# 2019-002473

Klamath County, Oregon

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PACIFIC CONNECTOR GAS PIPELINE, LLC 111 SW 5<sup>TH</sup> AVENUE, SUITE 1100 PORTLAND, OR 97204

DOCUMENT TITLE(S): RIGHT OF WAY AND EASEMENT AGREEMENT

REFERENCE NUMBERS(S) OF RELATED DOCUMENTS

# **GRANTOR(S)**

COLLINS PRODUCTS LLC, AN OREGON LIMITED LIABLILITY COMPANY

## GRANTEE(S)

PACIFIC CONNECTOR GAS PIPELINE, LP, A DELAWARE LIMITED PARTNERSHIP

#### **LEGAL DESCRIPTION**

Those certain parcels of land described as lying in Sections 13 and 24, in Township 39 South, Range 8 East, Willamette Meridian, and Section 18, Township 39 South, Range 9 East, Willamette Meridian, all located in Klamath County, Oregon, being more particular described in Exhibit A-1.

ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER

R583826, R580570, R580561

#### RIGHT OF WAY AND EASEMENT AGREEMENT

This RIGHT OF WAY AND EASEMENT AGREEMENT (the "Agreement"), is made and entered into effective as of February 4, 2019 (the "Effective Date") by and between, Collins Products LLC, an Oregon limited liability company ("Grantor"), formerly known as Collins Newco LLC, whose address is 21900 SW Town Center Loop West, Suite 300, Wilsonville, OR 97070, and Pacific Connector Gas Pipeline L.P., a Delaware limited partnership ("Grantee"), acting through its general partner, Pacific Connector Gas Pipeline, LLC, a Delaware limited liability company, whose address is 5615 Kirby Drive, Suite 500, Houston, TX 77005.

#### **RECITALS**

- A. Grantor is the owner of certain real property in Klamath County, Oregon, lying in Sections 13 and 24, Township 39 South, Range 8 East, Willamette Meridian and Section 18, Township 39 South, Range 9 East, and more particularly described on attached Exhibit "A-1" (the "Property"),
- B. Grantee is in the process of planning, locating, permitting, developing and constructing a single 36-inch interstate natural gas pipeline and related facilities which will extend across Klamath, Jackson, Douglas and Coos Counties, Oregon, for purposes of transporting natural gas (such pipeline, the "Pipeline" and the permitting, planning and construction of the Pipeline and the operation and maintenance of the Pipeline collectively, the "Project").
- C. Grantee desires to acquire Easements (as defined in Section 1 below) under, within, over and across the Property for Pipeline and Project purposes, and Grantor is willing to grant and convey to Grantee such Easements on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for the valuable consideration herein stated, it is mutually agreed by and between the parties hereto as follows:

#### **AGREEMENT**

#### 1. Grant of Easements.

- 1.1 <u>Grant of Pipeline Easement.</u> Subject to the terms and conditions set forth in this Agreement, Grantor hereby grants and conveys to Grantee, its successors and assigns, a non-exclusive easement and right-of-way ("Pipeline Easement") to locate, survey, construct, entrench, maintain, repair, replace, protect, inspect and operate a 36" outside diameter buried natural gas pipeline, cathodic protection equipment and/or appurtenances which may be constructed above or below ground, including but not limited to valves and metering equipment, electrical and/or communications cable, underground conduit, splicing boxes; and roads (collectively, the "Facilities") which may be on, over, under and through the Property. Grantee agrees there shall be no above ground installations or structures on the easement without the express written consent of Grantor, which may be withheld in Grantor's sole discretion, except pipeline markers and/or cathodic protection test posts at fence lines, roadways, railroads, ditches and waterways or as dictated by governmental regulations. The Pipeline Easement is <u>fifty (50)</u> feet in width being <u>twenty-five (25)</u> feet on each side of the centerline of the Pipeline as finally constructed. For purposes of illustration, a depiction of the intended location of the Pipeline Easement as of the Effective Date is set forth on attached Exhibit "A-2." Upon completion of construction of the Pipeline, Grantee shall provide Grantor a centerline survey description of the as-built" pipeline.
- 1.2 <u>Grant of Road Easements</u>. Subject to the terms and conditions set forth in this Agreement, Grantor hereby grants and conveys to Grantee, its successors and assigns, non-exclusive easements and rights-of-way fifty (50) feet in width, being twenty-five (25) feet in width on either side of the centerlines of the roads (each a "Road" and collectively, the "Roads") now existing or to be constructed hereafter on the Property which are located approximately in the locations illustrated on the

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maps attached as Exhibit "B-1" through "B-2" (each a "Road Easement" and collectively, the "Road Easements"). The Pipeline Easement and Road Easements collectively are referred to herein as the "Easements." The Road Easements granted herein shall be for purposes of ingress to and egress from the Facilities for purposes of constructing, maintaining, repairing, replacing, protecting, inspecting and operating the Pipeline and the Facilities, and shall include the right to park and to bring across the Roads all vehicles, equipment, materials and personnel which are necessary for constructing, maintaining, repairing, replacing, protecting, inspecting and operating the Pipeline and the Facilities, Grantee shall not block roads with equipment or otherwise interfere with Grantor's use of the roads for its maintenance and operation of Grantor's mill facilities. The Road Easements granted herein shall be subject to all terms and conditions set forth in this Agreement.

- AS-IS; Easements Subject to Prior Interests. The rights of Grantee under this Agreement are subject to any and all prior rights and interests, including all liens, easements, servitudes, rights of way, oil, gas, and mineral leases, and all other grants or reservations of record affecting the Property. Grantee accepts the Easements granted herein and any other portion of the Property related to the Easements strictly "AS-IS," with all defects, apparent or latent, without any representation or warranty by Grantor or any representative of Grantor, expressed or implied. Grantee hereby assumes all risk of their use of the Easements and the exercise of their rights under this Agreement. Without limiting the foregoing, the Easements and the rights of Grantee herein are granted subject to all matters of record and matters that a complete survey and inspection of the Easements and related areas of the Property would reveal.
- 1.4 Exercise of Rights by Permittees. Grantee may permit its Permittees to exercise the rights granted to it herein provided such use by any Permittee is directly related to the limited purposes for which the Easements herein are granted. For purposes of this Agreement, the term "Permittee" and "Permittees" means, individually and collectively, the agents, affiliates, contractors, subcontractors, licensees, vendors or suppliers of the Grantee furnishing materials, labor or services, performing any activities on behalf the Grantees or otherwise exercising any rights of the Grantees under this Agreement.
- 2. **Consideration**. Grantor's execution and recording of this Agreement acknowledges receipt from Grantee of the monetary consideration paid by Grantee for the Easements granted herein. There shall be no refund of consideration paid to Grantor for the Easements granted herein by reason of termination of this Agreement, lack of development of the Pipeline, abandonment of the Easements, or for any other reason.
- 3. **Single Pipeline; No Enlargement of Purpose**. The Pipeline Easement granted to Grantee is for a single buried natural gas delivery pipeline not to exceed 36" in outside diameter and related surface (subject to Section 1.1) and subsurface Facilities. The Pipeline shall only be used for the transportation of natural gas. The construction within the Pipeline Easement of additional or multiple pipelines or replacement of the Pipeline with a single pipeline of increased outside diameter shall not be permitted without the prior written consent of Grantor, or its applicable successors in title to the Property, and an appropriate recorded amendment to this Agreement. The Easements shall only be used by Grantee for the purposes expressly provided in this Agreement, and Grantee may not use the Easements for any other purposes, including, but not limited to hunting, fishing, camping or recreational activities.
- 4. **Minimum Depth**. The pipeline constructed by Grantee shall, at the time of construction, be buried with a minimum of three (3) feet of cover from top of the pipe, after giving effect to construction settlement, or such greater minimum depth as may be required by any applicable law. The pipeline constructed by Grantee shall be buried and maintained at a minimum of five (5) feet cover from the top of the pipe to road surface at all locations where the pipeline intersects a public or a private road used by Grantor for management of the Property.
- 5. **Pipeline Marking and Signage**. Upon completion of construction of the Pipeline and prior to commencement of operations, Grantee shall conspicuously mark the location of the Pipeline at

visible locations along the right of way through the Property with signage warning of the Pipeline location and avoidance of any ground disturbing or excavating activities on or near the Pipeline. Grantee shall maintain the signage for so long as the Pipeline remains in use.

# 6. Construction, Repair and Maintenance of Facilities.

- 6.1 <u>Initial Construction</u>. The parties acknowledge and agree that the initial location, construction, inspection and testing of the Facilities occurring prior to the first day of gas service (the "In-Service Date") shall be performed under and in accordance with the terms, conditions, specifications and restrictions set forth in the Temporary Construction Easement Agreement between Grantor and Grantee.
- Maintenance of Pipeline. From and after the In-Service Date (the "Operational Period"), Grantee shall have the right of ingress and egress to and from the Facilities over and through the Easement, with the right to use the Roads on the Property for the purposes of maintaining the Facilities in good working order, repair and condition, and at all times to the minimum standards imposed by, and in compliance with the requirements of, prudent utility practices and all applicable law governing the ownership and operation of the Pipeline and the transportation of natural gas through the Pipeline, including, but not limited to the pipeline safety and natural gas transportation standards imposed by USDOT and the Pipeline and Hazardous Materials Safety Administration of the USDOT. Grantee shall be responsible for the safe operation of the Pipeline and shall respond to any release or threatened release of natural gas or other Hazardous Substances from the Facilities in an expeditious manner and in accordance with applicable law.
- 6.3 <u>Temporary Construction Areas and Crossings</u>. For any maintenance, repair, reconstruction, replacement or removal of the Pipeline or Facilities during the Operational Period, Grantee may temporarily utilize additional land along both sides of the Pipeline Easement in the areas identified on attached Exhibit A-2" (such additional areas, "Temporary Work Areas"). Grantee shall construct temporary crossings across open trenches and ditches during any construction or maintenance activities if necessary to assure continued access, ingress and egress for Grantor to its mill site and facilities.
- 6.4 Notice and Work Plans. Prior to commencing any non-emergency repair or alteration of the Facilities or any Road, Grantee shall make commercially reasonable efforts to provide advance notice to Grantor of its surface activities on the Property (which commercially reasonable efforts may include without limitation first-class mail, verbal communication by telephone, electronic mail, facsimile, and/or other electronic medium of communication as may be agreed to by the parties) and shall furnish to Grantor, for review and comment as to work coordination and site safety, a detailed description of the work to be performed by Grantee or its Permittees, including, without limitation, the name of all proposed contractor(s), estimated time frame for completion of the work, and plans and drawings for the applicable Facilities, Roads or alterations thereto (each a "Work Plan"). Grantee shall not commence any such non-emergency repair or alteration until after Grantor has approved the applicable Work Plan, which approval shall not be unreasonably withheld, conditioned or delayed. Any such Work Plan shall be deemed approved unless Grantor notifies Grantee in writing within three (3) business days of receipt of Grantee's Work Plan stating in reasonable detail any Grantor objections to the Work Plan and Grantor's proposed resolution to the objections. Grantor shall not have a right to approve or reject the design and function of the Facilities itself, it being the intent of the parties that the review and approval right under this Section be solely for the purpose of ensuring site safety and work coordination in light of Grantor's ongoing operations on and around the affected portions of the Property. No approval given by the Grantor with respect to Grantee's plans or with respect to any work performed by Grantee shall operate as a waiver of Grantee's obligations to perform the work in accordance with the requirements of this Agreement or with any other requirement or standard of care imposed upon the Grantee under this Agreement or applicable law with respect to such work, nor shall such approval in any way relieve the Grantee of any liability to any person for personal injury or death of any person or for any damage to or loss or destruction of property of any person (including the property of Grantor). In the event that an emergency condition is deemed, in Grantee's sole discretion, to exist with respect to the Facilities, Grantee shall have no obligation under this Section to make commercially reasonable efforts to provide

advance notice or to submit a Work Plan to Grantor, but Grantee shall give Grantor notice of the emergency activities as soon thereafter as possible and will inform Grantor of the actions taken and worked performed on the Property.

- 6.5 <u>Deviations.</u> The parties anticipate that during alteration or repair of the Facilities and any Roads, Grantee may encounter certain unforeseen obstacles, subsurface soil or geographical features or other obstructions that may require the Pipeline, Facilities, or road alignments to be realigned or deviated from their original alignments. Grantee shall inform Grantor of any such obstruction so encountered and propose the realignment of the Facilities or Roads that the Grantee believes necessary (or that any regulatory authority determines is required) to avoid such obstruction. Grantee shall obtain the approval of Grantor to the proposed realignment or deviation prior to construction of any realigned or deviated course (which approval shall not be unreasonably withheld). In the event of any realignment approved by Grantor, the parties shall execute and record appropriate amendments to this Agreement to reflect the as-built description of any realigned Facilities as provided in Section 1.1, *supra*. Grantor may require additional payment from Grantee for any expansion in scope of easement or other economic impacts on the Property which are necessary to accommodate any realigned course or any additions to the scope of the Easements.
- 6.6 <u>Warnings</u>. Grantee shall provide Grantor with written notice as to whether natural gas being transported in the Pipeline is scented or unscented. Grantee shall construct and maintain appropriate warning signs and markers advising users of the Property of the location of the Pipeline.
- 6.7 <u>Maintenance Schedule and Contact Person</u>. Grantee shall provide Grantor with a written plan and schedule for Grantee's maintenance, upkeep and inspection of the areas and improvements within the Easements. Grantee also shall provide Grantor with a contact person designated by Grantee, including name, address, 24/7 telephone access number, fax number and email address. The contact person shall have information and knowledge pertinent to the Pipeline and Easements in order to address questions and concerns from Grantor. In the event the contact person is replaced or changed by Grantee, Grantor shall be given reasonable prior written notice of the change, along with the required information for the new contact person.
- 6.8 <u>Restoration</u>. Grantee agrees that within a reasonable time following the completion of its Pipeline maintenance and repair work and subject to weather and/or soil conditions, Grantee shall, as near as practicable, restore the Property to its original contour and condition, at Grantee's sole risk and expense.
- Damage to Property. Grantee agrees to repair, or if such damage cannot be repaired, to compensate Grantor for damages that directly result from Grantee's use of the Pipeline Easement or Road Easements, including but not limited to, any damages to growing crops, pasture, livestock, gates, fences, driveways, parking areas, roadways, road structures, bridges, culverts, ditches, landscaping, drains, drain lines, drain tiles, utilities and other real or personal property as provided in this Section. Any other recognizable damages to other real or personal property that result from its use of the Pipeline Easement or Road Easements shall be repaired by Grantee, or the Grantor shall be compensated for such repairs. Grantee will promptly notify Grantor of any property damage occasioned by Grantee's or its Permittees activities under this Agreement. If any such property is destroyed or is damaged to such extent that it cannot be repaired to at least as good a condition as existed prior to such damage, Grantee shall replace such property at Grantee's own expense or shall pay over to Grantee the fair market value of such damaged or destroyed property. Within thirty(30) days of receiving any property damage notice from Grantee, or within thirty (30) days following the date that Grantor actually learns of the occurrence of such loss or damage and notifies the Grantee of same, Grantor may, at its option, elect to repair or replace any property so damaged or destroyed by Grantee or its Permittees itself and obtain reimbursement from Grantee for the reasonably documented costs incurred by Grantor in obtaining such repair or replacement.

- 8. **Easement Clearing**. Grantee shall have the right to cut and to keep clear without payment of damages all trees, brush, native growth or foliage and other obstructions within the Pipeline Easement.
- 9. Compliance with Applicable Law, Permits and Regulatory Requirements. Grantee shall conduct (and shall cause its respective Permittees to conduct) all operations and activities required or permitted under this Agreement in accordance with applicable law and the terms and conditions of all authorizations, permits, approvals or certificates from governmental authorities with respect to the Project, the activities of the Grantee or its Permittees in connection therewith, and the existence of the Pipeline on the Property. For purposes of this Agreement, "applicable law" means all laws, rules, regulations and agency or judicial orders now or hereafter in force of all federal, state and other governmental authorities to the extent applicable to the Pipeline and the activities of Grantee and its Permittees under this Agreement, including, but not limited to, (a) the Natural Gas Act, (b) all applicable rules, regulations and agency or judicial orders of the Federal Energy Regulatory Commission ("FERC"), the United States Department of Transportation and the Pipeline and Hazardous Materials Safety Administration; (c) the Oregon Forest Practices Act; and (d) all applicable laws, rules, regulations and orders relating to (i) the preservation and protection of the environment, (ii) the use, storage, application, transportation, presence or absence of hazardous substances or materials of any kind, and (iii) the designation, classification and protection of any species of plant or animal.

### 10. **Property Protection Covenants**.

- 10.1 <u>Generally.</u> Grantee shall not perform any disorderly conduct or commit any nuisance on the Property, and shall maintain the Property in an orderly, clean and sanitary manner as required by Grantor. Grantee shall carry on all activities on the Property in a careful manner and shall comply, at Grantee's expense, with all laws, regulations and permits of any municipal, state, or federal authority that are applicable to Grantee's activities, Grantee's agreement to comply shall include any programmatic or generally applicable local, state or federal government regulatory permits held by Grantor as of the Effective Date, that are applicable to the Property and Grantee's activities on the Property under applicable law, including, without limitation, incidental take or enhancement of survival permits held by Grantor. Grantor reserves the right to require Grantee to take affirmative steps to review and comply with permits upon written notice by Grantor and to promptly comply when Grantor requests specific action to conform the activities with the requirements of a permit noticed to Grantee. Grantor shall provide copies of Grantor's permits to Grantee, and as such permits are amended or renewed, such amendments or renewals.
- 10.2 <u>Reporting.</u> Grantee shall promptly report to Grantor any violations of any laws, regulations, or permits relating to the activities by Grantee or its Permittees of which Grantee has knowledge and shall promptly send to Grantor a copy of any notice of violation received by Grantee that relates to the activities. A copy of all citations or other written documents Grantee receives from any agency shall accompany the notice of violation.
- 10.3 <u>Safety</u>. Grantee and its Permittees shall comply with all applicable federal, state, and local safety and health laws, regulations and standards and Grantor's plant safety and security procedures. Grantee and its contractors shall participate in a plant safety briefing with Grantor, prior to the start of any construction activity. Grantee is responsible for safety and health conditions in connection with Grantee's activities and has primary and ultimate responsibility for instructing and supervising its Permittees on safe work practices. Grantee shall immediately notify Grantor and others at the Property whenever Grantee becomes aware of a hazard that Grantee cannot remove or correct immediately.
- 10.4 <u>Water Bodies</u>. Grantee, consistent with its state and federal authorizations, will exercise every reasonable precaution to prevent damage and sedimentation to rivers, streams, lakes, riparian areas and other environmentally sensitive areas of which it has knowledge or discovers in the course of carrying out its activities under this Agreement. To that end, the Grantee, consistent with its

state and federal authorizations, will take all protective measures reasonably necessary to control dispersal of surface water to minimize muddy water from entering water bodies.

- Hazardous Substances. Grantee and its Permittees shall not dump, spill or release any Hazardous Substances on the Property in violation of applicable law, and will comply with all applicable law regarding use, storage, and handling of Hazardous Substances. Grantee and its Permittees shall not bring Hazardous Substances onto the Property except to the extent, and in quantities necessary, to exercise its rights under this Agreement. In the event of a spill or release of Hazardous Substances in violation of applicable law, Grantee shall promptly comply with all federal, state, and local spill notification and response requirements and shall notify Grantor of the spill event. Grantee shall be responsible for the response and restoration costs of any release of Hazardous Substances in connection with this Agreement, and shall indemnify, defend, and hold harmless the Grantor Indemnified Persons from any liability arising from claims or damages in connection with such release. As used in this Agreement, the term "Hazardous Substance" means any fuels, oils, pollutants, contaminants, chemicals or hazardous, toxic, or dangerous wastes, substances, chemicals or materials regulated or controlled pursuant to any applicable law now or at any time hereafter in effect. For the avoidance of doubt, if any pollutant, Hazardous Substance, contaminated waste or solid waste is released by Grantee upon the Property or any other Property of Grantor or any of its Permittees in violation of applicable law, Grantee shall be responsible for and timely pay all costs of clean-up, remediation, and other costs related to and arising from the event, including, but not limited to fines and penalties.
- 10.6 <u>Hours of Operation</u>. Grantee shall conduct its non-emergency activities on the Property only during daylight hours. Any night or non-daylight hour work (other than emergency work deemed necessary in Grantee's sole discretion) shall require the prior consent of Grantor.
- 11. **Grantor's Reservations; Concurrent Use.** Grantor reserves the right to use and enjoy the Property except for the purposes granted in this Agreement and the limitations on Grantor's use set forth herein. Grantor shall have the right to use, cross and recross all roads and to manage, work, harvest and use the land granted within the Easements as provided in this Agreement, so long as it shall not hinder, conflict or interfere with Grantee's surface or subsurface rights, including its right to cut and keep clear portions of the Pipeline Easement area as set forth above, or disturb its ability to operate, maintain and protect its Facilities. No new road, reservoir, excavation, change in surface grade, obstruction or structure shall be constructed, created or maintained within the described 50 foot Pipeline Easement area without Grantee's written permission, which shall not be unreasonably withheld, conditioned or delayed.

#### 12. Pipeline Integrity.

- 12.1 <u>Roadways</u>. The weight limitations of all vehicles operating within, over, or across the Pipeline Easement at identified pipeline road crossings and areas with pipe located within the roadway, shall comply with permitted legal load limits and shall not exceed 60,000 pounds per axle or 200,000 pounds per load without prior written permission of Grantee. Application for loads to be operated within, over, or across the Pipeline Easement at identified pipeline road crossings and areas with pipe located within the roadway that exceed these limits will be submitted for review and approval through Grantee's local Operating District at least twenty (20) days in advance of need. This restriction does not apply to the existing rail lines located on the Property. The pipeline where it crosses railroad lines will be at a depth that will not be impacted by load limits
- 12.2 <u>General Integrity</u>. Grantor shall provide written notification to Grantee of Grantor's plans for blasting, rock, cinder, or gravel pit work to be performed within one hundred (100) feet of the Pipeline Easement. Grantee shall be provided with sixty (60) days to develop an encroachment procedure. Grantee, at its sole expense, is responsible for preserving the integrity of the Pipeline and its facilities.
- 13. **Inspection.** Prior to any of Grantor's work activities requiring "Surface Disturbance" within the Pipeline Easement, Grantor shall notify Grantee at least seven (7) days prior to such activity

and provide Grantee with the opportunity for an authorized Grantee representative to be present during Surface Disturbance activities and to remain present on site as long as power equipment is being utilized. For purposes this paragraph, Surface Disturbance is new road construction or any activity within the Pipeline Easement that disturbs the soil deeper than twelve inches (12") or lowers the original grade of a road surface, or otherwise presents a significant risk to the integrity of the Pipeline. Surface Disturbance does not include road grading, road rocking, or heavy equipment travel that complies with Section 12.1.

14. "One-Call" Compliance. Grantor and Grantee shall conduct all operations and activities within the Pipeline Easement area in compliance with Oregon Revised Statues Chapter 757 and Oregon Administrative Rules 952-001-0001 through 952-001-0090 as modified and revised.

#### 15. Indemnification.

- Indemnification. To the fullest extent permitted by law, Grantee shall indemnify, protect and hold Grantor and Grantor's officers, directors, shareholders, employees, agents, parents, subsidiaries and affiliates (collectively, "Grantor Indemnified Persons") harmless from and against any and all claims, losses, liabilities, judgments, damages, costs, expenses, demands and suits (including but not limited to fees and expenses of attorneys, experts, consultants, arbitrator(s) fees and arbitration administrative costs/court costs and fees and all other costs of litigation and arbitration, whether incurred in investigation, at trial and on appeal or in bankruptcy proceedings), or injury (collectively, "Claims and Liabilities") arising out of or relating to, or alleged to arise out of or be related to the exercise by Grantee of its rights under this Agreement, or out of the existence of the Pipeline, or the work of Grantee or its respective Permittees or anyone directly or indirectly employed by Grantee, or for whom Grantee may be liable, except to the extent caused by the negligence or culpable conduct of Grantor. Without limiting the generality of the foregoing, the indemnity obligations provided in this Section will include any Claims and Liabilities whatsoever arising out of or relating to: (i) the death of or bodily injury to any person; (ii) physical damage to or destruction of any property; (iii) the construction, maintenance, repair, removal and operation of the Pipeline, including but not limited to any Claims and Liabilities arising out of breakage, failure, rupture or malfunction of the Pipeline; (iv) any release, spill or discharge of Hazardous Substances on the Property or other lands caused by Grantee, its respective Permittees or anyone directly or indirectly employed by Grantee, or for whom Grantee may be liable, or the presence (actual or reasonably suspected) of Hazardous Substances in, on or under the soil, groundwater, surface water or other environmental media or any structure or improvement on the Property or other lands caused by Grantee or its Permittees, if any investigatory, remedial, removal reporting or other response action is required; and (v) any breach or failure by Grantee to comply with, or to cause its Permittees to comply with, any provision of this Agreement.
- 15.2 <u>Duty to Defend</u>. Grantee shall at its own cost, expense and risk, defend any and all claims, investigations, demands and suits that may be brought or instituted against Grantor by third parties arising out of or related to, or alleged to arise out of or be related to the exercise by Grantee of its rights under this Agreement, or out of the existence of the Pipeline, or the work of Grantee or its Permittees or anyone directly or indirectly employed by Grantee, or for whom Grantee may be liable, including but not limited to claims, investigations, demands, and suits by governmental, state and local agencies, or employees of Grantee and any party for whose acts it may be responsible, except to the extent caused by the negligence or culpable conduct of Grantor. The Grantor shall have the right to approve counsel to be employed in its defense.
- 15.3 <u>Duty to Reimburse</u>. Grantee will reimburse the Grantor for any and all legal costs and related expenses incurred by Grantor in connection with Grantee performing the indemnification and defense obligations under this Section 15 or in enforcing such indemnity and defense rights granted in this Section 15.
- 15.4 <u>Damages Limitations</u>. In any and all claims against Grantor by third parties, the Grantee's indemnification obligations under this Agreement shall not be diminished or limited in any way by any limitation on the amount or type of costs or damages (including any consequential damages

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waiver, punitive damages waiver or other limitations of liability) payable by Grantee under agreements between Grantee or such person.

- 15.5 <u>Assignees Bound</u>. Each assignee of Grantee's rights under this Agreement, or any interest therein, shall be bound by the terms of this Section 15, and agrees to indemnify, defend and reimburse Grantor in the same manner as provided in this Section 15.
- 15.6 <u>Survival</u>. Grantee's indemnification, defense, reimbursement and related obligations under this Section 15, and in each other section of this Agreement imposing on Grantee any obligation of indemnification, defense or reimbursement, shall: (i) survive the expiration or earlier termination of this Agreement (including termination by reason of abandonment of the Easements); (ii) extend to claims brought after expiration or termination of this Agreement; and (iii) not be limited in any manner by Grantee's insurance coverage under this Agreement.
- 15.7 <u>Prior Environmental Liabilities</u>. Grantor agrees to indemnify Grantee against any contamination of soils or groundwater by release of Hazardous Substances by Grantor during its ownership of the Property except to the extent liability arising out of soil contamination is contributed to or increased by the actions of Grantee or its Permittees.
- 16. **Assumption of Risk**. Grantee assumes all of the known and unknown risks attendant or incidental to its activities (and the activities of its Permittees) on the Property, including, but not limited to, the risk of serious bodily injury or death to the personnel of Grantee or its Permittees and the risks of damage to or destruction of property owned by any person. Grantee represents and warrants to Grantor that it is knowledgeable and experienced in regard to the activities contemplated under this Agreement, and with the general geographic area in which its activities under this Agreement are to be performed, and that it is entering into this Agreement based upon its own assessment, knowledge and experience of site conditions (including weather, slopes and geographic features), access features, labor and equipment supply considerations, and related items. Grantor makes no representations or warranties whatsoever to Grantee or its Permittees as to the present or future condition of the Property, the adjacent properties, any roads or the condition of traffic thereon or the fitness or suitability of the Property for Grantee's intended purposes.

#### 17. Insurance.

- Generally. Grantee will at its own expense obtain, and will thereafter at its own expense continuously keep in full force and effect at all times that this Agreement remains in effect and for any greater periods specified below, the insurance coverage meeting the minimum amounts and requirements listed below (the "Required Insurance"), subject in each case to all requirements, limits and conditions relating to such Required Insurance as are more particularly set forth below. Grantee's procurement and maintenance of the Required Insurance shall be a condition precedent to Grantee's or any Permittee's right to commence or continue any activities on the Property under this Agreement. Grantor's failure at any time to ascertain that Grantee (or any of it Permittees) have not strictly complied with the requirements of this Agreement with respect to Required Insurance shall not constitute a waiver of Grantee's (or its Permittees') obligations set out herein with respect to Required Insurance or Grantor's rights thereafter to require strict compliance with such obligations. Grantee acknowledges that Grantee's (and its Permittees') procurement and maintenance of the Required Insurance is a material factor in Grantor's decision to enter into this Agreement and in allocating risks under the Agreement, and but for the procurement and maintenance of the Required Insurance, Grantor would not have entered into the Agreement for the same compensation or on the other risk allocation terms as are currently set forth in this Agreement.
- 17.2 <u>Approved Insurers</u>. All insurance required herein shall be written by companies with Best's Key Rating Guide of A- or better with a financial size rating of at least VIII, or as deemed acceptable by Grantor.

- 17.3 <u>Commercial General Liability</u>. Grantee shall carry primary Commercial General Liability insurance covering claims for bodily injury, property damage and personal injury arising out of this Agreement on a form providing coverage at least as broad as the current ISO Commercial General Liability Insurance policy (Occurrence Form, number CG 00 01) without any endorsements narrowing such coverage. This insurance shall provide, expressly or by separate endorsement or extension, coverage for all operations and, without limitation, include coverage for contractual liability, products/completed operations coverage, cross-liability (i.e. no cross-suit exclusions) independent subcontractors, products liability, completed operations coverage, and pollution arising out of heat, smoke or fumes from hostile fires, with limits not less than:
  - \$1,000,000 each occurrence;
  - \$1,000,000 each occurrence for personal injury and advertising injury;
  - \$2,000,000 aggregate for products and completed operations;
  - \$2,000,000 general aggregate limit, which shall apply separately to operations on the Property.

Additionally, the commercial general liability policy(ies) shall not exclude coverage for X, C or U (Explosion, Collapse, or Underground) hazards.

- 17.4 <u>Workers' Compensation and Employer's Liability Insurance</u>. Workers' Compensation insurance shall be provided as required by applicable law or regulation. Employer's Liability insurance shall be provided in amounts not less than:
  - \$1,000,000 each accident for bodily injury by accident;
  - \$1,000,000 policy limit for bodily injury by disease; and
  - \$1,000,000 each employee for bodily injury by disease.

Grantee, on its own behalf and on behalf of its insurers and other providers of coverage, waives any and all right of recovery and right to subrogation in connection with matters to which such insurance applies.

- Automobile Liability Insurance. Grantee shall carry automobile liability insurance, including coverage for all owned, hired and non-owned automobiles. This coverage shall apply to both on and off site work and include loading and unloading of vehicles and shall name Grantor as an additional insured. The limits of liability shall be no less than \$1,000,000 combined single limit each accident for bodily injury and property damage. Automobile Liability Insurance shall be provided pursuant to a coverage form at least as broad as ISO form CA 0001. If Grantee is subject to the Motor Carrier Act of 1980, the Motor Carrier Act endorsement MCS-90 must be obtained and attached to the policy.
- 17.6 <u>Umbrella Liability</u>. Grantee shall carry one or more umbrella or excess policies over the foregoing liability insurance policies with a total combined limit of not less than \$25,000,000 per occurrence and in the aggregate.
- 17.7 <u>Required Endorsements</u>. Except as provided below, the policies required under this Section shall be endorsed, in a form and manner acceptable to Grantor, providing as follows:
- (a) Additional Insureds: Except with regard to Workers' Compensation and Employer's Liability insurance, Collins Products LLC and the Grantor Indemnified Persons, shall be named as additional insureds, with respect to liability arising out of the activities of the Grantee or its Permittees. Such additional insured endorsement for Commercial General Liability coverage shall provide for additional insured status on both an on-going and completed operations basis and shall not require that the work performed be for the benefit of Grantor. The additional insured requirement for Commercial General Liability coverage is for the duration of this Agreement.
- (b) Waiver of Subrogation. Grantee hereby waives, for itself and on behalf of its respective insurers, any subrogation claim against Grantor and any Grantor Indemnified Person by its

# **RIGHT OF WAY AND EASEMENT AGREEMENT - PAGE 10**

insurers under the policies specified above, for damages arising from any peril insured against under such policies. If required to perfect such waiver on behalf of its insurers, Grantee will use commercially reasonable efforts to cause Grantee's insurance carriers to execute such further written instruments as necessary to waive their rights of subrogation against the Grantor Indemnified Persons, their affiliated companies and their respective boards of directors, managers, employees, representatives, consultants, and agents.

(c) Coverage by Occurrence. All liability coverages must be on an "occurrence" basis as opposed to "claims made".

#### 17.8 Other Requirements.

- (a) Deductibles and Notices. Grantee shall be responsible for any deductible or self-insured retention amount. The Grantee agrees to provide at least thirty (30) days' prior written notice to Grantor of any cancellation of insurance, reduction in coverage or reduction in limits available to Grantor.
- Evidence of Coverage. Prior to the commencement of activities on the (b) Property, Grantee shall furnish Grantor a certificate(s) of insurance, dated and signed by a stated, authorized agent for the insuring company or companies, in a form acceptable to Grantor and containing a representation that coverage of the types listed above is provided with the required limits. Any acceptance of insurance certificates by Grantor shall in no way limit or relieve Grantee of its duties and responsibility under this Agreement including the duty to indemnify, defend and hold harmless the Grantor Indemnified Persons under other provisions hereof. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Grantee for liability in excess of such coverage nor shall it preclude Grantor from taking such other actions as is available to it under any other provision of this Agreement or law. Should any insurance policy lapse or be canceled during the term of this Agreement, Grantee shall, prior to the effective expiration or cancellation date, furnish Grantor with evidence of renewal or replacement of the policy. Failure to continuously satisfy insurance requirements as herein provided is a material breach of contract. In the event the Grantee fails to maintain any insurance coverage required, Grantor may, but is not required to, maintain such coverage and charge the expenses to Grantee.
- (c) *Primary Insurance*. All limits and coverages required of the Grantee in this Agreement shall be primary and non-contributory with any insurance or self-insurance program carried by Grantor and the additional insureds.
- (d) Cooperation. Grantee shall fully cooperate, participate, and comply with all reasonable requirements of the insurers and insurance brokers issuing or arranging for issuance of the required policies, in all areas of safety, insurance program administration, claim reporting and investigating, and audit procedures.
- (e) No Limitation of Grantee Liability. All insurance shall be in a form sufficient to protect Grantee against the claims of third persons, and to cover claims by Grantor against Grantee or other parties for which Grantee has assumed liability under this Agreement. Nothing in this Agreement shall be construed as limiting, in any way, the extent to which the Grantee may be held responsible for payment of damages resulting from its operations. Grantee's obligations to procure insurance are separate and independent of, and shall not limit Grantee's contractual indemnity and defense obligations. Grantor does not represent that coverages and limits required in this Agreement will necessarily be adequate.
- (f) Requirements for Subcontractors/Agents. Grantee shall require that its Permittees who will be physically present on the Property maintain insurance in like form and limits, including additional insured and waiver of subrogation requirements, as are required of the Grantee in this

Agreement, except that the coverage amounts may be reduced, at Grantee's option, from the amounts stated in Section 17 to amounts not less than \$1 million. Grantee will provide Grantor with certificates of insurance and endorsements evidencing the additional insured and waiver of subrogation provisions have been complied with prior to any entering onto the Property.

#### 18. Relinquishment; Abandonment.

- 18.1 <u>Relinquishment</u>. Should Grantee fail to complete construction of the Pipeline contemplated herein within 10 years of the Effective Date, Grantor may demand that Grantee execute a relinquishment of the Easements. If construction does not commence within thirty (30) days of such demand, Grantee shall execute and record the relinquishment of the Easements.
- 18.2 <u>Abandonment</u>. Grantee may at any time permanently abandon all of the Easements and, subject to compliance with any conditions for approval of the abandonment by FERC, may remove or abandon in place the Facilities. Upon abandonment, at the request of Grantor, Grantee shall execute and record a reconveyance and release of this Agreement whereupon this Agreement with all rights and privileges mutually granted hereunder shall be fully canceled and terminated except for: (i) those rights or obligations which have accrued prior to such termination or abandonment or which inure to a party as a result of such termination or abandonment, and (ii) those provisions of this Agreement that specifically survive expiration or termination of this Agreement including all indemnification, property restoration and payment obligations set forth in this Agreement. Termination of this Agreement or abandonment of the Easement will not in any way relieve Grantee for its obligations for breach of contract prior to termination. The rights provided in this section are cumulative with and are in addition to any other rights of the Grantor to pursue all legal remedies available to it at law or in equity, which other rights and remedies will survive such termination or abandonment unimpaired.
- 19. **Taxes and Assessments**. Grantee shall be liable for all taxes and assessments, fines, fees and other charges, if any, levied against the Pipeline and the Facilities, including all related improvements located within the Easements. In the event any real property tax rollback or compensating tax is imposed upon Grantor by reason of the existence of the Pipeline and Easements on the Property, or any change in status or disqualification of the Property from any current forestland or open space tax deferral program results by reason of the existence of the Pipeline and Easements on the Property, Grantee shall assume, pay, and reimburse Grantor in full for the amount of such rollback or compensating taxes or any other increased real or personal property taxes.
- 20. Liens. Grantee shall have the right to discharge or redeem for Grantor, in whole or in part, any mortgage, tax or other lien on said land and shall be subrogated to such lien and rights. Grantee will pay all labor and other bills incurred in connection with the Easements and the Project before delinquency and furnish Grantor, upon Grantor's reasonable demand, with proof that all such labor bills and expenses are paid. Grantee and its Permittees shall not permit or cause any lien to become attached to any portion of Property. However, if any lien should attach to the Property, Grantee will immediately discharge the same. In the event that Grantee fails to discharge any of its obligations under this Section, Grantor shall have the right to pay and discharge any lien imposed against its property due to Grantee's breach. Grantee shall reimburse Grantor for any amounts so paid, including the reasonable expenses of Grantor in connection therewith, within thirty (30) calendar days of receiving notice from Grantor of any such payment, together with interest thereon at the rate of seven (7) percent per annum (calculated on a 365-day year basis) from the date of payment thereof by Grantor until the repayment thereof by Grantee. Further, Grantor shall have the right to defend, using counsel of its choice, at Grantee's sole expense, any lien filed against Grantor's property as a result of Grantee's Project, and Grantee agrees to immediately reimburse Grantor for such expense.

#### 21. Miscellaneous.

21.1 <u>Successors and Assigns; Assignment; Recording.</u> The rights and obligations herein shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto

and shall be a covenant that runs with and burdens the Property and successor owners of the Property (or affected portions thereof). Grantee may assign the rights granted under this Agreement in whole or part, subject to the terms of this Agreement and to any applicable FERC oversight. Either party may record this Agreement in the real property records of Klamath County, Oregon. In the event of any assignment of this Agreement by Grantee or its successors, the assignor shall remain fully responsible for all obligations, responsibilities and liabilities of the Grantee and shall not be released from any obligations under this Agreement until the assignor provides written notice to Grantor with written evidence that the assignee has assumed all rights and obligations of assignor under this Agreement, the effective date of the assignment, and assignee's certificates of insurance given in compliance with the Grantee insurance coverage requirements of this Agreement.

- 21.2 Permittees. All obligations, duties, liabilities, and responsibilities of Grantee whatsoever arising pursuant to the provisions of this Agreement or otherwise in law or in equity, shall apply with equal force to its Permittees where the context permits. Specific use of the terms "contractor," "subcontractor," "agent," "Permittee" and the like in certain sections of this Agreement, and omissions of such terms in other sections, shall not be deemed to nullify or restrict the force and effect of this Agreement on such person only to such sections of this Agreement where such terms are specifically used. Use of the term "Permittee" in any section giving rise to duties or obligations of Grantee shall be deemed to include the subcontractors, agents, contractors, employees, and licensees of Grantees where the context permits.
- 21.3 <u>Third Party Beneficiaries</u>. Except for the Grantor Indemnified Parties, who are each third-party beneficiaries of the covenants and agreements set forth in this Agreement regarding indemnification, insurance and property protection, this Agreement is for the sole benefit of the parties hereto (and their respective successors and assigns) and nothing herein, express or implied, is intended to or shall confer upon any other person, including any creditor of either party, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- 21.4 <u>Governing Law.</u> All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of Oregon without giving effect to any choice or conflict of law provision or rule (whether of Oregon or any other jurisdiction) that would cause the application of the laws of any other jurisdiction.
- 21.5 <u>Attorneys' Fees and Costs.</u> In the event suit or action is instituted to enforce or interpret any of the terms of this Agreement (including any exhibits or attachments), or to enforce any right arising out of or in any way connected with this Agreement, the prevailing party will be entitled to recover from the other party such sums as the court may adjudge reasonable as attorney fees (including in-house counsel fees) and costs whether incurred in investigation, at trial, on appeal or any petition for review, or in connection with any proceeding in bankruptcy at any level, in addition to all other sums provided by law, including reasonable and necessary expert witness fees.
- 21.6 Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and all of which will together constitute the same Agreement. The parties agree that delivery by facsimile or other electronic means of a signed counterpart of this Agreement will be deemed the same as delivery of the signed original counterpart. Upon request of the other party, a party delivering a counterpart of this Agreement by facsimile or other electronic means will also provide to the requesting party a manually-signed original of this Agreement.
- 21.7 <u>Entire Agreement</u>. It is mutually understood and agreed that this Agreement and the attached exhibits, as written, cover and include all of the agreements between the parties except as may otherwise be provided in a Temporary Construction Easement Agreement between the parties hereto and of even date herewith and that no representations or statements, verbal or written, have been made modifying, adding to or changing the terms of this Agreement.

[Signatures and acknowledgements on following pages]

IN WITNESS WHEREOF the parties have EXECUTED THIS FACILITIES EASEMENT AGREEMENT THIS 4<sup>th</sup> DAY OF February, 2019.

**GRANTOR:** 

**Collins Products LLC** 

Eric L. Schooler, President

**GRANTEE:** 

Pacific Connector Gas Pipeline L.P.

Ву:

Pacific Connector Gas Pipeline, LLC, a Delaware limited liability company, its

General Partner

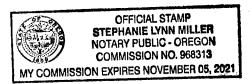
Name: Tony Diacee

Title: Authorized Signatory

[Acknowledgements appear on following pages]

# **ACKNOWLEDGMENT**

STATE OF OREGON	)
country of <u>Clackamas</u>	) ss. )
acknowledged said instrument to be the	, 2019, personally appeared before me Eric L. Schooler, the company that executed the within and foregoing instrument, and a free and voluntary act and deed of said corporation, for the uses on oath stated that he was authorized to execute said instrument
IN WITNESS WHEREOF, I have hereus above written.	Notary Public in and for the State of Oregon, residing at:
	My appointment expires: 11 5 202



# **ACKNOWLEDGMENT**

STATE OF TEXAS	)
COUNTY OF Harvis	) ss. )
forgoing instrument on behalf of	, 2011, personally appeared <u>Tony Diece</u> , , <u>seed Signature</u> of Pacific Connector Gas Pipeline, LP, acting through ector Gas Pipeline, LLC, and acknowledged that she/he signed the and by authority of said entity and that the instrument is said entity's and purposes mentioned therein.
Before me:	$C \cap A \cap A \cap A$
LATANYA HAMILTON Notary ID # 130784481 My Commission Expires August 18, 2020	Notary Public in and for the State of Texas My Commission Expires: August 18, 2020

STATE OF TEXAS

#### EXHIBIT "A-1"

#### **DESCRIPTION OF PROPERTY**

#### (R580570; R583826)

That portion of parcel 1 of "Land Partition 31-97", filed with the office of the Klamath County Surveyor, lying in Sections 13, and 24, T39S, R8EWM and also situated in S18, T39S, R9EWM, Klamath County, Oregon.

#### SAVING AND EXCEPTING THEREFROM:

THAT CERTAIN PARCEL OF LAND LYING IN THE NE' SE', SECTION 13, TOWNSHIP 39 SOUTH, RANGE 8 EAST, WILLIAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, SHOWN AS 0.84 ACRES, MORE OR LESS, KNOWN AS APN: R816068 AND MAP TAX LOT R-3908-013DA-05900-00, IN THE KLAMATH COUNTY TAX ASSESSOR OFFICE.

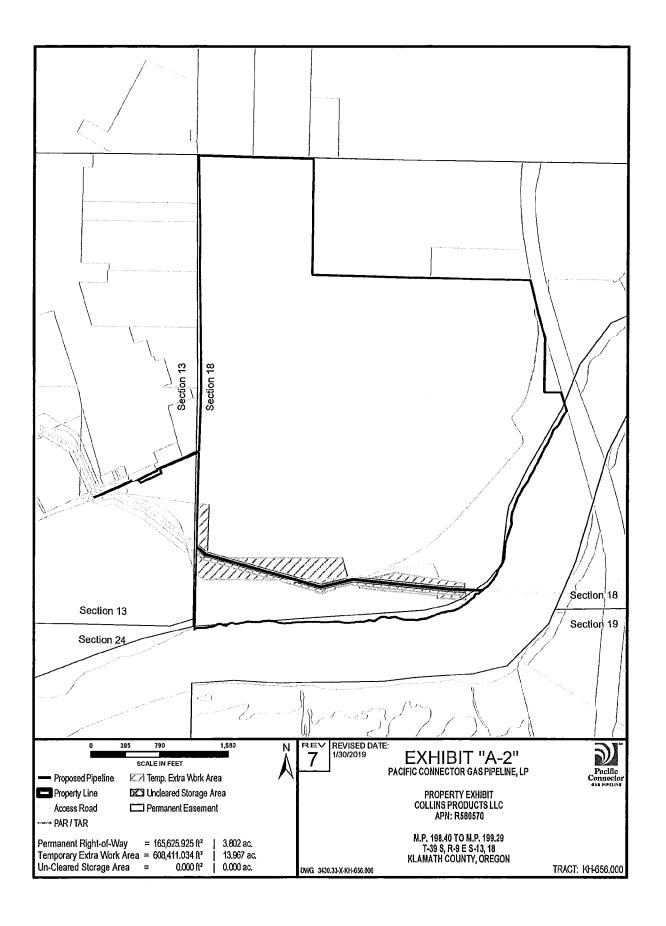
#### (R580561)

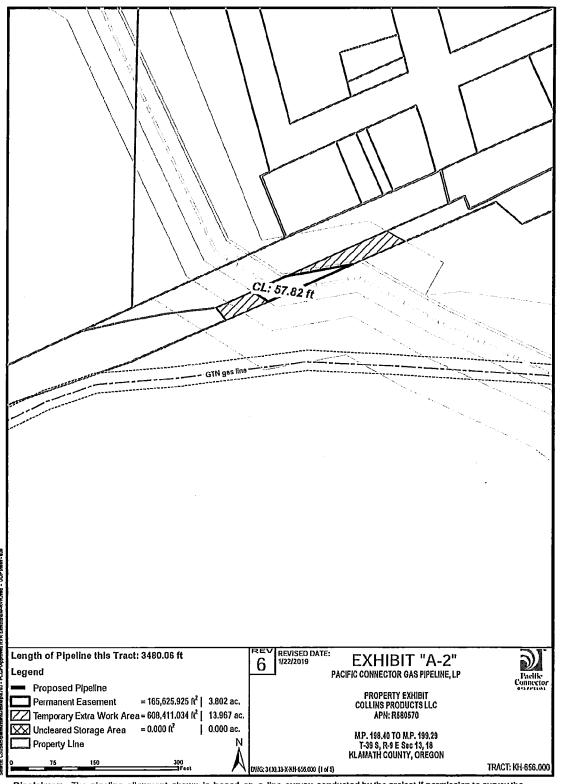
A strip of land 100 feet in width parallel to and adjacent to the said low water mark on the left bank of said Klamath River being a portion of Government Lots 10 and 11 of Section 18 in Township 39 South, Range 09 East of the Willamette Meridian, Klamath County, Oregon.

SAVING AND EXCEPTING therefrom that portion as contained in Deed to the State of Oregon by and through its Department of Transportation Highway Division, recorded April 23, 1992 in Volume M92, page 8702, Microfilm Records of Klamath County, Oregon.

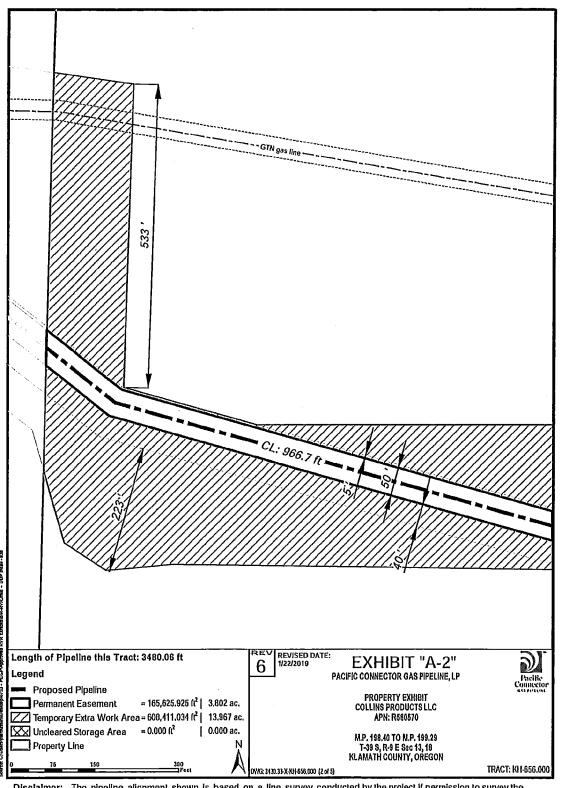
# EXHIBIT "A-2"

# PIPELINE EASEMENT DEPICTION

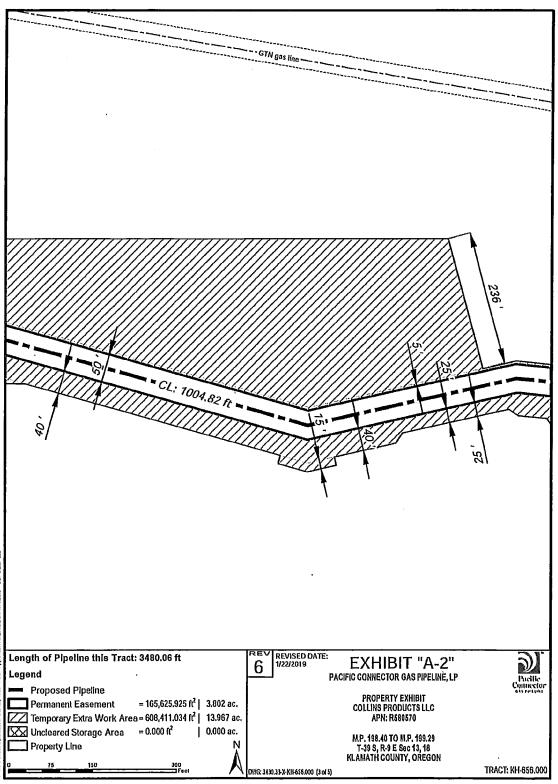




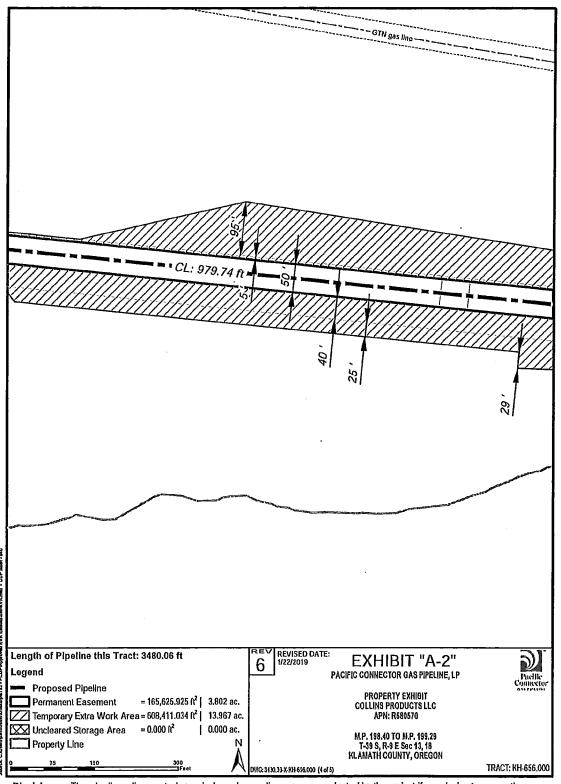
Disclaimer: The pipeline alignment shown is based on a line survey conducted by the project if permission to survey the property was granted by the landowner. The property boundary information was obtained from County tax maps. Because this exhibit is not based on a property survey the actual right-of-way and workspace areas may vary slightly from what is shown.



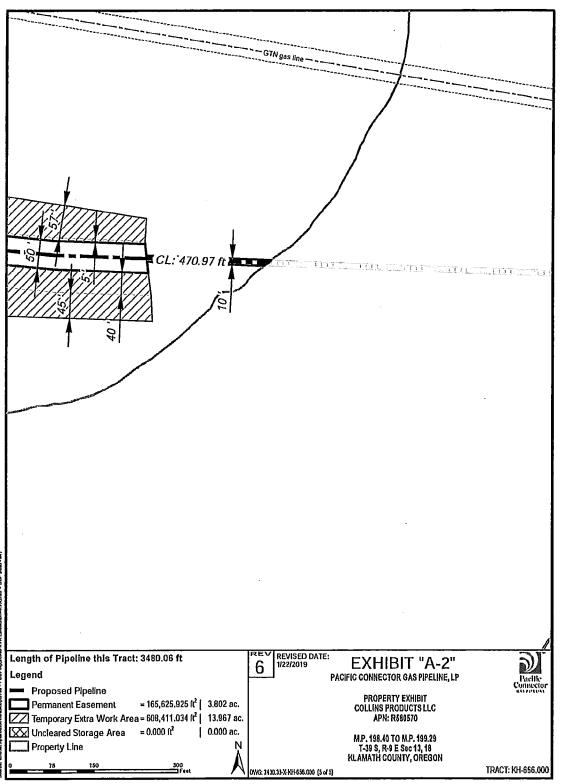
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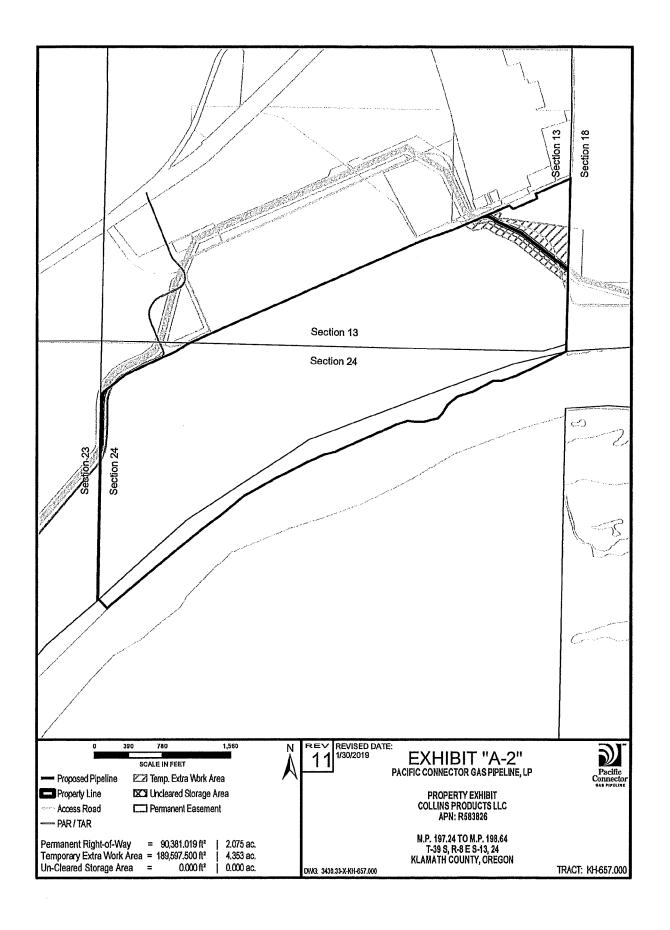
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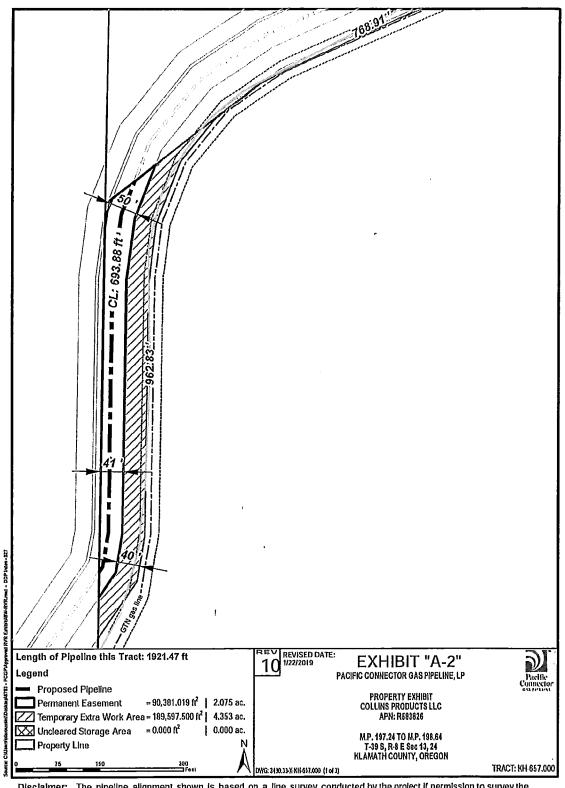


Disclaimer: The pipeline alignment shown is based on a line survey conducted by the project if permission to survey the property was granted by the landowner. The property boundary information was obtained from County tax maps. Because this exhibit is not based on a property survey the actual right-of-way and workspace areas may vary slightly from what is shown.

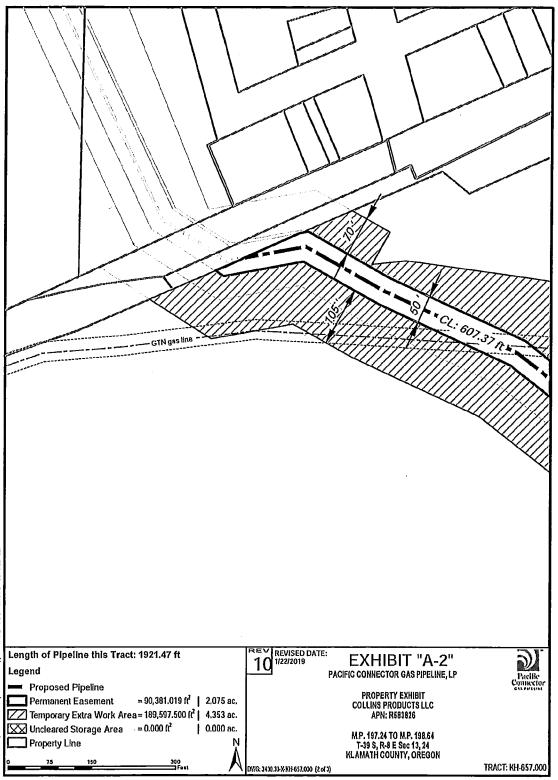


Discialmer: The pipeline alignment shown is based on a line survey conducted by the project if permission to survey the property was granted by the landowner. The property boundary information was obtained from County tax maps. Because this exhibit is not based on a property survey the actual right-of-way and workspace areas may vary slightly from what is shown.

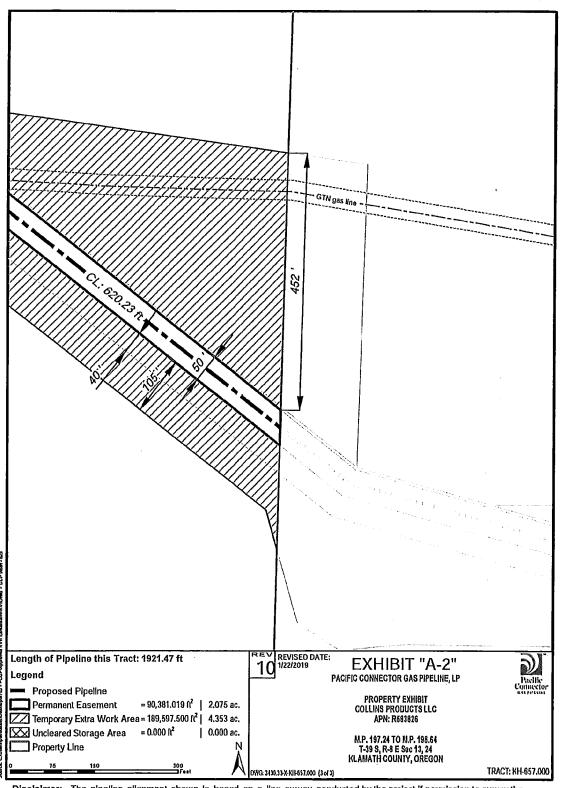




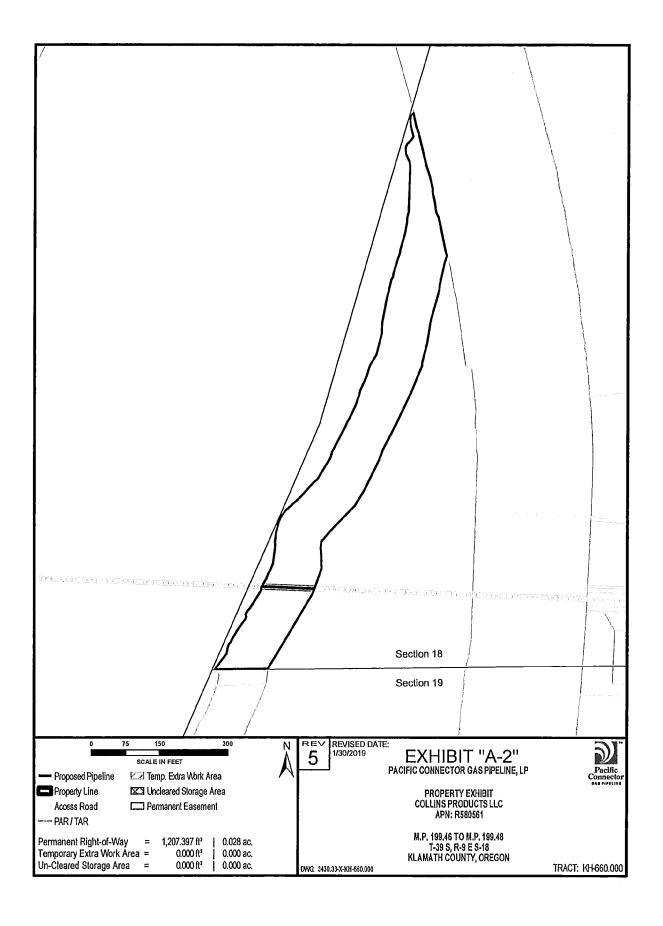
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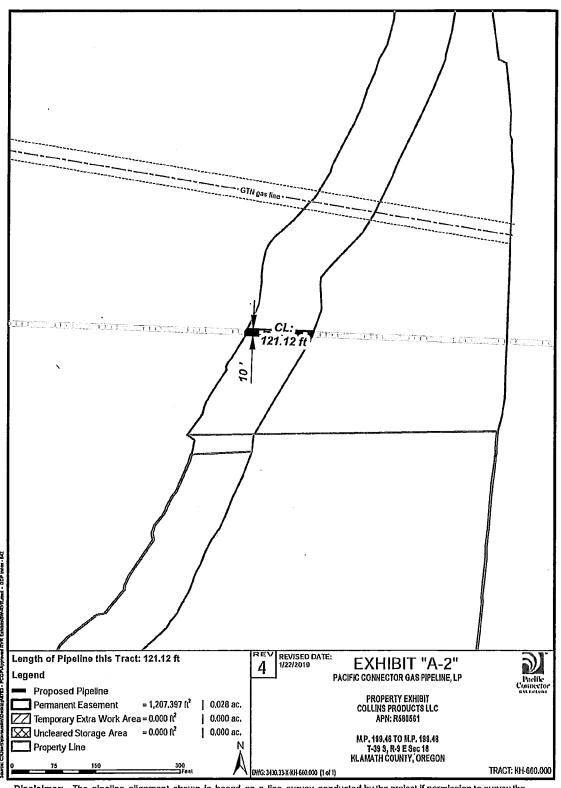


Disclaimer: The pipeline alignment shown is based on a line survey conducted by the project if permission to survey the property was granted by the landowner. The property boundary information was obtained from County tax maps. Because this exhibit is not based on a property survey the actual right-of-way and workspace areas may vary slightly from what is shown.



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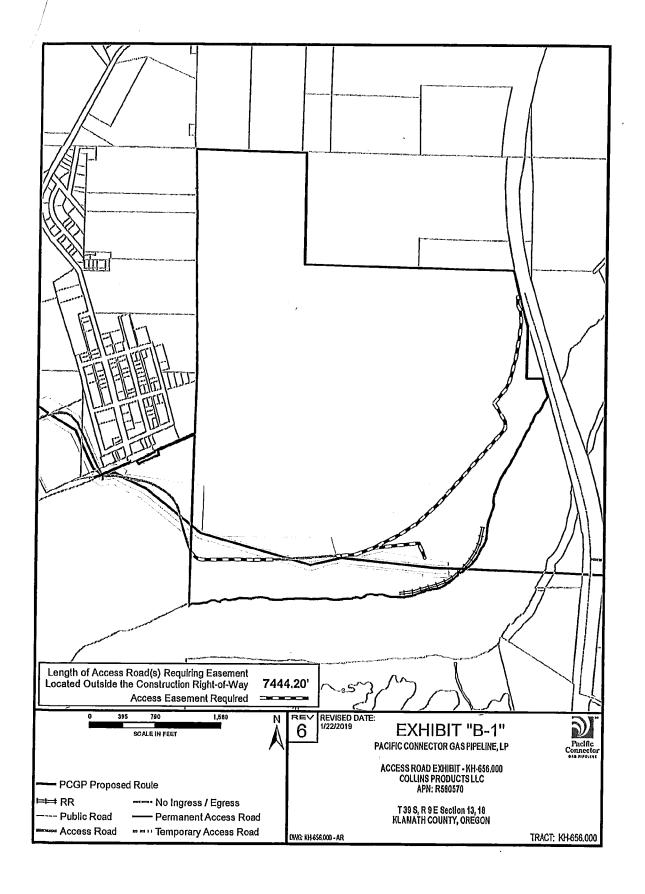




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# EXHIBIT "B-1"

# **ROAD EASEMENT MAP FOR B-1**



# EXHIBIT "B-2" ROAD EASEMENT MAP FOR B-2

