

THIS AGREEMENT made effective on the ____ day of _____, 20__

BETWEEN:

MUNICIPAL DISTRICT OF WAINWRIGHT NO. 61
(the "Municipality")

- AND -

(the "Company")

ROAD CROSSING AGREEMENT

WHEREAS:

- A. the Company owns and operates a utility and/or petroleum distribution system within the Municipality;
- B. the Municipality is charged with the management, care and control of the roads within the Municipality;
- C. the Company must obtain the Municipality's consent to occupy and use the roads within the Municipality, and to construct, maintain, operate and remove the Facilities (as hereinafter defined) in, on, over, under, along or across the roads within the Municipality;
- D. the Company must not unduly interfere with the public use, enjoyment and safety of the roads within the Municipality; and
- E. the Municipality and the Company have agreed that it would be mutually beneficial to outline the terms and conditions pursuant to which said consent shall be provided by the Municipality to the Company.

NOW THEREFORE in consideration of the promises and the mutual covenants herein contained, the Municipality and the Company each agree with the other as follows:

1. DEFINITIONS

1.1 In this Agreement:

- (a) "**Emergency Work**" means access to the Right of Way, and/or the maintenance, repair or replacement of the Facilities, where health, safety or the provision of essential services is endangered;
- (b) "**Facilities**" means all permanent improvements or installations contained within the Right of Way which are owned or controlled by the Company;

- (c) “**Municipal Road**” means that certain road allowance within the boundaries Municipality, as more particularly shown within Schedule “A” attached hereto;
- (d) “**person**” includes one or more individuals, partnerships, bodies corporate, unincorporated organizations, governments, government agencies, trustees, executors, administrators or other legal representatives, other than the Municipality or its legal representatives;
- (e) “**Right of Way**” means all that portion of the Municipal Road outlined or indicated within the Schedule “A” attached hereto;
- (f) “**Work**” means the construction, installation, maintenance, operation, inspection, repair and replacement of all or any of the Facilities, excluding Emergency Work, and the placement, storage, fabrication, operation, maintenance of the equipment and materials within the Right of Way as reasonably required by the Company to carry out the foregoing; and
- (g) “**Work Plan**” means those certain plan, designs, activities and information provided to and approved by the Municipality in accordance with Article 3 of this Agreement.

2. SCOPE OF MUNICIPALITY’S CONSENT

2.1 The Municipality hereby:

- (a) grants to the Company the non-exclusive right on, in, under, over, across and along the Right of Way for the purposes reasonably required to carry out the Work; and
- (b) consents to the Company’s non-exclusive use of the Municipal Road for the purposes of a temporary working area, to the extent same is reasonably required in order to carry out the Work, and to facilitate access to and from the Right of Way;

all subject to the terms, covenants and conditions contained within this Agreement.

2.2 For clarification, unless otherwise agreed upon in writing pursuant to a Work Plan, the Company shall not construct or install within the Municipal Road or the Right of Way any permanent improvements or alterations, nor any additions to or extensions of the Facilities.

2.3 Nothing contained in this Agreement shall be deemed to limit or in any manner prohibit the Municipality, its assigns or licensees, and any person from fully using and enjoying any portions of the Municipal Road including the Right of Way which are not then required by the Company to carry out the Work. For certainty, during conduct of the Work, the Company may, subject always to the Work Plan, occupy and interrupt usage of the Municipal Road, as well as bar access to such portion of the Municipal Road as may be reasonably required in order to conduct the Work, preserve the safety of any person, or secure equipment or materials required in relation to the Work.

2.4 Save and except for as expressly provided for otherwise within this Agreement, the non-exclusive right, privilege and license herein granted to the Company is strictly limited to the rights expressly granted herein and the Right of Way.

3. AUTHORIZATION OF WORK

- 3.1** The Company shall not access the Municipal Road, nor begin any Work, without first providing a plan to the Municipality setting out:
- (a) the nature and extent of the Work, including, without limitation, the activities to be undertaken, and the equipment and materials to be placed within, the Municipal Road;
 - (b) the nature and extent of the Facilities proposed to be placed within the Right of Way
 - (c) the portion of the Municipal Road to be occupied by the Company as a temporary working area, the duration of the occupation of the temporary working area, and the activities to be undertaking within the temporary working area; and
 - (d) such other information as requested or required by the Municipality, in form and content acceptable to the Municipality, acting reasonably;

which work plan shall be subject to revision and approval by the Municipality, acting reasonably.

- 3.2** Notwithstanding Section 3.1 above, the Company may perform such Emergency Work as is strictly necessary to end the emergency, without prior notice or the submission of a Work Plan, provided that the Company notifies the Municipality of the occurrence of the emergency and the nature and extent of the Emergency Work as soon as practicable.

- 3.3** Prior to the commencement of any Work, the Company shall obtain all required permits, consents and approvals to carry out the Work, and furnish evidence satisfactory to the Municipality (acting reasonably) that such permits, consents and approvals have been obtained by the Company.

4. CONDITIONS

- 4.1** The conduct of all Work conducted by or on behalf of the Company shall be subject to the following terms and conditions:
- (a) the design, construction, installation, maintenance, operation, inspection, repair and replacement of all or any of the Facilities shall be carried out in strict conformance with the corresponding Work Plan, and all applicable municipal, provincial and federal standards, and shall be carried out in a diligent and workmanlike manner, consistent with generally accepted engineering and construction practices;
 - (b) all Work shall be conducted and completed to the satisfaction of the Municipality, acting reasonably;
 - (c) the Work shall be performed in a manner that safeguards and protects all other structures, transmission lines, equipment, facilities and improvements of any kind present in the Municipal Road or adjacent thereto;
 - (d) the Company shall ensure that all work carried out in the Municipal Road shall have sufficient and proper traffic control, safety devices and warning devices or flagman as and where necessary;
 - (e) the Company shall leave the Municipal Road in substantially the same condition in which it was in immediately prior to the Work. Should the Company fail to rectify any

inadequacies in the restoration of the Municipal Road as identified by the Municipality, acting reasonably, within 90 days of receiving written notice of such inadequacies from the Municipality, the Municipality may (but is not obliged to) take such reasonable measures the Municipality deems necessary to complete the required restoration, and the cost of such measures shall be reimbursed by the Company to the Municipality forthwith upon demand;

- (f) without limiting the generality of Section 4.1(e) above, all waste material shall be removed, and all disturbed areas shall be leveled, trimmed and seeded to grass;
- (g) the Company agrees, except in the case of Emergency Work, to give to the Municipality no less than 7 days' prior written notice (weekends and statutory holidays excluded) before commencing any Work, or otherwise occupying the Municipal Road. In the case of Emergency Work, the Company shall attempt to give the Municipality verbal notice before commencing any Emergency Work;
- (h) if the Municipality requires that any Work be stopped so to coordinate other construction activities within or adjacent to the Municipal Road, the Company shall cease such Work upon delivery of a written notice to the Company to that effect by the Municipality;
- (i) the Company shall be responsible for all Work, including the cost of all Work;
- (j) the Company shall carry out such Work in the Municipal Road only during daylight hours, except if required otherwise to carry out Emergency Work;
- (k) should the Municipal Road be developed, the top surface of the Facilities shall be no closer than 1.5 meters from the lowest point of the ditch. Should the Municipal Road be undeveloped, the top surface of the Facilities shall be located no closer than 2.5 meters below grade;
- (l) all oil field equipment belonging to the Company (including, without limitation, pipeline, roadway, lease preparation and reclamation equipment) shall be steam cleaned prior to entering into the boundaries of the Municipality, to assist in the control of the spread of noxious weeds and pests, as defined within the *Agricultural Pest Act* (Alberta), as amended and/or replaced from time to time;
- (m) on bored crossings, the bell hole is to be a minimum of 7.5 meters from the boundary of the Municipal Road;
- (n) the Company shall, at the Company's expense, upon request made by the Municipality, locate and expose the Facilities;
- (o) the Facilities and all crossings of the Municipal Road shall be permanently marked by the Company, at the Company's cost. Location marker signs shall be erected by the Company on both sides of the Municipal Road, immediately adjacent to the boundary of the Municipal Road and directly above the Facilities; and
- (p) the Company must adhere to the compaction standards adopted by the Municipality when carrying out the Work.

5. INSPECTION AND SUPERVISION OF WORK

- 5.1 The Municipality may have a representative present at the Municipal Road at all times prior to, during and following the Work.
- 5.2 The Company agrees to pay the inspection/supervision fee as established by the Municipality from time to time, to cover the cost of the inspecting and supervising the Work and related administration costs.
- 5.3 The Company agrees to attend such site meetings and joint inspections as reasonably requested by the Municipality from time to time.

6. COMPLIANCE WITH LAWS

- 6.1 The Company shall conform and shall be responsible for the conformance by its officers, employees, agents, contractors and invitees within the Municipal Road to all laws, bylaws, statutes, regulations, ordinances, orders and directives of all competent authorities, governing bodies and regulatory agencies which are applicable to the Municipal Road and the Work, including, without limitation, all traffic, health and safety laws, including, without limitation, any regulations requiring the installation of safety devices or appliances. The Municipality may, on 24 hours' written notice to the Company, or sooner, if in the opinion of the Municipality the likelihood of harm to persons or property is imminent, suspend Work performed by or on behalf of the Company within the Municipal Road where there appears to be a lack of compliance with this Section, or because conditions of danger exist that would likely result in injury to any person or property. Such suspension shall continue until the lack of compliance or danger is eliminated.

7. RELOCATION

- 7.1 Upon the receipt of 60 days' advance written notice from the Municipality, the Company shall, at its own expense, relocate the Facilities or perform any other Work in connection with the Right of Way as may be reasonably required by the Municipality. However, in cases of emergency, the Municipality may take any measures deemed necessary for public safety with respect to the Facilities, and the Company shall reimburse the Municipality for all reasonable related expenses thereby incurred.
- 7.2 If the Company fails to complete the relocation of the Facilities in accordance with Section 7.1, or otherwise fails to perform any other Work in the manner prescribed by this Agreement, the Municipality may (but is not obligated to) complete such relocation or other Work. In such event, the Company shall reimburse the Municipality for the costs incurred by Municipality in carrying out such relocation or other Work, together with an administrative charge of 15% of such costs, forthwith upon demand.

8. ENVIRONMENTAL RESPONSIBILITY

- 8.1 The Company agrees to assume all environmental liability relating to its occupancy and use of the Municipal Road, including but not limited to, any liability for clean-up of any hazardous substance in, on, under, or discharged from Municipal Road which may result from:
 - (a) the operations of the Company, or the operations of the Company's employees, agents, contractors and invitees on, in, under, over, across or along the Municipal Road; or
 - (b) any products or goods brought on, in, under, over, across or along the Municipal Road by the Company, or by the Company's employees, agents, contractors or invitees.

9. INSURANCE

9.1 The Company covenants and agrees to carry out and maintain the following policies of insurance, and provide copies of the policies to the Municipality prior to the commencement of any Work:

- (a)** commercial general liability insurance with policy limits of no less than \$5,000,000.00 per occurrence, which shall extend to cover the contractual obligations of the Company as stated within this Agreement, shall include the Municipality as an additional insured, and shall contain a cross-liability clause and a waiver of subrogation as against the Municipality and the Municipality's insurers;
- (b)** all perils property insurance in respect of the Facilities, and all other property belonging to the Company which may be within or upon the Municipal Road, insuring no less than the full replacement cost thereof; and
- (c)** such other types of insurance and in amounts reasonably required by the Municipality from time to time.

All such policies as aforesaid shall also provide that they cannot be cancelled, lapsed or materially changed without at least 30 days' notice to the Municipality.

10. LIABILITY AND INDEMNIFICATION

10.1 The Municipality shall not be liable for any damage to the Facilities, or other property of the Company, or for the injury or death of any officer, employee, agent, contractor, licensee or invitee of the Company, except where caused by the willful misconduct or gross negligence of the Municipality or its employees.

10.2 The Company hereby indemnifies the Municipality, and the Municipality's elected officials, officers, employees, agents, representatives, successors and assigns from and against all losses, liabilities, costs, damages, and expenses (including, without limitation, all legal fees and disbursements on a solicitor and his own client full indemnity basis) incurred by or asserted against the Municipality, or the Municipality's elected officials, officers, employees, agents, representatives, successors or assigns in connection with or as a result of carrying out the Work, the location of the Facilities within the Right of Way, the use and occupation of the Municipal Road by the Company, or the Company's officers, employees, agents, contractors, licensees or invitees, or any breach of this Agreement by the Company, save and except only where such loss, liability, cost or damage is caused by the willful misconduct or gross negligence of the Municipality or its employees.

10.3 Notwithstanding anything contained in this Agreement, the Municipality shall not be liable in any way for indirect or consequential losses or damages, or damages for pure economic loss, howsoever caused or contributed to, in connection with this Agreement, the Work, the Facilities, or other property of the Company within or Municipal Road.

11. DEFAULT AND REMEDIES

11.1 Should either party fail to observe or perform any term, covenant or condition herein contained to be observed or performed by that party, the other party shall give written notice of such failure to the defaulting party, and provide the defaulting party 15 days within which to rectify such default.

Should the defaulting party fail to remedy the default within said 15 days period, the other party may, in addition to any and all other remedies which may be available to the innocent party by virtue of this Agreement, at law or in equity:

- (a) take such reasonable steps that are appropriate and necessary to remedy such default, and the party in default shall be liable for and pay all reasonable costs and expenses incurred with respect to the remedying of such default, together with an administrative charge of 15% of such costs and expenses, forthwith upon demand;
- (b) terminate this Agreement; or
- (c) in the case default by the Company, the Municipality may bar and prevent access to and use of the Municipal Road, unless and until all defaults are rectified by the Company.

12. GENERAL

12.1 This Agreement shall enure to the benefit of and be binding upon the parties, their respective successors and permitted assigns.

12.2 The Company shall not assign or transfer this Agreement or the rights or privileges herein contained without first obtaining the written consent of the Municipality, such consent not to be unreasonably withheld.

12.3 In the event of any assignment of the Agreement by the Company, the Company shall remain jointly and severally liable under this Agreement in all respects with the assignee, and the Municipality may require the assignee to enter into its own agreement with the Municipality before the assignment becomes effective.

12.4 Any condoning, excusing or overlooking by either party of any default, breach or non-observance by the other party at any time or times in respect of any covenant, provision, or condition herein contained shall not operate as a waiver of the party's rights hereunder in respect of any subsequent default, breach or non-observance nor as to defeat or affect in any way the rights of any party hereunder in respect of any subsequent default breach or non-observance by the other party. No covenant, term or condition of this Agreement or any breach thereof shall be deemed to have been waived by either party unless such waiver is completed in writing and signed by the party waiving as the case may be.

12.5 Every notice required by this Agreement to be in writing shall be delivered personally, sent by prepaid registered mail, or by email. In the case of personal delivery, such notice shall be deemed to be received on the date of delivery, in the case of service by mail, shall be deemed to have been given 7 days following the date upon which it was mailed, and in the case of email, shall be deemed to have been received on the date of delivery. The addresses of the parties for the purposes of notice are respectively:

- (a) to the Company: _____

Attention: _____
Ph: (780) _____
Fax: (780) _____

Email: _____

(b) to the Municipality: 717 – 14 Avenue
Wainwright, AB
T9W 1B3
Attention: _____
Ph: (780) 842-4454
Fax: (780) 842-2463
Email: _____

In the event that notice is served by mail at a time when there is an interruption of mail service affecting the delivery of such mail, the notice shall not be deemed to have been served until 7 days after the date that mail service is restored. Either party may change its address for service by serving a notice on the other party in the manner herein provided.

12.6 This Agreement sets forth the entire agreement between the parties hereto and shall be deemed to have superseded any and all previous agreements or understanding whether written or oral between the parties.

12.7 The parties hereby ratify and affirm those matters contemplated within the preamble to this Agreement, and acknowledge and agree that same shall be incorporated into and form part of this Agreement.

12.8 This Agreement may be simultaneously executed in counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument, which shall be sufficiently evidenced by any such original, facsimile copy or electronic copy (.pdf) of the counterpart.

12.9 Time shall be of the essence of this Agreement.

12.10 Nothing contained in this Agreement shall alter, diminish or derogate from any liability protection or limitation afforded to either the Municipality or the Company pursuant to any statute or regulation from time to time in force in the Province of Alberta.

IN WITNESS WHEREOF, the parties have hereunto caused their corporate seals to be affixed, attested under the hands of their proper officer in that behalf, as of the day and year first above written.

M.D. OF WAINWRIGHT NO. 61

(corporate seal)

PER: _____

PER: _____

(corporate seal)

PER: _____

PER: _____

SCHEDULE "A"

[NTD: INSERT PLAN SHOWING RIGHT OF WAY]

THIS ADDENDUM made effective on the ____ day of _____, 20__.

BETWEEN:

MUNICIPAL DISTRICT OF WAINWRIGHT NO. 61
(the "Municipality")

- AND -

(the "Company")

ROAD CROSSING AGREEMENT ADDENDUM

WHEREAS:

- A. The Municipality and the Company entered into a Road Crossing Agreement dated _____, 20__ (the "**Road Crossing Agreement**"); and
- B. The Grantor and Grantee wish to amend Schedule "A" of the Road Crossing Agreement by incorporating Schedule "A" attached hereto, thereto, thereby expanding upon the Right of Way, such expansion to be subject to all of the terms and condition contained within the Road Crossing Agreement.

NOW THEREFORE in consideration of the payment of \$10.00 by each of the Municipality and the Company to the other, the receipt and sufficiency of which is wholly acknowledged, the parties hereby agree as follows:

- 1. **DEFINITIONS** - Unless otherwise specifically defined within this Addendum, all capitalized terms shall have the same meaning as provided for within the Road Crossing Agreement.
- 2. **AMENDMENT OF SCHEDULE "A"** - The parties hereto acknowledge and agree that Schedule "A" to the Road Crossing Agreement is hereby amended by adding the contents of Schedule "A" attached hereto, thereto.
- 3. **SURVIVAL OF TERMS AND CONDITIONS** - Except as otherwise expressly amended herein, all provisions contained in the Road Crossing Agreement shall continue in full force.

IN WITNESS WHEREOF the parties have caused this Addendum to be executed under seal, and by the hands of their proper signing officers, all to give effect to this Addendum the day and year first above written.

MUNICIPAL DISTRICT OF WAINWRIGHT NO. 61 _____

PER: _____

(c/s)

PER: _____

(c/s)

PER: _____

PER: _____



SCHEDULE "A"

[NTD: INSERT PLAN SHOWING ADDITIONAL RIGHT OF WAY]