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(Reserved for Register of Deeds)

**AGREEMENT & AUTHORIZATION**

This AGREEMENT dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ is entered into by and between \_\_\_\_\_ TOWNSHIP, a political subdivision of the State of South Dakota, of \_\_\_\_\_ County, South Dakota, hereafter referred to as the "Township" and the DAKOTA ACCESS, LLC., PIPELINE PROJECT, hereafter referred to as "DAPP" of Huston Texas.

WHEREAS, DAPP desires to construct a thirty (30") inch diameter pipeline within the State of South Dakota running generally from Campbell County through Lincoln County, South Dakota; and

WHEREAS, on December 15, 2014 DAPP made application to the South Dakota Public Utilities Commission, hereinafter referred to as "PUC," for a permit to construct said pipeline; and

WHEREAS, on December 14, 2015 the PUC issued an Order with conditions permitting DAPP to construct said pipeline; and

WHEREAS, Condition 25, incorporated into the PUC Order pertains specifically to road protection; and

WHEREAS, in order to construct said project it will be necessary for DAPP, through it construction contractor, \_\_\_\_\_ Construction, to utilize a portion of the township roads within the township for the purpose of conveyance of construction equipment, vehicles, materials and supplies to and from the project sites; and

WHEREAS, DAPP has found it necessary to place pipelines through the statutory right of ways of the township; and

WHEREAS, it is anticipated the project will significantly increase the ADT (Average Daily Traffic) of vehicles and equipment on specified roads. Individual vehicles and equipment could weigh 200,000 lbs. or more during the term of the project; and

WHEREAS the township is responsible for construction, altering and improving and maintaining the township's roads under the supervision and direction of the Board of Supervisors; and

WHEREAS, the parties anticipate as a result of the DAPP's use of township roads, accelerated deterioration of Township Roads may occur. Thus repairs and/or improvements may be required and additional maintenance expenses may be incurred by the Township; and

WHEREAS, DAPP intends to restore all roads used for DAPP's construction purposes to their preconstruction condition,

NOW THEREFORE, in consideration of the terms, conditions, and covenants contained herein, it is mutually agreed as follows:

1. **PURPOSE:** this Agreement and Authorization is intended to address installation of the pipeline beneath the surface of the township right of way and to address the traffic and potential for the expected accelerated deterioration and/or damage to Township Roads caused by vehicles and equipment on specific roads. The parties understand DAPP will utilize a Contractor to perform the pipeline installation, restoration and other associated work.

2. **DEFINITIONS:**

A. Maintenance/Maintain. "Maintenance" and "Maintain" means subgrade repair, grading, graveling, reshaping of cross section, and other general repair on Township Roads and Haul Roads as part of DAPP use of Township Roads.

B. Township Road. "Township Road" means a street, road, or other public way, including shoulders and right-of-way designated for the purpose of vehicular traffic and under the jurisdiction of the Township.

C. Improvements. "Improvements" mean changes to Township Roads consisting of, but not limited to, roadway widening, changes in longitudinal profile, changes to ditches, changes to drainage or drainage structures, changes in access to private property or other roadway improvements deemed material by the Board of Supervisors because of the DAPP's use of the Township Roads. Improvements may be before use, during use or after use of the haul roads to provide a safely maintained road for the mutual benefit of the contractor and traveling public.

3. **AUTHORIZATION TO INSTALL PIPELINE:**

A. The Township hereby authorized DAPP to bore under and through the Township's Roads as herein described on the Site Plan and Profile described in Attachment "A" to this agreement.

1) The plan shall not have any crossing diagonally through an intersection.

2) No cross of a Township road shall be at an angle greater than forty-five (45°) degrees.

B. Such construction shall be consistent with the Site Plan and Profile. Any deviation therefrom must be authorized, in writing, by an Amended Site Plan and Profile prior to construction.

C. All installation of the pipeline within the right of way shall comply with all terms, specifications, conditions, permits required by all levels of government including but not limited to the federal, state, county and township. In the event it is necessary to enter upon land adjacent

to the right of way for the purposes of construction of the pipeline or boring beneath the right of way DAPP shall obtain authorization from the adjacent landowner(s) prior to any construction within the right of way.

D. In the event construction by digging a trench or otherwise is necessary within the right of way, then in that event, DAPP shall first strip or remove the top soil and upon remediation of the right of way shall ensure the top soil is replaced back on top for the purposes of remediation of any and all damage and the area reseeded to grass.

E. In the event it is necessary to enter upon land adjacent to the right of way for the purposes of construction of the pipeline or boring beneath the right of way DAPP shall obtain authorization from the adjacent landowner(s) prior to any construction within the right of way.

F. In the event construction by digging a trench or otherwise is necessary within the right of way, then in that event, DAPP shall first strip or remove the top soil and upon remediation of the right of way shall ensure the top soil is replaced back on top to assist in remediation of any and all damage.

G. DAPP shall also be responsible for any settling or other injury or damage, which relates to pipeline construction, to the right of way contemplated under this Agreement for a period of five (5) years.

H. No construction shall take place within the right of way unless the Township and adjacent landowners have been given a minimum of seventy-two (72) hours advance notice.

I. No road shall be blocked or closed without the expressed written authorization of the Township. DAPP is required to provide additional signing in accordance with best signing practices construction or to maintain public safety in the event any temporary closure is necessary.

#### **4. AGREEMENT AS TO ROAD USE:**

A. The parties to this agreement hereby agree to utilize the road(s) as set forth in Attachment "B" to this agreement as the designated and approved Haul Road pursuant the terms and conditions set forth herein.

1) No deviation from the routes designated and approved is authorized without prior written approval of the Township. Failure to comply is a basis for revocation of its authorization for both the pipeline and use of the Township roads.

2) No Township roads will be widened, lowered or raised without prior written approval from the Township.

B. DAPP agrees to restore the approved Haul Roads, at its sole expense, at the designated end of this agreement, or after it ceases to use the use the Haul Road, whichever occurs first.

The Haul Roads shall be restored to at least their pre-construction condition that will accommodate their previous use. Restoration includes but is not limited to subgrade condition, thickness and gradation of gravel, roadway profile, shoulders, culverts, bridges, ditches, and other structures affected as part of use of Township Road as Haul Road as of the specific date set forth in Attachment “C” to this agreement.

C. DAPP shall not make improvements to approved Haul Roads without the prior approval of the Township Board of Supervisors. Improvements which promote public safety by normal use by the travelling public, and are deemed reasonable by the Township will be permitted. The Township reserves the right to require DAPP to remove improvements at the end of this agreement if the Township determines the improvements may compromise public safety or do not fit with future plans or development of the Township.

D. During Haul Road use, DAPP agrees to maintain the approved Haul Road in a condition necessary to provide safe travel and at least the same condition which existed prior to DAPP’s use of the road. Maintenance shall be done on a continual basis. Soft subgrades, gravelling, reshaping, etc., shall be performed within twenty-four (24) hours after the need for the same is discovered or brought to the attention of DAPP.

E. DAPP shall provide dust suppression for the Haul Road, as necessary. At a minimum, DAPP shall provide a water truck for the purposes of dust suppression during all times DAPP is using said Haul Roads. The required water application rate shall be adequate to keep dust down but shall not be such that muddy conditions and/or ruts form. DAPP may use other dust suppression chemicals instead of water on a schedule commensurate with the chemical used.

F. DAPP is required to post additional signing in accordance with best signing practices during use of the Haul Roads to maintain public safety.

G. The Board of Supervisors reserves the right to perform Maintenance on any Township Roads, including Haul Roads, as part of their regular summer Maintenance, including Maintenance that may impact DAPP’s use as a Haul Road.

H. New or expanded hauling operations requiring requesting an extension of time or roads must be approved in writing by the Township prior to any use by DAPP.

I. Township roads, subject to maintenance per this Agreement, shall be maintained in accordance with best practices, applicable SDDOT standards of gravel road maintenance, and “Gravel Roads: Maintenance and Design Manual” by the South Dakota Local Transportation Assistance Program (LTAP).

J. Recycled or reclaimed materials may not be used to maintain, improve or restore Haul Roads.

K. A "Haul Road Report" is appended to this agreement which documents the condition of the Haul Road prior to start of construction.

L. Approval for said use of Township Roads as Haul Roads shall be from \_\_\_\_\_, 2016 through \_\_\_\_\_, 2016.

M. DAPP shall be responsible for obtaining any other permits or licenses which the Township or any other governmental entity may require to operate or move its equipment or vehicles on Township or County roads.

N. This Agreement shall not serve to relieve any operator of DAPP equipment or vehicle from complying with applicable speed limits.

O. Any improvements to Township Roads, including but not limited to modifications of all repairs and restoration shall be completed within 30 calendar days after the end of use of Haul Roads, or after end date specified above, whichever occurs first. Adverse weather conditions shall be considered an appropriate cause for an extension of this condition.

P. In the event the repairs are not made, as required by this Agreement, , then in that event the Township shall obtain a bid to complete said work necessary to restoring the road(s) to its previous condition and DAPP shall be responsible for cost of said repairs. The Township shall contact DAPP at the telephone number listed hereinafter. DAPP shall have seven days, exclusive of weekends, to complete the road work. In the event the work is not done, the Township has the right to authorize the work to be done at the expense of DAPP. Upon completion of the repair work DAPP shall be billed the direct costs of the repair and the invoice shall be paid in full within thirty (30) days of receipt of the bill. In the event the bill is not paid interest shall commence at same rate charged by party completing the work on behalf of the township.

Q. If any provisions in this agreement are not followed, Township reserves the right to revoke Haul Road agreement at any time, after giving DAPP written notice of non-compliance and upon the expiration of seven days thereafter for DAPP to remedy the alleged noncompliance.

R. DAPP agrees to follow the pipeline construction permit conditions contained in the PUC construction permit, and specifically agrees to follow permit condition 25 which pertains to and is intended to protect roads.

#### 5. **FEE:**

DAPP shall pay a fee of One Thousand Five Hundred Dollars (\$1,500.00) to the Township for each road crossed by DAPP in consideration for the authorization to use the Township roads and additional Two Hundred Fifty Dollars (\$250.00) as an occupancy fee for the pipeline for a total of One Thousand Seven Hundred Fifty Dollars (\$1,750.00) for each crossing.

**6. LIABILITY:**

In consideration of the Township consenting to and allowing the roads described herein to be used as Haul Roads during the time specified herein for road work on the adjacent interstate highway, DAPP hereby covenants and agrees to hold harmless and indemnify the Township, its successors and assigns from any and all losses, expenses, damages, demands and claims in connection with or arising out of any injury or alleged injury to any person(s) including death, and damage or alleged damages to personal or real property, sustained or alleged to have been sustained in connection with, or arising out of the negligent use of the township roads herein designated as haul roads. DAPP agrees to defend any suit or action brought against the Township, its successors and assigns, or any of them, based upon such alleged injury or damage to pay any and all damages, costs or expenses, including Township’s attorney’s fees in connection with or resulting there from.

**6. GENERAL TERMS:**

A. Compliance with Laws and Regulations: DAPP shall comply with all Federal, State, and local laws and regulations.

B. Severability: If any portion of this Agreement is held invalid it shall have no effect upon the validity of the remaining portions of this Agreement.

C. Scope and Construction of Terms: The definitions in this Agreement shall control the meaning of the term used herein. Where no definition is expressly stated herein, a term shall have that meaning clearly indicated by, or reasonably implied from, the context in which such term is used.

D. Notification:

All notices and oral or written communications relating to this Agreement may be forwarded to:

Dakota Access, LLC  
1300 Main St.  
Houston, Texas 77002  
713-989-7000  
Attn: Right of Way Department

\_\_\_\_\_ Township

\_\_\_\_\_ County, SD



BEFORE ME, the undersigned, a Notary Public in and for said county and state, on this day personally appeared Robert Rose in his capacity as Vice President of Land and Right-of-Way of Dakota Access , LLC, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same in his stated capacity for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: