

**CAPITAL IMPROVEMENT AGREEMENT WITH MARKWEST TEXAS PNG Utility, L.L.C.
FOR SANITARY SEWER RELOCATION NEAR CH MATTHIES**

This Capital Improvement Agreement (the "Agreement") is made on July __, 2021 between the City of Seguin, Texas, a Texas municipal corporation (the "City"), 205 N. River Street, Seguin, TX 78155, and MarkWest Texas PNG Utility, L.L.C. a Texas Corporation licensed to do business in Texas and headquartered at 1515 Arapahoe Street, Tower 2, Suite 700, Denver, Colorado 80202 ("MarkWest").

WHEREAS, MarkWest owns and operates a natural gas transmission pipeline (the "pipeline") that runs through the City of Seguin; and

WHEREAS, at some point while installing or repairing the transmission line a bore perforated a City sewer line resulting in part of the transmission line running through the City's sanitary sewer near CH Matthies Street; and

WHEREAS, in order to maintain constant gas flow necessary to serve critical customers MarkWest has agreed to reimburse the City for its costs in lowering the section of sewer line that was perforated; and

NOW THEREFORE, in consideration of the foregoing premises, the mutual covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and MarkWest agree as follows:

1. Award of Design and Construction Contracts:

A. The City awarded a contract to TRC Engineering, Inc. (the "Project Engineer") for design and construction management of the Project. The Project Engineer will provide any technical specifications required for the proposed improvements. The City shall ensure that the Project Engineer undertakes and completes the design of the Project in a timely manner, so as to ensure that all deadlines specified hereunder are met by the City.

B. The Project Engineer has provided an opinion of probable cost for the project estimating that the cost will be \$239,068.00 (see Exhibit "A"), including engineering and contingency.

C. The City shall ensure that the contract documents, and performance by the contractor, take into consideration all safety precautions necessary for work in the vicinity of a gas transmission line.

D. Pursuant to the Texas Local Government Code the City shall bid the project and award the bid to the contractor who submitted the lowest responsible bid. Should the bid exceed the estimated cost of construction, the City will immediately notify MarkWest by sending it a copy of the bid. MarkWest shall have five business days to approve or disapprove the increased cost. Approval shall not be unreasonably withheld and failure to meet the five day deadline shall be deemed acceptance of the increased costs.

2. Agreements by the Parties.

A. MarkWest shall pay the City an amount not to exceed \$ 239,068.00, the amount based on the cost of the Project. Any additional costs must be approved by MarkWest prior to the City entering into a change order with their contractor. Payment shall consist of two installments.

i. Installment one shall be in the amount of \$46,420 and payable upon execution of this agreement. Installment one is the amount of the design surveying and engineering. Upon receipt of this payment the City will authorize TRC Engineers to begin the design engineering for this project.

ii. Installment two shall be in the amount of \$192,648 and payable ten (10) days after bid opening. Installment two is the amount of the construction cost and contingencies. Upon receipt of this payment the City will authorize the contractor to proceed with construction.

B. Upon completion of the project, the City shall provide MarkWest with all invoices approved by the City and its Engineer for the services rendered under the construction contract. Should the actual construction costs associated with this project be less than \$239,068.00, the City agrees to reimburse MarkWest the difference between the total cost and the \$239,068 within 30 days of receipt of the actual costs. If the actual cost exceed \$239,068, MarkWest will have approved the increased costs pursuant to section 1. D. or 2. A. of this agreement and said increase shall be paid within 30 days of receipt thereof. MarkWest shall only be liable for the actual approved costs of the Project.

C. The City or its contractor shall provide written notice to MarkWest prior to any excavation or construction activities on or within three feet of the pipeline. Said notice shall be provided at least forty-eight (48) hours in advance of said excavation or construction activities as directed by the notice provision herein. The instructions of such MarkWest representative relative to the protection of the pipeline will be followed by the City. MarkWest is obligated to provide any instruction in a timely manner such that the contractor is not delayed.

3. General Provisions.

A. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns, including without limitation, any receivers, administrators, or trustees in bankruptcy.

B. **Severability.** If any word, phrase, clause, sentence, paragraph, section or other portion of this Agreement is held to be invalid for any reason by a court or agency of competent jurisdiction, the remainder of the Agreement shall not be affected by the invalidity and shall be construed as if the invalid portion was not contained in the Agreement. The provisions of this Agreement are expressly deemed severable for this purpose.

C. **Cooperation.** The parties to this Agreement agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.

D. **Entire Agreement.** This Agreement contains the entire agreement of the parties and supersedes all prior or contemporaneous understandings or representations, whether oral or written, respecting the subject matter of this Agreement.

E. **Amendments.** Any amendment of this Agreement must be in writing and signed by the authorized representative of each party to this Agreement.

F. **No Amendment of Other Agreements.** Unless otherwise expressly stipulated in this Agreement, this Agreement is separate from and is not an amendment or modification of any other agreement between the parties.

G. **Indemnity.** THE CITY AGREES THAT ALL RISK, COSTS, AND EXPENSES OF THE CONSTRUCTION OPERATION, MAINTENANCE, REPAIRS AND REMOVAL RELATED TO THE PROJECT WILL BE BORNE SOLEY AS DESCRIBED IN THIS AGREEMENT, AND TO THE EXTENT ALLOWED BY APPLICABLE LAW THE CITY AGREES TO PROTECT, INDEMNIFY AND SAVE MARKWEST AND ITS AFFILIATES, AND THE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AND REPRESENTATIVES OF THOSE ENTITES ("MARKWEST GROUP"), HARMLESS FROM AND AGAINST ALL CLAIMS FOR BODILY INJURY, ILLNESS, DEATH, DAMAGE TO PROPERTY, THE ENVIRONMENT, OR NATURAL RESOURCES, ALL DAMAGES, LOSSES, FINES, DEMANDS AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER (INCLUDING ATTORNEY FEES AND EXPENSES) CAUSED BY THE CITY IN ANY WAY DUE TO THE CONSTRUCTION, OPERATION, MAINTENANCE, REPAIR OF THE PROJECT THIS INDEMNITY OBLIGATION AND THE LIABILITIES ASSUMED BY THE CITY SHALL BE WITHOUT MONETARY LIMIT AND WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF; HOWEVER, THE INDEMNITY WILL NOT APPY TO THE EXTENT ANY SUCH LOSS OR DAMAGE IS DIRECTLY ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE MARKWEST GROUP. THE FOREGOING PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

H. **Applicable Law.** This Agreement shall be construed under and in accordance with Texas law. Venue for any action arising hereunder shall be in Guadalupe County, Texas.

I. **Notice.** Notice requirements of this Agreement shall be provided as directed in Exhibit B – Notice.

Executed and effective on July __, 2021

City of Seguin, Texas:

By: _____
Steve Parker,
City Manager

MarkWest Texas PNG Utility, L.L.C.:

By: Kevin Thompson
Kevin Thompson,
Regional Manager, G&P Operations - West

Exhibit A

CITY OF SEGUIN
FLEMING DRIVE SEWER REPLACEMENT
(GAS PIPELINE PROTUSION)
OPINION OF PROBABLE PROJECT COST
May 25, 2021

ID NO.	Description	Unit	Estimated Quantity	Price Per Unit	Amount
1	Payment and Performance Bonds (3%)	LS	1	\$5,000	\$5,000
2	Mobilization/Demobilization (10%)	LS	1	\$16,000	\$16,000
3	Bypass Pumping	LS	1	\$15,000	\$15,000
4	Remove/Replace Upstream MH (8' deep)	EA	1	\$10,000	\$10,000
5	Remove/Replace Downstream Drop MH (13' deep)	EA	1	\$13,000	\$13,000
6	Manhole Interior Coating	VF	21	\$300	\$6,300
7	Remove/Replace 10" Sanitary Sewer Main	LF	420	\$140	\$58,800
8	Flowable Fill @ Gas Pipeline	LF	40	\$100	\$4,000
9	Pavement Repair	SY	180	\$60	\$10,800
10	OSHA - Trench Protection	LF	420	\$6.00	\$2,520
11	Video Pipe	LF	420	\$6.00	\$2,520
12	Traffic Control	LS	1	\$5,000	\$5,000
13	Silt Fencing	LF	400	\$4.00	\$1,600
14	Seeding	SY	2,500	\$2.00	\$5,000
15	SWPPP	LS	1	\$5,000	\$5,000
Construction Cost					\$160,540
Contingencies (20%)					\$32,108
Design Surveying					\$3,000
Engineering					\$43,420
TOTAL COST					\$239,068

Notes:

1. Costs are based on recent project bids from the City of Seguin.
2. Costs exclude service laterals as none are anticipated.

FOR REVIEW ONLY
DO NOT USE FOR PERMITTING,
BIDDING, OR CONSTRUCTION.

1 of 1



Exhibit B
Notice Schedule

In addition to statutory and regulatory obligations, the City shall comply with this Notice Schedule

One Call

Ron Hudson
719 Rio Nogales Drive
Seguin, TX 78155
Tel: 830-660-0099
Email: rwhudson@marathonpetroleum.com

Operations

Trent Peterson
5850 US HWY 83
Asherton, TX 78827
Tel: 830-468-3399
Email: tepterson@marathonpetroleum.com

Pipeline Integrity

Dennis Thebeau
1515 Arapahoe St., Tower 1, Suite 1600
Denver, CO 80202
Tel: 303-531-9089
Email: dthebeau@marathonpetroleum.com

Legal

Christopher Rimkus
1515 Arapahoe St., Tower 1, Suite 1600
Denver, CO 80202
Tel: 303-925-9205
Email: clrimkus@marathonpetroleum.com

Emergency Pipeline:

1-800-825-9225