**Our File: Hwy.** **XXX:XX**

**Utility Agreement No.**

**ROADWAY UPGRADING PIPELINE CROSSING AGREEMENT**

**PIPELINE ADJUSTMENT IS REQUIRED**

This agreement is made as of the       day of      , A.D.

BETWEEN

**His Majesty the King in right of Alberta**

as represented by the Minister of Transportation and Economic Corridors

**(hereinafter called the "Minister")**

- and -

**REGISTERED COMPANY NAME**a body corporate registered and existing under the laws of

the Province of Alberta

**(hereinafter called the "Operator")**

WHEREAS the Minister intends to make improvements to a roadway known as Highway XXX:XX which may result in a ground disturbance within the Controlled Area (*Pipeline Act*) or Prescribed Area (*Canadian Energy Regulator Act*) of the Operator's pipelines in the land legally described as:

as shown on the attached Plan No.:     , *(\*and adjustment costs as negotiated in a letter dated* *sample 4 letter date which form as part of this agreement.) \*IF APPLICABLE*

AND WHEREAS the Operator obtained a permit from the Minister for placement of a pipeline under Highway XXX:XX.

NOW THEREFORE, pursuant to the applicable section of the *Highways Development and Protection Act* (Alberta)*,* the *Canadian Energy Regulator Act,* the *Pipeline Act and Pipeline Rules* (Alberta)*,* the *Water, Gas and Electrical Companies Act* (Alberta)*,* and the *Gas Distribution Act* (Alberta) (hereinafter called the **"Acts"**), the Minister and the Operator agree as follows:

1) The Operator's representative shall be:

**Name**

**Telephone number**

**Address**

2) The Minister's representative shall be:

**Name,** **Construction Manager, Region**

**Telephone Number**

**Transportation and Economic Corridors**

**Mailing Address**

3) The Minister (or his delegate) shall contact the Operator at least seventy-two (72) hours (excluding Saturdays, Sundays and Statutory Holidays) prior to undertaking any excavation or construction within the Controlled Area as defined in the *Pipeline Act*, or Prescribed Area as defined in the *Canadian Energy Regulator Act,* as the case may be. The Operator, upon receiving such notice, shall make arrangements to have a representative present during the period machinery is to be used within the Controlled Area or Prescribed Area, as the case may be, to witness the exposure of the Operator's pipeline(s). No excavation or construction of any sort shall be carried out within the Controlled Area or Prescribed Area, as the case may be*,* until the Operator's representative is present at the site and has authorized same, unless the Operator has advised otherwise by written notice to the Minister.

4) The Operator shall locate and mark the horizontal position of the Operator's pipeline(s), perform inspections, and supervise a ground disturbance without charging any fee to the Minister undertaking the ground disturbances.

5) The Operator's pipeline shall be exposed under the direction of the Operatorby hand digging or other acceptable method such as excavation by water or air jets to determine the exact location and depth of cover (for the purpose of highway design) before construction is undertaken over it. The cost of this exposure shall be borne by the Minister.

6) In the event pipeline work is required and the Operator is authorized by the Minister to carry out the work, the Operator shall carry out all necessary and permanent protection, adjustment or relocation of their pipeline(s) as required to accommodate the roadway construction.

7) *OCCUPATIONAL HEALTH AND SAFETY ACT*

Transportation and Economic Corridors (the Department) assigns prime contractor responsibilities, as specified in *the Occupational Health and Safety Act*, to all parties with which it enters into contracts and agreements. On highway and bridge construction or maintenance projects this would typically include a Contractor, a Consultant (the Department employs an engineering consultant on construction projects only), various Utility Companies and the Operator.

During the course of the project, the work sites of the Contractor, Consultant, Utility Companies, and the Operator may be separated by time and/or space or, may be in the same general vicinity or may be adjacent, depending on the circumstances on the project at any given point in time.

It is a requirement of all Department contracts and agreements that the Contractor, Consultant, Utility Companies, and the Operator working within the project limits, coordinate their respective activities, as outlined herein, to ensure a safe project. However, it is not the Department's intent that any of these parties be responsible to ensure that the other parties, or the other parties' subcontractors, have adequate health and safety process for their respective activities.

Designation of Prime Contractor

The Operator shall familiarize itself, its staff, and its subcontractors with the terms of the *Occupational Health and Safety Act and Regulations* there under to ensure complete understanding respecting the responsibilities given and compliance required. The Operator acknowledges that it is and assumes all of the responsibilities and duties of the Prime Contractor, as defined by the *Occupational Health and Safety Act*, and that it shall as a condition of this Agreement, comply with *the Occupational Health and Safety Act* and the regulations there under.

Coordinating Activities

The Operator shall coordinate its activities on the project with those of the Consultant and the Contractor. When the Consultant and/or Contractor and/or Utility Companies are conducting activities within the project limits the Operator shall liaise with the Consultant and/or Contractor and/or Utility Companies as the case may be, and jointly develop a health and safety system or process for the affected worksites. The health and safety system or process agreed to by the parties must be in writing. Any changes required to the health and safety system must be agreed to by all affected parties and must also be in writing. Documenting the written health and safety system or process, including any required changes shall be the responsibility of the Contractor.

(i) Coordinating activities on Highway and Bridge Construction Projects

For the purposes of coordinating activities on highway/bridge construction projects, the contact persons for the Contractor, Consultant, Utility Companies, and the Operator shall be identified at the pre-construction meeting for the project. The responsibility to initiate contact for coordinating activities shall reside with the party entering a project or site on which work has commenced. This responsibility to initiate contact shall apply regardless of whether or not the worksites are separated by time and/or space, are in the same general vicinity or are adjacent.

(ii) Coordinating activities not associated with a Highway or Bridge Construction Project

When the activities of the Operator are not being performed on a highway/bridge construction project, the Operator shall contact the local Transportation and Economic Corridors office prior to commencing work, to obtain the name of the contact person for the Department’s highway maintenance contractor. The responsibility to initiate contact for coordinating activities shall reside with the party entering a project or site on which work has commenced.

This responsibility to initiate contact shall apply regardless of whether or not the worksites are separated by time and/or space, are in the same general vicinity or are adjacent.

Resolving Disputes Related to Coordination of Activities

If the parties cannot agree on a process or system that addresses the safety concerns of all parties, work at the affected worksites shall cease and this matter shall be referred to the Consultant. However, if the Consultant is one of the parties involved in the dispute, or the Department has not employed a Consultant for the project, the matter shall be referred to the Department.

The Consultant or Department as applicable, after review, will decide which party shall be responsible for resolving the disputed safety issue. Such decision shall be final and binding upon all parties.

Responsibility for Subcontractors/Owner operators

The Prime Contractor shall, to the extent required by the *Occupational Health and Safety Act*, establish and maintain a Health and Safety system or process to ensure compliance to the Act by his subcontractors/owner operators.

8) If the pipeline work is of such a kind as to fall within the purview of the *Canadian Energy Regulator Act,* the Operator agrees to carry out the work in accord with the Canada Labour Code (as amended) and the Canada Occupational Safety and Health Regulations SOR/86-304.

9) In the event that the Minister authorizes the pipeline exposure work to be done by a person, either legal or natural, other than the Operator, the Minister agrees to require that person to fulfill the responsibilities and duties of the Prime Contractor as that term is used in the *Occupational Health and Safety Act* (as amended), and any regulations made pursuant to that Act. However, if the pipeline work is of such a kind as to fall within the purview of the *Canadian Energy Regulator Act*, the Minister agrees to require the person to carry out the work in accordance with the Canada Labour Code R.S.C. (as amended*).*

10) The Minister shall carry out all work within the Controlled Area or Prescribed Area, as the case may be*,* in accordance with good engineering and construction practices, and in accordance with the relevant Acts.

11) The Minister shall ensure that no equipment, material, or vehicles will be stored, parked, or driven over or along the Controlled Area or Prescribed Area, as the case may be,except as reasonably necessary in the actual construction of the roadway.

12) If any construction equipment is to be moved across the Operator’s pipeline(s), as a temporary protective measure, the Operator may require direct protective measures in accordance with good engineering and construction practices, and in accordance with the relevant Acts*,* to be placed across the Operator's pipeline(s) at the point of crossing, the cost of which shall be borne by the Minister.

13) The Minister shall be liable for and shall indemnify and save harmless the Operator from all manner of actions, causes of action, proceedings, claims, demands, costs, damages, and expenses whatsoever including damage to the Operator's pipeline(s), which the Operator may sustain, pay, or incur as a result of or in connection with any breach of the obligations assumed under this document by, or the negligence of, the Minister, his employees, servants, or agents.

14) The Operator shall be liable for and shall indemnify and save harmless the Minister from all manner of actions, causes of action, proceedings, claims, demands, costs, damages and expenses whatsoever including damage to the Minister's facilities which the Minister may sustain, pay or incur as a result of or in connection with any breach of the obligations assumed under this document by, or the negligence of, the Operator or any person for whom the Operator is responsible at law or in equity.

15) In the event the Operator is performing any work on its pipeline, the Operator (or their Contractor) shall comply with the following:

1. Contact Consultant’s Representative to co-ordinate work within the project limits.

**Name, Title**

**Firm's Name**

**Mailing Address**

Telephone Number: **000-000-0000**

1. Provide the Consultant’s Representative with the name and contact information of the person responsible for the work.
2. Submit a traffic control plan and a written Traffic Accommodation Strategy (TAS) to the Consultant’s Representative for review and comment.
3. Desist from starting work until the TAS has been reviewed and accepted.
4. Notify the Consultant and Contractor(s) a minimum of 72 hours in advance of the proposed commencement or cessation of utility construction work.
5. Maintain a copy of the TAS on site for inspection by the Minister or his designated representative(s).

16) In the event the Minister is responsible for the whole/portion of the relocation/upgrade cost, the Operator shall provide the following:

The final invoice for your work must be accompanied by back-up documentation and detailed cost breakdown sufficient and reasonable to support the actual close-out costs claimed. The breakdown of the estimate for the project should include the followings:

* Direct labour costs – hours and rates
* Sub-consultant/contractor charges – proof of payments
* Materials – proof of payments
* Salvage costs / credits (if applicable)
* Subsidiary costs if any (e.g. easements, etc.) – proof of payments
* Overheads – as percentage of total cost (per prior arrangement)

The Operator shall forward the invoice and associated documentation to the Consultant’s office for review prior to reimbursement.

17) Any written notice required or permitted hereunder shall be directed to the party to whom it will be given (hand delivered, sent by prepaid mail, or sent by telecommunication), addressed as follows:

**(a) To the Minister:**

 **Transportation and Economic Corridors**

**Mailing address**

 **ATTENTION: Name,** **Construction Manager, Region**

**(b) To the Operator:**

 **Company Name**

**Mailing Address**

**ATTENTION: Name, Title**

 And in the event of mail service disruption, such notice shall be delivered by hand.

18) Where the terms and conditions in this document contradict any portion of the Acts, the latter shall prevail.

19) The terms and conditions of this agreement shall be effective from the date shown at the beginning of this agreement.

|  |  |  |
| --- | --- | --- |
| **Executed on behalf of the Operator by:** |  | **Executed on behalf of the Minister by:** |
|  |  |  |
| Name |  | Name |
| Title |  | Construction Manager, Region |