

## Appendix D – Canadian Association of Petroleum Landmen Standard Agreement

### ALBERTA RIGHT-OF-WAY AGREEMENT (2012)

THIS AGREEMENT made the \_\_\_\_\_ day of A.D. \_\_\_\_\_.

BETWEEN: \_\_\_\_\_,  
(hereinafter called the “Grantor”) being the registered owner or entitled to become the registered owner of an estate in fee simple, subject however to such encumbrances, liens and interests as may be noted upon the existing Certificate of Title in all of that certain tract of land situate, lying and being in the Province of Alberta, namely:

Legal description  
(hereinafter called the “Said Lands”);

and

(hereinafter called the “Grantee”)

NOW THEREFORE in consideration of the sum of Ten Dollars (10.00) (receipt and sufficiency of which is hereby acknowledged) paid to the Grantor by the Grantee and in consideration of the covenants hereinafter contained THE GRANTOR DOES HEREBY GRANT, CONVEY, TRANSFER AND SET OVER, to and unto the Grantee, its successors and assigns, a right-of-way (the Agreement) across, over, under, on or through the Said Lands to construct, operate and maintain a pipeline or pipelines including accessories and appurtenances and for any other purpose preparatory or incidental thereto including the right to repair or replace the said pipeline or pipelines; provided however that the right to construct more than one pipeline in the right-of-way hereby granted shall be limited to those pipelines which are constructed during one construction operation.

The Grantor and the Grantee hereby covenant and agree to the following terms and conditions:

#### 1. FILING PLAN OF SURVEY

The Grantee agrees that following construction and installation of the pipeline or pipelines it will file at the appropriate Land Titles Office a Plan of Survey of the right-of-way \_\_\_\_\_ (\_\_\_\_) metres in width across the Said Lands, in substantially the same location as shown on a sketch or survey plan initialled by the parties and attached to this Agreement. Upon filing the Plan of Survey at the appropriate Land Titles Office, the Grantee shall cause to be registered such documents as shall restrict this Agreement, and the rights herein granted, to the right-of-way shown upon the Plan of Survey filed at the appropriate Land Titles Office.

#### 2. ADDITIONAL PAYMENT

- a. Prior to entering upon the Said Lands for any purposes relating to the construction of the aforesaid pipeline(s), other than for survey purposes, the Grantee shall pay an additional consideration to the Grantor calculated at the rate of

- \_\_\_\_\_ Dollars (\$\_\_\_\_\_) per acre of right-of-way shown on the Plan of Survey which has been or will be filed.
- b. Provided however, if the Said Lands are not entered upon except for survey purposes or the additional consideration set out in 2 (a) has not been paid within \_\_\_\_\_ (\_\_\_\_\_) days of the date of this agreement, the Grantee shall pay to the Grantor the sum of \_\_\_\_\_ (\$\_\_\_\_\_) for the right to survey and all other inconveniences, and this Agreement shall terminate.

### **3. PROTECTION OF RIGHT-OF-WAY**

- a. Subject to clause 16 (quiet enjoyment) and the following, the Grantor shall have the right to use and enjoy the right-of-way provided that:
- i. The Grantor shall not use the right-of-way for any purpose which might either interfere with the rights granted herein to the Grantee, or which might incur a liability for damages payable by the Grantee, without the prior written consent of the Grantee; including, in particular:
- a. The Grantor may not erect any permanent structures on the right-of-way without the written consent of the Grantee.
- b. The Grantor may not alter the physical condition of the right-of-way to diminish or add to the ground cover over any pipeline or to plant trees or other vegetation which may interfere with the Grantee's operations without the written consent of the Grantee. For greater clarity this clause is not intended to restrict the Grantor from conducting normal agricultural operations including, but not limited to, the addition of soil amendments such as fertilizer or manure that do not significantly alter the contour of the Said Lands.
- ii. The Grantor hereby agrees to indemnify and save harmless the Grantee from all actions, causes of action, proceedings, claims, demands, losses, costs, damages and expenses which the Grantee may pay or incur as a result of or in connection with any use by the Grantor of the right-of-way other than through wilful damage or gross negligence by the Grantee.
- b. The Grantee shall be responsible for and compensate the Grantor for reasonable additional costs incurred by the Grantor which may be caused by the existence of the said pipeline, pipelines and right-of-way in connection with the excavation, installation, erection, repair or construction for any permitted operation related to agriculture across, over or under, on or through the right-of-way. If the Grantee and Grantor fail to agree as to the amount of compensation for reasonable additional costs incurred as a direct result of the existence of said pipeline, pipelines and right-of-way, then the matter shall be referred to dispute resolution accordance with Clause 11 (Dispute Resolution) hereof."

### **4. REMOVAL OF PROPERTY**

Notwithstanding any rule of law or equity, the pipeline or pipelines including accessories and appurtenances shall at all times remain the property of the Grantee, notwithstanding that the same may be annexed or affixed to the Said Lands and shall at any time and from time to time be removable in whole or in part by the Grantee, provided however, that the Grantee may at its option, leave and abandon the pipeline or pipelines including accessories and appurtenances in place.

**5. DAMAGES**

*The Grantee shall pay compensation for any and all damage where such damage occurs as a result of the operations of the Grantee, its servants, agents or contractors.*

**6. LIABILITY**

*The Grantee covenants and agrees to indemnify and save harmless the Grantor from any and all liabilities, damages, costs, claims, suits or actions caused by or resulting from the construction, operation, maintenance or repairs of the said pipeline or pipelines or any related fixtures and appurtenances affixed to the right-of-way other than through wilful damage or gross negligence by the Grantor.*

**7. TOPSOIL**

*Insofar as it may be practicable to do so, the Grantee shall, unless otherwise requested by the Grantor, strip, prior to construction such width of topsoil as may be required under good oil field practices and in compliance with existing regulations and replace the topsoil as near as possible to its original condition following construction.*

**8. TAXES**

*The Grantee shall pay all rates and taxes that may be assessed and levied from time to time against its interest in the Said Lands and installation or in connection with its operations thereon. The Grantor or any person to whom the Grantor assigns any right to receive any payments hereunder (whether by Direction to Pay or otherwise) shall be and shall remain liable for all income taxes assessed against either of them in respect of such payment, without recourse to the Grantee.*

**9. DISCONTINUANCE AND ABANDONMENT**

*Upon the discontinuance of the use of the said right-of way and of the exercise of the right(s) hereby granted, the Grantee shall, in accordance with the applicable regulations restore the Said Lands to the same condition, so far as may be practicable to do so, as the Said Lands were prior to the entry thereon and the use thereof by the Grantee. PROVIDED HOWEVER, the Grantee may, at its option, leave and abandon the said pipeline or pipelines in place. The Grantee agrees to withdraw and discharge any encumbrance registered in the Land Titles Office pertaining to this Agreement upon abandonment of the pipeline or pipelines.*

**10. DISCHARGE OF ENCUMBRANCES**

*The Grantee may, where reasonably required to protect its interests under this Agreement, pay or discharge all or any balance owing under any agreement for sale or mortgage, or of any tax, charge, lien or encumbrance of any kind or nature whatsoever which may now or hereafter exist on or against or in any way affect the Said Lands, in which event the Grantee shall be subrogated to the rights of the holder or holders thereof, and may in addition thereto, at its option, reimburse itself by applying on account the repayment of the amount so paid by it.*

**11. DISPUTE RESOLUTION**

*In the event of any dispute or claim arising between the parties, the parties shall refer the matter to the appropriate governing body to be determined in accordance with the provisions of the relevant legislation then in force in the Province of Alberta. If the provisions of the relevant legislation do not permit resolution of the matter in issue, or the appropriate governing body refuses to hear the matter, the matter in issue shall be referred to dispute resolution before a single arbitrator agreed upon by the Grantor and the Grantee, and if they cannot agree, then the issue shall be referred to three (3)*

*disinterested arbitrators, one (1) to be appointed by the Grantor, one (1) by the Grantee and the third by the two (2) arbitrators so appointed and the decision of the single arbitrator or any two (2) of the three (3) arbitrators, as the case may be, shall be final and conclusive; PROVIDED THAT in all other aspects the provision of the dispute resolution legislation then in force in the Province of Alberta shall apply to each submission. In any event, the responsibility for the dispute resolution costs shall be determined by the appointed arbitrators.*

## **12. DEFAULT**

*a. Notwithstanding anything herein contained to the contrary, the Grantee shall not be in default in the performance of any of its covenants or obligations under this Agreement, unless and until the Grantor has notified the Grantee in writing of such default and the Grantee has failed, within thirty (30) days of the receipt of such notice, to commence action to remedy the same. For the purpose of this clause, a letter from the Grantee outlining its proposed timeline and intent to remedy the default and its anticipated timeline for completing same shall constitute a commencement of action to remedy the said default. Thereafter the Grantee shall proceed to take all reasonable steps to remedy the default within its anticipated timeline. In the event, a mutual agreement to remedy cannot be reached the Grantor may proceed to seek dispute resolution, pursuant to Clause 11.*

## **13. FORCE MAJEURE**

*Neither party shall be considered in default in performance of its obligations under this Agreement, to the extent that the performance of such obligations or any of them is delayed by circumstances, existing or future, which are beyond the reasonable control of the pertinent Grantor or the Grantee.*

## **14. ADDITIONAL TERMS**

*Any additional terms, expressed or implied, shall be of no force or effect unless made in writing and agreed to by the Grantor and the Grantee.*

## **15. ASSIGNMENT**

*The Grantee or the Grantor may delegate, assign or convey to other persons, corporations or agents all or any of the powers, rights and interests obtained by or conferred upon the Grantee or the Grantor herein, and may enter into all agreements, contracts, and writings and do all necessary acts and things to give effect to the provisions of this clause. However, no delegation, assignment or conveyance by the Grantor or the Grantee is effective or binding upon the other party until the other party has received notice, which notice shall include the name and address of the assignee.*

## **16. QUIET ENJOYMENT**

*The Grantee while performing and observing the covenants and conditions on its part to be performed and observed, shall and may peaceably hold and enjoy the rights, liberties and easements hereby granted without hindrance, molestation or interruption on the part of the Grantor or any person claiming by, through, under or in trust for the Grantor for so long thereafter as The Grantee, his successors and assigns continues to use the right-of-way for the purposes herein set forth.*

**17. NOTICES**

All notices to be given herein shall be in writing. All notices to be given herein may be given personally, by letter addressed to the party to whom the notice is to be given, sent by facsimile or e-mail provided the Grantor has facilities to receive the notice. Any such notice shall be deemed to be given to, and received by, the addressee the same day if given personally, ten (10) days after the mailing thereof, if mailed postage prepaid and within three days if sent electronically.

Unless changed by written notice, the addresses of the parties hereto shall be:

The Grantee:

a) FOR MAIL:

b) FOR DELIVERY:

Grantor:

**18. PERSONAL INFORMATION CONSENT**

By providing personal information to the Grantee, the Grantor consents to the Grantee's collection, use, retention and disclosure of that information for any and all purposes and uses as permitted or contemplated under this Agreement and as needed in regulatory proceedings or to comply with any legal requirements.

**19. NON-RESIDENT STATUS**

Each Grantor represents that he or she is not a non-resident of Canada within the meaning of the Income Tax Act (Canada), and that if the Grantor's status for income tax purposes changes, the Grantor will promptly notify the Grantee in writing. Subsequent to such notification, any payment made by or on behalf of the Grantee to the Grantor under this Lease will be made net of any deduction or withholding as required by the Income Tax Act (Canada) or any other applicable law.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year first above written.

**SIGNED**

by the above named Grantor in the presence of:

GRANTOR

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
Per:

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
Per:

GRANTEE

Per:

**DOWER CONSENT OF SPOUSE**

I, \_\_\_\_\_ being married to \_\_\_\_\_  
(Grantor) do hereby give my consent to the disposition of our homestead, made in this instrument, and I have executed this document for the purpose of giving up my life estate and other dower rights in the said property given to me by the Dower Act, to the extent necessary to give effect to the said disposition.

\_\_\_\_\_  
Spouse of Grantor

**CERTIFICATE OF ACKNOWLEDGMENT BY SPOUSE**

1. This document was acknowledged before me by \_\_\_\_\_  
apart from her husband (or his wife).
2. \_\_\_\_\_ acknowledged to me that she (or he):
  - a. is aware of the nature of the disposition.
  - b. is aware that the Dower Act, gives her (or him) a life estate in the homestead and the right to prevent disposition of the homestead by withholding consent.
  - c. consents to the disposition for the purpose of giving up the life estate and other dower rights in the homestead given to her (or him) by the Dower Act, to the extent necessary to give effect to the said disposition.
  - d. is executing the document freely and voluntarily without any compulsion on the part of her husband (or his wife).

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ A.D. \_\_\_\_\_.

\_\_\_\_\_  
A Commissioner for Oaths in and for the Province of Alberta

CANADA  
PROVINCE OF ALBERTA                      **DOWER AFFIDAVIT**  
TO WIT:

I, \_\_\_\_\_ of \_\_\_\_\_, in the Province of Alberta, make oath and say:

1. That I am the Grantor named in the within instrument.
2. That I am not married

OR

That neither myself nor my spouse have resided on the within mentioned land at any time since our marriage.

SWORN before me at \_\_\_\_\_ )  
 in the \_\_\_\_\_ of \_\_\_\_\_, )  
 this \_\_\_\_\_ day of \_\_\_\_\_ A.D. \_\_\_\_\_ ) \_\_\_\_\_  
 \_\_\_\_\_ )  
 A Commissioner for Oaths in and for the Province of Alberta

**AFFIDAVIT OF EXECUTION**

CANADA  
 PROVINCE OF ALBERTA  
 TO WIT:

I, \_\_\_\_\_ of \_\_\_\_\_, in the  
 Province of Alberta, \_\_\_\_\_, make oath and say:  
 (Occupation)

1. That I was personally present and did see \_\_\_\_\_ named in the within instrument, who is (are) personally known to me to be the person(s) named therein, execute the same for the purposes named therein.
2. That the same was executed at \_\_\_\_\_, in the Province of Alberta, and that I am the subscribing witness thereto.
3. That I know the said \_\_\_\_\_ and he (or she) is, (or they each are) in my belief, of the full age of eighteen years.

SWORN before me at \_\_\_\_\_ )  
 in the \_\_\_\_\_ of \_\_\_\_\_, )  
 this \_\_\_\_\_ day of \_\_\_\_\_ A.D. \_\_\_\_\_ ) \_\_\_\_\_  
 \_\_\_\_\_ )  
 A Commissioner for Oaths in and for the Province of Alberta

**CONSENT BY OTHER INTERESTED PARTY**

I, (WE) \_\_\_\_\_, of \_\_\_\_\_,  
 having an interest in and to the Said Lands as \_\_\_\_\_  
 (describe the interest, i.e.: occupant, vendor, purchaser,  
 mortgagee)

by virtue of:

- a. an Agreement or Instrument dated the day of A.D. .
- b. a verbal agreement with the Grantor.

DO HEREBY AGREE that all my (our) rights, interests and estate which are, or may be, affected by the Agreement shall be fully bound by all the terms and conditions thereof both now and henceforth.

DATED at \_\_\_\_\_, in the Province of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_\_.

\_\_\_\_\_  
Witness

**AFFIDAVIT OF EXECUTION**

CANADA  
PROVINCE OF ALBERTA  
TO WIT:

I, \_\_\_\_\_ of \_\_\_\_\_, in the Province of Alberta, \_\_\_\_\_, make oath and say:  
(Occupation)

1. That I was personally present and did see named in the within instrument, who is (are) personally known to me to be the person(s) named therein, execute the same for the purposes named therein.
2. That the same was executed at \_\_\_\_\_, in the Province of Alberta, and that I am the subscribing witness thereto.
3. That I know the said and he (or she) is, (or they each are) in my belief, of the full age of eighteen years.

SWORN before me at \_\_\_\_\_ )  
in the \_\_\_\_\_ of \_\_\_\_\_, )  
this \_\_\_\_\_ day of \_\_\_\_\_ A.D. \_\_\_\_\_ ) \_\_\_\_\_

\_\_\_\_\_  
A Commissioner for Oaths in and for the Province of Alberta