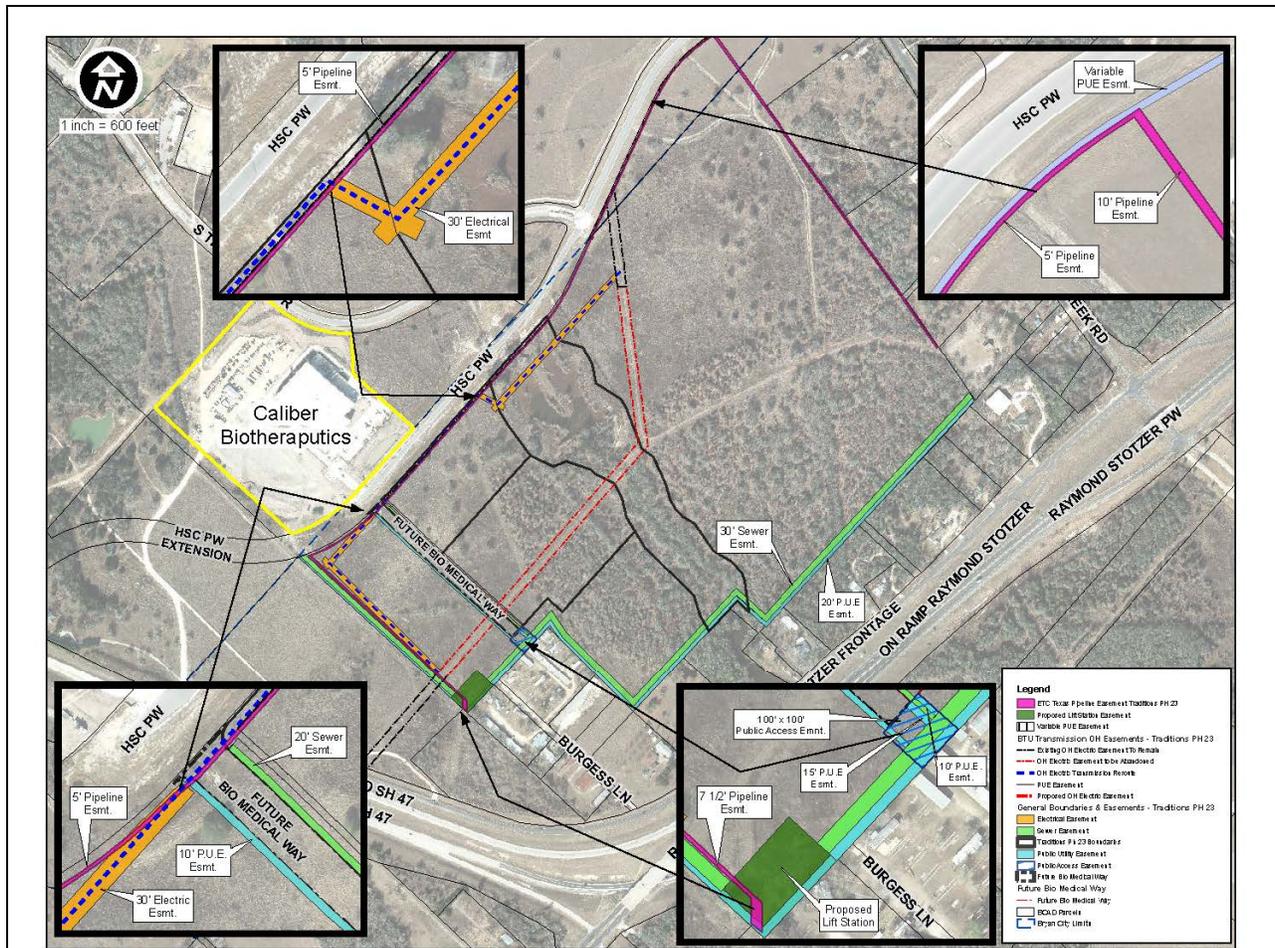


ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: April 8, 2014		DATE SUBMITTED: March 21, 2014	
DEPARTMENT OF ORIGIN: Engineering/Public Works		SUBMITTED BY: W. Paul Kaspar	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input checked="" type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input checked="" type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input checked="" type="checkbox"/> INFRASTRUCTURE
			<input type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: Authorize Jason P. Bienski, as Mayor of the City of Bryan, to consent to the use of an existing Public Utility Easement along HSC Parkway as a Temporary Construction Easement and future Maintenance Access Easement for ETC Texas Pipeline, LTD (ETC).			
SUMMARY STATEMENT: Energy Transfer Company (ETC) has a pipeline that is in conflict with the development of the bio-corridor along HSC Parkway. This easement is the new easement for their newly relocated pipeline that generally follows other utilities serving this Bio-Corridor area. The easement is variable in width from 10 feet in some locations to 5 feet when paralleling HSC Parkway. The reduced width is possible due to the existing Public Utility Easement along HSC Parkway that can be utilized by Energy Transfer to access their pipeline that will be contained within the 5 foot easement. A diagram below shows in pink color the proposed ETC pipeline easement.			
<p>There are multiple signature blocks on the easement document. The first 2 signature blocks are for the granting of the permanent easement from Bryan Commerce and Development and from Traditions Partnership. The 3rd signature is for ETC accepting the easement and the terms. The final signature is for the City of Bryan to consent to the use of the existing Public Utility Easement along HSC Parkway as the temporary easement used for construction of the pipeline and for future access for maintenance purposes.</p>			



STAFF ANALYSIS AND RECOMMENDATION: Staff recommends approval of this item. This permanent easement will provide a permanent home to the pipeline that will not be in conflict with the land being developed along HSC Parkway for the Bio-Corridor. The easement along HSC Parkway has been narrowed to the smallest footprint possible to minimize utilizing the valuable developable land along the roadway.

OPTIONS (In Suggested Order of Staff Preference):

1. Authorize the Mayor to execute the easement
2. Do not authorize the Mayor to execute the easement and provide direction to staff

ATTACHMENTS:

1. Easement Agreement (MS Word)
2. Exhibit A – Metes and Bounds, Drawing of Easement, cross sections of utility locations and site plan of lift station showing easement (single PDF file)

FUNDING SOURCE: No funding source is necessary

APPROVALS: Jayson E. Barfknecht 03/26/14; Hugh R. Walker, 03/28/2014

APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 03-30-2014

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis Hampton, 4/1/14

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

EASEMENT AGREEMENT

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration in hand paid, the receipt and sufficiency of which is hereby acknowledged, BRYAN COMMERCE AND DEVELOPMENT, INCORPORATED, a Texas local government corporation and BRYAN/TRADITIONS, LP, a Texas limited partnership (hereinafter collectively, and with either entity's successors and assigns, "Grantor") do hereby GRANT, BARGAIN, SELL and CONVEY to ETC TEXAS PIPELINE, LTD., and its successors and assigns (hereinafter "Grantee"):

- 1) a non-exclusive permanent easement for the purpose of constructing, operating and maintaining one (1) pipeline for the transportation of oil, oil products, crude petroleum, natural gas, gas liquids, liquefied minerals, or other mineral solutions ("Pipeline"), in, through, under, and along that certain 1.095 acres in the J.H. Jones Survey A-26, Brazos County, Texas, as more particularly described in the attached Exhibit A (the "Permanent Easement").
- 2) a temporary easement, for the purpose of constructing the Pipeline in the Permanent Easement, in, over, through, across, under, and along any Public Utility Easement that is immediately adjacent to the Permanent Easement (the "Temporary Construction Easement"); and
- 3) the right of ingress and egress over and across the Permanent Easement and Temporary Construction Easement for the purpose of maintaining, operating, removing, replacing, protecting and repairing the Pipeline. Grantee shall pay for the repair of any physical damages to roads, driveways, parking areas, fences, or other structural improvements caused by Grantee in the exercise of these rights, and shall maintain said roads, driveways or parking areas in as good or better condition as existed prior to use by Grantee.

The Permanent Easement and Temporary Construction Easement are collectively referred to herein as the "Easements." The term of the Temporary Construction Easement shall only be in effect during periods of construction or maintenance of the Pipeline. All rights, duties and/or obligations arising by or under this Easement Agreement shall only apply to the Temporary Construction Easement while same is in effect.

This Easement Agreement is for the purpose of providing a replacement for that certain Right-of-Way Agreement from Ethyl Burgess to Ferguson Burlson County Gas Gathering System, dated January 29, 1994, filed in the Deed Records of Brazos County, Texas at Volume 2204, Page 162, as such was released by that certain Release of Right of Way Agreements by and between ETC Texas Pipeline, Ltd. and Bryan Commerce and Development, Incorporated, dated April 16, 2013, filed in the Deed Records of Brazos County, Texas at Volume 11277, Page 188.

Grantee shall not have the right to build, construct, install or otherwise establish any above-ground pipelines or appurtenant facilities on the Easements.

It is further agreed as follows:

1. The right to use the Easements shall belong to Grantee, its successors and assigns, and all those acting by or on behalf of Grantee for the purposes herein defined, as may be reasonably necessary for the operation of the Pipeline, across and under the Permanent Easement.
2. Grantee agrees to bury the Pipeline to a depth of six feet (6') below the surface; provided, that if the horizontal separation to any adjacent water line is ten feet (10') or greater, Grantee may reduce the minimum depth to bury such pipelines to four feet (4') below the surface. Further, Grantee shall construct the Pipeline with a twelve (12) gauge wire attached to the Pipeline, and shall also place locator tape above the Pipeline in the pipeline trench.
3. Grantee agrees to pay for the repair of any physical damages to roads, driveways, parking areas, fences, or other structural improvements caused by construction, maintenance, operation, repairing, alteration, replacement or removal of said pipelines and appurtenant facilities. It is understood and agreed that the consideration herein paid does include payment of the initial land surface damages, as set forth in Paragraph 6 below.
4. Grantor does hereby bind itself, and its successors and assigns, to warrant and forever defend all and singular the Permanent Easement unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by or through Grantor, but not otherwise.
5. GRANTEE shall have the right to select the exact location of the Pipeline within the Permanent Easement. After installation of the Pipeline, Grantee shall cause the surface topsoil of the Easements to be replaced to a position that is as much as practical near its original position relative to the surrounding surface topsoil. Grantee shall retain only a limited right to change the slope of the Permanent Easement surface as reasonably necessary to ensure proper lateral and subjacent support for and drainage for the Pipeline and appurtenant facilities, and to ensure the prevention of topsoil erosion. Grantee will, insofar as reasonably practicable, level and re-grade the ground disturbed by Grantee's use of the Easements. Grantee will maintain the Easements clean of all litter and trash during periods of construction, operation, maintenance, repair or removal. All construction debris shall be cleaned up and removed by Grantee from Grantor's lands upon completion of installation and construction of the Pipeline.
6. The consideration paid by Grantee in this Easement Agreement includes the market value of the Easements, both permanent and temporary, any and all damages to Grantor's remaining property and payment for reasonably anticipated damages caused to the surface of the Easements during the initial construction of the Pipeline, including, but not limited to, payment for the damages, if any, to roads, driveways and fences within the Easements. The consideration does not cover any damages which may accrue to:
 - (a) Grantor's other lands;
 - (b) the Permanent Easement from time to time by reason of the operation, maintenance, repair, alteration and/or servicing of the Pipeline; or
 - (c) any other damages incurred from time to time as hereinafter more specifically set forth.

Grantee shall pay Grantor for any and all other such reasonable damages promptly as they may accrue.

7. Grantee agrees to comply in all material respects, at its sole cost, with all applicable federal, state

and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including without limitation, the construction, use, operation, maintenance, repair and service of the Pipeline, associated equipment and appurtenances thereto.

8. Grantee shall use the Easements solely for the purposes specified in this Easement Agreement. Grantee is granted the right to enter the Easements only, and shall be prohibited from entering or otherwise using any other property owned by Grantor without Grantor's prior express written consent.
9. Except as herein provided, no additional facilities may be installed by Grantee, its successors and assigns, on the Easements and no above-ground structures, buildings, utility lines or fences may be erected by Grantee upon, across, or along the Easements, such structures to include, but not be limited to, additional pipelines, power lines, utility lines, structures of any kind, and roads.
10. Grantor has executed and delivered this Agreement, and Grantee has received and accepted this Agreement and the Easements, AS IS, WHERE IS, AND WITH ALL FAULTS, AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL (WITH THE EXCEPTION OF THE LIMITED WARRANTY OF TITLE PROVIDED BELOW), IT BEING THE INTENTION OF GRANTEE TO EXPRESSLY REVOKE, RELEASE, NEGATE AND EXCLUDE ALL REPRESENTATIONS AND WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES AS TO (i) THE CONDITION OF THE EASEMENTS OR ANY ASPECT THEREOF, INCLUDING, WITHOUT LIMITATIONS, ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES RELATED TO SUITABILITY FOR HABITATION, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR USE OF PURPOSE; (ii) THE SOIL CONDITIONS, DRAINAGE, TOPOGRAPHICAL FEATURES, OR OTHER CONDITIONS OF THE EASEMENTS; (iii) ANY FEATURES OR CONDITIONS AT OR WHICH AFFECT THE EASEMENTS WITH RESPECT TO ANY PARTICULAR PURPOSE, USE, DEVELOPMENTAL POTENTIAL, OR OTHERWISE; (iv) THE AREA, SIZE, SHAPE, CONFIGURATION, LOCATION, CAPACITY, QUANTITY, QUALITY, CONDITION, AMOUNT OR SIZE OF THE EASEMENTS; (v) ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES CREATED BY ANY AFFIRMATION OF FACT OR PROMISE OR BY ANY DESCRIPTION OF THE EASEMENTS; (vi) ANY ENVIRONMENTAL, GEOLOGICAL, METEOROLOGICAL, OR OTHER CONDITION OR HAZARD OR THE ABSENCE THEREOF HERETOFORE, NOW, OR HEREAFTER AFFECTING IN ANY MANNER ANY OF THE EASEMENTS; (vii) ANY AND ALL OUTSTANDING INTERESTS OF ANY TYPE OR CHARACTER (WHETHER OR NOT OF RECORD) AFFECTING THE TITLE TO THE EASEMENTS; and (viii) ALL OTHER EXPRESS OR IMPLIED WARRANTIES AND REPRESENTATIONS BY GRANTOR WHATSOEVER.
11. Grantee agrees that if Grantee damages or destroys any roads, driveways, parking areas, fences, or other structural improvements such as, but not limited to bridges, culverts, buildings or other property on the land owned by Grantor (other than Grantee's own property), Grantee shall, within a reasonable period of time, rebuild and repair the damaged property to be as nearly as possible in a like condition to that before such damage or destruction. At Grantor's option, money damages shall be paid in lieu of repairing, replacing or rebuilding. Such damages include those incurred as a result of activities of Grantee, its agents, contractors, employees, subtenants, or licensees during construction of the Pipeline as well as any subsequent damage or destruction caused by operations or activities of Grantee, its agents, contractors, employees, subtenants, or licensees.

12. Grantee agrees to indemnify and hold Grantor harmless against any and all claims, demands, damages, costs, and expenses, including attorneys' fees for the defense of such claims and demands arising from or related to the conduct or management of Grantee's business on the property encumbered by the Easements or Grantee's use of the Easements, or from any breach on the part of Grantee of any conditions of this Agreement, of any negligence of Grantee, its agents, contractors, employees, subtenants, or licensees in or about the Easements, except for negligent acts of Grantor or its assigns. In case of any action or proceeding brought against Grantor by reason of any such claim, Grantee, upon notice from Grantor, agrees to pay all costs, expenses, and attorneys' fees associated with such action or proceeding as well as those incurred by Grantor in the enforcement of this indemnity provision. The provisions of this covenant of indemnity shall survive the termination of the Easements conveyed hereby.
13. Grantee shall not commit, or suffer to be committed, waste upon the Easements, shall keep the Easements and any improvements and equipment thereon in good working order and repair and in a clean, safe and healthful condition. Grantee shall not use the Easements or Grantor's other property or permit the Easements or Grantor's other property to be used so as to cause, suffer, or allow any contamination of soils, ground water, surface water, or natural resources on or adjacent to the Easements or Grantor's other property resulting from, but not limited to, spills or leaks of oil, gasoline, hazardous wastes, or other chemical compounds. Grantee shall be solely responsible for cleanup of any contamination resulting from violation of this provision. Grantee shall indemnify, defend, and hold Grantor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, losses (including diminution in value of the Easements or Grantor's other property, damages for loss of or restriction on use of the Easements or Grantor's other property, or of any amenity of the Easements or Grantor's other property, and sums paid in settlement of claims, attorneys' fees, consultants' fees and experts fees) which arise during or after the easement term as a result of such contamination. The provisions of this covenant of indemnity shall survive the termination of the Easements conveyed hereby.
14. If at any time Grantee ceases to use the Pipeline or Permanent Easement for the purposes herein granted and if such cessation should continue for as long as eighteen (18) consecutive months, all rights of Grantee herein shall ipso facto terminate and revert to Grantor, its successors or assigns.
15. Upon the request of Grantor, Grantee agrees that all or any portion of the Permanent Easement may be relocated to a place of Grantor's choosing on Grantor's property, and Grantor shall be responsible for the full expense of such relocation. Grantee may not interfere with any relocation right of Grantor set forth herein. Grantee may not require any relocation of the Permanent Easement.
16. This Easement Agreement may be executed in several counterparts, each of which shall be an original of this Easement Agreement but all of which, taken together, shall constitute one and the same agreement and be binding upon the parties who executed any counterpart, regardless of whether it is executed by all parties named herein.
17. Grantee, upon thirty (30) days' written notice to Grantor, shall have the right to assign the rights herein granted in whole or in part, but only so long as such assignee expressly assumes all of the obligations, liabilities and covenants of Grantee as set for herein. Grantor acknowledges and agrees that the assignee shall succeed to the rights and obligations of Grantee to the extent conveyed in such assignment.
18. This Easement Agreement embodies the entire agreement between the parties hereto with respect to the Easements and supersedes any and all agreements, representations, warranties, or

statements which may have been made between the parties prior to the date hereof, whether express, implied, written, or verbal, concerning the subject matter hereof and this Agreement shall not be modified or amended except by written instrument executed by each party hereto.

19. This Easement Agreement and all of its terms, provisions and obligations shall be covenants running with the land affected thereby and shall inure to the benefit of and be binding upon Grantor and Grantee and its respective successors and assigns.
20. Grantor reserves the right to use the said premises for all residential, agricultural, recreational, commercial and industrial purposes; provided that Grantor shall not construct any improvements on the Permanent Easement which would unreasonably interfere with Grantee's exercise of the rights herein conveyed. Grantor and its successors and assigns shall have the right to construct, reconstruct or maintain streets, roads or drives, road ditches, drainage ditches, and utilities, at any angle of not less than forty-five (45) degrees to Grantee's Pipeline over and across the Permanent Easement at such place or places as Grantor may from time to time hereafter select for public or private use, provided that all of Grantee's required and applicable spacings, including depth separation limits and other protective requirements are met by Grantor. Such crossing may include streets, roads, drives, ditches, and utilities.

TO HAVE AND TO HOLD the rights, privileges and authority hereby granted unto Grantee, its successors and assigns, so long as the Easements shall be used by, or useful to, Grantee for the purposes herein or otherwise granted. Grantor does hereby agree to warrant and defend said Easements unto Grantee, its successors and assigns against every person whomsoever lawfully claiming the same or any part thereof when the claim is by, through, or under Grantor, but not otherwise.

IN WITNESS WHEREOF, the undersigned have executed this Easement Agreement to be effective as of this ____ day of _____, 2014.

[Signature Pages Follow]

GRANTOR:

BRYAN COMMERCE AND DEVELOPMENT,
INCORPORATED, a Texas local government
corporation

By: _____
Jason P. Bienski, President

ATTEST: _____
Mary Lynne Stratta
City Secretary

APPROVED AS TO FORM:

Janis K. Hampton,
City Attorney

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

This instrument was ACKNOWLEDGED before me on the ____ day of _____, 2014,
by JASON P. BIENSKI, the President of the Board of BRYAN COMMERCE AND DEVELOPMENT,
INCORPORATED, on behalf of said corporation.

NOTARY PUBLIC, State of Texas

GRANTOR:

BRYAN/TRADITIONS, LP,
a Texas limited partnership

By: TRADITIONS ACQUISITION
PARTNERSHIP GP, LLC,
a Texas limited liability company,
its General Partner

By: _____
W. Spencer Clements, Jr.,
Vice President

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

This instrument was ACKNOWLEDGED before me on the ____ day of _____, 2014, by W. Spencer Clements, Jr., Vice President of Traditions Acquisition Partnership GP, LLC, a Texas limited liability company, the general partner of BRYAN/TRADITIONS, LP, a Texas limited partnership, acting for and on behalf of said limited partnership.

NOTARY PUBLIC, State of Texas

ACCEPTANCE BY GRANTEE:

ETC TEXAS PIPELINE, LTD.,
a Texas limited partnership

By: LG PL, LLC,
a Texas limited liability company,
its General Partner

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

This instrument was ACKNOWLEDGED before me on the ____ day of _____, 2014,
by _____, _____ of LG PL, LLC, a Texas limited liability
company, the general partner of ETC TEXAS PIPELINE, LTD., a Texas limited partnership, acting for
and on behalf of said limited partnership.

NOTARY PUBLIC, State of Texas

CONSENT AS TO USE OF TEMPORARY EASEMENT:

CITY OF BRYAN, TEXAS

By: _____
Jason P. Bienski, Mayor

ATTEST: _____
Mary Lynne Stratta
City Secretary

APPROVED AS TO FORM:

Janis K. Hampton,
City Attorney

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

This instrument was ACKNOWLEDGED before me on the ____ day of _____, 2014,
by JASON P. BIENSKI, Mayor of the CITY of BRYAN, TEXAS.

NOTARY PUBLIC, State of Texas