

**MEMORANDUM OF UNDERSTANDING  
BETWEEN**

**THE NATIONAL ENERGY BOARD**

**AND**

**THE NORTHERN PIPELINE AGENCY**

**CONCERNING THE PROVISION OF TECHNICAL ADVICE WITH RESPECT  
TO ENERGY MATTERS**

**PREAMBLE**

**WHEREAS** the *National Energy Board Act*, R.S.C., 1985, c. N-7 (NEB Act), as amended from time to time, authorizes the National Energy Board (NEB) to regulate, administer, manage or otherwise deal with matters related to inter-provincial and international natural gas pipelines;

**WHEREAS** the *Northern Pipeline Act*, R.S.C., 1985, c. N-26 (NP Act), as amended from time to time, authorizes the Northern Pipeline Agency (NPA) to regulate, administer, manage or otherwise deal with matters related to the Alaska Pipeline Project;

**WHEREAS** the NEB and the NPA have independent but related mandates in regard to the regulation of pipelines, and activities carried out under their respective mandates have the potential to affect the programs and responsibilities of the other;

**WHEREAS** paragraph 12(1) (b) and subsection 26(4) of the NEB Act authorizes the NEB to provide advice to NPA with respect to energy matters;

**WHEREAS** the NPA wishes to obtain technical advice through the NEB;

**WHEREAS** the NEB has the requisite expertise to provide technical advice to the NPA, either directly through its own employees or through third party contractors;

**NOW THEREFORE** the Parties hereby establish principles and procedures in this Memorandum of Understanding (MOU) for the provision of technical advice by the NEB to the NPA, and the recovery of the associated costs by the NEB from the NPA.

## **2.0 DEFINITIONS**

### **2.1 In this MOU**

“Administration Fee” is a mark up of 35% that is levied on top of rates of pay to cover costs of accommodation and employee benefits of federal employees.

“Alaska Pipeline Project” is the pipeline for the transmission of natural gas from Alaska across Canada, as contemplated in the NP Act.

“Calgary Allowance” is an allowance paid to all NEB employees, pursuant to the PIPSC-NEB Collective Agreement, the value of which is 4.95% of the employee’s annual salary.

“Market Allowance” is an allowance paid under the PIPSC-NEB Collective Agreement to employees in operational job families from NEB levels 08 to NEB level 12. Operational job families are: Economic & Financial Analysts, Environment, Market Analysts, Safety & Engineering, Socio-Economics and Lands, Supply Analysts, and Team Leaders in operational positions.

“Disbursements” mean incidental expenses incurred by employees or contractors of the NEB in the course of providing services to the NPA to the extent that such expenses are payable to compensate employees or contractors according to the NEB’s rules respecting such payments.

“Information” means records (see “Records”), as well as any oral exchanges, directions, advice, or guidance.

“NEB Business Unit Leader, Applications” is the designated NEB Executive who performs a single window function in respect of NEB business pertaining to the Alaska Pipeline Project.

“NPA Assistant Commissioner and Comptroller” is the designated NPA Executive who performs a single window function in respect of NPA business pertaining to the Alaska Pipeline Project.

“Party” means either the NPA or the NEB and their respective representatives, as the case may be, and “Parties” means both of them and their respective representatives.

“Records” mean any records and work product and includes books, documents, maps, drawings, photographs, letters, vouchers, notes, papers, correspondence, memorandum, plan, diagram, pictorial or graphic work, film, microfilm, sound recording, videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy thereof. This includes Records produced in the performance of duties under this MOU, as well as any historic records which may have arisen from other joint cooperation arrangements between the Parties.

“Services” means technical advice, emergency services, and other services provided for in the attached Schedule ‘A’ to this MOU.

### **3.0 INTERPRETATION**

#### **No Agency**

- 3.1 Nothing in this MOU is to be construed as creating an agency, partnership or joint venture relationship between the NPA and the NEB or an employer/employee or master/servant relationship between the NPA and any NEB employees.

#### **No Conflicting Interest**

- 3.2 The NEB warrants that it has no conflict of interest in carrying out the Services contemplated under this MOU. Should such a conflict arise during the term of this MOU, the NEB shall disclose it immediately to the NPA and the Parties shall discuss such conflict with a view to achieving a mutually satisfactory arrangement.

### **4.0 SERVICES**

#### **Mechanisms**

- 4.1 The NEB will provide Services to the NPA, upon request by NPA, subject to resource restraints, in accordance with this MOU using one of the following cost recovery mechanisms:
- 4.1.1 Fee for the Services of NEB Employees – Annual Rate
  - 4.1.2 Fee for the Services of NEB Employees – Hourly Rate
  - 4.1.3 Fees for Third Party (Contracted) Services
- 4.2 The NPA will pay the NEB based on the calculations in Section 5.0 - Payment.

#### **Rental Vehicles**

- 4.3 The Parties agree that in the performance of Services, NEB employees or contractors will not use their own personal vehicles but will only use rental vehicles and will obtain full insurance coverage.

#### **Applicable Laws**

- 4.4 This MOU is to be read with and interpreted in a manner consistent with the NEB Act and the NP Act, and any other law of general application and the rules of natural justice. This MOU does not create any new legal powers or duties, or fetter in any way, the jurisdiction, powers and duties of the Parties.

### **5.0 COST RECOVERY**

- 5.1 The NPA will pay the NEB for the Services according to the following calculations:

### **Fee for Services Provided by NEB Employees – Annual Rate**

- 5.1.1 The annual salary for a NEB employee providing Service(s), determined in accordance with attached Schedule 'B' to this MOU.

### **Fee for Services of NEB Employees – Hourly Rate**

- 5.1.2 The hourly rate for a NEB employee providing Service(s), determined in accordance with attached Schedule 'C' to this MOU.

### **Fees for Third Party (Contracted) Services**

- 5.1.3 Actual costs of contracted services performed by NEB contractors.
- 5.1.4 NPA will reimburse the NEB for payment of penalties if third party service contracts are unspent or cancelled at the request of NPA.

### **Travel, Hospitality, Equipment and Incidentals**

- 5.1.5 The NEB will bill the NPA quarterly for Disbursements paid or payable to NEB employees and contractors.

### **Invoices**

- 5.2 The NEB will invoice NPA on a quarterly basis or at other times mutually agreed to by the NEB and NPA. In any event, the NEB will invoice the NPA for costs related to all Services performed or contracted for in a fiscal year by March 31 of that fiscal year and provide NPA with such invoice within 30 days thereafter.
- 5.3 The NPA will make full payment to the NEB within 30 days of receiving the invoice.
- 5.4 Notwithstanding 5.3, all invoices will be paid by the end of each fiscal year.

### **Invoice Information**

- 5.5 Where Services are performed by NEB, invoices provided by the NEB will indicate, or be accompanied by documentation sufficient to indicate:
  - 5.5.1 the level of each NEB employee providing the Services billed for;
  - 5.5.2 the hourly or annual rate applicable to the employee;
  - 5.5.3 if the hourly rate is used, the number of hours of Services provided by the employee in the billing period and the month in which the services were performed; and
  - 5.5.4 the nature of the Services provided by NEB.
- 5.6 Where Services are performed by contracted third parties, the invoice will indicate, or be accompanied by documentation sufficient to indicate:
  - 5.6.1 the company and contractor name(s);
  - 5.6.2 the nature of the Services provided; and
  - 5.6.3 the cost of Services performed, including a breakdown of the hours spent and the hourly rates, if applicable.

## **Spending Limits**

- 5.6 This MOU is subject to the provisions of the *Financial Administration Act*, R.S.C., 1985, c. F-11, as amended from time to time. In particular, any payment under this MOU is subject to an appropriation of money for that purpose by Parliament.
- 5.7 The aggregate amount for which the NPA may be invoiced for under this MOU in respect of any fiscal year will not exceed the amount included in the NPA's budget for that fiscal year for the purpose of paying amounts invoiced to the NPA by the NEB under this MOU.

## **6.0 LEGAL LIABILITY**

- 6.1 This MOU indicates the intentions of the parties but does not create a contractual obligation between them.
- 6.2 Nothing in this MOU or any schedule is intended to create any right or benefit, substantive or procedural, enforceable at law by any person or organization against either party, its agencies or officers, agencies or officers carrying out programs authorized under federal or provincial law, or any other person.

## **7.0 INFORMATION MANAGEMENT AND DOCUMENT CONTROL**

### **Security Clearance**

- 7.1 The NPA and the NEB will each ensure that their staff and/or contractors obtain the security clearance required for viewing and/or working with documents and other sources of Information, written and oral.

### **Records**

- 7.2 All Records created by employees or contractors of the NEB in the course of providing Services under this MOU will remain in the custody of the NPA.
- 7.3 If Records have joint value, a copy will be provided to NEB and may be retained by the NEB for its own records purposes.
- 7.4 The Records referred to in 7.2 and 7.3 will not be disclosed by the NEB without the written consent of the NPA.
- 7.5 At reasonable times and on reasonable notice, the NEB and the NPA will provide each other with access to the Records described in 7.2 and 7.3, as well as to any historic documents that are of joint value.

### **Continuing Obligation**

- 7.6 The obligations of the NEB and the NPA under 7.2 – 7.5 survive the expiration or termination of this MOU.

## **8.0 DISPUTE RESOLUTION**

- 8.1 Step 1: Any dispute relating to this MOU and the Services performed or to be performed will be referred to the NEB Business Unit Leader and the NPA Assistant Commissioner and Comptroller for joint consideration and resolution. Step 2: If resolution is not possible following Step 1, the dispute will be brought to the NEB Deputy Head and the NPA Commissioner.
- 8.2 The provision of services as contemplated under this MOU will continue during the implementation of the dispute resolution process under this section.

## **9.0 ENTRY INTO FORCE, TERM, REVIEW, AMENDMENTS AND TERMINATION**

### **Entry into Force**

- 9.1 This MOU shall enter into force by signature of the Parties.

### **Term**

- 9.2 This MOU will terminate in 5 years unless there is cause and the Parties agree, in writing, to renew the MOU.

### **Interim Review and Reporting**

- 9.3 The NPA and the NEB will jointly undertake an annual review of services and provide a report on the effectiveness of the MOU, including any recommendations, to the NEB Business Unit Leader, Applications and the NPA Assistant Commissioner and Comptroller, within 60 days of the yearly anniversary of this MOU coming into force.

### **Amendments**

- 9.4 This MOU may be amended at any time by the written consent of the Parties as executed by their duly authorized representatives.

### **Termination**

- 9.5 This MOU may be terminated by either Party on its giving at least three months notice in writing to the other Party.

## **10.0 NOTICES**

- 10.1 Any notice or communication required to be given under this MOU will be made in writing and will be delivered personally, sent by fax, electronic communication or by first class prepaid mail to the addresses listed below.

If to the NEB:

Business Unit Leader, Applications  
National Energy Board  
444 – Seventh Avenue SW  
Calgary, AB T2P 0X8  
Tel: (403) 299-2793  
Fax: (403) 292-5503  
Email: jamie.kereliuk@neb-one.gc.ca

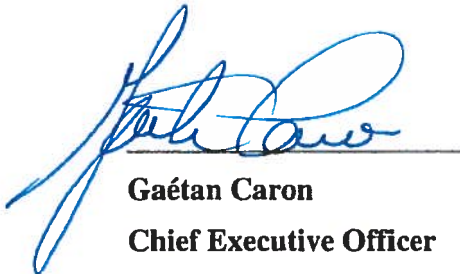
If to the NPA:

Assistant Commissioner and Comptroller  
Northern Pipeline Agency  
615 Booth Street, room 412  
Ottawa, ON K1A 0E9  
Tel: (613) 995-4297  
Fax: (613) 996-5354  
Email: chrystia.chudczak@nrcan-rncan.gc.ca


**Receipt of Notice**

10.2 The date of receipt of any notice shall be deemed to be:

- 10.2.1 if personally delivered or sent by courier, the date of delivery;
- 10.2.2 if sent by certified or ordinary mail, 7 business days after mailing;  
and
- 10.2.3 if sent by electronic communications or fax, 24 hours after the time  
of transmission, excluding from the calculation, weekends and  
public holidays.



**Gaétan Caron**  
**Chief Executive Officer**  
**National Energy Board**



**Serge Dupont**  
**Commissioner**  
**Northern Pipeline Agency**

March 29, 2012  
Date

AVR 25 2012  
Date