

BILL OF SALE AND PURCHASE AGREEMENT

This **Bill of Sale and Purchase Agreement** (this "Agreement") is made and entered into by and between the Kinder Morgan entity set forth as "Seller" on the signature page hereof and the person or entity set forth as "Buyer" on the signature page hereof. In consideration of, and subject to, the undertakings and terms and conditions contained in this Agreement, Seller agrees to sell, and Buyer agrees to buy, the materials and/or equipment (the "Property"), at the location and for the purchase price as set forth in described in Exhibit A attached hereto and incorporated herein by reference upon the following terms and conditions:

1. Hazardous Materials. Buyer acknowledges, understands and agrees as follows:

a. That the Property may bear, contain or be coated with toxic substances, hazardous chemicals, hydrocarbons, residues, or other hazardous materials including, without limitation, **MERCURY, LEAD PAINT, CHROMATES, CADMIUM OR AN ASBESTOS CONTAINING MATERIAL OR NORMALLY OCCURING RADIOACTIVE MATERIAL ("NORM"), OR POLYCHLORINATED BIPHENYLS** (collectively, "Hazardous Materials") which may be, or may become by physical alteration or chemical reaction, or otherwise, directly or indirectly hazardous to life, health, or property by reason of toxicity, flammability, explosiveness, or for other similar or different reasons during use, handling, removal, cleaning, reconditioning, storage, disposal, transportation, or other operations. Buyer shall treat the Property as if it contains Hazardous Materials. The Property is not suitable for, and should not be used for, storage or conveyance of food or liquids intended for human or animal consumption;

b. That Buyer is, at its sole cost, expense and liability, fully responsible for the safe removal, handling, transportation, shipment, decontamination, treatment and disposal of Hazardous Materials, and shall hire qualified environmental personnel or consultants and shall comply with all applicable federal, state and local laws, statutes and regulations regarding same, including, without limitation, OSHA 29 U.S.C. §§651-78 with regard to PPE, the Toxic Substances Control Act, ("TSCA" 15 U.S.C. §§ 2601-2629); the Solid Waste Disposal Act, including the Resource Conservation and Recovery Act, ("RCRA" 42 U.S.C. §§ 6901-6992); the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA" and "SARA" 42 U.S.C. §§9601-9657); the Clean Air Act ("CAA" 42 U.S.C. §§7401-7671q); the Hazardous Materials Transportation Act ("HMTA", 49 U.S.C. § 1801 et. seq.); any federal, state and local law, regulation or requirement relating to NORM; and the regulatory requirements contained in Subpart M of 40 C.F.R. §61.140-157 (the "Asbestos NESHAP") or equivalent and applicable state or local regulations (collectively, "Environmental Laws");

2. Warranty. **BUYER REPRESENTS, WARRANTS AND ACKNOWLEDGES THAT IT HAS INSPECTED THE PROPERTY TO ITS SATISFACTION AND IS BUYING IT ON AN "AS IS - WHERE IS" BASIS WITH ALL FAULTS AND DEFECTS. WHILE SELLER BELIEVES THAT THE QUANTITY, WEIGHT, SIZE AND OTHER DESCRIPTIONS OF THE PROPERTY ARE ACCURATE, SELLER NEITHER REPRESENTS NOR WARRANTS THAT THE PROPERTY CONFORMS TO SAME AND SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY ERRORS THEREIN. SELLER COVENANTS THAT THE PROPERTY IS FREE AND CLEAR OF LIENS AND ENCUMBRANCES, BUT OTHERWISE SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED OF ANY KIND, INCLUDING, WITHOUT LIMITATION, AS TO THE CONDITION OF THE PROPERTY OR ITS FITNESS FOR ANY PURPOSE. BUYER SHALL HAVE NO RECOURSE AGAINST SELLER IF ANY DEFECTS OF ANY KIND, LATENT OR PATENT ARE DISCOVERED. BUYER EXPRESSLY WAIVES ALL RIGHTS OF RETURN OF THE PROPERTY.**

3. Payment. Payment for the Property is due and payable no later than the "Payment Deadline" set forth in Exhibit A. If the Payment Deadline in Exhibit A is left blank, payment is due and payable immediately upon execution of this Agreement. Payment shall be made by wire transfer, certified check, or cashier's check to the Seller before the commencement of removal operations. If payment is not made when due, Seller shall have the right to terminate this Agreement on written notice to Buyer. Pricing for the Property shall be on a "price for the lot" basis unless Exhibit A specifically states that pricing is on a per unit or weight basis. Any variation in quantity or weight of any item between that listed on the Exhibit A and that actually available for removal will be adjusted on the basis of the unit price stated

for such item or the weight. No adjustment for variation will be made when the Property is sold on a "price for the lot" basis. For Property sold on a per pound basis, Seller has the right to witness weighing of material(s) or equipment on a certified public scale.

4. Title and Risk of Loss. Title, risk of loss and all other incidents of ownership shall pass to Buyer upon payment for the Property; whereupon Seller shall have no responsibility or liability of any nature with respect to the Property, notwithstanding the location of the Property, and Buyer assumes all risks and liabilities whatsoever, of any type or kind, whether relating indirectly or directly thereto, including, without limitation, all risk of loss, damage or destruction from any cause whatsoever.

5. Compliance with Laws and Safety Requirements. Buyer shall comply with all Environmental Laws and all health, safety, and permitting requirements regarding the use, handling, removal, cleaning, reconditioning, storage, disposal, transportation of, and other activities regarding the Property while on the Premises of Seller. Buyer shall undertake its activities in compliance with Seller's most current safety regulations, procedures, and practices, including those in use at the premises where the Property is located (the "Premises"), and take whatever additional actions necessary to ensure that Buyer's personnel operate safely and competently on the Premises. Seller may terminate this Agreement and/or remove Buyer or any of Buyer's personnel from the Premises at any time for any reason, when Seller observes unsafe or undesirable behavior on the Premises, or when Buyer violates any Environmental Law.

D. While on Seller's Premises, Seller may, at its option, suspend the Work for a full safety inspection and correction at any time if the Seller's Designated Representative (i) discovers a safety violation, (ii) sees the possibility of a dangerous condition in any Work area, or (iii) notices a pattern by BUYER or any subcontractor of disregard for maintaining a safe Jobsite. If BUYER has one major or two or more minor safety violations, then such violations shall be grounds for immediate termination of this Agreement and/or Work Directive and/or COMPANY may eject BUYER, its personnel and any of its subcontractor(s) from COMPANY'S Premises or Jobsite.

6. Indemnity.

(A) **To the extent permitted by applicable law and except to the extent caused by the negligence, gross negligence or willful misconduct of a COMPANY INDEMNITEE (as defined below), BUYER agrees to defend, release, protect, indemnify and hold harmless COMPANY, its parent, subsidiaries and affiliates, and its and their respective directors, officers, agents, employees, suppliers, contractors and subcontractors of any tier (collectively, the "COMPANY INDEMNITEES"), from any and all damages, losses, costs, liabilities (including STRICT LIABILITY and liabilities under the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and any similar state statutes, regulations or requirements), penalties, expenses, demands or claims, including but not limited to those arising from alleged personal injury, sickness, death, violation of any laws including EHS Laws, release of any Hazardous Materials or any other type of claim including claims between COMPANY INDEMNITEES and BUYER or its employees (whether arising in tort, contract, or otherwise), and including any and all costs and fees (including attorneys' and experts' fees and costs associated with discovery arising out of litigation or settlement, (collectively, "Losses"), including Losses described in the remainder of this Section 10.0, to the extent the Losses are caused by or alleged to have been caused by, arise from or relate to, directly or indirectly this Agreement.**

(B)

7. Insurance. Prior to the commencement of removal operations for the Property, Buyer shall furnish Seller with certificate(s) of insurance, from carriers with an A.M. Best rating of at least A-/VIII, on the ACORD form with boxes checked as approved by Seller and copies of such endorsements to evidence insurance coverage as required below. Failure of Buyer to furnish such evidence of insurance coverage shall not be considered a waiver by Seller of such coverage.

- a. The following insurance coverages are required:
 - i. Statutory Coverage Workers' Compensation Insurance (including Occupational Disease Coverage) in accordance with the laws of the states where the Services is to be performed; and if Buyer performs work on or adjacent to navigable waterways Buyer shall furnish a certificate of insurance showing compliance with the provisions of the Federal Longshoremen's and Harbor Workers' Compensation Law.
 - ii. Employer's Liability Insurance with limits of not less than **\$1,000,000** per occurrence and **\$1,000,000** per disease each employee.
 - iii. Commercial General Liability Insurance insuring the indemnity agreement set forth in this Agreement with a combined single limit of not less than **\$1,000,000** per occurrence and **\$2,000,000** in the aggregate. All policies shall include coverage for blanket contractual liability assumed hereunder.
 - iv. Comprehensive Automobile Liability Insurance covering liability arising out of any auto (owned, hired and non-owned); with a combined single limit of not less than **\$1,000,000**. If necessary, the policy shall be endorsed to provide contractual liability coverage.
 - v. Pollution Liability Insurance, coverage of not less than \$5,000,000 per occurrence and in the aggregate.
- b. As additional security for Seller and the separate obligation of Buyer, whether or not required by the other provisions of this Agreement, all insurance policies carried by Buyer hereunder (except Worker's Compensation) shall name Kinder Morgan, Inc. and each of its respective subsidiary or affiliated companies and entities, their respective successors and assigns, and all of their respective directors, officers, agents and employees(all of the foregoing persons and entities, for the purposes of Sections 7.b-d. only, being identified as "Kinder Morgan") additional insureds with respect to liability arising out of the activities performed by Buyer or subcontractor, as applicable.
- c. Also, as additional security for Kinder Morgan and the separate obligation of Buyer, whether or not required by other provisions of this Agreement, Buyer shall waive, or cause to be waived, all rights of subrogation under all insurance policies of Buyer (except Worker's Compensation) in favor of Seller. Such waiver shall apply to all claims of subrogation arising in connection with this Agreement whether such claims are brought in the name of Buyer, or by its insurer(s) in a direct action.
- d. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to or maintained by Kinder Morgan, and shall not require the exhaustion of any other coverage. Should any of the above described Buyer policies be cancelled before the expiration date thereof, Buyer shall cause its carrier to deliver notice to Seller within the timeframe provided by the policy for notice of cancellation to be provided to the insured. Buyer shall notify Seller immediately if the carrier declines or fails to so notify Seller and also notify Seller of any such cancellation. All deductibles carried by the Buyer under its insurance program are the sole responsibility of the Buyer and will not be borne in any way by the Seller. There shall be no self-insured retentions or self insurance as part of insurance applicable to the Services. Buyer will indemnify the Seller, in full, for any deductible amounts.
- e. If Buyer utilizes subcontractors, which shall be pre-approved by Seller, Buyer shall require all of its subcontractors to provide the foregoing coverage, as well as any other coverage that Buyer may consider necessary. All subcontractor policies shall be endorsed with the waiver of subrogation and additional insured wording above. Any deficiency in the coverage, policy limits, or endorsements of said subcontractors will be the sole responsibility of Buyer.

8. Removal of the Property.

- a. Buyer shall remove the Property from the Premises at Buyer's expense no later than the deadline date set forth in Exhibit A (the "Removal Deadline"), using qualified personnel and suitable equipment. If the Property remains at the Premises beyond the Removal Deadline without Seller's written permission, Seller may charge Buyer a storage charge beginning on the next day following the Removal Deadline. All such storage charges must be paid to Seller before removal operations commence. If the Property remains at the Premises beyond the Removal Deadline, Seller may, in the exercise of Seller's sole discretion and on ten (10) days written notice to Buyer: either terminate this Agreement with no refund or other consideration due to Buyer; whereupon, title to the Property shall revert back to Seller, or (ii) move and/or store the Property at Buyer's expense.
- b. Removal of the Property, and identification of Buyer's workers and equipment to be used shall be scheduled with Seller. Buyer shall obtain approval of its dismantling plans from Seller before any work commences, but Seller's approval shall not constitute any assumption of liability by Seller for such dismantling plans. Buyer shall, and shall cause its personnel, to park vehicles and equipment only in those areas designated by Seller. Buyer shall conduct its activities in a safe, good and workmanlike manner and with utmost care taking into account that the Premises constitute an industrial environment where Hazardous Materials may be present and hazardous activities may be occurring.
- c. Buyer shall not (i) perform any activity considered hazardous, including those activities involving welding, torch cutting, or other flammable, explosive or fire producing activities, or (ii) sample, bore, excavate, ditch or otherwise disrupt soil or subsurface of the Premises, unless (and then only to the extent) stated in the plans approved by Seller.
- d. Any and all protective and safety clothing and equipment, safety barriers and guards, and watchmen necessary and appropriate while performing activities on the Premises shall be provided by Buyer at its sole expense.
- e. Seller is not responsible for any of Buyer's equipment left on the Premises. If any of Buyer's equipment remains on the Premises beyond the Removal Deadline without Seller's written permission, Seller may charge Buyer a storage charge beginning on the next day following the Removal Deadline.
- f. Buyer is responsible for the collection and proper disposal of any waste that may be generated from the removal process. Buyer shall leave the storage area free of all tire ruts, other surface or subsurface disturbance, and free from foreign debris, all to the satisfaction of Seller.
- g. In addition to any requirements of the Asbestos NESHAP and/or any state or local requirements, the following procedures shall be employed by Buyer prior to and during the removal, load-out and transportation of pipe with asbestos-containing coating:
 - i. Buyer shall limit handling and transportation of the pipe to the very minimum during removal and transport to Buyer's desired location. Excessive handling and transportation is prohibited while on the Premises, and Seller may suspend Buyer's removal and transportation operations until Buyer modifies any handling and transportation which Seller deems excessive in Seller's sole opinion. Buyer shall take adequate precautions to prevent the coating material from becoming friable, airborne or scattered. In addition, prior to transportation, any areas of the pipe coating which show indications of loosening, shall be removed using manual means or secured in shrink wrap, plastic, tape, or equivalent type material.
 - ii. Any pipe coating that becomes dislodged from the pipe during handling must be wetted, picked up, bagged and disposed of by Buyer. This is to be done no later than the end of the work day when the dislodging occurs.

- iii. For pipe that is expected to be stored for extended periods of time (i.e. greater than one (1) month), Buyer shall protect the pipe coating from weathering and deteriorating.
- iv. Vehicle and equipment travel shall be minimized on any roads that may contain pipe coating or substances from pipe coating that has become dislodged from the pipe.
- v. Under no circumstances shall Buyer apply mechanical means to the pipe coating such as sawing, grinding, sandblasting, etc. on or adjacent to Seller's properties, including without limitation, leased, fee simple or right-of-way property.
- vi. In the event of temporary storage, appropriate measures for securing the area must be taken by Buyer, as well as preventing storm water run-off.

9. Buyer shall pay Seller on demand for all costs, expenses and attorneys' fees reasonably incurred by Seller in enforcing Buyer's obligations under this Agreement.

10. Buyer may not assign this Agreement, or any of the rights or duties included herein, without first having secured the written consent of Seller.

11. Buyer agrees that no mechanics lien or other liens or claims thereof shall attach to or be filed against the real estate, building, structure or any other improvement in, on or in respect to the Premises. To the fullest extent permitted by applicable law, Buyer covenants and agrees to protect and keep the Premises, and any and all interests and estates therein, and all improvements or materials now or hereafter placed thereon pursuant to this Agreement, free from any and all claims, liens, charges or encumbrances in the nature of mechanics, labor, or material liens or otherwise, arising out of or in connection with operations of Buyer and any of its subcontractors, and to promptly have any such lien released by bond or otherwise. If Buyer disputes in good faith any lien or claim or encumbrance of any laborer, materialman or subcontractor, in lieu of the immediate payment thereof, Buyer shall post security to protect Seller from liability for the payment thereof on terms acceptable to Seller and from any expense of defending against that liability, until the dispute is finally resolved. Seller may, at its sole discretion, post or place upon the site where any operations by or for Buyer is being performed notices of non-responsibility or do any other act permitted by law to exempt Seller, the site, any and all interests and estates therein, and any improvements or materials thereon from any liability to third parties for Buyer's operations. The failure of Seller to perform any of the actions described in the previous sentence shall not release or discharge Buyer of any of its obligations hereunder.

12. If either party is unable wholly or in part by Force Majeure to carry out its obligations hereunder, then such party shall give notice of the full particulars of such Force Majeure event in writing to the other party as soon as practicable after the occurrence of the cause relied on. The obligation of the party giving such notice, so far and only insofar as affected by such Force Majeure, shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall be remedied with all reasonable dispatch. If the Force Majeure event continues for more than thirty (30) days, Seller shall have the right, in its sole discretion, to terminate this Agreement. The term "Force Majeure," as used herein, shall mean acts of God, acts of public enemies, fire, war or civil disturbance, insurrection, blockades, strikes, riots, epidemics, landslides, lightning, hurricanes, tornadoes, earthquakes, floods and/or washouts, explosions, commandeering of raw materials or products or plants or facilities by a government, labor disputes involving a general stoppage of work on the job, rules, regulations, orders or acts of governmental authority, loss or shortage of transportation facilities due solely to an event described in this Section 12, inability with reasonable diligence to obtain materials due solely to the effect of an event described in this Section 12, and in each case not involving the fault or negligence of the party claiming Force Majeure.

13. If any section of this Agreement shall be adjudged illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of this Agreement as a whole or of any remaining portions. All information transmitted or obtained by Buyer in connection with this Agreement, the Premises, or the business of Seller or its customers is the property of Seller and is to be considered by Buyer as proprietary, confidential

or a trade secret and is not to be reproduced or copied or used for furnishing information, materials or services to third parties or for any other purpose detrimental to the interest of Seller, as determined solely by Seller.

14. . Any legal action arising out of or relating to a dispute shall be exclusively brought in the Eleventh Business Court Division of the State of Texas, Harris County (the "Business Court"), if the dispute meets the jurisdictional requirements of such Business Court and the Business Court is then accepting new case filings. If the Dispute does not meet the jurisdictional requirements of such Business Court or the Business Court is not then accepting new case filings, then the dispute shall be exclusively brought, filed and maintained in the federal or state courts located in Houston, Harris County, Texas. COMPANY and BUYER each submits to the exclusive jurisdiction of said courts and waives the right to change venue. The prevailing party in such dispute shall be entitled to recover its attorney's fees and court costs from the other Party. EACH PARTY HEREBY VOLUNTARILY AND IRREVOCABLY WAIVES TRIAL BY JURY IN ANY PROCEEDINGS ARISING OUT OF, CONNECTED WITH OR RELATING IN ANY WAY TO THIS AGREEMENT OR TO THE TRANSACTIONS CONTEMPLATED HEREBY The prevailing party in such litigation shall be entitled to recover its attorney's fees and court costs from the other party.

15. This Agreement constitutes the whole agreement between the parties. There are no promises, terms, conditions or obligations other than those contained herein. This Agreement shall supersede all previous communications, representations, agreements, proposals, and specifications, either verbal or written, between the parties hereto.

AGREED TO AND ACCEPTED THIS

SELLER : [KM entity that owns the Product]

By: _____

Name: _____

Title: _____

BUYER:

By: _____

Name: _____

Title: _____

EXHIBIT A

Date:

Location of Material:

Description of Material:

Price (US Dollars Only):

Account Codes (Note):