

Appendix 8-58

Access Easement Agreement (Manitoba)

Energy East File No.

**ACCESS EASEMENT AGREEMENT
(Manitoba)**

This access easement agreement is dated as of ____ day of _____, 20____.

BETWEEN:

(“Grantor”)

AND:

**ENERGY EAST PIPELINE LTD.,
in its capacity as general partner on behalf of
ENERGY EAST PIPELINE LIMITED PARTNERSHIP**

(“Grantee”)

RECITALS:

- A. The Grantor is the registered and beneficial owner of an estate in fee simple subject, however, to such encumbrances, liens and interests as are at the date hereof set forth in the existing title, of that parcel of land situated in the province of Manitoba, and described as follows:

as contained and described in Title No.
(the “**Servient Lands**”);
- B. The Grantee is the registered owner of or is otherwise the holder of those lands or interests therein in the province of Manitoba, described as follows:

(the “**Dominant Lands**”);
- C. The Grantee intends to construct certain facilities to be used in connection with its pipeline, including facilities on the Dominant Lands; and
- D. The Grantor, as owner of the Servient Lands, has agreed, on and subject to all of the terms and conditions set forth herein, to grant to the Grantee, as owner or holder of the Dominant Lands, an easement in, through and across that portion of the Servient Lands comprising the Access Easement (as defined herein) for vehicular and pedestrian access to and egress from the Dominant Lands;

Now therefore, in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by both the Grantor and the Grantee, and in consideration of the payment or payments made or to be made to the Grantor by the Grantee, the parties agree as follows:

1. GRANT OF RIGHTS

The Grantor, as owner of the Servient Lands, hereby grants, conveys and transfers to the Grantee, as owner of the Dominant Lands, for so long hereafter as the Grantee may desire to exercise them:

- (a) the right, licence, liberty, privilege, right-of-way and easement to clear and to use that portion of the Servient Lands as shown on the sketch or plan attached hereto as Schedule B (the “**Access Easement**”) for the purpose of pedestrian and vehicular access to and egress from the Grantee’s facilities located or to be located on the Dominant Lands, including, without limiting the foregoing, to construct, maintain, repair and operate a roadway on the Access Easement, to install and maintain fencing along the Access Easement, to install and maintain signage on the Access Easement and to connect any such roadway to the Dominant Lands and to any abutting public roadway;
- (b) the full and free right, licence, liberty, privilege and easement of ingress and egress at any time over, along, across and upon the Access Easement; and

Initial	Grantor		
	Agent		

- (c) in cases of emergency, the full and free right, licence, liberty, privilege and easement of access to and egress from the Access Easement at any and all times over, along, across and upon the Servient Lands.

(Such rights, licences, liberties, privileges, rights-of-way and easements may be referred to herein, collectively, as the “**Easement Rights**”).

2 **THE EASEMENT RIGHTS**

The Easement Rights:

- (a) extend to the Grantee and its directors, officers, managers, agents, employees, contractors, subcontractors, advisors, consultants, representatives and invitees; and
- (b) may be exercised on foot or with vehicles (including, without limitation, heavy trucks), together with materials, machinery, and equipment for all purposes useful or convenient in connection with or incidental to the exercise and enjoyment of the Easement Rights, upon the terms and conditions set forth herein.

3. **PAYMENT**

The Grantee shall pay to the Grantor the following sum or sums for the rights granted herein:

- (a) the lump sum of _____ Dollars (\$_____) plus any applicable goods and services tax
- or
- (b) annual or periodic payments of equal or different amounts over a period of time as set forth in Schedule A attached

(Delete (a) or (b) and initial)

- 4. The Grantor acknowledges receipt, prior to entering into this agreement, of a notice pursuant to section 87 of the *National Energy Board Act* (Canada) R.S.C 1985, c N-7, as amended, or any statute enacted in place thereof, being referred to herein as the “**Act**”) setting out or accompanied by:

- (a) a description of the portion of the lands required by the Grantee for a section or part of the Grantee’s pipeline;
- (b) details of the compensation offered by the Grantee for such lands required;
- (c) a detailed statement made by the Grantee of the value of such lands required in respect of which compensation was offered;
- (d) a description of the procedure for approval of the detailed route of the Grantee’s pipeline; and
- (e) a description of the procedure available for negotiation and arbitration under Part V of the Act in the event that the Grantor and the Grantee are unable to agree on any matter respecting the compensation payable.

- 5. Pursuant to the Act, the Grantor has the option of requiring the compensation for the Easement Rights to be made by one lump-sum payment or by annual or periodic payments of equal or different amounts over a period of time. The Grantor has selected the method of compensation referred to above.

- 6. Where the Grantor has selected annual or other periodic payments as referenced herein, the amount of such compensation payable by the Grantee shall be reviewed every five (5) years. Where the Grantor has selected annual or other periodic payments the Grantor hereby waives and releases to the Grantee any lien it may have on the Access Easement in connection with such payments.

- 7. (a) Except as provided in subclauses (b) or (c) of this clause 7, annual or periodic payments of compensation pursuant to Schedule “A”, if any, shall be made to the registered owner of the Access Easement at the time the payment is due. The Grantor shall not retain the right to annual or periodic payments upon the sale or other disposition of that part of the Servient Lands of which the Access Easement forms a part.
- (b) In the event of a change in the ownership of all or part of the Access Easement, the Grantee may nevertheless at its option, until thirty (30) days after proper notice of such change has been given to the Grantee, continue to make such annual or periodic payments to the person or persons to whom it was making such payments at the time of such change.
- (c) In the event of a severance in ownership of the Access Easement, the notice referred to in subclause (b) of this clause 7 may include a provision as to the manner in which such future annual or periodic payments of the compensation are to be divided between or

Initial	Grantor		
	Agent		

among registered owners of the Access Easement. If no such notice is given or if such a notice is given but no such provision is included, then the provisions of subclauses (a) and (b) of this clause 7 shall apply except that, in addition, the Grantee may, at its option, make any such payment jointly as to all the persons to whom it is entitled to make payment in accordance with this clause 7.

- (d) For the purposes of this clause 7, "proper notice" shall consist of (i) written notice of such change in ownership executed by both the prior registered owner and the new registered owner, accompanied by (ii) a notarial or certified copy of the registered instrument effecting such change in ownership.

8. REPRESENTATIONS AND WARRANTIES

The Grantor represents and warrants that it has the right to convey all of the rights granted hereunder free from all encumbrances, that it has done no act to encumber the Access Easement and the Easement Rights and that it has not granted any other rights to any third party, and the Grantor is not otherwise aware of any other rights, that would conflict with the rights granted hereunder except for:

- (a) any interests or encumbrances registered on the certificate of title to the Servient Lands as of _____; and
- (b) any interests or encumbrances disclosed in writing to the Grantee by the Grantor prior to the date the Grantor executes this agreement.

- 9. The Grantor represents that the Grantor is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada) and that if the Grantor's status for income tax changes, the Grantor will promptly notify the Grantee in writing.

ADDITIONAL TERMS AND CONDITIONS

- 10. The Grantee, or any person, firm or corporation acting on its behalf, may enter upon and occupy the Access Easement with its employees, agents, contractors, subcontractors and invitees, and with any vehicles, machinery and equipment required for its purposes. The Grantee shall have the right at any time and from time to time to remove any boulder or rock, and to sever, fell, remove or control the growth of any roots, trees, stumps, brush or other vegetation on or under the Access Easement that materially interfere with the Easement Rights granted herein.
- 11. The Grantee's use of the Servient Lands pursuant to this agreement shall be restricted to use of the Access Easement for access to and egress from the Dominant Lands related to the line of pipe or other facility located thereon or thereunder, unless the Grantor provides written consent to any proposed additional use at the time of the proposed additional use.
- 12. The Grantee shall compensate the Grantor for all damages suffered as a result of the operations of the Grantee, including all damage done to any drainage system, crops, pasture, timber, trees, hedges, produce, water wells, artesian springs, livestock, buildings, fences, culverts, bridges, lanes, improvements or equipment on the lands.
- 13. The Grantee may terminate this agreement at any time by written notice to the Grantor and provided that the Grantee has complied with its obligations herein relating to the restoration of the Access Easement, the Grantee shall stand relieved of all obligations, other than those accrued prior to the date of termination. If the Grantee registers this agreement, it shall cancel such registration at its sole expense.
- 14. Upon the abandonment of the Access Easement and the termination of all the rights hereby granted, the Grantee shall conserve, reclaim and remediate the Access Easement in accordance with the then applicable legislation, regulations and governmental directions.
- 15. Subject to this agreement, the Grantor shall have the right to fully use and enjoy the Access Easement provided that such use does not interfere with the rights herein granted to the Grantee. Without the prior written consent of the Grantee, acting reasonably, the Grantor shall not, and the Grantor shall not grant any right to any other party to:
 - (a) excavate, construct, drill, install, erect or permit to be excavated, constructed, drilled, installed or erected on, over or under any part of the Access Easement any pipe, pit, well, foundation, building or other structure, installation or improvement, or do or permit to be done any mining, quarrying, land levelling, landscaping or other work or activity of any like or similar nature on, in or under the Access Easement;
 - (b) alter the grade of the Access Easement;
 - (c) store vehicles or equipment or other materials on the Access Easement; or
 - (d) take any action which blocks, impedes, restricts or limits the exercise by the Grantee of any of the Easement Rights or damages the roadway located on the Access Easement in

Initial	Grantor		
	Agent		

any way or manner (in which case the Grantor shall repair the damages to the satisfaction of the Grantee, acting reasonably, at the Grantor's sole cost and expenses),

in each case to the extent that the same would materially adversely affect or restrict the Grantee's use and enjoyment of the Access Easement or the Dominant Lands.

16. The Grantee, upon performing and observing the terms and conditions of this agreement in all material respects, shall peaceably hold and enjoy the rights, licences, liberties, privileges and easements hereby granted without hindrance, molestation or interruption on the part of the Grantor or of any person, firm or corporation claiming by, through or under the Grantor.
17. Notwithstanding any provision in this agreement and notwithstanding any rights that any person having an interest may have in law or in equity, should the Grantee fail to pay any payment payable hereunder, the sole remedy of any such person shall be to recover from the Grantee such amount and any interest payable thereon, and in no event shall such person, for whatever reason, interfere with, hinder, molest or interrupt the Grantee in its enjoyment of any of the rights, licences, liberties, privileges or easements granted hereunder.
18. This agreement may be assigned by the Grantee in whole or in part as to all or any portion of the rights, licences, liberties, privileges and easements hereby granted, transferred and conveyed.
19. The Grantee shall indemnify and save harmless the Grantor from any and all liabilities, damages, costs, claims, suits or actions arising by reason of the exercise of the rights herein granted to the Grantee save and except liabilities, damages, costs, claims, suits or actions arising through the gross negligence or wilful misconduct of the Grantor.
20. The rights, licences, liberties, privileges and easements hereby granted are and shall be of the same force and effect for all intents and purposes as covenants running with the land and this agreement shall extend to, be binding upon and enure to the benefit of the heirs, executors, administrators, successors-in-title and assigns of the parties.
21. If any provision of this agreement is invalid under any applicable statute or is declared invalid by a court of competent jurisdiction, then it shall be deemed to be severed, provided, however that the remainder of this agreement shall continue in full force and effect.
22. This agreement sets forth the entire agreement and understanding between the parties, and the Grantor agrees that there are no other prior representations affecting the agreement, other than as are herein set forth.
23. The Access Easement and the Easement Rights herein granted are declared to be binding upon the Servient Lands, as servient tenement herein, for the benefit of and appurtenant to the Dominant Lands.
24. All notices or correspondence required or permitted to be given under or in connection with this agreement shall be in writing and shall be personally delivered, mailed by registered mail or faxed to the other party at its address as follows:

to the Grantor:

Attention:
Fax No.:

to the Grantee:

Energy East Pipeline Ltd.
450-1st Street SW
P.O. Box 1000, Station M
Calgary, Alberta T2P 4K5
Attention: Energy East Land Department
Fax No. (403) 920-2334

or such other address as the Grantor or the Grantee may from time to time advise, and any such notice or payment shall be deemed to be given to and received by the addressee on the date of personal service or, if served by prepaid first class mail, seven (7) days after the mailing thereof.

25. The Grantor consents to the collection, use and disclosure of the Grantor's personal information as described within this agreement as long as the agreement is in force or as required by law. The Grantee collects, uses and discloses the personal information for land rights acquisition and regulatory disclosure as described in this agreement, in accordance with industry practice and as required by law. The Grantee collects, uses, discloses and maintains personal information in accordance with the *Personal Information Protection and Electronic Documents Act* and the Grantee's personal information policy.
26. The Grantor will, from time to time, execute such further assurances of the rights granted herein as may be required by the Grantee. Without limiting the foregoing, the Grantor hereby agrees

Initial	Grantor		
	Agent		

from time to time to execute and deliver all such additional documents, instruments and agreements and to take all such additional steps and actions as may be reasonably required to fully implement the terms of this agreement and as may be required to register and perfect the Grantee's interest in the Servient Lands.

IN WITNESS WHEREOF the parties are executing this agreement with effect on the dated stated in the introductory clause.

SIGNED AND DELIVERED

by the Grantor in the presence of

GRANTOR: (if individual(s))

 Witness
 Print Name: _____

 Name:

 Witness
 Print Name: _____

 Name:

 Witness
 Print Name: _____

 Name:

OR

GRANTOR: (if a corporation)

 Witness
 Print Name: _____

Per: _____
 Print Name: _____
 Position Title: _____

 Witness
 Print Name: _____

Per: _____
 Print Name: _____
 Position Title: _____

I/We have authority to bind the corporation

Date executed by Company: _____, 20____

GRANTEE:

ENERGY EAST PIPELINE LTD.
 in its capacity as general partner on behalf of
 ENERGY EAST PIPELINE LIMITED
 PARTNERSHIP

Per: _____
 Print Name: _____
 Position Title: _____

Per: _____
 Print Name: _____
 Position Title: _____

I/We have authority to bind the corporation

For internal use only:

Legal 21Mar2013			
SF			
NS	Law	Business	Risk

HOMESTEAD ACT CONSENT TO DISPOSITION AND ACKNOWLEDGEMENT

I, the spouse or common-law partner of the Grantor, consent to the disposition of the homestead effected by this instrument and acknowledge that:

- 1. I am the first spouse or common-law partner to acquire homestead rights in the property;
- OR-
- A previous spouse or common-law partner of the Grantor acquired homestead rights in the property but those rights have been released or terminated in accordance with The Homesteads Act (Manitoba).
- 2. I am aware that *The Homesteads Act* (Manitoba) gives me a life estate in the homestead and that I have the right to prevent this disposition of the homestead by withholding my consent.
- 3. I am aware that the effect of this consent is to give up my life estate in the homestead to the extent necessary to give effect to this disposition.
- 4. I execute this consent apart from my spouse or common-law partner freely and voluntarily without any compulsion on the part of my spouse or common-law partner.

Name of Spouse or common-law partner

Signature of spouse or common-law partner

Date

Name of Witness

Signature of Witness

Date

A Notary Public in and for the Province of Manitoba

A Commissioner for Oaths in and for the Province of Manitoba

My Commission expires: _____

Or other person authorizes to take affidavits under The Manitoba Evidence Act (Specify) _____

[delete non-applicable office]

Initial	Grantor		
	Agent		

SCHEDULE "A"

PAYMENT

(a) **Annual Payment**

The consideration for this Agreement, inclusive of the value of the land, is the sum of _____ Dollars (\$ _____)
 to be paid on _____, 20____ and a further sum of _____ Dollars (\$ _____)
 to be paid on _____ in each and every year thereafter for a
 period of _____ years.

(Delete
 (a) or (b)
 and initial)

(b) **Periodic Payment**

The consideration for this Agreement, inclusive of the value of the land, is the sum of _____ Dollars (\$ _____)
 to be paid on _____, 20_____;

- (i) and a further sum of _____ Dollars (\$ _____) to be paid on _____, 20_____;
- (ii) and a further sum of _____ Dollars (\$ _____) to be paid on _____, 20_____;
- (iii) and a further sum of _____ Dollars (\$ _____) to be paid on _____, 20_____;
- (iv) and a further sum of _____ Dollars (\$ _____) to be paid on _____, 20_____;
- (v) and a further sum of _____ Dollars (\$ _____) to be paid on _____, 20_____.

Initial	Grantor		
	Agent		

SCHEDULE "B"

[INDIVIDUAL OWNERSHIP SKETCH OF ACCESS EASEMENT]

Initial	Grantor		
	Agent		

AFFIDAVIT OF WITNESS

(Grantor, if individual(s))

CANADA) I, _____, of
)
 PROVINCE OF MANITOBA) _____, in the Province of Manitoba,
)
 TO WIT:) make oath and say that:

1. I was personally present and did see _____ the person or persons named in the within (or annexed) Grant of Easement sign that instrument at _____, in the Province of Manitoba.
2. I personally know the person or persons whose signature or signatures I witnessed.

OR

The identity of the person or persons whose signature or signatures I witnessed has or have been proven to me to my satisfaction.

3. The person or persons whose signature or signatures I witnessed acknowledged to me that he/she or they:
 - (a) is/are the person or persons named in the attached instrument;
 - (b) has/have attained the age of majority; and
 - (c) is/are authorized to execute the instrument.

SWORN before me at _____)
 in the Province of Manitoba, on)
 _____, 20____)
)
) _____)
)
 A Notary Public in and for the Province of)
 Manitoba)

A Commissioner for Oaths in and for the Province of Manitoba
 My Commission expires: _____

Or other person authorizes to take affidavits under The Manitoba Evidence Act (Specify) _____

[delete non-applicable office]

Initial	Grantor		
	Agent		

AFFIDAVIT OF WITNESS

(Grantor, if individual(s))

CANADA) I, _____, of
)
 PROVINCE OF MANITOBA) _____, in the Province of Manitoba,
)
 TO WIT:) make oath and say that:

1. I was personally present and did see _____ the person or persons named in the within (or annexed) Grant of Easement sign that instrument at _____, in the Province of Manitoba.
2. I personally know the person or persons whose signature or signatures I witnessed.

OR

The identity of the person or persons whose signature or signatures I witnessed has or have been proven to me to my satisfaction.

3. The person or persons whose signature or signatures I witnessed acknowledged to me that he/she or they:
 - (a) is/are the person or persons named in the attached instrument;
 - (b) has/have attained the age of majority; and
 - (c) is/are authorized to execute the instrument.

SWORN before me at _____)
 in the Province of Manitoba, on)
 _____, 20____)
)
) _____)
)
 A Notary Public in and for the Province of)
 Manitoba)

A Commissioner for Oaths in and for the Province of Manitoba
 My Commission expires: _____

Or other person authorizes to take affidavits under The Manitoba Evidence Act (Specify) _____

[delete non-applicable office]

Initial	Grantor		
	Agent		

**AFFIDAVIT OF WITNESS
(Grantor, if a corporation)**

CANADA) I, _____, of
)
 PROVINCE OF MANITOBA) _____, in the Province of Manitoba,
)
 TO WIT:) make oath and say that:

1. I was personally present and did see _____ the person or persons named in the within (or annexed) Grant of Easement sign that instrument at _____, in the Province of Manitoba.
2. I personally know the person or persons whose signature or signatures I witnessed.

OR

The identity of the person or persons whose signature or signatures I witnessed has or have been proven to me to my satisfaction.

3. The person or persons whose signature or signatures I witnessed acknowledged to me that he/she or they:
 - (a) is/are the person or persons named in the attached instrument;
 - (b) has/have attained the age of majority; and
 - (c) is an/are officer(s), director(s), employee(s) of (insert name of Grantor Corporation) _____ and is/are authorized to execute the Grant of Easement.

SWORN before me at _____)
 in the Province of Manitoba, on _____)
 _____, 20____)
)
) _____
)
 A Notary Public in and for the Province of Manitoba)

A Commissioner for Oaths in and for the Province of Manitoba
 My Commission expires: _____

Or other person authorizes to take affidavits under The Manitoba Evidence Act (Specify) _____

[delete non-applicable office]

Initial	Grantor		
	Agent		

AFFIDAVIT VERIFYING CORPORATE SIGNING AUTHORITY

(Grantor, if a corporation)

I, _____ of _____, in the Province of Manitoba, MAKE OATH AND SAY THAT:

- 1. I am an officer, director or employee of (insert name of Grantor Corporation) _____ named in the within (or annexed) Grant of Easement.
- 2. I am authorized by (insert name of Grantor Corporation) _____ to execute the within (or annexed) Grant of Easement without affixing a corporate seal.

SWORN before me at _____)
 in the Province of Manitoba, on _____)
 _____, 20____)

 A Notary Public in and for the Province of Manitoba)

A Commissioner for Oaths in and for the Province of Manitoba
 My Commission expires: _____

Or other person authorizes to take affidavits under The Manitoba Evidence Act (Specify) _____

[delete non-applicable office]

Initial	Grantor		
	Agent		