

# EXHIBIT "A"

1 inch = 600 feet

**BTU Property for Potential Lease  
Approximately 68.96 Acres**

**Legend**

-  BTU Potential Lease Property 20140131
-  BCAD Parcels
-  STREETS



**CITY OF BRYAN**  
*The Good Life, Texas Style.™*

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## LEASE AGREEMENT

This Lease Agreement (the “Lease” or “Agreement”) this day made and entered into by and between the City of Bryan, Texas, a municipal corporation, doing business as Bryan Texas Utilities, (the “City”), and MAALT Transport, LP a Texas limited partnership (“MAALT”).

City does hereby lease to MAALT, and MAALT does hereby lease from City, those certain parcels of real property of approximately sixty eight (68) acres identified on Exhibit “A” attached hereto and incorporated herein for all purposes (the “Leased Premises”). This exhibit is not a survey, but based on existing data from other surveys and existing maps. It is a good-faith approximation of the property to be leased and any further detail would require a survey to be conducted at BTUs sole option.

### 1. Definitions

- A. “Aggregate materials” means granular material formed from a natural rock substance.
- B. “Car” means one (1) rail car containing Frac Sand.
- C. “Frac Sand” means sand produced for use in the hydraulic fracturing process.
- D. “Leased Premises” refers to the tract of land as shown on Exhibit “A”.
- E. “Transload” means to transfer a shipment from one mode of transportation to another. For purposes of this Agreement, “transloading” involves the transfer of Frac Sand or Aggregate from rail cars into trucks for transport.
- F. “UPRR” means Union Pacific Rail Road.

### 2. Consideration

MAALT agrees to pay the City the following consideration for use of the Lease Premises:

- A. Fracking Sand Car Fee.
  - i. MAALT agrees to pay City TWO HUNDRED DOLLARS (\$200.00) for each of the first one hundred (100) cars of Frac Sand transloaded within the Leased Premises during each calendar month. MAALT guarantees to pay the City a minimum of twelve thousand dollars (\$12,000.00) – or the equivalent of sixty (60) cars of Frac Sand – per month during the term of this Agreement. This obligation shall commence with the first month during which a car of Frac Sand is transloaded within the Leased Premises, or the fifth month from execution of this Lease, whichever is sooner. The Parties recognize that, transloading of cars will not commence until MAALT makes necessary repairs to the Leased Premises; therefore, until transloading begins, MAALT agrees to pay City one hundred dollars (\$100.00) per month for a period not to exceed four (4) months.
  - ii. MAALT agrees to pay City ONE HUNDRED AND FIFTY DOLLARS (\$150.00) for each car of Frac Sand in excess of one hundred (100) cars per month.
- B. Aggregate Materials Fee.

- i. MAALT agrees to pay the City one-half (1/2) of yard facility use fees received by MAALT for each ton of aggregate transloaded within the Leased Premises during each calendar month.

### 3. Payment

- A. By the twentieth day of each month, MAALT will provide a payment to the City, and will include a statement setting forth the car count for the previous month. MAALT agrees to provide the City with UPRR records for verification of the asserted car counts.
- B. By the twentieth day of each month in which aggregate is transloaded within the Leased Premises, MAALT will provide a payment to the City, and will include a statement setting forth the car count and tonnage of material for the previous month. MAALT agrees to provide documentation, in the form of a monthly rail car delivery summary, to support each payment of fees related to the transloading of aggregate material. The City has a right to audit MAALT's delivery documentation at any time.

### 4. Term

This Lease shall be effective upon signing by both parties and shall continue in force for a term of twenty-four (24) months. This Lease may be extended for subsequent twenty-four (24) months terms upon mutual agreement of the Parties.

### 5. Use of Premises

- A. MAALT may use the Leased Premises for the transloading of Frac Sand and aggregate materials.
- B. In connection with its use of and activities in and about the Leased Premises, MAALT, at its own expense, will comply, and will cause its employees, agents, and invitees to comply, with all applicable rules and regulations of governmental agencies.

### 6. Obligations of MAALT

- A. MAALT shall be responsible for improvement and maintenance of the rail spur existing on the Leased Premises. MAALT shall bear the costs of bringing the rail spur into serviceable condition and maintaining the rail spur throughout the duration of this Lease Agreement.
- B. MAALT shall repair the existing rail, maintain the Leased Premises, grade the site and construct pads with the consent of the City. Consent for nonstructural alterations, additions, or improvements shall not be unreasonably withheld by the City. MAALT shall have the authorization to erect or install temporary fixtures provided that MAALT complies with all applicable governmental laws, ordinances, and regulations.
- C. All alterations, additions, or improvements made by MAALT not considered temporary shall become the property of City; however, MAALT shall remove promptly, if City so elects, any or all temporary alterations, additions, and improvements, and any other property placed in or on the Leased Premises by

MAALT specifically designated by City to be removed, and MAALT shall repair any damage caused by such removal.

- D. City or its officers, agents, and representatives shall have the right to enter into and upon any and all parts of the Leased Premises at all reasonable hours to inspect same or make repairs or alternations or additions as City may deem necessary (but without any obligation to do so, except as expressly provided for herein).
- E. MAALT shall appoint one person and an alternate to be the liaison between the City and MAALT who shall have the responsibility for communicating all matters incident to this Lease.
- F. MAALT shall maintain all necessary repairs and maintenance on the rail spur so that it can be operated as a Frac Sand terminal.
- G. MAALT shall coordinate with Brazos County to ensure adequate ingress and egress to the Leased Premises as Brazos County completes repairs on Mikulin Road. The City makes no guarantee of uninterrupted accessibility to the tract.

## 7. Insurance

MAALT will maintain the following levels of insurance during the term of the Lease:

- A. Commercial General Liability (CGL) Insurance – with a limit of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. CGL shall be written on a standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract. No coverage shall be deleted from the standard policy without notification of individual exclusions and acceptance by City. CGL shall name the City of Bryan as an additional insured. Waiver of subrogation is required.
- B. Business Automobile Liability Insurance – with a limit of not less than \$1,000,000 each accident all self-propelled vehicles used in connection with this Contract, whether owned, non-owned or hired. MAALT waives all rights against the City of Bryan for recovery of damages to the extent these damages are covered by the business auto policy or umbrella liability insurance obtained by MAALT or under any auto physical damage coverage.
- C. Workers' Compensation Insurance & Employers' Liability Insurance – MAALT shall maintain workers compensation insurance for statutory limits and employers liability insurance with limits not less than \$500,000 each accident and \$500,000 by disease.
- D. Umbrella or Excess Liability – MAALT may satisfy the minimum limits required CGL or Business Automobile Liability insurance with an Umbrella or Excess Liability policy. MAALT agrees to endorse City of Bryan as an additional insured, unless the Certificate states the Umbrella or Excess Liability provides coverage on a pure “True Follow Form” basis.

- E. MAALT's Insurance to be Primary – MAALT's insurance shall be deemed primary with respect to any insurance or self-insurance program carried by the City of Bryan.
- F. Waiver Of Subrogation Waiver of subrogation in favor of the City of Bryan for each required policy. When required by the insurer or should a policy condition not permit MAALT to enter into a pre-loss agreement to waive subrogation without an endorsement, then MAALT agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should MAALT enter into such an agreement on a pre-loss basis.
- G. Deductibles, Coinsurance Penalties & Self-Insured Retention MAALT shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, or self-insured retention.
- H. Certificate Of Insurance MAALT shall furnish City with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements. The certificate must be from a company with an A.M. Best rating of "A-" or better and/or otherwise acceptable to City. Certificates must be submitted using the ACORD form and all endorsements must be included with the submittal. MAALT has the affirmative obligation to advise City at the address listed below within two business days of the cancellation or substantive change of any required insurance policy, and failure to do so shall be construed as a breach of the contract.

In the event City is notified that a required insurance coverage will cancel or non-renew during the contract period, the MAALT shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. City reserves the right, but not the obligation, to withhold payment to MAALT until coverage is reinstated. If the MAALT fails to maintain the required insurance, City shall have the right, but not the obligation, to purchase the required insurance at MAALT's expense.

#### 8. Indemnity

MAALT agrees to indemnify and hold City harmless against any and all claims, demands, damages, costs and expenses, including reasonable attorney's fees for the defense thereof, arising from the conduct or management of MAALT's business or its use of the Leased Premises or from any breach on the part of MAALT of any conditions of this Lease, or from any act of negligence of MAALT, its agents, contractors, employees, subtenants, guests, or invitees in or about the Leased Premises. In case of any action or proceeding brought against the City by reason of any such claim, MAALT, upon notice from City, covenants to defend such action or proceeding by counsel acceptable to City.

#### 9. Default

- A. The following events shall be deemed to be events of default by MAALT under this Lease:
  - 1. MAALT shall timely fail to pay any payment for the transloading of Frac Sand or Aggregate materials required under Section 3 of this Lease and such failure shall continue for a period of one (1) month.
  - 2. MAALT shall fail to comply with any term, provision, or covenant of this Lease, other than payment of rent, and shall not cure such failure within twenty (20) days after written notice thereof to MAALT.
  - 3. MAALT shall make an assignment for the benefit of creditors.
  - 4. MAALT shall file a petition under any section or chapter of the U.S. Bankruptcy Code, as amended, or under any similar law or statute of the United States of any state thereof; or MAALT shall be adjudged bankrupt or insolvent in proceedings filed against MAALT thereunder and such adjudication shall not be vacated or set aside or stayed within the time permitted by law.
  - 5. A receiver or trustee shall be appointed for all or substantially all of the assets of MAALT and such receivership shall not be terminated or stayed within the time permitted by law.
- B. In the event MAALT should default as that term is defined in A. above, the City may:
  - 1. Terminate this Lease, in which event MAALT shall immediately surrender the Leased Premises to City, and/or
  - 2. Hold MAALT liable for the performance of the Lease provision breached.

10. Miscellaneous

- A. Should MAALT, or any of its successors in interest, hold over the Leased Premises, or any part thereof, after the expiration of the term of this Lease, unless otherwise agreed in writing, such holding over shall constitute and be construed as tenancy from month to month only, and shall continue to be responsible for payment of fees set forth in Section 3 of this Lease. The inclusion of the preceding sentence shall not be construed as City's consent for MAALT to hold over.
- B. MAALT accepts this Lease subject to any deeds of trust, security interests, or mortgages which might now or hereafter constitute a lien upon the Lease Premises and to zoning ordinances and other building and fire ordinances and governmental regulations relating to the use of the property.

- C. All notices provided to be given under this Lease shall be given by certified mail or registered mail, addressed to the proper party, at the following address:

**City of Bryan**

City of Bryan, d.b.a.  
Bryan Texas Utilities  
Attn: General Manager  
P.O. Box 1000  
Bryan, TX 77805

**MAALT**

MAALT Transport, LP  
Director of Sales & Marketing  
4413 Carey Street  
Fort Worth, TX 76113

- D. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.
- E. This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Lease.
- F. This Lease shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Brazos County, Texas.
- G. In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- H. No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.
- I. This Lease constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.
- J. The rights and remedies provided by this Lease are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.
- K. No waiver by the parties hereto of any default or breach of any term, condition, or covenant of this Lease shall be deemed to be waiver of any other breach of the same or any other term, condition, or covenant contained herein.

- L. Neither City nor MAALT shall be required to perform any term, condition, or covenant in this Lease so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of City or MAALT and which by the exercise of due negligence City or MAALT is unable, wholly or in part, to prevent or overcome.

IN WITNESS WHEREOF, the undersigned City and MAALT hereto execute this Lease Agreement as of \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**CITY OF BRYAN/BTU**

**MAALT TRANSPORT, LP**

By: \_\_\_\_\_  
Jason P. Bienski, Mayor

By: \_\_\_\_\_  
Gary Humphreys, President