

# ENCROACHMENT AGREEMENT

Tract: Tejas 202-600, Tract 45

County: Fort Bend

OZI711010

State: Texas

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between **Kinder Morgan Tejas Pipeline LLC**, a Delaware limited liability company (the "Company"), with an office at 1001 Louisiana Street, Suite 1000, Baytown, Texas 77002, and **Fort Bend County**, whose address is 301 Jackson Street, Richmond, Texas 77469 (the "Owner"). Company and Owners may be individually referred to in this Agreement as a "Party" and collectively as the "Parties".

**WHEREAS**, a pipeline right of way Decree of Condemnation in Cause No. 3173 between Pan American Gas Company (Petitioner) and G. T. Bunting, et al (Defendants) had a Judgment rendered on October 19, 1967 and filed for record on October 30, 1967 in Volume 493, Page 347 of the Official Records of Fort Bend County, Texas;

**WHEREAS**, Company is successor in interest to Pan American Gas Company and to the above-referenced Decree of Condemnation, and;

**WHEREAS**, Company operates certain pipelines and pipeline related facilities (the "Company Facilities") under, upon, over, through and across the Company right of way, and;

**WHEREAS**, Owner owns all or a portion of the property (the "Parcel"), which is subject to the Company Easements, described as follows:

*A tract of land containing 1.687 acres of land, in the Benjamin Orsburn Survey, Abstract No. 390 (Account No. 0390-00-000-0004-907), Fort Bend County, Texas*

**WHEREAS**, Company is hereby willing, at the request of Owner, to allow Owner, to construct, own, operate, maintain, use and remove at Owner's sole risk and expense, two concrete median crossings with curb and gutter, and a side road off of Beechnut Road (the "Encroachment") at the location or locations designated in Exhibit "A" attached hereto and made a part hereof.

**NOW, THEREFORE** in consideration of the mutual covenants herein stated, Company and Owner agree as follows:

1. Company agrees to allow the construction, ownership, operation, maintenance, usage and removal of the Encroachment within the Company Easement, but only insofar as the Encroachment affects the Company Easement within the Parcel. The permission granted herein is limited exclusively to the Encroachment.
2. Except as specifically set forth in Exhibit "A",
  - a. Owner shall construct, own, operate, maintain, use and remove the Encroachment in accordance with Company's O&M Procedure 204 OM200-29 titled "Guidelines for Design and Construction near Kinder Morgan Operated Facilities," which is attached hereto as Exhibit "B" and made a part hereof. **A Company representative shall be on-site to monitor any construction activities within twenty-five (25) feet of Company Facilities. Owner shall notify Company at (281) 886-1803 at least seventy-two (72) hours prior to commencing any construction activities.**
  - b. Owner shall not reduce the depth of cover on, or permit such alteration anywhere on, or alter the drainage of the Company Easement without Company's prior written consent, which Company may withhold or condition in its sole discretion. Owner shall be solely responsible for, and shall bear the expense of repairs attributable to, in

Company's sole opinion, any loss of subjacent or lateral support to the Company Easement and/or Company Facilities caused by the Encroachment.

- c. Owner shall not construct any permanent structure, building, or obstruction within the Company Easement, except the Encroachment, without Company's prior written consent, which Company may withhold or condition in its sole discretion.
  - d. Owner shall not plant shrubs or trees within the Company Easement, without Company's prior written consent, which Company may withhold or condition in its sole discretion.
  - e. Owner shall not operate or permit the operation of any heavy equipment on the Company Easement without Company's prior written consent, which Company may withhold or condition in its sole discretion. Heavy equipment shall only be allowed to cross Company Facilities at locations designated by Company. Owners shall comply with all precautionary measures required by Company to protect Company Facilities and the Company Easement.
  - f. Owner shall not replace or modify the Encroachment without Company's prior written consent, which Company may withhold or condition in its sole discretion.
3. Owner shall be solely responsible for the construction, ownership, operation, maintenance, use, and removal of the Encroachment and for any and all expenses incurred by Company and/or damage to Company Facilities and/or the Company Easement as a result, in Company's sole opinion, of Owner's exercise of its rights under this Agreement. Owner shall, upon demand by Company, reimburse Company fully for any such expense or damage.
  4. Should Company's construction, reconstruction, operation, maintenance, alteration, repair, replacement, removal, addition, or changing the size of any of its Company Facilities within the Company Easement in any way, shape, manner, or form, in Company's sole opinion, affect, damage, or cause to be removed the Encroachment, or any portion thereof, Owner agrees to bear all costs to repair or replace the Encroachment, including any costs and expenses associated with the loss of the use of the Encroachment as a result of Company's activities.
  5. In the event Company shall, at any time, desire or be required to construct, reconstruct or alter the grade or location of its pipeline(s) or other facility upon the Company Easement; or in the event Company shall, at any time, desire to construct additional pipelines, appurtenances or other facilities upon the Company Easement; and if, in the judgment of Company, it is necessary that the Encroachment shall be relocated or altered in any way; or if for any other reason, Company deems it necessary for Owner to relocate or alter the Encroachment, Company shall notify Owner of the necessity for such relocation and use reasonable efforts to minimize the distance of said relocation and Owner shall alter or relocate the Encroachment, at its sole cost and expense, within thirty (30) days of receipt of said notification, as shall be deemed necessary in the judgment of Company. In the event of such alteration or relocation, Owner agrees to restore the Company Easement as nearly as practicable to its original condition. If Owner shall fail to comply with any such request of Company to alter or relocate the Encroachment, Company shall have the right to alter or relocate the Encroachment at Owner's sole risk and expense.
  6. Should Owner remove the Encroachment, in its entirety, from the Company Easement for a term of one hundred twenty (120) consecutive days, this Agreement shall be deemed null and void.
  7. Should Owner fail to adhere to the provisions of this Agreement, Company may have no adequate remedy at law and Owner agrees that monetary damages may not be sufficient. Owner, therefore, consents to Company seeking injunctive relief or an emergency order to enforce the provisions, or prevent breach of, this Agreement without the necessity to post a bond.
  8. Nothing contained herein shall be deemed to constitute any warranty or representation by Company as to its authority to permit the Encroachment upon the Parcel as proposed by Owner, except regarding Company's rights as set forth in the Company Easement that may restrict the Encroachment.

9. If any part, term or provision of this Agreement is, by a court of competent jurisdiction or regulatory authority having jurisdiction over the Parcel, held to be illegal, void or unenforceable, or to be in conflict with the law of the state which the Parcel lies, the validity of the remaining provisions or portion hereof shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be invalid.
10. Except as specifically herein described, all of the terms and conditions of the Company Easement shall remain in full force and effect.
11. The terms and conditions of this Agreement shall be binding on the Parties hereto, their heirs, successors and assigns.

**IN WITNESS WHEREOF**, the Parties hereunto subscribed their names as of the date first above written.

**{Signature Blocks on the Next Page}**

**Fort Bend County, Texas**

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K. P. George, County Judge

**Kinder Morgan Tejas Pipeline LLC**

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Daniel G. Gredvig, Attorney-in-Fact

STATE OF TEXAS                   §  
   §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared Stacy Slawinski, County Engineer for Fort Bend County, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of  
\_\_\_\_\_ 2019.

\_\_\_\_\_  
Notary Public in and for the State of Texas

STATE OF TEXAS                   §  
   §  
COUNTY OF HARRIS           §

BEFORE ME, the undersigned authority, on this day personally appeared Daniel G. Gredvig, Attorney-in-Fact, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of  
\_\_\_\_\_ 2019.

\_\_\_\_\_  
Notary Public in and for the State of Texas



## Guidelines for Design and Construction near Kinder Morgan Operated Facilities

**Name of Company: Kinder Morgan Tejas Pipeline LLC**

The list of design, construction and contractor requirements, including but not limited to the following, for the design and installation of foreign utilities or improvements on **Kinder Morgan Tejas Pipeline LLC** (Company) right-of-way (ROW) are not intended nor do they waive or modify any rights Company may have under existing easements or ROW agreements. Reference existing easements and amendments for additional requirements. This list of requirements is applicable for Company facilities on easements only. Encroachments on fee property should be referred to the Land and Right-of-Way Department.

### Design

- ♦ Company shall be provided sufficient prior notice of planned activities involving excavation, blasting, or any type of construction on Company's ROW to determine and resolve any location, grade or encroachment problems and provide protection of our facilities and the public before the actual work is to take place.
- ♦ Encroaching entity shall provide Company with a set of drawings for review and a set of final construction drawings showing all aspects of the proposed facilities in the vicinity of Company's ROW. The encroaching entity shall also provide a set of as-built drawings showing the proposed facilities in the vicinity of Company's ROW.
- ♦ Only facilities shown on drawings reviewed by Company will be approved for installation on Company's ROW. All drawing revisions that effect facilities proposed to be placed on Company's ROW must be approved by Company in writing.
- ♦ Company shall approve the design of all permanent road crossings.
- ♦ Encroaching entity shall, at the discretion of the Company, incorporate Heath ATI "sniffer" Gas Detection Units in the design of paved areas or "Green Belt" areas of Company ROW. The units shall be installed per Company Standard [TYP-V-0100-B010 – Gas Detection Unit for Pipelines Located under Asphalt or Concrete Parking Areas](#).
- ♦ Any repair to surface facilities following future pipeline maintenance or repair work by Company will be at the expense of the developer or landowner.
- ♦ The depth of cover over the Company pipelines shall not be reduced nor drainage altered without Company's written approval.
- ♦ Construction of any permanent structure, building(s) or obstructions within Company pipeline easement is not permitted.
- ♦ Planting of shrubs and trees is not permitted on Company pipeline easement.
- ♦ Irrigation equipment i.e. backflow prevent devices, meters, valves, valve boxes, etc. shall not be located on Company easement.
- ♦ Foreign line, gas, water, electric and sewer lines, etc., may cross perpendicular to Company's pipeline within the ROW, provided that a minimum of two (2) feet of vertical clearance is maintained between Company pipeline(s) and the foreign pipeline. Constant line elevations must be maintained across Company's entire ROW width, gravity drain lines are the only exception. Foreign line crossings below the Company pipeline must be evaluated by Company to ensure that a significant length of the Company line is not exposed and unsupported during construction. When installing underground utilities, the last line should be placed beneath all existing lines unless it is impractical or unreasonable to do so. Foreign line crossings above the Company pipeline with less than two (2) feet of clearance must be evaluated by Company to ensure that additional support is not necessary to prevent settling on top of the Company natural gas pipeline.
- ♦ A foreign pipeline shall cross Company facilities at as near a ninety-degree angle as possible. A foreign pipeline shall not run parallel to Company pipeline within Company easement without written permission of Company.
- ♦ The foreign utility should be advised that Company maintains cathodic protection on their pipelines. The foreign utility must coordinate their cathodic protection system with Company's. At the request of Company, foreign utilities shall install (or allow to be installed) cathodic protection test leads at all crossings for the purposes of monitoring cathodic protection. The Company Cathodic Protection (CP) technician and the foreign utility CP technician shall perform post construction CP interference testing. Interference issues shall be resolved by mutual agreement between foreign utility and Company. All costs associated with the correction of cathodic protection problems on Company pipeline as a result of the foreign utility crossing shall be borne by the foreign utility for a period of one year from date the foreign utility is put in service.



## Guidelines for Design and Construction near Kinder Morgan Operated Facilities

- The metallic foreign line shall be coated with a suitable pipe coating for a distance of at least 10-feet on either side of the crossing unless otherwise requested by the Company CP Technician.
- AC Electrical lines must be installed in conduit and properly insulated.
- DOT approved pipeline markers shall be installed so as to indicate the route of the foreign pipeline across the Company ROW.
- No power poles, light standards, etc. shall be installed on Company easement.

### Construction

- Contractors shall be advised of Company's requirements and be contractually obligated to comply.
- The continued integrity of Company's pipelines and the safety of all individuals in the area of proposed work near Company's facilities are of the utmost importance. Therefore, contractor must meet with Company representatives prior to construction to provide and receive notification listings for appropriate area operations and emergency personnel. **Company's on-site representative will require discontinuation of any work that, in his opinion, endangers the operations or safety of personnel, pipelines or facilities.**
- The Contractor must expose all Company transmission and distribution lines prior to crossing to determine the exact alignment and depth of the lines. A Company representative must be present. In the event of parallel lines, only one pipeline can be exposed at a time.
- Company will not allow pipelines to remain exposed overnight without consent of Company designated representative. Contractor may be required to backfill pipelines at the end of each day.
- A Company representative shall do all line locating. A Company representative shall be present for hydraulic excavation. The use of probing rods for pipeline locating shall be performed by Company representatives only, to prevent unnecessary damage to the pipeline coating.
- Notification shall be given to Company at least 72 hours before start of construction. A schedule of activities for the duration of the project must be made available at that time to facilitate the scheduling of Company's work site representative. Any Contractor schedule changes shall be provided to Company immediately.
- Heavy equipment will not be allowed to operate directly over Company pipelines or in Company ROW unless written approval is obtained from Company. Heavy equipment shall only be allowed to cross Company pipelines at locations designated by Company. Contractor shall comply with all precautionary measures required by Company to protect its pipelines. When inclement weather exists, provisions must be made to compensate for soil displacement due to subsidence of tires.
- Excavating or grading which might result in erosion or which could render the Company ROW inaccessible shall not be permitted unless the contractor/developer/owner agrees to restore the area to its original condition and provide protection to Company's facility.
- A Company representative shall be on-site to monitor any construction activities within 25-feet of a Company pipeline or aboveground appurtenance. The contractor **shall not** work within this distance without a Company representative being on site. Only hand excavation shall be permitted within a minimum of 18-inches (refer to state specific rules/regulations regarding any additional clearance requirements) of Company pipelines, valves and fittings. However, proceed with extreme caution when within three (3) feet of the pipe.
- Ripping is only allowed when the position of the pipe is known and not within 10-feet of Company facility unless Company representative is present.
- Temporary support of any exposed Company pipeline by Contractor may be necessary if required by Company's on-site representative. Backfill below the exposed lines and 12-inches above the lines shall be replaced with sand or other selected material as approved by Company's on-site representative and thoroughly compacted in 12-inches lifts to 95% of standard proctor dry density minimum or as approved by Company's on-site representative. This is to adequately protect against stresses that may be caused by the settling of the pipeline.



## Guidelines for Design and Construction near Kinder Morgan Operated Facilities

- No blasting shall be allowed within 1000-feet of Company's facilities unless blasting notification is given to Company including complete Blasting Plan Data. A pre-blast meeting shall be conducted by the organization responsible for blasting.

Company shall be indemnified and held harmless from any loss, cost of liability for personal injuries received, death caused or property damage suffered or sustained by any person resulting from any blasting operations undertaken within 500-feet of its facilities. The organization responsible for blasting shall be liable for any and all damages caused to Company's facilities as a result of their activities whether or not Company representatives are present. Company shall have a signed and executed Blasting Indemnification Agreement before authorized permission to blast can be given.

No blasting shall be allowed within 300-feet of Company's facilities unless blasting notification is given to Company a minimum of one week before blasting. *(Note: covered above)* Company shall review and analyze the blasting methods. A written blasting plan shall be provided by the organization responsible for blasting and agreed to in writing by Company in addition to meeting requirements for 500-feet and 1000-feet being met above. A written emergency plan shall be provided by the organization responsible for blasting. *(Note: covered above)*

- **Any** contact with any Company facility, pipeline, valve set, etc. shall be reported immediately to Company. If repairs to the pipe are necessary, they will be made and inspected before the section is re-coated and the line is back-filled.
- Company personnel shall install all test leads on Company facilities.
- Burning of trash, brush, etc. is not permitted within the Company ROW.