

Haul Route Agreement

THIS HAUL ROUTE AGREEMENT made and entered into on May 21, 2019 by and between Pennington County, a political subdivision of the State of South Dakota ("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; and

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 transporting equipment, supplies and/or materials employed in or related to the construction or maintenance of the Keystone XL Pipeline on the County 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 owned and maintained by Pennington County and included in the Pennington County Road System.

- c. Haul Road. “Haul Road” means any County Road, associated bridges, cattle guards, and/or auto gates used for transporting equipment, supplies and/or materials employed in or related to the construction or maintenance of the Keystone XL Pipeline.
- d. 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.
- e. Improvements. “Improvements” mean roadway improvements, including but not limited to widening or modification of County Roads and approaches to accommodate Keystone’s transport vehicles on County Roads designated as Haul Roads.

3. GENERAL AGREEMENT AS TO COUNTY 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 Roads, assumes responsibility for Additional Maintenance on such Haul Roads as a consequence of Keystone’s use thereof. 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, nor is it intended this Agreement restrict or prohibit Keystone from using the balance of the County Road system for light vehicle and light equipment traffic.
- b. Keystone has completed a pre-construction assessment of the County Roads it has selected as Haul Roads. The County has approved the assessment. The completed pre-construction assessment of selected Pennington County Roads is contained in a binder titled: **Keystone XL Pipeline Pre-Construction phase documentation Pennington County** dated January 29, 2019, which is marked **Exhibit A** and incorporated herein and made a part of this Agreement by this reference. Keystone shall commence and promptly complete construction of all Improvements and additions to the Haul Roads prior to its use for the construction of the Keystone XL Pipeline.

In the event Keystone selects additional County Roads as potential Haul Roads, Keystone agrees to retain at its own expense an independent third-party consultant to conduct a pre-construction assessment of those County Roads selected as Haul Roads to determine their suitability. 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(s) will conduct the following (hereafter “Pre-Construction Assessment”):

- (i) Video the selected County Roads to document pre-construction conditions;
- (ii) Document gravel depth at both the shoulders and center of each selected County Road at random intervals between 300-500 yards apart;

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

The County thereafter will advise Keystone whether Keystone's desired use of a County Road will be permitted as a Haul Road, and advise Keystone of any Improvements that would be required for Keystone to utilize the selected County Road as a Haul Road.

c. Keystone shall use only those County Roads approved by the County as Haul Roads to transport equipment, supplies and/or materials in connection with the construction of Keystone's proposed pipeline and related Improvements. The approved Haul Roads and specifications for use by Keystone are set forth in the TransCanada Keystone Pipeline, LP Pennington County Road Improvement Addendum which is marked **Exhibit B** for reference and attached hereto and incorporated herein by this reference.

d. During Keystone's use of the Haul Roads, Keystone will maintain each such Haul Road so that it is usable by the general public for travel. 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 Haul Road, Keystone agrees that the modifications to the road will be completed with a minimum of six inches of gravel, or such lesser amount as is reasonably acceptable to the County Highway 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 Haul 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 Highway 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 Highway 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 County Roads, and Keystone shall be afforded at least forty-eight hours to inspect and document the condition of the subject County 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 Highway 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 on and use of 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 County Road.

j. The County, and Keystone shall agree upon all Haul Roads to be used during construction of the Keystone XL Pipeline, which shall be indicated on a map which shall be appended to this Agreement. The Haul Roads approved to date are identified in **Exhibit B** and are depicted on maps titled **Pennington County Haul Routes To Box Elder Rail Siding** and **Construction Haul Roads And Pipeline Access Roads** marked **Exhibit C** and **D**, respectively and are attached hereto and incorporated herein by this reference.

Keystone shall sign the Haul Roads with temporary signs limiting trucks and over-sized vehicles associated with construction of the Keystone XL Pipeline to 45 miles per hour and 25 miles per hour near farm residences. Keystone shall require all its affiliates, employees, contractors and authorized designees, to comply with that speed limit.

k. All gravel used by Keystone on Haul Roads must be approved by the County Highway 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 promptly notify the County and within 30 days thereafter, the County shall notify Keystone of any Additional Maintenance that it asserts 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 their pre-construction condition as documented by the Pre-Construction Assessment.

m. The County hereby agrees 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. Keystone shall obtain any lawfully required governmental permits and licenses. All Improvements shall be constructed in a manner and to a condition reasonably acceptable to the County. 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.

n. To the best of its ability, Keystone shall not allow liens of any type to attach to the Haul Roads or the real property on which the roads are located. In the event a lien is perfected against any such Haul Road or real property on which a Haul Road is located, Keystone shall

cause the lien to be promptly released or shall post a bond or give other assurances as in the statutorily allowed manner pending satisfaction of the lien.

o. 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.

p. Any Improvements to the Haul Roads necessitated by Keystone's operations and agreed upon by the Parties pursuant to the terms of this agreement, shall be considered incidental to the hauling performed, and shall be made at Keystone's sole expense unless otherwise authorized in an addendum to this Agreement.

q. After construction of the Keystone XL Pipeline is completed and Keystone no longer has reason to use the Haul Roads, Keystone shall notify the County. The County may elect to retain additions or Improvements that Keystone makes to the Haul Roads. The County will, on the completion of Keystone's use of the Haul Roads, inspect and document the condition of each addition or Improvement it elects to allow to remain. Thereafter, the County agrees to accept responsibility for the additions and Improvements and 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 applicable to its performances under this Agreement.

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:

For the County

Pennington County Highway Superintendent

3601 Cambell St.

Rapid City, SD 57701

605-394-2166

with a copy to Pennington County Deputy States Attorney Jay Alderman , P.O.

Box 6160, Rapid City, SD 57709

For Keystone

Denisha Cummings

Land Manager

TRANSCANADA, Keystone Pipeline LP

13710 FNB Parkway, Suite 300

Omaha, NE 68154

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.**

Pennington County

Signed: _____

Name: _____

Title: _____

Signed: _____

Name: _____

Title: _____



Exhibit B

TransCanada Keystone Pipeline, LP

Pennington County Road Improvement Addendum

Specifications for agreed to road use, and road improvements as listed below in the county of Pennington, South Dakota, hereinafter called "**County**".

TransCanada Keystone Pipeline, LP, hereinafter called "**Keystone**", hereby agrees to specific road use conditions and improvements to be completed at their cost, prior to use of the county road, known as Elm Springs road, described below and indicated in the map in the attached page (the "**Road**"). Keystone and County further agree to the conditions applicable to 1416/Liberty Blvd road, as set forth below. To wit:

Legal Description:

Pennington Co. SD – Elm Springs Road

Specific Road Use Conditions – the Road:

Keystone's traffic shall be limited to loads less than approximately 30,000 GVWR

Improvements agreed to – the Road:

Application of Mag. Chloride at rate of 0.5 gallons / square yard of 5.22 miles of gravel surface on the Road with approximate width of 24 feet. Application shall be completed prior to Keystone's use of the Road following blading by Keystone.

Legal Description:

Pennington Co. SD – 1416 / Liberty Blvd (Box Elder Spur Heavy Haul Route)

Specific Road Use Conditions – 1416 / Liberty Blvd.:

Keystone shall complete the provide all outstanding road assessment data 30 days prior to project traffic use of 1416 / Liberty Blvd.

Keystone shall install County specified safety signage in agreed to locations prior to project traffic use of 1416 / Liberty Blvd.