

Memorandum

To: Honorable Mayor Shetter and members of the Burleson City Council

From: Peter Krause, Director of Parks and Recreation

Date: March 2, 2009

Subject: Reconsideration of a request from Texas Midstream Gas Services of a license agreement for the purpose of installing a natural gas transmission line across city owned property located south of Spinks Airport defined as Abstract 496 TR4A, A Lee Survey, Johnson County, Texas and authorize the City Manager to execute the agreement.

Council Action Requested:

1. Void the License Agreement approved by City Council on January 20, 2009; and
2. Authorize the City Manager to execute a revised License Agreement with Texas Mid- stream for the purpose of installing a natural gas transmission line across city owned property located south of Spinks Airport defined as Abstract 496 TR4A, A Lee Survey, Johnson County, Texas

Background Information:

There are two changes or revisions from the license agreement with Texas Midstream Gas Services (TMGS) approved by City Council on January 20, 2009.

First, a revision to the insurance requirements. Staff recommends the insurance requirements be revised to contain the same language as gas easement agreements previously approved by the City Council and reviewed and approved by the city's insurance representative. The January 20, 2009 language is as follows:

“Deductible or self insured retention limits of any line of coverage required herein shall not exceed \$1,000,000 in the annual aggregate unless the

limit per occurrence or per line of coverage is otherwise approved by the City.”

The revised language contained within previously approved agreements:

“Deductible or self insured retention limits of any line of coverage required herein shall not exceed \$1,000,000 per occurrence or per line of coverage is otherwise approved by the City.” And;

Also the Contractor insurance requirements are established as follows:

“General liability: \$1,000,000 Auto liability: \$500,000.”

Second, a revision to grant of a temporary bore pit. TMGS has asked the City to grant an enlarged temporary bore pit of 150' x 150' from the previously requested 150' x 65'. Staff recommends that Council approve the additional request.

Council approved a license agreement with Texas Midstream Gas Services for the purpose of installing a natural gas transmission line across city owned property located south of Spinks Airport. This agreement grants a 20 feet wide easement across the city's property south of Spinks (Attachment 2) with a portion of the easement intruding up to fifty feet (50') into the city's property but is not expected to interfere with any future improvements to that parcel. If any such future improvements do require the relocation of the line, the relocation shall be performed at Texas Midstream's expense. The term of the agreement (Attachment 1) is 25 years from date of execution.

Staff recommends that Council void the January 20, 2009 agreement with Texas Midstream Gas Services and authorize the City Manager to execute the revised agreement.

Legal Review:

The agreement has been reviewed by city attorney Wade Adkins and the city's Risk Manager.

Financial Considerations:

Texas Midstream Gas Services has previously paid the city fifty five thousand (\$55,000) dollars for the original license agreement. This revised alignment is approximately eighty feet (80) shorter than the initial alignment. Texas Midstream Gas Services is not requesting that the overpayment of four thousand (\$4,000) dollars be repaid to them.

Attachments:

1. License Agreement
2. Exhibit A

Staff Contact:

Peter Krause, Director of Parks and Recreation

Office: (817)295-8168

Cell: (817)312-0989

Email to: pkrause@burlesontx.com

STATE OF TEXAS)
)
COUNTY OF JOHNSON)

LICENSE AGREEMENT

This License Agreement (“Agreement”) is hereby made and entered into by and between the City of Burleson, Texas (the “City”), a home rule municipality created in accordance with Chapter 9 of the Texas Local Government Code, and Texas Midstream Gas Services, L.L.C. (“Licensee”), an Oklahoma limited liability company.

WHEREAS, Licensee desires, at its sole cost and expense, to construct, operate and maintain one buried natural gas pipeline and appurtenances across and under certain real property owned by the City; surveyed as Abstract 496 TR4A, A Lee, Johnson County, Texas;

WHEREAS, under the conditions and restrictions hereinafter set forth, the exercise by Licensee of the rights granted herein will not be incompatible with the requirements of the City for the use, operation and maintenance of such real property for public utility and other municipal purposes; and

WHEREAS, the granting of such license to Licensee is subject to the continuing use of the land by the City at all times for public utility and other municipal purposes.

NOW THEREFORE, the parties hereto agree as follows:

1. Grant of License.

The City, to the extent of its interest therein, hereby grants to Licensee, for a period of twenty-five (25) years from the date hereof, a license to construct, operate and maintain one (1) buried 16 inch nominal diameter natural gas pipeline under and across of one thousand and twenty (1,020) feet length within a 20 feet wide portion of the City’s real property (the “Property”) at the location shown on Exhibit “A” which is attached hereto and made a part hereof by reference, subject to termination as herein provided.

The Licensee shall have the right to use an additional forty (40) foot wide temporary work space adjacent and parallel to the portion of the Property where the pipeline is to be located as shown on Exhibit “A”. Licensee shall also have the right to have an additional temporary work space not to exceed 150’ X 150’ as shown on Exhibit “A”. This temporary workspace shall automatically terminate and expire when the pipeline and appurtenant facilities have been installed by Licensee. Restoration to the land shall be in compliance with section 9d and 9j of this agreement.

These rights are granted and accepted subject to the following: (a) any valid and enforceable restrictions, covenants, conditions, encumbrances (except liens), reservations, easements, and other exceptions to title, if any, relating to the Property, shown of record in the hereinabove mentioned County and State,

(b) all zoning laws, regulations and ordinances of municipal and/or other governmental authorities, if any, relating to the same; and (c) to all matters which would be revealed by an inspection and/or a current survey of the Property.

The Licensee acknowledges and agrees that this Agreement only allows the transportation of gas, and associated by-products through the City and does not allow the Licensee to distribute, sell or otherwise provide gas to any customer in the City.

2. License Non-Exclusive.

The license granted herein shall be nonexclusive and the City reserves the right to grant other rights and licenses across, over and under the Property to such other persons that the City deems proper. It is expressly understood that the City does not purport, by this Agreement to grant Licensee any right, title, claim or easement in or upon the Property shown on Exhibit "A" except for a license as that term is used in real property law.

3. Police Power of the City.

The Licensee shall at all times during the term of this Agreement be subject to the lawful exercise of the police power by the City.

4. Other Permits.

a. This Agreement does not relieve the Licensee of any obligation to obtain permits, licensee and other approvals from the City or other regulatory agencies necessary for the construction, installation, maintenance or repair of the Licensee's pipeline or the transportation of gas through such pipeline.

b. Licensee shall not initiate any kind of construction, installation, maintenance, repairs or other work that requires excavation on the Property until the Licensee first obtains a permit from the City's Director of Public Works or designee.

5. Fees.

Licensee has previously paid a fee of fifty five thousand (\$55,000) dollars to the City for a license agreement approved by the City on September 11, 2008. That license agreement has been voided. Licensee requests that the previously paid fee to the City be applied to this license agreement. The City and Licensee agree that no addition or reduction in fee be required with the execution of this agreement.

6. Time of Construction.

Construction shall be accomplished by Licensee at such time or times as will not unduly interfere with the City's use of the Property as determined by the City's Director of Parks prior to commencement of construction.

7. Bond.

Prior to commencement of any work that requires excavation on the Property, Licensee shall deliver to the City a bond executed by a corporate surety authorized to do business in the State of Texas and acceptable to the City in the amount of Fifty Thousand Dollars (\$50,000). The bond shall guarantee that Licensee shall (a) restore the surface of the part of the Property where excavation was done in a satisfactory and workmanlike manner; (b) maintain such restoration work in a state of repair satisfactory to the City following the date of restoration; and (c) fully comply with the terms and conditions of this Agreement and the City's ordinances governing excavation in public rights-of-way.

8. As-Built Plans and Drawings. Licensee shall provide the Director of Parks with as-built plans and drawings of Licensee's pipeline facilities located on the Property within ninety (90) calendar days following the completion of such pipeline facilities. As-built plans and drawings shall be new drawings or redlined changes to drawings previously provided to the Director.

9. Use of the City Property

a) Minimal Interference.

Licensee's pipeline facilities shall be installed and maintained in a manner that causes minimal interference with the City's use of the Property for public utility and other municipal purposes. Prior to the undertaking of any kind of construction, installation, maintenance, repairs or other work that requires excavation, or other physical use of the Property, Licensee shall provide at least twenty-four (24) hours advance written notice to the Director of Parks.

b) Worksite Regulations.

Licensee shall comply with all applicable rules, regulations and requirements of the City, including, but not limited to, those related to permissible hours of construction, operations during peak traffic hours, barricading requirements and any other construction rules or regulations that may be promulgated from time to time. In addition, during any such work, Licensee shall provide construction and maintenance signs and sufficient barricades at the work site to protect the public. The application of such traffic control devices shall be consistent with the standards and provisions of Part VI of the Texas Manual on Uniform Traffic Control Devices. Licensee shall utilize appropriate warning lights at all construction and maintenance sites.

c) Burial and Marking of Pipeline.

Licensee shall bury or have buried its pipeline facilities at least forty-two (42) inches below the surface of the Property. Licensee shall place signs at reasonable intervals requested by the City that alert the general public to the presence of such pipeline facilities. Such signs shall include the Licensee's name and a toll-free telephone number of Licensee that a person may call for assistance. In addition, during backfill of the pipeline excavation, "Buried Pipeline" warning tape shall be buried one (1) foot above the pipeline to warn future excavators of the presence of the pipeline.

d) Repairs and Restoration.

Licensee at its sole cost and expense shall repair any damage to the Property and surrounding property (including any improvements located thereon) resulting from the Licensee's use of the Property. Licensee at its sole cost and expense, and in a manner approved by the City, promptly restore any portion of the Property that is in any way disturbed or damaged by the construction, operation, maintenance or removal of the pipeline to as good or better a condition as the Property was in immediately prior to the disturbance or damage. Licensee shall diligently commence such restoration within thirty (30) calendar days following the date that the Licensee becomes aware of the disturbance or damage, or if the pipeline is being removed, within thirty (30) calendar days following such removal.

e) Prohibited Substances.

Licensee shall not use the Property in any manner which violates any federal, state or local law, regulation, rule or ordinance or which constitutes a public or private nuisance. Licensee shall not locate, place, generate, store, manufacture, use or dispose of on or about such right of way any chemical, pollutant, toxic substance, hazardous material, waste or other substance that is the subject of any federal, state or local law, regulation, rule or ordinance pertaining to public health, safety or to the protection of conservation of the environment.

f) Removal of Waste.

Licensee shall remove all waste from installation of the pipeline within a reasonable time after installation of the pipeline, and shall dispose of the same in a manner approved by the Director of Parks.

g) Relocation of Facilities.

Licensee, at Licensee's sole cost and expense, shall protect, support, disconnect, relocate or remove from the Property all or any portion of its pipeline facilities when required by the City due to street or other public excavation, construction, repair, grading, regarding or traffic conditions; the installation, lowering, construction or relocation of sewers, drains, water pipes or municipally-owned facilities of any kind; or any type of improvement necessary for the public health, safety or welfare. Except in case of an emergency, the City shall give Licensee thirty (30) days written notice that Licensee is required to protect, support, disconnect, relocate or remove Licensee's facilities and Licensee shall complete such removal within forty-five (45) days thereafter if reasonably practical. For projects expected to last beyond 45 days, the CITY will confer with LICENSEE before determining the alterations to be required and the timing thereof.

Upon the revocation, termination or expiration without extension or renewal of this Agreement, Licensee's right to use the Property under this Agreement shall cease and Licensee shall immediately discontinue the transportation of gas through the pipeline. Within six (6) months following such revocation, termination or expiration, and if the City requests, Licensee, at Licensee's sole cost and expense, shall remove the pipeline from the Property

(or cap the pipeline, if consented to by the City) in accordance with applicable laws and regulations. If the Licensee has not removed the pipeline from the Property (or capped the pipeline, if consented to by the City) within six (6) months following revocation, termination or expiration of this Agreement, the City may deem any portion of the pipeline remaining on the property abandoned, and, at the City's sole option: (1) take possession of and title to the pipeline or (2) take any and all legal action necessary to compel Licensee to remove the pipeline; provided, however, that Licensee may not abandon the pipeline or discontinue its service without approval of the Railroad Commission or its successor agency or any other regulatory authority with such jurisdiction.

h) Operation of Pipeline.

The Pipeline installed within the Right-of-way shall be operated and maintained in accordance with applicable Federal law and regulations of the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration ("PHMSA Regulations") and the Rules of the Texas Railroad Commission or, to the extent that Federal law, PHMSA Regulations or Rules of the Texas Railroad Commission do not apply, in accordance with the City Codes and ordinances.

i) Drainage.

Licensee shall plan and execute construction of Licensee's pipeline so that no flood conditions are created or worsened on the surrounding land in full compliance with the City's Flood Plain Ordinance(s).

j) Vegetation.

In order to minimize erosion and sedimentation resulting from the proposed pipeline installation, the excavated portion of the Property shall be repaired and re-vegetated in accordance with Texas Department of Transportation items 160 through 179 with appropriate watering as required until the re-vegetative areas are determined to be self-sustaining by the City's Director of Parks. If Licensee installs a fence along the pipeline, Licensee shall, at Licensee's expense, keep the part of the Property inside the fence mowed

k) Commencement of Installation of Pipeline.

Upon failure of Licensee to commence installation of the pipeline on the Property within two hundred ten (210) calendar days from the execution of this Agreement, or to complete installation of the pipeline on the Property within sixty (60) calendar days thereafter, this License shall expire.

10. Insurance.

a) Required of Licensee.

Licensee shall provide the Director of Public Works with proof that Licensee has insurance of the following types and limits in effect:

Commercial General Liability	\$ 5,000,000 per occurrence
Property Damage Liability	\$ 1,000,000 per occurrence

Automobile Liability \$ 1,000,000 per accident,
Including, but not limited to, all owner, hired or non-owned motor vehicles
used in conjunction Licensee's use of the Property.

Licensee's insurance shall be underwritten by entities authorized to do business in the State of Texas and who are acceptable to the City in terms of solvency and financial strength. Licensee's insurance policy or policies shall name the City as an additional insured and cover all public risks related to Licensee's use of the Property. These requirements may be met through a combination of self-insurance, underlying and excess policies.

Deductible or self-insured retention limits of any line of coverage required herein shall not exceed \$1,000,000.00 per occurrence or per line of coverage unless the limit is otherwise approved by the City. The CITY reserves the right to review these insurance requirements during the effective period of the License and any extension or renewal thereof, and to adjust the insurance coverage limits upon reasonable determination by the CITY's Risk Manager, based upon changes in statutory law, court decisions or the claims history of the industry. Licensee shall comply with such revised requirements within ten (10) calendar days of receipt of written notice from the City of such a revision. Such policies shall provide that the amount of coverage cannot be reduced, or the coverage canceled, without thirty (30) days prior written notice to the City.

b) Required of Licensee's Contractor's.

Licensee shall require any contractors who undertake construction, installation, maintenance, repairs or work that requires the excavation or other physical use of the Property to maintain insurance of the same types as provided by Section 10 a) with the following limits:

- i. General liability \$1,000,000.00;
- ii. Auto liability \$500,000.00; additionally such contractors, if not otherwise lawfully exempt by Texas Law, shall maintain workers compensation insurance.

11. Liability of Licensee.

Licensee shall be liable and responsible for any and all damages, losses, liabilities (joint or several), payments, obligations, penalties, claims, litigation, demands, defenses, judgments, lawsuits, proceedings, costs, disbursements or expense, to include, without limitation, fees, disbursements and reasonable expenses of attorneys, accountants and any other professional advisors and of expert witnesses and of costs of investigation and preparation of any kind or nature whatsoever (collectively "Damages"), which may arise out of or be in any way connected with (1) the construction, installation, operation maintenance or condition of the pipeline or any related facilities or appurtenances; (2) the transportation of gas and associated by products through the pipeline; (3) any claim or lien arising out of work, labor, materials or supplies provided or supplied to Licensee, its contractors, or subcontractors; or (4) Licensee's failure to comply with any federal, state or local law, ordinance, rule or regulation, except to the extent directly caused by the negligence or intentional misconduct of the City.

12. Indemnity.

LICENSEE SHALL INDEMNIFY AND HOLD THE CITY AND ITS OFFICERS AND EMPLOYEES HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS, LIENS, LOSSES, EXPENSES, FEES

(INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS OF DEFENSE), PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING PERSONAL OR BODILY INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT THAT IS FOUND BY A COURT OF COMPETENT JURISDICTION TO BE CAUSED SOLELY BY THE NEGLIGENT ACT, ERROR, OR OMISSION OF LICENSEE OR ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, AFFILIATE OR SUBCONTRACTOR OF LICENSEE, OR THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS OR REPRESENTATIVES, WHILE INSTALLING, REPAIRING, OR MAINTAINING FACILITIES ON THE PROPERTY. THE INDEMNITY PROVIDED UNDER THIS SECTION DOES NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF THE CITY, ITS OFFICERS, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS. IF LICENSEE AND THE CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THIS SECTION 12 IS SOLELY FOR THE BENEFIT OF THE CITY AND THE LICENSEE AND DOES NOT CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. LICENSEE AND THE CITY SHALL PROMPTLY ADVISE EACH OTHER IN WRITING OF ANY KNOWN CLAIM OR DEMAND AGAINST LICENSEE OR THE CITY RELATED TO OR ARISING OUT OF LICENSEE'S ACTIVITIES ON THE PROPERTY OR IN THE PUBLIC RIGHT-OF-WAY.

13. Licensee as Independent Contractor.

It is expressly agreed and understood that Licensee shall operate as an independent contractor as to all rights and privileges granted by this Agreement, and not as an agent, representative or employee of the City. Licensee acknowledges that the doctrine of *respondeat superior* shall not apply as between the City and Licensee, its officers, agents, employees, contractors and subcontractors. Licensee further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between the City and the Licensee.

14. Default.

The occurrence at any time during the term of this Agreement of one or more of the following events shall constitute an "Event of Default" under this Agreement:

a) Breach. An Event of Default shall occur if Licensee materially breaches or violates any of the terms, covenants, representations or warranties set forth in this Agreement or fails to perform any obligation required by this Agreement.

b) Bankruptcy, Insolvency or Receivership. An Event of Default shall occur if Licensee (a) files a voluntary petition in bankruptcy; (b) is adjudicated insolvent; (c) files any petition or fails to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; (d) seeks, consents to or acquiesces in the appointment of any trustee, receiver, master, custodian or liquidator of Licensee, any of Licensee's property or any revenues, issues, earnings or profits thereof; (e) makes an assignment for the benefit of creditors; or (f) fails to pay Licensee's debts generally as they become due.

c). Violations of Law. An Event of Default shall occur if Licensee violates any existing or future federal, state or local laws or any existing or future ordinances, rules and regulations of the City.

15. Uncured Defaults and Remedies

a) Notice of Default and Opportunity to Cure. If an Event of Default occurs on account of Licensee's failure to pay the License Fee in accordance with Section 5, such Event of Default shall be deemed an Uncured Default and the City shall have the right to terminate this Agreement immediately upon provision of written notice to Licensee. If an Event of Default occurs for a reason other than for failure to pay the License Fee, the City shall provide Licensee with written notice and shall give Licensee the opportunity to cure such Event of Default. For an Event of Default, Licensee shall have thirty (30) days from the date it receives written notice from the City to cure the Event of Default. If any Event of Default is not cured within the time period specified herein, such Event of Default shall, without further notice from the City, become an "Uncured Default" and the City immediately may exercise the remedies provided in Section 15 b).

b) Remedies for Uncured Defaults. Upon the occurrence of an Uncured Default, the City shall be entitled to exercise, at the same time or at different times, any of the following remedies, all of which shall be cumulative of and without limitation to any other rights or remedies the City may have:

c) Termination of Agreement. Upon the occurrence of an Uncured Default, the City may terminate this Agreement. Upon such termination, Licensee shall forfeit all rights granted to it under this Agreement and, except as to Licensee's unperformed obligations and existing liabilities as of the date of termination, this Agreement shall automatically be deemed null and void and shall have no further force or effect. Licensee shall remain obligated to pay and the City shall retain the right to receive License Fees and any other payments due up to the date of termination. Licensee shall remove the Pipeline from and restore the Property as and when requested by the City. The City's right to terminate this Agreement under this Section 15 c) does not and shall not be construed to constitute any kind of limitation on the City's right to terminate this

Agreement for other reasons as provided by and in accordance with this Agreement; provided, however, that Licensee may not abandon the pipeline without the approval of the Railroad Commission or successor agency or other regulatory authority with jurisdiction, if such action without such approval is prohibited at the time by applicable federal or state law or regulation.

d) Legal Action Against Licensee. Upon the occurrence of an Uncured Default, the City may commence against Licensee an action at law for monetary damages or in equity for injunctive relief or specific performance of any of the provisions of this Agreement which, as a matter of equity, are specifically enforceable.

16. Emergencies.

a) Work by the City. For purposes of this Section 16 a), a public emergency shall be any condition which, in the opinion of the officials specified herein, poses an immediate threat to life, health or property and is caused by any natural or man-made disaster, including, but not limited to, storms, floods, fires, accidents, explosion, water main breaks and hazardous materials spills. In the event of a public emergency, the City shall have the right to take whatever action is deemed appropriate by the City Manager, Mayor, or Fire Chief, or their authorized representatives, including, but not limited to, action that may result in damage to the pipeline, and Licensee hereby (1) releases the City, its officers, agents, servants, employees and subcontractors from liability or responsibility for any Damages, as defined in Section 11, that may occur to the pipeline or that Licensee may otherwise incur as a result of such a response, and (2) agrees that Licensee, at Licensee's sole cost and expense, shall be responsible for the repair, relocation or reconstruction of all or any of its pipeline that is affected by such action of the City. In responding to a public emergency, the City agrees to comply with all local, state and federal laws, including any requirements to notify the Texas One Call System, to the extent that they apply at the time and under the circumstances. In addition, if the City takes any action that it believes will affect the pipeline, the City will notify Licensee as soon as practicable so that Licensee may advise and work with the City with respect to such action.

b) Work by or on Behalf of Licensee. In the event of an emergency that directly involves that portion of the pipeline located on the Property and which necessitates immediate emergency response work on or repairs to the pipeline, Licensee may initiate the emergency response work or repairs or take any action required under the circumstances provided that Licensee notifies the City as promptly as possible. After the emergency has passed, Licensee shall apply for and obtain a construction permit from the Director of Parks and otherwise fully comply with the requirements of this Agreement.

17. Notices.

Any notices required pursuant to the provisions of this Agreement or provided by the City or Licensee to the other shall be (a) hand-delivered to the other party, or (b) mailed through the United States Postal Service, postage prepaid, return receipt requested, addressed as follows:

To the City:

City of Burleson
Attn: City Manager
141 West Renfro
Burleson, TX 76028

To Licensee:

Director of Right of Way Coordination
Texas Midstream Gas Services, L.L.C.
P.O. Box 18162
Oklahoma City, OK 73154-0162

18. Compliance with Laws.

The Pipeline installed within the Right-of-way shall be constructed, operated and maintained in accordance with applicable Federal law and regulations of the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration ("PHMSA Regulations") and the Rules of the Texas Railroad Commission or, to the extent that Federal law, PHMSA Regulations, and the Rules of the Texas Railroad Commission do not apply, in accordance with the City Codes and ordinances. After completion of the pipeline on the Property, Licensee shall, by a written statement signed by its President or Chief Engineer, certify to the City biannually that the pipeline on the Property is in compliance with all applicable laws, regulations and guidelines of the United States, State of Texas and the City of Burleson at the time of certification. The first certification shall be made on October 1 immediately following completion of the pipeline crossing and a similar certification shall be made on October 1 of every two years thereafter.

19. No Waiver.

The failure of the City to insist upon the performance of any term or provision of this Agreement or to exercise any rights that the City may have, either under this Agreement or the law, shall not constitute a waiver of the City's right to insist upon appropriate performance or to assert any such right on any future occasion.

20. Governing Law and Venue.

This Agreement shall be construed pursuant to and in accordance with the laws of the State of Texas. Venue for any action, whether real or asserted, at law or in equity, that arises out of the terms of this Agreement shall lie exclusively in state courts located in Johnson County, Texas.

21. Conferences.

At the request of either the City or Licensee, the City and Licensee shall meet at reasonable times and upon reasonable notice to discuss any aspect of this Agreement or Licensee's use of the Property.

22. Assignment.

Except as permitted in this Section 22, the Licensee shall not convey, transfer, pledge, encumber or assign any of its rights under this Agreement

without the prior written consent of the City. Notwithstanding the foregoing, however, Licensee may assign all or any of its rights under this Agreement without the consent of City provided that all of the following conditions are satisfied: (a) the assignee must be a gas pipeline company holding the requisite state and/or federal operating authority; (b) Licensee must give written notice of the assignment to the City; and (c) Licensee must deliver to the City a written agreement signed by the assignee in which the assignee agrees to be bound by all the terms and condition of this Agreement. Any purported assignment that does not satisfy all of the foregoing conditions shall be void.

23. Severability.

If any provision of this Agreement is held to be invalid, illegal or unenforceable by a final order entered by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired. For purposes of this Agreement, a court order shall be final only to the extent that all available legal rights and remedies pertaining to such order, including without limitation all available appeals, have been exhausted.

24. Headings Not Controlling.

Headings and titles that are used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

25. Parties Bound.

The rights, duties and obligations created by this Agreement shall be binding upon and inure to the benefit of the City, Licensee, and their successors and permitted assignees.

26. Entirety of Agreement.

This Agreement contains the entire understanding and agreement between the City and the Licensee as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent it is in conflict with the terms and conditions of this Agreement. This Agreement shall not be amended except by a written agreement signed by both parties. .

27. Recording of Agreement.

It is agreed and understood that this agreement shall not be recorded as a public record in the real property records of Johnson County.

Executed this _____ day of _____, 2009.

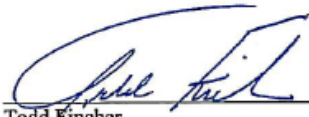
ATTEST: TEXAS MIDSTREAM GAS SERVICES, LLC

By: _____
(Signature)

By: _____
(Signature)

(Printed Name and Title)

(Printed Name and Title)



Todd Fincher
Registered Professional Land Surveyor
State of Texas No. 5633
April 29, 2008
Job No. 07-00393
TX-JOHN-BROW-007.00
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Exhibit "A"



EXHIBIT "A"
20' LICENSE AGREEMENT

**CITY OF BURLESON
ABNER LEE SURVEY
ABSTRACT NO. 496
JOHNSON COUNTY, TEXAS**

BEING all that certain Twenty Foot (20.00') License Agreement situated in the Abner Lee Survey, Abstract No. 496 and being a part of that certain tract of land, conveyed to the City of Burleson as recorded in Volume 1853, Page 246, Deed Records, Johnson County, Texas, and being located Ten Feet (10.00') either and both sides of the centerline of easement, being more particularly described as follows;

COMMENCING at a concrete monument found for reference at the northwest corner of said City of Burleson Tract;

THENCE: North 55 degrees 53 minutes 34 seconds East, a distance of 27.58 feet to the **POINT OF BEGINNING;**

THENCE: South 02 degrees 14 minutes 27 seconds West, a distance of 1019.58 feet to the **POINT OF TERMINATION**, and having a total distance of 1019.58 feet (61.80 Rods).

A Survey Plat representing a graphic image of this description styled as City of Burleson Tract, Page No. 2 of 2, accompanies this document. The Basis of Bearing is Texas State Plane Coordinate System, NAD 83. This description and the accompanying Survey Plat were prepared from record data furnished by the client and was done without the benefit of a Title Report. Surveyor has made no investigation or search for easements or other matters of record that a Title Report would disclose and this survey does not represent a warranty of title or a guarantee of ownership.

I, Todd Fincher, do hereby state that the above and foregoing description was prepared from a survey made on the ground, under my direction and supervision during the month of April 2008.

Todd Fincher
Registered Professional Land Surveyor
State of Texas No. 5633
April 29, 2008
Revised: December 12, 2008
Job No. 08-00393
TX-JOHN-BROW-007.00-REV3
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