

Tract: _____

**TRANS MOUNTAIN PIPELINE ULC
EASEMENT AND GRANT OF RIGHT OF WAY
PROVINCE OF ALBERTA**

This Grant of Easement and Right of Way Agreement is dated as of _____, 20____

BETWEEN:

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(the "Owner")

– and –

**TRANS MOUNTAIN PIPELINE ULC
in its capacity as general partner of
TRANS MOUNTAIN PIPELINE LIMITED PARTNERSHIP
(the "Company")**

WHEREAS:

A. The Owner is the registered owner of an estate in fee simple in those lands and premises situated in the Province of Alberta, legally described as follows:

(the "Lands")

B. The Owner has agreed to grant easement rights and rights of way to the Company on and subject to the terms and conditions set forth in this Agreement;

C. The rights of way and easement rights herein granted are necessary for the operation and maintenance of the Company's Undertaking;

IN CONSIDERATION OF the sum of Ten Dollars (\$10) paid to the Owner by the Company, the receipt of which is acknowledged by the Owner, and in consideration of the covenants and agreements on the part of the Company hereinafter set forth, the Owner does grant, covenant and agree as follows:

1. **Defined Terms:** The words and phrases defined in Schedule "A" hereto shall have the respective meanings set out in that Schedule when used in this Agreement.

2. **Limit Area of Pipeline Rights:** Upon the Company having constructed and installed the Permitted Pipeline it shall cause the boundaries of a permanent right of way through the Lands for the Permitted Pipeline to be surveyed by an Alberta Land Surveyor, and shall cause a right of way plan of that part of the Lands included in those boundaries based on that survey to be prepared (the "**ROW Plan**") and deposited in the LTO. Following deposit of the ROW Plan in the LTO the Pipeline Rights shall be restricted to that part of the Lands included in the ROW Plan, and the Company shall cause the Pipeline Rights to be partially discharged as to that part of the Lands not included in the ROW Plan and provide the Owner with a copy of the ROW Plan and evidence of such partial discharge. Notwithstanding the provisions of this section 2, the Company shall continue to be entitled to exercise with respect to the entire area of the Lands the rights set out in section 8, and none of those rights shall in anyway be affected, limited or prejudiced by the registration of the ROW Plan or the partial discharge referred to above.

3. **Pipeline Rights:** The Owner grants, conveys, sets over and transfers to the Company, its employees, agents, contractors, subcontractors, successors and assigns, with or without materials, supplies, workers, vehicles, machinery and equipment, at all times hereafter and by day and by night, and at their will and pleasure, the right, licence, liberty, privilege, easement and right of way on, over, upon, across, along, in, under and through the ROW Area to:

- (a) survey, construct, operate, maintain, inspect, patrol (including by aerial patrol), alter, remove, replace, reconstruct and repair a Pipeline within the ROW Area and for such purposes remove from the ROW Area any Improvements, Soil, Placed Soil or Vegetation on the ROW Area, and to carry out surveys, tests and examinations within the ROW Area and to place Soil on the ROW Area;
- (b) remove from the ROW Area any Incompatible Use on the ROW Area from time to time, including any Improvement, Soil, Placed Soil or Vegetation from time to time on the ROW Area that is an Incompatible Use, and to place Soil on the ROW Area to fill in any Excavation thereon;
- (c) enter, labour, go, be, return, pass and repass within the ROW Area for the foregoing purposes and to travel over the ROW Area for the purposes of the construction, installation, use, operation and maintenance of the Company's Undertaking; and
- (d) generally to do all things necessary or incidental to the Undertaking of the Company in connection with the foregoing.

4. **Restoration and Compensation following Work:** Following any exercise of the Pipeline Rights that results in the disturbance of any part of the ROW Area or anything on it, as soon as weather and soil conditions permit, and to the extent it is practicable to do so, the Company shall, except as otherwise agreed to by the Owner, if and to the extent applicable:

- (a) cause all construction debris to be removed from that part of the ROW Area;
- (b) replace all topsoil removed from and grade and contour that part of the ROW Area so it is suitable for its use as a pipeline right of way under this Agreement and any prior use thereof that is not an Incompatible Use; and

(c) restore Permitted Improvements, on that part of the ROW Area and otherwise leave that part of the ROW Area in a condition suitable for its use as a pipeline right of way under this Agreement and any prior use of it that is not an Incompatible Use.

5. **Compensate Owner:** The Company shall compensate the Owner for all damages suffered as a result of the operations of the Company to the extent contemplated by the provisions of the NEB Act governing compensation. For certainty the Company's obligation to compensate the Owner for damages suffered by the Owner under this section shall not extend to any damages for which the Owner has been or will be otherwise compensated by the Company including by payment for the rights and interests hereby granted, or has been or will be otherwise compensated by the Company as a result of the entry into this Agreement.

6. **Indemnify Owner:** The Company shall indemnify the Owner from all liabilities, damages, claims, suits and actions arising out of the operations of the Company other than liabilities, damages, claims, suits and actions resulting from the gross negligence or willful misconduct of the Owner.

7. **Incompatible Use:** The Owner shall not make, do, install or construct or permit or suffer to be made, done, installed or constructed any Incompatible Use within the ROW Area.

8. **Ancillary Rights:** The Owner grants, conveys, sets over and transfers to the Company the full and free right, licence, liberty, privilege and easement of ingress and egress at any and all times across, over and through the Lands, for itself, its employees, agents, contractors, subcontractors, successors and assigns, with or without materials, supplies, workers, vehicles machinery and equipment, at all times hereafter and by day and by night, to enter upon the Lands for the purpose of access over the Lands from neighbouring lands (including public roads) to the Permitted Pipeline as constructed and installed within the Lands under this Agreement, or any part thereof, and egress over the Lands to neighbouring lands (including public roads) from such Pipeline, or any part thereof, for all purposes necessary or incidental to the exercise and enjoyment of the Pipeline Rights.

9. **Ownership of Pipeline:** Notwithstanding that in constructing, operating, maintaining, inspecting, altering, removing, replacing, reconstructing and repairing a Pipeline within the ROW Area the Company may install pipe and equipment, fittings and facilities appurtenant, affixed or incidental thereto within the ROW Area in such a manner that it or they become affixed to the Lands, the title to such pipe and equipment fittings and facilities appurtenant, affixed or incidental thereto shall until surrendered or abandoned remain in the Company and the Company may at any time remove the whole or any part of the Permitted Pipeline.

10. **Quiet Enjoyment:** The Company shall peaceably hold and enjoy the rights hereby granted and given without hindrance, molestation or interruption on the part of the Owner or on the part of a person, firm or corporation claiming by, through, under or in trust for the Owner. If the Company shall fail to perform or observe any of its obligations under this Agreement the sole remedy the Owner or any other person having an interest in the Lands shall have is to recover from the Company damages for its default, and in no event shall the Owner or any other person having an interest in the Lands interfere with, hinder, molest or interrupt the Company in its use and enjoyment of the rights herein granted.

11. **Other Rights Preserved:** Nothing in this Agreement shall affect or prejudice the Company's rights in respect of the Lands under the provisions of any other right of way, held by the Company that encumbers the Lands or under applicable laws.

12. **Additional Compensation for Above Ground Works:** Where the Company requires any part of the Permitted Pipeline to be installed above ground (other than pipeline markers and cathodic protection test leads) or requires any part of the ROW Area to be fenced, the Owner shall be entitled to additional compensation to be agreed upon between the parties, or failing agreement, pursuant to the procedure available for negotiation and arbitration under Part V of the NEB Act.

13. **Successors and Assigns:** The provisions of this Agreement shall extend to, be binding upon, and enure to the benefit of the heirs, executors, administrators, successors and assigns of the Owner and the Company, respectively.

14. **Interpretation:** Wherever the singular or the masculine or neuter gender is used in this Agreement, it shall be construed as if the plural or other appropriate gender, as the case may be, had been used where the context so requires. If the Owner is comprised of more than one person the obligations and liabilities of the persons included in the Owner hereunder shall be joint and several.

15. **Headings:** The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement.

16. **Severability:** If any provision of this Agreement or any part thereof is determined to be void or invalid, it shall be severed, and the remainder of the Agreement shall be and remain in force and effect and shall be construed as if such void or invalid provision or part had been deleted from it.

17. **No Waiver:** No failure or delay on the part of the Company in exercising the Pipeline Rights or Ancillary Rights or any other right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of the Pipeline Rights or Ancillary Rights or any other right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

18. **Entire Agreement:** This Agreement sets forth the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between the parties with respect thereto, whether written or oral, and there are no promises, covenants, agreements, conditions, representations, warranties or collateral agreements whatsoever, express or implied, between the parties with respect to the subject matter hereof, other than those contained in this Agreement; **Provided however** that nothing in this section shall affect the rights and obligations of the parties set forth in any agreement in writing concerning the Lands, or any part thereof, that is expressed to take effect despite any provision to the contrary contained in this Agreement. No modification or amendment of this Agreement shall be binding unless executed in writing by the parties.

19. **Notices:** Save as otherwise provided herein, any notice or other communication or delivery given under this Agreement may be:

- (a) delivered by hand, in which case it shall be deemed to have been received on delivery;
or
- (b) sent by prepaid registered post mailed at a post office in Canada, in which case it shall be deemed to have been received on the third business day following the day of mailing;

PROVIDED THAT any notice delivered by hand, that is delivered other than prior to 4:00 p.m. local time at the address of the addressee on a business day shall be deemed to be received on the next following business day. The address of the Company for such purpose shall be Suite 2700, Stock Exchange Tower 300 – 5th Avenue S.W., Calgary, Alberta, T2P 5J2 Attention: Legal Department, and the address of the Owner shall be the address that appears on the certificate of title for the Lands maintained by the LTO at the time the notice is given. A party may from time to time notify the other party of a change of address to another address inside Canada. Notwithstanding anything contained herein to the contrary, if a strike, lockout or other labour disruption involving postal employees is in effect or generally known to be impending, every notice or other communication or delivery given under this provision must be given by personal delivery.

20. **Arbitration:** In the event of any dispute between the parties arising under or in relation to this Agreement, or the rights and obligations of the parties or either of them under it, unless the same shall be determinable under the mediation and arbitration provisions of the NEB Act the same shall be decided by a single arbitrator pursuant to the provisions of the applicable provincial arbitration legislation then in force in Alberta, as amended or replaced from time to time. The decision of the arbitrator shall be final and binding upon the parties. The arbitrator shall be authorized to make a determination of and assess responsibility for the costs of the arbitration.

21. **Compliance with Laws:** The Company shall comply with laws applicable to the Company in connection with the exercise of its rights pursuant to this Agreement and the performance of its obligations hereunder.

22. **Additional Terms and Conditions:** This Agreement is subject to any additional terms and conditions set out in Schedule “B” hereto. If there is a conflict between the provisions of Schedule “B” and the other provisions of this Agreement, the provisions of Schedule “B” shall govern.

23. **Counterparts:** This Agreement may be executed in any number of counterparts with the same effect as if all parties had all signed the same document.

24. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws in force in the Province of Alberta and the laws of Canada applicable therein.

IN WITNESS WHEREOF the Owner and the Company have executed and delivered these presents as of the day and year first above written.

Witness

Owner

**TRANS MOUNTAIN PIPELINE ULC
in its capacity as general partner of TRANS
MOUNTAIN PIPELINE LIMITED PARTNERSHIP**

Witness

PER: _____

Schedule “A” - Defined Terms

1. **“Agreement”** means this agreement as the same may be amended from time to time;
2. **“Ancillary Rights”** means the rights granted to the Company over the Lands by and under section 8 of this Agreement;
3. **“Approval”** means an approval in writing by the Company under this Agreement or otherwise, including any conditions of approval;
4. **“Excavation”** means a mine, quarry, well, pit, hole, trench, ditch, foundation or other excavation of any kind or nature of, on or under land;
5. **“Improvement”** means a building, structure, erection, pipe, pole, tower, road, pavement, foundation, improvement or thing of any kind or nature constructed or installed on land;
6. **“including”** means including without limitation;
7. **“Incompatible Use”** means any use, activity or thing within the ROW Area that would materially interfere with, disrupt or delay the exercise of the rights of way granted herein, including inspection, patrol and testing within the ROW Area, or that imperils the safety or security of the Permitted Pipeline as constructed and installed within the ROW Area under this Agreement, or any part thereof, or any person or property in relation to such Pipeline or any part thereof, and includes the use of any part of the ROW Area for, the carrying out within the ROW Area of, or the existence within the ROW Area of, any Excavation, dumping or removing Soil or any Improvement that is not a Permitted Improvement;
8. **“LTO”** means the land titles office for the Province of Alberta;
9. **“NEB Act”** means the *National Energy Board Act* (Canada), and regulations thereunder, all as amended or replaced from time to time;
10. **“Permitted Improvement”** means an Improvement for which there is an Approval and for which there has been compliance with any conditions that are part of that Approval.
11. **“Permitted Pipeline”** means the Pipeline constructed and installed by the Company within the ROW Area under this Agreement and replacements and renewals thereof;
12. **“Pipeline”** means a pipeline for the transportation, storage and handling of oil, other liquid and gaseous hydrocarbons, and products thereof and all installations, equipment, fittings and facilities included in, associated with, appurtenant, affixed or incidental thereto, including pipes, drips, valves, fittings, connections, meters and cathodic protection equipment, and telecommunication and electrical facilities used for or in the operation and maintenance of the pipeline;
13. **“Pipeline Rights”** means the rights granted over the ROW Area by and under section 3 of this Agreement;
14. **“Placed Soil”** means Soil that has been deposited, dumped or placed on land.

15. **“ROW Area”** means the Lands prior to the partial discharge of the Pipeline Rights under section 2, and following that partial discharge means that part of the Lands included in the ROW Plan;
16. **“ROW Plan”** has the meaning given in section 2 of this Agreement;
17. **“Soil”** means soil, fill, earth, sand, gravel, and other material of any kind or nature of which land is composed;
18. **“Undertaking”** means the Pipelines owned by the Company of which the Permitted Pipeline shall form part;
19. **“Vegetation”** means trees, shrubs, nursery stock and other vegetation and includes the limbs or growth of any Vegetation; and
20. **“within”** means across, over, under, in, through and on.

Schedule "B" – The Owner and the Company agree to the following additional terms, and conditions, which shall be read and construed along with the terms and conditions of that certain Agreement made between the Company and the Owner dated as of the _____ day of _____, 20__ to which this Schedule "B" is attached.