

# **Appendix A**

## Precedent Agreement

**PRECEDENT AGREEMENT**  
**Between**  
**TransCanada Alaska Company, LLC**  
**And**

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This Precedent Agreement (“PA” or “Agreement”) for services is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2010 by and between TransCanada Alaska Company, LLC, a Delaware limited liability company (“Transporter”), and \_\_\_\_\_ (“Shipper”). Transporter and Shipper are each referred to herein individually as a “Party” and collectively as the “Parties.”

**RECITALS**

**WHEREAS**, Transporter intends to design, engineer, permit, build, own, and operate a new natural gas pipeline, subject to regulation by the Federal Energy Regulatory Commission (“FERC”), beginning near Point Thomson, Alaska and extending through Alaska over one of two routes. One route would extend from the outlet of the Point Thomson plant through points near Prudhoe Bay, Alaska, Fairbanks, Alaska, and Delta Junction, Alaska and then to the U.S. (Alaska)-Canada border (“Alaska-Canada Pipeline”), where the pipeline would interconnect to a new pipeline that affiliates of Transporter, Foothills Pipe Lines (South Yukon) Ltd. and Foothills Pipe Lines (North B.C.) Ltd. (“Canadian Affiliates”) plan to design, engineer, permit, build, own and operate and which extends from the U.S. (Alaska)-Canada border to an interconnection point with pipeline facilities constructed, owned, and operated by Foothills Pipe Lines (Alberta) Ltd. or other existing off-take capacity at or near the British Columbia/Alberta border (“Canadian Pipeline”), providing the capability of transporting natural gas to markets in North America, including to the United States;

**WHEREAS**, an alternative Transporter pipeline route would extend from the outlet of the Point Thomson plant through points near Prudhoe Bay, Alaska, Fairbanks, Alaska, Delta Junction, Alaska and then to an interconnection point with liquefied natural gas (“LNG”) liquefaction facilities (to be built and operated by third parties (“LNG Plant Operators”)) near Valdez, Alaska (“Valdez Pipeline”);

**WHEREAS**, Transporter intends to design, engineer, permit, build, own and operate a new gas treatment plant (“GTP”) as an integral component of Transporter’s facilities and also subject to FERC regulation, located near Prudhoe Bay, Alaska, and operating in conjunction with either the Alaska-Canada Pipeline or the Valdez Pipeline (together, the GTP and the Alaska-Canada Pipeline or Valdez Pipeline comprise the United States portion of the Alaska Pipeline Project (“APP U.S. Facilities”));

**WHEREAS**, before Transporter applies for regulatory approvals and permits to construct, own and operate its facilities, Transporter seeks the execution of binding precedent agreements with prospective shippers for firm gas transportation service and optional firm gas treatment service commitments and other terms that support Transporter’s decision to seek approval from FERC to design, engineer, permit, build, own, and operate its facilities;

**WHEREAS**, Transporter's binding open season of April 30, 2010 to July 30, 2010 ("Open Season") solicits requests for firm transportation services and optional firm gas treatment services provided in relation to the APP U.S. Facilities;

**WHEREAS**, the Parties desire to enter into a binding PA that: (i) sets forth the terms upon which Transporter will design, engineer, permit, build, own, and operate facilities to provide Shipper with Service (as defined below); (ii) sets forth the terms upon which the Parties will enter into a firm transportation service agreement (including firm gas treatment services if selected by Shipper) ("FTSA"); and (iii) sets forth the circumstances under which Shipper may be required to pay for a portion of the costs of developing the APP U.S. Facilities;

**NOW, THEREFORE**, in consideration of the understandings and mutual covenants herein contained and intending to be legally bound thereby, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## **I. EFFECTIVE DATE AND TERM**

This PA shall become effective as of the date stated above and shall remain in effect, subject to Shipper's or Transporter's exercise of rights pursuant to Section V, until the effective date of the FTSA between Shipper and Transporter; provided that nothing in this section shall be interpreted to limit the surviving obligations set forth in Section VIII(q), including Section V(c).

## **II. SERVICE SPECIFICATIONS**

### **a. Services**

Subject to the terms and conditions set forth herein, including without limitation the conditions set forth in Section IV, the terms of the FTSA, and any applicable terms and conditions of the Transporter's FERC approved gas tariff ("Tariff"), Shipper shall pay for, and the Transporter shall provide, the firm transportation service and firm gas treatment service, if any, described further in this Section II and indicated on Exhibit A of this PA. The options elected by Shipper on Exhibit A (together with the terms of this PA, including Exhibits A and B, the FTSA, and any applicable terms of the Tariff) shall constitute the service to which the Shipper is entitled (the "Service").

- (1) The path of firm transportation service shall be determined by the primary receipt and delivery points for firm transportation service selected by the Shipper as indicated on Exhibit A.
- (2) The GTP shall perform firm gas treatment services, which shall consist of extraction of acid gas (CO<sub>2</sub> and H<sub>2</sub>S), dehydration and compression of both acid gas and gas delivered at the outlet of the GTP for downstream transportation, and refrigeration of sales gas delivered at the outlet of the GTP plant for downstream transportation on the APP U.S. Facilities. Acid gas extraction and the refrigeration, dehydration and compression of sales gas will allow Shipper to meet gas quality specifications applicable to the APP's U.S. Facilities

downstream of the GTP. Transporter will return extracted acid gas to Shipper at the outlet of the GTP, and Shipper is responsible for disposal of that acid gas. Whether Shipper shall receive firm gas treatment services will be determined by Shipper's election indicated on Exhibit A.

b. Capacity

Shipper has selected on Exhibit A (i) its maximum daily transportation quantity ("MDQ") with respect to its elected firm transportation service and, if applicable, (ii) its maximum daily treatment quantity ("MTQ") with respect to its elected firm gas treatment service. Shipper's elected MDQ and MTQ are exclusive of fuel and lost and unaccounted for gas.

c. Term of Shipper's Service, Service Phase-In, and Renewal Rights

- (1) Initial Service Term: Subject to the satisfaction or waiver of the conditions set forth in Section IV, Service under the FTSA shall commence on the date ("Commencement Date") which shall be ten days after Transporter provides Notice to the Shipper, pursuant to Section VIII(c), that Transporter is physically capable of and legally authorized to provide the Service. Shipper's Service will commence on Commencement Date and shall continue until the last day of the month following the expiration of the number of months corresponding to the term selected by the Shipper on Exhibit A ("Initial Service Term"), subject to continuation of Service as a result of Shipper's election of renewal rights as provided in Section II(c)(3) or as further agreed by the Parties. Beginning on the Commencement Date and continuing until the conclusion of the Initial Service Term and during any extension of that Initial Service Term pursuant to Section II(c)(3), Shipper must pay reservation charges for its firm gas transportation capacity and, if applicable, its firm gas treatment capacity as indicated on Exhibit A; provided that during the Phase-in Period, Shipper's reservation charges for firm gas treatment capacity will be based upon a billing determinant that reflects the reduced firm gas treatment capacity provided by Transporter to Shipper.
- (2) Phase-In Period: Following the Commencement Date, Shipper's MTQ shall be phased in ratably until the GTP operates at certificated treating capacity ("Phase-in Period"). Except for Section 36.1 and the 30-day period in Section 36.2, Transporter shall follow the procedures set forth in Section 36 of the General Terms and Conditions of the indicative tariff included in Transporter's January 29, 2010 FERC filing with respect to the Phase-in Period. Firm gas treatment service will be provided at the MTQ elected by Shipper on Exhibit A at the conclusion of the Phase-In Period but will be provided to Shipper at less than Shipper's MTQ during the Phase-In Period. The Initial Service Term selected by Shipper as indicated on Exhibit A includes the Phase-In Period.
- (3) Renewal Rights: If Shipper elects negotiated rates on Exhibit A, Shipper will have a one-time right to extend its Initial Service Term for a five year period at the MDQ (and, if applicable, MTQ) selected by Shipper on Exhibit A for the Initial Service Term. If Shipper elects to exercise this right, it must provide Notice to that effect to Transporter, consistent with Section VIII(c), at least 36 months prior to the conclusion of Shipper's Initial Service Term.

- (4) Foundation Shippers: Shipper is a Foundation Shipper if Shipper and any Person associated with Shipper (directly or through Affiliates) has been awarded in aggregate an MDQ equal to or greater than 200,000 MMBtu/day. All gas shipped by a shipper in which the State of Alaska has an economic interest, as the result of its exercise of sovereign powers or otherwise, is gas shipped by a Person associated with Shipper for purposes of this subsection. "Person" means any natural person, Entity, estate, labor union, or government authority or component and includes persons, corporations, partnerships, Affiliates of any person and related components of any governmental entity; "Entity" means any foreign or domestic general partnership, limited partnership, limited liability company, corporation, joint enterprise or venture, joint stock company, business or statutory trust, employee benefit plan, cooperative, association, or other legal entity; "Affiliate" means, in relation to the specified Person, a Person which (a) directly or indirectly, through one or more intermediaries or otherwise, controls the specified Person; (b) is directly or indirectly controlled by the specified Person; or (c) is directly or indirectly under common control by a Person that directly or indirectly controls the specified Person; where "control" means (a) the right to exercise votes attaching to more than 50 percent of the voting stock of the entity in question or (b) the power to direct or cause the direction of the management or policies of the specified Person, whether through the ownership of securities, by contract, or otherwise. Transporter shall determine whether gas is associated with a Person in its sole discretion, and Shipper shall provide information requested by Transporter that may be of assistance in making that determination.

d. Interruption of Service

Consistent with Shipper's obligations set forth in Section II(c)(1), Shipper's obligation to pay reservation charges continues during any period of Interruption of firm transportation service or firm gas treatment service.

- (1) During any such period of Interruption, or any non-Interruption reduction in system capabilities (including periodically reduced levels of Service associated with the planned GTP turnaround ("GTP Turnaround")), firm transportation and firm treatment of Shipper's gas will be reduced on a pro rata basis (based on Shipper's MDQ as a percentage of total firm gas transportation commitments, and MTQ as a percentage of total firm gas treatment commitments).
- (2) With respect to the particular zone(s) affected by an Interruption, Transporter shall provide Deferred Firm Transportation Service to Shipper in an amount equal to the quantity of gas subject to a reduction of Service as a result of an Interruption. For purposes of this Section II(d), Deferred Firm Transportation Service means a firm gas transportation service and, if applicable, a firm gas treatment service provided by Transporter (subject to the terms and conditions of the FTSA and any applicable terms of the Tariff initially filed by Transporter with the FERC) utilizing all transportation or gas treatment capacity, if any, that is available once Transporter has satisfied Shipper's and other shippers' MDQ and, if applicable, MTQ as indicated on Exhibit A, and shall be offered on a pro rata basis to all firm transportation and firm gas treatment shippers eligible to receive such service. Shipper may receive Deferred Firm Transportation Service only after utilizing its MDQ capacity and, if applicable, MTQ capacity.

- (3) Deferred Firm Transportation Service shall be available to Shipper for the entire amount of Shipper's deferred volumes under this Agreement, when capacity is available and Shipper is eligible to receive such service due to a prior Interruption of firm service, at any time during Shipper's Initial Service Term and during any extension or renewal of that Initial Service Term pursuant to Shipper exercising its Renewal Rights. Upon termination of the FTSA arising from this Agreement, at the later of the Initial Service Term or any extension pursuant to Shipper exercising its Renewal Rights, any remaining Deferred Firm Transportation Service rights shall expire. Such Deferred Firm Transportation Service shall have priority over authorized overrun service ("AOS"), interruptible transportation ("IT") service, and park-and-loan ("PAL") service.
- (4) Interruption, for purpose of this Section II(d), means an interruption, in whole or part, of Transporter's provision of firm gas transportation service or firm gas treatment service to Shipper due to limitations on system operation of the APP U.S. Facilities or, if applicable, the Canadian Pipeline, including for reasons of a Force Majeure Event, and does not include (i) any failure to provide Service attributable to the actions of Shipper (including the tender of gas at levels less than Shipper's MDQ or MTQ), (ii) anticipated levels of reduced Service associated with the Phase-In Period, and (iii) any reduction of Service due to GTP Turnaround.

e. Gas Quality

Gas provided by Shipper to Transporter must meet the gas quality and pressure specifications set forth in the Tariff for the receipt point where gas is tendered by Shipper to Transporter.

f. Reverse Open Season

In the event Transporter, after establishing an initial design capacity based on Precedent Agreements entered as a result of the Open Season, receives indications of interest for new capacity which cannot be satisfied by that initially established or certificated capacity, Transporter shall, prior to expanding such capacity, conduct a reverse open season pursuant to which Shipper shall have the right to offer to reduce all or a portion of Shipper's MDQ (and, if applicable, MTQ) up to an amount sufficient to satisfy the requests for new capacity. In the event other shippers, together with Shipper, offer capacity reductions in an amount that exceeds the requests for new capacity, capacity reductions for existing shippers, including Shipper, shall be adjusted on a pro rata basis. In the event aggregate offers to reduce capacity are less than requests for new capacity, and the difference cannot be provided by reasonable capital expenditures associated with facilities expansion, Transporter shall have the right, on a commercially reasonable basis, to deny all or a portion of Shipper's requested reduction in capacity in the reverse open season. Any reduction of capacity pursuant to a reverse open season shall be subject to the shippers seeking new capacity meeting all applicable Transporter requirements, including creditworthiness. In no event shall Transporter be obligated to accept an offer to reduce capacity if such reduction, after taking into account the commercial arrangement with shippers seeking new capacity, results in a decrease of Transporter's revenues or is otherwise inconsistent with Transporter's economic interests.

g. Line Fill

If Shipper is a Foundation Shipper, Shipper shall have the right to sell to Transporter a pro rata portion of Transporter's initial line fill requirements (determined as a percentage of Shipper's MDQ compared to total committed firm gas transportation capacity) under commercially reasonable terms and conditions mutually acceptable to Shipper and Transporter. Transporter shall secure any initial line pack not secured above on a commercially reasonable basis from Foundation Shippers or otherwise under a process to be defined by Transporter prior to Commencement Date.

h. Gas Component Tracking System

Transporter shall provide a gas component tracking system. If all shippers that have executed precedent agreements for firm transportation service agree, within two years following execution of this agreement, to a natural gas liquids ("NGL") process designed to address shippers' gas containing different NGL compositions, then Transporter will endeavor to provide data to such shippers to facilitate that process. Such process will not modify Transporter's obligation to accept gas tendered by shippers at receipt points and to deliver equivalent MMBtus at delivery points (net of MMBtus consumed in operations and lost or unaccounted for) under the provisions of the FTSA and will not require Transporter to deliver to any shipper at delivery points the same volume of NGLs as Transporter received from those shippers at receipt points.

**III. ADDITIONAL OBLIGATIONS OF PARTIES**

a. Prosecution and Completion of Project

- (1) Subject to Sections IV and V, Transporter will use commercially reasonable efforts to:
  - (i) File with FERC an application for a certificate of public convenience and necessity ("CPCN") for the APP U.S. Facilities ("FERC Application") by approximately October 2012;
  - (ii) Enter into interconnection agreements and operational balancing agreements with facilities designed to deliver gas to the APP U.S. Facilities receipt points and receive gas at delivery points in Alaska from the APP U.S. Facilities and with downstream facilities interconnected with the APP U.S. Facilities (the Canadian Pipeline or the third party LNG liquefaction facilities located near Valdez);
  - (iii) Construct the APP U.S. Facilities in a commercially reasonable manner and within a commercially reasonable period, including efforts to plan and develop the APP U.S. Facilities, design and implement start-up sequencing, seek financing, and enter into interconnection agreements, all taking into account interests of shippers as well as Transporter among other considerations and subject to Force Majeure Events and other events that delay the construction of the APP U.S. Facilities;

- (iv) Provide to Shipper, on (i) October 31, 2010, (ii) the filing of the FERC Application, and (iii) acceptance of the Final FERC CPCN, updated information regarding costs incurred related to development of APP U.S. Facilities and cost projections, through the Commencement Date, of development and construction costs related to the APP U.S. Facilities; and
  - (v) Work with shippers, producers, and other interconnecting parties to ensure a coordinated process leading to Commencement Date through a defined notification process.
- (2) For purposes of Section III(a)(1), “commercially reasonable” shall be determined in light of the level of capacity commitments entered by shippers following the Open Season and the conditions attached to their commitments.

b. Execution of Firm Transportation Service Agreement

- (1) Unless Shipper’s obligation to enter into an FTSA has been terminated in accordance with Section V, Shipper shall execute an FTSA that reflects the terms of this PA within 30 days after Transporter provides Notice to Shipper (“Notice of Regulatory Approvals”), in accordance with Section VIII(c), that (i) FERC has issued a CPCN for the APP U.S. Facilities and that Transporter has accepted such certificate in accordance with 18 C.F.R. Section 157.20(a) (“Final FERC CPCN”) and (ii) the Canadian Affiliates have received and accepted all approvals from the National Energy Board (“NEB”) and pursuant to the National Pipeline Act (“NPA”) that they deem necessary or, as applicable, the LNG Operators have received and accepted all regulatory approvals that Transporter concludes are necessary to the construction and operation of the LNG plant, in each case on terms and conditions satisfactory to the Canadian Affiliates or LNG Operators, as applicable. That Notice of Regulatory Approvals shall also include the FTSA that reflects the terms of this PA. Unless Transporter’s obligation to enter an FTSA has been terminated in accordance with Section V, once Shipper has executed the FTSA as provided in this Section III(b), Transporter shall execute the FTSA executed by Shipper within 60 days after Transporter provides Notice to Shipper, in accordance with Section VIII(c), that Transporter intends to file a request with FERC for a notice to proceed with construction.
- (2) The FTSA will preserve and include, among other provisions, the following:
- (i) The levels of MDQ and MTQ and the Initial Service Term as set forth in Exhibit A,
  - (ii) Shipper’s agreement to the Phase-In Period service levels and related obligations set forth in Section II(c),
  - (iii) The obligations set forth in Section II(d), including the obligation to continue to pay reservation charges and Transporter’s obligation to provide Deferred Firm Transportation Service,
  - (iv) For Shippers electing negotiated rates, the renewal rights set forth in Section II(c)(3),



- (v) Shipper's obligations under Section III(c) and the creditworthiness provisions in Exhibit B,
  - (vi) Shipper's obligation under Sections III(d)(2)-(4) and Section V(c)(1),
  - (vii) The provisions of Section VII,
  - (viii) Transporter's and Shipper's agreement to comply with the provisions of Sections VIII(a), (b), (c), (l), (o), (p), and (s), and
  - (i) Any other unexpired provisions of this PA that are to be carried forward into the FTSA.
- (3) The FTSA shall also include a provision ensuring that breach of or non-compliance with a tariff provision, related to service provided on the Canadian Pipeline, by a Shipper or Shipper's Affiliate that receives service from a Canadian Affiliate, will entitle Transporter to the same remedies against Shipper that Canadian Affiliates would be entitled to pursue against such Shipper or Shipper's Affiliate (in addition to a provision entitling Transporter to effective remedies pursuant to the FTSA, including damages and termination of the obligation to provide service, in relation to Shipper's breach of or non-compliance with the Tariff).

c. Creditworthiness Requirements

During the term of this PA and the term of the FTSA, Shipper shall establish and maintain its creditworthiness (and shall ensure the establishment and maintenance of the creditworthiness of each of Shipper's Affiliates entering into precedent agreement(s) or FTSA(s) with a Canadian Affiliate) in accordance with the standards and according to the terms and conditions set forth in Exhibit B and, when requested by Transporter, shall promptly provide evidence to Transporter, sufficient to Transporter in its sole discretion, of Shipper's (and such Shipper's Affiliates') continuing compliance with this requirement, and shall provide annual audited financial statements and other information requested by Transporter.

d. Cooperation

- (1) Each Party agrees to execute and deliver such other and additional instruments and documents and do such other acts and enter such additional agreements as may be reasonably requested by the other Party to effectuate the terms and provisions of this PA.
- (2) Shipper shall support any application by Transporter for FERC approval of the executed FTSA as a non-conforming service agreement.
- (3) To the extent Transporter's efforts are not inconsistent with Transporter's obligations to Shipper, this PA or the FTSA, Shipper shall cooperate with, and not oppose or protest, the efforts of Transporter to obtain any regulatory or governmental approvals Transporter deems necessary or desirable to design, engineer, permit, build, own, or operate Transporter's facilities, in whole or in part, or otherwise to provide the Service, including in relation to Transporter's

filing of the Tariff and recourse rates at FERC and through provision of any information that is reasonably requested by Transporter or by any governmental or regulatory body in connection with such applications; provided that Shipper may challenge Transporter's recourse rates and Tariff filing before the FERC so long as Shipper does not contest the provisions set forth in this PA or the FTSA.

- (4) Shipper shall cooperate with Transporter in arranging financing commitments, including by incorporating in the FTSA terms customarily required by lenders, by entering into customary direct agreements with lenders, and by otherwise assisting Transporter in arranging financing commitments.

e. Gas Volumes and Takeaway Capacity

If Shipper has elected on Exhibit A to deliver gas to the Alaska-Canada border and as long as this PA remains in effect with respect to such deliveries, Shipper (or an affiliate of Shipper) shall enter into and continue to abide by precedent agreements with Canadian Affiliates governing the transportation of such gas on the Canadian Pipeline. Shipper shall provide evidence to Transporter, sufficient to Transporter in its sole discretion and no later than six months after receiving Notice of Regulatory Approvals from Transporter, that Shipper has secured (i) rights to natural gas available for shipment on the APP U.S. Facilities in quantities sufficient for Shipper to substantially use the shipping commitment as set forth in Exhibit A, (ii) in the case of the Alaska-Canada Pipeline, capacity on facilities interconnected upstream and downstream with the APP U.S. Facilities sufficient to transport the firm capacity commitment as set forth in Exhibit A, and (iii) in the case of the Valdez Pipeline, capacity on facilities interconnected upstream with the APP U.S. Facilities sufficient to transport the firm capacity commitment as set forth in Exhibit A and rights to services sufficient to provide the liquefaction, shipping, and regasification of gas subject to such election.

Shipper, if it is a Foundation Shipper, is not required to provide such evidence, or any other evidentiary requirements related to gas volumes and takeaway capacity set forth elsewhere in this Agreement, unless required by potential lenders.

f. Shipper Regulatory and Internal Approvals

Shipper will diligently seek to secure all internal approvals (including approval from Shipper's board of directors or equivalent ultimate management authority) and all government approvals, including certificates, permits, orders, licenses and authorizations from the U.S., Canada and other nations, necessary (i) to construct and operate facilities for the delivery of gas to receipt points on the APP U.S. Facilities, (ii) to enable Shipper, or others designated by Shipper, to export Shipper's gas from Alaska, import Shipper's gas into other states or nations, and otherwise to have Shipper's gas delivered to facilities interconnected with the APP U.S. Facilities, and (iii) where necessary as determined in Transporter's sole discretion, to have Shipper's gas delivered to its ultimate destination.

#### IV. CONDITIONS PRECEDENT

##### a. Transporter Conditions Precedent

Notwithstanding the Parties' execution of this PA, Transporter's obligations established by Sections II and III, including obligations to enter an FTSA, to construct and operate the APP U.S. Facilities, and to provide Service (pursuant to Sections II(a), II(c), III(a) and III(b)) are subject to the satisfaction or express waiver (in the sole discretion of Transporter) of the following conditions precedent:

- (1) Certificates and Rights of Way: Transporter shall have (i) received and accepted the Final FERC CPCN authorizing the APP U.S. Facilities; (ii) obtained the rights-of-way and construction permits, easements, rights of access, waivers, authorizations, and other approvals necessary to construct, own and operate its facilities and provide Service to the Shipper; and (iii) received notice from the operators of downstream facilities to be interconnected with the APP U.S. Facilities (Canadian Affiliates, with respect to the Canadian Pipeline, or the LNG Plant Operators) that the operators have secured financing sufficient to construct those interconnected facilities and have received all government and other approvals necessary to construct, own, and operate those interconnected facilities, including approvals for the associated export and shipment of gas; with all authorizations and approvals listed in (i)-(iii) in form and substance satisfactory to Transporter in its sole discretion.
- (2) Financial Commitments: Transporter has received financing commitments, in form and substance satisfactory to Transporter in its sole discretion, sufficient to support construction and operation of the APP U.S. Facilities.
- (3) Corporate Approvals: Transporter shall have (i) obtained all corporate authorizations necessary for development, construction, and operation of the APP U.S. Facilities and to provide Service, including authorization from the Board of Transporter, and (ii) received notice that the operators of downstream facilities interconnected with the APP U.S. Facilities (Canadian Affiliates or LNG Plant Operators) have obtained all corporate authorizations necessary for their development, construction, and operation of the interconnected facilities.
- (4) Shipper Performance Under PA and Related Precedent Agreements
  - (i) Transporter shall have received evidence (acceptable to Transporter in its sole discretion) of (i) Shipper's compliance with the terms of this PA, including Shipper's and Shipper's Affiliates' (where applicable) continuous compliance since the effective date of this PA with the creditworthiness provisions of Section III(c) and Exhibit B and its execution of an FTSA in accordance with Section III(b); (ii) Shipper's or Shipper's Affiliates' entry into and compliance with precedent agreements entered with the operators of facilities interconnected with the APP U.S. Facilities (Canadian Affiliates or LNG Plant Operators); and (iii) Shipper's entrance into and compliance with firm contracts sufficient to ensure the delivery of Shipper's gas to facilities interconnected with the APP U.S. Facilities and, where Transporter determines it necessary, to its ultimate destination. If Shipper is a Foundation Shipper, Transporter is not entitled to rely upon

sub-clause (iii) of this section with respect to failure by Shipper to provide such evidence unless such evidence is required by potential lenders.

- (ii) Transporter shall have received evidence (satisfactory to Transporter in its sole discretion) that Shipper has satisfied or has waived its conditions precedent for each of the agreements identified in Section IV(a)(4)(i) and is in compliance with each of such agreements. Transporter shall also have received evidence, by December 31, 2010, that Shipper has received all corporate authorizations and internal approvals set forth in Section IV(b)(1).
- (5) Shippers' Regulatory Approvals: Transporter shall have received evidence (acceptable to Transporter in its sole discretion) that Shipper, and a sufficient number of other shippers necessary in Transporter's assessment in its sole discretion to support proceeding with construction of the APP U.S. Facilities, have met all statutory and regulatory requirements, and secured all certificates, permits, licenses, orders, and authorizations, required to ship, export, and deliver natural gas to be transported on the APP U.S. Facilities (including those approvals set forth in Section III(f)).
- (6) Capacity Commitments: Transporter determines, in its sole discretion, that the capacity commitments of Shipper and other shippers, reflected in FTSA's executed by Shipper and shippers (in accordance with Section III(b)), are sufficient to proceed with construction of the APP U.S. Facilities.

b. Shipper Condition Precedents

- (1) Notwithstanding the Parties' execution of this PA, Shipper's obligations to make payments for Services, to enter an FTSA, and to make payments pursuant to Section V(c) are subject to Shipper's having secured and not revoked, by December 31, 2010, all necessary board approvals and internal authorizations necessary to make such obligations to pay binding upon Shipper.
- (2) Exhibit C sets forth any further conditions precedent agreed between the Parties.
- (3) Shipper shall, by December 31, 2010, notify Transporter of the satisfaction, waiver, or failure of the condition set forth in Section IV(b)(1) and shall notify Transporter of the satisfaction, waiver, or failure of conditions set forth in Exhibit C by the dates indicated in that Exhibit C.

**V. TERMINATION**

a. Termination by Transporter

- (1) Subject to Section VIII(q), Transporter may terminate its obligations under this PA (including its obligations under Sections III(a) and (b) to enter an FTSA and to proceed to develop and construct the APP U.S. Facilities, and under Sections II(a) and (c) to provide Service), effective upon provision of Notice to Shipper in accordance with Section VIII(c), in the event that:

- (i) any of the conditions set forth in Section IV(a) is not satisfied or waived by the conclusion of six months following Transporter's provision of Notice of Regulatory Approvals or provision of Notice by Transporter to Shipper that necessary regulatory approvals, as determined by Transporter in relation to the APP U.S. Facilities or related downstream facilities (either the Canadian Pipeline or the LNG plant), have been finally denied; provided that, Transporter may pursuant to this Section V(a) terminate its obligations at any time prior to the conclusion of that period if Shipper's actions or other circumstances ensure that a condition set forth in Section IV(a) cannot be satisfied;
  - (ii) a petition is filed by or against Shipper, any of Shipper's Affiliates that have entered a precedent agreement with a Canadian Affiliate, Shipper's ultimate parent company, or any intermediate company holding a direct or indirect ownership interest in Shipper, or by or against any guarantor of Shipper's or Shipper's Affiliates' obligations hereunder or under a precedent agreement entered with a Canadian Affiliate, under any chapter of the bankruptcy code of the United States or any other nation; or
  - (iii) a precedent agreement between Shipper (or one of Shipper's Affiliates) and one of the Canadian Affiliates, referenced in Section III(e), has been terminated (other than through the exercise of rights equivalent to those set forth in Section V(b)).
- (2) Subject to Section V(b)(4), Transporter shall terminate this Agreement pursuant to Section V(a) if a precedent agreement between a Canadian Affiliate and Shipper or a Shipper's Affiliate is terminated by any party.
  - (3) Transporter may exercise its rights pursuant to Section V(a)(1) at any time prior to the execution of a binding FTSA. Any termination pursuant to Section V(a)(1) shall specify the basis for termination, including as applicable the condition(s) set forth in Section IV(a) that has not been or cannot be satisfied.

b. Termination of Certain Obligations by Shipper

- (1) Subject to Section VIII(q), Shipper may, before December 31, 2010, terminate this PA by provision of Notice to Transporter in the event that Shipper has not before then obtained and maintained all requisite management or board approvals set forth in Section IV(b)(1). In the event Shipper terminates this PA pursuant to this Section V(b)(1), Shipper shall have no responsibility to pay Transporter Initial Development Costs or Development Costs.
- (2) Subject to Section V(c) and Section VIII(q), Shipper, if it is a Foundation Shipper, may, within 30 days after receiving Notice of Regulatory Approvals from Transporter, by provision of Notice to Transporter terminate its obligations to enter an FTSA established by Section III(b), to pay for Services established by Sections II(a) and II(c)-(d), and to undertake additional actions established by Sections III(c)-(f).

- (3) If Shipper is a Foundation Shipper and does not terminate this PA pursuant to Section V(b)(2), and any other Foundation Shipper(s) terminates its precedent agreement following Shipper's receipt of Notice of Regulatory Approvals, Transporter shall, at the conclusion of the 30 day period following Shipper's receipt of such Notice, provide Shipper with Notice of (i) the firm gas transportation capacity secured by such other Foundation Shipper(s) pursuant to the terminated precedent agreement(s) and (ii) any revisions that Transporter has determined are necessary to the development and construction of the U.S. APP Facilities and, if applicable, the Canadian Pipeline, based upon the commitments of the remaining Foundation Shippers. Within 15 days of receiving such Notice, Shipper may, subject to Section V(c) and Section VIII(q), by provision of Notice to Transporter terminate its obligations described in Section V(b)(2). Transporter shall repeat the process set forth in this Section V(b)(3) as necessary until no remaining Foundation Shipper exercises such right of termination.
- (4) Termination pursuant to Section V(b)(1)-(3) is effective upon Transporter's receipt of Notice provided in accordance with Section VIII(c). A termination by Shipper or a Shipper Affiliate of a precedent agreement entered with a Canadian Affiliate, pursuant to a provision of that precedent agreement equivalent to Section V(b)(1)-(3), shall be deemed to be and have the effect of a termination by Shipper of this precedent agreement pursuant to Section V(b)(1)-(3).

c. Effect of Termination

- (1) Except as expressly stated in this PA and notwithstanding the specification of certain obligations set forth in Sections V(c)(2)-(4), the termination of this PA or any particular obligations hereunder shall not relieve any Party from any right, liability or other obligation, or any remedy or limitation of remedies, which has accrued or been incurred prior to the date of, or as a result of, such termination.
- (2) In the event that Transporter terminates this PA pursuant to Section V(a), Shipper shall owe and pay to Transporter a sum equal to Development Costs; provided that, Shipper shall pay to Transporter Initial Development Costs and Development Costs and any damages in excess of such costs in the event that Transporter terminates this PA pursuant to Section V(a) because Shipper or Shipper's Affiliate fails to sign an FTSA, as required by Section III(b) or by a precedent agreement entered with a Canadian Affiliate, or otherwise breaches this PA or a precedent agreement entered with a Canadian Affiliate.
- (3) In the event that Shipper terminates this PA pursuant to Section V(b)(2) or Section V(b)(3), then Shipper shall owe and pay to Transporter a sum equal to Initial Development Costs and Development Costs.
- (4) For purposes of this Section V(c):
  - (i) Development Costs mean the costs in relation to all the zones of the APP U.S. Facilities, where such costs for each zone mean Shipper's pro rata share (determined as a ratio, the numerator of which is the firm transportation capacity secured by Shipper as indicated on Exhibit A for that zone and the denominator of which is the firm transportation capacity

secured by all shippers for that zone as of or after January 31, 2011) of all expenditures and costs incurred by Transporter and its Sponsoring Parties related to the development of that zone of the APP U.S. Facilities between the conclusion of Transporter's Open Season and the Notice of termination provided by Transporter or, if applicable, by Shipper pursuant to Section V(b)(2)-(3) ("Post-Open Season Development Period"). Such costs include costs associated with preparing and filing regulatory applications, including the application to FERC for a CPCN, and costs incurred during the Post-Open Season Development Period even if required to be paid thereafter. Notwithstanding the foregoing, in the event that Transporter terminates provisions of this PA pursuant to Section V(a) (other than termination resulting from the circumstances set out in the proviso to Section V(c)(2)), Development Costs shall exclude any amounts Transporter has received from the State of Alaska as reimbursement of costs pursuant to AS 43.90.110(a)(1).

- (ii) Initial Development Costs mean the costs in relation to all the zones of the APP U.S. Facilities, where such costs for each zone mean Shipper's pro rata share (determined as a ratio, the numerator of which is the firm transportation capacity secured by Shipper as indicated on Exhibit A for that zone and the denominator of which is the firm transportation capacity secured by all shippers for that zone as of or after January 31, 2011) of (i) the portion of \$150 million equal to the percentage of the cost of the APP U.S. Facilities as compared to the total cost of the APP U.S. Facilities and the Canadian Pipeline multiplied by (ii) the ratio of the costs of the facilities in that zone compared to the total cost of the APP U.S. Facilities.
- (iii) Sponsoring Parties mean TransCanada Corporation and its Affiliates and Exxon Mobil Corporation and its Affiliates, as well as any other parties that may become Sponsoring Parties during the term of this PA. Transporter shall provide Notice to Shipper of the addition of any new Sponsoring Parties.

d. Termination of Certain Obligations as a Result of Transporter's Route Selection

- (1) Transporter's provision of Notice to Shipper of Transporter's determination to design, engineer, permit, build, own and operate the Alaska-Canada Pipeline, and not to develop the Valdez Pipeline, shall terminate this PA with respect to any commitments undertaken by either Party with respect to the Valdez Pipeline.
- (2) Transporter's provision of Notice to Shipper of Transporter's determination to design, engineer, permit, build, own and operate the Valdez Pipeline, and not to develop the Alaska-Canada Pipeline, shall terminate this PA with respect to any commitments undertaken by either Party with respect to the Alaska-Canada Pipeline.

## VI. REPRESENTATIONS AND WARRANTIES

a. Each Party represents and warrants to each other as follows:

- (1) Organization: Such Party is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization, and has all requisite power and authority to own, lease, and operate its assets and to carry on its businesses as they are now being conducted.
- (2) Authorization: Such Party has all requisite power and authority to enter into this PA, to perform its obligations hereunder, and to consummate the transactions contemplated hereby. The execution, delivery, and performance by such Party of this PA and the consummation by such Party of the transactions contemplated by this PA have been duly authorized by all necessary corporate action or other action (as applicable) on the part of such Party. This PA has been duly executed and delivered by such Party and, assuming the due authorization, execution, and delivery hereof by each of the other Parties, constitutes a legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.
- (3) No Violation: The execution and delivery by such Party of this PA, the consummation of the transactions contemplated by this PA, and the performance of the obligations of such Party hereunder will not conflict with, or result in any violation of or default under, any provision of any governing instrument applicable to such Party, or any agreement or other instrument to which such Party is a party or by which such Party or any of its assets is bound, or any governmental requirement or governmental approval applicable to such Party or its assets; provided that nothing in this sentence shall limit Shipper's ability to bid in an open season for or enter contracts related to the provision of gas transportation services by another Alaskan natural gas pipeline system. The execution, delivery, and performance by such Party of this PA does not require any governmental approval to be secured by such Party (other than government approvals associated with the development of the APP U.S. Facilities or the shipment of gas on the APP U.S. Facilities, or otherwise indicated in this PA).

b. Shipper represents and warrants to Transporter that there are no Third Party Claims or Proceedings pending against Shipper or its Affiliates or, to the knowledge of Shipper, threatened against Shipper or its Affiliates involving the transactions contemplated by this PA, other than those Notified to Transporter. Terms used in this Section VI(b) have the following meanings:

- (1) Third Party Claim or Proceeding means any threatened, pending, or completed action, claim, controversy, filing, complaint, application, suit, arbitration, alternative dispute resolution procedure, investigation, inquiry, rulemaking or other proceeding (including all permitting processes conducted by any regulatory agency or body) by or against any Third Party arising out of or relating in any way to the obligations or undertakings reflected in this Agreement.
- (2) Third Party means any person other than the Parties or any Affiliate of them.



## VII. DISPUTE RESOLUTION

Any disputes, controversies, or claims between the Parties arising out of or relating to this PA or the breach thereof (a "Dispute") shall be resolved by means of the following procedure. Transporter and Shipper agree that the dispute resolution procedure described in this Section VII shall apply to any dispute during the term of the FTSA concerning negotiated rates, including disputes concerning the rate principles set forth in Section IV of Exhibit A, and shall not apply to any controversy wherein the FERC has exclusive jurisdiction.

### a. Notification

A Party who desires to submit a Dispute for resolution shall commence the dispute resolution process by providing Notice of the Dispute ("Notice of Dispute") to the other Parties. The Notice of Dispute shall contain a reasonably detailed description of the alleged Dispute and the facts and law the Party believes support the same, the relief requested, and shall request negotiations among executives of the Parties with authority to settle the Dispute. The submission of a Notice of Dispute shall toll any applicable statutes of limitation pending the conclusion or abandonment of dispute resolution proceedings under this Section VII.

### b. Negotiations

The Parties shall seek to resolve the Dispute by negotiation between executives who have authority to negotiate a settlement of the Dispute on behalf of each Party in Dispute. Within 30 Days after the date of the receipt of the Notice of Dispute, the executives representing each of the Parties in Dispute shall meet in person at a mutually acceptable time and place in an attempt to resolve the Dispute. If an executive intends to be accompanied at the meeting by an attorney, such executive shall give the other Party Notice of such intention at least three Business Days in advance, and the executive(s) representing the other Party may also be accompanied at the meeting by an attorney. Notwithstanding the above, any Party in Dispute may initiate arbitration proceedings pursuant to Section VII(c) at any time after 60 Days from the date of receipt of the Notice of Dispute.

### c. Arbitration

Any Dispute not finally resolved by negotiation between executives as set forth in Section VII(b) shall be exclusively and definitively resolved through final and binding arbitration, except as otherwise set forth herein or otherwise agreed by the Parties.

- (1) Rules: Disputes shall be resolved by arbitration in accordance with the Rules for Non-Administered Arbitration of International Disputes of the International Institute for Conflict Prevention and Resolution ("CPR Rules") as in effect on the date of commencement of the arbitration, as modified in these arbitration procedures.
- (2) Commencement of Arbitration: An arbitration shall be commenced in the manner set forth in the CPR Rules except as otherwise provided hereafter.
- (3) Number of Arbitrators: The arbitration shall be conducted by three arbitrators.

- (4) Method of Appointment of the Arbitrators:
- (i) The claimant Party shall appoint one arbitrator in the Notice of arbitration and the respondent Party shall appoint one arbitrator within 30 Days after receiving the Notice of arbitration and give Notice of that appointment to the claimant; provided, that no Party in Dispute shall appoint an arbitrator who, by reason of residence or otherwise, has an interest in matters subject to dispute or who cannot remain at all times independent and impartial. If a Party in Dispute fails to appoint its Party-appointed arbitrator within the foregoing deadlines, the CPR shall appoint such arbitrator if requested to do so by a Party in Dispute.
  - (ii) The two arbitrators appointed in accordance with this Section VII(c)(4) shall appoint a third arbitrator, who shall act as the presiding arbitrator. If the two arbitrators cannot reach an agreement on the presiding arbitrator within 30 Days of the appointment of the second arbitrator, the CPR shall appoint the presiding arbitrator in accordance with the CPR Rules.
- (5) Place of Arbitration: Unless otherwise agreed by all Parties in Dispute, the place of arbitration shall be Houston, Texas.
- (6) Language: The arbitration proceedings shall be conducted in the English language.
- (7) Entry of Judgment: The award of the arbitral tribunal (“Award”) shall be in writing and shall be final and binding upon the Parties. Judgment on the Award may be entered and enforced by any court of competent jurisdiction and the Parties agree to submit to the personal jurisdiction of any such court.
- (8) Notice: All Notices required for any arbitration proceeding shall be deemed properly given if sent in accordance with Section VIII(c).
- (9) Qualifications and Conduct of the Arbitrators: All arbitrators shall be and remain at all times independent and impartial, and no arbitrator shall have any ex parte communications concerning the arbitration or the Dispute with any of the Parties in Dispute, other than communications appropriate under Rule 7.4 of the CPR Rules to determine an arbitrator’s willingness and availability to serve or concerning the selection of the presiding arbitrator, where applicable.
- (10) Interim Measures: The Parties in Dispute may seek interim measures as provided in Rules 13 and 14 of the CPR Rules. Any such measures granted by the arbitral tribunal may be immediately enforced by court order. Hearings on requests to the arbitral tribunal for interim measures may be held in person, by telephone, by video conference or by other means that permit the Parties in Dispute to present evidence and arguments.
- (11) Costs and Fees of Arbitration: The arbitral tribunal is authorized to allocate the costs of the tribunal, including fees for the arbitrators and hearing room and transcription expenses, between or among the Parties to the Dispute in such proportions as the tribunal shall determine. Each Party in Dispute shall bear its

own attorney's and expert witness fees, its expenses and the expenses of its witnesses, unless otherwise directed by the tribunal.

- (12) Award: The arbitral Award shall be made and payable in U.S. Dollars.
- (13) Consequential Losses: The Parties waive their rights to claim or recover, and the arbitral tribunal shall have no authority to award, any Consequential Losses, which for purposes of this PA means, as to any Person, any damage, cost, expense, or liability (including pass-through claims for indemnification or contribution owed to another Person under a contract, governmental requirement, or other obligation), or loss of any other nature of that Person that is caused (directly or indirectly) by any of the following arising out of, relating to, or connected with this PA or work carried out (or failed to be carried out) in relation to it: loss or deferment of income or profits; loss of use of any asset; loss of business or reputation; loss of business opportunity; loss of labor or management productivity; increases in wage, salary, or other cost of labor cost; or indirect damages or losses, costs, expenses, or liabilities, whether or not similar to the foregoing; in addition, Consequential Loss includes any exemplary, punitive, special, or treble damages.
- (14) Waiver of Challenge to Decision or Award: To the extent permitted by law, the Parties waive any right to challenge any arbitral decision or Award, or to oppose enforcement of any such decision or Award, except on the limited grounds for modification or non-enforcement provided by the CPR Rules or any applicable arbitration statute or treaty.
- (15) Governing Law: The tribunal will apply the substantive law of the State of New York to the merits of the case, except that the tribunal will not apply any choice of law rules that would call for the application of the law of any other jurisdiction.

d. Confidentiality

All negotiations and arbitration proceedings (including a settlement resulting from negotiation or an Award, documents exchanged or produced during an arbitration proceeding, and memorials, briefs, or other documents prepared for the arbitration) are confidential and may not be disclosed by the Parties in Dispute, their respective employees, officers, directors, counsel, consultants, and expert witnesses, except to the extent necessary to enforce this Section VII or any Award, to enforce other rights of a Party, or as required by law; provided, however, that breach of this confidentiality provision shall not void any settlement or Award.

**VIII. MISCELLANEOUS**

a. Limitation of Actions

The period for seeking an Award, remedial order, or relief for any claim arising in connection with this PA is six years from the date the claim first arises.

b. Force Majeure

- (1) Subject to Section VIII(b)(2), the requirement to perform obligations set forth in Sections II(a), II(c), II(d), and III(a) of this PA are subject to any delay or other effect attributable to the occurrence and continuation of any Force Majeure Event.
- (2) Force Majeure Event means any acts of God, strikes, lockouts or other labor disputes or industrial disturbances, terrorist acts or acts of a public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, tornadoes, other storms, floods, washouts or other act of nature, civil disturbances, explosions, breakage, accident or repairs to machinery or lines of pipe, freezing or cratering of pipe, inability to obtain or unavoidable delay in obtaining pipe, materials or other equipment, acts or binding orders of any court or other governmental authority whether or not having jurisdiction, and any other cause, whether similar or dissimilar to any above enumerated, not reasonably within the control of the Party claiming relief from liability and which such Party was or would have been unable to prevent by the exercise of due diligence. Failure to prevent or settle any strike or strikes or any dispute leading to a lockout shall not be considered to be a matter within the control of the Party claiming relief. A Force Majeure Event adversely affecting the development of any portion of the APP U.S. Facilities or the Canadian Pipeline (or the LNG Plant, as applicable) shall be deemed a Force Majeure Event for purposes of the development of all portions of the APP U.S. Facilities, and a Force Majeure Event affecting facilities upstream or downstream of the APP U.S. Facilities (including but not limited to the Canadian Pipeline or LNG Plant) shall be deemed a Force Majeure Event for purposes of the operation of any zone of the APP U.S. Facilities adversely affected by such Force Majeure Event. A Force Majeure Event affecting the performance by either Shipper or Transporter of any of its obligations under this Agreement shall not relieve the Party seeking relief from liability in respect of any period when the continuance of its inability to perform such obligations is due to its failure to use reasonable efforts to remedy the situation in a reasonable manner and with reasonable dispatch, nor shall a Force Majeure Event, regardless of the circumstances thereof, affect in any way the obligations of Transporter or Shipper to make payments under this Agreement or the FTSA (and a Force Majeure Event shall not include Shipper's inability to meet its obligation to pay for reasons related to the unavailability of reserves or any Interruption or other impairment of the operation of APP U.S. Facilities or facilities upstream or downstream of the APP U.S. Facilities, including impairment due to circumstances beyond Shipper's control). The Party claiming relief from liability by reason of a Force Majeure Event shall give Notice as soon as reasonably practical to the other of the occurrence and cessation of such Force Majeure Event. "Party" for the purposes of this subsection includes, in relation to Transporter, the Canadian Affiliates and, in relation to Shipper, affiliates of Shipper that have entered into precedent agreements with one of the Canadian Affiliates.

c. Notices

- (1) Whenever this Agreement requires or permits any notice to be given to any Party or any other Person, that notice must be in writing and must be delivered in

person or by courier, facsimile, or mail (a "Notice"). A Notice under this PA will be deemed given when the Person to which it is addressed receives it; provided, however, that a facsimile which is transmitted after the normal business hours of the recipient will be deemed given on the next Business Day unless the recipient has in fact acknowledged its earlier receipt. All Notices to a Party must, if not delivered in person, be sent to the address for that Party which Section VIII(c)(2) specifies or at such other address as that Party has specified by Notice to the other Parties. Oral communication does not constitute Notice for purposes of this Agreement, and e-mail addresses and telephone numbers for the Parties are listed below as a matter of convenience only.

- (2) This Section VIII(c)(2) includes initial contact information for each Party. A Party may change its contact information from time to time by Notice to the other Parties.

Transporter: TransCanada Alaska Company, LLC  
Attention: Commercial Manager  
16945 Northchase Drive  
GP4 – 430  
Houston, TX 77060  
Facsimile: (281) 654-5800  
Phone: (281) 654-6232  
E-mail: marty\_heeg@transcanada.com

Shipper: \_\_\_\_\_  
[Address]  
Attention:

- (3) Whenever any Notice is required to be given under the provisions of this Agreement, a waiver thereof in writing signed by the Person or Persons entitled to receive that Notice will be equal to the giving of that Notice.

d. Severability

If any provision of this PA is invalid, illegal, or unenforceable, that provision shall, to the extent possible, be modified in such manner as to be valid, legal, and enforceable while most nearly retaining the Parties' intent as expressed herein, and if such a modification is not possible, that provision shall be severed from this PA. In either case, the validity, legality, and enforceability of the remaining provisions of this PA are not in any way affected or impaired. The Parties shall endeavor to replace that severed provision with a new provision agreeable to the Parties that is valid and enforceable and places the Parties in substantially the same economic, business, and legal position in which they would have been if the original provision had been valid and enforceable.

e. Binding Effect

This PA binds, and inures to the benefit of, the Parties and their respective successors and permitted assignees.

f. Government Requirements

This PA and the rights and obligations of the Parties under this PA are subject to all valid and applicable governmental requirements, except choice of law or conflict-of-laws rule or principle under Section VIII(r).

g. Waiver

No waiver by a Party of any breach by another Party in the performance of any provision, condition, or requirement of this PA is deemed to be a waiver of, or in any manner a release of such Party from, performance of any other provision, condition, or requirement. No waiver is deemed to be a waiver of, or in any manner a release of such other Party from future performance of the same provision, condition, or requirement; nor shall any delay or omission of a Party to exercise any right hereunder in any manner impair the exercise of any such right or any like right accruing to it thereafter. Any waiver of any provision, condition, or requirement of this PA is valid only if it is in writing and signed by the Party against whom it is sought to be enforced.

h. Amendment

The Parties may not modify, amend or supplement this PA except by the Parties' written agreement.

i. Further Assurances

Each Party agrees to use all reasonable commercial efforts to take, or to cause to be taken, all actions, and to do, or to cause to be done, all things reasonably necessary or appropriate under applicable governmental requirements to consummate the actions this PA contemplates.

j. Exhibits

Exhibits A-D are incorporated herein and made a part of this PA; provided that Exhibit D is for illustrative purposes only.

k. Entire Agreement

This PA constitutes the entire agreement of the Parties relating to their relationship under this PA. All prior negotiations and all provisions and concepts contained in all prior agreements between the Parties on matters contained in this PA are expressly superseded by this PA. The Parties expressly waive any reliance on representations or course of dealings made prior to the execution of this PA regarding the subject of this PA.

l. Remedies

No Party shall be liable to any other Party under this PA, pursuant to Section VII or otherwise, for any Consequential Losses.

m. Third Party Beneficiaries

No provision of this PA affords any right to, is for the benefit of, or is enforceable by, any creditor of any of the Parties, and no provision of this PA confers, or is to be construed, deemed or interpreted as conferring, on any Person other than the Parties, any rights or remedies hereunder, except as this PA otherwise expressly provides; provided that, the corresponding provision of the FTSA addressing third party beneficiaries shall provide for third party creditors to benefit from and enforce the provisions of the FTSA.

n. Counterparts

This PA may be executed in two or more counterparts, all of which will be considered one and the same agreement and will become effective when two or more counterparts have been signed by each of the Parties named on the original signature pages hereof and delivered to the other Parties, it being understood that the Parties need not sign the same counterpart.

o. Assignment

- (1) Shipper may permanently assign its rights and obligations, in whole or in part, under this PA or FTSA, either before or after the Commencement Date, only if:
  - (i) Transporter has provided Shipper with written consent, which consent shall not be unreasonably withheld;
  - (ii) The assignee satisfies and adheres to the creditworthiness requirements set out in Section III(c) and Exhibit B, to Transporter's satisfaction in its sole discretion; if Shipper is a Foundation Shipper, the assignee must also satisfy and adhere to the creditworthiness requirements applicable to a Foundation Shipper; and
  - (iii) The assignee has entered into a PA or FTSA if required by and in a form satisfactory to Transporter.
- (2) Shipper shall remain liable for payment related to unassigned capacity in the event Shipper assigns less than all of its capacity. In the event Shipper effects an assignment of all capacity for the balance of the FTSA term in accord with the conditions of Section VIII(o)(1), Shipper shall thereafter not be liable for payment in relation to the assigned capacity.
- (3) If Shipper is a Foundation Shipper and assigns a part of its rights and obligations under this PA or FTSA (or reduces MDQ pursuant to Section II(f)) such that Shipper's remaining MDQ is less than 200,000 MMBtu/day, Shipper shall retain all rights and obligations set out in this PA or FTSA related particularly to a Foundation Shipper and, subject to Section VIII(o)(1)(ii), no such distinct rights or obligations shall transfer to the assignee.

p. Confidentiality

This PA and the terms set forth herein are (except insofar as certain terms are in the public domain and as such are not subject to this provision) confidential and the Parties

agree not to disclose such terms other than as otherwise set forth in this PA and as required by applicable laws, regulations or in connection with any requirement or request of a regulatory authority having jurisdiction over a Party or the subject matter hereof (including the State of Alaska). The Parties acknowledge that Transporter may file information with FERC or Canadian or Alaskan regulatory authorities in a public manner disclosing the content of this PA as necessary or desirable to support its FERC application or in furtherance of other FERC, Canadian, or Alaskan proceedings (or appeals thereof) and furthermore the Transporter may disclose the Shipper's name as a shipper and may disclose aggregate committed volumes of all shippers, by term. In addition, the Parties acknowledge that, unless otherwise restricted by applicable law or regulations, each Party may disclose the terms hereof to each of their and their respective Affiliates' officers, employees, agents, potential lenders and lenders, and other advisors that have a bona fide need to know such information and to potential assignees of their interests under the PA that have agreed to use this information only for the purposes intended herein and who agree to keep such information confidential; provided further, that the disclosing party shall be responsible for any such breach of these confidentiality provisions by the parties to which it disclosed such information. To the extent which any content of this PA shall be disclosed by FERC to the public in connection with Transporter's FERC Application, or by the officials of the State of Alaska or Canada (or its subdivisions), such disclosure shall constitute a permanent waiver by the Parties to claims of confidentiality under this Section VIII(p) with respect to the content so disclosed.

q. Surviving Terms

Unless expressly terminated by an executed FTSA, the following provisions of this PA shall survive any termination or purported termination of this PA or certain obligations of this PA: Section III(c) and Exhibit B; Section V(c); Section VII; and Section VIII (including Section VIII(l) and Section VIII(p)); provided, that Section V(c)(1), Section VII, and Section VIII (including Section VIII(l) and Section VIII(p)) shall survive Shipper's proper exercise of its rights provided by Section V(b)(1), within the time there provided.

r. Governing Law

This PA and disputes arising in relation to it are governed by the law of the State of New York, excluding such law (including conflicts of law or choice of law rules, principles, or statutes) that might result in the application of law other than the law of the State of New York.

s. Indemnification

The FTSA between the Parties shall include the following provisions:

- (1) Except as provided in Section VIII(s)(3), the Party that is the titleholder to gas lost shall bear responsibility for such loss and shall hold harmless and indemnify the non-titleholding Party against any claim, liability, loss or damage whatsoever suffered by the non-titleholding Party or by any third party;
- (2) Except as provided in Section VIII(s)(3), no Party shall pursue a claim for liability, loss, or damage against the other Party for harm to that Party and its facilities



caused by acts of third parties or by acts of nature or for the cost of repair of damage to such facilities caused by such acts;

- (3) Each Party shall bear responsibility for all its own;
  - a) tortious acts or tortious omissions connected in any way with the FTSA or the provision or acceptance of Service and causing damage or injuries of any kind to the other Party or to any third party; and
  - b) breach of any of its obligations under this Agreement.

The tortfeasor or breaching Party, as applicable, shall hold harmless and indemnify the other Party against any claim, liability, loss or damage whatsoever suffered by that Party or by any third party;

- (4) Except as provided in Section VIII(s)(3), Transporter shall have no liability in damages to Shipper in respect of failure for any reason whatsoever to accept receipt of, receive or deliver gas pursuant to the provisions of the FTSA (or any applicable provisions of the Tariff), and Shipper shall, notwithstanding any failure, for any reason whatsoever, to accept receipt of, receive, or deliver gas, make payment to Transporter in the amounts, in the manner, and at the times provided in the FTSA (and any applicable provisions of the Tariff);
- (5) In no case addressed by this Section VIII(s) shall one Party be required to make payments to the other Party for Consequential Losses suffered by that other Party; and
- (6) Nothing in this Section VIII(s) shall alter the implementation or applicability of the rate principles in Exhibit A or Transporter's ability to recover such costs in its recourse rates.

t. Interpretation

- (1) Capitalized terms have the meanings specified in this PA or, where no meaning is specified in this PA, the meanings specified in the Tariff.
- (2) The words "Section" and "Exhibit" refer to sections and exhibits of this PA unless this PA specifies otherwise.
- (3) This Agreement uses the words "herein," "hereof," and "hereunder" and words of similar import to refer to this PA as a whole and not to any provision of this PA.
- (4) Whenever the context so requires, the singular number includes the plural and vice versa, and a reference to one gender includes the other genders.
- (5) The word "including" (and, with correlative meaning, the word "include") means including, without limiting the generality of any description preceding that word. The words "shall" and "will" are used interchangeably in the mandatory and imperative sense. The word "may" means is authorized or permitted to, while "may not" means is not authorized or permitted to. The word "knowledge" (and,

with correlative meaning, the word “known”) means actual knowledge of a fact, rather than constructive knowledge of a fact.

- (6) The word “Day” means one of Monday through Sunday of each week including legal holidays.
- (7) A reference to a governmental requirement includes any amendment to it, and a reference to a particular provision of a governmental requirement includes any corresponding provisions in a succeeding governmental requirement.
- (8) A reference to a governmental official, agency, board, bureau, commission, department, or other instrumentality thereof continues to apply regardless of any changes in name or title, and applies to the successor official, agency, board, bureau, commission, department, or other instrumentality thereof to which the referenced responsibilities or functions may be transferred. Reference to a government official includes the official’s designee.
- (9) This PA uses the language the Parties have chosen to express their mutual intent. The language used in this PA shall not be construed more strictly against any Party.
- (10) This PA includes captions to sections, and subsections of, and exhibits to this PA for convenience of reference only, and these captions shall not be used in the construction or the interpretation of this PA.
- (11) Where this PA provides for a determination by Transporter, such a determination shall be made in Transporter’s sole discretion unless otherwise indicated in this PA.

**Accepted and agreed to as of the date hereof:**

**TransCanada Alaska Company, LLC**

**Signature:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

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

\_\_\_\_\_ **(Shipper)**

**Signature:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

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

**The above company representative is a duly authorized agent of the company and has the authority to bind the company.**

**EXHIBIT A**  
**to PRECEDENT AGREEMENT**  
**(Alaska-Canada Pipeline)**

Indicate your firm capacity commitment for firm transportation service and firm gas treatment service applicable to the Alaska-Canada Pipeline.

For purposes of selecting primary receipt and primary delivery points for firm gas transportation service and, if selected, firm gas treatment service, the following zones apply:

**Zone 1:** Comprising Transporter's facilities from the Point Thomson plant outlet to the inlet of the GTP, with a receipt point at Point Thomson and delivery points at or near the inlet of the GTP (permitting further delivery to the GTP or to Shipper for gas treatment using a gas treatment plant other than the GTP, for further transport in either case on Transporter's facilities in Zone 3).

**Zone 2:** Comprising the GTP, providing firm gas treatment service, with a receipt point at the GTP inlet and no separate delivery point. Gas delivered to the GTP will continue to Zone 3 of Transporter's facilities.

**Zone 3:** Comprising the pipeline downstream of the outlet of the GTP and proceeding to the U.S. (Alaska)-Canada border, with a receipt point or points downstream of the GTP and delivery points at any of five points within Alaska as indicated in the Open Season description and at the U.S. (Alaska)-Canada border for further transport on the Canadian Pipeline.

**I. FIRM TRANSPORTATION AND (OPTIONAL) GAS TREATMENT SERVICE**

**Zone 1:**

**Receipt Points**

Point Thomson Plant Outlet \_\_\_\_\_ MMBtu/day MDQ

\_\_\_\_\_ MMBtu/day MDQ

Specify Other

**Delivery Points**

GTP Inlet \_\_\_\_\_ MMBtu/day MDQ

\_\_\_\_\_ MMBtu/day MDQ

Specify Other\*

\*Shipper is obligated to treat gas at non-GTP facility and redeliver such treated gas to Transporter's facility in Zone 3

**Zone 2:**

GTP Inlet/Outlet \_\_\_\_\_ MMBtu/day MTQ

**Zone 3:**

**Receipt Points**

GTP \_\_\_\_\_ MMBtu/day MDQ

\_\_\_\_\_ MMBtu/day MDQ

Specify Other

**Delivery Points**

Alaska: Livengood \_\_\_\_\_ MMBtu/day MDQ

Alaska: Fairbanks \_\_\_\_\_ MMBtu/day MDQ

Alaska: Parks Highway \_\_\_\_\_ MMBtu/day MDQ

Alaska: Delta Junction \_\_\_\_\_ MMBtu/day MDQ

Alaska: Tok \_\_\_\_\_ MMBtu/day MDQ

U.S. (Alaska)-Canada Border \_\_\_\_\_ MMBtu/day MDQ

\_\_\_\_\_ MMBtu/day MDQ

Specify Other

Note: Indicated amounts exclude fuel used by Transporter or lost and unaccounted for during the provision of Services, which must be separately provided by Shipper. Shipper will provide its in-kind fuel and lost and unaccounted for gas ("Fuel") at the Receipt Point(s) where Shipper's gas first enters into Transporter's facilities ("Point of Origin"). Fuel will be aggregated based on the nominated path of the gas from the Point of Origin to the ultimate delivery point off of the APP U.S. Facilities or the Canadian Pipeline.

**II. RATE OPTION: FIRM TRANSPORTATION SERVICE AND (OPTIONAL) GAS TREATMENT SERVICE.**

( ) Recourse Rate

( ) Negotiated Rate

**III. INITIAL SERVICE TERM: FIRM TRANSPORTATION SERVICE AND (OPTIONAL) GAS TREATMENT SERVICE.**

( ) 20-25, 30 or 35 Years \_\_\_\_\_ (specify) (available only if "Negotiated Rate" is selected)

( ) 25 Years (if "Recourse Rate" is selected)

#### IV. NEGOTIATED RATE PRINCIPLES

Shippers electing negotiated rates agree to pay such rates without regard to any action or determination of the FERC with respect to recourse rates. The Parties acknowledge and agree that negotiated rates will be computed and paid in accordance with the negotiated rate principles and process set forth below and further agree that any disputes concerning negotiated rates shall not be resolved by FERC but will instead be decided by the dispute resolution provisions of Section VII of this PA or, following execution of the FTSA, comparable provisions of Transporter's FERC Tariff.

Negotiated rates shall be based upon, and the Parties intend that they will recover, Transporter's costs as identified in items 1-12 below. The Parties agree that negotiated rates shall be recalculated annually in order to assure that Transporter's rates recover all costs of providing service. The Parties further agree to utilize the following process to revise negotiated rates. On each November 1st following at least 15 months after the Commencement Date, Transporter shall circulate schedules and work papers to all Shippers electing negotiated rates which identify (i) Transporter's cost of service and normalized billing determinants for the twelve months ending the preceding August 31st determined in accordance with the negotiated rate principles set forth below, and (ii) Transporter's revenues collected during such twelve month period, net of any credits or applicable adjustments during such period. Transporter shall also identify revised negotiated rates to be effective beginning January 1st of the following year which shall be based upon the cost of service and normalized billing determinants identified above, adjusted for any difference (positive or negative) between costs and revenues, net of any credits or applicable adjustments, during the twelve month period identified in (i) above. Adjustments in normalized billing determinants shall be made separately by zone if necessary to recognize different levels of service or service interruption by zone.

Transporter and all Shippers electing negotiated rates shall meet to discuss the cost of service, billing determinants, schedules, work papers and proposed negotiated rates. Transporter will then file at FERC such negotiated rates, or such other rates which Transporter agrees to file, no later than December 31st and request that the negotiated rates be made effective January 1st. In the event Shipper objects to Transporter's filed negotiated rates, the matter shall be subject to the Dispute Resolution provisions of Transporter's Tariff. If the award of the arbitral Tribunal determines that Shipper's negotiated rates should be lower than the rates in effect for any applicable period, Transporter shall refund the difference between such lower rates and the rates charged, including interest at the applicable FERC rate.

Negotiated firm transportation reservation rates will be stated on an MMBtu (thermal) basis to provide for recovery by the Transporter of all fixed costs of providing firm transportation service. Shipper will also pay a commodity or usage charge for MMBtus actually transported, and provide volumes for Fuel. The negotiated firm reservation rate for gas treatment services will be calculated and stated on an MMBtu basis to provide for recovery by Transporter of all fixed costs of providing firm gas treatment services at Transporter's GTP. Shippers will also pay commodity charges per MMBtu and provide volumes for Fuel, as applicable, for gas treatment services.

The major elements in determining the cost of service and the methodology for the rate design of negotiated rates, are set forth below. Exhibit D sets forth an illustrative rate calculation.

1. Upon the approval of the final costs by FERC, the target capital structure will be 75% debt and 25% equity. The final capital structure used for setting the negotiated rates

shall be equal to Transporter's actual capital structure, provided that the capital structure utilized in determining negotiated rates shall include no less than 25% equity and be subject to A.S. 43.90.130(10), as amended from time to time. For expansions and maintenance capital, the capital structure for rate making purposes shall be 70% debt and 30% equity.

2. The actual weighted average cost of Transporter's debt will be calculated using an interest rate equal to the weighted average of the interest rate(s) on such debt. Any payments made to secure or reduce the cost of debt financing will be added to rate base. Changes in the actual weighted average cost of Transporter's debt will be reflected in negotiated rates for the Initial Service Term and any extension of the initial term of the FTSA.
3. Rate of return on equity will be 12% on an after-tax basis.
4. Income taxes will be calculated on a normalized basis, utilizing the federal and state corporate income tax rates for the Initial Service Term and any extension of the initial term of the FTSA. Changes in the federal and state corporate income tax rates will be reflected in the negotiated rate for the Initial Service Term and any extension of the initial term of the FTSA.
5. For the Initial Service Term and any extension of that term, depreciation on the GTP and transmission plant used for purposes of deriving rates will be calculated annually. An FTSA with an Initial Service Term of 20 to 25 years will recover 80% of the Shipper's Proportional Share of capital costs approved by FERC for Recourse Rates, and allowance for funds used during construction ("AFUDC") and property tax paid during construction ("Approved Capital Costs"), during the Initial Service Term, with Shipper's Proportional Share defined as an amount equal to Shipper's MDQ divided by aggregate MDQs, as adjusted to reflect firm shipper defaults and incremental transportation service from initial capacity. Such Shipper's Proportional Share of the remaining 20% of Approved Capital Costs shall be recovered in an additional period of five years following the Initial Service Term, utilizing the assumption that all non-defaulting firm shippers with Initial Service Terms of 20 years or more elect to renew. An FTSA with an Initial Service Term exceeding 25 years shall recover 80% of Shipper's Proportional Share of Approved Capital Costs in the first 25 years of that Term, and such Shipper's Proportional Share of the remaining 20% of Approved Capital Costs shall be recovered over the balance of the Initial Service Term.
6. Rates will include a reasonable estimate of negative salvage costs to fund the net costs of abandoning the APP U.S. Facilities and restoring the affected properties at the end of the system's service life. Changes in the negative salvage costs will be reflected in the revenue requirement of the negotiated rate for the Initial Service Term and any extension of the initial term of the FTSA.
7. The rate base will include, among other things, (i) debt service reserve, (ii) cost of line pack, inventory, and spare parts, (iii) payments made to secure or reduce the cost of debt financing, (iv) working capital up to one-twelfth of annual operating expenses, (v) prepayments, and (vi) Approved Capital Costs utilizing the weighted average cost of debt in principle No. 2 and the 12% return on equity, and be reduced by the cumulative depreciation and cost reimbursement received pursuant to the Alaska Gasline Inducement Act ("AGIA").

8. The negotiated reservation rates will be calculated based upon billing determinants equal to the sum of all firm contracted capacities under non-defaulting service agreements, normalized for any billing determinants attributable to in-state rates designed on a distance basis and adjusted for any reductions associated with service disruptions or changes in Shippers' MDQ or MTQ, for both the Initial Service Term and any extension of that term.
9. During the Initial Service Term and any extension of that term,
  - (a) Shipper shall continue to pay full reservation charges during any period of reduction of firm transportation service or firm gas treatment service, including an Interruption; provided that, reservation charges during a GTP Turnaround or Phase-In Period will be charged with respect to a reduced capacity for firm gas treatment and firm gas transportation services;
  - (b) There will be a commodity or usage charge which will recover costs which vary with volumes actually shipped (the commodity charge is estimated to be minimal);
  - (c) Fuel will be recovered on the basis of actual quantities of fuel consumed or utilized in operations and fuel lost and unaccounted for;
  - (d) Rates will reflect changes in Transporter's taxes (other than income taxes), fees assessed by any governmental entity, and all other operating costs;
  - (e) In addition to changes reflected elsewhere in these rate principles, negotiated rates will reflect changes in (i) billing determinants reflecting contracted capacities and (ii) rate base;
  - (f) Transporter will credit to Shipper and other shippers that have secured firm transportation service, on a pro rata basis according to firm transportation shippers' MDQ, 75 percent of the revenue received by Transporter for the provision of AOS service, IT service, and PAL service.
10. Negotiated rates shall be adjusted to ensure that they are not inconsistent with A.S. 43.90.130(7)(A)-(D), as amended from time to time.
11. A Foundation Shipper shall be entitled to elect the same negotiated rate principles, in their entirety, as offered prior to the Commencement Date and accepted by any other shipper.
12. Negotiated rate shippers shall pay the recourse rate for AOS and any other non FT-1 service.



**EXHIBIT A**  
**to PRECEDENT AGREEMENT**  
**(Valdez Pipeline)**

Indicate your firm capacity commitment for firm transportation service and firm gas treatment service applicable to the Valdez Pipeline.

For purposes of selecting primary receipt and primary delivery points for firm gas transportation service and, if selected, firm gas treatment service, the following zones apply:

**Zone 1:** Comprising Transporter's facilities from the Point Thomson plant outlet to the inlet of the GTP, with a receipt point at Point Thomson and delivery points at or near the inlet of the GTP (permitting further delivery to the GTP or to Shipper for gas treatment using a gas treatment plant other than the GTP, for further transport in either case on Transporter's facilities in Zone 3).

**Zone 2:** Comprising the GTP, providing firm gas treatment service, with a receipt point at the GTP inlet and no separate delivery point. Gas delivered to the GTP will continue to Zone 3 of Transporter's facilities.

**Zone 3:** Comprising the pipeline downstream of the outlet of the GTP and proceeding to near Valdez, with a receipt point or points downstream of the GTP and delivery points at any of five points within Alaska as indicated in the Open Season description and at the LNG liquefaction facility at Valdez.

**I. FIRM TRANSPORTATION AND (OPTIONAL) GAS TREATMENT SERVICE**

**Zone 1:**

**Receipt Points**

Point Thomson Plant Outlet \_\_\_\_\_ MMBtu/day MDQ

\_\_\_\_\_ MMBtu/day MDQ

Specify Other

**Delivery Points**

GTP Inlet \_\_\_\_\_ MMBtu/day MDQ

\_\_\_\_\_ MMBtu/day MDQ

Specify Other\*

\*Shipper is obligated to treat gas at non-GTP facility and redeliver such treated gas to Transporter's facility in Zone 3

**Zone 2:**

GTP Inlet/Outlet \_\_\_\_\_ MMBtu/day MDQ

**Zone 3:**

**Receipt Points**

GTP \_\_\_\_\_ MMBtu/day MTQ

\_\_\_\_\_ MMBtu/day MDQ

Specify Other \_\_\_\_\_

**Delivery Points**

Alaska: Livengood \_\_\_\_\_ MMBtu/day MDQ

Alaska: Fairbanks \_\_\_\_\_ MMBtu/day MDQ

Alaska: Parks Highway \_\_\_\_\_ MMBtu/day MDQ

Alaska: Delta Junction \_\_\_\_\_ MMBtu/day MDQ

Alaska: Glennallen \_\_\_\_\_ MMBtu/day MDQ

Alaska: Valdez \_\_\_\_\_ MMBtu/day MDQ

Alaska: Valdez LNG Facility \_\_\_\_\_ MMBtu/day MDQ

\_\_\_\_\_ MMBtu/day MDQ

Specify Other \_\_\_\_\_

Note: Indicated amounts exclude fuel used by Transporter or lost and unaccounted for during the provision of Services, which must be separately provided by Shipper. Shipper will provide its in-kind fuel and lost and unaccounted for gas ("Fuel") at the Receipt Point(s) where Shipper's gas first enters into Transporter's facilities ("Point of Origin"). Fuel will be aggregated based on the nominated path of the gas from the Point of Origin to the ultimate delivery point off of the APP U.S. Facilities or the Canadian Pipeline.

**II. RATE OPTION: FIRM TRANSPORTATION SERVICE AND (OPTIONAL) GAS TREATMENT SERVICE.**

( ) Recourse Rate

( ) Negotiated Rate

**III. INITIAL SERVICE TERM: FIRM TRANSPORTATION SERVICE AND (OPTIONAL) GAS TREATMENT SERVICE.**

( ) 20-25, 30 or 35 Years \_\_\_\_\_ (specify) (available only if "Negotiated Rate" is selected)

( ) 25 Years (if "Recourse Rate" is selected)

#### IV. NEGOTIATED RATE PRINCIPLES

Shippers electing negotiated rates agree to pay such rates without regard to any action or determination of the FERC with respect to recourse rates. The Parties acknowledge and agree that negotiated rates will be computed and paid in accordance with the negotiated rate principles and process set forth below and further agree that any disputes concerning negotiated rates shall not be resolved by FERC but will instead be decided by the dispute resolution provisions of Section VII of this PA or, following execution of the FTSA, comparable provisions of Transporter's FERC Tariff.

Negotiated rates shall be based upon, and the Parties intend that they will recover, Transporter's costs as identified in items 1-12 below. The Parties agree that negotiated rates shall be recalculated annually in order to assure that Transporter's rates recover all costs of providing service. The Parties further agree to utilize the following process to revise negotiated rates. On each November 1st following at least 15 months after the Commencement Date, Transporter shall circulate schedules and work papers to all Shippers electing negotiated rates which identify (i) Transporter's cost of service and normalized billing determinants for the twelve months ending the preceding August 31st determined in accordance with the negotiated rate principles set forth below, and (ii) Transporter's revenues collected during such twelve month period, net of any credits or applicable adjustments during such period. Transporter shall also identify revised negotiated rates to be effective beginning January 1st of the following year which shall be based upon the cost of service and normalized billing determinants identified above, adjusted for any difference (positive or negative) between costs and revenues, net of any credits or applicable adjustments, during the twelve month period identified in (i) above. Adjustments in normalized billing determinants shall be made separately by zone if necessary to recognize different levels of service or service interruption by zone.

Transporter and all Shippers electing negotiated rates shall meet to discuss the cost of service, billing determinants, schedules, work papers and proposed negotiated rates. Transporter will then file at FERC such negotiated rates, or such other rates which Transporter agrees to file, no later than December 31st and request that the negotiated rates be made effective January 1st. In the event Shipper objects to Transporter's filed negotiated rates, the matter shall be subject to the Dispute Resolution provisions of Transporter's Tariff. If the award of the arbitral Tribunal determines that Shipper's negotiated rates should be lower than the rates in effect for any applicable period, Transporter shall refund the difference between such lower rates and the rates charged, including interest at the applicable FERC rate.

Negotiated firm transportation reservation rates will be stated on an MMBtu (thermal) basis to provide for recovery by the Transporter of all fixed costs of providing firm transportation service. Shipper will also pay a commodity or usage charge for MMBtus actually transported, and provide volumes for Fuel. The negotiated firm reservation rate for gas treatment services will be calculated and stated on an MMBtu basis to provide for recovery by Transporter of all fixed costs of providing firm gas treatment services at Transporter's GTP. Shippers will also pay commodity charges per MMBtu and provide volumes for Fuel, as applicable, for gas treatment services.

The major elements in determining the cost of service and the methodology for the rate design of negotiated rates, are set forth below. Exhibit D sets forth an illustrative rate calculation.

1. Upon the approval of the final costs by FERC, the target capital structure will be 75% debt and 25% equity. The final capital structure used for setting the negotiated rates

shall be equal to Transporter's actual capital structure, provided that the capital structure utilized in determining negotiated rates shall include no less than 25% equity and be subject to A.S. 43.90.130(10), as amended from time to time. For expansions and maintenance capital, the capital structure for rate making purposes shall be 70% debt and 30% equity.

2. The actual weighted average cost of Transporter's debt will be calculated using an interest rate equal to the weighted average of the interest rate(s) on such debt. Any payments made to secure or reduce the cost of debt financing will be added to rate base. Changes in the actual weighted average cost of Transporter's debt will be reflected in negotiated rates for the Initial Service Term and any extension of the initial term of the FTSA.
3. Rate of return on equity will be 12% on an after-tax basis.
4. Income taxes will be calculated on a normalized basis, utilizing the federal and state corporate income tax rates for the Initial Service Term and any extension of the initial term of the FTSA. Changes in the federal and state corporate income tax rates will be reflected in the negotiated rate for the Initial Service Term and any extension of the initial term of the FTSA.
5. For the Initial Service Term and any extension of that term, depreciation on the GTP and transmission plant used for purposes of deriving rates will be calculated annually. An FTSA with an Initial Service Term of 20 to 25 years will recover 80% of the Shipper's Proportional Share of capital costs approved by FERC for Recourse Rates, and allowance for funds used during construction ("AFUDC") and property tax paid during construction ("Approved Capital Costs"), during the Initial Service Term, with Shipper's Proportional Share defined as an amount equal to Shipper's MDQ divided by aggregate MDQs, as adjusted to reflect firm shipper defaults and incremental transportation service from initial capacity. Such Shipper's Proportional Share of the remaining 20% of Approved Capital Costs shall be recovered in an additional period of five years following the Initial Service Term, utilizing the assumption that all non-defaulting firm shippers with Initial Service Terms of 20 years or more elect to renew. An FTSA with an Initial Service Term exceeding 25 years shall recover 80% of Shipper's Proportional Share of Approved Capital Costs in the first 25 years of that Term, and such Shipper's Proportional Share of the remaining 20% of Approved Capital Costs shall be recovered over the balance of the Initial Service Term.
6. Rates will include a reasonable estimate of negative salvage costs to fund the net costs of abandoning the APP U.S. Facilities and restoring the affected properties at the end of the system's service life. Changes in the negative salvage costs will be reflected in the revenue requirement of the negotiated rate for the Initial Service Term and any extension of the initial term of the FTSA.
7. The rate base will include, among other things, (i) debt service reserve, (ii) cost of line pack, inventory, and spare parts, (iii) payments made to secure or reduce the cost of debt financing, (iv) working capital up to one-twelfth of annual operating expenses, (v) prepayments, and (vi) Approved Capital Costs utilizing the weighted average cost of debt in principle No. 2 and the 12% return on equity, and be reduced by the cumulative depreciation and cost reimbursement received pursuant to the Alaska Gasline Inducement Act.

8. The negotiated reservation rates will be calculated based upon billing determinants equal to the sum of all firm contracted capacities under non-defaulting service agreements, normalized for any billing determinants attributable to in-state rates designed on a distance basis and adjusted for any reductions associated with service disruptions or changes in Shippers' MDQ or MTQ, for both the Initial Service Term and any extension of that term.
9. During the Initial Service Term and any extension of that term,
  - (a) Shipper shall continue to pay full reservation charges during any period of reduction of firm transportation service or firm gas treatment service, including an Interruption; provided that, reservation charges during a GTP Turnaround or Phase-In Period will be charged with respect to a reduced capacity for firm gas treatment and firm gas transportation services;
  - (b) There will be a commodity or usage charge which will recover costs which vary with volumes actually shipped (the commodity charge is estimated to be minimal);
  - (c) Fuel will be recovered on the basis of actual quantities of fuel consumed or utilized in operations and fuel lost and unaccounted for;
  - (d) Rates will reflect changes in Transporter's taxes (other than income taxes), fees assessed by any governmental entity, and all other operating costs;
  - (e) In addition to changes reflected elsewhere in these rate principles, negotiated rates will reflect changes in (i) billing determinants reflecting contracted capacities and (ii) rate base;
  - (f) Transporter will credit to Shipper and other shippers that have secured firm transportation service, on a pro rata basis according to firm transportation shippers' MDQ, 75 percent of the revenue received by Transporter for the provision of AOS service, IT service, and PAL service.
10. Negotiated rates shall be adjusted to ensure that they are not inconsistent with A.S. 43.90.130(7)(A)-(D), as amended from time to time.
11. A Foundation Shipper shall be entitled to elect the same negotiated rate principles, in their entirety, as offered prior to the Commencement Date and accepted by any other shipper.
12. Negotiated rate shippers shall pay the recourse rate for AOS and any other non FT-1 service.

## **EXHIBIT B**

### **to PRECEDENT AGREEMENT:**

#### **CREDITWORTHINESS**

The following creditworthiness standards apply for purposes of this PA, including Section III(c), Section IV(a)(4), and Section V(a) of this PA, and for evaluating requests for provision of service. These creditworthiness standards shall continue to apply to Shipper (or assignees) through the FTSA and during the Initial Service Term and any extension of that term. Transporter shall not be required to continue to perform its obligations under this PA or an FTSA, or to commence or continue Service, on behalf of any Shipper where (i) Shipper fails to establish and maintain creditworthiness or (ii) Shipper or Shipper's Affiliate fails to establish and maintain creditworthiness with respect to a precedent agreement or FTSA entered with a Canadian Affiliate. Transporter shall determine Shipper's creditworthiness, at any time in its sole discretion, in accordance with the following:

1. Creditworthiness Standard

- (a) Subject to Transporter's analysis of factors set forth below in Section 2, Shipper will be deemed creditworthy if (i) its Tangible Net Worth is, in Transporter's assessment in its sole discretion, equal to or greater than Shipper's Capital Cost Share as defined below; and (ii) it satisfies the requirements of Section 1(b) or 1(c), as applicable. Nothing herein shall limit Transporter's ability to undertake further analysis of the factors set forth in Section 2 in evaluating and making a determination regarding Shipper's creditworthiness. If Shipper is the State of Alaska, is guaranteed by the State of Alaska, or otherwise is supported by the full faith and credit of the State of Alaska, Shipper is deemed to have satisfied the Tangible Net Worth requirement set forth in this Section 1(a); provided that Shipper still must satisfy the requirements of Section 1(b) or 1(c), as applicable.

Shipper's "Capital Cost Share" is its pro rata share (determined based on the aggregate of firm transportation capacity commitments indicated by Shipper on all of its Exhibit As compared to shippers' total firm transportation capacity commitments, excluding any firm transportation capacity commitments secured by a shipper that fails to secure board and internal approvals, as indicated in Section V(b)(1)) of the capital costs (net of cumulative depreciation collected and cost reimbursement received under AGIA by Transporter), AFUDC, and other expenditures incorporated into rate base incurred or to be incurred by Transporter and Canadian Affiliates, in Transporter's and Canadian Affiliates' estimation, in developing the APP U.S. Facilities and the Canadian Pipeline.

- (b) A Foundation Shipper will be deemed creditworthy if its long-term unenhanced senior unsecured debt securities are rated at least A- by Standard & Poor's, a division of The McGraw-Hill Companies, Inc. ("S&P") or at least A3 by Moody's Investors Service, Inc. ("Moody's"), in each case with a stable or better outlook, and it meets the provisions of Section 1(a) above. If Foundation Shipper's rating has a negative outlook or is on creditwatch for downgrade, Foundation Shipper's rating will be reduced by one rating level. If Foundation Shipper is rated by both S&P and Moody's, only the lower rating will be taken into account.

- (c) If Shipper is not a Foundation Shipper, it will be deemed creditworthy if its long-term unenhanced senior unsecured debt securities are rated at least BBB by S&P or at least Baa2 by Moody's, in each case with a stable or better outlook, and it meets the provisions of Section 1(a) above. If Shipper's rating has a negative outlook or is on creditwatch for downgrade, Shipper's rating will be reduced by one rating level. If Shipper is rated by both S&P and Moody's, only the lower rating will be taken into account.
- (d) "Tangible Net Worth" means total assets, less total liabilities, less intangible assets, less off-balance sheet obligations. Intangible assets include, but are not limited to, goodwill, patents, copyrights, and unamortized loan costs. Only actual tangible assets are included for purposes of assessing creditworthiness.

## 2. Determination of Creditworthiness

In evaluating Shipper's creditworthiness, Transporter may consider, in addition to the factors set forth in Section 1, the following additional information and factors:

- (a) Opinions, outlooks, watch alerts, and rating actions of S&P and Moody's and other credit reporting agencies;
- (b) The pro forma effect on Shipper's debt rating of execution by Shipper of the FTSA;
- (c) Financial statements and reports;
- (d) Whether a petition is filed by or against Shipper, any of its affiliates, or any guarantor of Shipper's obligations hereunder, under any chapter of the bankruptcy code of the United States or under legislation of a similar nature of any other nation;
- (e) Whether Shipper, any of Shipper's Affiliates, or any guarantor of Shipper's obligations hereunder is subject to any lawsuits or outstanding judgments which could materially impair their ability to remain solvent;
- (f) The nature of Shipper's business and the effect on that business of general economic conditions and economic conditions specific to it, including Shipper's and Shipper's Affiliates' ability to recover the costs of Transporter's and Canadian Affiliates' services through filings with regulatory agencies or otherwise to pass on such costs to its customers;
- (g) Whether Shipper or any of Shipper's Affiliates has or has had any delinquent balances outstanding for services provided previously by Transporter or Canadian Affiliates and whether Shipper and Shipper's Affiliates are paying and have paid their account balances according to the terms established in their agreement(s) with Transporter or Canadian Affiliates (excluding amounts as to which there is a good faith dispute);
- (h) Any other information, including any information provided by Shipper or requested by Transporter, that is relevant to Shipper's creditworthiness or legal status.

3. As indicated further in Section VIII(o) of this PA, the creditworthiness requirements applicable to Shipper shall apply to any assignee pursuant to an assignment (in whole or part) of this PA or to any permanent release, in whole or part, pursuant to an FTSA.

4. Failure to Satisfy Creditworthiness – Alternatives

If Shipper fails or ceases to satisfy the creditworthiness standard or criteria as described above, in order to obtain or continue service Shipper must provide and maintain one or more of the following credit alternatives, in lieu of the creditworthiness standard requirements outlined in Section 1:

- (a) Guaranty: Shipper may provide a guaranty that is sufficient to cover its contractual obligations to the Transporter in a form satisfactory to Transporter in its sole discretion, from a guarantor which meets the creditworthiness standard or criteria described above; or
- (b) Collateral:
  - (i) Shipper may provide an irrevocable standby letter of credit in a form and from a financial institution acceptable to Transporter in its sole discretion in an amount no greater than Shipper's contractual obligations to Transporter. If Shipper does not, at least twenty (20) business days prior to the conclusion of the letter of credit's term, provide the Transporter with a replacement letter of credit, or alternate security that meets the requirements set out in this Section 4, acceptable to Transporter in its sole discretion, Transporter shall be entitled to draw upon the full value of the letter of credit;
  - (ii) Shipper may provide a cash security deposit acceptable to Transporter in its sole discretion in an amount no greater than Shipper's contractual obligations to Transporter; or
  - (iii) Shipper may provide any other security or collateral acceptable to Transporter in Transporter's sole discretion.
- (c) Upon termination in whole or part of this PA, if not superseded by an executed FTSA, or upon termination of an executed FTSA, any guarantee or collateral provided by Shipper shall first be applied to meet any obligation of Shipper to Transporter, and any remaining balance shall thereafter be returned to Shipper.

5. Ongoing Creditworthiness Review

Transporter shall have the right to review a Shipper's creditworthiness and the continued acceptability of any credit alternative provided on an ongoing basis, and Shipper shall provide, within ten (10) business days upon Transporter's request, any requested information in order to determine the continuing creditworthiness of Shipper and acceptability of any credit alternative provided. If Shipper or credit alternative provider is not subject to regulation by the Securities and Exchange Commission, Shipper shall notify Transporter in writing within ten (10) business days of the details of any material adverse change in its or its credit alternative provider's business, properties, conditions, or results of operations (financial or otherwise). If Shipper does not provide such



information or notification within ten (10) business days of Transporter's request or occurrence of material adverse change, the Transporter may deem that it cannot determine the Shipper's or its guarantor's Tangible Net Worth, and the Transporter may set the Shipper's or its guarantor's Tangible Net Worth to zero.

6. Notification of Failure to Meet Creditworthiness

Upon notification by Transporter, in accordance with PA Section VIII(c), that Shipper no longer meets Transporter's creditworthiness standard or criteria, or notification from Canadian Affiliates that Shipper or Shipper's Affiliate no longer meets Canadian Affiliates' creditworthiness standard or criteria, Shipper must within five (5) business days provide additional payment, guaranty, collateral, or other mutually agreed security sufficient to meet the creditworthiness requirements set forth in this Exhibit B.

- (a) If Shipper fails to provide one of the credit alternatives within this time period, or if Shipper or Shipper's Affiliate fails to provide a credit alternative or similar credit support to Canadian Affiliates in accordance with the terms of the agreements that Shipper or Shipper's Affiliate has with Canadian Affiliates, prior to the Commencement Date, Transporter has the right to suspend its performance under this PA and any FTSA or terminate this PA and any FTSA pursuant to Section V, with Shipper to pay the amounts indicated in Section V(c) (or corresponding provision of the FTSA). Transporter may, after terminating this PA or any FTSA, resell capacity previously held by Shipper. Nothing in this Subsection limits other remedies, including actions for damages, that Transporter may seek against Shipper.
- (b) If Shipper fails to provide one of the credit alternatives within this time period following the Commencement Date, or if Shipper or Shipper's Affiliate fails to provide a credit alternative or similar credit support to Canadian Affiliates in accordance with the terms of the agreements that Shipper or Shipper's Affiliate has with Canadian Affiliates following the Commencement Date, Transporter may provide Notice to Shipper of its intention to suspend service in five (5) business days, provided however, that any such suspension shall not relieve Shipper from any obligation to pay any further rates, charges or other amounts payable to Transporter under the Tariff. If Shipper or Shipper's Affiliate does not provide one of the credit alternatives to Transporter or Canadian Affiliates, as applicable, within five (5) business days of suspension of its service, Transporter may initiate termination of service proceedings with the Commission and provide such Notice to Shipper and any replacement shipper(s) that service will be terminated within thirty (30) days.
- (c) If Shipper at any time fails to provide one of the credit alternatives at the time Transporter initiates termination of service proceedings, Transporter shall immediately be entitled to collect, and Shipper shall be immediately obligated to pay, all amounts due to Transporter from Shipper during the full term of this PA and an FTSA (or, if no executed FTSA exists, the amounts that would be due under the FTSA Shipper is obligated to enter pursuant to Section III(b)); these rights shall be in addition to other rights of and remedies available to Transporter, including those set forth in this Section 6(a) and 6(b) to Exhibit B and in Section V(c).

- (d) If Shipper has multiple agreements with Transporter and defaults on one agreement, or if Shipper or any of Shipper's Affiliates defaults on any agreement with any of the Canadian Affiliates, Transporter may deem a default by Shipper on any agreement(s) Shipper has with Transporter.
- (e) If a petition is filed, by or against Shipper, any of Shipper's Affiliates, or any guarantor of Shipper's obligations hereunder, under any chapter of the bankruptcy code of the United States or under legislation of a similar nature of any other nation, Transporter reserves the right to suspend and terminate service as described in Section 6. Transporter also may exercise any other remedy available to it hereunder, at law or in equity.

**EXHIBIT C**

**to PRECEDENT AGREEMENT:**

**ADDITIONAL SHIPPER CONDITIONS PRECEDENT**

**EXHIBIT D**

**to PRECEDENT AGREEMENT:**

**ILLUSTRATIVE ANNUAL NEGOTIATED RESERVATION (20-25 Year Term)  
RATE CALCULATION /<sub>1,2</sub>**

Negotiated Rate = Revenue Requirement / Billing Determinants

Revenue Requirement = Cost of Equity + Cost of Debt + Income Tax + OPEX + Negative Salvage + Depreciation + Other Taxes

Billing Determinants = projected annual contracted firm transportation capacity

Cost of Equity = Rate Base x Equity Percentage x 12%

Cost of Debt = Rate Base x Debt Percentage x Debt WAC

Income Tax = Cost of Equity x Income Tax Rate / (1 – Income Tax Rate)

Income Tax Rate = composite Federal and State income tax rates

OPEX = projected annual operating and administrative & general expenses

Negative Salvage = projected abandonment cost amortized over contract life (adjusted for inflation)

Depreciation = (Gross Plant + AFUDC + Property Tax paid during construction) x 80%, levelized over term of contract (20-25 years)

Gross Plant = original cost of the pipeline and facilities

Other Taxes = projected annual ad valorem and other non-income taxes

Rate Base = Capital cost as approved by FERC, working capital, AFUDC and property tax paid during construction, net of accumulated depreciation, accumulated deferred income taxes and AGIA payments received

Allowance for Funds Used during Construction (AFUDC) = sum of interest during construction (IDC) and return on equity during construction (EDC) calculated on an annual basis

IDC = Capital Costs Incurred x 70% (targeted) x Debt WAC

EDC = Capital Costs Incurred x 30% (targeted) x 12%

Equity Percentage = actual capital structure (target 25%) and, for maintenance and expansion, 30%

Debt Percentage = actual capital structure (target 75%) and, for maintenance and expansion, 70%

Return on Equity (RoE) = 12% after tax

Debt WAC = an interest rate equal to the weighted average cost of the interest rate(s) on Transporter's debt

Notes:

1. Exhibit D is provided for illustrative purposes only.
2. Adjusted for prior year projected / actual differences as necessary.