

# ENCROACHMENT AGREEMENT

Tract: Tejas 202-600, Tract 45

County: Fort Bend

OZ1711010

State: Texas

**THIS AGREEMENT** is made and entered into this 25<sup>th</sup> day of SEPTEMBER, 2020 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 Texas Pipeline LLC**



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Daniel G. Gredvig, Vice President of Land & ROW

STATE OF TEXAS

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COUNTY OF \_\_\_\_\_

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BEFORE ME, the undersigned authority, on this day personally appeared K. P. George, Judge 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  
\_\_\_\_\_ 2020.

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

STATE OF TEXAS

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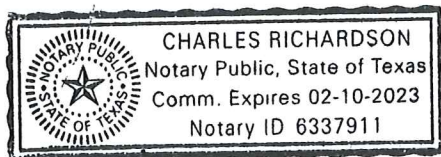
COUNTY OF HARRIS

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BEFORE ME, the undersigned authority, on this day personally appeared Daniel G. Gredvig, , 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 25<sup>th</sup> day of

SEPTEMBER 2020.



Charles Richardson  
Notary Public in and for the State of Texas