PROJECT AGREEMENT FOR THE TRANSCANADA KEYSTONE PIPELINES GP LTD. KEYSTONE XL PIPELINE PROJECT

PREAMBLE

WHEREAS the Government of Canada is committed to improving the federal environmental assessment (EA) and regulatory review processes for major resource projects to enable a more effective assessment and mitigation of potential environmental effects, while protecting the health and safety of Canadians and promoting innovation and competitiveness within the Canadian resource industry sectors;

AND WHEREAS the Government of Canada is committed to undertaking a process of early, effective and meaningful engagement and consultation with Canada's Aboriginal peoples concerning contemplated Crown conduct with respect to, among other things, major resource projects that may adversely affect established or potential Aboriginal and treaty rights under Section 35 of the Constitution Act 1982;

AND WHEREAS the Government of Canada has created the Major Projects Management Office (MPMO) for the purpose of overseeing and tracking the federal review and Aboriginal engagement and consultation for major resource projects;

AND WHEREAS TransCanada Keystone Pipelines GP Ltd. (the Proponent) has submitted an application for a Certificate of Public Convenience and Necessity (Certificate) pursuant to Section 52 of the *National Energy Board Act* (NEBA) on February 27, 2009 for the Keystone XL Pipeline Project (the Project);

AND WHEREAS the National Energy Board (NEB), Transport Canada (TC), the Canadian Transportation Agency (CTA), and Agriculture and Agri-Food Canada (AAFC) may have regulatory and statutory duties in relation to the development proposal;

AND WHEREAS the NEB is a quasi-judicial administrative tribunal and nothing in this Agreement should be construed as permitting activities that will undermine the quasi-judicial function of the NEB process, including compliance with the principles of natural justice;

AND WHEREAS nothing in this Project Agreement (Agreement) fetters the powers, statutory authorities and functions of federal departments / agencies and their respective Ministers;

NOW THEREFORE the signatories (Parties) to this Agreement commit to work together to facilitate an effective, accountable, transparent, timely and predictable federal review in relation to the Project and to contribute to the discharging of any duty to consult with Aboriginal groups.

1.0 PURPOSE

This Agreement describes the main activities of the federal review and outlines the key roles and responsibilities of the Parties. For further clarity, the Agreement shall be read together with the Annexes, which form part of this Agreement. The federal review process includes an EA of the

Project pursuant to the *Canadian Environmental Assessment Act* (CEAA), a public hearing process conducted by the NEB pursuant to the NEBA, regulatory review processes of RAs, and Aboriginal engagement and consultation.

2.0 PROJECT DESCRIPTION

The development proposal consists of the construction and operation of 525 km of oil pipeline and related facilities between Hardisty, Alberta and Monchy, Saskatchewan, with approximately 50 km of new Right-of-Way and a capacity of up to 900,000 barrels per day.

The Project for the purposes of the federal review may be different from the development proposal, as described in section 4.0.

3.0 ROLES AND RESPONSIBILITIES

Based on the information provided by the Proponent, the following federal departments and agencies have identified an interest in the Project, and will participate in the federal review as follows:

- The NEB has regulatory and statutory responsibilities under the NEBA, and, pursuant to the CEAA, is an RA and will conduct a hearing process as defined by the NEBA;

- TC may have regulatory and statutory responsibilities under the *Navigable Waters Protection Act* (NWPA) and the NEBA and, pursuant to the CEAA, is a likely RA. TC requires a Navigation Impact Assessment (NIA) to be completed in order for TC to make their CEAA determination. TC will participate within, and contribute to, the broader NEB-led EA to fulfill its EA obligations to the extent possible in relation to pipeline crossings of those watercourses for which the Project requires TC authorizations;

- The CTA has potential regulatory and statutory responsibilities under the *Canadian Transportation Act* (CT Act) and, pursuant to the CEAA, is a likely RA. The CTA will participate within, and contribute to, the broader NEB-led EA to fulfill its EA obligations in relation to pipeline crossings of federally regulated railway lines to the extent possible;

- AAFC has statutory responsibilities pursuant to the CEAA and is an RA. AAFC will participate within, and contribute to, the broader NEB-led EA to fulfill its EA obligations in relation to pipeline crossings of AAFC lands to the extent possible;

- DFO is a federal authority (FA) pursuant to CEAA and may be in possession of specialist or expert information with respect to the Project (expert FA) and, upon request, shall make available that information or knowledge to the RAs. In addition, DFO will participate within the NEB-led EA process to generate the information required to conduct an independent screening level EA and discharge any potential obligations, to the extent possible, that may arise should a primary crossing methodology be unsuccessful during construction, and DFO determines that an authorization under the *Fisheries Act* is required;

- Natural Resources Canada (NRCan) is in possession of specialist or expert information or knowledge in relation to the Project, and has identified itself as an FA under the CEAA. Additionally, NRCan will manage the submission of the Certificate, if any, to the Minister of Natural Resources and Governor-in-Council;

- Environment Canada (EC) and Health Canada (HC) are FAs pursuant to CEAA and may be in possession of specialist or expert information with respect to the Project (expert FA) and, upon request, shall make available that information or knowledge to the RAs;

- Indian and North Affairs Canada (INAC) has advisory responsibilities to support the Government of Canada's Aboriginal engagement and consultation activities in relation to the Project; and,

- The MPMO has administrative and advisory responsibilities under the *Cabinet Directive on Improving the Performance of the Regulatory System for Major Resource Projects* and the associated Memorandum of Understanding (MOU). The MPMO will provide oversight and advice throughout the entire federal review in relation to the Project to ensure adherence to the service standards and roles and responsibilities of all Parties. Additionally, the MPMO will provide selective intervention to help address identified challenges and, in collaboration with the Parties, will play an oversight role throughout the federal review in regard to Aboriginal engagement and consultation.

4.0 FEDERAL REVIEW PROCESS

The RAs will be responsible for each component of the scope of the Project that meets their own area of federal responsibility. A screening type EA will be conducted for the Project as determined by RAs and required pursuant to CEAA.

As currently proposed, the scope of the Project for the NEB for the purposes of the EA includes the various components of the Project described by the Proponent in its February 27, 2009 Certificate application to the NEB plus the physical activities associated with construction, operation, maintenance and foreseeable changes, and where relevant, the abandonment, decommissioning and site rehabilitation relating to the entire Project.

AAFC, the CTA and TC have determined, based on their respective triggers under the CEAA that their scopes of project for the purposes of the EA will be:

- For AAFC, any pipeline crossings of AAFC lands for which Keystone requires AAFC licenses;
- For the CTA, any pipeline crossings of federally regulated railway lines pursuant to the CT Act; and,
- For TC, any watercourse crossings (pipeline crossings and bridges) of navigable waterways pursuant to the NEBA or the NWPA.

These include all construction, operation, maintenance, modification, and decommissioning (including closure and reclamation) activities related to those Project components.

The NEB will prepare and release a Hearing Order detailing the hearing process to be followed in relation to the Project. RAs and FAs will participate within the NEB hearing process to develop and obtain the information required to discharge their roles and responsibilities associated with CEAA to the extent possible, by ensuring that relevant information with respect to their areas of responsibility and/or expertise is reflected in the official hearings record.

The NEB will issue an EA report shortly after the conclusion of the hearing process. RAs and FAs will provide comments on the draft NEB EA report with respect to their responsible areas of expertise, as appropriate and in accordance with the timeline for comments outlined in the Hearing Order. Subject to the discretion of the NEB Hearing Panel, the NEB will release its Reasons for Decision (RFD) and the final EA report within 14 weeks of the close of the hearing record. RAs are working toward one EA report with concurrent respective CEAA determinations. If this is not possible for some reason, RAs will rely on the NEB EA Report to the extent possible but may produce an appendix to the EA report if necessary. If concurrent respective CEAA determinations by RAs are not possible, RAs will provide their respective CEAA determinations and any EA appendix to the NEB within 2 weeks of receiving the requested additional information. The NEB will then complete the Project related entries on the Canadian Environmental Assessment Registry (CEAR). Annex I shows a Gantt chart of the federal review process. Annex II shows the key milestones and service standards for the EA as well as Aboriginal engagement and consultation

Through the EA process, RAs will confirm any regulatory decisions required in relation to the Project. If no regulatory decisions are required for a department or agency, it will end its participation in the EA as an RA, but may, upon request from an RA, continue to participate as an expert FA should it be in possession of specialist or expert information or knowledge with respect to the Project. Similarly, expert FAs will continue to review information provided by the Proponent, as it becomes available and as the project evolves and changes, in order to confirm whether a regulatory approval may be required based on this updated and/or new information. In this case, an expert FA may become an RA and continue its participation in the EA on that basis.

5.0 ABORIGINAL ENGAGEMENT AND CONSULTATION

The Parties are committed to a “Whole of Government” approach to Aboriginal engagement and consultation. To the extent possible, the Government of Canada wishes to make the most effective use of resources by integrating the Aboriginal engagement and consultation process with the federal review for major resource projects. As such, the Government of Canada will rely upon the NEB hearings process to the extent possible to ensure that its obligations with regard to Aboriginal engagement and consultation are discharged with respect to the Project. The Crown will monitor and evaluate the NEB process for its ability to satisfy the Crown’s duty to consult to the extent possible throughout the federal review.

The proposed Aboriginal engagement and consultation roles and responsibilities are identified in Annex III.

6.0 TIMELINES

The estimated timelines for the federal review of the Project, including the NEB public hearing process (to be determined by the NEB pursuant to the NEBA) and the regulatory review process of other Parties, are detailed below and in the Gantt chart in Annex I, starting from the date of the Proponent's submission of its NEB application. Pursuant to the NEBA, the NEB has sole discretion with respect to the timelines and process of the Hearing. RAs and FAs commit to following the timeline for the NEB Hearing. Estimated timelines include:

a) Based on typical past NEB projects of this nature, an NEB Certificate decision may be released approximately 10 - 12 months from the Proponent's submission of its Project application;
b) Recommendation by the Minister of NRCan to the Governor-in-Council in respect to the NEB Certificate if required - within 4 weeks of release of NEBA Reasons for Decision;
c) CEAA EA determinations and course of action decisions by CTA, TC, and AAFC – concurrently with the final NEB EA Report, assuming the timely submission of regulatory applications (TC requires a NIA to be completed in order for TC to make their CEAA EA determination), otherwise within 2 weeks of receiving of the required additional information;
d) If appropriate, issuance of CT Act authorizations – within 120 days of submission of an application to the CTA;
e) If appropriate, issuance of NWPA and Section 108(4) of the NEBA authorization – within 90 days of EA Course of Action decision;
f) Decision regarding AAFC lands approval, if appropriate – 30 days from the EA Course of Action decision - assuming submission of applications with the NEB Application;
g) Should primary crossing methodology fail, and where the impacts resulting from contingency crossing methods have been found acceptable to DFO, provide the necessary *Fisheries Act* Section 35(2) authorizations requested by the Proponent within 4 weeks of receiving all required information, including an acceptable compensation agreement and the discharge of any remaining Crown duty to consult; and,
h) Provision of SARA permit by EC within 60 days of receipt of an application. This is contingent upon the applicant submitting complete and proper documentation.

The estimated federal review timelines detailed above are based on target timeframes that have been established for activities to be undertaken by the Proponent that are required for the completion of the federal review, including the timely submission of documents and applications. Based on estimates of the federal review process, associated Proponent activities, and the discharge of the Crown's duty to consult, it is estimated that the federal review of the Project will be completed by May 2010.

The MPMO Tracker will provide for transparent and publicly accessible monitoring of the progress of the federal review.

7.0 FOLLOW-UP AND MONITORING

The RAs will work with FAs, and the Proponent, to ensure that mitigation measures related to their areas of responsibility that were identified through the EA, and any conditions attached to licences and approvals, are effectively implemented.

For those mitigation strategies within federal jurisdiction that were identified through the EA but that are not related to the RAs' regulatory responsibilities, the FAs will provide assistance to ensure the mitigation and follow-up strategies related to areas within their mandate are adhered to and effectively implemented by the Proponent.

8.0 ADMINISTRATION

Tracking Progress

The milestones, timelines and service standards set out in this Agreement, subject to any amendments, will provide the basis against which the MPMO will monitor the progress of the federal review and report on this progress in the MPMO Tracker.

The following are examples of situations where the MPMO may pause the timelines of the federal review:

a) the NEB delays its process on its own motion;
b) the NEB agrees to delay its process at the request of the Proponent, other interested parties or another jurisdiction;
c) litigation or other court action prevents the completion or continuation of the federal review process; and,
d) after the conclusion of the NEB process, information is outstanding for the purposes of an RA's EA and/or regulatory review.

Issues Resolution

The Parties will use their best efforts to resolve any differences of opinion in the interpretation or application of this Agreement in an effective and timely manner.

Issues relating to federal review of the Project will be resolved through direct discussions and collaboration between the involved Parties, supported by the MPMO, as appropriate given the restrictions associated with the quasi-judicial nature of the NEB process.

Should issues remain outstanding, they will be referred to the appropriate senior level committee established through the MPMO initiative.

Post-Project Evaluation

The Parties will participate in an informal evaluation of the effectiveness of the federal review process in relation to the Project within 90 days following the regulatory review. The level of effort and format of review will be appropriate to the scale of the issues encountered.

Amendments

The Parties may recommend to the MPMO whether a change to the federal review or to the project warrants an amendment to the Agreement. Where there is agreement that an amendment is warranted, and where such amendment is considered significant, the MPMO, on behalf of the Parties, will provide the proposed amendment to the Major Projects Deputy Ministers for consideration.

9.0 PROJECT AGREEMENT

The Parties hereto have signed the Project Agreement, in counterpart, on the dates indicated below:

Original signed by	20-08-09
Cassie Doyle	Date
Deputy Minister	
Natural Resources Canada	
Original signed by	17-07-09
Gaétan Caron	Date
Chief Executive Officer	
National Energy Board	
Original signed by	07-08-09
John Knubley	Date
Deputy Minister	
Agriculture and Agri-Food Canada	
Original signed by	31-07-09
Claire Dansereau	Date
Deputy Minister	
Fisheries and Oceans Canada	
Original signed by	24-07-09
Geoffrey Hare	Date
Chairman	
Canadian Transportation Agency	
Original signed by	16-07-09
Yaprak Baltacioğlu	Date
Deputy Minister	
Transport Canada	
Original signed by	04-08-09
Ian Shugart	Date
Deputy Minister	
Environment Canada	
Original signed by	22-07-09
Michael Wernick	Date
Deputy Minister	
Indian and Northern Affairs	

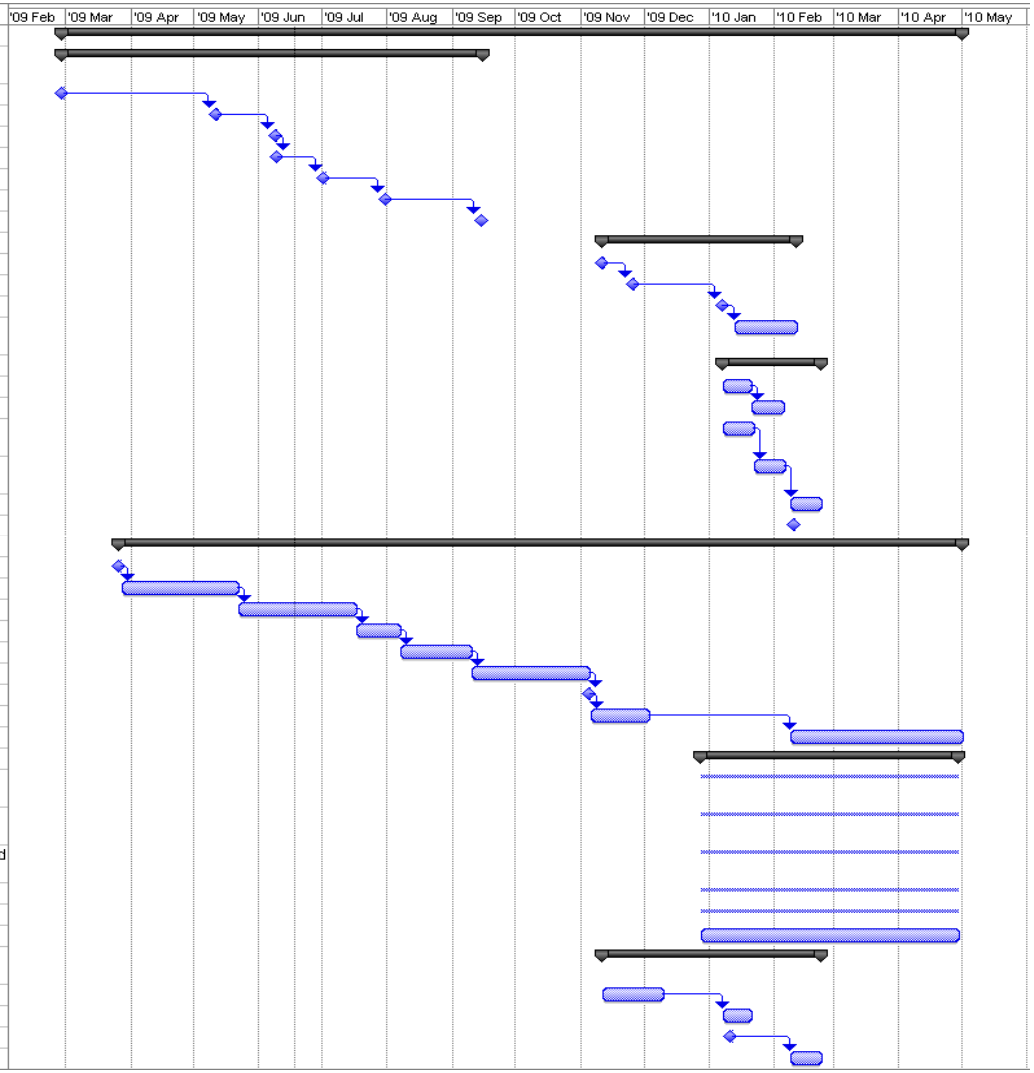
Annexes

Annex I	Gantt Chart – Target Timelines for the Federal Review of the Project
Annex II	Key Milestones and Service Standards for the Environmental Assessment and Aboriginal Engagement and Consultation
Annex III	Aboriginal Engagement and Consultation Approach and Roles and Responsibilities
Annex IV	Transport Canada: Roles, Responsibilities, Key Milestones and Service Standards
Annex V	Canadian Transportation Agency: Roles, Responsibilities, Key Milestones and Service Standards
Annex VI	Agriculture and Agri-Foods Canada: Roles, Responsibilities, Key Milestones and Service Standards
Annex VII	Other Federal Departments and Agencies: Roles and Responsibilities

Annex I: Gantt Chart – Target Timelines for the Federal Review of the Project

Note: With respect to the NEB hearing process, the Chart below outlines some of the typical key procedural steps associated with an NEB hearing process and potential dates for those steps in relation to this Project. It is important to note that the dates presented here are neither official nor final and are included only to provide a rough timeline based on typical past NEB experience. The timelines are quite likely to change subject to the schedule set by the NEB Panel who will oversee the Application. Further, timelines related to some procedural steps, such as the length of the oral hearing, are often dependent on the amount of third party involvement in the NEB hearing process. An official listing of procedural steps and associated timelines for the NEB hearing process as established by the NEB Panel overseeing the Application will be set out in the NEB Hearing Order when that is released.

ID	Milestones TCPL Keystone XL pipeline
1	**TCPL Keystone XL Pipeline Project Federal Review**
2	**National Energy Board Hearing Process (Illustrative only reflecting a typical average hearing process)**
3	Submission of NEB Certificate application
4	NEB Hearing Order issued
5	Deadline for comments on List of Issues
6	Deadline for application to Intervene (or for Government Participation role)
7	Intervenor and Government Participant information requests to the Proponent
8	Filing of Intervenor and Government Particpant written evidence
9	Start of Oral Hearing
10	**Post NEB Hearing Process Activities**
11	Distribution of draft NEB EA Report to RAs , FAs, and public for comment
12	Deadline for comments on draft NEB EA Report
13	Release of NEB Reasons for Decision (RFD) and NEB EA Report
14	NEB Certificate, if any, presented to Governor-in-Council by the Minister of Natural Resources
15	**EA Completion Activites for Federal Departments and Agencies**
16	RAs provide CEAA determinations and course of action decisions to the NEB
17	Post RA CEAA determinations and course of action decisions on the CEAR
18	If necessary, request for additional information by federal departments and agencies, if required to complete EA responsibilities
19	If additional information provided, RAs provide CEAA determinations and course of action decisions to the NEB
20	Post RA CEAA determinations and course of action decisions on the CEAR
21	Letter, on behalf of the Government of Canada, to Aboriginal Groups
22	**Regulatory Review for Transport Canada**
23	Submission of NWPP application for each proposed work
24	Determination and comment on application
25	Navigation Impact Assessment Process - On-site Inspection(s)
26	Notice to the Proponent to Advertise pursuant to NWPA S. 9(3)
27	Deposit and Advertise
28	Address Public Comment regarding projects potential impact on navigation
29	Resubmission of NWPA application(s) (if required)
30	Final Application Review Process
31	Issue approval under NWPA (if appropriate)
32	**Regulatory Review for Canadian Transport Agency**
33	Submission for authorization for rail construction and operation pursuant to S.101(3)
34	Proponent publishes notice of project and provides consultation period for interested parties to comment
35	CTA determines whether application information is adequate and complete and requests additional information if necessary
36	Interested parties forward comments to the CTA and to the Proponent
37	Proponent responds to comments from interested parties
38	Possible authorization pursuant to S. 101(3) of the CTA (if required)
39	**Agriculture and Agri-Food Canada Review Process of an Application for Right of Entry Licence (RoE) to construct**
40	Review of draft NEB EA report and requests for additional information
41	Review of final NEB EA report
42	Application for Right of Entry Licence (RoE) to construct
43	Decision to issue RoE to Construct



Annex II

Key Milestones and Service Standards for the Environmental Assessment and Aboriginal Engagement and Consultation

Note: The following milestones and service standards do not depict all steps within the NEB hearing process as detailed by the NEB hearing order.

Description/Activity	Lead	Support As Needed	Service Standard/ Completion Date
Federal Coordination Notification Process and Determination of Departmental Role in EA Process	NEB	MPMO	In progress
Posting of the Notice of Commencement for the EA on the CEARIS	NEB	TC, CTA, AAFC, CEA Agency	Completed October 14, 2008
Sending of Initial Engagement Letter to Aboriginal Groups on NEB hearings process	NEB	MPMO, RAs, FAs	Completed November 17, 2008
Posting of the Notice for the Draft Scope of Project for the Federal Review	NEB	TC, CTA, AAFC, CEA Agency	Completed December 22, 2008
Submission of NEB Certificate application	Proponent		February 27, 2009
NEB Hearing Order issued	NEB	NEB	May 12, 2009
RAs and FAs submit additional information requests to Proponent, if required	TC, CTA, AAFC, DFO, EC, NRCan		July 2, 2009
RAs and FAs submit written evidence, which may include preliminary evaluation of applicant's filed evidence with respect to RAs/FAs scope of involvement and/or expertise if appropriate	TC, CTA, AAFC, DFO, EC, NRCan		July 30, 2009
NEB Oral Hearing	NEB		Beginning September 15, 2009
Release of draft NEB EA Report for comment public	NEB		At the discretion of the NEB Panel (typically within about 6 weeks of close of NEB hearing record)
Submit comments on draft	TC, CTA,	MPMO	Within 2 weeks of release of draft

Description/Activity	Lead	Support As Needed	Service Standard/ Completion Date
NEB EA Report to the NEB in respect to scope of involvement and/or expertise	AAFC, DFO, EC, NRCan		NEB EA Report
Reasons for Decision (RFD) and final NEB EA Report issued by the NEB	NEB		Within 14 weeks of close of NEB hearings process
RAs provide CEAA determinations and course of action decisions to the NEB	TC, CTA, AAFC	NEB	Within 1 week of NEB Reason for Decision and final NEB EA Report
NEB Certificate, if any, presented to Governor-in-Council by the Minister of Natural Resources	NRCan	MPMO	Within 4 weeks of the release of the NEB RFD
If necessary, request for additional information to complete EA responsibilities	TC, CTA, AAFC	MPMO	Within 2 weeks of release of NEB RFD and final NEB EA Report
If no additional information required, RAs provide CEAA determinations and course of action decisions to the NEB	TC, CTA, AAFC	NEB	If concurrent completion of the EA not possible, within 2 weeks of receiving of requested additional information
Post RA's CEAA determinations and course of action decisions on the CEAR	NEB	CEA Agency	Within 2 weeks of receiving other RAs' CEAA determinations and course of action decisions
Letter, on behalf of the Government of Canada, to Aboriginal Groups	MPMO	NRCan	Within 4 weeks of any approval of NEB Certificate by Governor-in-Council

Annex III

Aboriginal Engagement and Consultation Approach and Roles and Responsibilities

1.0 Context

The Government of Canada will take a "Whole of Government" approach to Aboriginal engagement and consultation in the context of the Project. This approach is mandated by both the *Cabinet Directive on Improving the Performance of the Regulatory System for Major Natural Resource Projects* (the Directive) and its subsequent *Memorandum of Understanding for Improving the Regulatory Performance for Major Natural Resource Projects* (June, 2007). The Directive states that federal parties will work together towards a coordinated approach for Aboriginal engagement and consultation that is integrated with the EA and regulatory review process. Accordingly, this approach will work to ensure that Aboriginal groups are sufficiently consulted, and where appropriate accommodated, when actions that are contemplated by the Crown that may have adverse impacts on established or potential Aboriginal or treaty rights.

2.0 The Federal Crown Consultation Process for the Project

The Government of Canada will, to the extent possible, rely on the NEB process, including the NEB hearing, to discharge any duty to consult for the proposed Project. Aboriginal groups that have project-related concerns should convey these concerns to the NEB, either orally or in writing, through the NEB hearing process. The RAs for the Project will likewise use the NEB process to respond to project-specific concerns that may arise in relation to their mandates, as a mechanism to address issues and concerns raised.

To help facilitate this process, the NEB, in collaboration with the RAs as appropriate, will be undertaking an engagement program with identified Aboriginal Groups to: (1) outline the NEB process; and (2) clarify how Aboriginal Groups can utilize this process to ensure that their views are heard and considered. Through these engagement efforts RAs will provide information to potentially affected Aboriginal groups regarding their specific regulatory mandates, as well as their scope of involvement in the EA and regulatory review process. Aboriginal groups identified by the Crown for engagement may change over time based on information received during the federal review and from feedback from Aboriginal groups, as may the level of engagement and consultation activities undertaken by the Crown.

The Crown – through the MPMO - will exercise an oversight role to assess the adequacy of the NEB process to fulfill the legal duty of the Crown to consult for this Project. If it is determined that the activities undertaken through the NEB process do not sufficiently satisfy the Crown's legal duty to consult, the Crown will ensure that a process is put in place to satisfy this duty.

3.0 Roles and Responsibilities

Roles and responsibilities of each participating federal entity for the review of the Project are:

The NEB will:

- Conduct an engagement program with potentially impacted Aboriginal groups which will outline the NEB's hearing process and how groups can participate in that process;
- Conduct a public hearing process in respect of the Application, including the following activities:
    - Ensure that the Proponent distributes the Hearing Order to potentially impacted Aboriginal groups;
    - Provide additional information, as necessary, to Aboriginal groups on how Aboriginal groups can participate in the hearing process; and,
    - Consider cultural practices, location and timing when planning the oral portion of the hearing.
- Refer to the MPMO issues raised by Aboriginal persons or groups that are outside of the NEB's mandate and which are raised in the context of NEB Aboriginal engagement activities as well as during the public hearing process.

The MPMO will:

- In collaboration with RAs and other federal departments and agencies, evaluate the adequacy of the NEB process to satisfy Crown consultation obligations, including the provision of oversight to ensure the overall consistency, accountability and transparency of the Crown consultation effort during the entire Project review:
    - Review all early Aboriginal engagement materials forwarded by the NEB as a means to inform the Crown's review of the sufficiency of the NEB process to satisfy the Crown duty to consult;
    - Monitor the NEB's record of proceeding to identify issues raised by Aboriginal groups that fall outside the NEB's mandate which may require follow-up, and ensure these issues are referred to the appropriate organization; and,
    - In collaboration with federal departments and agencies, evaluate the adequacy of the NEB process to satisfy Crown consultation obligations and determine whether further Crown action is required outside the NEB process.
- House and maintain the official Record of Crown Consultation activities for the Project;
- Conduct early information gathering and communication with proponents, government departments, Aboriginal peoples and other stakeholders about engagement needs, activities and forthcoming Consultation responsibilities;
- Identify and track key regional or Consultation-relevant issues as early as possible;
- Incorporate information relating to Consultation activities into the project Monitoring and Tracking System; and,
- In collaboration with relevant federal departments and agencies, lead the development of the Crown Consultation Report for the Government of Canada.

Transport Canada, Agriculture and Agri-Food Canada, Canadian Transportation Agency, and Fisheries and Oceans Canada will:

- Participate in the NEB's hearing process and in coordinated consultation activities throughout the federal review process (including project development, pre-assessment, assessment, and post–assessment phases), as appropriate/required;
- In collaboration with other RAs, federal departments/agencies and the MPMO, monitor and evaluate the adequacy of the NEB process to satisfy Crown consultation obligations in respect of their legislative mandates;
- Track any Aboriginal concerns raised outside the NEB process in respect of their legislative mandates and address these issues, if required;
- Report to the NEB on consultation activities undertaken through the NEB hearing process and submit records to the MPMO in accordance with the established records-management process; and,
- Support issues analysis work, where required.

Natural Resources Canada, Health Canada, and Environment Canada will:

- Participate in any of the above activities upon request by the NEB, the MPMO, and/or RAs, as appropriate.

The Department of Justice (DOJ) and INAC will:

- Provide legal services (DOJ), information and advice to the MPMO, RAs and FAs as appropriate and required throughout the federal review process; and,
- Assist in the evaluation of the scope, nature, and sufficiency of consultation efforts by the Crown.

Annex IV

Transport Canada
Roles, Responsibilities, Key Milestones and Service Standards

EA

- Review and comment on the EA work plan;
- Review and comment on the Proponent's Certificate application;
- Participate in NEB hearings process as a government participant or Intervenor to provide expert authority on navigation issues, as determined by TC, to ensure its EA responsibilities are met to the extent possible;
- Review NEB draft EA screening report and submit comments during public comment period for the draft EA screening report ;
- Rely on the NEB final EA screening report to the extent possible, preparing additional information requests and further written analysis as required to fulfill any outstanding TC mandates and issues;
- Make EA determination pursuant to CEAA and make course of action determination;
- Provide input into the follow-up and monitoring programs relative to TC's areas of regulatory responsibilities and areas of interest, as required; and,
- Work with other RAs and FAs to ensure implementation of mitigation measures, and where appropriate, accommodation of adverse impacts on potential or established s.35 rights, and those aspects of the follow-up program, related to TC's areas of regulatory responsibilities and areas of interest, as required.

Regulatory

- Participate in meetings with other federal/provincial authorities as appropriate;
- Participate in public comment period, public notice and possible public consultations concerning navigation issues;
- Undertake any required activities, including consulting with affected/potentially affected Aboriginal groups as appropriate, related to TC's regulatory responsibilities under the *Navigable Waters Protection Act* and Section 108(4) of the NEBA as required supporting TC's regulatory decisions; and,
- Conduct site inspections to support its regulatory decisions, as required.

Note: The following milestones represent the key activities associated with the regulatory process for the Project and are not intended to reflect the entire work plan schedule associated with this Project. Furthermore, these milestones may need to be adjusted as additional information is made available.

MILESTONE	ACTIVITIES/DESCRIPTION	LEAD	SERVICE STANDARD
TC liaises with Project Proponent regarding potential works in regards to impacts on navigability	TC liaises with Proponent regarding proposed works that could potentially impact navigation and on potential alternatives and mitigation	TC	Ongoing

	strategies to ensure that navigability is maintained.		
Submission of NWPA application, including information required to process applications under the NWPA and NEBA 108(4), for each proposed work	Proponent provides TC with application for each proposed work and request for NWPA and/or Section 108 of the NEBA approval(s) complete with dimensioned plans, maps, reports, studies and data as outlined on the NWPA website.	Proponent	Applications were submitted on March 26, 2009
Determination and comment on NWPA and NEBA 108(4) application(s)	Review application package and information/plans for adequacy to support NWPA and Section 108(4) NEBA review. Request further information if required to proceed with application.	TC	Within 8 weeks after application submission
Navigation Impact Assessment Process - On-site Inspection(s)	Complete on-site Navigation Impact Assessment of Project, site and waterway(s), subject to weather and time of year.	TC	An initial 2 month inspection process, then ongoing until completion of public comment process
Resubmission of NWPA and NEBA 108(4) application(s) (if required)	Resubmission of NWPA and NEBA 108(4) application(s) by proponent if substantial changes to proposed work(s) are required.	Proponent	Dependent on Proponent if required
Notice to the Proponent to Advertise pursuant to NWPA S. 9(3)	TC provides proponent with advertisement package pursuant to NWPA Section 9(3).	TC	Within 3 weeks of completed initial on-site inspection and following the assessment of navigational issues arising from any changes to the Project due to EA issues
Deposit and Advertise	Proponent deposits "Final Plans" and other relevant information to Land Title Office or the government agent and advertises in advertise in one or more newspapers and the Canada Gazette.	Proponent Land Title Office, Canada Gazette	Advertisement process is to occur for a minimum of 30 +1 calendar days

	Proponent will provide to TC proof of deposit and advertising		
Address Public Comment regarding the Project's potential impact on Navigation	Should TC receive concerns from the public or Aboriginal groups regarding navigation, the Proponent and TC will work together to resolve concerns. Additional requirements might be deemed necessary by TC in regards to potential impacts on navigation posed by proposed works. TC will facilitate public comment process if required.	Proponent TC	To be completed within 2 months of completion of advertisement process
Final Application Review Process	Perform a final review of all information on file, including technical information and public comments.	TC	Within 4 weeks of public comment process
Issue approval under NWPA (if appropriate)	If appropriate, issue approvals under NWPA and/or Section 108(4) under NEBA.	TC	Within 90 calendar days following EA Course of Action decision

Annex V

Canadian Transportation Agency
Roles, Responsibilities, Key Milestones and Service Standards

EA

- Review and comment on the EA work plan;
- Review and comment on the Proponent's Certificate application;
- Participate in NEB hearings process as a government participant or Intervenor to provide expert authority on railway crossing issues, as determined by CTA, to ensure its EA responsibilities are met to the extent possible;
- Review NEB draft EA screening report and submit comments during public comment period for the draft EA screening report ;
- Rely on the NEB final EA screening report to the extent possible, preparing additional information requests and further written analysis as required to fulfill any outstanding CTA issues;
- Make EA determination pursuant to CEAA and make course of action determination;
- Provide input into the follow-up and monitoring programs relative to areas of federal interest;
- Provide input into the follow-up and monitoring programs relative to CTA's areas of regulatory responsibilities and areas of interest, as required; and
- Work with other RAs and FAs to ensure implementation of mitigation measures, and where appropriate, accommodation of adverse impacts on potential or established s.35 rights, and those aspects of the follow-up program, related to CTA's areas of regulatory responsibilities and areas of interest, as required.

Regulatory

- Participate in meetings with other federal/provincial authorities as appropriate;
- Participate in public comment periods as necessary/appropriate; and ,
- Undertake any required activities related to CTA's regulatory responsibilities under the *CT Act*, as required, to support CTA's regulatory decisions; and
- Conduct site inspections to support its regulatory decisions, as required.

Note: The following milestones represent the key activities associated with the regulatory process for the Project and are not intended to reflect the entire work plan schedule associated with this Project. Furthermore, these milestones may need to be adjusted as additional information is made available.

MILESTONE	ACTIVITIES/DESCRIPTION	LEAD	SERVICE STANDARD
Submission for CTA authorization	Proponent applies to the CTA for authorization to construct a suitable utility crossing over or under a railway line pursuant to Subsection 101(3) of the	Proponent	Dependent upon the Proponent .

	Canada Transportation Act		
Publication of notice and consultation period	Proponent publishes notice of Project and provides consultation period for interested parties to comment.	Proponent	Simultaneously with application to the CTA
Determination of adequacy of application	If any information is not filed or is deficient in any way, the CTA may request additional information and advise the applicant that the application is not complete and cannot be processed until the necessary information is filed.	CTA	To be determined by CTA
Interested parties forward comments to the CTA and to the Proponent	A respondent may oppose an application within 30 days after receiving it, by filing with the CTA a clear and concise written answer that includes an admission or denial of any facts alleged in the application and any documents that are relevant in explaining or supporting the answer. A person who has an interest in an application other than the applicant, the respondent or an interested person, may intervene to support or oppose the application.	Interested Parties	Dependent upon Interested Parties
Proponent responds to comments from interested parties	An applicant may, within 10 days after receiving a copy of an answer or intervention, file with the Agency and serve on the other parties to the proceeding a written reply to the answer or intervention.	Proponent	Within the period the CTA directs
Possible authorization	Issue authorization under Section 101(3) of the *CT Act* (if required). Authorization is contingent on a course of action decision that would allow the issuance of the authorization.	CTA	Within 120 days of submission for authorization, contingent on course of action decision.

Annex VI

Agriculture and Agri-Food Canada
Roles, Responsibilities, Key Milestones and Service Standards

EA

- Review and comment on the EA work plan;
- Review and comment on the Proponent's Certificate application;
- Participate in NEB hearings process as a government participant or Intervenor to ensure its EA responsibilities are met to the extent possible;
- Review NEB draft EA screening report and submit comments during public comment period for the draft EA screening report;
- Rely on the NEB final EA screening report to the extent possible, preparing additional information requests and further written analysis as required to fulfill any outstanding AAFC issues;
- Make EA determination pursuant to CEAA and make course of action determination;
- Provide input into the follow-up and monitoring programs relative to AAFC's management of Federal lands as required;
- Ensure implementation of mitigation measures, and where appropriate, accommodation of adverse impacts on potential or established s.35 rights, related to AAFC's legal responsibilities and management of Federal lands as required; and,
- Ensure implementation of those aspects of the follow-up program related to AAFC's legal responsibilities and management of Federal lands as required.

Management of Federal lands

- Undertake any required activities related to AAFC's operational planning as required in support of AAFC's land management program decisions.

Note: Since AAFC is not a regulator, the following milestones represent the key activities associated with the management of Federal land for the Project and are not intended to reflect the entire work plan schedule associated with this Project. Furthermore, these milestones may need to be adjusted as additional information is made available.

MILESTONE	ACTIVITIES/DESCRIPTION	LEAD	SERVICE STANDARD
Agri-Environmental Services Branch (AESB) Environmental Assessment Guidelines provided to Proponent	The Project Proponent to receive AAFC-AESB environmental assessment requirements, document outlines information to be submitted for review.	AAFC	Completed

Review of Proponent's NEB Application and associated Environmental and Socio-Economic Analysis (ESA) and requests for additional information, if required	AAFC will review the Proponent's NEB Application and ESA and assess the compatibility of the project activities with management of Federal Lands administered by AAFC, including the identification of measures, modification to the Project and/or construction methods necessary to mitigate negative effects of the project on Federal Lands administered by AAFC, in consultation with the Proponent if appropriate. AAFC will provide written notice, requesting specialist or expert information or knowledge, to other federal authorities that are likely to be in possession of specialist or expert information or knowledge that is necessary to conduct the environmental assessment. AAFC, at the request of other federal authorities, may require additional information pertaining to the potential impacts on Species at Risk and Preliminarily Identified Critical Habitat on Federal Lands administered by AAFC.	AAFC, and if appropriate, the Proponent	If needed, AAFC will request specialist or expert information from federal expert authorities within the NEB hearing process. If AAFC requires additional information with respect to its scope of project, it will make those requests within the NEB hearing process to the extent possible. AAFC will request that other federal authorities provide recommendations, or request additional information, within 4 weeks of receiving written notice from AAFC. If requested by an expert FA, AAFC will request additional information of the Proponent within 2 weeks of receipt.
Review of Final NEB EA report	AAFC will review the Final NEB EA Report with respect to its scope of project and identify if the Report meets the needs of AAFC's responsibilities with respect to CEAA.	AAFC	If additional information is requested, or if there outstanding information requests, AAFC will request or follow-up within 2 weeks of the release of the Final NEB EA Report.

Application for Right of Entry Licence (RoE) to Construct	The Project Proponent will submit an application for a Right of Entry Licence to Construct	Proponent	At the discretion of the Proponent.
Course of Action Decision pursuant to CEAA	AAFC will make a decision pursuant to CEAA	AAFC	Within 2 weeks of submission of final EA report.
Decision to issue RoE to Construct	If applicable, AAFC will issue the RoE Licence to Construct. Where appropriate AAFC will include, as conditions within the RoE license, measures necessary to mitigate negative effects of the project on Federal Lands administered by AAFC, conditions may arise due to recommendations from other federal authorities.	AAFC	Within 2 weeks of submission of the RoE application and contingent on AAFC's decision regarding a Course of Action pursuant to CEAA.

Annex VIII

Other Federal Departments and Agencies
Roles and Responsibilities

	ROLES / RESPONSIBILITIES
National Energy Board	<u>Joint EA and Regulatory</u> • Identify and coordinate RAs and FAs for the purposes of initiating and coordinating the EA process; • Prepare the EA Work Plan; • Conduct the NEB Hearing Process; • Prepare EA report; and, • Issue regulatory decision in regards to application • Post RA CEAA determinations on the CEAR <u>Post-EA Regulatory</u> • Monitor compliance with conditions imposed on Certificate if issued;

	ROLES / RESPONSIBILITIES
Fisheries and Oceans Canada	• Review and comment on the Proponent's Certificate application and other documents as directed by the NEB and RAs; • Participate in the NEB hearings as government participants, Intervenors or by letter of comment or oral statement; • Review and submit comments on the draft NEB EA report; • Provide support to the review of the design and implementation of the follow-up program and/or mitigation measures that arise from FA recommendations made, and as agreed to, with the RAs; and, • Participate, as necessary in Aboriginal consultation processes as part of the "Whole of Government" approach; • Should an authorization under the *Fisheries Act* be required due to a failure of a a primary crossing methodology, and where the impacts resulting from the contingency crossing methods have been found acceptable to DFO should provide the necessary *Fisheries Act* authorizations within 4 weeks of receiving all required information from the proponent, including an acceptable compensation agreement. Should an authorization for a contingency methodology be required, DFO will rely on the information contained within the NEB screening report to the extent possible to complete their EA. TC will be afforded an opportunity to review any necessary compensation agreements with respect to TC's legislative mandate prior to the issuance of authorizations.

	ROLES / RESPONSIBILITIES
Environment Canada **Natural Resources Canada**	• Review and comment on the Proponent's Certificate application and other documents as requested by the NEB and RAs; • Participate in the NEB hearings as government participants, Intervenors or by letter of comment or oral statement; • Review and submit comments on the draft NEB EA report; • Provide support to the review of the design and implementation of the follow-up program and/or mitigation measures that arise from FA recommendations made, and as agreed to, with the RAs; and, • EC issues SARA permit(s) as appropriate and if required.
Health Canada	• Provide advice regarding the potential human health implications of the Project when requested by RAs. Advice will be provided within the timelines requested by the RAs.
Indian and Northern Affairs Canada	• Provide advice in regard to Aboriginal engagement and consultation to support the Government of Canada in respect of the Project
Natural Resources Canada	• Prepare the Minister of Natural Resources regarding the Proponent's application for a NEB Certificate if required

	ROLES / RESPONSIBILITIES
Major Projects Management Office	• Coordinate the development and approval of the Project Agreement; • Monitor and report on the progress of the project through the EA and regulatory review; • Take proactive steps to identify opportunities to streamline the regulatory process to meet government timelines and identify bottlenecks that could cause delay; and • Incorporate information received from the FAs, RAs, and Proponent on the EA and regulatory milestones into the MPMO Project Tracking System.