**Austin County, TX**

**Roadway Use and Maintenance Agreement**

 This agreement is entered into at Austin County, Texas between Austin County, Texas, a political subdivision of the State of Texas, whose mailing address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereafter “County”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_whose mailing address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereafter “Applicant”) and shall be as follows:

**RECITALS**

WHEREAS, Pursuant to §251.016 of the Texas Transportation Code, the County has control of the county roads within Austin County, Texas and is required to keep such roads in good repair by law; and

WHEREAS, Applicant is obligated by §111.020 of the Texas Natural Resources Code, and §181.005 of the Texas Utilities code, when constructing a pipeline that is intended to pass through the County, and from time to time cross under, along or across Austin County along a path as reflected in the attached Exhibit A, incorporated herein by reference, and in doing so, Applicant will be installing said pipeline along, through or under certain County Roads as identified in Exhibit B, attached and incorporated herein by reference, and

WHEREAS, Applicant will also utilize certain County Roads identified in Exhibit C, attached and incorporated herein by reference, for purposes of hauling materials, equipment and supplies necessary for the construction of said pipeline, and

WHEREAS, County and Applicant desire to enter into an agreement in advance of the commencement of construction of the pipeline, providing for the repair and maintenance of the roads identified in Exhibits B and C, along with any culverts, bridges, drainage ditches or other facilities related to the roadways so identified, including any utility, mail, or other appurtenances located upon and within the county road right-of-way as a result of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

WHEREAS, the Applicant shall provide to the County a list of all vehicles carrying permit loads that will be used in the installation of the pipeline, together with the license plate numbers and permit numbers associated with each such vehicle. This list will be utilized by the County to keep records of the utilization of the identified roads in Exhibits B and C, and to apportion any cost of repairs at the conclusion of the project.

THEREFORE, in consideration of good faith performance by each party of the mutual covenants hereinafter set forth, and other good and valuable consideration, the Applicant agrees to the maintenance and repair of said roads and bridges, to their pre-existing condition prior to the placing of the pipeline and for any damage caused by the Applicant Traversing on roads and bridges throughout the County.

TO FACILITATE this agreement, the parties agree that prior to construction, a determination will be made regarding the condition of all roads identified in Exhibit B and C will be made, and in this regard, should the pre-construction condition of any such road be determined by the Applicant to be insufficient for the anticipated loading and repetitive use of such roadways, Applicant agrees to strengthen such roads to a degree sufficient to support the anticipated loading and frequency of use involved with the pipeline installation. The Applicant will provide, at its sole expense, any necessary engineering studies to determine the degree of strengthening required, subject to review and approval by the County. At a minimum, the Applicant will conduct an inspection, in coordination with the County Commissioner and Engineer responsible for each road crossing, that will include photographs to document the existing condition of the roadway surface. At each boring location, at least three (3) core samples will be taken to determine the depth of base materials beneath the roadway surface on the line of boring. These samples will be taken from each edge of the traveled portion of the road-bed, and at the centerline of each road to be crossed by a boring. The core samples required by this section shall be photographed, measured, and any analysis of the same provided to the County.

At the conclusion of the project, or at any time the condition of the road becomes significantly impaired or hazardous, the road will be reconditioned at Applicant’s expense to essentially the same or better condition as the condition of the road prior to construction.

IT IS FURTHER AGREED that Applicant shall provide for the strengthening and upgrading of the roads, culverts and bridges, if mutually agreed to be necessary, prior to (or during) any pipeline activity. The areas and structures required to be strengthened and/or upgraded shall be determined by the engineer provided by the Applicant with the approval of the County, such approval to be provided within fifteen (15) days prior to construction, without the obligation of a written request submitted by the County. Applicant’s engineer shall provide a written report to the County detailing the condition of the road(s) and Appurtenances covered under this Agreement along with any recommendations, if necessary, prior to the commencement of work. With the consent of the County, such strengthening will be conducted by Applicant in advance of subjecting the roadway to anticipated loads.

FURTHER, during the installation of the pipeline, the Applicant’s engineer, together with the County Commissioner and Engineer or designee shall periodically and routinely examine and provide the County a detailed record and textual narrative of the on-going condition of the roads, culverts and bridges identified in Exhibits B and C.

FURTHER, the Applicant agrees that all County roads will be crossed only by utilizing a direct bore method of construction. Pursuant to §251.016 Texas Transportation Code and §240.907, Texas Local Government Code, the Applicant shall be required to apply for a permit to cross each road identified in Exhibits B and C, and such permit application shall provide full and complete specifications regarding the proposed crossing, including an affirmative acknowledgment that the Applicant will maintain a minimum depth of cover above each bored crossing of not less than twelve (12) feet. The Applicant will not commence boring at any location until a permit has been issued by the County for each such crossing. No more than three (3) crossing permits per precinct shall be issued at one time to ensure that the terms and conditions of this Road Use Agreement are being honored by the parties. Once the first permit is successfully completed to county satisfaction, County could issue another, but three would be the limit for active projects per precinct.

In exchange for the issuance of each permit by the County authorizing the Applicant to perform the work described in the Application, Applicant agrees to comply with the following provisions:

1. Applicant must post a performance bond in the amount of $80,000.00 per mile on gravel and $300,000 on paved, or not less than $5,000,000.00 in the aggregate.

2. Applicant shall obtain, at Applicant's expense, and keep in effect during the term of this Agreement, Commercial General liability insurance issued by a company with an AM Best rating of not less than A-, covering bodily injury and property damage with minimum coverage of $5,000,000.00 per occurrence in a form satisfactory to the County.

3. Applicant shall pay a permit fee of $500.00 for each road crossing necessary to install the Applicant’s facilities, and as a part of any damage or cost to restore the road, the costs of an engineer to review the application, inspection of the work and compliance review pursuant to §240.907 of the Texas Local government Code, and §251.017 of the Texas Transportation Code.

4. This Agreement only applies to the County right-of-ways. Applicant acknowledges that this permit does not grant the right to trespass or damage non-right-of-way property owned by adjoining landowners, and Applicant accepts any permit issued by the County subject to any and all rights of the adjoining landowners.

5. Applicant expressly recognizes that the issuance of a permit by the County does not grant any right, claim, title, or easement in or upon the road or its appurtenances.

6. In the future, should the County, for any reason, need to work, improve, relocate, widen, increase, add to, decrease, or in any manner change the structure of the road or right-of-way and the Applicant’s facility, if affected, will be affected, the County will notify the Applicant, and upon such notice, the Applicant will move or relocate its Facilities at the complete expense of Applicant, pursuant to § 111.020 of the Texas Natural Resources Code and §181.005 of the Texas Utilities Code. All installations will be in conformity with applicable federal and state law, in addition to the requirements of this agreement.

7. Applicant will hold the County, its employees, agents or assigns harmless for all claims, actions, or damages of every kind and description which may occur to or be suffered by any person or persons, corporation, or property by reason of the performance of any such work by the Applicant, including claims related to the character of materials used or the manner of installation, maintenance or operation by the Applicant, or by improper occupancy of rights-of-way or use of public places or public structures, and in case any suit or action is brought against the County for damages arising out of or by reason of any of the above causes, Applicant, is successors or assigns, will upon notice to the County of commencement of such legal proceedings or action, defend the County at the Applicant’s own expense, and will satisfy any judgment after said suit or action shall have finally been determined if adverse to the County. In this regard, the County will have the option of being defended by legal counsel selected by the Applicant, or at the County’s option, by legal counsel of the County’s choice. Should the County select separate counsel, the Applicant agrees to reimburse the County for the reasonable cost of its defense.

8. The County, its employees and agents will, at no time, be held liable for any damage or injury done to the property of Applicant whether in contract or in tort, which may result from improving and/or maintaining its county roads or right-of-ways.

9. The Applicant must provide copies of drawings or diagrams showing proposed location of all facilities to be installed by the Applicant adjacent to or within the County Road right-of-way, including utility, pipeline, communication, electrical, or telephone lines (hereafter “utility") with respect to right-of-way, type of installation or repair, size, length, material, and size of appurtenances, if any. The applicant is responsible for placing any 8-1-1 calls, and having areas properly marked for other utilities at the location.

10. The construction and maintenance of the transmission facility by Applicant shall not interfere with a previously installed utility line to the extent practicable. Applicant assumes all obligations of notification to affected public utilities affected by the transmission facility, and to coordinate with the County and any affected utility in place any relocation of such utilities at the sole cost of the Applicant and/or the affected utility. When necessary to remove or adjust another utility, a representative of that other utility shall be notified in advance by the Applicant, with a copy of such notice to the County, to decide the method and manner of work to be done. Any cost of temporarily or permanently relocating other utilities shall be borne by Applicant.

11. Applicant agrees to haul heavy loads or equipment to the work site along routes designated by the Commissioner of the Precinct in which such roads are located, as defined by Exhibit C. Heavy loads, for purposes of this Agreement, shall mean any loaded weight in excess of 25,000 pounds for single axle, 46,000 pounds for Tandem (two axle), 60,000 pounds for Tridem (three axle), 70,000 pounds for Quadrem (four axle), 81,400 pounds for Quint (five axle), or any vehicle with an unloaded weight in excess of 54,000 pounds. Any vehicle operated by Applicant, or under lease or contract to the Applicant that is found to be hauling heavy loads or having an unloaded weight in excess of 54,000 pounds upon any county road not identified in Exhibit C shall be deemed in violation of this Agreement.

12. At the conclusion of the project, or at such times as may be required by the County to ensure the use and enjoyment of any affected county road by the citizens of the County, the County may require a road affected by the pipeline installation to be repaired to a standard equaling the functional condition of the road prior to the commencement of work. Applicant agrees to reimburse the County for any and all damages to roads and bridges in the County from the movement of said loads or equipment within 15 days of receipt of County's notice of damages.

13. The Applicant shall make every effort to open and close any trenching operations located within 100’ (one-hundred feet) of the county road right-of-way during the daylight hours of one day. If closure is not operationally feasible, the Applicant will take appropriate measures to adequately warn vehicular and pedestrian users of the roadway of the open trench, and Applicant shall implement such barricade or screen procedures which shall be followed in the interest of safety, traffic convenience and access to adjacent property in the conduct of all trenching operations. It shall be the responsibility of the Applicant to adhere to the section on construction and maintenance as outlined in the Texas Manual of Uniform Traffic Control Devices, and to the Application of Installation document executed by or on behalf of the Applicant.

14. Upon completion of each segment of the project in County Road right-of-way in Exhibit B, and not later than 30 days upon the completion of the project, all equipment, construction material, surplus materials, trash, broken concrete, lumber, etc. shall be removed from the County Road ROW. The entire construction site shall be graded and cleaned to present the appearance as it was prior to construction or better.

15. The Applicant shall not obstruct at any time more than one-half of any roadway at a time, in order to maintain the flow of traffic at all times. However, in an emergency or with the permission of the Precinct Commissioner, the total width of the roadway may be obstructed, provided such work is done in conformity with the construction plan attached to this Agreement and incorporated herein by reference.

16. All of the above work shall be done under the direction of the Applicant’s engineer, and be satisfactory to the Precinct Commissioner. The holder of the permit shall notify the Precinct Commissioner twenty-four (24) hours prior to the time the work will be commenced, and provided with an estimate of time necessary to complete the work, to allow the Precinct Commissioner to be present at the time the work is performed.

17. Failure to Comply with Specifications: If any construction related to the operation is not performed in conformity with the plans and specifications incorporated herein the County will notify the Applicant in writing to restore the project installation to comply with the plans, and to the satisfaction of the Precinct Commissioner. If the Applicant fails to comply with the written request within fifteen (15) days after receipt of such notice, the County is authorized to repair the work itself, or to utilized a designated contractor of the County’s option, and Applicant will pay for any expenses incurred by the County for the restoration work. Applicant will, within thirty (30) days of receipt of an invoice for such work, reimburse the County. Failure to restore, or reimburse pursuant to these provisions authorize the County to collect damages against the Applicant’s Performance Bond. No further permits shall be issued to such Applicant until these costs have been paid.

18. Any opening or cut in a county road that is not refilled and restored within 24 hours following verbal notice to Applicant by Precinct Commissioner will be repaired by County and Applicant will be billed for the cost of repairs. Failure to pay this bill will authorize County to collect damages against the Applicant’s Performance Bond.

19. In the event that the Applicant or its successor(s) abandons the facility, Applicant shall give written notice to the County Judge.

20. To more fully implement the terms of this agreement, Applicant agrees to establish supply to the County a Road Usage Bond in an amount to be established by the County Engineer prior to the commencement of significant construction activities for the project. This Bond, issued by an A+, A or A- rated company, to be placed on escrow with the County Treasurer of Austin County, Texas. For purposes of this Agreement, significant construction activities shall mean any vehicular traffic carrying loads in excess of 54,000 pounds. This fund shall be available to be applied to any costs incurred by Austin County for the repair of roads, bridges, culverts or other road infrastructure due to damage caused by the activities of Applicant in the project zone. The County will first give notice to Applicant of the damage claimed, and Applicant will have thirty (30) days in which to cure any claimed damage. Failure to cure the claimed damage will authorize the County to access the Road Use Contingency Fund to the extent of the actual costs of repairs incurred by the County, as documented by actual receipts for material, labor or equipment use rates, as based on FEMA publications, as noted above. Upon any withdrawal from the Road Use Contingency Fund, Applicant shall immediately replenish the fund to the extent of any draw down pursuant to this section. Failure to establish this fund, or to replenish said fund when and if necessary, shall constitute a material breach of this Agreement. At the conclusion of all construction and commencement of commercial operations, any remaining balance in said contingency fund shall be remitted to Applicant.

FURTHER, the Applicant agrees to provide the County a cost estimate for restoration of any damage to the roads and bridges at the conclusion of the placement of the pipeline. The Applicant agrees to provide the County a schedule for any restoration.

FURTHER, Agreement shall be governed by the laws of the State of Texas. This Agreement shall be in effect on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

APPROVAL PAGE

 County Applicant

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

Printed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Printed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Company: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_