

CITY OF ARDMORE
PUBLIC UTILITIES DIVISION

Authority Letter No. 5162
Meeting Date June 7, 2021

Mayor and City Commission
City of Ardmore, Oklahoma

Re: Request to enter Encroachment Easement with Oklahoma
Natural Gas, a division of ONE Gas, Inc., and Oklahoma
Corporation [ONE Gas]

Dear Commissioners:

Staff is requesting the approval of the attached Encroachment Easement and its attachment B with the Oklahoma Natural Gas, a division of ONE Gas, Inc., and Oklahoma Corporation [ONE Gas] for the Exit 29 Waterline Project. A portion of the project along hedges road crosses a ONE Gas line and they have asked us to enter into the attached Encroachment Easement. Mr. David Davis has reviewed and approved the attached easement. There is no cost for this easement.

Staff recommends the approval of the attached Encroachment Easement and its attachment B with the Oklahoma Natural Gas, a division of ONE Gas, Inc., and Oklahoma Corporation [ONE Gas] for the Exit 29 Waterline Project.

Sincerely,



Shawn Geurin, Utilities Director

Reviewed by: _____


City Manager

ENCROACHMENT ON EASEMENTS

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

This Consent to Encroachments on Easements (the "Consent") is by and between Oklahoma Natural Gas Company, a division of ONE Gas, Inc. an Oklahoma corporation [ONE Gas], whose address is 4901 N. Santa Fe, Oklahoma City, Oklahoma 73118, Attn: Drew Nixon ("ONE Gas") and the City of Ardmore, Oklahoma, a municipal corporation ("Grantee").

Background

1. ONE Gas is the owner of certain real property interests located and being a part of Section 1 & Section 12, T05S-R01E of the I.M. in Carter County, Oklahoma as evidenced and depicted on Exhibit "A" attached hereto and made a part hereof.

2. Grantee has requested ONE Gas' permission to encroach on and within a portion of the Easements (the "Encroachments") in accordance with the drawings attached hereto as Exhibit "B" and incorporated herein for all purposes (the "Construction Plans"), and ONE Gas has consented to the request subject to the terms and conditions described in this Consent.

For and in consideration of mutual covenants and agreements of the parties and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the execution and delivery hereof, the parties agree as follows:

Consent to Encroach Cross and Agreement to Conditions

3. ONE Gas hereby consents to the Encroachment, provided that Grantee agrees to comply with the following terms and conditions.

a. Grantee, its successors and assigns, shall forever be solely responsible for the installation, construction, maintenance and removal of Grantee's facilities within the Easement and Encroachment. Such facilities shall be installed at Grantee's own cost and expense and in conformance with the Construction Plans. If Grantee's facilities are found to exist outside the locations or configuration shown on the Construction Plans or in a manner differing from the Construction Plans, Grantee shall, at its own cost and expense, relocate same to its proper location and conform to the Construction Plans to occur within ninety (90) days of any formal notice of incorrect placement or construction. Grantee shall not install any additional facilities, property or equipment on the Easement other than those depicted in the Construction Plans without formal written approval by One Gas. This shall include use of the Easement as a staging area or storage location such as where vehicles, freight haulers, supplies, materials, workers, construction support and any other equipment, machinery or persons are placed or positioned for use, mobilization and access to a construction site.

IN THE EVENT ANY PORTION OF THE GRANTEE'S FACILITIES REMAIN OUTSIDE OF THE LOCATION OR CONFIGURATION SET FORTH IN THE CONSTRUCTION PLANS, GRANTEE HEREBY AGREES TO FORFEIT ANY AND ALL RIGHT OR CAUSES OF ACTION TO CLAIM A PRESCRIPTIVE EASEMENT OR EXERCISE ADVERSE POSSESSION OR EMINENT DOMAIN, AGAINST ONE GAS OR ANY PORTION OF THE EASEMENT.

b. The Encroachment can in no way prevent or impair One Gas' current or future access to and the operation of ONE Gas' facilities, property or equipment installed and existing, or to be installed in the future by ONE Gas in the Easement contained within Grantees' Encroachment nor impair the exercise of any rights provided for in the Easement or at law.

c. Grantee shall be fully responsible for reimbursement to One Gas for all costs associated with any damage to One Gas facilities, property or equipment: (1) during construction, removal and/or replacement of the Encroachment; and (2) as a result of One Gas' entry of the Easement, including the Encroachment, in order to operate, maintain, repair or replace ONE Gas' facilities, property or equipment or in the exercise of any rights provided for in the Easement. Additionally, **GRANTEE EXPRESSLY ACKNOWLEDGES THAT ONE GAS SHALL NOT BE LIABLE FOR ANY DAMAGES OR LOSS SUFFERED BY GRANTEE WHICH IS CAUSED, IN WHOLE IN PART, BY THE EXERCISE OF ONE GAS' RIGHTS UNDER THE EASEMENT OR THIS CONSENT.** Grantee shall be wholly responsible for such damages. Grantee hereby guarantees all work performed by Grantee and its contractors and subcontractors against any and all defects in workmanship and shall, at its sole cost and expense, make repairs as deemed necessary by ONE Gas to remedy such defects within fourteen (14) days after demand.

e. Grantee shall add design provisions to ensure drainage meets all applicable city and county regulations.

f. There shall be scheduled a pre-construction conference with ONE Gas representatives and Grantee's representatives prior to commencing any work on the Encroachment.

4. ONE Gas specifically reserves for itself, its successors, assigns and licensees, the right to use the Easement area for any purpose and in any manner permitted under the Easement and expressly denies Grantee the right to affect or preclude such use in any manner not specifically permitted in this Consent.

5. ONE Gas may remove the Encroachment in order to operate, maintain, repair or replace ONE Gas' facilities, property or equipment or in the exercise of any rights provided for in the Easement and ONE Gas shall not be responsible to pay any amount incurred by Grantee to repair or replace any of the Encroachment and related facilities removed as a result.

6. Grantee hereby binds itself to remit to ONE Gas, as consideration for the permission to be granted, payment in the amount of \$ N/A

7. Grantee agrees that this Consent is subject to all restrictions, conditions, reservations and exceptions to conveyance and warranty contained in the Easement and all other

documents in the Real Property Records of Carter County, Oklahoma affecting the Consent and the Easement. **GRANTEE ACKNOWLEDGES THAT ONE GAS HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS AS TO THE PHYSICAL CONDITION OR ANY OTHER MATTER AFFECTING OR RELATED TO THE EASEMENT AREA. GRANTEE EXPRESSLY AGREES THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS CONSENT IS GRANTED "AS IS" AND "WITH ALL FAULTS" AND GRANTEE EXPRESSLY DISCLAIMS AND ACCEPTS THAT ONE GAS HAS DISCLAIMED ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND, ORAL OR WRITTEN, EXPRESS OR IMPLIED, CONCERNING THE EASEMENT AREA, INCLUDING WITHOUT LIMITATION, THE VALUE, ENVIRONMENTAL AND PHYSICAL CONDITION, MERCHANTABILITY, HABITABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND THAT GRANTEE HAS RELIED EXCLUSIVELY ON ITS OWN INSPECTION AND INVESTIGATION OF THE EASEMENT AREA IN DECIDING TO REQUEST THE RIGHTS GRANTED HEREUNDER.**

8. **GRANTEE HEREBY BINDS ITSELF, ITS SUCCESSORS, ASSIGNS, AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS AND LICENSEES TO INDEMNIFY AND HOLD ONE GAS HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, LIABILITIES, COSTS, LOSSES, EXPENSES AND DAMAGES, IN CONTRACT, STRICT LIABILITY OR IN TORT, INJURY TO ANY PERSON (INCLUDING DEATH) OR DAMAGE TO ANY PROPERTY ARISING OUT OF, RELATED TO OR IN ANY WAY CONNECTED WITH THE CONSTRUCTION, USE AND EXISTENCE OF GRANTEE'S FACILITIES ON THE EASEMENT AREA WHERE SUCH INJURY OR DAMAGE IS CAUSED BY THE SOLE, JOINT, CONCURRENT, CONTRIBUTING OR COMPARATIVE NEGLIGENCE OR FAULT OF GRANTEE, ITS AGENTS OR EMPLOYEES.**

9. ONE Gas and Grantee agree to execute and deliver such additional documentation and take such actions as may be necessary to evidence and effectuate the agreements of the parties set forth in the Consent.

10. This Consent shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns and such agreements contained herein shall be binding on such parties.

11. This Consent may be executed in multiple counterparts, each of which will be deemed an original and all of which taken together will constitute but a single instrument. Additionally, the parties and any third party may rely on a copy or facsimile of an executed counterpart as if such copy or facsimile were an original.

Made and entered into as of the _____, 2021.

The City of Ardmore, Oklahoma,
a municipal corporation

By:
Name:
Title:

STATE OF OKLAHOMA)
) ss
COUNTY OF)

Before me, the undersigned, a Notary Public in and for said County and State, on this _____ day of _____, 2021, personally appeared _____ to me known to be the identical person who subscribed the name of the maker thereof to the within and foregoing instrument as its _____ and acknowledged to me that she/he executed the same as his/her free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year last above written.

My Commission Expires:

Notary Public

EXHIBIT "A"

SECTION 1, TOWNSHIP 5 SOUTH, RANGE 1 EAST

1. **Type:** Right of Way Agreement
Bk/Pg: Book 167, Page 250
Legal: E/2 NW/4 SW/4
Grantor: Willie Heron
Grantee: Oklahoma Natural Gas Company
Agreement dated: January 25, 1945
Recorded: February 28, 1945
2. **Type:** Right of Way Agreement
Bk/Pg: Book 167, Page 251
Legal: E/2 SW/4 SW/4
Grantor: W.G. Patten & Bessie K. Patten
Grantee: Oklahoma Natural Gas Company
Agreement dated: January 29, 1945
Recorded: February 28, 1945
3. **Type:** Right of Way Agreement
Bk/Pg: Book 549, Page 305
Legal: NW/4 SW/4
Grantor: Bill Heron and Ada Heron, his wife
Grantee: Oklahoma Natural Gas Company
Agreement dated: September 8, 1966
Recorded: September 26, 1966

SECTION 12, TOWNSHIP 5 SOUTH, RANGE 1 EAST

1. **Type:** Right of Way Agreement
Bk/Pg: Book 167, Page 252
Legal: E/2 W/2 NW/4
Grantor: Willie Hooks, Now Miller
Grantee: Oklahoma Natural Gas Company
Agreement dated: January 29, 1945
Recorded: February 28, 1945
2. **Type:** Right of Way Agreement
Bk/Pg: Book 549, Page 301
Legal: W/2 NW/4
Grantor: Horace D. Shockley and Ruby Hooks
Grantee: Oklahoma Natural Gas Company
Agreement dated: September 1, 1966
Recorded: September 26, 1966

EXHIBIT “B”

(SEE NEXT PAGE FOR CONSTRUCTION PLANS)

