

CITY OF MIDLAND, TEXAS
BRIEFING SESSION AGENDA
December 17, 2013 - 9:30 AM
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 an update from Andrew Nelson, COO of XCOR, regarding Midland Research and Development Facility and XCOR business activities.

AGENDA FOR CITY COUNCIL MEETING
December 17, 2013 – 10:00 AM
Council Chamber - City Hall

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

OPENING ITEMS

1. Invocation - Pastor Roy L. Smith, True-Lite Christian Fellowship
2. Pledge of Allegiance

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - a. Presentation to the 2013 Management Award Recipients.
 - b. Receive Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association.

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 November 26, 2013.

6. Consider a resolution authorizing the execution of a Professional Services Agreement with Agri-Waste Technology, Incorporated, of Apex, North Carolina for an agronomic compliance consultation for the Utilities Department; and appropriating \$185,000.00 for said professional services. (PURCHASING) (2013 - 437)
7. Consider a resolution approving the selection of AMD Engineering, LLC, Dunaway Associates, LP, Maverick Engineering, Parkhill, Smith & Cooper, Inc., and Savant Group to provide professional services for engineering designs and studies on an as-needed basis; authorizing the negotiation and execution of Professional Services Agreements with said firms; and providing that any agreement exceeding \$50,000 shall not become effective until approved by the City Council. (PURCHASING) (2013 - 438)
8. Consider a resolution authorizing issuance of a Request for Qualifications for architectural and engineering services for golf course improvements at Hogan Park Golf Course for the Community Services Department. (PURCHASING) (2013 - 439)
9. Consider a resolution authorizing the execution of a Professional Services Agreement with Kimley-Horn and Associates, Incorporated, of Irving, Texas for design development, construction documents, bidding assistance, and construction oversight for the Doug Russell Pool Renovation Project Phase II; and appropriating \$325,000.00 for said professional services. (PURCHASING) (2013 - 440)
10. Consider a resolution authorizing the City Manager to negotiate and execute a Professional Services Agreement with Silverwing Enterprises LLC to conduct an airport sensitivity study of land compatibility surrounding the Midland International Airport and appropriating \$200,500.00 to the Commercial Launch Site Application Project; the contract with Silverwing Enterprises will be approved by the City Manager and will not come back before the Council. (AIRPORTS) (2013 - 441)
11. Consider a resolution authorizing the City Manager to execute a Memorandum of Understanding regarding blood testing resulting from occupational exposure with the Midland County Hospital District; the City Manager is authorized to make modifications to the Memorandum of Understanding as long as the purpose is not amended. (CITY ATTORNEY'S OFFICE) (2013 - 442)
12. Receive and file the Consolidated Annual Performance and Evaluation Report for 2012/2013. (DEVELOPMENT SERVICES)
13. Consider a resolution approving the issuance of a permit to High Sky Partners, LLC ("Operator") to drill an oil and gas well within the City limits located 773 feet from the south line and 825 feet from the west line, Section 10, Block "X", H.P.

Hilliard Survey, City and County of Midland, Texas (Generally located on the north side of the extension of Mockingbird Lane, approximately 825 feet east of the extension of North Garfield Street); and waiving the requirement of a Road Repair Agreement. (DEVELOPMENT SERVICES) (2013 - 443)

14. Consider a resolution approving the issuance of a permit to High Sky Partners, LLC ("Operator") to drill an oil and gas well within the City limits located 1,176 feet from the south line and 825 feet from the west line, Section 10, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas (Generally located on the north side of the extension of Mockingbird Lane, approximately 825 feet east of the extension of North Garfield Street); and waiving the requirement of a Road Repair Agreement. (DEVELOPMENT SERVICES) (2013 - 444)
15. Consider a resolution approving the issuance of a permit to High Sky Partners, LLC ("Operator") to drill an oil and gas well within the City limits located 513 feet from the south line and 1,773 feet from the west line, Section 10, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas (Generally located on the north side of the extension of Mockingbird Lane, approximately 1,773 feet east of the extension of North Garfield Street); and waiving the requirement of a Road Repair Agreement. (DEVELOPMENT SERVICES) (2013 - 445)
16. Consider a resolution approving the issuance of a permit to Endeavor Energy Resources, LP ("Operator") to drill an oil and gas well within the City limits located 655 feet from the north line and 467 feet from the east line, Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas (Generally located on the north side of Passage Way, approximately 467 feet west of the extension of North Garfield Street). (DEVELOPMENT SERVICES) (2013 - 446)
17. Consider a resolution authorizing the execution of a Road Repair Agreement with Endeavor Energy Resources, LP regarding its applications to drill oil and gas wells (Chaps Wells) within the City limits in Section 9, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas. (DEVELOPMENT SERVICES) (2013 - 447)
18. Consider a resolution authorizing a Right-of-Way License with the City of Midland, Texas and Endeavor Energy Resources, L.P.; said Right-of-Way License is for the purpose of installing one (1) three inch (3") oil and gas, production water poly pipeline, and one four inch (4") fresh water poly pipeline all contained within an eight and one-half inch (8 ½") standard steel casing in a portion of Green Tree Boulevard.; the casing is located within the City of Midland right-of-way, Section 9, Block "X", H.P. Hilliard Survey, Midland, Midland County, Texas; the license term is for five (5) years, commencing with the date of this license and may be renewed at the end of the term for one additional five (5) year term upon 90 days written request prior to expiration. (ENGINEERING SERVICES) (2013 - 448)

19. Consider a resolution authorizing the execution of a Professional Services Agreement with Transmap Corporation for engineering, planning, and administrative services in connection with the Pavement Condition Survey Project; and authorizing payment therefor in the amount of \$182,000.00. (ENGINEERING SERVICES) (2013 - 449)
20. Consider a resolution authorizing the Midland Fire Department to file an application with the United States Government for the 2013 Assistance to Firefighters Grant; said funds will be used to purchase a Command Simulation Program; said grant is a matching funds grant in which the assistance to firefighters grant would fund 90% (\$315,000.00) of the total amount (\$350,000.00) and the City of Midland would fund 10% (\$35,000.00) of the total amount. (FIRE) (2013 - 450)
21. Consider a resolution authorizing an Operating Certificate for Moore's Limo Service, LLC to operate a limousine business; setting forth conditions accompanying the certificate; and establishing the terms of the certificate. (POLICE) (2013 - 451)
22. Consider a resolution authorizing the execution of a 1-year Effluent Farm Lease Renewal Agreement between the City of Midland, Texas, and CK Hay & Cattle Farms, L.L.C., for effluent farm operations at the City's plant farm. (UTILITIES) (2013 - 452)
23. Consider a resolution authorizing the execution of a 1-year Effluent Farm Lease Renewal Agreement between the City of Midland, Texas, and Schumann Cattle Company, for operation of the Conner Effluent Farm. (UTILITIES) (2013 - 453)

SECOND READINGS

24. Consider an ordinance on second reading changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 0.287-acre tract of land out of Section 18, Block 39, T-1-S, T&P RR Co. Survey, and Lot 2A, Block 45, Fairmont Park Addition, Section 23, City and County of Midland, Texas, which is presently zoned PD, Planned District for a Shopping Center, to be used as an O-1, Office District (Generally located on the west side of North Midland Drive, approximately 780 feet south of West Loop 250 North; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES)(First reading held on November 26, 2013)(9211)
25. Consider an ordinance on second reading changing the zoning use classification of the property described as a 6,369 square foot portion of the west 24.25 feet of Lot 9 and all of Lots 10-12, Block 65, Original Town, City and County of Midland,

Texas (Generally located on the southeast corner of the intersection of West Wall Street and South Colorado Street), which is presently zoned C-1, Central Area District, by permitting said property to be used under a Specific Use Permit with Term for the sale of all alcoholic beverages in a restaurant for on-premises consumption; making said permit subject to certain conditions and restrictions contained herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES)(First reading held on November 26, 2013)(9212)

26. Consider an ordinance on second reading vacating and abandoning a 0.05-acre portion of South Calhoun Street and East Washington Avenue rights-of-way adjacent to Lot 12, Block 22, Greenwood Addition, Third, Fourth and Fifth Sections, City and County of Midland, Texas (Generally located on the southeast corner of the intersection of South Calhoun Street and East Washington Avenue); adopting the appraisal by the City Manager of \$3,962.50; waiving the fee for the cost of the right-of-way; and ordering recordation by the City Secretary. (DEVELOPMENT SERVICES)(First reading held on November 26, 2013)(9213)
27. Consider an ordinance on second reading amending Title III, "Departments", Chapter 1, "Water Department", Section 2, "Rates," 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. (UTILITIES)(First reading held on November 26, 2013)(9214)

PUBLIC HEARINGS

28. 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 Lot 1A, Block 2, Westridge Park Addition, Section Three less 2.352 acres, 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 northeast corner of the intersection of Tradewinds Boulevard and Westridge 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) (9215)
29. At approximately 10:33 A.M. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting Lot 2, Block 84, East Midland Addition, Section 16, 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 North Fairgrounds Road, approximately 950 feet south of Golf Course Road); 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) (9216)

30. At approximately 10:36 A.M. hold a public hearing and consider an ordinance changing the zoning use classification of the property described as a 4.896-acre tract of land out of Section 33, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas (Generally located on the southeast corner of the intersection of South Midkiff Road and West Wall Street), which is presently zoned LR-3, Local Retail District, in part, and C-3, Commercial District, in part, 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) (9217)

MISCELLANEOUS

31. Consider a motion approving an Economic Development Agreement between the Midland Development Corporation and Pro Terminal Operators, LLC, setting forth the terms and conditions upon which incentive funds will be provided to Pro Terminal Operators, LLC, as consideration for Pro Terminal Operators, LLC making certain improvements to the property described as a 7.89-acre tract located in Section 8, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas. Said tract is generally located at Midland International Airport. (CITY ATTORNEY'S OFFICE)
32. Consider a motion approving the Midland Development Corporation's sale of Building "A" and the property described as Lot 9, Block 10, Midland International Airport Industrial Park Addition, Section 5, Midland, Midland County, Texas, to Pro Terminal Operators, LLC. (CITY ATTORNEY'S OFFICE)
33. Consider a motion authorizing the City Manager to execute all documents to sell to the Midland Community Development Corporation an eight (8) acre tract of land out of a City owned forty-eight (48) acre tract located at Loop 250 and North Big Spring. The City Manager may establish an appraisal if necessary and select the appropriate abstract company, and execute all closing documents and deeds. The sale of the property is not subject to the bidding requirements. (CITY MANAGER'S OFFICE)

34. Consider a motion establishing a policy to waive a percentage of the fees at the City's landfill for demolition in the downtown area. The City shall continue to collect the State Tipping Fee. (CITY MANAGER'S OFFICE)

EXECUTIVE SESSION

35. 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 551.072 Deliberation Regarding Real Property.
 - a.1. Discuss the purchase, exchange, lease or value of real property described as Lot 1 less 7.87 acres, Block 1, Westridge Park Addition, Section 1, an addition to the City of Midland, Midland County, Texas.
 - b. Section 551.087 Deliberate Economic Development Negotiations
 - b.1. Discuss business prospects that the City seeks to have locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives.

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
November 26, 2013**

BRIEFING SESSION

The City Council convened in a Briefing Session in the basement conference room, City Hall, Midland, Texas, at 9:00 a.m. on November 26, 2013.

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

Council Members absent: Council Member Michael Trost (District 4).

Staff members present: City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, Assistant City Manager Jim Nichols, Assistant to the City Manager Robert Patrick, City Secretary Amy Turner, Development Services Director Chuck Harrington, Solid Waste Director Morris Williams, Downtown Development Director Genora Young, Building Official Steve Thorpe, Community Development Manager Sylvester Cantu, Assistant Code Administration Officer Ron Jenkins, Code Public Information Officer Sara Higgins, Maintenance Supervisor Louis Gonzales.

2. Receive an update from United Way regarding transitional housing.

Donna Mahurin, Executive Director of United Way, provided an update on transitional housing. Transitional housing is needed from 90 days up to 2 years and is a bridge between emergency and permanent housing. She noted this is not a solution but a program for families who are coming out of emergency housing, and one that no other organization is currently providing. United Way formed a steering committee to look at meeting those needs. Family Promise also had the same vision and have come on board with their program. Their mission is to equip families to become self-sufficient and independent. Their overarching goal is to break the cycle of generational poverty.

She gave an overview of the program noting it would be for families with children under 17, and all adults would either be working or going to school. Each family pays a deposit and program fees, completes a literacy course and receives individualized goals. They are looking for people who are accustomed to case management noting this program is not for all people.

United Way has committed \$1 million to the transitional housing initiative. They are in the process of purchasing a duplex on Haynes and they hope to have one family in before Christmas. Family Promise was gifted two lots on Alta and they are working with a modular housing company to get duplexes put on the lots. The program has been named Families Forward.

1. Receive an update form Code Administration regarding the City's Inmate Work Program.

Building Official Steve Thorpe reported that in 2010 the City began looking into using inmates to do cleaning within the City limits. Since then, two Code Compliance Officers were sent to jailer school and passed their test. The City is now operating a work release City cleanup program which is a joint program between Midland County Sheriff's Office and the City of Midland, and as of March is operating full time.

Mr. Thorpe noted that in the past it was taking up to three months for large item pick up and with this program they are now down to under two weeks. He shared before and after pictures of some of their cleanup projects. He noted that in the future they would like to train another officer as a certified jailer and get a second truck so they can operate two work crews and do other special projects such a graffiti removal.

The Sheriff's Office perspective was the inmates look forward to participating in this program and they have a lot of respect for Louis Gonzales. The inmates assigned to this program are the lowest level offenders.

Code Compliance Officer Louis Gonzales reported this has been a unique learning experience for him and he has learned to wear many hats. He has to be the inmates' friend, counselor and spiritual advisor and he has found this to be a humbling experience. He has enjoyed it immensely.

City Attorney Keith Stretcher addressed liability issues noting they visited with Speaker Craddick and a bill was introduced giving the City fairly good immunity.

The foregoing agenda items were discussed by the City Council with no formal action taken. The Briefing Session was adjourned at 9:47 a.m.

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:04 a.m., November 26, 2013.

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

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

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

OPENING ITEMS

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

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - a. Presentation from the Parks & Recreation Division regarding the 2013 Lighted Christmas Parade.

Parks Manager Laurie Williams introduced Mr. & Mrs. Santa Clause who invited everyone to the 2013 Lighted Christmas Parade on Saturday, December 7.

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.

There were no citizens present wishing to speak.

CONSENT AGENDA

Council Member Morales moved to approve Consent Agenda items 5 - 16 excluding 7, 8; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

5. Approved a motion approving the following minutes:
 - a. Regular meeting of November 12, 2013.
 - b. Special meeting of November 14, 2013.
6. Approved a resolution approving and authorizing publication of Notice of Intention to issue series 2014 Certificates of Obligation in an amount not to exceed twenty-nine million and no/100 dollars (\$29,000,000.00). (FINANCE)

RESOLUTION NO. 2013 - 421

RESOLUTION APPROVING AND AUTHORIZING PUBLICATION OF NOTICE OF INTENTION TO ISSUE SERIES 2014 CERTIFICATES OF OBLIGATION IN AN AMOUNT NOT TO EXCEED TWENTY-NINE MILLION AND NO/100 DOLLARS (\$29,000,000.00)

9. Approved a resolution approving the purchase of a Caterpillar D8TXL Waste Dozer through Buyboard contract 424-13 from Warren Power & Machinery, Inc. for the Garage Division. (PURCHASING)

RESOLUTION NO. 2013 - 424

RESOLUTION APPROVING THE PURCHASE OF A CATERPILLAR D8TXL WASTE DOZER THROUGH THE BUYBOARD AT A TOTAL COST OF \$765,300.00; AND THIS ITEM WAS NOT BID BUT PURCHASED THROUGH A COUNCIL OF GOVERNMENTS

10. Approved a resolution finding that Diamondback E&P LLC submitted the most advantageous proposal with reference to RFP #07-13 Request for Oil and Gas Lease Proposal; and authorize the City Manager to execute all documents concerning the lease of minerals within portions of Sections 4 and 9, Block 40, T2S, T&P Ry. Co. Survey. (AIRPORTS)

RESOLUTION NO. 2013 - 425

RESOLUTION AUTHORIZING AN OIL AND GAS LEASE AGREEMENT WITH DIAMONDBACK E&P, LLC, TO LEASE LAND AT THE MIDLAND INTERNATIONAL AIRPORT, WITHIN PORTIONS OF SECTIONS 4 AND 9, BLOCK 40, T-2-S, T&P RY. CO. SURVEY, MIDLAND COUNTY, TEXAS, FOR THE PURPOSES AND WITH THE EXCLUSIVE RIGHT OF EXPLORING, DRILLING, AND OPERATING FOR, AND PRODUCING OIL AND GAS; THE COUNCIL PREVIOUSLY AUTHORIZED ADVERTISEMENT FOR PROPOSALS TO LEASE LAND AT THE MIDLAND INTERNATIONAL AIRPORT FOR THE PURPOSES AND WITH THE EXCLUSIVE RIGHT OF EXPLORING, DRILLING, AND OPERATING FOR, AND PRODUCING OIL AND GAS; THE LEASED PREMISES CONSISTS OF APPROXIMATELY 304 ACRES

11. Approved a resolution approving the MOUTD Management Services Agreement with McDonald Transit Associates, Inc.
(Notes: Check for amount on Fiscal Impact before approval.) (CITY MANAGER'S OFFICE)

RESOLUTION NO. 2013 - 426

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT BETWEEN THE MIDLAND-ODESSA URBAN TRANSIT DISTRICT AND MCDONALD TRANSIT ASSOCIATES, INCORPORATED; THIS CONTRACT IS A MANAGEMENT CONTRACT FOR THE MOTORBUS TRANSPORTATION SYSTEM LOCATED IN MIDLAND COUNTY AND ECTOR COUNTY, TEXAS

12. Approved a resolution authorizing the acceptance of grant funds from Midland County Hospital District/ Midland Memorial Hospital in the amount of \$66,000.00 to assist the Health and Senior Services Division with the delivery of diabetes screening services and appropriate said funds to a project. (COMMUNITY SERVICES)

RESOLUTION NO. 2013 - 427

RESOLUTION AUTHORIZING THE CITY OF MIDLAND TO ACCEPT GRANT FUNDS FROM THE MIDLAND COUNTY HOSPITAL DISTRICT DBA MIDLAND MEMORIAL HOSPITAL, A POLITICAL SUBDIVISION OF THE STATE OF TEXAS IN THE AMOUNT OF \$66,000.00; SAID GRANT FUNDS ARE TO ASSIST THE HEALTH AND SENIOR SERVICES DIVISION WITH THE DELIVERY OF DIABETES SCREENING SERVICES; AUTHORIZING THE EXECUTION OF ACCEPTANCE DOCUMENTS; AND APPROPRIATING FUNDS

13. Approved a resolution authorizing the execution of a Public Improvement Development Agreement with Real Property Resources, Inc., (Betenbough Homes) for the water extension (oversized participation) along Avalon Drive. Said agreement being authorized by Section 395.081 of the Texas Local Government Code. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 428

RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT

DEVELOPMENT AGREEMENT WITH REAL PROPERTY RESOURCES, INC. FOR DEVELOPMENT OF LEGENDS PARK ADDITION, SECTION 8, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ALONG AVALON DRIVE, APPROXIMATELY 2,400 FEET SOUTH OF DEAUVILLE BOULEVARD); AND APPROPRIATING FUNDS IN THE AMOUNT OF \$124,784.00 THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

14. Approved a resolution authorizing a Right-of-Way Agreement and a Surface Damage Agreement with Saltwater Partners SWD, LLC for the installation and maintenance of one (1) pipeline not to exceed six (6) inches in diameter, for the transportation of produced water, located in Block 38, Section 9, T2S, T&P Survey Co, Midland, TX. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 429

RESOLUTION AUTHORIZING A RIGHT-OF-WAY LICENSE BETWEEN THE CITY OF MIDLAND, TEXAS AND SALTWATER PARTNERS SWD, LLC; SAID RIGHT-OF-WAY LICENSE IS FOR ENTERING THE CITY OF MIDLAND'S RIGHT-OF-WAY FOR THE PURPOSE OF PLACING, CONSTRUCTING, OPERATING, REPAIRING, MAINTAINING, REPLACING AND REMOVING A PIPELINE NOT TO EXCEED SIX (6) INCHES IN DIAMETER FOR THE TRANSPORTATION OF PRODUCED WATER AND TO HAVE THE RIGHT OF INGRESS AND EGRESS AT CONVENIENT POINTS FOR SUCH PURPOSE; THE PIPELINES ARE LOCATED WITHIN THE CITY OF MIDLAND RIGHT-OF-WAY, SECTION 9, BLOCK 38, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; THE LICENSE TERM IS FOR FIVE (5) YEARS, COMMENCING WITH THE DATE OF THIS LICENSE AND SHALL AUTOMATICALLY RENEW AT THE END OF THE TERM FOR ONE ADDITIONAL FIVE (5) YEAR TERM UPON 120 DAYS WRITTEN REQUEST PRIOR TO EXPIRATION

15. Approved a resolution accepting a Temporary Drainage Easement by Cumberland & Western Resources LLC on property adjacent to Avalon Drive near Legends Park Addition Section 8. (ENGINEERING SERVICES)

RESOLUTION NO. 2013 - 430

RESOLUTION AUTHORIZING THE ACCEPTANCE OF A 1.186-ACRE TEMPORARY DRAINAGE EASEMENT LOCATED IN SECTION 47, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND, MIDLAND COUNTY, TEXAS; AND ORDERING RECORDATION BY THE CITY SECRETARY

16. Approved a resolution accepting engineering plans and specifications for elevated storage tank rehabilitation and authorization for advertisement for bid. (UTILITIES)

RESOLUTION NO. 2013 - 431

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR COMPETITIVE BIDS FOR THE "WATER SYSTEM IMPROVEMENTS; REHABILITATION & LEAD ABATEMENT OF THE EDGEWOOD ELEVATED WATER STORAGE TANK AND THE WADLEY ELEVATED STORAGE TANK PROJECT"; AND THE PLANS AND SPECIFICATIONS WERE PREPARED BY PARKHILL, SMITH AND COOPER

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

7. Consider a resolution declaring expectation to reimburse expenditures with proceeds of future debt; and the City of Midland reasonably expects to reimburse capital expenditures with proceeds of debt hereafter to be incurred by the City; and appropriating \$9,971,080.00 to the Radio System Upgrade Project (9018). (FINANCE)

RESOLUTION NO. 2013 - 422

RESOLUTION DECLARING EXPECTATION TO REIMBURSE EXPENDITURES WITH PROCEEDS OF FUTURE DEBT; AND THE CITY OF MIDLAND REASONABLY EXPECTS TO REIMBURSE CAPITAL EXPENDITURES WITH PROCEEDS OF DEBT HEREFTER TO BE INCURRED BY THE CITY; AND APPROPRIATING \$9,971,080.00 TO THE RADIO SYSTEM UPGRADE PROJECT (9018)

Council Member Sparks asked for an update noting that these radios were being purchased due to a Federal mandate. Chief Information Sharlett Chowning noted the City is complying with the Federal mandate for all radios to be interoperable. The City will be purchasing the radios through the General Fund and then will be reimbursed through the Certificate of Obligation issuance.

Council Member Trost moved to adopt Resolution No. 2013 - 422; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

8. Consider a resolution approving an agreement with Halff Associates, Inc. for architectural and engineering services for the Hike and Bike Trail Plan and Phase 1 Development project and appropriating funds for the Community Services Department. (PURCHASING)

RESOLUTION NO. 2013 - 423

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH HALFF ASSOCIATES, INCORPORATED, OF AUSTIN, TEXAS, FOR PROFESSIONAL ARCHITECTURAL AND ENGINEERING SERVICES FOR THE HIKE AND BIKE TRAIL PLAN AND PHASE I DEVELOPMENT PROJECT AT A COST OF \$400,000.00; AND APPROPRIATING AND ALLOCATING FUNDS

Council Member Sparks expressed concern about spending \$400,000 to design the hike and bike trail.

Parks & Recreation Manager Laurie Williams reported that \$317,000 was for the design and construction management which was expected to be \$3 million. The remaining portion was to update the master plan.

Council Member James moved to adopt Resolution No. 2013 - 423; seconded by Council Member Love.

Discussion ensued about how the location for the hike and bike trail was chosen, that the design phase should take 6-9 months and that the FAA will need to grant permission once the exact locations are specified. It was suggested to keep in mind that the Airpark may not always be located in that area and to have a contingency plan in place.

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

SECOND READINGS

17. Consider an ordinance on second reading on a request by CFC Properties, LLC for a zone change from PD, Planned District for an Industrial District to an Amended Planned District on a 4.57-acre tract of land out of Lots 1 through 3 and the vacated rights-of-way of Arapahoe Road and State Highway 349, Block 17; and from LR-2, Local Retail District to PD, Planned District for an Industrial District on Lots 1 and 2, Block 18, all out of 349 Ranch Estates, Section 3, City and County of Midland, Texas. (Generally located on the east side of Highway 349 on both sides of Arapahoe Road.) (DEVELOPMENT SERVICES) (First reading held on November 12, 2013.)

ORDINANCE NO. 9202

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 4.57-ACRE TRACT OF LAND OUT OF LOTS 1-3, AND THE VACATED RIGHTS-OF-WAY OF ARAPAHOE ROAD AND STATE HIGHWAY 349, BLOCK 17, AND LOTS 1 AND 2, BLOCK 18, ALL OUT OF 349 RANCH ESTATES, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR AN INDUSTRIAL DISTRICT, IN PART, AND LR-2, LOCAL RETAIL DISTRICT, IN PART, TO BE USED AS AN AMENDED PLANNED DISTRICT FOR AN INDUSTRIAL DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF HIGHWAY 349 ON BOTH SIDES OF ARAPAHOE ROAD); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9202.

Council Member Love moved to approve the second and final reading of Ordinance No. 9202 in accordance with the Charter of the City of Midland; seconded by Council Member Morales.

Planning Division Manager Jim Compton reported that just before the meeting the applicant requested permission to change the material of the fence pilasters from natural stone to a decorative masonry.

Council Member Sparks moved to amend the motion by changing the material of the fence pilasters to a split faced decorative masonry block; seconded by Council Member Love.

Mr. Compton reported that two weeks ago the applicant agreed to change the chain link fence along Arapahoe to wrought iron fence. There is a condition in the ordinance that includes that amendment.

Cliff Chalmers, applicant, noted he had agreed to construct a fence similar to what is on the west side of Highway 349 which is wrought iron fence panels with limestone columns. Now he is requesting to build materials out of a man-made decorative

masonry block in order to avoid importing stone from the Austin area. The entire fence will have the same material on Highway 349 and along Arapahoe. He fully understood the block was to be decorative and not a smooth block.

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

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

18. Consider an ordinance on second reading on a request by David Martin for a zone change from AE, Agriculture Estate District to PD, Planned District for a Housing Development on 54.487-acre tract of land out of Section 12, Block "X", H. P. Hilliard Survey, City and County of Midland Texas. (Generally located on the east side of Hwy 349, approximately 1,200 feet north of Mockingbird Lane. (DEVELOPMENT SERVICES) (First reading held on November 12, 2013.)

ORDINANCE NO. 9203

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 54.487-ACRE TRACT OF LAND OUT OF SECTION 12, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE EAST SIDE OF STATE HIGHWAY 349, APPROXIMATELY 1,200 FEET NORTH OF MOCKINGBIRD LANE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Moreno read the caption of Ordinance No. 9203.

Council Member Love moved to approve the second and final reading of Ordinance No. 9203 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

19. Consider an ordinance on second reading on a request by Chris Stokes for a Specific Use Permit with Term for an Electronic Billboard/ Billboard Sign, on a 0.553-acre portion of Tract 1, Town & Country Annex, City and County of Midland, Texas. (Generally located on the south side of Andrews Highway, approximately 730 feet northeast of West Cuthbert Avenue.) (DEVELOPMENT SERVICES) (First reading held on November 12, 2013.)

ORDINANCE NO. 9204

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS 0.553-ACRE PORTION OF TRACT 1, TOWN & COUNTRY ANNEX, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTH SIDE OF ANDREWS HIGHWAY, APPROXIMATELY 730 FEET NORTHEAST OF WEST CUTHBERT AVENUE), WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR AN OFFICE CENTER, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR A

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

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9204.

Council Member James moved to approve the second and final reading of Ordinance No. 9204 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Trost.

20. Consider an ordinance on second reading on a request by Mockingbird Oaks Development, LLC for a zone change from TH, Townhouse Dwelling District on a 3.98-acre tract of land all out of Section 25, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the west side of Holiday Hill Road, approximately 470 feet south of Briarwood Avenue.) (DEVELOPMENT SERVICES) (First reading held on November 12, 2013.)

ORDINANCE NO. 9206

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 3.98-ACRE TRACT OF LAND AND A 36.81-ACRE TRACT OF LAND, ALL OUT OF SECTION 25, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED TH, TOWNHOUSE DWELLING DISTRICT, IN PART, AND 1F-3, ONE-FAMILY DWELLING DISTRICT, IN PART, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE WEST SIDE OF HOLIDAY HILL ROAD, APPROXIMATELY 470 FEET SOUTH OF BRIARWOOD AVENUE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9206.

Council Member James moved to approve the second and final reading of Ordinance No. 9206 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

21. Consider an ordinance on second reading on a request by Midland Pediatric Associates, PLLC for a zone change from PD, Planned District for a Shopping Center to an Amended Planned District on Lots 4 and 5, Block 10, Northwood Addition, Section 7, City and County of Midland, Texas. (Generally located on the north side of Mamie Circle, approximately 290 feet north of West Wadley Avenue.) (DEVELOPMENT SERVICES) (First reading held on November 12, 2013.)

ORDINANCE NO. 9207

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING

CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 4 AND 5, BLOCK 10, NORTHWOOD ADDITION, SECTION 7, 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 NORTH SIDE OF MAMIES CIRCLE, APPROXIMATELY 290 FEET NORTH OF WEST WADLEY AVENUE); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9207.

Council Member Morales moved to approve the second and final reading of Ordinance No. 9207 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Trost.

22. Consider an ordinance on second reading on a request by Marshall Gage, LLC / Scott Caruthers for a zone change from PD, Planned District for a Shopping Center to LR-2, Local Retail District on Lot 3, Block 2; Westridge Park Addition, Section 3, City and County of Midland, Texas. (Generally located on the southwest corner of the intersection of Andrews Highway and North Loop 250 West.) (DEVELOPMENT SERVICES) (First reading held on November 12, 2013.)

ORDINANCE NO. 9208

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 3, BLOCK 2, WESTRIDGE PARK ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN LR-2, LOCAL RETAIL DISTRICT (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF ANDREWS HIGHWAY AND NORTH 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

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9208.

Council Member Love moved to approve the second and final reading of Ordinance No. 9208 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

23. Consider an ordinance on second reading establishing intersection stops at various locations within the City of Midland, Texas; requiring and authorizing the posting of appropriate signs at intersections; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two hundred dollars (\$200.00); and ordering publication. (ENGINEERING SERVICES) (First reading held on November 12, 2013.)

ORDINANCE NO. 9209

AN ORDINANCE ESTABLISHING INTERSECTION STOPS AT VARIOUS LOCATIONS WITHIN THE CITY OF MIDLAND, TEXAS; REQUIRING AND AUTHORIZING THE POSTING OF APPROPRIATE SIGNS AT INTERSECTIONS; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO HUNDRED DOLLARS (\$200.00); AND ORDERING PUBLICATION

Deputy City Secretary Moreno read the caption of Ordinance No. 9209.

Council Member Sparks moved to approve the second and final reading of Ordinance No. 9209 in accordance with the Charter of the City of Midland; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

PUBLIC HEARINGS

24. At approximately 10:30 A.M. hold a public hearing and consider an ordinance on a request by Real Property Resources for a zone change from FD, Future Development District to PD, Planned District for a Housing Development on a 40.498-acre tract of land (Tract 1) out of Sections 37, 38 and 48; from PD, Planned District for a Housing Development to an Amended Planned District on a 5.954-acre tract of land (Tract 2) and from PD, Planned District for a Housing Development to an Amended Planned District for a Housing Development on a 0.270-acre tract of land (Tract 3) all out of Section 37, both out of Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located at the south extension of Avalon Drive, approximately 700 feet south of Hall of Fame Boulevard.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9210

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 40.498-ACRE TRACT OF LAND OUT OF SECTIONS 37, 38 AND 48, BLOCK 40, T-1-S, T&P RR CO. SURVEY, A 5.954-ACRE TRACT OF LAND OUT OF SECTION 37, BLOCK 40, T-1-S, T&P RR CO. SURVEY, AND A 0.270-ACRE TRACT OF LAND OUT OF SECTION 37, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, IN PART, AND PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, IN PART, TO BE USED AS AN AMENDED PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE EAST SIDE OF THE SOUTH EXTENSION OF AVALON DRIVE, APPROXIMATELY 700 FEET SOUTH OF HALL OF FAME 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

Planning Division Manager Jim Compton gave a brief overview of the item noting it was for the next phase of Legends Park development by Betenbough Homes. There will be 178 residential lots that meet the minimum lot requirements. Planning & Zoning recommended approval and no letters of opposition had been received.

Mayor Perry opened the public hearing at 10:47 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9210.

Council Member James moved approval of the first of two readings of Ordinance No. 9210 in accordance with the Charter of the City of Midland; seconded by Council Member Trost.

Discussion ensued about the number of 1F-3 lots that have been proposed of late and that more 1F-1 1F-2 lots should be encouraged. It was noted that the project has alleys with caliche paving and no rear entry garages. It was suggested that a mix of lots in a development would be desirable such as including townhomes mixed in with single family homes. A suggestion was made to ensure that Planning & Zoning be made aware of the direction Council would like to go and the importance of informing the development community.

Council Member Sparks asked Building Official Steve Thorpe to address the alley issue. Mr. Thorpe reported that the Legend Park subdivision they discovered that when utility companies were doing their potholing to make customer connections, construction materials were buried in those potholes. Engineering Director Jose Ortiz noted he met with Betenbough and expressed concern regarding the alleys and informed them the alleys would not be accepted. Staff is working with them to remedy the situation and expect it to be resolved by early next year after the dumpsters were removed from the alleys.

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

25. At approximately 10:33 A.M. hold a public hearing and consider an ordinance on a request by Vision Health Specialties for a zone change from PD, Planned District for a Shopping Center to O-1, Office District on a 0.287-acre tract of land out of Section 18, Block 39, T-1-S, T&P RR Co. Survey and on Lot 2A, Block 45, Fairmont Park Addition, Section 23, City and County of Midland, Texas. (Generally located on the west side of N. Midland Drive, approximately 780 feet south of W. Loop 250 North.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9211

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 0.287-ACRE TRACT OF LAND OUT OF SECTION 18, BLOCK 39, T-1-S, T&P RR CO. SURVEY, AND LOT 2A, BLOCK 45, FAIRMONT PARK ADDITION, SECTION 23, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN O-1, OFFICE DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDLAND DRIVE, APPROXIMATELY 780 FEET SOUTH OF WEST LOOP 250 NORTH; 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 Jim Compton gave a brief overview of the item noting the applicant is wishing to expand their lot. Rather than revising the site plan they have filed

to change the zoning to an O-1 Office District which will still be under staff oversight. Planning & Zoning recommended approval and no opposition was received.

Mayor Perry opened the public hearing at 11:09 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9211.

Council Member Sparks moved approval of the first of two readings of Ordinance No. 9211 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Love, Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

26. At approximately 10:39 A.M. hold a public hearing and consider an ordinance on a request by Nemecio Torres for an Amended Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on a 6,369 square foot portion of the west 24.25 feet of Lot 9 and all of Lots 10 through 12, Block 65, Original Town, City and County of Midland, Texas. (Generally located on the southeast corner of the intersection of W. Wall Street and S. Colorado Street.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9212

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS A 6,369 SQUARE FOOT PORTION OF THE WEST 24.25 FEET OF LOT 9 AND ALL OF LOTS 10-12, BLOCK 65, ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF WEST WALL STREET AND SOUTH COLORADO STREET), WHICH IS PRESENTLY ZONED C-1, CENTRAL AREA DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

Mayor Perry announced he would be abstaining on this item and left the dais.

Planning Division Manager Jim Compton gave a brief overview of the item noting the applicant received a Special Use Permit in 2007 for alcoholic beverages. They recently expanded the square footage of the restaurant and need to update the permit to accommodate the additional square footage.

Mayor Pro Tem Sparks opened the public hearing at 11:13 a.m. There being no one present wishing to speak, the public hearing was immediately closed.

Deputy City Secretary read the caption of Ordinance No. 9212.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 9212 in accordance with the Charter of the City of Midland; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Morales, Trost, Dufford, James, Sparks. NAY: None. ABSTAIN: Perry. ABSENT: None.

27. At approximately 10:42 A.M. hold a public hearing and consider a resolution on a request by William Barrick for a variance to the Subdivision Code concerning the required paving of an alley for rear entry access on the east 79.14 feet of Lot 17 and the west 15.7 feet of Lot 18, Block 2, West Way, City and County of Midland, Texas. (Generally located on the north side of Humble Avenue, approximately 400 feet west of Lanham Street.) (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 432

RESOLUTION GRANTING A VARIANCE FOR THE EAST 79.14 FEET OF LOT 17 AND THE WEST 15.7 FEET OF LOT 18, BLOCK 2, WEST WAY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF HUMBLE AVENUE, APPROXIMATELY 400 FEET WEST OF LANHAM STREET), BY PERMITTING ACCESS TO SAID PROPERTY FROM AN UNPAVED ALLEY THAT DOES NOT CONFORM TO CITY OF MIDLAND STANDARD SPECIFICATIONS

Planning Division Manager Jim Compton gave a brief overview of the item noting the request was from someone not wanting to pave the alley to get access to a rear entry garage. There are other houses on the block that have rear entry garages without a paved alley. The subdivision code requires paved alleys unless a variance is granted. Staff recommended not approving the request but Planning & Zoning approved it so staff is bringing the item to Council for the final decision. When checking by aerial photography it appears there are 5-7 other rear entry structures in the area

Mayor Perry opened the public hearing at 11:21 a.m.

William Barrick, 2508 Humble, stated this was about his house. He provided a map of his area. He went 2000 feet in each direction from his house, drove up and down each alley and found 104 structures within that square that have rear alley access without paving which are represented on the map by blue dots. He also provided picture of some of the structures.

There being no one else wishing to speak, the public hearing was closed at 11:23 a.m.

Council Member Dufford moved to adopt Resolution No. 2013 - 432; seconded by Council Member James.

Brief discussion ensued about the type of building materials that will be used and the applicant reaffirmed that it will not include a kitchen or restroom. It was noted that a plan needed to be developed to have a mechanism in place to cover a portion of the paving or to have a development agreement of some type.

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

DEVELOPMENT SERVICES

28. Consider a resolution approving the 2012 International Building Code, with amendments; the 2012 International Mechanical Code, with amendments; the 2012 International Plumbing Code, with amendments; the 2012 International Fuel Gas Code, with amendments; and the 2012 International Residential Code, with amendments as public records; and providing that all codes shall be put on file in the office of the City

Secretary for a minimum of thirty (30) days before any action is taken by the City Council. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 433

RESOLUTION APPROVING THE 2012 INTERNATIONAL BUILDING CODE, WITH AMENDMENTS; THE 2012 INTERNATIONAL MECHANICAL CODE, WITH AMENDMENTS; THE 2012 INTERNATIONAL PLUMBING CODE, WITH AMENDMENTS; THE 2012 INTERNATIONAL FUEL GAS CODE, WITH AMENDMENTS; THE 2012 INTERNATIONAL RESIDENTIAL CODE, WITH AMENDMENTS; AND PROVIDING THAT ALL CODES SHALL BE PUT ON FILE IN THE OFFICE OF THE CITY SECRETARY FOR A MINIMUM OF THIRTY (30) DAYS BEFORE ANY ACTION IS TAKEN BY THE CITY COUNCIL

Building Official Steve Thorpe gave a brief overview of the item noting the Code Change Committee received a list of the significant changes the City is proposing to adopt and there was no negative feedback received from the committee. They recommended moving forward with the adoption process. The proposed code will be put on review for at least 30 days in the City Secretary's Office, comments will be gathered and brought forward to the City Council for actual adoption of the Code. The only significant amendment was out of Chapter 11 of the International Residential Code. Staff has chosen to strike the Energy Efficiency Chapter until the State acts on the Code. If the City adopts all five Codes, the Energy Code from the 2009 version will stand.

City Attorney Stretcher noted that under 4-1-9 Street Improvement Fees, the City does not have any impact fees, so the only way it can be done is under Craddick Amendment 395.081. There is a case out of Eastland that went to the Texas Supreme Court that states an affirmative statement has to be made that the City will not file criminal charges against an individual to collect those fees. That language was included in Ordinance 8818. He suggested the Council authorize the City Attorney's Office to put that language in 4-1-9 to comply with that court case.

Mr. Stretcher noted on another item under 4-1-9 Section D, it says that committee members shall prepare a schedule. He suggested the word "shall" be changed to "may".

Council Member Dufford moved to adopt Resolution No. 2013 - 433 with the amendment to add the following language, "The City shall not file criminal charges against any person if the street improvement fee is not paid. The City shall not file criminal charges against a person in an attempt to collect the Street Improvement fee." and to change the word "shall" to "may"; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Love, Morales, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Trost.

29. Consider a resolution for an appeal of the Building Official's denial of a temporary sign permit. (DEVELOPMENT SERVICES)

RESOLUTION NO. 2013 - 434

RESOLUTION AUTHORIZING THE ISSUANCE OF A TEMPORARY SIGN PERMIT TO FOTOVYBES INC. ("APPLICANT") FOR THE PLACEMENT OF A TEMPORARY SIGN ON PROPERTY WITHIN THE CITY OF MIDLAND; SAID PERMIT WAS DENIED BY THE BUILDING OFFICIAL AND THIS RESOLUTION IS AN APPEAL TO THE MIDLAND CITY COUNCIL

Council Member Love announced he would be abstaining on this item and left the dais.

Building Official Steve Thorpe gave a brief overview of the item noting he denied the permit because it does not meet requirements for a temporary sign. This is a 91 square foot electronic sign and temporary signs are 35 square feet and cannot be electronic. The applicant will be advertising multiple locations. Therefore this item is being brought to Council on appeal. The sign can be up for no more than 60 days in a calendar year and no more than four days in one location.

City Attorney Keith Stretcher emphasized that paragraph 9 reserves the right of City Council to cancel for no or any reason with a 30 day notice. Paragraph 10 of the permit limits the use for six months.

Council Member James noted he is struggling with the item because of his desire to stay consistent. His fear is Lamar or other companies will come in wanting to do the same thing and the City will end up with 200 mobile signs that can move anywhere in the City.

Jose Bo Zertuche, 1309 N. Big Spring, report this specific sign has been employed at specific events such as the T-Bar opening, the Blues Fest, and Mex-Tex. He noted technology is constantly changing. The structure doesn't take up any more room than a pallet truck. He questioned why off-premises advertising is not allowed noting everyone is already struggling with overregulation. He noted that with off-premises advertising they can have 10-20 ads which would mean fewer billboards are needed. He noted they could skirt the structure and limit the display to 35 square feet even though the sign itself is 96 square feet. He asked that Council consider trying this on a trial basis.

Council Member Morales moved to adopt Resolution No. 2013 - 434; seconded by Council Member Trost.

Discussion ensued about amending the permit to perhaps allow to stay in one location for one week and limiting the advertisement to the business it is in front of. A suggestion was made to defer the item until Council can come up with appropriate guidelines. It was noted if the item was deferred they would miss the holiday season to advertise and this item should be allowed to move forward on a temporary and trial basis.

Council Member Sparks moved to amend the motion by changing term of the permit to 90 days and deleting the last sentence that it automatically renews; seconded by Council Member Morales. The motion to amend carried by the following vote: AYE: Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: Love. ABSENT: None.

Council Member James moved to amend the motion by changing the display area to not exceed 35 square feet; seconded by Council Member Dufford. The motion to amend carried by the following vote: AYE: Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: Love. ABSENT: None.

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

MISCELLANEOUS

30. Continue consideration of an ordinance on a request by David Heiser Family Trust for a Specific Use Perm without Term for a RV Park on a 15.00-acre tract of land out of Section 1, Block 39, T-2-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the north side of East Interstate Highway 20, approximately 1,300 feet west of South Fairgrounds Road.) (DEVELOPMENT SERVICES) (Deferred from November 12, 2013.)

ORDINANCE NO. 9205

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF A 15.00-ACRE TRACT OF LAND OUT OF SECTION 1, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF EAST INTERSTATE HIGHWAY 20, APPROXIMATELY 1,300 FEET WEST OF SOUTH FAIRGROUNDS ROAD), WHICH IS PRESENTLY ZONED BP, I-20 BUSINESS PARK DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITHOUT TERM FOR A RECREATIONAL VEHICLE (RV) PARK; 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

Planning Division Manager Jim Compton gave a brief overview of the item noting the item was considered at the last meeting for an RV park with 131 lots. Council deferred the item in order to obtain more information. Just before this meeting, the applicant requested the item be deferred to date undetermined.

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

31. Consider an ordinance on a request for the vacation of a 0.05-acre portion of the rights-of-way of S. Calhoun Street and E. Washington Avenue adjacent to Lot 12, Block 22, Greenwood Addition, Third, Fourth and Fifth, Sections, City and County of Midland, Texas. (Generally located on the southeast corner of the intersection of S. Calhoun Street and E. Washington Avenue.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9213

AN ORDINANCE VACATING AND ABANDONING A 0.05-ACRE PORTION OF SOUTH CALHOUN STREET AND EAST WASHINGTON AVENUE RIGHTS-OF-WAY ADJACENT TO LOT 12, BLOCK 22, GREENWOOD ADDITION, THIRD, FOURTH AND FIFTH SECTIONS, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF SOUTH CALHOUN STREET AND EAST WASHINGTON AVENUE); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$3,962.50; WAIVING THE FEE FOR THE COST OF THE RIGHT-OF-WAY; AND ORDERING RECORDATION BY THE CITY SECRETARY

Council Member Love announced he would be abstaining on this item and left the dais.

Planning Division Manager Jim Compton gave a brief overview of the item noting the

applicant was proposing to add a second floor to an existing building which would extend the footprint of the first floor thereby creating a need to vacate unnecessary right of way. Planning & Zoning recommended in favor of this item.

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9213.

Council Member Morales moved approval of the first of two readings of Ordinance No. 9213 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: Love. ABSENT: None.

32. Consider a motion on a request for the annexation of Lot 3, Block 5, Pecan Acres Addition, Section 5, and of Lots 4A and 4B Block 5, Pecan Acres Addition, Section 7, Midland County, Texas. (Generally located on the north side of Trenton Drive, approximately 550 feet east of Trobaugh Boulevard.) (DEVELOPMENT SERVICES)

Planning Division Manager Jim Compton gave a brief overview of the item noting the applicant was requesting annexation in order to get access to City Water. Staff is requesting Council's permission to move forward with this item. If approved, it will come back early next year for annexation.

Council Member Dufford moved to approve a motion on a request for the annexation of Lot 3, Block 5, Pecan Acres Addition, Section 5, and of Lots 4A and 4B Block 5, Pecan Acres Addition, Section 7, Midland County, Texas. (Generally located on the north side of Trenton Drive, approximately 550 feet east of Trobaugh Boulevard.); seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Trost.

33. Consider a resolution approving a contract with Dailey and Wells Communications, Inc. for a P25 800 MHz Simulcast Trunked Land Mobile Radio System for the Communication and Information Systems Department. (PURCHASING)

RESOLUTION NO. 2013 - 435

RESOLUTION AUTHORIZING THE EXECUTION OF A CONTRACT FOR THE IMPLEMENTATION OF A P25 800 MHZ SIMULCAST TRUNKED LAND MOBILE RADIO SYSTEM WITH DAILEY & WELLS COMMUNICATIONS, INCORPORATED, OF SAN ANTONIO, TEXAS, AT A TOTAL COST OF \$9,149,719.00; AND THE CONTRACT IS FOR A CITY-WIDE PUBLIC SAFETY AND PUBLIC WORKS RADIO SYSTEM AND RELATED SYSTEMS

Chief Information Officer Sharlett Chowning gave a brief overview of the item noting the current radio system is 23 years old and the City is experiencing coverage issue in some areas. This would take care of the coverage issues as well as interoperability.

Council Member Sparks moved to adopt Resolution No. 2013 - 435 with the following amendments: page 906-907 strike item 6E; page 909 item B indemnification - the City will not give up indemnification; page 911 under governing law dispute resolution compliance strike item B; seconded by Council Member James. The motion carried by the following vote: AYE: Love, Morales, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Trost.

34. Consider a resolution approving an agreement with RCC Consultants, Incorporated, to

provide consulting services to conduct Phase 3 of the Radio Replacement Project at a cost of \$248,905.50 for the Communication and Information Systems Department. (PURCHASING)

RESOLUTION NO. 2013 - 436

RESOLUTION APPROVING AN AGREEMENT WITH RCC CONSULTANTS, INCORPORATED, TO PROVIDE CONSULTING SERVICES TO CONDUCT PHASE 3 OF THE RADIO REPLACEMENT PROJECT AT A COST OF \$248,905.50; AND THE CONSULTANTS WILL IMPLEMENT, AND TEST A NEW P25 800 MHZ SIMULCAST TRUNKED LAND MOBILE RADIO SYSTEM

Council Member Morales moved to adopt Resolution No. 2013 - 436; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Love, Morales, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Trost.

35. Consider an ordinance amending water and sewer rates and ordering publication. (UTILITIES)

ORDINANCE NO. 9214

AN ORDINANCE AMENDING TITLE III, "DEPARTMENTS", CHAPTER 1, "WATER DEPARTMENT", SECTION 2, "RATES," 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

Assistant City Manager Jim Nichols gave a brief overview of the item noting this item was a follow up to a briefing session Council recently heard regarding adjusting water and sewer rates in order to recover revenue needed to ensure the system is sustainable moving forward.

Deputy City Secretary Adriana Moreno read the caption of Ordinance No. 9214.

Council Member Dufford moved approval of the first of two readings of Ordinance No. 9214 in accordance with the Charter of the City of Midland; seconded by Council Member Love. The motion carried by the following vote: AYE: Love, Morales, Perry, Dufford, Sparks. NAY: None. ABSTAIN: None. ABSENT: Trost, James.

36. Consider a motion making appointments to various boards and commissions.

At 12:30 p.m. Mayor Perry recessed the meeting to lunch noting the would reconvene to hear the remainder of items.

Mayor Perry reconvened the meeting 1:36 p.m. with all Council Members present except Council Member Trost.

Council Member Love moved to make appointments as follows:

- Animal Services - remove Laura Hollifield and Justine Petty, appoint Molly Clark, Laura Clodfelter and Robert "Robin" Donnelly.
- City Development Advisory Committee - appoint Thomas Johnston

- Hotel/Motel Tax Advisory Board - reappoint Alex Singh, appoint Garrett Merket
- Housing Authority Commission - reappoint James Blischke, appoint Edward Mayberry as an alternate
- Midland Center Advisory Board - reappoint Brent Blackburn and Lorri Lyon West
- Oil & Gas Advisory Committee - reappoint Lance Friday
- Parks & Recreation Commission - reappoint Charlie Spence, appoint Ty Sisco
- Tax Increment Reinvestment Zone Board - reappoint Ken Burgess, appoint Brad Barnett to replace Mark Wellen, appoint John James to replace Bob Lanier, and recommend appointing Ken Burgess as chair
- Zoning Board of Adjustments - remove Manny Ribera and Ken Morgan, appoint Lewis Hassler and John Ory as alternates, move alternates Annabel Holguin and Greg Turner to regular positions.

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

EXECUTIVE SESSION

37. 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: No items.

All of the business at hand having been completed, the meeting adjourned at 1:59 p.m.

PASSED AND APPROVED the 17th day of December, 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 12/17/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving an agreement with Agri-Waste Technology, Inc. for an Agronomic Compliance Consultant for the Utilities Department.

Purpose:

Approval of a resolution authorizing an agreement with Agri-Waste Technology, Inc. for an Agronomic Compliance Consultant.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$185,000.00 (\$135,000.00 per year plus \$50,000.00 preparation cost) Water and Sewer Operating Fund

Discussion:

Please consider approval of a resolution authorizing the execution of a professional services agreement with the single proposer Agri-Waste Technology, Inc. Staff recommends entering into an agreement with Agri-Waste Technology, Inc. The professional services expenditures shall not exceed \$185,000.00. Please see the attached memo from Holly Rosas, Interim Utilities Director, for further discussion.

Therefore, please consider approval of a resolution authorizing the execution of a professional services agreement with Agri-Waste Technology, Inc. of Apex, North Carolina in an amount not to exceed \$185,000.00.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH AGRI-WASTE TECHNOLOGY, INCORPORATED, OF APEX, NORTH CAROLINA FOR AN AGRONOMIC COMPLIANCE CONSULTATION FOR THE UTILITIES DEPARTMENT; AND APPROPRIATING \$185,000.00 FOR SAID PROFESSIONAL SERVICES

WHEREAS, the City Council finds it to be in the public interest to employ the services of an Agronomic Compliance Consultant for the Utilities Department to assist the City of Midland's Wastewater Treatment Plant and adjoining permitted disposal sites in crop management plans, TCEQ permitting/compliance and compliance based tasks, and soil data applications/modeling minimizing nitrates in the soil and groundwater and sludge application("Professional Services"); and

WHEREAS, the single proposer, Agri-Waste Technology, Inc., proposes to perform said Professional Services for a fee not to exceed \$185,000.00; and

WHEREAS, the Council finds the fees proposed by Agri-Waste Technology, Inc., for said Professional Services to be fair and reasonable; and

WHEREAS, the Council finds it to be in the public interest to select Agri-Waste Technology, Inc., to provide said Professional Services; and

WHEREAS, the Council authorizes the City Manager to execute a professional services agreement with Agri-Waste Technology, Inc., for the performance of said professional services, said agreement being substantially in the form as is on file in the office of the City Secretary, referenced by the date and number of this Resolution;

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 Agri-Waste Technology, Inc., for performance of said Professional Services.

SECTION TWO. Appropriate funds in the amount of \$185,000. Funds are available

in the Water and Sewer Fund (300) Sprayberry Farm (0315) Consulting Fees (3450) budget account.

SECTION THREE. That the City Treasurer is hereby authorized and directed to make payments to Agri-Waste Technology, Inc., 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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Holly McGrath Rosas, Interim Director
of Utilities

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: December 17, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Holly McGrath Rosas, Interim Director of Utilities

SUBJECT: Award Bid to Agri-Waste Technology, Inc., Engineering/Agronomic Consulting for the Utilities Department

Purpose:

Consider a resolution awarding the Engineering/Agronomic consulting to Agri-Waste Technology Inc., and appropriating funds.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

Appropriate funds in the amount of \$185,000. Funds are available in the Water and Sewer Fund (300) Utilities (300) Sprayberry Farm (0315) Consulting Fees (3450) budget account.

Discussion:

This agronomic consultant will assist the City of Midland's Wastewater Treatment Plant and adjoining permitted disposal sites in crop management plans, TCEQ permitting/compliance and compliance based tasks, soil data applications/modeling minimizing nitrates in the soil and groundwater and sludge application.

PROFESSIONAL SERVICES AGREEMENT
FOR AGRONOMIC COMPLIANCE CONSULTING SERVICES
#7069-14

THIS AGREEMENT is made and effective the 18th day of December 2013, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Agri-Waste Technology, Inc. hereinafter referred to as "CONSULTANT."

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which CONSULTANT shall perform Agronomic Compliance Consulting services for the City of Midland.

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 professionals in approximately the same region 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

CITY 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 \$135,000.00 per year plus a one time \$50,000.00 preparation cost (breakdown of fees is located in Exhibit "A".) which fee for basic services shall in no event exceed \$185,000.00 for the first year and \$135,000.00 per year thereafter, excluding Additional Services and Reimbursable Expenses. Within 30 days of the date CONSULTANT's invoice is received

by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion of an invoice, CITY shall notify CONSULTANT of CITY's objection and the grounds therefor within 15 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 Consultant shall perform all work described in the attached Exhibit A and in any manner described thereon, for a period of one (1) year from the date of execution of this agreement unless sooner terminated as provided in the agreement. Thereafter, this agreement shall renew automatically for up to four (4) additional terms of one (1) year each, upon the written agreement by Consultant and the City Manager at least 30 days prior to the anniversary of the execution of this agreement. The renewals may be approved by the City Manager on behalf of City Council.

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

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

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 CITY and shall be delivered to CITY, without restriction, except that CONSULTANT may make copies of any and all instruments of service for its files. The CITY shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of 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 CITY; that Consultant shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between CITY and Consultant, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between CITY and Consultant. No person performing any of the work and services described hereunder by Consultant shall be considered an officer, agent, servant or employee of the CITY. Further, it is specifically understood and agreed that nothing in this 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 CITY does not have the power to direct the order in which the work is done. The CITY shall not have the right to control the means, methods or details of the Consultant's work. Consultant shall assume exclusive responsibility for the work. Consultant is entirely free to do the work in its own way.

ARTICLE IX. INSURANCE

1. Insurance

Contractor shall at all times during the term of this Contract maintain and keep in full force and

effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

Commercial General Liability (including Contractual liability):

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

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

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

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

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

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

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

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

ARTICLE X. ATTORNEY FEES

BY SUBMITTING A STATEMENT OF QUALIFICATIONS, EACH SUBMITTER 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 CITY'S ADMINISTRATION OF THE REQUEST FOR QUALIFICATIONS ("RFQ") PROCESS. THE SUBMITTER SPECIFICALLY AGREES THAT IF THE SUBMITTER BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED IN ANY WAY TO THE RFQ PROCESS OR CITY'S ADMINISTRATION OF THE RFQ PROCESS, 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 SUBMITTER AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH IT MIGHT OTHERWISE BE ENTITLED.

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

A WAIVER OF SOVEREIGN IMMUNITY.

THE SUBMITTER AND THE CITY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THESE RFQ DOCUMENTS WITH LEGAL COUNSEL PRIOR TO SUBMISSION OF ANY STATEMENT OF QUALIFICATIONS.

ARTICLE XI. SOVEREIGN IMMUNITY

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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

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.

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 CITY: City Manager's Office
 P.O. Box 1152
 Midland, Texas 79702

If to CONSULTANT: Agri-Waste Technology, Inc.
 501 North Salem Street, Suite 203
 Apex, NC 27502

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

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

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

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

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

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

J. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Consultant or his legal representative, shall give the City Manager, or any other reasonable official of the 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 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 CITY from any liability whatsoever. The CITY is under no obligation to provide notice to Consultant that Consultant'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, 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 CITY has actual or constructive notice or knowledge of said claim or alleged damages. Consultant agrees that the requirements of this entire Agreement are reasonable.

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

CONSULTANT:

By: _____
Courtney B. Sharp, City Manager

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____,
an officer of Agri-Waste Technology, Inc., known to me to be the person and official whose
name is subscribed to the forgoing instrument, and acknowledged to me that he executed the
same as the act and deed of said corporation, for the purposes and consideration therein
expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____,
201__.

Notary Public, State of Texas

Exhibit A

Qualifications:

Prior experience with the TCEQ on similar projects.

Prior experience with the City of Midland.

Texas Licensed Professional Geoscientist (Soil Science) on staff

Texas Professional Engineer on staff

Texas Nutrient Management Specialist on staff

Scope:

Part A. Preparation (Budget = \$50,000)

Activities Required to Prepare the City of Midland for Land Application Operations with Special Consideration to Minimizing Nitrate Leaching into the Groundwater

1. Water/Nitrogen Balance Model Preparation
 - a. Development of Data Sheet
 - b. Development of Tool to Calculate Weekly Wastewater Flow Rate By Plot
 - c. Development of Water/Nitrogen Balance Calculation Spreadsheets based on AWT Audit Report spreadsheets
 - d. Development of Reporting Templates
 - e. Engineer and Agronomist site visit to coordinate with Midland personnel for Model implementation
2. Farming Contract Language
3. Follow Up On Audit Report Recommendations
 - a. Assist with implementing Crop yield/tissue analysis procedures
 - b. Commercial fertilizer recommendations
 - c. Assist with implementing Soil sampling plan
 - d. Assist with implementing Soil/effluent/sludge sampling parameters
 - e. Irrigation system testing coordination
 - f. Assist with establishing irrigation system maintenance and inspection procedures
 - g. Assist with selection of flow meters for irrigation systems.

Part B. On-Going (Budget = \$135,000/year)

On-Going Weekly Activities

1. Weekly water and nitrogen application report shall be based on the output of the water and nitrogen balance model and include:
 - a. Significant non-routine issues requiring attention
 - b. Reservoir levels for that week
 - c. Pumping summaries from WWTP
 - d. Pumping summaries to plots
 - e. Update effluent analyses for outfalls/reservoirs

- f. Available storage in reservoirs
 - g. Recommended effluent and sludge applications to plots during the upcoming week
 - i. Effluent in gallons and inches
 - ii. Sludge in tons
 - iii. Including special notes required
- 2. Data table updates to model
- 3. Weekly Summary Report shall include:
 - a. Summary of applications for the previous week
 - i. Recommended application
 - ii. Actual application
 - iii. Difference
 - iv. Planned annual PAN application (pounds of N per acre)
 - v. Year to date PAN application (pounds of N per acre and percent of planned)
 - vi. Special notes and explanations for differences over 0.5 inches of irrigation
 - b. Significant non-routine issues requiring attention

On-Going Quarterly Activities

- 1. Update of soil data in model – during the year the City of Midland will provide updated soil analysis results. These results will be incorporated into the model.
- 2. Full rerun/update of model – during the year it is expected that the City will require a full scale rerun or update to the model, either to simulate proposed management changes or reflect actual management changes. This is expected to be required approximately four times per year.
- 3. Crop information updates – approximately quarterly the City will provide updated crop information (crop location, condition, and harvest) to AWT, these updates will be incorporated into the model.
- 4. AWT will prepare a brief quarterly report. The report should cover:
 - a. Snapshot of year-to-date land application activities
 - b. Needs from the client
 - c. Upcoming deliverables to the City
 - d. Completed & upcoming milestones, events, and meetings
 - e. Outstanding issues

On-Going Semi-Annual Activities

- 1. Agronomist & Engineer site visit to verify model parameters (winter and summer) – AWT will schedule two site visits by an agronomist and engineer. During these site visits the agronomist and engineer will verify that conditions at the Plant Farm and Spraberry are consistent with the model parameters being used for weekly recommendations.
- 2. Site visit report – AWT will develop a report providing notes from the visit and identifying any issues requiring attention.

On-Going Annual Activities

1. Annual model update and preparation (September) – each year AWT will completely update and prepare the model for use during the upcoming year. The revised model upcoming year and the completed and closed-out model for the previous year will be provided in electronic format to the City of Midland.
2. Annual model projections by month – each year AWT will use the updated model, using historical average precipitation, the latest soil samples, effluent analyses for the previous year and projected flows from the WWTP, to provide a snapshot of the projected applications needed for each plot on a monthly basis

On-Going Ad-hoc Activities

Occasionally consultation will be needed to address unforeseen issues, related, but not included, in the activities described above. These additional consultation requests would be limited in scope, would not exceed 200 hours of professional staff time annually, and would only be performed at the direction and with the consent of the City of Midland.

Total Budget

Part A (Preparation)	\$ 50,000
Part B (On-Going)	<u>\$135,000/year</u>
Total (Preparation + 1 st Year Implementation)	\$185,000



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 12/17/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the selection of five (5) firms for On-Call Professional Engineering Services for the Engineering Services Department.

Purpose:

Approval of a resolution selecting five (5) engineering firms to provide city-wide professional services on an as needed basis.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Funding is not required at this time.

Discussion:

Please consider a resolution authorizing staff to select from five (5) engineering firms to provide engineering services city-wide on an as needed basis. AMD Engineering, LLC; Dunaway Associates, LP; Maverick Engineering; Parkhill, Smith & Cooper and Savant Group are recommended for selection. Please see the attached memo from Jose Ortiz, Engineering Services Director, for further discussion.



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 12/17/2013

TO: City Council / City Manager

FROM: Jose Ortiz

SUBJECT: Consider a resolution authorizing City Staff to select the following Engineering firms to provide professional services to perform requested Engineering tasks on an as needed basis. (City Wide)

Purpose:

Consider a resolution authorizing City Staff to select the following Engineering firms to provide professional services to perform requested Engineering tasks on an as needed basis. (City Wide)

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No fiscal impact at this time. A Professional Service Agreement will be negotiated with a selected Engineering Firm for each project and presented to council for approval.

Discussion:

The intent of this item is to select five (5) qualified Engineering Firms to provide Engineering Services on an as needed basis to the City for a term of three (3) years for municipal engineering services.

Engineering Services staff may select any one of the following Engineering Firms to negotiate a Professional Services Agreement for a specific project involving one or more of the disciplines listed below.

1. Provide engineering, design, and administrative services in connection with drainage improvement projects as defined in the City's drainage study and City wide comprehensive drainage plan.
 - a. Prepare construction plans for drainage improvements.
 - b. Gather essential field data and develop a preliminary plan for review by City Staff.
 - c. Make presentation(s) to City staff, City Council, and/or to the public as necessary.
 - d. Collect feedback from City staff and prepare a report with recommendation and implementation schedule.

2. Provide engineering, design, and administrative services in connection with roadway and/or utility improvement projects.
 - a. Prepare roadway and/or utility construction plans for infrastructure improvements.
 - b. Gather essential field data and develop a preliminary plan for review by City Staff.
 - c. Make presentation(s) to City staff, City Council, and/or to the public as necessary.
 - d. Collect feedback from City staff and prepare a report with recommendation and implementation schedule.
3. Provide traffic engineering, design, and administrative services in connection with the recommendations of the City wide traffic analysis.
 - a. Perform an analysis of localized existing traffic system;
 - b. Perform essential field studies and develop a preliminary report for review by City Staff.
 - c. Make presentation(s) to City staff and/or City Council as necessary.
 - d. Collect feedback from City staff and prepare plans with recommendation and implementation schedule.
4. Provide real estate services,
 - a. Perform deed/title research as requested by City staff;
 - b. Perform essential field and boundary surveys to develop preliminary reports for review by City Staff.
 - c. Collect feedback from City staff and prepare field notes, boundary surveys, plats, etc.
 - d. Make presentation(s) to City staff and/or City Council as necessary.
5. Provide engineering and design services in connection with parks and recreation improvement projects.
 - a. Prepare construction plans (specifications) for maintenance projects.
 - b. Gather essential field data and develop a preliminary plan for review by City Staff.
 - c. Collect feedback from City staff and prepare a report with recommendation and implementation schedule.
 - d. Oversee the bidding process.
 - e. Oversee the construction of the project.

This course of action will speed up the process of out-sourcing Engineering Services projects that are smaller in nature (Engineering fee less than \$100,000), while allowing the City to select the most qualified Engineering Firm for a project with a specific discipline outlined above from a pre-qualified pool. Selected firms for specific projects will enter an agreement for professional services with the City and if the agreement exceeds \$50,000 the agreement will require Council approval.

The following firms are recommended for selection by City staff.

AMD Engineering, LLC

Dunaway Associates, LP

Maverick Engineering

Parkhill Smith & Cooper

Savant Group

RESOLUTION NO. _____

RESOLUTION APPROVING THE SELECTION OF AMD ENGINEERING, LLC, DUNAWAY ASSOCIATES, LP, MAVERICK ENGINEERING, PARKHILL, SMITH & COOPER, INC., AND SAVANT GROUP TO PROVIDE PROFESSIONAL SERVICES FOR ENGINEERING DESIGNS AND STUDIES ON AN AS-NEEDED BASIS; AUTHORIZING THE NEGOTIATION AND EXECUTION OF PROFESSIONAL SERVICES AGREEMENTS WITH SAID FIRMS; AND PROVIDING THAT ANY AGREEMENT EXCEEDING \$50,000 SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL

WHEREAS, the City of Midland advertised a Request for Qualifications for professional services for firms to provide engineering designs and studies on an as-needed basis; and

WHEREAS, the firms listed in Section One hereof have agreed to perform said professional services; and

WHEREAS, the City Council finds that the firms listed in Section One hereof are qualified to perform said professional services; and

WHEREAS, the City Council finds that the professional fees proposed the firms listed in Section One hereof are consistent with and not higher than the recommended practices and fees published by the applicable professional associations and do not exceed any maximum provided by law; and

WHEREAS, the City Council finds that the firms listed in Section One hereof provide professional services for a fair and reasonable price; and

WHEREAS, the City Council finds it to be in the public interest to approve the selection of the firms listed in Section One hereof as the most highly qualified provider of said professional services based on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services;

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

SECTION ONE. That the selection of AMD Engineering, LLC, Dunaway

Associates, LP, Maverick Engineering, Parkhill, Smith & Cooper, Inc., and Savant Group to provide professional services for engineering designs and studies on an as-needed basis is hereby approved.

SECTION TWO. The City Manager is hereby authorized and directed to negotiate and execute, on behalf of the City of Midland, professional services agreements with the firms listed in Section One hereof for said professional services. Provided, however, that any agreement exceeding \$50,000 shall not become effective until approved by the City Council.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 12/17/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the issuance of a request for qualifications for architectural and engineering services for golf course improvements at Hogan Park Golf Course for the Community Services Department.

Purpose:

Approval of a resolution authorizing the issuance of a request for qualifications for architectural and engineering services for golf course improvements at Hogan Park Golf Course.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Funding is not required at this time.

Discussion:

Please consider approval of a resolution authorizing the issuance of a request for qualifications for architectural and engineering services for golf course improvements at Hogan Park Golf Course. Please see the attached memo from David Byrd, Hogan Park Golf Course Operations Superintendent, for further information.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING ISSUANCE OF A
REQUEST FOR QUALIFICATIONS FOR
ARCHITECTURAL AND ENGINEERING SERVICES
FOR GOLF COURSE IMPROVEMENTS AT HOGAN
PARK GOLF COURSE FOR THE COMMUNITY
SERVICES DEPARTMENT**

WHEREAS, a request for qualifications has been prepared for architectural and engineering services for golf course improvements at Hogan Park Golf Course for the Community Services Department; and

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

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

SECTION ONE. That the request for qualifications for architectural and engineering services for golf course improvements at Hogan Park Golf Course is hereby approved, said request for qualifications being on file with the office of the City Secretary, referenced by the date and number of this Resolution.

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

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

Council members voting "AYE": _____

Council members voting "NAY": _____

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, Purchasing Manager

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

CITY OF MIDLAND
**Community Services Department
Golf Course Division
Interoffice Memorandum**

Date: December 4, 2013
To: Regina Stephenson, Purchasing Manager
From: David Byrd, Golf Operations
Subject: Request for Qualifications- Hogan Park Golf Course Renovation, Plans, Specifications and Estimates

This Request for Qualifications is to engage an Architectural/Engineering firm to provide design services for renovations and improvements at Hogan Park Golf Course, including, but not limited to:

1. Consultation and Preliminary Planning with Cost Estimate
2. Design and Development Documents with revised Cost Estimate
3. Construction and Bid Documents
4. Bid Evaluations
5. Construction Evaluations

The renovations being considered at Hogan Park Golf Course include:

- Replacement of asphalt cart paths
- Re-building and re-grassing needed tee boxes
- Leveling and re-grassing of certain fairways and roughs
- Improvements to the practice area
- Replacement of an existing irrigation pump station

Expected completion of the construction drawings and a projected timeline is May 1, 2014. Anticipated start of construction would be July 1, 2014. The completion date is expected to be before or on May 31, 2015.

Funding for the Architectural/Engineering services will come from the 2014 Certificates of Obligation.

PROFESSIONAL SERVICES AGREEMENT
FOR HOGAN PARK GOLF COURSE

THIS AGREEMENT is made and effective the ____ day of ____ 2013, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, _____ 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 Design, Development and Project Management of the 2014 Improvements and Renovations of Hogan Park Golf Course for the City of Midland.

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 professionals in approximately the same region 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

CITY 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 \$ ____ (breakdown of fees is located in Exhibit "A".) which fee for basic services shall in no event exceed \$ ____, excluding Additional Services and Reimbursable Expenses. Within 30 days of the date CONSULTANT's invoice is received by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion of an invoice, CITY shall notify CONSULTANT of CITY's objection and the grounds therefor within 15 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 ____, 2014 until ____, 201__, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

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

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 CITY and shall be delivered to CITY, without restriction, except that CONSULTANT may make copies of any and all instruments of service for its files. The CITY shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of 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 CITY; that Consultant shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between CITY and Consultant, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between CITY and Consultant. No person performing any of the work and services described hereunder by Consultant shall be considered an officer, agent, servant or employee of the CITY. Further, it is specifically understood and agreed that nothing in this 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 CITY does not have the power to direct the order in which the work is done. The CITY shall not have the right to control the means, methods or details of the Consultant's work. Consultant shall assume exclusive responsibility for the work. Consultant is entirely free to do the work in its own way.

ARTICLE IX. INSURANCE

1. Insurance

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

Commercial General Liability (including Contractual liability):

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

-Property Damage:	\$500,000.00 per occurrence
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Business Automobile Liability:	\$250,000.00 combined single limit - Personal Injury and Property Damage
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Worker's Compensation:	Statutory limits
Employers' Liability:	\$500,000.00 per accident or occurrence

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

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

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

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

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

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

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

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

CONSULTANT AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. 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 CITY AND THE CONSULTANT. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

ARTICLE XI. SOVEREIGN IMMUNITY

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

resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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

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.

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 CITY: City Manager's Office
 P.O. Box 1152
 Midland, Texas 79702

If to CONSULTANT:

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

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

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

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

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

I. Federal Wage Requirements. If applicable, the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations are hereby incorporated by reference and made a part of this Contract, and all

terms and requirements under said laws, by such incorporation, are made terms and requirements of this Contract, to which the parties to this Contract have agreed to be bound.

J. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Consultant or his legal representative, shall give the City Manager, or any other reasonable official of the 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 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 CITY from any liability whatsoever. The CITY is under no obligation to provide notice to Consultant that Consultant'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, 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 CITY has actual or constructive notice or knowledge of said claim or alleged damages. Consultant agrees that the requirements of this entire Agreement are reasonable.

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

CONSULTANT:

By: _____
Courtney B. Sharp, City Manager

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____,
2014.

Notary Public, State of Texas

REQUEST FOR QUALIFICATIONS FOR PROFESSIONAL ARCHITECTURAL/ENGINEERING SERVICES FOR THE CITY OF MIDLAND, TEXAS

Design, Development and Project Management of the 2014 Improvements and Renovations of Hogan Park Golf Course

INTRODUCTION

The City of Midland is seeking to engage an Architectural/Engineering firm to:
Provide complete Architectural/Engineering and Project Management services for improvements and renovations at the existing Hogan Park Golf Course located at 3600 N. Fairgrounds Road, Midland, Texas.

GENERAL SCOPE OF SERVICES AND TASKS

The selected consultant will be responsible for providing complete Architectural/Engineering and Project Management services for what is generally described as new cart paths, topsoil and re-grassing of certain fairways, re-building certain tees and practice area improvements.

All text and exhibit products shall be computer-based and provided in both hard copy and electronic format compatible with Microsoft Office 2007.

RFQ DUE DATE: 4:00 p.m. on January 8, 2014

Seven (7) copies of the qualifications shall be submitted in accordance with this RFQ. Please mark the package "Request for Qualifications for the City of Midland, Hogan Park Golf Course Improvements and Renovations". Submit Package to:

Regina Stephenson
Purchasing
300 N. Loraine St. Suite 220
Midland, TX 79701

Final consultant approval will be by the City Council and is subject to budget approval. Consultants may contact David Byrd, Golf Course Superintendent, for additional information at 432.685.7363. All qualifications are considered public records. The Community Services Department reserves the right to request additional information from consultants submitting qualifications. If selected, staff will make a

recommendation to City Council for approval; additional copies of the qualifications may be required.

INTRODUCTION AND SUMMARY

The City of Midland, Texas is seeking an Architectural/Engineering firm to perform complete Architectural/Engineering as well as Project Management services for renovating the existing Hogan Park Golf Course facility located at 3600 North Fairgrounds Road. The course was built in 1959 as an 18 hole course with 9 holes added in 1979 and, in 1998, 9 more holes were added to complete the existing 36 hole layout. The Quail is a traditional West Texas design with flat greens and tree lined fairways, which are mostly original. The Road Runner course is a links style with few trees and rolling terrain. The project will include, but not limited to, replacing existing cart paths on the Quail course, grading and re-grassing certain fairways and roughs and re-building certain tees on the Road Runner course as well as replacing the existing Road Runner pump station and building. Additional work is planned for the practice area and the tournament staging area.

PROJECT TIMELINE

The Architectural/Engineering firm shall work with the city to establish a project timeline, phasing, and associated costs. Expected completion of the construction drawings and a projected timeline is May 1, 2014. Anticipated start of construction would be July 1, 2014. The completion date is expected to be before or on May 31, 2015.

GENERAL SCOPE OF SERVICES & TASKS

These tasks will include, but will not be limited to:

1. Become acquainted with, and develop a design based on approved project requirements.
2. Preliminary consultation and planning phase shall include: evaluation of proposed work, schedule and construction requirements with budget, design study illustrating proposed feature changes and preliminary cost estimates.
3. Prepare design and development documents including: preliminary construction drawings and revised cost estimate.
4. Construction documents based on approved design development documents.
5. Assist owner in evaluation of bids and in awarding a contract or contracts.
6. Responsible for making periodic site visits to evaluate design and construction progress and accuracy.

INFORMATION FOR CONSULTANTS

Form of Qualifications

The consultant qualifications shall include the following information:

1. Description of the firm's interest in participating in the project.
2. Names and titles of professionals and support staff that will work on the project, a brief description of previous team experience on this type of project, and copies of their resumes. If the project is to be a joint venture between consulting firms, the qualifications should state so.
3. Work history of the company.
4. A proposed work program and timeline to respond to the scope of work in this RFQ.
5. Unique challenges in completing similar projects and outcomes.
6. Description of up to five projects indicating relevant experience and including a brief description of the project, client and phone number, budget, and role. Please include sample pages, websites, etc. for committee review.
7. Your current project schedule in relation to the time and attention, which you anticipate devoting to this project.
8. Names, addresses, and telephone numbers of references or clients for whom the consultant has recently performed services.
9. List all legal challenges and outcomes for this type of project within the last five (5) years.

QUESTIONS PRIOR TO SUBMISSION OF RFQ

Questions should be addressed to David Byrd, Golf Course Superintendent, no later than **January 3, 2014**.

EVALUATION OF QUALIFICATIONS

The following criteria will be considered in evaluating the qualifications and selecting a consultant:

- Firm experience and capability; credentials and experience of staff assigned to the study;
- References and quality of comparable work performed for other municipalities;
- Quality and organization of the proposal; tailoring of the proposal to the City of Midland needs;
- Likelihood of ability to produce a quality product in the given time frame; and
- Methodology;

In addition, the City reserves the right to request additional information from consultants submitting qualifications. All qualifications are considered public records. The City reserves the right to reject any or all qualifications and the right, in its sole discretion, to accept the qualifications it considers most favorable to the City's interest. The City further reserves the right to reject all qualifications and seek new qualifications when such procedure is deemed reasonable and in its best interest.

Weighting Factors

The final overall score will be computed by scoring each factor separately, and multiplying that score by the appropriate weighted percentage, and then adding all of the scores together.

FACTOR	WEIGHT
Firm experience and capability; credentials and experience of staff assigned to the study	25%
References and quality of comparable work performed for other public agencies	25%
Quality and organization of the proposal; tailoring of the proposal to the City of Midland needs	20%
Likelihood of ability to produce a quality product within the given time frame	15%
Methodology	15%

SELECTION OF CONSULTANT

The City shall review and interview firms that meet the criteria explained within this RFQ. Community Services shall prepare a short list of consultants and interview those consultants. A firm will be selected for recommendation to the City Council for the purpose of negotiating contracts terms, including a fair and reasonable price. The firm will submit additional hardcopies and digital copies of their qualifications to be forwarded to the City Council.

If a satisfactory contract cannot be negotiated with that firm, the City shall formally end negotiations with that firm and select the next most favored provider, and attempt to negotiate with that firm. The City reserves the right to discontinue the process and reopen the process for proposals if an agreement cannot be reached.

METHOD OF COMPENSATION

Upon selection, the consultant will provide the necessary information for a contract to the City. The contract with the consultant is for a not-to-exceed amount, with reimbursement upon completion of agreed upon components of work, with a fee schedule for the remainder of the requested services. The Director of Community Services and/or her designee will review and approve for payment all invoices submitted by the consultant under the contract.

LIABILITIES

No costs associated with the presentation of the qualifications, or incurred in any manner by the proposer, may be charged to the City. All responses shall become property of the City and subject to disclosure under the Texas Open Records Law.

INSTRUCTIONS FOR QUALIFICATIONS

1. Qualifications must be submitted to:

Regina Stephenson
Purchasing
300 N Loraine St. Suite 220
Midland, Texas 79701

2. Seven (7) copies of the qualifications must be received at the above address by **4:00 p.m. on January 8, 2014**. The qualifications package should be labeled "Request for Qualifications for the City of Midland, Hogan Park Golf Course Improvements and Renovations."
3. Any questions concerning qualifications should be directed to David Byrd, Golf Course Superintendent, 432.685.7363, dbyrd@midlandtexas.gov

WAIVER

- A. WAIVER OF CLAIMS ARISING FROM THE COMPETITIVE REQUEST FOR QUALIFICATION PROCESS OF AWARD OF CONTRACT**

BY SUBMITTING A STATEMENT OF QUALIFICATIONS, EACH SUBMITTER AGREES TO AND DOES HEREBY WAIVE ANY CLAIM THE SUBMITTER HAS OR

MAY HAVE AGAINST THE CITY AND/OR THE CITY'S EMPLOYEES, AGENTS AND OFFICERS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE FOLLOWING:

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

By submitting a Statement of Qualifications, the submitter acknowledges that he or she understands all terms of the proposal documents and consents to the competitive selection process and the possibility of a negative assessment. By submitting a Statement of Qualifications, the submitter acknowledges and agrees that there was and is no disparity of bargaining power between the submitter and the City.

The submitter agrees that this is the intentional relinquishment of the above listed presently existing known rights.

B. WAIVER OF ATTORNEY FEES

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

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

By execution and submission of a Statement of Qualifications under this RFQ, the submitter hereby represents and warrants to the City that the submitter has read and understands the RFQ and the Statement of Qualifications is submitted in accordance with this RFQ. The submitter acknowledges that it understands all terms within the proposal documents, which include the waiver provisions, and that it had the right to consult with counsel regarding all of the above documents.

This section shall not be construed as a Waiver of Sovereign Immunity.

SOVEREIGN IMMUNITY

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

QUESTIONS REGARDING THIS REQUEST

Questions should be directed to:

David Byrd

Golf Course Superintendent

Hogan Park Golf Course

432.685.7363

dbyrd@midlandtexas.gov

IMPORTANT NOTICE

Conflict Of Interest Reporting Requirements

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

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

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

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

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

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

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

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

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

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

City of Midland

Attn: City Secretary

P. O. Box 1152

Midland, Texas 79702

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

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

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

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

OFFICE USE ONLY

Date Received

1 Name of person doing business with local governmental entity.

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

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

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

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

Adopted 11/02/2005

FORM CIQ

Page 2

For vendor or other person doing business with local governmental entity

5 Name of local government officer with whom filer has affiliation or business relationship. (Complete this section only if the answer to A, B, or C is YES.)

This section, item 5 including subparts A, B, C & D, must be completed for each officer with whom the filer has affiliation or other relationship. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income from the filer of the questionnaire? ☐ Yes ☐ No

B. Is the filer of the questionnaire receiving or likely to receive taxable income from or at the direction of the local government officer named in this section AND the taxable income is not from the local governmental entity? ☐ Yes ☐ No

C. Is the filer of this questionnaire affiliated with a corporation or other business entity that the local government officer serves as an officer or director, or holds an ownership of 10 percent or more? ☐ Yes ☐ No

D. Describe each affiliation or business relationship.

[illegible]

6

Signature of person doing business with the governmental entity

Date _____

Adopted 11/02/2005

NOTICE TO BIDDERS

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

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

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

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



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 12/17/2013

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving an agreement with Kimley-Horn Associates, Inc. for Phase 2 design services for Doug Russell Pool improvements for the Community Services Department.

Purpose:

Approval of a resolution authorizing an agreement with Kimley-Horn Associates, Inc. to perform design development, provide assistance with construction documents and bidding, and construction oversight services for the Doug Russell Pool Renovation Project.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$325,000.00 from the 2012 GPCO Park Improvements Bond Fund

Discussion:

Resolution 2013-118 authorized the issuance of a request for qualifications for the renovation of Doug Russell Pool. Resolution 2013-152 authorized a professional services agreement with Kimley-Horn Associates, Inc. for Phase 1 of the Doug Russell Pool Renovation Project which included concept development and a financial impact study. Phase 1 has been completed and staff recommends beginning Phase 2 of the project which will include design development, construction documents, bidding assistance and construction oversight. Please see the attached memo from Tina Jauz, Community Services Director, for more information.

Therefore, please consider approval of a resolution authorizing the execution of a professional services agreement with Kimley-Horn and Associates, Inc. of Irving, Texas for Phase 2 of the project in an amount not to exceed \$325,000.00.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INCORPORATED, OF IRVING, TEXAS FOR DESIGN DEVELOPMENT, CONSTRUCTION DOCUMENTS, BIDDING ASSISTANCE, AND CONSTRUCTION OVERSIGHT FOR THE DOUG RUSSELL POOL RENOVATION PROJECT PHASE II; AND APPROPRIATING \$325,000.00 FOR SAID PROFESSIONAL SERVICES

WHEREAS, the City Council finds it to be in the public interest to employ the services of a design firm to provide professional design, development and project management services for the Doug Russell Pool Renovation Project Phase II (“Professional Services”); and

WHEREAS, Kimley-Horn and Associates, Inc., proposes to perform said Professional Services for a fee not to exceed \$325,000.00; and

WHEREAS, the Council finds the fees proposed by Kimley-Horn and Associates, Inc., for said Professional Services to be fair and reasonable; and

WHEREAS, the Council finds Kimley-Horn and Associates, Inc., to be the most highly qualified provider for such Professional Services based on demonstrated competence, knowledge, and qualifications; and

WHEREAS, the Council finds it to be in the public interest to select Kimley-Horn and Associates, Inc., to provide said Professional Services; and

WHEREAS, the Council authorizes the City Manager to execute a professional services agreement with Kimley-Horn and Associates, Inc., for the performance of said professional services, said agreement being substantially in the form as is on file in the office of the City Secretary, referenced by the date and number of this Resolution;

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 Kimley-Horn and Associates, Inc., for performance of

said Professional Services.

SECTION TWO. The sum of \$325,000 is hereby appropriated from the 2012 GPCO Park Improvements Bond Fund (162) Unappropriated Fund Balance (5650) to the Doug Russell Pool Renovations Project (9037).

SECTION THREE. That the City Treasurer is hereby authorized and directed to make payments to Kimley-Horn and Associates, Inc., 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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Regina Stephenson, Purchasing Manager

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: December 3, 2013
To: Tommy Hudson, Deputy City Manager
From: Tina Jauz, Community Services Director
Subject: Professional Services Agreement – Doug Russell Pool Renovation

The City of Midland closed a Request for Qualifications for Professional Design Services for the Doug Russell Pool Renovation project on April 26, 2013. On May 7, the Capital Improvement Committee of the Parks and Recreation Advisory Board and City staff reviewed the RFQ submittals and Kimley-Horn and Associates, Inc. was selected as the consultant to provide professional design services for the project. During the process of reviewing the RFQs, the Committee discussed the possibility of expanding the scope of the original project and voted to recommend to City Council that consideration be given to create a new aquatics facility in the current location of the Doug Russell facility, and to obtain additional funding. Phase I, analyzing the existing facility and developing options for renovation, was completed this fall. After examining the City's options, City Council has decided to move forward with a full renovation of the Doug Russell pool and create a state of the art aquatics facility for Midland.

Kimley-Horn and Associates, Inc. has submitted a scope of services for Phase II – Construction of the Doug Russell Pool Aquatics Facility which would include the following work:

Phase I	Schematic Design	\$ 35,700
Phase II	Construction Documents	\$ 206,500
Phase III	Bidding Phase	\$ 14,750
Phase IV	Construction Phase Services	<u>\$ 68,000</u>

Total Lump Sum Fee (Including Basic Services and Expenses) \$ 325,000

Construction of the Project is to begin in August 2014 and is anticipated to be completed by the end of May 2015.

The sum of \$325,000 is hereby appropriated from the 2012 GPCO Park Improvements Bond Fund (162) Unappropriated Fund Balance (5650) to the Doug Russell Pool Renovations Project (9037).

PROFESSIONAL SERVICES AGREEMENT
FOR CONSULTING SERVICES

THIS AGREEMENT is made and effective the 18th day of December 2013, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "CITY," and, Kimley-Horn and Associates, Inc. hereinafter referred to as "CONSULTANT."

ARTICLE I. PURPOSE

The purpose of this Agreement is to state the terms and conditions under which CONSULTANT shall perform design development, construction documents, bidding assistance and construction oversight services for the Doug Russell Pool Renovation Project for the City of Midland.

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 professionals in approximately the same region 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

CITY 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 \$325,000.00 (breakdown of fees is located in Exhibit "A".) which fee for basic services shall in no event exceed \$325,000.00, excluding Additional Services and Reimbursable Expenses. Within 30 days of the date CONSULTANT's invoice is received by CITY, CITY shall pay the full amount of such invoice; provided, however, that if CITY objects to any portion

of an invoice, CITY shall notify CONSULTANT of CITY's objection and the grounds therefor within 15 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 December 18, 2013 until June 1, 2015, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

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

ARTICLE VI. ASSIGNMENT

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

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 CITY and shall be delivered to CITY, without restriction, except that CONSULTANT may make copies of any and all instruments of service for its files. The CITY shall not make any modification to the plans and specifications or make them available for

use by third parties without the prior written authorization of 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 CITY; that Consultant shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between CITY and Consultant, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between CITY and Consultant. No person performing any of the work and services described hereunder by Consultant shall be considered an officer, agent, servant or employee of the CITY. Further, it is specifically understood and agreed that nothing in this 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 CITY does not have the power to direct the order in which the work is done. The CITY shall not have the right to control the means, methods or details of the Consultant's work. Consultant shall assume exclusive responsibility for the work. Consultant is entirely free to do the work in its own way.

ARTICLE IX. INSURANCE

1. Insurance

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

Commercial General Liability (including Contractual liability):

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

-Property Damage:	\$500,000.00 per occurrence
Business Automobile Liability:	\$250,000.00 combined single limit - Personal Injury and Property Damage
Worker's Compensation:	Statutory limits
Employers' Liability:	\$500,000.00 per accident or occurrence

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

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

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

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

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

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

The Contractor certifies that the certificate of insurance provided as required herein

complies with the requirements of Senate Bill 425, passed during the 82nd regular session of the Texas Legislature, and effective January 1, 2012.

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

CONSULTANT AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. 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 CITY AND THE CONSULTANT. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF SOVEREIGN IMMUNITY.

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

ARTICLE XI. SOVEREIGN IMMUNITY

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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

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.

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 CITY: City Manager's Office
 P.O. Box 1152
 Midland, Texas 79702

If to CONSULTANT: Kimley-Horn and Associates, Inc.
 Attn: Mark C. Hatchel
 2201 West Royal Lane
 Irving, TX 75063

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

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

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

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

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

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

J. Notice of Alleged Breach; Statutory Prerequisites. As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Consultant or his legal representative, shall give the City Manager, or any other reasonable official of the 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 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 CITY from any liability whatsoever. The CITY is under no obligation to provide notice to Consultant that Consultant'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, 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 CITY has actual or constructive notice or knowledge of said claim or alleged

damages. Consultant agrees that the requirements of this entire Agreement are reasonable.

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

CONSULTANT:

By: _____
Courtney B. Sharp, City Manager

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

STATE OF TEXAS §

§

COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____,
an officer of Kimley-Horn and Associates, Inc., known to me to be the person and official
whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed
the same as the act and deed of said corporation, for the purposes and consideration therein
expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____,
20131____.

Notary Public, State of Texas



EXHIBIT "A"

The Scope of Services as outlined on the following pages is based upon our meetings and conversations with the City of Midland, Texas.

Project Understanding

Kimley-Horn and Associates, Inc. (Consultant) understands that the City of Midland, Texas (City) intends to finalize schematic designs, prepare construction documents, and advertise for bids plans the Renovation and Remodel of Doug Russell Pool in Midland, Texas (Project.)

The amenities and budgets for this project were finalized in the master plan and feasibility study and shall include renovation and remodel of the existing pool to include new concrete deck, fencing, filtration enclosure, pool piping systems, new gutters, new plaster and tile markings, zero depth entry, interactive children's play feature, tot pool, body flume and drop slide complex, and shade structures. Other features may include updates to the existing bathhouse, grading, drainage, site lighting/electrical, landscape/irrigation, and site furnishings. The tentative budget established for this project has been set at \$3.2M total project cost per the Opinion of Probable Costs date 9/10/13.

City's Responsibilities

The Consultant understands that the City will provide the following information, on which we may rely, for our use in completing this Scope of Services:

- 1) Any existing Final Plat or boundary information of the sites.
- 2) Any City of Midland design requirements or standards applicable to the project including a list of current adopted codes.
- 3) Any existing plans and specifications of the existing pool, utilities, or adjacent park improvements.

Professional Services

The Consultant will provide the following Basic services as set forth below:

Phase I Schematic Design

The Consultant will prepare an exhibit to for the surveyor and geo-technical engineer and initiate the topographic survey and geo-technical investigations required for the project.

Existing Conditions and Topographic Survey

The Consultant will utilize a surveyor to provide a topographic with boundary survey tie-ins of the site in AutoCAD 2004. The topographic survey will be a detailed ground survey based upon a 50' grid, showing existing above and below ground conditions, easements, setbacks, utilities, contours at one-foot (1') intervals, spot elevations, physical features, single trees greater than six inches (6") in diameter in the vicinity of planned improvements. The nearest boundary/property line tie-ins (two points) will be shown along with any easements. The limits of the existing adjacent parking and buildings will be shown. Also, all other adjacent park improvements will be shown (parking and striping, planters, utility structures, poles, manholes, drains, cleanouts, signs, vault boxes, etc.) Datum will be tied to a benchmark or datum designated by the City and two temporary bench marks will be provided on-site. The Consultant will use the AutoCAD files provided by the surveyor of the topographic survey for base maps and to prepare the site plans for the proposed pool and site development.

Geo-technical Report / Soils Investigation

The Consultant will utilize a geo-technical firm to provide a geo-technical engineering services report for the pool site. This work will consist of doing two or three borings in the vicinity of proposed pool and any building structures. The reports will provide recommendations for any required soil modification, dewatering, building foundation, pool structures, and concrete paving, and footing designs. The Consultant will utilize the existing park aerials to locate the proposed type and position of borings and provide an electronic file for use by the geo-technical engineer.

Finalize Concept and Budget Allocations

Once the survey and geo-technical information is received, the Consultant will adapt the approved master plan concept to the topographic survey and submit the final concept and budget allocations (including any proposed alternate bid items) to City for comment and approval.

Meetings: One (1)

Phase II Construction Documents

Once the finalized concept and budget allocations are set, the Consultant will proceed with the subsequent phases of the work as set forth below

Task A Design Development

The Design Development phase will consist of the following tasks:

- A) Preparation of 50% construction plans and specifications for the pools, buildings, and site development.
- B) Provide an opinion of probable cost and coordinate based upon the design development plans.
- C) Provide information on finishes equipment, lighting, outlets, pool water supply and waste, structural design, and site utilities.
- D) Meet with City representatives to present the 100% design development design and to obtain design development comments.
- E) Finalize the 100% design development package to reflect changes and comments determined by consensus at a meeting with City representatives.

Meetings: One (1)

Task B Construction Documents

The Construction Document phase will consist of the following tasks:

- A) Preparation of final construction plans and specifications for the pools, buildings, and site development.
- B) Provide an opinion of probable cost based upon the 100% construction documents. Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding, or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids, or actual costs will not vary from its opinions of cost.

- C) Provide final specifications and details on finishes equipment, lighting, outlets, pool water supply and waste, structural design, and site utilities.
- D) Meet with City representatives to present the 100% construction documents.
- E) Finalize the 100% construction documents to reflect changes and comments determined by consensus at a meeting with City representatives and submit for compliance review.

Items to be included in the construction documents set are:

- 1) Site development Plans (removal items, layout, grading, storm sewer and drainage areas, water and gravity sanitary sewer, lighting, power distribution, erosion control, planting and irrigation, and details.)
- 2) Filtration Building Plans (floor plans, elevations, section, details, HVAC, plumbing, electrical, food service equipment, finishes, and structural).
- 3) Pool Plans (layout, details, pressure piping, return piping, filters, pumps, controls, and details.)
- 4) Project manual consisting of technical specifications and the City's front-end master contract documents.

Meetings: One (1)

Phase III Bidding Phase Services

The Consultant will provide Bidding Phase Services as follows:

- A) Prepare the advertisement for bids and bid documents.
- B) Assistance with pre-qualification of pool contractors and general contractors.
- C) Answer questions from Bidders and prepare addenda as necessary.
- D) Assist the City as required in opening bids.
- E) Provide bid tabulations and Letter of Recommendation. (A summary of the bid analysis will be provided to the City for use in selection and award of the construction contract.)

Meetings: Two (2)

Phase IV Construction Phase Services

The Consultant will provide Construction Phase Services for the project as requested by the City, as outlined below. Please note these services do not provide a full-time resident project representative:

- A) Provide site observation visits as directed by the City. Site observation visits shall be provided for the purpose of ascertaining for the City that the work is in substantial or general conformance with the contract documents and design intent.
 - 1. Should non-conforming or defective work be observed, the Consultant will endeavor to immediately inform the City's representative and Contractor conforming or remedial action is required.
 - 2. The Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the City a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
 - 4. The Consultant is not responsible for any duties assigned to the design professional in the construction contract that are not expressly provided for in this Agreement. The City agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and for its means and methods; that the contractor shall indemnify the City and the Consultant for all claims and liability arising out of job site accidents; and that the City and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.
- B) Conduct coordination meetings with contractors, inspection personnel, and City representatives to discuss strategy, problem areas, progress, and any required or requested coordination. Prepare a summary of these meetings and distribute them to both the City and the contractor (maximum of ten

meetings total to be conducted in conjunction with a site observation visit.) It is estimated that construction will take approximately ten months.

- C) Review shop drawings and other submittal information for the purpose of ascertaining conformance with the design intent and construction documents. Consultant will review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.
- D) Provide written responses to requests for information or clarifications.
- E) Prepare and process change orders, if required.
- F) Review monthly pay requests by the contractor. Based on its observations and on review of applications for payment and accompanying supporting documentation, Consultant will determine the amounts that Consultant recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Consultant's representation to City, based on such observations and review, that, to the best of Consultant's knowledge, information, and belief, Contractor's work has progressed to the point indicated and that such work-in-progress is generally in accordance with the Contract Documents subject to any qualifications stated in the recommendation. In the case of unit price work, Consultant's recommendations of payment will include determinations of quantities and classifications of Contractor's work, based on observations and measurements of quantities provided with pay requests. By recommending any payment, Consultant shall not thereby be deemed to have represented that its observations to check Contractor's work have been exhaustive, extended to every aspect of Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Consultant in this Agreement. It will also not impose responsibility on Consultant to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, nor to determine that title to any portion of the work in progress, materials, or equipment has passed to City free and clear of any liens, claims, security interests, or encumbrances, nor that there may not be other matters at issue between City and Contractor that might affect the amount that should be paid.
- G) Assist the City in conducting substantial completion and final completion observations. Consultant will, promptly after notice from Contractor that it

considers the entire Work ready for its intended use, in company with City and Contractor, conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list. If after considering any objections of City, Consultant considers the Work substantially complete, Consultant will notify City and Contractor. Consultant will conduct a final site visit to determine if the completed Work of Contractor is generally in accordance with the Contract Documents and the final punch list so that Consultant may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Consultant shall also provide a notice that the Work is generally in accordance with the Contract Documents to the best of Consultant's knowledge, information, and belief based on the extent of its services and based upon information provided to Consultant upon which it is entitled to rely.

H) Review of Contractor furnished As Built / Record Drawing Plans.

I) When complete, recommend final acceptance of work.

Meetings: Ten (10)

Exclusions

Any items requested by the City that are not outlined in the above scope will be considered excluded from this contract and may be provided only if requested and authorized in writing by the City.

The Consultant can provide the following services, but they are not included in the limited scope of this proposal:

- Franchise Utility Coordination
- Traffic Impact Studies or Signal Design
- Preparation of Traffic control plans
- Revisions due to changes in regulations
- Revisions to CD's after design approval other than clarifications
- Archaeological Survey
- Submittal, Permitting Fees, or Impact Fees
- Construction Staking
- Off-Site Utility Design
- Off-Site Roadway Design
- Off-Site Easement Descriptions
- Contractor Type Detailed Estimates (As Prepared by Estimating Service)
- Record Drawing Survey
- Preparation of Site Plan and Development Review Applications and Submittals
- Preparation of Preliminary or Final Plat

Additional Topographic and/or Boundary Surveys
Operations and Staffing Plan
Financial Impact Study (Expenses and Revenue Projections)
Environmental Impact Statement
Storm Drainage Studies and Detention/Retention Pond Design
Additional work due to increase in project cost and scope beyond \$3M

Additional Services

No additional services shall be provided without prior written authorization from the City. Should additional services be required, the Consultant will work with the City to develop a lump sum fee.

Fee and Billing

The Consultant will perform the professional services (Phases I, II, III, and IV) for a lump sum fee of \$325,000.

Fees and expenses will be invoiced monthly in the Consultant's format via e-mail, based as applicable, upon the percentage of services performed as of the invoice date.

Fees and times stated in this agreement are valid for sixty (60) days after the date of this letter.



Kimley-Horn
and Associates, Inc.

COMPENSATION
Renovation and Remodel of Doug Russell Pool
Midland, Texas

Lump Sum Services

Phase I	Schematic Design	\$35,750
Phase II	Construction Documents	\$206,500
Phase III	Bidding Phase	\$14,750
Phase IV	Construction Phase Services	<u>\$68,000</u>
Total Compensation Lump Sum Fee		\$325,000



Kimley-Horn
and Associates, Inc.

PROJECT SCHEDULE

***Renovation and Remodel of Doug Russell Pool
Midland, Texas***

December 17, 2013	Consultant Awarded Design Contract/Notice to Proceed
February 11, 2014	Phase I - Schematic Design Complete
May 15, 2014	Phase II – 100% Construction Documents Complete
June 1, 2014	Advertise for Bid
June 21, 2014	Receive Bids
July 1, 2014	Award Contract/Notice to Proceed for Construction
May 15, 2015	Substantial Completion –Prepare Punch List
May 25, 2015	Construction 100% Complete/Open to Public

Note: This schedule is tentative and is based upon actions by others (City) of which the Consultant has no control. This schedule is preliminary in nature and is intended only for project planning purposes.



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 12/17/2013

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the City Manager to execute a Professional Services Agreement with SilverWing Enterprises LLC to conduct an Airport Sensitivity Study of land compatibility surrounding Midland International Airport and appropriate funds.

Purpose:

Consider a resolution authorizing the City Manager to execute a Professional Services Agreement with SilverWing Enterprises LLC to conduct an Airport Sensitivity Study of land compatibility surrounding Midland International Airport and appropriate funds.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Commercial Space Launch Site Application (9005) -
Original Appropriation from Airport Operating Fund - \$628,502.00
Proposed Change Order - \$89,035.00
Contingency - \$60,066.00
Additional SilverWing Sensitivity Study - \$51,399.00
Total Appropriations (MDC) - \$200,500.00

Discussion:

During the August 28, 2012, City Council meeting, Council concurred with the Department of Airports' recommendation to amend Parkhill, Smith & Cooper's (PSC) Professional Services Agreement to include the project described as Commercial Space Launch Site Application (9005) and approved the appropriation of funds to the project. Due to unforeseen issues, including additional work on both the required environmental assessment and the risk calculation analyses required by the Federal Aviation Administration Office of Commercial Space Transportation (AST), caused the need for our first change order to the original agreement. This change order will necessitate the need to appropriate additional funds to the project. The Department of Airports estimates the need for an additional \$149,035.00, which includes a \$60,066.00 in contingency funding to complete the license process.

In addition, the Department of Airports would like to widen the scope of the project to include an Airport Sensitivity Study to assess adjacent land compatibility. This study will require the City to enter into a Professional Services Agreement with SilverWing Enterprises (SWE). Attached is a recent proposal received from SWE. Also attached is a spreadsheet detailing project expenses. The cost associated with this study is \$51,399.00

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH SILVERWING ENTERPRISES LLC TO CONDUCT AN AIRPORT SENSITIVITY STUDY OF LAND COMPATABILITY SURROUNDING THE MIDLAND INTERNATIONAL AIRPORT AND APPROPRIATING \$200,500.00 TO THE COMMERCIAL LAUNCH SITE APPLICATION PROJECT; THE CONTRACT WITH SILVERWING ENTERPRISES WILL BE APPROVED BY THE CITY MANAGER AND WILL NOT COME BACK BEFORE THE COUNCIL

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager to negotiate and execute a contract with SilverWing Enterprises LLC;

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, on behalf of the City of Midland, to negotiate and execute a contract with SilverWing Enterprises LLC to conduct an airport sensitivity study of land compatibility surrounding the Midland International Airport. The contract will not come back to the Council for approval but will be approved by the City Manager.

SECTION TWO. That the sum of \$200,500.00 is hereby appropriated from the Airport Operating Fund (500) Unappropriated Fund Balance (5605) to the Commercial Launch Site Application Project (9005).

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

Council members voting "AYE": _____

Council members voting "NAY": _____

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marvin Esterly, Director of Airports

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

11 November 2013

Marv Esterly
Director of Airports
Midland International Airport
9506 La Force Blvd. P.O Box 60305
Midland, Texas 79711
Phone (432) 560-2200 ext. 3001

Subject: Cost Estimate for Ec Sensitivity Study for the Midland International Airport Region

Dear Marv,

SilverWing Enterprises LLC is pleased to provide this proposal to conduct an Ec Sensitivity Analysis for the region surrounding the Midland International Airport. The goal of this study is to:

1. Evaluate the worst-case maximum estimated Ec (maximum individual risk) as a percentage of the maximum allowable collective Ec for each population block for the current population,
2. Determine the number of additional people required to exceed three separate thresholds (e.g. number of people required for the block's Ec to exceed 50%, 75% and 100% of the maximum allowable collective Ec), and
3. Create visual displays of the Ec and the population impact data associated with the Ec (e.g. Google Earth overlay).
4. Prepare a final report of the findings.
5. Prepare and present a PowerPoint presentation of the findings.

Notes:

- The assumed worst-case scenario utilized to estimate the maximum individual Ec corresponds to the trajectory segment of a flight path that travels directly above the population block's centroid. The Ec is calculated using this specific segment's trajectory parameters including altitude, velocity, and weight. The trajectory parameters will correspond to the nominal trajectory provided and the segment will be selected based on ground path distance from the population block centroid to an airport reference point.
- The evaluation of Ec is a complex and cumulative calculation based on track specific parameters. Therefore, the individual Ec evaluated based on the methodology described above will not meet the requirements associated with 14 CFR part 420. If the true value of the individual Ec is required, a unique trajectory and ground path must be developed with the associated heading and flight corridor. However, as the purpose of this analysis is to assess the relative population impact associated with Ec in the vicinity of MAF, the maximum Ec based on the worst-case scenario will provide a sufficient and conservative estimate.



SilverWing Enterprises

engineering, project management, and business development services

Letter Proposal 2013-03

Cost:

Manage the overall project including subcontracting BRRC to support the analysis.

Conduct the Ec sensitivity analysis.

Quality control review and approve the analysis performed by BRRC.

Prepare a PowerPoint presentation to present the results of the analysis.

Present the presentation as requested by the client to include three (3) round trips from Albuquerque, NM to Midland, Texas.

SWE Labor: \$19,200 (160 hour at \$120/hr)

SWE Travel: \$2,400 (\$800 per roundtrip, 3 trips)

BRRC Subcontract: \$29,799 (FFP)

Total estimated cost - \$51,399

Thank you for considering SWE as your subcontractor for this effort. If you have any questions or need any additional information, please let me know.

Sincerely,

Stephen E. Matier

President

SilverWing Enterprises LLC

Engineering, Project Management and Business Development Services

MIDLAND INTERNATIONAL AIRPORT

SPACEPORT LICENSING APPLICATION AND ENVIRONMENTAL ASSESSMENT

Work Item	Original Appropriation	Proposed Change Order 1	Revised Total Project Funds	Total Spent as of 10/31/2013
Task 1-10 (Environmental Assessment - Cardno TEC)	\$406,102.00	\$23,435.00	\$429,537.00	\$301,105.44
Task 11 (License Application, Ec Calculations - Silverwing)	\$202,400.00	\$50,600.00	\$253,000.00	\$235,326.69
PSC Tasks	\$20,000.00	\$15,000.00	\$35,000.00	\$18,175.96
	<u>\$628,502.00</u>	<u>\$89,035.00</u>	<u>\$717,537.00</u>	<u>\$554,608.09</u>

Proposed Contingency: \$60,000.00

Additional Flight Corridor Ec Analysis by Silverwing: \$51,399.00

Total Proposed Additional Funds: \$200,434.00

MIDLAND
City Attorney's Office
City of Midland
Office Memorandum

DATE: December 11, 2013

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: Memorandum of Understanding with the Midland County Hospital District

The proposed resolution authorizes the City Manager to execute a Memorandum of Understanding with the Midland County Hospital District regarding blood testing resulting from occupational exposure. The proposed resolution also authorizes the City Manager to make modifications to the Memorandum of Understanding as long as the overall purpose is not changed.

If you have any questions or if I may be of any assistance do not hesitate to contact me.

KS/lo

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A MEMORANDUM OF
UNDERSTANDING REGARDING BLOOD TESTING
RESULTING FROM OCCUPATIONAL EXPOSURE
WITH THE MIDLAND COUNTY HOSPITAL DISTRICT;
THE CITY MANAGER IS AUTHORIZED TO MAKE
MODIFICATIONS TO THE MEMORANDUM OF
UNDERSTANDING AS LONG AS THE PURPOSE IS NOT
AMENDED**

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager to execute a Memorandum of Understanding between the City of Midland, Texas, and the Midland County Hospital District regarding blood testing resulting from occupational exposure; and

WHEREAS, the City Manager is authorized to make modifications to the Memorandum of Understanding as long as the purpose is not amended;

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

SECTION ONE. That the Memorandum of Understanding between the City of Midland, Texas, and the Midland County Hospital District is hereby approved. Said Memorandum of Understanding which is attached hereto, marked as Exhibit "A", and incorporated herein for all legal purposes, is hereby approved. The City Manager is authorized to make modifications to the Memorandum as long as the overall purpose is not amended.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Price Robinson, Police Chief

Robert Isbell, Fire Chief

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

**MEMORANDUM OF UNDERSTANDING AND MEMORANDUM
REGARDING BLOOD TESTING RESULTING FROM OCCUPATIONAL EXPOSURE**

THIS MEMORANDUM OF UNDERSTANDING AND MEMORANDUM (the "Memorandum") will memorialize and evidence the understanding and authorization between Midland County Hospital District, d/b/a Midland Memorial (hereinafter referred to as "MMH") and the City of Midland (hereinafter referred to as "COM"),

WHEREAS, MMH is organized and operated as a community medical center in Midland, Texas, providing hospital and medical services for the residents of Midland County, Texas and the Permian Basin Area of Texas;

WHEREAS, COM, through its employees, provides services, including, but not limited to, police, firefighters, and EMS personnel, for the assistance and protection of the residents of Midland, Texas;

WHEREAS, COM, in connection with the Texas Department of State Health Services (hereinafter the "Department" which term shall include a designee of the Department), is seeking a provider to conduct blood testing, in accordance and compliance with Texas Health & Safety Code §81.50, of its employees and those persons such employees come into contact with as a result of possible exposure to blood borne pathogens;

WHEREAS, MMH has the requisite knowledge, experience and resources to provide the requested testing;

WHEREAS, MMH and COM desire to set forth an understanding of the procedure to be followed and requirements of each party to ensure compliance with all applicable federal, state, and local laws, rules and regulations governing the process of such blood testing.

ACCORDINGLY, MMH and COM shall follow the procedure set forth below in conducting such blood testing:

1. COM and the Department shall be responsible for complying with any and all requirements under federal, state, and local laws with regard to requesting such blood testing be done on the COM employee and the third party, including but not limited to those requirements under the Texas Health and Safety Code. Without limiting the foregoing, the Department shall have completed the following:

(a) the Department shall have received from the person, who has possibly been infected by a blood borne pathogen, a sworn statement delineating the reason for the request for such testing, including a statement that the person experienced the exposure in the course of his/her employment or volunteer service and believes that the exposure places him/her at risk of a reportable disease, including HIV infection.

(b) Upon receipt of the statement required by subparagraph (a), above, the Department shall review the person's request and inform the person whether the request

meets the criteria establishing risk of infection with Hepatitis B, Hepatitis C, and/or HIV/Aids.

(c) Upon a determination by the Department that the request meets the requirement for establishing a risk of infection, the Department shall provide the third-party who is subject to requested testing prompt and confidential written notice of the request for such testing. The order to such third-party must:

i. state the grounds and provisions of the order, including the factual basis for its issuance;

ii. refer the person to appropriate health care facilities where the person can be tested for reportable diseases, including HIV infection; and

iii. inform the person who is subject to the order of that person's right to refuse to be tested and the authority of the Department or health authority to ask for a court order requiring the test.

(d) If the person who is subject to the order refuses to comply and consent to the testing, COM and the Department shall comply with all applicable rules and regulations in obtaining a court order to conduct such testing prior to requesting admittance to MMH's Emergency Room.

2. Upon obtaining all necessary consents, and/or court orders, the COM employee and the third-party shall be admitted to MMH's Emergency Room for the blood draw and shall provide to MMH any and all documentation evidencing the necessary consent and/or court order and ensure that the COM Exposure Order form for each patient is completed and accurately documents that consent and/or a court order authorizing the testing was obtained.

3. MMH staff shall follow all applicable internal procedures for the blood draw, including, but not limited to, the completion of a COM Exposure Order form.

4. Upon completion of the testing, the results and all related records, including, but not limited to, the COM Exposure Order form, shall be sent by MMH to the person designated by the Department to receive such results on behalf of COM (the "COM Designee"). MMH shall develop protocols for coding test specimens to ensure that any identifying information concerning the person tested will be destroyed as soon as the testing is complete and once such results are sent to the COM Designee, MMH shall follow such protocols. Notwithstanding the above, MMH shall be responsible for the required reporting of any positive test results under the applicable reporting requirements under federal and/or state law.

5. Upon receipt of the test results from MMH, the COM Designee shall inform the employee of the results of the test. If the third-party person subject to the order is found to have a reportable disease, the COM Designee shall inform the employee and the third-party of the need for medical follow-up and counseling services, which shall conform to the model protocol on HIV counseling and testing prescribed by the Department, and advise appropriate postexposure medical follow-up as recommended by the United States Public Health Service.

6. The COM Designee shall develop protocols to ensure that any identifying information concerning the person tested and the test results will remain confidential and/or be destroyed, as required by applicable law. The COM Designee shall be solely responsible for maintaining the confidentiality of any testing results received by the COM Designee.

7. Upon completion of the testing, MMH shall bill COM for such services, and COM shall promptly remit payment for the same. The parties hereby acknowledge and agree that this Memorandum is entered into in support of this arrangement for testing and payment.

8. The Department shall be solely responsible for obtaining and documenting informed consent prior to any testing being conducted by MMH, or securing a court order covering the same in the absence of consent. MMH shall be entitled to rely on the representation of the Department with regard to the consent obtained or validity of such court order without further inquiry, provided however, MMH shall be entitled to review any and all evidence of the same upon request. In the event any litigation shall ensue, alleging a lack of consent, COM shall be responsible for any and all expenses, including, but not limited to, reasonable attorney's fees and costs of defense, MMH incurs in defending the same.

MMH shall notify COM, in writing, within (5) day of its acquiring knowledge of any claim of liability which could require defense pursuant to this subparagraph 8. MMH agrees to permit COM to contest and defend any claims made by any person prior to liability being assessed to MMH. Notwithstanding the foregoing, failure to provide timely notice and an opportunity to defend shall not void any obligations of COM under this subparagraph 8.

9. Miscellaneous.

(a) Nothing in this Memorandum, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Memorandum.

(b) Neither this Memorandum nor any of the rights, interests or obligations under this Memorandum shall be assigned, in whole or in part, by operation of law or otherwise by either of the parties hereto without the prior written consent of the other party.

(c) **NOTHING IN THIS MEMORANDUM IS INTENDED TO BE, NOR SHALL BE CONSTRUED AS, A WAIVER OF GOVERNMENTAL IMMUNITY OR ANY OTHER RIGHT(S) OF A PARTY AS A GOVERNMENTAL ENTITY.**

(d) This Memorandum is not, and shall not be construed as, a contract for goods and/or services.

(e) This Memorandum has been prepared by the joint efforts of the respective parties. Neither this Memorandum nor any portion thereof shall be construed more stringently for or against any party. Except for defined words or terms, when possible, all words or terms in this Memorandum shall be given their ordinary meaning.

(f) This Memorandum shall be construed and interpreted in accordance with the substantive laws of the State of Texas. The parties agree that any action, suit, or proceeding arising out of this Memorandum shall be brought in the state or federal courts of Midland County, Texas, and no action, suit, or proceeding shall be filed in any other court pertaining to any dispute arising out of or connected with this Memorandum.

IN WITNESS WHEREOF, the parties have affixed their signatures hereon.

Russell Meyers, President/CEO
Midland Memorial Hospital

Date

[Name], [Title]
City of Midland

Date



City Council Agenda

Approved for Agenda:
rpatrick
City Manager's Office

MEETING DATE: 12/17/2013

TO: City Council / City Manager

FROM: Sylvester Cantu, Community Development Manager

SUBJECT: Receive and file the Consolidated Annual Performance and Evaluation Report for 2012/2013

Purpose:

Receive and file the Consolidated Annual Performance and Evaluation Report for 2012/2013 (Annual CDBG Report)

Recommended City Council Action

☐ Approve ☐ Deny ☒ Directional / Informational

Fiscal Impact:

No impact on the budget.

Discussion:

Attached is a copy of the Executive Summary to the Consolidated Annual Performance and Evaluation Report (CAPER). A copy of the complete report is on file with the City Secretary. The CAPER is a document that describes the past year's performance related to the City's Consolidated Plan for Community Development and Housing Funds. The U.S. Department of Housing and Urban Development (HUD) requires the report. I have also included a map showing the location of various projects and a statistical report on the housing programs. The CAPER was subjected to a citizen review period from December 2 to December 16, 2013. We must deliver the CAPER to HUD by December 27, 2013.

If there are any questions or anyone wishes to view any of the activity, I can be reached at 685-7408, in Room 410 at City Hall or by e-mail at scantu@midlandtexas.gov.

THIRD PROGRAM YEAR

EXECUTIVE SUMMARY

The Consolidated Annual Performance and Evaluation Report (CAPER) describes the progress made from October 1, 2012 to September 30, 2013 towards implementing the City of Midland's Consolidated Plan for Community Development and Housing Funds. The past year covered the third year of the current Consolidated Plan. The U.S. Department of Housing and Urban Development (HUD) requires the City to prepare a Consolidated Plan as a pre-requisite for participation in various HUD programs including the Community Development Block Grant (CDBG).

The CAPER consists of narrative text presented in a format answering numerous questions from HUD and an appendix that contains back up documents and other essential information. A general narrative section describes how activities of the past year addressed the goals and objectives of the Consolidated Plan using federal funds covered by the Plan. The Community Development Block Grant was the only HUD grant allocated directly to the City. Using CDBG funds the following was achieved by the City during the past year:

- 5 owner occupied home were reconstructed
- 29 owner occupied homes received minor repairs
- 6 first time homebuyers were assisted with home purchases
- 12 homes built on CDBG acquired land became occupied by low income households
- 3 blocks of street and alley improvements were completed
- Sidewalks on 10 blocks were constructed
- 256 seniors received CDBG funded public services
- Lot clearance activity occurred on 361 properties
- Removed dilapidated structures on 10 properties

An assessment of the progress made in addressing the priority needs and objectives of the Consolidated Plan is included. It is concluded that good progress is being made on most of the objectives. The narrative also contains statements about actions taken to address various federal requirements such as affirmatively further fair housing, monitoring implementation of the Plan, fostering and maintaining affordable housing, reducing lead-based paint hazards, reducing poverty and eliminating barriers to affordable housing.

The narrative then focused on specific responses to the following need areas: housing (including public housing), homeless, community development, and non-homeless special needs persons. The housing needs narrative describes in greater detail the characteristics of households/persons assisted. The community development narrative is primarily a report on accomplishments with CDBG funds. It provides an assessment of the relationship of the use of CDBG funds to the priorities and specific objectives of the Consolidated Plan. By broad category, the City expended 54% of CDBG funds on housing programs, 20% on infrastructure,

5% on public services, 9% on other community development needs and 12% for administration. The income, racial and ethnic status of persons assisted as well as the locations of CDBG projects are presented in the CAPER.

Other narratives in the CDBG section include discussion on changes in program objectives, an assessment of compliance with certifications, and other CDBG issues such as explanations of program income, status of loans, and a report on housing rehabilitation. Other highlights include the CDBG financial report.

Accomplishments by CDBG funded projects are summarized on the following table and the succeeding performance profile.

2012/13 CDBG Program Accomplishments

<u>Activity</u>	<u>Accomplishments</u>	<u>Amount</u>
Sparks Park Area Infrastructure	Street paving and alley improvements were completed.	\$144,148
Sidewalks Improvements	Construction of sidewalks on 10 blocks near Travis Elementary was completed.	\$134,200
Housing Development in Sparks Target Area	Eleven homes were constructed and purchased by low income families.	\$0
Housing Reconstruction for homeowners	Reconstructed 5 homes and working on three others.	\$606,962
Housing Minor Repairs for homeowners	Completed 31 minor repairs.	\$99,003
Homebuyer Assistance Program	Assisted 6 first time homebuyers with the purchase of a home.	\$34,442
Lot Clearing Program	Lot clearing was accomplished on 361 properties.	\$46,738
Demolition Program	Demolished 10 dilapidated structures.	\$73,454
Senior Nutrition Program	115 seniors benefited from lunch meal program at SE Senior Center.	\$45,000
Home Cleaning Program	Home cleaning services for 141 elderly/handicap clients.	\$25,000
CDBG Administration	Conducted by the Community Development Office.	\$160,000
	Total:	\$1,368, 946

CDBG Performance Profile

	<u>2012/13</u>	<u>2011/12</u>	<u>2010/11</u>
CDBG Grant	\$699,035	\$830,012	\$991,086
Program Income	\$125,631	\$136,142	\$150,221
Available Funds (includes prior grants)	\$1,841,124	\$2,208,481	\$1,961,470
Expenditures	\$1,363,946	\$1,307,449	\$670,783
% By Major Category (2012/13 actual)			
Housing (\$740,407)	54.3%	45.1%	28.7%
Public Infrastructure (\$278,348)	20.0%	25.7%	25.1%
Public Facility (\$0)	0.0%	7.6%	0.0%
Public Services (\$70,000)	5.1%	7.2%	14.7%
Other (\$120,192)	8.8%	4.4%	4.0%
Administrative (\$160,000)	11.7%	10.1%	27.4%
Accomplishments			
Homebuyers Assisted	6	14	6
Homes Rehabilitated/Reconstructed	5	3	1
Housing Minor Repairs	31	38	30
Streets Paved - # of Blocks	3	0	12
Sidewalks Improved - # of Blocks	10	4	0
Public Facility Improved	0	1	0
Public Service Beneficiaries	256	425	528
Parcels Purchased	0	0	1
Lots Cleared	361	167	443
Structures Demolished	10	5	0
Direct Beneficiaries by Race	296	482	576
White	56.1%	53.7%	58.7%
Black	42.2%	45.2%	40.1%
Other or Multi-Race	1.7%	1.0%	1.2%
Direct Beneficiaries - Hispanic	28.4%	25.3%	32.8%
Direct Beneficiaries by Income	296	482	555
Under 30% of City Median	80.8%	70.1%	61.8%
30% - 50% of City Median	15.9%	20.5%	21.0%
50% - 80% of City Median	3.4%	9.3%	15.6%

CITY OF MIDLAND COMMUNITY DEVELOPMENT OFFICE
Housing Programs Activity

	<u>2006/2007</u>	<u>2007/2008</u>	<u>2008/2009</u>	<u>2009/2010</u>	<u>2010/2011</u>	<u>2011/2012</u>	<u>2012/2013</u>
Total Public Funds Expended	\$534,748	\$270,412	\$483,648	\$534,399	\$200,148	\$641,757	\$760,406
Homebuyer Assistance Program (HAP) – Preowned Homes							
# of Households Assisted	0	2	0	0	0	3	0
Funds Expended	\$0	\$0	\$0	\$0	\$0	\$15,088	\$0
HAP – New Homes							
# of Households Assisted	4	3	8	10	6	11	7
Funds Expended	\$29,400	\$22,128	\$89,003	\$185,815	\$48,033	\$56,324	\$54,442
Owner Minor Repairs							
# of Jobs Completed	0	22	32	51	30	38	31
Funds Expended	\$0	\$17,915	\$56,523	\$115,111	\$73,731	\$104,686	\$99,003
Owner Major Projects							
# of Jobs Completed	9	2	5	2	1	3	5
# of Reconstructions	8	2	4	2	1	3	5
Valuations Prior to Work	\$118,700	\$18,390	\$125,690	\$39,220	\$28,110	\$58,310	\$132,630
CDBG Funds Expended	\$289,715	\$160,708	\$327,783	\$233,473	\$78,384	\$424,658	\$606,961
Other Funds Expended	\$215,633	\$69,661	\$10,339	\$0	\$0	\$41,000	\$0
Loan Payments Received	\$176,052	\$168,953	\$153,483	\$175,933	\$148,721	\$134,642	\$123,766
CDBG Loan Portfolio	\$1,015,536	\$920,690	\$891,245	\$795,591	\$748,094	\$698,118	\$861,559

2012 2013 CDBG ACTIVITY BY CENSUS TRACT



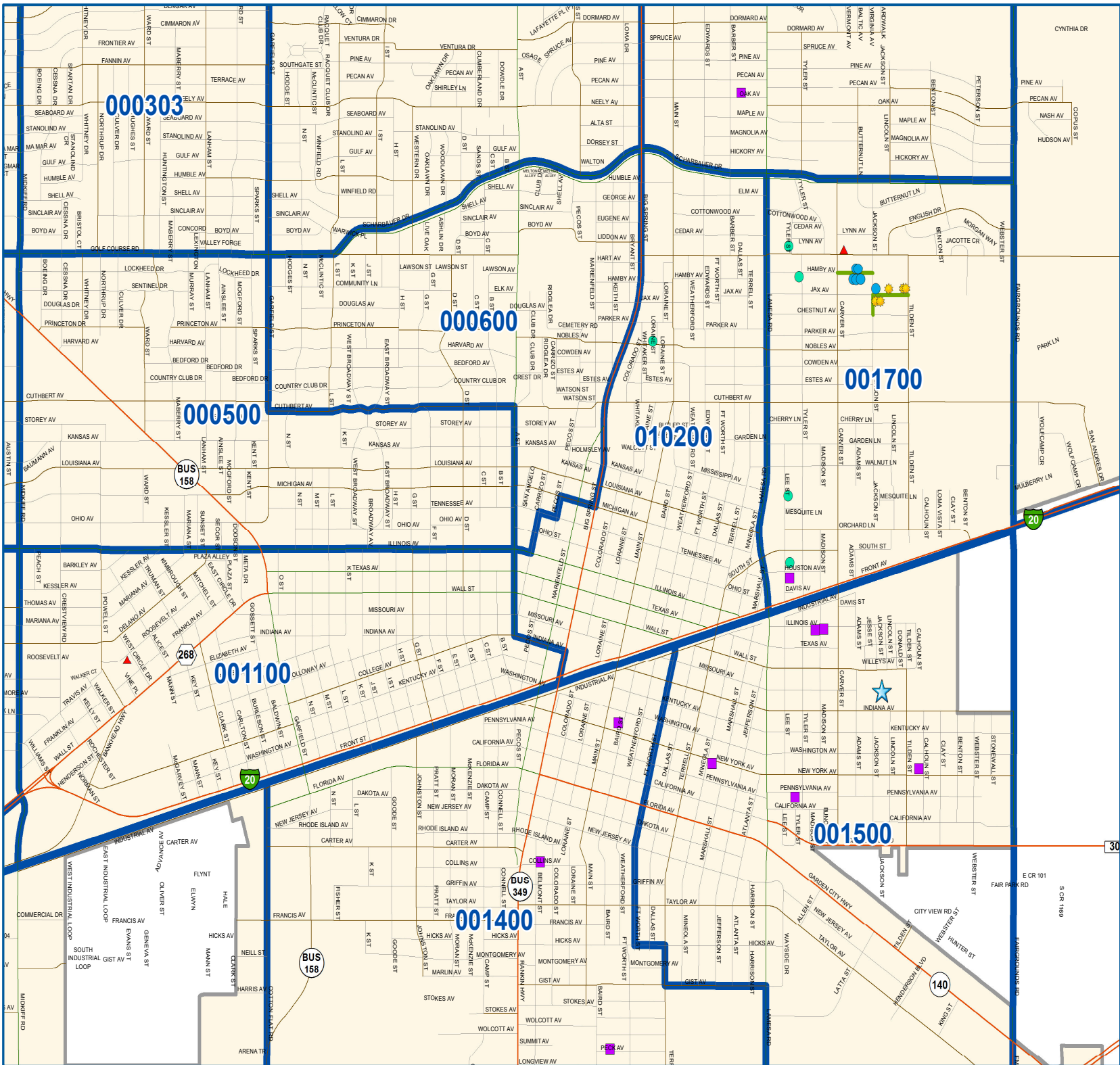
Legend

- SE Senior Meals Program
- Demolition
- Reconstruction
- Home Buyer
- new home
- New Home & Home Buyer
- Street Improvements
- Arterial
- Collector
- Interstate & State Highway
- Residential
- Census Tract 2010
- City Limit



OCTOBER 30, 2013
STEVE BAKER

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THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR
ANY DECISIONS BASED UPON THE USE OF THIS DATA.
WHILE THE INFORMATION IS AVAILABLE TO THE
PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY
OF MIDLAND, AND WHILE WE MAKE EVERY ATTEMPT TO
KEEP IT UPDATED, WE MAKE NO CLAIM AS TO ITS
DESIGNED TO BE USED AS A PRIMARY TOOL IN
PERMITTING, CITING, OR IN OTHER DECISIONS BASED
SOLELY ON THIS INFORMATION.





City Council Agenda

Approved for Agenda:
RPatrick
City Manager's Office

MEETING DATE: December 17, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Coordinator

SUBJECT: Consider a resolution approving the issuance of a permit to High Sky Partners, LLC (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Mask No 1001) located 773 feet from the south line and 825 feet from the west line located in Section 10, Block X, H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the north side of the extension of Mockingbird Lane, approximately 825 feet east of the extension of N. Garfield Street- District 1)

Purpose:

To consider a resolution approving the issuance of a permit to High Sky Partners, LLC (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Mask No 1001) located 773 feet from the south line and 825 feet from the west line located in Section 10, Block X, H.P. Hilliard Survey, City and County of Midland, Texas. The required 30-day public comment has passed and the Council may consider this request. No letters of objection received.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval of the application. High Sky Partners is requesting a landscaping/irrigation variance and a waiver of the road repair agreement since no city streets will be used. The Committee recommends variance of two years for landscaping and irrigation and then come back to the Oil & Gas Advisory Committee for review if variance is to be extended.

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

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO HIGH SKY PARTNERS, LLC (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 773 FEET FROM THE SOUTH LINE AND 825 FEET FROM THE WEST LINE, SECTION 10, BLOCK “X”, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF THE EXTENSION OF MOCKINGBIRD LANE, APPROXIMATELY 825 FEET EAST OF THE EXTENSION OF NORTH GARFIELD STREET); AND WAIVING THE REQUIREMENT OF A 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 November 12, 2013; and

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

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

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

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

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

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 773 feet from the south line and 825 feet from the west line, Section 10, 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 the requirement of a Road Repair Agreement between Operator and the City of Midland is hereby waived in regard to said permit.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant to the City Manager

APPROVED ONLY 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 December 17, 2013, considered the application of High Sky Partners, LLC, dated September 3, 2013, 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 High Sky Partners, LLC, dated September 3, 2013, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of High Sky Partners, LLC, Mask No 1001 oil and gas well shall be 773 feet from the south line and 825 feet from the west line, Section 10, 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 High Sky Partners, LLC, 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 December 17, 2013, through December 17, 2014, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

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

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

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

Landscaping is not required at this time but will be reviewed at the end of two years from December 17, 2013. If landscaping is not completed prior to the two year period then the operator shall request in writing to have variance reviewed by the Oil & Gas Advisory Committee.

A waiver granted for road repair agreement due to no city streets used by operator to access well or tank battery.

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

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, High Sky Partners, LLC shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in High Sky Partners, LLC application for said well. High Sky Partners, LLC for said well is incorporated herein by reference for all legal purposes.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of December 17, 2013.

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of December 17, 2013.

High Sky Partners, LLC

By: _____

Michael W Wallace, President

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 reviewed at the end of two years from December 17, 2013. If landscaping is not completed prior to the two year period then the operator shall request in writing to have variance reviewed by the Oil & Gas Advisory Committee.

(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: _____
Michael W. Wallace, President

High Sky Partners, LLC
508 W. Wall Street, Suite 1200
Midland, Texas 79701
(432) 686-4360

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: _____
Michael W Wallace, President

508 W Wall Street, Suite 1200
Midland, Texas 79701
(432) 686-4360



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)



I. General Information		
Date 9/3/2013	Operator Name (must match W-1) HIGH SKY PARTNERS LLC	Operator Address 508 W. Wall Street, Suite 1200 Midland, TX 79701
Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432) 686-4360
Michael W. Wallace	508 W. Wall Street, Suite 1200 Midland, TX 79701	Rep. Fax (432) 686-0302
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.): (432) 582-3190 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.): Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]). See Exhibit "B"		
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 Leslyn M. Wallace, 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: Undeveloped rangeland within 860' of the well location. Surface ownership: See Exhibit "D"		
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/plot/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lot/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: Mask № 1001

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See Exhibit "G", Page 2

Legal Description of Proposed Well Site:

773' FSL & 825' FWL Section 10, Block X, H.P. Hilliard Survey, Midland County, TX

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

Description of water source to be used during Drilling:

Water to be piped from surface owner's water wells to the well site.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

See Exhibit "N"

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: See Exhibit "O"

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)].

HIGH SKY PARTNERS LLC

By: Michael W. Wallace
Michael W. Wallace, President

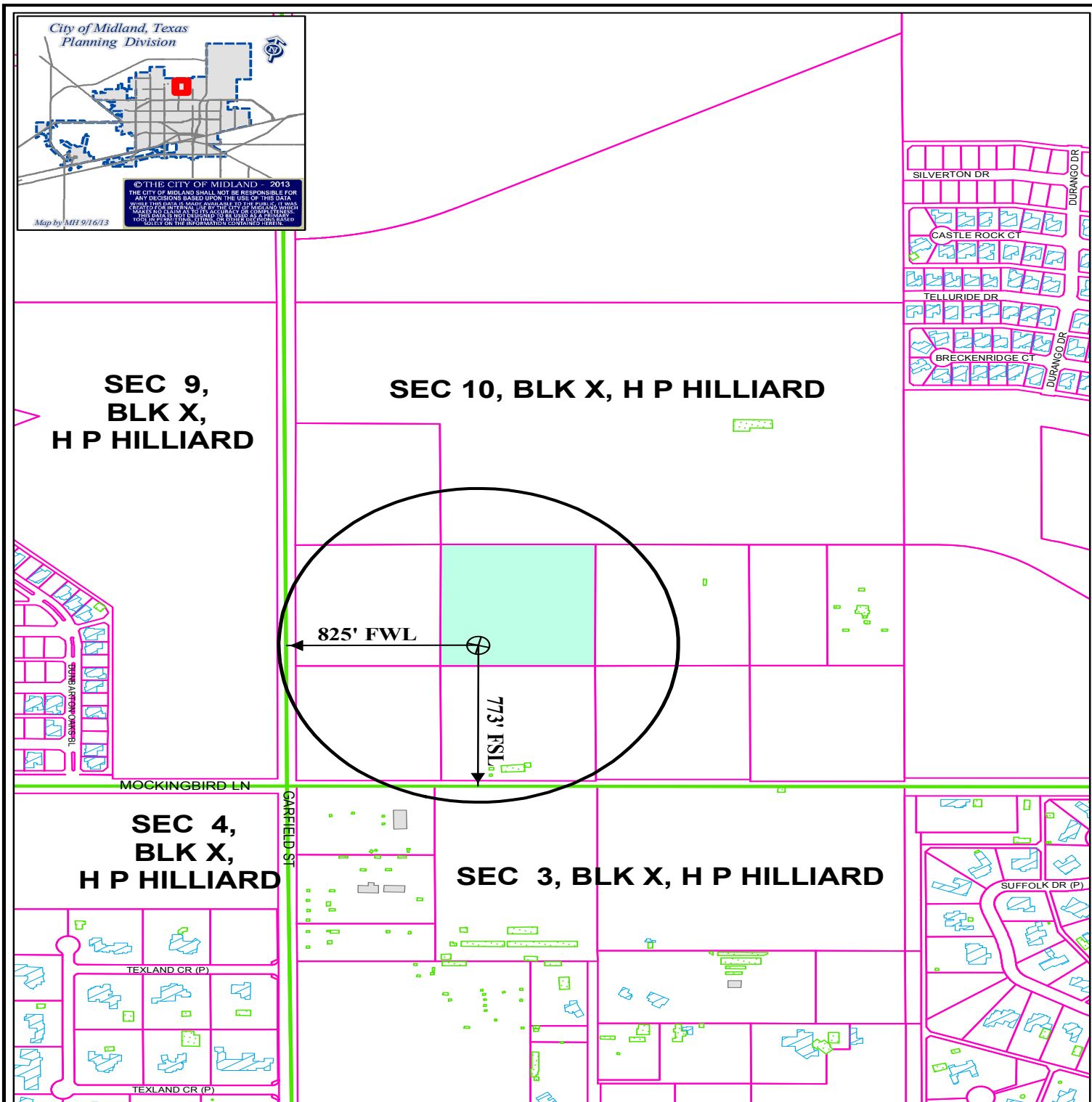
State of Texas §

County of Midland §

This instrument was acknowledged before me this 3rd day of September, by Michael W. Wallace, President of High Sky Partners LLC, a Delaware limited liability company, and 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 has read the above application and attached exhibits and the statements therein are true and correct to the best of his knowledge.



Keri R. Waddell
Notary Public, State of Texas



LOCATION AND ZONING MAP

O - 13 - 016

Scale: 1" = 600'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 773' FSL and 825' FWL, Section 10, Block "X", H. P. Hilliard Survey, Midland County, Texas.

Mask No. 1001

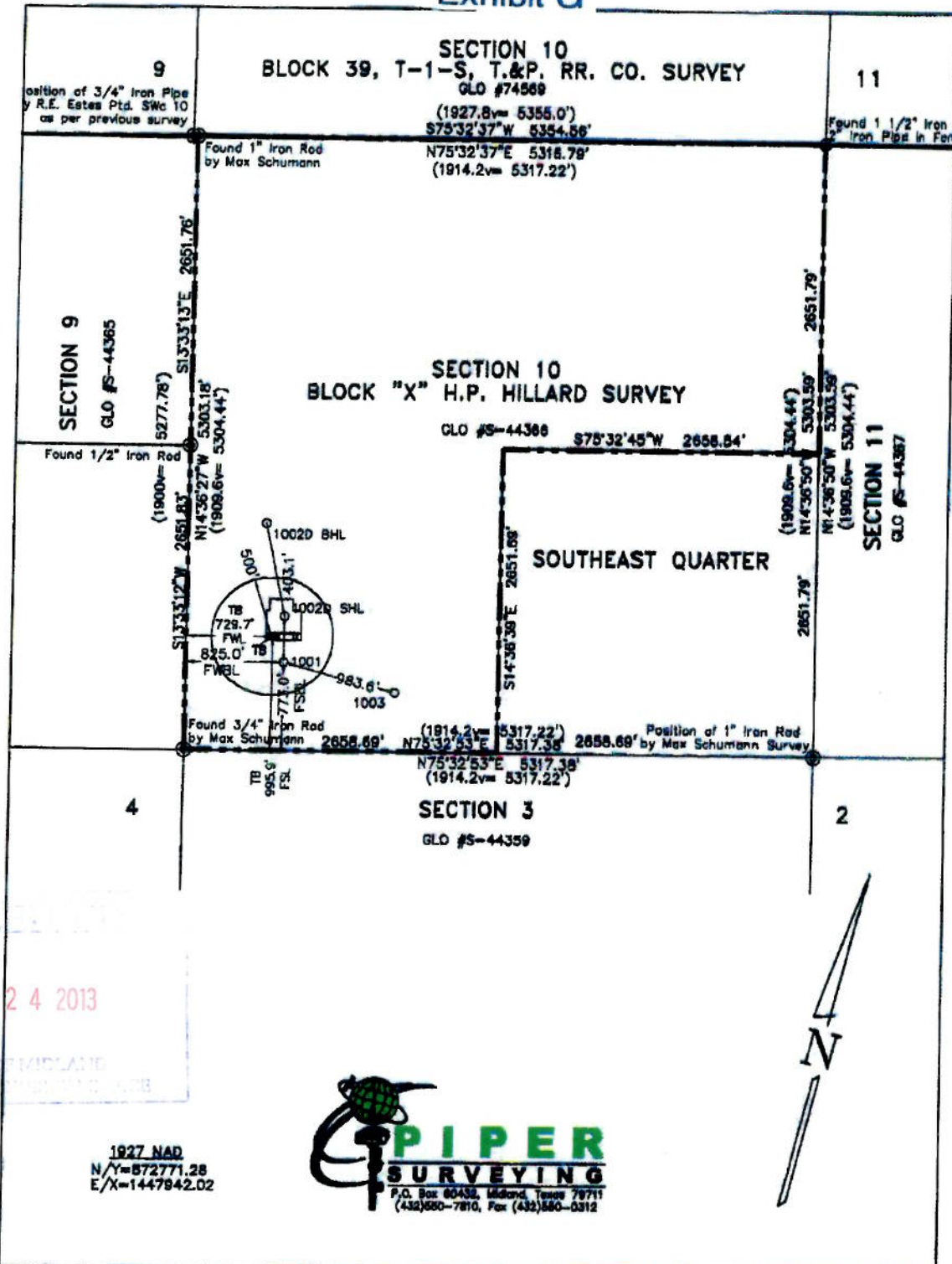
LEGEND

	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
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, JPI, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

Exhibit G

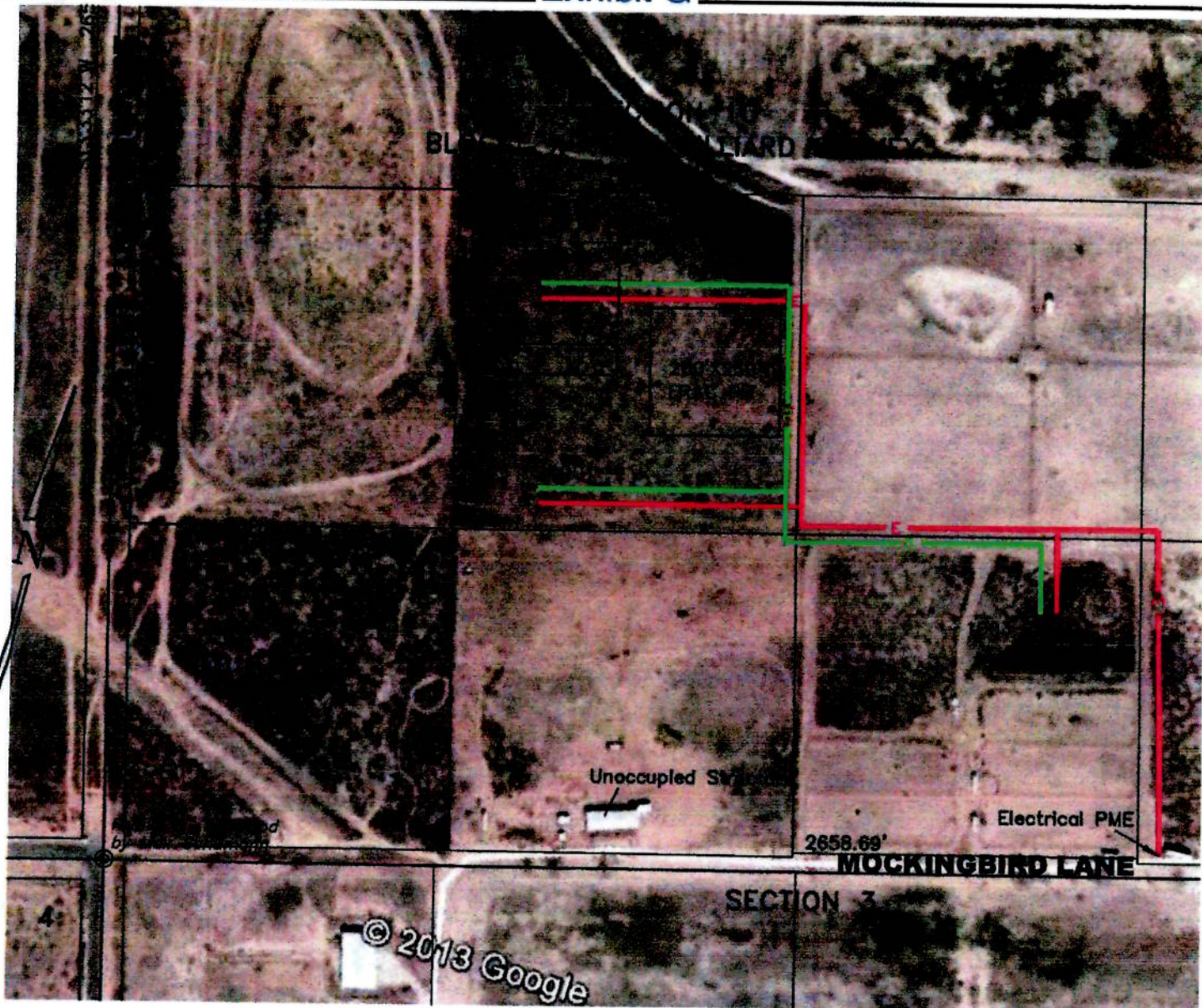


OPERATOR: High Sky Partners LLC 508 West Wall Street Suite 1200 Midland, Texas 79701	DESCRIPTION: MASK 1001 North Half and the Southwest Quarter of Section 10, Block "X", H.P. Hillard Survey, Midland County, Texas	FIELD: ACREAGE: 485.5 in Lease ELEVATION: 2807' DATE: 8/1/13 (9/23/13) SCALE: 1" = 1000'
The well location shown on this plot represents an actual survey made by me or under my supervision to the best of my knowledge and belief as surveyed on the ground. 7/23/13  J. STAR PIPER PROFESSIONAL LAND SURVEYOR REGISTERED SEAL NO. 1974	LOCATION IN SURVEY: 773.0' FSL & 825.0' FWL LOCATION IN LEASE: 773.0' FSL & 825.0' FWBL NEAREST POST OFFICE: 4.5 Miles Southeast to Midland, Texas GEODETIC POSITION: LATITUDE: 32°03'15.402" LONGITUDE: 102°06'55.749" STATE PLANE COORDINATES: NORTH (Y) 10715347.31 EAST (X) 1744408.66	DRAWN BY: Tina Chalambe DWG FILE: Scherbauer40.Dwg FIELD BOOK: Midland #56, Pg. 57 NORTH AMERICA DATUM OF: 1983 ZONE: Central STATE: TX

DRILL SITE MAP

MASK NO 1001

0-13-010 13.41



— F — = Flowline — E — = Electric Line

Drawing File: Scharbauer40.Dwg; Drawn By: Tina Switzer; Scale: 1"=300'; Date: 8/27/13; CRD File: Scharbauer40.crd
Revised 9/3/13, 9/16/13 & 9/23/13 by TS

**PLAT SHOWING FLOWLINE, ELECTRIC LINE AND FRAC PIT
IN SECTION 10, BLOCK "X", H.P. HILLIARD SURVEY,
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS**

OCT 24 2013

Bearings and distances 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 is true and correct to the best of my knowledge and ability as surveyed on the ground on July 23, 2013.

J. Stan Piper
Registered Professional Land Surveyor

Prepared For:
High Sky Partners LLC
508 West Wall Street
Suite 1200
Midland, Texas 79701

PIPER SURVEYING

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

FLOW LINE MAP

MASK NO 1001

0-13-016



City Council Agenda

Approved for Agenda:
RPatrick
City Manager's Office

MEETING DATE: December 17, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Coordinator

SUBJECT: Consider a resolution approving the issuance of a permit to High Sky Partners, LLC (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Mask No 1002D) located 1176 feet from the south line and 825 feet from the west line located in Section 10, Block X, H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the north side of the extension of Mockingbird Lane, approximately 825 feet east of the extension of N. Garfield Street- District 1)

Purpose:

To consider a resolution approving the issuance of a permit to High Sky Partners, LLC (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Mask No 1002D) located 1176 feet from the south line and 825 feet from the west line located in Section 10, Block X, H.P. Hilliard Survey, City and County of Midland, Texas. The required 30-day public comment has passed and the Council may consider this request. No letters of objection received.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval of the application. High Sky Partners is requesting a landscaping/irrigation variance and a waiver of the road repair agreement since no city streets will be used. The Committee recommends variance of two years for landscaping and irrigation and then come back to the Oil & Gas Advisory Committee for review if variance is to be extended.

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

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO HIGH SKY PARTNERS, LLC (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 1,176 FEET FROM THE SOUTH LINE AND 825 FEET FROM THE WEST LINE, SECTION 10, BLOCK “X”, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF THE EXTENSION OF MOCKINGBIRD LANE, APPROXIMATELY 825 FEET EAST OF THE EXTENSION OF NORTH GARFIELD STREET); AND WAIVING THE REQUIREMENT OF A 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 November 12, 2013; and

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

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

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

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

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

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 1,176 feet from the south line and 825 feet from the west line, Section 10, 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 the requirement of a Road Repair Agreement between Operator and the City of Midland is hereby waived in regard to said permit.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant to the City Manager

APPROVED ONLY 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 December 17, 2013, considered the application of High Sky Partners, LLC, dated September 3, 2013, 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 High Sky Partners, LLC, dated September 3, 2013, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of High Sky Partners, LLC, Mask No 1002D oil and gas well shall be 1176 feet from the south line and 825 feet from the west line, Section 10, 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 High Sky Partners, LLC, 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 December 17, 2013, through December 17, 2014, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

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

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

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

Landscaping is not required at this time but will be reviewed at the end of two years from December 17, 2013. If landscaping is not completed prior to the two year period then the operator shall request in writing to have variance reviewed by the Oil & Gas Advisory Committee.

A waiver granted for road repair agreement due to no city streets used by operator to access well or tank battery.

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

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, High Sky Partners, LLC shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in High Sky Partners, LLC application for said well. High Sky Partners, LLC for said well is incorporated herein by reference for all legal purposes.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of December 17, 2013.

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of December 17, 2013.

High Sky Partners, LLC

By: _____

Michael W Wallace, 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: _____
Michael W Wallace, President

508 W Wall Street, Suite 1200
Midland, Texas 79701
(432) 686-4360

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 reviewed at the end of two years from December 17, 2013. If landscaping is not completed prior to the two year period then the operator shall request in writing to have variance reviewed by the Oil & Gas Advisory Committee.

(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: _____
Michael W. Wallace, President

High Sky Partners, LLC
508 W. Wall Street, Suite 1200
Midland, Texas 79701
(432) 686-4360



0-13-017

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)



I. General Information		
Date 9/3/2013	Operator Name (must match W-1) HIGH SKY PARTNERS LLC	Operator Address 508 W. Wall Street, Suite 1200 Midland, TX 79701
Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432) 686-4360
Michael W. Wallace	508 W. Wall Street, Suite 1200 Midland, TX 79701	Rep. Fax (432) 686-0302
Fee: \$4,000.00 Rec'd Yes/No ☒ 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.): (432) 582-3190 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.):		
Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]): See Exhibit "B"		
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 _____, 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: Undeveloped rangeland within 860' of the well location. Surface ownership: See Exhibit "D"		
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/plot/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lot/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: Mask № 1002D

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See Exhibit "G", Page 2

Legal Description of Proposed Well Site:

1176' FSL & 825' FWL Section 10, Block X, H.P. Hilliard Survey, Midland County, TX

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

Description of water source to be used during Drilling:

Water to be piped from surface owner's water wells to the well site.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

See Exhibit "N"

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: See Exhibit "O"

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)].

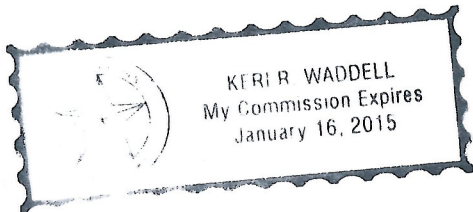
HIGH SKY PARTNERS LLC

By: Michael W. Wallace
Michael W. Wallace, President

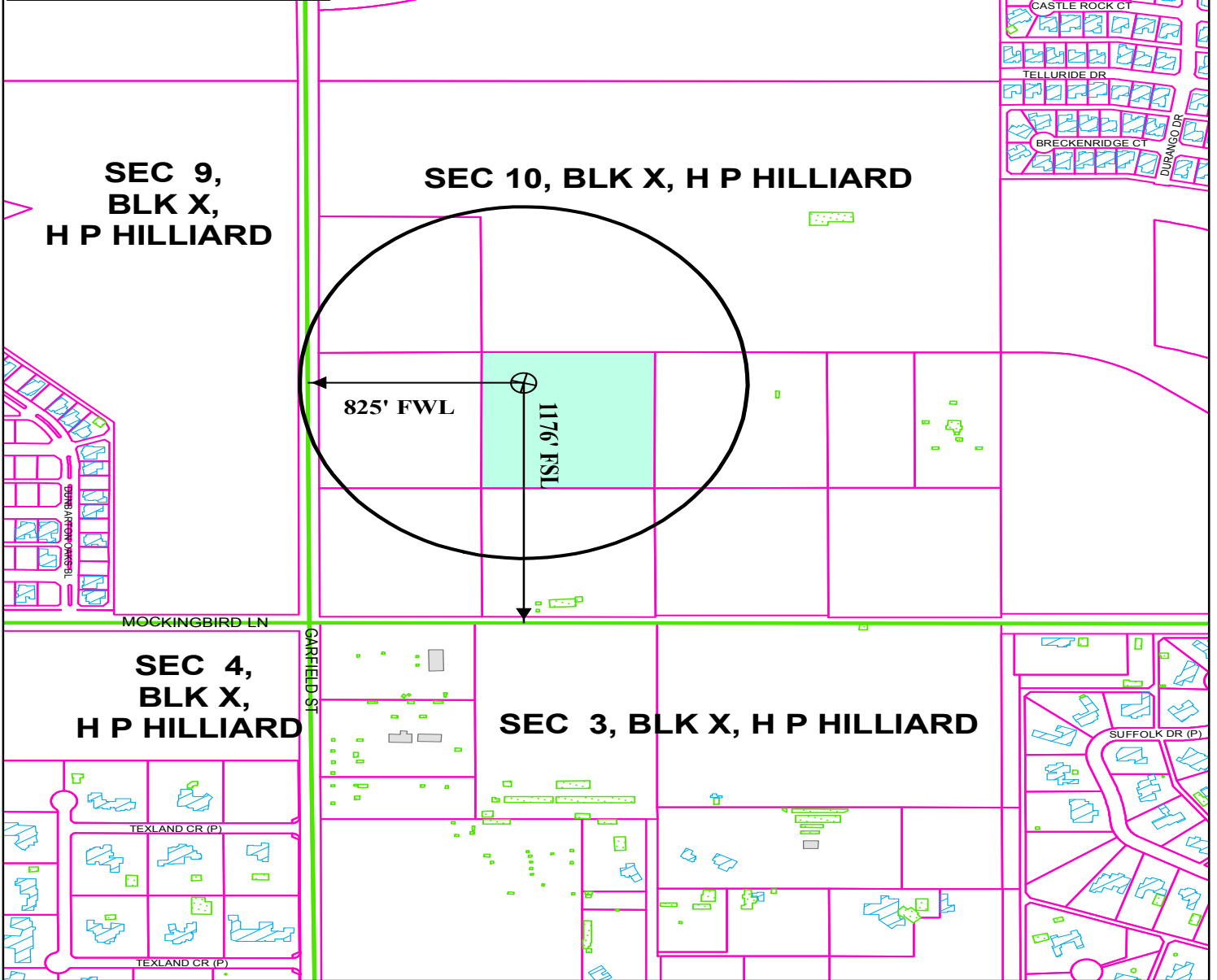
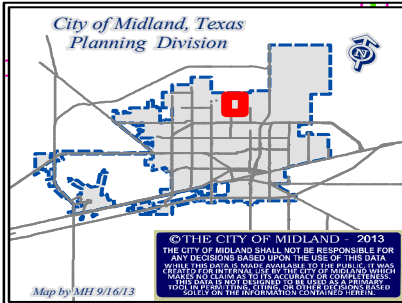
State of Texas §

County of Midland §

This instrument was acknowledged before me this 3rd day of September, by Michael W. Wallace, President of High Sky Partners LLC, a Delaware limited liability company, and 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 has read the above application and attached exhibits and the statements therein are true and correct to the best of his knowledge.



Kerri R. Waddell
Notary Public, State of Texas



LOCATION AND ZONING MAP

O - 13 - 017

Scale: 1" = 600'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 1176' FSL and 825' FWL, Section 10, Block "X", H. P. Hilliard Survey, Midland County, Texas.

Mask No. 1002D

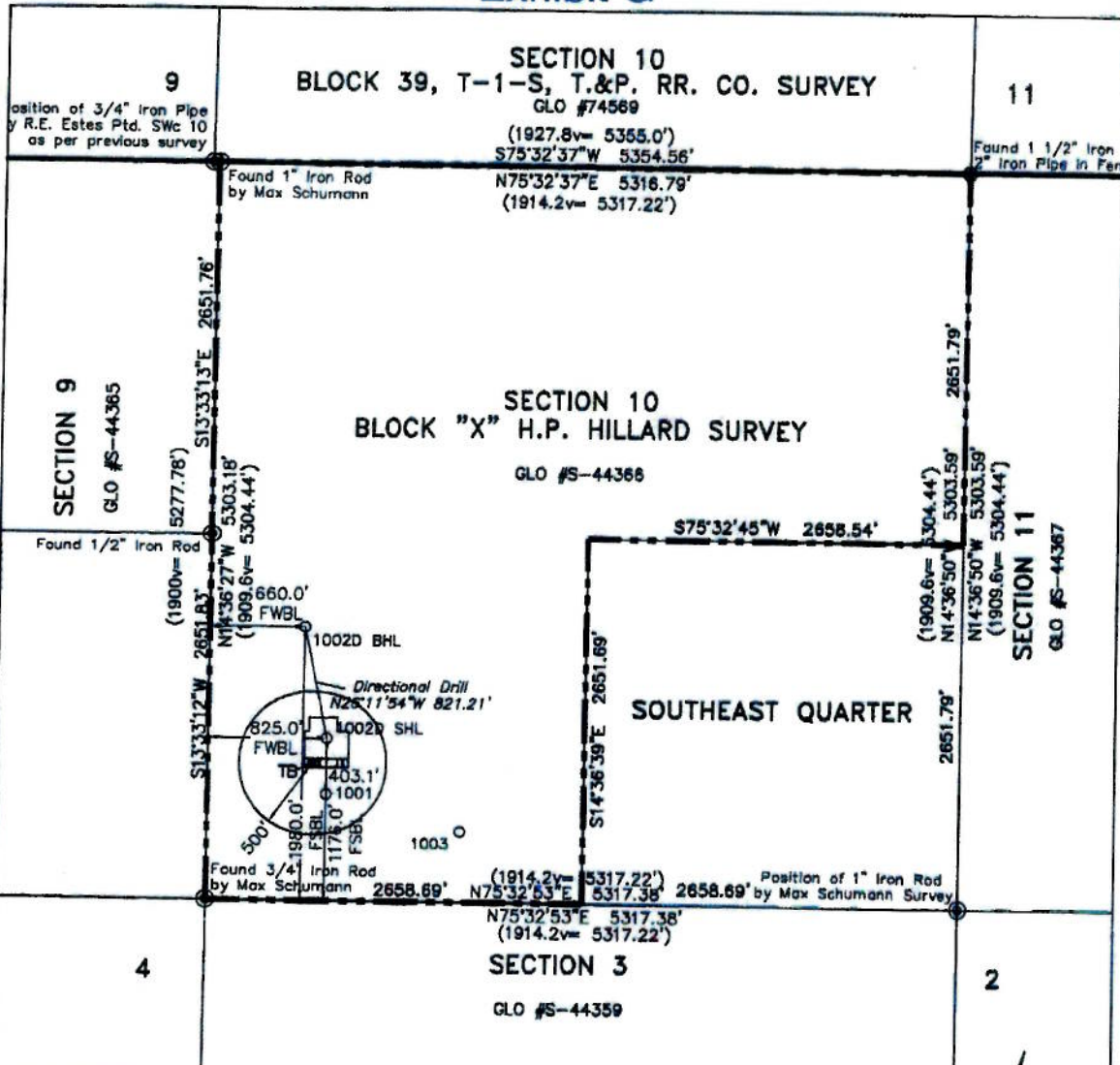
LEGEND

	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
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, JPI, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

Exhibit G

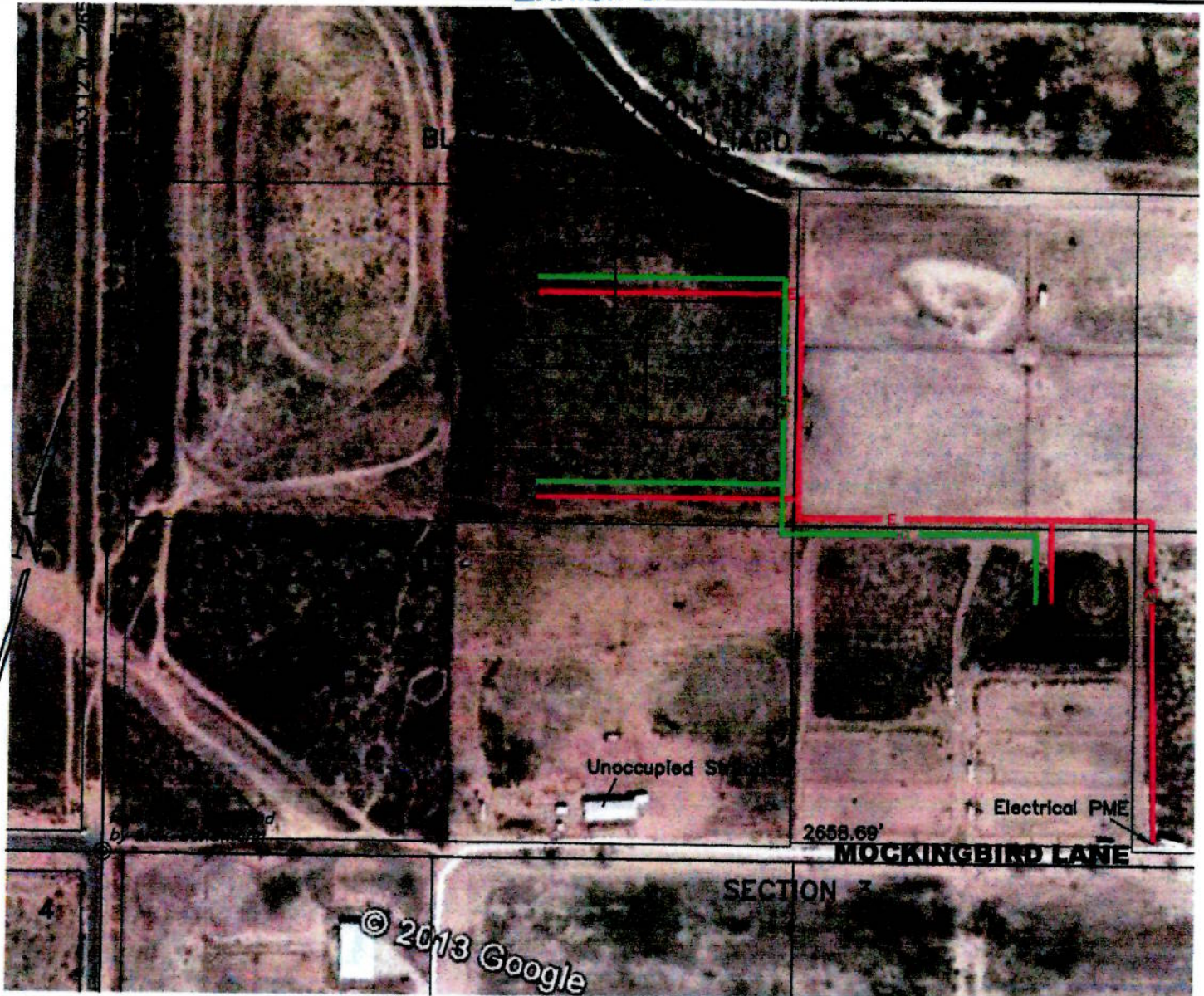


OPERATOR: High Sky Partners LLC 508 West Wall Street Suite 1200 Midland, Texas 79701	MASK 1002D	FIELD:
The well location shown on this plot represents an actual survey made by me or under my supervision to the best of my knowledge and belief as surveyed on the ground. 7/23/13 J/ STAN PIPER PROFESSIONAL LAND SURVEYOR REGISTERED SEAL NO. 1974	DESCRIPTION: North Half and the Southwest Quarter of Section 10, Block "X", H.P. Hillard Survey, Midland County, Texas	ACREAGE: 485.5 in Lease
	LOCATION IN SURVEY: SHL 1176.0' FSL & 825.0' FWL, BHL 1980.0' FSL & 660.0' FWL	ELEVATION: SHL 2807'
	LOCATION IN LEASE: SHL 1176.0' FSL & 825.0' FWL, BHL 1980.0' FSL & 660.0' FWL	DATE: 8/1/13 (9/23/13)
	NEAREST POST OFFICE: 4.6 Miles Southeast to Midland, Texas	SCALE: 1" = 1000'
	GEODETIC POSITION: SHL 32°03'19.244" LONGITUDE: SHL 102°06'57.002" LATITUDE: BHL 32°03'28.477" LONGITUDE: BHL 102°07'01.351"	DRAWN BY: Tina Chalambaga
STATE PLANE COORDINATES: SHL 10715737.35 SHL 1744307.03 NORTH (Y) BHL 10718474.19 EAST (X) BHL 1743944.46	DWG FILE: Scharbauer40.Dwg	FIELD BOOK: Midland #56, Pg. 57
		NORTH AMERICA DATUM OF: 1983
		ZONE: Central STATE: TX

DRILL SITE MAP

MASK NO 1002D

O-13-01/



— Flowline — Electric Line

Drawing File: Scharbauer40.Dwg; Drawn By: Tina Switzer; Scale: 1"=300'; Date: 8/27/13; CRD File: Scharbauer40.crd
Revised 9/3/13, 9/16/13 & 9/23/13 by TS

**PLAT SHOWING FLOWLINE, ELECTRIC LINE AND FRAC PIT
IN SECTION 10, BLOCK "X", H.P. HILLIARD SURVEY,
CITY OF MIDLAND, MIDLAND COUNTY, TEXAS**

OCT 24 2013

CITY OF MIDLAND
PLANNING DIVISION

Bearings and distances 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 is true and correct to the best of my knowledge and ability as surveyed on the ground on July 23, 2013.

J. Stan Piper
Registered Professional Land Surveyor

Prepared For:
High Sky Partners LLC
508 West Wall Street
Suite 1200
Midland, Texas 79701

PIPER SURVEYING

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

FLOW LINE MAP

MASK NO 1002D

0-13-017



City Council Agenda

Approved for Agenda:
RPatrick
City Manager's Office

MEETING DATE: December 17, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Coordinator

SUBJECT: Consider a resolution approving the issuance of a permit to High Sky Partners, LLC (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Mask No 1003) located 513 feet from the south line and 1773 feet from the west line located in Section 10, Block X, H.P. Hilliard Survey, City and County of Midland, Texas. (Generally located on the north side of the extension of Mockingbird Lane, approximately 1773 feet east of the extension of N. Garfield Street- District 1)

Purpose:

To consider a resolution approving the issuance of a permit to High Sky Partners, LLC (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Mask No 1003) located 513 feet from the south line and 1773 feet from the west line located in Section 10, Block X, H.P. Hilliard Survey, City and County of Midland, Texas. The required 30-day public comment has passed and the Council may consider this request. No letters of objection received.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval of the application noting that a surface agreement is not in place at the time of review. High Sky Partners is requesting a landscaping/irrigation variance and a waiver of the road repair agreement since no city streets will be used. The Committee recommends variance of two years for landscaping and irrigation and then come back to the Oil & Gas Advisory Committee for review if variance is to be extended

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

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO HIGH SKY PARTNERS, LLC (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 513 FEET FROM THE SOUTH LINE AND 1,773 FEET FROM THE WEST LINE, SECTION 10, BLOCK “X”, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF THE EXTENSION OF MOCKINGBIRD LANE, APPROXIMATELY 1,773 FEET EAST OF THE EXTENSION OF NORTH GARFIELD STREET); AND WAIVING THE REQUIREMENT OF A 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 November 12, 2013; and

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

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

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

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

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

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 513 feet from the south line and 1,773 feet from the west line, Section 10, 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 the requirement of a Road Repair Agreement between Operator and the City of Midland is hereby waived in regard to said permit.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant to the City Manager

APPROVED ONLY 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 December 17, 2013, considered the application of High Sky Partners, LLC, dated September 3, 2013, 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 High Sky Partners, LLC, dated September 3, 2013, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of High Sky Partners, LLC, Mask No 1003 oil and gas well shall be 513 feet from the south line and 1773 feet from the west line, Section 10, 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 High Sky Partners, LLC, 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 December 17, 2013, through December 17, 2014, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

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

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

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

Landscaping is not required at this time but will be reviewed at the end of two years from December 17, 2013. If landscaping is not completed prior to the two year period then the operator shall request in writing to have variance reviewed by the Oil & Gas Advisory Committee.

A waiver granted for road repair agreement due to no city streets used by operator to access well or tank battery.

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

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, High Sky Partners, LLC shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in High Sky Partners, LLC application for said well. High Sky Partners, LLC for said well is incorporated herein by reference for all legal purposes.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS _____ day of December 17, 2013.

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of December 17, 2013.

High Sky Partners, LLC

By: _____

Michael W Wallace, 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: _____
Michael W Wallace, President

508 W Wall Street, Suite 1200
Midland, Texas 79701
(432) 686-4360

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 reviewed at the end of two years from December 17, 2013. If landscaping is not completed prior to the two year period then the operator shall request in writing to have variance reviewed by the Oil & Gas Advisory Committee.

(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: _____
Michael W. Wallace, President

High Sky Partners, LLC
508 W. Wall Street, Suite 1200
Midland, Texas 79701
(432) 686-4360



0-13-018

RECEIVED

SEP - 3 2013

CITY OF MIDLAND
PLANNING DIVISION

APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information

Date 9/3/2013	Operator Name (must match W-1) HIGH SKY PARTNERS LLC	Operator Address 508 W. Wall Street, Suite 1200 Midland, TX 79701
Representative Name Michael W. Wallace	Representative Address (within Midland City Limits) 508 W. Wall Street, Suite 1200 Midland, TX 79701	Rep. Tele. (432) 686-4360 Rep. Fax (432) 686-0302
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.): (432) 582-3190 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.): Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]). See Exhibit "B"		

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 _____, 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: Undeveloped rangeland within 860' of the well location.

Surface ownership: See Exhibit "D"

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/plot/satellite/aerial photo) depicting all Residences, commercial structures, public buildings, all publicly dedicated Streets and alleys, Rights of Way, and permanent accessory structures surrounding the proposed Drill Site. The (map/p lot/satellite/aerial photo) includes two circles, as required by the Ordinance—one depicting a 500 foot radius and one depicting an 860 foot radius from the proposed well's surface location. [See § J(10)].

ATTACHED AS EXHIBIT F is a copy of the notification letter(s) sent to 100 percent of the surface owners, Certified Mail, Return Receipt Requested. [See § J(36)].

IV. Well & Operations Information

Proposed Well Name: Mask № 1003

Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

See Exhibit "G", Page 2

Legal Description of Proposed Well Site:

513' FSL & 1773' FWL Section 10, Block X, H.P. Hilliard Survey, Midland County, TX

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

Description of water source to be used during Drilling:

Water to be piped from surface owner's water wells to the well site.

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:

See Exhibit "N"

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: See Exhibit "O"

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)].

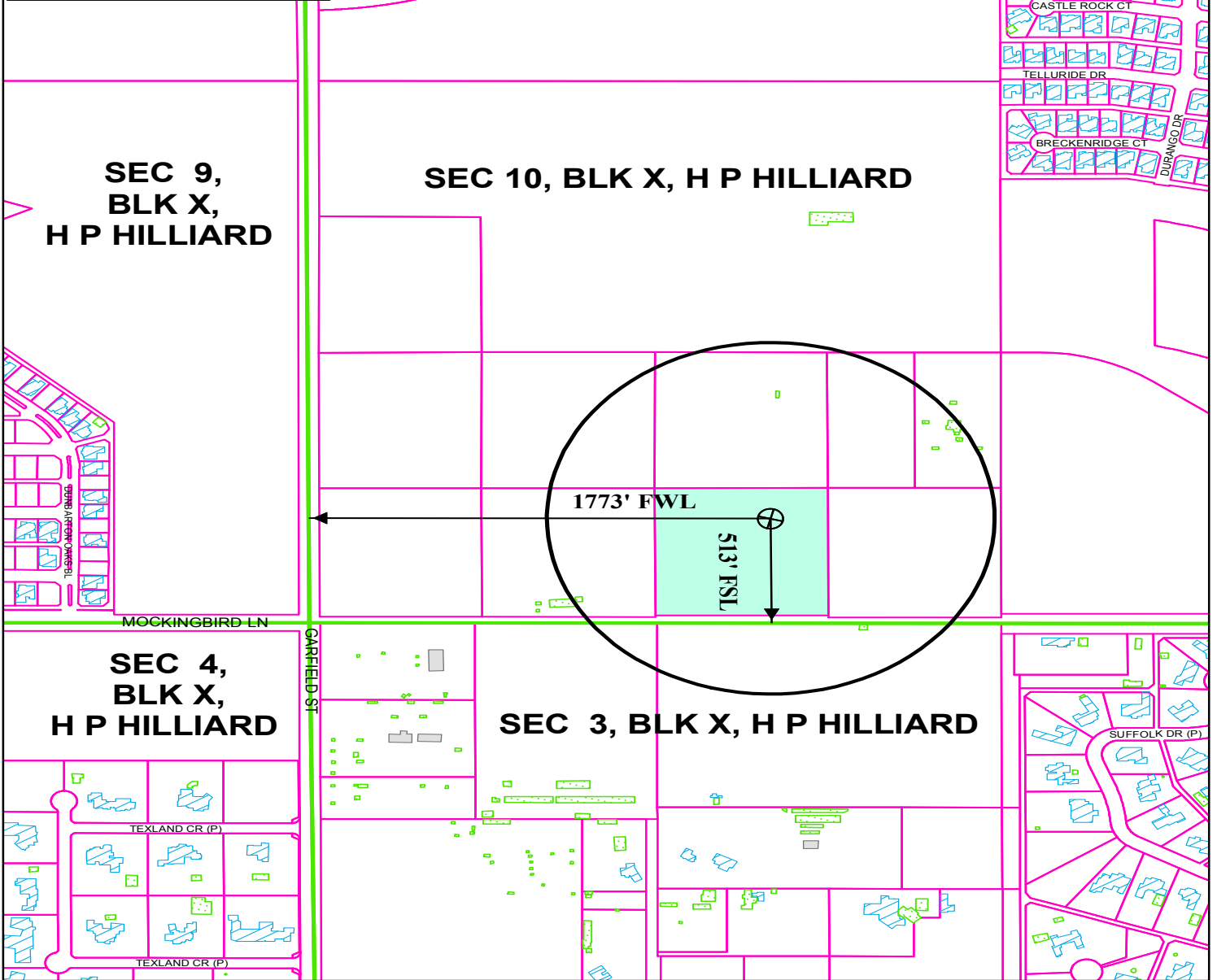
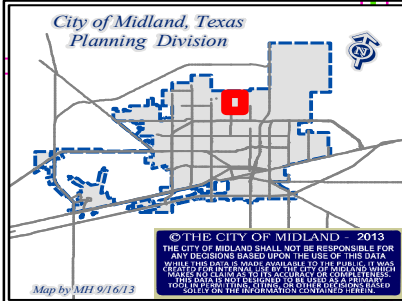
ATTACHED AS EXHIBIT Q are Tax certificates from Midland Central Appraisal District to be submitted indicating that all taxes on personal and real property, including minerals, owned by Applicant are current. [See § J(29)].

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)].



LOCATION AND ZONING MAP

O - 13 - 018

Scale: 1" = 600'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 513' FSL and 1773' FWL, Section 10, Block "X", H. P. Hilliard Survey, Midland County, Texas.

Mask No. 1003

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
PD	PLANNED DISTRICT	P
AE	AGRICULTURE ESTATE	01, 02
CE	COUNTRY ESTATE	NS
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3
MH	MOBILE HOME DWELLING	C1, C2, C3
TH	TOWNHOUSE DWELLING	IP, JPI, IP2, IP3
2F	TWO-FAMILY DWELLING	LI
MF1, MF2	MULTIPLE FAMILY DWELLING	HI
		BUSINESS PARK
		PARKING
		OFFICE
		NEIGHBORHOOD SERVICE
		LOCAL RETAIL
		COMMERCIAL
		INDUSTRIAL PARK
		LIGHT INDUSTRY
		HEAVY INDUSTRY

Exhibit G

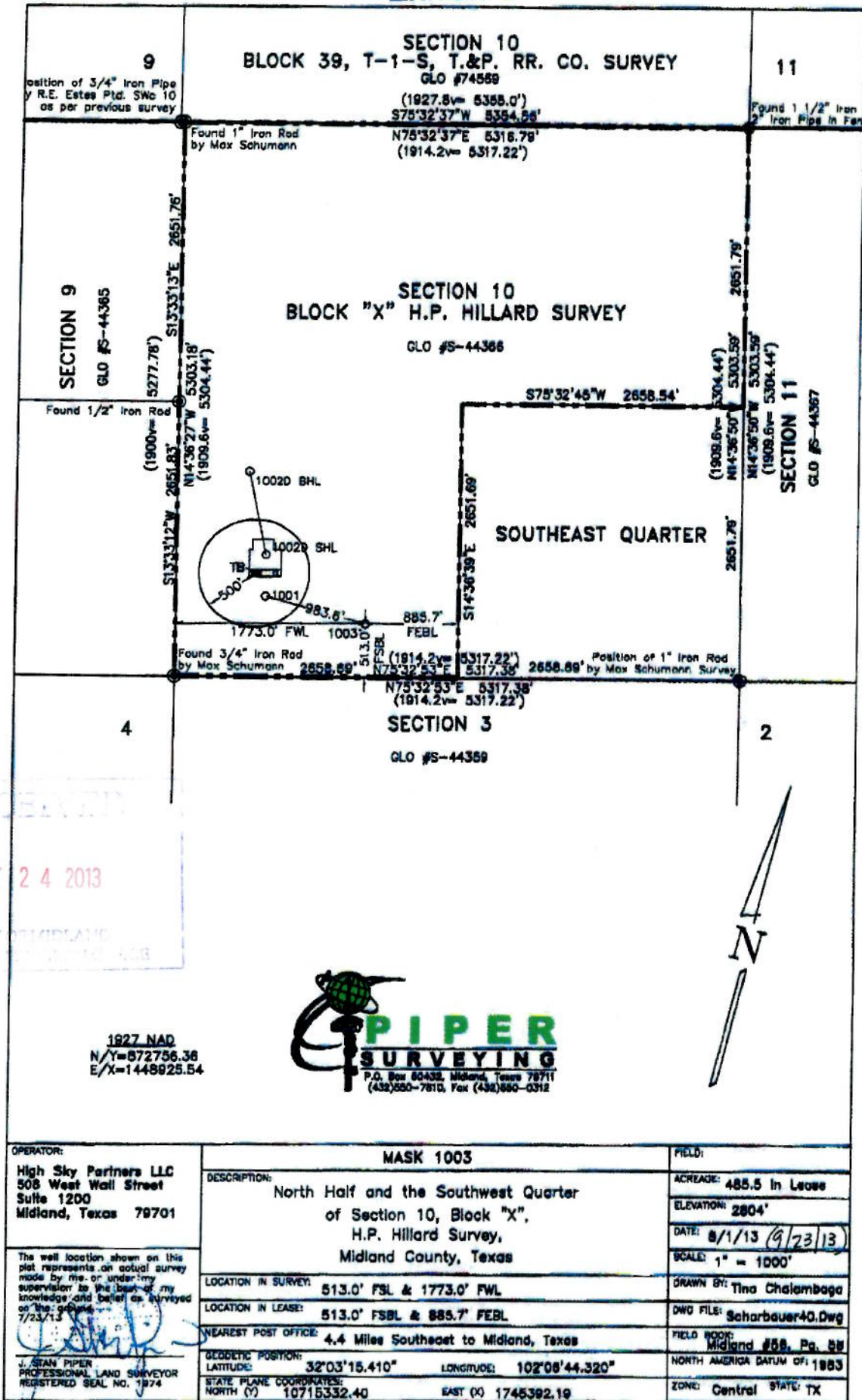
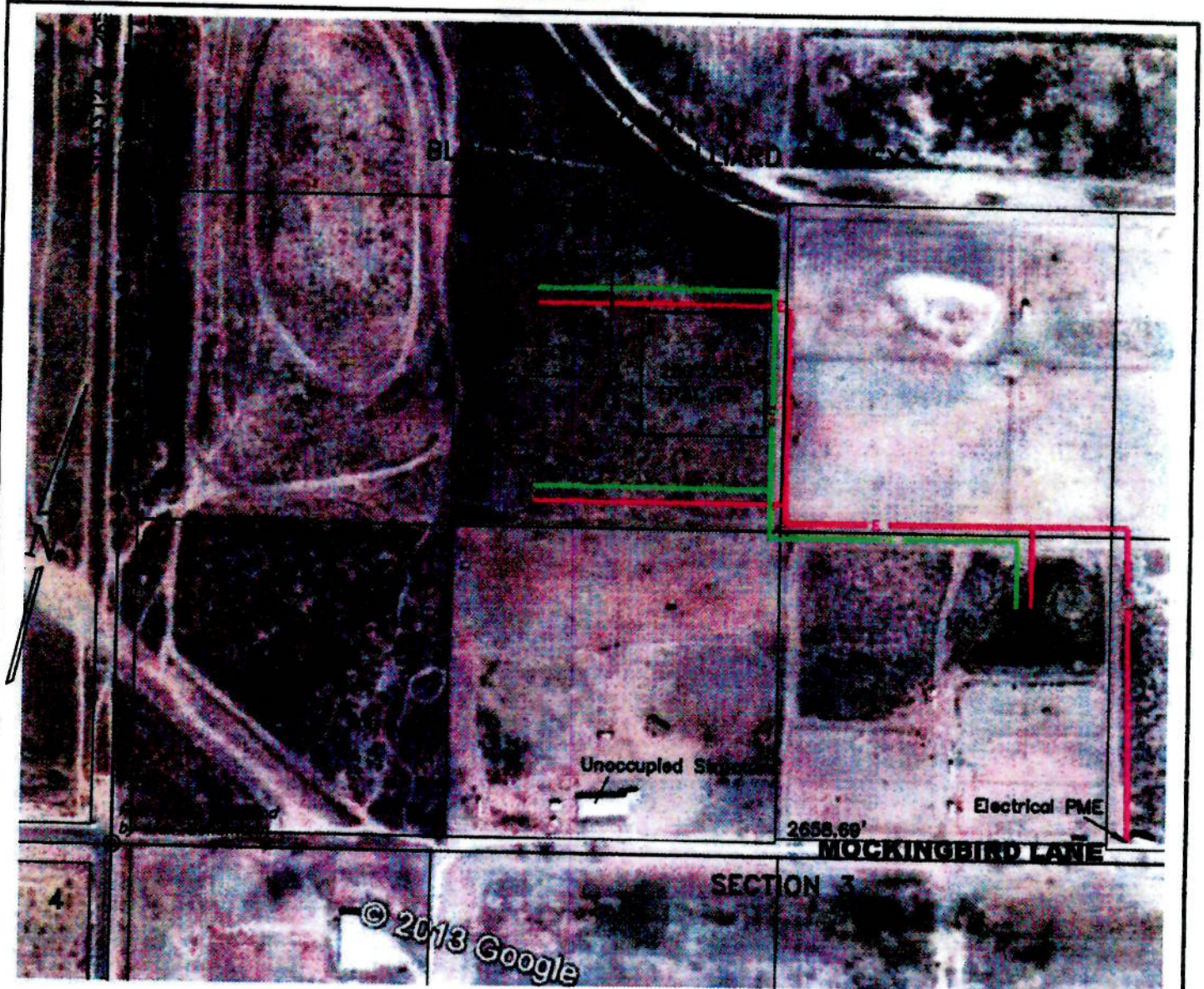


Exhibit G



— Flowline — E — Electric Line

Drawing File: Scharbauer40.Dwg; Drawn By: Tina Switzer; Scale: 1"=300'; Date: 8/27/13; CRD File: Scharbauer40.crd
Revised 9/3/13, 9/16/13 & 9/23/13 by TS

PLAT SHOWING FLOWLINE, ELECTRIC LINE AND FRAC PIT IN SECTION 10, BLOCK "X", H.P. HILLIARD SURVEY, CITY OF MIDLAND, MIDLAND COUNTY, TEXAS

OCT 24 2013

Bearings and distances 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 is true and correct to the best of my knowledge and ability as surveyed on the ground on July 23, 2013.

J. Stan Piper
Registered Professional Land Surveyor

Prepared For:
High Sky Partners LLC
508 West Wall Street
Suite 1200
Midland, Texas 79701

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

FLOW LINE LOCATION

MASK NO 1003

0-13-018

15.41



City Council Agenda

Approved for Agenda:
RPatrick
City Manager's Office

MEETING DATE: December 17, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Compliance Coordinator

SUBJECT: Consider a resolution approving the issuance of a permit to Endeavor Energy Resources, L.P. (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Chaps A #6) located 655 feet from the north line and 467 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 north side of the Passage Way, approximately 467 feet west of the extension of N. Garfield Street-District 1)

Purpose:

To consider a resolution approving the issuance of a permit to Endeavor Energy Resources, L.P. (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Chaps A #6) located 655 feet from the north line and 467 feet from the east line located in Section 9, Block X, H.P. Hilliard Survey, City and County of Midland, Texas. The required 30-day public comment has passed and the Council may consider this request. One letter of objection received.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends approval of the application to include correction of spelling, identification of street names, clarification of terminology concerning fencing and landscaping and the addition of a scale to contour map. The Committee noted that a surface agreement is not in place at the time of review of application. Endeavor Energy Resources has addressed the recommendations and updated the application.

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

RESOLUTION NO. _____

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO ENDEAVOR ENERGY RESOURCES, LP (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 655 FEET FROM THE NORTH LINE AND 467 FEET FROM THE EAST LINE, SECTION 9, BLOCK “X”, H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTH SIDE OF PASSAGE WAY, APPROXIMATELY 467 FEET WEST OF THE EXTENSION OF NORTH GARFIELD STREET)

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 November 12, 2013; and

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

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

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

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

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

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 655 feet from the north line and 467 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., 2013, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant to the City Manager

APPROVED ONLY 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 December 17, 2013, considered the application of Endeavor Energy Resources, L.P., dated September 2, 2013, 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 Endeavor Energy Resources, L.P., dated September 2, 2013, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Endeavor Energy Resources, LP, Chaps A #6 oil and gas well shall be 655 feet from the north line and 467 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 Endeavor Energy Resources, LP, 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 December 17, 2013, through December 17, 2014, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

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

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

This permit does not require or mandate the drilling of a water well. This permit does not require or mandate the planting of any landscaping or tree or the irrigation of any trees.

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, Endeavor Energy Resources, LP, shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Endeavor Energy Resources, LP, application for said well. Endeavor Energy Resources, LP, application for said well is incorporated herein by reference for all legal purposes.

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

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of December, 2013.

Endeavor Energy Resources, L.P.

By: _____

Michael A. Short

General Counsel, Vice President, Land

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: _____
Michael A. Short, Vice President, Land

Endeavor Energy Resources, L.P.
110 N. Marienfeld St., Ste 200
Midland, Texas 79701
(432)687-1575

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.

(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: _____

Michael A. Short, General Counsel, Vice President, Land

Endeavor Energy Resources, L.P.
110 N. Marienfeld, Suite 200
Midland, Texas 79701
(432) 687-1575



APPLICATION FOR OIL AND GAS PERMIT

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date September 2, 2013	Operator Name (must match W-1) Endeavor Energy Resources, L.P.	Operator Address 110 N. Marienfeld, Suite 200 Midland, TX 79701
Representative Name	Representative Address (within Midland City Limits)	Rep. Tele. (432)-687-1575
Michael A. Short General Counsel, Vice President, Land	110N. Marienfeld St., Ste. 200 Midland, TX 79701	Rep. Fax (432)-682-3088
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		
Option B: Alin Richardson 3345 Acapulco Road Midland, Texas 79705 (432)-664-1587		
Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A):		
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 (ATTACHED AS EXHIBIT B [see § J(26)]).		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease):		
ATTACHED AS EXHIBIT C - List of Names and Addresses of Mineral Estate Lessors and Supplemental Drilling and Division Order Title Opinion dated August 20, 2013 by Robert A. Spears at Lynch, Chappell & Alsup		
ATTACHED AS EXHIBIT C is (a Title Opinion by licensed Texas Attorney Robert A. Spears, a licensed Texas Attorney/Title Commitment 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): Land is currently being used as pasture land for farm animals and light agricultural.		
ATTACHED AS EXHIBIT D are the most Current Tax Cards 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/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)].

IV. Well & Operations Information

Proposed Well Name: Chaps A # 6

ATTACHED AS EXHIBIT G is Proposed Hole Size, Casing Program and Cementing Program (attach Exhibit as Necessary)[See § J(11) and § L(4)]:

Legal Description of Proposed Well Site:

655' FNL & 467' FEL
Northeast Quarter of the Northeast Quarter (NE4 of NE/4) Section 9, Block X, H. P. I-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)].

Description of Public Utilities required during (1) drilling and (2) operations:

- (1) **Drilling:** Electricity TXU 1-800-233-2133
- (2) **Operations:** Electricity TXU 1-800-233-2133

Description of water source to be used during Drilling: Water well located on Chaps #1 Location

Description of all electric lines to production facilities (reference exhibits as necessary) [See § L(10)]:
ATTACHED AS EXHIBIT E

Plan detailing construction, location, and closure of pits used for Drilling and Completion operations (attach exhibit if necessary) [See § J(35)]: **ATTACHED AS 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)].

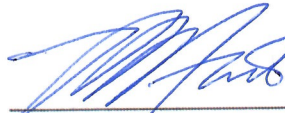
ATTACHED AS EXHIBIT T is Applicant's Emergency Action Response Plan. [See § J(22)].

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)].

CERTIFICATION OF APPLICATION

My name is Michael A. Short. I am General Counsel, Vice President, Land for Endeavor Energy Resources, L.P.

I hereby certify that the information contained in this application is true and correct.

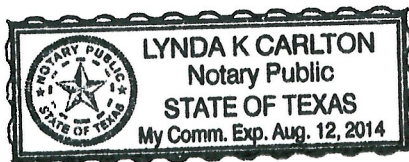


Michael A. Short
General Counsel, Vice President, Land
Endeavor Energy Resources, L.P.

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 6th day of
September, A.D. 2013.



Notary Public in and for the State of Texas

1. COMPLIANCE REPRESENTATIVES

STATEMENT

I, Kelvin Fisher, whose address is 5427 Basswood Circle, Midland, Texas 79707, and whose telephone number is 432-634-5621, hereby understand and agree to be responsible for ensuring that I will comply with the conditions of the Oil and Gas Well Permit issued by the City of Midland, along with applicable laws, regulations and ordinances on the wells located within the City Limits of Midland, Texas. In the event that I am relieved of my responsibilities, I will provide a replacement name, local address and local telephone number of a responsible replacement.

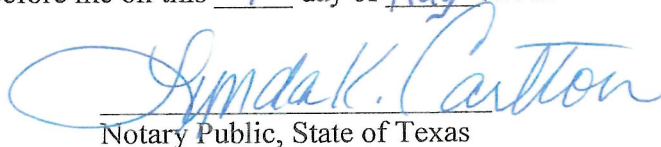


Kelvin Fisher

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

This instrument was acknowledged before me on this 9 day of Aug, 2012
by Kelvin Fisher.




Notary Public, State of Texas

STATEMENT

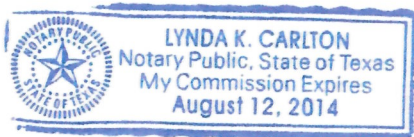
I, Alin Richardson, whose address is 3345 Acapulco Road, Midland, Texas, 79705, and whose telephone number is 432-664-1587, hereby understand and agree to be responsible for ensuring that I will comply with the conditions of the Oil and Gas Well Permit issued by the City of Midland, along with applicable laws, regulations and ordinances on the wells located within the City Limits of Midland, Texas. In the event that I am relieved of my responsibilities, I will provide a replacement name, local address and local telephone number of a responsible replacement.

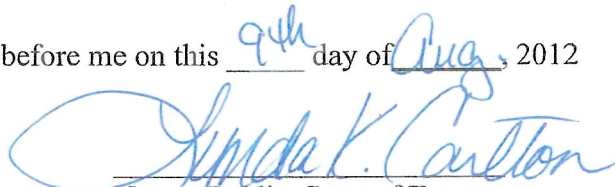


Alin Richardson

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

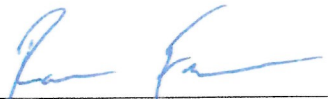
This instrument was acknowledged before me on this 9th day of Aug., 2012
by Alin Richardson.




Notary Public, State of Texas

STATEMENT

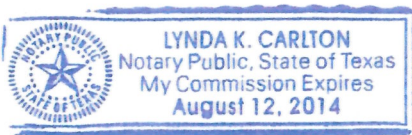
I, Rodney Foster, whose address is 3116 Humble, Midland, Texas 79705, and whose telephone number is 432-664-0641, hereby understand and agree to be responsible for ensuring that I will comply with the conditions of the Oil and Gas Well Permit issued by the City of Midland, along with applicable laws, regulations and ordinances on the wells located within the City Limits of Midland, Texas. In the event that I am relieved of my responsibilities, I will provide a replacement name, local address and local telephone number of a responsible replacement.

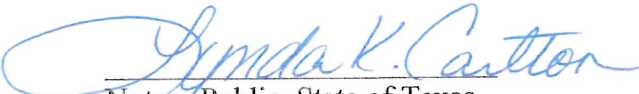


Rodney Foster

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

This instrument was acknowledged before me on this 13th day of Aug, 2012 by Rodney Foster.





Notary Public, State of Texas

CERTIFICATION OF APPLICATION

My name is Michael A. Short. I am General Counsel, Vice President, Land for Endeavor Energy Resources, LP.

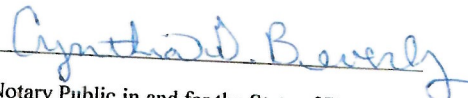
I hereby certify that the information contained in this application is true and correct.


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.

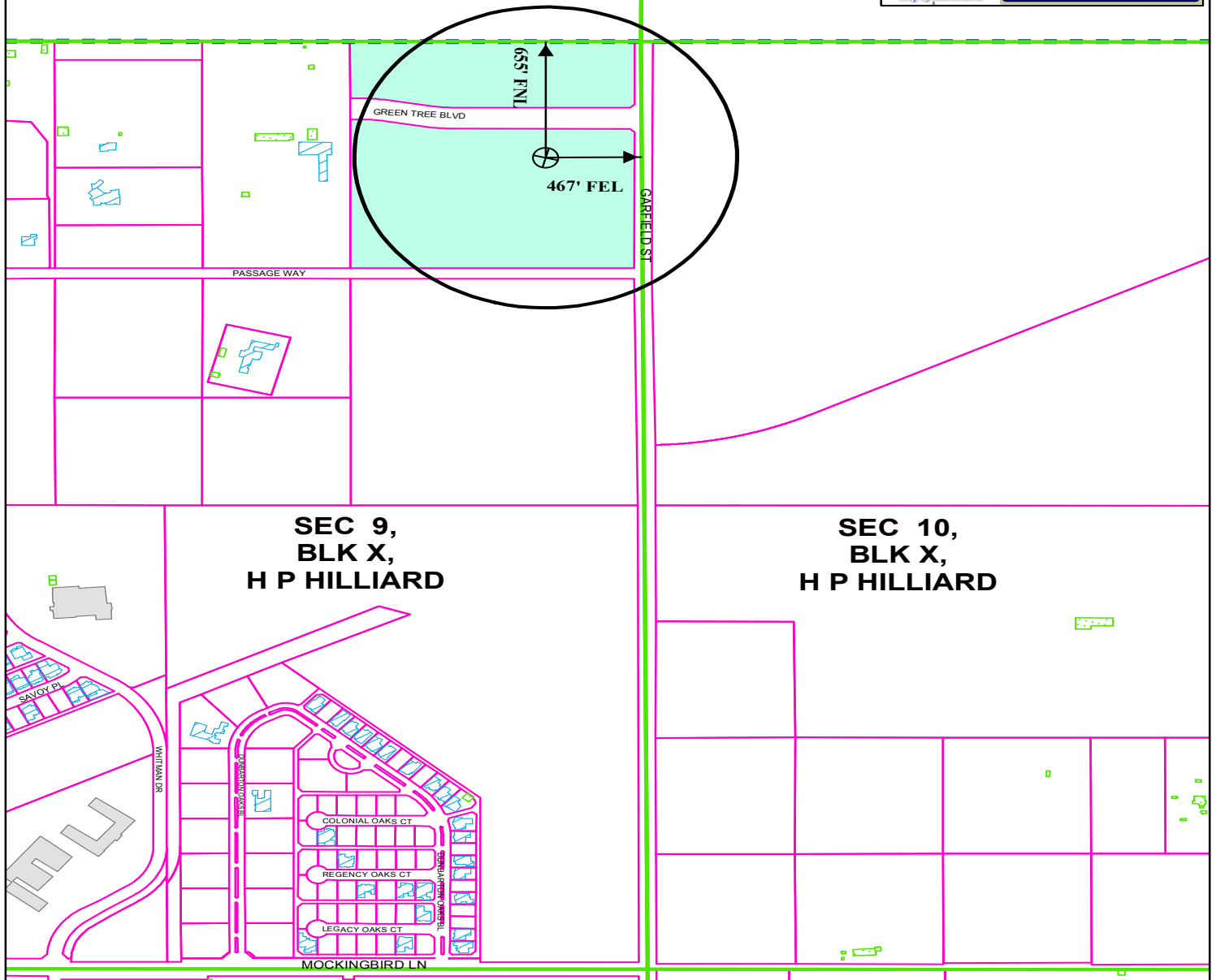
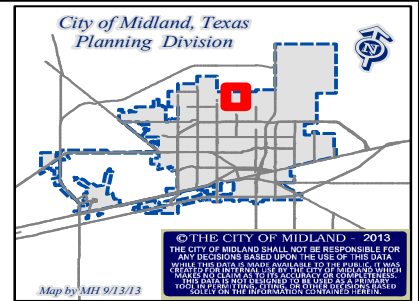
Given under my hand and seal of office this the 5th day of June, A.D. 2013.


Notary Public in and for the State of Texas



SEC 9, BLK 39, T-1-S

SEC 10,
BLK 39,
T-1-S



LOCATION AND ZONING MAP

O - 13 - 015

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 655' FNL and 467' FEL, Section 9, Block "X", H. P. Hilliard Survey, Midland County, Texas.

Chaps A#6

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, 02
NS
LR1, LR2, LR3
C1, C2, C3
IP, JP1, IP2, IP3
LI
HI

BUSINESS PARK
PARKING
OFFICE
NEIGHBORHOOD SERVICE
LOCAL RETAIL
COMMERCIAL
INDUSTRIAL PARK
LIGHT INDUSTRY
HEAVY INDUSTRY

(59440) 8 9 (S-20114)

(S-44363) 8 9 (S-44365)

10 (74569)

10 (S-44366)

ENDEAVOR ENERGY
RESOURCES, L.P.

GRID N: 876195.624
GRID E: 1445733.121
NAD'83 Lat/Long
Lat: 32°03'48.930"
Long: 102°07'22.050"

655'
#6
467'
EL.
2814

Abstract No. 1275
161.6 Acres

Chaps "A"

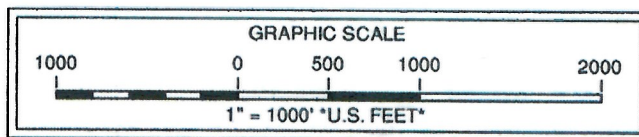
Block X, H. P. Hilliard Survey Midland County, Texas

Driving Directions to Location:

From intersection of Loop 250 and Midkiff in Midland, Texas;
Drive North on Midkiff Road, drive 1.8 miles to WCR 42;
Turn right (East) on to WCR 42, drive 0.8 miles to a dirt road at Lat: 32°03'43.84", Long:
102°07'31.19";
Turn right (East) on to dirt road, drive 0.2 miles to Lat: 32°03'45.60", Long: 102°07'21.20";
Location is left (North) 350 feet.

(S-44361) 5 4 (S-44360)

3 (S-44359)



Note: Well location is 5.2 miles Northwest of the city of Midland, Texas.

Note: Survey Reconstruction filed in the Office of Pennell & Marlowe Land Surveyors, Inc.

Note: Coordinates shown herein are on The Texas Coordinate System of 1927, Central Zone.

Note: Example: (S-99999) indicates General Land Office file number.



Stephen P. Marlowe
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5715



January 22, 2013

130122A-KRM

USGS Quadrangle Sheet: Northwest Midland, Tex.

Railroad Commission Permit Plat

ENDEAVOR ENERGY RESOURCES, L.P.

Chaps "A" #6

655' FROM NORTH LINE

467' FROM EAST LINE

Chaps "A" Lease

161.6 Acres being the NE/4 of

Section 9, Block X

H. P. Hilliard Survey

Midland County, Texas

Scale: 1" = 1000'

CHAPS A #6

DRILL SITE

O-13-015



City Council Agenda

Approved for Agenda:
RPatrick
City Manager's Office

MEETING DATE: December 17, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Ron Jenkins, Oil & Gas Coordinator

SUBJECT: Consider a resolution authorizing the execution of a road repair agreement with Endeavor Energy Resources, LP, regarding its applications to drill oil and gas wells (Chaps wells) within the City Limits, in Section 9, Block "X", H.P. Hilliard Survey, Midland County, Texas. The Road Repair Agreement will cover Midkiff Road and Passage Way and be in the amount of \$75,000.00.

Purpose:

Consider a resolution approving a road repair agreement between the City of Midland and Endeavor Energy Resources, LP.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

This agreement will cover the cost of road damages to Midkiff Road and Passage Way that are attributable to Endeavor Energy Resources, LP, in association with the above drilling permits. The total amount of the surety bond 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:

Endeavor Energy Resources, LP, 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 ENDEAVOR
ENERGY RESOURCES, LP REGARDING ITS
APPLICATIONS TO DRILL OIL AND GAS WELLS
(CHAPS WELLS) WITHIN THE CITY LIMITS IN
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 Endeavor Energy Resources, LP;

**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 Endeavor Energy Resources, LP. 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., 2013, 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:

Robert Patrick, Assistant to the City Manager

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

Road Repair Agreement

Endeavor Energy Resources, LP, ("Operator") intends to use portions of Midkiff Road and Passage Way 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 Midkiff Road or Passage Way or 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 Midkiff Road or Passage Way 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 Chaps wells it plans to operate within the city limits in Section 9, Block X, H.P. Hilliard Survey, Midland County, Texas. Operator has attached to this agreement a letter of credit, certificate of deposit or surety bond 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 9, Block X, H.P. Hilliard Survey, Midland County, Texas. In the event such letter of credit, certificate of deposit or surety bond is not restored to \$75,000.00 within ten (10) days after the date of the reduction of the letter of credit, certificate of deposit or surety bond, the City may draw and receive the remaining balance of the letter of credit, certificate of deposit or surety bond, and the Oil and Gas Well Permits shall be suspended on such date and the Operator's right to operate under 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 Midkiff Road or Passage Way 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:

Endeavor Energy Resources, LP

City of Midland

Date: _____

Date: _____

By: _____

By: _____

Michael Short, General Counsel

Mayor: W. Wesley Perry



City Council Agenda

Approved for Agenda:
rpatrick
City Manager's Office

MEETING DATE: 12/17/2013

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 Endeavor Energy Resources, L.P. for the purpose of installing one (1) three inch (3") oil and gas, production water poly pipeline, and one (1) four inch (4") fresh water poly pipeline all contained within an eight and one-half inch (8 ½") standard steel casing in a portion of Green Tree Blvd., Section 9, Block X, H.P. Hilliard Survey, Midland County, Texas.

Purpose:

Consider a resolution authorizing the execution of a Right-of-Way License Agreement between the City of Midland and Endeavor Energy Resources, L.P. for the purpose of installing one (1) three inch (3") oil and gas, production water poly pipeline, and one (1) four inch (4") fresh water poly pipeline all contained within an eight and one-half inch (8 ½") standard steel casing in a portion of Green Tree Blvd., Section 9, Block X, H.P. Hilliard Survey, Midland County, Texas.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The City of Midland shall receive payment of \$400.00 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 Endeavor Energy Resources, L.P. for the purpose of installing one (1) three inch (3") oil and gas, production water poly pipeline, and one (1) four inch (4") fresh water poly pipeline all contained within an eight and one-half inch (8 ½") standard steel casing in a portion of Green Tree Blvd. right-of-way, Section 9, Block X, H.P. Hilliard Survey, Midland County, Texas.

The pipeline shall be installed at a depth of seven (7) feet below the existing surface of the roadway.

This Agreement shall be for a term of five (5) years and may be renewed at the end of the initial Agreement term for one (1) additional term of five (5) years upon 90 days written request prior to expiration.

Attached are maps indicating location of the proposed pipeline.

Staff recommends approval of this resolution.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING A RIGHT-OF-WAY LICENSE WITH THE CITY OF MIDLAND, TEXAS AND ENDEAVOR ENERGY RESOURCES, L.P.; SAID RIGHT-OF-WAY LICENSE IS FOR THE PURPOSE OF INSTALLING ONE (1) THREE INCH (3") OIL AND GAS, PRODUCTION WATER POLY PIPELINE, AND ONE FOUR INCH (4") FRESH WATER POLY PIPELINE ALL CONTAINED WITHIN AN EIGHT AND ONE-HALF INCH (8 ½) STANDARD STEEL CASING IN A PORTION OF GREENTREE BLVD.; THE CASING IS LOCATED WITHIN THE CITY OF MIDLAND RIGHT- OF-WAY, SECTION 9, BLOCK "X", H.P. HILLIARD SURVEY, MIDLAND, MIDLAND COUNTY, TEXAS; THE LICENSE TERM IS FOR FIVE (5) YEARS, COMMENCING WITH THE DATE OF THIS LICENSE AND MAY BE RENEWED AT THE END OF THE TERM FOR ONE ADDITIONAL FIVE (5) YEAR TERM UPON 90 DAYS WRITTEN REQUEST PRIOR TO EXPIRATION

WHEREAS the City Council finds it to be in the public interest to authorize a right-of-way crossing license with Endeavor Energy Resources, L.P., located within the City of Midland Right-of-Way in a portion of Green Tree Blvd., Section 9, Block "X", H.P. Hilliard Survey, Midland, Midland County, Texas;

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

THAT the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a right-of-way crossing license with Endeavor Energy Resources, L.P., said license being substantially in the form attached hereto as Exhibit "A" and incorporated herein for all purposes.

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

Council members voting "AYE":

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Gary Saunders, Transportation Manager

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

RIGHT-OF-WAY LICENSE

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

THIS RIGHT-OF-WAY LICENSE ("AGREEMENT"), effective this 18th day of December, 2013, by and between THE CITY OF MIDLAND, TEXAS, a home rule municipal corporation, hereinafter called "Licensor", and ENDEAVOR ENERGY RESOURCES LP, 110 N. Marienfeld, Suite 200, 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 (1) one three inch (3") oil and gas, production water poly pipeline and (1) one four inch (4") fresh water poly pipeline, both contained within an eight and half inch (8.5") standard steal casing, in a portion of Greentree Blvd. 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 five (5) years (the “Initial Term”), commencing with the date of this Agreement, the “Commencement Date,” unless terminated earlier as provided hereafter. This Agreement may renew at the end of the Initial Term for one (1) additional term of five (5) years, upon the written request of Licensee received by Licensor on or before ninety (90) days prior to the expiration of the Initial Term then in effect, subject to the express written consent of the governing body of the Licensor. All work under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective.

Either party may terminate this Agreement at will for any or no reason upon giving at least three hundred sixty five (365) days written notice to the other party. The parties to this Agreement understand and agree that it is in the Licensor’s sole discretion to cancel the Agreement during the term of the Agreement without penalty to the Licensor. The Licensee has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of Agreement becoming effective.

Upon termination of this Agreement, Licensee shall remove all equipment and structures associated with the undertakings contemplated by this License. After removal of all equipment and structures associated with the undertakings contemplated by this License, the surface shall be restored at the expense of the Licensee to its original

condition, as close thereto as may be practical, subject to the approval of the Licensor upon inspection by Licensor's 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 Licensor the sum of Four Hundred dollars (\$400.00) 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 \$400.00 shall be due and payable within ten (10) days 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 Licensor 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 Licensor's Transportation Manager. Said fee shall revert to the Licensor 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 Licensor and Licensee shall negotiate in good faith to agree to an adjustment of the License Fee. If the Licensor and Licensee are unable to reach an agreement regarding an adjustment to the License Fee, then the License Fee shall be determined by Licensor 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 Licensor 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. Licensor 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 (1) one three inch (3") oil and gas, production water poly pipeline and (1) one four inch (4") fresh water poly pipeline, both contained within an eight and half inch (8.5") standard steal 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 oil and gas, production water poly pipeline and the fresh

water poly pipeline at least seven (7) feet below the existing surface of the roadway 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 purposes it shall be deemed necessary by the Licensor, at Licensor's sole discretion, to alter, change, adapt, conform or relocate any pipelines, structures or casing pipe 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

Employers' Liability: \$1,000,000.00 per accident or occurrence

Umbrella Liability: \$10,000,000.00 each occurrence and aggregate

This insurance, except Worker's Compensation, shall name the Licensor as an additional insured and all insurance shall waive subrogation in favor of the Licensor.

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

The Business Automobile Liability insurance provided by Licensee shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this Agreement.

All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name the Licensor as an additional insured on a claims occurred basis. All insurance required pursuant to this Agreement, including Worker's

Compensation Insurance, shall provide for a waiver of subrogation as to the Licensor.

The parties agree that, prior to the execution of the Agreement, Licensee shall provide one or more certificates of insurance showing that the requirements of this article have been met. This decision shall be in Licensor's sole discretion.

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

Licensee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts as required by Licensee, and name the City of Midland as an additional insured.

Licensee certifies that the one or more certificates of insurance provided as required herein complies with the requirements of Senate Bill 425, passed during the 82nd regular session of the Texas Legislature, and effective January 1, 2012.

2. INDEMNITY - THE LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE LICENSOR AND ALL OF LICENSOR'S OFFICERS, AGENTS, AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, LOSSES, ATTORNEY'S FEES AND EXPENSES OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON, PERSONS OR PROPERTY, ON ACCOUNT OF ANY ACT OF THE LICENSEE, Licensee's contractor or subcontractor, their agents or employees, arising directly

or indirectly or in any way connected with the placement, construction, operations, repair, maintenance, replacement or removal of any part of the Licensee's 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. This Agreement shall be governed by the laws of the State of Texas. This Agreement shall be construed and interpreted under the laws of the State of 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: ENDEAVOR ENERGY RESOURCES LP, Rodney Foster, 110 N. Marienfeld, Suite 200, Midland, Texas 79705.

11. **Notice of Alleged Breach; Statutory Prerequisites** - As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Licensee or his legal representative, shall give the City Manager 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.

13. **Waiver of Governmental Immunity; Ch. 271, Tex. Local Gov't Code** – The parties agree that this Agreement does not constitute an agreement for providing goods and/or services to the Licensor as discussed in Subchapter I of Chapter 271 of the Texas Local Government Code, and the Licensor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. The Licensor expressly does not consent to be sued or be liable. To the greatest extent allowed by law, nothing in this Agreement constitutes a waiver of the Licensor's governmental immunity and the parties expressly agree that this Agreement shall not constitute, nor be interpreted as a waiver of the Licensor's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of the Licensor's governmental immunity for the benefit of any third party lacking privity to the Agreement.

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 ONLY AS TO FORM:

Keith Stretcher, City Attorney

LICENSEE:

ENDEAVOR ENERGY RESOURCES LP

By: _____
Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of ENDEAVOR ENERGY RESOURCES LP, known to me to be the person and official whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said entity, for the purposes and consideration therein expressed, and in the capacity therein stated.

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

Notary Public, State of Texas



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
10/31/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MCGRIFF, SEIBELS & WILLIAMS OF TEXAS, INC. 818 Town & Country Blvd, Suite 500 Houston, TX 77024-4549	CONTACT NAME:	FAX (A/C, No): 713-877-8974
	PHONE (A/C, No, Ext): 713-877-8975	
INSURED Endeavor Energy Resources, L.P. and Per Attached Named Insureds 110 N Marienfeld, Suite 200 Midland, TX 79701	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	NAIC #	
	INSURER A :Liberty Mutual Insurance Company 23043	
	INSURER B :Aspen Insurance UK Ltd 42404	
	INSURER C :Liberty Insurance Corporation 33588	
INSURER D :The First Liberty Insurance Corporation		
INSURER E :		
INSURER F :		

COVERAGES

CERTIFICATE NUMBER:W86JE5RB

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC			TBI-641-443771	10/11/2012	12/31/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 1,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000 \$
D	AUTOMOBILE LIABILITY ☒ ANY AUTO ☒ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS			AI6-641-443771-103	11/01/2013	11/01/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	UMBRELLA LIAB ☒ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$			B0753PE13088000	11/01/2013	11/01/2014	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N / A	WA7-64D-443771-093	11/01/2013	11/01/2014	☒ WC STATU-TORY LIMITS ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000 \$ \$ \$ \$ \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Re: ROW Agreement for Flow Lines under W. County Road 42 and ROW Agreement for Flow Lines under Green Tree Blvd. on the Chaps Lease and Wells:
The above General Liability applies to Project: Drill 4 wells for the City of Midland. The well sites are listed below. Each well will be a straight shot to approximately 11,000 feet. The wells are located in the N/2 of Section 9, Black X, HP Hilliard Survey, Midland County Texas.
• Chaps #2 2167' FNL & 600' FWL • Chaps#3 2167' FNL & 1950' FWL • Chaps #4 300 FNL & 1831' FWL • Chaps #6 655' FNL & 467' FEL
Certificate Holder is included as Additional Insured as respects to General Liability, Automobile Liability and Umbrella Liability as required by written contract subject to policy terms, conditions and exclusions. A Waiver of Subrogation is provided as respects to General Liability, Automobile Liability, Workers' Compensation and Umbrella Liability as required by written contract subject to policy terms, conditions and exclusions. In the event of cancellation by the insurance companies, the policies have been endorsed to provide 30 days Notice of Cancellation (except 10 days for non-payment of premium) to the certificate holder shown below. The General Liability policy (continued next page)

CERTIFICATE HOLDER

City of Midland P. O. Box 1152 Midland, TX 79702	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

AGENCY CUSTOMER ID: _____

LOC #: _____

**ADDITIONAL REMARKS SCHEDULE**

Page 2 of 4

PRODUCER MCGRIFF, SEIBELS & WILLIAMS OF TEXAS, INC.		INSURED Endeavor Energy Resources, L.P. and Per Attached Named Insureds
POLICY NUMBER		
CARRIER	NAIC CODE	
		ISSUE DATE: 10/31/2013

ADDITIONAL REMARKS**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,****FORM NUMBER:** _____ **FORM TITLE:** _____

(continued from previous page)
includes Sudden and Acidental Pollution coverage \$1,000,000 aggregate subject to policy terms, conditions and exclusions and must be discovered within 30 days of occurrence and reported to underwriters within 90 days.
Umbrella Liability is excess of General Liability including Sudden and Accidental coverage \$1,000,000 aggregate.
No third party deductibles apply to the policies.



ADDITIONAL REMARKS SCHEDULE

Page 3 of 4

PRODUCER MCGRIFF, SEIBELS & WILLIAMS OF TEXAS, INC.		INSURED Endeavor Energy Resources, L.P. and Per Attached Named Insureds	
POLICY NUMBER		ISSUE DATE: 10/31/2013	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: _____ FORM TITLE: _____

CONTROL OF WELL

Insurance Company: Gemini Insurance Company
 Policy No.: JCH2000547
 Policy Term: 12/27/2012-12/27/2013

CONTROL OF WELL INSURANCE

Section 1A - Control of Well
 Section 1B - Redrill/Extra Expense
 Section 1C - Pollution and Clean Up
 Section 1D - Care, Custody and Control

SECTIONS 1A, 1B AND 1C - Combined Single Limits of Insurance
 \$5,000,000 Any One "Occurrence", with respect to 100% interest, Combined Single Limit of Insurance (applies over all coverages provided under SECTIONS 1A, 1B and 1C) with respect to Drilling wells, Workover wells, and Producing wells.

SECTION 1D - Care, Custody and Control
 \$1,000,000 (100%) Any One Occurrence Care, Custody and Control



ADDITIONAL REMARKS SCHEDULE

Page 4 of 4

PRODUCER MCGRIFF, SEIBELS & WILLIAMS OF TEXAS, INC.		INSURED Endeavor Energy Resources, L.P. and Per Attached Named Insureds	
POLICY NUMBER			
CARRIER	NAIC CODE		
		ISSUE DATE: 10/31/2013	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: _____ **FORM TITLE:** _____

Autry C. Stephens' Companies

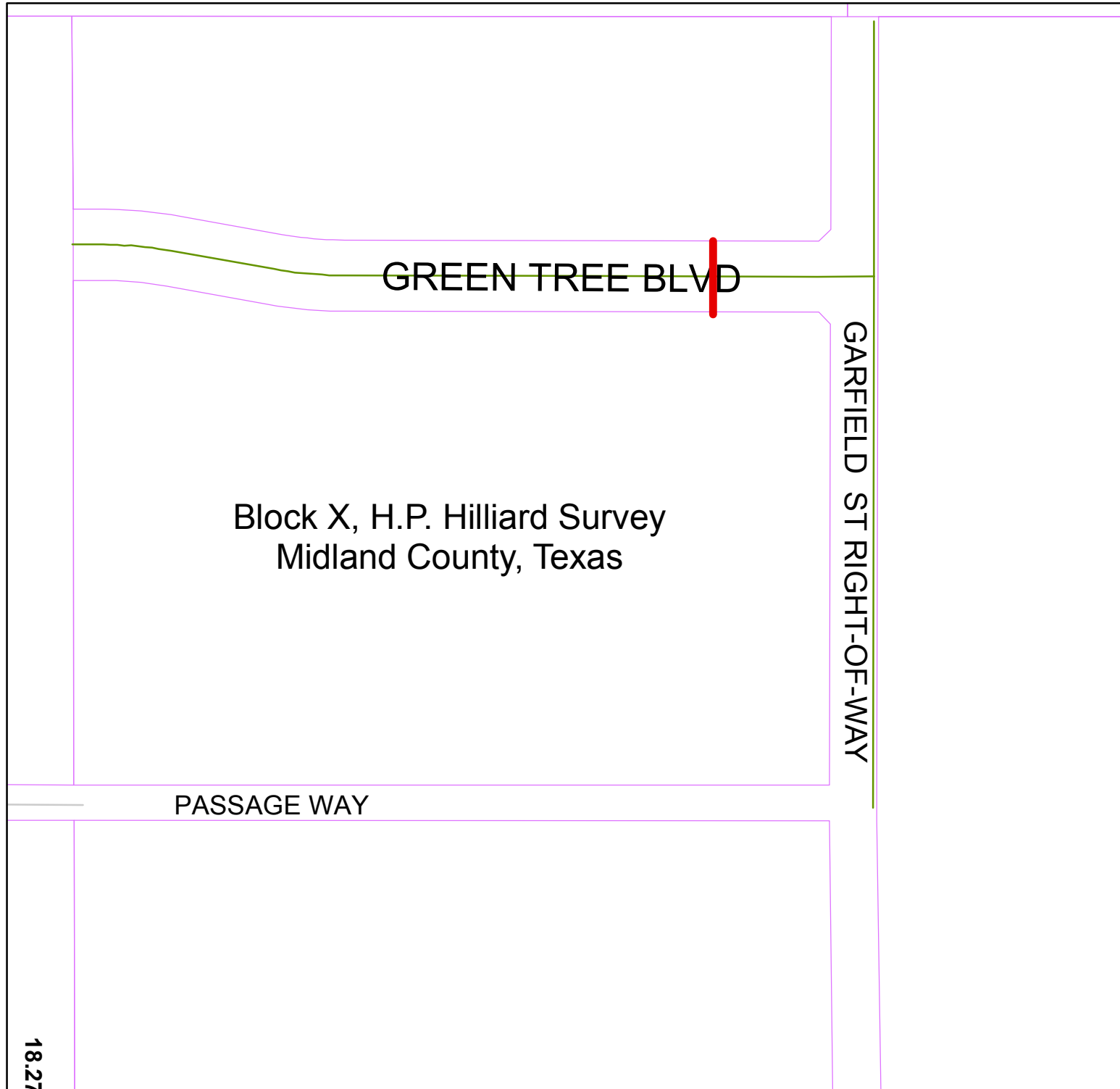
ENDEAVOR ENERGY RESOURCES, L.P.
 Named Insured List

Endeavor Petroleum, LLC.
 Endeavor Energy Resources, L.P. dba. J & L Well Service
 Endeavor Energy Resources, L.P. dba. Compadre Roustabout Service
 Endeavor Energy Resources, L.P. dba. C & W Transports
 Endeavor Energy Resources, L.P. dba. Jones Wireline Service
 Endeavor Energy Resources, L.P. dba. Pumping Unit Technologies
 Endeavor Energy Resources, L.P. dba. Flake Tompkins Tubular Services
 Endeavor Energy Resources, L.P. dba McMillan Welding & Fabrication
 Endeavor Energy Resources, L.P. dba Maverick Well Pluggers
 Endeavor Energy Resources, L.P. dba Electrical Maintenance and Construction
 Endeavor Energy Resources, L.P. dba One Marienfeld Place
 Endeavor Energy Resources, L.P. dba 414 West Texas
 Endeavor Energy Resources, L.P. dba ACS Pump & Supply
 Endeavor Energy Resources, L.P. dba Red Dog Construction
 Endeavor Energy Resources, L.P. dba Bryant Ranch Nature Conservancy Project
 Barnett Gathering Co., LLC
 Natural Gas Gatherers, LTD
 Barnett Field Services, Inc.
 NGG Gathering Co., LLC
 LCX Acquisitions, LLC
 LCX Pipeline Company
 Blue Streak Transportation, Inc.
 Advance Stimulation Technologies Inc.
 Oasis Transportation & Marketing Corp.
 Caltico Oil Corp.
 Maverick Well Service NM, LLC
 Impact! Chemical Technologies, Inc.
 Impact! Supply, LLC

ACME ENERGY SERVICES, INC.
 Named Insured List

Acme Energy Services, Inc. dba Big Dog Drilling
 Acme Energy Services, Inc. dba O-K Gas Services
 Acme Energy Services, Inc. dba SML Water Disposal
 Acme Energy Services, Inc. dba Rig Movers

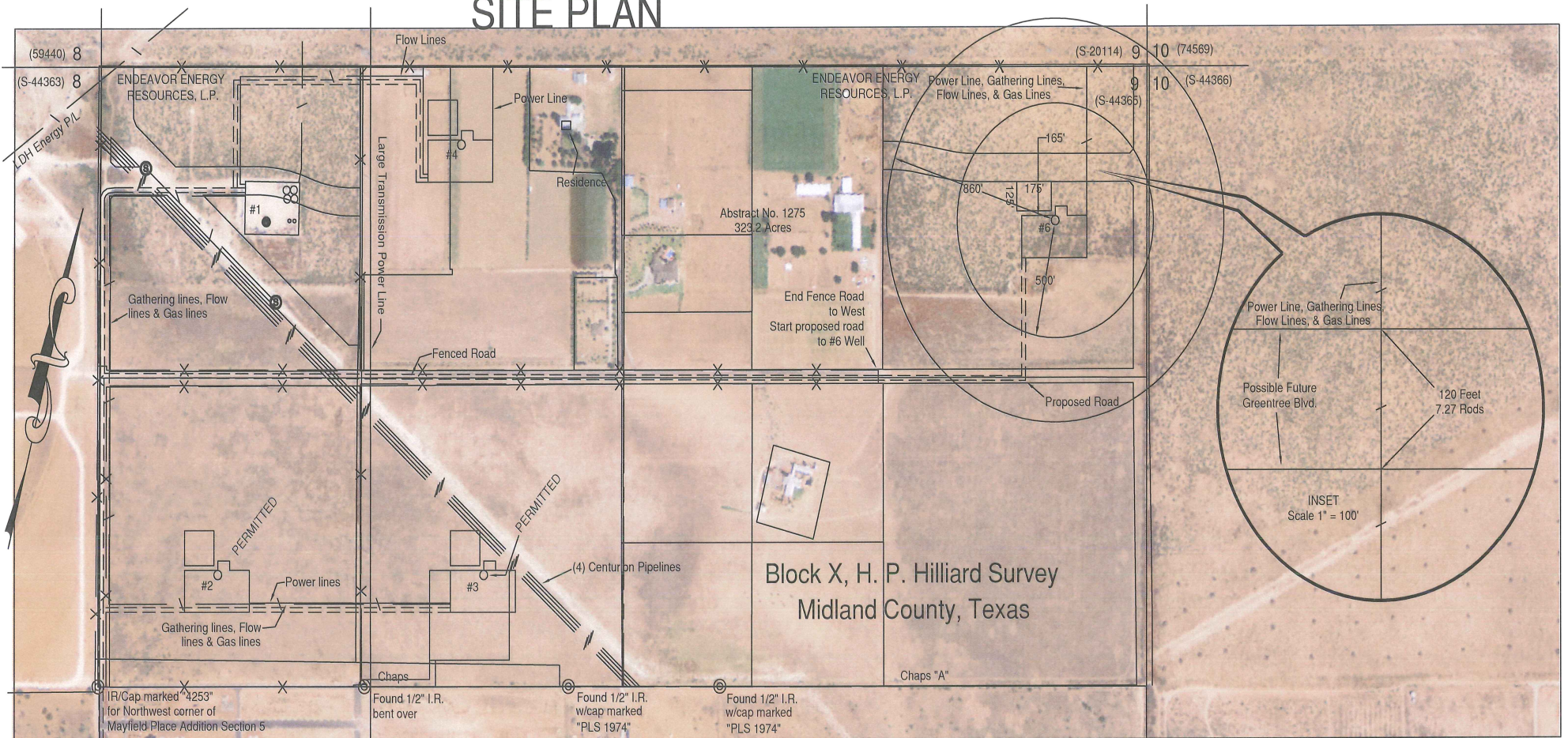
ENDEAVOR ENERGY
RESOURCES, L.P.



Gathering Lines,
Flow Lines,
Gas Lines

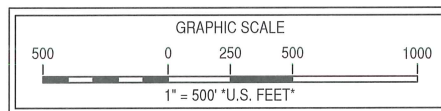


SITE PLAN



LEGEND

- _____ - Fence
- _____ - Overhead Power Line
- _____ - Pipeline (As described)
- == == == == - Road (As described)
- _____ - Well Lease Line
- ⊙ - Sewer Manhole
- - Well (As described)



Note: All land parcels shown herein including Greentree Blvd right-of-way are put in from the City of Midland GIS system and were not physically surveyed.
 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

130625S

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'



City Council Agenda

Approved for Agenda:
rpatrick
City Manager's Office

MEETING DATE: 12/17/2013

TO: City Council / City Manager

FROM: Gary Saunders, Transportation Manager

SUBJECT: Consider a resolution authorizing the City of Midland to negotiate a Professional Services Agreement with Transmap Corporation to provide engineering, planning, and administrative services in connection with pavement indexing including implementation of a five (5) year pavement preservation strategy for the Pavement Condition Survey Project.

Purpose:

Consider a resolution authorizing the City of Midland to negotiate a Professional Services Agreement with Transmap Corporation to provide engineering, planning, and administrative services in connection with pavement indexing including implementation of a five (5) year pavement preservation strategy for the Pavement Condition Survey Project.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$182,000.00 for engineering, planning, administrative services and implementation.

Discussion:

The Legal Department has prepared a resolution authorizing the City of Midland to negotiate a Professional Services Agreement with Transmap, 3366 Riverside Drive, Suite 103, Upper Arlington, Ohio for the Pavement Condition Survey Project within the City of Midland.

The Pavement Condition Survey project will include on-site raw data collection for roadway data and image capture, detailed pavement surface distress analysis, pavement condition management and implementation of a five (5) year pavement preservation strategy plan.

Staff recommends approval of this resolution.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH TRANSMAP CORPORATION FOR ENGINEERING, PLANNING, AND ADMINISTRATIVE SERVICES IN CONNECTION WITH THE PAVEMENT CONDITION SURVEY PROJECT; AND AUTHORIZING PAYMENT THEREFOR IN THE AMOUNT OF \$182,000.00

WHEREAS, the City of Midland advertised a Request for Qualifications for professional services for engineering, planning, and administrative services in connection with the Pavement Condition Survey Project; and

WHEREAS, Transmap Corporation has agreed to perform said professional services for an estimated \$182,000.00; and

WHEREAS, the City Council finds that Transmap Corporation is qualified to perform said professional services; and

WHEREAS, the City Council finds that the professional fees proposed by Transmap Corporation are consistent with and not higher than the recommended practices and fees published by the applicable professional associations and do not exceed any maximum provided by law; and

WHEREAS, the City Council finds that Transmap Corporation provides professional services for a fair and reasonable price; and

WHEREAS, the City Council finds it to be in the public interest to execute a professional services agreement with Transmap Corporation as the most highly qualified provider of said professional services based on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services;

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

SECTION ONE. That the 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 Transmap Corporation for said professional services. A copy said agreement is attached hereto as Exhibit "A" and incorporated herein for all legal

purposes.

SECTION TWO. That the City Treasurer is hereby authorized and directed to make payment to Transmap Corporation, pursuant to the terms of said agreement, in an amount not to exceed \$182,000.00, from funds available in the Fiscal Year 2013-2014 General Fund (001) Engineering (080) Transportation (0085) Consulting Fees (3450) budget account upon receipt of proper invoice or statement approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Jose Ortiz, Engineering Services Director

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and effective the 18th day of December, 2013, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called “City,” and TRANSMAP CORPORATION, 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 engineering, planning, and administrative services (also referred to as the “services”) in connection with pavement indexing including implementation of a five (5) year pavement preservation strategy for the Pavement Condition Survey Project.

ARTICLE II. SERVICES TO BE PERFORMED

1. Company shall provide those services described in Exhibit “A”, which is attached hereto and incorporated herein for all legal purposes.
2. Company shall perform all the services under this Agreement consistent with the same level of skill and care as other professionals in approximately the same location at approximately the same point in time and for the same types of projects. Company represents that any employee who performs services under this Agreement shall be fully qualified and competent to perform the services described in Exhibit “A.”

ARTICLE III. FINANCIAL CONSIDERATIONS

City agrees to pay Company in an amount not to exceed **\$182,000.00** for the professional services described in Exhibit “A.” City agrees to pay Company in accordance with the Fee Schedule set forth in Exhibit “B”, which is attached hereto and incorporated herein for all legal purposes, upon presentation of a monthly invoice. The monthly invoice shall set forth all fees and costs. 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. The 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 December 18, 2013, until the project is completed, unless the Agreement is terminated earlier as provided in Article V below.

ARTICLE V. TERMINATION

Either party may terminate this Agreement at will, for no or any reason, upon giving the other party sixty (60) 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. In the event of termination of the Agreement under this Article, the Company shall be paid for all services performed up to the termination date.

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 either self-performed or subcontracted by the Company.

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

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

ARTICLE VIII.

INDEPENDENT CONTRACTOR

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

ARTICLE IX. INSURANCE

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

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

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

All insurance required pursuant to this Agreement, except for Worker's Compensation Insurance, shall name the City as an additional insured. All insurance required pursuant to this Agreement, including Worker's Compensation Insurance, shall provide for a waiver of subrogation as to the City.

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

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

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

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

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: Transmap Corporation
3366 Riverside Drive, Suite 103
Upper Arlington, Ohio 43221

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

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

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

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

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

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

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

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

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

ARTICLE XVI. ASSIGNMENT

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Company:
TRANSMAP CORPORATION

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 TRANSMAP CORPORATION.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ day of
_____, A.D., 2013.

Notary Public, State of Texas

Printed Name

My Commission Expires: _____



December 5, 2013

Exhibit A - Scope of Services

City of Midland, Texas

Prepared For:

**Jose Ortiz, PE
Director Of Engineering Services
300 N. Loraine Street
Midland, TX 79702**

Prepared By:

**Craig Schorling, GISP
Vice President
Transmap Corporation
3366 Riverside Drive, Suite 103
Upper Arlington, OH 43221**

Version 1.0

Project Scope of Services Outline

- Introduction
- Project setup
 - Kick Off Meeting
 - Centerline Review
 - Mobilization
- Task 1 - Pavement Management System
 - 1a - ON-SIGHT Mobile Mapping
 - 1b - Advanced Inspections
 - 1c - Network Setup and Review
 - 1d - Pavement Inspection
 - 1e - MicroPAVER Load
 - 1f - GIS Integration
 - 1g - Pavement Boot Camp
 - 1h - Reporting
 - 1i - Project Management
 - 1j - ArcGIS
 - 1k - City-owned MicroPAVER
 - 1l - MicroPAVER Training
 - 1m - Cityworks Software
- Conclusion

Introduction

Transmap would like to thank the City of Midland for choosing Transmap as the provider for the Citywide Pavement Condition Survey. This scope of services will act as the foundation for the project. Excellent project management and understanding are essential in this project to ensure that Transmap has all of the needs of the City addressed. This document will act as Transmap's project narrative to the City for the collection and analysis of pavement distress data.

Project Team Representatives

The following table represents the current list of project participants, along with their phone numbers and email addresses.

Name	Project Role	Telephone	Email
Midland			
Gary Saunders	Division Manager	(432) 685-7280	gsaunders@midlandtexas.gov
Eric Johnson	Assistant Manager	(432) 685-7983	ejohnson@midlandtexas.gov
Transmap			
Howard Luxhoj	Project Principal	614-481-6799	hluxhoj@transmap.com
Craig Schorling	Account Manager	614-537-6297	cschorling@transmap.com
Chris Crocker	Project Manager	614-481-6799	ccrocker@transmap.com
Stephen Hale	Project Manager	614-481-6799	shale@transmap.com

Project setup

The setup process is the initial step for any project. Below are the items associated with the setup for the City of Midland Pavement Condition Survey Project:

Kick Off Meeting

The project kick off meeting will be in person and on site at the City of Midland. Transmap will have at least a project manager at the City with appropriate personnel attending via conference call. The goals for the kick off are to meet with technical staff members and project managers to discuss overall timeline, reporting requirements, technical exchange and team member responsibilities. The technical exchange will happen both on-site and remotely to facilitate any project materials needed by Transmap or the City. One major goal of the kick off meeting is to ensure that all roads in the project network are scheduled to be driven. The kick off meeting is scheduled to be a high level meeting lasting from 1-2 hours.

Centerline Review

Transmap has performed an initial review on the digital GIS centerline that was provided by the City. Transmap will produce maps for the the kick off meeting for the City to accept the roads that will be driven and analyzed as part of the road network. It is very important at the start of the project to get acceptance of the roads to be driven. As of the date of this scope the centerline review statistics are below:

Participant	# of Segments	# of Centerline Miles	Minimum Length FT	Maximum Length FT	Average Length FT	Std. Deviation FT
City of Midland	7,337	609.4	13	6,903	439	279

Mobilization

Transmap will mobilize the ON-SIGHT™ system to the project area. In addition, the ground control network and a quality control network will be established. Mobilization activities include: Deploying a Transmap ON-SIGHT™ mapping vehicle, equipment and required staff (driver and operator) to Midland, letter about mobile mapping vehicle (sent to client), installing, configuring, and calibrating the camera equipment and on-board data management hardware/software, installing, configuring, and calibrating the on-board global positioning and inertial navigation system equipment and setting up an external Quality Control (QC) network with quality control points. Transmap will establish an external ground control network to be utilized in support of field data capture quality control efforts. The purpose of the ground control network is to provide the GPS corrections necessary to ensure GIS sub-meter accuracy throughout the project.

Deliverables:

Kick Off Meeting	Account Manager will set up the kick off meeting and deliver a recap document after the meeting
Centerline Review	Transmap will bring maps for review in the kick off meeting
Mobilization	Transmap will notify the City when the Mobile Mapping vehicle will be mobilized to the project area. We will send a notice to the City that has information about the vehicle so the City can notify the authorities and constituents about the vehicle.

Task 1 - Pavement Management

Task 1a - ON-SIGHT Data Collection

The raw data collection portion of the project must begin before any extraction of data can begin. Transmap will drive all roads identified in the project area using our ON-SIGHT™ HD mapping vehicle. The vehicle has new high-definition cameras and a point cloud laser (vehicle-based LiDAR). The point cloud laser gives real-time positioning of assets within the roadways. Point cloud data is useful for measuring heights, offsets and intensity values of assets. The vehicle has a robust GPS/INS solution that has dramatically improved accuracy and efficiency.

Transmap will drive an imaging vehicle along 609 centerline miles of roads within the project area of the City. The image database will be collected for each roadway specified by the City in both directions (one-way streets excluded), enabling a full 360-degree view of each roadway in the network. The image spacing will be 13.1 feet. The vehicle will make multiple passes on roads that have 3 or more travel lanes in one direction. Transmap will use a 3-camera setup to obtain the required asset data. One camera will face forward in the vehicle travel direction, one camera will have a 45-degree offset to the right for right-of-way infrastructure, and one downward rear facing camera for pavement distress data. For this project, Transmap will have an ASTM E950 class 1 pavement profiler attached to the vehicle to produce IRI, rut information.

Transmap will QC the images obtained by the mapping vehicle to ensure that they are satisfactory and to meet the objective of the right-of-way asset and pavement inventory project. To ensure the highest quality images, image capture activities will not be performed during low-light or adverse weather conditions.

In-field image quality control will be performed for the purpose of identifying groups of images that may be unacceptable for feature extraction. Unacceptable images will be re-collected.

The specified route network will be compared against that of which has been imaged to ensure that no route segments have been overlooked. Missing route segments will be re-driven and imaged. Route segments may not be imaged when they are not accessible due to construction, temporary or permanent closures, or they may not exist as indicated in the supplied base data sets (i.e. – paper streets).

Positional accuracy will be maintained and verified through the use of QC points established within the road network. Reference coordinates will be established for said QC points. QC point locations will be derived from the collected images; with discrepancies between the known reference coordinates and the measured coordinates (from the images) noted. Ninety percent of the derived horizontal coordinates within 35 feet from the imaging vehicle will fall within 1 meter of the known reference coordinates. If 10 percent or more of the selected control points do not meet the accepted accuracy criteria, corrective actions will be taken.

Task 1b - Advanced Inspections

A unique element of the Transmap *hybrid* approach to capture the pavement distress is how the ride quality and rutting measurements will be provided by the laser profiler. The E950 approach uses a standard pavement profilometer which records the profile of the traveled surface. This method uses measurements of the distance between an inertial plane of reference and the traveled surface; along with the acceleration of the inertial platform in order to detect changes in elevation of the surface. Transmap uses International Cybernetics Corporation (ICC) sensors for our vehicle Rut and Ride equipment. We have worked together for over 10 years. ICC has met or exceeded all State Highway Class 1 testing requirements.

The International Roughness Index (IRI) and rut data will be collected for the left wheel track, the right wheel track, and the average of the two wheel tracks in a manner which meets all ASTM E950 standards. The equipment captures continuous pavement data as the vehicle drives along a roadway at user specified intervals (1" up to 18"). Lasers are placed in each wheel path and in the center of the wheel paths to give the rutting depth. The rutting depth will be delivered as minimum, maximum, and average per wheel path. The IRI data will be delivered as a value over the whole section of pavement. The IRI data represents the total anticipated vertical movement a vehicle would experience over a given stretch of road. The data acquired from the profiler and delivered as a field in the centerline file segment by segment.

Road Profiler Collection	
Rutting (measured in inches)	PAVER Distress Identification Manual defines a rut as a surface depression in the wheel paths caused by repeated traffic load.
Ride Quality (IRI) (measured in inches per mile)	The international roughness index (IRI) is a measure that represents the response of a typical passenger vehicle as the result of road roughness. IRI value is computed from the surface elevation data collected by a smoothness measuring device (road profiler) in each wheel path.

The results from these measurements are based on ASTM Standards and rely on the data collection vehicle traveling at a predetermined speed, and maintaining consistent tracking in the wheel path of the travel lane. Neighborhood streets and alleys with the following factors will cause inconsistency in results: absence of pavement marking for lane lines, lane width less than 11 or 12 feet, speeds less than 15 mph, parked cars in the travel lane, stop and go traffic, and numerous intersections.

Task 1c - Network Setup and Review

Transmap will create the unique network that is required for the pavement management system (MicroPAVER). This process defines the road network as a pavement network. From the basemap, Transmap will create the network, branch, section, and samples that will be used as the foundation for the Pavement Management System. During this task, Transmap will integrate any pertinent centerline data that the City might want in MicroPAVER.

Samples – The lowest order of the defined pavement network. All samples must belong to a network, branch and section. The length of the sample area will depend on the width of roadway. Roadways with widths of 12 feet or less will have a sample length of 182 feet. All routes with widths greater than or equal to 12 feet and less than 22 feet will have a sample length of 130 feet. Roadways with a width greater than or equal to 22 feet, and less than 32 feet will have a length of 78 feet. All roadways with a width greater than or equal to 32 feet will have a length of 52 feet. The ASTM goal is to have sample areas between 1,500 sq.ft. and 3,500 sq.ft. Transmap will not perform any pavement inspections at the center of intersections. All sample areas will be offset from intersections. Segments less than 75 feet are too small to have a sample and will not be analyzed. See table below:

Width	Number of Images	Length	Square Footage
<12	14	182	1456 – 2002
≥12 and <22	10	130	1560 – 2730
≥22 and <32	6	78	1716 – 2418
≥32	4	52	1664 – 4160

How Each Sample is Created

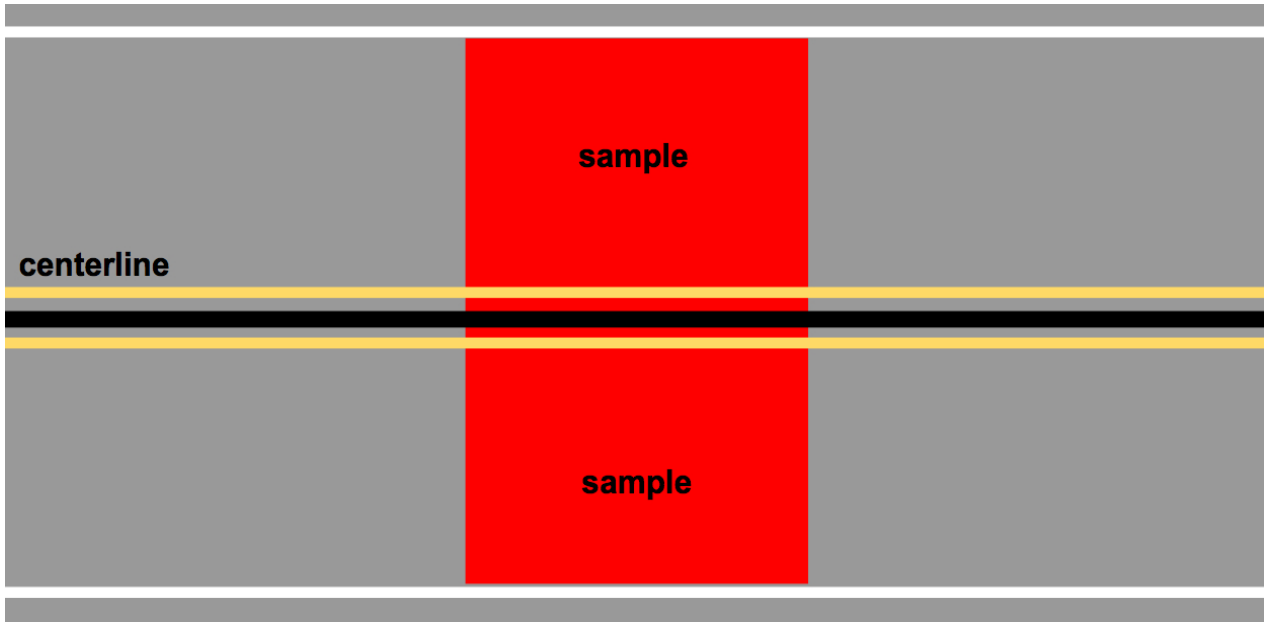
Samples are measured based on the lane configuration for each sample. For each case where there are only two through lanes in opposing directions (e.g. residential street), the entire width of the road will be measured with the corresponding length. In cases where there are multiple lanes (through or turn), Transmap will measure the rightmost through lane in the increasing milepost direction. In this case, the lane width along with total road width will be recorded and the length of the sample will be based on the lane width. If there is a median in the sample area, then the rightmost lane will be measured in the increasing milepost direction. In cases where the centerline is divided for a road, each half of the road will be treated as its own route and measuring will follow the same format as explained earlier.

Standard Roadways

	# of Lanes	Sample Width (feet)	Road Section Width (feet)
Example 1 (One Centerline)	2 through opposing directions	20	20

Standard Example 1

The following example is the standard sample layout for roads with two through lanes in opposing directions.

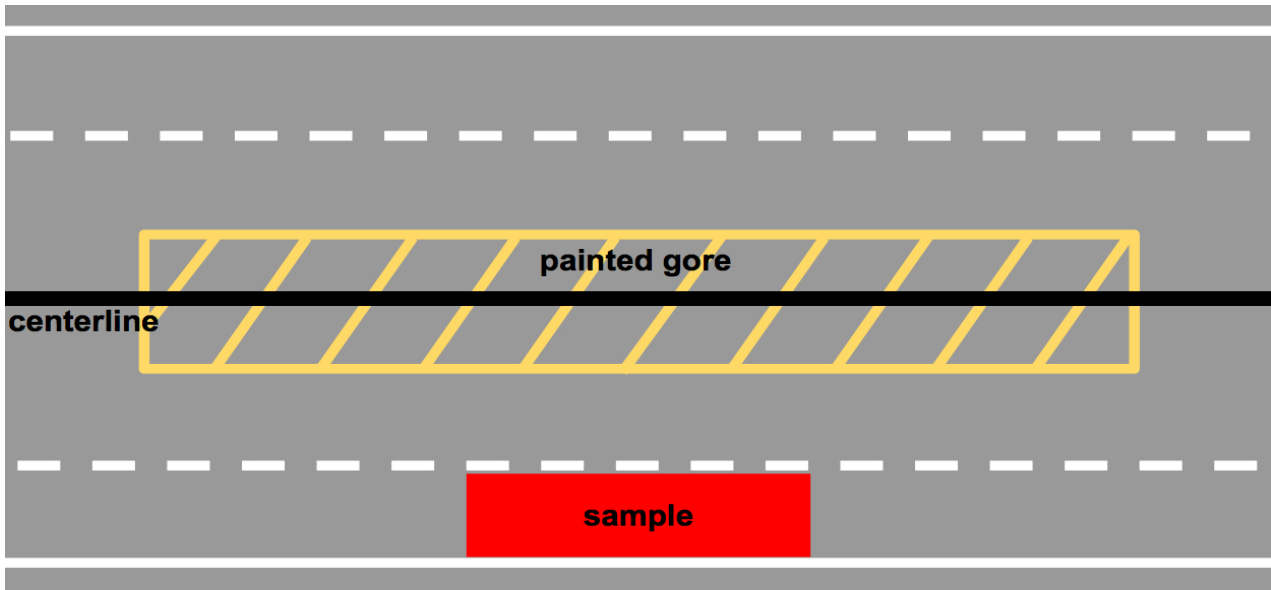


Non-Standard Roadways

	# of Lanes	Lane Width / Sample Width (feet)	Road Section Width (feet)
Example 2 (One Centerline)	4 non-divide	10	40
Example 3 (Two Centerlines)	4 median-divide	10	20

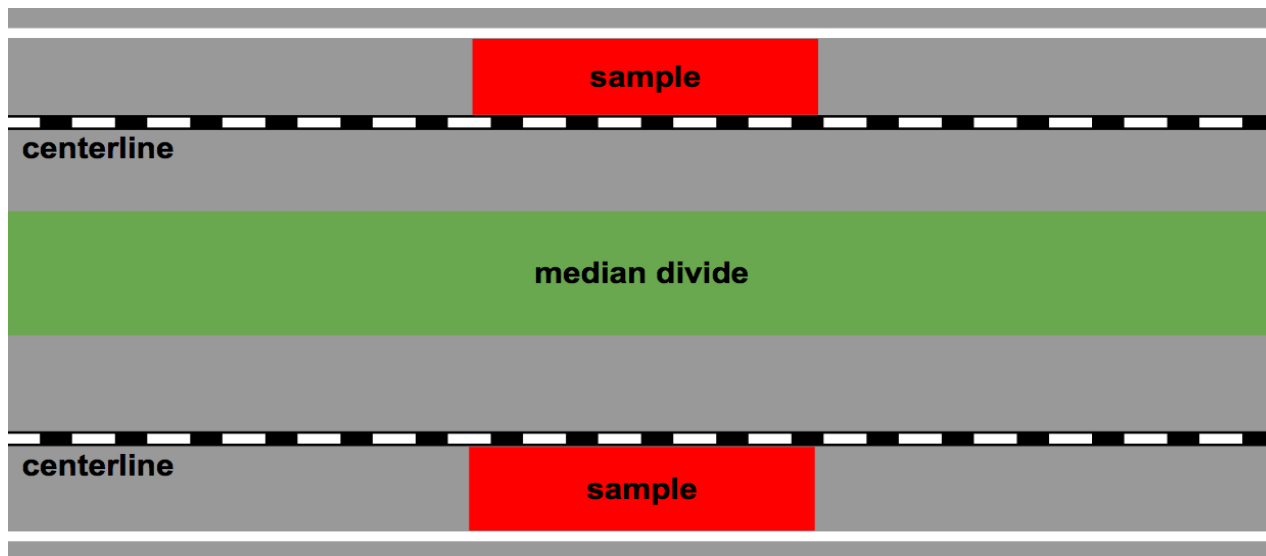
Four Lane Non-Divide Example 2

The following example has the sample in the increasing milepost direction on the rightmost through lane. The centerline is represented by one line.



Median-Divide Example 3

The following example has samples on both of the rightmost through lanes because the centerline is represented by two lines.



Sample Analysis for The City

Transmap has reviewed the City's GIS centerline file. Based on the City's centerline miles (609), we have determined that 10,274 samples will be analyzed. If the sample is in an area that is not concrete or asphalt it will not be analyzed and will be not valid. We will use the best representative area to perform our analysis. This means that the worst and the best areas will not be used but a good representative sample of the whole section will be used.

City Management Sections	If segment is less than 300 feet, one sample will be used. Transmap will setup 300-foot management sections for all roads over 300 feet long. One sample will be measured per 300-foot management section.
---------------------------------	--

Task 1d - Pavement Inspection

Transmap works closely with APWA to ensure pavement data is collected and implemented using ASTM standards (D6433). Transmap uses the US Army Corps of Engineers Paver Distress Identification Manual as a guideline for pavement inspections. Pavement conditions for each segment will be documented through the use of a digital pavement condition rating form designed to capture the distress type, severity, and frequency directly within the established pavement condition data mode. Transmap uses a unique *hybrid* approach to capture the pavement distress data. Through the use of photogrammetry, Transmap can measure widths, lengths and square footage of all surface distress data.

Transmap will collect distress information along 609 miles of asphalt/concrete roadway. Surface distress types will be captured and interpreted from digital imagery for designated centerline miles of roadway imaged by the Transmap vehicle. Additional IRI ride quality and rut measurements will be provided by the laser profiler.

The following table reflects the distress types that Transmap will collect for the project:

Asphalt Pavement Distresses	
Distress	Description
Alligator Cracking	Fatigue cracking that consists of a series of interconnecting cracks formed by repeated traffic loading
Potholes	Holes that are formed from alligator cracking
Transverse/Longitudinal Cracking	Cracks that are longitudinal or transverse in nature, which form for a variety of reasons
Edge Cracking	Cracking along the edge of the roadway
Weathering	The wearing away of the asphalt binder and fine aggregate
Raveling	The dislodging of coarse aggregate particles
Block Cracking	Interconnected cracks that form blocks typically caused by the hardening of the asphalt surface
Patching & Utility Cut Patching	An area that has been replaced with new material to repair existing pavement
Road Profiler Collection	
Rutting	A surface depression in the wheel path caused by repeated traffic load
Ride Quality	Vehicle vibrations

Concrete Collection	
Distress	Description
Slab Count	Number of slabs present within section
Slab Width	Width of concrete slabs
Slab Length	Length of concrete slabs
Corner Breaks	Edges of slabs broken
Patching	Patching present in concrete
Divided Slab	Slabs divided into four or more pieces
Linear Cracking	Transverse/Longitudinal cracks that are divided into two or more pieces

Pavement Distress Data QA/QC

Through Transmap's many projects, we have adopted a walkout field verification method to ensure accurate distress data analysis. This method uses additional inspections when needed. Transmap will use boots-on-the-ground when samples are flagged for additional verification and inspection. Samples will be flagged in areas where pavement distress is excessive and high. Transmap has a 20% QA/QC methodology set up in the office and a 5% method set up for boots-on-the-ground.

Task 1e - MicroPAVER Load

Transmap has written scripts for automated loading of the City's centerline file and distress data into MicroPAVER. Transmap loads MicroPAVER twice during the project. Once the initial pavement analysis is complete, Transmap will run results through MicroPAVER to establish a raw Pavement Condition Index (PCI). Transmap can deliver the raw PCI values but does not recommend using these results for final budgets. After the initial load, Transmap will perform our field verification walkout. After the walkout, distress data may be updated and re-run through MicroPAVER to establish a final PCI for delivery. The second time will be after the walkout is complete and after all of the ride quality and rutting data has been processed.

Task 1f - GIS Integration

After the final PCI data is created, Transmap will integrate the PCI data with the City's centerline file. Transmap will also be linking the pavement distress data to the City centerline when we create the network. The distress data will be part of a polygon geodatabase that will be delivered to the City.

Task 1g - Pavement Boot Camp

The boot camp is customized for every client and is designed as a fact-finding two half day meetings on-site with the client. The boot camp gives the client and Transmap an understanding about which pavement reports the client needs and which legacy data Transmap needs to collect to achieve these reports.

Transmap has successfully managed a boot camp for many customers. This process is considered necessary in establishing a proper PMS project from the beginning. During the boot camp, we will review any current maintenance and rehabilitation (M&R) practices that the City is using. The main focus will be to gather information on M&R practices and pricing. Transmap will suggest some preventative treatments that might best fit the project area. Transmap will use this information to gather regional cost data for the alternative methods of pavement practices. The boot camp will be the foundation for the reporting task.

The following list represents examples of which information Transmap will discuss in the boot camp:

- **Functional class** - The class or group of roads that the road belongs to. MicroPAVER uses the following classes: Principal, Arterial, Collector, Industrial, Residential, Primary, Secondary, Tertiary
- **Traffic count data**
- **Budgets** - Current pavement rehabilitation budgets
- **Material costs** - Typical cost of materials for rehabilitation
- **M&R practices** - Types of rehabilitation or reconstruction practices the City is performing: Some examples are: Microsurfacing, Cape seal, Slurry Seals, Hot-In-Place Recycling, etc.
- **ArcGIS Online site** - Transmap media site. Transmap will host the geodatabase data in the cloud. The site is created to assist in the tracking of the project deliverables
- **Overall digital centerline file** - We will review the final centerline file that was provided to Transmap by the City
- **Construction dates** - Approximate or actual major M&R dates per roadway segment

Task 1h - Pavement Reporting

Reports should not only be words on paper but large maps with multiple colors that depict different scenarios. It is this style that has supported many Transmap customers when requesting budgets that can achieve the standard level of M&R required by their constituents.

Transmap will have an understanding of which reports the City needs from the boot camp. Transmap will need information on maintenance and rehabilitation activities. This information, along with construction dates, will be loaded into MicroPAVER to help produce candidate maps that will predict what future PCI results will look like in a “do nothing” scenario. These reports will allow the City to see how creating logical candidate lists and maps will help in evaluating treatments based on PCI and deterioration models instead of windshield studies or resident phone calls.

Transmap has the ability to link the MicroPAVER data to the digital centerline file to produce maps of various maintenance scenarios. For example, PCI maps can be broken out based on roadway classification to evaluate how traffic count affects PCI value. Once all maintenance practices and costs have been determined, Transmap can start building reports over time based on how long certain treatments extend the life of the pavement. Transmap prefers to have different reporting styles and will not simply produce standard text reports. All reporting data will be integrated to the centerline file to produce plots for City review.

Task 1i - Project Management

Transmap will create project management reports, project milestones, project goals and keep the City informed on the progress of the project. Transmap will provide monthly status reports and maps. Most project management will be done remotely except for the kick off meeting. Transmap will utilize the web, email and voice for most project management tasks. The project manager is also responsible for the allocation of staff for a timely completion of the project. The project manager reports to the account manager and project principal on the status of the project.

Task 1j - ArcGIS Online Viewer (Media Hosting)

Once the image collection process is complete and all data is processed, Transmap will post all images on our ArcGIS Online web-based image viewer. This viewer allows the City to log on to a web page and view the basemap, orthophotography, image locations, pavement sample data, and all extracted assets from the project. Transmap uses this site to allow the City to see the progress of the project. Transmap will host the image links (media) for up to six months after completion of the project. The City will be responsible for having the space necessary to load the Transmap media on their servers. Transmap can assist the City in setting up the media on their servers.

Task 1k - MicroPAVER Software

Transmap will purchase one MicroPAVER software license for the City. The license will be in the name of the City. Each license comes with three desktop installations and a year of support from APWA.

Task 1l - On-Site MicroPAVER Training

Transmap will provide up to 5 City employees with a 2-day on-site training of MicroPAVER 1. This training will cover the basic MicroPAVER functions to the advanced reporting solutions within MicroPAVER. The training will be performed on the City’s actual data that is collected during the project. MicroPAVER 1 training will occur after the project data has been loaded into MicroPAVER.

The City will supply a computer for each trainee and the room where the training will take place. Transmap will install MicroPAVER on each computer and refresh the databases as necessary. The class will cover:

1. Overview of Paver - Selection tools and drop downs
2. Inventory - Network, surface type, user defined fields
3. Work Tracking - History, construction dates
4. PCI Field Inspection/Data Entry
5. Standard Paver Reports
6. Prediction Modeling
7. Condition Analysis
8. System Tables

9. Work Planning

Task 1m - Cityworks Software

Through our partner Azteca Cityworks, Transmap will purchase the Addition of Server AMS to the City's existing site license. Azteca will be responsible for all support and installation of the software. The Server AMS will provide the City unlimited logins to the Cityworks software.

Deliverables

1a - ON-SIGHT Data Collection	Transmap will deliver the vanimage, which is a geodatabase of the vehicle path with an image link to the Transmap media site. A drive-coded geodatabase of the centerline file is also included. Transmap will deliver all images and LiDAR data on an internal SATA hard drive. A download cable (USB to SATA) can be provided.
1b - Advanced Inspections	The data acquired from the pavement profiler will be processed and the rut data will be loaded into MicroPAVER. The following maps will be delivered to the City: IRI, rutting and average section IRI. The following Shapefiles will also be delivered: Rut, Ride and average Section IRI.
1c- Network Setup and Review	Transmap will deliver a pavement centerline with the network information as attributes. This data will also reside in MicroPAVER.
1d - Pavement Inspections	Transmap will deliver a geodatabase of the polygon inspection areas with analyzed distress data as attributes.
1e - MicroPAVER Load	Transmap will deliver a complete .e6x export file from MicroPAVER to install on the City's system.
1f - GIS Integration	Pavement centerline will be delivered with network and PCI values.
1g - Pavement Boot Camp	Transmap will be on-site at the City for the boot camp. We will prepare an agenda and a meeting recap will be delivered to the City.
1h - Reporting	Transmap will post all reporting in the cloud so the City can review. After the City review, Transmap will print the official report and supporting maps for delivery.
1i - Project Management	Transmap will supply the City with monthly project status reports along with maps and ArcGIS Online tracking.
1j - ArcGIS Online Viewer	Transmap will create a web link for the City to view images and data on ArcGIS online. This can be viewed from multiple users but not edited.
1k - MicroPAVER Software	Transmap will purchase one individual license from APWA.
1l - MicroPAVER Training	Training will be performed on site at the City. Each participant will receive a training manual.
1m - Cityworks Software	Transmap will purchase the unlimited logins of Cityworks Server AMS from Azteca.

Conclusion

Transmap is excited to have been selected to provide professional services to the City of Midland. We are confident that we can provide the tools necessary for the City to make intelligent decisions regarding its pavement and asset life cycles. Transmap helps communities turn data into knowledge. With this knowledge, the City will be able to produce budget scenarios, work orders, maps, and many other management strategies necessary to improve overall efficiency.

**City of Midland, TX
Exhibit B Fee Schedule**

1) Pavement Management

Task	Description	Comments	Transmap Units	Transmap Price	Total
1a	*ON-SIGHT™ Raw Data Collection Includes LiDAR - Roads (units = centerline miles)	Raw roadway data and image capture. 360-degree image view of all roadways (ROW) with dedicated pavement camera (100% roadway coverage) Includes LiDAR collection	609	\$99.00	\$60,291.00
1b	Advanced Inspection - Profilometer (units = lump sum)	Transmap uses an ASTM compliant E950 profilometer and will process all rut and ride collected data	1	\$9,995.00	\$9,995.00
1c	Network Setup and Review (units = hours)	Transmap will review the City's centerline file and set up the required network for loading into MicroPAVER	16	\$99.00	\$1,584.00
1d	Pavement Inspection (units = samples) estimated samples based on current centerline	Detailed surface distress analysis using Transmap's Pavement Management 2.0 approach. Vehicle automated collection using a combination of lasers, images and field walk out, pavement width included at sample area; Transmap uses ASTM D6433 compliant methods. 300' foot management sections on segments larger than 300' feet, at least one sample on smaller segments (price includes field verification)	10,274	\$5.88	\$60,411.12
1e	MicroPAVER Load and Review (units = hours)	Formatting pavement sample data and centerline file for mass load into MicroPAVER using scripts.	12	\$99.00	\$1,188.00
1f	GIS Integration (units = hours)	Transmap will link all PCI data to the City's centerline file. If any other GIS work is needed to be done, the hours can be purchased	14	\$99.00	\$1,386.00
1g	Pavement Management Boot Camp (units = days)	Transmap will meet with City staff to review maintenance/rehabilitation activities, analysis procedures, and collect any existing information on roadways (ADT data, construct dates, maintenance dates, etc.)	2	\$1,750.00	\$3,500.00
1h	Pavement Reporting (units = hours)	Transmap will put together tabular and GIS map data to support traditional/preventative maintenance pavement reporting. Budget scenarios with actual dollar amounts per M&R activity.	44	\$125.00	\$5,500.00
1i	Transmap Project Management (units = hours)	Transmap has a standard rate for project management and some estimated minimum hours. If the City needs more hours based on the amount required from Transmap, they can use our standard rate (rate includes on-site meeting and quality control plan)	174	\$99.00	\$17,226.00
1j	**ArcGIS Online Web-Based Image Viewer (free access for 6 months after project completion, units = 6 month term)	Transmap will set up the City to view all collected images in ArcGIS Online web environment with orthophotography and GIS basemap layer (web-based reporting) PCI results, Sample locations, Distress data	0	\$875.00	\$0.00
1k	City-owned MicroPAVER (units = lump sum)	Transmap will purchase MicroPAVER with 3 activations and 1 years of technical support	1	\$995.00	\$995.00
1l	On-Site MicroPAVER Training (units = days) Expenses are included	Transmap will provide on-site training for up to five City personnel on MicroPAVER 1 training.	2	\$2,600.00	\$5,200.00
1m	Cityworks Software (units = lump sum)	Transmap's partner (Cityworks) has provided a quote that is part of this pricing section for an additional Server AMS license	1	\$10,000.00	\$10,000.00

*Subtotal**\$177,276.12*

*Fuel surcharge may apply
**Internet surcharge may apply

Centerline Review
7337 Segments
609.4 Miles
Min - 13 ft.
Max - 6903 ft.
Avg - 439 ft.
Std. Dev. - 279 ft.

Transmap Standard Rates	
Title	Rate
Project Principal (PE)	\$135
Senior Project Manager (PE)	\$125
Project Manager	\$99
GIS Analyst	\$99
Pavement Analyst	\$99
GIS Technician	\$74
GIS Field Technician	\$55



Azteca Systems, Inc.
11075 South State Street, Suite 24
Sandy, UT 84070
Corporate Main 801-523-2751
Corporate Fax 801-523-3734

Pricing Quotation

Quote Number	00000087	Created Date	12/3/2013
		Expiration Date	3/31/2014

Contact Info

Contact Name	Bill Hodge	Prepared By	Brent Wilson
Company Name	City of Midland	Phone	(214) 507-0579
Phone	(432) 685-7284	E-mail	bwilson@cityworks.com
Email	bhodge@midlandtexas.gov		

Product Code	Product	Line Item Description	Quantity	Sales Price	Total Price
CW.Custom.0001	Custom Item	Addition of Server AMS to Existing Site License	1.00	\$10,000.00	\$10,000.00
			Total Price	\$10,000.00	
			Grand Total	\$10,000.00	

Notes

Quote Notes This provides unlimited logins of Cityworks Server AMS. Annual Maintenance of \$43,295.00 due on 8/5 will increase \$10,000 to \$53,295.

AZTECA SYSTEMS QUOTATION TERMS AND CONDITIONS COPYRIGHT 1995 - 2012

All quotations are valid for ninety-days (90) unless otherwise stated on the quotation form above. These prices and terms are valid only for items purchased for use and delivery within the United States.

All pricing for services are a firm fixed price and include travel costs. Tasks invoiced upon completion.

Cityworks is commercial-off-the-shelf software that can be tailored to the workflow of an organization.

Cityworks Desktop, Cityworks Anywhere and Cityworks Server are designed as an "extension" to various ESRI GIS software and are available in "Standalone" configuration. Cityworks does not include ArcGIS, ArcMap, ArcView, ArcEditor, ArcInfo, ArcIMS, ArcGIS Engine, ArcGIS Server, ArcSDE or other ESRI products. ESRI licenses will be from the customer's existing stock. If additional licenses are required, the customer will purchase these directly from ESRI.

The procurement, installation and administration of the RDBMS utilized in conjunction with Cityworks will be the responsibility of the customer. Currently, Cityworks supports Oracle and SQL Server.

Specific requirements for on-site Cityworks training are the responsibility of the Customer.

All hardware, software, and networking equipment used in conjunction with Cityworks are the responsibility of the Customer to purchase and maintain.

The networking of client machines to the Cityworks database and GIS file servers are the responsibility of the Customer.

This quotation information is proprietary and may not be copied or release other than for the express purpose of the current system selection and purchase. This information may not be given to outside parties or used for any other purpose without written consent from Azteca Systems, Inc.

To expedite your order, please reference the quotation number on your purchase order.

Order Process

The order process is initiated when Azteca Systems receives an original Purchase Order or some form of advance payment. Several additional documents will be required including, Software License Agreement, Tax Exemption Certification and Cityworks Site Profile to complete your order. The need for these documents may vary by the type of software ordered or generally accepted industry practices. Please consult your Account Representative for assistance. If delivery must be expedited, please notify your Account Representative.



Azteca Systems, Inc.
11075 South State Street, Suite 24
Sandy, UT 84070
Corporate Main 801-523-2751
Corporate Fax 801-523-3734

IMPORTANT! Collectively, these documents contain the authorization and information necessary to ship the proper version of the software and on the correct media. Please return them promptly to avoid unnecessary delays in shipping and incompatible media. Please return all documents by mail or express delivery, or as otherwise directed.

Software Licensing

All Azteca Systems software offered in this quotation are commercial off-the-shelf (COTS) software developed at private expense and subject to Azteca Systems commercial license terms and conditions. Azteca Systems software is subject to Azteca Systems Software License Agreement. A fully executed copy of the Software License Agreement is required before delivery and installation.

Delivery

FOB Sandy, UT 84070, USA.

Allow thirty-days (30) from Azteca System's receipt of the Purchase Order, signed Software License Agreement and other documents, as required.

Standard delivery method is through Azteca's customer support web portal. Other delivery service is available for an additional fee (e.g., overnight delivery).

Payment Terms

Net thirty (30) -days.

Taxes

Prices quoted do not include applicable sales or use taxes unless so stated. In preparing your budget and/or Purchase Order, please allow for applicable sales and use taxes, as necessary. Azteca Systems reserves the right to collect sales and use tax assessed by states as required by law. Azteca Systems will add applicable state sales tax to the invoice unless proof with the order is shown that your organization is tax exempt or pays state tax directly.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 12/17/2013

TO: City Council / City Manager

FROM: Robert Isbell, Fire Chief

SUBJECT: Consider a resolution to authorize the Midland Fire Department to apply for the 2013 AFG Grant

Purpose:

Consider a resolution allowing the Midland Fire Department to apply for a grant, through the U.S. Department of Homeland Security, in the amount of \$350,000.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The Midland Fire Department is seeking to apply for a \$350,000 grant with a 10% match that would be budgeted in the amount of \$35,000.

Discussion:

The grant would be used to purchase command simulation program, (computers, software), to credential our personnel in a nationally recognized emergency scene command system. MFD could become the credentialing training center for not only our personnel, but for outside agencies as well. The Command system is used on all emergency incidents, allowing a common language and operational mode that is understood across all agencies.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE MIDLAND FIRE DEPARTMENT TO FILE AN APPLICATION WITH THE UNITED STATES GOVERNMENT FOR THE 2013 ASSISTANCE TO FIREFIGHTERS GRANT; SAID FUNDS WILL BE USED TO PURCHASE A COMMAND SIMULATION PROGRAM; SAID GRANT IS A MATCHING FUNDS GRANT IN WHICH THE ASSISTANCE TO FIREFIGHTERS GRANT WOULD FUND 90% (\$315,000.00) OF THE TOTAL AMOUNT (\$350,000.00) AND THE CITY OF MIDLAND WOULD FUND 10% (\$35,000.00) OF THE TOTAL AMOUNT

WHEREAS, the United States Government has established the Assistance to Firefighters Grant Program to help municipal fire departments fund various programs; and

WHEREAS, the Midland Fire Department wishes to apply for said grant funds in the amount of \$315,000.00; and

WHEREAS, said grant is a matching funds grant in which the Assistance to Firefighters Grant would fund 90% (\$315,000.00) and the City of Midland would fund 10% (\$35,000.00) for a total of \$350,000.00; and

WHEREAS, said grant funds would be used to purchase a command simulation program in order to credential personnel in a nationally recognized emergency scene command system; and

WHEREAS, the City Council finds it to be in the public interest to authorize the Midland Fire Department to apply for said grant funds;

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

THAT the Fire Chief and the City Manager are hereby authorized to execute all appropriate documents to apply for a grant from the United States Government for the purpose of purchasing a command simulation program.

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

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Isbell, Fire Chief

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 12/17/2013

TO: City Council / City Manager

FROM: Price Robinson, Police Chief

SUBJECT: Consider a resolution authorizing an Operating Certificate for Moore's Limos, LLC to operate a limousine business

Purpose:

Consider a resolution authorizing an Operating Certificate for Moore's Limos, LLC to operate a limousine business

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None

Discussion:

Jerry Moore recently filed a limousine franchise application with the City Secretary's Office to begin operating Moore's Limos, LLC. The company will be operating with 1 limousine in Midland. Mr. Moore has passed the background investigation on criminal and driving record conducted by the Midland Police Department.

Therefore, we are requesting that the City Council consider a resolution granting a limousine franchise operating certificate to Moore's Limos, LLC.

The original application and all supporting documents are on file in the City Secretary's Office.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING AN OPERATING
CERTIFICATE FOR MOORE'S LIMO SERVICE, LLC
TO OPERATE A LIMOUSINE BUSINESS; SETTING
FORTH CONDITIONS ACCOMPANYING THE
CERTIFICATE; AND ESTABLISHING THE TERMS OF
THE CERTIFICATE**

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

SECTION ONE. That the City Secretary is hereby authorized and directed to act on behalf of the City of Midland to grant to Moore's Limo Service, LLC, an Operating Certificate for a limousine business pursuant to Title V, Chapter 6 of the Midland City Code, the provisions of said certificate to be as set forth in Exhibit "A", attached hereto and incorporated herein by reference.

SECTION TWO. Notwithstanding Section One, above, the City Secretary shall not issue the Operating Certificate set forth above unless and until:

- A. Moore's Limo Service, LLC, has delivered to the City Secretary a current certificate of insurance indicating compliance with the insurance requirements set forth in Section 5-6-2(F) of the Midland City Code for all motor vehicles to be used as limousines under the Operating Certificate; and
- B. Moore's Limo Service, LLC, has paid to the City the amount of the annual fee required under Section 5-6-2(G) of the City Code; and
- C. Moore's Limo Service, LLC, has signed a copy of the Operating Certificate indicating acceptance of the provisions set forth therein.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Price Robinson, Police Chief

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

**CITY OF MIDLAND OPERATING CERTIFICATE FOR
LIMOUSINE BUSINESS**

THIS OPERATING CERTIFICATE is issued to Jerry and Lupe Moore (hereafter called "Operator") whose address is 5025 Princeton #1, Midland, Texas 79707, pursuant to Title V, Chapter 6 of the Midland City Code, for the purpose of granting to Operator the privilege of operating a limousine business along, across, and over the public streets of the City of Midland, Texas, now laid out or dedicated, and all extensions thereof, subject to the following provisions and conditions:

1. Business Name: The name of the limousine business operated pursuant to this certificate shall be Moore's Limo Service, LLC.
2. Term: This certificate shall be valid and in effect for five years from the date of issuance indicated below, subject to earlier termination as set forth in the Midland City Code.
3. Suspension of Certificate for Non-Payment: This certificate shall be automatically suspended on March 1 of any year during the term of this certificate if Operator has not paid the annual fee required by Section 5-6-2(G) of the Midland City Code when due, and shall remain suspended until the annual fee is paid.
4. Compliance With All Laws: Operator must at all times operate the above-named limousine business in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including, but not limited to, Title V, Chapter 6 and Title XIII, Chapter 2 of the Midland City Code, as amended from time to time, and this certificate may be revoked by the Midland City Council at any time for Operator's non-compliance with said laws, regulations, or ordinances.
5. Assignability and Transferability: This certificate is personal to the Operator named above and may not be assigned by sale or otherwise to any other person or entity. Any attempt to assign this certificate or any interest in this certificate shall be void and will serve as grounds for termination of this certificate by the City.
6. Airport Privileges: This certificate grants to the Operator the privilege of operating at Midland International Airport, provided that such operations shall not be permitted until Operator has complied with Section 5-6-8 of the Midland City Code.

ISSUED THIS ____ DAY OF _____, 2013.

Amy M. Turner, City Secretary
City of Midland, Texas

ACCEPTANCE

The Operator herein named accepts this Operating Certificate and agrees to abide by all its provisions and all applicable federal, state, and local laws, ordinances, and regulations, including, but not limited to, applicable provisions of the Midland City Code, as amended, and the regulations governing the charging of fares between the City of Midland and the City of Odessa.

Name: _____

Date: _____

Name: _____

Date: _____



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 12/17/2013

TO: City Council / City Manager

FROM: Matt Irvin, Interim Assistant Director of Utilities

SUBJECT: Consider a Resolution Approving a Contract Extension with CK Hay and Cattle Farms, L.L.C.

Purpose:

Consider a Resolution approving a contract extension of one year with CK Hay & Cattle Farms, L.L.C. at the property known as "The Plant Farm" used for wastewater effluent and sludge disposal.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No additional fiscal impact.

Discussion:

The City of Midland has a current contract with CK Hay & Cattle Farms, L.L.C. to operate a farming operation on the City of Midland-owned area south of Interstate 20 near the Water Pollution Control Plant for the purpose of maintaining an effluent and sludge disposal option. This contract is set to expire December 31, 2013. The City of Midland is in the process of renewing its wastewater discharge permit with the TCEQ. The farming operations are an integral part of this permit. This permit has technically expired and a new one has not yet issued. Staff recommends an extension of this contract for one year (expiration date December 31, 2014) in order to maintain the current operational plan until such time as the new permit is issued and new contracts can be developed which will take into account new permit conditions.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
1-YEAR EFFLUENT FARM LEASE RENEWAL
AGREEMENT BETWEEN THE CITY OF MIDLAND,
TEXAS, AND CK HAY & CATTLE FARMS, L.L.C., FOR
EFFLUENT FARM OPERATIONS AT THE CITY'S
PLANT FARM**

WHEREAS, the City Council previously authorized the execution of a Lease Agreement with CK Hay & Cattle Farms, L.L.C., for effluent operations at the City's Plant Farm; and

WHEREAS, said Lease Agreement, as amended, will expire on December 31, 2013; and

WHEREAS, the Lessee continues to occupy the Plant Farm and operate under the terms of said Lease Agreement; and

WHEREAS, the Council finds it to be in the public interest to authorize the execution of a 1-year renewal of said agreement with CK Hay & Cattle Farms, L.L.C., for continued effluent operations at the Plant Farm;

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

SECTION ONE. That the recitals stated above are hereby adopted.

SECTION TWO. That the Mayor and City Secretary, are hereby authorized and directed to execute and attest, respectively, on behalf of the City, a 1-year Effluent Farm Operations Renewal Agreement with CK Hay & Cattle Farms, L.L.C., said agreement being attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Holly McGrath Rosas, Interim Director
of Utilities

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

PLANT FARM OPERATIONS
RENEWAL AGREEMENT

This Agreement is entered into this 18th day of December, 2013, by and between the City of Midland, Texas, a home rule municipal corporation, hereinafter referred to as “City,” and CK HAY & CATTLE FARMS, L.L.C., hereinafter referred to as “Operator;”

WITNESSETH:

WHEREAS, the City of Midland owns certain property as hereinafter described for the purpose of disposing of effluent and/or sludge in an efficient and environmentally sound manner; and

WHEREAS, Operator desires to aid the City in its disposal of effluent and/or sludge by managing a wastewater disposal program on City-owned property as well as property leased by City;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE RIGHTS and covenants herein contained, the parties hereto agree as follows:

I. Terms of Agreement

1. Except as otherwise specified in this Agreement, Operator shall provide all labor, materials, fertilizer, seed, and equipment necessary to operate and manage effluent and/or sludge disposal operations on certain land owned or leased by the City more particularly described as follows:

Tract A: The North one-half of Section 9, Block 38, T-2-S, T&P Ry. Co. Survey, Midland County, Texas, consisting of 320 acres, more or less.

Tract B: A portion of Section 5, Block 38, T-2-S, T&P Ry. Co. Survey, Midland County, Texas, consisting of 200 acres, more or less.

Tract C: The South one-half of the West one-half of Section 44, Block 38, T-1-S, T&P Ry. Co. Survey, Midland County, Texas, containing 160 acres, more or less.

Tract D: The West one-half of Section 4, Block 38, T-2-S, T&P Ry. Co. Survey, Midland County, Texas, containing 320 acres, more or less.

In addition, except as set forth herein, Operator shall provide all labor, materials, fertilizer, seed, and equipment necessary to operate and manage effluent and/or sludge disposal operations on land owned or leased by City, and more particularly described as follows:

Tract E: The South one-half of Section 9, Block 38, T-2-S, T&P Ry. Co. Survey, Midland County, Texas, consisting of 320 acres, more or less.

Tract F: A portion of Sections 5 and 8, Block 38, T-2-S, T&P Ry. Co. Survey, Midland County, Texas, consisting of 550 acres, more or less.

Tract G: A portion of Section 44, Block 38, T-1-S, T&P Ry. Co. Survey, Midland County, Texas, consisting of 45 acres, more or less.

Tracts A through G, inclusive shall collectively hereafter be called the "Property."

2. The Operator shall manage all operations to remain compliant with the Crop Management Plan (Attachment G) in the attached Wastewater Discharge Permit (WQ00102230-01) granted by the Texas Commission on Environmental Quality. Operations not specifically granted in this permit will be disallowed with the exception that cattle operations will be allowed.

3. City shall pay to Operator an annual management fee in the amount of \$175,000.00 for managing City's effluent and/or sludge disposal operations on the Property. The annual management fee shall be paid in four quarterly installments of \$43,750.00 each, on January 1, April 1, July 1, and October 1 during this Agreement, except that the first payment due pursuant to this Agreement shall not be due until after the Agreement has been signed by all parties.

4. This Agreement replaces and supercedes any prior agreement(s) between the parties regarding the subject matter contemplated herein.

5. The term of this Agreement Shall be from January 1, 2014, through December 31, 2014, unless terminated earlier as provided herein.

6. Operator shall operate and maintain existing irrigation equipment located on the property in good and usable condition. City shall purchase all repair and replacement parts and replacement units for side-wheel rolls. These items shall be warehoused at the Water Pollution Control Plant and shall be issued as requested by the Operator and deemed necessary by the Director of Utilities.

7. Operator agrees to farm, cultivate, mow, chisel and aerate all tillable acreage at the Property in a good and farm-like manner during this Agreement. All irrigated fields will be maintained by Operator in a manner that will enhance effluent and/or sludge disposal.

8. If the operations include grazing of cattle, cattle shall not be allowed to graze on land for thirty (30) days after application of sludge.

9. The City shall have no liability for any expenses related to operations including but not limited to fertilizer, seed, tillage and harvesting of crops. Any amendments added to the Property shall be in agreement with the Wastewater Discharge License and approved by the Director of Utilities in advance.

10. City shall furnish materials for all permanent fencing deemed necessary by the Director of Utilities. Operator will erect and maintain temporary fencing at Operator's sole expense.

11. City shall deliver, at its sole discretion, effluent and/or sludge generated by the City's wastewater treatment system to the Property. The volume and quantity of effluent and/or sludge furnished hereunder shall be in compliance with all provisions of Permit No. WQ0010223-01, as issued by the Texas Commission on Environmental Quality to the City of Midland, Texas, for the disposal of its effluent, and all applicable statutes, rules, regulations and ordinances. City shall have the right to discharge effluent and/or sludge upon the Property in excess of an amount that Operator requires. Notwithstanding anything to the contrary, City shall have the sole right to determine the time and the quantity of the effluent and/or sludge to be delivered. In any event, City shall not be liable in any manner under this Agreement for failure to deliver effluent and/or sludge or for the quality of said effluent and/or sludge as herein described.

12. In the event that City or Operator should default in the performance of this Agreement or materially breach any of its provisions, the other party shall have the right to terminate this Agreement upon sixty (60) days written notice to the offending party of its intention to do so. Nothing contained herein constitutes a waiver of the right of City to damages occasioned by breach of this Agreement by Operator. For purposes of this Agreement, the term "material breach" may include, but is not limited to, the following:

- a. Breach, violation or failure to perform, observe or keep any covenant, agreement or term or condition of this Agreement by any party obligated hereunder to observe, keep or perform such condition, term, agreement or covenant, and such default continues for a period of ten (10) days after written notice thereof is given by any aggrieved party hereto to the other party.
- b. Bankruptcy of Operator through voluntary or involuntary proceedings or an assignment made for the benefit of its creditors.
- c. Failure of Operator or any of its heirs, successors or assigns to operate the property described herein in such a manner so as to allow City to discharge its effluent upon the Site, and such failure continues for a period of ten (10) days

after notice thereof is given by the City to Operator or its heirs, successors or assigns.

In the event of breach by Operator, City shall have the right, following sixty (60) days written notice, to reenter the Site and remove Operator, its employees and agents therefrom, without prejudice to any legal remedies which may be used for the collection of rent. All and every claim for damages by Operator for or by reason of such reentry is hereby expressly waived. In the event of reentry, City may and is hereby fully empowered to take possession and sell at the current market price any remaining crops at the Site, and apply funds received to any and all rents due or to any damages sustained by Operator's breach.

The parties hereby agree and acknowledge that the acceptance and distribution of effluent and/or sludge pursuant to this Agreement is a unique obligation, and that failure of Operator to accept and distribute effluent and/or sludge provided by City as provided for herein would result in damage to City that could not be adequately compensated by a monetary award. The parties therefore agree that, if Operator fails to accept and/or distribute effluent and/or sludge pursuant to the terms of this Agreement, City may appropriately seek an order from a court of competent jurisdiction requiring Operator to specifically perform said obligation.

Pursuit of specific remedies herein described shall not preclude pursuit of any other remedies at law or in equity, to the extent that said other remedies are not inconsistent with the specific remedies herein set forth. No waiver of any violation shall be deemed or construed to constitute a waiver of any other violation or other breach of any of the terms, provisions and covenants contained in this Agreement.

13. In the event that either party is prevented from completing performance of its obligations hereunder by Acts of God or any other occurrence whatsoever which is beyond the control of either party hereto and which, by the exercise of due diligence City or Operator is unable, wholly or in part, to prevent or overcome, then such party shall be excused from performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

14. All notices and communications required or permitted under this Agreement, including address changes, shall be in writing and any communication or delivery hereunder shall be deemed to have been duly made if actually delivered, transmitted by telecopier or if mailed by registered or certified mail, postage prepaid, addressed as follows:

City

Holly Rosas
Interim Director of Utilities
P.O. Box 1152
Midland, Texas 79702

Operator

Rodney Hollums
CK HAY & CATTLE FARMS, L.L.C.
12911 ECR 103
Midland, Texas 79706

15. City's Interim Director of Utilities may, at her discretion, schedule meetings from time to time with Operator to discuss matters related to farm operations and budgeting. Such meetings shall be conducted by the Interim Director of Utilities, who will provide the meeting agenda and minutes.

16. All the provisions herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns, to the same extent as if such successor and assign were in each case named as a party to this Agreement; provided, however, that this Agreement and the rights, duties and obligations hereunder may not be assigned without the written consent of each party hereto.

17. It is further agreed between the parties hereto that, at the expiration or termination of this Agreement, Operator shall and will quietly and peacefully surrender and yield up the said premises, with the appurtenances thereto, unto City, in as good order and repair as the same now are in, reasonable wear and tear excepted.

18. Any equipment or improvements which are purchased by City during the term of this Agreement shall remain at all times the property of the City.

19. Operator warrants and represents that he has the legal authority to enter into this Agreement and further has the authority to accept City's effluent water and/or sludge.

20. In the event that no funds or insufficient funds are appropriated and budgeted or funds are otherwise unavailable in any of City's fiscal periods during the term of this Agreement for the payments due pursuant to this Agreement, then this Agreement shall terminate automatically on the last day of the fiscal period for which full appropriations were made, without liability on the part of either the City or the Operator. Notice required herein shall not apply in this situation.

II. Standard General Conditions

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

Commercial General Liability (including Contractual liability):

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

Business Automobile Liability: \$250,000.00 combined single limit -

Personal Injury and Property Damage

Worker's Compensation:

Statutory limits

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

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

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

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

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

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

The Operator certifies that the certificate of insurance provided as required herein complies with the requirements of Senate Bill 425, passed during the 82nd regular session of the Texas Legislature, and effective January 1, 2012. The City may waive any or all of the requirements of this section as agreed to by the parties.

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

3. RELEASE - NOTWITHSTANDING ANY OTHER PROVISIONS, OPERATOR HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES

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

4. 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.

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

6. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES - As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Operator or his legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one-hundred-twenty (120) days after the same has

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

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

7. INDEMNITY - OPERATOR WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF OPERATOR, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM, OPERATOR'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND OPERATOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

OPERATOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, ACCIDENTAL DEATH, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES

RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH OPERATOR OR OPERATOR'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND OPERATOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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

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

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

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

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

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

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.

13. 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.

14. AS IS - OPERATOR ENTERS INTO THIS AGREEMENT WITH THE UNDERSTANDING THAT THE PROPERTY THAT IS THE SUBJECT OF THIS AGREEMENT COMES "AS IS AND WITH ALL FAULTS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED BEING MADE BY CITY THAT THE PROPERTY IS FIT FOR A PARTICULAR PURPOSE. THE OPERATOR ACKNOWLEDGES THAT OPERATOR IS NOT RELYING UPON ANY REPRESENTATION MADE BY CITY WITH RESPECT TO THE CONDITION OF THE PROPERTY, BUT IS RELYING UPON OPERATOR'S EXAMINATION OF THE PROPERTY. OPERATOR ALSO

RECOGNIZES THAT THE OPERATOR ENTERS INTO THIS AGREEMENT WITH THE UNDERSTANDING THAT THE PROPERTY COMES “AS IS AND WITH ALL FAULTS,” THAT OPERATOR AGREES TO MAKE OPERATOR’S OWN APPRAISAL OF THE PROPERTY AND TO ACCEPT THE RISK THAT OPERATOR MAY BE WRONG. CITY GIVES NO ASSURANCES, EXPRESS OR IMPLIED, CONCERNING THE CONDITION OF THE PROPERTY THAT IS THE SUBJECT OF THIS AGREEMENT. IN NO EVENT SHALL OPERATOR HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, THE OPERATOR ENTERS INTO THIS AGREEMENT UNDER THE EXPRESS UNDERSTANDING THE PROPERTY IS ACCEPTED “AS IS AND WITH ALL FAULTS,” EXCLUDING EXPRESS OR IMPLIED WARRANTIES.

15. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS - Operator shall at all times during the term of this Agreement comply with applicable federal, state, and local laws regarding Operator’s activities pursuant to this Agreement, including but not limited to all applicable sections of the Municipal Code of Midland, Texas, as may be amended, said sections being hereby incorporated by reference and made a part of this Agreement for all legal purposes. Failure to abide by any such law mentioned herein constitutes grounds for the immediate termination of this Agreement.

16. PROMPT PAY ACT - The City and Operator agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the “Prompt Pay Act”) does not waive governmental immunity.

EXECUTED this _____ day of _____, 2013.

CITY OF MIDLAND, TEXAS

By _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Holly McGrath Rosas, Interim Utilities
Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CK HAY & CATTLE FARMS, L.L.C.,
OPERATOR

By: _____
Rodney Hollums

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared **RODNEY HOLLUMS** known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that s/he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of **CK HAY & CATTLE FARMS, L.L.C.**

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

Notary Public, State of _____



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 12/17/2013

TO: City Council / City Manager

FROM: Matt Irvin, Interim Assistant Director of Utilities

SUBJECT: Consider a Resolution Approving a Contract Extension with Schumann Cattle Company.

Purpose:

Consider a Resolution approving a contract extension of one year with Schumann Cattle Company at the property known as "The Plant Farm" used for wastewater effluent disposal.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No additional fiscal impact

Discussion:

The City of Midland has a current contract with Schumann Cattle Company to operate a farming operation on the City of Midland-owned area south of Interstate 20 near the Water Pollution Control Plant for the purpose of maintaining an effluent disposal option. This contract is set to expire December 31, 2013. The City of Midland is in the process of renewing its wastewater discharge permit with the TCEQ. The farming operations are integral to this permit. This permit has technically expired and a new one has not yet issued. Staff recommends an extension of this contract for one year (expiration date December 31, 2014) in order to maintain the current operational plan until such time as the new permit is issued and new contracts can be developed which will take into account new permit conditions.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
1-YEAR EFFLUENT FARM LEASE RENEWAL
AGREEMENT BETWEEN THE CITY OF MIDLAND,
TEXAS, AND SCHUMANN CATTLE COMPANY, FOR
OPERATION OF THE CONNER EFFLUENT FARM**

WHEREAS, the City Council previously authorized the execution of a Lease Agreement with Schumann Cattle Company, for operation of the Conner Effluent Farm; and

WHEREAS, said Lease Agreement, as previously amended, will expire on December 31, 2013; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a 1-year renewal of said agreement with Schumann Cattle Company for operation of the Conner Effluent Farm;

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

THAT the Mayor and City Secretary, are hereby authorized and directed to execute and attest, respectively, on behalf of the City, a 1-year Effluent Farm Operations Renewal Agreement with the Schumann Cattle Company, said agreement being attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Holly McGrath Rosas, Interim Director
of Utilities

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

STATE OF TEXAS
COUNTY OF MIDLAND

§
§
§

CONNER FARM OPERATIONS
RENEWAL AGREEMENT

This Agreement is made and entered into this 18th day of December, 2013, by and between the City of Midland, Texas, hereinafter referred to as “City”, and Schumann Cattle Company, hereinafter referred to as “Operator”;

W I T N E S S E T H:

WHEREAS, City owns certain land as hereinafter described, which is used in the disposal of effluent waste water through farming programs, and said City is desirous of leasing to Operator such lands for such farming operations; and

WHEREAS, Operator will engage in farming operations on such land and desires to lease said land for such farming purposes and assist the City in the disposal of effluent waste water through farming programs;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE RIGHTS, covenants and agreements herein contained, City does hereby grant, devise and let to Operator, and Operator does hereby hire, take and lease from City the following premises, upon the following terms and conditions, to wit:

1. City does grant, devise and lease unto Operator 219.3 acres consisting of the west half, except the south 100.7 acres, of Section 10, Block 38, TWP-2-S, T&P Ry. Co. Survey, Midland County, Texas, hereinafter referred to as the “Site”, for farming operations as herein described.
2. The term of this Agreement shall be from January 1, 2014, through December 31, 2014.
3. Operator, in consideration of the use of the Site and the rights granted herein, does covenant and agree to pay the City one-fourth (1/4) of the gross crop revenue during the term of this Agreement, as determined by receipts of sale. The payment due hereunder shall be remitted on or before February 28, 2014. Payment shall be mailed to City’s Director of Utilities, P.O. Box 1152, Midland, Texas 79702.
4. Operator shall operate and maintain one center-pivot and one side wheel roll irrigation system for use in such farming operations. The Operator shall maintain such equipment in

a good and usable condition and pay all maintenance costs necessary to keep such equipment in a good and usable condition. Operator shall pay all power costs necessary for the operation of the irrigation systems.

5. Operator agrees to farm and cultivate all tillable acreage at the Site in a good and farm-like manner during this Agreement. All plowed fields shall be maintained by Operator in a manner that will minimize erosion.

6. City shall pay the cost of fertilizer on such premises as required by City's soil sample analysis. If fields are maintained in good condition, the fertilizer supplier will apply dry fertilizer using hauling/spreading equipment. If fields are too rough for fertilizer supplier's equipment, the Operator will be responsible for fertilizer application. It is at City's sole discretion to determine if the fields are too rough.

7. Operator shall purchase all seed for crops cultivated at the Site at Operator's sole cost.

8. Operator shall maintain interior fencing and construct and pay for temporary fencing as may be required for operations.

9. City shall deliver, at its sole discretion, effluent generated by the City's wastewater treatment system to the Site. The volume of and quality of effluent furnished hereunder shall be in compliance with all provisions of permit No. 10223-001, as issued by the Texas Commission on Environmental Quality to the City of Midland, Texas, for the disposal of its effluent, and all applicable statutes, rules, regulations and ordinances. In the event that Operator fails to have crops ready to receive such effluent, City shall have the absolute right to enter upon the Site, without notice, and operate said premises in a manner so as to allow the proper discharge of such effluent upon said premises. City shall have the right to discharge effluent upon said premises in excess of an amount that the Operator requires. City shall have the sole right to determine the time and the quantity of the effluent to be delivered. In any event, City shall not be liable in any manner under this Agreement for failure to deliver effluent or for the quality of said effluent as herein described.

10. Proceeds from any and all settlements or awards arising out of damages proximately caused by any oilfield operation, pipeline operation or related activity on the Site shall be divided and shared between the Operator and City, with Operator being entitled to one-half (1/2) of such proceeds and City being entitled to one-half (1/2) of such proceeds. It is understood that at no time will Operator receive any proceeds from oil and gas royalties.

11. Operator shall not use the premises for any purpose other than that which is authorized herein without the prior written consent of City. Operator shall not, either directly or indirectly, assign all or any part of this Agreement or any interest, right or privilege herein,

or sublease any part of the premises or improvements thereon, without the prior written consent of the City. The issue on whether or not to grant consent to any assignment or sublease is in the sole discretion of the City.

12. Operator's obligations pursuant to this Agreement shall be and stand secured by a lien upon all crops cultivated and harvested at the Site and all proceeds from their sale, that may now or hereafter be present.

13. Operator shall act in accordance with the requirements of City of Midland Permit No. 10223-001 as issued by the Texas Commission on Environmental Quality, a copy of which has been provided to the Operator. Failure to so act shall be deemed a breach of this Agreement and grounds for the immediate termination of this Agreement.

14. Operator shall not construct underground water lines or any other permanent improvements on the premises without the prior written consent of City. Such consent will not be unreasonably withheld.

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

Commercial General Liability (including Contractual liability):

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

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

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, shall name the City as an additional insured on a claims occurred basis. City shall be provided the notice by Operator's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

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

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

The Operator certifies that the certificate of insurance provided as required herein complies with the requirements of Senate Bill 425, passed during the 82nd regular session of the Texas Legislature, and effective January 1, 2012. The City may, but shall not be required to, waive requirements under this section, as agreed by the parties.

16. INDEMNITY - OPERATOR WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF OPERATOR, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM, OPERATOR'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND OPERATOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

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

17. In the event that City or Operator should default in the performance of this Agreement or materially breach any of its provisions, the other party shall have the right to terminate this Agreement upon sixty (60) days written notice to the offending party of its intention to do so. Nothing contained herein constitutes a waiver of the right of City to damages occasioned by breach of this Agreement. For purposes of this Agreement, the term “material breach” may include, but is not limited to, the following:

- a. Breach, violation or failure to perform, observe or keep any covenant, agreement or term or condition of this Agreement by any party obligated hereunder to observe, keep or perform such condition, term, agreement or covenant, and such default continues for a period of ten (10) days after written notice thereof is given by any aggrieved party hereto to the other party.
- b. Bankruptcy of Operator through voluntary or involuntary proceedings or an assignment made for the benefit of its creditors.
- c. Failure of Operator or any of its heirs, successors or assigns to operate the property described herein in such a manner so as to allow City to discharge its effluent upon the Site, and such failure continues for a period of ten (10) days after notice thereof is given by the City to Operator.

In the event of breach by Operator, City shall have the right, following sixty (60) days written notice, to reenter the Site and remove Operator, its employees and agents therefrom, without prejudice to any legal remedies which may be used for the collection of rent. All and every claim for damages by Operator for or by reason of such reentry is hereby expressly waived. In the event of reentry, City may and is hereby fully empowered to take possession and sell at the current market price any remaining crops at the Site, and apply funds received to any and all rents due or to any damages sustained by Operator’s breach.

18. In the event that either party is prevented from completing performance of its obligations hereunder by Acts of God or any other occurrence whatsoever which is beyond the control of either party hereto and which, by the exercise of due diligence City or Operator is unable, wholly or in part, to prevent or overcome, then such party shall be excused from performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

19. **ATTORNEY’S FEES - BY EXECUTING THIS AGREEMENT, OPERATOR AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY’S FEES, WHICH ARE IN ANY WAY RELATED TO THE**

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

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

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

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

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

performing any of the work and services described hereunder by Operator shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this Agreement is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Operator shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. The City does not have the power to direct the order in which the work is done. The City shall not have the right to control the means, methods or details of the Operator's work. Operator shall assume exclusive responsibility for the work. Operator is entirely free to do the work in its own way.

22. **SURRENDER UPON EXPIRATION/TERMINATION** - It is further agreed between the parties hereto that, at the expiration or termination of this Agreement, Operator shall and will quietly and peacefully surrender and yield up the said premises, with the appurtenances thereto, unto City, in as good order and repair as the same now are in, reasonable wear and tear excepted.

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

24. **NOTICES** - All notices and communications required or permitted under this Agreement, including address changes, shall be in writing and any communication or delivery hereunder shall be deemed to have been duly made if actually delivered, transmitted by telecopier or if mailed by registered or certified mail, postage prepaid, addressed as follows:

City

City Manager
Midland City Hall
P.O. Box 1152
Midland, Texas 79702
Phone: 915/685-7201
Fax: 915/686-1643

Company

Schumann Cattle Company
Jody and Andy Schumann
P. O. Box 504
Midland, Texas 79702

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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

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

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

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

29. **CONSIDERATION** - The terms of this Agreement are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

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

31. **AS IS - OPERATOR ENTERS INTO THIS AGREEMENT WITH THE UNDERSTANDING THAT THE PROPERTY THAT IS THE SUBJECT OF THIS AGREEMENT COMES "AS IS AND WITH ALL FAULTS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED BEING MADE BY CITY THAT THE PROPERTY IS FIT FOR A PARTICULAR PURPOSE. THE OPERATOR ACKNOWLEDGES THAT OPERATOR IS NOT RELYING UPON ANY REPRESENTATION MADE BY CITY WITH RESPECT TO THE CONDITION OF THE PROPERTY, BUT IS RELYING UPON OPERATOR'S EXAMINATION OF THE PROPERTY. OPERATOR ALSO RECOGNIZES THAT THE OPERATOR ENTERS INTO THIS AGREEMENT WITH THE UNDERSTANDING THAT THE PROPERTY COMES "AS IS AND WITH ALL FAULTS," THAT OPERATOR AGREES TO MAKE OPERATOR'S OWN APPRAISAL OF THE PROPERTY AND TO ACCEPT THE RISK THAT OPERATOR MAY BE WRONG. CITY GIVES NO ASSURANCES, EXPRESS OR IMPLIED, CONCERNING THE CONDITION OF THE PROPERTY THAT IS THE SUBJECT OF THIS AGREEMENT. IN NO EVENT SHALL OPERATOR HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, THE OPERATOR ENTERS INTO THIS AGREEMENT UNDER THE EXPRESS UNDERSTANDING THE PROPERTY IS ACCEPTED "AS IS AND WITH ALL FAULTS," EXCLUDING EXPRESS OR IMPLIED WARRANTIES.**

32. **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS** - Operator shall at all times during the term of this Agreement comply with applicable federal, state, and local laws regarding Operator's activities pursuant to this Agreement, including but not limited to all applicable sections of the Municipal Code of Midland, Texas, as may be amended, said sections being hereby incorporated by reference and made a part of this Agreement for all legal purposes. Failure to abide by any such law mentioned herein constitutes grounds for the immediate termination of this Agreement.

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

34. **PRIOR AGREEMENTS** - This Agreement replaces and supercedes any prior agreement(s) between the parties regarding the subject matter contemplated herein.

EXECUTED this _____ day of _____, 2013.

CITY OF MIDLAND, TEXAS

By _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Holly McGrath Rosas, Interim Utilities
Director

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

SCHUMANN CATTLE COMPANY,
Operator

By: _____
Jody Schumann

By: _____
Andy Schumann

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared JODY SCHUMANN known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that s/he executed and delivered the foregoing instrument for the purposes and consideration therein expressed on behalf of Schumann Cattle Company.

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

Notary Public, State of _____

THE STATE OF TEXAS

§

§

COUNTY OF MIDLAND

§

BEFORE ME, the undersigned authority, on this day personally appeared ANDY SCHUMANN 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 Schumann Cattle Company.

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

Notary Public, State of _____



City Council Agenda

Approved for Agenda:
RPatrick
City Manager's Office

MEETING DATE: December 17, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Jim Compton, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by Vision Health Specialties for a zone change from PD, Planned District for Shopping Center, to O-1, Office District, on a 0.287-acre tract of land out of Section 18, Block 39, T-1-S, T&P RR Co. Survey and on Lot 2A, Block 45, Fairmont Park Addition, Section 23, City and County of Midland, Texas. (Generally located on the west side of N. Midland Drive, approximately 780 feet south of W. Loop 250 North.) District – 1.

Purpose:

Consider an ordinance on second reading on a request by Vision Health Specialties for a zone change from PD, Planned District for a Shopping Center, to O-1, Office District.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The applicant's property is located on the west side of Midland Drive, 780 feet south of W. Loop 250 North, and adjacent to the Northwest Drainage Channel. The applicant wishes to expand the existing Vision Health Specialties building to the north, requiring a replat and a rezoning of the property. The current PD, Planned District for Shopping Center, is planned to be rezoned to an O-1, Office District. Following a favorable recommendation from the Planning and Zoning Commission, City Council approved this request on first reading on November 26, 2013. It is now appropriate to consider this ordinance on second and final reading.

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 0.287-ACRE TRACT OF LAND OUT OF SECTION 18, BLOCK 39, T-1-S, T&P RR CO. SURVEY, AND LOT 2A, BLOCK 45, FAIRMONT PARK ADDITION, SECTION 23, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, TO BE USED AS AN O-1, OFFICE DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF NORTH MIDLAND DRIVE, APPROXIMATELY 780 FEET SOUTH OF WEST LOOP 250 NORTH; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of Districts under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of an O-1, Office District, as set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned PD, Planned District for a Shopping Center, and it shall be used as an O-1, Office District, said property being described as follows:

A 0.287-acre tract of land out of Section 18, Block 39, T-1-S, T&P RR Co. Survey, and Lot 2A, Block 45, Fairmont Park Addition, Section 23, City and County of Midland, Texas, said 0.287-acre tract being more specifically described by metes and bounds in Exhibit "A", which is attached hereto and incorporated herein.

SECTION TWO. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant to the City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

DESCRIPTION

OF A

VACATED AND ABANDONED PARCEL PER ORDINANCE 8313
VOL. 2525, PG. 214, DEED RECORDS OF MIDLAND CO., TEXAS

A tract of land situated within Section 18, Block 39, Township 1 South, T. & P. RR. Co. Survey, Midland County, Texas and being the same tract of land as described in Ordinance No. 8313 as filed for record in Volume 2525 at Page 214 of the Deed Records of Midland County, Texas. Said tract of land being more particularly described by metes and bounds as follows:

Beginning at a 1/2" rebar with a cap marked "West Co Midland" found, on the West right-of-way line of N. Midkiff Drive, for the Northeast corner of Lot 2A, Block 45, Fairmont Park Addition, Section 23 and addition to the City of Midland, Texas according to the map or plat thereof filed for record in Cabinet E at Page 157 of the Plat Records of Midland County, Texas;

Thence S 75°35'36" W, along the common boundary line of the tract of land herein described and the aforementioned Lot 2A, 270.07 feet to a 1/2" rebar with a cap marked "West Co Midland" found for a point of curvature;

Thence Southwesterly 30.00 feet, along the arc of a curve to the left, having a radius of 940.00 feet, a central angle of 01°49'43" and a chord which bears S 74°40'44" W, 30.00 feet to a 1/2" rebar with a cap marked "West Co Midland" found for the common North corner of said Lot 2A and Lot 1, Block 45, Fairmont Park Addition, Section 10 an addition to the City of Midland, Texas according to the map or plat thereof filed for record in Cabinet F at Page 88 of the Plat Records of Midland County, Texas;

Thence N 14°24'24" W, 24.01 feet to a 1/2" rebar with a cap marked "West Co Midland" found for the Northwest corner of the tract of land herein described;

Thence N 68°42'03" E, 302.29 feet to a 1/2" rebar with a cap marked "West Co Midland" found, on the above-mentioned West right-of-way line, for the Northeast corner of the tract of land herein described;

Thence S 14°22'05" E, along the aforementioned West right-of-way line, 59.81 feet to the Point of Beginning.

Said tract of land containing 12,509 square feet or 0.287 acre, more or less.



CASE NO. 2-13-047

PLANNING AND ZONING COMMISSION

November 4, 2013

CASE: Z-13-047, Vision Health Specialties.

REQUEST: Hold a public hearing and consider a request for a zone change from PD, Planned District for Shopping Center, to O-1, Office District.

OWNER: Vision Health Specialties.

REPRESENTATIVE: Maverick Engineering.

LEGAL DESCRIPTION: On a 0.287-acre tract of land out of Section 18, Block 39, T-1-S, T&P RR Co. Survey and on Lot 2A, Block 45, Fairmont Park Addition, Section 23, City and County of Midland, Texas.

LOCATION: Generally located on the west side of N. Midland Drive, approximately 780 feet south of W. Loop 250 North.

CURRENT ZONING: PD, Planned District for Shopping Center.

ASSOCIATED CASE: P-13-089, Fairmont Park Addition, Section 46.

DETAILS OF REQUEST:

1. The applicant's property, location of the Vision Health Specialties building, is located on the west side of Midland Drive, 780 feet south of W. Loop 250 North, and adjacent to the Northwest Drainage Channel. The applicant wishes to expand the building, and in order to do so, the property must be replatted and rezoned. The current zoning of the property is a Planned District for a Shopping Center, which includes an approved site plan that limits the building envelop and limits the building to 6,000 square feet, as well as other restrictions. The proposed expansion would violate the current Planned District. Rather than amending the Planned District, staff recommended the applicant rezone the property to an O-1, Office District. The O-1 District allows for medical offices, so the current use of the property would meet this requirement.

SURROUNDING ZONING AND LAND USE:

2. This applicant's property is about 780 feet south of Loop 250 North, particularly directly south of the Northwest Drainage Channel, and west of Midland Drive.

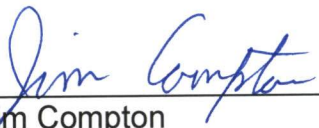
The properties to the north, west, and south of the property are all zoned PD, Planned District for Shopping Center. The buildings to north include Sonic and Staples, and to the west and south is the location of Home Depot, Target, and Western National Bank. To the east across Midland Drive are a 1F-2 and 1F-3, One-Family Dwelling Districts.

ANALYSIS:

3. The property was last replatted as Fairmont Park Addition, Section 23, on October 1998. It was zoned as PD, Planned District for Shopping Center, with an underlining zoning of LR-2, Local Retail District, also in October 1998. In May 2005, a vacation abandoning a portion of the drainage channel easement was approved and sold to the property owner. The building already exists on the property, but the applicants are now wishing to expand to the north. The property will need to be replatted to include the portion of the drainage channel which was vacated and will need to be rezoned. Instead of amending the Planned District and going through the site plan approval process, staff recommended the rezoning to an O-1, Office District. According to the Comprehensive Plan, office land uses are appropriate for professional and administrative uses, such as with the existing use of the building on the site. Additionally, the O-1 District would be more restrictive than the initial LR-2 District, which is the underlining zoning of the Planned District. Staff will also have the opportunity to review the site administratively to ensure it meets all City Code requirements. Finally, rezoning to an Office District would reduce the burden of a site plan, and would allow for greater flexibility to the owners by not restricting the site to specific conditions in an ordinance. For these reasons, we find the zone change request to be reasonable.

STAFF RECOMMENDATION:

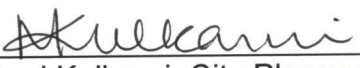
Staff recommends approval of this request for a zone change from PD, Planned District for Shopping Center, to O-1, Office District.



Jim Compton
Planning Division Manager
Department of Development Services

Attachments:

Application
Maps



Madhuri Kulkarni, City Planner
Department of Development Services

Case Number: Z-13-047

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Maverick Engineering - Stephen Marcum 432-262-0616 smarcum@maverick-eng.com
Applicant Name (Phone/e-mail)

P.O. Box 6040 Midland, Tx 79704
Address Zip Code

Vision Health Specialties 432-352-0788 chad@midland-dci.com
Property Owner Name (Phone/e-mail)

4109 N. Midland Drive Midland, Tx 79707
Address Zip Code

Same as Applicant
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. 4109 N. Midland Drive
Lot 2A in block 45, Fairmont Park, Section 23

PRESENT ZONE: PDSC REQUESTED ZONE: 01
(List by tracts if more than one district is requested)

Reason for Zone Change Request: Addition to existing building,
rezone to correct use.

Present Use of Property: Office - Vision Health Specialties (VHS)

Proposed Use of Property: Office - VHS

How will zone change affect the public health, safety and welfare? It will not
impact public health.

Describe how conditions affecting the property have changed since present zoning designation:
A portion of the drainage easement was never used,
addition to the building will make better use of vacant land.

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

Stephen Marcum who, being by me duly sworn, upon oath says: That (s)he is authorized by Vision Health Specialties the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

[Signature]

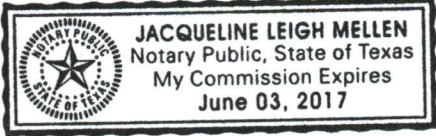
Authorized Agent (signature)

Subscribed and sworn to before me, this 8 day of OCTOBER, 20 13, to certify which witness my hand and seal of office.

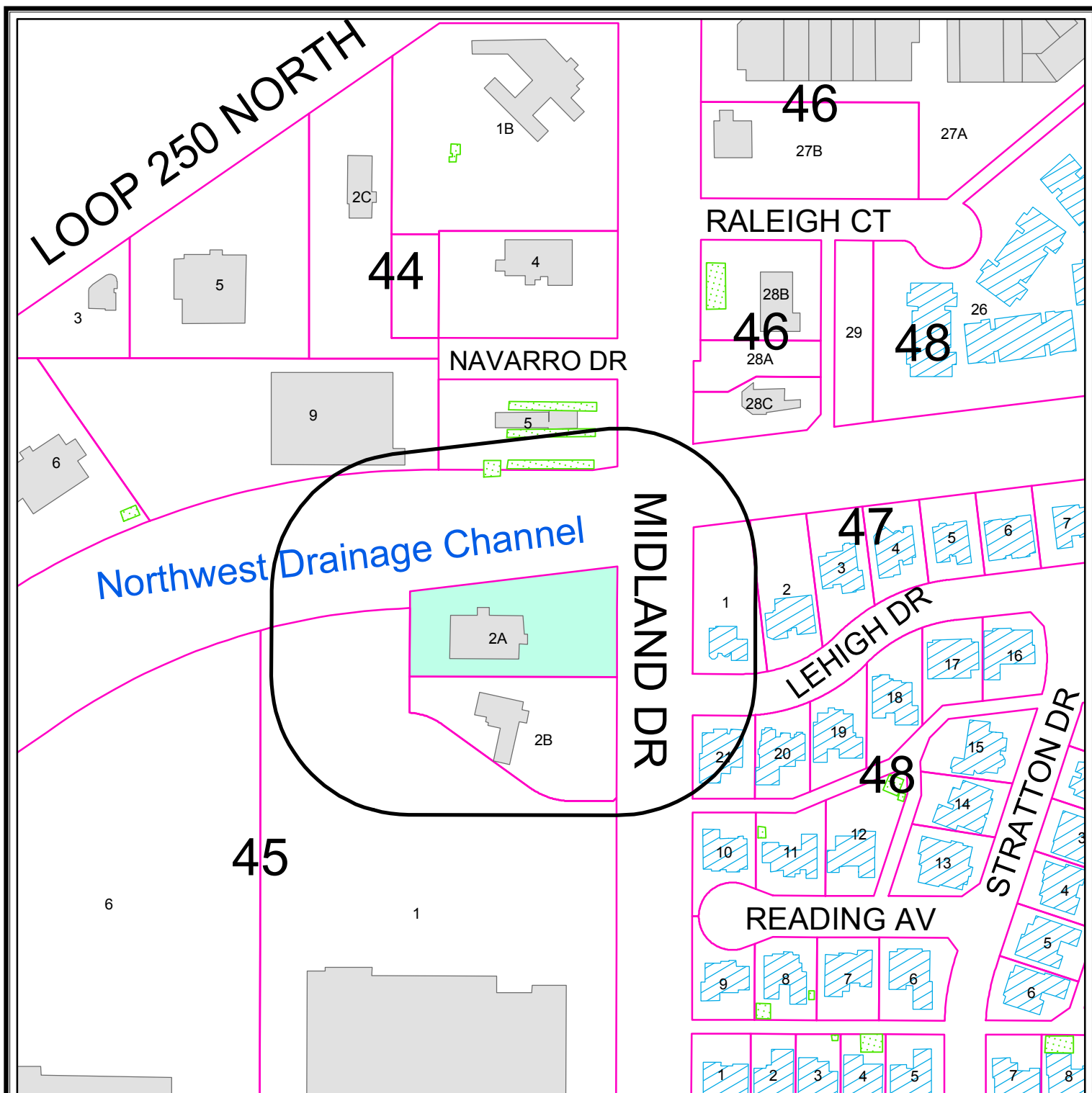
(Jim)

FOR OFFICE USE ONLY	
Rec'd By: _____	Date: _____
Assigned: <u>MK</u>	
For: <u>P&Z</u>	On: <u>11/4/13</u>

Jacqueline Leigh Mellen
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS



****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

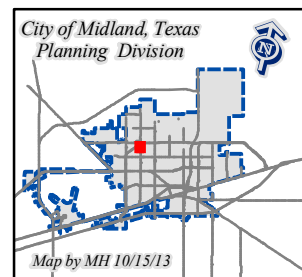
Z - 13 - 047

Scale: 1" = 200'

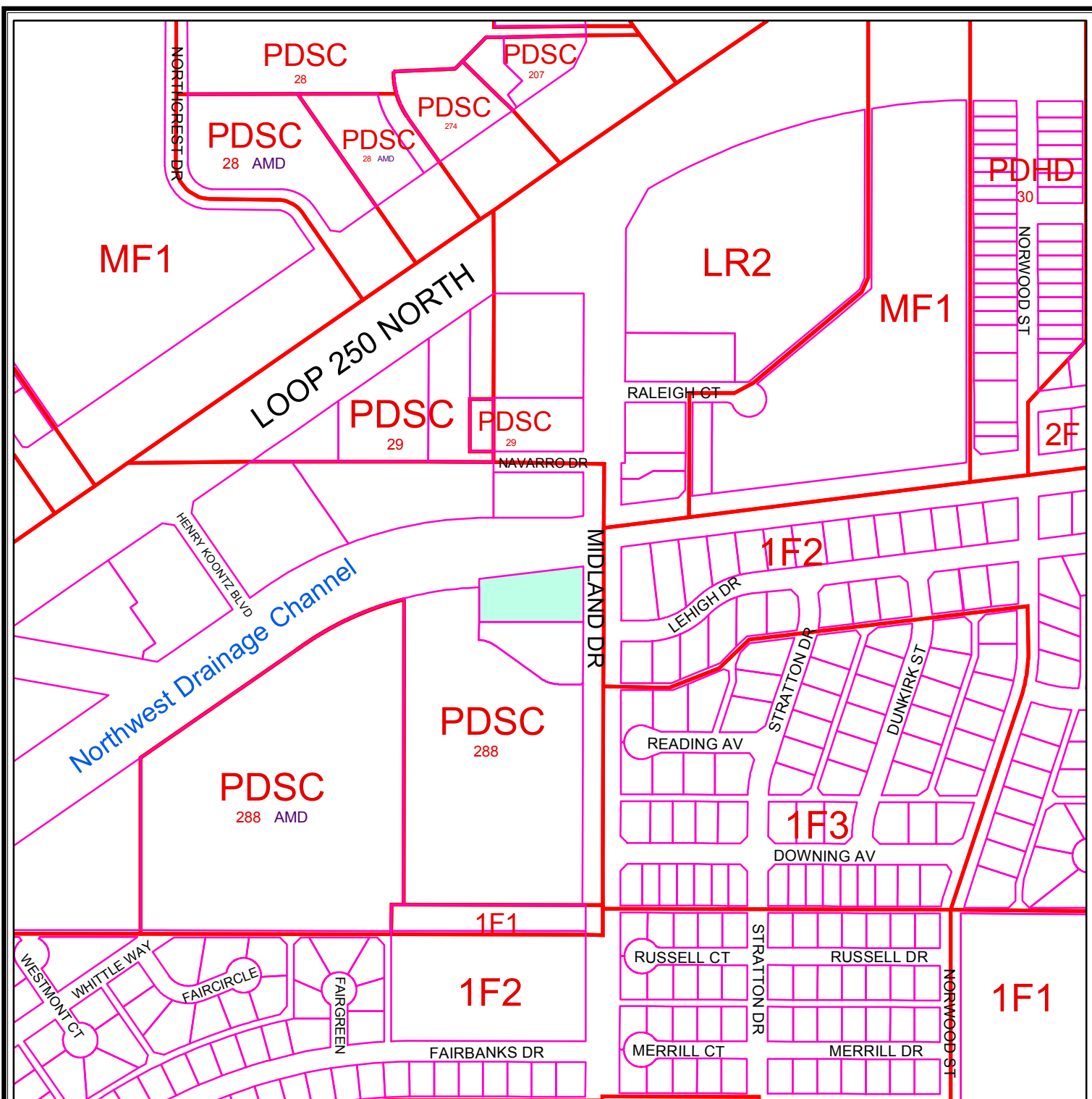
Consider a request for a zone change from PD, Planned District for a Shopping Center, to O-1, Office District on a 0.287-acre tract of land out of Section 18, Block 39, T-1-S, T & P RR Co. Survey and on Lot 2A, Block 45, Fairmont Park Addition, Section 23, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 13 - 047

Scale: 1" = 400'

Consider a request for a zone change from PD, Planned District for a Shopping Center, to O-1, Office District on a 0.287-acre tract of land out of Section 18, Block 39, T-1-S, T & P RR Co. Survey and on Lot 2A, Block 45, Fairmont Park Addition, Section 23, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	O1, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
RPatrick
City Manager's Office

MEETING DATE: December 17, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Jim Compton, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by Nemecio Torres for an Amended Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on a 6,369 square foot portion of the west 24.25 feet of Lot 9 and all of Lots 10-12, Block 65, Original Town, City and County of Midland, Texas. (Generally located on the southeast corner of the intersection of W. Wall Street and S. Colorado Street, District-2).

Purpose: Consider an ordinance on second reading on a request by Nemecio Torres for an Amended Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, 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:

The applicant received approval from the City Council for a Specific Use Permit in 2007 for on-premise consumption of alcohol in a restaurant. Nemecio Torres now wishes to expand the area of alcoholic beverage sales from 2,285 square feet to 3,625 square feet. Therefore, they have submitted this request to amend the existing permit. The restaurant floor area is approximately 3,625 square feet and the seating capacity is 240. The City Council voted to approve this ordinance on first reading on November 26, 2013. This ordinance is now ready for consideration on second and final reading.

Attachments: Proposed Ordinance, Exhibit A & B

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS A 6,369 SQUARE FOOT PORTION OF THE WEST 24.25 FEET OF LOT 9 AND ALL OF LOTS 10-12, BLOCK 65, ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF WEST WALL STREET AND SOUTH COLORADO STREET), WHICH IS PRESENTLY ZONED C-1, CENTRAL AREA DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, Texas, in compliance with the City Charter and the State law with reference to the granting of specific use permits under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after holding due hearings affording a full and fair hearing to all of the property owners generally, and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body of the City of Midland finds that the public convenience will be best served by the granting of a Specific Use Permit With Term, set out hereinafter, on the property described in Section One hereof;

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

SECTION ONE. That the zoning use classification of the following described property, which is presently zoned C-1, Central Area District, to-wit:

A 6,369 square foot portion of the west 24.25 feet of Lot 9 and all of Lots 10-12, Block 65, Original Town, 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 C-1, Central Area District.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

- A. That the restaurant shall be limited to 3,625 contiguous square feet in area and a maximum seating capacity of 240.
- B. That the days and hours of alcoholic beverage sales and consumption shall be limited to Monday through Saturday from 10:30 a.m. to 12:00 a.m. (Midnight), and Sunday from 12:00 p.m. (Noon) to 12:00 a.m. (Midnight).
- C. That the sale and on-premise consumption of alcoholic beverages shall conform to all applicable laws established by the City of Midland and the State of Texas.
- D. That the applicant shall obtain a Certificate of Occupancy to ensure compliance with the conditions of this permit.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by

the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

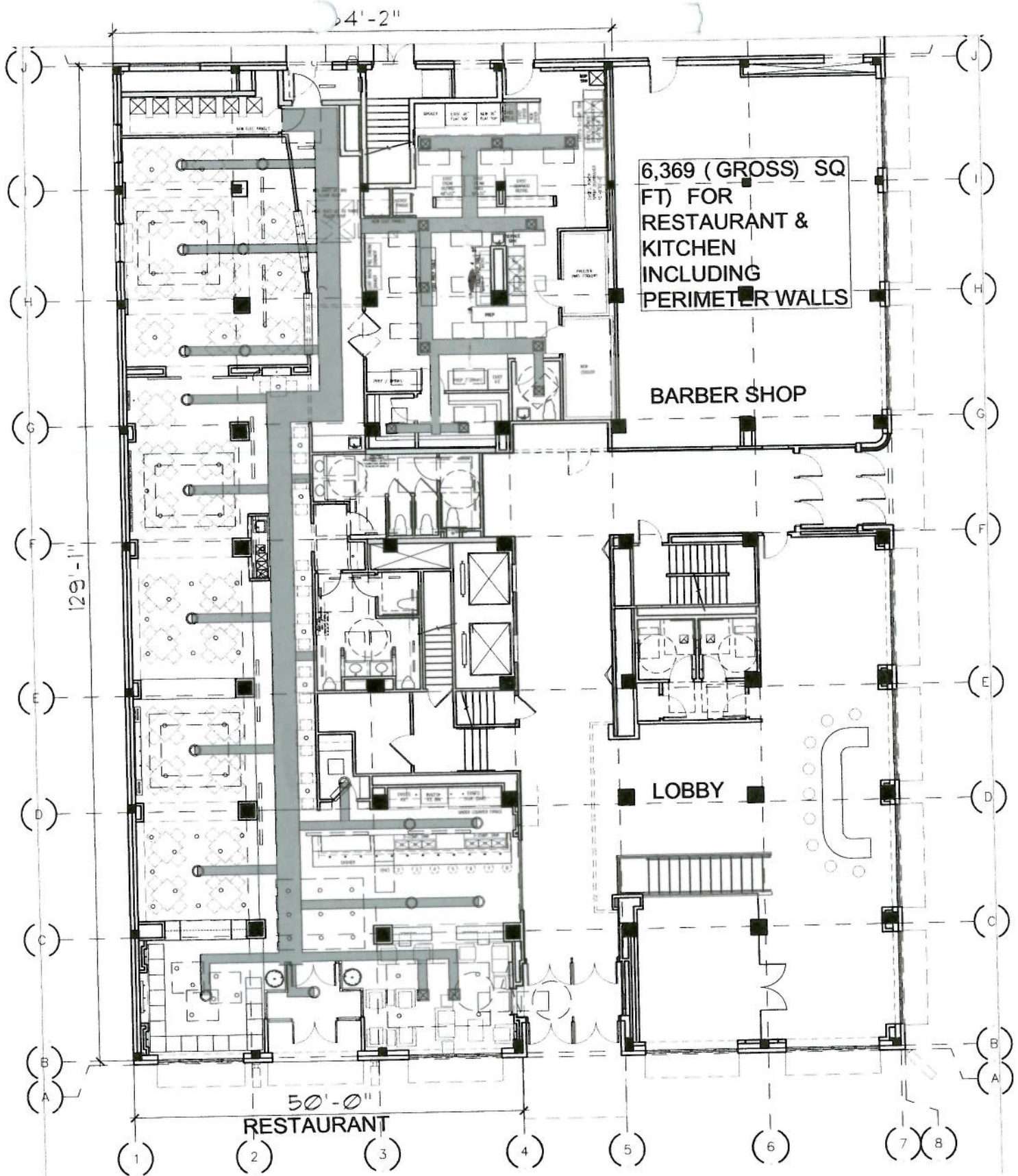
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant to the City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



ASD-02 - 11.07.12

OCT - 7 2013

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Jason S. Dean Architects, LLC
ARCHITECTURE | PLANNING
MIDLAND | ODESSA
JASONSOTTDEAN.COM
JASON@JASONSDEAN.COM
214.417.7035

CANCUN GRILL



NEMECKO TORRES & JAVIER VALLAS
223 W. WALL STREET, SUITE 121, MIDLAND, TEXAS

CITY OF MIDLAND
PLANNING DEPARTMENT

CASE NO. S-13-015 25.6

PLANNING AND ZONING COMMISSION

November 4, 2013

CASE: S-13-015, Nemecio Torres.

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: Nemecio Torres.

OWNER: Nemecio Torres.

LEGAL DESCRIPTION: 6,369 square foot portion of the west 24.25 feet of Lot 9 and all of Lots 10-12, Block 65, Original Town, City and County of Midland, Texas.

LOCATION: Generally located on the southeast corner of the intersection of W. Wall Street and S. Colorado Street.

CURRENT ZONING: C-1, Central Area District.

DETAILS OF REQUEST:

1. The applicant received approval of a Specific Use Permit in 2007 for on-premise consumption of alcohol in a restaurant. They now wish to expand the area of alcoholic beverage sales from 2,285 square feet to 3,625 square feet. Therefore, they have submitted this request to amend the existing permit. The restaurant floor area is approximately 3,625 square feet and the seating capacity is 240.

SURROUNDING ZONING AND LAND USE:

2. The proposed SUP is located in a C-1 District. Southeast across the Union Pacific Railroad is C-3 District. Located to the west of the site is a Planned District for a Housing Development. There are 12 businesses that serve alcohol within a mile radius of the restaurant.

ANALYSIS:

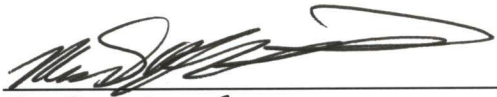
3. The Cancun Grill has 3,625 contiguous square feet of floor area. The City of Midland Building Official has determined that the maximum seating capacity is 240 seats. Cancun Grill has an existing Special Use Permit

that was to be renewed in June 2013. However, it was determined that because of the restaurant expansion a new Special Use Permit is required. The previous Special Use Permit allowed for a maximum 2,285 contiguous square feet in area and a maximum seating capacity not exceed 80 people.

STAFF RECOMMENDATION:

Staff recommends approval of this request for a Specific Use Permit with Term for the sale of all alcoholic beverages for on-site consumption in a restaurant, together with the uses permitted in the present C-1, Central Area District; we recommend that any approval be subject to the following conditions:

1. That the restaurant shall not exceed 3,625 contiguous square feet of floor area and a maximum seating capacity of 240.
2. That the days and hours of alcoholic beverage sales shall be limited to Monday through Saturday from 10:30 a.m. to 12:00 midnight, and Sunday from 12:00 noon to 12:00 midnight.
3. That the use and operation of this restaurant shall conform with all the laws of the State of Texas and the regulations pertaining to the sale and consumption of alcoholic beverages specified in Section 11-1-10(c)(1) of the Midland City Code as amended from time to time.
4. The applicant shall obtain a Certificate of Occupancy to ensure the conditions of this permit are followed.



Jim Compton *FCM*
Planning Division Manager
Department of Development Services



Robert Baronti, Jr., AICP
Sr. Planner
Department of Development Services

Attachments:

Application
Map

Case Number: S13015**CITY OF MIDLAND**
Planning Division**APPLICATION FOR A SPECIFIC USE PERMIT WITH TERM**
FOR THE SALE OF ALCOHOLIC BEVERAGES
FOR ON-PREMISE CONSUMPTION

NEMECIO TORRES 432-770-7982 N.TORRES@HOTMAIL.COM
Applicant Name Phone/e-mail
223 W WALL MIDLAND TX 79703
Address Zip Code

Property Owner Name Phone/e-mail
Address Zip Code

Operator (if different from Applicant or Property Owner) Phone/e-mail
Carmona Grill 432-618-0390
Address Zip Code

Type of Business: RESTAURANT BAR
(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.)

223 W WALL MIDLAND TX 79703

Current Zoning: _____

Seating Floor Area: 3,625 FT Max. Seating Capacity: ~~100~~ 240

Proposed hours and days of alcoholic beverage sales LUNCH 11:00 TO 1:45
DINNER 5:30 TO 9:00 PM

Reason for request: SALE OF ALCOHOLIC BEVERAGES
WITH FOOD AT THE RESTAURANT

Restroom fixtures: Men - Toilets / Urinals ✓ Bathroom Sinks ✓
EXPANDED OF POT Women - Toilets ✓ Bathroom Sinks ✓

REQUIRED SUBMITTALS

1. Application fee: \$300 ✓.
2. Site plan - 16 copies (FOLDED) _____.
3. On a CD in .pdf and .jpg digital format _____.

SIGNATURES:

Applicant: Nemecio Torres Date: _____
Property Owner: Lundy Date: 9.12.13

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY of MIDLAND

Before me, the undersigned authority, on this day personally appeared Nemecio Torres who, being by me duly sworn, upon oath says: That (s)he is authorized by Nemecio Torres, 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.

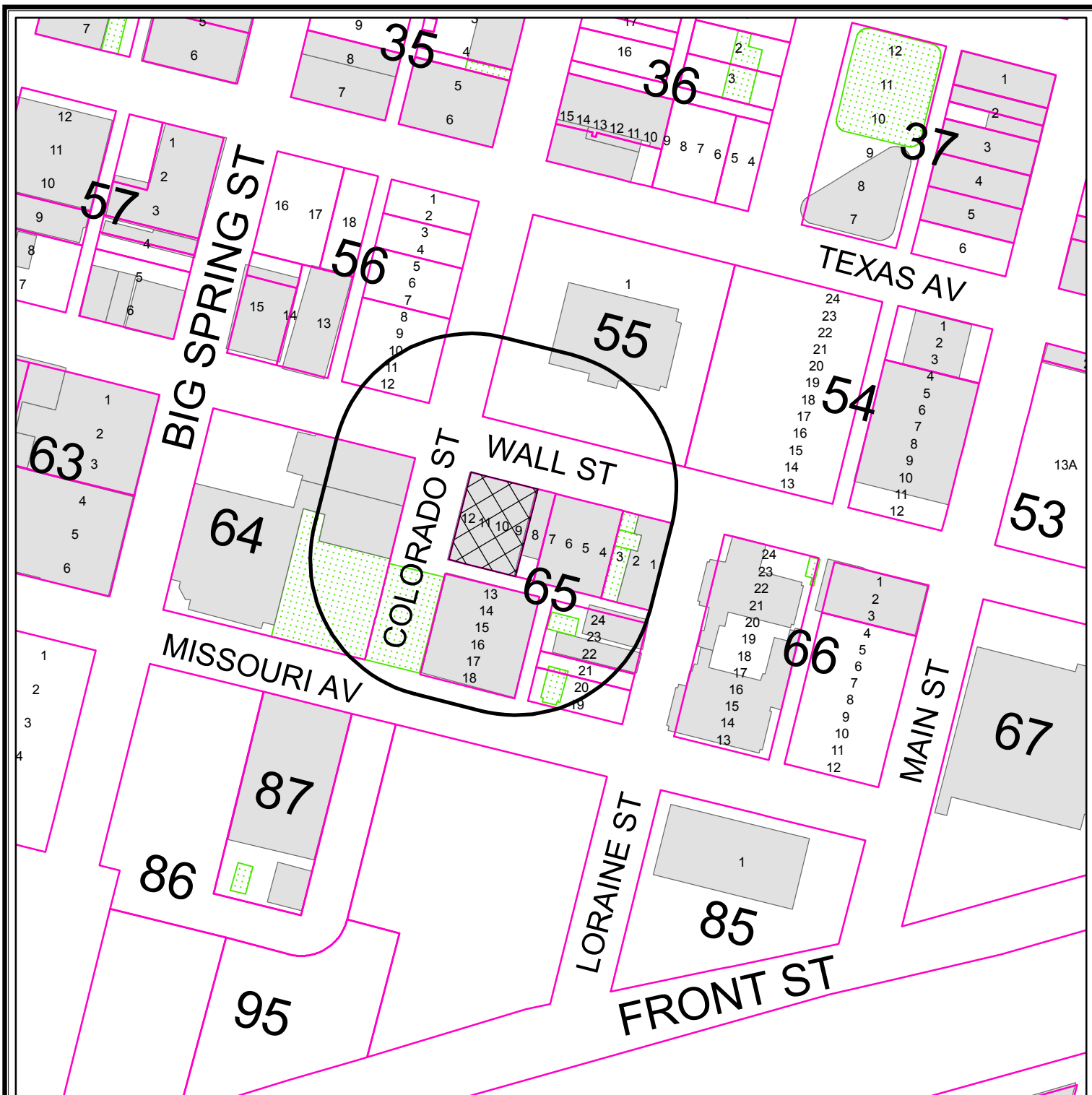
Subscribed and sworn to before me, this 18 day of September, 20 13, to certify which witness my hand and seal of office.

Lora Iglesias
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>MH</u>	Date: <u>10-7-13</u>
Assigned: <u>BB</u>	
For: <u>P&Z</u>	On: <u>11/4/13</u>



****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

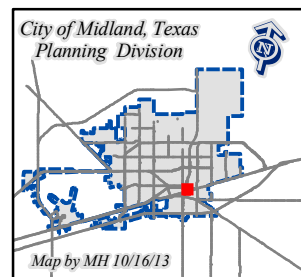
S - 13 - 015

Scale: 1" = 200'

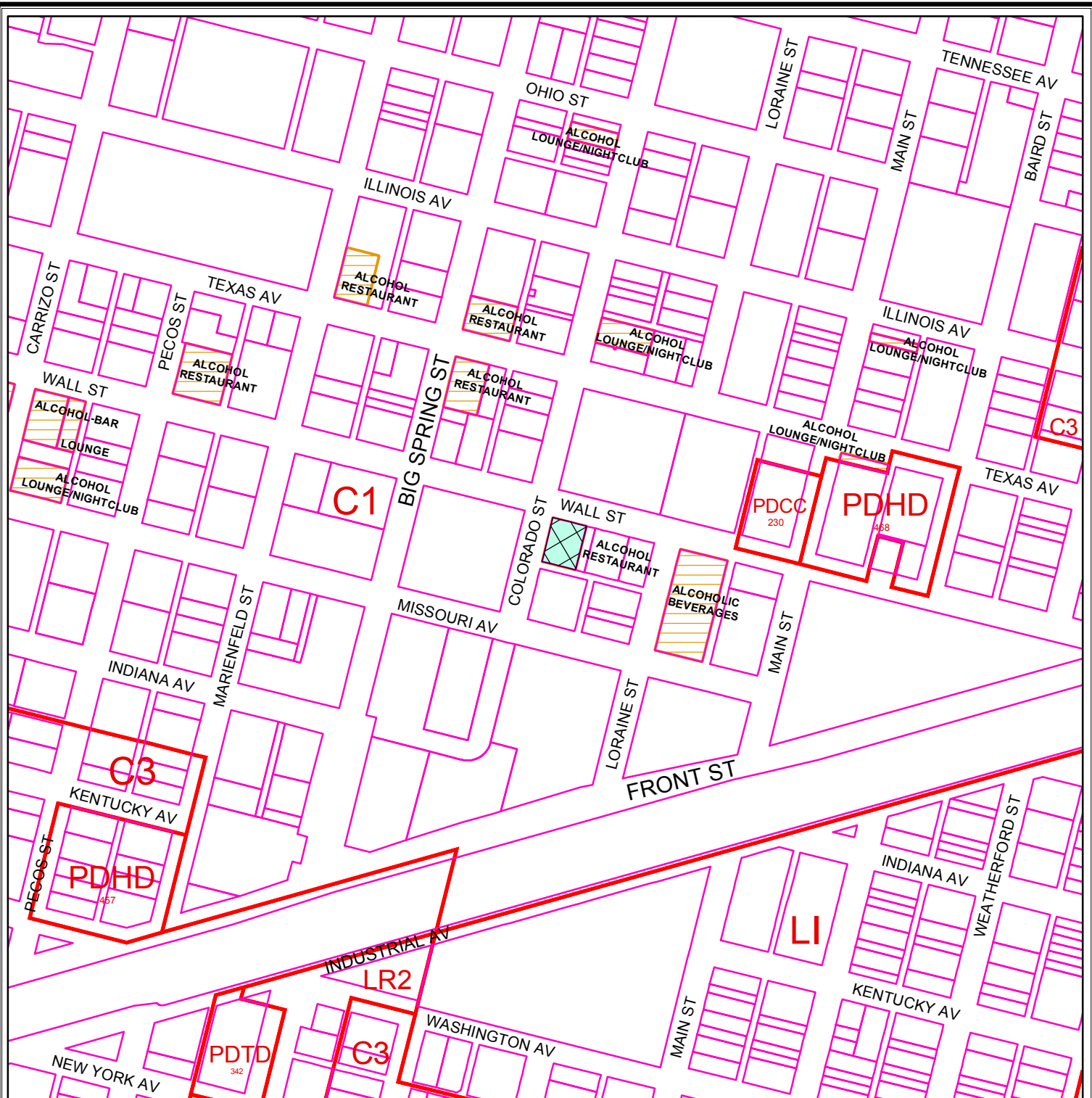
Consider a request for an Amended Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on a 6,369 square foot portion of the west 24.25 feet of Lot 9 and all of Lots 10 - 12, Block 65, Original Town, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- ACCESSORY BLDGS



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ZONING MAP

S - 13 - 015

Scale: 1" = 400'

Consider a request for an Amended Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on a 6,369 square foot portion of the west 24.25 feet of Lot 9 and all of Lots 10 - 12, Block 65, Original Town, City and County of Midland, Texas.

LEGEND

ZONING PARCELS SPECIFIC USE PERMITS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
RPatrick
City Manager's Office

MEETING DATE: December 17, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Jim Compton, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by Midland Visions 2000 for the vacation of Right-Of-Way, being a 0.05-acre portion of S. Calhoun Street and E. Washington Avenue adjacent to Lot 12, Block 22, Greenwood Addition, Third, Fourth, and Fifth Sections City and County of Midland, Texas (Generally located on the southeast corner of the intersection of S. Calhoun Street and E. Washington Avenue.) District - 2

Purpose: Consider an ordinance on second reading on a request by for Midland Visions 2000 the vacation of Right-Of-Way being a 0.05-acre portion S. Calhoun Street and E. Washington Avenue adjacent to Lot 12, Block 22, Greenwood Addition, Third, Fourth, and Fifth Sections City and County of Midland, Texas

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

MCAD list the value of this easement at \$3962.50. However, since we are working with Midland Visions 2000 a non-profit organization, staff recommends that no compensation be required.

Discussion:

The applicant Midland Visions 2000 is requesting to vacate the above described Right-Of-Way being a 0.05-acre portion of the Right-Of-Way of S. Calhoun Street and E. Washington Avenue adjacent to Lot 12, Block 22, Greenwood Addition, Third, Fourth, and Fifth Sections City and County of Midland, Texas. The applicant wishes to add a second structure to the property. The applicant is requesting the vacation in order to meet the minimum building setback. Staff recommends approval of this request.

ATTACHMENTS:

Application

Maps

Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE VACATING AND ABANDONING A 0.05-ACRE PORTION OF SOUTH CALHOUN STREET AND EAST WASHINGTON AVENUE RIGHTS-OF-WAY ADJACENT TO LOT 12, BLOCK 22, GREENWOOD ADDITION, THIRD, FOURTH AND FIFTH SECTIONS, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF SOUTH CALHOUN STREET AND EAST WASHINGTON AVENUE); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$3,962.50; WAIVING THE FEE FOR THE COST OF THE RIGHT-OF-WAY; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 0.05-acre portion of South Calhoun Street and East Washington Avenue rights-of-way adjacent to Lot 12, Block 22, Greenwood Addition, Third, Fourth and Fifth Sections, 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 \$3,962.50, 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 waive the fee for the cost of the right-of-way in light of the abutting property owner's status as a nonprofit organization; 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 0.05-acre portion of South Calhoun Street and East Washington Avenue rights-of-way adjacent to Lot 12, Block 22, Greenwood Addition, Third, Fourth and Fifth Sections, 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 the fee for the cost of the right-of-way vacated and abandoned herein to the adjoining property owner is hereby waived in light of the abutting property owner’s status as a nonprofit organization.

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., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular

meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

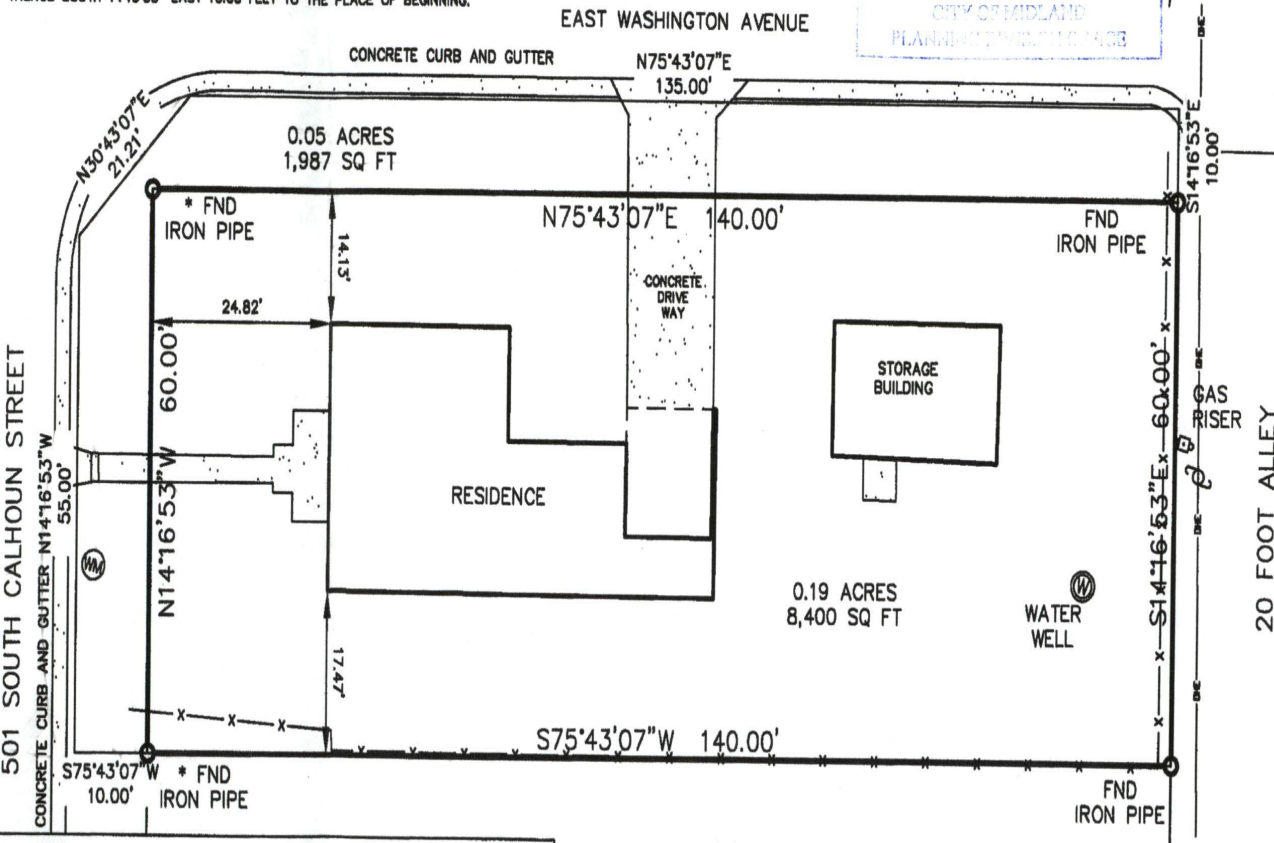
Robert Patrick, Assistant to the City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

FIELD NOTE DESCRIPTION OF THE SURVEY OF AN 0.05-ACRE (1,987 SQUARE FEET) VACATION OF THE SOUTH 10 FEET OF EAST WASHINGTON AVENUE AND THE EAST 10 FEET OF SOUTH CALHOUN STREET, ADJACENT TO LOT 12, BLOCK 22, GREENWOOD ADDITION, THIRD, FOURTH AND FIFTH SECTIONS, AN ADDITION TO THE CITY AND COUNTY OF MIDLAND, TEXAS, DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIPE FOUND FOR NORTHEAST CORNER OF SAID LOT 12 FOR THE MOST EASTERLY SOUTHEAST CORNER OF THIS TRACT;
 THENCE SOUTH 75°43'07" WEST 140.00 FEET TO AN IRON PIPE FOUND FOR THE NORTHWEST CORNER OF SAID LOT 12;
 THENCE SOUTH 14°16'53" EAST 60.00 FEET TO AN IRON PIPE FOUND FOR THE MOST SOUTHERLY SOUTHEAST CORNER OF THIS TRACT;
 THENCE SOUTH 75°43'07" WEST 10.00 FEET TO A POINT FOR THE SOUTHWEST CORNER OF THIS TRACT;
 THENCE NORTH 14°16'53" WEST 55.00 FEET TO A CUT BACK FOR THE MOST WESTERLY NORTHWEST CORNER OF THIS TRACT;
 THENCE NORTH 30°43'07" EAST 21.21 FEET TO A POINT FOR THE MOST NORTHERLY NORTHWEST CORNER OF THIS TRACT;
 THENCE NORTH 75°43'07" EAST 135.00 FEET TO A POINT FOR THE NORTHEAST CORNER OF THIS TRACT;
 THENCE SOUTH 14°16'53" EAST 10.00 FEET TO THE PLACE OF BEGINNING.



RECEIVED

NOV - 1 2013

CITY OF MIDLAND
PLANNING DEPARTMENT

FOR FLOOD INSURANCE RATING PURPOSES: THIS PROPERTY LIES WITHIN FLOOD INSURANCE ZONE DESIGNATION "X" AS DEPICTED ON FLOOD INSURANCE RATE MAP (FIRM) NUMBER 48329-C0208E, MIDLAND COUNTY, TEXAS AND INCORPORATED AREAS EFFECTIVE DATE, SEPTEMBER 16, 2005, AS ISSUED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA). CENSUS TRACT NO. 15

TO THE LIENHOLDERS, MIDLAND VISIONS 2000 (OWNER) OF THE PREMISES AND TO THE ISSUING TITLE INSURANCE UNDERWRITER: THE UNDERSIGNED DOES HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND OF THE PROPERTY LEGALLY DESCRIBED HEREON AND THAT THERE ARE NO KNOWN DISCREPANCIES, CONFLICTS, SHORTAGES IN AREA, BOUNDARY LINE CONFLICTS, ENCROACHMENTS, OVERLAPPING OF IMPROVEMENTS, EASEMENTS OR RIGHTS-OF-WAY, EXCEPT AS SHOWN HEREON.

DATED THIS 24TH DAY OF SEPTEMBER, 2013.

RJ DAUM
TEXAS RPLS 4826



SURVEY PLAT

LOT 12

BLOCK 22

AND AN 0.05-ACRE (1,987 SQUARE FEET) VACATION OF THE SOUTH 10 FEET OF EAST WASHINGTON AVENUE AND THE EAST 10 FEET OF SOUTH CALHOUN STREET, ADJACENT TO LOT 12, BLOCK 22

GREENWOOD ADDITION
THIRD, FOURTH AND FIFTH SECTIONS

AN ADDITION TO THE CITY OF MIDLAND,
AS PER PLAT OF RECORD IN
CABINET "C", PAGE 56, PLAT RECORDS,
MIDLAND COUNTY, TEXAS

SCALE: 1" = 20'

PROJECT: 73963MV
JOB NO.: 73,963

SCHUMANN ENGINEERING CO., INC.

REGISTERED PROFESSIONAL LAND SURVEYORS
LICENSED STATE LAND SURVEYORS

REGISTERED PROFESSIONAL CIVIL ENGINEERS
TEXAS AND NEW MEXICO

Civil Engineering ~ Land Surveying

408 N. PECOS STREET - P. O. BOX 504
MIDLAND, TEXAS 79702-0504

Office (432) 684-5548
Fax (432) 684-6973

NOTES:

BEARINGS AND DISTANCES SHOWN ARE GRID BASED ON GPS OBSERVATIONS AND CONFORM TO THE "TEXAS COORDINATE SYSTEM" TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983.

THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF TITLE COMMITMENT. NOT ALL EASEMENTS OR MATTERS OF TITLE MAY BE SHOWN.

* ASTERISK DENOTES CONTROLLING MONUMENT

MONUMENTS ARE A 1/2" REINFORCING BAR SET WITH YELLOW PLASTIC CAP STAMPED "SCHUMANN ENGINEERING" UNLESS OTHERWISE NOTED.

CASE NO. 13-018



Office of the City Manager

November 18, 2013

Midland City Council
City of Midland, Texas

RE: Request for vacation of a 0.05-acre portion of South Calhoun Street and East Washington Avenue rights-of-way adjacent to Lot 12, Block 22, Greenwood Addition, Third, Fourth and Fifth Sections, 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 \$3,962.50.

Very truly yours,

Courtney Sharp
City Manager

Exhibit "B"

L:\Ordinances\Planning\Vacate & Abandon\2013\Calhoun Street & Washington Avenue, Blk 22, Greenwood 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:
10 ft. from the north of 501 S. Calhoun
10 ft from NW side of 501 S. Calhoun
- II. Reason for Request: so that the property can be a multi-
dwelling premise. To add a second structure to
property
- 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:
All changes will only be made to property owned by
Midland Visions 2000.

IV. REQUIRED ITEMS:

1. Applicant(s) Information:
Name: Midland Visions 2000 / Cary Love
Address: 1212 E. Wadley Ave Phone: 432-687-3138
Midland TX 79705
City State Zip Code
2. Sealed metes and bounds description of property to be vacated (included on the map) and total square feet of vacation. Include ownership, legal-and deed information for adjacent property owners.
3. Application Fee: **\$300.00**
- Required items attached? Date Received: 1. 2. 3. MC 11/1/13

The City of Midland will take no action on this request, until items 1-3 are received.

- V. Clearance is needed from the following utility companies: City of Midland / Atmos Energy
Caprock Energy / Oncor Electric / AT&T / Suddenlink Cable TV Co. / Grande Communications

The City will route the request to these companies, but it is the applicant's responsibility to ensure clearance has been obtained and to work out any issues that may arise.

VI. Policies:

1. If the vacation request involves only a portion of a section right-of-way, such that approval would not affect the public's ability to travel along said right-of-way, then the request will be scheduled for consideration by the City Council. No public hearing will be needed.
2. If the vacation request involves an entire section of right-of-way, such that approval would cause the public to lose all rights to use it, then the following procedures apply:
 - a. Nearby land owners who have a reasonable expectation to use said right-of-way, as determined by the Transportation Division, must first agree to the proposed vacation. It is the applicant's responsibility to obtain a letter of concurrence signed by the affected landowners.
 - b. If all letters are received indicating that the affected landowners agree to the request, then a public hearing before the City Council will be scheduled. The Transportation Division will mail public notice of the hearing to landowners within 400 feet of the affected right-of-way.
 - c. If a request is approved, the right-of-way shall be divided into two equal parts, with each half becoming the property of the respective abutting owner. If the applicant desires to own the entire width, he or she must negotiate with the opposite landowner.

Signature of applicant: Shelly M. for Cary Lee

Date: 10/29/13

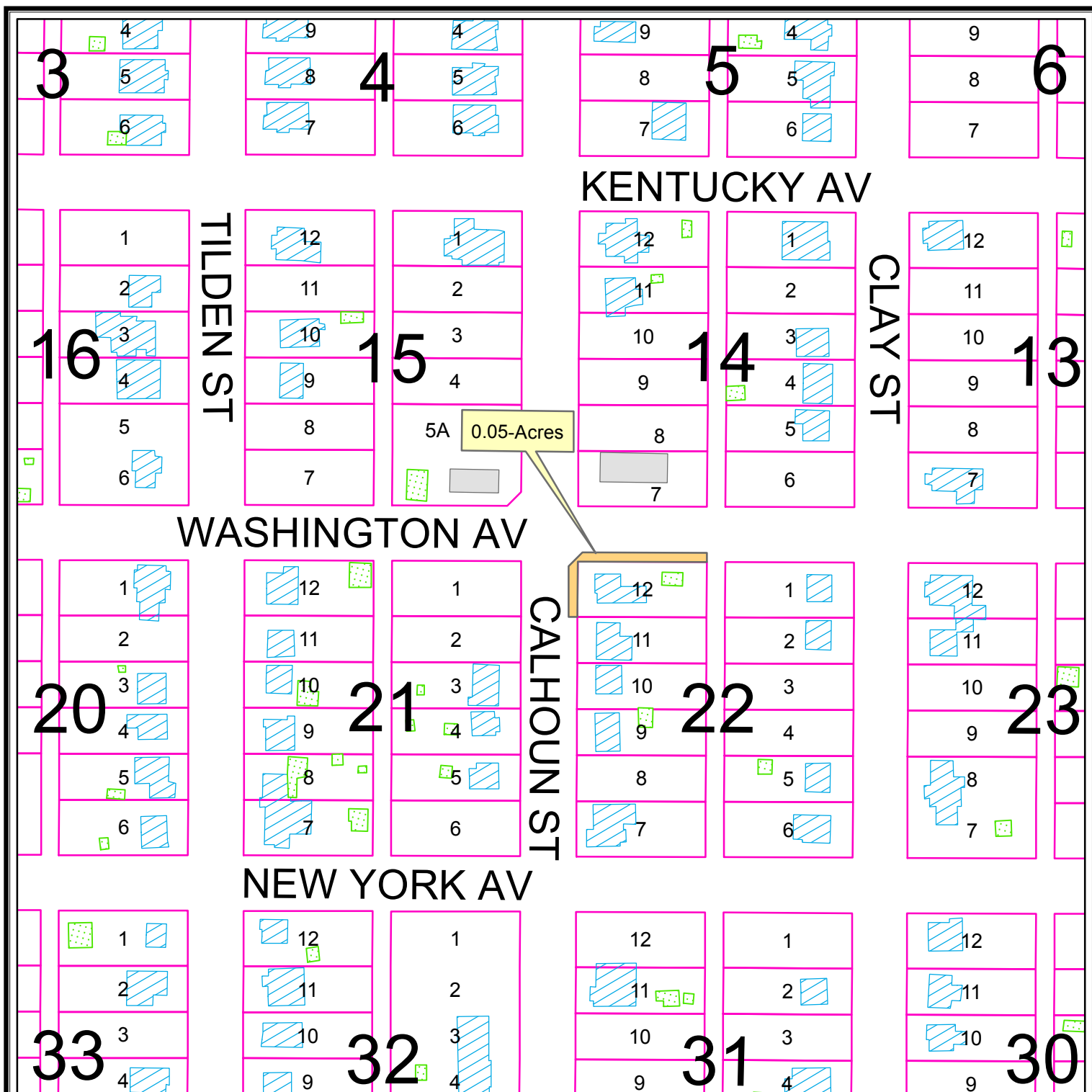
Signature of Other Affected Property Owners: _____

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>MC</u>	Date: <u>11/1/13</u>
Assigned: <u>BB</u>	
For: <u>CC</u>	On: <u>11/26/13</u>



LOCATION MAP

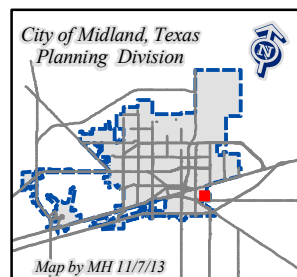
V - 13 - 018

Scale: 1" = 150'

Consider a request for the vacation of a 0.05-acre portion of the rights-of-way of S. Calhoun Street and E. Washington Avenue adjacent to Lot 12, Block 22, Greenwood Addition, Third, Fourth & Fifth, Sections, 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:
csharp
City Manager's Office

MEETING DATE: 12/17/2013

TO: City Council / City Manager

FROM: Jim Nichols, Assistant City Manager

SUBJECT: Consider an ordinance on second reading amending Water and Sewer Rates and Ordering Publication.

Purpose:

Consider an ordinance on second reading 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 and ordering publication.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Increasing Water and Sewer Rates will increase the revenues to the Water and Sewer Fund and provide necessary funding for the continued operation of the water and sewer utilities.

Discussion:

Based on the City of Midland FY 2013/14 budget for the Water Sewer Fund, current water and sewer rates will not meet expected expenditures. City staff hired Water Resources Management, LLC, a consulting firm, to review the current rate structure, project future water demands and sewer use, and recommend a new water and sewer rate structure to meet the water and sewer revenue requirements.

The consultants have calculated a Water and Sewer revenue requirement for the current fiscal year of \$53,788,62.00 (\$11.8 million for wastewater and \$42 million for water annually). The proposed rate structure to provide the necessary revenues is included in the Utility Rate Assessment Study, developed by Water Resources. However, in summary, our residential wastewater rate would change from a fixed charge of \$17.82 to a base rate for all customers of \$17.65 (including 2,000 gallons of use) and a volumetric rate of \$0.71 per 1,000 gallons (based on average winter water use each year). Water base rates would change from \$14.71 to \$17.50 for residential and commercial customers and from \$11.95 to \$14.25 for apartment customers. The water base rate will still include 2,000 gallons of use. The volumetric rates would change from \$3.50 to \$4.95 per 1,000 gallons for water use between 2,001 - 10,000 gallons; \$4.60 to \$6.50 per 1,000 gallons for water use between 10,001 - 25,000; \$6.20 to \$8.75 per 1,000 gallons for water use over 25,000 gallons. The residential 5x multiplier rate would be changed from \$31.00 per 1,000 gallons for usage over 40,000 gallons to \$43.75 per 1,000 gallons for usage over 50,000 gallons.

In addition, staff is recommending an automatic 5% rate escalation effective October 1 of 2014 and 2015 to ensure that the necessary funding levels are maintained in the Water and Sewer Fund. This escalation rate will be reevaluated in 2016 to determine what level it should be set to as this will depend heavily on the degree of water consumption of our customers over the next 2 years.

Staff recommends approval of the new water and sewer rates proposed with an effective date of January 1, 2014.

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE III, “DEPARTMENTS”, CHAPTER 1, “WATER DEPARTMENT”, SECTION 2, “RATES,” 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

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 and sewer 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,” 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 \$17.50 for the first 2,000 gallons or less;
 - ii. \$4.95 per 1,000 gallons for all water usage exceeding 2,000 gallons up to 10,000 gallons;
 - iii. \$6.50 per 1,000 gallons for all water usage exceeding 10,000 gallons up to 25,000 gallons;
 - iv. \$8.75 per 1,000 gallons for all water usage exceeding 25,000 gallons up

to 50,000 gallons;

v. \$43.75 per 1,000 gallons for all water usage exceeding 50,000 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 \$17.50 for the first 2,000 gallons or less;

ii. \$4.95 per 1,000 gallons for all water usage exceeding 2,000 gallons up to 10,000 gallons;

iii. \$6.50 per 1,000 gallons for all water usage exceeding 10,000 gallons up to 25,000 gallons;

iv. \$8.75 per 1,000 gallons for all water usage exceeding 25,000 gallons.

v. The City Manager may amend Attachment “A” as he finds necessary.

vi. All non-residential customers other than apartments who use water furnished by the City’s waterworks system for outside landscape irrigation purposes shall have installed, by the City, a separate water meter with separate water lines used exclusively for irrigation purposes.

a. Said water meter must be installed by the City, at the customer’s expense.

b. The City shall own said water meter.

c. It is the customer’s responsibility to install any necessary water lines, fittings and appurtenances thereto necessary to connect to customer’s outside landscape irrigation system, at customer’s expense, according to City’s specifications.

d. All non-residential customers, other than apartments, operating prior to the effective date of this ordinance shall have until May 1, 2018, to meet the requirements of this ordinance.

e. The penalty for violation of this section 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 five hundred dollars (\$500.00).

- (c) All water rates will increase by 5.0% on October 1, 2014, and again on October 1, 2015, unless otherwise modified by the City Council.
- (d) For apartments, the minimum charge shall be \$14.25 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 \$1,425.00 for the first 200,000 gallons or less of water used. Apartment units shall be calculated pursuant to Subsection (B) of this Section.

2. *Sewer Rates:* The monthly rates or charges for services to users of the City's sewer system shall be as follows:

- (a) Residential
 - (1) \$17.65 per month minimum, plus
 - (2) \$0.71 per 1,000 gallons for water usage greater than 2,000 gallons.
- (b) Commercial
 - (1) \$17.65 per month minimum, plus
 - (2) \$0.71 per 1,000 gallons for water usage greater than 2,000 gallons.

(B) *Customers outside of City limits:* All customers, except for those qualifying for industrial rates, who obtain water or sewer service outside the City limits shall pay 1.5 times the rates charged to customers inside the City limits.

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.

SECTION SIX. That this ordinance shall be effective on January 1, 2014.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2013, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2013.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

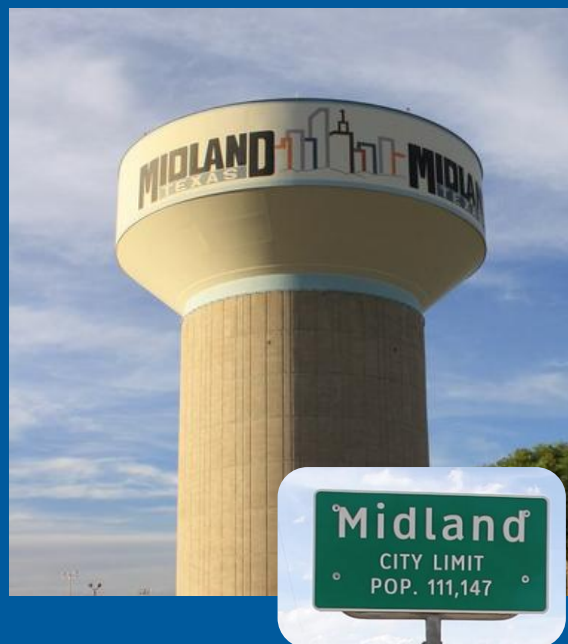
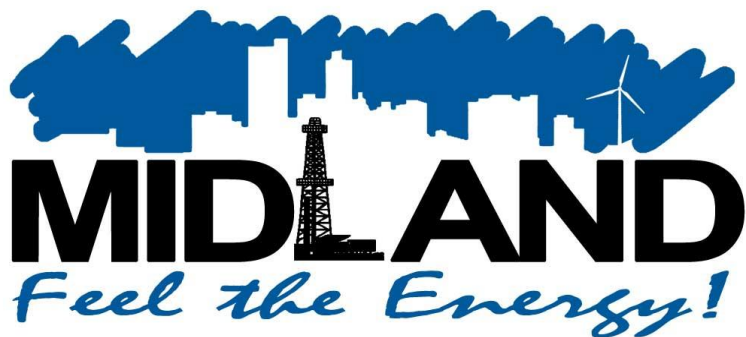
Matt Irvin, Acting Assistant Utilities Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

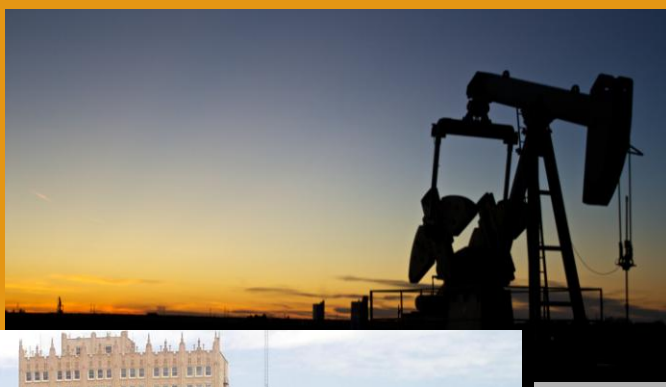


November 13, 2013
Prepared for:



FINAL REPORT

Utility Rate Assessment Study



Prepared by



8705 Shoal Creek Blvd., Suite 101, Austin, TX 78757
Phone (512) 420-9841, Fax (512) 420-9237





November 12, 2013

Mr. Courtney Sharp
City Manager
City of Midland
300 N. Loraine
Midland, Texas 79701

Re: FY 2013-14 Rate Assessment Study

Dear Mr. Sharp,

Water Resources Management, LLC (WRM) is pleased to present our findings and recommendations for the FY 2013-14 Water and Wastewater Rate Assessment Study that we have conducted on behalf of the City of Midland. The project team has reviewed available data and interviewed City staff. From this review, we were able to develop recommended rates for FY 2013-14.

The enclosed report details the methodology utilized by WRM during the course of our rate assessment analysis, and describes our findings.

It has been a pleasure working with the City of Midland. Your staff has been very efficient at answering our questions and filling data requests. Please feel free to contact our office with any questions or comments regarding this report, at (512) 420-9841.

Sincerely,

Nelisa Heddin

Vice President



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SEWER RATE DESIGN *2*

WATER RATE DESIGN *5*

RECOMMENDATIONS *7*



CITY OF MIDLAND TEXAS

FY 2013-14 Water and Wastewater Rate Assessment Study

Water Resources Management, LLC (WRM) is pleased to present to the City of Midland (City) the results of a rate assessment conducted for the City's Water and Wastewater Utility. The project team's main objective was to review the City's historical rate calculations and assist the City in designing FY 2013-14 rates based on the City's *current* water rate setting methodology and the City's proposed plan to move to a flow or volumetric based rate for all sewer customers.

WRM has met the goals and objectives of this study by utilizing the following work-plan:

-  Review current rate setting methodology.
-  Review historical financial and usage data.
-  Analyze historical consumption patterns and conduct a trending analysis to project usage in FY 2013-14.
-  Design rates that fully recover the City's costs associated with providing service.

FY 2013-14 Water and Wastewater Revenue Requirement

The City of Midland has a combined utility fund to account for the water and wastewater operations. The City's water and wastewater revenue requirement is based on the City's FY 2013-14 Proposed Budget minus depreciation. Based on our review of historical usage data and projections of future use on the system, the City's current rates are not projected to adequately recover the cash needs of the water and wastewater utility. With the help of City staff, WRM has designed rates that generate the revenue from water and sewer sales that meet the combined revenue requirement for FY 2013-14 of \$53,788,624. The revenue requirement (revenue that needs to be generated from water and sewer sales) is the total budgeted expenses (without depreciation) minus all other budgeted revenue sources (interest, tap fees, rentals, penalties, etc).



SEWER RATE DESIGN

FY 2013-14 Sewer Rate Design

In FY 2012-13, the City charged inside city residential customers (including apartment units) a monthly flat sewer rate of \$17.82. Inside city commercial customers were charged a monthly base rate of \$17.82 and a decreasing volumetric rate for flow 25,000 gallons to 500,000 gallons of \$.71 per thousand gallons and above 500,000 gallons of \$.54 per thousand gallons.

In FY 2012-13, the City began the process of moving to a residential volumetric rate based on a resident's measured winter water use average. During the winter months, the primary use of water is typically for indoor household purposes, not irrigation. This water use is a good estimate of the amount of wastewater being discharged into the sewer system. WRM used the 2012 Residential winter average data provided by the City as well as the Commercial and Apartment usage for CY 2012 to design the proposed FY 2013-14 sewer rates.

WRM recommends moving to one monthly base rate for all customers and a volumetric rate based on the winter average for residential and 100% of water consumption for commercial and apartment users. The City's monthly sewer base rate includes 2,000 gallons per customer or apartment unit. WRM proposes the sewer rate increase and rate structure change as listed in Table 1.

Table 1: Current and Proposed Sewer Rates for all Inside City Customers

Sewer Rates (Inside City Customers)	FY 2012-13 Rates	FY 2013-14 Proposed Rates (New Structure)
Residential Flat Rate per Unit (includes Apartments)	\$17.82	
Commercial Base Rate for Water Consumption under 25,000 gallons	\$17.82	
Commercial Rate per 1,000 gallon of Water Consumption between 25,000 & 500,000	\$0.71	
Commercial Rate per 1,000 gallon of Water Consumption over 500,000	\$0.54	
All Customers Monthly Base Rate (includes 2,000 gallons per connection/unit)		\$17.65
All Customers Volumetric Rate per 1,000 gallons*		\$0.71

*The charge for Residential customers is based on their winter average.

WRM estimates that the revenue generated by the change in sewer rates would be approximately \$11.8 million dollars, an increase of about \$1.5 million dollars compared to the estimated revenue generated by the current rate design. The project team analyzed the monthly impact to a range of customers within the City limits. Table 2 below shows the impact to those customers and their average monthly sewer bills.

Table 2: Monthly Sewer Bill Analysis (Inside City Customers)

Monthly Sewer Bill	FY 2012-13 Rates	FY 2013-14 Proposed Rates (New Structure)	Monthly Bill \$ Increase
Residential (5,000 gallons)	\$17.82	\$19.78	\$1.96
Residential (10,000 gallons)	\$17.82	\$23.33	\$5.51
Commercial (50,000 gallons)	\$36.28	\$51.73	\$15.45
Commercial (200,000 gallons)	\$142.78	\$158.23	\$15.45



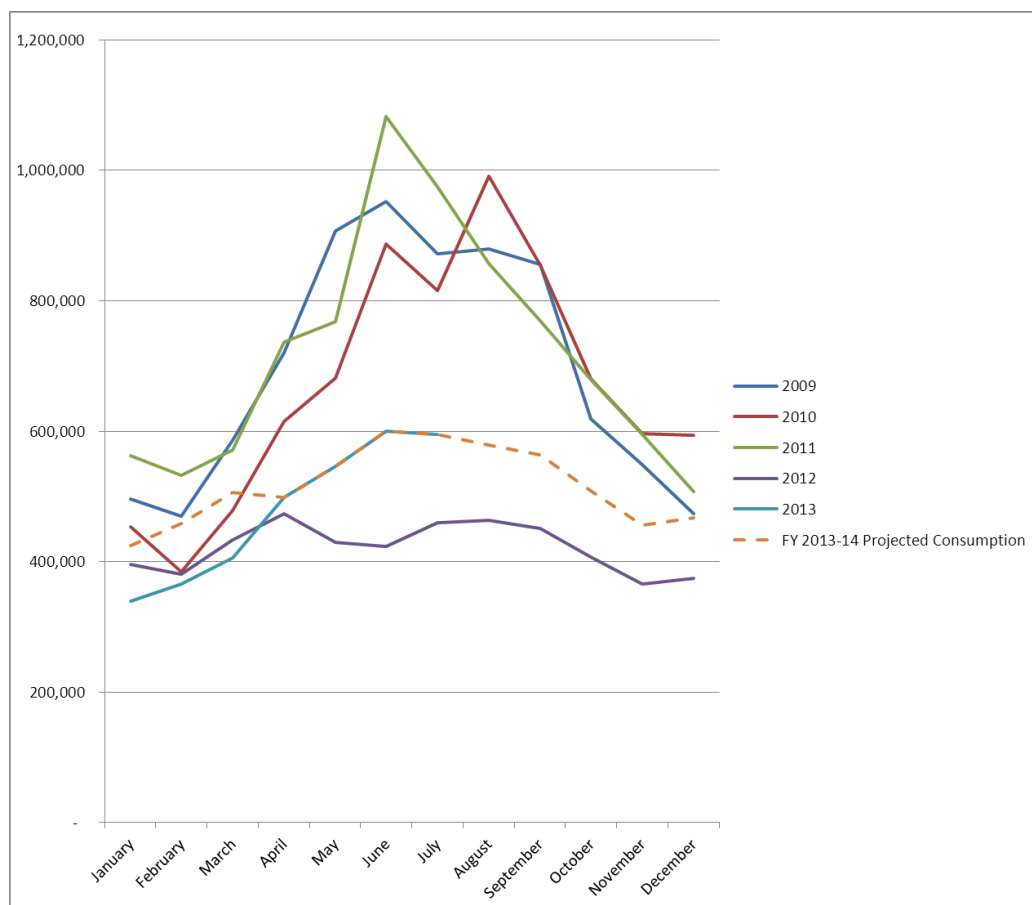
Historical and Projected Water Consumption Analysis

Due to the ongoing drought throughout Texas and water supply shortages, the City implemented strong water conservation measures. As well as restricting outdoor water use, the City also implemented a 5X multiplier on the top two tiers of users at the beginning of FY 2011-12. Due to these measures, the City reduced City supplied water consumption by 35% between FY 2010-11 and FY 2011-12. The City made adjustments to the 5X multiplier at the beginning of FY 2012-13 and again in May 2013. The May 2013 adjustment changed the 5X multiplier rate to only Residential customers and only those Residential customers using above 40,000 gallons. As a result, it is projected that future water consumption should increase from the most recent history.

In the analysis of water consumption data, WRM recognized a trending rise in water usage during the summer months of FY 2012-13. This rise is likely a result of the change in the threshold for the multiplier that was put into effect in May 2013. However, the usage is still low compared to the usage in 2009 through 2011 before the 5X multiplier was implemented; indicating a possible long-term change in consumption patterns.

WRM trended the consumption based on historical data and the increased water usage after May 2013, which assumes that the upward trend in consumption would continue. This analysis resulted in projected water sales of 6.2 billion gallons of water. The City's historical consumption as well as the trending consumption projection are shown below in Graph 1.

Graph 1: Historical and Projected Water Consumption (000s Gallons)



During this analysis, WRM also analyzed the usage within the City's tiered rate blocks. WRM has provided in Table 3 the percentage of annual bills that fall into each rate block for Residential and Commercial customers in the twelve month period beginning August 2012.

Table 3: Percent of Annual Bills, Residential and Commercial, in Rate Blocks (August 2012-July 2013)

Rate Blocks	% of Annual Bills in Rate Block
Gallons 2,000 and under	17.68%
Gallons 2,001 to 10,000	57.57%
Gallons 10,001 to 25,000	19.67%
Gallons 25,001 to 40,000	2.86%
Above 40,000	2.23%
Total	100.00%



WATER RATE DESIGN

FY 2013-14 Water Rate Design

The City's FY 2012-13 monthly base rate for water was \$14.71 per month for residential and commercial customers and \$11.95 per unit for apartment customers. The City's monthly base rate includes 2,000 gallons per customer or apartment unit. The volumetric rate for all customers is an inclining block rate structure. Table 4 below provides the City's FY 2012-13 volumetric rate structure.

Table 4: FY 2012-13 Volumetric Rate Structure

Volumetric Rate (per 1,000 gallons)	FY 2012-13 Rates
Gallons 2,000 and under	Included
Gallons 2,001 to 10,000	\$3.50
Gallons 10,001 to 25,000	\$4.60
Gallons Above 25,000	\$6.20
Residential Only 5X Multiplier (Above 40,000)	\$31.00

WRM designed the water rates to recover the remaining FY 2013-14 revenue requirement of approximately \$42 million dollars. WRM used the City's current rate structure with the City requested change of increasing the 5X multiplier to charge residential customers using above 50,000 gallons. Table 5 outlines WRM's proposed rate increases based on the projected water consumption of 6.2 billion gallons of water for the study year which assumes an upward trend of water consumption based on the increase in usage around May 2013.

Table 5: Proposed Water Rates for Inside City Customers

Monthly Base Rate and Volumetric Rates (per 1,000 gallons) (Inside City Customers)	FY 2012-13 Rates	FY 2013-14 Proposed Rates
Residential and Commercial Monthly Base Rate (includes 2,000 gallons)	\$14.71	\$17.50
Apartment Monthly Base Rate per Unit (includes 2,000 gallons per unit)	\$11.95	\$14.25
Gallons 2,000 and under	Included	Included
Gallons 2,001 to 10,000	\$3.50	\$4.95
Gallons 10,001 to 25,000	\$4.60	\$6.50
Gallons Above 25,000	\$6.20	\$8.75
Residential Only 5X Multiplier (Above 40,000)	\$31.00	
Residential Only 5X Multiplier (Above 50,000)		\$43.75

The project team analyzed the monthly impact to a range of water customers within the City limits. Table 6 below outlines the impact to those customers and their average monthly water bills.



Table 6: Monthly Water Bill Analysis (Inside City Customers)

Monthly Water Bill	FY 2012-13 Rates	FY 2013-14 Proposed Rates	Monthly Bill \$ Increase
Residential (5,000 gallons)	\$25.21	\$32.35	\$7.14
Residential (10,000 gallons)	\$42.71	\$57.10	\$14.39
Commercial (50,000 gallons)	\$266.71	\$373.35	\$106.64
Commercial (200,000 gallons)	\$1,196.71	\$1,685.85	\$489.14

RECOMMENDATIONS

Recommendation

In order to meet annual cash flow requirements for the water and wastewater utility, WRM recommends approving the following increases to the water and sewer rates as outlined in Tables 7 and 8.

Table 7: Proposed Water Rates for Inside City Customers

Water Monthly Base Rate and Volumetric Rates (per 1,000 gallons) (Inside City Customers)	FY 2013-14 Proposed Rates
Residential and Commercial Monthly Base Rate (includes 2,000 gallons)	\$17.50
Apartment Monthly Base Rate per Unit (includes 2,000 gallons per unit)	\$14.25
Gallons 2,000 and under	Included
Gallons 2,001 to 10,000	\$4.95
Gallons 10,001 to 25,000	\$6.50
Gallons Above 25,000	\$8.75
Residential Only 5X Multiplier (Above 50,000)	\$43.75

Table 8: Proposed Sewer Rates for Inside City Customers

Sewer Rates (Inside City Customers)	FY 2013-14 Proposed Rates (New Structure)
All Customers Monthly Base Rate (includes 2,000 gallons per connection/unit)	\$17.65
All Customers Volumetric Rate per 1,000 gallons*	\$0.71

*The charge for Residential customers is based on their winter average.





8705 Shoal Creek Blvd., Suite 101, Austin, TX 78757

Phone (512) 420-9841,

Fax (512) 420-9237





City Council Agenda

Approved for Agenda:
RPatrick
City Manager's Office

MEETING DATE: December 17, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Jim Compton, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by Sam's Real Estate Business Trust for a zone change from PD, Planned District for Shopping Center, to an Amended Planned District, on Lot 1A, Block 2, Westridge Park Addition, Section Three less 2.352-acres, City and County of Midland, Texas.(Generally located on the northeast corner of the intersection of Tradewinds Boulevard and Westridge Boulevard.) – District 4.

Purpose:

Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by Sam's Real Estate Business Trust for a zone change from PD, Planned District for Shopping Center, to an Amended Planned District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The applicant's property, Sam's Club, is located on the northeast corner of Tradewinds and Westridge Boulevards, and is zoned PD, Planned District for Shopping Center, with an underlining zoning of LR-2, Local Retail District. Sam's Club has experienced an increase in customers and sales, necessitating a larger space for merchandise. Thus, the applicant wishes to expand the building by adding a vestibule and restrooms. Additionally, concrete pads are proposed for a new rackhouse (another name for a Refrigeration Compressor Room), enclosed in a chain link fence, and a switchboard at

the rear of the building. The current Planned District zoning limits the building to a maximum building envelope on the north side to not exceed 15 feet, and a maximum building envelop on the south side as well. The proposed site plan, Exhibit A, shows the planned layout of the site. The addition of 5,909 square feet will increase the store to a total of 119,270 square feet. The expansion will surpass the previous building envelope on the north sideand extend 25.66 feet from the wall. A 15 foot sidewalk is planned, which will reduce the drive width from 30 feet to 24 feet. Setbacks meet the LR-2 District requirements. Parking will be decreased to 634 parking spaces, still exceeding the required 596 parking spaces. Exhibit B shows the elevations and the addition of the building. The front elevation shows the height of the addition at 33' 10"to the highest parapet, meeting with the LR-2 District maximum height requirements. The addition will be composed of split face CMU and EIFS. Exhibit C, to be used for illustrative purpose only, shows a colored rendering of the building. The Planning and Zoning Commission voted unanimously for approval at the November 18, 2013 meeting, and staff concurs.

Attachments:

Application
Maps
November 18, 2013 P&Z Staff Report
Exhibits A, B, and C
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 LOT 1A, BLOCK 2, WESTRIDGE PARK ADDITION, SECTION THREE LESS 2.352 ACRES, 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 NORTHEAST CORNER OF THE INTERSECTION OF TRADEWINDS BOULEVARD AND WESTRIDGE 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 “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 1A, Block 2, Westridge Park Addition, Section Three less 2.352 acres, 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, except as stated below.
2. That the development shall conform in all respects to the conditions shown on Exhibits “A” and “B”, which are attached hereto and incorporated herein.
3. That Exhibit “C”, which is attached hereto and incorporated herein, shall be considered illustrative.
4. That the maximum square footage of the building shall not exceed 120,000 square feet.
5. That the development shall meet all requirements of the Fire Department and the Code Administration Division.
6. That signage shall be considered illustrative and shall be in compliance with the Revised Outdoor Sign Regulations of the Midland City Code.
7. That landscaping shall be considered illustrative and shall be in compliance with the Landscape Regulations of the Midland City Code along with the additional landscape buffer.
8. That City of Midland Ordinance No. 6621 is hereby amended by this ordinance.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not

affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the ____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the ____ day of _____, A.D., 2014, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS ____ day of _____, A.D., 2014.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant to the City Manager

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

PLANNING AND ZONING COMMISSION

November 18, 2013

CASE: Z-13-048, Sam's Real Estate Business Trust.

REQUEST: Hold a public hearing and consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District.

APPLICANT: Sam's Real Estate Business Trust.

OWNER: Dune SC SUB II LLC.

LEGAL DESCRIPTION: On Lot 1A, Block 2, Westridge Park Addition, Section Three less 2.352-acres, City and County of Midland, Texas.

LOCATION: Generally located on the northeast corner of the intersection of Tradewinds Boulevard and Westridge Boulevard.

CURRENT ZONING: PD, Planned District for Shopping Center.

DETAILS OF REQUEST:

1. This property, location of Sam's Club, is on the northeast corner of Tradewinds and Westridge Boulevards. The property is currently zoned PD, Planned District for Shopping Center, with the underlying zoning of LR-2, Local Retail District. The applicants are requesting a zone change to amend the planned district in order to increase the building footprint and enlarge the available space for merchandise. A new vestibule and rest rooms will be added. Also, although not considered as part of the square footage, concrete pads are proposed for a new rackhouse with an enclosure and a switchboard which will be added at the back of the building to service new equipment in the store.

SURROUNDING ZONING AND LAND USE:

2. Sam's Club is located generally north of Westridge Boulevard (classified as a residential street), and east of Tradewinds Boulevard (classified as a collector street). The surrounding properties to the north, west, south, and east are each zoned PD, Planned District for Shopping Center, with one LR-1, Local Retail District. These PD properties primarily include hotels including the Courtyard by Marriot, Homewood Suites, Sleep Inn & Suites, and Townplace Suites Marriot, as

well as the vacant AT&T Call Center. The LR-1 District was recently rezoned for a self-service gasoline station.

ANALYSIS:

3. The lot was initially platted in March 1986, then replatted in September 1992 due to an anticipated expansion. However, the portion of land added during the replat was consequently vacated in February 1994, reverting the lot to the original dimensions from the original plat in 1986. The PD, Planned District for Shopping Center, zoning was approved in January 1986. The Planned District was associated with a site plan and elevations. The site plan depicted a maximum building envelope on the north side of the building, not to exceed 15 feet, and a maximum building envelope on the south side of the building as well. Sam's Club has experienced an increase in customers and sales, which necessitates enlarging the available space for merchandise. Additionally, vehicular traffic has increased, but the expansion would alter the drive lane in front of Sam's and reduce vehicular speed and traffic. Thus, we find that the zone change from PD, Planned District for Shopping Center, to an Amended Planned District (with an underlining zoning of LR-2, Local Retail District), is reasonable. The Planned District was already established during the initial zoning, and is to be amended simply due to the expansion of the building.

SITE PLAN:

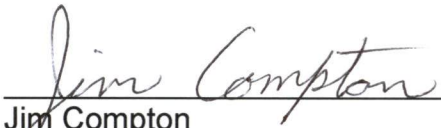
4. The site plan, Exhibit A, provides the layout and information about the site. As shown, the current Sam's Club building is approximately 113,361 square feet. The addition to the building is shown on the northern portion of the building. The vestibule will add 4,825 square feet, and the restroom will add 1,084 square feet, and will increase the total square footage of Sam's by approximately 5,909 square feet, resulting in the new total of 119,270 square feet. There are no side yard setbacks in an LR-2 District, so the expansion to the north complies with these requirements. The previous ordinance had set a maximum building envelope to not exceed 15 feet from the north wall. This expansion will surpass the previous envelope, and extend 25.66 feet from the existing wall. The current 30-foot drive will be reduced to 24 feet. A 15 foot sidewalk area is proposed between the expanded building and the 24 foot drive. Other areas added are at the southern end of the store; a concrete pad with a chain link fence is proposed for a new rack house, and a concrete pad for a new switchboard is also proposed. In terms of parking, the Zoning Code requires a ratio of one parking space for each 200 square feet of retail floor area. With this calculation, including the proposed expansion area, a total of 596 parking spaces are required. A total of 662 parking spaces are existing, and with the expansion, will reduce to 634 parking spaces, still exceeding the required number of parking spaces. Parking shown on the plan will be considered illustrative.

Exhibit B shows the front, side, rear, and an enlarged front addition elevation of the building. As shown, the height of the building is 29 feet to the parapet. The height of the new addition on the eastern side of the front elevation, shown in greater detail in the "Enlarged Elevation of New Addition," is taller at 33' 10" to the highest parapet. Since the City Code excludes parapets up to eight feet in height, this height meets the LR-2 maximum height of 28.75 feet. The building will be composed of split face CMU and EIFS. Exhibit C, to be used for illustrative purpose only, shows a colored rendering of the building.

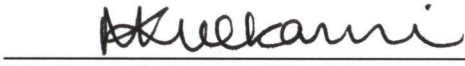
STAFF RECOMMENDATION:

Staff recommends approval of the zone change from PD, Planned District for a Shopping Center, to an Amended Planned District, subject to the following conditions:

- A. That the use and development of this property shall conform to the regulations of the LR-2, Local Retail District, except where permitted otherwise.**
- B. That the expansion shall conform to Exhibits A and B in all respects.**
- C. That Exhibit C shall be used for illustrative purposes only.**
- D. That the maximum square footage of the building shall not exceed 120,000 square feet.**
- E. That the proposed development meets all requirements of the Fire Department.**
- F. That the proposed development meets all requirements of the Code Administration Division.**
- G. That signage shall be considered illustrative, and shall be in compliance with the "Revised Outdoor Sign Regulations" of the Midland City Code.**
- H. That landscaping shall be considered illustrative, and shall be in compliance with the "Landscape Regulations" of the Midland City Code, along with the additional landscape buffer.**
- I. That Section Three of Ordinance 6621 is hereby amended.**



Jim Compton
Planning Division Manager
Department of Development Services



Madhuri Kulkarni, City Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A, B, and C

Case Number: 213-048

CITY OF MIDLAND
Planning Division

APPLICATION TO AMEND A PLANNED DISTRICT

Applicant: Sam's Real Estate Business Trust

Address: 2001 SE 10th Street, Mail Stop 5520 479-204-2702 / Jennifer.Petersen@wal-mart.com
Street Address (Phone/e-mail)
Bentonville Arkansas 72716-5520
City State Zip Code

Property Owner: Dune SC SUB II LLC

Address: 623 5th Avenue 30th Floor (212) 301-8337
Street Address (Phone/e-mail)
New York New York 10022
City State Zip Code

Street address and Legal Description of Planned District (complete Lot, Block, and Subdivision Name description below, or, if not in a recorded plat, attach a sealed Metes and Bounds Description: 1500 N. Tradewinds in Midland, TX: Lot 1, Block 2, Westrige Park Addition, Section Two, and addition to the City of Midland, Midland County, Texas, Plat of which is record in Cabinet F, Page 2, Midland County Plat Records. Parcel No. R000051291

Current PD Classification: PDSC (Planned District for Shopping Center)

Requested PD Classification: Amended PDSC (Amended Planned District for Shopping Center)
(List by tracts if more than one zoning district is requested)

Reason for amendment request: Increasing building foot print - adding a new vestibule and rest room addition. Also adding a new rackhouse with enclosure and an additional switchboard in the back of the building to service new equipment in the store. Additional egress doors to be added to comply with the current code requirements.

Describe how conditions affecting the property have changed since it was designated its present zone: An increase in customers and sales has made it necessary to enlarge the available space for merchandise. Vehicle traffic has increased in the area and the drive lane in front of the SAM's Club is being used by many as a "quick cut through". The building extension related site improvements will reduce the vehicle traffic/speed and make it safer for customers to enter and exit the building.

Will a Specific Use Permit with Term for alcoholic beverage sales be needed? Yes x No
Existing

FEES:

Single, Planned District amendment: **\$550**. Multiple, PD proposal: add **\$75** per district.

SUBMITTALS:

16 copies of the PD site plan (FOLDED): _____

Site Plan in digital format .pdf and .jpg: _____

SIGNATURE (by property owner only - authorized agent must sign affidavit below)

Property Owner (signature): _____ Date: _____

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

~~State of New York~~ State of New York
~~County of New York~~ County of New York

Before me, the undersigned authority, on this day personally appeared

DAVID L OLIVER who, being by me duly sworn, upon oath says: That (s)he is authorized by DUNE SC SUB II 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.

Authorized Agent (signature)

Subscribed and sworn to before me, this 4th day of October, 20 13, to certify which witness my hand and seal of office.

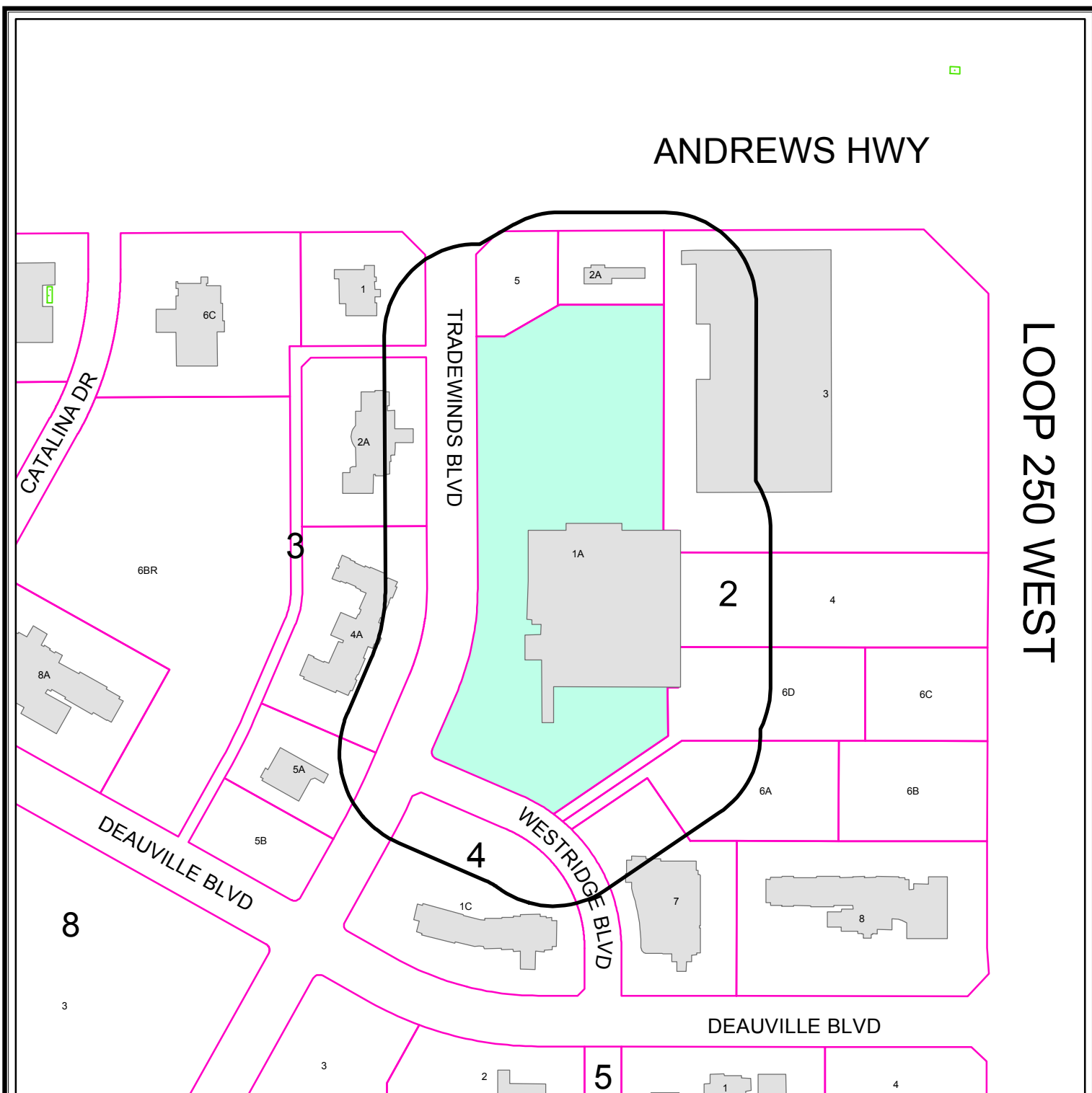
Noah J. Levine

NOTARY PUBLIC, ~~MIDLAND COUNTY, TEXAS~~

Noah Joseph Levine
Notary Public, State of New York
No. 02LE628573
Qualified in New York County
Commission Expires 9/9/17

FOR OFFICE USE ONLY	
Rec'd By: <u>MK</u>	Date: <u>10/14/13</u>
Assigned: <u>MK</u>	
For: <u>Pt 2</u>	On: <u>11/18/13</u>

****Application will not be considered for scheduling until reviewed by a planner. ****



PROPERTY OWNER NOTIFICATION MAP

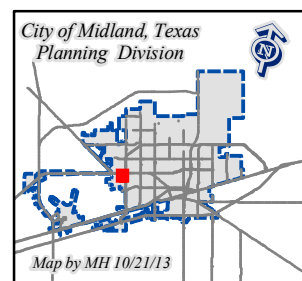
Z - 13 - 048

Scale: 1" = 300'

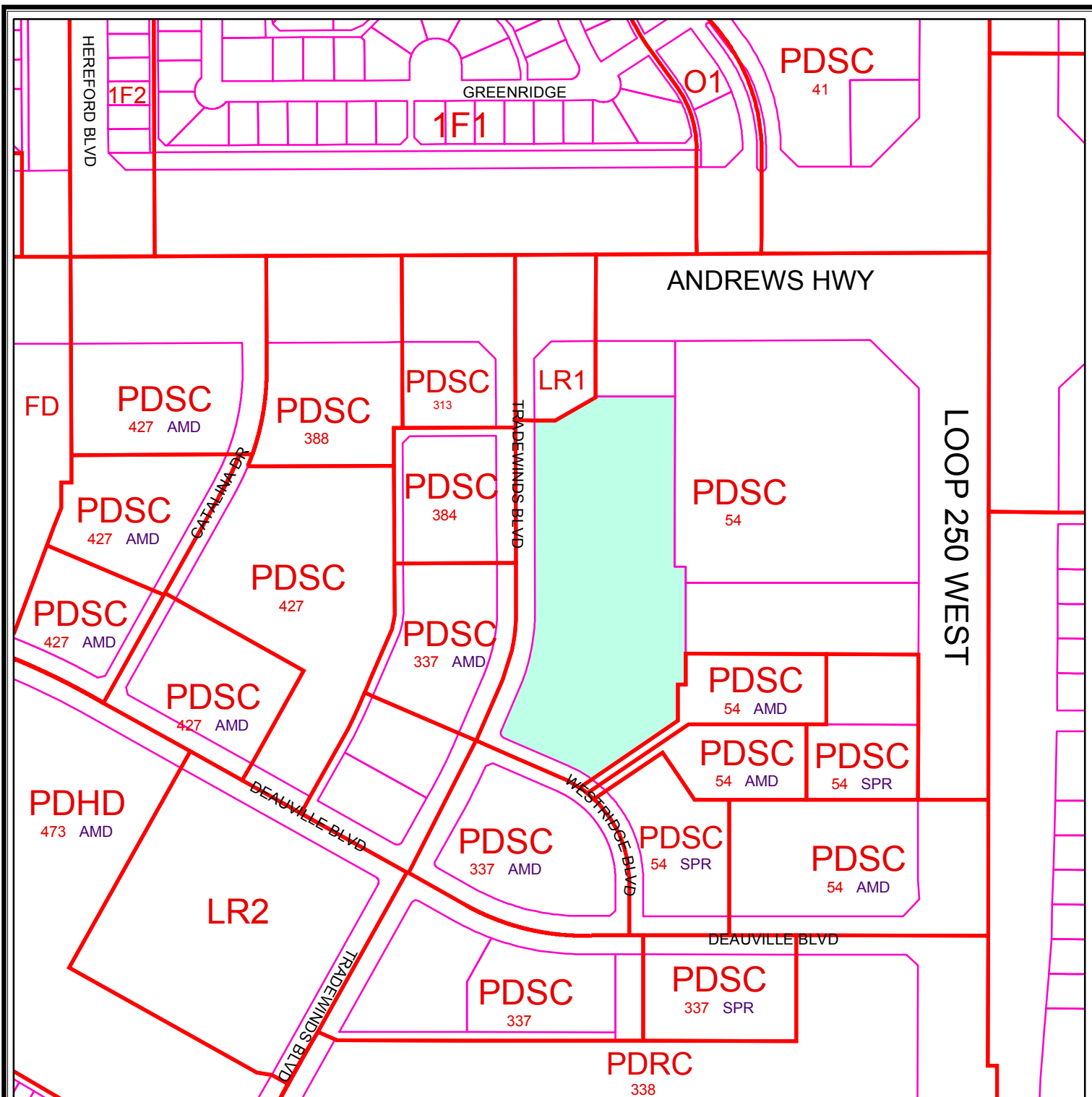
Consider a request for a zone change from PD, Planned District for a Shopping Center, to an Amended Planned District on Lot 1A, Block 2, Westridge Park Addition, Section Three less 2.352-acres, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- ACCESSORY BLDGS



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 THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CIZING, OR OTHER DECISION, SOLELY ON THE INFORMATION CONTAINED HEREIN



ZONING MAP

Z - 13 - 048

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 1A, Block 2, Westridge Park Addition, Section Three less 2.352-acres, 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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NO.	DATE	DESCRIPTION
1	10/16/13	ISSUE FOR PERMIT
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CHECKED BY:	JAL
DRAWN BY:	KWP
FILE NAME:	PD-A2
PROJECT CYCLE:	000013
DOCUMENT DATE:	10/16/13

PROPOSED ELEVATIONS

SHEET
PD-A2

COLOR LEGEND

F-1	YELLOW
F-2	LIGHT BROWN
F-3	BROWN
F-4	DARK TAUPE
F-5	SPLIT FACE CMU
F-6	DARK TAUPE EIFS
F-7	BEIGE

KEYNOTES

3.05	CONCRETE CURB
4.05	8" SPLIT FACE CMU
7.02	PAINTED REVEAL
7.06	EXISTING EXTERIOR INSULATION AND FINISH SYSTEM

5 ENLARGED ELEVATION OF NEW ADDITION
335' x 1'-0"

4 SIDE ELEVATION
T = 20'-0"

3 REAR ELEVATION
T = 20'-0"

2 SIDE ELEVATION
T = 20'-0"

1 FRONT ELEVATION
T = 20'-0"



Protypical Elevation



Existing Elevation

Date: 10/11/13

Sam's Club #8288
 1500 N. Tradewinds
 Midland, TX 79703



City Council Agenda

Approved for Agenda:
RPatrick
City Manager's Office

MEETING DATE: December 17, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Jim Compton, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by Sunrise at Fairgrounds, LLC for a zone change from PD, Planned District for Housing Development, to an Amended Planned District, on Lot 2, Block 84, East Midland Addition, Section 16, City and County of Midland, Texas. (Generally located on the west side of N. Fairgrounds Road, approximately 950 feet south of Golf Course Road.) – District 2.

Purpose:

Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by Sunrise at Fairgrounds, LLC for a zone change from PD, Planned District for Housing Development, to an Amended Planned District.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

No City funds are required to process this request.

Discussion:

The applicant's property is located on the west side of Fairgrounds Road, 950 feet south of Golf Course Road, and is zoned PD, Planned District for Housing Development, with an underlining zoning of MF-1, Multiple Family Dwelling District. Phase 1 of the Sunrise at Fairgrounds apartments was approved in the initial zone change in January 2013. This request is to amend the Planned District to accommodate Phase 2 and to amend Phase 1. The site plan, Exhibit A, shows the layout of the site. A total of six apartment buildings and an amenity center are proposed on the five-acre lot. Phase 1 has already

been approved on the eastern portion of the property, including Buildings 1, 2, 3, and the amenity center, but this site plan depicts the entire lot. A total of 108 dwelling units are proposed at 21.6 units per acre. The property will have access through two means of ingress/egress from Fairgrounds Road. The setbacks adhere to the MF-1 District. Dumpsters and landscaping are shown and are to be provided according to the City Code. A total of 216 parking spaces are required, and 223 parking spaces have been provided. Exhibit B shows the elevation of a typical apartment building, and includes brick up to five feet, then non-descriptive siding, and finally, non-descriptive board and batten siding (not to include metal). Exhibit C, to be considered illustrative only, shows a color rendering of the apartment building. Finally, Exhibit D includes the front elevation and floor plan of the amenity center, with the building materials to match the apartment buildings. The Planning and Zoning Commission voted unanimously for approval at the November 18, 2013 meeting, and staff concurs.

Attachments:

Application

Maps

November 18, 2013 P&Z Staff Report

Exhibits A-D

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 LOT 2, BLOCK 84, EAST MIDLAND ADDITION, SECTION 16, 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 NORTH FAIRGROUNDS ROAD, APPROXIMATELY 950 FEET SOUTH OF GOLF COURSE ROAD); 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 2, Block 84, East Midland Addition, Section 16, 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 MF-1, Multiple-Family Dwelling District, except as stated below.
2. That the maximum density shall not exceed 22 dwelling units per acre.
3. That the development shall conform in all respects to the conditions shown on Exhibits “A”, “B” and “D”, which are attached hereto and incorporated herein.
4. That Exhibit “C”, which is attached hereto and incorporated herein, shall be for illustrative purposes only.
5. That the maximum height of buildings shall not exceed three standard stories or 50 feet.
6. That a minimum of 216 parking spaces shall be provided; however, the arrangement and locations of the parking spaces shall be considered illustrative.
7. That the minimum driving aisle width shall be 26 feet.
8. That no R-panel materials shall be included in the description of “board and batten” as it appears on Exhibit B.
9. That a minimum six-foot solid wooden screening fence shall be constructed around the perimeter of this property.
10. That the proposed development shall meet all requirements of the Fire Department, the Code Administration Division, and the Transportation Division.
11. That signage shall be in compliance with the Revised Outdoor Sign Regulations of the Midland City Code.
12. That landscaping shall be considered illustrative, and shall be in compliance with the Landscape Regulations of the Midland City Code.
13. That the dumpster locations shall be considered illustrative and shall be determined by the Solid Waste Department. Dumpster screening shall conform to the Site Plan Review Standards of the Midland City Code.
14. That City of Midland Ordinance No. 9094 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., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the

following vote upon motion of Council member _____, seconded by Council member _____, on the ____ day of _____, A.D., 2014, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2014.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant to the City Manager

APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

THESE PLANS ARE SUBJECT TO
REVIEW & APPROVAL BY
JURISDICTIONAL ENTITIES

VICINITY MAP
N.Y.S.

BENCHMARK

COORDINATES, BEARINGS, DISTANCES AND AREAS SHOWN HEREON ARE LAMBERT GRID AND CONFORM TO THE "TEXAS COORDINATE SYSTEM", TEXAS CENTRAL ZONE, NORTH AMERICAN DATUM 1983.

NOTICE TO CONTRACTOR

1. ALL DIMENSIONS SHOWN ARE TO FACE OF CURB UNLESS NOTED OTHERWISE.
2. ALL PROPOSED SIDEWALKS ARE TO BE 5.0' UNLESS NOTED OTHERWISE.

SITE INFORMATION

TOTAL LAND AREA:	217,768.60 S.F. (5.00 AC)
CURRENT ZONING:	PD (PLANNED DISTRICT FOR HOUSING DEVELOPMENT PER ORD. 9094) AMENDED PD REQUIRED
TOTAL DWELLING UNITS:	108
UNIT DENSITY:	21.6 UNITS / ACRE
TOTAL PARKING REQUIRED:	216
TOTAL PARKING PROVIDED:	223
HANDICAP PARKING REQUIRED:	7
HANDICAP PARKING PROVIDED:	16
LANDSCAPE PERCENTAGE:	35.29%

STANDARD ACCESSIBILITY REQUIREMENTS

- PARKING:**
- (A) ACCESSIBLE PARKING SPACES SHALL BE A MIN. 96" WIDE WITH A MAXIMUM SLOPE OF 2% IN ALL DIRECTIONS
 - (B) EACH ACCESSIBLE PARKING SPACE SHALL HAVE A VERTICALLY MOUNTED (OR HORIZONTAL MOUNTED IF THE SYMBOLS OF ACCESSIBILITY AT LEAST ONE SIDE OF THE SPACE MUST HAVE AN ADDITIONAL SIGN BEING A "VEHICLE" MOUNTED ABOVE THE SYMBOLS OF ACCESSIBILITY. SIGNS SHALL BE LOCATED TO (MIN) 48" ABOVE THE FINISH PAVING SURFACE TO (MAX) 10' ABOVE THE FINISH PAVING SURFACE
 - (C) ALL ACCESSIBLE SIDES SERVING H.R. PARKING SPACES SHALL BE 60" WIDE MIN. AND 7' WIDE MINIMUM FOR VAN DESIGNATED SPACES. ALL BUILDINGS SHA CONTAIN AT LEAST ONE VAN ACCESSIBLE SPACE.
- CURB RAMP:**
- (A) RAMP EXCEEDING 6" IN RISE (EXCLUDING CURB RAMP) SHALL HAVE HANDRAILS ON EACH SIDE AT BETWEEN 34" AND 38" AND EXTEND 12" BEYOND THE BOTTOM OF EACH RAMP. RAMP SHALL BE 60" WIDE MINIMUM. (SEE RELEASE AREA REQUIRED FOR TOP AND BOTTOM LANDINGS SERVING THE RAMP)
 - (B) RAMP SHALL BE A TRUNCATED CONE SURFACE ARRANGED SO THAT WATER WILL NOT ACCUMULATE. COLOR OF RAMP FRACTIONS (INCLUDING CURB) SHALL HAVE A LIGHT AND REFLECTIVE VALUE AND MUST CONTRAST SIGNIFICANTLY TO DISTINGUISH IT FROM ADJACENT SURFACES - (OR PAINT STRIPES)
 - (C) BOTTOM LANDINGS FOR RAMP SERVING REQUIRED EXITS SHALL BE 6' BY 6' X 5' 5" WIDE MINIMUM.
 - (D) RAMP SHALL NOT EXCEED A 1:12 SLOPE
- STAIRWAYS AND ACCESSIBLE ROUTES:**
- (A) STAIRWAYS SHALL NOT EXCEED A 1/3" SLOPE
 - (B) SIDEWALK CROSS SLOPE SHALL NOT EXCEED 1/50 (%)
 - (C) SIDEWALK SHALL NOT EXCEED A 1/50 (%)
 - (D) LONGITUDINAL SLOPE OF ANY SIDEWALK (ACCESSIBLE ROUTE) SHALL NOT EXCEED 1/50 (%)

FEMA FIRM INFORMATION

COMMUNITY NUMBER	PANEL NUMBER	SUFFIX	DATE OF FIRM	FIRM ZONE	BASE FLOOD ELEVATION
48329C	93	F	9/16/2005	ZONE X	n/a

ZONE X - AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN.

INGRESS & EGRESS

- INGRESS & EGRESS BY TWO DOUBLE DRIVEWAY ALONG FAIRGROUNDS ROAD.

SCREENING FENCE

A 6' TALL SCREEN FENCE IS CURRENTLY PROPOSED AROUND THE EXTERIOR BOUNDARY OF THE PROPERTY IN ACCORDANCE WITH ORDINANCE NO. 9094. TYPICAL SCREENING WILL BE PROVIDED AROUND THE DUMPSTER LOCATIONS PER CITY OF MIDLAND STANDARDS.

SITE UTILITIES

A PUBLIC SEWER MAIN EXISTS ACROSS THE PROPERTY AS SHOWN ON THIS PLAN. PROVISIONS FOR MUNICIPAL WATER SERVICE HAVE BEEN MADE AS PART OF PHASE 1.

DRAINAGE

A 44.3' WIDE DRAINAGE EASEMENT HAS BEEN DELINEATED ALONG THE SOUTHERN BOUNDARY AS PART OF PHASE 1. AN ONSITE DETENTION BASIN WILL BE DESIGNED WITH AN OUTLET STRUCTURE WHICH DOES NOT INCREASE THE PRE-DEVELOPMENT FLOW RATE FOR THE ENTIRE PROJECT SITE.

LANDSCAPE

- PER CITY OF MIDLAND ORDINANCE, MINIMUM LANDSCAPE AREA = 20% OF LOT AREA LESS STRUCTURE FOOTPRINTS.

- SITE AREA: 217,768.60 ft²
- TOTAL STRUCTURE FOOTPRINT: 32,285 ft²
- REQUIRED LANDSCAPE AREA: 37,097 ft²
- PROVIDED LANDSCAPE AREA: 76,850.68 ft²

TRASH ENCLOSURES

TRASH DUMPSTERS TO BE PLACED AS SHOWN.
ENCLOSURES TO BE BUILT OF BRICK, AND WILL
MATCH DESIGN OF SCREENING WALL.

BUILDING SETBACKS

MINIMUM BUILDING SETBACK DISTANCES WILL BE OBSERVED IN ACCORDANCE WITH CHAPTER 1 OF THE CITY OF MIDLAND MUNICIPAL CODE, AND AS SHOWN ON THIS PLAN.

PARKING SPACES

REQUIRED

- PER THE CITY OF MIDLAND PARKING REQUIREMENTS: "2 SPACES FOR EACH DWELLING UNIT IN A ONE-FAMILY RESIDENCE AND 2 SPACES FOR EACH TWO-FAMILY OR APARTMENT UNIT."
- 108 UNITS @ 2 SPACES per UNIT = 216 REQUIRED SPACES

PROVIDED

- 207 REGULAR PARKING
- 16 HANDICAP PARKING
- 223 TOTAL PARKING

TREE REQUIREMENTS

- 1 TREE FOR EVERY 30 FEET OF LINEAR STREET FRONTAGE
- 1 TREE FOR EVERY 15 PARKING SPACES UP TO 150 SPACES, & 1 TREE FOR EVERY 20 PARKING SPACES FOR MORE THAN 150 SPACES.
- 333 LF FAIRGROUNDS ROAD FRONTAGE (11 REQUIRED)
- 223 PARKING SPACES: (14 REQUIRED)
- TOTAL REQUIRED: 25 TREES
- TOTAL SHOWN: 31 TREES

BUILDING HEIGHTS

REFER TO ARCHITECT'S BUILDING ELEVATION PLAN.

FIRE PROTECTION

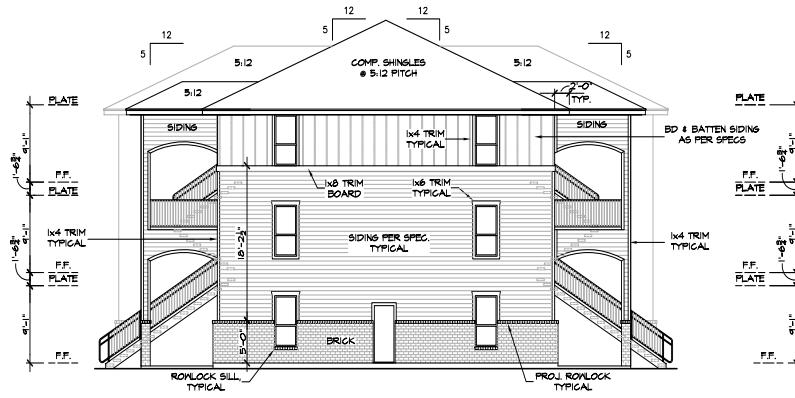
A 26' WIDE FIRE LANE HAS BEEN PROVIDED AT THE FRONT OF ALL BUILDINGS. THE FIRE LANE WILL BE IDENTIFIED BY PAINTED STRIPES, CURBS, AND PERMANENT SIGNAGE PER THE CITY OF MIDLAND REQUIREMENTS AND IN ACCORDANCE WITH THE IFC, 2009.

SIDEWALKS

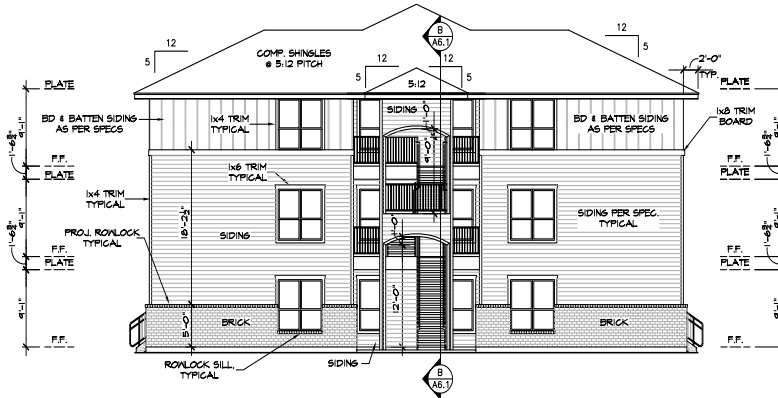
- 5' SIDEWALK TO BE CONNECTED TO SIDEWALK CONSTRUCTED AS PART OF PHASE 1 ALONG FAIRGROUNDS ROAD.
- 5' SIDEWALK TO BE PLACED IN THE INTERIOR OF THE PROPERTY AS SHOWN.



REAR ELEVATION



LEFT ELEVATION



RIGHT ELEVATION



FRONT ELEVATION

BUILDING EXTERIOR ELEVATIONS
Scale: 1/8" = 1'-0"

DANZE & DAVIS
ARCHITECTS, INC.
4701 Spicewood Springs Road, Suite 200 Phone 512.343.0714 Fax 512.343.0718
WWW.DANZE-DAVIS.COM

SUNRISE AT FAIRGROUND
APARTMENTS

NOT FOR
REGULATORY
APPROVAL
PERMITTING OR
CONSTRUCTION
8-20-12

Job No. C2809

DRAWN BY: LBSZ
DATE: .
CHKD. BY: .
REVISED: .

A4.0

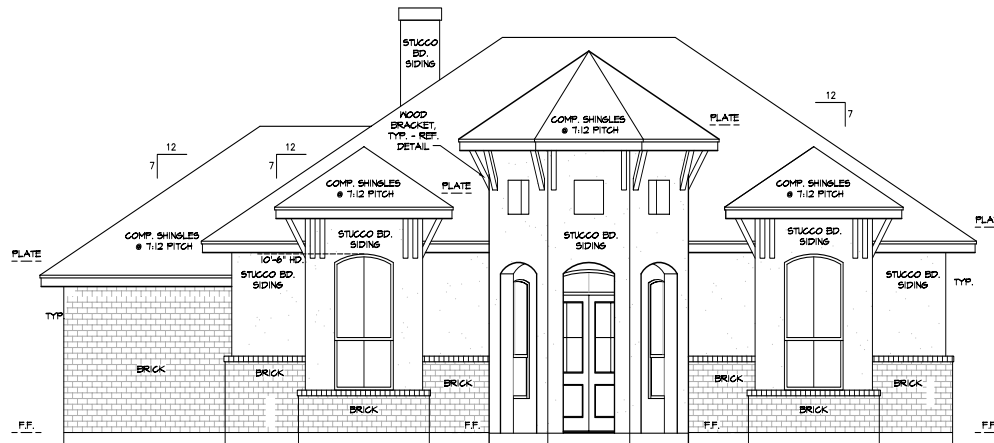
COPYRIGHT 2012 DANZE & DAVIS ARCHITECTS INC. THESE DRAWINGS AND THE IDEAS HEREON ARE THE PROPERTY OF THE ARCHITECT AND MAY NOT BE USED WITHOUT HIS EXPRESSED CONSENT.

Sunrise at Fairgrounds Apartments

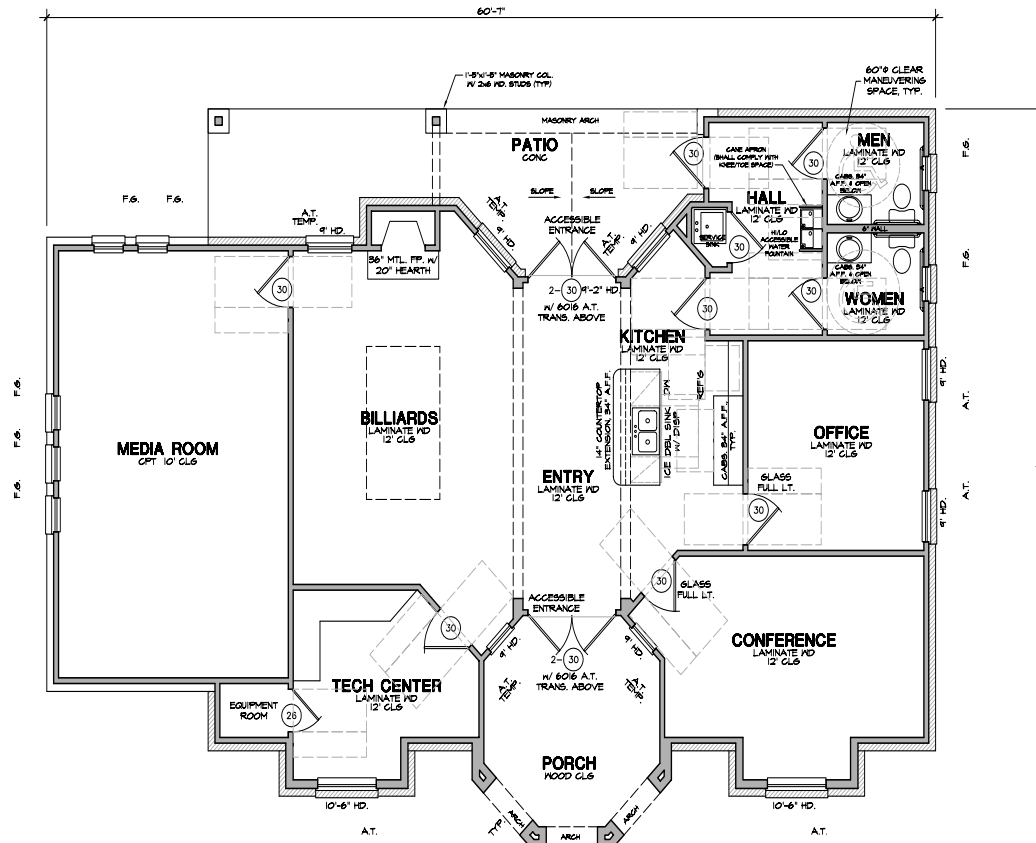
**FAIRGROUNDS ROAD
MIDLAND, TX**



FRONT ELEVATION



FRONT ELEVATION
Scale: 1/4" = 1'-0"



FLOOR PLAN
Scale: 1/4" = 1'-0"

AREA TABULATIONS	
1ST FLR HEATED AREA	1791.7 SQ. FT.
2ND FLR HEATED AREA	N/A SQ. FT.
TOTAL HEATED AREA	1791.7 SQ. FT.
TOTAL HEATED AREA W/ MASONRY	1881.2 SQ. FT.
GARAGE W/ MASONRY	N/A SQ. FT.
PORCH	150.7 SQ. FT.
COVERED PATIO	244.5 SQ. FT.
TOTAL COV'D AREA	2276.4 SQ. FT.

SUNRISE AT FAIRGROUNDS PROPOSED AMENITY CENTER

Job No. C2809

DRAWN BY: LBS/RAH CHKD. BY: JDC
DATE: 10/22/12 REVISED: 01/16/13

**SUNRISE AT FAIRGROUNDS
APARTMENTS**
1400 block of N. Fairgrounds Rd.
Midland, Texas

**DANZE & DAVIS
ARCHITECTS, INC.**
4701 Spicewood Springs Road, Suite 200 Phone 512.343.0714 Fax 512.343.0718
WWW.DANZE-DAVIS.COM

EXH

COPYRIGHT 2013 DANZE & DAVIS ARCHITECTS INC. THESE DRAWINGS AND THE IDEAS HEREON ARE THE PROPERTY OF THE ARCHITECT AND MAY NOT BE USED WITHOUT HIS EXPRESSED CONSENT.

PLANNING AND ZONING COMMISSION

November 18, 2013

CASE: Z-13-049, Sunrise at Fairgrounds, LLC.

REQUEST: Hold a public hearing and consider a request for a zone change from PD, Planned District for Housing Development, to an Amended Planned District.

APPLICANT: West Company of Midland.

OWNER: Sunrise at Fairgrounds, LLC.

LEGAL DESCRIPTION: On Lot 2, Block 84, East Midland Addition, Section 16, City and County of Midland, Texas.

LOCATION: Generally located on the west side of N. Fairgrounds Road, approximately 950 feet south of Golf Course Road.

CURRENT ZONING: PD, Planned District for Housing Development.

DETAILS OF REQUEST:

1. This property is located west of Fairgrounds Road, and approximately 950 feet south of Golf Course Road. The property was rezoned to PD, Planned District for Housing Development, in January 2013 for apartments. Phase 1 was approved at that time, and a future Phase 2 was subject to a site plan review in the same manner as a zone change request. This request is to amend the Planned District to accommodate Phase 2.

SURROUNDING ZONING AND LAND USE:

2. This property is located on the west side of Fairgrounds Road, an arterial street. The zoning to the north, west, and south is C-3, Commercial District. The development to the north consists of a landscape business as well as the Sterling Springs Apartments and the Santa Rita Senior Village. The area to the west is primarily vacant, and a pipe yard is to the south. To the east across Fairgrounds Road is an AE, Agriculture-Estate District, with a vacant mobile home park which has lost its former non-conforming status.

ANALYSIS:

3. The five-acre property was platted as East Midland Addition, Section 16, in May 2013. It is currently in the process of being replatted in order to vacate a drainage basin on the eastern portion of the property and to dedicate a drainage basin along the southern plat boundary. A zone change from a C-3, Commercial District, to PD, Planned District for Housing Development, was approved in January 2013 on the five-acre tract, including approved site plans for Phase 1. In this request, the applicants wish to continue with Phase 2 of the development and to amend Phase 1. Thus, we find the zone change from PD, Planned District for Housing Development, to an Amended Planned District (with an underlining zoning of MF-1, Multiple-Family Dwelling District), to be reasonable. The Planned District was already established during the initial zoning, meeting the recommendation of the Comprehensive Plan by being adjacent to arterial streets, such as Fairgrounds Road.

SITE PLAN:

4. The site plan, Exhibit A, provides the layout and information about the site. As shown, a total of six apartment buildings and an amenity center are proposed. A total of 108 dwelling units are proposed at 21.6 units per acre. Initially, the site plan of Phase 1 was approved on the eastern portion of the property, including Buildings 1, 2, 3, and the amenity center. Rather than providing just the site plans for the western portion of the property, staff recommended a holistic site plan, including both phases. The access to the property is through two means of ingress and egress off Fairgrounds Road, with a 26-foot wide driving aisle, meeting the Fire Department requirements. The setbacks for the development adhere to the MF-1, Multiple Family Dwelling District, regulations; a front yard setback of 20 feet, a rear yard setback of 20 feet, and side yard setbacks of 15 feet are met. Additionally, the minimum 15 feet spacing between apartment buildings is also met. Four dumpster locations are shown. Dumpsters will be enclosed and screened with brick, and will match the design of the screening wall; the locations will be considered illustrative. Landscaping will also be provided according to the City Code – landscaping shown on Exhibit A will be considered illustrative. In terms of parking, the Zoning Code requires a ratio of two parking spaces for each dwelling unit. With this calculation, for 108 units, a total of 216 parking spaces are required. A total of 223 parking spaces have been provided. Parking shown on the plan will be considered illustrative. A 6-foot tall solid wooden fence will be constructed around the perimeter of the property.

Exhibit B shows the elevations of a typical apartment building. The buildings are three stories tall. The building materials beginning at ground level include brick up to five feet, then non-descriptive siding, and finally, non-descriptive board and batten siding. As board and batten siding describes a design rather than specific

material, provided that metal is excluded, staff has no objection to the exterior materials. The roof is composed of composition shingles. Exhibit C, to be considered illustrative only, shows a color rendering of the apartment building.

Finally, Exhibit D includes the front elevation and floor plan of an amenity center, a footprint of which was included in the first phase of the project. The front elevation of this amenity center has now been provided. The building materials are acceptable, and match the materials of the apartment buildings, and include brick, stucco siding, and composite shingles for the roof. The floor plan of this exhibit shall only be considered illustrative.

STAFF RECOMMENDATION:

Staff recommends approval of the zone change from PD, Planned District for a Housing Development, to an Amended Planned District, subject to the following conditions:

- A. That the use and development of this property shall conform to the regulations of the MF-1 District, except where permitted otherwise.**
- B. That the combined maximum density shall not exceed 22 dwelling units per acre.**
- C. That the development shall conform to Exhibits A, B, and D in all respects.**
- D. That Exhibit C shall be used for illustrative purposes only.**
- E. That the maximum height shall not exceed three standard stories or 50 feet.**
- F. That a minimum of 216 parking spaces shall be provided; however, the arrangement and locations of the parking spaces shall be considered illustrative.**
- G. That the minimum driving aisle width shall be 26 feet.**
- H. That no R-panel materials shall be included in the description of "board and batten" as it appears on Exhibit B.**
- I. That a minimum six-foot solid wooden screening fence shall be constructed around the perimeter of this property.**
- J. That the proposed development meets all requirements of the Fire Department, the Code Administration Division, and the Transportation Division.**

- K. That signage shall be in compliance with the "Revised Outdoor Sign Regulations" of the Midland City Code.**
- L. That landscaping shall be considered illustrative, and shall be in compliance with the "Landscape Regulations" of the Midland City Code.**
- M. That the dumpster locations shall be considered illustrative and shall be determined by the Solid Waste Division. Dumpster screening shall conform to the "Site Plan Review Standards" of the Midland City Code.**
- N. That Ordinance 9094 is repealed.**



Jim Compton
Planning Division Manager
Department of Development Services



Madhuri Kulkarni, City Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A-D

Case Number: 213049

CITY OF MIDLAND
Planning Division

APPLICATION TO AMEND A PLANNED DISTRICT

Applicant: West Company of Midland - Larry Walker, PE

Address: 110 West Louisiana Avenue 432- 682-0588 / lwalker@team-west.com
Street Address (Phone/e-mail)
Midland Texas 79701
City State Zip Code

Property Owner: Sunrise at Fairgrounds, LLC

Address: 1401 N. Fairgrounds Road 432-352-9203 / john@barbedcross.com
Street Address (Phone/e-mail)
Midland Texas 79706
City State Zip Code

Street address and Legal Description of Planned District (complete Lot, Block, and Subdivision Name description below, or, if not in a recorded plat, attach a sealed Metes and Bounds Description: East Midland Addition, Section 19 - Lot 2, Block 84. Located in the NE/4 of Section 25, Block 39, T -1-S, T &P RR Co Survey, City and County of Midland, Texas

Current PD Classification: PD - Housing Development (MF-1)

Requested PD Classification: Amended PD - Housing Development (MF-1)
(List by tracts if more than one zoning district is requested)

Reason for amendment request: To comply with the requirements set forth in Ordinance 9094

Describe how conditions affecting the property have changed since it was designated its present zone: Phase 1 of this project is currently under construction.

Will a Specific Use Permit with Term for alcoholic beverage sales be needed? Yes ☒ No

FEES:

Single, Planned District amendment: **\$550**. Multiple, PD proposal: add **\$75** per district.

SUBMITTALS:

16 copies of the PD site plan (FOLDED): _____

Site Plan in digital format .pdf and .jpg: _____

SIGNATURE (by property owner only - authorized agent must sign affidavit below)

Property Owner (signature): _____ Date: _____

If an agent is authorized by the property owner to file and execute the application on behalf of the property owner, the agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

Larry Walker who, being by me duly sworn, upon oath says: That (s)he is authorized by Sunrise at Fairgrounds, 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 18 day of October, 2013, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY

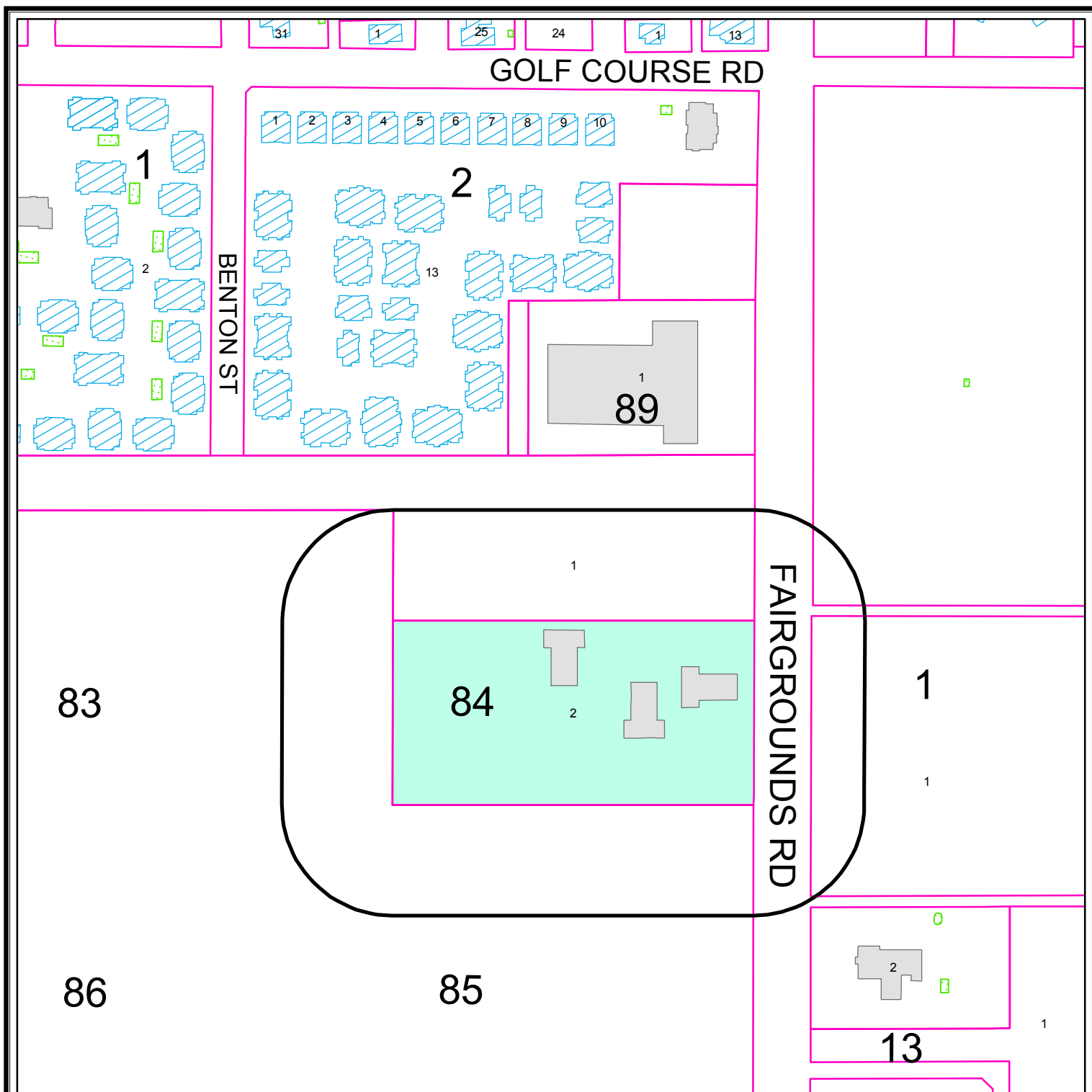
Rec'd By: MK Date: 10/18/13

Assigned: MK

For: PJZ On: 11/18/13



****Application will not be considered for scheduling until reviewed by a planner. ****



PROPERTY OWNER NOTIFICATION MAP

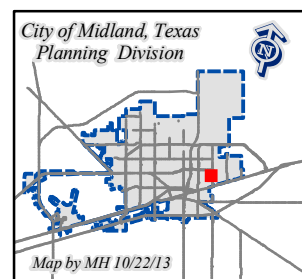
Z - 13 - 049

Scale: 1" = 250'

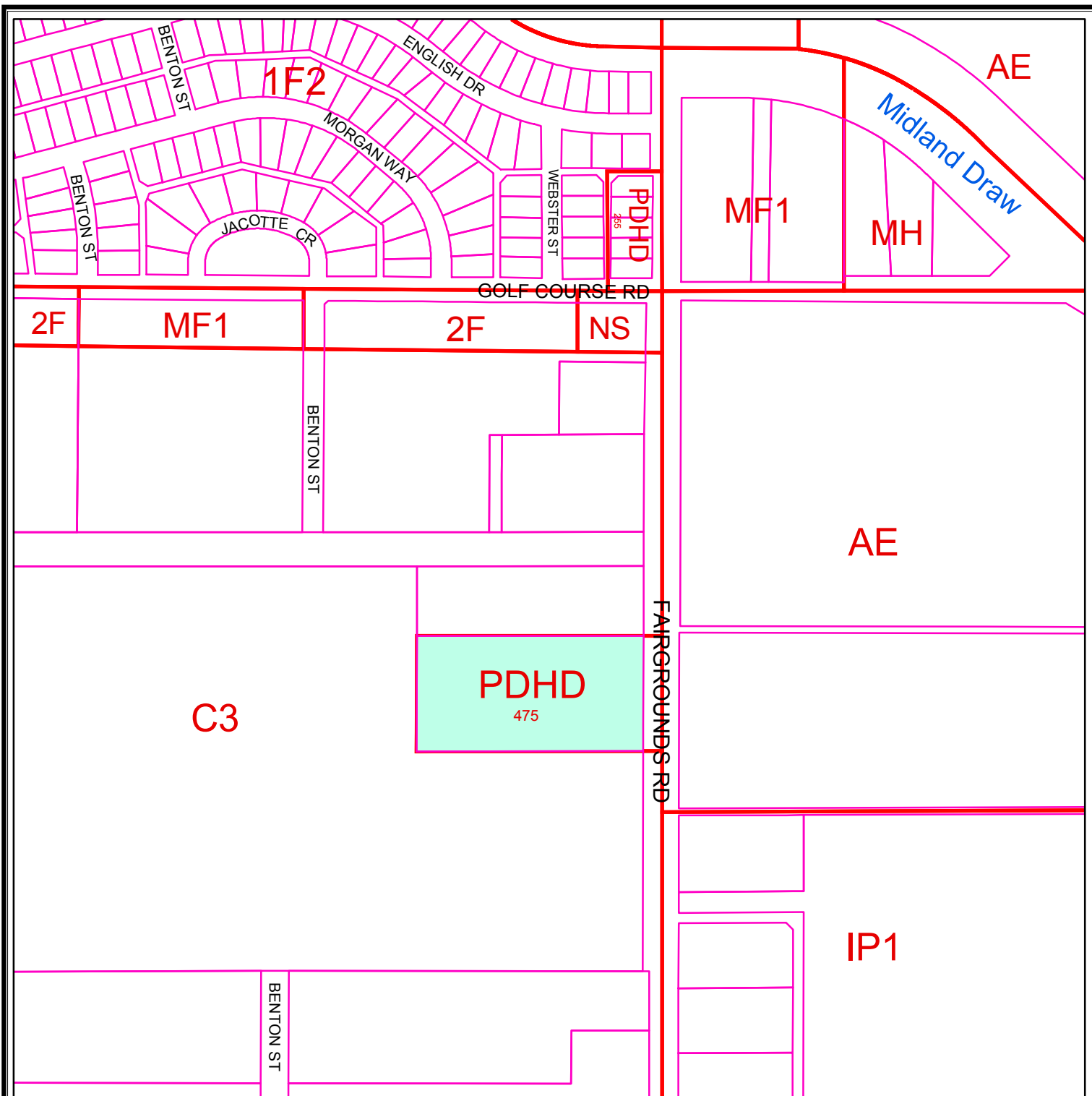
Consider a request for a zone change from PD, Planned District for a Housing Development, to an Amended Planned District on Lot 2, Block 84, East Midland Addition, Section 16, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



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ZONING MAP

Z - 13 - 049

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 2, Block 84, East Midland Addition, Section 16, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

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City Council Agenda

Approved for Agenda:
RPatrick
City Manager's Office

MEETING DATE: December 17, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Jim Compton, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:36 a.m. and consider an ordinance on a request by Raquel Alvarado for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant on a 4.896-acre tract of land out of Section 33, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. (Generally located on the southeast corner of the intersection of S. Midkiff Road and W. Wall Street.)– District 2.

Purpose:

Hold a public hearing at approximately 10:36 a.m. and consider an ordinance on a request by Raquel Alvarado for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

No City funds are required to process this request.

Discussion:

Ms. Alvarado is applying for a Specific Use Permit With Term for the sale of all alcoholic beverages for on-premises consumption for her restaurant. Reyna's Mexican Restaurant is located within the Bedford Inn & Suites Hotel, on the southeast corner of Midkiff Road and Wall Street. This property is within an LR-3, Local Retail District, and a C-3, Commercial District. Specific Use Permits for serving alcohol have been issued to Mario's Spanish Inn, Denny's, and the Club Arriba nightclub in this general area. The applicants are requesting alcoholic beverage service hours Monday from 7:00 a.m. to

3:00 p.m., Tuesday through Saturday from 7:00 a.m. to 9:00 p.m., and Sunday from 10:00 a.m. to 3:00 p.m. The restaurant will have a maximum floor area of 1,770 square feet, with 926 square feet utilized to serve alcohol. Based off the serviceable square feet, the Building Official has determined a maximum seating capacity of 62 seats. The maximum floor area, serviceable square feet, and the maximum seating capacity have reduced from what was approved by the Planning and Zoning Commission based on discussions with the Building Official. The Planning and Zoning Commission voted unanimously for approval, and staff concurs.

Attachments:

November 4, 2013 P&Z Staff Report
Exhibit A (Metes and Bounds)
Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS A 4.896-ACRE TRACT OF LAND OUT OF SECTION 33, BLOCK 39, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF THE INTERSECTION OF SOUTH MIDKIFF ROAD AND WEST WALL STREET), WHICH IS PRESENTLY ZONED LR-3, LOCAL RETAIL DISTRICT, IN PART, AND C-3, COMMERCIAL DISTRICT, IN PART, 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, in part, and C-3, Commercial District, in part, to-wit:

A 4.896-acre tract of land out of Section 33, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas, said tract being more specifically described by

metes and bounds in Exhibit “A”, which is attached hereto and incorporated herein. 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 LR-3, Local Retail District, in part, and C-3, Commercial District, in part.

SECTION TWO. That said property shall be subject to the following conditions and restrictions:

- A. That the serviceable space of the restaurant shall be limited to 926 contiguous square feet in area.
- B. That seats shall be limited to a maximum of 62.
- C. That the restaurant shall meet all requirements of the Fire Department and the Code Administration Division.
- D. That the days and hours of alcoholic beverage sales and consumption shall be limited to the following: Monday from 7:00 a.m. to 3:00 p.m.; Tuesday through Saturday from 7:00 a.m. to 9:00 p.m.; and Sunday from 10:00 a.m. to 3:00 p.m.
- E. That the sale and on-premise consumption of alcoholic beverages shall conform to all applicable laws established by the City of Midland and the State of Texas.
- F. That the applicant shall obtain a Certificate of Occupancy prior to the commencement of alcoholic beverage sales to ensure that the conditions of this permit are satisfied.

SECTION THREE. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances, inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FOUR. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section,

subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FIVE. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SIX. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2013; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2014, at a regular meeting of the City Council:

Council members voting “AYE”:

Council members voting “NAY”:

PASSED AND APPROVED THIS _____ day of _____, A.D., 2014.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, Assistant to the City Manager

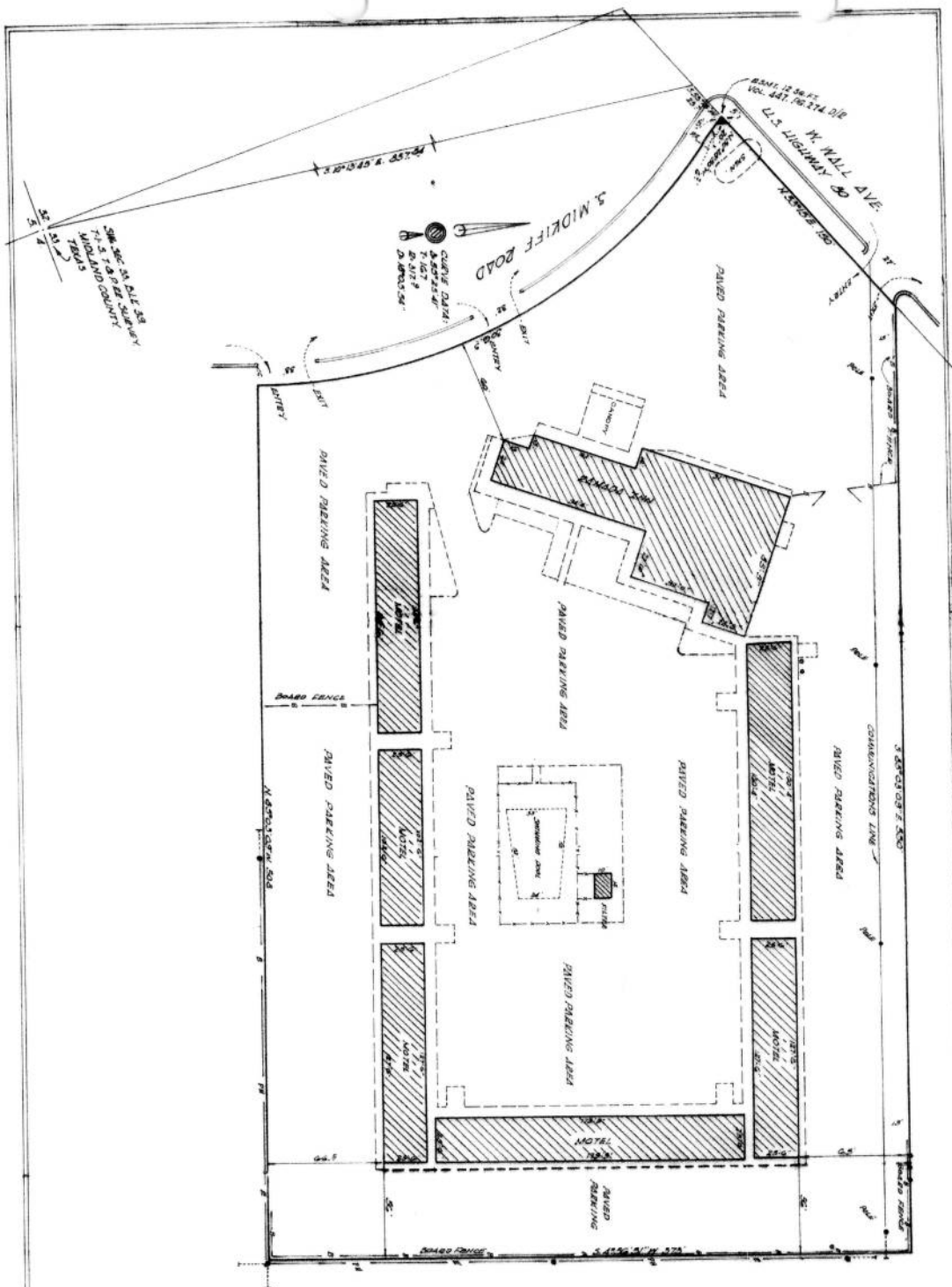
APPROVED ONLY AS TO FORM:

Keith Stretcher, City Attorney

RECEIVED

OCT 16 2013

CITY OF MIDLAND
PLANNING DIVISION OFFICE



SURVEY PLAT OF RAMADA INN PROPERTY, A TRACT OF LAND
OUT OF THE SW/4 OF SECTION 33, BEING T.4S. 1. N. 4. E.
R. 10. E., SURVEY, MIDLAND COUNTY, TEXAS, DESCRIBED
MORE FULLY BY METES AND BOUNDS AS FOLLOWS:
BEGINNING AT A POINT IN THE SOUTH RIGHT-OF-WAY LINE
OF U. S. HIGHWAY 90, FROM WHICH THE SW CORNER OF SAID
SECTION 33 BEARS S. 37° 15' W. 23.7 FEET, AND S. 07° 15' E.
357.14 FEET, FOR THE WEST NW CORNER OF THIS TRACT;
THENCE N. 37° 15' E. WITH SAID S. ROW LINE OF US HWY. 90
FOR A DISTANCE OF 150 FEET TO AN IRON PIN FOR THE EAST
NW CORNER OF THIS TRACT;
THENCE S. 07° 09' E. FOR A DISTANCE OF 560 FEET TO AN
IRON PIN FOR THE NE CORNER OF THIS TRACT;
THENCE S. 4° 57' 55" W. FOR A DISTANCE OF 175 FEET TO AN
IRON PIN FOR THE SE CORNER OF THIS TRACT;
THENCE N. 37° 03' 09" W. FOR A DISTANCE OF 508 FEET TO
A POINT, THE SW CORNER OF THIS TRACT AND THE POINT
OF CURVATURE TO THE NORTHWEST;
THENCE ALONG SAID CURVE TO THE NORTHWEST WHOSE
DATA IS: CENTRAL ANGLE, 55° 25' 41"; TANGENT DISTANCE,
187 FEET; RADIUS, 315.3 FEET; DEGREE, 18° 05' 55"; FOR A
DISTANCE OF 306.3 FEET TO THE POINT OF TANGENCY;
THENCE N. 50° 25' 35" W. FOR A DISTANCE OF 20 FEET TO
THE PLACE OF BEGINNING.

THIS IS TO CERTIFY THAT THE SURVEY DESCRIBED
BY THE FOREGOING FIELD NOTES AND SKETCHES
HEREON WAS MADE BY ME ON THE GROUND, AND
THAT THIS PLAT IS A CORRECT REPRESENTATION
THEREOF, AND THAT THERE ARE NO DISCREPANCIES
BETWEEN THE FIELD NOTES AND THIS PLAT.

Mark A. Sullivan
MARK A. SULLIVAN, L.S.
REGISTERED LAND SURVEYOR
NO. 94,342, EXPI. 01-01-2015
MIDLAND, TEXAS 79701-1470

ORDERED: 10/16/2013
BY: THE CITY OF MIDLAND
PLANNING DIVISION OFFICE

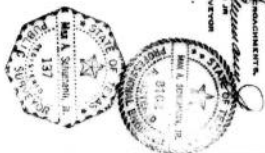


EXHIBIT A

CASE NO. 5-13-014

PLANNING AND ZONING COMMISSION

November 4, 2013

CASE: S-13-014, Raquel Alvarado.

REQUEST: Hold a public hearing and consider a request for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant.

APPLICANT: Raquel Alvarado.

OWNER: Muhesh Patel.

LEGAL DESCRIPTION: On a 4.896-acre tract of land out of Section 33, Block 39, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas.

LOCATION: Generally located on the southeast corner of the intersection of S. Midkiff Road and W. Wall Street.

CURRENT ZONING: LR-3, Local Retail District, and C-3, Commercial District.

DETAILS OF REQUEST:

1. The applicants are requesting a Specific Use Permit for the sale of alcoholic beverages for on-premise consumption for their restaurant. Reyna's Mexican Restaurant is located within the Bedford Inn & Suites hotel, south of Wall Street and east of Midkiff Road. The applicants are requesting a maximum seating capacity of 112 seats. Alcoholic beverage service hours will be Monday from 6:00 a.m. to 3:00 p.m., Tuesday through Saturday from 6:00 a.m. to 9:00 p.m., and Sunday from 10:00 a.m. to 3:00 p.m.

SURROUNDING ZONING AND LAND USE:

2. This property is both within an LR-2, Local Retail District and a C-3, Commercial District. To the north is the LR-2 District and to the west, south, and east is the C-3 District. The surrounding C-3 District includes use such as restaurants, a night club, and several inns and motels. Specific Use Permits for serving alcohol have been issued to Mario's Spanish Inn, Denny's, and the nightclub, Club Arriba, in this general area.

ANALYSIS:

3. The restaurant will have a maximum floor area of 2,842 square feet, with 1,856 square feet being utilized to serve alcohol. The Building Official has determined

that the seating capacity will be 124 seats based on the serviceable square feet available. There are no schools or churches within 300 feet of this site. Staff has no objections to the requested hours of service Monday from 6:00 a.m. to 3:00 p.m., Tuesday through Saturday from 6:00 a.m. to 9:00 p.m., and Sunday from 10:00 a.m. to 3:00 p.m.

STAFF RECOMMENDATION:

Staff recommends approval of the request for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, subject to the following conditions:

- A. That the serviceable space of the café shall be limited to 1,856 contiguous square feet.**
- B. That the maximum number of seats shall be limited to 124 seats.**
- C. That a building permit is obtained and that the restaurant meets all requirements of the Fire Department and the Code Administration Division.**
- D. That alcoholic beverages may be sold only during the hours specified as follows:**

Monday from 6:00 a.m. to 3:00 p.m.

Tuesday through Saturday from 6:00 a.m. to 9:00 p.m.

Sunday from 10:00 a.m. to 3:00 p.m.

- E. That the sale of alcoholic beverages for on-premise consumption shall comply with state and local laws.**
- F. That the applicant shall obtain a Certificate of Occupancy prior to the commencement of on-premise alcohol consumption to ensure that the conditions of this permit are satisfied.**



Jim Compton *Per*
Planning Division Manager
Department of Development Services



Madhuri Kulkarni, City Planner
Department of Development Services

Attachments:

Application
Maps
Exhibit A (Site Plan)

Case Number: S-13-014

CITY OF MIDLAND
Planning Division

APPLICATION FOR A SPECIFIC USE PERMIT WITH TERM
FOR THE SALE OF ALCOHOLIC BEVERAGES
FOR ON-PREMISE CONSUMPTION

RAQUEL ACARADO
Applicant Name

(432) 894-1346 / 432-202-4412
Phone/e-mail

1800 WCR 137 MIDLAND TX
Address

79706
Zip Code

MUHESH PATEL
Property Owner Name

(432) 694-8821
Phone/e-mail

3601 W WALL ST
Address

MIDLAND TX 79701
Zip Code

Operator (if different from Applicant or Property Owner)

Phone/e-mail

Address

Zip Code

Type of Business:

RESTURANT

(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.)

3601 W WALL ST

4.896 ACRES SW 1/4 SEC 33 BLK 39 T1S

Current Zoning:

Max. Floor Area:

2842

Seating Capacity:

112

Proposed hours and days of alcoholic beverage sales:

MON THRU SUN 6am-9pm daily
ALCOHOL BEVERAGE DURING TABL ESTABLISHED HOURS

Reason for request:

CURRENTLY HAVE FOOD AND BEVERAGE PERMIT
AND TAKE OUT

REQUIRED SUBMITTALS

Rest.
hours

Tues-Sat 6am-9pm
Mon. 6-3 Sun 8-3

* Alcohol

Tues-Sat 6am-9pm
Mon 6-3 Sun 10-3

1. Application fee: \$300 ✓.
2. Site plan – 16 copies (FOLDED) _____.
3. On a CD in .pdf and .jpg digital format _____.

SIGNATURES:

Applicant: Raquel alvarado Date: 9-11-13
Property Owner: [Signature] Date: 9/11/13

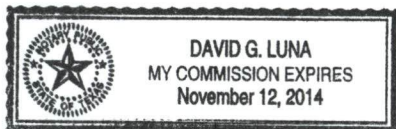
If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

~~Raquel Alvarado~~ who, being by me duly sworn, upon oath says: That (s)he is authorized by REMIAS MEXICAN RESTAURANT 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.

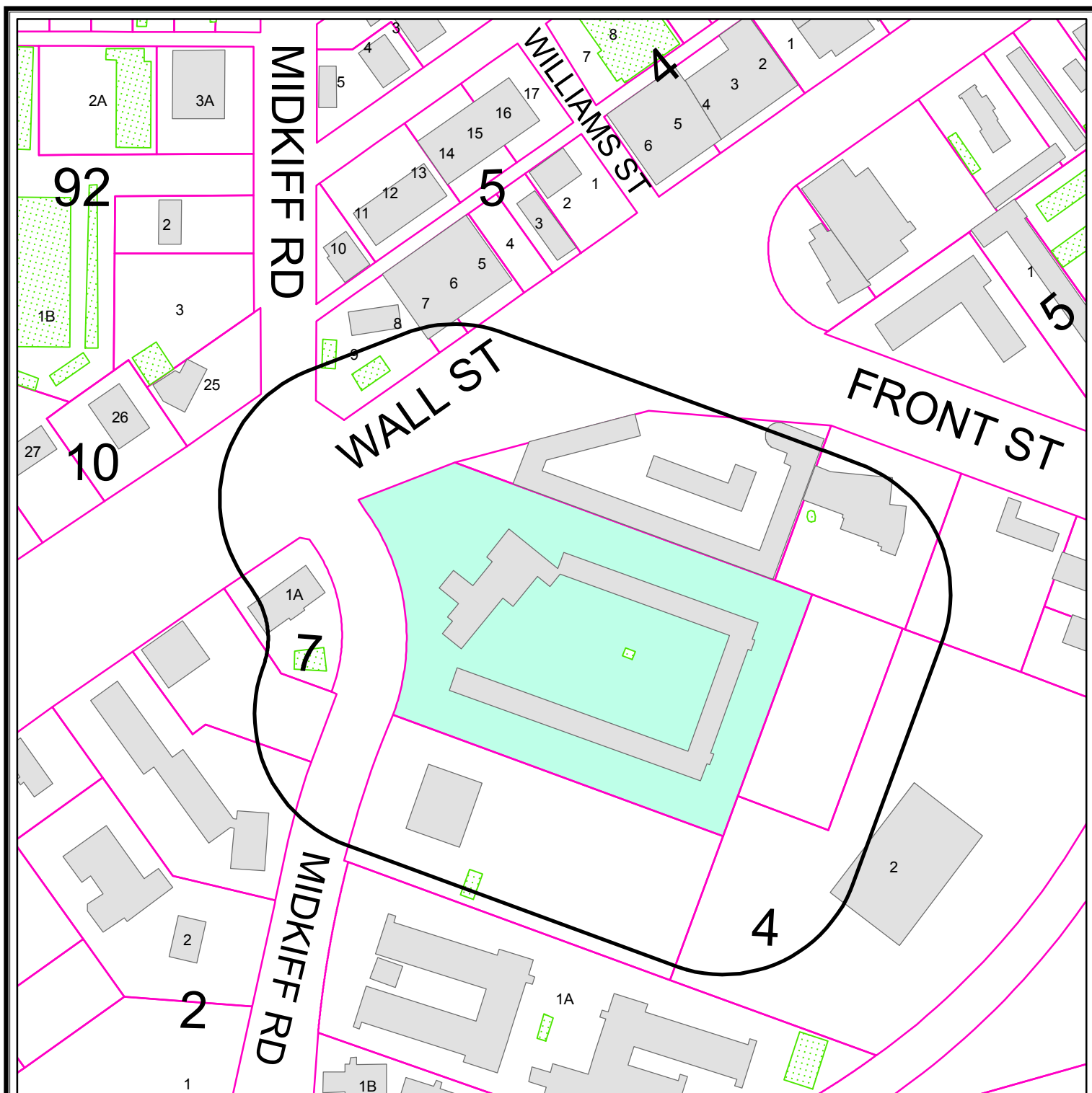
Subscribed and sworn to before me, this 11 day of SEPT, 2013, to certify which witness my hand and seal of office.



[Signature]
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>VS</u>	Date: <u>9/11/13</u>
Assigned: <u>MK</u>	
For: <u>P+2</u>	On: <u>11/4/13</u>

****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

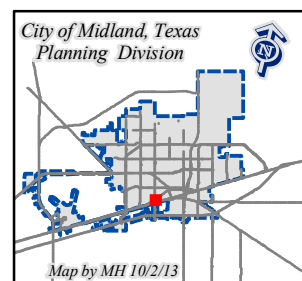
S - 13 - 014

Scale: 1" = 200'

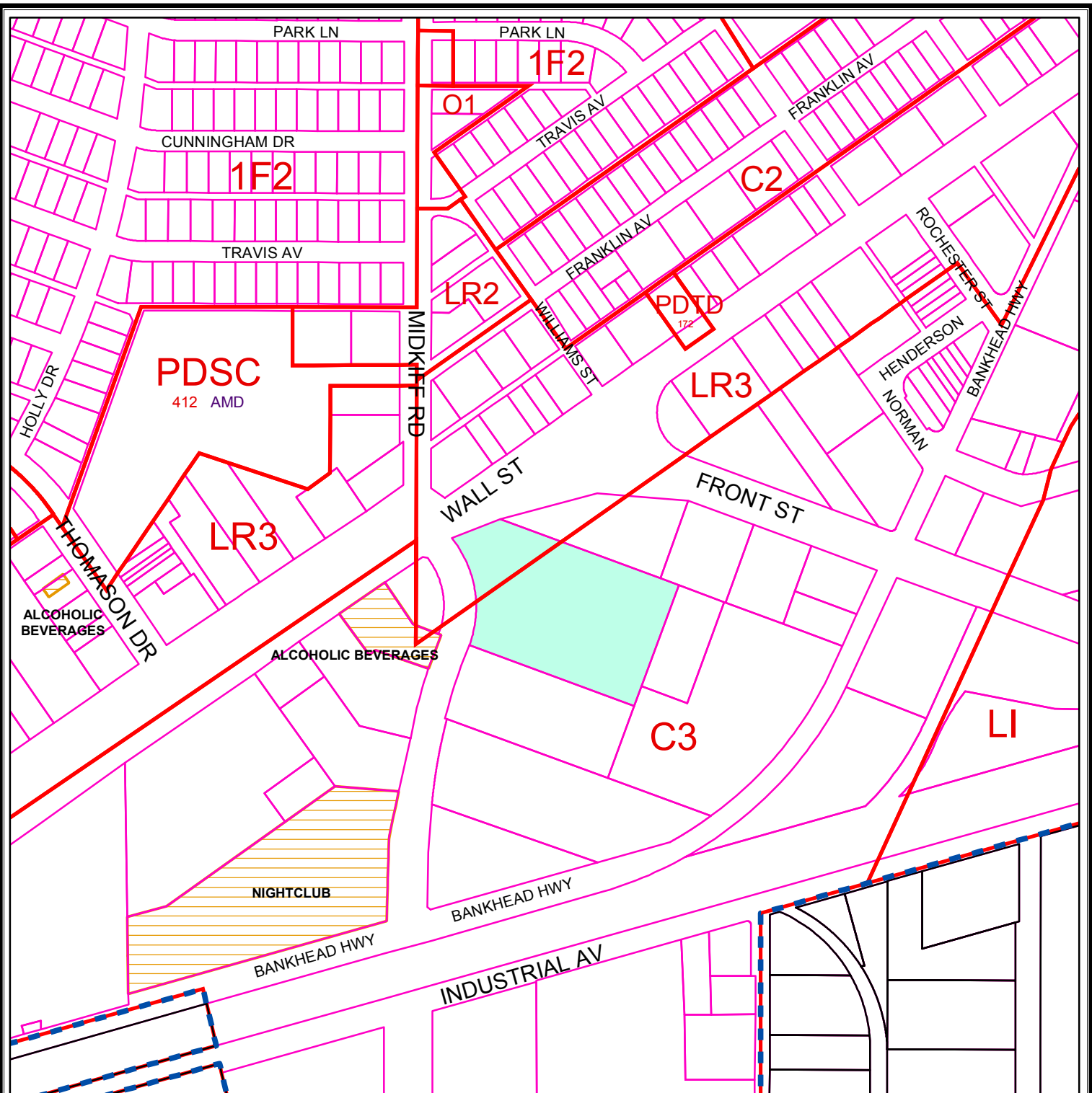
Consider a request for a Specific Use Permit With Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on a 4.896-acre tract of land out of Section 33, Block 39, T-1-S, T & P RR Co. Survey, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- ACCESSORY BLDGS



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ZONING MAP

S - 13 - 014

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 a 4.896-acre tract of land out of Section 33, Block 39, T-1-S, T & P RRR Co. Survey, City and County of Midland, Texas.

LEGEND

- ZONING
- PARCELS
- COUNTY PARCEL
- 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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DATE: December 12, 2013

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: The Midland Development Corporation

Mr. Robert Rendall with the Midland Development Corporation called late Thursday and asked that this item be added to your agenda. This item has also been placed on your executive session so that officials with the Midland Development Corporation can discuss it with you in more detail.

If you have any questions or if I may be of any assistance do not hesitate to contact me.

KS/lo



DATE: December 12, 2013

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: The Midland Development Corporation

Mr. Robert Rendall with the Midland Development Corporation called late Thursday and asked that this item be added to your agenda. This item has also been placed on your executive session so that officials with the Midland Development Corporation can discuss it with you in more detail.

If you have any questions or if I may be of any assistance do not hesitate to contact me.

KS/lo



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: December 17, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Sylvester Cantu Community Development Manager

SUBJECT: Donate Real Property to Midland Community Development Corporation (CDBG)

Purpose:

Consider a resolution authorizing the transfer of 8 acres, more or less, out of a 48 acre site to be surveyed within the City and County of Midland to Midland Community Development Corporation, Incorporated, in accordance with Section 253.011 and Section 272.001 of the Texas Local Government Code; and authorizing the City Manager and the City Attorney to execute all documents necessary to transfer ownership; the transfer of this property is not subject to the notice, bidding, and obtaining of fair market value requirements of state law.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

Property valuation will increase due to new apartment complex to be completed on the property.

Discussion:

The subject property is located on City Property that has also been utilized as a Citizen Collection Station. The purpose of the land transfer is for low income affordable housing. Midland CDC has requested the subject property so they can accomplish the objective. A term of two years will be allowed for construction to be substantial completion, if not, property will revert back to City of Midland ownership.



Midland Community Development Corporation

December 9, 2013

Courtney Sharp
City Manager
City of Midland

Dear Courtney,

Please accept this letter as our official request to have the City of Midland consider making available an 8 Acre parcel of land out of the City owned 48 acre parcel located at Loop 250 and N. Big Spring as a possible site for a 2014 Housing Tax Credit (HTC) Multifamily Apartment application. (See attached map)

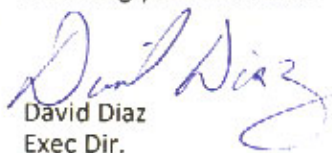
Midland Community Development Corp. in partnership with Yes Housing Inc. also a non-profit organization; will be applying to the Texas Department of Housing & Community Affairs, TDHCA, in the 2014 Housing Tax Credit cycle seeking an award for a 96 unit apartment complex to complement Midland's affordable apartment inventory. Our consultant Diana McIver & Associates – (Austin based) has identified this parcel as the site with the highest possible score for a site due to the fact that it is in the Emerson Elementary attendance zone. The site score for this parcel is (7 points)

We had also looked at the triangular parcel at Lamesa & Loop 250 (Prairie dog town) but this parcel scores (0) zero points.

You should know that Midland CDC has had good success in getting HTC awards from TDHCA and these HTC projects are the only true affordable apartments being built in our community. The first HTC award, Playa Del Pueblo, we beat the completion with just ONE point, and the second award Westridge Apartments we won with just TWO points. If we can get this location, SEVEN points is huge. The HTC awards are very competitive and we have managed to get two awards beating out the competition that includes San Angelo and Odessa. I can assure you that our competition is currently researching to see how they can possibly outscore us. It becomes a new challenge every year.

On behalf of the Board of Directors and staff of both organizations we look forward to having our request considered by City Council in December as we need to have site control by early January to submit our pre-application by mid January.

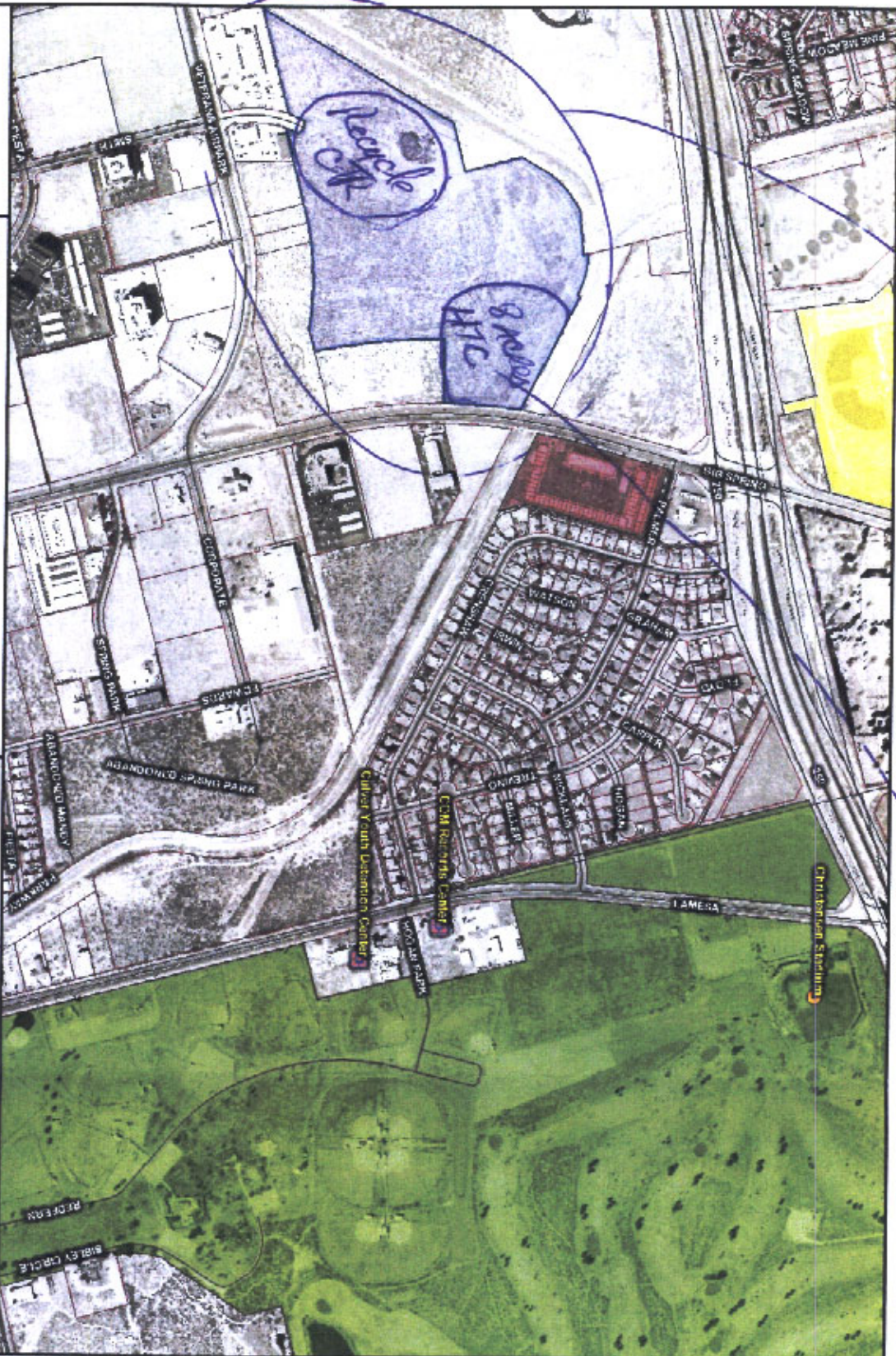
Thanking you in advance


David Diaz
Exec Dir.

Cc: Robert Patrick

*Blue Shaded Area
= 48 Acres*

8 Acres 2014 HTC



City of Midland
300 N. Loraine
Midland, Texas 79701

DISCLAIMER: THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA.

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Scale



Legend

- ☐ Identified Features
- ☐ City Limit
- ☐ Points Of Interest
- ☐ Post Office
- ☐ Chamber of Commerce
- ☐ Other
 - Theatre
 - Medical
 - Library
 - Animal Control
 - Stadium
 - Police Station
 - Cemetery
 - Golf Course
 - Fire Station
 - Museum
 - Courthouse
 - City Hall
 - Midland Central Appraisal District
- ☐ Airport
- ☐ Label Street
- ☐ Small
- ☐ Major County Road
- ☐ State
- ☐ Federal
- ☐ Street
- ☐ County Road
- ☐ Survey Section
- ☐ Park
- ☐ Church
- ☐ Apartment
- ☐ Shopping Center
- ☐ School
- ☐ Parcel
- ☐ County Boundary



City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: December 12, 2013

TO: CITY COUNCIL/CITY MANAGER

FROM: Courtney Sharp, City Manager

SUBJECT: Consider a motion establishing a policy to waive a percentage of the fees at the City's landfill for demolition in the downtown area. The City shall continue to collect the State Tipping Fee.

Purpose: Request by Councilman Trost for direction.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

Discussion: