

TBW Project: 84" Cypress Creek Transmission Main
TBW Parcel No.: 4294.71C – Non-Exclusive Perm Pipeline Easement
Section 15, Township 26 S, Range 18 East
Pasco County, Florida

Prepared by and return to:
Tampa Bay Water
2575 Enterprise Road
Clearwater, Florida 33763-1102

(Reserved for Clerk of Court)

MUTUAL USE AGREEMENT

THIS MUTUAL USE AGREEMENT entered into this _____ day of _____, 2018, by and between TAMPA BAY WATER, A Regional Water Supply Authority, an interlocal governmental entity of the State of Florida, hereinafter referred to as "TAMPA BAY WATER," with its principal place of business located at 2575 Enterprise Road, Clearwater, Florida 33763-1102, and CLEARWATER GAS SYSTEM, referred to as "GAS" whose local address is 400 N. Myrtle Avenue, Clearwater, FL 33755

RECITALS:

- A. TAMPA BAY WATER owns and possesses a Non-Exclusive Permanent Pipeline Easement in and upon that certain real property more particularly described in the Deed as recorded in Official Records Book 5556, Page 659 of the public records of Pasco County, Florida ("Tampa Bay Water Easement").
- B. TAMPA BAY WATER operates, and maintains its Cypress Creek 84" Transmission Main Replacement and its appurtenances ("Tampa Bay Water Pipeline Facilities") within the Tampa Bay Water Easement.
- C. GAS has acquired or will acquire the appropriate rights or interests from the fee simple owner of the property underlying the Tampa Bay Water Easement. GAS desires to use a portion of the Tampa Bay Water Easement in order to design, construct, inspect, operate, maintain, and repair a 6" gas main ("GAS Facility") for the purpose of providing natural gas to its customers.
- D. GAS and TAMPA BAY WATER desire to enter into this agreement for the purpose of setting forth the terms and conditions under which GAS and TAMPA BAY WATER will mutually use a portion of the Tampa Bay Water Easement described in Exhibit "A" (the "Use Area"), attached hereto and incorporated herein.

NOW THEREFORE, for and in consideration of the premises and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. The above recitals are true and are incorporated herein by reference.
2. TAMPA BAY WATER hereby agrees to allow GAS the mutual use of the Use Area for the uses and purposes stated herein.
3. GAS acknowledges and agrees that TAMPA BAY WATER's use of the Tampa Bay Water Easement for water transmission pipelines and related purposes will not constitute an interference with GAS's use of the Use Area.
4. Within fifteen (15) days after this Agreement is executed by both parties, GAS will submit to TAMPA BAY WATER, a complete set of the most current construction plans for the GAS Facility within the Use Area. Thereafter, TAMPA BAY WATER shall have forty-five (45) days to review and approve GAS's construction plans, such approval not to be unreasonably withheld. Also during this 45-day period, TAMPA BAY WATER may make comments to GAS's construction plans, by directing any such comments to GAS. GAS will use its best efforts to incorporate TAMPA BAY WATER's comments into the construction plans.
5. GAS acknowledges and agrees that it is using the Use Area "as is" and that TAMPA BAY WATER will not be responsible for preparing, altering, or modifying the Use Area in any manner to accommodate GAS's use.
6. During construction of the GAS Facility, GAS agrees to the following:
 - a. GAS will not interrupt the operation of the Tampa Bay Water Pipeline Facilities, so that the Tampa Bay Water Pipeline Facilities operate as they did prior to the start of the construction of GAS Facility.
 - b. GAS will install the GAS Facility under Tampa Bay Water's water main, while maintaining a minimum vertical separation of 36-inches, measured from below the outside edge of the Tampa Bay Water water main and the GAS Facility.
 - c. Any temporary roads used for construction traffic crossing the Tampa Bay Water Pipeline Facilities shall be built up a minimum of 3-feet above existing grade.
7. GAS covenants that its use of the Use Area shall not at any time interfere with TAMPA BAY WATER's use of the Tampa Bay Water Easement, and that GAS's use of the Use Area will not cause the impairment of the Tampa Bay Water Pipeline Facilities or other hazardous conditions to exist. GAS covenants that if it creates a hazardous condition or restricts, impairs, interferes with, or hinders the use of the Tampa Bay Water Easement by TAMPA BAY WATER, then, upon notification by TAMPA BAY WATER, GAS shall, within seventy-two (72) hours, at its cost and expense, correct such condition. TAMPA BAY WATER retains the right to enter upon the Tampa Bay Water Easement for the purpose of correcting such condition if GAS fails to respond within the seventy-two (72) hour period following notice or if TAMPA BAY WATER determines that an emergency situation exists and requires immediate attention. GAS agrees to reimburse TAMPA BAY WATER for all reasonable, justified and substantiated costs and expenses incurred in

connection with such action.

8. During the period in which any construction or site preparation for the GAS Facility is occurring by or on behalf of GAS within the Use Area, GAS shall maintain or arrange to have maintained the following insurance coverage through either self-insurance, purchased insurance, or a combination thereof:

- a. Workers' Compensation insurance adequate under Florida law for all of GAS's employees working in or about the Tampa Bay Water Easement. GAS shall require all contractors or sub-contractors working in or about the Tampa Bay Water Easement to maintain Workers' Compensation insurance adequate under Florida law for all their employees.
- b. Automobile liability insurance in the minimum amount of \$1,000,000.00 combined single limit, each accident, (bodily injury and property damage) insuring all owned, leased, hired and other non-owned vehicles.
- c. Comprehensive General Liability Insurance in the minimum amount of \$1,000,000.00 combined single limit (bodily injury and property damage) covering premises operations liability, products and completed operations liability, personal injury coverage.
- d. Employer's Liability Insurance in the following minimum amounts:
\$100,000 EACH ACCIDENT EACH EMPLOYEE
\$100,000 EACH DISEASE EACH EMPLOYEE
\$500,000 AGGREGATE BY DISEASE
- e. GAS shall furnish TAMPA BAY WATER with a letter of self-insurance signed by the City's Risk Manager. Any and all subcontractors performing work for GAS will furnish TAMPA BAY WATER with a Certificate of Insurance certifying that each policy required is in full force and effect. GAS and any and all subcontractors will give TAMPA BAY WATER thirty (30) days advance written notice by certified mail ~~and that~~, before canceling or changing the coverage of the required coverages under this Agreement.

The failure of TAMPA BAY WATER to request evidence of the coverage set forth above shall not be construed by GAS as a waiver of GAS's obligation to provide the insurance coverage specified.

The parties shall fully cooperate in making claims and furnishing information to the insured or the insurers and in obtaining settlements and payments from the insurer or insurers. Neither GAS nor its contractors shall claim an interest in any insurance settlement arising out of any loss with respect to the Tampa Bay Water Pipeline Facilities where TAMPA BAY WATER is named as the sole beneficiary. GAS and its contractors shall execute any and all documents

required by TAMPA BAY WATER or its insurer that may be necessary for use in connection with the settlement of any such claims. GAS shall not conduct or allow any hazardous activity on the Tampa Bay Water Easement that brings about a risk of bodily injury (including death) or property damage (including damage to or destruction of the property) that would be excluded from the coverage of the insurance that GAS is obligated to maintain.

9. After construction and after the GAS Facility is installed, GAS agrees to the following:
 - a. GAS shall clearly and permanently mark the location of the GAS Facility in the Use Area and TAMPA BAY WATER shall clearly and permanently mark the location of the Tampa Bay Water Pipeline Facilities in the Use Area.
 - b. Thereafter, should either party or its contractors negligently or intentionally damage the facilities of the other party, the injured party shall be reimbursed for all reasonable costs and expenses it incurs in connection with repairing any such damage.
 - c. GAS shall be responsible and shall reimburse TAMPA BAY WATER for all reasonable costs and expenses it incurs in connection with additional construction costs due to the GAS Facility located within the Use Area. GAS shall reimburse TAMPA BAY WATER all said costs and expenses within 30 days.

10. To the extent permitted by Section 768.28, Florida Statutes and without waiving its sovereign immunity, GAS shall protect, defend, indemnify and hold TAMPA BAY WATER and its officers, employees and agents harmless from and against any and all liabilities, claims, losses, negligent act, error, or omission by the GAS, its subcontractors, agents or employees, arising out of or incidental to the performance of this Agreement. The GAS's obligation to indemnify TAMPA BAY WATER pursuant to this Section 10 is limited by the GAS's right to sovereign immunity, which right is expressly not waived by the GAS, and to the indemnification limitations provided in section 768.28, Florida Statutes.

11. Seven (7) days prior to commencement of construction, GAS or its contractor shall contact the Tampa Bay Water Facilities Maintenance Department for the purpose of coordinating with and advising TAMPA BAY WATER of GAS's construction schedule.

12. The occurrence of one (1) or more of the following acts shall be deemed to constitute an event of default:

GAS or TAMPA BAY WATER fail to perform and comply with any obligation, responsibility or liability imposed upon TAMPA BAY WATER or GAS by this Agreement and such failure continues for more than thirty (30) days after the non-defaulting party gives the defaulting party written notice thereof, or the defaulting party fails to commence all reasonable curative action within thirty (30) days after notice thereof and fails to diligently and continuously prosecute the curative action to completion;

If a default occurs and the defaulting party fails to cure such default in accordance with this

Agreement, the non-defaulting party may, without further notice immediately or at any time thereafter, correct the default, in which event the defaulting party shall immediately reimburse the non-defaulting party for any and all costs incurred by the non-defaulting party in curing the default.

13. GAS's interest in the Use Area shall not be subject to liens for improvements made by, to or upon the Use Area, and any such liability is expressly prohibited as contemplated by Section 713.10, Florida Statutes. If any mechanic's lien is placed or any claim is filed against or permitted to be done by either party, such party shall cause the same to be removed within one hundred twenty (120) days of recording, and shall hold the other party harmless from any adverse effect thereof.

14. All notices, communications, and consents required or permitted by this Agreement shall be in writing and delivered by hand or transmitted by registered or certified mail, return receipt requested, with notice deemed to be given upon receipt and addressed to the attention of the following:

If to GAS:	Jason King Drafting & Design Coordinator 400 N. Myrtle Avenue Clearwater, FL 33755
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With a copy to:	City Attorney 112 S. Osceola Ave. Clearwater, FL 33756-5103
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If to TAMPA BAY WATER:	Matt Jordan General Manager 2575 Enterprise Road, Clearwater, Florida 33763-1102
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With a copy to:	Jonathan M. Kennedy Engineering Manager 2575 Enterprise Road, Clearwater, Florida 33763-1102
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15. This Agreement shall be binding upon the successors and assigns of the parties hereto (subject to the restriction governing assignment contained in the paragraph 16).

16. Neither party shall assign its rights under this Agreement without prior written approval

of the other party.

17. This Agreement may only be amended in writing, duly executed by the authorized representatives of the parties hereto.

18. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

19. This Agreement represents the entire agreement between the parties hereto, with respect to the subject matter contained herein, and supersedes all prior negotiations, understandings, representations or agreements, either written or oral.

20. If any one or more of the provisions of this Agreement should be held contrary to law, public policy, or should for any reason whatsoever be held invalid or unenforceable by court of competent jurisdiction, then such provision or provisions shall be null and void and shall be deemed separate from the remaining provisions of this Agreement, which remaining provisions shall continue in full force and effect if the rights and the obligations of the parties contained herein are not materially prejudiced and the intentions of the parties continue to be effective.

21. Any term, condition, covenant or obligation which requires performance by either party subsequent to termination of this Agreement shall remain enforceable against such party subsequent to such termination.

22. GAS agrees that at such time as the GAS Facility is removed from the Use Area, the rights granted herein shall be automatically extinguished. GAS agrees to execute whatever documents are necessary for the purpose of clearing title to the Tampa Bay Water Easement at issue in this Agreement.

23. The remedies set forth in this Agreement are cumulative and not in limitation of any remedies available at law or in equity.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date of execution written above.

Countersigned:

CITY OF CLEARWATER, FLORIDA

George N. Cretekos
Mayor

By: _____
William B. Horne II
City Manager

Approved as to form:

Attest:

Laura Mahony
Assistant City Attorney

Rosemarie Call
City Clerk

**STATE OF FLORIDA
COUNTY OF PASCO**

The foregoing instrument was acknowledged before me this _____ day of _____,
2018, By_____. That he/she is personally known to me or has produced
_____ as identification and has/has not taken an oath.

By: _____ (Seal)
Notary Public, State of Florida

Print Name: _____

My Commission Expires: _____

WITNESS:

TAMPA BAY WATER, A REGIONAL
WATER SUPPLY AUTHORITY

Signature

By: _____
Matt Jordan

Print Name

Its: General Manager

Signature

Date: _____

(SEAL)

Print Name

APPROVED AS TO FORM:

Barrie S. Buenaventura,
General Counsel

**STATE OF FLORIDA
COUNTY OF PASCO**

The foregoing instrument was acknowledged before me this _____ day of _____, 2018,
By _____. That he/she is personally known to me or has produced
_____ as identification and has/has not taken an oath.

By: _____ (Seal)
Notary Public, State of Florida

Print Name: _____

My Commission Expires: _____