

DESIGN BULLETIN # 79/13

Engineering Consulting Guidelines for Highway, Bridge, And Water Projects Volume 1- 2011

Appendix H Update

Summary

This Bulletin is issued to inform all consultants and department staff of an addition to Appendix H, Utility Adjustment Agreement Samples of the Engineering Consulting Guidelines (ECG) Volume 1, 2011.

The department has recently completed negotiations with TransCanada Pipelines Ltd. (TransCanada) for standard crossing agreements. These new master agreements are to be used for new highway construction over an existing TransCanada easement/ right-of-way. TransCanada also owns Nova Gas Transmission Ltd (NGTL), so these templates crossing agreements are also to be used for new highway construction on an NGTL easement/right-of way.

Three new crossing agreements are added to Appendix H Utility Adjustment Agreement samples of the ECG.

Key Changes

Under the condition as listed in the Summary above, the department agrees to use these new agreements:

- (1) Letter Agreement #1 Pre-Engineering Work
- (2) Letter Agreement#2 Full Construction Work
- (3) New Roadway over Existing Pipeline Crossing Agreement

For projects where a TransCanada facilities is located within the Alberta Transportation's right-of-way, Alberta Transportation standards crossing agreements are still to be used.

Effective Date

Immediately

Contact

Any questions can direct to Joe P.Mah at (780) 415-1018
Technical Standards Branch, Alberta Transportation

Recommended:



Steve Otto
Director, Highway Operations
Technical Standards Branch

Approved:


for 

Moh Lali
Executive Director
Technical Standards Branch

Letter Agreement #1: Pre-Engineering Work
\$xxx +/- 5% variance

AT File: Hwy xx:xx
Utility Agreement No. xxxx
Project No. xxxx
Date: xxxxxxxx

Alberta Transportation
c/o xxx

Attention: xxx Name, Construction Manager
 Region

Dear Sir/Madam:

Re: Hwy. xx:xx of JCT. xxx (the “Project”)
NOVA Gas Transmission Ltd. xxx Pipeline(s) (the “Pipeline”)
Confirmation of Reimbursement of Pipeline Adjustment Cost Estimate (\$x) and
Pipeline Crossing Agreement

At the request of Her Majesty the Queen in the right of the Province of Alberta as represented by the Minister of Transportation (“AT”), NOVA Gas Transmission Ltd. (“NGTL”) will perform all pre-engineering, procurement and construction work associated with the upgrade of the Pipeline at the affected location in order to accommodate the Project. The said NGTL work involves xxx *<insert general description of work, e.g. upgrading of two pipelines with heavy wall pipe, lowering pipeline>* and includes, without limitation, the following: *[delete any items that do not apply]*

- (a) estimate of NGTL construction costs including without limitation analysis of data and computer monitoring, gathering of soil, powerline and pipeline data, and detailed final report with recommended remedial actions, as applicable;
- (b) design;
- (c) environmental assessment;
- (d) geotechnical evaluation;
- (e) confirmation of pipe requirements;
- (f) negotiation, preparation, execution and registration of all land agreements, as applicable;
- (g) procurement of further environmental assessment, if applicable;
- (h) project management, and

((a) through (h), collectively, the “**Pre-Engineering Work**”).

The location (the “**Location**”) of the Pre-Engineering Work is described in the following table:

NGTL Chainage:

Xxx Mainline Loop + xxx km

AT Chainage:

Hwy. xx:xx – Station xx+xxx

Therefore, the parties agree as follows:

1. AT agrees to reimburse NGTL for one hundred per cent (100%) of NGTL's costs for the Pre-Engineering Work (the "**Price**"). NGTL estimates that the cost to perform the Pre-Engineering Work is \$x (the "**Estimated Cost**").
2. AT's acknowledgement of this letter will constitute AT's approval for NGTL to proceed with the Pre-Engineering Work. No other approvals from any other branch of AT are required for the Pre-Engineering Work.
3. If at any time during the performance of the Pre-Engineering Work, NGTL determines that it will:
 - (a) incur additional costs and expenses; or
 - (b) be required to perform additional or different work (the "**Additional Work**")which will result in a variation of more than five per cent (5%) from the Estimated Cost (the "**Excess Costs**"), NGTL must notify the Consultant's Representative (as hereinafter defined) as soon as possible. The Pre-Engineering Work will continue to proceed while NGTL is waiting for acknowledgement by AT that the Excess Costs are acceptable.
4. If AT agrees to pay the Excess Costs, then this letter shall be deemed amended such that any reference to Price shall include the Excess Costs. If AT does not agree to pay the Excess Costs, AT shall provide a notice of same to NGTL (the "**Notice**") and NGTL will invoice AT an amount equal to the aggregate of all costs and expenses paid or incurred by NGTL or for which NGTL is or may become liable in the performance of the Pre-Engineering Work (the "**Actual Close-Out Costs**"). For clarity, NGTL shall not be responsible for any costs due to any reason beyond the reasonable control of NGTL.
5. NGTL shall provide AT an invoice (the "**Pre-Engineering Work Invoice**") for the Price or the Actual Close-Out Costs, as the case may be, no later than one (1) year following the date of:
 - (a) completion of the Pre-Engineering Work, if the Pre-Engineering Work Invoice is for the Price; or
 - (b) the Notice, if the Pre-Engineering Work Invoice is for the Actual Close-Out Costs.The Pre-Engineering Work Invoice will include a total amount, instructions to AT for payment thereof to NGTL, a description of the materials and services provided (such descriptions being project management, engineering, region and land), and information about standard accounting conditions.
6. AT's representative shall be xxx of ABC Engineering Corp. (the "**Consultant Representative**"), at telephone number (403) xxx-xxxx. NGTL's representative (the

“NGTL Representative”) shall be Aprameya Ambala, P.Eng., Damage Prevention, Engineering, (403) 920-5434.

Please acknowledge AT's agreement to the terms of this letter by executing two (2) copies and returning the two (2) signed originals to the NGTL Representative for execution by signing officers for NGTL. Two (2) copies of the form of pipeline crossing agreement are also enclosed. Please execute both copies and return the signed originals to the NGTL Representative. Once the two (2) originals of each of this letter and the crossing agreement have been duly signed by signing officers for NGTL, NGTL will mail one fully executed original of each of the letter and the pipeline crossing agreement to the Consultant Representative for AT's files.

Sincerely,

NOVA Gas Transmission Ltd.

Per:

Mark Yeomans, Vice-President
Pipe Integrity
Operations and Major Projects Division

Per:

Dan A. King, Vice-President
Engineering and Asset Reliability
Operations and Major Projects Division

ORIGINATOR	CHECKED BY	QUALITY

Acknowledgment. This letter agreement is acknowledged and agreed to by the undersigned.

Date: _____, 20____

**Her Majesty the Queen in the right of the
Province of Alberta as represented by the
Minister of Transportation**

Per: _____

Per: _____

enclosure

cc. signed copy to:

AT Consultant
Company's Name
Company's Address

Letter Agreement #2: Full Construction Work
\$xxx +/- 5% variance

AT File: Hwy xx:xx
Utility Agreement No. xxxx
NGTL Project No. xxxx
Date: xxxxxxxx

Alberta Transportation
c/o xxx

Attention: xxx Name, Construction Manager
 Region

Dear Sir/Madam:

Re: Hwy. xx:xx of JCT. xxx (the “Project”)
NOVA Gas Transmission Ltd. xxx Pipeline(s) (the “Pipeline”)
Confirmation of Revised Pipeline Adjustment Cost Estimate (\$x)

By way of letter agreement #1 dated xxx agreed to by Her Majesty the Queen in the right of the Province of Alberta as represented by the Minister of Transportation (“AT”) on xxx (“**Letter Agreement #1**”), NOVA Gas Transmission Ltd. (“NGTL”) agreed to perform certain pre-engineering work associated with the upgrade of the Pipeline at the affected location in order to accommodate the Project (the “**Pre-Engineering Work**”).

NGTL has now completed the Pre-Engineering Work and the following additional work is required to accommodate the Project. The additional work involves xxx <*insert general description of work, e.g. upgrading of two pipelines with heavy wall pipe, lowering pipeline*> and includes, without limitation, the following: [*delete any items that do not apply*]

- (a) project management;
- (b) obtaining all requisite permits and approvals;
- (c) acquisition of materials;
- (d) installation and construction of groundbed, if applicable;
- (e) installation of new posts, signage and cables, if applicable;
- (f) relocation of fences and utility poles, if applicable;
- (g) fabrication;
- (h) pipeline replacement including excavation and backfilling, if applicable;
- (i) reclamation, if applicable; and
- (j) preparation of issued for construction drawings, road crossing drawings, final as-built drawings and updated alignment sheets, as applicable,

((a) through (j), collectively, the “**Full Construction Work**”).

Therefore, the parties agree as follows:

1. NGTL’s revised estimate of the cost to perform the Full Construction Work is \$x (the “**Estimated Cost**”).
2. The Estimated Cost is subject to a +/- 5% variation.
3. If at any time during the performance of the Full Construction Work, NGTL determines that it will:
 - (a) incur additional costs and expenses; or
 - (b) be required to perform additional or different work (the “**Additional Work**”)which will result in a variation of more than 5 per cent (5%) from the Estimated Cost (the “**Excess Costs**”), NGTL must notify the Consultant’s Representative (as hereinafter defined) as soon as possible. The Full Construction Work will continue to proceed while NGTL is waiting for acknowledgement by AT that the Excess Costs are acceptable.
4. If AT agrees to pay the Excess Costs, then this letter shall be deemed amended such that any reference to Price shall include the Excess Costs. If AT does not agree to pay the Excess Costs, AT shall provide a notice of same to NGTL (the “**Notice**”) and NGTL will invoice AT an amount equal to the aggregate of all costs and expenses paid or incurred by NGTL or for which NGTL is or may become liable in the performance of the Final Construction Work (the “**Actual Close-Out Costs**”). For clarity, NGTL shall not be responsible for any costs due to any reason beyond the reasonable control of NGTL.
5. NGTL shall provide AT an invoice (the “**Final Construction Work Invoice**”) for the Price or the Actual Close-Out Costs, as the case may be, no later than one (1) year following the date of:
 - (a) completion of the Final Construction Work, if the Final Construction Work Invoice is for the Price; or
 - (b) the Notice, if the Final Construction Work Invoice is for the Actual Close-Out Costs.The Final Construction Work Invoice will include a total amount, instructions to AT for payment thereof to NGTL, a description of the materials and services provided (such descriptions being project management, engineering, region and land), and information about standard accounting conditions.
6. AT’s representative shall be xxx of ABC Engineering Corp. (the “**Consultant Representative**”), at telephone number (403) xxx-xxxx. NGTL’s representative (the “**NGTL Representative**”) shall be Aprameya Ambalae, P.Eng., Damage Prevention, Engineering, (403) 920-5434.
7. All terms and conditions of Letter Agreement #1 shall remain in force unamended.

Please acknowledge AT's agreement to the terms of this letter by executing two (2) copies and returning the two (2) signed originals to the NGTL Representative for execution by signing officers for NGTL. Once the two (2) originals of this letter have been duly signed by signing officers for NGTL, NGTL will mail one fully executed original of the letter to the Consultant Representative for AT's files.

Sincerely,

NOVA Gas Transmission Ltd.

Per:

Mark Yeomans, Vice-President
Pipe Integrity
Operations and Major Projects Division

Per:

Dan A. King, Vice-President
Engineering and Asset Reliability
Operations and Major Projects Division

ORIGINATOR	CHECKED BY	QUALITY
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Acknowledgment. This letter agreement is acknowledged and agreed to by the undersigned.

Date: _____, 20

**Her Majesty the Queen in the right of the
Province of Alberta as represented by the
Minister of Transportation**

Per:

Per:

cc. signed copy to: AT Consultant
Company's Name
Company's Address

New Roadway Over Existing Pipeline Crossing Agreement

THIS AGREEMENT is made and effective as of the _____ day of _____, 20____.

BETWEEN **NOVA Gas Transmission Ltd.** ("Grantor")

(hereinafter and in Schedules A, B & C referred to as the Grantor)

and **Her Majesty the Queen in right of the Province of Alberta as represented by the Minister of Alberta Transportation** ("the Minister")

(hereinafter and in Schedules A, B & C referred to as the Minister)

WHEREAS Grantor operates under the jurisdiction of the National Energy Board, Alberta Energy and Utilities Board, or Alberta Energy, and holds permits, approvals, or authorizations for a pipeline across the said lands and has constructed a pipeline therein, hereinafter referred to as "Grantor's Facility"; and

WHEREAS the Minister desires to construct *the Minister's Facility* across the "Grantor's Facility" and has acquired *an interest in* the said lands and proposes to install therein a roadway (Hwy. _____) hereinafter referred to as "the Minister's Facility"; and

WHEREAS the *lands* and/or Facilities of the respective parties intersect in the Crossing Area; and

WHEREAS the parties wish to define their respective rights and liabilities with respect to the Crossing Area under certain terms and conditions defined in Schedule "A".

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises, mutual covenants and agreements herein contained, the parties agree that their respective Work in the Crossing Area shall be governed by this Agreement together with the Schedules as herein described.

1. Terms and Conditions

This Agreement including the recitals and the following Schedules, which are attached hereto and made part hereof, shall be the terms and conditions as agreed to by Grantor and the Minister:

Schedule "A" - Mutually Agreed to Terms and Conditions.

Schedule "B" - Location Plan and Profile.

Schedule "C" - Specific Terms and Conditions.
(the "Schedules")

2. LOCATION AND NOTICES

(a) Location of Crossing Area (Legal Description):

(b) Notices:

	<u>Grantor's Corporate Office</u>	<u>Minister's Office</u>
Name:	_____	_____
Address:	_____	_____
Dept.:	_____	_____
Phone	_____	_____
fax	_____	_____
email	_____	_____

(c) Field Representative:

	<u>Grantor's</u>	<u>Minister's Representative</u>
Name:	_____	_____
Position::	_____	_____
Address:	_____	_____
Phone:	_____	_____
Fax:	_____	_____
email:	_____	_____
Alternate:	_____	_____
Phone	_____	_____
Fax:	_____	_____
email:	_____	_____

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly executed.

NOVA Gas Transmission Ltd.

"Grantor"

Executed on behalf of the Minister

Per: _____

Name: _____

Per: _____

Title: _____

Schedule "A"

Mutually Agreed to Terms and Conditions

This Schedule "A" to Form Part of the New Roadway Over Existing Pipeline Crossing Agreement.

Between **NOVA Gas Transmission Ltd.** (Grantor)
and **Her Majesty the Queen in right of the Province of Alberta as represented by the Minister of Alberta Transportation** (the Minister)
and dated the _____ day of _____, 20____.

1. Interpretation

1.01 In this Agreement, including the recitals, the words and terms used shall have the following meanings:

- (a) "Crossing Area" means the area of intersection of Grantor's *rights of way* and the Minister's *interest in the said lands* and/or Facilities as outlined in Schedule "B";
- (b) "*Minister*" means the Minister of Alberta Transportation or his delegate;
- (c) "Minister's Facility" means the facility or facilities to be constructed by the Minister and to be located within, across, along, upon, over or under the Crossing Area;
- (d) "Grantor's Facility" means the facility or facilities of Grantor located within, across, along, upon or under the Crossing Area;
- (e) "Facility" means:
 - i) any structure that is constructed or placed on or in the right-of-way within the Crossing Area (*including but not limited to* concrete slab, concrete conduit, retaining wall, and special fences such as chain link); and
 - ii) any highway, public or private road, railway, irrigation ditch, drain, drainage system, sewer, dike, cable line, telecommunication line, telephone line or line for the transmission of hydrocarbons, power or any other substance that is or is to be carried across, along, upon, over or under the Crossing Area;
- (f) "said lands" means the lands described in Schedule "B";
- (g) "the Body of this Agreement" means the Agreement to which this Schedule is attached and which has been executed by the parties;
- (h) "this Agreement" means the Body of this Agreement and the Schedules attached to it; and

- (i) "Work" means, with respect to a Facility, the carrying, laying, installing, constructing, maintaining, operating, repairing, inspecting, replacing, altering, removing, abandoning and such other operations as may be required from time to time and includes any ground disturbance within the Crossing Area.
- 1.02 Unless a term or provision contained in the Body of this Agreement, if acted upon, would result in violation of any code, statute, law, regulation, permit, license, or governmental order, the following shall apply:
 - (a) if any term or provision conflicts with a term or provision contained in any Schedule, the term or provision in the Schedule shall prevail.
 - (b) If any terms or provisions of the Schedules conflict, the following shall apply: Schedule "C", if present, shall prevail over Schedules "A" and "B", Schedule "B" shall prevail over Schedule "A".

2. Consent

Grantor hereby agrees, insofar as it has the right to do so, that the Minister may perform the Work on the Minister's Facility in the Crossing Area in accordance with the terms and conditions of this Agreement.

3. Compliance with Statutes and Regulations

- (a) The Minister shall at all times comply with any and all applicable codes, statutes, laws, regulations, permits, licenses, orders and directions of any *federal or provincial* governmental authority from time to time in force. The minimum applicable technical standards therein shall apply to both parties unless more stringent standards are provided for in this Agreement. If compliance with any provision of this Agreement would result in violation of any applicable codes, statutes, laws, regulations, permits, licenses, orders and directions of any *federal or provincial* governmental authority, such code, statute, law, regulation, permit, license, order and direction of any *federal or provincial* governmental authority shall prevail and this Agreement shall be deemed to be amended accordingly.

The Minister agrees to require any agent or contractor who performs work, as defined by this agreement, on behalf of the Minister to comply with the applicable provincial or federal legislation and regulations governing occupational health and safety.

- (b) During the course of the project, the work sites of the contractor, consultant (the Minister employs an engineering consultant on construction projects only), utility companies and the Grantor may be separated by time and/or space or, may be in the same general vicinity or may be adjacent, depending on the circumstances on the project at any given point in time. It is a requirement of all Minister contracts and agreements that the contractor, consultant and utility companies working within the project limits, coordinate their respective activities, as outlined herein, to ensure a safe project. However, it is not the Minister's intent that any of these parties be responsible to ensure that the other parties, or the other parties' subcontractors, have adequate health and safety process for their respective activities.

Designation of Prime Contractor

The parties shall familiarize themselves and their staff and subcontractors with the terms of the *Occupational Health and Safety Act and Regulations* thereunder to ensure complete understanding respecting the responsibilities given and compliance required. The parties shall, as a condition of this Agreement, comply with the *Occupational Health and Safety Act* and the regulations thereunder.

Coordinating Activities

When the parties are conducting activities within the project limits the parties shall liaise with each other and any other affected parties to jointly develop a health and safety system or process for the affected worksites. The health and safety system or process agreed to by the parties must be in writing. Any changes required to the health and safety system must be agreed to by all affected parties and must also be in writing. Documenting the written health and safety system or process, including any required changes, shall be the responsibility of the prime contractor of the affected work site.

For the purposes of coordinating activities on highway/bridge construction projects, the contact persons for the parties shall be identified at the pre-construction meeting for the project. The responsibility to initiate "contact" for coordinating activities shall reside with the party entering a project or site on which work has commenced. This responsibility to initiate contact shall apply regardless of whether or not the worksites are separated by time and/or space, are in the same general vicinity or are adjacent.

Resolving Disputes Related to Coordination of Activities

If the parties cannot agree on a process or system that addresses the safety concerns of all parties, work at the affected worksites shall cease and this matter shall be resolved by all parties at the site.

Responsibility for Subcontractors/Owner operators

Each party shall, to the extent required by the *Occupational Health and Safety Act*, establish and maintain a health and safety system or process to ensure compliance to the Act by his subcontractors/owner operators.

4. Position of Facility

Unless otherwise indicated in any of the Schedules, or ordered by a *federal or provincial governmental authority or regulations* the *Grantor's Facility shall have the lower physical position in the Crossing Area*.

5. Conditions

When the Minister performs work on the Minister's Facility in the Crossing Area, the following terms and conditions shall apply:

- (a) The Minister's Field Representative shall contact Grantor's Field Representative directly, either in person or by telephone, a minimum of 72 hours (excluding Saturdays, Sundays and Statutory Holidays) before commencement of the Minister's Work within 30 meters of the Crossing Area and, if unable to contact

that person, the Minister shall serve a minimum of 72 hours written notice pursuant to clause 9 hereof before commencement of the Minister's Work.

(b) The Grantor's representative must be on site at all times while the Minister is conducting Work within the Crossing Area.

The Minister shall comply with all reasonable instructions of the Grantor's Field Representative regarding the procedures to be followed during the Minister's Work.

(c) During any Work pursuant to this Agreement, the Minister's Representative shall have available at the Crossing Area a copy of this Agreement.

(d) (i) *Before proceeding to excavate within 5 metres of the Crossing Area, the Minister shall require the Grantor to expose its Facility by hand digging or other acceptable method such as excavation by water or air jets. The Minister shall not use or permit the use of an excavating machine within 1.5 metres of either side of any existing Grantor's Facility, or 3.0 metres of either side of any existing Grantor's Facility as required under the National Energy Board Act and Regulation, as the case may be, unless otherwise agreed to in Schedule "C".*

(ii) *The cost of the exposure referred to in (d)(i) above shall be borne by the Minister.*

(e) *Notwithstanding subclause 5(d) above, the Grantor shall carry out any necessary and permanent protection, adjustment, or relocation of the Grantor's facility that is made necessary by the construction of the Minister's Facility.*

(f) The Minister shall, where applicable, install and maintain during performance of the Work suitable markers indicating the location of Grantor's Facility in the Crossing Area.

No ground disturbance, be it excavation or fill, will be permitted until the Grantor's Field Representative has been on site to locate and stake the Grantor's Facility and discuss the significance of the stakes that identify the location of the Grantor's Facility.

(g) The Minister shall lay down and construct its Facility in accordance with the Schedules to this Agreement.

(h) The Minister shall carry out all Work in the Crossing Area in a proper and diligent manner and in accordance with good engineering and construction practices.

(i) The Minister shall ensure no damage occurs to existing Facilities 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.

(j) In the event that Grantor's Facility suffers contact damage or other damage as a result of the Minister's Work, all Work at the Crossing Area shall immediately stop. Grantor shall be notified forthwith and its repair shall be carried out as directed by Grantor at the Minister's cost.

- (k) Intentionally deleted
- (l) At least 24 hours (excluding Saturdays, Sundays and Statutory Holidays) prior to covering Grantor's exposed Facility, the Minister's Field Representative shall contact Grantor's Field Representative directly, either in person or by telephone for inspection.
- (m) Unless otherwise directed by the Grantor, the Minister shall cover Grantor's Facility with at least 30 centimetres of select backfill material as *specified by the Grantor's Field Representative* prior to commencing backfilling operations. The Minister shall, in backfilling the excavation in the Crossing Area, compact the fill material in 15 centimetre layers, or such greater depth specified by Grantor's Field Representative.
- (n) The Minister shall, as soon as it is reasonably practical after the completion of the Minister's Work in the Crossing Area, restore the surface of the Crossing Area as closely as is practical to the condition in which it existed immediately prior to the Work being commenced.
- (o) The Minister shall carry out expeditiously all Work hereunder.
- (p) The cost associated with the location, identification or supervision of the Grantor's facility shall not be charged to or borne by the Minister unless specified in Schedule "C".
- (q) Where the Grantor is satisfied, in its discretion, that unsafe construction practices have been or are being used the Grantor may suspend, for such period as it deems necessary, the consent to Work provided for in this Agreement, in which case all Work shall cease.
- (r) The parties shall comply with Schedule "C" which includes the Grantor's specific terms and conditions.

6. Facility

- 6.01 The Minister shall maintain its Facility in a state of good repair compatible with the safety of the Grantor's pipeline and shall immediately correct any deterioration in the Minister's Facility upon being requested to do so in writing by the Grantor.
- 6.02 Unless otherwise ordered by the National Energy Board, the Minister shall not be relieved of its responsibility under subclause 6.01 except where:
 - (a) The Minister provides the Grantor with a written undertaking executed by a third party whereby the third party agrees to assume responsibility for maintaining the Minister's Facility; or
 - (b) The Minister's Facility has been removed or abandoned and the site restored to the satisfaction of the Grantor.

7. Remedy on Default

In the case of default by the Minister in carrying out any of the provisions of this Agreement, Grantor may give notice thereof to the Minister. If the Minister fails to commence to remedy such default within 15 days after receipt of such notice and diligently complete such remedy thereafter, Grantor may take such steps as are appropriate to remedy such default and the Minister shall be liable for and shall pay all reasonable costs and expenses incurred by Grantor in remedying the default. In the case of an emergency, the Grantor may, but has no obligation to, immediately take such steps as are appropriate to remedy such default and the Minister shall be liable for and shall pay all reasonable costs and expenses incurred by the Grantor in remedying the default.

8. Further Work

- (a) If, subsequent to the initial Work undertaken by the Minister for its Facility, either the Grantor or *the Minister* desires to undertake any Work in the Crossing Area in respect of its Facility, this Agreement shall be deemed to grant consent to *that party*, and clauses 5, 6 and 7 shall apply as *the context requires* to all subsequent Work undertaken by either party *under* this clause 8; and, for further certainty, the provisions of this Agreement shall be read as if "Minister" were substituted for "Grantor" and vice versa as the situation requires.
- (b) Notwithstanding the foregoing, installation of any new Facility not expressly contemplated by this Agreement and shown on attached Schedule "B" shall require a separate New Roadway Over Existing Pipeline Crossing Agreement.
- (c) Notwithstanding the foregoing, if emergency Work in the Crossing Area is required with respect to a party's Facility, that party shall commence the necessary Work and shall forthwith give the other party's Field Representative verbal notice of the emergency and necessary Work, and shall forthwith give notice pursuant to clause 9 hereof.

9. Notices

Notices shall be in writing and shall be sent to the parties at the addresses for notice shown in the Body of this Agreement. The following shall govern notices:

- (a) Either party may from time to time change its address for service by giving notice to the other party.
- (b) All notices required to be given hereunder may be delivered by hand, mailed by registered or prepaid mail, or sent by telecommunication. If mailed, the notice shall be deemed to have been received seven days (Saturdays Sundays and Statutory Holidays excluded) after the mailing thereof. If delivered by hand, the notice shall be deemed to have been 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 this Agreement, Grantor's and the Minister'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.

10. Liability and Indemnity

(a) Liability:

- (i) The Minister shall be liable to Grantor for all direct loss, damages and expenses which Grantor may suffer, sustain, pay or incur by reason of any matter or thing arising out of or attributable to any act or omission of the Minister, his servants, agents or employees in respect of the Minister's use of the Crossing Area or by reason of this Agreement.
- (ii) Grantor shall be liable to the Minister for all direct loss, damages, and expenses which the Minister may suffer, sustain, pay or incur by reason of any matter or thing arising out of or attributable to any act or omission by Grantor, its servants, agents or employees in respect of Grantor's use of the Crossing Area or by reason of this Agreement.

(b) Indemnity:

- (i) The Minister shall indemnify and save harmless the Grantor against all third party actions, proceedings, claims, demands, and costs which may be brought against or suffered by Grantor or which it may sustain, pay or incur, by reason of any matter or thing arising out of or attributable to any act or omission of the Minister, its servants, agents or employees in respect of the Minister's use of the Crossing Area or by reason of this Agreement.
- (ii) Grantor shall indemnify and save harmless the Minister against all third party actions, proceedings, claims, demands, and costs which may be brought against or suffered by the Minister or which it may sustain, pay or incur, by reason of any matter or thing arising out of or attributable to any act or omission of Grantor, its servants, agents or employees in respect of Grantor's use of the Crossing Area or by reason of this Agreement.
- (c) Notwithstanding subclauses 10(b)(i) and (ii) above, in no case shall either party have any liability to the other party for any consequential or special damages, loss of profits or business interruption suffered by that party.

11. 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 insurance covering 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. This policy shall provide coverage for liability assumed under this Agreement. Each party shall also obtain and keep in force during the term of this Agreement automobile liability insurance with an inclusive limit for bodily injury (including passengers) and property damage of two million dollars.

- (b) A party, upon request of the other party, shall furnish written documentation, satisfactory to the requesting party, evidencing the required coverage.
- (c) As an alternative to some or all of the insurance referred to in subclause 11(a), if acceptable to the other party, a party may self-insure against the risks normally covered by such a policy.

12. Changes to Agreement

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

13. Assignment

- (a) Neither party to this Agreement shall assign or transfer this Agreement or the rights and privileges hereby granted without the written consent of the other party, and such consent shall not be unreasonably withheld. The party intending to assign or transfer this Agreement shall give to the non-assigning party to this Agreement notice of its intent by registered mail.
- (b) The non-assigning party to this Agreement may require the assignor and assignee to execute a novation agreement in a form acceptable to the non-assigning party.
- (c) Notwithstanding the foregoing, either party may assign this agreement to an entity related to such assigning entity without the other party's prior written consent, however, written notice of such assignment shall be delivered to the non-assigning party.

This Agreement shall endure to the benefit of and be binding upon the parties, their successors and assigns.

14. Governing Law

This Agreement and the rights and obligations of the parties herein shall be governed and construed according to the laws of the province of Alberta.

15. Term

The rights and obligations of the parties under this Agreement shall terminate:

- (a) two years from the date hereof if construction of the Minister's Facility has not commenced, or
- (b) upon proper abandonment or removal of all of Grantor's or the Minister's Facilities 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.

16. 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", "thereto", "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 affect that party's rights with respect to any other or future breach.

17. Entire Agreement

This Agreement, including the recitals and schedules, 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 dealing with the Facilities and the Crossing Area, and all rights and obligations as herein described.

Schedule "B"

Location Plan and Profile

This Schedule "B" to Form Part of the New Roadway Over Existing Pipeline Crossing
Agreement.

Between **NOVA Gas Transmission Ltd.** (Grantor)

and *Her Majesty the Queen in right of the Province of Alberta as represented by the
Minister of Alberta Transportation* (the Minister)

and dated the _____ day of _____, 20____.

➤

Schedule "C"

Specific Terms and Conditions

This Schedule "C" to Form Part of the New Roadway Over Existing Pipeline Crossing Agreement.

Between **NOVA Gas Transmission Ltd.** (Grantor)

and *Her Majesty the Queen in right of the Province of Alberta as represented by the Minister of Alberta Transportation* (the Minister)

and dated the _____ day of _____, 20____.

NOTE: All invoices for the items listed below (if applicable) shall be directed to the Minister's Representative.

NOTE: *Attach a copy of any existing permit, approval or authorization held by the Grantor as part of Schedule "C" here ((as per Schedule "A", subclause 1.02(b)).*

NOTE: *Permission to use an excavating machine within 1.5 metres of either side of any existing Grantor's Facility as required under the Pipeline Act and Regulation, or 3.0 metres of either side of any existing Grantor's Facility as required under the National Energy Board Act and Regulation, as the case may (if applicable) here ((as per Schedule "A", subclause 5(d)(i)).*

NOTE: *Attach a copy of the Grantor's specific terms and conditions ((as per Schedule "A", subclause 5(r)).*

NOTE: *Attach a copy of the cost associated with the location, identification or supervision of the Grantor's facility to be borne by the Minister (if applicable) here ((as per Schedule "A", subclause 5(p)).*

Schedule "C" (continued)

Grantor's specific terms and conditions

General conditions: <Delete this note once the details are inserted into the document: NGTL to amend technical specifications as the situation requires prior to sending this agreement to AT. Clause 1 and page 2 of this Schedule C must be included as part of this crossing agreement where AT is reimbursing NGTL for costs relating to any NGTL upgrade required to accommodate the AT project>

1. Notwithstanding any other condition in this schedule, the Minister shall not enter onto the Crossing Area until after the Grantor's on site work in the Crossing Area, contemplated in a letter agreement from the Grantor to the Minister dated xxxx which is attached to and forms part hereof regarding certain engineering, procurement and construction work on the Grantor's xxxx pipeline nominal pipe size xx chainage at xx+xxx – xx+xxxm, is complete. The Grantor by way of prior written notice from an engineer from the Grantor's Damage Prevention Group shall, immediately following the completion of the on site engineering, procurement and construction work, give notice to the Minister that the said work is complete and that the Minister may enter the Crossing Area.
2. Should it be necessary to lower, alter or protect any portion of the Grantor's Facility to accommodate the Minister's Facility (road) or any proposed Work, all costs involved shall be borne by the Minister. Any additional costs that the Grantor may incur due to the presence of the Minister's Facility shall also be borne by the Minister.
3. Depth of cover over the Grantor's Facility shall not be less than 1.5 metres on the travelled surface and not less than 1.2 metres at the lowest point in the ditch. This depth of cover shall not be compromised over the life of the crossing due to rutting, erosion or other means.
4. After construction of the Minister's Facility, standard typical highway vehicle weights apply.
5. <Delete this note once the details are inserted into the document: NGTL to insert details of any other site specific terms and conditions required for the installation, as applicable>
6. The Grantor may impose additional specifications and requirements by giving notice of the same to the Minister.

NOVA Gas Transmission Ltd

("Grantor")

Per: _____

Per: _____

Her Majesty the Queen in the right of the Province of Alberta as
represented by the Minister of Transportation

("Minister")

Per: _____

Per: _____

Schedule "C" (continued)

Letter Agreement #1: Pre-Engineering Work \$xxx +/- 5% variance

AT File: Hwy xx:xx
Utility Agreement No. xxxx
Project No. xxxx
Date: xxxxxxxx

Alberta Transportation
c/o xxx

Attention: xxx Name, Construction Manager
Region

Dear Sir/Madam:

**Re: Hwy. xx:xx of JCT. S.H. xxx – Jct. Hwy. x (the “Project”)
NOVA Gas Transmission Ltd. xxx Pipeline(s) (the “Pipeline”)
Confirmation of Reimbursement of Pipeline Adjustment Cost Estimate (\$x) and
Pipeline Crossing Agreement**

At the request of Her Majesty the Queen in the right of the Province of Alberta as represented by the Minister of Transportation (“AT”), NOVA Gas Transmission Ltd. (“NGTL”) will perform all pre-engineering, procurement and construction work associated with the upgrade of the Pipeline at the affected location in order to accommodate the Project. The said NGTL work involves xxx <*insert general description of work, e.g. upgrading of two pipelines with heavy wall pipe, lowering pipeline*> and includes, without limitation, the following: [*delete any items that do not apply*]

- (a) estimate of NGTL construction costs including without limitation analysis of data and computer monitoring, gathering of soil, powerline and pipeline data, and detailed final report with recommended remedial actions, as applicable;
- (b) design;
- (c) environmental assessment;
- (d) geotechnical evaluation;
- (e) confirmation of pipe requirements;
- (f) negotiation, preparation, execution and registration of all land agreements, as applicable;
- (g) procurement of further environmental assessment, if applicable;
- (h) project management, and

((a) through (h), collectively, the “Pre-Engineering Work”).

The location (the “Location”) of the Pre-Engineering Work is described in the following table:

NGTL Chainage:

Xxx Mainline Loop + xxx km

AT Chainage:

Hwy. xx:xx – Station xx+xxx

Therefore, the parties agree as follows:

1. AT agrees to reimburse NGTL for one hundred per cent (100%) of NGTL's costs for the Pre-Engineering Work (the "Price"). NGTL estimates that the cost to perform the Pre-Engineering Work is \$x (the "Estimated Cost").
2. AT's acknowledgement of this letter will constitute AT's approval for NGTL to proceed with the Pre-Engineering Work. No other approvals from any other branch of AT are required for the Pre-Engineering Work.
3. If at any time during the performance of the Pre-Engineering Work, NGTL determines that it will:
 - (a) incur additional costs and expenses; or
 - (b) be required to perform additional or different work (the "Additional Work")

which will result in a variation of more than five per cent (5%) from the Estimated Cost (the "Excess Costs"), NGTL must notify the Consultant's Representative (as hereinafter defined) as soon as possible. The Pre-Engineering Work will continue to proceed while NGTL is waiting for acknowledgement by AT that the Excess Costs are acceptable.

4. If AT agrees to pay the Excess Costs, then this letter shall be deemed amended such that any reference to Price shall include the Excess Costs. If AT does not agree to pay the Excess Costs, AT shall provide a notice of same to NGTL (the "Notice") and NGTL will invoice AT an amount equal to the aggregate of all costs and expenses paid or incurred by NGTL or for which NGTL is or may become liable in the performance of the Pre-Engineering Work (the "Actual Close-Out Costs"). For clarity, NGTL shall not be responsible for any costs due to any reason beyond the reasonable control of NGTL.
5. NGTL shall provide AT an invoice (the "Pre-Engineering Work Invoice") for the Price or the Actual Close-Out Costs, as the case may be, no later than one (1) year following the date of:
 - (a) completion of the Pre-Engineering Work, if the Pre-Engineering Work Invoice is for the Price; or
 - (b) the Notice, if the Pre-Engineering Work Invoice is for the Actual Close-Out Costs.

The Pre-Engineering Work Invoice will include a total amount, instructions to AT for payment thereof to NGTL, a description of the materials and services provided (such descriptions being project management, engineering, region and land), and information about standard accounting conditions.

6. AT's representative shall be xxx of ABC Engineering Corp. (the "Consultant Representative"), at telephone number (403) xxx-xxxx. NGTL's representative (the "NGTL Representative") shall be Aprameya Ambalae, P.Eng., Damage Prevention, Engineering, (403) 920-5434.

Please acknowledge AT's agreement to the terms of this letter by executing two (2) copies and returning the two (2) signed originals to the NGTL Representative for execution by signing officers for NGTL. Two (2) copies of the form of pipeline crossing agreement are also enclosed. Please execute both copies and return the signed originals to the NGTL Representative. Once the two (2) originals of each of this letter and the crossing agreement have been duly signed by signing officers for NGTL, NGTL will mail one fully executed original of each of the letter and the pipeline crossing agreement to the Consultant Representative for AT's files.

Sincerely,

NOVA Gas Transmission Ltd.

Per:

Dan A. King, Vice-President
Engineering and Asset Reliability
Operations and Major Projects Division

Per:

Paul F. MacGregor, Vice-President
Operations and Project Services
Operations and Major Projects Division

ORIGINATOR	CHECKED BY	QUALITY

Acknowledgment. This letter agreement is acknowledged and agreed to by the undersigned.

Date: _____, 20____

**Her Majesty the Queen in the right of the
Province of Alberta as represented by the
Minister of Transportation**

Per: _____

Per: _____

enclosure

cc. signed copy to:

AT Consultant
Company's Name
Company's Address