



MISSISSAUGA

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January 24, 2020

Sent by Courier (electronic copy sent via Web Portal)

Ms. Christine E. Long,
Board Secretary and Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Long:

Re: **Imperial Oil Limited - Waterdown to Finch Project Application, OEB File No. 2019-0007 - Final Submissions of the City of Mississauga**

Further to Procedural Order No. 6 dated December 6, 2019, please find enclosed the Final Submissions of the City of Mississauga.

Yours truly,

Patrick M. Murphy
Legal Counsel, Environmental

cc: Richard King - Osler, Hoskin & Harcourt LLP (rking@osler.com)
Patrick G. Welsh - Osler, Hoskin & Harcourt LLP (pwelsh@osler.com)
Jessie Malone - Environmental and Regulatory Advisor, Imperial Oil Limited (jessie.m.malone@esso.ca)
Zahra Allidina - Imperial Oil (Zahra.allidina@esso.ca)
Ian Laing, Imperial Oil Limited (ian.r.laing@esso.ca)
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Michael Millar - OEB Counsel (Michael.millar@oeb.ca)

Imperial Oil Limited
Construction of the Waterdown to Finch Project

Application under section 90(1) of the *Ontario Energy Board Act, 1998*
OEB File Number EB-2019-0007

City of Mississauga – Final Submissions

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**Imperial Oil Limited (“Imperial”)
Construction of the Waterdown to Finch Project (the “Project”)
Application for Leave under section 90(1) (Application) of the *Ontario Energy
Board Act, 1998*
OEB File Number: EB-2019-0007**

City of Mississauga- Final Submissions

A. OVERVIEW

1. The City of Mississauga (“City”) makes these submissions for the reasons set out herein which supplements the City’s earlier submissions made September 20, 2019 to the Ontario Energy Board (“OEB” or “Board”)¹
2. The City supports in principle Imperial’s decision to replace the 63km section of pipeline (“Project”), but its support is conditional upon an order or decision with respect to the following:
 - (a) An order or decision incorporating conditions specific to the City and which is necessary and in the public interest. These conditions comprise the following key areas: financial assurance, fire safety and emergency response and land matters as outlined in Appendix “A”;
 - (b) An order or decision approving the Indemnification and Guarantee Agreement included in Appendix “B” which holds Imperial responsible for all activities associated with the construction, de-activation (of the current section of the SPPL pipeline) and for the ongoing operations of the SPPL within the municipality; and
 - (c) An order or decision approving the form of agreements related to the construction of the replacement section of the Sarnia Products Pipeline (“SPPL” or pipeline) included in Appendix “C”.

¹ EB-2019-007, City of Mississauga SUB Imperial Oil Ltd. 20190920

B. ARGUMENT AND SUBMISSIONS

Public Interest and Role of the Municipality in Emergency Response

3. Section 8 (1) of the *Municipal Act, 2001* provides that municipal powers are to be broadly interpreted to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues. The City has broad authority to govern the "health, safety and well-being of persons" within the municipality.² The replacement of a section of the pipeline is a municipal issue. It also follows that the City has an overarching responsibility not only that the pipeline is constructed safely, but that its operations are designed and constructed to minimize risk to City residents and possible damage to the environment.
4. The *Emergency Management and Civil Protection Act* requires each municipality to develop, implement, and maintain an emergency management program.³ The rationale for an emergency management program is to improve public safety through a coordinated and pre-identified process for responding to critical situations. An emergency management program assists in protecting lives, infrastructure, property, and the environment. Section 2.1 (3) requires that every municipality is to identify and assess the various hazards and risks:

2.1 (3) In developing its emergency management program, every municipality shall identify and assess the various hazards and risks to public safety that could give rise to emergencies and identify the facilities and other elements of the infrastructure that are at risk being affected by emergencies.
5. Part II of O. Reg. 380/04 to the *Emergency Management and Civil Protection Act*, outlines in detail the "Municipal Standards" in which every municipality shall designate an employee of the municipality or a member of council as its emergency management co-ordinator.⁴ The City has in place an Office of Emergency Management responsible for the development, implementation, and management of emergency planning initiatives in support of citywide preparedness, mitigation, response, and recovery in emergency situations. This includes the development, updating and execution of policies and procedures to be adopted in regard to prevention, preparedness, response and recovery phases of emergencies.
6. Part II of O. Reg. 380/04 also requires that every municipality is to have in place an Emergency Management Program Committee comprised of senior municipal officials

² *Municipal Act, 2001*, S.O. c. 25, section 11 (2) 6.

³ *Emergency Management and Civil Protection Act*, R.S.O. 1990. C. E.9

⁴ O. Reg. 380/04, s. 10.(1).

along with the City's emergency management program co-ordinator.⁵ The assessment and management of risk is the cornerstone for protecting the safety of the City's residents.

TSSA Process

7. The City acknowledges the Environmental Guidelines require Imperial to comply with the *Technical Standards and Safety Act, 2000* ("TSSA") and with O.Reg.210/01 especially with respect to prescribed technical and safety standards.⁶ The standards for oil and gas pipelines are set forth in the *Oil and Gas Pipeline Systems Code Adoption Document* ("Pipeline Adoption Document") adopted by regulation under the TSSA which adopts CSA Z662.⁷ The pipeline Adoption Document specifically requires Imperial to develop a pipeline integrity management program, a component of which utilizes a risk assessment method to evaluate line segments.⁸ Imperial, as the operator is required to address the risks associated with covered transmission pipeline segments.⁹ It is incumbent that Imperial conduct risk assessments that follow Annex B Guidelines for risk assessment of pipelines falling within the scope of CSA Z662-15.¹⁰ One of the objects of the TSSA is "to inform, educate and work with industry, government and the public in relation to matters assigned to the Corporation ("Technical Standards and Safety Authority)."¹¹
8. On February 1, 2019 Imperial submitted pre-filed evidence which included the *Waterdown to Finch Project Environmental Report* ("Environmental Report") to members of the Ontario Pipeline Coordinating Committee ("OPCC") for review and comment.¹² The Board examines a number of factors to determine if the Project is in the "public interest".¹³ For example, section 4.3.12 of the Environmental Guidelines provides minimum set-back requirements of 20 metres from dwellings for human occupancy and 300 metres where rapid evacuation is not possible.¹⁴ There are other safety conditions outlined in this section of the Environmental Guidelines.

⁵ O. Reg. 380/04, s. 11.(1) and (2).

⁶ *Technical Standards and Safety Act, 2000*, S.O. 2000, c. 16

⁷ TSSA, *Oil and Gas Pipeline Systems Code Adoption Document* (1 June 2001)

⁸ *Pipeline Adoption Document*, s. 10.11.2

⁹ *Pipeline Adoption Document Amendment* (February 15, 2018), s. 4.3.4.10

¹⁰ *Pipeline Adoption Document Amendment* (February 15, 2018), s. 4.3.4.11

¹¹ *Supra*, note 6.

¹² EB-20019-0007, Environmental Report February 2019, para. 1.3.1.

¹³ *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, section 96.

¹⁴ *OEB Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario*, 7th ed (2016) at s. 4.3.12.

City's Reliance on Imperial and the TSSA for the Assessment of Project and Operating Risk

9. The identification and management of "risk" associated with the construction, deactivation and ongoing operations of the replacement segment of the pipeline is of primary concern to the City. By statute, the City "shall" identify and assess risk for public safety.¹⁵ Imperial's filings with the OEB pursuant to its Application for Leave to Construct fail to identify and assess to the City's satisfaction, the risks of pipeline failure especially with respect to ongoing pipeline operations and the deactivation of the existing pipeline. Imperial's evidence is substantially on the construction phase of the Project.
10. The City specifically requested that Imperial identify and evaluate pipeline risks in its request for past and current risk assessments for the pipeline.¹⁶ Imperial does acknowledge there have been pipeline failures of SPPL¹⁷ but defers to the TSSA as the regulatory authority to assess these risks for public safety. In response, the City (along with other municipal interveners) has made repeated requests for Imperial's risk assessments which Imperial acknowledges is a component of its Operations Integrity Management System for managing its assets and operations.
11. Imperial's response not to provide copies of risk assessments based on the premise that these documents are Imperial's proprietary information simply ignores the City's overarching duty mandated by statute to protect its residents. Imperial's response also ignores the fact the City is required by statute to identify and assess risk and put in place plans to deal with emergencies.
12. The TSSA is non-responsive to freedom-of-information requests for copies of risk assessments which is a component of the TSSA's Pipeline Adoption Document (as amended). As part of its overall assessment of the pipeline for public safety, the City again reiterates its earlier request to provide copies of any and all risk assessments of SPPL undertaken internally within the corporation or by an outside consultant.¹⁸
13. The products transported by the proposed replacement pipeline through the City corridor are hazardous products (jet fuel and motor gasoline) moving under pressure in great quantities through densely populated areas. In the event of a spill, it will be the City officials in charge working with Imperial and its contractors and other agencies. As an example, the 1979 Mississauga train derailment¹⁹ although involving the transportation of dangerous goods through a federally regulated railway ultimately became the model

¹⁵ *Emergency Management and Civil Protection Act*, s.2.1(3)

¹⁶ Imperial's Response to Interrogatories, page 13, paragraph 10.3.

¹⁷ Imperial's Response to Interrogatories, page 13, paragraph 10.4 b.

¹⁸ Page 10 of 18, paragraph 3, City of Mississauga Submissions dated 2019-09-20

¹⁹ *Natural and Not So Natural Disasters in Ontario They Do Happen, The Mississauga Train Wreck-Evacuation, A Case Study*, September 9, 1997, C.R.I.M.S. Conference, remarks by Mississauga Fire Chief Cyril W. Hare

for emergency planning and training across Canada. City officials led the emergency response. One of the key “learnings” from emergency situations is the importance of having City officials, in particular the City’s Office of Emergency Management and Fire Department know and understand all the risks associated with the pipeline.

14. The City reiterates its earlier requests that Imperial provide detailed copies of risk assessments identifying potential hazards along with specific information about plans to mitigate against these risks necessary for City emergency responders to protect the public. The City acknowledges that some information has been addressed for the construction phase, but there is an absence of information notwithstanding earlier requests to have Imperial identify the risks of the ongoing pipeline operations. The City recognizes the TSSA, as the regulatory authority which requires Imperial to provide risk assessments, risk identification and mitigation as a requirement for the licensing of the pipeline, but this information has not conveyed to City officials.

Financial Assurance

15. The Applicant in the Leave to Construct Application is Imperial Oil Limited, the general partner with a 15 percent interest in the Imperial Oil Partnership.²⁰ Ensuring that Imperial has the financial resources to stand by its commitments is of paramount importance to the City especially in the situation where Imperial retains the environmental risk associated with the potential for loss of product due to gradual seepage into the environment.²¹

16. Section 23(1) of the *Ontario Energy Board Act* states that:

23(1) The Board in making an order may impose such conditions as it considers proper, and an order may be general or particular in its application.²²

17. The City submits that in reviewing the potential impacts associated not only with the construction of the pipeline replacement section, the de-activation of the existing pipeline and for the ongoing pipeline operations that the applicant (Imperial Oil Limited) contractually indemnify the City against loss. In lieu of specifying a specific financial amount, the City is prepared to accept Imperial’s contractual indemnity so long as the Applicant’s (Imperial Oil Limited) commitments are guaranteed by the Imperial Oil Partnership. The City hereby requests the Board order the form of agreement attached in Appendix “B”.

²⁰ Imperial’s Response to Interrogatories, page 10, paragraph. 8.4.

²¹ Imperial’s Response to Interrogatories, paragraph 9.4 c. in which Imperial acknowledges that its third party liability policy only covers sudden and accidental pollution.

²² *Supra*, note 12

Engineering and Land Matters

18. The City continues to have discussions with Imperial which have not resolved the issue of the size of the easement.²³ In particular, the City has concerns that Imperial's proposed 2 metre width is not within industry standard and is too narrow which could cause problems for access and maintenance.
19. The City also has concerns with the clearance rates with respect to the 12 inch easement for directional bore pipe. In order to protect public safety, the environment, and to protect volatile infrastructure, and to ensure any future installations made at depth, do not cause disturbance, or damage to all aforementioned safety considerations, the City of Mississauga contends that a stratified easement of no less than 3m x 3m be ordered. This will ensure that future pipelines repositioning within this corridor can easily locate the pipe and ensure any alignment is not directly affected. The desire to avoid financial cost should not be made at the expense of the public, environmental safety or good practice.

Land Related Agreements

20. The City has reviewed the various forms of agreement referred to by Imperial in Appendix "B" of Imperial's Argument-In-Chief.²⁴ The City is currently in discussions with Imperial regarding the form of the various agreements. The City agrees that it is within the role of the Board to approve the form of agreement presented to landowners. The City submits the interests of a municipality are unique from the interests of general landowners requiring the insertion of particular clauses necessary to protect the City and its residents. Attached in Appendix "C" of the City's submissions is a form of agreements acceptable to the City which have been presented to Imperial. The City submits that its form of agreements is required for the Project which differs somewhat from the agreements submitted by Imperial.²⁵

C. CONDITIONS OF APPROVAL

21. The City has reviewed the OEB Staff Proposed Conditions ("OEB Proposed Conditions")²⁶ along with Imperial's recommended minor amendments.²⁷ The City submits the OEB Proposed Conditions do not entirely reflect the unique interests of municipalities which requirements are necessary for public safety and for the protection of its residents.

²³ EB-2019-0007, Updated Application and Evidence of Imperial Oil Limited for Leave to Construct, Exhibit F, Tab 1, Schedule 1, paragraphs 1.2 and 1.3.

²⁴ IOL_ARGChief_20200110, paragraph 57.

²⁵ *Supra*, note 23, Exhibit F

²⁶ OEB Staff Interrogatories at p.7

²⁷ *Supra*, note 24, page 20, paragraph 88

22. Appendix "A" outlines the conditions of approval proposed by the City which conditions are similar to the interests of other municipalities. These conditions enable the City to fully understand and prepare for emergencies associated with the Project and any emergency situations with respect to the ongoing operations of the pipeline. Knowledge of pipeline risks is an integral part of the City's Office of Emergency Management and is essential information for the City's Emergency Management Program Committee mandated by provincial legislation.²⁸

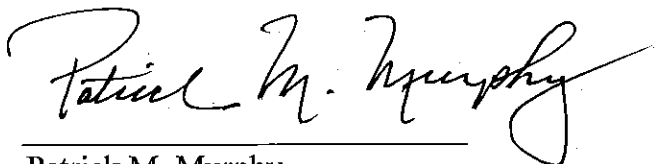
23. The City submits with construction of the Project and for the City's assurance during ongoing operations that Imperial shall enter into an indemnification and guarantee agreement in support for its commitments (Appendix "B"). The requirement for financial assurance is consistent with the City's requirements for other contractors and corporations doing business with the City.

D. CONCLUSION

24. The City continues to engage with Imperial in efforts to resolve outstanding matters. The City's final submissions including its earlier submission (City of Mississauga SUB Imperial Oil Ltd 20190920) support the necessary conditions of approval required for this Project and reflect what is required from a municipal perspective for the protection of its residents and infrastructure.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

January 24, 2020



Patrick M. Murphy
Counsel for the Corporation of the City of Mississauga

²⁸ *Supra*, note 3.

Appendix "A"

City of Mississauga Proposed Conditions

Municipal Emergency Response

1. Imperial shall provide the City with copies of risk assessments which identify and evaluate the risks associated with the following:
 - proposed construction of the replacement section of the pipeline;
 - de-activation of the current section of the pipeline; and
 - ongoing operations of the pipeline.
2. Imperial shall provide complete details of internal audits which reveal the reasons for past pipeline failures in order for the City to understand and prepare for an emergency situation.²⁹
3. Imperial shall advise the City of the results of past and future TSSA audits together with steps taken to minimize pipeline risks.
4. Imperial shall provide a complete risk analysis to the City's Office of Emergency Management of pipeline risks which identifies the key physical factors, external factors and operational factors affecting pipeline conditions.

Financial Assurance

5. Imperial shall hold harmless and fully indemnify the City from any loss, claims, causes of action, complaints, orders or proceedings of any kind including the City's legal fees, professional fees and disbursements which the City may sustain or incur or arising out of or in consequence of:
 - The construction of the Project;

²⁹ Imperial's Response to Interrogatories, page 13, paragraph 10.4.a.

- The de-activation of the existing segment of the pipeline;
 - The ongoing operations of the pipeline; and
 - Any breach by Imperial of the OEB order or decision.
6. In order to support Imperial's indemnity, the OEB shall approve the form of Indemnity and Guarantee Agreement included in Appendix "B".

Engineering and Land Matters

7. Imperial shall ensure the width of the easement meets at least a 3 metre width and shall confirm the width is consistent with the requirements of Hydro One Networks Inc. and Infrastructure Ontario.
8. Imperial shall ensure for public safety there are sufficient clearance rates with respect to the 12 inch easement for directional bore pipe and that a stratified easement with dimensions of no less than 3m x 3m be required for access, maintenance and servicing.

Form of Agreements

9. The City requires the Board to approve the forms of agreement attached to these submissions which agreements reflect the requirements of the City.

Appendix "B"
INDEMNIFICATION AND GUARANTEE AGREEMENT

This Agreement made this day of _____, 2020

BETWEEN:

THE CORPORATION OF THE CITY OF MISSISSAUGA,
(hereinafter referred to as "the City")

OF THE FIRST PART

-and-

IMPERIAL OIL LIMITED, a body
Corporate having offices at the City of Calgary, in the
Province of Alberta
(hereinafter referred to as "Imperial")

OF THE SECOND PART

-and-

IMPERIAL OIL, partnership of Imperial Oil Limited
and Imperial Oil Resources Limited registered in the
Province of Alberta
(hereinafter referred to as "Guarantor")

OF THE THIRD PART

WHEREAS Imperial Oil Limited, a partner in the Imperial Oil partnership has made an Application to the Ontario Energy Board ("OEB") for Leave to Construct a new 63km section of the Sarnia Products Pipeline ("pipeline") which provides refined petroleum products from Imperial's Sarnia Refinery to its Finch Avenue Terminal;

WHEREAS the route of the new section of the pipeline is substantially within Imperial's existing easement and continues through the communities of Hamilton, Burlington, Oakville, Milton, Mississauga and Toronto;

WHEREAS the Corporation of the City of Mississauga has been granted the status of Intervenor by the OEB in respect of the subject Application;

WHEREAS the City requires Imperial and the Guarantor to enter into the Indemnification and Guarantee Agreement as a condition for the construction and operation of the pipeline including the deactivation of the replacement section of the pipeline;

NOW THEREFORE in consideration of the premises hereto and of the covenants, warranties, representations and agreements herein set forth and provided for, the parties hereto covenant and agree as follows:

1. **PROJECT OVERVIEW**

- (a) The project involves the construction by Imperial of approximately 63km of new pipeline and associated infrastructure between Imperial's Waterdown Station and its Finch Terminal. The new pipeline is to be constructed mostly within Imperial's existing right-of-way and within the right-of-way of HydroOne Networks Inc. with the addition of some new easements. The route segment extends for approximately 17km through the Municipality of Mississauga. Infrastructure associated with the new pipeline will include new valves, launchers/receivers, cathodic protection and temporary storage facilities.
- (b) The project also provides for the deactivation of the existing section of the pipeline which will be left in place and purged of product.
- (c) The construction, ongoing operation and deactivation of the pipeline requires that Imperial perform the work and operate in accordance with certain conditions required by the City along with anticipated conditions imposed by the OEB in its Order or Decision.

2. **LIABILITIES AND INDEMNIFICATION**

Upon the issuance of OEB approval of Imperial's Application, Imperial hereby agrees to indemnify and hold the City including its officials, officers, employees, agents and contractors and representatives and those for whom any of such indemnified parties are responsible, harmless from any and all claims, actions, causes of action, complaints, demands, orders, suits or proceedings of any nature or kind, and all loss, liability, judgments, costs, charges, damages, liens and expenses (including, without limitation, all legal and other professional fees and disbursements) on account of damage to the property of the City and of third parties, and injury (including, without limitation, death) to any person, by reason of or as a consequence of the following:

- (a) The construction of the pipeline including any activities ancillary thereto;
- (b) The operation of the pipeline, including any activities ancillary thereto;
- (c) The deactivation of the existing pipeline, including any activities ancillary thereto;
- (d) The exercise by Imperial of any right or obligation under the OEB Order or Decision;
- (e) Any breach by Imperial of the OEB Order or Decision.

3. **GUARANTEE**

The Guarantor hereby covenants and agrees to and in favour of the City to be jointly and severally liable with Imperial for all obligations of Imperial arising under or pursuant this Agreement and any obligations imposed by the OEB in its Order or Decision in connection with or arising from the Application for the construction and ongoing operation of the pipeline and the deactivation of the existing pipeline. This Guarantee shall be a continuing guarantee.

4. **CONDITIONS**

This Guarantee shall come into effect upon OEB approval of Imperial's Application. This Guarantee is in addition, and without prejudice to other agreements of any kind held by the City or required as part of the Application.

5. **CONSTRUCTION**

This Guarantee shall, in all respects, be subject to and be interpreted, construed and enforced in accordance with the laws in effect in the Province of Ontario. Each party hereto accepts and irrevocably submits to the jurisdiction of the Courts of the Province of Ontario and all courts of appeal therefrom.

6. **NOTICES AND DEMANDS**

The address for notice or demand hereunder shall be as follows:

In case of the City:

(a) By mail or delivery:

City: 4th Floor, 300 City Centre Drive
Mississauga, Ontario, L5B 3C1

Attention: City Solicitor

(b) By FAX: (905) 896-5106

In case of Imperial:

(a) By mail or delivery:

Imperial Oil Limited: 505 Quarry Park Boulevard S.E.
Calgary, Alberta T2C 5N1

Attention: Vice President and General Counsel

(b) By FAX:

In case of the Guarantor:

(a) By mail or delivery:

Imperial Oil: 505 Quarry Park Boulevard S.E.
Calgary, Alberta T2C 5N1

Attention: Vice President and General Counsel

(b) By FAX:

Any of the parties hereto may from time to time change its address for notice or demand herein by giving written notice to the other parties hereto. Any notice or demand may be served by personal service upon an officer of a party hereto or by mailing the same by prepaid post in a properly addressed envelope addressed to the party hereto at its address hereunder or by FAX to the number hereunder. Any notice or demand given by service upon an officer of a party hereto shall be deemed to be given and received on the date of such service. Any notice or demand given by mail shall be deemed to be given to and received by the addressee on the sixth day (except Saturdays, Sundays, statutory holidays and days upon which postal service in Canada is interrupted) after the mailing thereof. Any notice or demand given by FAX shall be deemed to be

given to and received by the addressee on the next day (except Saturdays, Sundays, statutory holidays) after the sending thereof.

7. PRIOR AGREEMENTS AND AMENDMENTS

This Agreement shall supersede and replace any and all prior agreements between the parties hereto relating to the matters contained herein and may be amended only by written instrument signed by all parties hereto.

8. ENTIRE AGREEMENT

This Agreement states and comprises the entire agreement between the parties hereto. There is no representation, warranty or collateral agreement relating to the matters set forth herein except as expressly set forth herein.

9. INUREMENT

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, receivers, receiver-managers, trustees and permitted assigns.

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

10. COUNTERPARTS

This Agreement may be executed in counterparts and all the counterparts together shall constitute one and the same Agreement.

**THE CORPORATION OF THE CITY OF
MISSISSAUGA**

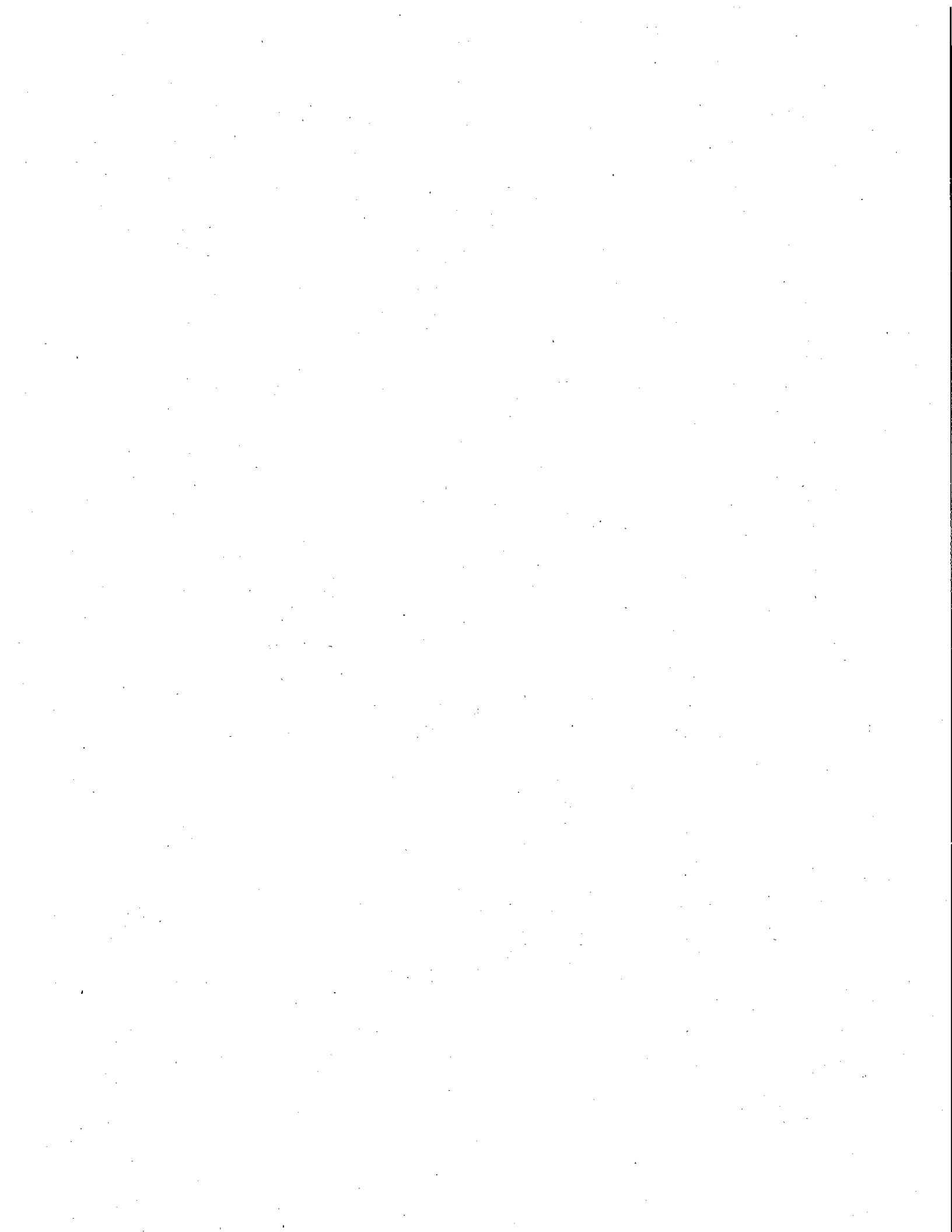
IMPERIAL OIL LIMITED

Per: _____
Title: City Solicitor

Per: _____
Title: _____

**IMPERIAL OIL, a partnership of
Imperial Oil Limited and
Imperial Oil Resources Limited**

Per: _____
Title: _____



Appendix "C"
OFFER TO CONVEY EASEMENT

This Offer to Convey Easement is made in quadruplicate and dated as of the ____ day of _____, 2020 (the "Agreement").

BETWEEN:

THE CORPORATION OF THE CITY OF MISSISSAUGA

(the "Transferor")

- and -

IMPERIAL OIL, an Ontario partnership having
its head office in the City of _____, in the Province of Ontario.

(the "Transferee")

RECITALS:

- A. The Transferor is the registered and beneficial owner of the lands described on Schedule "A" attached hereto;
- B. The Transferee operates a crude oil refinery in Sarnia, Ontario and is implementing the *Waterdown to Finch Pipeline Replacement Project*, which involves replacing approximately 63 kilometres of its existing pipe line between Waterdown, Ontario to its Finch terminal in North York;
- C. The Transferee requires multiple easements from the Transferor in order to implement the *Waterdown to Finch Pipeline Replacement Project* through the boundaries of the City of Mississauga;
- D. The Transferor has agreed to grant easements to the Transferee, subject however, to the terms and conditions set forth in this Agreement.

Now Therefore in consideration of the mutual covenants, terms and conditions exchanged between the parties herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1.0 DEFINITIONS

1.1 As used in this Agreement, the following terms shall have the following meanings:

- (a) **"Agreement"** means this agreement, the Schedules and every properly executed instrument that by its terms amends, modifies or supplements this agreement;
- (b) **"Authority"** means any governmental authority, quasi-governmental authority, agency, body or department whether federal, provincial, regional or municipal, having jurisdiction over the Easement Lands;
- (c) **"Date of Closing"** means the thirtieth (30th) day following the date of execution of this Agreement by the Transferor. In the event the land registry office or, if applicable the electronic registration system for registration of title documents, is closed for business on the said thirtieth (30th) day, then this transaction shall be completed on the first day immediately thereafter on which the land registry office or, if applicable, the electronic registration system shall be open for business;
- (d) **"Easement(s)"** means the document to be registered on title in the form attached hereto in Schedule "B";
- (e) **"Easement Lands"** means those lands owned by the Transferor and as legally described in Schedule "A".
- (f) **"Environmental Contaminant"** has, for the purposes of this Agreement, the same meaning as that contained in the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended, and shall include the requirements of any and all guidelines and/or policies issued by the Ontario Ministry of the Environment and/or the Ministry of Labour.
- (g) **"Land Use Regulations"** means any land use policies, regulations, by-laws, or plans of any Authority that apply to the use of the Easement Lands including the existing official plans, zoning by-laws and zoning orders.
- (h) **"Permitted Encumbrances"** means the encumbrances listed in Schedule ____ to this Agreement.

2.0 ACCEPTANCE OF OFFER

- 2.1 The Transferee agrees that this Offer shall be irrevocable by it until 4:00 p.m. on the date which is thirty (30) days following the date this Offer is executed by the Transferee, after which time, if not accepted, this Offer shall be null and void.
- 2.2 The parties agree that the acceptance, rejection or modification of this Offer may be transmitted by facsimile or similar electronic transmission and that communication by such means will be legal and binding on all parties.

3.0 PAYMENT OF CONSIDERATION

- 3.1 The Transferee shall pay the Transferor the sum of _____ (\$____.00), plus applicable taxes and Harmonized Sales Tax ("HST"), by certified cheque as the consideration for the Easement to be granted on the Date of Closing

4.0 PAYMENT OF TAXES AND FEES

- 4.1 The Transferee shall be responsible for the payment of provincial land transfer tax and registration fees and any other taxes and fees payable in connection with the registration of the Easement.
- 4.2 The Transferee shall pay any HST which is payable in connection with the transaction contemplated herein. The Transferee is registered under the Excise Tax Act (Canada) for the purposes of the HST, and is entitled to self-assess the payment of HST in respect of this transaction. On the Date of Closing, the Transferee shall provide the Transferor with a signed certificate confirming its registration and that such registration has not been varied, cancelled or revoked. The Transferee also shall indemnify and save harmless the Transferee from any HST, penalty, interest or other amounts which may be payable or assessed against the Transferee under the Excise Tax Act (Canada) as a result of or in connection with the Transferee's failure to collect and remit any HST applicable on the conveyance herein.

5.0 ENTRY AND INSPECTIONS

- 5.1 Upon execution of this Agreement, the Transferee (including its planners, engineers, surveyors, employees, agents and contractors, together with their vehicles, equipment and supplies) shall have the right, upon 24 hours prior written notice, to enter upon the Easement Lands for the following purposes:
- (i) to inspect and survey the Easement Lands;
 - (ii) to carry out environmental audits of the Easement Lands;

- (iii) to conduct such other reasonable investigations and tests as may be necessary and appropriate to the Transferee.

5.2 The Transferee shall indemnify, defend and save harmless the Transferor, of and from any and all claims, demands, actions, causes of action, liability for damages and associated costs and expenses, brought against the Transferor, or for which the Transferor becomes liable as a result of personal injury, including personal injury causing death, or property damage, suffered by any person arising out of anything done by the Transferee, its employees, agents and contractors in the course of the exercise of the above right of entry, save and except any damage to the property of the Transferor which is the reasonable and necessary consequence of the exercise of this right of entry or which is caused by or contributed to by the negligent act or omission of the Transferor.

6.0 AS-IS CONDITION

6.1 Save and except for any representations and warranties expressly set out in this Agreement and in the Easement document, the Transferor makes no representations or warranties of any kind, either expressed or implied, as to the condition of the soil, the subsoil, the ground and surface water or any other environmental matters, the condition of the Easement Lands or the condition of any structures, if any, or any other matters respecting the Easement Lands whatsoever, including the use to which it may be put and its zoning.

7.1 TRANSFEREE COVENANTS

7.1 Until the Date of Closing, the Transferee covenants not permit on the Easement Lands, at any time, the presence of any Environmental Contaminant, except in strict compliance with all applicable laws of any relevant Authority including, without limitation, environmental land use, occupational health and safety laws, regulations, requirements, permits and by-laws.

7.2 The Transferee covenants to comply with the terms of the Permitted Encumbrances, any agreement entered into by the Transferor with any Authority relating to the Easement Lands, all other agreements relating to public utilities and municipal services, the Land Use Regulations, all relevant municipal by-laws and all registered restrictions. The Transferee further agrees and acknowledges that it shall be bound by any contractual obligations which the Transferor may have entered into concerning the Easement Lands prior to the Date of Closing.

8.0 PLANNING ACT

8.1 The parties acknowledge that the Transferee is, by virtue of Section 50(3)(c) of the *Planning Act*, R.S.O. 1990, c.P.13, as amended, exempt from compliance with the requirements of Section 50 and therefore no consent will be required for the conveyance or transfer of the Easements to the Transferee.

9.0 TITLE

9.1 The Transferee shall not call for the production of any title deed, abstract, survey or other evidence of title to the Easement Lands except as set out in this Agreement. The Transferee shall have until ten (10) days before the Date of Closing to investigate title to the Easement Lands at the Transferee's sole expense. If within the time allowed for examining the title any objection to title or to any outstanding municipal work order or deficiency notice or requisition is made in writing to the Transferor, which the Transferor shall be unable to remove, remedy or satisfy, and which objection the Transferee will not waive, this Agreement, notwithstanding any intermediate acts or negotiations in respect of such objections, shall be terminated, and the parties shall not be liable to each other for any costs or damages.

9.2 On the Date of Closing, the Transferee shall accept title to the Easement Lands subject to:

- (a) all registered or unregistered agreements, current leases, easements, rights, covenants and/or restrictions in favour of municipalities, publicly or privately regulated utilities or adjoining owners or third parties, or that otherwise run with the Easement Lands;
- (b) any encroachments as may be revealed by an up-to-date survey; and

10.0 CLOSING DELIVERABLES

10.1 The Transferor shall, at its expense, deliver to the Transferee on or before the Date of Closing each of the following:

- (a) good and valid Transfer of Easement for the Easement Lands, in registerable form, in favour of the Transferee (save for any Land Transfer Tax Affidavit or statements which are to be completed by the Transferee);
- (b) an undertaking to re-adjust the statement of adjustments, if necessary, upon written demand;
- (c) copy of the resolution or by-law authorizing it to enter into this Agreement and convey the Easement;

- (d) a direction as to funds;
- (e) a statement of adjustments;
- (f) the Document Registration Agreement (as defined in Subsection 13(b)); and
- (g) such other documents as the Transferee or its solicitors may reasonably require in order to implement the intent of this Agreement.

10.2 The Transferee shall, at its expense, deliver to the Transferor on or before the Date of Closing each of the following:

- (a) Certified cheque for the consideration due to the Transferor on the Date of Closing;
- (b) a direction as to title, if necessary;
- (c) HST certificate and indemnity;
- (d) copy of the resolution or by-law authorizing it to enter into this Agreement and accept a conveyance of the Easements;
- (e) an undertaking to re-adjust the statement of adjustments, if necessary, upon written demand;
- (f) the Document Registration Agreement (as defined in Subsection 13(b)); and
- (g) such other documents as the Transferor or its solicitors may reasonably require in order to implement the intent of this Agreement.

11.0 ELECTRONIC REGISTRATION

11.1 The parties acknowledge that the Teraview Electronic Registration System ("TERS") is operative in the land registry office in which the Easement Lands are registered and agree that the following provisions shall govern the closing, namely:

- (a) the Transferor and the Transferee shall be obliged to retain a solicitor who is both an authorized TERS user and in good standing with the Law Society of Upper Canada, and who are hereby authorized by the parties to enter into a document registration agreement substantially in the form adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents

on March 29, 2004 or any successor version thereto (hereinafter referred to as the "Document Registration Agreement");

- (b) the delivery and exchange of documents and monies respecting this transaction and the release thereof to the Transferor and the Transferee, as the case may be, shall be governed by the provisions of the Document Registration Agreement;
- (c) each of the parties agrees that the delivery of any documents not intended for registration on title to the Easement Lands may be delivered to the other party's solicitor by any electronic system which reproduces the original, provided that all documents so transmitted have been duly and properly executed by the appropriate parties/signatories to that document. The party transmitting any such documents shall also deliver the originals of same to the recipient party's solicitor within two (2) business days after the Date of Closing, if delivery of the originals has been so requested by the recipient party or by its solicitor. However, all original cheques must be delivered on or prior to the Date of Closing.

12.0 PREPARATION OF DOCUMENTS

- 12.1 The Transfer of Easement for the Easement Lands shall contain the terms and conditions attached hereto as Schedule "B" and shall be prepared by the Transferor, except for the Land Transfer Tax Affidavit or statements, which shall be prepared by the Transferee.

13.0 ASSIGNMENT

- 13.1 This Agreement shall not be assigned by either party without the prior written consent of the other, which consent may not be arbitrarily and unreasonably withheld or delayed.

14.0 TENDER

- 14.1 Any tender of money or documents pursuant to this Agreement may be made on the Transferor or the Transferee or their respective solicitors. Money must be tendered by bank draft or negotiable cheque certified by a Canadian chartered bank, trust company or Province of Ontario Savings Office. It is expressly understood and agreed by the parties that an effective tender shall be deemed to have been validly made when the solicitor for the party wishing to tender has e-mailed a letter to the other party's solicitor prior to 4:00 pm on the Date of Closing confirming that,

- (a) all closing documents required under the Agreement have been prepared and signed and, in the case of a letter from the solicitor for the Transferee, that a cheque for the closing funds has

been drawn, (with copies of the aforementioned documents attached to the letter being e-mailed); and

- (b) its client is ready, willing and able to complete the transaction in accordance with the terms of the Agreement; and
- (c) all steps required by the Teraview electronic registration system that can be performed or undertaken without the cooperation of the solicitor for the party on whom tender is being made, have been completed by the solicitor for the party carrying out the tender, including signing of the transfer electronically by the solicitor for the tendering party,

all without the necessity of personally attending upon the other party or its solicitor with the aforementioned documents, funds and where applicable, keys, and without any requirement to have an independent witness to evidence the foregoing.

15.1 NOTICES

- 15.1 Any notices, communications and/or deliveries required by this Agreement shall be in writing and may be delivered personally, by e-mail or by registered mail (postage prepaid, return receipt requested) addressed to each party at the address below set forth or such other address as the parties shall designate by notice, given in accordance herewith:

The Transferor at:

City of Mississauga – Legal Services Division

300 City Centre Drive, 4th Floor

Mississauga, Ontario, L5B 3C1

Attention: Domenic Tudino, Senior Legal Counsel, C.S.

Tel: (905) 615-3200, ext. 5412

Fax: (905) 896-5106

e-mail: domenic.tudino@mississauga.ca

With a copy to:

City of Mississauga – Realty Services Section

950 Burnhamthorpe Road West, 2nd Floor

Mississauga, Ontario, L5C 3B4

Attention: Bill Moffat, Project Leader

Tel: (905) 615-3200 ext 5435

Fax: (905) 615-3956

To the Transferee:

Osler, Hoskin & Harcourt, LLP

100 King Street West, Suite 6200

Toronto, Ontario, M5X 1B8

Attention: Paul Morassutti

Tel: (416) 362-2111

Fax: (416) 862-6666

If delivered personally, any such notice or communication shall be deemed to have been given upon delivery. If delivered by email, any such notice or communication shall be deemed to have been given on the date of emailing, provided the sender produces an email showing the notice was sent. If by registered mailed, each such notice or communication shall be dated as of the date of mailing and shall be deemed to have been given, delivered and completed on the third (3rd) business day (excluding Saturdays, Sundays and Statutory Holidays) following the date of mailing thereof, provided that the postal services have not been interrupted in which case notice shall only be given by personal delivery or e-mail as aforesaid. It is agreed that any notice or communication to be given by Mississauga may be under the signature of Mississauga's Legal Counsel and need not be under the corporate seal, and any such notice or communication so signed shall conclusively be deemed to express the will and corporate act of Mississauga as therein contained and no further evidence thereof or of any by-law or resolution of Mississauga need be given.

16.0 MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

- 16.1 The Transferor and the Transferee agree to take all necessary precautions to maintain the confidentiality of the terms and conditions contained herein. The Transferee and Transferor acknowledge that this Agreement and any information or documents that are provided to the other party may be released pursuant to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended. This acknowledgment shall not be construed as a waiver of any right to object to the release of this Agreement or of any information or documents.

17.0 REFERENCE PLAN(S)

17.1 The Transferee shall be solely responsible for providing a valid and updated legal description for the Easement Lands and in doing so shall prepare and deposit all required reference plans at its cost and expense.

18.0 LEGAL FEES AND DISBURSEMENTS

18.1 On the Date of Closing, the Transferee shall reimburse the Transferor for legal fees and disbursements incurred connection with the preparation of this Agreement (and for any amendments) in accordance with the City of Mississauga *General Fees & Charges By-Law*. The amount payable by the Transferee shall appear on the Statement of Adjustments.

19.0 GENERAL

19.1 Time shall in all respects be of the essence of this Agreement, provided that the time for doing or completing any matter provided for in this Agreement may be extended or abridged by an agreement, in writing, signed by the Transferor and the Transferee or by an agreement between their respective solicitors who are hereby expressly authorized in this regard.

19.2 Whenever the singular is used in this Agreement, it shall mean and include the plural and whenever the masculine gender is used in this Agreement it shall mean and include the feminine gender if the context so requires.

19.3 This Agreement and the rights and obligations of the Transferor and the Transferee shall be determined in accordance with the laws of the Province of Ontario.

19.4 This Agreement shall be binding upon, and enure to the benefit of, the Transferor and the Transferee and their respective successors and assigns. The Transferor and the Transferee acknowledge and agree that the representations, covenants, agreements, rights and obligations of the Transferor and the Transferee under this Agreement (collectively, the "Obligations") shall not merge on the completion of this transaction, but shall survive completion and remain in full force and effect and be binding upon the parties subject to or entitled to the benefit of such Obligations, save and except as may be otherwise expressly provided for in this Agreement.

19.5 This Agreement constitutes the entire agreement between the parties and there is no representation, warranty, collateral agreement or condition affecting this Agreement or the Easement Lands other than expressed herein.

19.6 This Agreement and any amendment, notice or waiver associated therewith may be executed in any number of counterparts and all such counterparts shall for all purposes constitute one agreement, binding on the parties hereto, provided each party hereto has executed at least one counterpart, and each shall be deemed to be an original, notwithstanding that all parties are not signatory to the same counterpart. This Agreement and any amendment, notice or waiver associated therewith may be executed and delivered by any of the parties by transmitting to the others a copy of said agreement, amendment, notice or waiver (executed by such delivering party) by telecopier or similar means of electronic communication (including, without limitation, e-mail), and delivery in that manner by a party shall be binding upon such party and deemed to be an original.

20.0 SCHEDULES

20.1 The following schedules are attached to and form an integral part of this Agreement:

- (a) Schedule "A" - Legal Description of the Easement Lands
- (b) Schedule "B" - Terms of the Easement

IN WITNESS WHEREOF the parties have executed this Agreement under the hands of their respective signing officers duly authorized to bind the corporation or affixed their respective corporate seals under the hands of their duly authorized officers as of the date herein before first written.

THE CORPORATION OF THE CITY OF MISSISSAUGA

Per: _____

Print Name: **Geoff Wright**

Position Title: Commissioner of Transportation

Per: _____

Print Name: **Diana Rusnov**

Position Title: City Clerk & Director of Legislative Services

Authorized Through By-Law # _____

IMPERIAL OIL, by its Managing Partner,

IMPERIAL OIL LIMITED

Per: _____

Print Name:

Position Title:

Per: _____

Print Name:

Position Title:

I/We have authority to bind the corporation

SCHEDULE "A"

LEGAL DESCRIPTION OF THE EASEMENT LANDS

Property No.	Property PIN	Legal Description
1		
2		
3		

SCHEDULE "B"

EASEMENT IN GROSS

GRANT OF EASEMENT - PIPELINE

(Ontario)

This Grant of Easement Agreement is made in quadruplicate and dated as of the _____ day of _____, 2020 (the "Agreement").

BETWEEN:

THE CORPORATION OF THE CITY OF MISSISSAUGA

(the "Transferor")

- and -

IMPERIAL OIL an Ontario partnership having

its head office in the City of _____, in the Province of Ontario.

(the "Transferee")

RECITALS:

- A. The Transferor is the registered and beneficial owner of the lands described on Schedule "A" attached hereto, subject to such encumbrances, liens and interests as are at the date hereof set forth in the existing parcel register of those lands and premises (hereinafter the "Easement Lands");

- B. The Transferee operates a crude oil refinery in Sarnia, Ontario and is implementing the *Waterdown to Finch Pipeline Replacement Project*, which involves replacing approximately 63 kilometres of its existing pipe line (the "Project");
- C. The Transferee requires easements on the Easement Lands in order to implement the Project through the boundaries of the City of Mississauga;
- D. The Transferor has agreed to grant easements to the Transferee against the Easement Lands, subject however to the terms and conditions set forth in this Agreement.

In consideration of the sum of One Dollar (\$1.00) paid by the Transferee to the Transferor, the receipt and sufficiency of which is hereby acknowledged by the parties, and of the mutual covenants, terms and conditions contained in this Agreement, the parties therefore agree as follows:

1.0 Grant of Easement Rights

1.1 Transferor hereby grants, conveys and transfers unto the Transferee the following:

- (a) the exclusive easement in perpetuity, on, over, upon, across, along, in, under and through Easement Lands for the purposes of operating and maintaining one or more lines of buried pipe, including the right to sample the soil, survey the land, inspect, patrol (including aerial patrol), alter, relocate, remove, replace, reconstruct and repair one or more line(s) of pipe together with all facilities, appurtenances or works of the Transferee useful in connection with or incidental to its undertaking, including, but without limiting the generality of the foregoing, all such pipes, drips, valves, fittings, connections, meters, markers, corrosion control equipment, cathodic protection equipment and other equipment and appurtenances, whether or not similar to the foregoing, as may be useful or convenient in connection therewith or incidental thereto for the carriage, transmission, conveyance, transportation and handling of oil, diluent, refined products, natural and artificial gas and other gaseous or liquid hydrocarbons and any product or by-product thereof, such line of pipe together with such related facilities or works being referred to, collectively, as "Pipeline"; and
- (b) the right of ingress and egress at any and all times over, along, across and upon the Easement Lands; and
- (c) 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 in, on, above, or under the Easement Lands.

the rights and privileges of the Easement specifically described in sub-clauses 1.1 (a), (b) and (c) above shall be collectively referred to as the "**Easement Rights**".

- 1.2 The Easement Rights extend to the Transferee's directors, officers, agents, employees, contractors, subcontractors and invitees. The Transferee may exercise the Easement Rights on foot and/or with vehicles, 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 as and from the date hereof, upon the terms and subject to the conditions hereinafter set forth.

2.0 Aboveground Works and Grant of Access Easement

- 2.1 The Transferee shall, at any time, have the right to locate any part or parts of the Pipeline on the surface of the Easement Lands (in each case the "**Aboveground Works**") and to fence off such area as in the Transferee's opinion is required for the Aboveground Works.

- 2.2 In respect of each of the Aboveground Works, provided however the Transferor receives at least 120 days prior written notice, the Transferor shall agree to grant the Transferee, including its directors, officers, agents, employees, contractors, subcontractors and invitees, an easement to clear and to use the surface of the Easement Lands, including other lands owned by the Transferor, as may be reasonably required by the Transferee, and for as long as may be required by the Transferee, for convenient access on foot and/or with vehicles, together with materials, machinery and equipment, within and across such lands to gain access to the Aboveground Works (the "**Access Easement**"). The grant of the Access Easement shall remain conditional on the following actions to be taken by the Transferee:

- (a) secure the written approval of the Transferor as to the location of any Aboveground Works and any required Access Easement;
- (b) to minimize, as best as possible, any inconvenience to the Transferor, and to the extent practicable, each such Access Easement shall encompass existing roads, trails and gates located within such other lands;
- (c) furnish to the Transferor a draft reference plan prepared by an Ontario Land Surveyor showing the boundaries of the required Access Easement and the Aboveground Works;
- (d) by separate easement agreement(s) to be registered on title, pay fair market value compensation to the Transferor for the Access Easement and for the loss of use by the Transferor of such portions of the Easement Lands that are fenced and used for the Aboveground Works, including compensation for any nuisance, noise, inconvenience and interference that might arise or be caused to the Transferor's use of the Easement Lands by the Aboveground Works and Access Easement.

- 2.3 On providing the Transferee with at least 120 days prior written notice, the Transferor may relocate the boundaries of the Access Easement, provided however, the location of the new easement allows the

Transferee to access the Aboveground Works, together with materials, machinery and equipment, in a reasonably safe and expeditious manner. The Transferor shall bear the reasonable costs to prepare and register the new easement.

3.0 Transferee's Obligations

- 3.1 Subject to clause 3.3 below, the Transferee shall, as soon as weather and soil conditions permit and insofar as it is practicable to do so, bury those portions of the Pipeline that are designed to be underground so as not to unreasonably obstruct the natural surface runoff from the Easement lands.
- 3.2 In connection with the construction of the Pipeline, the Transferee shall, insofar as may be practicable to do so by employing good industry practices and in accordance with the legislation and regulations in force at the time, separate and save excavated topsoil from the Easement lands and thereafter restore it thereon.
- 3.3 As soon as reasonably practicable after the construction of the Pipeline, the Transferee, unless otherwise agreed to by the Transferor, shall remove all construction debris from the Easement Lands and in all respects restore the Easement Lands to a condition similar to the surrounding environment and consistent with the current use of the Easement Lands, as far as is reasonable and practicable and in accordance with the legislation and regulations in force at the time of such restoration, save and except for: (a) items in respect of which compensation is due under the indemnity clause 6.0; and (b) any soil rise above grade to allow for soil settling.

4.0 Use of Easement Lands by Transferor

- 4.1 Excluding any portion of the Easement Lands that may be fenced as contemplated herein, the Transferor shall have the full right to use and enjoy the Easement Lands, including the right to cross the buried portion of the Pipeline as may be necessary. Notwithstanding the foregoing, the Transferor shall not, without the prior written consent of the Transferee, which consent shall not be unreasonably withheld or delayed:
- (a) excavate, construct, drill, install, erect or permit to be excavated, constructed, drilled, installed or erected on, over or under any part of the Easement Lands 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 Easement Lands;
 - (b) alter the grade of the Easement Lands;
 - (c) add any paving or other material to the Easement Lands;
 - (d) use the Easement Lands for any purpose which could damage or compromise the functioning of the Pipeline; or

(e) Provided the Transferee is not in default under this Agreement, take any action which restricts or limits the exercise by the Transferee of any of the Easement Rights.

4.2 Subject to clause 5.1, where the Transferor notifies the Transferee in writing that the Transferor wishes to make a non-recurring agricultural improvement which can be practically made to the Lands, the Transferee agrees to reimburse the Transferor for the reasonable additional costs of making such improvement that are a direct result of the existence of the Pipeline. If the Transferee and the Transferor fail to agree within ninety (90) days of such a notification as to the practicality of making the proposed improvement or the amount by which the cost of making such an improvement is increased as a direct result of the existence of the Pipeline, then the Transferor or the Transferee may proceed to negotiation or arbitration in accordance with the provisions of the *Ontario Energy Board Act, 1998* (the "Act").

5.0 Insurance

5.1 Without restricting the indemnification provisions of this Agreement, the Transferee shall at its sole cost and expense, obtain and maintain in full force and effect at all times throughout the term or extended term(s) of this Agreement, insurance satisfactory to the Transferor with financially sound and reputable insurance companies licensed to underwrite insurance in the Province of Ontario. The Transferee shall be responsible for payment of all amounts within the deductible or self-insured retention under each policy of insurance. All insurance policies required pursuant to this Section shall be primary and shall not call into contribution any insurance available to the Transferor and any indemnified persons.

(a) Commercial General Liability insurance in respect of the Easement Lands and the operations of the Transferee thereon against claims for bodily injury, including personal injury and death, and property damage or loss, indemnifying and protecting the Transferee, their respective employees, servants, agents, contractor's, invitees or licensees, to the inclusive limit of not less than Five Million (\$5,000,000.00) Dollars per occurrence, or such other amounts as the Transferor may in its discretion determine from time to time. Such insurance shall specifically state by its wording or by endorsement that the following coverage is included:

- (i) the Transferor and any indemnified persons are added as additional insured under the policy only with respect to the operations and obligations of the Transferee as outlined in this Agreement;
- (ii) tenant's legal liability, contractual liability, non-owned automobile liability, owner's and contractor's protective liability, products and completed operations coverage, contingent employer's liability, and employees as additional insured;
- (iii) the policy contains a cross-liability clause which shall have the effect of insuring each person, firm or corporation named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each;

- (iv) a waiver of subrogation rights which the insurers may have against the Transferor and any indemnified persons and against those for whom it is in law responsible.
- (b) "All Risks" Property insurance coverage on a replacement cost basis in such amounts as required to adequately insure the Transferee's property, machinery, equipment, and other such property in the care, custody and control of the Transferee, including the improvements and property comprising the Easement Lands. The policy shall contain a waiver of rights of subrogation against the Transferor and any indemnified persons.
- (c) Environmental Impairment Liability insurance covering all operations as described in this Agreement including coverage for loss or claims arising from a pollution condition resulting from covered operations. Such policy shall provide coverage in the amount of at least Five Million (\$5,000,000.00) Dollars per occurrence and shall remain in force throughout the term of this Agreement and for a period of at least 12 months following the expiry of the term.
- (d) Automobile Liability insurance with limits of not less than (two/five) million (\$2/5,000,000) dollars per occurrence. The policy must provide coverage for bodily injury or property damage arising out of the ownership, use or operation of all owned and/or leased automobiles of the Licensee.

5.2 All such policies of insurance requested in this Section shall not be terminated, or cancelled unless written notice of such termination, cancellation or material change is given by the insurers to the Transferor at least thirty (30) clear days before the effective date thereof.

5.3 Prior to the execution of this Agreement, and upon each insurance policy renewal date throughout the term of this Agreement, the Transferor shall deliver to the Transferor a City of Mississauga Certificate of Insurance evidencing insurance required under this Agreement. A PDF version of the City Certificate can be obtained at www.mississauga.ca/certificateofinsurance, completed by an authorized representative of the insurer and forwarded to:

City of Mississauga, 300 City Centre Drive, Mississauga, Ontario, L5B 3C1,
Attention: Manager, Realty Services, File: CA13-IMP

6.0 Indemnity

6.1 The Transferee shall indemnify, defend and save the Transferor harmless, including the Transferor's elected officials, officers, employees, agents and contractors, from and against any loss, cost and expense incurred, suffered or sustained by the Transferor because of any demand, action or claim brought against the Transferor as a result of any loss of or damage to property, personal injury or death, or any other losses or damages, both direct or indirect, including such other costs and expenses howsoever and whatsoever incurred, suffered or sustained by the Transferor or any third party, resulting from Transferee's use of the Licensed Lands, or by anyone else permitted on the Licensed Lands by Transferee or by anyone for whom in law Transferee is responsible, including any losses or damages which have been caused or contributed to by any negligence or nuisance, breach of the *Occupiers' Liability Act* or

breach of statutory duty on the part of Transferee or on the part of anyone for whom Transferee is in law responsible, by Transferee's presence upon the Licensed Lands, the condition or state of repair of the Licensed Lands and the breach of any of the provisions of this Agreement by Transferee, including, but not limited to, any form of environmental damage caused by or attributable to the action or inaction of Transferee, but in each and every case this indemnity shall not apply where such injury, damage or loss is caused by the gross negligence of the Transferor, its employees, agents, contractors or invitees.

7.0 ENVIRONMENTAL LIABILITY

7.1 Transferee acknowledges and agrees that the Transferor is not responsible, either directly or indirectly, for any damage to property, including any nuisance or injury to any person, howsoever caused, including death, arising from the escape, discharge, spill or release of any Hazardous Substance resulting from Transferee's use of the Easement Lands.

7.2 Transferee hereby assumes all environmental liabilities relating to its use of the Easement Lands, including but not limited to, any liability for clean-up of any Hazardous Substance on or under the Easement Lands or any adjoining public highway which results from the operations of Transferee within the Easement Lands.

7.3 Transferee shall include in its agreements with third parties working upon or utilizing any portion of the Easement Lands, an acknowledgement and agreement by those third parties that their activities are subject to the terms of this Agreement, and that they shall comply, at their sole expense, with all applicable laws, statues, by-laws, codes, ordinances, rules, orders and regulations of all governmental authorities, and that the third party shall obtain and maintain any and all permits, licenses or any other approvals and consents necessary or required for their activities within the Easement Lands.

8.0 Risk Of Injury And Damage

8.1 The Transferee, its officers, directors, members, guests, servants, employees, agents and contractors and all others having access to the Easement Lands by reason of the Transferee's Easement Rights, shall do so at his, her and their own risk and under no circumstances shall the Transferor be liable for any personal injury (including personal injury causing death or psychological trauma) and for any property damage, loss or theft suffered by any person, firm or corporation while upon the Easement Lands or the approaches or appurtenances thereto, it being understood and acknowledged that all such liability, if any, is assumed by the Transferee.

9.0 Liens

9.1 The Transferee shall promptly pay for all materials and services supplied and work done in respect of the Easement Lands and do all things necessary so as to ensure that no lien or other charge or claim therefore, or certificate of action in respect thereof (any of which is called a "Lien" in this section) is claimed or registered against any portion of the Easement Lands or

against the Transferor's or Transferee's interest therein. If any such Lien is claimed or registered, the Transferee shall cause it to be discharged or vacated at its sole expense within thirty (30) days thereafter, failing which the Transferor, in addition to any other right or remedy of the Transferor, may, but shall not be obligated to, cause the Lien to be discharged or vacated by paying the amount claimed to be due together with any other amounts into court and the amounts so paid and all expenses of the Transferor including, without limitation, legal fees (on a substantial indemnity costs basis) shall be paid by the Transferee to the Transferor forthwith upon demand.

10.0 Ownership of Pipeline

10.1 Notwithstanding any rule of law or equity, the Pipeline shall, until surrendered, at all times remain the property of the Transferee notwithstanding that it may be annexed or affixed to the Lands.

11.0 Abandonment

11.1 The Transferee may, upon 180 days prior written notice to the Transferor, abandon the Pipeline by either leaving the Pipeline in place or removing it at the Transferee's option subject to and in accordance with the legislation and regulations in force at the time of such abandonment.

12.0 Discharge of the Easement

12.1 This Agreement shall be registered on title and thereafter upon the termination of this Agreement, the Transferee shall register in the appropriate Land Titles Office such documents as may be necessary to remove or delete such registration from title to the Easement Lands, at the sole cost and expense of the Transferee.

13.0 No Fettering Of Discretion

13.1 The Transferee acknowledges and agrees that this Agreement shall not in any manner fetter the discretion or authority of the Transferor, its elected municipal council or the chief building official under any and all applicable laws, including but not limited to the *Municipal Act, 2001*, *Building Code Act* and the *Planning Act*. The Transferee shall be required, at its own expense, to make any necessary applications regarding the Easement Lands including applications related to minor variances, site plan approval, official plan amendments, zoning and servicing of the Easement Lands to the applicable, regulatory and/or approving body or authority with respect to land use and any possible development of the Easement Lands.

14.0 Quiet Enjoyment

14.1 Provided the Transferee is not in default under this Agreement and is performing and observing each and every covenant and condition on its part to be observed and performed herein, the Transferee may peaceably hold and enjoy the Easement Rights without hindrance, molestation or interruption on the part of the Transferor or of any person claiming by, through, under or in trust for, the Transferor.

15.0 Binding Effect

15.1 If it appears that at the date this agreement is entered into, the Transferor is not the sole owner of the Lands, this agreement shall nevertheless bind the Transferor to the full extent of the Transferor's interest herein, and if the Transferor shall later acquire a greater or the entire interest in the Lands this agreement shall likewise extend to such after-acquired interest.

16.0 Representations and Warranties

16.1 The Transferor represents and warrants that it is the legal and beneficial owner in fee simple of the Lands, it has the legal right and authority to convey all of the rights granted hereunder free from all encumbrances, that it has done no act to encumber the Easement and the Easement Rights and that it has not granted any other rights to any third party, and the Transferor is not otherwise aware of any other rights, that would conflict with the rights granted hereunder. The Transferor will not grant an option, easement, lease or any other property rights related to the Lands to any other person that would interfere with the rights granted to the Transferee, save and except for any easements, rights-of-way, restrictions or any other property rights granted prior to the date hereof.

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

16.3 The Transferor represents and warrants to the Transferee that the Transferor is a municipal corporation.

17.0 Payment of Outstanding Amounts

17.1 Notwithstanding any other provision in this agreement, if the Transferee determines that,

- (a) there are outstanding charges, taxes, construction liens, writs of enforcement, judgments or other encumbrances which are registered against the Lands; or
- (b) there are any overdue amounts outstanding under any agreement for sale, mortgage or other financial encumbrance that is registered against the Lands,

the Transferee may, but is not obligated to, pay all or a portion of the compensation or other amounts payable under this agreement to the holder of such charge, lien, writ of enforcement, judgment, mortgage or other financial encumbrance, or to such vendor or mortgagee to satisfy and discharge such encumbrance or to obtain a postponement from the holder of such charge, lien, writ of enforcement, judgement, mortgage or other financial encumbrance. The payment of any amount to such third party shall be deemed to be payment of such amount to the Transferor. For greater certainty, the Transferee shall not be required to obtain the Transferor's consent prior to making such payment. The Transferee shall provide to the Transferor written confirmation of any such payments within thirty (30) days of making such payments.

18.0 Notices

- 18.1 All notices or payments required or permitted to be given under or in connection with this Agreement shall be in writing and shall be personally delivered, delivered by courier, mailed by registered mail, faxed or sent by electronic transmission to the party to whom the notice is to be given and, when mailed, any such notice shall be deemed to be given to, and received by, the addressee seven (7) days (Saturdays, Sundays and statutory holidays in the province of Ontario excluded) after the mailing thereof.
- 18.2 Unless changed by notice, the addresses of the parties shall be:

To the Transferor: **City of Mississauga, Legal Services Division**
300 City Centre Drive, 4th Floor
Mississauga, Ontario, L5B 3C1
Attention: City Solicitor
Tel: (905) 615-3200

With a copy to: **City of Mississauga, Realty Services Section**
300 City Centre Drive
Mississauga, Ontario, L5B 3C1
Attention: Manager of Realty Services
Tel No: (905) 615-3200

To the Transferee: **Imperial Oil**

Attention: _____
Tel: _____

19.0 General Provisions

- 19.1 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 from this Agreement, provided however, that the remainder of this Agreement shall continue in full force and effect.

- 19.2 This Agreement shall not be assigned by the Transferee, whether in whole or in part, without the prior written approval of the Transferor, which approval shall not be unreasonably withheld.
- 19.3 The Easement Rights and Access Easement are and shall be of the same force and effect to all intents and purposes as covenants running with the land and this Agreement, including all the covenants herein, shall extend to, be binding upon and enure to the benefit of the heirs, executors, administrators, successors-in-title, successors and assigns of the parties respectively.
- 19.4 Wherever the singular or masculine is used, it shall be construed as if the plural or the feminine or the neuter, as the case may be, had been used, where the context of the party or parties so require, and this Agreement shall be construed as if the grammatical and terminological changes thereby rendered necessary had been made.
- 19.5 The Transferor collects, uses, discloses and maintains personal information in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*, including any personal information policy that may be in effect from time to time. The Transferee collects, uses, discloses and maintains personal information in accordance with the *Personal Information Protection and Electronic Documents Act* and the Transferee's personal information policy.
- 19.6 The parties hereto shall execute such further assurances of the rights granted herein as may be required, including the execution and delivery 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 Easement Rights being granted.
- 19.7 This Agreement and the schedules attached set forth the entire agreement and understanding between the parties as to the subject matter contained herein, and the parties agree that there are no representations, warranties, agreements, terms or conditions affecting this Agreement other than as contained herein.
- 19.8 The Easement Rights herein granted are declared, agreed and acknowledged to be appurtenant to and run with the Transferee's refinery located in the City of Sarnia, Ontario and the Transferee's refinery located in Nanticoke, Ontario, and the pipe line system, pumping stations, bulk plant terminals and other corporeal hereditaments serving such refinery and to each separately as well as collectively.
- 19.9 This Agreement shall not be binding upon either party until it has been executed and delivered by both parties.
- 19.10 This Agreement shall be governed by and construed in accordance with the laws in force in the Province of Ontario and the federal laws of Canada, as applicable therein.
- 19.11 Time shall be deemed to be of the essence with respect to all time limits mentioned in this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement under the hands of their respective signing officers duly authorized to bind the corporation or affixed their respective corporate seals under the hands of their duly authorized officers as of the date herein before first written.

THE CORPORATION OF THE CITY OF MISSISSAUGA

Per: _____

Name: **Geoff Wright**

Title: Commissioner of Transportation & Works

Per: _____

Name: **Diana Rusnov**

Title: City Clerk & Director of Legislative Services

Authorized through Mississauga By-Law # _____

IMPERIAL OIL PARTNERSHIP, by its managing Partner

IMPERIAL OIL LIMITED

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the Partnership

SCHEDULE "A"

LEGAL DESCRIPTION OF THE EASEMENT LANDS

Property No.	Property PIN	Legal Description
1		
2		
3		

EASEMENT ENCROACHMENT AGREEMENT

THIS EASEMENT ENCROACHMENT AGREEMENT is made in quadruplicate and effective as of the _____ day of _____, 2020 (hereinafter the "Agreement").

BETWEEN:

THE CORPORATION OF THE CITY OF MISSISSAUGA

(the "Mississauga")

-and-

IMPERIAL OIL, an Ontario partnership having

its head office in the City of _____, in the Province of Ontario.

(the "Imperial")

WHEREAS _____ is the current registered owner (the "Owner") of the lands and premises described on *Schedule "A"* attached hereto and known municipally as _____, in the City of Mississauga, Region of Peel (the "Owner's Lands");

AND WHEREAS the Owner's Lands are subject to an easement in favour of Mississauga registered on _____, 20__ as instrument number # _____ (the "Mississauga Easement") against that portion of the Owner's Lands described as Part ___ on Reference Plan 43R-____ (the "Mississauga Easement Lands");

AND WHEREAS the Owner's Lands have become subject to an easement in favour of Imperial registered on _____, 20__ as instrument number # _____ (the "Imperial Easement") against that portion

of the Owner's Lands described as Part ____ on Reference Plan 43R-____ (the "Imperial Easement Lands");

AND WHEREAS the Imperial Easement Lands overlap and encroach onto the Mississauga Easement Lands (the "Encroachment Area") and the parties hereto are entering into this Agreement in order to govern and regulate their future activities as they relate to the Encroachment Area;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements herein contained, (the sufficiency of which is mutually agreed to) and subject to the terms and conditions hereinafter set forth, the parties hereto agree as follows;

1.0 CONSENT TO ENCROACH

1.1 Mississauga hereby grants its consent to Imperial to construct, install, maintain, repair and use within the Encroachment Area, as shown on the sketch attached hereto as Schedule "B", certain oil pipeline related equipment and improvements (the "Encroachments") on such terms and conditions as are set out herein.

1.2 Imperial agrees that it shall not increase the Encroachment Area without the prior written consent of Mississauga, which consent may not be unreasonably withheld or delayed.

1.3 Imperial has reviewed and is familiar with the Mississauga Easement and unless otherwise specified in this Agreement, shall conduct its operations so as not to breach or cause Mississauga to be in breach of the terms and conditions of the Mississauga Easement.

1.4 The consent provided herein by Mississauga shall remain subject to Imperial obtaining all other necessary permits, orders, decisions, authorizations and consents from any authority, board or committee having jurisdiction, including but not limited to permits, orders, decisions, authorizations and consents in connection with, but not necessarily limited to, site plan, building permit, zoning, planning, and minor variance.

2.0 TERM

2.1 This Agreement shall remain binding and enforceable unless terminated in accordance with the terms and conditions hereinafter set forth.

3.0 TERMINATION

3.1 This Agreement shall terminate in the following circumstances:

- (a) Upon the mutual signed agreement of the parties; or
- (b) If the Encroachments are removed from the Encroachment Area by Imperial or their authorized agents and/or contractors.

4.0 INSTALLATION OF THE ENCROACHMENTS

4.1 Prior to the installation of Encroachments within any of the Encroachment Areas, Imperial shall provide Mississauga with design drawings (in digital format) for each Encroachment Area describing the infrastructure and the depth at which it is being installed, along with a description of the type of materials being used.

5.0 ROUTINE MAINTENANCE AND REPAIR

5.1 At all times Imperial shall maintain and keep the Encroachments in a good state of repair at Imperial's sole cost and expense. Mississauga may at any time give written notice to Imperial requiring that certain maintenance or repair work be carried out with respect to the Encroachments where Mississauga has a reasonable belief that their condition or state of repair may adversely impact the proper functioning of municipal infrastructure installed through the Mississauga Easement. Upon receipt of such notice, Imperial shall commence all work described therein and shall have such work completed to the reasonable satisfaction of Mississauga within sixty (60) days.

5.0 EMERGENCY

- 5.1 If Mississauga deems that an emergency exists or that an emergency may be imminent as a result of any Encroachment suddenly becoming a source of danger to the health, welfare and/or safety of the public, Mississauga may take such measures on behalf of Imperial as Mississauga may deem necessary to remove or contain the danger or imminent danger created by the Encroachment. Where Mississauga elects to take any action under this section, the reasonable costs and expenses incurred by Mississauga in so doing shall be recovered in full from Imperial on demand by Mississauga.

6.0 LETTER OF CREDIT

- 6.1 On execution of this Agreement, Imperial shall provide Mississauga with security for the performance of its obligations during the installation of the Encroachments by the issuance of an irrevocable letter of credit in the amount of _____ Dollars (\$____,000.00), naming Mississauga as the sole beneficiary. The form and content of the irrevocable letter of credit shall be in accordance with the Uniform Customs and Practice for documentary credits of the International Chamber of Commerce, the issuing banks standard practice and satisfactory to Mississauga's solicitor, acting reasonably. In the event Mississauga is required to draw upon the letter of credit to enforce the obligations of Imperial, Mississauga shall, at its sole discretion, have the right to require Imperial to replace the letter of credit with a subsequent letter of credit; provided any amount drawn under a letter of credit which is not required or applied for any costs or obligations hereunder shall be forthwith paid to Imperial. Once the Encroachments have been installed, and the condition of the Encroachment Area is in a state satisfactory to Mississauga, acting reasonably, this letter of credit shall be reduced to twenty (20%) per cent of its original value and this reduced sum shall be held by Mississauga for a further period of six (6) months for application to any deficiencies or other maintenance issues relating to the Encroachments. Ten (10) days prior to the expiry of the said six (6) month period, Imperial shall write to Mississauga to arrange for final inspections and if no material deficiencies are found, the balance of the letter of credit shall be returned to Imperial.

7.0 INSURANCE

- 7.1 Without restricting the indemnification provisions of this Agreement, Imperial shall at its sole cost and expense, obtain and maintain in full force and effect at all times throughout the term or extended term(s) of this Agreement, insurance satisfactory to

Mississauga with financially sound and reputable insurance companies licensed to underwrite insurance in the Province of Ontario. Imperial shall be responsible for payment of all amounts within the deductible or self-insured retention under each policy of insurance. All insurance policies required pursuant to this Section shall include the following and be primary and shall not call into contribution any insurance available to Mississauga and any indemnified persons:

- (a) Commercial General Liability insurance in respect of the Encroachment Area and the operations of Imperial thereon against claims for bodily injury, including personal injury and death, and property damage or loss, indemnifying and protecting Imperial, their respective employees, servants, agents, contractor's, invitees or Imperials, to the inclusive limit of not less than Ten Million (\$10,000,000.00) Dollars per occurrence, or such other amounts as Mississauga may in its discretion determine from time to time. Such insurance shall specifically state by its wording or by endorsement that the following coverage is included:
 - (i) Mississauga and any indemnified persons are added as additional insured under the policy only with respect to the operations and obligations of Imperial as outlined in this Agreement;
 - (ii) tenant's legal liability, contractual liability, non-owned automobile liability, owner's and contractor's protective liability, products and completed operations coverage, contingent employer's liability, and employees as additional insured;
 - (iii) the policy contains a cross-liability clause which shall have the effect of insuring each person, firm or corporation named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each;
 - (iv) a waiver of subrogation rights which the insurers may have against Mississauga and any indemnified persons and against those for whom it is in law responsible.
- (b) "All Risks" Property insurance coverage on a replacement cost basis in such amounts as required to adequately insure Imperial's property, machinery, equipment, and other such property in the care, custody and control of Imperial, including the improvements and property comprising the Encroachment Area. The policy shall contain a waiver of rights of subrogation against Mississauga and any indemnified persons.

- (c) Environmental Impairment Liability insurance covering all operations as described in this Agreement including coverage for loss or claims arising from a pollution condition resulting from covered operations. Such policy shall provide coverage in the amount of at least Five Million (\$5,000,000.00) Dollars per occurrence and shall remain in force throughout the term of this Agreement and for a period of at least 12 months following the expiry of the term.
- (d) Automobile Liability insurance with limits of not less than five million (\$5,000,000) dollars per occurrence. The policy must provide coverage for bodily injury or property damage arising out of the ownership, use or operation of all owned and/or leased automobiles of Imperial.

7.2 All such policies of insurance requested in this Section shall not be terminated, or cancelled unless written notice of such termination, cancellation or material change is given by the insurers to Mississauga at least thirty (30) clear days before the effective date thereof.

7.3 Prior to the execution of this Agreement, and upon each insurance policy renewal date throughout the term of this Agreement, Imperial shall deliver to Mississauga a *City of Mississauga Certificate of Insurance* evidencing insurance required under this Agreement. A PDF version of the City Certificate can be obtained at www.mississauga.ca/certificateofinsurance, completed by an authorized representative of the insurer and forwarded to:

City of Mississauga, 300 City Centre Drive, Mississauga, Ontario, L5B 3C1,
Attention: Manager, Realty Services, File: CA13-IMP (Imperial)

8.0 ENVIRONMENTAL LIABILITY

8.1 For the purposes of this section, "Hazardous Substance" means any substance harmful to the environment, including but is not limited to, electromagnetic or other radiation, petroleum products or bi-products, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any law, ordinance, rule, regulation, bylaw or code, whether federal, provincial or municipal.

8.2 Imperial acknowledges and agrees that Mississauga is not responsible, either directly or indirectly, for any damage to property, including any nuisance or injury to any person, howsoever caused, including death, arising from the escape, discharge, spill or release of any Hazardous Substance resulting from Imperial's use of the Encroachment Area.

8.3 Imperial hereby assumes all environmental liabilities relating to its use of the Encroachment Area, including but not limited to, any liability for clean-up of any Hazardous Substance on or under the Encroachment Area which results from the Encroachments or operations of Imperial within the Encroachment Area.

8.4 Imperial shall include in its agreements with third parties working upon or utilizing any portion of the Encroachment Area, an acknowledgement and agreement by those third parties that their activities are subject to the terms of this Agreement, and that they shall comply, at their sole expense, with all applicable laws, statutes, by-laws, codes, ordinances, rules, orders and regulations of all governmental authorities, and that the third party shall obtain and maintain any and all permits, licenses or any other approvals and consents necessary or required for their activities within the Encroachment Area.

9.0 INDEMNITY

9.1 Imperial shall indemnify, defend and save Mississauga harmless, including Mississauga's elected officials, officers, employees, agents and contractors, from and against any loss, cost and expense incurred, suffered or sustained by Mississauga because of any demand, action or claim brought against Mississauga as a result of any loss of or damage to property, personal injury or death, or any other losses or damages, both direct or indirect, including such other costs and expenses howsoever and whatsoever incurred, suffered or sustained by Mississauga or any third party, resulting from Imperial's use of the Encroachment Area, or by anyone else permitted on the Encroachment Area by Imperial or by anyone for whom in law Imperial is responsible, including any losses or damages which have been caused or contributed to by any negligence or nuisance, breach of the *Occupiers' Liability Act* or breach of statutory duty on the part of Imperial or on the part of anyone for whom Imperial is in law responsible, by Imperial's presence upon the Encroachment Area, the condition or state of repair of the Encroachment Area and the breach of any of the provisions of this Agreement by Imperial, including, but not limited to, any form of environmental damage caused by or attributable to the action or inaction of Imperial, but in each and every case this indemnity shall not apply where such injury, damage or loss is caused by the gross negligence of Mississauga, its employees, agents, contractors or invitees.

10.0 NOTICES

10.1 Any notices, communications and/or deliveries required by this Agreement shall be in writing and may be delivered personally, by e-mail or by registered mail (postage prepaid, return receipt requested) addressed to each party at the address below set forth or such other address as the parties shall designate by notice, given in accordance herewith:

To Mississauga:

City of Mississauga

Legal Services Division

300 City Centre Drive, 4th Floor

Mississauga, Ontario, L5B 3C1

Attention: City Solicitor

Tel No: (905) 615-3200

With a copy to:

City of Mississauga

Realty Services Section

300 City Centre Drive

Mississauga, Ontario, L5B 3C1

Attention: Manager of Realty Services

Tel No: (905) 615-3200

To Imperial:

Imperial Oil

Attention: _____

Tel No: _____

Email: _____

If delivered personally, any such notice or communication shall be deemed to have been given upon delivery. If delivered by email, any such notice or communication shall be deemed to have been given on the date of emailing, provided the sender produces an email showing the notice was sent. If by registered mailed, each such notice or communication shall be dated as of the date of mailing and shall be deemed to have been given, delivered and completed on the third (3rd) business day (excluding Saturdays, Sundays and Statutory Holidays) following the date of mailing thereof, provided that the postal services have not been interrupted in which case notice shall only be given by personal delivery or e-mail as aforesaid. It is agreed that any notice or communication to be given by Mississauga may be under the signature of Mississauga's Legal Counsel and need not be under the corporate seal, and any such notice or communication so signed shall conclusively be deemed to express the will and corporate act of Mississauga as therein contained and no further evidence thereof or of any by-law or resolution of Mississauga need be given.

11.1 ASSIGNMENT

11.1 Imperial shall not assign its rights under this Agreement without the prior written consent of Mississauga, which consent may not be unreasonably withheld or delayed. For greater certainty, Imperial agrees that Mississauga shall withhold consent where Imperial is in breach of its obligations under this Agreement.

11.2 No assignment pursuant to this section shall take effect until the assignee to which the consent of Mississauga is given shall have entered into Mississauga's form of agreement directly with Mississauga on terms and conditions satisfactory to Mississauga's solicitor whereby, among other things, the assignee covenants with Mississauga to perform, observe and keep each and every covenant, proviso, condition and agreement in this Agreement on the part of Imperial to be performed, observed and kept.

11.3 Any request for consent shall be in writing and Imperial shall furnish to Mississauga all information available to Imperial or any additional information requested by Mississauga, as to the corporate relationship, responsibility, reputation and financial standing of the proposed assignee.

11.4 Notwithstanding anything else contained herein:

(a) whether or not Mississauga's consent is required, no assignment shall release or relieve Imperial from any of its obligations hereunder until Mississauga's consent is granted; and

(b) no consent by Mississauga to any assignment shall be construed to mean that Mississauga has consented or will consent to any further assignment which shall remain subject to the provisions of this section.

11.5 Imperial acknowledges that if it breaches or permits a breach of this section, Mississauga shall not be required in any way to recognize the purported assignment and that Mississauga shall continue to hold Imperial responsible for all of its obligations hereunder.

12.0 FORCE MAJEURE

12.1 Notwithstanding any other provision contained herein, in the event that either Mississauga or Imperial should be delayed, hindered or prevented from the performance of any act required hereunder by reason of strikes, lockouts, unavailability of materials, inclement weather, acts of God or acts of terrorism or any other cause beyond its reasonable care and control, but not including insolvency or lack of funds, then performance of such act shall be postponed for a period of time equivalent to the time lost by reason of such delay. The provisions of this subsection shall not under any circumstances operate to excuse Imperial from the prompt payment of fees and/or any other charges payable under this Agreement.

13.0 ADDITIONAL CONSIDERATIONS

13.1 During the Term the parties shall sign such further or other documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

14.0 ENTIRE AGREEMENT

14.1 This Agreement and the schedules attached hereto shall constitute the entire agreement between the parties. This Agreement shall not be modified or amended in any way except by written agreement executed and dated by both parties.

15.0 SUCCESSORS AND ASSIGNS

15.1 All rights and liabilities herein granted or imposed on the parties extend to and bind the successors and permitted assigns of Mississauga and Imperial, as the case may be.

16.0 CURRENCY

16.1 Unless otherwise provided for herein, all monetary amounts referred to herein shall refer to the lawful money of Canada.

17.0 HEADINGS FOR CONVENIENCE ONLY

17.1 The division of this Agreement into articles and sections is for convenience only and shall not affect the interpretation or construction of this Agreement.

18.0 NO RELATIONSHIP

18.1 Nothing in this Agreement shall create any relationship between the parties other than that of Imperial and licensor and it is specifically agreed that the parties are not partners, joint-venturers, agents or trustees of the others. Without limiting the generality of the foregoing, the parties expressly acknowledge and agree that Mississauga is in no way liable for the debts or any other liabilities of Imperial, whether relating to the Encroachments or otherwise.

19.0 LEGAL FEES AND DISBURSEMENTS

19.1 Imperial shall reimburse Mississauga for legal fees and disbursements in connection with the preparation of this Agreement (and for future amendments) in accordance with the City of Mississauga *General Fees & Charges By-Law*.

20.0 MUNICIPAL DISCRETION

20.1 Imperial acknowledges that this Agreement shall not in any manner whatsoever fetter

the discretion or authority of Mississauga under the *Municipal Act*, R.S.O. 2001, as amended, and/or the *Planning Act*, R.S.O. 1990, as amended, with respect to the Encroachment Area.

21.0 OTHER LAWS

21.1 During the Term of this Agreement, Imperial shall remain subject to applicable laws having the force of law made or to be made by any lawfully constituted authority having jurisdiction. Notwithstanding any provision of this Agreement to the contrary, this Agreement shall not affect or prejudice Imperial's statutory rights pursuant to the *Ontario Energy Board Act, 1998* and its successors or any order made by the Ontario Energy Board.

22.0 EXTENDED MEANINGS

22.1 In this Agreement, words, terms and provisions which are in the singular shall be read as including the plural, the plural shall include the singular, the masculine shall include feminine and the feminine shall include the masculine, as the case may be and the context require.

23.0 GOVERNING LAW

23.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

24.0 TIME OF THE ESSENCE

24.1 Time shall in all respects be of the essence hereof, provided, however that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the parties, or by their respective legal counsel who are hereby expressly appointed in that regard.

25.0 WAIVER

25.1 A party hereto (the "waiving party") may from time to time in writing and in its sole discretion waive in whole or in part any default, breach, non-performance and/or non-observance by the other party hereto (the "obligated party") of any of the covenants or obligations in favor of the waiving party to be observed or performed by the obligated party under this Agreement. Any such waiver may be retroactive but in any event shall only apply and extend to the specific matter forming the subject of such waiver, shall only extend to the waiving party and shall not otherwise affect or prejudice the right of the waiving party to require the due and strict observance and/or performance by the obligated party of such covenant or obligation thereafter or any other covenant or obligation in favor of the waiving party to be observed or performed by the obligated party under this Agreement.

26.0 SEVERABILITY

26.1 If any section or paragraph of this Agreement is determined to be void or unenforceable in whole or in part by a court of competent jurisdiction, the section or paragraph shall be deemed to be severable from this Agreement and shall not cause the invalidity or unenforceability of any other section or paragraph of this Agreement. Where appropriate, a provision declared to be void and unenforceable against some persons shall continue to be applicable to and enforceable to the fullest extent permitted by law against any person and circumstances other than those as to which it has been held or rendered invalid, unenforceable or illegal.

27.0 REGISTRATION ON TITLE

27.1 Imperial shall register a copy or notice of this Agreement against title to the Owner's Lands at its sole cost and expense. A copy of the registered instrument so registered shall thereafter be provided to Mississauga within thirty (30) days.

28.0 EXTENSION OF TIME

28.1 Mississauga may, in its absolute and unfettered discretion, grant such extensions of time as it deems reasonable or necessary for the performance of Imperial's obligations under this Agreement, provided however, that no such extension nor any other indulgence granted by

Mississauga, or any neglect, refusal or failure to enforce any of the terms and conditions of this Agreement, either in a timely manner or at all, or to take any other remedy shall in any way act as a waiver of the obligations of Imperial under any and all terms of this Agreement.

29.0 SCHEDULES

29.1 The schedules attached to this Agreement and listed below shall have the same force and effect as if the information and terms contained therein were contained in the body of this Agreement:

- (a) Schedule "A" – Legal Description of the Owner's Lands;
- (b) Schedule "B" – Sketch showing the Encroachment Area.

IN WITNESS WHEREOF the parties have executed this Agreement under the hands of their respective signing officers duly authorized to bind the corporation or affixed their respective corporate seals under the hands of their duly authorized officers as of the date herein before first written.

THE CORPORATION OF THE CITY MISSISSAUGA

Per: _____

Name: Geoff Wright

Title: Commissioner, Transportation & Works

Per: _____

Name: Diana Rusnov

Title: City Clerk & Director of Legislative Services

Authorized Through By-Law # _____

IMPERIAL OIL PARTNERSHIP, by its managing Partner

IMPERIAL OIL LIMITED

Name:

Title:

Name:

Title:

/We have the Authority to Bind the Partnership

SCHEDULE "A"

Legal Description of the Owner's Lands

Property No.	Property PIN	Legal Description
1.		
2		
3		

SCHEDULE "B"

Sketch of the Encroachmet Area

MUNICIPAL HIGHWAY CROSSING AGREEMENT

THIS MUNICIPAL HIGHWAY CROSSING AGREEMENT is made in quadruplicate and effective as of the _____ day of _____, 2020.

Between:

THE CORPORATION OF THE CITY OF MISSISSAUGA

(the "Municipality")

- and -

IMPERIAL OIL, an Ontario partnership having

its head office in the City of _____, in the
Province of Ontario.

(the "Imperial")

RECITALS:

- E. The Municipality is the registered and beneficial owner of the public highway lands described on Schedule "A" attached hereto, which lands are subject to such encumbrances, liens and interests as are at the date hereof set forth in the existing parcel register of those lands and premises;
- F. Imperial owns and operates a crude oil refinery in Sarnia, Ontario and is in the process of implementing the *Waterdown to Finch Pipeline Replacement Project*, which involves replacing approximately 63 kilometres of its existing oil pipe line between Waterdown, Ontario to its Finch terminal in North York.

- G. In order to implement the Project, Imperial's oil pipe line will be installed beneath the Crossing Lands at various locations as it proceeds through the boundaries of the Municipality;
- H. The Municipality has agreed to allow Imperial to use the Crossing Lands for the purposes of the Project, provided the parties enter into this Agreement in order to establish their rights and obligations;

NOW THEREFORE in consideration of the sum of Two Dollars (\$2.00) paid by Imperial to the Municipality, the receipt and sufficiency of which is hereby acknowledged by the parties, and of the mutual covenants, terms and conditions contained in this Agreement, the parties therefore agree as follows:

1.0 DEFINITIONS

- 1.1 In this Agreement, the following words and phrases shall have the following meanings:
 - (a) **"Agreement"** means this Municipal Highway Access Agreement and all the Schedules attached hereto;
 - (b) **"Commissioner"** means the Municipality's Commissioner of Transportation and Works or such other person as may have been designated by the said Commissioner;
 - (c) **"Crossing Lands"** means the Public Highways lands listed on Schedule "A" attached hereto under which the Plant shall be installed by Imperial;
 - (d) **"Emergency"** means an unforeseen situation where immediate action must be taken to preserve public health, safety or the essential services of either the Municipality or Imperial;
 - (e) **"Hazardous Substance"** means any substance harmful to the environment,

including but is not limited to, electromagnetic or other radiation, petroleum products or bi-products, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any law, ordinance, rule, regulation, bylaw or code, whether federal, provincial or municipal;

- (f) **"Municipal Consent"** means the written consent of the Commissioner in relation to accessing the Municipality's Public Highway;
- (g) **"Municipality's Costs"** means the reasonable and verifiable costs and expenses of the Municipality to complete an activity, based on the cost of labour and materials, plus an administrative cost equal to fifteen percent (15%) of the total cost of labour and materials;
- (h) **"Plant"** means the oil pipe line, including ducts, conduits, support structures or other related facilities and structures required to be installed to safely implement the Project;
- (i) **"Project"** means Imperial's *Waterdown to Finch Pipeline Replacement Project* which runs from Imperial's Waterdown pump station in rural Hamilton to Imperial's terminal storage facility in Toronto's North York area;
- (j) **"Public Highway"** means any highway, street, road allowance, lane, bridge or viaduct owned by the Municipality;
- (k) **"Road Occupancy Permit"** means the permit issued by the Municipality for the purposes of authorizing construction related activity on a Public Highway;
- (l) **"Work"** means the installation, removal, construction, maintenance, repair, replacement, relocation, adjustment or other alteration of the Plant within the Public Highway.

2.0 TERM

2.1 This Agreement shall run for a period of ___ (__) years, commencing on _____, 2020 and thereafter shall expire and be fully terminated on _____, 20___. Provided

Imperial is not then in default under this Agreement and shall have observed and complied with all obligations, restrictions, terms and provisions herein to the satisfaction of the Municipality, then at the option of Imperial and on providing the Municipality with no less than (90) days written notice prior to the expiry of the initial term, this Agreement may be renewed for one further term of ____ (__) years, subject to all obligations, restrictions, terms and provisions as hereinafter contained, save and except any further right of renewal and the applicable fees and charges to be paid at the time of renewal.

3.0 USE OF PUBLIC HIGHWAY

- 3.1 The Municipality hereby permits Imperial to use the Crossing Lands listed on Schedule "A" attached hereto for the purpose of conducting its Work, subject to the terms and conditions set out in this Agreement and in strict accordance with all federal, provincial and municipal statutes, laws and by-laws or other rules, regulations, policies, standards and guidelines pertaining to the Work and use of the Crossing Lands.
- 3.2 Imperial shall not use any Crossing Lands or any Public Highway, in whole or in part, for any purpose other than as permitted under this Agreement.
- 3.3 Imperial shall be solely responsible to secure all necessary non-municipal, permits and approvals for the Work and to provide copies of same to the Municipality prior to the commencement of any Work associated with the Project.

4.0 APPROVAL OF COMMISSIONER

- 4.1 Imperial shall not perform any Work under the Crossing Lands or near any Public Highway without first:
 - (a) obtaining the applicable Municipal Consent and/or Road Occupancy Permit required for the specific Work activity; and
 - (b) providing detailed engineering plans to the satisfaction of the Commissioner setting out the location of the Plant within the relevant Crossing Lands; and
 - (c) paying all associated charges and fees as outlined in the current *General Fees and Charges By-law* of the Municipality.

4.2 Imperial shall advise the Municipality in writing of the Work that Imperial has completed in a format and frequency as stipulated by the Municipality.

5.0 MANNER OF WORK

5.1 Imperial agrees that its Work shall be subject to the following general conditions:

- (a) All Work shall be conducted and completed to the satisfaction of the Commissioner, in accordance with all laws, regulations, by-laws and the Municipality's policies and standards, as amended from time to time;
- (b) Imperial shall repair and restore the Crossing Lands and any nearby Public Highway affected to the same or better condition it was in before such Work was undertaken. If Imperial fails to repair and restore to the satisfaction of the Commissioner within forty-eight (48) hours of being notified in writing by the Municipality, the Municipality may complete such repairs and restoration and charge the Municipality's Costs related thereto to Imperial for payment forthwith upon demand;
- (c) In the event of an Emergency, the Municipality may take such appropriate measures as may be deemed necessary by the Commissioner to re-establish a safe and secure environment. Where applicable, the Municipality's Costs associated in working around the Plant shall be charged back to Imperial for payment forthwith upon demand;
- (d) If the Municipality requires any Work to be immediately stopped for any reasonable cause, including but not limited to, health, public safety, special events or unacceptable conduct, as identified by the Municipality or as a result of any circumstances beyond the control of the Municipality, as deemed by the Commissioner, Imperial shall cease all such Work forthwith upon receipt of written notice from the Municipality and leave the site and all adjoining Public Highways in a safe and clean condition. Within forty-eight (48) hours of issuing a stop work order under this subsection, the Commissioner will provide written reasons for issuing such order to Imperial. Imperial shall be allowed to resume its Work activities once the reasons for the Work stoppage have been resolved to the satisfaction of the Commissioner;
- (e) For the purposes of greater clarity only, Imperial is responsible for all Work activities, including the cost of such Work;
- (f) Imperial shall use reasonable efforts to schedule its Work and share the Crossing Lands and the adjoining Public Highways and support structures with other

service providers occupying and using, or intending to occupy or use, the Crossing Lands and adjoining Public Highways, with the intent of minimizing traffic disruptions and construction related delays;

- (g) All employees or contractors working for or on behalf of Imperial shall have proper identification visible on site at all times, displaying the name of the business entity they are employed with;
- (i) During the performance of any Work, Imperial shall ensure that its employees and contractors are fully qualified and licensed for the Work or the duties to be performed;
- (j) Imperial shall ensure that all of its employees, agents and contractors comply at all times with all applicable laws, including but not limited to:
 - (i) The Workplace Safety Insurance Act, 1997;
 - (ii) The Occupational Health And Safety Act;
 - (iii) The Canadian Labour Code Part II; and
 - (iv) All applicable environmental laws and regulations.

6.0 PAYMENT OF FEES

- 6.1 Imperial covenants and agrees to pay a yearly annual fee of \$_____, plus applicable harmonized sales taxes ("HST") and any other applicable taxes, to be applied towards the administration of the Municipality's public utility co-ordination committees as well as the joint planning and co-ordination process.
- 6.2 Where applicable, Imperial shall pay (if assessed for same) taxes, charges, duties, rates, levies and business taxes in respect solely of the use by it of the Crossing Lands pursuant to the rights herein granted to Imperial that may arise pursuant to the *Assessment Act* (Ontario), as and when the same become due.

7.0 IMPERIAL'S WARRANTIES

- 7.1 Imperial represents and warrants to and covenants and agrees with the Municipality that:
 - (a) it is a general partnership in good standing under the applicable laws of the Province of Ontario;
 - (b) after completion of its Work, Imperial shall leave the Crossing Lands and the adjoining Public Highway in a sanitary, neat, clean and safe condition and free from nuisance, all to the reasonable satisfaction of the Commissioner;

- (c) Imperial warrants its restorative work of the Crossing Lands and any adjoining Public Highway, to the reasonable satisfaction of the Municipality, for a period of three (3) years from the date of completion, which date will be supplied to the Municipality by Imperial;
- (d) if this Agreement is terminated, all the unfulfilled covenants, indemnities and obligations of Imperial herein shall survive such termination and continue to bind Imperial until completed; and
- (e) Imperial shall not suffer or permit any lien to be filed or registered against any Public Highway, or portion thereof. In this regard and subject to any existing rights of Imperial or consents granted to Imperial by the Municipality, any instrument claiming an estate, interest, property right or lien against any Public Highway or other property owned by the Municipality (an "Instrument") shall be discharged or vacated from title to the Public Highway by Imperial, within twenty (20) days following notice from the Municipality to Imperial of the existence of the Instrument or, alternatively, Imperial shall have commenced the process of removing the Instrument from title to the Public Highway and be diligently pursuing the removal within the twenty (20) day period referred to above. If Imperial fails to discharge or vacate the Instrument within twenty (20) days, then in addition to any other right or remedy of the Municipality, the Municipality may discharge or vacate the Instrument by paying into Court the amount required by statute to be paid to obtain a discharge, and the amount so paid by the Municipality together with all costs and expenses including solicitor's fees (on a substantial indemnity basis) incurred in connection therewith, shall be due and payable by Imperial to the Municipality forthwith on demand.

8.0 CONDITION OF THE CROSSING LANDS

- 8.1 The Municipality makes no representations or warranties as to the condition or state of repair of the Crossing Lands or any adjoining Public Highway, or the suitability of the Crossing Lands for the Work and Imperial hereby accepts the Crossing Lands on a strictly "as is/where-is" basis.

9.0 AS-CONSTRUCTED DRAWINGS

- 9.1 Within one (1) month after completing the installation of its Plant at each Crossing Lands site, Imperial shall provide "as-constructed" drawings to the Municipality (in both hard copy and digital format), which may include certification requirements, at Imperial's expense, to the reasonable satisfaction of the Commissioner.

10.0 LOCATE NOTIFICATION

- 10.1 The parties shall, at no cost to the other party, provide locations of their respective Plant, facilities and equipment as follows:
- (a) in the event of an Emergency or other high priority circumstances, within two (2) hours of receiving a request by the other party or its contractors or authorized agents, using reasonable best efforts; and
 - (b) in all other circumstances, within a time reasonably agreed upon by Imperial and the Municipality.
- 10.2 Imperial shall be solely responsible for ensuring that the approved location of its Plant has been installed in accordance with drawings and specifications submitted to the Municipality.
- 10.3 Imperial and the Municipality shall provide each other with a list of 24 hour Emergency contact personnel and shall ensure that the aforementioned list is always up to date.
- 10.4 Imperial agrees to participate in the Municipality's public utility co-ordination committee involving all users of the Public Highway and to contribute to the costs of such committee.

11.0 PLANT AUTHENTICATION

11.1 Imperial agrees to identify and verify its Plant on plans created by the Municipality or its consultants that are required for maintenance purposes or new construction and design projects. Such plans, once received by Imperial, shall be returned to the Municipality or its consultant no later than thirty (30) days after receipt of same.

12.0 INCORRECT LOCATIONS

12.1 Where Imperial's Plant drawings or locates are found to be incorrect and where the Municipality incurs costs or expenses as a result of the actual location of the Plant, the Municipality agrees to notify Imperial in writing as soon as possible. If Imperial is unable to rectify the problem in a reasonable time commensurate with the situation, Imperial will compensate the Municipality for the Municipality's Costs which it subsequently incurs.

13.0 WORKERS' SAFETY AND INSURANCE BOARD COVERAGE

13.1 Imperial shall pay to the appropriate provincial Workers Safety and/or Insurance Board/Commission all assessments and levies owing to the Board/Commission by Imperial, its employees and others engaged in providing services under this Agreement and any unpaid assessment or levy shall be the sole responsibility of Imperial.

13.2 Prior to commencing the Work, Imperial shall provide the Municipality with evidence of compliance with the requirements of the Province of Ontario with respect to Workers' Compensation Insurance.

13.3 Imperial acknowledges that out-of-province contractors are not exempt from having to register and comply with the requirements of the Workers' Safety and Insurance Board of Ontario. Prior to commencing the Work, out-of-province contractors not required to be registered in Ontario shall provide:

- (a) written confirmation from the Workers' Safety and Insurance Board of Ontario stating that the contractor is not required to be registered in Ontario; and
- (b) evidence of compliance with the requirements of the province or territory or place of business with respect to workers' compensation insurance.

13.4 At any time during the Work for the Project, when requested to do so by the Municipality, Imperial shall provide such evidence of compliance by itself and its contractors. Failure to provide satisfactory evidence in respect of workers' compensation insurance may result in current permits being suspended and/or future permits being denied by the Municipality until satisfactory evidence of compliance has been received by the Municipality.

14.0 LEGISLATIVE CHANGES

14.1 If at any time after entering into this Agreement, the Provincial or Federal government or a regulatory authority, acting within its jurisdiction, enacts or repeals any legislation or regulation, or orders, directs or mandates anything that has a material effect on the rights and obligations of either party under this Agreement, then either

party may notify the other of its intention to require the other party to enter into good faith negotiations to amend this Agreement, or to enter into a new agreement reflecting such legislative or regulatory action or court or tribunal decision, as the case may be, within ninety (90) days after written notice (the "Notice") from the notifying party. Any newly permitted terms and conditions, charges or fees pursuant to such new or amended agreement shall take effect from the date upon which the Notice expires.

- 14.2 If the parties are unable to re-negotiate the terms and conditions for this Agreement as a result of the legislative changes noted above, then the unresolved matters shall, within thirty (30) days prior written notice from the requesting party, be referred by the party in the first instance to (a) arbitration for resolution, in accordance with the *Arbitration Act, 1991* (Ontario) as amended or its successor legislation, or, in the second instance, to (b) the Ontario Energy Board.

15.0 DEFAULT

- 15.1 If one of the parties is in default of any of its covenants, conditions or obligations contained in this Agreement, the non-defaulting party shall deliver to the defaulting party a written notice setting out the nature of the default and providing the defaulting party with thirty (30) days to remedy or cure such default. In the event the defaulting party fails to remedy or cure such default to the complete satisfaction of the non-defaulting party within the said thirty (30) day period, then at the sole option of the non-defaulting party, such default may be remedied or cured by the non-defaulting party and all costs and expenses incurred by the non-defaulting party shall be paid by the defaulting party to the non-defaulting party forthwith upon demand. However, it is agreed that where the defaulting party commences diligently to cure or remedy the default but cannot reasonably complete same within the said thirty (30) days, the defaulting party may continue to use diligent efforts to cure or remedy the default, provided such efforts to cure or remedy the default are completed to the satisfaction of the non-defaulting party within twenty (20) additional days from the initial thirty (30) day cure period, failing which, the right of the non-defaulting party to cure the default shall apply immediately and without notice

16.0 ABANDONMENT OF PLANT

- 16.1 In the event Imperial elects to abandon the use of its Plant within the Crossing Lands, it

shall submit a written notice to the Municipality providing details on the location of the Plant to be abandoned.

16.2 In the event of abandonment, Imperial shall have the option to:

- (a) decommission and remove the Plant from the Crossing Lands within a reasonable period of time after the issuance of the notice referenced above and restore the Crossing Lands to its pre-removal condition; or
- (b) at Imperial's request and with the written approval of the Commissioner, decommission the Plant but have it remain within the Crossing Lands, in which case it will be surrendered by Imperial and become the absolute property of the Municipality.

17.0 NO OWNERSHIP RIGHTS

17.1 No use of the Crossing Lands under this Agreement shall create or vest in Imperial any ownership, interest or property rights in the Crossing Lands and Imperial shall be and remain a mere non-exclusive licensee of the Crossing Lands. Placement of the Plant within the Crossing Lands shall not create or vest in the Municipality any ownership or property rights to the Plant, except as otherwise provided in this Agreement.

18.0 TREES

18.1 Imperial is responsible for the costs of any remedial work required to rehabilitate any trees damaged in the performance of its Work permitted by this Agreement or, in the event any trees suffer irreparable damage, Imperial shall compensate the Municipality for the value of the trees as determined by the Municipality.

19.0 ARBITRATION

19.1 The parties agree that notwithstanding the right of Imperial to refer matters under this Agreement to the Ontario Energy Board for dispute resolution, in the event of any dispute or disagreement between the parties as to the meaning or interpretation of anything contained in this Agreement, or as to the performance or non-performance by a party, or as to their respective rights and obligations hereunder, the parties agree to refer such dispute or disagreement to arbitration.

19.2 The procedure for an arbitration shall be as follows:

- (a) Within twenty (20) days after the written request of either of the parties hereto for arbitration, in the event the parties are unable to agree upon a single, mutually acceptable arbitrator, each of them shall appoint one arbitrator and the two so appointed shall, within twenty (20) days after the expiration of the twenty day period select a third. In case either of the parties hereto fails to name an arbitrator within twenty (20) days after the written request for arbitration, the arbitrator appointed shall be the only arbitrator. In case the two arbitrators so appointed are unable to agree on a third arbitrator within twenty (20) days after the expiration of the first twenty (20) day period mentioned above, application shall be made as soon as reasonably possible to any Judge of the Superior Court of Justice for the appointment of a third arbitrator. The arbitrator or arbitrators so appointed shall have all the powers accorded to arbitrators by the *Arbitration Act, 1991 (Ontario)* as from time to time amended, or any Act in substitution therefor. The decision of the said arbitrator or arbitrators (or of a majority of such arbitrators) shall be final and binding on the parties hereto;
- (b) Either party may seek leave to appeal an arbitration award to the courts of the Province of Ontario on a question of law;
- (c) Either party may bring an application to a court of competent jurisdiction;
 - (i) For an interim measure of protection; or
 - (ii) For any order for relief which the arbitrator or arbitrators do not have the jurisdiction to provide.

20.0 LETTER OF CREDIT

20.1 On execution of this Agreement, Imperial shall provide the Municipality with security for the performance of its obligations during the installation of the Encroachments by the issuance of an irrevocable letter of credit in the amount of _____ Dollars (\$____,000.00), naming the Municipality as the sole beneficiary. The form and content of the irrevocable letter of credit shall be in accordance with the Uniform Customs and

Practice for documentary credits of the International Chamber of Commerce, the issuing banks standard practice and satisfactory to the Municipality's solicitor, acting reasonably. In the event the Municipality is required to draw upon the letter of credit to enforce the obligations of Imperial, the Municipality shall, at its sole discretion, have the right to require Imperial to replace the letter of credit with a subsequent letter of credit; provided any amount drawn under a letter of credit which is not required or applied for any costs or obligations hereunder shall be forthwith paid to Imperial. Once the Encroachments have been installed, and the condition of the Encroachment Area is in a state satisfactory to the Municipality, acting reasonably, this letter of credit shall be reduced to twenty (20%) per cent of its original value and this reduced sum shall be held by the Municipality for a further period of six (6) months for application to any deficiencies or other maintenance issues relating to the Encroachments. Ten (10) days prior to the expiry of the said six (6) month period, Imperial shall write to the Municipality to arrange for final inspections and if no material deficiencies are found, the balance of the letter of credit shall be returned to Imperial.

21.0 INSURANCE

21.1 Without restricting the indemnification provisions of this Agreement, Imperial shall at its sole cost and expense, obtain and maintain in full force and effect at all times throughout the term or extended term(s) of this Agreement, insurance satisfactory to the Municipality with financially sound and reputable insurance companies licensed to underwrite insurance in the Province of Ontario. Imperial shall be responsible for payment of all amounts within the deductible or self-insured retention under each policy of insurance. All insurance policies required pursuant to this Section shall include the following and be primary and shall not call into contribution any insurance available to the Municipality and any indemnified persons:

- (a) Commercial General Liability insurance in respect of the Encroachment Area and the operations of Imperial thereon against claims for bodily injury, including personal injury and death, and property damage or loss, indemnifying and protecting Imperial, their respective employees, servants, agents, contractor's, invitees or Imperials, to the inclusive limit of not less than Ten Million (\$10,000,000.00) Dollars per occurrence, or such other amounts as the

Municipality may in its discretion determine from time to time. Such insurance shall specifically state by its wording or by endorsement that the following coverage is included:

- (i) the Municipality and any indemnified persons are added as additional insured under the policy only with respect to the operations and obligations of Imperial as outlined in this Agreement;
 - (ii) tenant's legal liability, contractual liability, non-owned automobile liability, owner's and contractor's protective liability, products and completed operations coverage, contingent employer's liability, and employees as additional insured;
 - (iii) the policy contains a cross-liability clause which shall have the effect of insuring each person, firm or corporation named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each;
 - (iv) a waiver of subrogation rights which the insurers may have against the Municipality and any indemnified persons and against those for whom it is in law responsible.
- (b) "All Risks" Property insurance coverage on a replacement cost basis in such amounts as required to adequately insure Imperial's property, machinery, equipment, and other such property in the care, custody and control of Imperial, including the improvements and property comprising the Encroachment Area. The policy shall contain a waiver of rights of subrogation against the Municipality and any indemnified persons.
- (c) Environmental Impairment Liability insurance covering all operations as described in this Agreement including coverage for loss or claims arising from a pollution condition resulting from covered operations. Such policy shall provide coverage in the amount of at least Five Million (\$5,000,000.00) Dollars per occurrence and shall remain in force throughout the term of this Agreement and for a period of at least 12 months following the expiry of the term.

(d) Automobile Liability insurance with limits of not less than five million (\$5,000,000) dollars per occurrence. The policy must provide coverage for bodily injury or property damage arising out of the ownership, use or operation of all owned and/or leased automobiles of Imperial.

21.2 All such policies of insurance requested in this Section shall not be terminated, or cancelled unless written notice of such termination, cancellation or material change is given by the insurers to the Municipality at least thirty (30) clear days before the effective date thereof.

21.3 Prior to the execution of this Agreement, and upon each insurance policy renewal date throughout the term of this Agreement, Imperial shall deliver to the Municipality a *City of Mississauga Certificate of Insurance* evidencing insurance required under this Agreement. A PDF version of the City Certificate can be obtained at www.mississauga.ca/certificateofinsurance, completed by an authorized representative of the insurer and forwarded to:

City of Mississauga, 300 City Centre Drive, Mississauga, Ontario, L5B 3C1,

Attention: Manager, Realty Services, File: CA13-IMP (Imperial)

22.0 ENVIRONMENTAL LIABILITY

22.1 For the purposes of this section, "Hazardous Substance" means any substance harmful to the environment, including but is not limited to, electromagnetic or other radiation, petroleum products or bi-products, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any law, ordinance, rule, regulation, bylaw or code, whether federal, provincial or municipal.

- 22.2 Imperial acknowledges and agrees that the Municipality is not responsible, either directly or indirectly, for any damage to property, including any nuisance or injury to any person, howsoever caused, including death, arising from the escape, discharge, spill or release of any Hazardous Substance resulting from Imperial's use of the Encroachment Area.
- 22.3 Imperial hereby assumes all environmental liabilities relating to its use of the Encroachment Area, including but not limited to, any liability for clean-up of any Hazardous Substance on or under the Encroachment Area which results from the Encroachments or operations of Imperial within the Encroachment Area.
- 22.4 Imperial shall include in its agreements with third parties working upon or utilizing any portion of the Encroachment Area, an acknowledgement and agreement by those third parties that their activities are subject to the terms of this Agreement, and that they shall comply, at their sole expense, with all applicable laws, statues, by-laws, codes, ordinances, rules, orders and regulations of all governmental authorities, and that the third party shall obtain and maintain any and all permits, licenses or any other approvals and consents necessary or required for their activities within the Encroachment Area.

23.0 INDEMNITY

- 23.1 Imperial shall indemnify, defend and save the Municipality harmless, including the Municipality's elected officials, officers, employees, agents and contractors, from and against any loss, cost and expense incurred, suffered or sustained by the Municipality because of any demand, action or claim brought against the Municipality as a result of any loss of or damage to property, personal injury or death, or any other losses or damages, both direct or indirect, including such other costs and expenses howsoever and whatsoever incurred, suffered or sustained by the Municipality or any third party, resulting from Imperial's use of the Encroachment Area, or by anyone else permitted on the Encroachment Area by Imperial or by anyone for whom in law Imperial is responsible, including any losses or damages which have been caused or contributed to by any negligence or nuisance, breach of the *Occupiers' Liability Act* or breach of statutory duty on the part of Imperial or on the part of anyone for whom Imperial is in law responsible, by Imperial's presence upon the Encroachment Area, the condition or state of repair of the Encroachment Area and the breach of any of the provisions of this

Agreement by Imperial, including, but not limited to, any form of environmental damage caused by or attributable to the action or inaction of Imperial, but in each and every case this indemnity shall not apply where such injury, damage or loss is caused by the gross negligence of the Municipality, its employees, agents, contractors or invitees.

24.0 NOTICES

24.1 Any notices, communications and/or deliveries required by this Agreement shall be in writing and may be delivered personally, by e-mail or by registered mail (postage prepaid, return receipt requested) addressed to each party at the address below set forth or such other address as the parties shall designate by notice, given in accordance herewith:

To Mississauga:

City of Mississauga

Legal Services Division

300 City Centre Drive, 4th Floor

Mississauga, Ontario, L5B 3C1

Attention: City Solicitor

Tel No: (905) 615-3200

With a copy to:

City of Mississauga

Realty Services Section

300 City Centre Drive

Mississauga, Ontario, L5B 3C1

Attention: Manager of Realty Services

Tel No: (905) 615-3200

To Imperial:

Imperial Oil

Attention: _____

Tel No: _____

Email: _____

If delivered personally, any such notice or communication shall be deemed to have been given upon delivery. If delivered by email, any such notice or communication shall be deemed to have been given on the date of emailing, provided the sender produces an email showing the notice was sent. If by registered mailed, each such notice or communication shall be dated as of the date of mailing and shall be deemed to have been given, delivered and completed on the third (3rd) business day (excluding Saturdays, Sundays and Statutory Holidays) following the date of mailing thereof, provided that the postal services have not been interrupted in which case notice shall only be given by personal delivery or e-mail as aforesaid. It is agreed that any notice or communication to be given by the Municipality may be under the signature of the Municipality's Legal Counsel and need not be under the corporate seal, and any such notice or communication so signed shall conclusively be deemed to express the will and corporate act of the Municipality as therein contained and no further evidence thereof or of any by-law or resolution of the Municipality need be given.

25.0 ASSIGNMENT

25.1 Imperial shall not assign its rights under this Agreement without the prior written consent of the Municipality, which consent may not be unreasonably withheld or delayed. For greater certainty, Imperial agrees that the Municipality shall withhold consent where Imperial is in breach of its obligations under this Agreement.

25.2 No assignment pursuant to this section shall take effect until the assignee to which the consent of the Municipality is given shall have entered into the Municipality's form of agreement directly with the Municipality on terms and conditions satisfactory to the Municipality's solicitor whereby, among other things, the assignee covenants with the Municipality to perform, observe and keep each and every covenant, proviso, condition and agreement in this Agreement on the part of Imperial to be performed, observed and kept.

25.3 Any request for consent shall be in writing and Imperial shall furnish to the Municipality all information available to Imperial or any additional information requested by the Municipality, as to the corporate relationship, responsibility, reputation and financial standing of the proposed assignee.

25.4 Notwithstanding anything else contained herein:

(a) whether or not the Municipality's consent is required, no assignment shall release or relieve Imperial from any of its obligations hereunder until the Municipality's consent is granted; and

(c) no consent by the Municipality to any assignment shall be construed to mean that the Municipality has consented or will consent to any further assignment which shall remain subject to the provisions of this section.

25.5 Imperial acknowledges that if it breaches or permits a breach of this section, the Municipality shall not be required in any way to recognize the purported assignment and that the Municipality shall continue to hold Imperial responsible for all of its obligations hereunder.

26.0 FORCE MAJEURE

26.1 Notwithstanding any other provision contained herein, in the event that either the Municipality or Imperial should be delayed, hindered or prevented from the performance of any act required hereunder by reason of strikes, lockouts, unavailability of materials, inclement weather, acts of God or acts of terrorism or any other cause beyond its reasonable care and control, but not including insolvency or lack of funds, then performance of such act shall be postponed for a period of time equivalent to the

time lost by reason of such delay. The provisions of this subsection shall not under any circumstances operate to excuse Imperial from the prompt payment of fees and/or any other charges payable under this Agreement.

27.0 ADDITIONAL CONSIDERATIONS

27.1 During the Term the parties shall sign such further or other documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

28.0 ENTIRE AGREEMENT

28.1 This Agreement and the schedules attached hereto shall constitute the entire agreement between the parties. This Agreement shall not be modified or amended in any way except by written agreement executed and dated by both parties.

29.0 SUCCESSORS AND ASSIGNS

29.1 All rights and liabilities herein granted or imposed on the parties extend to and bind the successors and permitted assigns of the Municipality and Imperial, as the case may be.

30.0 CURRENCY

30.1 Unless otherwise provided for herein, all monetary amounts referred to herein shall refer to the lawful money of Canada.

31.0 HEADINGS FOR CONVENIENCE ONLY

31.1 The division of this Agreement into articles and sections is for convenience only and shall not affect the interpretation or construction of this Agreement.

32.0 NO RELATIONSHIP

32.1 Nothing in this Agreement shall create any relationship between the parties other than that of Imperial and licensor and it is specifically agreed that the parties are not partners, joint-venturers, agents or trustees of the others. Without limiting the generality of the foregoing, the parties expressly acknowledge and agree that the Municipality is in no way liable for the debts or any other liabilities of Imperial, whether relating to the Encroachments or otherwise.

33.0 LEGAL FEES AND DISBURSEMENTS

33.1 Imperial shall reimburse the Municipality for legal fees and disbursements in connection with the preparation of this Agreement (and for future amendments) in accordance with the City of Mississauga *General Fees & Charges By-Law*.

34.0 MUNICIPAL DISCRETION

34.1 Imperial acknowledges that this Agreement shall not in any manner whatsoever fetter the discretion or authority of the Municipality under the *Municipal Act*, R.S.O. 2001, as amended, and/or the *Planning Act*, R.S.O. 1990, as amended, with respect to the Encroachment Area.

35.0 OTHER LAWS

35.1 During the Term of this Agreement, Imperial shall remain subject to applicable laws having the force of law made or to be made by any lawfully constituted authority having jurisdiction. Notwithstanding any provision of this Agreement to the contrary, this Agreement shall not affect or prejudice Imperial's statutory rights pursuant to the *Ontario Energy Board Act, 1998* and its successors or any order made by the Ontario Energy Board.

36.0 EXTENDED MEANINGS

36.1 In this Agreement, words, terms and provisions which are in the singular shall be read as including the plural, the plural shall include the singular, the masculine shall include feminine and the feminine shall include the masculine, as the case may be and the context require.

37.0 GOVERNING LAW

37.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

38.0 TIME OF THE ESSENCE

38.1 Time shall in all respects be of the essence hereof, provided, however that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the parties, or by their respective legal counsel who are hereby expressly appointed in that regard.

39.0 WAIVER

39.1 A party hereto (the "waiving party") may from time to time in writing and in its sole discretion waive in whole or in part any default, breach, non-performance and/or non-observance by the other party hereto (the "obligated party") of any of the covenants or obligations in favor of the waiving party to be observed or performed by the obligated party under this Agreement. Any such waiver may be retroactive but in any event shall only apply and extend to the specific matter forming the subject of such waiver, shall only extend to the waiving party and shall not otherwise affect or prejudice the right of the waiving party to require the due and strict observance and/or performance by the obligated party of such covenant or obligation thereafter or any other covenant or obligation in favor of the waiving party to be observed or performed by the obligated party under this Agreement.

40.0 SEVERABILITY

40.1 If any section or paragraph of this Agreement is determined to be void or unenforceable in whole or in part by a court of competent jurisdiction, the section or paragraph shall be deemed to be severable from this Agreement and shall not cause the invalidity or unenforceability of any other section or paragraph of this Agreement. Where appropriate, a provision declared to be void and unenforceable against some persons shall continue to be applicable to and enforceable to the fullest extent permitted by law against any person and circumstances other than those as to which it has been held or rendered invalid, unenforceable or illegal.

41.0 REGISTRATION ON TITLE

41.1 Imperial shall register a copy or notice of this Agreement against title to the Owner's Lands at its sole cost and expense. A copy of the registered instrument so registered shall thereafter be provided to the Municipality within thirty (30) days.

42.0 EXTENSION OF TIME

42.1 the Municipality may, in its absolute and unfettered discretion, grant such extensions of time as it deems reasonable or necessary for the performance of Imperial's obligations under this Agreement, provided however, that no such extension nor any other indulgence granted by the Municipality, or any neglect, refusal or failure to enforce any of the terms and conditions of this Agreement, either in a timely manner or at all, or to take any other remedy shall in any way act as a waiver of the obligations of Imperial under any and all terms of this Agreement.

43.0 SCHEDULES

43.1 The schedules attached to this Agreement and listed below shall have the same force and effect as if the information and terms contained therein were contained in the body of this Agreement:

- (c) Schedule "A" – Legal Description of the Crossing Lands;
- (d) Schedule "B" – Sketch showing the Crossing Lands..

IN WITNESS WHEREOF the parties have executed this Agreement under the hands of their respective signing officers duly authorized to bind the corporation or affixed their respective corporate seals under the hands of their duly authorized officers as of the date herein before first written.

THE CORPORATION OF THE CITY MISSISSAUGA

Per: _____

Name: Geoff Wright

Title: Commissioner, Transportation & Works

Per: _____

Name: Diana Rusnov

Title: City Clerk & Director of Legislative Services

Authorized Through By-Law # _____

IMPERIAL OIL PARTNERSHIP, by its managing Partner

IMPERIAL OIL LIMITED

Name:

Title:

Name:

Title:

I/We have the Authority to Bind the Partnership

SCHEDULE "A"

Legal Description of the Crossing Lands

Property No.	Property PIN	Legal Description
1		
2		
3		

SCHEDULE "B"

Sketch of the Crossing lands

LICENSE AGREEMENT

(Temporary Workspace)

THIS LICENSE AGREEMENT is made in quadruplicate and effective as of the ____ day of _____, 2020 (hereinafter the "Agreement").

BETWEEN:

THE CORPORATION OF THE CITY OF MISSISSAUGA

(the "Licensor")

-and-

IMPERIAL OIL, an Ontario partnership having
its head office in the City of _____, in the Province of Ontario.

(the "Licensee")

WHEREAS the Licensor is the registered and beneficial owner of certain lands within the City of Mississauga, in the Regional Municipality of Peel, as legally described on *Schedule "A"* attached hereto (the "Licensed Lands");

AND WHEREAS the Licensee operates a crude oil refinery in Sarnia, Ontario and is implementing the *Waterdown to Finch Pipeline Replacement Project*, which involves replacing approximately 63 kilometres of its existing pipe line between Waterdown, Ontario to its Finch terminal in North York. (the "Project");

AND WHEREAS the Licensee has been granted a permanent easement (the **"Permanent Easement"**) adjacent to or in the vicinity of the Licensed Lands for the purposes of installing and maintaining an oil pipeline (the **"Pipeline"**);

AND WHEREAS the Licensee wishes to obtain access to and occupy the Licensed Lands on a temporary basis in order to carry out construction related activities for the Project in the vicinity of the Permanent Easement;

AND WHEREAS the Licensor has agreed to allow the Licensee to use the Licensed lands for the purposes of the Project, provided the parties enter into this Agreement in order to establish their rights and obligations;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of \$2.00 paid by the Licensee to the Licensor, and of the mutual covenants and agreements herein contained, and subject to the terms and conditions hereinafter set forth, the parties hereto agree as follows;

1.0 GRANT OF LICENSE RIGHTS

1.1 The Licensor hereby grants to the Licensee (including its employees, agents and contractors), subject to the provisions of this Agreement, an exclusive temporary license to enter and use the Licensed Lands as a temporary workspace and staging area, with its vehicles, materials, machinery, supplies and equipment, to carry out construction related activity to facilitate the installation of its Pipeline within the Permanent Easement, together with the right at any time and from time to time during the Term to remove any boulder or rock and to sever, fell, remove or control the growth of any roots, trees, stumps, brush or other vegetation in, on, above, or under the Licensed Lands, and to install temporary gates and fences, including the stockpiling of construction spoil, materials and equipment as required by the Licensee (the **"Works"**).

1.2 Partial Or Total Surrender Of Acreage: Notwithstanding Section 1.1, the Licensee may from time to time and at any time surrender all or a portion of the Licensed Lands upon giving written notice to the Licensor. Such notice may be delivered or mailed to the Licensor and shall be accompanied by a sketch or plan showing outlined in red any portion or portions of the Licensed

Lands continuing to be used by the Licensee. The annual License Fee as herein stipulated shall, during any Extended Term, be payable only for the retained portion of the Licensed Lands and shall be calculated as a proportion of the annual License Fee based on the ratio that the retained portion bears to the original entire Licensed Lands.

- 1.3 Increase Of Licensed Lands: Following receipt by the Licensor of a written notice delivered by the Licensee, (the "**Expansion Notice**"), the Licensor will consider an increase in the area of the Licensed Lands if required by the Licensee to carry out the Works in connection with the Pipeline. If the Licensor consents to such increased area in writing, Schedule "A" of this Agreement shall be amended to show such increased area and the payment of License Fees shall be increased proportionately and paid on the possession date of the increased area.
- 1.4 The license rights provided herein by the Licensor shall remain subject to the Licensee obtaining all other necessary permits, orders, decisions, authorizations and consents from any authority, board or committee having jurisdiction, including but not limited to permits, orders, decisions, authorizations and consents in connection with, but not necessarily limited to, site plan, building permit, zoning, planning, and minor variance.

2.0 TERM

- 2.1 Subject to the early termination rights set out herein, the term of this Agreement (the "**Term**") shall be for a period commencing on _____, 2020 (the "**Commencement Date**") and thereafter expiring and being fully terminated on _____, 2021 (the "**Termination Date**").
- 2.2 Extension: Provided the Licensee has not been in default under this Agreement, the Licensee shall have the option to extend this Agreement for ninety (90) days (the "**Extended Term**"), such Extended Term to begin upon the expiration of the original Term and all of the provisions of this Agreement (except for (i) the License Fees applicable for the extended Term which shall be determined by the Licensor at that time in accordance with Section 4.1 and (ii) the insurance coverage in Section 14 for the applicable extended Term shall be satisfactory to the Licensor and the Licensee, each acting reasonably) shall apply to such Extended Term. If the Licensee elects to exercise the aforesaid option to extend, it shall do so by providing the Licensor with notice in writing of its intention to extend at least thirty (30) days prior to the expiration of the original Term.

3.0 LICENSE FEE AND OTHER COSTS

3.1 In consideration of the license rights granted during the Term, the Licensee shall pay the Licensor a fee of _____ (\$ _____) Dollars (the "License Fee") per annum, plus applicable taxes and HST. The License Fee shall be paid by cheque, bank draft or wire transfer and is due and payable on execution of this Agreement. In the event this Agreement is terminated at any time prior to the last day of any Term, the Licensee shall not be entitled to any refund of the License Fees paid.

3.2 In the event of an extension to the Term of this Agreement, the License Fee for the Extended Term will be based on _____; provided, however, that the License Fee for the Extended Term shall not be less than the License Fee for the initial Term.

3.3 The Licensee shall, in addition to the License Fee as provided for above, pay to the Licensor any additional reasonable costs, fees or claims attributable to the Works. This shall include, but not be limited to any third party costs that are incurred by the Licensor to facilitate any maintenance, repairs, restoration or installation of any public utility, and any additional cost for completing any works on the Licensed Lands due to the Works. Such costs shall include but not be limited to, consultant fees, construction costs, surveys, legal fees and Licensor staff time.

3.4 The Licensee shall be responsible for any costs, penalties or fees reasonably incurred by the Licensor or any third party for the costs of any emergency response or any clean up, remediation, restoration or repair or replacement necessitated or caused by the existence of the Works.

3.5 Where the Licensee defaults in the payment of any portion of the License Fee or any other cost or expense due and owing under this Agreement, at the Licensor's election, it may charge interest on any unpaid amount at the interest rate as set forth in the Licensor's *General Fees and Charges By-law*, as amended, in effect at the time of default. Nothing herein contained shall be construed so as to compel the Licensor to accept any payment of License Fees in arrears should the Licensor elect to pursue its remedies under any other section of this Agreement in the event of a default by the Licensee.

4.0 DEFAULT

4.1 A "default" shall occur under this Agreement if,

- (a) the Licensee or Licensor breaches in any material respect its obligations under this Agreement including where applicable, without limitation, failure to provide and maintain, or cause to be maintained, insurance or a letter of credit required pursuant to this Agreement; or
- (b) there is instituted by or against the Licensee any proceeding for bankruptcy, the dissolution or liquidation of, or winding up of the affairs of the Licensee, or the making of any proposal under the *Bankruptcy and Insolvency Act* (Canada) or the seeking of any relief under the *Companies Creditors Arrangement Act* (Canada); or
- (c) the Licensee fails to renew and to keep in full force and effect its legal existence,

and the Licensee fails to commence the cure of such default within thirty (30) calendar days after written notice from the other party specifying the nature of the default.

4.2 If a "default" by the Licensee or the Licensor (the "**Breaching Party**") occurs which is not properly remedied and continuing, the Licensor or the Licensee, as the case may be, in any order that it chooses, do any one or more of the following:

- (a) demand payment of any monies due and unpaid; or
- (b) initiate court proceedings against the Breaching Party to recover the amount of money due; or
- (c) take proceedings or any other legal action to compel the Breaching Party to comply with this Agreement; or

- (d) where the Breaching Party fails to diligently pursue a cure of such default or in any event fails to cure such a default within ninety (90) days of the occurrence of the delivery notice by the non-Breaching Party, terminate this Agreement on sixty (60) calendar days written notice to the Breaching Party; or
- (e) draw on the letter(s) of credit provided for in this Agreement, without any prior notice to the Licensee; or
- (f) where the Licensee is the Breaching Party, for greater clarity, there shall be no obligation on the Licensor to remedy a payment default by drawing down on the letter(s) of credit posted by the Licensee.

4.3 For greater certainty, all of the rights and remedies under this Agreement may be exercised alone or in any combination or order and are without prejudice to any other remedies at law or in equity, in contract or in tort.

4.4 If a default of the Licensor occurs which is not remedied, the Licensee may take proceedings and any other legal action to compel the Licensor to comply with this Agreement.

4.5 The Licensee will remain liable to the Licensor for the performance of all obligations, including the payment of money, which by their nature require performance following the expiry or termination of this Agreement. Nothing in this subsection or in any other term of this Agreement will be interpreted so as to restrict or limit the Licensor's remedies for the recovery of, or the Licensee's liability for, all losses caused by the negligent acts or omissions of the Licensee, whether in law or in equity, in contract or in tort, all of which are expressly reserved despite any other term of this Agreement.

4.6 For greater certainty, the insurance and indemnity provided in this Agreement by the Licensee (in addition to any other obligations which by their nature continue) shall remain in force with respect to the Works until the Works are removed by the Licensee or assumed by the Licensor.

5.0 PAYMENT OF TAXES

- 5.1 The Licensee shall pay and shall expressly indemnify and hold the Licensor harmless from, all realty taxes, rates, duties, levies, fees, charges, sewer levies, local improvement rates, assessments and similar charges imposed, assessed, levied or charged now or in the future by the City of Mississauga, or any regional, provincial, federal, parliamentary or other governmental body, corporate authority, agency or commission (including, without limitation, school boards and utility commissions) (collectively "Taxes"), directly attributable to the Works or the use of the Works by the Licensee or any other person including, without limitation, any such taxes which are levied in substitution or in lieu of or in addition to any of the foregoing; provided, however, that the Licensee shall not be responsible for any Taxes that are imposed prior to the date hereof.

6.0 RESTORATION OF LICENSED LANDS AFTER CONSTRUCTION

- 6.1 Immediately following completion of the Works, Licensee shall repair and reinstate the surface of the Licensed Lands to the same condition as it was before such Work to the satisfaction of the Licensor, acting reasonably, and in accordance with prudent industry practice and standards. In the event the Licensee shall fail to repair and reinstate the Licensed Lands within ten (10) calendar days of being notified in writing to do so by the Licensor, the Licensor may complete the restorative work and the reasonable cost thereof shall be paid by the Licensee within thirty (30) days following demand by the Licensor (which demand shall include invoices for such costs).

7.0 WORKPLACE SAFETY AND INSURANCE BOARD COVERAGE

- 7.1 Licensee shall pay to the appropriate provincial Workers Safety and/or Insurance Board/Commission all assessments and levies owing to the Board/Commission by Licensee, its employees and others engaged in providing services under this Agreement and any unpaid assessment or levy shall be the sole responsibility of Licensee.
- 7.2 Prior to commencing the Work, Licensee shall provide the Licensor with evidence of compliance with the requirements of the Province of Ontario with respect to Workers' Compensation Insurance.
- 7.3 Licensee acknowledges that out-of-province contractors are not exempt from having to register and comply with the requirements of the Workers' Safety and Insurance

Board of Ontario. Prior to commencing the Work, out-of-province contractors not required to be registered in Ontario shall provide:

- (c) written confirmation from the Workers' Safety and Insurance Board of Ontario stating that the contractor is not required to be registered in Ontario; and
- (d) evidence of compliance with the requirements of the province or territory or place of business with respect to workers' compensation insurance.

7.4 At any time during the Work for the Project, when requested to do so by the Licensor, Licensee shall provide such evidence of compliance by itself and its contractors. Failure to provide satisfactory evidence in respect of workers' compensation insurance may result in current permits being suspended and/or future permits being denied by the Licensor until satisfactory evidence of compliance has been received by the Licensor.

8.0 CONSTRUCTION LIENS

8.1 The Licensee agrees that this Agreement does not create or provide it with any interest in the Licensed Lands other than a licence and that no person shall be entitled to register or claim an interest of any kind against the Licensed Lands. The Licensee shall comply with the *Construction Act* (Ontario), as amended, to the extent that it is applicable and any other statutes from time to time applicable to work in the Licensed Lands, and shall promptly pay all accounts relating thereto.

8.2 Whenever any construction lien or charge for work, labour, services or materials supplied to or for the Licensee, or the cost of which the Licensee may be in any way liable, or claims therefor shall arise or be filed, the Licensee shall within thirty (30) days after receipt of notice thereof, satisfy the charge or discharge the lien, including any certificate of action registered in respect of any lien, by payment or in such other manner as may be required or permitted by law. In the event of a failure of the Licensee to do so, the Licensor may but is not obligated to, satisfy the charge or discharge the lien and seek reimbursement of its full costs and expenses, including legal fees on a substantial indemnity basis, from the Licensee within fifteen (15) days of a written request for same.

8.3 The parties agree that any work done in the Licensed Lands during the term of this Agreement by or on behalf of the Licensee shall not be done and shall be deemed not to have been done at the request of the Licensor, unless the Licensor has specifically requested such work to be done in writing and such work is not otherwise required

under this Agreement or by law, statute, regulation or by-law. If any contractor with respect to any work done by or on behalf of the Licensee gives notice to the Licensor pursuant to the *Construction Act* (Ontario), as amended, the Licensor shall have the right to refuse to assume responsibility.

9.0 LETTER OF CREDIT

9.1 On execution of this Agreement, the Licensee shall provide the Licensor with security for the performance of its obligations during the construction of the Works by the issuance of an irrevocable letter of credit in the amount of _____ Dollars (\$____,000.00), naming the Licensor as the sole beneficiary. The form and content of the irrevocable letter of credit shall be in accordance with the Uniform Customs and Practice for documentary credits of the International Chamber of Commerce, the issuing banks standard practice and satisfactory to the Licensor's solicitor, acting reasonably. In the event the Licensor is required to draw upon the letter of credit to enforce the obligations of the Licensee, the Licensor shall, at its sole discretion, have the right to require the Licensee to replace the letter of credit with a subsequent letter of credit; provided any amount drawn under a letter of credit which is not required or applied for any costs or obligations hereunder shall be forthwith paid to the Licensee. Once the Works have been completed, and the condition of the Licensed Lands are in a state satisfactory to the Licensor, acting reasonably, this letter of credit shall be reduced to twenty (20%) per cent of its original value and this reduced sum shall be held by the Licensor for a further period of six (6) months for application to any deficiencies or other maintenance issues relating to the Works. Ten (10) days prior to the expiry of the said six (6) month period, the Licensee shall write to the Licensor to arrange for final inspections and if no material deficiencies are found, the balance of the letter of credit shall be returned to the Licensee.

10.0 INSURANCE

10.1 Without restricting the indemnification provisions of this Agreement, Licensee shall at its sole cost and expense, obtain and maintain in full force and effect at all times throughout the term or extended term(s) of this Agreement, insurance satisfactory to the Licensor with financially sound and reputable insurance companies licensed to underwrite insurance in the Province of Ontario. Licensee shall be responsible for payment of all amounts within the deductible or self-insured retention under each policy of insurance. All insurance policies required pursuant to this Section shall include

the following and be primary and shall not call into contribution any insurance available to the Licensor and any indemnified persons:

- (a) Commercial General Liability insurance in respect of the Licensed Lands and the operations of Licensee thereon against claims for bodily injury, including personal injury and death, and property damage or loss, indemnifying and protecting Licensee, their respective employees, servants, agents, contractor's, invitees or licensees, to the inclusive limit of not less than Ten Million (\$10,000,000.00) Dollars per occurrence, or such other amounts as the Licensor may in its discretion determine from time to time. Such insurance shall specifically state by its wording or by endorsement that the following coverage is included:
 - (v) the Licensor and any indemnified persons are added as additional insured under the policy only with respect to the operations and obligations of Licensee as outlined in this Agreement;
 - (vi) tenant's legal liability, contractual liability, non-owned automobile liability, owner's and contractor's protective liability, products and completed operations coverage, contingent employer's liability, and employees as additional insured;
 - (vii) the policy contains a cross-liability clause which shall have the effect of insuring each person, firm or corporation named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each;
 - (viii) a waiver of subrogation rights which the insurers may have against the Licensor and any indemnified persons and against those for whom it is in law responsible.
- (b) "All Risks" Property insurance coverage on a replacement cost basis in such amounts as required to adequately insure Licensee's property, machinery, equipment, and other such property in the care, custody and control of Licensee, including the improvements and property comprising the Licensed Lands. The policy shall contain a waiver of rights of subrogation against the Licensor and any indemnified persons.
- (c) Environmental Impairment Liability insurance covering all operations as described in this Agreement including coverage for loss or claims arising from a pollution condition resulting from covered operations. Such policy shall provide coverage in the amount of at least Five Million (\$5,000,000.00) Dollars per

occurrence and shall remain in force throughout the term of this Agreement and for a period of at least 12 months following the expiry of the term.

(d) Automobile Liability insurance with limits of not less than five million (\$5,000,000) dollars per occurrence. The policy must provide coverage for bodily injury or property damage arising out of the ownership, use or operation of all owned and/or leased automobiles of the Licensee.

10.2 All such policies of insurance requested in this Section shall not be terminated, or cancelled unless written notice of such termination, cancellation or material change is given by the insurers to the Licensor at least thirty (30) clear days before the effective date thereof.

10.3 Prior to the execution of this Agreement, and upon each insurance policy renewal date throughout the term of this Agreement, Licensee shall deliver to the Licensor a *City of Mississauga Certificate of Insurance* evidencing insurance required under this Agreement. A PDF version of the City Certificate can be obtained at www.mississauga.ca/certificateofinsurance, completed by an authorized representative of the insurer and forwarded to:

City of Mississauga, 300 City Centre Drive, Mississauga, Ontario, L5B 3C1,
Attention: Manager, Realty Services, File: CA13-IMP (Imperial)

11.0 ENVIRONMENTAL LIABILITY

11.1 Licensee acknowledges and agrees that the Licensor is not responsible, either directly or indirectly, for any damage to property, including any nuisance or injury to any person, howsoever caused, including death, arising from the escape, discharge, spill or release of any Hazardous Substance resulting from Licensee's use of the Licensed Lands.

11.2 Licensee hereby assumes all environmental liabilities relating to its use of the Licensed Lands, including but not limited to, any liability for clean-up of any Hazardous Substance on or under the Licensed Lands or any adjoining Public Highway which results from the Work or operations of Licensee within the Licensed Lands.

11.3 Licensee shall include in its agreements with third parties working upon or utilizing any portion of the Licensed Lands, an acknowledgement and agreement by those third parties that their activities are subject to the terms of this Agreement, and that they shall comply, at their sole expense, with all applicable laws, statues, by-laws, codes, ordinances, rules, orders and regulations of all governmental authorities, and that the third party shall obtain and maintain any and all permits, licenses or any other approvals and consents necessary or required for their activities within the Licensed Lands.

12.0 INDEMNITY

12.1 The Licensee shall indemnify, defend and save the Licensor harmless, including the Licensor's elected officials, officers, employees, agents and contractors, from and against any loss, cost and expense incurred, suffered or sustained by the Licensor because of any demand, action or claim brought against the Licensor as a result of any loss of or damage to property, personal injury or death, or any other losses or damages, both direct or indirect, including such other costs and expenses howsoever and whatsoever incurred, suffered or sustained by the Licensor or any third party, resulting from Licensee's use of the Licensed Lands, or by anyone else permitted on the Licensed Lands by Licensee or by anyone for whom in law Licensee is responsible, including any losses or damages which have been caused or contributed to by any negligence or nuisance, breach of the *Occupiers' Liability Act* or breach of statutory duty on the part of Licensee or on the part of anyone for whom Licensee is in law responsible, by Licensee's presence upon the Licensed Lands, the condition or state of repair of the Licensed Lands and the breach of any of the provisions of this Agreement by Licensee, including, but not limited to, any form of environmental damage caused by or attributable to the action or inaction of Licensee, but in each and every case this indemnity shall not apply where such injury, damage or loss is caused by the gross negligence of the Licensor, its employees, agents, contractors or invitees.

13.0 NOTICES

13.1 Any notices, communications and/or deliveries required by this Agreement shall be in writing and may be delivered personally, by e-mail or by registered mail (postage prepaid, return receipt requested) addressed to each party at the address below set forth or such other address as the parties shall designate by notice, given in accordance herewith:

To the Licensor: **City of Mississauga**

Legal Services Division

300 City Centre Drive, 4th Floor

Mississauga, Ontario, L5B 3C1

Attention: City Solicitor

Tel: (905) 615-3200

With a copy to:

City of Mississauga

Realty Services Section

300 City Centre Drive

Mississauga, Ontario, L5B 3C1

Attention: Manager of Realty Services

Tel No: (905) 615-3200

To the Licensee:

Imperial Oil

Attention: _____

Tel: _____

If delivered personally, any such notice or communication shall be deemed to have been given upon delivery. If delivered by email, any such notice or communication shall be deemed to have been given on the date of emailing, provided the sender produces an email showing the notice was sent. If by registered mailed, each such notice or communication shall be dated as of the

date of mailing and shall be deemed to have been given, delivered and completed on the third (3rd) business day (excluding Saturdays, Sundays and Statutory Holidays) following the date of mailing thereof, provided that the postal services have not been interrupted in which case notice shall only be given by personal delivery or e-mail as aforesaid. It is agreed that any notice or communication to be given by Mississauga may be under the signature of Mississauga's Legal Counsel and need not be under the corporate seal, and any such notice or communication so signed shall conclusively be deemed to express the will and corporate act of Mississauga as therein contained and no further evidence thereof or of any by-law or resolution of Mississauga need be given.

14.0 ASSIGNMENT

14.1 The Licensee shall not assign its rights under this Agreement without the prior written consent of the Licensor, which consent may not be unreasonably withheld or delayed. For greater certainty, the Licensee agrees that the Licensor shall withhold consent where the Licensee is in breach of its obligations under this Agreement.

14.2 No assignment pursuant to this section shall take effect until the assignee to which the consent of the Licensor is given shall have entered into the Licensor's form of agreement directly with the Licensor on terms and conditions satisfactory to the Licensor's solicitor whereby, among other things, the assignee covenants with the Licensor to perform, observe and keep each and every covenant, proviso, condition and agreement in this Agreement on the part of the Licensee to be performed, observed and kept.

14.3 Any request for consent shall be in writing and the Licensee shall furnish to the Licensor all information available to the Licensee or any additional information requested by the Licensor, as to the corporate relationship, responsibility, reputation and financial standing of the proposed assignee.

14.4 Notwithstanding anything else contained herein:

- (a) whether or not the Licensor's consent is required, no assignment shall release or relieve the Licensee from any of its obligations hereunder until the Licensor's consent is granted; and

(d) no consent by the Licensor to any assignment shall be construed to mean that the Licensor has consented or will consent to any further assignment which shall remain subject to the provisions of this section.

14.5 The Licensee acknowledges that if it breaches or permits a breach of this section, the Licensor shall not be required in any way to recognize the purported assignment and that the Licensor shall continue to hold the Licensee responsible for all of its obligations hereunder.

15.0 FORCE MAJEURE

15.1 Notwithstanding any other provision contained herein, in the event that either the Licensor or the Licensee should be delayed, hindered or prevented from the performance of any act required hereunder by reason of strikes, lockouts, unavailability of materials, inclement weather, acts of God or acts of terrorism or any other cause beyond its reasonable care and control, but not including insolvency or lack of funds, then performance of such act shall be postponed for a period of time equivalent to the time lost by reason of such delay. The provisions of this subsection shall not under any circumstances operate to excuse the Licensee from the prompt payment of fees and/or any other charges payable under this Agreement.

16.0 ADDITIONAL CONSIDERATIONS

16.1 During the Term the parties shall sign such further or other documents, cause such meetings to be held, resolutions passed and by-laws enacted, exercise their vote and influence, do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

17.0 ENTIRE AGREEMENT

17.1 This Agreement and the schedules attached hereto shall constitute the entire agreement between the parties. This Agreement shall not be modified or amended in any way except by written agreement executed and dated by both parties.

18.0 SUCCESSORS AND ASSIGNS

18.1 All rights and liabilities herein granted or imposed on the parties extend to and bind the successors and permitted assigns of the Licensor and the Licensee, as the case may be

19.0 CURRENCY

19.1 Unless otherwise provided for herein, all monetary amounts referred to herein shall refer to the lawful money of Canada.

20.0 HEADINGS FOR CONVENIENCE ONLY

20.1 The division of this Agreement into articles and sections is for convenience only and shall not affect the interpretation or construction of this Agreement.

21.0 NO RELATIONSHIP

21.1 Nothing in this Agreement shall create any relationship between the parties other than that of the licensee and licensor and it is specifically agreed that the parties are not partners, joint-venturers, agents or trustees of the others. Without limiting the generality of the foregoing, the parties expressly acknowledge and agree that the Licensor is in no way liable for the debts or any other liabilities of the Licensee, whether relating to the Works or otherwise.

22.0 LEGAL FEES AND DISBURSEMENTS

22.1 The Licensee shall reimburse the Licensor for legal fees and disbursements in connection with the preparation of this Agreement (and for future amendments) in accordance with the City of Mississauga *General Fees & Charges By-Law*.

23.0 MUNICIPAL DISCRETION

23.1 The Licensee acknowledges that this Agreement shall not in any manner whatsoever fetter the discretion or authority of the Licensor under the *Municipal Act*, R.S.O. 2001, as amended, and/or the *Planning Act*, R.S.O. 1990, as amended, with respect to the Licensed Lands.

24.0 OTHER LAWS

24.1 During the Term of this Agreement, the Licensee shall remain subject to applicable laws having the force of law made or to be made by any lawfully constituted authority having jurisdiction. Notwithstanding any provision of this Agreement to the contrary, this Agreement shall not affect or prejudice the Licensee's statutory rights pursuant to the *Ontario Energy Board Act, 1998* and its successors or any order made by the Ontario Energy Board.

25.0 EXTENDED MEANINGS

25.1 In this Agreement, words, terms and provisions which are in the singular shall be read as including the plural, the plural shall include the singular, the masculine shall include feminine and the feminine shall include the masculine, as the case may be and the context require.

26.0 GOVERNING LAW

26.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

27.0 TIME OF THE ESSENCE

27.1 Time shall in all respects be of the essence hereof, provided, however that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the parties, or by their respective legal counsel who are hereby expressly appointed in that regard.

28.0 WAIVER

28.1 A party hereto (the "waiving party") may from time to time in writing and in its sole discretion waive in whole or in part any default, breach, non-performance and/or non-observance by the other party hereto (the "obligated party") of any of the covenants or obligations in favor of the waiving party to be observed or performed by the obligated party under this Agreement. Any such waiver may be retroactive but in any event shall only apply and extend to the specific matter forming the subject of such waiver, shall only extend to the waiving party and shall not otherwise affect or prejudice the right of the waiving party to require the due and strict observance and/or performance by the obligated party of such covenant or obligation thereafter or any other covenant or obligation in favor of the waiving party to be observed or performed by the obligated party under this Agreement.

29.0 SEVERABILITY

29.1 If any section or paragraph of this Agreement is determined to be void or unenforceable in whole or in part by a court of competent jurisdiction, the section or paragraph shall be deemed to be severable from this Agreement and shall not cause the invalidity or unenforceability of any other section or paragraph of this Agreement. Where appropriate, a provision declared to be void and unenforceable against some persons shall continue to be applicable to and enforceable to the fullest extent permitted by law against any person and circumstances other than those as to which it has been held or rendered invalid, unenforceable or illegal.

30.0 REGISTRATION ON TITLE

31.1 A copy of this Agreement and/or a document providing notice of this Agreement, whether in electronic format or not, may not be registered by the Licensee against title to the Licensed Lands.

31.2 The Licensee or anyone acting on behalf of the Licensee shall not encumber or register on title to the Licensed Lands, any form of lease, charge, mortgage, chattel mortgage, security instrument, hypothecation, lien or any other form of debt instrument in connection with the Works.

32.0 EXTENSION OF TIME

32.1 Licensor may, in its absolute and unfettered discretion, grant such extensions of time as it deems reasonable or necessary for the performance of Licensee's obligations under this Agreement, provided however, that no such extension nor any other indulgence granted by Licensor, or any neglect, refusal or failure to enforce any of the terms and conditions of this Agreement, either in a timely manner or at all, or to take any other remedy shall in any way act as a waiver of the obligations of Licensee under any and all terms of this Agreement.

33.0 SCHEDULES

33.1 The following schedules are attached to and form an integral part of this Agreement:

- (a) Schedule "A" - Legal Description of the Licensed Lands;
- (b) Schedule "B" - Sketch showing the Licensed Lands.

IN WITNESS WHEREOF the parties have executed this Agreement under the hands of their respective signing officers duly authorized to bind the corporation or affixed their respective corporate seals under the hands of their duly authorized officers as of the date herein before first written.

THE CORPORATION OF THE CITY OF MISSISSAUGA

Per: _____

Name: Geoff Wright

Title: Commissioner of Transportation & Works

Per: _____

Name: Diana Rusnov

Title: City Clerk & Director of Legislative Services

Authorized through Mississauga By-Law # _____

IMPERIAL OIL PARTNERSHIP, by its managing Partner

IMPERIAL OIL LIMITED

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the Partnership

SCHEDULE "A"

Legal Description of the Licensed Lands

Property No.	Property PIN	Legal Description
1		
2		
3		

SCHEDULE "B"

Sketches of the Licensed Lands