

STAFF-7-2 – GRANT OF EASEMENT PIPELINE (ONTARIO) AGREEMENT

Schedule “A”

Pipeline Easement

WHEREAS:

- A. The Transferor is the owner in fee simple of the lands and premises more particularly described in Schedule “B” attached hereto (hereinafter called the “Transferor’s Lands”).
- B. The Transferee is the owner in fee simple of those lands and premises more particularly described on Schedule “C” attached (hereinafter called the “Transferee’s Lands”).

IN CONSIDERATION of the sum of (0.00) of lawful money of Canada (hereinafter called “the consideration”), which sum is payment in full for the rights and interest hereby granted, including payment in full for all such matters as injurious affection to remaining lands, the Transferor does hereby GRANT, CONVEY, SELL AND TRANSFER IN PERPETUITY unto the Transferee, its successors and assigns, to be used and enjoyed as appurtenant to all or any part of the Transferee’s Lands and undertaking a free and unencumbered easement on, over, in, under, along and/or through that part of the Transferor’s Lands more particularly described in Schedule “D” (hereinafter referred to as the “Easement Lands”) to survey, lay, construct, maintain, inspect, patrol (including aerial patrol) alter, relocate, renew, remove, replace, reconstruct, repair, expand, move, keep, use and/or operate pipes and pipelines including without limitation a pipeline for the transmission of petroleum products and all works, appurtenances, attachments, apparatus, appliances, drips, valves, fittings, connections, meters, cathodic protection equipment, markers, fixtures and equipment and other equipment and appurtenances, whether or not similar to the foregoing which the Transferee may deem useful, necessary or convenient in connection with its use of the Easement Lands and in particular for the carriage, conveyance, transportation, storage and/or handling of oil and its products, together with a right-of-way to the Transferee, its successors, assigns, employees, contractors, servants and agents for ingress and egress at any time and from time to time over, along, across and upon the Transferor’s Lands in such ways and locations as the Transferor may direct, acting reasonably, on foot and/or with vehicles, supplies, machinery and equipment necessary or incidental to the exercise and enjoyment of the easement and right-of-way hereby transferred. The Transferee agrees to repair any damage to the Transferor’s Lands caused by such ingress and egress. The Parties hereto mutually covenant and agree each with the other as follows:

1. The Transferee shall at its own expense as soon as reasonably possible after completing any work in accordance with its rights hereunder, remove all surplus sub-soil and debris from the Easement Lands and restore the Easement Lands to the state that they were in prior to the commencement of such work so far as is reasonably practicable.

2. The Transferee shall indemnify the Transferor for all losses, costs, claims, injuries, actions and causes of actions which are directly attributable to the exercise of the rights hereby granted, except to the extent that the losses, costs, claims, injuries, actions and causes of actions have been caused by the negligence or misconduct of the Transferor or persons acting within the control of the Transferor.

3. The Transferor shall have the right to use and enjoy the surface of the Easement Lands except that such use and enjoyment shall not interfere with the rights of the Transferee hereunder. Without limiting the generality of the foregoing, the Transferor shall not without the prior written consent of the Transferee, place or erect any building, structure or fence and shall not excavate, alter the grading, drill, install, erect or permit to be excavated, drilled, installed or erected or permit the grading to be altered above, on, over, in, under or through the Easement Lands any pit, well, foundation, pavement, or other structure or installation (whether or not similar to the foregoing) or to do or permit to be done any mining, quarrying, land levelling or other work, or activity of a similar nature in, on, over, under or through the Easement Lands or to do or permit to be done, anything which might in any manner, impair the safety of any pipes or pipelines and appurtenances thereto in the Easement Lands or which will obstruct or prevent the exercise and enjoyment by the Transferee of its rights hereunder. Notwithstanding the foregoing the Transferee upon request shall consent to the Transferor constructing or repairing fencing pavements, pathways, and walks across, on and in the Easement Lands or any portion or portions thereof, provided that before commencing any of the work referred to in this sentence the Transferor shall (a) give the Transferee at least thirty (30) days clear notice in writing pointing out the work desired so as to enable the Transferee to evaluate, comment and impose reasonable conditions designed to protect the rights granted herein and the pipeline, on the work proposed and to have a representative inspect the site and/or be present at any time during the performance of the work, (b) observe and adhere to such conditions and follow the instructions of the Transferee or its representative as to the performance of such work without damage to the said pipeline, (c) shall exercise a high degree of care in carrying out any such work and, (d) shall perform any such work in such a manner as not to endanger or damage the said pipe line as may be required by the Transferee.

4. The rights, privileges and easement herein granted shall include the right to install, keep, use, operate, service, maintain, repair and/or replace in, under, over, on and above the Easement Lands any valves and/or take-offs subject to additional agreements and to fence in such valves and/or take-offs and to keep same fenced in, but for this right the Transferee shall pay to the Transferor (or to the person or persons entitled thereto) such additional compensation as may be agreed upon and in default of agreement as may be settled by arbitration under the provisions of *The Arbitrations Act*, R.S.O. 1990 Chapter A.24, or any act passed in amendment thereof or substitution therefor.

5. Notwithstanding any rule of law or equity and even though the said pipe line and its appurtenances may become annexed or affixed to the realty, title thereto shall nevertheless remain the Transferee.

6. The Transferor covenants that:

- (i) it has the right to convey this easement and right-of-way to the Transferee;
- (ii) the Transferee shall and may peaceably hold and enjoy the rights, easement and right-of-way hereby transferred 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;
- (iii) the Transferor or its successors and assigns will, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, documents and assurances of this easement and right-of-way (at the Transferee's expense) as may be reasonably required by the Transferee to give effect to this Transfer/Deed of Land, and
- (iv) the Transferor has not done, omitted or permitted anything whereby the Easement Lands is or may be encumbered (except as the records of the land registry office disclose).

7. The Transferee shall not bring any toxic, hazardous, dangerous, noxious or waste substances, flammable, explosive or radioactive materials, pollutants or contaminants on the Easement Lands except as permitted and in accordance with the laws, rules, regulations, orders and guidelines of all applicable public authorities. In acquiring its interests in the Easement Lands pursuant to this Easement, the Transferee shall be deemed not to acquire the care or control of the Easement Lands or any component thereof.

8. This Agreement is subject to the express condition that it is to be effective only if the provisions of the *Planning Act*, R.S.O. 1990, Chapter P13 and amendments thereto are complied with. In accordance with Paragraph 50(3)(d) of the *Planning Act*, the Transferee declares that the easement rights created herein are being acquired for the purpose of a hydrocarbon distribution and transmission line within the meaning of Part VI of the *Ontario Energy Board Act*, 1998.

9. The Transferee shall have the right at any time and from time to time to remove any boulder or rock and to sever, fell, remove or control the growth of any roots, trees, stumps, brush or other vegetation in, on or under the Easement Lands.

10. The rights of the Transferee herein shall be of the same force and effect as a covenant running with the Transferor's Lands and shall be appurtenant to Transferee's Lands.

11. The Transferee shall have the absolute and unfettered right to assign or transfer its rights hereunder in whole or in part however shall be bound to give notice thereof to any party.

12. The parties hereto agree that the terms of this easement supersede all other agreements with respect to the Easement Lands and the use thereof by the Transferee.

13. This easement shall extend to, be binding upon and enure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto respectively; and, wherever the singular or masculine is used it shall, where necessary, be construed as if the plural, or feminine or neuter had been used, as the case may be. The Transferor hereby agrees that all provisions herein are reasonable and valid and if any provision herein is determined to be unenforceable, in whole or in part, it shall be severable from all other provisions and shall not affect or impair the validity of all other provisions.

14. The parties hereto acknowledge that this easement is the product of arm's length negotiation between the parties, each party having obtained or having been given the opportunity to obtain its own independent legal advice, and the parties agree that this easement shall be construed neither strictly for nor strictly against any party irrespective of which party was responsible for drafting this Agreement.

15. Until the date on which the Transferee provides notice to the Ontario Energy Board in accordance with the Standard Conditions of Approval in proceeding number EB-2022-0012 that the pipeline on the Easement Lands is "in service", the Transferee shall take out and maintain, at its sole cost and expense, commercial general liability insurance with respect to the use of the Easement Lands or in connection with the enjoyment or exercise of any rights conferred under this easement with coverage to include the activities and operations of the Transferee and of any others performing work on behalf of the Transferee, and of those for whom the Transferee is in law responsible, written on an occurrence basis in an amount of not less than Five Million Dollars (\$5,000,000.00) per occurrence, for bodily injury (including death), personal injury, property damage, blanket written contractual liability, non-owned automobile liability, employers liability, severability of Interests and cross liability clause.

16. Upon the Transferee delivering written notice to the Transferor of its discontinuance of the use of the Easement Lands and of the exercise of the right(s) hereby granted, the Transferee shall, in accordance with applicable law, restore the Easement Lands to substantially the same condition, so far as may be practicable to do so, as the Easement Lands were in prior to the entry thereon and the use thereof by the Transferee provided, however, that the Transferee may, at its sole discretion and subject to applicable law, leave and abandon the pipes and pipelines and other below-grade equipment in place in the Easement Lands.

17. This Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and each of the parties hereto hereby irrevocably attorns to the jurisdiction of the courts of the Province of Ontario save and except that the parties are obliged to arbitrate certain matters pursuant to paragraph 4 of this Agreement.

Schedule "B"

Transferor's Lands

(Complete description to be provided by counsel)

Schedule "C"

Transferee's Lands

The right-of-way and easement herein conveyed is hereby declared to be appurtenant to the lands, premises and facilities of the Transferee located in the City of _____, County of _____, Province of Ontario, and elsewhere.

Schedule “D”

Easement Lands

(Complete description to be provided by new R-Plan)