

Appendix E

SCHEDULE "D"

Licence Agreement for
Pipeline Occupation of Cornwall Road Allowance

THIS LICENSE TO OCCUPY AGREEMENT is entered into effective <Date> 2017.

BETWEEN:

THE CORPORATION OF THE TOWN OF OAKVILLE

(herein referred to as the "Town")

-and-

TRANS-NORTHERN PIPELINES INC.

(herein referred to as "Trans-Northern")

WHEREAS the Town is the owner of a highway known as Cornwall Road (herein referred to as the "Road");

AND WHEREAS, pursuant to a Pipeline Relocation Agreement with the Town, Trans-Northern wishes to relocate, construct, install, operate, maintain, replace, repair, inspect, relocate or replace a portion of its NPS16 (406.4 mm diameter) pipeline for the transmission of refined petroleum products (the "Pipeline") in, on, under, over, along, across and through the Road in the location shown in Schedule "A" attached hereto (the "Right of Way"),

AND WHEREAS the Town has agreed to allow Trans-Northern to construct the Pipeline within the Road subject to and in accordance with the terms of this license agreement (the "License")

AND WHEREAS Town Council has authorized the Chief Administrative Officer and Town Clerk to execute this License

NOW THEREFORE, in consideration of the mutual covenants and agreements herein and other good and valuable consideration, which the parties confirm the sufficiency of, the Town and Trans-Northern hereby agree as follows:

SECTION 1 LICENCE TO OCCUPY

- 1.1 The Town hereby grants to Trans-Northern for so long as Trans-Northern requires: (i) an exclusive licence for the occupation and use of the Right of Way for the purpose of constructing, installing, operating, repairing, replacing, removing, altering, renewing, disconnecting, reconstructing, maintaining, inspecting, relocating and, re-laying the Pipeline, access to the Pipeline and (ii) a non-exclusive licence in, on, under, over, across, along and through the Road for the purpose of access to the Right of Way; subject to the terms and conditions set out in this Agreement and in accordance with all applicable federal, provincial and municipal laws and by-laws pertaining to use of the Road.
- 1.2 The Town's grant of the licences herein includes the full right, liberty and privilege unto Trans-Northern and its employees, servants, agents, contractors and others designated by it and from time to time at all times forever hereafter to enter upon the Right of Way and portions of the Road, as required, with or without tools, supplies, machinery, equipment and vehicles for all purposes useful or convenient in connection with or incidental to the exercise and enjoyment of the licenses and rights granted herein, provided that in connection with such entry Trans-Northern shall take all reasonable steps to minimize interference with the operations of the Road. Trans-Northern shall notify the Town in writing at least fourteen (14) days prior to carrying out any maintenance or repair on the Pipeline and obtain the Town's prior consent before conducting any maintenance on the Pipeline or within the Right of Way. Notwithstanding

the foregoing, in the event of an emergency Trans-Northern shall have access to the Right of Way and the Road as may be required, upon providing such prior reasonable notice to the Town as is possible in the circumstances before entry.

Trans-Northern Covenants

- 1.3 Trans-Northern represents, warrants, covenants and agrees that during that time which the Pipeline is occupying the Right of Way all work conducted by Trans-Northern on the Pipeline or within the Right of Way, including, without limitation, excavation, installation, maintenance, repair, replacement, removal and relocation of its Pipeline, is subject to the following conditions:
- (a) all work in the Right of Way shall be conducted and completed according to the National Energy Board Act, the Onshore Pipeline Regulations and the Right of Way shall be restored within a reasonable time substantially to its pre-work condition, free from nuisance and to the satisfaction of the Town, at its reasonable discretion and in accordance with all approved plans, by-laws, and its policies or permit requirements, as amended from time to time;
 - (b) any portions of the Pipeline which pass over or under existing utilities shall not place substantial point loading or bear directly on any existing pipe, conduit or structure;
 - (c) if Trans-Northern breaks the surface of the Right of Way, it shall forthwith repair and restore the surface of the Right of Way substantially to the same condition it was in before such work was undertaken by Trans-Northern in accordance with the Town's road restoration policies, as amended from time to time and to the satisfaction of the Town, acting reasonably.
 - (d) if the Town requires that any excavation, installation, maintenance, removal, repair, replacement or relocation of the Pipeline being carried out by Trans-Northern be temporarily stopped for any reason relating to public safety, health or the proper functioning of municipal services identified by the Town Director of Engineering & Construction or his/her designate or expressed by the Town Council, Trans-Northern shall cease all such installation, maintenance, removal, repair, replacement or relocation of the Pipeline forthwith upon receipt of written notice from the Town.
 - (e) Trans-Northern shall be responsible for all excavation, installation, maintenance, repair, replacement and removal of the Pipeline, including the cost of such work;
 - (f) Trans-Northern shall not cut down trees in the Right of Way unless approved by the Town for removal. Trans-Northern shall not trim trees in the Right of Way without the prior written permission of the Town and without any permits required by Municipal By-law;
 - (g) Trans-Northern is responsible for the costs of any remedial work required to rehabilitate any trees damaged in the performance of any work permitted by this agreement or, in the event any trees suffer irreparable damage, Trans-Northern shall compensate the Town for the value of the trees;
 - (h) Trans-Northern is responsible to ensure that all subcontractors working on its behalf are clearly identified. As well, Trans-Northern shall ensure that all subcontractors are working in accordance with current municipal standards,

labour or health and safety legislation, in compliance with applicable traffic control methods;

- (i) where weather conditions prevent a repair and restoration in accordance with this section, Trans-Northern shall, to the extent feasible, effect a temporary repair and restore the Right of Way to the satisfaction of the Town. The repair and restoration pursuant to this section shall be effected as soon as weather conditions permit; and
- (j) Trans-Northern shall post such signs as required by National Energy Board Regulations and approved by the Town in such locations along the Road as required to inform the public of the presence of the Pipeline and of Trans-Northern's contact information.

1.4 For so long as the Pipeline occupies the Right of Way, Trans-Northern represents, warrants, covenants and agrees with the Town that:

- (a) Trans-Northern will, at its sole cost and expense, repair, to the satisfaction of the Town, acting reasonably, any damage caused to the Road or its appurtenances by the construction or maintenance of the Pipeline by Trans-Northern, and will indemnify and save harmless the Town from any and all losses, costs, charges and expenses which may be paid, incurred or sustained by the Towns a result of any such damage;
- (b) Trans-Northern's use of the Road, shall not interfere unreasonably with the Town's or with public use and enjoyment of the Road;
- (c) Trans-Northern shall use reasonable efforts to schedule work outside of the Right of Way with other utilities occupying and using or intending to occupy or use the Road, with the intent of minimizing the necessity for road cuts and construction;
- (d) the Town shall have the right to place pipes, cables, wires, poles or any other equipment in and through the area in which the Right of Way is situate, provided that this is done in coordination with Trans-Northern and in compliance with the National Energy Board Act and Regulations to ensure that no damage to the Pipeline or interference with Pipeline operation or maintenance results;
- (e) Trans-Northern shall not suffer or permit any lien to be filed or registered against the Right of Way except as permitted under this Agreement;
- (f) if this Agreement is terminated by the Town, the unfulfilled covenants, indemnities and obligations of Trans-Northern hereunder incurred to the date of such termination and Trans-Northern's indemnities under Section 1.8 inclusive hereof shall survive such termination; and
- (g) the Town has made no representations or warranties as to the state of repair of the Right of Way or the suitability of the Right of Way for any business, activity or purpose whatsoever and Trans-Northern hereby agrees to take the Right of Way on an "as is" basis.

Notification of Locations

- 1.5 Trans-Northern agrees and acknowledges that the Town is not responsible in any way for providing information about the location of the Pipeline. All inquiries and requests for information about the location of the Pipeline will be directed to Trans-Northern. Trans-Northern shall upon such a request, without cost to the Town, provide locations of its Pipeline in accordance with the National Energy Board Act and Regulations and its obligations as a member of Ontario 1-Call. Trans-Northern shall be responsible for above ground markers for the Pipeline.
- 1.6 Trans-Northern shall provide the Town a list of emergency contact numbers for Trans-Northern and shall ensure that the list is kept current.

Release and Indemnification

- 1.7 Unless resulting from the gross negligence or willful misconduct of the Town or its officers, employees, elected officials, contractors or agents, the Town is not responsible, either directly or indirectly, for any damage to the Pipeline howsoever caused that may occur during excavation, installation, maintenance, removal or relocation of the pipeline by Trans-Northern, nor is the Town liable to Trans-Northern for any losses, claims, charges, damages or expenses whatsoever suffered by Trans-Northern including, without limitation, claims for loss of revenue or loss of profits, indirect or consequential damages, on account of any actions or omissions of the Town, its officers, employees, elected officials, contractors or agents, working in, under, over, upon and across the Road and the Right of Way or otherwise.
- 1.8 Trans-Northern covenants and agrees to indemnify, defend, release and save harmless the Town, its officers, employees, elected officials, contractors or agents from and against all losses, claims, charges, damages and expenses which the Town may at any time or times bear, sustain or suffer, by reason, or on account of the placement, installation, removal, relocation, maintenance or use of the Pipeline by Trans-Northern in, on, under, over, along or across the Right of Way, and Trans-Northern will, upon demand by the Town Director of Engineering & Construction or his/her designate at its own sole risk and expense, defend any and all suits, actions or other legal proceedings which may be brought or instituted by third persons against the Town on any such claim, demand or cause of action, and will pay and satisfy any judgment or decree which may be rendered against the Town in any such suit, action or other legal proceeding, and will reimburse the Town for any and all reasonable legal expenses on a substantial indemnity basis incurred in connection therewith. Trans-Northern's obligation to indemnify, defend, release, and save harmless the Town shall survive the termination of this Agreement but shall not be applicable to losses, claims, charges, damages or expenses which arise from the gross negligence or willful misconduct of the Town or its officers, employees, elected officials, contractors or agents.
- 1.9 The Town is not responsible, either directly or indirectly, for any damage to property or injury to a person, including death, arising from the escape, discharge or release of any Hazardous Substance from Trans-Northern's Pipeline or Right of Way unless such damage to property or injury to a person, including death, is related in any way to the gross negligence or willful misconduct by the Town its officers, employees, elected officials, contractors or agents.
- 1.10 Trans-Northern agrees to assume all environmental liability relating to any Hazardous Substances brought by it onto the Right of Way, including but not limited to any liability

for clean-up of any Hazardous Substance in, on, under, along, across and around Right of Way and the Road and property abutting the Road which result from:

- (a) the operations of Trans-Northern in, on, under, along, across or around the Right of Way ; or
- (b) any products or goods brought in, on, under, along, across or around the Right of Way by Trans-Northern, or by any other person for whom at law Trans-Northern is responsible.

Town Covenants

The Town covenants, represents warrants and agrees with Trans-Northern as follows:

- 1.11. Subject to the provisions of Section 7, Trans-Northern shall have the right at any time and from time to time, without payment of any fee or charge to the Town, to sublicense, sell, transfer ownership to, use or make available for use the Pipeline to any person or entity provided that Trans-Northern shall remain liable to the Town for the due performance of all obligations under this Agreement.
- 1.12 Prior to (i) any excavation, construction, drilling, installation or erection by the Town (or anyone permitted to do so by the Town) on, over or under the Pipeline or the Right of Way of any pit, well, foundation, building, pavement or any other structure, installation or improvement or (ii) the erection or maintenance of any obstruction on, in, under or along the Pipeline or the Right of Way by the Town (or anyone permitted to do so by the Town); the Town shall advise Trans-Northern of same and consult with Trans-Northern to ensure there will be no damage or interference to the Pipeline or the operations of the Pipeline. In performing, permitting or allowing any excavations or construction on or near the Pipeline or within the Right of Way The Town shall comply with all the provisions of the National Energy Board Act and Regulations or orders made thereunder, and take all reasonable steps to ensure there is no damage or interference with the Pipeline or the operations of the Pipeline.
- 1.13 Notwithstanding any other provision of this Agreement the Town shall be solely responsible for and shall have repaired at its sole cost and expense any damage caused to any portion of the Pipeline or any buildings, structures, improvements or works resulting from the gross negligence or willful misconduct of the Town and its representatives, tenants, contractors, workmen, employees and agents and those for whom at law it is responsible. In having such damage repaired the Town shall proceed in accordance with Section 1.12 of this License.
- 1.14 Notwithstanding any rule of law or equity, the Pipeline, and any future works or facilities together with all related works, appurtenances, attachments, apparatus, appliances, markers, fixtures and equipment, shall be deemed to be the property of Trans-Northern, even though the same may have become annexed or affixed to the Road.
- 1.15 In the event of the abandonment of the use of the Pipeline by Trans-Northern, Trans-Northern may, at its option, either leave the Pipeline in place or remove it. In the event of removal, Trans-Northern shall restore the Right of Way substantially to its original condition, to the satisfaction of the Town, acting reasonably. In the event of abandonment of the Pipeline in place, Trans-Northern shall (i) fill the Pipeline (or abandoned portion of the Pipeline) with concrete to specifications satisfactory to the Town's Department of Engineering and Construction, acting reasonably, and shall confirm such filling by providing the Town with a certificate from Trans-Northern's consulting engineer or contractor, (ii) comply with all applicable requirements of the National Energy Board Act and Regulations and any Orders of the National Energy Board related thereto and (iii) restore the Right of Way and the

Road substantially to their original condition, to the satisfaction of the Town, acting reasonably.

- 1.16 The Town agrees to continue to maintain its usual insurance coverage relating to the use of the Road and protecting against liability for bodily injury and death and damage to or destruction of property.

SECTION 2 TERM OF AGREEMENT

- 2.1 Provided Trans-Northern is in substantial compliance with its terms and conditions, this Agreement and the license, rights and privileges granted herein shall continue for so long as Trans-Northern so requires. The Agreement may nevertheless be terminated by Trans-Northern at any time by giving reasonable written notice of cancellation to the Town. Once terminated all rights and privileges hereunder shall come to an end, provided that notwithstanding such termination the parties shall continue to be liable to each other for all payments due and obligations incurred hereunder prior to the date of such termination. This Agreement and the licenses and rights granted to Trans-Northern are irrevocable except as otherwise specifically set out herein.

SECTION 3 MUNICIPAL BY-LAWS AND OTHER LEGISLATION

- 3.1 Notwithstanding any other provision of this Agreement, Trans-Northern shall comply with all applicable federal and provincial statutes and regulations and municipal by-laws in its use of the Right of Way and during construction, maintenance, repair or replacement of the Pipeline.

SECTION 4 INSURANCE

- 4.1 That 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 the following:
 - a) Comprehensive commercial general liability insurance covering liability for bodily injury and property damage arising from operations contemplated by this Agreement. The limit of this insurance shall not be less than Ten Million Dollars (\$10,000,000) for any one occurrence; each Party's policy shall name the other Party as Additional Insured, contain cross liability and severability of interest clauses;
 - b) Automobile liability insurance with an inclusive limit for bodily injury (including passengers) and property damage of Two Million Dollars (\$2,000,000).

These policies shall provide coverage for liability assumed under this Agreement. Either Party, upon request of the other, shall furnish written documentation satisfactory to the requesting Party evidencing the required coverage. As an alternative to the stated insurance policies and limits and, if acceptable to the other Party, a Party may self-insure against the risks normally covered by such policies. Upon electing to self-insure, the Party shall be deemed to have satisfied the requirement to maintain the insurance referred to in this Article. In the event that a Party elects to self-insure it agrees to indemnify and hold the other Party harmless from and against any loss, costs, claims or damages for which the other Party would have received indemnification had the insurance coverage referred to in this Article been in effect. Notwithstanding the fact that a Party may elect to self-insure in the manner set out above, such Party shall for all purposes of this Agreement be deemed to have insurance in place of the type, with the coverage and in the amounts required by

this Article and Agreement and the liability of the self-insured Party, whether under this Agreement or otherwise shall in no way be limited, reduced or adversely affected by the fact that such Party has elected to self-insure.

SECTION 5 LEGAL

- 5.1 Trans-Northern shall comply with all of the provisions of the *Construction Lien Act*, R.S.O. 1990, c.30, as amended from time to time and without limiting the generality of the foregoing, shall hold in its possession all the statutory holdbacks and any additional funds required to be held by that Act. These hold-backs and funds shall not be disbursed except in accordance with that Act.
- 5.2 Trans-Northern shall, at its own expense, within fifteen (15) days of receiving written notice from the Town to do so, pay, discharge, vacate, and obtain and register a release of, all charges, claims, liens, and all preserved or perfected liens, made, brought or registered pursuant to the *Construction Lien Act* which affect any lands owned by the Town, including public highways, and which arise out of the performance of this Agreement by Trans-Northern and its servants, employees, agents and contractors.
- 5.3 Trans-Northern shall indemnify and hold harmless the Town from all losses, damages, expenses, actions, causes of action, suits, claims, demands and costs whatsoever which may arise either directly or indirectly by reason of any failure, neglect or refusal by Trans-Northern to comply with the *Construction Lien Act* or by reason of any action brought against the Town or of them pursuant to that Act and arising out of the performance of this Agreement by Trans-Northern and its servants, employees, agents and contractors.
- 5.4 The Trans-Northern shall not call into question directly or indirectly in any proceeding whatsoever in law or in equity, or before any administrative tribunal or court, the right of the Town to enter into this Agreement.

SECTION 6 ARBITRATION

- 6.1 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 hereof or as to the respective rights and obligations of the parties, the Town and Trans-Northern or either of them may refer such dispute or disagreement to arbitration under the provisions of section 6.2.
- 6.2 Whenever the *Municipal Arbitrations Act*, R.S.O. 1990, c.M.48 shall extend and apply to the matters in dispute, any reference to arbitration pursuant to the provisions of subsection 19(a) shall be to the Ontario Municipal Board as the Official Arbitrator appointed under that Act and shall be governed by the provisions of that Act. At any other time, the procedure upon an arbitration pursuant to the provisions of subsection shall be as follows: Within twenty (20) days after the written request of either of the parties for arbitration, 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 the event that either of the parties fails to name an arbitrator within twenty (20) days after the written request for arbitration, the arbitrator appointed shall be the only arbitrator. In the event that the two arbitrators so appointed are unable to agree on a third arbitrator within twenty (20) days after the expiration of the first twenty 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 power accorded arbitrators by the *Arbitration*

Act, 1991, S.O. 1991, c. 17 as from time to time amended, or any Act in substitution therefore. The decision of the said arbitrator or arbitrators (or of a majority of such arbitrators) shall be final and binding on the parties hereto.

SECTION 7 MISCELLANEOUS PROVISIONS

7.1 Any notice required or permitted to be given hereunder or any tender or delivery of documents shall be in writing and shall be sent to the Parties at the addresses for notices shown below, and shall be governed by the following:

- a) either Party may from time to time change its address for service by giving notice to the other Party;
- b) unless otherwise indicated in this Agreement, all notices authorized or required to be given hereunder or made necessary by the terms hereof shall be in writing and may be delivered by hand, mailed by prepaid mail, or sent by telecommunication. If mailed, the notice shall be deemed to have been received seven (7) days (Saturdays, Sundays and statutory holidays excluded) after the mailing thereof. If delivered by hand, the notice shall be deemed to be received on the day on which it was delivered, or if delivered after regular business hours, it shall be deemed to have been received on the following business day. If sent by telecommunication, the notice shall be deemed to have been received on the first business day following the day it was dispatched;
- c) no notice shall be effective if mailed during any period in which Canadian postal workers are on strike or if a strike of postal workers is imminent and may be anticipated to affect normal delivery thereof;
- d) notwithstanding the foregoing, to the extent described in the Agreement, Trans-Northern and the Town representatives or designated alternatives shall have the right and the authority to make, give, receive any notice, information, direction or decision required in carrying out the Relocation contemplated herein; and
- e) Addresses and Telephone:

Trans-Northern Pipelines Inc.
c/o Mr. M. Glass, P.Eng., Manager
Engineering and Integrity
45 Vogell Road, Suite 310
Richmond Hill, Ontario L4B 3P6

Telephone: (289) 475-5352
Fax: (905) 770-8675
Email: mglass@tnpi.ca

The Town of Oakville
c/o Mr. D.M. Cozzi, P. Eng,
Director of Engineering & Construction
1225 Trafalgar Road
Oakville, Ontario L6H 0H3

Telephone: (905) 845-6601 ext. 3303
Email: dcozzi@oakville.ca

7.2 Time shall be of the essence of this Agreement and all matters contained or referenced herein.

- 7.3 The parties to this Agreement shall enter into such other documents and further assurances as are necessary to give effect to this Agreement.
- 7.4 This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. Trans-Northern shall have the right, from time to time, to assign its rights and obligations under this Agreement to: (i) any of its affiliates (as defined in the Canada Business Corporations Act) or (ii) for security purposes to a *bona fide* lender of Trans-Northern or any of its affiliates without the consent of, but upon written notice to, the Town. As a condition of Trans-Northern's right to complete any such assignment, the assignee(s) shall deliver to the Town a covenant in favour of the Town (in form and substance satisfactory to the Town, acting reasonably) by which such assignee covenants and agrees to assume all of the liabilities and obligations of Trans-Northern under this Agreement. Trans-Northern may not otherwise assign its rights or obligations under this Agreement without the prior written consent of the Town, such consent not to be unreasonably withheld or delayed.
- 7.5 This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.
- 7.6 If any section or sections or part or parts of a section or sections in this Agreement are determined by any Court or tribunal of competent jurisdiction to be illegal or unenforceable, it or they shall be considered separate and severable from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto as though the said section or sections or part or parts of a section or sections had never been included.
- 7.7 The parties hereby acknowledge and confirm the truth and accuracy of the Recitals.
- 7.8 All references in this Agreement to Recitals, Sections, Sections and Schedules, unless otherwise specified, are to recitals, Sections, sections and schedules of this Agreement. The expressions "hereof", "herein", "hereunder", "hereby" and similar expressions used in this Agreement refer to this Agreement as a whole and not to any particular section.
- 7.9 The division of this Agreement into recitals, sections and schedules, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 7.10 In this Agreement, words importing the singular shall include the plural and vice-versa, and words importing gender shall include all genders, unless the context otherwise requires.
- 7.11 All required approvals and consents of the Town required hereunder are to be given with time being of the essence, and shall not be delayed or unreasonably conditioned or withheld.
- 7.12 The following Schedules are attached to and shall form part of this Agreement and shall have the same force and effect as if the information, provisions and obligations set out in them are contained in the body of this Agreement:
- Schedule "A" - Location and Description of the Road, the Pipeline and the Right of Way
- Schedule "B" - Engineering Construction Drawings

IN WITNESS WHEREOF the parties have duly executed this Agreement as at the date first written above.

TRANS-NORTHERN PIPELINES INC.

J. Ferris, President and CEO

M. Speagle, Secretary Treasurer

We have the authority to bind the Corporation

THE CORPORATION OF THE TOWN OF OAKVILLE

R.G. (Ray) Green, P.Eng., Chief Administrative Officer

Vicki Tytaneck, Town Clerk

We have the authority to bind the Corporation

SCHEDULE "A"

LOCATION AND DESCRIPTION OF THE ROAD,
THE PIPELINE AND RIGHT OF WAY

SCHEDULE "B"
ENGINEERING CONSTRUCTION
DRAWINGS