

STANDARD PIPE CROSSING AGREEMENT

Y/F: 33830-1
O/F: UGP-KNG-175.05
AGREEMENT NO.


This Agreement entered into at Toronto, Province of Ontario, this 5th day of August 2005.

BETWEEN:

CANADIAN NATIONAL RAILWAY COMPANY, a corporation
having its head office at 935 de la Gauchetière Street West,
Montreal, Quebec H3B 2M9

(hereinafter called the "Railway")

AND:

~~UTILITIES KINGSTON~~ 1425445 ONTARIO LIMITED 
1211 John Counter Boulevard
P.O. Box 790
Kingston, Ontario
K7L 4X7

(hereinafter called the "Applicant")

WHEREAS the Railway hereby grants the Applicant the right and privilege to install, use and maintain an NPS 12 Steel 323.9mm O.D. Natural Gas Pipeline in an existing 1200mm Diameter Steel Casing, within the Railway's right-of-way, at mile 175.05 of the Kingston Subdivision (hereinafter the "works"), in the City of Kingston, Province of Ontario, as shown on Plan No. 0615-NG, dated June 2nd, 2005 (hereinafter the "Plan"), attached hereto and forming part hereof.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the mutual covenants and agreements herein and subject to the terms and conditions set out in this Agreement, the parties agree as follows:

1. The Applicant will carry out the work as shown on the attached Plan (Appendix A), and in accordance with Railway requirements respecting safe railway operations, and no works shall proceed until the Agreement has been signed and the plan has been approved by the Railway.
2. The works shall be constructed and at all times maintained in accordance with the *Railway Safety Act* and regulations, plans or specifications in force, adopted or approved by Transport Canada respecting pipe crossings under Railways, including *Standards Respecting Pipeline Crossings Under Railways*, TC E-10, effective May 10, 2001 (Appendix B), as amended from time to time, and any subsequent replacement document, according to the plans and specifications approved by the Railway.
3. No maintenance work shall be done without first obtaining the Railway's consent.
4. Under certain circumstances, before giving its permission to proceed to any work, the Railway may, at its discretion, assign an inspector to supervise the work to take place on its property. While so engaged, the inspector's wages and expenses will be chargeable to the Applicant and shall be paid by the Applicant immediately upon request by the Railway.

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5. All costs associated with the construction, the replacement, the use and the maintenance of the works, including flagging, location of underground cables and engineering fees, shall be paid by the Applicant.

6. Should it become necessary or expedient for the purposes of repair or improvement on the said Railway that the works be removed, relocated or modified, the Applicant shall, at its risk and expense, comply with the request of the Railway, failing which the Railway shall have the right to execute or have executed, at the risk and expense of the Applicant, any work required to remove, relocate or modify the said works.

7. In addition to any other amounts payable by the Applicant pursuant to this Agreement, as compensation for the rights and privileges herein granted and until Clause 13 is invoked, the Applicant shall immediately pay a non-refundable one-time lump sum of \$1,850, plus the applicable G.S.T. All sums payable pursuant to this clause shall be payable to the order of the Railway, care of its authorized representative, at such address as the authorized representative shall provide.

The Applicant shall also pay all taxes, rates and assessments of any other nature that may be levied from time to time during the course of this Agreement against the Railway's property as a result of the works constructed by the Applicant. The Railway's G.S.T. Registration Number is R100768779.

8. The Applicant shall indemnify and save harmless the Railway from and against all actions, causes of action, proceedings, claims and demands (hereinafter referred to as "Liability") for any direct losses, costs, damages or expenses suffered or incurred by the Railway, by reason of any damage of whatsoever nature including damages to property or to any persons caused by, resulting from or attributable to any action or omission by the Applicant, its employees, servants, agents, licensees, invitees or generally by those for whom it is by law responsible or to the existence, construction, operation, maintenance, relocation, modification or removal of any crossing, or injury, including injury resulting in death, to the employees, servants, agents, licensees or invitees of the Company while on Railway property, except to the extent that such liability, damage or injury is contributed to, caused by, results from or is attributable to the negligence or misconduct of the Railway or of those for whom it is by law responsible.

9. The Applicant shall immediately carry out all measures which the Railway, in its sole discretion, considers necessary to keep the works free and clear of all environmental contaminants or residue (hereinafter referred to as "Environmental Contamination") resulting from the Applicant's occupation or use of the Railway's premises (hereinafter the "Premises"), such condition to be confirmed (at the option of the Railway and at the sole expense of the Applicant) by a post-termination environmental inspection/audit of the Premises to be carried out by the Railway. The Applicant shall be solely responsible for the cost of all work carried out to correct any Environmental Contamination which occurs on the Premises, or which occurs on other lands as a result of the Applicant's occupation or use of the Premises

9.1 a) Notwithstanding the foregoing, in the event that the Railway, at any time, suspects that a potential source of Environmental Contamination may be either present on the Premises or at risk of escaping from or onto the Premises to or from the adjoining lands, the Railway shall have the right to enter upon the Premises, at all reasonable times and from time to time, in order to inspect the Premises and conduct or require the Applicant to conduct, at the Applicant's expense, such tests as may be required to verify the condition of the Premises. The Applicant shall, at its expense, take any and all action as shall be required to prevent such Environmental Contamination from occurring or escaping from or onto the Premises.

b) The Applicant shall be responsible to notify the Railway of all Environmental Contamination that the Applicant suspects is occurring on or escaping onto the Premises from adjacent lands or resulting from third party occupation.

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9.2 If the Applicant fails to correct any Environmental Contamination to the satisfaction of the Railway and any public authority having jurisdiction, the Railway may perform such work by its employees or agents. The Railway may charge the Applicant from time to time for all the costs incurred by the Railway in correcting such Environmental Contamination, plus fifteen per cent (15%) for overhead, and the Applicant shall pay the Railway's invoice or invoices for such costs within ten (10) days of receipt of each invoice. In the event such remedial work is carried out by any public authority, the cost of such work shall be borne by the Applicant.

9.3 The Applicant shall comply with the provisions of any federal, provincial or municipal laws applicable to the Premises with respect to maintaining a clean environment. If any public authority having jurisdiction with respect to environmental protection or fire protection requires the installation of equipment or apparatus on the Premises to improve the environment or to improve fire protection facilities, then the Applicant shall promptly install such equipment or apparatus or take such measures as may be required by such public authority. The Applicant shall be solely responsible for the cost of all work carried out to comply with the requirements of a public authority.

9.4 Upon the termination of this Agreement, the Applicant shall leave the Premises in a clean and tidy condition, free of any Environmental Contamination resulting from or occurring during the Applicant's occupation or use of the Premises. If the Applicant has installed any facility on or under the Premises, the Applicant shall remove such facility, subject to the provisions of Clause 15. The Applicant shall have the burden of proving that any Environmental Contamination has not resulted from or occurred during its occupation or use of the Premises.

9.5 The responsibility of the Applicant to the Railway with respect to the environmental obligations contained herein shall continue to be enforceable by the Railway notwithstanding the termination of this Agreement.

10. The Applicant shall, at its sole expense, provide and maintain in full force and effect during the term of this Agreement, insurance coverage as follows:

10.1 Commercial General Liability, in the amount of no less than ten million dollars (\$10,000,000) per occurrence, combined single limit for bodily/personal injury (including death), or for damage to or destruction of property (including loss of use) caused by accident or occurrence. This policy shall name the Railway as an additional insured and shall contain a cross-liability clause.

10.2 The Applicant shall provide the Railway with proof of insurance in the form of an insurance certificate, which certificate shall detail the coverage requirements and shall obligate the insurers to give the Railway a thirty (30) day prior written notice of cancellation or non-renewal, or of any material change affecting the coverage provided therein.

11 The Applicant's property, and any other person's property, shall, while located on the Railway's premises to fulfill any obligation covered by the present Agreement, be deemed to be there at the risk of the Applicant as to damages, loss or theft attributable to any cause whatsoever.

12. This Agreement is binding upon the respective employees, agents, successors and representatives of the Railway and the Applicant; however, the Applicant may not assign or transfer this Agreement, in whole or in part, or any of the rights and privileges resulting there from, without the prior written consent of the Railway. Said consent may not be unreasonably withheld

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13. This Agreement will continue in force from the date hereof to its termination, at any time, by giving a written notice to the other party at least thirty (30) days from the date of expiration. In the event of any failure by the Applicant to comply with any provisions of this Agreement, and upon the Applicant being notified in writing by the Railway alleging such failure and failing to remedy the failure within (thirty) 30 days of receiving such notice, the Agreement will be forthwith terminated upon receipt of written notice of termination. In either case, it is understood that the Railway will not reimburse the Applicant for any monies paid in advance under the provisions of this Agreement.

14. Unless otherwise specified, all notices, accounts, statements, reports, documents or instructions to be given by any party under the terms of this Agreement must be given in writing at the following address:

FOR THE RAILWAY:

1 Administration Road, Floor 1
Concord, Ontario L4K 1B9

Attention: Contracts Department
Facsimile: (905) 760-5010

FOR THE APPLICANT:

1211 John Counter Boulevard
P.O. Box 790, Kingston, Ontario K7L 4X7

Attention: Utilities, Technical Services
Facsimile: 613-542-1463

Notice shall be sufficiently given if delivered by courier or facsimile, or if mailed by prepaid registered mail to the above address or to such other place as may be specified in writing. Any notice or other document, if delivered by courier or facsimile, shall be deemed to have been given or made on the date delivered or the date that a confirmation of receipt of the facsimile was recorded by the sender, and if mailed, on the third business day following the date on which it was mailed. In the event of an actual or imminent disruption of postal service in Canada, the notice shall be delivered by courier.

15. Prior to the expiry of the present Agreement or, in the cancellation of the Agreement within a period determined in writing by the Railway, the Applicant will, at its risk and expense, remove from the Railway's property all works constructed under this Agreement, as well as all material not belonging to the Railway, except for the metal casing which will remain in place in perpetuity. As for the pipe installed inside the metal casing, the Applicant will at its discretion have the option of either leaving the pipe or removing it. The Applicant will be required to fill the casing and any pipes left within with cement and restore the Railway's property to the satisfaction of the Railway. Should the Applicant fail to comply with the requirements of this Clause, the Railway reserves the right, at its discretion, to do the work that the Applicant should have done in accordance with this Clause, or to have the work done, at the risk and expense of the Applicant. Under such circumstances, all the material located on the Railway's property shall become the property of the Railway, without compensation to the Applicant and without prejudice to the Railway's right to recourse against the Applicant for compensation for any costs or damages incurred by the Railway as a result of the Applicant's default.

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16. The Applicant shall not, at any time and in any way, impede the operation, the maintenance or the enjoyment of the Railway's property by the Railway and its representatives. If the Railway deems, at its discretion, that the work being undertaken or the method used to undertake the work will impede the Railway in any way, the Railway may order the work stopped, recommend a different methodology, require that adequate protective measures be taken and generally impose any measures or any combination of measures that the Railway may deem necessary under the circumstances. The Applicant will comply with the requirement of this clause, at its risk and expense and without recourse against the Railway except for damages, if justified.

17. The Applicant agrees not to register this Agreement or to file or register any caveat or other encumbrance based on this Agreement against the title for the said Works without first obtaining the written consent of the Railway.

18. This Agreement shall be governed by and construed in accordance with the laws of the Province in which the works are located, and all applicable federal laws and regulations.

19. Any dispute relating to the wording and interpretation of the clauses in this Agreement will be resolved in accordance with the Arbitration Act of the Province in which the works are located.

20. The preamble to this Agreement and all its Appendices form an integral part hereof.

IN WITNESS WHEREOF the parties hereto have executed these presents as of the day and year first above written.

CANADIAN NATIONAL RAILWAY COMPANY

Witness for the Railway

Name: Richard Paton
Title: Regional Manager
I am authorized to bind the Company

UTILITIES KINGSTON

Witness for the Applicant

Name: **J.A. KEECH, PRESIDENT & C.E.O.**
Title: **1425445 ONTARIO LIMITED**
UTILITIES KINGSTON
I am authorized to bind the Company

Witness for the Applicant

Name: **NANCY TAYLOR, SECRETARY**
Title: **1425445 ONTARIO LIMITED**
UTILITIES KINGSTON
I am authorized to bind the Company