

Drafted by/Return to:
Jason Godwin
Right of Way Department
Northern Natural Gas Company
1120 Centre Pointe Drive, Suite 400
Mendota Heights, MN 55120
651-456-1711

(22-074)
SDM90801-31
EATS: 98876

ENCROACHMENT AGREEMENT

This instrument made and entered into this 19th day of October, 2022, by and between NORTHERN NATURAL GAS COMPANY, a Delaware corporation, (hereinafter referred to as “Northern”), with principal offices at 1111 South 103rd Street, Omaha, Nebraska 68124-1000, and THE CITY OF HARRISBURG, a South Dakota municipal corporation (hereinafter referred to as “Owner” whether one or more).

WITNESSETH THAT:

WHEREAS, Northern is the holder of an Easement granted by Theodore Lien, a single man on June 16, 1954, covering the following described premises in Lincoln County, South Dakota:

North Half of the Southeast Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$) (except the South Seventeen (S.17) Acres thereof) in Section Thirty-six (36), and the South Half of the Northeast Quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$), in Section Thirty-six (36), all in Township One Hundred (100), Range Fifty (50);

which Easement was recorded the 17th day of September, 1954, as Document Number 28027, in Book M., at Page 205, and which was subsequently defined to a 90 foot wide strip by a Modification and Amendment of Easement Grant recorded the 10th day of October, 2007 in Book

17 of Miscellaneous at Page 987 as Document No. 288145, all in the Office of the Register of Deeds for Lincoln County, South Dakota (hereinafter referred to as "Easement"); and

WHEREAS, pursuant to the authority contained in said Easement, Northern has constructed and currently operates and maintains an 20-inch pipeline (SDM90801), along with the right to install additional facilities from time to time (hereinafter referred to as "Pipeline Facilities"), across and through the above described premises; and

WHEREAS, Owner is the present owner of the following described real property, with Pipeline Facilities situated upon the following described land in Lincoln County, South Dakota (hereinafter referred to as the "Owned Premises"):

Block 8 of Legendary Estates Addition to the City of Harrisburg,
Lincoln County, South Dakota

WHEREAS, Owner plans to construct an improved pond (hereinafter referred to as "Encroachment") upon and within a portion of the confines of Northern's 90-foot wide Easement as depicted on Exhibit "A" with this written consent; and

WHEREAS, Owner has been advised by Northern that Northern is a natural gas transmission company and that Northern operates a high pressure underground natural gas pipeline through the Owned Premises; and

WHEREAS, Owner has requested permission from Northern to maintain, use, and enjoy the Encroachment upon a portion of Northern's Easement and in close proximity to Northern's Pipeline Facilities; and

WHEREAS, Northern is willing to grant such permission upon the terms and conditions set forth as follows.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions hereinafter set forth, the parties hereto agree as follows:

1. Northern hereby grants permission to Owner to maintain, operate and use upon the Owned Premises and in close proximity to Northern's Pipeline Facilities, the said Encroachment, subject to the following conditions:

A. That Owner assumes all risks for damages, injuries, or loss to either property or persons, which may be incurred by Owner or its respective agents, invitees, or licensees present on or in the vicinity of the Easement and in any way associated with said Encroachment.

B. That the permission granted herein is limited exclusively to the proposed Encroachment within Northern's Easement. Owner shall not alter the grade or permit such alteration anywhere on the land upon which Northern has reserved its easement rights, without the prior express written consent of Northern.

C. That Owner shall at all times conduct all its activities on said Easement in such a manner as not to interfere with or impede the operation of Northern's Pipeline Facilities and activities in any manner whatsoever.

D. That Owner shall not plant any trees or shrubs within the confines of Northern's Easement without the prior express written consent of Northern.

E. That Owner agrees that the Encroaching Facilities shall be constructed according to the requirements and restrictions set forth on Exhibit "B" attached hereto.

2. Owner agrees to indemnify, protect, and hold Northern, its parent, affiliates, subsidiaries, and their directors, officers, employees, representatives, and agents harmless from and against any and all actions or causes of action, claims, demands, liabilities, loss, damage, injury, suit, proceeding, judgment, cost, or expense of whatever kind or nature, including but not limited to reasonable attorneys' fees, arising from or as a result of any incident, act, action, cause of action, negligence, transaction or omission of Owner in connection with, or incidental to the construction, operation, maintenance, or use of the said Encroachment within, upon or in the vicinity of the Easement Area, or from the operation, maintenance, use or presence of Northern's Pipeline Facilities upon or in the vicinity of the Encroachment except where such loss, cost, liability, or expense was proximately caused by the negligence of Northern or its employees. It is understood and agreed by the parties that under this Agreement, Owner shall be jointly and severally liable.

3. Owner agrees that protection of Northern's Pipeline Facilities will be maintained at all times.

4. Should Northern need to remove any of Owner's said Encroachment within its Easement in order to construct, maintain, operate, repair, remove, or resize Northern's existing or additional Pipeline Facilities, Owner or its respective heirs, successors, and assigns shall pay the cost of removing and replacing or reinstalling said Encroachment. In addition, all repair and maintenance work performed by Northern on its existing or additional Pipeline Facilities located on the Owned Premises shall be performed in a reasonable workmanlike manner and Northern shall restore the surface and grade of the Owned Premises where the work is performed, but shall not be liable for loss, damage, or replacement to Owner's said Encroachment or any associated equipment and facilities that exist within the Easement, and in this regard, Owner hereby releases Northern, its employees, agents, officers, and directors from any and all liability for any such loss or damage.

5. The Parties hereto understand that this Agreement in no way constitutes a waiver by Northern of its rights to enjoy its Easement unencumbered by the construction of said Encroachment within Northern's Easement.

6. It is expressly agreed to by and between the parties hereto that if Owner is in violation of any terms or conditions set forth in this Agreement, Northern, at its option, may terminate this Agreement upon ten (10) days' notice to the Owner. In the event of such termination, Owner shall immediately remove any and all of said Encroachment which may be situated on the

Easement, or if Owner fails to remove any and all of said Encroachment, Northern may, at its option, remove said Encroachment at the expense of Owner and without any liability whatsoever. It is further agreed that the failure by Northern to exercise such option as to any such violation shall not constitute a waiver of Northern's future right to exercise such option as to the same or any future violation.

7. The provisions of the Easement, and all rights, powers, privileges, and duties, obligations, and liabilities created thereby, remain in full force and effect and are not affected hereby except to the extent and in the manner set forth above.

8. Owner agrees to indemnify, defend and hold Northern, its parent and affiliated companies, and the directors, officers and employees of any such corporate entities harmless from and against any liability, damage, claims, loss, cause of action, suit, proceeding, judgment, cost (including the cost or expense of environmental response, removal or remediation activities), fees or expense, including reasonable attorney's fees arising from: (1) non-compliance with any laws, regulations and orders applicable to the ownership or the operation and maintenance of the said Encroachment on the Owned Premises described herein, and (2) any incidents, acts, releases, negligence, transactions or omissions, or conditions on or affecting the Easement that would (i) contribute to or constitute a violation of any local, state or federal environmental rule, regulation, law or judicial order, (ii) result, in whole or in part, in any requirement to clean up or otherwise remedy or remediate a condition, (iii) give rise to any lien, liability, injunction, order, restriction, claim, expense, damage, fine or penalty, or (iv) adversely affect human health or the environment at or near the Easement.

9. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED, AND AGREES ANY SUCH ACTIONS MAY NOT IN ANY EVENT BE CONSOLIDATED TOGETHER.

This instrument and the covenants and agreements herein contained shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the parties and the benefits of this Agreement shall run with the land.

[Remainder of page intentionally left blank. Signature and Acknowledgment pages follow.]

COUNTERPART SIGNATURE PAGE

COMPANY:

NORTHERN NATURAL GAS COMPANY

By: _____

Name: Bryan P. Kruger

Title: Attorney-in-Fact

ACKNOWLEDGMENT

THE STATE OF NEBRASKA §

§

COUNTY OF DOUGLAS §

This instrument was acknowledged before me this the ____ day of _____, 20__, by Bryan P. Kruger, the Attorney-in-Fact of Northern Natural Gas Company, a Delaware corporation, as the act and deed of said corporation, and for the purposes herein described.

Notary Public, State of Nebraska
My Commission expires: _____

COUNTERPART SIGNATURE PAGE

OWNER:

THE CITY OF HARRISBURG

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

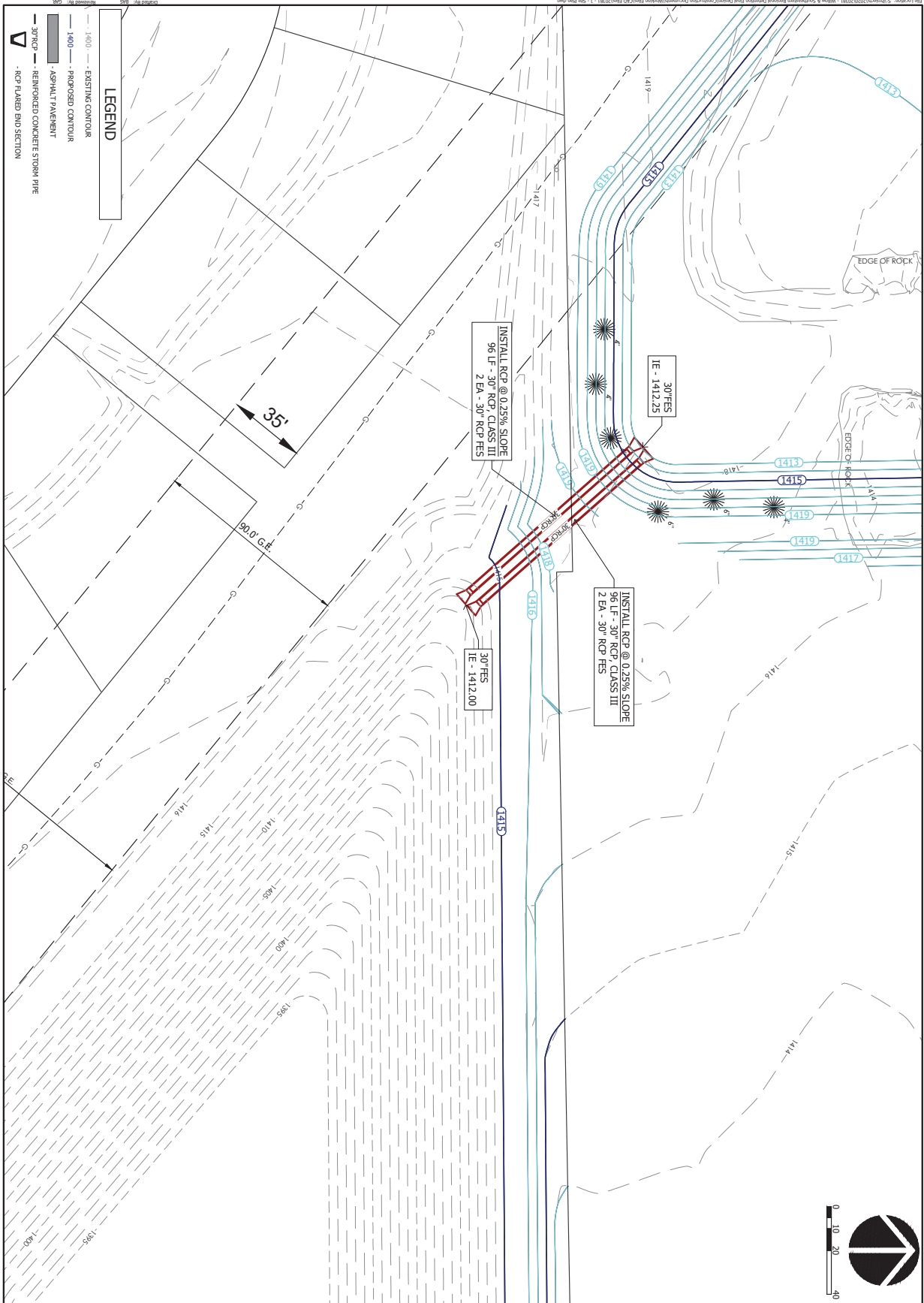
THE STATE OF SOUTH DAKOTA §



§

COUNTY OF LINCOLN §

This instrument was acknowledged before me this the ____ day of _____, 2022, by THE CITY OF HARRISBURG, a South Dakota municipal corporation, as the act and deed of said municipal corporation, and for the purposes herein described.

Notary Public, State of _____
My Commission expires: _____



 <p>STOCKWELL STOCKWELL ENGINEERS, INC. 201 W. 17TH ST. SUITE 200 SIOUX FALLS, SD 57104 PH: 605.336.8730</p>	 <p>LEGENDARY ESTATES DRAINAGE IMPROVEMENTS PHASE 1 - GRADING & OUTLET STRUCTURE HARRISBURG, SOUTH DAKOTA SEI PROJECT #: 20381</p>	<p>REGISTERED PROFESSIONAL ENGINEER STATE OF SOUTH DAKOTA 7828 GARD A MAY 1993 02/27/2021 11:29 AM</p> <p>REVIEW SET</p> <p>SITE PLAN</p> <p>J-2</p>
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To: Stockwell Engineering, City of Harrisburg
From: NNG Engineering
Subject: Legendary Pond Improvements, Harrisburg, SD
EATS# 98876

Date: 10/19/2022

Northern Natural Gas (NNG) engineering has reviewed the preliminary site plan provided by the developer, Stockwell, for the proposed pond improvement project. The developer plans to add new grading to an existing dry pond that is used only as storage for rainfall runoff that will drain quickly into the Mydland pond. The plan's design includes lowering the bottom of the Legendary pond and interconnecting it with the Mydland pond via twin 30" RCP culverts. NNG owns a 90' strip easement.

The proposed development will encroach upon an NNG high pressure natural gas main line, the 20-inch-diameter M471B in Section 36, Township 100N, Range 50W of Lincoln County, South Dakota, near pipeline milepost 63.86. The proposed project area is currently a class 3 population density area.

Engineering Notes

Engineering **approves** of the encroachment under the following conditions:

- Engineering makes note of the encroachment guidelines (ES-0065) listed below.

Pipeline History

The M471B main line consists of 20.000" outside diameter steel pipe. The line was originally installed in 2013.

Encroachment Guidelines

- **Representation:** An NNG representative shall always be present when excavation work is being performed within 25 feet of NNG's pipeline. This requirement is per NNG operating procedure OP 80.102, "Damage Prevention Program." The contractor shall provide NNG a South Dakota utility one call ticket with 48-hour notice prior to excavating in the area.
- **Excavation:** Mechanical excavation is allowed up to 24 inches from the NNG pipeline. Hand excavation or hydrovac excavation is required when excavating 24 inches or closer to NNG's pipeline.
- **Permanent Structures:** Any enclosed structure or building permanent in nature regardless of purpose may not be installed inside the NNG easement and should be installed a minimum of 45 feet from NNG facilities.
- **Foreign Utilities:** All foreign utilities (water, gas, sanitary, sewer, oil, communication, etc.) must cross NNG's pipelines at or near a right angle with a required minimum of 12 inches of separation. It is preferred that foreign utilities cross under NNG's pipeline where reasonable. Foreign utilities running parallel to NNG facilities must be placed a recommended minimum offset of 40 feet from NNG facilities.
- **Appurtenances:** All above grade appurtenances shall not interfere with ground patrols or leak surveys. All light poles, manholes, signs, trees, shrubs, etc. must be placed a recommended offset distance of 40 feet from NNG facilities.
- **Fence Posts:** New residential, commercial, and industrial fences may not cross pipelines. Fences running parallel to NNG facilities have a minimum recommended offset of 30 feet.
- **Grade Modifications:** Earthwork and other grade modification must maintain a minimum of 36 inches of cover (or existing cover if less than 36 inches) over NNG's pipeline after construction in all locations. Grading modifications shall not be designed to impound water above NNG facilities.
- **Parking Lot and Pavement:** NNG recommends a designated 15-foot-wide "green belt" space to accommodate future leak tests. If concrete or asphalt surfaces will extend within the proposed "green belt"

EXHIBIT "B" - Page 2 of 2

space for more than 100 feet over NNG's pipeline, NNG requires automatic sealing testing ports (cast iron valve boxes or approved equivalent) be installed in the proposed parking lot to accommodate regular leak detection surveys by NNG field operations personnel. Testing ports are to be installed 1-2 feet off the centerline of the pipe with a maximum distance of 100 feet between testing ports.

- **Road Crossings:** All road crossings must cross the NNG pipeline at or near a right angle and maintain a minimum of four feet of cover over the pipeline within the roadway and road ditches. Roads running parallel to NNG's facilities must be outside the easement and offset a recommended distance of 35 feet from NNG facilities.
- **Heavy Vehicle Crossings:** As a guideline, all vehicular crossings over the NNG pipeline have the following load restrictions (per ½ axle) without additional protection:
 - >24" Cover – 20,000 lbs.
 - ≥36" Cover – 20,000 lbs.
- NNG engineering requests vehicle specifications for all construction equipment exceeding 80,000 lbs. gross vehicle weight or exceeding the specified load restrictions that will be anticipated to cross NNG facilities. NNG engineering shall recommend appropriate crossing protection methods, if required. Potential crossing protection methods include use of timber/steel plate matting, temporary bridge structures, or pipeline reinforcement.
- Any damages or modifications to NNG's facilities shall be repaired or modified at the expense of the encroaching party. An estimate can be provided by NNG for any modifications or repairs as required.

NNG requires that the encroachment conditions are met to ensure pipeline integrity and safety during and after construction. NNG engineering will continue to review any revised construction plans and new proposals as they are developed.