

**City Council
Agenda Memo**



**City Council
Meeting Date: 8/14/14**

TO: Larry D. Gilley, City Manager

FROM: Megan R. Santee, Director of Public Works

SUBJECT: Oral Resolution authorizing the City Manager to execute an Oil & Gas Lease with Schkade Brothers Operating Company, Inc.

GENERAL INFORMATION

Jeff Grindstaff, Agent and Landman for Schkade Brothers Operating Co., Inc. (Schkade Brothers) of Abilene, Texas, has requested that the City of Abilene (City) execute the attached Paid-up Oil & Gas Lease for three small strips of City owned street and alley right-of-way in the Woodland Addition, located at Fannin Street & Vogel Avenue. The City purchased the north 14 feet of Lot 30, Block 5; the north 14 feet of Lot 30, Block 4; and the east 5 feet of Lots 1 through 30, Block 4, all in the Woodland Addition, in 1955 for street and utility improvement purposes. These three strips are shown on the attached map. The total combined acreage for all three tracts is approximately 0.242 acres. The City owns 100% of the mineral and executive rights in these tracts. The lease will be for a 3/16ths royalty, a three year primary term, and a lease bonus of \$575.00 (\$2,375.00 per acre).

The lease of these street and alley right-of-way strips will enable Schkade Brothers to pool them with other leases they have obtained on adjacent lots in order to form a pooled unit. Per the terms of the lease agreement negotiated between the City and Schkade Brothers there will be no drilling or surface operations for the exploration or production of oil and gas on these tracts; however, Schkade Brothers may drill under them and produce from the subsurface of these tracts from wells located within the pooled unit. Per the City oil and gas ordinance and terms of the lease, Schkade Brothers must apply for and obtain a City drilling permit for any & all wells they plan to drill.

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute the attached Paid-up Oil & Gas Lease with Schkade Brothers Operating Co., Inc. for the three small strips of street and alley right-of-way in the Woodland Addition as described above.

ATTACHMENTS

Paid-up Oil & Gas Lease
Aerial Map

Prepared by: Name <u>Travis McClure</u> Title <u>Land Agent</u>	Item No. _____	Disposition by City Council <input type="checkbox"/> Approved Ord/Res# <input type="checkbox"/> Denied _____ <input type="checkbox"/> Other _____ City Secretary
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Schkade Brothers Operating Co. Oil & Gas Lease request:
City owns these 3 street & alley ROW strips in fee-
(purchased by City in 1955)
north 14' at Vogel & Fannin, and
east 5' of Lots 1-30 along alley between
Fannin and Burger, from Vogel to Ambler

Vogel Ave.

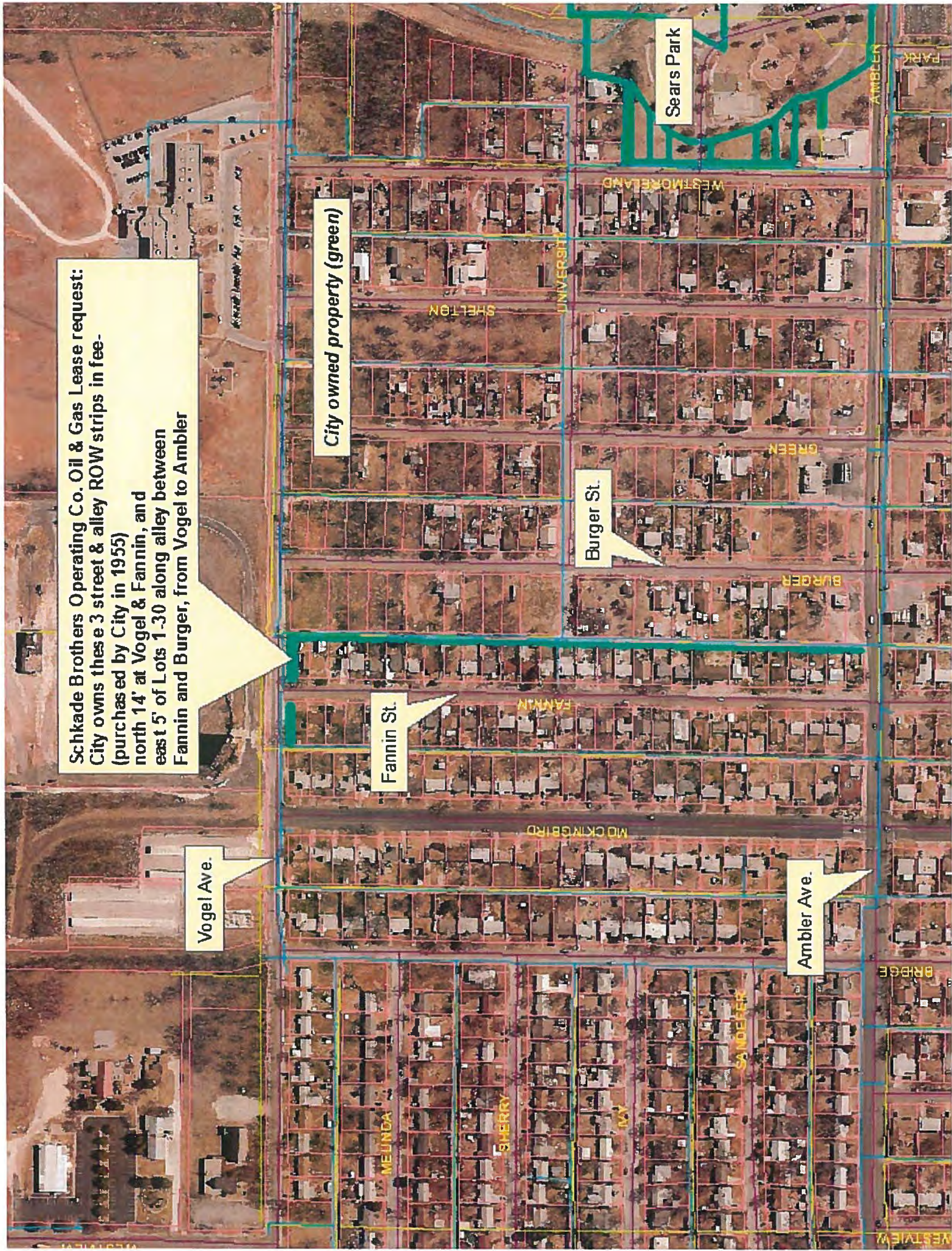
Fannin St.

Burger St.

Ambler Ave.

City owned property (green)

Sears Park



Notice of confidentiality rights: If you are a natural person, you may remove or strike any of the following information from this instrument before it is filed for record in the public records: your Social Security number or your driver's license number.

PAID-UP OIL AND GAS LEASE

THE STATE OF TEXAS

COUNTY OF TAYLOR

THIS AGREEMENT is on _____, 2014 (Effective Date), between the CITY OF ABILENE, Texas, a Municipal Corporation, Lessor, whose address is 555 Walnut, PO Box 60, Abilene, Texas 79604, and a SCHKADE BROTHERS OPERATING COMPANY, INC., Lessee, whose address is P.O. Box 2617, Abilene, Texas 79604.

1. Lessor, in consideration of \$10.00 and other good and valuable consideration, the receipt of which is hereby acknowledged, in consideration of the royalties provided in this lease, and in consideration of the agreement of Lessee contained in this lease, grants, leases, and lets exclusively to Lessee for the purpose of investigating, exploring, prospecting, mining, and drilling for and producing oil, gas, liquid hydrocarbons, and all associated substances, laying pipelines, storing oil, building roads, tanks, power stations, telephone lines, and other structures on and over and across all lands owned by Lessor adjacent or contiguous to the leased land, to produce, save, take care of, treat, transport, and own the products, and for the purpose of housing and otherwise caring for its employees, the following described land in Taylor County, Texas:

Legal Description :

Tract 1 – (apprx. .035 acre) The North 14 feet of Lot 30, Block 5 of the Woodland Addition, City of Abilene, Taylor County, Texas.

Tract 2 – (apprx. .035 acre) The North 14 feet of Lot 30, Block 4 of the Woodland Addition, City of Abilene, Taylor County, Texas.

Tract 3 – (apprx. .172 acre) The East 5 feet of Lots 1 through 30, Block 4 of the Woodland Addition, City of Abilene, Taylor County, Texas.

In addition to the above described land, this lease applies to all land owned or claimed by Lessor adjacent or contiguous to the above described land, whether it is the mentioned survey or surveys or in adjacent surveys, although not included within the boundaries of the land particularly described above.

2. Subject to the other provisions of this agreement, this lease shall be for a term of Three (3) years from this date (called *primary term* in this lease), and as long thereafter as oil or gas is produced from this land or land with which this land is pooled.

3. The royalties to be paid by Lessee on oil are three sixteenths (3/16 ths) of that produced and saved from the land, such amount of oil to be delivered at the wells or to the credit of Lessor into the pipeline to which the wells may be connected. Lessee may at any time purchase royalty oil in its possession, paying the market price prevailing for the field where produced on the date of purchase.

The royalties to be paid by Lessee on gas, including casinghead gas or other gaseous substance, produced from the land and sold or used off the premises or for the extraction of gasoline or other products from it, are the market value at the well of three sixteenths (3/16 ths) of the gas so sold or used, provided that for gas sold at the wells the royalty shall be three sixteenths (3/16 ths) of the amount realized from this sale. While there is a gas well on this lease or on acreage pooled with it, but gas is not being used or sold, Lessee may pay as royalty on or before 90 days after the date on which the well is shut in a sum of \$1.00 per acre. Lessee shall make like payments or tenders at or before the end of each anniversary of the expiration of said 90 day period if upon such anniversary this lease is being continued in force solely by reason of the provision of this paragraph. If this payment is made or tendered, this lease shall not terminate, and it will be considered that the gas is being produced from this lease in paying quantities. It is agreed that subsequent to the primary term, this lease may not be maintained in force and effect solely by payment of shut-in royalties for any period in excess of one (1) year.

4. Lessee, at its option, is given the right and power to pool or combine the acreage covered by this lease, or any portion of this acreage, as to oil or gas with any other land, lease, or leases in the immediate vicinity of this lease to the extent stipulated in this lease, when in Lessee's judgment it is necessary or advisable to do so in order properly to explore or to develop and operate the leased premises in compliance with the spacing rules of the Railroad Commission of Texas or other lawful authority, or when to do so would, in the judgment of lessee, promote the conservation of oil and gas that may be produced from the premises.

Units pooled for oil under this lease shall not substantially exceed 160 acres each in area, and units pooled for gas under this lease shall not substantially exceed 640 acres each in area plus a tolerance of 10 percent of that acreage, provided that should governmental authority having jurisdiction prescribe or permit the creation of units larger than those specified, units thereafter created may conform substantially in size with those larger units. Lessee under these provisions may pool or combine acreage covered by this lease, or any portion of this acreage, as to oil or gas in any one or more strata.

The units formed by pooling as to any strata or stratum need not conform in size or area with the unit or units into which the lease is pooled or combined as to any other strata or stratum, and oil units need not conform as to area with gas units. The pooling in one or more instances shall not exhaust the rights of Lessee to pool this lease or portions of it into other units. Lessee shall file for record in the appropriate manner in the county in which the leased land is located, an instrument describing and designating the pooled acreage as a pooled unit. Lessee may exercise its pooling option after commencing operations for or completing an oil or gas well on the leased premises, and the pooled unit may include, but is not required to include, land or leases which a well capable of producing oil or gas in paying quantities has previously been completed or upon which operations for the drilling of a well for oil and gas have previously been commenced.

Operations for drilling or for production of oil or gas from any part of the pooled unit which includes all or a portion of the land covered by this lease, regardless of whether such operations for drilling were commenced or such production was secured before or after the execution of this instrument or the instrument designating the pooled unit, shall be considered as operations for drilling on or production of oil or gas from land covered by this lease, whether or not the well or wells are located on the premises covered by this lease, and the entire acreage

constituting such unit or units, as to oil or gas, or either of them as provided in this lease, shall be treated for all purposes, except the payment of royalties on production from the pooled unit, as if the same were included in this lease.

For the purpose of computing the royalties to which owners of royalties and payments out of production shall be entitled on production of oil and or gas from the pooled unit, there shall be allocated to the land covered by this lease and included in the unit, a pro rata portion of the oil or gas produced from the pooled unit after deducting for that used for operations on the pooled unit. This allocation shall be on an acreage basis i.e., there shall be allocated to the acreage covered by this lease and included in the pooled unit that pro rata portion of the oil and or gas produced from the pooled unit which the number of surface acres covered by this lease and included in the pooled unit bears to the total number of surface acres included in the pooled unit. Royalties under this lease shall be computed on the portion of this production, whether it be oil or gas, so allocated to the land covered by this lease and included in the unit just as though this production were from this land. The production from an oil well will be considered as production from the lease or oil pooled unit from which it is producing and not as production from a gas pooled unit and production from a gas well will be considered as production from the lease or gas pooled unit from which it is producing and not as production from an oil pooled unit.

5. If before discovery and production of oil, gas, or other hydrocarbon on the above described land or on acreage pooled with that land, Lessee should drill a dry hole or holes on the land, or if after discovery and production of oil, gas, or any other hydrocarbon, the production should cease from any cause, this lease shall not terminate if Lessee commences additional drilling or reworking operations within ninety (90) days thereafter.

If at any time subsequent to ninety (90) days before the beginning of the last year of the primary term, and before the discovery of oil, gas, or other hydrocarbon on the land, or on acreage pooled with the land, Lessee should drill a dry hole on either of them, no rental payment or operations are necessary in order to keep the lease in force during the remainder of the primary term. If, at the expiration of the primary term, oil, gas, or other hydrocarbons are not being produced on the land or on acreage pooled with it, but lessee is then engaged in drilling or reworking operations on either of them, or shall have completed a dry hole on either of them within ninety (90) days before the end of the primary term, the lease shall remain in force so long as operations are prosecuted with no cessation of more than ninety (90) consecutive days, and if they result in the production of oil, gas, or other hydrocarbons, so long thereafter as oil, gas, or other hydrocarbons are produced from the land or acreage pooled with it. In the event a well or wells producing oil or gas in paying quantities shall be brought in on adjacent land and draining either the leased premises or acreage pooled with the leased premises, Lessee agrees to drill such offset wells as a reasonable prudent operator would drill under the same or similar circumstances.

6. Lessee shall have the right at any time during or after the expiration of this lease to remove all property and fixtures placed on the above described premises by lessee, including the right to draw and remove all casing. When required by Lessor, Lessee shall bury all pipelines below ordinary plow depth, and no well shall be drilled within two hundred (200) feet of any residence or barn located on the premises as of the date of this lease without lessor's consent.

7. It is expressly understood and agreed that Lessee shall serve as the Operator of this lease, as set out in the Railroad Commission Form P-4/Responsible Party for operations, and that the operations of this lease shall not be assigned or transferred, without the written consent of the Lessor first being had and obtained. Lessor shall not unreasonably withhold such consent. The provisions of this lease shall extend to the parties' heirs, successors, and assigns, but no change in the division or ownership of the land, rentals, or royalties, however accomplished, shall operate to enlarge the obligations or diminish the rights of Lessee; and no change or division in such

ownership shall be binding on Lessee until thirty (30) days after Lessee shall have been furnished by registered U.S. Mail at Lessee's principal place of business with a certified copy of the recorded instrument or instruments evidencing such change of ownership.

In the event of assignments of this lease, in whole or in part, liability for breach of any obligation issued under the lease shall rest exclusively on the owner of this lease, or portion of it, who commits the breach. In the event of the death of any person entitled to rentals under this lease, Lessee may pay or tender the rentals to the credit of the deceased, or the estate of the deceased, until such time as lessee has been furnished with the proper evidence of the appointment and qualification of an executor or administrator of the estate, or if there is none, then until Lessee is furnished satisfactory evidence as to the heirs or devisees of the deceased and that all debts of the estate have been paid.

If at any time, two or more persons become entitled to participate in the rental payments under this lease, lessee may pay or tender the rental payments to these persons, or to their joint credit in the depository named in this lease; or, at Lessee's election, the portion or part of the rental to which each participant is entitled may be paid or tendered to the person separately or to his or her separate credit in the depository; and payment or tender to any participant of his or her portion of the rentals under this lease shall maintain this lease as to that participant.

In the event of an assignment of this lease as to a segregated portion of the land, the rentals payable under this lease shall be apportioned as between the several leasehold owners ratably according to the surface area of each, and default in rental payments by one shall not affect the rights of other leasehold owners under this lease. If six or more parties become entitled to royalty payments under this lease, Lessee may withhold payments unless and until furnished with a recordable instrument executed by all the parties designating an agent to receive payment for all.

8. The breach by Lessee of any obligation arising under this lease shall not result in a forfeiture or termination of this lease, nor cause a termination or reversion of the estate created by the lease, nor be grounds for cancellation of the lease in whole or in part. In the event Lessor considers that operations are not being conducted in compliance with this lease, Lessor shall notify Lessee in writing of the facts relied on as constituting a breach of the lease, and Lessee, if in default, shall have 60 days after receipt of this notice in which to commence compliance with the obligations imposed by virtue of this lease instrument.

After the discovery of oil, gas, or other hydrocarbon in paying quantities on the premises, Lessee shall develop the acreage retained under the lease as a reasonably prudent operator, but in discharging this obligation it shall in no event be required to drill more than one well per 40 acres of the area retained under the lease and capable of producing oil in paying quantities and one well per 640 acres, plus an acreage tolerance not to exceed 10 percent of 640 acres, of the area retained under the lease and capable of producing gas or other hydrocarbons in paying quantities.

9. Lessor warrants and agrees to defend the title to the land and agrees that lessee at its option may discharge any tax, mortgage, or other lien on the land, either in whole or in part, and in the event that Lessee does so, it shall be subrogated to this lien with the right to enforce it and apply rentals and royalties accruing under the lease toward satisfying it.

Without impairment of Lessee's rights under the warranty in the event of failure of title, it is agreed that if Lessor owns an interest in the oil, gas, or other hydrocarbon on, in, or under the land less than the entire fee simple estate, whether or not this lease purports to cover the whole or a fractional interest, then the royalties and rentals to be paid Lessor shall be reduced in the proportion that Lessor's interest bears to the whole and undivided fee and in accordance with the nature of the estate of which Lessor is seized.

Should any one or more of the parties named above as Lessors fail to execute this lease, it shall nevertheless be binding on the party or parties executing it. Failure of Lessee to reduce rentals paid under this lease shall not impair the right of Lessee to reduce royalties.

10. Should Lessee be prevented from complying with any express or implied covenant of this lease, from conducting drilling, or reworking operations on the pooled unit or from producing oil or gas from them by reason of scarcity of or inability to obtain or to use equipment or material, or by operation of force majeure, any federal or state law or any order, rule, or regulation of governmental authority, then while so prevented, Lessee's obligation to comply with any of these covenants shall be suspended, and Lessee shall not be liable in damages for failure to comply with them. This lease shall be extended so long as Lessee is prevented by any such cause from conducting drilling or reworking operations on, or from producing oil or gas from, the leased premises; and the time while Lessee is so prevented shall not be counted against Lessee, notwithstanding anything to the contrary in this lease.

By the acceptance of this lease, and as a substantial part of the consideration therefore, Lessee hereby expressly COVENANTS and AGREES:

11. To diligently and fully explore, develop and protect the entire leased premises, and each and every producing, prospective or promising formation thereon, therein and thereunder at the time, with the rapidity, at the rate, in the manner, and to the degree, density and extent that a reasonably prudent operator, under the same or similar circumstances, and with the best interest of both the Lessor and Lessee in mind and at heart, should or would so explore, develop and protect the leased premises, and each and every producing, prospective or promising formation thereon, therein and thereunder;

12. To produce, gather, process, preserve, save, store, take care of, treat, transport and market said production, products, by-products, residues and residuals, and to conduct all such producing, gathering, processing, preserving, saving, storing, caring of, treating, transporting and marketing activities and operations at the time, with the rapidity, at the rate, and in the manner and to the extent that a reasonably prudent operator, under the same or similar circumstances, and with the best interest of both the Lessor and Lessee in mind and at heart, should or would so conduct such activities and operations;

13. To conduct pressure maintenance, or secondary recovery operations, or both, if the characteristics of the particular reservoir are such that, from sound engineering and economical standpoints, and with the best interests of both Lessor and Lessee in mind and at heart, a reasonably prudent operator would or should conduct one of both such operations;

14. To enter into contracts, in good faith and at arm's length, for the sale, at or near the mouth of the wells, or elsewhere, of all such natural products produced from the leased premises.

15. Following Lessor's initial review at Lessee's office or other location designated by Lessee, Lessee agrees to promptly furnish to Lessor, upon written request by Lessor, the following :

15.1 Copies, duplicates or reproductions of all location plats, applications for and permits to drill, drilling contracts, daily drilling and progress reports on and in connections with all wells drilled on the leased premises/pooled unit; copies of all pipe perforation and well completion records; and copies of all reports and forms required by or filed with the Oil and Gas Division of the Railroad Commission of Texas, and all reports filed with or required the Texas Comptroller of

Public Accounts;

15.2 Copies, duplicates or reproductions of all logs or surveys, drillers, electrical or otherwise, of all wells drilled on the leased premises/pooled unit, all coring data and core analysis reports, core analyses, core records, reports or results of drill stem or other tests, and all other data obtained in connection with or as a result of the exploration, development, operation and protection of the leased premises/pooled unit. Lessor agrees, upon Lessee's request, to keep said information confidential while this lease is in force, notwithstanding the rights and duties of Lessor and Lessee under Texas Government Code Chapter 552, the Texas Public Information Act;

15.3 Copies, duplicates or reproductions of all contracts and agreements pertaining to the exploration, development, operation or protection of the leased premises/pooled unit and pertaining to the absorbing, assimilating, bartering, blending, compounding, concentrating, contributing, cycling, deriving, disposing, exchanging, extracting, processing, producing, recovering, refining, saving, selling, swapping, treating, transporting or upgrading of any and all such natural products, products, by-products, residues or residuals; and

15.4 Copies, duplicates or reproductions of all reports or maps based, in whole or in part, upon surface surveys, seismic, electronic or electrical surveys, or the results of core hole and other tests, or based upon other scientific activities, operations and surveys of the leased premises/pooled unit of any formation thereunder, and all interpretations thereof, made by, made for, or obtained by, Lessee from any and all authorized sources, each and all of which shall be construed as covenants running with said lease and with the land constituting the leased premises/pooled unit. Lessor agrees, upon Lessee's request, to keep said information confidential while this lease is in force, notwithstanding the rights and duties of Lessor and Lessee under Texas Government Code Chapter 552, the Texas Public Information Act;

16. Lessor, acting by and through Lessor's corporate officers, executives, agents or duly authorized representatives, at Lessor's sole risk and responsibility, shall have and is hereby given and granted access to and the absolute right, at any time and from time to time, to:

16.1 After Lessor's execution of a liability waiver, observe, from the well site, derrick floor, drilling platform, or from any other vantage point, all drilling, completing, logging, surveying, producing, reworking, plugging and all other such or similar activities or operations conducted on the leased premises by Lessee, by Lessee's agents, employees, independent contractors, or by the those furnishing third party services, and to obtain from it or them current and accurate information and data with respect to all such activities and operations;

16.2 Inspect and reproduce all of Lessee's accounting data, of the leased premises pertaining to the transporting and marketing of the production and products therefrom; and to

16.3 Inspect all fixtures, physical equipment and facilities, metering, measuring and marketing devices, tanks, field-type separation devices, processing and treating plants, pipe lines and all other equipment of every kind or character, and regardless of wheresoever located, leased, rented, used or pertaining to the exploration, development, operation or protection of the leased premises and pertaining to the absorbing, assimilating, bartering, blending, compounding, concentrating, contributing, cycling, deriving, disposing, exchanging, extracting, processing, producing, recovering, refining, saving, selling, swapping, treating, transporting or upgrading of any and all such natural products, products, by-products, residues or residuals.

17. Lessor shall have the right to occupy and use the surface of said land for street & alley right-of-way, residential, business, agricultural, horticultural, grazing or any other purposes to such an extent as will not interfere with Lessee's operations hereunder.

Notwithstanding anything to the contrary contained herein, it is understood and agreed, between Lessor and Lessee, that there will be no drilling or surface operations for oil or gas upon the above described lands without the express written consent of the surface owner; however, Lessee shall have the right to drill under, or through, produce from, and inject substances into, the subsurface of the lands covered by this lease, from wells which are located on lands pooled therewith.

18. Lessee shall not drill any well on said leased land within two hundred (200) feet of any now existing structures thereon without the prior written consent of Lessor and the owner of such structure, nor shall Lessee drill any well upon lands occupied, used or held for railroad purposes.

19. Lessee agrees to conduct its operations so as to interfere with the use of land for street & alley right-of-way, residential, business, agricultural, horticultural, grazing or other purposes of Lessor as little as is consistent with the economical operation of the property for oil and gas. Lessee shall be liable for any and all damage to the surface of the land, the waters, structures located on the land, damage to agriculture, horticulture and grazing on the land, caused by, in whole or in part, by the operations of Lessee.

20. Lessee shall have no right to use in any way, any buildings or other structures belonging to Lessor or to Lessor's tenants.

21. The Lessee shall use only that portion of the surface of the said lands from time to time required in its operations. Lessee shall not construct any roadways on said leased land without the prior written consent of Lessor.

22. The Lessee, upon abandonment of any well, shall promptly close the same and restore the site thereof to its condition prior to the commencement of drilling operations insofar as may be reasonably practicable, including but not limited to the removal of all well anchors.

23. Lessee agrees to take reasonable steps to prevent its operations from (a) causing or contributing to soil erosion or the injury of terraces or other soil-conserving structures on said premises; (b) polluting the waters of reservoirs, springs, streams or wells upon the leased premises; (c) damaging crops, timber, or pastures, consistent with the purpose of this lease; or (d) harming or injuring in any way the animals or livestock owned by Lessor or its tenants and kept or pastured on the premises, including the erection and maintenance of fences, gates and cattle guards where necessary for such purposes. Lessee shall be liable for any and all damage to the surface of the land, the waters, structures located on the land, damage to agriculture, horticulture and grazing on the land, caused by, in whole or in part, by the operations of Lessee.

24. It is agreed and understood that no operations shall be commenced on the lands herein described unless and until the Lessee shall have filed a good and sufficient bond with the Lessor in an amount to be fixed by Lessor, or paid up-front in cash said amount to Lessor to be held in trust by Lessor, to secure the payment for such damage to the surface of the land, livestock,

growing crops, the waters, or improvements as may be caused by Lessee's operations on said lands and also compliance with all the provisions, conditions, covenants and obligations of this lease and the statutes of the State of Texas and rules and regulations thereto appertaining. It is agreed that any drilling permit bond approved by the Lessor shall satisfy this requirement, for such time that the drilling permit bond is effective. It is further agreed that an approved Letter of Credit shall satisfy this requirement, for such time that the Letter of Credit is effective.

25. Lessee shall comply with, adhere to, and strictly follow all City of Abilene codes, ordinances and other regulations, including but not limited to the City of Abilene Code of Ordinances, Chapter 21, Oil and Gas. Lessee shall be responsible for payment of all costs and expenses to comply with, adhere to, and strictly follow all City of Abilene codes, ordinances and other regulations, including but not limited to the City of Abilene Code of Ordinances, Chapter 21, Oil and Gas. Lessee shall not deduct or otherwise withhold said costs and expenses from any payments due Lessor pursuant to this lease. In the event that Lessee shall fail to comply with, adhere to, and strictly follow all City of Abilene codes, ordinances and other regulations, including but not limited to the City of Abilene Code of Ordinances, Chapter 21, Oil and Gas, then this lease shall automatically terminate, and Lessee shall immediately remove its equipment and property from the leased premises. In the event that Lessee shall fail to obtain or be granted the required permits within three (3) years from the effective date of this lease, then this lease shall automatically terminate, and Lessee shall immediately remove its equipment and property from the leased premises. Lessor makes no representations, and does not warrant, that Lessee shall be granted any required permits necessary to engage in oil and gas operations.

26. Lessee shall be restricted to using the surface estate for purposes of ingress and egress on this lease to the portion of the premises as is mutually agreed upon in advance between the Lessor and Lessee. In the event that Lessor and Lessee cannot mutually agree upon the portion of the premises to be used, then and in that event Lessee shall be entitled to refund of the amount of the consideration paid pursuant to paragraph 1 above as full and complete liquidated damages. Lessee hereby waives any additional right it may have to seek additional damages. Also, in such an event, this lease agreement shall terminate immediately upon payment to Lessee of said refund. Lessee shall not use any other portion of the surface estate of the premises for purposes of ingress and egress without first obtaining the written consent of Lessor.

In Witness Whereof, this instrument is executed on the date first above written.

CITY OF ABILENE, Lessor

By: _____
(signature)

Larry D. Gilley, City Manager

SCHKADE BROTHERS OPERATING COMPANY, INC. Lessee

By: [Signature]
(signature)

Brent Schkade, Vice - President

STATE OF TEXAS

COUNTY OF TAYLOR

Before me, the undersigned Notary Public, on this day personally appeared Larry D. Gilley, City Manager, City of Abilene, Texas, known to me to be the identical person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed that instrument for the purposes and consideration expressed in it.

Given under my hand and seal of office on _____, 2014.

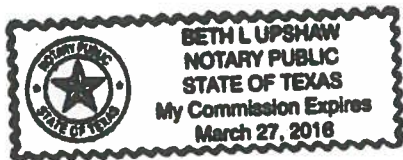
Notary Public, State of Texas
My Commission Expires _____

STATE OF TEXAS

COUNTY OF TAYLOR

Before me, the undersigned Notary Public, on this day personally appeared Brent Schkade, Vice -President of Schkade Brothers Operating Company, Inc., known to me to be the identical person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed that instrument for the purposes and consideration expressed in it.

Given under my hand and seal of office on July 15, 2014.



[Signature]
Notary Public, State of Texas
My Commission Expires 3-27-16