

Haul Route Agreement

THIS HAUL ROUTE AGREEMENT made and entered into this 24 day of April, 2019, by and between **Brule County** ("County") and TransCanada Keystone Pipeline, LP ("Keystone").

WHEREAS, Keystone plans to use County Roads in conjunction with the construction of its proposed pipeline project, including but not limited to movement of equipment, supplies and/or materials over County Roads identified in the Haul Route Map, attached as Exhibit A; and described as;

**Co. Road 367th, from I-90 Interchange north (0.4 miles),
including approximately 0.2 miles of the east / west Iron Horse Road**

WHEREAS, the County, as the case may be, is responsible for constructing, altering, improving, and maintaining County Roads; and

WHEREAS, the County and Keystone anticipate that as a result of Keystone's use of the roads, accelerated deterioration may occur. Thus, repairs or improvements may be required which would result in additional maintenance and repair expense for the County as a result of Keystone's activities; and

WHEREAS, it is appropriate that a Haul Route Agreement be completed addressing the hauling operations by Keystone in the County.

NOW, THEREFORE, in consideration of the terms, conditions, and covenants contained herein, it is mutually agreed as follows:

1. PURPOSE:

This Haul Route Agreement shall establish and govern Keystone's responsibilities resulting from the use of any Haul Road by Keystone, its affiliates, employees, contractors and authorized designees, during Keystone's pre-construction activities and during construction of the Keystone XL Pipeline.

2. DEFINITIONS:

The following definitions and terms shall apply to this Agreement:

- a. Additional Maintenance. "Additional Maintenance" means grading, reshaping, repair, and/or modification(s) that must be performed on County Roads in excess of the usual, customary routine maintenance operations performed by the County, including applying additional gravel, as a consequence of construction or maintenance of the Keystone XL Pipeline, and its appurtenances, including work camps and pipe storage yards.

- b. County Road(s). "County Road" means a street, road, or other public way, including shoulders, designated for the purpose of vehicular traffic and included in the County road system.
- c. Road(s). "Road" means a street, road, or other public way, including shoulders, designated for the purpose of vehicular traffic that is not included in the County road system, which the County is responsible for maintaining.
- d. Haul Road. "Haul Road" means any County road and associated bridges and, cattle guard/auto gates, used for transporting equipment, supplies and/or materials employed in or related to the construction or maintenance of the Keystone XL Pipeline.
- e. Haul Route. "Haul Route" means the system of Haul Roads agreed on by the parties as the routes in the County, as the case may be, to be employed for transportation of equipment, supplies, and/or materials employed in or related to the construction of the Keystone XL Pipeline.
- f. Improvements. "Improvements" mean roadway improvements, including but not limited to widening or modification of roads and approaches to accommodate transport vehicles on County roads designated as a Haul Road.

3. GENERAL AGREEMENT AS TO ROAD USE:

- a. Keystone understands and agrees that, although the Haul Roads covered by this Agreement are County Roads and are subject to normal traffic use, Keystone, by virtue of its use of the County Roads as Haul Routes, assumes responsibility for Additional Maintenance on such roads as a consequence of Keystone's use thereof. Under no circumstances will Keystone be responsible or liable for any accident, injury, tort, or be liable to any third party solely by virtue of this Agreement. Furthermore, no third-party beneficiary may claim or assert any benefit or right, either directly or indirectly, by or through this Agreement. Except to the extent specifically provided herein, the County agrees that this Agreement does not alter or shift to Keystone the legal responsibilities of the County, including the responsibility for ensuring the safety of County Roads.
- b. Keystone agrees to retain at its own expense an independent third-party consultant to conduct a pre-construction assessment of the County Roads to determine their suitability as a potential Haul Road. If Keystone selects a third-party consultant that the County does not reasonably approve, the County may select its own consultant to conduct a pre-construction assessment, at Keystone's expense, and Keystone will coordinate the efforts of the two consultants. County representatives will be asked to participate in the assessment. At a minimum, the consultant will conduct the following (hereafter "Pre-Construction Assessment"):
 - (i) Video the roads to document pre-construction conditions;
 - (ii) Document gravel depth at both the shoulders and center of the road at random intervals between 300-500 yards apart;

- (iii) Document gravel quality including average size at random intervals along the Haul Road;
- (iv) Document cross slope or crown on the Haul Roads;
- (v) Measure and document road width from shoulder top to shoulder top at random intervals;
- (vi) Document weight restrictions;
- (vii) Document pavement thickness;
- (viii) Photograph or otherwise record existing pavement faults, distresses or fatigue;
- (ix) All documentation will include GPS coordinates.

c. The County thereafter will (i) advise Keystone whether Keystone's desired use of a road will be permitted as a Haul Road, and (ii) advise Keystone of any Improvements that would be required for Keystone to utilize a County Road as a Haul Road. Keystone shall not use any roads not approved by the County, as applicable, to transport equipment, supplies and/or materials in connection with the construction of Keystone's proposed pipeline and related improvements.

d. During Keystone's use of the County Roads, Keystone will maintain each such road so that it is usable by the general public for travel that is not related to pipeline construction. This includes replacing gravel where it is worn, repairing blow-outs, and using appropriate dust control measures.

e. In places where Keystone elects to provide additional turning radius to a County Road, Keystone agrees that the road surface will be completed with a minimum of six inches of gravel, or such lesser amount as is reasonably acceptable to the County Road Superintendent, as the case may be, and to extend and maintain all affected culverts.

f. In places where Keystone chooses to build an approach to a County Road, the approach must be at least 60-feet long, it must be graveled with a minimum of six inches of gravel, or such lesser amount as is reasonably acceptable to the County Road Superintendent, as the case may be, it must include a culvert of sufficient length at least 15 inches in diameter, and the approach must have sufficient turning radius.

g. Keystone shall not stage equipment on the Haul Roads in a manner that significantly impedes or inhibits emergency vehicles, local traffic during normal work commuting times, or school buses during normal travel times.

h. If the County Road Superintendent, as the case may be, determines that use of a given Haul Road likely will result in a diversion of normal local traffic to other County roads, he shall notify Keystone, identify the affected roads, and Keystone shall be afforded at least forty-eight hours to inspect and document the condition of the subject roads. If Keystone and the County, both acting in good faith, agree those roads have experienced or are likely to experience more than normal deterioration as a consequence of the diversion, Keystone will repair the damage caused by the diverted traffic to a condition reasonably acceptable to the County Road Superintendent.

i. If Keystone fails to abide by the terms of this Agreement, the County may prohibit Keystone's continued use of any Haul Road. Keystone shall cure any breach of this Agreement within two days after receiving notice of breach, and shall suspend all hauling or other use on that Haul Road which requires repairs until such time as Keystone repairs that Haul Road. Keystone shall suspend operations and use on any Haul Road as required by the County in the event of adverse conditions, such as frost out, excessive rain, or a soaker rain, that would in the County's determination result in undue damage to the roadway.

j. The County, and Keystone shall agree upon all Haul Roads to be used during pipeline construction, which shall be indicated on a map which shall be appended to this Agreement. Keystone shall sign the Haul Roads with temporary signs to indicate speed limits of 45 miles per hour, and 25 miles per hour near farm residences, for trucks and all over-size vehicles and shall require all its affiliates, employees, contractors and authorized designees, to comply with that speed limit.

k. All gravel used by Keystone on County Roads must be approved by the County Road Superintendent, whose approval will not be unreasonably withheld. Gravel must meet County specifications.

l. Once Keystone has ceased using the Haul Roads for the purposes stated herein, Keystone shall notify the County, within 30 days thereafter, shall notify Keystone of any Additional Maintenance that they assert is the obligation of Keystone to perform. If the Haul Roads are damaged because of Keystone's use thereof, Keystone will restore the Haul Roads to at least as good a condition as documented by the Pre-Construction Assessment.

m. The County hereby agree to Keystone's use of the Haul Roads covered by this Agreement subject to the conditions contained herein. Prior to use of a Haul Road, Keystone shall make any required Improvements necessary for Keystone's use and obtain any lawfully required governmental permits and licenses. If Keystone elects to have any of the work contemplated herein performed by contractors, Keystone shall ensure that those contractors comply with Keystone's obligations under, and the requirements of, this Agreement. This Agreement shall not serve to relieve any operator of a Keystone vehicle from complying with applicable speed limits, weight restrictions, or other applicable law.

n. Any Improvements to the Haul Roads necessitated by Keystone's operations and agreed upon by the Parties pursuant to Section 3(c) above, shall be considered incidental to the hauling performed, and shall be made at Keystone's sole expense unless otherwise authorized in addendum to this Agreement.

o. After construction is completed, the County and s may elect to retain additions to County Roads to provide turning radius, approaches, or other improvements that Keystone

makes to the Haul Roads. The County agrees to indemnify Keystone and hold it harmless for any claim related to the approach, addition, or road improvement.

4. GENERAL TERMS:

- a. Keystone shall comply with all Federal, State, and local laws and regulations.
- b. If any portion of this Agreement is held invalid it shall have no effect upon the validity of the remaining portions of this Agreement.
- c. The definitions in this Agreement shall control the meaning of terms used herein. Where no definition is expressly stated herein, a term shall have that meaning clearly indicated by, or reasonably implied from, the context in which such term is used.
- d. All notices and oral or written communications relating to this agreement may be forwarded to:

IN WITNESS WHEREOF, the Parties hereto executed this Haul Route Agreement as of the first date hereinabove written.

**TransCanada Keystone Pipeline, LP by
its agent TC Oil Pipeline Operations,
Inc.**

Signed: 

Name: Rob Latimer

Title: SR. LAND REP.

Signed: 

Name: Land Manager

Title: Denisha Cummings

Brule County

Signed: 

Name: James Nesladek

Title: Chairman