

# CAPL 1988 ALBERTA PIPELINE CROSSING AGREEMENT

Telephone: (      ) \_\_\_\_\_  
Grantee's Address for Notice

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

_____ ("Grantor")	_____ ("Grantee")
Per: _____	Per: _____
Per: _____	Per: _____

## **2. CONSENT**

Grantor hereby agrees that Grantee may perform the Work on Grantee's Pipeline in the Crossing Area in accordance with the terms and conditions of this Agreement.

## **3. COMPLIANCE WITH STATUTES AND REGULATIONS**

Grantee shall at all times comply with any and all codes, statutes, laws, regulations, permits, licenses, orders and directions of any governmental authority from time to time in force. The minimum technical standards in the applicable codes, statutes, laws and regulations shall apply to Grantee's operations unless more stringent standards are provided for in this Agreement or are imposed by order of the Energy Resources Conservation Board of Alberta or other authority having jurisdiction over the Pipeline. If compliance with any provision of this Agreement would result in violation of any applicable code, statute, or regulation, such code, statute, or regulation shall prevail and this Agreement shall be deemed to be amended accordingly.

## **4. POSITION OF PIPELINE**

Unless otherwise indicated in any of the Schedules, or ordered by governmental authority or regulations:

- (a) Grantor's Pipeline shall be entitled to the upper position in the Crossing Area;
- (b) a minimum distance of 30 cm shall be maintained between the external surfaces of the Pipelines; and
- (c) the depth of Grantee's Pipeline shall be maintained for the entire width of the Crossing Area.

## **5. CONDITIONS**

When Grantee installs Grantee's Pipeline in the Crossing Area, the following terms and conditions shall apply:

- (a) Grantee's Field Representative shall contact Grantor's Field Representative directly, either in person or by telephone, a minimum of 48 hours before commencement of Grantee's Work in the Crossing Area and, if Grantee is unable to so contact that person, then Grantee shall serve a minimum of 48 hours written notice pursuant to [Clause 8](#) hereof before commencement of Grantee's Work in the Crossing Area.
- (b) Before proceeding to excavate in the Crossing Area, Grantee shall fully expose Grantor's Pipeline by hand digging. Grantee shall not use or permit the use of an excavating machine within 1.5 meters of either side of any existing Grantor's Pipeline.
- (c) Grantee shall install and maintain during performance of the Work suitable markers indicating the location of Grantor's Pipeline in the Crossing Area, and thereafter shall install and maintain suitable buried markers indicating the location of Grantee's Pipeline in the Crossing Area.

- (d) Grantee shall carry out all Work in the Crossing Area in a proper and diligent manner and in accordance with good engineering and construction practices.
- (e) During its operations pursuant to this Agreement, Grantee shall have available at the Crossing Area a copy of this Agreement.
- (f) Grantee shall lay down and construct Grantee's Pipeline in accordance with the Location Plan and Profile.
- (g) Grantee shall ensure that the weight of any equipment crossing over Grantor's Pipeline will not cause any damage to Grantor's Pipeline. Grantee shall, if requested by Grantor's Field Representative, pad the Crossing Area during any such crossing of equipment.
- (h) Grantee shall support Grantor's Pipeline as required, or as directed by Grantor, while any Work is being carried out hereunder.
- (i) At least 24 hours prior to covering Grantor's exposed Pipeline, Grantee's Field Representative shall contact Grantor's Field Representative directly, either in person or by telephone, and Grantor shall promptly inspect Grantor's exposed Pipeline. Grantee shall take precautions to protect and secure the Crossing Area while any Pipeline is exposed.
- (j) Grantee shall cover Grantor's Pipeline with at least 30 cm of sand or other select backfill material prior to commencing backfilling operations. Grantee shall, in backfilling the excavation in the Crossing Area, compact the fill material in 15 cm layers, or such greater depth specified by Grantor's Field Representative.
- (k) Grantee shall upon demand reimburse Grantor for all reasonable costs and expenses incurred due to the presence of Grantor's representative during the performance of the Work by Grantee at the Crossing Area.
- (l) Grantee shall, as soon as it is reasonably practical after the completion of Grantee'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.
- (m) Grantee shall maintain the Crossing Area in good order and condition and carry out expeditiously all necessary repairs and emergency Work arising out of its operations hereunder. In the event that Grantor's Pipeline suffers contact damage or other damage as a result of Grantee's Work, Grantor shall be notified forthwith and Grantor may direct its repair.
- (n) In the case of damage to Grantee's Pipeline in the Crossing Area or other emergency, Grantee shall commence the necessary Work and shall forthwith give to Grantor's Field Representative verbal notice of such damage or other emergency and of the necessary Work to be conducted, and shall forthwith give notice pursuant to [Clause 8](#) hereof.
- (o) The whole of the cost of the Work with respect to Grantee's Pipeline in the Crossing Area shall be borne by Grantee. In the event that Grantee's Pipeline passes over Grantor's Pipeline, then, notwithstanding anything herein contained, if Grantor at any time or times desires repairs, replacements or removals in respect of its Pipeline, Grantee shall pay to Grantor upon demand the amount by which the cost to Grantor of such repairs, replacements or removals is increased by the presence of Grantee's Pipeline in the Crossing Area.
- (p) Grantee shall do all things that in Grantor's reasonable opinion are necessary to ensure that Grantor's cathodic protection of Grantor's Pipeline or any part thereof is not damaged or adversely affected as a result of Grantee's operations or subsequent application of cathodic protection by Grantee to Grantee's Pipeline. Notwithstanding the generality of the foregoing, Grantee shall install where necessary not less than two coated wire test lead system at the point of crossing, of a design acceptable to Grantor. Such system shall include at least one white coated wire test lead to be bonded to Grantee's Pipeline and one black coated wire test lead to be bonded to Grantor's Pipeline. Bonding of the test lead to Grantor's Pipeline shall be by a method acceptable to Grantor. The whole of the cost

of providing installation and maintenance of any such cathodic protection and such test lead system shall be borne by Grantee. Notwithstanding the foregoing, cathodic protection shall not be required where Grantee installs a plastic or other nonmetal pipeline.

(q) Grantee shall be liable for and shall pay all taxes, rates and assessments of every description whatsoever that may be imposed by any lawful authority by reason of the presence of Grantee's Pipeline in the Crossing Area, or by reason of this Agreement or of anything done by Grantee pursuant to this Agreement. In addition, Grantee shall indemnify Grantor from and against all such taxes, rates and assessments.

## **6. REMEDY ON DEFAULT**

In the case of default by Grantee in carrying out any of the provisions of this Agreement, Grantor may give notice thereof to Grantee. If Grantee 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 Grantee 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 to be undertaken by Grantee for its Pipeline, either Grantor or Grantee desires to undertake any Work in the Crossing Area in respect of its Pipeline, this Agreement shall be deemed to grant consent to that party, and the provisions of this Agreement shall apply mutatis mutandis to all subsequent Work undertaken by either party under this Clause 7; and, for further certainty, the provisions of this Agreement shall be read as if "Grantee" were substituted for "Grantor" and vice versa as the situation requires.

(b) Notwithstanding the foregoing, installation of any pipeline other than those shown on Schedule "B" shall require a separate crossing agreement.

(c) Notwithstanding the foregoing, if emergency work is required with respect to a party's Pipeline, 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 authorized or required to be given hereunder or made necessary by the terms hereof shall be in writing and may be delivered by hand, mailed by 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 Grantee'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) Grantee shall:

- (i) be liable to Grantor for all loss, damages and expenses which Grantor may suffer, sustain, pay or incur and, in addition,
- (ii) indemnify 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 Grantee, its servants, agents, contractors or employees in respect of Grantee's use of the Crossing Area or by reason of this Agreement.

(b) Grantor shall:

- (i) be liable to Grantee for all loss, damages and expenses which Grantee may suffer, sustain, pay or incur and, in addition,
- (ii) indemnify Grantee against all actions, proceedings, claims, demands, and costs which may be brought against or suffered by Grantee or which it may sustain, pay or incur, by reason of any matter of thing arising out of or attributable to any act or omission of Grantor, its servants, agents, contractors 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 operations 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 [Subclause 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 shall assign or transfer this Agreement or the rights and privileges hereby granted without the written consent of the other party first had and obtained, and such consent shall not be unreasonably withheld. Together with any request for such consent, the Assignor shall provide the other party with the Assignee's written confirmation that the Assignee is familiar with the terms of this Agreement and agrees to be bound by the terms of this Agreement.

(b) The other party may, in addition, require the Assignor and Assignee to execute a Novation Agreement in a form acceptable to the other party.

### **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 Grantee's Pipeline has not commenced, or
- (b) upon proper abandonment or removal of all of Grantor's or Grantee's Pipelines 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) Subject to [Clause 12](#) herein, this Agreement shall enure to the benefit of and be binding upon the parties, their successors and assigns.
- (c) Words such as "hereto", "thereto", "hereof", and "herein", when used in this Agreement, shall be construed to refer to provisions of this Agreement.
- (d) The headings of all Clauses of this Agreement, including the Schedules, are inserted for convenience of reference only and shall not affect the meaning or construction thereof.
- (e) Time is of the essence of this Agreement.

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 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 Pipeline and the Crossing Area, and all rights and obligations as herein described.