 79707

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland³ years.

Professional and/or Community Activities:

NRA, General Contractors of America, Midland's YMCA, Our Lady of Guadalupe Catholic Church in Midland, Spartan & Tough

Mudder Races, Nuclear Contracting Opportunities & Nuclear Construction Safety

What is your personal vision for the City?

My vision of Midland is a city that people want to move to because of leading technology, opportunity for growth, secure employment, high demand of talent and respectable town to raise a family

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Building Codes Review Committee

City Development Advisory Committee

Construction Board of Adjustments and Appeals

Please tell us why you are interested in serving on this board or commission.

I have 12 yrs Construction experience with residential, commercial & Industrial industries. I am interested in bettering Midland and becoming a City Council member. I have a vast knowledge w/ building codes through out many cities within the US.

Date: _____

979.3249753

Phone: _____ (Home)

575.394.5763

_____ (Business)

efnordwald@gmail.com

Email: _____

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Nuclear Operations/Construction Manager

What contribution would you most like to make?
First and foremost I would like to build a youth center. I also would contribute as a spokesmen.

Additional pertinent information or references:
I am going to attach my resume as additional information.

(2) Name of Board/Commission:
Planning and Zoning Commissioning

Midland Football, Soccer and Baseball Complex Development

Midland Higher Education Facilities Corporation

What contribution would you most like to make?
My contribution would be thinking and acting as a father of younger people that will grow within the community.

Additional pertinent information or references:
Attached resume.

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



Applications may be submitted online via email or print in order to send by mail or fax:

**City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433**

[Submit Via Email](#)

[Print Application](#)

Eric F Nordwald Sr.
4902 Rio Grande Dr. Midland TX 79707
efnordwald@gmail.com
979-324-9753

SUMMARY OR EXPERIENCE

Over twelve years of experience on both commercial and industrial projects. In the capacity of Construction Manager, responsibilities include leading the Construction Team, providing leadership for production and recommendation of profit margin. My construction expertise extends to carry forward to final operational stages of the project, providing construction and maintenance management in both commercial and industrial fields. In the Industrial and Commercial industries, vast experiences and responsibilities were exercised in the coordination of all field activities, as well as commissioning and start up functions. All projects required continuous safety participation. Provide safety instruction and Safety presentation analysis. I have a comprehensive understanding of Plant construction techniques and procedures including use of construction tools for various projects and field safety coordination with Subcontractors and Client Representatives. I have specialized experience in new construction, construction management, large capital projects and maintenance projects. I have managed all fronts of construction starting with safety management, project controls, field execution and profit / loss responsibility.

PROJECT TYPES

Nuclear Enrichment Facilities
Commercial Structures
Formwork Tunnels
Housing Projects

ACTIVITIES

Construction Management
Construction Planning
Cost Control
Quality Assurance
Building Planning
Scheduling
Estimating
Coordination
Safety Training

TRAINING

Plant Safety
QA/QC Weld Track
Request for Information (RFI)
Field Change Order (FCO)
Subcontract Management
P3 Scheduling (Primavera Certificate 5.0)

Eric F. Nordwald Sr.

I am seeking a position in Construction Management. I have the experience, the determination, and can-do attitude that is essential to managing risk on every conceivable project. This includes the timely management of the project's cost, schedule, planning, vendors, subcontractors, technical information and other key elements. From pre-construction through project completion, I will systematically monitor work as it progresses and will manage both variances and trends for elements of scope, cost and timing.

Industry Experience:

URENCO USA Eunice, NM

February 2012 – Current

Commissioning & Acceptance Coordinator - Project: National Enrichment Facility

- Current holder of CAA and "L" clearance, qualified as a Construction Supervisor, Construction Engineer and Building Manager
- Commissioning structural, electrical and mechanical systems from construction and turning them over to engineering, maintenance and plant operations.
- Working directly with Operations and Construction Management on a day to day basis to establish plant requirements and provide the owner with the highest quality product(s).
- Generating, revising and performing test on mechanical systems for plant acceptance.
- Creating procedures for civil, structural and mechanical related items to insure quality guidelines during installation.
- Establishing code regulatory specifications for nuclear site building components.
- Providing plant maintenance with adequate documentation and tribal knowledge of accepted site equipment.

Baker Concrete Construction Inc. Eunice, NM

December 2009 – February 2012

Project Manager - Project: National Enrichment Facility (NEF) Separations Building Module Extension

- Responsible Project Manager for conducting the acceptance of a \$100M Nuclear Enrichment Building
- Managed from ground breaking through closure process for structural, mechanical & electrical portions
- Effectively communicate accurate and timely information to the Operations Manager and all project participants to bring the project to completion on time and budge.
- Performed tasks such as inspections, work plan implementation, coordinating trades, managing schedule, tracking cost, provided guidance for specification and procedure understanding along with building a strong relationship with the client respected vendors.
- Assisted in planning the tie-in process for new mechanical systems to existing working systems without interruptions.
- Directly supervised and trained nuclear-safety for 200+ site personnel.
- Provided material and equipment management for multiple site wide projects with a minimal staff experiencing tremendous savings and results

Baker Concrete Construction Inc. Eunice, NM

March 2010 – July 2010

Project Manager - Project: NEF Uranium Bi-product Cylinder Pad

- Manager of a \$2.0M Slab-on-Grade Uranium Storage Pad
- Performed project scheduling, sub and general contractor negotiations including financial responsibility for both firm fix and Time/Material budgets
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January 2009 – December 2009

Project Manager - Project: MD Anderson Administrative Building

- Oversight on report processes based on Earned Value Management (EVM) concepts
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Baker Concrete Construction Inc. Houston, TX

September 2008 – February 2009

Estimator

- Estimated turn-key projects for both Commercial and Industrial work ranging from \$5M up to \$65M
- Estimated with the use of On Screen Take-off (OST) and Timberline system spread sheet.
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Dee Shoring Inc. Richmond, VA

October 2006 – September 2008

Estimator

- Bid work for turnkey projects (shoring, forming, concrete & excavation)
 - High rises (*Wachovia Bank Headquarters*, Charlotte, N.C., *Rialto Suites*, Daytona, FL.)
 - Stadiums (ASU Kidd Brewer stadium in Tennessee)
 - Hospitals, schools, apartments and condos
 - Department stores, warehouses and parking garages
- Negotiated contracts

Asst. Project Manager – Projects: VCU Health & Engineering Building, VCU Gymnasium, Center Point School

- Performed building control and jobsite managing on multiple projects
- Supervised and trained all field engineers on total Station and related computer programs
- Achieved working relationships with owners engineers while resolving RFI's and change orders
- Gained much knowledge with awarding and working with sub-contractors for scheduling and financial purposes

Yates Construction Daytona Beach, FL

April 2006 – October 2006

Project Coordinator - **Projects:** Bella Vista Apartment Complex and Palma Bella Condos, Daytona Beach, FL

- Managed general contractor's layout for high rise apartment projects
- Supervised MEP field work along with drawing review for discrepancies
- Quality control and labor foreman

Dick Pacific Construction Co. Waikola, HI

Feb 2005 – March 2006

Carpenter Superintendent / Quality Control – **Projects:** Hilton Condominiums

- Supervised framing and trim construction crews on Hilton timeshare resorts as the General Contractor which consisted of exposed timber framed building projects
- Performed quality control for the project
- Coordinated mechanical, electrical and plumbing trades
- Trained employee safety and coordinated new hire orientations

St. Louis Carpenters Union St. Louis, MO

Feb 2000 - Feb 2005

Carpenter Superintendent

- Projects ranged from residential houses to large commercial and government structures.
- Performed work for the general contractor; framing, trim, welding, concrete, mechanical, electrical, plumbing, roofing, structural steel, flooring, painting & jobsite management

Education and Training:

- Attending the University of Texas Permian Basin for a Bachelors Degree in Industrial Technology
- St. Louis Carpenters Union – Apprenticeship Program & Certification in Construction Management
- East Central Community College – General Studies
- CPR and first aid certified
- Completed Supervisory Skills, Incident and Injury Free, and Lean Construction Training
- Trained and well experienced with industrial Work Plan's, procedures and specifications
- Experienced with P3 scheduling

References upon Request

- | | | | |
|-----------------------|--------------|--|---|
| • Robin Franke | 505.975.8420 | rfranke@nefnm.com | (Company: URENCO USA) |
| • John Beaver | 713.408.6568 | jbeaver1963@yahoo.com | (Company: T-Rex Engineering & Construction, LC) |
| • David Blickenderfer | 602.885.8566 | dvblick22@hotmail.com | (Company: Baker Concrete Construction Inc.) |
| • Keith Stephenson | 505.975.0351 | kstephenson@nefnm.com | (Company: Legacy Consulting) |
| • George Kaime | 541.261.7361 | george.kaime@fdthomas.com | (Company: FD Thomas) |

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

SPECIAL COMPOSITION REQUIREMENTS:

MEMBER	TERM EXPIRE JAN. 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 0)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy	Yes-2007			No		NO MEETINGS
Vacancy	Yes-2007			No		
Vacancy	Yes-2007			No		
Vacancy	Yes-2009			No		
Steve Jones	Yes			No		
Cathy Oestmann	Yes			No		
Curt Kamradt	No 01/14					Reappointed 9/25/2012

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Katey Howard	One other board	
Eric F. Nordwald Sr.	Five other boards	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Katey Howard

Address: 2500 W Cuthbert

Midland Texas 79701

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 24 years.

Professional and/or Community Activities:

Leadership Midland graduate 2012 - awarded the American Gladiator award for hard work; Aphasia Center Chocolate Decadence

Board Member; Usher, worship choir member and high school volunteer at Stonegate Fellowship; Secretary for the Permian Basin

Bicycle Association; Associate member of the Permian Basin Home Builders Association

What is your personal vision for the City?

To see Midland thrive and maintain an exceptional quality of life in every economic condition.

Please specify any time constraints you may have.

No lunch meeting time constraints.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Parks and Recreation Commission

Please tell us why you are interested in serving on this board or commission.

Being very active in sports and outdoor activities in and around the Permian Basin I believe my experience and love for the outdoors will help bring new ideas and enthusiasm to the board.

Date: 8/20/2012

Phone: 432-638-0826 (Home)

432-694-2595 x 113 (Business)

Email: kateyhoward@gmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Insurance Agent - Mims & Smith Insurance

What contribution would you most like to make?

New ideas, willingness to work, enthusiasm to see projects through from beginning to end.

Additional pertinent information or references:

Brenda Smith - President and Owner at Mims & Smith Insurance 432-694-2595 ext 102

Stephanie Martin - Events Manager Midland Chamber of Commerce 432-683-3381

Lisa Anderson - President Permian Basin Bicycle Association 432-208-8330

(2) Name of Board/Commission:

Midland Higher Education Facilities Corporation

What contribution would you most like to make?

As a graduate of Midland High, Midland College and UTPB I believe in higher education and its importance to our community.

I want to see our higher education facilities succeed and believe my compassion and ideas will benefit the board.

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

Kately Howard

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

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Print Application



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

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8/13/2012

PLEASE TYPE OR PRINT CLEARLY:

Eric F Nordwald Sr.

Name: _____

4902 Rio Grande Dr.

Address: _____

Midland TX 79707

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ³ years.

Professional and/or Community Activities:

NRA, General Contractors of America, Midland's YMCA, Our Lady of Guadalupe Catholic Church in Midland, Spartan & Tough

Mudder Races, Nuclear Contracting Opportunities & Nuclear Construction Safety

What is your personal vision for the City?

My vision of Midland is a city that people want to move to because of leading technology, opportunity for growth, secure employment, high demand of talent and respectable town to raise a family

Please specify any time constraints you may have.

None

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City Development Advisory Committee

Construction Board of Adjustments and Appeals

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I have 12 yrs Construction experience with residential, commercial & Industrial industries. I am interested in bettering Midland and becoming a City Council member. I have a vast knowledge w/ building codes through out many cities within the US.

Date: _____

979.3249753

Phone: _____ (Home)

575.394.5763

(Business)

efnordwald@gmail.com

Email: _____

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Nuclear Operations/Construction Manager

What contribution would you most like to make?
First and foremost I would like to build a youth center. I also would contribute as a spokesmen.

Additional pertinent information or references:
I am going to attach my resume as additional information.

(2) Name of Board/Commission:
Planning and Zoning Commissioning

Midland Football, Soccer and Baseball Complex Development

Midland Higher Education Facilities Corporation

What contribution would you most like to make?
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City of Midland
City Secretary's Office
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Midland, TX 79702
FAX: (432) 685-7433

[Submit Via Email](#)

[Print Application](#)

Eric F Nordwald Sr.
4902 Rio Grande Dr. Midland TX 79707
efnordwald@gmail.com
979-324-9753

SUMMARY OR EXPERIENCE

Over twelve years of experience on both commercial and industrial projects. In the capacity of Construction Manager, responsibilities include leading the Construction Team, providing leadership for production and recommendation of profit margin. My construction expertise extends to carry forward to final operational stages of the project, providing construction and maintenance management in both commercial and industrial fields. In the Industrial and Commercial industries, vast experiences and responsibilities were exercised in the coordination of all field activities, as well as commissioning and start up functions. All projects required continuous safety participation. Provide safety instruction and Safety presentation analysis. I have a comprehensive understanding of Plant construction techniques and procedures including use of construction tools for various projects and field safety coordination with Subcontractors and Client Representatives. I have specialized experience in new construction, construction management, large capital projects and maintenance projects. I have managed all fronts of construction starting with safety management, project controls, field execution and profit / loss responsibility.

PROJECT TYPES

Nuclear Enrichment Facilities
Commercial Structures
Formwork Tunnels
Housing Projects

ACTIVITIES

Construction Management
Construction Planning
Cost Control
Quality Assurance
Building Planning
Scheduling
Estimating
Coordination
Safety Training

TRAINING

Plant Safety
QA/QC Weld Track
Request for Information (RFI)
Field Change Order (FCO)
Subcontract Management
P3 Scheduling (Primavera Certificate 5.0)

Eric F. Nordwald Sr.

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Industry Experience:

URENCO USA Eunice, NM

February 2012 – Current

Commissioning & Acceptance Coordinator - Project: National Enrichment Facility

- Current holder of CAA and "L" clearance, qualified as a Construction Supervisor, Construction Engineer and Building Manager
- Commissioning structural, electrical and mechanical systems from construction and turning them over to engineering, maintenance and plant operations.
- Working directly with Operations and Construction Management on a day to day basis to establish plant requirements and provide the owner with the highest quality product(s).
- Generating, revising and performing test on mechanical systems for plant acceptance.
- Creating procedures for civil, structural and mechanical related items to insure quality guidelines during installation.
- Establishing code regulatory specifications for nuclear site building components.
- Providing plant maintenance with adequate documentation and tribal knowledge of accepted site equipment.

Baker Concrete Construction Inc. Eunice, NM

December 2009 – February 2012

Project Manager - Project: National Enrichment Facility (NEF) Separations Building Module Extension

- Responsible Project Manager for conducting the acceptance of a \$100M Nuclear Enrichment Building
- Managed from ground breaking through closure process for structural, mechanical & electrical portions
- Effectively communicate accurate and timely information to the Operations Manager and all project participants to bring the project to completion on time and budge.
- Performed tasks such as inspections, work plan implementation, coordinating trades, managing schedule, tracking cost, provided guidance for specification and procedure understanding along with building a strong relationship with the client respected vendors.
- Assisted in planning the tie-in process for new mechanical systems to existing working systems without interruptions.
- Directly supervised and trained nuclear-safety for 200+ site personnel.
- Provided material and equipment management for multiple site wide projects with a minimal staff experiencing tremendous savings and results

Baker Concrete Construction Inc. Eunice, NM

March 2010 – July 2010

Project Manager - Project: NEF Uranium Bi-product Cylinder Pad

- Manager of a \$2.0M Slab-on-Grade Uranium Storage Pad
- Performed project scheduling, sub and general contractor negotiations including financial responsibility for both firm fix and Time/Material budgets
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Baker Concrete Construction Inc. Houston, TX

January 2009 – December 2009

Project Manager - Project: MD Anderson Administrative Building

- Oversight on report processes based on Earned Value Management (EVM) concepts
- Develop, implement, reconcile and maintain valuable project control databases and reports
- Became fluent in creating and tracking schedules, proposed change orders, submittals, subcontracts, RFI's, and LEED material.

Baker Concrete Construction Inc. Houston, TX

September 2008 – February 2009

Estimator

- Estimated turn-key projects for both Commercial and Industrial work ranging from \$5M up to \$65M
- Estimated with the use of On Screen Take-off (OST) and Timberline system spread sheet.
- Worked with Field Supervisors and Project Managers to ensure understanding and accurate proposals
- Interacted with owners on potential projects for relationship purposes' and a understanding of there expectations

Dee Shoring Inc. Richmond, VA

October 2006 – September 2008

Estimator

- Bid work for turnkey projects (shoring, forming, concrete & excavation)
 - High rises (*Wachovia Bank Headquarters*, Charlotte, N.C., *Rialto Suites*, Daytona, FL.)
 - Stadiums (ASU Kidd Brewer stadium in Tennessee)
 - Hospitals, schools, apartments and condos
 - Department stores, warehouses and parking garages
- Negotiated contracts

Asst. Project Manager – Projects: VCU Health & Engineering Building, VCU Gymnasium, Center Point School

- Performed building control and jobsite managing on multiple projects
- Supervised and trained all field engineers on total Station and related computer programs
- Achieved working relationships with owners engineers while resolving RFI's and change orders
- Gained much knowledge with awarding and working with sub-contractors for scheduling and financial purposes

Yates Construction Daytona Beach, FL

April 2006 – October 2006

Project Coordinator - Projects: Bella Vista Apartment Complex and Palma Bella Condos, Daytona Beach, FL

- Managed general contractor's layout for high rise apartment projects
- Supervised MEP field work along with drawing review for discrepancies
- Quality control and labor foreman

Dick Pacific Construction Co. Waikola, HI

Feb 2005 – March 2006

Carpenter Superintendent / Quality Control – Projects: Hilton Condominiums

- Supervised framing and trim construction crews on Hilton timeshare resorts as the General Contractor which consisted of exposed timber framed building projects
- Performed quality control for the project
- Coordinated mechanical, electrical and plumbing trades
- Trained employee safety and coordinated new hire orientations

St. Louis Carpenters Union St. Louis, MO

Feb 2000 - Feb 2005

Carpenter Superintendent

- Projects ranged from residential houses to large commercial and government structures.
- Performed work for the general contractor; framing, trim, welding, concrete, mechanical, electrical, plumbing, roofing, structural steel, flooring, painting & jobsite management

Education and Training:

- Attending the University of Texas Permian Basin for a Bachelors Degree in Industrial Technology
- St. Louis Carpenters Union – Apprenticeship Program & Certification in Construction Management
- East Central Community College – General Studies
- CPR and first aid certified
- Completed Supervisory Skills, Incident and Injury Free, and Lean Construction Training
- Trained and well experienced with industrial Work Plan's, procedures and specifications
- Experienced with P3 scheduling

References upon Request

- | | | | |
|-----------------------|--------------|--|---|
| • Robin Franke | 505.975.8420 | rfranke@nefnm.com | (Company: URENCO USA) |
| • John Beaver | 713.408.6568 | jbeaver1963@yahoo.com | (Company: T-Rex Engineering & Construction, LC) |
| • David Blickenderfer | 602.885.8566 | dvblick22@hotmail.com | (Company: Baker Concrete Construction Inc.) |
| • Keith Stephenson | 505.975.0351 | kstephenson@nefnm.com | (Company: Legacy Consulting) |
| • George Kaime | 541.261.7361 | george.kaime@fdthomas.com | (Company: FD Thomas) |

MIDLAND HOUSING FINANCE CORPORATION
 (Decision Making)
 Membership - 5; Terms - 2 Years expiring 1-2-2)

SPECIAL COMPOSITION REQUIREMENTS: Resident of City.

MEMBER	TERM EXPIRE SEPT 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy	Yes			No		DID NOT RECEIVED ATTENDANCE RECORD
Adrienne Valencia	Yes			No		
Melissa Wicker	Yes			No		
Jerry Morales (Liaison Officer)	Yes			No		
Nathan Miller	Yes			Yes		

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Fran V. Wallace	Only this board	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: Fran V Wallace

Address: 2605 Whitney Dr

Midland Tx 79705

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 7 1/2 years.

Professional and/or Community Activities:

None of the Above. I married and moved to Midland in 05. My husband was born here in Midland and also went to school here in Midland. His work required traveling to other states and I joined him. He is now retired.

What is your personal vision for the City?

This city has grown so quickly and seems to be bursting at the seams. As the city grows there is a need for teamwork to organize and prepare and help our city to meet its needs within the government and the health and prosperity and needs of our people here in Midland.

Please specify any time constraints you may have.

None

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Midland Housing Authority Commission

Please tell us why you are interested in serving on this board or commission.

This will give me the opportunity to meet and get acquainted with the people of Midland and help the elderly and those with lower income needs.

Date: 8/24/2012

Phone: 432-699-4271 (Home)

(Business)

Email: dww42@sbcglobal.net

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Retired

What contribution would you most like to make?

To serve this position to the best of my ability. I have no idea what this position entails but I am sure that I am capable of working together and fulfilling whatever is required.

Additional pertinent information or references:

I am a graduate of Timken Vocational High School in Ohio. Attended many learning Seminars on many of the positions I have held in the past. Completed some courses in Criminal Justice online with the University of Phoenix. Organization and management are my best skills. I type, use computer and different software. Great phone etiquette.

(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Barbco Inc in Canton Ohio 330-488-9400 (Barbera, Jim, David or Tony) 15 Yrs

Staffing Resources in Midland Tx 432-684-0527 (Fran) 07 and 08

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant

James V Wallace

Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

[Submit Via Email](#)

[Print Application](#)

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD
(Ad Hoc)

SPECIAL COMPOSITION REQUIREMENTS:

MEMBER	TERM EXPIRE SEPT 2012?	ATTEN- DANCE %	MEETINGS ATTENDED	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Vacancy	Yes			N/A		
Richard Hatchett						
W. L. "Scooter" Brown						
Ken Burgess						
Jim Hightower						
Ted H. Jones						
Mitch Malouf						
Christi Newton						
Dan Rush						

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES

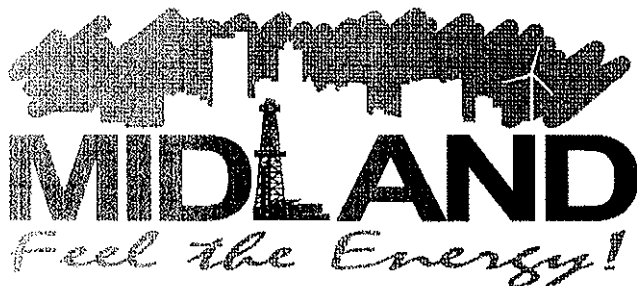
MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD
(Membership - 6; Terms - 2 Years Staggered)

SPECIAL COMPOSITION REQUIREMENTS: None

MEMBER	TERM EXPIRE SEPT 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 9)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Willie Barber	Yes	100%	9	No		
Rebecca Bell	No 09/14	N/A	N/A			Appointed 9/11/2012
Michael Trost	Yes	78%	7	No		
John James	No 09/13	56%	5			
Karen York	No 09/13	33%	8			
Guy McKenzie	No 09/13	33%	8			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Rebecca Bell	Only this board	Appointed 9/11/2012
J. Ross Lacy	One other board	



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: J. Ross Lacy

Address: P.O. Box 3266

Midland TX 79702

(City) (State) (Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland ²³ years.

Professional and/or Community Activities:

President, Midland Co. Young Republicans

Member, Young Professionals of Midland

Member, UTPB School of Business Advisory Board

What is your personal vision for the City?

With the current economic growth that Midland is experiencing, I would like to see the city continue to embark on new innovated ideas that focus on garnering new industries to the region and continue to support the oil and gas industry. We need to also focus on promoting young professionals in the city to engage and support various projects within the community.

Please specify any time constraints you may have.

I do not have any time constraints that would not allow me to attend meetings regularly.

Date: 8/16/2012

Phone: 432-254-1126 (Home)

432-683-5542 (Business)

Email: j.rosslacy@gmail.com

Are you a graduate of Midland 101? ☐ yes ☒ no

Occupation: Self Employed / Lacy Capital, LLC.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

Airport Planning and Development Board

Please tell us why you are interested in serving on this board or commission.

With the recent announcement of XCOR Aerospace moving to the Midland Airport, Midland is in a unique position to use this newfound partnership for economic growth and garner national attention to the region. The next few years are going to be exciting

for the airports and industrial park, which will just be another feather in the hat for Midland.

What contribution would you most like to make?

I would like to work on obtaining the Spaceport License for the airport. Also would like to work on continuing improve our airport system and work to get another hotel around the airport. The Midland Industrial Park can only benefit greatly in the next few years as of companies follow XCOR and move to the region.

Additional pertinent information or references:**(2) Name of Board/Commission:**

Midland-Odessa Urban Transit District Board

What contribution would you most like to make?

The Board did great in obtaining funding to make 349 a four lane road to Lamesa, however we need to make all entry roads into the region more accessible. Oilfield traffic is at an all time worst in the region causing unprecedented damage to our roads and making traffic accidents horrible. Working to obtain funding to make 349 a four lane road in south Midland Co. would be a major focus.

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland
City Secretary's Office
PO Box 1152
Midland, TX 79702
FAX: (432) 685-7433

Submit Via Email

Print Application

PERMIAN BASIN AIRPORT BOARD
(Advisory)
Membership - 30; Terms - 1 Year)
Ex-Officio Members: City Manager, City Attorney

SPECIAL COMPOSITION REQUIREMENTS: 10 Members of the Airport Planning & Development Board, A Resident of the following Cities: San Angelo, Abilene, Carlsbad, NM, Roswell NM, Artesia, NM, Hobbs NM, Fort Stockton, Seminole, Sweetwater, Pecos, 3 Residents of Odessa, Big Spring, Lamesa, Andrews, Monahans and Snyder.

MEMBER	TERM EXPIRE SEPT. 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 4)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Larry Gill (Abilene)	Yes	25%	1			
Elvin Brownlee III (Andrews)	Yes	75%	3			Reappointed 10/9/2012
Jim Little (Big Spring)	No 09/13	100%	4			Reappointed 9/25/2012.
David Hardwick (Ft. Stockton)	Yes	0%	0			
Donald R. Bethel (Lamesa)	No 09/13	50%	2			Reappointed 9/25/2012.
Henry Cutbirth (Monahans)	No 09/13	50%	2			Reappointed 9/25/2012.
Willie Taylor (Odessa)	No 09/13	50%	2			Reappointed 9/25/2012.
Gloria Pena (Odessa)	No 09/13	75%	3			Reappointed 9/25/2012.
Barbara Graff (Odessa)	Yes	75%	3			Reappointed 9/25/2012.
Isabelle Blanchard (Pecos)	Yes	50%	2			
Luis E. Elguezabal (San Angelo)	Yes	0%	0			Reappointed 10/9/2012
Lex Hinds (Seminole)	Yes	0%	0			
John Rogotzke (Snyder)	No 09/13	0%	0			Appointed 9/25/2012.
Glenn Wortham (Sweetwater)	No 09/13	0%	0			Reappointed 9/25/2012.
Lance Goodrich (Artesia, NM)	No 09/13	25%	1			Reappointed 9/25/2012.
Bob Forrest (Carlsbad, NM)	Yes	0%	0			
Larry Shed (Hobbs, NM)	Yes	0%	0			
Larry Fry (Roswell, NM)	No 09/13					Reappointed 9/25/2012.
Frankie Rolfe (Kermit)	No 09/13					Appointed 9/25/2012

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Frankie Rolfe (Kermit)	1	Appointed 9/25/2012

TAX INCREMENT REINVESTMENT ZONE BOARD
(Decision Making)
Membership - 12; Terms - 3 Years)

SPECIAL COMPOSITION REQUIREMENTS: None

MEMBER	TERM EXPIRE MARCH 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 4)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Neil Florer (College)	Yes	75%	3	No		
Ken Burgess (City)	Yes	50%	2	No		Appointed 10/9/2012
Mark T. Wellen (City)	Yes	100%	4	No		
Jay Reynolds, (Hospital)	Yes	25%	1	No		
Ralph Way (College)	Yes	75%	3	No		
Randy Prude (County)	Yes	75%	3	Yes		County has requested reappointed of Randy Prude 10-26-12
Judge Mike Bradford (County)	Yes	25%	1	Yes		County has requested reappointment of Judge Bradford 10/26/12
Michael Blonkvist (City)	No 09/14	N/A	N/A			Appointed 9/25/2012
Bob Lanier (City)	Yes	100%	4	Yes		
John Kennedy (City)	Yes	100%	4	Yes		Reappointed 10/9/2012
Brent Kennedy (City)	Yes	25%	1	Yes		
Pete Hulder (Hospital)	No 03/16	100%	4			

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Michael Blonkvist	Only this board	Appointed 9/25/2012
Ken Burgess	Only this board	Appointed 10/9/2012

**ZONING BOARD OF ADJUSTMENT
AND
AIRPORT ZONING BOARD OF ADJUSTMENT
(Decision Making)
Membership - 5; Terms - 2 Years expiring 3 odd & 2 even)**

SPECIAL COMPOSITION REQUIREMENTS: None

MEMBER	TERM EXPIRE SEPT. 2012?	ATTEN- DANCE %	MEETINGS ATTENDED (Out of 2)	ELIGIBLE FOR ANOTHER TERM	BOARD MEMBER'S PHONE #	COUNCIL NOTES
Scott Young	No 09/13	N/A				Appointed 9/25/12
Manny Ribera	Yes	100%	2	No		
Todd Byars	No 09/14	100%	2			Reappointed 9/25/12
Ken Morgan	Yes	50%	1	Yes		
Carla Repman	No 09/13	100%	2			
<u>ALTERNATES:</u>						
Vacancy	Yes - 2006					
Vacancy	Yes - 2007					
Annabel Holguin	No 09/13					
Greg Turner	No 09/13					

APPLICANTS: (Listed Alphabetically)

APPLICANT'S NAME	NUMBER OF BOARDS APPLIED FOR	COUNCIL NOTES
Scott Young	One other board	Appointed 9/25/12

Amy Turner

From: Genora Young
Sent: Friday, November 02, 2012 9:52 AM
To: Amy Turner
Cc: Courtney Sharp; Jim Nichols
Subject: Midland College appoints one TIRZ Board member

Amy,

Viola Edwards 685-4520 from Midland College called this morning. MC Board appointed Charlene McBride to the TIRZ Board. Her contact information is

Charlene McBride
3201 Apperson
Midland, TX 79705
(432) 638-9486

The MC Board will meet in November and appoint another person at that time.

Genora C. Young, PCED
Director, Downtown Development

City of Midland
300 N. Loraine, Suite 510
P. O. Box 1152
Midland, TX 79702

(432) 685-7263 Office
(432) 260-5362 Cell



Amy Turner

From: Mike Bradford [CJ101@co.midland.tx.us]
Sent: Friday, October 26, 2012 12:39 PM
To: Amy Turner
Cc: Jenny Hilton
Subject: RE: City of Midland - Tax Increment Reinvestment Zone Board

Amy,

I received a letter regarding the expiration of term on September 30, 2012 for both Randy Prude and Judge Bradford in September. I phoned your office to let you know they are both wanting to serve on the board. I am just now finding this email and wanted to check to see if you have them currently marked as on the board? Thank you for any clarification you can provide.

Jenny Hilton

From: Amy Turner [<mailto:aturner@midlandtexas.gov>]
Sent: Friday, October 05, 2012 12:28 PM
To: Mike Bradford
Cc: Ken VanDyne; Jim Nichols
Subject: City of Midland - Tax Increment Reinvestment Zone Board

Judge Bradford,

Midland County has two appointees to the Tax Increment Reinvestment Zone Board that meets as needed.

The two board members terms have both expired. Those board members were:

- Randy Prude (3 year term expired March 20, 2010)
- Judge Mike Bradford (3 year term expired March 20, 2010)

Please forward a letter or email to me with the names and contact information of those people you would like to serve on that board. If you need additional information about the board itself, please contact Senior Planner Ken VanDyne at (432) 685-7406.

Please let me know if I can be of further service.

Amy M. Turner, TRMC, MMC | City Secretary
City of Midland | 300 N. Loraine | PO Box 1152 | Midland, TX 79702
☎ (432) 685-7432 | fax (432) 685-7433 | aturner@midlandtexas.gov





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 11/13/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by Sage Star Development and Construction for a zone change from PD, Planned District for a Shopping Center to an Amended PD, Planned District for a Shopping Center. (Generally located on the west side of Tradewinds Boulevard, approximately 630 feet south of Andrews Hwy.)

Purpose:

Consider an ordinance on second reading on a request by Sage Star Development and Construction for a zone change from PD, Planned District for a Shopping Center to an Amended PD, Planned District for a Shopping Center. The purpose of the request is also to adopt a new site plan. No changes have been made to this item since its first reading on October 23, 2012.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 4A, BLOCK 3, WESTRIDGE PARK ADDITION, SECTION 15, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF TRADEWINDS BOULEVARD, APPROXIMATELY 630 FEET SOUTH OF ANDREWS HIGHWAY); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of an Amended Planned District, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned PD, Planned District for a Shopping Center, and it shall be used as an Amended Planned District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

Lot 4A, Block 3, Westridge Park Addition, Section 15, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That the use and development of this property shall conform to the regulations of the LR-2, Local Retail District.
2. That the development of a hotel on this property shall conform to the conditions shown on Exhibits "A", "B", "C" and "D", which are attached hereto and incorporated herein.
3. That the maximum height of the building shall not exceed 60 feet.
4. That the exterior of the building shall be a combination of the materials denoted in Exhibits "A", "B", "C" and "D".
5. That all fire lanes shall be in compliance with the City of Midland Fire Code and approved by the Fire Marshal.
6. That all driveways shall be in compliance with the Midland City Code.
7. That all signs on this property shall conform to the City of Midland Sign Code.
8. That City of Midland Ordinance No. 8683 is hereby repealed.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more

sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the ____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS ____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

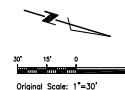
APPROVED AS TO FORM:

Keith Stretcher, City Attorney

WESTRIDGE PARK ADDITION **SECTION 15**

Lot 4-A

Block 3



PD Site Plan:
Submitted to City of Midland P&Z
on September 7, 2012.

NOTES:

- * BUILDING FOOTPRINT, PARKING AND LANDSCAPING SHOWN ARE FOR ILLUSTRATIVE PURPOSES ONLY. FINAL SITE DESIGNS TO BE REVIEWED BY THE CITY OF MIDLAND PRIOR TO ISSUING BUILDING PERMITS.
- * SHADED AREAS DENOTED BY TO BE PAVED OR OTHER DRIVING SURFACE.
- * SHADED AREAS DENOTED BY TO BE CONCRETE.
- * SHADED AREAS DENOTED BY TO BE IRRIGATED & LANDSCAPED INCLUDING TREES OR SHRUBS - WHICH MAY BE ENHANCED BY OTHER LANDSCAPE MATERIALS.
- * SHADED AREAS DENOTED BY ARE BUILDINGS.
- * SHADED AREAS DENOTED BY ARE SCREEN WALLS.
- * AREAS DENOTED BY ARE FIRE LANES.
- * LANDSCAPED AREA (NOT INCLUDING R.O.W.S) WILL BE A MINIMUM OF 10% OF TOTAL LOT AREA, LESS THE BUILDING AREA.
- * EXTERIOR BUILDING MATERIALS SHALL BE DECORATIVE OR PAINTED CMU, FACE BRICK, PRECAST CONCRETE, TILT-WALL, STUCCO, GLAZING OR SIMILAR CONSTRUCTION AND PER THE ELEVATION EXHIBITS.
- * ROOF MATERIALS MAY INCLUDE COMPOSITE, BUILT-UP OR STANDING SEAM METAL ROOF.
- * ALL SIGNS SHALL BE IN CONFORMANCE WITH SECTION 11-7a OF THE MIDLAND CITY CODE.
- * ALL EXTERIOR LIGHTING SHALL ADHERE TO THE STANDARDS OUTLINED IN SECTION 11-10 OF THE MIDLAND CITY CODE.
- * HVAC UNITS WILL BE LOCATED ON THE GROUND AND SURROUNDED BY A SCREEN WALL.

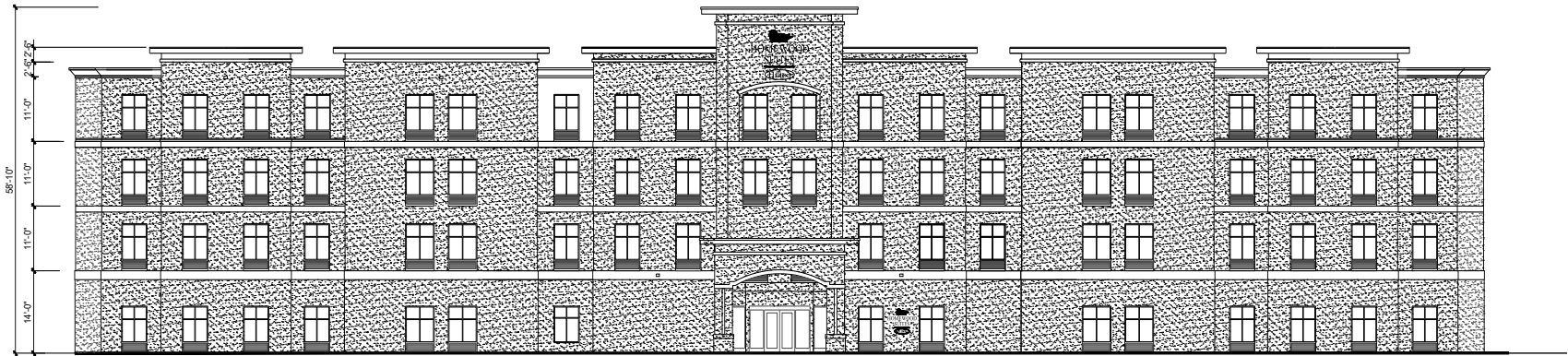
SITE DATA

SITE AREA	122,290 SF ±
BUILDING AREA (Foot Print)	24,000 SF ±
BUILDING AREA (Total Floor Space)	94,954 SF ±
LANDSCAPE AREA REQUIRED	9,829 SF ±
LANDSCAPED AREA SHOWN	29,801 SF ±
PARKING SPACES REQUIRED (1 per Room + 1 per 200 SF MTG SPACE)	130
PARKING SPACES PLANNED	130
H.C. PARKING SPACES REQUIRED	5
H.C. PARKING SPACES PLANNED	8

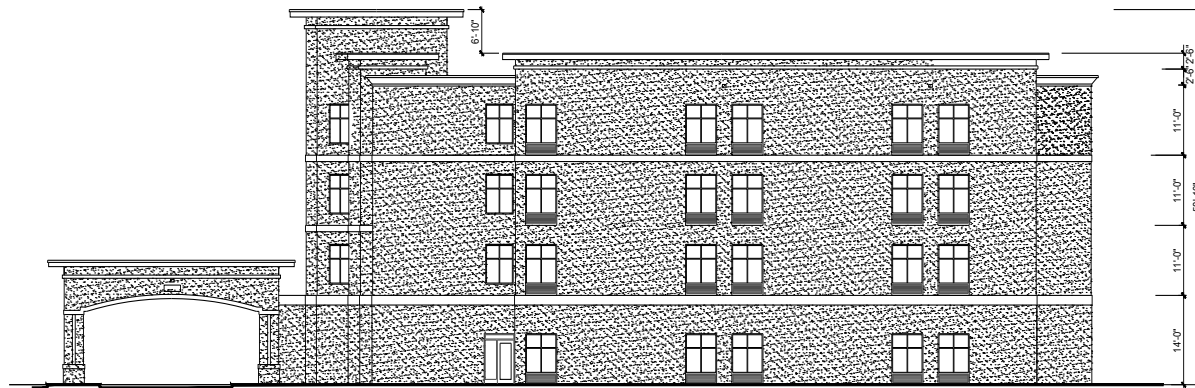
WESTRIDGE PARK ADDITION **SECTION 15**

TRADEWINDS

WESTRIDGE



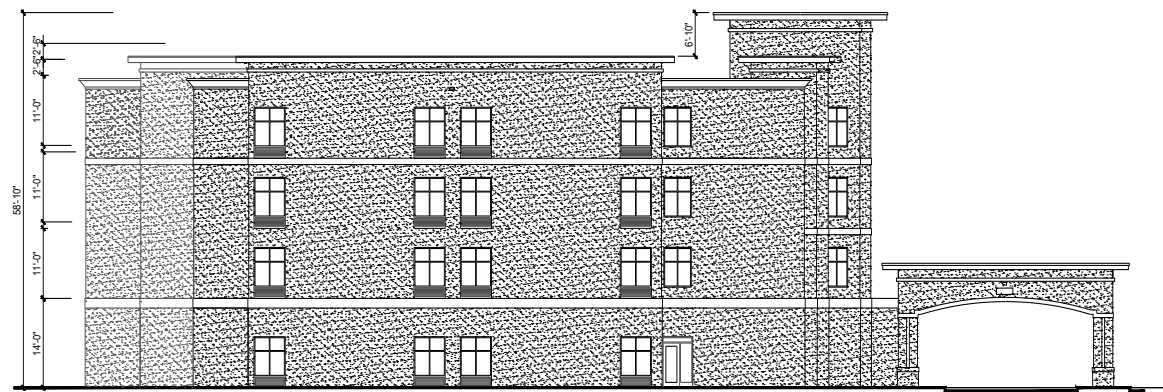
01 FRONT ELEVATION
SCALE: 3/32" = 1'-0"



02 SIDE ELEVATION
SCALE: 3/32" = 1'-0"



01 REAR ELEVATION
 SCALE: 3/32"= 1'-0"



02 SIDE ELEVATION
 SCALE: 3/32"= 1'-0"



**HOMWOOD
SUITES**
 — Hilton —
MIDLAND, TEXAS

h u g o m o n s a n t o
 a r c h i t e c t
103 1/2 north rogers street #5 • waxahachie texas 75165 • monsantoarchitects@att.net • 972.938.2500

Case Number: Z-12-037

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Sagestar Development and Construction, LLC (214) 774-4650

Applicant Name	(Phone/e-mail)
1135 Kinwest Parkway, Suite 150, Irving, TX	75063
Address	Zip Code

Midland Host Hotels, LLC	(214) 774-4650
--------------------------	----------------

Property Owner Name	(Phone/e-mail)
1135 Kinwest Parkway, Suite 150, Irving, TX	75063
Address	Zip Code

Parkhill, Smith, & Cooper, Inc.	(432) 697-1447
---------------------------------	----------------

Representative Name	(Phone/e-mail)
1700 W. Wall St, Suite 100, Midland, TX	79701
Address	Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. Lot 4A, Block 3, Westridge Park Addition - Section 15, City of Midland, Midland County, Texas

PRESENT ZONE: PD-SC REQUESTED ZONE: Amend PD
(List by tracts if more than one district is requested)

Reason for Zone Change Request: Request increased height beyond current PD Zoning

Present Use of Property: Vacant

Proposed Use of Property: Hotel

How will zone change affect the public health, safety and welfare? Zone Change will augment the hotel choices for Midland

Describe how conditions affecting the property have changed since present zoning designation: Hotel development has extended into the area

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: X
Site Plan in digital format .pdf and .jpg: X

SIGNATURE (by property owner only - authorized agent must sign affidavit below)

Property Owner (signature): _____ Date: _____

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

Eric L. West, PE who, being by me duly sworn, upon oath says: That (s)he is authorized by Midland Host Hotels, LLC, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

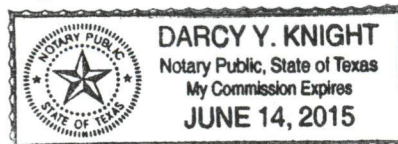
Eric L. West

Authorized Agent (signature)

Subscribed and sworn to before me, this 4th day of September, 20 12, to certify which witness my hand and seal of office.

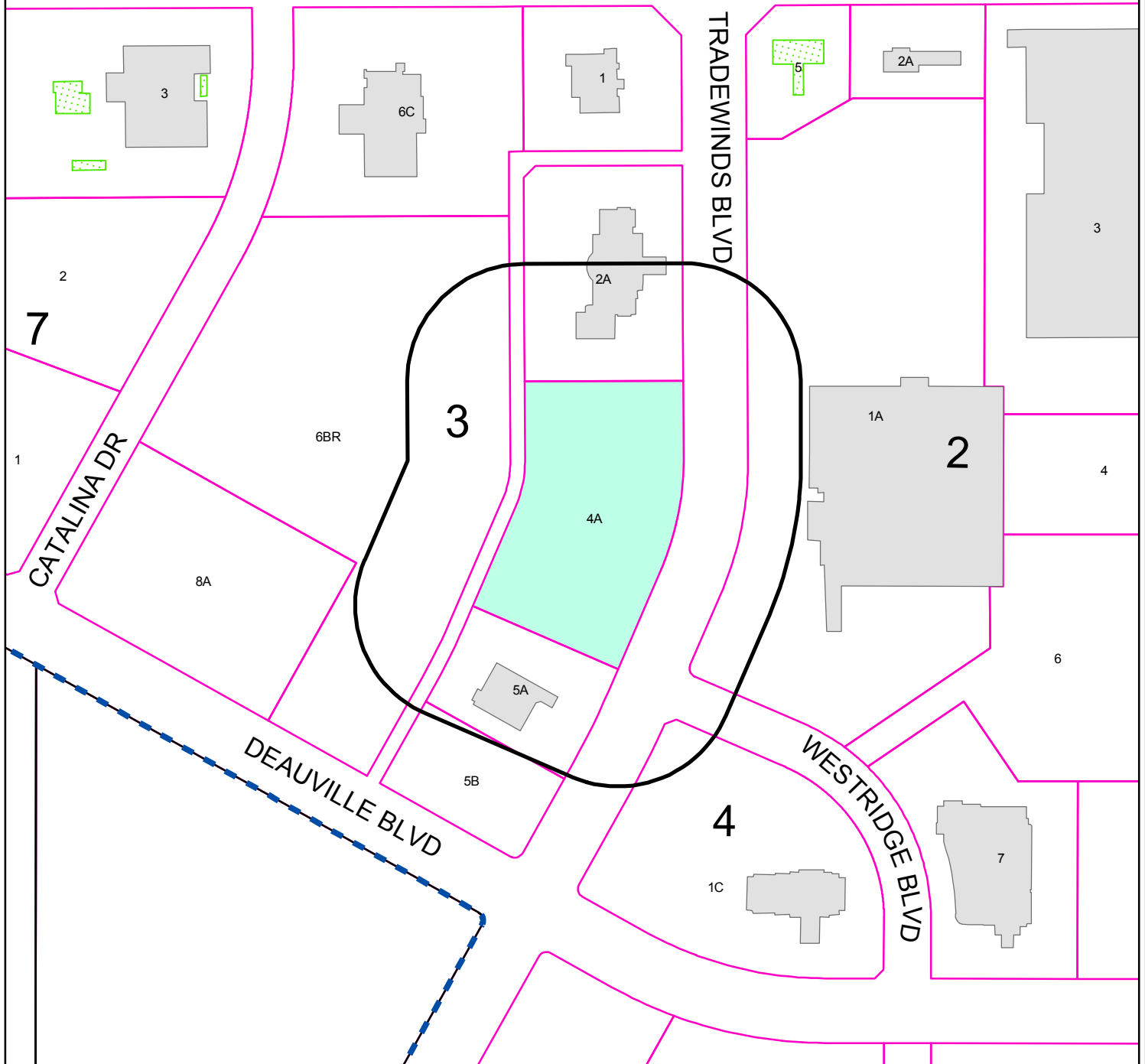
Darcy Y. Knight
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>AM</u>	Date: <u>9/7/12</u>
Assigned: <u>MS</u>	
For: _____	On: _____



****Application will not be considered for scheduling until reviewed by a planner.****

ANDREWS HWY



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 037

Scale: 1" = 250'

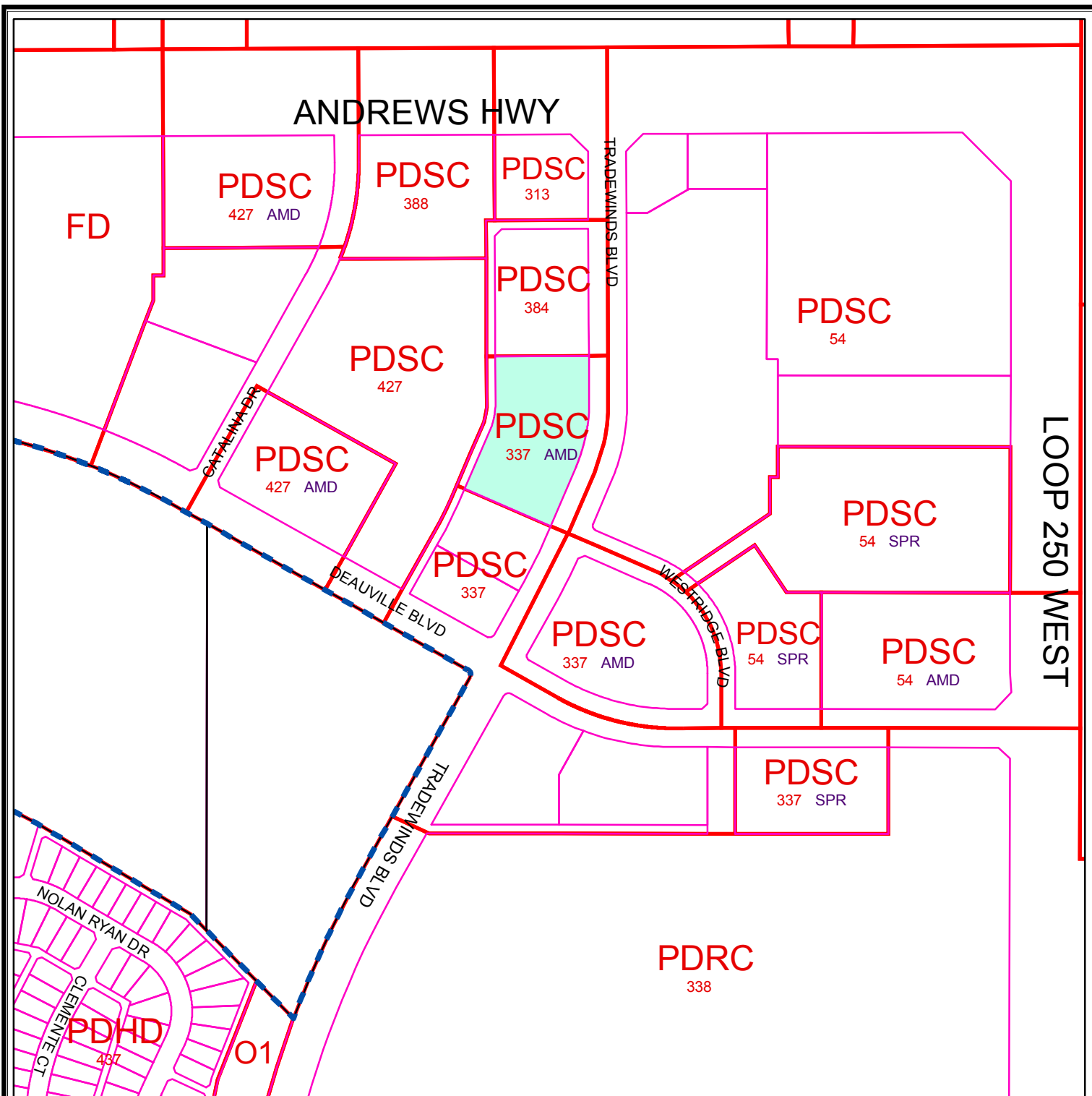
Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on Lot 4A, Block 3, Westridge Park Addition, Section 15, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- COUNTY PARCEL
- PUBLIC BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 12 - 037

Scale: 1" = 400'

Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on Lot 4A, Block 3, Westridge Park Addition, Section 15, City and County of Midland, Texas.

LEGEND

- ZONING
- CITY LIMITS
- CITY PARCELS
- COUNTY PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 11/13/2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request for the vacation of a 1,400 square foot portion of the right-of-way of W. Ohio Street adjacent to Lot 12, Block 26, Original Town, City and County of Midland, Texas. (Generally located on the southeast corner of the intersection of W. Ohio Street and N. Colorado St.)

Purpose:

Consider an ordinance on second reading on a request for the vacation of a 1,400 square foot portion of the right-of-way of W. Ohio Street adjacent to Lot 12, Block 26, Original Town, City and County of Midland, Texas. (Generally located on the southeast corner of the intersection of W. Ohio Street and N. Colorado St.)

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

The City will receive \$2,100.00 for the purchase of right-of-way.

Discussion:

Sonny Aguilar is representing Rita & SMA Properties concerning the request for the vacation of the above described right-of-way to allow for off-street parking. The lot will be used by the Brass Munkey and other businesses under construction across Colorado St. The area to be vacated is a 10' wide strip extending 140' parallel-to and behind the south curb of Ohio Ave. at the intersection of N. Colorado St. (Exhibit A). A payment to the City in the amount of \$2,100.00 has been received; no other changes have been made since first reading.

ORDINANCE NO.

AN ORDINANCE VACATING AND ABANDONING A 0.032-ACRE PORTION OF WEST OHIO STREET RIGHT-OF-WAY ADJACENT TO LOT 12, BLOCK 26, ORIGINAL TOWN ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF WEST OHIO STREET AND NORTH COLORADO STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$2,100.00; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 0.032-acre portion of West Ohio Street right-of-way adjacent to Lot 12, Block 26, Original Town Addition, City and County of Midland, Texas, is no longer needed for public use; and

WHEREAS, Section 272.001 of the Texas Local Government Code provides that a political subdivision may not convey, sell, or exchange its interest in land without observing notice and bid requirements, unless the conveyance is to one or more abutting property owners; and

WHEREAS, an application for vacating the right-of-way has been received by the City from the abutting property owner; and

WHEREAS, the City Manager has appraised the value of the City's property interest in the right-of-way at \$2,100.00, as shown in Exhibit "B" attached hereto and incorporated herein by reference; and

WHEREAS, the Council finds it to be in the public interest to abandon and vacate the right-of-way described herein;

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

SECTION ONE. That the 0.032-acre portion of West Ohio Street right-of-way adjacent to Lot 12, Block 26, Original Town Addition, City and County of Midland, Texas, as described in Exhibit "A" attached hereto and made a part hereof for all legal purposes, is hereby vacated and abandoned for all public purposes. Provided, however, that the City is hereby only abandoning the public interest in said property and this ordinance in no way

affects any private easement or access easement which abutting property owners may have in said right-of-way.

SECTION TWO. That this Ordinance shall not be effective until the City of Midland has received from the property owner(s) the sum of \$2,100.00.

SECTION THREE. That upon the City's receipt of the sum set forth in Section Two hereof, the City Secretary is hereby authorized and directed to file a certified copy of this Ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

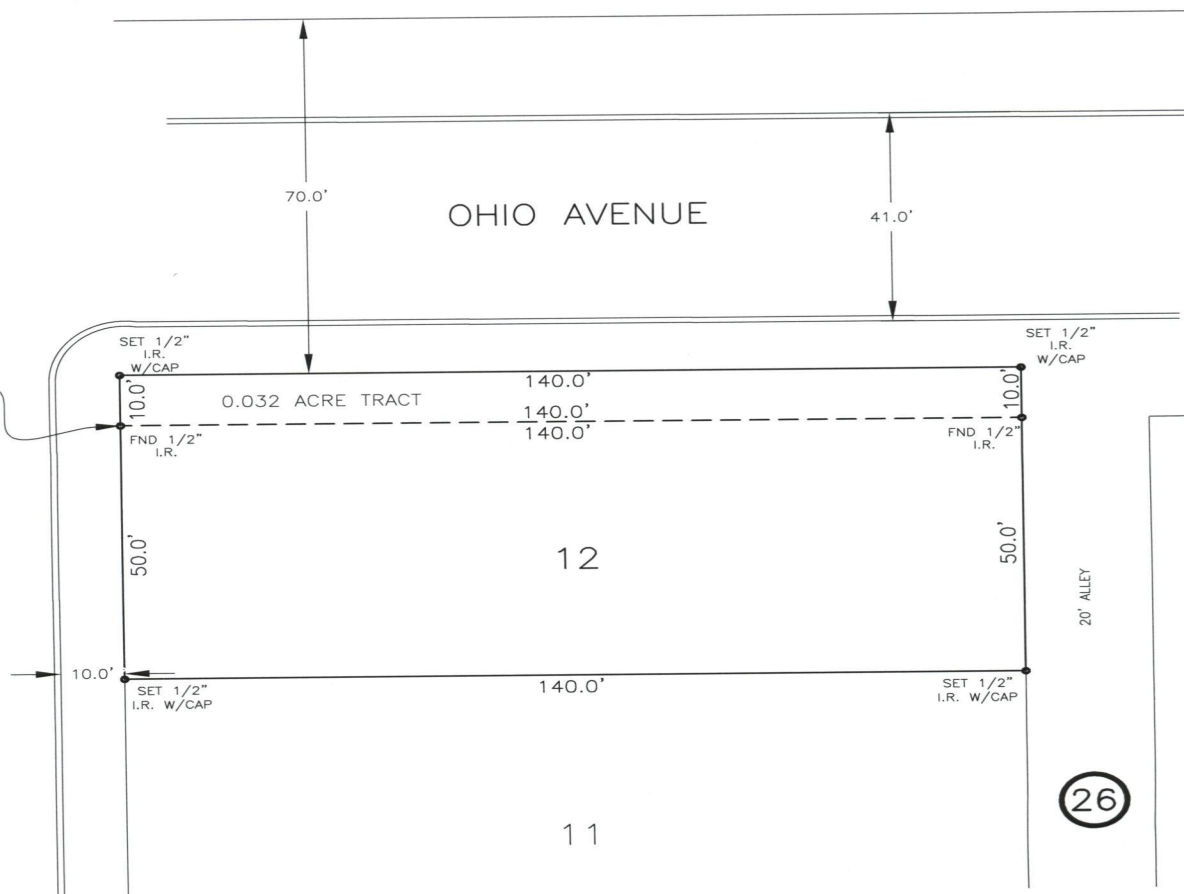
James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

COLORADO STREET
(80' RIGHT-OF-WAY)

POINT OF
BEGINNING



PLAT OF

LOT TWELVE (12), BLOCK TWENTY SIX (26),
AND A 0.032 ACRE TRACT,
ORIGINAL TOWN OF MIDLAND,
MIDLAND COUNTY, TEXAS



TO LIEN HOLDER ISSUING THE INSURANCE UNDERWRITER
THIS SURVEY PLAT IS PROVIDED SOLELY FOR THIS TRANSACTION
PLAT IS COPYRIGHTED AND SHALL NOT BE USED FOR ANY OTHER
TRANSACTION.

THE UNDERSIGNED HEREBY CERTIFIES THAT THIS SURVEY
WAS MADE ON THE GROUND OF THE PROPERTY LEGALLY
DESCRIBED HEREON AND IS CORRECT, AND THAT THERE
ARE NO VISIBLE DISCREPANCIES, CONFLICTS, SHORTAGES
IN AREA BOUNDARY LINE CONFLICTS, ENCROACHMENTS,
OVERLAPPING OF IMPROVEMENTS, VISIBLE EASEMENTS OR
RIGHTS OF WAY, EXCEPT AS SHOWN HEREON, AND THIS
SAID PROPERTY HAS ACCESS TO AND FROM A DEDICATED
ROADWAY AS SHOWN.

Robert D. Bradshaw
REGISTERED PROFESSIONAL LAND SURVEYOR



FILED IN PLAT VOLUME 3, PAGE 232, DEED RECORDS, MIDLAND COUNTY, TEXAS.
THIS PROPERTY LIES WITHIN ZONE "X" AS SHOWN BY THE FEDERAL EMERGENCY
MANAGEMENT AGENCY FEDERAL INSURANCE ADMINISTRATION MAP COMMUNITY PANEL
48329C0089F DATED SEPTEMBER 16, 2005.

Stored: 12051574

BRADSHAW AND ASSOCIATES, INC.

CONSULTING ENGINEERS
REGISTERED PROFESSIONAL LAND SURVEYORS

4400 N. BIG SPRING SUITE A-8
MIDLAND, TEXAS 79705
PHONE (432)682-4400 FAX (432)682-7997

	Drawn	Chkd	Surveyed
By	VR/SH	RDB	RG/GG
Date	10-2-2012	10-2-2012	6-21-2012

48.5

V-12-009



October 12, 2012

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 0.032-acre portion of West Ohio Street right-of-way adjacent to Lot 12, Block 26, Original Town Addition, City and County of Midland, Texas

Dear Members of the City Council:

The above-referenced property has been appraised in accordance with Chapter 272 of the Texas Local Government Code. The fair market value of the property is \$2,100.00. The property can be vacated and recorded in the Midland County Clerk's office when the City of Midland has received this amount from the adjoining property owner(s).

Very truly yours,

Courtney Sharp

Courtney Sharp
City Manager

Exhibit "B"

L:\Ordinances\Planning\Vacate & Abandon\2012\Ohio Street, Blk 26, Original Town Addition Appraisal Letter.wpd

CITY OF MIDLAND
Planning Division

APPLICATION TO VACATE RIGHT-OF-WAY

- I. Application is hereby made to the City Council to vacate the following public right-of-way or easement:
Lot 12 Block 26 Original Town Midland Texas.
- II. Reason for Request: Provide additional parking spaces.
- III. Reasons, in applicant's opinion, why the requested vacation will not adversely affect the public welfare or will contribute to it in a positive way:
No current usage and would facilitate downtown business establishments.

IV. REQUIRED ITEMS:

1. Applicant(s) Information: (Attach extra sheets as necessary.)

Name: Rita + SMA Properties

Address: 319 N. Colorado

Phone: 432-352-6386

Street

Midland

TX

79701

City

State

Zip Code

2. Metes and bounds description of property to be vacated including total square feet of vacation.
3. Map showing:
Property to be vacated and its relationship to the applicant's property
Lot and block numbers of all adjacent tracts
Current zoning of all adjacent tracts
4. Letter(s) of Concurrence signed by adjacent property owner(s). (See attached)
5. Application Fee: **\$300.00**

Required items attached? Date Received: 1. _____ 2. _____ 3. _____ 4. _____ 5. _____

The City of Midland will take no action on this request, until items 1-5 are received.

- V. Clearance is needed from the following utility companies: City of Midland / Atmos Energy
Caprock Energy / Oncor Electric / AT&T / Suddenlink Cable TV Co. / Grande Communications

The City will route the request to these companies, but it is the applicant's responsibility to ensure clearance has been obtained and to work out any issues that may arise.

VI. Policies:

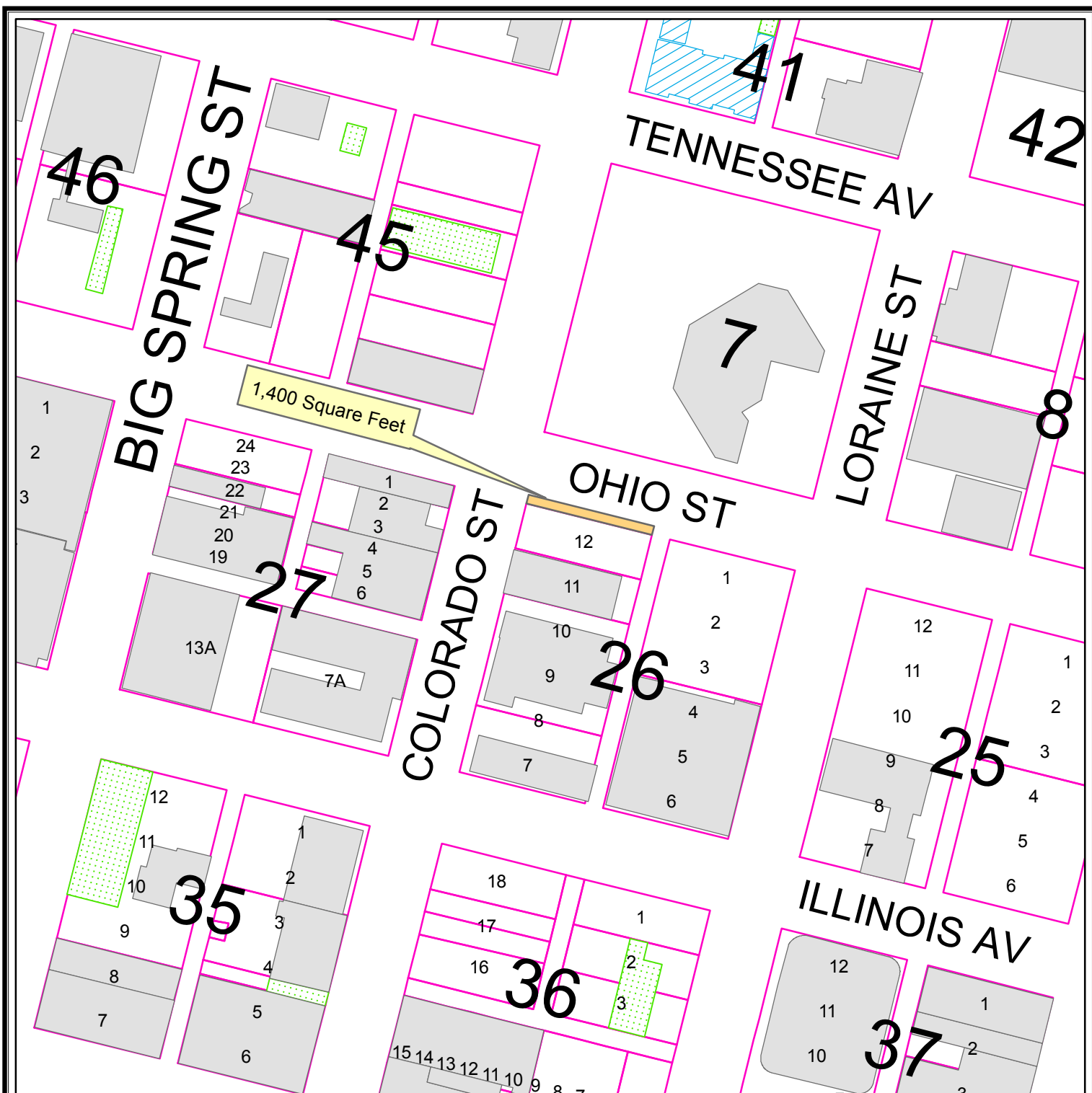
1. If the vacation request involves only a portion of a section right-of-way, such that approval would not affect the public's ability to travel along said right-of-way, then the request will be scheduled for consideration by the City Council. No public hearing will be needed.
2. If the vacation request involves an entire section of right-of-way, such that approval would cause the public to lose all rights to use it, then the following procedures apply:
 - a. Nearby land owners who have a reasonable expectation to use said right-of-way, as determined by the Transportation Division, must first agree to the proposed vacation. It is the applicant's responsibility to obtain a letter of concurrence signed by the affected landowners.
 - b. If all letters are received indicating that the affected landowners agree to the request, then a public hearing before the City Council will be scheduled. The Transportation Division will mail public notice of the hearing to landowners within 400 feet of the affected right-of-way.
 - c. If a request is approved, the right-of-way shall be divided into two equal parts, with each half becoming the property of the respective abutting owner. If the applicant desires to own the entire width, he or she must negotiate with the opposite landowner.

Signature of applicant: _____

Date: _____

****Application will not be considered for scheduling until all required items are reviewed by City Staff.****

FOR OFFICE USE ONLY	
Rec'd. By: <u>RS</u>	Date: <u>8/3/12</u>
Assigned: _____	
For: _____	On: _____



LOCATION MAP

V - 12 - 009

Scale: 1" = 150'

Consider a request for the vacation of a 1,400 square foot portion of the right-of-way of W. Ohio Street adjacent to Lot 12, Block 26, Original Town, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, AICP

SUBJECT: Hold a public hearing at approximately 10:29 a.m. and consider a resolution of the City Council of the City of Midland, Texas, providing for the annexation of certain sparsely populated property; the owner has requested that the property be annexed; said property is adjacent to and contiguous to the present boundary limits of the City of Midland; said property being a 30.98-acre tract of land out of Section 35, Block 40, T-1-S, T&P RR Co. Survey, Midland County Texas; the Midland City Council hereby grants the petition for annexation as authorized by Section 43.028 of the Texas Local Government Code; and authorizing and directing the City Secretary to file a certified copy of this resolution and all exhibits in the Midland County Deed Records maintained by the Midland County Clerk.

Purpose:

Hold a public hearing at approximately 10:29 a.m. and consider a resolution of the City Council of the City of Midland, Texas, providing for the annexation of certain sparsely populated property; the owner has requested that the property be annexed; said property is adjacent to and contiguous to the present boundary limits of the City of Midland; said property being a 30.98-acre tract of land out of Section 35, Block 40, T-1-S, T&P RR Co. Survey, Midland County Texas; the Midland City Council hereby grants the petition for annexation as authorized by Section 43.028 of the Texas Local Government Code; and authorizing and directing the City Secretary to file a certified copy of this resolution and all exhibits in the Midland County Deed Records maintained by the Midland County Clerk.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

This property is undeveloped; however, additional land ad valorem tax will result from the annexation into the city.

Discussion:

Chapter 43, Section 43.028 requires that a petition be provided to the City for annexation of a land area less than one-half mile in width.

Staff has received a signed and notarized petition from the property owner requesting annexation. This section of the state law has been satisfied.

Attachments: Draft Resolution.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIDLAND, TEXAS, PROVIDING FOR THE ANNEXATION OF CERTAIN SPARSELY POPULATED PROPERTY; THE OWNER HAS REQUESTED THAT THE PROPERTY BE ANNEXED; SAID PROPERTY IS ADJACENT TO AND CONTIGUOUS TO THE PRESENT BOUNDARY LIMITS OF THE CITY OF MIDLAND; SAID PROPERTY BEING A 30.98-ACRE TRACT OF LAND OUT OF SECTION 35, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY TEXAS; THE MIDLAND CITY COUNCIL HEREBY GRANTS THE PETITION FOR ANNEXATION AS AUTHORIZED BY SECTION 43.028 OF THE TEXAS LOCAL GOVERNMENT CODE; AND AUTHORIZING AND DIRECTING THE CITY SECRETARY TO FILE A CERTIFIED COPY OF THIS RESOLUTION AND ALL EXHIBITS IN THE MIDLAND COUNTY DEED RECORDS MAINTAINED BY THE MIDLAND COUNTY CLERK

WHEREAS, a public hearing was held before the City Council of the City of Midland, Texas on the 13th day of November, 2012, in the Council Chambers, Midland City Hall, 300 North Loraine, wherein all interested persons were provided an opportunity to be heard on the proposed annexation of the property hereinafter described, and November 13, 2012 is not more than thirty (30) nor less than five (5) days after the filing of the complete petition, a copy of said petition is attached hereto and made a part hereof as Exhibit "A"; and

WHEREAS, the area to be annexed is one-half mile or less in width; and

WHEREAS, the area to be annexed is contiguous to the City of Midland; and

WHEREAS, the area to be annexed has less than three (3) qualified voters; and

WHEREAS, the hereinafter described property lies within the extraterritorial jurisdiction of the City of Midland, Texas; and

WHEREAS, the hereinafter described property contains a total of approximately 30.98 acres of land;

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

SECTION ONE. That the recitals stated above are accepted, approved and are

adopted for all purposes.

SECTION TWO. That pursuant to the Texas Local Government Code, Section 43.028, the petition, attached hereto as Exhibit "A", is hereby granted and approved and the following described land lying adjacent to and adjoining the City of Midland, Texas, will hereby, by ordinance, be added to and annexed to the City of Midland, Texas. The said property is described by metes and bounds in Exhibit "A".

SECTION THREE. That the Midland City Council will proceed to annex the land described in the petition by ordinance.

SECTION FOUR. That the City Secretary is hereby authorized and directed to file a certified copy of this resolution and all exhibits in the Midland County Deed Records maintained by the Midland County Clerk.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

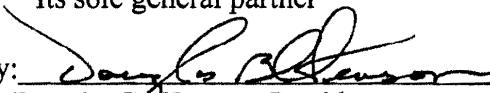
Keith Stretcher, City Attorney

Petition as authorized by Section 43.028 of the Texas Local Government Code.

We are the owners of the property described on Exhibit A. We hereby petition the Midland City Council of the City of Midland, Texas to annex the area described in Exhibit A.

We hereby request that the Midland City Council proceed with annexation.

SBC, LP
By: SBC GP, LLC
Its sole general partner

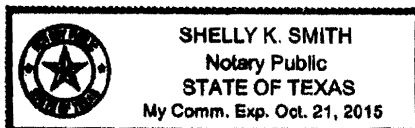
By: 
Douglas B. Henson, President

State of Texas

County of Midland

BEFORE ME , the undersigned authority, on this day personally appeared Douglas B. Henson, 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.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 27th day of October, A.D. 2012.




Notary Public, State of Texas

10-21-2015
My Commission Expires

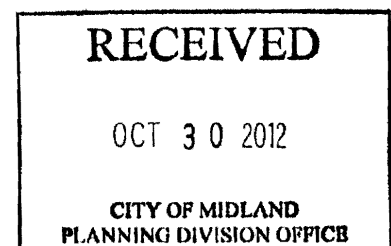


Exhibit "A"



110 W. Louisiana Ave. Suite. 110
MIDLAND TEXAS 79701-3414
OFFICE (432) 687-0865 FAX (432) 687-0868
www.team-west.com

August 28, 2012

**FIELD NOTES OF A 30.98 ACRE TRACT OF LAND OUT OF SECTION 35, BLOCK 40,
T-1-S, T & P RR. COMPANY SURVEY, MIDLAND COUNTY, TEXAS:**

Note: All bearings, distances, coordinates, and area's shown hereon are based upon the Texas Coordinate System, Texas Central Zone, NAD83.

BEGINNING at a set ½-inch iron rod in the western boundary of Grassland Estates, Section 16 as recorded in Cabinet "F", Page 157 Midland County Plat Records, located in Section 35, Block 40, T-1-S, T & P RR Company Survey, Midland County, Texas, and in the western boundary of the city limits of Midland, Texas, for the most northerly Northeast corner this tract, from which the Northeast corner of said Section 35 bears N 30°55'12" E, 1106.66 feet and N 14°17'15" W, 1169.27 feet:

THENCE S 30°55'12" W, along the common boundaries of said Grassland Estates, Section 16 and the city limits, at 270.49 feet pass a found 5/8- inch iron rod in the Southwest corner of said Grassland Estates, Section 16, in all 1395.26 feet to a set ½-inch iron rod with cap marked "WEST CO. MIDLAND" in the northern right-of-way of State Highway No. 158 for the Southeast corner this tract;

THENCE N 59°04'48" W, along the northern boundary of State Highway No. 158, 986.13 feet to a set ½-inch iron rod with cap marked "WEST CO. MIDLAND" for the Southwest corner this tract:

THENCE N 30°55'48" E, 190.00 feet to a set ½-inch iron rod with cap marked "WEST CO. MIDLAND" for a corner this tract;

THENCE N 21°12'11" E, 121.75 feet to a set ½-inch iron rod with cap marked "WEST CO. MIDLAND" for a corner this tract;

THENCE N 30°55'12" E, 504.07 feet to a set ½-inch iron rod with cap marked "WEST CO. MIDLAND" for a corner this tract;

THENCE N 14°04'48" W, 14.14 feet to a set ½-inch iron rod with cap marked "WEST CO. MIDLAND" for a corner this tract;

THENCE N 30°26'33" E, 60.00 feet to a set ½-inch iron rod with cap marked "WEST CO. MIDLAND" for a corner this tract;

THENCE S 59°04'48" E, 210.50 feet to a set ½-inch iron rod with cap marked "WEST CO. MIDLAND" for a corner this tract;

T:\Civil Drawings\2012\2012-0604\Voluntary Annexation Field Notes.docx

Exhibit "A"

THENCE N 30°55'12" E, 26.86 feet to a set ½-inch iron rod with cap marked "WEST CO. MIDLAND" for a corner this tract;

THENCE N 14°32'44" E, 259.82 feet to a set ½-inch iron rod with cap marked "WEST CO. MIDLAND" for a corner this tract;

THENCE N 30°55'12" E, 243.86 feet to a set ½-inch iron rod with cap marked "WEST CO. MIDLAND" for the Northwest corner this tract;

THENCE S 59°04'48" E, 180.00 feet to a set ½-inch iron rod with cap marked "WEST CO. MIDLAND" for a corner this tract;

THENCE N 30°55'12" E, 49.97 feet to a set ½-inch iron rod with cap marked "WEST CO. MIDLAND" for a corner this tract;

THENCE S 59°04'48" E, 60.00 feet to a set ½-inch iron rod with cap marked "WEST CO. MIDLAND" for a corner this tract;

THENCE S 14°04'48" E, 14.14 feet to a set ½-inch iron rod with cap marked "WEST CO. MIDLAND" for a corner this tract;

THENCE S 59°04'48" E, 310.00 feet to a set ½-inch iron rod with cap marked "WEST CO. MIDLAND" for a corner this tract;

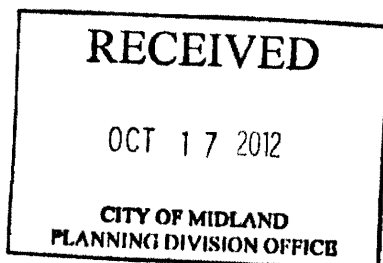
THENCE N 75°55'12" E, 14.14 feet to a set ½-inch iron rod with cap marked "WEST CO. MIDLAND" for a corner this tract;

THENCE S 59°04'48" E, 60.00 feet to a set ½-inch iron rod with cap marked "WEST CO. MIDLAND" for a corner this tract;

THENCE S 30°55'12" W, 58.78 feet to a set ½-inch iron rod with cap marked "WEST CO. MIDLAND" for a corner this tract;

THENCE S 59°04'48" E, 249.89 feet to the Place of Beginning and containing 30.98 acres of land.

Voluntary Annexation
Grassland 2 Dev. Co., LLP



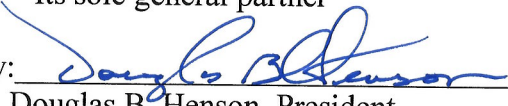
CASE NO. M-12-021

Petition as authorized by Section 43.028 of the Texas Local Government Code.

We are the owners of the property described on Exhibit A. We hereby petition the Midland City Council of the City of Midland, Texas to annex the area described in Exhibit A.

We hereby request that the Midland City Council proceed with annexation.

SBC, LP
By: SBC GP, LLC
Its sole general partner

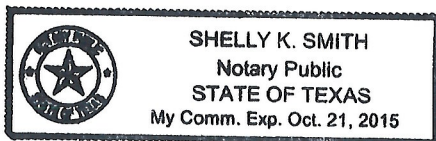
By: 
Douglas B. Henson, President

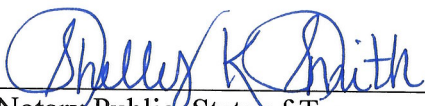
State of Texas

County of Midland

BEFORE ME , the undersigned authority, on this day personally appeared Douglas B. Henson, 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.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 29th day of October, A.D. 2012.




Notary Public, State of Texas

10-21-2015
My Commission Expires





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by Davidheiser Family Trust for a zone change from MH, Manufactured Home District and LR-2, Local Retail District to MF-1, Multiple-Family Dwelling District.

Purpose:

Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by Davidheiser Family Trust for a zone change from MH, Manufactured Home District and LR-2, Local Retail District to MF-1, Multiple-Family Dwelling District.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

The Davidheiser Family Trust owns a 22.46-acre tract of land located just east of Lamesa Road, approximately 1,100 feet north of Interstate 20. The land is currently vacant and is zoned MH, Manufactured Home District and LR-2, Local Retail District. The applicant wishes to construct apartments on this property. This requires approval of a zone change and adoption of site plans. However, site plans have not yet been developed for this site. Thus, if this request is approved, a second public hearing will be required to consider adoption of the site plans.

This site meets the Comprehensive Plan requirement of being located on or near an arterial street. A density of 16 dwelling units would allow approximately 360 dwelling units. Previously, Midland has limited apartments to a maximum of around 300 dwelling units.

However, we are seeing a shift by developers for larger apartment projects, likely linked to economy of scale. Higher densities and greater numbers of dwelling units increase the ability of the developer to construct higher quality units and provide higher levels of maintenance than could otherwise occur. The City Council previously approved an apartment complex on a 13-acre tract on the north side of Latta Street, indicating that this is generally an appropriate area for apartment development. The Planning and Zoning Commission voted unanimously to support this request on October 15, 2012, and no opposition has been received.

Attachments:

Application
Maps

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 22.46-ACRE TRACT OF LAND OUT OF SECTION 1, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED MH, MANUFACTURED HOME DISTRICT, IN PART, AND LR-2, LOCAL RETAIL DISTRICT, IN PART, TO BE USED AS AN MF-1, MULTIPLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF LAMESA ROAD, APPROXIMATELY 1,100 FEET NORTH OF INTERSTATE 20); 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 MF-1, Multiple-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 MH, Manufactured Home District, in part, and LR-2, Local Retail District, in part, and it shall be used as an MF-1, Multiple-Family Dwelling District, said property being described as follows:

A 22.46-acre tract of land out of Section 1, Block 39, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by metes and bounds in Exhibit "A", which is attached hereto and incorporated herein.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

FIRM # 001363

**521 NORTH TEXAS • ODESSA, TEXAS 79761
(432) 332-5058 or 580-8812 • FAX (432) 332-8812**

Legal Description

For a 22.46 Acre Tract of Land,
Located in Section 1, Block 39, T-2-S,
T&P RR Company Survey,
Midland County, Texas

Boundary Being More Fully Described By Metes and Bounds As Follows:

BEGINNING at a point in the south right of way line of Latta Street and west line of a 101.30 acre tract recorded in Volume 3111, Page 857, Midland County Deed Records at the northeast corner of Lot 10, Block 6, Carol Crest Addition (an unrecorded subdivision), being the northwest corner of this tract;

THENCE North 75°41'51" East with the south right of way line of said Latta Street, a distance of 879.12 feet to a point of curvature in the south right of way line of said Latta Street, being a point of curvature in the north line of this tract;

THENCE along a curve to the left in a northeasterly direction with the south right of way line of said Latta Street, said curve having a radius length of 330.00 feet, an arc length of 318.96 feet, a delta angle of 55°22'47" and a chord length of 306.69 feet bearing North 48°00'27" East to a point for the northeast corner of this tract;

THENCE South 14°20'17" East through said 101.30 acre tract, a distance of 981.80 feet to a point for the southeast corner of this tract;

THENCE South 75°39'43" West through said 101.30 acre tract, a distance of 1150.77 feet to a point in the west line of said 101.30 acre tract and the east line of Block 7, said Carol Crest Addition to a point for the southwest corner of this tract;

THENCE North 14°20'17" West with the west line of said 101.30 acre tract and the east lines of said Blocks 7 and 6, a distance of 840.00 feet to the Point of Beginning.

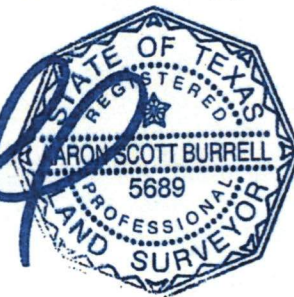
Containing 22.46 acres of land, as shown on the attached exhibit.

Bearings are relative to the Texas Coordinate System, 1983 NAD, Central Zone.

This document was prepared under 22 TAC 663.21, and is not to be used to convey or establish interest in real property except those rights and interest implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

LCA, Inc.

A S Burrell
Aaron S. Burrell, R.P.L.S. 5689



14 September, 2012

RECEIVED

OCT 2 2012

**CITY OF MIDLAND
PLANNING DIVISION OFFICE**

LCA Project Number 2012-094

EXHIBIT A

Page 1 of 1

CASE NO. 2-12-035

50.6

PLANNING AND ZONING COMMISSION

October 15, 2012

CASE: Z-12-035.

REQUEST: Hold a public hearing and consider a request for a zone change from MH, Manufactured Home District and LR-2 District to MF-1, Multiple-Family Dwelling District.

APPLICANT/OWNER: Davidheiser Family Trust.

REPRESENTATIVE: LCA

LEGAL DESCRIPTION: A 22.46-acre tract out of Section 1, Block 39, T-2-S, T&P RR Company Survey, Midland County, Texas.

LOCATION: South side of Latta Street, approximately 270 feet east of Lamesa Road.

DETAILS OF REQUEST:

1. This property is located just east of Lamesa Road. It was zoned MH District in 1981, but has remained vacant. The applicant desires to construct an apartment complex consisting of two- and three-story buildings. However, a site plan and elevation drawings are not available at this time. The only known criteria are that the maximum building height will be three stories, and the maximum density is 16 dwelling units per acre. Therefore, the applicant is requesting a zone change to an MF-1 District. If approved, a second application must be submitted for site plan approval, in the same manner as a zone change, before a building permit can be issued.

SURROUNDING ZONING AND LAND USE:

2. Access to this property will be from Latta Street, along the north property line. The staff has recommended a second access point from Lamesa Road via a strip of land owned by the applicant and located between what appear as platted lots that are zoned LR-2 District. As stated earlier, the LR-2 District appears to have been established several decades ago. The term "platted lots" is a misnomer, in that these lots are a part of the *unrecorded* Carol Crest Addition. While land was

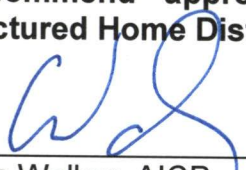
sold off in accordance to this unrecorded plat, and many deeds in the area refer to this unrecorded plat, the City of Midland does not recognize the Carol Crest plat as a valid plat, because it was not approved in the manner prescribed by law. Farther east along Latta Street is another apartment complex. To the west, across Lamesa Road, is a former mobile home park that was annexed into the City as a non-conforming use. However, the park has since been abandoned, and has lost its non-conforming status. The land to the south is vacant, and is zoned LR-2 District and BP District.

ANALYSIS:

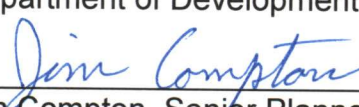
3. The Comprehensive Plan contains several recommendations pertaining to apartment development in Midland. A preferred location is adjacent to an arterial street, to handle the volume of traffic. This site does not meet these criteria, but it is within 270 feet of Lamesa Road, which is an arterial street. Apartments are also used as a buffer, or transition, between more intensive retail zoning found at arterial street intersections and the more restrictive residential uses found farther from arterial streets. At 16 dwelling units per acre, this property could support 360 apartment units. While this slightly exceeds the maximum limit of 300 dwelling units contained in the Comprehensive Plan, we find that the current market conditions are pushing for larger complexes with more units. And with the low density requested, we have no objection to this proposal. We would take this opportunity to remind the applicant that a subdivision plat must be approved, in addition to the aforementioned site plan, before any development could occur.

STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from MH, Manufactured Home District and LR-2, Local Retail District to MF-1 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-12-035

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Landgraf, Crutcher & Associates, Inc.

432-332-5058

Applicant Name

Contact #'s

521 N. Texas

Odessa, Texas 79761

Address

Zip Code

Davidheiser Family Trust

805-499-8925

Property Owner Name

Contact #'s

1222 Calle Las Casas, Thousand Oaks, California

91360

Address

Zip Code

Landgraf, Crutcher & Associates, Inc.

432-332-5058

Representative Name

Contact #'s

521 N. Texas

Odessa, Texas 79761

Address

Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name description below, or, if not in a recorded plat, attach a Metes and Bounds Description. Describe by tracts if more than one zoning district is requested): See Attached

Reason for requesting a zone change: Better Use of Property

PRESENT ZONE: MH & LR-1

REQUESTED ZONE: MF-3 /

(List by tracts if more than one zoning district is requested)

Present Use of Property: Vacant

Proposed Use of Property: Multi-Family

How will zone change affect the public health, safety and welfare? Will provide much needed housing

Describe how conditions affecting the property have changed since it was designated its present zone: Demand for multi-family units has increased

Will a Specific Use Permit with Term for alcoholic beverages sales be needed: Yes ☒ No

APPLICATION FEES:

- Single, standard zone change: **\$400**. Multiple, standard zone change: add **\$100** per district.
- Single PD, Planned District zone change: **\$550**. Multiple PD proposal: add **\$100** per district.
80% of fee will be refunded if no P&Z public hearing is called; if no City Council public hearing is called, then 30% of fee will be refunded.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS (if applicable):

16 copies of the PD site plan: _____

Site plan on CD in .pdf and .jpg format: _____

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 Joe M. Tucker who, being by me duly sworn, upon oath says: That (S)he is authorized by Brenda Davidheiser, the owner of the above described property, to fully represent him/her in this application and that (S)he has the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Joe M. Tucker
Authorized Agent (signature)

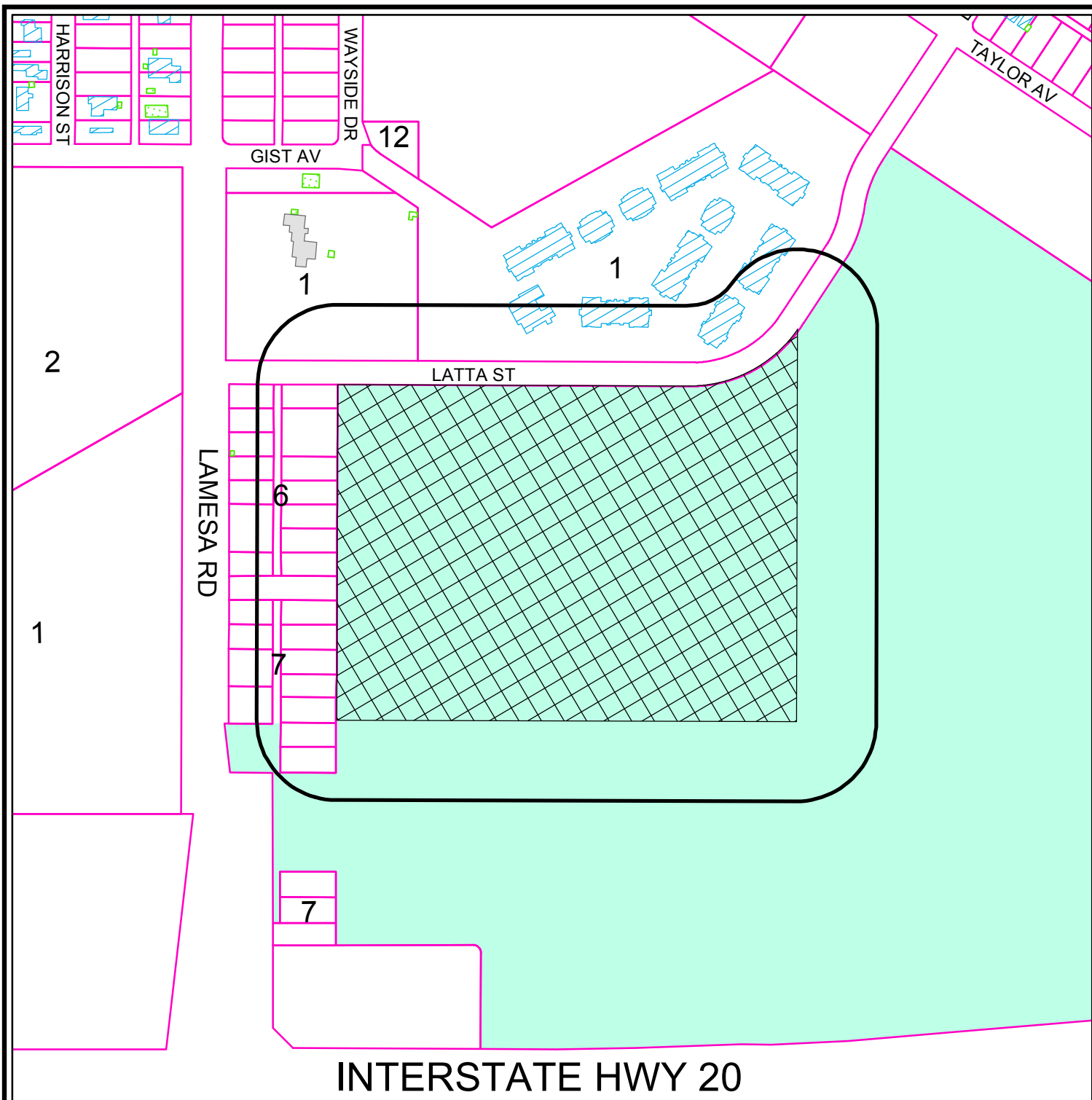
Subscribed and sworn to before me, by the said Joe M. Tucker, this 31st day of August, 2012, to certify which witness my hand and seal of office.

FOR OFFICE USE ONLY	
Rec'd By: <u>PS</u>	Date: <u>8/31</u>
Assigned: <u>JC</u>	
For: <u>P&Z</u>	On: <u>10/15/12</u>

Shani Dawson
Notary Public, Midland County, Texas



****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 035

Scale: 1" = 350'

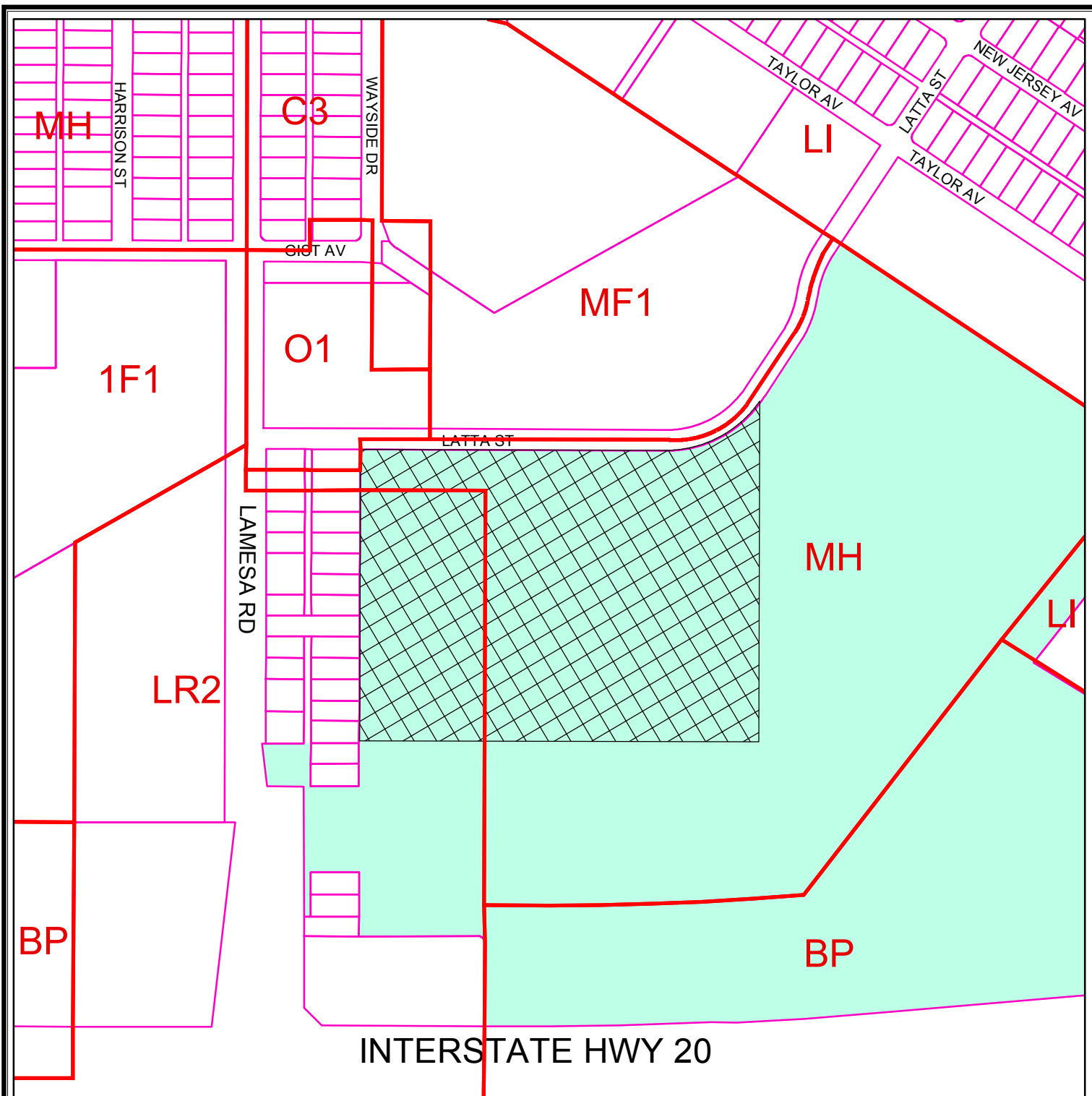
Consider a request for a zone change from MH, Mobile Home Dwelling District and LR-2, Local Retail District to MF-1, Multiple Family Dwelling District on a 22.46-acre tract of land out of Section 1, Block 39, T-2-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 12 - 035

Scale: 1" = 400'

Consider a request for a zone change from MH, Mobile Home Dwelling District and LR-2, Local Retail District to MF-1, Multiple Family Dwelling District on a 22.46-acre tract of land out of Section 1, Block 39, T-2-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by Javi's Restaurant for a Specific Use Permit with Term for on-premise consumption of alcoholic beverages in a Restaurant. Generally located on the northeast corner of the intersection of Rankin Hwy and W. Francis Avenue

Purpose: Hold a public hearing at approximately 10:33 a.m. and consider an ordinance for a Specific Use Permit with Term for on-premise consumption of alcoholic beverages in a Restaurant.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Javi's Restaurant operates east of Rankin Highway and north of Francis Avenue. The restaurant management is requesting a specific use permit with term. The restaurant contains a main service area with a seating capacity of 200, and a smaller banquet room with a seating capacity of 80. The total seats being requested by the applicant is 280 for operation purposes. The restaurant has a total floor area of 10,000 square feet, and is requesting the sale of alcohol from 11:00 a.m. -12:00 a.m. Restaurant management would like to only have the main dining area open for their lunch service until 2:00 p.m. Management would then close this portion of the restaurant, and open their banquet room to serve appetizers and drinks from 2:00 p.m. until midnight.

Attachments: Site Plan - Exhibit A

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 7, LESS THE WEST 5 FEET, AND LOTS 8, 9 AND 10, BLOCK 20, BELMONT ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF RANKIN HIGHWAY AND WEST FRANCIS AVENUE), WHICH IS PRESENTLY ZONED LR-3, LOCAL RETAIL DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by the granting of a Specific Use Permit With Term, set out hereinafter, on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned LR-3, Local Retail District, to-wit:

Lot 7, less the west 5 feet, Lots 8, 9 and 10, Block 20, Belmont Addition, City and County of Midland, Texas;

is hereby changed to permit said property to be used under a Specific Use Permit With Term for the sale of all alcoholic beverages for on-premises consumption in a restaurant, together

with the uses permitted in the present PD, Planned District for a Shopping Center.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

- A. That the restaurant shall not exceed 10,000 contiguous square feet in area.
- B. That the days and hours of alcoholic beverage sales and consumption shall be limited to the following:

Monday through Sunday with the following limitations:
 - 1) Main Dining Area: 11:00 a.m. until 2:00 p.m, with a maximum occupancy of 200 seats.; and
 - 2) Banquet Room: 2:00 p.m. to 12:00 a.m. (Midnight), with a maximum of occupancy of 80 seats.
- C. That the sale of alcoholic beverages for on-premise consumption shall comply with Section 11-1-10(C)(1)(a) of the Midland City Code.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Attorney

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

TAYLOR STREET



RECEIVED

AUG 9 2012

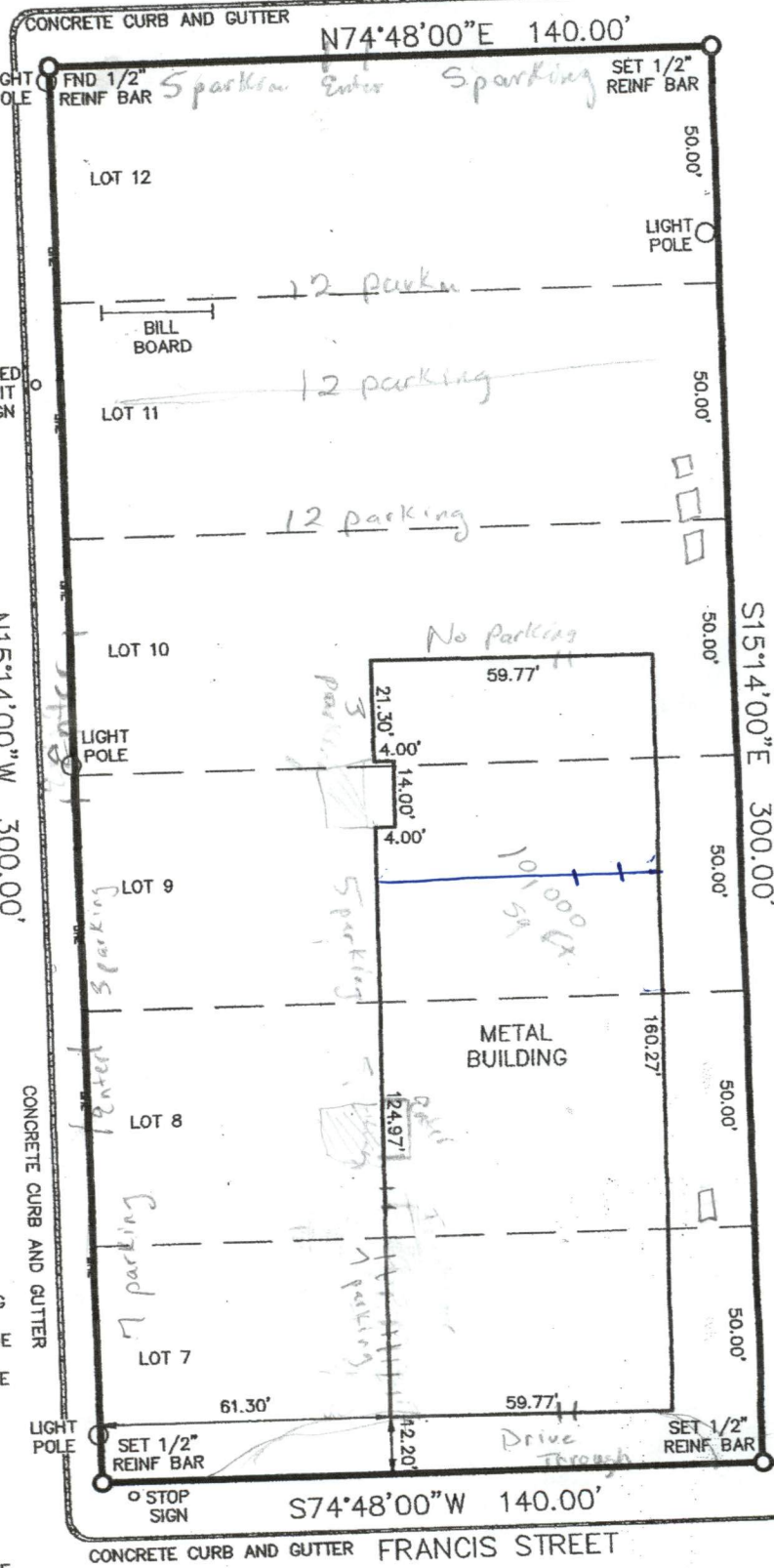
CITY OF MIDLAND
PLANNING DIVISION OFFICE

IN ACCORDANCE WITH TITLE COMMITMENT NUMBER 00094984, ISSUED JUNE 2, 2008, THE FOLLOWING EASEMENTS AND RIGHT-OF-WAYS FROM SCHEDULE B, EXCEPTION 10 ARE SHOWN ON THIS PLAT:

F) BLANKET RIGHT-OF-WAY TO ATLANTIC OIL PRODUCING COMPANY IN VOLUME 38, PAGE 428, DEED RECORDS OF MIDLAND COUNTY, TEXAS; ASSIGNED TO FIN-TEX PIPE LINE COMPANY IN VOLUME 554, PAGE 373, DEED RECORDS OF MIDLAND COUNTY, TEXAS; AND AMENDED TO FIN-TEX PIPE LINE COMPANY AND AMERICAN PETROFINA PIPELINE COMPANY IN VOLUME 737, PAGE 44, DEED RECORDS, MIDLAND COUNTY, TEXAS.

G) BLANKET RIGHT-OF-WAY TO MAGNOLIA PIPE LINE COMPANY IN VOLUME 43, PAGE 472, DEED RECORDS OF MIDLAND COUNTY, TEXAS

H) BLANKET RIGHT-OF-WAY DEED TO AMERICAN TELEPHONE & TELEGRAPH COMPANY IN VOLUME 44, PAGE 21, DEED RECORDS OF MIDLAND COUNTY, TEXAS.



FOR FLOOD INSURANCE RATING PURPOSES: THIS PROPERTY LIES WITHIN FLOOD INSURANCE ZONE DESIGNATION "X" AS DEPICTED ON FLOOD INSURANCE RATE MAP (FIRM) NUMBER 48329-C0202F, MIDLAND COUNTY, TEXAS AND INCORPORATED AREAS EFFECTIVE DATE, SEPTEMBER 16, 2001 AS ISSUED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA). CENSUS TRACT NO. 14.00

EXHIBIT

A

SURVEY PLAT

CASE NO. S-12-DIC 51.6

PLANNING AND ZONING COMMISSION

October 15, 2012

CASE: S-12-010

REQUEST: Hold a public hearing and consider a request for a Specific Use Permit with Term for on-premise consumption of alcoholic beverages in a Restaurant.

APPLICANT: Javi's Restaurant

OWNER: Bertha Ramirez

LEGAL DESCRIPTION: Lot 7, less the west 5 feet, and lots 8 thru 10, Block 20, Belmont Addition, City and County of Midland, Texas.

LOCATION: Generally located on the northeast corner of the intersection of Rankin Hwy and W. Francis Avenue.

CURRENT ZONING: LR-3, Local Retail

DETAILS OF REQUEST:

1. Javi's Restaurant operates east of Rankin Highway and north of Francis Avenue. The restaurant management is requesting a specific use permit with term. The restaurant contains a main service area with a seating capacity of 200, and a smaller banquet room with a seating capacity of 80. The total seats being requested by the applicant is 280 for operation purposes. The restaurant has a total floor area of 10,000 square feet, and is requesting the sale of alcohol from 11:00 a.m. -12:00 a.m. Restaurant management would like to only have the main dining area open for their morning service until 2:00 p.m. Management would then close this portion of the restaurant, and open their banquet room to serve appetizers and drinks from 2:00 p.m. until close.

SURROUNDING ZONING AND LAND USE:

2. The property is located within a medium sized LR-3, Local Retail District that runs north to south along Rankin Highway. It is bounded to the north and south by similar sized LR-2, Local Retail Districts, is bounded to the west by a medium sized C-3, Commercial District, and is bounded to the east by a large MH, Mobile Home District. Across the street from the property is Bill William's Tire Center, and La Herradura Restaurant. North of this property is a private residence, and south of this property is Out West Ice.

ANALYSIS:

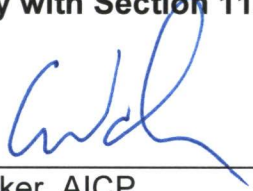
3. Javi's Restaurant has a maximum floor area of 10,000 square feet with seating indoors for 280 persons. The restaurant is currently operating with only the main serving area, and management would like to remodel their banquet room to expand service. Restaurant management would like to keep the main serving area open until 2:00 p.m. and then stop providing service. At this time, management would then open the banquet room where they would server appetizers and drinks. The requested hours of operation are Monday through Sunday from 11:00 a.m. until 2:00 p.m. for the main service area, and 2:00 p.m. until close for the banquet room. To allow flexibility to the owner, staff recommends that hours of operation are from 11:00 a.m. until midnight for seven days a week; Monday through Sunday.

STAFF RECOMMENDATION:

We recommend approval of the request for a Specific Use Permit with Term for on-premise consumption of alcoholic beverages in a Restaurant, together with the uses permitted in the LR-3, Local Retail District, subject to the following conditions:

- A. That the restaurant shall be limited to 10,000 square feet in contiguous area and occupancy shall be limited to 280 seats total, with 200 seats for the main dining area and 80 seats for the banquet room.
- B. That alcoholic beverages may be sold only during the hours specified as follows:

Monday through Sunday 11:00 a.m. to 12:00 a.m.
- C. That the sale of alcoholic beverages for on-premise consumption shall comply with Section 11-1-10(C)(1)(a) of the City Code.


Cameron Walker, AICP
Planning Division Manager
Department of Development Services


Martin Siwek, City Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A

Case Number: S-12-010

CITY OF MIDLAND
Planning Division

**APPLICATION FOR A SPECIFIC USE PERMIT WITH TERM
FOR THE SALE OF ALCOHOLIC BEVERAGES
FOR ON-PREMISE CONSUMPTION**

Javi's Restaurant 432 684 4898
Applicant Name Phone/e-mail
1511 RANKIN HWY 79701
Address Zip Code
Bertha Ramirez 5595096
Property Owner Name Phone/e-mail
1407 W. G. Rd. 130 79706
Address Zip Code
Midland TX. javisrestaurant@aatt.net
Operator (if different from Applicant or Property Owner) Phone/e-mail
Address Zip Code

Type of Business: Restaurant
(Restaurant, Bar, Lounge, Nightclub, etc.)

Street address and Legal Description of property on which SUP is desired (complete Lot, Block, and Subdivision, name, or if unplatted, attach a Metes and Bounds description with surveyor's seal.)

BELMONT ADDITION BLK 20 LOTS 7-10

Current Zoning: LR-3

Max. Floor Area: 10,000 Seating Capacity: 90 200 main + 80 banquet
280 Total

Proposed hours and days of alcoholic beverage sales: 11am - 12am
Mon. - Sunday

Reason for request: _____

REQUIRED SUBMITTALS

1. Application fee: \$300 ____.
2. Site plan – 16 copies (FOLDED) ____.
3. On a CD in .pdf and .jpg digital format ____.

SIGNATURES:

Applicant: _____ Date: _____

Property Owner: Bertha Ramirez Date: 7-20-2012

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

NA

Before me, the undersigned authority, on this day personally appeared

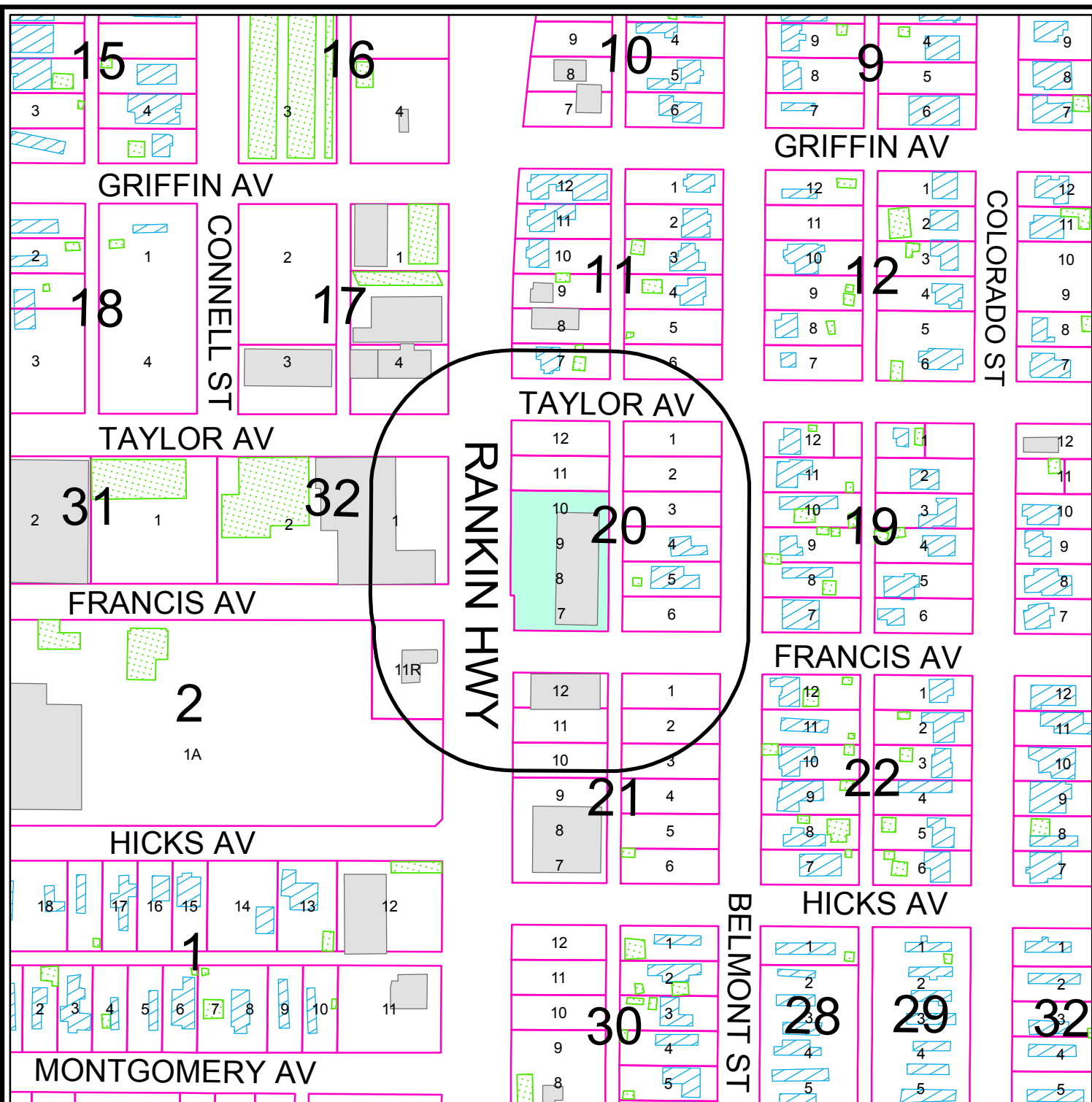
Bertha Ramirez who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Subscribed and sworn to before me, this ____ day of _____, 20 ____, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>JA/AZ</u>	Date: <u>7/20/12</u>
Assigned: <u>MS</u>	
For: <u>P+Z</u>	On: <u>10/1/12</u>

****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

S - 12 - 010

Scale: 1" = 200'

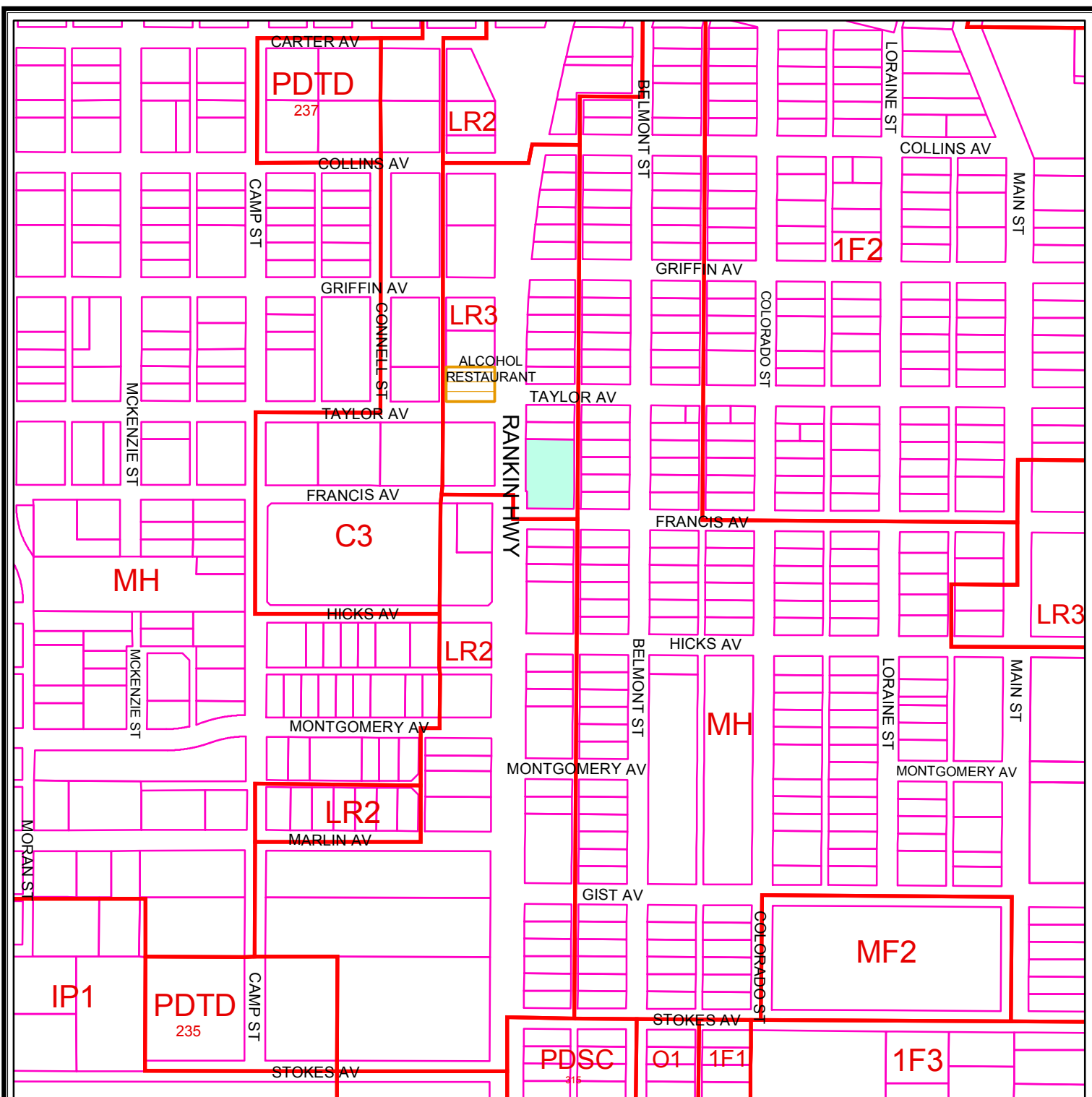
Consider a request for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 7, less the west 5 feet, and on Lots 8 thru 10, Block 20, Belmont Addition, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

S - 12 - 010

Scale: 1" = 400'

Consider a request for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 7, less the west 5 feet, and on Lots 8 thru 10, Block 20, Belmont Addition, City and County of Midland, Texas.

LEGEND

ZONING PARCELS SPECIFIC USE PERMITS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:36 A.M. and consider an ordinance on a request by Jeff Benson for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a Theater/Amusement Center.

Purpose:

Hold a public hearing at approximately 10:36 A.M. hold a public hearing and consider an ordinance on a request by Jeff Benson for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a Theater/Amusement Center, on Lot 1A, Block 2, Gateway Plaza, City and County of Midland, Texas. (Generally located on the northeast corner of the intersection of W. Business 20 and Liberty Drive).

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Cinergy Cinemas is currently being construction at Liberty Drive and Business I-20. The owner, Jeff Benson, requests to provide alcoholic beverage sales to adult patrons attending movies in one of the 11 theaters, the lobby area, or one of the many entertainment settings (arcade game area, party rooms, etc.) throughout the Cinergy Cinema complex for on-premise consumption. The proposed hours of operation for serving alcoholic beverages are noon to 2:00 a.m., seven days a week. In order for the staff to serve guests on the premises, a specific use permit with term must be approved. Designed to be a family-friendly entertainment venue, the alcoholic beverage sales are anticipated to be a very-low percent of gross sales in comparison to a typical restaurant or nightclub serving alcohol in Midland. Mr. Benson shared with staff that alcohol sales are typically below five percent at other Cinergy venues. This permit would allow on-premise consumption of all alcoholic beverages over a maximum floor area of 50,271 square feet. Staff concurs with the Planning and Zoning Commission that the proposal is in line with the original concept Mr. Benson promoted to the City and provides a unique entertainment attraction to our citizens and visitors.

Attachments:

Application
Maps
Exhibit A – Floor Plan

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 1A, BLOCK 2, GATEWAY PLAZA, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF WEST BUSINESS 20 AND LIBERTY DRIVE), WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A THEATER / AMUSEMENT CENTER FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by the granting of a Specific Use Permit With Term, set out hereinafter, on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned PD, Planned District for a Shopping Center, to-wit:

Lot 1A, Block 2, Gateway Plaza, City and County of Midland, Texas;

is hereby changed to permit said property to be used under a Specific Use Permit With Term for the sale of all alcoholic beverages for on-premises consumption in a theater / amusement

center, together with the uses permitted in the present PD, Planned District for a Shopping Center.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

- A. That the maximum serving area for alcoholic beverages shall not exceed 50,271 square feet as designated on Exhibit "A", which is attached hereto and incorporated herein.
- B. That the days and hours of alcoholic beverage sales and consumption shall be limited to the following: each day of the week from 12:00 p.m. (Noon) until 2:00 a.m. of the following day.
- C. That alcohol sales operations shall conform to all laws and regulations 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., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Attorney

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

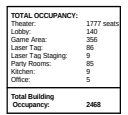
Revision Dates		
Rev#	Date	Comments
B	05-10-2012	Addendum B
	06-01-2012	Issued for Bid
1	06-19-2012	Revision 1

Cinergy
Cinemas -
Midland

Energy Cinemas

Egress Plan

RELEASED FOR CONSTRUCTION



PLANNING AND ZONING COMMISSION

October 15, 2012

CASE: S-12-011.

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 Theater/Amusement Center.

APPLICANT/OWNER: Jeff Benson.

LEGAL DESCRIPTION: Lot 1A, Block 2, Gateway Plaza, City and County of Midland, Texas.

LOCATION: Generally located on the northeast corner of the intersection of W. Business 20 and Liberty Drive.

CURRENT ZONING: PD, Planned District for a Shopping Center.

ASSOCIATED CASES: Z-12-003.

DETAILS OF REQUEST:

1. On February 28, 2012 the City Council approved a planned district site plan to allow the construction of a movie theater and family entertainment complex on this site. Consistent with his other Cinergy Cinema locations, Mr. Benson requests to provide alcoholic beverage sales to adult patrons attending a movie in one of the 11 theaters, the lobby area, or one of the many entertainment settings (arcade game area, party rooms, etc.) throughout the Cinergy Cinema complex for on-premise consumption. The proposed hours of operation for serving alcoholic beverages to adults of legal drinking age are noon to midnight, seven days a week. In order for the staff to service guests on the premises, a specific use permit with term for a theater/amusement center must be approved. This permit would allow on-premise consumption of all alcoholic beverages over a maximum floor area of 50,271 square feet.

SURROUNDING ZONING AND LAND USE:

2. This property is bounded on the north by Starboard Drive, on the west by Liberty Drive, and Business I-20 and the Loop 250 Exit Ramp to the south and southeast, respectively. Neighboring zoning is Local Retail with LR-3 to both the east and west and LR-2 to the north, all of which is currently undeveloped. A 96-unit apartment complex is located further north. Across Business I-20 is a fully-developed IP-3, Industrial Park District.

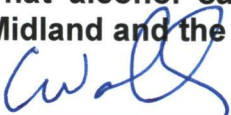
ANALYSIS:

3. One of the unique aspects of Cinergy Cinemas' business model is the dine-in movie experience which includes a full food and beverage menu with alcoholic drinks. This dine-in, multi-theater business mix, is also positioned around a large, interior arcade/amusement center that will also be included in the serving area for alcoholic beverages. Designed to be a family-friendly entertainment venue, the alcoholic beverage sales are anticipated to be a very-low percent of gross sales in comparison to a typical restaurant or nightclub serving alcohol in Midland. Mr. Benson shared with staff an anticipated revenue percentage for alcohol sales that was below 5 percent. The seating capacity is nearly 1,800 fixed seats for the movie theaters, party rooms will have typical movable seating, and the gaming area will also have seating that is less easily defined in terms of some movable chairs or stools and some sit-in or ride-on games themselves than could be considered seats. The nature of the arcade area is also to have a rotating selection and style of games that may frequently alter the seating and floor footprint of this area. To avoid any ambiguity in defining this permit in terms of seating or seating capacity, we are recommending approval based upon the extents of the provided floor plan (Exhibit – A) with the maximum serving area for alcoholic beverages not to exceed 50,271 square feet. Staff believes that the proposal is in line with the original concept Mr. Benson promoted to the City and provides a unique entertainment attraction to our citizens and visitors.

STAFF RECOMMENDATION:

Staff recommends approval of this request for a Specific Use Permit with Term for on-premise consumption of all alcoholic beverages in a Theater/Amusement Center, subject to the following conditions:

- A. That the maximum serving area for alcoholic beverages not to exceed 50,271 square feet as designated on Exhibit A;
- B. That the days and hours of alcoholic beverage sales and consumption shall not exceed the following: Each day of the week from noon until midnight;
- C. That alcohol sales operations 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
Floor Plan – Exhibit A
Maps

Case Number: S-12-011

CITY OF MIDLAND

Planning Division

APPLICATION FOR A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALCOHOLIC BEVERAGES FOR ON-PREMISE CONSUMPTION

Jeff Benson	(214) 750-6607
Applicant Name	Phone/e-mail
11311 North Central Expwy., Suite 336, Dallas, Texas	75243
Address	Zip Code

Jeff Benson	(214) 750-6607
Property Owner Name	Phone/e-mail
11311 North Central Expwy., Suite 336, Dallas, Texas	75243
Address	Zip Code

Operator (if different from Applicant or Property Owner)	Phone/e-mail
Address	Zip Code

Type of Business: Movie Theater
(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.)

Gateway Plaza, Section 3, Lot 1A, Block 2. In Section 1, Block 40, T-1-S, T&P, RR Co. Survey, City and County of Midland, Texas

Current Zoning: PDSC

Max. Floor Area: 50,271 Seating Capacity: 1780

Proposed hours and days of alcoholic beverage sales: Noon-Midnight (12p-12a)

Reason for request: To serve alcoholic beverages to adults of age for a festive movie going experience.

REQUIRED SUBMITTALS

1. Application fee: \$300 ✓.

2. Site plan – 16 copies (FOLDED) ✓.
3. On a CD in .pdf and .jpg digital format Emailed

SIGNATURES:

Applicant: Andrew L. Mellen Date: 7-26-12

Property Owner: _____ Date: _____

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

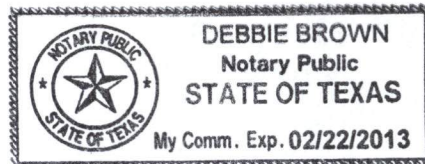
Andrew L. Mellen who, being by me duly sworn, upon oath says: That (s)he is authorized by Jeff Benson, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Subscribed and sworn to before me, this 26th day of July, 20 12, to certify which witness my hand and seal of office.

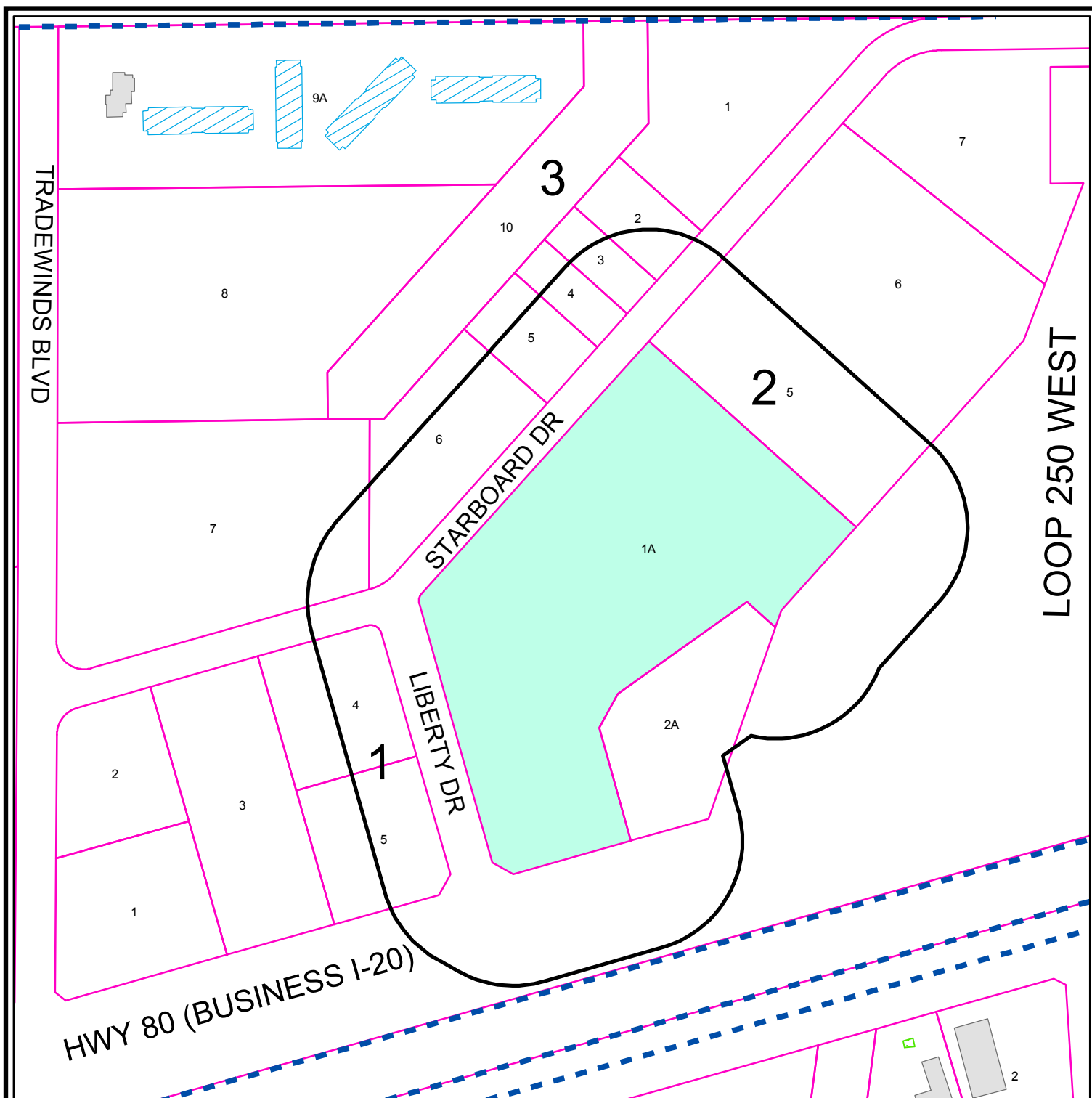
Debbie Brown

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>AM</u>	Date: <u>7/26/12</u>
Assigned: _____	
For: _____	On: _____



****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

S - 12 - 011

Scale: 1" = 250'

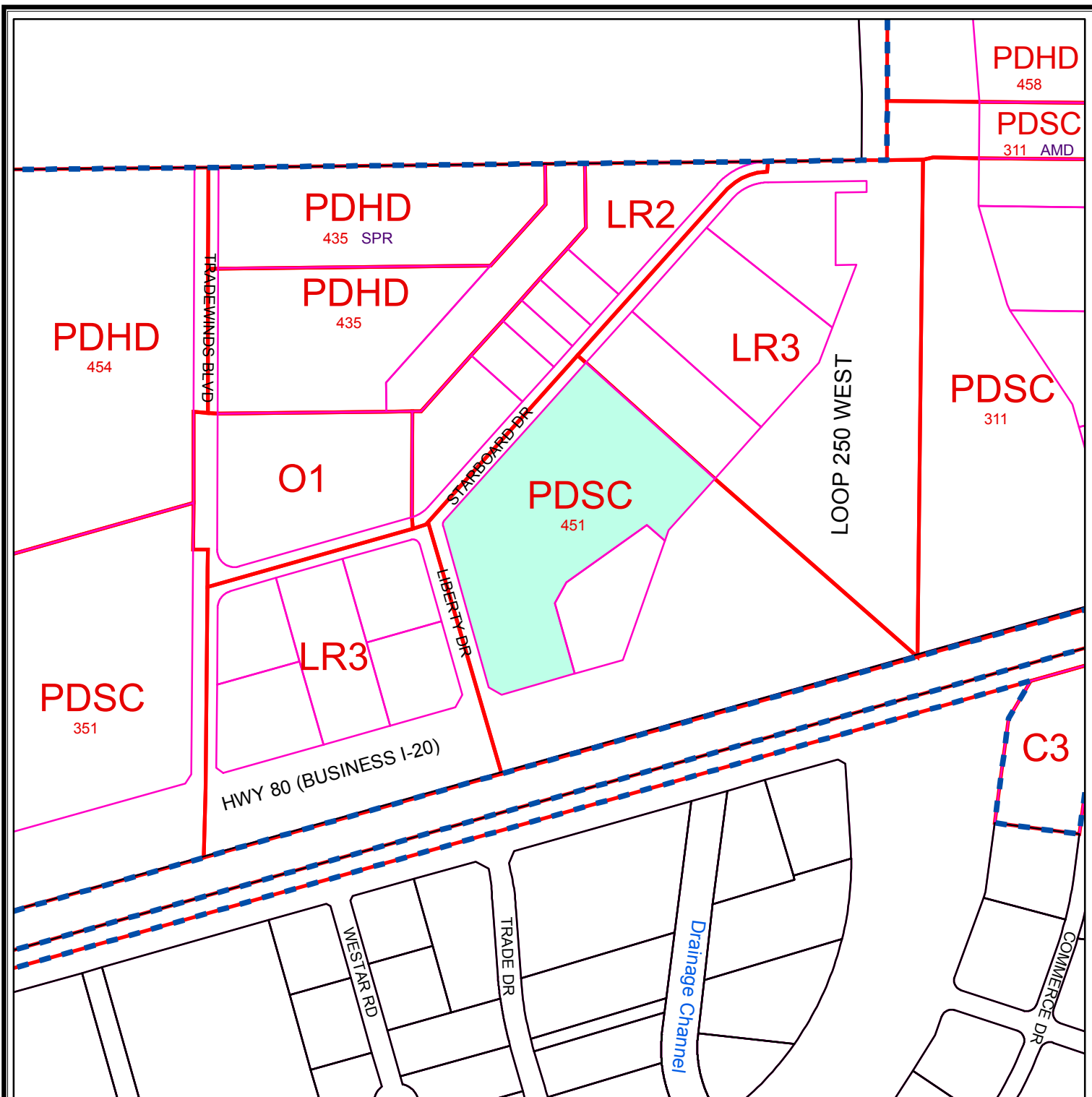
Consider a request for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a Theater/Amusement Center, on Lot 1A, Block 2, Gateway Plaza, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS



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ZONING MAP

S - 12 - 011

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 Theater/Amusement Center, on Lot 1A, Block 2, Gateway Plaza, City and County of Midland, Texas.

LEGEND

 ZONING	 CITY PARCELS	 COUNTY PARCELS
 CITY LIMITS	 SPECIFIC USE PERMITS	

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:39 a.m. and consider an ordinance on a City-initiated proposal for a zone change from C-1, Central Area District to PD, Planned District for a Housing Development.

Purpose:

Hold a public hearing at approximately 10:39 a.m. and consider an ordinance on a City-initiated proposal for a zone change from C-1, Central Area 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:

The City owns most of Block 53 of Original Town. It is bounded by Main Street, Wall Street, Baird Street and Texas Avenue, and is due east of the Midland Center. Exceptions to the City's ownership include Bourbon Street Bar and Wall Street Bar and Grill. City staff has been approached by a party interested in constructing a high rise apartment building on this property. The proposal includes the construction of an eight-story building with 150 dwelling units, and a multi-level parking garage. Staff is proposing a Planned District because some of the development criteria do not comply with the MF-2 District regulations.

Some of these deviations include maximum building height (80 feet proposed, 70 feet allowed), density (85 dwelling units per acre proposed, 16 allowed, although recent development has exceed 20 per acre), and minimum parking (1.4 spaces per unit proposed, 2.0 required). The developer also wishes to allow portions of the buildings above the second story to overhang into the public right-of-way up to five feet, which would not comply with the building setback requirements. However, many of these elements can be addressed by the proposed location. The C-1 District has no limit on building height, and it has no front, side or rear yard setback requirements. Over hanging public right-of-way can be addressed through a right-of-way use agreement. There is additional public and on-street parking in the Central Area. The staff views this as a high density, downtown apartment development, as found in many other Texas cities, adjacent to an EZ Rider station that can provide a catalyst for continued development in the downtown area. The Midland Downtown Smart Plan adopted by the Council in 2007 encourages this style of development. For these reasons, staff believes that this project will be a positive asset to the downtown area and to the community at large.

Attachments:

November 5, 2012 P&Z Staff Report
Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-8, THE NORTH 8 FEET OF THE WEST 75 FEET OF LOT 9, THE EAST 65 FEET OF LOTS 9-12, AND LOTS 13-23, BLOCK 53, ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED C-1, CENTRAL AREA DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED NORTH OF WALL STREET, SOUTH OF TEXAS AVENUE, EAST OF MAIN STREET, AND WEST OF BAIRD STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a Planned District for a Housing Development, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned C-1, Central Area District, and it shall be used as a Planned District for a Housing Development, subject to the special conditions and restrictions hereinafter set out, said property being described as

follows:

Lots 1-8, the north 8 feet of the west 75 feet of Lot 9, the east 65 feet of Lots 9-12, and Lots 13-23, Block 53, Original Town, City and County of Midland, Texas.

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 MF-2, Multiple-Family Dwelling District, except as otherwise stated below.
2. That the maximum building height shall not exceed eight standard stories or 80 feet, whichever is greater.
3. That the density shall not exceed 150 dwelling units.
4. That the minimum gross floor area of each dwelling unit shall be 600 square feet.
5. That there shall be no minimum front, side or rear yard building setback requirement; provided, however, that a minimum of five percent (5%) of the lot area shall be used as open space, including courtyards, buffer areas and other common areas.
6. That any portion of the building, or any other structures attached to the building that exceed 12 feet above the sidewalk grade may extend into the abutting right-of-way a maximum of five feet.
7. That accessory buildings or structures shall be limited to swimming pools, meeting rooms, party or social rooms in common areas, or a cabana or pavilion, or a parking garage and related infrastructure.
8. That a minimum of 1.4 parking spaces shall be provided for each dwelling unit. Said spaces may either be located on this lot or on an abutting lot, regardless of whether it is separated from this lot by a street or alley.
9. That business signs shall be limited to wall signs not to exceed eight feet in width and eight feet in height (maximum 64 square feet), with one sign allowed on each side of the building. Signs extending perpendicular to the building shall be allowed, subject to the conditions listed in this Condition and Condition No. 6 above.
10. That all exterior lighting shall conform to the conditions of the City of Midland's Outdoor Lighting Code.
11. That all HVAC equipment shall be screened with a wall or fence so as not to be visible by the general public.
12. That all outdoor solid waste containers and/or compactors shall be screened with a masonry screening wall.
13. That in addition to the uses allowed in the MF-2, Multiple-Family Dwelling

District, a minimum of 5,000 square feet of floor area may be used for retail uses as described in the LR-1, Local Retail District. The retail floor area shall not exceed 10,000 square feet.

14. That the requirement that apartment construction be preceded by site plan approval in the same manner as a zone change, as required by Section 11-1-6(A)(9) of the Midland City Code, is hereby waived; provided, however, that an administrative site plan review by the Development Services Department shall be required instead.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading

on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Case Number: Z-12-046

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

City of Midland

Applicant Name

(Phone/e-mail)

Address

Zip Code

City of Midland

Property Owner Name

(Phone/e-mail)

Address

Zip Code

Representative Name

(Phone/e-mail)

Address

Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. _____

PRESENT ZONE: C-1 Dist.

REQUESTED ZONE: PDHD

(List by tracts if more than one district is requested)

Reason for Zone Change Request: _____

Present Use of Property: Vacant, parking

Proposed Use of Property: High rise apartments

How will zone change affect the public health, safety and welfare? _____

Describe how conditions affecting the property have changed since present zoning designation: _____

Is a Specific Use Permit with Term for alcoholic beverages sales needed? ____ Yes ☒ No

APPLICATION FEES:

- Single, standard zone change: **\$400**. Multiple, standard zone change: add **\$100** per additional district.
- Single PD, Planned District zone change: **\$550**. Multiple PD proposal: add **\$100** per district.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS *(if applicable):*

16 copies (FOLDED) of the PD site plan: _____

Site Plan in digital format .pdf and .jpg: _____

SIGNATURE *(by property owner only - authorized agent must sign affidavit below)*

Property Owner (signature): _____ Date: _____

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

_____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

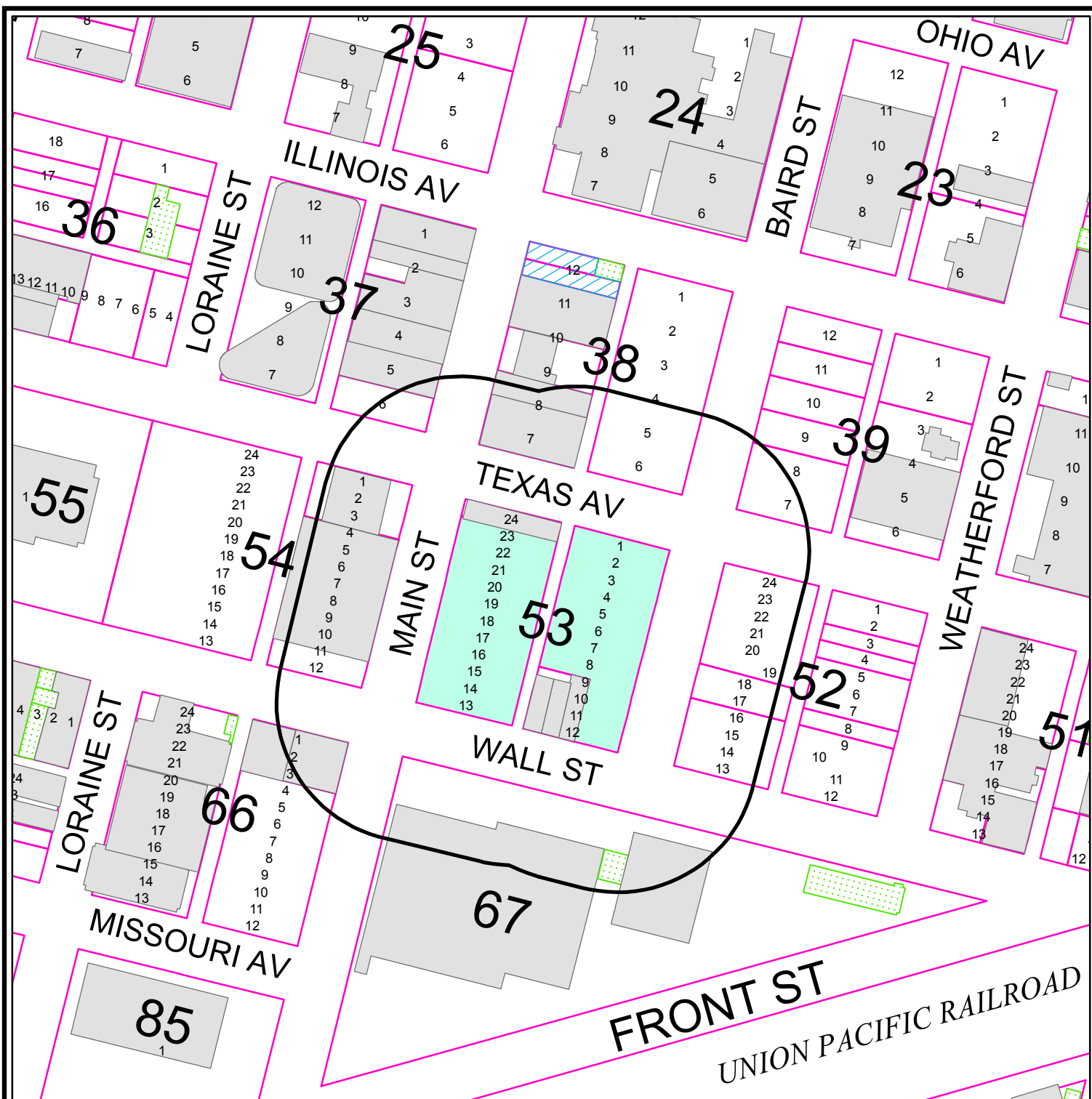
Authorized Agent (signature)

Subscribed and sworn to before me, this _____ day of _____, 20 ____, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>CW</u>	Date: <u>10-9-12</u>
Assigned: <u>IC</u>	
For: <u>PdZ</u>	On: <u>11-5-12</u>

****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 046

Scale: 1" = 200'

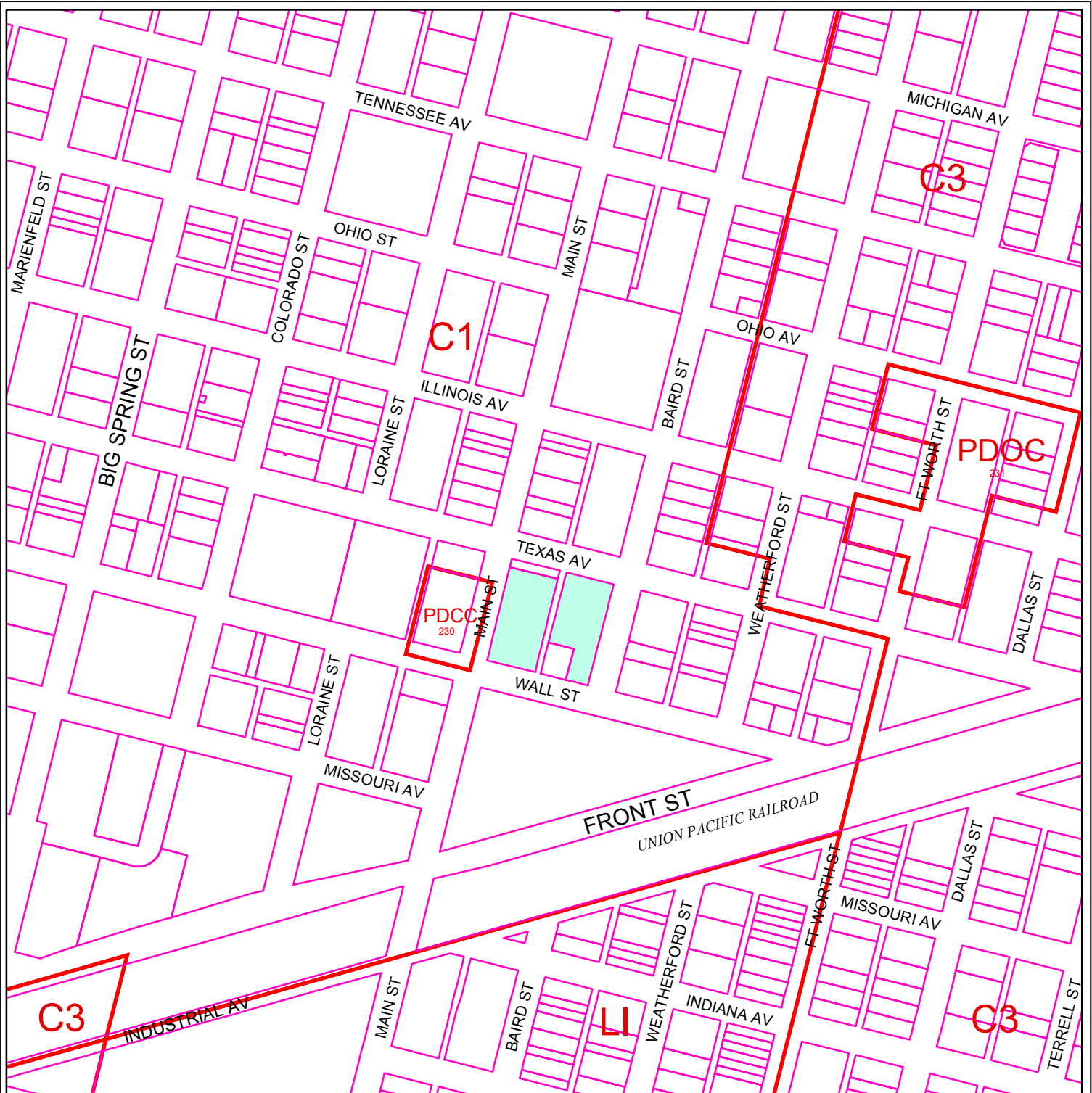
Consider a City Initiated proposal for a zone change from C-1, Central Area District, to PD, Planned District for an Housing Development on Lots 1 thru 8, the north 8 feet of the west 75 feet of Lot 9, the east 65 feet of Lots 9 thru 12, and Lots 13 thru 23, Block 53; Original Town, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 12 - 046

Scale: 1" = 400'

Consider a City Initiated proposal for a zone change from C-1, Central Area District, to PD, Planned District for an Housing Development on Lots 1 thru 8, the north 8 feet of the west 75 feet of Lot 9, the east 65 feet of Lots 9 thru 12, and Lots 13 thru 23, Block 53; Original Town, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:42 a.m. and consider an ordinance on a request by Tim Ernst for a zone change from 1F-2, One-Family Dwelling District to PD, Planned District for an Office Center.

Purpose:

Hold a public hearing at approximately 10:42 a.m. and consider an ordinance on a request by Tim Ernst for a zone change from 1F-2, One-Family Dwelling District to PD, Planned District for an Office District.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Dinero Plaza is a multi-story office building located at the southeast corner of Big Spring Street and Cuthbert Avenue. They have purchased property at the southwest corner of Cuthbert Avenue and Whitaker Street where they wish to construct an office building. This site is separated by an alley. The purpose of this request is to integrate an office use into a location that is on the edge of a residential neighborhood. Following an affirmative recommendation by the Planning and Zoning Commission, the City Council considered and tabled this matter last April and directed the applicant to prepare a site plan that includes a building design that is more appropriate for this site. In particular, the Council desired to see more of a residential style to the building. The applicant has resubmitted site plans as directed, and they are attached as Exhibits A-C.

Exhibit A is a plan view of the site. Rather than a simple gable roof with a single ridge, the revised plan illustrates a more complex hip roof design, which enhances the appearance of the building. Two dormers have been added to the front of the building, one over the front door and the other above a window. Another dormer has been added at the rear of the building. A six-foot tall solid wood and masonry fence has been added to the north and south ends of the property. Three separate planting beds have been added to the east side of the building. Landscaping remains unchanged, with five trees along Whitaker and two along Cuthbert Avenue, and two at the rear of the property. Crushed granite ground cover will be used instead of turf to conserve water use. Exhibit B illustrates the east and west elevations, and is substantially different from the original version. A simple door and awning has been replaced with a formal entryway. Rather than using Stucco exclusively for siding, the new plan includes a three-foot tall brick wainscot as well as extensive use of brick at the front entrance and a window. Six full-sized windows have been added to the east elevation, compared to very narrow windows on the original. Exhibit C was not included in the original request, but it includes the north and south elevation views. The brick wainscot has been carried around both ends of the building. Combined with the new roof design, the image of the proposed office is substantially enhanced. The staff sees this application as an instance where a redesign has resulted in a much improved image that will ensure integration of this building into this neighborhood.

Attachments:

April 2, 2012 P&Z Staff Report

Proposed Ordinance and Exhibits A, B and C

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1A, BLOCK 5, S.W. ESTES ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 1F-2, ONE-FAMILY DWELLING DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR AN OFFICE CENTER (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF WEST CUTHBERT AVENUE AND WHITAKER STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a Planned District for an Office Center, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned 1F-2, One-Family Dwelling District, and it shall be used as a Planned District for an Office Center, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

Lot 1A, Block 5, S.W. Estes Addition, Section 2, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That the development of this property shall be subject to the regulations of the O-1, Office District, except as otherwise stated below.
2. That the development of this property for an office shall conform to the conditions contained in Exhibits "A", "B" and "C", which are attached hereto and incorporated herein.
3. That the maximum building height shall not exceed 20 feet, and the maximum floor area shall not exceed 8,400 square feet.
4. That this office shall not be a stand-alone office, but shall only be used in association with the Dinero Plaza office, located on Lot 1, Block 18, Elmwood, Section 3, City and County of Midland, Texas.
5. That no business signs shall be allowed on this property.
6. That driveway access shall be limited to a driveway from the alley located on the west side of the property. This alley shall be paved to City of Midland standards from Cuthbert Avenue to the south edge of this property prior to the issuance of a Certificate of Occupancy.
7. That no mechanical equipment shall be located on the roof of this building.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section,

subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

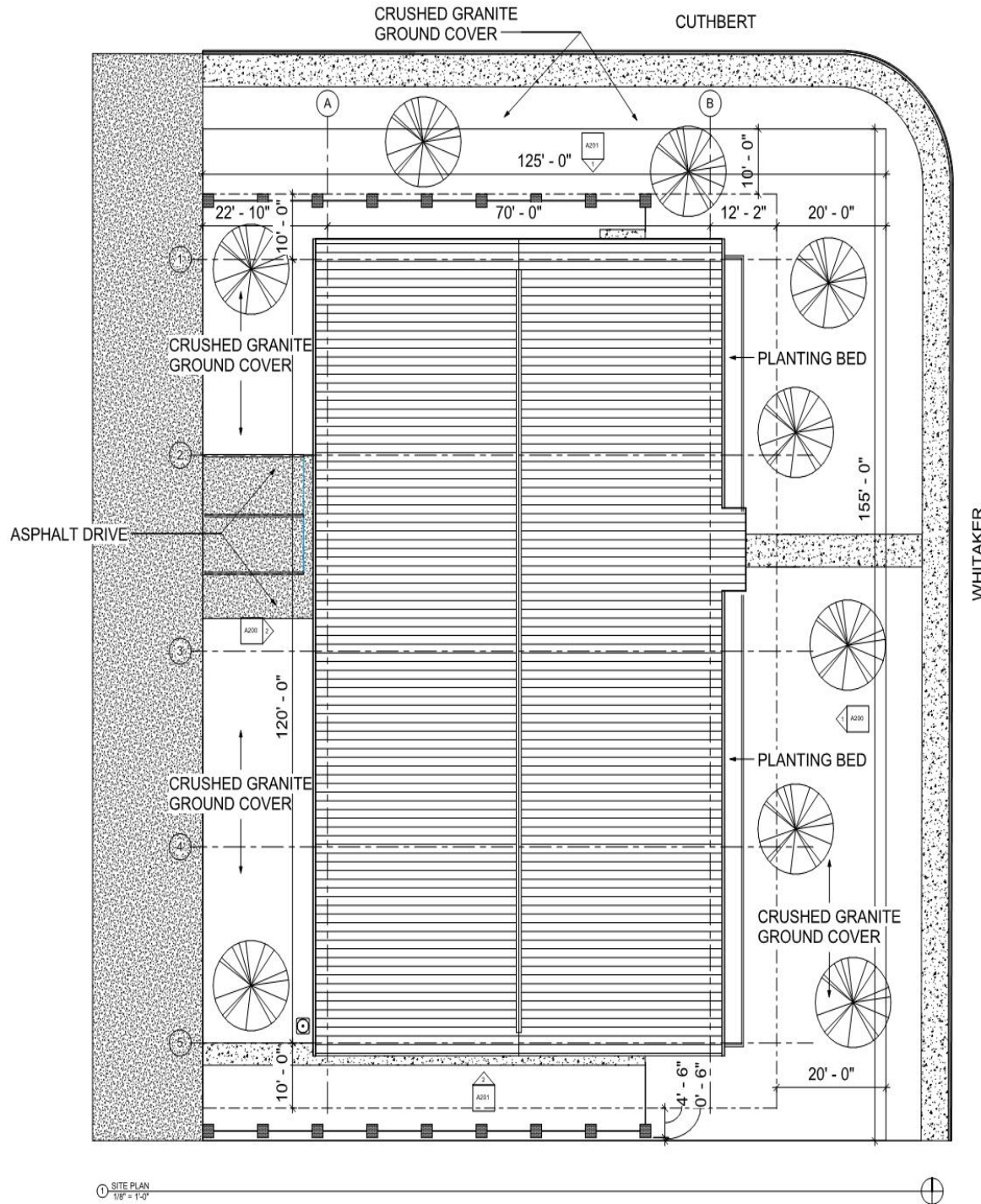
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



DINERO PLAZA MIDLAND, TEXAS

JOB NO. 0834

DRAWING TITLE

NEW SITE PLAN

REVISIONS

△
△
△
△

DATE 03/19/12

DRAWN BY CWW

CHECKED BY JRR

SHEET NO.

A101

NOT FOR REGULATORY
APPROVAL, PERMITTING
OR CONSTRUCTION.

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rwa
rhotenberry
wellen
architects

1102 West Texas Avenue
Midland, Texas 79701
432.682.1252
432.682.1257 fax



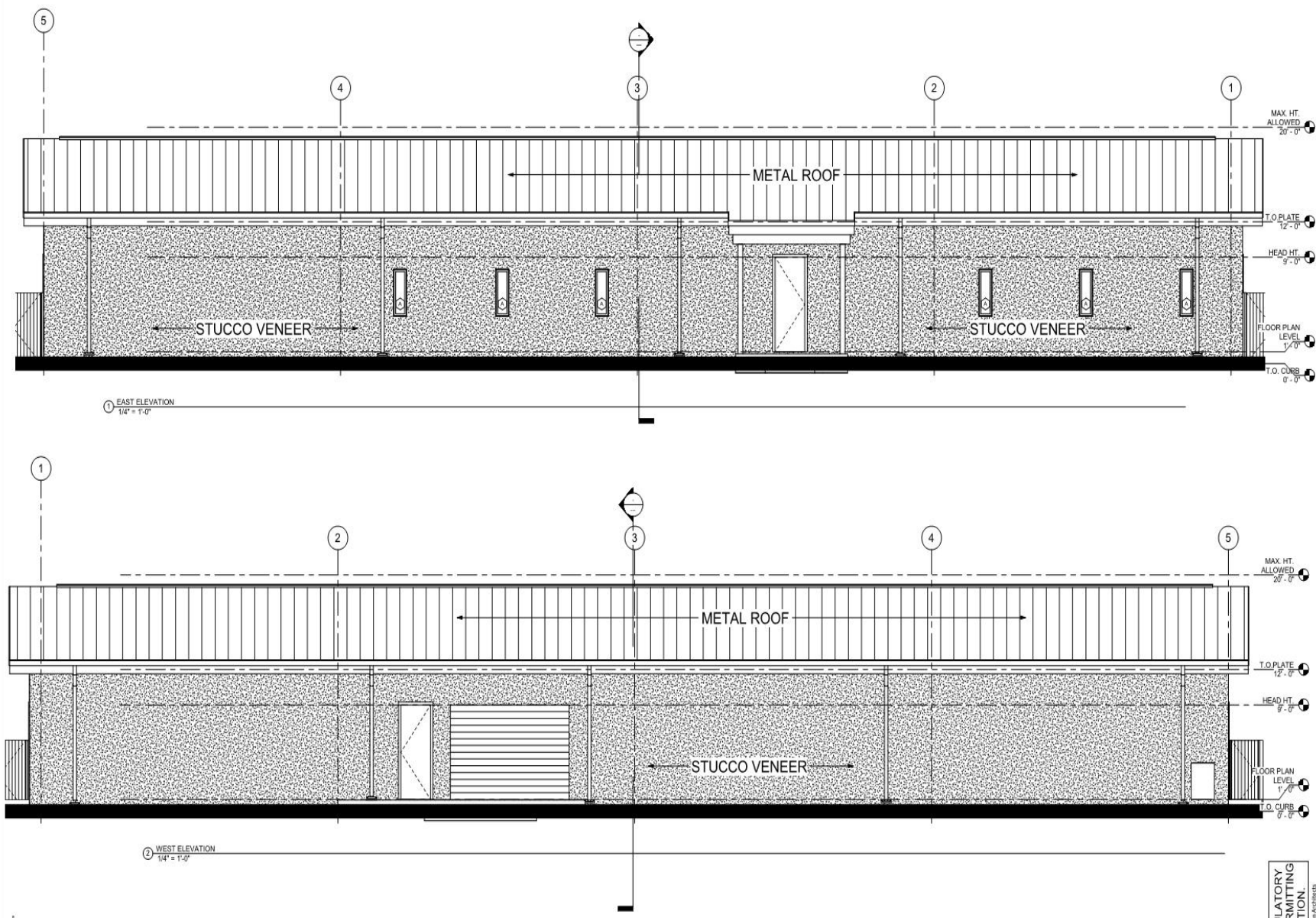
DINERO PLAZA
MIDLAND, TEXAS

SHEET NO.

NOT FOR REGULATORY
APPROVAL, PERMITTING
OR CONSTRUCTION.

OK CONSTRUCTION.
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A201



1102 West Texas Avenue
Midland, Texas 79701
432.682.1252
432.682.1257 fax



DINERO PLAZA
MIDLAND, TEXAS

JOB NO.	0834
DRAWING TITLE	EXTERIOR ELEVATIONS
REVISIONS	

DATE	03/19/12
DRAWN BY	CWW
CHECKED BY	JRR
SHEET NO.	

NOT FOR REGULATORY
APPROVAL, PERMITTING
OR CONSTRUCTION.

A200

Planning and Zoning Commission
Minutes
April 02, 2012

Z-12-007 - Hold a public hearing and consider a request by **Tim Ernst** for a *zone change* from 1F-2, One-Family Dwelling District to PD, Planned District for an Office Center on Lot 1A, Block 5, S. W. Estes Addition, Section 2, City and County of Midland, Texas. (Generally located near the southwest corner of the intersection of W. Cuthbert Avenue and Whitaker Street.)

With no applicant present, Senior Planner Jim Compton clarified that throughout the report the term warehouse space is used when in fact it is additional office space. Mr. Compton gave an overview of the request and stated all conditions exceed standard and staff recommended approval subject to conditions A through H.

Chairman Ferguson opened the public hearing.

There being no one wishing to speak in favor or in opposition to the item, Chairman Ferguson closed the public hearing.

After further discussion a motion for approval of a request subject to conditions A through H was made by Commissioner Lanning; seconded by Commissioner York. The motion carried by the following vote: AYE: Ferguson, Gatten, Norris, Wilton, York, Watkins, and Lanning. NAY: None. ABSTAIN: Carrillo. ABSENT: Wolf and Woodruff

PLANNING AND ZONING COMMISSION

April 2, 2012

CASE: Z-12-007.

REQUEST: Hold a public hearing and consider a request for a zone change from 1F-2, One-Family Dwelling District to PD, Planned District for an Office District.

APPLICANT: Tim Ernst.

OWNER: Midland Dinero, LLC.

REPRESENTATIVE: James Dewey.

LEGAL DESCRIPTION: Lot 1A, Block 5, S. W. Estes Addition, Section 2, City and County of Midland, Texas.

LOCATION: Southwest corner of Cuthbert Avenue and Whitaker Street.

DETAILS OF REQUEST:

1. Dinero Plaza is located at the southeast corner of Big Spring Street and Cuthbert Avenue. In order to provide for additional warehouse space, they have purchased the subject property, which is located across the alley from the main campus. It is currently zoned 1F-2 District, while warehouses are allowed beginning in the C-2, Commercial District. Consequently, the applicant has applied for a zone change to a Planned District for an Office Center, subject to the regulations of the O-1 district, and to the attached site plans, Exhibits A, B and C.

SURROUNDING ZONING AND LAND USE:

2. The land to the north, east and south of this property is zoned 1F-2 District. While there are some homes on the north side of Cuthbert Avenue, the rest of the abutting 1F-2 District is sparsely developed, except that the two lots immediately to the south are developed with residences. To the west is a strip of land zoned O-1 District, which serves as a transition between the 1F-2 District and the O-2 District to the west, where a maximum building height of seven standard stories is allowed.

ANALYSIS:

3. The purpose of this proposed planned district is to integrate a warehouse use located along the edge of a residential neighborhood. Exhibit A is a plan view of this proposal. Access is planned only from the alley located between the Dinero Plaza campus and the subject property. While access to lots is typically from public streets, the staff has no objection to this plan. Limiting driveway access to the alley decreases the likelihood that this proposed warehouse would be used by anyone other than Dinero Plaza. City policy will require that this alley be paved by the applicant. The building would be 8,400 square feet in area, with a maximum height of 20 feet at the roof ridge. Building setbacks exceed those of the O-1 District. Landscaping would consist of nine trees located within a crushed granite ground cover. The lack of turf grass greatly limits irrigation requirements. Planter beds are indicated adjacent to the east side of the building, where they would soften the appearance of the warehouse. There are no parking spaces shown on this site. Again, staff has no objection since this condition limits the ability to use this warehouse as a stand-alone land use. The staff recommends that mechanical equipment on the roof of the building be avoided. While not labeled, Exhibit A illustrates a series of pilasters for a 6-foot solid wood fence along the north and south property lines. Again, this fence will provide a buffer between this proposal and the residential development to the south. No signs are indicated on the site plan. The staff recommends that this property be subject to the applicable Sign Code regulations. Solid waste collection can be accommodated with dumpsters located in the abutting alley.

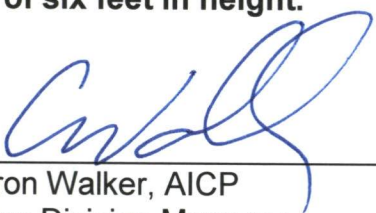
Exhibit B illustrates the north and south building elevations, while Exhibit C illustrates the east and west elevations. The entire side of the north and south elevations will be covered with stucco, except for three "man" doors. The east elevation, adjacent to Whitaker also exhibits a stucco exterior with a single door covered by a porch and a number of windows to break up the monotony of a solid building face. The rear is also covered with stucco, except for an overhead door and rain gutter downspouts. The roof is a gable design covered with a standing seam metal roof. The staff finds that this proposal meets all of the development requirements of the O-1 District, and that the conditions shown on the attached exhibits will integrate this proposed warehouse use into this location.

STAFF RECOMMENDATION:

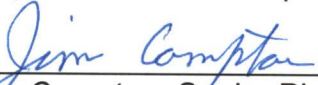
We recommend approval of this request for a zone change from 1F-2, One-Family Dwelling District to PD, Planned District for an Office District, subject to the following conditions:

- A. **The use and development of this property shall conform to the conditions of the O-1, Office District, except as otherwise stated below.**

- B. That the development of this warehouse shall conform to the conditions shown on the attached Exhibits A and B in all respects.
- C. This warehouse shall not be a stand-alone warehouse, but shall only be used in association with the property identified as Lot 1, Block 18, Elmwood, Section 3, City and County of Midland, Texas.
- D. This warehouse shall not exceed one story, with a maximum overall height of 20 feet. The maximum floor area shall not exceed 8,400 square feet.
- E. Driveway access shall be limited to a driveway from the alley on the east side of the property. This alley must be paved to City standards from Cuthbert Avenue to the south side of the driveway.
- F. No mechanical equipment shall be located on the warehouse roof.
- G. All signs shall conform to the regulations of the Midland Sign Code.
- H. The fences along the north and south property lines must be labeled and described on Exhibit A. The fence shall be a solid wood fence a minimum of six feet in height.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A, B and C

Case Number: 2-12-007**CITY OF MIDLAND****Planning Division****APPLICATION TO CHANGE ZONING CLASSIFICATION**

<u>Tim Ernst</u>	<u>ternst@terramarketinginc.com</u>
Applicant Name	(Phone/e-mail)
<u>1004 N. Big Spring St., Suite 500</u>	<u>79701</u>
Address	Zip Code
<u>Midland Dinero, LLC</u>	<u>(432) 684-4292</u>
Property Owner Name	(Phone/e-mail)
<u>SAME</u>	
Address	Zip Code
<u>James C. Dewey</u>	<u>(432) 684-5544</u> <u>jdewey@dineroinc.com</u>
Representative Name	(Phone/e-mail)
<u>SAME</u>	
Address	Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately.

Proposed Lot 1A, Block 5, S. W. Estes Addition, Sec. 2

PRESENT ZONE: 1F-2

REQUESTED ZONE: PDOC

(List by tracts if more than one district is requested)

Reason for Zone Change Request:

Small office addition

Present Use of Property: Undeveloped

Proposed Use of Property: Additional Office Space

How will zone change affect the public health, safety and welfare? N/A

Describe how conditions affecting the property have changed since present zoning designation:

Is a Specific Use Permit with Term for alcoholic beverages sales needed? Yes X No

APPLICATION FEES:

- Single, standard zone change: \$400. Multiple, standard zone change: add \$100 per additional district.
- Single PD, Planned District zone change: \$550. Multiple PD proposal: add \$100 per district.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

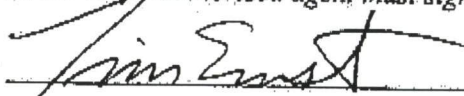
SITE PLAN SUBMITTALS *(if applicable):*

16 copies (FOLDED) of the PD site plan: _____

Site Plan in digital format .pdf and .jpg: _____

SIGNATURE *(by property owner only, authorized agent must sign affidavit below)*

Property Owner (signature):



Date: 10/18/11

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

_____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

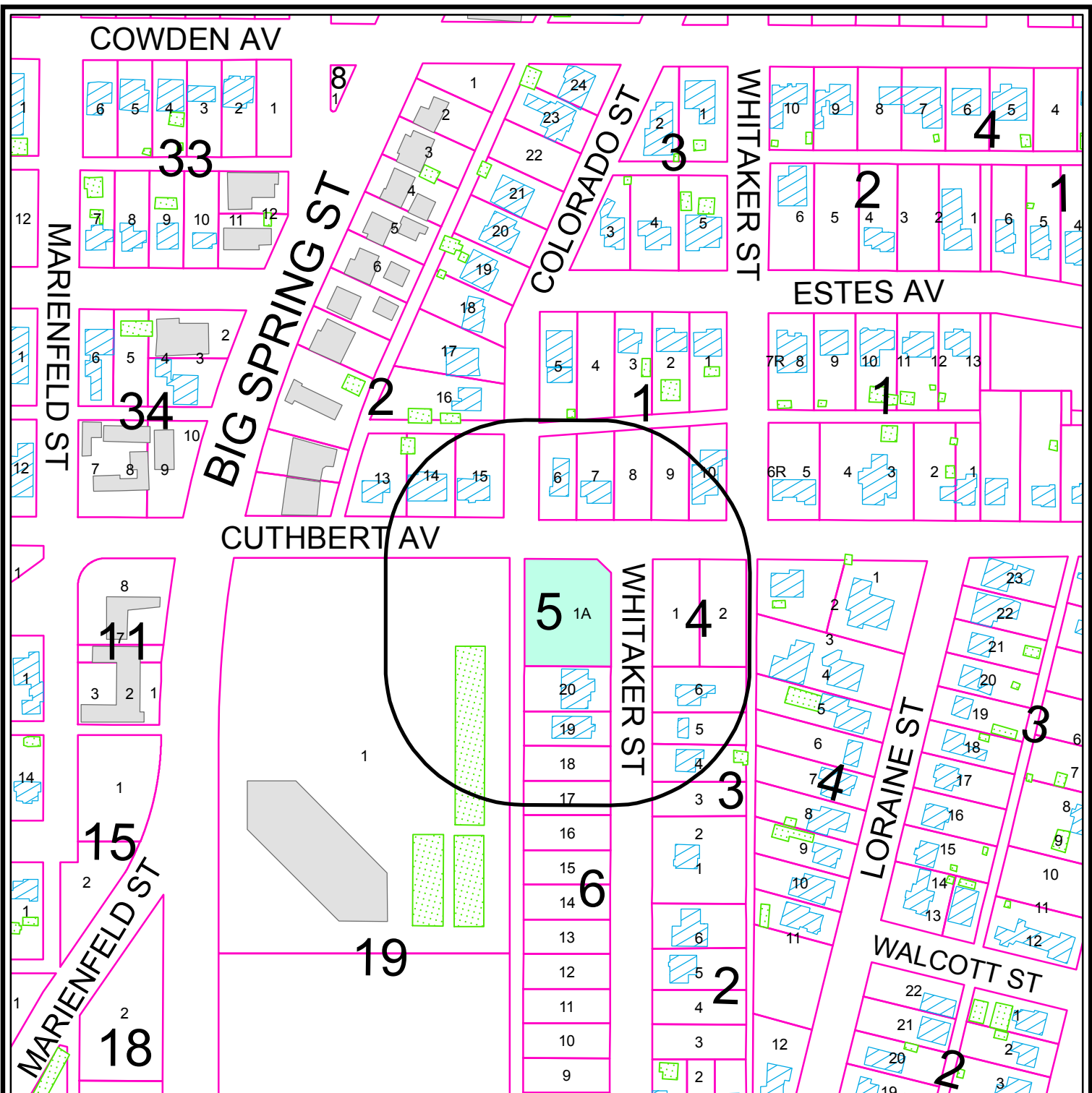
Authorized Agent (signature)

Subscribed and sworn to before me, this _____ day of _____, 20____, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: _____	Date: _____
Assigned: JC	
For: P+2	On: _____

****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 007

Scale: 1" = 200'

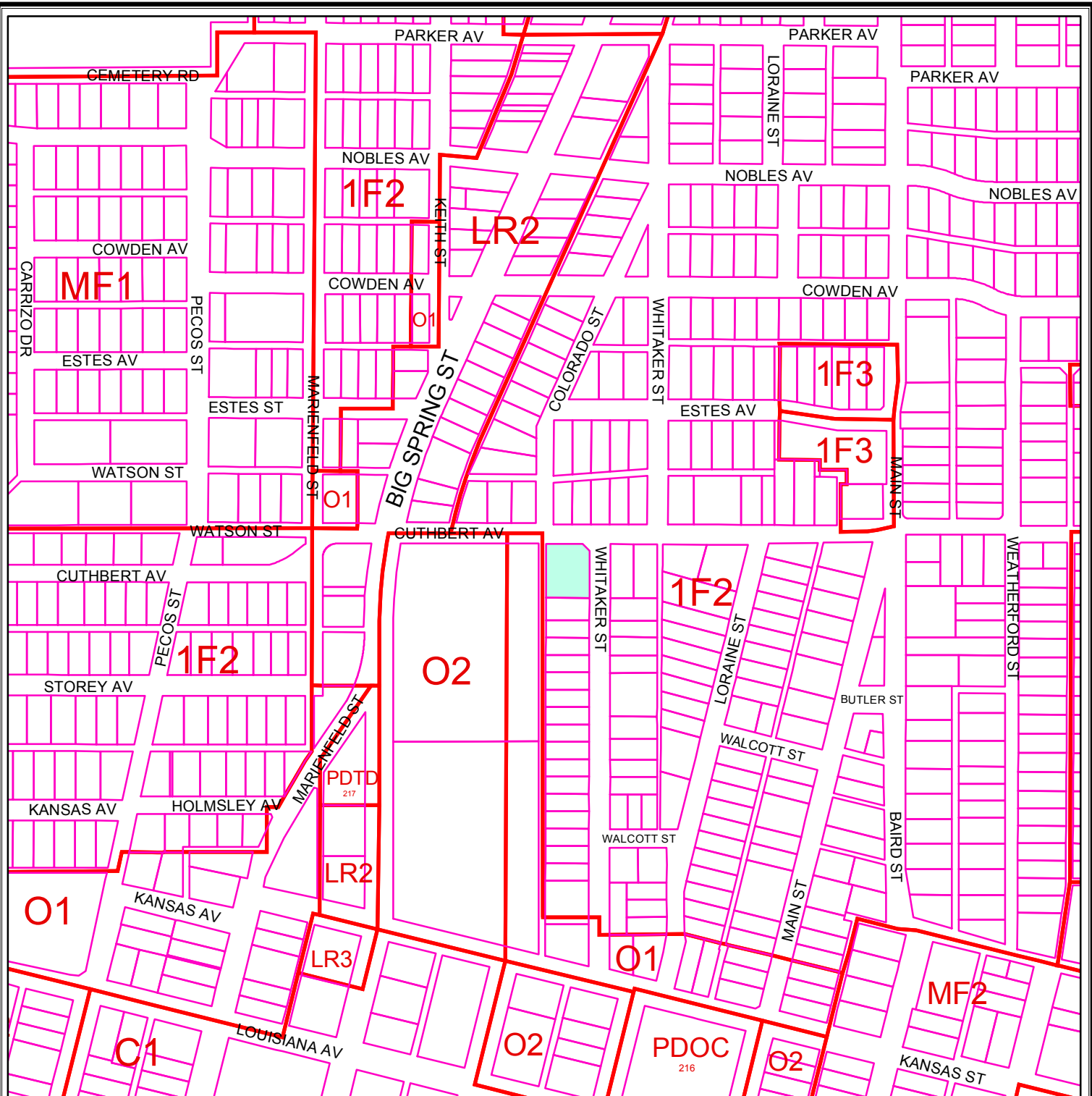
Consider a request for a zone change from 1F-2, One Family Dwelling District, to PD, Planned District for an Office Center on Lot 1A, Block 5, S. W. Estes Addition, Section 2, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 12 - 007

Scale: 1" = 400'

Consider a request for a zone change from 1F-2, One Family Dwelling District, to PD, Planned District for an Office Center on Lot 1A, Block 5, S. W. Estes Addition, Section 2, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at 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. (Generally located on the west side of N. Midland Drive, approximately 160 feet south of W. Dengar Avenue.)

Purpose:

Hold a public hearing at 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 are required to approve this request.

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, which is the same location Mr. Smith setup last year. As shown on the site plan, there will be a fenced-in tree display area, and a tree storage area. Proposed days and hours of operation are from November 23, 2012 through December 24, 2012 from 10:00 a.m. to 10:00 p.m. respectively.

Attachments:

Application
Maps
Site Plan - Exhibit A

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, 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 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, 2012 through December 24, 2012; 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, 2012.
- D. That the applicant shall obtain approval from the Utilities Department for a refuse collection and clean-up plan prior to November 23, 2012.
- 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., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

8' Steel Fence
North property
Line

La Casa Verde
Work Barn

Inside Plant & tree
Storage & Sales

well

Tree Storage

La Casa Verde
2615 N. Midland Dr

Oregon Trail
Tree Lot

Alley

4400 Dengar Ave

RECEIVED

OCT 16 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

Midland Drive

N

SITE PLAN

CASE NO. M-12-026 55.5

CITY OF MIDLAND, TEXAS
Planning Division

TEMPORARY LAND USE PERMIT APPLICATION

Submission Requirements: Application shall be submitted to the Planning Division not less than eighteen (18) days prior to the City Council meeting at which action is desired.

Application is hereby made to the City Council for a temporary land use (Carnival, Circus, Fair, Tent Sale, Mobile Food Vendor, etc.):

Name of Applicant: Joe L. Smith/Oregon Trail Trees Phone: 687-6354

Applicant's Address: 1602 W. Dengar, Midland, TX 79705

Property Owner: La Casa Verde Nursery, Mark Crisp Phone: 520-2144

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 (Carnival, Fair, etc): Christmas Tree Lot
4. Duration of temporary use: _____
If event does not exceed One (1) day (*must conclude by 10:00 p.m.*), then no public hearing is required. If more than One (1) day and is located within any residential district or is located within 1000 feet of any residential district, then a public hearing is required.
5. Proposed days and hours: 11/23/12 to 12/24/2012 10:00 a.m. - 10:00 p.m.
6. Will alcoholic beverages be sold? _____ Yes ☒ No
7. A detailed Site Plan is required on CD in .jpg and .pdf format(16 copies needed). Show existing buildings, parking, access arrangements, surrounding streets, activity areas, areas of alcoholic beverage sales, proposed street closures, etc.
Site Plan received: _____ Yes _____ No

8. Are you requesting the temporary closure of any streets? _____ Yes X No

If yes, you must:

- A. Obtain and complete the “**Special Event and Street Closure Application**”, available in the Traffic Coordinator’s 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 outdoor events. Checks need to be dated day of event. Inspection of site after the event for trash and damage is a City responsibility. The deposits, or a portion thereof, may be refunded following inspection.

Clean-up Deposit received: __ (Y) __ (N) Clean-up Deposit refunded: __ (Y) __ (%) __ (N)

Damage Deposit received: __ (Y) __ (N) Damage Deposit refunded: __ (Y) __ (%) __ (N)

11. A **\$200 Application Review fee** is required. **Fee received:** 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
Printed Name of Owner/Operator	Address	Zip Phone
<u>Joseph L. Smith</u>	<u>[Signature]</u>	<u>10/15/12</u>
Signature of Owner/Operator		Date

Signature of Applicant

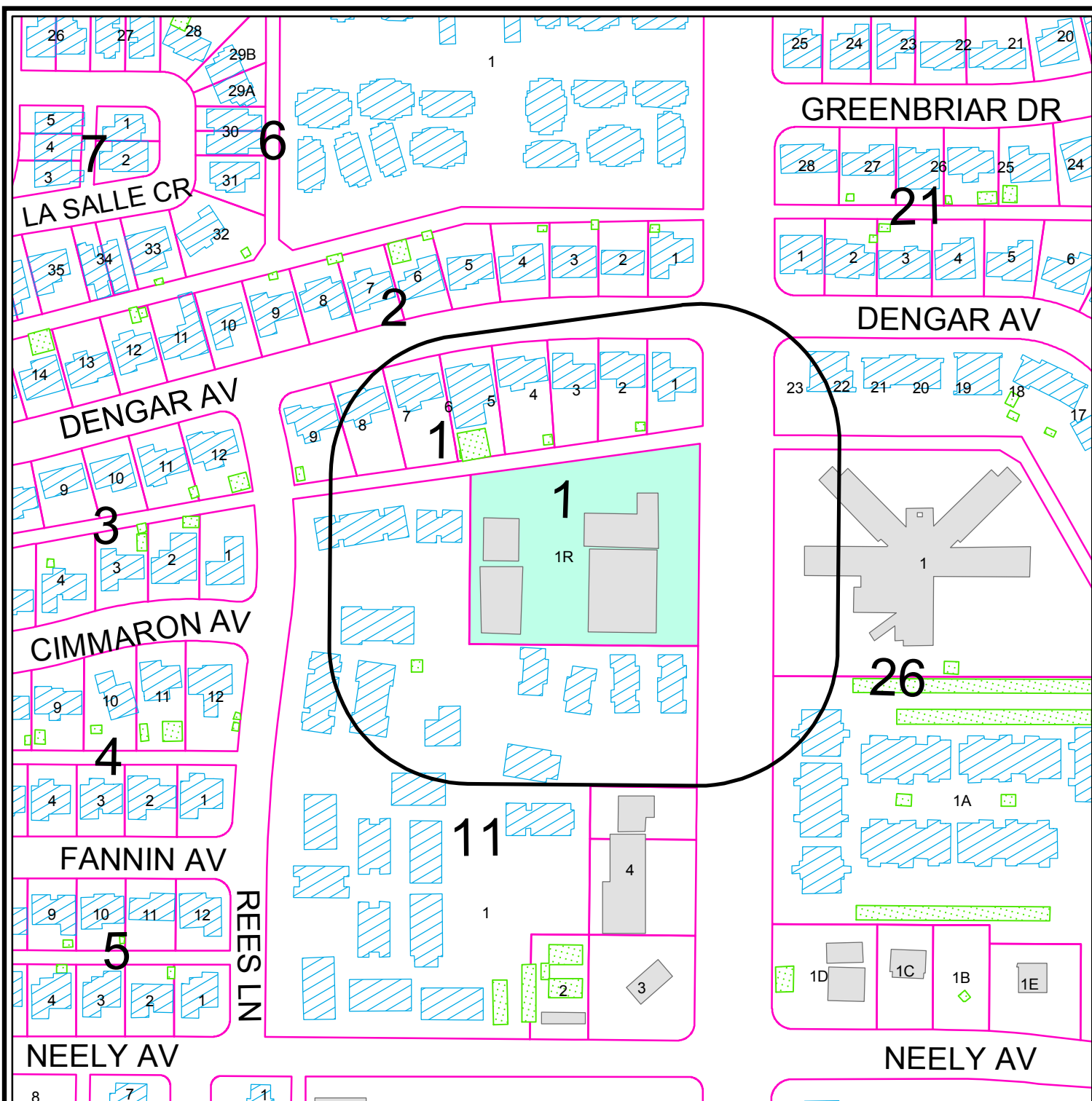
Date

Mark Crisp
Signature of Property Owner, if other than Applicant

10/15/12
Date

****Application will not be considered for scheduling until reviewed by a planner.****

FOR OFFICE USE ONLY	
Received By: <u>RS</u>	Date: <u>10/16/12</u>
Assigned: _____	
For: _____	On: _____



PROPERTY OWNER NOTIFICATION MAP

M - 12 - 026

Scale: 1" = 200'

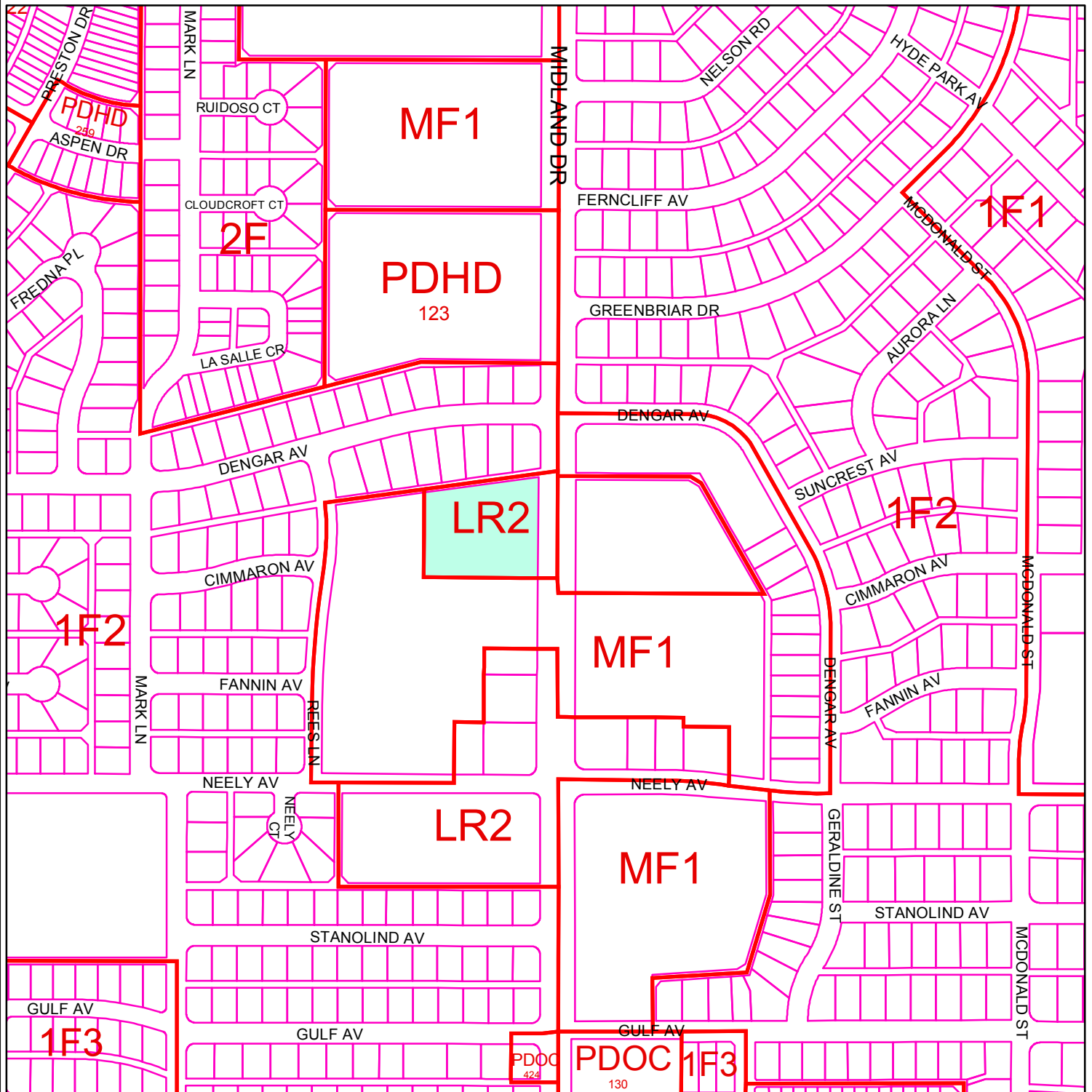
Consider a request for a Temporary Land Use Permit for Outdoor Christmas Tree Sales on the remainder of Lot 1, Block 1, Scotsdale Addition, Section Two, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

M - 12 - 026

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, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:

JNichols

City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:48 a.m. regarding a proposed oil and gas permit to Linn Operating, Inc. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits, (Robbie 24D)* located 262 feet from the north line and 467 feet from the west line located in Section 24, Block 40, T-1-S, T&P RR Co., Survey, City and County of Midland, Texas. (Generally located on the east side of Avalon Drive, approximately 250 feet south of the extension of Mockingbird Lane.)

Purpose:

At approximately 10:48 a.m. hold a public hearing on a request from Linn Operating, Inc. (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Robbie 24D) located 262 feet from the north line and 467 feet from the west line located in Section 24, Block 40, T-1-S, T&P RR Co., Survey, City and County of Midland, Texas. (Generally located on the east side of Avalon Drive, approximately 250 feet south of the extension of Mockingbird Lane.) This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period and at a regularly scheduled meeting. No letters of objection received.

Recommended City Council Action

X Approve Deny Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends application approval with a clarification of surface map and acceptance of a 495 foot variance from an occupied commercial structure. Linn Operating has addressed Committee recommendations and updated the application. Linn Operating is requesting a variance to have an office in the corporate limits of the City of Midland and is requesting a variance of 495 feet from an occupied commercial structure.

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



APPLICATION FOR OIL AND GAS PERMIT

0-12-016
SEP 24 2012

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 9/20/2012	Operator Name (must match W-1) Linn Operating, Inc.	Operator Address 600 Travis, Suite 5100 Houston, TX 77002
Representative Name Mike Matsinger	Representative Address (within Midland City Limits) 6010 E. Hwy 191, Ste. 130 Odessa, TX 79762	Rep. Tele. 432-366-1557 Rep. Fax 432-366-1574
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): Mike Matsinger Option A: 24/7 Answering Services - No. 1 (Tele.): 432-333-5878 No. 2 (Tele.): 432-258-5251 Option B: Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Mike Matsinger 420 West Spruce Ave., Midland, TX 79705 432-333-5878 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. Included in Exhibit C 2. 3.		
ATTACHED AS EXHIBIT C is (a Title Opinion by _____, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use Linn Operating, Inc.		
General Description of Current Surface Use (within 860 feet of proposed surface location): pasture land, no residential land/subdivisions		
ATTACHED AS EXHIBIT D is (a Title Opinion by _____, a licensed Texas Attorney/a Take-off from _____, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].		

ATTACHED AS EXHIBIT E is a (map/p lat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: Robbie 24D

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See Exhibit G

Legal Description of Proposed Well Site: 262' FNL 467' FWL of Section 24, Block 40, T1S, T&P RR CO. Survey, Midland County, Texas (Abstract #1392)

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: Water is pumped from 3 privately owned water wells to a fresh water pit on the Robbie lease for drilling operations.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

See Exhibit N for map layout. Above ground lines. Oncor is the electrical provider.

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]:

See Exhibit N

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)].

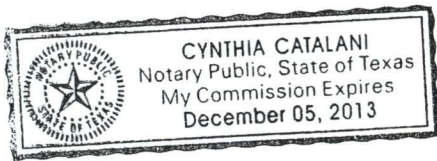
LINN OPERATING, INC.

By, Cynthia Pinel
Its', Compliance Contact

State of Texas)

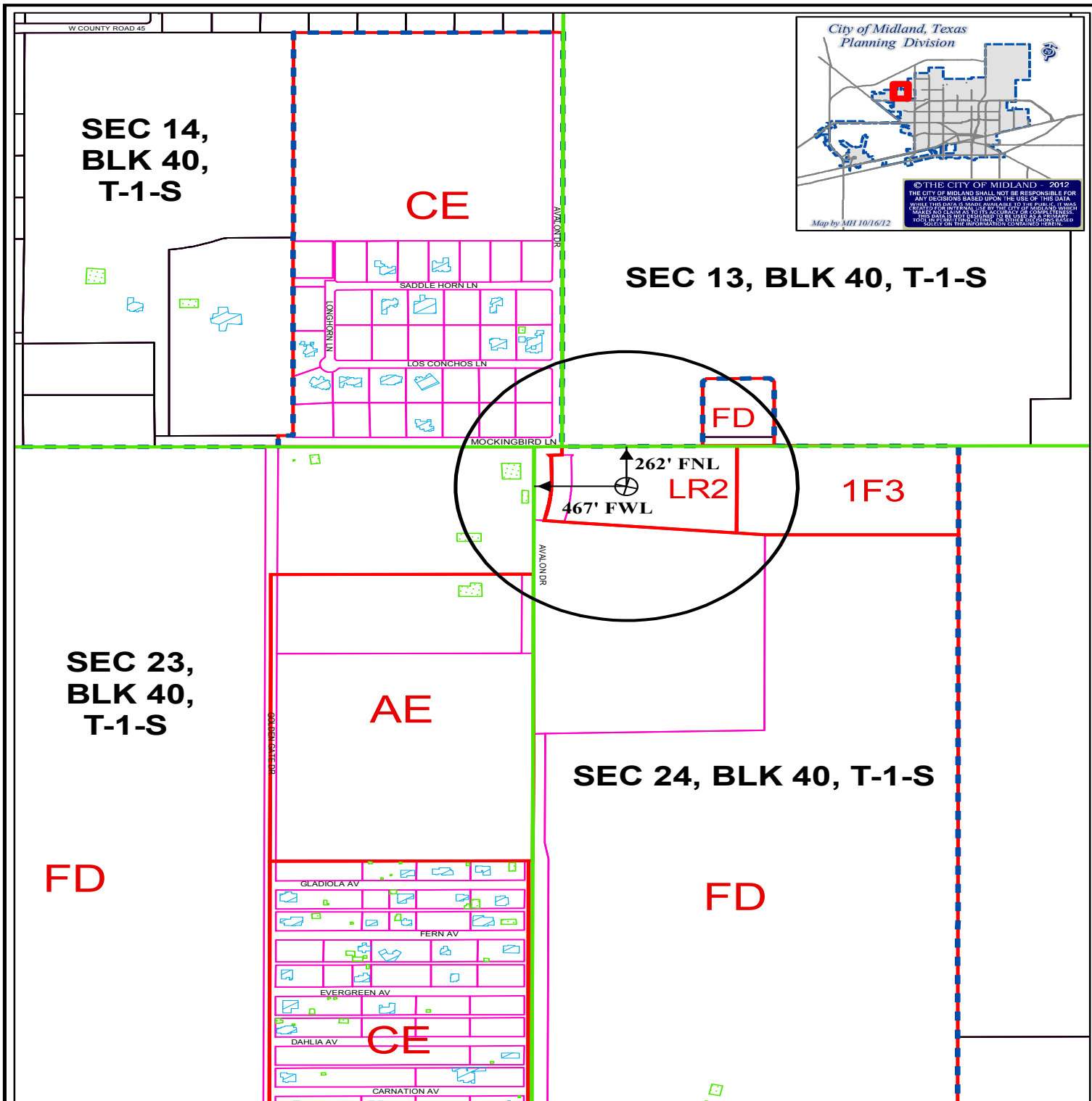
County of Harris)

Cynthia Pinel, 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.



Cynthia Catalani

Notary Public, State of Texas



LOCATION AND ZONING MAP

O - 12 - 016

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 262' FNL and 467' FWL, Section 24, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Robbie 24D

LEGEND

	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.

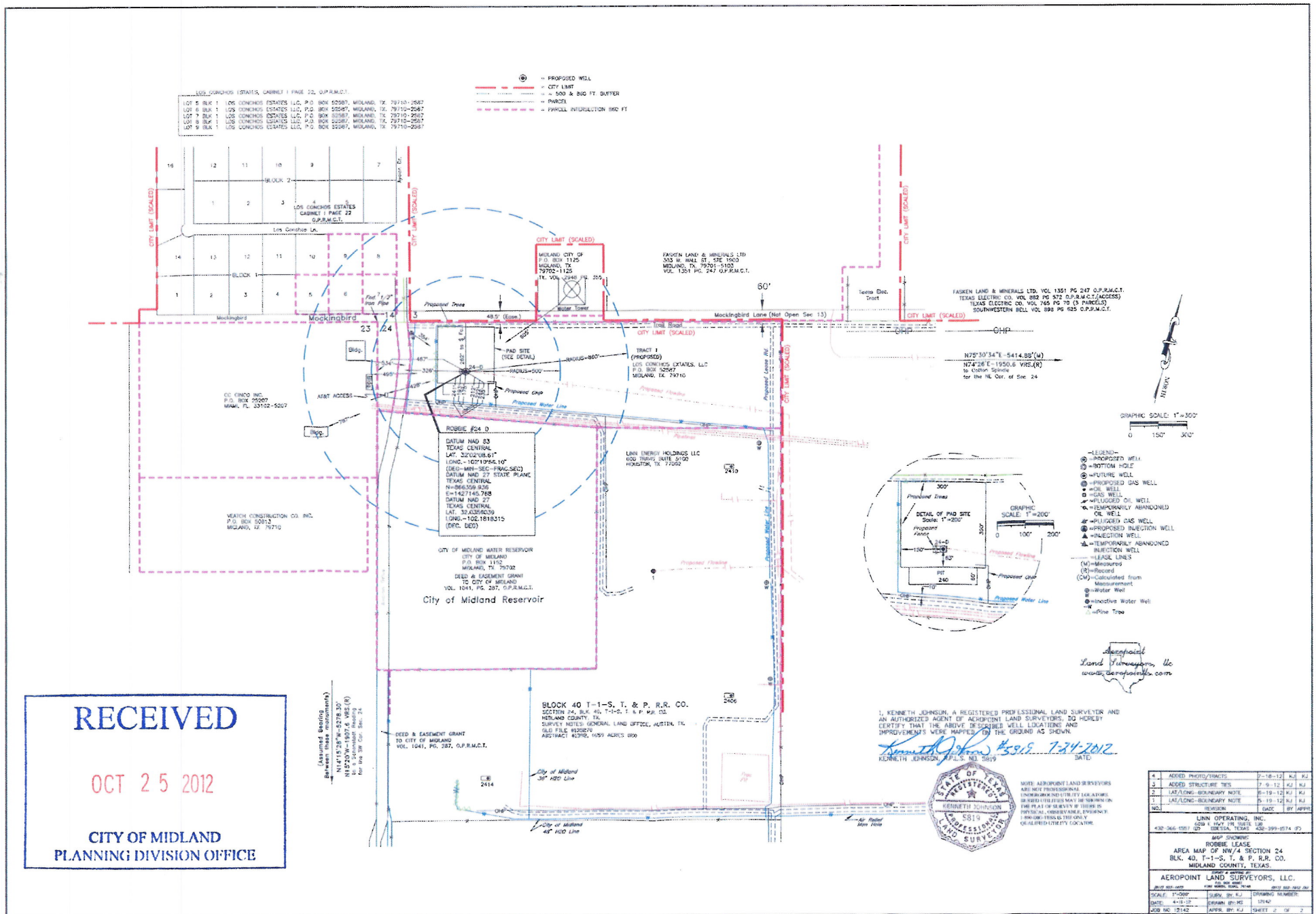
ZONING DISTRICTS:

FD
PD
AE
1F1, 1F2, 1F3
MH
TH
2F
MF1, MF2

FUTURE DEVELOPMENT
PLANNED DISTRICT
AGRICULTURE ESTATE
ONE-FAMILY DWELLING
MOBILE HOME DWELLING
TOWNHOUSE DWELLING
TWO-FAMILY DWELLING
MULTIPLE FAMILY DWELLING

BP
P
01, O2
NS
LR1, LR2, LR3
C1, C2, C3
IP, JP1, IP2, IP3
LI
HI

BUSINESS PARK
PARKING
OFFICE
NEIGHBORHOOD SERVICE
LOCAL RETAIL
COMMERCIAL
INDUSTRIAL PARK
LIGHT INDUSTRY
HEAVY INDUSTRY



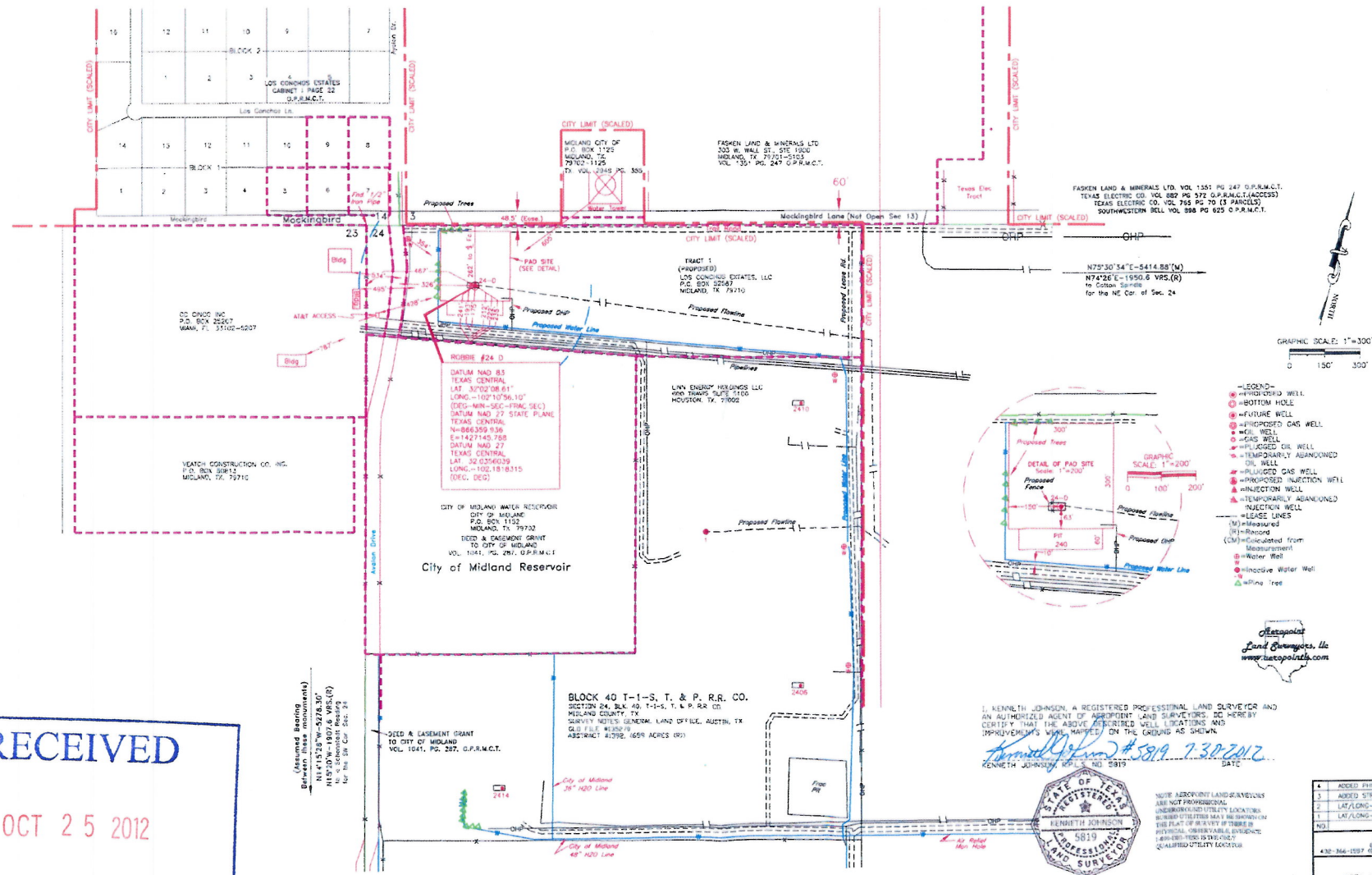
RECEIVED

OCT 25 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

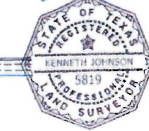
LOS CONCHOS ESTATES, CABINET 1 PAGE 22, O.P.R.M.C.T.
LOT 5 BLK 1 LOS CONCHOS ESTATES L.L.C. P.O. BOX 55987, MIDLAND, TX 79710-2587
LOT 6 BLK 1 LOS CONCHOS ESTATES L.L.C. P.O. BOX 55987, MIDLAND, TX 79710-2587
LOT 7 BLK 1 LOS CONCHOS ESTATES L.L.C. P.O. BOX 55987, MIDLAND, TX 79710-2587
LOT 8 BLK 1 LOS CONCHOS ESTATES L.L.C. P.O. BOX 55987, MIDLAND, TX 79710-2587
LOT 9 BLK 1 LOS CONCHOS ESTATES L.L.C. P.O. BOX 55987, MIDLAND, TX 79710-2587

- PROPOSED WELL
- CITY LIMIT
- 300' & 600' FT. BUFFER (NOT SHOWN)
- PARCEL
- PARCEL INTERSECTION SHG HT



I, KENNETH JOHNSON, A REGISTERED PROFESSIONAL LAND SURVEYOR AND AN AUTHORIZED AGENT OF AEROPOL LAND SURVEYORS, DO HEREBY CERTIFY THAT THE ABOVE DESCRIBED WELL LOCATIONS AND IMPROVEMENTS WERE MADE ON THE GROUND AS SHOWN.

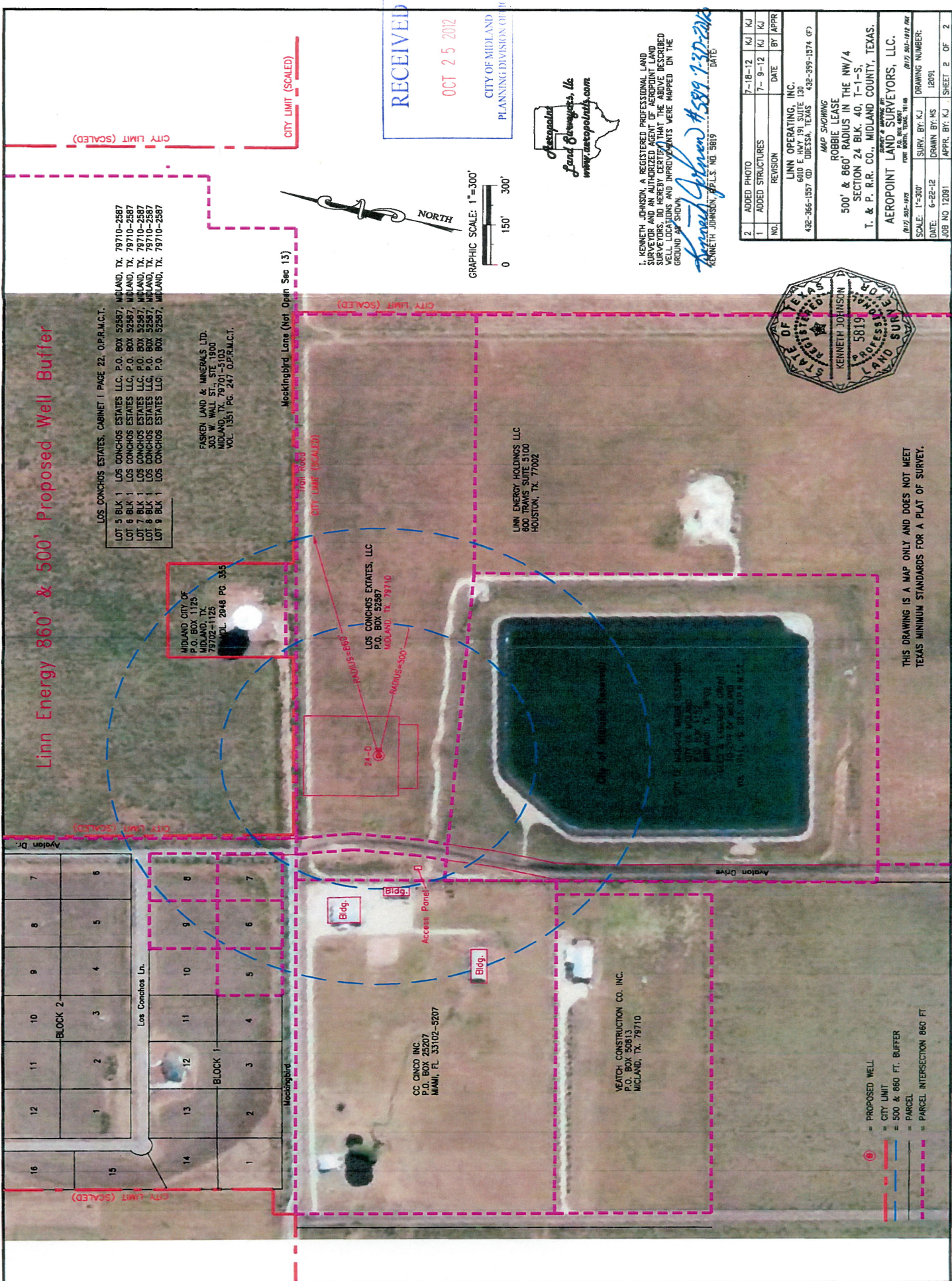
Kenneth Johnson #5819 7-30-2012
KENNETH JOHNSON, S.D.L.S. NO. 5819



NOTE: AEROPOL LAND SURVEYORS ARE NOT PROVIDING UNDERGROUND UTILITY LOCATIONS. BURIED UTILITIES MAY BE SHOWN ON THE FLAT OF THE SURVEY IF THERE IS PHYSICAL, OBSERVABLE EVIDENCE. FROM THE SURVEYOR'S QUALIFIED UTILITY LOCATIONS.

NO.	DESCRIPTION	DATE	BY	APPROVED
1	ADDED PHOTO/TRACTS	7-18-12	KJ	
2	ADDED STRUCTURE TIES	7-9-12	KJ	
3	LAT/LONG-BOUNDARY NOTE	8-19-12	KJ	
4	LAT/LONG-BOUNDARY NOTE	8-19-12	KJ	
5	REVISION			
LINN OPERATING, INC.				
AREA MAP OF NW/4 SECTION 24				
BLK. 40, T-1-S, T. & P. R.R. CO.				
MIDLAND COUNTY, TEXAS.				
AEROPOL LAND SURVEYORS, L.L.C.				
DATE	SCALE	BY	DATE	BY
7-30-12	1"=300'	KJ	7-30-12	KJ
7-30-12	1"=300'	KJ	7-30-12	KJ
7-30-12	1"=300'	KJ	7-30-12	KJ

Linn Energy 860' & 500' Proposed Well Buffer



RECEIVED

OCT 25 2012

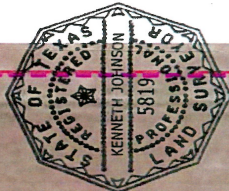
CITY OF MIDLAND
PLANNING DIVISION OF THE



I, KENNETH JOHNSON, A REGISTERED PROFESSIONAL LAND SURVEYOR AND AN AUTHORIZED AGENT OF AEROPOLIS LAND SURVEYORS, DO HEREBY CERTIFY THAT THE ABOVE DESCRIBED WELL, LOCATIONS AND IMPROVEMENTS WERE MAPPED ON THE GROUND AS SHOWN.

Kenneth Johnson #5819 12-30-2012
KENNETH JOHNSON, P.L.S. NO. 5819 DATE

2	ADDED PHOTO	7-18-12	KJ	KJ
1	ADDED STRUCTURES	7-9-12	KJ	KJ
NO.	REVISION	DATE	BY	APPR
LINN OPERATING, INC.				
6010 E HWY 191, SUITE 130				
432-366-1357 (D) DUESSA, TEXAS 432-399-1374 (F)				
MAP SHOWING				
ROBBIE LEASE				
500' & 860' RADIUS IN THE NW/4				
SECTION 24 BLK. 40, T-1-S,				
T. & P. R.R. CO., MIDLAND COUNTY, TEXAS.				
AEROPOLIS LAND SURVEYORS, LLC.				
P.O. BOX 1125 MIDLAND, TX 79702-1125				
SCALE: 1"=300'				
SURV. BY: KJ				
DRAWING NUMBER: 12091				
DATE: 6-22-12				
JOB NO 12091				
APPR. BY: KJ				
SHEET 2 OF 2				



THIS DRAWING IS A MAP ONLY AND DOES NOT MEET TEXAS MINIMUM STANDARDS FOR A PLAT OF SURVEY.



City Council Agenda

Approved for Agenda:
MWilliams
City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:51 a.m. regarding a proposed oil and gas permit to Endeavor Energy Resources, L.P. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Chaps No. 2) located 2,167 feet from the north line and 600 feet from the west line, southeast quarter of the northwest quarter of Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the south side of the Passage Way, approximately 600 feet east of N. Midkiff Road.)

Purpose:

At approximately 10:51 a.m. hold a public hearing on a request from Endeavor Energy Resources, L.P. (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Chaps No. 2) located 2,167 feet from the north line and 600 feet from the west line, southeast quarter of the northwest quarter of Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the south side of the Passage Way, approximately 600 feet east of N. Midkiff Road.) This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period and at a regularly scheduled meeting. One letter of objection received.

Recommended City Council Action

X Approve Deny Direction/Informational

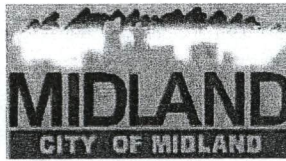
Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends application approval with the following recommendations: identify the Atoka formation, certify wells inside the city limits, Certificate of Liability Insurance- Sudden and Accidental to cover a longer time period of 30 days to *discover an incident* and 90 days to *report* instead of 10 and 30 days respectively or add Control of Well that includes these time periods. Emergency response map needs to identify well location. Both parties are working on a surface agreement and expect to be completed before the City Council public meeting. Endeavor Energy has addressed Committee recommendations and updated application except for the Certificate of Liability Insurance.

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



0-12-017

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date August 13, 2012	Operator Name (must match W-1) Endeavor Energy Resources, LP	Operator Address 110 N. Marienfeld, Suite 200 Midland, TX 79701
Representative Name Michael A. Short General Counsel, Vice President, Land	Representative Address (within Midland City Limits) 110 N. Marienfeld St., Ste. 200 Midland, TX 79701	Rep. Tele. 432-687-1575 Rep. Fax 432-682-3088

Permit Compliance Contact (Choose 1): Option A: 24/7 Answering Services -No. 1 (Tele.): No. 2 (Tele.):**Option B: Company Compliance Representative (Name, Address, Local Telephone):**Alin Richardson
3345 Acapulco Road
Midland, Texas 79705
432-664-1587
See attached statements**Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):**Val Joe Walker, Safety Manager for Endeavor Energy Resources, LP: 432-262-4299 or 432-631-8968
Midland Police Department: 911 or 432-685-7110
Midland Fire Department: 911
Ambulance: 911
Paramedics: 911**Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]).** See attached**II. Mineral Ownership****Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):**

See attached – List of Names and Addresses of Mineral Estate Lessors and Supplemental Drilling and Division Order Title Opinion dated July 10, 2012 by Robert A. Spears at Lynch, Chappell & Alsop

ATTACHED AS EXHIBIT C is (a Title Opinion by , a licensed Texas Attorney/Title Commitment by Abstract**Company/a Take-off from , a Certified Petroleum Landman/an opinion letter from ,****a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)]. See attached****III. Surface Ownership & Use****General Description of Current Surface Use (within 860 feet of proposed surface location):**

Pasture and residential

See attached a list of surface owners and their respective addresses.

ATTACHED AS EXHIBIT D is (a Title Opinion by , a licensed Texas Attorney/a Take-off from**, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists****the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)]. See attached****ATTACHED AS EXHIBIT E is a (map/plat/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lat/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].****ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)]. See attached****IV. Well & Operations Information****Proposed Well Name:** Chaps No. 2**ATTACHED IN EXHIBIT G -Proposed Hole Size, Casing Program and Cementing Program [See § J(11) and § L(4)]:**

See attached

Legal Description of Proposed Well:

2167' FNL & 600' FWL

Southeast Quarter of the Northwest Quarter (SE/4NW/4) Section 9, Block X, H. P. Hilliard Survey, Midland County, Texas

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)]. *ATTACHED AS EXHIBIT H* is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)]. *ATTACHED AS EXHIBIT I* is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (*also file copy of W-1 with City Secretary before commencement of drilling operations*). [See § J(16) and (20)]. *ATTACHED AS EXHIBIT J* is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)]. *ATTACHED AS EXHIBIT K (if applicable)* is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)]. *ATTACHED AS EXHIBIT L* is the Fencing and Irrigation Plan. [See § J(30)]. *ATTACHED AS EXHIBIT M* is the Road Repair Agreement and *Letter of Credit/Certificate of Deposit/Surety Bond* in the amount of at least \$75,000. *Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable):* Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 *letter of credit/certificate of deposit/surety bond* in conjunction with this request. [See § J(31)]. *ATTACHED AS EXHIBIT N* is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)]. See attached

Description of Public Utilities required during (1) drilling and (2) operations: (1) Drilling: (2) Operations:

Electricity

TXU: 1-800-233-2133

Description of water source to be used during Drilling:

Water well on location

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

See attached plat

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: See attached

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)]. *ATTACHED AS EXHIBIT Q* are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)]. *ATTACHED AS EXHIBIT R* is the required Insurance Certificate. [See § J(19) and § K(3)]. *ATTACHED AS EXHIBIT S (if applicable)* is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)]. *ATTACHED AS EXHIBIT T* is Applicant's Emergency Action Response Plan. [See § J(22)]. *ATTACHED AS EXHIBIT U* is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

[SIGNATURE PAGE FOLLOWS]

CERTIFICATION OF APPLICATION

My name is Michael A. Short. I am General Counsel, Vice President, Land for Endeavor Energy Resources, LP.

I hereby certify that the information contained in this application is true and correct.

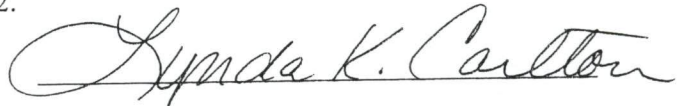


Michael A. Short
General Counsel, Vice President, Land
Endeavor Energy Resources, L.P.

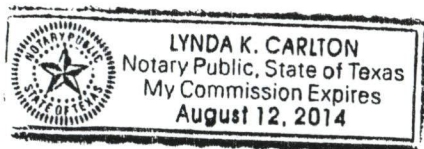
THE STATE OF §
 §
County of Midland §

Before me, undersigned authority, on this day personally appeared Michael A. Short, General Counsel, Vice President, Land of Endeavor Petroleum, L.L.C., a Texas limited liability company, in its capacity as General Partner of ENDEAVOR ENERGY RESOURCES, L.P., a Texas limited partnership, on behalf of said limited partnership.

Given under my hand and seal of office this the 13th day of
August, A.D. 2012.



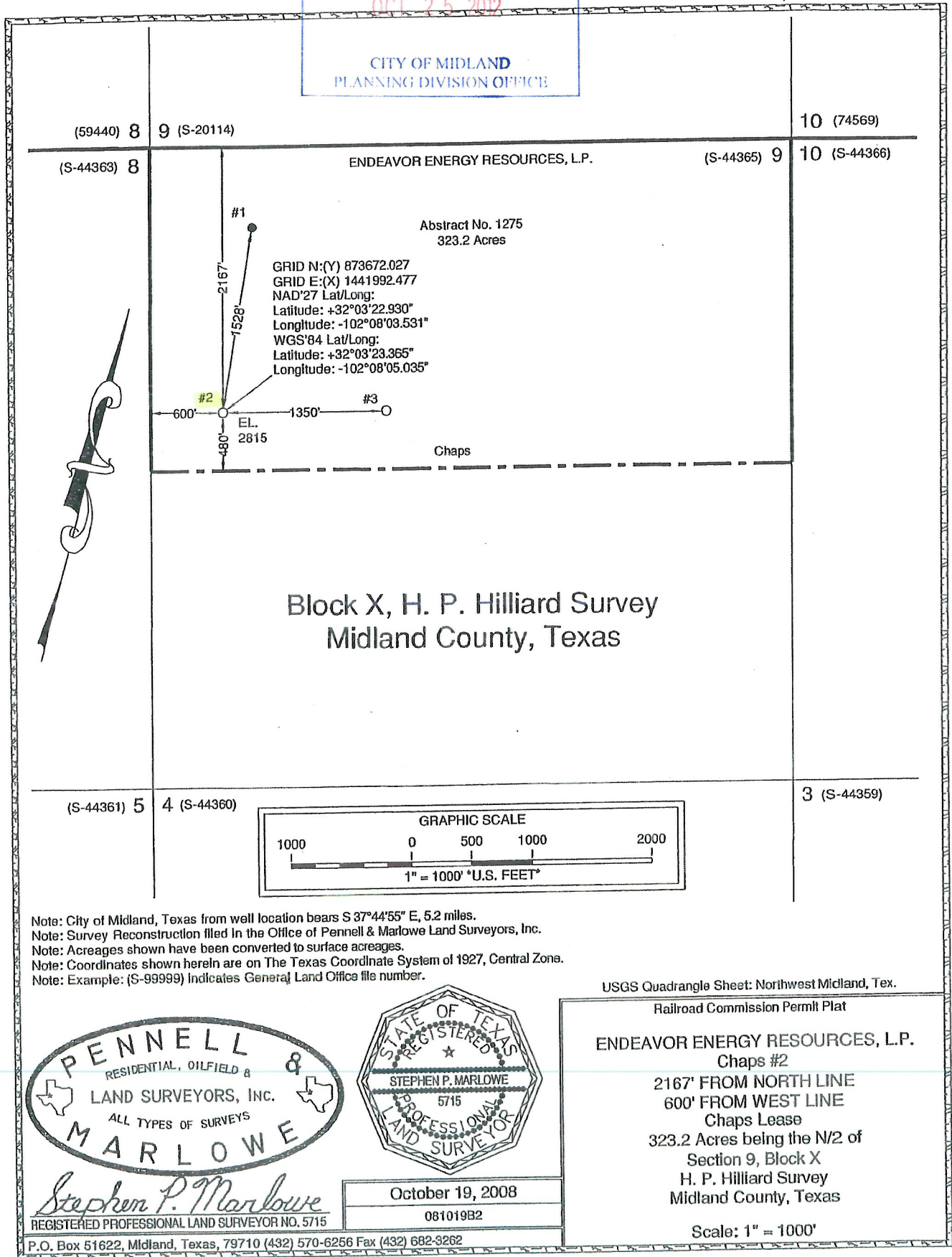
Notary Public in and for the State of Texas

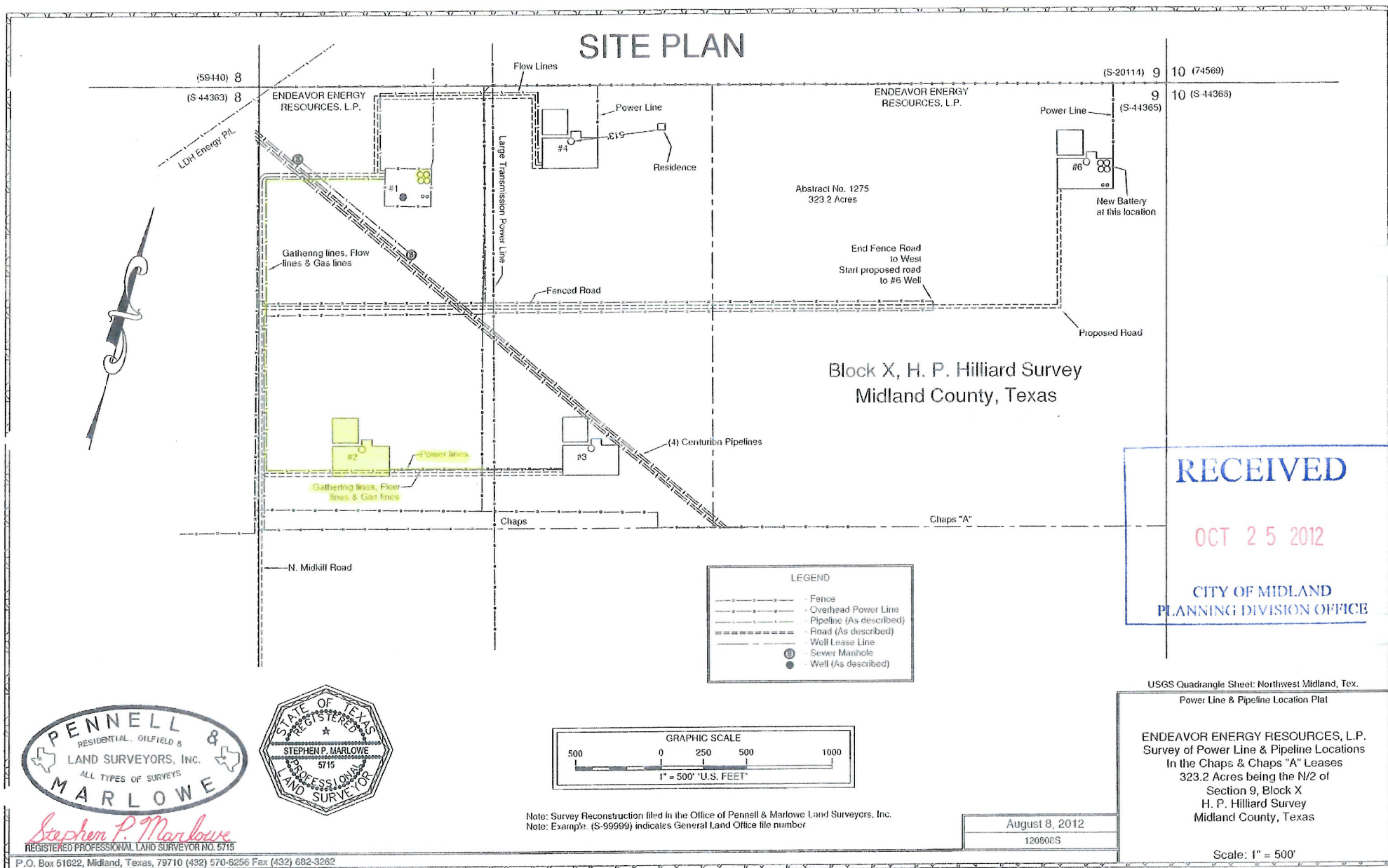


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OCT 25 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

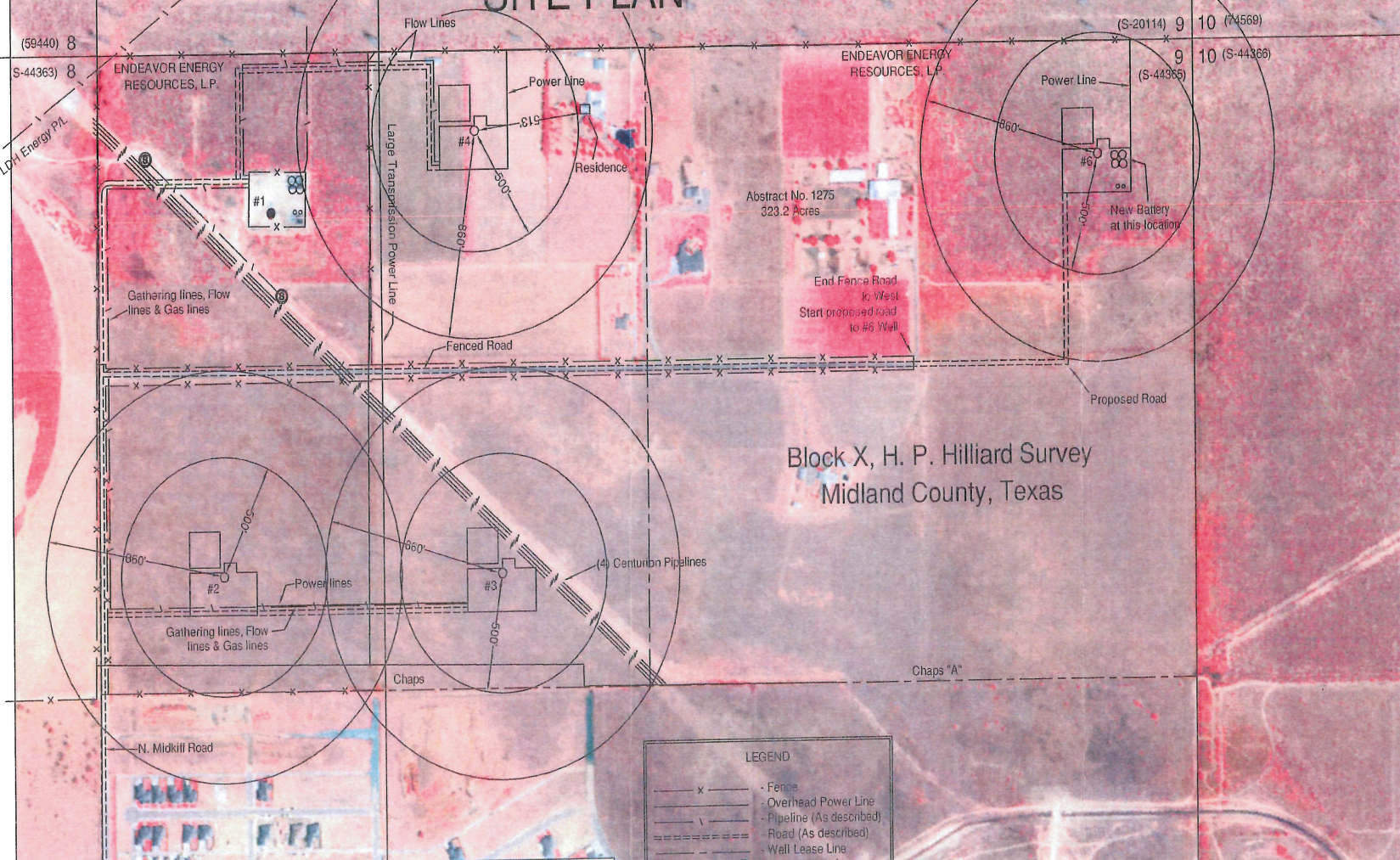




FLOW LINE MAP

0-12-017

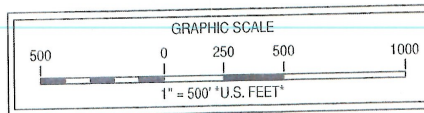
SITE PLAN



RECEIVED

OCT 25 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE



Note: Survey Reconstruction filed in the Office of Pennell & Marlowe Land Surveyors, Inc.
Note: Example: (S-99999) indicates General Land Office file number.

August 8, 2012

12080852

USGS Quadrangle Sheet: Northwest Midland, Tex.

Power Line & Pipeline Location Plat

ENDEAVOR ENERGY RESOURCES, L.P.
Survey of Power Line & Pipeline Locations
In the Chaps & Chaps "A" Leases
323.2 Acres being the N/2 of
Section 9, Block X
H. P. Hilliard Survey
Midland County, Texas

Scale: 1" = 500'

AERIAL MAP

0-12-017



City Council Agenda

Approved for Agenda:
MWilliams
City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:54 a.m. regarding a proposed oil and gas permit to Endeavor Energy Resources, L.P. (Operator), for a *Permit to Drill an Oil & Gas Well within the City Limits*, (Chaps No. 3) located 2,167 feet from the north line and 1950 feet from the west line, southwest quarter of the northwest quarter of Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the south side of the Passage Way, approximately 1,950 feet east of N. Midkiff Road.)

Purpose:

At approximately 10:54 a.m. hold a public hearing on a request from Endeavor Energy Resources, L.P. (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Chaps No. 3) located 2,167 feet from the north line and 1950 feet from the west line, southwest quarter of the northwest quarter of Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the south side of the Passage Way, approximately 1,950 feet east of N. Midkiff Road.) This is an opportunity for the Council to receive public comment. Council may consider this permit following a 30-day public comment period and at a regularly scheduled meeting. No letters of objection received.

Recommended City Council Action

X Approve Deny Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends application approval with the following recommendations: identify the Atoka formation, certify wells inside the city limits, Certificate of Liability Insurance- Sudden and Accidental to cover a longer time period of 30 days to *discover an incident* and 90 days to *report* instead of 10 and 30 days respectively or add Control of Well that includes these time periods. Both parties are working on a surface agreement and expect to be completed before the City Council public meeting. Endeavor Energy has addressed Committee recommendations and updated application except for the Certificate of Liability Insurance.

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



0-12-018

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date August 13, 2012	Operator Name (must match W-1) Endeavor Energy Resources, LP	Operator Address 110 N. Marienfeld, Suite 200 Midland, TX 79701
Representative Name Michael A. Short General Counsel, Vice President, Land	Representative Address (within Midland City Limits) 110 N. Marienfeld St., Ste. 200 Midland, TX 79701	Rep. Tele. 432-687-1575 Rep. Fax 432-682-3088

Permit Compliance Contact (Choose 1): Option A: 24/7 Answering Services -No. 1 (Tele.): No. 2 (Tele.):**Option B: Company Compliance Representative (Name, Address, Local Telephone):**Alin Richardson
3345 Acapulco Road
Midland, Texas 79705
432-664-1587

See attached statements See attached statements

Emergency Contact Representative (Name, Address, 24-Hour Tele. No.):Val Joe Walker, Safety Manager for Endeavor Energy Resources, LP: 432-262-4299 or 432-631-8968
Midland Police Department: 911 or 432-685-7110
Midland Fire Department: 911
Ambulance: 911
Paramedics: 911**Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]).** See attached**II. Mineral Ownership****Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):**

See attached – List of Names and Addresses of Mineral Estate Lessors and Supplemental Drilling and Division Order Title Opinion dated July 10, 2012 by Robert A. Spears at Lynch, Chappell & Alsup

ATTACHED AS EXHIBIT C is (a Title Opinion by , a licensed Texas Attorney/Title Commitment by Abstract**Company/a Take-off from , a Certified Petroleum Landman/an opinion letter from ,****a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)]. See attached****III. Surface Ownership & Use****General Description of Current Surface Use (within 860 feet of proposed surface location):**

Pasture and residential

See attached a list of surface owners and their respective addresses.

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See attached

Legal Description of Proposed Well Site

2167' FNL & 1950' FWL

Southwest Quarter of the Northwest Quarter (SW/4NW/4) Section 9, Block X, H. P. Hilliard Survey, Midland County, Texas

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)]. *ATTACHED AS EXHIBIT H* is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)]. *ATTACHED AS EXHIBIT I* is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (*also file copy of W-1 with City Secretary before commencement of drilling operations*). [See § J(16) and (20)]. *ATTACHED AS EXHIBIT J* is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)]. *ATTACHED AS EXHIBIT K (if applicable)* is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)]. *ATTACHED AS EXHIBIT L* is the Fencing and Irrigation Plan. [See § J(30)]. *ATTACHED AS EXHIBIT M* is the Road Repair Agreement and *Letter of Credit/Certificate of Deposit/Surety Bond* in the amount of at least \$75,000. *Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable):* Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 *letter of credit/certificate of deposit/surety bond* in conjunction with this request. [See § J(31)]. *ATTACHED AS EXHIBIT N* is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)]. See attached

Description of Public Utilities required during (1) drilling and (2) operations: (1) Drilling: (2) Operations:

Electricity

TXU: 1-800-233-2133

Description of water source to be used during Drilling:

Water well on location

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

See attached plat

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: See attached

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)]. *ATTACHED AS EXHIBIT Q* are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)]. *ATTACHED AS EXHIBIT R* is the required Insurance Certificate. [See § J(19) and § K(3)]. *ATTACHED AS EXHIBIT S (if applicable)* is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)]. *ATTACHED AS EXHIBIT T* is Applicant's Emergency Action Response Plan. [See § J(22)]. *ATTACHED AS EXHIBIT U* is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

[SIGNATURE PAGE FOLLOWS]

CERTIFICATION OF APPLICATION

My name is Michael A. Short. I am General Counsel, Vice President, Land for Endeavor Energy Resources, LP.

I hereby certify that the information contained in this application is true and correct.

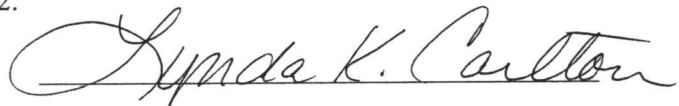


Michael A. Short
General Counsel, Vice President, Land
Endeavor Energy Resources, L.P.

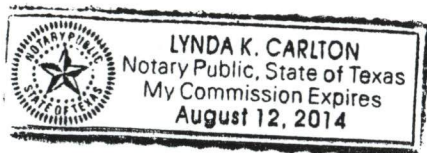
THE STATE OF §
 §
County of Midland §

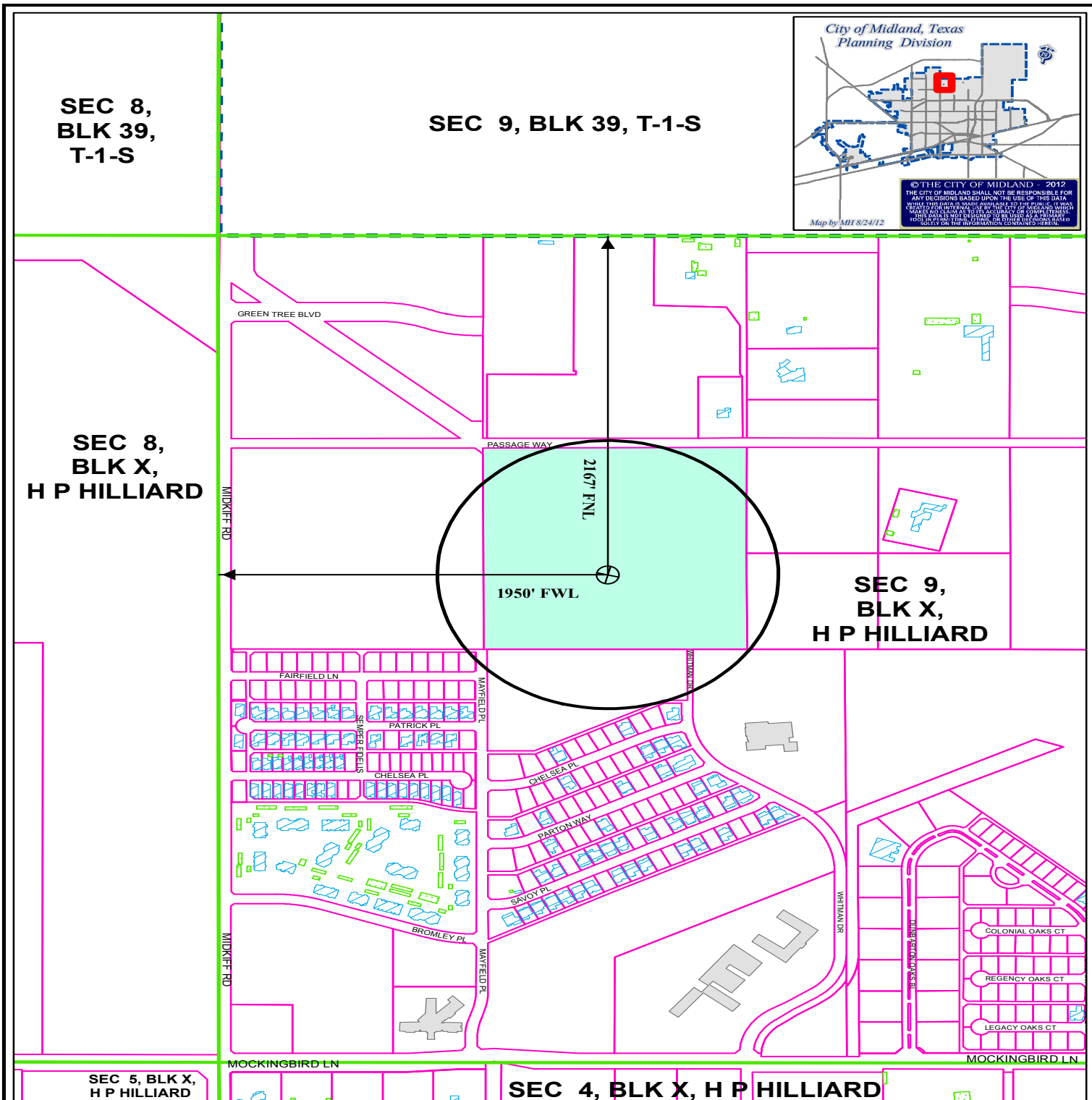
Before me, undersigned authority, on this day personally appeared Michael A. Short, General Counsel, Vice President, Land of Endeavor Petroleum, L.L.C., a Texas limited liability company, in its capacity as General Partner of ENDEAVOR ENERGY RESOURCES, L.P., a Texas limited partnership, on behalf of said limited partnership.

Given under my hand and seal of office this the 13th day of
August, A.D. 2012.



Notary Public in and for the State of Texas





O - 12 - 018

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 2167' FNL and 1950' FWL, SW/4 of the NW/4 of Section 9, Block "X", H. P. Hilliard Survey, Midland County, Texas.

Chaps No. 3

LEGEND

	CITY PARCELS		PUBLIC BLDGS		CITY LIMITS
	COUNTY PARCELS		PRIVATE BLDGS		860 FT. BUFFER
	ZONING		ACCESSORY BLDGS		SURVEY SEC.

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	NS	NEIGHBORHOOD SERVICE
MH	MOBILE HOME DWELLING	LR1, LR2, LR3	LOCAL RETAIL
TH	TOWNHOUSE DWELLING	C1, C2, C3	COMMERCIAL
2F	TWO-FAMILY DWELLING	IP, JP1, IP2, IP3	INDUSTRIAL PARK
MF1, MF2	MULTIPLE FAMILY DWELLING	LI	LIGHT INDUSTRY
		HI	HEAVY INDUSTRY

RECEIVED

OCT 25 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

(59440) 8 9 (S-20114)

10 (74569)

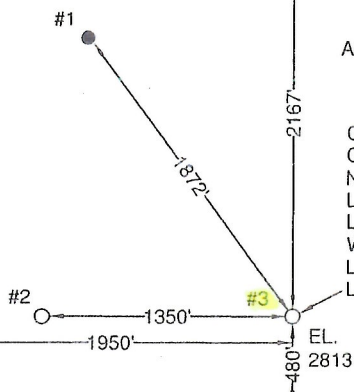
(S-44363) 8

ENDEAVOR ENERGY
RESOURCES, L.P.

(S-44365) 9 10 (S-44366)

Abstract No. 1275
323.2 Acres

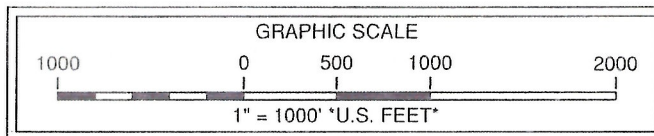
GRID N:(Y) 874008.412
GRID E:(X) 1443299.762
NAD'27 Lat/Long:
Latitude: +32°03'26.467"
Longitude: -102°07'48.408"
WGS'84 Lat/Long:
Latitude: +32°03'26.902"
Longitude: -102°07'49.911"



Block X, H. P. Hilliard Survey
Midland County, Texas

(S-44361) 5 4 (S-44360)

3 (S-44359)



Note: City of Midland, Texas from well location bears S 35°07'49" E, 5.1 miles.
Note: Survey Reconstruction filed in the Office of Pennell & Marlowe Land Surveyors, Inc.
Note: Acreages shown have been converted to surface acreages.
Note: Coordinates shown herein are on The Texas Coordinate System of 1927, Central Zone.
Note: Example: (S-99999) indicates General Land Office file number.

USGS Quadrangle Sheet: Northwest Midland, Tex.

Railroad Commission Permit Plat

ENDEAVOR ENERGY RESOURCES, L.P.

Chaps #3

2167' FROM NORTH LINE

1950' FROM WEST LINE

Chaps Lease

323.2 Acres being the N/2 of

Section 9, Block X

H. P. Hilliard Survey

Midland County, Texas

Scale: 1" = 1000'



October 19, 2008

081019B3

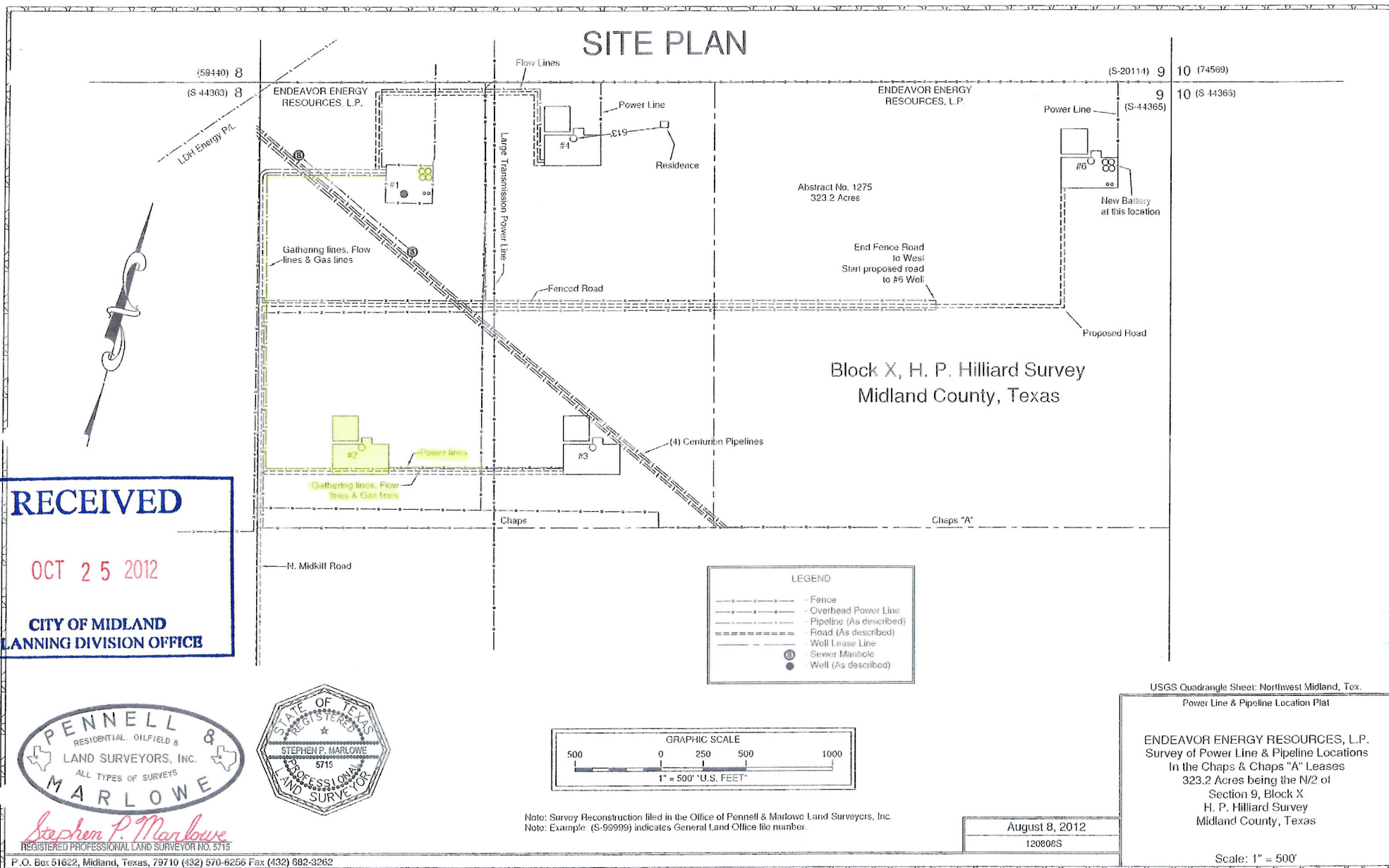
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5715

P.O. Box 51622, Midland, Texas, 79710 (432) 570-6256 Fax (432) 682-3262

DRILL SITE MAP

0-12-018

58.6



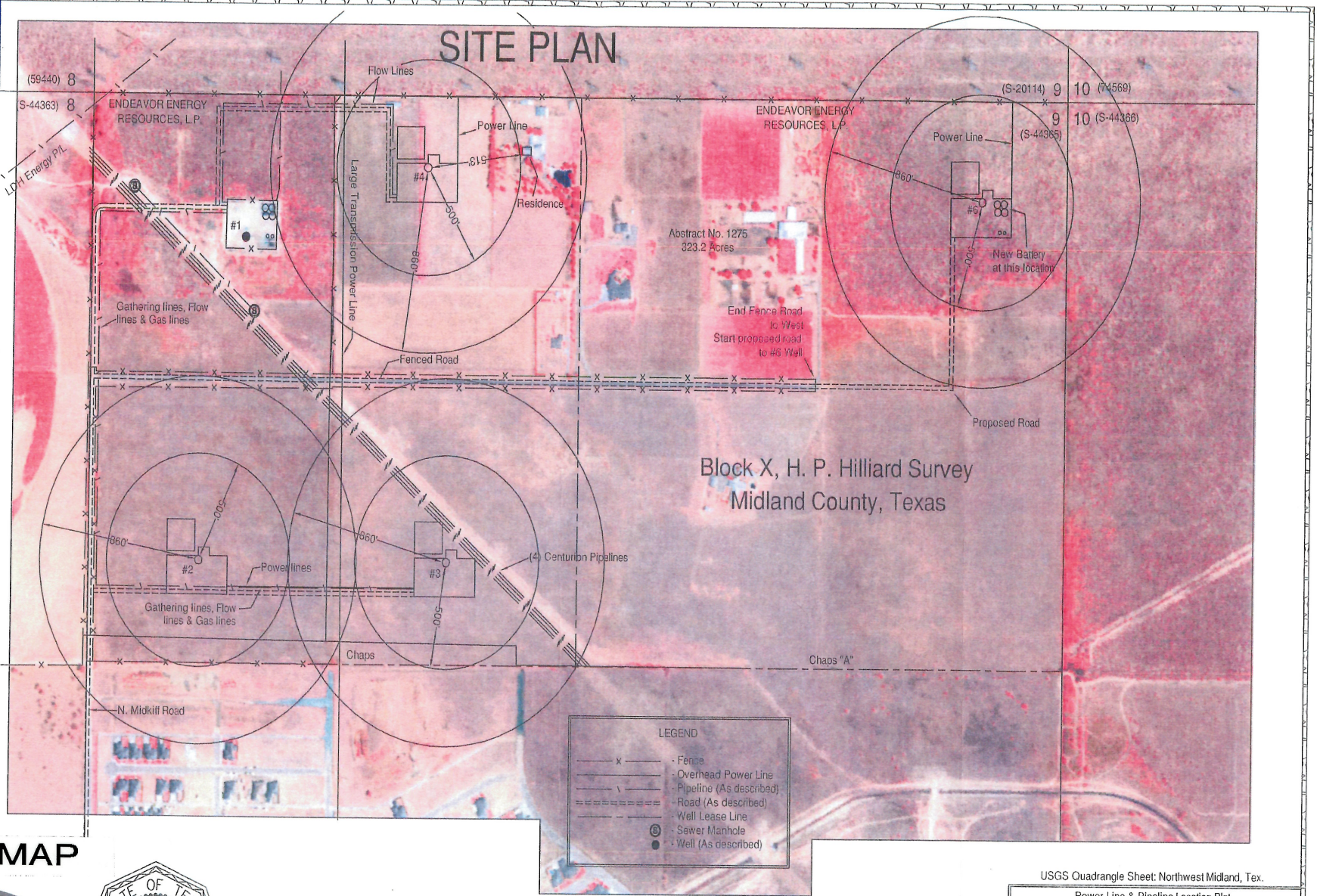
FLOW LINE MAP

0-12-018

RECEIVED

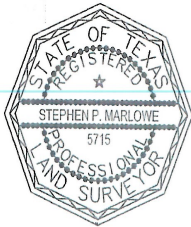
OCT 25 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE



Block X, H. P. Hilliard Survey
Midland County, Texas

AERIAL MAP



Stephen P. Marlowe
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5715

O. Box 51622, Midland, Texas, 79710 (432) 570-6256 Fax (432) 682-3262

Note: Survey Reconstruction filed in the Office of Pennell & Marlowe Land Surveyors, Inc.
Note: Example: (S-99999) indicates General Land Office file number.

August 8, 2012

120808S2

USGS Quadrangle Sheet: Northwest Midland, Tex.
Power Line & Pipeline Location Plat

ENDEAVOR ENERGY RESOURCES, L.P.
Survey of Power Line & Pipeline Locations
In the Chaps & Chaps "A" Leases
323.2 Acres being the N/2 of
Section 9, Block X
H. P. Hilliard Survey
Midland County, Texas

Scale: 1" = 500'

58.8

0-12-018



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, AICP

SUBJECT: Hold a public hearing at approximately 10:57 a.m. and consider an ordinance establishing the initial zoning of annexed property (Tract 1), being a 283.36-acre tract of land out of Sections 11 & 12, Block 40, T-2-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located on the northeast corner of W. Interstate 20 and SCR 1250)

Purpose: Hold a public hearing at approximately 10:57 a.m. and consider an ordinance establishing the initial zoning of annexed property (Tract 1), being a 283.36-acre tract of land out of Sections 11 & 12, Block 40, T-2-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located on the northeast corner of W. Interstate 20 and SCR 1250)

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process the initial zoning of this property.

Discussion:

This land was recently annexed and it is now appropriate for the Council to consider an ordinance establishing the initial zoning. There are three owners; Schlumberger Corporation, the Midland Development Corporation and the City of Midland. A portion of this land is under development by Schlumberger. Staff anticipates that the proposed BP, I-20 Business Park zoning will permit continued development by all affected owners. No letters of opposition have been received.

Attachments:

Map; Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 283.36-ACRE TRACT OF LAND OUT OF SECTIONS 11 AND 12, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF, AS A BP, I-20 BUSINESS PARK DISTRICT; SAID TRACT IS GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF WEST INTERSTATE 20 AND SOUTH COUNTY ROAD 1250; 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, notice has been given to all parties in interest and citizens by publication in the official newspaper and otherwise, of a hearing to be held before the City Council on November 13, 2012, to consider amendments to the zoning regulations and map establishing the zoning classification of the property described in Section One hereof as a BP, I-20 Business Park District as set out in Section 11-1-6 of the City Code of Midland, Texas; and

WHEREAS, such a public hearing was held in the Council Chambers beginning at 10:57 a.m. on said November 13, 2012, as advertised; and

WHEREAS, after a full hearing, at which all parties in interest and citizens were given an opportunity to be heard; and after considering among other things, the character of the property involved and the surrounding area and its peculiar suitability for particular uses; and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality, the Council finds it to be in the best interest of the health, safety, morals and general welfare of the City of Midland to amend the zoning regulations accordingly;

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

SECTION ONE. That the zoning classification of the area indicated as Tract 1 on Exhibit "A", attached hereto and incorporated herein by reference, is hereby established as

a BP, I-20 Business Park District.

SECTION TWO. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION THREE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. The 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 FIVE. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the day of , A.D., 2012; and passed to second reading on motion of Council member , seconded by Council member , by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the

following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

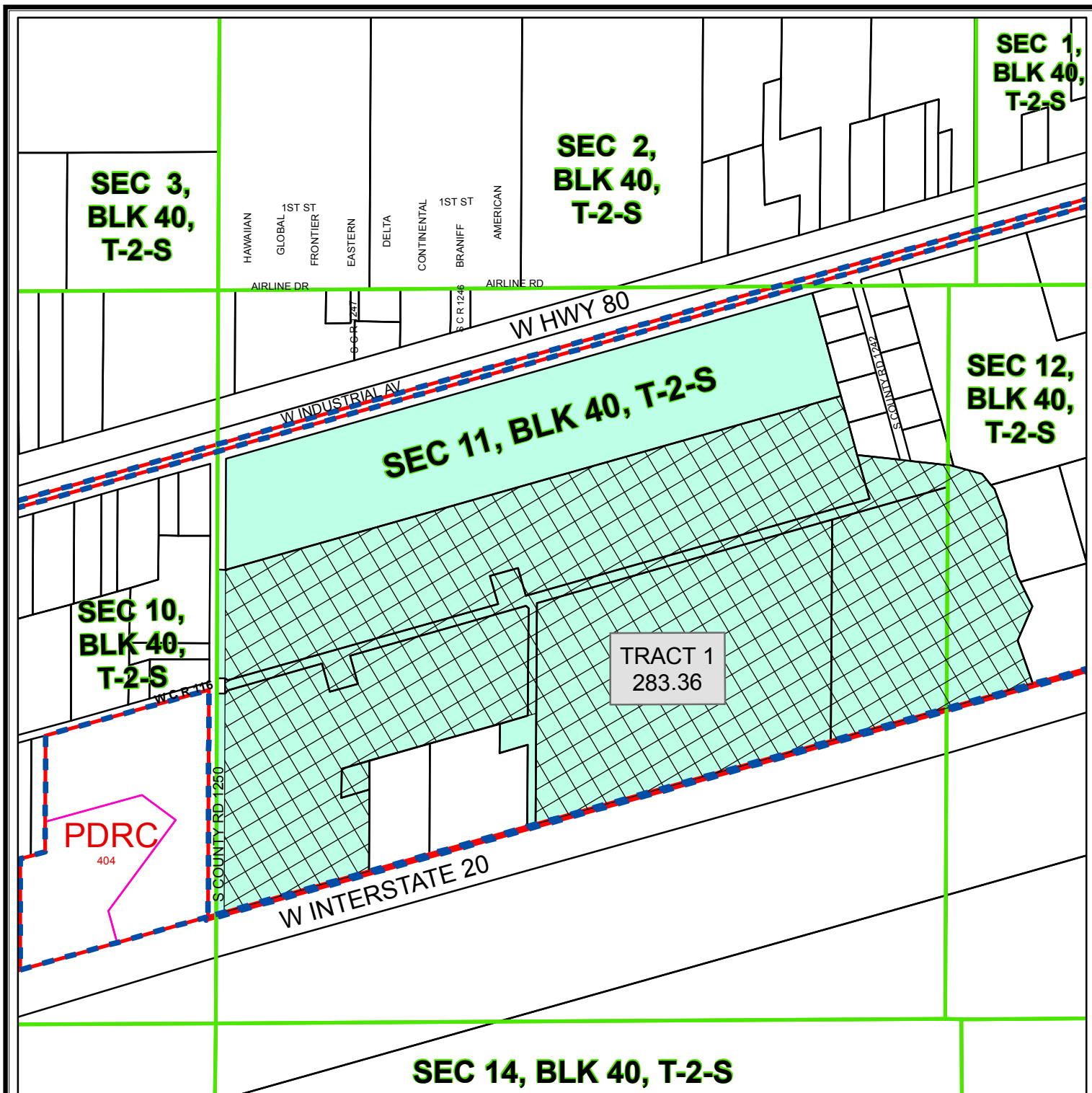
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



LOCATION & ZONING MAP

Z - 12 - 042

Scale: 1" = 1000'

TRACT 1

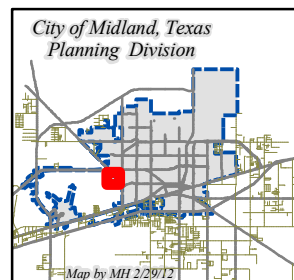
Consider the initial zoning of annexed land to BP, I-20 Business Park District on a 283.36-acre tract of land out of Sections 11 and 12, Block 40, T-2-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

- CITY LIMITS
- CITY PARCEL
- COUNTY PARCEL
- ZONING
- SURVEY SECTION

ZONING DISTRICTS:

PD - PLANNED DISTRICT



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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC. IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, GRANTING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 11/13/2012

TO: City Council / City Manager

FROM: Cameron Walker, Planning Division Manager

SUBJECT: At approximately 11:00 A.M. hold a public hearing and consider the initial zoning of annexed land to PD, Planned District for an Office Center, on a 29.82-acre tract of land (Tract 2A) out of Sections 37 and 38, Block 40, T-1-S, T & P RR Co. Survey; to PD, Planned District for an Office Center on a 21.87-acre tract of land (Tract 2B); to PD, Planned District for a Housing Development on a 16.13-acre tract of land (Tract 2C); to LR-2, Local Retail District on a 11.71-acre tract of land (Tract 2D); and to LR-2, Local Retail District on a 2.29-acre tract of land (Tract 2E), all out of Section 37, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas. (Generally located on the southwest corner of the intersection of Tradewinds Boulevard and Deauville Boulevard.)

Purpose:

At approximately 11:00 A.M. hold a public hearing and consider the initial zoning of annexed land to PD, Planned District for an Office Center, on a 29.82-acre tract of land (Tract 2A) out of Sections 37 and 38, Block 40, T-1-S, T & P RR Co. Survey; to PD, Planned District for an Office Center on a 21.87-acre tract of land (Tract 2B); to PD, Planned District for a Housing Development on a 16.13-acre tract of land (Tract 2C); to LR-2, Local Retail District on a 11.71-acre tract of land (Tract 2D); and to LR-2, Local Retail District on a 2.29-acre tract of land (Tract 2E), all out of Section 37, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas. (Generally located on the southwest corner of the intersection of Tradewinds Boulevard and Deauville Boulevard.)

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

This land was recently annexed and it is now appropriate for the Council to consider an ordinance establishing the initial zoning of these five contiguous tracts that encompass approximately 76 acres. This land is located in a significant growth area where both hotel and residential growth is occurring. The Scharbauer Sports Complex is located to the east. The property owner has requested that this land is zoned PD, Planned District for an Office Center, with a maximum height not to exceed 67 feet for both Tracts 2A & 2B, with each of the tracts generally being subject to O-2, Office District regulations. Each tract shall also be subject to administrative site plan review. Tract 2C is requested to be zoned PD, Planned District for a Housing Development, with a maximum density of 17 dwelling units per acre, with the tract being subject to MF-1, Multi-Family Dwelling District, regulations in all other respects. City Council approval of the site plan for any future apartment complex on Tract 2C will be required. Tracts 4D & 4E are both requested to be zoned LR-2, Local Retail District.

Attachments:

Map
Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 29.82-ACRE TRACT OF LAND OUT OF SECTIONS 37 AND 38, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS (“TRACT 2A”), AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF, AS A PD, PLANNED DISTRICT FOR AN OFFICE CENTER; ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 21.87-ACRE TRACT OF LAND (“TRACT 2B”), AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION TWO HEREOF, AS A PD, PLANNED DISTRICT FOR AN OFFICE CENTER; ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 16.13-ACRE TRACT OF LAND (“TRACT 2C”), AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION THREE HEREOF, AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 11.71-ACRE TRACT OF LAND (“TRACT 2D”), AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION FOUR HEREOF, AS AN LR-2, LOCAL RETAIL DISTRICT; ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 2.29-ACRE TRACT OF LAND (“TRACT 2E”), AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION FIVE HEREOF, AS AN LR-2, LOCAL RETAIL DISTRICT; TRACTS 2B-2E ARE ALL OUT OF SECTION 37, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; SAID TRACTS ARE GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF TRADEWINDS BOULEVARD AND DEAUVILLE BOULEVARD; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, notice has been given to all parties in interest and citizens by publication in the official newspaper and otherwise, of a hearing to be held before the City Council on November 13, 2012, to consider amendments to the zoning regulations and map establishing the zoning classification of the property described in Section One hereof as a PD, Planned District for a Office Center as set out in Section 11-1-6 of the City Code of Midland, Texas;

and

WHEREAS, notice has been given to all parties in interest and citizens by publication in the official newspaper and otherwise, of a hearing to be held before the City Council on November 13, 2012, to consider amendments to the zoning regulations and map establishing the zoning classification of the property described in Section Two hereof as a PD, Planned District for an Office Center as set out in Section 11-1-6 of the City Code of Midland, Texas; and

WHEREAS, notice has been given to all parties in interest and citizens by publication in the official newspaper and otherwise, of a hearing to be held before the City Council on November 13, 2012, to consider amendments to the zoning regulations and map establishing the zoning classification of the property described in Section Three hereof as a PD, Planned District for a Housing Development as set out in Section 11-1-6 of the City Code of Midland, Texas; and

WHEREAS, notice has been given to all parties in interest and citizens by publication in the official newspaper and otherwise, of a hearing to be held before the City Council on November 13, 2012, to consider amendments to the zoning regulations and map establishing the zoning classification of the property described in Section Four hereof as an LR-2, Local Retail District as set out in Section 11-1-6 of the City Code of Midland, Texas; and

WHEREAS, notice has been given to all parties in interest and citizens by publication in the official newspaper and otherwise, of a hearing to be held before the City Council on November 13, 2012, to consider amendments to the zoning regulations and map establishing the zoning classification of the property described in Section Five hereof as a LR-2, Local Retail District as set out in Section 11-1-6 of the City Code of Midland, Texas; and

WHEREAS, such a public hearing was held in the Council Chambers beginning at 11:00 a.m. on said November 13, 2012, as advertised; and

WHEREAS, after a full hearing, at which all parties in interest and citizens were

given an opportunity to be heard; and after considering among other things, the character of the property involved and the surrounding area and its peculiar suitability for particular uses; and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality, the Council finds it to be in the best interest of the health, safety, morals and general welfare of the City of Midland to amend the zoning regulations accordingly;

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

SECTION ONE. That the zoning classification of the area indicated as Tract 2A on Exhibit “A”, attached hereto and incorporated herein by reference, is hereby established as a PD, Planned District for an Office Center.

Tract 2A shall be subject to the following special conditions and restrictions:

1. That this planned district for an office center, unless expressly stated otherwise, shall be governed by O-2, Office District, regulations.
2. That the maximum building height shall not exceed 67 feet.
3. That the south setback line shall be 50 feet for any structure that exceeds two standard stories.
4. That the development of this lot shall be subject to administrative review and any alterations required will be as a result of staff review.

SECTION TWO. That the zoning classification of the area indicated as Tract 2B on Exhibit “B”, attached hereto and incorporated herein by reference, is hereby established as a PD, Planned District for an Office Center.

Tract 2B shall be subject to the following special conditions and restrictions:

1. That this planned district for an office center, unless expressly stated otherwise, shall be governed by O-2, Office District, regulations.
2. That the maximum building height shall not exceed 67 feet.
3. That the south setback line shall be 50 feet for any structure that exceeds two standard stories, unless abutting a drainage basin, then the standard setback applies.
4. That the development of this lot shall be subject to administrative review and

any alterations required will be as a result of staff review.

SECTION THREE. That the zoning classification of the area indicated as Tract 2C on Exhibit “C”, attached hereto and incorporated herein by reference, is hereby established as a PD, Planned District for a Housing Development.

Tract 2C shall be subject to the following special conditions and restrictions:

1. That this planned district for a housing development, unless expressly stated otherwise, shall be governed by MF-1, Multi-Family District, regulations.
2. That the maximum density permitted shall be 17 dwelling units per acre.

SECTION FOUR. That the zoning classification of the area indicated as Tract 2D on Exhibit “D”, attached hereto and incorporated herein by reference, is hereby established as an LR-2, Local Retail District.

SECTION FIVE. That the zoning classification of the area indicated as Tract 2E on Exhibit “D”, attached hereto and incorporated herein by reference, is hereby established as an LR-2, Local Retail District.

SECTION SIX. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION SEVEN. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION EIGHT. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code

of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION NINE. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the day of , A.D., 2012; and passed to second reading on motion of Council member , seconded by Council member , by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member , seconded by Council member , on the day of , A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS day of , A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**PD-OC ZONING TRACT
TRACT 2A
LEGAL DESCRIPTION FOR A 29.82 ACRE TRACT
LOCATED IN SECTIONS 37 AND 38, BLOCK 40,
T-1-S, T. & P. RR. CO. SURVEY, MIDLAND COUNTY, TEXAS**

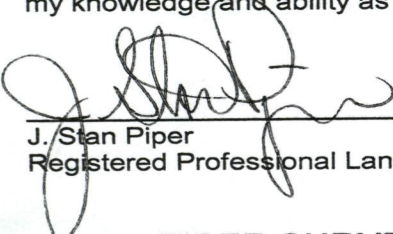
Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,692,757.30' E= 1,727,490.00') a point in the West right-of-way line of proposed Avalon Drive at the Northwest corner of this tract, from whence the Northwest corner of said Section 37, and the Northeast corner of said Section 38 bears S75°15'55"W, a distance of 50.79 feet and N14°25'48"W a distance of 1007.53 feet;

1. THENCE N75°13'55"E with the centerline of Deauville Boulevard, a distance of 1220.12 feet to the Northwest corner of a 21.87 Acre PD-OC Zoning Tract described this day and the Northeast corner of this tract;
2. THENCE S14°25'48"E with the West line of said PD-OC Zoning Tract, a distance of 866.82 feet to a point of curvature of this tract;
3. THENCE with the West line of said PD-OC Zoning Tract along a curve to the right in an Southerly direction, with a radius of 275.00 feet, a delta angle of 39°34'30", an arc length of 189.95 feet, and a chord length of 186.19 feet, which bears S05°21'27"W, to the Southwest corner of said PD-OC Zoning Tract and the Southeast corner of this tract;
4. THENCE S76°13'03"W with the North boundary line of said 108.712 Acre Tract as described in Instrument 2009-19786 Official Public Records of Midland County and the South line of a 75.90 Acre Tract previously surveyed on July 2, 2012, a distance of 1207.94 feet to a ½" iron rod with a plastic cap marked "RPLS 4413" found in the common line of said Sections 37 and 38 at the Northwest corner of said 108.712 Acre Tract;
5. THENCE S75°34'12"W with said South line of a 75.90 Acre Tract, a distance of 60.00 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at the Southwest corner of said 75.90 Acre Tract and this tract;
6. THENCE with the proposed West ROW line of Avalon Drive, along a curve to the right in a Northerly direction with a radius of 1560.00 feet, a delta angle of 13°23'55", an arc length of 364.81 feet, a chord length of 363.98 feet which bears N07°43'51"W, to a ½" iron rod with a plastic cap marked "PLS 1974" set at a point of tangency of said ROW line and this tract;
7. THENCE N01°01'53"W with the said proposed West ROW line, at 75.69 feet pass the East line of said Section 38 and the West line of said Section 37, continuing for a total distance of 164.19 feet to a ½" iron rod with a plastic cap marked "PLS 1974" set at a point of curvature corner of this tract;
8. THENCE with the said proposed West ROW line, along a curve to the left in a Northerly direction, with a radius of 1440.00 feet, a delta angle of 17°39'48", an arc length of 443.93 feet, with a chord length of 442.17 feet, which bears N09°51'47"W to a ½" iron rod with a plastic cap marked "PLS 1974" set at a compound curve of this tract;
9. THENCE with a West line of said Westridge Park, Addition, Section 6 along a curve to the left in a Northerly direction with a radius of 4440.00 feet, a delta angle of 0°45'59", an arc length of 59.40 feet, and a chord length of 59.40 feet which bears N19°11'31"W, to the **PLACE OF BEGINNING**, having an area of 1,299,166 square feet or 29.82 Acres.

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone, with a combined grid factor of 0.9998958, and a theta angle equal to -0°54'48.39" at U.S.C. & G. station "MIDLAND" with published values of Y= 10,690,154.70 and X= 1,746,696.78 in U.S. Survey Feet.

I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this legal description is based on an actual survey made by me or under my supervision, and that the same is true and correct to the best of my knowledge and ability as surveyed on the ground July 2, 2012.


J. Stan Piper
Registered Professional Land Surveyor

Prepared for:
Parkhill, Smith, and Cooper, Inc.
1700 West Wall St. Suite 100
Midland, TX 79701

PIPER SURVEYING P.O. BOX 60432, MIDLAND, TX, 79711, 432-550-7810

**PD-OC ZONING TRACT
TRACT 2B
LEGAL DESCRIPTION FOR A 21.87 ACRE TRACT
LOCATED IN SECTION 37, BLOCK 40, T-1-S,
T. & P. RR. CO. SURVEY, MIDLAND COUNTY, TEXAS**

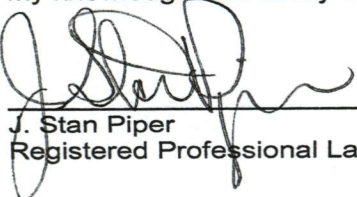
Boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,693,068.32' E= 1,728,669.81') a point on the centerline of Deauville Boulevard at the Northeast corner of a 29.82 Acre PD-OC Zoning Tract described this day and the Northwest corner of this tract, from whence the Northwest corner of said Section 37, and the Northeast corner of said Section 38 bears S75°13'55"W, a distance of 1270.91 feet and N14°25'48"W a distance of 1007.53 feet;

1. THENCE N75°13'55"E with the centerline of Deauville Boulevard, a distance of 310.22 feet to a point of curvature of this tract;
2. THENCE with a curve to the right in an Easterly direction with said centerline, along a radius of 2000.00 feet, a delta angle of 22°34'28", an arc length of 788.00 feet, and a chord length of 782.91 feet, which bears N86°31'10"E, to the Northwest corner of said PD-HD Zoning Tract, being a 16.14 Acre Tract described this day and the Northeast corner of this tract;
3. THENCE S7°06'53"W with the West line of said PD- HD Zoning Tract, a distance of 736.80 feet to a ½" iron rod with a plastic cap marked "PLS 1974" previously set at an exterior corner of said PD- HD Zoning Tract and an interior corner of this tract;
4. THENCE S82°53'07"E with a South line of said PD- HD Zoning Tract, a distance of 15.00 feet to a ½" iron rod with a plastic cap marked "PLS 1974" previously set at an interior corner of said PD- HD Zoning Tract and an exterior corner of this tract;
5. THENCE S7°06'53"W with the West line of said PD- HD Zoning Tract, a distance of 312.80 feet to a ½" iron rod with a plastic cap marked "PLS 1974" previously set at the Southwest corner of said PD- HD Zoning Tract and the Southeast corner of this tract;
6. THENCE N76°33'46"W with the North boundary line of a Storm Water Detention Basin for Legends Park, a distance of 19.96 feet to a corner of this tract and said Legends Park;
7. THENCE N86°55'08"W with the North boundary line of a Storm Water Detention Basin for Legends Park, a distance of 172.71 feet to a corner of this tract and said Legends Park;
8. THENCE S82°28'46"W with the North boundary line of a Storm Water Detention Basin for Legends Park, a distance of 171.39 feet to a corner of this tract and said Legends Park ;
9. THENCE S76°13'03"W with the North boundary line of said 108.712 Acre Tract as described in Instrument 2009-19786 Official Public Records of Midland County, a distance of 417.96 feet to the Southeast corner of said PD-OC Zoning Tract and the Southwest corner of this tract ;
10. THENCE with the East line of said PD-OC Zoning Tract, along a curve to the left in a Northerly direction, with a radius of 275.00 feet, a delta angle of 39°34'30", an arc length of 189.95 feet, with a chord length of 186.19 feet, which bears N05°21'27"E to a point of tangency;
11. THENCE N14°25'58"W with the East line of said PD-OC Zoning Tract, a distance of 866.82 feet to the **PLACE OF BEGINNING**, having an area of 952,561 square feet or 21.87 Acres.

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone, with a combined grid factor of 0.9998958, and a theta angle equal to -0°54'48.39" at U.S.C. & G. station "MIDLAND" with published values of Y= 10,690,154.70 and X= 1,746,696.78 in U.S. Survey Feet.

I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this legal description is based on an actual survey made by me or under my supervision, and that the same is true and correct to the best of my knowledge and ability as surveyed on the ground July 2, 2012.



J. Stan Piper
Registered Professional Land Surveyor

Prepared for:
Parkhill, Smith, and Cooper, Inc.
1700 West Wall St. Suite 100
Midland, TX 79701

PIPER SURVEYING P.O. BOX 60432, MIDLAND, TX, 79711, 432-550-7810

**PD-HD ZONING TRACT
TRACT 2C
LEGAL DESCRIPTION FOR A 16.13 ACRE TRACT
LOCATED IN SECTION 37, BLOCK 40, T-1-S,
T. & P. RR. CO. SURVEY, MIDLAND COUNTY, TEXAS**

Boundary being further described by metes and bounds as follows:

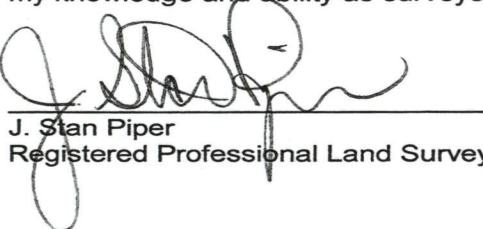
BEGINNING at (N= 10,693,194.93' E= 1,729,751.25') at a point on the centerline of Deauville Boulevard and the Northeast corner of a PD-OC Zoning Tract, being a 21.87 Acre Tract described this day from whence the Northwest corner of said Section 37, Block 40, T-1-S, bears N14°44'31"W, a distance of 1159.68 feet and S75°15'29"W, a distance of 2343.57 feet;

1. THENCE around a curve to the right in an Easterly direction, along the centerline of Deauville Boulevard, with a radius of 2000.00 feet, a delta angle of 6°56'07", an arc length of 242.08 feet, and a chord length of 241.94 feet which bears S78°43'33"E to a point of tangency;
2. THENCE S75°15'30"E the centerline of Deauville Boulevard, a distance of 330.96 feet to the most Northerly Northeast corner of this tract and the Northwest corner of LR-2 Zoning Tract, being a 11.79 acre tract described this day;
3. THENCE S14°44'30"W with the West line of said LR-2 Zoning Tract, a distance of 715.00 feet to 1/2" iron rod with a plastic cap marked "PLS 1974" set at the Southwest corner of said LR-2 Zoning Tract, and an interior corner of this tract;
4. THENCE S75°15'30"E with the South line of said LR-2 Zoning Tract a distance of 620.02 feet to an exterior corner of said LR-2 Zoning Tract and an interior corner of this tract;
5. THENCE N84°10'36"E with the South line of said LR-2 Zoning Tract a distance of 42.70 feet to an interior corner of said LR-2 Zoning Tract, being a 11.79 Acre Tract and an exterior corner of this tract;
6. THENCE S75°15'30"E with the South line of said LR-2 Zoning Tract a distance of 55.00 feet to the Southeast corner of said LR-2 Zoning Tract to the most Easterly Northeast corner of this tract;
7. THENCE S14°44'30"W with the centerline of Tradewinds Boulevard, a distance of 4.15 feet to a point of curvature;
8. THENCE around a curve to the left in a Southerly direction with the centerline of Tradewinds Boulevard, with a radius of 3000.00 feet, a delta angle of 1°25'22", an arc length of 74.49 feet, and a chord length of 74.49 feet which bears S14°01'49"W to the Northeast corner of a LR-2 Zoning Tract, being a 2.29 Acre Tract described this day and the most easterly Southeast corner of this tract;
9. THENCE N76°40'51"W with a North line of said LR-2 Zoning Tract, being a 2.29 Acre Tract, a distance of 55.00 feet to a point on the West right-of-way line of Tradewinds Boulevard at an interior corner of said LR-2 Zoning Tract, being a 2.29 Acre Tract and an exterior corner of this tract;
10. THENCE N54°52'03"W with a North line of said LR-2 Zoning Tract, being a 2.29 Acre Tract, a distance of 43.04 feet to an exterior corner of said LR-2 Zoning Tract, being a 2.29 Acre Tract and an interior corner of this tract;
11. THENCE N75°15'30"W with a North line of said LR-2 Zoning Tract, being a 2.29 Acre Tract, a distance of 155.40 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" set at the Northwest corner of said LR-2 Zoning Tract, being a 2.29 Acre Tract and an interior corner of this tract;

12. THENCE S14°44'32"W with the West line of said LR-2 Zoning Tract, being a 2.29 Acre Tract, a distance of 345.98 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" set at the Southwest corner of said 2.29 Acre Tract and the most Southerly Southeast corner of this tract;
13. THENCE N59°11'15"W with the North line of an alley and Legends Park, a distance of 183.49 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" previously set at an interior corner of this tract and an exterior corner of said Legends Park;
14. THENCE N73°58'32"W continuing with the North line of said alley and Legends Park, a distance of 516.83 feet to a 1/2" iron rod with a plastic cap marked "RPLS 4413" previously found at an interior corner of this tract and an exterior corner of said Legends Park;
15. THENCE N76°33'46"W continuing with the North line of said alley and Legends Park, a distance of 190.49 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" previously set at the Southeast corner of said 2.04 Acre Drainage Easement and the Southwest corner of this tract;
16. THENCE N07°06'53"E with an East line of said 2.04 Acre Drainage Easement, a distance of 312.80 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" previously set at an interior corner of this tract and an exterior corner of said Drainage Easement;
17. THENCE N82°53'07"W with a North line of said 2.04 Acre Drainage Easement, a distance of 15.00 feet to a 1/2" iron rod with a plastic cap marked "PLS 1974" previously set at an exterior corner of this tract;
18. THENCE N07°06'53"E with an East line of said 2.04 Acre Drainage Easement, a distance of 736.80 feet to the **PLACE OF BEGINNING**, having an area of 702,741 square feet or 16.13 Acres.

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone, with a combined grid factor of 0.9998958, and a theta angle equal to -0°54'48.39" at U.S.C. & G. station "MIDLAND" with published values of Y= 10,690,154.70 and X= 1,746,696.78 in U.S. Survey Feet.

I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this legal description is based on an actual survey made by me or under my supervision, and that the same is true and correct to the best of my knowledge and ability as surveyed on the ground July 2, 2012.


J. Stan Piper
Registered Professional Land Surveyor #1974

Prepared for:
Parkhill, Smith, and Cooper, Inc.
1700 West Wall St. Suite 100
Midland, TX 79701



PIPER SURVEYING P.O. BOX 60432, MIDLAND, TX, 79711, 432-550-7810

LR-2 ZONING TRACTS

LEGAL DESCRIPTION FOR A 2.29 AND A 11.71 ACRE TRACT LOCATED IN SECTION 37, BLOCK 40, T-1-S, T. & P. RR. CO. SURVEY, MIDLAND COUNTY, TEXAS

TRACT 2D

11.71 Acre LR-2 Zoning Tract boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,693,063.42' E= 1,730,308.58') at a point on the centerline of Deauville Boulevard and the Northeast corner of a 51.69 Acre PD-OC Zoning Tract, described this day, from whence the Northwest corner of said Section 37, Block 40, T-1-S, bears N14°44'31"W, a distance of 1428.68 feet and S75°15'29"W, a distance of 2849.09 feet;

1. THENCE S75°15'30"E with the centerline of Deauville Boulevard, a distance of 715.00 feet to the Northeast corner of this tract;
2. THENCE S14°44'30"W with the centerline of Tradewinds Boulevard, a distance of 700.00 feet to the most Easterly Northeast corner of a 16.13 Acre PD-HD Zoning Tract described this day and the Southeast corner of this tract;
3. THENCE N75°15'30"W with the North line of said PD-HD Zoning Tract, a distance of 55.00 feet to an exterior corner of said PD-HD Zoning Tract and an interior corner of this tract;
4. THENCE S84°10'36"W with the North line of said PD-HD Zoning Tract, a distance of 42.70 feet to an interior corner of said PD-HD Zoning Tract and an exterior corner of this tract;
5. THENCE N75°15'30"W with the North line of said PD-HD Zoning Tract, a distance of 620.02 feet to an interior corner of said PD-HD Zoning Tract and the Southwest corner of this tract;
6. THENCE N14°44'30"E an East line of said PD-HD Zoning Tract, a distance of 715.00 feet to the **PLACE OF BEGINNING**, having an area of 510,097 square feet or 11.71 Acres.

TRACT 2E

2.29 Acre LR-2 Zoning Tract boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,691,870.63' E= 1,730,475.76') at a ½" iron rod with plastic cap marked "PLS 1974 previously set at the most Southerly Southeast corner of a 16.13 Acre PD-HD Zoning Tract described this day, and the Southwest corner of this tract, from whence the Northwest corner of said Section 37, Block 40, T-1-S, bears S75°34'12"W, a distance of 2721.44 feet and N14°25'48"W, a distance of 2609.97 feet;

1. THENCE N14°44'32"E with the an East line of said 16.13 Acre PD-HD Zoning Tract, a distance of 345.98 feet to a ½" iron rod with plastic cap marked "PLS 1974 previously set at an interior corner of said 16.13 Acre PD-HD Zoning Tract and the Northwest corner of this tract;
2. THENCE S75°15'30"E with a South line of said PD-HD Zoning Tract, a distance of 155.40 feet to an interior corner of said PD-HD Zoning Tract and an exterior corner of this tract;
3. THENCE S54°52'03"E with a South line of said PD-HD Zoning Tract, a distance of 43.04 feet to an exterior corner of said PD-HD Zoning Tract and an interior corner of this tract;
4. THENCE S76°40'51"E with a South line of said PD-HD Zoning Tract, a distance of 55.00 feet to the most Easterly Southeast corner of said PD-HD Zoning Tract and the Northeast corner of this tract;
5. THENCE around a curve to the left in a Southerly direction with the centerline of Tradewinds Boulevard, with a radius of 3000.00 feet, a delta angle of 7°29'44", an arc length of 392.47 feet, and a chord length of 392.19 feet which bears S09°34'16"W to the Southeast corner of this tract;
6. THENCE N84°10'36"W, a distance of 55.00 feet to an exterior corner of this tract;
7. THENCE N59°11'15"W a distance of 241.17 feet to the **PLACE OF BEGINNING**, having an area of 99,957 square feet or 2.29 acres.

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone, with a combined grid factor of 0.9998958, and a theta angle equal to -0°54'48.39" at U.S.C. & G. station "MIDLAND" with published values of Y= 10,690,154.70 and X= 1,746,696.78 in U.S. Survey Feet.

I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this legal description is based on an actual survey made by me or under my supervision, and that the same is true and correct to the best of my knowledge and ability as surveyed on the ground July 2, 2012.


J. Stan Piper
Registered Professional Land Surveyor
Revised: August 29, 2012

Prepared for:
Parkhill, Smith, and Cooper, Inc.
1700 West Wall St. Suite 100
Midland, TX 79701

LR-2 ZONING TRACTS

LEGAL DESCRIPTION FOR A 2.29 AND A 11.71 ACRE TRACT LOCATED IN SECTION 37, BLOCK 40, T-1-S, T. & P. RR. CO. SURVEY, MIDLAND COUNTY, TEXAS

TRACT 2D

11.71 Acre LR-2 Zoning Tract boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,693,063.42' E= 1,730,308.58') at a point on the centerline of Deauville Boulevard and the Northeast corner of a 51.69 Acre PD-OC Zoning Tract, described this day, from whence the Northwest corner of said Section 37, Block 40, T-1-S, bears N14°44'31"W, a distance of 1428.68 feet and S75°15'29"W, a distance of 2849.09 feet;

1. THENCE S75°15'30"E with the centerline of Deauville Boulevard, a distance of 715.00 feet to the Northeast corner of this tract;
2. THENCE S14°44'30"W with the centerline of Tradewinds Boulevard, a distance of 700.00 feet to the most Easterly Northeast corner of a 16.13 Acre PD-HD Zoning Tract described this day and the Southeast corner of this tract;
3. THENCE N75°15'30"W with the North line of said PD-HD Zoning Tract, a distance of 55.00 feet to an exterior corner of said PD-HD Zoning Tract and an interior corner of this tract;
4. THENCE S84°10'36"W with the North line of said PD-HD Zoning Tract, a distance of 42.70 feet to an interior corner of said PD-HD Zoning Tract and an exterior corner of this tract;
5. THENCE N75°15'30"W with the North line of said PD-HD Zoning Tract, a distance of 620.02 feet to an interior corner of said PD-HD Zoning Tract and the Southwest corner of this tract;
6. THENCE N14°44'30"E an East line of said PD-HD Zoning Tract, a distance of 715.00 feet to the **PLACE OF BEGINNING**, having an area of 510,097 square feet or 11.71 Acres.

TRACT 2E

2.29 Acre LR-2 Zoning Tract boundary being further described by metes and bounds as follows:

BEGINNING at (N= 10,691,870.63' E= 1,730,475.76') at a ½" iron rod with plastic cap marked "PLS 1974 previously set at the most Southerly Southeast corner of a 16.13 Acre PD-HD Zoning Tract described this day, and the Southwest corner of this tract, from whence the Northwest corner of said Section 37, Block 40, T-1-S, bears S75°34'12"W, a distance of 2721.44 feet and N14°25'48"W, a distance of 2609.97 feet;

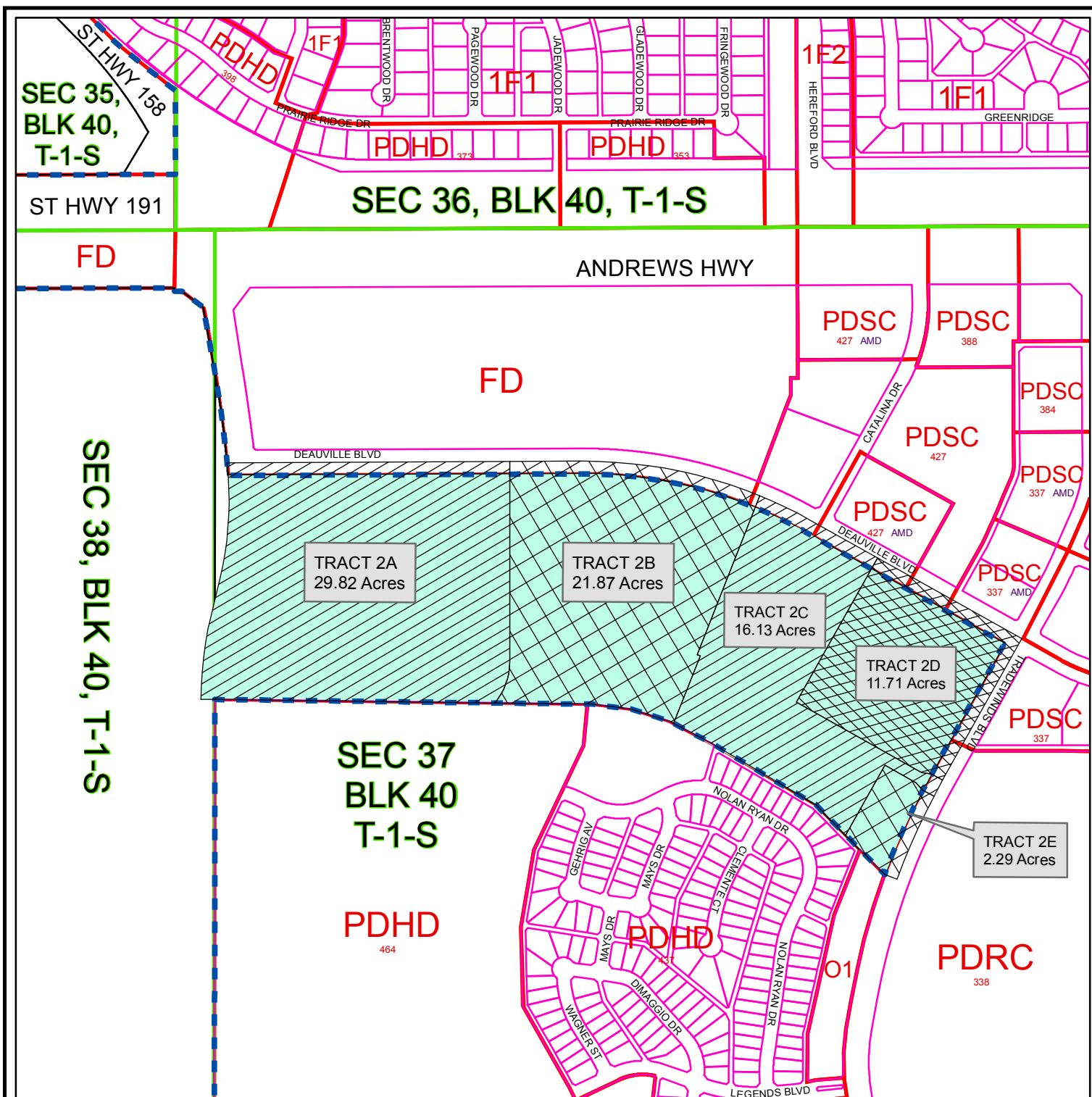
1. THENCE N14°44'32"E with the an East line of said 16.13 Acre PD-HD Zoning Tract, a distance of 345.98 feet to a ½" iron rod with plastic cap marked "PLS 1974 previously set at an interior corner of said 16.13 Acre PD-HD Zoning Tract and the Northwest corner of this tract;
2. THENCE S75°15'30"E with a South line of said PD-HD Zoning Tract, a distance of 155.40 feet to an interior corner of said PD-HD Zoning Tract and an exterior corner of this tract;
3. THENCE S54°52'03"E with a South line of said PD-HD Zoning Tract, a distance of 43.04 feet to an exterior corner of said PD-HD Zoning Tract and an interior corner of this tract;
4. THENCE S76°40'51"E with a South line of said PD-HD Zoning Tract, a distance of 55.00 feet to the most Easterly Southeast corner of said PD-HD Zoning Tract and the Northeast corner of this tract;
5. THENCE around a curve to the left in a Southerly direction with the centerline of Tradewinds Boulevard, with a radius of 3000.00 feet, a delta angle of 7°29'44", an arc length of 392.47 feet, and a chord length of 392.19 feet which bears S09°34'16"W to the Southeast corner of this tract;
6. THENCE N84°10'36"W, a distance of 55.00 feet to an exterior corner of this tract;
7. THENCE N59°11'15"W a distance of 241.17 feet to the **PLACE OF BEGINNING**, having an area of 99,957 square feet or 2.29 acres.

Bearings, distances, and coordinates are relative to the Texas State Plane Coordinate System, NAD 1983/86, Central Zone, with a combined grid factor of 0.9998958, and a theta angle equal to -0°54'48.39" at U.S.C. & G. station "MIDLAND" with published values of Y= 10,690,154.70 and X= 1,746,696.78 in U.S. Survey Feet.

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J. Stan Piper
Registered Professional Land Surveyor
Revised: August 29, 2012

Prepared for:
Parkhill, Smith, and Cooper, Inc.
1700 West Wall St. Suite 100
Midland, TX 79701



LOCATION & ZONING MAP

Z - 12 - 036

TRACT 2

Scale: 1" = 600'

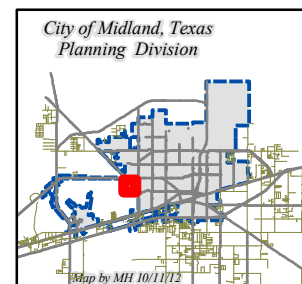
Consider the initial zoning of annexed land to PD, Planned District for an Office Center on a 29.82-acre tract of land (Tract 2A) out of Sections 37 and 38, Block 40, T-1-S, T & P RR Co. Survey; to PD, Planned District for an Office Center on a 21.87-acre tract of land (Tract 2B); to PD, Planned District for a Housing Development on a 16.13-acre tract of land (Tract 2C); to LR-2, Local Retail District on a 11.71-acre tract of land (Tract 2D); and to LR-2, Local Retail District on a 2.29-acre tract of land (Tract 2E), all out of Section 37, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

- CITY LIMITS
- CITY PARCEL
- COUNTY PARCEL
- ZONING
- SURVEY SECTION

ZONING DISTRICTS:

- LR - LOCAL RETAIL
- 01 - OFFICE DISTRICT
- 1F - FAMILY DWELLING
- PD - PLANNED DISTRICT
- FD - FUTURE DEVELOPMENT



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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA. WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CITING, OR OTHER DECISIONS SOLELY ON THE INFORMATION CONTAINED HEREIN.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, AICP

SUBJECT: Hold a public hearing at approximately 11:03 a.m. and consider an ordinance establishing the initial zoning of annexed property, being a 3.623-acre tract (Tract 3A) of land and a 27.347-acre tract (Tract 3B) all out of Section 35, Block 40, T-1-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located on the east side of SH 158, approximately ½ mile northwest of SH 191)

Purpose:

Hold a public hearing at approximately 11:03 a.m. and consider an ordinance establishing the initial zoning of annexed property, being a 3.623-acre tract (Tract 3A) of land and a 27.347-acre tract (Tract 3B) all out of Section 35, Block 40, T-1-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located on the east side of SH 158, approximately ½ mile northwest of SH 191)

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process the initial zoning of this property.

Discussion:

This land was recently annexed and it is now appropriate for the Council to consider an ordinance establishing the initial zoning. There is one property owner; SBC Corporation. This land will be developed as an extension of the Grassland Estates West neighborhood. Staff anticipates that the proposed zoning Districts – Tract 3A as a Planned District for a Housing Development and Tract 3B for a 1F-1, One-Family Dwelling District will permit continued residential development as the owner desires. No letters of opposition have been received.

Attachments: Map; Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 3.623-ACRE TRACT OF LAND (“TRACT 3A”), AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF, AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 27.347-ACRE TRACT OF LAND (“TRACT 3B”), AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION TWO HEREOF, AS A 1F-1, ONE-FAMILY DWELLING DISTRICT; SAID TRACTS ARE ALL OUT OF SECTION 35, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; SAID TRACTS ARE GENERALLY LOCATED ON THE EAST SIDE OF STATE HIGHWAY 158, APPROXIMATELY ½ MILE NORTHWEST OF STATE HIGHWAY 191; 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, notice has been given to all parties in interest and citizens by publication in the official newspaper and otherwise, of a hearing to be held before the City Council on November 13, 2012, to consider amendments to the zoning regulations and map establishing the zoning classification of the property described in Section One hereof as a PD, Planned District for a Housing Development as set out in Section 11-1-6 of the City Code of Midland, Texas; and

WHEREAS, notice has been given to all parties in interest and citizens by publication in the official newspaper and otherwise, of a hearing to be held before the City Council on November 13, 2012, to consider amendments to the zoning regulations and map establishing the zoning classification of the property described in Section Two hereof as a 1F-1, One-Family Dwelling District as set out in Section 11-1-6 of the City Code of Midland, Texas; and

WHEREAS, such a public hearing was held in the Council Chambers beginning at 11:03 a.m. on said November 13, 2012, as advertised; and

WHEREAS, after a full hearing, at which all parties in interest and citizens were

given an opportunity to be heard; and after considering among other things, the character of the property involved and the surrounding area and its peculiar suitability for particular uses; and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality, the Council finds it to be in the best interest of the health, safety, morals and general welfare of the City of Midland to amend the zoning regulations accordingly;

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

SECTION ONE. That the zoning classification of the area indicated as Tract 3A on Exhibit “A”, attached hereto and incorporated herein by reference, is hereby established as a PD, Planned District for a Housing Development.

Tract 3A shall be subject to the following special conditions and restrictions:

1. That the development of this property shall be subject to the regulations of the 1F-1, One-Family Dwelling District, regulations except as stated below.
2. That prior to issuance of any Certificate of Occupancy for any land abutting State Highway 158, a solid six-foot tall wooden screening fence with brick pilasters spaced at regular intervals shall be constructed in a common area adjacent to State Highway 158.
3. That no building permits shall be issued for this property until it has been platted, and said plat includes a common area adjacent to State Highway 158 to accommodate the screening fence described in Condition No. 2 above.
4. That the minimum front yard setback for the lots in this planned district shall be 15 feet.

SECTION TWO. That the zoning classification of the area indicated as Tract 3B on Exhibit “B”, attached hereto and incorporated herein by reference, is hereby established as a 1F-1, One-Family Dwelling District.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby

expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the day of , A.D., 2012; and passed to second reading on motion of Council member , seconded by Council member , by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member , seconded by Council member , on the day of , A.D., 2012, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS day of , A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



110 W. Louisiana Ave. Suite. 110
MIDLAND TEXAS 79701-3414
OFFICE (432) 687-0865 FAX (432) 687-0868
www.team-west.com

TRACT 3A

October 22, 2012

FIELD NOTES OF A 3.623 ACRE TRACT OF LAND OUT OF SECTION 35, BLOCK 40, T-1-S, T & P RR. COMPANY SURVEY, MIDLAND COUNTY, TEXAS:

NOTE: The following bearings, distances, coordinates, and area's shown hereon are based upon the Texas Plane Coordinate System, NAD 83, Texas Central Zone:

BEGINNING at (N:10,695,524.77, E:1,724,716.47) the South corner of the herein described tract a point in the Northerly right of way line of State Highway No. 158;

THENCE N 59°04'32" W with the northerly right of way line of said State Highway No. 158 a distance of 986.13 feet to a point for the West corner of the herein described tract;

THENCE N 30°55'48" E a distance of 160.00 feet to a point for the North corner of the herein described tract a point in the centerline of proposed Mosswood Drive;

THENCE S 59°04'48" E with the centerline of proposed Mosswood Drive a distance of 986.10' to a point in the City of Midland City Limits Line for the East corner of the herein described tract;

THENCE S 30°55'12" W with the City of Midland City Limits Line for a distance of 160.07 feet to the POINT OF BEGINNING.

Subject tract having an area of 3.623 acres.

GRASSLAND ESTATES WEST, SECTION 9

ANNEXED AREA PDHD – 1F1



CASE NO. 2-12-034

WEST COMPANY



110 W. Louisiana Ave. Suite. 110
MIDLAND TEXAS 79701-3414
OFFICE (432) 687-0865 FAX (432) 687-0868
www.team-west.com

TRACT 3B

October 22, 2012

FIELD NOTES OF A 27.347 ACRE TRACT OF LAND OUT OF SECTION 35, BLOCK 40, T-1-S, T & P RR.
COMPANY SURVEY, MIDLAND COUNTY, TEXAS:

NOTE: The following bearings, distances, coordinates, and area's shown hereon are based upon the
Texas Plane Coordinate System, NAD 83, Texas Central Zone:

BEGINNING at (N: 10,695,662.10, E:1,724,798.73) the South corner of the herein described tract a point
on the City of Midland City Limits line and the Intersection of proposed Mosswood Drive;

THENCE N 59°04'48" W with the centerline of proposed Mosswood Drive distance of 986.10 feet to an
angle point;

THENCE N 30°55'48" E a distance of 30.00 feet to an angle point;

THENCE N 21°12'11" E a distance of 121.75 feet to an angle point;

THENCE N 30°55'12" E a distance of 504.07 feet to an angle point;

THENCE N 14°04'48" W a distance of 14.14 feet to an angle point;

THENCE N 30°26'33" E a distance of 60.00 feet to an angle point;

THENCE S 59°04'48" E a distance of 210.50 feet to an angle point;

THENCE N 30°55'12" E a distance of 26.86 feet to an angle point;

THENCE N 14°32'44" E a distance of 259.82 feet to an angle point;

THENCE N 30°55'12" E a distance of 243.86 feet to an angle point;

THENCE S 59°04'48" E a distance of 180.00 feet to an angle point;

THENCE N 30°55'12" E a distance of 49.97 feet to an angle point;

THENCE S 59°04'48" E a distance of 60.00 feet to an angle point;

THENCE S 14°04'48" E a distance of 14.14 feet to an angle point;

THENCE S 59°04'48" E a distance of 310.00 feet to an angle point;
THENCE N 75°55'12" E a distance of 14.14 feet to an angle point ;
THENCE S 59°04'48" E a distance of 60.00 feet to an angle point ' ;
THENCE S 30°55'12" W a distance of 58.78 feet to an angle point;
THENCE S 59°04'48" E a distance of 249.89 feet to an angle point;
THENCE S 30°55'12" W a distance of 270.49 feet to an angle point;
THENCE S 30°55'12" W a distance of 964.77 feet to the point of beginning,
Subject tract having an area 27.347 acres.

GRASSLAND ESTATES WEST, SECTION 9

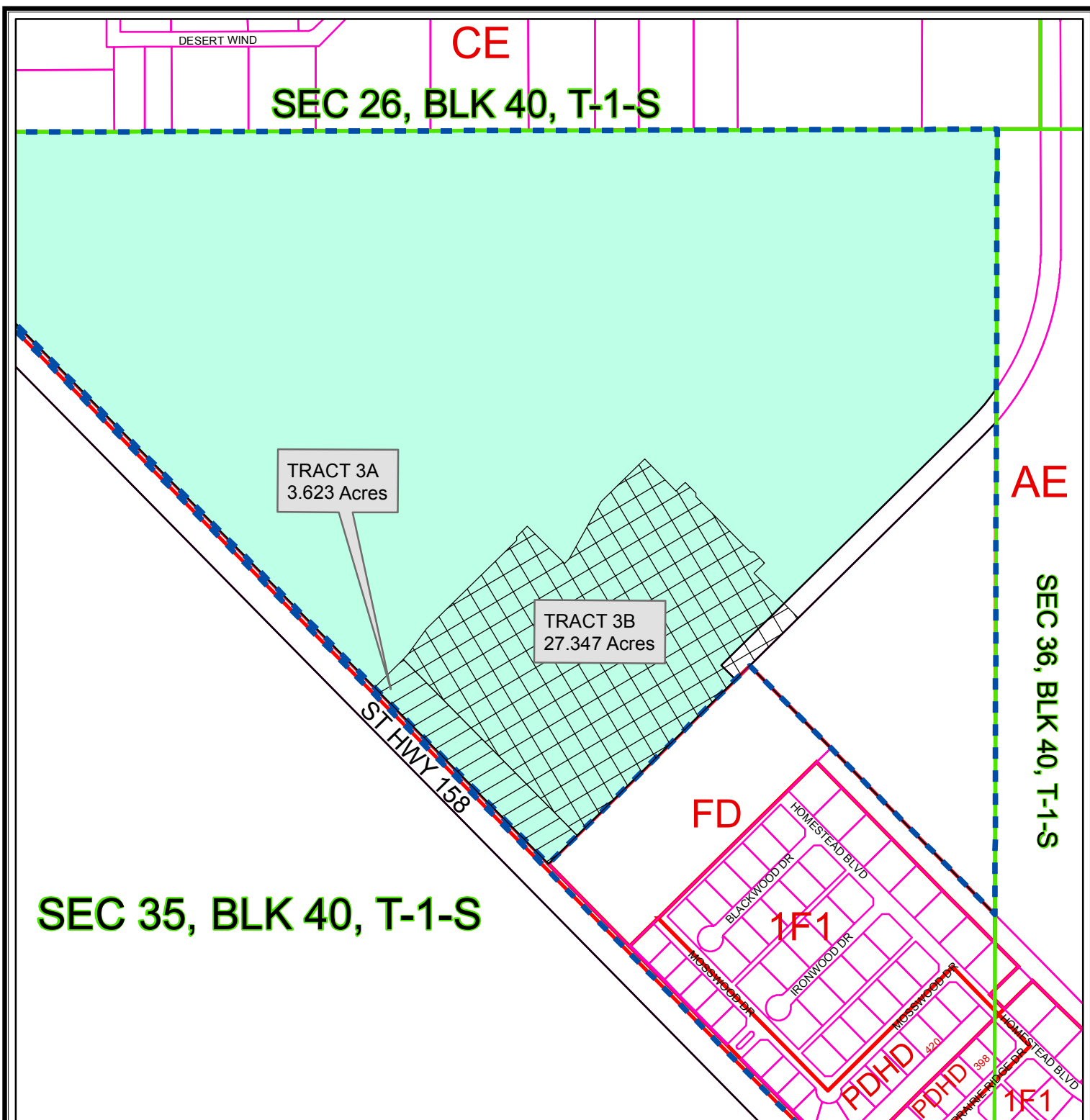
ZONING 1F1

ANNEX AREA


10/22/12



CASE NO. 2-12-034



LOCATION & ZONING MAP

M - 12 - 021

Scale: 1" = 550'

TRACT 3

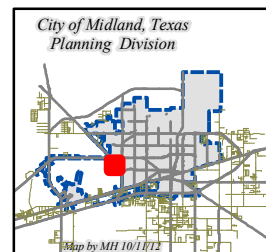
Consider the initial zoning of annexed land to PD, Planned District for a Housing Development on a 3.623-acre tract of land (Tract 3A) and to 1F-1 on a 27.347-acre tract of land (Tract 3B) all out of Section 35, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

- CITY LIMITS
- CITY PARCEL
- COUNTY PARCEL
- ZONING
- SURVEY SECTION

ZONING DISTRICTS:

- CE - COUNTY ESTATE
- 1F - FAMILY DWELLING
- PD - PLANNED DISTRICT
- AE - AGRICULTURE ESTATE
- FD - FUTURE DEVELOPMENT



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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, AICP

SUBJECT: Hold a public hearing at approximately 11:06 a.m. and consider an ordinance establishing the initial zoning of annexed property, being a 193.29-acre tract (Tract 4) of land out of Sections 11 & 12, Block 40, T-2-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located on the south side of Interstate Hwy 20, south of South Loop 250 West)

Purpose:

Hold a public hearing at approximately 11:06 a.m. and consider an ordinance establishing the initial zoning of annexed property, being a 193.29-acre tract (Tract 4) of land out of Sections 11 & 12, Block 40, T-2-S, T&P RR. Co. Survey, Midland County, Texas. (Generally located on the south side of Interstate Hwy 20, south of South Loop 250 West)

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City to process the initial zoning of this property.

Discussion:

This land was recently annexed and it is now appropriate for the Council to consider an ordinance establishing the initial zoning. There is one property owner; Darle Vuelta Cattle Company. Staff anticipates development of the property once utilities are made available from the north side of I-20. Staff met with representatives of the owner and until further development plans become available it was agreed that the most appropriate zoning district to utilize following property annexation is the FD, Future Development District. No letters of opposition have been received.

Attachments: Map; Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 193.29-ACRE TRACT OF LAND OUT OF SECTIONS 11 AND 12, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF, AS AN FD, FUTURE DEVELOPMENT DISTRICT; SAID TRACT IS GENERALLY LOCATED ON THE SOUTH SIDE OF INTERSTATE 20, SOUTH OF SOUTH LOOP 250 WEST; 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, notice has been given to all parties in interest and citizens by publication in the official newspaper and otherwise, of a hearing to be held before the City Council on November 13, 2012, to consider amendments to the zoning regulations and map establishing the zoning classification of the property described in Section One hereof as an FD, Future Development District as set out in Section 11-1-6 of the City Code of Midland, Texas; and

WHEREAS, such a public hearing was held in the Council Chambers beginning at 11:06 a.m. on said November 13, 2012, as advertised; and

WHEREAS, after a full hearing, at which all parties in interest and citizens were given an opportunity to be heard; and after considering among other things, the character of the property involved and the surrounding area and its peculiar suitability for particular uses; and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality, the Council finds it to be in the best interest of the health, safety, morals and general welfare of the City of Midland to amend the zoning regulations accordingly;

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

SECTION ONE. That the zoning classification of the area indicated as Tract 4 on Exhibit "A", attached hereto and incorporated herein by reference, is hereby established as

a FD, Future Development District.

SECTION TWO. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION THREE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. The 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 FIVE. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the day of , A.D., 2012; and passed to second reading on motion of Council member , seconded by Council member , by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the

following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

FIRM # 001363

**521 NORTH TEXAS • ODESSA, TEXAS 79761
(432) 332-5058 or 580-8812 • FAX (432) 332-8812**

Legal Description

For a 193.29 Acre Tract of Land,
Located in Sections 11 & 12, Block 40, T-2-S,
T&P RR Company Survey,
Midland County, Texas

TRACT 4

Boundary Being More Fully Described By Metes and Bounds As Follows:

BEGINNING at a point in the east line of said Section 12, the south right-of-way line of Interstate 20 and the existing City of Midland city limits line for the northeast corner of this tract;

THENCE South $14^{\circ}17'45''$ East with the east line of said Section 12, a distance of 2628.47 feet to a point for the southeast corner of said Section 12 and the northeast corner of Section 13, said Block 40, being the southeast corner of this tract;

THENCE South $75^{\circ}08'38''$ West with the south line of said Section 12 and the north line of said Section 13, a distance of 5285.27 feet to a point for the northeast corner of said Section 14, being a point of deflection in the south line of this tract;

THENCE South $76^{\circ}14'20''$ West with the south line of said Section 12 and the north line of said Section 14, a distance of 194.33 feet to a point for the southwest corner of said Section 12 and the southeast corner of said Section 11, being a point of deflection in the south line of this tract;

THENCE South $75^{\circ}09'10''$ West with the south line of said Section 11 and the north line of said Section 14, a distance of 3235.10 feet to a point in the south line of Tract 20 recorded in Volume 3131, Page 210, Official Records, Midland County, Texas, being a point of deflection in the south line of this tract;

THENCE North $59^{\circ}43'34''$ East with the south line of said Tract 20, at a distance of 3365.73 feet pass the east line of said Section 11 and the west line of said Section 12, continuing for a total distance of 5311.20 feet to a point in the west line of a 100 acre tract recorded in Volume 2422, Page 247, Official Records, Midland County, Texas and in the said City of Midland city limits line, being a point of deflection in the north line of this tract;

THENCE South $30^{\circ}16'41''$ East with the west line of said 100 acre tract and said City of Midland city limits line, a distance of 1049.42 feet to a point for the southwest corner of said 100 acre tract, being a point of deflection in the north line of this tract;

THENCE North $59^{\circ}43'19''$ East with the south line of said 100 acre tract and said City of Midland city limits line, a distance of 2300.29 feet to a point for the southeast corner of said 100 acre tract, being a point of deflection in the north line of this tract;

THENCE North 30°16'41" West with the east line of said 100 acre tract and said City of Midland city limits line, a distance of 1257.69 feet to a point of deflection in the north line of this tract;

THENCE North 59°49'06" East with said City of Midland city limits line, a distance of 1511.98 feet to the Point of Beginning, containing 193.29 acres of land.

Bearings and distances are relative to the Texas Coordinate System, 1983 NAD, Central Zone, with a combined grid factor of 0.9998771. Acreage stated is average surface.

This document was prepared under 22 TAC 663.21, and is not to be used to convey or establish interest in real property except those rights and interest implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

LCA, Inc.



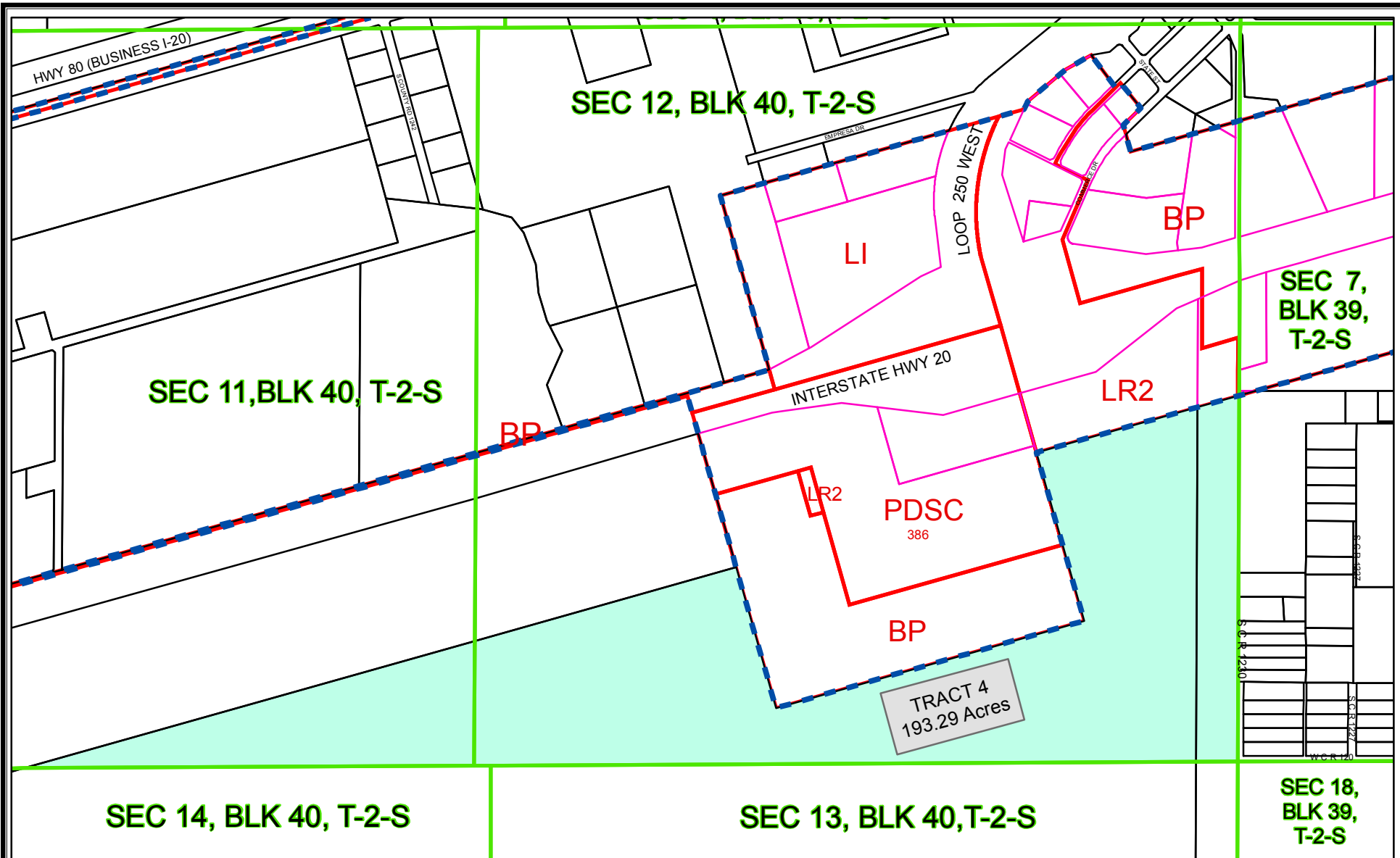
Aaron S. Burrell, R.P.L.S. 5689

22 August, 2012

LCA Project Number 2012-058



CASE NO. 2-12-041



Z - 12 - 041

Scale: 1" = 1000'

TRACT 4

Consider the initial zoning of annexed land to FD, Future Development on a 193.29-acre tract of land out of Sections 11 and 12, Block 40, T-2-S, T & P RR Co. Survey, Midland County, Texas.

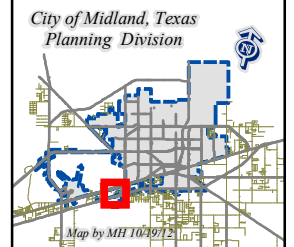
LOCATION & ZONING MAP

LEGEND

- CITY LIMITS
- ZONING
- CITY PARCEL
- COUNTY PARCEL
- SURVEY SECTION

ZONING DISTRICTS:

- LR - LOCAL RETAIL
- LI - LIGHT INDUSTRIAL
- BP - I-20 BUSINESS PARK
- PD - PLANNED DISTRICT



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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: At approximately 11:09 A.M. hold a public hearing and consider an ordinance on a request by James Grose for a *zone change* from PD, Planned District for a Housing Development to Amended Planned District on Lot 1A, Block 4, Gateway Plaza, Section 4, City and County of Midland, Texas. (Generally located on the west side of Tradewinds Boulevard, approximately 800 feet north of W. Business I-20)

Purpose:

At approximately 11:09 A.M. hold a public hearing and consider an ordinance on a request by James Grose for a zone change from PD, Planned District for a Housing Development to Amended Planned District on Lot 1A, Block 4, Gateway Plaza, Section 4, City and County of Midland, Texas. (Generally located on the west side of Tradewinds Boulevard, approximately 800 feet north of W. Business I-20)

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

This is a proposed development of 214 apartment units within the rapidly developing Gateway Plaza area at the northwest corner of the intersection of Business I-20 and Loop 250. The City Council approved a 14.67 acre PD, Planned District for a Housing Development on May 22, 2012, subject to future site plan approval. The site plan submitted

is the 10.35-acre southern portion of the Planned District, which is being developed as Phase I (Exhibit – A). The remaining 4 acres to the north will be developed as a continuation of this multifamily development at a future date with a subsequent site plan submitted for review. The density within the submitted plan is within the Planned District's permitted 21 dwelling units per acre. The three-story apartment buildings proposed are also in accordance with the underlying MF-1 zoning regulations that permit maximum building heights up to 50 feet. The apartment complex is fenced with brick columns and decorative metal fencing with a secure gate beyond the clubhouse (Exhibit – B). This design allows for incoming traffic to clear Tradewinds Boulevard rather than queuing in or near the road. The apartment buildings are constructed with a stone veneer, stucco, and fiber cement siding and the clubhouse providing a smoother surface with large stucco facades, stone veneer trim and a metal seamed roof. Other structures with complementary building facades include the central U.S Mail kiosk, a 12-car garage, and two 6-car garages. Staff concurs with the Planning & Zoning Commission in adopting the proposed site plan on 10.36 acres and amending the current Planned District for a Housing Development for the first phase of this multi-family development.

Attachments: Application, Maps, Exhibits A – F

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1A, BLOCK 4, GATEWAY PLAZA, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF TRADEWINDS BOULEVARD, APPROXIMATELY 800 FEET NORTH OF WEST BUSINESS INTERSTATE 20); 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 1A, Block 4, Gateway Plaza, Section 4, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That the development shall be significantly consistent with the Site Plans (Exhibits “A” and “B”); that the apartments shall be typical in design and materials as those shown on the Building Elevations (Exhibits “C”, “E” and “F”) and the clubhouse (Exhibit “D”). Said exhibits are attached hereto and incorporated herein.
2. That a provision for a street light at the entrance to the complex shall be made at Tradewinds Boulevard.
3. That a blanket refuse easement covering this property is granted to the City of Midland.
4. That the air conditioners, dumpsters, and any ground-based utility equipment shall be appropriately screened.
5. That a color elevation of the proposed design of the screening wall and its materials for all sides must meet administrative approval.
6. That all sidewalks shall be paved to the required standards along the property line frontage.
7. That all signs on this property shall conform to the City of Midland Sign Code.
8. That the developer shall make provisions for fire department access.
9. That this apartment site plan governs only this 10.35-acre site. Said 10.35-acre site is more specifically described by metes and bounds in Exhibit “G”, which is attached hereto and incorporated herein. Subsequent apartment developments on this lot are subject to separate site plan review.
10. That the development of this planned district, except where expressly noted, shall comply with MF-1, Multiple-Family Dwelling District, zoning regulations.
11. That driveway cuts and dimensions shall comply with Midland City Code requirements.
12. That a replat shall be submitted and approved, in accordance with Midland City Code requirements, if any rezoning application is submitted for said Lot 1A, Block 4, Gateway Plaza, Section 4, or in the event of a proposed sale of any portion of said Lot 1A, Block 4, Gateway Plaza, Section 4.
13. That this ordinance hereby amends City of Midland Ordinance No. 9016.

SECTION THREE. That the definitions given in the zoning regulations contained

in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the ____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

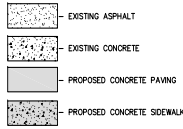
APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

NOTES AND LEGEND:



TYPE	AREA	NO.	%	TOTAL AREA
A1	714	72	33.94%	51,408
A2	806	48	22.43%	38,088
B1	975	36	16.82%	35,100
B2	1,129	42	19.63%	47,418
B3	1,176	12	5.61%	14,112
C1	1,539	4	1.87%	6,156
TOTAL	214	100.00%		192,882

AVERAGE UNIT SIZE \$91.32

TYPE	COUNT/UNIT TYPES	BLDG. AREA	TOT. AREA
A	1 10-A2-12-B2	21,608	21,608
B	1 10-A2-12-B3	22,172	22,172
C	1 12-A1-12-B1	20,268	20,268
D	1 2-A2-4-C1	7,768	7,768
E	3 12-A1-6-A2-6-B2	20,178	60,534
F	2 12-A1-4-A2-12-B1-6-B2	30,266	60,532
TOTAL	9		192,882

MISCELLANEOUS:
AVERAGE UNIT SIZE: 901.32 S.F.
LAND AREA: 10.93 ACRES
DENSITY: 20.67 UNITS/ACRE

NO. BLDGS	BUILDING TYPES						TOTAL
	A	B	C	D	E	F	
A1	1	1	1	1	3	9	72
A2	10	10	12	2	6	4	48
B1			12				12
B2	12				6	6	42
B3		12					12
C1				4			4

UNITS/BLDG	12	22	24	6	24	34	
UNITS/BLDG TYPE	12	22	24	6	72	68	214
CAPACITY TABULATION							

TYPE	DIRECT	ASSIGNABLE	GARAGE	TOTAL
DIRECT	4	0	0	10
ASSIGNABLE	2	6	0	20
GARAGE	6	6	0	30

ALL DIMENSIONS ARE MEASURED TO BACK OF CURB UNLESS OTHERWISE NOTED. SETBACKS ARE MEASURED FROM PROPERTY LINE. REFER TO FINAL PLAT FOR COMPLETE PLAT DIMENSIONAL INFORMATION.

SEE ARCHITECTURAL PLANS FOR EXACT LOCATIONS AND DIMENSIONS OF PORCHES, RAMPS, VESTIBULE, SLOPED PAVING, TRUCK DOCKS, BUILDING UTILITY ENTRANCE LOCATIONS AND PRECISE BUILDING DIMENSIONS.

ALL CONSTRUCTION OF PUBLIC IMPROVEMENTS SHALL BE IN ACCORDANCE WITH LATEST STANDARD CITY OF MIDLAND ENGINEERING REQUIREMENTS AND SPECIFICATIONS.

PRIOR TO ANY CONSTRUCTION THE CONTRACTOR SHALL FAMILIARIZE HIMSELF WITH THE CONTRACT DOCUMENTS AND SPECIFICATIONS, THE PLAN INCLUDING ALL NOTES, AND ANY OTHER APPLICABLE STANDARDS AND SPECIFICATIONS RELEVANT TO THE PROPER COMPLETION OF THE WORK SPECIFIED. FAILURE ON THE PART OF THE CONTRACTOR TO FAMILIARIZE HIMSELF WITH ALL STANDARDS OR SPECIFICATIONS PERTAINING TO THIS WORK SHALL IN NO WAY RELIEVE THE CONTRACTOR OF RESPONSIBILITY FOR PERFORMING THE WORK IN ACCORDANCE WITH ALL SUCH APPLICABLE STANDARDS AND SPECIFICATIONS. THE CONTRACTOR IS SOLELY RESPONSIBLE FOR THE MEANS, METHODS, TECHNIQUES, SEQUENCES AND PROCEDURES OF CONSTRUCTION AND ANY SAFETY PRECAUTION PROGRAMS RELATING IN ANY WAY TO THE CONDITIONS OF THE PREMISES.

THE INFORMATION SHOWN ON THESE DRAWINGS CONCERNING TYPE, INFORMATION, AND THE LOCATION OF UNDERGROUND AND OTHER UTILITIES IS NOT GUARANTEED TO BE ACCURATE OR ALL-INCLUSIVE. THE CONTRACTOR IS RESPONSIBLE FOR MAKING HIS OWN DETERMINATIONS AS TO THE TYPE AND LOCATIONS OF ALL UNDERGROUND AND OTHER UTILITIES AS MAY BE NECESSARY TO AVOID DAMAGES. THE CONTRACTOR SHALL REPAIR ANY DAMAGES TO EXISTING UTILITIES IMMEDIATELY AND AT NO ADDITIONAL COST TO THE OWNER OR ENGINEER. PLANS SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR WITH NO ADDITIONAL COMPENSATION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR NOTIFYING UTILITY COMPANIES HAVING PROPERTY IN THE AREA OF CONSTRUCTION A MINIMUM OF 48 HOURS PRIOR TO ANY EXCAVATION.

IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO PROTECT ALL PUBLIC UTILITIES IN THE CONSTRUCTION OF THIS PROJECT. ALL MANHOLES, CLEAN OUTS AND VALVE BOXES MUST BE ADJUSTED TO THE PROPER LINE AND GRADE BY THE CONTRACTOR PRIOR TO AND AFTER THE PLACING OF PERMANENT PAVING.

EXISTING IMPROVEMENTS, INCLUDING BUT NOT LIMITED TO: FENCES, GATES, GROUND SURFACES, UTILITY PRELINES AND DRAINAGE STRUCTURES WHICH ARE REMOVED OR ALTERED TO PERMIT INSTALLATION OF THE WORK, SHALL BE REPAIRED OR REPLACED BY THE CONTRACTOR AT THE CONTRACTOR'S EXPENSE, IN THE SAME LOCATION AND IN CONDITION EQUAL TO OR BETTER THAN FOUND.

AT ALL TIMES THAT WORK IS PROGRESSING, THE CONTRACTOR SHALL HAVE A DESIGNATED COMPETENT PERSON ON-SITE WHO SHALL BE RESPONSIBLE FOR SUPERVISING THE WORK AND WHOSE DUTY IT WILL BE TO PERFORM REQUIRED SAFETY INSPECTIONS AND TO DIRECT ALL REQUIRED CONSTRUCTION SAFETY ACTIVITIES.

APPLICANT:

MR. JAMES R. GROSE, P.E.
OAKWOOD DEVELOPMENT & CONSULTING, LLC
7309 WILLIAMSWOOD DRIVE
SUITE 100 E
DALLAS, TX 75252
OFFICE: 972-931-4800
MOBILE: 214-766-9140
jmgrose@oakwood-dc.net

PARKING CALCULATIONS

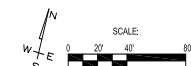
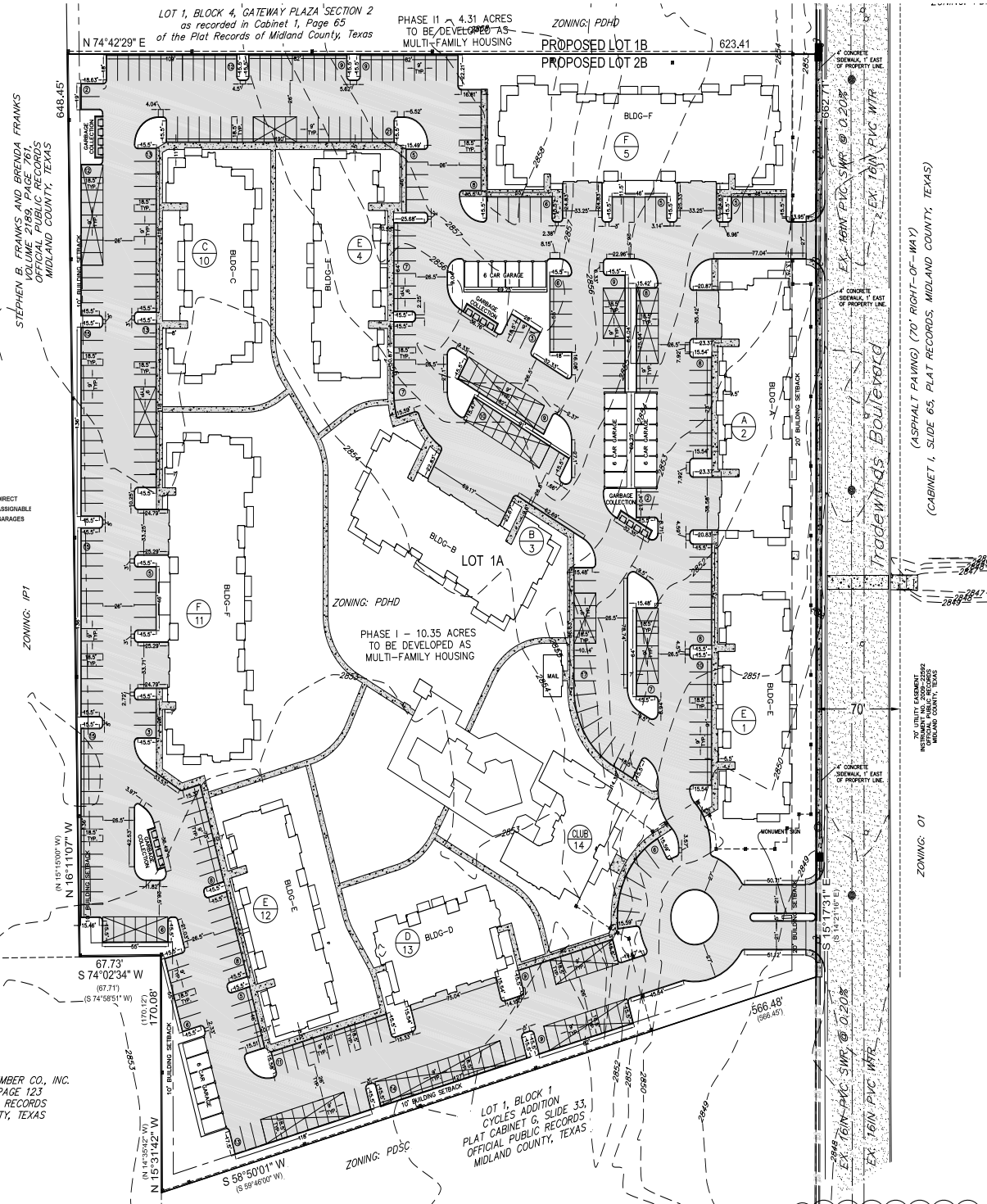
STANDARD PARKING 379 SPACES
ATTACHED GARAGE 30 SPACES
FREE GARAGE 24 SPACES

NAME: TRADEWINDS APARTMENTS
LOCATION: APPROXIMATELY 1,100' NORTH OF 1-20 ON THE WEST SIDE OF TRADEWINDS BOULEVARD

LEGAL DESCRIPTION:

LOT 1A, GATEWAY PLAZA, SECTION 4

FRAMING SQUARE LUMBER CO., INC.
VOLUME 1870, PAGE 123
OFFICIAL PUBLIC RECORDS
MIDLAND COUNTY, TEXAS



DIAL BEFORE YOU DIG!
UTILITIES ARE APPROXIMATE. CONTRACTOR SHALL CALL DIG TESS (1-800-DIG-TESS) 48 HOURS PRIOR TO CONSTRUCTION.

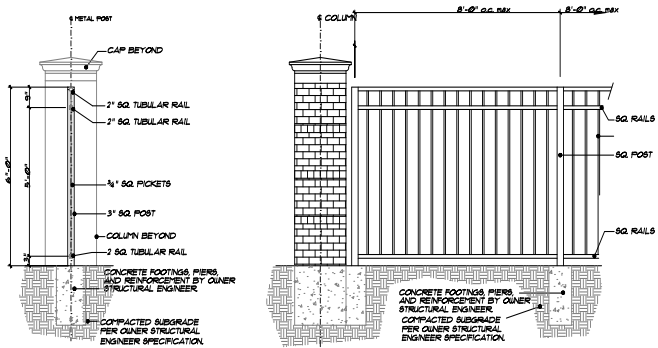
CIVIL ENGINEERING
LAND SURVEYING
AND ENGINEERING, LLC
2807 Fair Street, Suite 8
Lubbock, TX 79423
Phone: 806-771-6076
Fax: 806-771-7625
TEDE Reg. # F-18197
Accuracy - Efficiency - Integrity

TRADEWINDS APARTMENTS
PROPOSED ON FUTURE REPLAT TO BE SUBMITTED OF PROPOSED
LOT 2A, BLOCK 4, GATEWAY PLAZA SECTION 2
AN ADDITION LOCATED IN THE CITY OF MIDLAND,
MIDLAND COUNTY, TEXAS

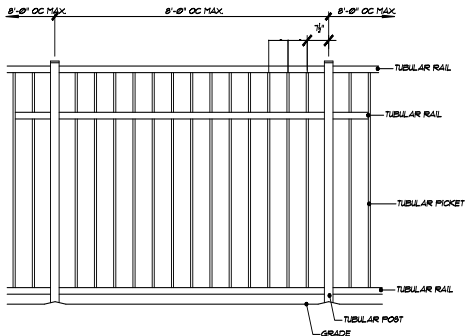
THIS DOCUMENT IS
RELEASED FOR REVIEW
PURPOSES ONLY UNDER
THE AUTHORITY OF
BRANDON K. AUTREY,
P.E. No. 100971 ON
SEPTEMBER 27, 2017.
IT IS NOT TO BE USED
FOR CONSTRUCTION
PURPOSES.

REVISIONS	No.	DATE

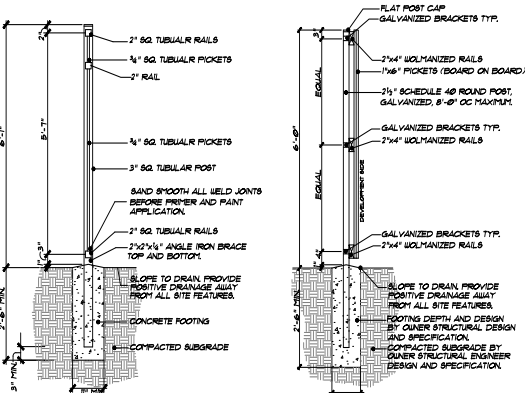
CSP-1.1



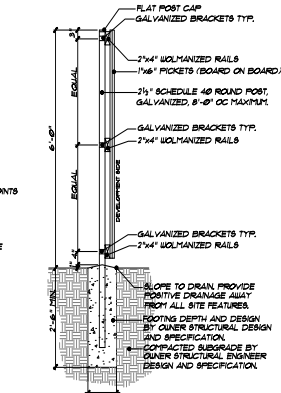
4 BRICK COLUMN WITH METAL FENCE



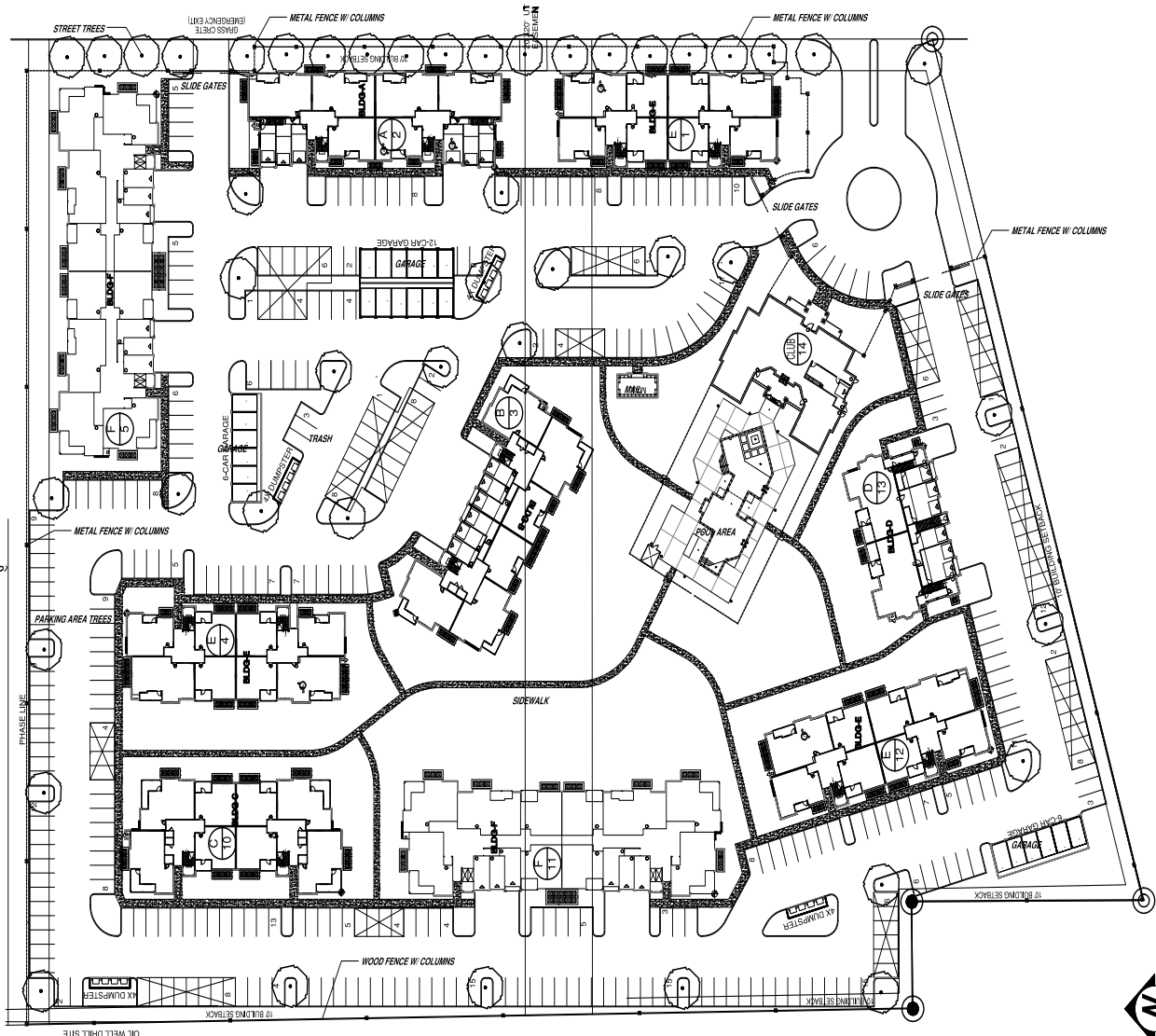
3 6'-0" HT. METAL PERIMETER FENCE ELEVATION



2 6'-0" HT. METAL FENCE SECTION

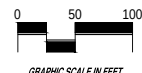


1 WOOD FENCE SECTION



1 CITY SUBMITTAL PLAN

SCALE: 1"=50'-0"



ISSUES:	
15-28-12	SUBMITTAL
15-30-12	CITY COMMENTS
15-30-12	CITY COMMENTS
15-30-12	CITY COMMENTS
15-30-12	CITY COMMENTS
15-30-12	CITY COMMENTS
15-30-12	CITY COMMENTS
15-30-12	CITY COMMENTS
15-30-12	CITY COMMENTS

CLIENT:
PILLAR INCOME ASSET MGMT.
7309 WILLIAMS WOOD DRIVE
STE. 100E
DALLAS, TX 75252

TRADEWINDS
APARTMENTS
MIDLAND, TEXAS

mbg
landscape
architects
Woods Design Group
1100 CENTENNIAL BLVD. #270
Richardson, TX 75081
ph 972.660.7474
fx 972.660.7878



CITY SUBMITTAL

TRADEWINDS APARTMENTS

MIDLAND, TEXAS

JOB NUMBER: 800-1206

CITY SUBMITTAL
PLAN

LP 0.01



TRADEWINDS APARTMENTS

214 UNITS IN MIDLAND, TEXAS FOR
OAKWOOD DEVELOPMENT

ISSUED FOR
SITE PLAN SUBMITTAL



PROJECT
12133
SHEET NUMBER

A-11
BLDG. 'F'

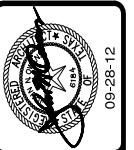




2 CLUBHOUSE REAR ELEVATION
SCALE 1/4"=1'-0"



1 CLUBHOUSE FRONT ELEVATION
SCALE 1/4"=1'-0"



REVISIONS

NO.	DATE	DESCRIPTION

TRADEWINDS APARTMENTS
214 UNITS IN MIDLAND, TEXAS FOR
OAKWOOD DEVELOPMENT

ISSUED FOR
SITE PLAN SUBMITTAL



4144 N. Central Expy.
Suite 855
Dallas, TX 75204
214.520.6878
bgoarchitects.com

DATE

09-28-12

PROJECT

12133

SHEET NUMBER

A-13

CLUB
ELEVATION



BUILDING A FRONT ELEVATION

TRADEWINDS MULTI FAMILY CONCEPTUAL ELEVATION
MIDLAND, TEXAS

SCALE 1"=10'



MIDLAND, TEXAS



Davis Geomatics, LLC

Professional Geomatic Consultants

J.D. Davis, RPLS, LSLs, CFedS

Licensed State Land Surveyors

Colorado • Kansas • Oklahoma • Texas

Professional Land Surveyors

Certified Federal Surveyors

LEGAL DESCRIPTION

A 10.35 acre tract of land out of Lot 1A, Gateway Plaza, Section 4, being a replat of Lots 1 and 2, Block 4, Gateway Plaza, Section 2, an addition to the City of Midland, Midland County, Texas according to the recorded map or plat thereof, of record in Cabinet 1, No. 2012-7606 of the Plat Records of Midland County, Texas, said 10.35 acre tract of land being described by metes and bounds as follows:

BEGINNING at (N: 10,681,917.325, E: 1,732,851.657) a 1/2" x 24" rebar with a plastic cap stamped "DAVIS GEOMATICS" (such type rebar and plastic cap hereafter referred to as a DAVIS CAP) set on the West line of said Lot 1A whence the Northwest corner of said Lot 1A bears N 16°11'07" W, 295.96 feet;

THENCE N 74°42'29" E - bearings contained herein are relative to true North as determined from G.P.S. observations - 623.41 feet to a DAVIS CAP set on the East line of said Lot 1A and the West right-of-way line of Tradewinds Boulevard whence a 1/2" rebar with a cap marked "WEST CO. MIDLAND" found at the Northeast corner of said Lot 1A bears N 15°17'31" W, 304.62 feet;

THENCE S 15°17'31" E along the East line of said Lot 1A and the West right-of-way line of said Tradewinds Boulevard, 662.71 feet to a 1/2" rebar with a cap marked "WEST CO. MIDLAND" found at the Southeast corner of said Lot 1A;

THENCE S 58°50'01" W along the South line of said Lot 1A, 566.48 feet to a bent 1/2" rebar found for the most Southern Southwest corner of said Lot 1A;

THENCE N 15°31'42" W along a West line of said Lot 1A, 170.08 feet to a 1/2" rebar with a cap marked "WEST CO. MIDLAND" found for an interior corner of said Lot 1A;

THENCE S 74°02'34" W along a South line of said Lot 1A, 67.73 feet to a 1/2" rebar with a cap marked "WEST CO. MIDLAND" found at the most Westerly Southwest corner of said Lot 1A;

THENCE N 16°11'07" W along the West line of said Lot 1A, 648.45 feet to the POINT OF BEGINNING of this tract of land;

Said tract contains a computed area of 10.35 acres of land as described.

Page 1 of 2

DAVIS GEOMATICS, LLC

PROFESSIONAL GEOMATIC CONSULTANTS

616 N. Polk Street, Amarillo, Texas 79107 • P.O. Box 4061, Amarillo, Texas 79116

866-570-0169 • 806-374-4334 • Fax 806-359-0686 • www.geopro.us



J. D. Davis
Registered Professional Land Surveyor
Texas Registration Number 5626
Amarillo, Texas

PLANNING AND ZONING COMMISSION

November 5, 2012

CASE: Z-12-043, James Grose.

REQUEST: Hold a public hearing and consider a request by James Grose for a zone change from a PD, Planned District for a Housing Development to an Amended Planned District.

APPLICANT/OWNER: James Grose.

LEGAL DESCRIPTION: Lot 1A, Block 4, Gateway Plaza, Section 4, City and County of Midland, Texas.

LOCATION: Generally located on the west side of Tradewinds Boulevard, approximately 800 feet north of W. Business I-20.

CURRENT ZONING: PD, Planned District for a Housing Development.

DETAILS OF REQUEST:

1. The City Council approved a 14.67 acre PD, Planned District for a Housing Development on May 22, 2012, subject to site plan approval in the same manner as a zone change. The site plan submitted represents Phase I of this multi-family development. The 10.36 acre southern portion of the Planned District (Exhibit – A), provides for 214 apartment units among 9 multi-family buildings. The density is within the Planned District's permitted 21 dwelling units per acre and the three-story apartment buildings proposed are in accordance with the underlying MF-1 zoning regulations that permit maximum building heights up to 50 feet. The site plan also includes a clubhouse with a pool and parking within the development for 433 vehicles.

SURROUNDING ZONING AND LAND USE:

2. The proposed development is positioned within a rapidly developing area known as Gateway Plaza at the northwest corner of the intersection of Business I-20 and Loop 250. Neighboring land uses to the applicant's Tradewinds Apartments – Phase I development include another PD, Planned District Housing Development, with an existing 96-unit apartment complex just across Tradewinds Blvd. to the east and the Cinergy Cinema multiplex theater further south. Other zoning in this area will accommodate local retail and office use. Plans for Tradewinds Boulevard connection to the north will significantly enhance mobility of traffic generation brought about by this development.

ANALYSIS:

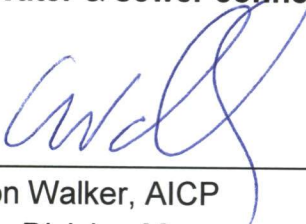
3. The submitted site plan provides a higher density development of 21 dwelling units per acre with adequate parking and access off of Tradewinds Boulevard. The apartment complex is fenced with brick columns and metal fencing with a secure gate beyond the clubhouse (Exhibit – B). This design allows for incoming traffic to clear Tradewinds Boulevard rather than queuing in or near the road. The northern drive has a similar gate system, but is designed to be exit only. A Knox-Box will have to be installed at the gates for emergency access. The screening fence on the west side of the property is proposed to be a solid wood fence spaced on brick columns. Given the industrial zoning to the west, staff is agreeable to a predominantly wood fence, but the base should be a minimum of 2 feet of masonry/brick material for longevity. Similarly, the tubular pickets and rail material on the metal fencing are easily bent and have a lasting impression. This rail fencing should either be wrought iron or have the minimum 2 feet of masonry/brick material at the base. All brick columns appear to be spaced nearly 100 feet apart, this distance should be closer to 30 feet spacing (with 60 feet allowable on the west facing fence). Staff requests a color elevation of the proposed wall for administrative review since this will be prominently visible to nearby future developments. Fire lane widths are sufficient, however for the buildings' heights in some instances, the Fire Marshall will require attic sprinkling to offset any potential code shortfall as to the reach of firefighting equipment. The site also includes an adequate provision for solid waste removal with sixteen trash dumpsters appropriately placed. They are described as being screened with brick which will have to match the look off the proposed apartment buildings. The sidewalk along Tradewinds Boulevard should be 5 feet in width rather than the indicated 4 feet. Landscaping coverage is more than sufficient for the site area with the tree requirement being 49 trees total, calculating for the street frontage and the parking lot. The apartment buildings are constructed with a stone veneer, stucco, and fiber cement siding and the clubhouse providing a smoother surface with large stucco faces, stone veneer trim and a metal seamed roof. Other structures with complementary building facades include the central U.S Mail kiosk, a 12-car garage, and two 6-car garages. Staff recommends adopting the proposed site plan on 10.36 acres and amending the current Planned District for a Housing Development for the first phase of this multi-family development.

STAFF RECOMMENDATION:

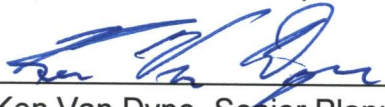
Staff recommends approval of this request for a zone change from a PD, Planned District for a Housing Development to an Amended Planned District, subject to the following conditions:

- A. That the development shall be significantly consistent with the submitted Site Plans (Exhibits A & B), the apartments are typical in design and materials of Building Elevations (Exhibits C, E & F) and the clubhouse (Exhibit D);
- B. That a provision for a street light at the entrance to the complex is made at Tradewinds Boulevard;
- C. That a blanket refuse easement to the property is granted to the City of Midland;

- D. That the air conditioners, dumpsters, and any ground-based utility equipment shall be appropriately screened;
- E. That a color elevation of the proposed site plan's screening wall and it's materials for all sides of the site plan must meet administrative approval;
- F. That sidewalks are paved to the required standards along the property line frontage;
- G. All signage to meet the City Sign Code;
- H. The developer will have to make provisions for fire department access (turning radii, adequate fire lane width, hydrant coverage, Knox-Box, etc.);
- I. That this apartment site plan governs only this 10.36 acre site and not the entirety of the 14.67 Planned District for a Housing Development zoned Lot 1A, Block 4, Gateway Plaza, Section 4. Subsequent apartment developments on this lot are subject to a separate site plan review.
- J. The development of this planned district, except where expressly noted, shall comply with MF-1, Multi-Family Dwelling District zoning regulations;
- K. That the development is consistent with the Site Plan (Exhibit – A) and the Building Elevations (Exhibits B & C) & Building Rendering (Exhibit – D);
- L. Driveway cuts and dimensions are to be per city code;
- M. Water & sewer connections need to be approved with City Engineer.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Ken Van Dyne, Senior Planner
Department of Development Services

Attachments:

Application
Site Plan – Exhibit A
Elevations – Exhibits B & C
Rendering – Exhibit D
Maps

Site Plan Submittal

Case Number: Z-12-043

CITY OF MIDLAND

Planning Division

FOR SITE PLAN

APPLICATION ~~TO CHANGE ZONING CLASSIFICATION~~

James (Jim) Grose, P.E.

Applicant Name

972-931-4800 / jimgrose@oakwood-dc. ^{US}

(Phone/e-mail)

7309 Williamswood Drive Suite 100E Dallas, TX 75252

Address

Zip Code

Pillar Income Asset Management

Project ~~Property~~ Owner Name

Same As Above

(Phone/e-mail)

Same As Above

Address

Zip Code

AMD Engineering

Brandon Autrey, P.E.

Representative Name

806-771-5976 / bautrey@amdeng.com

(Phone/e-mail)

2807 74th St. Ste. 8

Address

Lubbock, TX 79423

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. Lot 1 & 2, Block 4, Gateway Plaza

Section 2

PRESENT ZONE: PDHD

REQUESTED ZONE: No Change

(List by tracts if more than one district is requested)

Reason for Zone Change Request: Site Plan Submittal

Present Use of Property: Undeveloped

Proposed Use of Property: Apartments (Tradewinds Apartments)

How will zone change affect the public health, safety and welfare? NA

Describe how conditions affecting the property have changed since present zoning designation:

NA

Is a Specific Use Permit with Term for alcoholic beverages sales needed? ____ Yes X No

APPLICATION FEES:

- Single, standard zone change: **\$400**. Multiple, standard zone change: add **\$100** per additional district.
- Single PD, Planned District zone change: **\$550**. Multiple PD proposal: add **\$100** per district.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS (if applicable):

16 copies (FOLDED) of the PD site plan: _____ ✓

Site Plan in digital format .pdf and .jpg: _____

SIGNATURE (by property owner only - authorized agent must sign affidavit below)

Project

Property Owner (signature): _____ Date: 09/28/2012

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

_____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

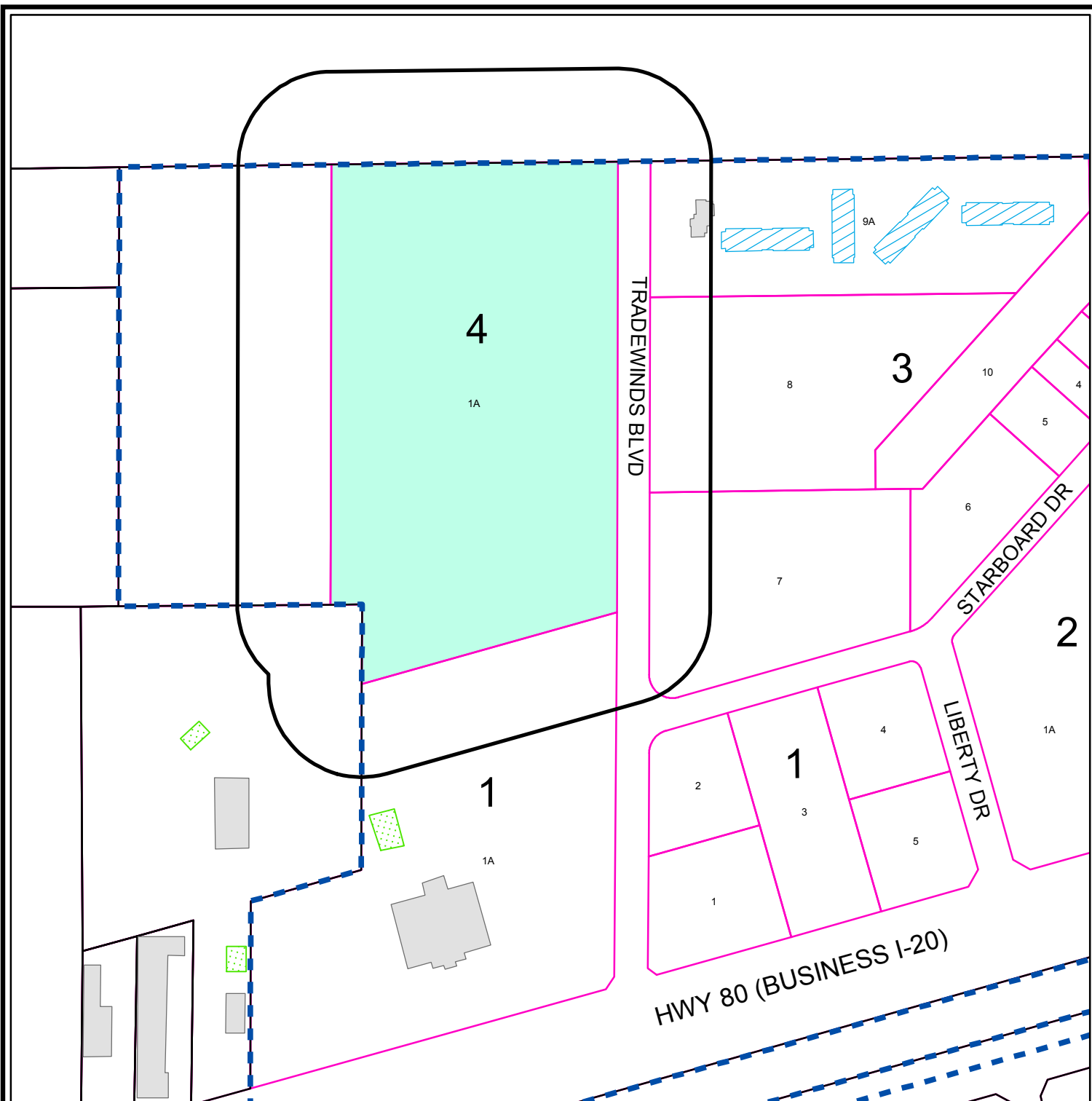
Authorized Agent (signature)

Subscribed and sworn to before me, this _____ day of _____, 20 __, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>IC</u>	Date: <u>10-2-12</u>
Assigned: <u>KV</u>	
For: <u>P+Z</u>	On: _____

****Application will not be considered for scheduling until reviewed by a planner.****



OWNER NOTIFICATION WITHIN CITY LIMITS ONLY

Z - 12 - 043

Scale: 1" = 300'

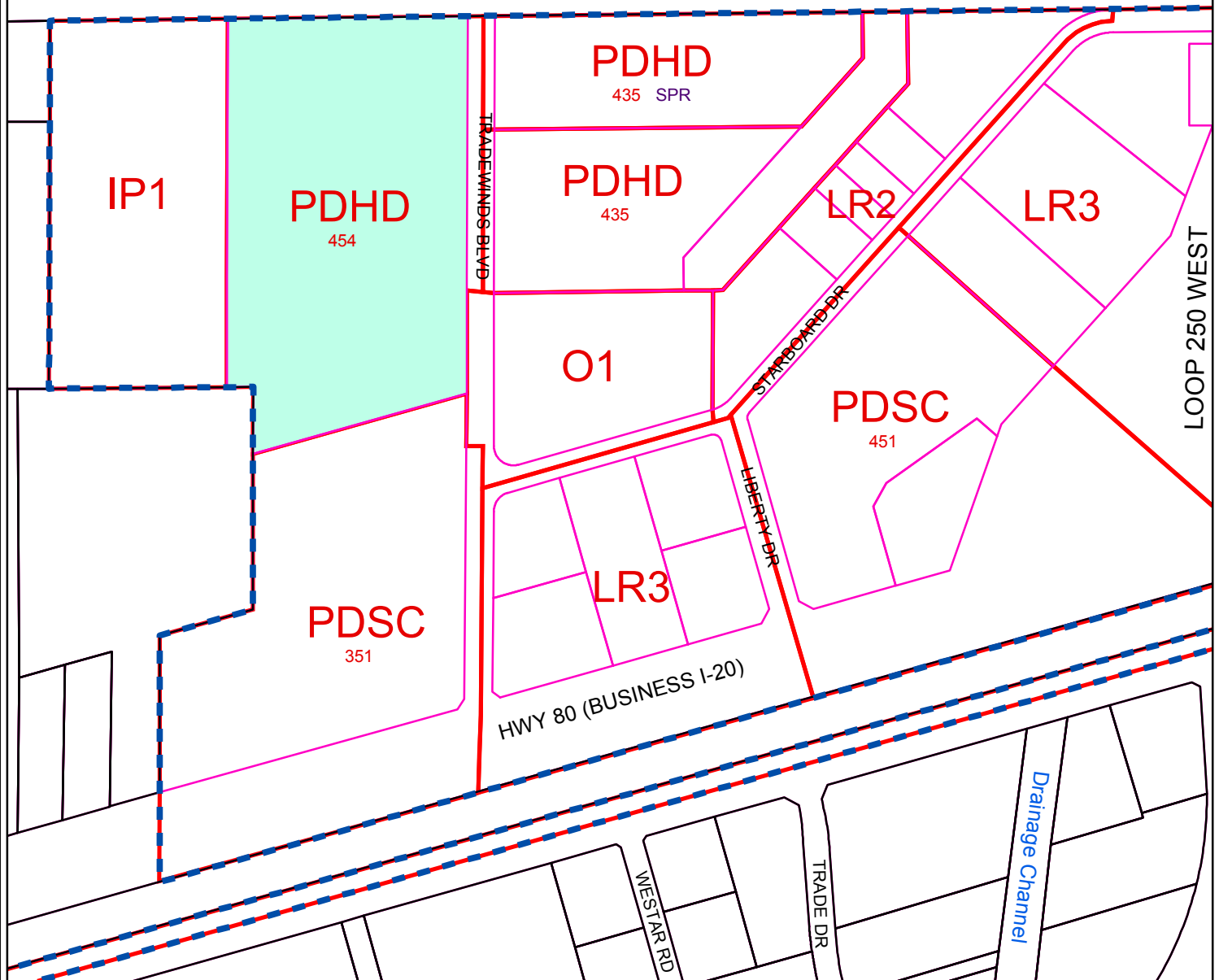
Consider a request for a zone change from PD, Planned District for a Housing Development, to an Amended Planned District on Lot 1A, Block 4, Gateway Plaza, Section 4, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- COUNTY PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

P - 12 - 043

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 1A, Block 4, Gateway Plaza, Section 4, City and County of Midland, Texas.

LEGEND

ZONING

CITY LIMITS

CITY PARCELS

COUNTY PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 11:12 a.m. and consider an ordinance on a request by SBC Corporation for a zone change from FD, Future Development District to 1F-1, One-Family Dwelling District and PD, Planned District for a Housing Development (Generally located on the northeast side of SH 158 at the west extension of Homestead Boulevard).

Purpose:

Hold a public hearing and consider a request for a zone change from FD, Future Development District to 1F-1, One-Family Development District and 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:

This property was zoned FD District when it was annexed in 2006. The owner wishes to continue the development of the Grassland Estates West neighborhood. The combined area of the two described parcels is 11.9 acres. While the entire area is intended to be subject to the 1F-1 District regulations, the lots adjacent to SH 158 have a rear lot orientation toward the highway that required screening, which in turn requires a Planned District. A six-foot tall wooden fence with brick pilasters will provide a visual screen along SH 158. This design is identical to the existing fence to the southeast. The lots in the Planned District will have a 20-foot front yard to match existing development along SH 158.

Attachments:

November 5, 2012 Staff Report

Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 10.215-ACRE TRACT OF LAND WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS A 1F-1, ONE-FAMILY DWELLING DISTRICT; BY PERMITTING A 1.695-ACRE TRACT OF LAND WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; SAID TRACTS BEING LOCATED IN SECTION 35, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS; SAID TRACTS BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS MADE A PART HEREOF; SAID TRACTS ARE GENERALLY LOCATED ON THE NORTHEAST SIDE OF STATE HIGHWAY 158 AT THE WEST EXTENSION OF HOMESTEAD BOULEVARD; PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of 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 1F-1, One-Family Dwelling District, and a PD, Planned District for a Housing Development, as set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the

hereinafter described property is concerned, which is presently zoned FD, Future Development District, and it shall be used as a 1F-1, One-Family Dwelling District, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 10.215-acre tract of land out of Section 35, 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 "A", which is attached hereto and incorporated herein.

SECTION TWO. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned FD, Future Development District, and it shall be used as a PD, Planned District for a Housing Development, subject to the special conditions and restrictions hereinafter set out, said property being described as follows:

A 1.695-acre tract of land out of Section 35, 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 THREE. That said 1.695-acre tract shall be subject to the following special conditions and restrictions:

1. That the development of this tract shall be subject to the regulations of the 1F-1, One-Family Dwelling District, except as otherwise stated below.
2. That prior to the issuance of any Certificate of Occupancy for any land abutting State Highway 158, a solid six-foot tall wooden screening fence with brick pilasters spaced at regular intervals shall be constructed in a common area adjacent to State Highway 158.
3. That no building permits shall be issued for this property until it has been platted and said plat includes a common area adjacent to State Highway 158 to accommodate the screening fence described herein.
4. That the minimum front yard setback for the lots in this planned district shall be 15 feet.

SECTION FOUR. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FIVE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION SIX. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SEVEN. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION EIGHT. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council

member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



110 W. Louisiana Ave. Suite. 110
MIDLAND TEXAS 79701-3414
OFFICE (432) 687-0865 FAX (432) 687-0868
www.team-west.com

October 22, 2012

FIELD NOTES OF A 10.215 ACRE TRACT OF LAND OUT OF SECTION 35, BLOCK 40, T-1-S, T & P RR.
COMPANY SURVEY, MIDLAND COUNTY, TEXAS:

NOTE: The following bearings, distances, coordinates, and area's shown hereon are based upon the
Texas Plane Coordinate System, NAD 83, Texas Central Zone:

BEGINNING at (N:10,695,424.98, E:1,725,194.60) the South corner of the herein described tract a point
in the centerline of proposed Mosswood Drive and the Northwesterly line of Grassland Estates West,
Section 7;

THENCE N 59°04'48" W With the centerline of said Mosswood Drive a distance of 461.46 feet to a point
for the West line of the herein described tract a point in the City of Midland City Limits Line;

THENCE N 30°55'12" E with the City of Midland City Limits Line a distance of 964.77 feet to an angle
point for the North corner of the herein described tract;

THENCE S 58°56'44" E a distance of 461.46 feet to an angle point;

THENCE S 30°55'12" W a distance of 963.68 feet to the POINT OF BEGINNING.

Subject tract having an area of 10.215 acres.

GRASSLAND ESTATES WEST, SECTION 9

EXISTING CITY AREA 1F1



EXHIBIT B

CASE NO. 2-12-047 64.6



110 W. Louisiana Ave. Suite. 110
MIDLAND TEXAS 79701-3414
OFFICE (432) 687-0865 FAX (432) 687-0868
www.team-west.com

October 22, 2012

FIELD NOTES OF A 1.695 ACRE TRACT OF LAND OUT OF SECTION 35, BLOCK 40, T-1-S, T & P RR. COMPANY SURVEY, MIDLAND COUNTY, TEXAS:

NOTE: The following bearings, distances, coordinates, and area's shown hereon are based upon the Texas Plane Coordinate System, NAD 83, Texas Central Zone:

BEGINNING at (N:10,695,287.62, E:1,725,112.33) the South corner of the herein described tract a point in the Northeasterly right of way line of State Highway No. 158;

THENCE N 59°04'32" W with the Northerly right of way of State Highway No. 158 a distance of 461.46 feet to the West corner of the herein described tract a point in the City of Midland City Limits Line;

THENCE N 30°55'12" E with said City Limits Line a distance of 160.07 feet to a point in the centerline of proposed Mosswood Drive for the North corner of the herein described tract;

THENCE S 59°04'48" E with the centerline of said proposed Mosswood Drive a distance of 461.46 feet to a point in the Northwesterly line of said Grassland Estates West, Section 7;

THENCE S 30°55'12" W with the northwesterly line of said Grasslands Estates West, Section 7 a distance of 159.97 feet to the POINT OF BEGINNING.

Subject tract having an area of 1.695 acres.

GRASSLAND ESTATES WEST, SECTION 9

EXISTING CITY PDHD – 1F1



EXHIBIT C

CASE NO. 2-12-048

PLANNING AND ZONING COMMISSION

November 5, 2012

CASE: Z-12-048.

REQUEST: Hold a public hearing and consider a request for a zone change from FD, Future Development District to 1F-1, One-Family Development District and PD, Planned District for a Housing Development.

APPLICANT/OWNER: SBC Corporation.

REPRESENTATIVE: West Company of Midland.

LEGAL DESCRIPTION: An 11.91-acre tract out of Section 35, Block 40, T-1-S, T&P RR Company Survey, Midland County, Texas.

LOCATION: Northeast side of SH 158, at the west extension of Homestead Boulevard.

DETAILS OF REQUEST:

1. This property was annexed in 2006. Since no development plan was available at that time, it was zoned FD District. The owner now wishes to continue the expansion of the Grassland Estates West subdivision and develop residential lots. This requires approval of a zone change as well as a plat. The associated plat indicates a common area adjacent to SH 158 that will be developed with a screening fence identical to the one that already exists to the southwest

SURROUNDING ZONING AND LAND USE:

2. The land to the north and west is located outside the City limit, but a process to annex this land has begun. To the northeast is the Nueva Vista golf course. To the southeast is the latest phase of the Grassland Estates West neighborhood. The land to the south is outside the City limit and is vacant.

ANALYSIS:

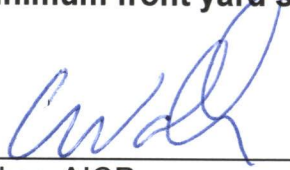
3. Two separate zoning districts are proposed. The 10.215-acre tract is proposed to be zoned 1F-1 District. This is the same zoning classification as the portion of Grassland Estates West that is located to the southeast. The smaller 1.695-acre portion is requested to be a Planned District for a Housing District, subject to 1F-

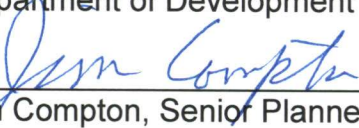
1 District regulations, except that the front yard setback is proposed to be reduced from 25 to 20 feet to match the existing development to the southeast. The purpose of the Planned District is to ensure the design of the screening fence planned along SH 158. This design is shown on Exhibit A, and is identical to the existing fence. The staff views this request as a logical extension of the Grassland Estates West subdivision that is already constructed, and we find this proposal to be reasonable.

STAFF RECOMMENDATION:

We recommend of approval of this request for a zone change from FD, Future Development District to 1F-1, One-Family Dwelling District for the land described on Exhibit B. We also recommend approval of a zone change from FD District to Planned District for a Housing Development on the land described on Exhibit C, subject to the following conditions:

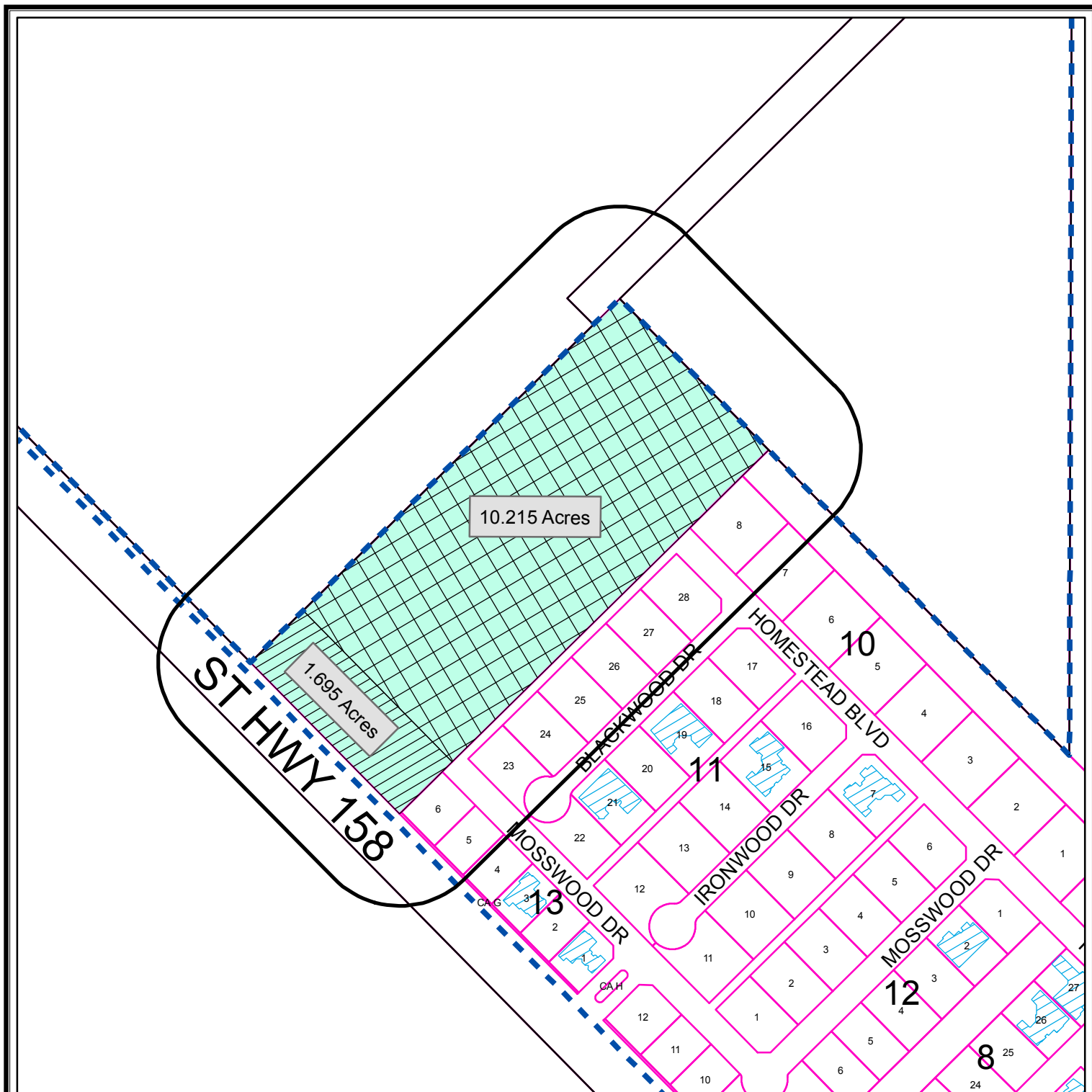
- A. That the use and development of this property shall be subject to the regulations of the 1F-1 District, except as otherwise stated below.
- B. That prior to the issuance of any Certificate of Occupancy for any lot adjacent to SH 158, a screening fence shall be constructed in a common area adjacent to SH 158. Said fence shall be a minimum of six feet in height, with brick pilasters spaced at regular intervals.
- C. Prior to the issuance of any building permits, this property shall be platted, and said plat shall include a common area adjacent to SH 158 that will contain the screening fence listed in Condition B above.
- D. The minimum front yard setback in this Planned District shall be 20 feet.


Cameron Walker, AICP
Planning Division Manager
Department of Development Services


Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps



OWNER NOTIFICATION WITHIN CITY LIMITS ONLY

Z - 12 - 048

Scale: 1" = 300'

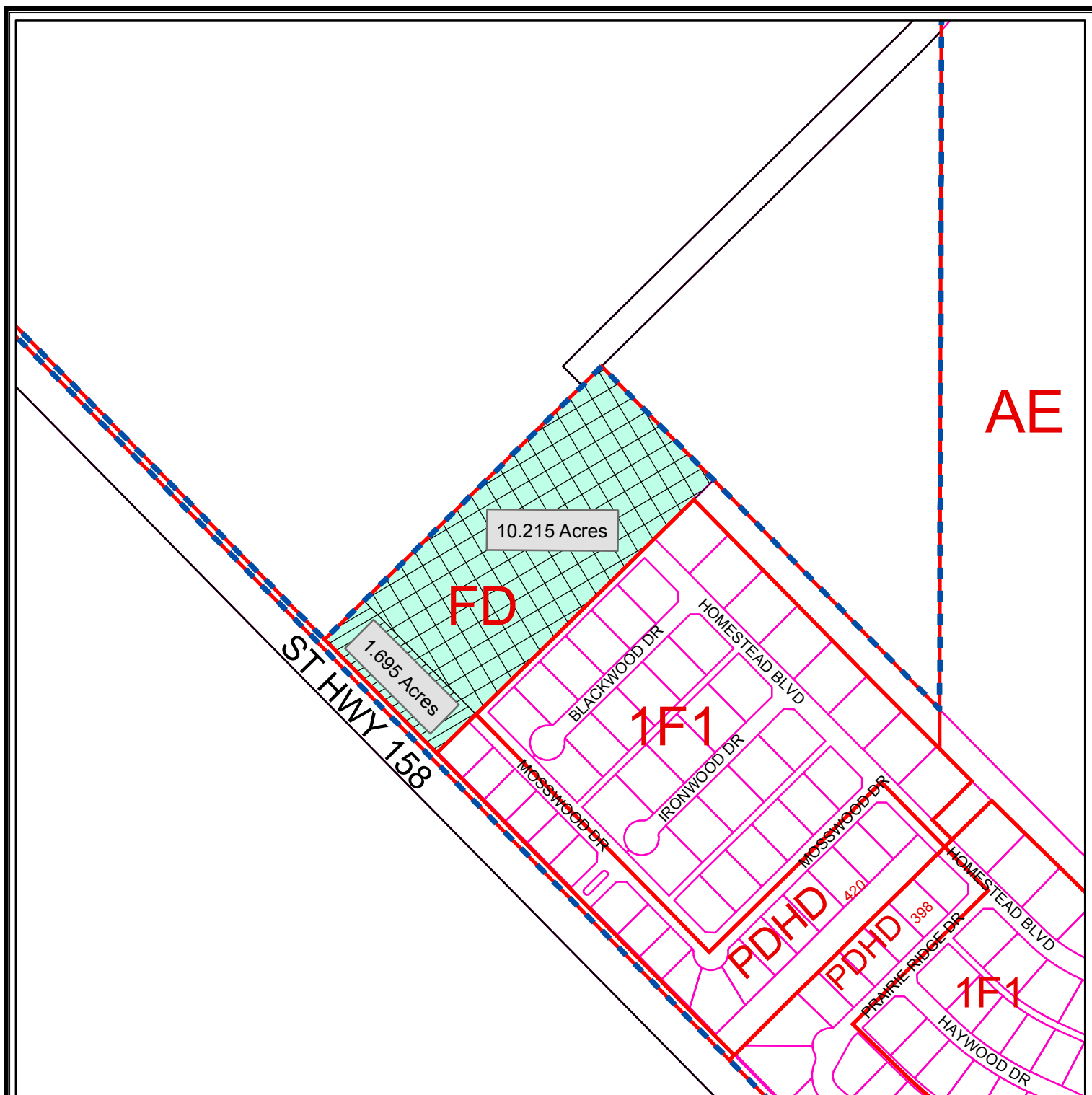
Consider a request for a zone change from FD, Future Development District to 1F-1, One Family Dwelling District on a 10.215-acre tract of land and to PD, Planned District for a Housing Development on a 1.695-acre tract of land all out of Section 35, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- COUNTY PARCEL
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 12 - 048

Scale: 1" = 400'

Consider a request for a zone change from FD, Future Development District to 1F-1, One Family Dwelling District on a 10.215-acre tract of land and to PD, Planned District for a Housing Development on a 1.695-acre tract of land all out of Section 35, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

LEGEND

 ZONING	 CITY PARCELS
 CITY LIMITS	 COUNTY PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: November 13, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: At approximately 11:15 A.M. hold a public hearing and consider a resolution on a request by Lone Star Bar for a Temporary Land Use Permit for a Outdoor Amusement Function on The West 90 feet of Lots 10 thru 12, Block 61 and on Lot 1, the north 30 feet of Lot 2, Block 60 ½ , and a 10 foot by 80 foot vacated portion of Carrizo Street, all out of Original Town, City and County of Midland, Texas (Generally located on the south side of W. Wall Street, on both sides of Carrizo Street.)

Purpose:

At approximately 11:15 A.M. hold a public hearing and consider a resolution on a request by Lone Star Bar for a Temporary Land Use Permit for a Outdoor Amusement Function on The West 90 feet of Lots 10 thru 12, Block 61 and on Lot 1, the north 30 feet of Lot 2, Block 60 ½ , and a 10 foot by 80 foot vacated portion of Carrizo Street, all out of Original Town, City and County of Midland, Texas (Generally located on the south side of W. Wall Street, on both sides of Carrizo Street.)

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

There is no cost to the City associated with approving this request.

Discussion:

This is a proposed downtown event for Cody Hollums Benefit to be held near the southeast corner of Wall and 'A' Street.

Proposed hours are: Saturday, November 17, 2012 from noon to 2:00 a.m. and Sunday,

November 18, 2012 noon until 2:00 p.m. for clean-up.

The applicant is proposing to host this event with live music and the sale of alcohol at the Lone Star Bar and the adjacent right-of-way that will be temporarily closed for this event. A reduction in volume of outdoor music by 10:00 p.m. to a level such that normal household activities can be performed without disturbance will be required. A minimum of ten portable restroom facilities will be provided. There are also a total of eight restrooms within the participating businesses located on both sides of Carrizo Street. A minimum of four (4) security officers will be available throughout the event. Adequate barricades, signage and insurance are required for the temporary street closure.

Attachments: Application, Maps, Exhibit A – Site Plan

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE TEMPORARY USE
OF LAND FOR AN OUTDOOR AMUSEMENT
FUNCTION ON THE WEST 90 FEET OF LOTS 10-12,
BLOCK 61, AND ON LOT 1 AND THE NORTH 30 FEET
OF LOT 2, BLOCK 60 ½, AND A 10 FOOT BY 80 FOOT
VACATED PORTION OF CARRIZO STREET, ALL OUT
OF ORIGINAL TOWN, CITY AND COUNTY OF
MIDLAND, TEXAS (GENERALLY LOCATED ON THE
SOUTH SIDE OF WEST WALL STREET, ON BOTH
SIDES OF CARRIZO STREET); AND MAKING SAID
PERMIT SUBJECT TO CERTAIN SPECIAL
CONDITIONS AND RESTRICTIONS CONTAINED
HEREIN**

WHEREAS, pursuant to Section 11-1-6(D) of the City Code of Midland, Texas, Lone Star Bar has applied for authorization to temporarily use land for an outdoor amusement function on the west 90 feet of Lots 10-12, Block 61, and on Lot 1 and the north 30 feet of Lot 2, Block 60 ½, and a 10 foot by 80 foot vacated portion of Carrizo Street, all out of Original Town, City and County of Midland, Texas; and

WHEREAS, the Council finds and determines that such temporary use shall be allowed;

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

SECTION ONE. That Lone Star Bar is hereby authorized by the City Council to have an outdoor amusement function on the following described land:

On the west 90 feet of Lots 10-12, Block 61, and on Lot 1 and the north 30 feet of Lot 2, Block 60 ½, and a 10 foot by 80 foot vacated portion of Carrizo Street, all out of Original Town, City and County of Midland, Texas.

SECTION TWO. That said temporary use shall be allowed within the area designated herein, subject to the following conditions and restrictions:

A. That the days and hours of operation of the function shall be limited to the following:

Saturday, November 17, 2012 from 12:00 p.m. (Noon) until 2:00 a.m.; and
Sunday, November 18, 2012 from 12:00 p.m. (Noon) until 2:00 p.m. for clean up.

B. That alcoholic beverage sales and consumption shall be limited to the bar and

the fenced off area shown on the site plan, which is attached hereto as Exhibit "A" and incorporated herein for all purposes.

- C. That this outdoor function area shall be enclosed by a temporary fence to protect attendees from nearby traffic.
- D. That live, outdoor music shall be allowed during all operating hours of the function with the volume to be reduced by 10:00 p.m. to a level such that normal household activities can be performed without disturbance.
- E. That a minimum of ten (10) portable restrooms and eight (8) restrooms within the participating businesses located at 621 and 703 West Wall Street, respectively, shall be provided during all operating hours of the function.
- F. That a minimum of four (4) certified peace officers shall be provided as security guards during all operating hours of the function.
- G. That the function shall comply with all requirements of the Fire Code.
- H. That the required vehicle barricade and signage are placed as required for the temporary road closure, and any required insurance is obtained.
- I. That Frank Tirey shall be responsible for ensuring that the conditions of this permit are observed.

SECTION THREE. The Council reserves at all times the full right and power to revoke said temporary use for violation of any of its terms or any misrepresentations contained in the application, after a hearing of which the holder of said temporary use permit has been given at least one (1) day notice.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Google

To see all the details that are visible on screen, use the "Print" link next to the

CASE NO. M-12-027

CITY OF MIDLAND, TEXAS
Planning Division

TEMPORARY LAND USE PERMIT APPLICATION

Submission Requirements: Application shall be submitted to the Planning Division not less than eighteen (18) days prior to the City Council meeting at which action is desired.

Application is hereby made to the City Council for a Temporary Land Use Permit:

Name of Applicant:

Sone Star Bar

Phone:

770-1151

E-mail:

Applicant's Address:

621 W Wal

Property Owner:

Frank Drey ^{Wall St Point}
Venture

Phone:

432 557-1990

E-mail:

Owner's Address:

Other required information:

1. Street address and legal description of property:

621 W. Wal

2. Zoning District:

3. Type of temporary use requested:

Cody Hollums Benefit

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:

Nov. 17th 2012 @ noon until
 Nov. 18th @ 2:00pm for Clean up

6. Will alcoholic beverages be sold?



Yes

No

7.

A detailed Site Plan is required (16 copies needed (FOLDED), plus digital - .jpg and .pdf). Show existing buildings, parking, access arrangements, surrounding streets, activity areas, areas of alcoholic beverage sales, proposed street closures, etc.

Site Plan received:



Yes

No

8. Are you requesting the temporary closure of any streets? ✓ Yes _____ No

If yes, you must:

A. Obtain and complete the "Special Event and Street Closure Application", available in the Transportation Division office (5th Floor, City Hall).

B. Provide the City with a **general liability insurance certificate**, naming the **City** as an **Additional Insured**, in the amount of one million dollars (\$1,000,000) for the term of the closure.

9. Other information: Number of security guards provided: _____
Number of restrooms provided: 10 OUTDOOR PORTABLE / 6 FIXED WOOD
Type of music (carnival, live, etc.): live
Showmobile requested _____ Days and hours _____

10. A **\$500.00 Clean-up Deposit** and a **\$500.00 Damage Deposit** are required for all events. Checks need to be dated day of event. Inspection of site after the event for trash and damage is a City responsibility. The deposits, or a portion thereof, may be refunded following inspection.

Clean-up Deposit received: __ (Y) __ (N) **Clean-up Deposit refunded:** __ (Y) __ (%) __ (N)

Damage Deposit received: __ (Y) __ (N) **Damage Deposit refunded:** __ (Y) __ (%) __ (N)

11. A **\$200 Application Review fee** is required. **Fee received:** _____ Yes _____ No
WALKER AS BENEFIT PER C.S.

Owner or Operator (if other than Applicant) responsible for ensuring that the conditions of this permit will be observed:

Gayla Olivas 621 W Wall 79701 970-1151
Printed Name of Owner/Operator Address Zip Phone

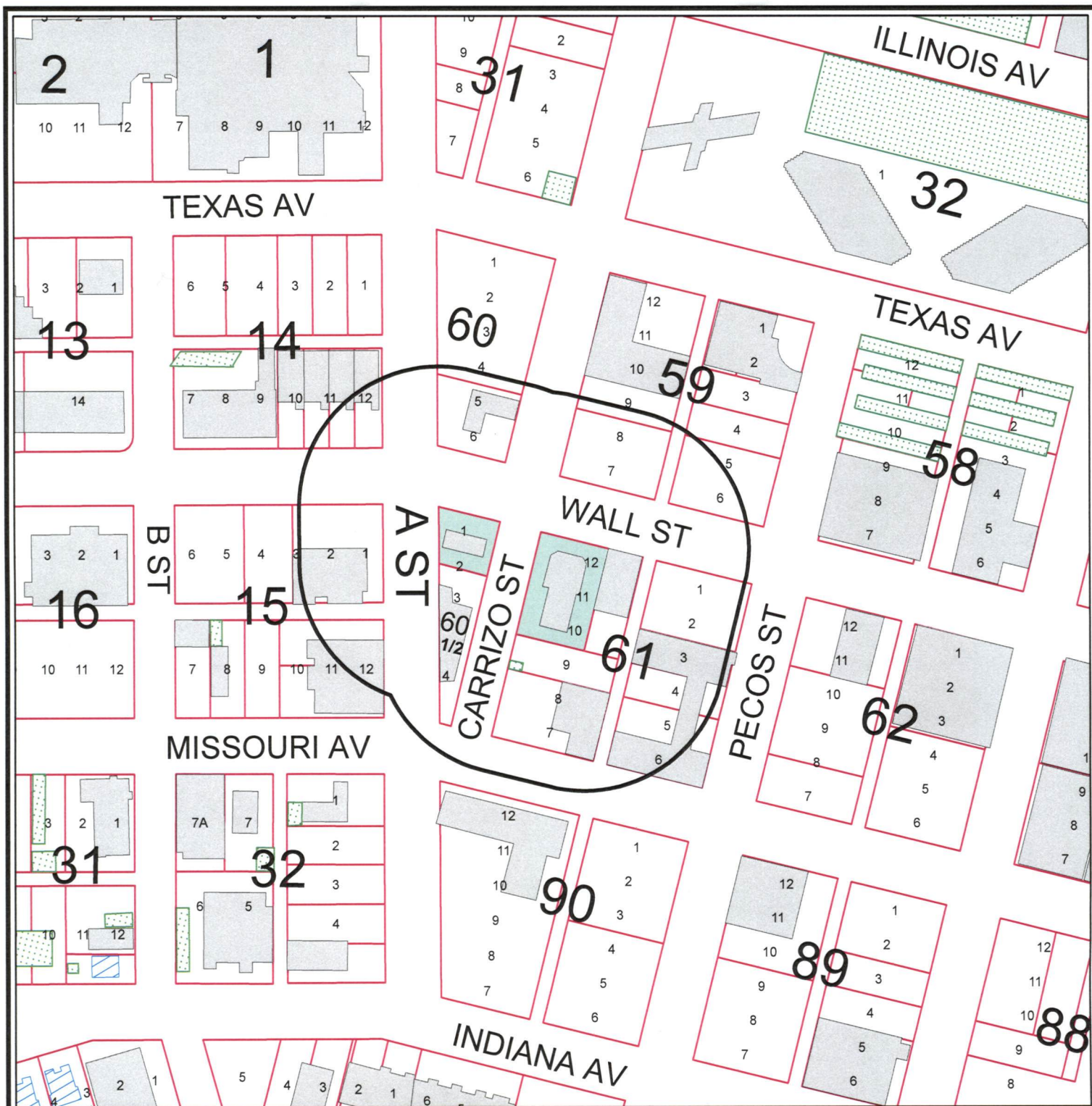
Gayla Olivas 11-1-12
Signature of Owner/Operator Date

Gayla Olivas 11-1-12
Signature of Applicant Date

Signature of Property Owner, if other than Applicant Date

****Application will not be considered for scheduling until reviewed by a planner.****

FOR OFFICE USE ONLY	
Received By: <u>KV</u>	Date: <u>11/1/12</u>
Assigned: <u>[Signature]</u>	
For: <u>CC</u>	On: <u>11/13/12</u>



PROPERTY OWNER NOTIFICATION MAP

M - 12 - 027

Scale: 1" = 200'

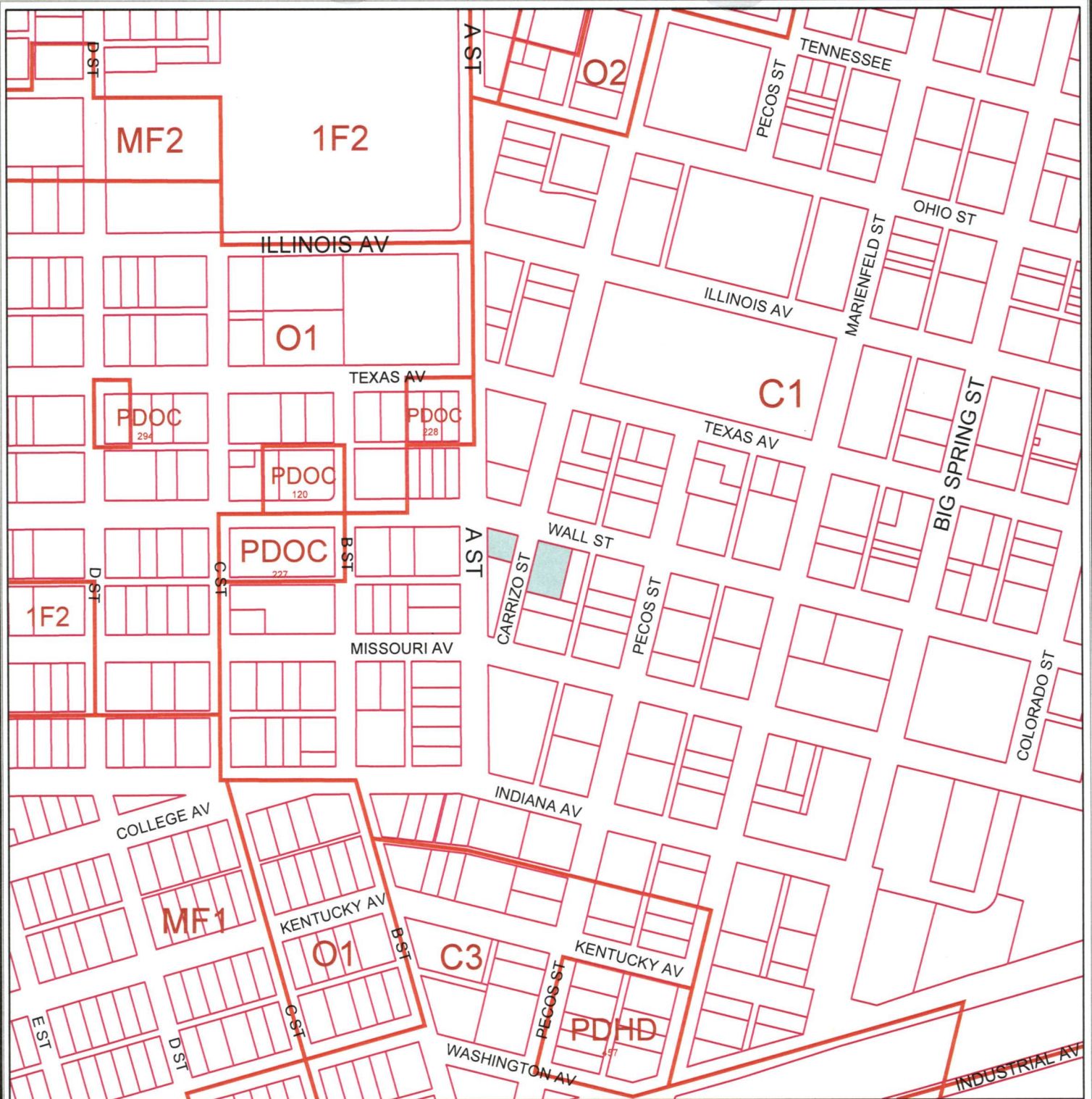
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LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

M - 12 - 027

Scale: 1" = 400'

Consider a request for a Temporary Land Use Permit for a Outdoor Amusement Function on the west 90 feet of Lots 10 thru 12, Block 61 and on Lot 1, the north 30 feet of Lot 2, Block 60 ½, and a 10 foot by 80 foot vacated portion of Carrizo Street, all out of Original Town, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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