



State of Oklahoma, Department of
Transportation (Farmrail Corporation)
Easement No. 15P004

SUNBELT DIVISION PIPELINE EASEMENT GRANT

KNOW ALL MEN BY THESE PRESENTS:

That the **STATE OF OKLAHOMA, DEPARTMENT OF TRANSPORTATION** (hereinafter referred to as the "Grantor"), by and through its authorized agent, **FARMRAIL CORPORATION**, a Delaware corporation ("Railroad"), acting pursuant to an agency agreement by and between Grantor and Railroad, in consideration of the sum of **SEVEN HUNDRED AND NO/100 (\$700.00) DOLLARS** and other good and valuable consideration paid by Grantee to Railroad, does hereby grant unto **CITY OF CLINTON**, whose address is 415 Gary Blvd, P.O. Box 1177, Clinton, OK 73601 (hereinafter referred to as the "Grantee"), a nonexclusive underground easement for pipeline purposes, and no other purpose, in the County of Custer, State of Oklahoma, along the course indicated by colored marker on the print attached hereto marked Exhibit "A" and by reference made a part hereof, legally described on Exhibit "B" attached and by reference made a part hereof. The property herein described is subject to a track lease and operating agreement between Grantor and Railroad, as it may be extended, modified or replaced (the "Operating Lease").

Grantee's use of the property herein described is made subject to the following terms and conditions which are deemed covenants and shall run with the land:

1. The easement and the rights granted herein shall be under and subject to all currently effective agreements and encumbrances, including without limitation the Operating Lease.
2. While the Operating Lease is in effect, the management of the property and of the rights granted herein shall be administered by Railroad on behalf of Grantor and Railroad.
3. The pipeline, when constructed or if and when the existing pipe shall be replaced, shall be for the purpose of conveying **RAW/TREATED WATER**. The pipeline shall be constructed and installed in strict accordance with plans approved by Grantor and as provided in the print attached hereto, marked Exhibit "C" and by reference made a part of this agreement.

4. Grantor shall permit Grantee reasonable right of entry for the purpose of constructing, replacing, repairing, maintaining and operating said pipeline, it being understood that Grantor may restrict the location of entry points or access on or over the property.
 5. Grantee shall pay the entire cost of constructing, replacing, repairing, maintaining and operating said pipeline. All of said work shall be done in a good and workmanlike manner and in strict accordance with the plans, specifications and profiles, to be prepared by Grantee and submitted in writing for approval by Grantor prior to entry onto the property by Grantee. Grantor reserves the right to have a representative present, but in no way waives any rights under this easement agreement by failing to have said representative present. If at any time Railroad should deem inspectors, flagmen or watchmen desirable or necessary to protect its operations or property, during the work of construction, replacement, repair, maintenance, alteration, relocation or removal of the pipeline, Railroad shall have the right to place such inspectors, flagmen, or watchmen at the sole risk, cost and expense of Grantee, which covenants and agrees to bear the full cost and expense thereof and to promptly reimburse Railroad upon demand at Railroad's then standard rates, including additives. The furnishing or failure to furnish inspectors, flagmen, or watchmen by Railroad, however, shall not release Grantee from any and all other liabilities assumed by Grantee under the terms of this instrument.
 6. Grantee agrees that before and during construction, replacement, repair, maintenance or operation of said pipeline, or at any other time, Grantor shall have the right to provide such safe and temporary structures as Grantor may deem necessary for safely caring for and preserving Grantor's tracks, buildings or other improvements, and Grantee agrees to pay to Grantor the entire cost of putting in and removing such temporary structures and of restoring the property of Grantor as near as may be to the same condition in which it was before commencement of the work.
 7. Grantee, at its sole cost and expense, shall at all times construct, replace, repair, maintain and operate said pipeline in a secure, safe and sanitary condition and in accordance with all applicable laws, ordinances, rules and regulations, and AREMA and Railroad engineering standards. If the manner of constructing, replacing, repairing, maintaining and operating said pipeline shall at any time be in violation of any applicable law, rule, regulation or ordinance, then Grantee shall at no cost or expense to Grantor or Railroad, upon receipt of appropriate notice from a governmental agency having enforcement jurisdiction in the property make such changes or repairs as shall be necessary. Failure or refusal of Grantee to make the required changes or repairs within the time prescribed by said agency shall terminate this easement, provided that it shall not terminate as long as Grantee in good faith and by pursuit of appropriate legal or equitable remedies, enjoins, defends against, appeals from or pursues other lawful measures to avoid the enforcement of said laws, ordinances, rules or regulations.
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8. Grantee shall notify Railroad a minimum of five (5) business days prior to commencement of work, by email to customerservice@farmrail.com, for the purpose of notifying the dispatcher and all parties the date of commencement of work, and until such notification is given and approval received, work on Grantor's property shall not be begun by Grantee or Grantee's contractor. Grantee shall, in all cases, be responsible for proper notification of commencement of work. Grantor shall not unreasonably withhold approval and shall authorize commencement within 48 of notification. In case of emergency, the five (5) business days' prior notice may be waived by mutual agreement between Grantee and Railroad. Failure by Grantee to provide proper notice pursuant to this Article shall constitute default by Grantee and at Grantor's option, shall terminate this easement.
9. Grantor and Railroad shall have the right to retain existing tracks and other improvements at the location of this easement and shall also have the right at any and all times in the future to construct, maintain and operate over said easement such additional track, tracks and other improvements as either of them may from time to time elect. Nothing shall be done or suffered to be done by Grantee that will in any manner impair the usefulness or safety of the existing tracks and other improvements of the Grantor and Railroad or of such track, tracks and other improvements as Grantor or Railroad may construct in the future across or above said easement. Grantee will be responsible for any settlement caused to the roadbed, right of way and/or tracks, facilities and appurtenances on the property arising from or as a result of the installation of the pipeline, and for a period of one (1) year subsequent to the date of completion of the installation or any subsequent work, and Grantee agrees to pay to Railroad on demand the full cost and expense therefore The Grantor reserves the right to grant future easements under, over, across or parallel with the property herein described.
10. Grantee agrees that if, at any time, Grantor or Railroad shall change the location or grade of the railroad tracks at any point of crossing or at any point along a parallel course with pipeline or shall desire to use Grantor's property at said crossing point or parallel course for any purpose whatever, Grantee, at its own expense shall make all changes required by Grantor. If Grantee shall fail, neglect or refuse to make such change for a period of thirty (30) days after receiving notice from Grantor, then Grantor may forthwith make such change at Grantee's expense.
11. Grantee covenants and agrees that no assessments, taxes or charges of any kind shall be made against Grantor, Railroad or the property by reason of the construction or presence of the pipeline, and Grantee further covenants and agrees to pay to Grantor or Railroad promptly upon bills rendered therefor, the full amount of any assessments, taxes or charges of any kind which may be levied, charged, assessed or imposed against Grantor, Railroad or the property by reason of the construction or presence of the pipeline.
12. It is understood between the parties hereto that the operations of Railroad at or near the pipeline involve some risk, and Grantee as part of the consideration for this license hereby releases and waives any right to ask for or demand damages from

Grantor and Railroad for or account of loss of or injury to the pipeline (and contents thereof) of Grantee, including the loss of or interference with service or use thereof and whether attributable to the fault, failure or negligence of Grantor or Railroad or otherwise.

13. (a) Without limiting any other provisions of this Agreement, Grantee, at its expense, will at all times maintain and keep the pipeline and all improvements and property now or hereafter erected or placed on or under the property, in compliance with all federal, state, and local laws, rules and regulations designed to prevent or control the discharge of substances in the land, water, or air.

(b) Without limiting any other provision of this Easement Grant, Grantor and Railroad shall have the right to enter and inspect the pipeline in order to determine whether Grantee is complying with such laws, rules, and regulations, but no such inspection or absence of inspection by Grantor or Railroad shall be construed to relieve Grantee of its obligations to comply with all such laws, rules and regulations.

(c) In the event any cleanup, response, removal or remediation of any environmental condition is required by a governmental entity (hereinafter collectively referred to as "Response Action"), Grantee shall not be entitled to any damages, actual or consequential, by reason of the Response Action's interference with Grantee's use of the pipeline. Grantee shall permit Grantor or Railroad and their contractors full, unrestricted and unconditional access to the pipeline for the purpose of completing or engaging in a Response Action for which Grantee is responsible should Grantee fail to diligently pursue and complete such Response Action to the satisfaction of Grantor. Completion of any Grantee's obligations hereunder by Grantor or Railroad shall not be deemed a waiver of Grantee's obligations under this Easement Grant. Grantor and Railroad shall have the right, but not the obligation, to conduct reasonable inspections of Grantee's Response Action and Grantee shall provide Grantor and Railroad all information requested by Grantor or Railroad regarding Grantee's Response Action or any environmental condition for which Grantee is responsible.

14. (a) As a condition to maintaining the easement granted hereunder, Grantee shall maintain at its sole cost and expense, the following insurance coverage:

(i) Commercial General Liability (CGL) insurance that contains broad form contractual liability with a combined single limit of a minimum of \$1,000,000.00 each occurrence and an aggregate limit of at least \$1,000,000.00. If said CGL policy does not automatically cover Grantee's contractual liability under this Easement Grant, a specific endorsement adding such coverage shall be purchased by Grantee. The contractual liability section of, or endorsement to, the policy must NOT exclude activities within fifty feet (50') of the railroad right of way. Coverage shall be primary and non-contributory in regards to Grantor and Railroad, and shall contain a waiver of subrogation in favor of Grantor and Railroad. Grantor and Railroad shall each be named as an additional insured under this insurance.

(ii) Environmental Legal Liability (ELL) insurance including coverage for bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed, cleanup costs, and defense, including costs and expenses incurred in the investigation, defense or settlement of claims or compliance with applicable statutes, all in connection with any loss arising from the insured's performance under this Easement Grant, with a combined single limit of \$1,000,000.00 each occurrence and an aggregate limit of at least \$1,000,000.00. Coverage shall be primary and non-contributory in regards to Grantor and Railroad, and shall contain a waiver of subrogation in favor of Grantor and Railroad. Grantor and Railroad shall each be named as an additional insured under this insurance.

(iii) Grantee agrees that, if the limits of its insurance increase, the policy limits identified in 14(i) and (ii) shall be increased to match the full policy limits available to Grantee.

(b) CGL and ELL coverage may be provided by a combination of primary and umbrella or excess policies. If Grantee utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

(c) Should said CGL or ELL policy be written on a "claims made" basis instead of a "per occurrence" basis, Grantee shall arrange for adequate time (at least 2 years) after termination or abandonment of the easement granted hereunder for reporting losses.

(d) All insurance shall be issued under standard form policies issued by insurers authorized to do business in Oklahoma, and rated "A" or better by Best's Insurance Report, "AA" or better by Standard & Poor's Insurance Rating Service, or "Aa" or better by Moody's Investor Service. Grantor reserves the right to reject as inadequate any insurance coverage provided by a company that is rated less than the ratings indicated above.

(e) Grantee shall provide a certificate of such insurance to Railroad upon the execution of this Easement Grant. Grantee shall also provide a certificate annually of such insurance to Railroad prior to each by anniversary of the date of execution.

(i) Commercial General Liability (CGL) insurance that contains broad form contractual liability with a combined single limit of a minimum of \$1,000,000.00 each occurrence and an aggregate limit of at least \$1,000,000.00. If said CGL policy does not automatically cover Grantee's contractual liability under this Easement Grant, a specific endorsement adding such coverage shall be purchased by Grantee. The contractual liability section of, or endorsement to, the policy must NOT exclude activities within fifty feet (50') of the railroad right of way. Coverage shall be primary and non-contributory in

15. All rights and interest to said premises shall revert to Grantor if Grantee vacates, abandons or ceases to use said easement with the intent to permanently vacate or

abandon said easement for the purpose herein set forth. Upon such permanent abandonment, Grantee, at its own expense, shall remove its improvements and restore said premises to their original condition. Immediately upon such event, Grantee shall deliver to Grantor, an instrument in proper form for approval and recording by Grantor releasing the property from the easement interest herein conveyed. If Grantee fails to do so in a timely manner, Grantee shall reimburse Grantor and Railroad for all costs, including reasonable attorneys' fees and court costs, incurred in clearing the Grantor's title.

16. Notwithstanding anything to the contrary herein, neither Grantor nor Railroad shall in any circumstance be liable to Grantee for the failure of or defect in Grantor's title or in the estate of the Grantor in and to the property over, under or along which the above-described easement lies.
17. The grants, covenants and stipulations hereof shall extend to and be binding upon respective successors and assigns of the parties hereto. Notwithstanding any interpretation to the contrary, for the purposes of this easement the term "Grantor" shall in all cases be construed to mean the State of Oklahoma, Department of Transportation and its successors and assigns.
18. Each of the parties hereto agrees to execute and deliver unto the other all such documents as may be necessary or appropriate for the effectuation of the provisions and intent of this easement.
19. Grantee shall bear all of the costs of recording this instrument.

IN WITNESS WHEREOF, this instrument is executed this 27 day of February, 2015.

STATE OF OKLAHOMA
DEPARTMENT OF TRANSPORTATION
By its authorized agent, Farmrail Corporation

By: Heather Sheppard
Name: Heather Sheppard
Title: Marketing Representative

By acceptance of this Pipeline Easement Grant, Grantee agrees to be bound by the terms hereof.

City Of Clinton

By: _____
Name:
Title:

STATE OF OKLAHOMA }
 }SS
COUNTY OF CUSTER }

On this 27th day of February, 2015 before me, the undersigned, a Notary Public in and for the State of Oklahoma, personally appeared Heather Sheppard, to me personally known, who, being by me duly sworn, did acknowledge to me that she is the Marketing Representative of Farmrail Corporation, the authorized agent of the State of Oklahoma, Department of Transportation, and that she executed the within and foregoing instrument, and that she executed the same in her/his authorized capacity, as her/his free and voluntary act and deed as such Marketing Representative of Farmrail Corporation, for the uses and purposes therein set forth.



Sonja Marshall
NOTARY PUBLIC
In and for the State of Oklahoma

Mailing Address: PO Box 1750
Clinton, OK 73601

My commission expires: 2-6-17

Commission No.: 01000418

STATE OF _____ }
 }SS
COUNTY OF _____ }

On this _____ day of _____, 2015 before me, the undersigned, a Notary Public in and for the State of [_____], personally appeared [name], to me personally known, who, being by me duly sworn, did acknowledge to me that s/he is the [title] of [Grantee], and that s/he executed the within and foregoing instrument, and that he executed the same in her/his authorized capacity, as her/his free and voluntary act and deed as such [title] of [Grantee], for the uses and purposes therein set forth.

NOTARY PUBLIC
In and for the State of [_____]

SEAL

Mailing Address: _____

My commission expires: _____

Commission No.: _____