

**TEMPORARY RIGHT OF WAY REQUEST**

DeWITT COUNTY  
CUERO, TEXAS

DATE \_\_\_\_\_

Formal notice is hereby given that \_\_\_\_\_

Proposes to place a \_\_\_\_\_

line within the right of way of \_\_\_\_\_

in DeWitt County, Texas, as follows: (give location, length, general design etc.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

We will construct and maintain the line on the highway right of way as shown on the attached drawing and in accordance with the rules, regulations and policies of the Texas Department of Transportation (TxDOT), and all governing laws, including, but not limited to, the "Texas Engineering Practice Act," "Federal Clean Water Act," the "National Endangered Species Act," "Americans with Disabilities Act," and the "Federal Historic Preservation Act." Upon request by DeWitt County at any time, we will submit to DeWitt County proof of compliance with all governing laws, rules and regulations before commencement of construction. Plans shall include the design, proposed location, vertical elevations, and horizontal alignments of the facility based on the department's survey datum, the relationship to existing highway facilities and the right of way line, traffic safety and access procedures, and location of existing utilities that may be affected by the proposed utility facility. The location and description of the proposed line and appurtenances is more fully shown by a complete set of drawings attached to this Temporary Right of Right Request (Request). We will give plans to DeWitt County for each future proposed modification or expansion to our facility and DeWitt County will have 10 days to review and approve the plans prior to commencement of the work. A new Request may be required as a condition of approval. We will also ensure that traffic control measures complying with applicable portions of the Texas Manual of Uniform Traffic Control Devices will be installed and maintained for the duration of this installation.

When installing, modifying or maintaining our utility on controlled access facilities, we shall conform to the Texas Transportation Code, Title 6 Roadways, Chapter 203, Subchapter C, Control of Access, §203.031 (<http://www.statutes.legis.state.tx.us/>). We shall limit access for servicing this installation to access via (a) frontage road where provided, (b) nearby or adjacent public roads or streets, (c) trails along or near the highway right of way lines, connecting only to an intersecting road; from any one or all of which entry may be made to the outer portion of the highway right of way for normal service and maintenance operations. Our rights of access to the through traffic roadways and ramps shall be subject to the same rules and regulations that apply to the general public.

It is expressly understood that DeWitt County does not purport hereby to grant any right, claim, title or easement in or upon highway right of way. DeWitt County may require us to relocate this line, subject to the provisions of governing laws, by giving us at least 30 days written notice. We understand a new Request will be required for the relocation. We will notify DeWitt County prior to commencement of any operation which requires pruning of trees so that DeWitt County may provide specifications to govern performance of work, including trimming, topping, tree balance, type of cuts, painting cuts and clean up.

Our installation shall not damage any part of the roadway structure or associated appurtenances. We will make adequate provisions to cause minimum inconveniences to the traveling public and adjacent property owners. We will not open-cut driveways or intersecting roadways without specific written permission from the owner.

Following approval, we will begin construction on or after \_\_\_\_\_  
Month/Day/Year

DeWitt County Representative to be notified 48 hours prior to beginning construction:

If approved, we understand we will assume all risks associated with this installation within the DeWitt County right of way. These risks include injuries to our workers, damage to contiguous utility lines that may be in the area and injuries or damage resulting from our failure to properly install and maintain the line.

If the character, use or function of our installation is materially changed from that approved under this Request, we will notify DeWitt County within 30 days after the change. In the event of a voluntary or involuntary loss of public utility status, or other legal authority for longitudinal placement of the utility facility in the highway, or there is an abandonment of the facility without the approval of DeWitt County, we will at our expense remove the unauthorized portion of the facility from the right of way.

If installation of the line is not begun prior to the 91<sup>st</sup> calendar day from date of issuance, we acknowledge that, the temporary right of way to be granted by this request is for ninety (90) days only. DeWitt County's approval of this Request will automatically **expire**, and we will be required to resubmit our Request. Furthermore, if the temporary line is still being used at the expiration of the 90 day permit period, a new request for a temporary right of way shall be submitted and approved prior to the expiration of the previously approved right of way. All Request submissions, whether due to expiration of approval under the paragraph or new Requests for modifications and relocations shall be in accordance with the governing laws, rules, regulations and policies existing at the time of submission. In the event we fail to comply with any or all of the requirements as set forth in this Request, the State may take such action as it deems appropriate to compel our compliance.

Payment of a \$500 Temporary Right of Way Permit Fee for each line to be laid must accompany this Request. If this Request is approved by DeWitt County, Requester will be required to enter into a Temporary Right of Way Agreement in the form attached as Exhibit "A" hereto. A \$5,000 penalty fee will be assessed if said pipeline has been installed prior to this application being presented to and approved by DeWitt County Commissioners Court or if said temporary lines remain in the right of way after the expiration of the 90 day permit period.

By signing as/for the requestor below, I certify that I am authorized to represent the requestor, that I agree to the provisions and requirements included in this Utility Installation Request, and our commencement of construction will further attest to our review and acceptance of said additional provisions and requirements.

REQUESTOR

APPROVED BY DeWITT COUNTY

\_\_\_\_\_  
Date:  
By:  
Title:  
Address:

\_\_\_\_\_  
Date:  
By: DARYL L. FOWLER  
Title: COUNTY JUDGE  
Address: 307 N. GONZALES ST.  
CUERO, TEXAS 77954

Telephone Number:  
THE STATE OF TEXAS  
COUNTY OF DeWITT

Telephone Number: 361 275 0916

### TEMPORARY RIGHT OF WAY AGREEMENT

This RIGHT OF WAY AGREEMENT (this "Agreement") dated as of \_\_\_\_\_, \_\_\_\_\_, (the "Effective Date"), is made by \_\_\_\_\_ (Company) and DeWitt County (County). Company and County are sometimes each referred to in this Agreement as a "Party" and collectively as the "Parties."

#### RECITALS

A. County owns an interest in the real property located in Dewitt County, Texas, which is commonly referred to as \_\_\_\_\_ Road(s), and which is depicted on Exhibit "A" attached to this Agreement (the "Property");

B. Company desires to acquire a right-of-way and easement along a route, the location of which has been agreed to by the parties herein (the location of the pipeline as constructed to evidence such agreed route,) to construct, maintain, operate, repair, replace, and remove a water pipeline and related facilities and markers; and

#### AGREEMENT

NOW, THEREFORE, in consideration of the agreements and promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals: The recitals set forth above, and all referenced exhibits, are expressly incorporated in this Agreement by this reference.

2. Payment: In consideration of County's consent to permit Company to construct, maintain, operate, repair, replace, and remove a water pipeline and related facilities and markers; and (ii) convey, transfer, and assign to the Company all easements, rights-of-way, and licenses ("Appurtenances") necessary for the Company's entry onto the Property to construct, maintain, operate, repair, replace, and remove a water pipeline and related facilities and markers, Company shall pay to County a \$500 permit fee per line laid.

3. Easement; Rights-of-Way and Licenses: In further consideration of the payment of the consideration set forth above, County shall, in accordance with the terms and conditions of this Agreement, grant to Company an easement in over, across, under, and through the Property to construct, install, maintain, replace, and operate the water pipeline and related facilities and markers. Company shall have reasonable access to the easement, including all necessary rights-of-way and licenses to enter upon the Property in accordance with the terms and conditions of this Agreement.

4. Term: The term of this Agreement shall commence on the Effective Date and will continue until the water pipeline and related facilities and markers are removed from the Property. The rights to the Property granted herein shall terminate on \_\_\_\_\_.

5. Construction, Operation, and Maintenance: Audit: Company shall be solely responsible for all costs of construct, maintain, operate, repair, replace, and remove of the water pipeline and related facilities and

markers from the Property. Proper drainage in the highway ditch shall be maintained throughout the installation of this line. The applicant shall assume all responsibility for any damage to the public or adjoining property owners in the installation and maintenance of this line. It is the responsibility of the applicant to handle traffic in a safe and satisfactory manner during the installation and maintenance of these lines. Traffic control shall be in compliance with Part VI of the 1980 Texas Manual on Uniform Traffic Control Devices for Street and Highways. A representative of the applicant will be on the jobsite whenever work is in progress and a copy of this permit must be on the jobsite.

6. Representations and Warranties: As an inducement to the Company to enter into this Agreement, County represents and warrants the following concerning the Property:

6.1 County holds an interest to the Property.

6.2 To the best of County's knowledge, there are no environmental or archeological restrictions which would interfere with the Company's rights pursuant to this Agreement; and

7. No Further Rights: Except for those rights expressly provided elsewhere herein, no other rights to the Property are conveyed, transferred, or assigned to Company by this Agreement.

8. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement is intended, and nothing in this Agreement shall be construed, to require that Company construct, maintain, operate, repair, replace, and remove the water pipeline and related facilities from the Property.

9. Further Documents and Cooperation: Company and County shall execute such other and further documents as are reasonable and necessary to fulfill and carry out the terms and conditions intended by this Agreement. County agrees to cooperate with Company and to take all actions required and necessary for the proper permitting and utilization of the Property obtained by Company pursuant to this Agreement.

10. All other parties holding any interests in the right to use the Property, including, but not limited to, mortgages, deeds of trust, leases, easements, rights-of-way, and licenses, have or will agree to subordinate such rights to use of the Property in favor of Company's right to use the Property pursuant to the terms of this Agreement.

11. Company shall provide proof of financial responsibility to cover damages to persons or property covering its operations and rights granted hereunder by complying with either option listed below:

- a) Company shall keep in effect, at its sole cost and expenses, reasonably satisfactory comprehensive general liability insurance covering the rights granted hereunder with maximum limits of liability of not less than \$1,000,000 for bodily injury of death to one person, or to any group of persons as a result of one accident, and \$1,000,000 for property damage. Company shall name the County as an additional insured and furnish such other party with certificates of current policies, and upon expiration thereof, renewal certificates, evidencing such insurance. Company shall also cover all of its respective employees with workman compensation policies.
- b) Company shall provide to Commissioners Court a letter, which shall be incorporated as part of this agreement, setting forth that company will self insure for any damage to persons or property caused by its operation and rights granted hereunder.

Commissioners Court reserves the right to accept or reject Company's selection to be self insured under option b) above.

12. Company shall pay all real estate taxes and assessments that shall be due and payable on the improvements to the extent related to Company's improvements (for the limited period of this Agreement), if any prior to delinquency.

13. Nothing contained herein shall be construed or deemed to constitute a dedication, express or implied, of any real property to or for any public use or purpose whatsoever.

14. No Representation. THE RIGHTS GRANTED HEREIN ARE BEING GRANTED IN THEIR CURRENT CONDITION, "AS-IS, WHERE-IS AND WITH ALL FAULTS" AND EXCEPT AS MAY BE SPECIFICALLY SET FORTH IN THE MASTER AGREEMENT, WITHOUT REPRESENTATION OR WARRANTY OR INDEMNIFICATION OF ANY KIND, EXPRESS OR IMPLIED, EACH AND ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED BY THE COUNTY, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO QUALITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE OR PURPOSE.

15. INDEMNIFICATION. COMPANY AGREES TO INDEMNIFY, DEFEND, AND HOLD COUNTY HARMLESS FROM AND AGAINST ANY CLAIM MADE AGAINST COUNTY AND/OR COUNTY'S REPRESENTATIVES FOR ANY LOSS OR DAMAGE INCLUDING PROPERTY DAMAGE AND DEATH OR BODILY INJURY, SUFFERED BY COUNTY OR ANY OF ITS REPRESENTATIVES AS A RESULT OF COMPANY'S INSPECTIONS, SAMPLING OR TESTING AND COMPANY'S USE OF THE EASEMENTS GRANTED TO IT HEREIN. THE FOREGOING INDEMNIFICATION OBLIGATIONS SHALL SURVIVE ANY SALE OF PROPERTY BY EITHER PARTY AND SHALL SURVIVE ANY EXPIRATION OR TERMINATION OF ANY OF THE EASEMENT RIGHTS GRANTED HEREUNDER FOR ACTIONS ACCRUING DURING THE TERM HEREOF.

16. WAIVER OF LIABILITY. EXCEPT FOR THE COMPANY'S INDEMNIFICATION OBLIGATIONS WITH RESPECT TO CLAIMS OF THIRD PARTIES, THE PARTIES' LIABILITY FOR DAMAGES HEREUNDER IS LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, AND NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, OR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, IN TORT, CONTRACT OR OTHERWISE, OF ANY KIND, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE, THE SUSPENSION OF PERFORMANCE, THE FAILURE TO PERFORM, OR THE TERMINATION OF THIS AGREEMENT.

17. Covenant Against Liens. Company hereby covenants and agrees that it will not cause or permit any lien (including, without limitation, the filing of any mechanic's lien) to be filed or asserted against the property of the County as a result of any act or omission of Company. In the event any such lien or notice of lien is filed, Company shall, within ten(10) days of receipt of notice from County of the filing of the lien, contest such lien as permitted by law if such contest is sufficient alone to prevent the lien from maturing, or contest said lien as permitted by law and bond or insure over said lien, or fully discharge the lien by settling the claim which resulted in the lien or by bonding or insuring over the lien in the manner prescribed by applicable law. If Company fails to so contest and/or discharge the lien, then, in addition to any other right or remedy of County, County may bond or insure over the lien or otherwise discharge the lien. Company shall reimburse County any amount paid by County to bond or insure over the lien or discharge the lien, including without limitation reasonable attorneys' fees, within fifteen (15) days of receipt of invoice. Any rights and obligations created under or by this Section shall survive termination or expiration of this Agreement.

18. Required Approvals: The Company will, at the Company's sole expense, obtain any required permits from the appropriate state or local agencies that may be required by law or regulation. County will cooperate in any nonmonetary manner in assisting County in obtaining and complying with any such requirements.

19. Filings: The Company shall file all reports with all appropriate state or local agencies that may be required by law or regulation.

20. Successors and Assigns: This Agreement shall be binding on the Parties and their respective successors and assigns, including, without limitation, any future Landowners of the Property. County agrees to include a description of this Agreement in any contract, deed, or other document affecting any conveyance of any interest in any of the Property.

21. Authorizations: Each Party warrants to the other Party that it is duly authorized and has the power to enter into this Agreement and grant and convey the interests described in this Agreement.

22. Governing Law: This Agreement shall be governed by and construed in accordance with the substantive laws and judicial decisions of the State of Texas.

23. This Agreement contains the entire agreement between the Company and the County and no statements, promises, or inducements made by any party or agreement of either party that are not contained in this Agreement shall be valid or binding. This Agreement may be modified only in writing when signed by the parties.

24. Counterparts: This Agreement may be signed in counterparts by the Parties with the same effect as though each Party had executed the same document. Signature and notary pages may be detached from the counterparts and attached to a single copy of this Agreement to form one legally effective document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

\_\_\_\_\_

\_\_\_\_\_  
Company Name

By: \_\_\_\_\_  
Authorized Agent

DeWITT COUNTY

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

EXHIBIT "A"

Plat Map, Abstract #, Survey # or Surface map of proposed location