

WASHINGTON AFFILIATED INTEREST FILING

ATTACHMENT A

PRECEDENT AND FACILITIES AGREEMENT

DRAFT – PENDING MANAGEMENT REVIEW AND APPROVAL

PRECEDENT AND FACILITIES AGREEMENT
(NAUGHTON LATERAL AND DELIVERY METER STATION)

THIS PRECEDENT AND FACILITIES AGREEMENT (“**Agreement**”) is made and entered into as of September 29, 2023 (“**Effective Date**”), by and between KERN RIVER GAS TRANSMISSION COMPANY (“**Kern River**”), a Delaware corporation, and PACIFICORP (“**Customer**”), an Oregon corporation. Hereinafter, Kern River and Customer may be referred to individually as a “**Party**” or collectively as the “**Parties**.”

BACKGROUND:

- A. Kern River owns and operates an interstate natural gas transmission system extending from receipt points near Opal, Wyoming to delivery points in Utah, Nevada, and California.
- B. Customer requested that Kern River construct a new natural gas pipeline lateral, a new delivery meter station, a pressure regulation station, and all associated facilities necessary to provide firm natural gas transportation service to Customer’s facility located near Kemmerer, Wyoming (“**Naughton Plant**”).
- C. Kern River is willing to design, permit, construct, own, operate, and maintain the Delivery Facilities (defined below).
- D. Customer has or will execute a FIRM TRANSPORTATION SERVICE AGREEMENT (“**TSA**”) substantially in the form of **Exhibit A** with Kern River for transportation service upon mutually agreed upon, prearranged commercial terms set forth in such TSA, subject to the rates, terms and conditions of Kern River’s Tariff (as defined in Section 1.19 below).
- E. In consideration of the mutual covenants and agreements herein contained, and subject to all the terms, conditions, and provisions of this Agreement, Kern River and Customer do hereby agree as follows:

ARTICLE I
DEFINITIONS

When used in this Agreement, the capitalized terms set forth below shall have the following meanings:

- 1.1 “**49 CFR § 192.195**” shall mean Title 49 of the Code of Federal Regulations, Section 192.195
- 1.2 “**Actual Cost**” shall mean the cost incurred or committed for the construction of the Delivery Facilities, determined in Kern River’s sole discretion, including, but not limited to, (i) planning, design, materials, labor, contract and engineering costs; (ii) overheads; (iii) all applicable taxes; (iv) income tax gross-up, when applicable; (v) allowance for funds used during construction (AFUDC), when applicable; (vi) associated operation and maintenance costs; and (vii) any reservation charge credits, as defined in Kern River’s

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Tariff, paid to other shippers by Kern River as a result of any outage caused by the construction of the Delivery Facilities.

- 1.3 “**Contract Value**” shall mean, as of the determination date, the unpaid reservation charges of the remaining original term of the TSA.
- 1.4 “**Custody Transfer Point**” shall mean the point of interconnection between the Delivery Facilities and Customer’s Downstream Facilities.
- 1.5 “**Customer’s Remaining Obligation**” shall mean that portion of the Actual Cost which has not been paid to Kern River, as of any given calendar date, and is equal to (x) multiplied by (y); where (x) equals the unpaid reservation charges of the remaining original term of the TSA (excluding any costs associated with the extension option) divided by the total reservation charges for the entire original term of the TSA (excluding any costs associated with the extension option), and (y) equals the Actual Cost.
- 1.6 “**Delivery Facilities**” shall mean those facilities owned by Kern River as set forth on **Exhibit B** including, but not limited to, a new pipeline lateral, a new delivery meter station, a pressure regulation station, and all associated facilities and appurtenances required for the transportation and delivery of natural gas, as contemplated by this Agreement and the TSA, to Customer’s facilities located in Section 34, Township 21 North, Range 116 West, Lincoln County, Wyoming.
- 1.7 “**Downstream Facilities**” shall mean any and all facilities not owned or operated by Kern River that may be necessary, in the reasonable opinion of Customer, to protect and connect Customer’s facilities to the Delivery Facilities, to meet applicable regulatory requirements, to meet Customer’s gas quality requirements, and to protect Customer’s facilities. Downstream Facilities may include, but are not limited to, odorization facilities, pressure regulation, over-pressure protection equipment, liquid separation and gas filtration equipment, and applicable cathodic protection equipment. The Downstream Facilities will accommodate Kern River’s operating pressures as they exist from time to time, up to the Maximum Delivery Pressure.
- 1.8 “**Dth**” shall mean dekatherm. For the purposes of this Agreement, one dekatherm shall equal one thousand standard cubic feet of natural gas.
- 1.9 “**FERC**” shall mean the FEDERAL ENERGY REGULATORY COMMISSION.
- 1.10 “**Imaged Documents**” shall have the meaning set forth in Section 13.3.
- 1.11 “**MAOP**” shall mean maximum allowable operating pressure, in pounds per square inch gauge (“**psig**”).
- 1.12 “**Maximum Delivery Pressure**” shall mean the maximum pressure at which Kern River will deliver to the Customer at the Custody Transfer Point. The Maximum Delivery Pressure is 450 psig.

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- 1.13 “**Minimum Delivery Pressure**” shall mean the minimum pressure at which Kern River will deliver gas to the Customer at the Custody Transfer Point. The Minimum Delivery Pressure is 300 psig.
- 1.14 “**Naughton Plant**” shall have the meaning set forth above in Section B of the Background portion of this Agreement.
- 1.15 “**Necessary Approvals**” shall mean an approval that has become final and is no longer subject to rehearing or appeal, regarding the construction and operation of the Delivery Facilities, this Agreement or the TSA, issued by FERC, any federal, state, local, or municipal agency, or any other governmental authority, in a form and substance satisfactory to Kern River in its sole determination; provided, however, at Kern River’s sole discretion, Kern River may waive a Necessary Approval. Necessary Approvals shall specifically include, but shall not be limited to, all rights of way, permits and authorizations for the Delivery Facilities.
- 1.16 “**Open Season**” shall mean the period (as described in Section 2.1 below) when Kern River will conduct a binding open season to offer third parties an opportunity to bid on the pre-arranged transaction as set forth in this Agreement and governed by the Tariff.
- 1.17 “**Requested Delivery Facilities Capacity**” shall mean Customer’s requested delivery measurement range of 720 Dth per day minimum through 96,576 Dth per day maximum.
- 1.18 “**Security**” shall mean the amount of credit assurance required by Kern River pursuant to **Exhibit C**, provided by Customer and held by Kern River to secure Customer’s obligations to Kern River under this Agreement and/or the TSA.
- 1.19 “**Set-Point Pressure**.” The Naughton Plant will have ability to request set-point at 300 psig through 450 psig. The Naughton Plant’s common Set-Point Pressure requirement is 300 psig.
- 1.20 “**Tariff**” shall mean Kern River’s FERC GAS TARIFF, as revised from time to time.
- 1.21 “**TSA**” shall mean a FIRM TRANSPORTATION SERVICE AGREEMENT executed pursuant to Kern River’s Open Season, or any subsequent open seasons for the Delivery Facilities in the form attached hereto as **Exhibit A** and incorporated into this Agreement by this reference, subject to the Tariff.

ARTICLE II
TRANSPORTATION SERVICE

- 2.1 Subject to the terms of this Agreement, Kern River will tender to Customer a TSA substantially in the form as set forth in **Exhibit A** to this Agreement. The TSA will be consistent with Kern River’s Rate Schedule KRF-1 and shall be subject to all the applicable terms and conditions of Kern River’s Tariff, as may be revised from time to time, and all rules and regulations of governmental authorities having jurisdiction. The TSA will

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provide for the transportation of natural gas up to 96,576 Dth per day from the primary point of receipt to the primary point of delivery at a demand/reservation rate of \$0.3314 per Dth per day for a term of five years set forth in **Exhibit A**. Pursuant to Tariff General Terms and Conditions Section 27.2(c), Kern River shall post the pre-arranged transaction for competitive bid. In accordance with Tariff General Terms and Conditions Section 27.2(c), if another party submits a bid with a higher incremental economic value than the pre-arranged transaction set forth in this Agreement, Customer will have an opportunity to retain the capacity by matching such higher bid. If the capacity is awarded to another party pursuant to Tariff General Terms and Conditions Section 27.2(c), Customer shall have no further obligations under this Agreement, which shall then be void and of no effect. If Customer is awarded the capacity, Kern River shall tender the TSA. If Customer fails to return a fully executed copy of the TSA within (30) thirty calendar days of the date tendered to Customer by Kern River, Customer will immediately be in breach of this Agreement on the date of such failure and will be liable for any and all damages at law or in equity hereunder, as accelerated to the date of such breach.

The term of the TSA shall commence on the later of March 1, 2026, or the date on which Kern River deems the facilities ready for service, provided, however, the TSA shall be subject to any Necessary Approvals, and acceptance of such Necessary Approvals, and the completion of any facilities necessary for Kern River to provide the service as set forth in Article IV.

- 2.2 Kern River and Customer shall execute a TSA, OPERATIONAL BALANCING AGREEMENT and a SIGNAL LEASE AGREEMENT prior to the in-service date of the Delivery Facilities in order to facilitate operation of the Delivery Facilities.

ARTICLE III

FACILITIES TO BE CONSTRUCTED AND OPERATED

- 3.1 The Delivery Facilities shall consist of those facilities required or necessary to facilitate the measurement and delivery of the Requested Delivery Facilities Capacity. Customer agrees that the design, construction and components used to build the Delivery Facilities will be determined by Kern River in its sole and reasonable discretion. Customer acknowledges that **Exhibit B** is not a comprehensive list of the items that may be necessary to construct the Delivery Facilities.
- 3.2 Kern River or its designee shall design, construct, install, inspect and test the Delivery Facilities to ensure that the Delivery Facilities can meet the Requested Delivery Facilities Capacity in accordance with this Agreement, Kern River's specifications, the Tariff, and otherwise in accordance with sound and prudent natural gas industry practice, and in compliance with any and all applicable laws, rules, regulations and orders of any duly constituted governmental authority having jurisdiction over Kern River or the Delivery Facilities.
- 3.3 Each Party represents and warrants that its facilities shall be designed, procured, constructed, and installed in accordance with all valid and applicable laws, regulations, codes, rules, ordinances, and directives of all applicable federal, state, local and tribal

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authorities, if any, having jurisdiction over such facilities including, without limitation, the provisions of 49 CFR § 192.

- 3.4 Kern River shall own, operate and maintain the Delivery Facilities as part of its interstate transmission system pursuant to its Tariff and any and all applicable laws, rules, regulations and orders of any duly constituted authority having jurisdiction.
- 3.5 Customer has the responsibility to adhere to 49 CFR § 192.195 and any other applicable federal and state requirements. Customer expressly agrees that Kern River is not responsible for the over-pressure protection or odorization of the Downstream Facilities, and that Customer is solely liable for any and all damages due to inadequate over-pressure protection on the Downstream Facilities.
- 3.6 Customer and Kern River hereby specifically acknowledge that delivery of natural gas transported by Kern River to Customer shall be at the Set-Point Pressure requested by the Naughton Plant, provided, however, Kern River reserves the right to modify the requested Set-Point Pressure in order to account for control system dead band limitations to ensure the delivery pressure will not exceed the Maximum Delivery Pressure or be less than the Minimum Delivery Pressure.
- 3.7 Kern River shall obtain all the Necessary Approvals. Such Necessary Approvals shall be obtained by and in the name of Kern River. Kern River shall be under no obligation to commence construction of the Delivery Facilities until such time as all Necessary Approvals have been obtained. Kern River shall not be liable to Customer under this Agreement for failure to obtain, or for delays in obtaining, the Necessary Approvals. The Parties will work together in good faith to obtain any required permits.
- 3.8 Subject to receipt of Necessary Approvals, Kern River will make commercially reasonable efforts to complete the Delivery Facilities no later than March 1, 2026. Customer shall not be obligated to make payment of any transportation demand/reservation charges until the Delivery Facilities are complete, provided, however, Kern River may declare the Delivery Facilities ready for service regardless of whether or not the Downstream Facilities to be constructed by Customer are complete.
- 3.9 Customer or its designee, at no cost or expense to Kern River, shall be solely responsible for the maintenance and operation of the Downstream Facilities. Kern River or its designee, shall be solely responsible for the maintenance and operation of the Delivery Facilities. Customer and Kern River, each agree to make reasonable efforts to coordinate testing and maintenance on the Downstream Facilities and Delivery Facilities, respectively.
- 3.10 Customer shall grant Kern River permanent and temporary easements on Customer-owned property necessary for the construction of a delivery meter station contemplated by this Agreement, as determined and mutually agreed by both Parties. The easement terms and conditions shall be to Kern River's satisfaction. The permanent easement for the delivery meter station shall have unrestricted vehicle access from a public road by March 1, 2025.

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CONDITIONS PRECEDENT

- 4.1 This Agreement and the TSA are expressly subject to receipt by Kern River of all Necessary Approvals.
- 4.2 To the extent Kern River, after making commercially reasonable efforts, is unable to obtain the Necessary Approvals, Kern River may terminate this Agreement and the TSA pursuant to this Article IV, and neither Party shall have any further obligations pursuant to this Agreement or the TSA, except that Customer shall be obligated to pay Kern River for the Actual Cost within thirty (30) calendar days of written notice which shall be accompanied with reasonable support of its Actual Cost.
- 4.3 In exchange for the consideration received hereunder, including without limitation the expected revenue from the TSA, Kern River is willing to make the capital expenditures for the construction of the Delivery Facilities; provided, however, if Customer has not provided a CIAC for an amount equal to the Actual Cost, and if the Total Delivery Point Entitlement (as defined in Exhibit A of the TSA) is, for any reason during the term of the TSA, in whole or in part, (i) reduced (except in the instance of a temporary capacity release), or (ii) realigned away from the Primary Receipt or Primary Delivery Points under the TSA, such act is a breach of this Agreement and Customer will promptly pay to Kern River an amount, which is immediately due and owing, equal to the Customer's Remaining Obligation on the date triggering the provisions of this section. This section and the reimbursement obligations herein will survive the permanent release of the capacity in the TSA or any assignment thereof and Customer will continue to be obligated for the reimbursement of Customer's Remaining Obligation unless Kern River consents to the express release of such obligation.
- 4.4 Kern River shall make reasonable commercial efforts to adhere to the total cost set forth in **Exhibit D**. If Kern River anticipates an overrun of the total cost at any time, it will make reasonable commercial efforts to provide Customer with prompt notice prior to incurring such total cost overrun.

ARTICLE V

TERM AND TERMINATION

- 5.1 This Agreement shall become effective as of the Effective Date and shall remain in effect until all obligations and responsibilities of this Agreement and the TSA have been fully satisfied, provided, however, upon both Parties' execution of the TSA, Operational Balancing Agreement and Signal Lease Agreement, Section 2.1 and **Exhibit A** of this Agreement shall expire and be superseded by the TSA. In the event this Agreement is terminated prior to the Delivery Facilities being ready for service for any reason not solely caused by Kern River, Customer shall be obligated to pay Kern River for the Actual Cost within thirty (30) calendar days of written notice which shall be accompanied with reasonable support of its Actual Cost.

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- 5.2 Kern River may terminate this Agreement and the TSA immediately upon written notice to Customer if (i) Customer, in Kern River’s reasonable judgment, fails to meet and maintain the creditworthiness requirements set forth in Article VI below, and (ii) Customer fails to provide Security in accordance with Article VI below.

ARTICLE VI
CREDITWORTHINESS

- 6.1 Customer must meet the requirements of General Terms & Conditions Section 29 of the Tariff and the Security requirements of **Exhibit C** hereof.

ARTICLE VII
SUCCESSION AND ASSIGNMENT

- 7.1 Customer shall not assign or transfer this Agreement, including by operation of law such as by purchase, merger or consolidation, without the express prior written consent of Kern River, which consent shall not be unreasonably withheld or delayed. Any such purported assignment, transfer or delegation without Kern River’s express written consent shall be null and void. As a condition precedent, any such assignment so consented to by Kern River must meet and satisfy the creditworthiness requirements set forth in Article VI.

ARTICLE VIII
NO THIRD PARTY BENEFICIARIES

- 8.1 This Agreement shall not create any rights in any third parties, and no provision shall be construed as creating any obligation for the benefit of, or right in favor of, any person or entity other than Kern River or Customer.

ARTICLE IX
NOTIFICATIONS, COMMUNICATIONS AND PAYMENTS

- 9.1 Except as otherwise provided herein, any notice contemplated or required by this Agreement shall be in writing, and shall be considered duly delivered when delivered by registered mail or overnight courier, to the appropriate Party at the appropriate address set forth below, or at such other address as Kern River or Customer may from time to time designate by written notice:

As to Kern River:

KERN RIVER GAS TRANSMISSION COMPANY
2755 E. Cottonwood Parkway, Suite #300
Salt Lake City, Utah 84121
Attn: VP – Customer Service &
Business Development

As to Customer:

PACIFICORP
825 NE Multnomah St, Suite 600
Portland, Oregon 97232
Attn: Irene Heng

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ARTICLE X
SEPARATE CLAUSES

- 10.1 Each clause is separate from the other clauses. If any clause or provision of this Agreement is deemed invalid, the remaining clauses and provisions shall remain in full force and effect.

ARTICLE XI
BREACH AND CONSEQUENTIAL DAMAGES

- 11.1 Except as otherwise set forth herein, a Party's failure to comply with the terms contained in this Agreement will constitute a breach of this Agreement and the TSA. Upon a Party's default, that Party will be liable for any and all damages at law or in equity hereunder; with respect to Customer, damages would include, but not limited to, payment of the Contract Value, as accelerated to the date of breach. The Parties specifically retain, but are not limited to, any rights the Party may exercise pursuant to Section 11 of the General Terms and Conditions of the Tariff.
- 11.2 NEITHER PARTY, NOR ITS REPRESENTATIVE OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AFFILIATES, SUCCESSORS OR ASSIGNS WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER ARISING OUT OF CONTRACT, TORT, STRICT LIABILITY, INDEMNITY, WARRANTY, PROFESSIONAL LIABILITY, CONTRIBUTION, OR OTHERWISE.

ARTICLE XII
REPRESENTATION AND WARRANTIES OF CUSTOMER

Customer hereby warrants and represents to Kern River the following:

- 12.1 Customer is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has full power to execute, deliver and perform this Agreement.
- 12.2 The execution, delivery and performance of this Agreement have been and remain duly authorized by all necessary corporate or organizational action and do not contravene any provision of law or of Customer's constitutional documents or any contractual restriction binding on Customer or its assets.
- 12.3 All consents, authorizations and approvals of, and registrations and declarations with, any governmental authority necessary for the due execution, delivery and performance of this Agreement have been obtained and remain in full force and effect and all conditions thereof have been duly complied with, and no other action by and no notice to or filing with, any governmental authority is required in connection with Customer's execution, delivery or performance of this Agreement.

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- 12.4 Customer's assets, at their respective fair value, exceed Customer's liabilities and Customer has, or will have, sufficient cash and capital to pay its liabilities and obligations as they become due.
- 12.5 In consideration for its execution of this Agreement, Customer will receive reasonably equivalent value for the obligations that it is assuming as a result of this Agreement.

ARTICLE XIII
ENTIRE AGREEMENT, SINGLE UNITARY TRANSACTION,
AMENDMENTS AND IMAGED DOCUMENTS

- 13.1 This Agreement hereto constitutes the entire agreement between Kern River and Customer pertaining to the subject matter hereof.
- 13.2 No amendments to, or modifications of, this Agreement shall be effective unless agreed to in a written instrument executed by Kern River and Customer that expressly refers to this Agreement.
- 13.3 Any document generated by the Parties with respect to this Agreement, including this Agreement, may be imaged and stored electronically ("**Imaged Documents**"). Imaged Documents may be introduced as evidence in any proceeding as if such were original business records and neither Party shall contest the admissibility of Imaged Documents as evidence in any proceeding.
- 13.4 Kern River's Tariff requires that the terms, conditions and obligations set forth herein be separately documented in this Agreement. Notwithstanding this separate documentation, the terms, conditions and obligations set forth herein are an integral, unseverable part of a single, unitary transaction between Kern River and Customer consisting of (i) the obligations evidenced by this Agreement and (ii) the terms, conditions and obligations set forth in the TSA. As evidenced by the integrated, intertwined elements of the transaction evidenced by this Agreement and the TSA, Kern River and Customer each intend that this Agreement and the TSA operate as one, unitary unseverable agreement. Kern River and Customer each acknowledge that neither this Agreement nor the TSA would exist as separate agreements. Any reference to (i) this Agreement individually, or (ii) this Agreement and the TSA together is merely a function of the Tariff's separate documentation requirement and does not evidence or constitute separate agreements or transactions. Kern River and Customer agree that any reference (i) this Agreement or the TSA individually, or (iii) this Agreement and the TSA together constitutes a reference to the single, unitary transaction consisting of this Agreement and the TSA together. Because this Agreement and the TSA together constitute one unitary, unseverable agreement and memorialize the terms and conditions of a single transaction, recoupment may be used to determine the liability owed under the transaction.

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ARTICLE XIV
GOVERNING LAW AND JURY WAIVER

- 14.1 The construction, interpretation, and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the State of Utah, excluding any conflict of law rule, which would refer any matter to the laws of a jurisdiction other than the State of Utah. Exclusive jurisdiction and venue shall lie in Salt Lake City, Utah.
- 14.2 TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY CANNOT BE OR HAS NOT BEEN WAIVED.

ARTICLE XV
CONFIDENTIALITY

- 15.1 Kern River and Customer agree to maintain this Agreement, all of its contents and subsequent and related documents (if clearly marked “Confidential Information” by the transmitting Party) in strict confidence and shall not cause or permit disclosure thereof to any third party without the express written consent of the other Party except to the extent necessary to comply with valid laws, regulations or orders of any court or agency having jurisdiction. The Parties specifically agree that disclosure to FERC shall be authorized under this Section. If either Party becomes aware of a judicial or administrative proceeding or request that has resulted in or may result in such disclosure, it shall so notify the other Party sufficiently in advance of any disclosure for such Party to take any and all actions necessary to prevent the disclosure and maintain the confidentiality of this Agreement and all related documents. Notwithstanding any other provision of this Agreement, if the disclosing Party fails to notify the other Party prior to such disclosure, the disclosing Party shall be liable for damages for such disclosure without notice.

ARTICLE XVI
INDEMNIFICATION

- 16.1 To the fullest extent permitted by law, the Parties agree to protect, defend, indemnify and hold each other, their directors, officers, employees, attorneys-in-fact, agents and affiliated companies, free and harmless from and against any and all losses, claims, liens, demands, and causes of action of every kind and character, arising out of, or in connection with, that Party’s (including its officers, employees’, agents’, contractors’, subcontractors’ acts, omissions, willful misconduct or negligence in the performance of their obligations under this Agreement, including, but not limited to, the amounts of judgments, penalties, interest, court costs, investigation expenses and costs and legal fees incurred by that Party’s, its directors, officers, employees, attorneys-in-fact, agents and affiliated companies, in defense of same arising in favor of any governmental agencies, third persons, contractors

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or subcontractors, on account of taxes, claims, liens, debts, personal injuries, death or damages to property, and all other claims or demands of every character.

ARTICLE XVII
ATTORNEYS' FEES

- 17.1 The prevailing Party shall have the right to collect from the other Party its reasonable costs and attorneys' fees incurred in enforcing this Agreement.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

KERN RIVER GAS TRANSMISSION COMPANY

By: _____ Date: _____

Mac McGuire
Vice President – Customer Service & Business Development

PACIFICORP

By: _____ Date: _____

Name:
Title:

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**EXHIBIT A
TO THE
PRECEDENT AND FACILITIES AGREEMENT
DATED _____**

**BETWEEN
KERN RIVER GAS TRANSMISSION COMPANY
AND
PACIFICORP**

**FIRM TRANSPORTATION SERVICE AGREEMENT
Rate Schedule KRF-1**

THIS FIRM TRANSPORTATION SERVICE AGREEMENT ("Agreement") is made and entered into as of this ___th day of _____, 2023, by and between KERN RIVER GAS TRANSMISSION COMPANY ("Transporter") and PacifiCorp ("Shipper"), and supersedes all previous versions of this Agreement, if any.

WHEREAS, Shipper has acquired or intends to acquire a supply of Natural Gas that can be delivered to Transporter's pipeline system and redelivered by Transporter to Shipper or for Shipper's account at Delivery Points on Transporter's system;

WHEREAS, Shipper was awarded available capacity pursuant to Transporter's Notice Identifier _____, Open Season Notice;

WHEREAS, Shipper desires Transportation service from Transporter in accordance with Transporter's Rate Schedule KRF-1, on file with the Federal Energy Regulatory Commission ("FERC"), as amended from time to time; and

WHEREAS, Transporter is willing to render such Transportation service.

NOW, THEREFORE, in consideration of the mutual covenants and agreements as herein set forth, the parties agree as follows:

ARTICLE I - GAS TO BE TRANSPORTED

- 1.1 Subject to the terms, conditions and limitations hereof, Transporter agrees to receive, on a firm basis, from Shipper for Transportation at the Receipt Point(s) specified in Exhibit "A" and to transport and deliver Thermally Equivalent Quantities to Shipper at the Delivery Point(s) specified in Exhibit "A," Quantities of Natural Gas, exclusive of Quantities required for fuel used and lost and unaccounted-for Gas, up to Shipper's TMDQ. Shipper's TMDQ is 96,576 Dth per day. Shipper's DMDQ is equal to Shipper's TMDQ.
- 1.2 Shipper will reimburse Transporter for fuel used and lost and unaccounted-for Gas on an in-kind basis at the factors applicable to incremental rate service related to the 2003/2010 Expansion Projects, pursuant to the General Terms and Conditions of Transporter's FERC-approved tariff, as revised from time to time ("Transporter's Tariff"). Backhaul Shippers will reimburse Transporter for system-wide lost and unaccounted-for Gas, but will not reimburse Transporter for compressor fuel.

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ARTICLE II – APPLICABLE RATE SCHEDULE

- 2.1 Shipper agrees to pay Transporter for all Natural Gas Transportation service rendered under the terms of this Agreement in accordance with Rate Schedule KRF-1 of Transporter's Tariff. This Agreement will be subject to the provisions of such Rate Schedule and the General Terms and Conditions of Transporter's Tariff, which by this reference are incorporated herein and made a part hereof.
- 2.2 Shipper's rates for Transportation service will be in accordance with Transporter's effective Rate Schedule KRF-1 for maximum recourse incremental rate service related to the 2003/2010 Expansion Projects, subject to the parties' understanding and agreement that Transporter may change the rates from time to time in accordance with the Natural Gas Act ("NGA"). Notwithstanding the foregoing, Shipper and Transporter have mutually agreed to a discounted rate for all or a portion of the capacity under this Agreement, as set forth on Exhibit B.
- 2.3 Notwithstanding Section 5.5 of the General Terms and Conditions of Transporter's Tariff, and subject to the Reservation Charge Credit provision in Section 9 of Rate Schedule KRF-1, Shipper will make payment of the monthly Reservation Charge pursuant hereto in full irrespective of (but without prejudice to the rights otherwise of Shipper with respect to) any dispute relative to the amount invoiced, and will not be entitled to any abatement of such payment or any set-off against it, including but not limited to, abatement or set-off due or alleged to be due by reason of any past, present or future claims or other rights of Shipper against Transporter or any other person or entity, whether in connection herewith or any unrelated transaction.

ARTICLE III – TERM OF AGREEMENT

- 3.1 This Agreement shall be in effect for a term of five (5) consecutive years, commencing on the later of (i) March 1, 2026, or (ii) the in-service date of the facilities to be constructed pursuant to the Precedent and Facilities Agreement dated _____, with an option to extend for an additional five-year term. Shipper must give a 12 month notice for the five-year extension term.

ARTICLE IV – MISCELLANEOUS PROVISIONS

- 4.1 Except as provided in Section 4.4 below, this Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. No promises, agreements or warranties additional to this Agreement other than as may be contained in Transporter's Tariff will be deemed to be a part of this Agreement, nor will any alteration, amendment or modification be effective unless confirmed in writing by the parties.
- 4.2 This Agreement shall incorporate and in all respects shall be subject to the General Terms and Conditions and the applicable Rate Schedule(s) set forth in Transporter's Tariff. Transporter may file and seek approval from the FERC under Section 4 of the NGA at any time and from time to time to change any rates, charges or other provisions set forth in the applicable Rate Schedule(s) and the General Terms and Conditions in Transporter's Tariff. Transporter shall have the right to place such changes in effect in accordance with the NGA, and this Agreement shall be

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deemed to include such changes and any change that becomes effective by operation of law and FERC order, without prejudice to Shipper's right to protest the same.

- 4.3 The priority of service for this Agreement shall be [INSERT EFFECTIVE DATE OF THIS AGREEMENT]
- 4.4 Kern River's Tariff requires that the terms, conditions and obligations set forth in the Precedent and Facilities Agreement between Shipper and Transporter dated [INSERT DATE] (the "Agreement") be separately documented. Notwithstanding this separate documentation, the terms, conditions and obligations set forth in the Agreement are an integral, unseverable part of a single, unitary transaction between Shipper and Transporter consisting of (i) the obligations evidenced by the Agreement and (ii) the terms, conditions and obligations set forth in the TSA. As evidenced by the integrated, intertwined elements of the transaction evidenced by the Agreement and the TSA, Shipper and Transporter each intend that the Agreement and the TSA operate as one, unitary unseverable agreement. Shipper and Transporter each acknowledge that neither the Agreement nor the TSA would exist as separate agreements. Any reference to (i) the Agreement individually, or (ii) the Agreement and the TSA together is merely a function of the Tariff's separate documentation requirement and does not evidence or constitute separate agreements or transactions. Shipper and Transporter agree that any reference to (i) the Agreement or the TSA individually, or (iii) the Agreement and the TSA together constitutes a reference to the single, unitary transaction consisting of the Agreement and the TSA together. Because the Agreement and the TSA together constitute one unitary, unseverable agreement and memorialize the terms and conditions of a single transaction, recoupment may be used to determine the liability owed under the transaction.
- 4.5 TO THE FULLEST EXTENT PERMITTED BY LAW, SHIPPER AND TRANSPORTER WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this _____ day of _____, 2023.

"SHIPPER:"

"TRANSPORTER:"

PACIFICORP

KERN RIVER GAS TRANSMISSION COMPANY

By:

By:

Title:

Title:

DRAFT – PENDING MANAGEMENT REVIEW AND APPROVAL

EXHIBIT "A"
TO
FIRM TRANSPORTATION SERVICE AGREEMENT
CONTRACT NO. _____
BETWEEN
PACIFICORP
AND
KERN RIVER GAS TRANSMISSION COMPANY

Execution Date of this Exhibit "A": XXXX XX, 2023

From March 1, 2026 through February 28, 2031
TMDQ: 96,576 Dth

<u>Receipt Point(s)</u>	<u>Meter Number</u>	<u>Loc. Type</u>	<u>Receipt Point Entitlement (Dth)</u>
Pioneer - Enterprise	014013	Physical	96,576
Total Receipt Point Entitlement:			96,576 Dth

<u>Delivery Point(s)</u>	<u>Meter Number</u>	<u>Loc. Type</u>	<u>Delivery Point Entitlement (Dth)</u>
Naughton - PacifiCorp	XXXXXX	Physical	96,576
Total Delivery Point Entitlement:			96,576 Dth

EXHIBIT "B"
TO
FIRM TRANSPORTATION SERVICE AGREEMENT
CONTRACT NO. _____
BETWEEN
PACIFICORP
AND
KERN RIVER GAS TRANSMISSION COMPANY

Execution Date of this Exhibit "B": ____ __, 2023

Shipper and Transporter have agreed to a Discounted Daily Reservation/Demand Rate. All other rates are the applicable maximum rates under Rate Schedule KRF-1 for incremental rate service related to the 2003/2010 Expansion Projects.

The Discounted Daily Reservation/Demand Rate applicable to Shipper's DMDQ is \$0.3314 per Dth for the initial five-year term. Such rate will never exceed the maximum recourse rate or be less than the minimum recourse rate under Rate Schedule KRF-1 for incremental rate service related to the 2003/2010 Expansion Projects.

If Shipper elects the five-year extension the Discounted Daily Reservation/Demand Rate applicable to the Shipper's DMDQ is \$0.0400 per Dth for the five-year extension. Such rate will never exceed the maximum recourse rate or be less than the minimum recourse rate under Rate Schedule KRF-1 for incremental rate service related to the 2003/2010 Expansion Projects.

Shipper acknowledges that the discounted Daily Reservation/Demand Rate will not apply, and Shipper will pay the maximum recourse rate under Rate Schedule KRF-1 for incremental rate service related to the 2003/2010 Expansion Projects for the total DMDQ under this Agreement beginning on the first day of the month in which any of the events below occur through the end of the term of this Agreement if:

- a. Any primary delivery point is amended;
- b. The total quantity scheduled on any day under this Agreement exceeds the DMDQ under this Agreement for any reason other than authorized overrun service;
- c. Shipper schedules any quantity to a delivery point other than Naughton (to be constructed) or from a receipt point downstream of Muddy Creek; and/or Shipper schedules any quantity to a Pool where any gas from that pool is then delivered to a delivery point other than Naughton or received from a receipt point downstream of Muddy Creek, and such event was not the result of Shipper's oversight or scheduling error; and/or
- d. Shipper releases any of the capacity to a third party.

**EXHIBIT B
TO THE
PRECEDENT AND FACILITIES AGREEMENT
DATED _____**

**BETWEEN
KERN RIVER GAS TRANSMISSION COMPANY
AND
PACIFICORP**

Major equipment comprising the Delivery Facilities:

DELIVERY METER STATION

Delivery meter(s)

Worker-monitor valve assembly(ies) for pressure regulation to a single Custody Transfer Point consisting of one flanged connection.

One (1) gas heater assembly

One (1) filter separator unit

One (1) condensate tank

Flow computer, transmitters and communication equipment

Cathodic protection equipment

Such other equipment as necessary to ensure the Interconnect Facilities satisfy the requirements of this Agreement

Kern River shall arrange for utility power to be installed at the Delivery Facility location.

PIPELINE LATERAL

One (1) 16-inch hot tap on 36-inch piping

One (1) 20-inch launcher assembly and associated piping

One (1) 20-inch receiver assembly and associated piping

16-inch diameter lateral line pipe

**EXHIBIT C
TO THE
PRECEDENT AND FACILITIES AGREEMENT
DATED _____**

BETWEEN
KERN RIVER GAS TRANSMISSION COMPANY
AND
PACIFICORP

CREDITWORTHINESS

A. Definitions

“**Mainline Facilities**” shall mean facilities on Kern River’s main pipeline system and appurtenant facilities to such Mainline Facilities.

“**Non-mainline Facilities**” shall mean facilities other than Mainline Facilities, which includes, but is not limited to, lateral lines and measurement facilities.

“**True-Up**” shall mean the process(es) initiated and completed by Kern River at any time during or after completion of the Delivery Facilities, to adjust any amount previously estimated to the Actual Cost, and the Security provided pursuant to Exhibit C attached hereto and incorporated herein.

B. When Security is not Required

Security will not be required during any period after the execution of this Agreement and/or throughout the term of the TSA, provided that Customer meets and maintains the creditworthiness requirements outlined in Section 29 of the General Terms and Conditions of the Tariff.

C. When Security is Required

Security will be required at any time after the execution of this Agreement and/or throughout the duration of the TSA if Customer fails to meet the creditworthiness requirements outlined in Section 29 of the General Terms and Conditions of the Tariff.

1. Amount of Security To Be Provided:

If Security is required pursuant to Exhibit C, Subpart B, then, upon request by Kern River, Customer shall provide Security in an amount equal to the following:

- a. If Customer provides a guaranty, the amount of the guaranty will be, at a minimum,

in an amount equal to Customer's Contract Value.

- b. If Customer provides a letter of credit or cash escrow, then Customer shall provide Security in an amount equal to the total of Customer's Remaining Obligation (computed as of the date of the demand and including income tax gross-up).
 - c. Customer and Kern River hereby agree that 100% of the Actual Cost will constitute Non-mainline Facilities and 0% of the Actual Cost will constitute Mainline Facilities under this Agreement.
- 2. Form of Security To Be Provided:**
- a. Customer may provide a guaranty, letter of credit or cash in a three-party escrow account.
 - b. If Customer provides a letter of credit, the letter of credit will be substantially in the form attached as Schedule C1 of Exhibit C or will be in a form acceptable to Kern River and from a financial institution acceptable to Kern River.
 - c. If Customer provides a guaranty, the guaranty will be substantially in the form attached as Schedule C2 of Exhibit C or will be in a form acceptable to Kern River and executed by a guarantor that meets the creditworthiness requirements of Section 29 of the General Terms and Conditions of the Tariff; provided, however, Kern River will not accept a guaranty from multiple guarantors unless such guarantors are jointly and severally liable under the terms of the single guaranty.
 - d. If Customer provides cash escrow, Customer agrees to execute a Joinder in Master Escrow Agreement substantially in the form attached as Schedule C3 of Exhibit C or will be in a form reasonably acceptable to Kern River.
- 3. Timing of Provision of Security:** The amount of Security required under this Exhibit C will be provided within ten (10) calendar days of the date of Kern River's written request. If Actual Cost is not known at the time of Kern River's request, the amount requested will be based on a good faith estimate of the costs expected to be incurred. Once the Actual Cost is known Security provided will be subject to True-Up.
- 4. Return of Security Associated with the Actual Cost of the Project:**
- a. Any return of Security is conditioned upon Customer (i) performing in accordance with this Agreement including making all payments required when due, and (ii) providing all required Security on a timely basis as set forth herein.
 - b. If Kern River has constructed Mainline Facilities to provide Customer's service, and if Customer: (i) has performed in accordance with the TSA including making all payments required when due, (ii) has not taken any of the actions set forth in subparts (i) and (ii) of Section 4.3 of this Agreement, and (iii) has timely provided

all the required credit assurance associated with any activity with Kern River, then Kern River will return that portion of the Security associated with the Actual Cost of the Delivery Facilities in excess of the product of (A) the original security amount associated with the Actual Cost of the Delivery Facilities and (B) the ratio of the remaining unpaid reservation charges under the original term of the TSA to the total reservation charges under the original term of the TSA.

- c. If Kern River has constructed Non-mainline Facilities, to provide Customer's service, and if Customer: (i) has performed in accordance with the TSA including making all payments when due, (ii) has not taken any of the actions set forth in subparts (i) and (ii) of Section 4.3 of this Agreement and (iii) has provided all the required credit assurance associated with any activity with Kern River, then Kern River will return that portion of the Security associated with the Actual Cost of the Non-mainline Facilities in the amount by which the Security associated with the Actual Cost of the Non-mainline facilities exceeds the Customer's Contract Value.
- d. Any return of Security will occur no more frequently than annually on or about each anniversary of the beginning date of the contract. The obligation of Kern River to reduce the Security will be subject to the right of Kern River to recoup and/or setoff all or any part of the Security against any obligations or claims whatsoever owing to Kern River from Customer, whether in connection with this Agreement or in connection with any unrelated transaction.

5. **Miscellaneous:**

- a. If due to default under this Agreement, Customer becomes obligated to pay Customer's Remaining Obligation and Kern River is holding Security, then Customer waives any and all claims to the balance of the Security held by Kern River and agrees that such balance will be retained by Kern River and applied toward any amounts due from Customer.
- b. Failure to remit in full all Security by the due dates will be a breach of this Agreement and may, at the discretion of Kern River, result in the termination of Kern River's obligations under this Agreement. Upon any default under this Agreement, Kern River may pursue any remedy available at law or equity.
- c. The Security will be owned and held by Kern River for its sole and exclusive benefit until the earlier of (i) Customer meeting the creditworthiness requirements of Section 29 of the General Terms and Conditions of the Tariff, or (ii) Customer satisfying in full all of its obligations under this Agreement.
- d. The Security will be owned and held by Kern River, and Customer's sole interest in the Security will be a residual interest, if any, remaining after all of Customer's obligations under this Agreement are satisfied in full. If Security is provided in the form of a letter of credit, Customer will have no interest in the letter of credit or its proceeds.

SCHEDULE C1 TO EXHIBIT C
TO THE
PRECEDENT AND FACILITIES AGREEMENT
DATED _____

BETWEEN
KERN RIVER GAS TRANSMISSION COMPANY
AND
PACIFICORP

Form of Letter of Credit

IRREVOCABLE STANDBY LETTER OF CREDIT
DATE OF ISSUANCE: _____

BENEFICIARY: Kern River Gas Transmission Company
1111 South 103rd Street
Omaha, NE 68124-1000
Attn: Credit Department
Phone: (402) 398-7741
Fax: (402) 548-5266

Applicant: [Company] _____
[Address] _____
[City, State, Zip] _____
Attn: _____
Phone: _____
Fax: _____

Re: Irrevocable Standby Letter of Credit No.: _____

Amount (U.S. Dollars): \$ _____ Expiration Date: _____

At the request of [Insert Party’s legal name, address and zip code] (“Shipper”), [Insert Bank’s legal name, address and zip code] (“Issuing Bank”) hereby establishes our Irrevocable Standby Letter of Credit (“Letter of Credit”) in your favor for the initial amount of [_____] United States Dollars [(\$_____)], available to you at sight upon demand at our offices as specified above on or before the expiration hereof.

Funds under this Letter of Credit are available at sight against your draft drawn on us bearing upon its face the amount of the draw and the clause, “Drawn under [Issuing Bank Name] Letter of Credit Number [Number] dated [date],” and accompanied by the following documents:

The original or a photocopy (as evidenced by a notarized statement from an officer of Beneficiary) of this Letter of Credit and any subsequent amendments, if any; and

A statement purportedly signed by an authorized officer of Kern River Gas Transmission Company stating that “Shipper is in default of its obligations under one or more agreement(s) between Shipper and Kern River Gas Transmission Company” and/or that “Shipper has failed to pay its invoice when due under one or more agreement(s) between Shipper and Kern River Gas Transmission Company” and/or that “Kern River Gas Transmission Company has contractual obligations with

Shipper that extend beyond the applicable expiration date of the Letter of Credit and Shipper has not provided an acceptable substitute Letter of Credit, or alternative acceptable eligible security within ninety (90) calendar days prior to such date.”

Partial drawings and multiple drawings under this Letter of Credit are permitted. All charges of this Letter of Credit are for the account of the Applicant. Beneficiary’s rights and interests in this Letter of Credit may be transferred, pledged or assigned.

We hereby engage with you that drafts under and in compliance with the terms and conditions of this Letter of Credit will be duly honored by us if presented in person at this office or by overnight courier or by registered mail on or before the current expiration date.

It is a condition of this Letter of Credit that it shall be considered automatically extended without amendment for an additional period of one (1) year from the present or any future expiration date unless we notify you in writing not less than ninety (90) calendar days before such date that we elect not to extend this Letter of Credit for such additional term, such notice to be sent by registered mail to you at the address herein. Upon receipt by you of such notice, you may draw on us at sight for the balance remaining under this Letter of Credit within the then applicable expiration date.

Draft presentation before 9:00 AM [Applicable Time Zone] on any Business Day (as defined below) shall be honored before 5:00 PM [Applicable Time Zone] on the same Business Day by wire transfer in immediately available funds to any account designated by an authorized representative of the Beneficiary (or any other reasonable means specified by an authorized representative of the Beneficiary). Draft presentation after 9:00 AM [Applicable Time Zone] and before 5:00 PM [Applicable Time Zone] on any Business Day shall be honored on the following Business Day in immediately available funds to any account designated by an authorized representative of the Beneficiary (or any other reasonable means specified by an authorized representative of the Beneficiary). As used in this Letter of Credit, the term “Business Day” shall mean a day other than Saturday or Sunday or any other day in which Banking Institutions in the State of [Applicable State where Issuing Bank is Located] are authorized or required by law to close.

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through the Issuing Bank referencing this Letter of Credit No. _____.

To the extent not inconsistent or in conflict with the specific terms of this Letter of Credit, this Letter of Credit is subject to all provisions of *The Uniform Customs and Practice for Documentary Credits* (2007 Revision), International Chamber of Commerce, Publication No. 600 ("UCP 600"). To the extent not addressed by the specific terms of this Letter of Credit, and if the UCP 600 is silent or does not govern, this Letter of Credit shall be governed by the laws of the State of New York, without regard to principles of conflicts of law.

TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LETTER OF CREDIT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

[BANK SIGNATURE]

**SCHEDULE C2 TO EXHIBIT C
TO THE
PRECEDENT AND FACILITIES AGREEMENT
DATED _____**

BETWEEN
KERN RIVER GAS TRANSMISSION COMPANY
AND
PACIFICORP

Form of Guaranty

GUARANTY

THIS GUARANTY is given as of [Month] ____, 20__ by _____, a [State of Formation corporation/LLC/partnership/form of entity], with its principal place of business located at [address], (“Guarantor”) to **KERN RIVER GAS TRANSMISSION COMPANY** (“Kern River”).

RECITAL

- A. WHEREAS, Kern River owns and operates certain facilities to provide natural gas services pursuant to Kern River’s FERC Gas Tariff;
- B. WHEREAS, Kern River:
- (i) supplies or may supply transportation and storage services to [Shipper Name(s)] (“Shipper”) pursuant to (x) transportation and storage agreements now existing or hereafter executed; (y) agreements ancillary or incident to such transportation and storage agreements, including, but not limited to, facilities or precedent agreements; and (z) the terms and conditions of Kern River’s FERC Gas Tariff; and
 - (ii) conducts, or may conduct, purchases or sales of natural gas or related financial transactions with Shipper pursuant to one or more agreements or contracts now existing or hereafter executed.

Collectively, the afore-mentioned now existing or hereafter arising contracts, agreements and ancillary documents and instruments, and all extensions, renewals, refunding, replacements, restatements and modifications of any of the foregoing shall be referred to herein as the “Agreements”.

- C. WHEREAS, [State relationship of Guarantor] to Shipper.
- D. WHEREAS, Guarantor derives or will derive substantial benefit from Kern River’s extension of services and other performance to Shipper pursuant to the Agreements and Guarantor desires to induce Kern River to commence or continue providing services and other performance to Shipper pursuant to the Agreements.

- E. WHEREAS, Kern River is willing to commence or continue providing services or performance only if Guarantor absolutely and unconditionally guaranties prompt and complete payment when due of Shipper's Guaranteed Obligations, as defined below.

NOW THEREFORE, in consideration of the premises Guarantor agrees as follows:

AGREEMENT

1. Guaranty. Guarantor hereby absolutely, unconditionally and irrevocably guaranties to Kern River:
 - (a) the prompt and complete payment when due and payable (whether at the stated due date or by required prepayment, acceleration or otherwise) of all Guaranteed Obligations, as defined herein, of Shipper to Kern River (notwithstanding the fact that from time to time there may be no indebtedness outstanding); and
 - (b) the prompt and complete performance of Shipper's covenants, representations and warranties under all Agreements, documents and instruments evidencing the Guaranteed Obligations.

2. "Guaranteed Obligations" means:
 - (a) any and all indebtedness, obligations and liabilities of Shipper to Kern River arising out of or related to the Agreements as and when such indebtedness, obligations and liabilities of Shipper are due and payable pursuant to the Agreements, whether by acceleration or otherwise, without regard to any cure rights or notice obligations;
 - (b) any and all other indebtedness, obligations and liabilities of Shipper to Kern River now existing or hereafter arising, direct or indirect, absolute or contingent, joint or several, secured or unsecured, matured or not matured, monetary or nonmonetary as and when such indebtedness, obligations and liabilities are due and payable.

3. Payment Guaranty. This Guaranty is a guaranty of payment and not of collection. This Guaranty is a primary and original obligation of Guarantor and is not merely the creation of a surety relationship. There are no conditions precedent to the effectiveness of this Guaranty and this Guaranty is in full force and effect and is binding on Guarantor upon execution and delivery to Kern River. Kern River shall, upon accrual of any Guaranteed Obligation, have the right to proceed first and directly against Guarantor under this Guaranty. Guarantor's liability hereunder for the Guaranteed Obligations shall be immediate and shall not be contingent upon the exercise or enforcement by Kern River of whatever remedies Kern River may have against any other obligor or person or the enforcement of any lien or

realization upon any security Kern River may possess. Kern River is not required to either commence or exhaust efforts to collect from Shipper or to look to or pursue any other party or source of payment before Guarantor is obligated to Kern River for the entirety of the Guaranteed Obligations or before Kern River may collect the Guaranteed Obligations from Guarantor.

4. Payment Terms. Before commencing judicial action against Guarantor on account of the Guaranteed Obligations, Kern River shall provide fifteen (15) business days written notice (the “Guarantor Courtesy Notice”) to Guarantor that Guaranteed Obligations are due and owing to Kern River and demanding that such Guaranteed Obligations be immediately paid. In the event that the Guaranteed Obligations are not paid to Kern River by wire transfer or certified funds within fifteen (15) business days following delivery of the Guarantor Courtesy Notice to Guarantor, Kern River may take any and all actions necessary to collect the Guaranteed Obligations from Guarantor. Without altering or affecting the Guarantor’s obligations to pay and perform the Guaranteed Obligations, the Guarantor Courtesy Notice shall contain a brief explanation and an accounting of the Guaranteed Obligations then due and owing in a form and content similar to what Kern River provides to its shipper customers. The Guarantor shall pay all costs of collecting the Guaranteed Obligations or enforcing this Guaranty incurred by Kern River (including reasonable attorneys’ fees, costs and expenses, and disbursements of counsel).

From and after the 15th business day following delivery of the Guaranty Courtesy Notice, all Guaranteed Obligations shall accrue interest at a rate of one and one-half percent per month.

5. Guaranty Unconditional and Absolute. The Guaranteed Obligations of Guarantor hereunder shall be unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:
 - (a) any extension, renewal, settlement, compromise, waiver, discharge or release in respect of any Guaranteed Obligations of Shipper;
 - (b) the existence, or extent of, any release, exchange, surrender, non-perfection or invalidity of any direct or indirect security for any of the Guaranteed Obligations;
 - (c) any modification, amendment (including, but not limited to, a restatement in whole or in part), waiver, extension of or supplement to any of the Agreements or the Guaranteed Obligations agreed to from time to time by Shipper and Kern River;
 - (d) any change in the corporate existence (including its constitution, laws, rules, regulations or powers), structure or ownership of Shipper, Kern River or

Guarantor, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting Shipper, Kern River or Guarantor, or their assets;

- (e) the existence of any claim, set-off or other rights which Guarantor may have at any time against Kern River, Shipper, or any other corporation or person, whether in connection herewith or in connection with any unrelated transaction;
- (f) the invalidity or unenforceability in whole or in part of the Agreements or any Guaranteed Obligations or any instrument evidencing any Guaranteed Obligations, or any provision of applicable law or regulation purporting to prohibit payment by Shipper of amounts to be paid by it under the Agreements or any of the Guaranteed Obligations;
- (g) any other act or omission to act or delay of any kind by Kern River which might, but for the provisions of this paragraph, constitute a legal or equitable discharge of any of Guarantor's obligations hereunder. The Guarantor agrees that any release that may be given by Kern River to Shipper or any other obligor shall not release Guarantor.

6. Term and Termination. This Guaranty is necessary, among other reasons, to induce Kern River to enter into Agreements that may result in the accrual of liabilities and payment obligations for years into the future. This Guaranty shall remain in full force and effect until the Guaranteed Obligations arising out of any Agreements have been fully paid and performed. Guarantor may terminate this Guaranty at any time by providing sixty (60) calendar days' prior written notice (a "Termination Notice") of termination to Kern River. A termination of the Guaranty as to Guarantor shall not become effective until the 61st calendar day (the "Termination Date") following delivery of the Termination Notice to Kern River and shall not affect, terminate, alter or amend Guarantor's obligations to pay all Guaranteed Obligations arising from or relating to Agreements entered into prior to the 61st day following Kern River's receipt of a Termination Notice.

For purposes of clarity, in the event a Guarantor (a "Terminating Guarantor") properly delivers a Termination Notice, the Terminating Guarantor shall nevertheless remain absolutely, unconditionally and irrevocably liable for all Guaranteed Obligations, or extensions or renewals of the same, arising from or related to any Agreements entered into prior to the Termination Date but shall be discharged as to only those Guaranteed Obligations arising from or relating to Agreements entered into following the Termination Date.

7. Waiver by Guarantor. Guarantor irrevocably waives acceptance hereof, diligence, presentment, demand, protest, notice of dishonor, notice of any sale of collateral and any notice not provided for herein, any right of subrogation to Shipper's rights against Kern River under any Agreement or otherwise, and any requirement that at any time any person exhaust any right to take any action against Shipper or their

assets or any other person. Guarantor further hereby waives any right of exoneration, subrogation or reimbursement until all Guaranteed Obligations are fully and indefeasibly paid or performed and until the expiration of any applicable preference periods.

8. Subrogation. Upon making any payment hereunder, Guarantor shall be subrogated to the rights of Kern River against Shipper with respect to such payment; provided that such Guarantor shall not enforce any right or receive any payment by way of subrogation until all of the Guaranteed Obligations shall have been paid in full and Kern River agrees to take, at Guarantor's expense, such steps as Guarantor may reasonably request to implement such subrogation.
9. Bankruptcy. In the event that the obligation of Shipper or Guarantor to pay any amount under any of the Agreements or this Guaranty is stayed, excused or discharged as the result of any insolvency, bankruptcy, dissolution or reorganization proceeding of Shipper or Guarantor (a "Bankruptcy Event"), all such amounts shall nonetheless be and remain Guaranteed Obligations and shall be due and payable by Guarantor as if no Bankruptcy Event occurred.

If any payment (an "Avoided Payment") received by Kern River from any Shipper or Guarantor in respect of the Guaranteed Obligations is subsequently recovered from or repaid by Kern River as the result of any Bankruptcy Event, Guarantor's payment obligation hereunder shall continue to be effective as though such Avoided Payment had not been made and without regard to any Termination Date that may have occurred after the date the claim relating to the Avoided Payment accrued.

10. Assignment: Successors and Assigns. This Guaranty shall be binding upon and inure to the benefit of Guarantor and its successors and assigns and Kern River and its successors and assigns. Notwithstanding the foregoing, Guarantor may not assign or delegate its rights or obligations hereunder without the prior express written consent of the Kern River, which shall not be unreasonably withheld, and any such purported assignment or delegation without Kern River's express written consent shall be void.
11. Amendments and Waivers. No provision of this Guaranty may be amended, supplemented or modified, nor any of the terms and conditions hereof waived, with respect to Guarantor except by a written instrument executed by Guarantor and Kern River.
12. Remedies Cumulative. The rights, powers, remedies and privileges provided in this Guaranty are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law and any other agreement.
13. Representations and Warranties. Guarantor hereby warrants and represents to Kern River:

- (a) Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, and has full power to execute, deliver and perform this Guaranty.
 - (b) The execution, delivery and performance of the Guaranty has been and remains duly authorized by all necessary organizational action and does not contravene any provision of law or of Guarantor’s constitutional documents or any contractual restriction binding on Guarantor or its assets.
 - (c) All consents, authorizations and approvals of, and registrations and declarations with, any governmental authority necessary for the due execution, delivery and performance of this Guaranty have been obtained and remain in full force and effect and all conditions thereof have been duly complied with, and no other action by and no notice to or filing with, any governmental authority is required in connection with the execution, delivery or performance of this Guaranty.
 - (d) This Guaranty constitutes the legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors’ rights and to general equity principles.
 - (e) Guarantor’s assets, at their respective fair value, exceed Guarantor’s liabilities, including the Guaranteed Obligations and Guarantor has, or will have, sufficient cash and capital to pay its liabilities and obligations, including the Guaranteed Obligations, as they become due.
 - (f) In consideration for its execution of this Guaranty, Guarantor will receive reasonably equivalent value for the Guaranteed Obligations that it is assuming as a result of the Agreements and the relationship, common enterprise and synergies existing between Guarantor and Shipper.
14. Notices. All notices required herein shall be in writing and shall be deemed delivered (i) when received by registered or certified mail; or (ii) when delivered by FedEx, UPS or other comparable overnight delivery service to the address specified below:

Kern River: 1111 South 103rd Street
Omaha, NE 68124-1000
Attn: Credit Department
Telephone: (402) 398-7741
Fax: (402) 548-5266

Guarantor: _____
_____, _____
Attn: _____
Telephone: _____
Fax: _____

For informational purposes:

Shipper: _____

Telephone: _____
Fax: _____

or such other address as any party may from time to time specify in writing.

- 15. Governing law and jurisdiction. This Guaranty shall be governed by, and interpreted in accordance with, the laws of the State of New York, without regard to principles of conflicts of laws thereunder (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law). Kern River (by its acceptance of this Guaranty) and Guarantor hereby irrevocably: (i) consent and submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York, or if that court does not have subject matter jurisdiction, to the exclusive jurisdiction of the Supreme Court of the State of New York, New York County (without prejudice to the right of any party to remove to the United States District Court for the Southern District of New York) for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof brought by Kern River, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.
- 16. **TO THE FULLEST EXTENT PERMITTED BY LAW, GUARANTOR HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.**
- 17. Third Party Beneficiaries. This Guaranty shall not be construed to create any third party beneficiary relationship as to or with any person or entity other than Kern

River.

18. Electronic Signature; Multiple Originals. A signature delivered by facsimile or e-mail in portable document format (.pdf) shall be deemed to be an original manual signature for purposes of the Guaranty and shall be binding upon Guarantor and have the same legal effect as an original manual signature. This Guaranty may be signed in counterparts, each of which when signed shall be an original, but all of which shall together constitute one and the same instrument.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed as of the date first above written.

GUARANTOR

[name of Guarantor]

By: _____

Printed Name: _____

Title: _____

**SCHEDULE C3 TO EXHIBIT C
TO THE
PRECEDENT AND FACILITIES AGREEMENT
DATED _____**

**BETWEEN
KERN RIVER GAS TRANSMISSION COMPANY
AND
PACIFICORP**

Form of Joinder in Master Escrow Agreement

JOINDER IN MASTER ESCROW AGREEMENT

This Joinder in Master Escrow Agreement (the "Joinder") dated as of [], 20__, is by and among [insert Shipper name], a [insert Shipper state of formation] [limited liability company/partnership/corporation] ("Shipper"); Kern River Gas Transmission Company, a Delaware corporation ("Company"); and U.S. Bank National Association, a national banking association, as Escrow Agent hereunder ("Escrow Agent"). Terms not defined herein have the meanings given to them in the Master Escrow Agreement (defined below).

BACKGROUND

[A.] Shipper and Company have entered into the Contract, pursuant to which Shipper has agreed to provide funds as credit support for Shipper's obligations under the Contract. Consistent with and in furtherance of the foregoing, the Shipper has agreed to deposit the Escrow Funds (defined below) in an escrow account established by Escrow Agent pursuant to the Master Escrow Agreement dated as of June 15, 2016, among the Escrow Agent and the Company (the "Master Escrow Agreement"), together with each shipper executing a Joinder in Master Escrow Agreement thereby becoming a party to the Master Escrow Agreement;

[B.] As of the date hereof the Shipper and Company are parties to [that certain Cash Escrow Agreement dated as of []/a cash escrow arrangement under Company's FERC Gas Tariff] (the "Prior Escrow Arrangement") whereby Shipper previously transferred funds to the escrow agent thereunder as credit support for the Contract and, since the date of such transfer, such funds have been and continue to be subject to the Prior Escrow Arrangement.

[C.] The Shipper and Company are entering into this Joinder for the purpose of replacing the Prior Escrow Arrangement with the Master Escrow Agreement and, consistent with and in furtherance of the foregoing, the Shipper and Company have jointly directed that all funds currently subject to the Prior Escrow Arrangement and relating to the Shipper be transferred directly to the Escrow Agent for credit to the Account as Escrow Funds.

[D.] Escrow Agent has agreed to accept, hold, and disburse the Escrow Funds deposited with it (together with the earnings thereon) in accordance with the terms of the Master Escrow Agreement; and

[E.] In order to establish the escrow of the Escrow Funds pursuant to the Master Escrow Agreement, the parties hereto have entered into this Joinder.

NOW, THEREFORE, in consideration of the premises and agreements contained herein and for other good and valuable consideration, the Shipper, Company and the Escrow Agent hereby agree as follows:

AGREEMENTS

1. Joinder in Master Escrow. By execution hereof, the Shipper hereby joins in and becomes a Shipper under the Master Escrow Agreement. The Shipper has received a copy of the Master Escrow Agreement, understands its provisions and Shipper hereby adopts and agrees to be bound by all of the provisions of the Master Escrow Agreement and all of the provisions of the Master Escrow Agreement hereby being incorporated herein.
2. Deposit of Escrow Funds. Simultaneously with the execution and delivery of this Joinder, [Shipper will transfer the funds in the amount set forth on Schedule 1 hereof (the "Escrow Funds") to Escrow Agent, by wire transfer of immediately available funds, to the account of the Escrow Agent referenced on Schedule 1 hereof] OR [Shipper and Company jointly direct that all funds currently subject to the Prior Escrow Arrangement and relating to the Shipper be transferred directly to the Escrow Agent for credit to the Account as Escrow Funds]. Immediately upon the delivery to the Escrow Agent, the Shipper, Company and the Escrow Agent each acknowledge and agree that the Escrow Funds shall be subject to, administered and disbursed solely in accordance with the provisions of the Master Escrow Agreement
3. Security Interest. The parties hereto intend that the deposit of the Escrow Funds with the Escrow Agent constitute an irrevocable transfer by the Shipper, that neither the Shipper nor the Company claims an equitable or other interest in the Escrow Funds, and that the rights of each of the Shipper and the Company in the Escrow Funds are limited to their respective rights to receive disbursements made by the Escrow Agent pursuant to Section 4 of the Master Escrow Agreement. Without limiting the foregoing, in the event Shipper is determined to have any right or interest in and to the Escrow Funds, Shipper hereby grants to Company a security interest in all of Shipper's right, title and interest in the Escrow Funds to secure payment and performance of all of the obligations owing to Company under the Contract. Shipper authorizes Company to file a financing statement to perfect this security interest and, in furtherance of the foregoing, Escrow Agent acknowledges that Escrow Agent has control of the Account on behalf of the Company as its agent. Upon any default under the Contract, Company may pursue any remedy available at law, including those available to a secured party under the provisions of the Uniform Commercial Code.
4. General Provisions.
 - (a) Effect of Agreement. This Joinder together with the Master Escrow Agreement shall be binding upon the Shipper, Company and the Escrow Agent and their respective, successors and permitted assigns.
 - (b) Representations and Warranties.
 - (i) Each of the parties hereto represents and warrants that it has full power and

authority to execute and deliver this Joinder and to perform its obligations hereunder and the Joinder has been duly approved by all necessary action and constitutes its valid and binding agreement enforceable in accordance with its terms; and

(ii) By execution hereof, Shipper represents and warrants that it has the full power and authority to perform its obligations under the Master Escrow Agreement, as supplemented by this Joinder, and that the Master Escrow Agreement, as supplemented, constitutes its valid and binding agreement enforceable in accordance with its terms.

(c) Severability. Every provision hereof is intended to be severable, and if any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement, provided, however, that all provisions hereof shall be enforced to the fullest extent permitted by law.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Joinder in Master Escrow Agreement to be executed as of the date first above written.

[insert SHIPPER name], as Shipper

By: _____
Name: _____
Title: _____

**KERN RIVER GAS TRANSMISSION COMPANY,
as Company**

By: _____
Name: _____
Title: _____

**U.S. BANK NATIONAL ASSOCIATION,
as Escrow Agent**

By: _____
Name: _____
Title: _____

SCHEDULE 1 OF MASTER ESCROW AGREEMENT

1. Effective Date: _____
2. Escrow Funds Amount: \$ _____
3. Escrow Funds Transfer Instructions:

RBK U.S. Bank N.A.
ABA 091000022
BNF US BANK TFM ESCROW
Beneficiary Account Number: 104793255431
Beneficiary Account Address: 777 E. Wisconsin Avenue
Milwaukee, WI 53202-5300
SWIFT Code (for int'l wires): USBKUS44 IMT
Reference: Kern River Gas Transmission Company / [Escrow account name & number]

4. Shipper Taxpayer Identification Number: _____

(Attach IRS Form W-9 and an original Form W-8, as applicable)

5. For purposes of Section 16 of the Master Escrow Agreement, all notices and written communications to Shipper shall be sent to:

_____ [Shipper Name]_

_____ [Shipper Address]_

Telephone: _____

Facsimile: _____

E-mail: _____

(Attach copy of formation documents, e.g., Articles of Incorporation/Organization, etc.)

**EXHIBIT D
TO THE
PRECEDENT AND FACILITIES AGREEMENT
DATED _____**

**BETWEEN
KERN RIVER GAS TRANSMISSION COMPANY
AND
PACIFICORP**

Preliminary Schedule of Costs to be Incurred by Kern River

The costs below are to aid the Parties' understanding of the expected Actual Costs

	Preliminary Cost Estimate
2022	\$ 1,581
2023	\$ 1,129,450
2024	\$ 7,357,559
2025	\$ 24,105,733
2026	\$ 2,833,717
2027	\$ 37,043
Total	\$ 35,465,083