[INVESTOR] / [FUNDING TARGET]

Summary of Terms and Conditions

of Private Placement of LLC Membership Interests

The following term sheet (the "Term Sheet") is a summary of the material terms and conditions upon which Investor (as defined below) proposes to make a potential investment in the Company (as defined below). This Term Sheet does not evidence any agreement to make such an investment or, except as expressly set forth herein, any other binding obligation on the part of either Investor or the Company.

I. General Terms

Investor:	[INVESTOR] **or** an affiliate of [INVESTOR] designated by the Board of [INVESTOR] ("Investor").
Issuer:	[FUNDING TARGET] or a newly formed limited liability company or other entity that will acquire or otherwise succeed to the business and operations of [FUNDING TARGET] (each, the "Company"). [In either case it is assumed that the Company will wholly own all Company projects and subsidiaries]
Managers:	[MANAGER], [MANAGER], [MANAGER], and [MANAGER] (each a "Manager" and collectively "Management")
Investment:	The Company will issue to Investor XX,XXX preferred membership interests of the Company (the "Preferred Units"). The Investor's acquisition of the Preferred Units is referred to as the "Investment."
Purchase Price:	The purchase price of each Preferred Unit will be the stated value of $X,XXX per share, for an aggregate purchase price of $XX,XXX,XXX (the "Purchase Price").
Closing Date:	The closing of the Investment shall occur on or before December 31, 2010 (the "Closing Date").

II. Terms of the Preferred Units

Nominal Value:	The nominal value of each Preferred Unit shall be the stated value of $X,XXX (the "Nominal Value").
Dividends:	After the 1st anniversary of the Closing Date, at the end of each quarter, the Company shall, **subject** to **the** requirements of applicable law, pay dividends in cash on the Preferred Units (in preference of any dividend on the Common Units) at the Rate of Adjustment in lieu of adjusting the Nominal Value. Payments of cash shall be applied first to current accrued dividends, then to any accrued and past due dividends.

Common Share Dividend:	The Company shall not pay any dividend with respect to the Common Units unless any increase in the nominal value of the Preferred Units over the stated value of such Preferred Units and all accrued dividends in respect of the Preferred Units have been paid in cash. In the event that the Company pays cash dividends on the Common Units, each Preferred Unit shall entitle the holder thereof to receive the amount of such dividend in cash as such holder would have received if such Preferred Unit had been converted into Common Units immediately prior to the date that such dividend was declared; provided however that such dividend to the holders of the Preferred Units shall be paid only after the holders of the Common Units have first been paid a "catch-up" cash dividend in an amount equal to the amount received by the holders of the Preferred Units during the then current fiscal year through such date in respect of dividends on the Preferred Units.
Priority:	The Preferred Units will rank senior in all respects to the Common Units and any other class or series of capital stock of the Company.
Quarterly Payments	After the 1st anniversary of the Closing Date and within thirty (30) days of the end of each calendar quarter, the Company shall distribute all cash of the Company that the board of directors of the Company (the "<u>Board of Directors</u>") reasonably determines is available for distribution, taking into account projected cash requirements (including cash operating expenses, reserves for future operations and capital expenditures of the business as reflected in the then current annual budget, and reasonable contingencies) and subject to any restrictions set forth in any credit or other agreement with a third party that is binding on the Company. Cash of the Company shall include net cash proceeds of any liquidation, dissolution, merger, sale or other liquidity event involving the Company (including changes of control to non-affiliated entities) or any subsidiary of the Company.
Liquidation Preference:	In the event of a Change of Control (to be defined), liquidation, dissolution or winding-up of the Company or similar event (each, a "<u>Liquidation</u> Event"), holders of Preferred Units will be entitled to receive, prior to holders of any security ranking junior to the Preferred Units with respect to a Liquidation Event, an amount *equal* to _______________ (the "<u>Liquidation Preference</u>"). If there are insufficient assets to permit the payment in full of the Liquidation Preference to the holders of Preferred Units, then the assets of the Company will be distributed ratably to the holders of Preferred Units in proportion to the Liquidation Preference each holder is otherwise entitled to receive. After the full Liquidation Preference has been paid on all Preferred Units with respect to a Liquidation Event, any remaining funds and assets of the Company legally available for distribution to

	shareholders will be distributed ratably among the holders of Preferred Units (on an as-converted basis) and Common Units provided however that such dividend to the holders of the Preferred Units shall be paid only after the holders of the Common Units have first been paid a "catch-up" cash dividend in an amount equal to the amount received by the holders of the Preferred Units during the then current fiscal year through such date in respect of dividends on the Preferred Units.
Redemption:	Each holder of Preferred Units may require the Company to redeem its Preferred Units at a price *equal* to __________ *plus* any accrued and unpaid dividends thereon at any time following the occurrence of (i) the Xrd anniversary of the Closing Date, (ii) a Default Event (as defined below) or (iii) the occurrence of a Qualified IPO (to be defined). "Default Events" shall include customary, material, on-going and uncured events of default, including, but not limited to, (i) failure of the Company to pay any amountsdue to the holders of the Preferred Units in connection with a voluntary conversion or a Liquidation Event, (ii) any breach by the Company of any of its material covenants or material protective provisions in connection with the Investment, (iii) anybankruptcy, suspension of payments, assignment to creditors or any similar event or action of the Company, (iv) two or more continuing Dividend Events and (v) failure to redeem the Preferred Units in accordance with this section. "Dividend Event" shall mean the failure to pay a quarterly dividend payment on the Preferred Units in cash when due after the first anniversary of the effective date of this agreement.
Voting Rights:	Holders of Preferred Units will have the right to vote as a single class with the Common Units on an as-converted basis.
Entitlement to Board Seats:	The size of the Board of Directors shall initially be set at X. Investor shall be initially entitled to nominate and appoint X person to the Board of Directors. On or after the occurrence of any Default Event or Dividend Event, the number of directors on the Board of Directors shall increase by one director (up to a maximum of two additional directors for all Default Events and Dividend Events).If any Default Event occurs, in accordance with the above paragraph, the holders of a majority of the Preferred Units shall be entitled, in addition to any rights granted as a result of the event that triggered the right of redemption, to nominate and appoint, together as a class, 1 additional person to the Board of Directors up to a maximum of 1, together with any Directors appointed as a result of a prior Default Event or Dividend Event. If any Dividend Event occurs, in

accordance with the above paragraph, the holders of a majority of the Preferred Units shall be entitled, in addition to any rights granted as a result of the event that triggered the right of redemption, to nominate and appoint, together as a class, 1 additional person to the Board of Directors up to a maximum of 1, together with any Directors appointed as a result of a prior Dividend Event or Default Event. Shouldn't this revert to original structure once a Default Event is cured??

The Company shall provide any persons appointed to the Board of Directors by Investor with the benefit of customary director and officer insurance and indemnify such persons to the fullest extent permitted by applicable law.

III. Terms of the Investment Agreement

Transfers:	Investor may transfer the Preferred Units and any Common Units it holds to any person at its sole discretion, provided that prior to any such transfer of Preferred Units and/or Common Units to a person that is not an affiliate of Investor, Investor shall first give Management the opportunity to make a *bona fide* offer to purchase such shares. Investor shall have XXX days to accept such offer or sell to another person at a price equal to or higher than that proposed by Management.
Tag-Along Rights:	Prior to the consummation of a Qualified IPO, in the event that holders of Common Units or Preferred Units propose to transfer securities representing greater than XX% of the Common Units on an as-converted basis (whether in a single transaction or a series of related transactions), each other holder of Common Units or Preferred Units will be entitled, subject to clause (A) under Key Employee Arrangements, to sell a pro rata portion (on an as-converted basis) of such securities on the same terms to the purchaser. This tag-along right shall be subject to customary scale-back provisions in the event of a sale of less than XXX% of the offered securities.
Drag-Along Rights:	In the event that the Company has not (a) completed a Qualified IPO or (b) been sold within three years of the closing, Investor will have the right to require the Company to be auctioned and sold in a merger, stock or asset sale, or otherwise. Investor will have the right to conduct such auction and accept such terms as it elects, provided that all equity holders will be entitled to receive the same price, and participate in such transaction on

	the same terms, as Investor. Investor and Management shall each have the right to participate as bidder if they desire. All equity holders will agree to sell their respective equity interests on such same terms as part of the resulting transactions. All directors will agree to vote in favor of the transaction resulting from the auction. Other customary provisions will apply.
Information Rights:	**So long as any Preferred Units remain outstanding (i) the Company will timely furnish to the holders of the Preferred Units audited annual financial statements (audited by an accounting firm acceptable to the holders of the Preferred Units) and (ii) the holders of the Preferred Units shall have the right to receive any information distributed by the Company to holders of Common Units or to the Company's lenders. In addition, so long as Investor has the right to appoint a director, Investor shall have the right to receive any materials distributed to the Board of Directors in connection with any such meetings.**
Registration Rights:	Holders of the Preferred Units will, after a IPO, have customary demand and piggyback registration rights.
Key Employee Arrangements:	**(A) The Company's Management will not take any action to cause their collective ownership of the Company's Common Units to fall below XX% of the fully-diluted shares outstanding, until the date of the termination of the Kinder Morgan Option Agreement.** (B) **All Common Units owned by a Manager shall be subject to repurchase by the Company at a price equal to XX% of the fair market value of such Common Units in the event such Manager is terminated for Cause (to be defined) or resigns without Good Reason (to be defined).** **(C) The Company will enter into an employment agreement with each of the key employees and managers of the Company, such agreement to include restrictive covenants regarding non-competition and non-solicitation (among other restrictive covenants) on terms reasonably acceptable to Investor, the Company and the executive officers of the Company.** **(D) The Company will not, without the prior approval of the Board of Directors, compensate any of its employees, including officers, in an annual amount greater than $XXX,XXX.** **(E) The Company will not, without the prior approval of the Board of Directors, engage in certain transactions**

with any Affiliates (to be defined) on terms less favorable than the Company would obtain in a transaction with an unrelated party.

Matters Requiring Special Approval of Investor or the Holders of the Preferred Units:	The approval of the holders of Preferred Units representing a majority of the outstanding Preferred Units shall be required before the Company or any of its subsidiaries may take (or commit to take) any action with respect to the following matters: (i) adoption of the Company's annual budget (provided that the holders of the Preferred Units shall act in good faith to resolve disputes related thereto), (ii) any acquisition or divestiture of any assets in excess of $[XXX,XXX], including any and all capital expenditures deviating materially from Company's budget to be agreed mutually agreed upon by all parties, (iii) any merger, consolidation, recapitalization or similar business combination or creation of any new subsidiary, (iv) the declaration or payment of any dividend or distribution other than as contemplated hereunder, (v) a public offering of any security or registration of any security for such purpose under the Securities Act of XXXX, (vi) any change to the size, composition or powers of the Board of Directors or any committee thereof, (vii) the determination of significant regulatory issues or litigation, including, without limitation, any decision to initiate, forego or settle any material litigation or arbitration, (viii) any liquidation, bankruptcy, suspension of payments, assignment to creditors or any similar event or action of the Company or any of its subsidiaries, (ix) the appointment and/or removal of independent auditors or any material change in accounting policies and principles or internal control procedures, (x) the retention of any investment bank or similar financial advisor on behalf of the Company or any of its subsidiaries, (xi) the issuance of equity securities (or any securities or other obligations convertible into or exchangeable for, or carrying rights equivalent to, equity securities), (xii) the incurrence, assumption or guaranteeing of any debt collateralized by any means, including, but not limited to, the sale of cash receivables in excess of, in the aggregate, $[X,XXX,XXX] during the course of any X year period, (xiii) share re-purchase (or "buybacks"), (xiv) any transaction or agreement between the Company or any of its affiliates, on the one hand, and the Company's officers, directors or holders of Common Units (other than Investor), on the

other, (xv) any action that would, or could reasonably be expected to, have adverse tax or regulatory consequences for Investor, (xvi) any amendment of the Kinder Morgan Option Agreement, (xvii) any employee profit sharing or bonus pool compensation plan or (xviii) any action that would, or could reasonably be expected to, have an adverse affect on the reputation of Investor or any of its affiliates.

The approval of the holders of a majority of the Preferred Units shall be required before the Company or any of its subsidiaries may take (or commit to take) any action with respect to the following matters: (i) any amendment to the articles, by-laws or other constitutive documents of the Company or (ii) any action that adversely alters or changes the rights, preferences or privileges of the Preferred Units (including any increase in the authorized number of Preferred Units).

IV. Miscellaneous Transaction Terms

Conditions:	Investor intends to enter into the transactions contemplated hereby is subject to, among other things: (i) the preparation, negotiation and execution of definitive legal documents necessary to consummate the transactions contemplated hereby in form and substance satisfactory to Investor, (ii) Investor' satisfaction with the results of its business, legal and other due diligence investigation of the Company and its subsidiaries, (iii) a determination by Investor that no change of control or breach has occurred or will occur under the terms of any material contracts, securities or other instruments or arrangements as a result of the consummation of the transactions contemplated hereby, (iv) the absence of any change in the business, condition or prospects (financial or otherwise) of the Company or its subsidiaries that would, or could reasonably be expected to, have a material adverse effect on such business, condition or prospects, (v) receipt by Investor, the Company and/or its subsidiaries of any regulatory or governmental approvals or assurances that may be necessary or appropriate to give effect to the transactions contemplated hereby, or any other third-party approvals (including any waivers required by the terms of any material contracts to which the Company is a party), (vi) all necessary Investor internal approvals.
Public Announcements:	Investor' consent (as to both form and content) will be required prior to any public announcement or other disclosure concerning the transactions contemplated hereby, except to the extent that such public announcement or other disclosure is required by law.

Fees and Expenses:	The fees and expenses (including legal fees) incurred by the parties in connection with the transactions contemplated hereby will be borne by each respective party, if subject transactions are not consummated. In the event that the transaction is consummated, the Company shall reimburse Investor for its transaction expenses and will pay all other expenses and fees related to the transaction, including a transaction fee payable to Investor in the aggregate amount of $X,XXX,XXX. Investor will act in good faith to limit all such fees and expenses. Total Investor expenses plus bank financing and re-financing fees are expected to be approximately $X,XXX,XXX. As part of the transaction, the Company and Investor would enter into a management agreement pursuant to which Investor will receive an annual management fee equal to $XXX,XXX, payable quarterly in advance (Noah – need to think how to present this).
Confidentiality:	This Term Sheet and the transactions contemplated hereby are confidential and shall not be disclosed by the Company to any third party without the prior written consent of Investor.
Exclusivity:	For a period of XX days from the date hereof, neither the Company nor any of its subsidiaries nor their respective directors, officers, employees, agents, shareholders or representatives will, directly or indirectly, without the prior written consent of Investor, (i) solicit, encourage or continue any other discussions or negotiations regarding, or (ii) enter into any other agreement or understanding contemplating, any direct or indirect acquisition or purchase of any securities of, or the provision of financing to, the Company, nor will any such persons or entities provide any information to any person for the purpose of making, evaluating or determining whether to make or pursue any such acquisition, purchase or provision of financing.
Non-Binding Nature:	The parties expressly agree that, except as set forth below, no binding obligations will be created until definitive documentation is executed by the parties. Without limiting the generality of the foregoing, it is the parties' intent that, until such execution, no agreement shall exist between the parties, there shall be no obligations whatsoever based on any parol evidence, extended negotiations, "handshakes," oral understandings or courses of conduct and either party may determine not to pursue the transactions contemplated hereby for any reason. Notwithstanding the foregoing, the parties agree that the sections hereto entitled "Indemnification", "Public Announcements", "Fees and Expenses", "Confidentiality" and "Exclusivity" shall be binding upon the parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Term Sheet as of this __ day of _______, XXX__.

[INVESTOR]

By: ______________________________
Name:
Title:

[COMPANY]

By: ______________________________
Name:
Title:

[Manager]

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[Manager]

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[Manager]

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