

Effective March 16, 2020, Governor Greg Abbott authorized the temporary suspension of certain statutory provisions of the Texas Open Meetings Act. This meeting of the City Council of the City of Midland is being held pursuant to such authorization and will limit face-to-face interactions for the purpose of slowing the spread of the coronavirus (COVID-19).

CITY OF MIDLAND, TEXAS
AGENDA FOR CITY COUNCIL MEETING
November 9, 2020 - 9:00 AM
300 North Loraine
Midland, Texas
Council Chamber - City Hall



Videoconference Information

Please click this URL to join.

<https://zoom.us/j/94838643981?pwd=Y21MaTN0VWhRL1hnNFE3ZVZuLzFaZz09>

Passcode: 806662

Or join by phone:

Dial (for higher quality, dial a number based on your current location):

US: +1 346 248 7799 or +1 669 900 9128 or +1 253 215 8782 or +1 301 715 8592 or +1 312 626 6799 or +1 646 558 8656

Webinar ID: 948 3864 3981

International numbers available: <https://zoom.us/u/adqwJACIAQ>

The City Council may discuss, consider, and take action on any item listed on this agenda.

OPENING ITEMS

1. Invocation
2. Pledge of Allegiance

MISCELLANEOUS

3. 2020-178 – RESOLUTION APPROVING A GRANT OF FUNDS TO THE MIDLAND COUNTY HOSPITAL DISTRICT IN THE AMOUNT OF \$100,000.00 FOR THE PURPOSE OF EXPANDING COVID-19 TESTING HOURS; AUTHORIZING THE MAYOR AND INTERIM CITY MANAGER TO EXECUTE ALL RELATED DOCUMENTS NECESSARY AND APPROPRIATE TO EFFECTUATE THE ADMINISTRATION OF SAID FUNDS; AND AUTHORIZING PAYMENT OF SAID FUNDS (FINANCE)
4. 138-2020 – MOTION AUTHORIZING THE EXECUTION OF A SECOND AMENDMENT

AND RESTATEMENT OF PRODUCED WATER DISPOSAL SITE LEASE AGREEMENT
WITH FELIX WATER, LLC, FOR THE PURPOSE OF ALLOWING CERTAIN
COMMERCIAL SALTWATER DISPOSAL ACTIVITIES AT T-BAR RANCH LOCATED IN
WINKLER AND LOVING COUNTIES, TEXAS

5. 10128 – AN ORDINANCE AMENDING TITLE VI, “POLICE REGULATIONS”, CHAPTER 1, “GENERAL OFFENSES”, OF THE CITY CODE OF MIDLAND, TEXAS, BY ESTABLISHING SECTION 25, “RESIDENTIAL PICKETING AND TARGETED MARCHES”, SO AS TO PROHIBIT RESIDENTIAL PICKETING AND TARGETED MARCHES ADJACENT TO A RESIDENCE OR DWELLING OF AN INDIVIDUAL; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION (DEFERRED FROM FIRST READING HELD NOVEMBER 03, 2020)

PUBLIC COMMENT

6. Receive public comments where individuals may address the City Council on City related issues and projects not on the present agenda. 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. (Please limit comments to three minutes or less.)

EXECUTIVE SESSION

7. Pursuant to Texas Government Code § 551.101, the City Council will hold an Executive Session, which is closed to the public, to discuss the following matters as permitted under the following sections of the Texas Government Code:
 - a. Section 551.072, Deliberation Regarding Real Property
 - a.1. Discuss the purchase, exchange, lease or value of real property.
 - b. Section 551.071, Consultation with the City Attorney
 - b.1. 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.
 - c. Section 551.087, Deliberate Economic Development Negotiations
 - c.1. Discuss business prospects that the City seeks to have locate, stay, or expand in or near the City of Midland, Texas, and discuss possible incentives.

Respectfully Submitted,

Robert Patrick

Interim 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.



City Council Meeting

Item Number: 3
Meeting Date: November 9, 2020
To: City Council / City Manager
From: Mark Mason, Director
Subject: RESOLUTION APPROVING A GRANT OF FUNDS TO THE MIDLAND COUNTY HOSPITAL DISTRICT IN THE AMOUNT OF \$100,000.00 FOR THE PURPOSE OF EXPANDING COVID-19 TESTING HOURS; AUTHORIZING THE MAYOR AND INTERIM CITY MANAGER TO EXECUTE ALL RELATED DOCUMENTS NECESSARY AND APPROPRIATE TO EFFECTUATE THE ADMINISTRATION OF SAID FUNDS; AND AUTHORIZING PAYMENT OF SAID FUNDS (FINANCE)

Purpose:

Adoption of a resolution to grant \$100,000 to Midland County Hospital District to expand Covid-19 testing hours an additional four hours per day plus add four hours on Saturday for one month.

Recommended City Council Action:

Approve

Fiscal Impact:

Funding is available and appropriated for this grant request in Fund 065 Cares Act Grant.

Discussion:

The City received a written request for a grant of \$100,000 by the Midland County Hospital District to expand testing hours daily from 2:30 pm to 6:30 pm and for four hours on Saturdays from 9 am to 1 pm utilizing the rapid antigen tests for symptomatic and exposed individuals by appointment at the Midland Memorial Hospital West Campus. Pursuant to the letter, the grant amount will provide these additional testing hours for one month. The City of Midland has received reimbursement of \$4.6 million out of \$7.9 million requested from the Cares Act funding provided through the State of Texas for public safety staffing pursuant to rules

promulgated by the U.S. Department of Treasury. The City has committed \$1,063,700 of these funds for various expenses in response to and mitigation of the COVID-19 pandemic to include \$500,000 in support of the Midland ISD for a matching grant program. These funds are available for funding programs originally contemplated by the Cares Act. The grant request for funding for testing by the Midland County Hospital District in the amount of \$100,000 was originally contemplated by the Cares Act and it is recommended that the City Council approves this grant request.



City Manager's Office

RESOLUTION NO. _____

RESOLUTION APPROVING A GRANT OF FUNDS TO THE MIDLAND COUNTY HOSPITAL DISTRICT IN THE AMOUNT OF \$100,000.00 FOR THE PURPOSE OF EXPANDING COVID-19 TESTING HOURS; AUTHORIZING THE MAYOR AND INTERIM CITY MANAGER TO EXECUTE ALL RELATED DOCUMENTS NECESSARY AND APPROPRIATE TO EFFECTUATE THE ADMINISTRATION OF SAID FUNDS; AND AUTHORIZING PAYMENT OF SAID FUNDS

WHEREAS, the Midland County Hospital District (“Midland Health”) has requested a grant of funds from the City of Midland in the amount of \$100,000.00 for the purpose of expanding COVID-19 testing hours; and

WHEREAS, the City Council of the City of Midland, Texas, finds it to be in the public interest to approve a grant of funds to Midland Health in the amount of \$100,000.00 for the purpose of expanding COVID-19 testing hours;

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

SECTION ONE. That a grant of funds to Midland Health in the amount of \$100,000.00 for the purpose of expanding COVID-19 testing hours is hereby approved.

SECTION TWO. That the Mayor and Interim City Manager are hereby authorized and directed to execute all related documents necessary and appropriate to effectuate the administration of said funds.

SECTION THREE. That the City Comptroller is hereby authorized and directed to pay \$100,000.00 to Midland Health, in accordance with this resolution and any documents executed in accordance with Section Two, upon receipt of proper invoice or statement approved by the Interim 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., 2020, by

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Robert Patrick, Interim City Manager

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney

October 29, 2020

Robert Patrick
Acting City Manager
City of Midland
300 N. Loraine | P.O. Box 1152
Midland, TX 79702

Dear Robert:

Midland Health formally requests the City of Midland's support of expanded COVID testing at our drive-thru testing site at the Midland Memorial Hospital West Campus.

We are providing rapid antigen tests for symptomatic and exposed individuals, by appointment via our 68NURSE telephone triage line. Testing is currently available 9:00 AM to 2:30 PM, Monday through Friday, and demand is such that we are scheduling 2-3 days out from most requests. We do not collect payment from any person we test; we file for insurance payment when possible, and perform testing for the uninsured with no expectation of payment.

Additional funding would allow us to expand our testing hours to 6:30 PM each evening, and to add Saturday hours from 9:00 AM to 1:00 pm. If the City could provide a grant of \$100,000 from its CARES Act funding, it would cover approximately four weeks of expanded testing hours.

We respectfully request that the City grant \$100,000 to Midland Health to support expanded testing hours. Please do not hesitate to contact me if you need additional information as you consider this request.

Sincerely,



Russell Meyers
President
Chief Executive Officer



City Council Meeting

Item Number: 4
Meeting Date: November 9th, 2020
To: City Council / Mayor
From: Robert Patrick, Interim City Manager

Subject: Second Amendment and Restatement of Produced Water Disposal Site Lease Agreement with Felix Water, LLC.

Purpose:

Motion authorizing the execution of a Second Amendment and Restatement of Produced Water Disposal Site Lease Agreement with Felix Water, LLC, for the purpose of allowing certain commercial saltwater disposal activities at T-Bar Ranch located in Winkler and Loving Counties, Texas.

Fiscal Impact:

Funding is not required.

Discussion:

Motion 105-2020 authorized the issuance of a request for proposals for produced water-related infrastructure to be located on certain City-owned real property known as "T-Bar Ranch" in Winkler and Loving Counties, Texas. 80 (eighty) request for proposals were issued. We received three (3) proposals. On October 6th, the City Council authorized the Interim City Manager to negotiate on behalf of the City of Midland, an agreement for commercial saltwater disposal operations at T-Bar Ranch. Included is Felix's latest redline proposal. Staff will provide additional deal points later for Council to consider with this item.

City Manager's Office

**SECOND AMENDMENT AND RESTATEMENT OF PRODUCED WATER DISPOSAL SITE
LEASE AGREEMENT**

THIS SECOND AMENDMENT AND RESTATEMENT OF PRODUCED WATER DISPOSAL SITE LEASE AGREEMENT (this “Second Amendment” or this “Agreement”) is entered into this ____ day of _____, 2020, but effective as of _____, 2020 (the “Second Amendment Effective Date”), by and between the **City of Midland, Texas**, a home rule municipal corporation, whose address is 300 N. Loraine, Midland, Texas, 79701, Attention: Right-of-Way Manager (“Lessor”), and **Felix Water, LLC**, a Delaware limited liability company, whose address is 1530 16th Street, Suite 500, Denver, Colorado 80202 (“Lessee”). Lessor and Lessee are hereinafter sometimes referred to collectively as the “Parties” and individually as a “Party”.

RECITALS:

A. Lessor owns an undivided interest in the surface estate of the following described lands located in Loving and Winkler Counties, Texas (the “Subject Lands”):

Sections 8, 9, 10, 11 and 27, Block 74, PSL Survey, Winkler County, Texas;

Section 1, Block 75, PSL Survey, Winkler County, Texas;

Sections 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27, Block C-23, PSL Survey, Winkler County, Texas; and

Sections 1, 2, 3, 4, 5, 6, 7, 12 and 17, Block C-24, PSL Survey, Loving and Winkler Counties, Texas.

B. Lessor and Lessee entered into that certain Produced Water Disposal Site Lease Agreement (the “Original Agreement”) dated effective as of December 11, 2018 (the “Effective Date”). Under the Original Agreement, Lessor leased to Lessee a portion of the Subject Lands, as more particularly described and set forth in the Original Agreement, for the purposes of (i) constructing, operating and maintaining facilities for the disposal of saltwater, brine and other fluid waste products (“Produced Water”) produced from Lessee’s Wells (as such term was originally defined under the Original Agreement) into four (4) permitted disposal wells to be drilled and completed by Lessee at its sole expense on the Subject Lands (collectively, the “Subject Wells”), and (ii) recovering skim oil, other hydrocarbons and other substances (collectively, “Skim Oil”) from such produced water.

C. Lessor and Lessee subsequently entered into that certain First Amendment to Produced Water Disposal Site Lease Agreement dated March 21, 2019, but effective as of December 11, 2018 (the “First Amendment”). The First Amendment amended and restated Paragraph 7(e) of the Original Agreement.

D. By this Second Amendment, Lessor and Lessee desire to further amend the Original Agreement and the First Amendment for the following purposes:

- To include Section 1, Block 75, PSL Survey, Winkler County, Texas, Sections 1, 2, 3, 4, 5, 6, 7, 12 and 17, Block C-24, PSL Survey, Loving and Winkler Counties, Texas, Sections 8, 9, 10, 11 and 27, Block 74, PSL Survey, Winkler County, Texas, and

Sections 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27, Block C-23, PSL Survey, Winkler County, Texas among the Subject Lands.

- To allow Lessee to dispose of Produced Water originating from (a) oil and/or gas wells located on the T-Bar Ranch Lands (as defined below) (“On-Lease Volumes”), and (b) oil and/or gas wells located off of T-Bar Ranch Lands (“Off-Lease Volumes”).
- The “T-Bar Ranch Lands” mean the following described lands located in Winkler and Loving Counties, Texas:

Sections 1-7, 12, 17 and 18, Block C-24, Sections 7, 10-14 and 17-27, Block C-23, Section 1, Block 75, and Sections 8-11 and 27, Block 74, all in PSL Survey, in Winkler and Loving Counties, Texas.

- To condition the effectiveness of this ~~Agreement~~Second Amendment on all of the following occurring within one hundred twenty (120) days after the Second Amendment Effective Date: (a) Lessee’s acquisition of the Little Wolf No. 8 Well (API 42-495-30931) and Black Kettle No. 1 Well (42-495-30375) (collectively, the “Heritage Disposal Wells”) from Heritage Standard Corporation or the current owner(s) thereof (“Heritage”), (b) Lessee’s permanent cessation of all disposal operations at both Heritage Disposal Wells, (c) Lessee’s plugging of both Heritage Disposal Wells in compliance with the rules and regulations and specifications of Lessor and the Texas Railroad Commission (“RRC”), including specifically Statewide Rule 14, and (d) the remediation of the surface locations of both Heritage Disposal Wells in compliance with the specifications of Lessor and the Texas Railroad Commission rules regulations, and specifications of the RRC, including specifically Statewide Rule 91’s post-remediation limits of 10,000 milligrams per kilogram (mg/Kg) for total petroleum hydrocarbons and 3,000 mg/Kg for chlorides.
- To require Lessee to install and operate monitor wells in proximity to the Subject Wells in order to monitor total dissolved solids (“TDS”) levels in the Pecos Valley Aquifer as set forth in Paragraph 6(i) below.
- To clarify and confirm Lessee’s right to transport Produced Water in one or more pipelines onto and/or across certain portions of the surface of the Subject Lands to the Subject Wells.
- To clarify and confirm Lessee’s right to transport Produced Water originating from oil and/or gas wells located on the T-Bar Ranch Lands and owned and/or operated by WPX Energy Permian, LLC (“WPX”), or any Affiliate of WPX (collectively, WPX and its Affiliates are referred to as the “Legacy Producer”), or any successor or assign of a Legacy Producer with respect to any such oil and/or gas well located on the T-Bar Ranch Lands (collectively referred to as “Legacy Source Wells”, or individually as a “Legacy Source Well”), (a) onto and/or across certain portions of the surface of the Subject Lands to the Subject Wells, or (b) onto, across and/or off of the Subject Lands for use or disposal elsewhere. “Affiliate” means, in relation to a party, any person, partnership or entity that (i) directly or indirectly controls such party; (ii) is directly or indirectly controlled by such party; or (iii) is directly or indirectly controlled by a person, partnership or entity that directly or indirectly controls such party. For this purpose, “control” of any person, partnership or entity means the possession, directly or indirectly, of the power to direct or cause the direction of the management and

policies of any person, partnership or entity, whether through the ownership of a majority of issued shares/units or voting power or control in fact of the person, partnership or entity or otherwise.

NOW THEREFORE, for and in consideration of the premises, the mutual covenants set forth herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties hereby agree to the following amendment and restatement of the Original Agreement and the First Amendment, which shall supersede and replace the Original Agreement and the First Amendment for all purposes from and after the Second Amendment Effective Date:

1. **Grant of Easement, Transportation and Disposal Rights.** During the Term (as defined below), and subject to all of the terms and conditions of this Agreement, Lessor hereby (a) leases to Lessee a four (4) acre tract surrounding each Subject Well as is more particularly described on Exhibit "A" attached hereto and made a part hereof for all purposes (the "Leased Premises") solely for the purposes of (i) drilling, completing, equipping, utilizing, operating, maintaining, and plugging and abandoning the Subject Wells as disposal wells for the disposal of Produced Water on the Leased Premises, and (ii) constructing, installing, operating, maintaining and removing all facilities and equipment reasonably necessary in connection therewith and in connection with the recovery of Skim Oil from Produced Water (such foregoing equipment and facilities, and together with the Subject Wells, collectively the "Facilities"); (b) grants to Lessee a non-exclusive easement and right-of-way over, through and across a strip of land thirty feet (30') in width located within the Subject Lands, with the centerline of such non-exclusive easement and right-of-way designated and/or depicted on the map attached hereto as Exhibit "B" (the "Preapproved Easement Route") for (i) ~~obtaining~~ ingress and egress to the Leased Premises and the Monitor Wells, (ii) the transportation of Produced Water in one or more pipelines onto and/or across the Subject Lands to the Subject Wells, (such pipelines being collectively referred to herein as the "System"), (iii) the transportation of Produced Water from Legacy Source Wells ("Legacy Volumes") onto, across and/or off of the Subject Lands, (iv) the transportation of (A) On-Lease Volumes that are not ~~from~~ Legacy ~~Source Wells Volumes~~ ("Non-WPX Volumes") and (B) Off-Lease Volumes (collectively with Non-WPX Volumes, "Non-Legacy Volumes") off of the Subject Lands, but only (A) on a temporary basis not exceeding thirty (30) consecutive days ~~(A) when disposal at the Subject Wells is impossible or impractical due to Facility maintenance, mechanical failure, mechanical break-down, or injection rate and/or pressure limitation, or (B) on a temporary basis not exceeding thirty (30) consecutive days~~ as and to the extent necessary to perpetuate pipeline easements across third party lands, or (C) when such volumes are being transported off of the Subject Lands for resale, recycling and/or reuse and upon which Reuse Fees are paid to Lessor pursuant to Paragraph 5(c) below, and (v) the establishment and maintenance of power to the Leased Premises and the Monitor Wells; and (c) grants to Lessee the right to drill, complete, equip, utilize, operate, maintain, and plug and abandon Monitor Wells on the Subject Lands at such locations provided for under Paragraph 6(i) below for the purposes described in Paragraph 6(i) below. Lessee agrees to use only so much of the Preapproved Easement Route as is reasonably necessary for the purpose of effectuating the terms of this Agreement. In addition to the Preapproved Easement Route, Lessee shall be entitled to the use of an additional width of twenty feet (20') on ~~the east/west~~ one side of the Preapproved Easement Route running adjacent and parallel to the Preapproved Easement Route as a temporary construction easement (the "Temporary Construction Easement") during the construction, maintenance and repair of any pipeline, power lines, or roads and/or any appurtenances to any pipeline, power lines or roads within the Preapproved Easement Route. Lessee shall commence drilling operations of at least one (1) of the Subject Wells under this Agreement within ninety (90) days after the Second Amendment Effective Date and shall complete at least one (1) of the Subject Wells under this Agreement within one hundred eighty (180) days after the Second Amendment Effective Date. Lessee may in the future wish to drill, complete, equip, utilize, and operate an additional disposal well or wells under this Agreement. For any additional disposal well, Lessee shall notify Lessor of the desired location thereof and Lessor shall have the right to consent to such disposal well in its sole discretion. If Lessor consents to any such disposal well, Lessor and Lessee shall execute an

amendment to this Agreement in form and substance mutually acceptable to Lessor and Lessee with a revised Exhibit "A" to reflect the addition of such new disposal well (which for all purposes would thereafter be treated as one of the Subject Wells) and surrounding acreage (which for all purposes would thereafter be treated as part of the Leased Premises). Notwithstanding anything to the contrary contained in this Agreement, all Non-Legacy Volumes shall be disposed of in the Subject Wells and may not be transported to any location other than the Subject Wells, except (x) as specifically provided in clause (b)(iv) above, or (y) for all Non-Legacy Volumes that are transported off of the Subject Lands for resale, recycling and/or reuse and upon which Reuse Fees are paid to Lessor pursuant to Paragraph 5(c) below.

2. **Subject to Existing Leases.** The rights granted to Lessee under this Agreement are subject to the terms of any existing oil, gas, and mineral leases and all existing easements, rights-of-way, surface use agreements and other interests covering or affecting the Subject Lands, the Leased Premises and/or the Preapproved Easement Route, and all future oil, gas and mineral leases, surface use agreements and other conveyances that may affect the Subject Lands and/or the Leased Premises, to the extent such future estates and interests created thereby are not inconsistent with the rights herein granted. Lessee shall conduct its operations hereunder in such a manner as not to unduly interfere with any third party having a lease, permit, easement, or any other right or interest in the Subject Lands.

3. **DISCLAIMER OF WARRANTIES.** LESSEE IS FULLY FAMILIAR WITH THE SUBJECT LANDS, INCLUDING, BUT NOT LIMITED TO, THE LEASED PREMISES AND THE PREAPPROVED EASEMENT ROUTE, THEIR CONDITION AND STATE OF REPAIR FROM LESSEE'S OWN INVESTIGATION OF SAME. LESSEE ACKNOWLEDGES THAT LESSOR HAS MADE NO REPRESENTATIONS OR EXPRESS WARRANTIES WITH REGARD TO THE SUBJECT LANDS OR THE CONDITION THEREOF AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LESSOR HEREBY DISCLAIMS, AND LESSEE WAIVES THE BENEFIT OF, ANY AND ALL IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF HABITABILITY, OR FITNESS OR SUITABILITY FOR LESSEE'S PURPOSE.

4. **Term.** Subject to the other terms and provisions herein, this Agreement shall remain in force for a term of ten (10) years from the Second Amendment Effective Date (the "Initial Term"). This Agreement may be renewed for up to two (2) successive additional terms of five (5) years each (each, an "Extended Term"), upon the written request of Lessee to the City Manager of the City of Midland, Texas (the "City Manager") received not more than one (1) year and not less than ninety (90) days prior to the expiration of the then current ten-year or five-year term, as applicable, and subject to the express written consent of the City Manager. ~~The granting of consent for any Extended Term is in the sole discretion of the City Manager, subject to any approval of the City Council of the City of Midland, Texas or other applicable governmental approval which may be required. Any timely request for an Extended Term shall be automatically granted provided that Lessee is not then in default under this Agreement.~~ The Initial Term together with any granted Extended Term(s) are collectively referred to as the "Term". Notwithstanding anything to the contrary contained in this Paragraph 4 or elsewhere in this Agreement, if during any Extended Term Lessee shall cease to conduct Disposal Operations (as defined below) on the Leased Premises for more than sixty (60) consecutive days, this Agreement shall terminate at Lessor's option, as evidenced by Lessor's written notice to Lessee of such termination, without the necessity for any further action by either Party hereunder, except for the obligations under this Agreement which survive any termination. As used in this Agreement, "Disposal Operations" means (i) Lessee's disposing of Produced Water in the Facilities, and/or (ii) Lessee's transportation of Produced Water through any pipeline on the Subject Lands permitted under this Agreement, whether inside or outside of the boundaries of the Leased Premises. Notwithstanding anything to the contrary contained in this Agreement, the effectiveness of this Agreement is conditioned upon all of the following occurring within one hundred twenty (120) days after the Second Amendment Effective Date: (a) Lessee acquiring both of the Heritage Disposal Wells, (b)

Lessee's permanent cessation of all disposal operations at both Heritage Disposal Wells, (c) Lessee's plugging of both Heritage Disposal Wells in compliance with the applicable rules and regulations and specifications of Lessor (with Lessor's specifications to include at a minimum a squeeze job and plugging) and the Texas Railroad Commission RRC, including Statewide Rule 14, and (d) the remediation of the surface locations of both Heritage Disposal Wells in compliance with the specifications of Lessor and the Texas Railroad Commission, applicable rules regulations, and specifications of the RRC, including specifically Statewide Rule 91's post-remediation limits of 10,000 mg/Kg for total petroleum hydrocarbons and 3,000 mg/Kg for chlorides. Collectively, the acquisition, plugging, and remediation described in the preceding sentence shall be collectively referred to as the "HDC Facility Remediation Obligation". In the event any of the foregoing do not occur within said one hundred twenty (120) days after the Second Amendment Effective Date, this Agreement ~~Second Amendment~~ shall terminate at Lessor's option, as evidenced by Lessor's written notice to Lessee of such termination, without the necessity for any further action by either Party hereunder, except for and the obligations under terms of this Agreement which survive any termination shall revert to the terms of the original Agreement, as amended by the First Amendment.

5. **Monetary Payments; Effluent Water; Meters and Records.**

a. Well Fee. Lessee shall pay Lessor as liquidated surface damages a fee of Eight Thousand and No/100ths Dollars (\$8,000.00) per Subject Well prior to conducting operations for the construction of the Facilities or the drilling of the Subject Wells, whichever occurs first.

b. Monthly Disposal Fees. Lessee shall pay Lessor monthly disposal fees based on the amount of Produced Water disposed of in the Facilities (other than Effluent Volumes, defined below) (the "Disposal Fees"). During Until the Initial Term end of the third full calendar year after the Second Amendment Effective Date, the Disposal Fees shall equal (a) \$0.05 per Barrel of On-Lease Volumes (including Legacy Volumes) disposed of at the Facilities, and (b) \$0.10 per Barrel of Off-Lease Volumes disposed of at the Facilities. During any Extended Term After the end of the third full calendar year after the Second Amendment Effective Date, the Disposal Fees for On-Lease Volumes (including Legacy Volumes) shall equal the greater of (i) \$0.05 per Barrel of Produced Water disposed of at the Facilities, or (ii) the per Barrel rate in the then applicable Rate and Damage Schedule set forth by The University of Texas System, University Lands (for University leases only) for each Barrel of Produced Water disposed of at the Facilities, and the Disposal Fees for Off-Lease Volumes shall equal the greater of (i) \$0.10 per Barrel of Produced Water disposed of at the Facilities, or (ii) the per Barrel rate in the then applicable Rate and Damage Schedule set forth by The University of Texas System, University Lands (University and non-university leases commingled) for each Barrel of Produced Water disposed of at the Facilities. Lessee shall pay such Disposal Fees to Lessor on or before the last day of the calendar month immediately following the calendar month with respect to which such Disposal Fees are to be calculated and paid, accompanied by a written statement accurately reflecting the volume (number of Barrels) of Produced Water disposed of in the Facilities (including the volume (number of Barrels) of Produced Water injected in each Subject Well). Each month ~~and for each Facility~~, Lessee shall separately account for disposal of (a) On-Lease Volumes, and (b) Off-Lease Volumes. "Barrel" means a quantity consisting of forty-two (42) U.S. gallons. Disposal Fees shall be calculated based upon whole numbers of Barrels; any partial or fractional Barrel shall be rounded up to the nearest whole number.

c. Monthly Reuse Fees. Lessee shall pay Lessor monthly fees for all ~~Non-Legacy~~ Produced Water (other than Effluent Volumes that are, defined below) transported off of the Subject Lands under this Agreement for resale, recycling and/or reuse (the "Reuse Fees"). For all such ~~Non-Legacy Volumes~~ volumes, the Reuse Fee shall be \$0.025 per Barrel. Lessee shall pay such Reuse Fees to Lessor on or before the last day of the calendar month immediately following

the calendar month during which such ~~Non-Legacy Volumes were~~ Produced Water was transported off of the Subject Lands for resale, recycling and/or reuse, accompanied by a written statement accurately reflecting the volume (number of Barrels) of ~~Non-Legacy~~ Produced Water (minus Effluent Volumes, if any) transported off of the Subject Lands under this Agreement for resale, recycling and/or reuse in such month.

d. Minimum Annual Fee. In the event the aggregate amount of Disposal Fees and Reuse Fees paid to Lessor in any calendar year during the Term of this Agreement, beginning with the calendar year of 2021, amounts to less than One Million ~~Five Hundred Thousand~~ and No/100 Dollars (~~\$1,500,000.00~~ \$1,000,000.00) (the "Minimum Annual Fee") during any such calendar year, then, and in that event, Lessee shall pay to Lessor within thirty (30) days after the end of any such calendar year the positive difference, if any, between (a) the Minimum Annual Fee and (b) the aggregate ~~amount~~ total of (i) all Disposal Fees ~~and~~, Reuse Fees, and Skim Oil Fees received by Lessor under this Agreement during such calendar year ~~-, plus (ii) the total costs incurred by Lessee during that calendar year in furtherance of fulfilling its HDC Facility Remediation Obligation (the "HDC Remediation Credit"), such HDC Remediation Credit in all calendar years not to exceed One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000) in the aggregate (collectively, the "Minimum Annual Fee Credit"). The Minimum Annual Fee Credit for the calendar year of 2021 shall include credits earned by Lessee during the calendar year of 2020.~~

i. If in any year the Minimum Annual Fee Credit exceeds the Minimum Annual Fee, such excess Minimum Annual Fee Credit shall be carried forward to the next year or any subsequent year, provided, however, that no Minimum Annual Fee Credit shall be carried forward from the Initial Term to the first Extended Term, or from any Extended Term to a subsequent Extended Term.

~~-ii.~~ During the final year of the Term of this Agreement, such Minimum Annual Fee payment requirement shall apply as to the portion of the calendar prior to the expiration or termination of this Agreement with the Minimum Annual Fee proportionally reduced accordingly and with any such payment owing to Lessor to be paid within thirty (30) days after the expiration or termination of this Agreement.

e. Skim Oil Fees. Lessee shall pay Lessor a monthly fee equal to ~~thirty~~ twenty percent (~~30~~ 20%) of the gross revenues (net of any applicable production and severance taxes) received by Lessee or its Affiliates derived from, resulting from or in connection with the sale of all Skim Oil recovered from Produced Water at the Facilities or recovered from Produced Water transported across any portion of the Subject Lands (the "Skim Oil Fees"). Lessee shall pay such Skim Oil Fees to Lessor on or before the last day of the calendar month immediately following the calendar month during which such Skim Oil revenues were received by Lessee or its Affiliates, accompanied by a written statement accurately reflecting the calculation of such Skim Oil Fees.

~~f. Other Revenue Fees. Lessee shall pay Lessor a monthly fee equal to ten percent (10%) of all gross revenues received by Lessee or its Affiliates, excluding Skim Oil Fees, derived from, resulting from or in connection with any Produced Water disposed of in the Facilities or transported across any portion of the Subject Lands, the operation or use of any pipelines permitted under this Agreement, including without limitation any pipeline tariffs, or any other rights granted to Lessee under this Agreement (the "Other Revenue Fees"). Lessee shall pay such Other Revenue Fees to Lessor on or before the last day of the calendar month immediately following the calendar month during which such revenues were received by Lessee or its Affiliates, accompanied by a written statement accurately reflecting the calculation of such Other Revenue Fees.~~

~~g. Most Favored Nation. If during the period of time occurring ten (10) years prior to the Second Amendment Effective Date through ten (10) years after the Second Amendment Effective Date, Lessee, its Affiliates, predecessors, successors or permitted assigns, enters into or has entered into any lease, easement, contract or agreement (“Other Contract”) on lands within ten (10) miles of any boundary of the Subject Lands which provides for the lessors or landowners thereunder to receive greater well fees, disposal fees per Barrel, reuse fees per Barrel, skim oil fee percentages, other revenue fees or other fees than that provided for herein, or provides for the lessors or landowners thereunder to be paid or receive from Lessee, its Affiliates, predecessors, successors or permitted assigns, agents, brokers, employees, independent contractors, or joint venture partners, any other fee or consideration not otherwise received by Lessor hereunder (calculated on a per well, per acre, per Barrel or proportional basis, as applicable), then, and in that event, Lessee shall be required to amend this Agreement to provide for Lessor to receive such greater well fees, disposal fees per Barrel, reuse fees per Barrel, skim oil fee percentages, other revenue fees or other fees or other consideration, as applicable. Lessee shall have ninety (90) days from the later of (i) the date of execution of the Other Contract or (ii) the date of execution of this Second Amendment, in which to amend this Agreement to provide for such greater well fees, disposal fees per Barrel, reuse fees per Barrel, skim oil fee percentages, other revenue fees or other fees or other consideration, as applicable. This provision is to be retroactive to the Second Amendment Effective Date; in other words, in the event this clause is activated by the execution of any such Other Contract, Lessee shall tender any back fee, payment or consideration which would be due if this Second Amendment contained the favorable provision(s) effective as of the Second Amendment Effective Date.~~

h.f. Effluent Water Disposal. Lessee shall accept all effluent water from Lessor resulting from Lessor’s remediation of its fresh water supply on the Subject Lands through reverse osmosis or similar technology (“Effluent Volume”) at such locations and by such means as may be reasonably determined by Lessor and Lessee. Lessee shall dispose of such effluent water Effluent Volumes in the Subject Wells at no cost to Lessor. The Lessee shall not be required to accept effluent water which contains hazardous substance (as such term is defined under Section 10 below), and shall not be required to accept more than four hundred barrels (400 bbls.) of Effluent Volumes on any given day. Lessee shall not owe Lessor any Disposal Fee, Reuse Fee or any other fee of any kind for disposal, transportation, resale, recycling or reuse of Effluent Volumes.

~~g. Meters and Records. Throughout the Term of this Agreement, Lessee shall install and maintain in good order, repair and ~~calibration~~calibrate at its sole cost and expense appropriate metering devices to measure (i) the ~~separate~~On-Lease Volumes ~~and~~, Off-Lease Volumes, ~~and~~ Effluent Volumes all measured separately, accepted by Lessee onto the System, (ii) all Produced Water disposed of ~~in at~~ the Facilities (including ~~in~~measured separately at each of the Subject Well)Wells), and (iii) all Non-Legacy VolumesProduced Water that ~~are~~is transported off of the Subject Lands. The Parties agree that Disposal Fees for resale, recyclingthe total volume of Produced Water disposed of at the Facilities each month shall be calculated as follows:~~

i. For On-Lease Volumes, (A) the total volume of On-Lease Volumes accepted onto the System during any single month, minus the total volume of On-Lease Volumes transported off of the Subject Lands pursuant Subpart (b)(iii) of Paragraph 1 above during such month (the “Total On-Lease Monthly Disposal Volume”); and/or reuse, and

ii. For Off-Lease Volumes, the (A) total Produced Water disposed of at the Facilities during such month minus (B) the sum of (1) Total

On-Lease Disposal Volumes calculated pursuant to 5.g.(i) above, plus (2) the total Effluent Volumes accepted onto the System during such month.

Lessee shall maintain true and accurate records and books of account reflecting Lessee's operations on the Leased Premises and the Subject Lands and under this Agreement including, but not limited to, (A) daily quantities of On-Lease Volumes ~~and~~, Off-Lease Volumes, ~~and Effluent Volumes~~, measured separately, accepted ~~by~~ onto the ~~Facilities~~ System, and (B) daily quantities of ~~On-Lease Volumes and Off Lease Volumes, measured separately~~ Produced Water, injected in each Subject Well, ~~(B) Produced Water that is transported off of the Subject Lands, and (D) daily quantities of Skim Oil recovered from the Produced Water and gross revenues from Skim Oil sales, (C) daily gross revenues received by Lessee or its Affiliates, excluding Skim Oil Fees, derived from, resulting from or in connection with any Produced Water disposed of in the Facilities or transported across any portion of the Subject Lands, the operation or use of any pipelines permitted under this Agreement, including without limitation any pipeline tariffs, or any other rights granted to Lessee under this Agreement, and (D) copies of any and all Other Contracts.~~ Lessor shall have the right to inspect such metering devices to ascertain that they are properly calibrated and to audit and inspect (including the right to receive copies at Lessee's expense) all books and records of Lessee related or in any way pertaining to this Agreement, the Leased Premises, the Subject Lands, and/or the Facilities ~~and/or the Other Contracts~~ at all reasonable times upon reasonable notice to Lessee. Without limiting the foregoing, Lessee shall at its own cost and expense perform calibration tests on the meter(s) no less frequently than every six (6) months and provide a copy of such test results to Lessor within ten (10) days of receipt. In furtherance of such audit and inspection rights, Lessee agrees to maintain all such books and records for a period of no less than three (3) years from December 31 of the year in which such books and records relate.

6. Conduct of Disposal Operations.

a. Generally. Lessee shall conduct all operations hereunder in the manner consistent with the highest then current industry practices for saltwater disposal operations and with due regard for good land management, damage prevention and environmental protection and in full compliance with all federal, state and local laws, ordinances, regulations and rules applicable to such operations. All Produced Water injected into the Subject Wells shall be injected in a manner approved by the Railroad Commission of Texas and all other applicable governmental authorities. Injection of Produced Water shall be injected into the **Bell Canyon and Cherry Canyon formations defined as the stratigraphic equivalent of the correlative interval from approximately 4,897 feet to 7,184 feet measured depth as seen on the Triple-Combo open hole log of the Tubb Estate 22-3 Well, API No. 42-495-32161.** Lessee shall use every means to prevent damage to or contamination of any fresh water aquifer and to prevent waste or loss of fresh water from any aquifer. Lessee shall make available to Lessor all information obtained by Lessee in connection with the drilling of the Subject Wells including, without limitation, all information obtained by Lessee with respect to all fresh water zones.

b. Licenses and Permits. Lessee shall, at Lessee's own expense, obtain any necessary licenses and permits, and shall comply with all laws, ordinances and regulations applicable to the Leased Premises, the Facilities, the Monitor Wells, the Preapproved Easement Route and Lessee's use thereof. Lessee shall promptly provide Lessor with copies of all licenses and permits obtained by Lessee in connection with the Leased Premises, the Facilities, the Monitor Wells, the Preapproved Easement Route and Lessee's use thereof. Lessee shall allow the Railroad Commission of Texas, including, without limitation, the Oil and Gas Enforcement Division, to send Lessor copies of all notices of infractions sent to Lessee regarding violations and possible violations

of the Railroad Commission of Texas rules and regulations applicable to the use and operation of the Facilities, the Leased Premises, the Monitor Wells and the Preapproved Easement Route. Without limitation of any other provision of this Agreement, Lessee shall promptly notify Lessor of any infractions (or possible infractions) claimed by the Railroad Commission of Texas as well as Lessee's intended action(s) to remedy the infractions.

c. Skim Oil Recovery. Lessee shall install and maintain Skim Oil recovery facilities on the Leased Premises in accordance with the highest then current and accepted industry standards.

d. Well Casing and Cement. All casing, pipe and other materials used by Lessee in the Subject Wells shall be of a type and quality meeting the Railroad Commission of Texas standards for saltwater disposal and injection wells, in order that no fresh water source will be contaminated. Without limiting the foregoing, the wellbores of the Subject Wells shall be constructed in accordance with the specifications set forth on Exhibit "C" attached hereto. In completing the Subject Wells, Lessee shall circulate cement from the bottom of the hole back to the surface in order that no fresh water source will be contaminated. If Lessee's attempts to circulate cement from the bottom of the hole back to the surface are unsuccessful, Lessee shall make a good faith attempt to utilize or perform a Bradenhead Squeeze, or similar industry accepted procedure, in the hole. When total depth is reached in each Subject Well, Lessee shall provide Lessor with bond logs promptly upon Lessee's receipt of same showing that the Subject Well has been satisfactorily cemented and cemented in compliance with the terms of this Agreement and applicable governmental laws, rules and regulations.

e. Copies of Filings. Lessee shall provide to Lessor within ten (10) days after such filing is made or such document is prepared, as applicable, unless a different time period is specified below, copies of the following:

- (i) Groundwater Protection Determination Letter provided to the Texas Commission of Environmental Quality.
- (ii) Email notification of Form W-1, Applications to Drill, at the time the application is filed with the Texas Railroad Commission.
- (iii) Email notification of Form W-1, Approved Permit to Drill.
- (iv) Wellbore schematic through the freshwater zones.
- (v) Copy of the Spill Prevention Control and Countermeasure ("SPCC") Plan, including phone numbers of company personnel.
- (vi) Any other documents filed with the Railroad Commission of Texas regarding the Leased Premises, the Subject Wells, the other Facilities or the Produced Water.

f. Notice of Drilling. Except as provided in subparagraph (g) below, Lessee will provide to Lessor at least three (3) days' written notice prior to the arrival of any drilling equipment on the Subject Lands, except in an emergency situation in which case Lessee will provide written notice as soon as reasonably available. Notice under this subparagraph (f) shall be provided as specified in Paragraph 15 below and to the City of Midland's Utilities Director and the Midland County Fresh Water Supply District No. 1 Manager, Jay Edwards, at the contact information provided to Lessee by Lessor.

g. Review by Hydrogeologist. Lessee shall provide to Lessor at least twenty-one (21) days' advance written notice of the scheduled drilling date of each Subject Well. In the event such scheduled drilling date changes, Lessee shall provide notice of the rescheduled drilling date to Lessor as soon as possible. Lessee will allow the services of a hydrogeologist from WSP USA or such other consulting group reasonably acceptable to Lessor and Lessee to monitor and be on location during the drilling and setting of surface and casings of each Subject Well. The parties shall request that such consulting group furnish to Lessee and Lessor detailed reports of their services upon request. Lessee will pay for the cost of such hydrogeologist to be on location from the time of spud of each Subject Well to TVD. Provided that Lessee has complied with the notice provisions contained in this subparagraph (g), Lessee and Lessor acknowledge and agree that (i) Lessor shall be responsible for contacting and scheduling the hydrogeologist to be present during the drilling of the Subject Wells, and (ii) Lessee will not be required to delay its operations in the event the hydrogeologist is not available on the scheduled drilling date of the Subject Well.

h. Fencing. Lessee shall, at Lessee's sole expense, construct and maintain such fences, barricades, and other restrictive devices on the Leased Premises in accordance with the reasonable specifications of Lessor to adequately protect persons or livestock from injury relating to Lessee's activities on the Leased Premises, to segregate the Leased Premises from the Subject Lands, and as Lessor may otherwise reasonably request.

i. Surveillance Wells. Prior to injection on a Subject Well, Lessee will drill at least one and up to two fresh water monitor wells (each, a "Monitor Well") for each of the Subject Wells. Each Monitor Well shall be located between the Subject Well in question and Lessor's fresh water field, provided that if such Monitor Well is located on the Subject Lands, but not on the Leased Premises, it shall be located at such location as is reasonably agreed to in advance of drilling by Lessor (such agreement not to be unreasonably withheld or delayed). Lessee agrees to use only so much of the Subject Lands for the surface location of such Monitor Well as is reasonably necessary for the purposes for such Monitor Well set forth herein. Each Monitor Well shall be drilled to a depth sufficient to access and monitor the Pecos Valley Aquifer, defined as the stratigraphic equivalent of the correlative interval from approximately 65 feet to 380 feet measured depth as seen on the 07-02-69 Dresser Atlas BHC Acoustilog open hole log of the Tubbs Estate #2 Well, API No. 42-495-30016. With respect to the Monitor Wells:

- (i) Each Monitor Well will monitor TDS levels in the Pecos Valley Aquifer with readings taken no less frequently than daily. Lessee shall furnish to Lessor, as specified in Paragraph 15 below and to the City of Midland's Utilities Director and the Midland County Fresh Water Supply District No. 1 Manager, Jay Edwards, at the contact information provided to Lessee by Lessor, at least weekly and more frequently if requested by Lessor, a summary of the monitoring results of each Monitor Well, such summary to be in such form as may be reasonably acceptable to Lessor, together with any data and/or records concerning such monitoring as may be reasonably requested by Lessor.
- (ii) TDS monitoring in each Monitor Well shall commence at least fourteen (14) days before Lessee commences injection of Produced Water into the to-be-monitored Subject Well. The average of TDS levels for the fourteen (14) day period immediately prior to the date injection commences in the to-be-monitored Subject Well shall be referred to as the Monitor Well's "TDS Baseline".

(iii) If after injection commences in any of the Subject Wells, Lessee measures TDS levels at one of its Monitor Wells greater than 1,000 ppm above the TDS Baseline for such Monitor Well on two consecutive days, Lessee will:

- a. immediately notify Lessor in writing;
- b. immediately cease injection of Produced Water into the Subject Well at issue in order to determine whether there is a leak in the Subject Well's casing; and
- c. not resume injection of Produced Water into the Subject Well at issue until the Subject Well passes a mechanical integrity test and the results of such test have been submitted to and approved by the Railroad Commission of Texas on a Railroad Commission Form H-5.

j. Mechanic's Liens. Lessee shall not permit any mechanic's or materialman's lien or liens to be placed on the Leased Premises, the Preapproved Easement Route or the Subject Lands during the term of this Agreement caused by or resulting from any work performed, materials furnished, or obligation incurred by or at the request of Lessee. In the case of the filing of any such lien, Lessee will promptly pay, bond off, or obtain the release of same to the satisfaction of Lessor; provided, however, that Lessee may contest any such lien, and the failure of Lessee to pay the contested claim pending such contest will not be or become an Event of Default (as defined below), if Lessee (i) obtains a bond which under applicable law releases the lien from the Leased Premises, the Preapproved Easement Route and/or the Subject Lands, as applicable, or such alternate form of security or assurance as is acceptable to Lessee and Lessor to insure around the lien; (ii) diligently and in good faith contests the same by appropriate legal proceedings which will operate to prevent the enforcement or collection of the same and the sale of any part of the Leased Premises, the Preapproved Easement Route and/or the Subject Lands; and (iii) promptly upon final determination thereof pays the amount of any such claim so determined, together with all costs, interest and penalties payable in connection therewith. If Lessee's failure to comply with the provisions of this paragraph shall continue for a period of thirty (30) calendar days, Lessor shall have the right, at Lessor's option, of paying the same or any portion thereof without inquiry as to the validity thereof, and any amounts so paid, including expenses and interest, shall be repaid by Lessee to Lessor immediately upon written demand.

k. No Trucking of Produced Water. Notwithstanding anything to the contrary contained in this Agreement, no trucking of Produced Water to the Facilities for disposal is permitted ~~anywhere on the Subject Lands~~ without the express written consent of Lessor.

7. Surface Use/Maintenance.

a. Caliche. All caliche necessary for Lessee's operations on the Leased Premises, the Preapproved Easement Route and the Subject Lands, as contemplated herein, including, but not limited to, road and Facilities construction and maintenance, shall be purchased from Lessor from such locations designated by Lessor, provided Lessor is capable of providing caliche of the quantity and quality reasonably required by Lessee and at a rate competitive with the prevailing market rate in the area. In the event Lessor cannot provide the necessary quantity and/or quality of caliche reasonably required by Lessee, Lessee may bring in caliche from an off-site source or, at Lessee's election, open a new caliche pit on the Subject Lands in accordance with the terms below. Lessee shall not open any new pit for the mining of caliche in or on the Subject Lands without (i) express

prior written permission from Lessor; and (ii) the lump sum payment to Lessor by Lessee in the amount of One Thousand and No/100 Dollars (\$1,000.00) per pit. Lessee shall pay Lessor the sum of Five and No/100 Dollars (\$5.00) per yard for any caliche removed from a pit, new or existing, on lands owned by Lessor. Lessee shall properly dress all caliche excavation sites, new or existing, used by Lessee on lands owned by Lessor.

b. Water. Nothing herein conveys to Lessee the right to drill water wells or use surface water within the boundaries of the Leased Premises or on any other portion of the Subject Lands unless separately agreed to in writing signed by Lessor. Lessee agrees to purchase all water necessary or required by Lessee in connection with drilling and operating the Subject Wells or any other operations of Lessee hereunder provided Lessor is capable of supplying the quantity, quality, delivery rate, and location of water reasonably required by Lessee. Lessee shall pay Lessor the sum of \$0.35 per Barrel for any water necessary or required by Lessee under this Agreement.

c. Facilities. Prior to construction, the specific plans for and location of the Facilities shall be agreed to between Lessor and Lessee in writing. Without limiting the foregoing, the tank battery or batteries to be included in the Facilities shall include (i) lightning protection using a Petro Guardian static dissipation system, (ii) gas control with Enardo Vent valves, (iii) a concrete or steel lined containment structure around the storage tanks, of a size sufficient to contain no less than one hundred fifty percent (150%) of the volumetric capacity of all storage vessels, (iv) SCADA electronic monitoring system, and (v) such other safeguards required by the Railroad Commission of Texas and/or as requested by Lessor.

The Facilities shall be maintained in a neat and clean manner, painted in a color or colors to blend in with the surrounding vegetation or terrain, and kept free of rust, stains, weeds and trash. All firewalls and retaining walls will be kept reasonably free of weeds and brush and Lessee shall promptly recover and remove from the Leased Premises any Produced Water, oil or other fluids that may be spilled or leaked onto the ground around the Facilities.

Within sixty (60) calendar days after construction of the Facilities, Lessee will clean up the Leased Premises and remove any and all spills, junk materials, concrete platforms, pieces of iron, pipes, steel and other debris and foreign materials and will level all mounds, fill all pits and other excavations (in accordance with any requirements set forth herein) and will remove all deleterious materials and substances that might cause injury to person, wildlife, or livestock. All such materials, trash, junk, etc. shall not be burned or buried on the Leased Premises or any other portion of the Subject Lands, but shall be removed therefrom. Lessee shall not use the Leased Premises to store any equipment, pipe, tanks or other personal property, to house any employees or other personnel (except on a temporary basis in connection with the construction, completion or repair of the Facilities), or for any other purpose not expressly contemplated by this Agreement.

d. Electric Lines. Unless otherwise agreed to in writing by Lessor, electric lines may only be constructed hereunder for the purpose of providing electricity to the Facilities, the Monitor Wells and Lessee's pipelines authorized, installed and operated pursuant to this Agreement.

Prior to installation of an electric line on the Leased Premises or within the Preapproved Easement Route, Lessee shall notify Lessor of the desired location thereof and Lessor shall be entitled to request, and Lessee shall comply with, reasonable changes in the proposed location of such line. Notwithstanding anything to the contrary contained herein, in the event that Lessee desires to install an electric line upon any portion of the Subject Lands outside the Leased Premises or the Preapproved Easement Route, Lessee shall notify Lessor of the desired location thereof and the specifications for any such electric line and Lessor shall have the right to consent to such electric

line in its sole discretion; in the event Lessor consents to any such electric line, Lessor and Lessee shall execute and Lessee shall file of record in the applicable county records prior to construction of the electric line an electric line easement in form and substance satisfactory to Lessor and Lessee. Once the electric line route and specifications have been agreed upon and, as to any electric line to be located outside the boundaries of the Leased Premises and/or the Preapproved Easement Route to which Lessor has consented, in its sole discretion, as applicable, Lessee shall grub and pile all mesquite, brush and cactus along the route. All mesquite, brush and cactus shall then be promptly removed from the Subject Lands. All trash and debris from construction of electric lines shall be promptly removed from the Subject Lands.

All underground electric lines shall be buried at least forty-eight inches (48") below grade. All above ground electric lines shall be maintained plumb. During the construction, repair, removal or other operations of buried electric lines, all ditching or trenching shall be double ditched in such a manner so that the top soil will be separated from the balance of the dirt removed in making the ditch or trench. In backfilling after any such operation, the top soil first removed shall be used as cover soil in such a manner as to result in it being returned to the top of the ditch as top soil. The top soil which was previously removed and stacked shall be spread uniformly over the electric line location, then leveled and reseeded with the type of grass designated by Lessor. All large rocks (any rock over three inches (3") in diameter) removed from any ditch or trench by Lessee shall be buried in such ditch or trench or otherwise removed from the Subject Lands. All buried electric line(s) located on the Subject Lands shall be properly marked at all times by Lessee with signage approved by Lessor.

If Lessee shall construct any electric line on the Subject Lands, Lessee agrees that before abandonment or removal of any such electric line, it will offer the same to Lessor, without compensation. If Lessor elects not to accept such electric line, then Lessee shall, within one hundred eighty (180) days of the earlier of such abandonment or the expiration or other termination of this Agreement, remove such electric line and restore the surface of the location of such removed electric line as nearly as is practicable to its condition prior to the execution of this Agreement. An electric line shall be deemed to be abandoned for purposes of this Agreement if it has not been used to deliver electricity to the Facilities, a Monitor Well, or one of Lessee's pipelines, as applicable, for a period of sixty (60) consecutive days. Lessee's obligations to Lessor under this Paragraph 7(d) shall survive the expiration or termination of this Agreement.

e. Pipelines. All pipelines constructed on the Subject Lands shall be buried at least forty-eight (48) inches below the surface (measured from the surface to the top of such pipeline) unless otherwise required by Lessor. All pipelines constructed on the Subject Lands shall be constructed of HDPE material and surface appurtenances shall be constructed of HDPE and/or steel materials consistent with industry practice; both pipelines and surface appurtenances shall be constructed and installed in accordance with the highest industry standards, and within twenty (20) days of the completion of installation of any pipeline on the Subject Lands, Lessee (i) shall furnish to Lessor, as specified in Paragraph 15 below and to the City of Midland's Utilities Director and the Midland County Fresh Water Supply District No. 1 Manager, Jay Edwards, at the contact information provided to Lessee by Lessor, such records of such installation as may be acceptable to Lessor in its sole discretion, including, without limitation, as-built plats of such pipelines with the locations of all such pipelines clearly marked, and (ii) shall report the locations of all such pipelines to Texas 811. The locations of such pipelines shall be properly marked with signage approved by Lessor. Any and all pipelines on the Subject Lands shall be encased in accordance with the highest industry standards at any and all road crossings. Prior to installation of a pipeline on the Leased Premises or along the Preapproved Easement Route, Lessee shall notify Lessor of the desired location thereof and Lessor shall be entitled to request, and Lessee shall comply with,

reasonable changes in the proposed location of such pipeline. Notwithstanding anything to the contrary contained herein, in the event that Lessee desires to install a pipeline upon any portion of the Subject Lands outside the Leased Premises or the Preapproved Easement Route, Lessee shall notify Lessor of the desired location thereof and the size of any such pipeline and Lessor shall have the right to consent to such pipeline in its sole discretion; in the event Lessor consents to any such pipeline, Lessor and Lessee shall execute and Lessee shall file of record in the applicable county records prior to construction of the pipeline a pipeline easement in form and substance satisfactory to Lessor and Lessee.

Once the pipeline route and specifications have been agreed upon and, as to any pipeline to be located outside the boundaries of the Leased Premises and/or the Preapproved Easement Route to which Lessor has consented, in its sole discretion, as applicable, Lessee shall first grub and pile all mesquite, brush and cactus along the route. All mesquite, brush and cactus shall then be promptly removed from the Subject Lands. All trash and debris from construction of pipelines shall be promptly removed from the Subject Lands.

During the construction, repair, removal or other operations, all ditching or trenching shall be double ditched in such a manner so that the top soil will be separated from the balance of the dirt removed in making the ditch or trench. In backfilling after any such operation, the top soil first removed shall be used as cover soil in such a manner as to result in it being returned to the top of the ditch as top soil. The top soil which was previously removed and stacked shall be spread uniformly over the pipeline location, then leveled and reseeded with the type of grass designated by Lessor. All large rocks (any rock over three inches (3") in diameter) removed from any ditch or trench by Lessee shall be buried in such ditch or trench or otherwise removed from the Subject Lands. All pipelines located on the Subject Lands shall be adequately marked at all times by Lessee at all road or fence crossings and as required by applicable laws.

In connection with the construction and installation of pipelines hereunder Lessee shall install at its cost and expense such flow and pressure surveillance devices as are reasonably acceptable to Lessor in its sole discretion to constantly monitor any pressure and/or volume changes within the pipelines on a real-time basis. Without limiting the foregoing, (i) any pressure and/or volume changes within the pipelines shall be monitored by a SCADA electronic monitoring system using high resolution data with readings taken no less frequently than once per minute; (ii) pressure transmitters shall be installed by Lessee at least every mile, provided that each pipeline shall be monitored by a pressure transmitter regardless of the length of such pipeline; (iii) Lessee shall install meters at each entrance and exit point to Lessee's pipeline system located on the Subject Lands, including, without limitation, at each point that a pipeline enters or exits the Subject Lands; (iv) Lessee shall furnish to Lessor, as specified in Paragraph 15 below and to the City of Midland's Utilities Director and the Midland County Fresh Water Supply District No. 1 Manager, Jay Edwards, at the contact information provided to Lessee by Lessor, at least weekly and more frequently if requested by Lessor, a summary of the monitoring results of such pipeline system, such summary to be in form and substance as may be acceptable to Lessor in its sole discretion, together with any data and/or records concerning such monitoring as may be requested by Lessor in its sole discretion; (v) in connection with such monitoring Lessee shall immediately notify Lessor at the phone number(s) and email address(es) provided to Lessee by Lessor of any readings indicating low pressure and/or sudden changes in pressure or volume within the pipeline system; (vi) Lessee shall perform liquid balances real-time; and (vii) at least once per calendar quarter Lessee shall conduct thermal imaging surveys of all of Lessee's pipelines on the Subject Lands to detect anomalously small or otherwise undetectable leaks and shall furnish to Lessor, as specified in Paragraph 15 below and to the City of Midland's Utilities Director and the Midland County Fresh Water Supply District No. 1 Manager, Jay Edwards, at the contact information provided to

Lessee by Lessor, within ten (10) days of the completion of each such survey, a summary of the results of such survey, such summary to be in form and substance as may be acceptable to Lessor in its sole discretion, together with any data and/or records concerning such survey(s) as may be requested by Lessor in its sole discretion.

As to any pipeline constructed on the Subject Lands by Lessee under the terms of this Agreement, Lessee agrees that before the abandonment or removal of any such pipeline, it will offer the same to Lessor, without compensation. If Lessor elects not to accept any such pipeline, then Lessee shall, within one hundred eighty (180) calendar days of the earlier of such abandonment or the expiration or other termination of this Agreement, remove such pipeline. Lessee shall then restore the surface of the location of such removed pipeline as nearly as is practicable to its condition prior to the execution of this Agreement. After the Initial Term, a pipeline shall be deemed to be abandoned for purposes of this Agreement if it has not been used to transport Produced Water for a period of sixty (60) consecutive days. If Lessee fails to remove any pipeline in accordance with the foregoing, Lessor may do so at the sole expense of Lessee. Lessee's obligations to Lessor under this Paragraph 7(e) shall survive the expiration or termination of this Agreement.

f. Roads, Gates and Fences. Lessee agrees to use and Lessor further assigns, grants and conveys to Lessee a non-exclusive appurtenant easement of ingress and egress over and across the existing gates and roadways depicted on Exhibit "D" attached hereto, to enter, leave and cross the Subject Lands for the purpose of accessing the Leased Premises, the Monitor Wells and Lessee's pipelines authorized, installed and operated pursuant to this Agreement. If the existing roadways depicted on Exhibit "D" attached hereto are inadequate to allow Lessee to exercise the rights granted herein, Lessee shall have the right to construct a new road, not to exceed twenty-five feet (25') in width, on and along the Preapproved Easement Route at a mutually agreeable location between Lessor and Lessee. The maximum twenty-five foot (25') width is to be measured from edge to edge of the caliche or paved road surface, and shall be exclusive of any area adjacent to the roadway surface utilized as (i) ditches or other reasonable water diversions, or (ii) brush clearance along the roadway. Unless otherwise agreed by Lessor, such adjacent area shall not exceed a width of five feet (5') on each side of the roadway surface. Notwithstanding anything to the contrary contained herein, in the event that Lessee desires to install a new road upon any portion of the Subject Lands outside the Preapproved Easement Route, Lessee shall notify Lessor of the desired location thereof and Lessor shall have the right to consent to such new road in its sole discretion; in the event Lessor consents to any such new road, Lessor and Lessee shall execute and Lessee shall file of record in the applicable county records prior to construction of the new road, a road easement in form and substance satisfactory to Lessor and Lessee. Once the road location has been agreed upon and, as to any new road to be located outside the boundaries of the Preapproved Easement Route to which Lessor has consented, in its sole discretion, as applicable, Lessee shall first grub and pile all mesquite, brush and cactus along the route. All mesquite, brush and cactus shall be promptly removed from the Subject Lands.

All non-paved roads used or constructed by Lessee shall be topped and crowned with a minimum of nine inches (9") of caliche and shall have magnesium chloride applied to the road surface after the completion of road construction, or shall be paved, as required by Lessor. All large rocks (any rock over three inches (3") in diameter) remaining from road construction and/or maintenance shall be removed from the Subject Lands. Notwithstanding that Lessor may use all roads used or constructed by Lessee for ranching and farming operations, recreational uses and otherwise provided Lessor does not materially interfere with Lessee's activities hereunder, Lessee shall maintain all roads used or constructed by Lessee, whether existing or newly constructed by Lessee, in good repair, and all non-paved roads shall be maintained as all-weather caliche roads at

all times. All holes and ruts in roads used by Lessee, whether existing or newly constructed by Lessee, shall be filled as soon as practical by Lessee. Lessee shall install adequate culverts wherever any road constructed or used by Lessee crosses a natural drainage, and except as provided below all roads and any pipelines laid by Lessee shall be so constructed and laid as not to interfere with the natural flow of surface waters or with drainage. Lessee shall place water diversions along any road constructed or used by Lessee as necessary to prevent excessive washing out of the road. All material for such diversions will be constructed using materials purchased from Lessor, provided that Lessor can provide such materials in the quantity and quality reasonably required by Lessee and at a rate competitive with the prevailing market rate in the area, and Lessee shall not use materials pushed up from the roadside, unless Lessor agrees otherwise.

Unless otherwise agreed to in writing by Lessor, within one hundred eighty (180) calendar days of the expiration or termination of this Agreement, Lessee shall remove any caliche or paved surface on any road built by Lessee and shall restore the surface of the location of such road as nearly as is practicable to its condition prior to the execution of this Agreement unless Lessor shall agree in writing otherwise, including, but not limited to, (i) stockpiling caliche from such road for Lessor's use, at such location(s) reasonably designated by Lessor, and (ii) root plowing, leveling the surface, and planting same with native grass seed selected by Lessor. If Lessee fails to take such removal and restoration action, Lessor may do so at the sole expense of Lessee. Lessee's obligations to Lessor under this Paragraph 7(f) shall survive the expiration or termination of this Agreement.

Lessee agrees that Lessee will not cut or go over any fence at any time or in connection with any operations hereunder without first obtaining Lessor's express consent thereto in writing. All openings in fences for operations hereunder shall be braced on each side by three (3) five inch (5") heavy wall, steel pipe posts five feet (5') in height on the two interior posts and two feet (2') in height on the third exterior post, a distance of eight feet (8') apart, cemented thirty-six inches (36") below the surface, cross braced and welded in place approximately twelve inches (12") from the top and eighteen inches (18") from the bottom with no less than two and three-eighths inch (2 3/8") heavy wall, steel pipe between the interior two posts and angled down to the third post which will be a height of approximately two feet (2') above the surface cross braced and welded with same material. At Lessee's option, Lessee shall either (i) at each such opening, build a cattle guard which has a pit two feet (2') deep underground, and, at the request of Lessor, a substantial metal gate shall be installed over the cattle guard, or (ii), install a gate and keep such gate locked at all times that Lessee or its agents are not passing through such gate. A new fence shall be installed from the existing fence to such cattle guard or gate. Insofar as it may be necessary for operations hereunder, a double gate shall be installed on one side of the fence cut to allow large equipment to be moved. All gates shall be constructed using 4" X 4" wire mesh, to be predator proof and in accordance with Lessor's reasonable specifications given the use and circumstances. In the event Lessee utilizes an existing gate that is not currently constructed to the standards set forth herein, unless otherwise requested by Lessor, Lessee agrees to upgrade such access point to such standards. All cattle guards and gates in fences shall be left in place at the termination of this Agreement and shall thereafter be owned by Lessor. Lessee shall clean out and maintain such cattle guards it uses and/or installs.

Lessee and all persons entering or leaving the Subject Lands in connection with Lessee's operations hereunder shall keep all outside and interior gates securely closed. Lessee shall keep all outside gates, and all other gates designated by Lessor, securely locked. At any gate that is to be locked, Lessee shall provide Lessor the key or access code, as applicable, to any such lock. In addition, Lessor may install its own lock in addition to Lessee's lock on any such gate.

g. Trash. Lessee agrees to maintain trash containers at reasonable locations during construction of the Facilities and the subsequent operation thereof, and agrees to promptly pick up and remove all trash introduced onto the Leased Premises, the Preapproved Easement Route or any other portion of the Subject Lands by Lessee or any of its employees, representatives, contractors and/or invitees. Lessor shall have the right to expel and permanently ban from the Subject Lands any person observed dumping trash on the Subject Lands. Upon the completion of any operation all ribbons, flags, stakes and similar items shall be promptly removed from the Subject Lands. Under no circumstances will Lessee be allowed to burn or bury any trash of any kind on or under the Leased Premises or any other portion of the Subject Lands. Lessee shall not permit any open fires of any kind upon the Subject Lands.

h. Restrooms. Lessee or its contractors shall provide its employees with portable toilet facilities during drilling of the Subject Wells, construction of the Facilities, road construction, pipeline construction, electric line construction and any other similar or related operations.

i. Speed Limit. Lessee agrees that all of its vehicles and contractor vehicles shall observe a speed limit of 25 MPH when on the Subject Lands and shall yield to vehicles of Lessor and/or its invitees at all times. Lessor shall have the right to expel and permanently ban from the Subject Lands any person observed exceeding such speed limit.

j. Hunting, Fishing, Alcohol and Illegal Drugs. No employee, representative or contractor of Lessee or any other person allowed to come upon the Subject Lands by Lessee shall be permitted to hunt, fish, trap, camp, picnic, ride motorcycles or four-wheelers (except four-wheelers for business purposes) or otherwise conduct any social gathering on the Subject Lands, nor shall any such persons be permitted to bring firearms, archery equipment, dogs, alcoholic beverages or illegal drugs on the Subject Lands at any time. Violations of this provision shall cause the violator to be regarded as a trespasser and subject to prosecution under trespass laws of the State of Texas. Lessor shall have the right to expel and permanently ban from the Subject Lands any person observed on the Subject Lands violating this provision.

k. Signage. At the request of Lessor, Lessee will place signs approved by Lessor at entrances onto the Subject Lands, and at such other intervals as deemed necessary by Lessor, that clearly state the restrictions set forth in this Agreement, including, but not limited to, the speed limit, and the prohibitions against trash, burning, hunting, fishing, alcohol and illegal drugs.

l. Noxious Weeds. Lessee shall take all reasonable precautions to keep the Leased Premises, the Preapproved Easement Route and adjoining portions of the Subject Lands free of bitterweed, African rue, tumbleweeds, cockleburs and other noxious and unwanted vegetation (being native and non-native toxic plants). In the event any such noxious vegetation is encountered on or around the Leased Premises, the Preapproved Easement Route or adjoining portions of the Subject Lands, Lessee agrees to promptly spray herbicide to eliminate such vegetation. If Lessee fails to take such action, Lessor may have such vegetation sprayed at the sole expense of Lessee.

8. Damages. Lessee has agreed to pay and Lessor has agreed to accept the following as payment for ordinary damages, if any, to the Leased Premises and/or Preapproved Easement Route, that may occur in connection with Lessee's initial construction of the Facilities and the construction of any road(s), pipelines, and/or electrical lines on, across or along the Preapproved Easement Route:

- a. New roads constructed by Lessee:
Forty dollars (\$40.00) per rod.

- b. New pipelines constructed by Lessee:
Sixty-Four dollars (\$64.00) per rod.
- c. New electrical lines constructed by Lessee:
Twenty-Four dollars (\$24.00) per rod.

The above consideration does not cover damages that may arise from operating, maintaining, repairing, replacing or removing the Facilities and/or any road, pipeline and/or electrical line constructed on the Leased Premises and/or the Preapproved Easement Route by Lessee pursuant to the terms hereof, nor does it cover any roads, pipelines and/or electrical lines constructed on the Subject Lands outside the boundaries of the Leased Premises and/or Preapproved Easement Route. During and after the initial construction of the Facilities and/or any road, pipeline and/or electrical line by Lessee pursuant to the terms hereof, Lessee shall be responsible to Lessor, its successors or assigns, surface lessees, or tenants as their respective interests may appear, for damages as a result of Lessee's operations hereunder, including, but not limited to, damages to Lessor's livestock, growing crops, grasses, trees, shrubbery, or fences. The amount of damages shall be based on (i) the prevailing market price at the time of the loss, or (ii) the reasonable cost to the owner, whichever is greater.

The specific damage amounts set forth above shall remain effective during the Initial Term, and thereafter during any Extended Term Lessee shall pay rates equal to the greater of (i) the specific damage amounts set forth above, or (ii) the rates set forth on the then most current University of Texas System Rate and Damage Schedule published by the University of Texas System (the "University Rate Schedule").

In the event Lessor approves the construction of any roads, pipelines and/or electrical lines on the Subject Lands outside the boundaries of the Leased Premises and/or Preapproved Easement Route, Lessee shall pay the damages rates equal to the greater of (i) the specific damage amounts set forth above, or (ii) the rates set forth on the then most current University Rate Schedule, and Lessee shall remit the same to Lessor prior to commencement of such construction. In the event other parties desire to construct their own disposal lines to the Subject Wells, assuming approval of the same by Lessor, Lessor shall be entitled to negotiate for and receive all damages from such other parties that may be paid for the use of the Subject Lands.

9. **Access by Lessor.** Lessor and its respective representatives may enter upon the Leased Premises or any other portion of the Subject Lands used by Lessee pursuant to the terms of this Agreement at any time and shall have access to the operations of Lessee thereon at all times without being accompanied by authorized representatives of Lessee; provided, however, that any provision of this Agreement to the contrary notwithstanding, Lessor and its respective representatives do so at their own risk and assume the risk of and release Lessee, its Affiliates and related entities and their respective representatives, officers, employees, agents, owners, heirs, successors and assigns from any and all injury, liabilities, losses or damage suffered while entering or upon the Leased Premises or any other portion of the Subject Lands used by Lessee pursuant to the terms of this Agreement or accessing the operations of Lessee thereon, save and except any such injury, liability, loss or damage caused by the gross negligence or willful misconduct of a Lessee Party (as defined below).

Lessor hereby reserves the right for itself and its successors and assigns to use the Preapproved Easement Route and any other portion of the Subject Lands used by Lessee pursuant to the terms of this Agreement in any manner that will not unreasonably interfere with the exercise by Lessee of its rights hereunder, and the right to grant to others such right. Lessor's uses may include, but shall not be limited to, using the Preapproved Easement Route and any other portion of the Subject Lands used by Lessee pursuant to the terms of this Agreement for agricultural, open space, set-back, density, street and roadway purposes, and Lessor may also construct and/or install, or allow the construction and/or installation of water,

sewer, oil and/or gas, electric, cable television, telephone and other utility lines (both above and below ground) across the Preapproved Easement Route and any other portion of the Subject Lands used by Lessee pursuant to the terms of this Agreement, provided that all required and applicable spacing and casing requirements are met by Lessor and/or Lessor's grantee(s).

10. **Pollution.** Lessee shall use all reasonable safeguards to prevent contamination or pollution of any environmental medium, including soil, surface waters, groundwater, sediments, surface or subsurface strata, ambient air or any other environmental medium, by any waste, pollutant or contaminant. Lessee shall use all reasonable efforts to contain any actual or potential release of any waste, contaminant or pollutant to the environment and to recapture any escaped waste, contaminant or pollutant, including, without limitation, any escaped Produced Water or hydrocarbons on the surface. In the event of contamination or pollution of any environmental medium, including, without limitation, any fresh water aquifer, resulting from Lessee's operations hereunder or any other act or omission of a Lessee Party, Lessee shall immediately notify Lessor in writing and, at Lessee's sole expense, conduct all soil, surface or groundwater investigations, studies, sampling and testing and undertake and complete all remedial, removal, restoration and other actions necessary to contain, clean up, remediate and remove all such contamination or pollution in compliance with this Agreement and all applicable governmental laws, rules and regulations. Lessee shall promptly notify Lessor in writing of undertaking any soil, surface or groundwater investigations, studies, sampling or testing or any remedial, removal, restoration, or other actions necessary to contain, clean up, remediate or remove contamination or pollution. The notice shall specify any consultants or engineers engaged by Lessee in connection with such undertaking and shall describe planned or anticipated activities in sufficient detail to adequately apprise Lessor of the same. Lessee shall promptly provide Lessor any additional information Lessor may reasonably request relating to such activities. Notwithstanding the foregoing, in an emergency or other situation that requires immediate action, Lessee shall take all necessary and appropriate actions and notify Lessor as soon thereafter as possible. The provisions of this paragraph shall survive the termination of this Agreement.

Without limiting the foregoing, Lessee agrees that it shall not engage in and shall not permit any other party to engage in any activity with respect to the Facilities, the Leased Premises or the Subject Lands which could cause (i) the Facilities to be classified as hazard waste treatment, storage or disposal facilities within the meaning of the Resources Conservation Recovery Act of 1976 (as now or hereinafter amended, "RCRA"), (ii) an unlawful release of a hazardous substance from or to the Facilities within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (as now or hereinafter amended, "CERCLA"), (iii) the unpermitted, unlawful discharge of pollutants or effluents into any surface waters, groundwater or aquifer, or (iv) the unpermitted, unlawful discharge into the air of any emission which would require a permit under the Federal Water Pollution Control Act or the Clean Air Act or any similar federal, state or local statute or ordinance. Lessee shall not permit any substance or conditions in or on the Facilities, the Leased Premises or the Subject Lands which might support a claim or cause of action under RCRA, CERCLA or any other federal, state or local environmental statutes, regulations or ordinances. Lessee agrees that no underground storage tanks shall be installed or located on or under the Facilities or the Leased Premises.

As used in the preceding provisions, the term "hazardous substance" and "release" shall have the meaning specified in CERCLA, and the terms "solid waste" and "disposal" (or "disposed") shall have the meaning specified in RCRA. Without limitation of this Paragraph, Paragraph 12 or any other provision of this Agreement, the indemnity contained in Paragraph 12 shall include indemnification of Lessor for any breach by Lessee or any other Lessee Party of the covenants included in this Paragraph.

11. **Events of Default and Remedies.**

a. Events of Default. The following events shall be deemed to be events of default hereunder (hereinafter referred to as "Event(s) of Default"):

i. If Lessee should fail or refuse to make the payment of any undisputed sum due to Lessor hereunder within sixty (60) calendar days after the due date thereof;

ii. If Lessee or Lessee's authorized agent should knowingly make any false report or false return concerning the volume of Produced Water disposed of in the Facilities, the Non-Legacy Volumes transported off of the Subject Lands for resale, recycling and/or reuse, Skim Oil revenues or any other fees or payments required under this Agreement, or should Lessee fail to render any reports or other information due to be transmitted to, or requested by, Lessor within sixty (60) calendar days after the same were to be provided to, or requested by, Lessor in accordance with the terms of this Agreement;

iii. If the Facilities, or any portion thereof, including, but not limited to, any Subject Well, or any Monitor Well or any pipeline permitted hereunder do not comply with the standards of the Railroad Commission of Texas or any other law, ordinance, regulation or rule applicable thereto and Lessee does not, within ninety (90) calendar days after notice from the Railroad Commission of Texas, Lessor or any other applicable governmental authority, (A) correct such non-compliance, or (B) commence steps to correct such non-compliance and thereafter diligently pursue the correction of such non-compliance until the Facilities, such Monitor Well or such pipeline, as applicable, are in full compliance; or

iv. If Lessee should knowingly breach any representation contained herein, or if Lessee should fail to perform any covenant or other obligation specified herein, including without limitation, the maintenance of the Facilities, the Leased Premises and/or the Preapproved Easement Route, or the refusal to permit Lessor or its authorized representatives access to the Leased Premises, to any other portion of the Subject Lands used by Lessee pursuant to the terms of this Agreement, or to any records pertaining to Lessee's operations hereunder.

b. Remedies. Should one or more Events of Default occur and Lessee fail to cure the Event of Default within thirty (30) calendar days after receiving written notice of the Event of Default from Lessor, Lessor may terminate this Agreement immediately and/or enforce the provisions of this Agreement in any other manner provided by law; provided, however, that if Lessee has initiated and is diligently pursuing efforts to cure the default prior to the expiration of the foregoing 30-day period, the foregoing cure period will be automatically extended for an additional thirty (30) calendar days or such additional reasonable period of time as is necessary to effect a cure. If Lessee fails to cure any Event of Default within the above time period, at Lessor's option, Lessor may terminate this Agreement and re-enter upon the Leased Premises and expel Lessee without being guilty of any manner of trespass, without liability for any damage or loss occasioned thereby, and without prejudice to any remedies available to Lessor for collection of amounts due, breach of contract, or otherwise. With respect to any amounts due to Lessor hereunder and collected by an attorney after default or through judicial, bankruptcy, or probate proceedings, Lessee agrees to pay all costs of collection, including reasonable attorneys' fees and all court costs. Notwithstanding anything to the contrary contained herein, in the event any Event of Default under Paragraph 11(a)(i) occurs two (2) or more times in any given calendar year, Lessor may terminate this Agreement immediately and/or enforce the provisions of this Agreement in any other manner provided by law, in any case without any written notice to Lessee or opportunity to cure, and Lessor may re-enter upon the Leased Premises and expel Lessee without being guilty of any manner of trespass, without liability for any damage or loss occasioned thereby, and without

prejudice to any remedies available to Lessor for collection of amounts due, breach of contract, or otherwise.

12. **INDEMNIFICATION; INSURANCE; LIMITATION OF LIABILITY.**

A. **INDEMNITY.** LESSOR SHALL NOT BE LIABLE FOR ANY DAMAGE, LOSS, OR INJURY TO ANY PERSON OR PROPERTY SUFFERED IN, ON OR ABOUT THE SUBJECT LANDS, THE LEASED PREMISES OR THE PREAPPROVED EASEMENT ROUTE ARISING FROM OR OUT OF ANY USE BY LESSEE OR ANY OF LESSEE'S AFFILIATES OR LESSEE'S OR LESSEE'S AFFILIATES' RESPECTIVE CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, AGENTS, REPRESENTATIVES OR INVITEES (EACH A "LESSEE PARTY" AND COLLECTIVELY, THE "LESSEE PARTIES"), INCLUDING, WITHOUT LIMITATION, ANY ACTIVITY THEREON OR IN CONNECTION THEREWITH BY THE LESSEE PARTIES OR THE NEGLIGENCE OR MISCONDUCT OF THE LESSEE PARTIES. LESSEE SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS LESSOR AND ITS RESPECTIVE REPRESENTATIVES, OFFICERS, EMPLOYEES, AGENTS, DIRECTORS, SUCCESSORS AND ASSIGNS (EACH AN "INDEMNIFIED PARTY" AND COLLECTIVELY, THE "INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL LIABILITIES, LOSSES, CLAIMS, DEMANDS, PENALTIES, FINES, SETTLEMENTS, DAMAGES, RESPONSE, REMEDIAL OR INSPECTION COSTS, AND ANY EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' AND CONSULTANTS' FEES AND COURT COSTS) OF WHATEVER KIND OR NATURE (COLLECTIVELY, "LOSSES"), WHICH ARE SUFFERED OR INCURRED BY ANY INDEMNIFIED PARTY, WHICH ARISE FROM OR RELATE IN ANY WAY TO LESSEE'S OR ANY OTHER LESSEE PARTY'S USE OF THE SUBJECT LANDS, THE LEASED PREMISES AND/OR THE PREAPPROVED EASEMENT ROUTE, INCLUDING, WITHOUT LIMITATION, IN CONNECTION WITH LESSEE'S OR ANY OTHER LESSEE PARTY'S CONSTRUCTING, RECONSTRUCTING, OPERATING, MAINTAINING AND/OR REMOVING (I) ANY OF THE FACILITIES, AND/OR (II) ANY ROAD, PIPELINE OR ELECTRIC LINE, AND INCLUDING, WITHOUT LIMITATION, ANY SUCH LOSSES ARISING FROM LESSEE'S OR ANY OTHER LESSEE PARTY'S FAILURE TO COMPLY WITH ALL APPLICABLE LOCAL, FEDERAL AND/OR STATE LAWS, INCLUDING, WITHOUT LIMITATION, LOCAL, FEDERAL AND/OR STATE ENVIRONMENTAL LAWS (INCLUDING, BUT NOT LIMITED TO, RCRA AND CERCLA, AS THEY MAY BE REAUTHORIZED AND/OR AMENDED FROM TIME TO TIME), AND THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT AND SHALL NOT BE LIMITED BY OR TO DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER INSURANCE POLICIES OR ANY OTHER SOURCE.

B. **INSURANCE OF LESSEE.** DURING THE TERM OF THIS AGREEMENT AND UNTIL TWO (2) YEARS AFTER SUCH TIME AS LESSEE HAS RESTORED THE SUBJECT LANDS AS REQUIRED BY THIS AGREEMENT, LESSEE AGREES TO MAINTAIN THE MINIMUM INSURANCE COVERAGES AND MEET THE INSURANCE REQUIREMENTS SPECIFIED ON EXHIBIT "E" ATTACHED HERETO WITH RESPECT TO ITS OPERATIONS HEREUNDER, WITH SUCH INSURANCE CARRIER(S) AND IN A FORM REASONABLY ACCEPTABLE TO LESSOR. LESSEE SHALL BE RESPONSIBLE FOR ALL DAMAGE OR LOSS FROM WHATEVER CAUSE TO ANY OF LESSEE'S PROPERTY OR EQUIPMENT ON THE SUBJECT LANDS, THE LEASED PREMISES OR THE PREAPPROVED EASEMENT ROUTE. TO THE EXTENT

OF THE LIABILITY ASSUMED BY LESSEE UNDER THIS AGREEMENT, LESSEE WAIVES ANY CLAIM OR CAUSE OF ACTION AND FURTHER AGREES TO OBTAIN FROM ITS INSURANCE CARRIER AN ENDORSEMENT TO ALL APPLICABLE POLICIES WAIVING SUCH INSURANCE CARRIER'S RIGHTS OF RECOVERY, WHETHER IN THE NATURE OF SUBROGATION OR OTHERWISE, AGAINST THE INDEMNIFIED PARTIES IN CONNECTION WITH ANY SUCH LOSS OR DAMAGE OR LIABILITY ASSUMED BY LESSEE UNDER THIS AGREEMENT. LESSOR SHALL NOT BE REQUIRED TO PROVIDE ANY INSURANCE WHATSOEVER PURSUANT TO THIS AGREEMENT. LESSEE CERTIFIES THAT THE ONE OR MORE CERTIFICATES OF INSURANCE PROVIDED AS REQUIRED UNDER THIS AGREEMENT AND AS SPECIFIED ON EXHIBIT "E" ATTACHED HERETO COMPLIES WITH THE REQUIREMENTS OF CHAPTER 1811 OF THE TEXAS INSURANCE CODE. LESSEE SHALL NOT USE AN UNAPPROVED CERTIFICATE OF INSURANCE OR INSERT INAPPROPRIATE LANGUAGE ON A CERTIFICATE. COMPLIANCE WITH STATE LAW IS THE SOLE RESPONSIBILITY OF LESSEE.

C. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL LESSEE OR ANY OTHER LESSEE PARTY BE ENTITLED TO RECOVER FROM ANY INDEMNIFIED PARTY ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, REMOTE OR SPECULATIVE DAMAGES OR DAMAGES FOR LOST PROFITS OR LOSS OF USE OR BUSINESS OPPORTUNITY, ARISING UNDER, IN CONNECTION WITH OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. LESSEE, ON BEHALF OF ITSELF AND EACH OTHER LESSEE PARTY, DOES HEREBY WAIVE ANY RIGHT TO RECOVER ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, REMOTE OR SPECULATIVE DAMAGES OR DAMAGES FOR LOST PROFITS OR LOSS OF USE OR BUSINESS OPPORTUNITY, ARISING UNDER, IN CONNECTION WITH OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

13. Termination.

a. Holding Over. Subject to the other provisions of this Agreement regarding Lessee's restoration obligations upon the expiration or earlier termination of this Agreement, upon the expiration or the earlier termination of this Agreement, Lessee shall immediately surrender the Leased Premises to Lessor. In the event Lessee occupies the Leased Premises or any part thereof after the expiration or other termination of this Agreement, unless otherwise agreed in writing by Lessor, Lessee shall hold the Leased Premises as a tenant at sufferance only. In no event shall such holding over constitute or be construed as a renewal or extension of this Agreement.

b. Lessee's Personal Property. Unless directed otherwise in writing by Lessor, Lessee shall remove all of Lessee's personal property, equipment, fixtures, pipelines, tanks, power lines and tubing from the Leased Premises, the Preapproved Easement Route and the Subject Lands within one hundred eighty (180) days after the expiration or termination of this Agreement. Lessor may direct Lessee in writing not to remove, and Lessee shall not remove, any such personal property, equipment, fixtures, pipelines, tanks, power lines or tubing if Lessor claims a lien on such property, if Lessee owes damages, payments or other amounts to Lessor, or if Lessee has demonstrated its financial inability to plug the Subject Wells or the Monitor Wells or restore the Leased Premises, the Preapproved Easement Route and the Subject Lands as required herein, or a separate agreement has been reached between Lessor and Lessee relating to removal of such

property. Should Lessee fail to remove any of Lessee's personal property, equipment, fixtures, pipelines, tanks, power lines or tubing within such time period, unless such failure is in accordance with Lessor's written directions, such personal property shall become the property of Lessor, at Lessor's option, and in such case Lessor shall be entitled to take possession of any such property and to sell or dispose of such property for any purpose. Lessee shall reimburse Lessor for any and all costs incurred by Lessor in connection with Lessor's taking possession of and the sale or disposal of any such property, less any amounts received by Lessor from such sale. Such amounts shall be due and payable by Lessee to Lessor immediately upon demand by Lessor. Lessee's obligations to Lessor under this Paragraph 13(b) shall survive the expiration or termination of this Agreement.

c. Well Takeover. Upon the expiration or other termination of this Agreement, Lessor shall have the option, exercisable by delivery of written notice to Lessee within sixty (60) days after such expiration or other termination, to either retain the Subject Wells and/or the Monitor Wells with all downhole equipment intact, or require Lessee to plug and abandon the Subject Wells and/or the Monitor Wells in compliance with ~~Lessor's specifications and~~ applicable governmental rules and regulations, including the RRC's Statewide Rule 14 for the Subject Wells, and restore the surface of the Leased Premises and the Subject Lands, as applicable. If Lessor fails to provide Lessee with written notice of its election to take over the Subject Wells and/or the Monitor Wells during said 60-day period, the right to take over will be deemed to have been waived. If Lessor chooses not to take over the operation of the Subject Wells and/or the Monitor Wells, Lessee hereby agrees, within one hundred eighty (180) days after the expiration or other termination of this Agreement, to plug the Subject Wells and the Monitor Wells that Lessor has chosen not to take over in accordance with ~~Lessor's specifications and the~~ the applicable rules, regulations and specifications of the ~~Texas Railroad Commission~~RRC, including Statewide Rule 14 and all other applicable governmental authorities and restore the surface of the Leased Premises and the Preapproved Easement Route and any other applicable portion of the Subject Lands as nearly as is reasonably practicable to their condition prior to the execution of this Agreement, including, without limitation (i) stockpiling caliche from such premises for Lessor's use, at such location(s) designated by Lessor, and (ii) root plowing, leveling the surface, and planting same with native grass seed selected by Lessor. In the event Lessee fails to properly plug and abandon the Subject Wells and the Monitor Wells and restore the surface of the Leased Premises and the Preapproved Easement Route and any other applicable portion of the Subject Lands within one hundred eighty (180) days after the expiration or other termination of this Agreement, Lessee agrees to pay Lessor the sum of Ten Thousand and No/100 Dollars (\$10,000.00) per month until such time as the Subject Wells and the Monitor Wells are properly plugged in accordance with ~~Lessor's specifications and the~~ the applicable rules, regulations and specifications of the Railroad Commission of Texas and all other applicable governmental authorities and the surface of the Leased Premises and the Preapproved Easement Route and any other applicable portion of the Subject Lands is restored. If Lessor chooses to take over the operation of the Subject Wells and/or the Monitor Wells: (i) Lessee shall promptly assign the Subject Wells and/or the Monitor Wells, as applicable, and all casing, pipe and equipment connected to the Subject Wells and/or the Monitor Wells, as applicable, located therein or thereon (with the exception of tanks, pumps and automation equipment) to Lessor by assignment in form and substance acceptable to Lessor and Lessor shall be responsible for the plugging and abandonment of the assigned Subject Wells and/or Monitor Wells, as applicable, and (ii) Lessee and Lessor will work together in good faith as reasonably as possible thereafter to take all action necessary to document and effect the transfer of the Subject Wells and, if necessary, the Monitor Wells, in the records of the applicable governmental authority, including, without limitation, to timely file Form P-4 with the Texas Railroad Commission. Lessor's and Lessee's obligations under this Paragraph 13(c) shall survive the expiration or termination of this Agreement.

18. **Third Party Beneficiaries.** Except as provided in Paragraph 12 with respect to the Indemnified Parties, this Agreement is intended solely for the use and benefit of the Parties and shall not constitute or be construed as a contract for the benefit of any third party.

19. **Counterpart Execution.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original hereof, and the execution of any one of such counterparts by any Party shall be binding upon and shall inure to the benefit of such Party to the same extent as if the same counterpart were executed by all of the Parties.

20. **Binding Effect.** This Agreement expresses the entire agreement of the Parties and shall be binding upon and shall inure to the benefit of each of the Parties and their respective successors and permitted assigns. The covenants and obligations of the Parties under this Agreement shall be binding upon and shall run with the land and burden the Subject Lands.

21. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Lessor and Lessee irrevocably and unconditionally agree that all suits, actions, proceedings, or disputes that arise out of or relate to this Agreement, whether the claims arise from contract or tort, or whether the claims are legal or equitable in nature, must be litigated exclusively in the courts of competent jurisdiction located in Midland County, Texas. Lessor and Lessee each irrevocably and unconditionally waive any objection to the laying of jurisdiction or venue in Midland County, Texas for any suit, action, proceeding, or dispute. The foregoing choice of forum is intended by the Parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the Parties in any jurisdiction other than that specified in this Paragraph 21. Each Party hereby waives any right it may have to assert the doctrine of forum *non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Paragraph 21. The Parties acknowledge that Midland County, Texas is a convenient forum.

22. **Waiver; Governmental Immunity.** No waiver of any of the provisions of this Agreement shall be deemed or constitute a waiver of any other provision of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. Likewise, the failure of Lessor to enforce any provision of this Agreement shall not be deemed nor shall constitute a waiver of the right of Lessor to enforce such provision. By executing this Agreement, Lessor is not waiving its right of sovereign immunity. Lessor is retaining its immunity from suit. Lessor is not granting consent to be sued by legislative resolution or action. **THERE IS NO WAIVER OF GOVERNMENTAL IMMUNITY.**

23. **Public Purpose; Governmental Functions.** The Parties acknowledge and agree that this Agreement is in the public interest and serves a public purpose. The Parties acknowledge and agree that Lessor's obligations and performance under this Agreement are governmental functions. By entering into this Agreement, Lessee waives and releases any present or future claim asserting Lessor's obligations or performance under this Agreement are not governmental functions.

24. **Chapter 271 of Texas Local Government Code.** The Parties agree that this Agreement does not constitute a "Contract" for providing goods and/or services to Lessor as set forth in Subchapter I of Chapter 271 of the Texas Local Government Code, and Lessor does not waive, to the maximum extent allowed by law, any constitutional, statutory or common law right to sovereign immunity or governmental immunity from liability or suit. Lessor expressly does not consent to be sued or be liable. To the maximum extent allowed by law, nothing in this Agreement constitutes a waiver of Lessor's governmental immunity and the Parties expressly agree that this Agreement shall not constitute, nor be interpreted as a waiver of Lessor's governmental immunity under Subchapter I of Chapter 271 of the Texas Local Government Code, nor shall it constitute nor be interpreted as a waiver of Lessor's governmental immunity for the benefit of any third party lacking privity to this Agreement.

This Agreement does not obligate Lessee to use the Subject Lands to construct, repair, operate, replace, or maintain equipment, structures, improvements, and/or facilities associated with Lessee's activities described herein, but it merely prohibits Lessee from using the Subject Lands for any other purpose. This Agreement restricts the use of the Subject Lands to a specific purpose but does not require the use of property for a specific purpose. Lessee is not providing a service to Lessor. Any such provision shall be deemed to be a covenant against noncomplying use, not a covenant to use. Lessee's use of the Subject Lands in compliance with a restriction shall not constitute a service, and such complying use shall not operate to waive Lessor's governmental immunity.

25. ATTORNEY'S FEES. SHOULD LESSOR BE REQUIRED TO RESORT TO EMPLOYMENT OF ATTORNEYS TO ENFORCE THIS AGREEMENT, OR ANY OF ITS RIGHTS UNDER THIS AGREEMENT, LESSOR SHALL BE ENTITLED TO REIMBURSEMENT FROM LESSEE FOR LESSOR'S ATTORNEYS' FEES. LESSEE SHALL REIMBURSE LESSOR FOR LESSOR'S ATTORNEYS' FEES INCURRED IN CONNECTION WITH THE PREPARATION AND NEGOTIATION OF THIS SECOND AMENDMENT, SUCH FEES IN CONNECTION WITH THE PREPARATION AND NEGOTIATION OF THIS SECOND AMENDMENT NOT TO EXCEED \$15,000.

BY EXECUTING THIS AGREEMENT, LESSEE AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST LESSOR REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THIS AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, LESSEE SPECIFICALLY AGREES THAT IF LESSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT OR TO 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, LESSEE AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LESSEE MIGHT OTHERWISE BE ENTITLED.

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

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

26. RELEASE. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT, LESSEE HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES LESSOR AND LESSOR'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LESSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT

NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR LESSOR'S NEGLIGENCE.

27. NOTICE OF ALLEGED BREACH; STATUTORY PREREQUISITES. Without limiting the provisions of Paragraph 26 of this Agreement, as a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Agreement, Lessee or Lessee's legal representative, shall give the City Manager, or any other reasonable official of Lessor, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Agreement) of such damages, duly verified, within one hundred twenty (120) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Lessee will settle, the physical and mailing addresses of Lessee at the time and date the claim was presented and the physical and mailing addresses of Lessee for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Lessee relies to establish its claim; and a failure to so notify the City Manager or other such official of Lessor within the time and manner provided herein shall exonerate, excuse and except Lessor from any liability whatsoever. Lessor is under no obligation to provide notice to Lessee that Lessee's notice is insufficient. Lessor reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice.

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

28. Severability. If any provision or any portion of any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable by reason of any law or public policy, such provision or portion thereof shall be considered to be deleted, and the remainder of this Agreement shall constitute the entire Agreement between Lessor and Lessee.

29. No Partnership. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture, association, trust, mining partnership or other entity, whether for state law, federal income tax purposes or otherwise.

30. Survival. All covenants, representations, indemnities, payment obligations, restoration obligations and environmental remediation obligations of Lessee in this Agreement shall survive the expiration or termination of this Agreement.

31. Captions. The captions and headings used herein are for reference purposes only and shall not affect the meaning or interpretation of the terms and provisions of this Agreement.

[THIS SPACE INTENTIONALLY LEFT BLANK/SIGNATURES ON FOLLOWING PAGE]

Contemporaneously with their execution and delivery of this Second Amendment, Lessor and Lessee shall execute a recording memorandum that is substantially identical in form and substance to that attached hereto as Exhibit "F" (the "Memorandum") for purposes of conferring constructive public notice of the existence of this Second Amendment. Except as may be required by applicable law or as mutually agreed in writing by the Parties, neither Party shall file of record in any county or other public records this Second Amendment, a copy thereof or any portion thereof (other than the Memorandum).

IN WITNESS WHEREOF, this Agreement is executed as of the respective dates of the acknowledgments below, and dated as of the date first above written, but effective for all purposes as of the Second Amendment Effective Date.

LESSOR:

CITY OF MIDLAND, TEXAS

By: _____
Name: _____
Title: _____

LESSEE:

FELIX WATER, LLC

By: _____
Name: _____
Title: _____

List of Exhibits:

Exhibit "A"	The Leased Premises
Exhibit "B"	The Preapproved Easement Route
Exhibit "C"	Wellbore Specifications
Exhibit "D"	Existing Roadways
Exhibit "E"	Insurance Requirements
Exhibit "F"	Form of Memorandum

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

 This instrument was acknowledged before me this ____ day of _____, 2020, by
_____, _____ of the City of Midland, Texas, a home
rule municipal corporation, on behalf of said entity.

Notary Public – State of Texas

STATE OF _____ §
 §
COUNTY OF _____ §

 This instrument was acknowledged before me this ____ day of _____, 2020, by
_____, _____ of Felix Water, LLC, a Delaware
limited liability company, on behalf of said limited liability company.

Notary Public – State of _____

EXHIBIT "A"

The Leased Premises

Facility Name	Block - Section	Dimensions of 4-Acre Tract	Center of Facility Location within Section
SWD 27 #1	Block C-23, Section 27	440' x 330'	200' FSL, 200' FWL of Section 27
SWD 27 #2	Block C-23, Section 27	440' x 330'	200' FNL, 200' FWL of Section 27
SWD 10 #1	Block 74, Section 10	440' x 330'	200' FNL, 200' FWL of Section 10
SWD 10 #2	Block 74, Section 10	440' x 330'	200' FNL, 200' FWL of Section 10

The boundaries of each of the above-described four (4) acre tracts shall be parallel to the boundaries of the surveyed section upon which the Subject Well is located, and the east-west boundaries of each such tract shall be the longer of the two above-stated dimensions for such tract.

EXHIBIT "B"

Preapproved Easement Route [NTD: To be updated]

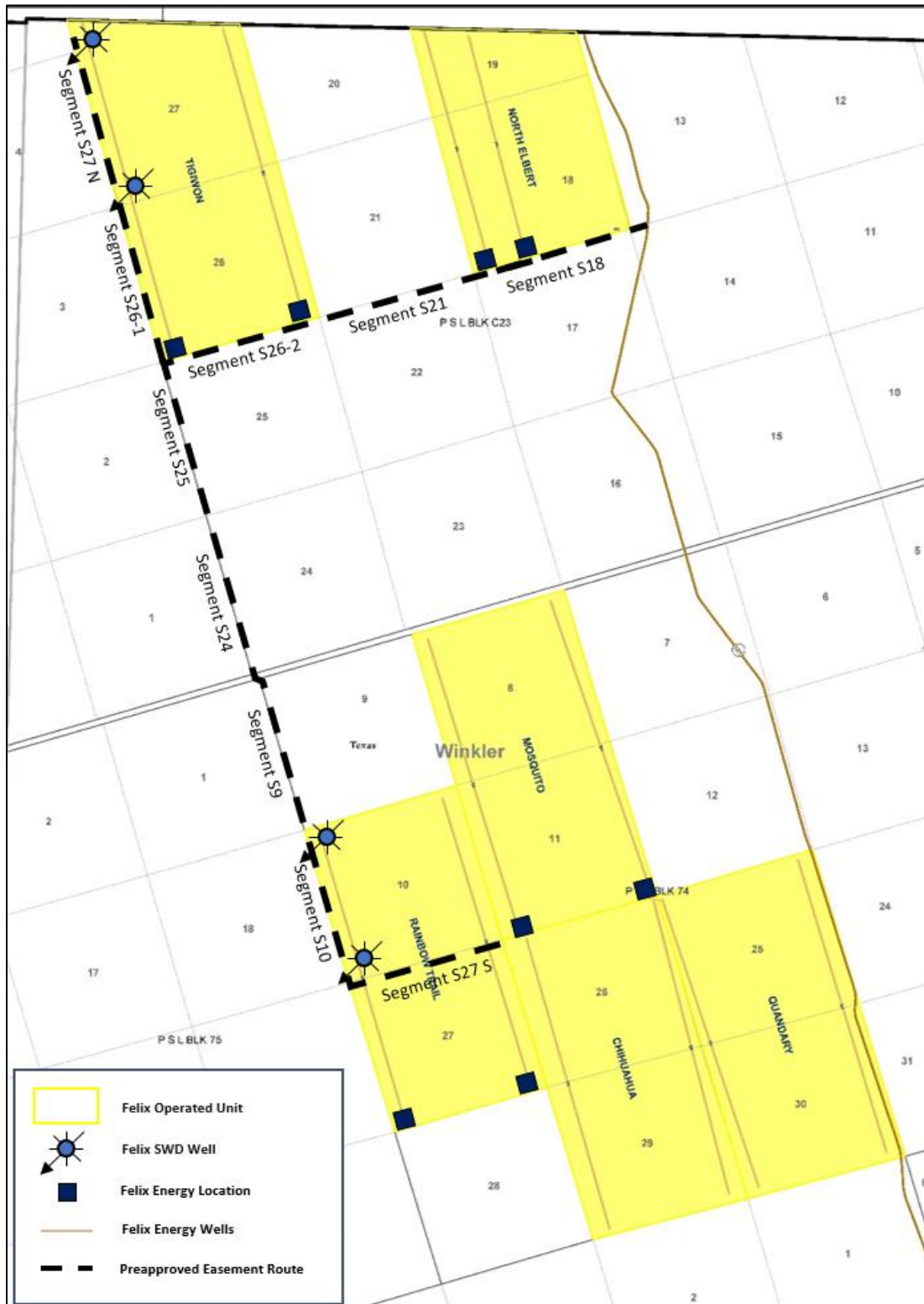


EXHIBIT “B”

Facility Name	Block - Section	Dimensions	Center of Facility Location within Section	Length of Segment
Segment S18	Block C-23, Section 18	30'	100' FSL of Section 18	5,280'
Segment S21	Block C-23, Section 21	30'	100' FSL of Section 21	5,280'
Segment S24	Block C-23, Section 24	30'	10' FWL of Section 24	5,280'
Segment S25	Block C-23, Section 25	30'	10' FWL of Section 25	5,280'
Segment S26-1	Block C-23, Section 26	30'	10' FWL of Section 26	5,280'
Segment S26-2	Block C-23, Section 26	30'	100' FSL of Section 26	5,280'
Segment S27 N	Block C-23, Section 27	30'	10' FWL of Section 27	5,280'
Segment S9	Block 74, Section 9	30'	10' FSL of Section 21	5,280'
Segment S10	Block 74, Section 10	30'	10' FWL of Section 10	5,280'
Segment S27 S	Block 74, Section 27	30'	10' FNL of Section 27	5,280'

Wellbore Specifications [NTD: To be updated]

[illegible]

Exhibit “D”

Existing Roadways [NTD: To be updated]

[INTENTIONALLY LEFT BLANK]

Exhibit "E"

Insurance Requirements

Lessee shall maintain adequate insurance to cover any and all damages arising in connection with its operations on the Subject Lands, and Lessee shall in any event maintain insurance meeting the following minimum requirements:

Comprehensive General Liability (including Contractual liability):

-Personal Injury:	\$1,000,000.00 per person \$1,000,000.00 per occurrence
-Property Damage:	\$100,000.00 per occurrence

Business Automobile Liability: \$1,000,000.00 combined single limit -
Personal Injury and Property Damage

Workers' Compensation: Statutory limits

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

Umbrella Liability: \$25,000,000.00 each occurrence
\$25,000,000.00 aggregate

The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on a claims-occurred basis. This insurance shall name Lessor as an additional insured and all insurance shall waive subrogation in favor of Lessor.

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

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

All insurance required pursuant to this Agreement, except for Workers' Compensation Insurance, shall name Lessor as an additional insured. All insurance required pursuant to this Agreement, including Workers' Compensation Insurance, shall provide for a waiver of subrogation as to Lessor.

The Parties agree that, prior to the execution of this Agreement, Lessee shall provide one or more certificates of insurance showing that these insurance requirements have been met, and specifically containing, without limitations, the following endorsement substantially in the following form:

"The City of Midland is included as an additional insured on all policies except for Workers' Compensation. Felix Water, LLC and Insurer hereby waive all rights of subrogation with respect to claims against the City of Midland, its agents, employees and officers, on all policies of insurance."

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

Lessee shall contractually require all contractors, subcontractors, and sub-subcontractors that work on any portion of the work that is the subject of this Agreement to obtain insurance coverage that meets or exceeds the minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of Lessor and policies that name Lessor as an additional insured (except Workers' Compensation).

Exhibit “F”

Form of Memorandum

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

**MEMORANDUM OF SECOND AMENDMENT AND RESTATEMENT OF PRODUCED
WATER DISPOSAL SITE LEASE AGREEMENT**

STATE OF TEXAS §
 §
COUNTIES OF LOVING AND §
 §
 WINKLER §

This Memorandum of Second Amendment and Restatement of Produced Water Disposal Site Lease Agreement (this “Memorandum”) is made and entered into by and between the CITY OF MIDLAND, TEXAS, a home rule municipal corporation, whose address is 300 N. Loraine, Midland, Texas 79701, Attention: Right-of-Way Manager (“Lessor”), and FELIX WATER, LLC, a Delaware limited liability company, whose address is 1530 16th Street, Suite 500, Denver, Colorado 80202 (“Lessee”).

WITNESSETH:

Lessor and Lessee are parties to that certain Produced Water Disposal Site Lease Agreement dated effective as of December 11, 2018, recorded by Memorandum of Produced Water Disposal Site Lease Agreement as Instrument C27901 in the Official Public Records of Winkler County, Texas (the “Lease Agreement”), which pertains to the surface estate of Sections 8, 9, 10, 11 and 27, Block 74, PSL Survey, Winkler County, Texas, and Sections 18, 19, 21, 24, 25, 26 and 27, Block C-23, PSL Survey, Winkler County, Texas (collectively, the “Subject Lands”).

Lessor and Lessee are also parties to that certain First Amendment to Produced Water Disposal Site Lease Agreement dated on or about March 21, 2019, but effective as of December 11, 2018, recorded by Memorandum of First Amendment to Produced Water Disposal Site Lease Agreement as Instrument C28893 in the Official Public Records of Winkler County, Texas (the “First Amendment”), under which Lessor and Lessee amended certain terms and provisions contained in the Lease Agreement.

Lessor and Lessee have now entered into that certain Second Amendment and Restatement of Produced Water Disposal Site Lease Agreement dated on or about _____, 2020, but effective as of _____, 2020 (the “Second Amendment”), under which Lessor and Lessee further amended certain terms and provisions contained in the Lease Agreement, expanded the definition of “Subject Lands” so that the following lands are now subject to the Lease Agreement, as amended: Section 1, Block 75, PSL Survey, Winkler County, Texas, Sections 1, 2, 3, 4, 5, 6, 7, 12 and 17, Block C-24, PSL Survey, Loving and Winkler Counties, Texas, Sections 8, 9, 10, 11 and 27, Block 74, PSL Survey, Winkler County, Texas, and Sections 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27, Block C-23, PSL Survey, Winkler County, Texas, and restated the Lease Agreement, as amended.

Lessor and Lessee are executing this Memorandum for the purpose of placing the same of record in the above-referenced County, and in order to constitute constructive notice to all third parties dealing

with Lessor and/or Lessee of the existence of the Lease Agreement, the First Amendment, the Second Amendment and the rights and obligations contained therein. In the event of any conflict between the terms of this Memorandum and the Second Amendment, the terms of the Second Amendment shall control.

This Memorandum shall be binding upon both parties signing a counterpart of this Memorandum, whether or not both parties sign the same counterpart hereof. To facilitate recordation, one or more executed counterparts of this Memorandum may be assembled into one document for recording purposes and a single counterpart containing additional signature and acknowledgment pages from the other counterparts may be executed and recorded.

LESSOR:

CITY OF MIDLAND, TEXAS

By: _____
Name: _____
Title: _____

LESSEE:

FELIX WATER, LLC

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

 This instrument was acknowledged before me this ____ day of _____, 2020, by
_____, _____ of the City of Midland, Texas, a home
rule municipal corporation, on behalf of said entity.

Notary Public – State of Texas

STATE OF _____ §
 §
COUNTY OF _____ §

 This instrument was acknowledged before me this ____ day of _____, 2020, by
_____, _____ of Felix Water, LLC, a Delaware
limited liability company, on behalf of said limited liability company.

Notary Public – State of _____

MIDLAND
City Attorney's Office
City of Midland
Office Memorandum

DATE: November 3, 2020

TO: The Honorable Mayor and City Council Members

FROM: John Ohnemiller, City Attorney

SUBJECT: A proposed ordinance amending Title VI, “Police Regulations”, Chapter 1, “General Offenses”, of the City Code of Midland, Texas, by establishing Section 25, “Residential Picketing and Targeted Marches”

This proposed ordinance amends Title VI, “Police Regulations”, Chapter 1, “General Offenses”, of the City Code of Midland, Texas, by establishing Section 25, “Residential Picketing and Targeted Marches”. In accordance with the United States Constitution, the Texas Constitution, and applicable case law, the ordinance is narrowly-tailored to protect the quiet enjoyment of one’s home while also protecting the freedoms of speech and assembly.

Specifically, the ordinance prohibits picketing and targeted marches on public right-of-way in front of the residence of an individual. The ordinance does not distinguish between prohibited and permitted speech on the basis of content. The ordinance also does not prohibit picketing at locations other than residences and dwellings, nor does it prohibit a march that does not constitute “picketing” or a “targeted march.”

Please do not hesitate to contact me should you have any questions.

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE VI, “POLICE REGULATIONS”, CHAPTER 1, “GENERAL OFFENSES”, OF THE CITY CODE OF MIDLAND, TEXAS, BY ESTABLISHING SECTION 25, “RESIDENTIAL PICKETING AND TARGETED MARCHES”, SO AS TO PROHIBIT RESIDENTIAL PICKETING AND TARGETED MARCHES ADJACENT TO A RESIDENCE OR DWELLING OF AN INDIVIDUAL; PROVIDING FOR A MAXIMUM PENALTY OR FINE OF FIVE HUNDRED DOLLARS (\$500.00); CONTAINING A CUMULATIVE CLAUSE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; AND ORDERING PUBLICATION

WHEREAS, the City Council finds that picketing and targeted marches obstruct and interfere with the free use of public sidewalks and public ways of travel; and

WHEREAS, the City Council finds that the practices of picketing and engaging in targeted marches before or about residences and dwellings cause emotional disturbances and distress to the occupants, and the purpose of these practices is to harass the occupants; and

WHEREAS, the City Council finds that the practices of picketing and engaging in targeted marches before or about residences and dwellings can result in the occupants having to leave their residences and dwellings in order to escape harassment, and continued picketing and targeted marches before or about their unoccupied residences and dwellings discourage the occupants from returning; and

WHEREAS, the City Council finds that it is in the public interest to enact the following content-neutral, narrowly-tailored ordinance that protects the quiet enjoyment of one’s home while at the same time protecting the freedoms of speech and assembly;

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

SECTION ONE. That the Midland City Code Title VI, “Police Regulations”, Chapter 1, “General Offenses”, shall be amended by adding Section 25, “Residential Picketing and Targeted Marches”, which shall read as follows:

6-1-25. RESIDENTIAL PICKETING AND TARGETED MARCHES.

- (A) *Purpose.* The purpose of this Section is to protect the freedoms of speech and assembly while also protecting and preserving homes and assuring that residents of the City of Midland enjoy in their homes and dwellings a feeling of well-being, tranquility, and privacy.
- (B) *Definitions.* As used in this Section:
1. *March* means the movement of a person from place to place, which may also involve a public display or demonstration of sentiment for or against a person, cause, or idea, including protesting, the distribution of leaflets or handbills, displaying signs, or engaging in other communication, including all expressive and symbolic conduct, whether active or passive.
 2. *Picketing* means the posting of a person before or about a certain location while engaging in a public display or demonstration of sentiment for or against a person, cause, or idea, including protesting, the distribution of leaflets or handbills, displaying signs, or engaging in other communication, including all expressive and symbolic conduct, whether active or passive.
 3. *Targeted march* means the movement of a person that passes along a sidewalk, roadway, or right-of-way before or about the residence or dwelling of an individual more than twice during a 24-hour period while engaging in a public display or demonstration of sentiment for or against a person, cause, or idea, including protesting, the distribution of leaflets or handbills, displaying signs, or engaging in other communication, including all expressive and symbolic conduct, whether active or passive.
- (C) *Prohibited conduct.*
1. A person shall not engage in conduct that constitutes picketing on a sidewalk, roadway, or right-of-way before or about the residence or dwelling of an individual.
 2. A person shall not engage in conduct that constitutes a targeted march.
 3. It is not an exception or a defense to prosecution under this Section that a residence or dwelling before or about which the conduct occurred was unoccupied.
- (D) *Marches not prohibited.* A person is not prohibited from engaging in a march that does not constitute picketing or a targeted march; provided, however, that the person shall comply with all applicable laws, rules, and ordinances.
- (E) *Offense and penalty; culpable mental state not required.*
1. A person who violates a provision of this Section shall be guilty of a misdemeanor and fined in a sum not to exceed \$500.00.

2. A person commits a separate and distinct offense for each separate violation of a provision of this Section.
3. Evidence of a culpable mental state is not required to prove a criminal offense under this Section. It is hereby declared that, for all offenses under this Section, the culpable mental state required by Section 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.
4. The criminal penalty in this Section shall be in addition to any other remedies that the City may have under City ordinance and/or state law.

SECTION TWO. The provisions of any ordinance which are inconsistent with or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

SECTION THREE. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The Council of the City of Midland hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid.

SECTION FOUR. The penalty for violation of this ordinance shall be in accordance with the general penalty provisions contained in Section 1-3-1 of the City Code of Midland, Texas, which provides for a fine not exceeding five hundred dollars (\$500.00) pursuant to State law. The definition of all offenses under this ordinance does not require a culpable mental state. The definition of all offenses under this ordinance plainly dispenses with any mental element as authorized by Section 6.02 of the Texas Penal Code. It is hereby declared, that for all offenses under this ordinance, that the culpable mental state required by Section 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with.

SECTION FIVE. The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

The above and foregoing ordinance was duly proposed, read in full and adopted on first reading, the _____ day of _____, A.D., 2020; 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., 2020, at a regular meeting of the City Council:

Council members voting "AYE":

Council members voting "NAY":

PASSED AND APPROVED THIS _____ day of _____, A.D., 2020.

Patrick N. Payton, Mayor

ATTEST:

Amy M. Turner, City Secretary

APPROVED ONLY AS TO FORM:

John Ohnemiller, City Attorney