

**ADMINISTRATIVE MATERIALS "D"**  
**SUBDIVISION IMPROVEMENTS AGREEMENT; GUARANTY**

**MODEL SUBDIVISION IMPROVEMENT AGREEMENT**

The parties to this Subdivision Improvements Agreement ("this agreement") are TransCanada Keystone Pipeline LP ("the Subdivider") and Fallon County ("the County").

WHEREAS, Subdivider submitted and the County approved a preliminary plan for the [ Baker Workforce Camp Subdivision], which will be constructed for the purpose of providing a temporary workforce camp and construction yard in connection with the staging, construction and installation of the Keystone XL Pipeline and associated pipeline components (the "Pipeline") in the State of Montana; and

WHEREAS, the Subdivider desires to defer construction of improvements described in Attachment (\*); and

WHEREAS, the purpose of this Agreement is to protect the County and is not intended for the benefit of contractors, suppliers, laborers or others providing work, services, or materials to the Subdivision or the Pipeline, or for the benefit of temporary residents in the Subdivision; and

WHEREAS, the mutual promises, covenants and obligations contained in this Agreement are authorized by state law and the County subdivision regulations.

NOW THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Effective Date: The effective date of this Agreement is the date that final subdivision plan approval is granted by the County.
2. Attachments: The Attachments cited herein are hereby made a part of this Agreement.

Subdivider's Obligations

3. Improvements: The Subdivider shall construct and install, at his own expense, those subdivision improvements listed in Attachment (\*) of this Agreement. The Subdivider's obligation to complete the improvements arises upon approval of the final subdivision plan, is not conditioned on the commencement of construction in the development within the subdivision, and is independent of any obligations of the County contained in this Agreement; provided, however, that Subdivider shall not be obligated to complete the improvements in the event approval or construction of the Pipeline is terminated, enjoined or precluded by the actions of any federal or state governmental agency or body, including any legislative or executive branch of a federal or state government, or by any federal or state court, with jurisdiction over the Pipeline (collectively, a "Governmental Action"). The Subdivider and County agree that the purpose of the subdivision is for the temporary staging and housing for workers for the construction of the Pipeline and the subdivision will not be necessary in the event the Pipeline is not constructed.
4. Security: To secure the performance of his obligations under this Agreement, the Subdivider shall deposit with the County on or before the effective date, a surety bond in the amount of \$ 6,553,701.00 (the "Bond") issued and executed by a surety company authorized to do business in the State of Montana and acceptable as a surety to the County and countersigned by a Montana agent. The Bond must be payable to the County in the event of a Default (defined below) by the Subdivider under this Agreement that is not remedied or cured by Subdivider in accordance with Sections 10 and 13 below. The Bond must be in effect until the completed improvements are accepted by the governing body.
5. Standards: The Subdivider shall construct the required improvements according to the standards and

\* See list of attachments under signature line

specifications required by the County as specified in Attachment (\*) of this Agreement.

6. Commencement and Completion Periods: The Subdivider shall complete all of the required improvements within two (2) years from the effective date of this Agreement; provided, however, the foregoing 2-year period shall be extended by any period that construction of the improvements or the Pipeline is delayed, stayed, or enjoined by a Governmental Action (said 2-year period, as extended by the period any such stay or injunction is in force, is referred to as the "Completion Period").
7. Compliance with Law: The Subdivider shall comply with all relevant laws, ordinances, regulations and requirements in effect at the time of subdivision plan approval when meeting its obligations under this Agreement.

#### County's Obligations

8. Inspection and Certification:
  - a. The County shall provide for inspection of the improvements as they are completed and, where found acceptable, shall certify those improvements as complying with the standards and specifications set forth in Attachment (\*) of this Agreement. The inspection and certification, shall occur within 14 days of notice by the Subdivider that the improvements are complete and that it desires County inspection and certification. Before requesting County certification of any improvement, the Subdivider shall present to the County valid lien waivers from all persons providing materials or performing work on the improvement.
  - b. Certification by the County does not constitute a waiver by the County of the right to make a demand or claim under the Bond in the event defects in or failure of any improvement are found following the certification.
9. Notice of Defect: The County shall provide timely notice to the Subdivider whenever inspection reveals that an improvement does not conform to the standards and specifications set forth in Attachment (\*), or is otherwise defective. The Subdivider shall have 30 days from the date the notice is issued to remedy the defect. The County may not declare a default under this Agreement during the 30 day remedy period unless the Subdivider clearly indicates it does not intend to correct the defect.
10. Reduction of Security: After the acceptance and certification pursuant to Section 9.a of any improvement, the amount that the County is entitled to demand or draw under the Bond shall be reduced by an amount equal to 90 percent of the estimated cost of the improvement as shown in Attachment (\*). At the request of the Subdivider, the County shall execute a certificate verifying the acceptance of the improvement and waiving its right to make a demand or claim on the Bond to the extent of the amount. Upon the certification of all of the improvements the balance that may be drawn under the Bond shall be available to the County for 90 days.
11. Use of Proceeds: The County shall use funds obtained under the Bond only for the purposes of completing the improvements or correcting defects in or failure of the improvements.

#### Other Provisions

12. Events of Default: The following conditions, occurrences or actions constitute an event of default ("Default") by the Subdivider during the Completion Period:

\* See list of attachments under signature line

- a. failure to complete construction of the improvements within the Completion Period;
  - b. failure to remedy the defective construction of any improvement within the remedy period pursuant to Section 10;
  - c. insolvency of the Subdivider or the filing of a petition for bankruptcy;
13. Measure of Damages: The measure of damages for a Default under this Agreement is the reasonable cost of completing the improvements. For purposes of this Agreement the estimated cost of the improvements as specified in Attachment (\*) is prima facie evidence of the minimum cost of completion. However, neither that amount nor the amount of the Bond establishes the maximum amount of the Subdivider's liability. The County may complete all unfinished improvements at the time of Default regardless of the extent to which development has taken place in the Subdivision or whether development ever was commenced, unless the failure to commence or complete the improvements is the result of a Governmental Action.
14. Local Government Rights Upon Default:
- a. Upon the occurrence of any Default, the County may make a demand or claim on the Bond to the extent of the face amount of the Bond less the estimated cost [as shown in Attachment (\*)] of all improvements previously certified by the County. The County may complete improvements itself or contract with a third party for completion, or the County may assign the proceeds of the Bond to a subsequent subdivider who has acquired the Subdivision and who has the same rights of completion as the County if and only if the subsequent subdivider agrees in writing to complete the unfinished improvements.
15. Indemnification: The Subdivider agrees to indemnify and hold the County harmless for and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work under this Agreement; provided, however, the Subdivider shall not be required to indemnify the County with respect to any claims, costs or liabilities arising or resulting from the reckless or intentional conduct of the County or its officers, employees and agents. The Subdivider is not an employee or agent of the County.
16. Amendment or Modification: The Parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the County and by the Subdivider.
17. Attorney's Fees: Should either party be required to resort to litigation, arbitration or mediation to enforce the terms of this Agreement, the prevailing party, whether plaintiff or defendant, is entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court, arbitrator or mediator awards relief to both parties, each shall bear its own costs in their entirety.
18. Third Party Rights: No person or entity who is not party to this Agreement has any right of action under this Agreement.

\* See list of attachments under signature line

19. Scope: The Agreement constitutes the entire agreement between the parties and no statement, promise or inducement that is not contained in this Agreement is binding on the parties.
20. Time: For the purpose of computing the commencement and completion periods, and time periods for County action, times in which war, civil disasters, acts of God or extreme weather conditions occur will not be included if the events prevent the Subdivider or the County from performing the obligations under this Agreement.
21. Assigns: The benefits of this Agreement to the Subdivider may not be assigned without the express written approval of the County. Such approval may not be withheld unreasonably, but any unapproved assignment is void. There is no prohibition on the right of the County to assign its rights under this Agreement.

The County shall release or authorize the release the original Subdivider's Bond if it accepts a new security from any subdivider or lender who obtains the property. However, no action by the County constitutes a release of the original Subdivider from his liability under this Agreement.

22. Severability: If any part, term or provision of this Agreement is held by the courts to be illegal, the illegality shall not affect the validity of any other part, term or provision, and the rights of the parties shall be construed as if the part, term or provision were never part of the Agreement.

Dated this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
County Official

\_\_\_\_\_  
SUBDIVIDER:

TRANSCANADA KEYSTONE PIPELINE, LP  
By its agent TC Oil Pipeline Operations Inc.

Signed: Rob Latimer  
Name: Rob Latimer  
Title: Sr. Land Rep

Signed: TR  
Name: Denisha Cummings  
Title: VS LAND MANAGER

v

\* List of Attachments (part of Final Plat Application)

Basis of Bond Tab

Construction Plans Tab