

# BOURBON COUNTY RIGHT-OF-WAY USE, REPAIR AND MAINTENANCE AGREEMENT FOR TRANSMISSION PIPELINE UTILITY INSTALLATION

**THIS BOURBON COUNTY RIGHT-OF-WAY USE, REPAIR AND MAINTENANCE AGREEMENT**, is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between **BOURBON COUNTY, KANSAS** (hereinafter referred to as "County", State of Kansas), acting by and through its Board of Commissioners, and

\_\_\_\_\_  
(Company)

and any of its respective related entities' agents, employees, contractors, subcontractors, material suppliers, vendors, transport providers, designees and representatives (hereinafter referred to as "Company").

Whereas, \_\_\_\_\_, whose address is

\_\_\_\_\_  
intends to lay, construct, operate, maintain, inspect, remove, alter, abandon-in place, replace, relocate and reconstruct a \_\_\_\_\_ pipeline through various

(Type of Pipeline)

portions of Bourbon County and;

Whereas, in connection with the development, construction, operation, or maintenance of the proposed pipeline, it will be necessary for Company to:

- 1.) transport overweight and/or oversized equipment and materials over designated haul routes on County Public right-of-way located in Bourbon County, which may in certain cases be in excess of the design limits of such roads and bridges;
- 2.) transport certain locally sourced materials, such as pipe, construction materials, water and gravel etc., on such County Public right-of-way;
- 3.) widen such roads on the County Public right-of-way and make certain modifications and improvements (both temporary and permanent) to such roads (including to certain culverts, bridges, road shoulders, crest corrections, and other related fixtures) to permit such equipment and materials to pass;
- 4.) install, construct and maintain temporary or permanent utilities;
- 5.) construct access entrances; and
- 6.) encroachment within the County's established maintained public right-of-ways.

Whereas, Company acknowledges that it may not conduct the above activities without the express consent and permission of Bourbon County, which has exclusive authority and control over the County and authority over roads, bridges, culverts, drains, and other County property; and

Whereas, Company shall provide a "Project Description Plan" for each Project Site within the County Public right-of-way with the following information;

- 1.) location of all proposed access entrances,
- 2.) estimated number of vehicles and trucks,
- 3.) designated haul routes,
- 4.) location of temporary or permanent utilities,
- 5.) storm water pollution prevention plan, if required,
- 6.) schedule of events,
- 7.) list of oversize/overweight vehicles;
- 8.) list of subcontractors

Company shall update "Project Description Plan" as necessary or at the request of Bourbon County.

Whereas, the County will permit Company to perform the above activities in connection with the Project on County Public right-of-way, including culverts, bridges, road shoulders, crest correction, and other related fixtures) pursuant to the terms and conditions as set forth in this Agreement.

## **ROADWAYS**

### **PRIOR CONDITIONS OF ROADS:**

With respect to any Bourbon County Public right-of-way that is identified in the "Project Description Plan" hereto (together with appurtenant bridges, culverts, road shoulders, intersections, and all other County or controlled property, each a "Designated Road" and collectively, the "Designated Roads"), the Company or Company's representative, at their sole discretion and expense, shall complete a road surface survey of the "Designated Roads" to which it has been granted access prior to the commencement of any and all related hauling, construction and restoration activities, as well as following the completion of any and all company related hauling, construction, and restoration activities. Company will provide a *Road Condition Report* of the "Designated Roads" before and after construction. The assessments shall be conducted using the Rural Road Condition Survey Guide, South Dakota Department of Transportation Office of Research. The Survey Guide provides a subjective condition rating methodology that defines pavement and gravel roadways condition ratings from 0 to 100 for each road and will be used to evaluate the effects of the temporary high volume traffic.

Bourbon County may send a representative to review the County Public right-of-way with the Company. The completed road survey shall be considered the *Road Condition Report*. A copy of the pre-construction *Road Condition Report* shall be received by the County prior to an related hauling, construction or restoration activities taking place on County Public right-of-way, also a post-construction *Road Condition Report* shall be received by the County after all hauling, construction, and restoration activities are completed.

### **PRE-PROJECT ROAD IMPROVEMENTS:**

Prior to Company use of the "Designated Roads", and after review of the *Road Condition Report*, Company and the County or County's representative shall determine if any improvements need to be made prior to the use of the "Designated Roads". The County hereby acknowledges and agrees and consents to Company completion of such modifications and permanent improvements to such "Designated Roads" as are reasonably necessary to accommodate the use of such "Designated Road" by Company. Such modifications and permanent improvements may include the widening of certain roads, the strengthening and /or spanning to existing culverts and bridges, and other improvements and modifications reasonably necessary to accommodate the heavy equipment and materials to be transported on the "Designated Roads".

Company agrees that all modifications and improvements to "Designated Roads", including any temporary turning radius, passing lanes, corner or intersection wide-out, intersections or corner improvements shall comply with all applicable engineering standards and stamped engineering drawings that are submitted by Company to the County or the County's representative prior to the commencement of the modifications and improvements.

### **PROFESSIONAL CONSULTATION:**

If Bourbon County deems necessary, it reserves the right to utilize professional consultants for all or any portion of the review of the *Road Condition Report*, "Project Description Plan or inspection services during the construction period of the project which will include the "Designated Roads". When the County determines professional consultation is necessary, the Company shall deposit an amount that Bourbon County estimates as compensation for professional consultation. The County shall then retain the professional consultation on the matters determined necessary. If the deposited amount is greater than the actual consultation fee, the overage shall be refunded to the Company. If the deposited amount is less than the actual consultation fee, the underage shall be paid by the Company prior to the authorization of any work to be performed within the Bourbon County right-of-way.

Inspection services cost shall be based upon the amount of work performed by the Company within the County Public right-of-way and by accepting this agreement, Company agrees to pay the actual costs directly attributable to the utility installation inspection performed by the County or a professional consultant representing the County. Upon completion of the utility installation, Bourbon County will provide a statement for services rendered and refund any excess payment to the Company within forty-five (45) days. If actual inspection service cost is greater than the deposited amount by Company, then the Company shall reimburse the County for difference of cost within thirty (30) days.

**RESTRICT USE OF ROADWAYS:**

Per K.S.A 8-1912 the County may restrict the use of County public right-of-ways or impose restriction as to the weight of vehicles to be operated upon "Designated Roads" due to climatic conditions that could deteriorate or damage the "Designated Road".

**USE OF DESIGNATED ROADS BY COMPANY:**

In connection with the development, construction, operation and maintenance of the Project, the County hereby acknowledges and agrees that Company may use the "Designated Roads" at any time, seven days a week, 365 days a year, beginning \_\_\_\_\_, 20\_\_\_\_\_ and for the duration of the development, construction, operation, and maintenance of the Project. Such use may include the movement and transportation of overweight and oversized vehicles, equipment, water, loads and other necessary equipment and materials to and from the Project.

For vehicles that are oversized and overweight, the Company shall obtain and submit to Bourbon County an Oversize/Overweight Vehicle Permit before any hauling, transporting or moving activities take place within Bourbon County.

In addition, to identifying the "Designated Roads", the "Project Description Plan" shall identify the routes over the "Designated Roads" that will be used for, travel and transportation. If Company desires to include additional roads or portions thereof the "Designated Roads", Company shall submit an updated version of the "Project Description Plan" and "Designated Roads" map to the County or County's Representative that includes such additional road and to the extent appropriate, revise or supplement the *Road Condition Report* in order to report the pre-existing road conditions of such additional roads or portions thereof.

**DAMAGES AND REPAIRS:**

If any Bourbon County Public right-of-way, or related appurtenances, including bridges, culverts, signage, or other road fixtures, or any County-owned drainage culvert or open ditch, is damaged by Company, Company shall repair (or cause to be repaired) such damage. With respect to damage to a County public right-of-way or related appurtenance, the County and Company shall determine how the damaged area shall be repaired in accordance with Kansas Department of Transportation's Construction and Material specifications latest addition and Bourbon County's Right-of-Way Use Guide with the standard set forth. Subject to considerations of safety, the presence of emergency conditions, and the costs of such repairs, any repair and restoration shall commence and be completed promptly by Company. Following completion of such repair, the County or County's Representative and Company shall jointly inspect the repair to confirm that it has been completed to the satisfaction of the County or County's Representative. Damages to any County owned drainage or open ditch may also include damages occurring within the County's public right-of-way, if such damages deny, impede, or affect the County's ability to exercise drain maintenance within its right-of-way and results in additional costs to the County.

**EXCESSIVE DAMAGES:**

If during the construction, road damage becomes excessive in nature, Company will make additional improvements to strengthen the road base and surface in accordance with the Bourbon County Right-of-Way Use Guide immediately upon written notice from the County or County's Representative. All work on the construction site will cease until repairs are done to correct the problem.

In the event damage results in an immediate hazard to any County Public right-of-way, and such damage is the direct results of Company's access and use, Company shall take immediate action to make the County Public right-of-way safe for the motoring public and immediate hazard cannot be made safe by dusk on the day the hazardous condition is discovered, Company shall protect the motoring public by placing illuminated or night condition warning signs at the hazardous location, as needed, until such time that the hazardous condition may be repaired.

**COMPLETION OF CONSTRUCTION:**

After completion of each Project Site, Bourbon County or County's Representative will inspect the Designated Roads for road damage during the construction period including damage to road base, culverts, bridges, ditches, guardrails, signs or other road appurtenances. The County or County's Representative will provide a list of damages to Company. Company shall make the necessary repairs based on Bourbon County's Right-of-Way Use for Utility Infrastructure Policy and/or Kansas Department of Transportation specifications. Company will notify the

County or County's Representative when repairs are to be made and the name of the Contractor performing such repairs.

After the above repairs are made, Company will insure that the final condition of the road surface are repaired in accordance with the Trench and Surface Restoration Details provided in the Construction Details Section of the County Public Right-of-Way Use Guide and Kansas Department of Transportation Standard Specification for State Road and Bridge Construction. The work shall be completed before final completion will be awarded to the project.

Company shall provide a written notice to the County or County's Representative that the work has been completed and provide proof of payment for the work performed by the subcontractor.

Upon receipt of the completion notice the County or County's Representative will have thirty (30) days to accept or reject the above work. If a rejection notice is tendered by the County or County's Representative, Company will make the necessary repairs as identified in the rejection notice.

#### **FAILURE TO REPAIR:**

If Company fails to repair any damage to County owned property that Company is required by this Agreement to repair, the County or County's Representative may request in writing that Company perform such repair. If Company fails to commence such repairs or reply with ten (10) days and thereafter to maintain reasonable progress in the performance of such repairs, then the County may make such repairs and shall invoice Company for costs incurred in connection with repairs. Company shall pay such invoiced amounts within thirty (30) days following receipt of such invoice.

**If Company does not fulfill obligation to repair Designated Roads after hauling, construction, or restoration activities is completed, the County can stop all activities on ongoing and/or new Project sites.**

### **BASIC TERMS OF ROAD USE**

#### **CONTACT PERSON:**

Company shall designate a person to coordinate the transportation related activities of the Company during construction of the project. Bourbon County shall be provided sufficient contact information to insure that the Contact Person is available to the County at any time in case of emergency or other need.

#### **OBHEY ALL TRAFFIC LAW:**

All vehicles driven by Company and any of its respective related entities' agents, employees, contractors, subcontractors, material suppliers, vendors, transport providers, designees and representatives shall abide by all local, state, and federal speed limits as posted or, if not posted, as otherwise applicable.

All vehicles driven by Company and any of its respective related entities' agents, employees, contractors, subcontractors, material suppliers, vendors, transport providers, designees and representatives shall comply with all reasonable requests of the County or County's Representative to take necessary precautions designed to protect the traveling public. These precautions include the immediate removal of dirt, mud, and debris carried onto the said road by trucks and trailers hauling material to the Project Sites.

#### **SIGNAGE:**

During construction of the Project, Company shall be responsible for placing and maintaining additional signage needed in compliance with applicable provisions of the Manual on Uniform Control Devices published by the U.S. Department of Transportation, Federal Highway Administration 2009 edition Revision No. 1 & 2, dated May 2012, which is incorporated herein.

#### **OVERSIZE/OVERWEIGHT VEHICLES:**

Vehicles operating within the Bourbon County Public right-of-way used by Company and its parties exceeding the legal size and/or weight limits specified under Article 19 of Chapter 8 of the Kansas Statutes Annotated, and amendments thereto, or of a height exceeding the maximum specified at K.S.A. 17-1914, and amendments thereto, shall obtain and submit a Permit from Bourbon County for such operation.

Company shall refer to the Bourbon County Public Right-of-Way Use for Utility Infrastructure Policy for standards and policies regarding the movement of oversized/overweight vehicles within the County Public Right-of-Way.

The legal size and weight of a typical vehicle and/or loads that can operate within the County Public right-of-way without obtaining a permit include, but are not limited to, the following: Any vehicle, trailer or load with a width eight and a half feet (8 1/2') or less; any vehicle, trailer or load with a height of fourteen feet (14') or less; and any vehicle, trailer or load with the weight on any wheel 10,000 pounds or less.

#### **NOTICE OF ROAD CLOSURES:**

Company shall provide to the County or County's Representative, and any other agency or office reasonably designated by the County:

- 1.) application for Permit for Road Closure (including time and expected duration) by mail or in person to Bourbon County fourteen (14) days prior to the requested closure date.
- 2.) current map of "Designated Road(s)" to be closed with traffic control plan and detour route for the proposed road closure.

Company shall designate a person to coordinate the transportation related activities of Company during construction of the Project.

Bourbon County reserves the right to prohibit the use or occupation of specific portions and/or all of the County Public right-of-way and may deny the permit on grounds that the road closure would compromise the public safety of or substantial public inconvenience. If County denies the road closure, they must notify Applicant within seven (7) days after they receive the *Application for Permit for Road Closure*.

This Agreement shall not prohibit the County from closing a road to any vehicle or combination if such closing is authorized by law and is necessary for safety or is temporary closing due to climatic conditions or an act of God or war.

#### **OVERSIZE/OVERWEIGHT VEHICLES:**

Vehicles operating within the Bourbon County Public right-of-way used by Company and its parties exceeding the legal size and/or weight limits specified under Article 19 of Chapter 8 of the Kansas Statutes Annotated, and amendments thereto, or of a height exceeding the maximum specified at K.S.A. 17-1914, and amendments thereto, shall obtain and submit a Permit from Bourbon County for such operation.

Company shall refer to the Bourbon County Public Right-of-Way Use, Repair and Maintenance Guide for standards and policies regarding the movement of oversized/overweight vehicles within the County Public Right-of-Way.

The legal size and weight of a typical vehicle and/or loads that can operate within the County Public right-of-way without obtaining a permit include, but are not limited to, the following: Any vehicle, trailer or load with a width eight and a half feet (8 1/2') or less; any vehicle, trailer or load with a height of fourteen feet (14') or less; and any vehicle, trailer or load with the weight on any wheel 10,000 pounds or less.

#### **IMPROVEMENTS:**

Upon completion of the portion of the Project Sites requiring temporary improvements, all such temporary improvements shall be removed by Company. However upon written request from Bourbon County or County's Representative prior to removal, any such temporary improvements may permanently remain as property of the County, or as a part of a County Public right-of-way.

#### **DUST CONTROL:**

During the construction and maintenance of the Project Sites, Company shall use a commercially recognized dust palliative to control the airborne dust created or contributed to by Company on gravel surfaces covered under "Designated Roads". Watering alone shall not be considered to be sufficient dust control, unless agreed upon in advance by the County or County's Representative. Company shall provide the County or County's Representative, and any other agency or office reasonably designated by the County:

- 1.) Dust Control Specification Sheet.
- 2.) Material Safety Data Sheet (MSDS) for Dust Control Palliative to be used.

- 3.) Current map of Designation Road to receive dust control application.

The dust control measures required by this Agreement and requested by the County or County's Representative shall be applied within twenty-four (24) hours of written notification.

**EROSION CONTROL:**

For projects that disturbed less than one acre, Company shall provide to County or County's Representative a Storm Water Pollution Prevention Plan in accordance with Bourbon County's Right-of-Way Use, Repair and Maintenance Policy. The contractor is responsible for the on-going maintenance of all erosion and sediment control devices within the project area until the disturbed area is approved for final acceptance by the County or County's Representative.

For projects that disturb more than one acre, Company must provide to the County or County's Representative a Storm Water Pollution Prevention Plan and obtain a NPDES permit from the Kansas Department of Health and Environment (KDHE).

**SURETY BOND:**

Company shall provide a performance and payment bond to cover the costs of any damages made to the roads used by Company during the Project. The amount of the performance bond shall be in an amount of at least equal to one hundred percent (100%) of the original contractor price of the project. If the contract price increases, an additional amount equal to one hundred percent of the increase shall be added to the project. The amount of the payment bond shall be no less than the amount of the performance bond.

The Performance and Payment Bond shall be made payable to the County and a surety bond issued by a corporation licensed to do business in Kansas and approved by the County or County's Representative or may be posted in the form of cash deposit. The Performance and Payment Bond shall remain in full force and effect during the term of the Project and continuing in full force and effect for one (1) year after the final completion of the work to be performed within Bourbon County. The Performance and Payment Bond are intended to provide the County with assurance that it will be paid by Company for its obligations under this Agreement, but shall not in any way limit the amount of Company's obligations or liabilities under this Agreement.

Bourbon County shall not make any claim on said surety bond until sixty (60) days after the mailing of written notice to Company specifying a default hereunder by Company, during which sixty (60) days Company may cure such default. Company is obligated to maintain such financial assurance until completion of all work in Bourbon County as evidenced by inspection of all work by the County Road and Bridge Supervisor or County's Representative.

**DRAW CONDITIONS:**

The County may draw upon the Performance and Payment Bonds only if and to the extent that Company fails or refuses to perform repairs or to pay the costs of performing repairs. Draw conditions are as follows:

- 1.) The County or County's Representative or a member of the Board of Commissioners shall certify that all the following draw conditions have been met:
  - a.) That the County or County's Representative has complied with the requirements; and
  - b.) That Company has failed or refused to perform repairs or to pay the costs of performing repairs; and
  - c.) That the County has performed such work and/or had such work performed; and
  - d.) That the County has incurred expenses for the performance of such work; and
  - e.) The County has provided to Company the amount of such expenses.

If the County draws upon the Performance and Payment Bond, the County or County's Representative shall provide a full accounting of the amount of the draw(s) and the costs of repairs to Company.



**RIGHTS AND WAIVERS:**

The failure of a Party to exercise any right under this Agreement shall not, unless otherwise provided or agreed to in writing, be deemed a waiver thereof; nor shall a waiver by a Party of any provisions hereof be deemed a waiver of any future compliance therewith, and such provisions shall remain in full force and effect.

**SEVERABILITY:**

In any event that any clause, provision or remedy in this Agreement shall, for any reason, be deemed invalid or unenforceable, the remaining clauses and provisions shall not be affected, impaired or invalidated and shall remain in full force and effect.

The status of Company under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, Company and any of its respective related entities' agents, employees, contractors, subcontractors, material suppliers, vendors, transport providers, designees and representatives shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of the County. As an independent contractor, Company shall accept full responsibility for providing to its employees all statutory coverage for worker's compensation, unemployment, disability or other coverage required by law.

- 1.) Workman's Compensation, and related coverage's required under Contractor's Insurance of the Bourbon County Right-of-Way Use, Repair and Maintenance Guide:
  - a.) Employee's Liability: \$500,000
- 2.) Contractor's General Liability required under Contractor's Insurance of the Bourbon County Right-of-Way Use, Repair and Maintenance Guide:
  - a.) General Aggregate: \$2,000,000
  - b.) Products-Completed Operation Aggregate: \$1,000,000
  - c.) Personal and Advertising Injury: \$1,000,000
- 3.) Automobile Liability required under Contractor's Insurance of the Bourbon County Right-of-Way Use, Repair and Maintenance Guide:
  - a.) Bodily Injury:
 

Each Person	\$1,000,000
Each Accident	\$1,000,000
  - b.) Property Damage:
 

Each Accident	\$1,000,000
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  - c.) Combined Single Limit of \$1,000,000
- 4.) Contractual Liability coverage required under Contractor's Insurance of the Bourbon County Right-of-Way Use, Repair and Maintenance Guide:
  - a.) Bodily Injury:
 

Each Person	\$2,000,000
Each Accident	\$2,000,000
  - b.) Property Damage:
 

Each Accident	\$2,000,000
Annual Aggregate	\$2,000,000
- 5.) The following entities shall be listed on policy as additional insureds:
  - a.) Bourbon County and its officers, agents, and employees

**TERMINATION AND/OR ABANDONMENT:**

If Company abandons or terminates construction of the Project, Company shall provide written notice to the County of such abandonment or termination of construction. If such event, this Agreement shall terminate one (1) year thereafter, or such earlier time as the parties shall otherwise agree to.

**ENFORCEMENT:**

Failure of Party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained or any of them upon any other Party imposed, shall not constitute as a waiver or relinquishment of any Party's right thereafter to enforce any such term covenant, agreement or condition, but the same shall continue in full force and effect.

**ASSIGNMENT:**

This Agreement shall insure to the benefit of and shall be binding upon the Parties hereto, their respective successor, permitted assignees, legal representatives and their respective agents, contractors, subcontractors, material suppliers, vendors, employees, respective transport providers and designees.

**COUNTERPARTS:**

The parties may execute different copies of this AGREEMENT in lieu of executing the same copy and each party shall be bound by the terms of this AGREEMENT upon delivery of a copy bearing the party's signatures by email or facsimile to the other party or its attorney.

**RENEWAL:**

This Agreement has a term of one (1) year and can be renewed yearly.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement the day and year first written above.

BOURBON COUNTY:

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
 Print: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Contact: \_\_\_\_\_  
 Cell: \_\_\_\_\_  
 Email: \_\_\_\_\_

ATTEST

Dated: \_\_\_\_\_ By: \_\_\_\_\_

ENBRIDGE:

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
 Print: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Contact: \_\_\_\_\_  
 Cell: \_\_\_\_\_  
 Email: \_\_\_\_\_

ATTEST

Dated: \_\_\_\_\_ By: \_\_\_\_\_