

Multi-Use Pathway Construction and Maintenance Agreement

This Construction and Maintenance Agreement (the "Agreement") is made and entered into this 9th day of April, 2015, by and between El Paso Natural Gas Company, L.L.C., together with its successors and assigns, hereinafter referred to as ("EPNG"); and The Town of Prescott Valley, together with its successors and assigns, hereinafter referred to as (the "Town").

WITNESSETH:

WHEREAS, EPNG is the holder of record of property interests conveyed to EPNG by: (a) an Agreement and Easement dated April 6, 1956, recorded in Yavapai County, Arizona, County Clerk's office, Book 74, Page 306, (b) a Warranty Deed dated July 17, 1970, recorded in Yavapai County, Arizona, County Clerk's office, Book 609, Page 959, (c) Warranty Deed dated October 17, 1975, recorded in Yavapai County, Arizona, County Clerk's office, Book 987, Page 962, and (d) Quit Claim Deed dated October 7, 1980, recorded in Yavapai County, Arizona, County Clerk's office, Book 1337, Page 478, a portion of said property being situate within the current corporate boundaries of the Town (the "Right-of-Way"); and,

WHEREAS, EPNG currently owns and operates a 20" pipeline and appurtenances known as "EPNG Gas Line 1203" (the "Pipeline") within the Right-of-Way, and the proximate location of the Pipeline within the Right-of-Way is depicted on Exhibit "A", attached hereto and made a part of this Agreement; and,

WHEREAS, EPNG previously granted to the Town, the right as a covenant running with the land to construct, maintain, and operate a pathway for use by pedestrians, equestrians and non-motorized cyclists by way of a Right of Way and Easement dated April 29th, 1991, recorded in Yavapai County, Arizona, County Clerk's office, Book 2426, Page 269-271 (Easement), and the Town now desires to construct such a multi-use pathway (the "MUP") as depicted on Exhibit "B", attached hereto and made a part of this Agreement; and,

WHEREAS, in accordance with the Easement EPNG is willing to permit the Town to collocate its proposed MUP over and proximate to the Pipeline, provided that the installation and maintenance of the MUP as depicted on Exhibit B is fully implemented and completed at the sole cost and expense of the Town; and,

WHEREAS, in accordance with the express conditions of the Easement the Town has agreed to reimburse EPNG for any damages resulting or arising from the MUP, and to protect, indemnify and hold harmless EPNG, its officers, employees, agents, assignees, and successors in interest from and against any and all claims, demands, damages, causes of action, expenses and losses resulting from injury or death to persons or horses and damages to property arising out of construction, maintenance or use of the MUP; and,

WHEREAS, EPNG and the Town have mutually agreed to enter into this Agreement to more fully set forth the conditions found in said Easement.

NOW, THEREFORE, in consideration of the performance by the parties hereto of all the terms and conditions hereinafter set forth, it is hereby mutually agreed and understood as follows:

TERMS AND CONDITIONS

1. Installation of MUP. The Town shall assume the sole responsibility for all work necessary to construct and install the MUP, including Caretaking (defined below). All work and completion of the MUP shall be performed by the Town (directly or by its authorized agents) and shall be at the sole expense of the Town. During construction and installation of the MUP, should EPNG incur any damage to its pipeline or facilities, the cost to repair and replace shall be at the Town's sole cost and expense. The term "Caretaking" as used in this Agreement shall mean reseeding, re-vegetation, stabilization, erosion control, mowing of that portion of the Right-of-Way on which the MUP is constructed, and removal of trash. In addition, the Town shall perform the following tasks and comply with the following terms and conditions.

a. Plans and Submittal. Exhibit B, includes a set of drawings entitled **Town of Prescott Valley Lakeshore Dr to SR 89A, Prescott Valley, Project No. 0000 YV PRV SL680 01C, Federal Aid No. TEA-PRV-0(205)T ("Plans")** that identify and stipulate the approved locations for individual elements of the MUP. The Town shall be responsible for providing all engineering services and preparing all construction plans, drawings and other materials (collectively, the "Plans") as may be required or otherwise necessary in connection with the MUP, which Plans shall be consistent with **Plans**. The Town shall submit a final draft of the Plans to EPNG for review and acceptance. Within thirty (30) days following EPNG's receipt of the Plans, EPNG shall deliver written notice to the Town either (i) accepting the Plans or (ii) setting forth, with particularity, EPNG's reasonable objections or concerns relative to the Plans. If EPNG delivers written notice of objection/concern to the Town, representatives of EPNG and the Town (the "Parties") shall meet and confer within fifteen (15) days following the Town's receipt of said notice for the purpose of (A) addressing EPNG's objections/concerns, and (B) working cooperatively and in good faith to resolve such objections/concerns. The Plans shall set forth in detail the specifications and performance requirements for the MUP, the work to be performed by the Town, and such matters reasonably requested by either Party.

b. All items which the Town is required to furnish, prepare or develop in the performance and completion of the MUP (including, but not limited to, reports, plans, drawings and specifications, calculations, maps, sketches, notes, data and samples), shall be made available to EPNG at EPNG's request.

c. Retention of Contractors and Personnel. The Town shall enter into, and shall fully perform, all contracts as are reasonably necessary or otherwise required in order to construct and implement the MUP in accordance with the Plans. Such contracts may include, but are not limited to, agreements with engineers, contractors and other design and construction professionals. Such contracts shall contain provisions which are acceptable to EPNG, and shall include, without limitation, indemnities in favor of EPNG, its officers, employees, agents, assignees, and successors in interest and insurance coverage naming EPNG as additional insured. The Town shall provide drafts of such contracts to EPNG for its review and acceptance prior to execution and provide signed copies promptly after their execution.

d. Non-Conforming Work. The Town shall notify EPNG in writing when the construction of the MUP has been completed. If, in the sole good faith judgment of EPNG, the MUP or any portion of the MUP does not conform to this Agreement, EPNG shall give the Town notice of any non-conformance. Within five (5) working days after receiving such notice from EPNG, the Town shall at its

sole expense correct all non-conforming items or provide a mutually acceptable written plan of work to correct or cure the non-conforming items. Corrected items shall be resubmitted for acceptance by EPNG and the above approval process will be repeated until the work is acceptable or otherwise rejected by EPNG.

2. Compliance with Applicable Requirements.

a. General. The Town agrees (on behalf of itself, agents and representatives) that the Town shall fully comply with all laws, rules, regulations, ordinances, permits and other requirements that are applicable to the implementation of the MUP (the "Applicable Requirements") and to protect, indemnify and hold harmless EPNG, its officers, employees, agents, assignees, and successors in interest from and against any fines or penalties that may be assessed against EPNG by failure of the Town or its agents and representatives to comply with the Applicable Requirements. The Applicable Requirements include, but are not limited to:

i. All conditions, provisions and obligations set forth in the Environmental Impact Report for the MUP.

ii. All applicable federal, state and local laws, ordinances, codes, local and national standards and regulations, including those of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration, the Federal Energy Regulatory Commission and any and all federal, state, and local laws, regulations, permits, approvals and requirements pertaining to health, safety, or the environment.

iii. The Kinder Morgan Engineering and Construction Standards as adopted by EPNG and found at: <ftp://lkwftp.kindermorgan.com/>. To log in: The user name is [EPCMasterDownload](#) and the password will be provided on request.

iv. The Kinder Morgan Environmental/Safety Manual as adopted by EPNG and attached as Exhibit "C".

a. Notification Requirements. With regard to the safety requirements in said Manual, the Town shall ensure that its employees, agents, contractors' and subcontractors' employees engaged in the performance of the MUP are notified and, when required by EPNG, trained and instructed by EPNG (either directly or through a train-the-trainer program instituted by EPNG), concerning the order of actions to be taken upon discovery of a release or threatened release condition of a Hazardous Material or pollutant, substance or natural gas; and

b. No work shall be undertaken on any EPNG property or facility without the presence of an EPNG representative to ensure that the provisions of the safety Manual are complied with.

c. The Town understands that EPNG has constructed the Pipeline within that portion of the Right-of-Way on which the MUP is to be constructed (the "Property"), and the Town has been fully advised by EPNG that such Pipeline transports natural gas at pressures exceeding 400 psi. The Town shall advise all of its employees, agents, contractors, and other persons who enter upon the

Property of the existence and nature of such Pipeline and pass on applicable safety requirements as set forth in said manual.

b. Non-Compliance with Applicable Requirements and Environmentals; Indemnity. The Town shall be responsible for all fines, penalties, costs and expenses associated with the violation of any regulatory mandate, condition or element of the Applicable Requirements (where said violation is caused by, or otherwise associated with, the construction, maintenance or use of the MUP, including the remediation of any unauthorized impacts to protected species and/or areas containing sensitive habitat or resource values. The Town shall indemnify, protect and hold harmless EPNG its officers, employees, agents, assignees, and successors in interest from and against all claims, demands, damages, causes of action, losses and expenses (including attorney's fees) arising out of (i) the Town's failure to adhere to and comply with the Applicable Requirements and (ii) the Town's acts or omissions related to the construction, maintenance or use of the MUP. The taking of any endangered or protected species in conjunction with the MUP shall be applied against the Incidental Take Permit or any other applicable local, state or federal permit obtained by the Town (and not EPNG).

c. Taxes; Compensation. The Town shall protect, indemnify and save EPNG harmless from and against the consequences of any failure by the Town or any of its contractors or subcontractors to pay or withhold taxes, charges or compensation due on behalf of its workers, employees or agents involved in construction of the MUP.

d. Liens. The Town shall protect, indemnify and hold harmless EPNG and keep the Property free and clear from any and all claims, liens, charges or encumbrances in the nature of mechanics, labor, or material liens or otherwise, arising out of or in connection with the MUP, and shall promptly have any such lien released by bond or otherwise. If The Town disputes in good faith any lien or claim or encumbrance of any laborer, material man or subcontractor, in lieu of the immediate payment thereof, the Town shall post security to protect EPNG from liability for the payment thereof on terms acceptable to EPNG and from any expense of defending against that liability, until the dispute is finally resolved. EPNG may, at its sole discretion, post or place upon the site where any work is being performed notices of non-responsibility or do any other act permitted by law to exempt EPNG, the Property, any and all interests and estates therein, and any improvements or materials thereon from any liability to third parties for the MUP. The failure of EPNG to perform any of the actions described in the previous sentence shall not release or discharge the Town of any of its obligations hereunder. The failure of the Town to comply with the provisions of this paragraph shall constitute a material breach of this Agreement.

e. Conduct of Work/Activities. When entering onto the Property and performing work thereon, the Town shall conduct its activities in a safe, reasonable and workman like manner and shall comply with all applicable state, local and federal statutes, ordinances, building codes, laws, rules and regulations including, but not limited to, the requirements, conditions and restrictions set forth in the EIR, and the Applicable Requirements, notwithstanding any provision in this Agreement to the contrary.

3. Damages; Indemnification. The Town shall repair, replace and restore any damage or casualty to any known and disclosed EPNG buildings, installations, facilities and other improvements or materials located on the Property, or to public roads and bridges including drainage, culverts, guardrails, signs and other transportation structures or appurtenances which is caused by the acts or omissions of the Town. Moreover, the Town shall be responsible for all acts and omissions of the Town and its agents and representatives related to construction, maintenance and use of the MUP. The Town shall indemnify,

protect and hold harmless EPNG its officers, employees, agents, assignees , and successors in interest from and against all claims, demands, damages, losses, causes of action and expenses (including attorney's fees) arising out of the construction, maintenance and use of the MUP or otherwise arising out of the acts or omissions of the Town hereunder.

4. Reimbursement of EPNG. The Town shall reimburse EPNG for any damages arising or resulting from the construction, operation and use of the MUP. The Town shall pay within thirty (30) days of invoice.

5. Future Expansion Projects. If at any time EPNG desires to expand its existing pipeline or install one or more additional pipelines or any other appurtenances within the Property that disturbs the MUP, any damages to the MUP will be at the sole expense of the Town.

6. Pipeline Maintenance.

a. EPNG will perform routine inspection and maintenance, at its discretion, on the Pipeline and may not be restricted from access to the MUP for those purposes. However, EPNG will take every precaution to protect the MUP. In the event the MUP is damaged, the cost to cure will be borne solely by the Town. EPNG will contact the Town 72 hours prior to any scheduled inspection or maintenance, and the Town will work with EPNG to temporarily close the MUP as needed. The Town contact person shall initially be Norm Davis, Public Works Director, whose contact information is email (ndavis@pvaz.net) tel (928) 759-3072. This contact person may be changed in the same manner as the persons listed for notice in subsection 12(g) below.

b. In the event of an emergency, EPNG may enter the Property without any prior notification and perform any actions necessary to ensure the safety of the public and the Pipeline. In the event that the MUP is damaged, the Town shall bear the sole expense to repair. If EPNG incurs the costs to repair those costs will be invoiced to the Town.

c. In the event that the MUP conflicts in any way with the maintenance, repair, or inspection of the Pipeline (including the obstruction, restriction or the ability of EPNG to implement, access, and perform maintenance activities), such interference shall be remedied at the sole cost of The Town.

d. In the event of damage to the Pipeline by the Town or the general public using the MUP, the Town shall be solely responsible for the cost of all repairs and associated loss of gas.

e. The Town will be responsible for mowing the Property in its entirety and in accordance with its standard practices for mowing on and adjacent to other MUPs within the Town in accordance with all city and county ordinances.

f. The Town has been fully informed by EPNG that the Pipeline, will be operating cathodic protection by rectifier and related anode beds. EPNG shall not be liable for stray current or interfering signals as a result of EPNG's cathodic protection system.

7. Warranties.

a. The Town warrants that the design of architectural, structural, mechanical, electrical, civil and any engineering features included as part of the Plans shall be reviewed, approved and stamped by architects or engineers registered and licensed to practice in Arizona and any drawings or documents provided by the Town shall comply with all applicable statutes, laws, rules and regulations.

b. The Town expressly warrants (i) that the work shall be free from defects in design and workmanship and shall conform to the terms of the Plans, to approved practices and standards, and to the specifications, safety standards, drawings, samples or other descriptions upon which this Agreement is based, and (ii) that any goods, materials, parts, products, supplies, and equipment included as part of the MUP shall be fit and sufficient for the purpose intended under this Agreement and the Plans.

8. Abandonment. Upon permanent abandonment of the MUP by the Town, the Town agrees to timely remove (at its sole expense) all improvements constructed thereon related to the MUP and to execute and record a reconveyance and release of the Easement. In so doing, the Town shall pay any costs and expenses EPNG may reasonably incur to repair, replace, or otherwise restore to like-new condition any portion of the Property damaged as a result of abandoning the MUP.

9. Indemnification. THE TOWN SHALL PROTECT, INDEMNIFY AND HOLD HARMLESS EPNG, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL DAMAGES, LOSSES, DEMANDS, CLAIMS, CAUSES OF ACTION AND EXPENSES (INCLUDING ATTORNEY'S FEES) EXCEPT THOSE CAUSED SOLELY BY THE NEGLIGENCE OF EPNG. THE TOWN SHALL REQUIRE EACH OF ITS CONTRACTORS ENGAGED FOR PERFORMANCE OF THE WORK TO PROVIDE EXPRESS INDEMNITIES, ENFORCEABLE BY AND FOR THE BENEFIT OF EPNG, TO THE SAME EXTENT REQUIRED OF THE TOWN.

10. Environmental Indemnification. The Town shall protect, indemnify and hold harmless EPNG from and against any and all damages, losses, demands, claims, causes of action, and expenses (including attorney's fees) for which EPNG may become responsible or pay out resulting from any act or omission by the Town in the construction, operation or use of the MUP in accordance with the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as the same may be amended from time to time, or any similar state statutes, regulations or requirements.

11. Insurance.

a. The Town shall carry and maintain the following insurance:

i. Statutory Coverage Workers' Compensation Insurance (including Occupational Disease Coverage) in accordance with the laws of Arizona.

ii. Employer's Liability Insurance with limits of not less than \$1,000,000 per occurrence and \$1,000,000 per disease/each employee.

iii. Commercial General Liability Insurance insuring the indemnity agreements set forth in this Agreement with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. All policies shall remove any exclusion for explosion, collapse and underground operations (XCU) and include coverage for Pollution Liability (sudden and accidental). The policy shall not contain any provision, definition, or endorsement that would serve to eliminate third party action over claims coverage.

iv. Comprehensive Automobile Liability Insurance covering liability arising out of any auto (owned, hired and non-owned); with a combined single limit of not less than \$1,000,000.

v. Professional Liability Insurance with limits of at least \$1,000,000 for each occurrence and \$2,000,000 in the aggregate covering claims of bodily injury or property damage arising from The Town's providing such design, engineering or other professional services hereunder.

vi. Umbrella Insurance (Excess Liability) with a minimum limit of not less than \$13,000,000 per occurrence. Such umbrella policy shall follow the form of the Employer's Liability Insurance, Commercial General Liability Insurance and Comprehensive Automobile Liability Insurance set out above, be in excess of those underlying policies without gaps in limits and provide coverage and provide coverage as broad as those underlying policies.

b. Additional Insureds. All insurance policies carried by the Town hereunder (except Workers' Compensation Insurance and Professional Liability Insurance) shall name EPNG as an additional insured with respect to liability arising out of the work performed by the Town or its contractor, as applicable. Such additional insured coverage shall include ongoing and completed operations.

c. Waiver of Subrogation. All insurance policies of the Town (except Professional Liability) shall include a waiver of subrogation (unless prohibited by law) in favor of EPNG.

d. Before commencing any performance under this Agreement, the Town shall furnish EPNG with certificates of insurance on the ACORD form with boxes checked as approved by EPNG and copies of such endorsements to evidence insurance coverage as required by the provisions of this Agreement. Failure of The Town to furnish such evidence of insurance coverage shall not be considered a waiver by EPNG of such coverage.

e. The insurance coverages required of the Town shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to or maintained by or for the benefit of EPNG, and shall not require the exhaustion of any other coverage. In no event shall the amount or scope of the insurance required herein place any limitation on the liability assumed by the Town elsewhere in the Agreement.

f. Should any of the above-described policies be cancelled before the expiration date thereof, the Town shall cause its carrier to deliver notice to EPNG within the timeframe provided by the policy for notice of cancellation to be provided to the insured. The Town shall notify EPNG immediately if the carrier declines or fails to so notify EPNG and also notify EPNG of any such cancellation.

g. The Town shall promptly notify EPNG when any insurance policy required above is not reasonably available and shall state the reasons therefore.

h. All deductibles, self-insured retentions and self-insurance carried by the Town under its insurance program are the sole responsibility of the Town and will not be borne in any way by EPNG. The Town will indemnify EPNG in full for any amounts related to such deductibles, retentions and self-insurance and for any deductibles or amounts owed under any EPNG issued policies due to the fault of the Town.

i. If the Town fails to carry out any of the provisions of this Section 11, EPNG shall, in addition to any right to recover damages or to obtain other relief, have the right to terminate this Agreement.

j. All contractor and subcontractor policies shall be endorsed with the waiver of subrogation and additional insured wording set forth in Section 11(b) and 11(c) above. Any deficiency in the coverage, policy limits, or endorsements of said Subcontractors will be the sole responsibility of the Town.

k. The insolvency, bankruptcy, receivership or failure of any insurance company to pay all claims accruing thereunder shall not relieve the Town of any of its obligations herein.

l. All limits as required above, may be met through the use of primary and excess policies at the discretion of the Town, so long as the total amount of insurance coverage provided is equal to or greater than the amount specified in this Agreement.

m. All insurance obligations shall remain in full force and effect regardless of whether the indemnity provisions contained in this Agreement are enforceable.

12. Mutual Agreements/Covenants of the Parties. In consideration of the Parties' performance of their respective obligations under this Agreement, the Parties mutually agree and covenant as follows:

a. Covenant of Good Faith. The Town and EPNG shall work cooperatively and in good faith with one another.

b. No Agency or Joint Venture. Nothing herein shall be deemed to create an agency, joint venture, partnership or franchise relationship between the Parties, or between the Parties and any contractor or professional retained by the Town in connection with the MUP.

c. Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns and legal representatives. However, no assignment of this Agreement by one Party shall be made or otherwise be valid without the prior written consent of the other Party.

d. No Third-Party Rights. Nothing in this Agreement shall be deemed or otherwise construed as granting any rights, benefits or interests to any individual, entity or body who is not a Party to this Agreement.

e. Counterparts. This Agreement may be executed in multiple original counterparts, each of which shall be deemed an original, and together they shall constitute one and the same agreement. Signature of this Agreement may be effected by facsimile (with confirmation by transmitting machine) and/or transmitted by portable document format ("pdf") file which shall be treated as an original signature, and any such signature, facsimile, pdf file or copy of this signed Agreement shall be construed and treated as the original and shall be binding as if it were the original.

f. Headings; Construction. The various headings of this Agreement are included for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision

k. Authority. The Parties represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of the respective organization or entity, enforceable in accordance with its terms.

l. Waiver. No waiver or failure to act by any Party with respect to any of its rights under this Agreement shall be construed as a waiver or relinquishment of that right in any other instance or of that Party's right to assert or to rely on the terms of this Agreement. Any express waiver of a provision of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving party.

m. Order of Precedence. In the event of a conflict between the terms and conditions of this Agreement and any Exhibit, this Agreement shall control.

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their officer's thereunto duly authorized on the date written above.

“The Town”

The Town of Prescott Valley

By: _____

Name: _____

Title: _____

“EPNG”

El Paso Natural Gas Company, L.L.C.

By: _____

Name: _____

Title: _____

EXHIBIT "A"

Pipeline Location within Right-of-Way

EXHIBIT "B"

Proposed MUP

EXHIBIT "C"

"Kinder Morgan Contractor Environmental/Safety Manual", as adopted by EPNG