

AFTER RECORDING, RETURN TO:

City Secretary
City of McKinney
P.O. Box 517
222 N. Tennessee Street
McKinney, Texas 75069

City of McKinney, Texas
ESCROW AGREEMENT
(Pipeline Relocation)

Timber Creek Addition

THIS ESCROW AGREEMENT, entered into effective the _____ day of _____, 2018, by and between **CITY OF MCKINNEY**, a Texas municipal corporation and home-rule city ("CITY"), and **TIMBER CREEK PROPERTIES, LLC**, a Delaware limited liability company, whose address is 14755 Preston Road, Suite 710, Dallas, Texas 75254, ("OWNER") witnesseth that:

WHEREAS, OWNER owns certain property situated along the south side of Bloomdale Road in the City of McKinney, Texas (the "Property") as more particularly described in Exhibit A incorporated herein by reference for all purposes allowed by law; and

WHEREAS, OWNER is responsible for the construction of the two southern lanes of Bloomdale Road and CITY is responsible for the construction of the two northern lanes of Bloomdale Road; and

WHEREAS, the construction of Bloomdale Road requires the relocation of one gas line owned by ONEOK NGL Pipeline, L.L.C. ("ONEOK") and a second gas line owned by Atmos Energy Corporation ("ATMOS") (collectively "Gas Companies"), such that the Gas Companies' respective gas lines (collectively "Gas Lines") will cross under Bloomdale Road at an angle which is acceptable to the Gas Companies; and

WHEREAS, Relocating the Gas Lines requires the acquisition of new easements for the Gas Lines ("Easements") that will allow the Easements to cross under Bloomdale Road at an angle which is acceptable to the Gas Companies; and

WHEREAS, OWNER has agreed to dedicate that portion of the Easements as are necessary upon and across the OWNER's property as may be required at no cost to CITY and OWNER and CITY have agreed to split the costs of acquiring the off-site Easements with each party paying fifty percent (50%) of the cumulative costs for off-site Easements with CITY's and OWNER's

respective participation in off-site Easement acquisition being capped at \$20,000 per party ("Off-Site Easement Costs"); and

WHEREAS, CITY may in its sole discretion and subject to the availability of additional funds budgeted for such purpose pay such additional amounts as CITY deems appropriate to acquire additional offsite Easements necessary to complete the relocation of the Gas Lines; and

WHEREAS, OWNER and CITY have also agreed to split the costs associated with the design and construction of the relocation of the Gas Lines together with all necessary appurtenances (individually and collectively "Improvements") with each party paying fifty percent (50%) of the cumulative costs of relocating the Gas Lines exclusive of Easement Costs ("Improvement Costs"); and

WHEREAS, OWNER has agreed to escrow OWNER's proportionate share of the Easement Costs and Improvement Costs and expense of said Improvements with CITY and to be responsible for any reasonable and necessary additional costs arising out of or related to the construction of the Improvements.

NOW THEREFORE, in consideration of the intent and desire of the OWNER, as set forth herein, and to gain approval of the CITY to construct the Improvements, the OWNER and CITY agree as follows:

A. RECITALS

All of the above Recitals are found to be true and correct and are incorporated into the body of this Escrow Agreement by reference as if copied in their entirety herein.

B. ACQUISITION OF OFF-SITE EASEMENTS

OWNER and CITY have agreed that CITY will acquire the necessary off-site Easements for the relocation of the Improvements. In the event CITY is unable to acquire the needed off-site Easements by negotiated purchase, the CITY may acquire the needed off-site Easements through the exercise by the City of its power of eminent domain. The determination of a public purpose and any decision to exercise such power is, however, within the sole discretion of the City. If the City exercises its power of eminent domain to acquire the off-site Easements, the City's legal costs and expenses together with any expert witness costs and special commissioners' costs as well as all other costs and expenses associated with acquiring the off-site Easements shall be considered a part of the Off-Site Easement Costs identified above, and which Off-Site Easement Costs shall be reimbursed from the funds that OWNER has escrowed with the CITY for such purpose pursuant to this Escrow Agreement. In the event CITY negotiates an agreement with the owner(s) of the land on which the off-site Easements are situated that results in the dedication of the off-site Easements at no charge to City

as part of a broader transaction that requires City to pay for other land not necessary to this Project, OWNER agrees that the per square foot price of the purchase component of that broader transaction shall be used to calculate the Off-Site Easement Cost incurred by the CITY for the acquisition of the off-site Easement. OWNER shall be responsible for paying fifty percent (50%) of all Off-Site Easement Costs that are incurred by CITY with the OWNER's portion of such Off-Site Easement Costs being capped at Twenty Thousand Dollars (\$20,000).

C. IMPROVEMENTS

OWNER and CITY have agreed that CITY will enter into such contracts as may be required by ATMOS and ONEOK whereby ATMOS and ONEOK will design and relocate their respective underground gas lines and all appurtenances thereto the costs of which Improvements shall be reimbursed from the funds that OWNER has escrowed with the CITY for such purpose pursuant to this Escrow Agreement. The general location of the Easements and Improvements are depicted generally on Exhibit B attached hereto and incorporated herein by reference for all purposes allowed by law. A description of the Improvements and appurtenances thereto are more particularly described in Exhibits C and D attached hereto and incorporated herein by reference for all purposes allowed by law. OWNER shall be responsible for paying fifty percent of all costs and expenses related to and arising out of the design and construction of the Improvements that are incurred by CITY through its contracts with ATMOS and ONEOK.

D. ESCROW

1. OWNER shall escrow a cash deposit with the CITY in the amount of Twenty Thousand Dollars (\$20,000) (the "Off-Site Easement Escrow Amount") for payment of costs associated with the acquisition of the off-site Easements contemporaneously with the execution of this Escrow Agreement. The Off-Site Easement Escrow Amount is an amount equal to the OWNER's maximum participation in the Off-Site Easement Costs as set forth herein. The CITY shall hold these funds in an interest-bearing escrow account in accordance with this Escrow Agreement.
2. ATMOS has submitted a "Ball-Park Cost Estimate" of One Hundred Seventy-Six Thousand Two Hundred Eighty-Six Dollars and Forty-One Cents (\$176,286.41) and ONEOK has submitted an "Executive Summary" projection of Four Hundred Twenty-One Thousand Dollars (\$421,000.00) as the projected costs associated with the design and construction of the Improvements. The cumulative total of these projected costs is Five Hundred Ninety-Seven Thousand Two Hundred Eighty-Six Dollars and Forty-One Cents (\$597,286.41) ("Combined Cost Projection") which makes OWNER's fifty percent (50%) portion of such Combined Cost Projection an amount of Two Hundred Ninety-Eight Thousand Six Hundred Forty-Three Dollars and Twenty-One Cents (\$298,643.21). In addition to these projected costs, CITY requires parties to escrow agreements and

agreements deferring the construction of required improvements to include an additional twenty percent (20%) contingency to cover potential increases in the actual amounts bid for such work (the "Required Contingency").

3. OWNER shall escrow a cash deposit with the CITY in the amount of Three Hundred Fifty-Eight Thousand Three Hundred Seventy-One Dollars and Eighty-Five Cents (\$358,371.85) (the "Initial Improvements Escrow Amount") for payment of costs associated with the design and construction of the Improvements contemporaneously with the execution of this Escrow Agreement. The Initial Improvements Escrow Amount is an amount equal to fifty percent (50%) of the total of the projected costs prepared by ATMOS' "Ball-Park Cost Estimate" and ONEOK's "Executive Summary" projection of costs plus the Required Contingency, which cost projections are attached hereto as Exhibits C and D, respectively, and incorporated herein by reference for all purposes allowed by law. The CITY shall hold these funds in an interest-bearing escrow account in accordance with this Escrow Agreement.
4. At such time as CITY receives final contracts from ATMOS and ONEOK containing final dollar amounts for the construction of the Improvements (collectively the "Utility Contract Amounts"), and prior to CITY's execution of such contracts, the CITY shall inform OWNER of the Utility Contract Amounts of the Improvements. If the Utility Contract Amounts exceed the Combined Cost Projection, the OWNER shall increase the amount of the Initial Improvements Escrow Amount such that the Initial Improvements Escrow Amount is equal to the amount of fifty percent (50%) of the Utility Contract Amounts received from ATMOS and ONEOK plus the Required Contingency. In the alternative, if the Utility Contract Amounts are less than the Initial Improvements Escrow Amount, the amount of the Initial Improvements Escrow Amount shall be reduced by City such that the Initial Improvements Escrow Amount is equal to the amount of fifty percent (50%) of the Utility Contract Amounts received from ATMOS and ONEOK plus the Required Contingency, and any excess amount of the Initial Improvements Escrow Amount returned to OWNER. The Initial Improvements Escrow Amount after it is established at the amount of fifty percent (50%) of the Utility Contract Amounts received from ATMOS and ONEOK together with the Required Contingency is hereafter referred to as the "Final Improvements Escrow Amount."
5. OWNER agrees and understands that the CITY makes no assurances or representations that the Improvements will be bid, constructed and accepted prior to any date certain or in conjunction with the completion or acceptance of any particular phase of the Timber Creek Addition subdivision it being understood and agreed that the subject work is being performed by and through ATMOS and ONEOK. The CITY will, however, use its best efforts to enter into contracts with both ATMOS and ONEOK for

the relocation of their respective underground gas lines and all appurtenances thereto on or before December 31, 2020.

- a. If neither of ATMOS and ONEOK have agreed to contractual terms with CITY for the relocation of their respective underground gas lines on or before December 31, 2020, then either OWNER or CITY may upon thirty (30) days' written notice request the termination of this Escrow Agreement.
 - b. If, however, the CITY has entered into a contract with either ATMOS or ONEOK on or before December 31, 2020, this Escrow Agreement shall remain in full force and effect until all work to be performed hereunder is fully contracted and finally completed.
 - c. If the OWNER or CITY requests that this Escrow Agreement be terminated in accordance with this Paragraph 5, the CITY will return to OWNER within thirty (30) days after the other party's receipt of the request to terminate so much of the Off-Site Easement Escrow Amount as has not been expended for the acquisition of the off-site Easements. CITY shall also, within the same time period, return the Initial Improvements Escrow Amount to OWNER.
 - d. Upon the termination of this Escrow Agreement, as provided in this Paragraph 5, CITY will execute a release of covenant to OWNER, its heirs, successors, assigns, grantees, representatives, and all others holding any interest now or in the future.
6. OWNER agrees that the CITY shall have the right to enter upon OWNER's property to survey, stake, bore, construct and install the Improvements at such time as the CITY deems necessary. The CITY may at its sole option and discretion enter into one or more agreements with third parties who shall be authorized to design and/or construct the Improvements and enter upon OWNER'S property to survey, stake, bore, construct and install the Improvements at the CITY's direction. Prior to their entry onto OWNER's property, CITY shall to the extent allowed by Texas law contractually require any such third parties with which CITY contracts to indemnify, defend and hold harmless OWNER for any damages, claims, losses or causes of action caused by such third parties' entry onto OWNER'S property.
7. OWNER specifically authorizes the CITY to utilize the Off-Site Easement Escrow Amount to pay for fifty percent (50%) of the acquisition of Easements up to a maximum Owner payment of \$20,000. OWNER also specifically authorizes the CITY to utilize the Final Improvements Escrow Amount to pay for fifty percent (50%) of the costs to design and construct the Improvements and all necessary appurtenances to said Improvements. Upon acceptance of the Improvements and the payment of any and all costs

and expenses associated with the Improvements, any unused amount of the Off-Site Easement Escrow Amount and the Final Improvements Escrow Amount held by CITY shall be returned to OWNER within thirty (30) days after CITY makes its final payment(s) to both ATMOS and ONEOK.

8. In the event that OWNER's Final Improvements Escrow Amount is less than fifty percent (50%) of the total cumulative actual cost and expense of designing and constructing the Improvements including, but not limited to, all necessary related costs such as acquiring payment bonds, performance bonds, maintenance bonds and insurance coverage for the design and construction of the Improvements OWNER shall reimburse the CITY for any and all additional costs and expenses ("Underpayment"). OWNER shall reimburse the CITY the total amount of any Underpayment within thirty (30) days after the CITY provides OWNER notice of such Underpayment.

E. NO WAIVER

OWNER expressly acknowledges that by entering into this Escrow Agreement, OWNER, its successors, assigns, vendors, grantees, and/or trustees, shall not construe any language contained herein or in any Exhibits as waiving any of the requirements of the Zoning Ordinance or Subdivision Ordinance or any other ordinance of the CITY except as herein specifically agreed.

F. INDEMNITY AND HOLD HARMLESS AGREEMENT

OWNER, its successors, and assigns, do hereby agree to fully indemnify, protect and hold CITY harmless from all third-party claims, suits, judgments, and demands, including its reasonable attorney's fees, arising out of the sole or concurrent negligence of OWNER, and only to the extent or percentage attributable to OWNER, in the subdividing, development, or construction of public improvements, including the negligent maintenance thereof. OWNER shall not be responsible for or be required to indemnify CITY from CITY'S own negligence. The indemnity contained in this Paragraph shall expire one (1) year from the date of final acceptance of each phase of the Improvements.

G. REVOCAION

In the event OWNER fails to comply with any of the provisions of this Escrow Agreement, CITY shall be authorized to file this instrument in the records of Collin County as a Mechanic's Lien against OWNER's property; and in the alternative, CITY shall be authorized to levy an assessment against OWNER's property for public improvements to be held as a tax lien against the Property by CITY.

H. CONTINUITY

This Escrow Agreement shall be a covenant running with the land, and be binding upon OWNER, its successors, heirs, assigns, grantees, representatives, and all others holding any interest now or in the future.

I. ASSIGNABILITY

This Escrow Agreement shall not be assignable by OWNER without the prior written consent of the CITY, and such consent shall not be unreasonably withheld, conditioned or delayed.

J. TERMINATION AND RELEASE

Upon completion and final acceptance of the Improvements by CITY and the return of any unused funds from the Escrow Amount to OWNER or the payment of any Underpayment by OWNER to CITY, this Escrow Agreement shall terminate and CITY will execute a release of covenant to OWNER, its heirs, successors, assigns, grantees, representatives, and all others holding any interest now or in the future.

K. GENERAL PROVISIONS

1. OWNER hereby relieves CITY of any responsibilities for any inadequacies in the preliminary plans, exhibits and cost estimate supplied for the purpose of this Escrow Agreement, and further agrees that OWNER will comply with CITY'S Subdivision Regulations, Street Design Standards, Public Improvements Policy, if applicable, and any other applicable policies, rules, regulations and ordinances of CITY regarding development of the Property.

CITY OF MCKINNEY

By: _____
PAUL G. GRIMES
City Manager

Date Signed: _____

Attest:

EMPRESS DRANE
City Secretary
LISA SEWELL
Deputy City Secretary

TIMBER CREEK PROPERTIES, LLC,
a Delaware limited liability company

By: **FORESTAR (USA) REAL ESTATE
GROUP INC.**, a Delaware
corporation,
Managing Member

By: Thomas A. Burleson
Name: THOMAS A. BURLESON
Title: SENIOR VICE PRESIDENT
Date Signed: 9.19.19

THE STATE OF TEXAS,
COUNTY OF COLLIN

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared PAUL G. GRIMES, City Manager of the City of McKinney, a Texas Municipal Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he has executed the same on the City's behalf.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE ___ DAY OF _____, 2019.

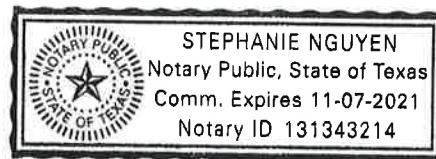
Notary Public, _____ County, Texas
My commission expires _____

THE STATE OF TEXAS,
COUNTY OF Tarrant

This instrument was acknowledged before me on the 19th day of September, 2019, by Thomas H. Burton, in his capacity as Senior Vice President of Forestar (USA) Real Estate Group Inc., a Delaware corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that Forestar (USA) Real Estate Group Inc., is the Managing Member of TIMBER CREEK PROPERTIES, LLC, a Delaware limited liability company, and that he executed the same on behalf of and as the act of said company..

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 19th DAY OF September, 2019.

Stephanie Nguyen
Notary Public Tarrant County, Texas
My commission expires 11-07-21



PREPARED IN THE OFFICES OF:

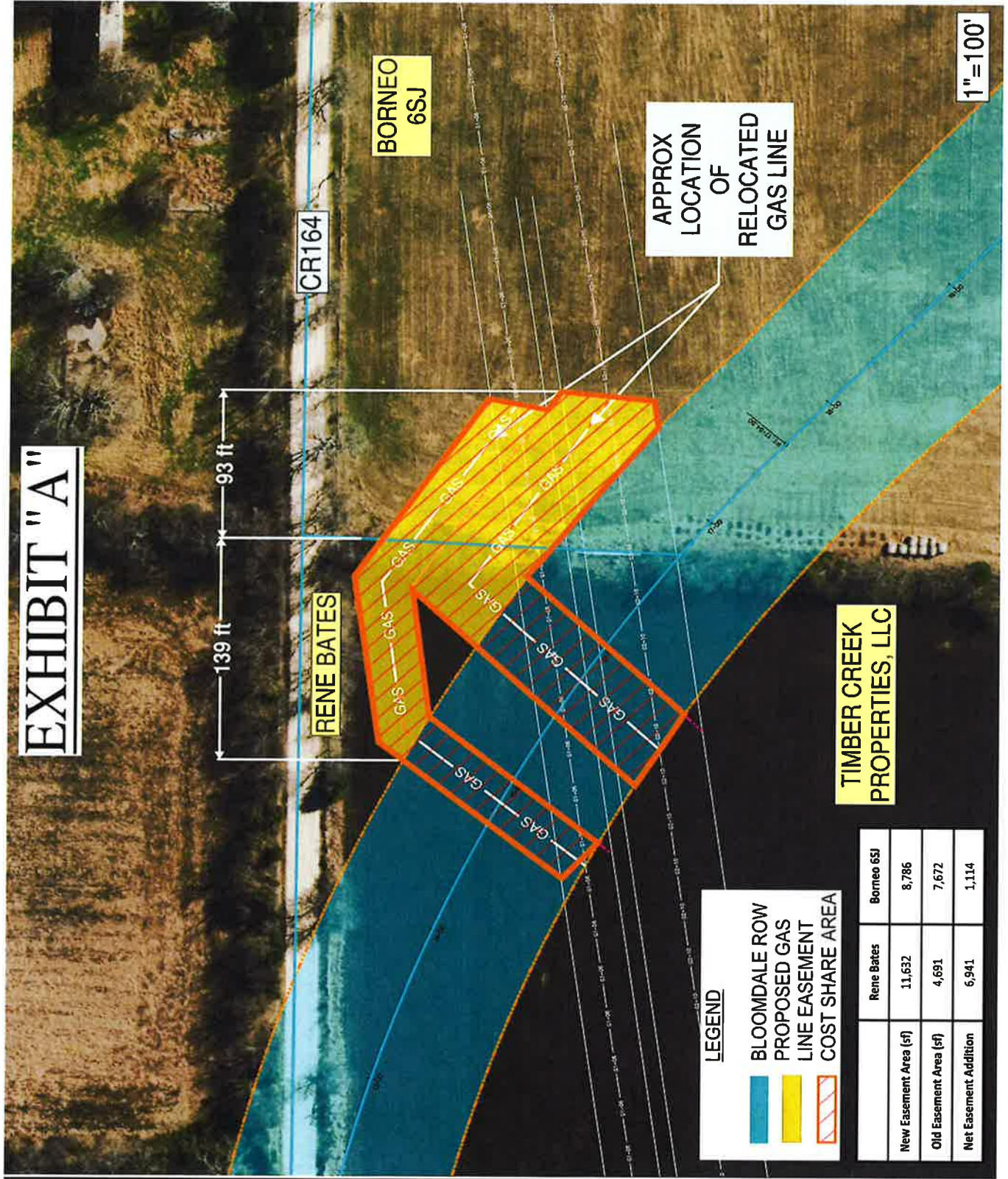
BROWN & HOFMEISTER, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081
214/747-6100
214/747-6111 Fax

EXHIBIT A

DESCRIPTION OF PROPERTY

EXHIBIT B

GENERAL LOCATION OF EASEMENTS & IMPROVEMENTS



RIGHT-OF-WAY & Overheads

0.00	lot	New Acquisition ROW		\$ -	\$ -
0.00	lot	Temporary working easement By developer			
0.00	lot	Damages			\$ -
1.00	ea	APT Rhutts from RHUTTS Calculator		\$20,758	\$ 20,757.67
0.00	ea	MdTx Rhutts from RHUTTS Calculator		\$17,717	\$ -
TOTAL RIGHT-OF-WAY COST					\$ 20,757.67

MISCELLANEOUS

0.00	miles	Gas Loss	\$/MSCF	\$ 7.00	\$ -
TOTAL MISCELLANEOUS COSTS					\$ -

SUBTOTAL ABOVE CATEGORIES

\$ 930,155.35

INDIRECTS (ATMOS)

0	14.12%	MidTex General Overheads			\$ -
1	15.44%	APT General Overheads			\$ 143,615.99
0	0.00%	Contingency @ subtotal			\$ -
					\$ 143,615.99

0	12.47%	Income Tax Adjustment MidTex			\$ -
1	9.45%	Income Tax Adjustment APT			\$ 101,471.39
0	5.00%	Franchise Fee			\$ -
					\$ 101,471.39

GRAND TOTAL ESTIMATE

\$ 1,175,242.72

Estimate Type	Ballpark Estimate			\$ 1,175,242.72
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Responsibility	Percentage	Multiple Party Responsibilities By Percentage		
	85.00%	Developer		\$ 998,956.31
	15.00%	Shared Responsibilities (Developer & City of McKinney)		\$ 176,286.41
Total:	100%		Total:	\$ 1,175,242.72

NOTE: ALL VALUES ARE BASED ON THE ABOVE ESTIMATE - ACTUAL VALUES AT END OF PROJECT MAY VARY!!!

Scope of work, Assumptions, comments

1. Assuming that there is no breaking of or replacing of pavement
2. Costs includes pressure testing
3. Costs do NOT include an allowance for underground rock or obstructions.
4. Construction duration estimated to be 90 days
5. All permits being obtained by ATMOS

EXHIBIT D

ONEOK'S OPINION OF PROBABLE COST

CLIENT: ONEOK INC.
 PROJECT: Bloomdale Road Crossing
 CASE:
 JOB #: 018941



EXECUTIVE SUMMARY
+15%/-15% Accuracy Range

		ESTIMATED 15-Mar-19 COST
I.	ENG., PROJ. MGMT., & CONST. MGMT.	
	A. Project Management, Engineering & Construction Support	\$54,800
	B. Mapping/Drafting	\$4,500
	C. FEED Study	\$12,200
	Total I.	\$71,500
II.	ENVIRONMENTAL & ENVIR. PERMITTING	
	A. Desktop Review	\$2,200
	B. BMP Plan	\$2,200
	C. Permit Applications	\$1,100
	D. Field Investigation	\$2,700
	Total II.	\$8,200
III.	SURVEY	
	A. Survey - Preliminary, Construction Staking, As-Built (8 days)	\$21,500
	B. Geotechnical Survey	\$0
	Total III.	\$21,500
VI.	PIPELINE MATERIAL	
	A. 6", D.280", X-42, FBE (600 ft)	\$15,400
	B. 6" 90 Degree Segmentable 3R Bend (1ea)	\$500
	C. 6" 45 Degree Segmentable 3R Bends (3ea)	\$600
	D. Line Stop Materials (1 Stop)	\$11,700
	E. Line Drying/Pigging Materials	\$1,500
	F. Freight (5%)	\$1,485
	Total VI.	\$31,200
VII.	PIPELINE INSTALLATION	
	A. Line Pipe Installation	\$150,500
	B. X-Ray	\$2,500
	C. Water Hauling	\$2,000
	D. Frac Tank Rental	\$2,300
	E. Line Stop Labor (1 Stop)	\$22,400
	F. Remove 300' of 6" Pipe	\$18,700
	Total VII.	\$198,400
VIII.	CONSTRUCTION INSPECTION	
	A. Chief Inspector (4 weeks)	\$24,000
	Total VIII.	\$24,000
IX.	COMMISSIONING & START-UP	
	A. Nitrogen Purge	\$5,000
	B. Pipeline Integrity Tool	\$0
	Total IX.	\$5,000
X.	SALES TAX on PIPELINE MATERIALS (8.25%)	\$2,500
	Total Direct Pipeline Costs	\$362,300
XI.	CONTINGENCY (15%)	\$54,300
XII.	COMPANY G & A (Overheads)	\$4,400
	Grand Total	\$421,000