

Attachment A
Capacity Release Agreement

CAPACITY RELEASE AGREEMENT

This Capacity Release Agreement (the “**Agreement**”) is made and entered into as of _____ (the “**Effective Date**”) by and among City of Victorville (“**Victorville**”), a California municipal corporation and charter city, acting through Victorville Municipal Utilities Services, a municipal utility organized and existing under the laws of the State of California (“**VMUS**”) (hereinafter VMUS and Victorville shall be collectively, and each individually as appropriate in the context, referred to as “**COV**”), and High Desert Power Project, LLC, a California limited liability company (“**HDPP**”). Victorville, VMUS, and HDPP are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**”. Certain capitalized terms used in this Agreement are given defined meanings in Appendix A attached hereto. Any capitalized terms not defined herein shall have the meaning assigned to them in the Kern River Tariff (defined below).

RECITALS:

- A. HDPP entered into that certain Restated Transportation Services Agreement by and between HDPP and Kern River Gas Transmission Company (“**Kern River**”), dated May 23, 2012 (Contract No. 2002), as amended May 1, 2023 (“**Amended 2012 TSA**”).
- B. Kern River executed an Amendment to Restated Transportation Services Agreement with HDPP, Contract No. 2002, dated May 1, 2023, to update the negotiated rate and extend the term of the Amended 2012 TSA. Commencing September 1, 2023, the negotiated rate is a Daily Reservation/Demand Rate of \$0.0140/Dth or \$0.0139/Dth for leap years (collectively the “**Negotiated Rate**”), and the term of the Amended 2012 TSA is extended for five years until August 31, 2028.
- C. On August 31, 2023, Kern River filed the May 1, 2023, Amended and Restated Agreement and associated Tariff revisions (FERC Docket No. RP23-1000-000) to reflect the new negotiated rate and term extension. FERC approved the Amended and Restated Agreement on September 15, 2023 to be effective September 1, 2023.
- D. HDPP desires to permanently release to COV a portion of HDPP’s firm forward-haul natural gas transportation capacity rights on Kern River’s High Desert Lateral Pipeline as set forth in the Amended 2012 TSA (the “**Gas Transportation Capacity Rights**”) in exchange for the consideration described herein.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by the Parties, the Parties agree as follows:

1. Offer to Release. HDPP agrees to use commercially reasonable efforts to post on Kern River's Customer Activities Website, within 5 business days after the Effective Date, an Offer to Release a total of 10,000 Dekatherms/Day (Dth/Day) of firm forward-haul natural gas capacity currently held by HDPP under the Amended 2012 TSA (the "**Permanently Released Capacity**"). HDPP shall use commercially reasonable efforts to ensure that the Offer to Release will be on a permanent and non-recallable basis, and COV will be identified as the prearranged bidder at the Negotiated Rate, term and other applicable terms as set forth in the Amended 2012 TSA as determined by Kern River. Unless an alternative nondiscriminatory ranking methodology is requested by COV prior to posting, HDPP will use commercially reasonable efforts to designate the "Net Revenue" methodology for determining the value of bids submitted pursuant to Section 15.7 of Kern River's Federal Energy Regulatory Commission Gas Tariff (the "**Kern River Tariff**").
2. Recall Rights. HDPP shall designate in the Offer to Release that HDPP is not entitled to recall the Permanently Released Capacity.
3. Biddable Posting. The Parties acknowledge that the Permanently Released Capacity must be posted for bid pursuant to FERC regulations and Section 15 of the Kern River Tariff. HDPP's obligations under this agreement are fully satisfied after: (1) HDPP submits to Kern River a valid Offer to Release pursuant to Section 1 above; (2) the Offer to Release is accepted by Kern River; and (3) the Offer to Release is posted for bid pursuant to the Kern River Tariff. COV shall ensure that it maintains the highest scoring bid and is awarded the Permanently Released Capacity, but in no instance will COV be required to bid more than the Negotiated Rate. Each Party shall utilize its best efforts to effect the release of the Permanently Released Capacity from HDPP to COV at the Negotiated Rate. Neither Party shall take any action to directly or indirectly encourage or otherwise cause the failure of the proposed permanent release.
4. Kern River Tariff. The Parties shall use commercially reasonable efforts to satisfy any requirements of the Kern River Tariff, as it may change from time to time, and to execute any and all documents as may be reasonably necessary to effectuate the permanent release of the Permanently Released Capacity such that Kern River (i) agrees to look solely to COV for all obligations with respect to the Permanently Released Capacity and (ii) releases HDPP from all obligations for demand charges, reservation charges, and all other charges related to the Permanently Released Capacity; provided, that HDPP shall have no obligation to take any action or execute any document that would adversely affect HDPP. HDPP acknowledges that if the Permanently Released Capacity is released to COV, pursuant to the Kern River Tariff, COV will have a pro rata share of rights in the Receipt Points and Delivery Points as set forth in the Amended 2012 TSA.
5. Security.
 - (a) Within 5 days after COV is awarded the Permanently Released Capacity, COV shall deliver to HDPP an irrevocable, transferable, standby letter of credit in the amount of \$500,000 (the "**LC Amount**"), issued by a bank that is a member of the Federal Reserve System satisfactory to HDPP, and meeting the requirements set

forth below (including any extension thereof or permitted replacement therefor, the “**Letter of Credit**”), as security for the faithful performance and observance by COV of its obligations under this Agreement, and COV shall maintain such Letter of Credit in full force and effect for the benefit of HDPP until the date on which Kern River releases and discharges HDPP from all obligations, damages, claims and liabilities arising out of or relating to the Permanently Released Capacity under the Amended 2012 TSA and the Kern River Tariff. The Letter of Credit (i) shall be payable to HDPP in partial or full draws upon presentation solely of a notice signed by an officer of HDPP (which presentation may be made at the issuer’s counter or by overnight mail at the address specified in such Letter or Credit), (ii) shall have an expiry date of the later of (a) the date COV executes a Transportation Services Agreement with Kern River assuming all HDPP obligations relating to the Released Capacity in accordance with Section 15.8(b)(ii) of the Kern River Tariff, (b) the date Kern River files at FERC to further amend the Amended 2012 TSA to add an exhibit memorializing the permanent capacity release to COV in accordance with Section 15.8(a)(i) of the Kern River Tariff, and (c) the date Kern River provides HDPP a full release of liability pertaining to the Permanently Released Capacity pursuant to Kern River Tariff Section 15.10(a), and (iii) shall be in form and substance otherwise satisfactory to HDPP. Any and all fees or costs charged by the issuer in connection with the issuance, maintenance or transfer of the Letter of Credit shall be paid by COV.

- (b) If COV fails to perform any of its obligations under this Agreement, including, without limitation, COV’s obligation to comply with all requirements of the Amended 2012 TSA and the Kern River Tariff to the extent the same relate to the Permanently Released Capacity, HDPP shall have the right to draw on the Letter of Credit, in whole or in part, to the extent required to pay, or to reimburse HDPP for, any HDPP Liabilities (as defined below) incurred by HDPP as a result of such failure, including without limitation any costs of HDPP performing, at its election (but without any obligation to do so) any such obligations on COV’s behalf. If any portion of the Letter of Credit is drawn upon pursuant to this clause (b), within 5 business days after written demand from HDPP, COV shall deliver to HDPP either an amendment of the Letter of Credit signed by the issuer, reinstating the undrawn amount of such Letter of Credit by an amount equal to such drawing up to the LC Amount, or shall deliver to HDPP, in replacement of such Letter of Credit, a new Letter of Credit in the full LC Amount that conforms to the requirements of this Section 5.
- (c) HDPP shall also have the right to draw on the full amount of the Letter of Credit if a material adverse change in the financial condition of the issuer of the Letter of Credit occurs, as reasonably determined by HDPP in good faith, and COV does not replace such Letter of Credit with a new Letter of Credit conforming to the requirements of this Section 5 within 15 business days after written request by HDPP. Any amounts drawn by HDPP pursuant to this clause (c) shall be held as cash security by HDPP and may be applied by HDPP to any HDPP Liabilities to

the same extent HDPP would have been entitled draw upon the Letter of Credit.

(d) Notwithstanding anything to the contrary contained herein and for the avoidance of doubt, if COV is not awarded the Permanently Released Capacity, COV shall not be required to comply with the provisions of this Section 5.

6. Term. The term (the “**Term**”) of this Agreement shall begin on the Effective Date and, unless earlier terminated pursuant to Section 7 below, shall terminate upon the date and time at which the Capacity Release open season ends in accordance with Section 15.9 of the Kern River Tariff. Notwithstanding anything herein to the contrary, the last sentence of Section 3, Section 4, Section 5, the last sentence of Section 7, the last sentence of Section 8, and Sections 9, 10, 11, 12, 13 and 14 of this Agreement shall survive the termination or expiration of this Agreement.
7. Termination. Either Party may deliver written notice to the other Party of any material breach of this Agreement by such other Party. The Party receiving notice of the material breach shall have ten (10) business days after receiving such notice to cure the material breach. If the Party receiving notice of the material breach does not cure the material breach within ten (10) business days after receiving notice of such material breach, the Party that delivered notice of the material breach may terminate this Agreement immediately upon providing written notice of termination to the other Party. In addition, HDPP may immediately terminate this Agreement upon providing written notice to COV if (i) for any reason, despite having exerted commercially reasonable efforts, HDPP is not able to successfully post on Kern River’s Customer Activities Website, within 5 business days after the Effective Date, an Offer to Release the Permanently Released Capacity on the terms described in Section 1, (ii) HDPP determines that the costs required to be incurred by HDPP in order to perform its obligations under this Agreement are reasonably likely to exceed the HDPP Expense Cap (as defined below), or (iii) Kern River challenges this Agreement or asserts any breach of or default under the Kern River Tariff or the Amended 2012 TSA resulting from or in connection with this Agreement. If this Agreement is terminated prior to the posting of the Offer to Release the Permanently Released Capacity on Kern River’s Customer Activities Website, HDPP shall return the Letter of Credit to COV as promptly as reasonably practicable (but in no event later than 10 business days) after the termination date.
8. Price. Within 5 business days after HDPP posts on Kern River’s Customer Activities Website an Offer to Release the Permanently Released Capacity with COV identified as the prearranged bidder as set forth in Section 1, COV shall pay HDPP Two-Hundred Thousand Dollars and No Cents (\$200,000.00) (“**Purchase Price**”), payable by wire transfer in immediately available funds in accordance with written wire instructions provided by HDPP. The Purchase Price shall be non-refundable and fully earned upon the Offer to Release for the Permanently Released Capacity being posted for bid pursuant to the Kern River Tariff and HDPP’s fulfillment of its obligations under Section 3 of this Agreement.

9. Representations and Warranties.

- a. COV Representations and Warranties: By signing this Agreement, COV represents, warrants, acknowledges and agrees that:
 - i. The execution and delivery of this Agreement has been duly authorized by all necessary action on the part of COV, this Agreement constitutes the legal, valid and binding obligation of COV, enforceable against COV in accordance with its terms, and, except as otherwise set forth herein, the performance by COV of its obligations hereunder will not require the approval of any Governmental Authority, will not contravene, conflict with or result in the breach or violation of any document, instrument or agreement to which it is a party or is bound or of any Law.
 - ii. COV possesses all requisite power and authority to perform this Agreement and to carry out the transactions contemplated herein.
 - iii. COV is qualified to receive service from Kern River under the provisions of the Kern River Tariff.
 - iv. COV shall comply with the provisions of the Kern River Tariff, including without limitation those provisions related to capacity release, solely to the extent such provisions directly relate to (i) COV's obligations under this Agreement, or (ii) the Permanently Released Capacity.
 - v. No suit, action or arbitration, or legal, administrative or other proceeding is pending or, to its knowledge, threatened against COV that would affect the validity or enforceability of this Agreement or the ability of it to fulfill its obligations and commitments hereunder.
- b. HDPP Representations and Warranties: By signing this Agreement, HDPP represents, warrants, acknowledges and agrees that:
 - i. The execution and delivery of this Agreement has been duly authorized by all necessary action on the part of HDPP, this Agreement constitutes the legal, valid and binding obligation of HDPP, enforceable against HDPP in accordance with its terms, and, except as otherwise set forth herein, the performance by HDPP of its obligations hereunder will not require the approval of any Governmental Authority, will not contravene, conflict with or result in the breach or violation of any document, instrument or agreement to which it is a party or is bound or of any Law.
 - ii. HDPP possesses all requisite power and authority to perform this Agreement and to carry out the transactions contemplated herein.

- iii. HDPP shall comply with the provisions of the Kern River Tariff, including without limitation those provisions related to capacity release, solely to the extent such provisions directly relate to (i) HDPP's obligations under this Agreement, or (ii) the Permanently Released Capacity.
- iv. No suit, action or arbitration, or legal, administrative or other proceeding is pending or, to its knowledge, threatened against HDPP that would affect the validity or enforceability of this Agreement or the ability of it to fulfill its obligations and commitments hereunder.

10. Release. COV acknowledges that HDPP shall seek an unconditional release from Kern River whereby Kern River shall release and discharge HDPP from all obligations, damages, claims, and liabilities arising out of or related to the Permanently Released Capacity under the Amended 2012 TSA and the Kern River Tariff. Unless and until such unconditional release is obtained, COV shall comply with all requirements of the Amended 2012 TSA and the Kern River Tariff to the extent the same relate to the Permanently Released Capacity.

11. Indemnifications.

- a. COV shall, jointly and severally, indemnify, defend (with counsel approved by HDPP) and hold harmless HDPP and each officer, director, employee, shareholder, partner, member or agent of HDPP (each, a "**HDPP Indemnified Person**") from and against any and all claims, actions, suits, fines, judgments, injuries, penalties, damages, demands, settlements, losses (to property, materials, equipment, or otherwise), liabilities, costs, charges and expenses (including without limitation legal fees and expenses), in each case whether or not arising out of a third-party claim (collectively, "**HDPP Liabilities**") incurred in connection with or arising out of or resulting from: (a) the Gas Transportation Capacity Rights, the Permanently Released Capacity, or any other obligations under this Agreement; (b) the negligence, fraud or willful misconduct of COV or its Affiliates in connection with COV or its Affiliates obligations under this Agreement; (c) any breach by COV of any representation or warranty under this Agreement; or (d) any failure by COV to perform any covenant or obligation under this Agreement, except, in each case, to the extent such HDPP Liabilities are caused by (x) the fraud, gross negligence or willful misconduct of any HDPP Indemnified Person, (y) the intentional and willful violation of any Law by any HDPP Indemnified Person or (z) the intentional and willful breach by any HDPP Indemnified Person of this Agreement. The indemnity obligations created by this Section 11 shall survive the termination and/or completion of this Agreement.
- b. HDPP shall, jointly and severally, indemnify, defend (with counsel approved by COV) and hold harmless COV and the elected or appointed officials, officers, directors, employees, independent contractors, or agents of COV (each, a "**COV Indemnified Person**") from and against any and all claims, actions, suits, fines,

judgments, injuries, penalties, damages, demands, settlements, losses (to property, materials, equipment, or otherwise), liabilities, costs, charges and expenses (including without limitation legal fees and expenses), in each case whether or not arising out of a third-party claim (collectively, “**COV Liabilities**”) incurred in connection with or arising out of or resulting from: (a) the negligence, fraud or willful misconduct of HDPP or its Affiliates in connection with HDPP or its Affiliates obligations under this Agreement; (b) any breach by HDPP of any representation or warranty under this Agreement; or (c) any failure by HDPP to perform any covenant or obligation under this Agreement, except, in each case, to the extent such COV Liabilities are caused by (x) the fraud, gross negligence or willful misconduct of any COV Indemnified Person, (y) the intentional and willful violation of any Law by any COV Indemnified Person or (z) the intentional and willful breach by any COV Indemnified Person of this Agreement. The indemnity obligations created by this Section 11 shall survive the termination and/or completion of this Agreement.

12. HDPP Expense Cap. Notwithstanding anything to the contrary contained elsewhere in this Agreement, HDPP shall not be required to incur any costs in excess of twenty thousand dollars (\$20,000.00) in the aggregate (“**HDPP Expense Cap**”) to reasonably perform its obligations under or in connection with this Agreement. The Parties agree that any costs incurred or accrued by HDPP prior to the Effective Date of this Agreement shall not be included in any calculation of the HDPP Expense Cap.
13. Disclaimer of Warranties. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 9(B), COV EXPRESSLY ACKNOWLEDGES AND AGREES THAT (1) HDPP MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE COMPLIANCE OF THIS AGREEMENT OR THE TRANSACTIONS OR ACTIVITIES CONTEMPLATED HEREBY, INCLUDING WITHOUT LIMITATION THE MATTERS CONTEMPLATED BY SECTION 1, WITH THE KERN RIVER TARIFF, THE AMENDED 2012 TSA, OR APPLICABLE LAWS; (2) HDPP IS NOT ASSUMING ANY LIABILITY OR OBLIGATION HEREUNDER IF ANY OR ALL OF THE TRANSACTIONS OR ACTIVITIES CONTEMPLATED HEREBY, INCLUDING, WITHOUT LIMITATION, THE PROCEDURES FOR RELEASING THE PERMANENTLY RELEASED CAPACITY ARE INEFFECTIVE UNDER OR VIOLATE THE KERN RIVER TARIFF, THE AMENDED 2012 TSA, OR APPLICABLE LAWS; AND (3) THE RELEASE OF THE PERMANENTLY RELEASED CAPACITY CONTEMPLATED BY THIS AGREEMENT IS ON AN “AS IS, WHERE IS” AND “WITH ALL FAULTS” BASIS, WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER STATUTORY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

14. Miscellaneous.

- (a) Governing Law; Venue. The Parties acknowledge and agree that this Agreement is subject to all applicable terms and conditions of the Kern River Tariff and all applicable Laws, as they may change from time-to-time. To the extent that state law may be applicable, this Agreement shall be governed and interpreted in accordance with the laws of the State of California without application of any conflict of laws principles thereof. Any action arising out of or relating to this Agreement shall be instituted in the state or federal courts located in San Bernardino County, California, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such action or legal proceeding.
- (b) Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHTS TO A TRIAL BY JURY IN ANY LEGAL ACTION TO ENFORCE OR INTERPRET THE PROVISIONS OF THIS AGREEMENT.
- (c) Assignment. Neither Party shall have the right to assign or transfer this Agreement, in whole or in part, or any of its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Without limiting the generality of the foregoing, HDPP may assign or grant a security interest in this Agreement and the Letter of Credit in connection with any financing or refinancing by HDPP or any of its Affiliates, and, in connection therewith, COV agrees to, and to cause its Affiliates to, cooperate with HDPP and the Lenders in the negotiation of any reasonable amendment or addition to this Agreement required by any Lender which does not result in a material adverse change in COV's rights or obligations under this Agreement, and COV also agrees to execute, acknowledge and deliver any and all such further documents and instruments and to take such other action at the request of HDPP, including without limitation the execution and delivery of certifications, estoppels, and consents, as may reasonably be required by the Lenders in order to allow any such financing or refinancing. Any and all costs incurred by HDPP with respect to an assignment or grant of a security interest in this Agreement or the Letter of Credit connection with a financing or refinancing shall be borne fully by HDPP and in no event shall COV be responsible for any such costs.
- (d) FERC Approval. Subject to the terms and conditions set forth herein, the Parties agree to execute and deliver all documents reasonably necessary for this Agreement to comply with FERC requirements; provided, however, that for purposes of clarity no Party shall be obligated to execute any documents which have or could reasonably be expected to have an adverse effect on such Party or its rights and benefits under this Agreement.
- (e) Entire Agreement. This Agreement contains the entire understanding between the

Parties, superseding all prior or contemporaneous communications, agreements, and understandings between the Parties. In the event of any conflict between the terms of this Agreement and the terms of any other agreements established in connection with the matters contained herein, the terms of this Agreement shall prevail.

(f) Waiver of Consequential Damages; Limitation on Liability. EXCEPT WITH RESPECT TO THE PARTIES' OBLIGATIONS UNDER SECTION 11, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES OR ITS OR THEIR RESPECTIVE MEMBERS, SHAREHOLDERS, DIRECTORS, OFFICERS AGENTS AND EMPLOYEES FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING LOSS OF ACTUAL OR ANTICIPATED PROFITS, REVENUES OR BUSINESS, COST OF CAPITAL, LOSS OF DATA OR LOSS OF OPPORTUNITY IN CONNECTION WITH OR ARISING OUT OF OR RESULTING FROM THIS AGREEMENT, REGARDLESS OF WHETHER SUCH LIABILITY ARISES OUT OF CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE. IN NO EVENT SHALL HDPP'S AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT (WHETHER IN CONTRACT, IN TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), STRICT LIABILITY OR OTHERWISE) EXCEED THIRTY THREE THOUSAND THREE HUNDRED AND THIRTY THREE DOLLARS (\$33,333.00); PROVIDED, THAT SUCH LIMITATION ON LIABILITY SHALL NOT APPLY IN THE EVENT OF FRAUD BY HDPP.

(g) Notice. All notices, requests, demands, and other communications required or permitted to be given by the Parties hereunder shall be in writing and shall be delivered (a) in person, (b) by overnight courier, fees prepaid, to the address of the intended recipient as set forth below, or (c) by electronic mail to the address of the recipient as set forth below with written confirmation of receipt (which does not include automatic email system generated "read" receipts). Notice delivered in person or by overnight courier shall be acknowledged in writing at the time of receipt. All such notices, requests, demands, and other communications shall be deemed to have been received by the addressee if by personal delivery or overnight courier, upon such delivery, and if by electronic mail, upon confirmation of receipt (which does not include automatic email system generated "read" receipts). All such notices, requests, demands, and other communications shall be sent to the following addresses:

City of Victorville
c/o Victorville Municipal Utilities Services

Attn:
Email:

High Desert Power Project, LLC

Attn:
Email:

The foregoing addresses may be changed by any Party by giving written notice to the other Party as provided above.

- (h) Amendments. No amendment or other modification of this Agreement shall be valid or binding upon the Parties unless such amendment or other modification is in writing and duly executed by both Parties.
- (i) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
- (j) Severability. The invalidity of one or more phrases, sentences, clauses, sections or subsections contained in this Agreement shall not affect the validity of the remaining portions of the Agreement so long as the material purposes of this Agreement can be determined and carried out.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first above written.

High Desert Power Project, LLC
a California limited liability company

By: _____
Name: _____
Title: _____
Date: _____

City of Victorville

By: _____
Name: _____
Title: _____
Date: _____

APPENDIX A

Attached to and made a part of the Capacity Release Agreement

“Affiliate” shall mean, when used in reference to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with the specified Person.

“Agreement” shall have the meaning set forth in the in the opening paragraph of the Agreement.

“Amended 2012 TSA” shall have the meaning set forth in the Recitals.

“Control,” “Controlled by,” and “under common Control with,” with respect to any Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or member or partnership interests, by contract or otherwise.

“COV” shall have the meaning set forth in the in the opening paragraph of the Agreement.

“COV Indemnified Person” shall have the meaning set forth in Section 11.

“COV Liabilities” shall have the meaning set forth in Section 11.

“Delivery Points” shall mean the existing Kern River “Victorville” delivery meter to HDPP and the new, proposed Lane’s Crossing delivery meter to COV.

“Effective Date” has the meaning set forth in the in the opening paragraph of the Agreement.

“FERC” shall mean the Federal Energy Regulatory Commission.

“Gas Transportation Capacity Rights” shall have the meaning set forth in the Recitals.

“Governmental Authority” shall mean any federal, state, tribal, municipal, national or other government, any governmental or quasi-governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof, or any entity, officer or examiner exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a State of the United States or the United States.

“Ground Lease” means that certain Ground Lease and Development Agreement dated February 14, 2001, between SCLAA and HDPT.

“HDPP” shall have the meaning set forth in the in the opening paragraph of the Agreement.

“HDPP Expense Cap” shall have the meaning set forth in Section 12.

“HDPP Indemnified Person” shall have the meaning set forth in Section 11.

“HDPP Liabilities” shall have the meaning set forth in Section 11.

“HDPT” shall mean High Desert Power Trust, a Delaware statutory business trust.

“High Desert Lateral Pipeline” shall mean the approximately 32-mile-long high-pressure pipeline lateral originating at Kern River’s mainline near Kramer Junction, CA and terminating at Kern River’s metering station located near the Northeast corner of the Land leased by SCLAA to HDPT and subleased by HDPT to HDPP.

“Kern River” shall have the meaning set forth in the Recitals.

“Kern River Tariff” shall have the meaning set forth in Section 1.

“Law” shall mean any statute, regulation, ordinance, rule, government approval, agreement, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Authority having jurisdiction over the matter or Person in question, whether now or hereafter in effect applicable to this Agreement or to any of the parties to this Agreement.

“Land” or “Leased Land” means that portion of SCLAA property leased to HDPT as defined in section 1.01 of the Ground Lease and Exhibit A thereto.

“LC Amount” shall have the meaning set forth in Section 5(a).

“Letter of Credit” shall have the meaning set forth in Section 5(a).

“Lender” means any Person or Persons providing debt or lease financing or refinancing to HDPP or any of its Affiliates, and its or their successors and assigns, including any agent or trustee for such Person or Persons.

“Negotiated Rate” shall have the meaning set forth in the Recitals.

“Party” or “Parties” shall have the meaning set forth in the opening paragraph of the Agreement.

“Permanently Released Capacity” shall have the meaning set forth in Section 1.

“Person” shall mean an individual, corporation, limited liability company, voluntary association, joint stock company, business trust, partnership, agency, Governmental Authority or other entity.

“Purchase Price” shall have the meaning set forth in Section 8.

“Receipt Points” shall mean Kern River’s Sidewinder meter and Fremont Peak (PG&E) meter, and any future receipt point meters built to serve the High Desert Lateral Pipeline.

“SCLAA” means the Southern California Logistics Airport Authority, the lessor under the Ground Lease.

“Term” shall have the meaning set forth in Section 6.

“Victorville” shall have the meaning set forth in the in the opening paragraph of the Agreement.

“VMUS” shall have the meaning set forth in the in the opening paragraph of the Agreement.