

Attachment No. 3

**This document was prepared by and return to:
Navigator Heartland Greenway LLC
Right-of-Way Department
2626 Cole Ave., Suite 900
Dallas, Texas 75204
Phone: (214) 880-6000**

HGS-SD-MO-XXXXX

PIPELINE RIGHT-OF-WAY AND EASEMENT AGREEMENT

For and in consideration of Ten Dollars (\$10.00) in hand paid and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned landowner(s)

hereinafter called GRANTOR, whether one or more), does hereby GRANT, BARGAIN, SELL, WARRANT and CONVEY to **Navigator Heartland Greenway LLC**, a Delaware limited liability company with its principal offices in Dallas, Texas, having a mailing address of 2626 Cole Avenue, Suite 900, Dallas, Texas, 75204 its successors and assigns (hereinafter called GRANTEE), a pipeline right-of-way and easement along a route (“Easement”), the location of which has been agreed to by the parties herein (the location of the pipeline, as constructed, to evidence such agreed route), to construct, install, maintain, operate, replace, abandon in place, inspect, patrol, protect, test, repair, reconstruct, alter, relocate, remove, and any and all related uses thereto (the “Permitted Uses”) up to, but no more than one (1) pipeline and one (1) or more fiber optic cables alongside such pipeline, together with incident facilities, equipment and appurtenances including but not limited to above or below, test stations, power and communication equipment, markers, signage, and cathodic protection devices, and other necessary appurtenances to transport, measure, and control the flow of carbon dioxide and associated substances (all of the above-described equipment and facilities being hereinafter referred to collectively as the “Pipeline”), whether in liquid or gas form that can be transported by pipeline on, over, under, through, across and along the strip(s) of land described and depicted as the Easement in Exhibit “A” attached hereto , such Easement crossing the following described land (hereinafter referred to as the “Property”) located in the County of _____ State of South Dakota, To wit:

The North Half (N 1/2) of the North Half (N 1/2) of the Northwest (NW 1/4) also described as the north _____ acres, of Section _____, Township _____ North, Range _____ West of the 5th P.M., _____ County, South Dakota (the "Property")

1. **TEMPORARY CONSTRUCTION EASEMENT AND ADDITIONAL TEMPORARY WORKSPACE:** During the initial construction and testing of the Pipeline, GRANTEE may utilize additional land adjacent to the Easement described and depicted on Exhibit "A" as the Temporary Construction Easement(s) (hereinafter referred to as a "Temporary Construction Easement(s)"). If the route of the Pipeline to be constructed hereunder should cross any terrain, roads, railroads, creeks, rivers or other waterways located on the Property, or other places requiring extra working space, GRANTEE shall have the right of temporary access to additional working space which may be necessary for the construction of the Pipeline ("Additional Temporary Workspace(s)"), in which event GRANTEE shall pay GRANTOR for all actual, documented damages suffered by GRANTOR due to GRANTEE's use of the Additional Temporary Workspace(s).
2. **GRANTEE RIGHTS AND BENEFIT:** GRANTEE shall have rights and benefits necessary or convenient for the full enjoyment or use of the rights herein granted, including but without limiting the same, the free, non-exclusive right of ingress and egress over, across, and within the Easement, together with a free, non-exclusive right of ingress and egress to and from said Easement upon and over the Property, including private roads. GRANTEE shall have the right from time to time, and at GRANTEE's sole discretion, to cut all trees and undergrowth and remove other obstructions that may injure, endanger, or interfere with the Permitted Uses for the Pipeline. GRANTEE agrees to make reasonable repairs of any damages to gates or roads caused by its use. GRANTEE shall have the right to remove any improvements, whether above or below ground, installed by GRANTOR on the Easement after the date that GRANTEE acquires possession of the Easement without liability to GRANTOR for damages. In the event of a breach by GRANTOR of paragraphs 3, 4 or 5, GRANTEE shall notify GRANTOR and GRANTOR shall promptly cure such breach at GRANTOR's expense; provided GRANTEE may cure the breach itself, at GRANTOR's expense (GRANTEE to be reimbursed on notice from GRANTEE), in the event GRANTOR either fails to promptly cure such breach or an immediate cure is reasonably necessary, as determined by GRANTEE, for the safety of persons or property, including the safe operation of the Pipeline.
3. **RETAINED RIGHTS:** GRANTOR may continue to use the surface of the Easement for agricultural, pasturage, open space, set-back, density, or other purposes (including the right to build cross fences on, over and across the land as near as to a ninety (90) degree angle to the Pipeline as possible), that are not inconsistent with the purposes set forth in this Pipeline Right-of-Way and Easement Agreement ("Agreement"), are not otherwise prohibited by applicable law, and that will not cause a safety hazard or interfere with the use of the Easement by

GRANTEE or any of the rights herein granted (the "Retained Rights"); provided, however, that GRANTOR shall not impound water upon the Easement, change the ground elevation or grade of the Easement, or construct or permit to be constructed any well, building, structure, improvement or obstruction, or plant any trees or shrubs that grow higher than 15 feet tall or have trunks larger than 3 inches in diameter at five feet upon the Easement or remove soil or change the grade or slope, which would interfere with GRANTEE'S exercise of the rights hereby conveyed, including access to the Easement, and the safe operation of the Pipeline. GRANTOR agrees that it will not interfere in any manner with the purposes for which the Easement, Temporary Construction Easement or Additional Temporary Workspace under this Agreement are conveyed.

4. **STREETS AND ROADWAYS:** GRANTOR is permitted, after review and approval by GRANTEE, not to be unreasonably withheld, to construct, reconstruct or maintain streets, roads or drives, road ditches, drainage ditches and utilities at an angle of not less than forty-five (45) degrees to the Pipeline, over and across (but not along and within) the Easement which do not damage, destroy or alter the operation of the Pipeline.
5. **UTILITIES:** GRANTOR may construct and/or install, upon GRANTEE'S review and approval, not to be unreasonably withheld, water, sewer, gas, electric, cable TV, telephone or other utility lines over and across (but not along and within) the Easement at any angle of not less than forty-five (45) degrees and no more than one hundred thirty-five (135) degrees to the Pipeline, provided that all of GRANTEE'S required and applicable spacings, including depth separation limits and other protective requirements are met by GRANTOR.
6. **ASSIGNMENT:** GRANTEE shall have the absolute right to assign, sell, lease, mortgage or otherwise transfer this Agreement in whole or in part and may be exercised by the GRANTEE herein and its respective successors and/or assigns either jointly or separately. An assignor shall have no liability or obligation as to events occurring after the date of a permitted assignment, with all such potential liability or obligation for future events terminating upon the assignment of assignor's rights in and to this Agreement to the assignee.
7. **FENCES:** GRANTEE shall have the right to remove all fences from the Easement, the Temporary Construction Easement(s), and Additional Temporary Workspace(s) as required for purposes of construction, maintenance or repair the Pipeline. Prior to cutting any fence, GRANTEE shall brace the existing fence on both sides of the removed section adequately and in such manner that there should be no slacking of the wires. While constructing through fenced areas, GRANTEE shall install gap fences or deterrent to keep cattle or livestock from crossing one fenced pasture to another. GRANTEE may install gate(s) along the fence line that is not a property boundary line where the fence(s) crosses the Easement, Temporary Construction Easement(s) or Additional Temporary Workspace(s). Likewise, GRANTEE may install a gate or gates in the fence line that marks the common

boundary between GRANTOR and adjoining owner(s). Any gate installed by GRANTEE shall be a farm gate consisting of one (1) gate sixteen (16) feet in width. All gates used by GRANTEE in connection with operations under this Agreement shall be kept locked at all times, except when passing through same. GRANTEE will also cause new fencing to be constructed across the Easement areas where there is existing fencing that has been damaged or destroyed. Such new fencing shall be of materially the same type as previously existed. GRANTOR shall allow GRANTEE to install its own lock if GRANTEE so chooses, provided that the method of locking the gates allows both GRANTOR and GRANTEE to use its/his/her own key or lock to open the gate without further assistance.

8. **CLEANUP AND RESTORATION:** GRANTEE shall remove all trash created by Grantee from the Property in accordance with applicable law. GRANTEE shall clear all other organic debris from the Property that is cut by Grantee by burning, cutting, stacking, blading and/or burying in accordance with applicable law. The method of disposal of said debris, whether one or more method, shall be selected by GRANTEE. Upon completion of GRANTEE'S installation, maintenance, or repair of the Pipeline within any portion of the Easement, GRANTEE shall restore the surface of the Easement, Temporary Construction Easement(s) and Additional Temporary Workspace(s) affected by the installation and construction of the Pipeline.
9. **DEPTH OF PIPELINE:** GRANTEE agrees to bury the Pipeline so that the top of the pipe lies at least sixty inches (60") below the surface when constructed/installed so as not to interfere with normal cultivation of the land, except at those locations where rock is encountered, the Pipeline may be buried at a lesser depth. GRANTOR agrees to not disturb, alter, or interfere with the depth of cover over the Pipeline. The foregoing requirement shall not apply to (a) vent pipes, location markers, and aboveground corrosion control equipment and/or (b) such other aboveground structures, installations, equipment, or apparatus authorized herein.
10. **MARKING:** After the completion and installation of the Pipeline, GRANTEE agrees to mark the locations of the Pipeline with permanent above ground markers to be located adjacent to fence or property lines if reasonably practicable and in conformance with laws, or as may otherwise be required in accordance with applicable state or federal regulations and to register the location of the Pipeline with the appropriate one-call agency.
11. **DAMAGES:** It is understood and agreed that the consideration herein paid for the Easement, Temporary Construction Easement(s) or Additional Temporary Workspace(s) includes payment for usual and customary damages incurred in the initial construction of the Pipeline, including those for growing crops, timber, fences, buildings or other improvements of GRANTOR on the Easement, Temporary Construction Easement(s) or Additional Temporary Workspace(s) resulting from the exercise of the rights herein granted during initial construction of the Pipeline (the "Initial Damages"). With respect to GRANTEE'S exercise of

any rights herein granted following the completion of initial construction, or to the extent GRANTOR's actual documented crop loss damages from the initial construction exceed those compensated for in GRANTOR's payment for Initial Damages, GRANTEE shall cause reasonable payment to be made for actual damages to the Property, crops, drain tiles, and fences of GRANTOR directly resulting from such activities; provided, however, as noted also in Section 2, GRANTEE shall have the right from time to time to clear the easement(s) of any trees, undergrowth, brush and other obstructions located on or overhanging the easement(s) and shall not be liable for damages caused by the clearing of the same from the easement(s) (the "Clearing Damages").

12. **INDEMNITY:** GRANTEE hereby agrees to indemnify and hold GRANTOR harmless from and against any claim or liability or loss from personal injury or property damage resulting from or arising out of the use of the Easement, Temporary Construction Easement(s) and Additional Temporary Workspace(s) by GRANTEE, its servants, agents or invitees, excepting, however, (a) the Initial Damages and the Clearing Damages, and (b) such claims, liabilities or damages as may be due to or caused by the negligence or willful acts of GRANTOR, or its servants, agents or invitees.

13. **INSURANCE.** Prior to GRANTEE's exercise of its rights pursuant to Section 2, and at all times thereafter until Grantee abandons or terminates its rights under the Agreement, GRANTEE shall carry the following insurance at all times. GRANTEE or any person or entity acting on GRANTEE'S behalf is on or about the Easement or acting pursuant to this Agreement, to the extent then available in the specified form, or comparable insurance on a substitute form:

(a) *Workers' Compensation and Employer's Liability Insurance.* Workers' Compensation with statutory limits in accordance with state and federal law; Employer's Liability minimum \$1,000,000 limit each occurrence.

(b) *Commercial General Liability ("CGL") and Umbrella Liability Insurance.* GRANTEE shall maintain commercial general liability insurance and commercial umbrella insurance with an aggregate limit of not less than \$10,000,000 and \$5,000,000 each occurrence. CGL insurance shall cover liability arising from premises, operations, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract. As allowed by state law, GRANTEE shall obtain coverage for liability arising from sudden and accidental pollution, explosion, collapse, and underground property damage.

(c) *Business Auto and Umbrella Liability Insurance.* GRANTEE shall maintain business auto liability, and, if necessary commercial umbrella liability insurance with a limit of not less than \$2,000,000.00 each accident. Such insurance shall cover liability arising out of any auto including owned, hired, and non-owned autos.

GRANTEE shall cause certificates of insurance evidencing the above coverage to be provided to GRANTOR upon reasonable request. All insurance requirements may be met by a combination of primary and excess insurance policies.

14. **RUN WITH THE LAND:** It is understood and agreed that this Agreement, the easement(s) and all rights, privileges, and obligations created herein shall be covenants running with the land in perpetuity and shall inure to the benefit of and be binding and obligatory upon the legal representatives, heirs, executors, administrators, devisees, legatees, successors, and assigns of the parties hereto.
15. **EXHIBITS:** GRANTEE may record this Agreement with a sketch as Exhibit "A" generally depicting the location of the Easement and the route of the Pipeline across the Property. Following the completion of the construction of the Pipeline, GRANTEE may unilaterally, without the execution thereof or further consent of GRANTOR, prepare, execute, and record a Correction of Pipeline Right-of-Way and Easement Agreement containing amended Exhibit "A" (as-built), showing the location of the Pipeline placed on the Property by GRANTEE, following actual construction, that reflects the survey of the center line of the Pipeline as built, and any such amended Easement description shall be included within and constitute the Easement granted by GRANTOR herein. The Correction of Easement and Right-of-Way Agreement shall be recorded in the official public records of this County to correct the description contained in the original Agreement.
16. **REPRESENTATIONS BY GRANTOR; COMPLIANCE WITH TAX CODE:** GRANTOR represents and warrants that GRANTOR is the owner in fee simple of the Property, subject only to outstanding mortgages, if any, now of record, and in the event of default by GRANTOR, GRANTEE shall have the right to discharge or redeem for GRANTOR, in whole or in part, any mortgage, tax or other lien on said Property and thereupon be subrogated to such lien and rights incident thereto. GRANTOR covenants that GRANTOR has the right to convey the Easement and that GRANTOR shall execute such further assurances thereof as may be required. The Internal Revenue Code provides that a GRANTEE of a real property interest in this county must withhold tax if the GRANTOR is a foreign person. Each GRANTOR hereby certifies under oath and subject to penalties of perjury that he/she/it is not a foreign person, foreign corporation, foreign trust, or foreign estate, for purposes of Internal Revenue Code compliance.
17. **TENANCIES:** In the event the Property is subject to a lease to any tenant for farming, ranching or any other purposes, unless GRANTOR and GRANTEE by separate binding agreement agree to allocate funds to said tenant, GRANTOR shall be solely responsible for making settlement with any such tenant or lessee for any share of the compensation paid for the granting of the Easement, Temporary Construction Easement(s) and Additional Temporary Workspace(s) or for any share of the damages that GRANTEE is otherwise required hereunder to pay, so that GRANTEE shall never be required to deal with or pay compensation to any such lessee or tenant, and GRANTEE may deal exclusively with GRANTOR.

18. **GOVERNING LAW:** This Agreement shall be interpreted and enforced in accordance with the laws of the state where the Property is located. If any part, term or provisions of this Agreement is, by a court of competent jurisdiction or regulatory authority having jurisdiction over the real property over, under and across which the Easement is located, held to be illegal, void, or unenforceable, or to be in conflict with the law of that jurisdiction, the validity of the remaining provisions or portion hereof shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part, term, or provision to be held invalid. GRANTOR waives any claims, now and in the future, which challenges the validity of the Easement or this Agreement or that seek additional compensation relating to the grant of the Easement.
19. **SIGNED IN COUNTERPARTS:** This Agreement may be signed in counterparts and all such counterparts shall be deemed as originals and binding upon each party executing any counterpart and upon their respective heirs, personal representatives, successors, and assigns. Similarly, facsimile or e-mail signatures shall be deemed as an original signature by the enforcing party.
20. **ENTIRE AGREEMENT:** This Agreement together with exhibits incorporated herein by reference, if any, and, if applicable, the binding agreement on allocation of funds to GRANTOR's tenant(s) agreed by the parties to this Agreement, embodies the whole agreement of the parties. There are no promises, terms, condition, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties. Notwithstanding the foregoing, (a) if the Parties have executed a Right of Entry and Option Agreement ("Option Agreement") contemporaneously with this Agreement, such Option Agreement shall remain effective and not be superseded by this Agreement until such date as this Agreement is recorded in the Office of the Recorder of Deeds of the above referenced county, following which the Option Agreement shall terminate and (b) the calculation of estimated Initial Damages separately agreed by GRANTOR and GRANTEE may be used for purposes of Section 11.
21. **NOTICES:** All notices required or permitted to be given under this Agreement shall be in writing and shall be considered sufficiently given if delivered to the specified address by (a) hand, courier, or overnight delivery service or (b) certified or registered mail, return receipt requested:

If to GRANTOR(s):

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A notice shall be effective upon the other party's receipt of the notice. Either party may specify a different address for delivery of notices by written notice to the other party as provided herein.

TO HAVE AND TO HOLD unto the said GRANTEE, its successors, and assigns, for so long as said Easement is used by or is useful to GRANTEE, its successors, and assigns, with ingress to and egress from said premises for the Permitted Uses. However, GRANTEE shall have

the right to abandon and terminate all or any part of the rights granted herein, by filing a release of same in the county records.

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