

Recorded at the Request of and After Recording Return to:

NuStar Pipeline Operating Partnership L.P.  
c/o Real Estate  
19003 IH-10 West  
San Antonio, Texas 78257

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## CONSENT AND CROSSING AGREEMENT

THIS CONSENT AND CROSSING AGREEMENT ("**Agreement**") is executed this \_\_\_\_ day of \_\_\_\_\_, 2021 (the "**Effective Date**"), by and between NuStar Pipeline Operating Partnership L.P., ("**Pipeline Owner**") and City of Harrisburg ("**Project Company**"). Pipeline Owner and the Project Company are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**."

### RECITALS:

**WHEREAS**, Pipeline Owner is the owner of certain Easement Agreements where Pipeline Owner's Pipeline is located:

North West Quarter of Section 35- T. 100 N. – R. 50W located in Lincoln County, South Dakota

(the "**Easement**"); and

**WHEREAS**, Pipeline Owner operates and maintains one pipeline for the transportation of oil, gas, gasoline, or other petroleum products ("**Pipeline**") within the real property described in the Easement;

**WHEREAS**, Project Company intends to construct, operate and maintain a twenty four-inch (24") sanitary sewer line, twenty-four inch (24") storm sewer line, eight-inch (8") water line and Plainside Avenue (collectively called the "**Facilities**") over, across, or along the Pipeline (such route collectively referred to as "**Utility Crossing**" more particularly described or depicted on **Exhibit "A"** attached hereto and incorporated by reference herein); for the purpose of

construction, installation, maintenance, use, operation, repair, replacement, and removal of the Facilities; and

**WHEREAS**, Pipeline Owner is willing to consent to Project Company's construction, maintenance and use of the Utility Crossing on the Easement during the Term subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Consent. Subject to the terms contained in this Agreement, Pipeline Owner hereby consents to Project Company's construction, installation, maintenance, use, operation, repair, replacement, and removal of the Facilities, located within the Easements.

2. Construction.

2.1 Approval of Plans. Project Company shall provide Pipeline Owner with a copy designs and proposed equipment for approval. Pipeline Owner shall review the designs and proposed equipment and provide written notice to Project Company concerning approval thereof or a list of required modifications to the design within ninety (90) days of receipt. Failure to provide such notice shall be deemed disapproval.

2.2 Construction Requirements.

A. Project Company shall construct the Facilities in accordance with the approved work plan, all Law (as defined below), and Pipeline Owner Guidelines for Development Around NuStar Pipelines and Facilities stated on **Exhibit "B"**, attached hereto and incorporated by reference in this Agreement.

B. Project Company shall provide Pipeline Owner a minimum of forty-eight (48 hours) advance notification (Monday thru Friday, 7:00 a.m. to 5:00 p.m.) prior to commencing construction, maintenance or repairs to Facilities that are within 25 feet of Pipeline Owner's Pipelines so that Pipeline Owner may be present during such activities. Pipeline Owner may appoint, at Project Company's sole expense, an inspector to oversee construction of the Facility. Project Company will reimburse Pipeline Owner for its expense within thirty (30) days of receipt of Pipeline Owner's invoice.

C. After completion of the installation/construction of the Facility, Project Company shall provide Pipeline Owner with "as-built" drawings and other such pertinent information relating to the construction of the Facility. In addition, Project Company shall or shall require and be responsible for its contractors, agents and subcontractors to notify the state's One Call number. No excavations shall be made by Project Company on land adjacent to the Pipelines which will in any way impair, or withdraw the lateral support, or which will cause any subsidence, accumulation of water, or damage to the Pipelines and/or right-of-way.

3. Inspection Rights and Approval. Prior to operation of the Facilities, the Pipeline Owner may send a representative to the Utility Crossing to inspect and perform acceptance tests, if necessary, to determine if the Facilities comply with the approved plans, Laws, and **Exhibit “B.”** Pipeline Owner shall notify the Project Company as to whether or not approval is granted within ten (10) working days from Pipeline Owner’s inspection of the Project Company Facilities. In the event the Project Company’s Facilities do not comply, Pipeline Owner shall promptly notify Project Company in writing, with reasonable specificity, the reason(s) for rejection of approval, and shall provide Project Company a reasonable period of time to bring the Facilities into compliance. Pipeline Owner shall have access to the Utility Crossing at all times.

4. Maintenance and Interference. Project Company shall be responsible for the operation, and maintenance of the Facilities and shall obtain and maintain all required governmental authorizations and/or permits required for its activities and operations. Project Company agrees to provide all necessary and routine maintenance of its Facilities and notify Pipeline Owner immediately in the event any damages are caused by Project Company or a Project Company contractor to Pipeline Owner’s Pipelines within the Easements. All repairs to Pipeline Owner’s Pipeline will be repaired by Pipeline Owner at Project Owner’s sole expense. Project Company will reimburse Pipeline Owner for its expense within thirty (30) days of receipt of Pipeline Owner’s invoice.

In the event it is determined by Pipeline Owner, in its sole discretion, that Facilities cause or result in added cost to Pipeline Owner in maintaining Owner’s Pipelines, then, in each instance, Project Company shall be required to pay, when invoiced, all costs of Pipeline Owner identified and deemed necessary by Pipeline Owner due to Facilities being present in, over, under, through, across or along Owner’s Easement.

5. Damages to the Pipelines and Environmental Releases.

5.1 Should any damages occur to the Pipelines, the crossing will be immediately closed and Pipeline Owner will conduct an inspection of the subsurface facilities to determine damages, if any, and extent repairs to be made, if any expense at Project Company. Once repairs are complete, Pipeline Owner shall provide Project Company with notice in writing to begin crossing again.

5.2 Project Company must report to Pipeline Owner immediately any incident near or within the Easements which did or could potentially cause harm to people, property, or the environment.

6. Indemnification. TO THE EXTENT PERMITTED BY LAW, PROJECT COMPANY HEREBY AGREES TO RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS PIPELINE OWNER AND ITS AFFILIATES AND ITS AND THEIR REPRESENTATIVES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE “PIPELINE OWNER INDEMNITEES”), FROM AND AGAINST ANY AND ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT IN CONNECTION WITH: (1) THE CONSTRUCTION, INSTALLATION, MAINTENANCE, USE, OPERATION, REPAIR,

REPLACEMENT, RELOCATION AND REMOVAL OF THE FACILITIES; (2) INJURY TO, OR DEATH OF, PERSONS; (3) DAMAGE TO PROPERTY; (4) ENVIRONMENTAL LIABILITY; (5) VIOLATION OF LAW; AND (6) BREACH OF THIS AGREEMENT. **PROJECT COMPANY INTENDS THE FOREGOING RELEASE, DEFENSE, INDEMNIFICATION, AND HOLD HARMLESS OBLIGATION TO APPLY WHETHER SUCH CLAIMS BE SOLE, JOINT, OR CONCURRENT, AND REGARDLESS OF WHETHER OR NOT SUCH CLAIMS, ARISE OUT OF, ARE CAUSED BY, OR RESULT FROM THE JOINT OR CONCURRENT NEGLIGENCE, WILLFUL MISCONDUCT, OR ANY OTHER FAULT OF THE PIPELINE OWNER INDEMNITEES EXCEPT TO THE EXTENT SUCH CLAIMS ARE CAUSED BY THE SOLE GROSS NEGLIGENCE, THE PIPELINE OWNER INDEMNITEES.**

As used herein, “Affiliate” means, with respect to any person, any other person directly or indirectly controlling, controlled by, or under common control with, such other person at the time at which the determination of affiliation is made. For the purposes herein, the term “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as applied to any person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities or other ownership interests, by contract or otherwise. “Claims” means all actions, causes of action, claims, charges, damages, demands or fines, of any kind or character and related costs (including court costs, defense costs, reasonable attorneys’ fees, settlement costs, and other expenses of litigation), lawsuits, liabilities, losses, obligations, penalties, proceedings, and suits. “Law” means all applicable constitutions, laws (including Environmental Laws and common law), treaties, statutes, orders, decrees, rules, injunctions, licenses, permits, approvals, agreements, regulations, codes, and ordinances issued by any governmental authority, and including judicial or administrative orders, consents, decrees, and judgments, and all published directives, guidelines, governmental authorizations, requirements or other governmental restrictions which have the force of law, and determinations by, or interpretations of any of the foregoing by any governmental authority having jurisdiction over the matter in question and binding on a given person, whether in effect as of the date hereof or thereafter and, in each case, as amended. “Environmental Laws” means all applicable local, state and federal laws, rules, regulations and orders, and common law, as the same may be amended from time to time, pertaining to (a) the use, generation, migration, storage, removal, treatment, remedy, discharge, release, transportation, disposal or cleanup of pollutants, contamination, hazardous wastes, hazardous materials (defined below), toxic substances and/or toxic pollutants, (b) surface waters, ground waters, ambient air and other environmental media and/or (c) the environment or health and safety-related matters, including, without limitation, the following federal laws, similar state or other similar laws, and any successor laws, together with all regulations promulgated pursuant thereto, as all of the same may be amended from time to time (whether prior to or after the date hereof): The Comprehensive Environmental Response, Compensation And Liability Act Of 1980 (as amended by The Superfund Amendments And Reauthorization Act Of 1986), The Resource Conservation And Recovery Act Of 1976 (as amended by The Used Oil Recycling Act Of 1980, The Solid Waste Disposal Act Amendments Of 1980, And The Hazardous And Solid Waste Amendments Of 1984), The Occupational Safety And Health Act Of 1970, The Superfund Amendments And Reauthorization Act Of 1986, The Hazardous Materials Transportation Act, The Toxic Substance Control Act, The Clean Air Act, The Clean Water Act, Federal Water Pollution Control Act, The Oil Pollution Act, The Safe Drinking Water Act and any of the

regulations implementing the forgoing statutes. “**Environmental Liability**” means liability arising out of or resulting from a violation of an Environmental Law by the Project Company. “**Hazardous Materials**” means any substance, material or waste (including friable asbestos non-friable asbestos, benzene, lead-based paint, petroleum, petroleum products, methyl tertiary butyl ether and polychlorinated biphenyl) that is: (1) regulated by laws as hazardous or toxic, as a pollutant or a contaminate, or otherwise as a threat to human health or to the environment; or (2) found by any federal, state, municipal or local government, including agencies, commissions, courts and departments to be hazardous or toxic, a pollutant or a contaminant, or otherwise a threat to human health or to the environment. The term hazardous materials includes, without limitation, substances defined as such in the Environmental Laws. “**Representatives**” means officers, directors, employees, contractors, and borrowed servants of a Party and/or its Affiliates.

**NOTWITHSTANDING THE FOREGOING INDEMNITY, IN NO EVENT SHALL PIPELINE OWNER BE LIABLE TO PROJECT COMPANY FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR BUSINESS INTERRUPTIONS, HOWEVER CAUSED AND IRRESPECTIVE OF WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SAME.**

**THIS SECTION 7 SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT.**

8. Insurance. Project Company shall procure and maintain, or ensure that its contractor procure and maintain for so long as this Consent to Crossing Agreement remains in effect, the insurance set forth on **Exhibit “C.”**

9. Notices. All notices to either Party hereto shall be in writing and delivered by a nationally recognized delivery service or sent by first class U. S. Mail, postage-prepaid, return receipt requested to:

If to Pipeline Owner:  
NuStar Pipeline Operating Partnership L.P.  
19003 IH 10 West  
San Antonio, TX 78257  
Attn: Real Estate

With a copy to:  
NuStar Pipeline Operating Partnership L.P.  
19003 IH 10 West  
San Antonio, TX 78257  
Attn: SVP, General Counsel

If to Project Company:  
City of Harrisburg  
301 E. Willow St

Harrisburg, SD 57032  
Attn: Michael McMahon

10. General.

10.1 Assignment. This Agreement shall inure to the benefit and be binding on the respective heirs, successors, assigns, agents, contractors, and personal representatives of the Parties to this Agreement. Project Company shall not, without Pipeline Owner's written consent, assign, mortgage, encumber, hypothecate, pledge or transfer to one or more assignees, mortgagees, co-tenants or any other secured party, any or all right, title or interest in this Agreement and the Utility Crossing. Nothing contained herein shall be construed to abrogate or relinquish any rights granted by the original Easement.

10.2 No Waiver. No failure or delay by either Party in exercising any right, power or privilege hereunder at any time will serve as a waiver of the same right at any future date. No amendment to this Agreement will be effective unless made in writing and executed by both parties. This Agreement is intended to be as broad and inclusive as permitted by the laws of the State of Texas, and that, if any portion of this Agreement is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect. No rule of construction against the drafter shall apply

10.3 Amendment. No amendment to this Agreement will be effective unless made in writing and signed by Project Company and Easement Holder.

10.4 Severability. If a provision of this Agreement is unenforceable under Law, that provision will be enforced to the maximum extent permitted by Law. The remaining provisions of this Agreement will continue in full force and effect.

10.5 Governing Law; Jurisdiction. **This Agreement will be governed and construed in accordance with the laws of the State of South Dakota, without reference to the choice of law principles thereof. Any disputes arising out of this Agreement will be subject to the exclusive jurisdiction of the courts of the State of South Dakota located in Lincoln County, South Dakota if state jurisdiction is available and to the U.S. District Court for the District of South Dakota if state jurisdiction is not available.**

10.6 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and part of one and the same document. Any Agreement may be executed in one or more counterparts, each of which will be deemed an original and part of one and the same document.

10.7 Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the matters contemplated herein.

11. Limitations.

11.1 THIS AGREEMENT GRANTS NO INDEPENDENT RIGHT TO PROJECT COMPANY TO ENTER ONTO THE EASEMENTS. PIPELINE OWNER MAKES NO ASSIGNMENT OF ANY OF ITS RIGHTS UNDER THE EASEMENTS BY THIS INSTRUMENT. PROJECT COMPANY MUST OBTAIN AN EASEMENT OR OTHER LEGAL AUTHORITY FROM THE SURFACE AND FEE OWNER(S) OF THE LANDS COVERED BY THIS AGREEMENT SUFFICIENT TO AUTHORIZE THE PROJECT COMPANY FACILITIES. IF PROJECT COMPANY FAILS TO OBTAIN SUCH EASEMENTS OR RIGHTS OF WAY FROM THE SURFACE FEE OWNER(S), THIS AGREEMENT SHALL BE NULL, VOID AND OF NO EFFECT.

11.2 THIS CONSENT IS GIVEN ONLY WITH RESPECT TO THE PROJECT OWNER'S FACILITIES AND SHALL NOT BE CONSTRUED AS AUTHORIZING THE PLACEMENT OR INSTALLATION OF ANY OTHER FACILITIES WITHIN SAID UTILITY CROSSING EXCEPT AS AUTHORIZED IN ADVANCE AND IN WRITING BY PIPELINE OWNER.

12. Authority to Sign. The signatories below hereby represent he or she has the authority to execute this Agreement on behalf of the respective Pipeline Owner or Project Company.

13. Project Company shall require its contractor to enter into the access agreement set forth as Exhibit "D", attached hereto and incorporated by reference (including procuring and maintaining for so long as this Consent to Crossing Agreement remains in effect, the insurance set forth on Attachment 1.

### **COUNTERPART SIGNATURE PAGE TO FOLLOW**

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Effective Date.

**PIPELINE OWNER:**

NuStar Pipeline Operating Partnership L.P.

By and through its general partner, NuStar Pipeline Company, LLC

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

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

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

**ACKNOWLEDGMENT**

**STATE OF TEXAS**            )

)

**COUNTY OF BEXAR**        )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, the \_\_\_\_\_ of *NuStar Pipeline Company, LLC*, a Delaware limited liability company, the general partner of *NuStar Pipeline Operating Partnership L.P.*, a Delaware limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public State of Texas  
My commission expires: \_\_\_\_\_



**EXHIBIT A**  
**Depiction Utility Crossing**

**EXHIBIT A**  
**Depiction Air Bridge**

**EXHIBIT A**  
**Depiction Trench Support**

**EXHIBIT B**  
**Crossing Requirements**

**GUIDELINES FOR DEVELOPMENT  
AROUND NUSTAR PIPELINES AND FACILITIES**

Rev. 04/06/2016

The following terms and guidelines should be taken into consideration for development around pipelines and facilities owned and operated by NuStar Energy L.P. and its subsidiaries and affiliates (“NuStar”):

1. In order to allow NuStar to safely maintain, operate and protect its pipeline(s), no dwelling, building, structure, area of congregation, fences, obstructions, landscaping, or other structures (including, but not limited to decks, pools, and playscapes) shall be constructed, permitted or placed within fifty feet (50’) of either side of NuStar’s pipeline(s), unless prior written permission from NuStar is obtained. Any tree canopy that overhangs within fifty feet (50’) on each side of the pipeline(s) shall be subject to cutting or trimming in the future as the pipeline(s) undergo maintenance clearing. Furthermore, NuStar shall not be liable for any tree damages occurring as a result of said clearing.
2. No cover shall be removed from over the pipeline(s) or easement.
3. No fill shall be placed upon the pipeline(s) without prior written approval from NuStar. Excessive fill can impact the ability for NuStar to maintain, operate, and protect the pipeline(s).
4. All street or road crossings must have a minimum of five feet (5’) of cover over the pipeline(s) and a minimum of three feet (3’) of cover in any borrow or drainage ditches, if there are any. Any proposed street or road crossing that cross NuStar’s pipeline(s) at less than a ninety degree (90°) angle must be approved in writing by NuStar, prior to construction of said crossing. Approved parking areas must have a minimum of five feet (5’) of cover over the pipeline(s) and be approved in writing by NuStar, prior to the construction of said parking area. All street or road crossings shall be constructed in a manner as to prevent erosion of NuStar’s easement.
5. Should any modifications be required for NuStar to maintain, operate, or protect the pipeline(s) to meet the conditions stated herein, all costs associated with the said modifications, downtime of the pipeline(s), etc. shall be at the sole expense of the surface owner unless otherwise agreed upon. The surface owner will be required to enter into a reimbursement agreement with NuStar prior to any modifications being made.
6. No utility crossings shall be installed within twenty-four inches (24”) of NuStar pipeline(s) and must cross underneath NuStar’s pipeline(s) unless approved in writing from NuStar. Utility must cross pipeline(s) as close to ninety degrees (90°) as possible. No utility may be installed parallel and within fifty feet (50’) of each side of the pipeline(s). All utility crossings shall be constructed in a manner as to prevent erosion of NuStar’s easement.
7. Any seismic testing, or blasting of any kind, performed within the vicinity of, or otherwise affecting in any way, NuStar pipelines or facilities, requires additional NuStar approval.

Information, including but not limited to explosive type, weight, and charge arrangement, must be made available. A test shot shall be made away from the pipeline(s) and seismic reading obtained. Costs associated with these activities shall be borne by the excavator, contractor and/or developer.

8. No construction activity shall be performed within fifty feet (50') of either side of the pipeline(s), without contacting the appropriate state one-call system as well as providing NuStar with forty-eight (48) hours' notice. This will enable NuStar to schedule a representative to be present to mark the exact location of the pipeline(s) and to be present for any activities. Excavators MUST follow appropriate one-call law requirements regarding notification prior to excavation.
9. NuStar will not be responsible for the damage to, repair or replacement of any encroachments due to NuStar exercising its rights granted within the right-of-way grant and any subsequent agreements between the parties hereto, their heirs, successors, and assigns.
10. Line markers and other above ground pipeline appurtenances including but not limited to casing vents, barricades, cathodic protection test leads, or other cathodic protection facilities shall not be removed. Any damages to these facilities during development activities require immediate notification to NuStar. Any cost associated with replacement or repair of the aforementioned will be at the sole cost of the responsible party and or surface owner.
11. Potholing within fifty feet (50') of either side of the pipeline(s) is not allowed without NuStar's prior written consent, and the on-site presence of NuStar personnel. The party performing potholing shall be held liable for any damage to NuStar's pipeline(s) or pipeline coating during potholing operations regardless of method used for potholing.
12. Applicable state one-call laws must be followed, and any costs associated with boring/directional drilling activities incurred by NuStar, such as pipeline(s) exposure, shall be made reimbursable to NuStar by the responsible party. The following clearances shall be provided for during boring activities within NuStar's pipeline easement:
  - A. Clearance during boring activities when pipeline is not fully exposed
    - I. Pipeline depth must be determined by NuStar personnel.
    - II. There must be at least ten feet (10') of clearance between NuStar's pipeline(s) and boring activities.
    - III. Approval from NuStar's GM is required for boring activities when no exposure is possible.
  - B. Clearance during boring activities with full circumferential exposure
    - I. When the pipeline(s) is fully exposed and NuStar personnel are present and monitoring, NuStar personnel may authorize less than ten feet (10'), but not less than two feet (2'), of clearance from the pipeline(s).

- II. Full circumferential exposure shall consist of two feet from the bottom edge of the pipeline. Consideration must be given to clearance during reaming activities.

C. Clearance during boring activities using excavation windows

- I. Upon determination of pipeline depth, NuStar operations personnel will require an excavation window be established on the upstream side of the directional crossing.
  - II. The excavation window should be no closer than three feet (3') from the outside edge of the pipeline(s) but not greater than the width of the NuStar easement.
  - III. The depth of the excavation window must exceed two feet (2') from the bottom edge of the pipeline. Directional drilling may proceed provided that the drilling does not surface through the window.
  - IV. Operations personnel shall require two feet (2') of clearance from the bottom side of the pipeline(s) during reaming activities
13. Any new impressed current-type cathodic protection system, galvanic anode, or stray current mitigation systems located within, or otherwise affecting underground facilities within NuStar's easement, must be designed, installed and maintained so as to minimize any adverse effects on existing NuStar pipeline facilities. Notification to NuStar's Engineering Department is required prior to the installation of any new impressed current-type cathodic protection system, galvanic anode, or stray current mitigation systems located within or otherwise affecting underground facilities within NuStar's easement.

NuStar owns and maintains steel pipelines and facilities. These guidelines are necessary to maintain compliance with the state and federal regulations, and to provide as much protection as possible for NuStar's pipeline facilities and any proposed development in the vicinity of the pipeline facilities.

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

**Minimum Insurance Requirements – Easement/ROW**

In addition to Project Company’s obligations of indemnification thereunder, Project Company shall, at its sole cost and expense, obtain and maintain, or ensure that its contractor obtain and maintain, the following insurance policies:

<b>Policy</b>	<b>Limits</b>	<b>Coverage</b>
Workers’ Compensation	Amount required by Law in each state where Project Company conducts operations.	Must include coverage for alternate employers and borrowed servants, if leased employees will be used.
Employer’s Liability	<ul style="list-style-type: none"> <li>• \$500,000 for bodily injury (each accident)</li> <li>• \$500,000 for bodily injury by disease (policy limits)</li> <li>• \$500,000 for bodily injury by disease (each employee)</li> </ul>	
Commercial General Liability	<ul style="list-style-type: none"> <li>• \$2,000,000 general aggregate limit</li> <li>• \$1,000,000 each occurrence limit (bodily injury/property damage)</li> <li>• \$1,000,000 each occurrence limit (personal injury and advertising injury)</li> <li>• \$2,000,000 aggregate limit (products/completed operations)</li> <li>• \$1,000,000 each occurrence limit (products/completed operations)</li> <li>• \$1,000,000 any one premises (damage to premises rented to you)</li> </ul>	Must be written on Insurance Services Office (ISO) Form CG 00 01 12 04 or a substitute form providing equivalent coverage (including tort liability of a third party assumed in a business contract).
Business Automobile Liability	\$1,000,000 combined single limit (bodily injury/property damage)	Must include coverage for all owned, non-owned and hired vehicles.
Umbrella/Excess Liability	\$5,000,000 each occurrence limit	Must include terms at least as broad as the underlying Employer’s Liability,

		Commercial General Liability and Business Automobile Liability policies.
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The Workers' Compensation, Commercial General Liability and Business Automobile Liability policies will, to the fullest extent allowable by Law, include a waiver of subrogation in favor of Pipeline Owner, its Affiliates, and each of their respective officers, directors, employees and borrowed servants. The Commercial General Liability policy will (i) include Pipeline Owner, its Affiliates, and each of their respective officers, directors, employees and borrowed servants as additional insureds (collectively, the "Company Insured Group"); and (ii) be primary and non-contributory with respect to any insurance or self-insurance maintained by Pipeline Owner. Any additional insured endorsement may be either specific to the Company Insured Group or "blanket" or "automatic" (i.e., addressing any person or entity), as required by contract.

Project Company covenants and agrees to:

- (A) maintain the insurance coverages and limits required hereby and any additional insurance and/or bonds required by law (i) at all times during the term of this Agreement; and (ii) with respect to any coverage maintained in a "claims-made" policy, for two (2) years following termination of this Agreement; provided that, if a "claims-made" policy is maintained, the retroactive date must precede the date of the Agreement;
- (B) procure the required insurance from an insurance company eligible to do business in the state or states where access is being granted and having, however, with respect to Workers' Compensation insurance, Project Company may procure such insurance from the state fund of the state where access is granted; and
- (C) deliver to Pipeline Owner certificates of insurance stating the types of insurance and policy limits, and further provide, or cause the issuing insurance company to provide, at least 30 days prior written notice to Pipeline Owner of any cancellation, non-renewal, or reduction in coverage, terms, or limits. Project Company shall deliver such certificates (i) prior to execution of this Agreement; (ii) prior to expiration of any insurance policy required under this Agreement; and (iii) for any coverage maintained on a "claims-made" policy, for two (2) years following the termination of this Agreement.

Pipeline Owner and Project Company further covenant and agree that (i) the failure of Pipeline Owner to demand such certificate of insurance or failure of Pipeline Owner to identify a deficiency therein will not be construed as a waiver of Project Company's obligation to maintain the insurance required under this Agreement; (ii) the insurance required under this Agreement does not represent that coverage and limits will necessarily be adequate to protect Project Company, nor be deemed as a limitation of Project Company's liability to Pipeline Owner in this Agreement; (iii) Project Company may meet the required insurance coverages and limits with any combination of primary and umbrella/excess liability insurance; and (iv) Project Company is solely responsible for any deductible or self-insured retention.

**Exhibit D**

**Government Contractor Access Agreement**

<b>Effective Date</b>	
<b>Name of Third Party</b>	
<b>Third Party Entity State and Form</b>	
<b>Third Party's Address</b>	
<b>Third Party's Phone</b>	
<b>Third Party's Fax</b>	
<b>Company Facility</b>	Six-inch (6") pipeline for the transportation of oil, gas, petroleum or any of its products
<b>Purpose of Access</b>	Construction of a twenty four-inch (24") sanitary sewer line, twenty-four inch (24") storm sewer line, eight-inch (8") water line and Plainside Avenue
<b>Special Instructions</b>	N/A

This Government Contractor Access Agreement ("Agreement") is entered into by and between NuStar Pipeline Operating Partnership L.P. (the "Company") and \_\_\_\_\_ ("Third Party"). Company owns and/or operates the facility identified above ("Facility") in connection with the transportation or storage of petroleum, chemicals and other commodities. Third Party has requested access to the Facility for the purpose identified above ("Operations"), and Company has agreed to grant Third Party access to the Facility solely for the Operations in consideration of Third Party's agreement to the following terms and conditions:

1. **Right of Entry.** Company hereby grants unto Third Party and its employees, and/or other authorized representatives (collectively "Third Party Parties") a non-exclusive license to enter the Facility to conduct, at Third Party's sole cost and expense, any or all of the Operations in accordance generally accepted standards for such work. Third Party shall be responsible for the acts and omissions of all Third Party Parties in the same capacity as it is responsible for its own acts and omissions. The license shall be utilized only during Company's regular business hours, except that Third Party shall have 24-hour/day access in the event of an emergency. Third Party further agrees to coordinate the Operations with Company to minimize any inconvenience to or interruption of the conduct of Company's business or operations on the Facility and to perform all of its activities at the Facility in such a manner as to not be a source of danger to or interfere with the safe operation and activities of Company.
2. **Equipment.** To assist with the Operations, Third Party Parties may bring supplies and equipment onto the Facility. **THIRD PARTY IS RESPONSIBLE FOR THE SECURITY AND SAFETY OF ALL OF ITS PERSONAL PROPERTY.**
3. **Term and Termination.** The term of this Agreement shall begin on the Effective Date and shall end on the date that the Operations are completed and Third Party has restored the Facility to the extent described in Section 6 below. Notwithstanding the foregoing, Company shall have the right to terminate this Agreement upon written notice to Third Party.
4. **Rules, Policies and Procedures.** Third Party will comply, and will cause all Third Party Parties and each of their respective employees and other representatives to comply, with: (i) all signs, rules, policies and procedures posted at the Facility; and (ii) all rules, policies and procedures of Company furnished to Third Party. Company may adopt, amend, modify, revoke and enforce such rules, policies and procedures as it deems necessary or appropriate in

connection with environmental, health and safety standards. Third Party's failure to comply with any such rules, policies or procedures will constitute a material breach of this Agreement. Company may exclude Third Party and any Third Party Parties from the Facility who, in Company's reasonable opinion, pose a risk to persons, property or the environment; however, Company assumes no responsibility for the supervision of Third Party or Third Party Parties.

5. Compliance with laws. Third Party shall comply with, and will cause all Third Party Parties and each of their respective employees and other representatives to comply with all applicable laws in undertaking the Operations authorized by this Agreement.

6. Facility Restoration. Third Party, at its sole cost and expense, will: (i) after completing the Operations, promptly (but no later than five (5) days after completion of the Operations or termination of this Agreement, whichever is sooner) restore the Facility to the condition that it was in prior to Third Party's Operations in accordance with all laws and to the satisfaction of Company; and (ii) in accordance with all laws, properly dispose of any waste or hazardous waste or materials generated by or associated with the Operations. Title to and liability for any such waste, hazardous waste or materials will remain with Third Party. The obligations described in this Section 6 shall survive the termination of this Agreement.

8. Indemnity, Disclosure and Insurance.

A. For purposes of this clause, the following definitions will apply: (i) "Indemnified Parties" mean Company, its subsidiaries, and its Affiliates, and its and their respective directors, officers, employees, agents, and other representatives; (ii) "Affiliates" means any entity that is Controlled by NuStar GP, LLC, NuStar Energy L.P. or NuStar GP Holdings, LLC; (iii) "Controlled" shall mean: (y) owns or controls, directly or indirectly through one or more subsidiaries (including those subsidiaries hereinafter described in (z)), at least 50% of the stock, partnership shares or equity interests in an entity having the right to vote for or appoint directors thereto, and/or (z) has the right to determine management direction, whether through having a majority representation on a board of directors of an entity or by owning or holding, directly or indirectly through one or more subsidiaries, at least 50% of the general partner interests of a partnership; and (iv) "Liabilities" means any and all actual and alleged actions, claims, causes of action, costs, demands, damages, expenses, fines, lawsuits, liabilities, losses, obligations, and penalties, including court costs, defense costs, settlement costs and reasonable attorneys' fees.

B. *To the maximum extent permitted by laws, Third Party will release, indemnify, defend, and hold harmless Indemnified Parties from and against any and all Liabilities arising out of, resulting from, or caused by Third Party's duties and obligations under this Agreement or any act or omission of Third Party, Third Party Parties, or any of its or their respective employees, servants, representatives or agents under this Agreement and in connection with: (i) breach by Third Party of this Agreement; (ii) bodily injury (including death) of any person; (iii) loss of use or damage to the Facility or any personal or other property owned by Company; (iv) violation of laws; and (v) any threatened or actual release to, or contamination of or adverse effects on, the environment arising out of, resulting from or caused by the Operations. **THIRD PARTY INTENDS THE FOREGOING RELEASE, INDEMNITY, DEFENSE AND HOLD HARMLESS OBLIGATIONS TO APPLY REGARDLESS OF WHETHER LIABILITIES ARE CAUSED IN PART BY THE NEGLIGENCE, STRICT LIABILITY, OR OTHER FAULT OF THE INDEMNIFIED PARTIES, EXCEPT IF THE LIABILITIES ARE CAUSED SOLELY BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTIES.** Third Party intends the preceding release, indemnity, defense and hold harmless obligations to survive the completion of the Operations and the termination of this Agreement.*

C. Limitation of Liability. *Company shall not be liable to Third Party for any indirect, special, consequential, incidental, multiple, punitive or exemplary damages arising from or related to this Agreement or Third Party's performance or failure to perform hereunder, including breach of warranty, regardless of how such damage occurred and whether the possibility of any such damage is or was at any time contemplated by the parties.*

D. **Release; Disclosure.** *Third Party expressly acknowledges and agrees that Company is merely providing access to the Facility pursuant to Third Party's request, for the sole and limited purposes set forth in this Agreement, and that Company has made no representations to Third Party in connection with any condition, contamination or substances that may exist on, near, about or under the Facility. Third Party expressly releases Company from and accepts all risks, known or unknown, of entering the Facility and performing any work thereon, and that may be found to exist from any condition, contamination or substances on, near, about or under the Facility.*

E. **Insurance.** Third Party will comply with the insurance requirements stated in Attachment 1, which is attached to and incorporated into this Agreement.

9. **Choice of law.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without reference to the choice of law principles thereof, with venue in Bexar County, TX. Each Party irrevocably waives its right to a trial by jury.

10. **Notices.** Except as otherwise specifically provided herein, all notices required or made under this Agreement shall be in writing and shall be delivered by U.S. mail or overnight courier to the following address:

If to Third Party: At the address set forth above.

If to Company:

19003 IH 10 West  
San Antonio, Texas 78257  
Phone: 210 918 2000

With a copy of legal notices to:

[LegalNotices@NuStarEnergy.com](mailto:LegalNotices@NuStarEnergy.com)

Either party may change the above designations by written notice to the other party pursuant to the terms of this Agreement.

8. **Miscellaneous.**

A. **Waiver.** No waiver by Company of any right hereunder at any time will serve to waive of the same right at any future date.

B. **Amendment.** Company may amend this Agreement by providing notice of the amendment to Third Party, and Third Party will be bound by such amendment if Third Party continues to access the Facility after receiving such amendment. Except as otherwise provided herein, no amendment of this Agreement will be effective unless made in writing and signed by Company.

C. **Severability.** If a provision of this Agreement is deemed unenforceable under laws by a court of competent jurisdiction, that provision will be ineffective only to the extent of such unenforceability and will otherwise be enforced to the maximum extent permitted by laws. The remaining provisions of this Agreement will continue in full force and effect.

D. **Assignment.** Third Party may not assign its rights and obligations under this Agreement, in whole or in part, without the prior written consent of Company. Any purported assignment in violation of this provision will be void.

E. Third Party understands that time is of the essence with respect to the performance of its obligations under this Agreement.

F. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one instrument.

Each party hereby represents that before executing this instrument, such party has fully informed himself/herself/itself of its terms, contents, and conditions, that no promise or representation of any kind has been made to it by any other person or by anyone acting for such person except as it is expressly stated in this instrument, and each has relied solely and completely upon its own judgment and that each has had the opportunity to seek and receive the advice of its legal counsel before entering into this Agreement.

[signature page to follow]

**Third Party:**

\_\_\_\_\_

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

Name: \_\_\_\_\_

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

**Company:**

NuStar Pipeline Operating Partnership L.P.

By: NuStar Pipeline Company, LLC, its general partner

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

Name: \_\_\_\_\_

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

**Attachment 1**  
**Minimum Insurance Requirements**

With respect to Third Party’s performance under the Agreement, and in addition to Third Party’s obligations of indemnification thereunder, Third Party will, at its sole cost and expense, obtain and maintain the following insurance policies:

<b>Policy</b>	<b>Limits</b>	<b>Coverage</b>
Workers’ Compensation	Amount required by law in each state where Third Party conducts operations.	Must include coverage for alternate employers and borrowed servants, if leased employees will be used. To the extent Third Party’s activities are subject to the Jones Act, the Longshore and Harbor Workers Compensation Act, or the Defense Base Act (collectively, the “Acts”), the Workers’ Compensation policy must be endorsed to cover all liability under any such Acts.
Stop Gap Employers Liability	\$500,000 (each accident or disease)	Required in all states where Workers’ Compensation insurance is a monopolistic state-run system.
Employer’s Liability	<ul style="list-style-type: none"> <li>• \$500,000 for bodily injury (each accident)</li> <li>• \$500,000 for bodily injury by disease (policy limits)</li> <li>• \$500,000 for bodily injury by disease (each employee)</li> </ul>	
Commercial General Liability	<ul style="list-style-type: none"> <li>• \$2,000,000 general aggregate limit</li> <li>• \$1,000,000 each occurrence limit (bodily injury/property damage)</li> <li>• \$1,000,000 each occurrence limit (personal injury and advertising injury)</li> <li>• \$2,000,000 aggregate limit (products/completed operations)</li> <li>• \$1,000,000 each occurrence limit (products/completed operations)</li> </ul>	Must be written on Insurance Services Office (ISO) Form CG 00 01 12 04 or a substitute form providing equivalent coverage, covering liability arising from premises, operations, personal injury, advertising injury, products/completed operations, and liability assumed under an insured contract (including tort liability of another assumed in a business contract).
Business Automobile Liability	\$1,000,000 combined single limit (bodily injury/property damage)	Must include coverage for all owned, non-owned and hired vehicles.
Umbrella/Excess Liability	\$5,000,000 each occurrence limit	Must include terms at least as broad as the underlying Employer’s Liability, Commercial General Liability and Business Automobile Liability policies.

The Workers’ Compensation, Commercial General Liability and Business Automobile Liability policies will, to the fullest extent allowable by law, include a waiver of subrogation in favor of Company, its affiliates, and each of their respective officers, directors, employees and borrowed servants. The Commercial General Liability policy will (i) include Company, its affiliates, and each of their respective officers, directors, employees and borrowed servants as additional insureds (collectively, the “Company Insured Group”); and (ii) be primary and non-contributory with respect to any insurance or self-insurance maintained by Company. Any additional insured endorsement may be either

specific to the Company Insured Group or “blanket” or “automatic” (i.e., addressing any person or entity), as required by contract. Third Party will provide a copy of the additional insured endorsement to Company within 60 days of the date of execution of this Agreement and within 60 days of each policy renewal.

Third Party covenants and agrees to:

- (A) maintain the insurance coverages and limits required hereby and any additional insurance and/or bonds required by law (i) at all times during the term of this Agreement; and (ii) with respect to any coverage maintained in a “claims-made” policy, for two (2) years following termination of this Agreement; provided that, if a “claims-made” policy is maintained, the retroactive date must coincide with the date of the Agreement;
- (B) require each of Third Party’s subcontractors to maintain coverages, requirements, and limits at least as broad as those listed in this Exhibit A throughout the term of the Agreement and, with respect to any coverage maintained on a “claims-made” policy, for two (2) years following termination of the Agreement;
- (C) procure the required insurance from an insurance company eligible to do business in the state or states where the Terminals accessed by Third Party are located and having and maintaining a Financial Strength Rating of “A-” or better and a Financial Size Category of “VII” or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies; provided, however, with respect to Workers’ Compensation insurance, Third Party may procure such insurance from the state fund of the state where the Terminals accessed by Third Party are located; and
- (D) deliver to Company certificates of insurance stating the types of insurance and policy limits, and further provide, or cause the issuing insurance company to provide, at least 30 days prior written notice to Company of any cancellation, non-renewal, or reduction in coverage, terms, or limits. Third Party will deliver such certificates (i) prior to execution of this Agreement and prior to accessing any Terminal; (ii) prior to expiration of any insurance policy required under this Agreement; and (iii) for any coverage maintained on a “claims-made” policy, for two (2) years following the termination of this Agreement.

Company and Third Party further covenant and agree that (i) the failure of Company to demand such certificate of insurance or failure of Company to identify a deficiency therein will not be construed as a waiver of Third Party’s obligation to maintain the insurance required under this Agreement; (ii) the insurance required under this Agreement does not represent that coverage and limits will necessarily be adequate to protect Third Party, nor be deemed as a limitation of Third Party’s liability to Company in this Agreement; (iii) Third Party may meet the required insurance coverages and limits with any combination of primary and umbrella/excess liability insurance; and (iv) Third Party is solely responsible for any deductible or self-insured retention.