

**WATER PIPELINE LICENSE OF OCCUPATION ON  
COUNTY ROAD RIGHT OF WAYS**

*May 2012*

Between

**County of St Paul No. 19**

-and-

**Elk Point/ St Paul Regional Water Commission**

LICENSE OF OCCUPATION AGREEMENT made this \_\_\_ Day of \_\_\_\_\_, 2012  
BETWEEN

COUNTY OF ST. PAUL NO. 19

5015-49 AVE

St Paul, AB, T0A 3A4

Tel: 780-645-3301

Fax: 780-645-3104

(Hereinafter called the "Grantor")

OF THE FIRST PART

-and-

ELK POINT/ ST. PAUL REGIONAL WATER COMMISSION

A Municipal Corporation

In the Province of Alberta

PO Box 448

Clyde, AB T0G 3A4

(Hereinafter referred to as the "Grantee")

OF THE SECOND PART

**LICENSE OF OCCUPATION AGREEMENT**

(Hereinafter called the "Agreement")

RECITALS:

**WHEREAS** the Grantor being a municipal corporation has the control and management of the public highways and roads hereinafter referred as "the road allowances" within the Municipality pursuant to Section 18 of the Municipal Government Act, being Chapter M26 of the Revised Statutes of Alberta, 2000 and amendments thereto.

**AND WHEREAS** the Grantee has requested a grant of License of Occupation with access over the Road Allowances for the purpose of developing and operating the Grantee's water pipeline (hereinafter referred to as "Road Allowance"); the Grantor having agreed to grant such access subject to the terms of this agreement.

**AND WHEREAS** the Parties have agreed that for those portions of the water pipeline in the Road Allowance shown in Schedule "A", access will be based on terms and conditions in this agreement; the License portion of the Road Allowance shall be defined for the purposes of this Agreement as the area shown in Schedule A,

**AND WHEREAS** the Grantor shall at all times retain the right, and have access to and use of the Road Allowance, including the License of Occupation, for the Primary Use and other uses.

**NOW THEREFORE** in consideration of the mutual terms, covenants and conditions hereinafter set forth and the payment by the Grantee to the Grantor of the sum of **ONE (\$1.00) DOLLAR**, and other subsequent good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

### **1. Grant of License of Occupation**

The Grantor hereby grants, conveys, transfers and sets over to and unto the Grantee, its successors and assigns a License of Occupation across, over, under and through the Road Allowance to construct, operate, and maintain the water pipeline or pipelines including accessories and appurtenances and for any other purpose preparatory or incidental thereto including the right to repair or replace the said water pipeline or pipelines.

### **2. Works**

All of the Grantee's water pipeline works that may come into existence and be laid along the Road Allowances in accordance with the terms of this agreement shall be referred to hereinafter collectively as "the Works" and individually as "the Work".

### **3. Additional Work**

In respect of any proposed additional work to be constructed, maintained and used by the Grantee after the effective date of completion of the work described herein, the Grantor hereby covenants that it will, when reasonably requested and upon receipt of a fee of ONE (\$1.00) DOLLAR and satisfactory plans outlining the specifications of the proposed additional work, grant a new License of Occupation in a form similar to this agreement and any additional work shall be governed by all the terms and conditions of this agreement.

### **4. Additional Access**

The Grantee shall pay to the Grantor in respect and upon the commencement of this and each additional access or egress from the License of Occupation Lands, a fee of ONE (\$1.00) DOLLAR to cover the administrative costs associated with each additional access.

### **5. Reclamation Inspections**

The Grantee shall pay the Grantor's costs for pre and post disturbance reclamation inspections to provincial standards by a qualified consultant.

### **6. Use by Grantee**

Subject to the Agreement, Schedules A and B, including the standard terms and conditions described in Schedule B - TERMS FOR THE LAYING OF PIPE LINES, WATER PIPES, SEWERS, WIRES, ETC., UNDER GRANTOR'S LANDS, the Grantee shall have the right to use the License of Occupation lands for the purposes outlined herein.

### **7. Schedules**

The parties hereto acknowledge and agree that the terms and conditions set out by the Grantor in Schedules A and B hereto, are valid and enforceable as against the Grantee, and that any failure on the part of the Grantee to fulfill any condition or term contained therein shall constitute a breach of this Agreement.

### **8. Use by Grantor**

Subject to the following, the Grantor shall have the right to use and enjoy the Road Allowance:

- (i) The Grantor shall not use the Road Allowance for any purpose which might either interfere with the rights granted herein to the Grantee, or incur a liability for damages to the Grantee without the prior written consent of the Grantee, including in particular:

- (a) no permanent structures may be erected on the Road Allowance by the Grantor without the written consent of the Grantee, such consent shall not be unreasonably withheld. Permanent structures excludes roads and related structures.

(ii) The Grantee shall be responsible for and compensate the Grantor for reasonable additional costs incurred by the Grantor, in connection with excavation, drilling, installation, erection, repair or construction required to develop the Road Allowance for use as a road or related purpose across, over or under, on or through the Road Allowance, that are caused by the existence of the said water pipeline.

#### **9. Removal of Property**

Notwithstanding any rule of law or equity, the water pipeline or pipelines shall at all times remain the property of the Grantee, notwithstanding that the same may be annexed or affixed to the Road Allowance and shall at any time and from time to time be removable in whole or in part by the Grantee.

#### **10. Damages**

In accordance with the terms and conditions outlined in Schedule B of the Agreement, the Grantee shall pay compensation for any and all damage where such damage occurs as a result of the operations of the Grantee, its servants, agents, or contractors.

#### **11. Liability**

In accordance with the terms and conditions outlined in Schedule B of the Agreement, the Grantee covenants and agrees to indemnify and save harmless the Grantor from any and all liabilities, damages, costs, claims, suits or actions caused by or resulting from the construction, operation, maintenance and/or repairs of the said water pipeline or pipelines and/or any related fixtures and appurtenances affixed to the Road Allowance other than through willful or gross negligence by the Grantor.

#### **12. Topsoil**

Insofar as it may be practicable to do so, the Grantee shall, unless otherwise requested by the Grantor, strip from the ditch line prior to construction such width as may be required under good pipeline practices and in compliance with existing regulations, replace the topsoil as near as possible to its original condition following construction.

#### **13. Reclamation Standards**

Reclamation practices will meet provincial standards.

#### **14. Notices**

All notices to be given hereunder may be given by letter, postage prepaid, addressed to the Grantee (Elk Point / St. Paul Regional Water Services Commission) at PO Box 448, Elk Point , AB T0A 1A0, and to the Grantor (County of St. Paul No. 19) at: 5015- 49 Ave, St Paul, AB, T0A 3A4, or such other address as the Grantor and Grantee may respectively from time to time appoint in writing, and any such notice shall be deemed to be given to, and received by, the Addressee five (5) days after the mailing thereof.

**15. Regional Services Commission**

The parties hereto each acknowledge to the other that the Grantee is a regional services commission governed pursuant to Part 15.1 of the Municipal Government Act of the Province of Alberta, Revised Statutes of Alberta, 2000 Chapter M-26 with amendments and that the Works described herein are a public utility within the meaning of that Act.

**16. Enurement**

This Agreement shall enure to the benefit of, and be binding upon the parties hereto and each of them, their respective heirs, executors, administrators, successors and assigns

**17. Severance**

In the event that any provisions hereof may be void or unenforceable for any reason, such provision or provisions shall be considered severable from the remaining provisions, which shall continue in full force and effect.

**18. Prior Agreements**

In the event of a conflict between the terms of this Agreement and the terms of any prior agreements, discussions or correspondence between the parties, the terms of this Agreement shall prevail.

**19. Governing Law**

This Agreement shall be construed by and governed in accordance with the laws of the Province of Alberta.

**20. Effective Date**

This Agreement shall take effect as of \_\_\_\_\_, 2012 (the "Effective Date").

IN WITNESS WHEREOF the parties have executed the Agreement as of the date first written above.

COUNTY OF ST. PAUL NO. 19

Per: \_\_\_\_\_  
Reeve

Per: \_\_\_\_\_  
County Manager

ELK POINT/ ST. PAUL REGIONAL WATER COMMISSION

Per: \_\_\_\_\_  
Chairman

Per: \_\_\_\_\_  
Project Manager

**Schedule A - DRAWING SET**

**SCHEDULE B****TERMS FOR THE LAYING OF PIPE LINES, WATER PIPES, SEWERS,  
WIRES, ETC., UNDER GRANTOR'S LANDS**

- |                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Definitions                                   | <p>1. (a) "Grantee" means the party applying for the right to install and maintain any Works upon, through, over or under Grantor's Lands;</p> <p>(b) "Works" means the Grantee's water transmission facility, installed or to be installed under the Road Allowance as defined by the Agreement;</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Construction maintenance, and repair          | <p>2. All construction, maintenance and repair of the Works and all restoration and reclamation of the road allowance, vegetation (including weed control), and the Grantor's Lands or structures as permitted or required hereunder shall be at the cost of, and borne by the Grantee, shall be conducted in a manner which is safe and acceptable to the Grantor, shall protect and maintain the integrity of the road allowance and associated structures, and where appropriate shall be subject to and in accordance with all applicable laws, rules, orders and regulations and subject to the terms and conditions of the Agreement. Reclamation shall be to a safe level condition, shall address water drainage needs and requirements.</p> |
| Above ground installations                    | <p>3. The Grantee shall, so far as may be practical, locate any above ground installation(s) in such a fashion as to provide a minimum of inconvenience to the Grantor, and shall ensure continuity and clear access along the road allowance. All above ground installation locations shall be submitted and subject to the Grantor's approval, such approval not to be unreasonably withheld. Where an above ground installation requires fencing, signage or other protection, such work shall be performed by the Grantee and the Grantee shall pay the entire cost of all such work.</p>                                                                                                                                                        |
| Work of supporting roads and other structures | <p>4. Any work of supporting the Grantor's roads or structures or of protecting the public made necessary by the construction, maintenance or repair of the Works shall be performed by the Grantee and the Grantee shall pay the entire cost of all such work.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Placement of signs                            | <p>5. (a) Except in the case of Works which are buried wire or buried cable crossings, the Grantee shall, at its own expense and as directed by the Grantor or as required by the order of any regulatory agency having jurisdiction, install and maintain at locations satisfactory to the Grantor and applicable authorities, signs prominently marking the Works and their distance underground.</p>                                                                                                                                                                                                                                                                                                                                              |
| Supervision                                   | <p>6. The work of construction, renewal and repair of the Works shall be subject to the supervision of the Grantee who shall be entirely responsible to the Grantor for ensuring public safety, fence repair, cleanup, and the return of the said lands, surface and surfacing materials, other structures and site to original condition or as otherwise specified in this agreement. The Grantee shall provide predisturbance photo documentation (electronic pdf file) of the site to the Grantor and shall give the Grantor at least 48 hours notice in writing of its intention to do such work, which notice period shall not include, Saturdays, Sundays, or statutory holidays, except that, in cases of emergency, the</p>                  |

Grantor shall be notified immediately by phone. When construction, renewal or repairs have been completed, the property of the Grantor shall be restored by the Grantee to a condition which is as close as is reasonably possible to its former condition or as otherwise specified herein and which is to the entire satisfaction of the Grantor, the Grantee shall provide post disturbance photo documentation of the site (electronic pdf file), and the Grantee shall at all times maintain the Works in good order and condition and to the entire satisfaction of the Grantor.

#### Indemnity

7. (a) The Grantee shall save harmless and indemnify the Grantor, and its elected officials, officers, agents and employees from and against any and all losses, costs, injuries, expenses, damages, claims, causes of actions, suits and liabilities whatsoever, direct or consequential (hereinafter called "Damages") which may arise or accrue to any person, firm or corporation against the Grantor by reason of negligence or willful act or omission of the Grantee, its members, officers, employees, agents, invitees, licencees, contractors or sub-contractors, or by any reason whatsoever, in respect of the construction, maintenance, operation, removal or existence of the Works including, without limiting the generality of the foregoing:

(i) Damages, including those arising out of personal injury or death or damage to property, caused by the Works or by any substance carried by or in the Works;

(ii) Damages arising out of the laying, repair, renewal, replacement, moving, alternation or removal of the Works;

(iii) Damages resulting from the release, discharge, seepage or other escape from the Works of any substance carried by or in them including chemicals, hazardous, or toxic materials, substances, pollutants, contaminants or wastes, whether liquid, gaseous, micro-organic or other nature whatsoever;

(iv) Damages resulting from failure to comply with any applicable laws, regulations or orders of any government, authority or body having jurisdiction, or any of the provisions hereof.

(b) The provisions of paragraph 7 (a) herein shall survive the expiration or termination of this Agreement.

(c) If requested by the Grantor, the Grantee shall, at its own expense, acquire and maintain at all times in respect of the Works and during the currency of the rights and obligations of the Grantee hereunder in respect thereof (from and including the date of the commencement of construction of the Works), insurance in a form and issued by an insurance company or companies satisfactory to the Grantor as follows and subject to the following terms:

#### Release

8.(a) The Grantee agrees that the Grantor, its elected officials, officers, agents and employees shall not be liable in any manner whatsoever for and the Grantee hereby releases and discharges the Grantor, their directors, officers, agents and employees from and against any and all losses, costs, injuries, expenses, damages, claims and liabilities



whatsoever, direct or consequential, incurred or suffered by the Grantee, its members, officers, employees, agents, invitees, licencees, contractors or sub-contractors by reason of:

(i) the entry upon the Grantors' Lands by the Grantee, its employees, agents, or contractors, notwithstanding that permission may have been granted by the Grantor; and

(ii) any other matter or occurrence whatsoever, including but not limited to any act, omission or negligence of the Grantor, their employees, agents or contractors or arising from or in connection with the use of the rights of way as set out herein and the existence of the Works thereon.

(b) The provisions of this Clause 8 shall survive the expiration or termination of the rights and privileges granted hereunder.

Grantee's  
employees  
on Grantor's property

9. Subject to any laws, rules and regulations now or hereafter in force governing roads and road allowances, and subject to the provisions of Clause 6 herein respecting notice to the Grantor, the Grantee and its employees and agents shall have the right to enter upon the lands of the Grantor at such times as may be necessary for the purpose of construction, maintenance, inspection, removal, and repair of the Works.

Default

10. If the Grantee shall neglect to do such work of repair or maintenance as in the reasonable opinion of the Grantor is necessary, the Grantor may carry out such work of repair or maintenance itself as agent of the Grantee, and the Grantee shall pay to the Grantor the entire cost of all such work forthwith upon receipt of invoice(s) based on actual cost plus labour overheads, material handling cost, equipment rentals and other arbitraries.

Moving or Alteration

11. Should the Grantor be ordered by any Federal, Provincial or Municipal Government authority having jurisdiction, to make such changes in the Grantor's road allowance, land, structures or facilities as would in the opinion of the Grantor necessitate the moving or alteration of the Works herein contemplated, or should the Grantor desire to build on the property crossed by the Works, including any road or road improvement, which would necessitate any change in the location or construction of the Works, the Grantee shall at its own expense and to the entire satisfaction of the Grantor perform all such work of moving or altering or carrying out protective measures to safeguard the Works as may be necessary within whichever is the lesser of twelve months, or the period provided in the order, after receipt of notice so to do and, should the Grantee fail to perform such work of moving or altering within the time specified, the Grantor shall have the right to do such work as agent of the Grantee and the Grantee shall pay to the Grantor the entire cost of all such work forthwith upon receipt of invoice(s) based on actual cost plus labour overheads, material handling cost, equipment rentals and other arbitraries. Directives or successors thereto issued by any authority having jurisdiction, and all the provisions hereof shall apply to the Works while being moved or altered and in their changed condition or location and to the parties hereto in respect thereof. Provided that the Works are relocated within the Grantors'

Lands, no additional fee as defined in the Agreement between the parties hereto, will be payable in respect of the relocated Works.

Assignment

12.The Grantee shall not assign, transfer or dispose of any of its rights or privileges hereunder without the consent in writing, first obtained, of the Grantor, which consent shall not be arbitrarily or unreasonably withheld.

Termination

13.The rights and privileges granted hereunder in respect of the Works shall be in force from year to year, subject, however, to termination of this Agreement. The Grantor may terminate the agreement on 30 days notice or such other date as the parties jointly agree to, and on the day so named all such rights and privileges hereunder shall come to an end, provided that notwithstanding such termination the Grantee shall continue to be liable to the Grantor for all payments due and obligations incurred thereunder prior to the date of such termination.

Agreement binding successors and assigns

14.The terms hereof shall, subject to Clause 12 hereof, enure to the benefit of and be binding upon the parties hereto, the successors and assigns of the Grantor, and the heirs, executors, administrators, successors and permitted assigns of the Grantee.

Removal of Works

15.Upon the termination of this Agreement, the Grantee shall, if requested by the Grantor acting reasonably so to do, remove at the expense of the Grantee the Works from the Grantor's Lands to a condition which is as near to its original state and condition as is reasonably possible. The conditions embodied in Clauses 7 and 8 hereof shall remain applicable and effective until such time as all work to be performed by the Grantee as provided for in this clause shall have been carried out.