

## NATURAL GAS EASEMENT AGREEMENT

This Natural Gas Easement Agreement ("**Agreement**") is between Santa Fe County ("**Grantor**" or "**County**"), a political subdivision of the State of New Mexico, and EMW Gas Association ("**Grantee**"), a domestic nonprofit corporation whose address is 416 5<sup>th</sup>, Estancia, New Mexico, 87016.

### RECITALS

A. Grantor is the fee owner of real property whose address is 18 Dinkle Road, Edgewood, New Mexico ("**Property**") and which is more particularly described in that certain Warranty Deed recorded on July 11, 2001 in Book 1937, Page 996 in the records of the County Clerk of Santa Fe County, New Mexico.

B. Grantee is installing natural gas facilities known as the Dinkle Road Project (the "**Project**") in order to provide natural gas service to areas of Santa Fe County.

C. Grantee requires a long-term natural gas easement across a portion of the Property to complete the Project.

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, Grantor and Grantee covenant and agree as follows:

#### 1. Grant of Natural Gas Easement.

1.1 Natural Gas Easement. Grantor hereby conveys and grants to Grantee, its successors and assigns, a 99-year natural gas easement (the "**Natural Gas Easement**") over, under, in, along, across and upon the portion of the Property depicted and described on the attached and incorporated Exhibits A1 and A2 ("**Easement Area**"), solely for the purposes of constructing, installing, maintaining, operating, repairing, replacing and using natural gas improvements and any related equipment or fixtures (collectively, "**Authorized Purposes**") that may be necessary or appropriate, under normal or emergency circumstances, to assure the continued operation of the natural gas improvements (collectively, "**Natural Gas Improvements**"), and for access to the Easement Area to carry out the Authorized Purposes.

1.2 Temporary Construction Easement. Grantor hereby conveys and grants to Grantee a temporary construction easement (the "**Temporary Construction Easement**") over, under, in, along, across and upon so much of the Property around the Easement Area as may reasonably be necessary for the initial construction and installation of the Natural Gas Improvements and any studies, testing, or surveys that may be necessary prior to construction and installation.

2. Terms of Easement

2.1 Natural Gas Easement. The Natural Gas Easement shall commence on the effective date of this Agreement and shall run with the land and continue in full force and effect until expiration of the term or until Grantee has, if ever, abandoned the Natural Gas Easement, as the term "abandonment" is defined in Section 6.7 below.

2.2 Term of Natural Gas Easement. The term of the Natural Gas Easement shall commence on its effective date and end on the 99<sup>th</sup> anniversary of the effective date.

2.3 Temporary Construction Easement. The Temporary Construction Easement shall commence on the effective date of this Agreement and shall automatically terminate upon the first occurrence of (i) the completion of the construction and installation of the Natural Gas Improvements and restoration of the disturbed surface or (ii) one years after the effective date of this Agreement.

3. Gas Service Connection. As part of the consideration for the grants of easement under this Agreement, Grantee shall install at Grantee's expense one natural gas service connection and meter to serve the County Fire Station located on the Property. The new service connection shall be acceptable to the County and fully replace the existing onsite propane tank.

4. Reservation by Grantor/Non-Exclusive Use. All right, title and interest in and to the Easement Area under this Agreement that can be used and enjoyed without interfering with the rights conveyed by this Agreement are reserved to Grantor; *provided*, however, that Grantor shall not erect or maintain any buildings which may cause damage to the Natural Gas Improvements or interfere with Grantee's right to carry out the Authorized Purposes under this Agreement.

5. Construction of Natural Gas Improvements.

5.1 Costs/Lien-Free Construction. Grantee shall bear and promptly pay without the imposition of any lien or charge on or against all or any portion of the Property all costs and expenses of constructing and maintaining the Natural Gas Improvements.

5.2 Compliance with Laws. Grantee shall construct the Natural Gas Improvements in a workmanlike manner and in compliance with the applicable federal, state, and local laws including but not limited to those applicable to gas pipeline safety.

5.3 Restoration. If the surface of the Easement Area or other areas of the Property is disturbed by Grantee in carrying out any of the Authorized Purposes, the disturbed area shall be restored to the condition in which it existed at the commencement of such activities, excepting the following; *provided*, however, that existing native vegetation removed for the Authorized Purposes, shall not be restored.

6. General Provisions.

6.1 Covenants Running with the Land. The parties to this Agreement acknowledge and agree that the Natural Gas Easement granted by this Agreement shall run with the land and shall inure to the benefit of and be binding upon the parties and their respective grantees, heirs, successors and assigns.

6.2 Assignment. This Agreement is assignable by either party upon notice to the other party and recordation of the assignment.

6.3 Effective Date. This Agreement shall be effective upon the last date written below.

6.4 Authorized Representative. Each individual signing on behalf of a party to this Agreement states that he or she is the duly authorized representative of the signing party and that his or her signature on this Agreement has been duly authorized by, and creates the binding and enforceable obligation of, the party on whose behalf the representative is signing.

6.5 Notices. Any notice permitted or required by this Agreement shall be deemed received, if delivered, when actually received, or, if mailed, on the third day after mailing by registered or certified mail, postage prepaid, to the party's address set forth below their respective signatures to this Agreement, or to such other address designated in writing to the other parties.

6.6 Plan. Upon Grantor request, Grantee shall provide Grantor with as-built drawings and a survey showing the location and depth of the improvements installed in the Easement Area.

6.7 Abandonment. In the event Grantee or its successors and assigns abandon or terminate their use of all of Grantee's improvements for a period of 36 consecutive months, this Agreement and all easement rights granted there under shall terminate.

6.8 Further Cooperation. The parties agree to execute such other documents and to perform such other acts as may be reasonably necessary or desirable to further the expressed and intent purpose of this Agreement.

6.9 Cancellation of Prior Agreement. This Agreement shall supersede and replace all prior written or oral agreements between the parties concerning the Natural Gas Easement and Temporary Construction Easement, if any.

6.10 No Third-Party Beneficiaries. The parties do not intend by this Agreement to benefit any person who is not a party to this Agreement.

6.11 Batement Act. Grantee acknowledges that Grantor is governed by the Santa Fe County Board of County Commissioners ("BCC"). BCC is subject to the Batement Act, NMSA 1978, Section 6-6-11(1968), which prohibits BCC from contracting any debts during any current year which, at the end of such current year, is not and cannot be paid out of money actually collected by Grantor and belonging to that current year. Any indebtedness for any current year that is not and cannot be paid out of funds belonging to that year is void.

6.12 Tort Liability. The County's sovereign immunity shall not be waived, if at all, except to the extent provided in the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-30.

IN WITNESS of this, the undersigned have executed this Agreement as of the last date written below.

SANTA FE COUNTY - GRANTOR:

By: [Signature] Date: 7/25/17  
Henry P. Roybal, Chair  
Santa Fe County Board of County Commissioners  
C/O Santa Fe County Public Works Director  
424 NM 599  
P.O. Box 276  
Santa Fe, NM 87504-0276

ATTEST:

[Signature] Date: 7-25-2017  
Geraldine Salazar, Santa Fe County Clerk



APPROVED AS TO FORM:

[Signature]  
Gregory S. Shaffer, Santa Fe County Attorney  
*Don't forget SEC Finance 6-28-17*

GRANTEE:

By: [Signature] Date: 7-18-17  
James Schweback  
Chairman, Board of Directors  
EMW Gas Association  
PO Box 118  
Estancia, NM 87016

ACKNOWLEDGEMENT OF GRANTEE

State of New Mexico

County of Torrance

This instrument was acknowledged before me on 7.18, 2017 by James Schwebach, as Chairman, Board of Directors (title) of EMW Gas Association, for and on behalf of said corporation.

  
Signature of Notarial Officer

My commission expires: June 21, 2019



OFFICIAL SEAL  
EDWARD L. O'BRIEN JR  
NOTARY PUBLIC-State of New Mexico

My Commission Expires June 21, 2019

COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) ss

EASEMENT AGREEMENT(N/C  
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I Hereby Certify That This Instrument Was Filed for  
Record On The 26TH Day Of July, 2017 at 01:06:42 PM  
And Was Duly Recorded as Instrument # **1832026**  
Of The Records Of Santa Fe County

Witness My Hand And Seal Of Office  
Geraldine Salazar  
Deputy A. Lane Howard County Clerk, Santa Fe, NM





Exhibit "A-2"  
Legal Description of Easement Area

A tract of land located west of the Town of Edgewood, Santa Fe County, New Mexico within Section 19, Township 10 North, Range 7 East, N.M.P.M., being Tract A-5-1 of the Land Division Created by Diane Dena Foosaner to donate Parcel to Edgewood Firefighters Association as the same is shown on the Plat thereof prepared by Allen C. Grace, PS 12443, filed for record in the Office of the Santa Fe County Clerk in Book 478, Page 029 on July 11, 2001;

The easement shall be 10 feet in width, the centerline of which is described as follows:

Beginning at the northern most point of the easement, a point on the south line of Dinkle Road (County Road 8), whence a NMDOT Highway Iron Rail Monument on the north right of way of Interstate Highway I-25 bears S89°49'07"W, 229.18 feet;

Thence, leaving the south line of Dinkle Road, S6°06'37"W, 103.16 feet to an angle point of this easement;

Thence, following a line parallel and being 5 feet south of the north right way line of Interstate Highway I-25, S63°47'18"E, 98.09 feet for the end of the easement and containing 0.046 acres, more or less.

Along with a temporary construction easement generally located at the south side of the existing parking lot for staging equipment. The temporary construction easement shall expire upon completion of construction.

