

CITY OF MIDLAND, TEXAS
BRIEFING SESSION AGENDA
December 18, 2012 - 9:30 AM
Basement Conference Room - City Hall
300 North Loraine
Midland, Texas

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

1. Discussion of possible dates for the 2013 Council Retreat.

AGENDA FOR CITY COUNCIL MEETING
December 18, 2012 – 10:00 AM
Council Chamber - City Hall

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

OPENING ITEMS

1. Invocation – Father Bernard Getigan, St. Michael the Archangel Catholic Church
2. Pledge of Allegiance

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to:
 - a. Receive Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association.
 - b. Recognize the 2012 Certified Public Manager Graduates: Regina Stephenson and Charlene Fox.

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 27, 2012.
6. Consider a resolution approving the Midland Development Corporation's appropriation of \$590,244 from the Fiscal Year 2011-2012 budget to be used for promotional purposes, as authorized by Chapter 504 of the Texas Local Government Code. (FINANCE) (2012 - 414)

7. Consider a resolution awarding a two-year contract for Hosted Mass Notification and Communication Services to Everbridge, Incorporated, at a total cost of \$60,360.00; and these services may include reverse 911 service; and contacts with citizens may be made via landline, cellular phone, text messages or email. (GENERAL SERVICES) (2012 - 415)
8. Consider a resolution awarding a contract for water, wastewater and fire hydrant taps to Entrench, Incorporated, at a total cost of \$517,682.50; and appropriating funds. (GENERAL SERVICES) (2012 - 416)
9. Consider a resolution approving the purchase of uniforms for the City of Midland Fire Department through the buyboard at a total cost of \$96,068.72; and this item was not bid but purchased through a Council of Governments. (GENERAL SERVICES) (2012 - 417)
10. Consider a resolution awarding an annual contract for Water Well Maintenance for the City's water supply to Straub Corporation, at a cost not to exceed \$60,000.00 per year; and said contract is for a term of two (2) years, renewable for up to an additional three (3) years at the City's option; and Straub Corporation was the sole bidder. (GENERAL SERVICES) (2012 - 418)
11. Consider a resolution authorizing the purchase of four complete side-wheel roll irrigation systems and spare parts for use at the Spraberry Farm Facilities from Mesa Irrigation Company of Lamesa, Texas, at a total cost of \$61,150.00. (GENERAL SERVICES) (2012 - 419)
12. Consider a resolution authorizing the execution of a Professional Services Agreement with Connolly Architects, Incorporated, for professional architectural design services for the City of Midland Animal Shelter; and appropriating \$49,500.00 for said professional services. (GENERAL SERVICES) (2012 - 442)
13. Consider a resolution authorizing the execution of a Letter of Agreement between the City of Midland and the Federal Aviation Administration Air Traffic Control Tower regarding Airport Movement Areas and Vehicle Control on Airfield Surfaces at Midland International Airport. (AIRPORTS) (2012 - 421)
14. Consider a resolution of the City of Midland, Texas requesting that the Texas State Legislature and the Governor of Texas take action to approve House Bill No. 63 which was introduced by the Honorable Tom Craddick in the Regular Session of the 83rd Session of the Texas Legislature. (CITY ATTORNEY'S OFFICE) (2012 - 422)
15. Consider a resolution approving an amendment to the Promotional Agreement between the Midland Development Corporation and Permian Basin Public Telecommunications, Inc. to advertise or publicize the City of Midland for the purpose of developing new and expanded business enterprises. (CITY MANAGER'S OFFICE) (2012 - 423)

16. Consider a resolution appropriating funds from the General Liability Self-Insurance Fund to the Atmos Rate Review Mechanism Project (8923) in the amount of \$198,032.00; said funds represent reimbursement from Atmos for consulting/legal fees associated with the Steering Committee's analysis of their Rate Review Mechanism costs; there is no impact to the General Fund. (CITY MANAGER'S OFFICE) (2012 - 424)
17. Consider a resolution authorizing the City of Midland to access the Home Investment Partnerships Program Funds from the Texas Department of Housing and Community Affairs through the Reservation System Participant Program; said funds will be used for Home Owner Rehabilitation and Home Buyer Assistance Programs; designating several City sources as matching funds not to exceed \$3,000.00; designating City cash reserves for funding projects pending reimbursement from the State; and appropriating funds from the Home Investment Partnerships Reservation System Participant Program. (DEVELOPMENT SERVICES) (2012 - 425)
18. Receive and file the Consolidated Annual Performance and Evaluation Report for 2011/2012. (DEVELOPMENT SERVICES)
19. Consider a motion on a request from First Baptist of Midland to approve the use and operation of golf carts on portions of Baird Street, Main Street and Texas Avenue, City owned streets within the downtown area of the City of Midland on December 9th, 16th, 23rd, 24th, and 30th, 2012 for church services within the Midland Center. (ENGINEERING SERVICES)
20. Consider a resolution approving an Economic Development Agreement between the Midland Development Corporation and the City of Midland for improvements to Briarwood Avenue, as authorized by Chapter 501 of the Texas Local Government Code; and appropriating funds therefor. (ENGINEERING SERVICES) (2012 - 426)
21. Consider a resolution authorizing the execution of a Public Improvement Development Agreement with Brighton County Development, LLC for development of Cross Pointe Addition, City and County of Midland, Texas (Generally located along the Briarwood Avenue Corridor, between Holiday Hill Road and Avalon Drive); and appropriating funds in the amount of \$2,974,959.00 therefor; said agreement being authorized by Section 395.081 of the Texas Local Government Code. (ENGINEERING SERVICES) (2012 - 427)
22. Consider a resolution approving plans and specifications and authorizing advertisement for bids for the Douglas Avenue and "D" Street Water and Sewer Improvements Project; said project will be for the installation of new water and sewer mains along Douglas Avenue and "D" Street. (ENGINEERING SERVICES) (2012 - 428)
23. Consider a resolution approving plans and specifications and authorizing advertisement for bids for the Compass Project (City of Midland paving, alleys, streets and sidewalks); said project will establish a unit price for installation of

necessary components to construct streets, alleys and sidewalks. (ENGINEERING SERVICES) (2012 - 429)

24. Consider a resolution appropriating \$58,824 from the 2001 GPCO Drainage Improvements Bond Fund (165) Unappropriated Fund Balance (5650) to the Jal Draw Channel Lining Project (8880) for additional improvements to Jal Draw. (ENGINEERING SERVICES) (2012 - 430)
25. Consider a resolution approving plans and specifications and authorizing advertisement for bids for the Lamesa Road Signal Replacement Project; said project will be for the replacement of signals at the intersections of Cuthbert Avenue and Lamesa Road and Golf Course Road and Lamesa Road. (ENGINEERING SERVICES) (2012 - 431)
26. Consider a resolution approving plans and specifications and authorizing advertisement for bids for the Lamesa Road Pedestrian Access Improvement Project; said project will be for the construction of sidewalks, ramps and crosswalks along both sides of Lamesa Road. (ENGINEERING SERVICES) (2012 - 432)
27. Consider a resolution approving an Economic Development Agreement between the Midland Development Corporation and Kenneth Huseman Family Limited Partnership, as authorized by Chapter 501 of the Texas Local Government Code; and authorizing payment therefor. (ENGINEERING SERVICES) (2012 - 433)
28. Consider a resolution authorizing the Mayor to negotiate and execute an Interlocal Agreement with the Midland County Fresh Water Supply District #1 for the design of a well to be drilled into the Capitan Reef Complex Aquifer to promote the City's future water supply; and appropriating funds. (UTILITIES) (2012 - 435)
29. Consider a resolution authorizing the execution of a 1-year Effluent Farm Lease Renewal Agreement between the City of Midland, Texas, and Spraberry CGC, Incorporated, for operation of the Spraberry Effluent Farm; and directing the Director of Utilities to take all procedural steps necessary to bid and have in place a new lease agreement for the Spraberry Effluent Farm, said agreement to take effect prior to January 1, 2014. (UTILITIES) (2012 - 436)
30. Consider a resolution authorizing the execution of a 1-year Effluent Farm Lease Renewal Agreement between the City of Midland, Texas, and Kevin Cook, for operation of the Spraberry Effluent Farm; and directing the Director of Utilities to take all procedural steps necessary to bid and have in place a new lease agreement for the Spraberry Effluent Farm, said agreement to take effect prior to January 1, 2014. (UTILITIES) (2012 - 437)
31. 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; and directing the Director of Utilities to take all procedural steps necessary to bid and have in place a new lease agreement for the Conner Effluent Farm, said agreement to take effect prior to January 1, 2014. (UTILITIES) (2012 - 438)

32. 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; and ratifying actions taken by the parties after expiration of the current lease agreement on November 30, 2012; and directing the Director of Utilities to take all procedural steps necessary to bid and have in place a new lease agreement for the Plant Farm, said agreement to take effect prior to January 1, 2014. (UTILITIES) (2012 - 439)

SECOND READINGS

33. Consider an ordinance on second reading vacating and abandoning a 0.16-acre portion of the east/west 20-foot alley located within Block 3, "A" Street Community Center, Section 3, City and County of Midland, Texas (Generally located near the southwest corner of the intersection of West Wadley Avenue and North "A" Street); adopting the appraisal by the City Manager of \$17,400.00; and ordering recordation by the City Secretary. (Development Services) (9019)

PUBLIC HEARINGS

34. 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 Lots 14-26, Block 43, Lots 14-26, Block 44, and Lots 14-26, Block 45, Greenwood Addition, Third, Fourth, and Fifth, City and County of Midland, Texas, which is presently zoned C-3, Commercial District, to be used as a PD, Planned District for a Housing Development (Generally located on the north side of Cloverdale Road, between South Jackson Street and South Webster Street); providing for such use to be subject to certain special conditions and restrictions as set out herein; containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9093)
35. At approximately 10:33 a.m. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 5.00-acre tract of land out of Blocks 84 and 85, East Midland Addition, City and County of Midland, Texas, and more specifically described in Section One hereof, which is presently zoned C-3, Commercial District, to be used as a PD, Planned District for a Housing Development (Generally located on the west side of Fairgrounds Road, 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) (9094)

36. At approximately 10:36 a.m. hold a public hearing and consider an ordinance changing the zoning classification by amending Chapter One, Title XI, of the City Code of Midland, Texas, by permitting a 3.911-acre tract of land out of Section 8, Block "X", H.P. Hilliard Survey, City and County of Midland, Texas, which is presently zoned AE, Agriculture Estate District, and a 7.709-acre tract of land out of Section 8, Block "X", H.P. Hilliard Survey, 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 northwest corner of the intersection of North Midkiff Road and Mockingbird Lane); containing a cumulative clause; containing a savings and severability clause; providing for a maximum penalty or fine of two thousand dollars (\$2,000.00); and ordering publication. (DEVELOPMENT SERVICES) (9095)
37. At approximately 10:39 a.m. hold a public hearing and consider a resolution authorizing a Temporary Special Permit for a Manufactured Home on Lot 9, Block 2, Pavilion Park, Section 7, City and County of Midland, Texas (Generally located on the east extension of Solomon Lane on the west side of North Fairgrounds Road). (DEVELOPMENT SERVICES) (2012 - 440)

MISCELLANEOUS

38. Consider a resolution approving the issuance of a permit to Linn Operating, Inc. ("operator") to drill an oil and gas well within the City limits located 262 feet from the north line and 467 feet from the west line, Section 24, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas (Generally located on the east side of Avalon Drive, approximately 250 feet south of the extension of Mockingbird Lane); providing that said permit does not require a new Road Repair Agreement but shall be consolidated under an existing Road Repair Agreement; and approving variances. (DEVELOPMENT SERVICES) (2012 - 441)
39. Consider a request for a motion regarding an interpretation of a note on a proposed final plat Greathouse Addition, Section 9 (Generally located on the northwest corner of the intersection of Briarwood Avenue and Mathis Street). (DEVELOPMENT SERVICES)
40. Consider a motion appealing the decision by the City Building Official to deny a proposed sign permit on Lot 1A, Block 1, Homestead Park Addition, Section 2, City and County of Midland, Texas. (Generally located on the northeast corner of Garfield Street and Louisiana Avenue.) (DEVELOPMENT SERVICES)
41. Consider a motion interpreting Chapter 11-7a Revised Outdoor Sign Regulations regarding the use of advertising on EZ Rider transportation shelters in all zoning districts. (DEVELOPMENT SERVICES)

42. Consider an ordinance designating the I-20 Wildlife Preserve as parkland; amending Title IX, "Public Ways and Property", Chapter 5, "Parks and Playgrounds", Section 18, "Hours of Use of Public Parks", establishing Subsection (C) of the City Code of Midland, Texas, so as to establish provisions concerning hours of use and rules and regulations for the I-20 Wildlife Preserve; containing a cumulative clause; containing a saving and severability clause; providing for a maximum penalty or fine of five hundred dollars (\$500.00); and ordering publication. (COMMUNITY SERVICES) (9098)
43. Consider a motion making appointments to various Boards and Commissions.

EXECUTIVE SESSION

44. Pursuant to Texas Government Code §551.101, the Council will hold an Executive Session which is closed to the public to discuss the following matters as permitted under the following Texas Government Code Sections:
 - a. Section 551.071 Consultation with the City Attorney
 - a.1. Discuss with the City Attorney contemplated litigation and legal issues involved in litigation styled Richard Sanchez, Heather Sanchez, Todd King and Laci King v. Union Pacific Railroad, Inc., and Smith Industries, Inc., in a State District Court in Midland County, Texas.
 - a.2. Discuss a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Texas Government Code.
 - b. Section 551.072 Deliberation Regarding Real Property.
 - b.1. Discuss the purchase, exchange, lease or value of real property described as Block 55, Original Town Addition, Midland, Midland County, Texas.

Respectfully Submitted,

Courtney B. Sharp
City Manager

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

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

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 27, 2012.

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

Staff members present: City Manager Courtney Sharp, City Attorney Keith Stretcher, Deputy City Manager Tommy Hudson, Assistant City Manager Jim Nichols, City Secretary Amy Turner, General Services Director Robert Patrick, Acting Engineering Director David Beard, Planning Division Manager Cameron Walker, Building Official Steve Thorpe, Downtown Development Director Genora Young, Assistant Code Administration Manager Ron Jenkins, and Multimedia Developer Ryan Stout.

- B1. Receive a presentation from Rhotenberry Wellen Architects on Midland Center Renovations.

Jim Rhotenberry noted they had been hired last spring to look at potential renovations to the Midland Center. He provided an overview of the study and building analysis.

TJ of Rhotenberry Wellen Architects noted the Midland Center is 30 years old and many of the systems are original to the building. He reviewed the first two options for improvements.

Option 1 would include replacing mechanical systems, installing ground level fire sprinkler system, new fire alarm, roof repairs, plumbing repairs, new lobby elevator, restroom renovations and ground level ceiling replacement at an estimated cost of \$2,162,000.

Option 2 would include all of Option 1 with the addition of removing asbestos at the basement level, renovating the basement level, constructing an addition at ground level including new restrooms, administration area and concession areas at an estimated cost of \$6,300,000.

Mr. Rhotenberry noted it would be impossible to evaluate the Midland Center without evaluating what is happening in the area. With the construction of the Midland Lofts and garage they developed an additional option.

Option 3 would include all of Option 2 with the construction of Midland Center Northeast Plaza and Main Street renovation including parking garage pedestrian access and Main Street modifications at an estimated cost of \$8,761,000.

He reviewed additional improvements that could be included such as a covered canopy along the building on Main Street, additional Baird Street surface parking, Texas Street modifications and Main Street renovations between Illinois & Texas.

Project timelines were discussed noting if Option 3 was chosen it would be approximately three years to complete the project if the Midland Center was to remain open.

City Manager Sharp noted that Option 1 has already been funded and that staff's recommendation would be to take a hard look at Option 3.

B2. Receive information regarding EZ Rider bus stop advertising signage.

Assistant City Manager Jim Nichols shared pictures of types of signage that could be used at EZ Rider bus shelters.

Discussion ensued about half signs over full signs and advertising content.

Mr. Nichols reported that the current sign ordinance would allow EZ Rider to move forward with advertising in the C-1 District only. The options are to allow EZ Rider to place advertising in the C-1 District and install additional bus shelters in that area, expand the ordinance to allow signage at all shelters, or to develop an ordinance to allow advertising at select bus shelters throughout the City.

EZ Rider could potentially generate \$5000 per shelter per year.

City Attorney Keith Stretcher noted that another option would be to place the current ordinance on the Council Agenda for the Council to interpret whether the current ordinance allows for signage at bus shelters outside of the C-1 District.

Discussion ensued about giving EZ Rider the opportunity to generate revenue.

The foregoing agenda items were discussed by the City Council with no formal action taken. The Briefing Session was adjourned at 10:02 a.m.

REGULAR SESSION

The City Council convened in regular session in the Council Chamber, City Hall, Midland, Texas, at 10:08 a.m., November 27, 2012.

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

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

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

OPENING ITEMS

Mayor Perry opened the meeting in remembrance of those who suffered and lost their lives in the recent train tragedy.

1. Invocation - Monsignor Larry Droll, St. Ann's Catholic Church
2. Pledge of Allegiance

PRESENTATIONS

3. Presentation of special events, organizations, individuals, or periods of time including, but not limited to: No presentations were made.

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 members of the public wishing to speak.

CONSENT AGENDA

Council Member Hailey moved to approve Consent Agenda items 5 - 21 excluding 11, 13, 20, and 21; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

5. Approved a motion approving the following minutes:
 - a. Regular Meeting of November 13, 2012.
6. Received information regarding Fourth Quarter Fiscal Year 2012 Investment Report. (FINANCE)
7. Approved a resolution approving Fiscal Year 2013 Investment Policy. (FINANCE)

RESOLUTION NO. 2012 - 400
RESOLUTION APPROVING THE CITY OF MIDLAND'S FISCAL YEAR 2013
INVESTMENT POLICY.

8. Approved a resolution approving Fiscal Year 2012 Water, sewer and sanitation write-offs. (FINANCE)

RESOLUTION NO. 2012 - 401

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

9. Approved a resolution approving Fiscal Year 2012 miscellaneous write-offs. (FINANCE)

RESOLUTION NO. 2012 - 402

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

10. Approved a resolution approving Fiscal Year 2012 EMS write-offs. (FINANCE)

RESOLUTION NO. 2012 - 403

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

12. Approved a resolution approving the purchase of ammunition for the Police Department. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 405

RESOLUTION AUTHORIZING THE PURCHASE OF AMMUNITION OF ASSORTED TYPES AND IN ASSORTED QUANTITIES FOR THE MIDLAND POLICE DEPARTMENT FROM THE RESPECTIVE LOW BIDDERS, GT DISTRIBUTORS, INCORPORATED, AND BLACK HILLS AMMUNITION, INCORPORATED, AT AN ESTIMATED TOTAL COST OF \$84,551.20; AND REJECTING SOME OF THE BIDS.

14. Approved a resolution authorizing the execution of an amendment to the lease with The Hispanic Cultural Center of Midland. (CITY ATTORNEY'S OFFICE)

RESOLUTION NO. 2012 - 407

RESOLUTION AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE LEASE AGREEMENT WITH THE HISPANIC CULTURAL CENTER OF MIDLAND REGARDING A CITY OWNED BUILDING LOCATED IN HOGAN PARK.

15. Approved a resolution authorizing the City of Midland to apply for grant funds from the Texas Department of Transportation for the purpose of constructing a Hike Bike Trail, said grant funds require an 80/20 match. (COMMUNITY SERVICES)

RESOLUTION NO. 2012 - 408

RESOLUTION AUTHORIZING THE CITY OF MIDLAND COMMUNITY SERVICES DEPARTMENT TO APPLY FOR A GRANT FROM THE TEXAS DEPARTMENT OF TRANSPORTATION IN ORDER TO CONSTRUCT A HIKE AND BIKE TRAILS SYSTEM; SAID GRANT IS A MATCHING FUNDS GRANT IN WHICH THE TEXAS DEPARTMENT OF TRANSPORTATION ENHANCEMENT GRANT PROGRAM WOULD FUND 80% (\$1,769,519.00) OF THE TOTAL AMOUNT AND THE CITY OF MIDLAND WOULD FUND 20% (\$442,380.00) OF THE TOTAL AMOUNT IN ADDITION TO DESIGN FEES IN THE AMOUNT OF \$153,875.00, THE CITY'S TOTAL FISCAL IMPACT WOULD BE \$596,255.00

16. Approved a resolution to accept Midland Development Corporation Funds in the amount of \$250,000 and allocate funds in order for the City of Midland to conduct drainage studies of both Midland Draw and Jal Draw and appropriate funds. (ENGINEERING SERVICES)

RESOLUTION NO. 2012 - 409

RESOLUTION ACCEPTING MIDLAND DEVELOPMENT CORPORATION FUNDS IN AN AMOUNT NOT TO EXCEED \$250,000 IN ORDER FOR THE CITY OF MIDLAND TO CONDUCT DRAINAGE STUDIES OF BOTH MIDLAND DRAW AND JAL DRAW; APPROPRIATING SAID FUNDS; AND PROVIDING THAT SAID EXPENDITURE IS AN ADMINISTRATIVE EXPENSE AS AUTHORIZED BY CHAPTER 501 OF THE TEXAS LOCAL GOVERNMENT CODE.

17. Approved a motion on a request by West Company of Midland, Inc. for Timber Wolf Estates, to approve items requested for deferral, and to waive the Associated Public Improvement Guarantee. There are no costs associated with this item. (ENGINEERING SERVICES)
18. Approved a resolution for plans and specifications and authorizing advertisements for bids for the Municipal Solid Waste Landfill Cell 7 Excavation and Liner Construction Project. (SOLID WASTE)

RESOLUTION NO. 2012 - 410

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE MUNICIPAL SOLID WASTE LANDFILL CELL 7 EXCAVATION AND LINER CONSTRUCTION PROJECT.

19. Approved a resolution authorizing a Request for Qualifications for a Professional Consultant to perform a Solid Waste Operational Review for the Solid Waste Department. (SOLID WASTE)

RESOLUTION NO. 2012 - 411

RESOLUTION AUTHORIZING THE CITY MANAGER TO ADVERTISE A REQUEST FOR QUALIFICATIONS FROM FIRMS TO CONDUCT PROFESSIONAL INDEPTH OPERATIONAL REVIEW SERVICES FOR THE CITY OF MIDLAND SOLID WASTE DEPARTMENT; AND AUTHORIZING THE CITY MANAGER TO NEGOTIATE AN AGREEMENT FOR SAID PROFESSIONAL SERVICES WITH THE MOST QUALIFIED PROVIDER; AND PROVIDING THAT NO SUCH AGREEMENT SHALL BECOME EFFECTIVE UNTIL APPROVED BY THE CITY COUNCIL.

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

11. Consider a resolution approving a Professional Services Agreement with RCC Consultants, Inc. for consulting services to conduct Phase 2 of the Radio Replacement Project. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 404

RESOLUTION APPROVING AN AGREEMENT WITH RCC CONSULTANTS, INCORPORATED, TO PROVIDE CONSULTING SERVICES TO CONDUCT PHASE 2 OF THE RADIO REPLACEMENT PROJECT AT A COST OF \$85,262.25; AND

APPROPRIATING FUNDS.

Council Member Trost asked for clarification of why it would be necessary to pay a consultant \$85,000. General Services Director Robert Patrick noted that the consultant would be evaluating the proposal received for the \$8 million radio upgrade and would help negotiate a contract. Chief Information Officer Sharlett Chowning added that the consultant in the first phase would ensure that the new radio system covers the entire City. The second phase would be to go through the bids, address technical issues, evaluate the bidders, and finally to help select a vendor and negotiate the contract. She noted the consultant has done this type of evaluation for many municipalities in the state. Once a vendor is selected it will take approximately 9-10 months to set up and it should last for 10 years. The City does not want to make a mistake and wants to ensure that they are getting what is best for the City.

Council Member Morales moved to adopt Resolution No. 2012 - 404; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

13. Consider a resolution approving a contract for labor, material, equipment and supervision necessary to clean and paint the steel structures at the Scharbauer Sports Complex. (GENERAL SERVICES)

RESOLUTION NO. 2012 - 406

RESOLUTION AWARDED A CONTRACT FOR THE CLEANING AND PAINTING OF ALL STEEL STRUCTURES AT THE SCHARBAUER SPORTS COMPLEX TO OPT CO, INCORPORATED, AT A TOTAL COST OF \$532,653.00; AND APPROPRIATING FUNDS.

When asked if this item was maintenance or a capital expense, Community Services Director Tina Jauz reported it was additional capital.

Discussion ensued about the need to continue the 4B due to large expenses that will be incurred throughout the life of the Sports Complex that would either need to be paid through sales tax or property tax. It was suggested this would be a good topic to discuss at retreat.

Council Member Trost moved to adopt Resolution No. 2012 - 406; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

20. Consider a resolution approving Change Order Number 2 for the Headworks Improvements - Replacement of Influent Screens Project with Red River Construction Company and Appropriate Funds. (UTILITIES)

RESOLUTION NO. 2012 - 412

RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDER NUMBER TWO WITH RED RIVER CONSTRUCTION COMPANY, INCORPORATED, ADDING \$325,553.00 FOR ADDITIONAL WORK TO THE EXISTING CONTRACT FOR THE HEADWORKS IMPROVEMENTS - REPLACEMENT OF INFLUENT SCREENS

PROJECT; AND APPROPRIATING \$325,553.00; THE ORIGINAL CONTRACT WAS FOR \$5,357,080.00; THIS CHANGE ORDER BRINGS THE TOTAL CONTRACT PRICE TO \$6,185,735.00.

Following brief discussion about the work included, Council Member Trost moved to adopt Resolution No. 2012 - 412; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

21. Consider a resolution authorizing the Mayor to negotiate and execute a contract with the Midland County Fresh Water Supply District Number 1 to investigate additional water supplies in Winkler County. (UTILITIES)

RESOLUTION NO. 2012 - 413

RESOLUTION AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE AN INTERLOCAL AGREEMENT WITH THE MIDLAND COUNTY FRESH WATER SUPPLY DISTRICT #1 FOR THE DRILLING OF A WELL INTO THE CAPITAN REEF COMPLEX AQUIFER TO PROMOTE THE CITY'S FUTURE WATER SUPPLY; AND APPROPRIATING FUNDS.

Following discussion, Council Member Hailey moved to continue the item to the next available meeting; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

SECOND READINGS

22. 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, 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)

ORDINANCE NO. 9076

AN ORDINANCE AMENDING TITLE III, "DEPARTMENTS", CHAPTER 1, "WATER DEPARTMENT", SECTION 2, "RATES," SUBSECTION (A), "CUSTOMERS INSIDE OF CITY LIMITS," SUB-SUBSECTION 1., "WATER RATES," OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO DECREASE THE RATES CHARGED TO CUSTOMERS INSIDE THE CITY LIMITS FOR WATER; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION; AND THE CITY MANAGER SHALL NOTIFY ALL CUSTOMERS OUTSIDE THE CITY LIMITS AS REQUIRED BY STATE LAW

Deputy City Secretary Reyes read the caption of Ordinance No. 9076.

Council Member Sparks moved to approve the second and final reading of Ordinance No. 9076 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey.

Discussion ensued regarding easing water restrictions, water conservation and being

consistent with the public in the message that the City sends out regarding water.

Council Member Morales moved to amend the motion by including the date certain of January 1, 2013; seconded by Council Member Hailey. The motion to amend carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

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

23. Consider an ordinance on second reading for the annexation of a 283.36-acre tract of land (Tract 1) out of Sections 11 and 12, Block 40, T-2-S, T&P RR Co., Survey, Midland County, Texas. (Generally located on the northeast corner of the intersection of West Interstate Highway 20 and South County Road 1250) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9077

AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO CERTAIN AREAS ADJOINING THE PRESENT CITY LIMITS, BEING A 283.36-ACRE TRACT OF LAND OUT OF SECTIONS 11 AND 12, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF WEST INTERSTATE 20 AND SOUTH COUNTY ROAD 1250); AND APPROVING A PUBLIC SERVICE PLAN.

Mayor Perry noted he would be abstaining from voting and left the dais.

Deputy City Secretary Reyes read the caption of Ordinance No. 9077.

Council Member Dufford moved to approve the second and final reading of Ordinance No. 9077 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks.

City Manager Sharp noted there was an amendment needed to this item. Council Member James asked Robert Rendall to address the amendment that was needed.

Robert Rendall, 550 W. Texas, Suite 800, reported this amendment had just been brought to his client's attention. There were three parties who requested voluntary annexation: Schlumberger, MDC and the City of Midland. It was discovered that a fourth owner's property was inadvertently included in the legal description prepared by LCA. The fourth party does not wish to annex their three acre parcel into the City limits and has asked that the Ordinance be amended to exclude their property. He clarified that the owner of the three acre tract of land is not affiliated with any of the other three properties and that piece of land was mistakenly included.

Council Member Sparks moved to amend the motion by saving and excepting the 3.80-acre tract of land and making the LCA Survey Exhibit C to the ordinance; seconded by Council Member Dufford. The motion to amend carried by the following vote: AYE: Morales, Trost, Hailey, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

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

24. Consider an ordinance on second reading for the annexation of a 75.90-acre tract of land (Tract 2) out of Sections 37 and 38, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the southwest corner of the intersection of Tradewinds Boulevard and Deauville Boulevard) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9078

AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO CERTAIN AREAS ADJOINING THE PRESENT CITY LIMITS, BEING A 75.90-ACRE TRACT OF LAND OUT OF SECTIONS 37 AND 38, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF TRADEWINDS BOULEVARD AND DEAUVILLE BOULEVARD); AND APPROVING A PUBLIC SERVICE PLAN.

Deputy City Secretary Reyes read the caption of Ordinance No. 9078.

Council Member Dufford moved to approve the second and final reading of Ordinance No. 9078 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

Following executive session, Mayor Perry reconvened the meeting at 1:00 p.m. with all Council Members present.

25. Consider an ordinance on second reading for the annexation of a 30.98-acre tract of land (Tract 3) out of Section 35, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the east side of State Highway 158, approximately ½ mile northwest of State Highway 191.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9079

AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO CERTAIN AREAS ADJOINING THE PRESENT CITY LIMITS, BEING A 30.98-ACRE TRACT OF LAND OUT OF SECTION 35, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF (GENERALLY LOCATED ON THE EAST SIDE OF STATE HIGHWAY 158, APPROXIMATELY ½ MILE NORTHWEST OF STATE HIGHWAY 191); AND APPROVING A PUBLIC SERVICE PLAN.

Deputy City Secretary Reyes read the caption of Ordinance No. 9079.

Council Member Sparks moved to approve the second and final reading of Ordinance No. 9079 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

26. Consider an ordinance on second reading for the annexation of a 193.29-acre tract of land (Tract 4) out of Sections 11 and 12, Block 40, T-2-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the south side of West Interstate 20, south of South Loop 250 West.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9080

AN ORDINANCE EXTENDING THE BOUNDARIES OF THE CITY OF MIDLAND, TEXAS, BY ADDING THERETO CERTAIN AREAS ADJOINING THE PRESENT CITY LIMITS, BEING A 193.29-ACRE TRACT OF LAND OUT OF SECTIONS 11 AND 12, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF (GENERALLY LOCATED ON THE SOUTH SIDE OF INTERSTATE 20, SOUTH OF SOUTH LOOP 250 WEST); AND APPROVING A PUBLIC SERVICE PLAN.

Deputy City Secretary Reyes read the caption of Ordinance No. 9080.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 9080 in accordance with the Charter of the City of Midland; seconded by Council Member Trost. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

27. Consider an ordinance on second reading on a request by Davidheiser Family Trust for a zone change from MH, Mobile Home Dwelling District and LR-2, Local Retail District to MF-1, Multiple Family Dwelling District on a 22.46-acre tract of land out of Section 1, Block 39, T-2-S, T&P RR Co. Survey, Midland County, Texas. (Generally located at the east side of South Lamesa Road, approximately 1,100 feet north of East Interstate 20.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9081

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 22.46-ACRE TRACT OF LAND OUT OF SECTION 1, BLOCK 39, T-2-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED MH, MANUFACTURED HOME DISTRICT, IN PART, AND LR-2, LOCAL RETAIL DISTRICT, IN PART, TO BE USED AS AN MF-1, MULTIPLE-FAMILY DWELLING DISTRICT (GENERALLY LOCATED ON THE EAST SIDE OF LAMESA ROAD, APPROXIMATELY 1,100 FEET NORTH OF INTERSTATE 20); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION.

Deputy City Secretary Reyes read the caption of Ordinance No. 9081.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 9081 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

28. Consider an ordinance on second reading on a request by Javi's Restaurant for a

Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a restaurant, on Lot 7, less the west 5 feet and on Lots 8 through 10, Block 20, Belmont Addition, City and County of Midland, Texas. (Generally located on the northeast corner of the intersection of Rankin Highway and West Francis Avenue.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9082

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 7, LESS THE WEST 5 FEET, AND LOTS 8, 9 AND 10, BLOCK 20, BELMONT ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF RANKIN HIGHWAY AND WEST FRANCIS AVENUE), WHICH IS PRESENTLY ZONED LR-3, LOCAL RETAIL DISTRICT, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A RESTAURANT FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION.

Deputy City Secretary Reyes read the caption of Ordinance No. 9082.

Council Member Dufford moved to approve the second and final reading of Ordinance No. 9082 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

29. Consider an ordinance on second reading on a request by Jeff Benson for a Specific Use Permit with Term for the sale of all alcoholic beverages, for on-premises consumption, in a Theater/Amusement Center, on Lot 1A, Block 2, Gateway Plaza, City and County of Midland, Texas. (Generally located on the northeast corner of the intersection of West Business 20 and Liberty Drive.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9083

AN ORDINANCE CHANGING THE ZONING USE CLASSIFICATION OF THE PROPERTY DESCRIBED AS LOT 1A, BLOCK 2, GATEWAY PLAZA, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF WEST BUSINESS 20 AND LIBERTY DRIVE), WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A SHOPPING CENTER, BY PERMITTING SAID PROPERTY TO BE USED UNDER A SPECIFIC USE PERMIT WITH TERM FOR THE SALE OF ALL ALCOHOLIC BEVERAGES IN A THEATER / AMUSEMENT CENTER FOR ON-PREMISES CONSUMPTION; MAKING SAID PERMIT SUBJECT TO CERTAIN CONDITIONS AND RESTRICTIONS CONTAINED HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION.

Deputy City Secretary Reyes read the caption of Ordinance No. 9083.

Council Member Trost moved to approve the second and final reading of Ordinance No. 9083 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

30. Consider an ordinance on second reading on a city-initiated proposal for a zone change from C-1, Central Area District to PD, Planned District for a Housing Development on Lots 1 through 8; the north 8 feet of the west 75 feet of Lot 9, the east 65 feet of Lots 9 through 12; and Lots 13 through 23, Block 53; Original Town, City and County of Midland, Texas. (Generally located on the east side of North Main Street bounded by East Texas Avenue and Wall Street.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9084

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 1-8, THE NORTH 8 FEET OF THE WEST 75 FEET OF LOT 9, THE EAST 65 FEET OF LOTS 9-12, AND LOTS 13-23, BLOCK 53, ORIGINAL TOWN, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED C-1, CENTRAL AREA DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED NORTH OF WALL STREET, SOUTH OF TEXAS AVENUE, EAST OF MAIN STREET, AND WEST OF BAIRD STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION.

Deputy City Secretary Reyes read the caption of Ordinance No. 9084.

Council Member Morales moved to approve the second and final reading of Ordinance No. 9084 in accordance with the Charter of the City of Midland; seconded by Council Member Dufford. The motion carried by the following vote: AYE: Morales, Trost, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: Hailey. ABSENT: None.

31. Consider an ordinance on second reading on a request by Tim Ernst for a zone change from 1F-2, One-Family Dwelling District to PD, Planned District for an Office Center on Lot 1A, Block 5, S. W. Estes Addition, Section 2, City and County of Midland, Texas. (Generally located near the southwest corner of the intersection of West Cuthbert and Whitaker Street.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9085

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1A, BLOCK 5, S.W. ESTES ADDITION, SECTION 2, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED 1F-2, ONE-FAMILY DWELLING DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR AN OFFICE CENTER (GENERALLY LOCATED ON THE SOUTHWEST CORNER OF WEST CUTHBERT AVENUE AND WHITAKER STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A

SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION.

Deputy City Secretary Reyes read the caption of Ordinance No. 9085.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 9085 in accordance with the Charter of the City of Midland; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

32. Consider an ordinance on second reading establishing the initial zoning of annexed land to: BP, I-20 Business Park District, on a 283.36-acre tract of land (Tract 1) out of Sections 11 and 12, Block 40, T-2-S T&P RR Co. Survey, Midland County, Texas. (Generally located northeast corner of the intersection of West I-20 and South County Road 1250.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9086

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 283.36-ACRE TRACT OF LAND OUT OF SECTIONS 11 AND 12, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF, AS A BP, I-20 BUSINESS PARK DISTRICT; SAID TRACT IS GENERALLY LOCATED ON THE NORTHEAST CORNER OF THE INTERSECTION OF WEST INTERSTATE 20 AND SOUTH COUNTY ROAD 1250; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION.

Deputy City Secretary Reyes read the caption of Ordinance No. 9086.

Council Member James moved to approve the second and final reading of Ordinance No. 9086 in accordance with the Charter of the City of Midland with the amendment to save and except the 3.80 acres tract of land and to make the LCA Survey Exhibit B; seconded by Council Member Sparks. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: Perry.

33. Consider an ordinance on second reading establishing the initial zoning of annexed land to PD, Planned District for an Office Center, on a 29.82-acre tract of land (Tract 2A) out of Sections 37 and 38, Block 40, T-1-S, T & P RR Co. Survey; to PD, Planned District for an Office Center on a 21.87-acre tract of land (Tract 2B); to PD, Planned District for a Housing Development on a 16.13-acre tract of land (Tract 2C); to LR-2, Local Retail District on a 11.71-acre tract of land (Tract 2D); and to LR-2, Local Retail District on a 2.29-acre tract of land (Tract 2E), all out of Section 37, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas. (Generally located on the southwest corner of the intersection of Tradewinds Boulevard and Deauville Boulevard.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9087

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA

INDICATED AS BEING A 29.82-ACRE TRACT OF LAND OUT OF SECTIONS 37 AND 38, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS ("TRACT 2A"), AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF, AS A PD, PLANNED DISTRICT FOR AN OFFICE CENTER; ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 21.87-ACRE TRACT OF LAND ("TRACT 2B"), AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION TWO HEREOF, AS A PD, PLANNED DISTRICT FOR AN OFFICE CENTER; ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 16.13-ACRE TRACT OF LAND ("TRACT 2C"), AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION THREE HEREOF, AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 11.71-ACRE TRACT OF LAND ("TRACT 2D"), AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION FOUR HEREOF, AS AN LR-2, LOCAL RETAIL DISTRICT; ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 2.29-ACRE TRACT OF LAND ("TRACT 2E"), AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION FIVE HEREOF, AS AN LR-2, LOCAL RETAIL DISTRICT; TRACTS 2B-2E ARE ALL OUT OF SECTION 37, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; SAID TRACTS ARE GENERALLY LOCATED ON THE SOUTHWEST CORNER OF THE INTERSECTION OF TRADEWINDS BOULEVARD AND DEAUVILLE BOULEVARD; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION.

Deputy City Secretary Reyes read the caption of Ordinance No. 9087.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 9087 in accordance with the Charter of the City of Midland; seconded by Council Member James. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

34. Consider an ordinance on second reading establishing the initial zoning of annexed land to PD, Planned District for a Housing Development on a 3.623-acre tract of land (Tract 3A) and a 1F-1, One-Family Dwelling District, on a 27.347-acre tract of land (Tract 3B) all out of Section 35, Block 40, T-1-S T&P RR Co. Survey, Midland County, Texas. (Generally located on the east side of State Highway 158, approximately ½ mile northwest of State Highway 191.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9088

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 3.623-ACRE TRACT OF LAND ("TRACT 3A"), AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF, AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 27.347-ACRE TRACT OF LAND ("TRACT 3B"), AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION TWO HEREOF, AS A 1F-1, ONE-FAMILY DWELLING DISTRICT; SAID TRACTS ARE ALL OUT OF SECTION 35, BLOCK 40, T-1-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS; SAID TRACTS ARE GENERALLY LOCATED ON THE EAST SIDE OF STATE

HIGHWAY 158, APPROXIMATELY ½ MILE NORTHWEST OF STATE HIGHWAY 191; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION.

Deputy City Secretary Reyes read the caption of Ordinance No. 9088.

Council Member Trost moved to approve the second and final reading of Ordinance No. 9088 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

35. Consider an ordinance on second reading establishing the initial zoning of annexed land to: FD, Future Development District, on a 193.29-acre tract of land (Tract 4) out of Sections 11 and 12, Block 40, T-2-S, T&P RR co. Survey, Midland County, Texas. (Generally located south side of Interstate Highway 20 south of South Loop 250 West.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9089

AN ORDINANCE ESTABLISHING THE ZONING CLASSIFICATION OF THE AREA INDICATED AS BEING A 193.29-ACRE TRACT OF LAND OUT OF SECTIONS 11 AND 12, BLOCK 40, T-2-S, T&P RR CO. SURVEY, MIDLAND COUNTY, TEXAS, AND BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS IN SECTION ONE HEREOF, AS AN FD, FUTURE DEVELOPMENT DISTRICT; SAID TRACT IS GENERALLY LOCATED ON THE SOUTH SIDE OF INTERSTATE 20, SOUTH OF SOUTH LOOP 250 WEST; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION.

Deputy City Secretary Reyes read the caption of Ordinance No. 9089.

Council Member Sparks moved to approve the second and final reading of Ordinance No. 9089 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

36. Consider an ordinance on second reading on a request by James Grose for a zone change from PD, Planned District for a Housing Development to Amended Planned District on Lot 1A, Block 4, Gateway Plaza, Section 4, City and County of Midland, Texas. (Generally located on the west side of Tradewinds Boulevard, approximately 800 feet north of West Business I-20) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9090

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOT 1A, BLOCK 4, GATEWAY PLAZA, SECTION 4, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT, TO BE USED AS AN AMENDED PLANNED DISTRICT (GENERALLY LOCATED ON THE WEST SIDE OF

TRADEWINDS BOULEVARD, APPROXIMATELY 800 FEET NORTH OF WEST BUSINESS INTERSTATE 20); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION.

Deputy City Secretary Reyes read the caption of Ordinance No. 9090.

Council Member Hailey moved to approve the second and final reading of Ordinance No. 9090 in accordance with the Charter of the City of Midland; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

37. Consider an ordinance on second reading on a request by SBC Corporation/Grassland Estates West for a zone change from FD, Future Development District to 1F-1, One-Family Dwelling District on a 10.215-acre tract of land and to PD, Planned District for a Housing Development on a 1.695-acre tract of land all out of Section 35, Block 40, T-1-S, T&P RR Co. Survey, Midland County, Texas. (Generally located on the northeast side of State Highway 158 at the west extension of Homestead Boulevard.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9091

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 10.215-ACRE TRACT OF LAND WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS A 1F-1, ONE-FAMILY DWELLING DISTRICT; BY PERMITTING A 1.695-ACRE TRACT OF LAND WHICH IS PRESENTLY ZONED FD, FUTURE DEVELOPMENT DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT; SAID TRACTS BEING LOCATED IN SECTION 35, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS; SAID TRACTS BEING MORE SPECIFICALLY DESCRIBED BY METES AND BOUNDS MADE A PART HEREOF; SAID TRACTS ARE GENERALLY LOCATED ON THE NORTHEAST SIDE OF STATE HIGHWAY 158 AT THE WEST EXTENSION OF HOMESTEAD BOULEVARD; PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION.

Deputy City Secretary Reyes read the caption of Ordinance No. 9091.

Council Member Trost moved to approve the second and final reading of Ordinance No. 9091 in accordance with the Charter of the City of Midland; seconded by Council Member Hailey. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

PUBLIC HEARINGS

38. At approximately 10:30 a.m. hold a public hearing regarding a proposed oil and gas permit to Bluestem Energy Holdings, LLC (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Evans E 1) located 2,073 feet from the north line and 1,009 feet from the west line located in Section 8, Block X, H. P. Hilliard Survey, City and County of Midland, Texas. Generally located on the east side of the North Midland Drive, approximately 3/4 mile north of Mockingbird Lane. (DEVELOPMENT SERVICES)

Oil & Gas Compliance Officer Ron Jenkins provided an overview of the item noting that one letter of objection had been received. The Oil & Gas Advisory Committee reviewed the application and recommended approval and that no landscape variance be granted due to the proximity of the well to the neighborhood. He reported there was a second letter from Mr. Evans, the surface owner, requesting the landscape variance be granted.

Mayor Perry opened the public hearing at 11:28 a.m. There being no one present wishing to speak, the public hearing was immediately closed. No further action was taken on this item.

39. At approximately 10:33 a.m. hold a public hearing regarding a proposed oil and gas permit to Callon Petroleum Operating Company (Operator), for a Permit to Drill an Oil & Gas Well within the City Limits, (Pecan Acres 23 #11) located 947 feet from the west line and 660 feet from the south line located in Section 23, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. Generally located on the north side of Briarwood Avenue, approximately one half mile west of Golden Gate Drive. (DEVELOPMENT SERVICES)

Oil & Gas Compliance Officer Ron Jenkins reported that no letters of objection had been received and that the Oil & Gas Advisory Committee reviewed the application. The operator requested a landscape variance and the Committee recommended that no variance be granted due to the proximity to homes. He confirmed that the operator agreed to provide control of well insurance.

Mayor Perry opened the public hearing at 11:31 a.m. There being no one present wishing to speak, the public hearing was immediately closed. No further action was taken on this item.

40. At approximately 10:36 a.m. hold a public hearing and consider an ordinance vacating a 45 foot by 215 foot portion of the right-of-way of North State Highway 349 adjacent to Lots 1 & 2, Block 18, 349 Ranch Estates, Section 3, City and County of Midland, Texas. (Generally located on the southeast corner of North State Highway 349 and Arapahoe Road.) (DEVELOPMENT SERVICES)

ORDINANCE NO. 9092

AN ORDINANCE VACATING AND ABANDONING A 45-FOOT BY 215-FOOT PORTION OF RIGHT-OF-WAY LOCATED ADJACENT TO LOTS 1 AND 2, BLOCK 18, 349 RANCH ESTATES ADDITION, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE SOUTHEAST CORNER OF STATE HIGHWAY 349 AND ARAPAHOE ROAD); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$9,675.00; AND ORDERING RECORDATION BY THE CITY SECRETARY.

Planning Division Manager Cameron Walker provided an overview of the item noting one notice of objection had been hand delivered this morning and that the appraisal number came from the Midland Central Appraisal District.

Mayor Perry opened the public hearing at 11:40 a.m.

Sherry Frank, 4505 Meadowlark, reported she bought the property next to the subject property about 25 years ago and the right-of-way was already there. If that right-of-way is sold it would limit access to her storage business from one direction to which she objected.

Cliff Chalmers, 5100 Ashdown Place, noted that there would still be access to Ms. Frank's storage business and did not see how it would have a negative impact. He reported his plans were to develop the property which would increase the tax revenue to the City of Midland. He addressed the price of the property noting he purchased the land four months ago for \$9,500 which is about 11 cents a square foot. He will have to move 4600 cubic yards of dirt from the east portion of the property in order to build up out of the flood plain which means he will lose 100 by 215 foot piece of land. If the public agreed to vacate that land, then he could incorporate the 45 foot piece of land to the west to make a more viable building project. With the knowledge that he purchased the land for 11 cents a square foot and the other right-of-way for 10 cents a square foot in 2007 and that the current asking price for this land represents about \$1 a square foot, he asked that the price be lowered.

When asked where access to Lot 2 would be Mr. Chalmers responded that access to Lots 1 and 2 would move to Arapahoe Road. He also stated he would not grant access across his property to those on the more southern lots.

Discussion ensued comparing this type of closure of right-of-way to closing an alley and whether the closure would affect the storage business.

There being no one else wishing to speak, the public hearing was closed at 12:03 p.m.

Deputy City Secretary Reyes read the caption of Ordinance No. 9092.

When asked if not receiving the right-of-way would adversely affect his business, Mr. Chalmers reported he believed it would have a negative impact but would be open to finding another solution.

Discussion ensued about drainage in the area.

Council Member Trost moved to continue the item to December 18, 2012; seconded by Council Member Morales. The motion carried by the following vote: AYE: Morales, Trost, Hailey, Perry, Dufford, James, Sparks. NAY: None. ABSTAIN: None. ABSENT: None.

MISCELLANEOUS

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

No appointments were made.

EXECUTIVE SESSION

42. Mayor Perry noted that pursuant to Texas Government Code §551.101, the Council will hold an Executive Session which is closed to the public to discuss the following matters as permitted under the following Texas Government Code Sections:

a. Section 551.071, Consultation with the City Attorney

- a.1. Discuss with the City Attorney and Attorney(s) with the law firm of Cotton, Bledsoe, Tighe, and Dawson, litigation styled in Re: Heritage Consolidated, LLC, Case No. 10-36484-hdh, Chapter 11, Jointly Administered, in the United States Bankruptcy Court, Northern District of Texas, Dallas Division.

Mayor Perry announced that the Council would adjourn to executive session and then return at 1:00 p.m. to hear the remaining items. The meeting was reconvened to regular session at 1:00 p.m.

All of the business at hand having been completed, the meeting adjourned at 1:13 p.m.

PASSED AND APPROVED the 18th day of December, 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary



City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: 12/18/2012

TO: City Council / City Manager

FROM: Bob McNaughton, Finance Director

SUBJECT: Consider a resolution approving appropriating funds from the Midland Development Corporation Unappropriated Fund Balance to be used for promotional purposes

Purpose:

Approval of Fiscal Year 2012 appropriation of 10% of revenue for promotions

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Increase balance in MDC promotions project by \$590,244

Discussion:

At the December 7 meeting of the Midland Development Corporation (the Corporation) Board, the promotions budget for Fiscal Year 2012 was considered.

A Type A corporation may designate up to 10% of annual revenue for promotions and retain that amount for future promotional needs. During FY'12, 10% of estimated gross revenue equaled \$859,854 and \$269,610 had been expended for promotions during the year leaving a net of \$590,244.

Subsequent to discussion by the Board members and their questions to Midland Chamber of Commerce representatives and City staff, a resolution was approved to appropriate \$590,244 for promotions.

It is recommended that Council approve the action of the Type A Board in relation to the promotions funding.

RESOLUTION NO.

**RESOLUTION APPROVING THE MIDLAND
DEVELOPMENT CORPORATION'S APPROPRIATION
OF \$590,244 FROM THE FISCAL YEAR 2011-2012
BUDGET TO BE USED FOR PROMOTIONAL
PURPOSES, AS AUTHORIZED BY CHAPTER 504 OF
THE TEXAS LOCAL GOVERNMENT CODE**

WHEREAS, pursuant to Chapter 504 of the Texas Local Government Code, the Midland Development Corporation (MDC) may spend no more than ten percent (10%) of the corporate revenues for promotional purposes; and

WHEREAS, the City Council finds it to be in the public interest to approve the MDC's appropriation of \$590,244 to Project No. 8705 from the Fiscal Year 2011-2012 budget to be used for promotional purposes; and

WHEREAS, the City Council finds that said project will advertise or publicize the City of Midland for the purposes allowed under Chapter 504 of the Texas Local Government Code;

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

THAT the MDC's appropriation of \$590,244.00 to Project No. 8705 from the Fiscal Year 2011-2012 budget to be used for promotional purposes is hereby approved.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved For Agenda:
THudson
City Manager's Office

MEETING DATE: 12/18/2012

TO: City Council, City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving an agreement with Everbridge, Inc. of Glendale, California for hosted mass communication services for the Communications and Information Systems Department.

Purpose:

Approval of a resolution authorizing an agreement for hosted mass communication services to be used to contact citizens and staff in the City and County of Midland.

Recommended City Council Action:

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

\$60,360.00 for two years from the Technology Fund

Discussion:

On April 24, 2012, the City Council approved the issuance of a request for proposals for hosted Mass Communication services. We are recommending Everbridge Inc., of Glendale, California. For further discussion on this item please see the attached memo from Sharlett Chowning, Chief Information Officer.

Therefore, please consider approval of a resolution authorizing an agreement with Everbridge Inc., of Glendale, California for hosted Mass Communication services for the first year at \$31,860.00 second year for \$28,500.00 totaling 2 years total cost \$60,360.00

RESOLUTION NO.

**RESOLUTION AWARDING A TWO-YEAR CONTRACT
FOR HOSTED MASS NOTIFICATION AND
COMMUNICATION SERVICES TO EVERBRIDGE,
INCORPORATED, AT A TOTAL COST OF \$60,360.00;
AND THESE SERVICES MAY INCLUDE REVERSE 911
SERVICE; AND CONTACTS WITH CITIZENS MAY BE
MADE VIA LANDLINE, CELLULAR PHONE, TEXT
MESSAGES OR EMAIL**

WHEREAS, the City Manager advertised hosted mass communication services for competitive bids; and

WHEREAS, Bid No. 4931-12 was opened on May 30, 2012, with the lowest and most responsible bid being submitted from Everbridge, Inc., at \$60,360.00 for two (2) years of service, as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the City Council finds it to be in the public interest to execute a contract with Everbridge, Inc., for said project;

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

SECTION ONE. That the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a two-year contract with Everbridge, Inc., for said project at a cost not to exceed \$60,360.00, said contract being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Everbridge, Inc., pursuant to the terms of said contract from funds available in the Technology Fund (770) budget account upon receipt of proper invoices or statements approved by the City Manager.

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

the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 4931-12 Mass Communication Services			First Call Network, Inc 5423 Galeria Drive Baton Rouge, LA 70816 Jeff Ross (225) 295-8123		Everbridge 505 North Brand Blvd, Suite 700 Glendale, CA 91203 Matthew Ward (888) 366-4911		Cassidian 117 Seaboard Lane, Suite D-100 Franklin, Tennessee 37067 Gill Carman (615) 791-3932		Code Red 9 Sunshine Boulevard Ormond Beach, FL 32174 Brian Choyka (866) 939-0911	
OPENED May 30, 2012 Est. Cost: \$50,000.00										
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
1	1	Price for 50,000 rooftops	\$30,000.00	\$30,000.00	\$29,500.00	\$29,500.00	\$33,180.00	\$33,180.00	\$87,780.00	\$87,780.00
					Unlimited Use				Based on population of 2010 Census	
2	1	Price for 130,000 residents	\$18,000.00	\$18,000.00	Same as above		\$33,180.00	\$33,180.00	Same as above	
3	1	Explanation of other cost Methods	\$540.00	\$540.00	Optional custom mapping and monthly updates		No Response		None	
		Cost of additional minutes								
4	1	Cost of any Modifications		Included	N/A		N/A		None	
5	1	Help Desk Support Cost		Included	24/7 Support Included			Included		Included
6	1	Periodic Updates of the System		Included	Yearly updates included			Included		Included
7	1	Training (Optional)		Included	\$2,500.00	\$2,500.00	\$4,200.00	\$4,200.00	Web based training included	
					Optional Onsite Training/per day		Onsite NXT/GCW Training-5 \$1,000.00	\$1,000.00		
							Training at Cassidian per person			
8	1	Installation and Implementation		Included	\$2,360.00	\$2,360.00		Included		Included
					(One time Fee)					
					Total: \$31860.00 first year \$28500.00 additional years		*Annual Geocoding-\$3000/yr Monthly Geocoding-\$8500/yr		*50% discount if COM accepts ECN standard contract terms limitless plan*	
		TOTAL		\$48,540.00		\$31,860.00		\$33,180.00		\$87,780.00

Bidding Summary:

14 Bid requests were issued.

4 Bids listed above

1 NO BIDS were received.

Blackboard Connect, Inc.

9 Bidders did not respond.

AO Wireless, APEX Innovations, Bids 17 Prime Vendor, Emergency Communications Network, Global Connect, HipLink, Rohl Networks, Synetra, Tech Radium (IRIS)

CITY OF MIDLAND
Communications and Information Services Department
Interoffice Memorandum

Date: December 18, 2012
To: Robert Patrick, Director of General Services
From: Sharlett Chowning, Chief Information Officer
Subject: Purchase Mass Notification System from Everbridge

City staff proposes the purchase of a mass notification system from Everbridge. This system will provide reverse 911 for the citizens of the city and county of Midland in the event of an emergency. Further, this system can be used to notify citizens and employees of both agencies with targeted information. Citizens will be able to go on-line and enter their preferred contact information. Contact can then be made via landline, cellular phone, text message or email.

Earlier this year a Request for Proposals was issued and the resulting respondents were evaluated by a committee made up of city and county representatives. After demonstrations by each of the top three vendors, Everbridge was chosen as the company that could most meet the needs of the community.

CISD is recommending the procurement of Everbridge's Aware product.

HOSTED MASS COMMUNICATIONS
SERVICE AGREEMENT
4931-12

THIS AGREEMENT is made and effective the 19th day of December, 2012, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "City," and Everbridge, Inc., hereinafter referred to as "Company."

ARTICLE I.
PURPOSE

The purpose of this Agreement is to state the terms and conditions under which Company shall provide hosted mass communications services to the City.

ARTICLE II.
SERVICES TO BE PERFORMED

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

ARTICLE III.
FINANCIAL CONSIDERATIONS

City agrees to pay Company in an amount not to exceed \$60,360.00 for the services described in Exhibit "1." City agrees to pay Company for Labor, Incidental Direct Costs and Sub-contractor Costs as set forth in Exhibit "1" upon presentation of an annual invoice. The invoice shall set out Labor fees for the year and those Incidental Direct Costs and Sub-contractor Costs described in Exhibit "1" incurred, if applicable. The City Manager must approve all additional expenses and reimbursable expenses in advance. Within 30 days of receipt of the annual invoice, City shall pay the full amount of such invoice; provided, however, that if City objects to any portion of an invoice, City shall notify Company of City's objection and the grounds therefor within 30 days of the date of receipt of the invoice, and the parties immediately shall make every effort to settle the disputed portion of the invoice. City in any event shall pay every portion of the invoice that is not in dispute within the 30-day period for payment.

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

ARTICLE IV. TERM

The term of this Agreement shall be from December 19, 2012, until December 18, 2014, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION

Either party may terminate this Agreement at will, for no or any reason, upon giving the other party One-Hundred-Eighty (180) days written notice; *provided, however*, that if City terminates this Agreement pursuant to this article, it shall not be entitled to any refund and all payments then owing shall remain due. The parties to this Agreement understand and agree that it is in either party's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the other party. All work and services under this Agreement shall be suspended immediately upon termination of the Agreement becoming effective. The parties have bargained for the flexibility to terminate the Agreement upon giving the requisite notice.

ARTICLE VI. CONTRACT PERSONAL

This Agreement provides for personal or professional services, and the Company shall not assign this Agreement, in whole or in part, without the prior written consent of City, unless such assignment is to a successor of all or substantially all of the assets of the business or a controlling interest of the Company, whether by merger, consolidation, sale of securities or other legal means. It is understood that any necessary engineering services shall be subcontracted by the Company.

ARTICLE VII. INDEPENDENT CONTRACTOR

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

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

ARTICLE VIII. INSURANCE

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

Commercial General Liability (including contractual liability):

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

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

Worker's Compensation: Statutory limits

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

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

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

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

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

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

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

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

ARTICLE IX. FEDERAL WAGE REQUIREMENTS

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

ARTICLE X. ATTORNEY FEES

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

COMPANY AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN

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

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

ARTICLE XI. SOVEREIGN IMMUNITY

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

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

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

ARTICLE XIII. RELEASE

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

ARTICLE XIV. GENERAL PROVISIONS

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

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

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

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

If to Company:	Everbridge, Inc. Attention: Marie-Laure Leglise, VP of Finance 505 N. Brand Blvd Glendale, CA 91203
----------------	---

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

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

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

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

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

H. Indemnity. **COMPANY WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM, COMPANY'S USE OF, OR ACTIVITIES ON THE CITY PREMISES, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGEMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.**

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

I. Force Majeure; Limitations. Everbridge shall not be responsible for performance under this Agreement to the extent precluded by circumstances beyond Everbridge's reasonable control, including without limitation acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, labor problems, computer, telecommunications, Internet service provider or hosting facility failures, or delays involving hardware, software or power systems, and network intrusions or denial of service attacks. The Service delivers information for supported Contact paths to public and private networks and carriers, but cannot guarantee delivery of the information to the recipients. Final delivery of information to

recipients is dependent on and is the responsibility of the designated public and private networks or carriers.

J. Entire Agreement. This Agreement, including its Exhibits, constitutes the entire agreement between the Parties and supersedes all other agreements and understandings between the Parties, oral or written, with respect to the subject matter hereof.

**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.
EVERBRIDGE SPECIFIC
PROVISIONS**

A. CUSTOMER RESPONSIBILITIES.

(1) Users. City shall in its discretion authorize certain of its employees and contractors to access the Service (“User(s)”). Each User must be bound in writing to confidentiality obligations that are no less restrictive than those set forth herein, and that are sufficient to permit City to fully perform its obligations under this Agreement. City shall cause Users to undergo initial setup and training in accordance with the Quote. City shall be responsible for (i) ensuring that Users maintain the confidentiality of all User login and password information; (ii) ensuring that Users use the Service in accordance with all applicable laws and regulations, including those relating to use of personal information; (iii) any breach of the terms of this Agreement by any User; and (iv) all communications by Users using the Service. City shall immediately notify Everbridge if it becomes aware of any User action or omission that would constitute a breach or violation of any term of this Agreement.

(1) City Data. All electronic data City provides to Everbridge in connection with the use of the Service (“City Data”) shall be true, accurate, current and complete, and shall be in a form and format specified by Everbridge. City shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all City Data. By purchasing the Services, City authorizes Everbridge to collect, store and process City Data subject to the terms of this Agreement. City shall maintain a copy of all City Data it provides to Everbridge. If City or any User provides any City Data that is untrue, inaccurate, outdated or incomplete, City acknowledges and agrees that any communications sent utilizing the Services may not reach the intended Contact. City shall prevent unauthorized access to, or use of, the Services, and shall notify Everbridge promptly of any such unauthorized use. Everbridge shall have no liability for any losses, damages, claims, suits or other actions arising out of or in connection with the unauthorized or improper use of the Services on City’s hardware or networks. City acknowledges that Everbridge is not responsible for monitoring City or Users’ use of the Services to examine the content passing through it, and Everbridge shall have no liability for such content.

B. PROPRIETARY RIGHTS.

(2) Grant of License. Everbridge hereby grants to City, during the term of this Agreement, a non-exclusive, non-transferable, non-sublicensable right to use the Services subject to the terms and conditions of this Agreement. Upon suspension of the Services or termination of this Agreement for any reason, the foregoing license shall terminate automatically and City shall promptly discontinue all further use of the Service.

(3) Restrictions. City shall use the Services solely for its internal business purposes and

shall not make the Services available to, or use the Services for the benefit of, any third party except as expressly contemplated by this Agreement. City shall not: (i) copy, modify, reverse engineer, de-compile, disassemble or otherwise attempt to discover or replicate the computer source code and object code provided or used by Everbridge in connection with delivery of the Services (the “**Software**”) or create derivative works based on the Software, the Services or any portion thereof; (ii) merge any of the foregoing with any third party software or services; (iii) use any Everbridge Confidential Information to create a product that competes with the Software; (iv) remove, obscure or alter any proprietary notices or labels on the Software or any portion of the Services; (v) create internet “links” to or from the Services, or “frame” or “mirror” any content forming part of the Services, other than on City’s own intranets for its own internal business purposes; (vi) use, post, transmit or introduce any device, software or routine which interferes or attempts to interfere with the operation of the Service; or (vi) use the Service in violation of any applicable law or regulation.

(4) Reservation of Rights. Other than as expressly set forth in this Agreement, Everbridge grants to City no license or other rights in or to the Services, the Software or any other proprietary technology, material or information made available to City through the Services or otherwise in connection with this Agreement (collectively, the “**Everbridge Technology**”), and all such rights are hereby expressly reserved. Everbridge (or its licensors where applicable) owns all rights, title and interest in and to the Services, the Software and any Everbridge Technology, and all patent, copyright, trade secret and other intellectual property rights (“**IP Rights**”) therein, as well as (i) all feedback and other information (except for the City Data) provided to Everbridge by Users, City and Contacts, (ii) all transactional, performance and derivative data and metadata generated in connection with the Services, and (iii) any De-Identified Data (as defined below).

(5) City Data. As between the Parties, City retains sole right, title and interest in the City Data. Without limiting the foregoing, Everbridge shall be permitted to de-identify City Data and aggregate it, including with other Citys’ data (the “**De-Identified Data**”), for use in its legitimate marketing and research activities.

2. CONFIDENTIAL INFORMATION.

(1) Definition; Protection. As used herein, “**Confidential Information**” means all information of a Party (“**Disclosing Party**”) disclosed to the other Party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information includes without limitation, any personally identifiable City Data, all Everbridge Technology, and either Party’s business and marketing plans, technology and technical information, product designs, reports and business processes. Confidential Information (except for City Data) shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party. The

Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose other than performance or enforcement of this Agreement without the Disclosing Party's prior written consent, unless (but only to the extent) otherwise required by a governmental authority. Each Party agrees to protect the Confidential Information of the other Party with the same level of care that it uses to protect its own confidential information, but in no event less than a reasonable level of care. Without limiting the foregoing, this Agreement and all terms hereof shall be Confidential Information of Everbridge, and the City Data shall be Confidential Information of City.

3. WARRANTIES

(1) Everbridge Warranty. Everbridge shall use commercially reasonable efforts to provide the Services herein contemplated. To the extent the Quote provides for any professional services, Everbridge shall perform them in a professional manner consistent with industry standards. THE FOREGOING REPRESENT THE ONLY WARRANTIES MADE BY EVERBRIDGE HEREUNDER AND EVERBRIDGE EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

(2) Disclaimer. THE SERVICES ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS. NEITHER EVERBRIDGE NOR ITS LICENSORS WARRANT THAT THE SERVICE WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION. WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL EVERBRIDGE HAVE ANY LIABILITY TO CITY, USERS, CONTACTS OR ANY THIRD PARTY FOR PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE ARISING FROM FAILURE OF THE SERVICE TO DELIVER AN ELECTRONIC COMMUNICATION, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY OR INDEMNITY, EVEN IF EVERBRIDGE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

(3) City Representations and Warranties. City represents and warrants that during use of the Services, City shall have (i) a privacy policy that clearly and conspicuously notifies Users of the way in which City Data shall be used, and (ii) primary safety and emergency response procedures including, without limitation, notifying 911 or equivalent fire, police, emergency medical and public health officials (collectively, "**First Responders**"). City acknowledges and agrees that Everbridge is not a First Responder, and that the Services does not serve as a substitute for City's own emergency response plan, which in the event of an actual or potential threat to person or property, shall include contacting a First Responder. City represents and warrants that all communications utilizing the Services shall be sent by authorized Users, and that the collection, storage and processing of City Data, and the use of the Services, as provided in this Agreement, will at all times comply with (x) City's own policies regarding privacy and protection of personal information; and (y) all applicable laws and regulations, including those related to processing, storage, use, disclosure, security, protection and handling of City Data.

4. LIMITATION OF LIABILITY. Neither Party shall have any liability to the other Party

for any loss of use, interruption of business, lost profits, costs of substitute services, or for any other indirect, special, incidental, punitive, or consequential damages, however caused, under any theory of liability, and whether or not the Party has been advised of the possibility of such damage. Notwithstanding anything in this Agreement to the contrary, in no event shall Everbridge's aggregate liability, regardless of theory of liability, exceed amounts actually paid by City to Everbridge hereunder during the 12 month period prior to the event giving rise to such liability.

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

By: _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Company :
Everbridge, Inc.

By:_____

Title:_____

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared _____, an officer of Everbridge, 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 _____, 2012.

Notary Public, State of Texas



505 N Brand Blvd, Ste 700
Glendale CA 91203 USA

t 888.366.4911
f 818.484.2299

www.everbridge.com

QUOTATION

Quote Number: 00004726

Confidential

1 of 2

Exhibit A

Prepared for: Regina Stephenson
City of Midland, TX
300 North Loraine
Suite 330
Midland, TX 79701
(432) 685-7233
(432) 686-1699
rstephenson@midlandtexas.gov

Quotation Date: May 23, 2012
Quote Expiration Date: December 31, 2012
Rep: Matthew Ward
(818) 230-9785
matthew.ward@everbridgemail.com

Contract Summary Information

Contract Period: 3 Years

Aware Members up to: 1,000
SmartGIS Households up to: 50,000

Annual Subscription

<u>Product</u>	<u>Fee Type</u>	<u>Qty</u>	<u>List Price</u>	<u>Total Price</u>
Everbridge SmartGIS-Unlimited Annual Fee	Recurring	1	\$38,900.00	\$29,500.00
Aware Annual Fee	Recurring	1	\$18,995.00	\$0.00

Additional Service Options

<u>Product</u>	<u>Fee Type</u>	<u>Qty</u>	<u>List Price</u>	<u>Total Price</u>
Aware QuickLaunch Annual Fee	Recurring	1	\$995.00	\$0.00



505 N Brand Blvd, Ste 700
Glendale CA 91203 USA

t 888.366.4911
f 818.484.2299

www.everbridge.com

QUOTATION

Quote Number: 00004726

Confidential

2 of 2

Exhibit A

Pricing Summary:

Initial Year One-time Fees and Year One Annual Recurring Fees: \$29,500.00

One-time Implementation and Set Up Fees: \$2,360.00

Total Year One Fees: \$31,860.00

Subsequent Year(s) Ongoing Annual Recurring Fees: \$28,500.00

1. Additional rates apply for all international calls.
2. Quote subject to terms & conditions of the Everbridge Services Agreement.
3. Successful delivery of text messages is dependent on the Member's SMS plan.
4. Customer is responsible for acquiring its Members' permission to use, store and download their contact information.
5. Additional Annual Subscription Fees and/or Usage Fees will apply for Member counts or minute usage amounts beyond the limits outlined above.
6. Except for currency designation, the supplemental notes or comments supplied in this Quote are for informational purposes and not intended to be legally binding or override negotiated language of the Everbridge Inc. Service Agreement.

Optional Features:

- Custom Center Line Maps, Replacing Everbridge Maps with Customer's Maps.
- Monthly Geo-Coded Data (if using Customer Maps, Customer Must Provide)
- Onsite Training

Authorized by Everbridge:

To accept this quote, sign, date and return:

Signature Date

Authorized Signature Date

Print Name Title

Print Name Title



Everbridge SmartGIS for Citizen Alerts-Unlimited Subscription Plan Inclusions

- One SmartGIS Org
- Unlimited System Use
 - Includes all Contact Types (phone, email, SMS, fax, IM, pager and other types as supported)
- Up to 35 Contact Paths Per User
- Ongoing web training sessions
- Polling Notifications with Call Transfer and Data Collection
- Saved shape library
- Real Time Confirmation of Human Receipt
- Custom Caller-ID / Sender Email (Variable Per Broadcast)
- Text to Speech Conversion
- Stop Broadcast
- Real Time Message Status Dashboard
- SmartRegistration Citizen Opt-In Portal
- Everbridge Mobile Aware with SmartGIS capabilities
- 100% Custom Ad-Hoc Reporting
- 24/7 Live Operator / Customer Service
- 5 Live Operator Access Included With Plan

Everbridge SmartGIS for Citizen Alerts-Unlimited Set-Up

- Dedicated Implementation Specialist / Project Manager
- Everbridge SmartGIS Administrative Setup and Configuration
- Identification and Setup of Organizational Defaults
- Prototype and Demonstration of Expected Usage and Configuration
- Access to Client Success Self Service Portal Including Best Practices Library
- Initial Upload and Geo Coding of a Single Data Source or Optional White Page Data if needed
- Assistance with Data Management / Upload
- Setup and Configuration of 1 Layer
- *Onsite Training is an Optional Fee*



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 12/18/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving a contract for water, wastewater and fire hydrant taps for the Engineering Services Department. RFB 5731-13

Purpose:

Approval of a resolution approving a contract for water, wastewater and fire hydrant taps.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$517,682.50 Water & Sewer Fund

Discussion:

Two bids were received for water, wastewater and fire hydrant taps. We recommend awarding the contract to the low bidder, Entrench, Inc. of Hobbs, New Mexico.

Therefore, please consider approval of a resolution awarding a contract for water, wastewater and fire hydrant taps to Entrench, Inc. of Hobbs, New Mexico for a total cost of \$517,682.50.

RESOLUTION NO. _____

**RESOLUTION AWARDING A CONTRACT FOR
WATER, WASTEWATER AND FIRE HYDRANT TAPS
TO ENTRENCH, INCORPORATED, AT A TOTAL COST
OF \$517,682.50; AND APPROPRIATING FUNDS**

WHEREAS, the City Manager advertised water, wastewater and fire hydrant taps for competitive bids; and

WHEREAS, Bid No. 5731-13 was opened on October 31, 2012, with the lowest and most responsible bid being submitted from Entrench, Inc., of Hobbs, New Mexico, at a cost of \$517,682.50 as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the City Council finds it to be in the public interest to execute a contract with Entrench, Inc., for said project;

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

SECTION ONE. That the Mayor and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Entrench, Inc., for said project at a cost not to exceed \$517,682.50, said contract being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That the sum of \$517,683.00 is hereby appropriated from the Water and Sewer Fund (300) Unappropriated Fund Balance (5650) to the W / WW / FH Tap Project (9027).

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay Entrench, Inc., pursuant to the terms of said contract from funds appropriated herein upon receipt of proper invoices or statements approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Project # U12-03-0000 (Water, Wastewater & Fire Hydrant Tap Project)

Project # U12-03-0000 (Water, Wastewater & Fire Hydrant Tap Project)				ENTRENCH UTILITY		TEC EXCAVATION	
		Quantity	Unit	Unit Price	Total	Unit Price	Amount
Water Improvements							
Item	Description						
1	6" C-900 DR 18	1000	LF	\$31.50	\$31,500.00	\$25.00	\$25,000.00
2	4" C-900 DR 18	250	LF	\$24.00	\$6,000.00	\$22.00	\$5,500.00
3	6" DIP Pressure Class 150	625	EA	\$33.50	\$20,937.50	\$37.00	\$23,125.00
4	12" Tapping Sleeve	4	EA	\$2,200.00	\$8,800.00	\$2,230.00	\$8,920.00
5	10" Tapping Sleeve	4	EA	\$2,000.00	\$8,000.00	\$2,100.00	\$8,400.00
6	8" Tapping Sleeve	4	EA	\$1,800.00	\$7,200.00	\$1,700.00	\$6,800.00
7	6" Tapping Sleeve	20	EA	\$1,600.00	\$32,000.00	\$1,500.00	\$30,000.00
8	4" Tapping Sleeve	10	EA	\$1,450.00	\$14,500.00	\$1,400.00	\$14,000.00
9	6" Gate Valve (MJ x MJ/F)	30	EA	\$1,800.00	\$54,000.00	\$800.00	\$24,000.00
10	4" Gate Valve (MJ x MJ/F)	10	EA	\$1,200.00	\$12,000.00	\$700.00	\$7,000.00
11	Fire Hydrant	20	EA	\$3,000.00	\$60,000.00	\$3,100.00	\$62,000.00
12	Ductile Iron Fittings	4	TN	\$2,700.00	\$10,800.00	\$2,700.00	\$10,800.00
13	6" Mechanical Joint Restraint	30	EA	\$105.00	\$3,150.00	\$130.00	\$3,900.00
14	4" Mechanical Joint Restraint	10	EA	\$85.00	\$850.00	\$125.00	\$1,250.00
15	1" Water Service Connection (0' - 5' Depth)	25	EA	\$500.00	\$12,500.00	\$1,200.00	\$30,000.00
16	1" Water Service Connection (5' - 8' Depth)	5	EA	\$600.00	\$3,000.00	\$1,700.00	\$8,500.00
17	1" Polyethylene Tubing (Including Trenching)	1000	EA	\$15.00	\$15,000.00	\$9.00	\$9,000.00
18	2" Water Service Connection (0' - 5' Depth)	7	EA	\$650.00	\$4,550.00	\$1,600.00	\$11,200.00
19	2" Water Service Connection (5' - 8' Depth)	3	EA	\$800.00	\$2,400.00	\$2,050.00	\$6,150.00
20	2" Polyethylene Tubing (Including Trenching)	250	LF	\$17.00	\$4,250.00	\$11.00	\$2,750.00
21	Water Meter Box (1")	30	EA	\$450.00	\$13,500.00	\$150.00	\$4,500.00
22	Water Meter Box (2")	10	EA	\$450.00	\$4,500.00	\$270.00	\$2,700.00
		TOTAL WATER BID			\$329,437.50		\$305,495.00
Wastewater Improvements							
Item	Description						
1	6" Wastewater Service Connection	10	EA	\$400.00	\$4,000.00	\$2,800.00	\$28,000.00
2	4" Wastewater Service Connection	30	EA	\$300.00	\$9,000.00	\$2,500.00	\$75,000.00
3	6" SDR 35 Wastewater Lateral & Trenching (0' - 5' Depth)	250	LF	\$35.00	\$8,750.00	\$25.00	\$6,250.00
4	4" SDR 35 Wastewater Lateral & Trenching (0' - 5' Depth)	1000	LF	\$30.00	\$30,000.00	\$20.00	\$20,000.00
5	Additional Depth At Trenching Including Trench Safety (Depth (5' - 8' Depth)	210	LF	\$17.00	\$3,570.00	\$18.00	\$3,780.00
6	Additional Depth At Trenching Including Trench Safety (8' - 10' Depth)	210	LF	\$20.00	\$4,200.00	\$23.00	\$4,830.00
7	Additional Depth At Trenching Including Trench Safety (10' - 12' Depth)	210	LF	\$25.00	\$5,250.00	\$40.00	\$8,400.00
8	Additional Depth At Trenching Including Trench Safety (12' - 14' Depth)	210	LF	\$30.00	\$6,300.00	\$75.00	\$15,750.00
		TOTAL WW BID			\$71,070.00		\$162,010.00
Pavement Improvements							
Item	Description	Quantity	Unit	Unit Price	Amount	Unit Price	Amount
1	Base Rock Utility Cut Repair	1260	SY	\$10.00	\$12,600.00	\$8.00	\$10,080.00
2	Asphalt Utility Cut Repair	170	SY	\$20.00	\$3,400.00	\$50.00	\$8,500.00
3	Concrete Utility Cut Repair	170	SY	\$65.00	\$11,050.00	\$92.00	\$15,640.00
4	Base Rock Repair At Engineer's Discretion	75	SY	\$10.00	\$750.00	\$8.00	\$600.00
5	Asphalt Repair At Engineer's Discretion	75	SY	\$20.00	\$1,500.00	\$50.00	\$3,750.00
6	Concrete Repair At Engineer's Discretion	75	SY	\$65.00	\$4,875.00	\$92.00	\$6,900.00
7	Arterial Road Site Safety & Traffic Control	10	EA	\$2,500.00	\$25,000.00	\$1,400.00	\$14,000.00
8	Collector/Local Road Site Safety & Traffic Control	30	EA	\$1,000.00	\$30,000.00	\$700.00	\$21,000.00
9	Alley/Easement Site Safety & Traffic Control	40	EA	\$700.00	\$28,000.00	\$250.00	\$10,000.00
		TOTAL PVMT BID			\$117,175.00		\$90,470.00
		TOTAL BASE BID:			\$517,682.50		\$557,975.00



M E M O

TO: Regina Stephenson; City of Midland, Purchasing Manager
FR: David D. Beard, P.E.; City of Midland, City Engineer
DA: 3 December 2012
RE: Water / Wastewater / Fire Hydrant Taps – Bid Tabulation
Project No. U12-03 ♦ RFB 5731-13

Regina --

Engineering staff has reviewed the bid tabulation for the Water, Wastewater, and Fire Hydrant Tap project. Entrench, Inc. of Hobbs NM was the low bidder. Since Entrench Inc. has not worked for the City of Midland in the past, we asked for references of similar projects. We checked the references provided as well as additional references discovered through our investigation. All references were positive with regard to quality of work. Further, the unit prices appear to be in line with current pricing and trends. Therefore, staff is recommending award of the, Wastewater, and Fire Hydrant Tap project to Entrench, Inc. in the amount of \$517,682.50.

City of Midland

David D. Beard, P.E.
City Engineer



City Council Agenda

Approved For Agenda:
THudson
City Manager's Office

MEETING DATE: 12/18/2012

TO: City Council, City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of Uniforms for the Fire Department through Buyboard.

Purpose:

Approval of a resolution authorizing the purchase of fire department uniforms for the Midland Fire Department.

Recommended City Council Action:

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

\$96,068.72 General Fund

Discussion:

Current Midland Fire Department uniforms are not NFPA station duty and firefighting compliant. The proposed uniforms are compliant and available through the Buyboard. We are members of this cooperative and Subchapter F, Section 271.102 of the Local Government Code provides that a local government may participate in a cooperative purchasing program and that purchasing goods or services under Subchapter F satisfies any state law requiring the local government to seek competitive bids for those purchases.

Therefore, please consider a resolution approving the purchase of Fire Department Uniforms from Casco Industries of New Deal, TX through the Buyboard for a total cost of \$96,068.72

RESOLUTION NO. _____

**RESOLUTION APPROVING THE PURCHASE OF
UNIFORMS FOR THE CITY OF MIDLAND FIRE
DEPARTMENT THROUGH THE BUYBOARD AT A
TOTAL COST OF \$96,068.72; AND THIS ITEM WAS
NOT BID BUT PURCHASED THROUGH A COUNCIL
OF GOVERNMENTS**

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

WHEREAS, Casco Industries, Inc., has submitted a total proposed cost to the City of \$96,068.72 for the purchase of uniforms for the Fire Department through the Buyboard, as shown on the quote attached hereto as Exhibit “A” and incorporated herein for all legal purposes; and

WHEREAS, the Council finds the price proposed by Casco Industries, Inc., through the Buyboard for said uniforms to be fair and reasonable; and

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

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase said uniforms referred to above through the Buyboard at a total estimated cost of \$96,068.72.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay for said uniforms from funds available in the Fiscal Year 2012 – 2013 General Fund (001) Fire (115) Fire (0115) Clothing (2570) budget account and the General Fund (001) Fire (115) Fire Prevention (0119) Clothing (2570) budget account upon proper receipt of invoices or statements approved by the City Manager.

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

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



Casco INDUSTRIES, INC.

FIRE EQUIPMENT SALES & SERVICE

607 W. 62nd Street Shreveport, LA 71106

TO: Midland Fire Department
Attn: Chief Robert Isbell
Chief Fritz Niggeler
Captain Charles Blumenauer

Quote Only
12/06/2012

FROM:
Randy Teeter
Sales Representative
Casco Industries
rteeter@cascoindustries.com
PO Box 43
New Deal, Texas 79350
806-790-3684

QTY.	ITEM NUMBER	DESCRIPTION	PRICE	TOTAL
			Each	
376	720NX45NB	Fire Officers Shirt, Short Sleeve Chest 38"-50" Navy	\$77.30	\$29,064.80
44	720NX45NB	Fire Officers Shirt, Short Sleeve Chest 52"-58" Navy	\$96.37	\$4,240.28
110	725NX45NB	Fire Officers Shirt, Long Sleeve Reg or Long 38"-50" Navy	\$91.10	\$10,021.00
3	725NX45NB	Fire Officers Shirt, Long Sleeve Reg or Long 52"-54" Navy	\$113.16	\$339.48
		Subtotal Shirts		\$43,665.56
519	402NX45NB	Fire Fighter Pant, Full Cut Waist 28"-34", Inseam to 34" or 36"	\$85.76	\$44,509.44
14	402NX45NB	Fire Fighter Pant, Full Cut Waist 44"-50", Inseam to 36"	\$106.98	\$1,497.72
		No Odd Waist After 35"		
		Subtotal Pants		\$46,007.16
533		Custom Embroidered Patches (Name and Rank) placed above pockets \$5.00 each	\$10.00	\$5,330.00
533		Sew on Department Patch and Certification Patch provided by Midland Fire Department \$1.00 each	\$2.00	\$1,066.00
		Subtotal Embroidery		\$6,396.00
				Total
				\$96,068.72

If you have any question, please contact me.

FREIGHT	Paid
---------	------

Quote good until 12/28/2012



CITY OF MIDLAND
Fire Department
Interoffice Memorandum

Date: December 18, 2012
To: Regina Stephenson, Purchasing Manager
From: Robert Isbell, Fire Chief
Subject: Fire Department Uniforms

Midland Fire Department uniforms in current use do not meet NFPA station duty and firefighting compliance. This proposal is for compliant uniforms that meet NFPA standards for all MFD members.

Current MFD uniforms do not meet any industry compliance. The proposed uniforms meet NFPA standards and are also abrasion resistant with a kevlar blend allowing for a longer life of the garment.

Although the MFD is not required to meet the NFPA standard, what we have found (through actual wear tests and testimonials from other users) is that the material construction not only provides an extra protection to members, it also lasts 3-5 times longer thus providing a long term cost savings. The bid is from Casco Ind., through BuyBoard. MFD has allocated funds for this purchase in the current fiscal budget.



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 12/18/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving a contract for annual water well maintenance for Utilities, Parks and Golf Course. RFB 5783-13

Purpose:

Approval of a resolution approving a service contract for water well maintenance.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$60,000 Estimated per year General Fund, Water & Sewer Fund, Golf Course Fund and Sanitation Fund

Discussion:

This is an annual service contract for the maintenance of water wells for water production for the City's water supply. The contract is based upon time and materials rates for a period of two years with an option to renew the contract for up to three additional one year periods. We received a single bid from Straub Corporation.

Therefore, please consider approval of a resolution awarding a contract for water well maintenance to Straub Corporation, of Stanton, Texas for an estimated cost of \$60,000.00 per year.

RESOLUTION NO.

RESOLUTION AWARDING AN ANNUAL CONTRACT FOR WATER WELL MAINTENANCE FOR THE CITY'S WATER SUPPLY TO STRAUB CORPORATION, AT A COST NOT TO EXCEED \$60,000.00 PER YEAR; AND SAID CONTRACT IS FOR A TERM OF TWO (2) YEARS, RENEWABLE FOR UP TO AN ADDITIONAL THREE (3) YEARS AT THE CITY'S OPTION; AND STRAUB CORPORATION WAS THE SOLE BIDDER

WHEREAS, the City Manager advertised annual well maintenance for the City's water supply for competitive bids; and

WHEREAS, Bid No. 5783-13 was opened on November 28, 2012, with the lowest and most responsible bid, which was also the only bid, being submitted from Straub Corp., of Stanton, Texas, at a cost not exceeding \$60,000.00 per year as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes; and

WHEREAS, the City Council finds it to be in the public interest to execute a contract with Straub Corp., for said project;

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

SECTION ONE. That the City Manager and City Secretary are hereby authorized and directed to execute and attest, respectively, on behalf of the City of Midland, a contract with Straub Corp, for said project at a cost not to exceed \$60,000.00 annually, said contract being on file in the office of the City Secretary, referenced by the date and number of this Resolution.

SECTION TWO. That upon receipt of proper invoices or statements approved by the City Manager, the City Treasurer is hereby authorized and directed to pay Straub Corp, pursuant to the terms of said contract from funds available in the following Fiscal Year 2012 – 2013 budget accounts: General Fund (001) Community Services (090) Parks (0090) Maintenance of Wells (4910) Water and Sewer Fund (300) Utilities (300) Spraberry Farm (0315) Maintenance of Wells (4910) Sanitation Fund (430) Sanitation (430) Landfill (0405) Maintenance of Wells (4910) Golf Course Fund (440) Community Services (090) Golf

Course (0410) Maintenance of Wells (4910).

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 5783-12 Well Service at Various City Locations OPENED November 28, 2012 Est. Cost: \$60,000.00			Straub Corporation PO Box 192 Stanton, TX 79782 Raymond Straub Jr. (432) 756-3489	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL
		Unit Costs for Well Repair Service:		
1	1	Submersible Pump (5 units at 120 ft. est)		
		A. cost per foot to remove		\$1.65
		B. Cost per foot to install		\$1.65
2	1	Plugging Wells (per inch diameter, per foot of depth)		\$2.75
		Mobilization:		
3	1	How much notification will be required to move into area?	2-7 Days	
4	1	State Premiums for emergency, mobilization on:		
		A. Weekends	\$158.00 per hour	
		B. Holidays	\$158.00 per hour	
		C. Off Hours	\$158.00 per hour	
5	1	Vendor to list Holidays:	Thanksgiving, Christmas	
			New Years Day, Easter	
			Memorial Day, 4th of July	
			Labor Day	
6	1	Regular Working Hours	M-F 8-5	
		Move In Charges (Est. 5 Wells)		
7	1	Per mile cost for mileage		\$0.00
8	1	Set up, Each Well		\$0.00
9	1	Bailing per hour		\$158.00
10	1	Fishing, per hour, includes waiting time for tool delivery		\$158.00
11	1	Any materials needed to repair wells not listed		40%

Bidding Summary:

8 Bid requests were issued.

1 Bids listed above

1 NO BIDS were received.

Current Electric

6 Bidders did not respond.

X*Environmental Inc, Valley Irrigation & Pump Service, J-R's Water Well Service, Odessa Pumps & Equ
Weisinger Waterwell, Thunder Well Service

CONTRACT

for

***Well Service at City Effluent Farms, Pollution Control Plant, Landfill,
Hogan Park Golf Course and other Park Service Wells
#5783-13***

THIS CONTRACT, effective this 19th day of December, 2012, by and between the City of Midland, hereinafter referred to as the "Owner", and Straub Corporation, hereinafter referred to as the "Contractor", is made for the following considerations:

1. The Contractor shall perform all work described in the attached Minimum Functional and Performance Specifications and in any manner described thereon, as released by specific Purchase Orders for a period of two (2) years from the date of execution of this contract unless sooner terminated as provided in this contract. The City may at its option, renew this contract for a period of three (3) years in one (1) year increments. In order to exercise this option, the City must give Company notice of its intent to renew not less than 30 days prior to the expiration of this contract.
2. Whenever the words Owner's Representative or representative is used in this contract, it shall be understood as referring to Stuart Purvis or his designee, (Utilities) and Tina Jauz or her designee (Hogan Park Golf Course and Parks) , under whose supervision these contract documents, including the plans and specifications, were prepared, who will inspect repairs; or to such other representative, supervisor, or inspector as may be authorized by the Owner to act in any particular under this contract.
3. Unless otherwise stipulated, the Contractor shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and all water, light, power, fuel, transportation and all other facilities necessary for the execution and completion of the work covered by the contract documents. Unless otherwise specified, all materials, shall be new and both workmanship and materials shall be of a good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials. Materials or work described in words which so applied have well known, technical or trade meaning shall be held to refer to such recognized standards.

- 3.2 The Contractor shall, at its expense, obtain all permits and licenses necessary for performance of this contract and pay all fees required by law, and comply with all laws, ordinances, rules and regulations governing the Contractor's performance of the contract.
- 3.3 All work shall be done and all materials furnished in strict conformity with the contract.
4. The Owner's Representative may make periodic visits to the site to observe the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract documents. He will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, nor will he be responsible for the construction means, methods, techniques, sequences or procedures, or the safety precautions incident thereto. He will not be responsible for the Contractor's failure to perform the work in accordance with the contract.
5. All minor detail of the work not specifically mentioned in the Minimum Functional and Performance Specifications but obviously necessary for the proper completion of the work, such as the proper connection of new work to old, shall be considered as incidental to and a part of the work for which the prices are named in the contract. The Contractor will not be entitled to any additional compensation therefor unless specifically stated otherwise. Otherwise the term "extra work" as used in this contract shall be understood to mean and include all work that may be required by Owner to be done by the Contractor to accomplish any alteration or addition to the work as shown on the Minimum Functional and Performance Specifications.
- 5.1 It is agreed that the Contractor shall perform all extra work under the direction of the Owner's Representative when presented with a written work order signed by the Owner's Representative, subject, however, to the right of the Contractor to require written confirmation of such extra work order by the Owner. Payment for extra work shall be as agreed in the work order.
6. The Contractor shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws and building codes. All machinery and equipment and other

physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of Associated General Contractors of America, except where incompatible with federal, state or municipal laws or regulations.

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

7.1 THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE OWNER AND ALL OF THE OWNER'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF THE OWNER, THE OWNER'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH THE CONTRACTOR OR THE CONTRACTOR'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE IN THE

EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND CONTRACTOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE OWNER OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

7.2 THE CONTRACTOR AGREES THAT HE WILL INDEMNIFY AND SAVE THE OWNER HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, ALL SUPPLIES, INCLUDING COMMISSARY INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN OWNER SO DESIRES, THE CONTRACTOR SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. THE CONTRACTOR, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS THE OWNER AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF THE CONTRACTOR OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST THE OWNER OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES.

8. The Contractor shall commence work no later than ten (10) days after receipt of the execution of this document or other written release to proceed and shall complete such work no later than n/a calendar days after release to proceed.

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

8.1 Time is of the essence of this contract.

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

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

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

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

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

12.1 Defective work not remedied.

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

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

12.4 Damages to another contractor or subcontractor.

When the above grounds are removed, or the Contractor provides a surety bond satisfactory to the Owner, which will protect the Owner in the amount withheld because of them, then final payment may be made.

13. The Contractor agrees to pay all workmen in his employ no less than the generally prevailing wage rate for employees of similar category in the Permian Basin Area, as is depicted in the attached wage rate scale.

13.1 If applicable, the Davis-Bacon Act, 29CFR 5.5, and any related acts or regulations are hereby incorporated by reference 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.

14. After all work is completed by the Contractor, and the Owner has inspected and approved that work, the Owner shall within thirty-one (31) days thereafter issue payment to the Contractor in the amount of the value of the specific purchase order. All costs will be based on the attached "Bid Detail Sheet for Well Service", Exhibit A. The Owner shall be the final judge of when work is completed by the Contractor. The Owner shall not make periodic payments to the Contractor, but shall make payment pursuant to this paragraph only after all work is completed by the Contractor.

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

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

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

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

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

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

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

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

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

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

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

20. RELEASE: NOTWITHSTANDING ANY OTHER PROVISIONS, CONTRACTOR HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES OWNER, OWNER'S EMPLOYEES AND OFFICERS, FROM ANY AND

ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH CONTRACTOR HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR OWNER'S NEGLIGENCE.

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

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

the right to control the means, methods or details of the Contractor's work. Contractor shall assume exclusive responsibility for the work. Contractor is entirely free to do the work in its own way.

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

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

24. Consideration: The terms of this Contract are supported by good and valuable

consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

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

Contract No: 5783-13:

OWNER, City of Midland

CONTRACTOR

Courtney B. Sharp, City Manager

APPROVED AS TO FORM

Keith Stretcher, City Attorney

ATTEST

Amy M. Turner, City Secretary

Corporate Acknowledgment:

THE STATE OF TEXAS §

§

COUNTY OF MIDLAND §

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

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

Notary Public, State of Texas



CITY OF MIDLAND
PURCHASING DIVISION
BID REQUEST

DATE: 8-14-2012
PAGE: 1

(THIS IS NOT AN ORDER)

BID NO: 5783-13

OPENING TIME: 11:00 AM

CLOSING DATE: 11-21-2013

CITY OF MIDLAND
300 NORTH LORAIN
P. O. BOX 1152
MIDLAND, TX 79702

BIDS WILL BE RECEIVED IN THE OFFICE OF THE City Secretary, 300 N. Lorraine St., Suite 330, Midland, TX 79702
UNTIL 11:00 A.M. FOR GOODS AND SERVICES DESCRIBED BELOW WHICH WILL BE DELIVERED
TO:

Water Well Services

Utilities, Parks & Golf Course Midland, Texas

ITEM NO.	QTY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
1	2	Yr.	Well Service at City Effluent Farms, Pollution Control Plant, Landfill, Hogan Park Golf Course and Other Park Service Wells.		
				TOTAL	

NOTICE TO BIDDERS:

- FAILURE TO RESPOND WITH EITHER A BID OR "NO BID" WILL SUBJECT YOUR FIRM TO REMOVAL FROM THE BID LIST FOR THIS TYPE OF MATERIAL, EQUIPMENT OR SUPPLY ITEM.
- BIDS SHALL BE DELIVERED TO THE CITY IN A SEALED PACKAGE (ENVELOPE, ETC) UNLESS THE CITY STATES THAT THE BID MAY BE FAXED OR E-MAILED, OTHERWISE, BIDS FAXED OR E-MAILED DIRECTLY TO THE CITY WILL BE REJECTED. A SEALED BID MAY BE FAXED TO A THIRD PARTY FOR SEALED DELIVERY TO THE CITY. PLEASE CALL FOR MORE INFORMATION.
- 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 REQUIREMENTS OF PARAGRAPH 3, 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.

FOR ADDITIONAL INFORMATION, CONTACT (432) 685-7234 OR 685-7233. FAX NO. (432) 685-0523

NOTE: EACH BIDDER IS TO INDICATE BRAND NAME PRODUCT NUMBER AND ATTACH DESCRIPTIVE LITERATURE CLEARLY MARKED TO SHOW EACH ITEM ON THIS BID.
THE UNDERSIGNED HEREBY OFFERS TO FURNISH AND DELIVER THE ARTICLES OR SERVICE AS SPECIFIED ABOVE AT THE PRICES AND TERMS HEREIN STATED AND IN STRICT ACCORDANCE WITH THE SPECIFICATIONS AND CONDITIONS OF BIDDING ALL WHICH ARE MADE A PART OF THIS OFFER. THIS OFFER IS NOT SUBJECT TO WITHDRAWAL WITHOUT PERMISSION.

COMPANY NAME: STRAUB Corporation
ADDRESS: P.O. Box 192
CITY: STANTON ST TX ZIP 79782
PHONE NO. 756-3489 FAX NO. 756-3849
EMAIL: RAYMOND@STRAUBCORPORATION.COM

CASH DISCOUNT: 0 % 0 DAYS

DELIVERY CAN BE MADE

AUTHORIZED SIGNATURE

PLEASE READ CONDITIONS FOR BIDDING ON BACK BEFORE SUBMITTING

Vendor's Name: STRAUB CORPORATION

**CITY OF MIDLAND, TEXAS
BID DETAIL SHEET FOR IRRIGATION WELL SERVICE
FOR THE HOGAN PARK GOLF COURSE
(Located at 3600 N. Fairgrounds Rd., Midland, Texas)**

UNIT COSTS FOR WELL REPAIR SERVICE:

1. Submersible Pump (5 units at 120 ft. est.):
 - A. Cost per foot to remove \$ 1.65
 - B. Cost per foot to install \$ 1.65
2. Plugging Wells (per inch diameter, per foot of depth) \$ 2.75

MOBILIZATION:

3. How much notification will be required to move into area? 2-7 DAYS
4. State premiums for emergency, mobilization on:
 - A. Weekends 158.00 Hr.
 - B. Holidays 158.00 Hr.
 - C. Off Hours 158.00 Hr.
5. Vendor to list:
Holidays: THANKSGIVING, CHRISTMAS, NEW YEARS DAY,
EASTER, MEMORIAL DAY, 4th of July, LA BOR DAY
6. Regular Working Hours: 8-5 MONDAY to Friday

MOVE IN CHARGES (EST. 5 WELLS):

7. Per mile cost for mileage \$ 0
8. Set up, each well \$ 0

Vendor's Name: STRAUB Corporation

9. Bailing, per hour \$ 158.00
10. Fishing, per hour, includes waiting time for tool delivery \$ 158.00
11. Any materials needed to repair the wells not listed herein shall be provided on a cost plus percentage basis. Vendor shall seek the best prices available for these materials. 40 %

1. **VENDOR CONTACT:**

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

The City Of Midland
Office of the Purchasing Agent OR FAX: (432) 685-0523
P.O. Box 1152 E-MAIL: purchasing@midlandtexas.gov
Midland, TX 79702

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

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

Vendor's Name: Straub Corporation

ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CONTRACTOR MIGHT OTHERWISE BE ENTITLED.

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

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

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

By Execution and submission of this bid, the bidder hereby represents and warrants to the City of Midland that the bidder has read and understands the Bid Documents and the Contract Documents and this bid is made in accordance with the Bid Documents. Bidder acknowledges that it understands all terms within the bid Documents which include the waiver provisions, and that it had the right to consult with counsel regarding all of the above documents.

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

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

Vendor's Name: STRAUB CORPORATION

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

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

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

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

STRAUB CORPORATION
Company Name

[Signature]
Authorized Signature

RAYMOND STRAUB JR., P.G.
Print Above Name

11-27-12
Date

432-756-3489
Phone

432-756-3849
Fax

Vendor's Name: STRANB CORPORATION

**CITY OF MIDLAND, TEXAS
BID DETAIL SHEET FOR IRRIGATION WELL SERVICE
FOR VARIOUS CITY OF MIDLAND PARKS**

UNIT COSTS FOR WELL REPAIR SERVICE:

1. Submersible Pump (12 units, located in Midland, Texas):

6 wells @ 125-150 feet deep @ Hogan Park, 1201 E. Wadley
3 wells @ 100-125 feet deep @ Reyes Mashburn Nelms, Cuthbert & Fairgrounds Rd.
2 wells @ 100 feet deep @ C.J. Kelly Park, 5500 League Dr.
1 well @ 80 feet deep @ Linebery House, 806 S. Main

A. Cost per foot to remove

\$ 1.65

B. Cost per foot to install

\$ 1.65

2. Plugging Wells (per inch diameter, per foot of depth)

\$ 2.75

MOBILIZATION:

3. How much notification will be required to move into area?

2-7 DAYS

4. State premiums for emergency, mobilization on:

A. Weekends

158.00 Hr.

B. Holidays

158.00 Hr.

C. Off Hours

158.00 Hr.

5. Vendor to list:

Holidays: THANKSGIVING, CHRISTMAS, NEW YEARS
EASTER, MEMORIAL DAY, 4th of July LABOR DAY

6. Regular Working Hours: 8-5 MONDAY to FRIDAY

MOVE IN CHARGES (EST. 12 WELLS):

7. Per mile cost for mileage

\$ 0

Vendor's Name: Straub Corporation

8. Set up, each well \$ 0
9. Bailing, per hour \$ 158.00
10. Fishing, per hour, includes waiting time for tool delivery \$ 158.00
11. Any materials needed to repair the wells not listed herein shall be provided on a cost plus percentage basis. Vendor shall seek the best prices available for these materials. 40 %

1. **VENDOR CONTACT:**

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

The City Of Midland
Office of the Purchasing Agent OR FAX: (432) 685-0523
P.O. Box 1152 E-MAIL: purchasing@midlandtexas.gov
Midland, TX 79702

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

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

Vendor's Name: STRAUB CORPORATION

ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH CONTRACTOR MIGHT OTHERWISE BE ENTITLED.

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

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

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

By Execution and submission of this bid, the bidder hereby represents and warrants to the City of Midland that the bidder has read and understands the Bid Documents and the Contract Documents and this bid is made in accordance with the Bid Documents. Bidder acknowledges that it understands all terms within the bid Documents which include the waiver provisions, and that it had the right to consult with counsel regarding all of the above documents.

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

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

Vendor's Name: STRAUB Corporation

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

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

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

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

STRAUB Corporation
Company Name

Company Name

11-27-12 Date

Date _____

Authorized Signature

Authorized Signature

432-756-3489
Phone

Phone

RAYMOND STRAUB JR., P.G.
Print Above Name

Print Above Name

432-756-3849

Fax

Vendor's Name: Straub Corporation

**CITY OF MIDLAND, TEXAS
BID DETAIL SHEET FOR IRRIGATION WELL SERVICE
FOR THE UTILITIES DEPARTMENT**

UNIT COSTS FOR WELL REPAIR SERVICE:

1. Submersible Pump (8 units at 1000 ft. est.):
 - A. Cost per foot to remove \$ 1.65
 - B. Cost per foot to install \$ 1.65
2. Plugging Wells (per inch diameter, per foot of depth) \$ 2.75
3. Cost per foot to plug 5" monitor wells at Landfill \$ 13.75
 - A. There are 13 monitor wells at the Landfill approximately 60 ft to 80 ft deep. If it becomes necessary to plug any or all of these wells, the work shall be performed in strict accordance with TCEQ requirements per 30 TAC t330.242 (g) and 16 TAC t 76.702 and t76.1004 and ASTM Standard D 5299.

MOBILIZATION:

4. How much notification will be required to move into area? 2-7 DAYS
5. State premiums for emergency, mobilization on:
 - A. Weekends 158.00 Hr.
 - B. Holidays 158.00 Hr.
 - C. Off Hours 158.00 Hr.
6. Vendor to list:
Holidays: THANKSGIVING, CHRISTMAS, NEW YEARS
EASTER, MEMORIAL DAY, 4th of July, LABOR DAY
7. Regular Working Hours: 8-5 MONDAY - FRIDAY

Vendor's Name: Straub Corporation

MOVE IN CHARGES (EST. 8 WELLS):

8. Per mile cost for mileage \$ 0
9. Set up, each well \$ 0
10. Bailing, per hour \$ 158.00
11. Fishing, per hour, includes waiting time for tool delivery \$ 158.00
12. Any materials needed to repair the wells not listed herein shall be provided on a cost plus percentage basis. Vendor shall seek the best prices available for these materials. 40 %

1. VENDOR CONTACT:

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

The City Of Midland

Office of the Purchasing Agent OR

FAX: (432) 685-0523

P.O. Box 1152

E-MAIL: purchasing@midlandtexas.gov

Midland, TX 79702

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

2. A. **WAIVER OF ATTORNEY FEES:** BY SUBMITTING A BID, CONTRACTOR AGREES TO WAIVE AND DOES HEREBY KNOWINGLY CONCLUSIVELY, VOLUNTARILY CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST THE OWNER, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE CONTRACT. THE CONTRACTOR SPECIFICALLY AGREES THAT IF THE CONTRACTOR BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS CONTRACT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS CONTRACT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT

Vendor's Name: Straub Corporation

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

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

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

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

By Execution and submission of this bid, the bidder hereby represents and warrants to the City of Midland that the bidder has read and understands the Bid Documents and the Contract Documents and this bid is made in accordance with the Bid Documents. Bidder acknowledges that it understands all terms within the bid Documents which include the waiver provisions, and that it had the right to consult with counsel regarding all of the above documents.

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

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

Vendor's Name: Straub Corporation

4. AWARD OF THE CONTRACT.

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

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

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

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

<u>Straub Corporation</u>	<u>11-27-12</u>
Company Name	Date
	<u>432-756-3489</u>
Authorized Signature	Phone
<u>RAYMOND STRAUB JR., P.G.</u>	<u>432-756-3849</u>
Print Above Name	Fax



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 12/18/2012

TO: City Council / City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving the purchase of 4 complete side wheel roll irrigation systems for the Utilities Department.

Purpose:

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

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

\$61,150.00 Water and Sewer Fund

Discussion:

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

Therefore, please consider approval of a resolution authorizing the purchase of the side wheel roll irrigation systems and parts from Mesa Irrigation Company of Lamesa, Texas for a total of \$61,150.00.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE PURCHASE OF
FOUR COMPLETE SIDE-WHEEL ROLL IRRIGATION
SYSTEMS AND SPARE PARTS FOR USE AT THE
SPRABERRY FARM FACILITIES FROM MESA
IRRIGATION COMPANY, OF LAMESA, TEXAS, AT A
TOTAL COST OF \$61,150.00**

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

WHEREAS, Bid No. 5779-13 was opened on November 21, 2012, with the lowest and most responsible bid being submitted by Mesa Irrigation Company of Lamesa, Texas, at a total cost of \$61,150.00, as shown on the bid tabulation attached hereto as Exhibit "A" and incorporated herein for all legal purposes;

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

SECTION ONE. That the City Manager is hereby authorized and directed to purchase four complete side-wheel roll irrigation systems with spare parts for use at the Spraberry Farm Facilities as specified in the bid tabulation, from Mesa Irrigation Company of Lamesa, Texas, at an estimated total price not to exceed \$61,150.00.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Mesa Irrigation Company from funds available in the Fiscal Year 2012 – 2013 Water and Sewer Fund (300) Utilities (300) Spraberry Farm (0315) Irrigation Equipment (8425) budget account upon proper receipt of invoices or statements approved by the City Manager.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

City of Midland - Bid Tabulation

BID # 5779-13 Side Wheel Roll Irrigation System OPENED November 21, 2012 Est. Cost: \$67,000.00			Consolidated Pipe & Tube PO Box 5695 Lubbock, TX 79408 karl@bossirrigation.com (806) 763-9591		Carter Company PO Box 777 Seminole, TX 79360 Rubert Combs (432) 758-2053		Mesa Irrigation 1609 N Hwy 87 Lamesa, TX 79331 Julian Coleman (806) 872-5479	
ITEM	QTY	DESCRIPTION	COST EA.	TOTAL	COST EA.	TOTAL	COST EA.	TOTAL
1	4	Complete New Sidewheel Systems complete with 5/32" nozzles	16,231.2500	\$64,925.00	\$17,043.20	\$68,172.80	\$13,050.00	\$52,200.00
2	10	5' x 20' Torque pipe for SWR, w/sprinkler, riser and leveler For Plant Farm	211.2500	\$2,112.50	\$189.22	\$1,892.20	\$200.00	\$2,000.00
3	20	5' x 40' Standard SWR pipe complete w/wheel, sprinkler, risers and leve For Spraberry	366.2500	\$7,325.00	\$328.16	\$6,563.20	\$330.00	\$6,600.00
4	1	Freight	None Specified	None Specified	\$2,000.00	\$2,000.00	\$350.00	\$350.00
		Delivery	10-15 Days ARO					
TOTALS:				\$74,362.50		\$78,628.20		\$61,150.00
TOTAL OF LOW BID ITEMS BY VENDOR:				\$0.00		\$0.00		\$0.00

Bidding Summary:

11 Bid requests were issued.

3 Bids listed above

0 NO BIDS were received.

8 Bidders did not respond.

Benmark Supply Company, Straub Corporation, Valley Irrigation & Pump Service, J-R's Water Well Service, Odessa Pumps & Equipment, South Plains Imp., Gicon Pumps, Ewing Irrigation



City Council Agenda

Approved For Agenda:
THudson
City Manager's Office

MEETING DATE: 12/18/2012

TO: City Council, City Manager

FROM: Regina Stephenson, Purchasing Manager

SUBJECT: Consider a resolution approving a professional services agreement with Connolly Architects and appropriating funds for renovations of the Animal Services Building.

Purpose:

Approval of a resolution approving a professional services agreement for renovations at the Animal Services Building.

Recommended City Council Action:

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

\$49,500.00 Animal Shelter Facility and Equipment Fund

Discussion:

Please consider approval of a resolution authorizing a Professional Services agreement with Connolly Architects & Consultants. Connolly Architects & Consultants were the original architects of the shelter construction in 1991.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH CONNOLLY ARCHITECTS, INCORPORATED, FOR PROFESSIONAL ARCHITECTURAL DESIGN SERVICES FOR THE CITY OF MIDLAND ANIMAL SHELTER; AND APPROPRIATING \$49,500.00 FOR SAID PROFESSIONAL SERVICES

WHEREAS, the City Council finds it to be in the public interest to employ the services of an architectural firm to provide professional design services for renovations to the City of Midland Animal Services Facility (“Professional Services”); and

WHEREAS, Connolly Architects, Inc., proposes to perform said Professional Services for a fee not to exceed \$49,500.00; and

WHEREAS, the Council finds the fees proposed by Connolly Architects, Inc., for said Professional Services to be fair and reasonable; and

WHEREAS, the Council finds Connolly Architects, 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 Connolly Architects, Inc., to provide said Professional Services; and

WHEREAS, the Council authorizes the City Manager to execute a professional services agreement with Connolly Architects, 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 Connolly Architects, Inc., for performance of said Professional Services.

SECTION TWO. That the sum of \$49,500.00 is hereby appropriated from the

Animal Shelter Facility and Equipment Fund (140) Unappropriated Fund Balance (5650) to the Animal Shelter Facility and Equipment Fund (140) Community Services (090) Animal Services Building Renovations Project (9026).

SECTION THREE. That the City Treasurer is hereby authorized and directed to make payments to Connolly Architects, 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., 2012, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Robert Patrick, General Services Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

CITY OF MIDLAND
Community Services Department
Interoffice Memorandum

Date: December 18, 2012
To: Tommy Hudson, Deputy City Manager
From: Tina Jauz, Community Services Director
Subject: Professional Services Agreement – Animal Services Building

On November 28, 2012, Connolly Architects and Consultants submitted a scope of services to the City of Midland. They are interested in providing design and specifications for the Shelter Renovation project scheduled for 2013. The scope of work will include specifications for the following areas to be addressed:

- recoat the polymer flooring
- repaint the exterior walls
- repaint the interior walls
- recoat the structural glazed facing brick
- install new kennel walls, gates, and walkway divider
- install sound absorbing wall panels
- install new sink, dishwasher, dog wash, and security cameras
- install new exterior doors

Connolly Architects and Consultants were the original architects when the shelter was constructed in 1991. This project is anticipated to be completed by the end of Fiscal Year 2013.

That the sum of \$49,500 is hereby appropriated from the Animal Shelter Facility and Equipment Fund (140) Unappropriated Fund Balance (5650) to the Animal Shelter Facility and Equipment Fund (140) Community Services (090) Animal Services Building Renovations Project (9026).

PROFESSIONAL SERVICES AGREEMENT
FOR ARCHITECTURAL SERVICES

THIS AGREEMENT is made and effective the 19th day of December 2013, by and between the CITY OF MIDLAND, TEXAS, a municipal corporation, hereinafter called "OWNER," and CONNOLLY ARCHITECTS, 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 architectural design services for renovations to the existing Animal Services Building.

ARTICLE II. SERVICES TO BE PERFORMED

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

ARTICLE III. FINANCIAL CONSIDERATIONS

OWNER agrees to pay CONSULTANT according to the schedule set forth in Exhibit "A" upon presentation of a monthly invoice. The invoice shall set out service fees for the month and those Additional Expenses and Reimbursable Expenses described in Exhibit "A" incurred during the previous month which have received advance written approval from the City Manager. The City Manager must approve all additional expenses and reimbursable expenses in advance. CONSULTANT shall perform professional services as outlined in the "Services to be Performed" for a fee not to exceed Forty Nine Thousand Five Hundred Dollars (\$49,500.00). Within 60 days of the date CONSULTANT's invoice is received by OWNER, OWNER shall pay the full amount of such invoice; provided, however, that if OWNER objects to any portion of an invoice, OWNER shall notify CONSULTANT of OWNER's objection and the grounds therefore within

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

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

ARTICLE IV. TERM

The term of this Agreement shall be from January 1, 2013, until December 31, 2013, unless the project is completed sooner or the Agreement is terminated as provided below.

ARTICLE V. TERMINATION AT WILL

The Owner 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 Owner's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the Owner. 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 Owner. The issue on whether or not to grant consent to an assignment is in the sole discretion of the Owner.

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

All reports, information and other data ("instruments of service"), given to, prepared or assembled by CONSULTANT under this Agreement, and any other related documents or items shall become the

sole property of OWNER and shall be delivered to OWNER, without restriction, except that CONSULTANT may make copies of any and all instruments of service for its files. The OWNER shall not make any modification to the plans and specifications or make them available for use by third parties without the prior written authorization of CONSULTANT, which consent shall not be unreasonably withheld.

ARTICLE VIII. INDEPENDENT CONTRACTOR

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

ARTICLE IX. INSURANCE

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

Commercial General Liability (including Contractual liability):

-Personal Injury:	\$1,000,000.00 per person \$1,000,000.00 per occurrence
-Property Damage:	\$500,000.00 per occurrence
<u>Business Automobile Liability:</u>	\$250,000.00 combined single limit - Personal Injury and Property Damage
<u>Worker's Compensation:</u>	Statutory limits
<u>Employers' Liability:</u>	\$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-owner vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$250,000.00 covering any vehicle used for the execution of the work that is the subject of this Contract.

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

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

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

The parties agree that, prior to the execution of the Contract, Contractor shall provide one or more certificates of insurance specifically stating that these requirements have been met and

subject to the approval of the City. The City shall not be required to provide any insurance whatsoever pursuant to this Contract.

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

ARTICLE X. ATTORNEY FEES

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

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

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

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

ARTICLE XI. SOVEREIGN IMMUNITY

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

ARTICLE XII. NO THIRD PARTY BENEFICIARIES

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

ARTICLE XIII. RELEASE

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

ARTICLE XIV. GENERAL PROVISIONS

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

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

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

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

If to CONSULTANT: Lawrence H. Connolly, AIA
 Connolly Architects, Inc.
 2414 Exposition Blvd., Suite A-2
 Austin, Texas 78703

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

E. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this

Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

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

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

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

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

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

EXECUTED IN DUPLICATE the day and year first above mentioned.

THE CITY OF MIDLAND, TEXAS

CONSULTANT:

By: _____
Courtney B. Sharp, City Manager

By: _____
Lawrence H. Connolly,
Connolly Architects, Inc.

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 Connolly Architects, 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 _____,
2012.

Notary Public, State of Texas

CONNOLLY
ARCHITECTS & CONSULTANTS

2414 Exposition Boulevard, Suite A-2 Austin, Texas 78703
512.480.9611 fax 512.480.9713 www.connollyia.com

November 28, 2012

Mr. Paul O'Neil, Director
Midland Animal Services
1200 Fairgrounds Road
Midland, Texas 79706

Re: Design Services Letter of Agreement
City of Midland Animal Shelter Evaluation & Addition/Renovation

Dear Mr. O'Neil:

We are most appreciative of the opportunity to provide this Letter of Agreement that is based primarily on my conversations with you over the last two years and the Renovation Project List you emailed me in December 2, 2010. The Shelter Evaluation, Re-Modeling and New Construction design services outlined below involve three sequential tasks that are based on the original drawings. Before we can begin, we need an updated site survey in a dwg file.

1. Shelter Evaluation and Master Plan \$5,000.

The existing facility will be evaluated to assess the shelter's condition and identify materials and conditions that need repair or replacement that are not identified in the Renovation Project List. The Evaluation deliverable is this Letter of Agreement that defines the scope of this project. The Master Plan includes a future Sally Port and Outdoor Holding Kennels.

2. Documents (Schematic and Construction in electronic format) \$34,500.

This includes Mechanical, Electrical, Plumbing and Structural Engineering, ADA Plan Review and Inspection, one day-trip by the Architect and Structural Engineer to confirm Remodeling/Addition scheme and in-house reproduction.

Plans - Demolition and New Construction -

Site	Key Notes; (Master Plan)
Roof	Key Notes
Floor	(Master Plan)
Reflected Ceiling	

Exterior Elevations –	New covered Parking for ACO's trucks; (Master Plan)
-----------------------	---

Building Sections –	New covered Parking for ACO's trucks
---------------------	--------------------------------------

Interior Elevations –	Dog Quarantine new construction
	Receiving/Evaluation new construction
	Front Desk new construction
	Cat Room

CONNOLLY

ARCHITECTS & CONSULTANTS

2414 Exposition Boulevard, Suite A-2 Austin, Texas 78703

512.480.9611 fax 512.480.9713 www.connollyaia.com

Details –
New covered Parking for ACO's trucks
Dog Quarantine new construction
Receiving/Evaluation new construction
Front Desk new construction

Specifications –
New Carpeting
New Lay-In Tile Ceiling
New Exterior and Interior Doors
New Millwork
Painting

A minimum of the above drawings will be necessary to quantify and qualify the following scope of work:

1. Recoat polymer flooring – after selected remodeling is complete.
 2. Re-paint exterior walls
 3. Kennel area – repaint the kennel walls, re-point Structural Glazed Facing Brick (SGFB), install new kennel gates and new upper wall panels and provide a second exterior door.
 4. Remodel Receiving/Evaluation to include stainless steel walk-up tub, dishwasher and cabinets.
 5. Remodel existing Dog Quarantine – add an exterior door and provide a new secured fenced yard w/ synthetic turf.
 6. Remodel Cat Room – cage-free habitats, new cages, new stainless steel cabinets w/ a counter and a sink.
 7. Cover the walkway from the exterior EU room door to the crematorium Replace exterior doors and frames.
 8. Replace selected security cameras
 9. Install new flooring material in public areas and offices.
 10. Covered parking area for officer trucks
 11. Lobby area – update the reception area, replace cabinets and front counter work station
 12. Exposed structure ceilings – install sound absorbing ceiling materials, insulation and gypboard to provide sanitary environment; enlarge existing skylights – work to be coordinated w/ roof replacement in 2014.
3. **Contract Observation** **\$10,000.**
This fee includes four day trips for construction observation, to facilitate construction and a maximum of 60 hours as a resource during the construction process. This does not include administration of the Contract.

TOTAL FEE (including Contingency) **\$49,500.**

CONNOLLY

ARCHITECTS & CONSULTANTS

2414 Exposition Boulevard, Suite A-2 Austin, Texas 78703
512.480.9611 fax 512.480.9713 www.connollyaia.com

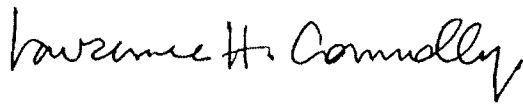
This all-inclusive proposal includes the trip to your shelter on December 8, 2010 for the Shelter Evaluation. Each of the first two tasks outlined above will involve a maximum of one draft to be submitted for comments and approval. The Documents are expected to be completed twelve weeks from the execution of this Agreement.

The intent of this agreement is to provide you with the necessary information to help you prioritize, plan and bid your remodeling projects as a group or individually according to available resources and your operational schedule.

During the execution of the tasks outlined above, it may be clear that Additional services are necessary, a subsequent agreement may be required. If these terms are acceptable, please have your City Manager sign both copies and return one of them to us. Statements will be issued at the completion of each task or at the end of the month depending on whichever comes first.

Thank you for the opportunity to work with you and the City of Midland on this exciting project and a shelter that I have not worked on in twenty years! We are eager to get started.

Sincerely,



Lawrence H. Connolly, AIA
Principal
CONNOLLY ARCHITECTS & CONSULTANTS

CONNOLLY

ARCHITECTS & CONSULTANTS

2414 Exposition Boulevard, Suite A-2 Austin, Texas 78703
512.480.9611 fax 512.480.9713 www.connollyia.com

page 3 of 3



City Council Agenda

Approved for Agenda:
THudson
City Manager's Office

MEETING DATE: 12/18/2012

TO: City Council / City Manager

FROM: Marv Esterly, Director of Airports

SUBJECT: Consider a resolution authorizing the execution of a Letter Agreement between the City of Midland and the Federal Aviation Administration (FAA) Air Traffic Control Tower.

Purpose:

Consider a resolution authorizing the execution of a Letter Agreement between the City of Midland and the Federal Aviation Administration (FAA) Air Traffic Control Tower regarding Airport Movement Area and Vehicle Control on Airfield Surfaces.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Discussion:

This Letter of Agreement defines the procedures for official airport vehicles to operate on the Airport Movement Area at Midland International Airport (MAF). It further defines movement and non-movement areas on the airport surface and provides guidance for opening and closing runways.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
LETTER OF AGREEMENT BETWEEN THE CITY OF
MIDLAND AND THE FEDERAL AVIATION
ADMINISTRATION AIR TRAFFIC CONTROL TOWER
REGARDING AIRPORT MOVEMENT AREAS AND
VEHICLE CONTROL ON AIRFIELD SURFACES AT
MIDLAND INTERNATIONAL AIRPORT**

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a Letter of Agreement between the City of Midland and the Federal Aviation Administration Air Traffic Control Tower regarding Airport Movement Areas and Vehicle Control on Airfield Surfaces at Midland International Airport;

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

THAT the City Manager, or his designee, is hereby authorized and directed to execute a Letter of Agreement between the City of Midland and the Federal Aviation Administration Air Traffic Control Tower regarding Airport Movement Areas and Vehicle Control on Airfield Surfaces at Midland International Airport. Said agreement shall be on file in the office of the City Secretary referenced by the date and number of this resolution.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Marv Esterly, Director of Airports

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

MIDLAND ATCT AND MIDLAND INTERNATIONAL AIRPORT

LETTER OF AGREEMENT

EFFECTIVE: December 12, 2012

SUBJECT: Airport Movement Area and Vehicle Control

1. PURPOSE: This Letter of Agreement is to ensure compliance with 14 CFR Section 139.329, JO 7110.65 paragraph 3-1-3 d., and JO 7210.3 paragraph 10-1-8. This Letter of Agreement further defines the procedures for official airport vehicles to operate on the Airport Movement Area at Midland International Airport (MAF), defines movement and nonmovement areas on the airport surface and provides guidance for opening and closing runways.
2. CANCELLATION: This letter cancels the Letter of Agreement between Midland ATCT and Midland International Airport, Responsibilities in Movement and Nonmovement Areas at Midland International Airport, dated December 1, 2010.
3. SCOPE: The procedures established herein are applicable to the movement of vehicles on movement areas at the Midland International Airport.
4. DEFINITIONS:
 - a. Airport Movement Area. The runways, taxiways and other areas of the airport that are not NOTAM closed and are utilized for taxiing, takeoff and landing of aircraft, exclusive of loading ramps and parking areas.
 - b. Non-Movement Area. Any airport surface that is closed by NOTAM, aircraft parking ramps, taxiways Victor, Sierra, Tango and Echo south of Alpha.
 - c. Airport Vehicles. The term includes the following operators: Operations, ARFF, Field Maintenance, Midland Police, FAA Technical Operations and National Weather Service.
 - d. MAF ATCT. The term refers to the entire Tower and its responsibilities.
 - e. MAF Local Control. The term refers to any operations that are approved by Local Control (118.7 – TWR frequency).
 - f. MAF Ground Control. The term refers to any operations that are approved by Ground Control (121.9 – Ground frequency).
5. RESPONSIBILITIES:
 - a. The MAF ATCT is responsible for approving aircraft operations on all movement areas and vehicle operations on all runways, runway safety areas and precision obstacle free zones (POFZs).
 - b. The Midland International Airport is responsible for airport vehicle operations on all movement areas except runways, runway safety areas and POFZs.
 - c. The Midland International Airport and MAF ATCT covenant and expressly agree that with regard to any liability which may arise from the operation within the movement area(s), each party must be solely and exclusively liable for the negligence of its own agents, servants, and/or employees, in accordance with applicable law, and that neither party looks to the other to save or hold it harmless for the consequences of any negligence on the part of one of its own agents, servants, and/or employees.

6. PROCEDURES:

a. The Midland International Airport vehicles must:

- (1) Hold short of all runways, runway safety areas and POFZs.
- (2) Obtain verbal clearance from MAF Local Control prior to crossing or entering a runway, runway safety area or a POFZ. Upon exiting, the vehicle must report to MAF Local Control that the vehicle is clear of the runway, runway safety area or POFZ.
- (3) Vehicle operators must yield the right-of-way to aircraft except in emergency situations or when MAF ATCT has specifically instructed an aircraft to hold or give way to vehicle(s) on a movement area surface.
- (4) Ensure that all vehicles operating on movement areas are equipped with a two-way radio capable of communications with the MAF Local Control. Non-radio equipped vehicles must be escorted by airport vehicles with two-way radio capability.
- (5) Advise MAF Local Control when an operation lasting more than two minutes is planned or expected to occur on a runway, in a runway safety area or in a POFZ. This includes such actions as construction, mowing, or snow removal.

b. MAF ATCT must:

- (1) Allow reasonable and timely access of airport vehicles to operate on the Airport Movement Area and approve requests to access runways, runway safety areas and POFZs.
- (2) Inform aircraft of any vehicle activities that may affect them and route traffic accordingly.
- (3) Close areas as requested by Airport Operations.

7. PROCEDURES FOR OPENING/CLOSING RUNWAYS:

a. Midland International Airport must:

- (1) Notify MAF ATCT of runway closures as soon as possible. Note: only Midland Airport Management has the authority to open or close a runway.
- (2) Advise MAF ATCT if lighted or unlighted barricades/X's will be used.
- (3) Advise MAF ATCT if portions of the closed runway are available for use by taxiing aircraft.
- (4) Advise MAF ATCT when a runway is reopened.

b. MAF ATCT must disseminate the NOTAM as appropriate.

8. MISCELLANEOUS:

- a. Vehicle operations that cannot permit right-of-way to aircraft or that may occupy a taxiway for an extended period of time must contact MAF Ground Control for clearance. MAF Ground Control will coordinate all runway crossings with MAF Local Control for these operations.

MIDLAND ATCT AND MIDLAND INTERNATIONAL AIRPORT LETTER OF AGREEMENT,
SUBJECT: Airport Movement Area and Vehicle Control. EFFECTIVE: December 12, 2012

- b. Vehicles experiencing radio failure must cautiously and promptly exit the runway, runway safety area, or POFZ via the most direct route, without crossing a runway, runway safety area, or POFZ. Once the airport vehicle has exited the runway safety areas, the operator will notify MAF ATCT.

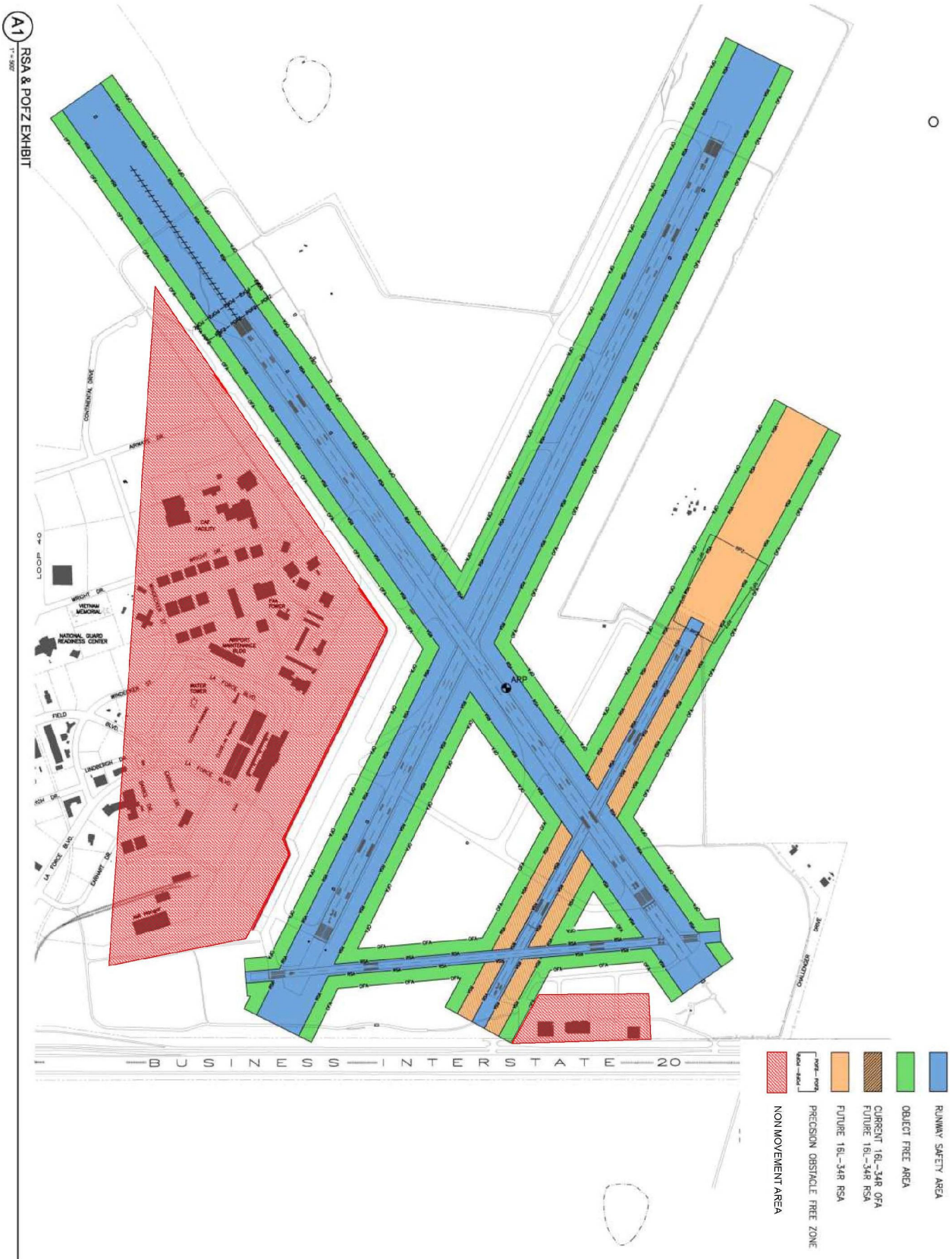
Midland City Council Approval

Michael D. Harvey
Air Traffic Manager
Midland Air Traffic Control Tower

Marvin Esterly
Director of Airports
Midland International Airport

MIDLAND ATCT AND MIDLAND INTERNATIONAL AIRPORT LETTER OF AGREEMENT,
SUBJECT: Airport Movement Area Vehicle Control. EFFECTIVE: December 12, 2012

Appendix 1





DATE: December 12, 2012

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: House Bill No. 63 – Texting While Driving and the Use of Handheld Wireless Communication Devices While Operating a Motor Vehicle

The proposed resolution is requesting that the Texas Legislature and the Governor of Texas take action to approve House Bill No. 63 which was introduced by the Honorable Tom Craddick in the regular session of the 83rd Session of the Texas Legislature.

I have attached a copy of House Bill No. 63 for your information.

If you have any questions or if I may be of any assistance, do not hesitate to contact me or you may wish to contact Council Member Dufford.

Keith Stretcher

KS/lo

Attachment

RESOLUTION NO. _____

**RESOLUTION OF THE CITY OF MIDLAND, TEXAS
REQUESTING THAT THE TEXAS STATE
LEGISLATURE AND THE GOVERNOR OF TEXAS
TAKE ACTION TO APPROVE HOUSE BILL NO. 63
WHICH WAS INTRODUCED BY THE HONORABLE
TOM CRADDICK IN THE REGULAR SESSION OF THE
83RD SESSION OF THE TEXAS LEGISLATURE**

WHEREAS, the citizens of the City of Midland are deeply concerned about the harmful effects of texting while driving and the use of handheld wireless communication devices while operating a motor vehicle; and

WHEREAS, nearly 80 percent of vehicle accidents are the result of some type of driver distraction; and

WHEREAS, it is important to have consistent regulations so the people of Texas can have a clear understanding of what is expected while traveling through each Municipality; and

WHEREAS, the City of Midland sees a serious safety issue in our community and it is vital that the Texas State Legislature and the Governor take immediate action to address the issue;

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

SECTION ONE. That the Texas State Legislature is encouraged to take prompt action in the 83rd Session of the Texas Legislature and pass House Bill No. 63.

SECTION TWO. That the Governor of Texas is hereby encouraged to sign House Bill No. 63 upon its passage and make it the law for the State of Texas.

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

Council members voting "AYE":

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

83R1067 JXC-F

By: Craddick

H.B. No. 63

A BILL TO BE ENTITLED
AN ACT

relating to the creation of an offense for use of a handheld wireless communication device for text-based communication while operating a motor vehicle.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act may be cited as the Alex Brown Memorial Act.

SECTION 2. The heading to Section 545.425, Transportation Code, is amended to read as follows:

Sec. 545.425. USE OF WIRELESS COMMUNICATION DEVICE GENERALLY; OFFENSE.

SECTION 3. Section 545.425(a)(1), Transportation Code, is amended to read as follows:

(1) "Hands-free device" means speakerphone capability, ~~or~~ a telephone attachment, or another function or other piece of equipment, regardless of whether permanently installed in or on a wireless communication device or in a ~~the~~ motor vehicle, that allows use of the wireless communication device without use of either of the operator's hands, except to activate or deactivate a function of the wireless communication device or ~~hands-free device.~~

SECTION 4. Subchapter I, Chapter 545, Transportation Code, is amended by adding Section 545.4251 to read as follows:

Sec. 545.4251. USE OF WIRELESS COMMUNICATION DEVICE TO SEND TEXT-BASED COMMUNICATIONS; OFFENSE. (a) In this section:

(1) "Handheld wireless communication device" means a wireless communication device, as defined by Section 545.425, that is portable. The term does not include:

(A) a citizens band radio or citizens band radio hybrid; or

(B) a commercial two-way radio communication device.

(2) "Text-based communication" means a communication that is designed or intended to be composed with at least one hand on a handheld wireless communication device and that is transmitted between wireless communication devices for the purpose of manually communicating in a nonspoken manner with another person in a written medium. The term includes:

(A) a text message;

(B) an instant message;

(C) an e-mail; or

(D) another type of electronic message.

(b) An operator commits an offense if the operator uses a handheld wireless communication device to read, write, or send a text-based communication while operating a motor vehicle unless the vehicle is stopped.

(c) It is a defense to prosecution under Subsection (b) that:

(1) the operator used a handheld wireless communication device:

(A) to read, select, or enter a telephone number or name for the purpose of making a telephone call;

(B) in conjunction with voice-operated technology, a push-to-talk function, or a hands-free device, as defined by Section 545.425; or

(C) to navigate using a global positioning system or navigation service; or

(2) the handheld wireless communication device:

(A) was used by the operator to relay information between the operator and a dispatcher in the course of the operator's occupational duties; and

(B) was affixed to the vehicle.

(d) It is an exception to the application of Subsection (b) that the operator is:

(1) an operator of an authorized emergency vehicle using a wireless communication device while acting in an official capacity;

(2) an operator who is licensed by the Federal Communications Commission while operating a radio frequency device other than a handheld wireless communication device; or

(3) an operator of a moving motor vehicle using a handheld wireless communication device to report illegal activity or summon emergency help.

(e) Except as provided by Subsection (f), this section preempts all local ordinances, rules, or regulations that are inconsistent with specific provisions of this section adopted by a political subdivision of this state relating to the use of a wireless communication device by the operator of a motor vehicle.

(f) A political subdivision of this state may adopt a local ordinance, rule, or regulation relating to an operator using a handheld wireless communication device to read, write, or send a text-based communication while operating a motor vehicle that is more stringent than this section.

SECTION 5. This Act takes effect September 1, 2013.



City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: 12/18/2012

TO: City Council / City Manager

FROM: Courtney Sharp, City Manager

SUBJECT: Consider a resolution authorizing an amendment to the Permian Basin PBS agreement extending the fundraising deadline to March 31, 2013.

Purpose:

Permian Basin PBS has requested an amendment to the agreement with Midland Development Corporation to extend their fundraising deadline to March 31, 2013.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

N/a

Discussion:

Additional time is needed to complete the fundraising efforts by the Permian Basin PBS.

RESOLUTION NO. _____

**RESOLUTION APPROVING AN AMENDMENT TO THE
PROMOTIONAL AGREEMENT BETWEEN THE
MIDLAND DEVELOPMENT CORPORATION AND
PERMIAN BASIN PUBLIC TELECOMMUNICATIONS,
INC. TO ADVERTISE OR PUBLICIZE THE CITY OF
MIDLAND FOR THE PURPOSE OF DEVELOPING NEW
AND EXPANDED BUSINESS ENTERPRISES**

WHEREAS, the City Council finds it to be in the public interest to approve an amendment to the promotional agreement between the Midland Development Corporation and Permian Basin Public Telecommunications, Inc.;

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

THAT the amendment to the promotional agreement between the Midland Development Corporation and Permian Basin Public Telecommunications, Inc., which is attached hereto, marked as Exhibit "A" and incorporated herein for all purposes, is hereby approved.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**AMENDMENT TO THE PROMOTIONAL AGREEMENT
BETWEEN THE MIDLAND DEVELOPMENT CORPORATION
AND PERMIAN BASIN PUBLIC TELECOMMUNICATIONS, INC.**

THIS AMENDMENT is made and effective December 19, 2012, by and between the Midland Development Corporation (“MDC”), a Type A corporation pursuant to Chapter 504 of the Texas Local Government Code, as amended, and Permian Basin Public Telecommunications, Inc. (“Basin PBS”), a 501(c)(3) organization.

WHEREAS, the MDC and Basin PBS entered into that certain Promotional Agreement dated February 15, 2012 (the “Agreement”), which was approved by the Midland City Council by Resolution No. 2012-023; and

WHEREAS, the Agreement has been in full force and effect since its effective date and has not been allowed to lapse; and

WHEREAS, the MDC and Basin PBS desire to make certain amendments to the Agreement as set forth below;

W I T N E S S E T H:

For and in consideration of the execution of this Amendment and the mutual promises and covenants of the parties hereto, it is mutually promised, understood and agreed as follows:

- 1) Section II of the Agreement is hereby amended to read in its entirety as follows:

On or before May 1, 2013, the MDC agrees to provide to Basin PBS funds in the amount of \$300,000.00 (the “Funds”), which shall be disbursed in one lump sum and shall be subject to the conditions and restrictions set forth herein. The MDC’s provision of the Funds is contingent upon Basin PBS securing \$2,700,000.00 in total commitments from all public and private sources by March 31, 2013.

- 2) Section III(C) of the Agreement is hereby amended to read in its entirety as follows:

Repayment. Basin PBS shall repay the Funds to the MDC if Basin PBS fails to complete the above-described Project by December 31, 2015.

The amount repayable shall be repaid, without interest, to the MDC on or before thirty (30) days after the MDC gives written notice to Basin PBS. Notwithstanding anything to the contrary contained anywhere in this Agreement, under no circumstances shall Basin PBS be obligated to repay the MDC an amount in excess of the total dollar amount of the funds actually received by Basin PBS from the MDC under this Agreement.

- 3) The Agreement, inclusive of this Amendment, is hereby ratified and affirmed by the MDC and Basin PBS and the Agreement shall in all respects remain in full force and

effect in accordance with its provisions and as amended above.

EXECUTED by the duly authorized officials as of the day and year first above written.

M I D L A N D D E V E L O P M E N T
C O R P O R A T I O N

Laura Roman, Chairman

ATTEST:

Robert Rendall, Secretary

APPROVED AS TO FORM:

Keith Stretcher, Counsel for the
Midland Development Corporation

P E R M I A N B A S I N P U B L I C
T E L E C O M M U N I C A T I O N S , I N C .

By: _____

Printed Name: _____

Title: _____

THE STATE OF TEXAS §

 §

COUNTY OF MIDLAND §

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

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

Notary Public, State of Texas



City Council Agenda

Approved for Agenda:
CSharp
City Manager's Office

MEETING DATE: 12/18/2012
TO: City Council / City Manager
FROM: Tommy T. Hudson, Deputy City Manager
SUBJECT: Appropriate reimbursed fees to Atmos Project

Purpose:

Consider a Resolution appropriating funds to Atmos RRM (Rate Review Mechanism) Project 8923

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Appropriate \$198,032 to Project 8923

These funds represent reimbursement from Atmos for consulting/legal fees associated with analysis of various Atmos GRIP and Rate Review Mechanism costs. Funds will be appropriated from the General Liability Self-Insurance Fund. There is no impact to General Fund.

Discussion:

The City is a member of the Steering Committee of cities Served by Atmos West Texas ("Steering Committee"). Steering Committee membership includes almost all cities north of Midland-Odessa (except Lubbock and Amarillo, which have separate rates and services) served by the West Texas Division of Atmos Energy ("Atmos" or "Company").

The original project was funded by a \$0.12 per capita fee assessed to the West Texas member cities. Those funds have been used to pay on-going legal fees associated with the various GRIP and RRM challenges. Funds being appropriated today are reimbursement of those fees and should be placed back into the project.

RESOLUTION NO. _____

RESOLUTION APPROPRIATING FUNDS FROM THE GENERAL LIABILITY SELF-INSURANCE FUND TO THE ATMOS RATE REVIEW MECHANISM PROJECT (8923) IN THE AMOUNT OF \$198,032.00; SAID FUNDS REPRESENT REIMBURSEMENT FROM ATMOS FOR CONSULTING/LEGAL FEES ASSOCIATED WITH THE STEERING COMMITTEE'S ANALYSIS OF THEIR RATE REVIEW MECHANISM COSTS; THERE IS NO IMPACT TO THE GENERAL FUND

WHEREAS, the City is a member of the Steering Committee of Cities served by Atmos West Texas; and

WHEREAS, the Atmos Rate Review Mechanism (RRM) Project (8923) funds have been used to pay on-going consulting/legal fees associated with the various GRIP and RRM challenges; and

WHEREAS, the City Council finds it to be in the public interest to appropriate \$198,032.00 to the Atmos RRM Project (8923) as reimbursement of consulting/legal fees;

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

SECTION ONE. That the sum of \$198,032.00 is hereby appropriated from the General Liability Self-Insurance Fund (702) to the Atmos RRM Project (8923).

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 12/18/2012

TO: City Council / City Manager

FROM: Sylvester Cantu, Community Development Manager

SUBJECT: HOME Investment Partnerships Program RSP Funds

Purpose:

Consider a resolution authorizing the City of Midland to access HOME Investment Partnerships Program funds from the Texas Department of Housing and Community Affairs through the Reservation System Participant program; such funds to be used for homeowner rehabilitation assistance and homebuyer assistance programs; designating several City sources as matching funds but total City match will not exceed \$3,000; designating City cash reserves for funding projects pending reimbursement from the State; and appropriation of funds for the HOME Investment Partnerships Program Reservation System Participant program.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

The City match contribution in the form of waived building permits and reduced sewer taps will be off-set by property valuation increases.

Discussion:

This resolution would allow the City to continue to be able to access State HOME Reservation System Participant (RSP) funds. RSP funds can be provided on a case by case basis for either homeowner reconstruction projects or homebuyer assistance. All assisted households must be low income. Funds for reconstruction projects would be used in combination with Community Development Block Grant funds. Homebuyer cases would be for the purchase of new homes. Appropriation of funds is proposed at a minimal level; therefore, additional funds would be sought later should the demand warrant it.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE CITY OF MIDLAND TO ACCESS THE HOME INVESTMENT PARTNERSHIPS PROGRAM FUNDS FROM THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THROUGH THE RESERVATION SYSTEM PARTICIPANT PROGRAM; SAID FUNDS WILL BE USED FOR HOME OWNER REHABILITATION AND HOME BUYER ASSISTANCE PROGRAMS; DESIGNATING SEVERAL CITY SOURCES AS MATCHING FUNDS NOT TO EXCEED \$3000.00; DESIGNATING CITY CASH RESERVES FOR FUNDING PROJECTS PENDING REIMBURSEMENT FROM THE STATE; AND APPROPRIATING FUNDS FROM THE HOME INVESTMENT PARTNERSHIPS RESERVATION SYSTEM PARTICIPANT PROGRAM

WHEREAS, the City Midland's Consolidated Plan for Community Development and Housing Fund has identified low income owner households and home buyer assistance as priority needs: and

WHEREAS, HOME Investment Partnerships Program Reservation System Participant (RSP) Program funds would augment the pool of Community Development Block Grant funds used to address the above needs; and

WHEREAS, the City of Midland has previously been approved for the RSP Program and desires to continue participating in the Texas Department of Housing and Community Affairs RSP Program that provides HOME Investment Partnerships Program RSP Program funds on a case by case basis; and

WHEREAS, the City desires to designate \$80,000.00 from its cash reserves for purposes of funding RSP projects pending reimbursement from the state of Texas; and

WHEREAS, the City Council finds it to be in the public interest to appropriate funds for the HOME Investment Partnerships Program RSP Program in order to start funding/expending RSP funds on projects;

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

SECTION ONE. That the City Manager is hereby authorized and directed to execute

and submit documents to the Texas Department of Housing and Community Affairs to enable the City of Midland to access RSP funds.

SECTION TWO. That the City of Midland will designate from its cash reserves \$80,000.00 for purposes of funding projects pending reimbursement from the state of Texas.

SECTION THREE. That the City of Midland hereby designates sources and amounts of local non-federal matching funds as follows:

- a) The value of waived building permits fees on the HOME projects at an average rate of \$350.00 per home for a total of \$1,750.00.
- b) The value of \$250.00 per HOME project for reducing the standard sewer tap charge from \$350.00 to \$100.00 for a total of \$1,250.00.

SECTION FOUR. That the combined total City contribution or match shall not exceed \$3,000.00.

SECTION FIVE. That the sum of \$83,200 is hereby appropriated from the Home Grant Fund (050) Unappropriated Fund Balance (5650) to following projects in the following amounts:

HOME RSP'13A Project (7105)	\$41,600
HOME RSP'13B Project (7106)	\$41,600.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Sylvester Cantu, Community Development
Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 12/18/2012

TO: City Council / City Manager

FROM: Sylvester Cantu, Community Development Manager

SUBJECT: Receive and file the Consolidated Annual Performance and Evaluation Report for 2011/2012

Purpose:

Receive and file the Consolidated Annual Performance and Evaluation Report for 2011/2012.

Recommended City Council Action

☐ Approve ☐ Deny ☒ Directional / Informational

Fiscal Impact:

None

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, a table entitled CDBG Performance Profile and a statistical report on the housing programs. The CAPER was subjected to a citizen review period from November 27 to December 12. We must deliver the CAPER to HUD by December 28, 2012.

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

SECOND PROGRAM YEAR

EXECUTIVE SUMMARY

The Consolidated Annual Performance and Evaluation Report (CAPER) describes the progress made from October 1, 2011 to September 30, 2012 towards implementing the City of Midland's Consolidated Plan for Community Development and Housing Funds. The past year covered the second 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:

- 3 owner occupied home were reconstructed
- 38 minor repairs performed on owner occupied homes
- 14 first time homebuyers assisted with purchase of homes
- 3 homes built on CDBG acquired land became occupied by low income households
- Water and sewer mains installed on 5 blocks in Sparks Park target area
- Playground, picnic and other improvements at Washington Park
- 363 seniors and 62 children received CDBG funded public services
- Lot clearance activity on 167 properties
- Removal of dilapidated structures on 5 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 45% of CDBG funds on housing programs, 26% on infrastructure,

8% on public services, 11% on other community development needs and 10% 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.

2011/12 CDBG Program Accomplishments

<u>Activity</u>	<u>Accomplishments</u>	<u>Amount</u>
Washington Park Improvements	Playground equipment, sidewalk, lighting, and picnic and recreational amenities were completed.	\$99,931
Sparks Park Area Infrastructure	Improvements to water and sewer mains were completed. Street paving and alley improvements have been bid out.	\$334,748
Sidewalks Improvements	Contract for construction of sidewalks on 9 blocks near Travis Elementary has started.	\$800
Housing development in San Juan Area	3 more homes were constructed and purchased by low income families. Project is complete. 26 homes developed.	\$0
Housing Reconstruction for homeowners	Reconstructed 3 homes and working on four others.	\$424,658
Housing Minor Repairs for homeowners	Completed 38 minor repairs.	\$92,963
Homebuyer Assistance Program	Assisted 14 first time homebuyers with the purchase of a home.	\$71,713
Lot Clearing Program	Lot clearing was accomplished on 167 properties.	\$13,096
Demolition Program	Demolished 5 dilapidated structures.	\$28,659
Senior Nutrition Program	144 seniors benefited from lunch meal program at SE Senior Center.	\$45,000
Home Cleaning Program	Home cleaning services for 219 elderly/handicap clients.	\$25,000
Local Initiatives Child Care Program	Program matched \$59,720 in Federal funds to assist with care of 62 children.	\$30,000
CDBG Administration	Conducted by the Community Development Office.	\$131,915
	Total:	\$1,298,483

CDBG Performance Profile

	<u>2011/12</u>	<u>2010/11</u>	<u>2009/10</u>
CDBG Grant	\$830,012	\$991,086	\$913,081
Program Income	\$136,142	\$150,221	\$175,933
Available Funds (includes prior grants)	\$2,208,531	\$1,961,470	\$2,130,888
Expenditures	\$1,298,483	\$670,783	\$1,359,786
% By Major Category (2011/12 actual)			
Housing (\$589,334)	45.4%	28.7%	49.5%
Public Infrastructure (\$335,548)	25.8%	25.1%	27.1%
Public Facility (\$99,931)	7.7%	0.0%	0.0%
Public Services (\$100,000\)	7.7%	14.7%	7.3%
Other (\$41,755)	3.2%	4.0%	4.8%
Administrative (\$131,915)	10.2%	27.4%	11.3%
% in Local Target Areas			69.6%
Accomplishments			
Homebuyers Assisted	14	6	7
Homes Reconstructed	3	1	2
Housing Minor Repairs	38	30	51
Streets Paved - # of Blocks	0	12	0
Sidewalks Improved - # of Blocks	4	0	0
Public Facility Improved	1	0	0
Public Service Beneficiaries	425	528	545
Parcels Purchased	0	1	37
Lots Cleared	167	443	373
Structures Demolished	5	0	11
Direct Beneficiaries by Race	482	576	617
White	53.7%	58.7%	51.9%
Black	45.2%	40.1%	48.1%
Other or Multi-Race	1.0%	1.2%	0.0%
Direct Beneficiaries - Hispanic	25.3%	32.8%	25.1%
Direct Beneficiaries by Income	482	555	617
Under 30% of City Median	70.1%	61.8%	67.2%
30% - 50% of City Median	20.5%	21.0%	26.9%
50% - 80% of City Median	9.3%	15.6%	5.9%

Note to HUD: ARRA funds are not included in the above.

CITY OF MIDLAND COMMUNITY DEVELOPMENT OFFICE
Housing Programs Activity

	<u>2005/2006</u>	<u>2006/2007</u>	<u>2007/2008</u>	<u>2008/2009</u>	<u>2009/2010</u>	<u>2010/2011</u>	<u>2011/2012</u>
Total Public Funds Expended	\$742,477	\$534,748	\$270,412	\$483,648	\$534,399	\$200,148	\$641,757
Homebuyer Assistance Program (HAP) – Preowned Homes							
# of Households Assisted	1	0	2	0	0	0	3
Funds Expended	\$4,000	\$0	\$0	\$0	\$0	\$0	\$15,088
HAP – New Homes							
# of Households Assisted	14	4	3	8	10	6	11
Funds Expended	\$99,248	\$29,400	\$22,128	\$89,003	\$185,815	\$48,033	\$56,324
Owner Minor Repairs							
# of Jobs Completed	73	0	22	32	51	30	38
Funds Expended	\$126,797	\$0	\$17,915	\$56,523	\$115,111	\$73,731	\$104,686
Owner Major Projects							
# of Jobs Completed	11	9	2	5	2	1	3
# of Reconstructions	10	8	2	4	2	1	3
Valuations Prior to Work	\$130,550	\$118,700	\$18,390	\$125,690	\$39,220	\$28,110	\$58,310
CDBG Funds Expended	\$387,030	\$289,715	\$160,708	\$327,783	\$233,473	\$78,384	\$424,658
Other Funds Expended	\$125,402	\$215,633	\$69,661	\$10,339	\$0	\$0	\$41,000
Loan Payments Received	\$171,957	\$176,052	\$168,953	\$153,483	\$175,933	\$148,721	\$134,642
CDBG Loan Portfolio	\$893,443	\$1,015,536	\$920,690	\$891,245	\$795,591	\$748,094	\$698,118
# CDBG staff	3.0	2.25	2	2	2	2	2

2011 2012 CDBG ACTIVITY BY CENSUS TRACT



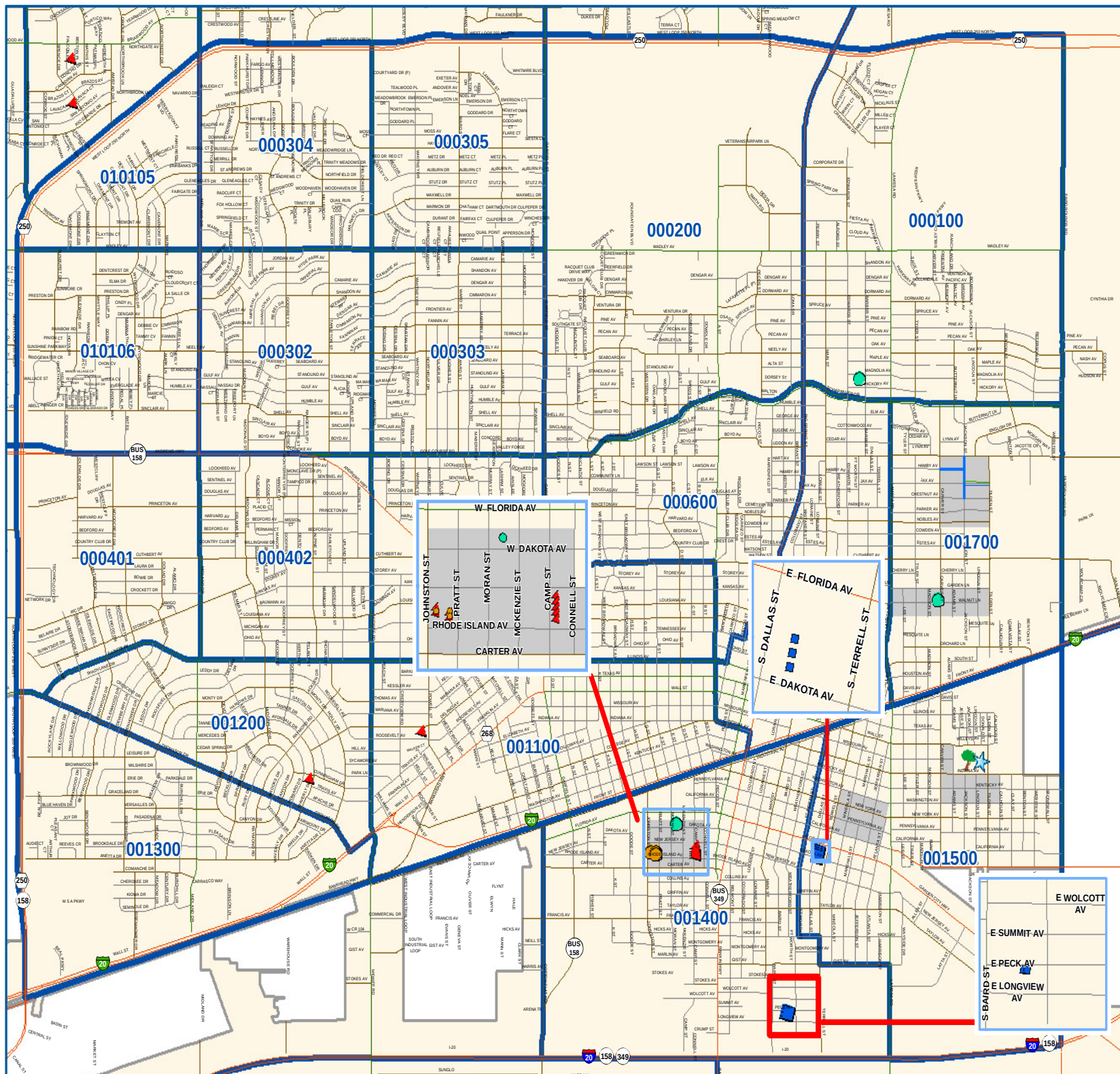
Legend

- SE Senior Meals Program
- Park Improvements
- Demolition
- Home Buyer
- New Home
- Reconstruction
- Water Line
- Water/Sewer
- Arterial
- Collector
- Interstate & State Highway
- Residential
- Census Tract 2010
- Select Target Areas
- City Limit



NOVEMBER 8, 2012
STEVE BAKER

© THE CITY OF MIDLAND - 2012
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR
ANY DECISIONS BASED UPON THE USE OF THIS DATA.
WHILE THIS INFORMATION IS MADE 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
ACCURACY OR COMPLETENESS. THIS DATA IS NOT
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:
JNichols
City Manager's Office

MEETING DATE: 12/18/2012

TO: City Council / City Manager

FROM: Gary Saunders, Transportation Manager

SUBJECT: Consider a motion on a request from First Baptist of Midland to approve the use and operation of golf carts on portions of Baird Street, Main Street and Texas Avenue, City owned streets within the Downtown area of The City of Midland on December 9th, 16th, 23rd, 24th, and 30th, 2012 for church services within the Midland Center.

Purpose:

Consider a motion on a request from First Baptist of Midland to approve the use and operation of golf carts on portions of Baird Street, Main Street and Texas Avenue, City owned streets within the Downtown area of The City of Midland on December 9th, 16th, 23rd, 24th, and 30th, 2012 for church services within the Midland Center.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

N/A

Discussion:

First Baptist of Midland, Texas has requested approval by motion for the use and operation of golf carts on portions of Baird Street, Main Street and Texas Avenue, City owned streets within the Downtown area of The City of Midland on December 9th, 16th, 23rd, 24th, and 30th, 2012 for church services within the Midland Center.

The golf carts will be used for transport purposes between parking facilities and Midland Center.

Staff recommends approval of this motion.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: December 18, 2012

TO: CITY COUNCIL/CITY MANAGER

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

SUBJECT: Consider a resolution to approve a contract between the City of Midland and Midland Development Corporation and to accept funds in the amount of \$1,500,000 for the construction of Brairwood Ave. between Holiday Hill Rd. and Avalon Dr. (District #4 – Trost)

Purpose:

Consider a resolution to approve a contract between the City of Midland and Midland Development Corporation (MDC) and to accept funds in the amount of \$1,500,000 for the construction of Brairwood Ave. between Holiday Hill Rd. and Avalon Dr.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

???

Discussion:

The purpose of this agreement is to accept funds from the MDC to offset to cost to upgrade Brairwood Ave. to the City of Midland arterial standard from Holiday Hill Rd. to Avalon Dr. (approximately 1 mile).

RESOLUTION NO. _____

**RESOLUTION APPROVING AN ECONOMIC
DEVELOPMENT AGREEMENT BETWEEN THE
MIDLAND DEVELOPMENT CORPORATION AND THE
CITY OF MIDLAND FOR IMPROVEMENTS TO
BRIARWOOD AVENUE, AS AUTHORIZED BY
CHAPTER 501 OF THE TEXAS LOCAL GOVERNMENT
CODE; AND APPROPRIATING FUNDS THEREFOR**

WHEREAS, on October 26, 2012, the Midland Development Corporation authorized the negotiation and execution of an economic development agreement with the City of Midland for improvements to Briarwood Avenue; and

WHEREAS, the City Council must consider and approve all economic development agreements approved by the Midland Development Corporation before the agreements can become effective; and

WHEREAS, the City Council finds it to be in the public interest to approve an economic development agreement between the Midland Development Corporation and the City of Midland for said improvements;

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

SECTION ONE. That the economic development agreement between the Midland Development Corporation and the City of Midland, which is attached hereto, marked as Exhibit "A", and incorporated herein for all purposes, is hereby approved.

SECTION TWO. That upon the City of Midland's receipt of \$1,500,000.00 from the Midland Development Corporation pursuant to the terms of said agreement, said funds shall be deposited into the General Fund (001) Unappropriated Fund Balance (5650) for use in the Briarwood Avenue Extension Project (9017).

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

ECONOMIC DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into by and between the MIDLAND DEVELOPMENT CORPORATION (“MDC”), an Economic Development Corporation existing under the authority of Chapter 504 of the Texas Local Government Code, and the CITY OF MIDLAND, TEXAS (“City”), a home-rule municipal corporation.

I. Recitals

- A. The MDC and the City desire to set forth the terms and conditions upon which \$1,500,000 in incentive funds will be provided to the City as consideration for the City’s widening of Briarwood Avenue from Crosse Pointe Addition at Holiday Hill Road to Avalon Drive (the “Project”).
- B. The Project is expected to facilitate commercial and industrial development in the City of Midland.
- C. The MDC Board of Directors (the “Board”) and the City Council of the City of Midland, Texas (the “Council”) find that the purpose of this Agreement qualifies as an infrastructure improvement project under Section 501.103 of the Texas Local Government Code, and is therefore eligible for MDC funding.
- D. The Board and the Council find that the Project and expenditures therefor are required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises within the City of Midland.
- E. The Board and the Council find that this Agreement does not constitute a direct incentive to or expenditure on behalf of a business enterprise as described in Section 501.158 of the Texas Local Government Code.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MDC and the City hereby agree as follows:

II. Obligations of the MDC

- A. Within fifteen (15) days after receiving written notice from the City that a construction contract has been entered into by the City or a third party with a contractor for construction of the Project, MDC shall provide to the City an interest-free forgivable loan in the amount of \$1,500,000.00 which shall be disbursed in one

lump sum and repaid as provided in Section III of this Agreement (the “Loan”). MDC agrees to forgive repayment of the Loan if the conditions contained in Section III of this Agreement are met.

III. Obligations of the City

- A. **The Project.** The City agrees to use the Loan for costs associated with the widening of Briarwood Avenue from Crosse Pointe Addition at Holiday Hill Road to Avalon Drive.

The Project shall include all necessary excavation, embedment, backfill, grading, sub-grade preparation, crushed aggregate base, HMAC/concrete pavement, cross drainage, curb and gutter, and necessary appurtenances or other such features as determined to be necessary by the City. Associated costs shall include but not be limited to engineering costs, surveying costs, right-of-way acquisition costs, bidding costs, construction costs, and inspection costs for the Project.

- B. **Completion.** Upon completion of the Project, the City shall certify such to the MDC in accordance with Section VII(B)(1) hereof.
- C. **Return of Unexpended Loan Funds.** Within thirty (30) days of the City’s certification that the Project has been completed, the City agrees to repay to the MDC any remaining Loan funds in the possession of the City that were not expended for the Project.
- D. **Repayment.** If the City fails to complete the above-describe Project by December 31, 2013, then the City agrees to repay the Loan to the MDC. The amount repayable from the Loan provided herein, shall be repaid, without interest, to the MDC on or before thirty (30) days after the MDC gives written notice to the City. Notwithstanding anything to the contrary contained anywhere in this Agreement, under no circumstances shall the City be obligated to repay the MDC an amount in excess of the total dollar amount of the Loan actually received by the City from the MDC under this Agreement.

IV. Term

Upon execution by all of the parties, this Agreement becomes effective on December 19, 2012 (the “effective date”), and shall terminate when the requirements set forth in

Sections II and III of this Agreement are completed, or when terminated by mutual agreement of the parties, or when terminated as hereinafter provided.

V. Law

The parties are aware of statutory limitations on the Loan and the use of funds under Chapters 501 and 504 of the Texas Local Government Code, and the parties acknowledge that the funds herein granted or guaranteed shall be utilized solely for purposes authorized under that law and by the terms of this Agreement.

VI. Documents

Prior to any payment by MDC, the City shall deliver to MDC an executed copy of this Agreement.

VII. Special Conditions

- A. **Financial Commitment.** The following provisions shall apply:
1. Notwithstanding any provision hereof which might be interpreted otherwise, the MDC's total financial commitment during a fiscal year of the MDC, October 1 to September 30, shall not exceed the Loan amount it is obligated to pay to the City during that fiscal year.
 2. Notwithstanding any provision hereof which might be interpreted otherwise, the MDC's total financial commitment during the term of this Agreement shall not exceed \$1,500,000.00 in the aggregate.
- B. **Certification.** As to any certification required under this Agreement, the City shall provide a letter from the City Manager. E-mail shall not be an acceptable form of certification under this Agreement.
- C. **Payments.** Payments to be made to the City under Section II hereof shall be made upon a written request from the City and completion of all necessary supporting documentation. The payment request and documentation should be directed to MDC Chairman, c/o City Secretary, City of Midland, P.O. Box 1152, Midland, Texas 79702.

VIII. General Terms

- A. **Entire Agreement.** This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written, previous and contemporary agreements between the parties relating to matters in this Agreement; and except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the parties.
- B. **No Third-Party Beneficiary.** The parties approval of the 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.
- C. **Legal Relationship.** The parties are not, and shall not be considered as, joint venturers, partners, or agents of each other; and neither shall have the power to bind nor obligate the other, except as set forth in this Agreement. The parties agree not to represent to anyone that they are agents of one another or have any authority to act on behalf of one another. It is mutually understood and agreed that nothing in this Agreement is intended or shall be construed as in any way creating or establishing any partnership, joint venture, or agency between the MDC and 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.
- D. **Terminations.** This Agreement may be terminated by mutual agreement of the parties or by either party, upon the failure of the other party to fulfill an obligation as set forth herein if the default is not cured within thirty (30) days after written notice from the other party.
- E. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- F. **Venue.** The obligations of the parties to this Agreement are deemed to have been performed in Midland County, Texas, and if legal action is necessary to enforce same, exclusive venue shall be in Midland County, Texas. All payments under this Agreement are deemed to have taken place 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.

- G. **Legal Construction.** In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- H. **Law.** This Agreement is subject to all applicable state and federal laws, and the Company agrees that it will comply in all material respects with all such applicable laws, regulations, orders and rules of the State of Texas and other such governmental agencies. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.
- I. **Assignment.** This Agreement shall be binding upon the parties hereto and their successors and assigns. This Agreement may not be assigned by the City without the prior written consent of the MDC.
- J. **Notices.** All notices to either party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such party at the addresses shown below. All notices shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Either party hereto may change the address below by sending written notice of such change to the other in the manner provided herein.

If to MDC:

MDC Chairman
c/o City Secretary
City of Midland
P. O. Box 1152
Midland, Texas 79702

with copy to:

MDC President
109 N. Main
Midland, Texas 79701

If to City:

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

- K. **Amendment.** This Agreement may be amended by written instrument executed by both parties expressly stating the intention to amend this Agreement.
- L. **Payments.** All payments to either party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such party at the addresses

shown below. All payments shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Either party hereto may change the address below by sending written notice of such change to the other in the manner provided herein.

If to MDC:

MDC Chairman
c/o City Secretary
City of Midland
P. O. Box 1152
Midland, Texas 79702

If to City:

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

- M. MDC and the City hereby agree and acknowledge that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties.
- N. This Agreement shall not be effective until approved by the Midland City Council.

IN WITNESS WHEREOF, the MDC and the Company have executed this Agreement on the _____ day of _____, 2012.

**MIDLAND DEVELOPMENT
CORPORATION**

Laura Roman, Chairman

ATTEST:

Robert Rendall, Secretary

CITY OF MIDLAND, TEXAS

By: _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 12/18/2012

TO: City Council / City Manager

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

SUBJECT: Consider a resolution authorizing the execution of a Public Improvement Development Agreement in the amount of \$2,974,959 with Brighton County Development, LLC (Mike Black) for the paving and drainage improvements to serve the Cross Pointe Addition. The site is generally along the Briarwood Ave. corridor between Holiday Hill Rd. and Avalon Dr. Said agreement being authorized by Section 395.081 of the Texas Local Government Code. (District #4 – Trost)

Purpose:

Consider a development agreement for the City to participate with Brighton Country Development, LLC (Mike Black) in the paving extension and widening of Briarwood Ave. from Holiday Hill Rd. to Avalon Dr. including engineering and surveying costs.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

Paving Improvements (Briarwood Ave.) – Developer	\$ 610,725
Paving Improvements (Briarwood Ave.) – City	\$2,974,959 (83.0%)
Total OPC (Parkhill, Smith & Cooper)	\$3,775,000

That the sum of \$2,974,959 is hereby appropriated from the following sources in the following amounts to the Briarwood Ave Extension Project (9017):

General Fund (001) Unappropriated Fund Balance (5650)	\$1,500,000
2009 GPCO Streets and Drainage Bond Fund (195) Unappropriated Fund Balance (5650)	\$1,474,959

Discussion:

The Cross Pointe Addition is located on at the northwest corner of the Briarwood Ave. and Holiday Hill Rd. intersection. The developer is requesting City participation for the construction of the Briarwood Ave. (full width) to the City of Midland arterial standards.

Paving improvements include the construction of the paving extension and widening from the west edge of the Cross Pointe Addition at Holiday Hill Rd. to Avalon Dr. The City's contribution to the paving of this development agreement is 83.0% of the total cost of the Briarwood Ave. extension. Due to the City's participation being greater than 30%, the project must meet the City's bidding and procurement requirements.

Staff recommends approval of the development agreement indicating City participation in the amount of \$2,974,959 (83.0%) of which, \$1,500,000 will be provided by MDC.

Attached is an opinion of probable cost from the engineer of record (Parkhill, Smith & Cooper – Eric West, P.E.) and a location map.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT WITH BRIGHTON COUNTY DEVELOPMENT, LLC FOR DEVELOPMENT OF CROSS POINTE ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ALONG THE BRIARWOOD AVENUE CORRIDOR, BETWEEN HOLIDAY HILL ROAD AND AVALON DRIVE); AND APPROPRIATING FUNDS IN THE AMOUNT OF \$2,974,959.00 THEREFOR; SAID AGREEMENT BEING AUTHORIZED BY SECTION 395.081 OF THE TEXAS LOCAL GOVERNMENT CODE

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

WHEREAS, the City Code allows City participation; and

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

WHEREAS, the City Council finds it to be in the public interest to execute a development agreement with Brighton County Development, LLC which sets forth the extent of the City's participation in the construction of public improvements related to the development of the Cross Pointe Addition, and to appropriate funds therefor;

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

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

SECTION TWO. That the sum of \$2,974,959.00 is hereby appropriated from the following sources in the following amounts to the Briarwood Avenue Extension Project (9017).

General Fund (001) Unappropriated Fund
Balance (5650).....\$1,500,000.00

2009 GPCO Streets and Drainage Bond Fund (195)
Unappropriated Fund Balance (5650).....\$1,474,959.00

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay for said agreement, in amount not to exceed \$2,974,959.00, out of funds that are available in the said budget account upon receipt of proper invoice or statement therefor approved by the City Manager.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

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

THIS PUBLIC IMPROVEMENT DEVELOPMENT AGREEMENT (“Agreement”) is made and effective this 19th day of December, 2012, by and between **BRIGHTON COUNTY DEVELOPMENT, LLC** (“Developer”) and the **CITY OF MIDLAND, TEXAS** (“City”), a home rule municipal corporation.

W I T N E S S E T H:

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

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

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

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

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

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

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

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

6. In consideration of the obligations incurred by the Developer pursuant to this Agreement, the City agrees to participate in the funding of the construction of the public improvements listed in Exhibit "A" attached hereto and incorporated herein by reference said amount to be no more than \$2,974,959.00. In no case shall the City's contributions to the public improvements required to be constructed on the Property exceed 30 percent of the actual cost of all the public improvements associated with the development without Developer complying with the applicable competitive sealed bid procedures set forth in state law and the ordinances and regulations of the City of Midland, Texas. If the City's contribution for public improvements for any contract exceeds 30 percent of the total cost of all public improvements associated with such contract and such public improvements were constructed without complying with said applicable competitive sealed bid procedures, then the City's maximum contribution under this contract for such phase shall not exceed 30 percent of the actual cost of all public improvements associated with the particular contract.

7. Developer will indemnify and hold harmless and defend City and all of City's officers, agents and employees from all suits, actions, claims, damages, personal injuries, including accidental death, losses, property damage and expenses of any character whatsoever, including attorney's fees, brought for or on account of any injuries or damages received or sustained by any person or persons or property, on account of any negligent act of Developer, its agents or employees, or any subcontractor, in the execution, supervision and operations growing out of or in any way connected with the performance of this Agreement,

and Developer will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including attorney's fees.

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

8. The Developer agrees to indemnify and save the City harmless from all claims growing out of any demands of subcontractors, laborers, workmen, mechanics, materialmen, and suppliers of machinery and parts thereof, equipment, power tools, all supplies, including

commissary incurred in the furtherance of the performance of this contract. When City so desires, the Developer shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived.

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

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

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

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

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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

of the project.

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

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

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

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

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

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

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

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

I. The Developer shall contractually require each person with whom it contracts to provide services on a project, to:

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

(2) provide to the Developer, prior to that person beginning work on the

project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide the Developer, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) obtain from each other person with whom it contracts, and provide to the Developer:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the Developer is representing to the governmental entity that all employees of the Developer who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Developer's failure to comply with any of these provisions is a breach of

contract by the Developer which entitles the governmental entity to declare the contract void if the Developer does not remedy the breach within 10 days after receipt of notice of breach from the governmental entity.

Developer shall also comply with the following:

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

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

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

10. All insurance required pursuant to Paragraph 9, except worker's compensation, shall name the City as an additional insured. The comprehensive general liability policy shall provide contractual liability coverage sufficiently broad so as to include the liability assumed by the Developer in the indemnity and hold harmless provisions included in this Agreement. Developer's insurance as required by this Agreement shall not be subject to cancellation or material alteration until at least thirty (30) days written notice has been provided to the City. Developer shall furnish to the City a certificate of insurance showing City as an additional insured and evidencing that all of the herein stated requirements have been met. **All insurance coverage required pursuant to Paragraph 9 shall include in its provisions a waiver of any rights of subrogation against City.**

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

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

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

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

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

If to Developer:

Brighton County Development, LLC

P.O. Box 50820
Midland, Texas 79703
Attn: Mike Black

If to City:

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

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

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

17. In the event of any conflict between the parties hereto such that either party brings or commences any legal action or proceeding related to this Agreement, including but not limited to any action pursuant to the provisions of the Texas Uniform Declaratory Judgments Act (TEX. CIV. PRAC. & REM. CODE §37.001 et seq., as amended), the parties hereto agree to waive any and all rights to recovery of attorneys fees to which the prevailing party might otherwise be entitled.

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

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

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

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

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

The City shall not have the right to control the means, methods or details of the Developer's work. Developer shall assume exclusive responsibility for the work. Developer is entirely free to do the work in its own way.

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

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

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

21. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES

As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Developer or its legal representative, shall give the City Manager, or any other reasonable official of the City, notice in writing (consisting of one (1) original and seven (7) copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of

this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which the Developer will settle, the physical and mailing addresses of Developer at the time and date the claim was presented and the physical and mailing addresses of Developer for the six (6) months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom the Developer relies to establish its claim; and a failure to so notify the City Manager within the time and manner provided herein shall exonerate, excuse and except the City from any liability whatsoever. The City is under no obligation to provide notice to Developer that Developer's notice is insufficient. The City reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

22. This agreement is made under the authority of Section 395.081 of the Texas Local Government Code and the laws of the State of Texas and Ordinances and the Charter of the City of Midland. The City finds in accordance with Section 395.081 of the Texas Local Government Code that the City of Midland will benefit from allowing the Developer

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

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

EXECUTED in duplicate the day and year first above written.

CITY OF MIDLAND, TEXAS

By: _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

B R I G H T O N C O U N T Y
DEVELOPMENT, LLC

By: _____
Mike Black, Partner

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this day personally appeared MIKE BLACK, 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 BRIGHTON COUNTY DEVELOPMENT, LLC, in the capacity therein stated.

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

Notary Public, State of Texas

Briarwood Avenue - Phase 1
From Holiday Hill Road to west of Avalon Drive (1.0 mile)
Midland, TX

ENGINEER'S OPINION OF PROBABLE COSTS (Revised by DDB)
AS OF AUGUST 20, 2012 (Revised 9/18/2012)

1 Mobilization	LS	1	\$	283,000	\$	283,000.00	11.84%	\$	33,500.27	88.16%	\$	249,499.73
2 ROW Prep	STA	54,912	\$	500.00	\$	27,456.00	11.84%	\$	3,250.12	88.16%	\$	24,205.88
3 Asphalt Pavement (2") and Stabilized Base Removal	SY	20387	\$	2.00	\$	40,774.00	11.84%	\$	4,826.64	88.16%	\$	35,947.36
4 Excavation (Roadway)	CY	43449	\$	10.00	\$	434,490.00	11.84%	\$	51,432.98	88.16%	\$	383,057.02
5 Embankment	CY	1574	\$	16.00	\$	25,184.00	11.84%	\$	2,981.17	88.16%	\$	22,202.83
6 Flex Base (12")	SY	39049	\$	15.00	\$	585,735.00	11.84%	\$	69,336.69	88.16%	\$	516,398.31
7 Prime Coat (MC-30)	GAL	11715	\$	6.00	\$	70,290.00	11.84%	\$	8,320.62	88.16%	\$	61,969.38
8 Asphalt (For Seal Coat)	GAL	21477	\$	5.00	\$	107,385.00	11.84%	\$	12,711.76	88.16%	\$	94,673.24
9 Aggregate (For Seal Coat)	CY	338	\$	60.00	\$	20,280.00	11.84%	\$	2,400.66	88.16%	\$	17,879.34
10 HMA (PG70-22)	TON	5365	\$	140.00	\$	751,100.00	11.84%	\$	88,911.86	88.16%	\$	662,188.14
11 Structural Excavation (Box)	CY	12000	\$	4.50	\$	54,000.00	0.00%	\$	-	100.00%	\$	54,000.00
12 12" Stone Riprap	CY	600	\$	100.00	\$	60,000.00	100.00%	\$	60,000.00	0.00%	\$	-
13 5" Concrete Riprap	CY	465	\$	300.00	\$	139,500.00	50.00%	\$	69,750.00	50.00%	\$	69,750.00
14 Concrete Box Culvert (6' x 3')	LF	240	\$	200.00	\$	48,000.00	0.00%	\$	-	100.00%	\$	48,000.00
15 Safety End Treatment (6' x 3' Box)	EA	2	\$	6,000.00	\$	12,000.00	0.00%	\$	-	100.00%	\$	12,000.00
16 36" RCP Pipe (Basin Equalizer)	LF	1336	\$	75.00	\$	100,200.00	100.00%	\$	100,200.00	0.00%	\$	-
17 Safety End Treatment (36" pipe)	EA	2	\$	3,000.00	\$	6,000.00	100.00%	\$	6,000.00	0.00%	\$	-
18 Traffic Control	MO	12	\$	3,500.00	\$	42,000.00	11.84%	\$	4,971.77	88.16%	\$	37,028.23
19 Erosion Control	LS	1	\$	33,000.00	\$	33,000.00	11.84%	\$	3,906.39	88.16%	\$	29,093.61
20 Concrete Curb & Gutter (TY II)	LF	10832	\$	20.00	\$	216,640.00	11.84%	\$	25,644.87	88.16%	\$	190,995.13
21 Concrete Curb & Gutter (Sawtooth)	LF	150	\$	25.00	\$	3,750.00	11.84%	\$	443.91	88.16%	\$	3,306.09
22 Driveways (Flex Base)	SY	1760	\$	20.00	\$	35,200.00	11.84%	\$	4,166.82	88.16%	\$	31,033.18
23 Curb Ramps	EA	3	\$	1,500.00	\$	4,500.00	11.84%	\$	532.69	88.16%	\$	3,967.31
24 Pavement Marking	LS	1	\$	17,200.00	\$	17,200.00	11.84%	\$	2,036.06	88.16%	\$	15,163.94
25 Sanitary Sewer Extension (NOT INCLUDED)	-	0	\$	-	\$	-	-	\$	-	-	\$	-
26 Contingency (15%)	LS	15%	\$	468,000.00	\$	468,000.00	11.84%	\$	55,399.75	88.16%	\$	412,600.25
Total (Base Bid)				\$	3,585,684.00	\$	610,725.01	\$	2,974,958.99			
Rounded (Base)				\$	3,600,000.00	\$	620,000.00	\$	2,980,000.00			

Cost Sharing

17.03%

82.97%

Exhibit "A"



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: December 18, 2012

TO: CITY COUNCIL/CITY MANAGER

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

SUBJECT: Consider a resolution authorizing staff to advertise for bids the Douglas Ave. & D Street Water and Sewer Improvements project.
(District #3 – James)

Purpose:

Consider a resolution authorizing staff to advertise for bids the Douglas Ave. & D Street Water and Sewer Improvements project.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

No financial impact at this time. Once bids are opened, staff will return to Council to recommend award of the project.

Discussion:

The purpose of this project is to replace and relocate the existing water and sewer mains in Douglas Ave. and D Street in the vicinity of Wadley Barron Park. The relocation of the existing utilities will allow an underground storm sewer to be installed in the middle of the street to address drainage issues along D Street. The storm sewer and pavement replacement will be constructed as the second phase of this project.

RESOLUTION NO. _____

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE DOUGLAS AVENUE AND “D” STREET WATER AND SEWER IMPROVEMENTS PROJECT; SAID PROJECT WILL BE FOR THE INSTALLATION OF NEW WATER AND SEWER MAINS ALONG DOUGLAS AVENUE AND “D” STREET

WHEREAS, plans and specifications have been prepared by the City of Midland for the Douglas Avenue and “D” Street Water and Sewer Improvements Project; and

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

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

SECTION ONE. That the plans and specifications as prepared by the City of Midland for the Douglas Avenue and “D” Street Water and Sewer Improvements Project are hereby approved, those plans and specifications to be on file in the City Secretary’s office referenced by the number and date of this resolution.

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

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: December 18, 2012

TO: CITY COUNCIL/CITY MANAGER

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

SUBJECT: Consider a resolution authorizing staff to advertise for bids the COMPASS project (sidewalk, alley & street paving).

Purpose:

Authorize staff to advertise for bids for the COMPASS project (City of Midland Paving, Alleys, Streets & Sidewalks).

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

No financial impact at this time. Once bids are opened, staff will return to Council to recommend award of the project.

Discussion:

The purpose of the COMPASS project is to establish a unit price to install the necessary components to construct alleys, streets, and sidewalks where directed by City Engineering staff.

RESOLUTION NO.

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE COMPASS PROJECT (CITY OF MIDLAND PAVING, ALLEYS, STREETS AND SIDEWALKS); SAID PROJECT WILL ESTABLISH A UNIT PRICE FOR INSTALLATION OF NECESSARY COMPONENTS TO CONSTRUCT STREETS, ALLEYS AND SIDEWALKS

WHEREAS, plans and specifications have been prepared by the City of Midland for the COMPASS Project; and

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

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

SECTION ONE. That the plans and specifications as prepared by the City of Midland for the COMPASS Project are hereby approved, those plans and specifications to be on file in the City Secretary's office referenced by the number and date of this resolution.

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

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: December 18, 2012

TO: CITY COUNCIL/CITY MANAGER

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

SUBJECT: Consider a resolution to allocate additional funds in the amount of \$58,424 to the Jal Draw Channel Lining project (District #3 – James)

Purpose:

Allocate additional funds in the amount of \$58,424 to the Jal Draw Channel Lining project.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

That the sum of \$58,824 is hereby appropriated from the 2001 GPCO Drainage Improvements Bond Fund (165) Unappropriated Fund Balance (5650) to the Jal Draw Channel Lining Project (8880)

Discussion:

The Jal Draw Channel Lining Project was awarded to Price Construction at the June 8, 2010 City Council meeting in the amount of \$1,626,400 (base bid + 10 % contingency). Due to unforeseen conditions, several design changes were necessary during construction of the project.

1. Additional excavation/backfill and relocation of the wall due to concrete channel bottom location;
2. Replaced the curb/rail due to deterioration along both sides of the channel;
3. Associated material testing;

To complete the project, additional funds in the amount of \$58,824 will be required. The Jal Draw Channel Lining project fund (8880) was originally appropriated with \$3,744,000 and at final completion will have approximately \$185,976 unused.

<u>Jal Draw Channel Lining</u>	<u>Payments Made to Date</u>	<u>Final Cost</u>
Price Construction	\$1,597,687	\$1,685,224
Stone Strong Blocks	\$1,042,282	\$1,042,282
<u>Ward Street Bridge, Jal North Alley</u>		
Onyx Contractors - Bridge	\$635,884	\$639,230 (anticipated)
Onyx Contractors - Alley	\$23,784	\$132,632 (anticipated)
PSC - Bridge Engineering	<u>\$58,656</u>	<u>\$58,656</u>
<u>TOTAL</u>	<u>\$3,358,293</u>	<u>\$3,558,024</u>

Total Appropriation	\$3,744,000
Estimated Final Cost	<u>\$3,558,024</u>
Estimated Unobligated Amount at Project Completion	<u>\$185,976</u>

RESOLUTION NO. _____

**RESOLUTION APPROPRIATING \$58,824 FROM THE
2001 GPCO DRAINAGE IMPROVEMENTS BOND FUND
(165) UNAPPROPRIATED FUND BALANCE (5650) TO
THE JAL DRAW CHANNEL LINING PROJECT (8880)
FOR ADDITIONAL IMPROVEMENTS TO JAL DRAW**

WHEREAS, the City Council finds it to be in the public interest to appropriate \$58,824 to the Jal Draw Channel Lining Project (8880) for additional improvements to Jal Draw;

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

THAT the sum of \$58,824.00 is hereby appropriated from the 2001 GPCO Drainage Improvements Bond Fund (165) Unappropriated Fund Balance (5650) to the Jal Draw Channel Lining Project (8880) for additional improvements to Jal Draw.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: December 18, 2012

TO: CITY COUNCIL/CITY MANAGER

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

SUBJECT: Consider a resolution authorizing staff to advertise for bids the Lamesa Rd. Signal Replacement project. (District #2 – Hailey)

Purpose:

Authorize staff to advertise for bids for the Lamesa Rd. Signal Replacement project.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Direction/Informational

Fiscal Impact:

No financial impact at this time. Once bids are opened, staff will return to Council to recommend award of the project.

Discussion:

The purpose of this project is to replace the signals at the intersections of Cuthbert St. & Lamesa Rd. and Golf Course Rd. & Lamesa Rd. The replacement of the signals and associated controls will upgrade the equipment to the current standard.

RESOLUTION NO. _____

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE LAMESA ROAD SIGNAL REPLACEMENT PROJECT; SAID PROJECT WILL BE FOR THE REPLACEMENT OF SIGNALS AT THE INTERSECTIONS OF CUTHBERT AVENUE AND LAMESA ROAD AND GOLF COURSE ROAD AND LAMESA ROAD

WHEREAS, plans and specifications have been prepared by the City of Midland for the Lamesa Road Signal Replacement Project; and

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

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

SECTION ONE. That the plans and specifications as prepared by the City of Midland for the Lamesa Road Signal Replacement Project are hereby approved, those plans and specifications to be on file in the City Secretary's office referenced by the number and date of this resolution.

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

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: December 18, 2012

TO: CITY COUNCIL/CITY MANAGER

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

SUBJECT: Consider a resolution authorizing staff to advertise for bids the Lamesa Rd. Pedestrian Access Improvement project. (District #2 – Hailey)

Purpose:

Authorize staff to advertise for bids for the Lamesa Rd. Pedestrian Access Improvement project.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

No financial impact at this time. Once bids are opened, staff will return to Council to recommend award of the project.

Discussion:

The purpose of this project is to improve pedestrian access along Lamesa Rd. by construction sidewalks, handicap ramps, and crosswalks along both sides of Lamesa Rd. between Wadley Ave. and Walnut Ln.

RESOLUTION NO.

RESOLUTION APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR THE LAMESA ROAD PEDESTRIAN ACCESS IMPROVEMENT PROJECT; SAID PROJECT WILL BE FOR THE CONSTRUCTION OF SIDEWALKS, RAMPS AND CROSSWALKS ALONG BOTH SIDES OF LAMESA ROAD

WHEREAS, plans and specifications have been prepared by the City of Midland for the Lamesa Road Pedestrian Access Improvement Project; and

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

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

SECTION ONE. That the plans and specifications as prepared by the City of Midland for the Lamesa Road Pedestrian Access Improvement Project are hereby approved, those plans and specifications to be on file in the City Secretary's office referenced by the number and date of this resolution.

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

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

David Beard, City Engineer

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: December 18, 2012

TO: CITY COUNCIL/CITY MANAGER

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

SUBJECT: Consider a resolution to approve a contract between Kenneth Huseman Family Limited Partnership and Midland Development Corporation in the amount of \$1,500,000 for the construction of public improvements to serve the property south of I-20 and West Loop 250 (20/250 Business Park – Case# P-12-073). (District #2 – Hailey)

Purpose:

Consider a resolution to approve a contract between Kenneth Huseman Family Limited Partnership and Midland Development Corporation (MDC) and to accept funds in the amount of \$1,500,000 for the construction of water distribution and wastewater collection improvements to serve the property south of I-20 at West Loop 250 (20/250 Business Park – Case# P-12-073).

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

Funds not to exceed \$1,500,000 are available for the payment of the above referenced Midland Development Corporation contract in the FY'13 Midland Development Corporation (235) Midland Development Corporation (235) Operations (0235) Economic Development Incentives (3905) budget account

Discussion:

The purpose of this agreement is to approve an economic development agreement between Kenneth Huseman Family Limited Trust and MDC for the development of public infrastructure (water and wastewater) to serve the 20/250 Business Park – Case# P-12-073). The proposed development is located south of I-20 at West Loop 250.

RESOLUTION NO. _____

**RESOLUTION APPROVING AN ECONOMIC
DEVELOPMENT AGREEMENT BETWEEN THE
MIDLAND DEVELOPMENT CORPORATION AND
KENNETH HUSEMAN FAMILY LIMITED
PARTNERSHIP, AS AUTHORIZED BY CHAPTER 501
OF THE TEXAS LOCAL GOVERNMENT CODE; AND
AUTHORIZING PAYMENT THEREFOR**

WHEREAS, the Midland Development Corporation authorized the negotiation and execution of an economic development agreement with Kenneth Huseman Family Limited Partnership on October 2, 2012; and

WHEREAS, the City Council must consider and approve all economic development agreements approved by the Midland Development Corporation before the agreements can become effective; and

WHEREAS, the City Council finds it to be in the public interest to approve an economic development agreement between the Midland Development Corporation and Kenneth Huseman Family Limited Partnership;

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

SECTION ONE. That the economic development agreement between the Midland Development Corporation and Kenneth Huseman Family Limited Partnership is hereby approved. Said agreement shall be in a form substantially similar to that of Exhibit "A", which is attached hereto and incorporated herein.

SECTION TWO. That the City Treasurer is hereby authorized and directed to pay Kenneth Huseman Family Limited Partnership in an amount not to exceed \$1,500,000.00, in accordance with the terms of said agreement, from funds available in the fiscal year 2013 Midland Development Corporation (235) Midland Development Corporation (235) Midland Development Corporation Operations (0235) Economic Development Incentives (3905) budget account.

On motion of Council member _____, seconded by Council member

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

Robert McNaughton, Director of Finance

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

ECONOMIC DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into by and between the MIDLAND DEVELOPMENT CORPORATION ("MDC"), an Economic Development Corporation existing under the authority of Chapter 504 of the Texas Local Government Code, and the KENNETH HUSEMAN FAMILY LIMITED PARTNERSHIP ("Company").

**I.
Recitals**

- A. The MDC and the Company desire to set forth the terms and conditions upon which \$1,500,000 in incentive funds will be provided to the Company as consideration for the Company installing a water line extension and a sewer collection system to serve the Company's property described as a 48.36-acre tract located in Section 12, Block 40, T-2-S , T&P RR Co. Survey, Midland, Midland County, Texas and more fully described by metes and bounds on Exhibit A which is attached hereto and incorporated herein (the "Project").
- B. The Project is expected to facilitate commercial and economic development in Midland County.
- C. The MDC Board of Directors (the "Board") and the City Council of the City of Midland, Texas (the "Council") find that the purpose of this Agreement qualifies as an infrastructure improvement project under Section 501.103 of the Texas Local Government Code, and is therefore eligible for MDC funding.
- D. The Board and the Council find that the Project and expenditures therefor are required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises within Midland County.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MDC and the Company hereby agree as follows:

**II.
Obligations of the MDC**

On or before January 15, 2013, MDC shall provide to the Company an interest-free forgivable loan in the amount of \$1,500,000.00 which shall be disbursed in one lump sum and repaid or forgiven as provided in Section III of this Agreement (the "Loan"). MDC agrees to forgive repayment of the Loan if the conditions contained in Section III of this Agreement are met.

III. Obligations of the Company

- A. **The Project.** Prior to December 31, 2013 (subject to extensions resulting from an event or events of force majeure, as such term is hereinafter defined), the Company agrees to complete the following:

Design and install a water line extension and a sewer collection system to serve the Company's property described on Exhibit A as a 48.36-acre tract located in Section 12, Block 40, T-2-S, T&P RR Co. Survey, Midland, Midland County, Texas.

The water main extension shall be connected to the City of Midland's distribution system that now exists along the extension of Empresa Drive, west of Loop 250 West (at a point on the line that will be no more than 500 feet west of the intersection of Empresa Drive and Agri Street), heading south to cross under Interstate 20, looped through the Company's property in an easterly direction and then extended north across Interstate 20 to a point in the City of Midland's existing distribution system along Commerce Drive, east of Loop 250 West. The sewer collection improvements shall route all the wastewater to a duplex lift station at the southeast side of the Company's property. The wastewater shall be pumped through a forcemain to a point in the existing collection system near the intersection of State Street and Commerce Drive, east of Loop 250 West.

The installation shall include all necessary excavation, embedment, backfill and pavement repair to construct approximately 11,000 linear feet of 12" diameter water mains, 5,000 linear feet of 12" wastewater mains, 18" and 12" diameters bore with steel casing under Interstate Highway 20, duplex lift station with 5,300 linear feet of 6" diameter forcemain, manholes, valves, fittings, fire hydrants and necessary appurtenances. Company agrees to use the Loan for costs associated with the installation of said extensions. Associated costs shall include but not be limited to engineering costs, surveying costs, right-of-way acquisition costs, bidding costs, construction costs, testing costs and inspection costs for the Project. The parties agree that the Company may unilaterally enter into any and all agreements necessary for construction of the Project.

- B. **Completion.** Upon completion of the Project, the Company shall certify such to the MDC in accordance with Section VII(B) hereof.
- C. **Return of Unexpended Loan Funds.** The Company agrees to repay to the MDC any Loan funds remaining in the possession of the Company that were not expended for the Project.
- D. **Repayment.** If the Company fails to complete the above-described Project by December 31, 2013, then the Company agrees to repay the then unexpended Loan funds to the MDC. The amount repayable from the Loan provided herein, shall be repaid, without interest, to the MDC on or before thirty (30) days after the MDC gives written notice to the Company. Notwithstanding anything to the contrary contained anywhere in this Agreement, under no circumstances shall the Company be obligated to repay the

MDC an amount in excess of the total dollar amount of the unexpended Loan funds actually received by the Company from the MDC under this Agreement.

- E. **Force Majeure**. The Company shall not be deemed in violation of this Agreement if it is prevented from performing any of its obligations by reason of strikes, boycotts, labor disputes, embargoes, shortages of materials, act of God, acts of the public enemy, act of superior governmental authority, weather conditions, floods, riots, rebellions, acts of sabotage or any other circumstances for which it is not responsible or which are not in its control.

IV. Term

Upon execution by all of the parties, this Agreement becomes effective on December 19, 2012 (the "effective date"), and shall terminate when the requirements set forth in Sections II and III of this Agreement are completed, or when terminated by mutual agreement of the parties, or when terminated as hereinafter provided.

V. Law

The parties are aware of statutory limitations on the Loan and the use of funds under Chapters 501 and 504 of the Texas Local Government Code, and the parties acknowledge that the funds herein granted or guaranteed shall be utilized solely for purposes authorized under that law and by the terms of this Agreement.

VI. Documents

Prior to any payment by MDC to the Company, the Company shall deliver to MDC an executed copy of this Agreement.

VII. Special Conditions

- A. Financial Commitment. The following provisions shall apply:
1. Notwithstanding any provision hereof which might be interpreted otherwise, the MDC's total financial commitment during a fiscal year of the MDC, October 1 to September 30, shall not exceed the Loan amount it is obligated to pay to the Company during that fiscal year.
 2. Notwithstanding any provision hereof which might be interpreted otherwise, the MDC's total financial commitment during the term of this Agreement shall not exceed \$1,500,000.00 in the aggregate.

- B. **Certification.** As to any certification required under this Agreement, the Company shall provide a letter from the Company President or other appropriate officer. E-mail shall not be an acceptable form of certification under this Agreement.
- C. **Payments.** Payment of the Loan funds to be made to the Company under Section II hereof shall be made upon a written request from the Company and completion of any necessary supporting documentation. The payment request and documentation should be directed to MDC Executive Director, 109 N. Main, Midland, Texas 79701.

VIII. General Terms

- A. **Entire Agreement.** This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written, previous and contemporary agreements between the parties relating to matters in this Agreement; and except as otherwise provided herein, this Agreement cannot be modified or amended without a written agreement of the parties.
- B. **No Third-Party Beneficiary.** The parties' approval of the 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.
- C. **Legal Relationship.** The parties are not, and shall not be considered as, joint venturers, partners, or agents of each other; and neither shall have the power to bind nor obligate the other, except as set forth in this Agreement. The parties agree not to represent to anyone that they are agents of one another or have any authority to act on behalf of one another. It is mutually understood and agreed that nothing in this Agreement is intended or shall be construed as in any way creating or establishing any partnership, joint venture, or agency between the MDC and the Company. 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.
- D. **Terminations.** This Agreement may be terminated by mutual agreement of the parties or by either party, upon the failure of the other party to fulfill an obligation as set forth herein if the default is not cured within thirty (30) days after written notice from the other party.
- E. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- F. **Venue.** The obligations of the parties to this Agreement are deemed to have been performed in Midland County, Texas, and if legal action is necessary to enforce same, exclusive venue shall be in Midland County, Texas. All payments under this Agreement are deemed to have taken place 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.

- G. **Legal Construction.** In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- H. **Law.** This Agreement is subject to all applicable state and federal laws, and the Company agrees that it will comply in all material respects with all such applicable laws, regulations, orders and rules of the State of Texas and other such governmental agencies. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.
- I. **Assignment.** This Agreement shall be binding upon the parties hereto and their successors and assigns. This Agreement may not be assigned by the Company without the prior written consent of the MDC.
- J. **Notices.** All notices to either party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such party at the addresses shown below. All notices shall be deemed given on the date so deposited in the mail, unless otherwise provided herein. Either party hereto may change the address below by sending written notice of such change to the other in the manner provided herein.

If to MDC:

MDC Chairman
c/o City Secretary
City of Midland
P. O. Box 1152
Midland, Texas 79702

with copy to:

MDC Executive Director
109 N. Main
Midland, Texas 79701

If to Company:

Kenneth V. Huseman, Managing Partner
Kenneth Huseman Family
Limited Partnership
3313 Ebbets
Midland, Texas 79707

- K. **Amendment.** This Agreement may be amended by written instrument executed by both parties expressly stating the intention to amend this Agreement.
- L. **Payments.** All payments to either party required under this Agreement shall be sent by certified U.S. mail, postage prepaid, addressed to such party at the addresses shown below. All payments shall be deemed given on the date so deposited in the mail, unless

otherwise provided herein. Either party hereto may change the address below by sending written notice of such change to the other in the manner provided herein.

If to MDC:

MDC Chairman
c/o City Secretary
City of Midland
P. O. Box 1152
Midland, Texas 79702

If to Company:

Kenneth V. Huseman, Managing Partner
Kenneth Huseman Family
Limited Partnership
3313 Ebbets
Midland, Texas 79707

- M. **Consideration.** MDC and the Company hereby agree and acknowledge that this Agreement is supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties.
- N. **Release.** NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES MDC, MDC'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.
- O. **Waiver of Attorney Fees.** By executing this Agreement, COMPANY AND MDC AGREE TO WAIVE AND DO HEREBY WAIVE ANY CLAIM THEY HAVE OR MAY HAVE AGAINST THE OTHER PARTY, 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 AND MDC SPECIFICALLY AGREE THAT IF THIS COMPANY OR MDC BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), THE COMPANY AND MDC EACH AGREES TO WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY OR MDC MIGHT OTHERWISE BE ENTITLED.

Company and MDC agree that this is the intentional relinquishment of a presently existing known right. Each party acknowledges that it understands all terms and conditions of the Agreement.

By execution of the Agreement, Company hereby represents and warrants to the MDC that Company has read and understood the Agreement.

- P. **Indemnity.** COMPANY AGREES TO INDEMNIFY AND HOLD HARMLESS AND DEFEND MDC AND ALL OF MDC'S OFFICERS, AGENTS AND EMPLOYEES

FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, (OTHER THAN ATTORNEY'S FEES EXCLUDED PURSUANT TO THE IMMEDIATELY PRECEDING PARAGRAPH OF THIS AGREEMENT), BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, its agents or employees, or any subcontractor, arising out of, or resulting from, Company's activities under this Agreement and Company will be required to pay any judgment with costs which may be obtained against MDC or any of its officers, agents or employees.

Q. **Approval.** This Agreement shall not be effective until approved by the Midland City Council.

IN WITNESS WHEREOF, the MDC and the Company have executed this Agreement on the _____ day of December, 2012.

**MIDLAND DEVELOPMENT
CORPORATION**

Pam Welch, Executive Director

ATTEST:

Robert Rendall, Secretary

**KENNETH HUSEMAN FAMILY
LIMITED PARTNERSHIP**

By: _____
Kenneth Huseman, Managing Partner

THE STATE OF TEXAS §

COUNTY OF MIDLAND §

BEFORE ME, _____, a notary public, on this day personally appeared KENNETH HUSEMAN of KENNETH HUSEMAN LIMITED FAMILY PARTNERSHIP, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of said company for the purposes and consideration therein expressed and in the capacity therein stated.

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

Notary Public, in and for
the State of Texas



ENVIRONMENTAL • CIVIL ENGINEERING • LAND SURVEYING

FIRM # 001363

521 NORTH TEXAS • ODESSA, TEXAS 79761

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

Legal Description

**For a 48.36 Acre Tract of Land,
Located in Section 12, Block 40, T-2-S,
T&P RR Company Survey,
Midland County, Texas**

Boundary Being More Fully Described By Metes and Bounds As Follows:

BEGINNING at a point in the east line of said Section 12 and the west line of Section 7, Block 39, said T-2-S for the most easterly southeast corner of this tract, whence the southeast corner of said Section 12 bears South $14^{\circ}17'45''$ East, a distance of 80.00 feet;

THENCE South $30^{\circ}25'28''$ West, a distance of 28.42 feet to a point for the most southerly southeast corner of this tract;

THENCE South $75^{\circ}08'42''$ West, a distance of 639.22 feet to a point for the most southerly southwest corner of this tract;

THENCE North $67^{\circ}34'00''$ West, a distance of 31.82 feet to a point for the most westerly southwest corner of this tract;

THENCE North $30^{\circ}16'41''$ West, a distance of 2000.80 feet to a point for the most westerly northwest corner of this tract;

THENCE North $14^{\circ}33'04''$ East, a distance of 28.37 feet to a point for the most northerly northwest corner of this tract;

THENCE North $59^{\circ}22'48''$ East, a distance of 1253.23 feet to a point for the most northerly northeast corner of this tract;

THENCE South $67^{\circ}27'28''$ East, a distance of 23.98 feet to a point in the east line of said Section 12 and the west line of said Section 7 for the most easterly northeast corner of this tract;

THENCE South $14^{\circ}17'45''$ East, a distance of 2278.77 feet to the Point of Beginning, containing 48.36 acres of land.

Bearings and distances are relative to the Texas Coordinate System, 1983 NAD, Central Zone, with a combined grid factor of 0.999884655. Acreage stated is average surface.

This document was prepared under 22 TAC 663.21, and is not to be used to convey or establish interest in real property except those rights and interest implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

LCA, Inc.



Aaron S. Burrell, R.P.L.S. 5689

23 October, 2012



LCA Project Number 2012-058



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 12/18/2012

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Consider a Resolution Authorizing the Mayor to Negotiate and Execute a Contract with the Midland County Fresh Water Supply District Number 1 to Investigate Additional Water Supplies in Winkler County.

Purpose:

Consider a Resolution Authorizing the Mayor to Negotiate and Execute a Contract with the Midland County Fresh Water Supply District Number 1 to Investigate Additional Water Supplies in Winkler County.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

That the sum of \$95,000.00 is hereby appropriated from the following sources in the following amounts to the T-Bar Additional Supply Project (9023):

T-Bar Ranch Fund (340) Unappropriated Fund Balance (5650).....\$95,000.00

Discussion:

This project will fund the Midland County Fresh Water Supply District Number 1 in their investigation of additional water supplies in Winkler County. Specifically it will be utilized to construct a well into the Capitan Reef formation to characterize the quantity and quality of that water. This formation is over 4,000 feet deep so the cost of the well are significant but indications are that there is an abundance of water there.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE MAYOR TO
NEGOTIATE AND EXECUTE AN INTERLOCAL
AGREEMENT WITH THE MIDLAND COUNTY FRESH
WATER SUPPLY DISTRICT #1 FOR THE DESIGN OF A
WELL TO BE DRILLED INTO THE CAPITAN REEF
COMPLEX AQUIFER TO PROMOTE THE CITY'S
FUTURE WATER SUPPLY; AND APPROPRIATING
FUNDS**

WHEREAS, the City Council finds it to be in the public interest to authorize the Mayor to negotiate and execute an interlocal agreement with the Midland County Fresh Water Supply District #1 for the design of a well to be drilled into the Capitan Reef Complex Aquifer at a cost of approximately \$95,000.00;

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

SECTION ONE. That the Mayor is hereby authorized and directed to negotiate and execute, on behalf of the City of Midland, an interlocal agreement with the Midland County Fresh Water Supply District #1 for the design of a well to be drilled into the Capitan Reef Complex Aquifer at a cost of approximately \$95,000.00.

SECTION TWO. That the sum of \$95,000.00 is hereby appropriated from the following sources in the following amounts to the T-Bar Additional Supply Project (9023):
T-Bar Ranch Fund (340) Unappropriated Fund Balance (5650).....\$95,000.00

SECTION THREE. That the City Treasurer is hereby authorized and directed to pay the Midland County Fresh Water Supply District #1 pursuant to the terms of said agreement from funds appropriated herein upon receipt of proper invoices or statements approved by the City Manager.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Stuart Purvis, Utilities Director

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

ESTIMATED DEPTHS

T-BAY
CAPITAN REEF
PROPOSED
LOCATION "A"

Wells

Bore Hole

26" Hole
~40' or competent ground

19" Hole

12-1/4" Hole

8-3/4" Hole

Casing

20" Casing
Cement to surface with
Type A cement

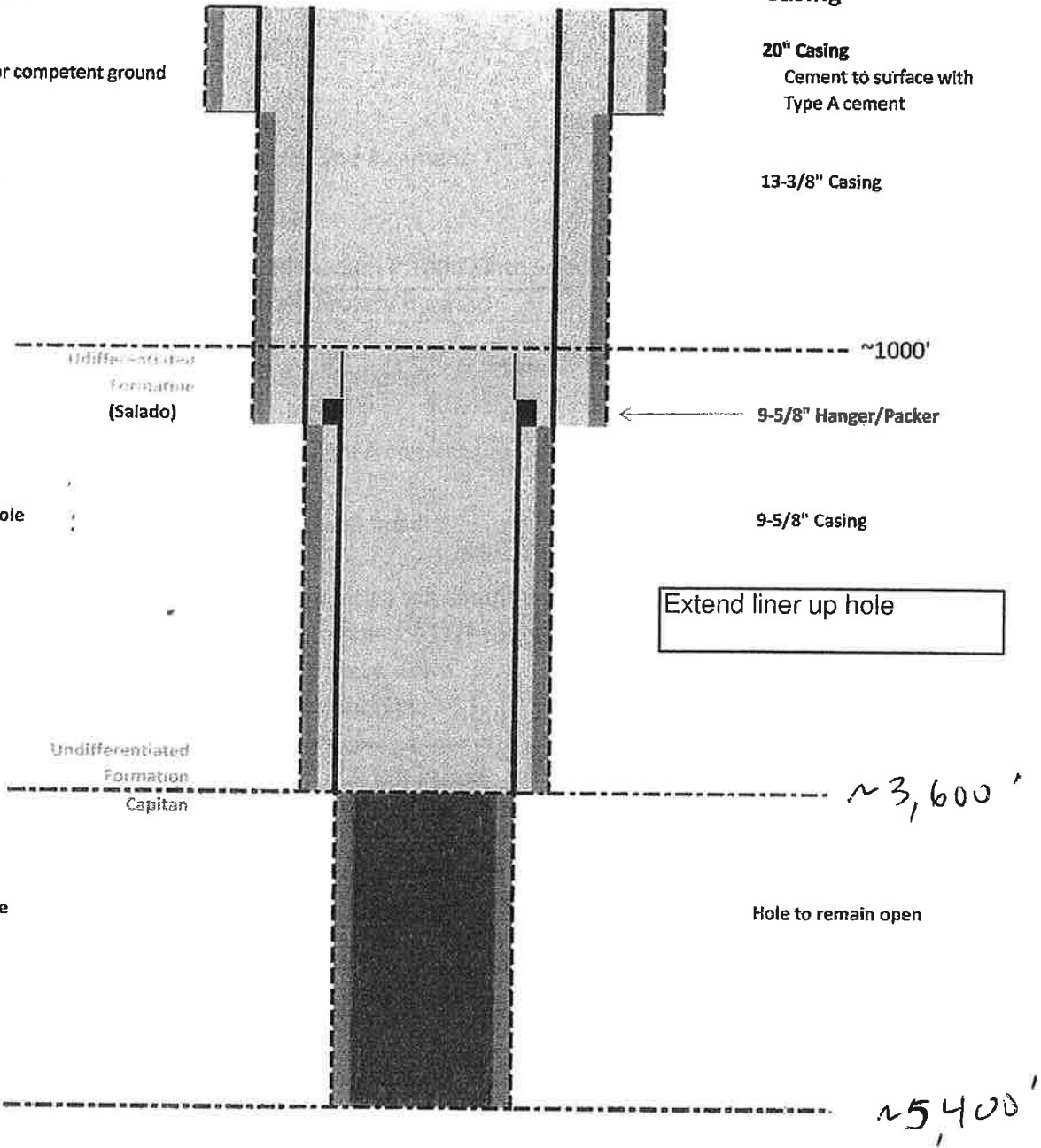
13-3/8" Casing

9-5/8" Hanger/Packer

9-5/8" Casing

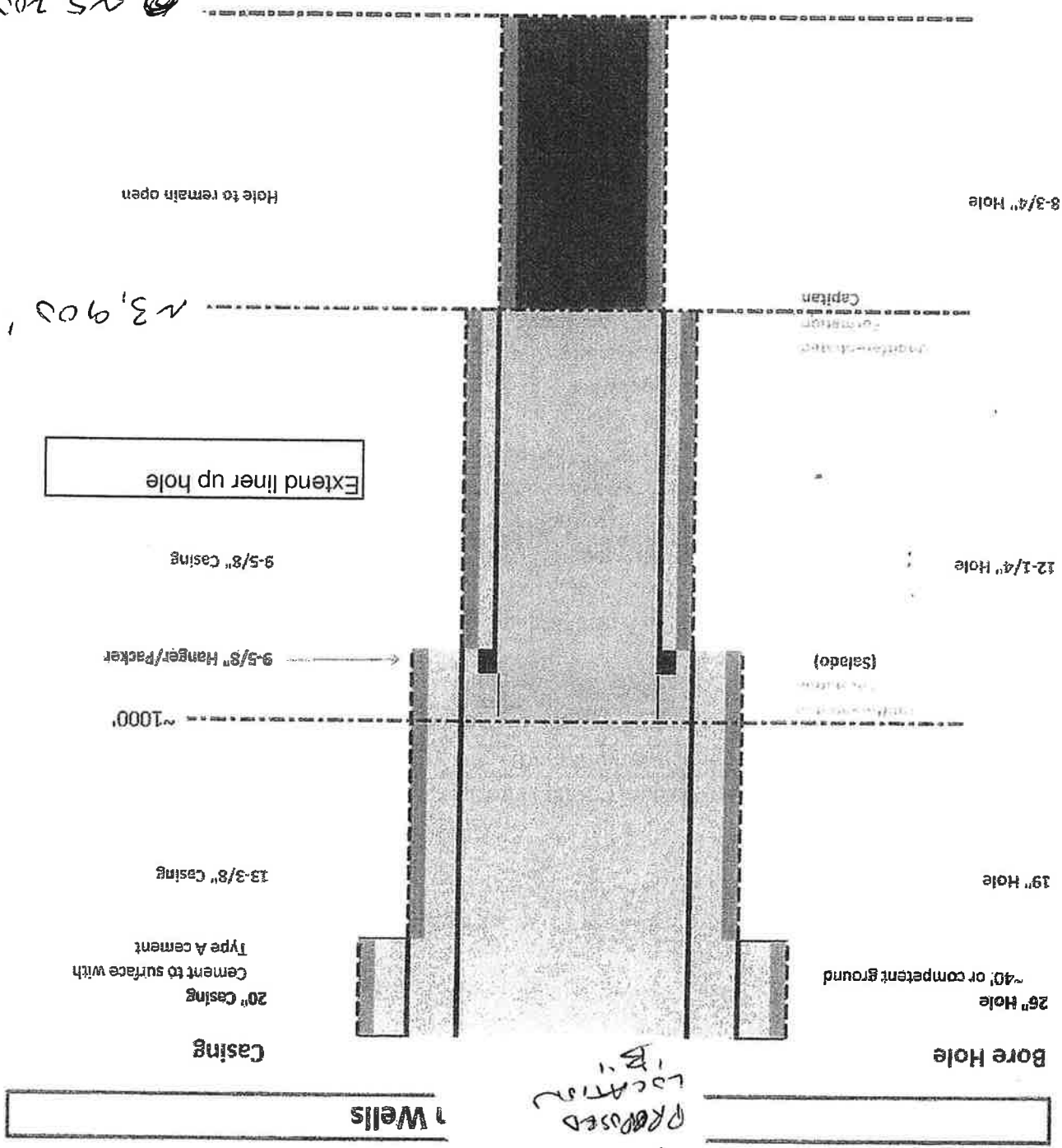
Extend liner up hole

Hole to remain open



~5,200'

~3,900'



1 Wells

ESTIMATED DEPTHS
T-5AR
CAPITAN REEF
PROPOSED
LOCATION
1 B"

Legend

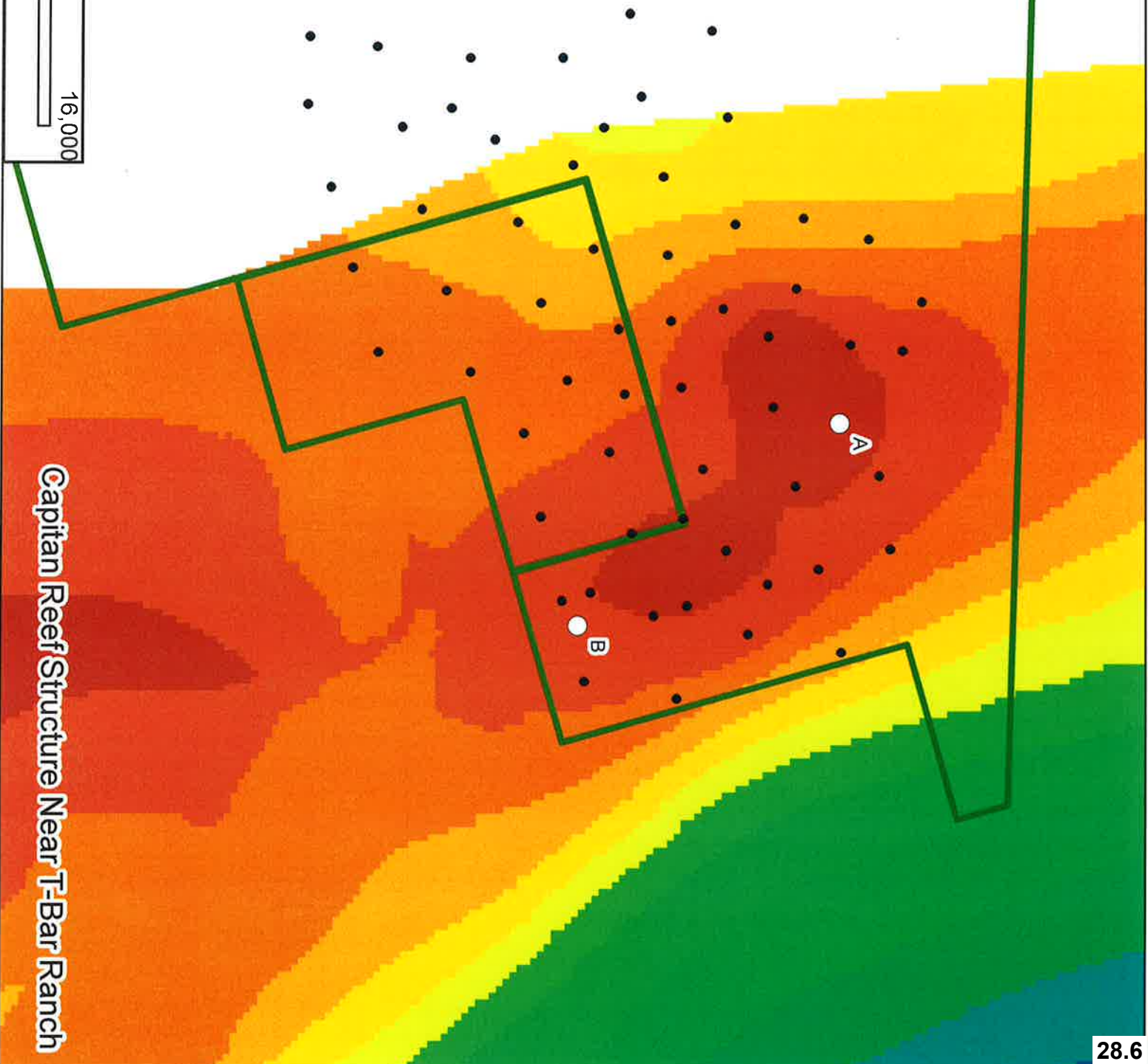
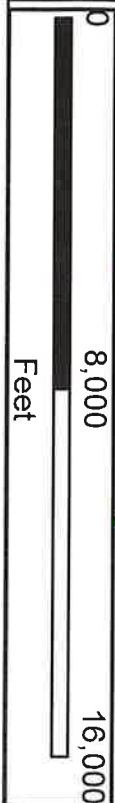
- Capitan Proposed Test Location
- Alluvium Production Wells

T-Bar

Capitan Bottom Elevation

VALUE

-2,599 - -2,400
-2,399 - -2,200
-2,199 - -2,000
-1,999 - -1,800
-1,799 - -1,600
-1,599 - -1,400
-1,399 - -1,200
-1,199 - -1,000
-999 - -800
-799 - -600
-599 - -400
-399 - -200
-199 - 0



Capitan Reef Structure Near T-Bar Ranch

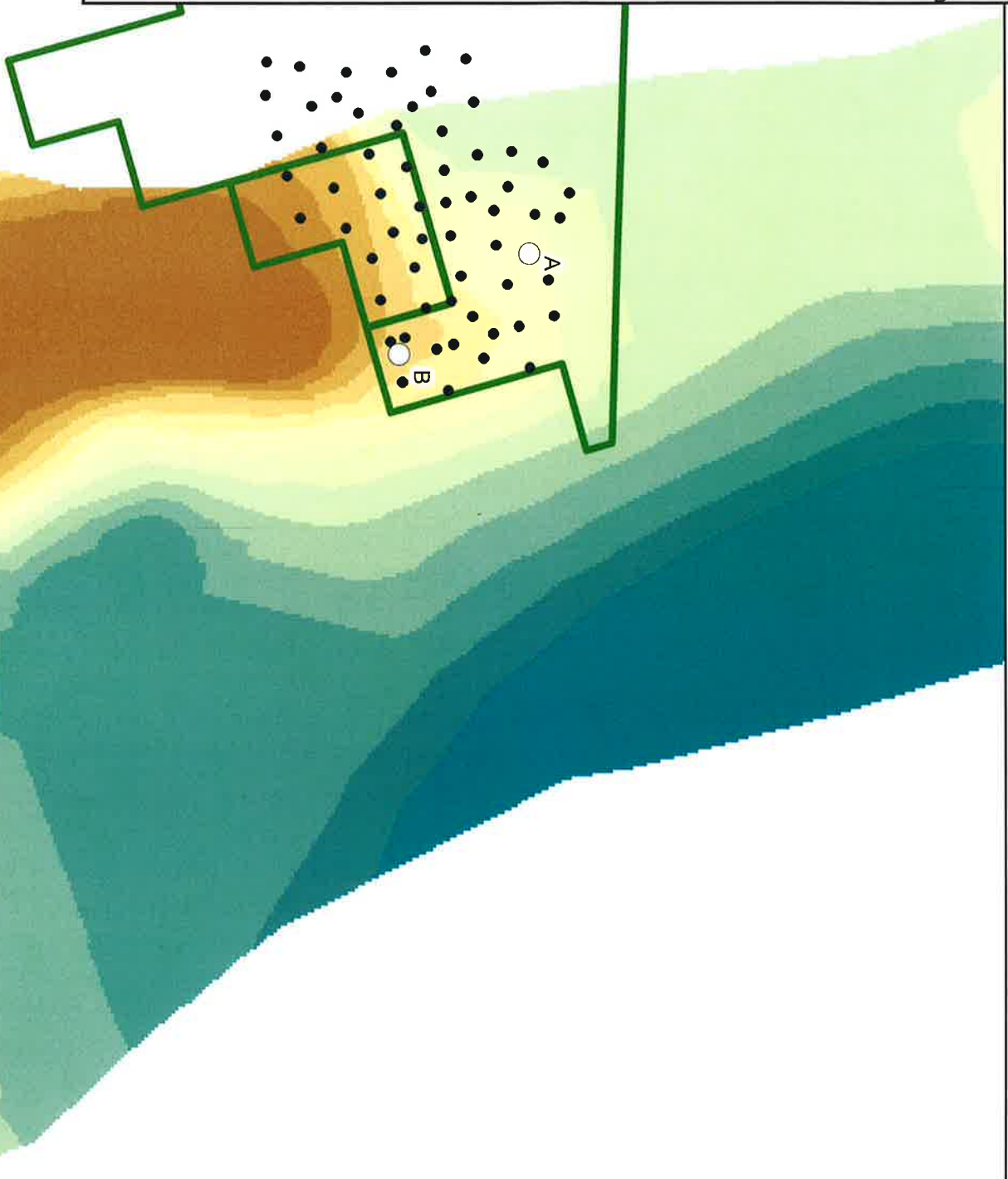
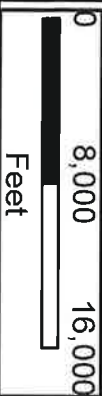
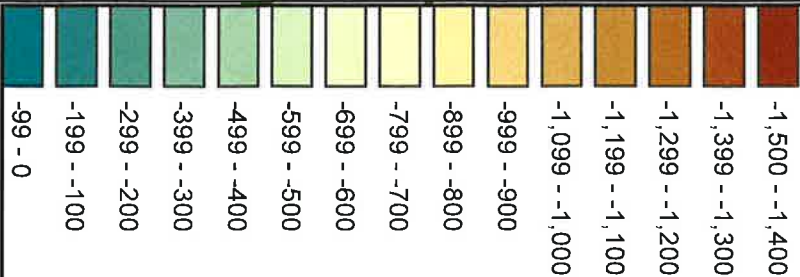
Legend

- Capitan Proposed Test Location
- Alluvium Production Wells

T-Bar

Capitan Top Elevation

VALUE



Capitan Reef Structure Near T-Bar Ranch



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 12/18/2012

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Consider a Resolution Approving a One Year Extension of the Contract with Sprayberry CGC, Inc. at the Spraberry Effluent Farm

Purpose:

Consider a resolution approving a one year extension of the contract with Sprayberry CGC, Inc. at the Spraberry Effluent Farm.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No additional fiscal impact. Money is in the current budget.

Discussion:

The lease on the majority of the Spraberry Effluent Farm is with Sprayberry CGC, Inc.. This contract is set to expire on December 31, 2012. Our permit to operate these farms, along with the Water Pollution Control Plant, is currently under review by the TCEQ. It is not anticipated that the City will receive the final permit before May of 2013. Because we do not know what terms will be included in the new permit, it is in the best interest of the City to extend this contract, under the existing terms, until December 31, 2013. This allows any changes in the terms of our permit to be incorporated into the contract as it is bid and awarded.

It is therefore recommended that this lease be extended until that time.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A 1-YEAR EFFLUENT FARM LEASE RENEWAL AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS, AND SPRABERRY CGC, INCORPORATED, FOR OPERATION OF THE SPRABERRY EFFLUENT FARM; AND DIRECTING THE DIRECTOR OF UTILITIES TO TAKE ALL PROCEDURAL STEPS NECESSARY TO BID AND HAVE IN PLACE A NEW LEASE AGREEMENT FOR THE SPRABERRY EFFLUENT FARM, SAID AGREEMENT TO TAKE EFFECT PRIOR TO JANUARY 1, 2014

WHEREAS, the City Council by Resolution No. 2001-377, passed on December 11, 2001, authorized the execution of a Lease Agreement with Spraberry CGC, Inc., for operation of the Spraberry Effluent Farm; and

WHEREAS, said Lease Agreement, as previously amended, will expire on December 31, 2012; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a 1-year renewal of said agreement with Spraberry CGC, Inc., for operation of the Spraberry Effluent Farm; and

WHEREAS, the City Council finds it to be in the public interest to direct the Director of Utilities to take all procedural steps necessary to have in place a new lease agreement for the Spraberry Effluent Farm, said agreement to take effect on or before January 1, 2014;

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, a 1-year Effluent Farm Operations Renewal Agreement with Spraberry CGC, Inc., said agreement being attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION TWO. That the City Council hereby directs the Director of Utilities to take all procedural steps necessary to have in place a new lease agreement for the Spraberry Effluent Farm, said agreement to take effect on or before January 1, 2014.

On motion of Council member _____, seconded by Council member

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Stuart Purvis, Director of Utilities

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

STATE OF TEXAS

§

§

COUNTY OF MIDLAND

§

SPRABERRY FARM RENEWAL AGREEMENT

This Agreement is effective this 19th day of December, 2012, by and between the City of Midland, Texas, hereinafter referred to as “City”, and Spraberry CGC, Incorporated, hereinafter referred to as “Operator”;

W I T N E S S E T H:

WHEREAS, City owns certain land as hereinafter described, which is used in the disposal of effluent waste water through farming programs, and said City is desirous of leasing to Operator such lands for such farming operations; and

WHEREAS, Operator will engage in farming operations on such land and desires to Agreement said land for such farming purposes and assist the City in the disposal of effluent waste water through farming programs;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE RIGHTS, covenants and agreements herein contained, City does hereby grant, devise and let to Operator, and Operator does hereby hire, take and Agreement from City the following premises, upon the following terms and conditions, to wit:

1. City does grant, demise and Agreement unto Operator Sections 2, 3, 4, 9, 10 and 11, Block 37, TWP-3-S, T&P Ry. Co. Survey, Midland County, Texas, hereinafter referred to as the “Site”, for farming operations as herein described.

2. The term of this Agreement shall be from January 1, 2013, through December 31, 2013.

3. Operator, in consideration of the use of the Site and the rights granted herein, does covenant and agree to pay the City the lump sum of \$151,600.00, due at or before execution of this Agreement. The payment due hereunder shall be paid in person to the City’s Director of Utilities or mailed to City’s Director of Utilities at P.O. Box 1152, Midland, Texas 79702.

4. City shall furnish, operate and maintain thirteen (13) center-pivot irrigation systems for use in such farming operations. The City shall maintain such equipment in a good and usable condition and pay all maintenance costs necessary to keep such equipment in a good and usable condition. City shall pay all power costs necessary for the operation of the center-pivot irrigation systems.

5. Operator agrees to farm and cultivate all tillable acreage at the Site in a good and farm-like manner during this Agreement. All plowed fields shall be maintained by Operator in a manner that will minimize erosion. In order to maintain the irrigated land, Operator will be required to aerate all irrigated land at least twice per year with the City's aerator to a minimum fifteen (15) inch depth. Operator must furnish a minimum of two (2) 180-horse power tractors and one (1) no-till drill.

6. City shall pay the cost of fertilizer on such premises as required by City's soil sample analysis. If fields are maintained in good condition, the fertilizer supplier will apply dry fertilizer using hauling/spreading equipment. If fields are too rough for fertilizer supplier's equipment, the Operator will be responsible for fertilizer application. The determination as to the field's condition shall be in the City's sole discretion.

7. City shall purchase all seed for permanent and forage crops cultivated at the Site and shall arrange for delivery of the seed to the Site. Operator shall prepare a cropping plan on a yearly basis. However, City shall have sole discretion as to crop selection for the Site. Operator shall properly store seed, prepare seed beds and sow seed in a manner agreed upon by Operator and City's Director of Utilities.

8. City shall maintain permanent fencing around the perimeter of the Site. Operator shall maintain interior fencing and construct and pay for temporary fencing as may be required for operations.

9. City shall deliver, at its sole discretion, effluent generated by the City's wastewater treatment system to the Site. The volume of and quality of effluent furnished hereunder shall be in compliance with all provisions of permit No. 10223-01, as issued by the Texas Natural Resource Conservation Commission to the City of Midland, Texas, for the disposal of its effluent, and all applicable statutes, rules, regulations and ordinances. In the event that Operator fails to have crops ready to receive such effluent, City shall have the absolute right to enter upon the Site, without notice, and operate said premises in a manner so as to allow the proper discharge of such effluent upon said premises. City shall have the right to discharge effluent upon said premises in excess of an amount that the Operator requires. City shall have the sole right to determine the time and the quantity of the effluent to be delivered. In any event, City shall not be liable in any manner under this agreement for failure to deliver effluent or for the amount delivered or for the quality of said effluent as herein described.

10. Proceeds from any and all settlements or awards arising out of damages proximately caused by any oilfield operation, pipeline operation or related activity on the Site shall be divided and shared between the Operator and City, with Operator being entitled to one-half ($\frac{1}{2}$) of such proceeds and City being entitled to one-half ($\frac{1}{2}$) 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 Site for any purpose other than that which is authorized herein without the prior written consent of City. Operator shall not, either directly or indirectly, assign all or any part of this agreement or any interest right or privilege herein, without the prior written consent of the City. The issue on whether or not to grant consent to an assignment is in the sole discretion of the City.

12. Operator's obligations pursuant to this Agreement shall be and stand secured by a lien upon all crops cultivated and harvested at the Site and all proceeds from their sale, that may now or hereafter be present.

13. Operator shall act in accordance with the requirements of City of Midland Permit No. 10223-01 as issued by the Texas Natural Resource Conservation Commission, a copy of which has been provided to the Operator. Failure to so act shall be grounds for the immediate termination of this Agreement.

14. Operator shall not construct underground water lines or any other permanent improvements on the Site without the prior written consent of City. Such consent will not be unreasonably withheld.

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

Commercial General Liability (including Contractual liability):

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

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

Worker's Compensation: Statutory limits

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

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

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

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

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

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

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

16. INDEMNITY - OPERATOR WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF OPERATOR, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM, OPERATOR'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND OPERATOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

OPERATOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, ACCIDENTAL DEATH, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY

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

17. In the event that City or Operator should default in the performance of this Agreement or materially breach any of its provisions, the other party shall have the right to terminate this Agreement upon sixty (60) days written notice to the offending party of its intention to do so. For purposes of this Agreement, the term "material breach" may include, but is not limited to, the following:

- a. Breach, violation or failure to perform, observe or keep any covenant, agreement or term or condition of this Agreement by any party obligated hereunder to observe, keep or perform such condition, term, agreement or covenant, and such default continues for a period of ten (10) days after written notice thereof is given by any aggrieved party hereto to the other party.
- b. Bankruptcy of Operator through voluntary or involuntary proceedings or an assignment made for the benefit of its creditors.
- c. Failure of Operator or any of its heirs, successors or assigns to operate the property described herein in such a manner so as to allow City to discharge its effluent upon the Site, and such failure continues for a period of ten (10) days after notice thereof is given by the City to Operator.

In the event of breach by Operator, City shall have the right, following sixty (60) days written notice, to reenter the Site and remove Operator, its employees and agents therefrom, without prejudice to any legal remedies which may be used for the collection of rent. All and every claim for damages by Operator for or by reason of such reentry is hereby expressly waived. In the event of reentry, City may and is hereby fully empowered to take possession

and sell at the current market price any remaining crops at the Site, and apply funds received to any and all rents due or to any damages sustained by Operator's breach.

This section shall not be construed as limiting the City's right to terminate the Agreement as described in Section 2.

18. In the event that either party is prevented from completing performance of its obligations hereunder by Acts of God or any other occurrence whatsoever which is beyond the control of either party hereto and which, by the exercise of due diligence City or Operator is unable, wholly or in part, to prevent or overcome, then such party shall be excused from performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

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

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

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

to it as such independent contractor hereunder. The City does not have the power to direct the order in which the work is done. The City shall not have the right to control the means, methods or details of the Operator's work. Operator shall assume exclusive responsibility for the work. Operator is entirely free to do the work in its own way.

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

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

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

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

24. All notices and communications required or permitted under this Agreement, including address changes, shall be in writing and any communication or delivery hereunder

shall be deemed to have been duly made if actually delivered, transmitted by telecopier or if mailed by registered or certified mail, postage prepaid, addressed as follows:

City	Operator
City Manager Midland City Hall P.O. Box 1152 Midland, Texas 79702 Phone: 915/685-7201 Fax: 915/686-1643	Spraberry CGC, Inc. 2504 SCR 1110 Midland, Texas 79706

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

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

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

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

28. **CONSIDERATION** - The terms of this Agreement are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

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

30. **AS IS - OPERATOR ENTERS INTO THIS AGREEMENT WITH THE UNDERSTANDING THAT THE PROPERTY THAT IS THE SUBJECT OF THIS AGREEMENT COMES "AS IS AND WITH ALL FAULTS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED BEING MADE BY CITY THAT THE PROPERTY IS FIT FOR A PARTICULAR PURPOSE. THE OPERATOR ACKNOWLEDGES THAT OPERATOR IS NOT RELYING UPON ANY REPRESENTATION MADE BY CITY WITH RESPECT TO THE CONDITION OF THE PROPERTY, BUT IS RELYING UPON OPERATOR'S EXAMINATION OF THE PROPERTY. OPERATOR ALSO RECOGNIZES THAT THE OPERATOR ENTERS INTO THIS AGREEMENT WITH THE UNDERSTANDING THAT THE PROPERTY COMES "AS IS AND WITH ALL FAULTS," THAT OPERATOR AGREES TO MAKE OPERATOR'S**

OWN APPRAISAL OF THE PROPERTY AND TO ACCEPT THE RISK THAT OPERATOR MAY BE WRONG. CITY GIVES NO ASSURANCES, EXPRESS OR IMPLIED, CONCERNING THE CONDITION OF THE PROPERTY THAT IS THE SUBJECT OF THIS AGREEMENT. IN NO EVENT SHALL OPERATOR HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, THE OPERATOR ENTERS INTO THIS AGREEMENT UNDER THE EXPRESS UNDERSTANDING THE PROPERTY IS ACCEPTED "AS IS AND WITH ALL FAULTS," EXCLUDING EXPRESS OR IMPLIED WARRANTIES.

31. **COMPLIANCE WITH ALL FEDERAL, STATE AND LOCAL LAWS** - Operator shall at all times during the term of this Agreement comply with applicable federal, state, and local laws regarding Operator's activities pursuant to this Agreement, including but not limited to all applicable sections of the Municipal Code of Midland, Texas, as may be amended, said sections being hereby incorporated by reference and made a part of this Agreement for all legal purposes. Failure to abide by any such law mentioned herein constitutes grounds for the immediate termination of this Agreement.

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

33. This Agreement replaces and supercedes any prior agreement(s) between the parties regarding the subject matter contemplated herein.

34. **SURRENDER UPON EXPIRATION/TERMINATION** - It is further agreed between the parties hereto that, at the expiration or termination of this Agreement, Operator shall and will quietly and peacefully surrender and yield up the said premises, with the appurtenances thereto, unto City, in as good order and repair as the same now are in, reasonable wear and tear excepted.

EXECUTED this _____ day of _____, 2012.

CITY OF MIDLAND, TEXAS

By _____
Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

SPRABERRY CGC, INCORPORATED

By:_____

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

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

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

Notary Public, State of _____



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 12/18/2012

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Consider a Resolution Approving a One Year Extension of the Contract with Kevin Cook for Part of Section 12, Block 37, TWP-3-S, T&P RR Co. Survey Located at the Spraberry Effluent Farm

Purpose:

Consider a resolution approving a one year extension of the farm lease agreement with Kevin Cook for part of Section 12, Block 37, TWP-3-S, T&P RR Co. Survey located at the Spraberry Effluent Farm.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No additional fiscal impact. Money is in the current budget.

Discussion:

The lease on a part of Section 12, Block 37, TWP-3-S, T&P RR Co. Survey located at the Spraberry Effluent Farm with Kevin Cook is set to expire on December 31, 2012. Our permit to operate these farms, along with the Water Pollution Control Plant, is currently under review by the TCEQ. It is not anticipated that the City will receive the final permit before May of 2013. Because we do not know what terms will be included in the new permit, it is in the best interest of the City to extend this contract, under the existing terms, until December 31, 2013. This allows any changes in the terms of our permit to be incorporated into the contract as it is bid and awarded.

It is therefore recommended that this lease be extended until that time.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A 1-YEAR EFFLUENT FARM LEASE RENEWAL AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS, AND KEVIN COOK, FOR OPERATION OF THE SPRABERRY EFFLUENT FARM; AND DIRECTING THE DIRECTOR OF UTILITIES TO TAKE ALL PROCEDURAL STEPS NECESSARY TO BID AND HAVE IN PLACE A NEW LEASE AGREEMENT FOR THE SPRABERRY EFFLUENT FARM, SAID AGREEMENT TO TAKE EFFECT PRIOR TO JANUARY 1, 2014

WHEREAS, the City Council by Resolution No. 2002-115, passed on April 23, 2002, authorized the execution of a Lease Agreement with Kevin Cook for operation of the Spraberry Farm; and

WHEREAS, said Lease Agreement, as previously amended, will expire on December 31, 2012; and

WHEREAS, the City Council finds it to be in the public interest to authorize the execution of a 1-year renewal of said agreement with Kevin Cook for operation of the Spraberry Farm; and

WHEREAS, the City Council finds it to be in the public interest to direct the Director of Utilities to take all procedural steps necessary to have in place a new lease agreement for the Spraberry Effluent Farm, said agreement to take effect on or before January 1, 2014;

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, a 1-year Effluent Farm Operations Renewal Agreement with Kevin Cook, said agreement being attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION TWO. That the City Council hereby directs the Director of Utilities to take all procedural steps necessary to have in place a new lease agreement for the Spraberry Effluent Farm, said agreement to take effect on or before January 1, 2014.

On motion of Council member _____, seconded by Council member

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Stuart Purvis, Director of Utilities

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

STATE OF TEXAS
COUNTY OF MIDLAND

§
§
§

SPRABERRY FARM RENEWAL AGREEMENT

This Agreement is effective this 19th day of December, 2012, by and between the City of Midland, Texas, hereinafter referred to as "City," and Kevin Cook, hereinafter referred to as "Operator";

W I T N E S S E T H:

WHEREAS, City owns certain land as hereinafter described, which is used in the disposal of effluent waste water through farming programs, and said City is desirous of leasing to Operator such lands for such farming operations; and

WHEREAS, Operator will engage in farming operations on such land and desires to lease said land for such farming purposes and assist the City in the disposal of effluent waste water through farming programs;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE RIGHTS, covenants and agreements herein contained, City does hereby grant, devise and let to Operator, and Operator does hereby hire, take and lease from City the following premises, rights and easements upon the following terms and conditions, to wit:

1. City does grant, devise and Agreement unto Operator a part of Section 12, Block 37, TWP-3-S, T&P Ry. Co. Survey, Midland County, Texas, hereinafter referred to as the "Site", for farming operations as herein described. The site is defined as all of Section 12 except the pond areas and the office area shown on Exhibit "A", attached hereto and incorporated herein for all purposes.
2. The term of this Agreement shall be from January 1, 2013, through December 31, 2013.
3. Operator, in consideration of the use of the Site and the rights granted herein, does covenant and agree to pay the City the lump sum of \$20,551.00. The payment due hereunder shall be remitted at or before the execution of this Agreement. Payment shall be mailed to City's Director of Utilities, P.O. Box 1152, Midland, Texas 79702.
4. City shall furnish, operate and maintain two (2) center-pivot irrigation systems for use in such farming operations. The City shall maintain such equipment in a good and usable condition and pay all maintenance costs necessary to keep such equipment in a good and

usable condition. City shall pay all power costs necessary for the operation of the center-pivot irrigation systems.

5. Operator shall operate and maintain one side wheel roll system. City will supply effluent water to the side wheel roll system, Operator shall be responsible for all other costs of operation. Operator shall also provide goats in sufficient numbers to control weeds and salt cedar growth within the Lagoon Area.

6. Operator agrees to farm and cultivate all tillable acreage at the Site in a good and farm-like manner during the term of this Agreement. All plowed fields shall be maintained by Operator in a manner that will minimize erosion. In order to maintain the irrigated land, Operator will be required to aerate all irrigated land at least twice during the term of this Agreement with the City's aerator to a minimum fifteen (15) inch depth.

7. City shall pay the cost of fertilizer on such premises as required by City's soil sample analysis. If fields are maintained in good condition, the fertilizer supplier will apply dry fertilizer using hauling/spreading equipment. If fields are too rough for fertilizer supplier's equipment, the Operator will be responsible for fertilizer application. The determination as to the field's condition shall be in the City's sole discretion.

8. City shall purchase all seed for permanent and forage crops cultivated at the Site and shall arrange for delivery of the seed to the Site. Operator shall prepare a cropping plan. However, City shall have sole discretion as to crop selection for the Site. Operator shall properly store seed, prepare seed beds and sow seed in a manner agreed upon by Operator and City's Director of Utilities.

9. City shall maintain permanent fencing around the perimeter of the Site. Operator shall maintain interior fencing and construct and pay for temporary fencing as may be required for operations.

10. City shall deliver, at its sole discretion, effluent generated by the City's wastewater treatment system to the Site. The volume of and quality of effluent furnished hereunder shall be in compliance with all provisions of permit No. 10223-01, as issued by the Texas Natural Resource Conservation Commission to the City of Midland, Texas, for the disposal of its effluent, and all applicable statutes, rules, regulations and ordinances. In the event that Operator fails to have crops ready to receive such effluent, City shall have the absolute right to enter upon the Site, without notice, and operate said premises in a manner so as to allow the proper discharge of such effluent upon said premises. City shall have the right to discharge effluent upon said premises in excess of an amount that the Operator requires. City shall have the sole right to determine the time and the quantity of the effluent to be delivered. In any event, City shall not be liable in any manner under this Agreement for failure to deliver effluent or for the quantity or quality of said effluent as herein described. The parties

agree that the effluent is accepted by the Operator AS IS and with all faults and there are no express or implied warranties of merchantability or fitness.

11. Proceeds from any and all settlements or awards arising out of damages proximately caused by any oilfield operation, pipeline operation or related activity on the Site shall be divided and shared between the Operator and City, with Operator being entitled to one-half (1/2) of such proceeds and City being entitled to one-half (1/2) of such proceeds. It is understood that at no time will Operator receive any proceeds from oil and gas royalties.

12. Operator shall not use the premises for any purpose other than that which is authorized herein without the prior written consent of City. Operator shall not at any time during the term of this Agreement, in any manner, either directly or indirectly, assign, or transfer this Agreement or sublease any part of the premises or improvements thereon without the prior written consent of the City. The issue on whether or not to grant consent to any assignment, transfer or sublease is in the sole discretion of the City.

13. Operator's obligations pursuant to this Agreement shall be and stand secured by a lien upon all crops cultivated and harvested at the Site and all proceeds from their sale, that may now or hereafter be present.

14. Operator shall act in accordance with the requirements of City of Midland Permit No. 10223-01 as issued by the Texas Natural Resource Conservation Commission, a copy of which has been provided to the Operator. Failure to so act shall be grounds for the immediate termination of this Agreement.

15. Operator shall not construct underground water lines or any other permanent improvements on the premises without the prior written consent of City. Such consent will not be unreasonably withheld.

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

Commercial General Liability (including Contractual liability):

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

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

Worker's Compensation: Statutory limits

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

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

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

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

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

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

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

17. INDEMNITY - OPERATOR WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF OPERATOR, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM, OPERATOR'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND OPERATOR WILL BE REQUIRED TO PAY ANY JUDGMENT

WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

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

18. In the event that City or Operator should default in the performance of this Agreement or materially breach any of its provisions, the other party shall have the right to terminate this Agreement upon sixty (60) days written notice to the offending party of its intention to do so. Nothing contained herein constitutes a waiver of the right of City to damages occasioned by breach of this Agreement. For purposes of this Agreement, the term "material breach" may include, but is not limited to, the following:

- a. Breach, violation or failure to perform, observe or keep any covenant, agreement or term or condition of this Agreement by any party obligated hereunder to observe, keep or perform such condition, term, agreement or covenant, and such default continues for a period of ten (10) days after written notice thereof is given by any aggrieved party hereto to the other party.
- b. Bankruptcy of Operator through voluntary or involuntary proceedings or an assignment made for the benefit of its creditors.
- c. Failure of Operator or any of its heirs, successors or assigns to operate the property described herein in such a manner so as to allow City to discharge its effluent upon the Site, and such failure continues for a period of ten (10) days after notice thereof is given by the City to Operator.

In the event of breach by Operator, City shall have the right, following sixty (60) days written notice, to reenter the site and remove Operator, its employees and agents therefrom, without prejudice to any legal remedies which may be used for the collection of rent. All and every claim for damages by Operator for or by reason of such reentry is hereby expressly waived. In the event of reentry, City may and is hereby fully empowered to take possession and sell at the current market price any remaining crops at the Site, and apply funds received to any and all rents due or to any damages sustained by Operator's breach.

19. In the event that either party is prevented from completing performance of its obligations hereunder by Acts of God or any other occurrence whatsoever which is beyond the control of either party hereto and which, by the exercise of due diligence City or Operator is unable, wholly or in part, to prevent or overcome, then such party shall be excused from performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

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

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

Operator's work. Operator shall assume exclusive responsibility for the work. Operator is entirely free to do the work in its own way.

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

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

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

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

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

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

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

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

27. **NOTICE** - All notices and communications required or permitted under this contract, including address changes, shall be in writing and any communication or delivery hereunder shall be deemed to have been duly made if actually delivered, transmitted by telecopier or if mailed by registered or certified mail, postage prepaid, addressed as follows:

City

City Manager
Midland City Hall
P.O. Box 1152
Midland, Texas 79702
Phone: 432/685-7201
Fax: 432/686-1643

Operator

Kevin Cook
P.O. Box 914
Stanton, Texas 79782
432/425-1823

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

29. **CONSIDERATION** - The terms of this Agreement are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties named herein.

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

31. **AS IS** - **OPERATOR ENTERS INTO THIS AGREEMENT WITH THE UNDERSTANDING THAT THE PROPERTY THAT IS THE SUBJECT OF THIS AGREEMENT COMES "AS IS AND WITH ALL FAULTS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED BEING MADE BY CITY THAT THE PROPERTY IS FIT FOR A PARTICULAR PURPOSE. THE OPERATOR ACKNOWLEDGES THAT OPERATOR IS NOT RELYING UPON ANY REPRESENTATION MADE BY CITY WITH RESPECT TO THE CONDITION OF THE PROPERTY, BUT IS RELYING UPON OPERATOR'S EXAMINATION OF THE PROPERTY. OPERATOR ALSO RECOGNIZES THAT THE OPERATOR ENTERS INTO THIS AGREEMENT WITH THE UNDERSTANDING THAT THE PROPERTY COMES "AS IS AND WITH ALL FAULTS," THAT OPERATOR AGREES TO MAKE OPERATOR'S**

OWN APPRAISAL OF THE PROPERTY AND TO ACCEPT THE RISK THAT OPERATOR MAY BE WRONG. CITY GIVES NO ASSURANCES, EXPRESS OR IMPLIED, CONCERNING THE CONDITION OF THE PROPERTY THAT IS THE SUBJECT OF THIS AGREEMENT. IN NO EVENT SHALL OPERATOR HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, THE OPERATOR ENTERS INTO THIS AGREEMENT UNDER THE EXPRESS UNDERSTANDING THE PROPERTY IS ACCEPTED "AS IS AND WITH ALL FAULTS," EXCLUDING EXPRESS OR IMPLIED WARRANTIES.

32. **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS** - Operator shall at all times during the term of this Agreement comply with applicable federal, state, and local laws regarding Operator's activities pursuant to this Agreement, including but not limited to all applicable sections of the Municipal Code of Midland, Texas, as may be amended, said sections being hereby incorporated by reference and made a part of this Agreement for all legal purposes. Failure to abide by any such law mentioned herein constitutes grounds for the immediate termination of this Agreement.

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

34. **PRIOR AGREEMENTS** - This Agreement replaces and supercedes any prior agreement(s) between the parties regarding the subject matter contemplated herein.

35. **SURRENDER UPON EXPIRATION/TERMINATION** - It is further agreed between the parties hereto that, at the expiration or termination of this Agreement, Operator shall and will quietly and peacefully surrender and yield up the said premises, with the appurtenances thereto, unto City, in as good order and repair as the same now are in, reasonable wear and tear excepted.

EXECUTED this _____ day of _____, 2012.

CITY OF MIDLAND, TEXAS

By _____
Courtney Sharp, City Manager

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Kevin Cook, Operator

THE STATE OF TEXAS §

§

COUNTY OF _____ §

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

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

Notary Public, State of Texas



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 12/18/2012

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Consider a Resolution Approving a One Year Lease Extension with Schumann Cattle Company for a 219.3 acre portion of the Plant Farm

Purpose:

Consider a resolution approving a one-year farm lease extension with Schumann Cattle Company for a 219.3-acre portion of the Plant Farm.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No additional fiscal impact. Money is in the current budget.

Discussion:

The lease on a 219.3-acre portion of the plant effluent farm with Schuman Cattle Company is set to expire on December 31, 2012. Our permit to operate these farms, along with the Water Pollution Control Plant, is currently under review by the TCEQ. It is not anticipated that the City will receive the final permit before May of 2013. Because we do not know what terms will be included in the new permit, it is in the best interest of the City to extend this contract, under the existing terms, until December 31, 2013. This allows any changes in the terms of our permit to be incorporated into the contract as it is bid and awarded.

It is therefore recommended that this lease be extended until that time.

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE EXECUTION OF A
1-YEAR EFFLUENT FARM LEASE RENEWAL
AGREEMENT BETWEEN THE CITY OF MIDLAND,
TEXAS, AND SCHUMANN CATTLE COMPANY, FOR
OPERATION OF THE CONNER EFFLUENT FARM;
AND DIRECTING THE DIRECTOR OF UTILITIES TO
TAKE ALL PROCEDURAL STEPS NECESSARY TO BID
AND HAVE IN PLACE A NEW LEASE AGREEMENT
FOR THE CONNER EFFLUENT FARM, SAID
AGREEMENT TO TAKE EFFECT PRIOR TO JANUARY
1, 2014**

WHEREAS, the City Council by Resolution No. 2000-381, passed on November 28, 2000, 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, 2012; 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; and

WHEREAS, the City Council finds it to be in the public interest to direct the Director of Utilities to take all procedural steps necessary to have in place a new lease agreement for the Conner Effluent Farm, said agreement to take effect on or before January 1, 2014;

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

SECTION ONE. That the Mayor and City Secretary, are hereby authorized and directed to execute and attest, respectively, on behalf of the City, 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.

SECTION TWO. That the City Council hereby directs the Director of Utilities to take all procedural steps necessary to have in place a new lease agreement for the Conner Effluent Farm, said agreement to take effect on or before January 1, 2014.

On motion of Council member _____, seconded by Council member

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Stuart Purvis, Director of Utilities

APPROVED 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 19th day of December, 2012, 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, 2013, through December 31, 2013.
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

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

Worker's Compensation: Statutory limits

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

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

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

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

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

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

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

16. INDEMNITY - OPERATOR WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF OPERATOR, ITS AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, ARISING OUT OF, OR RESULTING FROM, OPERATOR'S USE OF, OR ACTIVITIES ON, THE AGREEMENT PREMISES, AND OPERATOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING REASONABLE ATTORNEY'S FEES.

OPERATOR SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, ACCIDENTAL DEATH, PERSONAL INJURIES, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON

ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH OPERATOR OR OPERATOR'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND OPERATOR WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF CITY'S OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

17. In the event that City or Operator should default in the performance of this Agreement or materially breach any of its provisions, the other party shall have the right to terminate this Agreement upon sixty (60) days written notice to the offending party of its intention to do so. 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 _____, 2012.

CITY OF MIDLAND, TEXAS

By _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED 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 _____, 2012.

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 _____, 2012.

Notary Public, State of _____



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 12/18/2012

TO: City Council / City Manager

FROM: Stuart Purvis, Utilities Director

SUBJECT: Consider a Resolution Approving a One Year Extension of the Contract with CK Hay and Cattle Farms at the Plant Farm

Purpose:

Consider a resolution approving a one year extension of the contract with CK Hay and Cattle Farms at the Plant Farm.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

No additional fiscal impact. Money is in the current budget.

Discussion:

The lease on the Plant Farm is with CK Hay and Cattle Farms. This contract is set to expire on December 31, 2012. Our permit to operate these farms, along with the Water Pollution Control Plant, is currently under review by the TCEQ. It is not anticipated that the City will receive the final permit before May of 2013. Because we do not know what terms will be included in the new permit, it is in the best interest of the City to extend this contract, under the existing terms, until December 31, 2013. This allows any changes in the terms of our permit to be incorporated into the contract as it is bid and awarded.

It is therefore recommended that this lease be extended until that time.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE EXECUTION OF A 1-YEAR EFFLUENT FARM LEASE RENEWAL AGREEMENT BETWEEN THE CITY OF MIDLAND, TEXAS, AND CK HAY & CATTLE FARMS, L.L.C., FOR EFFLUENT FARM OPERATIONS AT THE CITY'S PLANT FARM; AND RATIFYING ACTIONS TAKEN BY THE PARTIES AFTER EXPIRATION OF THE CURRENT LEASE AGREEMENT ON NOVEMBER 30, 2012; AND DIRECTING THE DIRECTOR OF UTILITIES TO TAKE ALL PROCEDURAL STEPS NECESSARY TO BID AND HAVE IN PLACE A NEW LEASE AGREEMENT FOR THE PLANT FARM, SAID AGREEMENT TO TAKE EFFECT PRIOR TO JANUARY 1, 2014

WHEREAS, the City Council by Resolution No. 2010-040, passed on February 9, 2010, 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 previously amended, expired on November 30, 2012; 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 ratify all actions taken by the Lessee and the City, subsequent to November 30, 2012, regarding Lessee's effluent operations of the Plant Farm; 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 CK Hay & Cattle Farms, L.L.C., for continued effluent operations at the Plant Farm; and

WHEREAS, the City Council finds it to be in the public interest to direct the Director of Utilities to take all procedural steps necessary to have in place a new lease agreement for the Plant Farm, said agreement to take effect on or before January 1, 2014;

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 actions taken by the Lessee and the City, subsequent to November 30, 2012, regarding Lessee's effluent operations at the City's Plant Farm, are hereby approved and ratified.

SECTION THREE. 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.

SECTION FOUR. That the City Council hereby directs the Director of Utilities to take all procedural steps necessary to have in place a new lease agreement for the Plant Farm, said agreement to take effect on or before January 1, 2014.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

Stuart Purvis, Director of Utilities

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

PLANT FARM OPERATIONS
RENEWAL AGREEMENT

This Agreement is entered into this 19th day of December, 2012, 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 December 1, 2012, through December 31, 2013, 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

Stuart Purvis
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 Director of Utilities may, at his 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 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.

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 _____, 2012.

CITY OF MIDLAND, TEXAS

By _____
W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

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 _____, 2012.

Notary Public, State of _____



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 12/18/2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance on second reading on a request by COM Aquatics, Inc. for the vacation of the east/west 20 foot alley out of Block 3, "A" Street Community Center, Section 3, being a 0.16-acre portion of land adjacent to Lot 1C, Block 3, "A" Street Community Center, Section 7, City and County of Midland, Texas.

Purpose:

Consider an ordinance on second reading on a request by COM Aquatics, Inc. for the vacation of the east/west 20 foot alley out of Block 3, "A" Street Community Center, Section 3, being a 0.16-acre portion of land adjacent to Lot 1C, Block 3, "A" Street Community Center, Section 7, City and County of Midland, Texas.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

The area to be vacated is approximately 7,000 square feet and is valued at \$2.00 per square foot for the northern 3,600 square feet and \$3.00 per square foot for the southern 3,400 square feet which establishes the land value at a total of \$17,400.00. The City will benefit from the placement of a new sewer line located to the west of the existing facility; therefore, the City Manager recommends the appraised value be reduced to \$0 due to the replacement of existing facilities.

Discussion:

COM Aquatics is requesting the vacation of the above described right-of-way to allow for a \$7 million expansion of current operations with a new natatorium built to the north of the existing building. Designs for the expanded facility, associated infrastructure, and pedestrian walk areas are proposed to utilize the vacated alley. COM Aquatics is in the process of replatting lots on both sides of this alley and identified plans to vacate this alley. Prior to utilizing the new facility, COM Aquatics will reroute the necessary sewer infrastructure in an easement on their property to the west of their current facility. The rerouted sewer line will be inspected and tested prior to abandoning the existing sewer line, followed by the removal of the abandoned infrastructure in accordance with City requirements. Written confirmation has been requested by the City of Midland from all franchised utility companies regarding facilities that may be present within the rights-of-way to be vacated. The City has discussed the existence of franchise utility lines with COM Aquatics and they were aware of the need to work with the various entities in their expansion plans. It is known that a gas line and Suddenlink Services will need to be relocated. The alley vacation should not take effect until a replat is filed and a sewer is provided and all franchise utility companies are satisfied.

ORDINANCE NO.

AN ORDINANCE VACATING AND ABANDONING A 0.16-ACRE PORTION OF THE EAST/WEST 20-FOOT ALLEY LOCATED WITHIN BLOCK 3, “A” STREET COMMUNITY CENTER, SECTION 3, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED NEAR THE SOUTHWEST CORNER OF THE INTERSECTION OF WEST WADLEY AVENUE AND NORTH “A” STREET); ADOPTING THE APPRAISAL BY THE CITY MANAGER OF \$17,400.00; AND ORDERING RECORDATION BY THE CITY SECRETARY

WHEREAS, it has been determined by the Midland City Council that a 0.16-acre portion of the east/west 20-foot alley located within Block 3, “A” Street Community Center, Section 3, 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 \$17,400.00 , as shown in Exhibit “B” attached hereto and incorporated herein by reference; and

WHEREAS, the Council finds it to be in the public interest to abandon and vacate the right-of-way described herein;

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

SECTION ONE. That the 0.16-acre portion of the east/west 20-foot alley located within Block 3, “A” Street Community Center, Section 3, City and County of Midland, Texas, as described in Exhibit “A” attached hereto and made a part hereof for all legal purposes, is hereby vacated and abandoned for all public purposes. Provided, however, that

the City is hereby only abandoning the public interest in said property and this ordinance in no way affects any private easement or access easement which abutting property owners may have in said right-of-way.

SECTION TWO. That this Ordinance shall not be effective until the City of Midland has received from the property owner(s) the sum of \$17,400.00.

SECTION THREE. That upon the City's receipt of the sum set forth in Section Two hereof, the City Secretary is hereby authorized and directed to file a certified copy of this Ordinance with the County Clerk of Midland County, Texas, for purposes of recording in the Official Records of Midland County, Texas.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 2012, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2012.

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Rick Crownover, Director of Development
Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

**LEGAL DESCRIPTION OF A 0.16 ACRE ALLEY ABANDONMENT
AND VACATION WITHIN BLOCK 3, "A" STREET COMMUNITY CENTER,
SECTION 3, AN ADDITION TO THE CITY OF MIDLAND,
LOCATED IN THE NORTHEAST QUARTER OF SECTION 22,
BLOCK 39, T.&P. RR. CO. SURVEY, MIDLAND COUNTY, TEXAS**

(Plat recorded in Cabinet "B", Page 352, Plat Records of Midland County, Texas)

Boundary being further described by metes and bounds as follows:

BEGINNING at the Southeast corner of Lot 1C, Block 3, "A" Street Community Center, Section 7 as recorded in Cabinet "D", Page 358, Plat Records of Midland County, Texas being the Northeast corner of this tract;

THENCE S15°02'30"E crossing said alley, a distance of 20.00 feet to the Southeast corner of said "A" Street Community Center, Section 3 and of this tract;

THENCE S74°53'30"W with the South line of said "A" Street Community Center, Section 3, a distance of 344.00 feet to the Southwest corner of this tract;

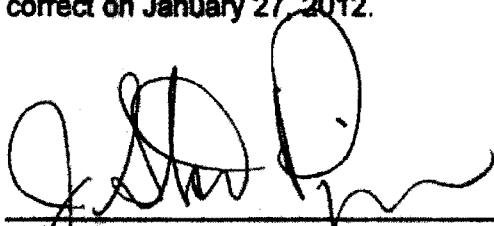
THENCE N15°02'30"W crossing said alley, a distance of 40.00 feet to the most Westerly cutback corner of said Lot 1C and the Northwest corner of this tract;

THENCE S60°06'30"E with the cutback line of said Lot 1C, a distance of 28.27 feet to the most Southerly cutback corner of said Lot 1C and an interior corner of this tract;

THENCE N74°53'30"E with the South line of said Lot 1C, a distance of 324.00 feet to the **PLACE OF BEGINNING**. Tract contains 7,080 square feet or 0.16 acres.

Bearings and distances based on "A" Street Community Center, Section 3 Final Plat as recorded in Cabinet "B", Page 352, and "A" Street Community Center, Section 7 as recorded in Cabinet "D", Page 358, all in Plat Records of Midland County, Texas.

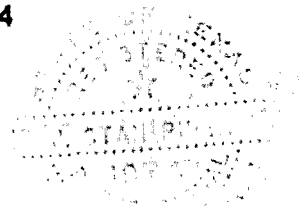
I, J. Stan Piper, Registered Professional Land Surveyor, do hereby certify that this legal description is true and correct on January 27, 2012.



J. Stan Piper
Registered Professional Land Surveyor #1974
Date: January 30, 2012

Prepared for:

Parkhill, Smith & Cooper, Inc
Attn.: Elizabeth Oliver
1700 W. Wall Street, Suite 100
Midland, Texas 79701



PIPER SURVEYING, P.O. BOX 60432, MIDLAND, TX 79711, 432-550-7810

Exhibit "A"

WADLEY AVENUE

0.17 Ac. Private
Access and Utility
Easement Abandonment

Lot 1D

Block 3

0.06 Ac. Private
Access and Utility
Easement Abandonment

0.16 Ac. Alley
Abandonment and
Vacation

Lot 2
Block 2

North "A" Street

W. DENGAR AVE.

**"A" Street Community Center
Midland, Texas**

EXHIBIT "A"

Proposed Vacations

February 2012



Original Scale: 1"=100'



PLANNING AND ZONING COMMISSION

February 21, 2012

CASE: P-11-075, "A" Street Community Center, Section 9.

REQUEST: Proposed Preliminary Plat.

APPLICANT/OWNER: COM Aquatics, Inc.

LEGAL DESCRIPTION: Proposed plat of "A" Street Community Center, Section 9, being a replat of Lot 1C, Block 3; "A" Street Community Center, Section 8 and the, to be vacated 0.162 acre portion of the adjacent east/west alley, City and county of Midland, Texas.

LOCATION: Generally located near the southwest corner of the intersection of W. Wadley Avenue and N. "A" Street.

DETAILS OF REQUEST:

1. The applicant is replatting two lots for the purpose of expanding the operations of the current COM Aquatics building on the southern lot with an additional pool facility to be constructed on the northern lot. This replat is required to provide to legally document the proposed changes in sewer utility relocation, changes in access and utility easements, and the vacation of a public alley, in addition to other items. An application to develop the new natatorium with a site plan and an amended planned district was also received for this project. The pending zone change will be scheduled for consideration by to the Planning and Zoning Commission after staff receives all necessary materials for a complete site plan review.

RIGHTS OF WAY (ROW):

2. A 15'x15' corner clip is required at the SW corner of the lot bordering W. Dengar and N. "A" Street.
3. Two vacation requests were submitted by the applicant and must be approved prior to final plat:
 - a. A request to vacate 0.16 acres of public alley (Exhibit B)
 - b. A request to vacate a 0.06 acre tract & a 0.17 acre tract of private and public utility easements (Exhibit C)

DRAINAGE:

4. A drainage plan will be required.

PUBLIC IMPROVEMENTS:

5. Public improvements will require the addition of fire hydrants, the re-routed sewer line to city standards, and the construction of sidewalks where required.

STAFF RECOMMENDATION:

Staff recommends approval of the preliminary plat of “A” Street Community Center, Section 9, subject to the following conditions:

- A. A statement of why the proposed re-routing of the sewer line functionally works must be submitted to the city engineering division;
- B. Vacation on the alley and the sewer line will require a letter of credit;
- C. City Council approval of the alley vacation will be required prior to final plat;
- D. That a satisfactory drainage plan is submitted and approved prior to final plat;
- E. That any required public improvements are addressed prior to final plat;
- F. A blanket refuse collection easement will be required;
- G. Technical notes for final plat.
 - a. State Plane Coordinates on two points.
 - b. Other minor scrivener errors provided to the engineer.

Cameron Walker, AICP
Planning Division Manager
Department of Development Services

Ken Van Dyne, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibit A – Proposed Preliminary Plat
Exhibit B & C – Vacation Requests

CITY OF MIDLAND
Transportation 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:
Being a 0.16 acre alley abandonment and vacation within Block 3, "A" Street Community Center, Section 3. This alley is directly north of the existing COM Aquatics facility.
- II.** Reason for Request: This vacation facilitates the development of a new natatorium for COM Aquatics, Inc.
- 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:
The to-be-vacated alley currently contains the majority of the dumpsters for the existing facility; however, dumpsters will be relocated on the property to serve both the existing and future development.

IV. REQUIRED ITEMS:

1. Applicant(s) Information: (Attach extra sheets as necessary.)

Name: COM Aquatics, Inc.

Address: 3003 N. A Street

Phone: (432) 684-7755

Midland
City

Texas
State

79705
Zip Code

2. Metes and bounds description of property to be vacated including total square feet of vacation.
3. Map showing:
- Property to be vacated and its relationship to the applicant's property
 - Lot and block numbers of all adjacent tracts
 - Current zoning of all adjacent tracts
4. Letter(s) of Concurrence signed by adjacent property owner(s). (See attached)
5. Application Fee: **\$300.00**

Required items attached? Date Received: 1. ____ 2. ____ 3. ____ 4. ____ 5. ____

The City of Midland will take no action on this request, until items 1-5 are received.

- V.** Clearance is needed from the following utility companies: City of Midland / Atmos Energy
Caprock Energy / Oncor Electric / AT&T / Suddenlink Cable TV Co. / Grande Communications

The City will route the request to these companies, but it is the applicant's responsibility to ensure clearance has been obtained and to work out any issues that may arise.

VI. Policies:

1. If the vacation request involves only a portion of a section right-of-way, such that approval would not affect the public's ability to travel along said right-of-way, then the request will be scheduled for consideration by the City Council. No public hearing will be needed.
2. If the vacation request involves an entire section of right-of-way, such that approval would cause the public to lose all rights to use it, then the following procedures apply:
 - a. Nearby land owners who have a reasonable expectation to use said right-of-way, as determined by the Transportation Division, must first agree to the proposed vacation. It is the applicant's responsibility to obtain a letter of concurrence signed by the affected landowners.
 - b. If all letters are received indicating that the affected landowners agree to the request, then a public hearing before the City Council will be scheduled. The Transportation Division will mail public notice of the hearing to landowners within 1,000 feet of the affected right-of-way.
 - c. If a request is approved, the right-of-way shall be divided into two equal parts, with each half becoming the property of the respective abutting owner. If the applicant desires to own the entire width, he or she must negotiate with the opposite landowner.

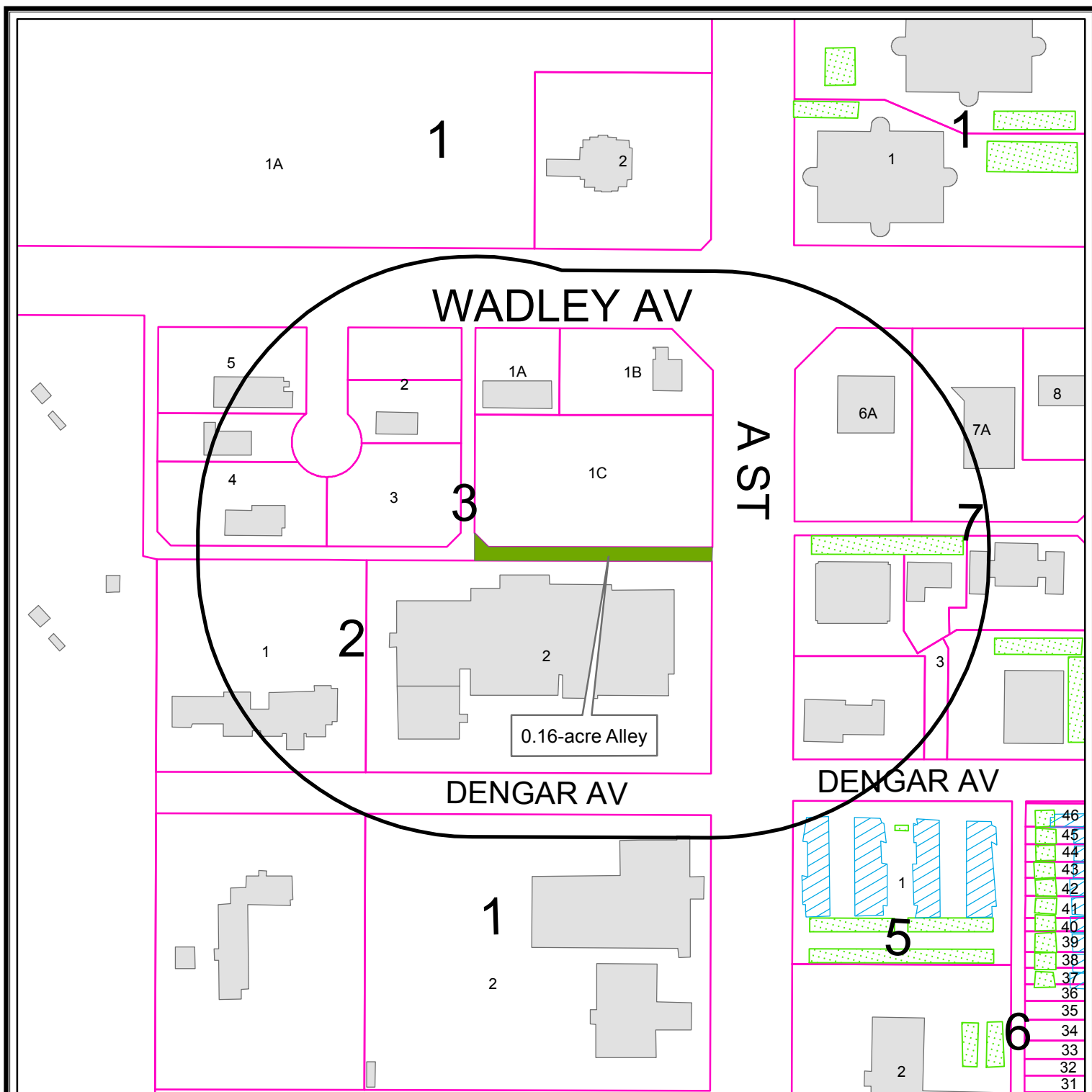
Signature of applicant:  Date: 2-1-12

****Application will not be considered for scheduling until all required items are reviewed by City Staff.****

To be completed by City of Midland staff:

According to the policy guidelines outlined above, a public hearing will ____ will not ____ be
required

FOR OFFICE USE ONLY	
Rec'd. By: <u>Rs</u>	Date: <u>2/15/12</u>
Assigned: <u>KV</u>	
For: <u>CC</u>	On: <u>5/8/12</u>



PROPERTY OWNER NOTIFICATION MAP

V - 12 - 001

Scale: 1" = 350'

Consider a request for the vacation of the east/west 20 foot alley out of Block 3, "A" Street Community Center, Section 3, being a 0.16-acre portion of land adjacent to Lot 1C, Blocks 3, "A" Street Community Center, Section 7, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 400 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BUILDING



© THE CITY OF MIDLAND - 2012
 THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC. IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PROFESSIONAL TOOL IN PERMITTING, ENGINEERING, OR OTHER DECISION SOLELY ON THE INFORMATION CONTAINED HEREIN.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: December 18, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by Habitat for Humanity for a zone change from C-3, Commercial District to PD, Planned District for a Housing Development.

Purpose:

Hold a public hearing at approximately 10:30 a.m. and consider an ordinance on a request by Habitat for Humanity for a zone change from C-3, Commercial District to PD, Planned District for a Housing Development.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Midland Habitat for Humanity has acquired several lots facing Cloverdale Road (FM 307), and wishes to develop single-family detached homes. This plat and the current C-3 District zoning date back to the 1950's. The lots are currently 50 feet wide and 286 feet deep, which is not conducive for residential development. Further, there has been a significant increase in traffic on Cloverdale Road since then, and it is not safe to construct a driveway every 50 feet. Habitat has submitted a proposed plat that appears identical to the proposed site plan, attached as Exhibit A. The purpose of requesting a planned district is to allow lot sizes that do not meet all of the minimum 1F-3 District requirements. Instead of having a driveway every 50 feet and lots that are excessively deep, they are proposing six short cul-de-sacs extending north from Cloverdale Road.

The Staff believes that this is a creative plan that provides lots of sufficient size for workforce housing, and places land that has been vacant for decades into productive use. The Planning and Zoning Commission recommended approval of this request on November 5, 2012, and no letters of objection have been received.

Attachments:

November 5, 2012 P&Z Staff Report
Proposed Ordinance and Exhibit A, Site Plan

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING LOTS 14-26, BLOCK 43, LOTS 14-26, BLOCK 44, AND LOTS 14-26, BLOCK 45, GREENWOOD ADDITION, THIRD, FOURTH AND FIFTH, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED C-3, COMMERCIAL DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE NORTH SIDE OF CLOVERDALE ROAD, BETWEEN SOUTH JACKSON STREET AND SOUTH WEBSTER STREET); PROVIDING FOR SUCH USE TO BE SUBJECT TO CERTAIN SPECIAL CONDITIONS AND RESTRICTIONS AS SET OUT HEREIN; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of “Planned Districts” under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of a Planned District for a Housing Development, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned C-3, Commercial District, and it shall be used as a Planned District for a Housing Development, subject to the special conditions and restrictions hereinafter set out, said property being described as

follows:

Lots 14-26, Block 43, Lots 14-26, Block 44, and Lots 14-26, Block 45, Greenwood Addition, Third, Fourth and Fifth, City and County of Midland, Texas.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That this property shall be subject to the regulations of the 1F-3, One-Family Dwelling District, except as otherwise stated below.
2. That the size, depth and area of the lots, along with the location of cul-de-sac streets, alleys and parking pad locations, shall conform to the conditions shown on Exhibit "A", which is attached hereto and incorporated herein.
3. That a final plat must be approved prior to the construction of any residence on this property.
4. That all off-street parking shall be located so that vehicles parked on the pads do not extend into the adjacent public right-of-way.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland,

Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 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:

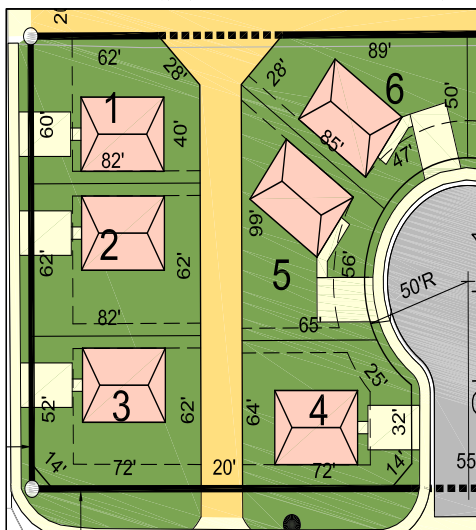
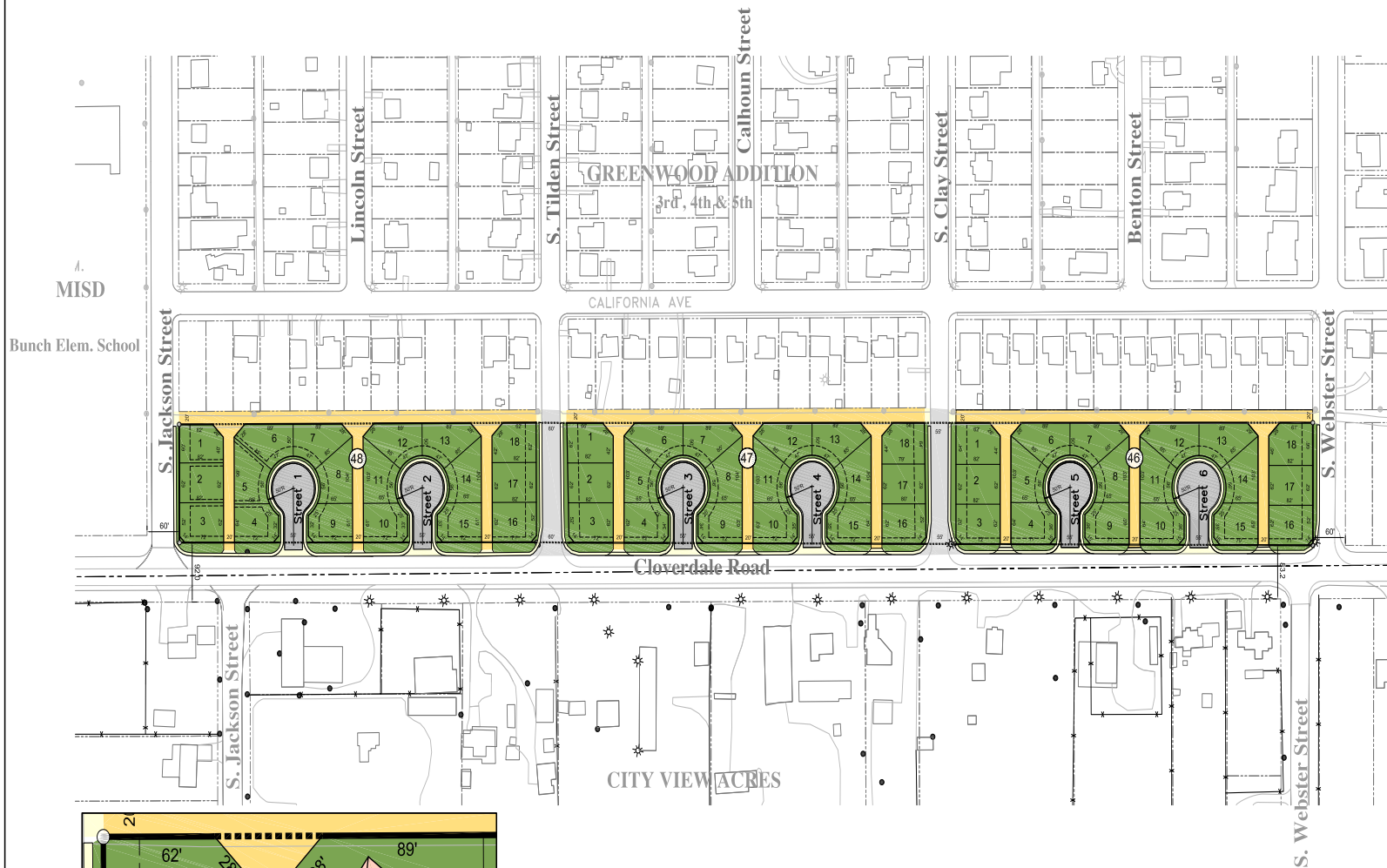
James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

NOTES:

- BUILDING FOOTPRINT, PARKING AND LANDSCAPING SHOWN ARE FOR ILLUSTRATIVE PURPOSES ONLY. FINAL SITE DESIGNS TO BE REVIEWED BY THE CITY OF MIDLAND PRIOR TO ISSUING BUILDING PERMITS.
- SHADED AREAS DENOTED BY  TO BE PAVED.
- SHADED AREAS DENOTED BY  TO BE CALICHE.
- SHADED AREAS DENOTED BY  TO BE CONCRETE.
- SHADED AREAS DENOTED BY  TO BE IRRIGATED & LANDSCAPED INCLUDING TREES OR SHRUBS - WHICH MAY BE ENHANCED BY OTHER LANDSCAPE MATERIALS.
- SHADED AREAS DENOTED BY  ARE BUILDINGS.
- SHADED AREAS DENOTED BY  ARE SCREEN WALLS.
- BUILDING SETBACK LINE - - - - -
- MAXIMUM NUMBER OF RESIDENTIAL UNITS SHALL NOT EXCEED 54.

 PARK HILL SMITH & COOPER

Lot Layout Detail

 $1''=30'$

NOTES:

- OFF-STREET PARKING PAD PROVIDED AT EACH HOUSE.
- TYPICAL HOUSE SIZE = 1150 SF ±

PLANNING AND ZONING COMMISSION MINUTES

November 05, 2012

3:30 p.m.

Z-12-038 - Hold a public hearing and consider a request by **Midland Habitat for Humanity** for a *zone change* from C-3, Commercial District to PD, Planned District for a Housing Development on Lots 14 through 26, Block 43, Lots 14 through 26, Block 44, and Lots 14 through 26, Block 45, Greenwood Addition, Third, Fourth & Fifth, City and County of Midland, Texas. (Generally located on the north side of Cloverdale Road, between S. Jackson Street and S. Webster Street.)

Renee Franks representing Parkhill, Smith and Cooper, 1700 W. Wall St., Midland, Texas, stated that in 20 years she has had about three people approach her who wanted to develop the property. She stated Parkhill, Smith and Cooper came up with something very clever to develop the area and wanted to reiterate it was a really great use for the property and urged the approval of the commission.

Senior Planner Jim Compton gave an overview of the request for zone change. Staff recommends approval subject to conditions A through D.

Vice Chairman Gatten opened the public hearing.

James Jordan, 2100 E. California, Midland, Texas, stated he was in favor of the project but was asking for a curb from California to Cloverdale. Vice-Chairman Gatten stated the Commission was only required to address the items on the agenda and informed Mr. Jordan he was welcomed to contact the Development Services Department regarding the curb.

With no one else wishing to speak in favor or in opposition Vice-Chairman Gatten closed the public hearing.

A motion for approval the proposed request for zone change subject to condition A through D made by Commissioner York; seconded by Commissioner Wolf. The motion carried by the following vote: AYE: Gatten, Wilton, York, Wolf and Watkins. NAY: None. ABSTAIN: None. ABSENT: Ferguson, Norris, Lanning and Woodruff.

PLANNING AND ZONING COMMISSION

November 5, 2012

CASE: Z-12-038.

REQUEST: Hold a public hearing and consider a request for a zone change from C-3, Commercial District to PD, Planned District for a Housing Development.

APPLICANT/OWNER: Midland Habitat for Humanity.

REPRESENTATIVE: Parkhill, Smith and Cooper.

LEGAL DESCRIPTION: Lots 14-26, Block 43; Lots 14-26, Block 44; Lots 14-26, Block 45, Greenwood Addition, Third, Fourth and Fifth, City and County of Midland, Texas.

LOCATION: North side of Cloverdale Road, between, S. Jackson Street and S. Webster Street.

DETAILS OF REQUEST:

1. Cloverdale Road is classified as a collector street; east of Fairgrounds Road it is designated FM 307. The subject property was platted in the early 1950's. While the lotting pattern suggests this land may have been intended for single-family development, the lot depth of 188 would suggest otherwise. City records seem to indicate that the C-3 District zoning classification was approved when the land was annexed in 1954, but has since remained vacant. Midland Habitat for Humanity has acquired this property and desires to develop it with single-family homes. We have received a preliminary plat that illustrates the proposed street and lot pattern, which is also scheduled on the November 5th agenda. A change in the lot pattern is desired because most homeowners do not desire to have a lot much more than 110-120 feet deep. Based on the current lot pattern, this additional rear lot area would likely be wasted. In order to maximize the use of available land, the applicant has designed a site plan, Exhibit A, in which the lot and street sizes are identical to the preliminary plat. There are six proposed cul-de-sac lots extending north from Cloverdale Road, and each cul-de-sac has six lots. Therein lies the basis for a planned district request. The 1F-3 District requires a minimum lot width of 50 feet, a minimum lot depth of 100 feet, and a minimum lot area of 5,500 square feet. (The Planning Commission is authorized to approve a plat with 90-foot deep lots, provided the minimum lot width and area

for the respective district are still met.) The proposed lot dimensions shown on Exhibit A do not meet the minimum requirements of the 1F- District. Without support of the zone change request, the Planning and Zoning Commission cannot consider the associated preliminary plat.

SURROUNDING ZONING AND LAND USE:

2. The land north of this property is zoned 1F-3 District and MF-2 District. It is platted in a manner consistent with single-family development, and developed in a similar manner. The land to the east is zoned C-3 District, and is vacant except for a small, non-conforming mobile home park. The area to the south is located outside the City limit, and is developed with a variety of industrial uses. The land to the west is owned by MISD, and is the location of the Bunche Early Childhood Center.

ANALYSIS:

3. The lot depths range from 50 feet to 85 feet. All of the lots have at least 40 feet of street frontage, which is a requirement for having a driveway curb cut. As shown on the Lot Layout Detail, none of the homes will have a garage; instead there will be a parking pad for two vehicles on each lot. These pads will be deep enough to avoid parked vehicles from extending into the right-of-way. The proposed front yard setback is 20 feet, except along the actual cul-de-sac, where the setback is 15 feet. These dimensions conform to the 1F-3 District regulations. In order to avoid having parked vehicles from extending into the public right-of-way and blocking sidewalks, the parking pads for lots abutting a cul-de-sac are not directly in front of the homes, but are off-set to the side of the lots.

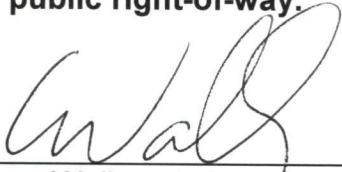
This proposal cannot be referred to as "standard" single-family development. However, the C-3 District zoning has been in place for many years, but has not attracted any commercial development, despite the fact that water and sanitary sewer lines are close by. Further, the high volume of traffic on Cloverdale Road is not conducive to single-family development facing the roadway. For these reasons, combined with the high demand for housing is sufficient basis for the staff to support this proposal.

STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from C-3, Commercial District to PD, Planned District for a Housing Development, subject to the following conditions:

- A. **The development of this property shall conform to the regulations of the 1F-3, One-Family Dwelling District, except as otherwise stated below.**

- B. The width and depth of these residential lots shall conform to the conditions shown on the attached Exhibit A.
- C. A final plat, conforming to the conditions shown on Exhibit A, must be approved before any development can occur on this property.
- D. All off-street parking pads illustrated on Exhibit A shall provide a minimum depth of 20 feet to avoid parked vehicles from extending into the adjacent public right-of-way.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibit A

Case Number: Z-12-038

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Midland Habitat for Humanity (432) 686-8877

Applicant Name

(Phone/e-mail)

PO Box 2555

Midland, TX 79702

Address

Zip Code

Midland Habitat for Humanity

(432) 686-8877

Property Owner Name

(Phone/e-mail)

PO Box 2555

Midland, TX 79702

Address

Zip Code

Parkhill, Smith & Cooper, Inc.

(432) 697-1447

Representative Name

(Phone/e-mail)

1700 W. Wall, Suite 100

Midland, TX 79701

Address

Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately. Lots 14-26, Block 43, Lots 14-26, Block 44,
and Lots 14-26, Block 45, Greenwood Addition to the City of
Midland, TX

PRESENT ZONE: C3

REQUESTED ZONE: PD-HD

(List by tracts if more than one district is requested)

Reason for Zone Change Request: Better design for single family homes

Present Use of Property: Vacant

Proposed Use of Property: Single, Family Homes

How will zone change affect the public health, safety and welfare? Will make design better for homes

Describe how conditions affecting the property have changed since present zoning designation:
Habitat for Humanity is now ready to develop the property
into single family homes.

Is a Specific Use Permit with Term for alcoholic beverages sales needed? Yes x No

APPLICATION FEES:

- Single, standard zone change: **\$400**. Multiple, standard zone change: add **\$100** per additional district.
- Single PD, Planned District zone change: **\$550**. Multiple PD proposal: add **\$100** per district.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS (if applicable):

16 copies (FOLDED) of the PD site plan: _____

 X

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
John M. Walsh, EIT who, being by me duly sworn, upon oath says: That (s)he is
authorized by Habitat for Humanity, 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.

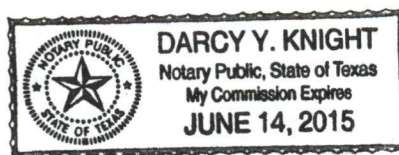
[Signature]

Authorized Agent (signature)

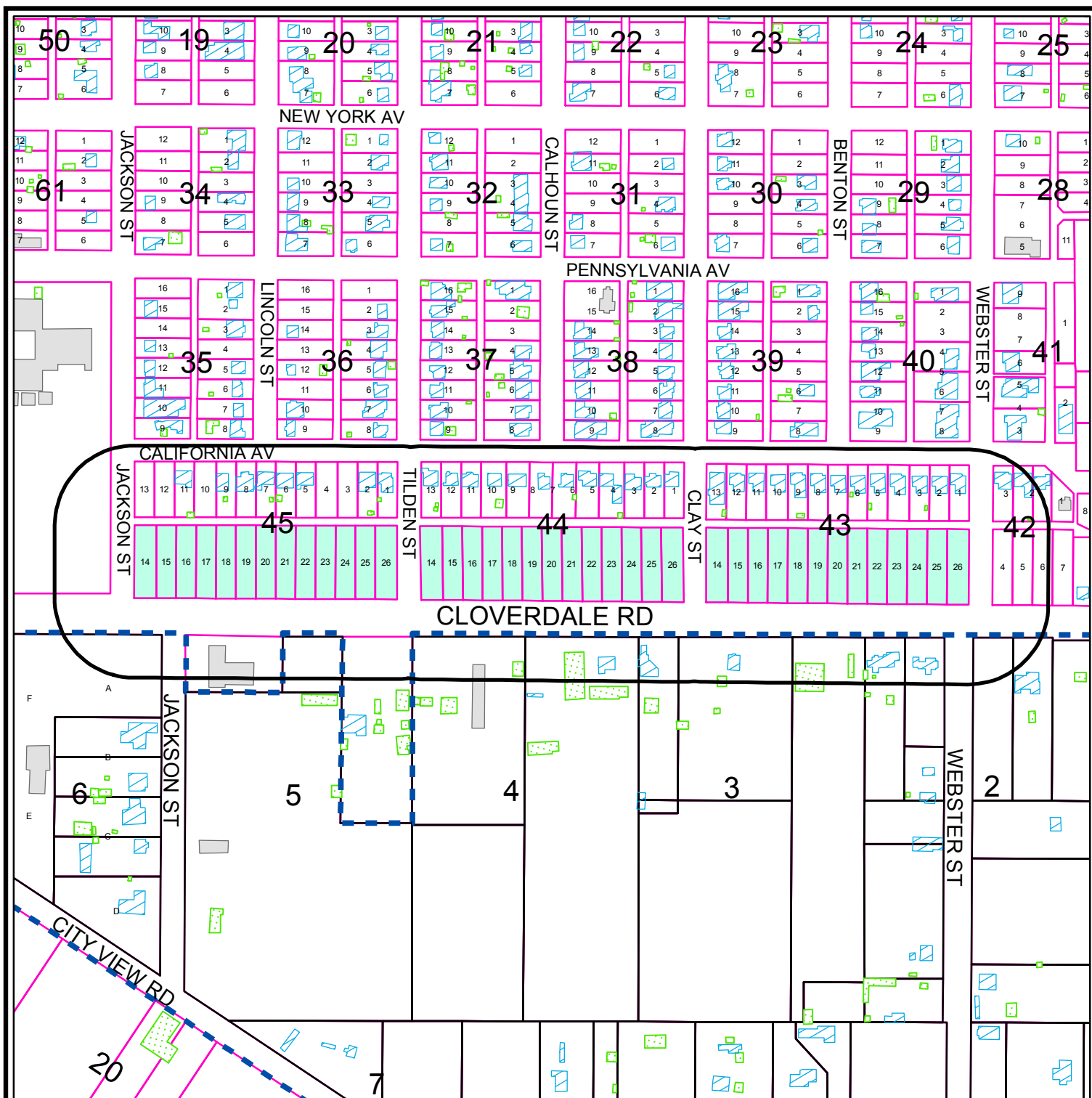
Subscribed and sworn to before me, this 14th day of September, 20 12, to certify which
witness my hand and seal of office.

Darcy Y. Knight
NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>DS</u>	Date: <u>9/14/12</u>
Assigned: _____	
For: _____	On: _____



****Application will not be considered for scheduling until reviewed by a planner.****



200 FOOT SELECTED CITY PROPERTY OWNERS

Z - 12 - 038

Scale: 1" = 350'

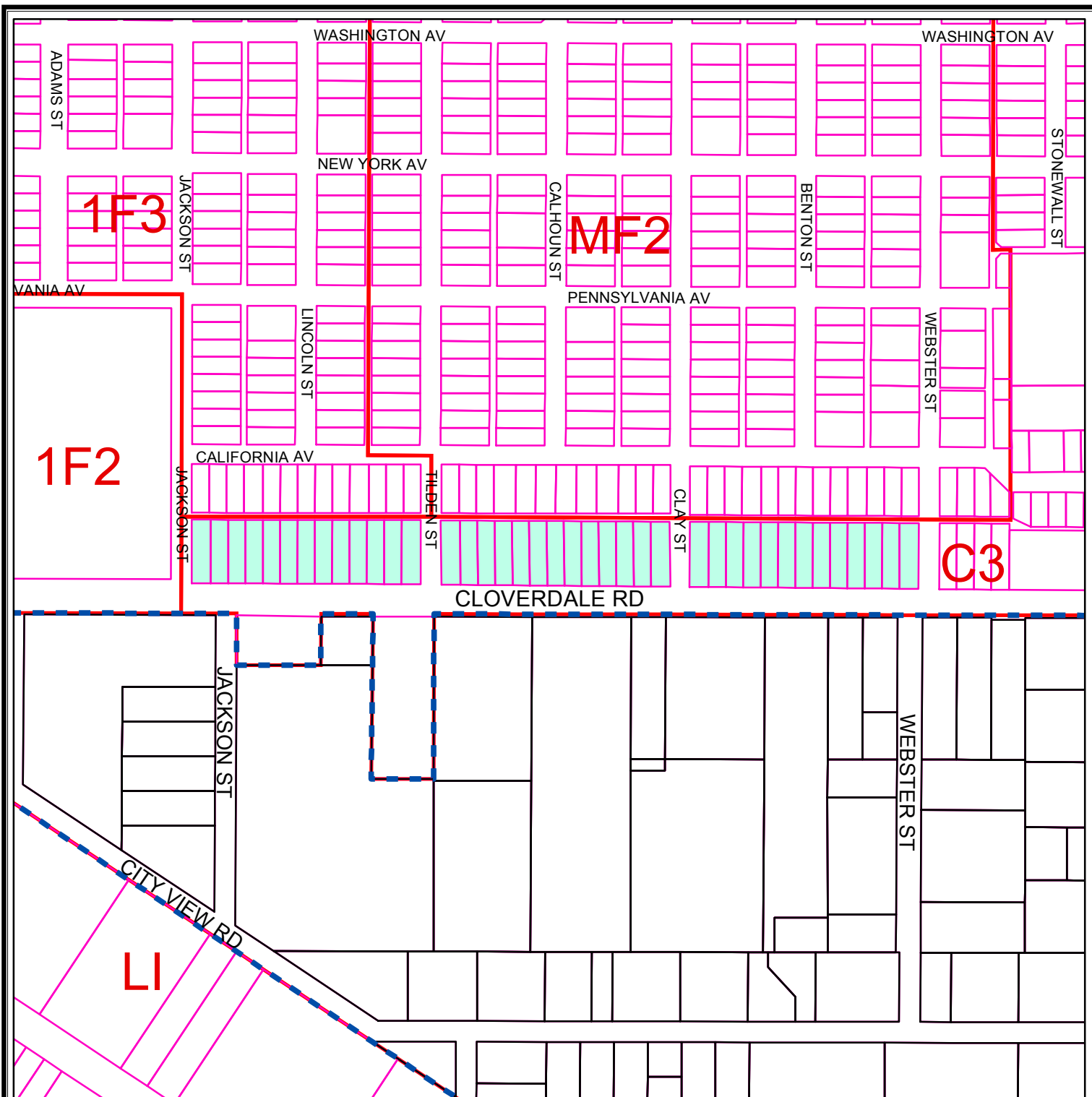
Consider a request for a zone change from C-3, Commercial District, to PD, Planned District for a Housing Development on Lots 14 thru 26, Block 43, Lots 14 thru 26, Block 44 and Lots 14 thru 26, Block 45, Greenwood Addition, Third, Fourth & Fifth, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- CITY PARCEL
- COUNTY PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



©THE CITY OF MIDLAND - 2012
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC. IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, SITING OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.



ZONING MAP

Z - 12 - 038

Scale: 1" = 400'

Consider a request for a zone change from C-3, Commercial District, to PD, Planned District for a Housing Development on Lots 14 thru 26, Block 43, Lots 14 thru 26, Block 44 and Lots 14 thru 26, Block 45, Greenwood Addition, Third, Fourth & Fifth, City and County of Midland, Texas.

LEGEND

 ZONING	 CITY PARCELS
 CITY LIMITS	 COUNTY PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

© THE CITY OF MIDLAND 2012; THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA. WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: December 18, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:33 a.m. and consider an ordinance on a request by Chris Vore for approval of a zone change from C-3, Commercial District to PD, Planned District for a Housing Development.

Purpose:

Hold a public hearing and consider a request for a zone change from C-3 District to PD, Planned District for a Housing Development.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Chris Vore wishes to construct apartments on this five-acre tract located on the west side of Fairgrounds Road, south of Golf Course Road. He has provided the attached Exhibits A, B and C to satisfy the site plan approval requirement applicable to all apartment construction. He plans to construct the apartments in two phases. Exhibit A is a plan view showing the first phase of development. The Planned District is proposing a density increase from 16 units to 20 units per acre. The apartments would be three stories tall, and all building setbacks are met or exceeded. Exhibits B and C are elevation views. Exterior building materials include brick and siding, with composition shingles. The Planning and Zoning Commission recommended approval on November 5, 2012, where no opposition was noted. The Staff concurs with this recommendation for approval.

Attachments:

November 5, 2012 P&Z Staff Report
Proposed Ordinance

ORDINANCE NO.

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 5.00-ACRE TRACT OUT OF LAND OUT OF BLOCKS 84 AND 85, EAST MIDLAND ADDITION, CITY AND COUNTY OF MIDLAND, TEXAS, AND MORE SPECIFICALLY DESCRIBED IN SECTION ONE HEREOF, WHICH IS PRESENTLY ZONED C-3, COMMERCIAL DISTRICT, TO BE USED AS A PD, PLANNED DISTRICT FOR A HOUSING DEVELOPMENT (GENERALLY LOCATED ON THE WEST SIDE OF FAIRGROUNDS ROAD, 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 a Planned District for a Housing Development, set out hereinafter and subject to the conditions and restrictions set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned C-3, Commercial District, and it shall be used as a Planned District for a Housing Development, subject to the special conditions and restrictions hereinafter set out, said property being described as

follows:

A 5.00-acre tract out of land out of Blocks 84 and 85, East Midland Addition, City and County of Midland, Texas, said tract is more specifically described by metes and bounds in Exhibit “D”, which is attached hereto and incorporated herein.

SECTION TWO. That said property shall be subject to the following special conditions and restrictions:

1. That the development of this property shall be subject to the regulations of the MF-1, Multiple-Family Dwelling District, except as otherwise stated below.
2. That the development of this property with apartments shall conform to the conditions shown on Exhibits “A”, “B” and “C”, which are attached hereto and incorporated herein. Exhibit “C” represents a general color pallet for building exterior.
3. That the maximum building height shall not exceed three stories or 50 feet.
4. That the maximum density allowed shall not exceed 20 dwelling units per acre.
5. That no R-panel material shall be allowed in the exterior building materials.
6. That a minimum six-foot-tall wooden fence shall be constructed around the perimeter of this property. Said fence may be constructed in two phases, coinciding with the apartment construction.
7. That before the area identified as “Phase 2” on Exhibit “A” is developed, a site plan must be approved in the same manner as a zone change.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of

Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 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:

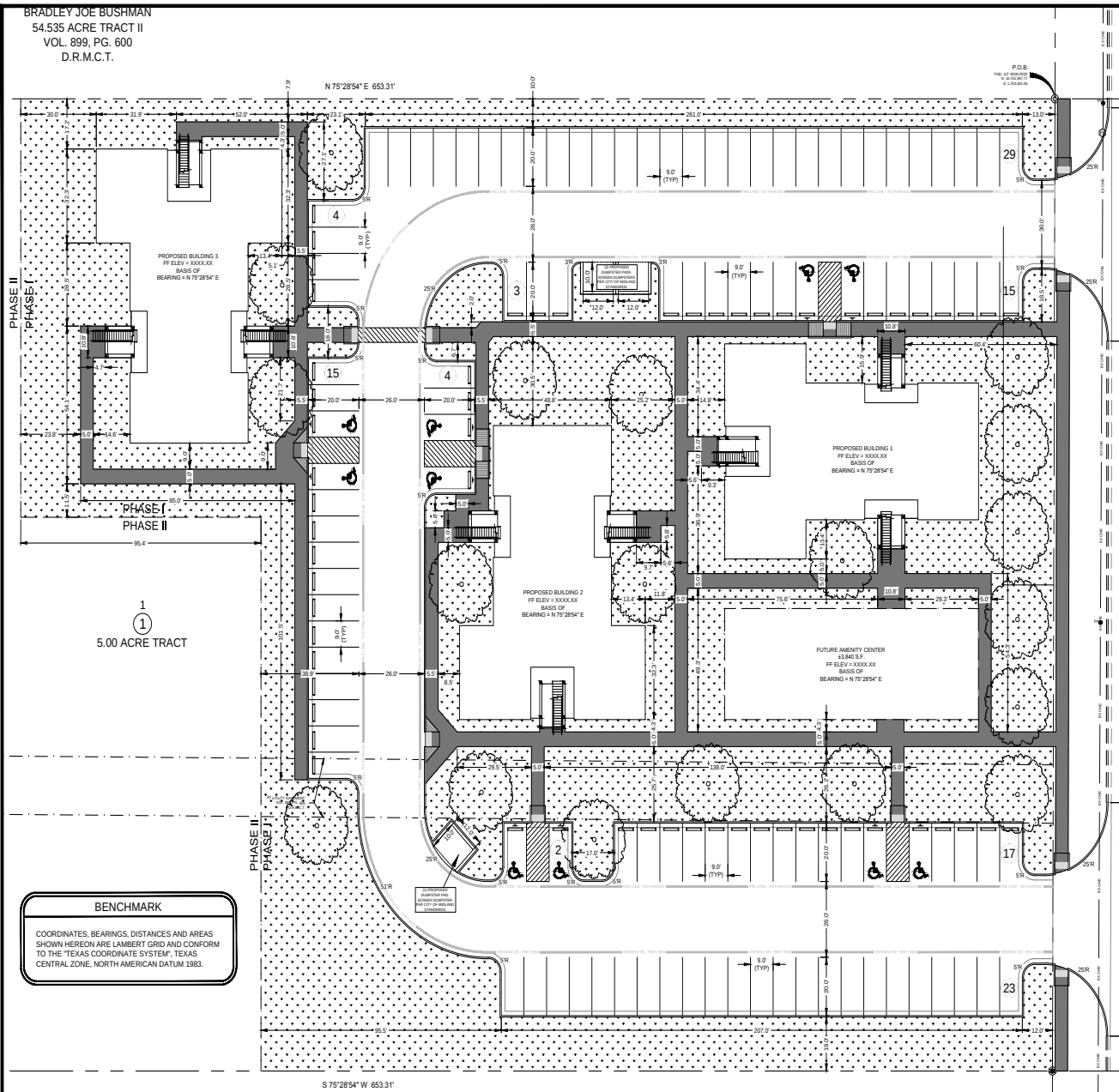
Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

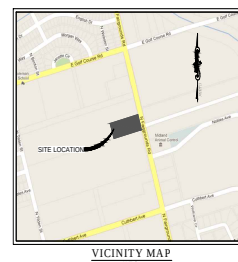
Keith Stretcher, City Attorney



Know what's below.
Call before you dig



FAIRGROUNDS ROAD (VARIABLE R.O.W.)



1. ALL DIMENSIONS SHOWN ARE TO FACE OF CURB UNLESS NOTED OTHERWISE.
2. ALL PROPOSED SIDEWALKS ARE TO BE 5.0' UNLESS NOTED OTHERWISE.

TOTAL LAND AREA:	217,768.60 S.F. (5,000 AC)
PHASE 1 LAND AREA:	118,666.59 S.F. (2,725 AC)
PHASE 2 LAND AREA:	99,102.01 S.F. (2,275 AC)
CURRENT ZONING:	C-3 (COMMERCIAL) *REZONE TO PD REQUIRED
TOTAL PARKING PROVIDED:	112
HANDICAP PARKING PROVIDED:	10
HANDICAP PARKING REQUIRED:	3
PHASE 1 LANDSCAPE PERCENTAGE:	39.6%
PHASE 1 UNIT DENSITY:	19.8 UNITS / ACRE

[illegible]

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 BY TWO DOUBLE DRIVEWAY ALONG FAIRGROUNDS ROAD.

NO SCREEN FENCE IS CURRENTLY PROPOSED AROUND THE EXTERIOR BOUNDARY OF THE PROPERTY. TYPICAL SCREENING WILL BE PROVIDED AROUND THE DUMPSTER LOCATIONS PER CITY OF MIDLAND STANDARDS

NECESSARY UTILITIES ARE CURRENTLY IN PLACE. SOME ADDITIONAL IMPROVEMENTS TO EXISTING UTILITY INFRASTRUCTURE MAY BE REQUIRED BY THE CITY OF MIDLAND.

THE CITY OF MIDLAND'S MASTER DRAINAGE PLAN ACCOUNTS FOR DEVELOPED FLOW CONDITIONS AT THIS SITE LOCATION. FLOW CAPACITY OF FAIRGROUNDS ROAD SHOULD BE EVALUATED TO CONFIRM THE STREET CAN PROPERLY CONVEY INCREASED RUN-OFF FROM THE PROPOSED DEVELOPMENT AS WELL AS CONFIRM A DETENTION BASIN IS NOT REQUIRED.

- PER CITY OF MIDLAND ORDINANCE, MINIMUM LANDSCAPE AREA = 20% OF LOT AREA LESS STRUCTURE FOOTPRINTS.

- LOT AREA: 118,667 ft²
- TOTAL STRUCTURE FOOTPRINT: 18,843 ft²
- REQUIRED LANDSCAPE AREA: 19,965 ft²
- PROVIDED LANDSCAPE AREA: 46,992 ft²

TRASH DUMPSTERS TO BE PLACED AS SHOWN.
ENCLOSURES TO BE BUILT OF BRICK, AND WILL MATCH
DESIGN OF SCREENING WALL.

BUILDING SETBACK DISTANCES OF 20 FEET FROM THE
PROPERTY LINE WILL BE OBSERVED ALONG
FAIRGROUNDS ROAD FRONTAGE.

REQUIRED

- PER THE CITY OF MIDLAND'S PARKING REQUIREMENTS: "2 SPACES FOR EACH DWELLING UNIT IN A ONE-FAMILY RESIDENCE AND 2 SPACES FOR EACH TWO-FAMILY OR APARTMENT UNIT."
- 54 UNITS @ 2 SPACES per UNIT = 108 REQUIRED SPACES

- | | |
|----------|------------------|
| PROVIDED | |
| • 102 | REGULAR PARKING |
| • 10 | HANDICAP PARKING |
| • 112 | TOTAL PARKING |

- 1 TREE FOR EVERY 30 LINEAR FOOT STREET
- 1 TREE FOR EVERY 15 PARKING SPACES
- 333 LF FAIRGROUNDS ROAD: 11 TREES (06 SHOWN)
- 112 PARKING SPACES: 08 TREES (13 SHOWN)
- TOTAL REQUIRED: 19 TREES
- TREES SHOWN: 19 TREES
- PAID INTO TREE FUND: 00 TREES

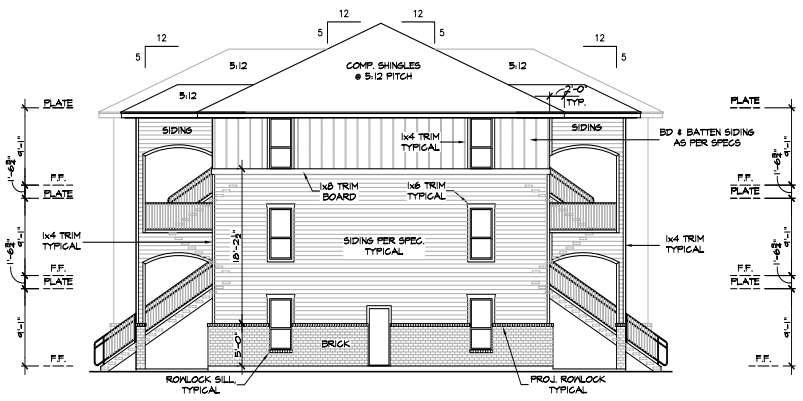
REFER TO ARCHITECT'S BUILDING ELEVATION PLAN

A 26' WIDE FIRE LANE HAS BEEN PROVIDED AT THE FRONT OF ALL BUILDINGS. THE FIRE LANE WILL BE IDENTIFIED BY PAINTED STRIPES AND CURBS PER THE CITY OF MIDLAND'S REQUIREMENTS.

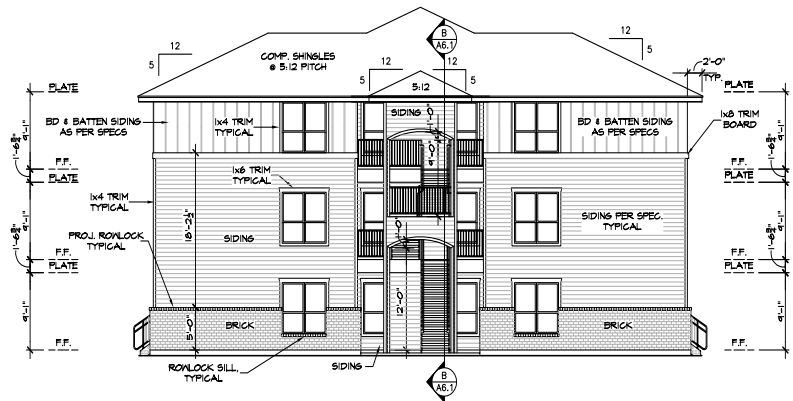
- 5' SIDEWALK TO BE PLACED UP TO THE PROPERTY LINE FOR PEDESTRIAN ACCESS TO AND FROM FAIRGROUNDS ROAD.
- 5' SIDEWALK TO BE PLACED IN THE INTERIOR OF THE PROPERTY.



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



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



FIELD NOTES of 5.00 acres, more or less, with a 333.33 foot frontage on the Easterly most portion of this Tract of Land out of the S/2 of Block 84, and the N/2 of Block 85, East Midland Addition, an addition to the City of Midland, Midland County, Texas, according to the map or plat thereof of record in Volume 1, Page 52, Deed Records of Midland County, Texas; said tract being more particularly described by metes and bounds as follows:

BEGINNING at (N:10,701,997.77, E:1,763,401.06) a 1/2" Iron Rod with cap marked "Howell RPLS 280" found in the East line of the Bradley Joe Bushman Tract II as recorded in Volume 899, Page 600 of the Deed Records of Midland County, Texas, and in the Westerly right-of-way line of Fairgrounds Road, having a 107.5' public right-of-way as recorded in Cabinet "B", Page 324 of the Plat Records of Midland County, Texas, for the Northeast corner of this tract;

THENCE S 14°20'39" E with the Westerly line of said Fairgrounds Road and the Easterly line of said Bushman Tract II a distance of 333.33 feet to a 1/2" Iron Rod with red plastic cap marked "West Co Midland" set for the Southeast corner of this tract;

THENCE S 75°28'54" W in and across said Bushman Tract II a distance of 653.31 feet to a 1/2" Iron Rod with red plastic cap marked "West Co Midland" set for the Southwest corner of this tract;

THENCE N 14°20'39" W in and across said Bushman Tract II a distance of 333.33 feet to a 1/2" Iron Rod with cap marked "Howell RPLS 280" found for the Northwest corner of this tract;

THENCE N 75°28'54" E in and across said Bushman Tract II a distance of 653.31 feet to the POINT OF BEGINNING;

Subject tract containing a total of 5.00 acres (217,768.6 ft²).

Note: All Bearings, Distances and Coordinates Shown Hereon are Relative to the Texas State Plane Coordinate System, Texas Central Zone, North American Datum of 1983.



[Handwritten signature and date 12/10/12]

EXHIBIT D

T:\Civil Drawings\2012\2012-1081\EXHIBITS\2012-1081 FIELD NOTES.docx

PLANNING AND ZONING COMMISSION MINUTES

November 05, 2012

3:30 p.m.

Z-12-039 – Hold a public hearing and consider a request by **Chris Vore** for a *zone change* from C-3, Commercial District to PD, Planned District for a Housing Development on a 5.00-acre tract of land out of Blocks 84 and 85, East Midland Addition, City and County of Midland, Texas. (Generally located on the west side of N. Fairgrounds Road, approximately 950 feet south of E. Golf Course Road.)

Andrew Mellen, West Company of Midland, 110 W. Louisiana Avenue, representing the applicant. He stated there were two phases to the project with 54 units in the first phase. There is an amenity that you will notice slip up into two phases. There were 54 units in this first phase. There is an amenity and fencing that his clients would like to build during the second phase.

Senior Planner Jim Compton gave an overview of the request for zone change. He stated it was unknown if phase II would be built. Staff requested the addition of Exhibit J stating the word future be removed from exhibit A.

Vice-Chairman Gatten opened the public hearing

With no one wishing to speak in favor or in opposition Vice-Chairman Gatten closed the public hearing.

Mr. Mellen stated they did not have the means to build the amenities in the first phase. He stated that in this market he did not see the second phase not happening.

John Dunn, 701B Technology Circle, Midland, Texas stated they could take the future amenities off the plan as they had no plans to build during phase one. Intentions were to build three buildings and get them leased. He was not planning on advertising the amenity center and was certain the buildings would lease out. Commission Gatten asked Mr. Dunn if he was asking the commission to withdraw that part of the proposal or if he was asking the Commission to consider it? Mr. Dunn stated he would like the Commission to consider it during the second phase, as he had not intention on building it during the first phase. s Or are you asking the Commission we don't see a problem with anyone needing a pool or office right away. Commissioner Gatten asked about the fencing and Mr. Mellon stated he miss spoke and the applicant was willing to build the fence

during the first phase. Concern on density. Willing to build a fence for phase one.

Discussion ensued regarding the amenity center and the wording on the application. Planning Division Manager Walker stated some concern regarding a leasing office but was pleased to hear the fence would be constructed. He stated if the Commission felt comfortable writing in that the amenities building would be during phase two than the staff would not object.

Planning Division Manager Walker stated he would be willing to work with the developer from now until the next City Council Meeting and would be willing to make changes and be flexible. He stated he would e-mail the Commission on what they agreed on.

After further discussion a motion for approval of the proposed request for zone change subject to condition A through H made by Commissioner Wilton; seconded by Commissioner Watkins. The motion carried by the following vote: AYE: Wilton, York, Wolf and Watkins. NAY: Gatten. ABSTAIN: None. ABSENT: Ferguson, Norris, Lanning and Woodruff.

PLANNING AND ZONING COMMISSION

November 5, 2012

CASE: Z-12-039.

REQUEST: Hold a public hearing and consider a request for a zone change from C-3, Commercial District to PD, Planned District for a Housing Development.

APPLICANT/OWNER: Chris Vore.

REPRESENTATIVE: West Company of Midland.

LEGAL DESCRIPTION: A 5.0-acre tract out of Blocks 84 and 85, East Midland Addition, City and County of Midland, Texas.

LOCATION: West side of Fairgrounds Road, approximately 1,100 feet south of Golf Course Road.

DETAILS OF REQUEST:

1. The subject property is zoned C-3 District and is current vacant. The applicant wishes to construct an apartment complex on a 5.0-acre tract of land. Before this can occur, a zone change is needed, and site plans must be approved before a building permit can be approved. The applicant has provided Exhibits A, B and C to satisfy this requirement. We have already received a Sketch Plan Application, which initiated the platting process. Details of this proposal are as follows:
 - A. The Planned District will be subject to regulations of the MF-1 District, except that the applicant is requesting a density from 16 to 20 dwelling units per acre.
 - B. Access is provided at two separate driveways on Fairgrounds Road. No perimeter screening fence is shown on the exhibits.
 - C. The maximum building height is three stories, not to exceed 50 feet.
 - D. The first of two Phases includes 54 dwelling units. Phase 2 will require a second site plan review process.
 - E. Total parking provided is 112, whereas 108 spaces are required.
 - F. A 26-foot wide fire lane is provided.

SURROUNDING ZONING AND LAND USE:

2. This property is located in a large C-3 District, a portion of which is developed with an oil field pipe yard. A sanitary sewer line runs east/west through this site. We recommend that the location be identified on the site plan. The area to the east is zoned 2F District, which is vacant, and 1F-2 District, which is partially developed with single-family homes. The land to the north is developed with a retirement center and a landscape business. East, across Fairgrounds Road is a vacant mobile home park that has lost its former non-conforming statues.

ANALYSIS:

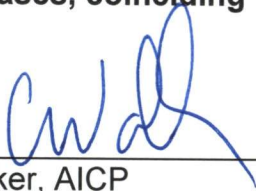
3. The Comprehensive Plan recommends that apartments be located adjacent to arterial streets, such as Fairgrounds Road. Please refer to the attached Exhibit A, which is a plan view of this proposal. Access to the site is provided by two driveways, which is preferred by the Fire Department. The distance between the two driveways exceeds the 170-foot spacing required by the Traffic Code. The 26-foot wide driving aisle, which is U-shaped, meets the Fire Department requirements. The Zoning Code specifies a minimum front yard building setback of 20 feet, a minimum side yard of 15 feet, and a minimum rear yard of 20 feet. The building setbacks shown on Exhibit A meet or exceed these requirements. Exhibit B illustrates front, side and rear elevation views of a typical apartment building. The buildings are three stories tall, with a hip roof covered in composition shingles. Beginning at ground level, exterior building materials include a five-foot tall brick wainscot, non-descript horizontal siding and finally, non-descript board and batten vertical siding. Board and batten siding describes a particular design rather than specific materials. Metal R-panel meets this description. Provided that metal is excluded, the staff has no objection to the list of exterior materials. Exhibit C is a color rendering of the long side of one of the apartment buildings. We are satisfied with the general palette of colors shown on Exhibit C.

We discussed with the applicant the lack of a screening fence. We were advised that although once the apartments are built and producing income, a screening fence is planned. However, the staff recommended that a screening fence be included as a condition of this planned district. The applicant then agreed to construct a six-foot tall solid wooden fence around the perimeter of the property. We are satisfied with this additional condition.

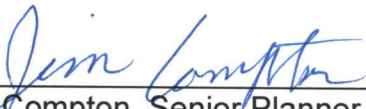
STAFF RECOMMENDATION:

We recommend approval of this request for a zone change from C-3 District to PD, Planned District for a Housing Development on the subject property. Further, we recommend approval of the construction of apartments on this property, subject to the satisfaction of the following conditions:

- A. That the development of apartments on this property shall conform to the conditions shown on Exhibits A, B and C in all respects, except as otherwise stated below.
- B. The maximum building height shall not exceed three standard stories or 50 feet.
- C. The combined maximum density for Phases 1 and 2 shall not exceed 20 dwelling units per acres.
- D. A minimum of 108 parking spaces shall be provided for Phase 1.
- E. The minimum driving aisle width shall be 26 feet.
- F. No R-panel materials shall be included in the description of "board and batten" as it appears on Exhibit B.
- G. The location of the existing east/west sewer line that crosses this property must be identified on Exhibit A.
- H. Exhibit C shall be used only for the purpose of establishing the general color palette for the apartments.
- I. A minimum six-foot tall wooden screening fence shall be constructed around the perimeter of this property. Said fence may be constructed in two phases, coinciding with the apartment construction.



Cameron Walker, AICP
Planning Division Manager
Department of Development Services



Jim Compton, Senior Planner
Department of Development Services

Attachments:

Application
Maps
Exhibits A, B and C

Case Number: Z-12-039

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

WEST COMPANY OF MIDLAND - ANDREW MELLEN, PE 432-682-0588 andrew@team-west.com

Applicant Name

(Phone/e-mail)

110 W. LOUISIANA, STE. 250

MIDLAND, TEXAS

79701

Address

Zip Code

CHRIS VORE

432-352-9203

Property Owner Name

(Phone/e-mail)

7 WARWICK

ODESSA, TEXAS

79765

Address

Zip Code

WEST COMPANY OF MIDLAND - ANDREW MELLEN, PE

432-682-0588

andrew@team-west.com

Representative Name

(Phone/e-mail)

110 W. LOUISIANA, STE. 250

MIDLAND, TEXAS

79701

Address

Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision Name or if unplatted, attach a Metes and Bounds description with surveyor's seal). Each district must be described separately.

EAST MIDLAND ADDITION- A 5.0 ACRE TRACT OF LAND OUT OF BLOCKS 83, 84, N/2 OF BLOCK 85, & N/2 OF BLOCK 86. LOCATED IN SECTION 25, BLOCK 39, T-1-S, T&P RR Co. SURVEY, MIDLAND COUNTY, TEXAS

PRESENT ZONE: _____ REQUESTED ZONE: _____

(List by tracts if more than one district is requested)

Reason for Zone Change Request: TO BUILD APARTMENTS

Present Use of Property: RAW LAND

Proposed Use of Property: MULTI-FAMILY

How will zone change affect the public health, safety and welfare? THIS WILL ADD HOUSING TO MIDLAND

Describe how conditions affecting the property have changed since present zoning designation:
N/A

Is a Specific Use Permit with Term for alcoholic beverages sales needed? ____ Yes x No

APPLICATION FEES:

- Single, standard zone change: **\$400**. Multiple, standard zone change: add **\$100** per additional district.
- Single PD, Planned District zone change: **\$550**. Multiple PD proposal: add **\$100** per district.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS (if applicable):

16 copies (FOLDED) of the PD site plan: _____

Site Plan in digital format .pdf and .jpg: _____

SIGNATURE (by property owner only - authorized agent must sign affidavit below)

Property Owner (signature): _____ Date: _____

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

Andrew L. Melton Jr. who, being by me duly sworn, upon oath says: That (s)he is authorized by Chris Vore, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Andrew L. Melton Jr.

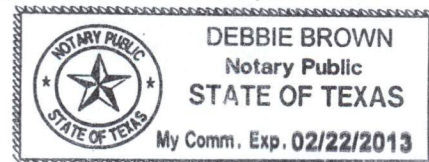
Authorized Agent (signature)

Subscribed and sworn to before me, this 16th day of October, 20 12, to certify which witness my hand and seal of office.

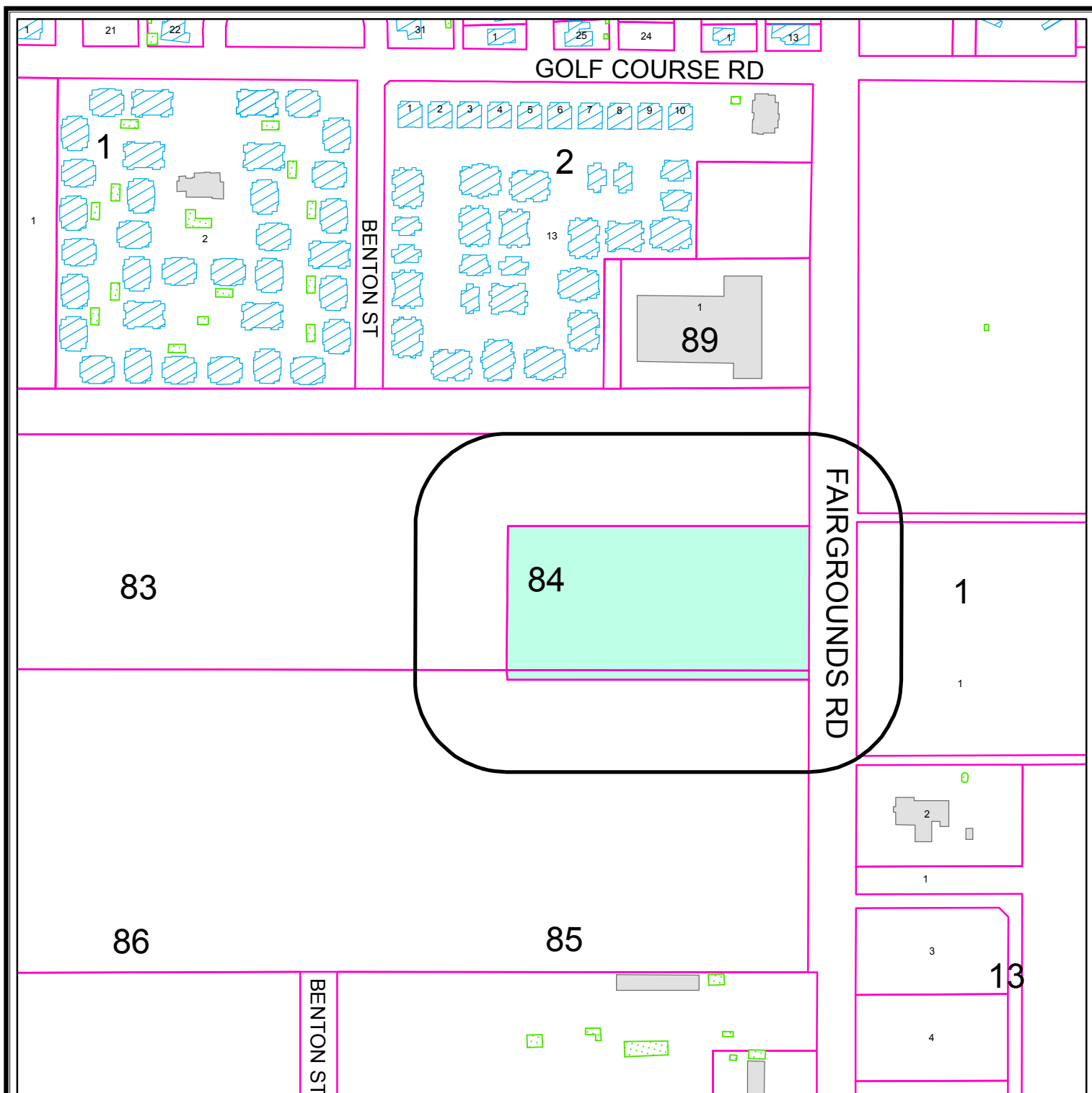
Debbie Brown

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>WJ</u>	Date: <u>10/16/12</u>
Assigned: <u>JC</u>	
For: <u>Pt 2</u>	On: <u>11/5/12</u>



****Application will not be considered for scheduling until reviewed by a planner.****



PROPERTY OWNER NOTIFICATION MAP

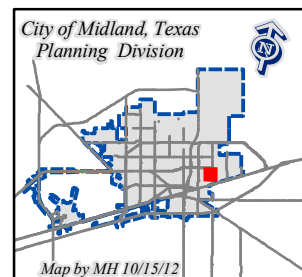
Z - 12 - 039

Scale: 1" = 300'

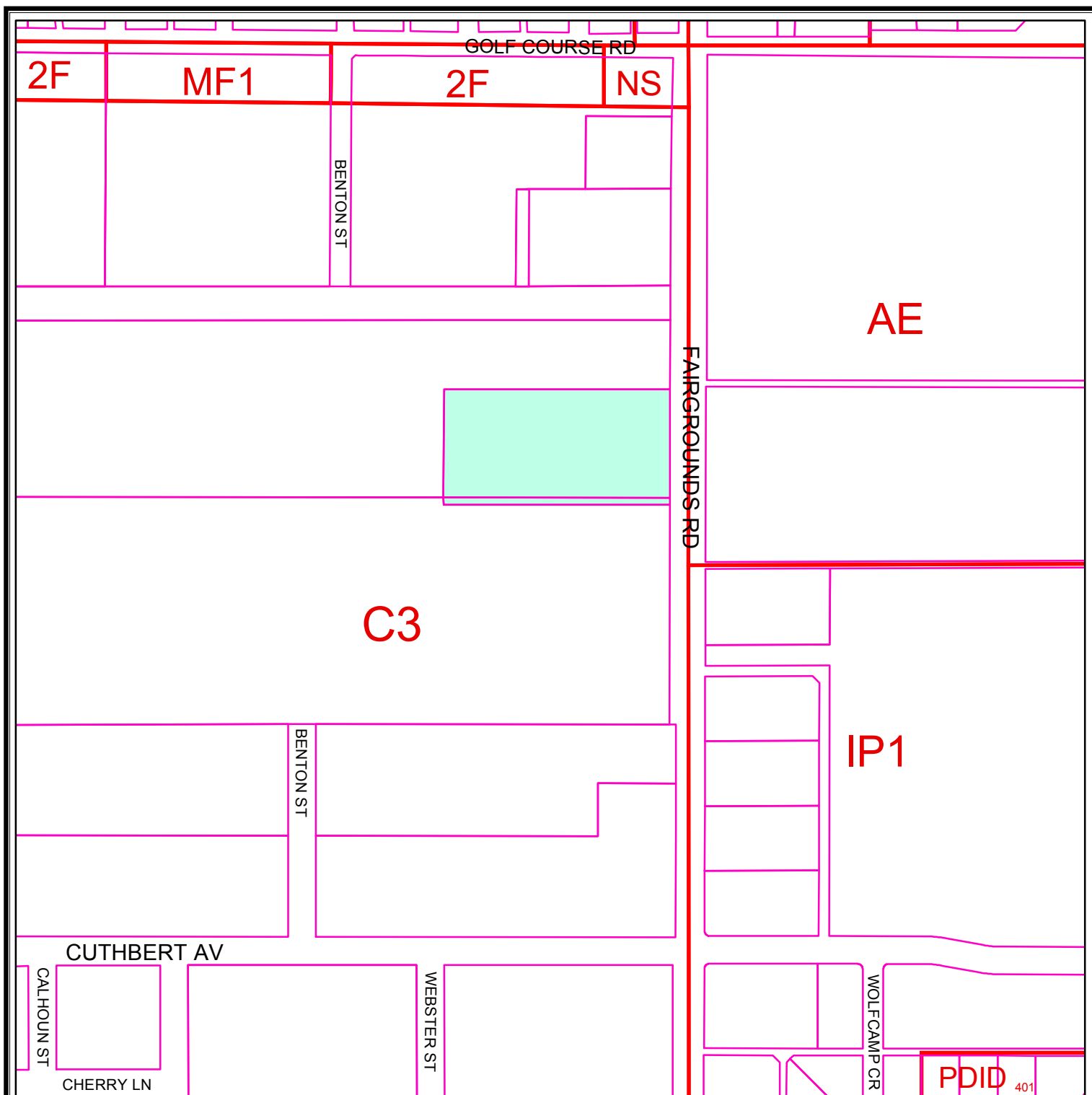
Consider a request for a zone change from C3, Commercial District to PD, Planned District for a Housing Development on a 5.00-acre tract of land out of Blocks 84 and 85, East Midland Addition, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



©THE CITY OF MIDLAND - 2012
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC. IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CIZING, OR OTHER DECISION SOLELY ON THE INFORMATION CONTAINED HEREIN.



ZONING MAP

Z - 12 - 039

Scale: 1" = 400'

Consider a request for a zone change from C3, Commercial District to PD, Planned District for a Housing Development on a 5.00-acre tract of land out of Blocks 84 and 85, East Midland Addition, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, 02	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

© THE CITY OF MIDLAND 2012; THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA. WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.





City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: 12/18/2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider an ordinance at approximately 10:36 a.m. and consider an ordinance on a request by Dusty Evans for approval of a zone change from AE, Agriculture Estate District on a 3.911-acre tract of land and from PD, Planned District for a Shopping Center on a 7.709-acre tract, to LR-2, Local Retail District.

Purpose:

Consider an ordinance at approximately 10:36 a.m. and consider an ordinance on a request by Dusty Evans for approval of a zone change from AE, Agriculture Estate District on a 3.911-acre tract of land and from PD, Planned District of a Shopping Center on a 7.709-acre tract, to LR-2, Local Retail District. (Generally located on the northwest corner of the intersection of N. Midkiff Road and Mockingbird Lane.)

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Dusty Evans is requesting to rezone approximately 11.62 acres of his property for future development in accordance with LR-2, Local Retail District, regulations. The rezoning request consists of two zoning districts, an AE, Agriculture Estate District, zoned tract, and a PD, Planned District for a Shopping Center, which was adopted in 1994, but was never developed. Mr. Evans' intention to rezone removes the obligation of the planned district site plan and the associated public hearings that would currently be required on the larger, 7.7-acre tract. The planned district's underlying zoning regulation is LR-1, Local Retail District, which provides for slightly fewer uses than the LR-2 usage requested. The primary difference applicable in this case is the *ability to request* for the sale of alcoholic beverages for on-premise consumption by a specific use permit at a later date. While a public hearing for a site plan would not be required, any development is still subject to administrative site plan approval and design guidelines. If the zoning is approved, the property will need to be platted, any public improvements addressed, and (for the alcohol sales portion of the plan) a Specific Use Permit approved. The Planning and Zoning Commission recommended approval on November 19, 2012. The Staff concurs with this recommendation for approval.

Attachments:

November 19, 2012 P&Z Staff Report
Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION BY AMENDING CHAPTER ONE, TITLE XI, OF THE CITY CODE OF MIDLAND, TEXAS, BY PERMITTING A 3.911-ACRE TRACT OF LAND OUT OF SECTION 8, BLOCK "X", H.P. HILLIARD SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS, WHICH IS PRESENTLY ZONED AE, AGRICULTURE ESTATE DISTRICT, AND A 7.709-ACRE TRACT OF LAND OUT OF SECTION 8, BLOCK "X", H.P. HILLIARD SURVEY, 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 NORTHWEST CORNER OF THE INTERSECTION OF NORTH MIDKIFF ROAD AND MOCKINGBIRD LANE); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF TWO THOUSAND DOLLARS (\$2,000.00); AND ORDERING PUBLICATION

WHEREAS, the City Planning and Zoning Commission and the Governing Body of the City of Midland, in compliance with the City Charter and the State law with reference to the creation of Districts under the zoning ordinance regulations and zoning map, have given the requisite notices by United States mail, publication and otherwise; and after a full and fair hearing to all of the property owners generally and particularly to those interested persons situated in the affected area and in the vicinity thereof, the Governing Body finds that the public health, safety and general welfare will be best served by the creation of an LR-2, Local Retail District, as set out hereinafter;

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

SECTION ONE. That Chapter 1, Title XI, of the City Code of Midland, Texas, and the official zoning map of the City of Midland, Texas, are hereby amended insofar as the hereinafter described property is concerned, which is presently zoned AE, Agriculture Estate District, in part, and PD, Planned District for a Shopping Center, in part, and it shall be used as an LR-2, Local Retail District, said property being described as follows:

A 3.911-acre tract of land and a 7.709-acre tract of land, all out of Section 8, Block

“X”, H.P. Hilliard Survey, City and County of Midland, Texas, said tracts being more specifically described by metes and bounds in Exhibits “A” and “B”, respectively, which are attached hereto and incorporated herein.

SECTION TWO. That City of Midland Ordinance No. 7300 is hereby repealed.

SECTION THREE. That the definitions given in the zoning regulations contained in the City Code of the City of Midland, Texas, shall be applicable to such of those terms as are used herein.

SECTION FOUR. The provisions of this ordinance are to be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION FIVE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION SIX. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding two thousand dollars (\$2,000.00).

SECTION SEVEN. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 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 FORM:

Keith Stretcher, City Attorney



NEWTON ENGINEERING, PC

4908 N. Midkiff Rd.
Midland, Texas 79705
(432) 770-0499

F-13856

November 8, 2012

Field Notes

3.911 acres

A 3.911 acre tract of land out of Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas and being and more particularly described as follows:

Starting at a point in the centerline intersection of Mockingbird Lane and Midkiff Road at the Southeast corner of said Section 8.

Thence S 75°40'02" W along the South line of said Section 8, 460.00 feet and N 14°27'48" W, 730.00 feet to the Place of Beginning of this tract.

Thence N 14°27'48" W along the West line of this tract, 370.00 to its Northwest corner.

Thence N 75°40'02" E along the North line of this tract, 460.00 feet to the Northeast corner of this tract on the East line of said Section 8.

Thence S 14°27'48" E along the East line of this tract and said East line of Section 8, 370.00 feet to the Southeast corner of same.

Thence S 75°40'02" W along the South line of this tract 460.00 feet to the place of beginning and containing 3.911 acres of land. This survey was made from records obtained from the Clerk's Office of Midland County, Texas.

Charles P. Rutherford

Charles P. Rutherford, R.P.



RECEIVED

NOV 9 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

CASE NO. Z-12-047



NEWTON ENGINEERING, P.C.

4908 N. Midkiff Rd.
Midland, Texas 79705
(432) 770-0499

F-13856

November 8, 2012

Field Notes

7.709 acres

A 7.709 acre tract of land out of Section 8, Block "X", H.P. Hilliard Survey, Midland County, Texas and being and more particularly described as follows:

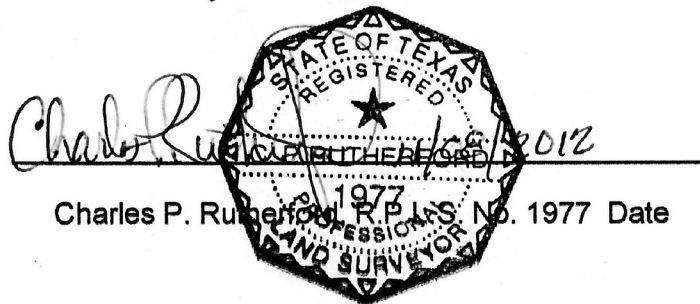
Beginning at a point in the centerline intersection of Mockingbird Lane and Midkiff Road at the Southeast corner of said Section 8 and the Southeast corner of this tract.

Thence S 75°40'02" W along the South line of said Section 8, 460.00 feet to the Southwest corner of this tract.

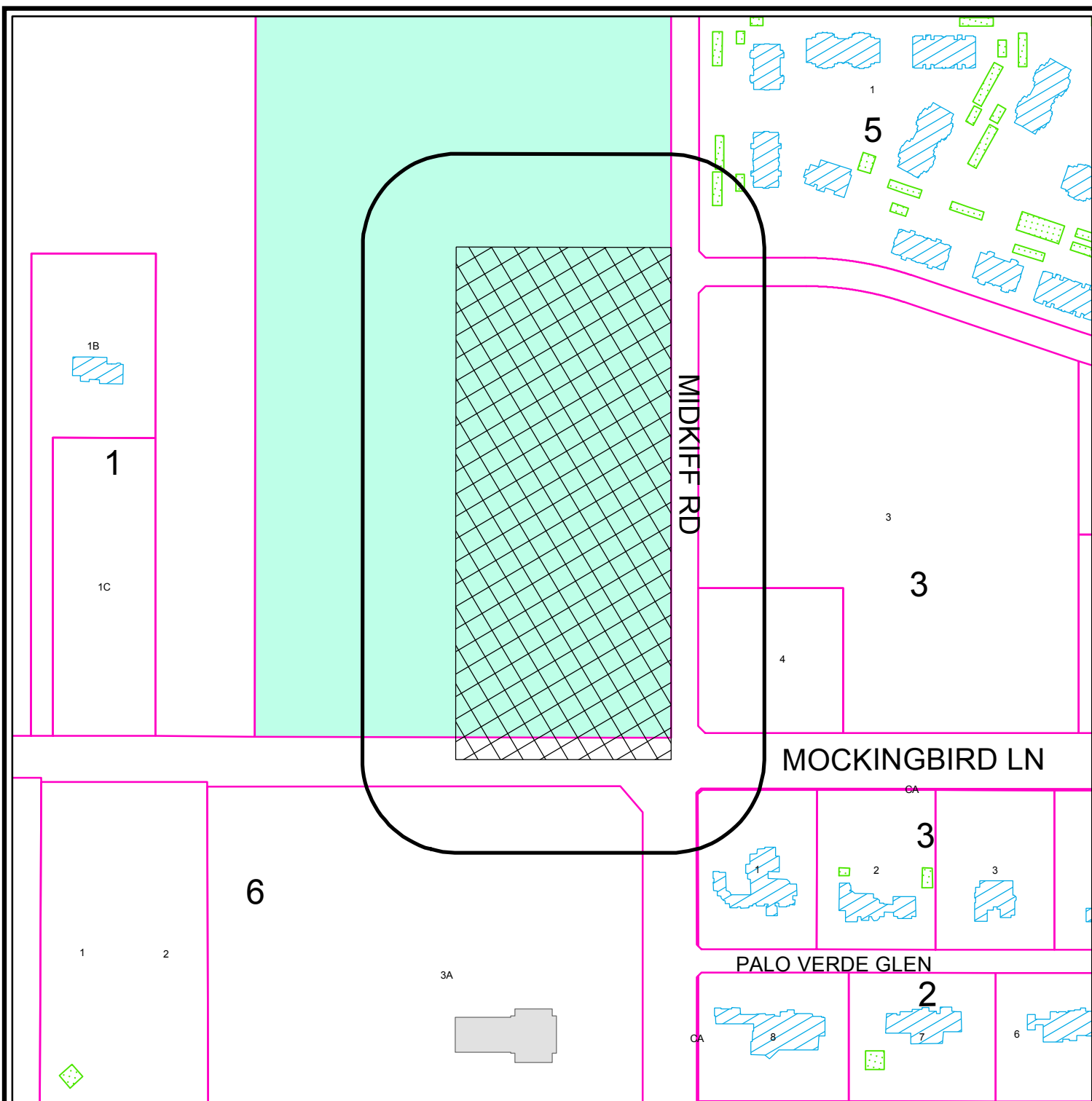
Thence N 14°27'48" W, 460.00 feet from and parallel to the East line of said Section 8, 730.00 feet to the Northwest corner of this tract.

Thence N 75°40'02" E along the North line of this tract, 460.00 feet to the Northeast corner of this tract on the East line of said Section 8.

Thence S 14°27'48" E along the East line of this tract and said East line of Section 8, 730.00 feet to the place of beginning and containing 7.709 acres of land. This survey was made from records obtained from the Clerk's Office of Midland County, Texas.



CASE NO. 2-12-047



PROPERTY OWNER NOTIFICATION MAP

Z - 12 - 047

Scale: 1" = 300'

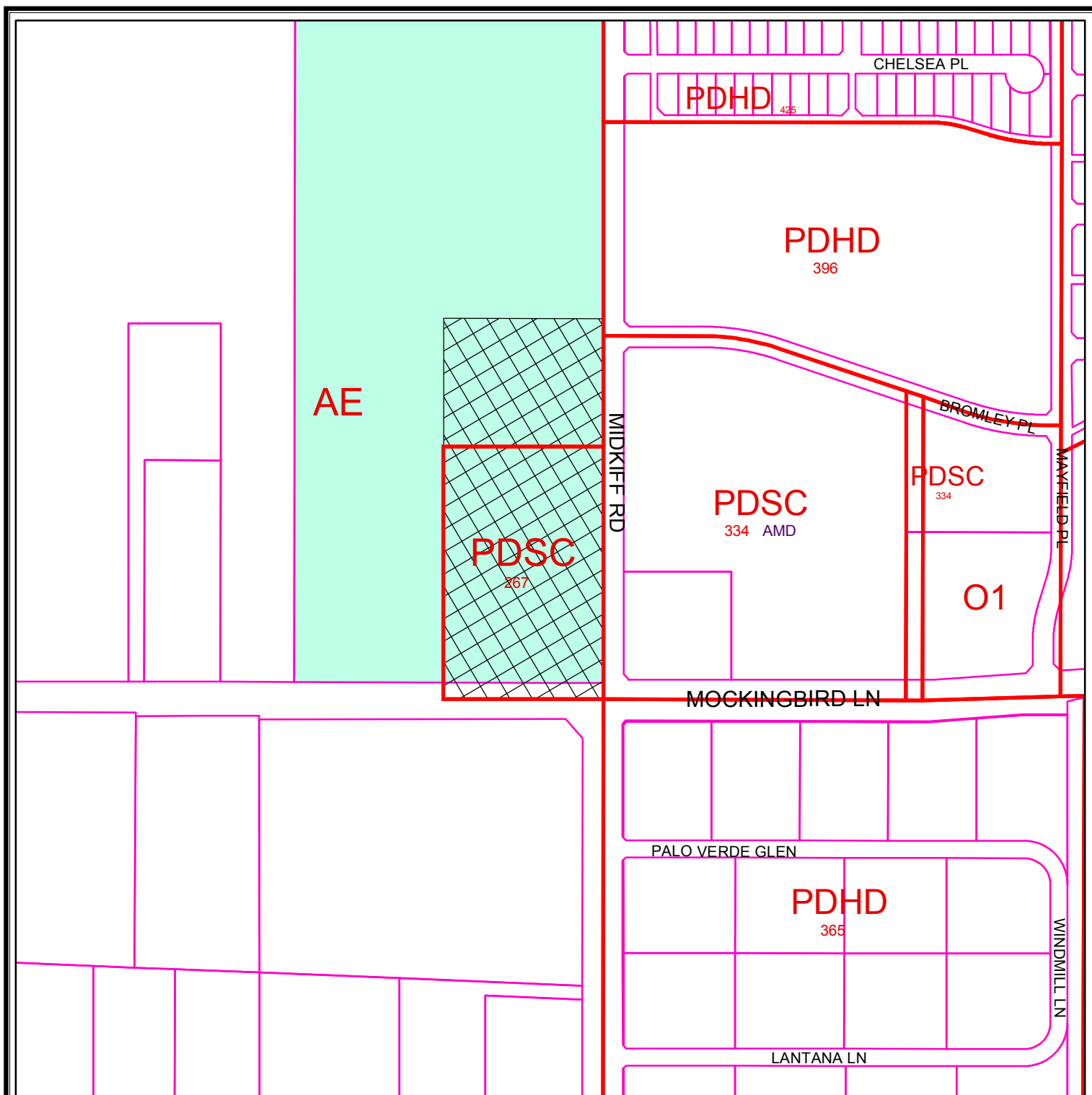
Consider a request for a zone change from AE, Agriculture Estates District on a 3.911-acre tract of land and from PD, Planned District of a Shopping Center on a 7.709-acre tract, to LR-2, Local Retail District all out of Section 8, Block "X", H. P. Hilliard Co. Survey, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PUBLIC BLDGS
- PRIVATE BLDGS
- ACCESSORY BLDGS



©THE CITY OF MIDLAND - 2012
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC. IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, SITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.



ZONING MAP

Z - 12 - 047

Scale: 1" = 400'

Consider a request for a zone change from AE, Agriculture Estates District on a 3.911-acre tract of land and from PD, Planned District of a Shopping Center on a 7.709-acre tract, to LR-2, Local Retail District all out of Section 8, Block "X", H. P. Hilliard Co. Survey, City and County of Midland, Texas.

LEGEND

ZONING PARCELS

ZONING DISTRICTS:

FD	FUTURE DEVELOPMENT	BP	BUSINESS PARK
PD	PLANNED DISTRICT	P	PARKING
AE	AGRICULTURE ESTATE	01, O2	OFFICE
CE	COUNTRY ESTATE	NS	NEIGHBORHOOD SERVICE
1F1, 1F2, 1F3	ONE-FAMILY DWELLING	LR1, LR2, LR3	LOCAL RETAIL
MH	MOBILE HOME DWELLING	C1, C2, C3	COMMERCIAL
TH	TOWNHOUSE DWELLING	IP, IP1, IP2, IP3	INDUSTRIAL PARK
2F	TWO-FAMILY DWELLING	LI	LIGHT INDUSTRY
MF1, MF2	MULTIPLE FAMILY DWELLING	HI	HEAVY INDUSTRY

© THE CITY OF MIDLAND 2012; THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA. WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.



Case Number: 2-12-047

CITY OF MIDLAND
Planning Division

APPLICATION TO CHANGE ZONING CLASSIFICATION

Dusty Evans <u>1, Ltd.</u>	(432) 557-4340
Applicant Name	Contact #s
3700 Mockingbird Ln.	79707
Address	Zip Code
Evans I Ltd.	
Property Owner Name	Contact #s
Address	Zip Code
Newton Engineering, PC	(432) 770-0499
Representative Name	Contact #s
4908 N. Midkiff Rd.	79705
Address	Zip Code

Street address and Legal Description of property (complete Lot, Block, and Subdivision, or if unplatted, attach a Metes and Bounds description with surveyor's seal). Describe by tracts if more than one zoning district is requested: See attached Metes and Bounds
Description.

PRESENT ZONE: 7.7 acres PDSC remainder AE REQUESTED ZONE: LR-2
(List by tracts if more than one district is requested)

Reason for Zone Change or PD Amendment: To conform to development

Present Use of Property: Pasture

Proposed Use of Property: Retail.

How will zone change affect the public health, safety and welfare? N/A

Describe how conditions affecting the property have changed since present zoning designation:
N/A

Is a Specific Use Permit with Term for alcoholic beverages sales needed? x Yes No

APPLICATION FEES:

- Single, standard zone change: **\$400**. Multiple, standard zone change: add **\$100** per district.
- Single PD, Planned District zone change: **\$550**. Multiple PD proposal: add **\$100** per district.
80% of fee will be refunded if no P&Z public hearing is called; if no City Council public hearing is called, then 30% of fee will be refunded.
- If a Traffic Impact Analysis is required, a fee of up to \$500.00 will be assessed.

SITE PLAN SUBMITTALS (if applicable):

16 copies of the PD site plan: N/A
Site Plan on a CD in .pdf and .jpg format: N/A

SIGNATURE (by property owner only - authorized agent must sign affidavit below)

Property Owner (signature): *Dusty Evans* Date: 10/12/12

If an Agent is authorized by the property owner to file and execute the application on behalf of the property owner, the Agent must complete the affidavit below.

STATE of TEXAS
COUNTY OF MIDLAND

Before me, the undersigned authority, on this day personally appeared

_____ who, being by me duly sworn, upon oath says: That (s)he is authorized by _____, the owner of the above described property, to fully represent him/her in this application and that (s)he had the legal right, power and authority to sign said owner's name hereto as his/her attorney in fact.

Authorized Agent (signature)

Subscribed and sworn to before me, this _____ day of _____, 20 __, to certify which witness my hand and seal of office.

NOTARY PUBLIC, MIDLAND COUNTY, TEXAS

FOR OFFICE USE ONLY	
Rec'd By: <u>JES</u>	Date: <u>10/17/12</u>
Assigned: _____	
For: <u>P42</u>	On: <u>11-19-12</u>

****Application will not be considered for scheduling until reviewed by a planner.****

PLANNING AND ZONING COMMISSION

November 19, 2012

CASE: Z-12-047, Dusty Evans.

REQUEST: Hold a public hearing and consider a request for a zone change from AE, Agriculture Estate District on a 3.911-acre tract of land and from PD, Planned District of a Shopping Center on a 7.709-acre tract, to LR-2, Local Retail District.

APPLICANT/OWNER: Dusty Evans.

LEGAL DESCRIPTION: A 3.911-acre tract of land and a 7.709-acre tract, all out of Section 8, Block "X", H. P. Hilliard Co. Survey, City and County of Midland, Texas.

LOCATION: Generally located on the northwest corner of the intersection of N. Midkiff Road and Mockingbird Lane.

CURRENT ZONING: AE, Agriculture Estate District, and PD, Planned District for a Shopping Center.

DETAILS OF REQUEST:

1. The applicant is requesting to rezone approximately 11.62 acres of his property for future development in accordance with LR-2, Local Retail District, regulations. The subject property is currently split between two zoning districts. The southern 7.7 acres is zoned for a PD, Planned District for a Shopping Center (subject to LR-1, Local Retail, regulations), and was adopted in 1994, but was never developed. The balance of the 11.62 acres is zoned AE, Agriculture Estate District, and is located adjacent to, and immediately north of the previously described 7.7-acre tract. The applicant intends to open a retail store in the future. This requested zone change is the first step in the applicant's plan. If a rezoning request is approved, this will only grant LR-2, Local Retail, uses. The property will also need to be platted. In addition, any proposed sale of alcohol for on-premise consumption, will require a separate specific use permit approval process.

SURROUNDING ZONING AND LAND USE:

2. This property is located at the northwest corner of the intersection of Midkiff Road and Mockingbird Lane. Both of the subject property's frontages are on arterial class roads. Adjacent zoning includes a recently approved site plan, to the east of Midkiff Road, for a Planned District for a Shopping Center that includes a mix of office/retail development subject to LR-2, Local Retail District, regulations. To the southeast and south it is zoned AE, Agriculture Estates District, these areas are developed with housing and one large church lot, respectively. Immediately adjacent to the subject property is the applicant's vineyard land

ANALYSIS:

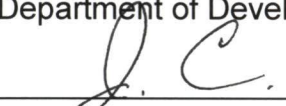
3. The applicant's intention to rezone removes the obligation of a planned district site plan and the associated public hearings. The planned district's underlying zoning regulation is LR-1, Local Retail District, which provides for slightly fewer uses than the, LR-2 usage requested. The primary difference applicable in this case is the *ability to request* for the sale of alcoholic beverages for on-premise consumption by a specific use permit at a later date. While a public hearing for a site plan would not be required, any development is still subject to administrative site plan approval and design guidelines. If the zoning is approved, the property will need to be platted, any public improvements addressed, and (for the alcohol sales portion of the plan) a Specific Use Permit approved. Staff supports this request for rezoning in accordance with LR-2 regulations and find it matches the zoning of the retail/office development approved across Midkiff Road.

STAFF RECOMMENDATION:

Staff recommends approval of this request for a zone change from AE, Agriculture Estate District on a 3.911-acre tract of land and from PD, Planned District of a Shopping Center on a 7.709-acre tract, to LR-2, Local Retail District, subject to the following conditions:

- A. That the property shall be governed by LR-2, Local Retail District, regulations in all respects;
- B. That the property must be platted and any public improvements are adequately addressed;
- C. That Ordinance 7300 is repealed by this action;


Cameron Walker, AICP
Planning Division Manager
Department of Development Services


Ken Van Dyne, Senior Planner
Department of Development Services

Attachments:

Application
Field Notes



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: December 18, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Hold a public hearing at approximately 10:39 a.m. and consider a Resolution on a request by James Isbell for a Temporary Permit for a Manufactured Home for a Guard's Residence. (Generally located at the east extension of Solomon Lane on the west side of N. Fairgrounds Road.)

Purpose:

Hold a public hearing at approximately 10:39 a.m. and consider a Resolution on a request by James Isbell for a Temporary Permit for a Manufactured Home for a Guards Residence. Generally located at the east extension of Solomon Lane on the west side of N. Fairgrounds Road.

Recommended City Council Action

☒ Approve

☐ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

Mr. Isbell is requesting the temporary placement of a manufactured home generally located at the extension of Solomon Lane on the west side of N. Fairgrounds Road for the duration of two years to oversee the development of his property. The city is requiring that Mr. Isbell submits a sketch plan within two months of the placement of the manufactured home, and that a preliminary plat be submitted subsequently within six months. Additionally, the manufactured home must be removed from the property before any final inspections for the proposed platted property for future development may occur. Mr. Isbell will be required to remove the manufactured home from his

property if he fails to meet the submittal timeline and inspection requirements regarding the future development of his property.

Attachments: Application, Maps, Exhibit A

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING A TEMPORARY
SPECIAL PERMIT FOR A MANUFACTURED HOME
ON LOT 9, BLOCK 2, PAVILION PARK, SECTION 7,
CITY AND COUNTY OF MIDLAND, TEXAS
(GENERALLY LOCATED ON THE EAST EXTENSION
OF SOLOMON LANE ON THE WEST SIDE OF NORTH
FAIRGROUNDS ROAD)**

WHEREAS, pursuant to Section 5-5-14 of the City Code of Midland, Texas, James Isbell has applied for a Temporary Special Permit to locate on Lot 9, Block 2, Pavilion Park, Section 7, City and County of Midland, Texas, for occupancy by a guard, a manufactured home on said property on an emergency basis; and

WHEREAS, after a full public hearing at which both the applicant and interested citizens within the vicinity involved were given an opportunity to be heard, the Council finds and determines that an emergency exists constituting a genuine hardship for the applicant and that such permit should be issued;

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

SECTION ONE. That the City Manager is hereby authorized and directed to issue, on behalf of the City of Midland, Texas, a Temporary Special Permit authorizing James Isbell to locate on Lot 9, Block 2, Pavilion Park, Section 7, City and County of Midland, Texas, for occupancy by a guard, a manufactured home on said property, all subject to the terms and conditions as set out in Section Two herein.

SECTION TWO. That said Temporary Special Permit shall be subject to the following conditions and restrictions.

- A. That the placement of a manufactured home on this property shall conform to the site plan setbacks in all respects, as shown on Exhibit "A" which is attached hereto and incorporated herein.
- B. That the applicant shall submit a sketch plan to begin the platting process within 2 months of the placement of the manufactured home.
- C. That the applicant shall submit a preliminary plat within 6 months of the placement of the manufactured home.
- D. That the manufactured home must be removed from the property before any

final inspections for the proposed platted property for future development may occur.

- E. That the manufactured home shall be removed from the property if Conditions B, C and D above are not met.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



Google earth

feet 3000
km 1

EXHIBIT A

T-12-002

Case Number:

**CITY OF MIDLAND
Planning Division**

**SPECIAL TEMPORARY PERMIT FOR A MANUFACTURED HOME
APPLICATION**

For Occupancy by a Caretaker, Manager or Guard

16x55 Palm Harbor 2 BR mobile Home 2013

Name of Land Owner: James Isbell Phone: 432 557 0232
Address: 1801 E Solomon Ln
E-Mail address: JIsbell55@gmail.com

Legal Description of Property to accommodate manufactured home:

(Complete Lot and Block Description below or if not a lot in a recorded plat, attach a Metes and Bounds Description with surveyors seal:): Lot: 9 Block: 2 Addition: Parkview Park Sect 7

Permit Address: _____

Zoning classification: AE

Name of manufactured home owner: Same Phone: _____
Address: _____
E-Mail address: _____

Relationship to Land Owner: I am Land owner

Reason for request and description of need: overseeing Development

Have you considered any alternatives to a manufactured home? If so, please comment:

no

The maximum term for a permit is two (2) years. Said permit may be renewed for successive two-year periods.

Length of time for which permit is requested: 2 years

Is this a new application or a request for an extension? _____

If an extension, when was the original permit approved? _____

The applicant hereby certifies that the information contained herein is accurate and that, if the requested permit is approved:

- a) the manufactured home shall only be used as authorized by this permit;

- b) the manufactured home shall not exceed 1,000 square feet;
- c) the manufactured home shall not be rented out or used for any commercial purpose;
and
- d) the manufactured home shall be removed from the premises at the expiration of the approved permit (unless an extension is granted) or when it is no longer needed for the reason stated above, whichever is sooner.
- e) the manufactured home shall be located not less than 30' from any other structure or from any lot line of an adjacent lot or parcel; and
- f) the manufactured home shall be observe all area regulations applicable to single family residences unless the City Council specifically approves an exception in approving the permit.

Note: The City Council may impose any special conditions, restrictions, limitations on such permits as it deems to be in the public interest after full hearing on said application. The City Council reserves at all times the right and power to revoke any such permit for violation of any of its terms after a hearing at which the holder has been given at least five (5) days notice.

A written notice stating the time, place and purpose of the public hearing will be sent to land owners within 200 feet of the lot or property as described above, by mail not less than ten (10) days prior to the public hearing.

NOTE: A one hundred-dollar (\$100.00) fee and a site plan must accompany all requests.

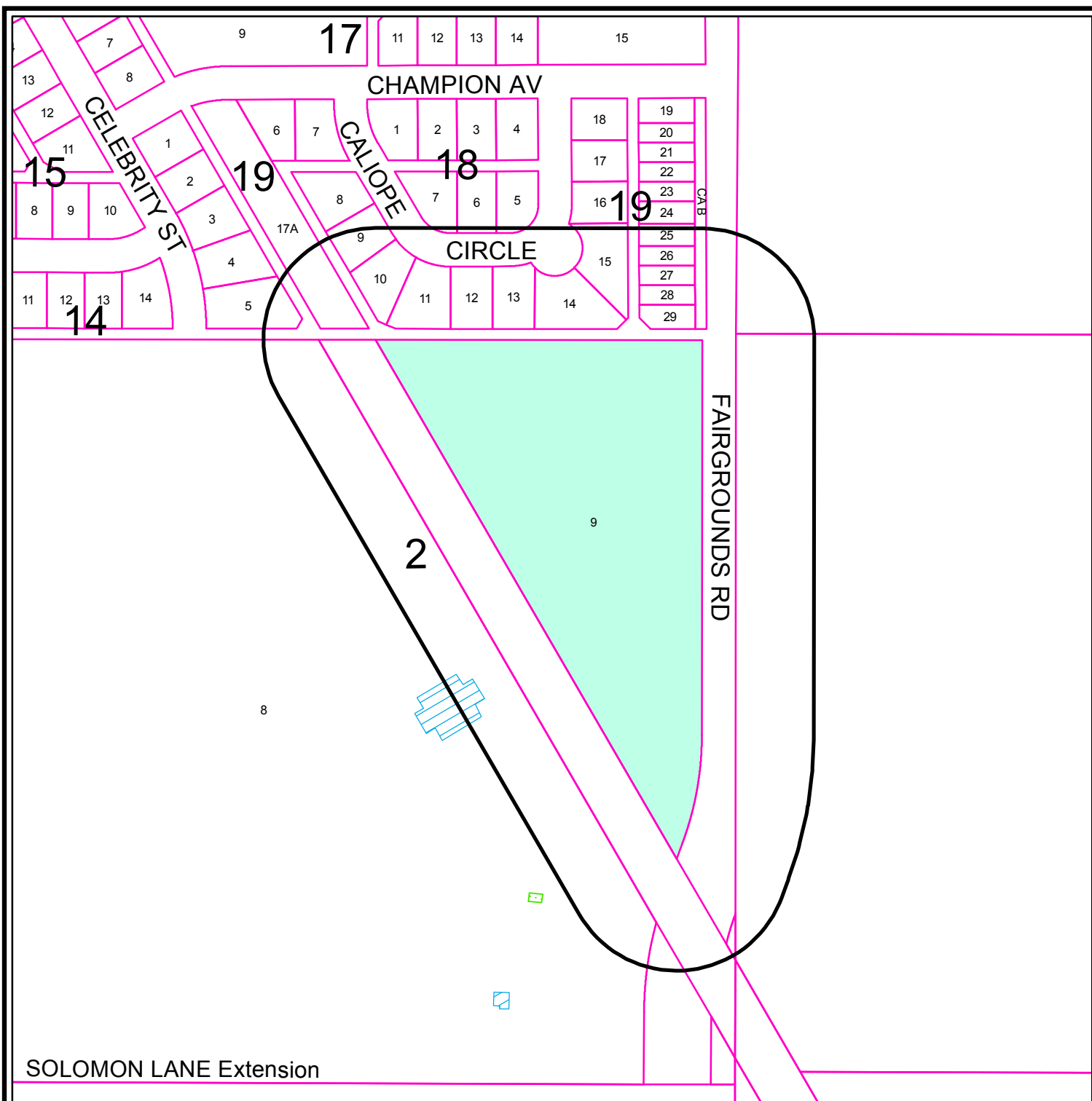

12/4/12

 Signature of Applicant Date

 Signature of Landowner if other than Applicant Date

****Application will not be considered for scheduling until reviewed by a planner.****

FOR OFFICE USE ONLY			
Rec'd By: _____	Date: _____		
Assigned: _____	For: <u>City Council</u>	On: _____	



PROPERTY OWNER NOTIFICATION MAP

T - 12 - 002

Scale: 1" = 200'

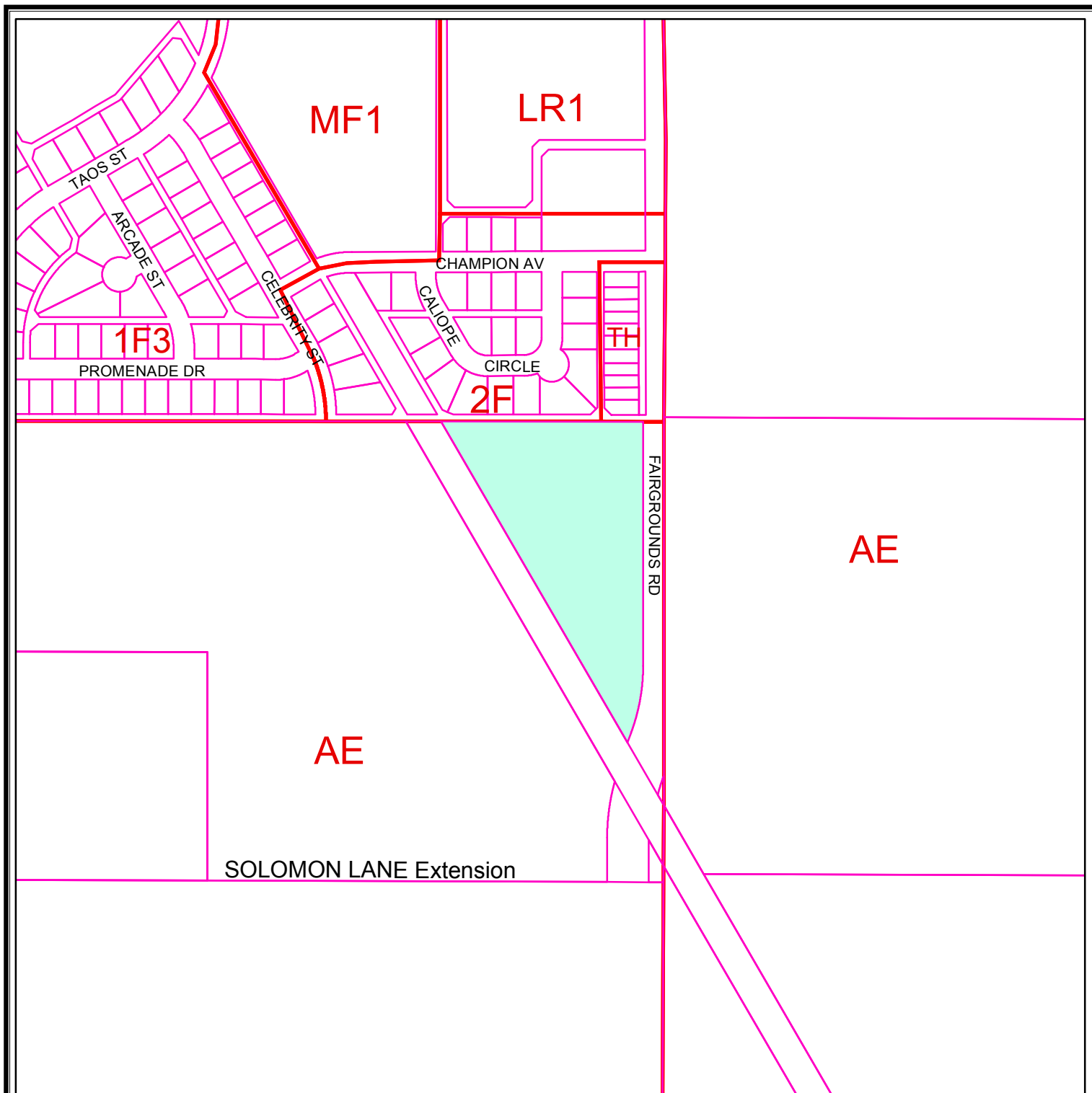
Consider a request for a Special Temporary Permit for the placement of a Manufactured Home on Lot 9, Block 2, Pavilion Park, Section 7, City and County of Midland, Texas.

LEGEND

- CITY LIMITS
- 200 FT. LEGAL NOTICE LIMIT
- PARCEL
- PRIVATE BLDGS
- ACCESSORY BLDGS



©THE CITY OF MIDLAND - 2012
THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC. IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, SITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.



ZONING MAP

T - 12 - 002

Scale: 1" = 400'

Consider a request for a Special Temporary Permit for the placement of a Manufactured Home on Lot 9, Block 2, Pavilion Park, Section 7, 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

© THE CITY OF MIDLAND 2012; THE CITY OF MIDLAND SHALL NOT BE RESPONSIBLE FOR ANY DECISIONS BASED UPON THE USE OF THIS DATA. WHILE THIS DATA IS MADE AVAILABLE TO THE PUBLIC, IT WAS CREATED FOR INTERNAL USE BY THE CITY OF MIDLAND WHICH MAKES NO CLAIM AS TO ITS ACCURACY OR COMPLETENESS. THIS DATA IS NOT DESIGNED TO BE USED AS A PRIMARY TOOL IN PERMITTING, CITING, OR OTHER DECISIONS BASED SOLELY ON THE INFORMATION CONTAINED HEREIN.





City Council Agenda

Approved for Agenda:

JNichols

City Manager's Office

MEETING DATE: December 18, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a resolution approving the issuance of a permit to Linn Operating, Inc. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Robbie 24D) located 262 feet from the north line and 467 feet from the west line located in Section 24, Block 40, T-1-S, T&P RR Co., Survey, City and County of Midland, Texas. (Generally located on the east side of Avalon Drive, approximately 250 feet south of the extension of Mockingbird Lane.)

Purpose:

To consider a resolution approving the issuance of a permit to Linn Operating, Inc. (Operator), *for a Permit to Drill an Oil & Gas Well within the City Limits*, (Robbie 24D) located 262 feet from the north line and 467 feet from the west line located in Section 24, Block 40, T-1-S, T&P RR Co., Survey, City and County of Midland, Texas. The required 30-day public comment has passed and the Council may consider this request. No letters of objection received.

Recommended City Council Action

X Approve Deny Direction/Informational

Fiscal Impact:

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

Discussion:

The Oil and Gas Advisory Committee has reviewed this well site in detail and recommends application approval with a clarification of surface map and acceptance of a 495 foot variance from an occupied commercial structure. Linn Operating has addressed Committee recommendations and updated the application. Linn Operating is requesting a variance to have an office in the corporate limits of the City of Midland and is requesting a variance of 495 feet from an occupied commercial structure. Road repair can be consolidated with existing agreement.

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

RESOLUTION NO.

RESOLUTION APPROVING THE ISSUANCE OF A PERMIT TO LINN OPERATING, INC. (“OPERATOR”) TO DRILL AN OIL AND GAS WELL WITHIN THE CITY LIMITS LOCATED 262 FEET FROM THE NORTH LINE AND 467 FEET FROM THE WEST LINE, SECTION 24, BLOCK 40, T-1-S, T&P RR CO. SURVEY, CITY AND COUNTY OF MIDLAND, TEXAS (GENERALLY LOCATED ON THE EAST SIDE OF AVALON DRIVE, APPROXIMATELY 250 FEET SOUTH OF THE EXTENSION OF MOCKINGBIRD LANE); PROVIDING THAT SAID PERMIT DOES NOT REQUIRE A NEW ROAD REPAIR AGREEMENT BUT SHALL BE CONSOLIDATED UNDER AN EXISTING ROAD REPAIR AGREEMENT; AND APPROVING VARIANCES

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 13, 2012; and

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

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

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

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

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

SECTION TWO. That the Mayor is hereby authorized and directed to execute a permit, on behalf of the City of Midland, that will allow Operator to drill an oil and gas well within the City limits located 262 feet from the north line and 467 feet from the west line, Section 24, Block 40, T-1-S, T&P RR Co. Survey, City and County of Midland, Texas. Said permit is attached hereto as Exhibit "A" and incorporated herein for all legal purposes.

SECTION THREE. That said permit does not require a new road repair agreement but shall be consolidated under the existing road repair agreement between Operator and the City of Midland for Operator's wells in this area.

SECTION FOUR. That the following variances are approved for said permit: (1) the

permitted well may be located no closer than 495 feet from occupied commercial structures; and (2) the office of the Operator's representative may be located outside the corporate limits of the City of Midland, Texas, at 6010 E. Highway 191, Ste. 130, Odessa, Texas.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO CONTENT
AND COMPLETENESS:

James R. Nichols, Assistant City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

OIL AND GAS WELL PERMIT

The City Council of the City of Midland, Texas, at its regular meeting on December 18, 2012, considered the application of Linn Operating, Inc., dated September 20, 2012, to drill an oil and gas well inside the territorial limits of the City of Midland, Texas. The City Council of the City of Midland, Texas, by appropriate action approved the application and authorized the issuance of this permit.

This documentation hereby constitutes a permit, issued in accordance with the Midland City Code, Ordinance 8769, to drill an oil and gas well, in the application of Linn Operating, Inc., dated September 20, 2012, and filed with the Oil & Gas Compliance Officer and incorporated herein for all legal purposes.

The location of Linn Operating, Inc., Robbie 24D oil and gas well shall be 262 feet from the north line and 467 feet from the west line, Section 24, Block 40, T-1-S, T&P RR Co., Survey, Midland County, Texas. The hole size, casing program, cement program and total depth of that well shall be in strict compliance with the proposed hole size, casing program, cementing program and proposed total depth found in that application of Linn Operating, Inc., 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. Included is approved variance for permitted well to be located no closer than 495 feet from occupied commercial structures, shown on Exhibit "C" which is incorporated into and made a part of this permit for all purposes. Included is approved variance for the location of Operator's representative office outside of corporate limits of the City of Midland, Texas and to be located at 6010 E. Highway 191, Ste. 130, Odessa, Texas.

This permit shall be effective from December 18, 2012, through December 18, 2013, and so long thereafter as oil or gas is produced or until such time as the permittee has permanently abandoned the operations of the well or facility for which this permit is issued.

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

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

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

In addition to the requirements of the Midland City Code, Ordinance 8769, and the requirements of this permit, including the General and Specific Conditions incorporated herein, Linn Operating, Inc., shall develop, maintain and operate the well described herein in accordance with the conditions, limitations and safeguards contained in Linn Operating, Inc., application for said well. Linn Operating, Inc., 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, 2012.

CITY OF MIDLAND, TEXAS

BY: _____

W. Wesley Perry, Mayor

UNDERSTOOD AND AGREE THIS _____ day of December, 2012.

Linn Operating, Inc.

By: _____

Cynthia Pinel

Regulatory Specialist

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

(K)

General Conditions of all Oil and Gas Well Permits.

1.

General Obligations of Operator.

The Operator shall be required to:

a.

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

b.

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

c.

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

d.

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

e.

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

f.

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

g.

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

2.

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

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

a.

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

b.

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

c.

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

d.

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

e.

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

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

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

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

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

3.

Insurance.

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

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

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

x.

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

xi.

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

b.

Standard Commercial General Liability Policy.

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

c.

Excess or Umbrella Liability.

\$1,000,000	Excess, if the Operator has a stand-alone Environmental Pollution Liability (EPL) policy.
-------------	---

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

d.

Environmental Pollution Liability Coverage.

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

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

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

e.

Workers Compensation and Employers Liability Insurance.

i.

Workers Compensation benefits shall be Texas Statutory Limits.

ii.

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

iii.

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

f.

Automobile Liability Insurance.

i.

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

ii.

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

g.

Certificates of Insurance.

i.

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

ii.

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

iii.

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

iv.

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

v.

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

vi.

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

Indemnification.

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

Notice.

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

Notice addresses are as follows:

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

OPERATOR: _____
Cynthia Pinel, Regulatory Specialist

Linn Operating, Inc.
6010 E Hwy 191, Ste. 130
Odessa, Texas 79762
(432) 366-1557

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

(L)

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

1.

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

2.

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

3.

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

4.

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

5.

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

6.

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

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

7.

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

8.

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

9.

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

10.

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

11.

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

12.

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

13.

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

14.

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

15.

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

16.

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

17.

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

18.

Fresh water wells. The measurements required by this Subsection shall be in a direct line from the closest Oil and Gas well to the fresh water well.

a.

Upon request of an owner of a fresh water well within 860 feet of an Oil and Gas well, who has been duly notified, Operator shall provide the City Manager with a "pre-drilling" and "post-drilling" water analysis from any such existing fresh water well(s).

b.

Operator shall conduct and fund annual testing for water wells that have been tested pursuant to Subsection (L)18.a. above. This testing program shall continue for the production life of The Well plus three years for a producing well, or for a period of one (1) year for a dry hole.

19.

Compressors. No onsite compressor used to "lift gas" shall be used. No compressor of any type shall be used. In the event Operator determines the use of such compressor is necessary, a detailed plan shall be submitted by Operator to the City Council for consideration. An on-site compressor plan shall include the following information:

- a. The physical size of the compressor;
- b. The power source of the compressor;
- c. The horsepower of the compressor;
- d. The noise of the compressor; and
- e. The manufacturer of the compressor.

No compressor of any type shall be used unless a plan is approved by the City Council.

20.

Gas emission or burning restricted. Operator shall not allow, cause or permit gases to be vented into the atmosphere or to be burned by open flame except as provided by law or as permitted by the Railroad Commission. If the venting of gases into the atmosphere or the burning of gases by open flame is authorized as provided by law or as permitted by the Railroad Commission, then such vent or open flame shall not be located closer than three hundred thirty (330) feet from any building not used in operations on the drilling site and such vent or open flame shall be screened in an effort to minimize detrimental effects to adjacent owners. Operator shall provide notice to the Fire Marshall prior to any open flaring of gas. Gas may not be flared unless for a limited time when completing, or recompleting a well, and only if flaring will not constitute a fire hazard to other owners. If flaring gas, it shall not be burned at a rate greater than 3,000 mcf/d. No gas may be flared between the hours of 7:00 p.m. and 7:00 a.m., except in an emergency.

21.

Gas processing onsite. Except for a conventional gas separator or line heater, no refinery, processing, treating, dehydrating or absorption plant of any kind shall be constructed, established or maintained on the premises without prior written consent of the City Manager.

22.

Grass, weeds, trash. All Drill sites and Operation sites shall be kept clear of high grass, weeds, and combustible trash within a radius of one hundred (100) feet around any Tanks, production facilities, or producing wells.

23.

Hazardous plan. Hazardous Materials Management Plan (HMMP) and all Material Safety Data Sheets (MSDS) for all hazardous materials that will be located, or stored, on the Operations Site shall be submitted to the City Manager.

24.

Lights. Except under emergency circumstances, operator shall not Operate any lights located at the Drill Site. To the extent practicable, and taking into account safety considerations, emergency site lighting shall be directed downward and internally so as to avoid glare on public roads and adjacent dwellings and buildings within three hundred (300) feet. This paragraph does not apply during initial Drilling Operations.

25.

Monitoring for H₂S gas. If required by the Railroad Commission, equipment for the monitoring of H₂S gas shall be used during Drilling. The Operator will comply with all requirements found in Statewide Rule 36 of the Railroad Commission, as amended. Within sixty (60) days after completion, and annually thereafter, Operator shall submit to the City Manager results of testing to determine the concentration of H₂S produced from the Well. If the results of the H₂S testing proves to be one hundred (100) PPM H₂S or greater, the Operator is responsible for determining the one hundred (100) PPM H₂S radius of exposure for each Well and production facility. Wells and facilities where the concentration of H₂S is equal to or greater than one hundred (100) PPM will be considered "Sour." Safety systems described herein must be approved by the Fire Marshall.

a.

The following safety alarms and equipment are required at the well site of all wells that are capable of producing at a sustained rate of at least one hundred twenty-five (125) barrels of oil per day and/or three hundred (300) MCF of gas per day and for "sour" wells whose one hundred (100) PPM H₂S radius of exposure is greater than fifteen (15) feet:

i.

H₂S monitors located along the fencing, as set forth in Subsection M (for "sour" wells only).

ii.

Automated audible alarms to provide warnings for a substantial drop in pressure or for the presence of H₂S in concentrations greater than one hundred (100) PPM.

iii.

Automated valve to shut-in production from the well if a substantial drop in pressure or if the presence of H₂S in concentrations greater than one hundred (100) PPM is detected.

b.

The following safety alarms and equipment are required at "Sour" Tank battery facilities:

i.

H₂S monitors located along the fencing, as set forth in Subsection M.

ii.

Automated audible alarm to provide warnings for the presence of H₂S in concentrations greater one hundred (100) PPM.

iii.

An electrical device capable of shutting down power to all "Sour" wells producing into the battery in the event H₂S in concentrations great than 100 PPM is detected.

26.

Muffling exhaust. Exhaust from any internal combustion engine or compressor, stationary or mounted on wheels, used in connection with the Drilling of any well or for use on any production equipment shall not be discharged into the open air unless it is equipped with an exhaust muffler, or mufflers or an exhaust muffler box constructed of noncombustible materials sufficient to suppress noise and disruptive vibrations and prevent the escape of obnoxious gases, fumes or ignited carbon or soot.

27.

Pits. The following applies for pits used for Drilling and completion operations:

a.

No pit shall be placed in a floodplain without obtaining a floodplain development permit from the City Department of Development Services.

b.

No fresh water pit may be placed in any City recognized drainage way, FEMA floodplain or floodway. Construction of the fresh water pit must comply with all City, state and federal regulations.

c.

The use of earthen pits shall be allowed so long as the construction, use, dewatering and closure of such pits meets or exceeds the requirements of the applicable Railroad Commission rules and Texas Commission on Environmental Quality rules. In addition to compliance with applicable Railroad Commission rules, and Texas Commission on Environmental Quality rules, such earthen reserve pits shall also meet the following requirements;

(i)

the maximum size of a reserve pit shall be no greater than two hundred (200) feet by two hundred (200) feet;

(ii)

The pits shall be lined with a plastic liner having a minimum thickness of eight (8) mil reinforced polyethylene;

(iii)

Reserve pits used in Drilling operations shall be fenced on all open sides during such operations and shall be enclosed on all sides once Drilling operations have ceased;

(iv)

Reserve pits shall be closed within one hundred (180) days of the cessation of drilling operations;

(v)

Drill cuttings may be disposed of on the Drill Site using a deep burial method provided that the burial pit containing the cuttings is located entirely within one hundred thirty five (135) feet of the surface location of the Well, provided that all free water has been removed prior to burying the cuttings, and an impermeable liner is placed above the cuttings prior to covering the cuttings and liner with top soil, and provided that the burial pit is constructed in such a manner that the cuttings will be covered with a minimum of thirty six (36) inches of clean, compactable soil. A survey and description of the location of any closed pit used in connection with the Drill Site shall be recorded in the property records of the county in which the real property is located.

28.

Salt water wells. No commercial salt-water disposal wells that receive water by truck shall be located within the City of Midland. In the event the operator determines that the use of a non-commercial salt-water well is necessary, a detailed plan shall be submitted by the operator to the City Council for consideration. No salt water disposal well of any type shall be used unless a plan is approved by the City Council.

29.

Signs.

a.

A sign shall be immediately and prominently displayed at the gate on the temporary and permanent site fencing erected pursuant to Subsection (M) of this Section. Such sign shall be durable material, maintained in good condition and, unless otherwise required by the Railroad Commission, shall have a surface area of not less than two square feet not more than four square feet and shall be lettered with the following:

i.

Well name and number;

ii.

Name of operator;

iii.

The emergency 911 number; and

iv.

A 24-hour phone number that will provide an emergency phone number of Operator's Representatives as stated in Subsection F.

b.

Permanent weatherproof signs reading "DANGER NO SMOKING OR OPEN FLAME ALLOWED IN THIS AREA" shall be posted immediately upon completion of the well site fencing at the entrance of the well site and tank battery or in any other location approved or designated by the Fire Chief of the City. Sign lettering for this sign shall be two (2) inches or greater in height and shall be red on a white background or white on a red background. Each sign shall include the emergency notification numbers of the Fire Department and the Operator, well and lease designations required by the Texas Railroad Commission.

c.

Provide a National Fire Prevention Association (NFPA) 704 diamond hazard identification signs are required at the entrance to the Operation Site adjacent to the Operator's sign if chemicals are present. A label must be located on each chemical Tank indicating exact chemicals that may be contained in such Tank. Text shall be minimum two inches or greater in height, contrasting with the background color.

30.

Storage of equipment. Storage of equipment and materials shall be minimized and limited to the immediate operational needs of the well. Lumber, pipes, empty drums, trucks, trailers, automobiles, junk tubing, casing and rods shall not be left on the operation site except when drilling or reworking operations are being conducted on the site.

No vehicle or item of machinery shall be parked or stored on any Street, Right-of-Way or in any driveway, alley or upon any Operation Site which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for Drilling or production operations on the site. The Fire Department shall be the entity that determines whether any equipment on the site shall constitute a fire hazard.

31.

Tank Battery Facilities. At the tank battery for either oil and/or gas Wells a sensor for fire detection should be appropriately placed near heater treaters, separators, and oil storage tanks that would allow an automated valve placed at the header to be closed in the event of a detected fire. All storage tanks shall be equipped with a secondary containment system. The secondary containment system shall be a minimum of three (3) feet in height and one and one-half (1½) times the contents of the total tank volume. Drip pots shall be provided at the pump out connection to contain the liquids from the storage tanks. No storage tank shall be over sixteen 16 feet in height. All storage tanks shall be built on an adequate foundation with a twelve 12-mil liner being placed

beneath each tank, extending a minimum of three (3) feet beyond the edge of each tank.

Operator must use portable steel storage tanks or fiberglass tanks for storing all fluids from the well. Tanks must meet the American Petroleum Institute standards. All tanks must have a vent line, lightning arrester and pressure relief valve. All tanks must be enclosed by a fence as required by Section (M) herein. No tank shall exceed sixteen (16) feet in height. No tank battery shall be constructed within five hundred (500) feet of any Occupied Residence, Occupied Commercial Structure or Occupied Public Building, unless a variance is granted by the City Council.

Drilling mud, cuttings, liquid hydrocarbons and all other field refuse derived or resulting from or connected with the drilling, re-working or deepening of any well shall be discharged into a steel pit or an approved earthen pit. All disposals must be in accordance with the rules of the Railroad Commission and with a plan submitted to and approved by the City Manager. Water stored in on-site tanks shall be removed as necessary.

All refuse shall be disposed of in such a manner as to comply with the applicable air and water pollution control regulations of the state, the conditions of this permit, and any applicable ordinance of the City.

Temporary flowback tanks shall be removed within ninety (90) days after completion date of the well at the pad site unless permission is obtained from the City Manager to extend the time period for no more than thirty (30) days. Completion date is that date which is stated as the "completion or recompletion date" shown on the Form W-2 or G-I filed with the Railroad Commission.

All tanks shall be set back pursuant to the standards of the Railroad Commission and the National Fire Protection Association, but in all cases, shall be at one hundred (135) feet from any street or alley right-of-way, three hundred thirty (330) feet from any public athletic field, and five hundred (500) feet from an Occupied Residence, Occupied Commercial Structure or Occupied Public Building, church, public or private school, hospital, nursing home, college or university or daycare center unless a variance is granted by the Midland City Council. Operator shall institute operational practices involving the daily monitoring of tank integrity and fluid levels within each tank. The use of a remote monitoring system is acceptable.

No meters, storage tanks, separation facilities, or other aboveground facilities, other than the well head and flow lines, shall be placed in a floodway identified by FEMA on the most current FIRM or the 100-year floodplain without a floodplain development permit obtained from the Department of Development services.

All fluids and tank bottoms will be disposed of in accordance with Railroad Commission regulations.

32.

Valves. Each flowing high volume well must have an automated shut-off valve to shut-in the well's production at the Operation Site for either a fire or

abnormal change in pressure. The fire department shall have access to the Operation Site and the shut-off valve in an emergency.

33.

Work hours for site development. No construction activities involving the excavation of, demolition of, alteration to, or repair work on any access road or pad site shall occur before 7:00 a.m. or after 7:00 p.m.

34.

Wellhead status after fracing. The wellhead between the time of Drilling/completion and tank battery construction, shall be:

a.

Surrounded with a six (6) foot tall temporary chain link fence having a gate and lock until permanent fencing is installed;

b.

The gate shall be locked at all times, except when the Operator is involved in active operations;

c.

The cellar shall be filled or closed; and

d.

The Bradenhead shall be piped to the surface and open to the atmosphere or have an observable and adequate pressure gauge with operable test valve.

35.

Inspections. In accordance within applicable law, the City Manager, or his designee, at his sole cost, risk and expense shall have a right of entry to the Drill Site/Operation Site and may, at his discretion, visit the Drill Site/Operation Site to make sure operator is in compliance with the requirements of this Section.

36.

Violation. In the event a violation of this ordinance is determined by the City's official (or officials), the City may act in any or all of the following ways:

a.

The City, through its designated official (or officials), may issue a notice of violation to the Operator, its agent, agents, employees or independent contractors (whether on site or not), or to any Person participating in the Drilling of the Well. Such notice may include a citation to appear before the Midland Municipal Court.

b.

If the City Manager, or his designee, finds the Operator to be in violation of any requirement of the applicable Oil and Gas well permit, then the City reserves the right after giving ten (10) business days written notice to the Operator regarding such violation, to draw upon the letter of credit, certificate of deposit or surety bond as outlined in Subsection (K) of this Section, in order to remedy such violation. In the event that a violation is not capable of being remedied within such ten (10) business day period, then Operator must have commenced efforts

to remedy such violation within said ten (10) business day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, the City shall not draw against the letter of credit, certificate of deposit or surety bond. In the event the City makes a claim on the letter of credit, certificate of deposit or surety bond pursuant to the terms hereof, reinstatement of the full amount of the letter of credit, certificate of deposit or surety bond shall be a condition to the cure of the violation leading to such claim. Alternatively, if the City Manager finds the Operator to be in violation of any requirement of the applicable Oil and Gas Well Permit, the City Manager shall give written notice to the Operator that unless all violations are corrected within ten (10) business days of the Operator's receipt of notice of the violation, the City Manager shall recommend to the City Council that the Oil and Gas Well Permit be cancelled by the City Council. In the event that a violation is not capable of being remedied within such ten (10) business-day period, then Operator must have commenced efforts to remedy said violation within said ten (10) business-day period and thereafter continue with such efforts to remedy said violation with due diligence until completed, and as long as the Operator continues with efforts to remedy a violation with due diligence, as determined by the City, the City shall not draw against the letter of credit, certificate of deposit or surety bond. If the City Council determines to consider the cancelling of the permit, it shall give the Operator written notice of the date and time of the hearing and shall give the Operator the opportunity to be heard and present facts the Operator deems relevant. The cancelling of a permit requires the majority vote of the City Council.

c.

Prosecution of violations of this Section shall be given priority and expedited upon the Municipal Court docket. Provided, however, that this subsection does not grant or guarantee Persons cited a right to expedited consideration of their citation before the Midland Municipal Court.

d.

In the event that there exists an imminent threat to public health and safety, a certified peace officer, in conjunction with the Railroad Commission, may order the temporary cessation of operations. An Operator may appeal the order to an appropriate Court in Midland County, Texas and request an expedited hearing. With respect to the contestation of an order issued pursuant to this subsection, an Operator retains all of its legal remedies.

M.

Fencing and landscaping.

1.

Fences.

A fencing plan shall be submitted, said plan containing a description of the building materials, dimensions, and locations of the proposed fence/walls and gates. The plan shall take into consideration the surrounding area and neighborhood.

At a minimum, tank battery facilities, wellheads and any production equipment associated with Oil and Gas wells shall be enclosed by a chain link fence at least seven (7) feet in height with beige-colored slats woven through the chain link, topped with three (3) strands of barbed wire angled outward or concertina wire, and shall be equipped with a locking gate. Gates shall be provided with a combination catch and locking attachment for a padlock, and shall be kept locked except when being used for access to the operation site. Operator must provide the City Fire Chief with a "Knox Padlock" or "Knox Box with a key" to access the Operation Site to be used only in case of an emergency.

The City Council may require additional or a different type of fencing to the extent necessary to conform with architectural standards and building materials existing on lots and/or lands immediately adjacent to the well and within five (500) feet of the Well at the time the Oil and Gas Well Permit is issued.

Additionally, if at any time within twenty-four (24) months following the issuance of an Oil and Gas Well Permit, a structure intended for permanent occupancy is constructed within five hundred (500) feet of the Well, the City Council may require the operator to undertake a one-time revision of the fencing plan to account for architectural standards and building materials associated with such structure to the extent that the revised fencing plan is consistent with, but not better than, the architectural standards and building materials associated with such structure.

Fences shall not be required on drill sites during drilling, completion or re-working operations as long as 24-hour on-site supervision is provided.

2.

Landscaping.

a.

The City will require tree preservation and/or planting measures.

i.

A minimum number of eight trees shall be required to be planted within 25 feet from the outside perimeter of the wall or walls required herein.

ii.

At least 75 percent of the trees shall be evergreen.

iii.

The minimum size of each tree planted will be at least four inches in diameter measured one foot above ground level.

iv.

All trees that die within three years of the date of project completion will be replaced by another replacement tree. The replacement tree carries the same three-year replacement requirement. A replacement of any tree that dies within three years of planting will be replaced by the Operator or agent and a new three-year guarantee will begin at the time of replacement.

b.

The following list of trees is considered desirable. Planting of trees for this list is acceptable. Other trees will be considered by the City Manager. The approval of additional species will be judged on adaptability, long-term health and growing characteristic of the tree type.

Scientific Name	Common Name
Pinus elarica	Afghan Pine, Mondell Pine
Pinus Sylvestris	Russian Pine
Ulmas Crassifolia	Cedar Elm

c.

Operator may submit a plan in lieu of subparagraphs (M)2.a and b above. The Operator must describe the type, number, and location of trees to be planted under this Section. The City Council may consider any proposal prepared in accordance with this subparagraph. Any alternative plan shall not be effective unless approved by the City Council.

d.

Operator shall submit an irrigation plan detailing the measures to be taken to adequately irrigate all landscaping, including indicating the proposed water source for irrigation, and the proposed efforts to replace dead or dying screening vegetation. Upon request by the Operator, the City may provide access to fresh water to be used for such irrigation if water is readily available and in conformance with City policies and procedures.

e.

In such instances, where City water is not available, a variance may be requested. Additionally, when City water becomes available, the provisions of this subsection shall be required.

(N)

Cleanup and Maintenance.

1.

Cleanup after well servicing. After the well has been completed or plugged and abandoned, the Operator shall clean the drill site or operation site, complete restoration activities and repair all damage to public property caused by such operations within one hundred eighty (180) days.

2.

Clean-up after spills, leaks and malfunctions. After any Railroad Commission reportable spill, leak or malfunction, the Operator shall remove or cause to be removed to the satisfaction of the City Fire Chief and the City Manager all refuse materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately. The Operator shall comply with all requirements found in Statewide Rule 91 of the Railroad Commission, as amended. If Statewide Rule 91 requires reporting of the spill, the operator shall comply with the notification and reporting requirements found in Statewide Rule 20 of the Railroad Commission, as amended. Upon request the Operator shall furnish the City Manager with all information filed with the Railroad Commission. If the Operator fails to begin site clean-up immediately the City Manager may then employ any cleanup expert or experts or other contractors or suppliers of special services, or may incur any other expenses for labor and material which the City Manager deems necessary to clean-up such spill, leak or malfunction. The City shall then be able to collect from operator the costs involved in the site clean-up. The City may collect from the posted letter of credit, certificate of deposit or surety bond or any other legal means.

3.

Free from debris. The public street entrance and property on which a well site is located shall at all times be kept free of mud, debris, pools of water or other liquids, contaminated soil, weeds, brush, trash or other refuse material within a radius of one hundred (100) feet around any production facilities, tanks and producing wells.

4.

Painting. All production equipment shall be painted beige and maintained at all times, including pumping units, tanks, secondary containment and buildings or structures. When requiring painting of such facilities, the City Manager shall consider the deterioration of the quality of the material of which such facility or structure is constructed, the degree of rust, and its appearance.

5.

Blowouts. In the event of the loss of control of any well, Operator shall immediately take all reasonable steps to regain control regardless of any other provision of this permit and shall provide the City Manager with the same information as required to be filed with the Railroad Commission under Statewide Rule 20 as soon as practicable.

6.

Cleanup after Drilling/Completion. After the well has been drilled and completed, the Operator shall clean the Drill site, complete restoration activities and repair all damage to public property caused by such operations within ninety (90) days as specified previously in Subsection (L)27.

O.

Drilled and Abandoned Wells.

1.

Surface Requirements for Plugged and Abandoned Well. Whenever abandonment occurs pursuant to the requirements of the Railroad Commission, the Operator so abandoning shall be responsible for the restoration of the Operation site to its original condition as nearly as practicable, in conformity with the requirements of this permit underground pipelines associated with operations shall be purged of all fluids and may be abandoned in place.

2.

Surface Requirements for Drilled and Abandoned Well. Abandonment shall be approved by the City Manager after restoration of the Drill Site has been accomplished in conformity with the following requirements at the discretion of the City Manager:

a.

The Derrick and all appurtenant equipment thereto shall be removed from Drill site;

b.

All tanks, towers, and other surface installations shall be removed from the Drill site;

c.

All concrete foundations, above ground piping, wood, guy anchors and other foreign materials regardless of depth, except surface casing, shall be removed from the site, unless otherwise directed by the Railroad Commission;

d.

All holes and depressions shall be filled with clean, compactable soil;

e.

All, refuse and trash shall be removed from the Drill Site; and

f.

During abandonment, Operator shall comply with all applicable subsections in this section; and

g.

The drill site shall be restored, as close as practicable, to its original condition.

h.

Unless modified by the approved plan, deep burying of pits within the drill site perimeter is permitted. A survey and description of the location of any closed pit used in connection with the drill site shall be recorded in the property records of the county in which the real property is located. In any event the Operator shall comply with Subsection (L), Paragraph 27.

3.

Abandoned well requirement. The Operator shall furnish the following to the City Manager:

a.

A copy of the W-3A "Notice of Intention to Plug & Abandon" and W-3 "Plugging Record" forms on the same date these forms are submitted to the Railroad Commission.

b.

Prior 48-hour notice of intention to abandon under the provisions of this section and stating the date such work will be commenced. Abandonment may then be commenced on or subsequent to the date so stated.

c.

All wells shall be abandoned in accordance with the rules of the Railroad Commission; however, all well casings and cellars shall be cut and removed to a depth of at least three feet below the surface. A permanent abandonment marker, with the well identity and location permanently inscribed, shall be welded to the casing.

4.

Abandonment requirements prior to new construction. All abandoned or deserted wells or drill sites shall meet the most current abandonment requirements of the Railroad Commission prior to the issuance of any building permit for development of the property. No structure shall be built over an abandoned well.

P.

Certificate of Request for Inspection and Extension of Permit.

On or before ninety (90) days prior to each annual anniversary date of Operator's Oil and Gas Well Permit, Operator shall submit to the City Manager a Certificate of Request for Inspection of Permit. The Certificate of Request for Inspection of Permit must state the location and name of the well and the date the permit was granted by the City Council. The Certificate of Request for Inspection of Permit must be signed by the Operator before a notary public stating that the well is in compliance with the permit and all applicable Ordinances. The Certificate of Request for Inspection of Permit must be accompanied by an application and inspection fee of \$300.00. The City Manager shall grant a one-year inspection approval on the oil/gas drilling permit if the Operator is in compliance with the permit and all applicable ordinances as they apply to the

inspected well. Prior to authorizing the inspection approval, the City Manager, or his designee, shall inspect the oil and gas well site that is subject to the oil/gas drilling permit. The City Manager shall issue his decision in writing, within thirty (30) days of receiving the Certificate for Request for Inspection of Permit, either granting or denying the inspection of the oil/gas drilling permit.

The Operator may appeal the City Manager's denial of an oil/gas drilling permit inspection by submitting, in writing, an appeal to the City Council within thirty (30) days of the City Manager's written denial of the oil and gas well permit inspection. If an appeal is received by the City Council, a hearing shall be set before a meeting of the City Council to consider the denial of the oil/gas drilling permit inspection. The City Council shall hear and consider the recommendation of the City Manager, or his designee, before deciding whether or not to uphold the City Manager's decision. The Operator shall be allowed to speak and present any relevant evidence for consideration by the City Council prior to a vote of the council. A majority vote of the City Council shall be required to uphold the denial of the Oil and Gas Well Permit inspection by the City Manager. An inspection that is approved shall be valid for one (1) year from the inspection date.

(Q)

Measurement.

The measurement of all distances set forth herein shall be calculated from the proposed surface location of the well and tank batteries in a straight line, without regard to intervening structures or objects, to the closest exterior point of the object.

(R)

Effect of denial of oil and gas well permit.

If an application for an Oil and Gas Well Permit is denied by the City Council, nothing herein contained shall prevent a new permit application from being submitted to the City Council for the same proposed Oil and Gas Well or a different location for a well. A new application may also be filed on any of the mineral estate owned or leased by the applicant. Once all of the Operator's administrative and legislative remedies have been exhausted herein, the Operator may appeal or challenge the denial of an application in an appropriate Court in Midland County Texas under applicable state or federal law.

(S)

Amendment to Oil and Gas Well Permit.

1.

Amendment required. Within one hundred eighty (180) days after an Operator has been granted an Oil and Gas Well Permit, an Operator may submit an application to the City to amend an existing Oil and Gas Well Permit to commence Drilling from a new Drill site that is not shown on (or incorporated by reference as part of) the existing Oil and Gas Well Permit.

2.

Application Requirement for Amendment to Permit. An application for an amended Oil and Gas Well Permit shall meet all the requirements of this

Section, shall be in writing, shall be on forms provided by the City, shall be signed by the Operator, and shall include the following:

- a. An amendment fee of \$1,000.00.
- b. A description of the proposed amendments.
- c. Any changes to the information previously submitted with the application for the existing oil/gas drilling permit (if such information has not previously been provided to the City).
- d. Such additional information as is reasonably required by the City to demonstrate compliance with the original oil/gas drilling permit.
- e. Such additional information as is reasonably required by the City to prevent imminent destruction of property or injury to persons.

3.

Review of Application for Amendment to Permit. All applications for an amended oil/gas drilling permit shall be considered in accordance with the factors listed in Subsection (I) herein. The City Council may elect to consider the application for an amended oil/gas drilling permit without the requirement of a public hearing.

4.

Standard of review.

- a. **No Material Change from Existing Permit.** If the activities proposed by the amendment are not materially different from the activities covered by the existing Oil and Gas Well Permit, and are otherwise in conformance with the requirements of this section, other applicable City Ordinances, the Oil/Gas Drilling Permit then the City Council shall approve the Amended Application.
- b. **Material Change from Existing Permit.** If the activities proposed by the amendment are materially different from the activities covered by the existing Oil/Gas Well Permit, are not in conformance with the requirements of this Section, other applicable City Ordinances, the Oil/Gas Well Permit, or if, in the judgment of the City Council, the activities proposed by the amendment might create a risk of imminent destruction of property or injury to persons or property or that were not otherwise taken into consideration by the existing Oil/Gas Well Permit, the City Council may require the amendment to be processed as a new Oil and Gas Well Permit Application.

T.

Independent Contractor. Operator understands and agrees that Operator, its employees, servants, agents, and representatives, shall at no time represent themselves to be employees, servants, agents, and/or representatives of the City. The City shall not have any control over the means or methods by which Operator shall perform its obligations hereunder. Operator shall furnish all equipment and materials necessary to perform hereunder and shall at all times be acting as an independent contractor. No action by either party should be construed to create a partnership, joint venture, or other dual enterprise between the parties.

U.

Assignability; Transfer Permit.

1.

The Operator shall not, either directly or indirectly, assign, sell, or transfer any part of the Oil and Gas Well Permit, or any interest, right, duty, obligation or privilege under the permit, except in accordance with this Subsection.

2.

An Oil and Gas Well Permit may be transferred upon written request by the Operator with the consent of the City Council:

a.

If the transferee agrees in writing to be bound by the terms and conditions of the current Oil and Gas Well Permit and road repair agreement;

b.

If all information previously provided to the City as part of the current Oil and Gas Well Permit is updated to reflect any changes; and

c.

If the transferee provides the insurance and security required by this section.

3.

In determining whether to approve the transfer permit, the City Council may consider the financial standing of the transferee and its record of compliance with respect to existing permits. Should the transfer permit be denied, the transferee may file an application for a new Oil and Gas Well Permit.

4.

The insurance and security provided by the transferor shall be released if the transfer permit is approved; provided, however, that the transfer shall not relieve the transferor from any liability to the City arising out of any activities conducted prior to the transfer, except to the extent that the transferee expressly agrees in writing to assume such liabilities as part of the transfer.

5.

Applications for the transfer of Oil and Gas Well Permits shall be filed with the City's planning department. A non-refundable administration fee shall be charged for each application in the amount of five hundred (\$500.00).

V.

Time Limit Requirements. The failure of the City Council to review and approve an Oil and Gas Well Permit within a specified time limit shall not cause the application for the Oil and Gas Well Permit to be deemed approved. If the City Council denies a request for a permit, the applicant may file a request with the City Council to re-consider the application. The applicant may present any new evidence to the council and may present any extenuating circumstances or other matters deemed relevant by the applicant. The decision of the City Council regarding the issuance of a permit is not final until the request for re-consideration is voted upon by the City Council.

W.

Indemnification. The oil and gas well permit may contain the following language:

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

X.

Incident Reports or Written Complaints. The Operator shall provide a copy of any "incident reports" or written complaints submitted to the Railroad Commission or any other state or federal agency within thirty (30) days after Operator has notice of the existence of such reports or complaints.

Y.

Expiration of permit. Drilling must commence on the Well covered by the Oil and Gas Well permit twelve (12) months of approval by the City Council, after which the Oil and Gas Well Permit shall automatically expire if no drilling has commenced. A permit extension for a maximum time period of six (6) months may be granted by the City Manager without reapplication after the City Manager receives a written request from the Operator.

Z.

Takings determination.

1.

Any aggrieved applicant that believes that an action taken pursuant to this Section by the City Council or any officer or employee of the City constitutes a taking under the Texas or United States Constitution or under other state law, may file an application with the City Council requesting a takings determination.

2.

The applicant seeking a takings determination from the Council shall file its appeal with the office of the City Secretary. The City Secretary shall then

forward the appeal to the City Council for consideration. An appeal fee in the amount of two hundred fifty (\$250.00) dollars shall accompany each filing.

3.

The appeal shall state the reasons that the applicant believes would support a finding that the City's actions constitute a taking under the Texas or United States Constitution or pursuant to other State law and shall include evidence substantiating the purported diminution in value of the applicant's real property.

4.

If the Council finds by a majority vote in favor of the applicant it may: (1) grant the relief requested, or (2) direct the City Manager to rescind action taken by City Staff that formed the basis of the takings determination appeal. If the Council denies the appeal, or after a favorable determination the City Council fails to take action as specified above, the applicant may appeal the decision or inaction of the City Council to the county or district court of the county in which the affected real property is located within thirty (30) days of the date that the Council issues its final decision or in the event the Council does not act on the application, then the operator may appeal to the county or district court after the expiration of one hundred twenty (120) days from the date the application is heard by the City Council.

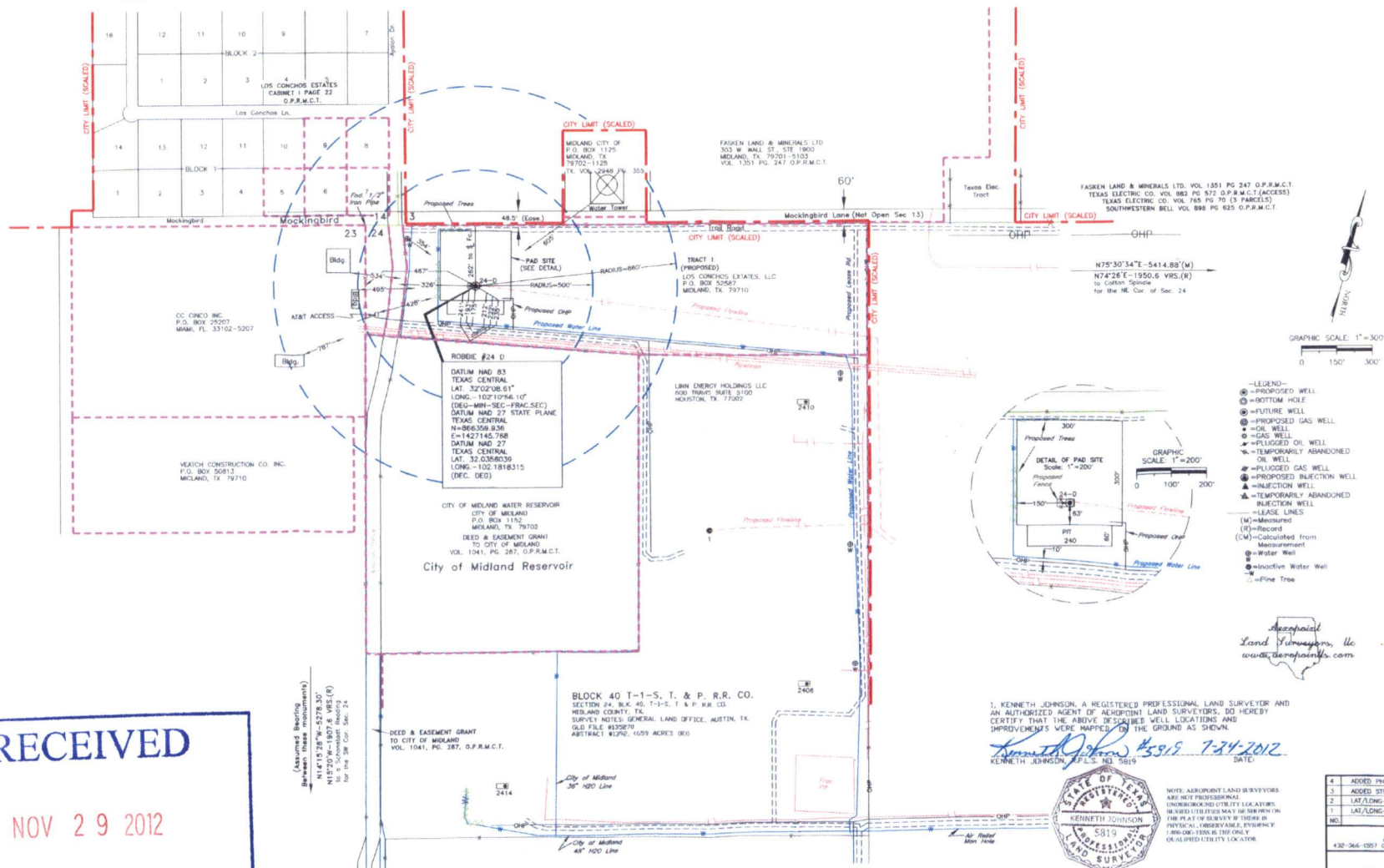
Notice addresses are as follows:

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

OPERATOR: _____
Cynthia Pinel, Regulatory Specialist

Linn Operating, Inc.
6010 E. Hwy 191, Ste. 130
Odessa, Texas 79762
(432) 366-1557

LOT 5 BLK 1	LOS CONCHOS ESTATES LLC, P.O. BOX 52587,	MIDLAND, TX	79710-2587
LOT 6 BLK 1	LOS CONCHOS ESTATES LLC, P.O. BOX 52587,	MIDLAND, TX	79710-2587
LOT 7 BLK 1	LOS CONCHOS ESTATES LLC, P.O. BOX 52587,	MIDLAND, TX	79710-2587
LOT 8 BLK 1	LOS CONCHOS ESTATES LLC, P.O. BOX 52587,	MIDLAND, TX	79710-2587
LOT 9 BLK 1	LOS CONCHOS ESTATES LLC, P.O. BOX 52587,	MIDLAND, TX	79710-2587

[illegible]

Aeropoist
Land Surveyors, LLC
www.aeropoistllc.com

I, KENNETH JOHNSON, A REGISTERED PROFESSIONAL LAND SURVEYOR AND AN AUTHORIZED AGENT OF AEROPONT LAND SURVEYORS, DO HEREBY CERTIFY THAT THE ABOVE DESCRIBED WELL LOCATIONS AND IMPROVEMENTS WERE MAPPED ON THE GROUND AS SHOWN.

Kenneth Johnson #5919 7-24-2012
KENNETH JOHNSON, P.L.S. NO. 5919 DATE:



NOTE: AEROPPOINT LAND SURVEYORS
ARE NOT PROFESSIONAL
UNDERGROUND UTILITY LOCATORS.
RELIED UTILITIES MAY BE SHOWN ON
THE PLAT OF SURVEY IF THERE IS
PHYSICAL, OBSERVABLE, EVIDENCE.
1-800-DIG-YES IS THE ONLY
QUALIFIED UTILITY LOCATOR.

[illegible]

RECEIVED

NOV 29 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

EXHIBIT C

CASE NO. 0-12-D16

38.38



APPLICATION FOR OIL AND GAS PERMIT

0-12-016
SEP 24 2012

(Pursuant to Midland City Ordinance No. 8769)

I. General Information		
Date 9/20/2012	Operator Name (must match W-1) Linn Operating, Inc.	Operator Address 600 Travis, Suite 5100 Houston, TX 77002
Representative Name Mike Matsinger	Representative Address (within Midland City Limits) 6010 E. Hwy 191, Ste. 130 Odessa, TX 79762	Rep. Tele. 432-366-1557 Rep. Fax 432-366-1574
Fee: \$4,000.00 Rec'd Yes ☒ No ☐	NOTE: All attachments need to bound and put in a binder before submitting.	Pages 1-4
Permit Compliance Contact (Choose 1): Mike Matsinger Option A: 24/7 Answering Services - No. 1 (Tele.): 432-333-5878 No. 2 (Tele.): 432-258-5251 Option B: Company Compliance Representative (Name, Address, Local Telephone) (ATTACH STATEMENT AS EXHIBIT A): Emergency Contact Representative (Name, Address, 24-Hour Tele. No.): Mike Matsinger 420 West Spruce Ave., Midland, TX 79705 432-333-5878 Other Permitted Wells in City (ATTACH EXHIBIT B [see § J(26)]).		
II. Mineral Ownership		
Name(s) and Address(es) of Mineral Estate Lessors (under applicable lease): 1. Included in Exhibit C 2. 3.		
ATTACHED AS EXHIBIT C is (a Title Opinion by _____, a licensed Texas Attorney/Title Commitment by Abstract Company/a Take-off from _____, a Certified Petroleum Landman/an opinion letter from _____, a licensed Texas Attorney) indicating that [Operator] has a legal right to develop the mineral estate that is the subject of this Application. [See § J(5)].		
III. Surface Ownership & Use Linn Operating, Inc.		
General Description of Current Surface Use (within 860 feet of proposed surface location): pasture land, no residential land/subdivisions		
ATTACHED AS EXHIBIT D is (a Title Opinion by _____, a licensed Texas Attorney/a Take-off from _____, a Certified Petroleum Landman/Current Tax Roll from Midland Central Appraisal District), which lists the name(s) and address(es) of all surface owners within 860 feet of the surface well location. [See § J(7)].		

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

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

IV. Well & Operations Information

Proposed Well Name: Robbie 24D

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

See Exhibit G

Legal Description of Proposed Well Site: 262' FNL 467' FWL of Section 24, Block 40, T1S, T&P RR CO. Survey, Midland County, Texas (Abstract #1392)

ATTACHED AS EXHIBIT G is the Location Site Plan [See § J(9)].

ATTACHED AS EXHIBIT H is the Map with the proposed transportation route(s) and road(s) for equipment, chemicals, or refuse products used or produced in the proposed oil and gas operations. [See § J(12)].

ATTACHED AS EXHIBIT I is a copy of the approved Texas Railroad Commission permit to drill (Form W-1), together with all attachments (also file copy of W-1 with City Secretary before commencement of drilling operations). [See § J(16) and (20)].

ATTACHED AS EXHIBIT J is a copy of the required TCEQ report as to depth of usable quality ground water. [See § J(17)].

ATTACHED AS EXHIBIT K (if applicable) is the list of alternative locations developed in consultation with the Oil & Gas Advisory Committee. [See § J(27)].

ATTACHED AS EXHIBIT L is the Fencing and Irrigation Plan. [See § J(30)].

ATTACHED AS EXHIBIT M is the Road Repair Agreement and Letter of Credit/Certificate of Deposit/Surety Bond in the amount of at least \$25,000. Option (if applicable): Applicant would further state that no City-owned streets or alleys will be used by the Operator in connection with its oil and gas operations and as a result, requests a waiver from the Council of this requirement. Option B (if applicable): Because Applicant has three Road Repair Agreements in effect that have been approved by the Council, Applicant requests that the Council consolidate all agreements into one and is filing the necessary \$75,000 letter of credit/certificate of deposit/surety bond in conjunction with this request. [See § J(31)].

ATTACHED AS EXHIBIT N is the Concept Plan depicting the proposed Operations Site (which includes tanks, roads, power lines, and pipeline routes). [See § J(32)].

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

(1) Drilling: NONE

(2) Operations: NONE

Description of water source to be used during Drilling: Water is pumped from 3 privately owned water wells to a fresh water pit on the Robbie lease for drilling operations.

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

See Exhibit N for map layout. Above ground lines. Oncor is the electrical provider.

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

See Exhibit N

V. Additional Required Exhibits

ATTACHED AS EXHIBIT P is the *Letter of Credit/Certificate of Deposit* in accordance with Subsection (K)(2). [See § J(18)].

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

ATTACHED AS EXHIBIT R is the required Insurance Certificate. [See § J(19) and § K(3)].

ATTACHED AS EXHIBIT S (if applicable) is the Drainage Plan approved by the City Engineer relating to Applicant's proposed operations. [See § J(21)].

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

ATTACHED AS EXHIBIT U is Applicant's Hazardous Materials Management Plan, a copy of which has been submitted and is on file with the Midland Fire Department. [See § J(23)].

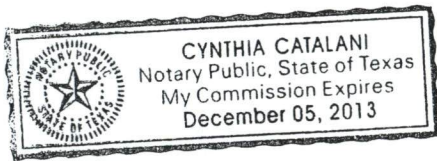
LINN OPERATING, INC.

By, Cynthia Pinel
Its', Compliance Contact

State of Texas)

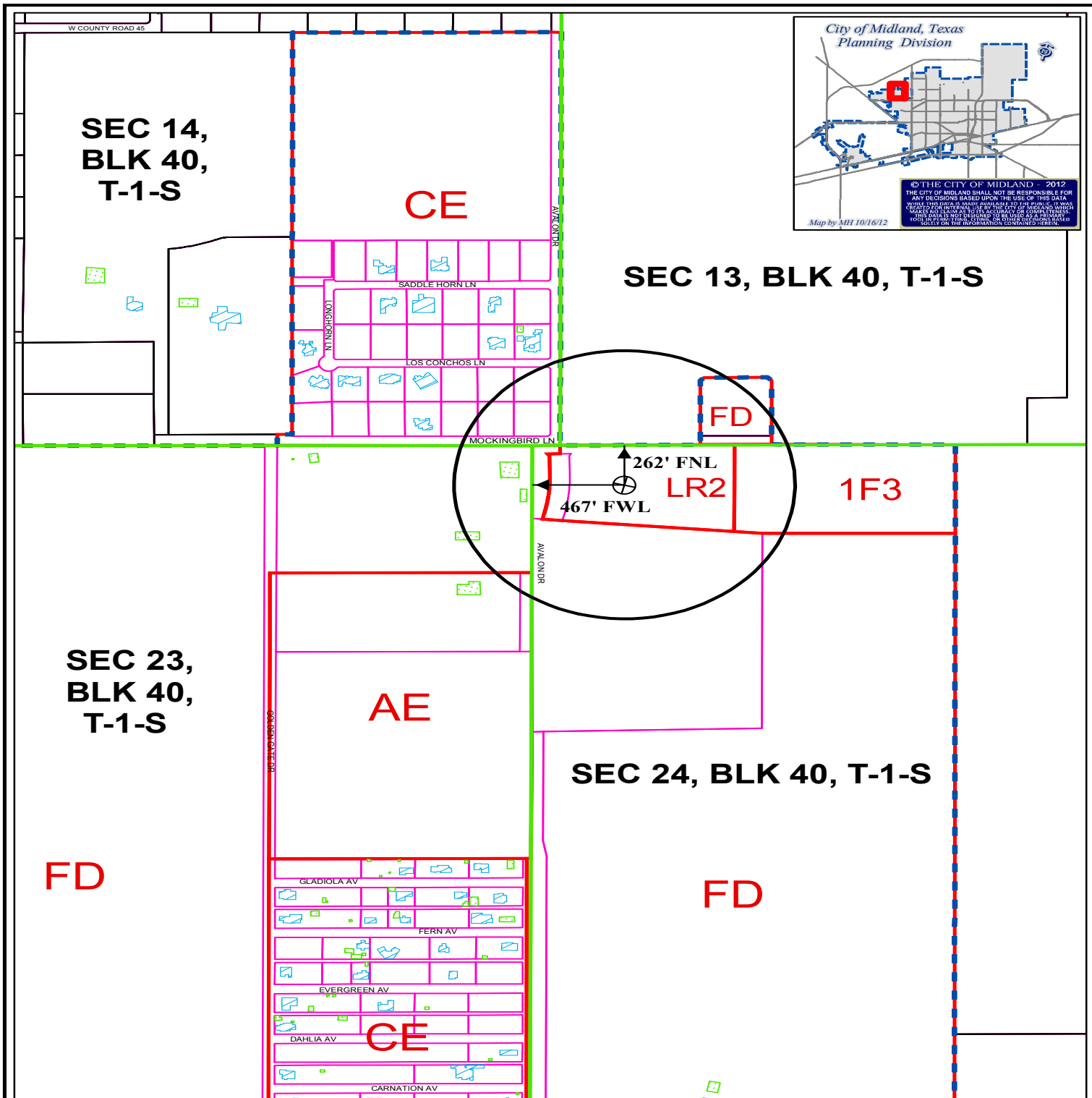
County of Harris)

Cynthia Pinel, personally appeared before me, and being first duly sworn declared he/she signed the application in the capacity designated, if any, and further states that he/she has read the above application and attached exhibits and the statements therein are true and correct to the best of their knowledge.



Cynthia Catalani

Notary Public, State of Texas



O - 12 - 016

Scale: 1" = 700'

Consider a request for a Permit to drill an Oil and Gas Well within the City Limits located 262' FNL and 467' FWL, Section 24, Block 40, T-1-S, T & P RR Co. Survey, Midland County, Texas.

Robbie 24D

LEGEND

CITY PARCELS	PUBLIC BLDGS	CITY LIMITS
COUNTY PARCELS	PRIVATE BLDGS	860 FT. BUFFER
ZONING	ACCESSORY BLDGS	SURVEY SEC.

ZONING DISTRICTS:

FD
PD
AE
1F1, 1F2, 1F3
MH
TH
2F
MF1, MF2

FUTURE DEVELOPMENT
PLANNED DISTRICT
AGRICULTURE ESTATE
ONE-FAMILY DWELLING
MOBILE HOME DWELLING
TOWNHOUSE DWELLING
TWO-FAMILY DWELLING
MULTIPLE FAMILY DWELLING

BP
P
01, 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

38.43

LINN UNIVERSITY, INC.
6208 E. HWY. 17, SUITE 100
ST. LOUIS, MO. 63114-2634 432-399-1574 (F)

MAP SHOWING
ROBBIE LEASE
AREA MAP OF NW/4 SECTION 24
BLK. 40, T-1-S. T. & P. R.R. CO.
MIDLAND COUNTY, TEXAS.

AEROPOINT LAND SURVEYORS, L.L.C.

SCALE: 1"=600'
DATE: 4-18-12
JOB NO. 12142

SUBV. BY: R.J.
DRAWN BY: MS
APPR. BY: R.J.

DRAWING NUMBER:
17142
SHEET 2 OF 2

[illegible]

LOT 5 BLK 1	LOS CONCHOS ESTATES LLC, P.O. BOX 52587	MIPLAND, TX. 79710-2587
LOT 6 BLK 1	LOS CONCHOS ESTATES LLC, P.O. BOX 52587	MIPLAND, TX. 79710-2587
LOT 7 BLK 1	LOS CONCHOS ESTATES LLC, P.O. BOX 52587	MIPLAND, TX. 79710-2587
LOT 8 BLK 1	LOS CONCHOS ESTATES LLC, P.O. BOX 52587	MIPLAND, TX. 79710-2587
LOT 9 BLK 1	LOS CONCHOS ESTATES LLC, P.O. BOX 52587	MIPLAND, TX. 79710-2587

FASKEN LAND & MINERALS LTD.
303 W. WALL ST., STE 1900
MIDLAND, TX. 79701-5103
VOL. 1351 PG. 247 O.P.R.M.C.T.

MIDLAND CITY OF
P.O. BOX 1125
MIDLAND, TX.
79702-1125

Mockingbird Lane (Not Open Sec 13)

CITY LIGHT (SCALD)

LOS CONCHOS EXTATES, LLC
P.O. BOX 52587
MIDLAND, TX. 79710

CLINN ENERGY HOLDINGS LLC
500 TRAVIS SUITE 5100
HOUSTON, TX. 77002

CC CINCO INC.
P.O. BOX 25207
MIAMI, FL 33102-5207

WEATCH CONSTRUCTION CO. INC.
P.O. BOX 50813
MIDLAND, TX. 79710

PROPOSED WELL
CITY LIMIT
500 & 860 FT. E
PARCEL
PARCEL INTERSEC

THIS DRAWING IS A MAP ONLY AND DOES NOT MEET TEXAS MINIMUM STANDARDS FOR A PLAT OF SURVEY.

RECEIVED

OCT 25 2012

CITY OF MIDLAND
PLANNING DIVISION OFFICE

**Acetopoint
Land Surveyors, llc**
www.acetopointllc.com

I, KENNETH JOHNSON, A REGISTERED PROFESSIONAL LAND SURVEYOR AND AN AUTHORIZED AGENT OF AEROPPOINT LAND SURVEYORS, DO HEREBY CERTIFY THAT THE ABOVE DESCRIBED WELL LOCATIONS AND IMPROVEMENTS WERE MAPPED ON THE GROUND AS SHOWN

— Kenneth Johnson #589 7-37-21/2
DATE

NO.	REVISION	DATE	BY	APPR
2	ADDED PHOTO	7-18-12	KJ	KJ
1	ADDED STRUCTURES	7- 9-12	KJ	KJ

LINN OPERATING, INC.
 6010 E HWY 191, SUITE 130
 432-366-1557 DALLAS, TEXAS 75243
 432-399-1574 (F)

MAP SHOWING	ROBBIE LEASE	500' & 860' RADIUS IN THE NW/4 SECTION 24 BLK. 40, T-1-S, T. & P. R.R. CO., MIDLAND COUNTY, TEXAS.	OWNER'S ADDRESS P.O. BOX 1000 FORT WORTH, TEXAS, 76108	(R/T) 507-1475	(R/T) 507-1475	DRAWING NUMBER:	(R/T) 507-1475 REF
						SURV. BY: K.J.	
						DRAWN BY: MS	12091
						APPR. BY: K.J.	SHEET 2 OF 2
						DATE: 6-22-12	
						JOB NO 12091	

AERIAL MAP

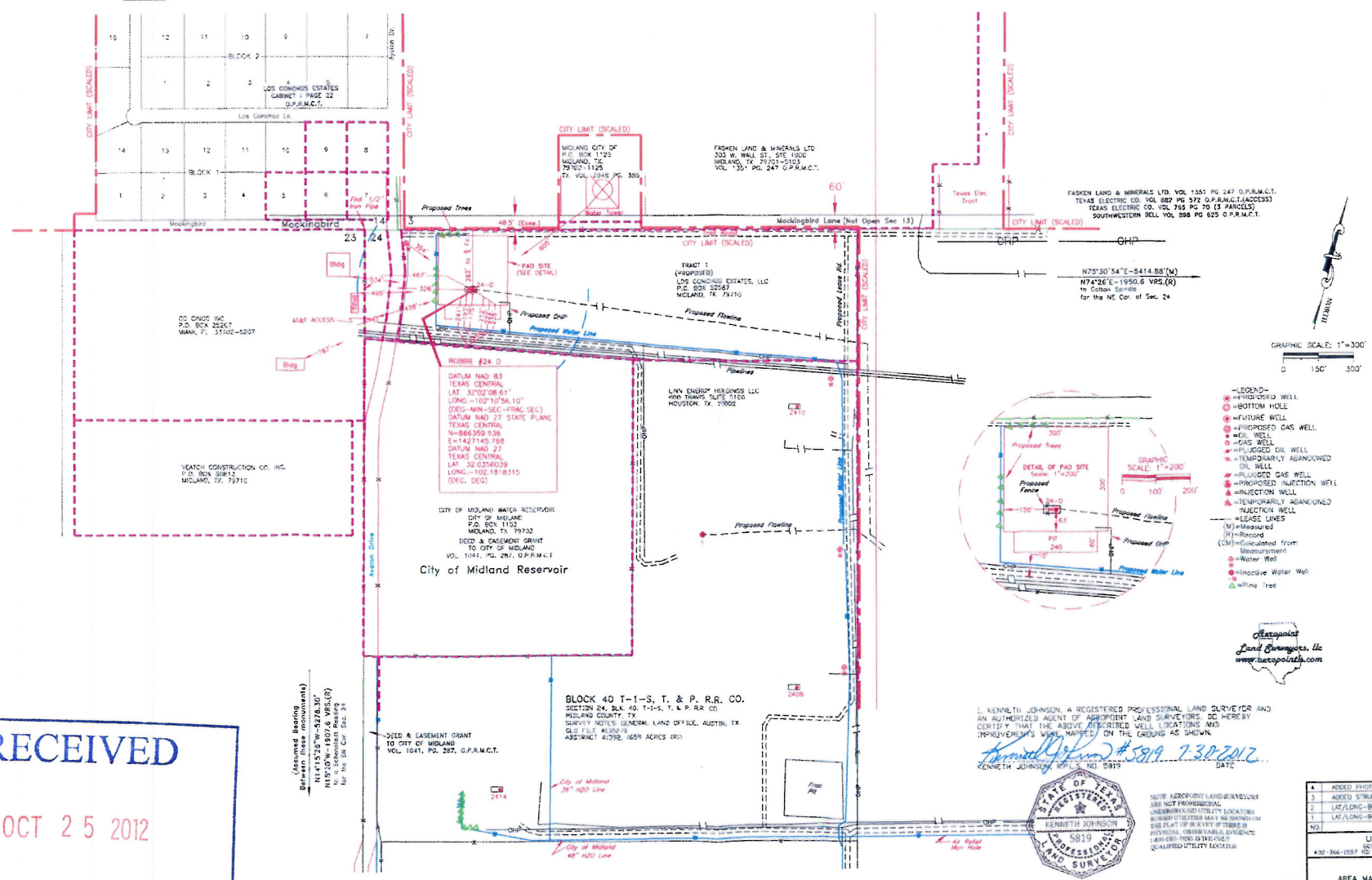
0-12-016

38.46

RECEIVED
OCT 25 2012
CITY OF MIDLAND
PLANNING DIVISION OFFICE

LOS CONCHOS ESTATES, CABINET 1 PAGE 22, O.P.A.M.C.T.
LOT 5 BLK 1 LOS CONCHOS ESTATES L.L.C. P.O. BOX 55987, MIDLAND, TX 79710-2587
LOT 6 BLK 1 LOS CONCHOS ESTATES L.L.C. P.O. BOX 55987, MIDLAND, TX 79710-2587
LOT 7 BLK 1 LOS CONCHOS ESTATES L.L.C. P.O. BOX 55987, MIDLAND, TX 79710-2587
LOT 8 BLK 1 LOS CONCHOS ESTATES L.L.C. P.O. BOX 55987, MIDLAND, TX 79710-2587
LOT 9 BLK 1 LOS CONCHOS ESTATES L.L.C. P.O. BOX 55987, MIDLAND, TX 79710-2587

- PROPOSED WELL
- CITY LIMIT
- 300' & 600' FT. BUFFER (NOT SHOWN)
- PARCEL
- PARCEL INTERSECTION SHG HT



I, KENNETH JOHNSON, A REGISTERED PROFESSIONAL LAND SURVEYOR AND AN AUTHORIZED AGENT OF AEROPOL LAND SURVEYORS, DO HEREBY CERTIFY THAT THE ABOVE DESCRIBED WELL LOCATIONS AND IMPROVEMENTS WERE MADE ON THE GROUND AS SHOWN.

Kenneth Johnson #5819 7-30-2012
KENNETH JOHNSON, S.D.S., NO. 5819



NOTE: AEROPOL LAND SURVEYORS ARE NOT PROVIDING UNDERGROUND UTILITY LOCATIONS. BURIED UTILITIES MAY BE SHOWN ON THE PLAN IF A SURVEY OF THEM IS PHYSICALLY OBSERVABLE. EVIDENCE FROM THE FIELD IS REQUIRED FOR QUALIFIED UTILITY LOCATIONS.

NO.	ADDED PHOTO/TRACTS	DATE	BY
1	ADDED PHOTO/TRACTS	7-9-12	KJ
2	ADDED PHOTO/TRACTS	7-9-12	KJ
3	ADDED PHOTO/TRACTS	7-9-12	KJ
4	ADDED PHOTO/TRACTS	7-9-12	KJ
5	ADDED PHOTO/TRACTS	7-9-12	KJ
6	ADDED PHOTO/TRACTS	7-9-12	KJ
7	ADDED PHOTO/TRACTS	7-9-12	KJ
8	ADDED PHOTO/TRACTS	7-9-12	KJ
9	ADDED PHOTO/TRACTS	7-9-12	KJ
10	ADDED PHOTO/TRACTS	7-9-12	KJ
11	ADDED PHOTO/TRACTS	7-9-12	KJ
12	ADDED PHOTO/TRACTS	7-9-12	KJ
13	ADDED PHOTO/TRACTS	7-9-12	KJ
14	ADDED PHOTO/TRACTS	7-9-12	KJ
15	ADDED PHOTO/TRACTS	7-9-12	KJ
16	ADDED PHOTO/TRACTS	7-9-12	KJ
17	ADDED PHOTO/TRACTS	7-9-12	KJ
18	ADDED PHOTO/TRACTS	7-9-12	KJ
19	ADDED PHOTO/TRACTS	7-9-12	KJ
20	ADDED PHOTO/TRACTS	7-9-12	KJ
21	ADDED PHOTO/TRACTS	7-9-12	KJ
22	ADDED PHOTO/TRACTS	7-9-12	KJ
23	ADDED PHOTO/TRACTS	7-9-12	KJ
24	ADDED PHOTO/TRACTS	7-9-12	KJ
25	ADDED PHOTO/TRACTS	7-9-12	KJ
26	ADDED PHOTO/TRACTS	7-9-12	KJ
27	ADDED PHOTO/TRACTS	7-9-12	KJ
28	ADDED PHOTO/TRACTS	7-9-12	KJ
29	ADDED PHOTO/TRACTS	7-9-12	KJ
30	ADDED PHOTO/TRACTS	7-9-12	KJ
31	ADDED PHOTO/TRACTS	7-9-12	KJ
32	ADDED PHOTO/TRACTS	7-9-12	KJ
33	ADDED PHOTO/TRACTS	7-9-12	KJ
34	ADDED PHOTO/TRACTS	7-9-12	KJ
35	ADDED PHOTO/TRACTS	7-9-12	KJ
36	ADDED PHOTO/TRACTS	7-9-12	KJ
37	ADDED PHOTO/TRACTS	7-9-12	KJ
38	ADDED PHOTO/TRACTS	7-9-12	KJ
39	ADDED PHOTO/TRACTS	7-9-12	KJ
40	ADDED PHOTO/TRACTS	7-9-12	KJ
41	ADDED PHOTO/TRACTS	7-9-12	KJ
42	ADDED PHOTO/TRACTS	7-9-12	KJ
43	ADDED PHOTO/TRACTS	7-9-12	KJ
44	ADDED PHOTO/TRACTS	7-9-12	KJ
45	ADDED PHOTO/TRACTS	7-9-12	KJ
46	ADDED PHOTO/TRACTS	7-9-12	KJ
47	ADDED PHOTO/TRACTS	7-9-12	KJ
48	ADDED PHOTO/TRACTS	7-9-12	KJ
49	ADDED PHOTO/TRACTS	7-9-12	KJ
50	ADDED PHOTO/TRACTS	7-9-12	KJ
51	ADDED PHOTO/TRACTS	7-9-12	KJ
52	ADDED PHOTO/TRACTS	7-9-12	KJ
53	ADDED PHOTO/TRACTS	7-9-12	KJ
54	ADDED PHOTO/TRACTS	7-9-12	KJ
55	ADDED PHOTO/TRACTS	7-9-12	KJ
56	ADDED PHOTO/TRACTS	7-9-12	KJ
57	ADDED PHOTO/TRACTS	7-9-12	KJ
58	ADDED PHOTO/TRACTS	7-9-12	KJ
59	ADDED PHOTO/TRACTS	7-9-12	KJ
60	ADDED PHOTO/TRACTS	7-9-12	KJ
61	ADDED PHOTO/TRACTS	7-9-12	KJ
62	ADDED PHOTO/TRACTS	7-9-12	KJ
63	ADDED PHOTO/TRACTS	7-9-12	KJ
64	ADDED PHOTO/TRACTS	7-9-12	KJ
65	ADDED PHOTO/TRACTS	7-9-12	KJ
66	ADDED PHOTO/TRACTS	7-9-12	KJ
67	ADDED PHOTO/TRACTS	7-9-12	KJ
68	ADDED PHOTO/TRACTS	7-9-12	KJ
69	ADDED PHOTO/TRACTS	7-9-12	KJ
70	ADDED PHOTO/TRACTS	7-9-12	KJ
71	ADDED PHOTO/TRACTS	7-9-12	KJ
72	ADDED PHOTO/TRACTS	7-9-12	KJ
73	ADDED PHOTO/TRACTS	7-9-12	KJ
74	ADDED PHOTO/TRACTS	7-9-12	KJ
75	ADDED PHOTO/TRACTS	7-9-12	KJ
76	ADDED PHOTO/TRACTS	7-9-12	KJ
77	ADDED PHOTO/TRACTS	7-9-12	KJ
78	ADDED PHOTO/TRACTS	7-9-12	KJ
79	ADDED PHOTO/TRACTS	7-9-12	KJ
80	ADDED PHOTO/TRACTS	7-9-12	KJ
81	ADDED PHOTO/TRACTS	7-9-12	KJ
82	ADDED PHOTO/TRACTS	7-9-12	KJ
83	ADDED PHOTO/TRACTS	7-9-12	KJ
84	ADDED PHOTO/TRACTS	7-9-12	KJ
85	ADDED PHOTO/TRACTS	7-9-12	KJ
86	ADDED PHOTO/TRACTS	7-9-12	KJ
87	ADDED PHOTO/TRACTS	7-9-12	KJ
88	ADDED PHOTO/TRACTS	7-9-12	KJ
89	ADDED PHOTO/TRACTS	7-9-12	KJ
90	ADDED PHOTO/TRACTS	7-9-12	KJ
91	ADDED PHOTO/TRACTS	7-9-12	KJ
92	ADDED PHOTO/TRACTS	7-9-12	KJ
93	ADDED PHOTO/TRACTS	7-9-12	KJ
94	ADDED PHOTO/TRACTS	7-9-12	KJ
95	ADDED PHOTO/TRACTS	7-9-12	KJ
96	ADDED PHOTO/TRACTS	7-9-12	KJ
97	ADDED PHOTO/TRACTS	7-9-12	KJ
98	ADDED PHOTO/TRACTS	7-9-12	KJ
99	ADDED PHOTO/TRACTS	7-9-12	KJ
100	ADDED PHOTO/TRACTS	7-9-12	KJ

FLOW LINE LOCATION

0-12-016



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: December 18, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a motion interpreting a note on a proposed final plat, Greathouse Addition, Section 9. (Generally located on the northwest corner of the intersection of Briarwood Avenue and Mathis Street.)

Purpose: Consider a motion interpreting a note on a proposed final plat, Greathouse Addition, Section 9. Generally located on the northwest corner of the intersection of Briarwood Avenue and Mathis Street.

Recommended City Council Action

☐ Approve

☐ Deny

☒ Direction/Informational

Fiscal Impact:

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

Discussion:

The purpose of this replat for Greathouse Addition, Section 9 pertains to a note that was filed and recorded with the plat of Greathouse Addition, Section 6. The note on this plat indicates that the recorded restrictive covenant applies to all platted lots recorded on the final plat. The applicant is putting forth language on the replat that indicates the note is a scrivener's error, and that the restrictive covenant only applies to a portion of the platted lots. The City of Midland's legal office has put forth language stating that the note should indicate "the owner's sole purpose" of replatting the property is to adjust the area the restrictive covenant is thus applied. An interpretation is needed from the Council regarding which language is appropriate for the final plat of Greathouse Addition, Section 9.

GREATHOUSE ADDITION SECTION 9

Being A Replat
of Lot 11, Block 2
Greathouse Addition Section 6
to the City of
Midland, Texas

Original Scale: 1"=60'

LEGEND

PLAT LIMITS

EXISTING PLATTED LOTS

EXISTING EASEMENTS

NOTES:

1. THIS PLAT IS MADE TO CORRECT A SCRIVENER'S ERROR IN THE FINAL PLAT OF GREATHOUSE ADDITION, SECTION 6, THAT PLAT ERRONEOUSLY IMPLIED THAT THE RESTRICTIVE COVENANTS FOR THE GREATHOUSE ADDITION RECORDED AT VOLUME 2536, PAGE 149, OFFICIAL RECORDS OF MIDLAND COUNTY, TEXAS, WHICH EXPRESSLY PROVIDE THAT THE RESTRICTIONS COVER ONLY RESIDENTIAL LOTS AND RESIDENCES, COVERED LOTS THAT WERE NEVER RESIDENTIAL LOTS, INCLUDING LOT 11, BLOCK 2, REPLATED BY THIS PLAT.
2. A BLANKET EASEMENT OF INGRESS AND EGRESS IS HEREBY GRANTED FOR GREATHOUSE SECTION 9 TO THE CITY OF MIDLAND FOR GARBAGE AND TRASH COLLECTION AND LOCATION AND MAINTENANCE OF TRASH CONTAINERS, SAVE AND EXCEPT THOSE AREAS OCCUPIED BY A BUILDING OR STRUCTURE. SAID EASEMENT IS CONDITIONED SUCH THAT NO CONSTRUCTION SHALL COMMENCE ON SAID LOT UNTIL EXACT LOCATION OF SAID CONTAINERS AND THE EASEMENTS IN CONNECTION THEREWITH HAVE BEEN SELECTED AND APPROVED BY THE DIRECTOR OF UTILITIES.
3. SELLING A PORTION OF THIS ADDITION BY METES AND BOUNDS MAY BE A VIOLATION OF CITY ORDINANCE AND STATE LAW AND SUBJECT TO FINES AND WITHDRAWAL OF UTILITIES AND BUILDING PERMITS.
4. APPROVAL OF A SITE PLAN BY THE CITY OF MIDLAND MAY BE REQUIRED BEFORE THE DEVELOPMENT OF ANY LOT AND BEFORE A BUILDING PERMIT MAY BE OBTAINED.
5. A DRAINAGE EASEMENT IS HEREBY ESTABLISHED ACROSS LOT 11A, BLOCK 2, SAID EASEMENT SHALL BE CAPABLE OF CONVEYING THE ANTICIPATED 135 CFS, 100-YEAR FLOW, MODIFICATION OF THIS EASEMENT WILL BE SUBJECT TO CITY OF MIDLAND APPROVAL OF EASEMENT PATH AND CAPACITY.
6. 1/2" IRRED WITH PLASTIC CAP MARKED "PLS 1914" SET OR FOUND AT EACH CORNER WHERE POSSIBLE.

UTILITY COMPANY'S CERTIFICATE

This plat has been checked for accessibility of utilities.

Rita P. Aguilar
Onor Electric Delivery Service LUIS AGUILAR

Robert Pope
At&T Texas ROBERT POPE

Mark Lieb
At&T Texas MARK LIEB

Bill Bentley
SuddenLink Communications BILL BENTLEY

Charles J. McGee
Sweeney DOUG MCGEE

Vicki Byler
Grande Communications VICKI BYLER

OWNERS:

BLACK FAMILY PARTNERSHIP, LTD.
P.O. BOX 50820
MIDLAND, TEXAS 79710

Contact:
Mike Black
(432) 683-2950

CRUMP FAMILY PARTNERSHIP, LTD.
P.O. BOX 50820
MIDLAND, TEXAS 79710

Contact:
Leo Crump
(432) 683-2950

ENGINEER:

PARKHILL, SMITH & COOPER, INC.
1700 W. WALL
MIDLAND, TEXAS 79701

Contact:
Eric West, P.E.
(432) 697-1447

PLAT FILED FOR RECORD
MIDLAND COUNTY, TEXAS

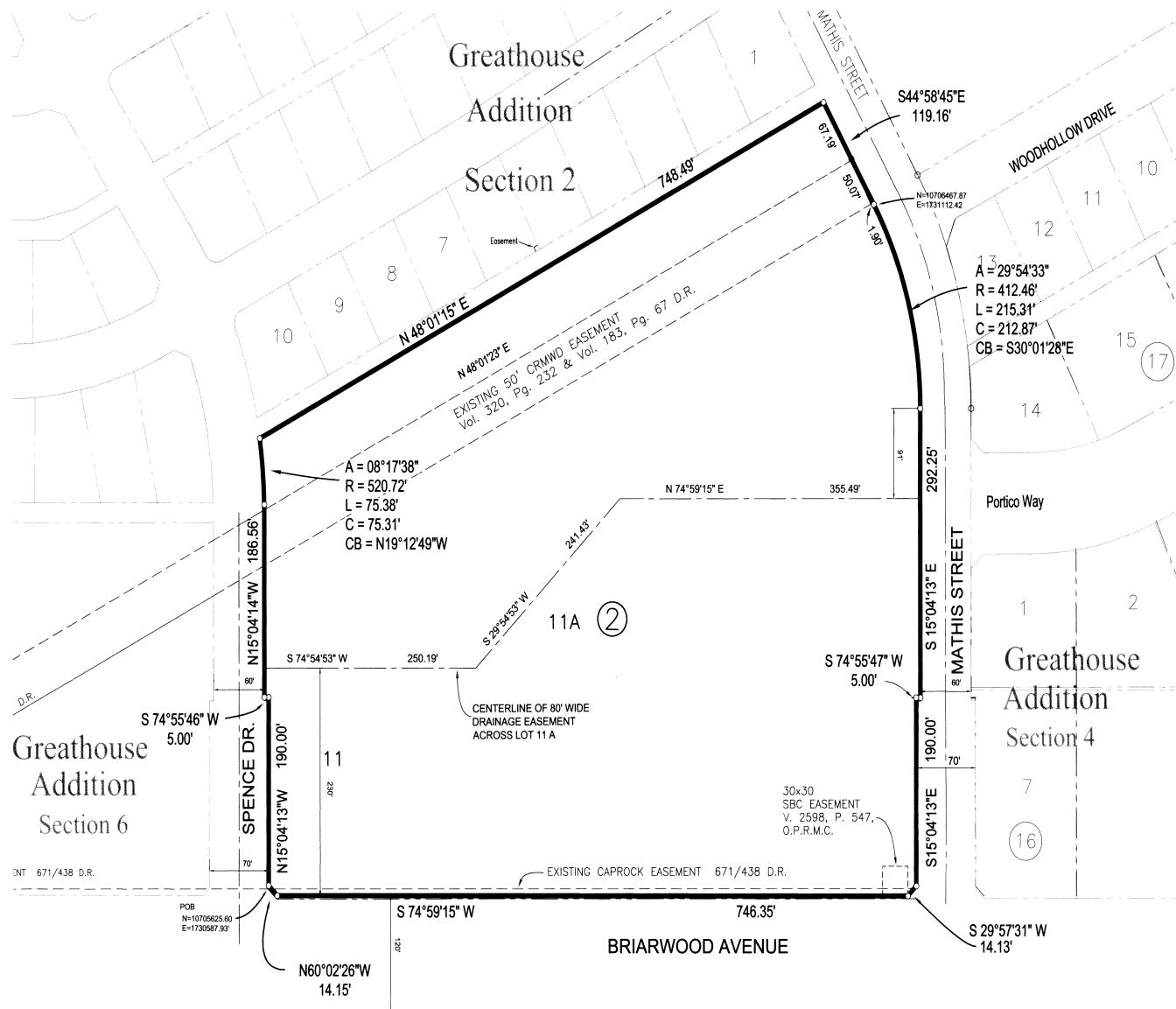
NO. _____ CABINET _____
DATE _____ PAGE _____

CERTIFICATE OF APPROVAL

This is to certify that the above and foregoing plat of GREATHOUSE ADDITION, Section 11 was approved by proper action of the Director of Development Services of the City of Midland, Texas, on this 19th day of November, 2012.

JIM NICHOLS
Acting Director of Development Services

**GREATHOUSE
ADDITION
SECTION 9**



SURVEYOR'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS

That I, J. Stan Piper, a Registered Professional Land Surveyor, do hereby certify that I prepared this plat from an actual and accurate survey of the land and that the corner monuments shown thereon were properly placed under my personal supervision, in accordance with the Subdivision Regulations of the City of Midland, Texas.

J. Stan Piper
J. Stan Piper, R.P.L.S. #1974
Piper Surveying, P.O. Box 50432, Midland, Texas 79711

BEARING NOTE

Bearings are relative to Greathouse Addition Section 1 recorded in Cabinet F, Page 45, Plat Records of Midland County, Texas.

OWNER'S CERTIFICATES

STATE OF TEXAS
COUNTY OF MIDLAND

Whereas, the Black Family Partnership, LTD. and the Crump Family Partnership, LTD. are the record owners of Lot 11, Block 2 Greathouse Addition, Section 6 to the City of Midland Texas and more particularly described herein.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That we, the Black Family Partnership, LTD. and the Crump Family Partnership, LTD., do hereby adopt this plat designating the hereinabove described property as GREATHOUSE ADDITION SECTION 9 to the City of Midland, Texas, and we do hereby dedicate to the public use for the streets, alleys, and easements (and parkways) shown thereon.

WITNESS our hands at Midland, Texas, this 19th day of November, 2012.

Mike Black
Mike Black
Black Family Partnership, LTD.

E. Leo Crump
E. Leo Crump
Crump Family Partnership, LTD.

STATE OF TEXAS
COUNTY OF MIDLAND

This instrument was acknowledged before me on Nov. 19, 2012 by Mike Black, for Black Family Partnership, LTD., on behalf of said Limited Partnership.

Rita J. Cook
Rita J. Cook
Notary Public
STATE OF TEXAS
My Comm. Exp. Feb. 04, 2014

STATE OF TEXAS
COUNTY OF MIDLAND

This instrument was acknowledged before me on Nov. 19, 2012 by E. Leo Crump, for Crump Family Partnership, LTD., on behalf of said Limited Partnership.

Rita J. Cook
Rita J. Cook
Notary Public
STATE OF TEXAS
My Comm. Exp. Feb. 04, 2014

Rita J. Cook
Rita J. Cook
Notary Public Signature

Rita J. Cook
Rita J. Cook
Notary Public Signature

EXHIBIT B

Greathouse Addition, Section 9 Replat: Note 1

NOTES:

1. THIS PLAT IS MADE TO CORRECT A SCRIVENER'S ERROR IN THE FINAL PLAT OF GREATHOUSE ADDITION, SECTION 6. THAT PLAT ERRONEOUSLY IMPLIED THAT THE RESTRICTIVE COVENANTS FOR THE GREATHOUSE ADDITION RECORDED AT VOLUME 2536, PAGE 149, OFFICIAL RECORDS OF MIDLAND COUNTY, TEXAS, WHICH EXPRESSLY PROVIDE THAT THE RESTRICTIONS COVER ONLY RESIDENTIAL LOTS AND RESIDENCES, COVERED LOTS THAT WERE NEVER RESIDENTIAL LOTS, INCLUDING LOT 11, BLOCK 2, REPLATTED BY THIS PLAT.



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: December 18, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a motion appealing the Building Official's denial of a sign permit application by First Baptist Church. Generally located on the northeast corner of the intersection of W. Louisiana Avenue and Garfield Street.

Purpose: Consider a motion appealing the Building Official's denial of a sign permit application by First Baptist Church.

Recommended City Council Action

☐ Approve

☒ Deny

☐ Direction/Informational

Fiscal Impact:

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

Discussion:

The applicant recently requested a sign permit for a 96 sf electronic sign with a height of 19 feet for the property located on the northeast corner of the intersection of W. Louisiana Avenue and N. Garfield Street. The Building Official denied the sign permit application since it is not in compliance with the City Sign Code. The City Sign Code limits the size of such as sign to 24 sf with a 15 foot maximum height for the zoning district governing the property. This item is being placed on the City Council agenda in order for the property owner to appeal the decision of the Building Official. If the Council chooses to allow the proposed sign, then direction should be given to the Building Official's office to issue the requested sign permit.

Attachments: map, letter from First Baptist Church, sign design and site plan



First Baptist

LOVE IS FIRST

11.19.2012

City of Midland
Code Administration Division
P.O. Box 1152
300 N. Loraine Street
Attn: Mr. Steve Thorpe

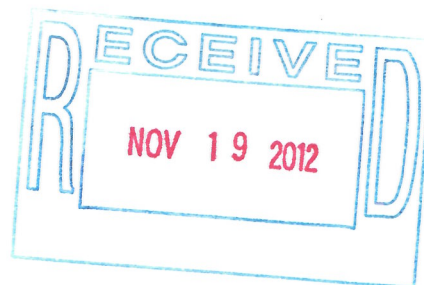
Re: Sign Permit Application, First Baptist Church, 2104 W. Louisiana

This letter serves as a request to a variance for First Baptist Church to present its case at the next City Council meeting for consideration for the proposed Electronic Message Sign. First Baptist Church has received the City of Midland's rejection notice for the proposed Electronic Message Sign and is aware of it not meeting code requirements as referenced in the email from the Building Official Steve Thorpe, dated November 19, 2012.

Thank you for your consideration and communication.

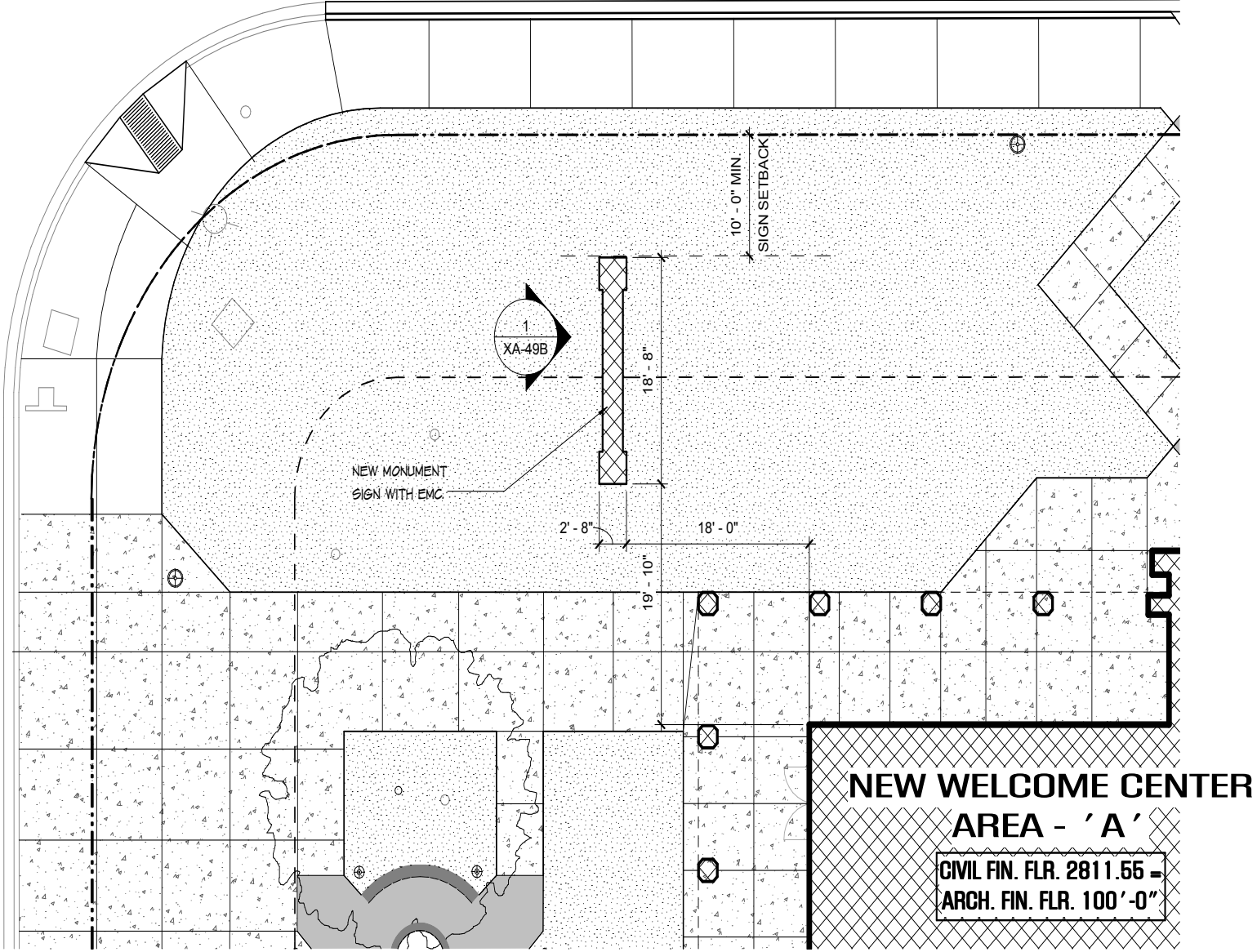
Respectfully,

Dr. Randel Everett
Pastor
FBC Midland



AREA
A

GARFIELD ST.



1

ENLARGED SITE PLAN - AREA 'A'

SCALE: 1" = 10'-0"



THIS DOCUMENT IS FOR
PERMITTING PURPOSES ONLY
NOT FOR CONSTRUCTION

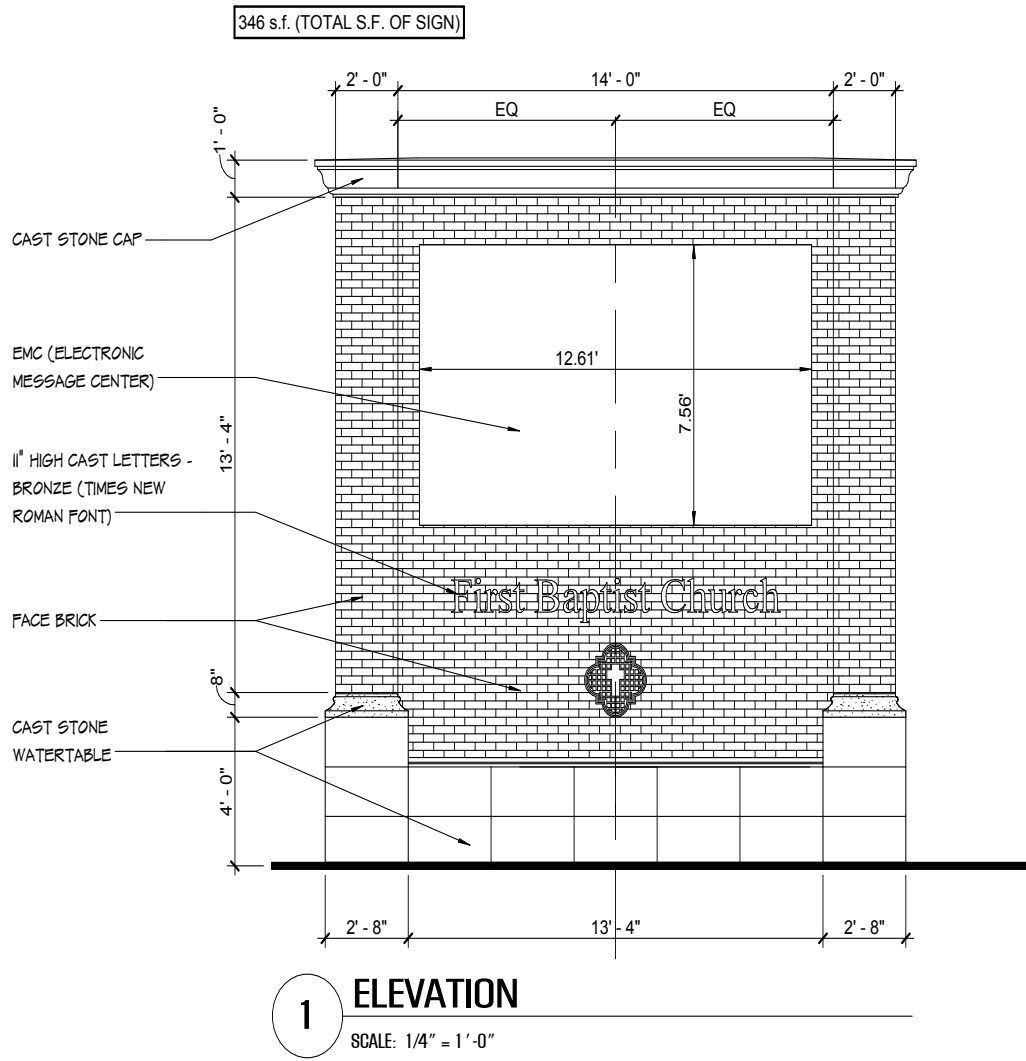
First Baptist Church, Midland TX
Additions and Renovations
2104 W. Louisiana
Midland, TX 79701

jsa
jsa architects

odessa, texas
432-362-6565
kerrville, texas
888-774-6565

11-07-2012
JSA No. 2010-01

XA-49A



THIS DOCUMENT IS FOR
PERMITTING PURPOSES ONLY
NOT FOR CONSTRUCTION

First Baptist Church, Midland TX
Additions and Renovations
2104 W. Louisiana
Midland, TX 79701



odessa, texas
432-362-6565
kerrville, texas
888-774-6565

11/07/12
JSA No. 2010-01

XA-49B



First Baptist
LOVE IS FIRST

40.5

First Baptist Church Midland
Proposed Welcome Center and Chapel Additions
September 2010

jsa
jsa architects



City Council Agenda

Approved for Agenda:
JNichols
City Manager's Office

MEETING DATE: December 18, 2012

TO: CITY COUNCIL/CITY MANAGER

FROM: Cameron Walker, Planning Division Manager

SUBJECT: Consider a motion interpreting Chapter 11-7a Revised Outdoor Sign Regulations regarding the use of advertising on EZ Rider transportation shelters in all zoning districts.

Purpose: Consider a motion interpreting Chapter 11-7a Revised Outdoor Sign Regulations regarding the use of advertising on EZ Rider transportation shelters in all zoning districts.

Recommended City Council Action

☐ Approve

☐ Deny

☒ Direction/Informational

Fiscal Impact:

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

Discussion:

EZ Rider is considering the placement of advertising on the organization's transportation shelters to increase revenue to assist with their operations. EZ Rider needs an interpretation from the Council regarding the C-1, Central Area District sign standards under Chapter 11-7a-7 of the City Code. The current code prohibits the advertisements from adhering to the transportation shelters except as authorized by the Transportation Director. Furthermore, EZ Rider is also considering the placement of advertisements on these shelters in all other use districts. Staff is requesting Council to interpret the intent of this portion of the City Code. If the City Council interprets that EZ Rider signs may be allowed on the shelters the suggested limitations should include the following:

- No signs on shelters in residential areas or adjacent to residential areas;
- Any sign placed on an EZ Rider Shelter shall not exceed 4 feet in height above grade. Signs may face inward or outward from the shelter facility.
- That EZ Rider is solely responsible for regulating the content of all advertisements.



City Council Agenda

Approved for Agenda:

City Manager's Office

MEETING DATE: 12/18/2012

TO: City Council / City Manager

FROM: Tina Jauz / Community Services Director

SUBJECT: Consider an ordinance designating the I-20 Wildlife Preserve as parkland and establishing Title IX "Public Ways and Property," Chapter 5 "Parks and Playgrounds," Section 18 "Hours of Use of Public Parks," Subsection C of the City Code of Midland, Texas

Purpose:

To designate the I-20 Wildlife Preserve as parkland and to set the operating hours at the I-20 Wildlife Preserve and James M. Bradford Park.

Recommended City Council Action

☒ Approve ☐ Deny ☐ Directional / Informational

Fiscal Impact:

None

Discussion:

To meet the requirement of the Texas Parks and Wildlife Department Grant, the I-20 Wildlife Preserve needs to be designated as parkland. This action is required to take place between the time of receiving the grant and the ribbon cutting of the new park. The action is being recommended at this time as the ribbon cutting will be scheduled sometime after January 1st. Much consideration was given to the operating hours recommended. Elain Magruder and her staff have chosen the hours based on the times and days of operation of many state parks. They are proposing to be closed:

6:00 p.m. to 8:00 a.m. from October 1 – the end of February

8:00 p.m. to 8:00 a.m. from March 1 – September 30

Dates of closure: New Year's, Easter, Thanksgiving, and Christmas Days

The Director of the I-20 Wildlife Preserve shall be authorized to grant exceptions to the above hours on a temporary basis for management and safety purposes.

ORDINANCE NO. _____

AN ORDINANCE DESIGNATING THE I-20 WILDLIFE PRESERVE AS PARKLAND; AMENDING TITLE IX, “PUBLIC WAYS AND PROPERTY”, CHAPTER 5, “PARKS AND PLAYGROUNDS”, SECTION 18, “HOURS OF USE OF PUBLIC PARKS”, ESTABLISHING SUBSECTION (C) OF THE CITY CODE OF MIDLAND, TEXAS, SO AS TO ESTABLISH PROVISIONS CONCERNING HOURS OF USE AND RULES AND REGULATIONS FOR THE I-20 WILDLIFE PRESERVE; CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00); AND ORDERING PUBLICATION

WHEREAS, the Council finds it to be in the public interest to designate the I-20 Wildlife Preserve as parkland and to establish provisions concerning hours of use, and rules and regulations for the I-20 Wildlife Preserve;

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

SECTION ONE. That the I-20 Wildlife Preserve is hereby designated as Parkland, said property is described on Exhibits “A”, “B”, “C”, and “D” attached hereto and incorporated herein for all purposes.

SECTION TWO. That Title IX, “Public Ways and Property”, Chapter 5, “Parks and Playgrounds”, Section 18, “Hours of use of public parks” of the City Code of Midland, Texas is hereby amended so as to establish Subsection (C), which shall hereby read as follows:

9-5-18. Hours of use of public parks

- (C) That the I-20 Wildlife Preserve hours of use, and rules and regulation shall be established as described in Exhibit “E” attached hereto and incorporated herein for all purposes.

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 five hundred dollars (\$500.00).

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 law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2012; and passed to second reading on motion of Council member _____, seconded by Council member _____, by the following vote:

Council members voting "AYE":

Council members voting "NAY":

The above and foregoing ordinance was read in full and finally adopted by the following vote upon motion of Council member _____, seconded by Council member _____, on the _____ day of _____, A.D., 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, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED AS TO CONTENT
AND COMPLETENESS:

Tina Jauz, Director of Community Services

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

Reso # 2002-101

QUITCLAIM DEED

THE STATE OF TEXAS
COUNTY OF MIDLAND

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, **CITY OF MIDLAND, TEXAS, A Texas Home Rule Municipal Corporation**, P.O. Box 1152, Midland, Texas 79702 of the County of Midland, State of Texas, hereinafter referred to as "Grantor", whether one or more, for and in consideration of Grantee herein named to use the property in a manner that primarily promotes a public purpose of the City of Midland in accordance with House Bill 122, passed by the Seventy-Seventh Texas Legislature during its regular session. The public purpose being to develop an exposition center. The Grantor has QUITCLAIMED, and by these presents does QUITCLAIM unto **West Texas Expo Center Incorporated**, 200 West Wall, Suite 200, Midland, Texas 79701, herein referred to as "Grantee", whether one or more, the real property (the "Property") described as follows:

For a 84.01 acre tract of land out of Section 5, Block 39, T-2-S, T&P Railroad Company Survey, Midland County, Texas and being the same land conveyed to the City of Midland by the following deeds, Vol. 385, Page 256 tracts 1 and 2 and Vol. 384, Page 659 tract 1 as recorded in Midland County Deed Records and being more fully described as follows;

Beginning at a 1/2" iron rod with aluminum cap set for the northwest corner of the herein described tract also being the northwest corner of said Vol. 384, Pg. 659, Tract 1 and being in the East line of south Midland Drive and the South line of Industrial Ave.

Thence N 59° 43' 16" E along said Industrial Ave. a distance of 441.04 feet to a found 3/8" iron rod at the northwest corner of a tract to Terramark LP recorded in Vol. 1950, Pg 111 of said deed records.

Thence S 14° 23' 34" E with the West line of the said Terramark tract a distance of

Vol Page
7232 1978 27

519.55 feet to a found ½" iron rod

Thence N 75° 36' 26" E along the South line of said Terramark tract a distance of 466.78 feet to a set ½" iron rod with aluminum cap.

Thence S 26° 21' 22" E a distance of 123.88 feet to a found ½" iron rod at a corner of the said Terramark tract.

Thence N 75° 03' 11" E along South line of said Terramark tract a distance of 203.10 feet to a steel fence corner post for corner in the West line of a tract owned by McClatchy Brothers.

Thence S 13° 37' 10" E along West line of said McClatchy tract a distance of 164.74 feet to a large cedar fence corner post for corner.

Thence N 75° 36' 38" E along the South line of said McClatchy Brothers tract a distance of 1492.91 feet to a set ½" iron with aluminum cap in the West line of a county road.

Thence S 14° 23' 22" E along said county road a distance of 60.00 feet to a set ½" iron rod with aluminum cap.

Thence S 75° 36' 38" W along the North line of a tract to Western Wireless Corp., Vol. 1154, Pg. 54 and another tract to Holsum Partnership LLP, Vol. 1637, Pg. 357 a distance of 798.2 feet to a set ½" iron rod with aluminum cap in the East line of the herein described tract.

Thence S 14° 23' 22" E a distance of 303.00 feet to a set ½" iron rod with aluminum cap at an angle point in the East line of this tract.

Thence S 38° 37' 34" E along the East line of this tract a distance of 1939.98 feet to a set ½" iron rod with aluminum cap set in the north right-of-way of Interstate Hwy. 20 at the southeast corner of this tract.

Thence along the said north right-of-way and a curve to the left having a radius of 11609.2 feet and a length of 1350.10 feet and a chord bearing of S 67° 15' 10" W to a set ½" iron rod with aluminum cap for the southwest corner of this tract and southeast corner of a tract to David Hoff, Vol. 912, Pg. 680.

Thence N 37° 32' 32" W along the West line of this tract a distance of 2532.05 feet

to a set ½" iron rod with aluminum cap for the northeast corner of a tract to Henry Culp Vol. 1228 Pg. 466.

Thence S 75° 36' 38" W along said Culp tract a distance of 278.07 feet to a set ½" iron rod with aluminum cap in the East line of South Midland Drive.

Thence N 14° 23' 22" W along the East line of said road a distance of 682.71 feet To The Place Of Beginning and containing 84.01 acres.

Bearings based on the Texas State Coordinate System Central Zone.

BY EXECUTING THIS QUITCLAIM DEED, THE GRANTOR AND THE GRANTEE AGREE THAT GRANTEE IS TAKING THE PROPERTY "AS IS" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED BEING MADE BY THE CITY OF MIDLAND, TEXAS THAT THE PROPERTY IS FIT FOR A PARTICULAR PURPOSE. THE GRANTEE ACKNOWLEDGES THAT GRANTEE IS NOT RELYING UPON ANY REPRESENTATION MADE BY THE CITY OF MIDLAND WITH RESPECT TO THE CONDITION OF THE PROPERTY, BUT IS RELYING UPON GRANTEE'S EXAMINATION OF THE PROPERTY. GRANTEE ALSO RECOGNIZES BY AGREEING TO PURCHASE THE PROPERTY "AS IS" THAT GRANTEE AGREES TO MAKE GRANTEE'S OWN APPRAISAL OF THE PROPERTY AND TO ACCEPT THE RISK THAT GRANTEE MAY BE WRONG. THE GRANTOR GIVES NO ASSURANCES, EXPRESS OR IMPLIED CONCERNING THE VALUE OR CONDITION OF THE PROPERTY SOLD. IN NO EVENT SHALL A GRANTEE HAVE A RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, THE GRANTEE WILL

TAKE THE PROPERTY UNDER THE EXPRESS UNDERSTANDING THE PROPERTY IS ACCEPTED "AS IS" AND WITH ALL FAULT, EXCLUDING EXPRESS OR IMPLIED WARRANTIES. PROVISIONS OF THIS PARAGRAPH SURVIVE THE CLOSING.

In accordance with House Bill 122, now codified as Section 253.011 of the Texas Local Government Code, the ownership of the above-referenced property automatically reverts back to the Grantor in the event the Grantee at any time fails to use the property to promote the public purpose of developing an exposition center.

RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY:

This conveyance, however, is made and accepted upon the following reservations and exceptions:

1. The City of Midland ("Grantor") expressly reserves and retains a drainage easement on, over, through, across and under the entire tract of Property described above. The City of Midland reserves and retains the right to construct, place, operate, repair, maintain, rebuild, replace and relocate drainage structures on, over, under, across and through the Property described above.
2. The Property is conveyed subject to a lease between the City of Midland ("Grantor") and Benchmark Research & Technology, Inc., dated April 14, 1998.
3. Midland County ("Grantee") must receive a Grant in the amount of \$1,000,000.00 from the Texas Parks and Wildlife Department for the development of a Midland County Exposition Center prior to December 31, 2003.

TO HAVE AND TO HOLD all of Grantor's right, title and interest in and to the above described property and premises unto the Grantee, and Grantee's heirs, administrators, executors, successors and/or assigns forever; so that neither Grantor nor Grantor's heirs, administrators, executors, successors and/or assigns shall have, claim or demand any right or title to the aforesaid property, premises or appurtenances or any part thereof.

EXECUTED this 9th day of April, 2002.

CITY OF MIDLAND, TEXAS

By: *Rick Menchaca*
Rick Menchaca, City Manager

THE STATE OF TEXAS

§

§

COUNTY OF MIDLAND

§

This instrument was acknowledged before me on the 9th day of April, 2002, by *Rick Menchaca*.



Lyn Miller
Notary Public, State of Texas

ACCEPTED BY GRANTEE

Wm. C. Morrow
Wm. C. Morrow, Midland County Judge

7232 Vol 1978 Page 31

THE STATE OF TEXAS
COUNTY OF MIDLAND

§
§
§

This instrument was acknowledged before me on the 16TH day of April, 2002, by Wm. C. Morrow.



Michelle Rudd
Notary Public, State of Texas

7232 Vol 1978 Page 32

LAContracts\Administration\2002\Expo Center.wpd

6



STATE OF TEXAS
COUNTY OF MIDLAND

I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me and was duly RECORDED in the Volume and Page of the named RECORDS of Midland County, Texas, as stamped hereon by me.

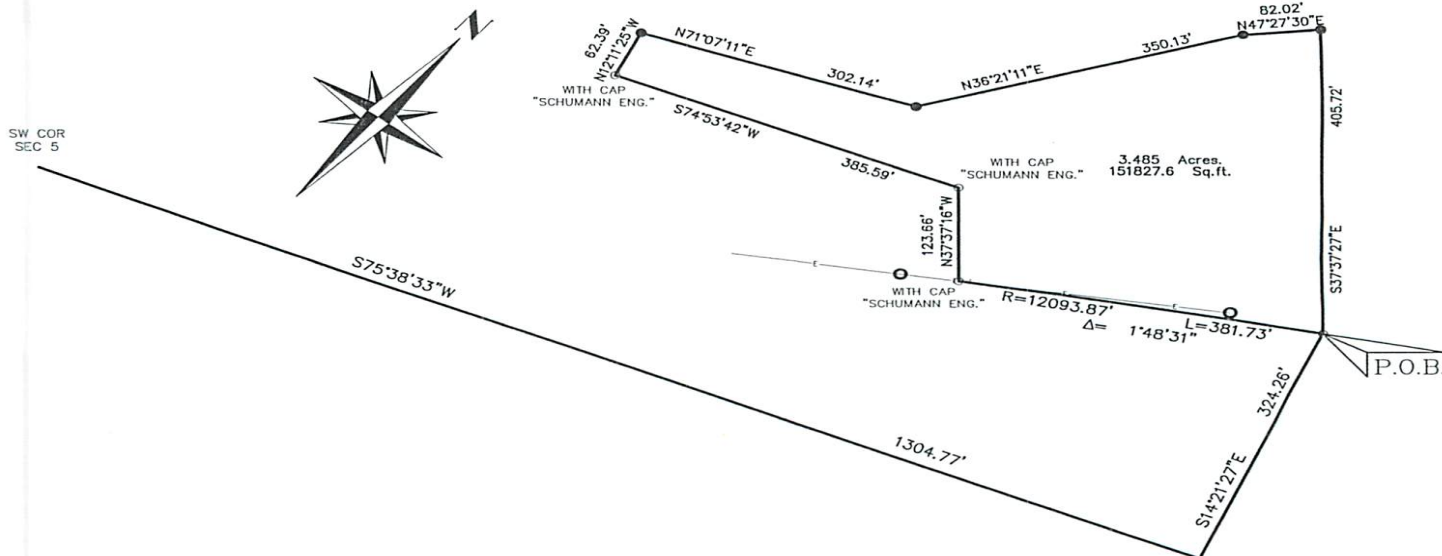
Midland County
Shauna Brown
County Clerk
On: Apr 16, 2002 at 03:31PM

Shauna Brown

County Clerk
Midland County, Texas

* COPYRIGHT 2011

This survey plat is being provided solely for the use of: I-20 Wildlife Preserve and that no license has been created, express or implied, to copy the survey plat except as is necessary in conjunction with the original transaction dated June 24 2011, which shall take place within 90 days after the survey was provided.



BEING a description of a 3.485 acre tract of land out of a 20.55 acre tract of land out of the southwest quarter (SW/4) of Section 5, Block 39, T-2-S T&P R.R. Co. Survey, Midland County, Texas, said 3.485 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" iron rod found for the southeast corner of this tract in the north right-of-way line of Interstate 20, also being the southeast corner of said 20.55 acre tract, from which the southwest corner of said Section 5 bears S 14°21'27" E a distance of 324.26 feet and S 75°38'33" W a distance of 1304.77 feet;

THENCE along a curve to the left having a radius of 12093.87 feet, a delta of 1°48'31" and arc length of 381.73 along the south line of said 20.55 acre tract and the north right-of-way line of said Interstate 20 a distance of 381.71 feet to a 1/2" iron rod with cap marked "SCHUMANN ENG." found for the most southerly southwest corner of this tract;

THENCE N 37°37'16" W a distance of 123.66 feet to a 1/2" iron rod with cap marked "SCHUMANN ENG." found for an interior corner of this tract;

THENCE S 74°53'42" W a distance of 385.59 feet to a 1/2" iron rod with cap marked "SCHUMANN ENG." found for the most northerly southwest corner of this tract;

THENCE N 12°11'25" W a distance of 62.39 feet to a 1/2" iron rod with cap marked "RPLS 4170" set for the northwest corner of this tract;

THENCE N 71°07'11" E a distance of 302.14 feet to a 1/2" iron rod with cap marked "RPLS 4170" set for an interior corner of this tract;

THENCE N 36°21'11" E a distance of 350.13 feet to a 1/2" iron rod with cap marked "RPLS 4170" set in the north line of this tract;

THENCE N 47°27'30" E a distance of 82.02 feet to a 1/2" iron rod with cap marked "RPLS 4170" set in the east line of said 20.55 acre tract for the northeast corner of this tract;

THENCE S 37°37'27" E along the east line of said 20.55 acre tract a distance of 405.72 feet to the POINT OF BEGINNING.

THE CONSTRUCTION OF THE BOUNDARY OF THIS PLAT IS BASED ON INFORMATION PROVIDED BY CLIENT FROM A PREVIOUS SURVEY.

LEGEND

- Set 1/2" I.R.
- W/Cap "RPLS 4170"
- Fnd. 1/2" I.R.
- Power Pole
- E — E —
- OVERHEAD ELECTRIC
- ▷ Guy Wire

Census Tract: 101.11

This tract is in Flood Zone "X" as shown on the Flood Insurance Rate Map, Dated September 16, 2005 provided by the Federal Emergency Management Agency Flood Map Number: 48329C0203 F

The undersigned does hereby certify that this survey was this day made on the ground of the property legally described hereon and is correct, and that there are no visible discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, easements or rights-of-way, except as shown hereon, and that said property has access to and from a dedicated roadway.

Dated this the 24th day of June 2011.

Bruce R. Pennell

Registered Professional Land Surveyor No. 4170
Date: 06/24/11

(IF SURVEYORS SIGNATURE IS NOT SIGNED IN RED INK, THIS IS NOT AN ORIGINAL DOCUMENT)

PENNELL & MARLOWE LAND SURVEYORS, INC.

PROFESSIONAL LAND SURVEYING

P.O. BOX 51622, MIDLAND, TEXAS 79710

VOICE: (432) 570-6256

FAX: (432) 682-3262

MOBILE: (432) 528-1027

ABSTRACT OFFICE: N/A

G.F. #: N/A

COMMITMENT EFFECTIVE DATE: N/A

CAD FILE: BRP14733-3

DATA FILE: WILDLIFE

DRAWN BY: MARCY N.

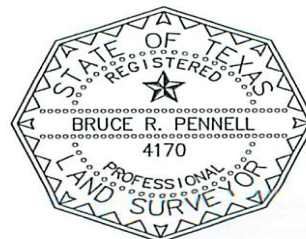
BOOK/PAGE: 1/

Basis of Bearings:
EAST Line of this Lot

Bearings and Distances Shown
Inside () Indicate Record Information

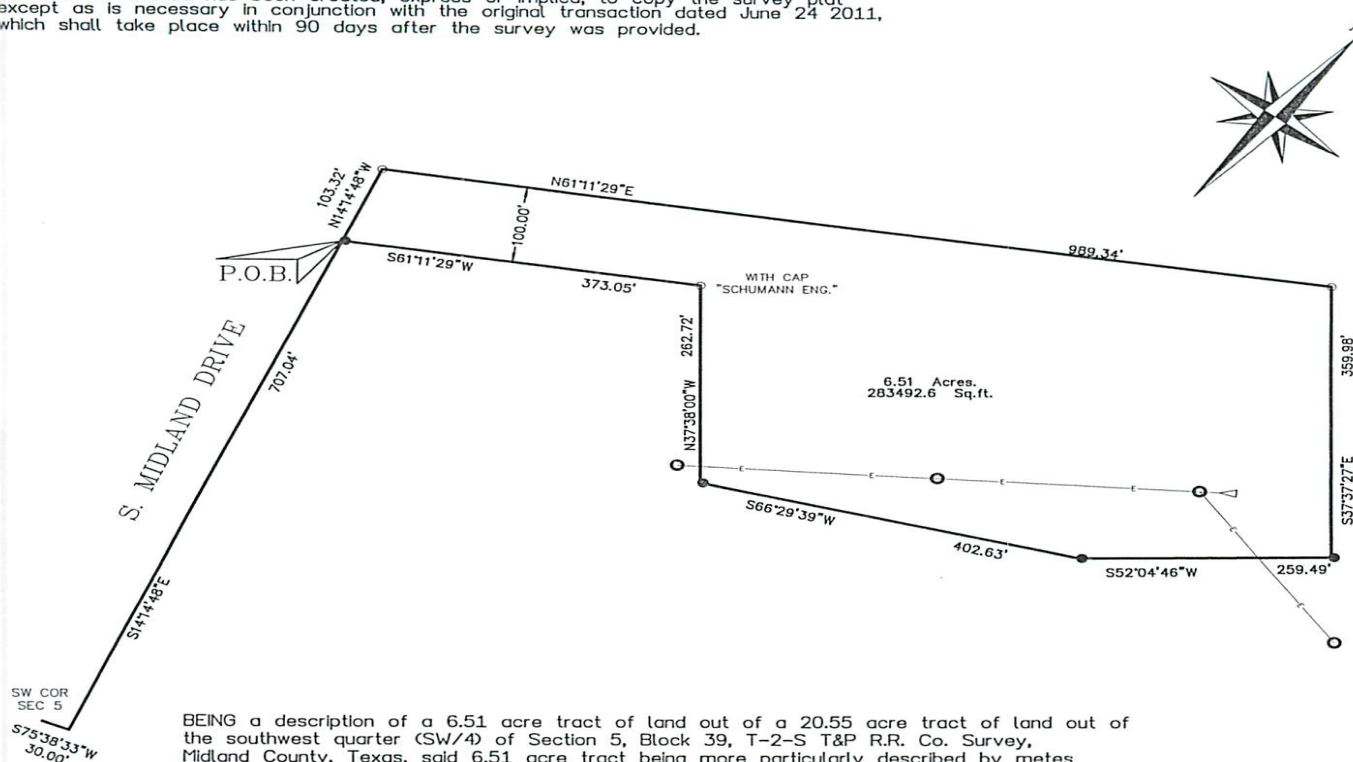


SCALE: 1" = 200'



* COPYRIGHT 2011

This survey plat is being provided solely for the use of: I-20 Wildlife Preserve and that no license has been created, express or implied, to copy the survey plat except as is necessary in conjunction with the original transaction dated June 24 2011, which shall take place within 90 days after the survey was provided.



BEING a description of a 6.51 acre tract of land out of a 20.55 acre tract of land out of the southwest quarter (SW/4) of Section 5, Block 39, T-2-S T&P R.R. Co. Survey, Midland County, Texas, said 6.51 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" iron rod with cap marked "RPLS 4170" set in the east right-of-way line of South Midland Drive for the most northerly southwest corner of this tract, from which the southwest corner of said Section 5 bears S 14°14'48" E a distance of 707.04 feet and S 75°38'33" W a distance of 30.00 feet;

THENCE N 14°14'48" W along the east right-of-way line of said South Midland Drive a distance of 103.32 feet to a 1/2" iron rod found for the northwest corner of this tract, also being the northwest corner of said 20.55 acre tract;

THENCE N 61°11'29" E along the north line of said 20.55 acre tract a distance of 989.34 feet to a 1/2" iron rod found for the northeast corner of this tract, also being the northeast corner of said 20.55 acre tract;

THENCE S 37°37'27" E along the east line of said 20.55 acre tract a distance of 359.98 feet to a 1/2" iron rod with cap marked "RPLS 4170" set for the southeast corner of this tract;

THENCE S 52°04'46" W a distance of 259.49 feet to a 1/2" iron rod with cap marked "RPLS 4170" set in the south line of this tract;

THENCE S 66°29'39" W a distance of 402.63 feet to a 1/2" iron rod with cap marked "RPLS 4170" set for the most southerly southwest corner of this tract;

THENCE N 37°38'00" W a distance of 262.72 feet to a 1/2" iron rod with cap marked "SCHUMANN ENG." found for an interior corner of this tract;

THENCE S 61°11'29" W 100.00 feet south of and parallel to the north line of said 20.55 acre tract a distance of 373.05 feet to the POINT OF BEGINNING.

THE CONSTRUCTION OF THE BOUNDARY OF THIS PLAT IS BASED ON INFORMATION PROVIDED BY CLIENT FROM A PREVIOUS SURVEY.

LEGEND
 ● Set 1/2" I.R. W/Cap "RPLS 4170"
 ○ Fnd. 1/2" I.R.
 ○ Power Pole
 ——— OVERHEAD ELECTRIC
 ▷ Guy Wire

Census Tract: 101.11

This tract is in Flood Zone "X" as shown on the Flood Insurance Rate Map, Dated September 16, 2005 provided by the Federal Emergency Management Agency Flood Map Number: 48329C0203 F

The undersigned does hereby certify that this survey was this day made on the ground of the property legally described hereon and is correct, and that there are no visible discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, easements or rights-of-way, except as shown hereon, and that said property has access to and from a dedicated roadway.

Dated this the 24th day of June 2011.

Bruce R. Pennell
 Registered Professional Land Surveyor No. 4170
 Date: 06/24/11

(IF SURVEYORS SIGNATURE IS NOT SIGNED IN RED INK, THIS IS NOT AN ORIGINAL DOCUMENT)

PENNELL & MARLOWE LAND SURVEYORS, INC.

PROFESSIONAL LAND SURVEYING

P.O. BOX 51622, MIDLAND, TEXAS 79710

VOICE: (432)570-6256

FAX: (432)682-3262

MOBILE: (432)528-1027

ABSTRACT OFFICE: N/A

G.F. #: N/A

COMMITMENT EFFECTIVE DATE: N/A

CAD FILE: BRP14733-1

DATA FILE: WILDLIFE

DRAWN BY: MARCY N.

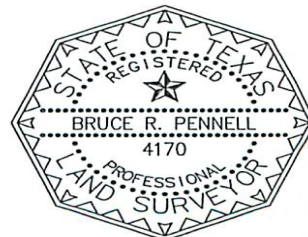
BOOK/PAGE: 1/

Basis of Bearings:
 EAST Line of this Lot

Bearings and Distances Shown
 Inside () Indicate Record Information

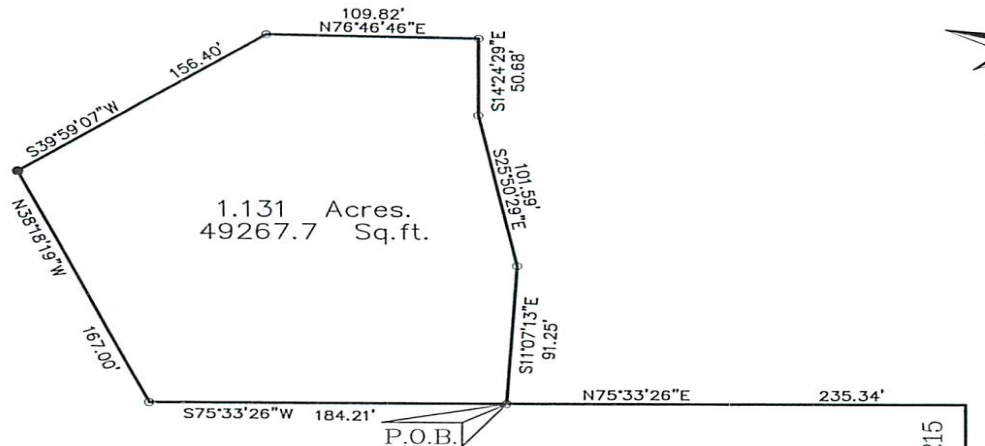


SCALE: 1" = 200'



* COPYRIGHT 2011

This survey plat is being provided solely for the use of: I-20 Wildlife Preserve and that no license has been created, express or implied, to copy the survey plat except as is necessary in conjunction with the original transaction dated June 24 2011, which shall take place within 90 days after the survey was provided.



BEING a description of a 1.131 acre tract of land out of a 3.10 acre tract of land out of the southwest quarter (SW/4) of Section 5, Block 39, T-2-S T&P R.R. Co. Survey, Midland County, Texas, said 1.131 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" iron rod found for the southeast corner of this tract in the north line of a 1.04 acre tract (Reference: Vol. 622, Pf. 201, Deed Records, Midland County, Texas), also being the southeast corner of said 3.10 acre tract, from which the southwest corner of the southeast quarter of said Section 5 bears N 75°33'26" E a distance of 235.34 feet and S 14°26'10" E a distance of 1449.76 feet;

THENCE S 75°33'26" W along the south line of said 3.10 acre tract and the north line of said 1.04 acre tract a distance of 184.21 feet to a 1/2" iron rod found for the southwest corner of this tract, also being the southwest corner of said 3.10 acre tract;

THENCE N 38°18'19" W along the west line of said 3.10 acre tract a distance of 167.00 feet to a 1/2" iron rod with cap marked "RPLS 4170" set for the most westerly northwest corner of this tract;

THENCE N 39°59'07" E a distance of 156.40 feet to a 1/2" iron rod found for the most easterly northwest corner of this tract;

THENCE N 76°46'46" E a distance of 109.82 feet to a 1/2" iron rod found for the northeast corner of this tract, said point also being the most southerly northeast corner of said 3.10 acre tract;

THENCE S 14°24'29" E along the east line of said 3.10 acre tract a distance of 50.68 feet to a 1/2" iron rod found in the east line of this tract;

THENCE S 25°50'29" E along the east line of said 3.10 acre tract a distance of 101.59 feet to a 1/2" iron rod found in the east line of this tract;

THENCE S 11°07'13" E along the east line of said 3.10 acre tract a distance of 91.25 feet to the POINT OF BEGINNING.

THE CONSTRUCTION OF THE BOUNDARY OF
THIS PLAT IS BASED ON INFORMATION PROVIDED
BY CLIENT FROM A PREVIOUS SURVEY.

LEGEND

- Set 1/2" I.R.
- W/Cap "RPLS 4170"
- Fnd. 1/2" I.R.

Census Tract: 101.11

This tract is in Flood Zone "X" as shown on the Flood Insurance Rate Map, Dated September 16, 2005 provided by the Federal Emergency Management Agency Flood Map Number: 48329C0203 F

The undersigned does hereby certify that this survey was this day made on the ground of the property legally described hereon and is correct, and that there are no visible discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, easements or rights-of-way, except as shown hereon, and that said property has access to and from a dedicated roadway.

Dated this the 24th day of June 2011.

Bruce R. Pennell

Registered Professional Land Surveyor No. 4170

Date: 06/24/11

(IF SURVEYORS SIGNATURE IS NOT SIGNED IN RED INK, THIS IS NOT AN ORIGINAL DOCUMENT)

PENNELL & MARLOWE LAND SURVEYORS, INC.

PROFESSIONAL LAND SURVEYING

P.O. BOX 51622, MIDLAND, TEXAS 79710

VOICE: (432) 570-6256

FAX: (432) 682-3262

MOBILE: (432) 528-1027

ABSTRACT OFFICE: N/A

G.F. #: N/A

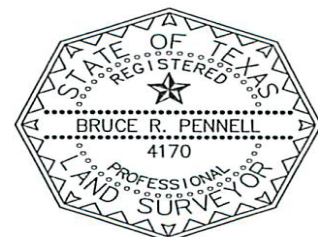
COMMITMENT EFFECTIVE DATE: N/A

CAD FILE: BRP14733-5

DATA FILE: WILDLIFE

DRAWN BY: MARCY N.

BOOK/PAGE: 1/



Basis of Bearings:

EAST Line of this Lot

Bearings and Distances Shown

Inside () Indicate Record Information



SCALE: 1" = 100'



I-20 Wildlife Preserve

Mission Statement: The mission of the I-20 Wildlife Preserve is to ensure conservation of, and provide access to, Midland's wildlife preserve for the use, enjoyment and education of present and future generations.

Preserve Regulations: The I-20 Wildlife Preserve is for your enjoyment. The City of Midland has by ordinance enacted laws to ensure that all members of the park have the opportunity to enjoy these facilities. Your cooperation in obeying the following ordinance is sincerely appreciated.

Preserve Hours: October to February — 8:00am thru 6:00pm

March to September — 8:00am thru 8:00pm

Rules:

Dogs are not allowed at anytime.

Alcoholic beverages are not permitted.

Firearms are not permitted on the property.

No hunting or fishing is allowed on the property.

There shall be no littering or dumping on the property.

Motorized vehicles and bicycles are not allowed on trail system.

Do not remove, damage, cut, disturb, destroy or carve any structure, sign, fence or living and non living material.

Warning: It should be noted that caution should be used at all times on this property. This site contains elevated walkways and platforms. **Drop offs** are prevalent. It falls upon the person entering this property to exercise awareness at all times while enjoying the trails, bird blinds, bridges, boardwalks and hawk tower. By entering the I-20 Wildlife Preserve you understand and accept the liability of being in a natural area where wildlife and natural hazards exist.

City of Midland
City Secretary's Office
Interoffice Memorandum

Date: December 13, 2012
To: The Honorable Mayor Perry and Council
From: Amy M. Turner, City Secretary
Subject: Membership - Boards and Commissions

Attached is an updated membership listing for the City's Boards and Commissions effective December 18, 2012. Remaining expirations and vacancies are listed below:

AIRPORT PLANNING AND DEVELOPMENT BOARD – Two terms expired on September 30, 2012.

CITY DEVELOPMENT ADVISORY COMMITTEE – One vacancy expiring on September 30, 2013 and two terms expired on September 30, 2012.

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS – Two vacancies for Alternate terms expired on September 30, 2007.

HOUSING AUTHORITY COMMISSION – One vacancy as Alternate term expiring in October 2015

MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX DEVELOPMENT CORPORATION – Two terms expired in November 2011.

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION – Three vacancies expired on January 1, 2007, one term expired on January 1, 2009, and two terms expired on January 1, 2010.

MIDLAND HOUSING FINANCE CORPORATION – One vacancy expired on September 30, 2010, two terms expired on September 30, 2011 and one term expired on September 30, 2012.

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD – One vacancy.

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD – Two terms expired on September 30, 2012.

PERMIAN BASIN AIRPORT BOARD – Two terms expired on September 30, 2010 (Carlsbad and Hobbs New Mexico), two terms expired on September 30, 2011 and two terms expired on September 30, 2012.

TAX INCREMENT REINVESTMENT ZONE BOARD – One term expired on March 20, 2009 (one College representative), five terms expired on March 20, 2010, one term expired March 20, 2011 and one terms expired on March 20, 2012. (Four City representatives, two Hospital representatives, two County representatives and one College representative.)

ZONING BOARD OF ADJUSTMENT AND AIRPORT ZONING BOARD OF ADJUSTMENT- One term expired on September 30, 2011, one term expired on September 30, 2012 and one vacancy for Alternate term expired on September 30, 2006 and one vacancy for Alternate term expired September 30, 2009.

BOARDS AND COMMISSIONS OF THE CITY OF MIDLAND

December 18, 2012

AIRPORT PLANNING AND DEVELOPMENT BOARD

(Advisory)

(Membership-10; Terms - 3 Years expiring 3-3-4.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ronald Schwisow	09/06	Sept 30 2012	Sept 30 2012
Herbert Blankinship	09/06	Sept 30 2012	Sept 30 2012
Jerry Walton	11/09	Sept 30 2015	Sept 30 2015
Mike Owen	10/07	Sept 30 2013	Sept 30 2013
Gregory F. Baiano	09/10	Sept 30 2013	Sept 30 2016
John T. Echols	09/10	Sept 30 2013	Sept 30 2016
Dallas L. Smith	09/10	Sept 30 2013	Sept 30 2016
Earl Erdmann, Chairman	09/08	Sept 30 2014	Sept 30 2014
J. Ross Lacy	09/12*	Sept 30 2014	Sept 30 2020
Don "Woody" Woodward	11/11	Sept 30 2014	Sept 30 2017

Ex-Officio members are Harry Spannaus, the City Manager and the City Attorney. The Secretary is the Director of Aviation.

ANIMAL SERVICES ADVISORY COMMISSION

(Advisory)

(Membership - 6; Terms - 4 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Dr. Tom Green (Veterinarian)	10/07*	Sept 30 2013	Sept 30 2017
Kelly Spencer	09/09	Sept 30 2013	Sept 30 2017
Laura Hollifield	09/08*	Sept 30 2013	Sept 30 2017
Justin Petty	04/07*	Sept 30 2013	Sept 30 2017
Tony Carrillo	09/09	Sept 30 2013	Sept 30 2017
Paul O'Neill	09/09	Sept 30 2013	Sept 30 2017

BUILDING CODES REVIEW COMMITTEE

(Membership – 9; Terms – 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
James Rigger	12/09	Dec 31 2013	Dec 31 2013
Chris Repman	12/09	Dec 31 2013	Dec 31 2013
John Cooper	12/09	Dec 31 2013	Dec 31 2013
Bill Routh	12/09	Dec 31 2013	Dec 31 2013
Tom Woodruff	12/09	Dec 31 2013	Dec 31 2013
Ron Ainsworth	12/09	Dec 31 2013	Dec 31 2013
Walter Pate	12/09	Dec 31 2013	Dec 31 2013
Robert Harrington	12/09	Dec 31 2013	Dec 31 2013

* Indicates appointment to an unexpired term.

Jerry Morales

12/09

Dec 31 2013

Dec 31 2013

CITY DEVELOPMENT ADVISORY COMMITTEE

(Advisory)

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
(Vacancy)-Lena Margita	10/09	Sept 30 2013	Sept 30 2013
Vicky Hailey	09/10	Sept 30 2012	Sept 30 2014
Reggie Lawrence	09/10	Sept 30 2012	Sept 30 2014
Alonda Massey	11/11	Sept 30 2013	Sept 30 2015
Tim Bryson	11/11	Sept 30 2013	Sept 30 2015

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS

(Decision Making)

(Membership - 7; Terms - 4 Years expiring 2-2-2-1)

Position to include: 1. Registered Architectural or Builder Superintendent, 2. Registered Structural Engineer, 3. Registered Mechanical and Plumbing, 4. Registered Electrical Engineer, 5. Registered Fire Protection Engineer

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>	<u>Position</u>
Don Woodward (At Large)	11/11*	Sept 30 2016	Sept 30 2020	5
Richard D. Dunham	10/05	Sept 30 2013	Sept 30 2013	1
Greg Turner	03/11*	Sept 30 2013	Sept 30 2021	4
Chris Repman	10/07*	Sept 30 2014	Sept 30 2018	3
Jay K. Bradford	09/10	Sept 30 2014	Sept 30 2018	2

ALTERNATES:

Vacancy	Sept 30 2007	Any
Vacancy	Sept 30 2007	Any

HOTEL/MOTEL TAX ADVISORY BOARD

(Advisory)

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Karmen Hendrix Bryant	02/12*	Sept 30 2013	Sept 30 2017
David Baur	09/10	Sept 30 2013	Sept 30 2014
Lisa Grissom	09/09	Sept 30 2013	Sept 30 2013
Steve Jones	02/09*	Sept 30 2013	Sept 30 2013
Annabell Ramirez	09/12	Sept 30 2014	Sept 30 2016
Brian Smith	09/12	Sept 30 2014	Sept 30 2016
Alex Singh-Hotel/Motel Assn. Rep.	09/09	Dec 31 2013	Assn. Appt.

* Indicates appointment to an unexpired term.

Vicky Hailey (Liaison Officer)

HOUSING AUTHORITY COMMISSION

(Membership - 5; Terms - 2 Years expiring 2 even & 3 odd.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Gregory Maes	11/11	Oct 2013	Oct 2015
Carla Repman, Vice Chairman	09/09	Oct 2013	Oct 2013
James A. Blischke	01/10	Oct 2013	Oct 2015
Dennis Bade	09/12	Oct 2014	Oct 2016
Norma Duran	11/08*	Oct 2014	Oct 2014

ALTERNATES:

<u>Vacancy</u>	<u>Oct 2013</u>	<u>Oct 2015</u>
-----------------------	------------------------	------------------------

JOINT ECONOMIC DEVELOPMENT TASK FORCE

(Ad Hoc)

	<u>Appt. Date</u>
(Midland)	
Wes Perry	01/08
LuAnn Morgan	12/00
Keith Stretcher	12/00
Tommy Hudson	08/07
John Breier	01/04
(Odessa)	
Larry Melton	08/01
Jim Morris	11/00
Richard Morton	11/02
Joel Roberts	11/00
Neil McDonald	11/00

MANAGED COMPETITION COMMITTEE

(Ad Hoc)

	<u>Appt. Date</u>
Jon Morgan	01/02
Wes Perry	01/02
Roy Nelson	01/02
Hugh "Andy" Shaffer	12/03
Scott Dufford	01/02
Ted Tipton	04/04
Kevin Sparks	11/07
Scott Lovett	04/10
P. Lourcey Sams	04/10

Ex-Officio members are the Mayor and the City Manager.

* Indicates appointment to an unexpired term.

MIDLAND CENTER ADVISORY BOARD

(Advisory & Decision Making)

(Membership - 9; Terms - 3 Years expiring 3-2-2.)

		<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Brent Blackburn	(City)	09/09*	Sept 30 2013	Sept 30 2016
Charles Spence	(CC)	11/07	Sept 30 2013	N/A
Lorri Lyon West	(City)	09/10	Sept 30 2013	Sept 30 2016
Patricia S. Blackwell	(City)	10/07*	Sept 30 2014	Sept 30 2014
Paula Mitchell	(City)	09/08	Sept 30 2014	Sept 30 2014
Greg Turner	(CC)	12/11	Sept 30 2014	N/A
Tracy Bacon	(CC)	12/11	Sept 30 2014	N/A
Jerry Morales (Liaison Officer)				

Ex-Officio members are the City Manager and Executive Director of the Chamber of Commerce.

MIDLAND CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS

Five Directors, Elected by Local Taxing Entities.

City Nominates/Cast Vote for one Director

(Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>
Chad Clark	3/12*	Dec 31 2013

MIDLAND DEVELOPMENT CORPORATION

(Membership - 5; Terms -3 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Michael Trost	02/11*	Jan 14 2013	Jan 14 2019
Cary J. Love	12/09	Jan 14 2013	Jan 14 2016
Gary Douglas	11/11*	Jan 14 2013	Jan 14 2019
Laura Roman	01/08	Jan 14 2014	Jan 14 2014
Robert Rendall, Chairman	01/09*	Jan 14 2014	Jan 14 2017

MIDLAND FRESH WATER SUPPLY DISTRICT #1

(Ad Hoc)

(3 Non Voting Members)

Appt Date

Wes Perry
Gary Harris
Wayne Merritt

05/12
05/12
05/12

**MIDLAND FOOTBALL-SOCCER AND BASEBALL COMPLEX
DEVELOPMENT CORPORATION**

(Decision Making)

Membership - 7; Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Ken Marks, Vice President	10/07	Nov 2011	Nov 2011
James G. Smith	12/07	Nov 2011	Nov 2011
Mike Thompson	11/11	Nov 2013	Nov 2015
Tim Bryson	11/11	Nov 2013	Nov 2015
Wesley D. Bownds	02/09*	Nov 2013	Nov 2013
John James	08/08*	Nov 2013	Nov 2013
Rick Davis (MISD Resp.)	10/10*	Nov 2013	Nov 2015

MIDLAND HIGHER EDUCATION FACILITIES CORPORATION

(Membership - 7; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2007	
Vacancy		Jan 1 2009	
Cathy Oestmann	11/05*	Jan 1 2010	Jan 1 2010
Steve Jones	09/08*	Jan 1 2010	Jan 1 2012
Curt Kamradt	11/05*	Jan 1 2014	Jan 1 2014

* Indicates appointment to an unexpired term.

MIDLAND HOUSING FINANCE CORPORATION

(Decision Making)

(Membership - 5; Terms - 2 Years - Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Vacancy - (Damon L. Blakeley)	07/07*	Sept 30 2010	
Adrienne Valencia	10/07	Sept 30 2011	Sept 30 2011
Melissa Wicker	10/07	Sept 30 2011	Sept 30 2011
Jerry Morales (Liaison Officer)	10/08	Sept 30 2012	Sept 30 2012
Nathan Miller	11/11*	Sept 30 2012	Sept 30 2016

MIDLAND MUNICIPAL MANAGEMENT DISTRICT BOARD

(Ad Hoc)

	<u>Appt. Date</u>
Vacancy	
Richard Hatchett	11/08
W. L. "Scooter" Brown	09/04
Ken Burgess	09/04
Jim Hightower	11/08
Ted H. Jones	09/04
Mitch Malouf	11/08
Christi Newton	09/04
Dan Rush	09/04

MIDLAND-ODESSA URBAN TRANSIT DISTRICT BOARD

(Decision Making)

(Membership - 6; Terms - 2 Years Staggered)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Willie Barber	09/08	Sept 30 2012	Sept 30 2012
Michael Trost	09/08	Sept 30 2012	Sept 30 2012
John H. James	09/09	Sept 30 2013	Sept 30 2013
Karen York	06/09*	Sept 30 2013	Sept 30 2013
Guy McKenize	03/11*	Sept 30 2013	Sept 30 2015
Rebecca Bell	09/12	Sept 30 2014	Sept 30 2016

* Indicates appointment to an unexpired term.

OIL AND GAS ADVISORY COMMITTEE

(Advisory)

(Membership – 5; Terms – 3 Years expiring 2-2-1)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Russell Richards (Petroleum Eng.)	09/12	Sept 30 2015	Sept 30 2018
Perry Dan Taylor (Real Estate)	09/12	Sept 30 2015	Sept 30 2018
Lance Friday (Real Estate)	09/12*	Sept 30 2013	Sept 30 2019
Paul Brown (Petroleum Eng.)	11/11	Sept 30 2014	Sept 30 2017
David Rosen (Petroleum Eng.)	11/11	Sept 30 2014	Sept 30 2017

PARKS AND RECREATION COMMISSION

(Advisory)

(Membership - 9; Terms - 3 Years expiring 3-3-3.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Charles A. Spence	01/10*	Sept 30 2013	Sept 30 2016
Susan Nichols	02/06*	Sept 30 2013	Sept 30 2013
Eric L. West	10/07	Sept 30 2013	Sept 30 2013
Kenny Harper	03/12*	Sept 30 2013	Sept 30 2019
P. Lourcey Sams	09/08	Sept 30 2014	Sept 30 2014
Tina Corbett	09/08	Sept 30 2014	Sept 30 2014
Katey Howard	09/12*	Sept 30 2014	Sept 30 2020
Amanda McCann	11/11*	Sept 30 2015	Sept 30 2018
Edward Mayberry	09/12	Sept 30 2015	Sept 30 2021

PERMIAN BASIN AIRPORT BOARD

(Advisory)

(Membership - 30; Terms - 1 year.)

	<u>Appt. Date</u>	<u>Term Expires</u>
--	--------------------------	----------------------------

10 Members of the Airport Planning and Development Board

Bob Forrest (Carlsbad, NM)	10/04	Sept 30 2010
Larry Shed (Hobbs, NM)	10/01	Sept 30 2010
Larry Gill (Abilene)	10/10	Sept 30 2011
Isabelle Blanchard (Pecos)	10/10	Sept 30 2011
David Hardwick (Ft. Stockton)	10/07	Sept 30 2012
Lex Hinds (Seminole)	10/08	Sept 30 2012

PERMIAN BASIN AIRPORT BOARD CON'T

	<u>Appt. Date</u>	<u>Term Expires</u>
Elvin Brownlee III (Andrews)	12/10*	Sept 30 2013
Jim Little (Big Spring)	09/03	Sept 30 2013
Frankie Rolfe (Kermit)	09/12	Sept 30 2013
Don Bethel (Lamesa)	02/91	Sept 30 2013
Willie Taylor (Odessa)	02/00	Sept 30 2013
Gloria Pena (Odessa)	03/03*	Sept 30 2013
Barbara Graff (Odessa)	06/10*	Sept 30 2013
Henry Cutbirth (Monahans)	09/05	Sept 30 2013
Luis E. Elguezabal (San Angelo)	10/07	Sept 30 2013
Glenn Wortham (Sweetwater)	10/07	Sept 30 2013
John Rogotzke (Snyder)	01/12	Sept 30 2013
Lance Goodrich (Artesia, NM)	09/09	Sept 30 2013
Larry Fry (Roswell, NM)	09/00	Sept 30 2013

Ex-Officio members are the City Manager and the City Attorney. The Secretary is the Director of Aviation.

**PERMIAN BASIN COMMUNITY CENTER FOR MENTAL HEALTH
AND MENTAL RETARDATION**

(Decision Making)
(Membership - 2 (City); Terms - 2 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Janet R. Pritchett (City)	05/09*	June 2014	June 2014
Larry Edgerton	07/10*	June 2013	June 2015

PERSONNEL BOARD OF APPEALS

(Decision Making)
(Membership - 3; No designated terms.)

	<u>Appt. Date</u>
John James	03/08
Hugh A. "Andy" Shaffer	09/05
Michael Trost	01/10

* Indicates appointment to an unexpired term.

PLANNING AND ZONING COMMISSION

(Advisory & Decision Making)
(Membership - 9; Terms - 3 Years)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Jane Wolf	03/09*	Sept 30 2013	Sept 30 2016
Cindy Lanning	09/10	Sept 30 2013	Sept 30 2016
Jay Norris	11/11	Sept 30 2014	Sept 30 2017
Galen Gatten, Vice Chairman	09/08	Sept 30 2014	Sept 30 2014
Kevin Wilton	09/08*	Sept 30 2015	Sept 30 2017
Royce Watkins	02/08*	Sept 30 2015	Sept 30 2017
Karen York	10/10*	Sept 30 2015	Sept 30 2018
Sharla Hotchkiss	10/12	Sept 30 2015	Sept 30 2018
Warren Lvey	10/12*	Sept 30 2014	Sept 30 2020
<u>ALTERNATES:</u>			
Tony Carrillo	11/11	Sept 30 2014	Sept 30 2017

TAX INCREMENT REINVESTMENT ZONE BOARD

(Decision Making)
(Membership - 12; Terms - 2 Years, or 3 Years if appointed after 3/1/07)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Neil Florer (College)	07/01	Mar 20 2009	Mar 20 2009
Mark T. Wellen (City), Chairman	07/01	Mar 20 2010	Mar 20 2010
Jay Reynolds (Hospital)	03/02	Mar 20 2010	Mar 20 2010
Ralph Way (College)	07/01	Mar 20 2010	Mar 20 2010
Randy Prude (County)	03/07	Mar 20 2010	Mar 20 2013
Judge Mike Bradford (County)	01/07*	Mar 20 2010	Mar 20 2014
Bob Lanier (City), Secretary	04/03	Mar 20 2011	Mar 20 2011
Brent Kennedy (City)	06/09	Mar 20 2012	Mar 20 2015
Pete Hulder (Hospital)	03/10	Mar 20 2016	Mar 20 2016
Michael Blonkvist	09/12*	Mar 20 2014	Mar 20 2020
John L. Kennedy (City)	10/09*	Mar 20 2015	Mar 20 2018
Ken Burgess (City)	10/12*	Mar 20 2013	Mar 20 2018

Ex-Officio member is President, Board of Trustees, Midland Independent School District

ZONING BOARD OF ADJUSTMENT
AND
AIRPORT ZONING BOARD OF ADJUSTMENT

(Decision Making)

(Membership - 5; Terms - 2 Years expiring 3 odd & 2 even.)

	<u>Appt Date</u>	<u>Term Expires</u>	<u>Eligibility Expires</u>
Manny Ribera	10/07	Sept 30 2011	Sept 30 2011
Ken Morgan	01/10*	Sept 30 2012	Sept 30 2014
Carla Repman	01/10*	Sept 30 2013	Sept 30 2015
Scott Young	09/12*	Sept 30 2013	Sept 30 2017
Todd Byars	02/08*	Sept 30 2014	Sept 30 2014

ALTERNATES: (not applicable to Airport Zoning)

Vacancy		Sept 30 2006	
Vacancy		Sept 30 2009	
Annabel Holguin	11/11	Sept 30 2013	Sept 30 2015
Greg Turner	11/11	Sept 30 2013	Sept 30 2015



APPLICATION FOR CITY OF MIDLAND BOARDS/COMMISSIONS/COMMITTEES

As an applicant for a City board, commission, or committee, please be advised that all information on this application is subject to the Texas Open Records Act and will be available to the public.

PLEASE TYPE OR PRINT CLEARLY:

Name: D. Link Grimes

Address: 710 N. Colorado St., Suite 110

Midland TX 79701

(City)

(State)

(Zip)

I am ☒ I am not ☐ a U.S. Citizen

Please tell us about yourself:

I have lived in Midland 44 **years.**

Are you a graduate of Midland 101? ☐ **yes** ☒ **no**

Occupation: Attorney

Professional and/or Community Activities:

Trinity School Board of Trustees, Elder First Presbyterian Church, Midland County Bar Association,

Permian Basin Landmans Association

What is your personal vision for the City?

See Midland as a friendly, clean, progressive city, with the best schools and college in the state, forward thinking in business, with ample recreational offerings, and entertainment venues, with all citizenry taking prideful ownership in our town, our arts, charities, churches, etc., with a strong and vibrant downtown. See Midland as a destination and a great place to live.

Please specify any time constraints you may have.

None.

Please list below the Board(s) or Commission(s) on which you are interested in serving:

(You can find a complete and current list on the City's website at www.midlandtexas.gov)

(1) Name of Board/Commission:

TIRZ

Please tell us why you are interested in serving on this board or commission.

I was asked to serve and I have an interest in downtown Midland development and preservation.

What contribution would you most like to make?

Be a contributing and enthusiastic member of TIRZ Board.

Additional pertinent information or references:

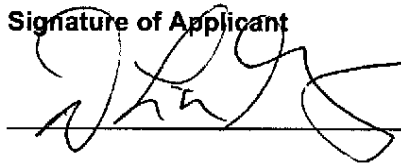
(2) Name of Board/Commission:

What contribution would you most like to make?

Additional pertinent information or references:

Applications are maintained on file in the City Secretary's office for a period of one year. Should you need additional information, please call us at 432-685-7430.

Signature of Applicant



Applications may be submitted online via email or print in order to send by mail or fax:

City of Midland

City Secretary's Office

PO Box 1152

Midland, TX 79702

FAX: (432) 685-7433

Submit Via Email

Print Application

Amy Turner

From: Mike Bradford [CJ101@co.midland.tx.us]
Sent: Friday, October 26, 2012 12:39 PM
To: Amy Turner
Cc: Jenny Hilton
Subject: RE: City of Midland - Tax Increment Reinvestment Zone Board

Amy,

I received a letter regarding the expiration of term on September 30, 2012 for both Randy Prude and Judge Bradford in September. I phoned your office to let you know they are both wanting to serve on the board. I am just now finding this email and wanted to check to see if you have them currently marked as on the board? Thank you for any clarification you can provide.

Jenny Hilton

From: Amy Turner [<mailto:aturner@midlandtexas.gov>]
Sent: Friday, October 05, 2012 12:28 PM
To: Mike Bradford
Cc: Ken VanDyne; Jim Nichols
Subject: City of Midland - Tax Increment Reinvestment Zone Board

Judge Bradford,

Midland County has two appointees to the Tax Increment Reinvestment Zone Board that meets as needed.

The two board members terms have both expired. Those board members were:

- Randy Prude (3 year term expired March 20, 2010)
- Judge Mike Bradford (3 year term expired March 20, 2010)

Please forward a letter or email to me with the names and contact information of those people you would like to serve on that board. If you need additional information about the board itself, please contact Senior Planner Ken VanDyne at (432) 685-7406.

Please let me know if I can be of further service.

Amy M. Turner, TRMC, MMC | City Secretary
City of Midland | 300 N. Loraine | PO Box 1152 | Midland, TX 79702
☎ (432) 685-7432 | fax (432) 685-7433 | aturner@midlandtexas.gov



Amy Turner

From: Genora Young
Sent: Friday, November 02, 2012 9:52 AM
To: Amy Turner
Cc: Courtney Sharp; Jim Nichols
Subject: Midland College appoints one TIRZ Board member

Amy,

Viola Edwards 685-4520 from Midland College called this morning. MC Board appointed Charlene McBride to the TIRZ Board. Her contact information is

Charlene McBride
3201 Apperson
Midland, TX 79705
(432) 638-9486

The MC Board will meet in November and appoint another person at that time.

Genora C. Young, PCED
Director, Downtown Development

City of Midland
300 N. Loraine, Suite 510
P. O. Box 1152
Midland, TX 79702

(432) 685-7263 Office
(432) 260-5362 Cell



Amy Turner

From: Venetta Seals [rchcares@trhta.net]
Sent: Thursday, December 13, 2012 10:59 AM
To: Amy Turner
Subject: Airport Board

Good Morning, Amy!

I apologize for not responding sooner for our appointment to the Permian Basin Airport Board. My office has been being used by other City employees and some of my mail has been mixed in with their mail and/or just gotten buried in a stack. I will also apologize for sending this email from my "other work office" but the important thing at this point is to send you verification of our appointment! I would like to continue having Isabelle Blanchard as our representative for the Town of Pecos City on the Permian Basin Airport Board.

Thank you,

Venetta Seals, Mayor
Town of Pecos City

Venetta Seals
Director of Public Relations, Marketing, Community Development,
Recruitment, Grants, Specialty Clinics, and Patient Representative
2323 Texas Street
Pecos, Texas 79772
Office: (432) 447-3551, extension 6350
Cell: (432) 940-5513
E-mail: rchcares@trhta.net
"Providing Modern Healthcare in Frontier Texas"
www.reevescountyhospital.com