

To complete this document, please fill in the following information:

Date is not filled in until ACRWC General Manager signs the document.

Ist Page	Fill in Grantee's Company Name and Legal Land Description in full
Number 12	Fill in Grantee's Company Name, Address and to whose attention the information is to be sent
Number 18	Grantee's Company Name, Signature and Title of person signing
Schedule A	Legal Land Description Drawing /Reference Number Brief Description of Work

CROSSING AGREEMENT

MEMORANDUM OF AGREEMENT ENTERED INTO THIS _____ DAY OF _____,
2013 BETWEEN:

ALBERTA CAPITAL REGION WASTEWATER COMMISSION
hereinafter referred to as "the Commission"

OF THE FIRST PART

And

hereinafter referred to as "the Grantee"

OF THE SECOND PART

WHEREAS the Commission has acquired a right-of-way in respect to the lands
legally described as:

_____ **Quarter Section** _____
Township _____
Range _____
West of the 4th Meridian

(hereinafter called the "Said Lands"), the said right-of-way being more particularly
described in Schedule "A", which is hereby declared to be part of the Agreement;

AND WHEREAS, a sewer pipeline has been installed within the right-of-way and
the Commission is in all respects the owner of the pipeline;

AND WHEREAS the Grantee desires to lay, construct, repair, renew, or remove a pipeline and/or cable (the Work), within and across those portions of the right-of-way shown in red on Schedule "A" (hereinafter called "the Crossing Area"). The description of the type of pipeline and/or cable to be placed within the Crossing Area is also described in Schedule "A";

AND WHEREAS the Grantee has applied to the Commission for permission to construct the pipeline and/or cable (hereinafter called the "Said Works") within and across the Crossing Area at the location shown on Schedule "A".

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of ONE (\$1.00) DOLLAR paid by the Grantee to the Commission, and other good and valuable consideration, receipt of which is hereby acknowledged, and subject to the terms and conditions hereinafter expressed, the Commission hereby grants unto the Grantee the right to lay and construct (and where necessary maintain, repair, renew or remove) it's Said Works over the Commission's pipeline in the Crossing Area.

1. **Consent**

Grantor hereby agrees, insofar as it has the right to do so, that the Grantee may occupy and place the said works in the Crossing Area in accordance with the terms and conditions of this Agreement. In no way does this consent allow the Grantee access to the said lands or the Crossing Area without first receiving permission from the landowner of the said lands.

2. **Position of Facility**

Unless otherwise indicated in any of the Schedules, or ordered by governmental authority or regulations or expressly agreed to in writing by the Commission or the Commission's representative, the Said Works shall be constructed and installed above the Commission's existing pipeline.

3. **Laying the Said Works**

With respect to any Work carried out by the Grantee in or on or above the Crossing Area and with respect to the Said Works in the Crossing Area, the Grantee shall:

- (a) Provide all wire, cables, pipe, materials, equipment and labour;
- (b) Grantee's Field Representative shall contact the Commissions Control Room either in person or by telephone, a minimum of 48 hours before commencement of access to and Work within the Crossing Area. **WORK PERMITS** will be issued at the Alberta Capital Region Wastewater commission's plant site, 23262 Township Road 540, Fort Saskatchewan, Alberta. Work Permits are to be returned when the Said Works are complete.
Work Permit contact Information: Operations control room 780-416-9967
- (c) Carry out all Work under the supervision of and to the satisfaction of the Commission's representatives;
- (d) Expose the Commission's pipeline by hand excavation for a minimum distance of ONE (1.0) METERS on each side of the pipeline prior to commencement of any machine excavation within the Crossing Area;
- (e) Maintain minimum clearance of 0.3 METERS between the external surfaces of the Commission's pipelines and the Grantee's Said Works;
- (f) Install any of the Said Works at the point of crossing in accordance with the attached Schedule "A", previously declared to be part of this Agreement;
- (g) Install tracer wire along non-metallic Grantee pipes, cables, ducts, fibre optics, and conduits;
- (h) Restore the Crossing Area and/or surface disturbance of the sewerline Right-of-Way insofar as practical to their former condition upon completion of construction, maintenance, replacement and/or removal of the Grantee's Said Works;
- (i) During installation pursuant to this Agreement, have available at the Crossing Area a copy of this Agreement.
- (j) Where applicable, install and maintain during performance of the Work, suitable markers indicating the location of the Commission's pipeline or pipelines, in the Crossing Area.

- (k) Carry out all Work in the Crossing Area in a proper and diligent manner and in accordance with good engineering and construction practices.
- (l) Ensure no damage occurs to the Commission's pipeline or pipelines while the Work is being performed in the Crossing Area including damage which may result from the use of heavy work equipment outside the Crossing Area while performing the Work in the Crossing Area.
- (m) If construction activities in connection with the Work include any change in the existing ground elevation beneath overhead power lines, additional, specific consent must be obtained from the Grantor because this crossing agreement is based on the ground elevations existing as of the date of this agreement.
- (n) Elevated or over head power transmission lines will be a minimum of 10m above the crossing area surface at the lowest point.
- (o) Within two months after construction of the Said Works is complete, submit as-built plans of the Crossing Area to the Commission. These plans should also show a contact person in case of an emergency. These plans are to be in the form of electronic files compatible with the AutoCAD file format.

4. **Repairs, Renewals and Removal**

- (a) The Grantee covenants and agrees to maintain its Said Works in good order and condition and to carry out all necessary maintenance from time to time (all work shall be carried out under the supervision and to the satisfaction of the Commission, as well as in accordance with all regulations and specifications of the governing authority);
- (b) The Grantee shall have the right to enter upon the Crossing Area to carry out repairs on, or renewals or removal of its Said Works on giving at least FORTY-EIGHT (48) HOURS written notice to the Commission, as per paragraph 3b;

- (c) In the case of breakage of the Grantee's Said Works or other emergency, no prior notice shall be required but the Commission shall be advised of such emergency and remedial work as soon as possible;
- (d) Upon notice from the Commission, the Grantee shall, within THIRTY (30) DAYS thereafter, commence to renew, alter or repair its Said Works within the Crossing Area, in such a manner as to comply and conform with and to any and all new or amended statutes and any new or altered rules, regulations, orders, plans or specifications made or promulgated and for the time being in force with respect to the Said Works. The Grantee shall thereupon complete the said renewals, alterations, or repairs as quickly as possible.

5. Sub-Surface Work – When Work is to be performed in the Crossing Area, both the Commission and the Grantee shall be subject to the provision of hand exposing the other party's pipeline and Said Works, respectively, for a minimum distance of ONE (1.0) METERS on each side of the pipeline or Said Works, prior to any machine excavation.

6. Costs

The whole of the cost of carrying, laying, constructing, maintaining, operating, repairing, renewing, supervising, altering or removing the Grantee's Said Works and/or the other expenses or work contemplated by this Agreement at the said crossing, and within the Crossing Area, shall be paid and borne by the Grantee.

If the Commission at any time or times desires repairs, replacements or renewals to be made in respect of its pipeline or installs a new pipeline at or near the crossing, or installs a new pipeline or pipelines within the said right-of-way the Grantee will at the Grantee's option either alter its Said Works as necessary to facilitate the repairs, replacements, renewals, or installation proposed by the Commission at the Grantee's expense; or pay to the Commission on demand the amount by which

the cost to the Commission of such repairs or renewals is increased by the presence of the Grantee's Said Works.

Any work of supporting the Grantee's Said Works in the Crossing Area which is made necessary by the construction, maintenance, operation, replacement and/or removal of the Commission's pipeline may be performed by the Commission, and if performed by the Commission shall be at the Grantee's cost and expense and the Grantee shall reimburse the Commission for all costs and expenses so incurred.

7. **Taxes**

The Grantee shall be liable for and shall pay all taxes, rates and assessments of every description whatsoever, that may be imposed by any lawful authority, by reason of the presence of the Grantee's Said Works, or by reason of this Agreement or of anything done pursuant to this Agreement, and shall indemnify the Commission from and against all such taxes, rates and assessments.

8. **Indemnity**

The Grantee shall indemnify and save harmless the Commission from all damage and loss to persons and property and from all claims, demands, actions, suits or other proceedings by whomsoever made, brought or prosecuted in any manner based upon or arising out of this Agreement or anything done or maintained hereunder unless such damage, loss, claim, demand, action, suit or other proceeding is attributable to the negligence of the Commission or their servants, agents, employees or contractors.

Such indemnity shall survive termination of this Agreement. The Grantee will be liable for any damages to the Commission's pipeline within the Crossing Area arising as a result of a breakage or any other problems related to the Grantee's Said Works, unless the damage occurs as a result of the negligence of the Commission and to the extent that such injury or damage is caused or contributed to by the negligence of the Commission or their servants, agents, employees or contractors.

The Commission shall not be liable nor responsible in any way for any personal or bodily injury or property damage of any nature whatsoever that may be suffered or sustained by the Grantee or any of his employees or agents in the performance of this Agreement.

The Grantee shall assume full responsibility for and shall pay for all damage caused to the Commission's sewerline and facilities by reason of the operations of the Grantee except and to the extent that such damage is caused or contributed to by the negligence of the Commission or their servants, agents, employees or contractors.

9. **Insurance**

- (a) Without in any way limiting the liability of either party under this Agreement, each party shall obtain and keep in force during the term of this Agreement comprehensive general liability for bodily injury and property damage arising from Work contemplated by this Agreement. The limit of this insurance shall not be less than five million dollars inclusive, for any one occurrence unless otherwise agreed by the parties in writing. These policies shall provide coverage for liability assumed under this Agreement.
- (b) A party upon request of the other, party shall furnish written documentation, satisfactory to the requesting party, evidencing the required coverage.

10. **Remedy on Default**

In the case of default by the Grantee in carrying out any of the provisions of this Agreement, the Commission may give FIFTEEN (15) DAYS notice thereof to the Grantee to rectify the same, and the Grantee covenants and agrees to proceed with due diligence to carry out the same. If the Grantee fails to proceed to remedy such default within the said FIFTEEN (15) DAY period, the Commission may take the necessary steps to remedy such default, and without limiting the above,

may cancel this agreement and remove the Grantee's Said Works from the right-of-way of the Commission and restore the Commission's property to the condition in which it was prior to the occupation thereof by the Said Works.

The Commission shall retain the right to enter upon and occupy their easement in order to install, remove, maintain and operate any number of sewer transmission lines or other works and appurtenances within the said Right-of-Way.

11. **Conformance with Regulations and Conditions**

Each of the parties in laying, erecting, constructing, repairing or removing any pipeline, facility, work, cable, conduit, or thing, in, over or under the Right-of-Way and in the operation and maintenance of such pipeline, facility, work, cable, conduit, or thing, shall and will at all times comply fully with all laws, regulations, rules, orders, plans and specifications of competent governmental authority from time to time and for the time being in force and effect in respect thereof or relevant thereto.

12. **Notices**

- (a) All notices, reports and other communications required or permitted by this Agreement shall be deemed to have been properly given and delivered when delivered by hand or sent by written telecommunication or registered mail with all postage or charges fully prepaid and addressed to the parties, respectively, as follows:

Grantor: Alberta Capital Region Wastewater Commission
23262 Township Road 540
Fort Saskatchewan, Alberta T8L 4A2

Attention: Mike Darbyshire, P.Eng.
General Manager

Grantee:

or to the latest known address of the party concerned, as furnished pursuant to subsection of this section.

- (b) Any notice, report, or communication so mailed shall be deemed to have been received by the addressee THREE (3) DAYS after posting thereof. In all other instances, the date of receipt by addressee shall be the date of actual delivery at the said address.
- (c) Either party may change its address for the purposes hereof by giving written notice thereof to the other party at its latest known address.
- (d) No notice shall be effective if mailed during any period in which Canadian postal workers are on strike or if a strike or postal workers is imminent and may be anticipated to affect normal delivery thereof.
- (e) Notwithstanding the foregoing, to the extent described in this Agreement, Grantor's and Grantee's Field Representatives or designated alternates shall have the right and authority to make, give, receive any notice, information, direction or decision required in conducting Work hereunder.

13. **Changes to Agreement**

No change, modification or alternation of this Agreement shall be valid unless it is in writing and signed by the parties hereto, and no course of dealing between the parties shall be construed to alter the terms hereof.

14. **Term**

The rights and obligations of the parties under Schedule "A" shall terminate:

- (a) Two years from the date hereof if construction of the Said Works has not commenced, or
- (b) Upon proper abandonment or removal of all of the Said Works from the Crossing Area and the completion of any reclamation Work required by applicable laws, except for those rights acquired and obligations incurred prior to such events.

15. **Miscellaneous**

- (a) In this Agreement, words importing the singular include the plural and vice versa; words importing the masculine gender include the feminine and vice versa; and words importing persons include firms or corporations and vice versa.
- (b) Words such as “hereto”, “thereof”, “hereof”, and “herein”, when used in this Agreement, shall be construed to refer to provisions of this Agreement.
- (c) The headings of all clauses of this Agreement, and the Schedules, are inserted for convenience of reference only and shall not affect the meaning or construction thereof.
- (d) Time is of the essence of this Agreement.
- (e) No waiver of any breach of a covenant or provision of this Agreement shall take effect or be binding upon a party unless it is expressed in writing. A waiver by a party of any breach shall not limit or effect that party’s right with respect to any other or future breach.

16. **Representatives**

Each party to this Agreement may in writing appoint a representative to act on its behalf in matters pertaining to this Agreement. Each such authorized representative shall have the right and authority

to make, give, or receive any notice, information, direction or decision required or provided for in this Agreement.

17. **Assignment**

- (a) The Grantee shall not assign or transfer this Agreement or the rights and privileges hereby granted without the written consent of the Commission PROVIDED; HOWEVER, that nothing in this clause contained shall preclude the Grantee from including this Agreement and its interest herein in any mortgage, charge or hypothecation for the purpose of financing.

18. **Complete Agreement**

This Agreement sets forth the entire Agreement between the parties hereto and shall be deemed to have superseded any and all previous agreements and understandings whether written or oral between the parties.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed as of the day and year first above written.

**ALBERTA CAPITAL REGION
WASTEWATER COMMISSION**

Per: _____
General Manager

Per: _____

Title: _____

- SCHEDULE A -