

Haul Route Agreement

THIS HAUL ROUTE AGREEMENT, made and entered into this 7 day of March, 20 12, by and between Meade 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 County Roads; and

WHEREAS, the County is responsible for constructing, altering, improving, and maintaining County Roads under the supervision and direction of the County Highway Superintendant; 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

WHEREAS, it is necessary that a Haul Route Agreement be completed addressing the existing, new and expanded hauling operations by Company which may cause accelerated deterioration of county roads

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, 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, cattle guard/auto gate 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. Under no circumstances will Keystone be responsible or liable for any accident, injury, tort, or other theory of liability 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. The County agrees that this Agreement does not alter or in any way or otherwise shift responsibility for ensuring the safety of the County Roads from the County to Keystone.

b. Keystone agrees to enlist, at its own cost, a third-party consultant to conduct a pre-construction assessment of 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 in regard to the pre-construction assessment, at Keystone's cost, and Keystone will coordinate the efforts of the two. County representatives will be asked to participate in the assessment and the assessment shall occur no more than thirty (30) days prior to scheduled start date. At a minimum, the consultant will conduct the following (hereafter "Pre-Construction Assessment"):

- Document gravel depth
- Document cross slope or crown
- Document weight restrictions

- Document pavement thickness
- Capture existing pavement distresses or fatigue.

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.

d. Keystone agrees to provide the County and Townships with a map of all Haul Roads to be used during pipeline construction.

e. Once Keystone has ceased using the Haul Roads for the purposes stated herein, Keystone shall notify the County, and the County, within 60 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.

f. 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.

g. 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.

h. In addition to all conditions above, Keystone will abide by all stipulations contained in the South Dakota Public Utility Commission Final Order.

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:

On behalf of the County:

Meade County Highway Superintendent

Attn: Ken McGirr

20623 131st Ave., Sturgis, SD 57785

605-347-4565 o / 605-490-3550 c

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.

County

Signed: 

Name: Tim M. Inoué

Title: Authorized Signatory

Signed: 

Name: Alan Aker

Title: com. chair

Signed: 

Name: James H. Odom

Title: Regional Project Manager