

## ENCROACHMENT AGREEMENT

County of Fort Bend

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State of Texas

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KNOW ALL BY THESE PRESENTS:

This Agreement is made and entered into as of the \_\_\_\_\_ day of April, 2019 by and between **MONUMENT PIPELINE, LP** ("**Grantor**"), a Texas limited partnership, whose address is 601 Travis Street, Suite 1900, Houston, Texas 77002, and **FORT BEND COUNTY, TEXAS**, a body corporate and politic under the laws of the State of Texas, ("**Grantee**"), whose address is 301 Jackson Street, 4th Floor, Richmond, Texas 77469.

WITNESSETH:

WHEREAS, Grantor (successor in interest to Texas Eastern Transmission Corporation) is the owner of certain Easement Agreements ("**Easements**") as follows:

A pipeline right-of-way and easement, granted to Texas Eastern Transmission Corporation as set forth by instrument dated October 13, 1949, recorded in Volume 267, Page 196, in the Deed Records of Fort Bend County, Texas;

A pipeline right-of-way and easement, granted to Texas Eastern Transmission Corporation as set forth by instrument dated March 14, 1950, recorded in Volume 270, Page 394, in the Deed Records of Fort Bend County, Texas; and

A pipeline right-of-way and easement, granted to Texas Eastern Transmission Corporation as set forth by instrument dated May 3, 1950, recorded in Volume 272, Page 539, in the Deed Records of Fort Bend County, Texas;

pursuant to which pipelines have been laid on, in and across those lands more particularly described as follows, to-wit:

**All that certain tract of land containing 15.65 acres of land, more or less, situated in the Thomas Habermaker Survey, Abstract 191, Fort Bend County, Texas, as more particularly described in that certain Donation Deed from UDFLOF Tuscany Lakes, LP to Fort Bend County, Texas, dated June 24, 2018, recorded as Instrument 2018083553, Official Public Records, Fort Bend County, Texas (hereinafter "Property").**

WHEREAS, by Donation Deed (2018083553), cited above, Grantee purchased the tract(s) of land subject to the Easements; and

WHEREAS, Grantee desires to construct a roadway, namely Chimney Rock Road, along with an open drainage ditch and storm sewer in some locations, from Tabor Mills Drive to McHard Road, (the "**Improvements**") on, over and across the Property, and the Improvements will encroach on the Easements as more fully depicted in Exhibit "A" attached hereto and made a part hereof;

NOW THEREFORE, for and in consideration of the premises and of the mutual covenants contained herein, Grantor acknowledges and consents to Grantee's proposed construction of the Improvements, subject to the following terms and conditions:

1. **Roadway with Open Ditch & Storm Sewer.** Grantee shall have the sole responsibility, without cost to Grantor, of grading, paving and shelling the Easements to construct the Improvements, but nothing herein shall confer up Grantee, and Grantee shall not have, (a) the right to place any type of paving other than concrete or asphalt on the Easements or (b) the right to materially alter the grade of the Easements without first submitting plans to Grantor and securing written approval thereof, which approval shall not be unreasonably withheld, conditioned, or delayed. Grantee's use of the Improvements shall be junior and inferior to the use thereof by Grantor for the construction, operation, maintenance, replacement and removal of pipelines and related facilities, and Grantees shall make no use of the Property which will in any way obstruct or impair the use thereof by Grantor for such purposes provided specifically, that Grantee shall have the rights herein expressly set forth, and Grantor shall have a continuing right to restrict or prohibit parking during periods of construction, maintenance, replacement or removal of Grantor's facilities; Grantor shall use commercially reasonable efforts to disrupt Grantee's use as little as possible.
2. **Notification.** Grantee will notify Grantor's Pipeline Supervisor at (713) 374-1551 at least 48 hours prior to when the construction of the Improvements will commence. Voicemail notification or failure to reach the Pipeline Supervisor does not constitute valid notification.
3. **Representative.** Grantor reserves the right to have an inspector or company representative on site for the duration of the construction of the Improvements.
4. **Plans.** Grantee shall supply such plans, surveys, drawings and other documentation as Grantor deems necessary or appropriate to ensure that the Improvements will not conflict with the operational integrity of Grantor's pipelines.
5. **Liability and Indemnification.** (a) Grantee assumes all liability for any damages, costs, and liabilities of any kind, including attorneys' fees, relating to Grantor's pipelines and any related personal injury or death resulting in any way from the construction of the Improvements or encroachment on the Easements. Grantee agrees to cause its contractors similarly to assume liability for all of these damages, costs, and liabilities. (b) Grantee agrees to be responsible for all costs (direct or indirect, tangible or intangible) associated with the construction of the Improvements and any follow-up work required to restore runoff and drainage patterns to the situation that prevailed prior to the commencement of work in the area relating to the Improvements or encroachment on the Easements. **To the extent allowed by the State of Texas Constitution, Grantee agrees to release, defend, indemnify, and hold Monument Pipeline, LP, their affiliates, and their officers, employees, and agents harmless from and against any and all risks, liabilities, causes of action and claims of property damage, personal injury, or death resulting from or related in any way to Grantee's construction, operation, and use of the Improvements or encroachment on the Easements. The above exclusions of liability and indemnities shall apply to any property damage, personal injury, or death that arises directly, indirectly, or incident to the Improvements or to Grantee's encroachment on the Easements, whether on the Property or in the course of going to or coming from or at any other place where Grantee's employees, agents, contractors, or equipment are present as a result of Grantee's construction or relating to the performance of this Agreement. Grantee's release and indemnification obligations apply WITHOUT REGARD TO THE CAUSE OR CAUSES OF THE CLAIM OR LIABILITY IN QUESTION, INCLUDING, WITHOUT LIMITATION, STRICT LIABILITY, BREACH OF WARRANTY (EXPRESS OR IMPLIED), IMPERFECTION OF MATERIALS, CONDITION OF ANY PREMISES OR TRANSPORT TO OR FROM SUCH PREMISES, OR THE NEGLIGENCE OF ANY INDEMNITEE, ITS OFFICERS, EMPLOYEES, OR AGENTS, AND WHETHER ALLEGED NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, ACTIVE OR PASSIVE, and regardless of whether the claim is based on common law, civil law, statute, or contractual obligation between the indemnities and a third party. The foregoing indemnity shall not, however, extend to liability arising out of any Indemnitees' acts with respect to constructing, maintaining, replacing or removing Grantor's facilities or otherwise exercising its rights in respect of the Easements.**

- 6. Grantor's Right to Remove and Rebuild.** Grantor may remove, at Grantor's expense, the Improvements or portion thereof, if in Grantor's judgment it is reasonably necessary to do so to exercise the rights held by Grantor or to comply with any laws, regulations and statutes related to the operation and maintenance of Grantor's pipelines and facilities. At the conclusion of Grantor's work activity as contemplated herein, Grantee may reconstruct the Improvements at Grantee's expense and risk. Any material modification in the paving from those depicted in Exhibit "A" shall be done only with the prior written approval of Grantor. Grantor shall notify Grantee a reasonable period of time in advance before exercising its rights under this Section, and, except in cases of emergency, shall use commercially reasonable efforts to disrupt Grantee's use as little as feasible.
- 7. Cathodic Protection; Corrosion Control; Safety Facilities.** If Grantee should install any type of corrosion control device or system, it will be compatible with any corrosion control device or system used by Grantor on its pipelines and facilities. If the two devices or systems are not compatible, Grantee, at the request of Grantor, will at Grantee's sole cost and expense make the necessary modifications to its device or system to ensure compatibility with Grantor's corrosion control device or system.
- 8. Compliance with Laws and Regulations.** The improvements shall be constructed and maintained to comply with all laws and industry standards, specifically including without limitation those relating to the operation and safety of Grantor's pipelines. No Improvements shall be constructed that cause Grantor's pipelines to be out of compliance with applicable pipeline safety or operation laws and regulations. Grantee is responsible for obtaining all necessary zoning approvals, variances, land use permits, and other required approvals for the Improvements.
- 9. Other Consents and Approvals.** The permission herein granted by Grantor is limited to its interest and authority in the Property, and Grantee acknowledges the possible obligation to obtain the required permission from other parties or governmental entities. Grantor permits the improvements only to the extent it may do so by law.
- 10. Liability for Pipeline Damage.** Grantee accepts full liability for any damage to Grantor's pipelines and facilities from the construction, placement, operation, and maintenance of the Improvements.
- 11. Construction Standards.** Grantee warrants that its prime contractors and their contractors and subcontractors possess the degree of skill necessary to construct the Improvements depicted on Exhibit "A" in a safe and prudent manner as contemplated under this Agreement. All work contemplated under this Agreement will be performed in a good and workmanlike manner taking into account the expertise required to perform the work. If Grantee determines to use the services of one or more contractors for the performance of any work under this Agreement, any agreement between Grantee and its contractors will contain provisions requiring that the work be performed in accordance with the requirements of this Agreement, including without limitation its allocation and risk, liability, and indemnification pro

## 12. Miscellaneous Provisions.

(a) Assignment. This Agreement shall inure to the benefit of, and be binding upon, Grantee's successors in title to the Property. Grantee shall cause any assignee of Grantee specifically to assume Grantor's obligations under this Agreement and the Easements. (b) Notices. Any notice, tender, delivery, or other communication made pursuant to this Agreement shall be in writing and shall be addressed to the recipient party at the address indicated for that party as follows:

GRANTOR:

Monument Pipeline, LP  
ATTN: Right of Way Department  
601 Travis Street Suite 1900  
Houston, TX 77002

GRANTEE:

Fort Bend County  
ATTN: Engineering  
301 Jackson Street, 4th Floor  
Richmond, TX 77469

(c) Entire Agreement. This Agreement constitutes the entire understanding between the Grantor and Grantees relating to the Improvements. Any related prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. Any waiver or amendment of this Agreement shall be of no force and effect unless it is in writing and signed by Grantee and Grantor.

(d) Attorneys' Fees. If any action, proceeding, or arbitration arising out of or relating to this Agreement is commenced, then as between Grantee and Grantor, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, its reasonable attorneys' fees, costs, and expenses incurred in the action, proceeding, or arbitration.

(e) Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties to this Agreement and their successors and assigns, except as otherwise provided herein.

(f) Governing Law. This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of Texas without reference to laws that could refer to the law of another jurisdiction. (g) Waiver. The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

**Amendment and Confirmation.** The Easements are amended to the extent noted herein. In all other respects, it is confirmed and shall continue in full force and effect. Grantee hereby ratifies, adopts, approves and confirms the Easements and declares that the Easements are in full force and effect with respect to the Property.

IN WITNESS WHEREOF, the parties have set their hands by their duly authorized representatives as of the date so acknowledged, but to be made effective the date first set forth above.

Grantor:

**MONUMENT PIPELINE, LP**

by and through NET General Partners, LLC, its general partner

By:

\_\_\_\_\_  
Lawrence A. Wall, Jr., President

Grantee:

**FORT BEND COUNTY, TEXAS**

By:

\_\_\_\_\_  
KP George, County Judge

**ACKNOWLEDGEMENTS**

State of Texas §

County of \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_ day of \_\_\_\_\_, 2019, by Lawrence A. Wall, Jr., President, for Monument Pipeline, LP, by and through its General Partner, NET General Partners, LLC.

\_\_\_\_\_  
Notary Public, State of Texas

State of Texas §

County of \_\_\_\_\_ §

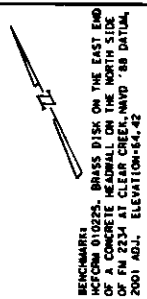
This instrument was acknowledged before me on \_\_\_\_ day of \_\_\_\_\_, 2019, by KP George, County Judge of Fort Bend County, Texas.

\_\_\_\_\_  
Notary Public, State of Texas

Return This Instrument To:  
Right of Way Department  
Monument Pipeline, LP  
601 Travis Street, Suite 1900  
Houston, TX 77002

Exhibit "A"

dated April \_\_, 2019



- NOTES
- 1 PROPOSED 8" REINFORCED CONCRETE PAVEMENT.
- 2 REMOVE AND DISPOSE OF EXISTING STORM DRAIN SEWER.
- 3 REMOVE AND DISPOSE OF EXISTING STORM MANHOLE.
- 4 PROPOSED 6" CURB.
- 5 PUC - POTENTIAL UTILITY CONFLICT.
- 6 REMOVE AND DISPOSE OF EXISTING FENCE.
- 7 SAWCUT, REMOVE AND DISPOSE OF EXIST. PAVT WITH OR W/O CURB.
- 8 SAWCUT, REMOVE AND DISPOSE OF EXIST. CONC. CURB.
- 9 SAWCUT, REMOVE AND DISPOSE OF SIDEWALK, AND TRAMP.
- 10 PROP 5' WIDE 4-3" THK CONC. SIDEWALK.
- 11 REMOVE AND DISPOSE EXIST. SIGNS.
- 12 REMOVE AND RELOCATE EXIST. FIRE HYDRANT, LEAD AND WN.
- 13 ADJUST MANHOLE, WATER VALVE TO PROP. GRADE.
- 14 PROP CONCRETE HEADER
- 15 PROP MGR WITH 25' T&S

**PROFILE LEGEND:**

.....	---(P)---	(E) RO
....	--	(W) RO
.	.	EXIST

NO.	DATE	REVISION	APPROVED



**FORT BEND COUNTY**



**Zarinkel**  
Engineering Services, Inc.

**CHIMNEY ROCK ROAD**

## PLAN

STA 55+00 TO STA 60+00

CONTRACT: 1203	SECTION
APPROVED: 02	SHEET NO:
DESIGNED: 08	DATE: 1/24/2018
PLANNED: 08	VERT SCALE: 1"=2'
JG	HORIZ SCALE: 1"=20'
SHEET 30 OF 107	

	C22	C23	C24	D3
	$\Delta=31.33^\circ$	$\Delta=29.84^\circ$	$\Delta=29.47^\circ$	$\Delta=23.09^\circ$
	R=2000'	R=2015'	R=2040'	R=1939.27'
	1:1163 34'	1:1020 03'	1:1049 28'	1:791 42'