

LAREDO EXPRESS PIPELINE
TRANSPORTATION SERVICES AGREEMENT

THIS TRANSPORTATION SERVICES AGREEMENT (this “Agreement”), is made and entered into the [day] of [month], [year] (“Effective Date”) by and between Laredo Express Pipeline, LLC, a Delaware limited liability company (“Carrier”), and _____ (“Shipper”). Carrier and Shipper are each sometimes hereinafter individually referred to as a “Party” and together referred to as the “Parties”.

RECITALS

WHEREAS, on [insert date], Carrier initiated an open season (the “Open Season”) for the public solicitation of minimum volume commitments from potential shippers for transportation of Product from the Origin(s) described in this Agreement to the Destination(s) described in this Agreement (“Pipeline”);

WHEREAS, pursuant to the Open Season terms, Carrier will commit to provide certain transportation services for Shipper for the transportation of Products from the Origin(s) to the Destination(s) (as such terms are hereinafter defined), and in exchange Shipper has agreed to ship, or pay a Deficiency Payment for failure to ship, a minimum amount of Product (as such terms are hereinafter defined) for transportation from and to such points upon and subject to the terms and conditions of this Agreement; and

WHEREAS, the Parties have agreed to the initial tariff rates to be included in the local rate tariff to govern the transportation of Product from the Origin(s) to the Destination(s) on the Pipeline, which initial tariff rates shall govern Shipper’s transportation of Product from the Origin(s) to the Destination(s), subject to applicable Legal Requirements.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions.** In this Agreement, each of the following terms shall have the meanings assigned as follows:

A. “Actual Shipments” means the volumes of Product that originate at the Origin(s) and are ultimately delivered to the Destination(s) for the account of Shipper.

B. “Affiliate” means with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person or, in the case of a Person that is a limited partnership, an “Affiliate” shall include any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with the general partner of such limited partnership. For the purposes of this definition, “control” means the ownership, directly or indirectly, of more than fifty percent (50%) of the Voting Stock, of such Person; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

CONFIDENTIAL INFORMATION

- VI.A.iv.
- C. “Applicable Shortfall Period” has the meaning set forth in Section
 - D. “Barrel” means forty-two (42) Gallons.
 - E. “BPD” means Barrels of Product per Day.
 - F. “Business Day” means any day other than a Saturday, Sunday or other day on which banks in the State of Texas are permitted or required to close.
 - G. “Carrier Default Notice” has the meaning set forth in Section X.C.i.
 - H. “Commencement of Service Date” has the meaning set forth in Section III.
 - I. “Committed Rate” has the meaning set forth in Section VI.A.i.
 - J. “Committed Volume” means the Shipper’s BPD volume commitment applicable for a given year set forth in Schedule A attached hereto.
 - K. “Contract Year” means each successive period of twelve (12) months commencing on the Commencement of Service Date.
 - L. “CPR Rules” has the meaning set forth in Section XIX.D.
 - M. “Day” means a period of twenty-four (24) consecutive hours commencing at 9:00 A.M. Central Time.
 - N. “Default” has the meaning set forth in Section X.A.
 - O. “Deficiency Payments” has the meaning set forth in Section VI.A.iii.
 - P. “Deficiency Volume” has the meaning set forth in Section V.A.ii.
 - Q. “Destination(s)” means the delivery point for delivering Product from the Pipeline listed in the Tariff.
 - R. “Effective Date” has the meaning set forth in the preamble to this Agreement.
 - S. “Excess Volume” has the meaning set forth in Section V.A.v.
 - T. “FERC” means the United States Federal Energy Regulatory Commission.
 - U. “Force Majeure” has the meaning set forth in Section XIV.
 - V. “Gallon” means a U.S. gallon of two hundred thirty one (231) cubic inches of liquid at sixty degrees Fahrenheit (60° F) and at the equilibrium vapor pressure of the liquid.

CONFIDENTIAL INFORMATION

W. “Governmental Body” means a government organization, subdivision, court, agency or authority thereof, whether foreign or domestic.

X. “Initial Term” has the meaning set forth in Section III.

Y. “In Service Date” means the first Day upon which the Pipeline is deemed by Carrier to be complete, operational and available to receive, transport, and deliver Product (including without limitation, linefill) from the Origin(s) to Destination(s) under this Agreement, upon written notice served by Carrier to Shipper.

Z. “Legal Requirement” means any law, statute, code, ordinance, order, rule, regulation, judgment, decree, injunction, franchise, permit, certificate, license, authorization, or other directional requirement of any Governmental Authority.

AA. “Maintenance” has the meaning set forth in Section XV.

BB. “Month” means a period of time commencing on the first Day of a calendar month and ending on the first Day of the next calendar month.

CC. “New Governmental Fee” has the meaning set forth in Section VI.A.viii.

DD. “Notice of Dispute” has the meaning set forth in Section XIX.B.

EE. “Off-Spec Penalty” has the meaning set forth in Section VI.A.vi.

FF. “Origin(s)” means the location for accepting Product onto the Pipeline listed in the Tariff.

GG. “Person” means any individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, trust, estate, unincorporated organization or Governmental Body.

HH. “Pipeline” means the Border Express Pipeline, a certain petroleum products and natural gas liquids pipeline owned by Carrier which transports the Products from one or more Origins to one or more Destinations.

II. “Product” means unleaded gasoline, petroleum distillates, and liquefied petroleum gas.

JJ. “Regular Shipper Rate” means the per Barrel rate paid by a Regular Shipper (as defined in the Tariff) pursuant to the Tariff.

KK. “Required Monthly Volume” means, with respect to a Month during the Term, the minimum average daily volume commitment in such Month as set forth in Schedule A attached hereto.

LL. “Second Default Notice” has the meaning set forth in Section X.B.ii.

CONFIDENTIAL INFORMATION

MM. “Services” means transportation on the Pipeline for a Shipper’s account from the Origin to the Destination as specified in the Shipper’s nomination, as provided in Section V.A.iv.

NN. “Shipper Default Notice” has the meaning set forth in Section X.B.i.

OO. “Tariff” means that certain tariff that is filed with respect to the Pipeline by Carrier or its operator or Affiliate with FERC in a form substantially similar to the tariff set forth in Schedule B.

PP. “Term” has the meaning set forth in Section III.

QQ. “Voting Stock” means the securities or other ownership interest in any Person which have ordinary voting power under ordinary circumstances for the election of directors (or the equivalent) of such Person, and with respect to a Person that is a limited partnership, the securities or other ownership interest in the general partner of such Person which have ordinary voting power under ordinary circumstances for the election of directors (or the equivalent) of such general partner.

SECTION I REQUEST FOR SERVICE

Shipper hereby requests that Carrier provide transportation service of Product over and through the Pipeline from the Origin(s) to the Destination(s) in accordance with the terms and conditions set forth in this Agreement.

SECTION II AGREEMENT TO PROVIDE SERVICE; CONDITIONS PRECEDENT

- A. Carrier agrees to provide transportation service of Product for Shipper from the Origin(s) to the Destination(s) in accordance with the terms and conditions set forth in this Agreement.
- B. The following condition precedent is for the sole benefit of Carrier and may be waived by Carrier in whole or in part at any time, or from time to time. The obligations and agreements undertaken by Carrier in this Agreement are subject to the following condition precedent, and if such condition precedent is not satisfied, or waived by Carrier, then Carrier has the right to withdraw from the project or from portions of the project, in which case the project may be terminated or only portions of the project may be completed, and this Agreement may be terminated as set forth in Section II.D below:
 - i. That Carrier shall have received all governmental authorizations required for Carrier to provide the Services, including, but not limited to the Tariff, in a form acceptable to Carrier in its commercially reasonable discretion.
- C. The following conditions precedents set forth herein are for the sole benefit of Shipper and may be waived by Shipper in whole or in part at any time, or from time to time. The

CONFIDENTIAL INFORMATION

obligations and agreements undertaken by Shipper in this Agreement are subject to the following conditions precedent:

- i. That the Shipper receives notice from Carrier of satisfaction or waiver of each of the conditions precedent set forth in Section II.B
 - ii. That the FERC accept the initial terms of the Tariff applicable to transportation under this Agreement, in a form substantially similar to the pro forma version set forth in Schedule B, including the Tariff provisions for prorationing of pipeline capacity as set forth in Item No. 80.
- D.** Carrier shall have the right to terminate this Agreement if any of the conditions precedent applicable to it listed in this Section II are not fully met within a reasonable period of time following the Effective Date to Carrier's satisfaction in its commercially reasonable discretion. If this Agreement is terminated pursuant to this Section II, Carrier and Shipper shall each be released from any and all obligations to the other under this Agreement.

SECTION III TERM

This Agreement shall be effective as of the Effective Date. Services hereunder shall commence on the In Service Date (the "Commencement of Service Date"). The Commencement of Service Date shall not occur prior to the completion of the construction of the Pipeline. This Agreement shall remain in full force and effect for a period commencing on the Commencement of Service Date and continuing through the first day of the first Month immediately following the end of the period designated on Schedule A as the Initial Term (the "Initial Term"). Thereafter, this Agreement shall remain in effect for additional one (1) year periods unless written notice of termination is given by either Party at least one (1) year prior to the end of the Initial Term of the Agreement or any subsequent term. The "Term" of this Agreement means the Initial Term plus all subsequent terms as provided above. In the event that Carrier determines not to construct the Pipeline or the storage terminal at the Origin, or only to construct a portion of the Pipeline, then Carrier shall provide Shipper with reasonably prompt notice of such decision and Shipper shall have the right to terminate this Agreement without any liability to it by providing notice to Carrier of its desire to terminate within fifteen (15) Business Days of receiving the written notice from Carrier.

SECTION IV CARRIER OBLIGATIONS

- A.** Carrier will operate and provide maintenance to the Pipeline as a common carrier oil pipeline as defined by the FERC and will be subject to the rules and regulations that govern such pipelines and facilities.
- B.** Prior to the Commencement of Service Date and in accordance with FERC's notice requirements of 18 C.F.R. § 341.2(b), Carrier shall file with the FERC the initial terms of the Tariff applicable to transportation under this Agreement, in a form substantially similar to the Tariff set forth in Schedule B. Any matter not addressed in this Agreement, but addressed in the Tariff and applicable to the Services provided hereunder shall be governed by the Tariff. Carrier may revise

CONFIDENTIAL INFORMATION

the Tariff from time to time, so long as any revisions applicable to the service hereunder are materially consistent with this Agreement, unless required otherwise by the FERC. In the event that the FERC requires Carrier to revise the Tariff in a manner that is inconsistent with the terms of this Agreement and Shipper notifies Carrier that the revision will have a material adverse effect on Shipper, the Parties will negotiate in good faith for a period of sixty (60) days an amendment to this Agreement or other agreements designed to ensure that the original commercial intent of the Parties reflected in this Agreement is preserved to the greatest extent possible while complying with the FERC requirements. Such negotiations, however, shall not obligate the Parties to enter into further amendments or agreements except by mutual agreement. To the extent there is any conflict between the provisions of the Tariff and the terms of this Agreement, the terms of the Tariff shall govern.

SECTION V TRANSPORTATION SERVICES

- A. Volume Commitment; Throughput and Deficiency Obligations. The following volume commitment and throughput and deficiency obligations apply:
- i. Commencing as of the Commencement of Service Date and continuing through the Term of this Agreement, Shipper agrees to nominate and ship, the Committed Volume or to pay for any Deficiency Volumes as detailed below. Unless otherwise expressly agreed to by Carrier, Shipper shall not be permitted to reduce its Committed Volume during the Term of this Agreement.
 - ii. In any Month, the product of Shipper's Committed Volume multiplied by the number of days in such Month shall be the "Required Monthly Volume." Shipper's "Deficiency Volumes" shall be the amount by which Shipper's Actual Shipments are less than the Shipper's Required Monthly Volume during the same Month; provided, however, that Shipper's Required Monthly Volume for this purpose shall be reduced by any volumes Shipper tendered to Carrier for shipment in such Month, but which Carrier failed to accept for transportation, or otherwise failed to transport, for any reason other than Shipper's failure to comply with the terms of this Agreement or the Tariff, including if capacity available to Shipper is reduced due to prorationing or otherwise.
 - iii. Shipper agrees that, to the extent that it does not nominate up to its Committed Volume in any month, Carrier shall be free to utilize such unused capacity for the provision of transportation services to other shippers.
 - iv. Shipper's nominations of Product for shipment and Carrier's scheduling, acceptance, transporting, measuring, and delivering of Product, shall, at all times, be subject to, and implemented in accordance with, the Tariff. The Tariff shall govern the terms of the Services provided by Carrier to Shipper.
 - v. Subject to available capacity, Shipper shall have the right during each Month of the Term, but not the obligation, to ship Product in excess of Shipper's Committed Volume ("Excess Volume"). Carrier agrees to transport such Excess

CONFIDENTIAL INFORMATION

Volume subject to available capacity and the provisions set forth in the Tariff including, but not limited to, Carrier's prorationing provisions.

SECTION VI TARIFF RATES AND CHARGES

- A. Tariff Rates and Charges. Shipper shall pay rates for all volumes of Product transported by Shipper on the Pipeline in accordance with the Tariff, which shall provide for the following:
- i. Committed Volumes. Shipper shall pay the rate set forth in Schedule A attached hereto ("Committed Rate") for Actual Shipments or its Committed Volumes, whichever is greater, during the Term as the Committed Rate may be changed from time to time in accordance with the provisions of this Agreement or as required by a Governmental Body with legal jurisdiction over the rates charged by Carrier. The Committed Rate shall not be increased during the Initial Term. After the Initial Term, the Committed Rate may be increased by Carrier annually, effective July 1 of each year following the In-Service Date, in accordance with the mechanism set forth in FERC regulation 18 C.F.R. § 342.3 or any successor thereto.
 - ii. In the event that the Regular Shipper Rate is ever lower than the Committed Rate plus \$.10 per Barrel, the Committed Rate shall be adjusted to the greater of: (a) the Regular Shipper Rate minus \$.10 per Barrel or (b) \$1.88 per Barrel. If the Committed Rate is reduced as a result of the requirement set forth in the preceding sentence, (a) it shall continue to be subject to yearly increases in accordance with 18 C.F.R. § 342.3 or any successor thereto; and (b) it shall be increased anytime the Regular Shipper Rate is increased so that the Committed Rate shall always be either (x) the initial Committed Rate as it would have been increased each year in accordance with 18 C.F.R. § 342.3 or any successor thereto, or if that would result in the Committed Rate being greater than the Regular Shipper Rate minus \$.10 then, (y) the greater of: (a) the Regular Shipper Rate minus \$.10 or (b) \$1.88.
 - iii. Deficiency Volumes. For any Deficiency Volumes, Shipper shall pay the applicable per Barrel Committed Rate. Carrier shall maintain a rolling bank accounting for payments for Deficiency Volumes made by Shipper ("Deficiency Payments"), as such bank of Deficiency Payments may be reduced by crediting for the transportation of Excess Volumes as set forth in Section VI.A.iv.
 - iv. Excess Volumes. For any Excess Volumes, Shipper shall pay the applicable per Barrel Committed Rate; provided, however, that payments due from Shipper for transportation of such Excess Volumes shall be credited, on a dollar-for-dollar basis, with any Deficiency Payments previously made by Shipper during the Applicable Shortfall Period. The "Applicable Shortfall Period" shall consist of the eighteen (18) months immediately preceding the month when the Excess Volumes were shipped; provided, however, that the length of such period shall be extended

CONFIDENTIAL INFORMATION

by one month for each month during that period in which Shipper was not able to transport all of its nominated and tendered Product due to prorating on the Pipeline; provided, further, that regardless of the length of the period in which the Shipper was not able to transport all of its nominated and tendered Product due to prorating, the Applicable Shortfall Period shall not in any event exceed twenty four (24) months. Any Deficiency Payments credits may only be used once to offset payments for Excess Volumes, and in no event shall such Deficiency Payments credits carry over into, or be otherwise applied to offset payments in, any time period beyond the Applicable Shortfall Period.

- v. **Tariff Rate during Shipper Defaults.** Notwithstanding anything in this Agreement to the contrary, during the continuance of a Default by Shipper, and after Carrier has provided a Shipper Default Notice which is not cured within ten (10) Business Days, the tariff rate payable by Shipper for its Committed Volume shall be the applicable Regular Shipper Rate then in effect as further described in Schedule B and shall be retroactively applicable from the date of Shipper Default Notice.
- vi. **Off Spec Penalty.** Shipper may be required to pay an Off-Spec Penalty as established in Section VII.
- vii. **Fees and Charges of General Application.** Shipper shall be subject to fees and charges set forth in the Tariff that are applicable to all shippers.
- viii. **Governmental Cost Increases.** In the event that, as a result of any federal, state or local environment law or regulation enacted or adopted after the Effective Date, any Governmental Body imposes a new fee upon Carrier and all similarly situated pipelines that (1) was not in effect on the Effective Date, (2) is of general applicability and not levied against Carrier specifically or as a result of any violation by Carrier of law or regulation, and (3) the total proceeds of which are remitted to such Governmental Body or entity designated by such Governmental Body (the "New Governmental Fee"), then Carrier may file with the FERC to adjust the Committed Rate and the Regular Shipper Rate, on an equal basis, to recover such New Governmental Fee. Carrier shall provide Shipper with notice of such filing and with information to verify Carrier's claimed adjustment. Notwithstanding any provision of this Agreement, Shipper shall have the right to protest before FERC any filing made by Carrier to adjust the Committed Rate or the Regular Shipper Rate pursuant to this Section VI.A.viii.
- ix. **Open Season.** Carrier shall have the right, but not the obligation, to conduct one or more open seasons for the Pipeline in order to contract with new or existing shippers for uncommitted or expansion capacity or capacity that has been made available due to the termination or expiration of Pipeline transportation services agreements.
- x. **Rate Reduction.** If, before the In Service Date, Carrier enters into an agreement that provides another shipper with a lower rate than the rate herein provided for a

CONFIDENTIAL INFORMATION

similar service, with similar shipper commitments, then Carrier agrees to decrease Shipper's Committed Rate to be equal to the rate provided to such shipper.

SECTION VII NOMINATIONS, QUALITY, AND PRORATIONING

- A.** Nominations. Shipper shall follow the nomination procedures set forth in the Tariff.
- B.** Quality. Quality provisions of Item 110 of the Tariff, or its successor, shall be applicable to the Product delivered hereunder. Carrier shall give prompt written notice to Shipper of any proposal to modify the quality specifications set forth in its initial Tariff. If Shipper notifies Carrier in writing that such a proposed change in specifications will adversely affect Shipper, in Shipper's reasonable judgment, such notification to include a reasonably detailed explanation of the adverse effect on Shipper, Carrier shall consider in good faith Shipper's notification and explanation and whether the proposed change in specifications is truly necessary and whether it may be modified to address Shipper's concerns.
- C.** Linefill. The linefill provisions of Item 125 of the Tariff, or its successor, shall be applicable to the Product delivered hereunder.
- D.** Prorationing. Capacity on the Carrier Pipeline shall be allocated in accordance with Item 80 of the Tariff or its successor.

SECTION VIII MEASUREMENT AND CUSTODY

- A.** Carrier and Shipper shall measure Product delivered hereunder as provided in Item 50 of the Tariff.
- B.** Possession of the Product received under this Agreement shall pass from Shipper to Carrier at the Origin(s).
- C.** Possession of the Product delivered under this Agreement shall pass from Carrier to Shipper at the Destination(s).

SECTION IX DUTY TO NOT OPPOSE

- A.** Shipper's Duty to Not Oppose Prior to the Commencement of Service Date. To the extent not inconsistent with Applicable Law, Shipper hereby agrees prior to the Commencement of Service Date: (a) to not oppose, obstruct or otherwise interfere with the efforts of Carrier to obtain all governmental, regulatory and other authorizations and approvals necessary for the construction and operation of the Pipeline in the form and manner proposed by Carrier; and (b) to not take, directly or indirectly, any action that is designed to delay review or approval of any petitions or applications to any Governmental Authorities related to the Pipeline, or that would materially and adversely affect the Pipeline or this Agreement; provided, however, that nothing herein shall prevent Shipper

CONFIDENTIAL INFORMATION

from (i) protesting any regulatory or other filings that are materially inconsistent with the terms of this Agreement or the Tariff, and (ii) proceeding in any manner consistent with Applicable Law if this Agreement is terminated or if the Pipeline has been abandoned by Carrier.

- B.** Shipper's Duty Not to Oppose Tariff Filing. To the extent consistent with Applicable Law, Shipper hereby agrees not to protest, complain, or take any action, nor recommend or cause any affiliated entity or other entity to protest, complain, or take any action, that is designed to or may delay review or approval of the filing of Carrier's initial Tariff, including the Committed Rate, with FERC or any other Governmental Body, unless such tariff filing is in conflict with the terms of this Agreement or Tariff.

SECTION X DEFAULT AND REMEDIES

- A.** The occurrence of a material breach by either Party of any of its payment or performance obligations under this Agreement, unless such breach occurs as a result of a breach by the other Party of its obligations under this Agreement, shall be deemed a "Default".
- B.** Remedies on Shipper Default.
- i. Upon the occurrence of a Default by Shipper ("Shipper Default"), Carrier, with respect to its obligations under this Agreement or the Tariff, will provide written notice to Shipper describing the Shipper Default in reasonable detail and requiring Shipper to cure the Shipper Default (the "Shipper Default Notice"). If a Shipper Default has not been cured within ten (10) Business Days following receipt by Shipper of a Shipper Default Notice, then in addition to Carrier's right to enforce Carrier's rights and remedies provided for in this Agreement, the Tariff and under Applicable Law, Carrier shall not be obligated to accept Shipper's Product for transportation and may suspend the provision of other Services to Shipper during the continuance of the Shipper Default.
 - ii. If the Shipper Default continues for a period of more than ninety (90) days, Carrier shall be entitled, by notice in writing to Shipper ("Second Default Notice"), to do any one or more of the following:
 - (a) terminate this Agreement, any such termination to be effective upon receipt of the Second Default Notice by Shipper, in which event Shipper shall be liable to Carrier for all of its accrued obligations under this Agreement and the Tariff up to and including the effective date of termination, and Carrier may pursue all its rights at law and equity to recover from Shipper its losses and damages sustained by Carrier as a result of or arising out of such termination; and/or
 - (b) draw on any guaranty, letter of credit or other financial assurance provided by Shipper pursuant to Section XI. If Carrier terminates this Agreement pursuant to subpart (a) of this Section, Carrier shall be entitled to apply the proceeds of such financial assurance to Shipper's unmet obligations under

CONFIDENTIAL INFORMATION

this Agreement and the Tariff, as well as Carrier's losses referenced in Section X.B. that are legally determined to be owed by Shipper to Carrier. In all other circumstances in which Carrier calls on any financial assurance provided by Shipper pursuant to Section XI following a Shipper Default, Carrier shall be entitled to apply the proceeds of such financial assurance to cure such Shipper Default and to hold the remaining proceeds (if any) as additional security for the payment and performance of Shipper's future obligations under this Agreement and the Tariff provided that Carrier has not terminated this Agreement and continues to provide service to Shipper pursuant to the terms of this Agreement.

C. Remedies on Carrier Default.

- i. Upon the occurrence of a Default by Carrier, Shipper will provide written notice to Carrier describing the Default in reasonable detail and requiring Carrier to cure the Default (the "Carrier Default Notice"). If a Default by Carrier has not been cured within ten (10) Business Days -- unless such Default (other than a payment default) cannot reasonably be cured within then (10) Business Days in which case such period shall extend for so long as the defaulting Party is diligently working to cure such default -- following receipt by Carrier of a Carrier Default Notice, then in addition to all Shipper's right to enforce its rights and remedies provided for in this Agreement, the Tariff and under Applicable Law, Shipper may terminate this Agreement. In the event of such termination, Carrier shall be liable to Shipper for all of its accrued obligations under this Agreement up to and including the effective date of termination, and Shipper may pursue all its rights at law and equity to recover from Carrier the direct losses and damages sustained by Shipper as a result of or arising out of such termination.
- ii. If the Carrier Default continues for a period of more than ninety (90) days, Shipper shall be entitled, by notice in writing to Carrier ("Second Default Notice"), to do any one or more of the following:
 - (a) terminate this Agreement, any such termination to be effective upon receipt of the Second Default Notice by Shipper, in which event Carrier shall be liable to Shipper for all of its accrued obligations under this Agreement up to and including the effective date of termination, and Shipper may pursue all its rights at law and equity to recover from Carrier its direct losses and damages sustained by Shipper as a result of or arising out of such termination; and/or
 - (b) draw on any guaranty, letter of credit or other financial assurance provided by Carrier pursuant to Section XI. If Shipper terminates this Agreement pursuant to subpart (a) of this Section, Shipper shall be entitled to apply the proceeds of such financial assurance to Carrier's unmet obligations under this Agreement, as well as Shipper's direct and immediate losses referenced in Section X.C. that are legally determined to be owed by Carrier to Shipper. In all other circumstances in which Shipper calls on

CONFIDENTIAL INFORMATION

any financial assurance provided by Carrier pursuant to Section XI following a Carrier Default, Shipper shall be entitled to apply the proceeds of such financial assurance to cure such Carrier Default and to hold the remaining proceeds (if any) as additional security for the payment and performance of Carrier's future obligations under this Agreement and the Tariff provided that Shipper has not terminated this Agreement and continues to require the services provided by Carrier pursuant to the terms of this Agreement.

SECTION XI CREDIT STANDARDS AND FINANCIAL ASSURANCES

When reasonable grounds for insecurity of payment or performance arise, Carrier may demand from Shipper adequate assurance of performance. Adequate assurance means sufficient security in the form and for the term specified by Carrier, including, but not limited to, a standby, irrevocable letter of credit, a prepayment, or a guarantee by a creditworthy entity.

SECTION XII TAXES

Carrier shall not be responsible for the payment of any taxes or assessments and charges now or hereafter levied against the Product transported hereunder, and Shipper shall indemnify and hold Carrier harmless therefrom. Carrier shall be responsible for the payment of all taxes or assessments and charges now or hereafter levied against the operation and maintenance of the Pipeline and the service provided, and Carrier shall indemnify and hold Shipper harmless therefrom.

SECTION XIII LAWS AND REGULATIONS

This Agreement shall be subject to all applicable local, state and federal laws and to all applicable rules, regulations, orders, and directives of any federal, state or local governmental authority, agency, commission, or regulatory body in connection with any and all matters and things incident to this Agreement.

SECTION XIV FORCE MAJEURE

- A. Excuse by Force Majeure. If Carrier is rendered unable, wholly or in part, by Force Majeure to carry out its obligations under this Agreement (other than the obligation to make payments of monies due hereunder), then Carrier shall give prompt written notice of the Force Majeure stating facts supporting such claim of inability to perform. Thereupon, the obligation to perform so affected shall be suspended during the continuation of an inability so caused, but for no longer period, and this Agreement shall otherwise remain unaffected. Carrier shall use due diligence to remove the cause, where commercially practicable, with all reasonable dispatch; provided, however, that this provision shall not require the settlement of strikes, lockouts, or other labor difficulty if such course is determined inadvisable by Carrier. During the term of any Force Majeure,

CONFIDENTIAL INFORMATION

Shipper shall be released from its obligation hereunder to deliver the Product to Carrier at the Origin and to make any payments whatsoever, except to the extent of the volume which have not been impacted by the Force Majeure.

- B.** Definition of Force Majeure. The term “Force Majeure,” as employed herein, shall mean any event or occurrence beyond the reasonable control of Carrier that prevents in whole or in part the performance of any obligation or condition under this Agreement, including but not limited to strikes, lockouts, or other industrial disturbances, wars, sabotage, terrorism, blockades, insurrections, or acts of the public enemy; epidemics, landslides, lightning, earthquakes, tornadoes, loss of utilities, fires, explosions, storms, floods, washouts, or other acts of God; arrests or restraints of governments and people; riots or civil disturbances, failures, disruptions, breakdowns, or accidents to machinery, facilities, or lines of pipe (whether owned, leased or rented); freezing of lines; embargoes, priorities, expropriation, or condemnation by government or governmental authorities; interference by civil or military authorities; compliance with any orders, directives, rules or regulations issued by governmental authority. “Force Majeure” will also include (i) any event described in the previous sentence and occurring with respect to the facilities or services of Carrier’s service providers providing a service or providing any equipment, goods, supplies, or other services or items necessary to the performance by Carrier of its obligations under this Agreement, (ii) in those instances where Carrier is required to obtain servitudes, rights-of-way, grants, surface rights, permits, or licenses to enable it to fulfill its obligations under this Agreement, Carrier’s inability to acquire, or delay in acquiring (at commercially reasonable cost and after the exercise of reasonable diligence), such servitudes, rights-of-way, grants, surface rights, permits, or licenses, (iii) in those instances where Carrier is required to secure permits or permissions from any Governmental Body to enable it to fulfill its obligations under this Agreement, Carrier’s inability to acquire, or delays on its part in acquiring (at commercially reasonable cost and after the exercise of reasonable diligence), such permits and permissions, and (iv) inspections, alterations, or repairs made necessary as a result of any event described in the previous sentence to any part of Carrier’s pipeline or required relocations or modifications of pipelines and other equipment and facilities comprising part of Carrier’s pipeline, but, in each case, only to the extent the event is not within the reasonable control of Carrier.

SECTION XV MAINTENANCE

Shipper recognizes that Carrier will from time to time require routine scheduled and unscheduled maintenance periods to overhaul, service, or test the Pipeline or related facilities (“Maintenance”). Carrier shall use reasonable efforts to minimize the amount of Maintenance consistent with safe and reliable operations. Carrier shall provide Shipper sixty (60) Days’ prior notice (or, in instances when sixty (60) days’ notice is not possible, as much notice as is practicable) of any scheduled Maintenance which will interrupt delivery or receipt of any Product hereunder and, Carrier shall use reasonable efforts to give Shipper updates as such Maintenance schedule changes. If scheduling, maintenance, or operational restrictions exist at the time Shipper schedules movements of Product, then Carrier shall promptly notify Shipper of such restrictions.

**SECTION XVI
ASSIGNMENT**

The rights and obligations of this Agreement shall bind and inure to the respective successors and permitted assigns of the Parties. However, any assignment or attempted assignment, except to an Affiliate, shall be void without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, delayed or denied except for reasons which may include, but not be limited to, the lack of creditworthiness of the assignee.

**SECTION XVII
LIMITATION ON LIABILITY AND INDEMNITY**

A. Shipper's Liability and Indemnification.

- i. Shipper shall be in control and possession of the Product until delivered to Carrier at the Origin and following delivery of the Product by Carrier at the Destination, and shall be fully responsible and liable for any and all damages, claims, actions, expenses, penalties and liabilities, including attorney's fees, arising from personal injury, death, property damage, environmental damage, pollution, or contamination relating to the Product while in Shipper's control and possession, and Shipper agrees to release, indemnify and defend Carrier with respect thereto. Shipper further agrees to release, indemnify and defend Carrier from and against any and all damages, claims, actions, expenses, penalties and liabilities, including attorney's fees, arising from personal injury, death, property damage, environmental damage, pollution, or contamination relating to Shipper's performance or nonperformance of its obligations under this Agreement.
- ii. Shipper represents and warrants to Carrier that it has the full right and authority to execute, deliver and perform its obligations and duties in this Agreement. Shipper further represents and warrants to Carrier that the execution, delivery and performance by Shipper of this Agreement does not and will not conflict with or result in any breach or contravention of, or the creation of any lien or other encumbrance under, any contractual obligation to which Shipper is a party or to which the Product are subject. Shipper agrees to release, indemnify and defend Carrier from and against any and all damages, claims, actions, expenses, penalties and liabilities, including attorney's fees, arising from any breach of the foregoing representations and warranties. Shipper agrees and acknowledges that such representations and warranties shall survive the execution of this Agreement and shall remain in full force and effect for the entire term of this Agreement and shall expire thereafter.

B. Carrier's Liability and Indemnification.

- i. Carrier shall be in control and possession of the Product after it is delivered to Carrier at the Origin and prior to delivery of the Product by Carrier at the Destination, and shall be fully responsible and liable for any and all damages,

CONFIDENTIAL INFORMATION

claims, actions, expenses, penalties and liabilities, including attorney's fees, arising from personal injury, death, property damage, environmental damage, pollution, or contamination relating to the Product while in Carrier's control and possession, and Carrier agrees to release, indemnify and defend Shipper with respect thereto. Carrier further agrees to release, indemnify and defend Shipper from and against any and all damages, claims, actions, expenses, penalties and liabilities, including attorney's fees, arising from personal injury, death, property damage, environmental damage, pollution, or contamination relating to Carrier's performance or nonperformance of its obligations under this Agreement.

- ii. Carrier represents and warrants to Shipper that it has the full right and authority to execute, deliver and perform its obligations and duties in this Agreement. Carrier further represents and warrants to Shipper that the execution, delivery and performance by Carrier of this Agreement does not and will not conflict with or result in any breach or contravention of, or the creation of any lien or other encumbrance under, any contractual obligation to which Carrier is a party. Carrier agrees to release, indemnify and defend Shipper from and against any and all damages, claims, actions, expenses, penalties and liabilities, including attorney's fees, arising from any breach of the foregoing representations and warranties. Carrier agrees and acknowledges that such representations and warranties shall survive the execution of this Agreement and shall remain in full force and effect for the entire term of this Agreement and shall expire thereafter.
- iii. Notwithstanding anything to the contrary herein, Carrier shall not be liable to Shipper for any delay in delivery, damage thereto, or for any loss of Product caused by a defect or vice in the transported Product, Force Majeure, or resulting from any other cause not due to the actions or inactions of Carrier, whether similar or dissimilar to the causes herein enumerated.
- iv. Carrier will not be liable for discoloration, contamination, or deterioration of Product transported unless such discoloration, contamination, or deterioration of Product transported results from the actions or inactions of Carrier.
- v. Carrier operates the Pipeline under this tariff solely as a common carrier and not as an owner, manufacturer, or seller of the Product transported or stored hereunder, and Carrier expressly disclaims any liability for any expressed or implied warranty for Product transported or stored hereunder including any warranties of merchantability or fitness for intended use.

C. Disclaimer of Damages.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT EXCEPT FOR EACH PARTY'S OBLIGATIONS TO INDEMNIFY THE OTHER PARTY FOR DAMAGES SUFFERED BY THIRD PARTIES, NEITHER PARTY NOR ITS AFFILIATES SHALL BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES, OR ANY OF THEIR EMPLOYEES, OFFICERS, DIRECTORS OR AGENTS, FOR LOSS OF PROFITS OR EARNINGS OR FOR SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL

CONFIDENTIAL INFORMATION

DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSSES DUE TO BUSINESS INTERRUPTION OR DIMINUTION IN VALUE OF THE ASSETS OR BUSINESS TO WHICH THEY RELATE) ARISING OUT OF OR RESULTING FROM OR IN CONNECTION WITH THIS AGREEMENT, WHETHER OR NOT CLAIMED TO BE DUE TO SUCH PARTY'S NEGLIGENCE (WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE).

**SECTION XVIII
MISCELLANEOUS**

- A.** Except for Shipper's obligation to make Deficiency Payments in respect of Deficiency Volumes, which constitutes Carrier's sole and exclusive remedy in respect of Deficiency Volumes, no remedy herein conferred upon or reserved to Carrier or Shipper under this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power nor be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Carrier or Shipper to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.
- B.** Unless otherwise specifically provided herein, any notice or other communication provided for in this Agreement or any other notice which either Party may desire to give to the other shall be in writing and shall be considered as duly delivered (i) when hand delivered, (ii) upon receipt when mailed by prepaid registered or certified mail, return receipt requested, (iii) the following Business Day, if sent by a nationally recognized overnight delivery service, or (iv) when receipt is confirmed by the equipment of a transmitting Party, if sent by facsimile during normal business hours provided a copy is mailed by registered or certified mail; and, in any event, when addressed to the Party to whom such notice is given as follows:

Notices and Correspondences:

If to Carrier:

Laredo Express Pipeline, LLC
17806 IH-10 West, Suite 210
San Antonio, Texas 78257
Attention: Sr. Vice President – Terminals and Transport
Telephone: 210-298-2222
Fax No.: 210-298-2221
E-mail: MHelmke@howardep.com

With a copy to:

CONFIDENTIAL INFORMATION

General Counsel
Howard Midstream Energy Partners
17806 IH-10 West, Suite 210
San Antonio, Texas 78527

If to Shipper:

As provided in Schedule A.

It is agreed that either Party can change its address to which such notice shall be delivered at any time by written notice to the other Party in accordance with this Section XVIII.

- C. The catch-lines or topical headings shown for each section in this Agreement are for the convenience of the Parties hereto and shall not be deemed or taken to constitute any part of said section or to alter the contents thereof in any way.
- D. This Agreement, including all Schedules attached hereto and made a part hereof, contains the full and complete agreement of the Parties hereto with reference to its subject matter and it may not be modified except in writing, signed by the authorized representatives of the Parties hereto.
- E. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW, RULES OR STATUTES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION.
- F. The terms and conditions of this Agreement shall supersede any previous oral or written agreements between the Parties.
- G. Nothing in this Agreement, whether expressed or implied, is intended to confer, or shall confer, any rights or remedies on any persons other than the Parties to this Agreement and their respective permitted successors and assigns. Further, nothing in this Agreement, whether expressed or implied, is intended to relieve or discharge the obligation or liability of any third person to any Party to this Agreement, nor shall any provision give any third person any right of subrogation or action over or against any Party to this Agreement.
- H. This Agreement may be executed in counterparts, any of which shall constitute an original and all of which when taken together shall constitute a single agreement.

SECTION XIX DISPUTE RESOLUTION

- A. **Scope.** The procedures specified in this Section XIX shall be the sole and exclusive procedures for the resolution of disputes between the Parties arising out of or relating to this Agreement; provided, however, that a Party may file a complaint for statute of limitations and/or to seek a preliminary injunction or other provisional judicial relief, if in its sole judgment such action is necessary; and provided further that a Party may seek

CONFIDENTIAL INFORMATION

action or relief from FERC on issues related to the Tariff or any perceived violation of any FERC rule, regulation, or policy. Despite such action, the Party will continue to participate in good faith in the procedures specified in this Section XIX. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this Section XIX are pending. The Parties will take such action, if any, required to effectuate such tolling. Mediators and arbitrators shall have experience relevant to the subject matter of the dispute before them.

- B.** Senior Party Negotiation. The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between management representatives who have authority to settle the controversy and who are at least one level above the persons with direct responsibility for administration of this Agreement and who have been unsuccessfully involved with the dispute up to this point. Any Party may give the other Party written notice of any dispute (“Notice of Dispute”). Within twenty (20) days after delivery of the Notice of Dispute, the receiving Party shall submit to the other a written response. The notice and the response shall include (a) a statement of each Party’s position and a summary of arguments supporting that position, and (b) the name and title of the officer or executive who will represent that Party and of any other person who will accompany such officer or executive. Within ten (10) days after delivery of the written response, the representatives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.
- C.** Mediation. If the dispute has not been resolved within ten (10) days of the meeting of the management representatives, or if the management representatives fail to meet within thirty (30) days of the disputing Party’s notice, and the parties do not otherwise agree to extend the time for negotiation, either party may initiate mediation of the dispute by giving the other Party written notice setting forth such Party’s request to submit the dispute to mediation. The mediation shall be conducted in accordance with the CPR mediation procedure then currently in effect. The Parties shall have ten (10) days from the date the mediation notice is received to agree upon a mediator. If the Parties are unable to agree, the mediator will be selected by CPR on motion by either Party. The mediation shall be conducted in San Antonio, Texas. Each Party shall bear one-half of the costs of the mediation, except that each party shall bear the costs of its discovery and preparation, attorneys, experts, and witnesses. All mediations under this Section XIX.C. are confidential and shall be treated as compromise and settlement negotiations for purposes of the applicable rules of evidence.
- D.** Arbitration. Any dispute arising out of or relating to this Agreement, including the breach, termination or validity thereof, which has not been resolved through the procedures provided in subsections B. or C. above, shall be finally resolved by arbitration in accordance with the rules for non-administered arbitration of the International Institute for Conflict Prevention and Resolution (the “CPR Rules”) then currently in effect. Either Party may initiate such arbitration proceedings fifteen (15) days or more after the initial mediation session, to the extent the Parties have not otherwise agreed to extend the time

CONFIDENTIAL INFORMATION

for mediation or resolved the dispute. The arbitration shall be conducted by (i) a sole arbitrator if the dispute involves less than \$500,000, based on the amounts claimed by either Party, and (ii) a panel of three independent and impartial arbitrators if the dispute involves in excess of \$500,000. All arbitrators, shall be agreed upon by the Parties or, failing such agreement, shall be appointed under the CPR Rules. The arbitration will proceed in accordance with the CPR Rules and shall be conducted in San Antonio, Texas. The Parties agree that any arbitration shall be kept confidential and any element of such arbitration (including but not limited to any pleadings, briefs or other documents submitted or exchanged, any testimony or other oral submissions, and any awards) shall not be disclosed beyond the arbitral tribunal, the Parties, their counsel and any persons necessary to conduct the arbitration, except as may be required in recognition and enforcement proceedings, if any, or in order to satisfy disclosure obligations imposed by any Applicable Law. The Parties agree to cooperate in providing each other with all discovery, including but not limited to the exchange of documents and depositions reasonably related to the issues in the arbitration. If the Parties are unable to agree on any matter relating to such discovery, any such difference shall be determined by the arbitrators or determined by the majority of the arbitrators if the number of arbitrators is greater than one. The award of the arbitrators shall be final and binding upon the Parties, and shall not be subject to any appeal or review, absent fraud. Judgment upon the award may be obtained and entered in any federal or state court of competent jurisdiction. The Parties shall submit to the non-exclusive personal jurisdiction of the federal and state courts sitting in San Antonio, Texas for the limited purpose of enforcing this arbitration agreement (including, where appropriate, issuing injunctive relief) or any award resulting from arbitration pursuant to this Section XIX.

- E.** Continued Performance. Each Party is required to continue to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement, unless to do so would be impossible or impracticable under the circumstances. The requirements of this Section XIX shall not be deemed a waiver of any right of termination under this Agreement.

Notwithstanding any provision to the contrary herein, in the event of any discrepancy between the English and Spanish versions of this Agreement (including its Schedules), the English version shall prevail.

[SIGNATURE PAGE FOLLOWS]

CONFIDENTIAL INFORMATION

IN WITNESS WHEREOF, each of the Parties hereto has executed this Agreement as of the date set in the preamble of this Agreement.

SHIPPER

By: _____

Name: _____

Title: _____

LAREDO EXPRESS PIPELINE, LLC

By: _____

Name: _____

Title: _____

SCHEDULE A

Volume Schedule

[This Schedule A will be completed with the submission of a Request of Service Form.]

SCHEDULE B

***PRO FORMA VERSION OF RULES,
REGULATIONS AND RATES TARIFF***