

**PIPELINE EASEMENTS FROM
THE LANDOWNER'S PERSPECTIVE**

Presenter

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CHAPTER 15

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West grew up in Wichita Falls, Texas, and graduated magna cum laude from Midwestern University in Wichita Falls in 1969 and with honors from The University of Texas School of Law in 1972, where he was Editor-in-Chief of the *Texas International Law Journal*.

As a practicing attorney West currently handles oil and gas leases, pipeline easement agreements, and real estate and corporate transactions.

He has been a speaker, panelist, or moderator at many professional education programs on topics of oil and gas law, real estate law, notary law, and professional ethics, including:

- Author/Speaker, “Barnett Shale – Leasing & Current Issues,” National Association of Lease and Title Analysts, National Conference and Educational Seminar, September 15, 2011, New Orleans, LA
- Speaker, “Barnett Shale Leasing Update,” Texas Wesleyan University School of Law, Energy Symposium, April 15, 2010, Fort Worth, TX
- Speaker, “Trends in Leasing,” Texas Wesleyan University School of Law, Urban Gas Drilling Symposium, April 16, 2009, Fort Worth, TX
- Author/Speaker, “Negotiating an Urban Natural Gas Lease; Pipelines; Condemnation,” 18th Annual Robert C. Sneed Texas Land Title Institute, December 4, 2008, San Antonio, TX
- Author/Speaker, “Ethics for Landmen,” Fort Worth Association of Petroleum Landmen, September 18, 2008, Fort Worth, TX
- Author/Speaker, “Urban Issues - Leasing and Drilling,” 2006 Southwest Land Institute, April 6, 2006, Fort Worth, TX
- Author/Speaker, “Ethics for Landmen and Attorneys,” The Southwestern Legal Foundation 34th Annual Institute for Petroleum Landmen, April 5, 1993, Dallas, TX
- Co-Author/Presenter/Panelist, “Ethics Overview,” AAPL International Conferences, 1991 (Denver, CO), 1992 (New Orleans, LA), and 1993 (Houston, TX)

While serving as Chairman of the Tarrant County Bar Association’s Real Estate Section he was the organizing Moderator of that organization’s first two Barnett Shale legal seminars, in 2004 and 2005, and was a speaker at the Barnett Shale Symposiums in 2006, 2007, and 2009 and the City of Fort Worth’s Barnett Shale Expo in 2008. He is also an occasional guest Instructor in the Professional Land Practices training program for landmen at Texas Christian University.

He has held *Martindale-Hubbell Law Directory*’s highest rating of “AV” for over 30 years; has been listed for several years in *Who’s Who in American Law*, *Who’s Who in America*, and *Who’s Who in Finance and Industry*; has been named a “Texas Super Lawyer” in real estate by *Texas Monthly* magazine the past 10 years; has been named one of Tarrant County’s Top Attorneys by *Fort Worth, Texas* magazine for the past 10 years; and was named as a “Power Attorney” by the *Fort Worth Business Press* in 2010.

His civic activities include serving as a former member and Chairman of the City of Fort Worth’s Board of Adjustment – Commercial (2006–2011) and as a current member of the City of Fort Worth’s Zoning Commission (2011–present). He is an elder, former trustee, and active member of Ridglea Presbyterian Church in Fort Worth.

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Ms. Leaton grew up in the Fort Worth area and is a fifth generation Texan. She graduated *magna cum laude* from the University of Texas at Arlington 1998 and *cum laude* from Texas Tech School of Law in 2011. She also studied International Business Transactions and Comparative Law at the Pantheon-Sorbonne in Paris, France.

Licensed to practice law in Texas and North Dakota, Ms. Leaton currently handles oil and gas and real estate transaction matters, including: purchase and sale agreements, mineral leases, surface use and pipeline easement agreements, title examination, title curative work, due diligence, property owners' association formation, and zoning issues.

Before attending law school, Ms. Leaton worked for six years in the land title industry.

In 2012 she was named one of Tarrant County's Top Attorneys by *Fort Worth, Texas* magazine (attorneys in practice fewer than five years).

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PIPELINE EASEMENTS FROM THE LANDOWNER'S PERSPECTIVE

I. INTRODUCTION

This article and the accompanying presentation are intended to offer practical assistance on the negotiation and drafting of pipeline easement agreements primarily for construction and operation of water lines and oil and gas pipelines.

A. Goals

My view of professional seminars is that the written course paper and oral presentation should do three things:

- Reinforce information you already know.
- Remind you of information you once knew, but forgot.
- Give you a few nuggets of new information or wisdom that will help you in your everyday law practice.

B. Perspective

The information in this article and the accompanying presentation is intended to be more "practical" than "scholarly" and will focus more on drafting and negotiation points than substantive legal issues. The focus is also on water lines and oil and gas pipelines, since that is where I have the most experience.

For a comprehensive article on all types of easements and multiple alternatives for language to be used in an easement document, I highly recommend "Annotated Easement," by James Noble Johnson, Chapter 5 in the State Bar of Texas 14th Annual Advanced Real Estate Drafting Course, March 2003, Houston, TX. In addition, "Easements and Rights of Way," by James Noble Johnson, Chapter G, in the State Bar of Texas Advanced Real Estate Law Course, July 1994, Houston and Fort Worth, Texas, is an excellent comprehensive analysis of the legal issues involving easements and rights-of-way, and which I have referred to many times in my day-to-day law practice. Finally, I recommend the article "Drafting Easement Agreements," by Denise Vargo Cheney, in the Advanced Real Estate Drafting Course, January 22, 1993, Houston, Texas, which has particular insight into easement agreements relating to or affecting governmental entities.

This is not intended as a comprehensive article or presentation on oil and gas law or condemnation law. Although I have done a considerable amount of oil and gas work throughout my 41 years of law practice – including oil and gas transactions, litigation, and title opinions – I am primarily a real estate transaction

attorney, like most of you, and not an oil and gas specialist. I also have handled a number of condemnation negotiations and proceedings, but I am not a specialist in condemnations.

My comments reflect my background and experience as an attorney representing individual property owners, real estate developers, property owner associations, informal neighborhood groups, and a variety of private and public entities.

C. Acknowledgements and Usual Disclaimers

1. I gratefully acknowledge the assistance of Lisa C. Leaton, a contract attorney at my law firm, in the preparation of this course article and the attached forms. She has worked with me for more than a year on legal projects for clients of our firm on pipeline easements, mineral leases, and other real estate and oil & gas matters. I also acknowledge assistance from Fort Worth City Attorney Sarah Fullenwider for information on federal, state, and local regulation of natural gas pipelines.

2. The information in this article and the oral presentation is not intended as legal advice and should not be relied upon as advice. If you or a client needs legal advice, then I would welcome the opportunity to open a project file including the signing of an appropriate legal services agreement.

3. The sample forms included in the Appendices to this article are intended as general guides and checklists of points to be considered in the negotiation and preparation of actual documents and are, of course, subject to negotiation to reach mutual agreement on the terms and customization of the language to fit a specific fact situation.

D. Overview and Current Status of Pipeline Easements

Pipelines and the easements in which they are located have a long history in Texas. Each municipality and utility district typically has numerous pipelines and related easements for water supply and wastewater collection. Oil and gas companies and their midstream affiliates and independent pipeline companies have easements and pipelines for local gathering lines and for larger intrastate and interstate transmission lines.

Many of the pipelines are in easements that have existed for decades. Other pipelines and their related easements are related to the growing Texas economy in new real estate developments and in renewed and expanded oil and gas activities in both urban and rural areas.

II. PIPELINES

A. Overview of Oil and Natural Gas Pipelines Regulation

1. Federal and State Laws.

The information summarized below is to provide a general framework for terminology used in this article and not as a definitive article on the regulation of oil and natural gas pipelines. For a more detailed article on natural gas pipelines see "Pipeline Regulation," by Gregg Owens, University of Texas School of Law Land Use Conference, March 26-27, 2009, Austin, Texas.

The transportation and sale of natural gas in interstate commerce is subject to the Federal Natural Gas Act, 15 USC Section 717(b). Under that federal Act, however, the states retain jurisdiction over intrastate transportation, local distribution, distribution facilities, production of natural gas, and gathering of natural gas.

At the federal level, the Office of Pipeline Safety ("OPS") has been established within the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration ("PHMSA"), to exercise overall regulatory responsibility for hazardous liquid and gas pipelines under its federal jurisdiction. The OPS has authority to regulate, inspect, and enforce safety requirements for interstate gas and liquid pipelines.

At the state level, the State of Texas, through a certification by OPS, has authority to regulate, inspect, and enforce safety requirements for intrastate gas and liquid pipelines. This work is performed by the Pipeline Safety Section, Gas Services Division of the Railroad Commission of Texas.

The Railroad Commission of Texas has primary jurisdiction over all persons owning or operating pipelines in Texas under a 1917 Act designed primarily to prevent monopolistic practices, unfair pricing, and discrimination in oil and gas pipelines. That 1917 Act declared oil and gas pipelines to be "common carriers" and gave the RRC the power to establish and enforce common carrier provisions relating to the pipelines. Two years later, in 1919, the RRC's authority over the oil and gas industry was extended by the Texas Legislature to the regulation of oil and gas production in order to prevent waste in drilling and production operations.

2. Categories of Oil and Gas Pipelines

- **Production/flow lines** are located wholly within the oil or gas lease, and are unregulated (except by terms of the lease)
- **Gathering lines** extend from the well site to other well sites and/or to a compressor station. Gathering lines located before the point of sale are not regulated.

- **Transmission lines** transport gas from a gathering line or storage facility to a distribution center. The United States Department of Transportation regulates interstate transmission lines. The Railroad Commission of Texas regulates intrastate transmission lines in the state of Texas.

3. Design Criteria

Design criteria for a particular pipeline are based on the "class" of that pipeline, depending on the "Class Location Units" ("CLU") within the area that extends 220 yards on either side of the centerline of a continuous mile length of pipe. The greater the number of buildings intended for human occupancy located within the continuous mile of the pipe length, the higher the class of the pipeline and the more stringent are the design criteria. The design criteria set specifications for wall thickness and yield strength.

4. Width Requirements for Pipeline Easements

There is no particular width requirement for pipeline easements, but the statute sets the width at 50 feet unless a different width is specified by agreement.

5. Depth Requirements

Pipelines are required to be buried at a depth of at least 3 feet, but after the initial construction the depth is not required to be maintained even if erosion occurs.

6. Setback Requirements

There are no distance setback requirements from buildings or other uses required under federal or state law.

7. Gas Pipeline Entities

The typical gas pipeline entities are:

- a. **Common Carrier** – a pipeline that transports gas "for hire." TEX. NAT. RES. CODE, Section 111.002.
- b. **Gas Utility** – an entity engaged in the business of transporting or distributing gas for public consumption. TEX. UTIL. CODE, Section 181.021(2).
- c. **Gas Corporation** – a gas corporation includes partnerships, limited partnerships, corporations, and limited liability companies that operate gas pipelines. A gas corporation can be a gas utility. TEX. UTIL. CODE, Sections 181.001 and 181.002.

B. Authority for Eminent Domain/Condemnation for Pipeline Entities

Common Carriers have the right of eminent domain and the power of condemnation. TEX. NAT. RES. CODE, Section 111.019.

Gas Corporations and Gas Utilities have the right of eminent domain and the power of condemnation. TEX. UTIL. CODE, Section 181.004.

Municipalities have the right of eminent domain and the power of condemnation. TEX. LOCAL GOV'T CODE, Section 251.001.

Municipal utility districts and other special districts have the right of eminent domain and the power of condemnation. TEX. WATER CODE, Sections 36.105 and 49.222.

C. Tips for Negotiating and Drafting Pipeline Easement Agreements

Landowners typically (at least initially) focus on how much they will be paid for the easement. It is important for the landowner to understand what property rights are being taken for that payment, and to negotiate the best possible terms to the easement agreement to retain and protect as many of their property rights as possible.

During the early stages of pipeline easement negotiations, the pipeline company will present the landowner with an easement agreement instrument that the pipeline company wants the landowner to sign. The pipeline company's instrument will contain terms that will allow the pipeline company maximum flexibility in how it uses the easement, while leaving the landowner few (if any) rights to the easement property.

Accompanying this article as **Appendix B** is a sample easement document typical of those provided by pipeline companies to landowners when the pipeline company makes an initial offer to purchase the easement. It is important to remember that many of the property rights the pipeline company is offering to purchase cannot be acquired by condemnation, such as (1) an obligation on the landowner to warrant and defend title, (2) a right to the pipeline company to transport of more than one substance, and (3) a right of assignment by the pipeline company to another entity. *Cf. Hubenak v. San Jacinto Gas Transmission Co.*, 141 S.W.3d 172, 187 (Tex. 2004).

Also accompanying this article as **Appendix A** is a sample pipeline easement agreement that is much more "landowner friendly" and incorporates many of the terms listed below that I feel should (from a landowner's perspective) be included in the pipeline easement agreement.

Appendix C is a sample permanent water facility easement and temporary construction easement as used by a major Texas municipality (with identifying

information redacted), and attaching an Addendum containing specially negotiated provisions.

Of course, each situation will be different, and depending on the circumstances of the actual project, the pipeline company may not be willing to negotiate some of the terms.

1. Compensation

The landowner is entitled to compensation for (a) the value of the easement itself and (b) the damages to the landowner's property from the burden of the easement. Factors in determining the compensation for the easement include the "going price" in the area, the current and proposed future uses of the property, the property's zoning, width of the permanent easement, restrictions on the landowners' use of the surface over the easement, and other specially negotiated provisions. The damages to the property resulting from the burden of the easement usually are measured by the difference in the market value of the property before and after the establishment of the easement.

In urban environments, the price for the easement is usually priced "per linear foot"; in rural environments the compensation is priced "per linear rod." One (1) linear rod = 16.5 linear feet.

When dealing with municipal or other water or sanitary sewer pipelines, the negotiating agents for the pipeline company will often refer to the price "per square feet" to more easily communicate with landowners and their attorneys and real estate agents.

Some pipeline companies use the local county appraisal district as the basis for their initial contacts with the landowner, which is usually not acceptable to the landowner. If the landowner does not accept an early offer, then the pipeline company will secure a formal appraisal of the desired pipeline easement area relating to that landowner, including a calculation by the appraiser of the compensation for the easement area itself, and a calculation by the appraiser of the economic impact on the landowner's remaining property, and that appraisal must be delivered to the landowner along with the pipeline company's final offer letter.

I recommend contacting your own real estate appraiser or a knowledgeable real estate agent early in the negotiating process to review the appraisal information given to the landowner with the pipeline company's initial offer letter or the later final offer letter.

When negotiating the compensation, and to the extent possible, it is usually beneficial to the landowner for income tax purposes for as much of the total compensation as possible to be allocated to the damages to the property since that is treated under federal income tax law as a reduction in the tax basis

of that property and is not taxable in the year the damage payment is received (except to the extent that the payment for damages exceeds the owner's tax basis in the property).

The payment for the easement itself is usually taxable in the year it is received. For tax documentation purposes, it is best for the owner to receive separate checks from the pipeline company for the easement and for the damages, but if the pipeline company is not willing to do this then I suggest that you send a letter or email to the pipeline company explaining how the total payment was calculated, which might assist the landowner in the preparation of tax returns.

2. Specify the width of the pipeline easement.

A pipeline company wants the most width possible, particularly since it is paying the landowner based on the length of the easement, not the width. Typically a pipeline company needs about 50 feet of width to construct the pipeline and then 20 to 30 feet of width for the permanent easement once the pipe is in the ground.

The easement agreement should set forth two easements – one for a temporary construction easement up to 50 feet in width and one for the permanent pipeline easement between 20 and 30 feet in width. The easement agreement should also set forth a construction timetable, so that the temporary easement terminates no later than a definite date.

If the width of an easement is not specified otherwise in the pipeline easement document, then the landowner may limit it to 50 feet for each pipeline laid under the grant or judgment in eminent domain. TEX. NAT. RES. CODE, Section 111.0194.

3. Include a legal description of the proposed easement property.

If the only property description in the easement agreement is the legal description of the entire property (a "blanket easement"), then the pipeline company can lay the pipeline wherever it wants across that property – even if it is a different location than the right-of-way agent told the landowner.

Like any real estate document that is intended to be filed of record and binding on the parties, the pipeline easement agreement should include a proper legal description of the agreed easement area to ensure that the easement is for that specific area only and not the entire tract. The pipeline company and most attorneys prefer a metes and bounds legal description prepared by a surveyor, including a surveyor's sketch of the subject area to be attached to the pipeline easement agreement. But the legal description, particular in older documents, may be a centerline description (25 feet on either side of line ...) or a

reference to the nearest boundary of the property (50 feet along the landowner's property line...), and the landowner's property itself may be identified by referring to a previously filed document.

Also like other documents relating to real estate, a pipeline easement agreement is not required to be filed of record in order to be binding between the parties to the transaction, but the filing of a properly signed and notarized document gives public notice of the transaction.

4. Specify the nature, location, and number of any surface facilities.

The pipeline company will have to install certain surface facilities along the pipeline route. Unless the easement agreement specifies differently, the pipeline company can install whatever surface equipment it deems necessary along its easement – even if the landowner was told that only an underground pipeline would burden the property.

The easement agreement should specify the nature, location, and number of any surface facilities that will or may burden the tract. If there are going to be surface facilities, the landowner can likely demand more compensation for the easement.

5. Specify the substance(s) to be transported and excluded in the pipeline.

Unless the easement agreement specifies differently, the pipeline company can transport whatever substances it wishes through the pipeline, including salt water waste, sewage, etc.

The easement agreement should state that the pipeline will be used only for the transportation of the particular substances intended for the pipeline, such as oil, natural gas, or water.

6. The easement should be limited to a single pipeline.

Unless the easement agreement specifies differently, the pipeline company can put as many pipelines in the easement as desired by the pipeline company at any time without paying additional damages to the landowner.

The easement agreement should state that the easement is for a single pipeline. Then, if the pipeline company wants to lay additional lines (and do additional damage to the property), the pipeline company must get an additional easement from the landowner and pay the landowner accordingly.

7. Specify the maximum diameter of the pipe and the maximum operating pressure of the pipeline.

One of the landowner's greatest fears regarding oil and gas pipelines is of an explosion that will destroy property and potentially kill or injure the

landowner or others. This fear and risk motivates the landowner to oppose or resist the proposed pipeline easement and to seek higher compensation from the pipeline company to offset the real or perceived risk. Some comfort may be provided to the landowner by specifying the maximum diameter of the pipe and the maximum operating pressure of the pipeline.

One of my partners who frequently handles contested condemnation proceedings recently called my attention to a report dated October 2000 entitled "A Model for Sizing High Consequence Areas Associated with Natural Gas Pipelines," prepared by Mark J. Stephens, at C-FER Technologies, in Alberta Canada (C-FER Report 99068), and prepared for the Gas Research Institute (Contract No. 8174). The purpose of this 15-page report is summarized as follows in the Abstract on page i of the report:

This report developed a simple and defensible approach to sizing the ground area potentially affected by a worst-case ignited rupture of a high-pressure natural gas pipeline. Based on this model, a simple equation has been developed that relates the diameter and operating pressure of a pipeline to the size of the area likely to experience high consequence in the event of an ignited rupture failure. Pipeline incident reports, located in the public domain, were reviewed and provide the basis for evaluating the validity of the proposed affected area equation. The correlation suggests that the simple equation provides a credible estimate of affected area.

The equation set forth in the report uses the diameter of the pipe and the maximum operating pressure (psi) as the key variables to calculate a "hazard area radius" around the pipeline. As one example, a pipeline with an 18 inch diameter pipe being operated at a pressure of 700 psi would result in a hazard area radius of 330 feet, but the same size pipe being operated at a pressure of 1400 psi would result in a hazard area radius of over 600 feet. This type formula may be of assistance to landowners and their attorneys in negotiating the compensation and other terms of a pipeline easement.

8. State the rights and restrictions on the landowner's use of the easement area.

Unless the easement agreement specifies differently, the landowner cannot do anything on the easement area that might interfere with the easement.

The easement agreement should specify what the landowner may and may not do over or in the

easement (roads, parking, landscaping, fences, other easements, structures, etc.).

9. The landowner should not warrant title.

The landowner is not required to warrant title to the pipeline company, and should not. Checking title to the landowner's property is part of the job of the pipeline company's land agent.

If the negotiations are not successful, then the pipeline company may indeed pursue a condemnation of the desired right of easement, but the order received from the court will not contain a warranty of title.

10. Specify the pipeline company's specific routes of ingress and egress.

If no mention is made of the pipeline company's route of ingress and egress to the specified easement area, then the pipeline company will be entitled to a reasonable route.

11. Specify the depth of the pipeline.

Unless the pipeline easement agreement provides otherwise, the pipeline is required to be buried only 3 feet below the surface and that depth is not required to be maintained after the initial construction even if erosion occurs.

The pipeline easement agreement should specify that the pipe must be buried at least 42 inches below the surface, since that is the requirement of FHA guidelines for financing houses near the pipeline.

I recommend asking for a depth of 48 inches below the surface so that there will not be a problem even if some erosion later occurs.

12. Specify whether and how the surface will be restored upon completion of the project.

Unless the easement agreement specifies differently, the pipeline company can restore the surface however it chooses – the cheapest and easiest way possible.

The easement agreement should specify how the pipeline company is to handle settling soil, re-seeding with desired grasses (require this annually until the grass is permanent), double-ditching to get the good topsoil back on top, etc.

13. State the right to recover damages for disruption due to maintenance, repair, replacement, and other activities in the easement area in the future.

Unless the easement agreement specifies differently, the pipeline company can conduct all maintenance, repair, replacement, and other activities necessary to the pipeline without paying additional compensation to the landowner. These operations frequently disrupt the property as much as the initial pipe laying.

The easement agreement should state that the landowner has the right to recover damages for disruption of the property due to maintenance, repair, replacement, and other activities. Then, if the pipeline company does have to tear up the property again, at least the landowner is paid additional damages.

As a *caveat*, be sure to make the easement grant subject to the terms and conditions as set forth in the document. In 1933, the Texas Commission of Appeals held that “under the terms of the conveyance [the pipeline company] had a legal right to locate, construct, maintain and operate such lines across the land, and [that it was] presumed that the grantors assented to bear all loss and take all profits which incidentally resulted from the exercise of those rights in a proper manner,” therefore, the plaintiff could not recover damages caused by construction, maintenance, or operation of the lines unless the defendant’s negligence had caused the damages. *See Lone Star Gas Co. v. J.R. Hutton*, 58 S.W.2d 19, 21 (Tex.Comm’n App. 1933, holding approved). However, in 1953, the Court of Civil Appeals of Texas, Eastland ruled that parties can contract as they desire concerning damages, and if the terms of the easement clearly provide for the pipeline company’s liability, “[the pipeline company] is liable for the damages shown to have been suffered by [the plaintiff] regardless of any negligence by [the pipeline company].” *See Premier Petroleum Co. v. Box*, 255 S.W.2d 298, 300 (Tex. Civ. App.—Eastland 1953, writ ref’d n.r.e.).

14. Indemnify the landowner against liability.

The landowner should seek to obtain a provision that the pipeline company will indemnify the landowner for problems that arise relating to the use of the pipeline easement or other operations by the pipeline company on the landowner’s property. Governmental entities, however, will likely not be subject to such an indemnification obligation, due to sovereign immunity.

15. State whether and when the easement is abandoned and reverts back to the landowner.

Unless the easement agreement specifies differently, the easement is a perpetual burden on the property, whether or not it is ever utilized or continually utilized, until legally abandoned.

Proving that a pipeline has been abandoned can be difficult since the pipeline operator’s “intent” is usually involved as an issue of fact, and the pipeline operator will deny that it has intentionally abandoned the pipeline.

The easement agreement should state that after a certain period of either no use of the easement (i.e., not laying the pipeline within two years of the grant of

the easement) or no use of the pipeline (i.e., two years of no substances running through the pipeline), the easement is considered abandoned and reverts back to the landowner.

16. Additional points for possible consideration, if applicable.

- a. The extent to which the easement area will be maintained and by whom;
- b. Access to the easement area;
- c. Damages caused by contractors;
- d. Restrictions on contractors’ activities (i.e., no guns or fishing poles, no trash, no pictures, etc.);
- e. Restrict or specify activities outside of the easement area;
- f. List special issues, such as saving a favorite tree, not disturbing a sensitive area, or requiring all or part of the pipeline to be installed by boring rather than by open ditch construction;
- g. Explain environmental responsibilities;
- h. State whether or not ponds or lakes built in the future may intrude on the easement without permission;
- i. State restrictions on the pipeline company granting other easements within the easement area;
- j. Specify hours when inspections can occur;
- k. Whether and how the pipeline company is obligated to remove its structures in the event of termination of the easement;
- l. Where warning signs will be located (preferably in one place);
- m. Whether there is a secrecy agreement;
- n. Right to move pipeline at landowner’s expense, if needed, such as for future development of the landowner’s tract;
- o. That all roads used by the pipeline company will be repaired to their former condition or improved when the construction is finished;
- p. Whether temporary crossings will be provided across open trenches or ditches;
- q. Whether there is an established maintenance or inspection schedule;
- r. Whether the terms of the easement agreement state the pipeline company’s right to assign an interest in the easement to a third party; if such provisions are present, some procedure to notify the landowner of such assignment may be included; further, the easement agreement should state that any assignment of the pipeline company’s rights must comply strictly with the original

easement agreement and may not increase its burden;

- s. That the pipeline company is liable for potential payment of damages for up to three years after the work is completed (the usual statute of limitations period for this is only two years); and
- t. Whether the pipeline company is liable for the payment of all survey, filing, and attorney fees incurred incidental to the condemnation.

III. CONDEMNATION

As mentioned at the outset, this article and presentation are not intended to be a comprehensive study of either oil and gas law or condemnation law, and I particularly claim no real expertise in condemnation law. Other attorneys at my firm usually handle contested condemnation proceedings when needed. There are, however, a few general points that I would like to make regarding condemnation.

A. The pipeline company has the right, even without express consent of the property owner and without any compensation, to enter upon the property for the purpose of surveying and conducting non-invasive soil density, anthropological, and ecological tests, but not to perform core boring. The pipeline company will usually ask the owner for such consent, however, in order to reduce controversies.

B. The pipeline company determines the route of the planned pipeline and obtains necessary easements through negotiated easement agreements or, if needed, condemnation proceedings. The landowner may request that the route of the pipeline be located to avoid particular locations on the landowner's property, and that may be the focus of negotiations, but if no agreement is reached by mutual agreement then the pipeline company is likely to seek the court's granting condemnation for the route desired by the pipeline company. Recognizing this, I recommend that the landowner and its attorney keep in mind that a negotiated agreement may be good enough without being perfect, in order to get the benefit of negotiated terms that can benefit the landowner and that likely not be obtained in a condemnation proceeding.

C. A municipality has no authority to determine the pipeline route except that the municipality's consent is required for the pipeline to cross beneath a city street. TEX. TRANSP. CODE, Section 311.001. A municipality or county may not adopt or enforce an ordinance that establishes a safety standard or practice. TEX. UTIL. CODE, Section 121.002. This does not, however, impair the ability of a municipality

to adopt an ordinance that establishes conditions for mapping, locating, or relocating pipelines over, under, along, and across a public street, alley, or private residential area in the boundaries of the municipality, and does not prevent the municipality from assessing a charge for the placement and use of a pipeline in a city street if the street incurs damage.

D. Notwithstanding the municipality's lack of actual authority over many aspects of the pipeline, it is not uncommon for a municipality and its elected officials to become involved in the negotiation process between the pipeline company and property owners in an attempt to encourage the pipeline company to consider an alternate route or to improve the payment offer or other terms of the pipeline easement agreement.

E. Pipeline companies usually do not like to initiate condemnation proceedings, especially against homeowners, since such proceedings are public relations nightmares, which the pipeline companies and their pipeline affiliates try hard to avoid. The pipeline company will send the required notices and will say that it will initiate a condemnation proceeding if an agreement is not reached, but usually an agreement is in fact reached before the condemnation proceeding is actually initiated.

Even after a condemnation proceeding is initiated and before a hearing before the three court-appointed condemnation commissioners is held, the matter is usually resolved by a negotiated mutual agreement before the hearing is actually held.

Very few cases actually go through the condemnation hearing process and the cases that do go through the hearing process tend to involve owners of large tracts or valuable commercial properties.

F. As a result of changes in the Texas statutes relating to condemnation a few years ago, the property owner seldom is entitled to recover its attorney's fees in a condemnation proceeding. *See generally*, TEX. PROP. CODE, Chapter 21. This obviously encourages most property owners to settle their claims before incurring the legal expenses of a condemnation hearing or trial.

G. The best legal advice for most owners of platted lots and small tracts of land is to negotiate the financial and legal terms of the pipeline company's offer, even after a condemnation proceeding is filed and before the hearing before the condemnation commissioners, but to eventually settle the matter before the hearing is held.

IV. TRENDS AND RECENT DEVELOPMENTS

A. "Dish" Resolutions Regarding Greater Municipal Regulation of Pipelines.

In 2008, the town council of the small town of Dish, in Denton County, the crossing point for several gas pipelines, passed a Resolution requesting the Texas Legislature to grant municipalities greater regulatory control over pipelines located in their boundaries. Several other municipalities, large and small, subsequently passed similar resolutions, but no serious action has occurred in the Texas Legislature. I expect that this will be an issue again in the current session of the Texas Legislature, but I do not perceive that there is enough popular or legislative support to result in any significant new legislation at this time.

B. *Denbury* Decision

The recent Texas Supreme Court decision in *Denbury* may make it harder for pipeline owners to use eminent domain to condemn landowner's property to install new lines in Texas.

In the *Denbury* opinion the Supreme Court recognized that Texas statutes "plainly gives private pipeline companies the power of eminent domain" but "that authority is subject to special scrutiny by the courts." *Tex. Rice Land Partners, Ltd. v. Denbury Green Pipeline—Tex., LLC*, 363 S.W.3d 192, 197 (Tex. 2012). Historically, it has been up to the pipeline company to "self-declare" its common carrier status by checking a box on a form it files with the Railroad Commission to obtain a permit for its pipeline, but the Court held that the mere granting of a pipeline permit by the Railroad Commission "did not conclusively establish [the pipeline company's] status as a common carrier and confer the power of eminent domain." *Id.* at 198. Instead, to qualify as a common carrier, the Court held that "a reasonable probability must exist that the pipeline will at some point after construction serve the public by transporting gas for one or more customers who will either retain ownership of their gas or sell it to parties other than the carrier," thereby putting the burden of proof on the pipeline company to show that its pipelines will be for public use. *See id.* at 202.

C. Keystone XL Pipeline

The pipeline being built by TransCanada, a Canadian company, to transport heavy oil sands from Canada to refineries on the Gulf Coast has resulted in several law suits being filed by Texas landowners concerning whether TransCanada qualifies as a "common carrier" and can take private property to build the pipeline. So far, none of these court challenges has permanently stopped construction on the line.

In August 2012, a Lamar County Judge upheld TransCanada's condemnation of a 50-foot strip of land. *TransCanada Keystone Pipeline, L.P. v. Crawford Family Farm P'ship.*, No. 80810 (Co. Ct. at Law, Lamar County, Tex.).

V. CONCLUSION

Renewed real estate development activity is expected to require additional water and sewer lines to serve new residential and commercial projects. The state's desire to provide new surface water supplies throughout Texas will also require new water lines to get the water transported to where it is needed.

In addition, oil and gas drilling is expected to continue in many urban and rural areas of Texas for the foreseeable future. As the oil and gas leases are formed into pooled units and actually drilled, the oil and gas produced from the wells must be transported through pipelines from the drill site and to a market so it can be sold. The payment of royalties to mineral owners is dependent upon the sale of the oil and gas, so the mineral owners that signed the leases have a financial incentive to cooperate with the pipeline companies in getting the necessary pipelines constructed.

Both public and private pipeline companies usually want to avoid a condemnation proceeding as much as the landowners do, to avoid the bad public relations of such a proceeding. But if an agreement simply cannot be reached, then a condemnation proceeding will be initiated.

I hope that this article, presentation, and accompanying sample documents will assist you and your clients effectively negotiate the terms of pipeline easement documents.

VI. RESOURCES

Railroad Commission of Texas website: www.rrc.state.tx.us – maps and general information

Barnett Shale Energy Education Council website (an industry sponsored educational group): www.bseec.org

Powell Shale Digest: www.shaledigest.com – news clippings, summaries, and analysis of leasing, drilling, production, and pipeline activities. Subscription required after initial free trial period. Includes information on shale areas such as Barnett Shale in north central Texas, the Haynesville/Bossier Shale in east Texas and northwest Louisiana, the Eagle Ford play in south Texas, and the Permian Basin play in west Texas, as well as numerous oil and gas plays in other states.

Texas A&M University's Real Estate Center website:
<http://recenter.tamu.edu/pubs/> -- includes publications
on topics such as "Oil & Gas," "Condemnation," and
"Easements"

Oil and gas company and pipeline company websites

**[APPENDICES A, B, AND C ARE ON THE
FOLLOWING PAGES]**

APPENDIX A – Pipeline Easement Agreement (Suggested Form):

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

PIPELINE EASEMENT AGREEMENT

(Modified Easement Agreement for Utilities - Texas Real Estate Forms Manual Form 81-21)

Date:

Grantor:

Grantor's Mailing Address:

Grantee:

Grantee's Mailing Address:

Easement Property:

A [**width**]-foot-wide strip of land more particularly described on Exhibit __ attached hereto and incorporated herein for all purposes, containing approximately __ acres/square feet of land, more or less; being a part of the _____ Survey, Abstract No. __, and being a part of that certain real property owned by Grantor ("Grantor's Property") described in that certain Deed recorded as Instrument No. _____ of the Official Public Records of _____ County, Texas.

Easement Purpose:

For laying, constructing, operating, inspecting, maintaining, replacing, repairing, protecting, abandoning in place (subject to item 7 of the Terms and Conditions herein), and removing one (1) underground pipeline not to exceed [**specify diameter**] inches in outside diameter and not to be operated under pressure exceeding [**specify pressure**], including cathodic protection, below-ground valve settings, and any and all other below-ground devices, equipment, and structures (and only such above-ground devices, equipment, and structures required by law) that may from time to time be deemed by Grantee to be necessary or desirable in connection with the use and convenient operation of said pipeline for the sole purpose of transporting [**specify oil/natural gas/natural gas liquids/ water/etc.**] under and through the Easement Property.

Consideration:

TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration, the receipt and sufficiency of which are acknowledged by Grantor.

Reservations from Conveyance:

1. This instrument conveys to Grantee easement interests in the surface estate only of the Easement Property. Grantor hereby reserves to Grantor, and Grantor's heirs, legal representatives, administrators, executors, successors and assigns, all mineral interests, whether metallic or nonmetallic, whether similar or dissimilar, whether known or unknown, currently owned by Grantor in, on, and under and that may be produced and saved from the Easement Property or acreage pooled or unitized therewith, and the full and exclusive executive rights to execute leases in connection therewith.
2. Grantor reserves the right to convey to others the right to use all or part of the Easement Property in conjunction with Grantee, as long as such further conveyances are subject to the terms of this agreement. Grantee acknowledges that the minimum depth of Grantee's pipeline was negotiated and established so that Grantor can convey additional underground easements for utility purposes.
3. Grantor, as owner of Grantor's Property, and for the benefit of previous and any subsequent grantees of Grantor, reserves the right to use all or part of the Easement Property in conjunction with Grantee for any purpose that will not interfere with the use of the Easement Property by the Grantee. It being understood, however, that no building or similar permanent obstruction will be placed within or upon the Easement Property, and that there will be no material alteration of the ground surface or grade of the Easement Property without the express written consent of the Grantee, which will not be unreasonably withheld and, to the extent that written permission has not been given, Grantee will have the right to clear and keep cleared from within the Easement Property buildings or similar permanent obstruction, though Grantee has no obligation to do so, and, after said pipeline has been installed, Grantee will not be liable for damages caused on the Easement Property by keeping the Easement Property clear of such unauthorized buildings or similar permanent obstruction in the exercise of its rights hereunder.

Exceptions to Conveyance and Warranty:

1. This conveyance is made by Grantor and accepted by Grantee subject to any and all existing easements, covenants, rights-of-way, conditions, restrictions, outstanding mineral interests and royalty interests, if any, relating to the Easement Property, to the extent, and only to the extent, that the same may still be in force and effect, and either shown of record in the office of the County Clerk of the County in which any part of the Property is located, or that may be apparent on the Property.
2. BY ITS ACCEPTANCE OF THIS EASEMENT CONVEYANCE, AND AS A MATERIAL PART OF THE CONSIDERATION, GRANTEE FURTHER EXPRESSLY ACKNOWLEDGES AND AGREES THAT (i) ANY INFORMATION PROVIDED TO GRANTEE PERTAINING TO THE EASEMENT PROPERTY BY GRANTOR HAS NOT BEEN INDEPENDENTLY INVESTIGATED OR VERIFIED BY GRANTOR, (ii) GRANTOR IS NOT MAKING, AND HAS NOT MADE, ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION; AND (iii) GRANTOR IS NOT, AND WILL NOT BE, LIABLE OR BOUND IN ANY MANNER WHATSOEVER BY ANY WRITTEN OR VERBAL STATEMENT, REPRESENTATION, REPORT, SURVEY, OR INFORMATION FURNISHED TO GRANTEE, OR MADE BY ANY PARTY WITH RESPECT TO THE EASEMENT PROPERTY OR THE EASEMENT INTERESTS HEREBY CONVEYED. GRANTEE SPECIFICALLY AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO CONDUCT SUCH TESTS, STUDIES, AND INVESTIGATIONS AS GRANTEE DEEMS NECESSARY AND APPROPRIATE, GRANTEE IS RELYING SOLELY UPON GRANTEE'S OWN INVESTIGATION OF THE EASEMENT PROPERTY AND NOT ON ANY INFORMATION PROVIDED BY GRANTOR. GRANTEE FURTHER AGREES THAT GRANTEE HAS PURCHASED AND ACCEPTED THE EASEMENT INTERESTS IN THE

EASEMENT PROPERTY IN ITS CURRENT, "AS IS," WITH ALL FAULTS CONDITION, AND TO HAVE ASSUMED THE RISK OF ANY MATTER OR CONDITION WHICH IS LATENT OR PATENT OR THAT COULD HAVE BEEN REVEALED BY ITS INVESTIGATIONS. GRANTOR HAS NOT MADE (AND GRANTOR HEREBY EXPRESSLY DISCLAIMS, AND GRANTOR IS SELLING THE PROPERTY WITHOUT) ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WHATSOEVER, AS TO THE VALUE, CONDITION, NATURE, CHARACTER, SUITABILITY, HABITABILITY, OR FITNESS OF THE EASEMENT PROPERTY, THE INCOME TO BE DERIVED THEREFROM, THE PRESENCE OR ABSENCE OF ANY HAZARDOUS MATERIAL OR OTHER ENVIRONMENTAL CONDITION OR COMPLIANCE OF THE LAND WITH, OR VIOLATION OF, ANY LAW, STATUTE, ORDINANCE, RULE, OR REGULATION, AND ANY OF SUCH REPRESENTATIONS AND WARRANTIES, AND ANY CLAIMS OR CAUSES OF ACTION AGAINST GRANTOR BASED IN WHOLE OR IN PART ON ANY VIOLATION OF, OR ARISING WITH RESPECT TO, ANY FEDERAL, STATE, OR LOCAL STATUTE, ORDINANCE, RULE, OR REGULATION ARE HEREBY EXPRESSLY WAIVED AND RELEASED BY GRANTEE.

Grant of Easement:

Grantor, for the Consideration and subject to the Reservations from and Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee an easement over, under, and across the Easement Property for the Easement Purpose (the "Easement") and for the benefit of Grantee, to have and to hold said Easement unto Grantee, subject to the Terms and Conditions hereof.

Terms and Conditions:

The following terms and conditions apply to the Easement granted by this agreement:

1. Grantee will have the right to use a temporary construction easement, not to exceed **[specify width]** feet in width (the "Temporary Construction Easement"), for the use and occupancy by Grantee, its agents, employees, contractors, and subcontractors only for the Easement Purpose, and only in connection with and during the original construction of the pipeline on the Easement. The Temporary Construction Easement will automatically terminate and revert to the Grantor, free and clear of any right, title, or interest in Grantee, upon whichever first occurs: (i) the completion of construction of the pipeline on the Easement; or (ii) twelve (12) months following the date hereof. The description of the Temporary Construction Easement, and the part of Grantor's Property out of which the same is being acquired, are described in Exhibit __ attached hereto and made a part hereof for all purposes.
2. Grantee will have the right of ingress and egress to and from the Easement, which right of ingress and egress will be limited and confined to the boundaries of the Easement and to the boundaries of the Temporary Construction Easement while such Temporary Construction Easement remains in effect.
3. Grantee will bury the pipeline and appurtenances to provide a minimum ground cover of **[specify depth]** inches.
4. Grantee will promptly (a) restore the ground surface as nearly as practicable to the original contour which existed immediately prior to the commencement of any work; (b) provide suitable ditch cross-overs during construction as are reasonably required by Grantor; (c) properly support each side of a contemplated fence opening by suitable posts and braces before a fence is cut, and, where

required, to provide a temporary gate; (d) repair in a good and workmanlike manner any and all fences, parking surfaces, drainage, irrigation, and other utility systems which are cut or damaged by Grantee; and (e) restore or pay Grantor for any damages caused by Grantee or its agents, servants, employees, contractors, or subcontractors to Grantor's growing crops, landscaping, grasses, trees, shrubbery, fences, buildings, drives, parking surfaces, livestock, or other property of Grantor (including the personal property of any tenant, invitee, or permittee) permitted to be located on the Easement by the terms hereof and elsewhere on Grantor's Property as a result of the construction or other pipeline related activities.

5. **Grantee will be solely responsible for the design and construction of the Easement facilities constructed within the Easement Property, the operation, maintenance, and repair thereof, and any damages resulting from the activities of Grantee hereunder or the use of the Easement Property or any other portion of Grantor's Property by Grantee, or Grantees employees, agents, contractors, customers, or invitees. Grantee shall indemnify Grantor, in accordance with law, against any loss and damage that is caused by the exercise of the rights granted under this agreement or by any wrongful or negligent act or omission of Grantee's agents, employees, or contractors in the course of their employment. Nothing contained herein will ever be construed to place upon Grantor any manner of liability for injury to or death of persons or for damage to or loss of property arising from or in any manner connected with the acts, conduct, or negligence of Grantee, or its contractors, in the design, construction, or maintenance of the Easement facilities.**
6. The duration of the Easement is perpetual, subject to the termination provisions herein.
7. Notwithstanding the perpetual character of this Easement, if the Easement facilities are abandoned by Grantee, are ceased to be used for a period of **[specify number of years]** years, or are removed from the Easement Property by Grantee, then in any such event, the easement, rights, and privileges granted hereby will automatically cease, said easement and rights will terminate, and the Easement Property will be released of and from, and title to the Easement Property will revert to and re-vest in Grantor or Grantor's successors or assigns, free and clear of the easement, rights, and privileges granted hereby as fully and completely as if this easement had not been executed, (and Grantee shall furnish at its expense, upon receipt of written request from Grantor, a release of the Easement) in which event Grantee will have the right to abandon the pipeline in place or remove said pipeline. In the event that Grantee elects to abandon the pipeline in place, Grantee agrees to perform such procedures that are standard to the industry in order to prevent corrosion of the pipeline and/or the escape of any hazardous material from the pipeline. Grantee represents that such standard procedures include, without limitation, cleaning the pipeline, verification that no hydrocarbons remain in the pipeline, and ensuring that the pipeline remains moisture free in order to reduce the possibility of corrosion.
8. Grantee covenants and agrees that, in conducting its operations on Grantor's Property, Grantee shall strictly comply with all laws, statutes, rules, and regulations and shall not use the Easement in a manner that may be dangerous or constitute a public or private nuisance. Grantee shall not locate or dispose on or about the Easement any substance that is subject to any law or regulation pertaining to public health, safety, protection, or conservation of the environment. In the event, however, that any contamination should occur on Grantor's Property as the result of Grantee's operations, Grantee shall clean-up such contamination and remediate Grantor's Property to as nearly its original condition as possible.
9. This agreement and the exhibit(s) attached hereto are the entire agreement of the parties concerning the Easement Property and the grant of the Easement by Grantor to Grantee. There are no representations, agreements, warranties, or promises, and neither party is relying on any statement or representations of any agent of the other party, that are not expressly set forth in this agreement

and any exhibits.

10. This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.

11. Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

12. Time is of the essence.

GRANTOR

GRANTEE

By: _____
Name: _____
Its: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20__, by _____.

[seal]

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 20__, by _____, as _____ of _____, a Texas _____ on behalf of said _____.

[seal]

Notary Public, State of Texas

damages shall be determined by final and binding arbitration before three disinterested arbitrators, with one arbitrator being appointed by Grantor, one arbitrator being appointed by Grantee, and the third arbitrator being appointed by the two other arbitrators. If not unanimous, the award may be determined by any two or the three arbitrators and shall be in writing and shall be non-appealable. A judgment upon any award rendered by the arbitrators may be entered by any state or federal court having jurisdiction thereof. Further, the aforesaid consideration includes the right of Grantee to install additional, future pipelines and appurtenances as Grantee, in its sole discretion, may determine to be necessary or convenient.

4. Grantee has the right to trim, cut down or eliminate trees or shrubbery to the extent, in the sole judgment of Grantee as may be necessary to prevent possible present or future interference with the convenient operation or convenient inspection of said lines and to remove possible present or future hazard to such lines, and the right to remove or prevent the construction of any and all buildings, structures, reservoirs, or other obstructions on said strip and to prevent activities on said strip any of which, in the sole judgment of Grantee may presently or in the future endanger or interfere with the efficiency, safety, convenient operation or convenient inspection of said lines and appurtenances.
5. If Grantee should abandon the rights granted herein and if such abandonment should continue for a continuous period of ten years, all rights of Grantee herein shall ipso facto terminate and revert to Grantor, his heirs, legal representatives, and assigns.
6. Grantor and Grantee agree that the failure to assert any right under this Pipeline Easement shall not constitute a waiver of any other right hereunder. Further, it is hereby agreed that any delay by Grantor in asserting any right granted it in the Pipeline Easement, regardless of the length of any such delay, shall not prevent Grantee from later asserting or otherwise enforcing that same right, including but not limited to the right to prevent or remove any encroachments within the easement area as provided in paragraph 4 above.
7. Both Grantor and Grantee hereby represent and warrant that they have read and have fully understood the terms of this Pipeline Easement that they have had the opportunity to have same reviewed by an attorney, and that in entering into this Pipeline Easement they are relying solely upon their independent review and the advice of their respective counsel. Further, Grantor and Grantee acknowledge that this Pipeline Easement has been negotiated by the parties, and this Pipeline Easement shall be construed as one prepared by the joint efforts of Grantor and Grantee and shall not be construed against either party as the drafter.

TO HAVE AND TO HOLD the above described easements and rights unto the said Grantee, and Grantee's successors and assigns, until abandoned as provided for herein.

This instrument and covenants and agreements herein contained shall constitute covenants running with the land, binding upon Grantor, his heirs, legal representatives, successors and assigns, for the benefit of Grantee and Grantee's successors and assigns.

Grantor hereby binds himself, his heirs, legal representatives and assigns to warrant and forever defend all and singular the above described easements and rights, unto the said Grantee, and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

[CONTINUED ON NEXT PAGE]

It is hereby understood that the party securing this grant on behalf of Grantee is without authority to make any covenant or agreement not herein expressed.

EXECUTED this _____ day of _____, _____.

GRANTOR(S):

STATE OF TEXAS

COUNTY OF _____

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be the person(s) whose name is subscribed to the foregoing instrument and acknowledged to me that he/she/they executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, _____.

[seal]

Notary Public, State of Texas

APPENDIX C – Sample of Permanent Water Easement and Temporary Construction Easement, with Negotiated Addendum [See attached 5 pages in PDF format]

APPENDIX C

Sample of Permanent Water Easement and Temporary Construction Easement, with Negotiated Addendum

[REDACTED]

STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS**
COUNTY OF TARRANT §

CITY OF [REDACTED]
PERMANENT WATER FACILITY EASEMENT
AND TEMPORARY CONSTRUCTION EASEMENT

DATE: [REDACTED]

GRANTOR: [REDACTED]

GRANTOR'S MAILING ADDRESS (including County): [REDACTED]

GRANTEE: CITY OF [REDACTED]

GRANTEE'S MAILING ADDRESS (including County): [REDACTED]

CONSIDERATION: One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

PROPERTY: A [REDACTED] sq. ft. tract of land out of the [REDACTED] Survey, abstract No. [REDACTED] and being a strip of land out of two tracts of land conveyed to [REDACTED]

PERMANENT WATER FACILITY EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT

[REDACTED]

TO HAVE AND TO HOLD the above described temporary construction easement, together with, all and singular, the rights and appurtenances thereto in anyway belonging unto Grantee, and Grantee's successors and assigns until the completion of construction and acceptance by Grantee. Grantor hereby bind themselves, their heirs, successors, and assigns, to warrant and defend, all and singular, said easement unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

When the context requires, singular nouns and pronouns include the plural.

See Addendum attached hereto and incorporated herein by reference. In the event of a conflict between the Addendum and this easement, the provisions of the Addendum shall control.

GRANTOR:

GRANTEE:

LEGALITY

APPROVED AS TO FORM AND

Assistant City Attorney

PERMANENT WATER FACILITY EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF [REDACTED] §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me to be the same person whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of _____ and that he/she executed the same as the act of said _____ for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 20__.

Notary Public in and for the State of Texas

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF [REDACTED] §

BEFORE ME, the undersigned authority, on this day personally appeared [REDACTED] known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of the City of [REDACTED] a municipal corporation of [REDACTED] County, Texas, for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 20__.

Notary Public in and for the State of Texas

PERMANENT WATER FACILITY EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT

[REDACTED]

ADDENDUM

This Addendum to the foregoing CITY OF _____ PERMANENT WATER FACILITY EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT (the "Easement") modifies the Easement as follows:

Notwithstanding any provision in the Easement to the contrary:

- 1) Grantor and Grantor's heirs, successors, and assigns forever, reserve all rights, if any, currently owned by Grantor in all oil, gas, and other minerals in and under and that may be produced from the Property;
- 2) Grantor and Grantor's heirs, successors, and assigns forever, reserve the right to construct, maintain, and use driveways, roadways, walkways, parking lots, and landscaping on and across the Property as long as this construction, maintenance, and use does not interfere with the Permanent Water Facility;
- 3) Temporary Construction easement is for twelve months after execution of this Easement; with written notification to Grantor, however, Grantee may extend this temporary construction easement for an additional six month period twice;
- 4) The Easement is granted and accepted subject to any and all reservations, restrictions, covenants, conditions, easements, and other matters of record, if any, relating to the Property, but only to the extent that they are still in effect and shown of record in _____ County, Texas; and
- 5) The Easement is granted without express or implied warranty, and all warranties that might arise by common law as well as the warranties in Section 5.023 of the Texas Property Code (or its successor) are excluded.

GRANTOR:

GRANTEE:

APPROVED AS TO FORM AND LEGALITY:

Assistant City Attorney

