

ROAD USE AGREEMENT (Montgomery County Highway System)

This ROAD USE AGREEMENT (this "Agreement") is made and entered into this ____ day of _____, 2014 by and among the County of Montgomery, Illinois, a body politic acting by and through its Chairman of the Board (the "County" or "County Engineer" as a representative of the Board), and Dakota Access, LLC ("Dakota Access"). Dakota Access and the County are sometimes referred to herein individually as a "Party" and collectively as the "Parties." The term "Dakota Access Representative(s)" shall include the Dakota Access' contractors, sub-contractors, employees, material suppliers, vendors, transport providers, representatives, and designees.

RECITALS

WHEREAS, Dakota Access intends to construct a petroleum pipeline and other ancillary facilities (the "Dakota Access Pipeline Project" or "Project") in and across portions of Montgomery County, Illinois, and

WHEREAS, in connection with the construction of the Project, the County desires to address certain issues relating to the roads owned, operated and maintained by the County (collectively, the "County Highways") over which it will be necessary for Dakota Access and Dakota Access' Representative(s) to, among other things, (i) transport heavy equipment and materials over certain County Highways, which may in certain cases be in excess of the design limits of the County Highways; (ii) transport certain locally sourced materials, such as concrete and gravel, on such County Highways; (iii) widen certain County Highways and make certain modifications and improvements (both temporary and permanent) to such County Highways (including to certain culverts, bridges, road shoulders and other related fixtures) to permit such equipment and materials to pass; and (iv) place pipe for the Project adjacent to, or under certain County Highways, and

WHEREAS, under 605 ILCS 5/5 et seq. the County has broad power regarding the opening, construction, maintenance, relocation, access to or repair of highways in the County Highway system, and

WHEREAS, 605 ILCS 5/9-113 grants to the County, authority to impose reasonable rules, regulations and specifications for the use of County Highways by public and private utilities, and

WHEREAS, 605 ILCS 5/9 113.01 imposes a liability on public or private utilities for any damage to County Highways, and

WHEREAS 605 ILCS 5/9-122 imposes a liability on damage done to a bridge or culvert, and

WHEREAS, it is in the best interest of the public health, safety and welfare that Dakota Access and the County reach an agreement to address the majority of issues that will arise in a project of this size, and

WHEREAS, Dakota Access has provided to the County Engineer of Montgomery County an alignment plan for the Project that shows the pipeline route, road crossings, and construction access roads, a copy of which is attached as the Principal Road Use Schedule (Exhibit A), and

WHEREAS, Dakota Access and the County of Montgomery, Illinois wish to set forth their understanding and agreement as to the road issues relating to the construction and operation of the Project, and

WHEREAS, this Agreement shall apply to those County Highways outlined on the Principal Road Use Schedule (Exhibit A) and, subject to Section 3D herein, used by Dakota Access, or Dakota Access's Representative(s) in direct support of the construction and operation of the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promise and covenants herein set forth, the parties, intending to be legally bound, agree as follows:

Section 1. Dakota Access agrees to undertake the following activities in accordance with the terms of this Agreement:

- A. Pay a sum of _____ the County Highway Department for costs directly associated with the management and implementation of this Agreement. Said payment shall be made directly to the County Highway Department within 21 days of the signing of this document. Such payment shall be made, at Dakota Access's discretion, by check or wire transfer.

- B. Provide contact information for the Dakota Access Construction Manager, a Dakota Access Field Engineer who will be stationed no farther than two (2) hours away from the County, and the Dakota Access Permit Manager.
 - 1) (Construction Manager). Email: . Mobile:
 - 2) (Field Engineer). Email: . Mobile:
 - 3) (Permit Manager). Email :. Phone:

- C. Provide as much advance notice as is reasonable to the County Engineer in advance of all "Super Load" moves and equipment crossings for separate review and permitting. At minimum, a load is considered a "Super Load" if ONE of the following is true:

- WIDTH is greater than 14'-06"
- LENGTH is greater than 145'-0"
- HEIGHT is greater than 15'-0"
- WEIGHT is greater than 120,000 lbs. gross

Additional information regarding what may be considered a "Super Load" is available from the Illinois Department of Transportation Permit Office.

- D. Transport the pipe segments and other oversize loads so as to minimize adverse impact on the local traffic.
- E. Provide as much advance notice as is commercially reasonable to obtain approval of the County Highway Department when it is necessary for a road to be closed due to a road crossing or for any other reason. Notwithstanding the generality of the aforementioned, Dakota Access or Dakota Access's Representative(s) will provide 48 hours notice to the extent reasonably practicable.
- F. Notify all relevant parties identified under Section 4 of any temporary road closures.
- G. Sign all highway work zones and closures in accordance with the Manual on Uniform Traffic Control Devices and the Illinois Department of Transportation Supplement to the Manual on Uniform Traffic Control Devices in accordance with Chapter 430 of the Illinois Compiled Statutes and current Illinois Department of Transportation Traffic Control Standards.
- H. Sign or mark all truck routes, roads and highways approved on the Principal Road Use Schedule (Exhibit A) for use by Dakota Access or Dakota Access's Representative(s) for the movement of pipe segments and other oversize loads or equipment.
- I. Keep all County Highways used by Dakota Access or Dakota Access's Representative(s) clear, by removing all mud, dirt, dust, spilled or tracked material, garbage, obstructions or other hazards, upon notice and within a reasonable time period.
- J. Prohibit the use of County Highway right of way as storage or staging areas and as parking areas for vehicles and equipment of all contractors, sub-contractors, employees, material suppliers, vendors, transport providers, representatives and designees.

- K. Make the necessary improvements for the widening of any corner radius necessary to facilitate the turning movements of the transport trucks used by Dakota Access or Dakota Access's Representative(s) and once these widened radii are no longer needed to return the corners substantially to their original lines and grades unless the County Engineer requests that the widened radii remain as improved.
- L. Pay for the cost of all repairs to all County Highways that are damaged by Dakota Access or Dakota Access's Representative(s) during the construction of the Project and restore such roads to the condition they were in at the time of the pre-construction inventory.
- M. Take such measures as are reasonably required during an extended work suspension to provide for safe vehicular travel on County Highways damaged as a direct result of Dakota Access or Dakota Access's Representative(s) use as directed by the County. The extended work suspension may be caused by but not limited to seasonal weather conditions, "acts of God", or labor disagreements.
- N. Acknowledge that the estimates for road repairs or restorations are good faith estimates provided by Montgomery County or an approved consultant, but the final actual costs may vary.
- O. Provide a single Surety Bond in accordance with Section 6 for the purposes of road repair or restoration.
- P. Anywhere this Agreement obligates Dakota Access to make a payment, except as called for in Section 1.A., said payment shall be made directly to the County Highway Department within 21 days of receipt of an invoice, containing such detail as Dakota Access may reasonably request, from County Highway Department. Such payments shall be made, at Dakota Access's discretion, by check or wire transfer of immediately available funds.

Section 2. The County, in accordance with the terms of this Agreement, agrees to:

- A. Consent to the use of the County Highway's rights-of-way for utility encroachments for the Project by separate permit. Consent granted herein shall be effective only to the extent of the property interest of the County. Such consent shall not be binding on any owner of a fee over or under which the highway is located and shall not relieve Dakota Access or Dakota Access's Representative(s) from obtaining by purchase, condemnation or otherwise the necessary approval of any owner of the fee over or under which the highway is located if such approval is legally required.
- B. Review for approval all equipment crossings across the County Highway system by giving consideration of road damage and traffic safety in a reasonable manner based on accepted engineering practices.

- C. Issue master overweight and oversize permits for County Highways in a timely manner for the roads scheduled on the Principal Road Use Schedule (Exhibit A) upon the filing of such applications on behalf of Dakota Access or Dakota Access's Representative(s) and concurrent with any an applicable Illinois Department of Transportation OS/OW Permit(s).

Issue permits during the spring posting period, between January 15th and April 15th when conditions warrant.

Issue individual "Super Load" permits and provide recommended routing information for those loads based on timely information provided by Dakota Access or Dakota Access's Representative(s). At minimum, a load is considered a "Super Load" if ONE of the following is true:

- o WIDTH is greater than 14'-06"
- o LENGTH is greater than 145'-0"
- o HEIGHT is greater than 15'-0"
- o WEIGHT is greater than 120,000 lbs. gross

Additional information regarding what may be considered a "Super Load" is available from the Illinois Department of Transportation Permit Office.

- D. Coordinate with Dakota Access and Dakota Access's Representative(s) so as to minimize the impact of their use of the County Highway system.
- E. Perform all routine maintenance on the County Highways used as access roads for the construction of the pipeline in accordance with Section 5 of this Agreement.
- F. Review for approval all access points to the County Highway system by giving consideration to sight distances, drainage and proximity to other entrances, in a reasonable manner and in accordance with accepted engineering practices.
- G. Prepare estimates in good faith based on the design of all road repairs or restorations in accordance with IDOT Bureau of Local Road and Streets Manual.
- H. Authorize the County Engineer to agree on behalf of the County of Montgomery to revisions to the Principal Road Use Schedule (Exhibit A) and to determine appropriate improvements.

Section 3. Road Inventory

A. Pre-Construction Inventory

Dakota Access, prior to the commencement of construction, shall perform an inventory and/or survey to record the condition of the pavement surface of the County Highways listed in the Principal Road Use Schedule (Exhibit A) prior to use by Dakota Access or Dakota Access's Representative(s). Dakota Access shall provide notice to County of the start dates and completion dates of the road survey work. During this survey the entire length of the roads as listed in the Principal Road Use Schedule (Exhibit A) shall be videotaped and if necessary photographs may be taken. In addition, the County will provide Dakota Access or Dakota Access's Representative(s) copies of any plans, cross-sections and specifications relevant to the existing road structure, if requested. The survey company(s) shall provide a network level analysis of the condition of the roads. The assessments may be conducted using the pavement condition index (PCI) methodology, adopted by ASTM Testing Standard D 6433 Standard Practice for Roads and Parking Lots Pavement Condition Index Surveys. The PCI provides a numerical indication of the overall pavement condition for each road and will be used to evaluate the effects of the pipeline construction traffic.

The road inventory shall include: photographs which are date- and geo-stamped; pavement images with 1-mm crack resolution; ride quality; rutting; and road surface profiling. Dakota Access shall provide to the County a copy of the final report describing the road inventory within ten (10) days of receiving the report. For any drainage structures on the proposed routes that the County reasonably determines may not carry the loads proposed by the Dakota Access or Dakota Access's Representative(s), the County shall have the right to hire a consultant to make a study of the drainage structure to determine the load carrying capacity. Dakota Access or Dakota Access's Representative(s) shall furnish the consultant with drawings depicting the axle numbers, spacing and loading for the trucks moving the oversized loads. If it is determined that a structure will not carry the loads that are proposed, Dakota Access or Dakota Access's Representative(s) may propose a plan to strengthen the structure. The County will then furnish Dakota Access or Dakota Access's Representative(s) with all available plans. Should Dakota Access or Dakota Access's Representative(s) present a plan to strengthen a structure; the County will then have their consultant review these plans to determine if the improvements will carry the proposed loads. All reasonable costs incurred by the County for these services shall be paid by Dakota Access.

Copies of all pre-construction documentation shall be provided to each of the Parties.

B. Post-Construction Inventory

Upon completion of construction of the Project, Dakota Access will perform a post-construction inventory and/or survey, the methods of which shall be identical to those of the pre-construction survey. The two sets of data will be compared and if there is any wheel lane rutting, cracking or other damage in excess of the original survey, the parties shall negotiate to determine the extent of the repairs or improvements needed to return the roads to a pre-construction condition, and any inability to resolve any disputes shall be determined by the dispute resolution procedure in Section 6.E. The design of these repairs or improvements shall conform to standards provided in the IDOT Bureau of Local Roads and Streets Manual. The cost of these repairs or improvements shall be paid for by Dakota Access.

C. Routing and Access Approval

As soon as practical and as necessary throughout the construction of the Project, Dakota Access or Dakota Access's Representative(s) and the County shall meet and by mutual agreement revise the Principal Road Use Schedule (Exhibit A) in so far as it affects the County Highways and make it more definitive.

D. Revisions

As the Principal Road Use Schedule (Exhibit A) is revised and roads are added or removed by mutual agreement of Dakota Access and County Highway Engineer or its designate, pre-construction and post-construction improvement details shall be prepared and added to the Exhibit A using the same methodology as was used to establish the improvement descriptions included in Exhibit A.

E. Incidental/Accidental Use

(1) The Parties recognize that the Project traffic may, either through mistake or with the consent of the County, use roads other than those listed on the Principal Road Use Schedule (Exhibit A). Repairs for damage caused by Dakota Access or Dakota Access's Representative(s) during such mistaken or permitted use shall be paid for or repaired as provided in Section 6.C. of this Agreement.

(2) The Parties intend that all construction traffic related to the Project shall exclusively use the routes designated in Exhibit A and shall not use any other County Highways or local roads other than those so designated. Construction traffic shall mean any traffic in support of the Project, including travel by workers to and from any job site in vehicles weighing five (5) tons or more. Subject to subsection (1) above, in the event any unauthorized construction vehicle of Dakota Access or Dakota Access Representative(s) uses a non-designated County Highway or local road, then the County in the reasonable discretion of the County Engineer, may give written notice to Dakota Access of the time and

place of such use, the specific identity of the vehicle, and the owner and/or operator making use of such road, and the County Engineer may impose a fine of \$500.00 per occurrence on Dakota Access to be paid within thirty (30) days of the date of such written notice; provided, however, that on the first occurrence of any unauthorized use of a road as set forth in this subsection (2), the County shall issue a warning to the operator of the offending vehicle, with a copy provided to Dakota Access.

Section 4. Construction Cooperation:

A. With Others:

Prior to the commencement of construction, Dakota Access and Dakota Access Representative(s) shall hold a meeting and shall invite all public or semi-public entities that may be affected by the Project including, but not limited to, schools and fire protection districts. At said meeting, Dakota Access will discuss its plans for the construction of the Project and compile a list of contact persons that will need to be notified of any temporary road closures that may have an effect on the daily routine or routing of those agencies. Should all of the parties contacted not be represented, Dakota Access shall attempt to make contact with these entities in an effort to obtain the contact information. A copy of this list shall be furnished to the County Highway Department.

B. With the County:

During construction, the County, Dakota Access and Dakota Access's Representative(s) may meet weekly to disclose and discuss Project activities, including anticipated material and equipment deliveries, equipment crossings, and traffic movement which may be reflected as changes to the construction plans and/or the Principal Road Use Schedule (Exhibit A).

Section 5. Upgrades and Maintenance of the County Highways

- A. Upon mutual agreement between the parties, in order to minimize the adverse effect of the construction traffic on the County Highways, certain upgrades may be required on certain roads as described below, the cost of which shall be paid by Dakota Access.

See the Principal Road Use Schedule (Exhibit A), as amended from time to time.

- B. The daily routine maintenance of the County Highways affected by the Project including snow removal, striping, dust control, and routine signage and regularly scheduled maintenance or repair shall be the responsibility of the Montgomery County Highway Department. If repairs or maintenance, other than daily

routine maintenance, are deemed necessary by mutual agreement of the parties because of activity of Dakota Access or Dakota Access's Representative(s), the County will invoice Dakota Access for such cost and Dakota Access shall make payment to the County therefore.

Section 6. Surety Bond

Dakota Access shall provide to County a financial security in the form of a Surety Bond in the amount of _____ which the County may draw against in the event and only to the extent that Dakota Access fails to pay for the upgrade, repair and/or restoration expenses of the County Highways in accordance with the terms of this Agreement. The Surety Bond shall be issued by a bank or other financial entity with a rating of AA or better and in such form as is reasonably acceptable to the County.

- A. The Surety Bond shall remain in place from a date thirty (30) days prior to the initiation of the Project, including the transportation of materials or equipment on the roads identified on Exhibit A that are subject to this Agreement until a date two years after the completion of the Project in the County, or the effective date of a full settlement and release of road issues executed by the County and Dakota Access, whichever is earlier. For avoidance of doubt, the completion date shall be the date that the entire Project is placed into service. The County agrees to deliver any certification required for the surrender of the Surety Bond when Dakota Access is no longer required to provide the Surety Bond pursuant to the terms hereof, or the terms of the Surety Bond.

For so long as Dakota Access is required to maintain the Surety Bond pursuant to the terms hereof, in the event that, pursuant to the terms of such Surety Bond, the County shall be entitled to draw down the full outstanding amount of such Surety Bond as a result of Dakota Access's failure or default to upgrade, repair or restore the County Highways in accordance with the terms of this Agreement. The County shall not make any claim on said Surety Bond until sixty (60) days after the mailing of a written notice to Dakota Access specifying a default hereunder by Dakota Access, during which sixty (60) days Dakota Access may cure such default.

- B. The Surety Bond Agreement shall set forth, among other things, the disbursement procedures for the Surety Bond and shall include:
1. For the preconstruction improvements to County Highways listed on the Principal Road Use Schedule attached as Exhibit A, as such Exhibit may be amended by the Parties from time to time:

- a. The Dakota Access shall notify the County of the work to be done and submit plans for approval prior to the construction of the improvements.
 - b. The work shall be performed by or contract shall be let by Dakota Access.
 - c. The County reserves the right to inspect the improvements during construction and to allow the improvements to remain or to have the improvements removed and the area restored to its preconstruction condition, at no cost to the County.
2. For damage during construction to the roads listed on the Principal Road Use Summary (Exhibit A), as amended from time to time and those roads damaged by incidental or accidental use:
- a. Upon notification by the County, Dakota Access or Dakota Access Representative(s) shall make all temporary road repairs necessitated by Dakota Access's activities at Dakota Access's cost.
 - b. The work necessary to temporarily repair and reopen the County Highway to traffic shall be performed by Dakota Access or its duly obligated contractor within 3 days of notification of the work to be done.
 - c. Should Dakota Access or its duly obligated contractor fail to complete the temporary repair within the given time period, the temporary repair work shall be performed by the County. Payment for such work shall be made by Dakota Access.
 - d. Final repairs to County Highways shall be completed as described in Section 6.C.3.
3. For the post construction final repairs or restoration of County Highways listed on the Principal Road Use Schedule attached as Exhibit A, as such Exhibit may be amended by the Parties from time to time:
- a. The County shall notify Dakota Access in writing of the work to be done based upon the pre- and post construction inspections of the County Highways in order to return the County Highways to their preconstruction condition.
 - b. The County shall prepare and provide a reasonable estimate of cost for the work to be completed.

- c. Payment for the repairs and restoration shall be made by Dakota Access in the form of direct monetary compensation equal to the final repair or restoration cost, plus any reasonable survey, design and construction inspection costs incurred by the County. The survey, design and construction inspection cost shall either be based on the percentage of the estimated cost or those fees charged by a consultant providing the services to the County. The cost percentages shall be those approved by the Illinois Department of Transportation for the County.
- d. Upon completion of or upon receipt of the necessary funds to complete the final repairs or restoration, as detailed above, the County shall provide Dakota Access with a Release of Claims in connection with Dakota Access's obligations pursuant to this Agreement. The County reserves the right to have such Release of Claims be provided on a system wide or individual unit basis.
- e. Upon receipt of the necessary funds to complete the final repairs or restoration, the final repair or restoration work shall be completed at the discretion of the County.

C. Emergency Repairs.

Notwithstanding the foregoing, in the event Dakota Access or Dakota Access's Representative(s) are reasonably believed by the County to have caused damage to County Highways of a magnitude sufficiently great to create a hazard to the motoring public, which in the County's reasonable opinion warrants an immediate repair or road closing, the County may unilaterally make or authorize repair, with the reasonable, documented costs thereof paid by Dakota Access. The County shall photograph, videotape and otherwise document the conditions and make all such documentation available to Dakota Access. Any such emergency repair shall be subject to post-repair negotiations by the Parties, involvement of the intermediary and, if necessary, adjudication. If such post-repair proceedings favor Dakota Access, the County will reimburse Dakota Access for amounts to fund the repair, if any.

D. Procedure and Dispute Resolution

- a. The County shall notify Dakota Access of the location and nature of the repair or restoration required, provide an estimate of cost and a time frame for completion of the work.
- b. If Dakota Access agrees, the County or County's contractor shall perform the repair in the time framework specified and recover its costs from Dakota Access.
- c. Should a disagreement exist as to the:

- o The extent of the damage done to a County Highway based upon the pre- and post construction inspections of the County Highways;
- o The method, procedure or design used for the preparation of an estimate of a final repair or restoration of a County Highway;
- o Estimate of Cost plus fees for a final repair or restoration of a County Highway;

the County and Dakota Access will in good faith attempt to resolve the dispute. If, following such good faith attempt, the Parties are still unable to resolve the dispute; the Parties shall select a qualified independent third party road engineer for review and to act as a neutral intermediary to mediate the dispute within five (5) days of the effective date of such appointment. If the Parties cannot agree on a qualified independent third party road engineer, then each Party shall select a qualified independent road engineer, and those two shall select a third qualified independent third party engineer, and the three engineers shall provide to the Parties a proposed solution. The cost of the engineer(s) shall be borne equally by the Parties.

- d. If the Parties agree and/or don't reject the intermediary's proposed solution, then the County shall proceed in accordance with the agreed upon solution, complete the final repairs or restoration of the County Highway and shall recover its costs from Dakota Access or the Surety Bond as described in Section 6.C.3.
- e. If the Parties cannot agree and the County rejects the intermediary's proposed solution, the County may take unilateral action to prevent harm or protect public safety or the further degradation of its infrastructure, the cost of which shall be paid by the County.

If the appropriateness of the County action is ultimately determined to be justified either by agreement or adjudication, Dakota Access shall promptly, in the form of direct monetary compensation, reimburse the County for its expenses relating to the final repair or restoration of the County Highway, if those expenses were paid directly by the County.

- f. For the purposes of temporary or emergency repairs, the County charges shall be based on County maintained time and material cost records, which shall be made available to Dakota Access for review. County billing rates for labor shall be those established by the County and in regards to equipment and machinery, those rates approved by the Illinois Department of Transportation or the Federal Highway Administration.

Section 7. Mutual Indemnification/Hold Harmless and Liability Insurance Provisions

- A. Indemnification by Dakota Access. Dakota Access hereby release and agree to indemnify and hold harmless the County and their respective officers, employees, elected or appointed officials, and agents, and their respective heirs, executors, administrators, successors and assigns (hereinafter collectively "County Releasees") from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands against the County Releasees arising out of or relating to the performance by Dakota Access or Dakota Access's Representative(s) of their obligations under this Agreement. More particularly, but without in any way limiting the foregoing, Dakota Access hereby releases the County Releasees and agree to indemnify and hold harmless the County Releasees from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands arising directly or indirectly from any personal injury, death or property damage arising out of the use, construction, modifications, repair or improvement of any road subject to this Agreement by Dakota Access, its employees, agents, representatives, materials suppliers, vendors, transport providers or contractors, or their respective employees, agents or representatives.
- B. Indemnification by the County. The County hereby releases and agrees to indemnify and hold harmless Dakota Access and their members, officers, directors, contractors, subcontractors, employees and agents, and their respective employees, heirs, executors, administrators, successors and assigns (hereinafter collectively "Dakota Access Releasees") from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands against the Dakota Access Releasees arising out of or relating to the performance by the County of its obligations under this Agreement. More particularly, but without in any way limiting the foregoing, the County hereby releases the Dakota Access Releasees and agrees to indemnify and hold harmless the Dakota Access Releasees from any and all actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands arising directly or indirectly from any personal injury, death or property damage arising out of the use, construction, modifications, repair or improvement of any road subject to this Agreement by the County, their respective employees, agents, representatives, suppliers or contractors, or their respective employees, agents or representatives.
- C. Limitations of Liability. In no event shall Dakota Access or any of their members, officers, directors or employees or the County or any of its Board, officers or employees be liable (in contract or in tort, involving negligence, strict liability, or otherwise) to any other party or their contractors, suppliers, employees, members and shareholders for indirect, incidental, consequential or punitive damages resulting from the performance, non-performance or delay in performance under this Agreement.
- D. Required Insurance. Dakota Access shall at all times throughout the term of this Agreement maintain in full force and effect, the following insurance (Exhibit B, Dakota Access Certificate of Liability Insurance):

- a. Workers Compensation Insurance covering all employees engaged in the work to the limits required by the applicable laws in the jurisdiction in which the Project is being executed;
- b. Automobile Liability Insurance covering all motor vehicles, owned, operated and/or licensed or leased by Dakota Access and engaged in executing the Project. Limits of liability shall not be less than _____ for the accidental injury to or death of one or more persons, or damage to or destruction of property as a result of one accident; and,
- c. Commercial General Liability Insurance with minimum limits of _____ per occurrence. Without restricting the generality of the foregoing, such coverage shall include, but not be limited to bodily injury and property damage, non-owned automobile, sudden and accidental pollution liability, employer's liability, products and completed operations and contractual liability. Dakota Access shall request its insurers add the County of Montgomery, Illinois, its Board, officers and employees as additional insureds to the Commercial General Liability policy in this section 7(D)(c).

General Provisions Applicable to the Foregoing Insurance Requirements:

- i. Dakota Access may utilize any combination of primary and/or excess insurance to satisfy the above requirements.
- ii. Evidence of such insurance shall be submitted to the County prior to the initiation of any work or transportation of any materials or equipment on the roads listed on the Principal Road Use Schedule (Exhibit A).

Section 8. Miscellaneous

- A. Remedies and Enforcement. Each of the parties hereto covenant and agree that in the event of default of any of the terms, provisions or conditions of this Agreement by any Party (the "Defaulting Party"), which default is not caused by the party seeking to enforce said provisions (the "Non-Defaulting Party") and after notice and reasonable opportunity to cure has been provided to the Defaulting Party, then in such an event, the Non-Defaulting Party shall have the right of specific performance. The remedy of specific performance and injunctive relief shall not be exclusive of any other remedy available at law or in equity.

Failure of either Party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained or any of them upon the other Party imposed, shall not constitute or be construed as a waiver or relinquishment of either Party's right thereafter to

enforce and such terms, covenants, agreements and conditions, but the same shall continue in full force and effect.

- B. Severability. If any provision of this Agreement is held invalid under any applicable law, such invalidity shall not affect any other provision of this Agreement that can be given effect without the invalid provision and, to this end, the provisions hereof are severable.
- C. Amendments. No amendment or modification to this Agreement or waiver of a Party's rights hereunder shall be binding unless it shall be in writing and signed by the Party against whom enforcement is sought.
- D. Notices. All notices shall be in writing and sent (including via facsimile transmission) to the parties hereto at their respective addresses or fax numbers (or to such other address or fax number as any such party shall designate in writing to the other parties from time to time).

Dakota
Access:

County:

Montgomery County Board
c/o Montgomery County Clerk
P.O. Box 595
Hillsboro, IL 62049
Phone: 217-532-9530 FAX: 217-532-9581
email: sandyleitheiser@hotmail.com

With a copy to:

Montgomery County Engineer
1215 Seymour Avenue
Hillsboro, Illinois 62049
Phone: 217-532-6109 FAX: 217-532-6642
email: montgomerycoeng@gmail.com

- E. This Agreement may not be assigned without the written consent of the other Party.
- F. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopy shall be as effective as delivery of a manually signed counterpart to this Agreement.
- G. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the state of Illinois, irrespective of any conflict of law's provisions.
- H. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto, their respective successors, permitted assignees, legal representatives and their respective agents, contractors, subcontractors material suppliers, vendors, employees, respective transport providers and designees.
- I. Termination. Dakota Access shall have the right to terminate this Agreement at any time for convenience by providing fifteen (15) days prior written notice to the County of its intent to terminate this Agreement. In the event such termination occurs, the Surety Bond shall remain in place as follows, rather than the date specified in Section 6B of this Agreement.

In the event such termination occurs prior to "the initiation of any work on the Project", including the transportation of materials or equipment on the roads identified on Exhibit A that are subject to this Agreement, then notwithstanding anything herein to the contrary the Surety Bond, and 95 % of the sum paid to the County Highway Department for costs directly associated with the management and implementation of this Agreement shall be returned to Dakota Access and Dakota Access shall have no further liability to the County under this Agreement.

In the event such termination occurs prior to "commencement of commercial operations of the Project", the Surety Bond shall remain in place until a date two years after the date on which Dakota Access's construction activities have ceased.

This agreement shall remain in place until a date two years after the completion of the Project. For avoidance of doubt, the completion date shall be the date that the entire Project is placed into commercial operation or service.

- J. Due Authorization. This Agreement contains the entire understanding of the Parties as to the matters set forth herein, and this Agreement supersedes any prior agreements or understandings by and between

Parties, whether written or oral. Dakota Access hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of Dakota Access, LLC. The Montgomery County Clerk hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of the County.

- K. Illinois Prevailing Wage Act. With regard to any work performed on County Highways in connection with the construction of the Project, Dakota Access and Dakota Access Representative(s) shall pay wages in accordance with the Illinois Prevailing Wage Act, 820 ILCS130/0.0/et seq. The parties agree that certification by Dakota Access' Management that wages are paid in accordance with the Illinois Prevailing Wage Act shall be acceptable to the County unless otherwise required by Illinois State Statute.

