

Haul Route Agreement

THIS HAUL ROUTE AGREEMENT, made and entered into this 6th day of August, 2019 by and between Gregory County, ("County"), and TransCanada Keystone Pipeline, LP, ("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 Country Roads; and

WHEREAS, the County is responsible for constructing, altering, improving, and maintaining Country Roads under the supervision and direction of the Public Works Director and/or the County Engineer; and

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

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 govern Keystone's responsibilities for use of any Haul Road during Keystone's preconstruction activities and construction of its proposed pipeline to the extent Keystone's hauling operations could cause accelerated deterioration of County Roads. These hauling operations shall only apply to Keystone, its employees, its contractors, or authorized designees thereof.

2. DEFINITIONS:

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

- a. Additional Maintenance. "Additional Maintenance" means grading, reshaping, repair, and/or modification that must be performed on County roads in excess of the usual and customary maintenance operations performed as routine maintenance by the County as a consequence of construction or maintenance of the Keystone XL Pipeline and its appurtenances.
- 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.
- c. 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, and/or supplies and as a result incurs deterioration.

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 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 Additional Maintenance on such County Roads resulting from its use of such County Roads as a Haul Route. 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 Gregory County for any damages and costs of defense of any action of litigation, including attorney's fees, that are caused by actions of Keystone as allowed by SDCL §56-3-1 et seq.

b. Keystone pipeline responsibility for additional maintenance applies throughout construction of the Keystone XL in South Dakota. During Keystone's use of the Haul Roads, Keystone will maintain each 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.

c. If the County Highway Superintendent, as the case may be, determines that the use of a given Haul Road likely will result in a diversion of normal 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.

d. 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.

e. 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 Gregory 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 Gregory County as to road use.

f. 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 the County asserts is the obligation of Keystone. Keystone agrees that if the Haul Roads are damaged because of Keystone's use of the Haul Roads, Keystone 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 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, Gregory County may seek monetary damages, and County make seek reimbursement from any bond on file with the State of South Dakota or any other governmental agency.

g. 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 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.

h. Any Improvements of 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. Any such Improvement shall be authorized by Township prior to construction. Improvements made to said Haul Roads may be allowed to become permanent at the discretion of Gregory County. However, the designation of any improvements as permanent shall not entitle Keystone to be reimbursed for the same.

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 of the County Road.

4. GENERAL TERMS:

a. Compliance with Laws and Regulation

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. Notification.

All notices and oral or written communications relating to this agreement may be forward to:

On behalf of the County:
Gregory County Highway Superintendent
Attn: Brad Ellwanger
P.O. Box 437
Burke, SD 57523
Cell: 605-775-2677

On behalf of Keystone:
TransCanada Keystone Pipeline, LP
Attn: Denisha Cummings
13710 FNB Parkway, Suite 300
Omaha, NE 68154
Tel: 402.492.7467
Fax: 402.492.7490

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

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

County

Signed: 

Name: Robert Latimer

Title: S.R. LAND REP.

Signed: 

Name: Myron Johnson - Chair

Title: Chairperson

Signed: 

Name: Denisha Cummings

Title: LAND MANAGER