

# TRANSMISSION FACILITIES CONSTRUCTION AGREEMENT

THIS TRANSMISSION FACILITIES CONSTRUCTION AGREEMENT (“**Agreement**”) is made and entered into as of the 31<sup>st</sup> day of July, 2013 between TRANSCANADA KEYSTONE PIPELINE, LP, a limited partnership established pursuant to the laws of Delaware (hereinafter referred to as “**Keystone**”) and NEBRASKA PUBLIC POWER DISTRICT, a public corporation and political subdivision of the State of Nebraska (hereinafter referred to as the “**NPPD**”).

**WHEREAS**, Keystone intends to own and operate the Keystone Facility and wishes to enable the Keystone Facility to obtain service from each System;

**WHEREAS**, NPPD is willing to construct the NPPD Transmission Facilities, which will be used to provide transmission service to each Retail Service Provider as defined herein, to interconnect the Transmission System to the Point of Interconnection serving each Retail Service Provider’s System;

**AND WHEREAS**, the Parties enter into this Agreement to establish the rights and obligations of each Party for construction and payment for the NPPD Transmission Facilities for the Keystone Facility.

**NOW THEREFORE**, in consideration of, and subject to the mutual covenants contained herein, the Parties agree as follows:

## ARTICLE 1 – DEFINITIONS AND INCORPORATED APPENDICES

**1.1 Defined Terms.** Unless otherwise specified in this Agreement, the following terms shall, for the purposes of this Agreement, have the following meanings:

"**Capitalization Fee**" shall have the meaning set out in Section 1 of Appendix C.

"**Cumulative Authorized Construction Costs**" shall mean the cumulative construction costs authorized by Keystone that NPPD may incur for NPPD Transmission Facilities for each applicable quarter, as set out in Appendix B.

"**Effective Date**" shall have the meaning given in Section 2.1.

"**Force Majeure**" shall mean any cause beyond the control of the Party affected, including but not restricted to, acts of God, flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labour dispute, labour or material shortage, nonresponsive or unacceptable bids by contractors and vendors, sabotage, acts of public enemy, acts of terrorism, explosions, orders, regulations or restrictions imposed by governmental, military, or lawfully established civilian authorities, which, in any of the foregoing cases, by exercise of due diligence such Party could not reasonably have been expected to avoid, and which, by the exercise of due diligence, it has been unable to overcome, but does not include any cause arising out of a Party’s act of negligence or intentional wrongdoing nor mere economic hardship of a Party.

"**Good Utility Practices**" shall mean, at any particular time, any of the practices, methods and acts engaged in or approved by a significant portion of the electric utilities located in North America during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, could

be expected to produce the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Good Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be a range of acceptable practices, methods or acts.

**"Governmental Charges"** shall mean any present or future tax, levy, impost, duty charge, assessment, or fee of any nature (including interest, penalties, and additions thereto) that is imposed by any governmental authority or other taxing authority in respect of any payment under this Agreement.

**"Guarantor"** shall have the meaning given in the Guaranty Agreement in Appendix D.

**"In-Service-Date"** shall mean the day NPPD Transmission Facilities have been completed and energized, and Keystone confirms in writing to the Retail Service Provider and NPPD it is prepared to receive the supply of power from the Retail Service Provider. The In-Service-Date is targeted to be December 31, 2014 for O'Neill Pump Station 22, and Steele City Pump Station 26. The In-Service Date is targeted to be June 30, 2015 for Oakdale Pump Station 23 and Fullerton Pump Station 24. For purposes of the Capitalization Fee Contract payments, the In-Service-Date shall be not later than one (1) month after NPPD completes the construction of the NPPD Transmission Facilities

**"Keystone Facility"** shall, individually and collectively, mean the Keystone XL Pipeline pump stations O'Neill Pump Station 22, Oakdale Pump Station 23, Fullerton Pump Station 24, and Steele City Pump Station 26 to be owned and operated by Keystone with electrical service to be provided by the Retail Service Provider selected for each pump station as further identified in Appendix A.

**"Loss"** shall have the meaning given in Section 9.1.

**"NPPD Transmission Facilities"** shall mean all facilities and equipment, including NPPD Substations owned, operated and maintained by NPPD on NPPD's side of the Point of Interconnection with each Retail Service Provider, located and described in Appendix A.

**"NPPD Substation"** shall mean the electrical substations to be constructed and owned by NPPD and located as shown on Appendix A.

**"Party"** shall mean either Keystone or NPPD and **"Parties"** shall mean both Keystone and NPPD.

**"Point of Interconnection"** shall mean the point, located at each Retail Service Provider's substation and depicted in Appendix A, at which the NPPD Transmission Facilities interconnect with that System.

**"Project Schedule"** means the project schedule for construction of the NPPD Transmission Facilities set out in Appendix B as amended from time to time by NPPD.

**"Retail Service Provider"** shall mean, as applicable to each Keystone Facility, either Niobrara Valley Electric Membership Cooperative, Elkhorn Rural Public Power District, Cornhusker Public Power District, and/or Norris Public Power District.

“**System**” shall mean the electric distribution system of the Retail Service Provider that is providing service to a Keystone Facility.

“**Transmission System**” means the electric transmission facilities of NPPD.

"**Term**" shall have the meaning given in Section 2.2.

"**Termination Payments**" shall mean the payments due to NPPD from Keystone upon the termination of this Agreement, as set out in Section 7.2.

"**Total Construction Costs**" shall mean all costs and expenses, incurred by NPPD for the permits, design, engineering, procurement, construction, coordination and testing the NPPD Transmission Facilities as set out in Appendix B and to be paid by Keystone pursuant to Appendix C.

“**XL Pipeline Original Route Expenses**” shall mean all costs and expenses incurred by NPPD for permits, design, engineering and procurement under the Parties Transmission Facilities Construction Agreement dated July 17, 2009 for NPPD Transmission Facilities as defined therein for the original Keystone XL pipeline route, and as set out in Appendix F and to be paid by Keystone pursuant to Appendix C.

## **1.2 Attachments and Appendices.**

The following appendices are incorporated into and shall be part of this Agreement:

- Appendix A - Depiction of NPPD Transmission Facilities, Retail Service Provider Facilities, Point of Interconnection and Keystone Facility
- Appendix B - Project Schedule, Estimated Construction Costs, Cumulative Authorized Construction Costs and Total Construction Costs
- Appendix C - Capitalization Fee Contract
- Appendix D - Guaranty Agreement
- Appendix E - Keystone Service Requirements:  
TransCanada Keystone Email correspondence and attachment giving Keystone electric service, conductor and breaker requirements.
- Appendix F - XL Pipeline Original Route Expenses

## **ARTICLE 2 - TERM OF AGREEMENT**

**2.1 Effective Date.** This Agreement shall become effective on of the date first written above (the "Effective Date").

**2.2 Term.** This Agreement shall continue in full force and effect from the Effective Date until the date of full and complete payment and performance of the Capitalization Fee Contract in Appendix C unless Keystone terminates this Agreement before the In-Service Date pursuant to Section 7.1 (the “Term”).

**2.3 Survival.** The applicable provisions of this Agreement shall continue in effect after termination hereof to the extent necessary to provide for final billings, billing adjustments, the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect and for the enforcement of obligations that continue beyond the term of this Agreement as specifically provided herein.

### **ARTICLE 3 - CONSTRUCTION OF NPPD TRANSMISSION FACILITIES**

**3.1 NPPD Transmission Facilities.** NPPD shall design, engineer, procure, construct, install and maintain the NPPD Transmission Facilities in accordance with all requirements of applicable electric industry safety and/or engineering codes and standards, including those of NPPD, Good Utility Practices and all applicable laws and regulations.

**3.2 Cumulative Authorized Construction Costs.** NPPD shall not at any time or in any quarter incur any costs or expenses in excess of the Cumulative Authorized Construction Costs for the applicable quarter, and at no time shall the total costs and expenses for the NPPD Transmission Facilities incurred by NPPD exceed the Total Construction Costs. Keystone shall under no circumstances be liable to NPPD for any costs or expenses incurred by NPPD which exceed the Cumulative Authorized Construction Costs at that point in time. Any change to the Cumulative Authorized Construction Costs must be agreed to in writing by Keystone. The Parties agree that any agreement to such amendment by Keystone is required to be written and timely in order to prevent delays to the In-Service-Date. If the Parties fail to reach agreement on a proposed amendment to the Cumulative Authorized Construction Costs then Keystone may terminate this Agreement under Section 7.1 and proceed under Section 7.2.

**3.3 NPPD Status Reports.** NPPD shall inform Keystone on a monthly basis, and at such other times as Keystone reasonably requests, of the status of the construction and installation of the NPPD Transmission Facilities including, but not limited to, the following information: (i) progress to date; (ii) a description of scheduled activities for the next period; (iii) the delivery status of all equipment ordered; and (iv) the identification of any event which NPPD reasonably expects may delay or advance the construction of the NPPD Transmission Facilities; and (v) updates to the Project Schedule.

**3.4 Keystone Facility Layout.** Keystone shall submit the legal description and a plot plan for the Keystone Facility to NPPD for review prior to commencement of construction of the Keystone Facility. NPPD shall review and provide any comment on such plot plan which it deems necessary and advisable. NPPD shall then design, engineer, procure, construct, install and maintain NPPD Transmission Facilities in accordance with all requirements of applicable safety and/or engineering codes, including those of NPPD, Good Utility Practices and all applicable laws and regulations.

**3.5 NPPD Completion Obligations and Project Schedule.** NPPD shall use all reasonable efforts and Good Utility Practices to design, engineer, procure, construct, install, and test the NPPD Transmission Facilities in accordance with the Project Schedule, which schedule may be revised from time to time by mutual agreement of the Parties. NPPD shall, at Keystone’s request and expense, use reasonable efforts to accelerate its work under this Agreement in order to meet the Project Schedule, provided that Keystone authorizes such actions and the costs associated therewith in advance.

**3.6 Land Rights and Access.** Upon reasonable notice and supervision by NPPD, Keystone shall provide at no cost to NPPD any necessary access for ingress and egress across lands owned or controlled by Keystone and/or its affiliates for the construction, operation and maintenance of necessary lines, switches, and other equipment to interconnect the NPPD Transmission Facilities and the Point of Interconnection. Keystone shall provide at no cost to NPPD transmission line easements in a form and substance satisfactory to NPPD for the 115 kV line facilities from the Transmission System to the substation owned by each Retail Service Provider. Easements will be for right-of-way ingress, egress, construction, operation, and maintenance of necessary lines, switches or other associated equipment to serve the Retail Service Provider.

#### **ARTICLE 4 - CREDITWORTHINESS**

**4.1 Financial Assurances.** Keystone shall obtain and provide to NPPD simultaneously with the originals of this Agreement executed by Keystone an executed guarantee of payment of its obligations under this Agreement and the Capitalization Fee Contract in Appendix C, in a form acceptable to NPPD and attached hereto as Appendix D (the “**Guaranty Agreement**”).

**4.2 Obligations Conditional.** NPPD’s obligations under this Agreement are conditional upon NPPD’s receipt of the properly executed original of said Guaranty Agreement. If said Guaranty Agreement is not delivered to NPPD by September 11, 2013, NPPD shall have no obligation to perform under this Agreement.

#### **ARTICLE 5 - PAYMENT**

**5. Capitalization Fee.** Beginning on the third month following the In-Service-Date and any continuation thereof, Keystone shall pay the Capitalization Fee as set forth in the Capitalization Fee Contract in Appendix C.

#### **ARTICLE 6 - FORCE MAJEURE**

**6.1 Notice.** The Party unable to carry out an obligation imposed on it by this Agreement due to Force Majeure shall notify the other Party in writing or by telephone, followed up in writing, within a reasonable time after the occurrence of the cause relied on.

**6.2 Duration of Force Majeure.** Except as set forth in Section 6.3, no Party shall be considered in breach or default as to any obligation under this Agreement if prevented from fulfilling the obligation due to an event of Force Majeure. A Party shall not be responsible for any non-performance or be considered in breach or default under this Agreement due to Force Majeure whether occurring on the Transmission System, the Keystone Facility, the System, the NPPD Transmission Facilities, or any connecting electric generating, transmission or distribution system affecting the Party’s operations. A Party shall be excused from whatever performance is affected only for the duration of the Force Majeure and while the Party exercises reasonable efforts to alleviate such situation. As soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence of Force Majeure, such Party shall give prompt notice thereof to the other Parties.

**6.3 Obligation to Make Payments.** Any Party’s obligation to make payments under this Agreement shall not be suspended by Force Majeure.

## ARTICLE 7 – TERMINATION AND PAYMENT OF COSTS

**7.1 Right to Terminate.** Keystone may terminate this Agreement for any reason whatsoever by providing a minimum of three (3) days written notice of termination to NPPD. Such termination shall be effective upon Keystone’s satisfaction of all Termination Payments as set out in Section 7.2. NPPD may terminate this Agreement pursuant to Section 11.6 by providing a minimum of three (3) days written notice to Keystone.

### **7.2 Termination Payments.**

(a) If this Agreement is terminated 1) by Keystone before the In-Service-Date, or 2) by either Party pursuant to Section 11.6, Keystone shall pay to NPPD the aggregate of the following Termination Payments:

- (i) actual costs and expenses incurred by NPPD up to the Cumulative Authorized Construction Costs at that point in time;
- (ii) any reasonable costs incurred in winding up the work;
- (iii) any reasonable costs incurred in removing facilities already installed;
- (iv) any reasonable costs incurred in respect of the construction demobilization;
- (v) any amounts relating to commitments for future work in respect of the NPPD Transmission Facilities for which NPPD is obligated or liable to any contractors, vendors or other parties; and,
- (vi) charges assessed, if any, by the bulk transmission system operator related to the NPPD Transmission Facilities which are payable by NPPD.
- (vii) XL Pipeline Original Route Expenses

Upon termination, NPPD shall use all reasonable efforts to mitigate and minimize the Total Construction Costs, including, without limitation, selling or reusing any unused equipment or facilities.

**7.3 Payment.** For any amount payable by Keystone to NPPD pursuant to Section 7.2 to this Agreement, NPPD shall render an invoice by electronic mail and regular mail to Keystone, with return receipt requested, to the address of a person designated by Keystone. All amounts due and payable shall be paid to NPPD by electronic funds transfer within 30 days from the date Keystone receives the invoice. If the 30<sup>th</sup> day falls on a non-business day, payment shall be due on the immediately preceding business day. The proceeds of any sale or the value of any reused equipment or facilities under Section 7.2 shall be credited to Keystone on the invoice issued pursuant to this Section 7.3.

## ARTICLE 8 - ASSIGNMENT

**8.1 General Provision.** Neither Party may assign any of its rights or transfer or purport to transfer any of its obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

## ARTICLE 9 - INDEMNITY

**9.1 General.** Each Party shall indemnify and hold harmless the other Party, and the other Party’s respective officers, shareholders, stakeholders, managers, representatives, directors, agents and employees, and affiliated and associated companies, from and against any and all loss, liability, damage,

cost or expense, for liability for bodily injury to or death of persons, or damage to property of persons (including reasonable legal fees and expenses, litigation costs, consultant fees, investigation fees and sums paid in settlements of claims and any such fees and expenses incurred in enforcing this indemnity or collecting any sums due hereunder) (collectively, "**Loss**") to the extent arising out of, in connection with or resulting from (i) the indemnifying Party's breach of any terms or conditions of this Agreement, or failure to perform any of its obligations under, this Agreement; or (ii) the negligence or willful misconduct of the indemnifying Party or its contractors and regardless whether arising under applicable laws and regulations or otherwise; provided, however, that no Party shall have any indemnification obligations under this Section 9.1 with respect to any Loss to the extent the Loss results from the gross negligence or willful misconduct of the Party seeking indemnity.

**9.2 Amount Owing.** If an indemnifying Party is obligated to indemnify and hold any indemnified person harmless under this Article 9, the amount owing to the indemnified person shall be the amount of such indemnified person's actual Loss, not of any insurance or other recovery. An indemnifying Party shall not be liable for any incidental, indirect or consequential economic, exemplary or punitive damages, costs or expenses, loss of profits, loss of revenue, or lost opportunity howsoever characterized suffered by an indemnified Party which arises due to the indemnifying Party's breach of or failure to perform its obligations under this Agreement.

## ARTICLE 10 - NOTICE

**10.1 General.** Any notice, request, instruction, correspondence or other document to be given hereunder by any Party to another (herein collectively called "**Notice**") shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or by telecopier or email, as follows:

To NPPD:

Thomas J. Kent  
Vice President and Chief Operating Officer  
Nebraska Public Power District  
1414 15<sup>th</sup> Street  
P.O. Box 499  
Columbus, NE 68602-0499

Telephone – (402) 563-5575  
Facsimile - 402-563-5145  
Email address [tjkent@nppd.com](mailto:tjkent@nppd.com)

Copy To:

Harold L. Hadland  
Office of the General Counsel  
Nebraska Public Power District  
1414 15<sup>th</sup> Street  
P.O. Box 499  
Columbus, NE 68602-0499

Telephone – (402) 563-5046  
Facsimile - 402-563-5837  
Email address [hlhadla@nppd.com](mailto:hlhadla@nppd.com)

To Keystone:

Neall Banner  
TransCanada Keystone  
450 – 1<sup>st</sup> Street SW  
Calgary, Alberta T2P 5H1

Telephone – (403) 920-7907  
Facsimile – (403) 920-  
Email address [neall\\_banner@transcanada.com](mailto:neall_banner@transcanada.com)

Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by telecopier shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's

normal business hours. All Notices by telecopier shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any Party hereto may change any address to which Notice is to be given to it by giving notice of such change of address as provided above.

## **ARTICLE 11 - MISCELLANEOUS**

**11.1 Waiver.** Any waiver at any time by a Party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver or continuing waiver with respect to any subsequent default or other matter.

**11.2 Governing Law.** The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the State of Nebraska, which state the Parties agree shall be the exclusive venue for any lawsuit on the Agreement, without regard to the conflicts of law provisions.

**11.3 Amendments.** This Agreement may be amended by and only by a written instrument duly executed by the Parties. Upon satisfaction of all applicable laws and regulations, an amendment to this Agreement shall become effective and a part of this Agreement.

**11.4 Entire Agreement.** This Agreement constitutes the entire agreement among the Parties hereto with reference to the subject matter hereof and supersedes all prior oral and written communications pertaining hereto, except as specifically incorporated herein.

**11.5 Binding Effect.** This Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.

**11.6 Regulatory Requirements.** Each Party's obligations under this Agreement shall be subject to its receipt and the continued effectiveness of any required permits, approval or certificate from one or more governmental authorities in the form and substance satisfactory to the receiving Party, or the Party making any required filings with, or providing notice to, such governmental authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek these other approvals as soon as is reasonably practicable. Should a Party not receive the required permits, approvals or certificates, or if those approvals or certificates are revoked, cancelled or vacated, either Party may terminate this Agreement in accordance with Article 7. In the event Keystone does not receive all permits, approvals and certificates by December 31, 2013, NPPD shall have the right to collect the Termination Payments without terminating the Agreement and the right to terminate this Agreement in accordance with Article 7.

**11.7 Further Assurances.** Each of the Parties hereto shall from time to time and at all times from and after the date hereof, without further consideration do all such further acts and execute and deliver all further agreements and other documents and instruments as may be reasonably necessary to give effect to this Agreement or to otherwise give effect to the provision of this Agreement.



**11.8 Termination of Original XL Pipeline Construction Agreement.** The Parties agree that upon full and complete execution and delivery of this July 31, 2013 Transmission Facilities Construction Agreement, the July 31, 2013 Capitalization Fee Contract and the July 31, 2013 Guaranty Agreement that the July 17, 2009 Transmission Facilities Construction Agreement and Capitalization Fee Contract between the Parties shall be deemed terminated and each Party released from its obligations thereunder.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year below written.

**TRANSCANADA KEystone PIPELINE,  
LP, by its agent, TC OIL PIPELINE  
OPERATIONS INC.**

**NEBRASKA PUBLIC POWER  
DISTRICT**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX A**  
**Description of the NPPD Transmission Facilities,**  
**Retail Service Provider Facilities, Point of Interconnection,**  
**and Keystone Facility**

This Appendix A is a part of the Transmission Facilities Construction Agreement between Keystone and NPPD.

**APPENDIX B**  
**Project Schedule, Estimated Construction Costs**  
**Cumulative Authorized Construction Costs and Total Construction Costs**

This Appendix B is a part of the Transmission Facilities Construction Agreement between Keystone and NPPD.

**APPENDIX C**  
**Capitalization Fee Contract**

This Appendix C is a part of the Transmission Facilities Construction Agreement between Keystone and NPPD.

## CAPITALIZATION FEE CONTRACT

THIS CAPITALIZATION FEE CONTRACT (“**Capitalization Fee Contract**”) is made and entered into as of the 31<sup>st</sup> day of July, 2013 between TRANSCANADA KEYSTONE PIPELINE, LP, a limited partnership established pursuant to the laws of Delaware (hereinafter referred to as “**Keystone**”) and Nebraska Public Power District, a public corporation and political subdivision of the State of Nebraska (hereinafter referred to as the “**NPPD**”).

### 1. Capitalization Fee

- a. Keystone shall pay NPPD a monthly fee (the “**Capitalization Fee**”) to cover the total capital expenditures required to build and finance the NPPD Transmission Facilities (the “**Total CapEx**”), subject to the adjustment pursuant to Section 2 herein. The Total CapEx shall be comprised of the following costs:
  - (i) The Total Construction Costs incurred by NPPD for the NPPD Transmission Facilities; plus
  - (ii) XL Pipeline Original Route Expenses; plus
  - (iii) Interest costs incurred by NPPD for XL Pipeline Original Route Expenses and during the construction (the “**Interest During Construction**”) in respect of the Total Construction Costs for the NPPD Transmission Facilities.
- b. The Capitalization Fee shall be determined by applying to the Total CapEx a standard Ten (10) year amortization schedule with equal monthly payments and the true interest rate equal to NPPD’s actual and documented taxable debt borrowing rate (including the applicable allocated share of debt issuance costs) for the Total CapEx, as calculated by NPPD’s debt underwriter, plus a placement/administrative fee of 100 basis points, (the “**Cost of Money**”). The Cost of Money shall be adjusted for any change during the Capitalization Term resulting from refinancing of the Total CapEx.
- c. Keystone shall pay the Capitalization Fee to NPPD for **Ten (10)** years beginning three months after the In-Service Date as defined in the Agreement (the “**Capitalization Term**”).
- d. NPPD estimates that the Total CapEx will be \$43,370,000 and the Capitalization Fee will be \$460,006 per month (see calculation below). However, NPPD shall review its Total Construction Costs and Interest During Construction after the NPPD Transmission Facilities have been completed and shall adjust the Capitalization Fee (upwards or downwards as the case may be) 1) to reflect such actual costs and 2) for any change in the Cost of Money resulting from any refinancing.

### **Example Calculation of Capitalization Fee Based on Estimated Total CapEx**

Total Construction Costs	\$29,870,000
XL Pipeline Original Route Expenses	<u>\$11,500,000</u>
Grand Total	\$41,370,000
Interest During Construction	<u>\$2,000,000</u>
Total CapEx	\$43,370,000

Capitalization Fee Beginning three months after In-Service-Date

Cost of Money @ 5.00% for 120 months

Capitalization Fee

Monthly \$460,006

2. REDUCTION FOR SHARED USE BY OTHER LARGE CUSTOMERS

If the NPPD Transmission Facilities described in Appendix A and Appendix B are utilized by NPPD to serve additional customers, the Total CapEx and the Capitalization Fee shall be reduced to reflect such other users and the Adjusted Total CapEx shall apply to the Capitalization Fee calculation rather than the Total CapEx.

The Adjusted Total CapEx shall be calculated as per the following formula and the monthly Capitalization Fee shall be adjusted accordingly:

$$\text{Adjusted Total CapEx} = \text{Shared Facilities} \times \frac{\text{Keystone Capacity}}{\text{Keystone Capacity} + \text{Other Capacity}} + \text{Unshared Facilities}$$

Where:

- a. **Adjusted Total CapEx** is the adjusted Total CapEx upon which the monthly Capitalization Fee will be based if NPPD serves other customers from the NPPD Transmission Facilities.
- b. **Shared Facilities** is the actual installed cost of the portions of the NPPD Transmission Facilities that are used to serve both Keystone and other customers.
- c. **Unshared Facilities** is the actual installed cost of the portions of the NPPD Transmission Facilities that are used to serve only Keystone.
- d. **Keystone Capacity** is the dedicated MVA capacity of the service provided by NPPD for service to Keystone.
- e. **Other Capacity** is the dedicated MVA capacity of the service provided by NPPD to other customers.

3. NPPD TAXES AND FEES

Keystone agrees to pay the actual taxes, fees, and similar obligations imposed on NPPD in relation to this Capitalization Fee Contract. These charges shall be applied to monthly bills rendered under this Capitalization Fee Contract.

4. FEDERAL, STATE, AND LOCAL OBLIGATIONS

All applicable federal, state, and local sales taxes, fees, charges, or other similar obligations shall be applied to monthly bills. These charges are not included in the fee components described above.

5. **Payments and Arrangements**

- (i) For payments due pursuant to the Capitalization Fee, NPPD shall render an invoice

electronically to Keystone on or before the 10<sup>th</sup> day of each month, return receipt requested, to the electronic mail address of a person designated by Keystone. All amounts due and payable under this Section 5.2 (i) shall be paid to NPPD by electronic funds transfer within 15 days from the date Keystone receives the invoice. If the 15<sup>th</sup> day falls on a non-business day, payment shall be due on the immediately preceding business day. All invoiced amounts shall be calculated in accordance with the Capitalization Fee Contract.

- (ii) Keystone shall pay interest at a rate per annum equal to the Prime Rate plus 1% on the unpaid portion of any past due amounts. Interest shall accrue commencing on the date following the date on which the payment is due and continues until full payment has been made to NPPD.
- (iii) Keystone shall pay all amounts invoiced in accordance with Section 5.2 (i) timely and in accordance with the terms of this Section 5 even if it disputes the amounts invoiced. If it is determined that Keystone is entitled to a refund or credit for any invoiced amount paid, NPPD shall, in addition to the principal amount refunded or credited, pay interest on said refund or credit at the Prime Rate plus 1%. Interest on any refunded or credited amount shall be calculated from the date payment was made by Keystone up to and including the date the refund or credit was given by NPPD. Neither Party shall be obligated to settle disputes by arbitration or mediation without the mutual consent of the Parties.
- (iv) In the event Keystone fails to make any monthly payment by the due date, NPPD shall have the right to accelerate payment and declare the remaining total balance of Total CapEx due and payable immediately.
- (v) Keystone after the In-Service-Date, may satisfy its obligations under this Capitalization Fee Contract by payment to NPPD of the amount equal to the present value of all monthly Capitalization Fees outstanding for the remainder of the Capitalization Term discounted at the Cost of Money.

**TRANSCANADA KEYSTONE PIPELINE,  
LP, by its agent , TC OIL PIPELINE  
OPERATIONS INC.**

**NEBRASKA PUBLIC POWER  
DISTRICT**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX D**  
**Guaranty Agreement**

This Appendix D is a part of the Transmission Facilities Construction Agreement between Keystone and NPPD.



## GUARANTY AGREEMENT

This Guaranty Agreement (this “**Guaranty**”), dated as of July 31, 2013, is entered into by TransCanada Corporation, a Canadian corporation, and TransCanada Pipeline USA Ltd., a Nevada corporation (individually and collectively, the “**Guarantor**”) in favor of and for the benefit of Nebraska Public Power District, a public corporation and political subdivision of the State of Nebraska (“**NPPD**”). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Transmission Facilities Construction Agreement.

### RECITALS:

A. NPPD has entered into a Transmission Facilities Construction Agreement dated as of July 31, 2013, with an affiliate of the Guarantor, TransCanada Keystone Pipeline, LP, a Delaware limited liability company (hereafter “**Keystone**”) pursuant to which NPPD has agreed to construct the NPPD Transmission Facilities to interconnect the System to the Transmission System.

B. Guarantor is willing to irrevocably and unconditionally guaranty, both jointly and severally, the Guaranteed Obligations (as such term is defined below) of Keystone under the Transmission Facilities Construction Agreement and the Capitalization Fee Contract attached thereto as Appendix C.

NOW THEREFORE, based on the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby covenants and agrees as follows:

1. **GUARANTY.** Subject to the provisions hereof, Guarantor hereby irrevocably and unconditionally guarantees, jointly and severally, and as primary obligor and not merely as surety, the timely payment when due of any monetary damages or amounts owed to NPPD by Keystone pursuant to the Transmission Facilities Construction Agreement and the Capitalization Fee Contract attached thereto as Appendix C (the “**Guaranteed Obligations**”). If Keystone shall fail to timely pay when due any Guaranteed Obligations, upon written demand by NPPD to Guarantor, Guarantor shall promptly make such payment to NPPD in the amount due. This Guaranty shall constitute a guaranty of payment and not of collection or performance. The liability of Guarantor under this Guaranty shall be subject to the following:

(a) The aggregate amount payable under this Guaranty, whether as Guarantor or as principal debtor, shall not exceed USD \$43,370,000.

(b) The liability of Guarantor under this Guaranty shall be terminated automatically and this Guaranty shall be of no further force and effect upon full satisfaction of the Guaranteed Obligations by Guarantor or Keystone.

(c) If all or any portion of the Guaranteed Obligations is paid by Keystone and all or any part of such payment(s) is rescinded or recovered directly or indirectly from NPPD as a preference, fraudulent transfer or otherwise, the obligations of Guarantor hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, and any such payments that are so rescinded or recovered shall constitute Guaranteed Obligations.

(d) Guarantor shall not exercise, until all Guaranteed Obligations have been paid in full, any claim, right or remedy, direct or indirect, that Guarantor now has or may hereafter have against Keystone or any of its assets in connection with this Guaranty or the performance by Guarantor of its obligations

hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, reimbursement or indemnification that Guarantor now has or may hereafter have against Keystone.

2. DEMANDS AND NOTICE. A demand made by NPPD upon Guarantor under Section 1 hereof (hereinafter referred to as a “**Payment Demand**”) shall be in writing and shall briefly specify the basis for the payment under the Transmission Facilities Construction Agreement or Capitalization Fee Contract, and the amount of the payment due thereunder, with a specific statement that NPPD is calling upon the Guarantor to pay under this Guaranty.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

(a) it is a corporation duly organized and validly existing under the laws of its jurisdiction of incorporation stated above, and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and

(c) this Guaranty has been duly authorized by all necessary corporate action, has been duly executed and delivered, and constitutes a valid and legally binding agreement of Guarantor, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors’ rights generally and by general principles of equity.

4. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except by a writing signed by the Guarantor and NPPD.

5. EXPENSES. Guarantor agrees to pay, or cause to be paid, on demand, and to save NPPD harmless against liability for, any and all costs and expenses (including reasonable fees and disbursements of legal counsel) incurred or expended by NPPD in connection with the successful enforcement of or preservation of any rights under this Guaranty.

6. WAIVERS. (a) Guarantor hereby waives (i) notice of acceptance of this Guaranty; (ii) presentment and demand concerning the liabilities of Guarantor, except as expressly hereinabove set forth; (iii) any right to require that any action or proceeding be brought against Keystone or any other person; (iv) any right to require that NPPD seek enforcement of any performance against Keystone or any other person, prior to any action against Guarantor under the terms hereof; and (v) to the fullest extent permitted by law, any defenses which limit the liability of or exonerate guarantors or sureties.

(b) Except as to applicable statutes of limitation, no delay of NPPD in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from any obligations hereunder.

7. NO MERGER. Any action, proceeding, judgment or recovery does not constitute a merger of any of NPPD’s rights or remedies under this Guaranty. Any judgment obtained by NPPD in whole or in part of any of the Guaranteed Obligations under this Guaranty does not constitute a merger of this Guaranty into that judgment.

8. NOTICE. Any Default Notice, notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein collectively called “**Notice**”) shall be in writing and

delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or by telecopier, as follows:

If to Guarantor:

TransCanada Corporation  
450 – 1<sup>st</sup> Street SW  
Calgary, Alberta  
Canada T2P 5H1  
Attention: Vice-President, Risk Management  
Fax No.: (403) 920-2359

Copy to:

TransCanada Pipeline USA Ltd.  
c/o TransCanada Corporation  
450 – 1<sup>st</sup> Street SW  
Calgary, Alberta  
Canada T2P 5H1  
Attention: VP Risk Management  
Fax No.: (403) 920-2361

If to NPPD:

Traci L. Bender  
Vice President & Chief Financial Officer  
Nebraska Public Power District  
1414 15<sup>th</sup> Street  
P.O. Box 499  
Columbus, NE 68602-0499  
Fax: 402-563-5145

Copy To:

Harold L. Hadland  
Office of the General Counsel  
Nebraska Public Power District  
1414 15<sup>th</sup> Street  
P.O. Box 499  
Columbus, NE 68602-0499  
Fax: 402-563-5837

Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by telecopier shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All Notices by telecopier shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any party hereto may change any address to which Notice is to be given to it by giving notice of such change of address as provided above.

9. MISCELLANEOUS. THIS GUARANTY SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF NEBRASKA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. Guarantor hereby agrees to be subject to suit in the federal court in the State of Nebraska and submit to the jurisdiction and venue of said court for any suit to enforce this Guaranty. This Guaranty shall be binding upon Guarantor, its successors and assigns and inure to the benefit of and be enforceable to NPPD, its successors and assigns. The Guaranty embodies the entire agreement and understanding between Guarantor and NPPD and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. This Guaranty may be executed

in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

EXECUTED as of the day and year first above written.

**GUARANTOR:**

**TRANSCANADA CORPORATION**

**TRANSCANADA PIPELINE USA LTD.**

Per: \_\_\_\_\_

Per: \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Per: \_\_\_\_\_

Per: \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

**ACCEPTED:**

**NEBRASKA PUBLIC POWER DISTRICT**

By: \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPENDIX E**  
**Keystone Service Requirements**

This Appendix E is a part of the Transmission Facilities Construction Agreement between Keystone and NPPD.

Keystone Service Requirements

NPPD agrees to allow a single breaker, single line configuration to serve both the Keystone and the Keystone XL substations. Originally, NPPD proposed to construct a separate 115 kV breaker and radial line for each substation. Keystone instructed NPPD it did not need this level of service. Keystone provided the Keystone XL Electric Service Requirements to NPPD contained in Appendix E. Keystone requested the single breaker and line to serve Keystone and Keystone XL substations and acknowledges this configuration's operational inflexibility and that this configuration provides less reliability. Furthermore, Keystone acknowledges this configuration at Steele City will require simultaneous outages to both Keystone and Keystone XL substations to perform certain operations and maintenance, as well as during any unplanned outages.

**APPENDIX F**  
**XL Pipeline Original Route Expenses**

This Appendix F is a part of the Transmission Facilities Construction Agreement between Keystone and NPPD.

**APPENDIX F**  
**XL Pipeline Original Route Expenses**

<u>Project</u>	<u>Description</u>	<u>Actual Expense as of 2/28/13</u>
C/003763	MCCOOL 115 KV SUB, CAP UPGRADE, (XL)	561,582.06
C/003770	ERICSON 115KV SUB-PURCH LAND (XL)	78,542.23
C/005169	MCCOOL - 115/69 KV, 56 MVA (XL)	1,430,339.14
C/005411	NEW 115 KV LINE O'NEILL TO XLPS 22 (XL)	2,455,796.00
C/005416	NEW 115V KV LINE PETERSBURG-ERICSON (XL)	2,697,250.26
C/005421	CLARKS TO XL PS24 NEW 115 KV LINE (XL)	968,186.06
C/005512	O'NEILL 115 KV SUB MODS (XL)	141,615.79
C/005513	PETERSBURG 115 SUB MOD (XL)	245,745.60
C/005514	CLARKS NEW 115 KV SWITCH STATION (XL)	405,552.67
C/005646	CLARKS SWITCH STATION, PROCURE LAND (XL)	61,871.01
C/006172/02	NEW ERICSON 115 KV SUBSTAT (XL)	271,148.69
C/006319	L1264 DISBUT LN IMPACT (C/5411) (XL)	370,352.99
C/006320	L1264 SUBT LN IMPACT (C/5411) (XL)	-
C/006335	O-NEILL-STUART S UG FIBER (XL)	4,091.57
C/006336	PETERSBURG N -ERICSON UG FIBER (XL)	3,821.45
C/006446	STUART S 115KV SUB LAND PURCHASE (XL)	90,895.38
C/006652	MATL STAGE/RENT/ENGR/REVEG (XL)	102,219.88
C/006909	TRANSCANADA KXL PROJECT MATERIALS (1)	1,517,651.30
		11,406,662.08

\*All projects will continue to accrue Interest During Construction until closed out and they become payable under the Capitalization Fee Contract or as Termination Payments.

C/006909 Project Materials are proposed to be installed in alternate route projects.

C/006652 is an open project and continues to incur applicable charges for labor and storage rent