

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

# ENCROACHMENT AGREEMENT

STATE OF TEXAS  
COUNTY OF TRAVIS

§§§

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the CITY OF PFLUGERVILLE, a Texas Municipal Corporation (hereinafter referred to as “Permitter”) with an address of 100 E. Main Street, Pflugerville, TX 78660, is the owner of an existing 1.09 acre tract of land in the James Burleson Survey No. 19, A-4, Travis County, Texas as described in Document Number 2003174330 in the Real Property Records of Travis County, Texas (hereinafter referred to as “Permitter Property”), a copy of which is attached hereto and fully incorporated by reference herein as Exhibit A;

WHEREAS, Texas Gas Service, a division of ONE Gas, Inc., with a mailing address of 9228 Tuscany Way, Austin, TX 78754 (hereinafter referred to as “Permittee”) is the current owner of a ten foot (10’) wide easement as specified in the Easement Agreement, recorded as Document Number \_\_\_\_\_ in the Real Property Records of Travis County, Texas (hereinafter referred to as the “Permittee Easement”), a copy of which is attached hereto and incorporated herein as Exhibit B;

WHEREAS, Permittee has requested permission to permanently encroach upon portions of the Permitter Property by constructing Permittee's facilities described as a natural gas pipeline and related appurtenances, and more particularly described in Exhibit C, attached hereto and made a part hereof, within the Permittee Easement on the Permitter Property (hereinafter referred to as the "Encroachment", whether one or more).

WHEREAS, Permittor has reviewed Permittee's plans and specifications for the Encroachment and agrees to allow and consents to the Encroachment subject to the terms and conditions of this Encroachment Agreement ("Agreement").

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars, and of the premises and covenants hereof contained and incorporated herein, the receipt and sufficiency of which are hereby acknowledged, Permittor grants to Permittee a limited right to encroach upon the Permittor Property and Permittee agrees to the following terms and conditions:

1. The Encroachment granted herein shall be for the purposes of the installation, erection, construction, reconstruction, improvement, upgrade, operation, repair, modification, inspection, patrol, protection, replacement, removal, abandonment and maintenance of a pipeline and related appurtenances (collectively “Facilities”) for the transmission and/or distribution of natural gas. The route of the Facilities to be installed shall be substantially the same as depicted in Exhibit B or as otherwise agreed to in writing by Permittee and Permitter.
2. Permittee shall have all rights necessary for the full use granted herein for the identified purposes. None of the aforementioned Permittee rights shall unreasonably conflict or interfere with Permitter’s property rights. Except in cases of emergency and during initial construction of the Facilities and restoration of the Permitter’s Property, Permittee’s ingress and egress to the Permitter Property and movement within the Permitter Property is limited to the Permittee Easement and where the same intersects any public road or public right-of-way or other easement to which Permittee has the right to access and along any roads or routes designated by Permitter.
3. Permitter may use the Permittee Easement for any and all purposes which do not unreasonably interfere with the rights granted to Permittee hereunder and in the Permittee Easement, including but not limited to the use of the Permittee Easement for roadways, fences, parking, driveways, curbing, sidewalks, landscaping, lighting, signage or other utilities provided that all of Permittee’s required and applicable spacing, including depth and separation limits, and other protective requirements are met by Permitter.
4. Nothing in this Agreement shall be construed as a grant or assignment of any of Permitter’s rights in the Permitter Property, or a conveyance of any property, specified above.
5. Except in cases of emergency, when notice shall be given as quickly as practicable, or in response to non-invasive routine activities such as line locates or leak detection activities (e.g., One-Call) or a routine inspection or patrol of the Facilities, Permittee shall give Permitter at least seven (7) business days’ advance written notice before commencing any construction, maintenance, removal, or replacement of Permittee’s Facilities in order that Permitter shall have an opportunity to have an inspector or representative present during the time such activities are carried out and so that Permitter’s pipeline(s) and related facilities can be located both vertically and horizontally and staked to minimize the possibility of damage. Permittee shall reimburse Permitter for Permitter’s actual and reasonable costs of such staking and locating. Permitter shall comply with all state One Call requirements on the Permittee Easement. Notice to Permitter is to be given to the following individual at the listed address and phone number (which can be changed with prior written notice to Permittee):

City of Pflugerville

Attn: \_\_\_\_\_

Pflugerville, Texas \_\_\_\_\_  
(512) 990-\_\_\_\_\_  
Email: \_\_\_\_\_

6. Any material changes in the nature or location of the Encroachment shall require the prior written approval of Permittor, which shall not be unreasonably withheld, conditioned or delayed.
7. Permittee shall adequately mark its underground facilities with permanent line markers and ground placards to promote public safety and the future safe operation of its Facilities and to meet applicable governmental regulations.
8. Any other encroachments on, disturbances of, or excavations within the Permittor Property that are not part of the Encroachment contemplated under this Agreement, including any material field changes to the Encroachment, are forbidden unless permitted by a separate fully executed agreement, and, without waiving Permittor's rights hereunder or otherwise, if such encroachments, disturbances, or excavations are initiated by Permittee, without or prior to the execution of a new encroachment agreement or an amendment to this Agreement, such actions by Permittee shall be governed by this Agreement until the parties enter into a separate encroachment agreement or an amendment to this Agreement. Permittee will not excavate, nor permit its employees, contractors, agents or representatives to excavate, on the Permittor Property for subgrade preparations or for any other purposes, except as allowed by this Agreement. Permittee shall at all times maintain the Encroachment in a condition which will not unreasonably interfere with or endanger Permittor's pipeline and related facilities.
9. Permittee agrees that it is in compliance with and shall continue to comply with all applicable laws and regulations relating to its activities hereunder.
10. During the term of this Agreement, including the period thereafter until the Permittee's Encroachment and related facilities are removed (or abandoned in place in accordance with applicable law and regulation at the expense of Permittee, as the case may be), Permittee shall carry a minimum of (a) comprehensive general liability insurance coverage of at least \$6,000,000 per occurrence, such insurance to provide coverage for premises operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, property damage, independent contractors and personal injury coverage including coverage for construction, operation and maintenance of Permittee's Encroachment, including but not limited to, loss or injury resulting from Hydrogen Sulfide Gas (H<sub>2</sub>S or "Sour Gas") if applicable. Permittor shall be furnished proof of such coverage before commencement of operations hereunder, and Permittee shall furnish Permittor a certificate of insurance providing for thirty (30) business days prior written notice to Permittor of cancellation of, or material change in, coverage. To the extent allowed by law, Permittor shall be included an additional insured under such insurance policy. Policy shall include Waiver of Subrogation in favor of Permittor.
11. **PERMITTEE SHALL PROTECT RELEASE, INDEMNIFY, DEFEND AND HOLD PERMITTOR, ITS PARENTS, SUBSIDIARIES, AFFILIATES,**

**CONTRACTORS AND SUBCONTRACTORS, THEIR SUCCESSORS AND ASSIGNS, AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES (HEREINAFTER COLLECTIVELY REFERRED TO AS THE "INDEMNIFIED PARTIES"), HARMLESS FROM AND AGAINST ANY AND ALL THIRD-PARTY CLAIMS, LOSSES, FINES, PENALTIES, DAMAGES, DEMANDS, SUITS, CAUSES OF ACTION, JUDGMENTS, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, COSTS OF LITIGATION AND/OR INVESTIGATION AND OTHER COSTS ASSOCIATED THEREWITH), AND LIABILITIES, OF EVERY KIND, (COLLECTIVELY REFERRED TO HEREFTER AS "CLAIMS"), INCLUDING WITHOUT LIMITATION THOSE RELATING TO LOSS OF OR DAMAGE TO ANY PROPERTY (INCLUDING, BUT NOT LIMITED TO, ENVIRONMENTAL DAMAGES, POLLUTION OR CONTAMINATION), AND INJURY TO OR DEATH OF ANY PERSONS, ARISING OUT OF, CONNECTED WITH, RELATING TO, OR RESULTING FROM PERMITTEE'S EXERCISE OF ANY OF THE RIGHTS IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THE CONSTRUCTION, PRESENCE, MAINTENANCE, USE, REPAIR OR REMOVAL OF THE ENCROACHMENT, OR ANY BREACH OF THIS AGREEMENT BY PERMITTEE OR BY ANYONE ACTING ON BEHALF OF PERMITTEE, REGARDLESS OF THE CAUSE OR CAUSES THEREOF, INCLUDING WITHOUT LIMITATION ANY CLAIMS CAUSED SOLELY BY OR CONTRIBUTED TO, IN PART, BY THE INDEMNIFIED PARTIES' SOLE, JOINT OR CONCURRENT NEGLIGENCE OR FAULT (WHETHER IMPOSED BY STATUTE, RULE, REGULATION OR OTHERWISE, INCLUDING THE STRICT LIABILITY OF THE INDEMNIFIED PARTIES), EXCEPT TO THE EXTENT ANY SUCH CLAIMS ARE CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ONE OR MORE OF THE INDEMNIFIED PARTIES OR ANY THIRD PARTY NOT ACTING ON BEHALF OF OR AT THE DIRECTION OF PERMITTEE.**

12. This Agreement shall be a covenant running with the land in which the Encroachment lies.
13. Permittee may assign its rights hereunder to another utility company, with Permittee or its assignee providing reasonably notice of such assignment to Permitter. The provisions hereof shall extend to, be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, successors and assigns.
14. This Agreement shall be construed and applied under, and in accordance with, the laws of the State of Texas. Venue of any suit to construe and/or enforce this Agreement shall be in the County(s) in which the lands described in this Agreement are located or in the federal court with jurisdiction over such county if the suit involved federal laws.
15. Permittee accepts the Permitter Property "AS IS" and "WITH ALL FAULTS" and Permitter specifically disclaims any and all warranties, express or implied, including but not limited to any warranty of fitness of the Permitter Property for any purpose.

16. Permittee is prohibited from storing Hazardous Substances in or on the Permitter Property. For purposes of this Agreement, the phrase “Hazardous Substances” carries the same meaning as in Section 26.263 of the Texas Water Code.
17. Permitter and Permittee each acknowledge that there are no representations, agreements, arrangements, or understandings, oral or written, concerning the subject matter of this Agreement that are not fully expressed herein.
18. This Agreement may be executed in multiple counterparts, each of which shall be considered an original and all of which, when taken together, shall constitute one and the same instrument. Signature pages from each counterpart may be combined to avoid duplication of pages.

EXECUTED on the dates set forth in the acknowledgments, but effective for all purposes as of the \_\_\_\_ day of \_\_\_\_\_, 2024.

**PERMITTOR**

City of Pflugerville  
a Texas Municipal Corporation

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

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

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

**PERMITTEE**

Texas Gas Service, a division of ONE Gas, Inc.  
an Oklahoma corporation

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

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

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

**(Acknowledgements on next page)**

ACKNOWLEDGEMENTS

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

Before me, a Notary Public in and for said County and State, on this day personally appeared, \_\_\_\_\_, the \_\_\_\_\_ of the City of Pflugerville, a Texas municipal corporation, and acknowledged to me that s/he executed said instrument for the purposes and consideration therein expressed, and as the act of said corporation.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

Before me, a Notary Public in and for said County and State, on this day personally appeared, \_\_\_\_\_, the \_\_\_\_\_ of Texas Gas Service, a division of ONE Gas, Inc., an Oklahoma corporation, and acknowledged to me that s/he executed said instrument for the purposes and consideration therein expressed, and as the act of said corporation.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**EXHIBIT “A”**  
**(Permittor Property)**

**EXHIBIT “B”**  
**(Permittee Easement)**



**EXHIBIT “C”**  
**(Encroachment)**