

## **Exhibit “D”**

### **Open Season Procedure – Natural Gas Transportation**

#### **Format of the Firm Gas Transportation Agreement**

Transporter shall execute with the awarded Bidding Shipper(s) a transportation agreement according to the Format of the Firm Gas Transportation Agreement attached here.

#### **FIRM GAS TRANSPORTATION AGREEMENT**

This FIRM GAS TRANSPORTATION AGREEMENT (this “Agreement”) is made and entered into as of [●], 20 [●] (the “Effective Date”), by and between KINDER MORGAN GAS NATURAL DE MEXICO, S. de R.L. de C.V. (“Transporter”), and [●] (“Shipper”). Transporter and Shipper are sometimes referred to singularly as “Party” and collectively as “Parties.”

#### **WITNESSETH:**

WHEREAS, Transporter conducted an open season in order to award new available capacity, which announcement was published in the newspapers as of [●] (the “Open Season”). As a result of the Open Season, Transporter awarded to Shipper the reservation of capacity on a Firm Basis (as this term is defined below) for the transportation service of natural gas to be provided under the terms of this Agreement (the “Transportation Service”);

WHEREAS, Transporter owns and operates the Mier-Monterrey Pipeline in the states of Tamaulipas and Nuevo León, México for the transportation of Gas, according to the transportation permit number G/003/TRA/1996 granted by the Energy Regulatory Commission of Mexico (the “CRE”);

WHEREAS, Transporter shall apply to the CRE to obtain an amendment of the transportation permit number G/003/TRA/1996 (the “Transporter’s Permit”);

WHEREAS, Shipper desires Transporter to receive and transport certain quantities of Gas (as this term is defined below) on Transporter’s System (as this term is defined below) from and to the Receipt Point and Delivery Point specified on Exhibit “A” of this Agreement;

WHEREAS, Transporter is willing to transport such quantities of Gas for Shipper in accordance with the terms and conditions set forth in this Agreement;

WHEREAS, Transporter’s affiliates, Kinder Morgan Texas Pipeline LLC and Kinder Morgan Tejas Pipeline LLC (collectively, “KM”), and Shipper and/or Shipper’s affiliates will execute contemporaneously with this Agreement that certain Intrastate Firm Gas Transportation Agreement of even date with this Agreement (the “Intrastate FTA”) under which KM will receive and transport Shipper’s Gas on a Texas intrastate natural gas transportation pipeline to the Receipt Point;

WHEREAS, Transporter is a company incorporated under the laws of Mexico, as established under public deed number 65,075 dated as of January 23, 1996, before the Notary Public Number 92 in Mexico D.F., Mr. José Visoso del Valle, and public deed number 732 dated as of December 19, 2001, before the Notary Public Number 50 in Mexico City, Mr. Gerardo Francisco Saavedra Silva, by which its corporate name was changed from Midcon Gas Natural de Mexico, S.A. de C.V. to Kinder Morgan Gas Natural de Mexico, S. de R.L. de C.V.;

WHEREAS, Shipper is a company incorporated under the laws of [●], as established under public deed number [●] dated as of [●] before the Notary Public Number [●] in Mexico City, Mr. [●];

WHEREAS, Transporter's legal representative proves its authority with public deed number [●] dated as of [●], before the Notary Public Number [●] in Mexico City, Mr. [●];

WHEREAS, Shipper's legal representative proves its authority with public deed number [●] dated as of [●], before the Notary Public Number [●] in Mexico City, Mr. [●];

WHEREAS, Transporter's Federal Taxpayer Number is KMG960123BN5; and

WHEREAS, Shipper's Federal Taxpayer Number is [●].

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth in this Agreement, the Parties agree as follows:

## **ARTICLE I DEFINITIONS**

Unless otherwise defined in this Agreement, capitalized terms used herein shall have the meanings given below:

**"Adequate Assurance of Performance"** means security in the form, amount, and term reasonably acceptable to Transporter, including any of the following mechanisms (i) cash prepayment with an accelerated due date or a more frequent basis than a monthly billing cycle, (ii) a standby irrevocable letter of credit, (iii) prepayment, or (iv) a guaranty, in each case enforceable for at least three (3) months following the termination of the Agreement.

**"Administrative Provisions"** means the General Administrative Provisions with regard to Open Access and the rendering of Pipeline Transport and Storage of Natural Gas Services, approved by CRE, or any other superseding or amending administrative provision.

**"Applicable Law"** means the Administrative Provisions, and any law, standard, decree, resolution, permit, ruling, regulation, or any legislative or administrative action carried out by a Governmental Authority having jurisdiction, including a judicial decision, award or order from a Mexican tribunal that is related to the execution of rights and

obligations stated in this Agreement and/or the Terms and Conditions, or to the interpretation or application of such documents, in effect from time to time.

**“Central Standard Time” or “CST”** means the local time in Houston, Texas.

**“CRE”** means the Energy Regulatory Commission.

**“Creditworthy”** means an entity that (a) has a long-term senior unsecured debt rating of Baa3 or better from Moody’s Investor Service (“Moody’s”) or BBB- or better from Standard & Poor’s Corporation (“S&P”), or (b) has an issuer rating of Baa3 or better from Moody’s or BBB- or better from S&P, provided, however, if Shipper’s rating is at Baa3 or BBB- and the short-term or long-term outlook is “Negative”, then Transporter may request additional analysis.

**“Equivalent Quantity”** means that quantity of Gas which is thermally equivalent to the quantity of Gas delivered by Shipper to Transporter on any one Gas Day, less Transporter’s Use, if it is collected in kind, as approved by CRE or negotiated between the Parties.

**“Firm Basis” and “Firm Transportation Service”** means that, with respect to any Transportation Service, Shipper shall deliver such Gas to Transporter and Transporter shall receive at the Receipt Point and transport an Equivalent Quantity to the Delivery Point without interruption, suspension or curtailment, in quantities up to the MDQ, except as provided under the Terms and Conditions.

**“Force Majeure”** means and includes any act that (a) renders Transporter or Shipper unable to provide or utilize the Transportation Service, (b) is beyond the affected Party’s reasonable control, (c) is not due to the affected Party’s fault or negligence, and (d) is unforeseeable or even when foreseeable, could not have been avoided by the exercise of reasonable due diligence, including the expenditure of reasonable sums of money as determined by prudent pipeline operator standards in light of the scope of the Transportation Service being provided.

**“Fuel Charge”** means Gas reimbursed by Shipper, either in kind or otherwise, to compensate Transporter for fuel associated with the operational aspects of providing Transportation Service, including compression and metering, as negotiated between the Parties or as authorized by CRE, as the case may be.

**“Gas”** means the mix of gases that are obtained through extraction or industrial processing and is composed primarily of methane. Usually, this mix contains ethane, propane, butanes and pentanes. Unless otherwise required by the context, Gas means that tendered by Shipper to Transporter or redelivered by Transporter to Shipper.

**“Gas Day”** means a period of twenty-four (24) consecutive hours beginning at 9:00 a.m. Central Clock Time.

**“GLU”** means Gas reimbursed by Shipper, either in kind or otherwise, to compensate Transporter for gas lost, if any, in providing Transportation Service, including operating

losses or shrinkage (unaccounted) of the product being transported or stored in the course of operating the System, as negotiated between the Parties or as authorized by CRE, as the case may be.

**“Governmental Authority”** means any legislature, court, tribunal, authority, agency, commission, or other instrumentality of México, or any domestic state, municipal, city or other political subdivision, governmental department or similar governing entity, and including any governmental or quasi-governmental body exercising similar powers of authority.

**“Maximum Daily Quantity”** or **“MDQ”** means the maximum quantity of Gas which Transporter is obligated to receive from Shipper for transport during one Gas Day as specified in this Agreement.

**“Mier-Monterrey Pipeline”** means the facilities owned and operated by KMGNM to provide transportation service under the Natural Gas Transportation Permit No. G/003/TRA/96, granted by CRE.

**“Month”** means a period beginning on the first (1st) day of a calendar month and extending until the last day of that calendar month.

**“Price Directive”** means the Directive issued by the CRE for the determination of rates and transfer of prices for regulated natural gas activities DIR-GAS-001-2007, or any other superseding or amending directive or administrative provision.

**“Project”** means the installation of new available capacity up to 35,000 MMBtu/d by means of a compression facility.

**“Successor”** means any person, corporation or any other entity which at any time, whether by purchase, merger or otherwise, directly or indirectly acquires all or substantially all of the assets, interests or business of any of the Parties.

**“System”** means the set of components owned and used by Transporter to provide the Transportation Service, including pipelines, compressors, regulators, meters, and other equipment and facilities.

**“Terms and Conditions”** means the applicable General Terms and Conditions for Transportation Service, subject to CRE’s approval, which shall constitute an integral part of Transporter’s Permit.

**“Transporter’s Use”** means the sum of the Fuel Charge and the GLU; on the understanding that Transporter may recover Transporter’s Use from Shippers by means of (i) an in-kind reimbursement by Shipper, (ii) a rate adjustment, and/or (iii) adding a new charge, as the case may be.

**“VAT”** means value added tax.

**“Working Day”** means Monday through Friday, excluding México federal holidays, United States federal holidays, and any holidays Transporter publishes on its Electronic Bulletin Board.

## **ARTICLE II PERFORMANCE OF TRANSPORTATION SERVICE**

2.1 The purpose of this Agreement is the provision of Firm Transportation Service pursuant to the Terms and Conditions, as amended from time to time, with previous authorization by CRE.

2.2 The Terms and Conditions shall be published at the CRE's webpage and Transporter's Electronic Bulletin Board ("EBB"). Notwithstanding anything contained in this Agreement to the contrary, the Transportation Service performed under this Agreement will be subject to the Terms and Conditions, which are incorporated by reference into this Agreement. If any term or provision in the body of this Agreement or its exhibits is inconsistent with the Terms and Conditions, then the provision of the Terms and Conditions shall prevail. If any term or provision in an exhibit to this Agreement is inconsistent with the body of this Agreement, then the provision of the exhibit will control and the body of this Agreement will be deemed modified accordingly.

2.3 Subject to the terms and conditions of this Agreement, Transporter will receive at the Receipt Point(s) and deliver an Equivalent Quantity at the Delivery Point(s) on a Firm Basis, in consistency with the affirmation by the delivering operator at the Receipt Point(s), and by the receiving operator at the Delivery Point(s), such quantities of Gas as may be nominated and delivered by Shipper from time to time and for periods of time as nominated by Shipper, up to a Maximum Daily Quantity of [●] MMBtu per Day, which corresponds to the capacity that is reserved by Shipper at the System.

## **ARTICLE III FEES AND REIMBURSEMENT**

3.1 Shipper agrees to pay Transporter the capacity charge specified in Exhibit "B" of this Agreement for the Transportation Service to be rendered under this Agreement (the "Capacity Charge").

The Capacity Charge is a contractual rate and excludes the application of regulated rates.

3.2 In addition to the Capacity Charge, Shipper shall pay the following fees:

- a. A use charge equal to the then-current regulated usage fee, as published in the Daily Official Gazette ("DOF" for its abbreviation in Spanish), which will be charged for quantities delivered by Transporter for Shipper's account at the Delivery Point for the applicable Month (the "Use Charge").
- b. If Shipper incurs an authorized overrun, Shipper will pay to Transporter the then-current regulated authorized overrun rate, as published in the DOF (the "Authorized Overrun Rate").
- c. If Shipper incurs an unauthorized overrun, Shipper will pay to Transporter a penalty equal to the Capacity Charge multiplied by three (3), multiplied

by the unauthorized overrun quantities (the “Unauthorized Overrun Rate”).

- d. The Use Charge, Authorized Overrun Rate or Unauthorized Overrun Rate shall not be considered as additional services in terms of section 10.1 of the Price Directive. In case that Transporter desires to offer additional services related to transport, those will have to be reviewed and authorized by CRE, in consistency with section 10.1 of the Price Directive.
- e. Shipper shall pay in-kind for Transporter’s Use the percentage specified in Exhibit “B” of this Agreement for quantities delivered by Transporter for Shipper’s account at the Receipt Point for the applicable Month.

The charges and payments agreed as a result of an Open Season, as well as those agreed between the Parties, shall be valid and enforceable through the entire term of this Agreement, and thus shall prevail over regulated rates that are approved by CRE.

3.3 Subject to the negotiations between the Parties or CRE’s approval, as the case may be, irrespective of Shipper’s payment of a contractual Capacity Charge, Shipper shall pay Transporter other charges either incremental or to be applied to all Shippers on a general basis.

3.4 The rates and other fees, charges and reimbursements provided for in this Agreement are exclusive of VAT. All payments under this Agreement shall bear applicable VAT.

#### **ARTICLE IV RECEIPT AND DELIVERY POINTS**

4.1 The Receipt Point for all Gas delivered by Shipper to Transporter for the Transportation Service under this Agreement will be at the point designated in Exhibit “A” of this Agreement.

4.2 The Delivery Point for all Gas delivered by Transporter to Shipper under this Agreement will be at the point designated in Exhibit “A” of this Agreement.

#### **ARTICLE V TERM**

5.1 This Agreement will be effective as of the Effective Date with its term commencing on the later of (a) [Shipper’s negotiated start date], (b) the first day of the Month next following the Month in which Transporter notifies Shipper that the System has been placed in commercial service, or (c) the date on which Transporter obtains the Transporter’s Permit on terms acceptable to Transporter (“Service Commencement Date”) and ending on the [fifteenth to twentieth] (15<sup>th</sup>-20<sup>th</sup>) anniversary of the Service Commencement Date; in the understanding that the term of the Agreement shall be for an initial term of 7 years, automatically renewed for an additional period of [8-13] years,

subject to Transporter's renewal of the Transportation Permit for an additional period of 15 years. If the CRE does not authorize the renewal of the Transportation Permit, and the Transporter has exhausted all the legal resources to obtain such renewal, this Agreement and all its effects shall terminate.

5.2 Notwithstanding anything contained in this Agreement to the contrary, Transporter shall have the right to terminate this Agreement with no liability if the Service Commencement Date is expected to occur after [December 31, 2021].

5.3 Notwithstanding anything contained in this Agreement to the contrary, Transporter's obligations under this Agreement do not commence unless and until:

- (a) Shipper has delivered to Transporter Adequate Assurance for Performance in form and substance acceptable to Transporter, if Shipper is not Creditworthy on the Effective Date.
- (b) Shipper has executed and delivered to Transporter an interconnection agreement, if applicable, as provided in Article VI.
- (c) The Parties have signed the Intrastate FTA.
- (d) Transporter determines by the close of the Open Season that sufficient capacity has been reserved on a Firm Basis to go forward with the Project.
- (e) All appropriate and final governmental approvals and other applicable authorizations for the Project, including any cross-border authorization by U.S. authorities, must be obtained by [March 31, 2021] and maintained on terms acceptable to Transporter in its sole discretion.
- (f) All rights-of-way and other surface rights required to site and maintain the System must be obtained by [March 31, 2021] and maintained on terms and conditions acceptable to Transporter in its sole discretion.
- (g) Transporter shall have received all approvals from its board of directors necessary for the construction or acquisition of the Project and for the execution of this Agreement.

5.4 Notwithstanding anything in this Agreement to the contrary, if the conditions precedent set out in subsections (d), (e), and (f) are not satisfied by the dates specified or if the conditions precedent set out in subsections (a), (b) and (c) are not satisfied within thirty (30) Working Days following the Effective Date, or if the condition precedent set out in subsection (g) is not satisfied within [\*](\*) Working Days following the Effective Date, then Transporter shall have the right to terminate this Agreement with no liability.

## **ARTICLE VI INTERCONNECTION FACILITIES AND PRESSURE**

Shipper shall execute an interconnection agreement, substantially in the form attached to the Terms and Conditions, and that (i) describes the actual Delivery Point(s), which will comprise a tap, meter and related measurement facilities and be located at a mutually agreeable site on the System, (ii) provides that such facilities will be designed, constructed, and installed to Transporter's specifications at Shipper's sole expense, and (iii) provides such facilities will be owned and operated by Transporter.

Transporter shall deliver the MDQ at a minimum pressure of 650 psig, on the understanding that any feasible pressure increase shall be paid by Shipper. In case Shipper requires new interconnects, other than M11, compression for higher-pressure uses, or any other facilities, Shipper shall fund one hundred percent (100%) of any associated costs and will acquire all necessary rights-of-way, if applicable.

## **ARTICLE VII NO PARTNERSHIP**

Nothing contained in this Agreement will be deemed to create between the Parties a partnership, joint venture or an association and each will be deemed to act herein and in connection with the performance of this Agreement for itself, and not for the other, and neither Party will be liable or responsible for any acts of the other by virtue of the relationship created under this Agreement.

## **ARTICLE VIII NOTICES**

If the EBB is out of service, all notices required to be served under this Agreement, including invoices, must be in writing and served by (a) personal or overnight delivery service, (b) certified or registered mail, or (c) electronic mail, addressed as follows:

### **IF TO TRANSPORTER:**

<u>Notices &amp; Correspondence:</u>	Torre General Motors, Avenida Ejército Nacional 843-B, Antara B-1, Piso 7, Colonia Granada, Delegación Miguel Hidalgo, C.P. 11520 Attn: Contract Administration contractadministration@kindermorgan.com
<u>Dispatching Matters:</u>	Torre General Motors, Avenida Ejército Nacional 843-B, Antara B-1, Piso 7, Colonia Granada, Delegación Miguel Hidalgo, C.P. 11520 Attn: Gas Control Department #gc-kmtpl@kindermorgan.com
<u>Accounting Matters:</u>	Torre General Motors, Avenida Ejército Nacional 843-B, Antara B-1, Piso 7, Colonia Granada, Delegación Miguel Hidalgo, C.P. 11520 Attn: Gas Accounting
<u>Payment by Wire:</u>	Scotiabank Inverlat, S.A. ABA # N/A A/C# 11002001802



For Credit to Kinder Morgan Gas  
Natural de México, S. de R.L. de C.V.

**IF TO SHIPPER:**

Notices & Correspondence:

[●]

[●]

Attn: Contract Administration

Telephone: [●]

Email: [●]

Billing:

[●]

[●]

Telephone: [●]

Email: [●]

Payment

[●]

ABA No.: [●]

Account No.: [●]

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.

**ARTICLE IX  
MISCELLANEOUS**

9.1 The Parties stipulate and agree that this Agreement shall be deemed and considered for all purposes as prepared through the joint effort of the Parties and shall not be construed against one Party or the other as a result of the preparation, submittal or other event of negotiation, drafting or execution of this Agreement.

9.2 This Agreement is binding upon and will inure to the benefit of the Parties and their respective Successors and assigns. The provisions of this Agreement and the Terms and Conditions shall not impart rights enforceable by any person, firm, or organization not a Party or not a Successor or permitted assignee of a Party.

9.3 This Agreement, including attached exhibits and the Terms and Conditions, constitutes the entire agreement between the Parties covering the subject matter of this Agreement. Thus, there are no agreements, modifications, conditions or understandings, written or oral, expressed or implied, pertaining to the subject matter of this Agreement that are not contained in this Agreement.

9.4 Shipper shall not be considered or deemed by interpretation of this Agreement to have any rights in, to or through the System.

9.5 Shipper's breach of the Intrastate FTA during the term of this Agreement will be considered as a Shipper's event of default.

9.6 Force Majeure shall include events declared as force majeure upstream and/or downstream of the System.

9.7 If Transporter or Shipper waives its rights set forth in the event of the other Party's breach of any provision of this Agreement, then such waiver shall not operate as a waiver of any continuing or future default, whether of a like or different character.

9.8 If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement and Conditions; *provided that*, the Parties shall attempt in good faith to negotiate an amendment to this Agreement consistent with Applicable Law to place the Parties as nearly as possible in a similar economic position that they were in before the finding of such invalidity, illegality or unenforceability.

*Signature Page to Follow*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate original by their respective duly authorized legal representatives as of the Effective Date.

**SHIPPER:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

**TRANSPORTER:**

**Kinder Morgan Gas**

**Natural de México, S. de R.L. de C.V.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

**EXHIBITS**

A – Receipt Point and Delivery Point

B – Fees

[Signature page to FIRM GAS TRANSPORTATION AGREEMENT made and entered into as of [●], by and between KINDER MORGAN GAS NATURAL DE MEXICO, S. de R.L. de C.V., and [●].]

EXHIBIT "A"  
TO  
FIRM GAS TRANSPORTATION AGREEMENT  
DATED [●]  
BETWEEN  
KINDER MORGAN GAS NATURAL DE MEXICO, S. de R.L. de C.V.  
AND  
[●]

**RECEIPT POINT AND DELIVERY POINT**

**Receipt Point:**

Point Name:	PIN #	MDQ	Transporter's Use
The point at which the Mier-Monterrey Pipeline connects to Kinder Morgan Texas Pipeline LLC's ("KMTP") pipeline at or near the international border between the United States and Mexico.	Measurement shall occur at KMTP's meter station located at KMMX/KMTP Monterrey Star [Bob West] – PIN #40564	[*]	1.6%

**Delivery Point:**

Point Name:	PIN #	MDQ

END OF EXHIBIT "A"

EXHIBIT “B”  
FIRM GAS TRANSPORTATION AGREEMENT  
DATED [●]  
BETWEEN  
KINDER MORGAN GAS NATURAL DE MEXICO, S. de R.L. de C.V.  
AND  
[●]

**FEES**

**Monthly Capacity Charge** = [*MDQ*] MMBtu x US\$[*Capacity Charge*] x number of Days in Month

**Transporter’s Use:** As specified on Exhibit “A”.

END OF EXHIBIT “B”