

Memorandum

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

From: Peter Krause, Director of Parks and Recreation

Date: August 17, 2009

Subject: Request from Chesapeake Energy for a license agreement for the purpose of installing an electrical transmission line to operate required pad site facilities at the Burleson Cemetery pad site.

Council Action Requested:

1. Council is asked to consider a request from Chesapeake Energy for a license agreement for the purpose of installing an underground electrical transmission line at the Burleson Cemetery pad site and;
2. Authorize the City Manager to sign the agreement.

Background Information:

As Council is aware, Chesapeake Energy has previously approached the City of Burleson for the purpose of installing an electrical transmission line at the City Cemetery for the purpose of providing electrical power for the operation of the pad site's gate, lights and security system. At that time, Chesapeake was unwilling to meet the city's request that the line be installed underground and instead insisted that the city pay the difference between the installation of an overhead line and the requested underground line. That difference was \$39,130. At that time, Council instructed staff to deny Chesapeake's request and propose that Chesapeake install an underground electrical line at their complete expense. Staff did as requested and Chesapeake has since agreed to Council's terms in exchange for a waiver of fees (\$47,650.00) associated with the license agreement. Specifics of the easement request are:

- The easement is 923 feet in length.
- The permanent width of the easement is ten (10) feet.

- Power run to the pad site will also be used to power the Cemetery's water well at no charge to the City. This will also allow the city to power the portable office building located at the city's compost facility.

Staff recommends that Council approve the easement and requested fee waiver based on the fact that if Council were to deny the request, the city would be forced to install an additional electrical line itself in an area that is already "crowded" with previously approved easements (water; waste water; natural gas transmission lines).

Board/Citizen Input:

N/A

Financial Considerations:

There is no expenditure of funds associated with this item.

Attachments:

- (1) Preliminary abstract of easement alignment.
- (2) Request letter from Michael Biggs Chesapeake ROW Agent
- (3) License Agreement

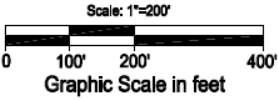
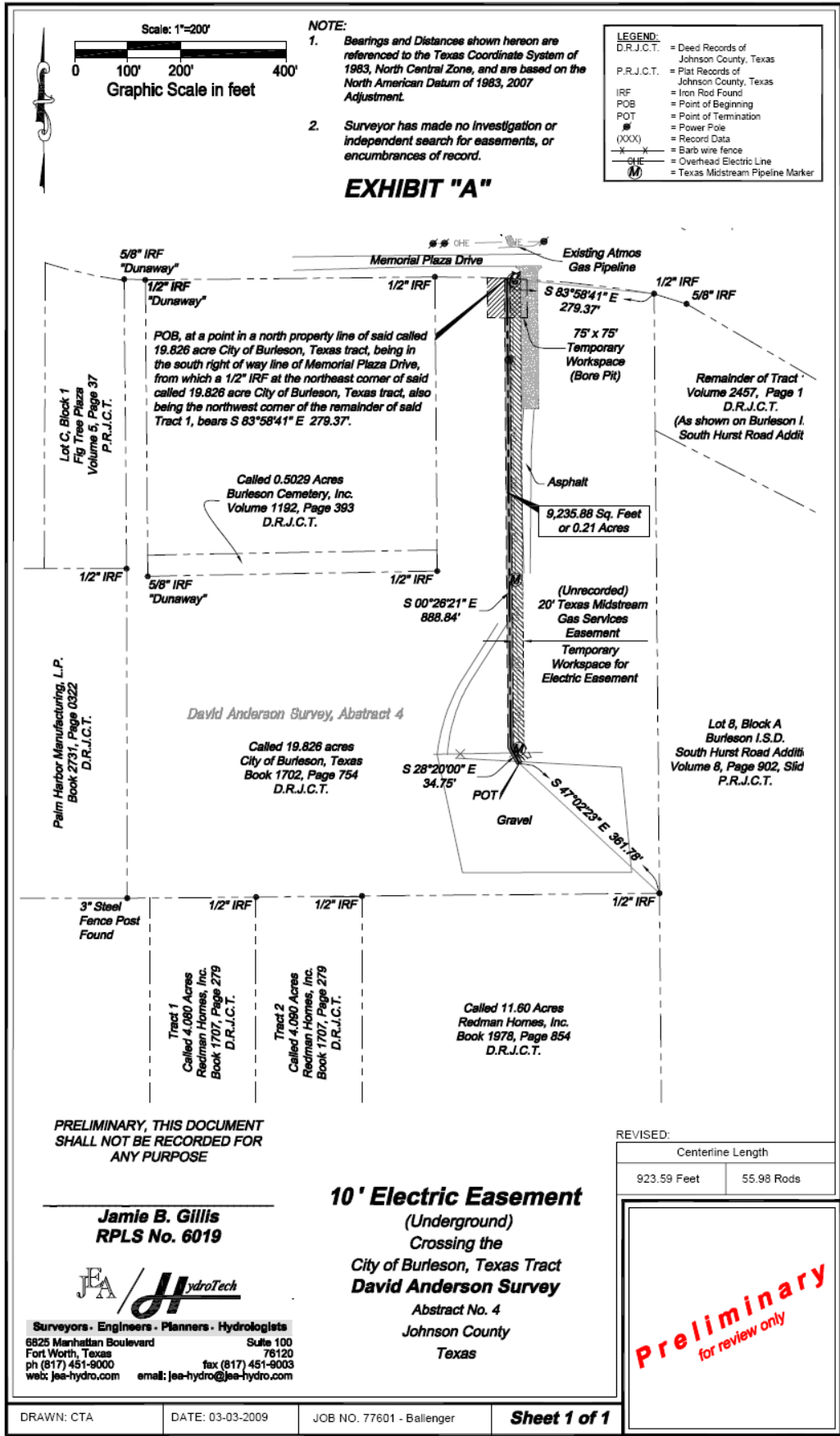
Staff Contact:

Peter Krause, Director of Parks and Recreation

Office (817) 295-8168

Cell (817) 312-0989

Email: pkrause@burlesontx.com

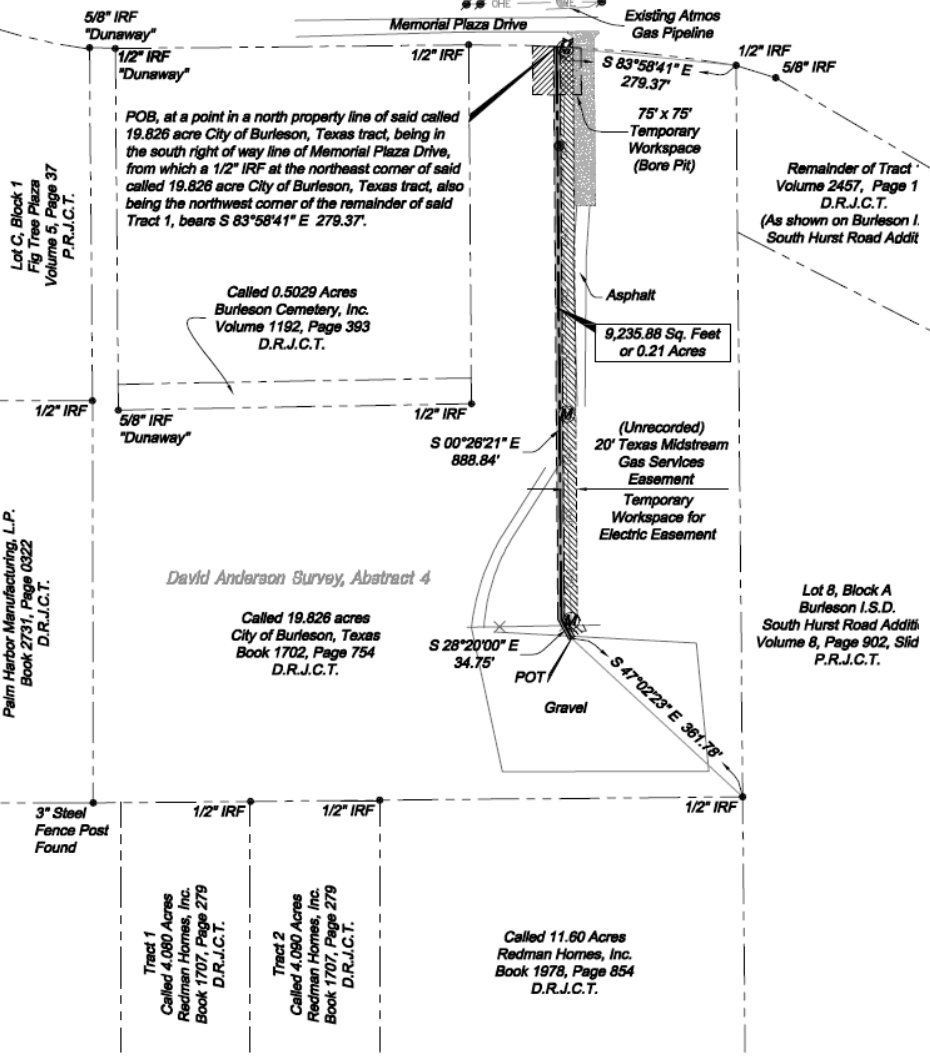


NOTE:
1. Bearings and Distances shown hereon are referenced to the Texas Coordinate System of 1983, North Central Zone, and are based on the North American Datum of 1983, 2007 Adjustment.
2. Surveyor has made no investigation or independent search for easements, or encumbrances of record.

LEGEND:

- D.R.J.C.T. = Deed Records of Johnson County, Texas
- P.R.J.C.T. = Plat Records of Johnson County, Texas
- IRF = Iron Rod Found
- POB = Point of Beginning
- POT = Point of Termination
- ⊕ = Power Pole
- (XXX) = Record Data
- +— = Barb wire fence
- O— = Overhead Electric Line
- Ⓜ = Texas Midstream Pipeline Marker

EXHIBIT "A"



PRELIMINARY, THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE

Jamie B. Gillis
RPLS No. 6019



Surveyors - Engineers - Planners - Hydrologists
8825 Manhattan Boulevard Suite 100
Fort Worth, Texas 76120
ph (817) 451-9000 fax (817) 451-9003
web: jee-hydro.com email: jee-hydro@jee-hydro.com

10' Electric Easement
(Underground)
Crossing the
City of Burleson, Texas Tract
David Anderson Survey
Abstract No. 4
Johnson County
Texas

REVISED:

Centerline Length	
923.59 Feet	55.98 Rods

Preliminary
for review only

August 17, 2009

1F - 4

To whom it may concern;

This is reference to an electrical easement that is being purposed on the City of Burleson's property, located at 630 Memorial Plaza Burleson, Texas 76028. Referred to as the City of Burleson (1H, 2H, 3H, and 4H) pad site. We are purposing for the consideration of Chesapeake to place underground electric lines at our expense on an easement and that the City of Burleson, would donate the land to Chesapeake for such easement. This would help both parties out. The City would have an underground electric line that would not be intrusive to the Memorial area, and would serve the water well located in front of the pad site also. The width of this easement would be less than 20' as purposed to an overhead line in which we would have to have a 30' wide easement. Please see the attached preliminary plat that I have provided for this will show how the easements will lie. The expenses that this will endure on running the underground is three times (3X's) the amount that it takes for overhead lines.

Thanks

Michael Biggs

ROW Agent

Chesapeake Energy

421 Marti Dr.

Cleburne, Texas 76033

Office 817-556-5825 ext 82896

Cell 817-709-8584

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 Chesapeake Energy (“Licensee”), an Oklahoma limited liability company.

WHEREAS, Licensee desires, at its sole cost and expense, to construct, operate and maintain one buried electrical line and appurtenances across and under certain real property owned by the City; D. Anderson survey, Abstract 4, 19.826 acres City of Burleson, Book 1702, Page 754, Johnson County, Texas; and

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 electrical line and easement in a 10 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 twenty (20) foot wide temporary work space adjacent and parallel to the portion of the Property where the easement 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 75’ X 75’ as shown on Exhibit “A”. This temporary workspace shall automatically terminate and expire when the electrical line 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 transmission of electricity and does not allow the Licensee to distribute, sell or otherwise provide electricity 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 electrical line.

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.

The City agrees to waive the assessed easement fee of \$46,150.00 required to install an underground electrical line to power the gates, lights and other facilities at the City of Burleson Pad Site. Licensee further agrees to provide electricity to the city's adjacent water well at no cost to the City of Burleson.

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 easement and facilities located on the Property within ninety (90) calendar days following the completion of such 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 electrical transmission line 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 Electrical Line.

Licensee shall bury or have buried its electrical transmission line 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 underground 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 electrical line excavation, "Buried Electrical Transmission Line" warning tape shall be buried one (1) foot above the transmission line to warn future excavators of the presence of the electrical line.

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 electrical line 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 electrical line 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 electrical line within a reasonable time after installation of the line, 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 electrical line 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.

h) Drainage.

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

i) Vegetation.

In order to minimize erosion and sedimentation resulting from the proposed electrical transmission line's 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 electrical line, Licensee shall, at Licensee's expense, keep the part of the Property inside the fence mowed

j) Commencement of Installation of the electrical transmission line.

Upon failure of Licensee to commence installation of the electrical transmission line on the Property within one hundred eighty (180) calendar days from the execution of this Agreement, or to complete installation of the transmission line 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 electrical line or any related facilities or appurtenances; (2) any claim or lien arising out of work, labor, materials or supplies provided or supplied to Licensee, its contractors, or subcontractors; or (3) 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 comply with the requirements 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 to comply with the requirements listed in Section 5, 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 leave the electrical line service to the city's water well intact and the City shall retain the right to continue its usage of said electrical line so long as the City deems necessary receive. 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, that Licensee may not abandon the electrical line without the approval of the City 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 electrical line, 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 electrical line 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 electrical line 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 electrical line, 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 electrical line located on the Property and which necessitates immediate emergency response work on or repairs to the electrical line, 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
Chesapeake Energy
421 Marti Dr.,
Cleburne, Texas 76033

18. Compliance with Laws.

The electrical line to be installed within the easement shall be constructed, operated and maintained in accordance with applicable 2002 NEC regulations, City of Burleson codes as well as those standards required by electrical provider.

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:

Chesapeake Energy, LLC

By: _____
(Signature)

By: _____
(Signature)

(Printed Name and Title)

(Printed Name and Title)

ATTEST:

THE CITY OF BURLESON

By: _____
City Secretary
Amanda M^cCory

By: _____
Curtis E. Hawk
City Manager