

NOTICE OF SPECIAL CITY COUNCIL MEETING

PURSUANT to Texas Government Code §551.041, notice is hereby given that the City Council of the City of Midland, Texas, will meet in special session in the Council Chamber at City Hall, 300 North Loraine, Midland, Texas on September 17, 2013 at 8:30 AM for the following purposes:

SPECIAL SESSION

1. Consider a motion to elect a chairman to preside. (CITY ATTORNEY'S OFFICE)
2. Consider a resolution authorizing the City Manager to execute a Term Sheet with Energy Tower, LLC, to facilitate the negotiation of final definitive agreements relating to the disposition and redevelopment of property commonly known as the proposed Energy Tower and City Center development (with an associated downtown parking garage and a proposed new Midland Center) in downtown Midland, Texas and negotiate and execute the final definitive agreements; the Term Sheet describes a property transfer in downtown Midland, an agreement under Chapter 380 of the Texas Local Government Code, and describes an agreement with the Midland Tax Increment Reinvestment Zone Number One (1) and a lease; the Term Sheet also discusses the use of hotel-motel tax funds generated solely from Energy Tower and the use of the sales and use tax generated solely from Energy Tower. (CITY ATTORNEY'S OFFICE) (2013 - 310)
3. Consider a resolution authorizing the City Manager to negotiate and execute an Economic Development Agreement with the Midland Development Corporation as authorized by Chapter 380 of the Texas Local Government Code and Chapters 501 and 504 of the Texas Local Government Code regarding infrastructure, parking facilities and site development, related to the proposed Energy Tower and City Center development with an associated downtown parking garage and proposed new Midland Center. (CITY ATTORNEY'S OFFICE) (2013 - 311)
4. Consider a resolution authorizing the City Manager to negotiate and execute an amendment to the Memorandum of Understanding with the Midland Tax Increment Reinvestment Zone Number One (1) increasing the Tax Increment Reinvestment Zone property valuation cap from \$260,000,000.00 to \$1,000,000,000.00 and negotiating and executing an agreement with the Tax Increment Reinvestment Zone regarding Energy Tower and to develop and adopt a Project Plan. (CITY ATTORNEY'S OFFICE) (2013 - 312)

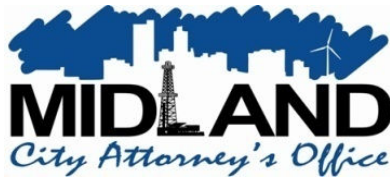
EXECUTIVE SESSION

5. Pursuant to Texas Government Code §551.101, the Council will hold an Executive Session which is closed to the public to discuss the following matters as permitted under the following Texas Government Code Sections:
 - a. Section 551.087 Deliberate Economic Development Negotiations
 - a.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. The Council will discuss Energy Tower, LLC.

WITNESS my hand and seal of office on September 13, 2013.

Amy M. Turner, City Secretary

SEAL:



City of Midland
Office Memorandum

DATE: 9/17/2013

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: Consider a motion to elect a chairman to preside.



City of Midland
Office Memorandum

DATE: 9/17/2013

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: Consider a resolution authorizing the City Manager to authorize the City Manager to execute a Term Sheet with Energy Related Properties, LLC, to facilitate the negotiation of final definitive agreements relating to the disposition and redevelopment of property commonly know as the proposed Energy Tower and City Center development with an associated downtown parking garage and a proposed new Midland Center) in downtown Midland, Texas and negotiate and execute the final definitive agreements

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A TERM SHEET WITH ENERGY TOWER, LLC, TO FACILITATE THE NEGOTIATION OF FINAL DEFINITIVE AGREEMENTS RELATING TO THE DISPOSITION AND REDEVELOPMENT OF PROPERTY COMMONLY KNOWN AS THE PROPOSED ENERGY TOWER AND CITY CENTER DEVELOPMENT (WITH AN ASSOCIATED DOWNTOWN PARKING GARAGE AND A PROPOSED NEW MIDLAND CENTER) IN DOWNTOWN MIDLAND, TEXAS AND NEGOTIATE AND EXECUTE THE FINAL DEFINITIVE AGREEMENTS; THE TERM SHEET DESCRIBES A PROPERTY TRANSFER IN DOWNTOWN MIDLAND, AN AGREEMENT UNDER CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE, AND DESCRIBES AN AGREEMENT WITH THE MIDLAND TAX INCREMENT REINVESTMENT ZONE NUMBER ONE (1) AND A LEASE; THE TERM SHEET ALSO DISCUSSES THE USE OF HOTEL-MOTEL TAX FUNDS GENERATED SOLELY FROM ENERGY TOWER AND THE USE OF THE SALES AND USE TAX GENERATED SOLELY FROM ENERGY TOWER

WHEREAS, the City Council finds it to be in the public interest to authorize the City Manager to execute a Term Sheet with Energy Tower, LLC, to facilitate the negotiation of final definitive agreements relating to the disposition and redevelopment of property commonly known as the proposed Energy Tower and City Center development (with an associated downtown parking garage and a proposed new Midland Center) in downtown Midland, Texas and negotiate and execute the final definitive agreements; and

WHEREAS, the Term Sheet describes a property transfer in downtown Midland, an agreement under Chapter 380 of the Texas Local Government Code, and describes an agreement with the Midland Tax Increment Reinvestment Zone Number One (1) and a lease. The Term Sheet also discusses the use of hotel-motel tax funds generated solely from Energy Tower and the use of the sales and use tax generated solely from Energy Tower;

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

SECTION ONE. That the recitals stated above are hereby adopted and approved.

SECTION TWO. That the City Manager is hereby authorized and directed to execute a Term Sheet with Energy Tower, LLC, to facilitate the negotiation of final definitive agreements relating to the disposition and redevelopment of property commonly known as the proposed Energy Tower and City Center development (with an associated downtown parking garage and a proposed new Midland Center) in downtown Midland, Texas and negotiate and execute the final definitive agreements. The Term Sheet is attached hereto, marked as Exhibit “A”, and incorporated herein for all purposes.

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

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney

TERM SHEET
CITY CENTER
SEPT 12, 2013

This Term Sheet is between the CITY OF MIDLAND (“**City**”) and ENERGY TOWER, LLC (“**Developer**”) to facilitate the negotiation of final definitive agreements (the “**Agreements**”) relating to the disposition and redevelopment of the property commonly known as the proposed Energy Tower and City Center development (with associated downtown parking garage and proposed City convention center) (collectively, the “**City Center**”) in Midland, Texas.

1. Land Disposition.

(a) Tower Block.

City and Developer are parties to the Purchase and Sale Agreement (the “**PSA**”) executed March 18, 2013 concerning Block 55 in the City of Midland (the “**Tower Block**”). The PSA will be amended to extend the “Due Diligence Period” to and including September 30, 2014, without additional cost and allow Developer to further extend the Due Diligence Period for up to 9 additional months at a cost of \$100,000 per month (“**PSA Amendment**”).

As the Tower Block is located in the Midland Tax Increment Reinvestment Zone No. One (the “**TIRZ**”), authority for the transfer of the Tower Block is provided by Chapter 272.001(b)(6) of the Texas Local Government Code and Chapter 380 of the Texas Local Government Code. On or before the transfer of the Tower Block, City will develop and adopt a “project plan” for the TIRZ and ensure the TIRZ is properly organized and the plan is properly adopted.

The PSA Amendment will also add the Loraine Street right of way adjacent to the east boundary line of the Tower Block between Texas and Wall Streets to the Tower Block. During the Due Diligence Period, City will replat the Tower Block to include such right of way in one platted lot (the final plat to be prepared by Developer’s engineer in coordination with and approved by the City, which approval shall not be unreasonably withheld). All other terms of the PSA will remain the same.

(b) Park Block. Contemporaneously with the closing under the PSA, City and Developer will enter into a 49 year ground lease (with 3 extension options of 25 years each) for the ground area under the block adjacent to the east line of Loraine Street between Texas and Wall Streets (the “**Park Block**”), which is currently being used as a park and, following redevelopment, will continue to be used as enhanced and redeveloped park consistent with Chapter 26 of the Texas Parks and

Wildlife Code which will be open to the public consistent with City park rules and policies. The rent for the ground lease will be \$1 per year, increasing by \$1 after each five years. Only those surface rights which are necessary for the operation of the City Center Garage (defined below) will be granted in the Park Block lease, such as appropriate utilities, venting, and reasonable ingress and egress areas. The construction and operation of the public park on the surface of the Park Block will not materially interfere with the construction and operation of the City Center Garage.

- (c) Chamber Block. Contemporaneously with the closing under the PSA, City and Developer will enter into a 49 year ground lease (with 3 extension options of 25 years each) for the ground area under the block adjacent to the east line of the Park Block between Texas and Wall Streets (the “**Chamber Block**”), which is currently being used as the Midland Convention Center and Chamber offices. The rent for the ground lease will be \$1 per year, increasing by \$1 per year after each five years. Only those surface rights which are necessary for the operation of the City Center Garage will be granted in the Chamber Block lease, such as appropriate utilities, venting, and reasonable ingress and egress areas. The Chamber Block lease shall not materially interfere with the construction and operation of the Midland Center. The construction and operation of the Midland Center will not materially interfere with the construction and operation of the City Center Garage.
- (d) The Tower Block, the Park Block and the Chamber Block, collectively, the “**Property**” and are illustrated on the site plan attached hereto.

2. Planning and General Construction.

- (a) Developer intends to build a multi-use tower (the “**Energy Tower**”) on the Tower Block and a parking garage under the Tower Block, the Park Block and the Chamber Block (the “**City Center Garage**”).
- (b) The City Center Garage will contain parking spaces that will be available to the public and the Midland Center, subject to reasonable fees, rules and regulations. Other portions of the City Center Garage will be set aside for the Energy Tower. The City Center Garage may extend under public rights of way which are adjacent to the Property upon the execution of a right of way use permit to be approved by the City Council, which approval shall not be unreasonably withheld.
- (c) City will retain only its regulatory approvals of the construction of Energy Tower.
- (d) In connection with the construction of Energy Tower, the current park on the surface of the Park Block will be temporarily removed by Developer and rebuilt upon completion of Energy Tower in accordance with plans mutually agreed upon between the City and the Developer. Upon completion, the redeveloped park will

be maintained as a public park in accordance with Chapter 26 of the Texas Parks and Wildlife Code.

- (e) The current buildings located on the Chamber Block and the Tower Block will be removed by the City prior to commencement of construction of the City Center. City shall work with the Midland Chamber of Commerce regarding such removal on the Chamber Block. If requested by the City, the Developer will advance the funds for such removal (subject to Developer's approval of the "Guaranteed Maximum Price" contract and scope of work with the general contractor); provided however, if the Tower Block is not transferred to Developer for any reason, the removal costs thereof will be paid by the City to Developer within 60 days of Developer's written request therefor.
- (f) In connection with the development of the City Center, Developer will also construct a new Midland Chamber of Commerce building and associated convention facilities with a total square footage not to exceed 30,000 square feet on the Chamber Block (the "**Midland Center**") at a cost not to exceed \$15,000,000 (with a reasonable allocation of Midland Center's infrastructure cost from the overall cost of Energy Tower) to be paid by the City; provided however, prior to the execution of the Agreements, City and Developer will agree upon the plans for such construction (and jointly agree on any Developer obligation for construction costs in excess of \$15,000,000, if any). City will be responsible for coordinating with the Midland Chamber of Commerce on the plans for the Midland Center and the occupancy agreements thereof (the Midland Center will not be part of the Chamber Block ground lease). The Midland Center will utilize the public parking spaces of the City Center Garage.
- (g) In the development of City Center, Developer will not be subject to any additional City laws, regulations or ordinances which do not apply to developers of privately financed and developed projects.
- (h) In connection with the redevelopment of the Property, Developer will pay all subdivision, building permit and building inspection City fees, but all other City fees, including street closure, landfill, site development permit, right of way license and similar development fees are waived.
- (i) Development of the Energy Tower must comply with all applicable laws, but only as they exist on the effective date of the approval of this term sheet by the Midland City Council.
- (j) City understands that the construction of Energy Tower to the desired density may require parking or other zoning variances and the Park Block/Chamber Block may have to be rezoned to permit the City Center Parking Garage.

3. City Support.

- (a) The development of the City Center will provide a significant benefit to the City of Midland by forming the cornerstone of the redevelopment of downtown Midland, Texas, alleviating a significant parking shortage, reintroducing Class A multiuse space to downtown, redeveloping a City Park and redeveloping the Midland Convention Center. On or before transfer of the Tower Block, City will develop and adopt a program with the Developer's approval to promote local economic development and to stimulate business and commercial activity in the City of Midland under Section 380 of the Texas Local Government Code, which includes the incentives below.
- (b) City will enter into an agreement with the Midland Development Corporation concerning a \$10,000,000 (the "**Site Improvement Incentive**") reimbursement to the City to pay for the streets and roads, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements (including parking), and related improvements, telecommunications and internet improvements related to the City Center. City will enter into a Chapter 380 economic development agreement with Developer to disburse to Developer the Site Improvement Incentive as eligible costs are incurred with respect to infrastructure.
- (c) City will enter into a Chapter 380 economic development agreement(s) with the Developer to fund to Developer an amount equal to \$30,000 for each parking space in the City Center Parking Garage, up to a cap of \$50,000,000 (the "**Development Incentive**"). The Development Incentive will be paid using 80% of the City's portion of real estate taxes (which taxes are currently funded to the TIRZ), 80% of the City's 1 percent sales and use tax, and 80% of the City's hotel/motel use taxes derived from the Energy Tower and associated operations. The reimbursements will be made to Developer within 30 days of the City receiving such taxes (or evidence of payment thereof). The obligation for the payment of the Development Incentive will survive until the earlier to occur of (i) full payment (without interest), or (ii) 15 full calendar years immediately following a three year stabilization period subsequent to the issuance of the first final certificate of occupancy for a tenant space in the Energy Tower.

The Development Incentive will be paid to Developer first to reimburse Developer for the development of any utility infrastructure to support the City Center, then to the cost of the City Center Parking Garage, then to the cost of the redeveloped City park on the Park Block and finally to the development of the Energy Tower.

Other taxing jurisdictions such as Midland County, Midland Hospital District and Midland College District which are a part of TIRZ may also join in such economic development agreements concerning the real estate tax portion of the Development Incentive.

Notwithstanding anything to the contrary above, if less than the existing 4 total TIRZ taxing jurisdictions are parties to such economic development agreement at any time, the City's percentage contribution towards payment of the Development

Incentive will ratably increase from 80% to make up such deficiency in the real estate tax contribution (but in no event shall such City share exceed 85%), and the repayment period specified in Section 3(c)(ii) above will be extended for a period of 5 full calendar years (but in no event longer than needed to reach the \$50,000,000 repayment cap).

4. General:

- (a) The Agreements will contain a process for handling public information requests, maintenance of a dedicated development team, waiver of the City's governmental immunity rights to permit enforcement of the City's obligations, mortgagee protection clauses for Developer's lender and be assignable to any future owner(s) of Energy Tower and related improvements.
- (b) The City agrees to use its best efforts to support and obtain passage of a validation act in the 2015 Texas legislative session that includes a legislative waiver of the City's sovereign or governmental immunity from suit with respect all City agreements with the Developer including the City's funding and tax reimbursement obligations to Developer under this Term Sheet, as well as to any related obligations under the TIRZ economic development agreement. The City also agrees to use best efforts to cause other jurisdictions participating in TIRZ to support and obtain passage of a validation act in the 2015 Texas legislative session that includes legislative waivers of their respective sovereign or governmental immunity from suit for their funding and tax reimbursement obligations under the TIRZ economic development agreement.

This Term Sheet is intended solely as a preliminary expression of general intentions and is used to memorialize the terms the parties have agreed on as a basis for negotiations. The Agreements to be negotiated between the parties will contain other terms and conditions necessary for a transaction of this nature. This Term Sheet is not intended to create any agreement or obligation by either party to negotiate Agreements and imposes no duty on either party to continue negotiations. The parties intend that neither shall have any contractual obligations to the other with respect to the matters referred herein unless and until an Agreement has been fully executed and delivered by the parties. Prior to delivery of executed Agreements, and without any liability to the other party, either party may unilaterally terminate all negotiations with the other party hereto.

City of Midland

By: _____
Name: _____
Title: _____
Date: _____

STATE OF TEXAS]
COUNTY OF MIDLAND]

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same on behalf of the City of Midland, Texas.

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

Notary Public, State of Texas

Energy Tower LLC

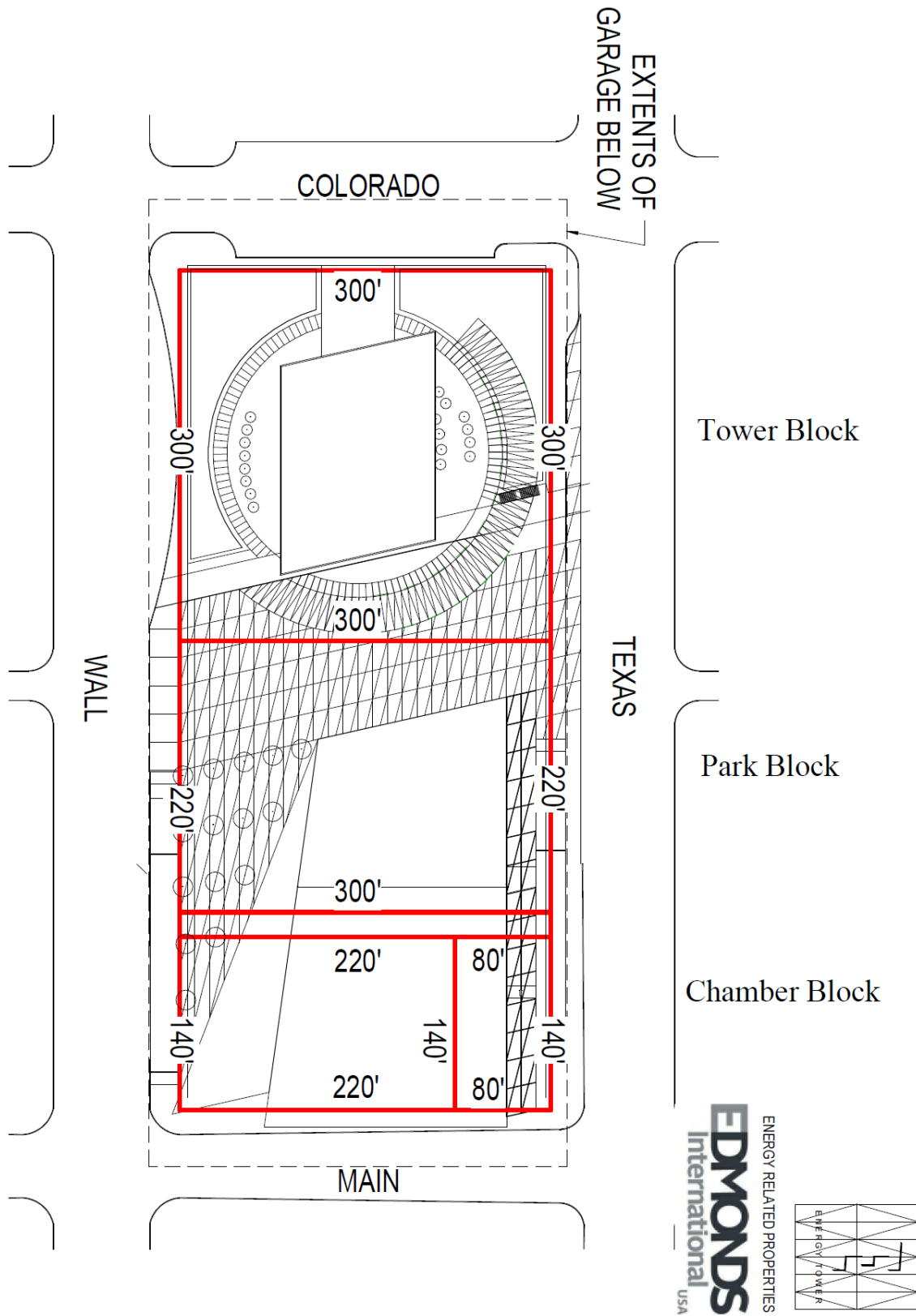
By: _____
Name: _____
Title: _____
Date: _____

STATE OF _____]
COUNTY OF _____]

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same on behalf of Energy Tower LLC.

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

Site Plan





City of Midland
Office Memorandum

DATE: 9/17/2013

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: Consider a resolution authorizing the City Manager to negotiate and execute an economic development agreement with the Midland Development Corporation as authorized by Chapter 380 of the Texas Local Government Code and Chapters 501 and 504 of the Texas Local Government Code regarding infrastructure, parking facilities and site development, related to the Proposed Energy Tower and City Center Development with an associated downtown parking garage and proposed new Midland Center.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN ECONOMIC DEVELOPMENT AGREEMENT WITH THE MIDLAND DEVELOPMENT CORPORATION AS AUTHORIZED BY CHAPTER 380 OF THE TEXAS LOCAL GOVERNMENT CODE AND CHAPTERS 501 AND 504 OF THE TEXAS LOCAL GOVERNMENT CODE REGARDING INFRASTRUCTURE, PARKING FACILITIES AND SITE DEVELOPMENT, RELATED TO THE PROPOSED ENERGY TOWER AND CITY CENTER DEVELOPMENT WITH AN ASSOCIATED DOWNTOWN PARKING GARAGE AND PROPOSED NEW MIDLAND CENTER

WHEREAS, the Council finds it to be in the public interest to authorize the City Manager to negotiate and execute an economic development agreement with the Midland Development Corporation as authorized by Chapter 380 of the Texas Local Government Code and Chapters 501 and 504 of the Texas Local Government Code regarding infrastructure, parking facilities and site development, related to the Proposed Energy Tower and City Center Development with an associated downtown parking garage and proposed new Midland Center;

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

SECTION ONE. That the City Manager is hereby authorized and directed to negotiate and execute, on behalf of the City of Midland, Texas, an economic development agreement with the Midland Development Corporation as authorized by Chapter 380 of the Texas Local Government Code and Chapters 501 and 504 of the Texas Local Government Code regarding infrastructure, parking facilities and site development, related to the Proposed Energy Tower and City Center Development with an associated downtown parking garage and proposed new Midland Center.

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

the following vote:

Council members voting “AYE”:

Council members voting “NAY”:

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney



City of Midland
Office Memorandum

DATE: 9/17/2013

TO: The Honorable Mayor and City Council Members

FROM: Keith Stretcher, City Attorney

SUBJECT: Consider a resolution authorizing the City Manager to negotiate and execute an amendment to the memorandum of Understanding with the Midland Tax Increment Reinvestment Zone Number One (1) increasing the TIRZ property valuation cap from \$260,000,000.00 to \$1,000,000,000.00 and negotiating and executing an agreement with the TIRZ regarding Energy Tower.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING WITH THE MIDLAND TAX INCREMENT REINVESTMENT ZONE NUMBER ONE (1) INCREASING THE TAX INCREMENT REINVESTMENT ZONE PROPERTY VALUATION CAP FROM \$260,000,000.00 TO \$1,000,000,000.00 AND NEGOTIATING AND EXECUTING AN AGREEMENT WITH THE TAX INCREMENT REINVESTMENT ZONE REGARDING ENERGY TOWER AND TO DEVELOP AND ADOPT A PROJECT PLAN

WHEREAS, the Council finds it to be in the public interest to authorize the City Manager to negotiate and execute an amendment to the Memorandum of Understanding with the Midland Tax Increment Reinvestment Zone (TIRZ) Number One (1) increasing the TIRZ property valuation cap from \$260,000,000.00 to \$1,000,000,000.00 and negotiating and executing an agreement with the TIRZ regarding Energy Tower;

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

SECTION ONE. That the City Manager is hereby authorized and directed to negotiate and execute, on behalf of the City of Midland, Texas, an amendment to the Memorandum of Understanding with the Midland Tax Increment Reinvestment Zone (TIRZ) Number One (1) increasing the TIRZ property valuation cap from \$260,000,000.00 to \$1,000,000,000.00 and negotiating and executing an agreement with the TIRZ regarding Energy Tower.

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

Council members voting "AYE":

Council members voting "NAY":

W. Wesley Perry, Mayor

ATTEST:

Amy M. Turner, City Secretary

RECOMMENDED AND APPROVED:

Courtney Sharp, City Manager

APPROVED AS TO FORM:

Keith Stretcher, City Attorney