

## AGREEMENT AND BILL OF SALE

**No. KDM-S0055**

This Agreement and Bill of Sale ("Agreement") is made and entered into this \_\_\_\_\_, by and between Energy Transfer Company, whose address is 248 Burroughsville Road, Victoria, Texas 77905, hereinafter referred to as "Seller", and \_\_\_\_\_, whose address is \_\_\_\_\_, hereinafter referred to as "Buyer."

### **WITNESSETH:**

1. **Purchase and Sale of Equipment**. Buyer hereby agrees to purchase and Seller agrees to sell all of its right, title and interest in and to the following described personal property ("Equipment"):
  - (a) it is duly organized, validly existing and in good standing under the laws of the State of its formation or incorporation, and is duly qualified to do business in the State of Texas;
  - (b) it has all authority necessary to enter into this Agreement and to perform all its obligations hereunder;
  - (c) its execution, delivery and performance of this Agreement and the transaction contemplated hereby will not: (i) violate or conflict with any provision of its Certificate of Incorporation, By-Laws, or other governing documents; (ii) result in the breach of any term or condition of, or constitute a default or cause the acceleration of any obligation under, any agreement or instrument to which it is a Party or by which it is bound; or (iii) violate or conflict with any applicable judgment, decree, order, permit, law, rule or regulation;
  - (d) this Agreement has been duly executed and delivered on its behalf, and at the Closing all documents and instruments required hereunder will have been duly executed and delivered. This Agreement, and all such documents and instruments shall constitute legal, valid and binding obligations enforceable in accordance with their respective terms, except to the extent enforceability may be affected by bankruptcy, reorganization, insolvency or similar laws affecting creditors' rights generally; and
  - (e) it has been represented by legal counsel of its own selection who has reviewed this Agreement.
  
3. **Purchase Price**. The purchase price ("Purchase Price") to be paid by Buyer to Seller for the Equipment shall be the sum of \_\_\_\_\_, to be paid by cashier's check

payable to Energy Transfer Company and delivered to Seller concurrently with Buyer's execution of this Agreement. The Purchase Price does not include any taxes. Any applicable local and/or state sales or use tax shall be calculated at the rate applicable to the location of said Equipment and shall be paid by Buyer to Seller in addition to the Purchase Price with payment. If Buyer is exempt from the payment of applicable local and/or state sales or use tax, Buyer shall complete a statement of sales and/or use tax exemption and provide same to Seller at the time payment of the Purchase Price is made.

4. **Title and Risk of Loss.** The sale provided herein shall be effective, and title to and all risk of loss of the Equipment shall pass to Buyer, upon the date all of the following three conditions have been met (the "Effective Date"):
  - (a) Buyer's execution of this Agreement and delivery thereof to Seller,
  - (b) Seller's receipt in good funds of the Purchase Price, and
  - (c) Buyer's delivery to Seller of the Certificates of Insurance required under Section 9 below.
  
5. **Warranty of Title.** Seller hereby represents and warrants that seller has good and marketable title to the Equipment, free and clear of all liens, encumbrances and burdens.
  
6. **Exclusion of Prior Existing Rights or Claims.** There is also specifically excepted, excluded and reserved from the transaction contemplated hereby, all rights and claims arising, occurring, or existing in Seller with respect to the Equipment, to the extent that such rights and claims relate to the period prior to the Effective Date including, but not limited to, any and all contract rights, claims, penalties, receivables, revenues, recoupment rights, recovery rights, accounting adjustments, erroneous payments or other claims of any nature relating to any time period prior to the Effective Date.
  
7. **No Warranty of Condition or Quality.** **THE EQUIPMENT IS SOLD 'WHERE IS AND AS IS' AND IN ITS PRESENT CONDITION AND STATE OF REPAIR AND BUYER IS RELYING SOLELY UPON ITS OWN INSPECTION OF THE EQUIPMENT. BUYER ACKNOWLEDGES THAT NO PERSON ACTING ON BEHALF OF SELLER HAS MADE, AND SELLER HEREBY EXPRESSLY DISCLAIMS AND NEGATES, ANY REPRESENTATION OR WARRANTY, (EXPRESS, STATUTORY OR IMPLIED) RELATING TO THE CONDITION OR QUALITY OF THE EQUIPMENT, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF CONDITION, MERCHANTABILITY, ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES UNDER APPLICABLE LAW NOW OR HEREAFTER IN EFFECT.**

8. **INDEMNIFICATION, RELEASE AND LIMITATION OF LIABILITY.** The Parties agree to the following indemnity obligations:

- (a) The following definitions apply to this Section 8:
- (i) **"SELLER INDEMNIFIED PARTY(IES)" shall mean SELLER and its parent, general and limited partners, subsidiaries, affiliates, joint venturers, contractors and subcontractors of every tier, invitees (except BUYER), and the officers, directors, stockholders, agents, employees and insurers of any of the foregoing; it being additionally understood that any person who is on a SELLER INDEMNIFIED PARTY'S payroll, or who has received or is entitled to receive payment from the SELLER INDEMNIFIED PARTIES in connection with the dismantling and removal of the Equipment from the Premises shall be considered an employee of the respective SELLER INDEMNIFIED PARTY, regardless of whether such person claims to be or is found to be a borrowed servant of BUYER or BUYER-RELATED PARTIES.**
  - (ii) **"BUYER-RELATED PARTY(-IES)" shall mean Buyer's parent, general and limited partners, subsidiaries, affiliates, joint venturers, contractors and subcontractors of every tier, invitees, and the officers, directors, stockholders, agents, employees and insurers of any of the foregoing; it being understood that any person who is on a BUYER-RELATED PARTY'S payroll, or who has received or is entitled to receive payment from any BUYER-RELATED PARTY in connection with the dismantling and removal of the Equipment from the Premises shall be considered an employee of the respective BUYER-RELATED PARTY, regardless of whether such person claims to be or is found to be a borrowed servant of Seller or any SELLER INDEMNIFIED PARTY.**
  - (iii) **"CLAIMS" shall mean all lawsuits, claims, demands, causes of action, costs, judgments, penalties, fines, enforcement actions, losses or expenses of every kind (including, but not limited to, reasonably attorneys fees, costs, and investigative and litigation expenses, including those incurred in the defense of indemnified claims and all other litigation expenses related thereto), or any liability in tort, contract or otherwise, for economic loss, death, bodily injury or property damage, including, but not limited to, illness, disease, death, loss of services, loss of society, mental or emotional injury, maintenance, cure, wages, loss of property or other property damage.**
  - (iv) **"FAULT" shall mean every liability of whatever nature and under whatever theory of law, whether existing at the time of contract or in the future, including the conditions of the Premises (whether such conditions be latent or patent or pre-existing), breach of representation or warranty (express or implied), strict liability, product liability, tort, breach of contract, violation of federal, state or**

local statutes or regulations, or negligence, and every other type of fault or alleged fault whatsoever.

(b) **BUYER'S RELEASE AND INDEMNITY OBLIGATION.** BUYER hereby releases SELLER INDEMNIFIED PARTIES from, and BUYER shall fully release, indemnify, hold harmless and defend SELLER INDEMNIFIED PARTIES from and against, all CLAIMS, whether groundless or not, which may be asserted against or imposed upon SELLER INDEMNIFIED PARTIES by any party, including without limitation, Buyer or any BUYER-RELATED PARTY or any other third party, arising out of, incident to, or in connection with the following:

- (i) the purchase contemplated by this Agreement;
- (ii) the disassembly, dismantling or removal of the Equipment from the Premises, including without limitation, any matter or circumstance relating to environmental laws or the release, from the Equipment or any equipment owned or controlled by any BUYER-RELATED PARTY, of materials into the environment during or after such disassembly, dismantling or removal, regardless of whether or not such release may be known or unknown; or
- (iii) the presence of any BUYER-RELATED PARTY on the Premises or the activity of any BUYER-RELATED PARTY on the Premises; or
- (iv) loss or damage to the Equipment occurring from and after the Effective Date, whether occurring on the Premises or not, and regardless of the cause thereof, including without limitation, any act of God; or
- (v) the ownership and operation of the Equipment by Buyer or any subsequent owner or user thereof, including without limitation, any matter or circumstance relating to environmental laws or the release from the Equipment of materials into the environment, regardless of whether or not such release may be known or unknown, after the Effective Date.

FURTHER, IT IS EXPRESSLY AGREED AND UNDERSTOOD BY BUYER THAT, FOR THE PURPOSES OF THIS SECTION 8, THE TERM "CLAIMS" AND BUYER'S OBLIGATION HEREUNDER TO RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS SELLER AND ITS EMPLOYEES, OFFICERS, AGENTS AND REPRESENTATIVES, SHALL EXPRESSLY INCLUDE, BUT IS NOT LIMITED TO, CLAIMS ARISING OUT OF OR IN ANY WAY RELATED TO SELLER'S OR ANY OTHER PARTY'S SOLE, CONTRIBUTORY, JOINT, COMPARATIVE OR CONCURRENT (1) NEGLIGENCE, (2) NEGLIGENCE *PER SE*, (3) STRICT LIABILITY, OR (4) OTHER FAULT OF ANY NATURE.

(c) In the event any of the SELLER INDEMNIFIED PARTIES institutes suit to enforce any indemnity obligation hereunder, then Buyer shall reimburse to

such party its reasonable attorney's fees, court costs, and investigative and litigation expenses related thereto.

- (d) **BUYER agrees to investigate, handle, respond to, provide defense for and defend any CLAIM at its sole expense and agrees to bear all attorney's fees, costs, and expenses related thereto, even if the CLAIM is groundless, false, fraudulent, or without legal or factual merit. It is agreed that the SELLER shall have the right to approve the BUYER'S designation of defense counsel. Additionally, Seller shall have the right at all times to participate in the preparation for and conducting of any hearing or trial related to any indemnity set forth in this Agreement, as well as the right to appear on its own behalf or to retain separate counsel to represent it at any such hearing or trial.**
  - (e) **The indemnity obligations set forth above in this Section 8 are not intended to provide indemnification greater than that which is permitted by applicable law. Such provisions shall apply to the extent permitted under applicable law and shall survive the closing of this transaction.**
9. **Insurance.** Buyer shall procure and maintain in effect through the date Buyer has removed the Equipment from the Premises (as defined below), at Buyer's sole expense, the minimum insurance coverages set forth in Exhibit "A", which shall be subject to Seller's approval as to form, amount and issuing company. Buyer shall comply with all "Additional Requirements" provisions of Exhibit "A" and said provisions are hereby incorporated in this Section 9 as if fully set forth herein. Buyer shall submit to Seller at the time Buyer executes this Agreement, a Certificate of Insurance in form satisfactory to Seller, evidencing that satisfactory coverage of the type and limits set forth in Exhibit "A" are in effect. Should Buyer fail to comply with any of the foregoing insurance requirements, Seller, in its sole discretion, may immediately terminate this Agreement. Buyer further agrees that nothing contained in Exhibit "A" shall relieve Buyer of any of Buyer's obligations and responsibilities contained in this Agreement, including without limitation, the Indemnity provisions of Section 8.
10. **Inspection, Disassembly, Dismantling and Removal of the Equipment.** Buyer shall comply with the safety rules set out on Exhibit "B" while on the premises where the Equipment is currently located ("Premises"), as well as any additional instructions from Seller regarding the actions of Buyer while upon, entering or leaving the Premises. Further, Buyer shall coordinate its inspection and removal operations with Seller's representative in order to avoid interference, damage, or injury to Seller's personnel, operations, and facilities. **BUYER'S ACCESS TO THE PREMISES SHALL BE AT BUYER'S SOLE RISK, COST AND EXPENSE.**
11. **Completion of Dismantling and Removal of Equipment.** Buyer shall complete the dismantling and removal of the Equipment from the Premises within 60 days from the date of execution of this Agreement ("Removal Date"). Buyer's obligations under this Section 11 shall survive the closing of this transaction. If Buyer shall have failed to remove all of the Equipment from the Premises by the Removal Date, Buyer shall pay to seller a rental fee equal to \$100.00 per day for each day after the Removal Date that any Equipment remains on the Premises. Seller will hold such remaining Equipment as

security for the payment of the total accrued rental ("Accrued Rental") until it is paid in full. In the event the Accrued Rental exceeds the purchase price set forth in Section 3 above, Buyer shall be deemed to have abandoned such remaining Equipment, and Seller will retain such purchase price and sell the remaining Equipment to satisfy the Accrued Rental. Upon removal of the Equipment by Buyer, Buyer shall immediately clear the Premises from which the Equipment is removed of any refuse, garbage or debris caused by such removal at the sole expense and responsibility of Buyer. In addition, Buyer shall return the surface of the Premises to its original condition as closely as practicable.

12. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, SELLER'S LIABILITY TO BUYER UNDER THIS AGREEMENT, IF ANY, SHALL BE LIMITED TO THE PAYMENT TO BUYER BY SELLER OF AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE SET FORTH IN SECTION 3 HEREOF. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY EXEMPLARY, PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL, REMOTE OR SPECULATIVE DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES (IN TORT, CONTRACT OR OTHERWISE). IN FURTHERANCE OF THE FOREGOING, BUYER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED UNDER ANY APPLICABLE LAW, ANY AND ALL RIGHT, CLAIMS AND CAUSES OF ACTION IT MAY HAVE AGAINST SELLER EXCEPT AS PROVIDED HEREIN.

13. **Entire Agreement: Choice of Laws.** This Agreement constitutes the entire agreement between the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, agreements, proposals, specifications, either verbal or written, between the parties hereto. This Agreement shall be interpreted in accordance with the laws of the State of Texas, without regard to principles or conflict of laws that may invoke the laws of another jurisdiction.

14. **Counterparts.** This Agreement and Bill of Sale may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

**Seller**

Energy Transfer Company

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

Title: Director of Operations

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

Title: COO

**Buyer**

\_\_\_\_\_

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

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

Federal Tax ID No.: \_\_\_\_\_

**EXHIBIT "A"**  
**MINIMUM INSURANCE REQUIREMENTS**

**Workers Compensation and Employers Liability Insurance**

Buyer agrees to comply with Workers Compensation laws of the state of Texas, and to maintain a Workers Compensation and Employers Liability policy. This policy shall be endorsed to provide: all states coverage, voluntary compensation coverage and occupational disease.

Workers Compensation	Statutory
Employers Liability	\$1,000,000 Each Accident (Minimum) \$1,000,000 Disease Each Employee (Minimum)

**Commercial General Liability Insurance**

Commercial General Liability insurance, endorsed to provide coverage for explosion, collapse and underground damage hazards, contractual liability and products and completed operations.

Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit Each Occurrence (Minimum)
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**Automobile Liability Insurance**

Automobile Liability insurance, which shall include coverage for all, owned, non-owned and hired vehicles.

Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit Each Occurrence (Minimum)
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**Excess Umbrella Liability Insurance**

Bodily Injury and Property Damage	\$5,000,000 Combined Single Limit Each Occurrence (Minimum in Excess of Primary)
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**Additional Requirements:**

Buyer shall submit to Seller on or before the time this Agreement is executed, a Certificate of Insurance, in form satisfactory to Seller, evidencing that satisfactory coverage of the type and limits set forth hereinabove are in effect. Policies providing such coverages shall contain provisions that no cancellation or material changes in the policies shall become effective except on thirty (30) days advance written notice thereof to Seller. Irrespective of the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance for Buyer, or the failure of any of Buyer's insurance company to pay claims accruing, or the inadequacy of the limits of the insurance, shall not affect, negate or waive any of the provisions of Agreement, including, without exception, the indemnity obligations of Buyer.

Buyer agrees to require any policies of insurance (including but not limited to those listed above) except Workers' Compensation coverages, which are in any way related to the inspection, disassembly, dismantling or removal of the Equipment from the Premises (the "Work") and that are secured and maintained by Buyer or its subcontractors, shall include Seller, its parent and affiliated companies, and their directors, officers, employees and agents, as Additional Insured and shall include a maximum deductible of no more than \_\_\_\_\_.

Furthermore, Buyer shall waive all rights of recovery against Seller Indemnified Parties.

Buyer shall require any subcontractor at any tier connected with the Work to provide and maintain insurance at all times during the period that their agreement related to the Work hereunder is in force and effect at the subcontractor's, vendor's, supplier's, material dealer's, or others' own cost, with insurance limits, in a form and issued by companies acceptable to Seller. Buyer agrees to require all such policies of insurance which are in any way related to the Work and that are secured and maintained by Buyer or its subcontractors, to include clauses providing that each underwriter shall waive its rights of recovery, under subrogation or otherwise, against Seller, its parent and affiliated companies and their directors, officers, employees and agents.



**EXHIBIT "B"**  
**SELLER'S SAFETY RULES WHILE ON PREMISES**

1. Buyer, its agents, subcontractors and employees shall not do any cutting, welding, or any other action requiring the use of an open flame without the written consent of Seller, which consent shall not be unreasonably withheld. Buyer, its agents, subcontractors, and employees shall comply with the safety practice guidelines set forth in OSHA.
2. Buyer shall conduct initial employee training and weekly environmental safety meetings. Initial training shall include: (a) all aspects of OSHA's 1910 Hazardous Communication training; and (b) identification of an information (including Material Safety Data Sheets) pertaining to all hazardous materials that its employees may come in contact with at the work location; and (c) the Buyer's SPCC plan. Buyer shall provide Seller with documentation of attendance and the agenda for each meeting.
3. Buyer, at Buyer's expense, shall maintain an adequate supply of spill control and loss prevention materials on site.
4. Buyer shall not conduct any sandblasting activities in connection with the Abatement Work and the Disassembly Work. Prior to use by Buyer, Seller must approve all paint, paint solvent or other cleaning solvents.
5. Buyer shall confine its employees, contractors and subcontractors to the authorized work site and service facilities only.
6. Buyer will ensure that all of its employees, contractors and subcontractors are provided with, and daily wear, safety glasses and hardhats. Fall protection equipment required by OSHA such as safety belts, harnesses, lifelines, etc. will be provided by Buyer. Buyer shall insure the proper use of said equipment.
7. Buyer shall be responsible for providing all fire fighting equipment. In the event of a fire, Buyer shall remove all of Buyer's personnel (including contractors, subcontractors and employees) from the Equipment Site. **No fire water system is available at the Equipment Site.**
8. No blasting with explosives shall be permitted.
9. During the Work, Buyer shall take such measures as may be necessary to protect adequately all persons and Seller's property and the property of others from injury or loss, and provide and maintain all passageways, guard fences, lights, and such other facilities for the protection of persons and property as may be required by any federal, state, and/or local government having jurisdiction or by local conditions.