

## PRE-EMPTIVE RIGHTS AGREEMENT

THIS AGREEMENT made the 16<sup>th</sup> day of August, 2022,

B E T W E E N:

**BIRCH HILL EQUITY PARTNERS MANAGEMENT INC.**, a corporation existing under the laws of the Province of Ontario (the “**Manager**”), in its own capacity and in its capacity as general partner of Birch Hill Equity Partners V, LP, Birch Hill Equity Partners (US) V, LP and Birch Hill Equity Partners (Entrepreneurs) V, LP (each, an “**Investor**”);

- and -

**TIDEWATER MIDSTREAM AND INFRASTRUCTURE LTD.**,  
a corporation existing under the *Business Corporations Act* (Alberta),

(hereinafter referred to as the “**Corporation**”).

WHEREAS the Corporation, the Manager, in its own capacity, and the Manager in its capacity as the general partner of each Investor, have entered into a subscription agreement dated August 2, 2022 (the “**Subscription Agreement**”) pursuant to which the Corporation has agreed to issue to the Investors and the Investors have agreed to purchase from the Corporation 14,166,667 Units (comprised of 14,166,667 common shares in the capital of the Corporation and 7,083,333 common share purchase warrants), which represents approximately 3.4% of the issued and outstanding common shares of the Corporation on a non-diluted basis and 5% on a partially diluted basis;

AND WHEREAS as at the Calculation Date, the Manager had control and/or direction over, and collectively, the Investor Group (as defined below) was the beneficial owner of, an aggregate of 81,336,771 common shares;

AND WHEREAS in consideration of the Investors’ agreement to complete the subscription pursuant to the Subscription Agreement, the Corporation has agreed to grant certain rights set out herein to the Investor Group, on the terms and subject to the conditions set out herein;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the respective covenants and agreements of the parties herein contained and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each party), the parties agree as follows:

## **ARTICLE 1**

### **INTERPRETATION**

#### **1.1**            **Defined Terms**

For the purposes of this Agreement, unless the context otherwise requires, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

“**Act**” means *Business Corporations Act* (Alberta);

“**Affiliate**” means, with respect to any specified Person, any other Person which, directly or indirectly, through one or more Persons controls, or is controlled by, or is under common control with, such specified Person;

“**Associate**” has the meaning ascribed to such term in the *Business Corporations Act* (Alberta), as in effect on the date of this Agreement;

“**Board**” means the board of directors of the Corporation;

“**Business Day**” means any day, other than: (a) a Saturday, Sunday or statutory holiday in the Province of Alberta or the Province of Ontario; or (b) a day on which banks are generally closed in the Province of Alberta or the Province of Ontario;

“**Calculation Date**” means August 2, 2022.

“**Canadian Securities Laws**” means the applicable securities legislation of each of the provinces and territories of Canada and all published regulations, policy statements, orders, rules, instruments, rulings and interpretation notes issued thereunder or in relation thereto, as the same may hereafter be amended from time to time or replaced;

“**Closing Date**” means August 16, 2022;

“**Common Shares**” means the common shares in the capital of the Corporation issued and outstanding from time to time and includes any common shares that may be issued hereafter;

“**Corporation**” shall have the meaning set out in the preamble hereto;

“**control**”, “**controlled by**” and “**under common control with**”, as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise;

“**Convertible Securities**” means any security convertible, exchangeable or exercisable for or into, with or without consideration, Common Shares or other equity or voting securities of the Corporation, including any warrants, options or other rights issued by the Corporation;

“**Dilutive Conversion**” shall have the meaning set out in Section 3.3(a);

“**Excluded Event**” shall have the meaning set out in Section 3.6;

“**Exercise Notice**” shall have the meaning set out in Section 3.4;

**Existing Convertible Securities**” means Convertible Securities issued prior to, and outstanding on, the Closing Date, other than any Convertible Securities issued pursuant to the Stock Option Plan or any predecessor stock option plan of the Corporation;

**Governmental Entity**” means any domestic or foreign federal, provincial, regional, state, municipal or other government, governmental department, agency, authority or body (whether administrative, legislative, executive or otherwise), court, tribunal, commission or commissioner, bureau, minister or ministry, board or agency, or other regulatory authority, including any securities regulatory authority and stock exchange;

**Investor**” shall have the meaning set out in the preamble hereto;

**Investor Group**” means each Investor, the Manager and any of their Affiliates and any Associates of the Manager;

**Issuance**” shall have the meaning set out in Section 3.1;

**Notice Period**” shall have the meaning set out in Section 3.4;

**Offered Securities**” means any equity or voting securities, or securities convertible into, exercisable or exchangeable for equity or voting securities, of the Corporation;

**Offering**” shall have the meaning set out in Section 3.1;

**Offering Notice**” shall have the meaning set out in Section 3.1;

**Participation Right**” shall have the meaning set out in Section 3.2;

**Person**” means and includes any individual, Corporation, limited partnership, general partnership, joint stock corporation, limited liability corporation, joint venture, association, corporation, trust, bank, trust corporation, pension fund, business trust or other organization, whether or not a legal entity and any Governmental Entity;

**Stock Option Plan**” means the existing stock option plan of the Corporation;

**Subscription Agreement**” has the meaning set out in the recitals hereto; **Top-up Notice**” has the meaning set forth in Section 3.3(b);

**Top-up Offering**” has the meaning set forth in Section 3.3(c);

**Top-up Right**” has the meaning set forth in Section 3.3(a)(i);

**Top-up Shares**” has the meaning set forth in Section 3.3(a)(i);

**Top-up Threshold**” has the meaning set forth in Section 3.3(a)(ii);

**TSX**” means the Toronto Stock Exchange;

**Upsize Notice**” shall have the meaning set out in Section 3.4(b); and

**Upsize Option**” shall have the meaning set out in Section 3.4(b).

## **1.2 Rules of Construction**

Except as may be otherwise specifically provided in this Agreement and unless the context otherwise requires, in this Agreement:

- (a) the terms “Agreement”, “this Agreement”, “hereto”, “hereof”, “herein”, “hereby”, “hereunder” and similar expressions refer to this Agreement in its entirety and not to any particular provision hereof;
- (b) references to an “Article” or “Section” followed by a number or letter refer to the specified Article or Section to this Agreement;
- (c) the division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (d) words importing the singular number only shall include the plural and *vice versa* and words importing the use of any gender shall include all genders;
- (e) the word “including” is deemed to mean “including without limitation”;
- (f) the terms “party” and “the parties” refer to a party or the parties to this Agreement;
- (g) any reference to this Agreement means this Agreement as amended, modified, replaced or supplemented from time to time;
- (h) any reference to a statute, regulation or rule shall be construed to be a reference thereto as the same may from time to time be amended, re-enacted or replaced, and any reference to a statute shall include any regulations or rules made thereunder;
- (i) all references to a percentage ownership of Common Shares shall be calculated on a non-diluted basis;
- (j) any time period within which a payment is to be made or any other action is to be taken hereunder shall be calculated excluding the day on which the period commences and including the day on which the period ends; and
- (k) whenever any action is required to be taken or period of time is to expire on a day other than a Business Day, such action shall be taken or period shall expire on the next following Business Day.

## **1.3 Entire Agreement**

This Agreement and the Subscription Agreement constitute the entire agreement between the parties with respect to the subject matter hereof and thereof and supersede all prior agreements, understandings, negotiations and discussions, whether written or oral, between the parties. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof except as provided in the aforesaid agreements.

#### **1.4 Time of Essence**

Time shall be of the essence of this Agreement.

#### **1.5 Governing Law and Submission to Jurisdiction**

(a) This Agreement shall be interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable in that province.

(b) Each of the parties irrevocably and unconditionally: (i) submits to the non-exclusive jurisdiction of the courts of the Province of Ontario over any action or proceeding arising out of or relating to this Agreement; (ii) waives any objection that it might otherwise be entitled to assert to the jurisdiction of such courts; and (iii) agrees not to assert that such courts are not a convenient forum for the determination of any such action or proceeding.

#### **1.6 Severability**

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, all other provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

### **ARTICLE 2**

#### **2.1 [reserved]**

### **ARTICLE 3 PARTICIPATION RIGHT & TOP-UP RIGHT**

#### **3.1 Notice of Issuances**

If the Corporation proposes to issue (an “**Issuance**”) any Offered Securities pursuant to a public offering, a private placement or otherwise (but excluding any issuances of Common Shares in respect of which the Top-up Right (as defined below) would be applicable (each, an “**Offering**”) at any time after the date hereof, the Corporation will, forthwith upon determining to proceed with an Issuance and, (i) in respect of a public offering that is a “bought deal”, at least 10 Business Days, and (ii) in respect of a public offering other than a “bought deal” or a private placement or otherwise, at least 30 days, in each case, prior to the expected completion date of the Issuance, give written notice of the Issuance (the “**Offering Notice**”) to the Manager, including, to the extent known by the Corporation, full particulars of the Offering, including the number of Offered Securities, the rights, privileges, restrictions, terms and conditions of the Offered Securities, the price per Offered Security to be issued under the Offering, the name of any agent(s) or underwriter(s) expected to be involved in the Offering, the intended form of the

Offering (e.g., bought deal, overnight marketed, fully marketed, private placement, etc.), the expected use of proceeds of the Offering and the expected closing date of the Offering.

### **3.2 Grant of Participation Right**

The Corporation agrees that the members of the Investor Group (directly or through an Affiliate in which case the provisions of this Article 3 shall apply *mutatis mutandis*) have the right (the “**Participation Right**”) to subscribe for and to be issued as part of an Offering at the subscription price per Offered Security pursuant to the Offering and otherwise on substantially the terms and conditions of the Offering (provided that, if the applicable members of the Investor Group, are prohibited by Canadian Securities Laws or other applicable law from participating on substantially the terms and conditions of the Offering, the Corporation shall use commercially reasonable efforts to enable the applicable members of the Investor Group to participate on terms and conditions that are as substantially similar as circumstances permit):

- (a) in the case of an Offering of Common Shares, up to such number of Common Shares that will allow the Investor Group (at its election and in its sole discretion) to either: (i) maintain a percentage ownership interest in the issued and outstanding Common Shares that is the same as the percentage ownership interest of the Investor Group immediately prior to completion of such Offering; or (ii) acquire a percentage ownership interest in the Common Shares of up to 23% of the issued and outstanding Common Shares, in each case of (i) and (ii), after giving effect to such Offering; and
- (b) in the case of an Offering of Offered Securities (other than Common Shares), up to such number of Offered Securities that will (assuming, for all purposes of this Section 3.2(b), the conversion, exercise or exchange of all of the convertible, exercisable or exchangeable Offered Securities issued in connection with the Offering and issuable pursuant to this Section 3.2) allow the Investor Group (at its election and in its sole discretion) to either: (i) maintain a percentage ownership interest in the issued and outstanding Common Shares that is the same as the percentage ownership interest of the Investor Group immediately prior to completion of such Offering; or (ii) acquire a percentage ownership interest in the Common Shares of up to 23% of the issued and outstanding Common Shares, in each case after giving effect to such Offering.

### **3.3 Top-up Offering**

(a) Without limiting Section 3.2, the Corporation agrees that, subject to the terms of this Section 3.3:

- (i) the members of the Investor Group (directly or through an Affiliate, in which case the provisions of this Article 3 shall apply *mutatis mutandis*) have the right (the “**Top-up Right**”) to subscribe for and to be issued in connection with the issuance of Common Shares on the conversion, exercise or exchange of Existing Convertible Securities (a “**Dilutive Conversion**”) up to such number of Common Shares (the “**Top-up Shares**”) that will allow the Investor Group to maintain a percentage ownership interest in the issued and outstanding Common Shares, after giving effect to such Dilutive Conversions referenced in the Top-up Notice (as defined below), that is the same as the percentage ownership interest

that the Investor Group would have had but for the Dilutive Conversions referenced in the Top-Up Notice; and

- (ii) the Top-up Right shall be exercisable from time to time following Dilutive Conversions that result in the reduction of the percentage ownership interest of the Investor Group by 0.10%, or more, in the aggregate (the “**Top-up Threshold**”).

(b) Subject to Section 3.3(d), within 10 Business Days of the date on which one or more Dilutive Conversions occurs resulting in the Top-up Threshold being achieved, the Corporation shall deliver a written notice (a “**Top-up Notice**”) to the Manager notifying the Manager that the Top-up Right has become exercisable and setting out the number of Existing Convertible Securities converted, exercised or exchanged into Common Shares, and the total number of issued and outstanding Common Shares following such Dilutive Conversions and any other conversions, exercises and exchanges of Convertible Securities from the end of the last period in respect of which a Top-up Notice was delivered.

(c) Subject to Section 3.5(c) and Section 3.5(d), if the Manager delivers an Exercise Notice in accordance with Section 3.4, the Corporation shall in accordance with the provisions of this Article 3, promptly, and in any event within 30 days of the date on which the relevant Top-up Notice was delivered, complete an offering to the applicable members of the Investor Group of the number of Top-up Shares that the applicable members of the Investor Group wish to subscribe for pursuant to the Top-up Right, as specified in the Exercise Notice, at an offering price per Top-up Share determined pursuant to Section 3.8(b) (each, a “**Top-up Offering**”).

(d) Notwithstanding Section 3.3(a), Section 3.3(b) or Section 3.3(c), if a Top-up Threshold is achieved in, or is determined by the Corporation, acting reasonably, to be likely to occur prior to the date on which a record date for a meeting of shareholders of the Corporation is to be set, prior to setting such record date the Corporation shall deliver a Top-up Notice to the Manager and, if the Manager delivers an Exercise Notice in accordance with Section 3.4 in response to a Top-up Notice delivered pursuant to this Section 3.3(d), the Corporation shall in accordance with the provisions of this Article 3, promptly, and in any event prior to declaring the record date for such shareholder meeting, complete a Top-up Offering to the applicable members of the Investor Group.

### **3.4            Exercise Notice**

(a) If members of the Investor Group wish to exercise the Participation Right or the Top-up Right, the Manager shall give written notice to the Corporation (the “**Exercise Notice**”) of the intention to exercise such right and of the number of Offered Securities or Top-up Shares that the applicable members of the Investor Group wish to subscribe for and purchase pursuant to the Participation Right or the Top-up Right, as applicable. The Manager shall deliver an Exercise Notice to subscribe to the Offering, Issuance or issuance of the Top-up Shares within 15 days after the date of receipt of an Offering Notice or Top-up Notice, as applicable, or in the case of a public offering that is a “bought deal”, within five Business Days of receipt of an Offering Notice, but in any event, the Manager shall be entitled to deliver an Exercise Notice a minimum of five Business Days from the date the Corporation files a preliminary prospectus, registration statement or other offering document in connection with an Issuance that constitutes a public offering of Offered Securities (the “**Notice Period**”), failing which the Investor Group will not be entitled to exercise the Participation Right or the Top-up Right in respect of such Offering, Issuance or issuance of Top-up Shares.

(b) Each Exercise Notice shall constitute a binding agreement by the applicable members of the Investor Group to subscribe for and take up, and by the Corporation to issue and sell to the applicable members of the Investor Group the number of Offered Securities or Top-up Shares, as applicable, that the Investor Group agrees to subscribe for in the Exercise Notice. If the Corporation at any time proposes to increase the number of any Offered Securities to be issued in the Offering it shall, by notice in writing delivered to the Manager (the “**Upsize Notice**”), give the Investor Group the option to subscribe for its *pro rata* share of the additional Offered Securities (the “**Upsize Option**”). The Investor Group shall be entitled to exercise the Upsize Option by delivering a new Exercise Notice to the Corporation. If no new Exercise Notice is delivered by the Manager to the Corporation within five Business Days of receipt by the Manager of the Upsize Notice, the Exercise Notice of the Manager delivered in respect of the original Offering Notice shall continue in full force and effect.

(c) If for any reason the number of Offered Securities to be issued in the Offering is reduced or otherwise less than the number of Offered Securities set out in the Offering Notice, the Corporation shall provide written notice to the Manager (the “**Downsize Notice**”) confirming the new number of Offered Securities of the Offering and the corresponding *pro rata* reduction of the entitlement of the Investor Group to participate in the Offering (the “**Downsized Entitlement**”); provided that no such reduction shall be made to the extent that such reduction would result in a reduction of the percentage ownership interest of the Investor Group following completion of such Offering. Following delivery of the Downsize Notice, the Exercise Notice and the Downsize Notice, shall together constitute a binding agreement by the applicable members of the Investor Group to subscribe to and take up, and by the Corporation to issue and sell to, the applicable members of the Investor Group the number of Offered Securities equal to the Downsized Entitlement and the Manager will be entitled to a refund (to be paid to the Manager within two Business Days of completion of the Offering) to the extent that it has already remitted funds to the Corporation in payment in connection with such Offering.

### **3.5 Issuance of Offered Securities and Top-up Shares**

(a) The Corporation agrees to take any and all commercially reasonable steps as are required to facilitate the rights of the Investor Group set forth in this Article 3, including: (i) undertaking a private placement or directed offering of Offered Securities to applicable members of the Investor Group as part of such Offering or Issuance; (ii) if required, increasing the size of the Offering or Issuance to satisfy its obligations to applicable members of the Investor Group pursuant to Sections 3.2 through 3.4, inclusive; and (iii) undertaking a private placement of Top-up Shares to applicable members of the Investor Group, in each case, subject to obtaining any regulatory or other approvals required by applicable law or the TSX and any other stock exchange on which the Common Shares are then listed and/or traded.

(b) If the Corporation receives an Exercise Notice from the Manager within the Notice Period, then the Corporation shall, subject to the receipt and continued effectiveness of all required approvals (including the approval(s) of the TSX and any other stock exchange on which the Common Shares are then listed and/or traded and any required approvals under Canadian Securities Laws and any shareholder approval required under applicable law), which approvals the Corporation shall use all commercially reasonable efforts to promptly obtain (including by applying for any necessary price protection confirmations, seeking shareholder approval (if required) in the manner described below, and using its commercially reasonable efforts to cause management and each member of the Board to vote their Common Shares and any shares of the Corporation entitled to vote in the matter and all votes received by proxy in favour of the issuance of the Offered Securities or the Top-up Shares, as applicable, to members of the Investor Group),

issue to the applicable members of the Investor Group against payment of the subscription price payable in respect thereof, that number of Common Shares or other Offered Securities, as applicable, set out in the Exercise Notice.

(c) If the Corporation is required by the TSX or otherwise under applicable law to seek shareholder approval for the issuance of the Offered Securities or the Top-up Shares, as applicable, to the applicable members of the Investor Group then the Corporation shall: (i) call and hold a meeting of its shareholders to consider the issuance of the Offered Securities or the Top-up Shares, as applicable, to the applicable members of the Investor Group as soon as reasonably practicable, and in any event such meeting shall be held within 75 days after the date that the Corporation is advised by the TSX or other applicable Governmental Entity that it will require shareholder approval; and (ii) recommend approval of the issuance of the Offered Securities or the Top-up Shares, as applicable, to the applicable members of the Investor Group and solicit proxies in support thereof. The Manager shall have a reasonable advance right to review and provide comments on all materials to be provided to the shareholders in connection with such meeting, and the Corporation shall give reasonable consideration to all such comments made and shall incorporate all comments that relate to or refer to the Manager to the extent commercially reasonable.

(d) If the purchase and sale of any Offered Securities or Top-up Shares, as applicable, to applicable members of the Investor Group is delayed as a result of the need to obtain TSX, shareholder or any other approval: (i) such sale shall be completed within five Business Days of receipt of the last of such required approvals; and (ii) any decrease in the percentage ownership interest of the Investor Group occurring between the time of the delivery of the Offering Notice or Top-up Notice and the issuance of Offered Securities or Top-up Shares, as applicable, to the members of the Investor Group pursuant to the Exercise Notice shall be disregarded for all purposes of this Agreement and, notwithstanding any other provision of this Agreement, the percentage ownership interest of the Investor Group shall be deemed to be unchanged until the Offered Securities or Top-up Shares, as applicable, subscribed by the applicable members of the Investor Group in the Exercise Notice have been issued and sold to the applicable members of the Investor Group.

### **3.6 Issuances Not Subject to Rights**

Notwithstanding anything to the contrary contained herein, Sections 3.1 to 3.5 inclusive and Section 3.7 will not apply to any of the following Issuances (each such Issuance pursuant to paragraphs (a) through (f) hereof being referred to as an “**Excluded Event**”):

- (a) a rights offering that is open to all shareholders of the Corporation including the Investor Group, as applicable;
- (b) any share split, share dividend or recapitalization of the Corporation, provided that the beneficial shareholders of the Corporation do not change as a result thereof;
- (c) any equity securities of the Corporation issued for consideration other than cash pursuant to a merger, amalgamation, arrangement, consolidation or similar business combination approved by the Board;
- (d) an Offering of Offered Securities or Top-up Shares to members of the Investor Group or any of their Affiliates;

- (e) Issuances of Common Shares for compensatory purposes to directors, officers, employees of or consultants to the Corporation and its Affiliates pursuant to the Stock Option Plan or any other security compensation plan of the Corporation that complies with the requirements of the TSX; or
- (f) Issuances upon the conversion, exchange or exercise of any Convertible Securities issued on the Closing Date or following the Closing Date.

### **3.7 Determining Percentage Ownership**

For the purposes of Section 4.1 and this Article 3, in determining whether the Manager has control over, and/or the Investor Group beneficially owns, directly or indirectly, at any time at least 5% of the issued and outstanding Common Shares:

- (a) any increase in the Common Shares arising from the conversion, exchange or exercise of any Convertible Securities issued pursuant to an Excluded Event covered by Section 3.6(e) shall be disregarded and the Investor Group shall be deemed to own the percentage of Common Shares it would have held at such time if all such Common Shares had not been issued; and
- (b) any Common Shares issued as a result of a Dilutive Conversion shall be disregarded and the Investor Group shall be deemed to own the percentage of Common Shares it would have held at such time if such Dilutive Conversion had not occurred, unless and until the Corporation has delivered to the Manager a Top-up Notice in respect of such Dilutive Conversion and (i) the Manager fails or declines to exercise the Top-up Right within the applicable Notice Period, in which case, the Common Shares issued in connection with such Dilutive Conversion shall be counted from the date the Manager fails or declines to exercise the Top-up Right within the applicable Notice Period, or (ii) the Manager exercises the Top-up Right within the applicable Notice Period, in which case the Common Shares issued in connection with such Dilutive Conversion shall be counted from the date on which the Top-up Shares are issued and sold to the Investor Group.

### **3.8 Additional Terms**

(a) The Participation Right will be exercisable by the members of the Investor Group at the offering price made available by the Corporation to other investors in such Offering; provided that if the offering price is lowered by the Corporation in the course of any such Offering, the members of the Investor Group will be entitled to pay the lowest price paid to the Corporation by any investor in the relevant Offering without regard to any applicable fees or commissions (except for any such fees or commissions that are paid or payable to the ultimate beneficial purchasers of such Offered Securities) in respect of each class of securities issued (and the Manager will be entitled to a refund (to be paid to the Manager within two Business Days of completion of the Offering) to the extent that it has already remitted funds to the Corporation in payment in connection with such Offering) and otherwise on substantially the same terms and conditions offered to other investors in the Offering.

(b) The Top-up Right will be exercisable by the members of the Investor Group at the market price calculated in accordance with the TSX Company Manual (without a discount) as at the date on which the Top-up Notice is delivered. For greater certainty, each Top-up

Offering will be an offering of Common Shares, unless otherwise agreed by the Manager in its sole discretion.

(c) If the Corporation has not issued the Offered Securities in connection with an Offering within 90 days of the expiry of the relevant Notice Period, the Corporation shall not thereafter proceed with such Offering without providing the Manager with a new Offering Notice and further opportunity to deliver an Exercise Notice in respect of such Offering.

(d) Notwithstanding any other provision of this Article 3, if any Offering is to be conducted on a bought deal basis, then the Manager may, in its sole discretion, choose not to participate in the bought deal but instead elect, within 15 days after the date of receipt of an Offering Notice, to exercise the rights of the Investor Group under this Agreement through a private placement to be completed concurrently with, or within 30 days following, the completion of such bought deal and, in such case, shall notify the Corporation in its Exercise Notice of its election pursuant to this Section 3.8(d).

#### **ARTICLE 4 MISCELLANEOUS**

##### **4.1        Termination**

This Agreement shall terminate and all rights and obligations hereunder shall cease immediately at such time as the Investor Group ceases to hold Common Shares representing at least 5% of the issued and outstanding Common Shares.

##### **4.2        Notices**

(a) Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be delivered in person, transmitted by e-mail or similar means of recorded electronic communication or sent by registered mail, charges prepaid, addressed as follows:

(i) in the case of the Investor or the Manager:

Manager

Birch Hill Equity Partners Management Inc.  
4510-81 Bay Street  
PO Box 45  
Toronto, Ontario  
M5J 0E7  
Attention:     Michael Salamon  
E-mail:        [Redacted]

with a copy to:

Davies Ward Phillips & Vineberg LLP  
155 Wellington Street West  
Toronto, ON M5V 3J7

Attention: Patrick Barry  
E-mail: [Redacted]

(ii) in the case of the Corporation:

TIDEWATER MIDSTREAM AND INFRASTRUCTURE LTD..

Attention: Joel MacLeod  
E-mail: [Redacted]

with a copy to:

DLA Piper (Canada) LLP  
Suite 1000, 250 2<sup>nd</sup> Street SW  
Calgary, Alberta

Attention: Trevor Wong-Chor  
E-mail: [Redacted]

(b) Any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a Business Day or if delivery or transmission is made on a Business Day after 5:00 p.m. (Calgary time) at the place of receipt, then on the next following Business Day) or, if mailed, on the third Business Day following the date of mailing; provided, however, that if at the time of mailing or within three Business Days thereafter there is or occurs a labour dispute or other event which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid.

(c) Either party may at any time change its address for service from time to time by giving notice to the other party in accordance with this Section 4.2.

#### **4.3 Amendments and Waivers**

No amendment or waiver of any provision of this Agreement shall be binding on either party unless consented to in writing by such party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

#### **4.4 Assignment**

No party may assign any of its rights or benefits under this Agreement, or delegate any of its duties or obligations, except with the prior written consent of the other party. Notwithstanding the foregoing, the Manager may assign and transfer all of its rights, benefits, duties and obligations under this Agreement in their entirety, without the consent of the Corporation, to an Affiliate of the Manager, provided that any such assignee shall, prior to any such transfer, agree to be bound by all of the covenants of the Manager contained herein and comply with the provisions of this Agreement, and shall deliver to the Corporation a duly executed undertaking to such effect in form and substance satisfactory to the Corporation, acting reasonably.

#### **4.5 Successors and Assigns**

This Agreement shall enure to the benefit of and shall be binding on and enforceable by and against the parties and their respective successors or heirs, executors, administrators and other legal personal representatives, and permitted assigns.

#### **4.6 Expenses**

Except as otherwise expressly provided in this Agreement, each party will pay for its own costs and expenses incurred in connection with the negotiation, preparation, execution and performance of this Agreement and the transactions contemplated herein, including the fees and expenses of legal counsel, financial advisors, accountants, consultants and other professional advisors.

#### **4.7 Further Assurances**

Each of the parties shall, from time to time hereafter and upon any reasonable request of the other, promptly do, execute, deliver or cause to be done, executed and delivered all further acts, documents and things as may be required or necessary for the purposes of giving effect to this Agreement.

#### **4.8 Right to Injunctive Relief**

The parties agree that any breach of the terms of this Agreement by either party would result in immediate and irreparable injury and damage to the other party which could not be adequately compensated by damages. The parties therefore also agree that in the event of any such breach or any anticipated or threatened breach by the defaulting party, the other party shall be entitled to equitable relief, including by way of temporary or permanent injunction or specific performance, without having to prove damages, in addition to any other remedies (including damages) to which such other party may be entitled at law or in equity.

#### **4.9 Counterparts**

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts, with the same effect as if each party had signed and delivered the same document, and all counterparts shall be construed together to be an original and will constitute one and the same agreement.

*[Remainder of page intentionally left blank; signature page follows.]*

IN WITNESS WHEREOF this Agreement has been executed by the parties on the date first written above.

**TIDEWATER MIDSTREAM AND  
INFRASTRUCTURE LTD.**

by [s] *Joel MacLeod*

Name: Joel MacLeod

Title: Chairman and CEO

**BIRCH HILL EQUITY PARTNERS  
MANAGEMENT INC., in its own  
capacity and its capacity as general  
partner of BIRCH HILL EQUITY  
PARTNERS V, LP, BIRCH HILL EQUITY  
PARTNERS (ENTREPRENEURS) V, LP  
AND BIRCH HILL EQUITY PARTNERS  
(US) V, LP**

by [s] *Michael Salamon*

Name: Michael Salamon

Title: Executive Vice-President

[s] *Neil McCarron*

Name: Neil McCarron

Title: Senior Vice-President