

CONSTRUCTION MANAGEMENT AGREEMENT

BETWEEN

ENERGY TRANSFER CRUDE OIL COMPANY, LLC

AND

DAPL-ETCO CONSTRUCTION MANAGEMENT, LLC

Dated October 15, 2014

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CONSTRUCTION MANAGEMENT AGREEMENT

This CONSTRUCTION MANAGEMENT AGREEMENT (as the same may be amended from time to time in accordance herewith, this “*Agreement*”) by and between ENERGY TRANSFER CRUDE OIL COMPANY, LLC, a Delaware limited liability company (“*Owner*”), and DAPL-ETCO CONSTRUCTION MANAGEMENT, LLC, a Delaware limited liability company, is made and entered into as of October 15, 2014 (“*Effective Date*”). Owner and Construction Manager (as hereinafter defined) may be referred to herein collectively as the “*Parties*” or each, individually, as a “*Party*.”

RECITALS

WHEREAS, Owner is owned 75% by ETCO Holdings LLC, a Delaware limited partnership (“*Energy Transfer*”), and 25% by Phillips 66 PDI Sub 2 LLC, a Delaware limited partnership (“*P66*”);

WHEREAS, Energy Transfer and P66 have entered into that certain Amended and Restated Limited Liability Company Agreement of Owner, dated effective as of the Effective Date (as such agreement may be amended, modified or supplemented from time to time, the “*LLC Agreement*”), to govern the management, ownership and operation of Owner and its assets;

WHEREAS, Owner intends, pursuant to this Agreement, to retain the services of Construction Manager to Manage (as hereinafter defined) the Design (as hereinafter defined), Procurement (as hereinafter defined) and Construction (as hereinafter defined) of the Subject Facilities (as hereinafter defined), any Qualifying Capital Projects (as hereinafter defined), any Other Projects (as hereinafter defined) and any Required Upgrades (as hereinafter defined), in each case, on the terms and conditions set forth in this Agreement; and

WHEREAS, contemporaneously herewith, Construction Manager has caused Energy Transfer Partners, L.P., one of its indirect owners, to provide a guaranty of the payment obligations of Construction Manager hereunder.

NOW, THEREFORE, for and in consideration of the foregoing, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

AGREEMENT

1.0 Definitions. The following terms, as used in this Agreement, shall have the meanings given such terms as set forth below:

“*AAA*” has the meaning set forth in Section 12.4.2.

“*Acceptance Certificate*” has the meaning set forth in Section 2.5.2.

“*Affiliate*” has the meaning set forth in the LLC Agreement.

“*Agreement*” has the meaning set forth in the introductory paragraph of this Agreement.

“*Applicable Facilities*” means the, Subject Facilities, a Qualifying Capital Project, an Other Project and/or a Required Upgrade, as the context requires.

“*Assets*” has the meaning set forth in the LLC Agreement.

“Audit Period” has the meaning set forth in Section 7.3.2.

“Authorized Officer” means the President or any Vice President.

“Available Cash” has the meaning set forth in the LLC Agreement.

“Bankrupt” means, with respect to any Person, (a) the filing by such Person of a voluntary petition seeking liquidation, reorganization, arrangement or readjustment, in any form, of its debts under the U.S. Bankruptcy Code (or corresponding provisions of future Laws) or any other insolvency Law, or a Person’s filing an answer consenting to or acquiescing in any such petition, (b) the making by such Person of any assignment for the benefit of its creditors or the admission by a Person of its inability to pay its debts as they mature or (c) the expiration of 60 days after the filing of an involuntary petition under the U.S. Bankruptcy Code (or corresponding provisions of future Laws) seeking an application for the appointment of a receiver for the assets of such Person, or an involuntary petition seeking liquidation, reorganization, arrangement or readjustment of its debts under any other insolvency Law, unless the same shall have been vacated, set aside or stayed within such 60 day period.

“Board” has the meaning set forth in the LLC Agreement.

“Budget Amendment” has the meaning set forth in Section 5.3.

“Business Day” means a day (other than a Saturday or Sunday) on which commercial banks in Texas are generally open for business.

“Calendar Month” has the meaning set forth in the LLC Agreement.

“Calendar Quarter” has the meaning set forth in the LLC Agreement.

“Calendar Year” has the meaning set forth in the LLC Agreement.

“Capital Account” has the meaning set forth in the LLC Agreement.

“Claim” means any claim, demand, suit, action, investigation, proceeding (whether civil, criminal, arbitrative, investigative, or administrative), governmental action or cause of action, and expenses and costs associated therewith (including attorneys’ fees and court costs), whether now existing or hereafter arising, whether known or unknown, including any such item involving or sounding in the nature of breach of contract, tort, statutory liability, strict liability, products liability, Liens, contribution, indemnification, fines, penalties, malpractice, professional liability, design liability, premises liability, environmental liability (including investigatory and cleanup costs and natural resource damages), safety liabilities (including OSHA investigations, litigation and pending fines), deceptive trade practices, malfeasance, nonfeasance, negligence, misrepresentation, breach of warranty, tortious interference with contractual relations, slander or libel.

“CM Group” means, collectively, Construction Manager, Energy Transfer Partners, L.P., Energy Transfer Equity, L.P., Sunoco Logistics Partners, L.P., and any of such Persons’ respective Affiliates.

“CM Indemnitees” has the meaning set forth in Section 10.2.1(a).

“Confidential Information” has the meaning set forth in Section 11.1.1.

“**Construction**” and its derivatives mean, with respect to each of the Applicable Facilities, all activities and services relating to the construction, testing, Final Acceptance and Final Completion of each Segment of such Applicable Facility and its related facilities, including contracting with and supervision of Contractors, the acquisition of Land Rights and required Permits and any environmental remediation required due to the construction of such Applicable Facility but excluding Design and Procurement activities.

“**Construction Account**” has the meaning set forth in Section 7.2.

“**Construction Budget**” means, with respect to each of the Applicable Facilities, a budget covering all Construction Costs that (a) Construction Manager and Owner deem advisable to make in connection with the Design, Procurement and Construction of such Applicable Facility, and (b) is approved by Owner in accordance with the terms and provisions of this Agreement, as such Construction Budget may be amended pursuant to a Budget Amendment or otherwise in accordance with this Agreement. In the context of any Required Upgrade, the Construction Budget therefor shall be deemed to include all Required Upgrade Costs for such Required Upgrade as set forth in the applicable Required Upgrade Notice.

“**Construction Costs**” means, with respect to each of the Applicable Facilities, those costs made or incurred by or on behalf of Owner in connection with the Design, Procurement and Construction of such Applicable Facility. For the avoidance of doubt, Required Upgrade Costs are also characterized as Construction Costs hereunder.

“**Construction Direct Bill Items**” has the meaning set forth in Exhibit B-2.

“**Construction G&A Fee**” has the meaning set forth in Section 4.2.

“**Construction Manager**” means DAPL-ETCO Construction Management, LLC, a Delaware limited liability company, or any successor construction manager appointed pursuant to Section 2.3.3.

“**Construction Non-Billable Items**” has the meaning set forth in Exhibit B-3.

“**Construction Period**” means, with respect to (a) the Subject Facilities, the time period from and after the Effective Date until the Final Completion of the entirety of the Subject Facilities, (b) any Qualifying Capital Project or Other Project, the time period from the date of the delivery by Owner to the Construction Manager of the initial Construction Budget or initial Construction Schedule for such Qualifying Capital Project or Other Project (whichever is delivered to the Construction Manager first) until the date of Final Completion of the entirety of such Qualifying Capital Project or Other Project, as applicable, and (c) with respect to any Required Upgrade, the time period from the date of the delivery of the applicable Required Upgrade Notice until the date of Final Completion of the entirety of such Required Upgrade.

“**Construction Reports**” has the meaning set forth in Section 7.4.2.

“**Construction Schedule**” means (a) with respect to the Subject Facilities, the schedule attached hereto as Exhibit C, which contains the initial estimated timeline for the Design, Procurement and Construction of the Subject Facilities based on the then-current Project Scope, (b) with respect to any Qualifying Capital Project or Other Project, a schedule, containing information and details of a level commensurate with those attached hereto as Exhibit C, containing the initial estimated timeline for the Design, Procurement and Construction of such Qualifying Capital Project or Other Project, as applicable,

based on the then-current Project Scope, and (c) with respect to any Required Upgrade, the estimated schedule contained in the applicable Required Upgrade Notice.

“**Contract**” means any written or oral contract or agreement, including any such agreement regarding indebtedness, any lease, mortgage, license agreement, purchase order, commitment, letter of credit and any other legally binding arrangement.

“**Contractor**” means any Person engaged by Owner with Construction Manager’s assistance pursuant to this Agreement to provide services or materials with respect to the Design, Procurement and Construction of any of the Applicable Facilities and the Management thereof. For the avoidance of doubt, no employee of Construction Manager or its Affiliates shall be considered a Contractor for purposes of this Agreement.

“**Crude Petroleum**” has the meaning set forth in the LLC Agreement.

“**Design**” and its derivatives mean, with respect to each of the Applicable Facilities, all activities relating to the engineering, planning and design of such Applicable Facility.

“**Designated Category**” means any of the following categories: (a) Design, (b) Procurement, (c) Construction (other than the acquisition of Land Rights or services relating thereto) or (d) the acquisition of Land Rights.

“**Director**” has the meaning set forth in the LLC Agreement.

“**DOT**” means the United States Department of Transportation.

“**Effective Date**” has the meaning set forth in the introductory paragraph of this Agreement.

“**EH&S Audit Period**” has the meaning set forth in Section 6.2.1.

“**EH&S Laws**” has the meaning set forth in Section 6.2.1.

“**Emergency**” has the meaning set forth in Section 5.6.

“**Emergency Expenditure**” has the meaning set forth in the LLC Agreement.

“**Energy Transfer**” has the meaning set forth in the recitals.

“**Existing Facilities**” means that certain segment of a 30-inch diameter interstate natural gas pipeline and related assets and properties, in each case, as described on Exhibit A-1.

“**Facilities**” has the meaning set forth in the Operating Agreement.

“**FERC**” means the U.S. Federal Energy Regulatory Commission.

“**Final Acceptance**” has the meaning set forth in Section 2.5.2.

“**Final Completion**” means, with respect to any Segment of the Applicable Facilities and its related facilities, the date upon which all of the following has occurred: (a) Mechanical Completion has been achieved with respect to such Segment and related facilities, (b) Final Acceptance has occurred with respect to such Segment and related facilities, (c) all aspects of the Design, Procurement and Construction of such Segment and its related facilities have been completed, (d) Construction Manager or Owner has

received affidavits from each Contractor with respect to such Segment and related facilities that all bills relating to the Design, Procurement and/or Construction activities performed by such Contractor have been paid, (e) all required work to commission and place in-service such Segment and related facilities has been completed, and (f) all punch list items and other post-construction items in the Construction Budget (including fencing, painting, remediation and other post-construction items) have been completed with respect to such Segment and related facilities.

“**Fixed Operating Fee**” has the meaning set forth in the Operating Agreement.

“**Force Majeure**” has the meaning set forth in Section 8.2.

“**GAAP**” has the meaning set forth in the LLC Agreement.

“**Governmental Authority**” has the meaning set forth in the LLC Agreement.

“**Initial Facilities**” means that certain Crude Petroleum pipeline system and related facilities described on Exhibit A-2.

“**Land Rights**” has the meaning set forth in Section 3.10.

“**Law**” has the meaning set forth in the LLC Agreement.

“**Liabilities**” has the meaning set forth in the LLC Agreement.

“**Liability Claim**” has the meaning set forth in Section 10.1.1.

“**Lien**” means, with respect to any property or asset, any mortgage, deed of trust, lien, pledge, charge, claim, security interest, restrictive covenant or easement or encumbrance of any kind in respect of such property or asset, whether or not filed, recorded or otherwise perfected under applicable Law, as well as the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such property or asset; excluding, however, the terms and conditions (other than any purchase money lien) in the instrument creating such property or asset.

“**LLC Agreement**” has the meaning set forth in the recitals.

“**Manage**” or “**Management**” and their respective derivatives mean, with respect to each of the Applicable Facilities, assisting Owner in the day-to-day management and administration of the Design, Procurement and Construction of such Applicable Facility through its Final Acceptance, including assisting Owner in (a) the selection and management of Contractors, (b) the acquisition by Owner of Land Rights, (c) the acquisition by Owner of required Permits, (d) the management of Construction Costs, and (e) the conduct by Owner of any environmental remediation required in connection with the Construction of such Applicable Facility.

“**Mechanical Completion**” means, with respect to any Segment of the Applicable Facilities and its related facilities, the date upon which the Construction Manager and/or Owner, as applicable, has received notices from the Contractors performing the Design and Construction of such Segment that (a) such Segment (and, if applicable, its related facilities) is capable of receiving Crude Petroleum, and (b) such Segment and related facilities are capable of providing the intended service with respect thereto.

“**Member**” has the meaning set forth in the LLC Agreement.

“**Member Interest**” has the meaning set forth in the LLC Agreement.

“**Operate**” and its derivatives have the meanings set forth in the Operating Agreement.

“**Operating Agreement**” means that certain Operating Agreement covering the Facilities, dated effective as of the Effective Date, between Owner and DAPL-ETCO Operations Management, LLC, as the same may be amended, modified or supplemented from time to time in accordance with the terms thereof and of the LLC Agreement.

“**Operator**” means the Person serving as “Operator” under the Operating Agreement and any successor “Operator” that is appointed pursuant to the terms of thereof.

“**Option Agreement**” means that certain Option Agreement, dated as of September 17, 2012, by and between SUCo, LLC and Owner.

“**Option Agreement Transfer**” has the meaning set forth in Section 3.3.2.

“**Other Project**” means any project relating to the Facilities (other than a Qualifying Capital Project or Required Upgrade) for which Owner has requested that Construction Manager, pursuant to this Agreement, Manage the Design, Procurement and Construction of such project.

“**Owner**” has the meaning set forth in the introductory paragraph of this Agreement.

“**Owner Indemnitees**” means Owner and its Affiliates and its and their respective directors, officers, managers and employees.

“**P66**” has the meaning set forth in the recitals.

“**Parties**” and “**Party**” have the meaning set forth in the introductory paragraph of this Agreement.

“**Percentage Interest**” has the meaning set forth in the LLC Agreement.

“**Permits**” has the meaning set forth in Section 6.4.

“**Person**” has the meaning set forth in the LLC Agreement.

“**President**” has the meaning set forth in the LLC Agreement.

“**Procurement**” and its derivatives mean all activities relating to the procurement of services (other than services relating to the acquisition of Land Rights), materials, equipment and construction equipment necessary for the Design and/or Construction of the Applicable Facilities.

“**Project Scope**” means, as of any date of determination and with respect to each of the Applicable Facilities, the set of service, capacity and other objective(s), including any acceptance criteria, to be achieved by the Design, Procurement and Construction of such Applicable Facility, based upon (a) in the case of the Subject Facilities, on the actual or anticipated contracted Subscriptions for the service(s) to be made available by Owner with respect to such Applicable Facility and the descriptions of the Initial Facilities and Existing Facilities contained herein, (b) in the case of any Qualifying Capital Project, on the actual or anticipated contracted Subscriptions for the service(s) to be made available by Owner with respect to such Qualifying Capital Project, (c) in the case of any Other Project, the required

obligations of Owner under any Contracts with respect to such Other Project, or (d) in the case of any Required Upgrade, on the information contained in the applicable Required Upgrade Notice.

“Qualifying Capital Project” has the meaning set forth in the LLC Agreement.

“Qualifying Subscription Contract” has the meaning set forth in the LLC Agreement.

“Quarterly Estimate” has the meaning set forth in Section 5.4.1.

“Records” means as-built specifications and complete drawings, Global Positioning System data via electronic transmission based on final as-built drawings, files, maps, alignment sheets, drawings, documents, reports, correspondence, records required to comply with applicable regulations under DOT, 49 CFR Part 195 and other instruments and records (including accounting and financial records), in each case, to the extent the foregoing are (a) provided to Construction Manager by a Contractor and (b) related to the Design, Procurement and Construction of the Applicable Facilities and/or any other obligations of Construction Manager hereunder.

“Recovery Claim” has the meaning set forth in Section 10.1.2.

“Required Upgrade” has the meaning set forth in the LLC Agreement.

“Required Upgrade Costs” has the meaning set forth in Section 3.11.

“Required Upgrade Notice” has the meaning set forth in Section 3.11.

“Safety Report” has the meaning set forth in Section 6.2.6.

“Segment” means, with respect to each of the Applicable Facilities, a portion of such Applicable Facility with respect to which, if Final Acceptance has occurred with respect to such portion, then such portion would be capable of being placed in-service prior to the Final Acceptance of the entirety of such Applicable Facility.

“Shortfall Estimate” has the meaning set forth in Section 5.4.2.

“Subject Facilities” means the Initial Facilities and the Existing Facilities.

“Subject Facilities Final Acceptance” means the Final Acceptance of the last Segment (and its related facilities) of the Subject Facilities to reach Final Acceptance.

“Subject Facilities Final Completion” means the Final Completion of the last Segment (and its related facilities) of the Subject Facilities to reach Final Completion.

“Subscriptions” has the meaning set forth in the LLC Agreement.

“Successor Construction Manager Effective Date” means (a) in connection with any resignation by Construction Manager, (i) under Section 2.3.1(a), the date that is the earlier of (A) the date that is nine months after the date of Construction Manager’s resignation notice to Owner, and (B) the date that a successor construction manager has been appointed pursuant to Section 2.3.3, and (ii) under Section 2.3.1(b) or Section 2.3.1(c), the date that is the earlier of (A) the date that is six months after the date of Construction Manager’s resignation notice to Owner, and (B) the date that a successor construction manager has been appointed pursuant to Section 2.3.3, and (b) in connection with any removal of Construction Manager under Section 2.3.2, the date that is the earlier of (i) the date that is nine

months after the date of Owner's removal notice to Construction Manager, and (ii) the date that a successor construction manager has been appointed pursuant to Section 2.3.3.

"Third Party" means any Person that is not a Party or a Member or an Affiliate of a Party or a Member.

"TRIR" has the meaning set forth in the Section 6.2.6.

"Unit" has the meaning set forth in the LLC Agreement.

"Vice President" has the meaning set forth in the LLC Agreement.

1.1 References and Rules of Construction. All references in this Agreement to Exhibits, Articles, Sections, subsections and other subdivisions refer to the corresponding Exhibits, Articles, Sections, subsections and other subdivisions of or to this Agreement unless expressly provided otherwise. Titles appearing at the beginning of any Articles, Sections, subsections or other subdivisions of this Agreement are for convenience only, do not constitute any part of this Agreement and shall be disregarded in construing the language hereof. The words "this Agreement," "herein," "hereby," "hereunder" and "hereof," and words of similar import, refer to this Agreement as a whole and not to any particular Article, Section, subsection or other subdivision unless expressly so limited. The words "this Article," "this Section" and "this subsection," and words of similar import, refer only to the Article, Section or subsection hereof in which such words occur. The word "including" (in its various forms) means "including without limitation." The word "U.S." means the United States of America, the word "Federal" means U.S. federal and the word "State" means any U.S. state. All references to "\$" or "dollars" shall be deemed references to U.S. Dollars. Each accounting term not defined herein shall have the meaning given to it under GAAP. Pronouns in masculine, feminine or neuter genders shall be construed to state and include any other gender, and words, terms and titles (including terms defined herein) in the singular form shall be construed to include the plural and vice versa, unless the context otherwise requires. Exhibits referred to herein are attached hereto. References to any Law or agreement shall mean such Law or agreement as it may be amended from time to time. Except as expressly set forth herein, references herein to matters that require the "approval of Owner" or similar statements mean the "approval of the Board of Owner pursuant to the LLC Agreement."

2.0 Construction Manager.

2.1 Construction Manager Identified. Subject to the terms of this Agreement, DAPL-ETCO Construction Management, LLC, is hereby retained as Construction Manager to (a) Manage the Design, Procurement and Construction of the Subject Facilities and, if applicable, each Qualifying Capital Project, Other Project, and Required Upgrade, in each case, during the applicable Construction Period therefor, and (b) perform, or cause to be performed, the other services of Construction Manager expressly specified in this Agreement.

2.2 Term. The term of this Agreement begins on the Effective Date and ends upon the earlier to occur of (a) the termination of the LLC Agreement in accordance with the terms thereof, and (b) the mutual written agreement of the Parties.

2.3 Resignation or Removal of Construction Manager.

2.3.1 Resignation of Construction Manager. Construction Manager may resign by delivering written notice to Owner (a) at any time, (b) if Owner breaches any payment provision of this Agreement and, after receipt of notice of such alleged breach by Owner from Construction Manager

(which notice shall provide with particularity details of such alleged breach), Owner fails to correct such breach within five days after receipt of such notice from Construction Manager, or (c) if Owner breaches any material provision of this Agreement (other than a payment provision) in any material respect and, after receipt of notice of such alleged breach by Owner from Construction Manager (which notice shall provide with particularity details of such alleged breach), Owner fails to correct or to diligently pursue correction of such breach in a manner reasonably acceptable to Construction Manager within 30 days after receipt of such notice from Construction Manager; provided that if Owner disputes the material breach claimed by Construction Manager pursuant to subsection (c) above, then such dispute shall be settled pursuant to the terms of Section 12.3 prior to Construction Manager's resignation notice becoming effective. Following the settlement of such dispute which results in a determination that such material breach did in fact occur, if such breach is not corrected by Owner or corrective action reasonably acceptable to Construction Manager is not commenced by Owner, in each case, within ten days after such determination, then Construction Manager's resignation notice delivered pursuant to subsection (c) above shall be deemed to be effective as of the day such notice was originally delivered. Notwithstanding any such resignation by Construction Manager, Construction Manager shall not be relieved of its duties as Construction Manager under this Agreement and shall continue to perform all of the duties, responsibilities and obligations of Construction Manager hereunder, in each case, until the applicable Successor Construction Manager Effective Date.

2.3.2 Removal of Construction Manager. Construction Manager may be removed by Owner by written notice from Owner to Construction Manager if (a) Construction Manager becomes Bankrupt, (b) if the CM Group in the aggregate owns less than 25% of the Owner, or (c) Construction Manager breaches any material provision of this Agreement in any material respect and, after receipt of notice of such alleged breach by Construction Manager from Owner (which notice shall provide with particularity details of such alleged breach), Construction Manager fails to correct or to diligently pursue correction of such breach in a manner reasonably acceptable to Owner within 30 days after receipt of such notice from Owner; provided that if Construction Manager disputes the material breach claimed by Owner pursuant to subsection (b) above, then such dispute shall be settled pursuant to the terms of Section 12.3 prior to Owner's removal notice becoming effective. Following the settlement of such dispute which results in a determination that such material breach did in fact occur, if such breach is not corrected by Construction Manager or corrective action reasonably acceptable to Owner is not commenced by Construction Manager, in each case, within ten days after such determination, then Owner's removal notice delivered pursuant to subsection (b) above shall be deemed to be effective as of the day such notice was originally delivered. Notwithstanding any such removal of Construction Manager, Construction Manager shall not be relieved of its duties as Construction Manager under this Agreement and shall continue to perform all of the duties, responsibilities and obligations of Construction Manager hereunder, in each case, until the applicable Successor Construction Manager Effective Date.

2.3.3 Appointment of Successor Construction Manager. Upon the resignation or removal of Construction Manager, a successor construction manager shall be appointed by Owner as soon as practicable and Owner shall promptly notify Construction Manager of any such appointment. Construction Manager shall reasonably cooperate in the transition to the successor construction manager prior to the applicable Successor Construction Manager Effective Date. Upon such appointment of the successor construction manager, Construction Manager shall (a) assign its rights and obligations under this Agreement to such successor construction manager at the request of Owner and (b) promptly deliver all Records in Construction Manager's possession to such successor construction manager. From and after the appointment of any successor construction manager, the successor construction manager shall be deemed to be the "Construction Manager" hereunder for all purposes.

2.4 Effect of Removal or Resignation. Any removal of or resignation by Construction Manager pursuant to Section 2.3 shall release Construction Manager from any Liability for any obligation

and duties of “Construction Manager” hereunder accruing on or after the applicable Successor Construction Manager Effective Date, including Liabilities for which a successor construction manager is responsible on and after the Successor Construction Manager Effective Date. Any removal of or resignation by Construction Manager pursuant to Section 2.3 shall not relieve Construction Manager from (a) any Liability that it would otherwise have under this Agreement for acts or omissions that occurred prior to the applicable Successor Construction Manager Effective Date, or (b) its obligations accruing prior to the applicable Successor Construction Manager Effective Date to properly account for any remaining funds in the Construction Account and to make all books and records relating to such account and Construction Manager’s performance under this Agreement available to Owner and any successor construction manager. Except in the case where (i) Construction Manager resigns pursuant to Section 2.3.1(b) or Section 2.3.1(c), or (ii) Construction Manager is removed pursuant to Section 2.3.2(b) Construction Manager shall bear all transition costs associated with the transition to a successor operator due to the removal or resignation of Construction Manager.

2.5 Final Acceptance and Acceptance Certificates.

2.5.1 Construction Manager shall give notice to Owner once the applicable Contractors have notified Construction Manager that Mechanical Completion of any Segment and its related facilities has occurred.

2.5.2 Within 30 days of any notification by Construction Manager pursuant to Section 2.5.1, an Authorized Officer, with the assistance of Construction Manager, shall inspect and evaluate the state of completion of the applicable Segment and its related facilities and, if during such time period such Authorized Officer, on behalf of Owner, determines, in its reasonable opinion, that Mechanical Completion has occurred with respect to such Segment, then, Owner shall so certify through issuance to Construction Manager by an Authorized Officer, on behalf of Owner, of a certificate of completion (an “*Acceptance Certificate*”) with respect to such Segment and its related facilities. The date that an Acceptance Certificate is so issued with respect to any Segment and its related facilities shall be the date of “*Final Acceptance*” of such Segment and related facilities.

2.5.3 In the event that an Authorized Officer fails to issue an Acceptance Certificate on behalf of Owner with respect to any Segment and its related facilities within the time period set forth in Section 2.5.2, then Owner and Construction Manager shall in good faith confer and make commercially reasonable efforts to resolve any dispute with respect to the delivery of such Acceptance Certificate. If such dispute cannot be resolved within 45 days of the delivery by Construction Manager of the notification pursuant to Section 2.5.1, then such dispute shall be determined by an expert pursuant to the provisions of Section 12.4.

2.5.4 Upon Subject Facilities Final Completion or the Final Completion of any other Applicable Facility, this Agreement shall terminate with respect to the Subject Facilities, such Qualifying Capital Project, such Other Project or such Required Upgrade (as applicable) only (except as provided in Section 3.5.2, Section 7.5.3, Section 10, Section 11 and this Section 2.5.4).

3.0 Duties of Construction Manager.

3.1 **Independent Contractor.** In the performance of any work or services by Construction Manager for Owner pursuant to this Agreement, Construction Manager conclusively shall be deemed an independent contractor, with the right and authority to (a) direct and control all services and other work being performed by the employees of Construction Manager and its Affiliates and (b) Manage all services and other work to be performed by all Contractors; provided that all such services and other work shall be subject to Owner’s general right of inspection. Owner shall have no right or authority to supervise or give

instructions to any such Persons, and such Persons at all times shall (i) if employees of Construction Manager or its Affiliates, be under the direct and sole supervision and control of Construction Manager and (ii) if employees of any Contractor, be under the direct and sole supervision and control of such Contractor. Any suggestions that may be given by Owner shall be given only to the supervisor or to the other Person in charge of such Person's employees and it is the understanding and intention of the Parties that no relationship of master and servant or principal and agent shall exist between Owner and the employees, agents or representatives of Construction Manager or its Affiliates or any Contractors.

3.2 **No Agency.** Nothing in this Agreement shall be deemed or construed to authorize Construction Manager to act as an agent, principal, servant or employee for Owner for any purpose whatsoever and Construction Manager shall not hold itself out as an agent, principal, servant or employee of Owner to any Person.

3.3 **Administrative Duties of Construction Manager.**

3.3.1 Prior to Final Acceptance of any Segment and its related facilities, Construction Manager shall be responsible for administering the accounting and regulatory affairs of Owner with respect to such Segment and related facilities, including maintaining the Records with respect thereto. Construction Manager also shall be responsible for preparing and distributing information, notices and reports (including reports to Governmental Authorities) required in connection with the Applicable Facilities relating to such Segment and its related facilities pursuant to Section 2.5, Section 3.4.2, Section 3.4.3, Section 5.4, Section 5.6, Section 6.1, Section 7.4 and Section 7.5.2.

3.3.2 Upon the earlier to occur of (a) the date that is 12 months prior to the date the Construction Manager reasonably believes Subject Facilities Final Acceptance will occur, and (b) the date that Construction Manager reasonably believes that the Existing Facilities are needed in order to efficiently proceed with the Design, Procurement and Construction of the Subject Facilities, Construction Manager shall deliver to Owner and the President a notice directing Owner to request that the Existing Facilities be transferred to Owner pursuant to the Option Agreement (the "***Option Agreement Transfer***").

3.4 **Design, Procure and Construct the Applicable Facilities.** Construction Manager shall Manage the Design, Procurement and Construction of each of the Applicable Facilities in accordance with the terms and provisions of this Agreement and in accordance with all valid and applicable Laws and other requirements of Governmental Authorities.

3.4.1 Subject to the limitations set forth in Section 3.6, Section 3.9 and Section 5.3, Owner hereby authorizes Construction Manager to cause to be done and performed any and all acts and things reasonably necessary for the Design, Procurement and Construction of each of the Applicable Facilities (and the Management thereof) from the Effective Date through the Final Completion of such Applicable Facility, including (a) incurring any expense authorized in an approved Construction Budget relating thereto or as otherwise permitted hereunder (including Emergency Expenditures) and (b) entering into (or causing an Authorized Officer, on behalf of Owner, to enter into) Contracts in order to accomplish such Design, Procurement and Construction of such Applicable Facility.

3.4.2 Construction Manager shall Manage the (a) development and maintenance of reasonable safety, health and environmental management systems, policies, procedures and practices to ensure the safety and health of Persons working in connection with the Design, Procurement and Construction of each of the Applicable Facilities and the Management thereof, (b) compliance with applicable environmental and safety Laws, (c) collection of data relating to the foregoing, (d) reporting findings (if applicable) to the appropriate Governmental Authorities and (e) maintenance of all records relating thereto.

3.4.3 Notwithstanding anything herein to the contrary, in no event shall Construction Manager be required to directly enter into any Contract for the Design, Procurement or Construction of each of the Applicable Facilities. Owner may delegate to an Authorized Officer, on behalf of Owner, the right to execute any Contracts for the Design, Procurement or Construction of any of the Applicable Facilities as requested by Construction Manager, subject to the limitations set forth in Section 3.6, Section 3.9 and Section 5.3.

3.5 Additional Post-Final Acceptance Duties of Construction Manager.

3.5.1 From and after Final Acceptance of each Segment and its related facilities, until Final Completion has occurred with respect to such Segment, Construction Manager shall: (a) Manage the pursuit and enforcement of any and all post-construction Claims (including in respect of Contractor insurance), warranties, indemnities and other rights, and the payment or retention of any retainage or other contingent payments (which shall be deemed Claims), in each case, on behalf of Owner arising under or related to any Contract with any Contractor engaged in the Design, Procurement or Construction of such Segment and related facilities; and (b) Manage the completion by Contractors of any punch list items reasonably identified by an Authorized Officer, on behalf of Owner, and agreed to by Construction Manager in connection with Final Completion of such Segment and related facilities.

3.5.2 Once Final Completion has occurred with respect to any Segment and its related facilities, Construction Manager shall (a) coordinate with Operator to permit Operator to, subject to the applicable limitations contained in the Operating Agreement, manage the pursuit and enforcement of any and all outstanding post-construction Claims (including in respect of Contractor insurance), warranties, indemnities and other rights, and the payment or retention of any retainage or other contingent payments (which shall be deemed Claims), in each case, on behalf of Owner arising under or related to any Contract with any Contractor engaged in the Design, Procurement or Construction of such Segment and related facilities, (b) furnish to Owner a copy of the final Construction Cost statements for such Segment and its related facilities as soon as possible after all bills relating to Design, Procurement and Construction of such Segment and its related facilities have been received by Construction Manager, but in any event no later than 150 days after Final Completion of such Segment, and (c) provide Operator with the applicable Records as proscribed by Section 7.5.3.

3.6 Procurement; Entry into Contracts.

3.6.1 Subject to the limitations set forth in this Section 3.6, Section 3.9 and Section 5.3, Construction Manager shall Manage the Procurement of necessary materials and supplies in connection with the proper Design, Procurement and Construction of each of the Applicable Facilities. Such actions shall include requesting that an Authorized Officer, on behalf of Owner, enter into: (a) Contracts for the Design, Procurement and Construction of each of the Applicable Facilities and (b) Contracts for power, fuel, other utilities and communication facilities related to the Design and Construction of each of the Applicable Facilities. Construction Manager may, on behalf of Owner, sell or dispose of materials and equipment that are no longer required for the Design and Construction of, or future operation of, any Applicable Facility to any non-Affiliate of the Operator in an arm's length transaction. Unless approved by Owner (such approval not to be unreasonably withheld, conditioned or delayed), Construction Manager shall use its reasonable efforts to ensure that all Contracts pursuant to which materials are purchased by Owner as contemplated hereby contemplate that such materials shall be in new condition and give Owner (and not Construction Manager or its Affiliates) all discounts, rebates, warranties or credits given with respect to such purchases.

3.6.2 Notwithstanding anything to the contrary set forth in this Agreement, Construction Manager agrees that any Contracts that Construction Manager requests that an Authorized

Officer, on behalf of Owner, enter into with any Contractor for the provision (by such Contractor) of services and/or materials for the Design, Procurement or Construction of the Applicable Facilities shall (a) be at an arm's length basis, (b) contain insurance provisions that are, in Construction Manager's reasonable opinion, either customary in the industry in connection with the services or materials to be provided under such Contract or consistent with the insurance provisions set forth herein (or that are otherwise approved in writing by Owner, such approval not to be unreasonably withheld, conditioned or delayed), (c) contain indemnity provisions that are, in Construction Manager's reasonable opinion, customary in the industry with respect to the services or materials to be provided under such Contract, (d) contain warranty provisions that are, in Construction Manager's reasonable opinion, customary in the industry with respect to the services or materials to be provided under such Contract, and (e) if applicable, contain audit rights that are enforceable by Owner.

3.7 Personnel. Subject to the limitations set forth in Section 3.6, Section 3.9 and Section 5.3, Construction Manager (and/or its Affiliate(s)) may (a) utilize its or any of its Affiliates' employees for services in connection with Construction Direct Bill Items; provided, however, that records of time spent by employees for the Design, Procurement and Construction of each of the Applicable Facilities, and the Management thereof, with respect to Construction Direct Bill Items shall be maintained by Construction Manager or its Affiliates, as applicable, so that proper charges may be made in accordance with Section 4.1, and (b) request that an Authorized Officer, on behalf of Owner, enter into Contracts to engage the services of Contractors in the performance of such services and otherwise in accordance with the provisions of Section 3.6 in order for each of the Applicable Facilities to be Designed and Constructed. Notwithstanding the above, Construction Manager shall not charge Owner for any services provided by such employees or by Contractors that are Construction Non-Billable Items.

3.8 Payment of Expenses. Subject to the limitations set forth in Section 3.6, Section 3.9 and Section 5.3, to the extent of available funds in the Construction Account, Construction Manager shall pay and discharge all Construction Costs on a timely basis (including any such Construction Costs incurred by Owner), including Construction Costs with respect to (a) Contractors for the Design, Procurement and Construction of each of the Applicable Facilities, (b) the Procurement of necessary materials and services for such Design, Procurement and Construction, (c) the acquisition of Land Rights with respect to each of the Applicable Facilities and (d) the Procurement and/or enforcement of insurance pursuant to Section 9 with respect to each of the Applicable Facilities. Notwithstanding anything herein to the contrary, in no event shall Construction Manager be liable in connection with the performance of its services hereunder or otherwise in breach of this Agreement if Construction Manager fails, or is otherwise unable, to perform any of such services or its other obligations hereunder, including any obligations to pay or cause to be paid any such Construction Costs due to (i) the failure of Owner to pay when due any amounts payable hereunder by Owner into the Construction Account, whether pursuant to Section 5.4, Section 5.6 or otherwise, or (ii) the lack of available funds in the Construction Account.

3.9 Limitation of Authority. Except (a) in the case of Emergencies and (b) for actions previously approved by Owner or included in an approved Construction Budget, notwithstanding anything in this Agreement to the contrary, Construction Manager shall obtain the prior written consent of Owner (such approval not to be unreasonably delayed, but which approval may otherwise be provided or withheld in Owner's sole and absolute discretion), prior to (i) taking any of the following actions with respect to Owner, any of the Applicable Facilities or any other Assets, or (ii) requesting that an Authorized Officer execute a Contract on behalf Owner in respect of any of the following:

3.9.1 the taking of any action that would require the prior affirmative vote, consent or approval of the Directors or the Board under Section 5.1(c) or Section 5.1(d) of the LLC Agreement;

3.9.2 the possession of, or in any manner the dealing with, any of the Assets or the transfer of the rights of Owner in such Assets other than for the sole benefit of Owner; or

3.9.3 except with respect to powers of attorney granted for the Procurement of Land Rights relating to any of the Applicable Facilities, the granting of powers of attorney with respect to the Design, Procurement or Construction of any of the Applicable Facilities or the Management thereof.

3.10 **Land Rights.** Subject to Section 3.6, Section 3.9 and Section 5.3, Construction Manager shall assist Owner in causing (and request that an Authorized Officer, on behalf of Owner, enter into Contracts to cause) each of the Applicable Facilities to be surveyed. In addition, subject to the limitations set forth in Section 3.6, Section 3.9 and Section 5.3, Construction Manager shall assist Owner in acquiring (and request that an Authorized Officer, on behalf of Owner, enter into Contracts, including powers of attorney, to acquire) all necessary rights of way, easements, leases, fee titles, land permits and licenses and other interests in land required for the Construction, operation and maintenance of each of the Applicable Facilities (“**Land Rights**”).

3.10.1 Owner shall, and shall cause each Member to, use its commercially reasonable efforts to provide Construction Manager with any information in Owner’s or the Members’ possession that would be useful to Construction Manager in connection with assisting Owner in surveying of the route for any of the Applicable Facilities or assisting Owner in the acquisition of Land Rights relating thereto.

3.10.2 In assisting Owner with the acquisition of Land Rights, Construction Manager shall assist Owner in entering into good faith negotiations with each applicable property owner. Condemnation shall be used by Owner to acquire Land Rights whenever, in Construction Manager’s good faith opinion, the necessary Land Rights cannot reasonably and economically be obtained voluntarily by Owner, and Construction Manager shall assist Owner in Owner’s initiation of condemnation proceedings with the appropriate Governmental Authority and the prosecution of the same to conclusion to the fullest extent allowed by applicable Law.

3.10.3 Owner shall bear the entire cost of obtaining or enforcing all such Land Rights, whether by voluntary conveyance, condemnation or other civil proceedings (and whether by judgment or settlement).

3.11 **Required Upgrades.** From and after the Effective Date, if Owner (either at the direction of Operator or otherwise) or Construction Manager reasonably believes that a Required Upgrade is needed with respect to all or any portion of the Facilities, then Owner or Construction Manager, as applicable, shall provide written notice to the other Party of such circumstance. Such written notice shall contain the following: (a) a description of the Asset(s) requiring such Required Upgrade, (b) the type of upgrade, modification, expansion or other similar improvement needed with respect to such Required Upgrade, (c) a description of the applicable Law or material Contract containing the requirements or obligations, as applicable, that such Required Upgrade is needed to satisfy, and (d) a good faith estimate of the costs and expenses of the design, construction, development, operation and maintenance of such Required Upgrade (such costs and expenses, the “**Required Upgrade Costs**”) (including the incremental increase to the Fixed Operating Fee payable to the Operator under the Operating Agreement that would be attributable to such Required Upgrade, if any), including an estimated schedule of such costs and expenses (such notice, a “**Required Upgrade Notice**”). Upon receipt by Owner or Construction Manager, as applicable, of any such Required Upgrade Notice (i) the Required Upgrade in question shall be deemed approved by Owner and Construction Manager, (ii) a Construction Budget for such Required Upgrade shall be deemed approved by Owner and Construction Manager that includes the Required Upgrade Costs set forth in the applicable Required Upgrade Notice, and (iii) Construction Manager shall conduct and

implement such Required Upgrade under this Agreement in accordance with the details contained in the applicable Required Upgrade Notice.

4.0 Schedule of Charges.

4.1 **Construction Costs.** In the course of Managing the Design, Procurement and Construction of each of the Applicable Facilities, and subject to the then-current Construction Budget therefor and the provisions of Section 5.3, Construction Manager may incur, or cause Owner to incur, Construction Costs constituting Construction Direct Bill Items. Subject to (a) the limitations set forth in Section 3.9, (b) the provisions of Section 5.3, and (c) the then-current Construction Budget for such Applicable Facility, Owner shall be responsible for contributing to the Construction Account, pursuant to Section 5.4, Section 5.6 or otherwise, all actual Construction Costs that constitute Construction Direct Bill Items (including any Emergency Expenditures) incurred by Construction Manager (without markup), Owner or any Contractor with respect to such Applicable Facility.

4.2 **Construction G&A Fee.** As compensation for performing the Construction Non-Billable Items with respect to the Applicable Facilities, commencing on the Effective Date and continuing thereafter during the term of this Agreement, Owner shall pay Construction Manager a monthly fee equal to, the sum of (a) 1.0% of the total amount of all Construction Costs incurred by Construction Manager and/or Owner in the immediately preceding Calendar Month with respect to the Subject Facilities, and (b) with respect to any other Applicable Facility during its applicable Construction Period under this Agreement, an amount to be determined in accordance with the standard allocation procedures of Construction Manager and its Affiliates with respect to projects of such type (such amounts, collectively, the “*Construction G&A Fee*”). Owner shall pay Construction Manager the Construction G&A Fee by depositing each installment into the Construction Account by the fifth day of each Calendar Month; provided that with respect to the first payment of the Construction G&A Fee, such fee shall be deposited into the Construction Account by Owner no later than five days following the Effective Date.

4.3 **Taxes.** Construction Manager shall use commercially reasonable efforts to take such actions as are necessary to obtain available exemptions from, reductions in, or rebates or refunds of, applicable state and local taxes, including sales and use taxes and property taxes, and Owner shall cooperate with Construction Manager to the extent such cooperation is required to obtain such exemptions, reductions, rebates or refunds.

5.0 Construction Schedule; Construction Budget; and Authority for Expenditures.

5.1 Construction Schedule.

5.1.1 The initial Construction Schedule for the Subject Facilities is attached hereto as Exhibit C. Upon the decision by Owner to undertake any Qualifying Capital Project or Other Project, Owner shall deliver to Construction Manager the initial Construction Schedule for such Qualifying Capital Project or Other Project, as applicable. The initial Construction Schedule for any Required Upgrade shall be as contained in the applicable Required Upgrade Notice. As the Project Scope, Construction Budget and/or description of any Applicable Facility are revised by the Construction Manager and/or the Parties, as applicable, from time to time during the term of this Agreement in accordance herewith, the Construction Manager will deliver to Owner a revised Construction Schedule with respect to such Applicable Facility which will, upon such delivery, be deemed to be the “Construction Schedule” with respect to such Applicable Facility for all purposes hereunder.

5.1.2 Construction Manager shall meet with the Board no fewer than once per Calendar Quarter (or more or less frequently as the Parties shall so mutually agree) during the term of this

Agreement to review any Project Scope then-in effect, any Construction Schedule then-in effect and the Design, Procurement and Construction of the Applicable Facilities.

5.2 Construction Budget; Construction Budget Amendments. Attached hereto as Exhibit B-1 is the initial Construction Budget for the Subject Facilities. Upon the decision by Owner to undertake any Qualifying Capital Project or Other Project, Owner shall deliver to Construction Manger the initial Construction Budget for such Qualifying Capital Project or Other Project, as applicable. With respect to any Required Upgrade, the initial Construction Budget therefor shall contain the Required Upgrade Costs included in the applicable Required Upgrade Notice. Each Construction Budget for any Applicable Facility shall (a) set forth the anticipated expenditures under the terms of any Contracts that the Construction Manager anticipates to be entered into by Owner relating to the Design, Procurement and Construction of such Applicable Facility and the Management thereof, (b) set forth all other expenditures necessary for the Design, Procurement and Construction of such Applicable Facility (including a budget for the acquisition by Owner of the Land Rights relating thereto), in each case, based on the then-current Project Scope for such Applicable Facility, (c) set forth the Construction G&A Fee based on the then-current Project Scope for such Applicable Facility (except for the Initial Subject Facilities Construction Budget), and (d) allocate, other than in the case of a Required Upgrade, anticipated Construction Costs for such Applicable Facility into the applicable Designated Categories and identify the Designated Category to which each such expense relates.

5.3 Extra-Budget Expenditures. From time to time, Construction Manager shall have the right and authority with respect to any then-current Construction Budget for any Applicable Facility, to make (or cause Owner to make) expenditures in excess of such Construction Budget; provided that (a) Construction Manager shall give written notice to Owner if Construction Manager reasonably believes that an expenditure to be incurred with respect to a Designated Category of the Construction Budget (or the entirety of the Construction Budget in the case of a Required Upgrade) would cause the aggregate Construction Costs attributable to such Applicable Facility and such Designated Category and set forth in such then-current Construction Budget (or the entirety of the Construction Budget in the case of a Required Upgrade) to be exceeded, and (b) prior to making any expenditure with respect to any Designated Category of the then-current Construction Budget that would cause the aggregate Construction Costs actually incurred and attributable to such Applicable Facility and such Designated Category to equal more than 110% of the aggregate Construction Costs attributable to such Applicable Facility and such Designated Category as set forth in the then-current Construction Budget for such Applicable Facility, Construction Manager shall deliver to Owner an amendment to the Construction Budget for such Applicable Facility (each, a “**Budget Amendment**”), which Budget Amendment shall (other than any such Budget Amendment with respect to a Required Upgrade) comply with the provisions of Section 5.2 concerning specific allocation of expenses to the Designated Categories to which such expenses relate and include information regarding the nature of the excess expenditures and the reasons therefor. Within 15 days following the delivery to Owner of any such Budget Amendment, the Construction Manager shall meet with the Board to review the Budget Amendment and the facts and circumstances relating thereto. Following such meeting, the Budget Amendment (including any amendments thereto that may have been made as a result of such meeting) shall become effective and the then-current Construction Budget for such Applicable Facility shall be amended accordingly to reflect such Budget Amendment.

5.4 Payment of Construction Costs.

5.4.1 Quarterly Estimates. On or before 40 days prior to each applicable Calendar Quarter beginning after the Effective Date, Construction Manager shall prepare and deliver to Owner and the President a notice of the estimated amount of expenditures projected to be incurred for such Calendar Quarter pursuant to each then-current Construction Budget *plus* a reasonable contingency amount (the

“*Quarterly Estimate*”). Owner shall cause each one-third of such Quarterly Estimate to be deposited in the Construction Account on or before the first day of each Calendar Month during such applicable Calendar Quarter unless the Construction Manager notifies the President of a different allocation of payments among the three Calendar Months during such Calendar Quarter. As of the Effective Date, Owner has deposited in the Construction Account two-thirds of the Quarterly Estimate for the Calendar Quarter in which the Effective Date occurs and Owner will deposit the remaining one-third of such Quarterly Estimate for such Calendar Quarter on or before December 1, 2014.

5.4.2 **Shortfall Estimates.** If Construction Manager reasonably believes that the payments made pursuant to Section 5.4.1 with respect to such current Calendar Quarter are reasonably projected to be insufficient to satisfy the projected Construction Costs to be expended during such current Calendar Quarter with respect to any Applicable Facility (a) under any then-current Construction Budget for such Applicable Facility, (b) in connection with any Emergency Expenditure for such Applicable Facility or (c) otherwise in accordance with this Agreement and relating to such Applicable Facility, including Construction Manager’s right and authority to make (or cause Owner to make) expenditures in excess of any then-current Construction Budget for such Applicable Facility pursuant to Section 5.3, then Construction Manager shall prepare and deliver to Owner and the President a notice of the estimated amount of the shortfall for such Calendar Quarter *plus* a reasonable contingency amount (the entirety of such amounts, “*Shortfall Estimate*”). Owner shall cause each such Shortfall Estimate to be deposited in the Construction Account within five Business Days of its receipt of such Shortfall Estimate.

5.4.3 **Objections to Estimates.** With respect to the initial Quarterly Estimate deposited by Owner in the Construction Account and any other Quarterly Estimate or any Shortfall Estimate submitted by Construction Manager hereunder, Owner may notify Construction Manager in writing of any objections to all or any portion of such amounts on or before the expiration of the applicable Audit Period with respect to such amounts. Owner shall be responsible for paying the amounts set forth in the notices from Construction Manager pursuant to Section 5.4.1 and Section 5.4.2 in full, but such payment shall not be construed as a waiver by Owner of any of its rights under this Section 5.4.3 or Section 7.3.2.

5.4.4 **Return of Unused Amounts in the Construction Account.** Following the Final Completion of the entirety of any Applicable Facility, if any amounts deposited by Owner in the Construction Account with respect thereto are then remaining, then Construction Manager shall notify Owner thereof and, as directed by Owner in writing, Construction Manager shall return such amounts to the Members who contributed the same to Owner in the same proportions as such contributions were made by such Members.

5.5 **Emergencies.** In the event of an Emergency, Construction Manager shall promptly (a) make all notifications (or cause Owner to make such notifications) required under applicable Law to appropriate Governmental Authorities, (b) Manage the implementation of all Emergency response and mitigation measures as are either required by applicable Law or as deemed advisable by Construction Manager for a prudent operator to respond to or mitigate the Emergency, including to protect human health and the environment, (c) Manage the commencement of any required remediation, maintenance or repair work necessary to keep the Applicable Facilities in compliance with all applicable Law or otherwise to minimize damage and (d) as soon as practicable after the occurrence of the event, notify Owner of (i) such Emergency, (ii) all mitigation, repair, restoration or remedial plans to be undertaken by Owner with Construction Manager’s assistance, (iii) all material correspondence with Governmental Authorities and (iv) any permits or approvals required in connection with Owner’s Emergency response, restoration, repair, remedial or restoration activities. Construction Manager’s notification of Owner may be made by any method deemed appropriate by Construction Manager under the circumstances and does not have to comply with Section 12.1. To the fullest extent possible, Construction Manager may cause an Authorized Officer, on behalf of Owner, to enter into Contracts in connection with any required

remediation, maintenance or repair work necessary to keep the Applicable Facilities in compliance with all applicable Laws or otherwise to minimize damage and may cause all Contractors to directly bill Owner for expenses incurred in an Emergency. To the extent funds are not available in the Construction Account to pay for any costs incurred by Construction Manager or Owner in connection with an Emergency, then Construction Manager shall submit invoices for such costs incurred by Construction Manager or Owner during such Emergency to Owner and Owner shall deposit such amounts in the Construction Account within five Business Days of receipt of such invoices. For purposes of this Agreement, an “**Emergency**” shall be defined as a sudden or unexpected event which causes, or risks causing, (A) substantial damage to any of the Applicable Facilities or the property of a Third Party, (B) death of or injury to any Person, (C) damage or substantial risk of damage to natural resources (including wildlife) or the environment, or (D) non-compliance with any applicable Law (except where complying with such Law would require a Required Upgrade that would not otherwise be immediately required under applicable Law), in each case, which event is of such a nature that a response cannot, in the discretion of Construction Manager reasonably exercised, await the decision of Owner. For the avoidance of doubt, an “**Emergency**” shall include any release or threatened release of hazardous substances into the environment that requires notification to any Governmental Authority under applicable Law.

5.6 No Waiver by Payment. No payment by Construction Manager out of the Construction Account or payment by Owner pursuant to Section 5.6 shall preclude Owner from (a) questioning the accuracy of the statement or the justification of any charge related to such payment; *provided*, any such protest with respect to charges and credits made during the period covered by an audit must be made within the Audit Period specified in Section 7.3.2, or (b) any of its rights under the indemnity set forth in Section 10.2.2.

5.7 Payment of Funds from Construction Account. Subject to (a) Section 3.8, and (b) the Construction Manager’s right to withdraw and/or use any funds constituting the Construction G&A Fee at its sole discretion, Construction Manager shall only use the funds in the Construction Account to pay expenses owed by Owner or Construction Manager for the Design, Procurement and Construction of the Applicable Facilities, including the Management thereof, pursuant to this Agreement or that are otherwise chargeable to Owner or due to Construction Manager hereunder.

6.0 Construction Procedures.

6.1 Environmental, Health and Safety Reporting. Construction Manager shall prepare and furnish (or cause a Contractor to prepare and furnish) to Owner a report describing any material accidents and environmental incidents experienced with respect to any of the Applicable Facilities and known to Construction Manager, in each case, as soon as reasonably practical but no later than 30 days of such occurrence.

6.2 EH&S Audit Rights.

6.2.1 Upon not less than 30 days’ prior written notice to Construction Manager, but not more than once during any Calendar Year (unless more frequent audits are required by applicable Law and then, in such case, as frequently as required by applicable Law), Owner may audit all records, procedures and performance of Construction Manager relating to the Management of the Design, Procurement and Construction of each of the Applicable Facilities and compliance with (a) applicable Laws enacted to protect the environment and the health and safety of employees, customers, Contractors and the public (“**EH&S Laws**”) and (b) Construction Manager’s environmental, health and safety policies and practices, in each case, for any Calendar Year within the 24 Calendar Month period immediately preceding the date of such notice (such 24 Calendar Month period, the “**EH&S Audit Period**”).

6.2.2 The cost of each such audit shall be borne by Owner. Any such audit shall be conducted during normal business hours at the principal office of Construction Manager and in a manner designed to result in a minimum of inconvenience and disruption to the operations of Construction Manager.

6.2.3 For the avoidance of doubt, any Confidential Information obtained by Owner or its representatives in connection with the conduct of an audit (whether related solely to Construction Manager or otherwise) shall be subject to the confidentiality provisions of Section 11.

6.2.4 Within 90 days following completion of any such audit, Owner must provide Construction Manager with a copy of the written audit report and a written notice of any alleged instances of non-compliances with applicable EH&S Laws and any alleged deficiencies in Construction Manager's environmental, health and safety policies or procedures related to the EH&S Audit Period disclosed in such report. Construction Manager shall make a reasonable effort to reply to such instances of non-compliance and alleged deficiencies in writing as soon as possible and in any event no later than 30 days after its receipt of such report and notice.

6.2.5 Upon agreement by Owner and Construction Manager of necessary corrective action, if any, Construction Manager shall then prepare a written action plan and shall provide a copy to Owner. Additionally, Construction Manager shall track and document close-out of all audit findings agreed to by Construction Manager and Owner, the status of which shall be reported to Owner at each meeting of the Board. If any dispute shall arise in connection with an audit and/or the results thereof, the Parties shall use their reasonable efforts to resolve such disputes within 30 days after delivery of Construction Manager's reply to such report and notice delivered by Owner pursuant to Section 6.2.4. If any such dispute is not resolved within such time period, then either Party may seek to have such dispute settled pursuant to Section 12.4.

6.2.6 During the Construction Period for each of the Applicable Facilities, Construction Manager will provide quarterly safety reports that will provide the safety performance of the Construction related progress performance for such Applicable Facility. The information provided shall consist of a direct reporting of the relevant Applicable Facility's overall OSHA Total Recordable Incident Rate ("**TRIR**") and each major construction-related contractor's TRIR, together with a general summary of the recordable incidents relating to such Construction of such Applicable Facility and mitigation measures taken to protect the safety and welfare of the construction workforce with respect to such Construction of such Applicable Facility. In the event (a) the TRIR for the relevant Applicable Facility or for any individual contractor performing work on such Applicable Facility exceeds a 1.5 or (b) a fatality occurs that is recordable to the project for the Applicable Facility in accordance with OSHA rules and regulations, then the Construction Manager shall provide a written explanation of the circumstances resulting in the high TRIR to the Owner or the fatality, the mitigation measures to be taken to improve the TRIR or in response to the fatality, and any recommendations necessary to improve the overall safety performance of the Construction of such Applicable Facility and/or such individual contractor (the "**Safety Report**"). Within 15 days following the delivery to Owner of any such Safety Report, the Construction Manager shall meet with the Board to review the Safety Report and the facts and circumstances relating thereto.

6.3 **Ownership of Applicable Facilities, Land Rights and Materials.** Each of the Applicable Facilities (including all Land Rights and materials acquired with respect thereto) shall, at all times, be owned by Owner.

6.4 **Permits.** Subject to the limitations set forth in Section 3.6, Section 3.9 and Section 5.3, Construction Manager shall assist Owner in acquiring (and request that an Authorized Officer, on behalf

of Owner, enter into Contracts to acquire) all necessary permits and licenses (other than permits or licenses incorporating party of the Land Rights) required for the Design, Procurement and Construction of each of the Applicable Facilities (“*Permits*”).

7.0 Accounting; Reports; Records.

7.1 **Maintenance of Accounts; Statements.** Construction Manager shall maintain true and accurate accounts of (a) all expenses, disbursements and costs chargeable to Owner pursuant to this Agreement, and (b) all revenue of Owner received by Construction Manager in connection with the Design, Procurement and Construction of each of the Applicable Facilities and the Management thereof, all of which shall be charged or credited to Owner and maintained in accordance with GAAP and the Uniform System of Accounts (including any subsequent modifications or revisions thereof) prescribed for oil pipeline companies by the FERC, its successors or by any other Governmental Authority having regulatory jurisdiction over Owner or the Applicable Facilities, consistently applied. Construction Manager shall maintain such books of account at its principal place of business and such books of account shall be open to inspection and examination in accordance with Section 7.5. During the term of this Agreement, Construction Manager shall provide copies of such books of accounts to Operator at Operator’s request.

7.2 **Banking.** Owner shall establish, in Owner’s name and under Owner’s control, a bank account or accounts (the “*Construction Account*”). Owner shall designate only Construction Manager, and such Persons as reasonably requested by Construction Manager, as authorized signatories to the Construction Account, and all withdrawals by Construction Manager from the Construction Account shall be made only by Construction Manager or such designated Persons. All revenues attributable to the Applicable Facilities received by Construction Manager shall be deposited by Construction Manager into the Construction Account. All funds of Owner in the Construction Account shall be used by Construction Manager solely for the Design, Procurement and Construction of the Applicable Facilities and the Management thereof in accordance with Section 3.8 and Section 5.8. All interest and other benefits pertaining to the Construction Account belong to Owner. At no time may Construction Manager commingle the funds in the Construction Account with Construction Manager’s funds or the funds of any other Person, and such funds may not be subject to the Liens or Claims of any kind in favor of Construction Manager or its creditors.

7.3 Audits.

7.3.1 In accordance with this Section 7.3, Owner shall have the right to audit costs charged to Owner’s accounts and other accounting records maintained for Owner by Construction Manager under this Agreement no more than twice during any Calendar Year.

7.3.2 Subject to the restrictions contained in Section 7.3.1, upon not less than 30 days’ prior written notice to Construction Manager, Owner may audit Construction Manager’s books and records for any Calendar Year within the 24 Calendar Month period immediately preceding the date of such notice (such 24 Calendar Month period, the “*Audit Period*”). The cost of each such audit shall be borne by Owner. Any such audit shall be conducted during normal business hours at the principal office of Construction Manager and in a manner designed to result in a minimum of inconvenience and disruption to the operations of Construction Manager.

7.3.3 In conducting any such audit, Owner may request access to information relating to such audit prior to the commencement of such audit, and, if such information is in the possession of Construction Manager or its Affiliates, Construction Manager shall, provide access to such information

requested as soon as practical (but in any event, not later than 10 days after Owner's request therefor) in order to facilitate the forthcoming audit.

7.3.4 For the avoidance of doubt, any Confidential Information obtained by Owner or its representatives in connection with the conduct of such audit (whether related solely to Construction Manager or otherwise) shall be subject to the confidentiality provisions of Section 11.

7.3.5 Within 90 days following completion of such audit, Owner must provide Construction Manager with a copy of the written audit report and a written notice of any claims of Owner arising from such audit report. Construction Manager shall make a reasonable effort to reply to such claims in writing as soon as possible and in any event no later than 90 days after delivery of such report and notice.

7.3.6 All adjustments agreed to between Owner and Construction Manager resulting from such audit shall be reflected promptly in Construction Manager's books and records and reported to Owner. If any dispute shall arise in connection with an audit, the Parties shall use their reasonable efforts to resolve such disputes within 60 days after delivery of Construction Manager's reply to such report and notice delivered by Owner. If any such dispute is not resolved within such time period, then either Party may seek to have such dispute settled pursuant to Section 12.4.

7.4 **Reports.**

7.4.1 **Government Reports.** Prior to the Final Acceptance of any Applicable Facility, other than with respect to any tariff-related filings or reports, Construction Manager shall Manage the preparation and filing of any reports required by any Governmental Authority having jurisdiction over any Segment of such Applicable Facility for which Final Acceptance has not occurred, including any such reports required in connection with the Management of the Design, Procurement and Construction of such Applicable Facility.

7.4.2 **Construction Reports.** During the Construction Period for each of the Applicable Facilities, each Calendar Quarter Construction Manager shall provide reports to Owner as to the then-current status of the Design, Procurement and Construction of such Applicable Facility and all then-known Construction Costs incurred with respect thereto (the "**Construction Reports**"). The Construction Reports for each Applicable Facility and for a given Calendar Quarter shall (x) be delivered to Owner no later than the 20th day of the first Calendar Month of each Calendar Quarter following the Calendar Quarter to which the Construction Reports relate and (y) include the following reports and information which shall, in each case, be prepared on an Applicable Facility by Applicable Facility basis:

(a) a project spend profile which shall include a comparison of the initial Construction Budget for such Applicable Facility against the then-current Construction Budget for such Applicable Facility;

(b) a report on (i) the cumulative (on a net basis) calculation of all Construction Cost variances to date for such Applicable Facility, and (ii) any Construction Budget overages for such Applicable Facility described in Section 5.4.1, in each case, calculated by Designated Category;

(c) an updated Construction Schedule for such Applicable Facility reflecting Construction Manager's current estimate of the timeline for the Design, Procurement and Construction of such Applicable Facility;

(d) a summary of each of the Permits (other than permits and licenses included in the Land Rights) then-known by Construction Manager to be required for the Design, Procurement and Construction of such Applicable Facility, including (if applicable) the dates such Permits were (or will be, as applicable) applied for and the expected receipt dates of such Permits; provided, that this report shall only be provided to the extent that outstanding Permits are pending;

(e) a summary of the acquisition status by Owner of all Land Rights necessary for the Design, Procurement and Construction of such Applicable Facility, including the following elements: (i) the total number and status of all such Land; (ii) the total number of such Land Rights acquired by Owner to date; (iii) those Land Rights that Construction Manager believes will need to be acquired by Owner pursuant to condemnation proceedings (including the jurisdictions applicable to each such Land Right); and (iv) a summary of condemnation or similar proceedings commenced by Owner that are pending or have been resolved in such Calendar Quarter; and

(f) a summary of all civil proceedings (other than condemnation or similar proceedings) commenced by or against Owner or against Construction Manager (in its capacity as Construction Manager hereunder), in each case, that are pending or that have been resolved in such Calendar Quarter.

7.5 Records. Except as otherwise provided herein, until Final Acceptance with respect to a Segment and its related facilities, Construction Manager shall keep, or cause to be kept, true and complete Records with respect to such Segment and related facilities in accordance with the provisions of this Agreement and Section 8.2 of the LLC Agreement. Construction Manager shall maintain the Records at its principal place of business.

7.5.1 Construction Manager shall give access to each Member to inspect any of the Records of Owner maintained by Construction Manager pursuant to this Agreement for any purpose reasonably related to the Member's Member Interest. Any such inspection shall occur during normal business hours at the principal office of Construction Manager upon reasonable advance notice to Construction Manager and the other Members and shall be conducted in a manner designed to result in a minimum of inconvenience and disruption to the operations of Construction Manager. In addition, if any Member is engaged in bona fide negotiations with a Third Party or Member's Affiliate related to a proposed disposition of its Member Interest and requests Records for disclosure to such Third Party or Member's Affiliate in accordance with the LLC Agreement, Construction Manager agrees to reasonably cooperate with such Member and, upon reasonable notice, provide access to such Records as may be reasonably required by such Member. Any such review by any Member shall be conducted during normal business hours, at the principal office of Construction Manager and in a manner designed to result in a minimum of inconvenience and disruption to the operations of Construction Manager.

7.5.2 Construction Manager agrees to provide Operator, upon Operator's reasonable request, with all necessary Records in order that Operator can properly (a) maintain the Capital Accounts for each Member pursuant to the terms of the LLC Agreement, (b) maintain the complete books of account for Owner in accordance with Section 8.1 of the LLC Agreement, (c) submit to Owner the statements, reports and notices specified in Section 8.3 of the LLC Agreement within the periods established in Section 8.3 of the LLC Agreement, (d) deliver to Owner and the Board Operator's determination of Available Cash prior to Subject Facilities Final Acceptance, and (f) Operate the Applicable Facilities pursuant to the Operating Agreement.

7.5.3 As soon as possible after Final Completion of any Segment and its related facilities, but no later than 120 days after such date, Construction Manager shall provide the Records in

Construction Manager's possession relating to such Segment and related facilities to Operator; provided, however, that Construction Manager shall be permitted to retain copies of such Records.

8.0 Force Majeure.

8.1 **Procedure.** If either Party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations under this Agreement, other than to make payments then or thereafter due hereunder, upon such Party giving notice and full particulars of such Force Majeure to the other Party as soon as possible after the occurrence of the cause relied on, then the obligations of the Party giving such notice, so far as they are affected by such Force Majeure, will be suspended during the continuance of any inability so caused but for no longer period, and such cause must as far as possible be remedied with all reasonable and diligent dispatch by the Party claiming such in order to put itself in a position to carry out its obligations under this Agreement.

8.2 **Definition.** The term "*Force Majeure*" means any event not within the control of the Party (or any of its Affiliates) claiming suspension and which by the exercise of due diligence, such Party is unable to prevent or overcome,, including (to the extent such event satisfies the foregoing) events of nature or the elements, strikes, lockouts or other labor disturbances, sabotage, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, storm warnings, floods and washouts, restraints of Governmental Authorities, civil disturbances, environmental accidents affecting the land, air or water, explosions, breakage or accident to or freezing of equipment, machinery or lines of pipe, or other casualty occurrences, in each case, materially affecting the Design, Procurement or Construction of any of the Applicable Facilities, or the Management thereof, terrorist acts or the threat thereof, inability to obtain pipe, materials, equipment, rights of way, Permits or labor and any actions by Governmental Authorities that are resisted in good faith.

8.3 **Strikes, etc.** Notwithstanding anything to the contrary contained herein, it is understood and agreed that the settlement of strikes, lockouts or other labor disturbances is entirely within the discretion of the Party having the difficulty, and that the above requirement that any Force Majeure must be remedied with all reasonable and diligent dispatch shall not require the settlement of any such strike, lockout or other labor disturbance by acceding to the demands of opposing Persons when such course is inadvisable in the discretion of the Party having the difficulty.

8.4 **Notice of Force Majeure Termination.** The Party claiming a Force Majeure must provide notice to the other Party of the date of termination of such Force Majeure event.

9.0 Insurance.

9.1 **Construction Insurance.** Construction Manager shall obtain on Owner's behalf and, on behalf of Owner, Construction Manager shall maintain in force with insurance companies acceptable to Owner, the kinds of primary insurance and amounts of coverage set forth in Exhibit D.

9.2 **Premiums, Deductibles, etc.** All guaranteed cost insurance premiums, expenses, deductibles (reasonably acceptable to Owner), or similar programs applicable to the insurance required hereunder shall be included in the Construction Budget as Construction Direct Bill Items.

9.3 **Cooperation.** Should any Member desire to obtain, for itself, any additional insurance in excess of the insurance coverage mandated by this Agreement and Section 7.5 of the LLC Agreement, Construction Manager agrees to cooperate with such Member to provide such information as may be reasonably requested by such Member in furtherance of obtaining such additional insurance.

9.4 **Insurance Limits.** In the event that the damages resulting from any Claim or Liability exceed the coverage limits under an insurance policy covering such Claim or Liability, such coverage limits shall not affect either Party's obligations under Section 10.2 for any such damages in excess of the limits associated with any such insurance policy covering any such Claim or Liability.

10.0 Claims.

10.1 **Claims.** Liabilities and Claims involving Owner and Construction Manager shall be handled in the following manner:

10.1.1 **Liability Claims.** Subject to the limitations set forth in Section 3.9, Construction Manager shall Manage and process any Claim by a Third Party against Construction Manager or Owner, that arises out of the Design, Procurement and/or Construction of any of the Applicable Facilities (including the Management thereof), or arises out of or is incidental to the activities carried on pursuant to, or work performed, required or contemplated by, this Agreement (each such Claim, a "**Liability Claim**") in accordance with Section 10.1.3.

10.1.2 **Recovery Claims.** Subject to the limitations set forth in Section 3.9, Construction Manager shall Manage the prosecution and/or settling of any Claim that Owner has against a Third Party (each such Claim, a "**Recovery Claim**"). Construction Manager may not name a Member as party plaintiff on a Recovery Claim unless Construction Manager has obtained that Member's consent to do so. If any Member so desires, in addition to counsel employed by Construction Manager on behalf of Owner, a Member may be represented in any such lawsuit at its expense by counsel selected by it.

10.1.3 **Notice of Claim.** In the event that Construction Manager receives a Liability Claim in writing that exceeds \$5,000,000, Construction Manager shall provide Owner, within 30 days of receipt of such Liability Claim, a notice that includes a brief written summary of the facts then known to Construction Manager regarding such Liability Claim and a copy of the demand letter, petition, or similar documentation relating thereto.

10.2 Release and Indemnification.

10.2.1 Owner Release and Indemnity.

(a) Except for any Liability or Claim with respect to which Construction Manager is required to indemnify Owner pursuant to Section 10.2.2 but otherwise notwithstanding anything to the contrary herein, to the fullest extent permitted by applicable Law, Owner hereby releases Construction Manager and its Affiliates and their respective directors, officers, managers and employees (such Persons, excluding, for the avoidance of doubt, any Contractors, the "**CM Indemnitees**") from and against all Liabilities and Claims arising out of, attributable to, in connection with or incidental to (i) the Design, Procurement and/or Construction of any of the Applicable Facilities, or the Management thereof, including any act or omission of any of the CM Indemnitees in connection therewith or relating thereto or (ii) any other activities carried on or work performed or required by this Agreement, in each case, EVEN IF SUCH LIABILITIES OR CLAIMS ARE AS A RESULT OF THE NEGLIGENCE (WHETHER SOLE, CONCURRENT, ACTIVE OR PASSIVE) OR ANY OTHER LEGAL FAULT, INCLUDING STRICT LIABILITY, OF ANY CM INDEMNITEE, ANY OWNER INDEMNITEE, ANY THIRD PARTY OR ANY OF THEM.

(b) Except with respect to any Liability or Claim with respect to which Construction Manager is required to indemnify Owner pursuant to Section 10.2.2, but otherwise notwithstanding anything to the contrary set forth herein, to the fullest extent permitted by applicable

Law, Owner shall be responsible for, shall pay on a current basis and hereby defends, indemnifies and holds harmless the CM Indemnitees from and against all Liabilities and Claims arising out of, attributable to, in connection with or incidental to (i) the death or personal injury of any employee of any of the Owner Indemnitees or any Contractor of Owner and (ii) any damage or destruction to any personal property of any of the Owner Indemnitees or any Contractor of Owner, in each case, in connection with or incidental to the Design, Procurement and/or Construction of any of the Applicable Facilities, or the Management thereof, including any act or omission of any of the CM Indemnitees in connection therewith or relating thereto, in the case of each of subsections (i) and (ii) above, EVEN IF SUCH LIABILITIES OR CLAIMS ARE AS A RESULT OF THE NEGLIGENCE (WHETHER SOLE, CONCURRENT, ACTIVE OR PASSIVE) OR ANY OTHER LEGAL FAULT, INCLUDING STRICT LIABILITY, OF ANY CM INDEMNITEE, ANY OWNER INDEMNITEE, ANY THIRD PARTY OR ANY OF THEM.

(c) Except for any Liability or Claim with respect to which Construction Manager is required to indemnify Owner pursuant to Section 10.2.2, but otherwise notwithstanding anything to the contrary set forth herein, to the fullest extent permitted by applicable Law, Owner shall be responsible for, shall pay on a current basis and hereby defends, indemnifies and holds harmless the CM Indemnitees from and against all Liabilities and Claims arising out of, attributable to, in connection with or incidental to (i) the Design, Procurement and/or Construction of any of the Applicable Facilities, or the Management thereof, including any act or omission of any of the CM Indemnitees in connection therewith or relating thereto or (ii) any other activities carried on or work performed or required by this Agreement, in each case, by any of the CM Indemnitees, in the case of each of subsections (i) and (ii) above, EVEN IF SUCH LIABILITIES OR CLAIMS ARE AS A RESULT OF THE NEGLIGENCE (WHETHER SOLE, CONCURRENT, ACTIVE OR PASSIVE) OR ANY OTHER LEGAL FAULT, INCLUDING STRICT LIABILITY, OF ANY CM INDEMNITEE, ANY OWNER INDEMNITEE, ANY THIRD PARTY OR ANY OF THEM.

10.2.2 Construction Manager Indemnity. Notwithstanding anything herein to the contrary, Construction Manager shall be responsible for, shall pay on a current basis and hereby releases, defends, indemnifies and holds harmless the Owner Indemnitees from and against all Liabilities and Claims arising out of, in connection with or attributable or incidental to (a) any fraud of any Construction Manager Indemnitee or (b) the gross negligence or willful misconduct of the Construction Manager.

10.2.3 Survival of Indemnification Provisions; No Double Recovery. The provisions of this Section 10.2 shall survive any termination of this Agreement. In calculating any amount to be paid by an indemnifying Party by reason of the provisions of this Section 10.2, the amount shall be reduced by all cash reimbursements (including insurance proceeds) actually received (directly or indirectly, including by virtue of the indemnified Party's direct or indirect ownership interest in Owner) by the indemnified Party with respect to the applicable Claim or Liability.

10.2.4 Disclaimer of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, AS BETWEEN THE PARTIES, A PARTY'S DAMAGES RESULTING FROM A BREACH OR VIOLATION OF ANY COVENANT, AGREEMENT OR CONDITION CONTAINED HEREIN OR ANY ACT OR OMISSION ARISING FROM OR RELATED TO THIS AGREEMENT SHALL BE LIMITED TO ACTUAL AND DIRECT DAMAGES AND NONE OF THE CM INDEMNITEES OR THE OWNER INDEMNITEES SHALL BE ENTITLED TO RECOVER FROM CONSTRUCTION MANAGER OR OWNER OR THEIR RESPECTIVE AFFILIATES (AS APPLICABLE) ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING LOST PROFITS) OR ANY EXEMPLARY OR PUNITIVE DAMAGES. EXCEPT AS PROVIDED BELOW IN THIS SECTION 10.2.4, EACH PARTY EXPRESSLY RELEASES THE OTHER PARTY FROM ALL SUCH CLAIMS FOR

DAMAGES OTHER THAN ACTUAL DAMAGES. IF A PARTY BECOMES OBLIGATED TO PAY A PERSON THAT IS NOT A PARTY OR AN AFFILIATE OF ANY PARTY ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING LOST PROFITS) OR ANY EXEMPLARY OR PUNITIVE DAMAGES, AND SUCH PARTY IS ENTITLED TO INDEMNIFICATION UNDER THE TERMS OF THIS AGREEMENT, THEN SUCH PARTY'S INDEMNIFICATION RIGHT SHALL INCLUDE ALL INDIRECT, SPECIAL, CONSEQUENTIAL AND INCIDENTAL DAMAGES, INCLUDING LOST PROFITS AND ALL EXEMPLARY AND PUNITIVE DAMAGES IT IS OBLIGATED TO PAY.

10.2.5 **Compliance with Laws.** The exculpation and indemnifications provisions included herein shall be effective to the maximum extent permitted by applicable Law. The Parties agree that in the event any Law, when applied to this Agreement, limits in any way the extent to which exculpation and/or indemnification may be provided to the beneficiary thereof in accordance with the terms hereof, this Agreement shall automatically be amended to provide that the exculpation and indemnification provisions included herein shall extend to the maximum extent permitted by applicable Law.

11.0 Confidential Information; Publicity.

11.1 Confidential Information.

11.1.1 The Parties agree that all confidential pricing, cost data and other commercially or operationally sensitive information relating to the Management of the Design, Procurement and Construction of any of the Applicable Facilities that is typically considered confidential shall be considered "**Confidential Information**" hereunder, shall be kept confidential and shall not be disclosed to any Person that is not a Party, except:

- (a) to an Affiliate of Owner or a Member;
- (b) to the extent any Confidential Information is required to be furnished in compliance with applicable Law, or pursuant to any legal proceedings or because of any order of any Governmental Authority that is binding upon a Party;
- (c) to prospective or actual attorneys engaged by any Party where disclosure of such Confidential Information is essential to such attorney's work for such Party;
- (d) to prospective or actual contractors and consultants engaged by any Party where disclosure of such Confidential Information is essential to such contractor's or consultant's work for such Party;
- (e) to a bona fide prospective transferee of a Member's Member Interest and Units to the extent appropriate in order to allow the assessment of such Member Interest and Units (including a Person with whom a Member and/or its Affiliates are conducting bona fide negotiations directed toward a merger, consolidation or the sale of a majority of its or an Affiliate's shares), as long as the Member provides ten days prior written notice to Owner of its intention to share such Confidential Information and the transferee executes a confidentiality agreement with Owner and Construction Manager containing substantially similar terms and conditions as those set forth in this Section 11.1;
- (f) to a bank or other financial institution to the extent appropriate to a Party or Member arranging for funding;

(g) to the extent such Confidential Information must be disclosed pursuant to any rules or requirements of any stock exchange having jurisdiction over a Party or its Affiliates; *provided* that if such Party desires to disclose Confidential Information in an annual or periodic report to its or its Affiliates' shareholders and the public and such disclosure is not required pursuant to any rules or requirements of any stock exchange, then such Party shall comply with Section 11.2;

(h) to its respective employees, subject to each Party taking customary precautions to ensure such Confidential Information is kept confidential; and

(i) any Confidential Information which, through no fault of or breach of this Agreement by a Party, becomes a part of the public domain.

11.1.2 Disclosure pursuant to Section 11.1.1(d) or Section 11.1.1(e) shall not be made unless prior to such disclosure the disclosing Party has obtained a written undertaking from the recipient to keep the Confidential Information strictly confidential and to use the Confidential Information for the sole purpose described in Section 11.1.1(d) and Section 11.1.1(e), whichever is applicable, with respect to such disclosing Party.

11.2 Publicity.

11.2.1 Without reasonable prior notice to the other Party, no Party shall issue, or permit any agent or Affiliate of it to issue, any press releases or otherwise make, or cause any agent or Affiliate of it to make, any public statements with respect to this Agreement, the LLC Agreement, the Operating Agreement, any Confidential Information or the activities contemplated hereby or thereby, except where such release or statement is deemed in good faith by such releasing Party to be required by Law or under the rules and regulations of a recognized stock exchange on which shares of such Party or any of its Affiliates are listed, and in any case, prior to making any such press release or public statement, such releasing Party shall provide a copy of the proposed press release or public statement to the other Party reasonably in advance of the proposed release date as necessary to enable such other Party to provide comments on it; provided such other Party must respond with any comments within two Business Days after its receipt of such proposed press release.

11.2.2 Notwithstanding anything to the contrary in Section 11.1 or Section 11.2.1, any Party or Affiliate of a Party may disclose information regarding the Design, Procurement and Construction of any of the Applicable Facilities, and the Management thereof, that is not Confidential Information in investor presentations, industry conference presentations or similar disclosures; If a Member wishes to disclose any Confidential Information in investor presentations, industry conference presentations or similar disclosures, such Member must first (a) provide the other Party with a copy of that portion of the presentation or other disclosure document containing such Confidential Information and (b) obtain the prior written consent of the other Party to such disclosure (which consent may not be unreasonably withheld, conditioned or delayed).

11.2.3 Notwithstanding anything to the contrary in Section 11.1 or Section 11.2.1, in the event of any Emergency endangering property, lives or the environment, Construction Manager may issue such press releases or public announcements as it deems necessary in light of the circumstances and shall promptly provide Owner with a copy of any such press release or announcement.

12.0 General Provisions.

12.1 **Notices.** All notices and communications required or permitted to be given hereunder shall be sufficient in all respects (a) if given in writing and delivered personally, (b) if sent by overnight

courier, (c) if mailed by U.S. Express Mail or by certified or registered United States Mail with all postage fully prepaid or (d) sent by facsimile transmission (provided any such facsimile transmission is confirmed either orally or by written confirmation) and, in each case, addressed to the appropriate Party hereto at the address for such Party shown below:

Construction Manager:

DAPL-ETCO CONSTRUCTION MANAGEMENT, LLC
c/o Energy Transfer Partners, L.P.
1300 Main Street
Houston, Texas 77002
Attention: President of DAPL-ETCO Operations Management, LLC
Telephone: 210-403-6455
Facsimile: 210-403-7500

With a copy to:

DAPL-ETCO CONSTRUCTION MANAGEMENT, LLC
c/o Energy Transfer Partners, L.P.
1300 Main Street
Houston, Texas 77002
Attention: General Counsel
Telephone: 713-989-7000
Facsimile: 214-981-0701
Owner:

ENERGY TRANSFER CRUDE OIL COMPANY, LLC
c/o Energy Transfer Partners, L.P.
800 E. Sonterra Blvd. #400
San Antonio, Texas 78258
Attention: President of Energy Transfer Crude Oil Company, LLC
Telephone: 210-403-6455
Facsimile: 210-403-7500

With a copy to:

ENERGY TRANSFER CRUDE OIL COMPANY, LLC
c/o Energy Transfer Partners, L.P.
1300 Main Street
Houston, Texas 77002
Attention: General Counsel
Telephone: 713-989-7000
Facsimile: 214-981-0701

Any notice given in accordance herewith shall be deemed to have been given (i) when delivered to the addressee in person, or by courier, during normal business hours, or on the next Business Day if delivered after business hours, (ii) when received by the addressee via facsimile during normal business hours, or on the next Business Day if received after business hours, or (iii) upon actual receipt by the addressee after such notice has either been delivered to an overnight courier or deposited in the U.S. Mail, as the case may be. The Parties may change the address, telephone number and individuals to which such communications to any Party are to be addressed by giving written notice to the other Parties in the

manner provided in this Section 12.1. Any notice delivered pursuant to this Section 12.1 shall be accompanied by a copy to each Member in accordance with the provisions for notice to the Members set forth in Section 15.2 of the LLC Agreement.

12.2 Governing Law. THIS AGREEMENT AND THE LEGAL RELATIONS AMONG THE PARTIES SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICTS OF LAW RULE OR PRINCIPLE THAT MIGHT REFER CONSTRUCTION OF SUCH PROVISIONS TO THE LAWS OF ANOTHER JURISDICTION. IN RESPECT OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, EACH OF THE PARTIES CONSENTS TO THE EXCLUSIVE JURISDICTION AND VENUE OF ANY FEDERAL OR STATE COURT LOCATED WITHIN HARRIS COUNTY, TEXAS, WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON SUCH PARTY, CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY FIRST CLASS REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, RETURN RECEIPT REQUESTED, DIRECTED TO SUCH AT THE ADDRESS SPECIFIED PURSUANT TO SECTION 12.1, AGREES THAT SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT THEREOF, AND WAIVES ANY OBJECTION TO JURISDICTION OR VENUE OF, AND WAIVES ANY MOTION TO TRANSFER VENUE FROM, ANY OF THE AFORESAID COURTS. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY DISPUTE.

12.3 Dispute Resolution. Except as set forth in Section 2.5.3, Section 6.2.5 and Section 7.3.6, all disputes, Claims and controversies arising out of or relating to this Agreement shall be determined and resolved in accordance with the procedures set forth in Section 14.2 of the LLC Agreement.

12.4 Expert Proceedings. For any decision referred to an independent expert under Section 2.5.3, Section 6.2.5 or Section 7.3.6, the Parties hereby agree that such decision shall be conducted expeditiously by an expert selected unanimously by the Parties.

12.4.1 The fees and costs of the expert shall be borne 100% by Owner. The expert is not an arbitrator of the dispute and shall not be deemed to be acting in an arbitral capacity.

12.4.2 The Party desiring an expert determination shall give the other Party written notice of the request for such determination. If the Parties are unable to agree upon an expert within ten days after receipt of the written notice of request for an expert determination, then, upon the request of any of the Parties, the Houston, Texas office of the American Arbitration Association (the "AAA") shall appoint such expert. The expert, once appointed, shall have no ex parte communications with the Parties concerning the expert determination or the underlying dispute. Each expert appointed by the AAA shall have such qualifications as would be reasonably sufficient to be qualified as an expert under the federal rules of civil procedure for the specific dispute in question.

12.4.3 All communications between any Party and the expert shall be conducted in writing, with copies sent simultaneously to the other parties participating in the expert proceeding in the same manner, or at a meeting to which representatives of all Persons participating in the expert proceeding have been invited and of which such Persons have been provided at least five Business Days' notice.

12.4.4 Within 15 days after the expert's acceptance of its appointment, the Parties shall provide the expert with a report containing their proposal for the resolution of the matter and the reasons therefor, accompanied by all relevant supporting information and data. Within 30 days of receipt of the

above-described materials and after receipt of additional information or data as may be required by the expert, the expert shall select the proposal or solution or value which it finds more consistent with the terms of this Agreement. The expert may not propose alternate positions or award damages, interest or penalties to any Party with respect to any matter. The expert's decision shall be final and binding on the Parties. Any Party that fails or refuses to honor the decision of an expert shall be in default under this Agreement.

12.5 Entirety of Agreement. THIS AGREEMENT AND THE LLC AGREEMENT CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES REGARDING THE DESIGN, PROCUREMENT AND CONSTRUCTION OF THE APPLICABLE FACILITIES AND THE MANAGEMENT THEREOF, AND SUPERSEDE ALL OTHER PRIOR AND CONTEMPORANEOUS AGREEMENTS, WHETHER WRITTEN OR ORAL, BETWEEN THE PARTIES AND RELATED THERETO. NO VARIATION, MODIFICATION OR CHANGE SHALL BE BINDING UPON A PARTY UNLESS EFFECTUATED BY AN INSTRUMENT IN WRITING EXECUTED BY A DULY AUTHORIZED OFFICER OR A DULY AUTHORIZED AGENT FOR IT.

12.6 Captions or Headings. The headings appearing at the beginning of each Section are all inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement, or any provision or provisions hereof, or in connection with determining the duties, obligations or liabilities of the Parties or in ascertaining intent, if any question of intent should arise.

12.7 Assignment. Except as set forth in Section 2.3.3, this Agreement and its attendant rights may not be assigned, transferred, subcontracted or otherwise conveyed by either Party without the express written consent of the other Party; provided, however, a Party may assign its rights and obligations under this Agreement to (a) an Affiliate and (b) in the case of Construction Manager, to any member of the CM Group, in each case, without the prior consent of the other Party and any transition costs associated with this assignment shall be bore by the Construction Manager.. Except as provided in the preceding sentence, any assignment without consent shall be void. No assignment by any Party shall relieve such Party (or any guarantor of such Party's obligations hereunder) from any liability hereunder.

12.8 Duplicate Originals. This Agreement is executed in duplicate originals, with one original to be retained by Construction Manager and one original to be retained by Owner.

12.9 No Third Party Beneficiary. Except as provided in Section 10.2, nothing in this Agreement, express or implied, shall entitle any Person other than the Parties and their respective successors and permitted assigns to any Claim, remedy or right of any kind under (or pursuant to) this Agreement. Notwithstanding the foregoing, the Parties acknowledge and agree that only a Party or its successor or permitted assign, shall have the right to (it being understood and agreed that such Person shall not have the obligation to) enforce the provisions of (or exercise any of right or remedy under) this Agreement on its own behalf or on behalf of any of its related indemnified parties.

12.10 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not materially affected in any manner adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

12.11 **Waiver.** No waiver by either Party of the performance of any provision, condition or requirement in this Agreement shall be deemed to be a waiver of, or in any manner release the other Party from performance of any other provision, condition or requirement in this Agreement; and it shall not be deemed to be a waiver of, or in any manner release the other Party from, future performance of the same provision, condition or requirement; and no delay or omission of a Party in exercising any right under this Agreement shall in any manner impair the exercise of any such right or any like right accruing to it thereafter. No waiver shall be effective unless made in writing and signed by the Party to be charged with such waiver.

12.12 **Exhibits.** In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of any Exhibit, the terms and conditions of the applicable Exhibit shall govern and control.

12.13 **Joint Efforts.** This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties, and shall not be construed against one Party or the other as a result of the preparation, submittal or other event of negotiation, drafting or execution of the Agreement.

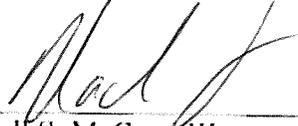
12.14 **Counterparts.** This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all of such counterparts shall constitute for all purposes one agreement. Any signature hereto delivered by a Party by facsimile or other electronic transmission shall be deemed an original signature hereto.

Remainder of page intentionally left blank.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement, effective as of the Effective Date.

CONSTRUCTION MANAGER:

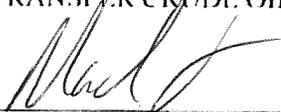
DAPL-ETCO CONSTRUCTION MANAGEMENT,
LLC

By: 
Name: Marshall S. McCrea, III
Title: President and Chief Operating Officer

wjh
(MS)

OWNER:

ENERGY TRANSFER CRUDE OIL COMPANY, LLC

By: 
Name: Marshall S. McCrea, III
Title: President and Chief Operating Officer

wjh
(MS)

**EXHIBIT A-1
EXISTING FACILITIES**

Existing Facilities:

A. General Description: Trunkline 30” –inch Line 100-2

One certain thirty inch (30”) diameter interstate natural gas pipeline starting at or near chaining station 142+81 of valve section 54 (T4N, R3W, Section 63, Rapides Parish, Louisiana), thence to the suction of the Pollock Compressor Station (T7N R1W, Section 12, Grant Parish, Louisiana), from the Pollock Station discharge thence to the suction of the Epps Compressor Station (T19N R9E, Section 20, West Carroll Parish, Louisiana), from the discharge of the Epps Station thence to the suction of the Shaw Compressor Station (T21N R5W, Section 35, Bolivar County, Mississippi), from the discharge of the Shaw Station thence to the suction of the Independence Compressor Station (T4S R6W, Section 14, Tate County, Mississippi), from the discharge of the Independence Station thence to the suction of the Dyersburg Compressor Station (Dyer County, Tennessee), from the discharge of the Dyersburg Station thence to the suction of the Joppa Compressor Station (T15S R3E, Section 10, Massac County, Illinois), from the discharge of the Joppa Station thence to the suction of the Johnsonville Compressor Station (T1N R6E, Section 32, Wayne County, Illinois), from the discharge of the Johnsonville Station thence to or near chaining station 200+60 of valve section 112 (T1N R6E, Section 8, Wayne County, Illinois) with the exception that the diameter reduces to twenty-six inch (26”) for approximately .16 mile on the suction of the Joppa Compressor Station (T15S R3E, Section 10, Massac County, Illinois) and twenty-four inch (24”) at three (3) major river crossings: the Red River Crossing (T5N R2W, Sections 9&29, Rapides Parish, Louisiana), the Ouachita River Crossing (T13N R4E, Sections 45 & 41, Caldwell Parish, Louisiana), the Mississippi River Crossing (T17S R1E, Section 21, Chicot County, Arkansas / T16N R9W, Section 5 Washington County, Mississippi); and thirty inch (30”) at one (1) major river crossing: the Sabine River Crossing (Newton County, Texas, T7S, R13W, Section 9, Beauregard Parish, Louisiana).

but specifically excluding the following assets:

all facilities that are on the compressor station side of each valve off the thirty inch (30”) mainline.

B. Segment Details.

<u>Description of Pipeline</u>	<u>Approximate Miles of Pipe</u>
Trunkline 24” Line 100-1	
Valve Section 43, Station Number 201+50, Newton County, Texas, to Longville, LA	41.45
Trunkline 30” Line 100-2	

<u>Description of Pipeline</u>	<u>Approximate Miles of Pipe</u>
Longville - Pollock	85.07
Pollock-Epps	88.87
Epps- Shaw	90.54
Shaw- Independence	92.44
Independence – Dyersburg	89.21
Dyersburg- Joppa	93.43
Joppa – Johnsonville	92.66
Johnsonville to Valve Section 112, Station Number 200+60, Wayne County, Illinois, T1N/R6E/Section 8.	3.8

EXHIBIT A-2
INITIAL FACILITIES

Initial Facilities:

The “*Initial Facilities*” are those facilities, equipment, and other assets reasonably necessary or prudent for the Owner to plan, design, construct, acquire, own, operate, modify, and/or maintain, in conjunction with the Existing Facilities, for Owner to fulfill its contractual obligations to counterparties under the transportation services agreements executed by Owner in connection with the open season commenced by Owner and Dakota Access, LLC, on March 12, 2014, and/or the expansion open season commenced by Owner and Dakota Access, LLC, on September 23, 2014, including the Owner’s obligations with respect to the provision of transportation services to the counterparties under such transportation services agreements, in accordance with the Construction Budget for the Subject Facilities

EXHIBIT B-1
INITIAL SUBJECT FACILITIES CONSTRUCTION BUDGET

See the budget in the column(s) under “ETCO” on the attached schedule entitled “Dakota Access <-> Patoka <-> ETCO - North Dakota Sweet (450 mbpd)”, as such budget may be increased for incremental costs as reflected under the “Entity” column with the name of ETCO on the attached schedule entitled “Dakota Access <-> Patoka <-> ETCO - Incremental Project Costs - North Dakota Sweet (570 mbpd)”.

**Dakota Access <-> Patoka <-> ETCO
- North Dakota Sweet (450mbpd) -**

Segment	Size	Miles	DAPL					ETCO
			Stanley-Ramberg	Ramberg - Epping	Epping - Trenton	Trenton-Watford City	Watford City -Patoka	Patoka-Nederland
			12"	20"	20"	24"	30"	30"/30"/30"
Pipelines								
Stanley to Ramberg	12	1246.0	\$ 54,301,548	\$ -	\$ -	\$ -	\$ -	\$ -
	16		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Ramberg to Epping	16		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	20		\$ -	\$ 44,406,145	\$ -	\$ -	\$ -	\$ -
Epping to Trenton	20		\$ -	\$ -	\$ 69,733,144	\$ -	\$ -	\$ -
	24		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Trenton to Watford City	20		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	24		\$ -	\$ -	\$ -	\$ 105,385,269	\$ -	\$ -
Watford City to Patoka	24		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	30		\$ -	\$ -	\$ -	\$ -	\$ 2,925,047,926	\$ -
Patoka to Johnsonville	24	37.6	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	30		\$ -	\$ -	\$ -	\$ -	\$ -	\$ 113,653,357
Connection Lateral - A	0.5		\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,500,000
Connection Lateral - B	0.5	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,500,000	
Connection Lateral - C	0.5	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,500,000	
Abandonment / Conversion								
Johnsonville to Boyce	30	574.0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 301,839,263
Boyce to Longville	30	68.0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 35,757,961
Longville (24") to MLV 43.1	24	45.0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 23,663,357
Purchase of TGC 30"	30	687.0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 70,000,000
Nederland Lateral	24	35.0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	30		\$ -	\$ -	\$ -	\$ -	\$ -	\$ 115,042,527
Nederland Terminal (Manifold Connection)			\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,500,000
Contingency on Pipeline		0%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Terminals								
Stanley, ND (1 @ 50k BBL & 1 @ 100k BBL)			\$ 59,581,983	\$ -	\$ -	\$ -	\$ -	\$ -
Manifold Connection			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Ramberg, ND (1 @ 200k BBL / 1 @ 100k BBL / 1 @ 150 k BBL)			\$ -	\$ 89,306,181	\$ -	\$ -	\$ -	\$ -
Manifold Connection			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Epping, ND (1 @ 100k BBL / 1 @ 150k BBL)			\$ -	\$ -	\$ 80,496,181	\$ -	\$ -	\$ -
Manifold Connection			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Trenton, ND (1 @ 100k BBL / 1 @ 150k BBL)			\$ -	\$ -	\$ -	\$ 80,496,181	\$ -	\$ -
Manifold Connection			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Watford City, ND (2 @ 100k BBL / 1 @ 150k BBL)			\$ -	\$ -	\$ -	\$ -	\$ 84,246,181	\$ -
Manifold Connection			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Johnson Corner, ND (1 @ 200k BBL / 1 @ 200k BBL)			\$ -	\$ -	\$ -	\$ -	\$ 66,092,594	\$ -
Manifold Connection			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Patoka Terminal (2 @ 300k BBL)			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Pump Stations								
Stanley to Ramberg								
Stanley (Electric)			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Ramberg to Epping								
Ramberg (Electric)			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Epping to Trenton								
Epping (Electric)			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Trenton to Watford City								
Epping (Electric)			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Watford City to Patoka								
Watford City Station (Electric)			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Johnson Corner Station (Electric)			\$ -	\$ -	\$ -	\$ -	\$ 28,636,875	\$ -
Station 1 (Electric)			\$ -	\$ -	\$ -	\$ -	\$ 3,000,000	\$ -
Station 2 (Electric)			\$ -	\$ -	\$ -	\$ -	\$ 28,636,875	\$ -
Station 3 (Electric)			\$ -	\$ -	\$ -	\$ -	\$ 3,000,000	\$ -
Station 4 (Electric)			\$ -	\$ -	\$ -	\$ -	\$ 28,636,875	\$ -
Station 5 (Electric)			\$ -	\$ -	\$ -	\$ -	\$ 3,000,000	\$ -
Patoka to Johnsonville								
Patoka (Gas)			\$ -	\$ -	\$ -	\$ -	\$ -	\$ 26,483,735
Johnsonville to Nederland								
Johnsonville (Gas)			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Midpoint-Pittsburg			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Joppa (Electric)			\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,000,000
Midpoint-Hickman			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Dyersburg (Electric)			\$ -	\$ -	\$ -	\$ -	\$ -	\$ 22,964,534
Midpoint-Arlington			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Independence (Gas)			\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,000,000
Midpoint-Lambert			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Shaw (Gas)			\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,000,000
Midpoint-Eudora			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Epps (Gas)			\$ -	\$ -	\$ -	\$ -	\$ -	\$ 25,946,544
Midpoint-Columbia			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Pullock (Gas)			\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,000,000
Hineston (Electric)			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Longville (Electric)			\$ -	\$ -	\$ -	\$ -	\$ -	\$ 22,129,571
Fields (Electric)			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TX Hwy 87 (Electric)			\$ -	\$ -	\$ -	\$ -	\$ -	\$ 750,000
Vidor (Electric)			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Contingency on Pump Station		0%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
CAIC for Power			\$ -	\$ -	\$ -	\$ -	\$ 18,000,000	\$ 4,228,450
Surge Tankage			\$ -	\$ -	\$ -	\$ -	\$ 7,500,000	\$ 12,000,000
Measurement Stations								
Stanley								
Receipt Station			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Delivery Station			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Ramberg								
Receipt Station - from Stanley P/L			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Receipt Station			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Delivery Station			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Epping								
Receipt Station - from Ramberg P/L			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Receipt Station			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Delivery Station			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Trenton								
Receipt Station - from Epping P/L			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Receipt Station			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Delivery Station			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Watford City								
Receipt Station - from Trenton P/L			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Receipt Station			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Delivery Station			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Johnson Corner								
Receipt Station - from Watford City P/L			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Receipt Station			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Delivery Station			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Patoka								
Delivery Station - A			\$ -	\$ -	\$ -	\$ -	\$ -	\$ 11,564,198
Delivery Station - B			\$ -	\$ -	\$ -	\$ -	\$ -	\$ 11,564,198
Delivery Station - C			\$ -	\$ -	\$ -	\$ -	\$ -	\$ 11,564,199
Nederland								
Delivery Stations (PSX & SXL)			\$ -	\$ -	\$ -	\$ -	\$ -	\$ 29,914,198
Contingency on Meter Stations		0%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other								
Regulatory / Gov. Affairs			\$ 250,000	\$ 250,000	\$ 500,000	\$ 500,000	\$ 8,000,000	\$ 9,000,000
Benefit Load @ 1 %		1%	\$ 1,141,335	\$ 1,339,623	\$ 1,507,293	\$ 1,863,814	\$ 32,037,973	\$ 8,680,661
Baseline ILLI Tools @ 60%			\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6,758,329
Dig Program 1st Year @ 60%			\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,732,270
Project Total			\$ 115,274,866	\$ 135,301,949	\$ 152,236,618	\$ 188,245,264	\$ 3,235,835,299	\$ 887,237,350
All-In Project Total			\$4,714,131,347					

Dakota Access <-> Patoka <-> ETCO				
Incremental Project Cost - North Dakota Sweet (570mbpd) -				
Segment	Size	Miles	Entity	
Pipelines				
Longville (24") to MLV 43.1 Replacement	30	45.0	ETCO	\$ 123,106,500
Pump Stations				
Stanley to Ramberg				
PS Upgrade			DAPL	\$ 500,000
Ramberg to Epping				
PS Upgrade			DAPL	\$ 750,000
Epping to Trenton				
PS Upgrade			DAPL	\$ 750,000
Trenton to Watford City				
PS Upgrade			DAPL	\$ 750,000
Watford City to Patoka				
Watford City Station Upgrade			DAPL	\$ 3,000,000
Johnson Corner Station Upgrade			DAPL	\$ 3,000,000
Station 1 (Electric)				
Station 2 Upgrade			DAPL	\$ 3,000,000
Station 3 (Electric)				
Station 4 Upgrade			DAPL	\$ 3,000,000
Station 5 (Electric)				
Patoka to Johnsonville				
Patoka Upgrade			ETCO	\$ 2,000,000
Johnsonville to Nederland				
Johnsonville (Gas)				\$ -
Joppa (Electric)				\$ -
Dyersburg Upgrade			ETCO	\$ 2,000,000
Independence (Gas)				\$ -
Shaw Add Pump Station			ETCO	\$ 25,562,213
Epps Upgrade			ETCO	\$ 2,000,000
Pollock (Gas)				\$ -
Longville Upgrade			ETCO	\$ 2,000,000
CAIC for Power			ETCO	\$ 6,000,000
Surge Tankage			ETCO	\$ 1,500,000
Other				
Regulatory / Gov. Affairs			See note	\$ 1,000,000
Benefit Load @ 1 %		1%	See note	\$ 1,799,187
Project Total				\$ 181,717,900

Note: For Regulatory/Gov. Affairs and Benefit Load, each to DAPL or ETCO in proportion to the amount of incremental project cost reflected in this table for the entity as between the two companies

EXHIBIT B-2
CONSTRUCTION DIRECT BILL ITEMS

The following are examples of the services, functions and cost categories that are intended to be included in the scope of the Construction Costs not covered by the Construction G&A Fee (herein collectively referred to as “*Construction Direct Bill Items*”). The Parties acknowledge and agree that this Exhibit B-2 is not intended to be a comprehensive and complete listing of the potential services, functions and cost categories that may be considered Construction Direct Bill Items. In the event of a conflict between whether any service, function or cost category is a Construction Non-Billable Item or a Construction Direct Bill Item, such service, function or cost category shall be deemed to be a Construction Direct Bill Item.

1. Regulatory Compliance Functions. All costs and expenses (e.g., outside services, equipment and materials, etc.) associated with performing regulatory compliance functions.
2. Field Office Expenses. All costs and expenses associated with the following:
 - a. Office space;
 - b. Field construction supervision;
 - c. Office supplies;
 - d. Electrical and phone services;
 - e. Computer hardware (including printers) and software (including associated licenses) and other associated information technology activities if such hardware and software is specifically attributable and separately billed for the Facilities; for avoidance of doubt, this excludes any costs associated with financial, operating, compliance, and communication software and hardware that is used by Construction Manager on an enterprise-wide basis; and
 - f. Personnel safety equipment.
3. Operation, Maintenance and Inspection: Costs and expenses (e.g., transportation, etc.) associated with performing operations, maintenance and inspection functions including the cost of materials.
4. Insurance (other than workers’ compensation insurance).
5. Property damage Claims by Third Parties .
6. Personal injury/death Claims by Third Parties .
7. All payments of taxes of every kind and nature assessed or levied upon or incurred in connection with the Facilities or on the Facilities or other property of Owner and which taxes have been paid by the Construction Manager for the benefit of Owner (other than any payroll taxes paid with respect to any of Construction Manager’s personnel).
8. State and Federal pipeline fees including state one call fees.
9. Fuel and power costs.

10. Third Party financial audits.
11. Non-routine legal services (e.g., litigation, non-routine FERC tariff issues), expert witness fees, court costs, etc. with agreement from the Owner.
12. Engineering and drafting services.
13. Environmental remediation (subject to any indemnity of Construction Manager set forth in Section 10.2 with respect thereto).
14. All costs and expenses directly incurred by Construction Manager (in accordance with the terms and provisions of this Agreement) in connection with the Procurement of materials and equipment necessary for the Construction of any of the Applicable Facilities.
15. Unusual or contested tax or property evaluations.
16. Any additional functions or responsibilities of Construction Manager as may be specified in the LLC Agreement that are not specifically listed in Exhibit B-3.
17. Permit and license fees, rental payments and renewal costs associated with Land Rights, other Third Party fees, penalties and fines.

EXHIBIT B-3
CONSTRUCTION NON-BILLABLE ITEMS

The following is a complete and comprehensive listing of the services, functions and cost categories that are intended to be included in and covered by the Construction G&A Fee (herein collectively referred to as “*Construction Non-Billable Items*”).

All costs and expenses associated with the following:

1. Office expenses other than those office expenses related to field offices.
2. The following normal and routine product and financial accounting services:
 - a. Financial reporting and general accounting;
 - b. Fixed asset, property accounting and project tracking;
 - c. Accountings payable;
 - d. Revenue accounting, accounts receivable and billing;
 - e. Tax services (but specifically excluding the payment of any taxes);
 - f. Property and ad valorem taxes services (but specifically excluding the payment of any taxes); and
 - g. Planning services (preparation of Construction Budget).
3. Corporate overhead costs associated with the following functions (given current regulations and operating conditions in effect as of the date of this Agreement):
 - a. Commercial business administration services;
 - b. Legal services relating to the ordinary course of business activities;
 - c. Human resource services relating to the ordinary course of business activities;
 - d. Environmental, health and safety services relating to the ordinary course of business activities;
 - e. Right-of-way administrative services relating to the ordinary course of business activities; and
 - f. Non-field one-call services.

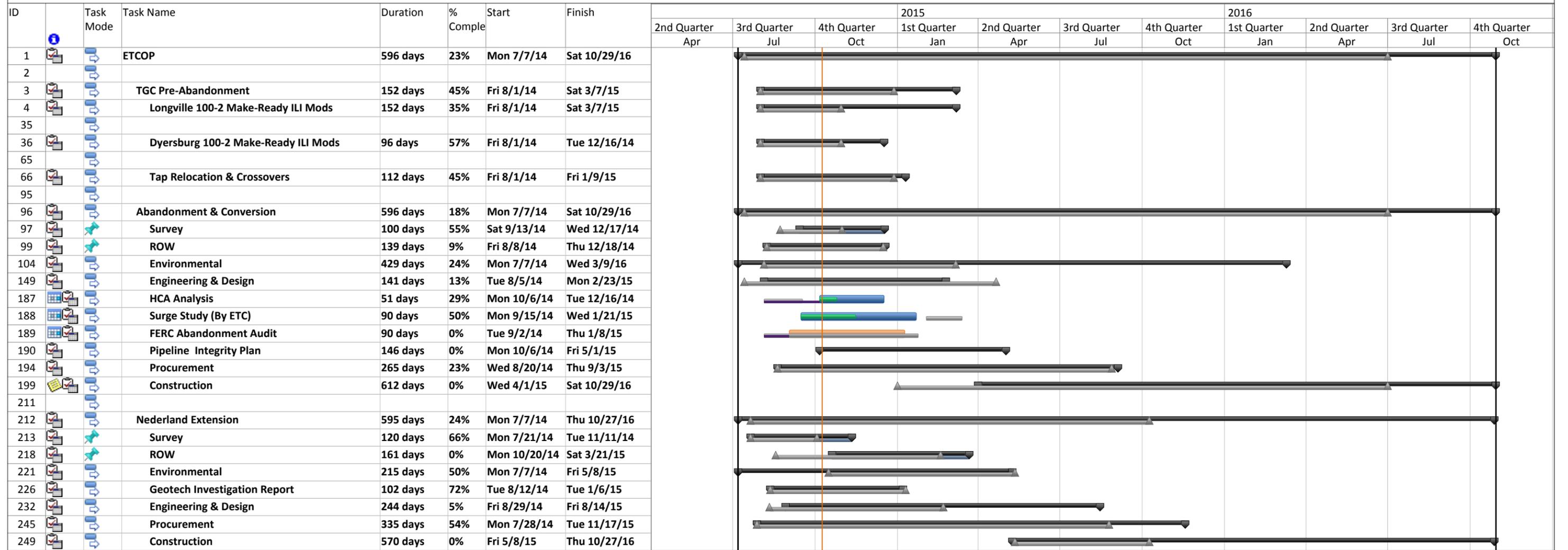
For the avoidance of doubt, the costs and functions referenced above in subparts (c), (d), (e) and (f) specifically exclude any non-routine activities, including activities with respect to any litigation, rate cases, or claims.

EXHIBIT C
INITIAL SUBJECT FACILITIES CONSTRUCTION SCHEDULE

See the attached.

ETCOP - FULL PROJECT SCHEDULE

Updated: Mon 10/13/14



Project: ETCOP - Project Schedule Date: Mon 10/13/14	Task		External Tasks		Manual Task		Finish-only		Baseline	
	Split		External Milestone		Duration-only		Deadline		Baseline Milestone	
	Milestone		Inactive Task		Manual Summary Rollup		Late		Baseline Summary	
	Summary		Inactive Milestone		Manual Summary		Critical		Progress	
	Project Summary		Inactive Summary		Start-only		Critical Split		Slippage	

EXHIBIT D INSURANCE

1. **Worker's Compensation and Employer's Liability Insurance.** Construction Manager shall obtain worker's compensation insurance which shall apply to all employees, including borrowed servants, alternate and statutory employees, in accordance with the benefits afforded by the statutory Worker's Compensation Acts, applicable to the state, territory or district of hire, supervision or place of accident. For the purposes of workers' compensation Laws and coverage, Owner and Construction Manager shall be joint employers of the employees. Policy limits for worker's compensation shall not be less than statutory limits, and for employer's liability \$1,000,000 each accident, \$1,000,000 disease each employee and \$1,000,000 disease policy limit.

2. **Primary Commercial Liability Insurance.** Pursuant to the requirements of the LLC Agreement, Construction Manager shall procure and maintain throughout the term of the Agreement, for the benefit of Owner, its Members and Construction Manager, primary commercial liability insurance for liabilities further described in Section 10.1.1 of this Agreement with a combined single limit of \$25,000,000 per occurrence, which may be made up of any combination of primary and excess insurance, including contractual liability, sudden and accidental pollution liability, broad form property damage, independent contractors, products/completed operations and explosion, and collapse and underground.

3. **Construction All Risk Insurance.** Construction Manager shall not obtain a Builder's All Risk Insurance Policy to cover during the course of construction asset damage or business loss of the Company. However, a Member may, at its own expense, purchase or arrange for insurance or self-insurance programs to provide insurance coverage for the value of its Member Interest and associated Units, the benefit of which may accrue to such Member with respect to such Member Interest and Units only. If such insurance is purchased, or any other type of insurance is purchased or is arranged through a program of self-insurance, the Member shall waive all rights of recovery and shall cause its insurers to waive rights of subrogation in favor of the Company and its Subsidiaries, the Members and the Operator and/or the Construction Manager, as applicable, but only to the extent of the indemnification obligations herein or in the Operating Agreement or in the Construction Management Agreement, as applicable. All insurance premiums, deductibles, self-insurance retentions, fronting arrangements, self-insurance or similar program's cost and expense applicable to such coverage shall be the sole responsibility of the Member obtaining such insurance.

4. **Construction Liability Insurance.** Construction Manager shall obtain, for the benefit of Owner, the Members and Construction Manager during the course of construction primary liability insurance with a limit of \$25,000,000 per occurrence, which may be made up of any combination of primary and excess insurance, including contractual liability, sudden and accidental pollution, broad form property damage, independent contractors, products/completed operations and explosion and collapse and underground. This obligation may be met through placement through the Primary Liability Insurance in No. 2 above.

5. **Special Conditions.** Insurance obtained by Construction Manager shall be subject to the following special conditions:

a. The workers compensation policy shall provide a waiver of rights of recovery and subrogation endorsement in favor of Owner and the Members but only to the extent specifically pertaining to the Design, Procurement and Construction of the Applicable Facilities and/or arising from any other activities carried on or work performed under this Agreement.

b. Under the insurance described in Section 2 and Section 4 above, Owner and Construction Manager shall be included as named insureds, and Members shall be included as additional insureds, but only specifically pertaining to the Design, Procurement and Construction of the Applicable Facilities and/or arising from any other activities carried on or work performed under this Agreement and only to the amount of insurance stated above. Insurance required in Section 1, Section 2, and Section 4 above shall be primary to any other insurance maintained by Owner, its Members and Construction Manager, but only to the extent of the primary limits noted above.

c. Construction Manager shall provide Owner with certificates of insurance showing the coverages and limits of insurance required pursuant to Section 1, Section 2, and Section 4 above upon request by Owner.

6. **Contractors.** Construction Manager shall at all times use reasonable efforts to require Contractors performing work and/or supplying materials relating to this Agreement to obtain and maintain all such insurance pertaining to the work and materials as they may be required to carry by virtue of any applicable Law and such other insurance as Construction Manager may deem advisable.

7. **Claims Administration.** In respect of the Primary Liability Insurance required to be obtained by Construction Manager, Construction Manager shall manage any Claim against Owner, Construction Manager or Member which arises out of the Management of the Design, Procurement and Construction of the Applicable Facilities, or arises out of or is incidental to the other activities carried or work performed or required by this Agreement. Construction Manager shall promptly notify Members in writing of all accidents and Claims arising out of the Design, Procurement and Construction of the Applicable Facilities (including the Management thereof), or otherwise in connection with this Agreement. Likewise, any Members having knowledge of such accidents and Claims shall promptly notify the other Members in writing.