

## FIFTH AMENDMENT TO LICENSE AGREEMENT

WHEREAS, Joe McCombs has been licensed to install a spring water pipeline within the right-of-way owned by the city of Keller since August 28, 1995; and

WHEREAS, said installation of spring water pipeline furthers an important public interest in the economic development of Keller for new business and jobs for the City of Keller;

WHEREAS, this License Agreement was originally between the City of Keller and Joe McCombs;

WHEREAS, the parties agree that the License Agreement is being assigned to Samantha Springs, LP

NOW THEREFORE, this License Agreement (hereinafter referred to as "License Agreement") this day made between the City of Keller, a Texas municipal corporation (hereinafter referred to as "City") and Samantha Springs, LP (hereinafter referred to as "Licensee") an individual whose principal residence is within the City, evidences the following;

1. That Licensee, in consideration of being permitted to occupy the hereinafter described Premises (the "Premises" is hereinafter defined as the current location of the spring water pipeline that currently exists within the City of Keller right-of-way, and as further shown in attached Exhibit "A", hereto), hereby agrees to pay to the city of Keller the sum of \$100.00 per linear mile per year. Timely payment shall be received on January 2, but not later than January 31<sup>st</sup>. The term of the License Agreement shall be 30 years. At the conclusion of the initial 30-YEAR term, the License Agreement shall automatically be renewed in perpetuity, until and unless a party provides written notice to terminate the License Agreement, by giving the other party at least sixty (60) days written notice. Licensee agrees to increase the annual license fee TO \$200.00 PER LINEAR MILE AT THE CONCLUSION OF THE 30-YEAR TERM FOR FIVE (5) YEARS, AFTER WHICH SAID LICENSE FEE SHALL BE ADJUSTED AT THE END OF EACH SUBSEQUENT FIVE (5) YEAR PERIOD BASED ON THE FIVE (5) YEAR CPI (DALLAS) AVERAGE INCREASE/DECREASE AND SHALL CONTINUE AT THE REVISED FEE FOR THE CURRENT 5-YEAR TERM. Licensee further agrees to make all improvements and repairs and undertake all maintenance necessary on the dedicated spring water pipeline, at no expense to the City of Keller and that the City of Keller shall be absolutely exempt from making any improvements, repairs, or undertaking any maintenance to the dedicated spring water pipeline during the period the Premises are occupied by Licensee. Licensee may take possession of the portion of the Premises upon execution hereof, subject to the City of Keller's continued use of the Premises currently in use for any public purpose.
2. That the Premises described herein shall be used by Licensee solely for the purpose of transporting water from the spring to the bottling facility or wholesale distribution point, as shown on Exhibit "A", pursuant to engineered plans approved by City of Keller; and installation

of the spring water pipeline sufficient in size to move the estimated volume of water from the spring to the bottling facility or the wholesale distribution facility.

The Licensee also has the right to a Special Use Permit to operate one underground booster pump station on the west side of Bourland Road at the location and in the manner specified in Ordinance No. 1477 approved by Council on October 6, 2009.

3. That this License is granted subject to the following additional conditions, terms and reservations:

a. It is agreed by Licensee that failure to pay the fees timely as stipulated herein, no later than the 31st day of January, or the violation of any other provision or covenant contained herein shall forfeit the License Agreement, and the City of Keller shall be entitled to possession after notice to Licensee, provided Licensee receives notice of the violation, triggering the forfeiture fifteen (15) business days prior to such forfeiture and License is given fifteen (15) business days after notice is received to cure such violation or rebut such violation. Any violation being asserted to trigger forfeiture shall be approved by City Council prior to the City of Keller taking possession or Licensee forfeiting the License.

b. It is further understood and agreed that the Premises are deemed suitable by Licensee of the uses contemplated to be made of the Premises.

c. It is further understood that all work shall be done in compliance with the current standards of the City of Keller with regard to water pipeline construction.

d. The City of Keller further agrees, and Licensee acknowledges such agreement, that this License Agreement may be terminated at any time by Licensee in the event the need for such license ceases. Any notice received after the 2nd of January of any year and before December 31<sup>st</sup> of any year, shall be effective for the year in which notice was received, which would nullify the obligation for payment for the remaining years of the license agreement. Further, the City of Keller may terminate this License Agreement at any time by giving at least sixty (60) days written notice. In the event this License Agreement is abandoned by either party, the City of Keller will take possession and ownership of any and all improvements located within the City of Keller's right-of-way.

e. It is understood and agreed, and a condition hereof, that Licensee shall at all times during the occupation of the Premises herein, carry comprehensive general liability insurance, insuring against bodily injury and property damage with a company authorized to do business in the State of Texas and satisfactory to the City of Keller, naming the City of Keller as an additional insured as to protect the City of Keller against any and all claims for damages to persons or property as a result of or arising out of the use, operation, and maintenance by Licensee of the portion of the Premises regarding the spring water pipeline and Licensee's installations, improvements and equipment in connection therewith and located therein. Said insurance shall be in an amount not less than \$500,000.00. C-SL (Combined Single Limit).

Licensee shall carry said insurance at its expense, and shall furnish to the City of Keller a certificate of such coverage. Said policy shall bear an endorsement to the effect that no cancellation will be effective without first giving sixty (60) day's written notice to the City of Keller. In the event Licensee shall allow said insurance coverage to lapse during the term hereof, then this License Agreement shall automatically be canceled and terminated as of the last date of insurance coverage and Licensee shall be deemed a trespasser.

f. As a condition hereof, Licensee agrees and is bound to defend, indemnify and hold the City of Keller, its officers, agents and employees, harmless against any claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned in whole exclusively by the use, occupancy and maintenance of the spring water pipeline on the Premises which such damage sought is from or originates from the spring water pipeline, or work or injury specifically associated with the spring water pipeline, or Licensee's installations, improvements and equipment within the Premises, from any act or omission of any representative, agent, customer and/or employee of Licensee, or by Licensee's breach of any of the terms or provision of this License, or by any gross negligent or strictly liable act or omission in whole of Licensee, its officer, agents, representatives, customers, employees or subcontractors in the use, occupancy and maintenance of Licensee's installations, improvements, and equipment within the Premises. This obligation to indemnify and defend shall also include any claim for damage that any utility service provider, whether publicly or privately owned, may sustain or receive, which are proved by reason of Licensee's use of the Premises or Licensee's installations, improvements and equipment located thereon. Notwithstanding anything stated to the contrary herein, Licensee shall at no time be liable or held responsible to indemnify or defend any damages that are caused by the actions of the City of Keller, or any other utility or communication company, whether publicly or privately owned, or their agents, employees or assigns, whether such actions are negligent or strict liability acts, if such actions that are the proximate cause of the damage are not a result of actions by the Licensee, his agents, employees, or assigns. Licensee covenants and agrees never to make a claim of any kind or character whatsoever against the City for damage of any kind that it may suffer by reason of the installation, construction, reconstruction, operation or maintenance of any of Licensee's improvements, whether presently in place or which may in the future be constructed or installed, including but not limited to, any water facilities, regardless of whether such damage is due to flooding, infiltration, backflow or seepage caused from the failure of any installation, natural causes, negligence, or from any other cause whatsoever on behalf of Licensee. It is the intention of this indemnity agreement on the part of Licensee, and a condition of the License Agreement, that it shall be full and total indemnity against those claims that are a direct result of Licensee's spring water pipeline that may be asserted against the City of Keller by reason or as a consequence of having granted permission to Licensee to use and maintain the below described Premises. Licensee hereby agrees to defend those related suits, claims or causes of action brought against

the City of Keller on account of the spring water pipeline, and discharge any judgment or judgments that may be rendered against the City of Keller in connection therewith.

g. In the event of an alleged breach by Licensee, if any, of the terms, covenants, or provisions herein contained, the City of Keller shall notify Licensee of such alleged breach and if same is not resolved within fifteen (15) business days from such notice, the City of Keller may, upon a determination that a substantial breach has occurred and is continuing, terminate this License Agreement. The Licensee may request a hearing before the City Council of the City of Keller, and the Licensee shall be allowed to be present and shall be given full opportunity to respond and defend against such charges and allegations as set out against it in the termination notice. If, after the hearing is concluded, the City Council shall determine that a substantial breach of the terms, covenants or provisions of this License Agreement has occurred, it may terminate this Agreement and the same shall be null and void. The City of Keller shall upon such determination become entitled to possession of the Premises with the appropriate notice stated herein and without the necessity of legal proceeding to obtain possession thereof, any fees paid in advance shall be returned to Licensee in the proportion which the unexpired part of the period bears to the yearly period; and in any event upon termination or cancellation by the City of Keller, If required by the City of Keller, or at the option of the Licensee, Licensee shall remove improvements and encroachments from said Premises at Licensee's expense as expeditiously as possible. All work shall be done to meet the current building and construction City of Keller codes and ordinances.

Any notice or other communication required or permitted to be given under this License Agreement and any amendment or modification, shall be in writing and signed by or on behalf of the City of Keller, or Samantha Springs, LP, whoever is giving notice, and shall be given either personally or by Mail, addressed to each Party at the address below. A notice to a Party shall be deemed to have been given at the time indicated on the return receipt if sent by mail. A notice to a Party delivered other than by mail shall be deemed to have been given at the time it is actually delivered to the recipient.

4. It is expressly understood that the City of Keller does not purport, hereby, to grant any right, claim, title, or easement in, under or upon any public right-of-way or easement; and it is further understood that the City of Keller may require the Licensee to relocate this spring water line or any additional lines that may subsequently be authorized at the Licensee's expense by giving one hundred and twenty (120) days written notice.

5. That City of Keller does hereby License the property depicted on Exhibit "A" subject to the foregoing terms and provision, which exhibit is attached hereto and made a part hereof. Generally, the License Agreement grants rights to the City of Keller's right-of-way, beginning at Mr. Joe McCombs' homestead property, traveling south and west to Highway 377, in Keller, Texas, to the new Water Delivery Station and beginning from Mr. Joe McCombs' homestead property traveling north approximately 1 mile to the location of the new spring site identified on the attached Exhibit "A".

6. This License Agreement may only be transferred or assigned if approved in writing by the City of Keller. Provided that, if the City agrees to any such transfer or assignment, the new Licensee must agree in writing to accept all of the terms and conditions contained in this Agreement. Samantha Springs, LP, its successors and assigns shall be identified and defined as the sole and exclusive "Licensee" in the License Agreement, and this provision herein shall amend and modify the existing definition. Any heir, successor or assignee shall comply with obligations noted in Section 6 of the license agreement and the previous amendment.