

**CHAPTER 380**  
**INCENTIVE AGREEMENT**  
**By and Between**  
**CITY OF CORPUS CHRISTI, TEXAS**  
**And**  
**MARKWEST GAS SERVICES, L.L.C.**

**2009-492**  
**Res. 028450**  
**12/15/09**

## CHAPTER 380 INCENTIVE AGREEMENT

This Agreement ("Agreement"), by and between the City of Corpus Christi, Texas, a home-rule municipal corporation ("City"), and MarkWest Gas Services, L.L.C., Texas limited liability company ("MarkWest"), is effective on December 31, 2009 ("Effective Date").

### RECITALS

**WHEREAS**, MarkWest, MarkWest Javelina Company, L.L.C., and Air Products, LLC, developed and Air Products will operate a steam methane reformer that produces hydrogen, commonly known as the Corpus Christi Hydrogen SMR Facility ("CC HSMR Facility"), located at 5401 Up River Road, within the city limits of Corpus Christi, Texas;

**WHEREAS**, MarkWest will construct and operate facilities to interconnect the MarkWest Javelina Company, L.L.C., and Air Products, LLC, processing facilities ("Project" or "CC HSMR Interconnect Facility");

**WHEREAS**, the City has established a program under Article III, Section 52-a, Texas Constitution and Chapter 380, Texas Local Government Code ("Chapter 380") under which the City has the authority to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City;

**WHEREAS**, the City has concluded and finds that this Agreement promotes economic development in the City of Corpus Christi and meets the requirements under Chapter 380 and the City's established economic development program;

**WHEREAS**, the City finds that this Agreement is in the best interests of the City and MarkWest;

**WHEREAS**, the City recognizes the positive economic impact that the investment of at least \$11,900,000 in the Project will bring to the City through development and diversification of the economy;

**WHEREAS**, MarkWest will directly finance, design, and construct the Project, as described in this Agreement;

**WHEREAS**, in consideration of the acquisition, development, and operation of the Project, and jobs located at the Project, the City agrees to use its funds in order to pay to MarkWest the amount of the City commitment (as defined in this Agreement) directly in the amount described in Article IV of this Agreement;

**WHEREAS**, consistent with Article III, Section 52-a, Texas Constitution; Chapter 380; and other laws, the City and MarkWest, as contemplated in this Agreement, agree to work together to cause the public purposes of developing and diversifying the economy of the City, and developing or expanding commerce in the City;

**WHEREAS**, to ensure that the benefits the City provides under this Agreement are utilized in a manner consistent with Article III, Section 52-a, Texas Constitution; Chapter 380; and other laws, MarkWest has agreed to comply with certain conditions for receiving those benefits, including performance measures relating to Project operations and the hiring of local and disadvantaged businesses for the construction of the Project; and

**WHEREAS**, the City and MarkWest desire to enter into this Agreement for their mutual benefit;

**NOW, THEREFORE:**

## **AGREEMENT**

For and in consideration of the foregoing recitals and of the mutual promises, obligations, covenants, and benefits contained in this Agreement, City and MarkWest contract and agree as follows:

### **ARTICLE I GENERAL TERMS**

**Section 1.01. Incorporation of Recitals.** The recitals to this Agreement are incorporated for all purposes.

**Section 1.02. Definitions and terms.** The terms "Agreement," "Chapter 380," "City," "MarkWest," "Effective Date," and "Project" have the meanings described in the Recitals, and the following terms have the following meanings:

"City commitment" is defined in Article IV.

"Completion" means the date that both of the following have occurred: (i) MarkWest has completed construction of the CC HSMR Interconnect Facility, with a minimum investment of private equity or financing of not less than \$11,900,000 and (ii) Air Products, LLC determines that the CC HSMR Facility is capable of delivering hydrogen to its customers, but not later than December 31, 2010.

"Fiscal Year" means the twelve consecutive month period designated by the City as its fiscal year. As of the date of this Agreement, the City's fiscal year commences on August 1 and ends on the next succeeding July 31.

"Full Operation" means the operation of a steam methane reformer interconnection facility.

"Parties" or "Party" means the City and MarkWest, the parties to this Agreement.

"Property" means the improvements and personal property as described in this Agreement and as constructed by MarkWest upon completion.

"Land" means the land on which the Project will be built, as described in Exhibit B, which is attached and incorporated into this Agreement.

"Reimbursement Account" means the special fund created by the City as described in Section 4.01.A of this Agreement.

"Useful Life" means the period of time during which the CC HSMR Interconnect Facility will operate for its intended purpose, not less than 15 years.

**Section 1.03. Singular and Plural.** Words used in this Agreement in the singular, where the context so permits, also include the plural and vice versa. The definitions of words in the singular in this Agreement also apply to the words when used in the plural where the context so permits and vice versa.

## **ARTICLE II REPRESENTATIONS**

**Section 2.01. Representations of the City.** The City represents to MarkWest that as of the date of this Agreement:

- A. The City is a duly created and existing municipal corporation and home rule municipality of the State of Texas, and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.
- B. The City has the power, authority, and legal right under the laws of the State of Texas and the City Charter to enter into and perform this Agreement and the execution, delivery, and performance of this Agreement (i) will not, to the best of its knowledge, violate any applicable judgment, order, law, or regulation, and (ii) do not constitute a default under any Agreement or instrument to which the City is a party or by which the City or its assets may be bound or affected.
- C. This Agreement has been duly authorized, executed, and delivered by the City, and constitutes a legal, valid, and binding obligation of the City, enforceable under its terms, except to the extent that (i) the enforceability of the instruments may be limited by bankruptcy, reorganization, insolvency, moratorium, or other similar laws of general application in effect from time to time relating to or affecting the enforcement of creditors' rights and (ii) certain equitable remedies, including specific performance, may be unavailable.
- D. The execution, delivery, and performance of this Agreement by the City do not require the consent or approval of any person that has not been obtained.

**Section 2.02. Representations of MarkWest.** MarkWest represents to the City that as of the date of this Agreement:

- A. MarkWest is duly authorized, existing, and in good standing under the laws of the State of Texas, and is qualified to do business in the State of Texas.

B. MarkWest has the power, authority, and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery, and performance of this Agreement (i) have been duly authorized, and will not, to the best of its knowledge, violate any judgment, order, law or regulation applicable to MarkWest, and (ii) do not constitute a default under any Agreement or instrument to which MarkWest is a party or by which MarkWest or its assets may be bound or affected.

C. This Agreement has been duly authorized, executed, and delivered and constitutes a legal, valid, and binding obligation of MarkWest, enforceable under its terms except to the extent that (i) the enforceability of the instruments may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application in effect from time to time relating to or affecting the enforcement of creditors' rights, and (ii) certain equitable remedies including specific performance may be unavailable.

### **ARTICLE III MARKWEST PERFORMANCE REQUIREMENTS**

#### **Section 3.01. Project.**

A. MarkWest agrees:

1. To complete construction of the Project no later than December 31, 2010.
2. To commence full operation by the not later than December 31, 2011 or the date on which the CC HSMR Facility is required to commence delivering hydrogen to its customers, whichever is earlier.
3. Subject to Section 7.01.C., after full operation, to operate the CC HSMR Interconnect Facility for the Useful Life of the CC HSMR Interconnect Facility.

B. MarkWest shall pay all engineering, planning, accounting, architectural, legal fees, and expenses; survey, testing, and laboratory costs; license fees; advertising and other bidding costs; amounts due under construction contracts; costs of labor and material, insurance premiums, and other costs and expenses incurred in connection with the acquisition and construction of the property which costs as set forth in Exhibit A, which is attached to and incorporated into this Agreement, and which are at least \$11,900,000. MarkWest shall provide evidence, satisfactory to the City, of expenditures for the improvements to the Project in the amounts required for completion. The City shall not be responsible for any of the costs out of its current revenues or other sources, except under the reimbursement to MarkWest for the costs of the improvements through the City commitment as provided in this Agreement.

C. MarkWest agrees to assist the City, if so requested by the City, in the preparation of any documentation necessary for the preparation and approval of any of the documents or actions required by the City to perform any of the obligations under this Agreement. MarkWest further shall prepare or cause to be prepared any preliminary architectural or engineering plans and financial data and Projections reasonably requested by the City in order to assist the City in carrying out the purposes of this Agreement. MarkWest

agrees to proceed in good faith towards the redevelopment of the Project. Upon completion of the Project and during the term of this Agreement, MarkWest shall maintain the property, improvements, and premises in a commercially reasonable manner, comparable to the maintenance of similar hydrogen steam methane reformer interconnection facilities; shall operate the Project, as provided in Section 3.01.A.2; and shall timely pay all ad valorem taxes assessed against the property subject to exercise by MarkWest of its legal rights to contest, protest, or appeal the taxes.

### **Section 3.02. Operational Requirements.**

A. MarkWest's receipt of the City commitment is subject to the following commitment ("Operational Requirement"): MarkWest agrees to maintain and operate the Project, as provided in Section 3.01.A.2, as a hydrogen steam methane reformer interconnection facility for the useful life of the Project; any default in this obligation shall result in the forfeiture of the right to receive reimbursement for any of the City commitment.

B. MarkWest's failure to complete the Project within 12 months from the Effective Date is a default under this Agreement, and MarkWest shall forfeit the right to receive reimbursement.

**Section 3.03. Utilization of Local Contractors and Suppliers.** Subject to MarkWest's existing contractual obligations, in all of its procurements entered into after the Effective Date, including, but not limited to, procurements of supplies, materials, equipment, service contracts, construction contracts, and professional services contracts, MarkWest shall use reasonable efforts to procure same from businesses located within Nueces and San Patricio Counties, unless supplies or services are not reasonably and competitively available within the area. MarkWest shall make reasonable efforts to determine local availability and competitiveness of other supplies, materials, equipment, service, construction, and professional service contracts, but shall not be required to maintain records regarding this requirement other than those normally kept in its usual course of business.

**Section 3.04. Monitoring by the City.** Monitoring to determine MarkWest's compliance with the terms of this Agreement for compliance purposes will be done by the City no less than twice per year during the period of construction, and on an annual basis after completion. During the monitoring process, the City will make maximum use of any State and Federal submissions for the determination of contract compliance. Monitoring may be accomplished by City personnel or other persons designated by the City. MarkWest agrees to reasonably cooperate with the City in the monitoring process.

## **ARTICLE IV PROJECT FINANCING AND FUNDING**

### **Section 4.01. Project Financing for the CC HSMR Interconnect Facility.**

A. The City covenants and agrees upon the Effective Date of this Agreement to create a special fund ("Reimbursement Account") for the benefit of MarkWest for the purpose of paying the City commitment related to the CC HSMR Interconnect Facility. The City

shall fund the reimbursement account through the term of this Agreement from the difference between the ad valorem tax payments received from MarkWest for the CC HSMR Interconnect Facility and the in-lieu of tax amount calculated according to Section 4.02.E ("City commitment"). The City shall annually fund the City commitment from the funds deposited in the reimbursement account under this Agreement and the amount of the City commitment under this Agreement shall be paid by the City to MarkWest under the terms of this Agreement.

B. The reimbursement account shall always remain unencumbered by the City and segregated from all other funds of the City. The funds are held in trust by the City for MarkWest to be used subject to and solely under the terms of this Agreement as long as MarkWest is in compliance with this Agreement. The City agrees that it will pay to MarkWest the City commitment in the form of annual cash payments within ninety (90) days after MarkWest notifies the City that it has paid the ad valorem taxes related to the CC HSMR Interconnect Facility each year, which payments shall be made by the City from the reimbursement account.

#### **Section 4.02. City commitment.**

A. Under its authority under Chapter 380, the City agrees to pay the City commitment to MarkWest. It is intended by the parties that the City commitment will be paid by the City solely out of the reimbursement account. The annual amount of the City commitment is set forth in Section 4.02.E. Payments to MarkWest of the City commitment will commence beginning tax year 2010 and will continue through the term of this Agreement. The City agrees that it will pay the City commitment during the term of this Agreement (solely from the reimbursement account), if the Project is completed and the CC HSMR Interconnect Facility is maintained in full operation after the respective dates required in Section 3.01.A. The payments are not subject to any reduction, whether offset or otherwise, except under Section 3.03 of this Agreement.

B. The parties agree that the City commitment will be limited solely to the funds deposited or required to be deposited into the reimbursement account under this Agreement.

C. The City shall determine the amount of the City commitment annually. The City agrees to deposit from the ad valorem tax payment of MarkWest related to the CC HSMR Interconnect Facility an amount equal to the annual City commitment into the reimbursement account under Section 4.01.(A) of this Agreement, and pledges the fund to the payment of the City commitment as provided in this Agreement. The City commitment shall be remitted to MarkWest ninety (90) days after MarkWest notifies the City that it has paid the ad valorem taxes related to the CC HSMR Interconnect Facility each year.

D. The City shall maintain complete books and records showing deposits to and disbursements from the reimbursement account, which books and records shall be deemed complete if kept under generally accepted accounting principles as applied to Texas municipalities. The books and records shall be available for examination by the

duly authorized officers or agents of MarkWest during normal business hours upon request made not less than five business days prior to the date of the examination. The City shall maintain the books and records throughout the term of this Agreement and store the books and records for four years after a transaction.

E. The City commitment is determined as follows:

1. For the purposes of this Section 4.02.E, the following words are defined as set forth in this Agreement:

"Improvements" have the meaning set forth in Section 1.04(3), Texas Tax Code.

"Personal property" has the meaning set forth in Section 1.04(4), Texas Tax Code.

2. Each year during the term of this Agreement, the City commitment is the difference between (i) the total ad valorem taxes assessed on the land and property of the CC HSMR Interconnect Facility and paid by MarkWest, as described in Exhibit B, and (ii) the in-lieu of tax amount determined as follows:

a. *In-lieu of taxes on property located on the land prior to completion.*

(1) An amount in-lieu of taxes on property located on the land prior to completion equal to zero percent (0%) of the amount of ad valorem taxes which would otherwise be payable to City by MarkWest.

(2) On or before July 31 of each year or upon final determination of property values by NCAD, whichever is later, during the term of this Agreement, MarkWest shall provide to City's Department of Financial Services a written statement of its opinion of the market value sworn to by an official of MarkWest authorized to do the same.

b. *In-lieu of taxes on property existing on the land as of completion and any new property added to the land after completion.*

(1) For property existing on, or new property added after, completion, in-lieu of the percentages of the amount of ad valorem taxes as calculated in Section 4.02.E.a., the in-lieu of tax payment shall be based on the percentage shown in the Chart 4.02.E.2.b based on the year of use.

(2) The first year of use for purposes of this Section 4.02.E.2.b:

(i) With respect to property existing on the land as of completion, shall be deemed to begin the first day of January after completion.

(ii) With respect to new property, shall be deemed to begin on the first day of January next following the date when the new property is placed in use.

(3) Section 4.02.E.2.b.(2)(ii) applies to construction of new improvements, personal property, or facilities and to the expansion of existing improvements, personal property, or facilities on the land.

(4) New improvements, personal property, or facilities not included within this Section 4.02.E.2.b are deemed to be included within the provisions of paragraph Section 4.02.E.2.a.

Chart 4.02.E.2.b

Construction Period (not to exceed 1 year)	0%
Year 1	0%
Year 2	0%
Year 3	0%
Year 4	25%
Year 5	50%
Year 6	75%
Year 7	100%
Year 8	100%
Year 9	100%
Year 10	100%
Year 11	100%
Year 12	100%
Year 13	100%
Year 14	100%
Year 15	100%

d. The present ratio of ad valorem tax assessment used by City is one hundred percent (100%) of the fair market value of land and property. Any change in the ratio used by City shall be reflected in any subsequent computations under this Agreement. This Agreement and the method of determining and fixing the amount of in-lieu of taxes

payments under this Agreement shall be subject to all provisions of law relating to determination of market value and taxation, including, but not limited to, laws relating to rendition, assessment, equalization, and appeal.

e. In determining MarkWest's in-lieu of tax amount required under this Agreement, the calculation is made utilizing the fair market value of all property determined by NCAD or its successor under provisions of the Texas Property Tax Code. MarkWest shall timely provide information and reports required under Texas law, rules, and regulations to NCAD or its designee, so that the appraisal process can be completed under all applicable state laws. Upon written request each year by the City's Department of Financial Services, MarkWest will provide the City with the certified fair market value assessment for use in calculation and preparation of the annual in-lieu tax amount. The calculation must be made without reference to the exemption for pollution control property in Section 11.31, Texas Tax Code, and Article VIII, Section 1-l, Texas Constitution, as they presently exist or may be amended, using the fair market value of pollution control equipment certified by NCAD. In addition, all the amounts shall be calculated without reference to any new tax exemption or any increase in an existing tax exemption enacted after January 1, 1995.

f. If MarkWest elects to protest the valuation set on any of its properties by Nueces County Appraisal District (NCAD) for any year or years during the term of this Agreement, it is agreed that nothing in this Agreement precludes the protest and MarkWest has the right to take all legal steps desired by it to reduce the same, except with regard to the exemptions in Section 4.02.E.2.e. Notwithstanding any protest by MarkWest, MarkWest agrees to pay to City an initial tax payment, on or before the date payment is due under this Agreement of at least the amount of the taxes on the land and property that would be due by MarkWest to City under this Agreement on the basis of renditions filed by MarkWest with City's Department of Financial Services for that year under Section 4.02.E.2.a(2) or on the basis of the assessment under this Agreement for the last preceding year, whichever is higher. When the valuation on the land or property has been finally determined, either as the result of final judgment of a court of competent jurisdiction or as the result of other final settlement of the controversy, then within thirty (30) days thereafter MarkWest shall make to City any additional payment due based on the final valuation. If as a result of final judgment of a court of competent jurisdiction, or as the result of other final settlement of the controversy, the valuation of MarkWest's land or property is established as an amount less than the amount used to compute the initial tax payment for that year by MarkWest, then within thirty (30) days thereafter City shall make to MarkWest any payment due based on the difference between the initial payment and that which is computed based on the final settlement.

## **ARTICLE V ADDITIONAL DUTIES AND RESPONSIBILITIES**

**Section 5.01. Amendment of Agreement.** Upon the request of MarkWest, the City may agree to amend this Agreement to provide for any reasonable changes necessary

to carry out the intent of this Agreement. The City's consent to an amendment of this Agreement will not be unreasonably withheld.

## **ARTICLE VI TERM OF THE AGREEMENT AND OTHER OBLIGATIONS**

**Section 6.01. Term and termination.** This Agreement has a term ("term") beginning on the Effective Date of this Agreement and continuing until December 31, 2025.

## **ARTICLE VII DEFAULT**

### **Section 7.01. Default.**

A. If the City does not perform its obligations under this Agreement in substantial compliance with this Agreement and, if the default remains uncured for a period of 60 days after notice of the default of this Agreement has been given, in addition to the other rights under the law or given MarkWest under this Agreement, MarkWest may enforce specific performance of this Agreement, or seek a writ of mandamus to perform obligations under this Agreement.

B. If MarkWest does not perform its obligations under this Agreement in substantial compliance with this Agreement, and, if the default remains uncured for a period of 60 days after notice of the default under this Agreement has been given or such longer period as is reasonably necessary to cure default if the default cannot be cured within 60 days, then the City may terminate this Agreement and City may recover funds previously paid to MarkWest under this Agreement in an amount proportionate to the uncured default. For the purposes of this Agreement, since greater benefits are provided to MarkWest in the earlier years of this Agreement the amount of funds that the City will be entitled to recover will be greater in the early years of this Agreement, and may include up to 100% of the City Commitment for all prior years. For example, if the CC HSMR Interconnect Facility is never placed into operation or only operates for a limited period of time, the City could recover 100% of all prior City Commitment payments during the prior years of this Agreement. But if MarkWest operates the CC HSMR Interconnect Facility for two thirds of the facility's useful life, the City could only recover 33% of prior the City Commitment paid to MarkWest.

C. Notwithstanding anything in this Agreement that is or may appear to be to the contrary, if the performance of any covenant or obligation to be performed under this Agreement by either Party is delayed as a result of circumstances that are beyond the reasonable control of the Party (which circumstances may include, without limitation, pending or threatened litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions (such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures, hurricane, or tornados), labor action, strikes, or similar acts) the time for the performance is extended by the amount of time of the delay. The Party claiming delay of performance as a result of any of the foregoing "force majeure" events shall deliver

written notice of the commencement of any the delay resulting from the force majeure event not later than seven days after the claiming Party becomes aware of the circumstances causing the delay, and if the claiming Party fails to so notify the other Party of the occurrence of a force majeure event causing the delay, the claiming Party is not entitled to avail itself of the provisions for the extension of performance contained in this Section.

D. Should MarkWest fail to commence Full Operation by the date required in Section 3.01.A, this Agreement terminates without obligation of City to provide reimbursement to MarkWest.

## **ARTICLE VIII GENERAL**

**Section 8.01. Severability.** If any provision of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction for any reason, the provision is fully severable, and the remainder of this Agreement remains in full force and effect. This Agreement must be construed and enforced as if the invalid or unenforceable provision had never comprised a part of this Agreement.

**Section 8.02. Indemnification.** *MarkWest agrees to indemnify, defend, and hold the City and its respective council members, board members, officers, employees, and agents, harmless from any actions, suits, liens, claims, damages, expenses, losses, and liabilities (including reasonable attorneys' fees and expenses) arising from any grossly negligent act or omission on the part of MarkWest to the extent MarkWest is held liable for the act or omission under a final, unappealable order of a court with jurisdiction over MarkWest or the property.*

**Section 8.03. Notice.**

A. Any notice or other communication required or permitted to be given under this Agreement must be given to the other Party at the following address:

If to MarkWest:      MarkWest Gas Services, L.L.C.  
                                  ATTN: Vice President & Controller  
                                  1515 Arapahoe Street, Tower 2, Suite 700  
                                  Denver, CO 80202

If to the City:        City of Corpus Christi  
                                  ATTN: City Manager  
                                  1201 Leopard Street (78401)  
                                  P. O. Box 9277  
                                  Corpus Christi, Texas 78469

With a copy to: City of Corpus Christi  
ATTN: City Attorney  
1201 Leopard Street (78401)  
P. O. Box 9277  
Corpus Christi, Texas 78469

B. Any the notice or communication is deemed given on the date so delivered or so deposited in the mail, unless otherwise provided in this Agreement.

C. Either Party may change the above address by sending written notice of the change to the other Party in the manner provided in Section 8.03.A.

D. With the consent of the receiving Party, notice may be given by facsimile transmission or electronic mail.

**Section 8.04. Amendments and Waivers.** Any provision of this Agreement may be amended or waived if the amendment or waiver is in writing and is signed by the City and MarkWest.

**Section 8.05. Successors and Assigns.**

A. Except as provided in Article IV, no party has the right to assign its rights under this Agreement or any interest in this Agreement, without the prior written consent of the other Party, except MarkWest may assign its rights and responsibilities under this Agreement to any related, affiliated, or subsidiary entity to which substantially all of its assets, liabilities, and its rights to proceed with development of the Project are transferred without the consent of the City. The written consent may not be unreasonably withheld.

B. If MarkWest is seeking City consent to assign, City Council shall consider the consent to assign within thirty (30) days of the written notification. If the decision is not received by the Party seeking consent within sixty (60) days of their request for consent, the assignment is deemed approved.

C. Notwithstanding the foregoing, the City consents to MarkWest's assignment to a lending institution of all of MarkWest's rights under this Agreement as security for repayment of one or more loans to finance the construction or ownership of the Project, or construction of the improvements.

D. MarkWest shall give written notice of its assignment of its rights under this Agreement to the City within five business days of the occurrence of the assignment.

E. The foregoing provisions of Section 8.05 notwithstanding, any assignment of MarkWest's rights under this Agreement to any related, affiliated, or subsidiary entity to which substantially all of its assets, liabilities, and its rights to proceed with development of the Project are transferred without the consent of the City does not release MarkWest from its obligations under Section 7.01.B of this Agreement.

**Section 8.06. Exhibits; Titles of Articles, Sections, and Subsections.**

A. The exhibits attached to this Agreement are incorporated in this Agreement and are considered a part of this Agreement for the purposes stated in this Agreement, except that in the event of any conflict between any of the provisions of the exhibits and the provisions of this Agreement, the provisions of this Agreement prevail.

B. All titles or headings are only for the convenience of the parties, and may not be construed to have any effect or meaning as to the Agreement between the parties to this Agreement.

C. Any reference in this Agreement to a section or subsection is considered a reference to the section or subsection of this Agreement unless otherwise stated.

D. Any reference in this Agreement to an exhibit shall be considered a reference to the applicable exhibit attached to this Agreement unless otherwise stated.

**Section 8.07. Construction.** This Agreement is a contract made under and shall be construed under and governed by the laws of the United States of America and the State of Texas, excluding conflicts of laws, as the laws are now in effect. Venue for any action arising under this Agreement lies in the state district courts of Nueces County, Texas.

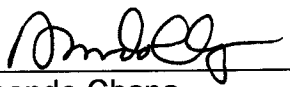
**Section 8.08. Entire Agreement.** This written Agreement represents the final Agreement between the parties, and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral Agreements of the parties. There are no unwritten oral Agreements between the parties.

**Section 8.09. Approval by the parties.** Whenever this Agreement requires or permits approval or consent to be given by either Party, the parties agree that the approval or consent may not be unreasonably withheld or delayed.


**IN WITNESS WHEREOF,** the parties to this Agreement have caused this instrument to be duly executed as of the 15<sup>th</sup> day of December, 2009.

**ATTEST**

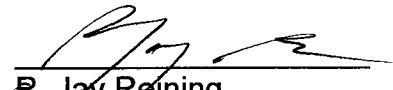
**CITY OF CORPUS CHRISTI, TEXAS**

  
Armando Chapa  
City Secretary

  
Angel R. Escobar  
City Manager

Res. 028450 AUTHORIZED  
BY COUNCIL 12/15/09  
AC  
SECRETARY 

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
R. Jay Reining  
First Assistant City Attorney  
For City Attorney

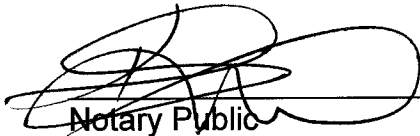
**MARKWEST GAS SERVICES, L.L.C.**

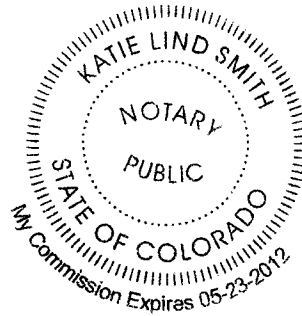
By:   
Paula Rosson  
Vice President & Controller

**THE STATE OF COLORADO**

COUNTY OF Denver

This instrument was acknowledged before me on Dec. 17<sup>th</sup>, 2009, by Paula Rosson, Vice President & Controller, for MarkWest Gas Services, L.L.C., a Texas limited liability company, on behalf of the company.

  
Notary Public  
State of Colorado



**Exhibit A**  
**Project Plan**

MarkWest, MarkWest Javelina Company, LLC, and Air Products, LLC, developed and Air Products, LLC, will operate a steam methane reformer that produces hydrogen, commonly known as the Corpus Christi Hydrogen SMR Facility ("CC HSMR Facility"), located on the MarkWest Javelina plant, within the City of Corpus Christi, Texas. MarkWest Gas Services, L.L.C., will construct and operate facilities to interconnect the MarkWest Javelina Company, L.L.C., and Air Products, LLC, processing units at the MarkWest Javelina plant. Both MarkWest Gas Services, L.L.C., and MarkWest Javelina Company, L.L.C., are subsidiaries of MarkWest Energy Partners, L.P.

The MarkWest Gas Services interconnect facilities include an L-shaped pipe rack with a total length of 430', and includes the following:

- 430' of 18" pipe for flare
- 430' of 10" pipe for steam
- 430' of 8" pipe for hydrogen
- 130' of 6" pipe for natural gas
- 430' of 4" pipe for condensate
- 275' of 2" pipe for nitrogen
- 430' of 2" pipe for wastewater

**Project Description and Estimated Investment**

<b>Task</b>	<b>Task Description</b>	<b>Projected Burdened Cost</b>
10	Pipe rack	11, 901,079
99	Expense	50,334

Total Projected  
Investment

**11,951,413**

MarkWest Gas Services pays a fee and provides utilities (water, electricity, natural gas, condensate, etc) to Air Products in return for hydrogen, steam, and hydrogen compression services from Air Products. MarkWest Gas Services also purchases hydrogen from MarkWest Javelina Company. MarkWest Gas Services transports and sells hydrogen at high pressure to CITGO and resells steam to MarkWest Javelina Company. The attached drawing illustrates the MarkWest Gas Services interconnect between MarkWest Javelina Company and Air Products. The entire \$11.9 million investment is attributable to this L-shaped interconnect system owned by MarkWest Gas Services. The hydrogen is delivered to CITGO via a 2.7 mile 10" pipeline that is not part of this request.

## **Exhibit B**