

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (this “Agreement”) is entered into as of _____, 2020 by and between Navigator Borger Express LLC, a Delaware limited liability company (“Navigator”), and _____, a _____ (“Company”). Each of Navigator and Company is referred to herein individually as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, Navigator is conducting an open season to solicit long-term volume commitments of crude oil from shippers (“Committed Shippers”) in connection with a new crude pipeline movement from Cushing, Oklahoma, to Borger, Texas, using a combination of existing assets and newly-constructed pipeline (the “Borger Express System”).

WHEREAS, Company is interested in becoming a Committed Shipper on the Borger Express System (the “Potential Transaction”); and

WHEREAS, in furtherance of the exploration and evaluation of the Potential Transaction, the Parties desire to exchange in confidence, in accordance with the terms hereof, certain Confidential Information (defined below).

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the Parties hereto agree as follows:

1. As used herein “Confidential Information” means all data and information of whatever kind or nature, whether verbal or written, tangible or intangible, given by whatever means, including, without limitation, through physical inspections and views of applicable sites, by one Party or its affiliates (the “Disclosing Party”) to the other Party or its affiliates (the “Receiving Party”) in connection with or related to the Potential Transaction and all data and information derived therefrom.
2. Receiving Party shall retain Confidential Information in strict confidence and exercise all reasonable steps to safeguard the confidentiality of the Confidential Information, and, except as required by applicable law or regulation or by legal process, Receiving Party (a) will not in any way disclose, reveal or furnish any Confidential Information to any person or entity other than the directors, officers, employees, agents, attorneys, auditors, consultants and advisors of Receiving Party and its affiliates (collectively, “Representatives”) who are directly participating in the evaluation of the Potential Transaction and (b) will not use the Confidential Information for any purposes other than for the evaluation of the Potential Transaction. Receiving Party agrees that its Representatives will be directed to treat the Confidential Information as confidential and will be caused by Receiving Party to observe the terms and conditions of this Agreement (or obligations of confidentiality at least as strong as those set forth in this Agreement). Receiving Party shall be liable for any breach of this Agreement caused by any of its Representatives.

3. Company (i) agrees, in addition to the obligations provided for in paragraph 2, not to disclose Confidential Information it received as a Receiving Party to any Representative of Company (or any other person) that is involved in the development, planning, construction, marketing or operation of, or the potential development, planning, construction, marketing or operation of, a project similar to the Borger Express System or a project offering services similar to those offered by Navigator as part of the Borger Express System, and (ii) represents to Navigator that Company or its affiliate is, or is interested in becoming, a Committed Shipper on the Borger Express System.
4. Receiving Party's duty of confidentiality set out hereunder above shall not extend to:
 - a. Confidential Information which at the time of disclosure is or, without fault on the part of Receiving Party, thereafter becomes available to the public by publication or otherwise; or
 - b. Confidential Information which Receiving Party can show was in its possession at the time of disclosure and was not acquired directly or indirectly from Disclosing Party; or
 - c. Confidential Information which was received from a third party unless Receiving Party has actual knowledge that the third party is subject to a confidentiality agreement prohibiting disclosure of such information; or
 - d. Confidential Information which was or is independently developed by Receiving Party without reliance upon Confidential Information.
5. If Receiving Party is requested or required by applicable law or regulation or by legal process to disclose any Confidential Information to any third party, Receiving Party agrees that it will, to the extent practicable and legally permissible, provide Disclosing Party with prompt notice of such request or requirement to permit Disclosing Party the opportunity to seek an appropriate protective order; provided, however, that, notwithstanding the foregoing, disclosures of Confidential Information may be made to the Securities and Exchange Commission, the Federal Energy Regulatory Commission ("FERC") or any other similar regulatory authority having jurisdiction without such notice to the Disclosing Party upon request of such regulatory authority or if otherwise required pursuant applicable law or regulation in furtherance of the Potential Transaction or otherwise. Notwithstanding the foregoing, in the event that either Party wishes to disclose any Confidential Information supplied to it as part of the Potential Transaction to FERC as part of a proceeding related to the Potential Transaction, the Party agrees that it will, to the extent permitted by applicable law, (1) provide the Party who supplied such Confidential Information with prompt notification of the planned disclosure of such Confidential Information, and (2) disclose such Confidential Information only under seal as part of a confidential submission, marking the Confidential Information as "Confidential." Both Parties agree not to submit the Confidential Information as part of any public filing.

6. Receiving Party agrees that, if requested by Disclosing Party, Receiving Party will destroy or return to Disclosing Party all documents, tangible mediums, or other written material containing or constituting Confidential Information and all copies thereof made by Receiving Party and will destroy any reports or other documents generated by Receiving Party to the extent they contain Confidential Information; provided that Receiving Party may retain copies of Confidential Information (including Confidential Information stored on electronic, magnetic or similar media) for archival purposes, in order to comply with legal and regulatory requirements and to demonstrate Receiving Party's compliance with its obligations, which Confidential Information shall remain subject to the terms of this Agreement.
7. Disclosing Party does not make any representation or warranty as to the accuracy or completeness of any Confidential Information which is to be provided. Disclosing Party shall have sole discretion as to what Confidential Information will be disclosed to Receiving Party.
8. This Agreement shall be deemed governed by and interpreted in accordance with the laws of the State of Texas without regard to its conflicts of law principles.
9. The Parties agree that monetary damages might be an insufficient remedy for any breach of this Agreement, and that Disclosing Party may seek injunctive relief and/or specific performance as a remedy for a breach hereof. Such remedy shall not be deemed to be an exclusive remedy, but shall be in addition to all other remedies available to Disclosing Party at law or equity.
10. Receiving Party's duties hereunder shall continue for a period of two (2) years from and after the date of this Agreement unless Disclosing Party shall notify Receiving Party of a prior termination of such duties.
11. This Agreement may be executed in one or more counterparts, each of which shall be an original but all of which shall constitute one and the same instrument. This Agreement contains the entire understanding between the Parties with respect to the subject matter hereof. No amendments, modifications or waivers of this Agreement shall be valid except if the same are in writing and signed by a duly authorized representative of each of the Parties hereto.
12. No waiver by a Party of a default or any breach of any obligation under this Agreement shall operate as a waiver of any continuing or future default or breach.
13. This Agreement may not be transferred or assigned in whole or in part by operation of law or otherwise without the prior written consent of the non-assigning Party.

[signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

NAVIGATOR BORGER EXPRESS LLC

By: _____
Name:
Title:

[_____]

By: _____
Name:
Title: