

**CONTRACTUAL AGREEMENT FOR  
RIGHT-OF-WAY UTILITY ADJUSTMENTS**

THE STATE OF TEXAS

§

COUNTY: Harris

§

CHANNEL: E132-00-00

COUNTY OF HARRIS

§

This Agreement entered into by and between **Harris County** (“County”), acting by and through the Harris County Engineering Department (“HCED”), and **ExxonMobil Pipeline Company LLC** (“Owner”). The County and Owner each may also be referred to individually herein as a “Party”, or collectively as the “Parties”.

**RECITALS**

WHEREAS, County deems it necessary to make certain improvements to E132-00-00 Channel (“Proposed Improvement”), located in Harris County Precinct 3; and

WHEREAS, Owner has asserted an interest in certain lands as set forth in an Affidavit dated March 25, 2024, and attached hereto as **Exhibit 1** and the Proposed Improvement will necessitate the adjustment, removal, or relocation of certain utility facilities of Owner located upon such lands as indicated in the following statement of work (“Work”):

The scope of mechanical work will include the excavation of the Owner’s pipelines, the removal of the lines, capping the lines, and, if necessary, removal of trees as needed. An expected 160’ of pipe will be removed to ensure the abandoned lines are not in conflict with any future work the County would like to conduct. If the lines are discovered to be under the nearby trees, Owner will need to remove them to access the pipelines; and

WHEREAS, County desires to accomplish the adjustment, removal, or relocation of Owner’s utility facilities located within the right-of-way (“ROW”) owned by the County and affected by this Agreement,

NOW THEREFORE, the Parties desire to enter into this Agreement, as follows:

**I. Owner’s Responsibilities**

- A. Upon execution of this Agreement by the Parties, Owner shall submit the Plans and/or Sketch of the Work, Estimate of Costs, Affidavit of Property Ownership, and other instruments, as appropriate, for approval by County.
- B. Owner agrees to prosecute the Work diligently to completion so as to not result in reasonably-avoidable interference or delay in County’s construction of the Proposed Improvement or in the Work. Owner will carry out the Work in accordance with the Plans or Sketch attached hereto.

## **II. County's Responsibilities**

Upon County's approval of the instruments referenced in Section I.A of this Agreement, County will authorize Owner in writing to proceed with the Work ("Notice to Proceed"). A copy of the Commissioners Court Order related to this Agreement will be attached to the Notice to Proceed.

## **III. Terms of Payment**

- A. County agrees to pay Owner and Owner agrees to accept payment equal to 100% of the total actual cost of the Work, reduced by any applicable salvage and betterment, which may result from the Work ("Owner's Costs"). The amount paid by County pursuant to this Agreement shall be full compensation to Owner for the Owner's Costs ("County's Payment"). County's Payment represents the portion of the Work for which County is legally required to pay and for which Owner is legally entitled to be reimbursed.
- B. Owner shall remit all invoices for reimbursement of Owner's Costs to County no later than ninety (90) days after completion of the Work. Any reimbursement due under this Agreement will be based on the Owner's Costs incurred in a commercially-reasonable manner. Owner shall submit to County an itemized final invoice to include supporting documentation of all costs incurred ("Final Invoice") for the Work. County will reimburse Owner within thirty (30) days of County's receipt of the Final Invoice.
- C. County shall have no obligation to pay Owner for the Work contemplated under this Agreement until sufficient funds are certified by the County Auditor as available from current fiscal funds. The issuance of a purchase order pursuant to this Agreement represents certification by the Harris County Auditor that funds, in the amount of the purchase order total, are available to satisfy all financial obligations of Harris County hereunder.

## **IV. Limitation of Liability**

- A. Unless the Parties mutually agree to modify this Agreement to provide for additional funding, County shall in no event be liable to pay a sum greater than One Hundred Thirty Thousand and 00/100 Dollars (\$130,000.00) in reimbursement of Owner's Costs ("Limitation of Liability"). Owner shall not be obligated to incur costs in excess of the Limitation of Liability as provided herein.
- B. If circumstances arise such that, based on commercially-reasonable criteria, there is the likelihood that the amount of the Limitation of Liability will be insufficient to cover 100% percent of the Costs of the Work, Owner may (i) notify County of such likelihood and the basis thereof, and inform County of its reasonable estimate of the additional amount that will be sufficient to cover the cost to complete the Work ("Additional Costs"), and, at its option, (ii) stop the Work. Any Additional Costs attributable to the negligence of Owner or its contractor(s) in the performance of the Work shall not constitute "commercially reasonable criteria" and will not be the basis for additional compensation to Owner.

- C. Upon receipt of Owner's notice as described herein, County may submit a request to Commissioners Court to amend or supplement this Agreement to increase the Limitation of Liability by the amount of the Additional Costs. If Commissioners Court does not approve the proposed amendment or supplement within thirty (30) days of County's receipt of Owner's notice, Owner may restore its facilities and seek reimbursement for 100% of the Cost of the Work, including, but not limited to, restoration cost incurred, subject to the Limitation of Liability.

## **V. Notice**

- A. All notices required to be given hereunder ("Notice") shall be given by registered or certified United States Mail, postage prepaid, return receipt requested, or by courier services, addressed as follows:

Owner:

ExxonMobil Pipeline Company LLC  
22777 Springwoods Village Parkway  
Spring, Texas 77389  
Attention: Jason Jones  
**Email:** jason.jones2@exxonmobil.com

County:

Harris County Engineering Department  
1111 Fannin Street, 7<sup>th</sup> Floor  
Houston, Texas 77002  
Attention: Chief Utility Coordinator

Any Notice sent by mail or delivery services as provided herein shall be deemed given and completed on the date of actual receipt thereof.

- B. All communications and invoices given hereunder may be given by electronic means or in the same manner as Notices described herein.
- C. Each Party shall have the right to change its respective address and each shall have the right to specify as its address any other address in the State of Texas by giving at least fifteen (15) days' written notice of such change to the other Party.

## **VI. Attached Instruments**

The instruments attached to and made a part of this Agreement are:

**Exhibit 1** - Affidavit  
**Exhibit 2** - Cost Estimate  
**Exhibit 3** - Chief Utility Coordinator's Approval of Cost Estimate  
**Exhibit 4** - Company Plans or Sketch

## **VII. Termination**

County may terminate this Agreement at any time up to the date that the Work under this Agreement has been authorized and such termination will not create any liability on the part of County.

## **VIII. Liability of the Parties**

Subject to Section XV below, each Party shall be responsible for all claims and liability due to the activities of the Party's employees, officials, agents, contractors, or subcontractors arising out of or under this Agreement and which result from any act, error, or omission; intentional tort; intellectual property infringement; or failure to pay a vendor; committed by the Party or its employees, officials, agents, consultant under contract, or another entity over which it exercises control.

## **IX. Applicable Law and Venue**

- A. The Agreement is subject to the state and federal laws, orders, rules, and regulations relating to the Agreement and funded by state or federal funds. Each Party shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations concerning the performance of this Agreement.
- B. This Agreement is governed by the laws of the State of Texas.
- C. The exclusive forum for any action arising out of, in connection with, or in any way relating to, the Agreement shall be in a state or federal court of competent jurisdiction in Texas.
- D. The exclusive venue for any action arising out of, in connection with, or in any way relating to, the Agreement shall be in a state or federal court of competent jurisdiction in Houston, Harris County, Texas.

## **X. Assignment**

No Party hereto shall make, in whole or in part, any assignment of this Agreement or any obligation hereunder without the prior written consent of the other Party.

## **XI. Independent Parties**

It is expressly understood and agreed by the Parties that nothing contained in this Agreement shall be construed to constitute or create a joint venture, partnership, association or other affiliation or like relationship between the Parties, it being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement. The County is an independent contractor and neither it, nor its employees or agents shall be considered to be an employee, agent, partner, or representative of the Owner for any purpose. The Owner, nor its officials, employees, officers, or agents shall be considered to be employees, agents, partners or representatives of the County for any purposes. Neither Party has the authority to bind the other Party.

## **XII. No Third Party Beneficiaries**

The County is not obligated or liable to any party other than Owner for the performance of this Agreement. Nothing in the Agreement is intended or shall be deemed or construed to create any additional rights or remedies upon any third party. Further, nothing contained in the Agreement shall be construed to or operate in any manner whatsoever to increase the rights of any third party, or the duties or responsibilities of County with respect to any third party.

## **XIII. Waiver of Breach**

A waiver by either Party of a breach or violation of any provision of the Agreement shall not be deemed or construed to be a waiver of any subsequent breach.

## **XIV. No Personal Liability; No Waiver of Immunity**

- A. Nothing in the Agreement is construed as creating any personal liability on the part of any official, officer, director, employee, or agent of any public body that may be a Party to the Agreement, and the Parties expressly agree that the execution of the Agreement does not create any personal liability on the part of any officer, director, employee, or agent of the County.
- B. The Parties agree that no provision of this Agreement extends the County's liability beyond the liability provided in the Texas Constitution and the laws of the State of Texas.
- C. Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver by the County of any right, defense, or immunity on behalf of itself, its employees or agents under the Texas Constitution or the laws of the State of Texas.

## **XV. Applicable Law and Venue**

This agreement shall be governed by the laws of the State of Texas and the forum for any action under or related to the Agreement is exclusively in a state or federal court of competent jurisdiction in Texas. The exclusive venue for any action under or related to the Agreement is in a state or federal court of competent jurisdiction in Houston, Harris County, Texas.

## **XVI. Anti-Boycott**

In accordance with Tex. Gov't Code Ann. § 2270.002, Owner warrants and represents that it does not boycott Israel and agrees that it will not boycott Israel during the term of this contract.

## **XVII. Foreign Terrorists Organizations**

In accordance with Tex. Gov't Code Ann. Chapter 2252 Subchapter F, Owner warrants and represents that, at the time of execution of this Agreement and for the duration of the Term of this Agreement and any Renewal Terms, Owner does not appear on the Texas State Comptroller's list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization.

## **XVIII. No Binding Arbitration; Right to Jury Trial**

The County does not agree to binding arbitration, nor does the County waive its right to a jury trial.

## **XIX. Contract Construction**

- A. This Agreement shall not be construed against or in favor of any Party hereto based upon the fact that the Party did or did not author this Agreement.
- B. The headings in this Agreement are for convenience or reference only and shall not control or affect the meaning or construction of this Agreement.
- C. When terms are used in the singular or plural, the meaning shall apply to both.
- D. When either the male or female gender is used, the meaning shall apply to both.

## **XX. Recitals**

The recitals set forth in this Agreement are, by this reference, incorporated into and deemed a part of this Agreement.

## **XXI. Entire Agreement; Modifications**

This Agreement contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. This Agreement supersedes and replaces any prior agreement between the Parties pertaining to the rights granted and the obligations assumed herein. This Agreement shall be subject to change or modification only by a subsequent written modification approved and signed by the governing bodies of each Party.

## **XXII. Severability**

The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person, entity, or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to other persons, entities, or circumstances shall not be affected thereby.

**XXIII. Survival of Terms**

Any provision of this Agreement that, by its plain meaning, is intended to survive the expiration or earlier termination of this Agreement including, but not limited to the indemnification provision, shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.

**XXIV. Multiple Counterparts/Execution.**

This Agreement may be executed in several counterparts. Each counterpart is deemed an original and all counterparts together constitute one and the same instrument. In addition, each Party warrants that the undersigned is a duly authorized representative with the power to execute the Agreement.

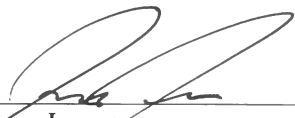
**XXV. Warranty**

By execution of this Agreement, the Owner warrants that the duties accorded to the Owner in this Agreement are within the powers and authority of the Owner.

**HARRIS COUNTY**

**EXXONMOBIL PIPELINE COMPANY LLC**

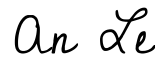
By: \_\_\_\_\_  
Lina Hidalgo  
County Judge

By:  \_\_\_\_\_  
Jason Jones  
Right of Way Manager

APPROVED AS TO FORM:

ATTEST:

CHRISTIAN D. MENESEE  
Harris County Attorney

By:  \_\_\_\_\_  
An Le  
Assistant County Attorney  
C.A. File No.: 24GEN0079

\_\_\_\_\_  
Secretary

Exhibit 1

AFFIDAVIT

THE STATE OF TEXAS

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COUNTY: Harris

CHANNEL: E132-00-00

COUNTY OF HARRIS

WHEREAS Harris County, hereinafter called the "County," deems it necessary to make certain improvements to the E132-00-00 Channel "Improvements;" and

WHEREAS, it is anticipated that the Improvements will affect the facilities of ExxonMobil Pipeline Company LLC, acting by and through its Right of Way Manager, hereinafter called the "Owner," at the following-described location:

E132-00-00 Channel

WHEREAS, the County has requested that the Owner furnish the County information relative to interests that Owner holds in lands at the above-indicated location,

NOW THEREFORE, before me, the undersigned authority, this day personally appeared Jason Jones who, after being by me duly sworn, did depose and say:

"My name is Jason Jones. I am above the age of eighteen (18) and fully qualified to make this affidavit. I am the Right of Way Manager of ExxonMobil Pipeline Company LLC and as such, have knowledge of the facts contained herein, and they are all true and correct.

To the best of my knowledge, ExxonMobil Pipeline Company LLC is the owner of certain interests in the above-indicated lands, described as follows:

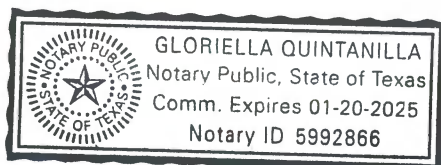
E132-00-00 Channel

  
Jason Jones  
Affiant

Sworn to and subscribed before me this 25 day of March, 2024].

  
Notary Public in and for the State of Texas

(SEAL)





## Exhibit 2

### **ExxonMobil Pipeline Company Work Scope TX-167 Removal for Harris County**

ExxonMobil Pipeline company currently has two lines that conflict with work to expand a ditch in Harris County. EMPCo will be responsible for getting bids for mechanical work and a survey of the area. The survey will be conducted by a third party to include identification potholes, staking of the identified line, and sufficient information to determine the depth, sizing, and location of the conflicting lines. Upon completion of the survey EMPCo will begin mechanical work to remove the lines. An expected 160 ft of pipe will be removed to ensure the abandoned lines are not in conflict with any future work Harris County would like to conduct. If the lines are discovered to be under the nearby trees EMPCo will need to remove them to access the pipelines. Prior to tree removal a desktop survey will be conducted on the area. A desktop survey is done by a third party from a computer. Included in a desktop survey is information on the local wildlife and forestry, as well as required permits needed to begin work in accordance with governing bodies over the land. The scope of mechanical work will include the excavation of EMPCo's pipelines, the removal of the lines, capping the lines, and, if necessary, removal of trees as needed. Table 1 lists the price breakdown.

**Table 1. Cost Breakdown**

Crew Labor Costs	\$26,433.00
Equipment Costs	\$34,862.00
3 <sup>rd</sup> Party Rentals & Materials	\$23,540.00
Survey Crew	\$16,477.50
*Desktop Survey/ Permitting	\$5,000.00
<b>Subtotal</b>	<b>\$106,312.50</b>
<b>Tax</b>	<b>\$8,770.78</b>
<b>12.5% Contingency</b>	<b>\$14,385.41</b>
<b>Total</b>	<b>\$130,000.00</b>

Please see the below images showing the scope of ExxonMobil Pipeline Co.'s scope of work. It is important to note that this is an estimate scope of work. A red line is drawn to provide a rough idea of where ExxonMobil Pipeline believes there to be a conflict. Without first conducting a survey to identify the line within the scope of Harris County's work, we cannot provide an accurate length of pipe that will need to be removed. Figures 2 & 3 provide a ground level image of the area of work pointed in the direction of the tree line. There will be additional work working towards the school shown in Figure 1 that is not captured by ground level images.



**Figure 1.** Red Line Displaying Potential Length of Work.



**Figure 2.** Image Displaying Corridor Facing East Towards Tree Line



**Figure 3.** Second Image Displaying Potential Conflict Facing East Toward Tree Line

**Exhibit 3**

**CHIEF UTILITY COORDINATOR'S APPROVAL OF COST ESTIMATE**

**Date:** 01/09/2024

**Project:** E132-00-00 Mitigation Project - 2020 - 23/0429 - 21090MF22E01

**Owner** ExxonMobil Pipeline Company LLC

**Description of Adjustment:**

The scope of mechanical work will include the excavation of EMPCo's pipelines, the removal of the lines, capping the lines, and, if necessary, removal of trees as needed. An expected 160 ft of pipe will be removed to ensure the abandoned lines are not in conflict with any future work Harris County would like to conduct. If the lines are discovered to be under the nearby trees EMPCo will need to remove them to access the pipelines.

**Estimated Cost:** \$130,000.00

**Percentage Reimbursable:** 100%

**Approved By:**

*Okachukwu Chika*

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Chief Utility Coordinator  
Harris County Engineering Department

## Exhibit 4

### **ExxonMobil Pipeline Company Work Scope TX-167 Removal for Harris County**

Please see the below images showing the scope of ExxonMobil Pipeline Co.'s scope of work. It is important to note that this is an estimate scope of work. A red line is drawn to provide a rough idea of where ExxonMobil Pipeline believes there to be a conflict. Without first conducting a survey to identify the line within the scope of Harris County's work, we cannot provide an accurate length of pipe that will need to be removed. Figures 2 & 3 provide a ground level image of the area of work pointed in the direction of the tree line. There will be additional work working towards the school shown in Figure 1 that is not captured by ground level images.



**Figure 1.** Red Line Displaying Potential Length of Work.





**Figure 2.** Image Displaying Corridor Facing East Towards Tree Line



**Figure 3.** Second Image Displaying Potential Conflict Facing East Toward Tree Line

**ORDER OF COMMISSIONERS COURT**

Authorizing Execution of an Agreement

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on \_\_\_\_\_, with all members present except \_\_\_\_\_.

A quorum was present. Among other business, the following was transacted:

**ORDER AUTHORIZING EXECUTION OF THE AGREEMENT BETWEEN HARRIS COUNTY  
AND EXXONMOBIL PIPELINE COMPANY LLC**

Commissioner \_\_\_\_\_ introduced an order and made a motion that the same be adopted. Commissioner \_\_\_\_\_ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

Vote of the Court	<u>Yes</u>	<u>No</u>	<u>Abstain</u>
Judge Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ramsey, P.E.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Briones	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and law-fully adopted. The order thus adopted follows:

**IT IS ORDERED** that County Judge Lina Hidalgo be, and she is hereby, authorized to execute for and on behalf of Harris County, the Agreement with ExxonMobil Pipeline Company LLC for adjustment of its facilities on the E132-00-00 Channel for Harris County at a cost to the County of \$130,000.00. The Agreement is incorporated herein by reference for all purposes as though fully set forth word for word.

All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purpose of this Order.