

FACILITIES AGREEMENT

This FACILITIES AGREEMENT (“Agreement”), is entered into and made effective as of _____, 2023 by and between Kinder Morgan Tejas Pipeline LLC (“Company”) and The City of Tomball (“Connecting Party”). Company and Connecting Party are sometimes referred to individually as “Party” and collectively as “Parties.”

WITNESSETH:

WHEREAS, Company owns an intrastate natural gas pipeline and related facilities (the “Company Pipeline”) located in Harris County, TX; and

WHEREAS, Company and Connecting Party desire for Company to construct, own and install the Company Facilities (hereinafter defined) for control and delivery of natural gas from Company to Connecting Party at the interconnect described below to be located at a mutually agreeable site in Harris County, TX.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements contained in this Agreement, the Parties agree as follows:

1. Company Facilities. Company will design, procure materials for, construct, install, test, own, maintain, and operate the following facilities (collectively, the “Company Facilities”):
 - a. one (1) one-inch (1”) Coriolis meter (the “Meter”);
 - b. one (1) three-inch (3”) hot tap;
 - c. electronic flow measurement equipment, transmitters, solar power system, and communications equipment (collectively, the “EFM”), and
 - d. all necessary pipelines and related facilities that are required to deliver natural gas from the Company Pipeline at the Meter.

The Company Facilities include above-grade facilities and below-grade piping as depicted on the process flow diagram attached to this Agreement as Exhibit “A”.

2. Connecting Party Facilities. Connecting Party will, at its sole cost, design, procure materials for, construct, install, test, own, maintain, and operate the following facilities (collectively the “Connecting Party Facilities”) downstream of the Company Facilities:
 - a. any electronic flow measurement equipment Connecting Party desires to use for check measurement of the gas to be delivered by Company, or install on designated ports of the Company’s EFM for data sharing (“Data Sharing Equipment”), provided that any such Data Sharing Equipment is approved by, and deemed necessary by Company;
 - b. all over pressure protection equipment required to protect the Connecting Party Facilities; and
 - c. all necessary pipelines and related facilities that are required to receive natural gas from the Company Pipeline at the Meter.

3. Engineering, Design and Construction. The Company Facilities will be designed, installed, and constructed in accordance with engineering standards as adopted by Company, as those standards may be amended or supplemented from time to time. The Company Facilities and the Connecting Party Facilities will each be designed, installed, and constructed in accordance with sound and prudent natural gas pipeline industry practice (including cathodic protection). Each Party may conduct onsite inspections of the other Party's facilities during and after construction. Upon request by one Party to the other Party, the other Party will provide the following: (a) the welder's test for butt welds and branch welds; (b) the fabrication and radiographic inspection reports; (c) hydrostatic testing documentation; (d) OPP documentation, as applicable; and (e) as-built drawings and information. The Parties will arrange a mutually agreeable schedule for connecting the Connecting Party Facilities to the Company Facilities.

4. Payment.

- a. Connecting Party will reimburse Company for the actual cost to design, construct, install and test the Company Facilities (the "Actual Cost"). The Actual Cost of the Company Facilities permitted to be charged to Connecting Party will include (i) the direct, third-party, out-of-pocket costs incurred for equipment, materials and labor, and easement/right-of-way acquisition costs allowing for the construction, installation, testing, operation and maintenance of the Company Facilities; (ii) the direct costs of any internal labor utilized in Company's performance under this Agreement; (iii) a charge reflecting Company's overhead costs, equal to sixteen percent (16%) of the costs reflected in clauses (i) and (ii), and (iv) tax gross up costs equal to fourteen percent (14%) of the other costs and expenses incurred by Company for the Company Facilities (including fourteen percent (14%) overhead costs).
- b. The cost of the Company Facilities is estimated to be two hundred thirty-six thousand seven hundred sixty-two dollars (\$236,762.00) (the "Estimated Cost") as detailed on Exhibit "B". Upon execution of this Agreement and prior to the construction and installation of the Company Facilities, Connecting Party will pay Company the Estimated Cost. After the construction, installation and testing of the Company Facilities is complete, Company will determine the Actual Cost and a true-up will be made between the Actual Cost and the Estimated Cost. If the Actual Cost is less than the Estimated Cost, then Company will refund any excess amounts to Connecting Party within thirty (30) days after the true-up. If the Actual Cost exceeds the Estimated Cost, then Company will invoice Connecting Party for the difference between the Actual Cost and the Estimated Cost, and Connecting Party will pay such invoice within thirty (30) days of its receipt.

5. Late Payment. If Connecting Party has not paid any amount due Company under this Agreement on or before the fifth (5th) day following the date such payment is due, then Company may, in addition to its other remedies, cease operation of the Company Facilities at any time prior to receiving payment in full by giving written notice to Connecting Party.

6. Property Access Rights. All of the Company Facilities will be located on a surface site to be obtained by Connecting Party as depicted on Exhibit “A” (the “Surface Site”). Connecting Party shall, at no cost to Company, grant to Company, or cause third parties to grant to Company, all rights-of-way and easements that Company deems necessary to construct, install, test, maintain, and operate the Company Facilities, on terms and conditions acceptable to Company, including rights-of-way and easements for (i) the Surface Site, (ii) additional work space, (iii) an all-weather access road for accessibility to the Surface Site, and (iv) 24/7 direct vehicular and pedestrian ingress and egress to the Surface Site and additional work space by Company and its employees, contractors and invitees and those of its affiliates (the “Connecting Party Easements”). Until such time as the Connecting Party Easements are in full force and effect, Company will have, and Connecting Party hereby grants to Company, a non-exclusive, irrevocable license, for the use and benefit of Company, its successors and assigns, and their respective employees, contractors and invitees and those of their affiliates, to use (1) the Surface Site, (2) additional work space, and (3) all access roads providing vehicular and pedestrian ingress and egress to the Surface Site and additional work space, in each case as Company deems necessary to construct, install, test, maintain, and operate the Company Facilities.

7. Operation. Company will, at its own expense, operate and maintain or cause the operation and maintenance of the Company Facilities in accordance with sound and prudent natural gas pipeline industry practice. Connecting Party will, at its own expense, operate and maintain the Connecting Party Facilities in accordance with sound and prudent natural gas pipeline industry practice. Company and Connecting Party, as applicable, shall comply with the following:

- a. Delivery Point/Measurement Point. Custody of the gas will transfer at the outlet flange of the Meter at the Company Facilities (the “Delivery Point”). The Delivery Point will be used to perform custody transfer measurement of the gas.
- b. Quality Specifications and Measurement. All gas delivered to the Delivery Point will be measured in accordance with and will conform to normal and reasonable natural gas pipeline industry standards and as provided for in the Commercial Agreement (hereinafter defined). Company will perform the testing and calibration of the Meter at reasonable times after giving Connecting Party no less than two (2) business days advance notice. Connecting Party will have the right to be present during testing or calibration of the Meter; provided, if Company has given the required notice to Connecting Party and Connecting Party is not present at the time specified, then Company may proceed with the tests as though Connecting Party were present, and the results therefrom will be deemed correct and accurate.
- c. Maximum/Minimum Flow Rate. The following are the minimum and maximum instantaneous flow rates at the interconnect, which are estimated on a uniform hourly rate of flow:

Minimum Flow Rate: 37 Mscf/day
Maximum Flow Rate: 7.5 MMscf/day

The designation of these daily flow rates represents a design approximation and is neither a representation nor a guarantee that actual operating conditions will permit such flow.

- d. Pressure. Company will deliver the gas to the Delivery Point at a pressure not to exceed the then-current maximum allowable operating pressure (“MAOP”) of the Company Pipeline.
- e. Noncompliance. Should either Party fail to comply with any provision of this Agreement with regard to gas quality, pressure and pulsation control or any other provision which could impact the operation and safety of the Connecting Party Facilities or the Company Facilities, the impacted Party will have the right to immediately suspend the flow of gas through the Connecting Party Facilities. Such Party will notify the other Party of such suspension as soon as reasonably possible.
- f. Odorization. It is understood and agreed that any gas delivered and received through the Delivery Point will not be odorized.

8. Data Sharing. Company will provide Connecting Party access for the Data Sharing Equipment. Connecting Party, at its sole risk, may install the Data Sharing Equipment approved by, and deemed necessary by Company, to obtain access to Company’s EFM data. Connecting Party will have access to such EFM data only in a format established by Company that will not interfere with the operation of the Meter. Company reserves the right to disconnect the Data Sharing Equipment without prior notice if the Data Sharing Equipment in any way interferes with or adversely affects Company’s operations. If it becomes necessary for Company to disconnect the Data Sharing Equipment from Company’s EFM, Company will notify Connecting Party of disconnection prior to or as soon as possible thereafter. Company will not be liable or responsible to Connecting Party Indemnified Parties (hereinafter defined), for, and Connecting Party will protect, defend indemnify, and hold harmless the Company Indemnified Parties (hereinafter defined) from and against, any and all Claims (hereinafter defined), including Claims for punitive, indirect, exemplary or consequential damages, arising from the use of, or the unavailability of the Data Sharing Equipment.

9. Compliance with Laws. The Company Facilities and the Connecting Party Facilities will be constructed, installed, operated, and maintained in compliance with all valid laws, orders, directives, rules, and regulations of all governmental authorities having jurisdiction.

10. Inspection and Retention of Records. Each Party will have the right at reasonable hours to examine the books and records of the other Party to the extent necessary to verify the accuracy of any statement, calculation or determination made pursuant to the provisions of this Agreement. If any such examination reveals, or if either Party discovers, any error in its own or the other Party’s statements, calculations or determinations, then proper adjustment and correction of the error will be made as promptly as practicable. All invoices and billings will be conclusively presumed final and accurate unless objected to in writing, with adequate explanation and/or documentation, within two (2) years from receipt by Connecting Party of the invoice(s) relating thereto.

11. Term. This Agreement will be effective as of the date first above written and will remain in full force and effect for an initial term ending February 29, 2028, then continuing for successive one year terms unless either Party gives the other Party written notice of termination at least sixty (60) days prior to the last day of the initial term or any renewal term (as applicable); provided, however, the Parties agree that while a Commercial Agreement applicable to the Delivery Point is in place, neither Party may terminate this Agreement.

12. **Intentionally Left Blank**

13. **Limitation of Consequential Damage Recovery. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED OTHER THAN (I) SUCH DAMAGES AS ARE AWARDED OR PAID TO THIRD PARTIES AND WHICH AN INDEMNIFIED PERSON IS LEGALLY COMPELLED TO PAY TO SUCH THIRD PARTIES AND (II) AS PROVIDED IN SECTION 8.**

14. Separate Commercial Agreement. This Agreement is not an agreement to transport, buy, sell, gather, treat, process, blend, receive or deliver gas. Any transportation, purchase, sale, gathering, treating, processing, blending, receipt or delivery of gas through the facilities described in, upgraded, installed or constructed under this Agreement will be performed under the terms and conditions of one or more separate written agreements (each, a “Commercial Agreement”). Further, the Parties agree that this Agreement does not waive any gas quality specifications in any Commercial Agreement.

15. Notices. All notices, including but not limited to invoices, required to be served under this Agreement must be in writing and served by (a) personal or overnight delivery service, (b) U.S. certified or registered mail, or (c) electronic mail, and must be addressed as follows:

Company:
Kinder Morgan Tejas Pipeline LLC
1001 Louisiana, Suite 1000
Houston, Texas 77002
Attn: Contract Administration
Phone Number: (713) 369-9427
E-mail: contractadministration@kindermorgan.com
Invoices: Cassell_Kincaid@kindermorgan.com

Connecting Party:
The City of Tomball
401 Market Street, Tomball, Texas 77375
Phone Number: (281) 290-1400
E-mail: desquivel@tomballtx.gov

or at such other address as the Parties may from time to time designate to one another in writing. Notices sent by certified mail or courier will be deemed provided upon delivery as evidenced by the receipt of delivery. Notices sent by electronic mail will be deemed to have been provided upon the sending Party's receipt of a non-automated response from the recipient or automatic read receipt generated from the recipient's electronic mail provider. Electronic mail copies of all notices and correspondence under this Agreement, including signatures, will constitute original copies of the notice(s) and correspondence and will be as binding on the Parties as the original, as long as there is verification of receipt of the copy.

16. Laws. **THIS AGREEMENT WILL BE INTERPRETED, CONSTRUED AND GOVERNED BY THE LAWS OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICT OF LAW RULES WHICH WOULD REFER TO THE LAWS OF ANOTHER JURISDICTION. EXCLUSIVE VENUE FOR ANY ACTION BROUGHT HEREUPON WILL BE IN THE STATE OR FEDERAL COURTS LOCATED IN HOUSTON, HARRIS COUNTY, TEXAS. EACH PARTY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM RELATING TO THIS AGREEMENT. Reasonable attorneys' fees and costs may be awarded to the prevailing Party in connection with any action taken to enforce its rights under this Agreement.**

17. Binding Agreement and Assignments. Once executed by the Parties, this Agreement will be binding upon and inure to the benefit of the Parties and their permitted successors and assigns. The Parties do not intend there to be any third party beneficiaries of this Agreement, except for the indemnified parties specifically described herein. A Party may not sell, assign or otherwise transfer, in whole or in part, any interest in this Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld, delayed or conditioned; provided that, a Party may sell, assign or transfer its interest in this Agreement to an affiliate without consent of the other Party upon notice to the other Party. Any sale, assignment or transfer in violation of the foregoing provisions will be void.

18. Force Majeure. In the event any Party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations, other than payment, it is agreed that upon such Party's giving written notice of such Force Majeure to the other Party, the obligations of both Parties, to the extent affected by such event, shall be suspended from the inception and during the continuance of the Force Majeure, but for no longer period, and the cause shall be remedied with reasonable dispatch. "Force Majeure" means an event not anticipated as of the date hereof, which is not within the reasonable control of the Party, including but not limited to: (i) either Party's failure to obtain or delay in obtaining any necessary permits or easements or rights-of-way, which by the exercise of due diligence, such Party is unable to overcome, and (ii) in the case of third-party obligations and/or facilities, the third party claiming suspension, which by the exercise of due diligence such third party is unable to overcome.

19. Relationship of the Parties. This Agreement is not intended to and does not (i) create any relationship of partnership, joint venture, agency, or employment; or (ii) permit either Party to obligate the other. Each Party is and will remain an independent contractor as to the other Party in all respects and in the performance of all work and activities under this Agreement. The detailed methods and manner of conducting such work and activities by such Party will be under the complete control and direction of such Party unless modified by another provision of this

Agreement. Nothing in this Agreement will limit or be interpreted as conflicting with the independent contractor status of such Party and its subcontractors, but in the event of any such conflict, the provisions of this Section will govern.

20. Miscellaneous. The division of this Agreement into articles, sections and subsections, and the insertion of headings and table of contents, if any, are for convenience of reference only, and will not affect the construction or interpretation hereof. To the extent of any conflict between the terms and provisions of the portion of this Agreement that precedes the signature lines (the “Body of the Agreement”) and any Exhibit attached hereto, the Body of the Agreement will control. This Agreement, together with the Exhibits attached hereto, set forth the entire agreement between the Parties relating to the subject matter hereof and supersedes and replaces all previous discussions, undertakings and agreements regarding the subject matter of this Agreement. Except as otherwise expressly provided, this Agreement will not be amended other than by written agreement of the Parties. The failure of any Party to insist upon strict performance of any provision hereof will not constitute a waiver of, or estoppel against asserting, the right to require such performance in the future, nor will a waiver or estoppel in any one instance constitute a waiver or estoppel with respect to a later breach of a similar nature or otherwise.

21. Severability. If any provision of this Agreement becomes or is found to be illegal or unenforceable for any reason, such clause or provision must first be modified to the extent necessary to make this Agreement legal and enforceable and then if necessary, second, severed from the remainder of this Agreement to allow the remainder of this Agreement to remain in full force and effect.

22. Waiver. Any waiver of any term or condition will not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition of this Agreement. The failure of any Party to assert any of its rights hereunder will not constitute a waiver of any such rights.

23. Counterparts. This Agreement may be executed in any number of counterparts (including by facsimile, portable document format (.pdf), or other electronic or photostatic transmission), each of which when so executed will be deemed to be an originally executed original.

24. Company makes the following verifications in accordance with Chapters 2271 and 2274 of the Texas Government Code:

- a. the Company does not boycott Israel and will not boycott Israel during the term of the contract to be entered into with the City of Tomball;
- b. the Company does not boycott energy companies and will not boycott energy companies during the term of the contract to be entered into with the City of Tomball; and
- c. the Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

Signature Page to Follow

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

Kinder Morgan Tejas Pipeline LLC

By: _____

Title: _____

Date: _____

The City of Tomball

By: _____

Title: _____

Date: _____

[SIGNATURE PAGE TO THAT CERTAIN FACILITIES AGREEMENT BY AND BETWEEN KINDER MORGAN TEJAS PIPELINE LLC AND THE CITY OF TOMBALL DATED _____, 2023.]

EXHIBITS

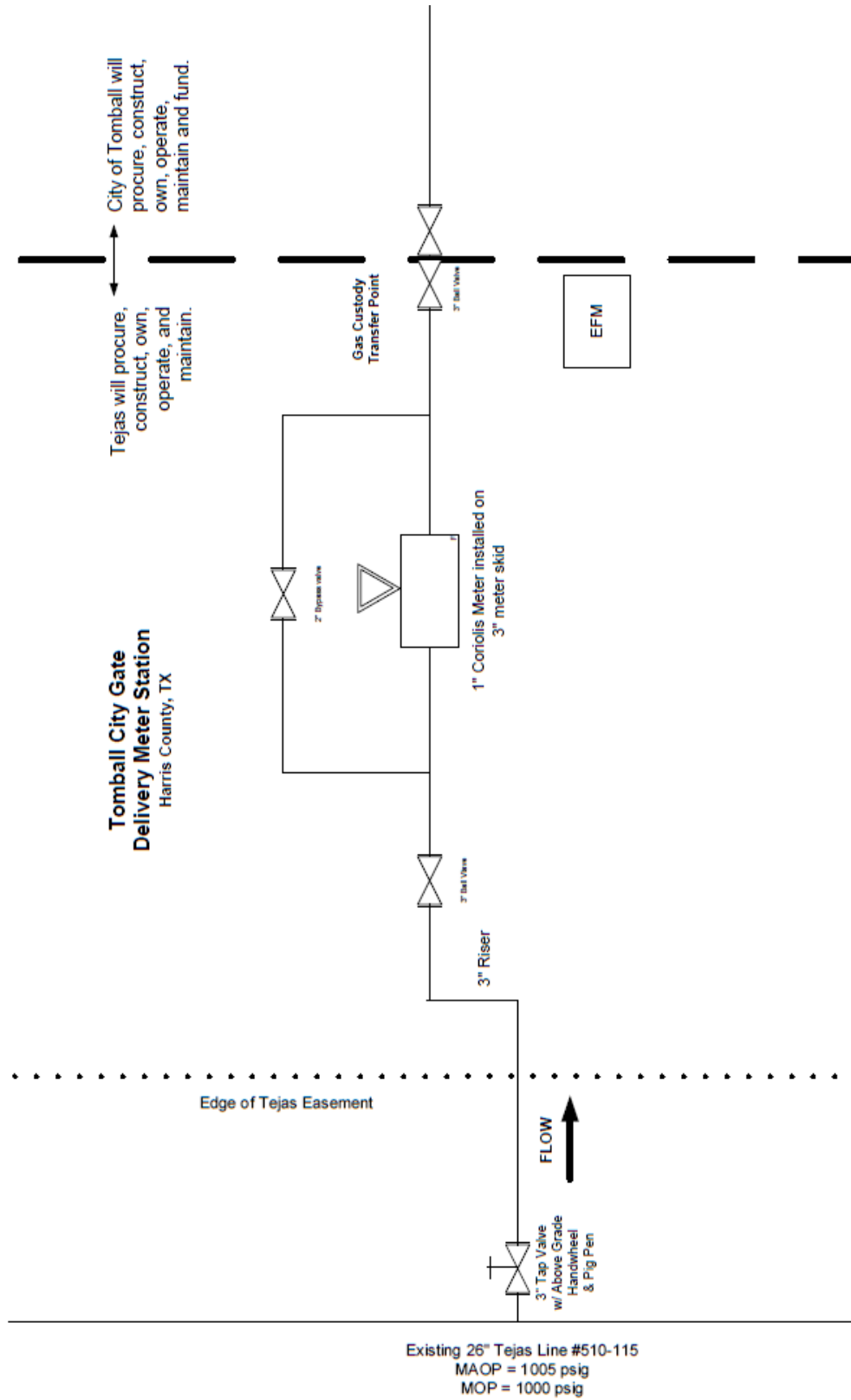
A – Process Flow Diagram

B – Estimated Cost

EXHIBIT "A"
TO
FACILITIES AGREEMENT
BETWEEN
KINDER MORGAN TEJAS PIPELINE LLC
AND
THE CITY OF TOMBALL

PROCESS FLOW DIAGRAM

(See Next Page)



END OF EXHIBIT "A"

EXHIBIT "B"
TO
FACILITIES AGREEMENT
BETWEEN
KINDER MORGAN TEJAS PIPELINE LLC
AND
THE CITY OF TOMBALL

ESTIMATED COST

KINDER MORGAN				
PROJECT NAME	CEM22010005 Tomball City Gate Delivery Meter			
COMPANY NAME	TEJAS	COMPANY NO.	0544	
REQUESTED BY	Ryan White	PREPARED BY	Don Shrum	
ESTIMATE NO.	CEM22010005a / 1523	ORIGINAL EST. DATE	10/11/22	
REVISION NO.	-	CONSTRUCTION CONTINGENCY	10%	
REVISION DATE	11/28/22	OVERHEAD	14.00%	
PROJECT MANAGER	Austin Malone	AFUDC RATE (Debt / Equity)	0.00%	0.00%
STATE	Texas	TAX GROSS UP	14.00%	
COUNTY	Harris	PROJECT TYPE	Reimbursable	
		IN-SERVICE	Mar-23	
		ESTIMATE ACCURACY LEVEL	Class 3	
Tomball City Gate Delivery SCOPE:	Interconnect Contractor to provide necessary equipment, material and labor to perform tasks outlined in Interconnect Scope of Work, which includes: material for a 3" hot tap on a 26" Tejas 520-115 mainline, 3" riser and meter installation, 50ftx50ft site prep and chain link fencing w/ gates. 1" coriolis meter installed on 3" meter skid, transmitter, RTU w/ solar power system and communications equipment.			
ASSET CAPABILITIES: Vol @ ### psi				
Minimum	0 MMCFD			
Maximum	7.5 MMCFD			
ESTIMATE SUMMARY	Tomball City Gate Delivery			TOTAL
MATERIAL (INCL SALES TAX)	\$ 86,600			\$ 86,600
COMPANY LABOR COST	\$ 3,100			\$ 3,100
PM, ENG, LAND, ENVIRO - EXPENSE	\$ -			\$ -
PRIMARY CONSTRUCTION CONTRACTOR	\$ 69,300			\$ 69,300
SECONDARY CONTRACTOR	\$ -			\$ -
PROFESSIONAL ENGINEERING	\$ 1,400			\$ 1,400
INSPECTION SERVICES	\$ 5,200			\$ 5,200
RADIOGRAPHY SERVICES	\$ -			\$ -
ENVIRONMENTAL CONTRACTOR	\$ -			\$ -
ELECTRICAL & INSTRUMENTATION	\$ -			\$ -
RIGHT OF WAY CONTRACTOR	\$ -			\$ -
SURVEY CONTRACTOR	\$ -			\$ -
OUTSIDE LEGAL SERVICES	\$ -			\$ -
ROW & DAMAGES	\$ -			\$ -
PERMIT FEES	\$ -			\$ -
GAS LOSS	\$ -			\$ -
SUBTOTAL	\$ 165,600			\$ 165,600
CONSTRUCTION CONTINGENCY	\$ 16,560			\$ 16,560
AFUDC	\$ -			\$ -
SUBTOTAL	\$ 182,160			\$ 182,160
CAPITALIZED OVERHEAD (BURDEN)	\$ 25,502			\$ 25,502
TAX GROSS-UP	\$ 29,100			\$ 29,100
ESCALATION	\$ -			\$ -
RISK INSURANCE	\$ -			\$ -
ESTIMATED TOTAL COST	\$ 236,762			\$ 236,762

END OF EXHIBIT "B"