**Our File: Highway**

**Utility Agreement No.**

New Roadway over Existing Pipeline Crossing Agreement

**THIS AGREEMENT** is made and effective as of the       day of     ,      .

**BETWEEN Registered Company Name (” Grantor”)** (hereinafter and in Schedules A, B &C referred to as the Grantor)

and His Majesty the King in right of Alberta as represented by the Minister of Transportation and Economic Corridors **("the Minister”)**
(hereinafter and in Schedules A, B & C referred to as the Minister)

**WHEREAS** Grantor operates under the jurisdiction of the Canadian Energy Regulator, Alberta Energy Regulator, or Alberta Utility Commission, and holds permits, approvals, or authorizations for a pipeline across the said lands and has constructed a pipeline therein, hereinafter referred to**as ”Grantor’s Facility****;”** and

**WHEREAS** the Minister desires to construct the Minister's Facility across the **"Grantor's Facility"** and has acquired an interest inthe said lands and proposes to install therein a roadway (**Highway** ) hereinafter referred to as **"the Minister's Facility";** and

**WHEREAS** the lands and/or Facilities of the respective parties intersect in the Crossing Area; and

**WHEREAS** the parties wish to define their respective rights and liabilities with respect to the Crossing Area under certain terms and conditions defined in Schedule "A".

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the premises, mutual covenants and agreements herein contained, the parties agree that their respective Work in the Crossing Area shall be governed by this Agreement together with the Schedules as herein described.

**1. Terms and Conditions**

This Agreement including the recitals and the following Schedules, which are attached hereto and made part hereof, shall be the terms and conditions as agreed to by Grantor and the Minister:

Schedule "A” - Mutually Agreed to Terms and Conditions.

Schedule ”B” - Location Plan and Profile.

Schedule ”C” - Specific Terms and Conditions.
(The "Schedules")

**2. LOCATION AND NOTICES**

**(a) Location of Crossing Area (Legal Description):**

**(b) Notices:**

|  |  |  |  |
| --- | --- | --- | --- |
|  | Grantor's Corporate Office |  | Minister's Office |
| Name: |  |  |  |
| Address: |  |  |  |
|  |  |  |  |
| Dept.: |  |  |  |
| Phone |  |  |  |
|  |
| Email |  |  |  |

**(c) Field Representative:**

|  |  |  |  |
| --- | --- | --- | --- |
|  | Grantor's |  | Minister's Representative |
| Name: |  |  |  |
| Position: |  |  |  |
| Address: |  |  |  |
|  |  |  |  |
| Phone: |  |  |  |
| Email: |  |  |  |
|  |  |  |  |
| Alternate: |  |  |  |
| Phone |  |  |  |
| Email: |  |  |  |

**IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly executed.**

|  |  |  |
| --- | --- | --- |
|  |  |  |
| "Grantor" |  | Executed on behalf of the Minister |
|  |  |  |
| Per:  |  |  |
|  |  | Name: |
| Per:  |  |  |
|  |  | Title: |

**Schedule “A”**

**Mutually Agreed to Terms and Conditions**

This Schedule”A” to Form Part of the New Roadway Over Existing Pipeline Crossing Agreement.

**Between Registered Company Name (Grantor)**

**and His Majesty the King** in right of the Province of Alberta as represented by the Minister of Transportation and Economic Corridors **(****the Minister)**

**and dated the** **day of** **,** **.**

**1. Interpretation**

1.01 In this Agreement, including the recitals, the words and terms used shall have the following meanings:

(a) "Crossing Area" means the area of intersection of Grantor’s rights of way and the Minister’s interest in the said lands and/or Facilities as outlined in Schedule” B;”

(b) "Minister" means the Minister of Transportation and Economic Corridors or his delegate;

(c) ”Minister’s Facility” means the facility or facilities to be constructed by the Minister and to be located within, across, along, upon, over or under the Crossing Area;

(d) ”Grantor’s Facility” means the facility or facilities of Grantor located within, across, along, upon or under the Crossing Area;

(e) ”Facility” means:

i) any structure that is constructed or placed on or in the right-of-way within the Crossing Area (including but not limited to concrete slab, concrete conduit, retaining wall, and special fences such as chain link); and

ii) any highway, public or private road, railway, irrigation ditch, drain, drainage system, sewer, dike, cable line, telecommunication line, telephone line or line for the transmission of hydrocarbons, power or any other substance that is or is to be carried across, along, upon, over or under the Crossing Area;

(f) ”said lands” means the lands described in Schedule” B”;

(g) ”the Body of this Agreement” means the Agreement to which this Schedule is attached, and which has been executed by the parties;

(h) ”this Agreement” means the Body of this Agreement and the Schedules attached to it; and

(i) ”Work” means, with respect to a Facility, the carrying, laying, installing, constructing, maintaining, operating, repairing, inspecting, replacing, altering, removing, abandoning and such other operations as may be required from time to time.

1.02 Unless a term or provision contained in the Body of this Agreement, if acted upon, would result in violation of any code, statute, law, regulation, permit, license, or governmental order, the following shall apply:

(a) If any term or provision conflicts with a term or provision contained in any Schedule, the term or provision in the Schedule shall prevail.

(b) If any terms or provisions of the Schedules conflict, the following shall apply: Schedule” C,” if present, shall prevail over Schedules” A” and” B,” Schedule” B” shall prevail over Schedule ”A”.

**2. Consent**

Grantor hereby agrees, insofar as it has the right to do so, that the Minister may perform the Work on the Minister’s Facility in the Crossing Area in accordance with the terms and conditions of this Agreement.

**3. Compliance with Statutes and Regulations**

(a) The Minister shall at all times comply with any and all applicable codes, statutes, laws, regulations, permits, licenses, orders, and directions of any *Federal or Provincial* governmental authority from time to time in force. The minimum applicable technical standards therein shall apply to both parties unless more stringent standards are provided for in this Agreement. If compliance with any provision of this Agreement would result in violation of any applicable codes, statutes, laws, regulations, permits, licenses, orders, and directions of any *Federal or Provincial* governmental authority, such code, statute, law, regulation, permit, license, order, and direction of any *Federal or Provincial* governmental authority shall prevail and this Agreement shall be deemed to be amended accordingly.

*The Minister agrees to require any agent or contractor who performs Work, as defined by this agreement, on behalf of the Minister to comply with the applicable provincial or federal legislation and regulations governing occupational health and safety.*

(b) During the course of the project, the Work sites of the Contractor, Consultant (the Department employs an engineering consultant on construction projects only), Utility Companies and the Grantor 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 and Utility Companies 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 Grantor shall familiarize itself, its staff, and its subcontractors with the terms of the *Occupational Health and Safety Act* and the regulations thereunder to ensure complete understanding respecting the responsibilities given and compliance required. The Grantor acknowledges that it is and assumes all of the responsibilities and duties of the Prime Contractor, as defined by th*e Occupational Health and Safety Ac*t, and that it shall as a condition of this Agreement, comply with the *Occupational Health and Safety Act* and the regulations thereunder.

Coordinating Activities

The Grantor 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 Grantor 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.

For the purposes of coordinating activities on highway/bridge construction projects, the contact persons for the Contractor, Consultant, Utilities Companies, and the Grantor 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.

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 resolved by all parties at the site.

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.

**4. Position of Facility**

Unless otherwise indicated in any of the Schedules, or ordered by a Federal or Provincial governmental authority or regulations the Grantor’s Facility shall have the lower physical position in the Crossing Area;

**5. Conditions**

When the Minister performs Work on the Minister’s Facility in the Crossing Area, the following terms and conditions shall apply:

(a) The Minister’s Field Representative shall contact Grantor’s Field Representative directly, either in person or by telephone, a minimum of 72 hours (excluding Saturdays, Sundays, and Statutory Holidays) before commencement of the Minister’s Work within 30 meters of the Crossing Area and, if unable to contact that person, the Minister shall serve a minimum of 72 hours written notice pursuant to Clause 8 hereof before commencement of the Minister’s Work.

(b) Grantor has the right to have a representative present to inspect the Work of the Minister in the Crossing Area.

(c) During installation pursuant to this Agreement, the Minister's Representative shall have available at the Crossing Area a copy of this Agreement.

(d) Before proceeding to excavate within five metres of the Crossing Area, the Minister shall expose the Grantor’s Facility by hand digging or other acceptable method such as excavation by water or air jets. The Minister shall not use or permit the use of an excavating machine within 1.5 metres of either side of any existing Grantor’s Facility unless otherwise agreed to in Schedule “C.”

1. Notwithstanding clause 5(d) above, the Grantor shall carry out any necessary and permanent protection, adjustment, or relocation of the Grantor's facility that is made necessary by the construction of the Minister's Facility*.*
2. The Minister shall, where applicable, install and maintain during performance of the Work suitable temporary markers indicating the location of Grantor’s Facility in the Crossing Area.
3. The Minister shall lay down and construct its Facility in accordance with the Schedules to this Agreement.
4. The Minister shall carry out all Work in the Crossing Area in a proper and diligent manner and in accordance with good engineering and construction practices.
5. The Minister shall ensure no damage occurs to existing Facilities while the Work is being performed in the Crossing Area including damage which may result from the use of heavy Work equipment outside the Crossing Area while performing the Work in the Crossing Area.
6. In the event that Grantor’s Facility suffers contact damage or other damage as a result of the Minister’s Work, Grantor shall be notified forthwith, and its repair shall be carried out as directed by Grantor at the Minister’s cost.
7. Where cathodic protection is required to be modified by Grantor as a result of the Minister’s installation, the Grantor at its cost shall, at the time of the construction of the Minister's Facility, modify and thereafter maintain a cathodic protection system for Grantor’s Facility at the crossing. The Grantor shall provide a cost estimate of the installation of the cathodic protection system prior to construction of the Minister's Facility, and upon approval of all or a part of the costs of the installation of the cathodic protection system by the Minister, the Minister shall reimburse the Grantor in accordance with the attached Schedule”C.”
8. At least 24 hours (excluding Saturdays, Sundays, and Statutory Holidays) prior to covering Grantor’s exposed Facility, the Minister’s Field Representative shall contact Grantor’s Field Representative directly, either in person or by telephone for inspection.
9. (i) Where backfilling the excavation in the Crossing Area is required as a result of the Minister’s installation, the Grantor may elect to backfill in accordance with the Minister’s Standard Specifications for Highway Construction (current edition). Upon such election, the Grantor at its cost shall, at the time of the construction of the Minister's Facility, backfill the Crossing Area. The Grantor shall provide a cost estimate to backfill the Crossing Area, and upon approval of all or a part of the costs to backfill the Crossing Area by the Minister, the Minister shall reimburse the Grantor in accordance with the attached Schedule” C”.

 (ii) In the event the Grantor elects not to backfill the Crossing Area, and unless otherwise directed by the Grantor, the Minister shall cover Grantor’s Facility with at least 30 centimetres of select backfill material as specified in Schedule "C" prior to commencing backfilling operations. The Minister shall, in backfilling the excavation in the Crossing Area, compact the fill material in 15 centimetre layers, or such greater depth specified by Grantor’s Field Representative.

1. The Minister shall, as soon as it is reasonably practical after the completion of the Minister’s Work in the Crossing Area, restore the surface of the Crossing Area as closely as is practical to the condition in which it existed immediately prior to the Work being commenced.
2. The Minister shall maintain the Crossing Area in good order and condition and carry out expeditiously all Work hereunder.
3. The cost associated with the location, identification or supervision of the Grantor's facility shall not be charged to or borne by the Minister unless specified in Schedule "C".
4. **Remedy on Default**

In the case of default by the Minister in carrying out any of the provisions of this Agreement, Grantor may give notice thereof to the Minister. If the Minister fails to commence to remedy such default within 15 days after receipt of such notice and diligently complete such remedy thereafter, Grantor may take such steps as are appropriate to remedy such default and the Minister shall be liable for and shall pay all reasonable costs and expenses incurred by Grantor in remedying the default.

**7. Further Work**

(a) If, subsequent to the initial Work undertaken by the Minister for its Facility, the Minister desires to undertake any Work in the Crossing Area in respect of its Facility, this Agreement shall be deemed to grant consent to the Minister, and the provisions of this Agreement shall apply as the context requires to all subsequent Work undertaken by the Minister under this Clause 7.

(b) Notwithstanding the foregoing, installation of any Facility by the Minister other than those shown on attached Schedule” B” shall require a separate New Roadway over Existing Pipeline Crossing Agreement.

(c) Notwithstanding the foregoing, if emergency Work in the Crossing Area is required with respect to a party’s Facility, that party shall commence the necessary Work and shall forthwith give the other party’s Field Representative verbal notice of the emergency and necessary Work and shall forthwith give notice pursuant to Clause 8 hereof.

**8. Notices**

Notices shall be in writing and shall be sent to the parties at the addresses for notice shown in the Body of this Agreement. The following shall govern notices:

(a) Either party may from time to time change its address for service by giving notice to the other party.

(b) All notices required to be given hereunder may be delivered by hand, mailed by registered or prepaid mail, or sent by telecommunication. If mailed, the notice shall be deemed to have been received seven days (Saturdays Sundays and Statutory Holidays excluded) after the mailing thereof. If delivered by hand, the notice shall be deemed to have been received on the day on which it was delivered, or if delivered after regular business hours, it shall be deemed to have been received on the following business day. If sent by telecommunication, the notice shall be deemed to have been received on the first business day following the day it was dispatched.

(c) No notice shall be effective if mailed during any period in which Canadian postal workers are on strike or if a strike of postal workers is imminent and may be anticipated to affect normal delivery thereof.

(d) Notwithstanding the foregoing, to the extent described in this Agreement, Grantor’s and the Minister’s Field Representatives or designated alternates shall have the right and authority to make, give, receive any notice, information, direction, or decision required in conducting Work hereunder.

**9. Liability and Indemnity**

**(a) Liability:**

(i) The Minister shall be liable to Grantor for all loss, damages, and expenses which Grantor may suffer, sustain, pay, or incur by reason of any matter or thing arising out of or attributable to any act or omission of the Minister, his servants, agents, or employees in respect of the Minister’s use of the Crossing Area or by reason of this Agreement.

(ii) Grantor shall be liable to the Minister for all loss, damages, and expenses which the Minister may suffer, sustain, pay, or incur by reason of any matter or thing arising out of or attributable to any act or omission by Grantor, its servants, agents, or employees in respect of Grantor’s use of the Crossing Area or by reason of this Agreement.

**(b) Indemnity:**

(i) The Minister shall indemnify and save harmless the Grantor against all actions, proceedings, claims, demands, and costs which may be brought against or suffered by Grantor or which it may sustain, pay, or incur, by reason of any matter or thing arising out of or attributable to any act or omission of the Minister, its servants, agents, or employees in respect of the Minister’s use of the Crossing Area or by reason of this Agreement.

(ii) Grantor shall indemnify and save harmless the Minister against all actions, proceedings, claims, demands, and costs which may be brought against or suffered by the Minister or which it may sustain, pay, or incur, by reason of any matter or thing arising out of or attributable to any act or omission of Grantor, its servants, agents, or employees in respect of Grantor’s use of the Crossing Area or by reason of this Agreement.

**10. Insurance**

(a) Without in any way limiting the liability of either party under this Agreement, each party shall obtain and keep in force during the term of this Agreement comprehensive general liability insurance covering liability for bodily injury and property damage arising from Work contemplated by this Agreement. The limit of this insurance shall not be less than five million dollars, inclusive, for any one occurrence unless otherwise agreed by the parties in writing. This policy shall provide coverage for liability assumed under this Agreement.

(b) A party, upon request of the other party, shall furnish written documentation, satisfactory to the requesting party, evidencing the required coverage.

(c) As an alternative to the five million dollar policy of comprehensive general liability insurance referred to in Sub-clause 10 (a), if acceptable to the other party, a party may self-insure against the risks normally covered by such a policy.

**11. Changes to Agreement**

No change, modification or alteration of this Agreement shall be valid unless it be in writing and signed by the parties hereto, and no course of dealing between the parties shall be construed to alter the terms hereof.

**12. Assignment**

(a) Neither party to this Agreement shall assign or transfer this Agreement or the rights and privileges hereby granted without the written consent of the other party, and such consent shall not be unreasonably withheld. The party intending to assign or transfer this Agreement shall give to the non- assigning party to this Agreement notice of its intent by registered mail.

(b) The non-assigning party to this Agreement may require the assignor and assignee to execute a novation agreement in a form acceptable to the non- assigning party.

This Agreement shall endure to the benefit of and be binding upon the parties, their successors, and assigns.

**13. Governing Law**

This Agreement and the rights and obligations of the parties herein shall be governed and construed according to the laws of the province *of Alberta*.

**14. Term**

The rights and obligations of the parties under this Agreement shall terminate:

(a) two years from the date hereof if construction of the Minister’s Facility has not commenced, or

(b) upon proper abandonment or removal of all of Grantor’s or the Minister’s Facilities from the Crossing Area and the completion of any reclamation Work required by applicable laws, except for those rights acquired and obligations incurred prior to such events.

**15. Miscellaneous**

(a) In this Agreement, words importing the singular include the plural and vice versa; words importing the masculine gender include the feminine and vice versa; and words importing persons include firms or corporations and vice versa.

(b) Words such as” hereto”,” thereto”,” hereof,” and” herein,” when used in this Agreement, shall be construed to refer to provisions of this Agreement.

(c) The headings of all clauses of this Agreement, and the Schedules, are inserted for convenience of reference only and shall not affect the meaning or construction thereof.

(d) Time is of the essence of this Agreement.

(e) No waiver of any breach of a covenant or provision of this Agreement shall take effect or be binding upon a party unless it is expressed in writing. A waiver by a party of any breach shall not limit or affect that party’s rights with respect to any other or future breach.

**16. Entire Agreement**

This Agreement, including the recitals and schedules, sets forth the entire agreement between the parties hereto and shall be deemed to have superseded any and all previous agreements and understandings, whether written or oral, between the parties dealing with the Facilities and the Crossing Area, and all rights and obligations as herein described.

**Schedule “B”**

**Location Plan and Profile**

This Schedule” B” to Form Part of the New Roadway Over Existing Pipeline Crossing Agreement.

Between       (Grantor)

and       (the Minister)

and dated the        day of       ,      .

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**Schedule “C”**

**Specific Terms and Conditions**

**This Schedule "C" to Form Part of the New Roadway over Existing Pipeline Crossing Agreement.**

Between **Registered Company Name** (**Grantor**)

and His Majesty the King in right of Alberta as represented by the Minister of Transportation and Economic Corridors (**the Minister**)

and dated the       day of       ,      .

***NOTE: All invoices for the items listed below (if applicable) shall be directed to the Minister's Representative.***

*NOTE: Attach a copy of any existing permit, approval or authorization held by the Grantor as part of Schedule "C" here ((as per clause 1.02(b)).*

*NOTE: Permission to use an excavating machine within 1.5 metres of either side of any existing Grantor’s Facility as required under the Pipeline Act and Rules, or 3.0 metres of either side of any existing Grantor’s Facility as required under the Canadian Energy Regulator Act and its regulations, as the case may (if applicable) here ((as per clause 5(d)(i)).*

*NOTE: Attach a copy of the Grantor's cost estimate of the installation of the cathodic protection system (if any) here ((as per clause 5(k)).*

*NOTE: Attach a copy of the Grantor's cost estimate for backfilling the excavation in the Crossing Area (if any) here ((as per clause 5(m)(i))).*

*NOTE: Attach a copy of the Grantor's specification for backfill (if any) here ((as per clause 5(m)(ii)).*

*NOTE:* *Attach a copy of the cost associated with the location,* *identification, or supervision of the Grantor's facility to be borne by the Minister (if applicable) here ((as per clause 5(p)).*

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