



NOW THEREFORE the Agreement witnesseth that, in consideration of the premises, covenants and agreements herein contained, the parties agree as per the following:

- 1) attached Schedule "A", Sub-surface Facility Conditions of Agreement, revised October 28, 2009: and
- 2) attached Schedule "B", Sub-surface Facility Regulations, revised October 28, 2009

IN WITNESS WHEREOF the parties hereto have affixed their corporate seals under the hands of their proper signing officers in that behalf to give effect to this Agreement the day and year first above written notwithstanding the actual date or dates of execution.

**COUNTY OF FORTY MILE NO. 8:**

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**(Municipality)**

**OPERATOR:**

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**SCHEDULE " A "**

Rev: October 28, 2009

**SUB-SURFACE FACILITY CONDITIONS OF AGREEMENT**

1. In this Agreement the following definition shall apply:
  - a) "FACILITIES" means and shall include any piping system used for the transmission and/or gathering and/or distribution of gas, oil, water, waste water, mineral or other commodity; and shall include electrical lines, fibre optics, and any other specified installation.
2. The Municipality consents to the Operator's use of the Roads to lay, construct, replace, repair, maintain, inspect, operate and remove the Facility under the Roads (hereinafter called the "Crossing") upon the proper and timely fulfilment of all of the terms and conditions of this Agreement.
3. The Operator shall only be permitted to cross the Roads at those locations (hereinafter called the "Crossing Area") approved by the Municipality, such approval not to be arbitrarily nor unreasonably withheld. In the event the parties fail to agree upon a location for the Crossing Area, the Operator may apply to the appropriate regulatory authority for a determination of the location for the proposed Crossing Area.
4. The Operator shall select a location for the Crossing Area, which gives due consideration to any features of the Roads, as well as any known plans by the municipality to upgrade or relocate the Roads so as to avoid any Crossing Areas which may have detrimental effect on the future operation or upgrading of the Roads or the Facility in the Crossing Area, and the Operator shall, before commencing any work in the Crossing Area, submit to the Municipality for approval, a detailed plan of the proposed location of the Facility in the Crossing Area.
5. The Operator shall not commence any construction work in the Crossing Area, without first obtaining the Municipality's written approval of the detailed plan referred to in Clause 3 herein. Upon the Operator providing the Municipality with the proposed detailed plan, the Municipality shall forthwith review and advise within twenty one (21) calendar days if such detailed plan is acceptable. In the event that the detailed plan is not acceptable, the Municipality shall list the reasons why such plan is unacceptable and suggest an alternate plan for the Crossing. The Municipality shall determine if the proposed work will conflict with any imminent or future road construction work, relocation or upgrading, or other work which may necessitate the relocation or lowering of the Facility in the Crossing Area and shall notify the Operator accordingly when approving or rejecting the Operator's application for the Crossing. If for any reason the parties cannot agree upon the plans and the details with respect to the Crossing, either party may apply to the appropriate regulatory authority for a determination of terms and conditions on which the Operator may use the Roads including inter-alia (among other things) detailed plans.

6. The Municipality shall not commence or carry out any work that involves a ground disturbance in the Crossing Area without having obtained the written approval of the Operator and without a representative of the Operator being present at all times. Other than in the case of an emergency, the Municipality shall give forty eight (48) hours notice in advance (weekends and statutory holidays excluded) to the Operator of a proposed ground disturbance. The Operator may waive its right to have a representative present at the time of the work being performed and in the event a representative is not present, it shall be deemed to have waived its right.
7. The Operator shall, with respect to any work, as referred to in Clause 4, carried out in or on the Crossing Area,
  - a) provide all suitable pipe, materials, equipment and labour;
  - b) give to the Municipality no less than forty eight (48) hours notice in advance (weekends and statutory holidays excluded) before commencing construction or maintenance work involving a ground disturbance;
  - c) provide in such notice the name or names of the contractor and sub-contractor proposed to carry out the work in the Crossing Area;
  - d) ensure that all work carried out in the Crossing Area shall have sufficient and proper traffic control, safety devices and warning devices or flagmen as and where necessary;
  - e) carry out such work in the Crossing Area only during daylight hours except if required otherwise in cases of emergency;
  - f) permit the Municipality to have a representative present to inspect such work;
  - g) design, construct, operate and maintain the Facilities, as applicable, in accordance with:
    - i) the latest edition of the CSA Standard Z662-07 issued and adopted by the Canadian Standards Association in July, 2007, and
    - ii) any supplementary standards issued by the Department of Infrastructure of the Province of Alberta, Occupational Health and Safety and any other applicable regulations or standards, including applicable standards established by the Energy Resources Conservation Board; and
    - iii) the detailed plan consisting of the standard and typical profile attached hereto as Schedule "A", or specific profile for the Crossing as may be required from time to time at locations where the details of the standard and typical profile are insufficient.

- h) install and maintain suitable markers indicating the location of the Facilities in the Crossing Area;
- i) construct and lay the Facilities as close to a ninety (90) degree angle as possible to the Roads, unless otherwise approved by the Municipality;
- j) construct and lay the Facilities without any mechanical joints including couplings, flanges and transition fittings, horizontal or vertical bends from property line to property line within the existing road allowance;
- k) install the Facilities at the Crossing in a developed road allowance using the boring method unless otherwise approved by the Municipality. Install the Facilities at the Crossing in an undeveloped road allowance using the open cut or plough-in method providing prior approval has been given by the Municipality;
- l) provide verbal notice to the Municipality's representative prior to backfilling of any excavation within the Crossing Area to enable the Municipality to make a final inspection;
- m) as soon as is reasonably practicable after completion of the work, restore the Crossing Area as closely as is practical to the condition in which it existed immediately prior to the work. If within ninety (90) days subsequent to notifying the Operator that the restoration of the Crossing Area is inadequate given reasonable cause for such inadequacy, the Municipality may take reasonable measures to complete the required restoration, the cost of such restoration to be borne by the Operator;
- n) maintain the Facilities in good order and condition and carry out all necessary repairs, renewals or emergency work expeditiously;
- o) surface locate and mark the Facilities within the road crossing rights of way, at the sole cost and expense of the Operator, given forty eight (48) hours advance notice (weekends and statutory holidays excluded) when reasonably requested to do so by the Municipality;
- p) expose the Facilities at the lowest ground location within the Crossing Area (usually the toe of the borrow ditch) on each side of the travelled surface when requested by the Municipality on the basis of reasonable cause for the purpose of determining accurate pipe depth locations for maintaining, upgrading or repairing that portion of the Roads in the Crossing Area. Such exposure will be provided by the Operator if requested by the Municipality providing that forty eight (48) hours advance notice (weekends and statutory holidays excluded) shall be given to the Operator and that the costs for such exposures are borne by the Operator. The Operator agrees upon the request of the Municipality to leave the Crossing exposed and properly flagged for future reference provided that the Municipality allows the Operator the opportunity to inspect the backfilling of the exposure performed by the Municipality.

Notification for timing of backfilling can be made at the time of exposure, otherwise forty eight (48) hours notice in advance (weekends and statutory holidays excluded) shall be given to the Operator.

- q) conform to and comply with all terms and conditions of this Agreement, and all statutes, laws, regulations, governmental orders and directions for the time being and from time to time in force affecting the Facilities, the Crossing Area and the work carried out hereunder;
8. The Operator shall have the right to enter upon the Crossing Area to carry out repairs to, or maintenance of, or removal of the Facilities. In the case of repairs or maintenance causing a ground disturbance or removal, the Operator shall give forty eight (48) hours notice in advance (weekends and statutory holidays excluded) of such work to the Municipality. In the case of breakage of the Facilities or other emergency, no prior notice shall be required for the Operator to undertake such work, but the Operator shall notify the Municipality of such emergency and remedial work as soon as is reasonably practical. In the case of maintenance to marker signs or cathodic protection test points, no notice shall be required.
9. The cost of laying, maintaining, repairing, renewing, altering or removing the Facilities within the Crossing Area, and of restoring the Crossing Area, shall be borne solely by the Operator, subject to the provisions in Clause 11.
10. The Operator shall be liable for and pay all taxes, rates and assessments of any kind and description whatsoever that may be imposed by any lawful authority, other than the Municipality, by reason of the presence of Facilities within the Crossing or by reason of this Agreement and shall indemnify and save harmless the Municipality from and against all such taxes, rates and assessments.
11. a) The Operator shall be liable for and shall indemnify and save harmless the Municipality of and from any and all losses, costs, charges, liabilities, damages and expenses (including without limiting the generality of the foregoing any and all liabilities to third parties, whether in contract, tort or otherwise) which the Municipality at any time or times hereafter shall or may bear, suffer, sustain or incur for or by reason of the Operator's use of the Crossing Area or by reason of the negligence of the Operator, its servants, agents, employees or contractors.
- b) The Municipality shall be liable for and shall indemnify and save harmless the Operator of and from any and all losses, costs, charges, liabilities, damages and expenses (including without limiting the generality of the foregoing any and all liabilities to third parties, whether in contract, tort or otherwise) which the Operator at any time or times hereafter shall or may bear, suffer, sustain or incur for or by reason of the Municipality's use of the Crossing Area or by reason of the negligence of the Municipality, its servants, agents, employees or contractors.

- c) It is expressly understood that nothing contained herein shall be construed as imposing upon the other party, any obligation to indemnify and save harmless the other party from or against any losses, costs, charges, liabilities, damages or expenses occasioned by or arising directly or indirectly from or out of any negligence of the other party, its servants, agents, employees or contractors.
12. The Municipality may, when reasonably required, serve a notice upon the Operator requesting that the Operator relocate or lower any of the Facilities within the Crossing Area. The Operator shall have a period of seventy (70) days from the initial notification from the Municipality, within which to relocate or lower the Facilities within the Crossing Area. The cost of such relocation or lowering shall be borne by the Operator. If the Operator can propose an alternative to such relocation or lowering, provided such alternative is in accordance with good engineering standards and practices with respect to the roadway surfaces and grades, the Municipality does hereby agree to implement such alternative, provided that the costs of such alternative are shown to the Municipality to be less than the costs of the relocation or lowering of the Facilities, and provided that the sole costs of such alternative are borne by the Operator. It being agreed, however, that if any relocation or lowering is requested of the Operator by the Municipality within a period of fifteen (15) years of any relocation or lowering of the same Crossing at the expense of the Operator, then, the total expense of this second relocation or lowering shall be borne by the Municipality. Upon the lapse of fifteen (15) years from the first relocation or lowering, a subsequent relocation or lowering of the same Crossing shall again be at the sole expense of the Operator. If for any reason a dispute arises as to the reasonableness of the Municipality's requirement for the Operator to relocate or lower any pipelines in the Crossing Area, either party may refer the matter to the appropriate regulatory authority for determination.
13. In the case of default by either of the parties hereto in carrying out any of the terms, covenants and provisions of this Agreement, either party may give fifteen (15) days written notice of such default to the other. In the event that the party claimed to be in default does not commence to remedy such default within or at the end of the fifteen (15) day period, the other party may take such reasonable steps that are appropriate and necessary to remedy such default, and the party in default shall be liable for and pay all reasonable costs and expenses incurred with respect to the remedy of such default.
14. Any condonement, excusing or overlooking by either party of any default, breach or non-observance by the other party at any time or times in respect of any covenant, provision, or condition herein contained shall not operate as a waiver of the party's rights hereunder in respect of any subsequent default, breach or non-observance nor as to defeat or affect in any way the rights of any party hereunder in respect of any subsequent default, breach or non-observance by the other party. No covenant, term or condition of this Agreement or any breach thereof shall be deemed to have been waived by either party unless such waiver is completed in writing and signed by the party waiving as the case may be.

- 15. This Agreement may be used for all Crossings except for Crossings and installations in hamlets and unincorporated urban communities.
- 16. Either party may by notice in writing appoint a representative to act on its behalf in matters pertaining to this Agreement. Each such authorized representative shall have the right and authority to make, give or receive any notice, information, direction or decision required or provided for in this Agreement.
- 17. Every notice required by this Agreement to be in writing shall be delivered personally or sent by prepaid registered mail. In the case of personal delivery, such notice shall be deemed to be received on the date of delivery and in the case of service by mail, shall be deemed to have been given seven (7) days following the date upon which it was mailed. The addresses of the parties for the purpose of notice are respectively:

***To the Municipality:***

***To the Operator:***

**COUNTY OF FORTY MILE NO. 8  
 Box 160  
 Foremost, AB TOK OXO  
 Attn: Utilities Officer**

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In the event that notice is served by mail at a time when there is an interruption of mail service affecting the delivery of such mail, the notice shall not be deemed to have been served until seven (7) days after the date that mail service is restored.

Either party may change its address for service by serving a notice on the other party in the manner herein provided.

- 18. The Operator shall not assign or transfer this Agreement or the rights or privileges herein contained without first obtaining the written consent of the Municipality, which consent shall not be arbitrarily withheld. Nothing in this clause shall preclude the Operator from including this Agreement and its interest herein in any mortgage, charge or hypothecation for the purposes of financing.
- 19. This Agreement shall be governed by the laws of the Province of Alberta and the rights and obligations of the parties hereto are subject to all present and future laws, rules, regulations and orders of any legislative body or duly constituted authority now or hereafter having jurisdiction over the parties or the subject matter of this Agreement.
- 20. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- 21. Agreement becomes invalid if construction has not been initiated within one year of the date of this Agreement.

22. This Agreement shall be valid for a period of ten (10) years from the date of this Agreement and then shall continue in force from year to year unless terminated by either party on ninety (90) days written notice to the other party and in the event of such termination, this Agreement shall thereafter have no further force and effect other than with respect to the rights and obligations of each of the parties hereto as they relate to Pipelines already constructed under and pursuant to the terms of this Agreement.
23. This Agreement contains the entire agreement between the parties hereto and no understandings or agreements, verbal or otherwise, exist between the parties except as herein expressly set out.

**SUB-SURFACE FACILITY REGULATIONS**

These regulations shall govern standards and procedures used in the construction, maintenance and operation of pipelines and/or integral parts thereof, or extensions thereto within the County. Provincial regulations also be followed at all times.

1. The erecting or excavating with respect to any structure over, under or along any highway, road, street, lane, alley, bridge, river, stream, watercourse, lake or other body of water within the County including the air space above and the ground below for any purpose whatsoever is prohibited without permission from the authorized County personnel.
2. A pipeline shall be deemed to be any piping system used in the transmission and/or gathering and/or distribution of gas, oil, water, waste water, mineral or other commodity; and shall include electrical lines, fibre optics, and any other specified installation.
3. All pipelines paralleling any road allowance shall not be nearer than 30 meters at any point to the nearest boundary of the road allowance, unless otherwise approved by the authorized County personnel.
4. Where a pipeline must cross a road, no bends shall be permitted in that portion of the pipeline within the boundaries of the road allowance or within 30 meters of the boundaries on either side of the road allowance unless otherwise approved by the authorized County personnel.
5. Any pipeline that must cross a road must cross at a 90 degree angle to the road allowance unless otherwise approved by the authorized County personnel.
6. The County shall be supplied with a detailed map, plans and drawings for all proposed pipelines and/or extensions or revisions thereto, prior to any construction.
7. The County shall not be liable for any damage, injury or other costs or inconvenience arising from the construction, maintenance or operation of any pipeline within the County.
8. All pipeline right of ways shall be restored to their original condition or the satisfaction of the authorized County personnel.
9. If deemed necessary, authorized County personnel may inspect pipeline construction and/or installation at any time with representatives of the pipeline owner or contractor.
10. All crossings on all developed roads must be punched or bored from ditch bottom to ditch bottom unless otherwise approved.
11. All crossings approved for open cut trenching shall be adequately tamped when back-filled and the gravel must be restored to the satisfaction of the authorized County personnel.
12. The pipeline crossing area of any road will be the responsibility of the pipeline owner for a period of three years after the date of completion.

13. Should the authorized County personnel determine the need for repairs or maintenance to the crossing area necessitated by the crossing, the pipeline owner will be responsible for the costs of all such corrective action taken.
14. All expense relating to the crossing shall be the responsibility of the pipeline owner.
15. The depth of the road crossing shall be 122 cm below the existing road ditches, unless improvements to the road are proposed or expected in the near future, in which case the depth will, then, be as determined by the authorized County personnel.
16. All pipelines crossing a road shall be installed according to the following:
  - a) shall meet the latest standards as outlined in CSA Z662-07 adopted in July, 2007;  
or
  - b) if a lesser standard is proposed it shall be installed inside a larger diameter carrier pipe or casing. This is to facilitate ease of removal or repair should the pipe's integrity come into question, and reduces possible damage due to heavy traffic and ground shifting.
  - c) all electrical, water, and private pipeline crossings shall be installed inside a larger diameter carrier pipe or casing.
17. On unimproved road allowances, a carrier pipe or casing will not be required and the depth of the crossing shall be the same as in the adjoining lands. Unimproved road crossings will be allowed using the plough-in method. Should the unimproved road allowance be subject to upgrading by the County, the owner of the pipeline shall be responsible for the alterations necessary to meet the standards as specified for crossing a developed road.
18. All pipelines crossing a road allowance must be marked by signs, and such markings shall be maintained by the pipeline owner at his expense until such time that the pipeline is taken permanently out of service and abandoned.
19. All road crossings shall be installed in such a manner as to incur the least amount of inconvenience to the travelling public as possible. Should a detour be necessary, the provision of such, along with signage and maintenance shall be the responsibility and expense of the pipeline owner.
20. The owner of the pipeline at this expense, shall upon the request of the authorized County personnel, assist in establishing the location and depth of the pipeline.
21. The owner of the pipeline shall upon the request of the authorized County personnel and at his own expense, lower or relocate the pipeline when deemed necessary.
22. Road crossings on the crest of a hill should be avoided if possible.
23. All debris associated with the construction or installation shall be removed from the sight in a timely manner.

24. When a pressure compensating regulator is required on the pipeline, and the installation of the regulator adversely affect farming operations, the regulator shall upon request, be permitted to be installed immediately adjacent to the road allowance, but on private property. All expenses involved in the construction and those involved following a request of the authorized County personnel to relocate the facility are the responsibility of the pipeline owner.
25. When regulators are installed within 30 meters of a road allowance, they must be protected on the three sides accessible to traffic by a barricade consisting of continuous guardrails similar to those commonly used on bridges, and the installation must be legibly signed indicating ownership of the installation.
26. Upon receiving approval from authorized County personnel for an installation, the pipeline owner agrees to save harmless the County of Forty Mile No. 8 along with its officers and employees from and against all claims, damages, suits, actions and causes of actions or cost that the County may suffer or be put to by reasons of the County granting permission for the said line crossing.
27. Any person violating the provisions of this By-Law may be charged under the provisions of the By-Laws duly in place and enforceable by the County.
28. This By-Law shall take effect upon Third and Final Reading by the Council of the County of Forty Mile No. 8 and By-Law No. 11/2000 will be repealed on final passing of this By-Law.