

Haul Route Agreement

THIS HAUL ROUTE AGREEMENT, made and entered into this 6TH day of SEPTEMBER, 2011, by and between Harding County, 410 Ramsland Street, Buffalo, South Dakota, 57720, ("County"), and TransCanada Keystone Pipeline, LP, 2700 Post Oak Blvd, Suite 400, Houston, Texas, 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, the County is responsible for constructing, altering, improving, and maintaining County 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 a 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 construction of its proposed pipeline to the extent Keystone's hauling operations 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 this 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.
- 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 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 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 Harding County for any damages and costs of defense of any action or litigation, including attorney's fees, that are caused by actions of Keystone as allowed by 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 slope or crown
- 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 Harding 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 Harding County as to road use.

d. Once Keystone has ceased using the Haul Roads for the purposes stated herein, Keystone shall notify the County, and 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 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, Harding County; may seek 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 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 County permit. Any such improvement must be authorized by the County prior to construction. Improvements made to said haul roads may be allowed to become permanent at the discretion of Harding 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. Notification

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.

County

Signed: 

Name: Tim M. Irons

Title: Authorized Signatory

Signed: 

Name: Charles Verbeke

Title: Chairman, Harding County Commission

Signed: 

Name: Ricardo S. Lopez

Title: Authorized Signatory