

INTERCONNECTION CONSTRUCTION AGREEMENT

THIS AGREEMENT is dated as of the ____ day of _____, 2020

BETWEEN

TRANSCANADA KEYSTONE PIPELINE, LP

a limited partnership established pursuant to the laws of Delaware

(hereinafter referred to as “**Customer**”)

- and -

BUTLER POWER DISTRICT (District)

a public power district established pursuant to the laws of Nebraska

(hereinafter referred to as “**District**”)

WHEREAS, the Customer intends to own and operate the Customer Facility which is located adjacent to the System and wishes to interconnect the Customer Facility with the System;

WHEREAS, the District has agreed to construct the District Interconnection Facilities to interconnect the Customer Facility to the System;

WHEREAS, the electric service and interconnection to be provided from the District to the Customer shall be governed by an Electric Service Agreement;

AND WHEREAS, the Parties have agreed to enter into this Agreement to establish the rights and obligations of each Party in order to construct and prepare to interconnect the Customer Facility with the System.

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

ARTICLE 1 - INTERPRETATION

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

“**Agreement**” means this Interconnection Construction Agreement.

“**Customer Facility**” shall mean the pump station owned and operated by the Customer located approximately at County Rd J and NE 64 in Butler County, Nebraska, and on the Customer’s side of the Point of Interconnection as identified in Appendix A and the neutral

grounding reactor, located within the District Substation, but owned and operated by the Customer, as identified in Appendix A.

“District Interconnection Facilities” shall mean all facilities and equipment owned, operated and maintained by the District on the District’s side of the Point of Interconnection, as identified in Appendix A. At no point shall Customer acquire or maintain any ownership of District Interconnection Facilities.

“District Substation” shall mean the electrical substation owned by the District and located adjacent to the Customer Facility, approximately at County J on NE 64 in Butler County, Nebraska.

“Effective Date” shall have the meaning given in Section 2.1.

“Estimated Authorized Construction Costs” shall mean the cumulative construction costs, in US dollars, authorized by the Customer that the District may incur for the District Interconnection Facilities for each applicable quarter, as set out in Appendix B. The quarter following the Service-Ready Date shall include the True-Up, as set forth in Section 4.2.

“Facilities Charge” shall mean a minimum monthly fee assessed to Customer beginning on the Service-Ready Date.

“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, labor dispute, labor or material shortage, power supply, interruptions to supply or delays in transportation, sabotage, acts of public enemy, acts of terrorism or threats thereof, 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.

“Governmental Authority” means any federal, state, regional, city, or local government, any intergovernmental association or political subdivision thereof, or any other governmental, regulatory, or administrative agency, court, commission, administration, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or authority, or any Person acting as a delegate or agent of any of the foregoing. Notwithstanding the foregoing, neither the District nor the Wholesale Power Provider shall be considered a Governmental Authority.

“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.

“**In-Service-Date**” shall mean the day the District Interconnection Facilities have been completed as required by this Agreement and energized at the request of the Customer. The In-Service-Date shall be _____, 20___. Nominal energy consumption, such as a security light, does not trigger the In-Service-Date.

“**Party**” shall mean either the Customer or District and “**Parties**” shall mean both the Customer and District.

“**Point of Interconnection**” shall mean the point located at County Rd J and NE 64 and depicted in Appendix A where the District Interconnection Facilities interconnect with the Customer Facility.

“**Project Schedule**” means the project schedule for construction of the District Interconnection Facilities set out in Appendix B, as amended from time to time.

“**Service-Ready Date**” means the date the District Interconnection Facilities are fully constructed and extends until the In-Service-Date. To the extent any allowances or other credits are provided to Customer, such allowances and credits shall be triggered as of the Service-Ready Date. “**System**” shall mean the newly constructed and existing sub-transmission facilities owned and operated by the District.

“**Term**” shall have the meaning given in Section 2.2.

“**Total Construction Costs**” shall mean the maximum of all costs and expenses, in US dollars, including without limitation legal, accounting and other fees and costs, that may be incurred by the District in obtaining all necessary approvals and for designing, permitting, engineering, constructing, coordinating, and testing of the District Interconnection Facilities, as set out in Appendix B, including those costs incurred prior to the execution of this Agreement, and the True-Up incurred after the execution of this Agreement.

1.2 Attachments and Appendices.

The following attachments and appendices shall form part of this Agreement:

Appendix A	Diagram of the District Interconnection Facilities and Point of Interconnection
Appendix B	Project Schedule, Estimated Construction Costs, Estimated Authorized Construction Costs and Total Construction Costs

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 earlier of: (i) the date the Customer terminates this Agreement pursuant to Section 7.1; (ii) the District terminates this Agreement pursuant to Section 7.2 or 7.5 or (iii) the In-Service-Date (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 DISTRICT INTERCONNECTION FACILITIES

3.1 District Interconnection Facilities. The District shall design, procure, construct, install, and maintain the District Interconnection Facilities in accordance with all requirements of applicable safety and/or engineering codes, including those of the District, Good Utility Practices, and all applicable laws and regulations.

3.2 Estimated Authorized Construction Costs. The District shall not at any time or in any quarter incur any costs or expenses in excess of the Estimated Authorized Construction Costs for the applicable quarter, and at no time shall the total costs and expenses for the District Interconnection Facilities incurred by the District exceed the Total Construction Costs. The Customer shall not be liable to the District for any costs or expenses incurred by the District which exceed the Estimated Authorized Construction Costs at that point unless the Customer has approved the construction cost increase. Any change to the Estimated Authorized Construction Costs, or the Total Construction Costs, must be agreed to in writing by the Customer. The Parties agree that any agreement to such amendment by the Customer is required to be written and timely in order to prevent delays to the Service-Ready Date or In-Service-Date, as applicable. If the Parties fail to reach agreement on a proposed amendment to the Estimated Authorized Construction Costs, or the Total Construction Costs, then either Party may terminate this Agreement.

3.3 District Status Reports. The District shall inform the Customer on a monthly basis, and at such other times as the Customer reasonably requests, of the status of the construction and installation of the District Interconnection 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 the District reasonably expects may delay or advance the construction of the District Interconnection Facilities; and (v) updates to the Project Schedule.

3.4 Customer Facility Layout. The Customer shall submit a plot plan for the Customer Facility and the District Substation to the District for review prior to commencement of construction of the Customer Facility. The District shall review the plan to confirm and/or comment on the design and location of the District Substation. The District shall then procure, construct, install, and maintain the District Substation in accordance with all requirements of

applicable safety and/or engineering codes, including those of the District, Good Utility Practices, and all applicable laws and regulations.

3.5 District Owned Substation & System. The Customer will provide to the District:

- (i) suitable locations for the installation of the District Substation on or near the Customer Facility and site grading at no cost to the District;
- (ii) at no cost, a warranty deed for the property on which the District Substation will be located and a permanent access easement to the District Substation property; and
- (iii) permanent easements for the location of any portion of the System and/or transmission line which will be located on the Customer's property.

3.6 Land Rights and Access. Upon reasonable notice and supervision by a Party, each Party shall provide at no cost to the other Party any necessary access for ingress and egress across lands owned or controlled by the Party and/or its affiliates for the construction, operation, testing, and maintenance of necessary lines, substations, and other equipment to interconnect the District Interconnection Facilities and the Customer Facility.

3.7 District Completion Obligations and Project Schedule. District shall use all reasonable efforts to design, procure, construct, install, and test the District Interconnection Facilities in accordance with the Project Schedule, which schedule may be revised from time to time by mutual agreement of the Parties. The District shall, at the Customer's request and expense, use reasonable efforts to accelerate its work under this Agreement in order to meet the Project Schedule, provided that the Customer authorizes such actions and the costs associated therewith in advance.

ARTICLE 4 - PAYMENT

4.1 Construction Payment. The Customer shall pay the District the actual expenses incurred by the District for the construction of the District Interconnection Facilities, as invoiced by the District, up to the Estimated Authorized Construction Costs at the time of such invoice. The District shall render an invoice for the estimated construction costs, as set forth within Appendix B, in advance of each calendar quarter by electronic mail to the Customer on or before the 20th day of each month in advance of the quarter, to the address of a person designated by the Customer. The Customer shall have 30 days from the date of receipt of the invoice to make payment to the District. The District reserves the right to not place an order for equipment until payment has been received from the Customer. Upon receipt of payment from Customer, the payment shall be deemed the property of the District and not an asset of the Customer.

4.2 Construction Payment True-up & Refund. Within thirty (30) days of the Service-Ready Date, the Parties shall true-up the actual construction cost, which costs shall be provided to Customer in writing. In the event of an overpayment, the District shall refund any overpayment of actual charges to the Customer. In the event of an underpayment, the District shall issue a shortfall invoice, which shall be paid by the Customer to the District within thirty (30) days. Customer shall have the right to review the supporting documentation for charges incurred on the shortfall invoice but shall have no ability to challenge actual construction costs documented on the shortfall invoice, so long as such expenses were pre-approved by the Customer.

4.3 Facilities Charge. Upon completion of construction of the District Interconnection Facilities, Customer must direct the District to energize the Interconnection Facilities. If Customer has not directed the District to energize the facilities within thirty (30) days from the Service-Ready Date, Customer shall be charged a Facilities Charge from that date until the In-Service-Date. The District shall set forth the calculation of the Facilities Charge in Appendix B. The District shall render an invoice in advance of each month by electronic mail to the Customer on or before the 15th day of each month in, to the address of a person designated by the Customer. The Customer shall have fifteen (15) days from the date of receipt of the invoice to make payment to the District.

ARTICLE 5- METERING

5.1 General. Unless otherwise agreed by the Parties, the District, either individually or through its wholesale service provider, shall provide, install, own, operate and/or control suitable metering equipment at or near the Point of Interconnection prior to any operation of the Customer Facility.

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 electronic mail 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 System, the Customer Facility, the District Interconnection Facilities, or any connecting electric generating, transmission, or distribution system affecting or interconnected to the Party's System. 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 for services incurred, as set forth in Article 4, shall not be suspended by Force Majeure.

ARTICLE 7 – TERMINATION AND PAYMENT OF COSTS

7.1 Customer Right to Terminate. The Customer may terminate this Agreement for any reason whatsoever by providing a minimum of five (5) days written notice of termination to the District.

7.2 District Right to Terminate. The District may terminate this Agreement if the In-Service-Date has not been met or is delayed, at no fault of the District, for a period of more than thirty-six (36) months. The District shall provide Customer with thirty (30) days written notice of termination.

7.3 Termination Payments. If this Agreement is terminated by the Customer before the In-Service-Date, the Customer shall pay to the District the aggregate of the following costs:

- (i) actual costs and expenses, including all internal costs, incurred by the District up to the date of termination plus any amounts relating to commitments for future work in respect of the District Interconnection Facilities for which the District is liable (including but not limited to purchase cancellation penalties, restock charges or any other actual costs incurred by the District in its good faith effort to meet the requirements of this Agreement), up to the Estimated Authorized Construction Costs, less any payments made to date by the Customer;
- (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) and three (3) years of Facilities Charges, as calculated on Appendix B; and
- (vi) charges assessed, if any, by the bulk transmission system operator related to the District Interconnection Facilities which are payable by the District.

Upon termination of this Agreement, the District shall use all reasonable efforts to mitigate and minimize the actual construction related fees, costs, and expenses paid or incurred by the District, including, without limitation, selling, or reusing any uninstalled equipment or facilities. To the extent District's mitigation efforts results in the District's receipt of money from third parties for the purchase of any equipment or facilities related hereto within the 12 months immediately following the date of termination, District agrees to credit Customer the amount of any such money received by District, or where, within the District's sole discretion, equipment is utilized by District within 12 months for an unrelated project, the fair market value of such equipment at the time of reutilization.

7.4 Payment. For any amount payable by the Customer to the District pursuant to Section 7.2 to this Agreement, the District shall render an invoice by electronic mail to the Customer, with return receipt requested, to the address of a person designated by the Customer. All amounts due and payable shall be paid to the District by electronic funds transfer in US Dollars within 30 days from the date the Customer receives the invoice. If the 30th 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 the Customer on the invoice issued pursuant to this Section 7.3.

7.5 Failure to Pay. Failure to pay within 30 days shall be an event of default of this Agreement. Following the occurrence of an event of default, the District may, at its sole option, give written notice to the Customer specifying the same. The Customer shall be entitled thirty (30) days after receipt of such notice within which to cure any default. If Customer fails to cure such default within thirty (30) days, the District may terminate this Agreement.

7.6 Mitigation in Failure to Pay Scenario. In the event the District terminates pursuant to Sections 7.2 or 7.5, the Customer shall be invoiced and required to pay for all charges set forth in Section 7.3(i)-(vi).

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 Reciprocal Responsibility. Each Party shall be responsible for its own facilities and personnel provided or used in the performance of this Agreement. Neither Party shall be responsible to the other Party for damage to or loss of any property (real or personal), wherever located, unless the damage or loss is caused by the negligence, gross negligence, willful acts, or willful omissions of a Party's officers, employees, or agents, in which case the damage or loss shall be borne by the responsible Party. Notwithstanding the above, neither Party shall be responsible or liable to the other Party, or to any other Party for any indirect, special, or consequential damages, or for lost revenues, lost wages, lost profits, lost business or lost business opportunities, other than as may be required pursuant to this Agreement.

9.2 District Indemnification. Subject to the limitations of liability in Paragraph 9.1 above, the Customer agrees to indemnify and hold harmless the District and its directors, officers, managers, employees, agents, representatives, affiliates, attorneys, successors and assigns from and against any third-party claims resulting from the Customer's negligence, gross negligence, willful acts, or willful omissions in connection with the design, construction, installation, operation, or maintenance of any of the Customer Owned Facilities. Notwithstanding the above, the Customer shall not be liable to any third party, nor have the obligation to indemnify the District, for any third-party claims relating to or for special, indirect, incidental, punitive, or consequential damages including, but not limited to, lost wages, lost revenues, lost profits, lost business or lost business opportunities, other than those damages required by this Agreement.

9.3 Customer Indemnification. Subject to the limitations of Paragraph 9.1 above, the District agrees to indemnify and hold harmless the Customer and its directors, officers, managers, employees, agents, representatives, affiliates, attorneys, successors, and assigns from and against any third-party claims resulting from District's negligence, gross negligence, willful acts or willful omissions in connections with the design, construction, installation, operation or maintenance of the District-Owned Facilities. Notwithstanding the above, the District shall not be liable to any third party, nor have the obligation to indemnify the Customer, for any third-party claims relating to or for special, indirect, incidental, punitive, or consequential damages including, but not limited to, lost wages, lost revenues, lost profits, lost business, or lost business opportunities, other than those required by this Agreement.

ARTICLE 10 - NOTICE

10.1 Any notice, demand, or request required or permitted to be given by a Party to the other and any instrument required or permitted to be tendered or delivered by a Party in writing to the other may be so given, by depositing the same with U.S. Postal Service with postage prepaid, for transmission by certified or registered mail, addressed to the Party, or personally delivered to the Party at the addresses set out below. Any notice or request required or permitted to be given by

either Party to the other and not required by this Agreement to be given in writing may be so given by telephone or by facsimile or e-mail to the facsimile numbers and e-mail addresses set out below.

<u>To District:</u>	Butler Public Power District
<u>Address:</u>	<u>1331 4th St. David City, Nebraska 68632</u>
<u>Telephone:</u>	<u>402-367-3081</u>
<u>Facsimile:</u>	<u>402-367-6114</u>
<u>E-mail Address:</u>	<u>butler@butlerppd.com</u>
<u>To Customer:</u>	TransCanada Keystone Pipeline, LP
	Attention:
<u>Address:</u>	<u>450 1st Street NW</u>
	<u>Calgary, AB, Canada T2P 5H1</u>
<u>Telephone:</u>	_____
<u>Facsimile:</u>	_____
<u>E-mail Address:</u>	_____

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 **Nebraska** 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 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

11.6 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.

11.7 Conflicts. In the event of a conflict between the body of this Agreement and any attachment, appendix or exhibit hereto, the terms and provisions of the body of this Agreement shall prevail and be deemed to be the final intent of the Parties.

11.8 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.

11.9 Regulatory Requirements. Each Party's obligations under this Agreement shall be subject to its receipt and the continued effectiveness of any required 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. However, nothing within this Paragraph 11.9 shall relieve Customer of its obligation to make payment for services provided by the District. Furthermore, District shall have no responsibility to challenge, appeal or otherwise dispute any Governmental Authority over any subject matter relating to this project.

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 first above written.

TRANSCANADA KEYSTONE PIPELINE,
LP, By its general partner TransCanada
Keystone Pipeline GP, LLC

By: _____
Name:
Title:

By: _____
Name:
Title:

_____ PUBLIC POWER DISTRICT

By: _____
Name:
Title:

APPENDIX A

Diagram of the District Interconnection Facilities and Point of Interconnection

This Appendix A is a part of the Interconnection Construction Agreement between the Customer and the District.

1.1 District Interconnection Facilities to be constructed by the District include the following:

- (i) the District Substation;
- (ii) metering equipment;
- (iii) Sub-Transmission line;

1.2 Diagram of Point of Interconnection

Please see attached.

APPENDIX B
Estimated Construction Costs

This Appendix B is a part of the Interconnection Construction Agreement between the Customer and the District. All costs contained herein shall be in US dollars.

			Steele City	
			Project Task	
Cumulative Year	Quarter	Authorized	Estimated	Construction
Substation			Costs	Costs
2020	Second	Engineering Design, Order Transformer		
2020	Third	Transformer Progress Payment		
2021	First	Transformer Final Payment		
2021				
2021				
2021				