

Haul Route Agreement

THIS HAUL ROUTE AGREEMENT, made and entered into this 20th day of August, 2013 by and between Butte County, ("County"), 839 5th Ave, Belle Fourche, South Dakota 57717 and TransCanada Keystone Pipeline, LP, 2700 Post Oak Blvd., Suite 400, Houston, TX 77056 ("Keystone").

WHEREAS, Keystone plans to use County Roads in transporting items related to the construction of its proposed pipeline project, including but not limited to products, equipment, materials, and/or supplies over County Roads; and

WHEREAS, Keystone wishes to use certain roads as Haul Routes in Butte County; and

WHEREAS, Keystone acknowledges that its contemplated use of Butte County roads will exceed the normal and customary use for which the roads are designed; and

WHEREAS, the County is authorized to construct, alter, improve, maintain and regulate County Roads under the supervision and direction of the County Commission and the Highway Superintendent; and

WHEREAS, the County and Keystone anticipate that as a result of Keystone's use of County Roads, accelerated deterioration will likely occur and that repairs or improvements may be required and maintenance expenses may be incurred by the County as a result of Keystone's activities;

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 provide for Keystone's minimum responsibilities for use of any Haul Road during Keystone's construction of its proposed pipeline to indemnify and pay to Butte County for Keystone's hauling operations along County Roads.

2. DEFINITIONS:

The following definitions and terms shall apply to the entirety of this Agreement:

- a. Maintenance. "Maintenance" means grading, reshaping, repair, and/or modification that may be performed on County roads during Keystone's use of County roads as set forth in this Agreement.
- b. County Road(s). "County Road" means a street, road, bridge, or other public way, including shoulders, designated for the purpose of vehicular traffic and under the jurisdiction of the County.
- b. Haul Road. "Haul Road" means any County road, bridge, or other structure which is used for transporting items including, but not limited to products, equipment, materials, manpower and/or supplies.
- d. Haul Route. "Haul Route" means the system of haul roads between a source site and the destination and/or the source site and the nearest major intersection as determined by the County.

e. Improvements. "Improvements" mean roadway improvements, including but not limited to widening or modification of roadway approaches to accommodate transport vehicles, required by the Director because of Keystone's anticipated use of the County Roads 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 a Haul Route, assumes responsibility for Maintenance on such County Roads during the period of use of such roads as Haul Roads and continuing until such roads have been restored as provided in Section 3 ¶

d. In addition to Maintenance costs, Keystone will be responsible or liable for any accident, injury, tort, or other theory of liability to any third party whose damages are caused by the actions of Keystone by virtue of this agreement and Keystone agrees to indemnify Butte County for any damages and costs of defense of any action or litigation, including attorney's fees, that are caused by actions of Keystone including those identified at SDCL §56-3-1 et seq.

b. Keystone agrees to enlist a mutually agreed upon third-party consultant to conduct a pre-construction assessment of County Roads to determine their suitability as a potential Haul Road. County representatives will be asked to participate in the assessment and the assessment shall occur no more than fourteen (14) days prior to scheduled start date. At a minimum, the consultant will conduct the following (hereafter "Pre-Construction Assessment"):

- Video the existing roads to document pre-construction conditions
- Document gravel depth
- Document cross slopes or crowns
- Document weight restrictions
- Document pavement thickness
- Capture existing pavement distresses or fatigue.
- Provide a map of the proposed haul roads.

c. The County, Keystone, and the consultant will participate in a pre-construction roads assessment to ensure the acceptability of the road condition. The County thereafter will (i) advise Keystone whether Keystone's desired use of a County 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. It is understood by the parties that it is at the discretion of Butte County to allow Keystone's use of the County roads for a haul road. Keystone does not waive any rights under law, if any, to appeal a decision of Butte County as to road use.

d. Once Keystone has ceased using the Haul Roads for the purposes stated herein, Keystone shall notify the County within 30 days thereafter and the County then shall notify Keystone of any

Maintenance that the County asserts is the obligation of Keystone. Keystone agrees that it will restore the Haul Roads to at least as good a condition as existed prior to Keystone's use of the Haul Roads. Damage, if any, will be determined by comparing the Pre-Construction Assessment to the condition following Keystone's use of the Haul Roads. If Keystone is unable to restore the road to its prior condition, Butte County is entitled to monetary damages, and County may seek reimbursement from any bond on file with the State of South Dakota or any other governmental agency.

e. The County hereby agrees to Keystone's use of the Haul Roads covered by this Agreement subject to the conditions contained herein. Keystone shall be responsible for obtaining any other permits or licenses which the County or any other governmental entity may require to operate or move its vehicles on County Roads. This Agreement shall not serve to relieve any operator of a Keystone vehicle from complying with applicable speed limits, weight restrictions, or other posted restrictions.

f. Any Improvements of the Haul Roads necessitated by Keystone's operations and agreed upon by the Parties 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. Any such Improvement shall be subject to approval by County prior to commencement of construction. Improvements made to said Haul Roads may be allowed to become permanent at the discretion of Butte County. However, the designation of an improvement as permanent shall not entitle Keystone to be reimbursed for the same.

4. GENERAL TERMS:

a. Compliance with Laws and Regulations

Keystone shall comply with all Federal, State, and local laws and regulations.

b. Severability

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. Scope and Construction of Terms

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. Keystone shall be liable for and shall indemnify and hold Butte County harmless from any and all actions, matters or costs and expenses, including reasonable attorney fees, associated with any endeavors which keystone undertakes in its performance under this Agreement without limitation. This does not waive any claim to sovereign or governmental immunity belonging to Butte County.

e. This Agreement shall be governed and construed as to interpretation and performance in accordance with the laws of the State of South Dakota. Any lawsuit or action pertaining to or affecting this Agreement shall be venued in Circuit Court, Fourth Judicial Circuit, Butte County, South Dakota and

such court shall have exclusive jurisdiction to hear any and all matters concerning this Agreement and/or its enforcement.

f. In the event Keystone fails or refuses to comply with its obligations under this Agreement, Butte County shall have the right to curtail or restrict Keystone's use of all Butte County roads.

g. While performing any service or duty under this Agreement, Keystone is an independent contractor and is not an officer, agent or employee of Butte County.

h. Butte County expressly reserves any and all immunities and defenses available to it and does not, by entering into this Agreement waive any defenses or immunities otherwise available to it.

i. This agreement may not be amended except in writing signed by an authorized representative of each party. Any such amendment is subject to the same approval requirements as in this Agreement.

j. The terms of this Agreement shall be binding upon the parties' representatives, successors and assigns to the extent permitted by law.

k. Notification. All notices and oral or written communications relating to this agreement may be forwarded to:

On behalf of the County:

Butte County Highway Superintendent

Attn: Don Adams

830 6th Street

Belle Fourche, S D 57717

(605) 892-4414

On behalf of Keystone:

TransCanada Keystone Pipeline, LP

Attn: Tim Irons

717 Texas St. Ste. 2400, Houston, TX 77002

832-320-5294

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.

Butte County

Signed: [Signature] Signed: Kim Kling
Name: Tim M. Irons Name: Kim Kling
Authorized Signatory
Title: _____ Title: Chairman

Signed: A. C. Osborn
Name: Alex Osborn
Authorized Signatory
Title: _____

Donald Osborn
Don Adams
Highway Superintendent

Chaine Jensen
Butte County Auditor



LEGEND

► **SYSTEM DESIGNATION***

- PRIMARY ROAD
- SECONDARY ROAD
- LOCAL, NEIGHBORHOOD OR RURAL ROAD
- VEHICULAR TRAIL (4WD)
- SERVICE DRIVE
- PRIVATE ROAD

*EXCLUDED FROM DESIGNATION: PRIVATE DRIVE, PRIVATE DRIVE, PRIVATE DRIVE

► **ROUTE PREFERENCES**

- DESIGNATED HAUL ROUTE

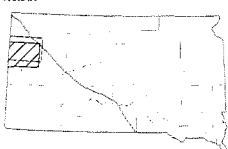
► **PIPELINE PROJECT DATA**

- MILEPOST
- KEYSTONE XL PROJECT
- VALVE SITE
- PUMP STATION
- CONSTRUCTION CAMP
- PIPE YARD
- RAIL SIDING

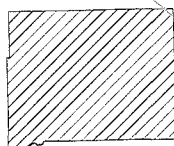
► **ADMINISTRATIVE / OTHER**

- RAILROAD
- COUNTY BOUNDARY
- TOWNSHIP / RANGE (PLSS)
- URBAN AREA
- WATERBODY
- RIVER / STREAM
- INDIAN RESERVATION
- NATIONAL PARK SERVICE
- STATE PARK
- U.S. FOREST SERVICE
- U.S. FISH & WILDLIFE SERVICE

► **SOUTH DAKOTA**



► **BUTTE COUNTY**



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**KEYSTONE XL PROJECT
SOUTH DAKOTA TRANSPORTATION MAP**

DRAWN BY:	PD	DATE:	2012-12-17
CHECKED BY:	JP	REVISION:	3
COUNTY:	BUTTE	STATE:	S. DAKOTA
DWG:	4389-08-ML-03-500	SHEET:	1 OF 1

