

**PUBLIC RIGHT-OF-WAY USE AGREEMENT
(NATURAL GAS PIPELINE CROSSING)**

The following statements are true and correct and constitute the basis upon which the parties have executed this Agreement.

A. Texas Midstream Gas Services, LLC, an Oklahoma Limited Liability Company duly authorized to do business in Texas (“Company”) wishes to construct a pipeline for the transportation of natural gas under certain Public Rights-of-Way.

B. The City has reviewed Company’s request and agrees to grant Company a license to use certain Public Rights-of-Ways in order to erect, construct, install, operate, repair, maintain, and remove a Pipeline, on the terms and conditions set forth herein, solely for the transportation of Gas and solely in accordance with the terms and conditions of this Agreement.

1. DEFINITIONS. Capitalized terms used in this Agreement and not otherwise defined within this Agreement shall have the following meanings:

Affiliate shall mean any individual, partnership, association, joint stock company, limited liability company, trust, corporation, or other person or entity who owns or controls, or is owned or controlled by, or is under common ownership or control with, the entity in question.

Agreement shall mean this Public Right-of-Way Use Agreement (Natural Gas Pipeline Crossing).

Company shall mean Texas Midstream Gas Services, LLC, an Oklahoma Limited Liability Company, only and shall not include any Affiliate or third party.

City shall mean the area within the corporate limits of the City of Euless, Texas and the governing body of the City of Euless, Texas.

City Manager shall mean the City Manager of the City of Euless, Texas.

Commission shall mean the Railroad Commission of the State of Texas or other authority succeeding to the regulatory powers of the Commission.

Customer shall mean any Person or Business located, in whole or in part, within the City.

Director shall mean the Director of the City’s Department of Public Works/Engineering or authorized representative.

Gas shall mean gaseous natural gas, liquefied natural gas, the constituents thereof or any mixture thereof.

Person shall mean, without limitation, an individual, a corporation, a limited liability company, a general or limited partnership, a sole proprietorship, a joint venture, a business trust or any other form of business entity or association.

Pipeline shall mean the ten inch (10") nominal diameter natural gas pipeline and appurtenant facilities approved by the Director that are installed by Company in the Public Rights-of-Way in accordance with this Agreement.

Public Right-of-Way shall mean only those dedicated public streets, highways, alleys and rights-of-way in the City identified in Exhibit "A" of this Agreement, attached hereto and hereby made a part of this Agreement for all purposes.

Public Works Department shall mean the Public Works Department of the City of Euless, Texas.

2. **GRANT OF RIGHTS.**

2.1 General Use of Public Rights-of-Way for Provision of Gas. Subject to the terms and conditions set forth in this Agreement and pursuant to §§181.005, 181.006 of the Texas Utilities Code, the City, to the extent of its interest therein, hereby grants Company a license to (i) erect, construct, install, operate, repair, maintain, and remove the Pipeline in, under, along and across the Public Rights-of-Ways and (ii) transport Gas through the portions of the Pipeline in, under, along and across the Public Rights-of-Ways as described in Exhibit A attached. Company hereby acknowledges and agrees that this Agreement allows only the transportation of Gas through the Public Rights-of-Ways and does not allow Company to distribute, sell or otherwise provide Gas to any Customer within the City.

2.2 Nonexclusive. This Agreement and all rights granted to Company herein are strictly nonexclusive. The City reserves the right to grant other and future licenses and other authorizations for use of the Public Rights-of-Ways to other Persons in accordance with applicable law and as the City deems appropriate; provided, however, that as to the grant of subsequent licenses for use of the same Public Rights-of-Ways that is solely within the discretion of the City, if a dispute arises as to priority of the use of the Public Rights-of-Ways, the City will resolve such dispute in a manner that does not result in unreasonable interference with Company's operation of the Pipeline for the purposes provided for herein. This Agreement does not establish any priority for the use of the Public Rights-of-Ways by Company or by any present or future licensees or other permit holders. In

the event of any dispute as to the priority of use of the Public Rights-of-Ways, the first priority shall be to the public generally, the second priority to the City in the performance of its various functions, and thereafter, as between licensees and other permit holders, as determined by the City in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Texas.

2.3 Other Permits. This Agreement does not relieve Company of any obligation to obtain other appropriate permits, licenses and other approvals from the City or other regulatory agency necessary for the erection, construction, installation, maintenance, removal or repair of Company's Pipeline or the transportation of Gas through such Pipeline.

2.4 Bonds. Before beginning any work that requires excavation in the Public Rights-of-Ways, Company shall deliver to City a bond executed by a corporate surety authorized to do business in the State of Texas and acceptable to the City in the amount of the cost of the work or \$50,000.00, whichever is greater for two years. The bond shall guarantee (i) the faithful performance and completion of all construction, maintenance, removal or repair work in accordance with the contract between Company and the contractor and (ii) full payment for all wages for labor and services and of all bills for materials, supplies and equipment used in the performance of that contract; (iii) that Company shall restore the Public Rights-of-Ways affected by such excavation in a satisfactory and workmanlike manner; (iv) that the restoration work shall be maintained in a state of repair satisfactory to the City for a period of two (2) years following the date the City approves the restoration; and (v) Company shall fully comply with any valid and enforceable City ordinances governing excavation in the Public Rights-of-Ways. If the Company meets its obligations under this Section, the City shall return the bond to the Company upon expiration of the two-year period. The bonds shall name the City as obligee.

3. TERM. This Agreement shall become effective on the date as of which both parties have executed it ("Effective Date") and shall expire at 11:59 P.M. CST on _____ unless terminated earlier as provided herein. This Agreement shall have a term of twenty-five (25) years.

4. FEES AND PAYMENTS TO CITY.

4.1. Right-of-way charge. On or prior to the Effective Date of this Agreement, Company shall pay City a right-of-way fee (the "Right-of-Way Fee") for the Term of this Agreement the sum of \$46.00 per linear foot.

4.2. Reserved.

- 4.3 Company's Acceptance of Fees.** Company hereby acknowledges and agrees that the amount of the Right-of-Way Use fee together with the construction plan review and inspection fee, constitutes an amount necessary to cover the anticipated cost to the City of administering, supervising, inspecting, and otherwise regulating the location of the Pipeline within the Public Rights-of-Way, including maintaining records and maps of the location of the Pipeline within the Public Rights-of-Way as provided by this Agreement.
- 4.4. Other Payments and Interest.** The payment of the Right-of-Way Fee does not excuse Company from any property taxes, license fees, permit fees, or other taxes, charges or fees that the City may from time to time impose on all other similarly situated entities within the City. Company shall reimburse the City for publication of this Agreement as required by the City's Charter.
- 4.5. Interest.** All sums not paid when due shall bear interest at the rate of ten percent (10%) per annum or the maximum amount allowed by law, whichever is less, computed monthly. If such outstanding sums are paid with interest within thirty (30) days following their respective due dates, Company's failure to pay such sums by their respective due dates shall not, in and of itself, constitute an Event of Default under Section 9 of this Agreement.
- 5. REGULATORY AUTHORITY OF THE CITY.** Company's property and operations hereunder shall be subject to such regulation by the City as may be reasonably necessary for the protection or benefit of the general public, to the extent that regulation is valid under applicable federal or state law. In this connection, Company shall be subject to, governed by and shall comply with all applicable and valid federal, state and local laws, including all applicable and valid ordinances, rules and regulations of the City, as same may be adopted and amended from time to time.
- 6. USE OF PUBLIC RIGHTS-OF-WAYS.**
- 6.1. Compliance with Laws, Ordinances, Rules and Regulations.** The City has the right to control and regulate the use of the Public Rights-of-Ways and other City-owned property and the spaces above and beneath them. Company shall comply with all valid and applicable laws, ordinances, rules and regulations, including, but not limited to, valid and applicable City ordinances, rules and policies related to construction permits, construction bonds, permissible hours of construction, operations during peak traffic hours, barricading requirements and any other construction rules or regulations that may be promulgated from time to time.

6.2. No Undue Burden. The Pipeline shall not be erected, installed, constructed, repaired, replaced or maintained in any manner that places an undue burden on the present or future use of the Public Rights-of-Ways by the City and the public. If the City reasonably determines that the Pipeline does place an undue burden on any portion of the Public Rights-of-Ways, Company, at Company's sole cost and expense and within a reasonable time period specified by the City, shall modify the Pipeline or take other actions reasonably determined by the City to be in the public interest to remove or alleviate such undue burden.

6.3. Minimal Interference.

6.3.1. Notice. Prior to the undertaking of any kind of construction, installation, maintenance, removal, repairs, or other work that requires the excavation, lane closure, or other physical use of the Public Rights-of-Ways, Company shall, except for work required to address an emergency, provide at least 48 hours' advance written notice to the owners of property adjacent to the Public Rights-of-Ways that will be affected. In the case of emergencies Company shall provide notice to the affected landowners within twenty-four (24) hours after commencement of work.

6.3.2. Worksite Regulations. During any such work, Company shall provide construction and maintenance signs and sufficient barricades at work sites to protect the public. The use of such traffic control devices shall be consistent with the standards and provisions of Part VI of the Texas Manual on Uniform Traffic Control Devices. Company shall utilize appropriate warning lights at all construction and maintenance sites where one or more traffic lanes are closed or obstructed during nighttime conditions. Company shall plan and execute construction of the pipeline so that no flood conditions are created or worsened on the surrounding land. To minimize erosion, the excavated portion of the right-of-way adjacent to the improved portion of the road shall be restored and revegetated.

6.3.3. Burial. Company shall bury or have buried its Pipeline at least four feet (4') deep except underneath public roads that are on the Public Rights-of-Way. Underneath public roads on the Public Rights-of-Way, below-ground parts of the Pipeline shall be at least seven feet (7') below the lowest point in such road pavement. When the Pipeline cannot be bored, during backfill of the Pipeline excavation, "Buried Pipeline" warning tape shall be buried between 12" and 24" inches above the Pipeline to warn future excavators of the presence of the Pipeline.

- 6.4. **“As-Built” Plans and Maps.** Company, at Company’s sole cost and expense, shall provide the City with as-built plans of all portions of the Pipeline located within the City, including those portions within the Public Rights-of-Way, and maps showing such Pipeline within ninety (90) calendar days following the completion of such Pipeline. Company shall supply the textual documentation of such as-built plans and maps in computer format as requested in writing by the City and shall otherwise fully cooperate with the City in ensuring that the Pipeline is accurately reflected in the City’s mapping system.
- 6.5. **Marking of Pipeline.** In addition to the markings required pursuant to 49 C.F.R. § 192.707 or its successor, Company shall mark the Pipeline in a manner that is reasonably acceptable to the Director, to show conspicuously Company’s name, a toll-free telephone number of Company that a Person may call for assistance and the appropriate Texas One Call System telephone number.
- 6.6. **Pavement Cut Coordination and Additional Fees.** The City shall have the right to coordinate all excavation work in the Public Rights-of-Ways in a manner that is consistent with and convenient for the implementation of the City’s program for street construction, rebuilding, resurfacing and repair. To preserve the integrity of the Public Rights-of-Ways, Company shall not cut, excavate or otherwise breach or damage the surface of any paved Public Right-of-Ways within ninety-six (96) months following the construction or resurfacing of such Public Right-of-Ways unless Company obtains written consent from the Director of Public Works, which consent shall not be unreasonably refused, withheld, conditioned, or delayed; pays an additional fee reasonably agreed to by and between the parties; and restores the Public Rights-of-Ways in accordance with this Agreement.
- 6.7. **Restoration of Public Rights-of-Ways and Property.** Company, at Company’s sole cost and expense, and in a manner approved by the City, shall promptly restore any portion of the Public Rights-of-Ways, City-owned property or other privately-owned property that is in any way disturbed or damaged by the construction, operation, maintenance or removal of any of the Pipeline to, at Company’s option, as good or better a condition as such property was in immediately prior to the disturbance or damage. Company shall diligently commence such restoration within thirty (30) calendar days following the date that Company first became aware of the disturbance or damage or, if the Pipeline is being removed, within thirty (30) calendar days following such removal. Any private service/utility lines that are in any way disturbed or damaged by the Company’s construction, operation, maintenance or removal of any of the

Pipeline, shall be repaired at the Company's sole cost and expense within 24 hours.

6.8. Relocation of Pipeline. Within forty-five (45) calendar days following a written request by the City, Company, at Company's sole cost and expense, shall protect, support, disconnect, alter or remove from the Public Rights-of-Ways all or any portion of its Pipeline due to (i) street or other public excavation, construction, repair, grading, regrading, or traffic conditions; (ii) the installation of sewers, drains, water pipes or municipally-owned facilities of any kind; (iii) the vacation, construction or relocation of streets or any other type of structure or improvement of a public agency; (iv) any public work; or (v) any other type of improvement necessary, in the City's sole discretion, for the public health, safety or welfare. If Company reasonably requires more than forty-five (45) days to comply with the City's written request, it shall notify the director of the City's Department of Public Works/Engineering in writing and the City will work in good faith with Company to negotiate a workable time frame. Any relocation will require that the Public Works Department, at Company's expense, approve Company's plans.

6.9. Emergencies.

6.9.1. Work by the City. For purposes of this Section 6.9.1, a public emergency shall be any condition which, in the reasonable opinion of the officials specified herein, poses an immediate threat to life, health or property and is caused by any natural or man-made disaster, including, but not limited to, storms, floods, fires, accidents, explosion, water main breaks and hazardous materials spills. In the event of a public emergency, the City shall have the right to take whatever action is deemed reasonably appropriate by the City Manager or Fire Chief, or their authorized representatives, including, but not limited to, action that may result in damage to the Pipeline, and Company hereby (i) releases the City, its officers, agents, servants, employees and subcontractors from liability or responsibility for any Damages, as defined in Section 7.1, that may occur to the Pipeline or that Company may otherwise incur as a result of such necessary response, and (ii) agrees that Company, at Company's sole cost and expense, shall be responsible for the repair, relocation or reconstruction of all or any of its Pipeline that is affected by such action of the City. In responding to a public emergency, the City agrees to comply with all local, state and federal laws, including, without limitation, any requirements to notify the Texas One Call System, to the extent that they apply at the time and under the circumstances. In addition, if the City takes any action that it believes will affect the Pipeline, the City will notify

Company as soon as practicable so that Company may advise and work with the City with respect to such action.

6.9.2. Work by or on Behalf of Company. In the event of an emergency that directly involves any portion of the Pipeline and necessitates immediate emergency response work on or repairs, Company may initiate the emergency response work or repairs or take any action required under the circumstances provided that Company notifies the City as promptly as possible. After the emergency has passed, Company shall apply for and obtain a construction permit from the director of the City's Department of Public Works/Engineering and otherwise fully comply with the requirements of this Agreement.

6.10. Removal of Pipeline.

6.10.1. Company Obligated to Remove. Upon the revocation, termination or expiration without extension or renewal of this Agreement, Company's right to use the Public Rights-of-Ways under this Agreement shall cease and Company shall immediately discontinue the transportation of Gas in or through the Pipeline. Within six (6) months following such revocation, termination, or expiration and, if the City requests, Company, at Company's sole cost and expense, shall remove the Pipeline from the Public Rights-of-Ways (or cap the Pipeline and abandon it in place, if consented to by the City), in accordance with applicable laws and regulations.

6.10.2. City's Right to Remove. If Company has not removed all of the Pipeline from the Public Rights-of-Ways (or capped the Pipeline and abandoned it in place, if consented to by the City) within six (6) months following revocation, termination or expiration of this Agreement, the City may deem any portion of the Pipeline remaining in the Public Rights-of-Ways abandoned and, at the City's sole option, (i) take possession of and title to such property or (ii) take any and all legal action necessary to compel Company to remove such property; provided, however, that Company may not abandon the Pipeline within the City except in compliance with any requirements of the Commission or successor agency or any other regulatory authority with such jurisdiction.

6.10.3. Restoration of Property Within six (6) months following revocation, termination or expiration of this Agreement and

in accordance with Section 6.7 of this Agreement, Company shall also restore any property, public or private, that is disturbed or damaged by removal (or, if consented to by the City, capping) of the Pipeline. If Company has not restored all such property within this time, the City, at the City's sole option, may perform or have performed any necessary restoration work, in which case Company shall immediately reimburse the City for any and all reasonable costs incurred in performing or having performed such restoration work.

7. LIABILITY AND INDEMNIFICATION.

7.1. Liability of Company. Company shall be liable and responsible for any and all of City's damages, losses, liabilities (joint or several), payments, obligations, penalties, claims, litigation, demands, defenses, judgments, lawsuits, proceedings, costs, disbursements or expenses (including, without limitation, fees, disbursements and reasonable expenses of attorneys, accountants and other professional advisors and of expert witnesses and costs of investigation and preparation) of any kind or nature whatsoever (collectively "Damages"), which may arise out of:

- (i) the construction, installation, operation, maintenance or condition of the Pipeline;
- (ii) the transportation of Gas through the Pipeline;
- (iii) any claim or lien arising out of work, labor, materials or supplies provided or supplied to Company, its contractors or subcontractors with respect to the Pipeline; or
- (iv) Company's failure to comply with any valid and applicable federal, state or local law, ordinance, rule or regulation,

except to the extent directly caused by the gross negligence or intentional misconduct of the City.

7.2. Indemnification. ***COMPANY, AT COMPANY'S SOLE COST AND EXPENSE, SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, BOARDS, COMMISSIONS, AGENTS, EMPLOYEES AND VOLUNTEERS ("INDEMNITEES"), FROM AND AGAINST ANY AND ALL DAMAGES WHICH MAY ARISE OUT OF: (I) COMPANY'S CONSTRUCTION, INSTALLATION, OPERATION, MAINTENANCE OR CONDITION OF THE PIPELINE OR ANY RELATED FACILITIES OR APPURTENANCES; (II) THE TRANSPORTATION OF GAS THROUGH THE PIPELINE; (III) ANY CLAIM OR LIEN ARISING OUT OF WORK,***

LABOR, MATERIALS OR SUPPLIES PROVIDED OR SUPPLIED TO COMPANY, ITS CONTRACTORS OR SUBCONTRACTORS; OR (IV) COMPANY'S FAILURE TO COMPLY WITH ANY APPLICABLE FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION, ACTS; OR (V) THE NEGLIGENT ACT OR OMISSION(S) OF THE CITY, ITS OFFICERS AND EMPLOYEES.

7.3. Assumption of Risk. Company hereby undertakes and assumes, for and on behalf of Company, its officers, agents, contractors, subcontractors, agents and employees, all risk of dangerous conditions, if any, on or about any City-owned or City-controlled property, including, but not limited to, the Public Rights-of-Ways.

7.4. Defense of Indemnitees. If an action, lawsuit or other proceeding is brought against any Indemnitee by reason of any matter for which the Indemnitees are indemnified hereunder, the City shall give Company prompt written notice of the making of any claim or commencement of any such action, lawsuit or other proceeding, and Company, at Company's sole cost and expense, shall resist and defend the same with reasonable participation by the City and with legal counsel selected by Company and specifically approved by the City, at City's own expense. In such an event, Company shall not admit liability in any matter on behalf of any Indemnitee without the advance written consent of the City.

8. INSURANCE. Company shall procure and maintain at all times, in full force and effect, a policy or policies of insurance to provide coverages as specified herein, naming the City as an additional insured and covering all public risks related to the use, occupancy, condition, maintenance, existence or location of the Public Rights-of-Ways and the construction, installation, operation, maintenance or condition of the Pipeline, including the transportation of Gas through the Pipeline. The required insurance can be met by a combination of self-insurance, primary and excess policies, as follows:

8.1. Primary Liability Insurance Coverage.

8.1.1. Commercial General Liability:

\$5,000,000 per occurrence, including coverage for the following: (i) Premises Liability; (ii) independent contractors; (iii) products/completed operations; (iv) personal injury; (v) contractual liability; (vi) explosion, collapse and underground property damage.

8.1.2. Property Damage Liability:

\$1,000,000 per occurrence.

8.1.3. Automobile Liability:

\$1,000,000 per accident, including, but not limited to, all owned, leased, hired or non-owned motor vehicles used in conjunction with the rights granted under this Agreement.

8.1.4. Worker's Compensation:

As required by law; and,

8.1.5 Employer's Liability:

\$1,000,000 per accident.

- 8.2. Requirements and Revisions to Required Coverage.** The City may, not more than once every five (5) years during the term of this Agreement, revise insurance coverage requirements and limits required by this Agreement. Company agrees that within ninety (90) days of receipt of written notice from the City, Company will implement all such revisions reasonably requested by the City. The policy or policies of insurance shall be endorsed to provide that no material changes in coverage, including, but not limited to, cancellation, termination, non-renewal or amendment, shall be made without thirty (30) days' prior written notice to the City. The policies and Certificate of Insurance provided to the City shall contain the following language:

“CANCELLATION CLAUSE”

“SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREFORE, THE ISSUING INSURER WILL PROVIDE THIRTY (30) DAYS WRITTEN NOTICE TO THE NAMED CERTIFICATE HOLDER”

- 8.3. Underwriters and Certificates.** Company shall procure and maintain its insurance with underwriters authorized to do business in the State of Texas and who are reasonably acceptable to the City in terms of solvency and financial strength. Within thirty (30) days following adoption of this Agreement by the City Council, Company shall furnish the City with certificates of insurance signed by the respective companies as proof that it has obtained the types and amounts of insurance coverage required herein. No construction shall commence until such certificates are received. In addition, Company shall, on demand, provide the City with evidence that it has maintained such coverage in full force and effect.
- 8.4. Deductibles.** Deductible or self-insured retention limits on any line of coverage required herein shall not exceed \$50,000 in the annual aggregate unless the limit per occurrence or per line of coverage, or aggregate is otherwise approved by the City.

8.5. No Limitation of Liability. The insurance requirements set forth in this Section 8 and any recovery by the City of any sum by reason of any insurance policy required under this Agreement shall in no way be construed or affected to limit or in any way affect Company's liability to the City or other persons as provided by this Agreement or law.

9. DEFAULTS. The occurrence at any time during the term of this Agreement of one or more of the following events shall constitute an "Event of Default" under this Agreement:

9.1. Breach. An Event of Default shall occur if Company materially breaches or violates any of the terms, covenants, representations or warranties set forth in this Agreement or materially fails to perform any obligation required by this Agreement.

9.2. Bankruptcy, Insolvency or Receivership. An Event of Default shall occur if Company (i) files a voluntary petition in bankruptcy; (ii) is adjudicated insolvent; (iii) files any petition or fails to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; (iv) seeks, consents to or acquiesces in the appointment of any trustee, receiver, master, custodian or liquidator of Company, any of Company's property or any revenues, issues, earnings or profits thereof; (v) makes an assignment for the benefit of creditors; or (vi) fails to pay Company's debts generally as they become due.

9.3. Violations of the Law. An Event of Default shall occur if the Pipeline or Company's operation of the Pipeline violates any valid and applicable existing or future federal, state or local laws or any applicable existing or future ordinances, rules and regulations of the City.

10. UNCURED DEFAULTS AND REMEDIES.

10.1. Notice of Default and Opportunity to Cure. If an Event of Default occurs, then City shall provide Company with written notice of such Default and shall give Company the opportunity to cure such Event of Default. For an Event of Default, Company shall have thirty (30) days from the date it receives written notice from the City to cure the Event of Default. In the event the Default cannot be cured within said thirty (30) days, so long as Company is acting in good faith, with due diligence to cure said Event of Default shall not be deemed an "Uncured Default." If any Event of Default is not cured within the time period specified herein and Company is not continuing to cure said Default in good faith with due diligence, such "Event of Default" shall, without further notice from the

City, become an “Uncured Default” and the City immediately may exercise the remedies provided in Section 10.2.

10.2. Remedies for Uncured Defaults. Upon the occurrence of an Uncured Default, the City shall be entitled to exercise, at the same time or at different times, any of the following remedies, all of which shall be cumulative of and without limitation to any other rights or remedies the City may have:

10.2.1. Termination of Agreement. Upon the occurrence of an Uncured Default, the City may terminate this Agreement. Upon such termination, Company shall forfeit all rights granted to it under this Agreement and, except as to Company's unperformed obligations and existing liabilities as of the date of termination, this Agreement shall automatically be deemed null and void and shall have no further force or effect. Company shall remain obligated to pay and the City shall retain the right to receive Right-of-Way Fees and any other payments due up to the date of termination. Company shall remove the Pipeline from and restore the Public Rights-of-Ways as and when requested by the City. The City's right to terminate this Agreement under this Section 10.2.1 does not and shall not be construed to constitute any kind of limitation on the City's right to terminate this Agreement for other reasons as provided by and in accordance with this Agreement; provided, however, that Company may not abandon the Pipeline except in compliance with any requirements of the Commission or successor agency or other regulatory authority with jurisdiction.

10.2.2. Legal Action Against Company. Upon the occurrence of an “Uncured Default”, the City may commence against Company an action at law for monetary damages or in equity, for injunctive relief or specific performance of any of the provisions of this Agreement which, as a matter of equity, are specifically enforceable.

11. PROVISION OF INFORMATION.

11.1. Right to Information. City shall, until the expiration of three (3) years after the termination of the final extension under this Agreement, have the right to request and receive all Company records, documents, and other items that identify the locations of the Pipeline or transactions under this Agreement.

12. **COMPANY AS INDEPENDENT CONTRACTOR.** Company shall operate as an independent contractor as to all rights and privileges granted by this Agreement, and not as an agent, representative or employee of the City. Company shall have the exclusive right to control the details of its business and other operations necessary or appurtenant to the transportation of Gas in accordance with the terms and conditions of this Agreement, and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors and subcontractors. Company acknowledges that the doctrine of respondeat superior shall not apply as between the City and Company, its officers, agents, employees, contractors and subcontractors. Company further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between the City and Company.
13. **ASSIGNMENT PROHIBITED.** Company may not assign or otherwise transfer any of its rights or obligations under this Agreement unless specifically authorized in writing by the City, which authorization shall not be unreasonably withheld; provided, however, that Company may make such an assignment of its rights to an affiliated company without the consent of City, provided, that upon such assignment, Company shall notify City within sixty (60) days of said assignment. An ‘affiliated company’ shall mean any parent, subsidiary or sister company or other legal entity that controls, is controlled by, or is under common control with Company. For purposes of this clause, ‘control’ means direct or indirect ownership of fifty percent (50%) or more of the voting rights of the subject entity. Notwithstanding such an assignment to an affiliated company, Company shall remain liable to City for any failure to perform hereunder by the affiliated assignee, and this provision shall thereafter be applicable to Company and such affiliated assignee. Every transferee shall succeed to all rights and be subject to all obligations, liabilities, and penalties owed to the City by the Company or any prior transferee of this Agreement, including any liabilities to the City for unpaid sums. No such transfer shall release the Company (or any subsequent transferor) from any obligation hereunder.
14. **NOTICES.** Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (i) hand-delivered to the other party, its agents, employees, servants or representatives, or (ii) received by the other party by United States Mail, postage prepaid, return receipt requested, addressed as follows:

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| <p>To the CITY:</p> <p>City of Euless Attn: Director Public Works 201 N. Ector Drive Euless, Texas 76039</p> | <p>To the COMPANY:</p> <p>Texas Midstream Gas Services, L.L.C. Director-Right-of-Way Coordination P.O. Box 18162 Oklahoma City, OK 73154-0162</p> |
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| <p>with a Copy to: City of Euless Attn: Director of Planning and Economic Development 201 N. Ector Drive Euless, Texas 76039</p> | <p>Physical Address: 6100 N. Western Avenue Oklahoma City, OK 73118-1044</p> <p>with a Copy to: Texas Midstream Gas Services, L.L.C. CT Corporation System 350 N. St. Paul Street, Suite 2900 Dallas, TX 75201</p> |
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15. **NON-DISCRIMINATION COVENANT.** Company shall not discriminate against any individual person on the basis of race, color, national origin, religion, handicap, sex, sexual orientation, or familial status in the receipt of benefits from Company's business operations, in any opportunities for employment with Company, or in the construction or installation of the Pipeline.

16. **NO WAIVER.** The failure of the City to insist upon the performance of any term or provision of this Agreement or to exercise any rights that the City may have, either under this Agreement or the law, shall not constitute a waiver of the City's right to insist upon appropriate performance or to assert any such right on any future occasion.

17. **GOVERNING LAW AND VENUE.** This Agreement shall be construed pursuant to and in accordance with the laws of the United States of America and the State of Texas. If any action, whether real or asserted, at law or in equity, arise out of the terms of this Agreement, Company's transportation of Gas or Company's use of the Public Rights-of-Ways, venue for such action shall lie exclusively in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas, Fort Worth Division.

18. **MISCELLANEOUS PROVISIONS.**
 - 18.1 **CONFERENCES.** At the request of either the City or Company, the City and Company shall meet at reasonable times and upon reasonable notice to discuss any aspect of this Agreement, Company's Pipeline, Company's operations in the City, Company's transportation of Gas or Company's use of Public Rights-of-Way.

- 18.2 SEVERABILITY.** If any provision of this Agreement is held to be invalid, illegal or unenforceable by a final order entered by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired. For purposes of this Agreement, a court order shall be final only to the extent that all available legal rights and remedies pertaining to such order, including, without limitation all available appeals, have been exhausted. In such an event, the City and Company agree that they shall amend or have amended this Agreement to comply with such final order entered by a court of competent jurisdiction.
- 18.3 FORCE MAJEURE.** In the event Company's performance of any of the terms, conditions or obligations required by this Agreement is prevented by a cause or event that is not within Company's reasonable control, Company's non-performance shall be deemed excused for the period of such inability and for thirty (30) days thereafter. Causes or events that are not within the Company's control shall include, but not be limited to, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions and natural disasters.
- 18.4 HEADINGS NOT CONTROLLING.** Headings and titles, other than those captions in Section 1, that are used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.
- 18.5 ENTIRETY OF AGREEMENT.** This Agreement, including the exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Company as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with the terms and conditions of this Agreement. This Agreement shall not be amended unless agreed to in writing by both parties and approved by the City Council of the City.

[INTENTIONALLY LEFT BLANK SIGNATURES ON FOLLOWING PAGE]

EXECUTED as of the later date below:

CITY OF EULESS:

By: _____
Mary Lib Saleh, Mayor

Date: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____
Wayne Olson, City Attorney

TEXAS MIDSTREAM GAS SERVICES, L.L.C.:

By: _____
Dave Johns, Manager – Property Rights

Date: _____

EXHIBIT “A”

Company may only use the following portions of the Public Rights-of-Way in the City: