



RESOLUTION NO. 20161122-05

RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO NEGOTIATE FINAL TERMS OF AGREEMENT TO PROCEED WITH NAVITAS ASSETS, LLC

WHEREAS, TexAmericas Center is a political subdivision of the State of Texas with the powers and authorities specified in Chapter 3503 of the Special District Local Laws Code of the State of Texas; and

WHEREAS, TexAmericas Center has negotiated with Navitas Assets, LLC regarding the proposed construction of a 15,000 linear foot natural gas pipeline on the East Campus of TexAmericas Center to provide natural gas to the Expal USA, Inc. manufacturing site and other properties in the area; and

WHEREAS, TexAmericas Center and Navitas Assets, LLC desire to move forward with the development of a comprehensive agreement for Navitas to construct, own and develop the natural gas system on the TAC East Property; and

WHEREAS, while the parties negotiate a Definitive Agreement for the development of the project, in order to avoid delays to the completion of the project by the desired date, it may be necessary for Navitas to commence certain work prior to the execution of the definitive documents; and

WHEREAS, the parties desire to enter into a precontract Agreement to Proceed in order to expedite the development of the project;

NOW, THEREFORE, it is hereby resolved that Scott Norton, Executive Director/CEO shall be and he is hereby authorized to negotiate the final terms of the Agreement to Proceed in substantially the form attached hereto and to execute the same on behalf of TexAmericas Center.

PASSED AND APPROVED THIS 22nd day of November, 2016.


Denis Washington, Chairman of the Board

ATTEST:


Melford Pierce, Secretary

Attached: Agreement to Proceed

AGREEMENT TO PROCEED

This Agreement to Proceed (this "Agreement") is entered into on this 2nd day of November 2016 (the "Effective Date"), by and between TexAmericas Center, a Texas special purpose district ("TAC"), and Navitas Assets, LLC, a Delaware limited liability company ("Navitas"). TAC and Navitas are individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the Parties are currently discussing a project (the "Project") to build a 15,0001f natural gas pipeline (the "Pipeline") on the East Campus of the TexAmericas Center, located on Highway 82 in Bowie County, Texas, adjacent to Hooks, Texas (the "Premises"); and

WHEREAS, the Parties are still in the process of negotiating the terms and conditions for the definitive documents (the "Definitive Agreements") for the development of the Project, substantially in accordance with the terms set forth in the Term Sheet (the "Term Sheet") attached hereto as Exhibit A; and

WHEREAS, the Parties acknowledge and agree that in order to avoid delays to the completion of the Project by the desired date it may be necessary for Navitas to commence certain work (the "Pre-Contract Work") prior to the execution of the Definitive Documents; and

WHEREAS, the Parties desire that the Pre-Contract Work shall be subject to the terms of this Agreement;

NOW, THEREFORE, in consideration of the above noted transactions and the mutual covenants contained in this Agreement, the Parties hereto agree as follows:

Part I — Non-Binding Provisions

1. **Summary of Project.** The Parties presently intend that the Definitive Agreements shall include the terms and conditions set forth in the Term Sheet. The Parties agree, however, that the Term Sheet does not contain all material terms and conditions as are necessary to conclude the Definitive Agreements, such additional terms and conditions shall be developed and agreed through additional discussion and negotiation. A binding agreement with respect to the Project will result only from the execution by the Parties of the Definitive Agreements. Unless and until the Definitive Agreements have been executed, neither Party shall have any legal obligation of any kind with respect to the Project by virtue of this Agreement, or any other written or oral expression by a Party or its respective affiliates, employees, agents, investors or representatives made prior to or after the date of this Agreement, except as specifically set forth in Part II below with respect to costs and expenses (the "Development Costs") incurred in connection with the Pre-Contract Work (as hereafter defined). No Party will have an obligation to proceed with the Project until both Parties have negotiated and executed the Definitive Agreements. Either Party may terminate negotiations at any time for any reason without liability to the other Party, except for the Development Costs as hereafter provided. Neither Party shall

represent to any third party that it has received a commitment from the other Party to enter into the Project or any Definitive Agreement. Upon such termination and except for the obligations as set forth in Part II of this Agreement, neither Party hereto will have any rights, liabilities or obligations pursuant to the Project. Each Party agrees not to commence any litigation or to take any other action to recover any actual or alleged damages from the other Party because the Project is not consummated or Definitive Agreements are not concluded, or seek an order compelling the consummation of the Project pursuant to this Agreement and Term Sheet.

Part II — Binding Provisions

2. Binding Agreement. Notwithstanding the foregoing, the provisions of this Part II (the "Binding Provisions") shall be binding on the Parties.

3. Term. The term of this Agreement (the "Term") shall commence on the Effective Date and shall terminate on January 31, 2017 (the "Expiration Date"), unless terminated earlier in accordance with the provisions hereof.

4. Definitive Agreements. The Parties acknowledge and agree that neither Party shall have a binding obligation to proceed with the Project beyond the terms of this Agreement, unless and until the Parties have executed the Definitive Documents. During the Term, the Parties agree to negotiate in good faith and use all reasonable efforts to execute the Definitive Documents prior to the Expiration Date, which Definitive Documents shall be consistent with the terms set forth in the Term Sheet attached hereto as Exhibit A and such other terms as the Parties may mutually agree therein.

5. Pre-Contract Work. Navitas shall form a special purpose Texas entity ("Navitas Texas") to own the Pipeline and all costs related to the formation of Navitas Texas shall be for Navitas's account. TAC and Navitas shall each appoint a representative for purposes of coordinating all discussions and negotiations between the Parties. TAC shall commit such resources as TAC deems appropriate for the Project for periods prior to the execution of the Definitive Documents, to include, as it deems reasonably necessary, rights-of-way identification, preliminary surveying, ground penetrating radar, records research and updating use rights for development of a master utility plan. The actions of each Party described in this Paragraph 5 shall constitute "Pre-Contract Work". TAC shall have no duty to reimburse Navitas for any Navitas Pre-Contract Work and Navitas shall have no duty to reimburse TAC for any TAC Pre-Contract Work. In the event that either Party desires to engage in other or additional Pre-Contract work that would be subject to reimbursement by the other Party, the written consent of such other Party shall be required. Each Party shall have the right to terminate this Agreement and request the cessation of all Pre-Contract Work upon delivery of three (3) days written notice to the other Party (the "Termination Notice").

6. Exclusivity. During the Term of this Agreement, TAC agrees to work exclusively with Navitas with respect to any project involving the construction of a natural gas pipeline on the Premises. If this Agreement expires or is terminated prior to the Execution of Definitive Agreements, then for a period of four (4) months thereafter, TAC shall notify Navitas if it seeks

or receives any proposal for the construction of a natural gas pipeline on the Premises which is acceptable to TAC, and hereby grants Navitas the right to match such third party proposal.

7. Termination of this Agreement. This Agreement shall terminate upon the earlier of (i) the Expiration Date, (ii) the date of execution of the Definitive Agreements and (iii) the date either Party receives a Termination Notice from the other Party (the "Termination Date"). Upon the execution of the Definitive Agreements, the matters set forth herein shall be superseded and governed by the terms of the Definitive Agreements and no reimbursement of the Development Costs shall be required. In the event that the Parties have not executed the Definitive Agreements prior to the expiration or termination of this Agreement, the following provisions shall apply, effective as of the Expiration Date or Termination Date, as applicable:

- (i) Each Party, as applicable, shall invoice the other Party for any reimbursable Pre-Contract Work agreed to in writing by the Parties and performed prior to the Expiration Date or the Termination Date, as applicable. The owing Party shall pay such invoice within thirty (30) days of receipt thereof.
- (ii) A Party claiming reimbursement pursuant hereto shall provide to the other Party reasonable supporting documentation for the reimbursable costs, including, as applicable, hourly rates and the amount of time spent in connection therewith, as well as any purchase order invoices for the purchase of equipment or materials from third party suppliers.

8. Limitation of Liability. In no event, shall either Party be liable to the other Party for any consequential, indirect, punitive or special damages under this Agreement.

9. Representations and Warranties. As of the Effective Date, each Party represents and warrants to the other that (a) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or at law); and (b) the execution, delivery and performance of this Agreement do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.

10. Notices. Any formal notice or other communication required pursuant to this Agreement shall be deemed to have been duly given if delivered: (a) personally, (b) by certified mail (postage prepaid, return receipt requested) or overnight courier, or (c) by electronic mail (confirmed by certified mail) and addressed as provided below. Until another address or addresses shall be furnished in writing by either Party, notices shall be addressed as follows:

If to TAC:

TexAmericas Center
Attn: Scott Norton,

Executive Director/CEO
107 Chapel Lane
New Boston, Texas 75570

If to Navitas:

Navitas Assets, LLC
3186D Airway Avenue
Costa Mesa, California 92626
Attn: Thomas Hartline and Richard Varner
Fax: 714-850-0876
Email: thartline@navitasutility.com

11. **Governing Law.** This Agreement and any controversy or dispute arising out of or related to this Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to its conflict of laws principles, and the jurisdiction and venue of any legal action or proceeding, brought by any Party against the other, shall be in Bowie County, Texas.

12. **Additional Assurances.** The Parties agree to cooperate with one another and to use their commercially reasonable efforts to effect, or cause to be effected, as the case may be, the matters contemplated by this Agreement. Each Party shall, at any time and from time to time, upon the request of any other Party, execute, acknowledge and deliver all such further instruments or assurances as may be necessary, in the reasonable judgment of the requesting Party, to carry out the provisions and intent of this Agreement.

13. **No Partnership.** This Agreement shall not be construed as creating a partnership, association or joint venture between the Parties. It is understood that each Party shall have complete charge of its own employees and agents in the performance of its duties hereunder, and nothing herein shall be construed to make either Party, or any employee or agent of such Party, an agent or employee of the other Party.

14. **No Fiduciary Relationship.** Each Party has entered into this Agreement as principal (and not as advisor, agent, broker or in any other capacity, fiduciary or otherwise), with a full understanding of the material terms and risks of the same, and is capable of assuming those risks.

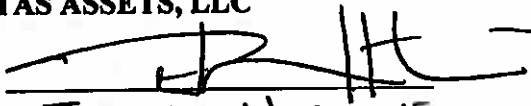
15. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall for all purposes shall be an original, and all such counterparts shall constitute one and the same instrument. Delivery of an executed signature page of this Agreement in Portable Document Format (pdf) or by facsimile transmission shall be effective as delivery of an executed original counterpart of this Agreement.

16. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

NAVITAS ASSETS, LLC

By: 
Name: THOMAS HARTLINE
Title: PRESIDENT

TEXAMERICAS CENTER

By: 
Name: Scott Norton
Title: Executive Director/CEO