

LICENSE AGREEMENT

C2016-__

THIS LICENSE AGREEMENT is made on the 8th day of December, 2016, ("Effective Date"), by and between **El Paso Natural Gas Company, L.L.C.**, a Delaware limited liability company ("El Paso"), and the **City of Tempe, Arizona** ("City").

WHEREAS, City has a roadway and public utility easement along South Priest Drive in Tempe, Arizona; and

WHEREAS, El Paso has a pipeline located within the City's easement; and

WHEREAS, El Paso also has an easement in the same area as the City's easement and El Paso requires a certain area on each side of its pipeline to maintain the pipeline ("the Premises"); and

WHEREAS, the City seeks to place two traffic signals within El Paso's Premises, more particularly described in the attached Exhibit "A", which exhibit is incorporated herein by reference, for the purpose specified in Paragraph 1 below.

NOW THEREFORE, intending to be legally bound, the parties agree as follows:

1. **Use.** El Paso hereby grants to City, its agents and contractors, a non-exclusive License to enter upon and use the Premises and the right of ingress and egress to and from the Premises, subject to the terms and conditions herein, for the purpose of constructing, installing, repairing, operating and maintaining two traffic signals ("License").

2. **Term.** This License shall commence upon date of execution and shall continue for a period of Fifty (50) years ("Term"). The term shall automatically be extended for additional periods of twenty (20) years each, unless either party notifies the other, in writing, of its desire to terminate the License at the end of the current term. Notification shall be submitted not less than 180 days prior to the end of the current Term.

3. **Conditions Applicable to License.** This License is subject to all existing covenants, conditions, reservations, contracts, leases, licenses, easements, encumbrances, restrictions and rights of way with respect to the Premises, whether or not of record.

4. **No Transfer or Assignment.** This License is personal to City. Any attempt to transfer or assign this License shall result in immediate termination.

5. **Permits and Regulations.** City shall be responsible for securing any required approvals, permits and authorizations from any Federal, State or local agencies, and shall comply with all applicable laws and regulations.

6. **No Interference.** City shall not interfere with the normal operation and activities of El Paso and City shall conduct its activities on the Premises to minimize damage to the Premises and inconvenience to El Paso, its agents, employees and invitees.

7. **Repair and Restoration.** If City, its agents or contractors cause any damage to the Premises, or to El Paso's , infrastructure or other property and improvements (collectively "Property") in connection with the exercise of this License, City shall repair and restore the Premises and Property to their original condition prior to City's use of the Premises pursuant to this License. City shall perform the repair and restoration required hereunder prior to the expiration of this License, or within ten (10) days of the earlier termination of City's rights hereunder. In the event that repair and restoration is performed following the termination this License, the City's Indemnity and Insurance obligations in paragraphs 12 and 13 shall continue until repair and restoration is completed as provided herein.

8. **Breach and Cure.** In the event that City breaches any of its obligations under this License, El Paso shall send City written notice specifying the nature of such breach. City shall have thirty (30) days from the receipt of such notice within which to cure such breach. If more time is reasonably required for City's performance, then City shall notify El Paso in writing of its proposed schedule for performance and commence performance within such thirty (30) day period; thereafter, City shall diligently proceed to completion. If City fails to cure or to commence cure within such thirty (30) day period, then El Paso shall have the right to terminate this License immediately by serving City with written notice of termination. El Paso shall have all rights and remedies available under Arizona law including, but not limited to, actions for damages and specific performance, for any breach of City's obligations hereunder.

9. **Alteration in Writing.** This License supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to the subject matter of this License. No alteration or variation of this License shall be valid unless made in writing and signed by El Paso and City.

10. **Notice.** Any notice required hereunder shall be in writing and shall be addressed as follows:

El Paso:

El Paso Natural Gas Pipeline Company, LLC
a Kinder Morgan company
7776 South Pointe Parkway West, Suite 185
Phoenix, AZ 85044
Attention: Land and Right of Way

A Copy To:

Kinder Morgan Inc.
1001 Louisiana St., Suite 1000
Houston, TX 77002
Attention: Land and Right of Way

City:

City of Tempe

Attn: Community Development

Kathy Pettigrew, Real Estate Management Coordinator

31 E. 5th St.,

Garden Level – East Wing

Tempe, AZ 85281

or to such other address as either party may indicate in a written notice to the other. All notices and communications given under this License Agreement shall be deemed to have been duly given and received: (i) upon personal delivery, or (ii) as of the third business day after mailing by United States certified mail, return receipt requested, postage prepaid, addressed as set forth above, or (iii) the immediately succeeding business day after deposit (for next day delivery) with Federal Express or other similar overnight courier system, or (iv) 24 hours after facsimile transmittal with confirmation of receipt and followed by personal delivery, United States mail, or overnight delivery as specified in this Paragraph.

11. **Indemnification.** City shall indemnify, defend, and hold harmless El Paso, its officers, agents and employees, from and against any claims, damages, costs, expenses, or liabilities (collectively “Claims”) arising out of City’s use of the Premises under this License including, without limitation, Claims for loss or damage to any property, or for death or injury to any person or persons but only in proportion to and to the extent that such Claims arise from the negligent or intentional acts or omissions of City, its officers, agents, partners, invitees or employees.

12. **Insurance.**

13.1 **City’s Insurance.** City, at its sole cost and expense, shall insure its activities in connection with this License and obtain, keep in force, and maintain insurance as follows:

A. Commercial Form General Liability Insurance (contractual liability included) with minimum limits as follows:

Each Occurrence \$ 1,000,000

1) Products/Completed Operations Aggregate \$ 2,000,000

2) Personal and Advertising Injury \$ 1,000,000

3) General Aggregate \$ 2,000,000

If the above insurance is written on a claims-made form, it shall continue for three (3) years following termination of this License. The insurance shall have a retroactive date of placement prior to or coinciding with the commencement of the Term of this License.

B. Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with a combined single of not less than one million dollars (\$ 1,000,000) per occurrence.

C. Property Insurance, Fire and Extended Coverage Form in an amount sufficient to reimburse City for all of its equipment, trade fixtures, inventory, fixtures and other personal property located on or in the Premises including leasehold improvements hereinafter constructed or installed.

- D. Workers' Compensation as required by Arizona law.
- E. Such other insurance in such amounts which from time to time may be reasonably required by the mutual consent of El Paso and City against other insurable risks relating to performance.

The coverages required herein shall not limit the liability of City. The coverages referred to under subsections A and B of Section 13.1 shall include El Paso as an additional insured. Such a provision shall apply only in proportion to and to the extent of the negligent acts or omissions of City, its officers, agents, and employees. City, upon the execution of this License, shall furnish El Paso with certificates of insurance evidencing compliance with all requirements. Certificates shall provide for thirty (30) days (ten [10] days for non-payment of premium) advance written notice to El Paso of any material modification, change or cancellation of the above insurance coverages. Coverage shall be provided pursuant to City's program of self-insurance in accordance with applicable Arizona law.

13.2 **Waiver of Subrogation.** City hereby waives any right of recovery against El Paso due to loss of or damage to the property of City when such loss of or damage to property arises out of an act of God or any of the property perils included in the classification of fire or extended perils ("all risk" as such term is used in the insurance industry) whether or not such perils have been insured, self-insured, or non-insured.

13.3 **El Paso's Insurance.** El Paso will maintain a program of self-insurance.

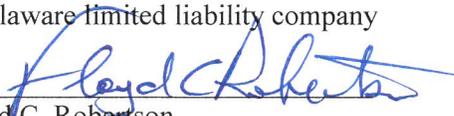
14. **Lien Free Condition.** City shall not cause or permit any liens to be placed against the Premises or against El Paso's other property as a result of City's exercise of rights under this License. In the event of the filing of any such liens, City shall promptly cause such liens to be removed. In no event shall such lien removal require more than thirty (30) days.

IN WITNESS WHEREOF, the parties have executed this License Agreement the day and year first above written.

CITY:
City of Tempe,
an Arizona municipal corporation

By: _____
Mark W. Mitchell, Mayor

EL PASO:
El Paso Natural Gas Company L.L.C.
a Delaware limited liability company

By: 
Floyd C. Robertson
Title: Attorney-in-fact

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA

this _____ day of _____, 2016.

ATTEST:

APPROVED AS TO FORM:

Brigitta Kuiper, City Clerk

Judith R. Baumann, City Attorney

EXHIBIT A

