

LICENSE AGREEMENT

This License Agreement is made this _____ day of _____, 2014, by and between the City of Lawrence, Kansas, a municipal corporation ("City"), and ("Southern Star").

RECITALS

- A. The City is the holder of those Rights of Way on which Ousdahl Road and Michigan Street ("the City's Rights of Way") are located in Lawrence, Douglas County, Kansas;
- B. Pursuant to the laws of the State of Kansas and the ordinances of the City of Lawrence, Kansas, the authority to use the public rights of way within the City is vested in the reasonable police powers of the City;
- C. Southern Star Central wishes to place and install facilities for the transmission of natural gas in certain portions of the City's Rights of Way, specifically crossing under Ousdahl Road approximately at 33rd Street and Michigan Street approximately at 33rd Street, for the sole and limited purpose of completing a network of pipelines for the transmission of natural gas (A map showing the proposed route of the natural gas pipeline and the proposed use of the City's Rights of Way is affixed hereto as Exhibit A and is incorporated herein by reference);
- D. To that end, Southern Star has submitted to the City plans detailing its proposed use of the City's Rights of Way (Copies of those plans and the legal descriptions of the license areas are affixed hereto as Exhibit B and are incorporated herein by reference); and
- E. The City has approved those plans contingent, *inter alia*, upon the execution of this License Agreement and compliance with the terms of this License Agreement.

AGREEMENT

NOW, THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

SECTION 1. Adoption of Recitals. The above recitals are incorporated herein by reference as if set forth in full.

SECTION 2. Definitions. For the purposes of this License Agreement, the following words and phrases shall have the meanings given herein:

- (a) "Facilities" shall mean Southern Star's natural gas transmission pipelines and all appurtenances and improvements thereto, whether existing above or below ground.
- (b) "Public Improvement" shall mean any existing or contemplated public facility, building, or capital improvement project, including but not limited to streets, alleys, sidewalks, sewers, water mains, drainage conduits, rights of way improvements, and other Public Projects.
- (c) "Public Project" shall mean any project planned or undertaken by the City or any other governmental entity for the construction, reconstruction, maintenance, or repair of public facilities or Public Improvements, or for any public purpose.

SECTION 3. Grant of Limited License.

- (a) For and in recognition of the mutual consideration set forth in this License Agreement, the satisfaction of which is hereby acknowledged by the parties, Southern Star is hereby granted a limited nonexclusive license to construct, place, replace, repair, maintain, extend, and operate its Facilities under the City's Rights of Way, as shown in Exhibits A and B, for the purpose of completing a network of pipelines for the transmission of natural gas, provided that the license granted by this agreement shall be limited to the locations shown in Exhibit A.
- (b) This License Agreement is not a franchise agreement under K.S.A. 12-2001 *et seq.* Southern Star hereby acknowledges, however, its obligation to enter into a contract franchise with the City before using the City's Rights of Way for the transmission and delivery of natural gas services directly to the City or its inhabitants.
- (c) The grant of this License Agreement shall not convey title, equitable or legal, to Southern Star in the City's Rights of Way and shall only give to Southern Star the right to occupy the City's Rights of Way for the purposes and for the time stated in this License Agreement.
- (d) Nothing in this License Agreement shall be construed as giving Southern Star any exclusive rights or privileges.
- (e) Southern Star or Southern Star's contractor shall, prior to commencing any construction of Southern Star's Facilities in the City's Rights of Way, obtain from the City a Right of Way Permit and shall post a payment bond or other guaranty

that the construction of Southern Star's Facilities in the City's Rights of Way will be constructed without the attachment of any construction liens.

SECTION 4. Use of Public Rights of Way. In using Public Rights of Way under this License Agreement, Southern Star shall be subject to all ordinances, resolutions, rules, regulations, and policies now or hereafter adopted or promulgated by the City in the reasonable exercise of its police powers and shall be subject to all applicable laws, statutes, ordinances, regulations, orders, and rules adopted or promulgated by any governing body now or hereafter having jurisdiction. In addition, Southern Star shall be subject to all ordinances, resolutions, rules, regulations, and policies now or hereafter adopted or promulgated by the City relating to the use of public rights of way, including but not limited to permits, sidewalk and pavement cuts, utility location, construction coordination, the City's "Complete Streets" policy, beautification, tree care, and other requirements affecting the use of City's Rights of Way. Southern Star shall also comply with the following:

- (a) Southern Star's use of the City's Rights of Way shall, in all matters, be subject and subordinate to the City's use of the City's Rights of Way for any public purpose or for any purpose relating to the health, safety, and welfare of the City. Southern Star shall, as shown in Exhibit B, install its Facilities in a manner that minimizes any adverse impact on Public Improvements as reasonably determined by the City. Where placement is not otherwise regulated, the Facilities shall be placed with adequate clearance from such Public Improvements so as not to impact or be impacted by such Public Improvements.
- (b) All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind that are injured, damaged, or removed by Southern Star, while engaging in any activity under this License Agreement, shall be fully repaired or replaced within a reasonable time by Southern Star at its sole cost and expense and to the reasonable satisfaction of the City.
- (c) Southern Star shall keep and maintain accurate records and as-built drawings depicting the accurate location of all Facilities constructed, reconstructed, located, or relocated in the City's Rights of Way after the date hereof and shall provide that information to the City upon its request. Where such information is available electronically, upon request of the City, Southern Star agrees to provide such information in an electronic format. Such location and identification shall be at the sole cost and expense of Southern Star, without any such cost or expense to the City or its authorized agents and contractors.
- (d) Except in cases of emergency, Southern Star shall submit, a minimum of fourteen (14) days prior to construction, reconstruction, location, or relocation of any Facilities in the City's Rights of Way, to the City Engineer, or his or her designee, for approval, plans and specifications related to the proposed

construction, reconstruction, location, or relocation. The City shall not unreasonably withhold, delay, or condition approval of said plans and specification. The City's review of the plans and specifications shall be confined to matters impacting the interests of the City.

- (e)** As reasonably necessary, Southern Star shall relocate or adjust any of its Facilities located in the City's Rights of Way for a Public Project upon one hundred eighty (180) days' written notice from the City. Such relocation or adjustment shall be performed by Southern Star at its sole cost and expense, without any cost or expense to the City or its authorized agents and contractors and shall be subject specifically to the rules and regulations of the City.
- (f)** It shall be the sole responsibility of Southern Star to take adequate measures to protect and defend its Facilities in the City's Rights of Way from harm and damage. If Southern Star fails to accurately or timely locate its Facilities when requested, then Southern Star has no claim for costs or damages against the City or its authorized agents and contractors or any other party authorized to be in the City's Rights of Way, except to the extent that such harm or damage is caused by such party's intentional conduct. The City and its authorized agents and contractors agree to take reasonable precautionary measures, including but not limited to calling for utility locations and observing marker posts, when working near Southern Star's Facilities.
- (g)** Except in cases of emergency, Southern Star shall notify the City not less than ten (10) days in advance of any construction, reconstruction, repair, location, or relocation of Facilities that would require any street closure or that would reduce the traffic flow to less than two lanes of moving traffic. The City shall follow its policies in the approval or denial of such authority, neither of which shall be unreasonably denied nor delayed. Except in cases of emergency, no such closure shall take place without the prior authorization of the City.

In addition, all work performed in the traveled portion of the City's Rights of Way that, in any way, impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected. For all work performed within the City's Rights of Way, Southern Star shall comply with the Manual for Uniform Traffic Control Devices (MUTCD) and the City's regulations, rules, and orders regarding the placement of signs, barricades, and other safeguards.

- (h)** All technical standards governing construction, reconstruction, installation, operation, testing use, maintenance, and dismantling of the Facilities in the City's Rights of Way shall be in accordance with applicable present and future federal, state, and local laws and regulations.

SECTION 5. Street Tree Ordinance. Southern Star shall comply with the provisions of the City's Street Tree Ordinance (Chapter 18, Article 1, of the Code of the City of Lawrence, Kansas, and amendments thereto) regarding the care, pruning, trimming, and removing of trees located in or on the City's Rights of Way.

SECTION 6. Location of Underground Facilities and Equipment. Southern Star's Facilities shall be placed underground as required by City ordinances and as shown on Exhibit B to this License Agreement. Where underground construction is made, the Facilities, appurtenances and improvements thereto, and any necessary trenching shall be installed, maintained, or provided by Southern Star in accordance with City ordinances and at Southern Star's sole cost and expense.

SECTION 7. Accommodation. The permission granted to Southern Star under this License Agreement is given for good and valuable consideration. However, the permission granted is also given as an accommodation to Southern Star and shall be made without requiring the payment of rent from Southern Star. Southern Star hereby acknowledges the City's right to the City's Rights of Way and agrees never to assail, resist, or deny such right by virtue of Southern Star's use or occupancy of the City's Rights of Way under this License Agreement.

SECTION 8. Indemnification.

- (a) It shall be the responsibility of Southern Star to take adequate measures to protect and defend its Facilities in the City's Rights of Way from harm or damage. If Southern Star fails to locate its Facilities accurately or timely, when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 *et seq.*, then it has no claim for costs or damages against the City or its authorized contractors, except to the extent such harm or damage is caused by such party's gross negligence or intentional conduct.
- (b) Southern Star, and any successor or assign, agrees to indemnify, defend, save, and hold harmless the City, its officers, commissioners, agents, employees, grantees, and assigns, from and against all claims, actions, liabilities, damages, costs, expenses, and judgments, including attorneys' fees, which relate to, arise out of, or are in any way associated with the Southern Star's activities in the City's Rights of Way under the terms of this License Agreement on account of any injury to persons (including death) or damage to property. This indemnification clause shall not apply to any injury or damage caused by the City's own negligence or intentional conduct. This indemnity provision shall extend beyond the termination or expiration of this License Agreement.
- (c) The City and Southern Star shall promptly advise the other in writing of any known claim or demand against Southern Star or the City related to or arising out of the Southern Star's activities in the City's Rights of Way.

SECTION 9. Transfer and Assignment.

- (a) Pursuant to the written permission of the City, which shall not unreasonably be withheld, Southern Star shall have the right to assign this License Agreement and the rights and privileges hereby granted, to any person, firm, or corporation, and any such assignee, by accepting such assignment, shall be bound by the terms and provisions of this License Agreement. If Southern Star should seek approval to assign this License Agreement, Southern Star shall notify the City in writing. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk. This License Agreement shall be assignable only in accordance with the laws of the State of Kansas.

- (b) This provision shall not apply in the case of sale, assignment, transfer, or lease by Southern Star to an affiliated interest; nor shall it apply to assignments made or security interests granted in order to secure financing. Southern Star shall, however, provide to the City at least thirty (30) days' written notice of such sale, assignment, transfer, or lease to an affiliated interest.

SECTION 10. Notice. All notices, requests, demands, or other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or by a recognized overnight delivery service, to the following addresses:

If to City, to:

City of Lawrence, Kansas
Attn: City Clerk
6 East 6th Street
P.O. Box 708
Lawrence, Kansas 66044

With a copy to:

Attn: City Attorney
Toni R. Wheeler
6 East 6th Street
P.O. Box 708
Lawrence, Kansas 66044

If to Southern Star, to:

Southern Star Central Gas Pipeline, Inc.
Attn: Vice President and Chief Operations Officer
Robert S. Bahnick
P.O. Box 20010
Owensboro, Kentucky 42304

Any such Notice shall be deemed effective upon actual receipt or refusal of receipt as shown on any return receipt obtained under this Section.

SECTION 11. Term and Termination Date.

- (a) This License Agreement shall be effective for a term of ten (10) years from the effective date of this License Agreement and shall expire at midnight on December 31, 2025. Thereafter, this License Agreement will renew for one (1) additional ten (10) year term, unless either party notifies the other party in writing of its intent to terminate or renegotiate this License Agreement not less than one hundred eighty (180) days before the termination of the then-current term. The additional term shall be deemed a continuation of the License Agreement and not a new License Agreement or amendment.
- (b) Upon written request of the City or Southern Star, this License Agreement shall be renegotiated at any time in accordance with the requirements of state law, upon any of the following events: (i) any change in federal, state, or local laws, ordinances, regulations, orders, or rules that materially affect any rights or obligations of either the City or Southern Star under this License Agreement; or (ii) notice is given not less than one hundred eighty (180) days before the termination of the then-current term.

SECTION 12. Termination or Forfeiture of Agreement.

- (a) In case of failure on the part of Southern Star, its successors or assigns, to comply with any of the provisions of this License Agreement, or if Southern Star, its successor or assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this License Agreement, then Southern Star, its successors or assigns, shall forfeit all rights and privileges granted by the License Agreement and all rights hereunder shall cease, terminate, and become null and void, provided that said forfeiture shall not take effect until the City shall complete the following:
 - (i) Before the City may proceed to terminate this License Agreement, it shall first serve a written notice as provided by the Notice provisions of this License Agreement, setting forth in detail the conditions of neglect, default, or failure complained of, and Southern Star shall have ninety (90) days after the mailing of such notice in which to comply with the conditions of this License Agreement. If, at the end of such ninety (90) day period, the City deems that the conditions of the License Agreement have not been met and that such License Agreement is subject to cancellation thereunder, then the City, in order to terminate the License Agreement, shall by formal resolution, setting forth the grounds for

termination, terminate the License Agreement. If within thirty (30) days after the effective date of said resolution, Southern Star shall not have instituted an action in the District Court of Douglas County, Kansas, to determine whether or not Southern Star has violated the terms of this License Agreement and that the agreement is subject to forfeiture therefor, such agreement shall be canceled and terminated at the end of such thirty (30) day period.

(ii) If, within such thirty (30) day period, Southern Star does institute an action, as above describe, to determine whether or not it has violated the terms of this License Agreement and prosecutes such action to final judgment with due diligence, then, in the event that the court finds that this License Agreement is subject to cancellation by reason of the violation of its terms, then this License Agreement shall terminate thirty (30) days after such final judgment is rendered and available appeals have been exhausted.

(iii) Nothing in this Section shall prevent the City or Southern Star from invoking any other remedy that may otherwise exist at law.

(b) Southern Star, its successors or assigns, may terminate this License Agreement by notifying the City of its intent to terminate in writing.

(c) In the event of forfeiture or termination of the License Agreement under this Section, Southern Star agrees that all Compensation paid to the City hereunder shall be forfeited.

SECTION 13. Rights and Duties upon Termination of Agreement. Upon termination of this License Agreement, whether by lapse of time, agreement by the parties, or by forfeiture, Southern Star shall remove its Facilities from the City's Rights of Way within a reasonable time after such termination. It shall be the duty of Southern Star, immediately upon removal of its Facilities, to restore the City's Rights of Way from which said Facilities are removed to as reasonably good condition as the same were before said removal was effected without cost to the City.

SECTION 14. Insurance.

(a) During the initial term, the renewal term, or any other extension of this License Agreement, Southern Star shall obtain and maintain insurance coverage, at its sole cost and expense, with financially reputable insurers that are licensed to do business in the State of Kansas. Should Southern Star elect to use the services of

an affiliated captive insurance company for this purpose, Southern Star shall obtain and possess a certificate of authority from the Kansas Insurance Commissioner. Southern Star shall provide not less than the following insurance:

- (i) Worker's compensation as provided for under any workers' compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.
 - (ii) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars (\$2,000,000.00) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Southern Star's operations under this License Agreement.
- (b) As an alternative to the foregoing, Southern Star may demonstrate to the satisfaction of the City that it is self-insured and that it has the financial wherewithal to provide coverage in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in aggregate to protect the City from and against all claims by an person for loss or damage from death, personal injury, bodily injury, or property damage occasioned by Southern Star or so alleged to have been caused or to have occurred.
- (c) Southern Star shall, as a material condition of this License Agreement, prior to the commencement of any work, deliver to the City a certificate of insurance or evidence of self-insurance evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Southern Star shall make available to the City, on request, the policy declarations page and a certified copy of the policy in effect so that limitations and exclusions can be evaluated for appropriateness of overall coverage.
- (d) Southern Star shall, as a material condition of this License Agreement, prior to the commencement of any work hereunder, deliver to the City satisfactory evidence of a performance bond in the amount of Twenty Thousand Dollars (\$20,000.00) payable to the City. The bond shall be used to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the City's Rights of Way and must be issued by a surety company authorized to transact business in the State of Kansas and satisfactory

to the City Attorney or to the City Attorney's Office in form and substance. The performance bond shall remain in effect the entire term of the contract to ensure the ongoing performance of the terms and obligations of the franchise as well as any future phases of construction and/or repair work. Notwithstanding the foregoing sentence, the City reserves the right to require Southern Star to provide additional financial assurance for future phases of construction and/or repair work, as reasonably determined by the City.

SECTION 15. Reservation of Rights. In entering into this License Agreement, neither the City's nor Southern Star's present or future legal rights, positions, claims, assertions, or arguments, before any administrative body or court of law are in any way prejudiced or waived. By entering into this License Agreement, neither the City nor Southern Star waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Southern Star may have at law or equity, without limitation, to argue, assert and/or take any position as to the legality or appropriateness of this License Agreement or any present or future laws, ordinances, or rulings that may be the basis for the City or Southern Star entering into this License Agreement.

SECTION 16. Failure to Enforce. The failure of either the City or Southern Star to insist in any one or more instances upon the strict performance of one or more of the terms or provisions of this License Agreement shall not be construed as a waiver or relinquishment of any right in the future to enforce such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment of any term or provision of this License Agreement shall be deemed to have been made by the City or Southern Star unless said waiver or relinquishment is in writing and signed by both the City and Southern Star.

SECTION 17. Force Majeure. No party shall be liable for any failure to perform its obligations where such failure is a result of acts of God, fire, strikes, riots, floods, war, and other disasters or events beyond the City's or Southern Star's reasonable control.

SECTION 18. Effectiveness. This License Agreement shall become effective and shall be in force and shall be binding on the City and Southern Star, their successors and assigns, from and after the execution of this License Agreement, as dated above.

SECTION 19. Severability. If any provision, section, or subsection of this License Agreement or the application thereof to any person or circumstance is declared invalid by a competent court of law, such invalidity shall not affect other provisions, sections, subsections, or applications of this License Agreement that can be given effect without the invalid provision, section, subsection, or application, and to this end the provisions, sections, subsection, or applications of this License Agreement are hereby declared to be severable.

SECTION 20. Governing Law. The terms of this License Agreement shall be governed by the laws of the State of Kansas.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned have caused this License Agreement to be executed as of the date noted above.

**CITY: CITY OF LAWRENCE, KANSAS, a
municipal corporation**

DAVID L. CORLISS
City Manager

ACKNOWLEDGMENT

THE STATE OF KANSAS)
)
THE COUNTY OF DOUGLAS) ss:

BE IT REMEMBERED, that on this ____ day of _____, 2014, before me the undersigned, a notary public in and for the County and State aforesaid, came David L. Corliss, as City Manager of the City of Lawrence, Kansas, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

Notary Public

My Appointment Expires:

