

Easement and Right of Way Agreement For Gas Pipeline

This Easement and Right of Way Agreement ("Easement") is entered by and between _____, with an address of _____ ("Grantor") and _____ with an address of _____ ("Grantee") for the granting of a right of way and easement for a pipeline under the following terms, conditions, and limitations:

1. **Grant.** Grantor grants to Grantee, Grantee's successors and assigns, a right of way and easement to construct, reconstruct, operate, maintain, repair, replace and remove a pipeline for the transportation of gas on a portion of the real estate owned by Grantor described in Exhibit A attached hereto (Exhibit A constituting a meets and bounds description of the real property in gross upon which the easement as specifically described below will be located, along with the permanent parcel number(s) for each parcel of land described). The right granted by this easement shall be deemed to run with the land.

2. **Description of Easement Area.** The easement will run along a line that is described particularly by meets and bounds in a legal description prepared and stamped by an Ohio Registered Surveyor in good standing, as set out in Exhibit B attached hereto. Said line of easement is further shown in a map also prepared by the Registered Surveyor attached hereto as Exhibit C.

- a. **Temporary Easement for Construction.** During the period of construction of the pipeline as described in this easement, the easement Area shall include twenty-five (25) feet on each side of the line of easement, thus constituting a temporary easement fifty (50) feet in width.
- b. **Pipeline Easement.** The pipeline easement which shall continue following completion of construction shall be twelve and one-half (12 ½) feet on each side of the line of easement, thus constituting an easement Area of twenty-five (25) feet.

The Area contained within the Easement, whether temporary easement for construction, or the pipeline easement, as applicable, may be referred to as "Easement Area."

3. **Consideration.** Grantor acknowledges receipt from Grantee of full payment of consideration for this Easement, determined on the basis of the lineal distance of the Easement on Grantor's property.

In addition, Grantee shall pay to Grantor any amounts required for damage to property resulting from the Easement, and damages for removal of timber, crops, and structures in accordance with Paragraph 5(b) of this Easement.

4. **Purpose and Limitations on Use of Easement.** This Easement is granted solely for the purposes and uses set forth and limited below:

- a. **Single Pipeline.** This Easement allows one pipeline with a maximum diameter of _____ inches, and with the maximum pressure of gas transported within the pipeline of _____ pounds per square inch. The pipeline shall be used only for the transportation of natural gas.
- b. **Depth.** The top of the pipeline shall be a minimum of forty-eight (48) inches from the surface (after construction and settlement) or such minimum depth as may be required by any applicable regulation, whichever is greater.
- c. **Appurtenances.** There shall be no surface or subsurface appurtenances to the pipeline (including, but not limited to meter stations, meter pits, compression or pumping stations

- or devices, structures, fences, signs) other than as specifically provided in this Easement, or as agreed to by Grantor by separate written instrument signed by Grantor.
- d. **Other Easements.** Grantor may grant other easements over, along and across the Easement Area so long as such other easements do not interfere with Grantee's purposes and uses of the Easement after obtaining the prior, written consent of Grantee which shall not be unreasonably withheld, and which shall be provided within thirty (30) calendar days after receipt of request therefor. Grantee shall have no right to grant additional easements or sub-easements on, along or across the Easement Area.
- e. **Grantor Use of Easement.** Grantor retains, reserves and shall continue to enjoy use of the surface of the Easement Area for any and all purposes that do not interfere with and prevent the use by Grantee of the Easement, including the right to build and use the surface of the granted Easement Area for drainage ditches, private streets, roads, driveways, alleys, walks, gardens, lawns, grazing, plantings and crops, parking Areas, and other like uses, and to dedicate all or any part of the Easement Area to any public entity for use as a public street, road or alley. Grantor may construct fences across the Easement Area, but Grantor shall not construct any permanent structure (structure with foundation or that is affixed to ground) or plant trees in the Easement Area without Grantee's prior written consent. If the Grantor shall dedicate all or any part of the Easement Area, the Grantee shall execute all instruments that may be necessary or appropriate to effectuate the dedication, without, however, extinguishing the rights granted in this Easement. Grantor reserves the right, at Grantor's expense, to relocate the Easement and the pipeline installed therein provided the relocated Easement and pipeline can be reasonably used for its intended purpose by Grantee. Grantor may exercise this right by giving Grantee a minimum of sixty (60) calendar days prior written notice of the intention to relocate the Easement.

5. Construction.

- a. **Time Table.** Prior to Grantee conducting any construction or construction-preparation activities on the Easement Area (other than surveying and measuring) Grantee shall provide Grantor a written timetable setting forth the construction and completion schedule. The period of construction shall not exceed sixty (60) calendar days.
- b. **Removal of Timber, Crops, Structures.** Prior to any activity that changes the condition of trees, crops, or structures on the Easement Area, Grantee shall provide Grantor a written accounting of each affected tree by type and diameter (above three inches diameter only), crop by type and acreage, and structure by dimension and description. At Grantor's option, Grantor may choose to harvest timber or crops, if appropriate, or Grantor may require an appraisal of the timber by qualified independent appraiser, at Grantee's expense, and Grantee shall pay Grantor the appraised value for the timber identified prior to its removal by Grantee. Grantee shall compensate Grantor for the damage or loss to growing crops at current market value. Grantee shall compensate Grantor for the loss of any structure prior to its removal or being damaged, in an amount to be determined by a qualified independent appraiser at Grantee's expense.
- c. **Fences and Drains.** Grantee shall construct and maintain appropriate temporary fencing and provisions for maintaining drainage during the period of construction so that Grantor's uses conducted on property adjoining the Easement Area can be maintained; this will include temporary fencing to contain animals, ditches and drain lines to allow surface water drainage, and the like. Upon completion of construction, any fences and drains will be reinstalled in a manner and condition equal to or better than that existing prior to construction.
- d. **Work Standards.** The design and construction regarding the pipeline and all activities conducted in the Easement Area shall be in accordance with good, workmanlike standards in the industry and geographical Area where this Easement Area is located, with Grantee at all times following the highest observed and accepted standards in the industry for the geographical Area where this Easement is located.
- e. **Temporary Crossings.** Grantee shall construct temporary crossings across open trenches and ditches to assure continued access, ingress and egress for Grantor to Areas adjacent to the Easement Area. Any streams located along or across the Easement Area shall be maintained in a manner that flow is not disrupted during construction, and flow upon completion of construction can be maintained at the same rate and volume as prior to construction, with all workmanlike and accepted standards being followed for erosion of stream banks.
- f. **Soils.** Grantee shall follow the "double ditch" construction method, segregating top soil removed, and replacing top soil above sub-soils. Grantee shall implement measures to avoid re-deposited topsoil being compacted to any degree greater than existed prior to construction. Grantee shall remove rocks from re-deposited topsoil, to the extent the

rocks would be an impediment to normal tilling methods. Grantee will reseed or resod, as applicable, the Easement Area, and replace shrubs and other plantings, so that upon completion of construction the Easement Area has an appearance and contains plantings similar to those that existed prior to construction, to the degree reasonably practicable.

- g. **Identification of Contractors.** Prior to construction, Grantor shall be provided in writing the name, address, and a contact person for each independent contractor and subcontractor that enters upon the Easement Area. Nothing herein shall limit the obligation and liability and responsibility of Grantee for any and all actions and activities occurring in connection with construction and Grantee's uses in general of the Easement Area.
- h. **Other Uses.** The Easement Area shall be used only for the purposes set forth in this Easement. There shall be no hunting, fishing, loitering, lodging, camping, or similar activities by Grantee or its contractors, permittees, or guests.
- i. **As-Built Survey.** Upon completion of construction, and prior to the pipeline being placed in any service, Grantee shall provide Grantor with an as-built survey which reflects the location of the pipeline, its depth, diameter and the Pipeline Easement Area, prepared by and stamped by a Registered Surveyor in good standing in the State of Ohio. Grantee shall provide Grantor with a supplemental survey that reflects any subsequent corrections or changes to the pipeline and easement.

6. Maintenance and Upkeep.

- a. **Excavation or Construction Concerning Replacement or Repair.** In the event of any replacement or repair to the pipeline, all work and activity shall be contained in the pipeline easement Area (and not the temporary construction easement) unless and until a separate temporary easement is agreed to in writing and signed by Grantor. All standards and requirements applicable for initial construction activities set forth in this Easement shall be equally applicable to any repair or replacement activities.
- b. **Warnings.** Grantee shall provide Grantor with written notice as to whether gas being transported in the pipeline is scented or unscented. Grantee shall construct and maintain appropriate signage warning of the pipeline and advising of its location.
- c. **Maintenance Obligations; Contact Person.** Maintenance of the Easement Area (other than as to crops or vegetation planted by Grantor) shall be the sole obligation of Grantee. Upon completion of construction and prior to the pipeline being placed in service, Grantee shall provide Grantor with a written plan and schedule for Grantee's maintenance, upkeep and inspection of the pipeline and Easement Area. Grantee shall therewith provide Grantor with a contact person designated by Grantee, including name, address, 24/7 telephone access number, fax number and email. The contact person shall have information and knowledge pertinent to the pipeline and Easement Area in order to address questions and concerns from Grantor. In the event the contact person is replaced or changed by Grantee, Grantor shall be given reasonable prior written notice of the change, along with the required information for the new contact person.
- d. **Access to Easement Area by Grantee.** The as-built survey described in Paragraph 5(i) above shall specifically depict the access areas whereby Grantee will have access to the pipeline and pipeline Easement Area. Other than in case of emergency, Grantee will not access the pipeline Easement Area from points other than the stated access Areas. In the event any appurtenant facilities are permitted on the Easement Area (which would require separate written agreement in accordance with Paragraph 4(c) of this Easement), and unless specifically waived in writing by Grantor, such appurtenances shall be protected by fences and gates, with fences sufficient to exclude animals and Grantor's permittees, invitees and guests. No gates shall obstruct full access by Grantor to Grantor's property (other than portions fenced immediately around the appurtenance) unless Grantor is given a key, and the right of ingress and egress at Grantor's discretion. No person or entity shall have access to the pipeline Easement Area other than Grantee, its contractors or permittees, and then only for purposes of inspection, maintenance, and repair and replacement of the pipeline.
- e. **Taxes.** In the event any real property tax rollback is imposed upon Grantor by reason of the pipeline and the pipeline Easement, Grantee shall assume, pay, and reimburse Grantor in full for the amount of such rollback taxes or any other increased real or personal property taxes.

7. Liability.

Grantee shall be strictly liable for all damages and losses caused by or arising out of the construction, maintenance, repair, replacement, or operation of the pipeline or activities upon the Easement Area that may be asserted against Grantor (other than to the extent any such claims arise from the conduct of Grantor, Grantor's agents, contractors, employees, invitees, guests and permittees). Grantee agrees to defend, indemnify and hold harmless Grantor from and against any

and all claims, demands and causes of action for injury, including death, or damage to persons or property or fines or penalties or environmental matters arising out of, incidental to or resulting from the operations of or for Grantee or Grantee's servants, agents, employees, guests, licensees, invitees or independent contractors, and from and against all costs and expenses incurred by Grantor by reason of any such claim or claims, including attorneys' fees; and each assignee of this Easement, or any interest therein, agrees to indemnify and hold harmless Grantor in the same manner provided above. This indemnity shall apply to any claim, however caused, or regardless of the legal grounds and basis. The provisions of this paragraph shall survive the termination or abandonment of this Easement.

- a. **Insurance.** A company licensed by the Ohio Department of Insurance to do business in the state shall underwrite all policies required by this Easement. Provided however, such insurance requirements may be met by a combination of self-insurance, primary and excess insurance policies.
- b. Grantee shall assure that Grantee and any person acting on Grantee's behalf under this Easement carries the following insurance with one or more insurance carriers at any and all times such party or person is on or about the Easement Area or acting pursuant to this Easement, in such amounts as from time to time reasonably required by Grantor.
 - i. Workers Compensation and Employer's Liability Insurance;
 - ii. Commercial General Liability and Umbrella Liability Insurance;
(\$5,000,000.00 Minimum coverage)
 - iii. Business auto and Umbrella Liability Insurance;
(\$5,000,000.00 Minimum coverage)
 - iv. Environmental Liability; (\$5,000,000.00 Minimum coverage)

Within six (6) months of the five (5) year anniversary date of this Easement and each subsequent fifth (5th) anniversary, Grantor may request in writing and Grantee shall agree to institute new insurance amounts based on the original insurance amounts indexed to the Producers Price Index for All Commodities, issued for the anniversary month by the U.S. Department of Labor, Bureau of Labor Statistics. Should such index be discontinued and/or replaced, a conversion to a substitute or replacement index shall be accomplished using normally accepted conversion factors. Such adjusted amounts shall be rounded off to the nearest Thousand Dollar (\$1,000) amount. Failure of Grantor to request an adjustment for any five (5) year period shall not preclude a full adjustment at a subsequent five (5) year anniversary if requested.

The Grantee shall cause Certificates of Insurance evidencing the above coverage to be provided promptly upon request to Grantor, or to such other representative of Grantor as Grantor may from time to time designate. The insurance policies required under this section, shall cover the Grantor as additional insureds with regard to the Easement Area, and shall reflect that the insurer has waived any right of subrogation against the Grantor. Failure to comply with this Insurance section shall be basis of default and all operations under the Easement shall cease immediately.

8. **Termination and Abandonment.** If Grantee has not commenced construction of a pipeline within twenty-four (24) months following the date this Easement is signed by Grantor, this Easement shall be deemed abandoned. Once construction has commenced (construction being defined as excavation of a trench for the installation of the pipeline), if no natural gas has been transported through that pipeline for any period of twenty-four (24) months, then this Easement shall be deemed abandoned. If Grantor believes that the Easement has been abandoned, it shall provide written notice thereof to Grantee through the designated contact person maintained by Grantee under this Easement, said notice to be sent by certified mail and facsimile. Unless Grantee has responded within thirty (30) calendar days after such notice has been sent, providing evidence to counter the facts as presented by Grantor regarding abandonment, then Grantor may proceed to record an affidavit providing notice of abandonment and termination of this Easement with the recorder's office of the county where the Easement is located. Grantee hereby agrees that such notice shall constitute abandonment and termination of this Easement.

Grantee may terminate this Easement at any time upon providing written notice of termination on record at the recorder's office of the county where the Easement is located, along with serving a copy of that recorded notice upon Grantor.

Within ninety (90) days following abandonment or termination (as evidenced by recording notice of abandonment or termination with the county recorder), Grantee shall remove at Grantee's cost any pipe or other structures, accoutrements, or the like from the Easement Area, and reclaim the

area to elevations and surface composition the same as prior to such removal, to the degree reasonably practicable, with Grantee being required to provide necessary fill and topsoil in order to reclaim the Easement Area. Grantee shall separately compensate Grantor for any losses and damages, including damage to crops incurred by reason of such reclamation and removal. Any waiver of the removal and reclamation requirement by Grantor must be in writing, signed by Grantor.

There shall be no refund of consideration paid to Grantor for this Easement by reason of termination, lack of development, or for any other reason.

9. Other; Miscellaneous.

- a. **Title.** Grantor makes no representation or warranty as to Grantor's title to the land described in Exhibit A hereto. It shall be the Grantee's burden and obligation to assure itself of the quality of title to Grantor's property for the purposes and to the extent deemed necessary by Grantee in order to enter this Easement.
- b. **Environmental Issues.** Grantee shall not use, dispose of or release on or under the Easement Area or on lands adjacent thereto, or permit to exist or be used, disposed of or released any substances (other than those Grantee has been licensed or permitted by applicable public authorities to use on the Easement Area) which are defined as "hazardous materials", "toxic substances" or "solid waste" in federal, state or local laws, statutes or ordinances. Should any pollutant, hazardous material, toxic substances, contaminated waste or solid waste be accidentally released, Grantee shall notify Grantor immediately after notifying the applicable governmental body of such event. Grantee shall be responsible for and timely pay all costs of clean-up, remediation, and other costs related to and arising from the event, including, but not limited to penalties. Grantee shall be responsible for, and shall comply with all applicable laws and regulations as to any required permitting, licenses, and fees related thereto concerning, relating to or arising from Grantee's use of the Easement Area, this Easement, and the pipeline.
- c. **Assignments.** This agreement shall inure to and be applicable to Grantor and Grantee and their respective heirs, representatives, successors and assigns. Grantee shall not assign this Easement without the prior written consent of Grantor, with Grantor's consent not to be unreasonably withheld or delayed, provided, however, that in the event of any assignment by Grantee or any successive Grantee, the assignor shall remain fully responsible for all obligations, responsibilities and liabilities of Grantee under this Easement (including, but not limited to, requirements as to indemnity and insurance).
- d. **Arbitration.** Any questions concerning this Easement that cannot be resolved by Grantor and Grantee shall be submitted to three disinterested arbitrators, one thereof to be appointed by the Grantor, one by the Grantee, and the third by the two so appointed, and the majority vote award of such collective group shall be final and conclusive. If the appointees of Grantor and Grantee cannot agree upon the third, the parties shall thereupon submit to the rules and procedures of the American Arbitration Association. Arbitration proceedings shall be conducted at the county seat of the county where the Easement is located unless the parties otherwise mutually agree. Each party shall pay its own arbitrator costs, and the cost of the third arbitrator shall be borne equally. The determination rendered by the arbitrators may be entered in the court of general jurisdiction in the county where the Easement is located.

Either party may apply to the arbitrators seeking injunctive relief until the arbitration award is rendered, or the controversy is otherwise resolved. Either party also may, without waiving any remedy under this Easement, seek from the court of general jurisdiction in the county where the Easement is located any interim or provisional relief that is necessary to protect the rights of property of that party, pending the establishment of the arbitration tribunal and its decision.

The arbitrators shall consider dispute issues in accordance with and subject to the terms of this Easement.

- e. **Apportionment of Consideration.** The parties agree that of consideration paid by Grantee to Grantor for this Easement, fifty (50) percent is deemed apportioned to the grant of the Easement, and fifty (50) percent is apportioned to damages resulting from the grant of Easement. This apportionment shall not apply to payment for timber, crops and structures pursuant to Paragraph 5(b) of this Easement.
- f. **Other Rights Superseded.** In the event any rights have been granted to or assigned to Grantee other than by this Easement for the placement, construction, maintenance, repair

and replacement of a pipeline on lands of Grantor described by Paragraph 1 herein, such rights are superseded by and extinguished by the parties' entering this Easement agreement.

In Witness Whereof, this instrument is executed as of this _____ day of _____, 2011.

GRANTOR:

WITNESS:

GRANTEE:

WITNESS:

By _____

Title _____

ACKNOWLEDGEMENT

STATE OF _____)
)
COUNTY OF _____)

On this ____ day of _____, 2011, before me, the undersigned Notary Public, personally appeared _____, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument as GRANTOR, and acknowledged that they executed the same for the purposes therein contained.

In Witness Whereof, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires _____

Printed Name:_____

STATE OF _____)
)
COUNTY OF _____)

On this ____ day of _____, 2011, before me, the undersigned Notary Public, personally appeared _____, the _____ of _____, who subscribed the within instrument as his/her own free act and deed as said officer of GRANTEE, and acknowledged that he/she executed the same for the purposes contained therein.

In Witness Whereof, I have hereunto set my hand and official seal.

Notary Public
My Commission Expires _____

Printed Name:_____

This instrument prepared by: