

**PUBLIC RIGHT-OF-WAY USE LICENSE  
(NATURAL GAS PIPELINE CROSSING)**

The following statements are true and correct and constitute the basis upon which the City of Mansfield has executed this Agreement.

A. \_\_\_\_\_, a \_\_\_\_\_ Corporation (“**Company**”) wishes to construct a pipeline for the transportation of natural gas under a Public Right-of-Way.

B. The City has reviewed Company’s request and agrees to grant Company a revocable license to use certain Public Rights-of-Way in order to construct, operate and maintain a pipeline, on the terms and conditions set forth herein, solely for the transportation of Gas and solely in accordance with the terms and conditions of this Agreement.

1. **DEFINITIONS.** Capitalized terms used in this Agreement and not otherwise defined within this Agreement shall have the following meanings:

**Affiliate** shall mean any individual, partnership, association, joint stock company, limited liability company, trust, corporation, or other person or entity who owns or controls, or is owned or controlled by, or is under common ownership or control with, the entity in question.

**Agreement** shall mean the authorization issued to Company hereunder to use the Public Rights-of-Way for (i) the construction, installation, maintenance and repair of Company’s Pipeline; (ii) the use of such Pipeline for the transportation of Gas; and (iii) any other directly related uses of the Public Rights-of-Way, pursuant to and in accordance with this Agreement.

**Company** shall mean \_\_\_\_\_, Inc. a \_\_\_\_\_ Corporation, only and shall not include any Affiliate or third party.

**City** shall mean the area within the corporate limits of the City of Mansfield, Texas and the governing body of the City of Mansfield, Texas.

**Director of Public Works** shall mean the Director of Public Works of the City of Mansfield or the Director of Public Works’ designated representative.

**City Manager** shall mean the City Manager of the City of Mansfield or the City Manager’s designated representative.

**Commission** shall mean the Railroad Commission of the State of Texas or other authority succeeding to the regulatory powers of the Commission.

**Customer** shall mean any Person located, in whole or in part, within the City.

**Gas** shall mean gaseous natural gas, liquefied natural gas, or any mixture thereof.

**Person** shall mean, without limitation, an individual, a corporation, a limited liability company, a general or limited partnership, a sole proprietorship, a joint venture, a business trust or any other form or business entity or association.

**Pipeline** shall mean Company's natural gas pipeline and other facilities approved by the City Manager, to the extent the same are installed by Company in the Public Rights-of-Way in accordance with this Agreement.

**Public Right-of-Way** shall mean only those dedicated public streets, highways, alleys and rights-of-way in the City identified in Exhibit "A" of this Agreement, attached hereto and hereby made a part of this Agreement for all purposes.

Words used or defined in one tense or form shall include other tenses and derivative forms.

## 2. **GRANT OF RIGHTS.**

**2.1 General Use of Public Rights-of-Way for Provision of Gas.** Subject to the terms and conditions set forth in this Agreement and applicable City ordinances, the City, to the extent of its interest therein, hereby grants Company a revocable license to (i) erect, construct, install and maintain its Pipeline in, under, along and across the Public Rights-of-Way and (ii) transport Gas through the portions of its Pipeline in, under, along and across the Public Rights-of-Way. Company hereby acknowledges and agrees that this Agreement allows only the transportation of Gas through the City and does not allow Company to distribute, sell or otherwise provide Gas to any Customer.

**2.2. Nonexclusive.** This Agreement and all rights granted to Company herein are strictly nonexclusive. The City reserves the right to grant other and future licenses and other authorizations for use of the Public Rights-of-Way to other Persons and entities in accordance with applicable law and as the City deems appropriate; provided, however, that as to the grant of subsequent licenses for use of the same Public Rights-of-Way that is solely within the discretion of the City, if a dispute arises as to priority of the use of the Public Rights-of-Way, the City will resolve such dispute in a manner that does not result in unreasonable interference with Company's operation of the Pipeline for the purposes provided for herein. This Agreement does not establish any priority for the use of the Public Rights-of-Way by Company or by any present or future licensees or other permit holders. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to the City in the performance of its various functions, and thereafter, as between licensees and other permit holders, as determined by the City in accordance with this Section 2.2 and in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Texas.

**2.3. Other Permits.** This Agreement does not relieve Company of any obligation to obtain permits, licenses and other approvals from the City or other regulatory agency

necessary for the construction, installation, maintenance or repair of Company's Pipeline or the transportation of Gas through such Pipeline.

**2.4. Bonds.** If any construction, maintenance and repair work in the license area is undertaken by a contractor of Company, Company shall require such contractor to deliver to Company bonds executed by a corporate surety authorized to do business in the State of Texas and acceptable to the City in the proportional amount of the cost of work under the construction contract or construction project that will be performed by the contractor in the Public Right-of-Way, or \$50,000, whichever amount is greater. The bonds shall guarantee (i) the faithful performance and completion of all construction, maintenance or repair work in accordance with the contract between Company and the contractor and (ii) full payment for all wages for labor and services and of all bills for materials, supplies and equipment used in the performance of that contract; and (iii) that the contractor shall restore the Public Right-of-Way affected by such cut, opening, or other excavation in a satisfactory and workmanlike manner; (iv) that the contractor will maintain such restoration work in a state of repair satisfactory to the City for a period of two years following the date the City approves the restoration; and fully comply with the City's applicable ordinances governing excavation in the Public Right-of-Way. At a minimum, the bonds shall be valid for a period of two years following the date of final installation of all pipelines covered by this Agreement. The bonds shall name both the City and Company as dual obligees.

**3. TERM.** This Agreement shall become effective on the date as of which both parties have executed it ("**Effective Date**") and shall expire at 11:59 P.M. CST on the twenty-five (25) year anniversary thereof (the "**Primary Term**"), unless terminated earlier as provided herein. Company shall have the option to extend the term hereof for one successive period of twenty-five (25) years (said period being referred to as the "**Extended Term**"). Said option may only be exercised if there is no default in the performance of any condition of this Agreement for which a notice of default has been given to Company. The Extended Term will be upon the same conditions as provided in this Agreement except that there is no privilege to extend the term of this Agreement for any period of time after the expiration of the Extended Term. Where Company is entitled to exercise the option for the Extended Term, Company must provide written notice of such to the City at least three months prior to the expiration of the Primary Term.

**4. FEES AND PAYMENTS TO CITY.** No fee or other payment shall be required of Company under this Agreement unless identified within this Agreement, the consideration and inducement for the City to enter into this Agreement being the contractual commitments and covenants of Company set forth herein.

**5. REGULATORY AUTHORITY OF THE CITY.** Company's property and operations hereunder shall be subject to such regulation by the City as may be reasonably necessary for the protection or benefit of the general public. In this connection, Company shall be subject to, governed by and shall comply with all applicable federal, state and local laws, including all applicable ordinances, rules and regulations of the City, as the same may be adopted and amended from time to time.

## 6. USE OF PUBLIC RIGHT-OF-WAY.

**6.1. Compliance with Laws, Ordinances, Rules and Regulations.** The City has the right to control and regulate the use of the Public Right-of-Way, public places and other City-owned property and the spaces above and beneath them. Company shall comply with all applicable laws, ordinances, rules and regulations, including, but not limited to, applicable City ordinances, rules and policies related to construction permits, construction bonds, permissible hours of construction, operations during peak traffic hours, barricading requirements and any other applicable construction rules or regulations that may be promulgated from time to time.

**6.2. No Undue Burden.** The Pipeline shall not be erected, installed, constructed, repaired, replaced or maintained in any manner that places an undue burden on the present or future use of the Public Right-of-Way by the City and the public. If the City reasonably determines that the Pipeline does place an undue burden on any portion of the Public Right-of-Way in which the Pipeline is located, Company, at Company's sole cost and expense and within a reasonable time period specified by the City, shall modify the Pipeline or take other actions determined by the City to be in the public interest to remove or alleviate the burden.

### **6.3. Minimal Interference.**

**6.3.1 Notice.** Prior to the undertaking of any kind of construction, installation, maintenance, repairs or other work on the Pipeline that requires the excavation, lane closure or other physical use of the Public Rights-of-Way, Company shall, except for work required to address an emergency, provide at least seven (7) days' advance written notice to the City's Director of Public Works. In the case of emergencies Company shall make immediate notification to the City's Emergency Services dispatch (911) as work is beginning and provide both verbal and written notice to the City's Director of Public Works within twenty-four (24) hours after commencement of work.

**6.3.2 Worksite Regulations.** During any work described in Section 6.3.1, Company shall provide construction and maintenance signs and sufficient barricades at work sites to protect the public. The use of such traffic control devices shall be consistent with the standards and provisions of Part VI of the Texas Manual on Uniform Traffic Control Devices. Company shall utilize appropriate warning lights at all construction and maintenance sites where one or more traffic lanes are closed or obstructed during nighttime conditions. Company shall plan and execute construction of the Pipeline so that no flood conditions are created or worsened on the surrounding land. To minimize erosion, the excavated portion of the right-of-way adjacent to the improved portion of the road shall be revegetated in accordance with the Texas Pollutant Discharge Elimination System (TPDES) construction permit requirements.

**6.3.3 Burial.** Company shall bury or have buried its pipeline facilities at least seven feet below the lowest point in said right-of-way, unless an alternate depth is

required by the Director of Public Works. During backfill of the Pipeline excavation, "Buried Pipeline" warning tape shall be buried one foot above the Pipeline to warn future excavators of the presence of the Pipeline.

**6.4. Detailed Profile Plans and Maps.** Company, at Company's sole cost and expense, shall provide the City with detailed profile plans of all portions of the Pipeline crossing the Public Right-of-Way and maps showing the location and entire route of the Pipeline within the City and the City's extraterritorial jurisdiction, within 90 calendar days following the completion of such Pipeline. As-built plans shall not be required unless the Pipeline installation varies from the profile plans. Company shall supply such plans and maps, in a digital format acceptable to the City to ensure that the Pipeline is accurately reflected in the City's mapping system.

**6.5. Marking of Pipeline.** The Pipeline shall be marked, as required by the applicable state law or city ordinances, to show conspicuously Company's name and a toll-free telephone number of Company that a Person may call for assistance.

**6.6. Pavement Cut Coordination and Fees.** The City shall have the right to coordinate all excavation work in the Public Right-of-Way in a manner that is consistent with and convenient for the implementation of the City's program for street construction, rebuilding, resurfacing and repair. To preserve the integrity of the Public Right-of-Way, Company shall not cut, excavate or otherwise breach or damage the surface of any paved Public Right-of-Way unless Company obtains written consent from the Director of Public Works, pays a reasonable fee agreed to by and between the parties, and restores the Public Rights-of-Way in accordance with this Agreement.

**6.7. Restoration of Public Rights-of-Way and Property.** Company, at Company's sole cost and expense, and in a reasonable manner approved by the City, shall promptly restore any portion of the Public Right-of-Way, City-owned property or other privately-owned property that are in any way disturbed or damaged by the construction, operation, maintenance or removal of any of the Pipeline in accordance with generally applicable paving standards and other applicable standards in the City to, at Company's option, as good or better a condition, as such property was in immediately prior to the disturbance or damage. Company shall diligently commence such restoration within thirty (30) calendar days following the date that Company first became aware of the disturbance or damage or, if the Pipeline is being removed, within thirty (30) calendar days following such removal.

**6.8. Relocation of Pipeline.** Within forty-five (45) calendar days following a written request by the City, Company, at Company's sole cost, shall protect, support, disconnect or remove from the Public Right-of-Way all or any portion of its Pipeline due to street or other public excavation, construction, repair, grading, regrading or traffic conditions; the installation of sewers, drains, water pipes or municipally-owned facilities of any kind; the vacation, construction or relocation of streets or any other type of structure or improvement of a public agency; any public work; or any other type of improvement necessary, in the City's sole discretion, for the public health, safety or welfare. If Company reasonably requires more than forty-five (45) days to comply with the City's

written request, it shall notify the City Manager in writing and the City will work in good faith with Company to negotiate a workable time frame. Any relocation will require that the Director of Public Works approve Company's plans.

**6.9. Emergencies.**

**6.9.1. Work by the City.** For purposes of this Section 6.9.1, a public emergency shall be any condition which, in the opinion of the officials specified herein, poses an immediate threat to life, health or property and is caused by any natural or man-made disaster, including, but not limited to, storms, floods, fires, accidents, explosion, water main breaks and hazardous materials spills. In the event of a public emergency, the City shall have the right to take whatever action is deemed appropriate by the City Manager or Fire Chief, or their authorized representatives, including, but not limited to, action that may result in damage to the Pipeline, and Company hereby, except to the extent such Damages result from the gross negligence or willful misconduct of the City, its officers, agents, servants, employees, or subcontractors: (i) releases the City, its officers, agents, servants, employees and subcontractors from liability or responsibility for any Damages, as defined in Section 7.1, that may occur to the Pipeline or that Company may otherwise incur as a result of such a response, and (ii) agrees that Company, at Company's sole cost and expense, shall be responsible for the repair, relocation or reconstruction of all or any of its Pipeline that is affected by such action of the City. In responding to a public emergency, the City agrees to comply with all local, state and federal laws, including any requirements to notify the Texas One Call System, to the extent that they apply at the time and under the circumstances. In addition, if the City takes any action that it believes will affect the Pipeline, the City will notify Company as far in advance as practicable prior to taking such action so that Company may advise and work with the City with respect to such action.

**6.9.2. Work by or on Behalf of Company.** In the event of an emergency that directly involves that portion of the Pipeline located in the Public Right-of-Way and necessitates immediate emergency response work or repairs, Company may initiate the emergency response work or repairs or take any action required under the circumstances provided that Company notifies the City as promptly as possible. After the emergency has passed, Company shall, to the extent required by applicable City ordinances, apply for and obtain a construction permit from the City Manager and otherwise fully comply with the requirements of this Agreement.

**6.10. Removal of Pipeline.**

**6.10.1 Company obligated to Remove.** Upon the revocation, termination or expiration without extension or renewal of this Agreement, Company's right to use the Public Right-of-Way under this Agreement shall cease and, unless extended or renewed, Company shall immediately discontinue the transportation of Gas in or through the City. Within six (6) months following such revocation,

termination or expiration and if the City requests, Company, at Company's sole cost and expense, shall remove the Pipeline from the Public Right-of-Way (or cap the Pipeline, if consented to by the City), in accordance with applicable laws and regulations.

**6.10.2 City's Right to Remove.** If Company has not removed all of the Pipeline from the Public Rights-of-Way (or capped the Pipeline, if consented to by the City) within six months following revocation, termination or expiration of this Agreement, unless the City has otherwise consented to allowing Company to continue to operate the Pipeline, the City may deem any portion of the Pipeline remaining in the Public Right-of-Way abandoned and, at the City's sole option, (i) take possession of and title to such property or (ii) take any and all legal action necessary to compel Company to remove such property; provided, however, that, where required by law Company may not abandon its facilities or discontinue its services within the City without the approval of the Commission or successor agency or any other regulatory authority with such jurisdiction, if such action without such approval is prohibited at the time by applicable federal or state law or regulation.

**6.10.3 Restoration of Property.** Within six (6) months following revocation, termination or expiration of this Agreement and in accordance with Section 6.7 of this Agreement, Company shall also restore any property, public or private, that is disturbed or damaged by removal (or, if consented to by the City, capping) of the Pipeline. If Company has not restored all such property within this time, the City, at the City's sole option, may perform or have performed any necessary restoration work, in which case Company shall immediately reimburse the City for any and all reasonable costs incurred in performing or having performed such restoration work.

**6.11 Company Operations.** Company, for itself and its successors and assigns, hereby covenants and agrees to the following:

**6.11.1.** Prior to easement acquisition or installing Company's pipeline infrastructure across any land within the territorial limits of the City of Mansfield, Texas, Company shall confer with and seek the written approval of the City's Director of Public Works and Director of Planning that the proposed route is not in conflict with the City's thoroughfare, drainage, parks, and utility master plans, as such plans exist on the day Company seeks the written approval of its proposed route from the City. Should the City's Director of Public Works and Director of Planning conclude that Company's proposed route is in conflict with the City's then-current thoroughfare, drainage, parks, and utility master plans, Company shall modify its proposed route in such a manner that it no longer creates a conflict with the City's master plans.

**6.11.2.** All new or relocated Pipelines within the territorial limits of the City of Mansfield, Texas, shall be located within existing pipeline corridors within the City, or if Company and the Director of Public Works and Director of Planning

agree that it is not feasible for a new or relocated Pipeline to be located within an established pipeline corridor within the City of Mansfield, the Pipeline must:

- i. For platted property, be located within mandatory front, side yard or rear setbacks;
- ii. For un-platted property, be contiguous and adjacent to the property boundaries of fee parcels or existing easements to avoid unnecessary fragmentation of land and avoid diagonal routes that would create unusable slivers of land;
- iii. Not cross areas of unique recreational or aesthetic importance, environmentally sensitive areas and areas of historical or cultural significance, as identified by the Mansfield City Council; and
- iv. Avoid conflict with the location and opening of planned future streets and laying of planned water lines, sanitary sewer lines, and storm sewer and drainage routes incident to future private development, as determined by the City's Director of Public Works.

The requirements of this subsection shall not apply to property owned in fee simple by Company or where Company must deviate from these requirements on a single tract or platted lot containing a gas well that is intended to be connected to and serviced by Company's pipeline.

**6.11.3.** Company agrees that trees removed for the installation of the Pipeline and related facilities shall be mitigated by 1) paying a mitigation fee into the tree restoration fund, or 2) replanting trees in accordance with the requirements of the Natural Resources Management Ordinance of the City of Mansfield, Texas, and any future amendment thereof.

**6.11.4.** Company agrees to screen all of Company's above-ground equipment from public view in a manner as required by Chapter 114 of the Mansfield Code of Ordinances.

**6.11.5.** Company agrees that all existing and proposed Company-owned, operated or planned compressor stations, gathering stations, metering stations or natural gas separators or other surface appurtenances located within the City of Mansfield, Texas and intended to serve the proposed Pipeline are depicted in the attached and incorporated Exhibit "B" to this Agreement. Should Company elect to construct or operate any compressor station, gathering station, metering station or natural gas separator or other surface appurtenances within the City of Mansfield, Texas to serve the proposed Pipeline not depicted in Exhibit "B," Company must first seek the written approval of the City's Director of Public Works and Director of Planning.

## **7. LIABILITY AND INDEMNIFICATION.**

**7.1. Liability of Company.** Company shall be liable and responsible for any and all damages, losses, liabilities (joint or several), payments, obligations, penalties, claims, litigation, demands, defenses, judgments, lawsuits, proceedings, costs, disbursements or expenses (including, without limitation, fees, disbursements and reasonable expenses of attorneys, accountants and other professional advisors and of expert witnesses and costs of investigation and preparation) of any kind or nature whatsoever (collectively “**Damages**”), which may arise out of or be in any way connected with (i) the construction, installation, operation, maintenance or condition of the Pipeline or any related facilities or appurtenances; (ii) the transportation of Gas through the Pipeline; (iii) any claim or lien arising out of work, labor, materials or supplies provided or supplied to Company, its contractors or subcontractors; or (iv) Company’s failure to comply with any federal, state or local law, ordinance, rule or regulation, except to the extent caused by the gross negligence or intentional misconduct of any of the Indemnitees, as defined in Section 7.2.

**7.2. Indemnification.** *COMPANY, AT COMPANY’S SOLE COST AND EXPENSE, SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, BOARDS, COMMISSIONS, AGENTS, EMPLOYEES AND VOLUNTEERS (“INDEMNITEES”), FROM AND AGAINST ANY AND ALL DAMAGES WHICH MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH (I) THE CONSTRUCTION, INSTALLATION, OPERATION, MAINTENANCE OR CONDITION OF THE PIPELINE OR ANY RELATED FACILITIES OR APPURTENANCES LOCATED IN THE PUBLIC RIGHT-OF-WAY; (II) THE TRANSPORTATION OF GAS THROUGH THE PIPELINE; (III) ANY CLAIM OR LIEN ARISING OUT OF WORK, LABOR, MATERIALS OR SUPPLIES PROVIDED OR SUPPLIED TO COMPANY, ITS CONTRACTORS OR SUBCONTRACTORS WITH RESPECT TO THE PIPELINE; (IV) COMPANY’S FAILURE TO COMPLY WITH ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION, ACT(S) RELATED TO THE PIPELINE; OR (V) THE NEGLIGENT ACT OR OMISSION(S) OF THE CITY, ITS OFFICERS AND EMPLOYEES TO THE EXTENT RELATED TO THE PIPELINE, EXCEPT TO THE EXTENT ANY OF THE FOREGOING ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OF THE INDEMNITEES.*

**7.3. Assumption of Risk.** Company hereby undertakes and assumes, for and on behalf of Company, its officers, agents, contractors, subcontractors, agents and employees, all risk of dangerous conditions, if any, on or about any City-owned or City-controlled property on which the Pipeline and any related surface appurtenances are located, including, but not limited to, the Public Right-of-Way.

**7.4. Defense of Indemnitees.** If an action is brought against any Indemnitee by reason of any matter for which the Indemnitees are indemnified hereunder, the City shall give Company prompt written notice of the making of any claim or commencement of any such action, lawsuit or other proceeding, and Company, at Company’s sole cost and expense, shall resist and defend the same with reasonable participation by the City and with legal counsel selected by Company and specifically approved by the City. In such

an event, Company shall not admit liability in any matter on behalf of any Indemnitee without the advance written consent of the City.

**8. INSURANCE.** Company shall procure and maintain at all times, in full force and effect, a policy or policies of insurance to provide coverages as specified herein, naming the City as an additional insured and covering all public risks related directly to the Company's use, occupancy, condition, maintenance, existence or location of the Public Rights-of-Way and arising from the construction, installation, operation, maintenance or condition of the Pipeline, including the transportation of Gas through the Pipeline, as follows:

**8.1. Primary Liability Insurance Coverage.**

a. **Commercial General Liability:**

\$1,000,000 Combined Single Limit for Bodily Injury and Property Damage, with an aggregate of \$2,000,000. Such Insurance shall include Sudden and Accidental Seepage and Pollution; explosion, collapse and underground property damage; contractual and all other standard coverages.

b. **Automobile Liability:**

\$1,000,000 per Accident Limit, covering all owned, hired and non-owned vehicles used in the performance of this contract.

c. **Worker's Compensation:**

As required by state law; with an Employer's Liability of \$1,000,000

d. **Umbrella Liability Insurance:**

Extending coverage of the coverages in Paragraphs a, b, and c above to a limit of \$10,000,000 per occurrence.

**City shall be named additional insured in events where Company has agreed to indemnify or Hold City Harmless. Company will furnish Certificates of Insurance verifying that the required coverage is in effect. Acceptance by the City of such Certificate indicating that less than the required coverage is carried will not mean that such coverage is waived. Company shall waive subrogation on all insurance carried whether or not required by the Agreement.**

**8.2. Requirements and Revisions to Required Coverage.** The City may, not more than once every five years during the term of this Agreement, revise insurance coverage requirements and limits required by this Agreement. Company agrees that within ninety days of receipt of written notice from the City, Company will implement all such revisions reasonably requested by the City. The policy or policies of insurance shall be endorsed to provide that no material reduction in coverage or cancellation, termination, non-renewal, shall be made without 30 days' prior written notice (10 days for non-

payment of premium) to the City. The policies and Certificate of Insurance provided to the City shall contain the following language:

**CANCELLATION CLAUSE**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREFORE, THE ISSUING INSURER SHALL ENDEAVOR TO PROVIDE 30 DAYS WRITTEN NOTICE (10 DAYS FOR NON-PAYMENT OF PREMIUM) TO THE CERTIFICATE HOLDER.

**8.3. Underwriters and Certificates.** Company shall procure and maintain its insurance with underwriters authorized to do business in the State of Texas and who are acceptable to the City in terms of solvency and financial strength. Within thirty (30) days following adoption of this Agreement by the City Council, Company shall furnish the City with certificates of insurance signed by representatives of the respective insurance companies as proof that it has obtained the types and amounts of insurance coverage required herein. No construction shall commence until such certificates are provided to the City. In addition, Company shall, within seventy-two (72) hours of a written demand, provide the City with evidence that it has maintained such coverage in full force and effect.

**8.4. Deductibles.** Deductible or self-insured retention limits on any line of coverage required herein shall not exceed \$250,000 unless otherwise approved by the City.

**8.5. No Limitation of Liability.** The insurance requirements set forth in this Section 8 and any recovery by the City of any sum by reason of any insurance policy required under this Agreement shall in no way be construed or affected to limit or in any way affect Company's liability to the City or other persons as provided by this Agreement or law.

**9. DEFAULT.** The occurrence at any time during the term of this Agreement of one or more of the following events shall constitute an "**Event of Default**" under this Agreement:

**9.1. Breach.** An Event of Default shall occur if either party materially breaches or violates any of the terms, covenants, representations or warranties set forth in this Agreement or fails to perform any obligation required by this Agreement.

**9.2. Bankruptcy, Insolvency or Receivership.** An Event of Default shall occur if either party (i) files a voluntary petition in bankruptcy; (ii) is adjudicated insolvent; (iii) files any petition or fails to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; (iv) seeks, consents to or acquiesces in the appointment of any trustee, receiver, master, custodian or liquidator of such party, any of such party's property or any revenues, issues, earnings or profits thereof; (v) makes an assignment for the benefit of creditors; or (vi) fails to pay its debts generally as they become due.

**9.3. Violations of the Law.** An Event of Default shall occur if either party violates any existing or future applicable federal, state or local laws or any existing or future applicable ordinances, rules and regulations of the City.

**10. UNCURED DEFAULTS AND REMEDIES.**

**10.1. Notice of Default and Opportunity to Cure.** If an Event of Default occurs, the non-defaulting party shall provide the defaulting party with written notice and shall give the defaulting party the opportunity to cure such Event of Default. For an Event of Default, the defaulting party shall have 30 days from the date it receives written notice from the non-defaulting party to cure the Event of Default. If any Event of Default is not cured within the time period specified herein, such Event of Default shall, without further notice from the non-defaulting party, become an “**Uncured Default**” and the non-defaulting party immediately may exercise the remedies provided in Section 10.2.

**10.2. Remedies for Uncured Defaults.** Upon the occurrence of an Uncured Default, the non-defaulting party shall be entitled to exercise, at the same time or at different times, any of the following remedies, all of which shall be cumulative of and without limitation to any other rights or remedies the non-defaulting party may have:

**10.2.1. Termination of Agreement.** Upon the occurrence of an Uncured Default, the non-defaulting party may terminate this Agreement. Upon such termination, the defaulting party shall forfeit all rights granted to it under this Agreement and, except as to the defaulting party’s unperformed obligations and existing liabilities as of the date of termination, this Agreement shall have no further force or effect. If the City so terminates this Agreement as a result of Uncured Default by Company, Company shall remove the Pipeline from and restore the Public Rights-of-Way as and when reasonably requested by the City. Each party’s right to terminate this Agreement under this Section 10.2.1 does not and shall not be construed to constitute any kind of limitation on such party’s right to terminate this Agreement for other reasons as provided by and in accordance with this Agreement; provided, however, that Company may not abandon the Pipeline without the approval of the Commission or successor agency or other regulatory authority with jurisdiction, if such action without such approval is prohibited at the time by applicable federal or state law or regulation.

**10.2.2 Legal Action Against Company.** Upon the occurrence of an Uncured Default, the non-defaulting party may commence against the defaulting party an action at law for monetary damages or in equity, for injunctive relief or specific performance of any of the provisions of this Agreement which, as a matter of equity, are specifically enforceable.

**11. PROVISION OF INFORMATION.**

**11.1. Filings with the Commission.** Company shall, upon request, provide copies to the City of all documents which Company files with or sends to the Commission concerning or related to its transportation of Gas through or other operations in the City,

including, but not limited to, filings related to (i) tariffs; (ii) rules, regulations and policies requested, under consideration or approved by the Commission; and (iii) applications and any supporting pre-filed testimony and exhibits filed by Company or third parties on behalf of Company, on the same date as such filings are made with the Commission. In addition, Company shall provide the City with copies of records, documents and other filings that Company is required to maintain or supply to the Commission under any applicable state or federal law, rule or regulation, to the extent the same relate to the Pipeline or the transportation of Gas through or other operations in the City.

**11.2. Lawsuits.** Company shall provide the City with copies of all pleadings in all lawsuits to which Company is a party and that pertain to the granting of this Agreement and/or the transportation of Gas through the City within thirty (30) days of Company's receipt of the same.

**12. COMPANY AS INDEPENDENT CONTRACTOR.** The parties agree that Company shall operate as an independent contractor as to all rights and privileges granted by this Agreement, and not as an agent, representative or employee of the City. Company shall have the exclusive right to control the details of its business and other operations necessary or appurtenant to the transportation of Gas in accordance with the terms and conditions of this Agreement, and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors and subcontractors. Company acknowledges that the doctrine of *respondeat superior* shall not apply as between the City and Company, its officers, agents, employees, contractors and subcontractors. Company further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between the City and Company.

**13. ASSIGNMENTS.** Company shall not convey, transfer, pledge, encumber or assign any of its rights under this Agreement, other than to an Affiliate (as defined herein), without the prior written consent of the City. Any purported assignment that does not satisfy the foregoing condition shall be void. For purposes of this section, "affiliate" shall mean any individual, partnership, association, joint stock company, limited liability company, trust, corporation, or other person or entity that (a) directly or indirectly owns, controls or holds with power to vote 50% or more of the outstanding voting securities or other voting interests of Company, or (b) 50% or more of whose outstanding voting securities or other voting interests are directly or indirectly owned, controlled or held with power to vote by Company.

**14. NOTICES.** Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (i) hand-delivered to the other party, its agents, employees, servants or representatives, or (ii) received by the other party by United States Mail, postage prepaid, return receipt requested, addressed as follows:

**To the CITY:**

City of Mansfield  
Attn: \_\_\_\_\_  
\_\_\_\_\_

**To COMPANY:**

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_

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15. **NON-DISCRIMINATION COVENANT.** Company shall not discriminate against any person on the basis of race, color, national origin, religion, handicap, sex, sexual orientation or familial status in the receipt of benefits from Company's business operations, in any opportunities for employment with Company or in the construction or installation of the Pipeline.

16. **GOVERNING LAW AND VENUE.** This Agreement shall be construed pursuant to and in accordance with the laws of the United States of America and the State of Texas. If any action, whether real or asserted, at law or in equity, arise out of the terms of this Agreement, venue for such action shall lie exclusively in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas, Fort Worth Division.

17. **MISCELLANEOUS PROVISIONS.**

17.1 **Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable by a final order entered by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired. For purposes of this Agreement, a court order shall be final only to the extent that all available legal rights and remedies pertaining to such order, including, without limitation all available appeals, have been exhausted. In such an event, the City and Company agree that they shall amend or have amended this Agreement to comply with such final order entered by a court of competent jurisdiction.

17.2. **Force Majeure.** In the event Company's performance of any of the terms, conditions or obligations required by this Agreement is prevented by a cause or event that is not within Company's reasonable control, Company's non-performance shall be deemed excused for the period of such inability. Causes or events that are not within Company's control shall include, but not be limited to, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, and natural disasters.

17.3 **Headings not controlling.** Headings and titles, other than those captions in Section 1, that are used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

17.4 **Entirety of Agreement.** This Agreement, including the exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Company as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with the terms and conditions of this Agreement. This Agreement shall not be amended unless agreed to in writing by both parties and approved by the City Council of the City.

17.5 **No Waiver.** The failure of either party to insist upon the performance of any provision of this Agreement or to exercise any rights such party may have, either under this Agreement or the law, shall not constitute a waiver of such party's right to insist upon appropriate performance or to assert any such right on any future occasion.

**EXECUTED** as of the later date below:

**CITY OF MANSFIELD:**

**COMPANY:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

City Attorney

**EXHIBIT "A"**

**EXHIBIT "B"**