

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, OF INTENTION TO LEASE PROPERTY FOR PRODUCTION OF OIL, GAS AND OTHER HYDROCARBONS

THE CITY COUNCIL OF THE CITY OF WHITTIER, CALIFORNIA, DOES RESOLVE AS FOLLOWS:

SECTION 1. The City Council of the City of Whittier that said Council hereby finds that the public use of the property hereinafter described will not be substantially interfered with by a lease for a production of oil, gas and other hydrocarbons in the form herein provided for. The property comprises, approximately, 1,280 acres situated in the County of Los Angeles, State of California, and is described in Exhibit "A" attached hereto (the "Property"). A complete legal description of the Property is attached to the form of oil and gas lease on file and available for inspection as set forth below.

SECTION 2. The Council on behalf of the City intends to lease all or any part of the property hereinafter described for the production of oil, gas and other hydrocarbons for the term and at the rental hereinafter stated, and at the royalty specified in the prevailing bid. The lease to be executed shall be substantially in the form of the proposed oil and gas lease on deposit and available for inspection at the office of the City at 13230 Penn Street, Whittier, California 90602, to which form reference is hereby made. The primary term of the lease shall be three (3) years with a secondary term so long thereafter as operations are continuously conducted or there is production in paying quantities as provided in the form of lease on file; the rental to be paid shall be Ten Dollars (\$10.00) per acre for the first year of the primary term, with the second and third years rental to be paid together in the total amount of One Hundred Forty Dollars (\$140.00) per acre of land still subject to the lease at the earlier to occur of the first anniversary of the lease or prior to entry on the leased land to commence operations pursuant to any Conditional Use Permit which may be applied for by the Lessee and issued by the City of Whittier therefore in the City's discretion; and Lessor's royalty shall not be less than Twenty percent (20%) on the first \$1,500,000.00 in market price (if leased substances are produced but not sold) or gross proceeds of sale of leased substances produced in any calendar month ("Initial Royalty"), plus an additional One and One-Quarter percent of One Hundred percent (1.25% of 100%) on each incremental \$250,000.00 in market price (if leased substances are produced but not sold) or gross proceeds of sale of leased substances produced in any calendar month ("Incremental Royalty"), but the highest total royalty need not be in excess of Fifty percent (50%). The lease shall continue for a period in no event in excess of three (3) years and as long thereafter as drilling or producing operations are conducted on the property. The one variable, biddable factor on which bids will be received shall be royalty. Each bidder must stipulate in its bid the royalty to be paid, which shall not be less than as stated above. A variable royalty of not less than the herein stated minimum

royalty may be bid, with a higher Initial Royalty, a higher Incremental Royalty, or both. The increments in market price or gross proceeds of sale (\$250,000.00) which trigger Incremental Royalties may not be altered. The City reserves complete discretion to determine which is the highest and best royalty bid, but will apply at least the following assumptions in evaluating bids: production at the rate of 30,000 barrels of oil or equivalent per month and a price of \$100.00 per barrel.

SECTION 3. Prospective bidders should note that the form of oil and gas lease to be utilized prohibits any entry on the surface of the property, other than for visual inspection and surveying in support of an application for a Conditional Use Permit, until such time, if any, as: (i) the successful bidder/lessee has applied for a Conditional Use Permit to conduct operations; (ii) Environmental Review therefore under the provisions of the California Environmental Quality Act and applicable guidelines has been conducted at the expense of the successful bidder/lessee, considered by the City of Whittier, adopted and becomes final, (iii) a Conditional Use Permit therefore has been issued by the City of Whittier, in its sole discretion, and (iv) the City will not issue a Conditional Use Permit until the City has obtained a release from protected area status of that portion of the leased land upon which surface operations are allowed under an issued Conditional Use Permit from the "Los Angeles County Proposition A District." Prospective bidders should also note that: (i) the City contemplates that it may put in place an open space/conservation easement encompassing any portion of the property which does not become permitted for oil and gas operations pursuant to any Conditional Use Permit which may be issued therefore; (ii) the City maintains on file and available for inspection with the form of lease a statement of potential mitigation measures which, subject to modification through the Environmental Review and CUP Issuance Process, which must be followed in commencing and conducting operations on the property; and (iii) the form of lease provides for lessee's direct payment to the Puente Hills Landfill Native Habitat Preservation Authority of (i) a Management Fee of \$5,000.00 per month upon issuance of a Conditional Use Permit to conduct operations and acceptance thereof by lessee, increasing to \$7,000.00 per month upon commencement of drilling operations, and (ii) a habitat enhancement fee of \$100,000.00 per year upon commencement of drilling operations.

SECTION 4. October 2, 2008, at the hour of 2:00 p.m. in the office of the City at City Council Chambers at 13230 Penn Street, Whittier, California, 90602, is hereby fixed as the time and place where all sealed proposals received shall be opened in public session, will become public documents and will be examined and recorded by City staff, and the property leased to the highest responsive, responsible bidder with appropriate operational capability, in the sole judgment of the Council, at a later public session to be noticed at such public opening. No oral bids will be received. The Council reserves the right to reject any and all bids, to withdraw any and all of the property from lease, and to determine the financial and other responsibility and operational capability of all bidders. Each bidder shall provide a statement of qualifications in accordance with the requirements set forth on Exhibit "B" attached

hereto with the financial qualifications to be placed in a separate sealed envelope (which financials the City will assert are confidential under the California Public Records Act) within their sealed bid package.

SECTION 5. This Resolution be published once a week for four (4) successive weeks in the Whittier Daily News, a newspaper of general circulation in the County where the property is situated. A condition to the award shall be the commitment of the successful bidder to reimburse the City for the cost of publishing this Resolution and for the attorneys' and other consultants' fees incurred by the City in connection with the proceedings leading up to the execution of the Lease (herein, "Costs"). All bids must be accompanied by a check in the amount of \$400,000.00 payable to the City, which check for the selected bidder will be cashed and must clear as a condition of award to the selected bidder and will be held as a deposit by the City and applied by the City toward the successful bidder's commitment to reimburse the City for its Costs and the first year delay rental under the Lease, and will be applied toward the successful bidder's responsibility for application fees and environmental review costs, if and as incurred, ("Review Costs") in connection with an application for a Conditional Use Permit for the conduct of operations under the Lease. Any portion of the successful bidders' deposit not expended for Costs, the first year delay rental and Review Costs at the time of Lease expiration or surrender shall be returned to the Lessee. To the extent that Costs, first year delay rental and Review Costs exceed the sum of \$360,000.00, the successful bidder will be required to make a further deposit in an amount to be reasonably determined by the City, subject to refund as above provided.

SECTION 6. The City Clerk-Treasurer shall certify to the passage and adoption hereof.

APPROVED AND ADOPTED this _____ day of _____ 2008.

JOSEPH A. VINATIERI, Mayor

ATTEST:

KATHRYN A. MARSHALL
City Clerk-Treasurer

EXHIBIT B TO RESOLUTION OF INTENTION
Minimum Qualifications and Submittal Requirements

I. Introduction

This Exhibit B presents the City's Minimum Qualifications and Submittal Requirements for all Bidders wishing to pursue the Whittier Main 2008 Mineral Extraction Project by submitting a bid to the City for an Oil, Gas, and Mineral Lease.

The City has established certain Minimum Qualifications and Submittal Requirements in order to ensure a level playing field among respondents and to protect the interests of the City, its residents and its stakeholders. The same Minimum Qualifications will apply to any assignment of the Lease as a condition of City's approval of the assignment.

II. Minimum Qualifications

A. Single-entity Project Guarantor

The Bidder must identify a single-entity Project Guarantor that will unconditionally guarantee performance of all obligations and compliance with all requirements of the Oil, Gas, and Mineral Lease to be issued by the City of Whittier. The Project Guarantor must possess and demonstrate adequate financial resources to meet its contractual requirements, as reflected in criteria further described below. The Project Guarantor may be the same entity as the Bidder if Bidder meets the minimum qualifications of for the Guarantor described herein.

B. Compliance with California Public Resources Code

The Bidder must agree to comply with the blanket indemnity bonding provisions as described in California Public Resources Code Division 3, Chapter 1, Article 4, Section 3205.

C. Experience of principals

The Bidder's Principals must possess and demonstrate at least twenty-five (25) years of combined experience in the exploration and development and production of oil resources.

D. California experience

The Bidder must possess and demonstrate experience in operating oil extraction facilities in the State of California within the last five (5) years.

E. No felony convictions

No principal member on the Bidder team may have a felony conviction.

F. No bankruptcy filings

No Project Guarantor may have filed for bankruptcy within the last twenty (20) years.

G. Profitability

The Bidder or Project Guarantor must demonstrate at least 5 continuous years of profitability.

H. Positive net worth

The Project Guarantor must possess and demonstrate a positive net worth for the last five (5) years.

I. Access to credit

The Bidder or Project Guarantor must demonstrate its ability to access at least a ten million U.S. dollars (\$10M) line of credit.

III. Submittal Requirements

It is the Bidder's responsibility to demonstrate compliance with each of the Minimum Qualifications presented above. The City reserves the right to request additional information should any Bidder's response lack adequate information.

Any information that Bidders consider confidential must be submitted in a sealed envelope identified as such. While the City will use its best efforts to protect the confidentiality of this information, it is the Bidder's responsibility to defend any legal challenges to the confidentiality protection of the information.

At a minimum, Bidders are requested to provide the following information:

A. Team organizational structure

Bidders shall provide an organization chart and narrative discussion that describes the overall team structure, responsibilities, Principal reporting relationships and subcontractor relationships (if applicable). The Project Guarantor must also be identified and a Project Guarantor Acknowledgement Form must be signed and returned with the Bidder's submittal (see below for sample form).

PROJECT GUARANTOR ACKNOWLEDGMENT
(to be typed on Project Guarantor's Letterhead)

Matrix Oil Corporation ("Bidder") has submitted herewith a Bid in response to the City of Whittier, California ("City") to provide services under the Whittier Main 2008 Oil Extraction Project and the City's Oil, Gas, and Mineral Lease.

The Project Guarantor hereby certifies that it will irrevocably, absolutely and unconditionally guarantee the performance of all of the Bidder's obligations under the Oil, Gas, and Mineral Lease negotiated by the parties.

Name of Guarantor: CLAYTON WILLIAMS ENERGY INC.

Name of Authorized Signatory: _____

Signature: _____

Title: _____

B. Team qualifications and experience

Bidders shall provide information to adequately demonstrate the qualifications of the team (including subcontractors, if applicable) in the exploration, development, production and operation of oil resource facilities. This information should include applicable project descriptions. As reflected above, California-specific operations experience shall also be provided.

C. Team Principals qualifications and experience

In addition to the team qualifications and experience information provided, Bidders must also provide information reflecting the relevant experience of individual Principals and other team members in the exploration, development, production and operation of oil resource facilities. This information should include individual resumes for key project personnel. California-specific operations experience shall also be provided.

D. Financial statements and disclosures

Each Bidder **and** its Project Guarantor must demonstrate their financial strength and ability to meet the Minimum Requirements described above.

If applicable, three (3) years of annual SEC filings (10K / 10Q) must be provided.

If the Bidder and/or Project Guarantor are not required to make periodic filings with the SEC, three (3) years of the most recent audited financial statements for both the Bidder and its Project Guarantor (if a separate entity) must be provided. Financial statements must include, at a minimum, balance sheets, income statements and statements of changes in financial position.

Bidders must also disclose any outstanding litigation that could materially and adversely affect its financial condition if judgment is brought against the Bidder. Such information shall also be provided for the Project Guarantor if different from the Bidder.

Bidders must also disclose past or current bankruptcies, felony convictions, debarments, and material financial changes of Principals and/or the Project Guarantor since the date reflected in the submitted financial statements

E. Financial institution letters of intent

Bidders must provide preliminary letters of intent from established financial institutions reflecting the Bidder's and/or Project Guarantor's ability to secure credit as required by the Minimum Qualifications.

Agenda Report



Date: August 26, 2008
To: Stephen W. Helvey, City Manager
From: David A. Pelsler, Director of Public Works
Subject: Whittier Main 2008 Mineral Extraction Lease

RECOMMENDATION

It is recommended the City Council:

1. Approve the Oil, Gas And Mineral Lease and other referenced documents for bidding in relation to a proposed Whittier Main 2008 Mineral Extraction Project;
2. Adopt the attached Resolution of intention to lease property for production of oil, gas and other hydrocarbons;
3. Authorize the City Manager to execute the Lease; and
4. Direct staff to publish the Resolution of intention as required by law and described in the Resolution.

BACKGROUND

The City owns approximately 1300 acres of former oil fields in the hills north of the developed areas of the City (see Exhibit A to the attached Resolution of Intention). This was commonly known as the Whittier Main Field which was in oil production for over 100 years. The majority of this land was purchased from Chevron and Unocal with Measure A funds in order to preserve this land as open space and wildlife habitat. This land is managed for the City by the Puente Hills Landfill Native Habitat Preservation Authority (Habitat Authority), a joint powers agency with members including the City of Whittier, County of Lo Angeles, Los Angeles County Sanitation Districts, and Hacienda Heights Improvement Association. When oil production stopped, the oil was worth about \$12 per barrel. Today, the oil is valued at approximately \$100 per barrel. If the oil could be successfully extracted now, the City could receive a new source of revenue for its General Fund in the form of royalty payments from an oil company. In addition to the change in value of the remaining oil deposits, technology has also changed. New methods of drilling and pumping are much less invasive to the surface land uses and the environment. We estimate the same 1300 acres of oil deposits could now be developed from approximately three surface sites of 2-3 acres each (less than half of 1% of the land). Furthermore, most of the drilling and pumping equipment can be placed in soundproof underground vaults that would not be visible. Therefore, it now appears feasible to access the valuable oil and gas resources while continuing to preserve our precious open space and wildlife habitat.

Project Concept

Extracting oil and natural gas will require an experienced oil company to partner with the City. The relationship with the oil company will be in the form of a mineral lease in which with the City will lease its mineral rights to the land and the oil company will pay

the city royalties on the oil and natural gas produced. Under State law, the City must use a competitive process to solicit bids for the mineral lease. The highest qualified bidder will then have the opportunity to explore and extract the oil and natural gas. The request for bids is accomplished in the form of a resolution of intention. Attached is a proposed RESOLUTION OF INTENTION TO LEASE PROPERTY FOR PRODUCTION OF OIL, GAS AND OTHER HYDROCARBONS and a proposed OIL, GAS AND MINERAL LEASE.

The successful bidder on the mineral lease must still apply to the City for a Conditional Use Permit (CUP) in order to do any work on the ground surface such as set up a drill rig, pumps, and other equipment required to actually extract the minerals. The CUP application will describe exactly what the oil company plans to do, and will define the "project" that will be subject to review under the California Environmental Quality Act (CEQA) which will require an Environmental Impact Report (EIR). The Draft EIR will be circulated for public comment. The proposed OIL, GAS AND MINERAL LEASE has no guarantee that the successful bidder will be able to obtain a CUP once the environmental impacts are presented in the EIR. Also, if a CUP is issued, it will contain many specific requirements and mitigation measures for the oil company to follow. City staff and the Habitat Authority have already given this much thought and cooperated to provide the attached List of Potential Mitigation Measures in order to inform potential bidders and the public of the extent of environmental protections expected to be included in any future CUP. While it is unusual to anticipate mitigation measures prior to preparing an EIR, staff wants the public and the bidders to be aware of the high value the City places on the open space and wildlife habitat uses of this land. The actual mitigation measures and CUP conditions will be determined later by the City Council following public review of potential environmental impacts disclosed in the EIR.

Project Schedule

At this time, our best estimate of a project schedule follows:

<u>Date</u>	<u>Event</u>
August 26, 2008	City Council adopts Resolution of Intention to Lease Property for Production of Oil
	City receives bids on lease (bid for royalty amount)
	City Council awards Lease Agreement to highest bidder
3 – 8 months after lease awarded	Oil Company files application for Conditional Use Permit – identifies facilities and locations requested for exploration and production operations

Public Involvement

The public will have multiple opportunities to be informed and to comment while the process unfolds. Already, the City Council has heard a staff report at its meeting on April 22, 2008 and a presentation by Mayor Pro Tem Bob Henderson on June 24, 2008. Information was posted on the City's web site to keep the public informed. Several front page articles appeared in the Whittier Daily News. The CEQA process including the preparation of an EIR will include multiple opportunities for public review and comment, as will the consideration of issuing a CUP. All through this process, there will be several government agencies which will have additional permitting and oversight authority to impose additional project requirements. For example, the California Department of Conservation, Division of Oil, Gas, and Geothermal Resources (DOGGR) has multiple regulations related to oil and natural gas exploration and production.

City Project Team

The City Manager assembled a team of key staff and consultants to work together in assessing the feasibility of a project to extract minerals from City-owned land in the Whittier Hills area. Specific staff members involved will vary according to the needs of the project at any particular time. During the preparation of the proposed RESOLUTION OF INTENTION and OIL, GAS AND MINERAL LEASE the City team included the following:

Bob Henderson, City Councilman and Chairman of the Board of the Puente Hills
Landfill Native Habitat Authority

Steve Helvey, City Manager

Dick Jones, City Attorney

David Pelsler, Public Works Director

Jeff Collier, Community Development Director

Rod Hill, Controller

Jim Day, Partner with Day Carter Murphy, LLP law firm

Kyle Rhorer, Vice President of RW Beck (finance and procurement specialist)

Tom Walker, Vice Pres. of Evans and Walker Consulting Petroleum Engineers

DISCUSSION

In this discussion section are presented some of the key features of the proposed bidder submittal requirements and proposed lease agreement provisions.

Request for Bids

The Resolution of Intention serves as a request for bids and must be published four consecutive weeks in the Daily News prior to receiving bids. This will comply with State law.

Also in compliance with State law, there will be only one variable on which to bid – royalty payments to the City. The Royalty payments are set at a minimum bid of 20% initial royalty plus an additional increment as price or production increases. Bidders may bid higher initial royalty, a higher incremental royalty, or both. The royalty is based on either published market price or gross proceeds of sale per month. Royalty payments are made when production begins, even if it occurs during the Primary Term of the lease while rent payments are also paid.

Bidders are required to submit a check for \$400,000 as initial deposit toward the City's costs including running the bid process and preparing an EIR. The deposit will be increased if City costs reach 90% (\$360,000) of the initial deposit. Alternatively, a refund will be made to the Bidder if the City costs total less than the amount on deposit.

To protect the city from wasting time with unqualified bidders, the ROI includes Exhibit "B" - "Minimum Qualifications and Submittal Requirements". The bidders will be required to demonstrate their technical, financial, and experience qualifications. Only bidders that meet the minimum qualifications will be considered for award of a lease. The same minimum qualifications will be required as a condition of assignment of the lease should the successful bidder desire to assign the lease to another company at a later date.

Proposition A Compliance

The City's purchase of the Whittier Hills land subject to the proposed mineral lease was funded by a grant of Proposition A funds. Conditions of this funding prevent the City from using the land for anything other than open space. In order to make available for drilling and pumping approximately 8 acres of the surface in the 1300 acre mineral lease area, the City will have to either reimburse a portion of the Proposition A funds, or provide an additional comparable area of land that can be used for open space to compensate for that area used for surface facilities in oil production. City staff is in contact with the Los Angeles County Proposition A District to determine the appropriate approach to compliance with this requirement. The proposed lease includes a provision that a CUP will not be issued by the City until a release from protected area status is obtained from the Proposition A District.

Limitations on Property Access

Prior to CEQA compliance and issuance of a CUP, the successful bidder will not be allowed to enter the property, except for visual inspections or surveys in support of preparing a CUP application.

Lease Payments During Primary Term

The Primary Term of the lease is three years, during which time CEQA compliance must be completed, a CUP issued, and drilling operations started. The first year's rental payment is \$10.00 per acre (approximately \$13,000) and is paid in advance with the

proposal submittal. The rent for the next two years total is \$140.00 per acre, or approximately \$182,000.

Funding for Ecologist and Habitat Enhancement

The proposed lease requires the successful Bidder pay the Habitat Authority a monthly Management Fee of \$5,000, increasing to \$7,000 when drilling operations begin. The lease also requires payment to the Authority a Habitat Enhancement Fee of \$100,000 annually upon starting drilling operations. Both of these fees will be adjusted over time by a consumer price index.

Payment of Taxes

The proposed lease requires the successful bidder pay all taxes including property taxes.

Insurance

The proposed lease requires workers compensation coverage, \$1,000,000 in employer's liability insurance and \$5,000,000 in both auto and general liability insurance. It also provides for naming the City and the Habitat Authority as an additional insured.

Potential Mitigation Measures and CUP Conditions

As mentioned above in the Background Section of this report, the successful Bidder will have to apply to the City for a Conditional Use Permit. The CUP application will provide the basis for a project description that will be subject to CEQA review. Most likely, a full EIR will be required. CEQA compliance is likely to require mitigation measures be included in the proposed project. In addition, the City will likely have a number of conditions in a CUP. City staff and the Habitat Authority have already given this much thought and cooperated to provide the attached List of Potential Mitigation Measures in order to inform potential bidders and the public of the extent of environmental protections expected to be included in any future CUP. While it is unusual to anticipate mitigation measures prior to preparing an EIR, staff wants the public and the bidders to be aware of the high value the City places on the open space and wildlife habitat uses of this land. The actual mitigation measures and CUP conditions will be determined later by the City Council following public review of potential environmental impacts disclosed in the EIR. The actual conditions adopted may be even more extensive than this List. The attached List is intended to serve as a starting point for public discussion and review.

Hazardous Substances, Pollution, Well Abandonment, Restoration

While there are many safeguards that will be in place in the lease, in State regulations, and in various permits to assure safe and environmentally responsible operations, the lease also holds the successful Bidder responsible for all hazardous substances, waste materials, spills, and environmental pollution that may occur. The Bidder will be responsible for any cleanup and restoration due spills, pollution, and the like.

