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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
FORT WORTH DIVISION

In re:	§	**Chapter 11**
	§	
VISTA PROPPANTS AND LOGISTICS, LLC, ET AL.,	§	**Case No. 20-42002-ELM-11**
	§	
Debtors	§	**Jointly Administered**
	§	
MAALT, LP,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	**Adversary No. 20-04064-elm**
	§	
SEQUITUR PERMIAN, LLC,	§	**Removed from Cause No. CV19-003 in the 51st Judicial District Court, Irion County, Texas**
Defendant.	§	
	§	

PLAINTIFF'S THIRD
MOTION FOR PARTIAL SUMMARY JUDGMENT

2042002210312000000000002

TO THE HONORABLE UNITED STATES BANKRUPTCY COURT:

Plaintiff, Maalt, LP ("Maalt") files this Third Motion for Partial Summary Judgment addressing claims and defenses alleged by Defendant, and in support shows the Court as follows:

Summary

By this motion, Maalt seeks a partial summary judgment on the following grounds:

Background

Maalt owns and operates a rail transloading facility that serves the energy industry in Barnhart, Texas (the "Barnhart Facility"). In 2018, Sequitur Permian, LLC ("Sequitur") desired to obtain crude oil transloading services for its crude oil so it could ship it to higher priced markets and take advantage of an arbitrage opportunity that was project to carry into 2019. In June, 2018, Maalt and Sequitur entered into a letter of intent, and ultimately a Terminal Services Agreement (the "TSA") pursuant to which Maalt would (a) dedicate exclusive use of the Barnhart Facility to Sequitur's use, (b) transload Sequitur's crude oil at the Barnhart Facility onto railcars for shipment to markets outside of the Permian Basin, and (c) give Sequitur a right of first refusal to purchase the Barnhart Facility. The TSA obligated Maalt to exclusively transload Sequitur's crude oil at a price of $1.50 per barrel, and required Sequitur to throughput a minimum of 11,424 barrels per day or pay Maalt a minimum fee equal to $17,136.00 per day (the "Minimum Fee"). Sequitur never throughput any crude oil through the Barnhart Facility and never paid Maalt the minimum fee required by the Contract. Instead, Sequitur claimed that a force majeure event occurred, essentially claiming that rail transportation services were completely unavailable *at any price* at the Barnhart Facility, and refused to pay Maalt any amount despite having exclusive use of the Barnhart Facility for approximately 6 months of the 17-month TSA term. This suit followed.

This motion addresses the following claims and defenses alleged by Defendant:

I. ***There was no fraudulent inducement***

As a matter of law, any reliance by Sequitur on representations made by Maalt was not reasonable or justifiable under the holding in *JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, 546 S.W.3d 648 (Tex. 2018) and other Texas decisions.

II. ***There was no Justifiable Reliance on any Negligent Misrepresentation***

Under the holding in *JPMorgan Chase Bank, id*., and other decisions, Sequitur's negligent misrepresentation claim also fails as a matter of law.

III. ***Mutual Mistake Defense***

The defense of mutual mistake fails as a matter of law because there was no mistake by Maalt, to the extent that Sequitur may have made a mistake, it bore the risk of that mistake.

IV. ***Failure of Implied Condition Defense***

Sequitur's defense is negated as a matter of law by the "Entire Agreement" provision in the TSA stating that the entire agreement of the parties is contained in the written document.

V. ***Excuse and/or Justification Defense***

Sequitur rehashes its force majeure and condition precedent arguments that were the subject of the parties' prior motion for summary judgment. For the reasons that those defenses fail, so does this one.

VI. ***Statue of Frauds Defense***

Sequitur claims that Maalt seeks to enforce an oral agreement or oral modification to the TSA. Maalt only seeks enforcement and performance of the written TSA; therefore, the statute of frauds does not apply as a matter of law.

VII. ***Defense of Waiver***

The TSA expressly precludes Sequitur's waiver argument by expressly stating that no waiver of any right of a party would occur unless it was contained in a signed writing. Moreover, no conduct occurred that constituted a waiver of any kind by Maalt. The defense fails as a matter of law.

VIII. ***Failure of Consideration Defense***

Sequitur prevented Maalt from transloading crude at the Barnhart Facility by failing to deliver oil and rail cars to the facility, thus preventing Maalt from performing transloading services. Under Texas law, a failure of consideration does not occur when the other party to the contract prevents performance.

Summary Judgment Evidence

Maalt supports this motion with the evidence contained in its appendix to this motion.

Incorporation of Brief

Pursuant to Local Bankruptcy Rule 7056-1(d)(2), the other items required to be included in Maalt's motion will be set forth in Maalt's Brief in Support of its Amended Second Motion for Partial Summary Judgment.

Conclusion

Wherefore, Maalt prays that the Court grant Plaintiff's Amended Second Motion for Summary Judgment in whole or in part, and provide it such other relief to which it is entitled.

DATED: March 1, 2021

Respectfully submitted,

By: */s/ James Lanter*
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ATTORNEYS FOR PLAINTIFF, MAALT, LP and THIRD-PARTY DEFENDANT VISTA PROPPANTS AND LOGISTICS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all counsel of record through the Court's electronic filing service on March 1, 2021.

/s/ *James Lanter*
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
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In re:	§	**Chapter 11**
	§	
VISTA PROPPANTS AND LOGISTICS, LLC, ET AL.,[1]	§	**Case No. 20-42002-ELM-11**
	§	
	§	
Debtors	§	**Jointly Administered**
	§	
MAALT, LP,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	**Adversary No. 20-04064-elm**
	§	
SEQUITUR PERMIAN, LLC,	§	**Removed from Cause No. CV19-003 in the 51st Judicial District Court, Irion County, Texas**
Defendant.	§	
	§	

APPENDIX IN SUPPORT OF PLAINTIFF'S
THIRD MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff, Maalt, LP ("Maalt" or "Plaintiff"), submits this Appendix in support of its reply brief filed contemporaneously herewith. This Appendix following exhibit to the motion:

[1]The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Vista Proppants and Logistics, LLC (7817) ("Vista HoldCo"); VPROP Operating, LLC (0269) ("VPROP"); Lonestar Prospects Management, L.L.C. (8451) ("Lonestar Management"); MAALT Specialized Bulk, LLC (2001) ("Bulk"); Denetz Logistics, LLC (8177) ("Denetz"); Lonestar Prospects, Ltd. (4483) ("Lonestar Ltd."); and MAALT, LP (5198) ("MAALT"). The location of the Debtors' service address is 4413 Carey Street, Fort Worth, TX 76119-4219.

PAGE	DOCUMENT
Maalt Appx. 004	Excerpts from the Deposition of Braden Merrill
Maalt Appx. 038	Exhibit 6
Maalt Appx. 045	Exhibit 9
Maalt Appx. 046	Exhibit 13
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Maalt Appx. 104	Exhibit 49
Maalt Appx. 107	Exhibit 76
Maalt Appx. 112	Exhibit 79
Maalt Appx. 114	Exhibit 89
Maalt Appx. 115	Exhibit 104
Maalt Appx. 116	Exhibit 117
Maalt Appx. 118	Maalt_000228
Maalt Appx. 123	Maalt_001120
Maalt Appx. 126	Sequitur_000323
Maalt Appx. 127	Sequitur_001462
Maalt Appx. 128	Email from Braden Merrill to Mike van den Bold dated June 7, 2018
Maalt Appx. 130	Sequitur's Answers to Interrogatories

Maalt Appx. 136	Sequitur_000636
Maalt Appx. 137	Sequitur_000660
Maalt Appx. 138	Sequitur_000680
Maalt Appx. 139	Exhibit 5

DATED: March 1, 2021

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF, MAALT, LP

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all counsel of record through the Court's electronic filing service on March 1, 2021.

/s/ James Lanter
James Lanter

CAUSE NO. 19-003

MAALT, LP,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
VS.	§	IRION COUNTY, TEXAS
	§	
SEQUITUR PERMIAN, LLC,	§	
	§	
Defendant.	§	51st JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF
BRADEN MERRILL
November 19, 2019
Volume 1

ORAL AND VIDEOTAPED DEPOSITION OF BRADEN MERRILL, produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above-styled and numbered cause on the 19th day of November, 2019, from 9:32 a.m. to 5:25 p.m., before Patricia Palmer, CSR, in and for the State of Texas, reported by machine shorthand, at the offices of Mr. Matthew A. Kornhauser, Hoover Slovacek LLP, 5051 Westheimer Road, Suite 1200, Houston, Texas 77056, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record herein.

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ALSO PRESENT:
Mr. Daniel Alpizar, Videographer
Mr. Christopher Favors, Corporate Representative of Sequitur Permian, LLC

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THE VIDEOGRAPHER: Today's date is November 19th, 2019. This is the video deposition of Braden Merrill. The time is 9:32. We are on the record.

The court reporter may now swear in the witness.

THE REPORTER: Are there any stipulations?

MR. KORNHAUSER: We are -- we are proceeding by agreement and by notice.

MR. LANTER: And by notice, yeah.

MR. KORNHAUSER: Yeah. We would like to have the opportunity to read and sign, please.

MR. LANTER: Sure.

BRADEN MERRILL,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. LANTER:

Q. Good morning.

A. Good morning.

Q. Would you state your name, please.

A. It's Braden Merrill.

Q. Okay. And what is your position with Sequitur Permian?

A. I am vice president and senior -- I am vice president and chief financial officer.

Q. Okay. Now, you were -- you understand why we are here, don't you?

A. I do.

Q. A deposition in a case brought by Maalt; and is that a yes?

A. I do, yes. I'm sorry.

Q. Okay. You were the person who signed the letter declaring force majeure under the terminal services agreement that your company held at Maalt; is that right?

A. I'm not sure if it was either me or Mike Van den Bold, but it would have been one of us.

Q. Okay. You don't remember that -- that you were the one who signed it?

A. I don't remember that.

MR. LANTER: I am going to hand you what was previously marked as Exhibit 32 in earlier depositions.

THE WITNESS: All right.

Q. And that is the February 8th of 2019 letter that was sent by Sequitur Permian reportedly to terminate the terminal services agreement, correct?

A. Yes, sir.

Q. And that was signed by you, right?

A. That was signed by me.

Q. Okay. Would you tell me all of the reasons why you determined that a force majeure event occurred?

MR. KORNHAUSER: I am going to object to the form of the question. You can answer.

MR. LANTER: Go ahead.

THE WITNESS: Okay.

A. We -- we invoked the force majeure or we -- we sent the letter because we were unable to get trains to the facility, we -- and I guess, it was -- the primary is the trains to the facility and also we never got our pollution liability -- or legal liability.

Q. Never got what?

A. The pollution legal liability.

Q. Okay. All right. So make sure I understand you, the first reason was you were unable to get trains to the facility and -- is that yes?

A. Yes. And -- and trains out of the facility, yes.

MR. LANTER: Okay. She can't take down shakes of the head.

THE WITNESS: No, I get you. I am sorry about that.

MR. LANTER: It looks -- uh-huh (positive response) and uh-uh (negative response) look exactly the same, okay.

THE WITNESS: Got it.
MR. LANTER: -- on paper, so I may prompt you.
Q. So you're unable to get trains in and out of the facility?
A. Yes, sir.
Q. And then your second reason for declaring for force majeure was you never got a pollution legal liability policy?
A. That's correct.
Q. All right. Anything else?
A. That's it.
Q. Okay. When you say you were unable to get trainings in or out of the facility, what do you mean by that?
A. We had spoken with multiple logistics companies about service in and out of the Barnhart facility and all -- all that we talked to. Well -- so let me go back here. So we were unable to get in and out of the facility.
Q. Okay. And specifically, what was the problem?
A. The -- the -- my understanding is that the carriers, it is a convoluted system of -- of class ones and smaller carriers, but -- and logistics companies, but my understanding is the class one carriers were not

interested in providing crude oil rail service in and out of the Permian Basin.
Q. Okay. So you when you -- when you say that you couldn't get trains in or out of the facility, who made that determination within your company?
A. It was Mike Van den Bold and I.
Q. Okay. Anybody else involved in that decision?
A. No.
Q. Okay. So you are not testifying that there is any curtailment of rail services or product transportation services, are you?
MR. KORNHAUSER: Objection form.
A. What -- what do you mean by curtailment? I am sorry.
Q. What do you understand that word to mean?
A. I mean, ceasing of --
Q. Okay.
A. Is that what you are asking?
Q. That's what I am asking.
A. I -- I would say that there was ceasing of rail services, my understanding, to the Permian Basin.
Q. Did you ever get rail service to this facility at all?
A. No.
Q. So no rail service that you obtained had ever

ceased for any reason?
A. No rail services would have been obtained -- no.
Q. Okay. And no rail service that you ever obtained had been delayed for any reason, correct?
A. Well, we had -- had two trains sent to the facility, which were not able to get there and then therefore, had to be rerouted to another facility.
Q. Okay. When you say "we had two trains at the facility," who is we?
A. We as in Jupiter was coordinating the trains.
Q. Okay. So you and Jupiter?
A. Jupiter was coordinating on our behalf, yes.
Q. And -- so when you say "we," are you talking about you and your company?
A. Yes.
Q. -- Jupiter?
A. Yes, I am. When I said we that's what I meant.
Q. Okay. So Jupiter and Sequitur is we?
A. Yes.
Q. Okay. Was any rail transportation that you were able to procure ever interrupted?
A. No.
Q. Okay. And was there any rail service unavailable?

MR. KORNHAUSER: Objection form.
A. Yes.
Q. And how did you determine that rail service was unavailable?
A. We reached out to every logistics provider and every purchaser that we knew of. We went through our personal relationships. We talked to Vista about it, asking them for help. And we also asked our third-party marketing consultant.
Q. Okay. So every -- you mentioned that you reached out to purchasers and you reached out to logistics providers?
A. Uh-huh (positive response).
Q. Tell me who the purchasers were that you reached out to.
A. From the beginning, we reached out to BP, Valero, Shell, Sunoco, Arm, Jupiter. I don't remember who I said at this point, but Shell.
Q. Okay.
A. Murex, Nustar. I may have said some multiple times.
Q. What was the last one you said?
A. Nustar.
Q. Nustar. Any other purchasers?
A. Those are the ones that I remember.

Q. Okay. And how about logistic providers?
A. Well, all of those were logistic providers slash purchasers.
Q. Okay. Which ones -- I want to separate the two. Which ones were purchasers, BP, Valero, Shell, Sunoco?
A. All of them would have purchased our oil.
Q. Okay. So they would have all had purchased and then they would have provided logistics after the point of purchase I take it?
A. Yes, that's correct.
Q. All right. Did you ever reach out to any companies who were just pure logistic providers to pick your oil up at the Barnhart facility and transport it to a purchasers location somewhere else?
A. Not that I know of.
Q. Okay. So the only thing you did was reach out to purchasers?
A. That's my recollection.
Q. Okay. And what was your role in doing so?
A. I -- I facilitated most of the -- or I was the one who called on most of the companies.
Q. Okay. So you were personally involved in the day-to-day activities of that?
A. Yes, I was.

you never had any contact with anybody, right?
A. No, I -- Steve McCarley, I believe --
Q. Okay.
A. -- was on site. And I'm not sure which -- what the name of -- it was either the president or the CEO came to one of our meetings. I don't remember his name. I remember he has a deer -- deer breeding facility. That's what I remember.
Q. Okay. Did you ever go to that deer facility?
A. No, I did not.
Q. Anybody else that you ever talked to with Maalt?
A. I was introduced to Blake DeNoyer at the beginning.
Q. Okay. And how do you know Blake DeNoyer?
A. He tried to sell sand to our company.
Q. Okay.
A. And we had contact through that so I received his information from our operations team.
Q. All right. And that was SIM that was talking to Vista about purchasing sand, correct?
A. That's correct.
Q. Okay. Do you have any involvement in that at all?
A. No, I did not.

Q. Was Mr. Wroten working with you on that?
A. Yes, he was.
Q. What was his role?
A. Mr. Wroten works for me. He did a lot of the day-to-day as well.
Q. Uh-huh (affirmative response).
A. So he and I both would call these companies at the beginning.
Q. Okay. In your dealings with Maalt, who were the individuals that you primarily dealt with?
A. Primarily at the beginning it was Jon Ince and then it switched to Chris Favors pretty quickly, but Jon Ince stayed in the picture somewhat.
Q. Okay. So just those two individuals?
A. That's correct.
Q. Now, you never had any contact with any officer of director of Sequitur -- excuse me, of Vista Proppants and Logistics, Incorporated, did you?
A. I -- honestly I don't know the difference between Vista and Maalt, so I'm not -- I'm kind of...
Q. Okay. I'm you very specifically, did you have any contact with anybody who is an officer, director of Vista Proppants and Logistics, Inc.?
A. I -- I am not sure.
Q. Okay. But other than Jon Ince and Chris Favors

Q. All right. When all of this first started in early to mid 2018, you were the one who reached out to Blake DeNoyer, weren't you?
A. Yes, I was.
Q. Okay. And you made the initial contact with his company or with Maalt Service entities about running transloading services, right?
A. I did.
Q. Okay. And after your initial conversation with Blake DeNoyer -- or was it an e-mail or conversation?
A. I don't remember.
Q. Okay. After that first communication, did you have anymore discussions or communications with -- with Mr. DeNoyer?
A. No, I -- after -- after talking with him about using the facility we -- he set me in touch with Jon fairly quickly and then Chris fairly quickly after that.
Q. Okay. Now, I want to ask you this up front and we will talk about it some more potentially. But during your conversations with Jon Ince and Chris Favors?
A. Uh-huh (positive response), yes.
Q. Did they ever make any promises to you that they did not keep?
A. I am not sure.
Q. You are not aware of any as you sit here today?

contract were not in place?
A. I don't remember.
Q. Okay. Did you -- did your company ever send out a notice of default to Maalt claiming that they were in default because they had not provided the required insurance certificates?
A. Not that I remember.
Q. And certainly, I haven't seen a default notice from your company to Maalt anywhere in the documents produced. If there had been one it would be in those documents, correct?
A. I believe so.
Q. Okay. With respect to the terminal service agreement that is Exhibit 13, what was your role in preparing that document?
A. So our outside legal counsel drafted most of the document. Most -- most of my role is involved in the commercial aspect of the contract.
Q. Who is that outside counsel?
A. Vinson and Elkins.
Q. Okay. So they drafted this document?
A. That's my understanding, yes.
Q. Okay. And then once it was drafted it came to you and what did you do with it?
A. So most of the efforts that we put into it were

involved in kind of writing the commercial terms and making sure that they stuck with what we had agreed to with Vista.
Q. Okay. This contract was not contingent upon Sequitur obtaining any type of favorable rail rates, was it?
MR. KORNHAUSER: Objection form.
A. I am -- I am not sure what -- I'm not sure. I would have to go back and read the document.
MR. LANTER: Okay. Well, why don't we take a minute and look through there and tell me --
MR. KORNHAUSER: Well, what's -- what's -- what's your question specifically?
MR. LANTER: Did you understand my question?
THE WITNESS: It is my understanding that the question is that this document doesn't have any word in it that says that there's -- that we have to secure reasonable rail rates. Is that --
Q. My question to you was, is there any provision in this contract that makes this contract contingent upon Sequitur Permian obtaining any type of favorable rail rates?
MR. KORNHAUSER: Object to form.
A. I -- I --

MR. KORNHAUSER: You need to define these term, Jim. I mean, favorable rail rates. I mean, your question is vague and ambiguous.
MR. LANTER: No. I can ask him what I want and you can say objection form. And if there is a problem he can tell me. I think he understood my question.
MR. KORNHAUSER: Do you want to go off the record and have him take a look at it?
MR. LANTER: Sure.
THE VIDEOGRAPHER: The time is 9:55. Off the record.
(Break taken.)
THE VIDEOGRAPHER: The time is 10:03. We are back on the record.
Q. Okay Mr. Merrill, we took a break off the record and gave you time to go through the terminal services agreement. Now, we are going to go back to my question. Is there any provision in that contract that makes it contingent on Sequitur Permian obtaining favorable rail rates?
MR. KORNHAUSER: We object to form.
A. I didn't read that in the agreement.
Q. Okay. Is there anything in that contract that makes it contingent on Sequitur Permian obtaining a JV

partner?
MR. KORNHAUSER: Objection form.
A. Not that I read, no.
Q. So you know what JV partner means, don't you?
A. Joint ventures.
Q. Yes. And in that contract, the terminal services agreement, Maalt, was not hired by your company to provide any logistic services other than the transloading itself, correct?
MR. KORNHAUSER: Objection form. A. I -- I don't remember seeing that in the contract.
Q. Okay. During this whole course of events you have never come across anything in this contract otherwise that obligated Maalt to procure trains or rail service or rates for your company?
MR. KORNHAUSER: Objection form.
A. I don't remember it in this contract. I remember never discussing them getting us rates, but that they offered to help us get -- or help us with the logistics and understanding the railroads and with connections to people inside the railroads.
Q. Okay. And they did that on a gratuitous basis, right?
A. What do you mean by that?

Q. Just because they were trying to be a good provider of services to you.
A. I mean, I think they -- I mean, they were trying -- I think they were trying to do it to get the rail terminal up and operational so they can start making money faster.
Q. Okay. So they are trying to help you get started so you can make money faster, too, correct?
A. Yeah for both -- both of us.
Q. But they didn't have a contractual obligation to do any of that, did they?
MR. KORNHAUSER: Objection form.
A. I mean, written contract, I don't believe so.
Q. Okay. Now, when we go back a little bit in time you mentioned that your first contact with Maalt was through Blake DeNoyer?
A. Yes.
Q. What prompted you to call him?
A. The -- what prompted me to call them was differentials and the Midland Basin for the price of oil was -- was becoming a lot higher or so -- more of a discount to our -- the price that we would receive for a barrel of a well. And I knew that EOG who was the company that we bought our assets from, our oil and gas assets from, owned a rail facility. I had been out

there when they still owned it. They -- I knew that it was set up initially for -- for oil service. And so I -- I asked kind of what was the status of that facility. And so I was told by somebody in the organization, I don't remember who at this point, that it was now owned by Vista Maalt.
Q. Okay. And that prompted you to call Blake then?
A. After I got his contact information from our operations team.
Q. Okay. What was the differential between what you were receiving for your oil at Midland and the other place that you were looking at?
A. It -- it depended on the month, but it got as high as $20 a month.
Q. Okay. And?
MR. KORNHAUSER: $20 a barrel.
A. $20 a barrel, yes.
Q. Do you remember what time frame this was when was you first reached out to Blake DeNoyer?
A. I believe it was early May.
Q. Okay. So in the May time frame what was the difference between the Midland price for oil in the other locations you were looking at?
A. I -- I can't remember exactly what it was, but

I - I mean, I sent in the discovery I had, an economics folder, I had an Excel file that had from May -- I believe from May through December --
Q. Okay.
A. -- of what the differentials were.
Q. All right. Now, the December was look forward, right?
A. Yes.
Q. And so was that your projections?
A. Yes.
Q. Or was it based on futures?
A. That was based on the CME, so Chicago Mercantile Exchange futures.
Q. Okay. And what other selling point locations were you comparing to Midland at the time?
A. LLS, Louisiana Light Sweet.
Q. Okay. So that would be Gulf Coast?
A. That would be Saint James, Louisiana.
Q. Saint James, Louisiana, okay. And that is on the Gulf Coast, right?
A. It is on the Gulf Coast.
Q. All right. Were you looking at the spread between Midland and any other selling points, such as Houston, Beaumont, Port Arthur?
A. We -- we looked at -- we looked at Houston, but

Houston was becoming a -- kind of a narrower spread, so we focused on Louisiana Light Sweet.
Q. Okay. And where did you go to determine what the Saint James prices were at the time, was that CME as well?
A. Yes.
Q. And when you go to CME, tell me as if you are -- you are telling your mom or your aunt, somebody who is not in the oil industry what you would go on their website and what data you would pull up and look at?
A. Okay. So the CME has the settlements, so the market closing price, the last price that a contract settled on its website from the day before. And so those are the -- the values that I would pull up. So there is two differentials that I would pull up every night. One would be the difference between Midland and WTI and the other one would be the differential between WTI and LLS, because WTI is the standard cost of a barrel in Cushing, Oklahoma with a grade of west -- what is called a west Texas grade barrel. There may be something a little bit more scientific than that, but that's just kind of how it is vernacular of the industry.
Q. Yeah.
A. And so I would take what was in essence the

difference between the Midland to WTI differential or what was the differential and then I would -- which was a negative number. And I would then have the LLS differential, which was a positive number, which is the -- the benefit between getting it from Cushing to -- to an LLS market. So let's say, for -- for -- for example, that there was a $5 differential between WTI and LLS and then there was a negative $10 differential between WTI and Midland then I would take LLS, which was $5 and I would subtract out the $10 -- the negative $10, which would then give me a $15 benefit between the two.

Q. And then from that I guess you would reduce out your transportation cost?

A. That's correct.

Q. And then the difference is what you guys call the arbitrage?

A. Yes.

Q. Okay. Now, when you first contacted Mr. DeNoyer in May, I'm not going to hold you to an exact number right now, but it would be on your spreadsheet, right?

A. Yes, it will.

Q. The spread difference will be on there?

A. It will.

Q. Okay. What is your recollection of what that

was in the ballpark?

A. My recollection at that time -- so the hard part is it changed month by month. But at that point I would say it was probably around a $15 differential.

Q. Okay. And did that make moving crude by rail to Saint James attractive?

A. It did.

Q. Okay. And how attractive?

A. At that point it was -- it would have been a very lucrative venture. It was -- I think our initial forecast, it is in that spreadsheet. I -- I can't remember exactly how much the benefit to us would have been. But it would have been probably in the $10 million range.

Q. Okay. Over what period of time?

A. Over the period from September to -- September of 2018 through December of 2019.

Q. Okay. And that would be extra profit over and above what you would typically expect on your oil sales?

A. Yes.

Q. Okay. And was that $10 million then also after taking into consideration your -- your build-out cost on a transloading facility?

A. I am not sure if that would be after that or not. I -- I can't remember.

Q. Would that be in your spreadsheet?

A. It would be in my spreadsheet.

Q. Okay.

A. Well, actually it is not in my spreadsheet. So you would then have to deduct out the -- the -- the cost of seeking the build-out.

MR. LANTER: Okay. I am going to pull that spreadsheet out in a little bit.

THE WITNESS; okay.

MR. LANTER: And then we'll talk about it. It was too big to print.

THE WITNESS: I completely understand. It is a lot of data.

MR. LANTER: But I will get the computer out and you can walk me through it --

THE WITNESS: That'd be great.

MR. LANTER: -- in a little bit, okay?

THE WITNESS: Yeah.

Q. So then in May you are looking at, you know, hey, we've got this potential $10 million --

A. Uh-huh (positive response).

Q. -- you know, bonanza.

A. Yep.

Q. You know, minus out build-out cost on a terminal.

A. That's right.

Q. And so you contacted Mr. DeNoyer. Before that had you talked to any of your customers or your potential JV partners about doing this?

A. I -- I don't remember.

Q. Okay. When did you first start talking to Shell about it?

A. It -- it would have been in May.

Q. Okay. And who were your discussions with at Shell?

A. Ben Thompson.

Q. What were you talking to him about?

A. About the possibility of them being -- or -- or entering into a joint venture with us whereby they would pick up the -- or they would send trains to the Barnhart facility, Vista would load them. We would -- or we would provide the oil and Shell would take them to Saint James to market.

Q. Okay. When -- when you are talking to him, was Shell already a customer for your oil?

A. No.

Q. So this was a new?

A. This was a new relationship.

Q. New relationship, okay. And how long did you continue to have those discussions with him?

A. Through January of 2019.
Q. And all of those discussions in that period of May through January '18 to '19 involved rail transportation of -- of oil?
A. Not all of them, but -- be we continued the rail conversation, but they also became a purchaser of our oil.
Q. Okay.
A. Through that stretch and we thought that they were going to be the purchaser of our -- or the train. We had to switch over our -- our purchasers so that they would be able to take our oil when the train showed up.
Q. Okay. So you are talking to Shell and initially you are talking to them about buying your oil and moving it to Saint James or wherever within the Shell organization?
A. Yes.
Q. So that logistics would be out of your hands and then basically transferred over to Shell?
A. Yes.
Q. And what were -- what were you going to gain and your company going to gain from doing that?
A. We would receive half the arbitrage that you spoke of earlier.
Q. Okay. So Shell would buy your oil at, I guess

whatever the WTI, was the spot price that you were looking at the time?
A. No, the WTI was Mid-Cush differential.
Q. Okay. At that price and then they would ship it down to Saint James?
A. Uh-huh (positive response).
Q. And then whatever the difference was you would split that 50/50?
A. That's correct.
Q. And you then would be able to receive that arbitrage without having any logistics cost; is that correct?
A. That's correct.
Q. Okay. Were you going to have to build out a transload facility in order to do that deal, that type of deal with Shell?
A. Yes.
Q. And was that going to be the Barnhart one?
A. Yes.
Q. Okay. What happened to those talks?
A. So they were our primary desire partner because they had such a large rail presence initially. But those -- those talks ended in August when they were unable to get trains or get a rate from the -- the railroad.

Q. And how did you learn that they were unable to get a rate from the railroad?
A. I talked to Ben.
Q. So Ben Thompson told you that?
A. Yes.
Q. And he told you that he was unable to get a rate from what railroad?
A. I believe it was the Union Pacific, but I am not positive on that.
Q. Okay. Any others besides UP?
A. I believe he also talked to the BNSF.
Q. Okay. So maybe BNSF, but for sure based on your memory, the UP?
A. Yes.
Q. Did he ever mention talking to KCS?
A. I do not remember.
Q. Okay. Were you ever involved in any of the talks that he had with either the UP or the BNSF?
A. No, he actually didn't handle the talks himself. He -- he -- they have a rail logistic group that handled those talks to my understanding.
Q. Okay. Were you involved in any of those conversations between Shell and the railroads?
A. No.
Q. Like, a party on a phone call or?

A. No.
Q. So no involvement whatsoever?
A. Nope.
Q. You were just going to turn it over to Shell and let them figure it out and then reap the arbitrage advantage?
A. Yes.
Q. Was anybody else in your company involved in those Shell railroad conversations?
A. Not that I know of.
Q. So then Shell couldn't get it worked out, I guess, in what month?
A. August.
Q. August. And then what did you do?
A. I kept talking to them. But -- so basically, I -- when we signed our TSA with Vista, I told -- or Vista Maalt. I told Vista Maalt that I needed would Shell -- that I needed to give one -- Shell one more week in order to -- because I owed them that, before signing on with Jupiter and then I told Jupiter that and we all went to lunch that day. And then -- so when I got done with the meeting I called Shell and told them that you had one week, otherwise we told Vista Maalt and Jupiter that we are going to go with Jupiter.
Q. Okay. Now, your terminal services agreement,

which is in front of you as Exhibit 13.
A. Yes.
Q. That's dated effective August 6th, 2018, right?
A. That's correct.
Q. So by that time were your talks with Shell still alive?
A. They were still alive. We told them we would give them one week.
Q. Okay. And so you went ahead and signed this agreement without having a JV partner, right?
A. We were assured by Jupiter that they -- they would take Shell's shoes if -- if they wanted to step out.
Q. Okay. You -- you had -- your company had never done any business with Maalt, had it?
A. I don't know. I don't believe so, but I don't know.
Q. You hadn't?
A. I had not, no.
Q. Never been involved?
A. No, I had not.
Q. Okay. When -- when you were told or it was suggested to you that you call Maalt about the transload facility?
A. Uh-huh (positive response).

them on potential sand purchases?
A. I don't remember that.
Q. Okay. So as you sit here today, you don't recall doing any research or due diligence into Maalt and its affiliated companies before you went down this road to doing a terminal service agreement?
A. Well, not -- not at the beginning. I mean, I thought the question was about when I contacted Blake.
Q. Okay. Fair enough. It was. So my question to that then you didn't do any due diligence or research into the company at that point?
A. Oh, I did research.
Q. That you recall?
A. I did. I did follow. I didn't do research on the company at that point.
Q. Okay. And what research did you do?
A. I tried to figure out who their main purchasers were.
Q. Uh-huh (positive response).
A. Because my understanding -- my understanding was the EOG was one of their main purchaser and we had a lot of faith in EOG and trust Maalt. So we put a lot of stock in the fact that they had -- they trusted Vista as a -- Vista Maalt is a large cluster, is one of their little main service providers in the area that they must

Q. What research did you do into the company?
A. Honestly, I don't remember.
Q. Okay. Did you look at the website?
A. I -- I'm -- I -- I'm sure I did. I -- I don't remember.
Q. What would have been -- what would be your normal practice back then?
A. My normal practice would have been to ask the operations team their understanding of Maalt's and what their representation is. And that was -- I mean, when we initially contacted Maalt the first time, we didn't know if they were going to want to sell it to us or what the structure of the agreement would have been. So I mean, there was -- the initial lob in or the initial call in or e-mail would have been just kind of a discovery.
Q. Uh-huh (positive response). When you called Blake?
A. Yes.
Q. Okay.
A. Or e-mailed them. I'm not sure which one.
Q. All right. Did you talk to any of the people over at SEM Operating; is that the right name?
A. It's one of our names, yes.
Q. Okay. About their experiences, working with

be standup guys and follow through on what they said.
Q. How did you learn that information?
A. I learned that information, I think initially in talking with one of the Vista Maalt folks and I kind of researched it afterwards.
Q. And what research did you do afterwards?
A. I Go ogle searched.
Q. Okay. Did you talk to anybody at the EOG?
A. I don't believe that I did. Some of our operations team might have.
Q. Okay. Who would those people be?
A. That would have been Steve McVay our head of procurement and Blake Cantley our vice president of completion and production, I believe.
Q. Okay. Did you obtain any information from them about their research or their due diligence into Maalt or the Vista entities?
A. I had -- I heard positive things about -- about Vista Maalt.
Q. Okay. And so that whatever you learned gave you enough confidence that you could move forward with negotiating and talking about this type of deal?
A. It did.
Q. When you did it you wanted exclusivity on this facility, didn't you?

A. Yes, we did.
Q. Why was that?
A. Because if we were putting money in the facility, we wanted to make sure that that money was going to be able to be used. We felt like we were operating in a collaborative effort and so it was a team kind of thing. And so if we were going to move forward and trust in them to -- to have -- or to work with us, then they would trust in us that we are doing what we said we would do.
Q. Okay. How important was the exclusivity to you?
A. It was fairly important because it was -- we wanted to make sure our money was secure.
Q. Okay. Important enough to you to insist that those provisions be in the terminal services agreement, right?
A. The -- I -- I don't remember that being in the terminal services agreement.
Q. Okay.
A. Is there exclusivity in the terminal services agreement?
Q. Well, we will come back and we will look at that. Yeah look at 2.3.
A. Okay.

Q. Does that provide for exclusivity for your company?
A. Yes, I thought you were referring to it in a different manner. I'm sorry. Yes, that does.
Q. Okay.
A. Okay.
Q. All right. So this exclusivity was important to you, you didn't want them bringing other business into the facility, correct?
A. Absolutely.
Q. Whether that was oil, sand or anything else, you wanted to have the complete right to control the tracks and what took place out there?
A. Yes.
Q. Okay. And you also insisted upon having thing right of first refusal to purchase the facility if somebody else came along and wanted to buy it, right?
A. We asked for it, yes.
Q. And you got that in your contract, didn't you?
A. We did.
Q. Okay. Now, when you signed this contract you didn't have anybody lined up to provide your logistic services, right?
A. When we signed the contract? Well, we had an oral agreement from Jupiter that they wouldn't, if -- if

they wanted to step out of Shell's shoes.
Q. Okay. How did you come into contact with Jupiter?
A. Through Maalt.
Q. And how did -- how did that happen?
A. I don't remember if it was either Chris or Jon who was the original person that told us about -- about Jupiter Maalt.
Q. Was it an introduction type thing?
A. It was.
Q. And how did that introduction take place?
A. Via phone -- phone call from -- from Vista Maalt and then an e-mail, I believe, from -- from Vista Maalt to Jupiter and myself introducing us.
Q. Okay. And did the phone call and e-mail result in any kind of meeting or, you know, lunch or dinner or anything, like that?
A. It did.
Q. And what -- what did it lead to?
A. We had a meeting.
Q. And where did you have the meeting?
A. At our offices, Sequitur's office.
Q. And who -- who attended that meeting?
A. I can't -- I can't tell you to be sure. I know that there is Travis Morris, myself and I believe --

this is not for sure, but I believe Blake Cantley was there on our side and I believe they had a second person on their side as well. It may have been Albert, but I am not sure.
Q. Okay. So had the exchange of either e-mail or phone call that you mentioned.
A. Yes.
Q. And then did you go to lunch or did you go to dinner at some place after that e-mail or?
A. No.
Q. So just the exchange of e-mails?
A. Yes.
Q. And then there was a meeting at your office?
A. Yes.
Q. And you told us who was there, Vista was not there, Maalt was not there?
A. Vista was not there.
Q. Okay. So I take it from that point on all of your conversations with Jupiter were directly between your company, Sequitur Permian and Jupiter, right?
A. I can't remember. I -- I don't know.
Q. Okay. But you were -- you would agree me wouldn't you that at that time the decision whether or not to do business with Jupiter was solely within your control?

MR. KORNHAUSER: Objection form.
A. I -- I would agree with that.
Q. Okay. And after that meeting or before that meeting, did y'all do due diligence into that company to see what they were all about?
A. We did. We -- we -- went on and searched the internet and -- to see what they were and looked at their financials.
Q. Okay. And so I take it by that that you verified that they were a company that you would be willing to do business with independently of anything that Chris Favors or Jon Ince may have told you?
A. Not exactly. Actually, Jon told me that -- that he had called around to his railroad contacts and that Jupiter was a -- the real deal in terms of being able to get it done. They had the rates. They were able to get the cars and that we should go with those guys.
Q. Okay. Did you confirm that on your own?
A. I don't have railroad contacts, so I don't know who to --
Q. Did you confirm it through your discussions with Jupiter?
A. Yeah I asked Jupiter about it.
Q. Uh-huh (positive response).

A. And Jupiter also confirmed it, but --
Q. Okay.
A. -- I was relying a lot on Jon as, you know, we were -- Jon gave them the -- kind of the bill of good health.
Q. Are you telling us that you relied on Jon Ince, who you never met until this deal, more so than your own internal due diligence and research into Jupiter?
A. Well, Jon -- Jon is an expert in logistics and I am -- I am not an expert in rail logistics.
MR. LANTER: Objection nonresponsive.
Q. Let's answer my question. Are you telling is that you are relying more on what Jon Ince told you, somebody who had never done business with before verus your own due diligence and research into Jupiter?
MR. KORNHAUSER: I am going to object. The question has been asked and answered.
MR. LANTER: Go ahead answer that question.
A. I say that it was a mix between the two.
Q. Okay. If you were relying on Jon Ince so much why did you do your own research and due diligence?
A. That's a good question. I -- I would say that it is just a standard form to -- to -- to do my own due diligence. A lot of mine due diligence was kind of more on the financial side and their -- and their sizing.

Q. Yeah.
A. Like, if we could trust them from a credit perspective.
Q. And Jon Ince didn't provide you with any Jupiter financials, did he?
A. No, he did not.
Q. Didn't provide you any internal information about that company, did he?
A. No.
Q. The only thing he gave you was in the e-mail that you were referring to when you said they are the real deal, right?
A. No, it was phone call.
Q. A phone call?
A. Yes.
Q. Okay. So other than that phone call and perhaps that e-mail, that's al that you got from Jon Ince, right?
A. I mean, I think I talked with Jon twice about Jupiter.
Q. Okay. But other that that's all you got about Jupiter from Jon Ince, right?
A. I believe so.
Q. Okay. And all the rest of your information that you obtained in order to decide whether or not to

do business with it came from your own work and your own due diligence?
A. I would say that Chris also was very encouraging to do business with Jupiter.
Q. Putting aside encouraging, I am talking about specific information.
A. Oh, okay. Then -- then yes.
Q. Okay.
A. I -- well, what was your answer again -- or your question again? I'm sorry. I want to make sure I'm answering.
Q. Sure. The -- the thrust of your decision to go ahead and move forward with Jupiter was based on your own due diligence and research into that company, wasn't it?
MR. KORNHAUSER: Objection form.
A. Well, it was that and what Jon had said about his due diligence.
Q. Okay. Now, if Jon hadn't told you that would you have done business with Jupiter based on what you found out about them doing your own research and diligence?
A. Probably not.
Q. Probably not. Why not?
A. Because they didn't have a strong balance sheet

and so --
Q. Uh-huh (positive response).
A. I mean, it really -- at the end of the we knew that it was going to take a lot more hurdles of getting through, of finding some way to do credit and -- and we hadn't heard of Jupiter before. So it was not kind of an optimal situation for us having a Shell or somebody else or a BP, or a Sunoco or somebody that has a lot of railcars and -- and kind of their own logistic group would have been a preferred.
Q. Uh-huh (positive response). Before all of this came up how were you moving your oil?
A. Via truck.
Q. Truck. And where were you taking it to sell?
A. That was based on whoever was purchasing our -- our oil at the time. They -- they took it to their own spot, it was point of sale. That bought it at our tank battery.
Q. Okay. So you truck from the well site to wherever your customers point of sale was?
A. No. They would pick it up at our -- our well site. So we -- they had no visibility beyond our -- our well site.
Q. Okay. So you didn't have any trucking either --

those meetings and conversations?
MR. KORNHAUSER: Objection form.
A. Mainly it's Travis Morris, Albert, I can't remember his last name at -- at Jupiter, who I met a fewer times than Travis, but -- and then Tony Wroten would have also been in those discussions as well.
Q. Okay. Did you ever end up entering into any kind of contract with Jupiter?
A. We did for the purchase of our oil by truck.
Q. Okay. Was that it?
A. That I remember, yes.
Q. All right. And which oil did you end up selling them under that contract?
A. We sold them -- I don't know how many barrels. We sold all of our barrels through on Barnhart. And most of our barrels on Texon through -- through, I believe January.
Q. What did you say last after January?
A. I believe -- I believe through January.
Q. Through January, okay. So when did you start selling it to them?
A. I am not sure. My recollection -- it was after -- I am not sure.
Q. Okay. So at some point in 2018 you entered into a contract to sell Jupiter oil?

A. No.
Q. -- that you did?
A. No.
Q. It was your customer who would bring their trucks in --
A. That's correct.
Q. -- to pick up the oil? Okay.
Once you had -- I'm sorry, do you need a drink?
Once you had the meeting with the people at Jupiter at your offices?
A. Yes.
Q. I understand you had a series of additional meetings and phone calls and things of that nature --
A. Uh-huh (positive response).
Q. -- going into time, correct?
A. That's correct.
Q. Was anybody from Maalt ever involved in any of those meetings or conversations that you had with Jupiter?
A. I don't remember them being involved.
Q. Okay. If they were there you would probably remember that wouldn't you?
A. I am not sure.
Q. Okay. Who do you recall being involved in

A. Yes.
Q. And that contract ran or the activities under that contract ran so sometime in January of 2019?
A. That's correct.
Q. All right. And you sold them all of your production at Barnhart?
A. Yes.
Q. And some of your production at Texon?
A. Yes.
Q. Okay. And when you talk about all of your production at Barnhart, how many wells do you have there and how wide is the geographic area?
A. It's -- the geographic area, it is a -- pretty expansive. It's -- it's -- I would estimate it's probably 25 to 30 miles across. And it is probably 25 miles across, 25 to 30 miles across.
Q. Okay.
A. And it's probably 20 miles north south.
Q. So about what, 400, 500 square miles?
A. Well, it is not all our acreage, so it's --
Q. Sure.
A. Some of it's -- but yeah, I mean, in terms of kind of the geographical area that it covers.
Q. And it probably goes up just a little bit doesn't it with your wells?

Q. Were you doing any business with Shell at that time?
A. We sold to them for one month, which have been -- I believe in September, but I'm not positive on that. After that, no we weren't doing any business with Shell.
Q. Okay. But you kept the relationship alive?
A. Kept the relationship alive hoping they would be able to come through with the rail if something happened with Jupiter.
Q. Okay. But mainly in that time period you were relying solely on Jupiter?
A. Mainly we were relying on Jupiter.
Q. Okay. And you had to deal with -- with Jupiter where it would basically be buying all of your oil through the credit sleeve arrangement through the Barnhart production?
A. Yes.
Q. And so if it changed and Jupiter was able to get trains into Barnhart, was there a termination right under the credit sleeve where you could stop doing that and put it on the trains and ship to Louisiana?
A. Say it again.
Q. Sure. Might not have been a very good question.
A. I'm sorry.

MR. KORNHAUSER: I tried to follow it.
Q. Under your credit sleeve arrangement, was that a month-to-month thing, a day-to-day thing --
A. It was a --
Q. -- could you cancel it any time?
A. It was a month-to-month.
Q. Okay.
A. Yeah.
Q. So if it looked like you were going to have rail transportation in November you could cancel that and switch over to rail transportation?
A. Yes.
Q. Okay. And I take it that credit sleeve arrangement was in writing?
A. Yes, it was.
Q. And who all signed off on that, was it a three way contract?
A. Just two separate contracts. We actually never had a contract with Jupiter at that point because it was us with Macquarie and Macquarie with Jupiter.
Q. Okay. So as long as you sold it Macquarie got your money, you were happy and didn't care what happened?
A. It was an investment grade so yeah, it was -- it was -- having them on the transaction was necessary.

Q. All right. Is your company a creditor of Jupiter in the Jupiter bankruptcy?
A. No.
Q. Does it owe you any money for anything?
A. It -- it may for some frac tanks rentals that we had. But we haven't put that into the -- it is -- it is not a large dollar. I mean, it is not nearly as much as the other companies.
Q. Yeah. So you had this arrangement with Jupiter where it was buying the oil through the credit sleeve. What other business did you do with Jupiter in the 2018 time frame, you mentioned frac tanks?
A. Well, that -- that was us. We rented frac tanks because they were unable to get trucks to -- to haul oil. So we had to put frac tanks out to haul -- to store our oil otherwise we would have had to shut in our oil.
Q. Uh-huh (positive response). And who --
A. And they were supposed to reimburse us for those.
Q. Who did you rent those from?
A. I don't remember.
Q. It wasn't Jupiter though?
A. It was not Jupiter.
Q. Okay. So they were supposed to reimburse you,

but never did?
A. That's right.
Q. Any other business that you did with Jupiter?
A. Not that I can think of, no.
Q. Okay. Now, I've heard Jupiter often referred to in this context of this case as being an off-taker, what is an off-taker?
A. So off-taker, and this is kind of -- on the field level, it is somebody who takes the -- the oil from your -- from your well.
Q. Uh-huh (positive response).
A. So I mean, they would be the truck or the pipeline that showed up and took our oil.
Q. Okay. And would that be your first purchaser?
A. Yes.
Q. Okay. We asked -- we talked a little bit about this earlier, but how did you first learn of the crude by rail opportunity that arose in 2018?
A. Honestly, it was the -- so during the time that we acquired our EOG assets or the assets from EOG, they provided us several years of financials and those years of financials had kind of this weird portion of them. So I -- so during our due diligence we asked them what the -- that was and they said well, during this portion we were -- we were shipping our oil by rail and that's

why it was whatever it was. I don't remember exactly what it was and the financials that brought that question up. But that was kind of what spurred the thought was that hey, you know, EOG when they did this crisis -- or when entered -- when they had this issue several years ago this is how they handled it and that facility is still there, so I wonder if we could do the same thing.

Q. Okay. So basically EOG had been shipping it out to take advantage of the arbitrage?

A. That's right.

Q. Did you have any conversations with anybody at EOG about that?

A. Yes, when we were doing our financial due diligence.

Q. Yeah. And who was that person?

A. I honestly -- I don't remember.

Q. Okay. When you -- when you got to 2018, did you recognize -- just recognize the difference in the markets and decide to do what EOG had previously done or did somebody come to you and say hey, you know, the market spread is pretty favorable right now, you need to be looking at this?

MR. KORNHAUSER: Objection form.

A. I -- I -- I -- I honestly -- I am not positive,

they don't want to be shipping crude out of that facility unless -- or out of that facility except for the KCS. But they couldn't get us to our downstream markets.

Q. Okay. Well, you had those conversations earlier in the year as well hadn't you?

A. Yes.

Q. So what was the precipitating event that occurred in late November, early December of 2018 that led you to send out the letter claiming force majeure?

A. We wanted to know or we felt that the -- the facility was going to be through construction fairly soon or it was nearing the end of construction and felt like it was only fair to notify Vista Maalt at that time that hey, we are trying. I mean, Chris and I had several conversations about our unavailability to -- or our inability to find trains and he had tried vetting at least one, if not more, on our behalf.

Q. Okay. So you get to December facilities nearing or at completion, right?

A. Yes, nearing. I -- I -- I don't remember exactly when it was, but it was nearing completion.

Q. And so then you decided to declare force majeure?

A. Yes.

but I'm pretty sure it was just a hey, EOG did this, why can't with do it sort of feeling. It wasn't somebody coming to us. It was an internally --

Q. Okay.

A. -- thrown idea.

Q. Who would have been in the internal discussions about that?

A. It would have been myself, Mike Van den Bold, Scott Josey, who is the CEO, and other folks on the operation team. So Steve McVay and Blake Cantley.

Q. Okay.

A. And Tony Wroten.

Q. Tony Wroten?

A. Yes. Sorry.

Q. When you got to December of 2018.

A. Uh-huh (positive response).

Q. What happened that caused you to decide to send a letter to Maalt saying that there was a force majeure event?

A. We were trying to get rail. And I mean, we tried every avenue we knew as a kind of the teams had kind of these robust logistics teams, these rail teams because we figured those were the ones who could it get it done. And basically everybody told us that, you know, the railroads really aren't open for business and

Q. Because you knew if you didn't you were going to start paying the monthly minimums, right?

A. That -- that was part of it, yes.

Q. Was that most all of it?

A. I mean, we thought --

MR. KORNHAUSER: Objection form.

A. We thought that it was partly. I mean, we -- we -- we felt like it was -- I mean, we felt like Vista would probably count on the revenue, we wanted them to be aware that this was not -- that -- that we were having these issues.

Q. Right. And you knew you were going to have to go online with the minimum monthlies and so you sent the force majeure letter, right?

A. We -- we thought that that was a possibility.

Q. But you knew it was a possibility, not just a thought didn't you?

A. Yes.

Q. Okay.

MR. KORNHAUSER: Can we take a break when you get a chance.

MR. LANTER: Sure.

MR. KORNHAUSER: Thanks.

MR. LANTER: Let's go now.

MR. KORNHAUSER: Okay. Thanks.

THE VIDEOGRAPHER: 10:52. We are off the record.
(Break taken.)
THE VIDEOGRAPHER: The time is 11:07. Back on the record.
Q. Mr. Merrill, before we broke you made a statement to the effect of the UP and BNSF was the one that transported the crude out of the Barnhart area?
A. Uh-huh (positive response).
Q. And KCS was willing to do so, but couldn't get to your downstream markets. Do you recall saying that?
A. I do.
Q. What were your downstream markets at that time?
A. Well, that was LLS. So that was -- so that's Louisiana, it's a Nustar facility.
Q. Is that the only one?
A. There are multiple markets in -- in Louisiana, so I don't know all their names offhand. I don't remember them.
Q. Sure. But Nustar was the one you primarily relied upon?
A. It was the one that Jupiter had -- had tankage at.
Q. Oh, okay. During this time did you look into other downstream markets for the receipt of your oil?

Q. Anybody with your company?
A. No.
Q. What rates have you heard about from KCS?
A. I heard about rates through Murex.
Q. Uh-huh (positive response). So Murex could get KCS transportation services?
A. That was what they were putting. I am not positive that they could get transportation services, but...
Q. Okay. What were they telling you about the transportation services they could get?
A. They said that the transportation -- they could get KCS service, but not to a location that had open -- or the ability to take our rail -- railcars.
Q. Now Murex, is it a purchaser of oil itself?
A. Yes.
Q. Okay. All of these companies that -- that you are talking about are all companies that would be purchasers of your oil, right?
A. That's correct.
Q. So with respect to each of them then, would they be buying the oil at the wellhead and then transporting it via their rail logistics to whatever end points they wanted to do?
A. Yes.

A. We -- we talked with other companies about it and they said that there wasn't -- that most of the downstream markets had -- were pretty full in terms of ability to take new railcars.
Q. Who did you talk to?
A. So we talked with Sunoco about that directly, with Arm Energy about that, Murex. That's what I remember.
Q. Anybody else? Nobody else?
A. That's -- that's who I remember. I don't -- I may have talked with -- I am sure I talked with Shell about it at some point, but...
Q. Okay. And that was all about markets in Louisiana?
A. Uh-huh (positive response).
Q. Yes?
A. Yes, I am sorry.
Q. Okay. So there were -- there were markets that KCS could get your oil to from Barnhart, right?
A. I don't know. I am -- I am not positive on that.
Q. Okay. Did you ever obtain rates from KCS?
A. I personally did not. I -- I --
Q. Anybody with your company?
A. What's that?

Q. Okay. Now, you never talked to any companies that were solely logistics companies, did you?
A. I -- I am not sure which companies those would be.
Q. Okay. When you say you are not sure what companies those would be, you are not sure you if talked to any or you are not sure where you had looked for them or if there are such companies? What do you mean by that?
A. I -- I know that there are individual contractors that --
Q. Uh-huh (positive response).
A. -- that will provide logistics.
Q. Uh-huh (positive response).
A. Or will offer the logistic services. I believed we talked with one at the beginning, but decided to instead go with the route of using a company that actually already had railcars because we knew they were in short supply.
Q. Okay. Who did you talk to at the beginning that was a logistics provider?
A. I -- I don't remember.
Q. Did anybody -- did you or anybody in your company make any effort to find railcars?
A. We did at the beginning, but not -- not at the

end.
Q. What did you do at the beginning?
A. We were given a contact, Jonas, I believe, Struthers.
Q. Uh-huh (positive response).
A. Through Jon Ince.
Q. Uh-huh (positive response).
A. And we made contact with him about railcars.
Q. Okay. And who -- when you say "we," who was that?
A. Tony Wroten and I.
Q. Okay. And what contact did you make with Mr. Struthers?
A. E-mail, phone.
Q. Okay. How many -- how many phone conversations did you have that you can recall?
A. I can't remember being on more than two. But I believe Tony Wroten was on more than I was.
Q. Okay. Now, the e-mail communications that you had with Ms -- Mr. Struthers, they would be in the documents that you produced in this lawsuit, right?
A. I believe so.
Q. Okay. Have any e-mails regarding your conversations with Mr. Struthers or anything else relating to the claims in this lawsuit, have anything --

what those were exactly yet.
Q. Yeah.
A. But -- but that -- that's what I recall.
Q. Okay. Did your conversations ever get past that first meeting?
A. I don't recall.
Q. Okay. You know, I didn't see anything in the document production from either side involving any kind of discussion about logistics other than transloading, are you aware of anything?
A. Besides setting us up with Jupiter, I mean, I don't and basic comments about the market and kind of what they are hearing from the railroads and contacting the UP on our behalf. And BNSF, I don't -- I don't recall.
Q. Okay. There was an e-mail that was internal to Maalt that was talked about in Mr. Ince's deposition where he made a comment to one of his coworkers or several coworkers that there is a possibility that we could manage a railcar fleet for Sequitur. Did you ever have any detailed discussions with anybody at Maalt about doing that?
MR. KORNHAUSER: Objection, form.
A. I -- I don't remember.
Q. Okay.

has anything been destroyed or?
A. Not -- not that I know of.
Q. Okay. Nothing has been purged that you know of?
A. No -- No, I put my -- all my e-mails into a folder.
Q. Okay. Some companies go through periodic purging of things.
A. No.
Q. -- and kind rebuilding or whatnot, did y'all go through any of that?
A. No.
Q. Okay. And y'all have document retention policies, you know what that is?
A. We do.
Q. Okay. Did you ever talk to Maalt or any other Vista company about providing logistic services other than transloading?
A. We did.
Q. And when did you have those conversations?
A. We -- we talked with Maalt about it at our first meeting in Fort Worth.
Q. Uh-huh (positive response).
A. And they said that they would be willing to provide logistic services for a fee. They weren't sure

A. When -- when was that e-mail?
MR. LANTER: It would be early on. It would be, like, in May, I believe.
A. That -- that would have been talked about at that -- that early meeting in Fort Worth.
Q. Right. But beyond that, do you recall any conversations with them orally, via e-mail, text messages, you know, whatever means you communicate with --
A. I don't remember.
Q. -- about that?
A. I don't remember.
MR. KORNHAUSER: Objection, form.
Q. Did you ever discuss with -- with Maalt or -- including Chris Favors and Jon Ince, any type of arrangement by which they would serve as a fleet manager for you?
A. I don't remember.
Q. Okay. Did you ever talk to them about providing any type of consultation services to Sequitur with respect to rail transportation?
A. They offered them up and they said that they would help us along the way.
Q. Okay. But did you ever enter into any kind of agreement or anything that provided for them to provide

you specific consultation services?
A. I don't believe we had a specific agreement.
Q. And your contract that you had with them, the terminal services agreement, didn't put any obligation on Maalt to procure railcars for you, did it?
MR. KORNHAUSER: Objection form.
A. No.
Q. And under your contract, the terminal services agreement, Maalt was not responsible for getting railcars to the Barnhart facility was it?
MR. KORNHAUSER: Objection form.
A. I don't believe so.
Q. Okay. And it was not responsible for finding Sequitur a joint venture partner or other customer for its rail that could provide rail transportation services?
MR. KORNHAUSER: Objection -- objection form.
A. Responsible, it wasn't responsible in the TSA.
MR. LANTER: That was my question.
MR. KORNHAUSER: Objection, form.
Q. Okay. Now, when you were talking to Murex about moving oil to Louisiana through the KCS, were they giving you any kind of idea of transportation costs?
A. I believe so.

Q. And what did they tell you the transportation costs would be?
A. I don't remember. But I believe it was just a little bit -- it was a little bit more expensive than Jupiter. That's what I remember.
Q. And when you say "it was a little bit more expensive," what was Jupiter quoting you?
A. I believe it was -- it is -- it is in that Excel spreadsheet. I can show it to you in a second, if that works.
Q. Sure. So when were you having these conversations with Murex?
A. November.
Q. Okay.
A. 2018.
Q. And they quoted -- they quoted you transportation cost?
A. I believe that was in an e-mail.
Q. And were those transportation cost going to be beneficial to you or not?
MR. KORNHAUSER: Objection, form.
A. How do you -- how do you mean?
Q. Pardon me?
A. I'm sorry. What do you mean being beneficial to me?

Q. Fair question. If you -- if you move the oil via rail through Murex at their transportation cost, was it going to be a positive gain or a net loss for you?
MR. KORNHAUSER: Objection form.
A. Assuming that we had a downstream market?
Q. Yes.
A. It would have been a positive gain.
Q. Okay. Who at Murex did you talk to?
A. I believe the gentleman's name is Rob Wright.
Q. And where is he located?
A. I believe he is in the Dallas Fort Worth Metroplex.
Q. All right. Have you had any conversations with him since then?
A. Since November of 2018?
Q. Yes.
A. I do not believe so.
Q. Okay. Why did the conversations end in November of '18?
A. Because he said that we were going to have to -- well, he said that -- where the KCS could us -- or the KCS couldn't get us to a place that -- or a location that had offloading availability.
Q. Is there any other reason?
A. I -- I don't remember one. That's...

Q. Okay. Did you ever do anything yourself or did anybody within your company ever do anything to contact the markets on the Louisiana Gulf Coast to see if that was or not the case?
A. We -- I mean, we talked with the -- those companies we spoke with who owned most of those facilities down there. So Sunoco, for instance, owns a lot of facilities in that area and others and so we spoke with them.
Q. Okay. Who was we?
A. So it would be me and Tony. But probably the majority would be myself.
Q. Do you have notes of those conversations?
A. I don't remember having notes. I -- I don't know if I have notes of those conversations.
Q. Are you a note taker?
A. Sometimes. But often times I will -- I will write something at the top of the page to take notes and then I don't end up taking it.
Q. Okay. We saw -- we have a bunch of notes that your lawyers have produced to us and some of have doodling on them. Are those yours by any chance?
A. Yes.
Q. All right. So you are the doodler?
A. I am the doodler.

A. I do see.
Q. -- that portion. It looks like it starts off with offering, can you read what it says after that?
A. I believe it says, "Delivered" --
Q. Delivered prices?
A. Uh-huh (positive response). And the next bullet point or the first bullet point would say "Midland floating."
Q. Uh-huh (positive response).
A. And the next bullet point would -- it says, "Can give us uplift in." And the next bullet point is, "Midland ARR less transportation cost."
Q. Okay. Do you know what Midland-AR is?
A. I do not. I don't know what AR is.
Q. All right. And then it says, "We want to start off," is that "buying 14,000 barrels a day," with what, can you read that?
A. I -- I can't.
Q. Okay. Was that attractive to you?
A. Yes.
Q. And why was it attractive to you?
A. Because they would -- it was BP had a lot of logistics. And they were offering -- or they were interested in doing a deal with us contingent on getting rail.

Q. Uh-huh (positive response). Did you ever follow-up with this?
A. Yeah.
Q. And when did you follow-up?
A. Throughout the summer.
Q. Okay. How many -- how many meetings or conversations did you have with BP about doing this?
A. I am not -- I am not sure. I can -- I can remember one over the July 4th weekend because I was out of town, but that's the only one I remember for sure.
Q. Okay. So the one in May and then one in -- on July 4th that you recall?
A. Those are the two that I recall, but they were more than that.
Q. Okay. Were you involved in gathering documents within your company to produce in response to our discovery requests in this case?
A. I was responsible for doing my own, getting my own e-mails and notes.
Q. Uh-huh (positive response). Okay. And did you have any IT people or anything go through and do a search through your computer system or your e-mail server?
A. No, I don't believe so.
Q. Okay. So you each just pulled it off your own

join computers?
A. I believe so.
Q. Did you provide your lawyers with all the documents and communications that you had with BP regarding these discussions in 2018 that were involving you?
A. That I -- that I know of. I mean, I could have missed something, but I don't believe I did.
Q. Okay. At the bottom of this page it looks like it says drafting up proposal?
A. Uh-huh (positive response).
Q. Yes?
A. Yes. Yes. Sorry.
Q. Don't mean to fuss at you.
A. Yeah no, I get it. I'm sorry. I just...
Q. Yeah. Was there a proposal drafted?
A. I am not sure if it was drafted or they gave us a call.
Q. Okay. And do you remember the call?
A. I do remember talking to them on the call.
Q. And what -- what took place? What was discussed on that call?
A. They said they were interested in getting our oil or taking our oil so long as -- as -- so long as they could get rates.

Q. Uh-huh (positive response).
A. But I don't -- and so basically at this point it was between BP and Shell were the two that we were primarily interested.
Q. Okay. Now, did they ever get back to you and tell you -- let me strike that. Because that's not a good question.
How did the conversation continue after that?
A. After the proposal?
Q. Yeah after you got that phone call you just told me about.
A. We -- we said that we had received a better offer from Shell. But if there was any -- any issues going forward that we would be back in contact with them.
Q. Okay. Did you get -- did you actually have an offer from Shell?
A. Offer from Shell, yes.
Q. And what was the difference in these two offers?
A. The economics were a little bit better than Shell.
Q. So more money for you?
A. Yes.

Q. Okay. So BP was willing to do a deal with you, but you just liked the numbers that Shell was throwing out better?
A. Yes.
Q. Now, you said you recalled a conversation of the proposal that you got, was it ever reduced to any type of writing, like an e-mail or a term sheet, anything of that nature?
A. I don't remember.
Q. Okay. Was BP ready to go forward with the deal if you accepted their terms?
A. The deal was never -- it was always contingent on funding rail -- railcars.
Q. Yeah.
A. But they would have been -- we never had a deal with Shell either really in -- in contract.
Q. So the deal with BP was contingent on them finding railcars?
A. Yes.
Q. Was it contingent on anything else?
A. And rail service.
Q. Okay. Did they ever tell you they were not able to obtain cars or rail service?
A. They were not able to maintain rail service.
Q. Okay. Throughout this whole thing, all of your

conversations have been with potential off-takers or purchasers of your oil, right?
A. Yes.
Q. And do I understand correctly that -- that you were relying on those potential purchasers or off-takers telling you that they could not get rail service as your basis for the force majeure in this case?
MR. KORNHAUSER: Objection, form.
A. That was most of what we relied upon.
Q. Okay what else?
A. We relied -- we relied on what we heard from Maalt Vista about not being able -- or about the railroads not being interested in service. And we also relied on kind of what we heard from kind of the industry in terms of people --
Q. Okay.
A. -- not being able to get their companies.
Q. So you don't have any -- let me back up.
Did you ever have a discussion directly with the UP about what it would take for them to ride you rail service?
A. I don't remember having that conversation.
Q. Okay. Did you ever have a conversation with the BN about that?
A. Yes.

Q. And who did you talk to at the BN?
A. I don't remember.
Q. And when did you have that conversation?
A. I don't remember.
Q. And what did they tell you?
A. Honestly, I don't remember.
Q. Who else was on that phone call?
A. Tony Wroten.
Q. Okay anybody else?
A. Just us two.
Q. Okay. Did you ever have any conversations with the KCS?
A. No.
Q. Never talked to Josh Monroe?
A. Not that I remember.
Q. Okay. Do you know who he is?
A. I don't remember if I did at one point.
Q. Okay. Did you ever talk to anyone at the Fort Worth and Western Railroad?
A. I -- I don't remember.
Q. Okay. Did you ever talk to anybody at the Texas Pacifico Railroad?
A. Yes.
Q. Who did you talk to at Texas Pacifico?
A. So I talked with Stan Meador and Jorge, I can't

remember what his last name is.
Q. Anybody else?
A. I believe there was another gentleman who came to our on-site visit, but I can't remember his name.
Q. Okay. What discussions did you have with Mr. Meador?
A. He was very generous in offering up training services for us on transloading, and also discussed kind of the tenor of the railroads and what he was hearing?
Q. Uh-huh (positive response). Okay. And what the did he tell you about that?
A. He said that the class ones typically negotiate and then he is kind of -- the TXPF is the -- the -- I can't think of the name. But lesser tiered railroad.
Q. Short line?
A. Short line. There you go. Is kind of at the mercy of the class ones in many ways. And so he was waiting on confirmation from the class ones regarding our rail service.
Q. All right. Anything else you can recall ever discussing with him?
A. I know he was frustrated with the lack of communication with Travis Morris.
Q. Uh-huh (positive response). Okay. Anything else that you can remember discussing with him?

A. I mean, I -- I -- no, that was it.
Q. All right. Mr. Meador never told you that you would not be able to obtain rail service, did he?
A. I am not sure. I don't remember if he did or not.
Q. Okay. So you just don't recall him saying that at all, do you?
A. I don't recall that.
Q. Okay. Do you remember Jorge ever telling you that you would not be able to obtain rail service for your products?
A. I don't recall that.
Q. Did you ever retain rates from any railroad?
A. Sequitur or SEM?
Q. Yes.
A. No.
Q. So going back to BP, that just kind of fell by the wayside because you liked the Shell rates better or Shell pricing better?
A. For awhile it did.
Q. Okay. Did it ever get resurrected?
A. We called back later in the summer when Shell was having difficulty getting rates.
Q. You called BP?
A. I did.

Q. Okay. And how did those conversations go?
A. They said they were also having -- would have difficulty getting rates.
Q. And did they tell you what class one railroad they were having difficulty getting rates from?
A. I don't remember.
Q. Did Shell ever tell you which class ones they were having difficulty getting rates from?
A. I'm -- I'm -- I know UP and I believe with the BNSF, but I am not sure beyond that.
Q. Okay. In both of those cases is that all they told you is they were having difficulty getting rates?
A. Yeah they said that the railroads weren't interested in taking crude oil.
Q. Okay. But they never told you they could not get crude transported by rail cars did they?
MR. KORNHAUSER: Objection form.
A. They said they couldn't get rail cars there.
Q. Okay. Did anybody ever tell you the railroad was refusing to transport crude by rail out of the Barnhart area?
A. No.
Q. Okay. Did you have any e-mail communications with BP?
A. I believe I had a couple.

Q. Would Mr. Wroten or Mr. Van den Bold have any communications with BP in writing or anybody else in the company?
A. I do not know. Tony may, Tony Wroten may.
Q. Okay. Tell me who Enmark is?
A. Enmark is a third-party company that we use that helps us in bidding out our oil and also managing kind of regulatory and state reporting requirements.
Q. Okay. Did you talk to them about rail transportation for your products?
A. Yes.
Q. And how did those conversations go?
A. We talked with them about they tried to talk with Valero, I believe and they tried -- they asked around to others apparently. I can't remember who they were, but didn't receive any positive interest.
Q. Do you know of any -- were they just contacting purchasers, crude purchasers?
A. I don't remember.
MR. LANTER: I would like to talk to you about Exhibit 35.
(Exhibit 35 marked.)
THE WITNESS: Okay.
Q. This appears to be a chain of e-mails between you and Spencer Falls.

A. Okay.
Q. And he is with Enmark, right?
A. That's correct.
Q. Okay. Going to the last page of that document. It looks like you sent him an e-mail on May 4th.
A. Uh-huh (positive response).
Q. And it says you just got off the phone with the rail depot owner; is that Maalt?
A. What's that?
Q. We're at the last page.
A. Yep.
Q. Yeah.
A. I was just checking the date.
Q. Sure. It says you say just got off the -- you're writing this one?
A. Uh-huh (positive response).
Q. And you say: Just got off the phone with the rail depot owner," was that Maalt?
A. Yes.
Q. Okay. And then you tell Mr. Falls information you need, such as volume and things of that nature to see if you could talk to Maalt about doing a deal with them, right?
A. Wait, say that again. I'm sorry.
Q. You are telling him that you need to go back to

Maalt with volume and frequency and things of that nature to see if you could do some sort of deal with their facility; is that right?
A. I am sorry. I am reading. I -- I believe this is just an informative e-mail at this point.
Q. Uh-huh (positive response). And then we go to the page before, three days later on May 7th. You said you wanted to follow-up on this, have you had a chance work through our netback using the Plains or Medallion pipelines. What were you talking about there? What were you looking for?
A. Honestly, I am not sure.
Q. What would -- what would the term "netback" mean?
A. It would mean price for oil, net of expense getting it there.
Q. Okay. And then it looks like Mr. McFall -- Mr. Falls responded to you that same day later and then you had another e-mail back to him at 5:18 p.m., which is on Page 2 of this exhibit. And it looks like you say, "Thank you for the update. We do not have final proposal from Medallion or terms from Plains. Do you think that any deal we would be able to get through would be at Mid-Cush, if so, I am going to start working the train angle in tandem. But if Enterprise Midland

delivery point could offer better terms, I would rather not do the train deal."
What were you trying to do at this point in time? Tell us what that means.
A. This was -- I was trying to figure out if there was other avenues to get our oil to the Gulf Coast besides and get better pricing.
Q. Okay. And when you say "from a proposal from Medallion or terms from Plains," what were you looking -- what were talking about on that?
A. So Medallion and Plains both have enter-basing pipelines.
Q. Uh-huh (positive response).
A. So there are pipelines that connect to other long haul pipelines.
Q. So you were trying to get a rate --
A. Yes.
Q. -- to put your oil into those pipelines?
A. Yes.
Q. Did you ever get the rate?
A. At this point, no.
Q. Okay. Did you ever get one?
A. Yes, we were selling on Medallion and Texon now.
Q. Now you are, but back in this time frame in

summer of 2018, were you able to get a rate?
A. I don't believe from -- I don't remember, but I mean, I don't -- I don't remember.
Q. Uh-huh (positive response). Because from what I understand about the market at that time, the pipelines were backed up and over capacity; is that right?
MR. KORNHAUSER: Objection form.
A. No, the long hauls were.
Q. Uh-huh (positive response). Okay. Are these short haul pipelines that you are talking about in this e-mail?
A. These are enter-basing pipelines.
Q. Okay. But they have to go to a long haul pipeline, right?
A. Yes.
Q. And those pipelines are backed up. So if there is no place for oil to go you couldn't simply put it in there could you?
MR. KORNHAUSER: Objection form.
A. If there was no place for it to go, then no.
Q. And then Tony sends an e-mail on May 9th and in the last paragraph of his e-mail on Page 2, it says, "Do you have any suggestions for a third-party that could manage the logistics for us? And then secondly, where

do you think we would want to take the oil and would want" -- "who we would want to sell to?"
Did you ever get anything from Mr. Falls back about third-party logistic companies that you could hire to handle the train transportation for you?
A. I --I don't remember.
Q. Other than an off-taker?
A. I don't remember.
Q. Do you -- did you ever do anything to look for a third-party logistics company other than an off-taker?
A. We did at one point.
Q. Okay. Who did you contact on that?
A. I don't remember. It was early on.
Q. How early?
A. Around this time frame.
Q. So May of 2018?
A. I -- I would guess.
Q. Yeah. And what happened with those efforts, where did they lead?
A. They always lead back to finding a -- a kind of overall provider or somebody who could manage the JV aspect.
Q. Okay. And you don't recall who you might have talked to about third-party logistics?
A. I don't.

Q. Do you know who was in charge of doing that?
A. I don't.
Q. Do you know if Tony ever did it?
A. I am not sure.
Q. And then Mr. Falls asked if the terminal owner was Vista San, you -- Tony said yes, sir. Did you ever have discussion with Spencer Falls about Vista San or Maalt or any of those companies that were involved?
A. I don't remember.
Q. So in this context, what were you trying to get from Enmark?
MR. KORNHAUSER: Objection, form.
A. We were trying to receive help on finding a market and logistics for our oil.
Q. Okay. And was it in your mind something that they had to go hand in hand, the market and logistics had to be from the same provider?
A. Not necessarily.
Q. So at that point you were willing to entertain a third-party logistics company?
A. I -- I can't speak to my -- what I was thinking at the time on that.
Q. But I take it after that you never pursued the third-party logistics --
A. Not that I can recall.

Struthers?
MR. KORNHAUSER: Objection form.
A. I understood that he said that Jonas could get us cars if we needed it.
Q. Uh-huh (positive response). And there is nothing in this e-mail that promises you that Jon would be able to get Jonas to do that, is there?
A. It says, "I am sure he will be able to get you cars that you need for your fleet."
Q. But it doesn't say that he promises that he will be able to do so, does it?
MR. KORNHAUSER: Objection form.
A. He never articulates the word promise.
Q. Uh-huh (positive response). And then once you had the introduction then you had your direct communications with Mr. Struthers, correct?
A. Yes.
Q. Now, it says that you are going to have -- or that you offered to have a phone call that same day on May 10th or after 10:30 a.m. on the 11th, did you have such a call?
A. I'm not sure if it was that time frame, but I -- we did speak with Jonas.
Q. Okay. And when you talked to Jonas, tell us what your discussion was.

Q. -- avenues did you?
MR. LANTER: Here is Exhibit 36.
(Exhibit 36 marked.)
THE WITNESS: All right. Thank you.
Q. It looks like this is your first introduction to Jonas Struthers; does that look right?
A. It looks like it.
Q. Okay. And if you look at Page 2.
A. Okay.
Q. On May 9th we have what appears to be the introductory e-mail by Jon Ince where he is telling you about Jonas Struthers, right?
A. That's correct.
MR. LANTER: Excuse me.
Q. Now, on the second paragraph he says, "Let me introduce Jonas Struthers, the railcar guy I mentioned to you on our call." He said, "He has been a great partner for me in the past with our sand cars."
MR. LANTER: I'm sorry.
Q. "And I am sure he will be able to get you the cars that you need for your fleet. I'm sure he can get you cars that you need at a really good rate. He has done amazing work for me in the past."
Did you understand that Mr. Ince was just simply telling you about his experiences with Jonas

A. Basically we tried to articulate the need as we understood at that time, it was very early.
Q. Uh-huh (positive response).
A. For railcars, timing and volume and he -- he said that it would be -- he had some more questions for us about what railcars we would need for it, which we didn't really have that information at the time. And he had -- and -- but he said well -- I don't know. I am trying to think exactly. But basically for this conversation it was let's keep the conversation going.
Q. Okay. Did he ever tell you that he would not be able to get railcars for you?
MR. KORNHAUSER: Objection form. At this point in time?
MR. LANTER: No, I said did he ever.
MR. KORNHAUSER: Okay.
A. I -- I do not remember him saying that, no.
MR. LANTER: Okay. Since I am having a little bit of a coughing fit, why don't we go ahead and take our lunch break.
MR. KORNHAUSER: Sounds good to me.
THE VIDEOGRAPHER: The time is 12:00 o'clock. Off the record.
(Break taken.)
THE VIDEOGRAPHER: The time is 1:11. Back

minimal and then turns into a negative for you as you get into '19 further; is that right?
A. That's what it appears to do.
Q. What was the reaction to that in your -- within your company?
A. I -- I -- I don't remember honestly.
Q. Okay. Page 2, can you tell us what that is?
A. These appear to be the various prices they used in the calculation.
Q. Okay. And so that just relates back to Page 1?
A. Yep. That's what I would imagine just -- yeah, that's what it appears to be.
Q. Okay. Now, you told us earlier today that you had a potential $10 million upside --
A. Uh-huh (positive response).
Q. -- to this arbitrage over a period of time.
A. Right.
Q. And you had some risks in pursuing that didn't you?
A. There is always risks, yes.
Q. Sure. What were -- what was the risks that would be present in making that move to try and capture that arbitrage?
A. The markets could move against us.
Q. Okay and how would you monetize that risk?

A. How would I monetize, I am sorry?
Q. How would you quantify the monetary amount of that risk?
A. I am not really sure how to quantify it. But I mean, there's -- it could be very big or -- or it could very big in either direction, so positive or negative.
Q. So tell me if I am wrong on this or not. One of the risks that you would have would be the cost of construction of the transload facility?
A. That's correct.
Q. That you may not recover that risk, right?
A. That's correct.
Q. Any other risks that you would have under the terminal services agreement would be the minimums that you would be required to pay Maalt if things didn't turn out as you hoped?
A. That is a risk.
Q. And so both of those risks were risks you were willing to undertake when you entered into the contract with Maalt, right?
A. That's correct.
Q. And the risk would materialize if the arbitrage got -- became reduced or went away?
A. That is correct.
Q. Okay. Now, your -- your --

A. Can I caveat that?
Q. Sure.
A. But you do have -- you would have the ability to hedge some as well. So it depends on what that is, not necessary at that date, but when you hedge in the future.
Q. And when you talk about hedging?
A. I mean selling for contracts.
Q. Selling for contracts.
A. That's correct.
Q. So that would offset some of the risks that you undertook, the two risk factors we talked about a minute ago?
A. That's right.
Q. Okay. Now, and if the arbitrage reduces over time that could be from factors, such as rail transportation cost increase?
A. That's one factor, yes.
Q. Okay and you were willing to accept that risk weren't you?
A. When we signed the contract we were confident that we had our rates with Jupiter.
Q. Okay. But you didn't have a contract with Jupiter, did you?
A. No, we had an oral agreement.

Q. Okay. And who were the parties of that oral agreement?
A. Travis Morrison and ourselves.
Q. Okay anybody else?
A. Not in that, no.
Q. Okay. What were the rates in your oral agreement with Jupiter?
A. I believe they are in the contract that are in our e-mails. I don't remember exactly what they were offhand, but --
Q. Can you give a ballpark?
A. $10.
Q. Ten bucks a?
A. A barrel.
Q. A barrel, okay. Did you have e-mail exchange that outlined what those rates were?
A. I believe so.
Q. Who is Sammy Reed with your company?
A. He was our senior vice president of operations, but he retired in January.
Q. Where is he now?
A. He is in Midland.
Q. What was his involvement in this project you were working on?
A. So he was at the initial meeting in Fort Worth

possible not though, I don't remember if he was there or not.
Q. Was it a phone call or a face-to-face?
A. A phone call.
Q. And what -- where would I go to find your notes or whatever documentation there might be to reflect what the indicative terms were that they gave you?
A. If -- if they have -- if I have it it should be in the discovery that we sent over. I don't -- I don't remember specifically if I had taken them or not.
Q. Okay. What happened with that conversation, where did it go from there?
A. I believe this was -- well, we -- we decided not to pursue that opportunity. I am not sure if it was at this point or if it was later on.
Q. Uh-huh (positive response).
A. But we did keep in contact.
Q. Never did a deal with them though?
A. No.
MR. LANTER: Get to 43, Exhibit 43.
(Exhibit 43 marked.)
THE WITNESS: All right.
Q. This is Mr. Fall's e-mail to you and Mr. Wroten talking about Valero. And he says they, I take that means Valero?

MR. KORNHAUSER: 444.
Q. And it was signed by you as VP and CFO of the company?
A. Yes.
Q. Is that right?
A. It appears to be.
Q. Okay. This originated from your offices, Correct?
A. I believe so, but I am not certain.
Q. Well, as indicated on the third page, it was actually signed by you as the sender of the letter; is that right correct?
A. It was signed by me, yes.
Q. As the sender of the letter?
A. What do you mean by that?
Q. Well, it is in the place where you normally sign a letter that you are sending?
A. Yes, yes.
Q. And then you asked Vista Proppants and Logistics, LLC to agree to this?
A. That appears -- I mean, I am not a lawyer, so I don't -- I'm not positive, but that seems.
Q. Okay. Who actually penned this letter on your side?
A. I don't remember.

A. Right.
Q. "Are not a candidate for purchase as everything they would offer us. Regardless of location we have a Mid-Cush differential embedded in the price structure."
What did you understand him to mean by that statement?
A. My understanding was that that Mid-Cush differential, they wouldn't offer us a piece of the arbitrage opportunity.
Q. Okay. And did that make it more or less attractive to you?
A. It makes it less attractive to us.
Q. To the point where you wouldn't want to do the deal?
A. We would not want to do the deal, no.
MR. LANTER: We marked this the other day, but I'm going to mark it again as Exhibit 44.
(Exhibit 44 marked.)
Q. I understand this is your letter of intent that you -- that your company prepared and sent to Maalt; is that right?
A. I believe so.
MR. KORNHAUSER: Are you going to remark this, Jim?
MR. LANTER: I did.

Q. Was it your in-house lawyer, is his name Mr. Aronowitz?
A. Honestly, I don't -- I don't remember.
Q. Okay. Is that -- the man I mentioned, is that the proper pronunciation of this name?
A. Aronowitz, yes.
Q. Does he work as an employee of the Sequitur companies?
A. He was contractor at the time, now he's a full-time employee.
Q. Okay. And he serves as your in-house attorney?
A. He is our assistant general counsel or associate general counsel.
Q. Okay. Who is your general counsel?
A. Julian Murray.
Q. Now, this letter was sent by you guys and contemplated that you would do due diligence before you entered into a definitive agreement; is that right?
A. That's correct.
Q. And it was not intended to be binding either except to the extent that sections 3 through 10 were intended to be binding.
MR. KORNHAUSER: Objection, form.
Q. Is that correct?
MR. KORNHAUSER: Objection, form.

A. I don't know. Does it say that somewhere?
Q. Look at Paragraph 11.
A. It appears to say that.
Q. Okay. And if we look further Paragraph 11 under the B, it says, "May not be relied upon by either party as a basis for a contract by estoppel or otherwise, but rather evidence as a nonbinding expression of good faith understanding to endeavor subject to completion of due diligence to the parties satisfaction to negotiate a mutually agreeable definitive agreement."
Do you see that?
A. Yes.
Q. And that was words written by someone in your office before you signed this?
A. I don't -- I don't remember, but...
Q. Do you know who wrote out the term sheet that's attached as the last two pages?
A. I believe I started it, it was a very crude beginnings, but I don't remember who -- or who all was involved in it.
MR. LANTER: Would you take a look at Exhibit 45, please.
(Exhibit 45 marked.)
Q. Does this look like Tony's notes again?

A. These do.
Q. Do they?
A. They do.
Q. Okay. Do you have a memory of the event during which he took these notes?
A. I am not sure if this was a phone call or in person meeting. It looks like it was a phone call.
Q. Do you recall it?
A. I remember having the phone call, but I don't remember -- I remember having this phone call, but I -- yes. Well, I remember having a phone call with Travis before meeting with him.
Q. Okay. And this looks like -- it says at the top Jupiter MLP and then what's the next, C or GBR potential customer; is that what that says?
A. Crude by rail potential customer.
Q. Okay.
A. And that would be my guess, I -- I didn't write these notes.
Q. Sure. Do these notes refresh your memory of anything that you participated in during that discussion?
MR. KORNHAUSER: Objection, form.
A. Not really, except for the numbers.
Q. Pardon me?

A. The numbers. I didn't remember how many, if they had 130,000 barrels in the Permian or not. I remember it was a big number, but I didn't remember what they were.
Q. Okay. Did y'all do any due diligence to find out if they were in fact moving that type of product through the Permian?
A. We talked with out third-party marketing consultant about it.
Q. And who was that?
A. That's Enmark.
Q. Okay. That Mr. -- Mr. Falls?
A. Yes.
Q. Okay. And what did he tell you his research about Jupiter showed?
A. He said that they didn't have -- that they do a lot of transportation, but that they didn't have the balance sheet and the reputation that -- that Shell had.
Q. Okay.
A. Or VP.
Q. Anything else?
A. If so, I don't remember.
Q. Did he give you any type of warning about not doing business with him?
A. He may have. I -- he probably did because he

wants us to use big balance sheet companies.
Q. Okay. Turn to the second page, it looks like your notes of the same day probably.
A. Uh-huh (positive response).
Q. Handwriting looks similar in style, so I presume it is still Tony's notes?
A. It is.
Q. Okay. Carl Freemyer, can you tell us who that is?
A. He is the -- he works for BP. He's -- I think he is a rail expert.
Q. Okay. And were you involved in the conversation with him?
A. I was.
Q. That these notes reflect?
A. I believe so.
Q. Okay. It looks like at the top, "Rationale for 30 percent split of arb," and it says, "Leasing railcars for longer than term freight, other risks involved for BP side."
A. Uh-huh (positive response).
Q. So they are wanting to give you 30 percent and they take 70 percent of the arb?
A. That's correct.
Q. And then it goes down and says, "Destination

Saint James."
A. Yes.
Q. And then he -- it says, "Need to know where leases are for us manning trucking cost and logistics. And Sequitur needs to be vetted for account openings."
Did I read that correct?
A. I -- I don't know. Either account or accounting opening.
Q. Okay. So was the 30 percent arbitrage acceptable to you guys?
A. It would've been acceptable. It was less than Shell's 50 percent though.
Q. Yeah.
A. Yeah.
Q. So did you turn down BP?
A. We said that we had a better offer that we were pursuing.
Q. Okay. And was that the end of the conversation with BP then?
A. We talked with them again, but this was the end of the conversation for a period.
Q. Okay. When did you talk to them again?
A. I know I talked with them near July 4th because I was out of town.
Q. Okay. And what was -- you were on vacation, I

think?
A. I was on vacation.
Q. Did you take the call on vacation?
A. I did.
Q. And what did you discuss?
A. I asked him where he saw the market.
Q. Uh-huh (positive response).
A. And if they thought they would be able to get cars.
Q. And what did he say?
A. He said it was a difficult market.
Q. Is that all he said?
A. I -- I don't remember beyond that.
Q. Okay. Where is Mr. Freemyer located?
A. I don't know. I've never met him in person, that I recall.
Q. And then we go to Page 3 of this exhibit, it appears to be some more notes by Mr. Wroten?
A. Uh-huh (positive response).
Q. Is that right?
A. That's correct.
Q. Okay. And it's June 18th and it says, "Shell CBR term sheet," and then Ben Thompson is the name under that, does this appear to be the terms that Shell was giving you?

A. It does.
Q. Okay. So in the first paragraph it talks about differential components and it looks like they are saying that they had $12.50 in cost?
A. That's it.
Q. Is that per barrel?
A. That would have been, yes.
Q. Okay. So that would have be their transportation cost per barrel?
A. That's correct.
Q. And then it says at the bottom line of that first section, "Plus 50 percent of"?
A. "Of LLS Midland differential."
Q. Okay. So they are wanting 12.50 in transportation cost plus 50 percent of the arbitration?
A. Arbitrage, yes.
MR. LANTER: Excuse me. You're right. I'm used to my industry. I am sorry. I apologize.
THE WITNESS: No worries.
Q. So not only -- would you -- was this going to encompass that you would have to reimburse them 12.50 out of your share of the arbitrage?
A. No. So that was basically the -- that's how it was calculated before we would get to the arbitrage.
Q. Okay. So transportation cost first and then

the differential would be split 50/50?
A. Yes.
Q. Now, what's the bottom section of that third page referring to?
A. Well, the first of it is the implied portion of the trucking cost and that transportation cost or -- or just the trucking costs, and then the -- I am not really sure what the last three lines refer to.
Q. You don't know what the word discount is referring to?
A. I am not sure -- I mean, I know discount, but I don't know what's after it.
Q. "Discount to client injection point to Midland," does that look like what it says?
A. I don't know why but client seems like a weird word to use there.
Q. Yeah. I -- am I not reading it right?
A. Yeah I also -- I don't -- I honestly don't know.
Q. Okay. Last line, "Last minute risk factor."
Do you know what that means or what he is referring to you?
A. I honestly don't know.
Q. Okay. What did you do to prepare for your deposition?

A. Actually, can we take a break? I need to use the restroom.
MR. LANTER: Sure. Absolutely.
THE WITNESS: Thank you.
THE VIDEOGRAPHER: The time 2:09. We are off the record.
(Break taken.)
THE VIDEOGRAPHER: The time is 2:24. Back on the record.
MR. LANTER: Another document. It looks like somebody's notes again.
THE WITNESS: Okay.
MR. LANTER: Exhibit 46.
(Exhibit 46 marked.)
Q. Does this look like Tony's again?
A. These are my notes.
Q. Oh, those are your notes, okay. I didn't see doodling, so.
A. There's a little bit of a start of one on the left side here.
Q. Oh, yeah. All right. So these are your notes. It looks like meeting or phone call on the 5th of June?
A. I -- I am not sure.
Q. Okay. And it looks Travis Morris, Mike Van den Bold and Tony Wroten were involved in the conversation?

A. Yes.
Q. Okay. Was this your initial meeting with Jupiter?
A. I am not sure if it was the initial, but it would be early on.
Q. Okay. Because it looks like you just have a bunch of questions here, like, what does Jupiter do currently, destination points, railroad relationships, all of the question marks. Was this your exploratory conversation with him to find out what they do and how they might be able to work with you?
A. This was the first part of it.
Q. Okay. And then we go to the next page, your notes again?
A. They are.
Q. Okay. And it is the same date at the top. And then at the it says "BP," and then you have the same -- well, let's see, Carley, Michael, Mike Van den Bold and Tony?
A. I think this is Carl.
Q. Okay, Carl. I'm sorry.
A. Carl Freemyer. No worries.
Q. Carl Freemyer?
A. Yes.
Q. And Michael who?

A. Michael Porter, I believe.
Q. Okay works with you?
A. Now, he is also at BP.
Q. Okay. And so do you remember if this was a conversation or a meeting?
A. This was a phone call.
Q. Okay. Down there you have an asterisk and then you say would want to vet Vista, what was your purpose of writing that on these notes?
A. They are just to follow-up with...
Q. Was BP --
A. This was --
Q. -- suggesting that you vet Vista?
A. No, BP was suggesting that they wanted to -- it is my recollection that they wanted to see the site.
Q. Okay. The Barnhart site?
A. The Barnhart site.
Q. All right. Anything else reflected in these notes that we haven't already talked about?
A. I don't believe so.
Q. Okay. On the first line it says they are locking in training for three to four years. Is that consistent with your earlier note we saw where it said they were taking on some long-term risks in conjunction with getting railcars and such?

A. Was that Tony's notes?
Q. I think so, yes.
A. I am not sure.
Q. Okay. And if you turn to the third page, it looks like these are dated about a month and half later on July 24th?
A. Okay.
Q. By now you are kind of into this, you have got three transloaders already there, meaning at the Barnhart facility?
A. Yes.
Q. And you say, "Vista is doing transloading." What did you mean by that?
A. Vista would be performing the transloading service.
Q. Okay. So they weren't doing, they were going to be doing it?
A. That's correct.
Q. And then you have, "Shell sell to Jupiter," what were you referring to there?
A. So that was the perceived -- or proposed credit sleeve transaction.
Q. Okay. Did you run that by Shell first before Macquarie?
A. Yes.

Q. And what was Shell's response to that?
A. Shell was -- Shell was okay doing it for a short-term and then changed their mind on a long-term.
Q. So they never did it at all as a result?
A. I don't remember if they were one month or not.
Q. Okay. Going down, it says, "Long haul-crane," what is that referring to?
A. Oh. So Albert is their -- so Jupiter is trying to start a long haul pipeline from the Midland basin or from the Permian Basin to -- to Brownsville.
Q. Uh-huh (positive response).
A. And they are proposing or they were telling us about their long haul, the origination point was at crane.
Q. Okay. And then you have a note, "Producer gets the highest arb," what were you referring to there?
A. That was if we did -- and that was in relation to the train -- or not the train, excuse me, to the -- to the pipe -- the long haul pipeline if we did the deal. It was some way of spreading arb, that was several -- they are several years out.
MR. LANTER: Okay. Let's go to the next exhibit.
THE WITNESS: Okay.
MR. LANTER: Which is 47.

(Exhibit 47 marked.)
Q. This looks to be a memo from you to Mike Van den Bold?
A. Yes.
Q. And giving him a rail update, it says, "You spoke with Vista on Monday, but the difficulty Shell and BP you were having securing good numbers from the railroad. He called them to tell them that they were dealing with us and to give us the numbers we needed."
Who is the -- he?
A. I don't remember who it was at Vista Maalt that did, but it was one of those. Somebody -- I'd say probably either Chris or Jon. I'm not sure who.
Q. Okay. And then you state you "Reached out to the TXPF to ask them to get back in touch with the potential purchasers."
What purchasers were you asking Texas Pacifico to put in touch -- put in touch with, put you in touch with?
A. I believe it was Shell and BP at that point.
Q. And why were you calling TXPF?
A. Because -- obviously, I don't remember.
Q. The next paragraph, "I don't think Vista has made much hedge way on the agreement, but will review this afternoon."

What agreement are you talking about on there?
A. I believe that was the TSA.
Q. Okay. So you had prepared that and sent that to them roughly a month and a half before it was actually executed?
A. It appears to be.
Q. Okay. And then the next paragraph you said, "In talking with Ben yesterday," I guess that's Ben Thompson?
A. It would be, yes.
Q. "He asked me if we would be comfortable locking the arbitrage opportunity at the point of locking in the contract."
Tell me what you were talking about in this paragraph and what you were talking to Ben about and what the issues were.
A. So that was that point I talked about earlier where I said that we would probably lock in some of the prices with the forward contracts at that point. He wanted to do that at the beginning of locking in the contract, just to lock in the prices so that he could count on what he was going to receive as the arbitrage.
Q. Uh-huh (positive response). Did he ever provide you with a term sheet with the rail cost as a

variable?
A. I don't -- honestly, I don't remember. I don't think he provided me a term sheet. It may have been just an e-mail with --
Q. Okay.
A. -- numbers.
MR. LANTER: I am going to hand you Exhibit 48.
(Exhibit 48 marked.)
Q. And I would like to know if you could tell me what we are looking at on this document.
A. So at the top, it looks like that that was the rate that Ben thought he could provide for all the cost to get it from our wellhead to the coast.
Q. Okay. Did you follow-up on that at all?
A. What do you mean by that? I am sorry.
Q. When he got you this number, did you do anything with Ben after that? Did you follow-up with him and work that into a deal or?
A. We talked with him for a lot. Yeah. There was always waiting on getting a rate from the railroad.
Q. Uh-huh (positive response). Down at the bottom you have, "Cactus two, moving Q3 Q4."
Do you have an understanding what that means?

thought that that was the date that I possibly set up the meetings.
Q. Well, I could be wrong on that, but I am just going off the date off the document.
A. No, I know. I think that this was started as of August, but it actually -- we cancelled. I think this was either November, December.
Q. Okay.
A. But I am not positive on that. But I am fairly certain.
Q. Did this go out after the facility was completed by your company?
A. I didn't -- no, it would not have.
Q. Okay.
MR. KORNHAUSER: When you get to a breaking point, Jim, if that's okay.
MR. LANTER: Yeah we can take one now.
THE VIDEOGRAPHER: The time is 3:04. Off the record.
(Break taken.)
THE VIDEOGRAPHER: The time is 3:14. We are back on the record.
MR. LANTER: Mr. Merrill, let's take a look at Exhibit 58.
(Exhibit 58 marked.)

Q. It appears to be some communication involving the Enmark people that you were included on, at the top Derek Jones sending it to you?
A. Okay.
Q. And he's forwarding you an e-mail from AJ Sander at railcar.com, and in that e-mail Mr. Sander is saying that -- to Derek, that they have 79 28.5000 gallon CNIs in Texas available for 20 months at a rate of 950, they also have another 15 cars in Canada that they can get down there that are available. So apparently these railcars are available and Mr. Jones is passing that information along to you; is that right?
MR. KORNHAUSER: Objection form.
A. I don't remember this e-mail. But it would appear that somebody is claiming that they have access to 94 cars.
Q. If you don't recall this e-mail, is it safe to say that you did not follow-up on this e-mail to inquire about these cars or see what it would take them to get to Texas for your use?
A. I honestly don't remember so.
MR. LANTER: I am going to hand you Exhibit 59.
(Exhibit 59 marked.)
THE WITNESS: All right.

Q. This is an e-mail from you to Stan Meador, and you are telling him in the September 6th e-mail in the second paragraph.
A. Uh-huh (positive response).
Q. "I got the KCS rate yesterday and I'm working the last of the details on cars so I can evaluate which direction."
What KCS rates did you get on September 5?
A. So the first sentence says, "I believe Travis just reached out to you," but below are his responses.
Q. Uh-huh (positive response).
A. So that was me forwarding on what Travis had received.
Q. Okay. So you didn't get rates from KCS, Travis told you he did?
A. That's correct.
Q. And you are forwarding that on to Mr. Meador?
A. That's correct.
Q. Did you ever see those rates?
A. I did not.
Q. Did you ask to see them?
A. I don't remember. Or actually I may have, I don't remember either way.
Q. So where does Mr. Morris's e-mail start and end in your September 6th e-mail?

A. That's a great question. I didn't do a very good job of saying which one was which. But it would be my assumption that the paragraph starting with Jupiter would be the -- where I start talking.
Q. Okay. Why did you not ever pick up the phone and call KCS and ask them what their plans were doing or what they could do for you?
MR. KORNHAUSER: Objection, form.
A. I guess we thought as a kind of smaller player with no history we were better -- our better shot was to go in with the approach of somebody who had history and who they had done business with before.
Q. But you would certainly agree with me there would be nothing stopping you from picking up the phone and calling KCS and talking with their sales people would you?
A. I don't believe there would be anything stopping us.
Q. Yeah. And you could certainly call them up and say what kind of rates can you offer us and where can you take our product and maybe we can start a relationship with you; you could do that kind of call couldn't you?
A. We could, yes.
Q. In fact, you do do that in your business, you

nothing that you know of that would prevent -- had prevented you from operating that facility other than the lack of trains?
A. To my knowledge, yes.
MR. LANTER: Okay. I am going to hand you Exhibit 75.
(Exhibit 75 marked.)
Q. Do you recognize that document?
A. I do.
Q. And what is it?
A. It's our notice of force majeure.
Q. Signed by you?
A. It was.
Q. Does it mention anything about not having a pollution liability policy?
A. No, it does not.
Q. All right. Do you still have the terminal services agreement in front of you, which is Exhibit 13?
A. I do.
Q. If you look at Section 8.3, starting on Page 14 going over to 15, you see that provision down there, remedies for default?
A. Yes.
Q. Did your company ever send Maalt a default notice as it is used in this paragraph stating that you

don't have a pollution liability policy in place and have 30 days from your receipt of the default notice to cure that?
MR. KORNHAUSER: Are you asking if he personally?
MR. LANTER: Mr. Merrill, did you understand my question?
THE WITNESS: Honestly, I don't remember your question fully, sir.
MR. LANTER: Would you read it back, please.
(Requested portion read back.)
A. Okay. We are just talking about 8.3?
Q. Yeah the default notice as required by that section.
A. Okay.
MR. KORNHAUSER: Objection form.
Q. Did your company -- did your company ever send one to Maalt?
A. Not that I am aware of.
Q. Okay. Now, a lot of noise has been made in this lawsuit about the environmental operations commencement date.
A. Uh-huh (positive response).
Q. Which is referenced on Page 5 of that, do you

remember that term? You mentioned it in your force majeure letter.
A. Okay.
Q. And it's your position that once that facility is complete that you can simply withhold the written notice that's mentioned in that paragraph, so as to delay or eliminate your company's obligation to honor its obligations under the contract?
MR. KORNHAUSER: Objection, form.
A. Say that again, I am sorry.
Q. Sure. Is it your position that once the facility is complete you can merely withhold that letter in an effort so that you don't have to comply with the terms of the contract?
MR. KORNHAUSER: Objection, form.
A. I -- I mean, I am not sure I have a position. I mean, I rely on our lawyers to kind of make or to have -- to tell me what the contract says.
Q. Well, I am asking you your thoughts, do you believe -- is it your position as you sit here today that you can simply withhold that written notice and claim that you don't have to honor your obligations because you haven't sent that written notice?
MR. KORNHAUSER: Objection, form.
A. Just for no reason?

Q. Yeah.
MR. KORNHAUSER: Objection, form.
A. No, it's not my position.
Q. Okay. Do you think it would be reasonable to withhold that written notice once the facility is complete just because you just don't want to have to pay your minimum monthly obligation?
MR. KORNHAUSER: Objection form. Oh, you're arguing with him now, Jim. Ask him a proper question.
MR. LANTER: No, I am going to ask this question. I have every right to.
MR. KORNHAUSER: It is inappropriate.
MR. LANTER: It's inappropriate for you to interrupt me except for to make the objection form so.
MR. KORNHAUSER: It is inappropriate.
MR. LANTER: I'm going to ask him my questions. Mr. Merrill, answer my question, please.
THE WITNESS: I'm sorry, would you say it again.
MR. LANTER: Would you repeat my last question, Patricia.
(Requested portion read back.)
MR. KORNHAUSER: Objection, form.
A. No.

Q. Who wrote Exhibit 75, the force majeure letter?
A. Oh, excuse me.
Q. Yeah that's okay.
A. I don't remember.
Q. Was it written by your lawyers?
A. I honestly don't remember.
Q. Would it be your style to begin a letter by saying reference is made to that certain terminal services agreement dated August 6th, 2018?
A. That would not be my style.
Q. All capitalized terms, not otherwise defined herein have the same meanings as in the agreement; that wouldn't be your style either would it?
A. Not normally, no.
Q. More like your lawyer's style isn't it?
MR. KORNHAUSER: Objection, form.
A. It's more of a legal style.
Q. Which of your lawyers would have written this, Mr. Aronowitz or your general counsel?
MR. KORNHAUSER: Objection, form.
A. I honestly have no idea. Could have been either of them or outside counsel.
Q. Outside counsel, meaning Vinson and Elkins?
A. I am not really sure honestly. I don't who they would have used.

A. On the operations report, no.
Q. As of December 1st, were there any permits, governmental permits that were not in place for this facility?
A. I honestly have no idea.
Q. Russ?
A. Russ would be the right person to know.
MR. LANTER: Okay. We can take a break now.
THE VIDEOGRAPHER: The time is 4:32. We are off the record.
(Break taken.)
THE VIDEOGRAPHER: The time is 4:44. Back on the record.
MR. LANTER: Okay Mr. Merrill, why don't you take a look at Exhibit 77, please.
(Exhibit 77 marked.)
Q. This is an e-mail from you to Noah Carson, who is Mr. Carson?
A. Noah Carson became our contract at Jupiter after Travis left.
Q. Okay. And so as of December 20th what is going on with Jupiter?
A. Jupiter was not -- not bringing the trucks to our field, or enough trucks.

Q. Okay.
MR. KORNHAUSER: Take a short break?
MR. LANTER: Just a minute. I am going to hand you Exhibit 76.
(Exhibit 76 marked.)
THE WITNESS: Okay.
MR. LANTER: And I do have another one here.
Q. If you turn to the last page -- well, hold on a second. Tell us what Exhibit 76 is.
A. My assumption and my understanding would be this is our weekly operations report for the meetings held on the Tuesdays. It is typically addressed to Scott Josey with others, such as myself as CC.
Q. And it looks like somebody forgot to change the date on Page 1 because the subsequent pages are dated January 2nd, would that sometimes happen?
A. I wouldn't be surprised.
Q. Okay. And on the last page, is there a reference to Vista rail yard?
A. There is.
Q. And what does it say?
A. It says 100 percent complete.
Q. There is nothing on there that references that any insurance was not in place is there?

Q. Uh-huh (positive response).
A. So they were getting behind on truckloads, which meant that our field was filling up with oil.
Q. Okay. So this is what we talked about earlier when Indeca moved their trucks out and did something else with them?
A. I'm sure if this is -- I think that was actually a different time.
Q. Okay. So continuing problems with trucking --
A. Yes.
Q. -- out of your field?
When did you stop doing business with Jupiter?
A. My recollection was that we switched February 1st.
Q. Okay. And who did you switch to on February first as far as off-taker for your product?
A. To Shell.
Q. Who is Les Werme?
A. He works Les Werme --
Q. Yes.
A. -- works at Arm.
Q. Okay. And in Jan of 2013 why were you talking to them?
A. I -- I asked Les if -- if they had any rail

needed to do, they had the experience and they access to cars, and so we were relying upon that when we made our final decision to sign the TSA.
Q. Okay.
A. And to actually spend the remainder of the cap X at that point.
Q. Did Mr. Ince or did Mr. Favors promise or represent to Sequitur that trains and railcars would be available?
MR. LANTER: Objection, form.
Q. To your knowledge?
A. Yes.
Q. Okay. What do you recall specifically, as best you can, being told by Mr. Favors and Mr. Ince in that regards?
A. I remember with railcars -- this is just in regards to railcars?
Q. Yes, sir.
A. That he represented that he could help us find railcars or put us in contact with people who could find railcars.
Q. And did he tell you that trains and railcars were available?
MR. LANTER: Objection, form.
A. He said it would be a difficult thing to do,

transloaders that are no longer in market.
MR. LANTER: Objection nonresponsive.
Q. But for the representations and promises that were made by Mr. Ince and Mr. Favors to Sequitur about the availability trains and railcars, would Sequitur have signed the TSA?
A. No.
MR. KORNHAUSER: We pass the witness.
EXAMINATION
BY MR. LANTER:
Q. Did your company purchase the transloaders before you signed the TSA?
A. We signed purchase orders for the, I believe, but I can't verify that.
Q. Before the TSA?
A. Yes.
Q. And your company has in-house lawyers, right?
A. That's correct.
Q. And what's your -- what's your education?
A. I've got a finance degree and an MBA.
Q. Okay. So you have people who are highly educated people, right?
A. Yes.
Q. You are used to doing due diligence?
A. Yes.

but that we could -- but that we could do it.
Q. Okay. Did he tell you from whom that trains or railcars would be available?
A. I don't know that he specifically specified whom, but he did tell us in an e-mail, I believe, that -- that Jonas Struthers would be able to help us.
Q. Okay. And did you rely upon these promises and representations?
MR. LANTER: Objection, form.
A. Yes we did.
Q. Okay. Did these promises and representations prove to be true?
A. For the railcars?
Q. Yes and trains?
A. And what do you mean by trains?
Q. Well, the power?
A. The power? Oh, no they did not turn out to be true.
Q. Okay. Has Sequitur suffered damages as a result of the promises and representations that you just stated not being true?
MR. LANTER: Objection, form.
A. Yes, we have spent a lot of money. We have spent millions and millions of dollars in cap X on these -- upgrading the faculties, which is the sub-cost and

Q. You are used to making your decisions based on your own due diligence and research, aren't you?
A. We are.
Q. Okay. And you had every capability of determining whether or not there were railcars available on your own, didn't you?
MR. KORNHAUSER: Objection, form.
A. We would have had to relied on somebody at some point.
MR. LANTER: Objection nonresponsive.
Q. You had the capability of making phone calls and asking people if railcars were available, didn't you?
MR. KORNHAUSER: Objection, form.
A. Asking people on the -- yes.
Q. Yes. Earlier in your deposition I asked you about roughly about 10 to 15 railcar manufacturers and leasing companies and you said you didn't recall a single one of them; that's true isn't it?
A. That is true.
Q. But you certainly could have couldn't you?
A. I could have called them, yes.
Q. Okay. And you said the -- when did those representations that your lawyers asked you about take place, was that May and June?

A. That was May and June through -- through the signing of the TSA.
Q. Okay. And do you have the letter of intent in that stack?
A. I sure do. I'm sorry, let me --
MR. LANTER: Pull it out and let me see that.
THE WITNESS: Oh, wait no letter of intent.
MR. KORNHAUSER: Did you remark it, I've got it.
MR. LANTER: Yeah I believe it is. And I can find it in my --
THE WITNESS: You gave me too many papers.
MR. LANTER: -- briefcase, but it might take longer.
THE WITNESS: Do you think what exhibit it is by chance?
MR. LANTER: Yeah not offhand I don't. There it is. Exhibit 6.
THE WITNESS: Okay. Well, you gave it to me later though, right?
MR. LANTER: Here, let's do this, why don't we remark it. I will just pull it out of this. Let's go back. We will talk about it as being Exhibit 6 today.

THE WITNESS: Okay. Perfect. Thank you.
Q. And your letter of intent, I mean, let's kind of shuffle that, it is dated June 1?
A. Yes.
Q. 2018, right?
A. That's -- I am -- I am not sure, yes.
Q. And when you signed this letter of intent, you agreed with Paragraph 8, did you not?
A. We -- we signed it.
Q. In fact, you wrote it, didn't you? Your -- your company wrote it, didn't it?
A. I don't remember.
Q. Okay. It's not on Maalt or Vista letterhead is it?
A. I -- I can I see the --
MR. LANTER: Sure.
A. No, it is not.
Q. Okay. And you signed it first asking Maalt or Vista to execute it as well, didn't you?
A. I did.
Q. Once you had the introduction made to Jupiter, you guys took it from there and had all of your negotiations just between Sequitur and Jupiter, correct?
A. On terms of commercial terms, yes.
Q. And you conducted your own due diligence of --

of Jupiter didn't you?
A. We did some, yes.
Q. But then less despite your own due diligence and the research you did in that company you decided to make the business decision to move forward with whoever dealings you had with it, right?
A. Say that again, I am sorry.
Q. Yes. Despite your own due diligence and the research you did into Jupiter, your company made the decision to move forward and do business with it?
A. We -- we did make the decision to move forward with the agreement.
MR. LANTER: Okay. Pass the witness.
MR. KORNHAUSER: We will pass the witness.
THE VIDEOGRAPHER: The time is 5:25. We are off the record.
[Proceedings concluded at 5:25 p.m.]

CORRECTION SHEET
WITNESS NAME: BRADEN MERRILL DATE: 11/19/2019
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June 1, 2018

Vista Proppants and Logistics, LLC
4413 Carey St.
Ft. Worth, Texas 76119



Attn.: Jon Ince

Re: Letter of Intent

Ladies and Gentlemen:

Sequitur Permian, LLC ("Sequitur") and Vista Proppants and Logistics, LLC ("Vista") intend to enter into a transaction pursuant to a service agreement covering Vista's (or an affiliate's) provision of the Service (as defined in Attachment "A" hereto) to Sequitur. Pending the preparation and execution of a Definitive Agreement (as hereinafter defined), this letter will confirm the intent of such parties ("Parties") to enter into the contemplated transaction ("Transaction") to be governed by the Definitive Agreement in accordance with the terms and conditions set forth in this letter. The Parties agree as follows:

1. Term Sheet. The Parties intend to negotiate in good faith a mutually acceptable agreement governing the Service. To the extent there is any conflict between the Term Sheet and this letter, this letter shall control.

2. Definitive Agreement. The Parties shall endeavor to incorporate the terms and conditions expressed herein in a mutually acceptable definitive agreement (the "Definitive Agreement," whether one or more) no later than June 26, 2018 ("LOI Term"), unless extended by the Parties in writing, which the Parties would expect to do if the negotiations toward a Definitive Agreement and other relevant agreements and activities have sufficiently progressed. In the event the Parties do not agree upon and execute the Definitive Agreement by the end of the LOI Term, this letter (and the understandings set forth herein) shall be deemed terminated, and neither Party shall have any further obligation to the other Party, provided, however, that the provisions of Section 3 shall survive the termination of this letter for a period of one (1) year.

3. Confidentiality. The existence of this letter (and its contents) are intended to be confidential and are not to be discussed with or disclosed to any third party, except (i) with the express prior written consent of the other Party hereto, (ii) as may be required or appropriate in response to any summons, subpoena or discovery order or to comply with any applicable law, order, regulation or ruling or (iii) as the Parties or their representatives (who shall also be bound by the confidentiality hereof) reasonably deem appropriate in order to conduct due diligence and other investigations relating to the contemplated Transaction.

4. Exclusive Dealing Period. The Parties agree that from the date of this letter through the end of the LOI Term, neither Party nor any of its controlled affiliates shall, directly or indirectly, enter into any agreements with any other person or entity regarding any transaction similar to the Service or the Transaction or any other transaction related, in whole or in part, to the Service, except as

approved in writing by the other Party. Additionally, neither Vista nor any of its controlled affiliates shall, directly or indirectly, enter into any negotiations, discussions or agreements with BP, Valero, Sunoco, NuStar or Shell, or any of their respective affiliates, for provision of the Service to them, or any other transaction similar to the Service, within 75 miles of Vista's rail facility in Barnhart, Texas, except as approved in writing by the Sequitur. Nothing in this section shall prohibit Vista from selling any service or product more than 75 miles from its rail facility in Barnhart, Texas.

5. Expenses. Each Party shall bear its own costs associated with negotiating and performing under this letter.

6. Due Diligence. Following the execution of this letter until the end of the LOI Term, the Parties and their designated representatives will conduct due diligence reviews to analyze the feasibility of the contemplated Transaction, which reviews have not yet been conducted and completed.

7. Approval. No Party shall be bound by any Definitive Agreement relating to the Transaction until (a) each Party has completed its due diligence to its satisfaction, (b) such Party's senior management, or other governing body or authorized person, shall have approved the Definitive Agreement, (c) such Party shall have executed the Definitive Agreement, and (d) all conditions precedent to the effectiveness of any such Definitive Agreement shall have been satisfied, including obtaining any and all requisite government or third party approvals, licenses and permits (which are satisfactory in form and substance to each Party in its sole discretion), if such approvals, licenses and permits are required.

8. No Oral Agreements. Subject to the foregoing, this letter (and the Term Sheet) sets out the Parties' understanding as of this date, there are no other written or oral agreements or understandings among the Parties.

9. Governing Law. THIS LETTER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES.

10. Assignment. Neither Party shall assign its rights or obligations under this letter without the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed. Any attempted assignment in contravention of this paragraph shall be null and void.

11. Binding Status. Except as to Sections 3 through 10 (which are intended to be binding upon execution and delivery of this letter by both Parties), the Parties understand and agree that this letter (a) is not binding and sets forth the Parties' current understanding of agreements that may be set out in a binding fashion in the Definitive Agreement to be executed at a later date and (b) may not be relied upon by either Party as the basis for a contract by estoppel or otherwise, but rather evidences a non-binding expression of good faith understanding to endeavor, subject to completion of due diligence to the Parties' satisfaction, to negotiate a mutually agreeable Definitive Agreement.

If the terms and conditions of this letter are in accord with your understandings, please sign, and return the enclosed counterpart of this letter to the undersigned, by no later than close of business on June 4, 2018, after which date, if not signed and returned, this letter shall be null and void.

Very truly yours,

SEQUITUR PERMIAN, LLC

By: _____
Name: Braden Merrill
Title: VP & CFO

AGREED
this 5 day of June 2018 by:

VISTA PROPPANTS AND LOGISTICS, LLC
By: _____
Name: Kristin W. Smith
Title: CFO

ATTACHMENT "A"
to
Letter of Intent
(Term Sheet)

Party A:	Vista Proppants and Logistics, LLC (and any designated affiliates)
Party B:	Sequitur Permian, LLC (and any designated affiliates)
Facility:	Barnhart Railyard
Location:	Barnhart Loading Facility 44485 W. Hwy 67 Barnhart, TX 76930
Term:	September 2018 through December 2019.
Renewal:	Subject to the Survival clause below, the Term may be renewed and extended by Party B for successive 12-month periods by written notice to Party A at least 60 days prior to the end of the then Term, as it may have been previously renewed and extended.
Products:	Crude oil or other hydrocarbons products owned or controlled by Party B or which Party B is obligated to market or deliver.
Commitment:	For the Term, as it may be extended, Party A will limit use of its Barnhart Railyard property and Facility to the sole purpose of loading Party B's Products. Party A will load Products provided by Party B at the Facility, whether from pipeline or trucks.
Service:	Party A's loading of Party B's Products at Location/Facility and related services, including maintenance.
Rate:	$1.50/barrel of Products loaded into railcars at the Location/Facility.
Volume:	Party B agrees to provide Products sufficient to fill an average of no fewer than sixteen railcars per day (11,424 barrels) during each calendar month. If Party B does not meet its minimum volume obligation for a calendar month, Party A will be compensated in such month, as that month's total settlement, in an amount equal to at least the Rate times 11,424 barrels, or $17,136, times the number of days in that month so that Party A will be paid as if the minimum volume had been provided by Party B. Should Party B provide more Products than its minimum volume obligation, Party A shall be compensated at the Rate times the excess volume.
Capital Investment:	In no event shall Party A be obligated to provide any capital investment necessary to perform Service. To the extent more capital investment is needed to satisfy incremental Volume, the financial burden required to equip the facility shall be borne by Party B.

Phase I: Party B will install (or pay to install) equipment (to be owned by Party B) sufficient to load rail cars from trucks such that loading will commence September 1, 2018.

Phase II: Party B will install (or pay to install) equipment (to be owned by Party B) sufficient to load rail cars from pipeline.

Assignability: The Definitive Agreement would be assignable on sale or disposition, and as otherwise negotiated. Any sale of the Facility property would be subject to the Definitive Agreement.

Survival: If the Term is not extended, then when Party A is not utilizing the Barnhart Railyard for the general course of its sand business and desires to use for loading of oil, the terms of the Definitive Agreement may be reinstated by Party B at its option.

Other Terms: The Definitive Agreement will contain customary provisions for transactions similar to the Service or the Transaction, such as mutual representations, warranties, and covenants, conditions precedent, termination, remedies, force majeure, indemnification, and risk of loss.

THIS SUMMARY OF TERMS AND CONDITIONS IS ATTACHMENT "A" TO A LETTER OF INTENT DATED JUNE 1, 2018, AND IS NOT TO BE CONSIDERED SEPARATELY FROM THE LETTER OF INTENT. EXCEPT AS MAY BE SET OUT IN THE LETTER OF INTENT, THE LETTER OF INTENT AND THIS ATTACHMENT "A" ARE NOT INTENDED TO BE COMPLETE AND ALL-INCLUSIVE OF THE TERMS OF THE PROPOSED TRANSACTION, NOR DOES THE LETTER OF INTENT OR THIS ATTACHMENT "A" CREATE A BINDING AND ENFORCEABLE CONTRACT BETWEEN OR COMMITMENT OR OFFER TO ANY PARTY OR PARTIES, EXCEPT TO THE EXTENT PROVIDED IN SECTION 11 OF THE LETTER OF INTENT.

June 22, 2018

Vista Proppants and Logistics, LLC
4413 Carey St.
Ft. Worth, Texas 76119

Attn.: Jon Ince

Re: Letter of Intent Amendment

Ladies and Gentlemen:

Reference is made to that certain letter of intent ("LOI") dated June 1, 2018 between Sequitur Permian, LLC ("Sequitur") and Vista Proppants and Logistics, LLC ("Vista"). All capitalized terms used herein are as defined in the LOI.

The Parties agree to amend Section 2 of the LOI to change "June 26, 2018" to "July 6, 2018".

Except as amended hereby, all other terms of the LOI shall remain in full force and effect.

Very truly yours,

SEQUITUR PERMIAN, LLC

By: _____
Braden Merrill
Vice President and Chief Financial Officer

AGREED
this 26 day of June 2018 by:

VISTA PROPPANTS AND LOGISTICS, LLC
By: Kristin W. Smith
Name: Kristin W. Smith
Title: CFO

July 9, 2018

Vista Proppants and Logistics, LLC
4413 Carey St.
Ft. Worth, Texas 76119

Attn.: Jon Ince

Re: Letter of Intent Amendment No. 2

Ladies and Gentlemen:

Reference is made to that certain letter of intent (as previously amended, "LOI") dated June 1, 2018 between Sequitur Permian, LLC ("Sequitur") and Vista Proppants and Logistics, LLC ("Vista"). All capitalized terms used herein are as defined in the LOI.

The Parties agree to amend Section 2 of the LOI to change "July 6, 2018" to "July 23, 2018".

Except as amended hereby, all other terms of the LOI shall remain in full force and effect.

Very truly yours,

SEQUITUR PERMIAN, LLC

By: _____
Name: Braden Merrill
Title: VP & CFO

AGREED
this 12 day of July 2018 by:

VISTA PROPPANTS AND LOGISTICS, LLC
By: _____
Name: Kristin Smith
Title: CFO

From: Braden Merrill
To: Mike van den Bold
Cc: Scott Josey; Tony Wroten; Alan Aronowitz
Subject: Rail Update
Date: Thursday, June 14, 2018 7:44:30 AM

Mike,

I spoke with Vista on Monday about the difficulty Shell and BP were having securing good numbers from the railroad. He called them to tell them that they were dealing with us and to give us the numbers we needed. I spoke with Ben @ Shell and Carl @ BP yesterday and both of them are still having difficulty getting the railroad to respond. I have reached out to the TXPF to ask them to get back in touch with the potential purchasers. I verified with Jon that Stan (who's contact information we provided to Ben) was the right contact. I am going to keep reaching out until I get somewhere.

I don't think Vista has made much headway on the agreement but will review this afternoon.

Also, in talking with Ben yesterday. He asked me if we would be comfortable locking in the arbitrage opportunity at the point of locking in the contract. The primary issue I see with that is forecasting volumes so he is giving that some thought. He doesn't feel comfortable providing a binding term sheet prior to getting the rail rates but I asked him again to put something together with that as a variable.

BP told me that we should have gotten a term sheet last night or this morning so I will be on the lookout for that and forward your way when received.

Best,
Braden





TERMINAL SERVICES AGREEMENT

This TERMINAL SERVICES AGREEMENT (this "Agreement") is made, entered into and effective as of August 6, 2018 (the "Effective Date"), by and between Maalt, LP, a Texas limited partnership ("Terminal Owner"), and Sequitur Permian, LLC, a Delaware limited liability company ("Customer"). Terminal Owner and Customer shall be referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, Terminal Owner owns and operates a rail terminal facility located in Barnhart, Texas as more specifically described on Exhibit A-1 hereto on the land more specifically described on Exhibit A-2 hereto (collectively, the "Terminal"), and Customer is engaged in the transportation and marketing of Product; and

WHEREAS, Terminal Owner desires to make available the Terminal to Customer and perform the services set forth in this Agreement, and, on an exclusive basis, Customer desires to utilize the Terminal for the throughput of Product and related services.

AGREEMENT

NOW, THEREFORE, in and for consideration of the premises and mutual covenants contained in this Agreement, Terminal Owner and Customer hereby agree as follows:

ARTICLE 1
DEFINITIONS

For the purposes of this Agreement, capitalized terms used herein will have the meaning assigned to such terms below:

"Actual Quarterly Aggregate Volume" means the sum of the volumes of Product tendered by Customer (or by Customer's third-party customers) for Throughput at the Terminal during the applicable Calendar Quarter.

"Affiliate" means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, Controls, or is Controlled by, or is under common Control with, such Person.

"Agreement" has the meaning given to such term in the Preamble hereto.

"Alternate Service" has the meaning given to such term in Section 8.8. "Alternative Service Notice" has the meaning given to such term in Section 8.8.

"Applicable Law" means any applicable statute, law, regulation, ordinance, rule, judgment, rule of law, order, decree, permit, approval, concession, grant, franchise, license, agreement, requirement, or other governmental restriction or any similar form of decision of, or any provision or condition of any permit, license or other operating authorization issued under any of the foregoing by, or any determination by, any Governmental Authority having or asserting

jurisdiction over the matter or matters in question, whether now or hereafter in effect and in each case as amended (including without limitation, all of the terms and provisions of the common law of such Governmental Authority), as interpreted and enforced at the time in question.

"Barrel" means 42 United States gallons of 231 cubic inches per gallon at sixty degrees Fahrenheit (60° F) and normal atmospheric pressure.

"Business Day" means a Day (other than a Saturday or Sunday) on which banks are open for business in Houston, Texas.

"Calendar Quarter" means a period of 3 consecutive Months beginning on the first day of each January, April, July and October (except for 2018 of the Initial Term, September will be included with October-December 2018). "Calendar Quarterly" shall be construed accordingly.

"Control" means (a) with respect to any Person, the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting shares, by contract, or otherwise and (b) with respect to any Product, such Product produced by Customer and owned by it or produced and owned by a Third Party or an Affiliate and with respect to which (i) Customer has the contractual right or obligation (pursuant to a marketing, agency, operating, unit, or similar agreement) to dispose of such Product and (ii) Customer elects or is obligated to dispose of such Product on behalf of the applicable Third Party or Affiliate. "Controlled" shall be construed accordingly.

"Cure Period" has the meaning given to such term in Section 8.3.

"Customer" has the meaning given to such term in the Preamble to this Agreement.

"Customer Parties" means, collectively, Customer, its Affiliates and its and their equity holders, officers, directors, employees, representatives, agents, contractors, customers, and their respective successors and permitted assigns (excluding any Terminal Owner Parties), and individually, a "Customer Party".

"Customer Terminal Modifications" has the meaning given to such term in Section 2.7.

"Day" means a period commencing at 7:00 a.m. Central Standard Time and extending until 7:00 a.m. Central Standard Time on the following calendar day. "Daily" shall be construed accordingly.

"Default Notice" has the meaning given to such term in Section 8.3.

"Defaulting Party" has the meaning given to such term in Section 8.3.

"Delivery Point" means the inlet flange of the applicable railcar.

"Effective Date" has the meaning given to such term in the Preamble to this Agreement.

"Extended Term" has the meaning given to such term in Section 8.1.

"Forecast" has the meaning given to such term in Section 2.6.

"Force Majeure" or "Force Majeure Event" has the meaning given to such term in Section 14.2.

"Governmental Authority" means any federal, state, or local government or any provincial, departmental or other political subdivision thereof, or any entity, body or authority exercising executive, legislative, judicial, regulatory, administrative, legislative, regulatory, taxing or other governmental functions, and any court, department, commission, board, bureau, agency, instrumentality or administrative body of any of the foregoing.

"Group" means either Terminal Owner Parties or Customer Parties, as applicable.

"HSE" has the meaning given to such term in Section 15.4(a).

"HSE Program" has the meaning given to such term in Section 15.4(a).

"Income Taxes" means any income, franchise and similar Taxes.

"Initial Term" has the meaning given to such term in Section 8.1.

"Interest Rate" means an annual rate (based on a three-hundred-sixty (360) Day year) equal to the lesser of (a) two percent (2%) over the prime rate as published under "Money Rates" in the *Wall Street Journal* in effect at the close of the Business Day on which payment was due and (b) the maximum rate permitted by Applicable Law.

"Liabilities" means actions, claims, causes of action, costs, demands, damages, expenses, fines, lawsuits, liabilities, losses, obligations and penalties (including court costs and reasonable attorneys' fees).

"Loss Credit" has the meaning given to such term in Section 7.2(b).

"Loss Allowance" has the meaning given to such term in Section 7.2(a).

"Meter" has the meaning given to such term in Section 5.1.

"Minimum Volume Commitment" has the meaning given to such term in Section 3.1.

"Month" means the period beginning on the first Day of a calendar Month and ending immediately prior to the start of the first Day of the following calendar Month. "Monthly" shall be construed accordingly.

"Non-Defaulting Party" has the meaning given to such term in Section 8.3.

"Party" and "Parties" have the meanings given to such terms in the Preamble to this Agreement.

"Permits" means permits, licenses, consents, clearances, certificates, approvals, authorizations or similar documents or authorities required by any Governmental Authority or pursuant to any Applicable Law and that apply to the Terminal, the Services or a Party.

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"Person" means any individual, corporation, limited liability company, partnership, joint venture, unincorporated organization or any other legal entity.

"Phase I Project" has the meaning given to such term in Section 2.7.

"Phase II Project" has the meaning given to such term in Section 2.7.

"PLL" has the meaning given to such term in Section 11.2.

"Product" means crude oil and other liquid hydrocarbon products owned or Controlled by Customer.

"Receipt Point" has the meaning given to such term in Section 7.1.

"Receiving Party" has the meaning given to such term in Section 15.20.

"Regulatory Approval" means any Permit from a Governmental Authority necessary for performance of the Services or the installation of equipment at or operations of the Terminal in connection with the Services, including the following Permits: Spill Prevention, Control, and Countermeasure (SPCC) plan is in place, Storm Water Permit (as it may be required to be amended or updated) issued by the Texas Commission on Environmental Quality (TCEQ) and Permit by Rule (PBR) Air Permit (as it may be required to be amended or updated) issued by TCEQ.

"Representatives" has the meaning given to such term in Section 15.20.

"ROFR Notice" has the meaning given to such term in Section 9.2(b).

"ROFR Offer" has the meaning given to such term in Section 9.2(b).

"ROFR Period" has the meaning given to such term in Section 9.2(a).

"Services" has the meaning given to such term in Section 2.12.

"Shortfall" has the meaning given to such term in Section 3.2(a).

"Shortfall Payment" has the meaning given to such term in Section 3.2(a).

"SPCC" has the meaning given to such term in Section 15.4(a).

"Subsequent Transfer" has the meaning given to such term in Section 9.2(a).

"Subsequently Transferred Interest" has the meaning given to such term in Section 9.2(b).

"Target Terminal Operations Commencement Date" means September 1, 2018, as such date may be extended as mutually agreed in writing by the Parties and subject to Article 14.

"Taxes" means any taxes, assessments, fees, duties or other similar charges imposed by any Governmental Authority, including income, franchise, ad valorem, property, sales, use, excise,

employment, transfer or other charge in the nature of a tax, and any interest, fine, penalty or addition thereto.

"Term" has the meaning given to such term in Section 8.1.

"Terminal" has the meaning given to such term in the Recitals to this Agreement.

"Terminal Operations Commencement Date" means the date that the Terminal is fully operational to enable the performance and receipt of the Services and any and all Regulatory Approvals for the Services have been obtained, in each case, as reasonably determined by Customer and as such date is evidenced by a written notice sent by Customer to Terminal Owner.

"Terminal Owner" has the meaning given to such term in the Preamble to this Agreement.

"Terminal Owner Parties" means, collectively, Terminal Owner, its Affiliates and its and their equity holders, officers, directors, employees, representatives, agents, contractors, subcontractors, invitees, successors and permitted assigns (excluding any Customer Parties), and individually, a "Terminal Owner Party".

"Third Party" means any Person other than a Terminal Owner Party and Customer Party.

"Throughput" means the delivery of Product from trucks or pipeline into the Terminal on behalf of Customer or Customer's third-party customers. The quantity of Product Throughput at the Terminal shall be measured in accordance with Article 5.

"Throughput Fee" has the meaning given to such term in Section 4.1.

"Week" means the period beginning on Sunday at midnight and ending on Saturday at 11:59 p.m. "Weekly" shall be construed accordingly.

ARTICLE 2
SERVICES; FACILITIES AND OPERATIONS

2.1 Regulatory Approval Filings. After the Effective Date, the Parties shall work (at their own cost and expense) together in good faith to obtain prior to the Target Terminal Operations Commencement Date the Regulatory Approvals as provided in this Agreement. Each Party shall promptly, but in no event later than ten (10) Days of receipt of all information from the other Party necessary to be included as part of such Regulatory Approval applications, file or cause to be filed applications for all Regulatory Approvals required to be obtained by it in connection with the transactions contemplated hereby. Such applying Party shall use its commercially reasonable efforts to obtain such Regulatory Approvals at the earliest practicable time. The Parties shall cooperate with each other and communicate regularly regarding their efforts to obtain such Regulatory Approvals. Each Party will provide the other Party with copies of all non-confidential portions of any application, statements or correspondence submitted to or received from any Governmental Authorities in connection with the transactions contemplated by this Agreement.

2.2 Services. Terminal Owner shall receive, load, unload, handle, measure, and

redeliver Product at the Terminal in accordance with Customer's Forecasts and reasonable requirements and will tender such Product to Customer or its or its third-party customers' carriers as directed by Customer, in each case, in accordance with the terms and conditions of this Agreement. Terminal Owner shall furnish and be responsible for all labor, supervision, and materials necessary for its timely and efficient performance of the receipt, loading, unloading, transloading, handling, measuring, redelivery, and related operations and services pursuant to this Agreement and contemplated under this Agreement in order to provide the Services, which in all cases shall be conducted in accordance with generally accepted oil terminalling practices, in a good and workmanlike manner and in compliance with all Applicable Law and the obligations of Terminal Owner to its surface lessors. Terminal Owner shall operate and maintain the Terminal and any other related equipment and property in good and safe condition at all times (all of the foregoing in this Section 2.2, is herein collectively, the "Services").

2.3 Exclusivity. During the Term, (a) Customer shall have exclusive rights to use the Terminal for Product transloading; (b) Customer shall be entitled to utilize 100% of the capacity of the Terminal if required for the transloading of Product, (c) without Customer's prior written consent, Terminal Owner shall not contract with any other Person (including any Affiliates of Terminal Owner) for capacity at the Terminal, provide services at the Terminal to any other Person or develop any additional terminal facilities on the Terminal's land for the transloading of Product, (d) Terminal Owner shall limit the use of the areas of the Terminal designated for the transloading of Product to the sole and exclusive purpose of loading and unloading of Product, and (e) Terminal Owner shall not enter into any agreement with any Third Party for the transloading of oil or other hydrocarbon products at the Terminal. Notwithstanding anything herein to the contrary, after the Effective Date, Terminal Owner may use those areas of the land on which the Terminal is located that are not used for the performance of the Services, including but not limited to the staging and transloading of Product, for another business purpose so long as such purpose does not interfere with or adversely impacts the operations and use of the Terminal for performance of the Services.

2.4 Delivery; Redelivery. Customer may deliver Product to the Terminal by truck or pipeline delivery for receipt by Terminal Owner during the Terminal's operating hours which shall be no less than twenty-four (24) hours per Day, seven (7) Days per week, holidays included. Customer will retain responsibility for all dispatch services associated with the staging and logistics of trucks and railcars, and delivery of Product to and from the Terminal. Customer and Terminal Owner will cooperate with each other in scheduling deliveries, receipts and redeliveries. Receipts shall be issued by Terminal Owner to Customer or Customer's third-party customers for all Product delivered to the Terminal by truck or pipeline by Customer or Customer's third-party customers for unloading, handling, and loading into railcars. Terminal Owner shall redeliver Product to Customer or Customer's third-party customers from the Terminal into railcars. The Terminal will be made available for redelivery twenty-four (24) hours per Day, seven (7) Days per week, holidays included.

2.5 Access. In connection with Terminal Owner's and Customer's obligations under this Agreement, including Customer's exclusive use of the Terminal, Customer's rights with respect to Customer's Terminal Modifications, and the Services provided hereunder with respect to the Product, Terminal Owner does hereby GRANT and CONVEY to Customer and the other Customer Parties, its and their successors and assigns, for the purposes of enforcing and otherwise

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realizing the benefits of Customer's rights under this Agreement a non-exclusive right of access over, on, and across the surface of the lands on which the Terminal is located for the duration of the Term and any extensions thereof. Further, from and after the Effective Date, Customer will seek from the owner of the land, and Terminal Owner shall cooperate with Customer in seeking, a non-exclusive easement providing a right of access over, on, across and under the surface of the land on which the Terminal is located. Any access by Customer with respect to Customer Terminal Modifications shall be coordinated in advance with Terminal Owner, and Terminal Owner agrees to permit routine access to a pre-approved list of Customer personnel and representatives. Terminal Owner represents and warrants that it has obtained all the necessary and required consents, if any, of any applicable lessor(s) or other holders of property rights with respect to such grant of easement and right of access. Terminal Owner shall have a duty to maintain in force and effect any underlying agreements that the grant of such non-exclusive easement and right of access by Terminal Owner is based upon. Without limiting the foregoing, Terminal Owner grants Customer's third-party customers access to the Terminal, including the loading racks and railcar areas, at all reasonable times for the purpose of the staging and logistics of trucks and railcars, and delivering and receiving Product, as applicable.

2.6 Monthly Forecasts. Customer will provide Terminal Owner, by email or facsimile, or by other means mutually agreed by Terminal Owner and Customer from time to time, no later than the fifteenth (15th) Day of each Month throughout the Term, a good faith Monthly forecast (a "Forecast") of the volume of each Product that Customer projects it (and its third-party customers, as applicable) will deliver to the Terminal during the following Month. Terminal Owner and Customer will work together cooperatively to schedule deliveries of the Products to the Terminal based on Customer's Forecasts. Customer's Forecasts may exceed the Minimum Volume Commitment, but shall not exceed the maximum design transloading capacity of the Terminal.

2.7 Terminal Modifications. In order to facilitate the Services, Customer will perform (with the full cooperation of Terminal Owner) certain expansions or alterations to the Terminal at Customer's sole cost and expense (collectively, the "Customer Terminal Modifications") as follows: (a) Customer will install equipment and facilities at the Terminal necessary for loading railcars with Product from trucks, such that the loading will commence on the Target Terminal Operations Commencement Date, and as may be described in further detail on Exhibit B hereto ("Phase I Project"), and (b) Customer may, at its sole option, install equipment and facilities necessary for loading railcars from pipelines, and as may be described in further detail on Exhibit C hereto ("Phase II Project"). If Customer elects to perform the Customer Terminal Modification described in (b), it shall provide Terminal Owner with notice of such election. Terminal Owner shall allow Customer (and the Customer Parties) to perform all Customer Terminal Modifications, and shall provide Customer and Customer Parties with such access (including any necessary easements and rights-of-way into, over, under and across the Terminal and associated land to locate equipment and facilities) and full assistance as reasonably required; provided that Terminal Owner shall be permitted to have a representative present at the Terminal for observation when work on a Customer Terminal Modification is being performed. Terminal Owner acknowledges and agrees that title to the equipment and facilities installed by or at the direction of Customer in connection with a Customer Terminal Modification shall remain with and be vested in the Customer; *provided* that ownership of any additional rail tracks that may be installed will be transferred to Terminal Owner upon the expiration of the Term, subject to

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Customer's rights under Section 8.8 and Section 9.2. Other than the rail tracks described in the preceding sentence, upon the expiration of the Term, Customer shall be permitted, at its sole cost and expense, to remove any equipment or facilities constituting Customer Terminal Modifications. During the Term, Terminal Owner (i) shall not be required to make any capital investment to facilitate the Services (other than in connection with any maintenance or repair necessary for the Terminal Owner to comply with its obligations under this Agreement), and (ii) shall not be permitted to make any expansion, modification or other alteration (other than routine maintenance and repairs) to the Terminal that interferes with or adversely impacts the operations and use of the Terminal without the prior written consent of Customer.

ARTICLE 3
MINIMUM THROUGHPUT OBLIGATION

3.1 Minimum Volume Obligation. Subject to the terms of this Agreement, including Section 3.3 and Force Majeure, for each Calendar Quarter from and after the Terminal Operations Commencement Date, Customer agrees to Throughput (either directly or via volumes delivered to the Terminal by Customer's third-party customers) an amount of Product through the Terminal on a Monthly basis equal to a minimum of Eleven Thousand Four Hundred and Twenty Four (11,424) Barrels per Day (the "Minimum Volume Commitment") during each Calendar Quarter during the Term after the Termination Operations Commencement Date, or otherwise pay the Shortfall Payment applicable to such Calendar Quarter.

3.2 Shortfall Payment.

(a) Quarterly Shortfall. If, for any Calendar Quarter after the Terminal Operations Commencement Date, the volume of Product actually Throughput during such Calendar Quarter (for the avoidance of doubt, calculated on a Calendar Quarterly, not a Monthly or Daily, basis) is less than the Minimum Volume Commitment (such deficiency, if any, the "Shortfall"), Customer shall pay Terminal Owner an amount equal to the volume of the Shortfall (expressed in Barrels) to the extent not caused or contributed to by Force Majeure, maintenance outages at the Terminal, or Terminal Owner's breach of its obligations under this Agreement, *multiplied by* the Throughput Fee in effect for such Calendar Quarter (collectively, the "Shortfall Payment"). There shall be no Shortfall Payment due and owing for the Shortfall to the extent caused or contributed to by Force Majeure or due to such Terminal Owner breach.

(b) Quarterly True-Up. Promptly following each Calendar Quarter, Terminal Owner will provide to Customer a written statement showing the Minimum Volume Commitment versus the Actual Quarterly Aggregate Volume. If the Actual Quarterly Aggregate Volume exceeds the Minimum Volume Commitment for such Calendar Quarter, Customer shall not owe and shall be relieved from payment to Terminal Owner of any Shortfall Payment determined pursuant to Section 3.2(a) for the applicable Calendar Quarter. However, if the Actual Quarterly Aggregate Volume is less than the Minimum Volume Commitment for such Calendar Quarter, Customer shall owe to Terminal Owner a Shortfall Payment determined pursuant to Section 3.2(a) for the applicable Calendar Quarter.

3.3 Adjusted Minimum Volume Commitment. For any partial Calendar Quarter within the Term, the Minimum Volume Commitment shall be prorated accordingly. The

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Minimum Volume Commitment for the applicable Calendar Quarter shall also be adjusted downward on a per Barrel basis for any volumes of Product that Customer was not able to Throughput through the Terminal due to Terminal Owner's failure to receive Product within the capacity of the Terminal, Terminal Owner breach of this Agreement, or any other act or an omission of a Terminal Owner Party that prevents or curtails Throughput.

ARTICLE 4
FEES; INVOICES

4.1 Throughput Fee. Subject to the terms of this Agreement, Customer shall pay Terminal Owner a throughput fee equal to One Dollar and Fifty Cents ($1.50) per Barrel of Product Throughput through the Terminal (the "Throughput Fee").

4.2 Invoices; Payment of Fees. Within twenty-four (24) hours following the end of each Month, Terminal Owner shall issue to Customer an estimate of any amounts owed by Customer pursuant to this Article 4 and the quarterly Shortfall Payment (if any); *provided* that the Parties agree and acknowledge that Customer shall have no obligation to pay the amounts set forth in such estimate until Terminal Owner delivers to Customer an invoice as described in the remaining portion of this Section 4.2. Terminal Owner shall invoice Customer Weekly for any amounts owed by Customer pursuant to this Article 4 and the quarterly Shortfall Payment (if any) within ten (10) Business Days after the end of each Week for Services that occurred during the preceding Week, including a detailed statement setting forth the amounts included in such invoice. Customer agrees to pay Terminal Owner all undisputed amounts set forth in such invoice within thirty (30) Days of receipt of Terminal Owner's invoice, which shall be the due date for such invoice. If Customer disputes one or more items in an invoice, Customer must notify Terminal Owner promptly (and in any event by the due date therefor) in writing of the item or items under dispute and the reasons therefor. Customer may withhold payment of the disputed portion of such invoice, without the payment of the Interest Rate as described below, until the dispute is resolved. Any portion of a disputed invoice which is later paid will be paid with accrued interest thereon calculated using the Interest Rate from the due date of such invoice until paid. All invoices issued by Terminal Owner under this Agreement shall be issued in United States dollars, and all such invoices and any other amounts due hereunder shall be paid in United States dollars.

4.3 Past Due Interest. Any amount payable by Customer under this Agreement shall, if not paid when due, bear interest from the payment due date until, but excluding the date payment is received by Terminal Owner, at the Interest Rate.

ARTICLE 5
MEASUREMENT

5.1 Measurement Procedures. Measurement shall be in accordance with Terminal Owner's standard measurement procedures, which shall be in accordance with applicable API standards. Terminal Owner shall transload the Product from trucks or pipeline into railcars using, as applicable, a rack, pump and custody transfer meter at the Receipt Point to be provided by Customer and a rack, pump and custody transfer meter at the Delivery Point to be provided by Customer (each meter at the Receipt Point and Delivery Point, a "Meter"). Each Meter shall be provided in accordance with industry standards and in accordance with all Applicable Law. The

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quantities of the Products transloaded by Terminal Owner at the Terminal will be determined by the Meters. In the event of a failure of a Meter, the Parties will use railcar waybills and truck bills of lading, as applicable, until the applicable Meter is repaired. Terminal Owner shall be responsible for the maintenance of the Meters, and repair any malfunctioning Meter as soon as commercially practicable. All tests, calibrations, and adjustments of a Meter, to be performed by Terminal Owner at least once per Calendar Quarter, may be witnessed by Customer (or its designated representative) and shall be preceded by reasonable notice to Customer. Upon request of either Party for a special test of any meter or auxiliary equipment, Terminal Owner shall promptly verify the accuracy of same; provided, however, that the cost of such special test shall be borne by the requesting Party, unless the percentage of inaccuracy found is more than one percent (1) % of a recording corresponding to the average hourly rate of Product flow, in which case the cost of such test shall be borne by Terminal Owner.

5.2 Measurement Records. Terminal Owner shall keep accurate records of the receipt and delivery of Product under this Agreement and, subject to the Loss Allowance, shall account for Product receipts and redeliveries at such time and in such manner as shall be reasonably requested by Customer. Terminal Owner will provide Daily updates to Customer as to the metered volumes of the Product Throughput into the Terminal, trucks delivered to the Terminal, and volumes of Product transloaded into railcars at the Terminal.

ARTICLE 6

TERMINAL OWNER OBLIGATIONS

6.1 Warranty. Terminal Owner warrants to Customer that: (a) all Services shall be in accordance with Section 2.2 hereof; (b) all Services will be performed and completed in a safe and environmentally conscientious manner, with Terminal Owner taking all reasonable and necessary actions, including, but not limited to, those in accordance with all Applicable Law, regulations, ordinances and codes, any applicable policies of Customer and prudent industry practices to protect persons, property and the environment; (c) all Services shall be performed professionally, and in accordance with sound engineering practices; (d) all Services will be free from defects in design, workmanship, and materials, and that all Terminal Owner personnel and employees have been trained to work in a safe and competent manner to assure the safety of other persons; and (e) all equipment or property provided or supplied by Terminal Owner in performing the Services has been thoroughly tested and inspected and is safe, sufficient and free of any defects, latent or otherwise, is in good operating condition and is appropriate for the carrying out of the Services.

6.2 Non-Conforming Services. Any Services found defective, unsuitable, or in any way nonconforming with the terms of this Agreement shall be promptly replaced or corrected by Terminal Owner without additional charge to Customer, whether or not the Services have been accepted. Customer may, at its sole discretion and with full reservation of its other rights and remedies, direct Terminal Owner to replace or correct, as applicable, the non-compliant Services. The warranty obligations of Terminal Owner under this Agreement shall not be limited, restricted, or otherwise modified by the indemnity obligations contained elsewhere in this Agreement.

6.3 Observation and Testing of Services. All Services will be subject to Customer's observation and testing. Terminal Owner shall be responsible for inspecting and testing the

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components of the Services. Customer Parties shall (subject to Section 15.2) have the right at any time to review and test the Services at all places and stages of performance, without such action being treated as either discharging Terminal Owner's responsibility or constituting Customer's acceptance of the Services. Notwithstanding any prior test and observation at the Terminal, all Services will be subject to final acceptance at the Terminal. Neither payment for, nor the inspection at the Terminal of any Services shall in any way impair Customer's right to observation, imply acceptance or rejection of non-conforming Services, or reduce or waive any other remedies or warranties to which Customer is entitled.

6.4 Warranty Default. If, after written request by Customer, Terminal Owner fails to replace or correct any non-conforming Services within the shortest time reasonably practicable, but in any event not later than three (3) Days after being notified of the defect, without prejudice to Customer's other rights and remedies under this Agreement or by Applicable Law, Customer (a) may replace or correct such Services itself or through another contractor in any manner that Customer determines in its sole discretion, and charge to Terminal Owner the cost incurred by Customer thereby, which Terminal Owner will pay promptly upon invoice therefor, (b) deduct or withhold the costs and expenses incurred from amounts otherwise due and owing by Customer to Terminal Owner and/or (c) may, without further notice, exercise its remedies under this Agreement for default, in accordance with Article 8 hereof.

6.5 Permits. Terminal Owner shall obtain and maintain in force, and ensure that each Terminal Owner Party obtains and maintains in force (as necessary), all Permits including the Regulatory Approvals. If Customer is required to obtain any Permit that Applicable Law requires to be issued in the name of Terminal Owner or another Terminal Owner Party, Terminal Owner shall provide all reasonable assistance to Customer in connection with Customer's efforts to obtain and maintain such Permit, including by signing and submitting any applications or other documentation required to be in Terminal Owner's or another Terminal Owner Party's name.

ARTICLE 7
TITLE AND RISK OF LOSS; PRODUCT LOSS; DEMURRAGE

7.1 Title; Custody and Control. Customer (or its customer, as the case may be) shall retain title to all Product delivered by it to the Terminal, and Terminal Owner acknowledges that it has no title to or interest in the Product. Care, custody and control of (and risk of loss for) all such Product shall pass to Terminal Owner at the time that such Product passes through the Meter at the outlet flange of the applicable truck or pipeline delivering such Product into the Terminal (the "Receipt Point") and shall remain with Terminal Owner until the railcar receiving such Product from the Terminal is no longer located at the Terminal and such railcar is removed from the Terminal by the applicable rail carrier. Title to Product shall not transfer to Terminal Owner by reason of the performance of the Services. For the avoidance of doubt, Customer Terminal Modifications are considered part of the Terminal for purposes of determining the Receipt Point and other purposes of this Agreement, subject to Section 2.7.

7.2 Loss Allowance; Product Degradation. Customer acknowledges that minor losses (shrinkage) in the handling of crude oil is a normal part of the transloading process and, as a result, minor losses of crude oil related to the unloading and loading of such commodity shall be considered negligible if within the Loss Allowance (as hereinafter defined).

(a) Loss Allowance. If Customer Parties and/or Terminal Owner observe Product spillage or loss while transloading from trucks to railcars or from the pipeline to railcars, Customer Parties and Terminal Owner shall determine the volume of lost Product (as reported on the relevant spill report). Terminal Owner shall not be responsible for any loss of Product provided that such loss does not exceed one barrel per railcar (each a "Loss Allowance"). Terminal Owner shall be responsible for loss of Product that exceeds the Loss Allowance.

(b) Loss Credit. Customer shall not owe Terminal Owner any transloading fees for lost Product in excess of the Loss Allowance. In the event of losses in excess of the Loss Allowance, the loss above the Loss Allowance shall be settled and reflected as a credit (the "Loss Credit") to Customer on Terminal Owner's invoice for such Month in an amount equal to the lost barrels in excess of the Loss Allowance multiplied by the then crude oil barrel price of WTI Midland (ARGUS). While Terminal Owner has care, custody and control of the Product pursuant to Section 7.1, Terminal Owner shall be responsible for securing the Product and protecting the Product against loss (above any Loss Allowance) or theft, and any such loss or theft shall not be the basis of a Force Majeure claim by Terminal Owner under this Agreement. Terminal Owner shall indemnify and hold harmless the Customer Parties from and against any Liabilities arising out of, incident to, or in connection with (a) the loss of Product in excess of the Loss Allowance at the Terminal or otherwise due to the acts or omissions of Terminal Owner, or (b) any contamination, damage, degradation or improper transloading of Product at the Terminal; provided, however, that the limit of the indemnification shall be the Loss Credit given to Customer as provided in this Section.

7.3 Demurrage. Terminal Owner shall be responsible for demurrage, standby, delay and similar charges related to the Services incurred by Customer Parties provided under this Agreement for railcars and trucks if the applicable delay resulted from the acts or omissions of any of the Terminal Owner Parties.

7.4 No Security Interest. Unless Customer has defaulted in its payment obligations under this Agreement and such default is not cured, Terminal Owner, for itself and all Terminal Owner Parties, shall not create, incur or suffer to exist any pledge, security interest, lien, levy or other encumbrance of or upon any of the Product delivered to the Terminal or upon the Customer Terminal Modifications. If Terminal Owner does, it shall indemnify, defend and hold harmless the Customer Parties from and against any such pledge, security interest, lien, levy or other encumbrance. Unless Terminal Owner has defaulted in its obligations under this Agreement and such default is not cured, Customer shall not create, incur or suffer to exist any pledge, security interest, lien, levy or other encumbrance of or upon the Terminal (other than with respect to the Customer Terminal Modifications) in connection with this Agreement. If Customer does, it shall indemnify, defend and hold harmless the Terminal Owner from and against any such pledge, security interest, lien, levy or other encumbrance.

ARTICLE 8
TERM; REMEDIES

8.1 Term. Subject to early termination pursuant to this Article 8, the term of this Agreement shall commence on the Effective Date and shall continue until January 1, 2020 (the "Initial Term"). At Customer's election, the term may be renewed and extended for successive

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three (3) month periods (each such period, an "Extended Term") by written notice from Customer to Terminal Owner at least sixty (60) Days prior to the expiration of the Initial Term or any Extended Term, as applicable (such Initial Term and any Extended Term(s) are herein collectively, the "Term").

8.2 Termination Due to Failure of Conditions. This Agreement may be terminated at any time prior to the Target Terminal Operations Commencement Date by either Customer or Terminal Owner, by the terminating Party's written notice of termination to the other Party, if all conditions set forth below in this Section 8.2 to such terminating Party's obligations have not been fulfilled by the Target Terminal Operations Commencement Date (as it may be extended by the Parties in writing), unless the failure to so fulfill by such time is due to an uncured breach of this Agreement by the Party seeking to terminate.

(a) Conditions to Customer's Obligations. All obligations of Customer under this Agreement from and after the Terminal Operations Commencement Date are subject to the fulfillment, prior to or on the Target Terminal Operations Commencement Date, of each of the following conditions, any or all of which may be waived in whole or in part by Customer:

(i) Compliance with Representations, Warranties and Agreements. The representations and warranties made by Terminal Owner in this Agreement shall have been true and correct in all material respects as of the Effective Date and as of the Target Terminal Operations Commencement Date with the same force and effect as if such representations and warranties were made at and as of the Target Terminal Operations Commencement Date, except with respect to those representations and warranties specifically made as of an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date). Terminal Owner shall have performed or complied in all material respects with all material agreements, terms, covenants and conditions required by this Agreement to be performed or complied with by Terminal Owner prior to or at the Target Terminal Operations Commencement Date, including Terminal Owner's full cooperation with Customer during the Phase I Project, except as specifically provided to the contrary in this Agreement.

(ii) Necessary Company Actions. Terminal Owner shall have taken any and all requisite company actions and other steps and secured any other company approvals, necessary to authorize and consummate this Agreement and the transactions contemplated hereby.

(iii) Regulatory Approvals. The Regulatory Approvals shall have been obtained and are effective.

(iv) No Litigation. No action shall have been taken, and no statute, rule, regulation or order shall have been promulgated, enacted, entered or enforced by any Governmental Authority or by any court, including the entry of a preliminary or permanent injunction, that would make this Agreement or the transactions contemplated hereby illegal, invalid or unenforceable. No action or proceeding before any court or Governmental Authority or by any other Person, in each case, as a result of any Third Party action, shall be threatened, instituted or pending that would reasonably be expected to result in any of the consequences referred to in the preceding sentence.

(v) SPCC & HSE Compliance. Terminal Owner shall have in place an SPCC plan for the Terminal that is reasonably satisfactory to Customer Parties, and shall, upon request, provide to Customer and Customer Parties all HSE and related documentation and maintain practices necessary for Customer to obtain Customer Parties' approval of use of the Terminal.

(vi) Easement. The easement described in Section 2.5 hereof for Customer's benefit shall have been obtained by Target Terminal Operations Commencement Date .

(b) Conditions to Terminal Owner's Obligations. All obligations of Terminal Owner under this Agreement from and after the Terminal Operations Commencement Date are subject to the fulfillment, prior to or on the Target Terminal Operations Commencement Date, of each of the following conditions, any or all of which may be waived in whole or in part by Terminal Owner:

(i) Compliance with Representations, Warranties and Agreements. The representations and warranties made by Customer in this Agreement shall have been true and correct in all material respects as of the Effective Date and as of the Target Terminal Operations Commencement Date with the same force and effect as if such representations and warranties were made at and as of the Target Terminal Operations Commencement Date, except with respect to those representations and warranties specifically made as of an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date). Customer shall have performed or complied in all material respects with all material agreements, terms, covenants and conditions required by this Agreement to be performed or complied with by Customer prior to or at the Target Terminal Operations Commencement Date, including the Phase I Project, except as specifically provided to the contrary in this Agreement.

(ii) Necessary Company Actions. Customer shall have taken any and all requisite company actions and other steps and secured any other company approvals, necessary to authorize and consummate this Agreement and the transactions contemplated hereby.

(iii) Regulatory Approvals. The Regulatory Approvals shall have been obtained and are effective.

(iv) No Litigation. No action shall have been taken, and no statute, rule, regulation or order shall have been promulgated, enacted, entered or enforced by any Governmental Authority or by any court, including the entry of a preliminary or permanent injunction, that would make this Agreement or the transactions contemplated hereby illegal, invalid or unenforceable. No action or proceeding before any court or Governmental Authority or by any other Person, in each case, as a result of any Third Party action, shall be threatened, instituted or pending that would reasonably be expected to result in any of the consequences referred to in the preceding sentence.

8.3 Remedies for Default. Except as otherwise specifically provided for under the terms of this Agreement, if either Party fails to perform any of the representations, warranties, covenants or other obligations imposed on it by this Agreement in any material respect (the "Defaulting Party"), then the Party to whom the covenant or obligation was owed (the "Non-Defaulting Party") may (without waiving any other remedy for breach hereof, each of which is

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hereby reserved), notify in writing the Defaulting Party, stating specifically the nature of the default (the "Default Notice"). The Defaulting Party will have thirty (30) Days after receipt of the Default Notice (the "Cure Period") in which to (i) remedy the cause or causes stated in the Default Notice, (ii) provide adequate security satisfactory to Non-Defaulting Party to fully indemnify the Non-Defaulting Party for any and all consequences of the breach, or (iii) to dispute the claim of breach in good faith. If the Defaulting Party either cures the default or provides such adequate security within the Cure Period, then this Agreement shall remain in full force and effect. If the Defaulting Party fails to timely cure such default or to timely provide such adequate security, then, without prejudice to its other remedies under this Agreement, at law or in equity, the Non-Defaulting Party may suspend the performance of its obligations under this Agreement or terminate this Agreement immediately upon giving written notice of such suspension or termination to the Defaulting Party. In the event of any Terminal Owner uncured default, Customer (or its designee) may, at its option, without prejudice to its other remedies under this Agreement, at law or in equity, perform the Services by whatever method Customer reasonably deems expedient, and in such case, Terminal Owner shall be liable to Customer for Customer's reasonable direct damages and costs of cover and performing the Services, if applicable. The effective date of any termination of this Agreement under this Section 8.3 shall be the date established in the notice of such termination delivered by the Non-Defaulting Party exercising its termination right hereunder.

8.4 Termination for Extended Force Majeure. By written notice to the other Party, a Party shall have the right to terminate this Agreement prior to the end of the Term if the Parties are unable to fulfill the purposes of this Agreement due to Force Majeure for a period equal to or greater than (a) (60) consecutive Days or (b) sixty (60) Days in any one hundred and twenty (120) consecutive Day period. Following the giving of such notice, neither Party shall have any further obligations to the other Party under this Agreement (including, but not limited to, with respect to the Minimum Volume Commitment).

8.5 Effect of Termination. In the event of the termination of this Agreement pursuant to the provisions of Section 8.1, Section 8.2, Section 8.3 or Section 8.4, and except as provided in Section 8.3, no Party to this Agreement shall have any further liability or obligation under or in respect of this Agreement, except that the provisions of this Agreement that by their nature survive its termination (including property rights, indemnities, damage limitations, waivers, releases, warranties, Permits, confidentiality and governing law provisions) shall remain applicable and survive such termination and remain in force and effect; provided, however, that the termination of this Agreement shall not (a) relieve any Party from any expense, liability or obligation or remedy therefor that has accrued or attached prior to the date of such termination, nor (b) defeat or impair the right of any Party to pursue such relief as may otherwise be available to it on account of any breach of this Agreement or any of the representations, warranties, covenants or agreements contained in this Agreement by the other Party.

8.6 Specific Performance and Declaratory Judgments. Damages in the event of breach of this Agreement by a Party hereto may be difficult, if not impossible, to ascertain. Therefore, each Party, in addition to and without limiting any other remedy or right it may have, will have the right to seek a declaratory judgment and will have the right to an injunction or other equitable relief in any court of competent jurisdiction, enjoining any such breach, and enforcing specifically the terms and provisions hereof, and each of the Parties hereto hereby waives any and all defenses

it may have on the ground of lack of jurisdiction or competence of the court to grant such an injunction or other equitable relief. The existence of this right will not preclude any Party from pursuing any other rights and remedies at law or in equity that such Party may have.

8.7 Cumulative Remedies. Except as otherwise expressly stated in this Agreement, the remedies provided under this Agreement are cumulative and in addition to any other rights or remedies either Party may have now or that may subsequently be available at Applicable Law, in equity, by statute, in any other agreement between the Parties, or otherwise. Subject to the express limitations in Section 10.6 hereof, nothing contained in the Agreement shall preclude either Party, in its sole discretion, from (i) enforcing any or all of its rights or remedies against the other Party for any breach of this Agreement by that other Party or (ii) seeking any injunctive relief necessary to prevent the other Party from breaching its obligations under the Agreement or to compel the other Party to perform its obligations. No election of remedies shall be required or implied as a result of a Party's decision to avail itself of a remedy.

8.8 Reinstatement after Termination. If this Agreement is terminated (other than due to Customer's breach), and Terminal Owner plans to utilize or utilizes the Terminal for the purpose of providing services similar to the Services under this Agreement, then, Terminal Owner shall notify Customer in writing prior to the commencement of such services (an "Alternative Service Notice"), detailing the anticipated arrangement or contract ("Alternative Service"). Any such arrangement or contract for Alternative Service by Terminal Owner shall only be permitted if made expressly subject to Customer's rights under this Section 8.8. Customer shall have thirty (30) Days following receipt of an Alternative Service Notice to elect whether to reinstate this Agreement under an Extended Term to commence on the date set forth in such Customer election (to be a date no later than sixty (60) Days following the date of such election). Failure by Customer to respond within such time period shall be deemed an election not to reinstate this Agreement; provided, however that at the expiration of such Alternative Service, Customer shall have the right to reinstate this Agreement. If Customer elects to reinstate this Agreement, the arrangement that is the subject of the Alternative Service Notice shall not be permitted and shall be cancelled promptly, and this Agreement shall be reinstated in accordance with its terms. Any reinstatement of this Agreement would be subject to the Customer's rights under this Section 8.8.

ARTICLE 9
ASSIGNMENT AND TRANSFER

9.1 Assignment.

(a) Except as specifically otherwise provided in this Agreement, and subject to Section 9.2 and Section 9.3, no Party shall have the right to assign its rights and obligations under this Agreement (in whole or in part) to another Person except with the prior consent of the other Party, which consent may not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, a Party may assign its rights and obligations under this Agreement to an Affiliate of such Party without the consent of the other Party; *provided* that (i) such Person assumes in writing the obligations of the assigning Party under this Agreement reasonably acceptable to the non-assigning Party, (ii) such assignment is made subject to this Agreement, and (iii) the assigning Party shall not be released from any of its obligations under this Agreement without the consent of the non-assigning Party. Any assignment in violation of this Section 9.1 shall be void *ab initio*.

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(b) Except as provided in (a) above, nothing in this Section 9.1 shall prevent or restrict Customer's members or owners from transferring their respective interests (whether equity or otherwise and whether in whole or in part) in Customer without Terminal Owner's prior consent, and nothing in this Section 9.1 shall prevent or restrict Terminal Owner's members or owners from transferring their respective interests (whether equity or otherwise and whether in whole or in part) in Terminal Owner without Customer's prior consent. However, if a change of Control of a Party gives rise to a reasonable basis for insecurity on the part of the other Party, such change of Control may be the basis for a request of adequate assurance of performance. Each Party shall have the right without the prior consent of the other Party to (i) mortgage, pledge, encumber or otherwise impress a lien or security interest upon its rights and interest in and to this Agreement, and (ii) make a transfer pursuant to any security interest arrangement described in (i) above, including any judicial or non-judicial foreclosure and any assignment from the holder of such security interest to another Person; provided, in each case, such arrangement or action shall only be permitted if it is expressly subject to and subordinated to the terms of this Agreement.

9.2 Right of First Offer (ROFR).

(a) This Section 9.2 shall apply to any sale, assignment, transfer or disposition of the Terminal or any of the Terminal assets in (i) a singular transaction separate and apart from other non-Terminal assets or interests or (ii) a transaction where the Terminal or such Terminal assets comprise more than fifty percent (50%) of the aggregate value of such transaction (each, a "Subsequent Transfer") by Terminal Owner to any Person that is not an Affiliate of Terminal Owner from the Effective Date until the date that is five (5) years following the end of the Term (such period, the "ROFR Period"); *provided* that any sale, assignment, transfer or disposition to an Affiliate of Terminal Owner shall only be made expressly subject to the restriction in this Section 9.2 with such Affiliate agreeing in writing to be bound by such restriction and *provided further* that a Subsequent Transfer includes those sales, assignments, transfers or dispositions for which a contractual agreement was executed within the ROFR Period, even if such transfer is not consummated until after the ROFR Period.

(b) Once the final terms and conditions of a Subsequent Transfer have been fully negotiated, Terminal Owner shall give the Customer a written notice (the "ROFR Notice") stating the assets to be transferred (the "Subsequently Transferred Interest"), and all such final terms and conditions as are relevant to such Subsequent Transfer, together with a copy of all instruments or relevant portions of instruments establishing such terms and conditions. Customer shall have the right, but not the obligation, to elect, in its sole discretion, to acquire such Subsequently Transferred Interest on the terms and conditions set forth in the ROFR Notice. The ROFR Notice shall constitute a binding offer (the "ROFR Offer") by Terminal Owner to sell, assign, transfer and dispose to Customer the Subsequently Transferred Interest at the price and upon the terms specified in the ROFR Notice and such offer shall be irrevocable for thirty (30) Days following receipt of the ROFR Offer by Customer. In the event that the sale price to be paid for the Subsequently Transferred Interest by a proposed bona fide third-party purchaser consists of or includes properties or assets other than cash, the target price to be paid by Customer shall be equal to the fair market value of such non-cash consideration, as reasonably determined by the Parties, plus the amount of any cash consideration. If the Parties are unable to agree on the fair market value of such non-cash consideration, then the fair market value thereof shall be determined by an independent third-party appraisal, the cost of which will be shared equally by the Parties

challenging the proposed fair market value. The independent third-party appraiser who conducts such appraisal shall be selected by the mutual agreement of the Parties. Customer (or its designated Affiliate) may accept such ROFR Offer and acquire all of the Subsequently Transferred Interest by giving written notice of the same to Terminal Owner within such thirty (30) Day period. The failure by Customer to so notify Terminal Owner within such thirty (30) Day period shall be deemed an election by Customer not to accept such ROFR Offer.

(c) If Customer accepts the ROFR Offer, then Terminal Owner and Customer shall cooperate to consummate the Subsequent Transfer to Customer (or its designated Affiliate) as promptly as practicable following such acceptance.

(d) If Customer does not accept the ROFR Offer, then Terminal Owner may transfer all, but not less than all, of the Subsequently Transferred Interest at any time within one hundred eighty (180) Days following the end of the thirty (30) Day period that Customer had to accept the ROFR Offer. Any such Subsequent Transfer shall be (i) at a price not less than the price set forth in the ROFR Notice and (ii) upon such other terms and conditions not, in the aggregate, more favorable to the acquiring party than those specified in the ROFR Notice. If Terminal Owner does not consummate such Subsequent Transfer on such terms within such one hundred eighty (180) Day period, the Subsequent Transfer shall again become subject to the right of first offer set forth in this Section 9.2.

(e) If Terminal Owner structures a Subsequent Transfer as a merger or sale of equity interests, such Subsequent Transfer shall be subject to the restrictions in this Section 9.2; *provided* that the restrictions contained in this Section 9.2 shall not apply to any such indirect transfer that is (i) a transaction involving a merger or other business consolidation of Terminal Owner's ultimate parent entity with a Third Party or a public securities offering; or (ii) an acquisition with a Third Party in which the assets subject to such Subsequent Transfer were included in a divestiture package and the allocated value of such assets does not constitute more than twenty-five percent (25%) of the aggregate value of the acquisition.

9.3 Covenant Running with the Land. Any transfer of Terminal Owner's interests in the Terminal or any of the land on which the Terminal is located shall be subject to Customer's rights under this Agreement. This Agreement is (a) a covenant running with the Terminal and the land described on Exhibit A-2 hereto to the extent Terminal Owner is able to grant such a covenant with respect to the land, it being recognized that Terminal Owner is a lessee of the land and owns no fee interest in the land; and (b) binding on and enforceable by Customer against Terminal Owner and its successors and assigns and their respective right, title and interest in and to the Terminal and the land described on Exhibit A-2 hereto, and as a benefit to Customer, its successors and assigns. If Terminal Owner sells, transfers, conveys, assigns, grants or otherwise disposes of all or any interest in such Terminal or land, then any such sale, transfer, conveyance, assignment, or other disposition shall be expressly subject to this Agreement and expressly state as such in any instrument of conveyance. Terminal Owner hereby authorizes Customer to record a memorandum of this Agreement in the real property records of the relevant county where the Terminal is to be located. The Parties agree that until Customer provides notice to the contrary, all payment terms and pricing information shall remain confidential and be redacted from any filings in the real property records.

ARTICLE 10
INDEMNIFICATION; DAMAGES LIMITATION

10.1 Duty to Indemnify Customer Parties. To the fullest extent permitted by Applicable Law, subject to Section 10.12 and except as otherwise provided in this Agreement, TERMINAL OWNER HEREBY AGREES TO RELEASE, PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS CUSTOMER PARTIES from and against any and all Liabilities (inclusive of claims made by or Liabilities of a Third Party) for any (a) injury or death of persons, (b) damage, loss, or injury to any property, and (c) pollution or threat of pollution from the Terminal, in each case, directly or indirectly arising out of, incident to, or in connection with performing or failure to perform Terminal Owner's obligations under this Agreement, **EXCEPT TO THE EXTENT SUCH LIABILITIES ARISE OUT OF THE GROSS NEGLIGENCE, STRICT LIABILITY, WILLFUL MISCONDUCT, OR OTHER FAULT OR BREACH OF LEGAL DUTY BY ANY MEMBER OF CUSTOMER PARTIES.**

10.2 Duty to Indemnify Terminal Owner Parties. To the fullest extent permitted by Applicable Law, subject to Section 10.1 and except as otherwise provided in this Agreement, CUSTOMER HEREBY AGREES TO RELEASE, PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS TERMINAL OWNER PARTIES from and against any and all Liabilities (inclusive of claims made by or Liabilities of a Third Party) for any (a) injury or death of persons, (b) damage, loss, or injury to any property (excluding Product loss or damage), and (c) pollution or threat of pollution from the Terminal, in each case, directly or indirectly arising out of, incident to, or in connection with performing or failure to perform Customer's obligations under this Agreement, **EXCEPT TO THE EXTENT SUCH LIABILITIES ARISE OUT OF THE GROSS NEGLIGENCE, STRICT LIABILITY, WILLFUL MISCONDUCT, OR OTHER FAULT OR BREACH OF LEGAL DUTY BY ANY MEMBER OF TERMINAL OWNER PARTIES.**

10.3 Term of Indemnity. The provisions of this Article 10 and any other indemnification provisions set forth in this Agreement shall survive the termination or expiration of this Agreement.

10.4 Express Negligence. **THE RELEASE, PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS OBLIGATIONS PROVIDED FOR IN THIS AGREEMENT SHALL BE APPLICABLE WHETHER OR NOT THE LIABILITIES, LOSSES, COSTS, EXPENSES AND DAMAGES IN QUESTION AROSE OR RESULTED SOLELY OR IN PART FROM THE GROSS, SOLE, ACTIVE, PASSIVE, CONCURRENT OR COMPARATIVE NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT OR VIOLATION OF LAW OF OR BY ANY INDEMNIFIED PARTY. CUSTOMER AND TERMINAL OWNER ACKNOWLEDGE THAT THIS STATEMENT COMPLIES WITH THE EXPRESS NEGLIGENCE RULE AND IS "CONSPICUOUS."**

10.5 Notice and Defense. A party indemnified hereunder shall, as soon as practicable after receiving notice of any suit brought against it within this indemnity, furnish to the indemnifying party the full particulars within its knowledge thereof and shall render all reasonable assistance requested by the indemnifying party in the defense of any Liabilities. Each indemnified party shall have the right but not the duty to participate, at its own expense, with counsel of its

own selection, in the defense and/or settlement thereof without relieving the indemnifying party of any obligations hereunder; provided, however, the indemnifying party shall have control over the defense and settlement as long as the settlement does not impose any obligations on the indemnified party. Any claim for indemnification by a member of Customer or Terminal Owner's respective Group may only be brought by Customer or Terminal Owner, as applicable, on behalf of such member seeking indemnification.

10.6 No Consequential Damages. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NEITHER TERMINAL OWNER NOR CUSTOMER SHALL BE LIABLE TO THE OTHER OR ANY MEMBER OF THE OTHER'S GROUP, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY (AND THE OTHER PARTY'S GROUP), FOR ANY INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES, SPECIAL OR PUNITIVE DAMAGES, OR FOR LOST PROFITS, WHICH ARISE OUT OF OR RELATE TO THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF WHETHER IN CONTRACT, TORT OR OTHERWISE; PROVIDED, HOWEVER, THAT THE LIMITATION ON LIABILITY SET FORTH IN THIS SECTION 10.6 SHALL NOT LIMIT EITHER PARTY'S RESPECTIVE INDEMNITY OBLIGATIONS HEREUNDER THIS AGREEMENT FOR ANY LIABILITIES OCCASIONED BY THIRD PARTY CLAIMS, AS EXPRESSLY PROVIDED IN THIS AGREEMENT. FOR THE AVOIDANCE OF DOUBT, THE PARTIES AGREE THAT RECOVERY OF THE ACTUAL DIRECT DAMAGES DESCRIBED IN SECTION 6.4 OR SECTION 8.3 SHALL NOT BE PRECLUDED BY THIS SECTION 10.6.**

ARTICLE 11
INSURANCE

11.1 Each Party shall procure and maintain, at its sole expense, policies of insurance (with solvent insurers rated by A.M. Best Company A-VI or higher) set forth in Exhibit D. The insurance provisions of this Agreement, including the minimum required limits of Exhibit D are intended to assure that certain minimum standards of insurance protection are afforded and the specifications herein of any amount or amounts shall be construed to support but not in any way to limit Parties' liabilities and indemnity obligations as specified elsewhere in this Agreement. All required insurance policies shall be endorsed to cover contractual liabilities insuring the indemnifications contained in this Agreement.

11.2 In addition to the insurance required under Section 11.1, Terminal Owner shall procure and maintain at its sole expense a pollution legal liability ("PLL") policy providing coverage for remediation of environmental contamination at the Terminal, for the costs of responding to a spill or release of oil or hazardous materials at or from the Terminal, and for personal injury and property damage claims arising from environmental conditions associated with Terminal operations. The PLL policy shall be in a form reasonably acceptable to Customer, shall name the Customer and its Group as an additional insured, and shall be extended and renewed as necessary to provide coverage that extends for a minimum of two (2) years following the Term, as it may be extended. The PLL policy shall provide for a self-insured retention of not more than $250,000 and for policy limits of not less than $5,000,000.

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11.3 All insurance carried by either Party (which insurance is in any way related to the Services), whether or not required by this Agreement, shall, but only to the extent of the risk and liabilities assumed by such Party under this Agreement:

(a) Name the other Party's Group as additional insured (except for worker's compensation/employer's liability or professional liability policies (with such additional insured coverage not being restricted to the sole or concurrent negligence of the additional insured and not being restricted to (i) "ongoing operations," (ii) coverage for vicarious liability, or (iii) circumstances in which the named insured is partially negligent);

(b) Waive subrogation as to the other Party's Group; and

(c) Be primary and non-contributory to any insurance of the other Party's Group.

11.4 Although the scope of each Party's insurance obligations is defined by reference to the risks and liabilities assumed under this Agreement, the insurance provisions of this Agreement are, to the extent required to maximize their effectiveness, (a) separately and independently enforceable, and (b) distinct and severable from, and shall not in any way limit any release, protect, defense, indemnity or hold harmless obligations in this Agreement.

11.5 The insolvency, liquidation, bankruptcy, or failure of any insurance company providing insurance for either Party, or failure of any such insurance company to pay claims accruing, shall not be considered a waiver of, nor shall it excuse such Party from complying with, any of the provisions of this Agreement.

11.6 Each Party will promptly provide oral and written notice to the other Party of any accidents or occurrences resulting in injuries to persons or property in any way arising out of or related to the Services and/or occurring on or near the Terminal. For the purpose of this subsection, "promptly" requires oral notification to the other Party within two (2) hours of when the incident occurred.

11.7 Unless specific, prior, written approval is obtained from the other Party, a Party may not self-insure any of its obligations under this Agreement. Where approved, neither Party's decision to self-insure shall in any way act as a prejudice against the other Party and its Group. All deductibles, self-insurance coverage or retentions shall be treated as coverage under an insurance policy, and each Party and its Group will have the same benefits and protection thereunder as though the self-insured Party had secured a policy from a separate insurer.

ARTICLE 12
AUDIT; INSPECTION

12.1 Audits. Customer will have the right, upon reasonable notice, to review for compliance with the terms of this Agreement, (a) the movement of Customer's or Customer's third party customers' Product into, through and out of the Terminal, (b) the relevant portion of all books, records, and information kept by or on behalf of Terminal Owner that reasonably relate to Customer's rights and obligations under this Agreement, and (c) any fees and/or costs charged by Terminal Owner pursuant to this Agreement, except for information subject to attorney-client privilege or confidential information associated with the Terminal's personnel. Terminal Owner

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shall retain all such books and records for a period of four (4) years from the date the applicable Services are rendered hereunder, or such greater period as required by Applicable Law. Customer may audit such books and records at Terminal Owner's locations where such books and records are stored. Any such audit will be at Customer's expense and will take place on Business Days and during normal business hours. Any and all information, audits, inspections and observations made by Customer under this Section 12.1 shall: (i) be held in confidence, Customer exercising a degree of care not less than the care used by Customer to protect its own proprietary or confidential information that it does not wish to disclose; (ii) be restricted solely to those with a need to know and not to disclose it to any other person, those persons notified of their obligations with respect to the information; and (iii) be used only in connection with the operations that relate to this Agreement. Terminal Owner shall allow Customer's external auditors access to the Terminal, and shall provide any information or explanations requested by such external auditors that Customer would otherwise have access to pursuant to the terms and conditions of this Agreement.

ARTICLE 13
TAXES

13.1 Customer's Obligations. Customer shall pay, or cause to be paid, and shall indemnify and defend Terminal Owner from and against, all Taxes imposed by Applicable Law on Customer with respect to the Product Throughput under this Agreement. Notwithstanding anything in this Agreement to the contrary, Customer shall not be responsible for or be obligated to indemnify or defend Terminal Owner with respect to (i) all ad valorem, property or similar Taxes imposed by Applicable Law on Terminal Owner with respect to its ownership of the Terminal, (ii) any Income Taxes imposed on Terminal Owner, or (iii) any employment, payroll or similar Taxes imposed with respect to Terminal Owner's employees. Customer shall be responsible for paying any sales, use or similar Taxes imposed on the performance of the Services under this Agreement whether collected by Terminal Owner or otherwise.

13.2 Terminal Owner's Obligations. Terminal Owner shall pay, or cause to be paid, and shall indemnify and defend Customer from and against, (i) all ad valorem, property or similar Taxes imposed by Applicable Law on Terminal Owner with respect to its ownership of the Terminal, (ii) any Income Taxes imposed on Terminal Owner, and (iii) any employment, payroll or similar Taxes imposed with respect to Terminal Owner's employees. Notwithstanding anything in this Agreement to the contrary, Terminal Owner shall not be responsible for or be obligated to indemnify or defend Customer with respect to (i) any Income Taxes imposed on Customer, (ii) any employment, payroll or similar Taxes imposed with respect to Customer's employees, or (iii) any sales, use or similar Taxes imposed on the performance of the Services under this Agreement.

ARTICLE 14
FORCE MAJEURE

14.1 Declaration of Force Majeure Event. Except for Customer's obligation to pay Terminal Owner the monetary amounts provided for in Article 4 of this Agreement for Product actually Throughput at the Terminal, neither Party shall be liable to the other for any failure, delay, or omission in the performance of its obligations under this Agreement, or be liable for damages, for so long as and to the extent such failure, delay, omission, or damage arises directly or indirectly from a Force Majeure occurrence; however, the Term of this Agreement shall not be extended by

such period of Force Majeure delay. It is further agreed that the obligations of the Parties that are affected by such Force Majeure (except as provided above), shall be suspended without liability for breach of this Agreement during the continuance of the Force Majeure but for no longer period. The Party affected by Force Majeure shall use commercially reasonable efforts to remedy the Force Majeure condition with all reasonable dispatch, shall give notice to the other Party of the termination of the Force Majeure, and shall resume performance of any suspended obligation promptly after termination of such Force Majeure.

14.2 Force Majeure. A "Force Majeure Event" or "Force Majeure" means any cause not within the reasonable control of a Party claiming suspension, and that could not have been avoided or overcome by the exercise of due diligence by such Party, and includes, but is not limited to, the following events to the extent consistent with the definition above: an act of God; fire; flood; hurricane; explosion; accident; act of the public enemy; riot; sabotage; epidemic; quarantine restriction; strike, lockout, or other industrial disturbance or dispute or difference with workers; labor shortage; civil disturbance; inability to secure or delays in obtaining labor, materials, supplies, easements, surface leases, or rights-of-way, including inability to secure materials by reason of allocations promulgated by an authorized Governmental Authority, so long as such Party has used commercially reasonable efforts to obtain the same; compliance with a request, recommendation, act, rule, regulation or order of a Governmental Authority having or purporting to have jurisdiction; delays or failures by a Governmental Authority to grant Permits applicable to the Terminal so long as the Party experiencing the occurrence has used its commercially reasonable efforts to make any required filings with such Governmental Authority relating to such Permits; unanticipated or emergency shutdowns or turnarounds for maintenance and repair; freezing of wells or delivery facilities, partial or entire failure of wells, and other events beyond the reasonable control of a Party claiming suspension that affect the timing of production or production levels; the plugging of equipment, lines of pipe or other facilities; destruction, breakage and/or accidents to facilities including machinery, lines of pipe, wells or storage caverns or facilities; the necessity for making repairs to or alterations of pipelines; the unavailability, interruption, delay or curtailment of Product transportation services; or, any other cause or causes beyond the reasonable control of the Party claiming suspension, whether similar or not to those listed. The settlement of strikes or differences with workers shall be entirely within the discretion of the Party claiming suspension.

14.3 Notice of Force Majeure Event. If either Party finds it necessary to declare Force Majeure under this Agreement, then as soon as reasonably possible after the occurrence of Force Majeure, such Party shall immediately notify the other Party, first by telephone or e-mail, and then promptly by mail or overnight express courier, giving reasonably full details of such occurrence and its estimated duration. The cause of such Force Majeure occurrence shall, only if the affected Party deems it reasonable and economic, be remedied with all reasonable dispatch and the other Party shall be notified either of the date so remedied or the decision not to remedy as soon as practicable.

ARTICLE 15
GENERAL PROVISIONS

15.1 Certain Representations and Warranties. Each Party represents and warrants, as of the Effective Date, that (a) it is duly organized and validly existing under the laws of the

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jurisdiction in which it is incorporated or formed; (b) it has all necessary power and authority to enter into and perform its obligations under this Agreement; (c) other than the Regulatory Approvals, which are required to be pursued under this Agreement, such Party is duly qualified or licensed to do business in all jurisdictions wherein the nature of its business and operations or the character of the properties owned or leased by it make such qualification or licensing necessary and where failure to be so qualified or licensed would impair its ability to perform its obligations under this Agreement or would otherwise have a material adverse effect on the other Party; (d) its execution, delivery and performance of this Agreement has been duly authorized by all necessary action on its part and on the part of its Affiliates (as the case may require); (e) its execution, delivery and (provided the required Regulatory Approvals are obtained) performance of this Agreement and the consummation of the transactions contemplated hereby will not conflict with, or result, by itself or with the giving of notice or the passage of time, in any violation of or default under, any provision of the articles of incorporation or bylaws of such Party or any material mortgage, indenture, lease, agreement or other instrument or any permit, concession, grant, franchise, license, contract, authorization, judgment, order, decree, writ, injunction, statute, law, ordinance, rule or regulation applicable to such Party or its properties; and (f) no consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority or other Third Party is required in connection with the execution and delivery of this Agreement by such Party or the consummation by such Party of the transactions contemplated hereby, except for filings required in order to obtain the required Regulatory Approvals, as described in Section 2.1.

15.2 Independent Contractor. This Agreement shall not be construed as creating a partnership, joint venture or establish a principal and agent relationship or any other similar relationship between Customer and Terminal Owner with respect to the subject matter hereof. It is understood and agreed that the relationship created by this Agreement is that of principal and independent operator and not that of principal and agent, master and servant, or employer and employee; and Terminal Owner and its employees and contractors shall not be the employees of Customer for any purpose whatsoever. Customer shall designate the work and services it desires to be performed under this Agreement and the ultimate results to be obtained, but shall defer to Terminal Owner as to the methods and details of performance in accordance with the terms and conditions of this Agreement.

15.3 Notices. Any notice, request, demand or communication required to be given by either Party under this Agreement shall be in writing. It may be delivered or sent to the attention of the contact name and address specified in this Agreement by courier service (which is deemed served when delivered) or fax (which is deemed served on the Business Day it was received with written confirmation made thereof) or by certified mail or its equivalent, postage prepaid, return receipt requested or postage prepaid United States Express Mail or its equivalent (which is deemed served the second Business Day after posting). Unless otherwise provided in this Agreement, Email notice is not sufficient. A Party may change the individual and/or address for notices by giving the other Party notice of such change in the manner set forth above.

If to Terminal Owner:

Maalt, LP
4413 Carey Street

vdB

Fort Worth, Texas 76119
Attention: Marty Robertson

With a copy to:

James Lanter
James Lanter, PC
560 N. Walnut Creek, Suite 120
Mansfield, Texas 76063

If to Customer:

Sequitur Permian, LLC
2050 West Sam Houston Parkway S, Suite 1850
Houston, Texas 77042
Attention: CFO

With a copy to:

Sequitur Permian, LLC
2050 West Sam Houston Parkway S, Suite 1850
Houston, Texas 77042
Attention: General Counsel

15.4 Compliance with Policies and Laws.

(a) HSE Policies. Terminal Owner shall establish, maintain and implement written health, safety and environmental ("HSE") policies, programs and protection and compliance systems covering operations conducted at the Terminal that conform in all material respects with generally accepted industry best practices (as amended from time to time, an "HSE Program"). Terminal Owner shall (a) monitor on a periodic basis its HSE performance and record performance data, (b) conduct an annual review of its HSE Program, and (c) correct any performance deficiencies identified and update the HSE Program as appropriate. Terminal Owner shall notify Customer as soon as reasonably practicable upon becoming aware of any HSE incident or any other material incidents, conditions or HSE matters that could reasonably be expected to adversely affect Terminal operations or Customer. Without limiting the foregoing, Terminal Owner shall maintain currently effective Spill Prevention, Control and Countermeasure ("SPCC") plans and programs, and shall promptly respond to any spill at the Terminal in a manner that (x) is consistent with the SPCC plans, (y) complies with Applicable Law, and (z) seeks to minimize, correct and eliminate any harm to the environment or human health and safety. Terminal Owner shall also comply with and shall cause its subcontractors and their respective employees and consultants to comply with all applicable Customer rules and regulations (as revised from time to time) known to Terminal Owner that relate to the safety and security of persons and property, protection of the environment, housekeeping and work hours.

rdb

(b) Compliance with Laws. Terminal Owner agrees that it will comply with, and shall cause its subcontractors and their respective employees, to comply with, all federal, state, and local employment laws and regulations having jurisdiction over the Services, and all other Applicable Law governing the employment relationship and practices and/or protection of the environment. Terminal Owner represents that each of its employees, agents, contractors, subcontractors involved on Terminal Owner's behalf in carrying out the Services is qualified to work pursuant to written documentation from the appropriate regulatory authorities of the United States.

15.5 Applicable Law. This Agreement is subject to all Applicable Law. If this Agreement or any provision of it is found contrary to or in conflict with any such Applicable Law, this Agreement shall be deemed modified to the extent necessary to comply with same.

15.6 Successors. The provisions of this entire Agreement shall be binding upon the respective successors and permitted assigns of the Parties.

15.7 No Third-Party Beneficiaries. This Agreement is entered into for the benefit of the Parties only, and except as may be specifically set forth herein, including the indemnity provisions, no other Person shall be entitled to enforce any provision hereof or otherwise be a third-party beneficiary hereunder.

15.8 Rebates Prohibited. Neither Party will pay any commission, fee, or rebate to an employee of the other Party or favor an employee of the other Party with any gift or entertainment of significant value.

15.9 No Brokers' Fee. Neither Party has incurred any liability to any financial advisor, broker or finder for any financial advisory, brokerage, finder's or similar fee or commission in connection with the transactions contemplated by this Agreement for which either Party or any of its Affiliates could be liable.

15.10 Waivers; Cumulative Rights. No term, covenant, condition, benefit or right accruing to a Party under this Agreement (or any amendment) shall be deemed to be waived unless the waiver is reduced to writing, expressly refers to this Agreement, and is signed by a duly authorized representative of such Party waiving compliance. No failure or delay in exercising any right hereunder, and no course of conduct or dealing, shall operate as a waiver of any provision of this Agreement or affect in any way the right of such Party at a later time to enforce the performance of such provision. No waiver by any Party of any condition, or any breach of any term or covenant contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term or covenant. The rights of Parties under this Agreement shall be cumulative, and the exercise or partial exercise of any such right shall not preclude the exercise of any other right.

15.11 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO ITS CHOICE OF LAW PROVISIONS THAT WOULD REQUIRE APPLICATION OF THE SUBSTANTIVE LAWS OF ANOTHER JURISDICTION. TO THE EXTENT PERMITTED BY APPLICABLE LAW,

vdB

THE PARTIES WAIVE ALL RIGHTS TO A TRIAL BY JURY IN CONNECTION WITH ANY ACTION OR LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY DISPUTE CONCERNING OR INTERPRETATION OF THE AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. THE PARTIES SPECIFICALLY ACKNOWLEDGE THAT THIS WAIVER IS MADE KNOWINGLY AND VOLUNTARILY AFTER AN ADEQUATE OPPORTUNITY TO NEGOTIATE THE TERMS.

15.12 Captions. The captions used in this Agreement are for convenience only and shall in no way define, limit or describe the scope or intent of this Agreement or any part thereof.

15.13 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be partially or completely unenforceable, this Agreement shall be deemed to be amended partially or completely to the extent necessary to make such provision enforceable, and the remaining provisions shall remain in full force and effect.

15.14 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and part of one and the same document.

15.15 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the Parties regarding the subject matters set forth herein. No variation, modification or change of the Agreement shall be binding upon either Party unless contained in a written instrument executed by a duly authorized representative of each of the Parties.

15.16 Survival. After termination or expiration of this Agreement, the provisions hereof that by their sense and context are intended to survive the expiration or other termination of the Agreement because they reasonably require some action or forbearance after termination or expiration (including, without limitation, the reinstatement, indemnity, hold harmless and similar obligations under this Agreement) shall so survive.

15.17 Publicity. Neither Party may make a press release or other public announcement concerning this Agreement, except to the extent that such press release or other public announcement is required by Applicable Law or rules and regulation of any governmental agency or any stock exchange, in which case, the disclosing Party shall prior to such disclosure (a) notify the other Party of the reasons or basis for such disclosure, (b) make the proposed disclosure available to other Party and (c) obtain the written consent of other Party with respect to the form of such proposed disclosure, which consent shall not be unreasonably withheld.

15.18 Construction. The following rules of construction will govern the interpretation of this Agreement: (a) "years" will mean calendar years unless otherwise defined; (b) "including" does not limit the preceding word or phrase; (c) section titles or headings do not affect interpretation; (d) "hereof," "herein," and "hereunder" and words of similar meaning refer to this Agreement as a whole and not to any particular provision of this Agreement; (e) reference to any agreement (including this Agreement), document or instrument means such agreement, document, or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms of this Agreement; (f) no rule of construction interpreting this Agreement against the drafter will apply; (g) references to Sections and Exhibits refer to Sections

and Exhibits of this Agreement unless otherwise indicated; (h) references to laws refer to such laws as they may be amended from time to time, and references to particular provisions of a law include any corresponding provisions of any succeeding law; (i) references to money refer to legal currency of the United States, unless otherwise specified; (j) the word "or" is not exclusive; (k) references to any Person includes references to such Persons successors and permitted assigns; and (l) the Exhibits attached hereto are hereby incorporated by reference and included as part of this Agreement.

15.19 Attorneys' Fees. In the event that any suit or action is instituted under or in relation to this Agreement, including without limitation, to enforce any provision in this Agreement, the prevailing Party in such dispute shall be entitled to recover from the losing Party all fees, costs and expenses of enforcing any right of such prevailing Party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

15.20 Confidentiality. All non-public, confidential data and information exchanged by the Parties in connection with or under this Agreement and all pricing terms shall be maintained in strict and absolute confidence, and no Party receiving such data, information or terms ("Receiving Party") shall disclose, without the prior consent of the other Party, any such non-public, confidential data, information or pricing terms unless the release thereof is to Receiving Party's Affiliates, and the employees, owners, officers, directors, consultants, attorneys, agents, or representatives of Receiving Party and its Affiliates (collectively, "Representatives") on a clear need-to-know basis and subject to the confidentiality restrictions hereof, required by Applicable Law (including any requirement associated with an elective filing with a Governmental Authority) or the rules or regulations of any stock exchange on which any securities of the Parties or any Affiliates thereof are traded. Nothing in this Agreement shall prohibit the Parties from disclosing whatever information in such manner as may be required by Applicable Law; nor shall any Party be prohibited by the terms hereof from disclosing information acquired under this Agreement to any Representative or any financial institution or investors providing or proposing financing to a Party or to any Person proposing to purchase the equity in any Party or the assets owned by any Party. Notwithstanding the foregoing, the restrictions in this Section will not apply to data or information that (a) is in the possession of the Person receiving such information prior to disclosure by the other Party, (b) is or becomes known to the public other than as a result of a breach of this Agreement or (c) becomes available to a Party a non-confidential basis from a source other than the other Party, provided that such source is not bound by a confidentiality agreement with, or other fiduciary obligations of confidentiality to, the other Party. This Section will survive any termination of this Agreement for a period of twenty (24) Months from the end of the year in which the date of such termination occurred.

[Signature Page Follows]

vdB

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers effective for all purposes as of the Effective Date.

Terminal Owner:

Maalt, LP

By: _____
Name: Marty Roberson
Title: President + COO

ATBA

Customer:

Sequitur Permian, LLC

By: _____
Name: Michiel C. vd Bold
Title: President + COO

Exhibit A-1

Rail Terminal Facility

Terminal Facility Address:
Barnhart Loading Facility
44485 W. Hwy 67
Barnhart TX, 76930

Facility description:

Approximately 10,065 ft. of track within a leased (University Lands) site being approximately 2.8 Miles West of the town of Barnhart, being in Irion County, Texas. Rail facility includes #11 (115#) switches (2-mainline & 3-facility) to allow rail extension/access to an existing Texas Pacifico mainline track. Hardwood ties 8' x 6' with #115 lb. new rail with 3 flop over derails and concrete Xing panels. The facility accommodates 6,913 feet of track accessible for crude transloading operations, and includes access roadway from State Highway 67 and all associated drainage/dirt work required on the site. The site has 24/7 capability with all-weather roads and lighting.

Road Access:
Common use, Multi-Tenant Road to the Crude oil off load Terminal.
Hwy 67 access- turn-lanes/ acceleration lanes.

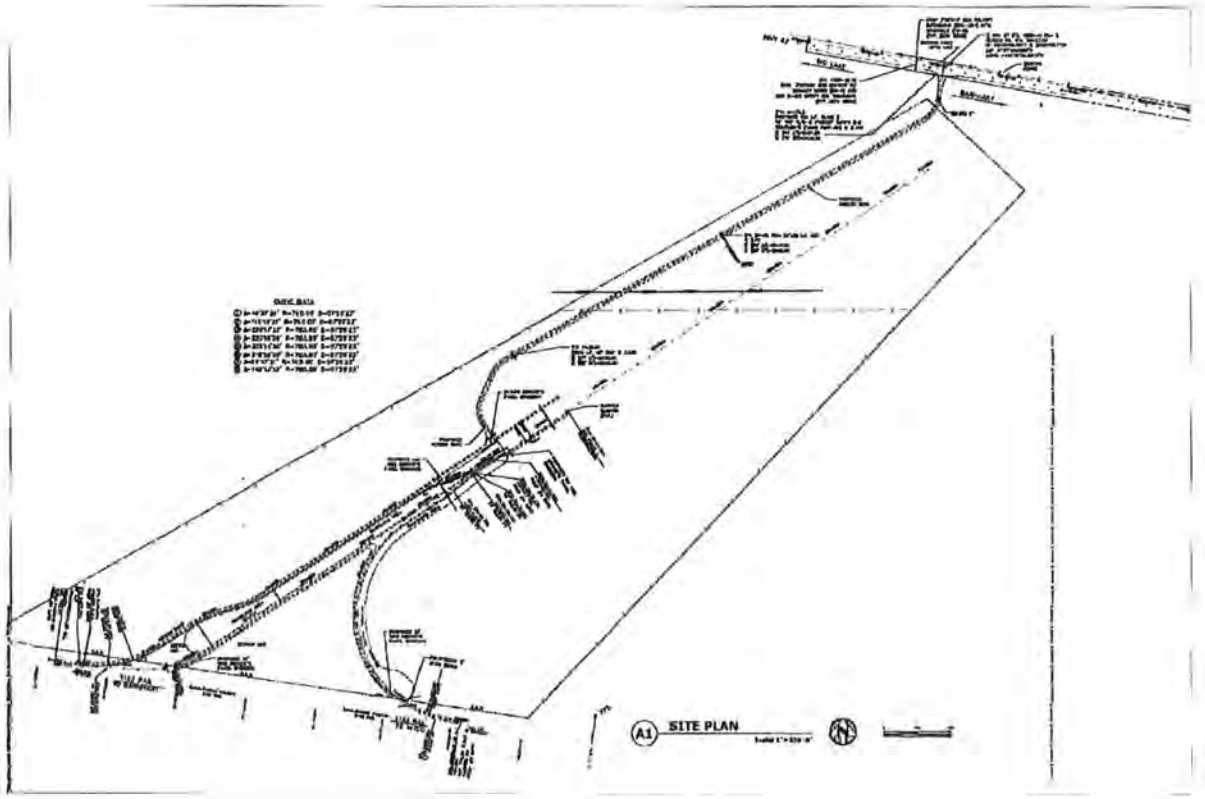


Exhibit A-1

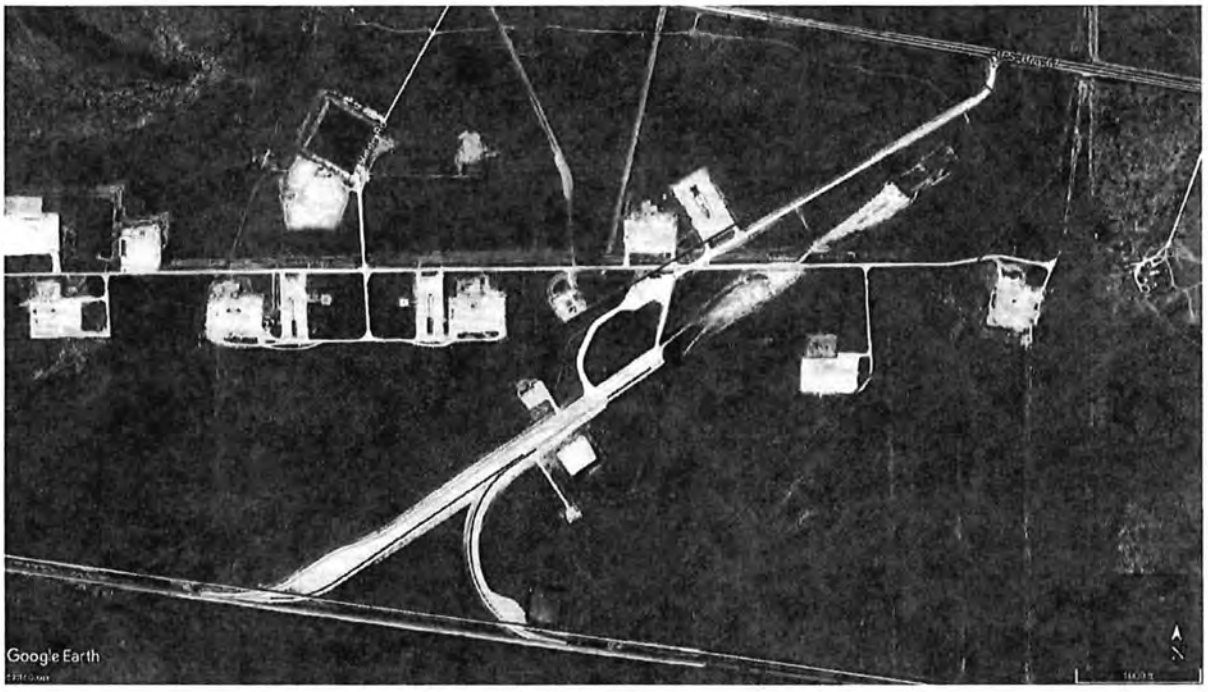


Exhibit A-1

Exhibit A-2

Land

Land description:

269.610 acres of land, more or less, lying in Sections 9, 10, 11, & 12, Block 43, University Lands, Irion County, Texas, as more fully shown below:

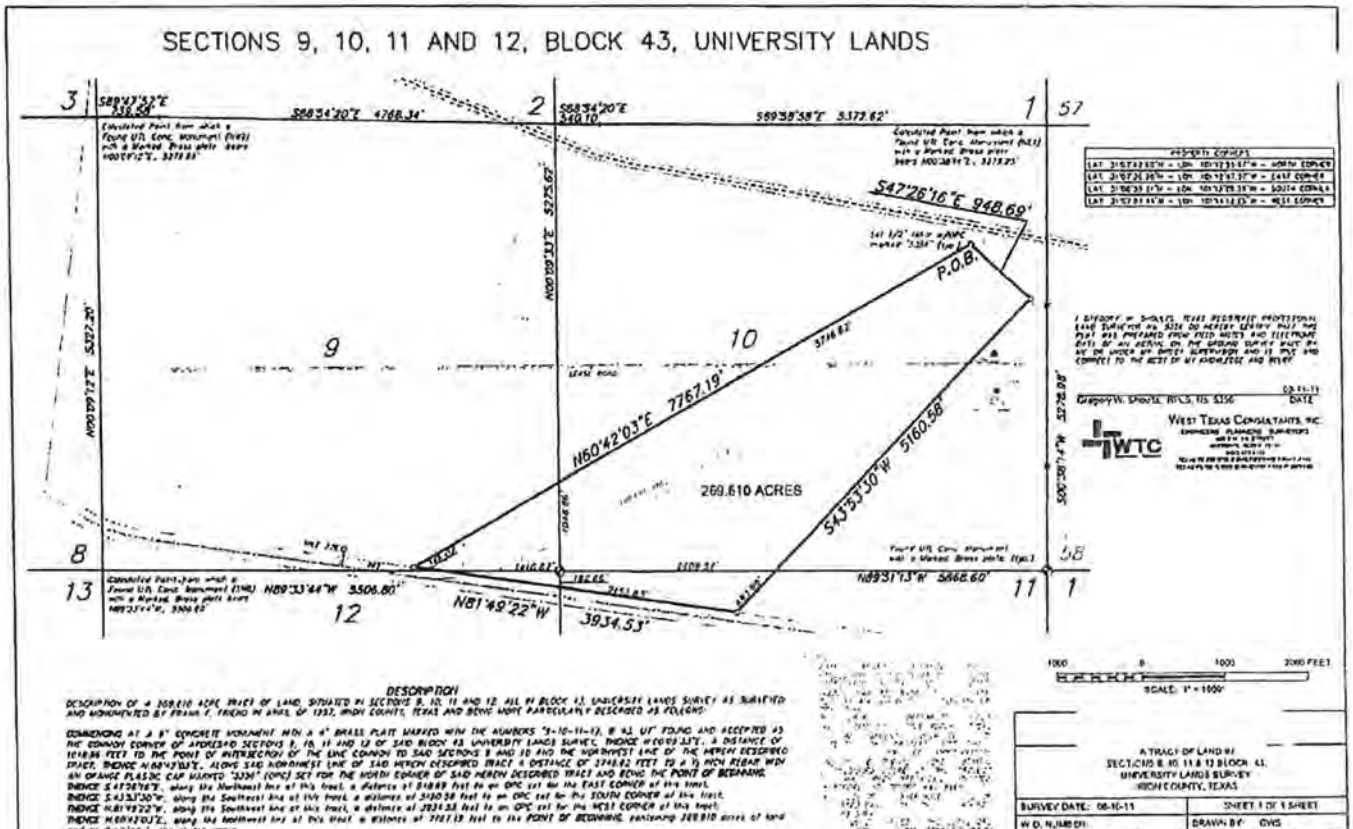


Exhibit A-1

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Exhibit B

Phase I Project

Customer will outfit the Terminal with the following items:

- Vent line for connection to trucks and railcars
- Obtain easement from University Lands for the vent lines
- Flare facility (including a flare, separator and a tank) connected to vent lines for gaseous hydrocarbon byproduct
- Transloaders sufficient to transfer Product from trucks (or pipeline in the event Phase II is implemented) onto railcars
- Hoses, valves and fittings to connect vent lines to trucks, railcars, and flare
- Fire extinguishers at manifolds

vcb

Exhibit C

Phase II Project

Customer will outfit the Terminal and land near the Terminal with the following items:

- Oil gathering pad with secondary containment, truck racks, charge pumps, electrification, vapor recovery unit, flare, scrubber and automation
- Obtain easements from University Lands for pipelines to the transloading area from nearby land
- Storage tanks with capacity of at least 20,000 barrels sufficient to store oil near the train loading area
- Pipelines connecting the storage tanks to the transloading area
- Fill manifolds tying in the pipelines to the transloaders will be made for transloaders

Exhibit D

Minimum Insurance Requirements

A. **Workers Compensation and Employers Liability (with Alternate Employer):**

Statutory requirements in states where operating, to include all areas involved in Services, but a minimum of.

Employers Liability	$1,000,000 Each Accident
	$1,000,000 Disease Each Employee
	$1,000,000 Disease Policy Limit

B. **Commercial General Liability (CGL):**

Occurrence Form

Each Occurrence	$1,000,000
General Aggregate	$2,000,000
Products-Completed operation aggregate	$2,000,000
Personal and injury	$1,000,000

Coverage to include: Bodily injury and property damage, including broad form property damage, products-completed operations, sudden and accidental pollution, blanket contractual specifically covering the indemnity obligations in this Agreement, severability of interests, actions over, independent contractor(s), personal injury (with contractual exclusion deleted where required by contract), XCU.

C. **Automobile Liability**

Bodily injury and property damage	$1,000,000 combined single limits
Owned, non-owned, and hired autos	per accident
With broadened pollution coverage,	
and MCS-90 endorsement (if carrying cargo)	

D. **Umbrella/Excess Liability** (over EL, CGL, and Auto)

Each Occurrence	$10,000,000

vdb

Aggregate	$10,000,000

F. **Property**

Terminal Owner shall provide first party/property insurance covering its own property in the amount of the replacement cost of the property.

Additional Requirements:

1. All insurance policies of Terminal Owner, in any way related to the Services and whether or not required by this Agreement, shall, but only to the extent of the risks and liabilities assumed hereunder: (i) name Customer Parties as additional insured (except for worker's compensation, employer's liability, OEE/COW, or professional liability policies) (with such additional insured coverage including coverage for the sole or concurrent negligence of the additional insured and not being restricted (a) to "ongoing operations," (b) to coverage for vicarious liability, or (c) to circumstances in which the named insured is partially negligent), (ii) waive subrogation against Customer Parties, and (iii) be primary and non-contributory to any insurance of Customer Parties.
2. Each Party shall have its policies endorsed to provide not less than thirty (30) Days prior notification in the event of non-renewal, cancellation or material change in the policies. Each Party shall be responsible for any deductibles or self-insured retentions stated in its policies.
3. Terminal Owner shall require the same minimum insurance requirements as listed above of all of its subcontractors will include the same indemnity requirements from each subcontractor. Terminal Owner shall be and responsible for any deficiencies in coverage or limits,
4. Each Party shall provide a certificate of insurance on a form satisfactory to the other Party (attaching appropriate copies of endorsements) and all carriers must have an A.M. Best rating of at least A-VI. Copies of certified policies shall be provided upon written request of a Party.
5. Completed operations coverage shall be maintained by Terminal Owner in favor of indemnitee(s) for a period of two (2) years after final payment to Terminal Owner; Customer Parties shall continue to be named as additional insured(s) during this time frame.
6. Insurance limits required above may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an excess or umbrella policy. Coverage provided under any excess or umbrella policy must be at least as broad as the coverage provided by the primary policy(s).
7. Nothing in this section shall be deemed to limit any Party's liability under this Agreement, and a Party's decision to self-insure shall work no prejudice on the other Party.
8. Neither the minimum policy limits of insurance required of the Parties nor the actual amounts of insurance maintained by the Parties under their insurance program shall operate to modify the Parties' liability or indemnity obligations in this Agreement.

From: Braden Merrill
To: mrobertson@vprop.com; Chris Favors
Cc: Mike van den Bold
Subject: Notice of Force Majeure
Date: Friday, December 7, 2018 7:16:26 PM
Attachments: image001.png
Notice of Force Majeure - Sequitur Permian - Maalt.pdf

Gentlemen,

Pursuant to Mike's and my conversations with Chris, please find the attached notice of Force Majeure. We have also sent physical copies to Marty and James Lantner via Fedex.

Please don't hesitate to reach out.

Best,
Braden Merrill
Vice President & Chief Financial Officer



O:713-395-3008
F: 713-395-3099
C: 434-466-4294
bmerrill@sequiturenergy.com

Two Briarlake Plaza; 2050 West Sam Houston Pkwy South
Suite 1850; Houston, TX 77042



Sequitur
ENERGY RESOURCES LLC

December 7, 2018

Via email to mrobertson@vprop.com & FedEx
Maalt, LP
4413 Carey Street
Fort Worth, Texas 76119
Attention: Marty Robertson

Via email to cfavors@vprop.com
Maalt, LP
4413 Carey Street
Fort Worth, Texas 76119
Attention: Chris Favors

Re: Notice of Force Majeure

Gentlemen:

Reference is made to that certain Terminal Services Agreement ("Agreement") dated August 6, 2018 between Sequitur Permian, LLC ("Customer") and Maalt, L.P. ("Terminal Owner") relating to the use of Terminal Owner's rail terminal facility located in Barnhart, Texas ("Terminal"). All capitalized terms not otherwise defined herein have the same meanings as in the Agreement.

Consistent with the ongoing discussions between our companies, and as you are already aware, there presently exists the following situation that is not within the Customer's reasonable control: the unavailability, interruption, delay, or curtailment of rail transportation services for the Product, despite continued efforts to procure such services ("Existing Force Majeure") to allow for the use of the Terminal for the intended purposes of the Agreement.

Therefore, Customer hereby notifies Terminal Owner of the Existing Force Majeure and hereby finds it necessary to declare Force Majeure under the Agreement. Customer currently anticipates that the Existing Force Majeure will continue for the foreseeable future.

Accordingly, pursuant to the Agreement, Customer is not liable for any failure, delay, or omission of performance arising directly or indirectly from the Force Majeure, and Customer's obligations affected by the Force Majeure, including but not limited to, the obligation to utilize the Terminal for the throughput of Product via rail, are hereby suspended.

Customer will keep Terminal Owner informed of any changes or developments in the status of the existing Force Majeure.

This notice is without prejudice to Customer's rights and remedies, all of which are hereby reserved.

Thank you for your attention to this matter.

Sequitur Permian, LLC
24 Smith Road, Suite 600 · Midland, Texas 79705
P.O. Box 50608 · Midland, Texas 79710
432·218·2001 · *f)* 888·400·4170

Two BriarLake Plaza · 2050 West Sam Houston Parkway S, Suite 1850
Houston, Texas 77042 · SequiturEnergy.com
713·395·3000 · *f)* 713·395·3099

Sequitur
ENERGY RESOURCES LLC

Sincerely,

Braden Merrill
CFO

Cc:

Via FedEx
James Lantner
James Lantner, PC
560 N. Walnut Creek, Suite 120
Mansfield, Texas 76063

Sequitur Permian, LLC
24 Smith Road, Suite 600 · Midland, Texas 79705
P.O. Box 50608 · Midland, Texas 79710
432·218·2001 · *f)* 888·400·4170

Two BriarLake Plaza · 2050 West Sam Houston Parkway S, Suite 1850
Houston, Texas 77042 · SequiturEnergy.com
713·395·3000 · *f)* 713·395·3099

From: Braden Merrill
Sent time: 01/17/2019 04:15:41 PM
To: Chris Favors <cfavors@vprop.com>; Mike van den Bold
Subject: RE: Barnhart Operations - Important

Chris,

We have received your email. We need to review and discuss internally. We expect to be back in touch with you in the coming days.

Regards,
Braden

From: Chris Favors <cfavors@vprop.com>
Sent: Thursday, January 17, 2019 1:18 PM
To: Mike van den Bold <mcvdb@sequiturenergy.com>; Braden Merrill <bmerrill@sequiturenergy.com>
Subject: Barnhart Operations - Important

Gentlemen,

I hope you're doing well! I had a meeting with Gary and Marty today and was directed that "quarterly minimums" should begin to be invoiced starting in December 2018 as Phase I of the facility has been completed since then. I have attached pictures of the site in case you haven't seen the facility recently.

For December (4Q2018), the invoice will go out today and will be for $531,216. The 1Q2019 minimum will be $1,542,240.

I pitched a couple of ideas to Braden the other night via text message and wanted to follow up on that. We are open to discussing:

1. Cash buyout of the contract at 50% of contract value ($3,127,320)
2. Cash buyout of contract in addition to buyout of Barnhart facility at 80% of the contract value ($5,003,712)
    a. This option would also include a ROFR on future transloading services for Vista.

Let's discuss when you have time (Preferably today).

VISTA PROPPANTS AND LOGISTICS

Chris Favors
Business Relations
(682)-251-5538
cfavors@vprop.com
4413 Carey Street, Ft Worth, TX 76119
www.vprop.com



From: Lynn Walkup
To: bmerrill@sequiturenergy.com
Subject: Invoice
Date: Monday, January 28, 2019 2:48:21 PM
Attachments: TRA_000001_Sequitur.pdf

Thank you,
Lynn

Lynn Walkup
Accounting - Billing Supervisor
817-201-2089
817-563-3550
lwalkup@vprop.com
4413 Carey St. Fort Worth, TX 76119
www.vprop.com



Vista Proppants and Logistics
4413 Carey Street
Fort Worth, Texas 76119
P: 817-563-3550 F: 817-563-3555

INVOICE

INVOICE NUMBER: TRA-000001
INVOICE DATE: 01/25/2019
PAGE: 1 of 1

SOLD TO
Sequitur Permian, LLC.
Attention: Chief Financial Officer
2050 West Sam Houston Pkwy S
Suite 1850
Houston, TX 77042
USA

CUSTOMER PO	PRODUCT	PAYMENT TERMS	DUE DATE
		NET 30	02/24/2019

DESCRIPTION	QUANTITY	UNIT PRICE	EXTENSION
4Q 2018 - Quarterly Minimum	1.00	531,216.00	531,216.00

Subtotal:	$531,216.00
Tax:	$0.00
Amount Paid:	0.00
Balance:	$531,216.00

Remit to: Lonestar Prospects, LTD
4413 Carey Street, Fort Worth, TX 76119
Phone 817-563-3550

Sequitur Permian, LLC
2050 W. Sam Houston Parkway S., Suite 2050
Houston, Texas 77042

January 31, 2019

Via email to mrobertson@vprop.com & FedEx
Maalt, LP
4413 Carey Street
Fort Worth, Texas 76119
Attention: Marty Robertson

Via email to cfavors@vprop.com
Maalt, LP
4413 Carey Street
Fort Worth, Texas 76119
Attention: Chris Favors

Re: Invoice Dispute and Continuation of Force Majeure

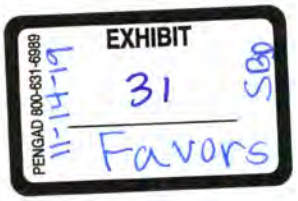
Gentlemen:

Reference is made to (i) that certain Terminal Services Agreement ("Agreement") dated August 6, 2018 between Sequitur Permian, LLC ("Customer") and Maalt, L.P. ("Terminal Owner") relating to the use of Terminal Owner's rail terminal facility located in Barnhart, Texas ("Terminal") and (ii) Customer's letter to Terminal Owner dated December 7, 2018, declaring an existing Force Majeure Event ("Notice of Force Majeure Event"). All capitalized terms not otherwise defined herein have the same meanings as in the Agreement.

Customer received on January 28, 2019 Terminal Owner's invoice dated January 25, 2019 (No. TRA-000001) for $531,216.00 ("Invoice"). Inasmuch as the existing Force Majeure Event continues to be in effect, Customer does not owe any Throughput Fees, Shortfall Payments or any other amounts to Terminal Owner; accordingly, the Invoice is hereby disputed in its entirety. In addition, without prejudice to the full suspension of Customer's obligations under the Agreement due to the existing Force Majeure Event and without the waiver of any right Customer may have under the Agreement, the Terminal Operations Commencement Date has not occurred as per the terms of the Agreement. Therefore, in accordance with the terms and conditions of the Agreement, the Minimum Volume Commitment is also not in effect, and no amounts are owed by Customer to Terminal Owner.

Customer will keep Terminal Owner informed of any changes or developments in the status of the Existing Force Majeure.

This notice is without prejudice to Customer's rights and remedies under the Agreement or otherwise, all of which are hereby reserved.



Thank you for your attention to this matter.

Sincerely,

Braden Merrill
CFO

Cc:

Via FedEx
James Lantner
James Lantner, PC
560 N. Walnut Creek, Suite 120
Mansfield, Texas 76063

Sequitur Permian, LLC
2050 W. Sam Houston Parkway S., Suite 2050
Houston, Texas 77042

February 8, 2019

Via email to mrobertson@vprop.com & FedEx
Maalt, LP
4413 Carey Street
Fort Worth, Texas 76119
Attention: Marty Robertson

Via email to cfavors@vprop.com & FedEx
Maalt, LP
4413 Carey Street
Fort Worth, Texas 76119
Attention: Chris Favors

Re: Termination of Terminal Services Agreement

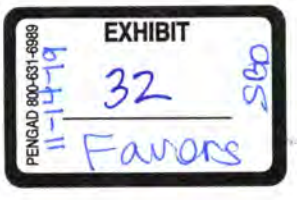
Gentlemen:

Reference is made to (i) that certain Terminal Services Agreement ("Agreement") dated August 6, 2018 between Sequitur Permian, LLC ("Customer") and Maalt, L.P. ("Terminal Owner") relating to the use of Terminal Owner's rail terminal facility located in Barnhart, Texas ("Terminal") and (ii) Customer's letter to Terminal Owner dated December 7, 2018, declaring an existing Force Majeure Event ("Notice of Force Majeure Event"). All capitalized terms not otherwise defined herein have the same meanings as in the Agreement.

The Force Majeure Event described in the Notice of Force Majeure Event has continued for a period of sixty (60) consecutive Days. Accordingly, pursuant to Section 8.4 of the Agreement, Customer hereby notifies Terminal Owner that Customer has elected to terminate the Agreement effective as of the date of this letter. As provided in Section 8.4, Customer shall have no further obligations to Terminal Owner under the Agreement (including, but not limited to, with respect to any Minimum Volume Commitment).

Additionally, pursuant to Section 2.7 of the Agreement, upon termination of the Agreement, Customer, at its sole cost and expense, is permitted to remove any equipment and facilities constituting the Customer Terminal Modifications. As required under the Agreement, Terminal Owner shall provide Customer access to the Terminal to commence and complete the removal of the Customer Terminal Modifications. Customer will be contacting Terminal Owner after the date hereof to (i) discuss the potential acquisition of the Terminal Owner's rights to the surface area and any other appurtenances or (ii) coordinate the removal process.

This notice is without prejudice to Customer's rights and remedies under the Agreement or otherwise, all of which are hereby reserved.



Thank you for your attention to this matter.

Sincerely,

Braden Merrill
CFO

Cc:

Via FedEx
James Lantner
James Lantner, PC
560 N. Walnut Creek, Suite 120
Mansfield, Texas 76063

James Lanter

Professional Corporation
Attorneys at Law

560 N. Walnut Creek
Suite 120
Mansfield, TX 76063
817.453.4800
817.453.4801 fax

James Lanter jim.lanter@lanter-law.com

February 14, 2019

Sequitur Permian, LLC
Attn: Mr. Braden Merrill
2050 W. Sam Houston Parkway South
Suite 2050
Houston, TX 77042

Via Certified Mail, Return Receipt Requested
7012 2210 0000 0470 5812

Re: Terminal Services Agreement dated August 6, 2018 ("Contract")

Dear Mr. Merrill:

Please be advised that this firm represents Maalt, LP ("Maalt"). We are in receipt of your letter dated February 8, 2019.

Maalt disputes that there was a force majeure event of the type described in your December 7, 2018 letter or that there was any force majeure event that has continued for sixty (60) days. Rather, the claim of force majeure is simply a pretext asserted in an attempt to avoid your contractual obligations.

In light of your February 8, 2019 letter, Maalt considers your actions a repudiation of the Contract and therefore a material breach. Accordingly, Maalt will not allow your company access to the Barnhart property to remove equipment or otherwise. Any attempt to access the property will be considered a trespass.

Enclosed is a copy of the lawsuit filed against your company today. Please forward to your counsel.

Very truly yours,

James Lanter

Enclosure

Cc: Maalt, LP



CV19-003
Irion County - District Clerk

Filed 2/13/2019 5:00 PM
Shirley Graham-Miles
District Clerk
Irion County, Texas

Ashley Masters

CAUSE NUMBER CV19-003

MAALT, LP, Plaintiff	§	**IN THE DISTRICT COURT**
	§	
VS.	§	**51st JUDICIAL DISTRICT**
	§	
SEQUITUR PERMIAN, LLC, Defendant	§	**IRION COUNTY, TEXAS**

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Maalt, LP ("Maalt"), Plaintiff, and files this its Original Petition, and in support thereof, respectfully shows this Court as follows:

DISCOVERY CONTROL PLAN

I.

Plaintiff intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4.

RULE 47 STATEMENT OF RELIEF REQUESTED

II.

Plaintiff seeks monetary relief over $1,000,000.00.

PARTIES

III.

Plaintiff, Maalt, LP, is a Texas limited partnership with its principal place of business in Tarrant County, Texas.

Defendant, Sequitur Permian, LLC, ("Sequitur") is limited liability company with its prinicipal place of business in Harris County, Texas. It may be served by serving its registered agent, Capitol Corporate Services, Inc. at 206 East 9th Street, Suite 1300, Austin, Travis County, Texas 78701. The Clerk is requested to serve the citation on Defendant by Certified Mail.

VENUE

IV.

Venue is proper in Irion County, Texas, pursuant to Texas Civil Practice and Remedies Code §15.002(a)(1) because that is the county in which all or a substantial part of the events giving rise to Maalt's claims and causes of action occurred.

FACTS

V.

Maalt is in the business of operating transloading facilities that transload materials used in the oil and gas industry in Texas. Its transloading activities typically involve transloading materials from rail cars to trucks for delivery to well sites and vice versa. Maalt operates a transloading facility in Barnhart, Texas (the "Barnhart Facility") that is provided rail service by Texas Pacifico Transportation, Ltd. (the "Railroad").

VI.

In August 2018, Maalt entered into a Terminal Services Agreement (the "Contract") with Sequitur to develop and operate a crude oil transloading business at the Barnhart Facility. The Contract granted Sequitur the exclusive right to operate a crude oil transloading facility at the Barnhart Facility. In exchange, Sequitur agreed to pay Maalt $1.50 per barrel of crude oil transloaded with a minimum daily volume obligation of 11,424 barrels on a monthly basis (for example, 342,720 barrels in a 30 day month). If Sequitur failed to deliver the required volumes for transloading, it was obligated to pay Maalt a minimum fee equal to the price per barrel times the minimum daily volume requirement times the number of days in the month (for example, in the case of a 30 day month, $1.50 X 11,424 X 30 = $514,080.00).

VII.

Pursuant to the Contract, Sequitur constructed the Phase I Project improvements at the Barnhart Facility, including equipment and facilities necessary for loading railcars with crude oil brought to the Barnhart Facility in trucks, and those improvements became operational in about October, 2018. Under the terms of the Contract, Sequitur's obligations to pay Maalt the minimum payment began once the improvements were operational.

VIII.

Despite the completion of the Phase 1 Project improvements, Sequitur did not begin transloading crude oil as required by the Contract. It has also refused to pay Maalt the minimum transloading fees it is obligated to pay. Based on information and belief, Sequitur refused and failed to do so because the economics of sending crude oil to the Barnhart Facility changed to the point that it was no longer a "good deal" for Sequitur.

IX.

On December 7, 2018, Sequitur sent Maalt a letter claiming that it was experiencing a force majeure event because of the "unavailability, interruption, delay, or curtailment of rail transportation services for the Product, despite continued efforts to procure such services. . .." On February 8, 2019, Sequitur then sent Maalt a letter claiming to terminate the Contract pursuant to the force majeure provisions of the Contract. However, in reality there was never a force majeure event as rail service to the Barnhart Facility was never unavailable, interrupted, delayed or curtailed. Rather, Sequitur was asserting its force majeure claim as a pretext in an effort to terminate the Contract simply because the financial benefits it sought to reap from the deal were no longer realistic.

X.

Sequitur's conduct indicates that it is absolutely and unconditionally refusing to perform the Contract. It has therefore repudiated the Contract, and has therefore materially breached the Contract. Moreover, by sending its February 8, 2019 letter attempting to terminate the Contract, Sequitur has improperly attempted to terminate the Contract in order to avoid its contractual obligations.

BREACH OF CONTRACT

XI.

Paragraphs IV through X are incorporated herein by reference. Sequitur's repudiation of the Contract constitutes a material breach of the Contract. As a result, Vista has sustained damage within the jurisdictional limits of the Court, for which Maalt now sues.

DECLARATORY JUDGMENT

XII.

Paragraphs V through XI are incorporated herein by reference. Maalt seeks a declaration pursuant to the Texas Declaratory Judgments Act, Texas Civil Practice & Remedies Code, Chapter 37, that:

a. The Termination Operations Commencement Date under the Contract occurred and the date of its occurrence;

b. The "force majeure event" alleged by Sequitur did not occur and is a mere pretext;

c. The date the payment obligations created by Article 3 of the Contract began; and

d. Sequitur breached the Contract by refusing to perform its obligations under the Contract.

ATTORNEYS' FEES

XIII.

Pursuant to Texas Civil Practice and Remedies Code Chapters 37 and 38 and the terms of the Contract, Maalt is entitled to recover its reasonable and necessary attorneys' fees and associated litigation and expert costs from Sequitur.

WHEREFORE, PREMISES CONSIDERED, Maalt, LP, Plaintiff, prays that Defendant be cited to appear and answer herein, and that Plaintiff recover the following:

1. All damages to which it may be entitled;
2. Its reasonable and necessary attorney's fees, litigation costs, and expert costs;
3. Pre and post judgment interest allowed by law;
4. All costs of Court; and
5. Such other and further such other and further relief to which it may be justly entitled.

Respectfully submitted,

/s/ James Lanter

James Lanter
State Bar No. 11940700
jim.lanter@lanter-law.com
JAMES LANTER, PC
560 N. Walnut Creek, Suite 120
Mansfield, Texas 76063
Phone: 817.453.4800
Fax: 817.453.4801

Paul O. Wickes
State Bar No. 00788663
WICKES LAW, PLLC
5600 Tennyson Parkway
Suite 205
Plano, Texas 75024
(972) 473-6900
(972) 767-3225 FAX
pwickes@wickeslaw.com

ATTORNEYS FOR PLAINTIFF

From: Braden Merrill
To: Tony Wroten; Spencer Falls
Subject: RE: Rail
Date: Thursday, May 10, 2018 1:40:01 PM

Spencer,
We would have the option to sell on UP or BNSF. Do you have contacts at either or have a way of finding them?
Best,
Braden

From: Tony Wroten
Sent: Thursday, May 10, 2018 11:16 AM
To: Spencer Falls
Cc: Braden Merrill
Subject: RE: Rail

Based on the map below, TXPF looks right.
http://ftp.dot.state.tx.us/pub/txdot-info/tpp/maps/2016-railroad.pdf

Tony Wroten
Finance Associate
O: 713-395-3029
C: 314-805-3678
twroten@sequiturenergy.com

From: Tony Wroten
Sent: Thursday, May 10, 2018 11:10 AM
To: 'Spencer Falls' <Spencer.Falls@EnMarkServices.com>
Cc: Braden Merrill <bmerrill@sequiturenergy.com>
Subject: RE: Rail

Yes sir. Correct me if I'm wrong Braden, but I believe they're on TXPF based on what we discussed.

Tony Wroten
Finance Associate
O: 713-395-3029
C: 314-805-3678
twroten@sequiturenergy.com

From: Spencer Falls [mailto:Spencer.Falls@EnMarkServices.com]
Sent: Thursday, May 10, 2018 10:45 AM
To: Tony Wroten <twroten@sequiturenergy.com>
Cc: Braden Merrill <bmerrill@sequiturenergy.com>
Subject: RE: Rail

Tony:
Working on the rail option. Is the terminal owner Vista Sand? What rail line are they on UP?
Thanks
S

Spencer Falls
President
EnMark Services, Inc.
1700 Pacific Avenue, Suite 2660
Dallas, Texas 75201
Phone: (214) 965-9581 | Fax: (214) 965-9593
spencer.falls@enmarkservices.com



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From: Tony Wroten [mailto:twroten@sequiturenergy.com]
Sent: Wednesday, May 09, 2018 7:03 PM
To: Spencer Falls <Spencer.Falls@EnMarkServices.com>
Cc: Braden Merrill <bmerrill@sequiturenergy.com>
Subject: RE: Rail

Spencer,
We spoke with the head of logistics over at the Depot Owner about the Barnhart facility. He said it would take about 6 weeks to get the facility up and running to handle crude again, which should give us a good cushion before the Plains trucking agreement expires on 9/1. The facility is capable of shipping crude to the Gulf Coast and has capacity to hold about 90 crude cars between 3 tracks (~30 cars/track). Logistically it takes about an hour to load each car via truck.
Below are some general terms we discussed:

- Typically contract at 2-year term, but mentioned they could get comfortable with a 9/1/18 - 12/31/19 term if we committed to a minimum amount of cars per day (think he mentioned ~14/day would be sufficient given our need for 20-30 cars/day to handle our volumes).
- Fee would be between $1.00-1.10/bbl, depending on if we're using a manifest train ($725-750/car) or unit train ($700/car). This may or may not include labor costs, but he's going to follow up on that. They currently have staff onsite, so that's one less thing we'd have to worry about.

Do you have any suggestions for a third party that could manage the logistics for us? Secondly, where do you think we would we want to take the oil and who would we want to sell to?
Thanks,

Tony Wroten
Finance Associate
O: 713-395-3029
C: 314-805-3678
twroten@sequiturenergy.com

From: Braden Merrill
Sent: Monday, May 7, 2018 5:18 PM
To: Spencer Falls <Spencer.Falls@EnMarkServices.com>
Cc: Tony Wroten <twroten@sequiturenergy.com>
Subject: RE: Rail

Spencer,
Thank you for the update. We do not have a final proposal from Medallion or terms from Plains. Do you think that any deal we would be able to get through would be at mid-cush? If so, I am going to start working the train angle in tandem. But if the Enterprise Midland Delivery point can offer better terms, I would rather not do the train deal.
Have the physical differentials improved at all?
Best,
Braden

From: Spencer Falls [mailto:Spencer.Falls@EnMarkServices.com]
Sent: Monday, May 07, 2018 5:13 PM
To: Braden Merrill <bmerrill@sequiturenergy.com>

Cc: Tony Wroten <twroten@sequiturenergy.com>
Subject: RE: Rail
Guys:
Do you have formal term sheets from both Medallion and Plains that have their proposed gathering rates? We need that information in order to give you an idea as to the transportation costs. We then get a quote from potential purchasers as to what price they would be willing to offer you that will include the gathering rates and any additional transport costs. This would include pipeline loss allowance, pump over costs plus a deduction for their margin. Our understanding was that Medallion was working on a revised proposal and Plains may just be getting started on working up a term sheet for you to look at since they just signed the CA.
We did talk with Medallion and they shared with us the names of several markets that purchase production on their system. They are connected to Longhorn Magellan pipeline at Crane. That system is at capacity and is being prorated. They are working on a connection to Plains's Cactus Pipeline but that connection will not be active until August of this year. Trafigura will be a prime market at that location. They are talking to P66 about connecting to their new Gray Oak system at Crane that will be completed late 4th quarter 2019.
At this time, there are several potential markets at the Enterprise Midland delivery point. Trafigura, Enterprise, Koch, Occidental and Rio to name a few. At Colorado City BP, Occidental, Koch and Shell are some of the potential markets. We just need some time to contact these markets mentioned above to see what locations and type transactions they may be able to offer us.
S

Spencer Falls
President
EnMark Services, Inc.
1700 Pacific Avenue, Suite 2660
Dallas, Texas 75201
Phone: (214) 965-9581 | Fax: (214) 965-9593
spencer.falls@enmarkservices.com

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From: Braden Merrill [mailto:bmerrill@sequiturenergy.com]
Sent: Monday, May 07, 2018 4:42 PM
To: Spencer Falls <Spencer.Falls@EnMarkServices.com>; Derek Jones <Derek.Jones@EnMarkServices.com>
Cc: Tony Wroten <twroten@sequiturenergy.com>
Subject: FW: Rail
Gentlemen,

Just wanted to follow up on this. Have you had a chance to work through our netback using the Plains or Medallion pipelines? I'd appreciate it.
Best,
Braden

From: Braden Merrill
Sent: Friday, May 04, 2018 3:57 PM

To: Spencer Falls (Spencer.Falls@EnMarkServices.com) <Spencer.Falls@EnMarkServices.com>; Derek.Jones@EnMarkServices.com
Cc: Tony Wroten <twroten@sequiturenergy.com>
Subject: Rail

Gentlemen,

Just got off the phone with the rail depot owner. They are doing similar contracts elsewhere in the basin and would be open to doing the same at the facility on our acreage. We just need to come back to them with volume and frequency. I calculate that we will need somewhere around 20 rail cars per day. We are currently producing around 13,000 barrels and each rail car should hold ~714 bbls (from the internet). That would dictate 18 rail cars but if we contract starting three months from now, it should be more than that.

We would need to add facilities as they have taken out the oil gathering facilities that were in place. I told him that I would get back with them early next week by which point he will have figured out their capacity.

Best,

Braden Merrill
O:713-395-3008
C: 434-466-4294
bmerrill@sequiturenergy.com
Two Briarlake Plaza; 2050 West Sam Houston Pkwy South
Suite 1850; Houston, TX 77042

Jim Lanter

From: Braden Merrill
Sent: Thursday, May 17, 2018 4:44 PM
To: Mike van den Bold; Tony Wroten
Subject: Fw: Rail Follow Up Questions

See questions below

From: Porter, Michael <Michael.Porter2@bp.com>
Sent: Thursday, May 17, 2018 4:08:10 PM
To: Braden Merrill
Subject: Rail Follow Up Questions

Braden,

Thank you for taking the time to walk through your potential rail operation. Carl did come up with a couple of follow up questions that we forgot to ask on the initial call:

- Is there the potential to add more siding and increase loading capability if more siding was added?
- Will you be looking for BP to provide a loading crew for you? (This wouldn't be an issue for us)
- What will the size of the tanks be on the site?
- Does the site already have/ will have loading arms?
- What size pipe will be feeding the tanks/loading arms?
- How many switches do you get a day?

On the Y-Grade side, would you remind me what your current volume is, and any color you could give on expected growth profile? I should have an indicative term sheet over to you tomorrow.

Regards,
Michael Porter
BP Energy Company
Director, Gulf Coast / MidContinent Producer Services
Phone: 713-323-4997
Cell: 832-350-1646
AIM: MichaelPorterBP

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Jim Lanter

From: Braden Merrill
Sent: Thursday, June 21, 2018 4:32 PM
To: Tony Wroten
Subject: FW: Econs

Best,
Braden

From: Travis Morris [mailto:tmorris@jupitermlp.com]
Sent: Wednesday, June 20, 2018 12:13 PM
To: Braden Merrill <bmerrill@sequiturenergy.com>; Blake Cantley <bcantley@sequiturenergy.com>
Subject: Econs

Please see economics below. Note that the "positioning cost" and "shrinkage" are conservative estimates.

The net price to you for all volume railed out would be NYMEX WTI CMA (Ex. W&H) + CMA Diff + Mid/Cush - $2.50 + $2.22. If bbls deliver into the local market you will get the floor price and we take the risk to clear them. A summary of the long haul truck econs are below as well.

As some of these items are still estimates, we will true these numbers up based on actuals. We should schedule a call for later today or in the morning to go through any questions or comments so that we can get this done.



Total Spread	*Plus*	Midland formula +/- lease diff vs LLS formula +/- sales diff
Railcar Lease	*Minus*	2 year lease amortized over projected 1year volume (if this exte
Positioning Cost	*Minus*	Cost associated with moving empty cars to Midland
Load Terminal Cost	*Minus*	Vista
Transloader Capital Recovery	*Minus*	Sequitur Equipment purchase amortized over projected 1year v
Offload Terminal Cost	*Minus*	Jupiter Lease
Shrinkage	*Minus*	estimated at .5%
Freight	*Minus*	TXPF/ BNSF
FSC	*Minus*	BNSF
Trucking	*Minus*	Jupiter
Net Margin (per bbl)	***Sum***	
Sequitur Margin 50%	***Sum/2***	Added to "lease diff" referenced in Total Spread

Assumptions

Total Railcars	360.00
Turns per Month	2.00
Railcar Volume	673.00
Daily Volume	15,000.00
Monthly Volume	456,250.00
Annual Volume	5,475,000.00
Railcar Lease (monthly)	900.00
Railcar Lease (per bbl)	1.42
Positioning Cost (per car)	5,000.00
Positioning Cost (per bbl)	0.33
Load Terminal Cost (per bbl)	1.50
Offload Terminal Cost (per bbl)	1.50
Shrinkage	0.35
Freight (per car)	4,500.00
Freight (per bbl)	6.69
FSC	179.60
FSC (per bbl)	0.27
Trucking	1.50

Margin Calculation

Sale Price vs. Midland	$	15.50
Purchase Deduct (floor)	$	(2.50)
Total Spread	$	18.00
Railcar Lease	$	(1.42)
Positioning Cost	$	(0.33)
Load Terminal Cost	$	(1.50)
Offload Terminal Cost	$	(1.50)
Shrinkage	$	(0.35)
Freight	$	(6.69)
FSC	$	(0.27)
Trucking	$	(1.50)
Net Margin (per bbl)	**$**	**4.45**
Sequitur Margin 50%	**$**	**2.22**

Trucking

Mid/ Cush	$ 12.45
Purchase Deduct (floor)	$ (2.50)
Total Spread	$ 14.95
Shrinkage	$ (0.35)
Freight	$(12.00)
Net Margin (per bbl)	**$ 2.60**
Sequitur Margin 50%	**$ 1.30**

Travis Morris
Chief Commercial Officer

440 Louisiana Street
Suite 700
Houston, TX 77002
(409)-771-6697
ICE Messenger – Tmorris10 **please note that my ICE ID has changed**
Email – tmorris@jupitermlp.com

**please note that my new email address: tmorris@jupitermlp.com*

JUPITER MLP

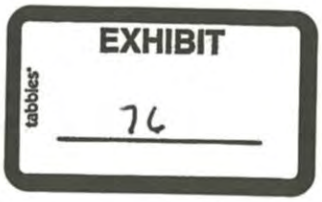
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Memorandum

To: Scott Josey
From: Daniel Goodwin, Lee Elsner, Verne Harper, Lucy Wathen, Derek Davis
CC: Charlie Odom, Larry Long, Mike van den Bold, Braden Merrill, Mark Tarver, Bill Crow, Blake Cantley
Date: December 18, 2018
Re: Weekly Status Update – SEM Operating Company LLC

[redacted]



[redacted]

January 2, 2019

[redacted]

January 2, 2019

[redacted]

January 2, 2019

[redacted]

[redacted]

[redacted]

January 2, 2019

[redacted]

Facility Update

Barnhart:

- Vista Railyard – 100% Complete
- Vista to Barnhart Oil Gathering Facility line – 60% complete. We need to finish installing rockshield, and x-ray welds/jeep coating. Estimated completion of 1/8/19.
- Barnhart Oil Gathering Facility – All plumbing is complete. We have the liner installation set up for 1/4/19. Flare piping is prefabbed and awaiting liner installation for final assembly.
- [redacted]

[redacted]

[redacted]

[redacted]

Deal Economics & Pricing Overview

Key Points

- Moving crude by rail is economically viable when the price spread between Midland and the Gulf Coast is sufficient to garner an arbitrage opportunity that Sequitur and Jupiter can share
- Over the term of the contract, SER believes it could at minimum recover any capex from the non-budgeted special projects related to the rail deal:
  - Vista Rail Facility upgrade (Transloaders, Power, Vent lines, Oil Lines) - ~$4.2MM
    - Transloader will have salvage value of ~$0.5 – 1.0MM)
  - Barnhart Oil Gathering Facility (2-10k Bbl tanks, truck depot, existing P/L connection) - ~$3.6MM
    - Reduces need for trucking, allows for 3rd party oil business, facilitates rail loading
    - Acceleration of planned infrastructure to accommodate rail alternative
  - Texon Oil Gathering P/L and Facility (2-5k Bbl tanks, truck depot, 6 miles of P/L) - ~$3.3MM
    - Eliminate trucking in Texon, permanent field infrastructure upgrade
    - Acceleration of planned infrastructure to accommodate rail alternative
    - Plains and Medallion P/L connection alternatives

Illustrative Margin Economics

Sequitur Volumes Sold via Rail Facility	
Gross Spread Between LLS and Mid-Cush	**$20.00**
(-) Rail Cost	(10.00)
(-) Transloading Fee	(2.50)
Transportation Cost	**($12.50)**
Total Crude-by-Rail Arbitrage	**$7.50**
(-) 50% Arb Share to Buyer	(3.75)
Margin to SER Before Adjustments	**$3.75**
(+) Transloading Fee Adjustment [1]	1.00
Net Margin to SER	**$4.75**

Thrid Party Volumes Sold via Rail Facility	
Gross Spread Between LLS and Mid-Cush	**$20.00**
(-) Rail Cost	(10.00)
(-) Third Party Transloading Fee	(2.00)
(-) Third Party Facility Fee	(1.00)
Transportation Cost	**($13.00)**
Total Crude-by-Rail Arbitrage	**$7.00**
(-) 50% Arb Share to Buyer	($3.50)
Margin to SER Before Adjustments	**$3.50**
(+) Third Party Facility Fee	1.00
(+) Transloading Fee Adjustment [1]	0.50
Net Margin to SER	**$5.00**

Total Benefit / (Deficit) per Month ($M)

Avg. Daily Prod. (Boe/d)	Spread Between LLS and Mid-Cush Basis					
	$7.50	**$10.00**	**$12.50**	**$15.00**	**$17.50**	**$20.00**
5,000	($228)	($38)	$152	$342	$532	$722
10,000	($456)	($76)	$304	$684	$1,064	$1,444
15,000	($684)	($114)	$456	$1,026	$1,596	$2,166
20,000	($912)	($152)	$608	$1,368	$2,128	$2,888
25,000	($1,140)	($190)	$760	$1,710	$2,660	$3,610
Implied Margin ($/Bbl)	*($1.50)*	*($0.25)*	*$1.00*	*$2.25*	*$3.50*	*$4.75*

(1) Reflects the add-back to adjust for SER's actual obligation to Vista for transloading of $1.50/Bbl

EXHIBIT tabbies 79

Sequitur ENERGY RESOURCES LLC

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Illustrative Economics at Current Strip Pricing

Key Assumptions

- Assumes 15,000 Bbls/d of SER production and 5,000 Bbls/d of third-party production starting in November 2018
- Modeled terms are subject to change based on ongoing discussions
- Based on forward pricing per CME as of 8/20/2018

($/Bbl unless otherwise noted)	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Total
Sequitur Volumes Sold via Rail Facility																
LLS Differential	$5.16	$5.14	$5.08	$5.04	$5.09	$5.14	$5.07	$4.92	$4.77	$4.70	$4.60	$4.50	$4.30	$4.30	$4.30	
(-) Mid-Cush Differential	(15.26)	(12.12)	(10.29)	(9.64)	(9.45)	(9.20)	(8.72)	(8.34)	(7.94)	(7.15)	(6.49)	(5.84)	(3.75)	(3.75)	(3.75)	
Gross Spread Between LLS and Mid-Cush Basis	**$20.42**	**$17.26**	**$15.37**	**$14.68**	**$14.54**	**$14.34**	**$13.79**	**$13.26**	**$12.71**	**$11.85**	**$11.09**	**$10.34**	**$8.05**	**$8.05**	**$8.05**	
(-) Rail Cost	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)	
(-) Transloading Fee	(2.50)	(2.50)	(2.50)	(2.50)	(2.50)	(2.50)	(2.50)	(2.50)	(2.50)	(2.50)	(2.50)	(2.50)	(2.50)	(2.50)	(2.50)	
Transportation Cost	**($12.50)**	**($12.50)**	**($12.50)**	**($12.50)**	**($12.50)**	**($12.50)**	**($12.50)**	**($12.50)**	**($12.50)**	**($12.50)**	**($12.50)**	**($12.50)**	**($12.50)**	**($12.50)**	**($12.50)**	
Total Crude-by-Rail Arbitrage	**$7.92**	**$4.76**	**$2.87**	**$2.18**	**$2.04**	**$1.84**	**$1.29**	**$0.76**	**$0.21**	**($0.65)**	**($1.41)**	**($2.16)**	**($4.45)**	**($4.45)**	**($4.45)**	
(-) 50% Arb Share to Buyer	(3.96)	(2.38)	(1.44)	(1.09)	(1.02)	(0.92)	(0.65)	(0.38)	(0.11)	0.32	0.71	1.08	2.23	2.23	2.23	
Margin to SER Before Adjustments	**$3.96**	**$2.38**	**$1.44**	**$1.09**	**$1.02**	**$0.92**	**$0.65**	**$0.38**	**$0.11**	**($0.32)**	**($0.71)**	**($1.08)**	**($2.23)**	**($2.23)**	**($2.23)**	
(+) Transloading Fee Adjustment [1]	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	
Net Margin to SER	**$4.96**	**$3.38**	**$2.44**	**$2.09**	**$2.02**	**$1.92**	**$1.65**	**$1.38**	**$1.11**	**$0.68**	**$0.30**	**($0.08)**	**($1.23)**	**($1.23)**	**($1.23)**	
Daily Production (Bbls/d)	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000	
Monthly Production (Bbls)	456,000	456,000	456,000	456,000	456,000	456,000	456,000	456,000	456,000	456,000	456,000	456,000	456,000	456,000	456,000	6,840,000
Total Margin for SER Production ($M)	**$2,262**	**$1,541**	**$1,110**	**$953**	**$921**	**$876**	**$750**	**$629**	**$504**	**$308**	**$135**	**($36)**	**($559)**	**($559)**	**($559)**	**$8,276**
Third Party Volumes Sold via Rail Facility																
Gross Spread Between LLS and Mid-Cush Basis	**$20.42**	**$17.26**	**$15.37**	**$14.68**	**$14.54**	**$14.34**	**$13.79**	**$13.26**	**$12.71**	**$11.85**	**$11.09**	**$10.34**	**$8.05**	**$8.05**	**$8.05**	
(-) Rail Cost	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)	(10.00)	
(-) Third Party Transloading Fee	(2.00)	(2.00)	(2.00)	(2.00)	(2.00)	(2.00)	(2.00)	(2.00)	(2.00)	(2.00)	(2.00)	(2.00)	(2.00)	(2.00)	(2.00)	
(-) Third Party Facility Fee	(1.00)	(1.00)	(1.00)	(1.00)	(1.00)	(1.00)	(1.00)	(1.00)	(1.00)	(1.00)	(1.00)	(1.00)	(1.00)	(1.00)	(1.00)	
Transportation Cost	**($13.00)**	**($13.00)**	**($13.00)**	**($13.00)**	**($13.00)**	**($13.00)**	**($13.00)**	**($13.00)**	**($13.00)**	**($13.00)**	**($13.00)**	**($13.00)**	**($13.00)**	**($13.00)**	**($13.00)**	
Total Crude-by-Rail Arbitrage	**$7.42**	**$4.26**	**$2.37**	**$1.68**	**$1.54**	**$1.34**	**$0.79**	**$0.26**	**($0.29)**	**($1.15)**	**($1.91)**	**($2.66)**	**($4.95)**	**($4.95)**	**($4.95)**	
(-) 50% Arb Share to Buyer	($3.71)	($2.13)	($1.19)	($0.84)	($0.77)	($0.67)	($0.40)	($0.13)	$0.15	$0.57	$0.96	$1.33	$2.48	$2.48	$2.48	
Margin to SER Before Adjustments	**$3.71**	**$2.13**	**$1.19**	**$0.84**	**$0.77**	**$0.67**	**$0.40**	**$0.13**	**($0.15)**	**($0.57)**	**($0.96)**	**($1.33)**	**($2.48)**	**($2.48)**	**($2.48)**	
(+) Third Party Facility Fee	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	
(+) Transloading Fee Adjustment [1]	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50	
Net Margin to SER	**$5.21**	**$3.63**	**$2.69**	**$2.34**	**$2.27**	**$2.17**	**$1.90**	**$1.63**	**$1.36**	**$0.93**	**$0.55**	**$0.17**	**($0.98)**	**($0.98)**	**($0.98)**	
Daily Production	-	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	
Monthly Production	-	152,000	152,000	152,000	152,000	152,000	152,000	152,000	152,000	152,000	152,000	152,000	152,000	152,000	152,000	2,128,000
Total Third-Party Margin ($M)	**-**	**$552**	**$408**	**$356**	**$345**	**$330**	**$288**	**$248**	**$206**	**$141**	**$83**	**$26**	**($148)**	**($148)**	**($148)**	**$2,537**
Total Margin ($M)	**$2,262**	**$2,093**	**$1,518**	**$1,309**	**$1,266**	**$1,205**	**$1,038**	**$877**	**$710**	**$448**	**$217**	**($11)**	**($707)**	**($707)**	**($707)**	**$10,813**

(1) Reflects the add-back to adjust for SER's actual obligation to Vista for transloading of $1.50/Bbl

Sequitur

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Maalt Appx. 113

1	2	3	4	5	6	7	10	11	12	13	14	15	16	17	18	19
AFE NUMBER	SUBACCOUNT	SUBACCOUNT NAME	FIELD	COST (2018-11)	COST (ITD)	TYPE	IN-SERVICE	AFE DATE	AFE CODE	AFE NAME	AFE BUDGET	PERCENT OF BUDGET SPENT	EXPECTED IN-SERVICE	STATUS	PERCENT COMPLETE	NOTES
I18002	BYCTB54	Univ 38-40 CTB	BARNHART	455,081.30	1,914,438.95	CTB	12/12/2018	4/5/2018	I18002	Univ 38-40 CTB (NEW)	1,799,000.00	106%	EXPECT: 2018-11	WIP	70%	
I18004	BY5000	Barnyard Water Supply System	BARNHART	283,711.26	1,836,221.52	WATER SUPPLY		4/3/2018	I18004	Multi Frac Misc (40A/40/LINI/LINM) & Univ 3840 Sec	1,935,000.00	95%	EXPECT: 2018-11	WIP		
I18012	BYCTB52	Linthicum C Tank Battery	BARNHART	448,665.20	1,092,696.35	CTB	10/22/2018	4/13/2018	I18012	Linthicum C CTB (New) & Pipeline	2,061,000.00	53%	EXPECT: 2018-11	WIP	0%	
I18013	BYCTB51	Linthicum B Tank Battery	BARNHART	718,474.27	1,683,912.06	CTB	10/1/2018	4/13/2018	I18013	Linthicum B CTB (New) & Pipeline	1,493,000.00	113%	EXPECT: 2018-11	WIP	35%	
I18016	IM3052	Texon Oil Gathering Line	TEXON	563.43	126,279.13	GATHERING	mid 2019	7/13/2018	I18016	Texon Trunkline to Oil Gathering Facility	1,462,500.00	9%	EXPECT: 2019-02	WIP	0%	
I18017	BY5002	Barnyard Water Reuse Storage	BARNHART	66,704.00	71,077.57	WATER SUPPLY	early 2019	10/31/2018	I18017	Barnhart Produced Water Facility for Frac Use	1,114,000.00	6%		WIP	0%	
I18018	IM3053	Texon Oil Gathering Facility	TEXON	90,485.15	593,687.07	GATHERING	mid 2019	6/15/2018	I18018	Texon Oil Gathering Facility (Central & N. Blk)	1,820,000.00	33%	EXPECT: 2019-02	WIP	5%	
I18019	BY3054	Vista Railyard	BARNHART	667,909.61	1,772,141.94	GATHERING	12/10/2018	7/13/2018	I18019	Vista Railyard Truck to Train	4,216,500.00	42%	EXPECT: 2018-11	WIP	20%	
I18020	BY3053	Barnhart Oil Gathering Facilit	BARNHART	256,381.73	2,356,901.94	GATHERING	expected 12/20/201	7/13/2018	I18020	Barnhart Oil Gathering Facility	3,591,100.00	66%	EXPECT: 2018-11	WIP	15%	

Deposition Exhibit 89

From: Braden Merrill
To: Mike van den Bold; Tony Wroten
Cc: Blake Cantley
Subject: FW: Economics
Date: Thursday, June 7, 2018 6:17:42 PM
Attachments: image001.png
image002.png

Mike,

See the below from the Jupiter guys. Where they get you are the "Lease diff", which is a spot price in a tight market and their ability to move enough cars.

Best,
Braden

From: Travis Morris [mailto:tmorris@jupitermlp.com]
Sent: Thursday, June 07, 2018 5:58 PM
To: Braden Merrill <bmerrill@sequiturenergy.com>; Blake Cantley <bcantley@sequiturenergy.com>
Subject: Economics

Thanks for taking the time to meet with me this week. I think that we should be able to work toward a solution that creates value for both of us.

Please see general outline below for establishing a margin/ arb share that would be used to price your bbls as we discussed.

What we need to move this forward is to understand where you see the "lease diff" basis sales to the local market. Once I have that we can plug the above formulas and establish a final price.

Assuming that you want to take the risk and go for 50% of the uplift, we need to have provisions in the contract related to pricing for bbls delivered to other markets via truck. Conceptually, I think the best way to do so would be to show 3 markets (Midland, Col City, Nustar?) and run mileage/ set truck rates to each and apply the actual sales premium/ deduct for any volume forced to clear outside of the rail project. We can kick that around a bit, just wanted to begin to address it.

Please also provide me with the specs for the transload units you are ordering so that I can make sure they will work for the project.

If you have any questions please let me know.

Look forward to hearing from you.

Travis Morris
Chief Commercial Officer

440 Louisiana Street
Suite 700
Houston, TX 77002
(409)-771-6697
ICE Messenger – Tmorris10 **please note that my ICE ID has changed**
Email – tmorris@jupitermlp.com

**please note that my new email address: tmorris@jupitermlp.com*

www.JupiterMLP.com

This email message and any attachments are confidential and may be privileged. If you are not the intended recipient, please notify JupiterMLP, LLC immediately -- by replying to this message with the title "received in error" to sender or by forwarding this email to postmaster@jupitermlp.com -- and destroy all copies of this message and any attachments. Thank you.



Rachael L. Smiley

From: Travis Morris <tmorris@jupitermlp.com>
Sent: Thursday, August 9, 2018 2:23 PM
To: Braden Merrill
Subject: RE: Follow Up

To clarify, you estimate 10 – 12 trains per month, your production should be around 8 – 9 trains per month, so at 1 train per week I would be getting close to half the volume? I would certainly look to add third party as we see that capacity on TXPF exists. I will see what I can do for Sep. to bring in volume.

Would you like for me to send over a draft contract?

Travis Morris
Chief Commercial Officer

440 Louisiana Street
Suite 700
Houston, TX 77002
(409)-771-6697
ICE Messenger – Tmorris10 **please note that my ICE ID has changed**
Email – tmorris@jupitermlp.com

**please note that my new email address: tmorris@jupitermlp.com*

JUPITER MLP

www.JupiterMLP.com

From: Braden Merrill [mailto:bmerrill@sequiturenergy.com]
Sent: Thursday, August 9, 2018 9:01 AM
To: Travis Morris <tmorris@jupitermlp.com>; Tony Wroten <twroten@sequiturenergy.com>; Mike van den Bold <mcvdb@sequiturenergy.com>
Subject: RE: Follow Up

Good morning Travis,

With 10-12 trains per week available at Barnhart, we believe that we could give you a train per week. The hangup is that we, at least as of September, cannot dedicate any volume to you. Would you be interested in moving third-party volume through the facility?

We have given Shell until the end of the week to get back to us on their offer.

Best,
Braden



From: Travis Morris <tmorris@jupitermlp.com>
Sent: Thursday, August 09, 2018 6:25 AM
To: Braden Merrill <bmerrill@sequiturenergy.com>; Tony Wroten <twroten@sequiturenergy.com>; Mike van den Bold <mcvdb@sequiturenergy.com>
Subject: Follow Up

Good Morning

I wanted to follow up on our meeting and thank you again for taking the time to discuss the opportunity.

As discussed, the initial question to address is the volume that would be dedicated to sale to Jupiter. In order to meet a September start date I need to begin directing trains toward Barnhart quickly. Please let me know soonest.

Travis Morris
Chief Commercial Officer

440 Louisiana Street
Suite 700
Houston, TX 77002
(409)-771-6697
ICE Messenger – Tmorris10 **please note that my ICE ID has changed**
Email – tmorris@jupitermlp.com

**please note that my new email address: tmorris@jupitermlp.com*

JUPITER MLP

www.JupiterMLP.com

This email message and any attachments are confidential and may be privileged. If you are not the intended recipient, please notify JupiterMLP, LLC immediately -- by replying to this message with the title "received in error" to sender or by forwarding this email to postmaster@jupitermlp.com -- and destroy all copies of this message and any attachments. Thank you.

From: Chris Favors
To: Mike van den Bold
Cc: Braden Merrill
Subject: RE: Access Agreement
Date: Friday, July 27, 2018 3:19:16 PM
Attachments: image001.png
image006.png
image007.png
Maalt LP - Sequitur - Premises Access Agreement 2018-07-27 Maalt revision v2.docx

Mike,

We accepted the change that you proposed; however we changed the word "owner" to "Maalt".

Our President, Marty Robertson, also asked that we add the language at the bottom of page 1 on the attachment. If you are agreeable to that language, I have a signed copy that I can send over to you.

Thanks,

Chris Favors
Business Development
(682)-251-5538
cfavors@vprop.com
4413 Carey Street, Ft Worth, TX 76119
www.vprop.com

From: Mike van den Bold <mcvdb@sequiturenergy.com>
Sent: Friday, July 27, 2018 1:17 PM
To: Chris Favors <cfavors@vprop.com>
Cc: Braden Merrill <bmerrill@sequiturenergy.com>
Subject: Access Agreement

Chris,

Attached are redline and clean draft versions of the captioned Agreement. We accepted all your edits except for not assuming liability for Maalt's gross negligence.
The new edits are merely for clarification of the tie to the Terminal Services Agreement. Upon execution of the TSA, this Access Agreement will terminate.
We need to start construction next week in order to meet Sept 1 online date.

If you are OK with these edits, I'm prepared to sign today and send an executable version to you.

Call either number below if any questions,

Thx,

Mike van den Bold, *President and COO*

Sequitur
ENERGY RESOURCES LLC

Two BriarLake Plaza
2050 West Sam Houston Parkway S., Suite 1850
Houston, TX 77042
Office - 713.395.3004 Cell - 832.567.8649
mcvdb@sequiturenergy.com

PREMISES ACCESS AGREEMENT

THIS PREMISES ACCESS AGREEMENT (this "**Agreement**") is entered into effective as of _____, 2018 (the "Effective Date") by and between Maalt, LP, a Texas limited partnership ("Maalt") and Sequitur Permian, LLC, a Texas limited liability company, and SEM Operating Company LLC, a Texas limited liability company (collectively, "Sequitur" or "Company"), who desires to perform certain services for Maalt from time to time on Maalt's premises as more particularly described hereinbelow. Maalt and Sequitur shall be referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, Maalt operates a rail terminal facility located in Barnhart, Texas, as more specifically described on Exhibit A-1 hereto on the land more specifically described on Exhibit A-2 hereto (collectively, the "Premises"); and

WHEREAS, Sequitur owns and operates various oil and gas wells which produce crude oil and other liquid hydrocarbon products (the "Products"); and

WHEREAS, Maalt and Sequitur desire to enter into a Terminal Services Agreement (the "Terminal Agreement") pursuant to which Sequitur will utilize the Premises and Maalt's services for the throughput of Sequitur's Products, as well as other related services; and

WHEREAS, in order to utilize the Premises in a timely manner, it is necessary for Sequitur to commence construction of its throughput-related facilities on the Premises (the "Services") prior to execution of the Terminal Agreement; and

WHEREAS, Maalt desires that Sequitur perform such Services on the Premises from time to time, provided that Sequitur makes the agreements set forth below.

NOW, THEREFORE, IN CONSIDERATION of Maalt engaging Sequitur to perform the Services and Sequitur being permitted to access Maalt's premises, Sequitur agrees as follows:

For the Sequitur Group (as hereinafter defined), Sequitur fully assumes such risks, including the risk of personal injury, death, or property damage due to any conditions of the Premises or due to any negligence of Maalt or otherwise, except as to Maalt's gross negligence or willful misconduct while Sequitur is in or upon the Premises performing Services, and agrees to (i) exercise reasonable care while on the Premises and (ii) comply with any procedures, requests or instructions (especially those related to safety) of Maalt or any of its representatives while Sequitur is on the Premises.

Sequitur may maintain on the Premises any equipment, materials, and personnel necessary for performance of the Services. Such equipment and materials must be located in a manner that does not interfere with entering, leaving, and using the Premises or any contiguous property.

Sequitur shall, in connection with the Services, comply and cause its contractors, agents and employees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees. Without limiting the generality of the foregoing, Sequitur, at its sole cost and expense, shall obtain any and all permits which may be required by any law, regulation or ordinance for the Services.

In the event that a Terminal Services Agreement is not executed by Maalt and Sequitur by September 1, 2018, Sequitur shall stop all work under this Agreement, and immediately restore the Premises to the condition it was in before Sequitur began its work. All such restoration work shall be completed no later than September 30, 2018 at no cost to Maalt.

FOR ITSELF AND ITS DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, CONTRACTORS AND SUBCONTRACTORS OF ANY TIER ("SEQUITUR GROUP"), SEQUITUR HEREBY EXPRESSLY RELEASES, AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND, MAALT, AND ITS AFFILIATES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, EMPLOYEES, AGENTS, REPRESENTATIVES, INVITEES, CONTRACTORS AND SUBCONTRACTORS OF ANY TIER, AND OTHER REPRESENTATIVES OF EACH (COLLECTIVELY, THE "MAALT GROUP"), FROM ANY AND ALL LIABILITY FOR DAMAGES, CLAIMS AND COSTS (INCLUDING ATTORNEYS' FEES) ARISING OUT OF (A) PERSONAL INJURY TO OR DEATH OF ANY MEMBER OF SEQUITUR GROUP, OR FOR DAMAGE OR DESTRUCTION OF THEIR RESPECTIVE PERSONAL PROPERTY, CAUSED WHILE PRESENT ON THE PREMISES OR ON ANY OTHER PREMISES OPERATED BY MAALT GROUP, INCLUDING THE MAALT GROUP-MAINTAINED ROADWAYS USED IN CONNECTION WITH THE PREMISES, REGARDLESS OF THE CAUSE OR FAULT OF SUCH INJURY, DEATH, OR DAMAGE AND REGARDLESS WHETHER SUCH INJURY, DEATH OR DAMAGE IS THE RESULT OF THE SOLE, CONCURRENT, SLIGHT OR ORDINARY NEGLIGENCE OF ANY MEMBER OF SEQUITUR GROUP, (B) PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE SUFFERED BY ANY THIRD PARTY THAT WAS PROXIMATELY CAUSED BY THE NEGLIGENCE, GROSS NEGLIGENCE OR INTENTIONAL CONDUCT OF ANY MEMBER OF THE SEQUITUR GROUP AND REGARDLESS WHETHER SUCH INJURY, DEATH OR DAMAGE IS THE RESULT OF THE SOLE, CONCURRENT, SLIGHT OR ORDINARY NEGLIGENCE OF ANY MEMBER OF SEQUITUR GROUP, AND (C) ANY BREACH OF SEQUITUR'S OBLIGATIONS HEREUNDER, UNLESS ARISING FROM MAALT GROUP'S NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT OR GROSS) OR WILLFUL MISCONDUCT.

The obligations under this Agreement are in addition to any provision contained in any other agreement between the parties, existing now or hereafter made, relating to the subject matter. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas, exclusive of conflicts of law principles.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective authorized officers as of the Effective Date.

[Signature page follows.]

Maalt:

Maalt, LP

By: _____

Name: _____

Title: _____

Sequitur:

Sequitur Permian, LLC

By: _____

Name: _____

Title: _____

SEM Operating Company LLC

By: _____

Name: _____

Title: _____

PREMISES ACCESS AGREEMENT

THIS PREMISES ACCESS AGREEMENT (this "**Agreement**") is entered into effective as of 7/27/18, 2018 (the "Effective Date") by and between Maalt, LP, a Texas limited partnership ("Maalt") and Sequitur Permian, LLC, a Texas limited liability company, and SEM Operating Company LLC, a Texas limited liability company (collectively, "Sequitur" or "Company"), who desires to perform certain services for Maalt from time to time on Maalt's premises as more particularly described hereinbelow. Maalt and Sequitur shall be referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, Maalt operates a rail terminal facility located in Barnhart, Texas, as more specifically described on Exhibit A-1 hereto on the land more specifically described on Exhibit A-2 hereto (collectively, the "Premises"); and

WHEREAS, Sequitur owns and operates various oil and gas wells which produce crude oil and other liquid hydrocarbon products (the "Products"); and

WHEREAS, Maalt and Sequitur desire to enter into a Terminal Services Agreement (the "Terminal Agreement") pursuant to which Sequitur will utilize the Premises and Maalt's services for the throughput of Sequitur's Products, as well as other related services; and

WHEREAS, in order to utilize the Premises in a timely manner, it is necessary for Sequitur to commence construction of its throughput-related facilities on the Premises (the "Services") prior to execution of the Terminal Agreement; and

WHEREAS, Maalt desires that Sequitur perform such Services on the Premises from time to time, provided that Sequitur makes the agreements set forth below.

NOW, THEREFORE, IN CONSIDERATION of Maalt engaging Sequitur to perform the Services and Sequitur being permitted to access Maalt's premises, Sequitur agrees as follows:

For the Sequitur Group (as hereinafter defined), Sequitur fully assumes such risks, including the risk of personal injury, death, or property damage due to any conditions of the Premises or due to any negligence of Maalt or otherwise, except as to Maalt's gross negligence or willful misconduct while Sequitur is in or upon the Premises performing Services, and agrees to (i) exercise reasonable care while on the Premises and (ii) comply with any procedures, requests or instructions (especially those related to safety) of Maalt or any of its representatives while Sequitur is on the Premises.

Sequitur may maintain on the Premises any equipment, materials, and personnel necessary for performance of the Services. Such equipment and materials must be located in a manner that does not interfere with entering, leaving, and using the Premises or any contiguous property.

Sequitur shall, in connection with the Services, comply and cause its contractors, agents and employees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees. Without limiting the generality of the foregoing, Sequitur, at its sole cost and expense, shall obtain any and all permits which may be required by any law, regulation or ordinance for the Services.

In the event that a Terminal Services Agreement is not executed by Maalt and Sequitur by September 1, 2018, Sequitur shall stop all work under this Agreement, and immediately restore the Premises to the condition it was in before Sequitur began its work. All such restoration work shall be completed no later than September 30, 2018 at no cost to Maalt.

FOR ITSELF AND ITS DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, CONTRACTORS AND SUBCONTRACTORS OF ANY TIER ("SEQUITUR GROUP"), SEQUITUR HEREBY EXPRESSLY RELEASES, AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND, MAALT, AND ITS AFFILIATES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, EMPLOYEES, AGENTS, REPRESENTATIVES, INVITEES, CONTRACTORS AND SUBCONTRACTORS OF ANY TIER, AND OTHER REPRESENTATIVES OF EACH (COLLECTIVELY, THE "MAALT GROUP"), FROM ANY AND ALL LIABILITY FOR DAMAGES, CLAIMS AND COSTS (INCLUDING ATTORNEYS' FEES) ARISING OUT OF (A) PERSONAL INJURY TO OR DEATH OF ANY MEMBER OF SEQUITUR GROUP, OR FOR DAMAGE OR DESTRUCTION OF THEIR RESPECTIVE PERSONAL PROPERTY, CAUSED WHILE PRESENT ON THE PREMISES OR ON ANY OTHER PREMISES OPERATED BY MAALT GROUP, INCLUDING THE MAALT GROUP-MAINTAINED ROADWAYS USED IN CONNECTION WITH THE PREMISES, REGARDLESS OF THE CAUSE OR FAULT OF SUCH INJURY, DEATH, OR DAMAGE AND REGARDLESS WHETHER SUCH INJURY, DEATH OR DAMAGE IS THE RESULT OF THE SOLE, CONCURRENT, SLIGHT OR ORDINARY NEGLIGENCE OF ANY MEMBER OF SEQUITUR GROUP, (B) PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE SUFFERED BY ANY THIRD PARTY THAT WAS PROXIMATELY CAUSED BY THE NEGLIGENCE, GROSS NEGLIGENCE OR INTENTIONAL CONDUCT OF ANY MEMBER OF THE SEQUITUR GROUP AND REGARDLESS WHETHER SUCH INJURY, DEATH OR DAMAGE IS THE RESULT OF THE SOLE, CONCURRENT, SLIGHT OR ORDINARY NEGLIGENCE OF ANY MEMBER OF SEQUITUR GROUP, AND (C) ANY BREACH OF SEQUITUR'S OBLIGATIONS HEREUNDER, UNLESS ARISING FROM MAALT GROUP'S NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT OR GROSS) OR WILLFUL MISCONDUCT.

The obligations under this Agreement are in addition to any provision contained in any other agreement between the parties, existing now or hereafter made, relating to the subject matter. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas, exclusive of conflicts of law principles.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective authorized officers as of the Effective Date.

[Signature page follows.]

Maalt:

Maalt, LP

By: _____

Name: Marty Robertson

Title: President

Sequitur:

Sequitur Permian, LLC

By: _____

Name: M. C. vd Bold

Title: Pres. + COO

SEM Operating Company LLC

By: _____

Name: M. C. vd Bold

Title: Pres. + COO

FW: Econs

Braden Merrill <bmerrill@sequiturenergy.com>
Thu 6/21/2018 4:31 PM
To: Tony Wroten <twroten@sequiturenergy.com>

Best,
Braden

From: Travis Morris [mailto:tmorris@jupitermlp.com]
Sent: Wednesday, June 20, 2018 12:13 PM
To: Braden Merrill <bmerrill@sequiturenergy.com>; Blake Cantley <bcantley@sequiturenergy.com>
Subject: Econs

Please see economics below. Note that the "positioning cost" and "shrinkage" are conservative estimates.

The net price to you for all volume railed out would be NYMEX WTI CMA (Ex. W&H) + CMA Diff + Mid/Cush - $2.50 + $2.22. If bbls deliver into the local market you will get the floor price and we take the risk to clear them. A summary of the long haul truck econs are below as well.

As some of these items are still estimates, we will true these numbers up based on actuals. We should schedule a call for later today or in the morning to go through any questions or comments so that we can get this done.

Total Spread	*Plus*	**Midland formula +/- lease diff vs LLS formula +/- sales diff**
Railcar Lease	*Minus*	**2 year lease amortized over projected 1year volume (if this extends beyond 1yr, this factor is removed in all subsequent months**
Positioning Cost	*Minus*	**Cost associated with moving empty cars to Midland**
Load Terminal Cost	*Minus*	**Vista**
Transloader Capital Recovery	*Minus*	**Sequitur Equipment purchase amortized over projected 1year volume**
Offload Terminal Cost	*Minus*	**Jupiter Lease**
Shrinkage	*Minus*	**estimated at .5%**
Freight	*Minus*	**TXPF/ BNSF**
FSC	*Minus*	**BNSF**
Trucking	*Minus*	**Jupiter**
Net Margin (per bbl)	*Sum*	
Sequitur Margin 50%	*Sum/2*	**Added to "lease diff" referenced in Total Spread**

Assumptions	
Total Railcars	360.00
Turns per Month	2.00
Railcar Volume	673.00
Daily Volume	15,000.00
Monthly Volume	456,250.00
Annual Volume	5,475,000.00
Railcar Lease (monthly)	900.00
Railcar Lease (per bbl)	1.42
Positioning Cost (per car)	5,000.00
Positioning Cost (per bbl)	0.33
Load Terminal Cost (per bbl)	1.50
Offload Terminal Cost (per bbl)	1.50
Shrinkage	0.35
Freight (per car)	4,500.00
Freight (per bbl)	6.69
FSC	179.60
FSC (per bbl)	0.27
Trucking	1.50

Margin Calculation		
Sale Price vs. Midland	$	15.50
Purchase Deduct (floor)	$	(2.50)
Total Spread	$	18.00
Railcar Lease	$	(1.42)
Positioning Cost	$	(0.33)
Load Terminal Cost	$	(1.50)
Offload Terminal Cost	$	(1.50)
Shrinkage	$	(0.35)
Freight	$	(6.69)
FSC	$	(0.27)
Trucking	$	(1.50)
Net Margin (per bbl)	$	**4.45**
Sequitur Margin 50%	$	**2.22**

Trucking	
Mid/ Cush	$ 12.45
Purchase Deduct (floor)	$ (2.50)
Total Spread	$ 14.95
Shrinkage	$ (0.35)
Freight	$(12.00)
Net Margin (per bbl)	**$ 2.60**
Sequitur Margin 50%	**$ 1.30**

Travis Morris
Chief Commercial Officer

440 Louisiana Street
Suite 700
Houston, TX 77002
(409)-771-6697
ICE Messenger – Tmorris10 **please note that my ICE ID has changed**
Email – tmorris@jupitermlp.com

**please note that my new email address: tmorris@jupitermlp.com*

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From: Spencer Falls
To: Braden Merrill; Tony Wroten
Cc: Derek Jones
Subject: Valero crude by rail inquiry
Date: Thursday, May 17, 2018 3:19:14 PM

Guys:

Just wanted you to know I am continuing to push Valero for an answer as to their interest in railing crude out of west Texas, specifically your production. I am waiting on Plains marketing to get back to me.

Thanks

Spencer

Spencer Falls
President
EnMark Services, Inc.
1700 Pacific Avenue, Suite 2660
Dallas, Texas 75201
Phone: (214) 965-9581 | Fax: (214) 965-9593
spencer.falls@enmarkservices.com

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From: Spencer Falls
Sent: Thursday, May 17, 2018 3:16 PM
To: 'danny.willmann@Valero.com'
Subject: crude by rail

Danny:

Just checking in with you to see if you have been able to find out what Valero's situation is on possibly railing crude out of west Texas as we discussed the other day? Any updates you can share with me?

Thanks

S

Spencer Falls
President
EnMark Services, Inc.
1700 Pacific Avenue, Suite 2660
Dallas, Texas 75201
Phone: (214) 965-9581 | Fax: (214) 965-9593
spencer.falls@enmarkservices.com

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Jim Lanter

From: Braden Merrill
Sent: Thursday, June 07, 2018 6:18 PM
To: Mike van den Bold; Tony Wroten
Cc: Blake Cantley
Subject: FW: Economics

Mike,

See the below from the Jupiter guys. Where they get you are the "Lease diff", which is a spot price in a tight market and their ability to move enough cars.

Best,
Braden

From: Travis Morris [mailto:tmorris@jupitermlp.com]
Sent: Thursday, June 07, 2018 5:58 PM
To: Braden Merrill <bmerrill@sequiturenergy.com>; Blake Cantley <bcantley@sequiturenergy.com>
Subject: Economics

Thanks for taking the time to meet with me this week. I think that we should be able to work toward a solution that creates value for both of us.

Please see general outline below for establishing a margin/ arb share that would be used to price your bbls as we discussed.

Total Spread	*Plus*	Midland formula +/- lease diff vs LLS formula +/- sales diff
Railcar Lease	*Minus*	2 year lease amortized over projected 1year volume (if this exten
Positioning Cost	*Minus*	Cost associated with moving empty cars to Midland
Load Terminal Cost	*Minus*	Vista
Transloader Capital Recovery	*Minus*	Sequitur Equipment purchase amortized over projected 1year vol
Offload Terminal Cost	*Minus*	Jupiter Lease
Shrinkage	*Minus*	estimated at .5%
Freight	*Minus*	TXPF/ BNSF
FSC	*Minus*	BNSF
Trucking	*Minus*	Jupiter
Net Margin (per bbl)	*Sum*	
Sequitur Margin 50%	*Sum/2*	Added to "lease diff" referenced in Total Spread

What we need to move this forward is to understand where you see the "lease diff" basis sales to the local market. Once I have that we can plug the above formulas and establish a final price.

Assuming that you want to take the risk and go for 50% of the uplift, we need to have provisions in the contract related to pricing for bbls delivered to other markets via truck. Conceptually, I think the best way to do so would be to show 3 markets (Midland, Col City, Nustar?) and run mileage/ set truck rates to each and apply the actual sales premium/ deduct for any volume forced to clear outside of the rail project. We can kick that around a bit, just wanted to begin to address it.

Please also provide me with the specs for the transload units you are ordering so that I can make sure they will work for the project.

If you have any questions please let me know.

Look forward to hearing from you.

Travis Morris
Chief Commercial Officer

440 Louisiana Street
Suite 700
Houston, TX 77002
(409)-771-6697
ICE Messenger – Tmorris10 **please note that my ICE ID has changed**
Email – tmorris@jupitermlp.com

**please note that my new email address: tmorris@jupitermlp.com*

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Local Counsel for Sequitur Permian, LLC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re:	§	**Chapter 11**
	§	
VISTA PROPPANTS AND LOGISTICS, LLC, ET AL.,	§	**Case No. 20-42002-ELM-11**
	§	**(Jointly Administered)**
Debtors.	§	
	§	
	§	
MAALT, LP,	§	
	§	
Plaintiff,	§	
	§	**ADV. PROC. NO. 20-04064-ELM**
v.	§	
	§	
SEQUITUR PERMIAN, LLC,	§	
	§	
Defendant.	§	
	§	

DEFENDANT, SEQUITUR PERMIAN, LLC'S
OBJECTIONS AND ANSWERS TO PLAINTIFF'S FIRST INTERROGATORIES

Defendant, Sequitur Permian, LLC ("Defendant" or "Sequitur") serves the following objections and answer to Plaintiff's First Interrogatories pursuant to Federal Rule of Civil Procedure 26(a)(2):

Interrogatory No. 1: State general the facts that give rise to Sequitur's affirmative defense of failure of consideration.

Answer: Objection. Sequitur objects to this interrogatory to the extent it seeks the complete marshaling of all evidence in support of its affirmative defense. Sequitur further objects to this contention interrogatory as overly broad as it does not seek specifically if Sequitur is making a factual or legal contention, but, instead, seeks Sequitur to explain all facts in support of an affirmative defense. Sequitur further objects to this interrogatory as it seeks facts in support of a contractual interpretation to which the unambiguous contract speaks for itself. Finally, Sequitur objects to this interrogatory as premature to the extent that the discovery period is ongoing.

Without waiving this objection and subject thereto, the Terminal Services Agreement ("TSA") requires Maalt to actually perform throughput services prior to the Throughput Fee or Shortfall Payment becoming due. Maalt has sued for the recovery of the Throughput Fee or Shortfall Payment but has not performed the throughput services in consideration of the same.

Sequitur reserves the right to supplement this interrogatory to the extent necessary as discovery is not yet complete.

Interrogatory No. 2: State general the facts that give rise to Sequitur's affirmative defense of waiver.

Answer: Objection. Sequitur objects to this interrogatory to the extent it seeks the complete marshaling of all evidence in support of its affirmative defense. Sequitur further objects to this contention interrogatory as overly broad as it does not seek specifically if Sequitur is making a factual or legal contention, but, instead, seeks Sequitur to explain all facts in support of an affirmative defense. Sequitur further objects to this interrogatory as it seeks facts in support of a contractual interpretation to which the unambiguous contract speaks for itself. Finally, Sequitur objects to this interrogatory as premature to the extent that the discovery period is ongoing.

Without waiving this objection and subject thereto, Sequitur asserts that Maalt has waived a claim for lost profits under the specific provisions of the TSA that limit the recoverable damages. Sequitur further asserts that Maalt waived the right to demand notice of commencement or seek a declaration of commencement by failing to declare that Sequitur was in default or breach per the TSA.

For further answer, please see the contractual language in the TSA.

Sequitur reserves the right to supplement this interrogatory to the extent necessary as discovery is not yet complete.

Interrogatory No. 3: State general the facts that give rise to Sequitur's affirmative defense of statute of frauds.

Answer: Objection. Sequitur objects to this interrogatory to the extent it seeks the complete marshaling of all evidence in support of its affirmative defense. Sequitur further objects to this contention interrogatory as overly broad as it does not seek specifically if Sequitur is making a factual or legal contention, but, instead, seeks Sequitur to explain all facts in support of an affirmative defense. Finally, Sequitur objects to this interrogatory as premature to the extent that the discovery period is ongoing.

Without waiving these objections and subject thereto, Maalt is seeking a declaration to enforce terms that are not in writing. Specifically, Maalt is seeking to enforce a "Minimum Fee" that is not in writing and for which Maalt admits is not performable within one year.

Sequitur reserves the right to supplement this interrogatory to the extent necessary as discovery is not yet complete.

Interrogatory No. 4: State general the facts that give rise to Sequitur's affirmative defense of excuse and/or justification.

Answer: Objection. Sequitur objects to this interrogatory to the extent it seeks the complete marshaling of all evidence in support of its affirmative defense. Sequitur further objects to this contention interrogatory as overly broad as it does not seek specifically if Sequitur is making a factual or legal contention, but, instead, seeks Sequitur to explain all facts in support of an affirmative defense. Sequitur further objects to this interrogatory as it seeks facts in support of a contractual interpretation to which the unambiguous contract speaks for itself. Finally, Sequitur objects to this interrogatory as premature to the extent that the discovery period is ongoing.

Without waiving these objections and subject thereto, Sequitur contends that it was justified or excused in its actions under the Force Majeure and Terminal Operations Commencement Date definitions in the TSA. Specifically, Sequitur's obligation, if any, to declare the Terminal Operations Commencement Date was subject to the specific language in the TSA under which Sequitur never did send the notice nor did Sequitur determine that the Terminal was operational. Sequitur's obligations in regard to the Terminal Operations Commencement Date were further excused by the Force Majeure Event under the express language of the TSA.

Sequitur reserves the right to supplement this interrogatory to the extent necessary as discovery is not yet complete.

Interrogatory No. 5: State general the facts that give rise to Sequitur's affirmative defense of failure to mitigate damages.

Answer: Objection. Sequitur objects to this interrogatory to the extent it seeks the complete marshaling of all evidence in support of its affirmative defense. Sequitur further objects to this contention interrogatory as overly broad as it does not seek specifically if Sequitur is making a factual or legal contention, but, instead, seeks Sequitur to explain all facts in support of an affirmative defense. Finally, Sequitur objects to this interrogatory as premature to the extent that the discovery period is ongoing.

Without waiving these objections and subject thereto, Sequitur contends that Maalt had an obligation to mitigate any damages it may have suffered under the TSA by using reasonable efforts to lease or contract for the use of the Terminal after the Force Majeure Event was declared. In addition, Maalt had an obligation to make reasonable efforts to lease the Terminal. To date, Maalt has failed to provide evidence of reasonable efforts taken.

Sequitur reserves the right to supplement this interrogatory to the extent necessary as discovery is not yet complete.

Interrogatory No. 6: State general the facts that give rise to Sequitur's affirmative defense of failure of implied conditions of the contract.

Answer: Objection. Sequitur objects to this interrogatory to the extent it seeks the complete marshaling of all evidence in support of its affirmative defense. Sequitur further objects to this contention interrogatory as overly broad as it does not seek specifically if Sequitur is making a factual or legal contention, but, instead, seeks Sequitur to explain all facts in support of an affirmative defense. Finally, Sequitur objects to this interrogatory as premature to the extent that the discovery period is ongoing.

Without waiving these objections and subject thereto, Sequitur contends the TSA included implied contract conditions including the availability of proper railcars, a destination to offload the Product with rail capacity and rates to that destination all of which had to be ascertained or met prior to the obligations in the TSA being enforced, including the alleged Throughput Fee or Shortfall Payment becoming due. These conditions were not met.

Sequitur reserves the right to supplement this interrogatory to the extent necessary as discovery is not yet complete.

Interrogatory No. 7: State general the facts that give rise to Sequitur's affirmative defense of mutual mistake.

Answer: Objection. Sequitur objects to this interrogatory to the extent it seeks the complete marshaling of all evidence in support of its affirmative defense. Sequitur further objects to this contention interrogatory as overly broad as it does not seek specifically if Sequitur is making a factual or legal contention, but, instead, seeks Sequitur to explain all facts in support of an affirmative defense. Finally, Sequitur objects to this interrogatory as premature to the extent that the discovery period is ongoing.

Without waiving these objections and subject thereto, the objective circumstances surrounding the execution of the TSA showed that the parties knew that the Terminal would not be operational until rail services had been ascertained to an end destination with capacity to receive an amount of Product necessary to fulfill the minimum throughput contemplated under the TSA and the Product was actually throughput through the Terminal. This understanding was evident through the negotiations between the parties and the efforts by Maalt prior to execution in recommending and

ascertaining these services and through the specification of the Terminal Operations Commencement Date as a distinct date under the TSA.

Sequitur reserves the right to supplement this interrogatory to the extent necessary as discovery is not yet complete.

Interrogatory No. 8: If Maalt had mitigated its damages with reasonable efforts, how much damages could it have mitigated? State the general facts that support this contention.

Answer: Objection. Sequitur objects to this interrogatory to the extent it seeks the complete marshaling of all evidence in support of its affirmative defense. Sequitur further objects to this contention interrogatory as overly broad as it does not seek specifically if Sequitur is making a factual or legal contention, but, instead, seeks Sequitur to explain all facts in support of an affirmative defense. Finally, Sequitur objects to this interrogatory as premature to the extent that the discovery period is ongoing.

Without waiving these objections and subject thereto, Sequitur contends that if Maalt had leased or contracted with a third party for the use of the Terminal that it could have avoided all damages sought through the Shortfall Payment or Throughput Fee.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re:	§	**Chapter 11**
	§	
VISTA PROPPANTS AND LOGISTICS, LLC, ET AL.,	§	**Case No. 20-42002-ELM-11**
	§	**(Jointly Administered)**
Debtors.	§	
	§	
	§	
MAALT, LP,	§	
	§	
Plaintiff,	§	
	§	**ADV. PROC. NO. 20-04064-ELM**
v.	§	
	§	
SEQUITUR PERMIAN, LLC,	§	
	§	
Defendant.	§	
	§	

VERIFICATION

1. "My name is Braden Merrill. I am the VP & CFO of Sequitur Permian, LLC ("Sequitur"). I am above the age of twenty-one (21). I have personal knowledge of all the facts stated in this Verification and am in all respects qualified to make the same. I have read the foregoing Objections and Answers to Plaintiff's First Interrogatories and that the facts stated therein are true and correct.

2. Further, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED this 22nd day of January, 2021.

Braden Merrill

Sequitur
ENERGY RESOURCES LLC

Purchase Order

No.: PO-2018-139-WT

SUPPLIER: Superior Tank Company Inc. 1700 Bamore Road Rosenberg, TX 77471 281-342-0750 huel@superiortank.com	**BILL TO:** SEM Operating Company LLC 909 ESE Loop 323 Ste 777 Tyler, TX 75701
SEQUITUR: David Pharaoh Supply Chain Management dpharaoh@sequiturenergy.com Direct: 432-218-2001 Cell: 432-631-7916	**SHIP TO:** Barnhart Rail Facility 4 miles West of Barnhart Texas Irion County, Texas

Order Date	23-May-18	**Final Destination**	TBA	**Currency**	USD
Required Date	31-Aug-18	**AFE**	See Below	**Payment Terms**	Net 30
Ship Via	Superior Trucks	**Permits/Block**		**Requisition #**	Sammy Reed
Shipping Terms	FOB - SEM Facility	**Well**	See Below	**Quotation #**	1805-25 Revision I

The purchase of Goods shall be subject to the terms of the (I) Master Purchase Order Agreement executed between the parties or (ii) Terms and Conditions attached hereto in the event no Master Purchase Order Agreement has been executed by the parties.

	Description	Qty	Unit	Unit Price USD	Total USD
1	54' 11 3/4" Diameter x 24' Height; Bolted Steel Storage Tanks; per attached quote from Superior Tank dated 5/22/2018	2	EA	$ 117,494.50	$ 234,989.00
2	Construction and Erection for 2 - 10,000bbl Steel Bolted Tanks	2	EA	$ 57,753.00	$ 115,506.00
3	Sales Tax @ 6.25%	1	EA	$ 14,686.81	$ 14,686.81

LIQUIDATED DAMAGES: If Contractor fails to complete the Work (tanks erected and operational) to Company's satisfaction by the end of the day August 31, 2018 and the reason for delay is not attributable to Company or delays due to adverse weather conditions (agreed to by the Parties), then for each day of delay beyond the Completion Date, Company shall be entitled to impose liquidated damages of $10,500.00 on September 1, 2018, and additional damages of $3500.00 per day starting September 2, 2018, which may be deducted from payments otherwise due to Contractor under this Purchase Order. Only delays after delivery of the Work materials to Company's Work Site shall be considered for extending the Completion date. Change Orders to the original quotation, such as the addition of vertical rise stairs, landings and guardrails, shall not be considered for assessing liquidated damages. The Parties agree that liquidated damages applied against Contractor hereunder shall not exceed a maximum of $35,000.00. The amounts for liquidated damages set out in this Article represent a genuine pre-estimate of the loss likely to be suffered by Company resulting from delays and shall not be considered a penalty.

EARLY COMPLETION: As incentive to Contractor for timely and early completion of the Work, if Contractor completes the Work (tanks erected and operational) to Company's satisfaction by the end of the day August 31, 2018, Contractor shall be entitled to receive, in addition to the payments otherwise due to Contractor under this Purchase Order, an incentive payment of $10,500. Should Contractor complete the Work on or before the end of the day August 24, 2018, Contractor shall be entitled to receive $17,500.00 (this in addition to the payment of $10,500.00 due for completion by August 31, 2018). Should the Contractor complete the Work on or before the end of the day August 17, 2018, Contractor shall be entitled to receive an additional $10,500.00. The Parties agree that additional payments to the amounts due under this Purchase Order, shall not exceed $38,500.00.

				Total	**$ 365,181.81**

Approved by Company		**Accepted by Contractor**	
Signature		**Signature**	
Name	Mike van den Bold	**Name**	
Date	23-May-18	**Date**	

Special Conditions:

This Purchase Order, along with Buyer's Terms and Conditions to Purchase Order which is incorporated herewith, shall become a binding contract between Seller and Buyer upon the earlier occurrence of the following: (I) Seller signing and returning an acceptance copy of the Purchase Order, (II) Seller shipping the Goods or otherwise acknowledging acceptance of the Purchase Order, or (III) Seller commencing performance of services related to the Goods.

Sequitur
ENERGY RESOURCES LLC

Purchase Order

No.: PO-2018-140-WT

SUPPLIER: Flare King 508 W. Wall, Suite 550 Midland, TX 79701 432-553-3851 rayme.dean@ngsgi.com	**BILL TO:** SEM Operating Company LLC 909 ESE Loop 323 Ste 777 Tyler, TX 75701
SEQUITUR: David Pharaoh Supply Chain Management dpharaoh@sequiturenergy.com Direct: 432-218-2001 Cell: 432-631-7916	**SHIP TO:** Barnhart Rail Facility 5 miles West of Barnhart, Tx Irion County, Texas

Order Date	29-May-18	**Final Destination**	TBA	**Currency**	USD
Required Date	Per Instructions	**AFE**	See Below	**Payment Terms**	Net 30
Ship Via	TBD	**Permits/Block**		**Requisition #**	Nick Eldridge
Shipping Terms	FOB - Kimark	**Well**	See Below	**Quotation #**	F-18-060

The purchase of Goods shall be subject to the terms of the (i) Master Purchase Order Agreement executed between the parties or (ii) Terms and Conditions attached hereto in the event no Master Purchase Order Agreement has been executed by the parties.

	Description	Qty	Unit	Unit Price USD	Total USD
1	Model FKAVP-H25_R2S-EOOOOA Flare King Air Assited Variable Port Tip on a 25ft. OAH Guyed Stack; per attached quote dated 5/21/2018; to include one FAS70215 - 2" Enardo Series 7 Flame Arrestor and One Solar Quad O Ignition Controls System Capable of all functions of the 110V System with "K" Type Thermocouple Monitor per attached quote.	1	EA	$ 23,650.00	$ 23,650.00
	Delivery: 5-7 weeks FRO -				
				Total	**$ 23,650.00**

Approved by Company	**Accepted by Contractor**
Signature _____	**Signature** _____
Name Sammy Reed	**Name** _____
Date 29-May-18	**Date** _____

Special Conditions:

This Purchase Order, along with Buyer's Terms and Conditions to Purchase Order which is incorporated herewith, shall become a binding contract between Seller and Buyer upon the earlier occurrence of the following: (i) Seller signing and returning an acceptance copy of the Purchase Order, (ii) Seller shipping the Goods or otherwise acknowledging acceptance of the Purchase Order, or (iii) Seller commencing performance of services related to the Goods.

Sequitur
ENERGY RESOURCES LLC

Purchase Order

No.: PO-2018-142-WT

SUPPLIER: SafeRack, LLC 730 Electric Drive Sumter, SC 29153 (843) 714-9811 Cbollinger@saferack.com	**BILL TO:** SEM Operating Company LLC 909 ESE Loop 323 Ste 777 Tyler, TX 75701
SEQUITUR: David Pharaoh Supply Chain Management dpharaoh@sequiturenergy.com Direct: 432-218-2001 Cell: 432-631-7916	**SHIP TO:** Barnhart Rail Facility 5 miles West of Barnhart, Tx Irion County, Texas

Order Date	1-Jun-18	**Final Destination**	TBA	**Currency**	USD
Required Date	Per Instructions	**AFE**	See Below	**Payment Terms**	See Below
Ship Via	SafeRack	**Permits/Block**		**Requisition #**	Nick Eldridge
Shipping Terms	FOB	**Well**	See Below	**Quotation #**	SAS-47186R5

The purchase of Goods shall be subject to the terms of the (i) Master Purchase Order Agreement executed between the parties or (ii) Terms and Conditions attached hereto in the event no Master Purchase Order Agreement has been executed by the parties.

	Description	Qty	Unit	Unit Price USD	Total USD
1	Eight (8) Trailer Mounted Crude Transloaders per the specification listed in the attached quote.	8	EA	$ 212,049.04	$ 1,696,392.32
	Payment Terms: 1/3 - Down Payment at Time of Order; 1/3 Payment at Time of Shipment; 1/3 Final Payment at Delivery and Start-Up Net 30				
	Cancellation: 1. Purchaser cannot cancel orders under any circumstances without Purchaser first reaching an agreement in writing with Seller covering all Seller's expenses. At a minimum, such an agreement must reimburse the Seller for all expenses incurred (including but not limited to costs of purchased materials), engineering costs, and a reasonable mark-up to cover overhead and profit; cancellation charges shall be, at a minimum, at least 15% of the purchase price of the goods covered by the cancelled orders, altogether defined as Cancellation Fees. Once the first system has been shipped, Purchaser will be notified at least seven days before the next two systems are due to begin fabrication. This process will continue until the final system has been scheduled for fabrication. 2. Notwithstanding Paragraph 1 of this Article, If Purchaser cancels prior to the start of fabrication for units 6 – 8, the Cancellation Fees will be waived. The waiver does not include restocking fees assessed by Seller's 3rd party vendors for purchased materials.				
	Delivery Requirements: One (1) Unit at 4 Weeks from Order Date; Two (2) Units Every Two Weeks Afterwards Until the Total of Eight (8) Units are Met.				
				Total	**$ 1,696,392.32**

Approved by Company	**Accepted by Contractor**
Signature _____	**Signature** _____
Name Sammy Reed	**Name** _____
Date 1-Jun-18	**Date** _____

Special Conditions:

This Purchase Order, along with Buyer's Terms and Conditions to Purchase Order which is incorporated herewith, shall become a binding contract between Seller and Buyer upon the earlier occurrence of the following: (i) Seller signing and returning an acceptance copy of the Purchase Order, (ii) Seller shipping the Goods or otherwise acknowledging acceptance of the Purchase Order, or (iii) Seller commencing performance of services related to the Goods.

From: Chris Favors
To: Braden Merrill
Cc: Steven McCarley; Jon Ince
Subject: RE: Term Sheet
Date: Tuesday, June 5, 2018 10:54:30 AM
Attachments: image001.png
image003.png
image005.png
Term Sheet_Vista_SER_20180520 (002) rev 6-5-2018.docx
Term Sheet_Vista_SER_20180520 (002) rev 6-5-2018.pdf

Braden,

Here is the redline of the agreement and a clean copy PDF. If you are agreeable to the two changes, please sign the clean version and send it back. We will get it countersigned today.

Thanks,

Chris Favors
Business Development
(682)-251-5538
cfavors@vprop.com
4413 Carey Street, Ft Worth, TX 76119
www.vprop.com



From: Braden Merrill <bmerrill@sequiturenergy.com>
Sent: Friday, June 1, 2018 5:05 PM
To: Chris Favors <cfavors@vprop.com>
Cc: Steven McCarley <smccarley@vprop.com>; Jon Ince <jince@vprop.com>
Subject: Term Sheet

Chris,

I apologize that it took the entirety of the day to respond. I completely understand your desire to keep communication open with other parties in case Sequitur is unable to perform. As Jon and I discussed, Sequitur would prefer that such dialogue be limited to companies that Sequitur is not in dialogue with. You will see that we have noted such companies in section 4 of the revised agreement. We are hoping not to complicate those discussions if possible.

Other than that, we added a blurb to section 2, referencing our conversation earlier this week, that it would be the intent of both parties to extend the exclusivity period if factors beyond our control kept us from executing a Definitive Agreement within a three week period but we were near the finish line. And we kept the "licenses and permits" consistent in section 7. Nothing legally material but I wanted to point it out. I have attached a clean, redlined and executed version for your review.

So you know, we are going full steam ahead on our side. We have:

- Purchase orders in for 8 new transloaders,
- Had two drafting rounds of our Definitive Agreement, which we hope to have to you by Wednesday of next week,
- Made good progress regarding the transportation and sale of the oil via rail,

Ordered 20,000 barrels of oil tankage,

- Been working through regulatory issues concerned with the transport of oil, and
- Met with University Lands regarding our surface use plans.

Please give me a call if you would care to discuss anything. I look forward to getting past the legal stuff and working with you guys on the real stuff.

Best,
Braden Merrill

O:713-395-3008
C: 434-466-4294
bmerrill@sequitureenergy.com

Two Briarlake Plaza; 2050 West Sam Houston Pkwy South
Suite 1850; Houston, TX 77042

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
FORT WORTH DIVISION

In re:	§	**Chapter 11**
	§	
VISTA PROPPANTS AND LOGISTICS, LLC, ET AL.,	§	**Case No. 20-42002-ELM-11**
	§	
	§	
Debtors	§	**Jointly Administered**
	§	
MAALT, LP,	§	
	§	
	§	
Plaintiff,	§	
	§	
vs.	§	**Adversary No. 20-04064-elm**
	§	
SEQUITUR PERMIAN, LLC,	§	**Removed from Cause No. CV19-003 in**
	§	**the 51st Judicial District Court, Irion**
Defendant.	§	**County, Texas**

ORDER ON PLAINTIFF'S THIRD
MOTION FOR PARTIAL SUMMARY JUDGMENT

ON THIS DAY, the Court considered the Third Motion for Partial Summary Judgment filed by Plaintiff, Maalt, LP ("Maalt"), the response filed by Sequitur Permian, LLC ("Sequitur"), Defendant, and any reply, and the entirety of the summary judgment evidentiary record. After giving consideration to the Motion and all related documents, the Court is of the opinion that it should be granted.

IT IS, THEREFORE ORDERED THAT:

1. There is no material fact as to the reliance element of Sequitur's fraudulent inducement claim, and summary judgment is granted dismissing that claim against Maalt;
2. There is no material fact as to the reliance element of Sequitur's negligent misrepresentation claim, and summary judgment is granted dismissing that claim against Maalt;
3. There is no material question of fact with respect to Sequitur's affirmative defense of mutual mistake, and summary judgment is granted in favor of Maalt with respect to the affirmative defense of mutual mistake;
4. Both as a matter of law and because there is no material question of fact with respect to Sequitur's affirmative defense of failure of implied condition, summary judgment is granted in favor of Maalt with respect to the affirmative defense of failure of implied condition;
5. Both as a matter of law and because there is no material question of fact with respect to Sequitur's affirmative defense of excuse and/or justification, summary judgment is granted in favor of Maalt with respect to the affirmative defense of excuse and/or justification;

6. As a matter of law, the statute of fraud does not apply to Maalt's claims; therefore, summary judgment is granted in favor of Maalt on that defense; and

7. There is no material question of fact with respect to Sequitur's affirmative defense of waiver, and summary judgment is granted in favor of Maalt with respect to the affirmative defense of waiver;

8. There is no material question of fact with respect to Sequitur's affirmative defense of failure of consideration, and summary judgment is granted in favor of Maalt with respect to the affirmative defense of failure of consideration.

END OF ORDER # #

Submitted by:

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pwickes@wickeslaw.com

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
FORT WORTH DIVISION

In re:	§	**Chapter 11**
	§	
VISTA PROPPANTS AND LOGISTICS, LLC, ET AL.,[1]	§	**Case No. 20-42002-ELM-11**
	§	
	§	
Debtors	§	**Jointly Administered**
	§	
MAALT, LP,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	**Adversary No. 20-04064-elm**
	§	
SEQUITUR PERMIAN, LLC,	§	**Removed from Cause No. CV19-003 in the 51st Judicial District Court, Irion County, Texas**
Defendant.	§	

BRIEF IN SUPPORT OF PLAINTIFF'S THIRD MOTION FOR PARTIAL SUMMARY JUDGMENT

[1]The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Vista Proppants and Logistics, LLC (7817) ("Vista HoldCo"); VPROP Operating, LLC (0269) ("VPROP"); Lonestar Prospects Management, L.L.C. (8451) ("Lonestar Management"); MAALT Specialized Bulk, LLC (2001) ("Bulk"); Denetz Logistics, LLC (8177) ("Denetz"); Lonestar Prospects, Ltd. (4483) ("Lonestar Ltd."); and MAALT, LP (5198) ("MAALT"). The location of the Debtors' service address is 4413 Carey Street, Fort Worth, TX 76119-4219.

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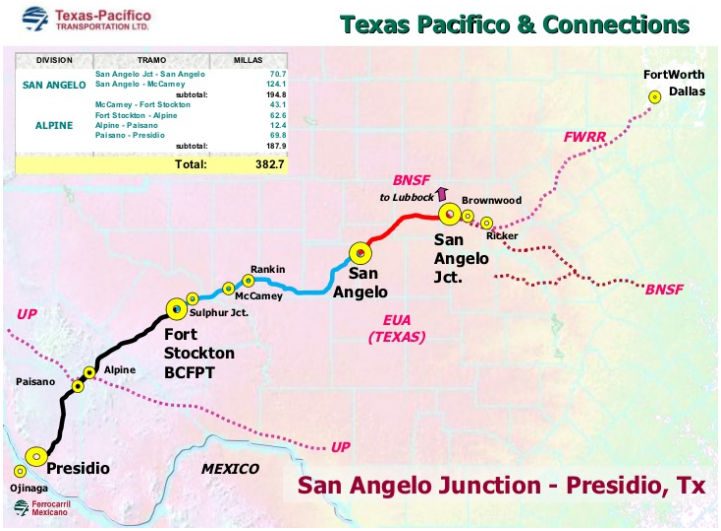
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STATEMENT OF FACTS

Prior to the bankruptcy filing, Maalt was in the business of operating rail transloading facilities that transloaded materials used in the oil and gas industry in Texas. Its transloading activities typically involve transloading materials from rail cars to trucks for delivery to well sites and vice versa. In 2018 to 2019, Maalt operated a transloading facility in Barnhart, Texas (the "Barnhart Facility") that is on the railroad owned and operated by Texas Pacifico Transportation, Ltd. ("TXPF").[1] It is located approximately mid-way between San Angelo and Rankin, Texas.

TXPF has track that runs through the Permian Basin and interchanges (connects) to tracks owned by other railroads including the Union Pacific, BNSF, and Fort Worth and Western Railroad ("FWWR"). The FWWR in turn interchanges with track owned by BNSF and The Kansas City Southern Railway ("KCS") (at the Fort Worth interchange) as shown in this map[2]:



[1] In depositions, the Barnhart Facility was often referred to as the Vista rail facility.

[2] https://image.slidesharecdn.com/txpf-ptp-sa-2011presentation-110303162527-phpapp02/95/west-texas-trade-summit-2011-texas-pacifico-3-728.jpg?cb=1299169980

Through those interchanges and railroads, goods can be shipped into and out of the Permian Basin area by rail. The Barnhart Facility was able to accept goods brought to it by truck or train from anywhere in the country, and then transloaded to either truck or train for delivery either within the Permian Basin or other areas throughout the country.

In approximately May 2018, Sequitur contacted Maalt to discuss arrangements through which Maalt would transload Sequitur's crude oil at the Barnhart Facility because that facility was adjacent to land on which Sequitur had producing oil wells.[3] At the time, the pipelines leading from the Permian Basin to various oil markets were at capacity and oil was in a state of oversupply. Because of that situation, the price of crude oil at Midland was far less in 2018 than it was for crude oil sold at the Gulf Coast.[4] Sequitur believed that the spread in the prices made the cost of transporting crude oil by rail attractive and created an opportunity to cash in on that difference by moving its oil to the Gulf Coast by train. By doing so, it projected that it could make $10 million in extra profit.[5]

On or about June 5, 2018, Sequitur and Maalt signed a letter of intent ("LOI") with respect to the transloading of crude oil at the Barnhart Facility. By that time, Sequitur had already spent millions of dollars on transloading machines and tank storage to be used at the facility.[6] The LOI was drafted by Sequitur, and contained the following provisions that are relevant to this motion:

> 6. Due Diligence. Following the execution of this letter until the end of the LOI Term, the Parties and their designated representatives will conduct due

[3] Merrill dep. 17, 26.

[4] Merrill dep. 26–29.

[5] Merrill dep. 29–31.

[6] Exhibit 5, Sequitur_000636, Sequitur_000600, Sequitur_00680.

> diligence reviews to analyze the feasibility of the contemplated Transaction, which reviews have not yet been conducted and completed.
>
> 7. Approval. No Party shall be bound by any Definitive Agreement relating to the Transaction until (a) each Party has completed its due diligence to its satisfaction. . ..[7]

The letter of intent was extended two times at the request of Sequitur, and eventually expired on July 23, 2018. However, notwithstanding the expiration of the letter of intent, Sequitur requested and obtained from Maalt an access agreement in July 2018 allowing it to begin constructing improvements and installing equipment that would be used for the transloading process even though it did not have a definitive agreement for the use of the facility.[8]

Eventually, in early August 2018, Maalt and Sequitur entered into a Terminal Services Agreement (the "TSA") to provide (i) crude oil transloading services at the Barnhart Facility for Sequitur, (ii) Sequitur with exclusive use of the facility, and (ii) Sequitur with a right of first offer and refusal to purchase the facility (the "ROFR").[9] Pursuant to the TSA, Sequitur was to provide and install the equipment needed to transload Sequitur's crude oil from trucks (and potentially a pipeline) to rail cars and make the payments required by the TSA.

Pursuant to the TSA, Sequitur constructed the Phase I Project improvements at the Barnhart Facility which consisted of the transloading equipment purchased by Sequitur before it signed the LOL and the other infrastructure necessary to transload from trucks to rail cars. While

[7] Exhibit 6.

[8] Maalt_000228; Maalt_001120

[9] Exhibit 13.

the completion of the improvements was targeted for early September 2018, Sequitur's completion of those improvements was delayed and ultimately completed and became operational and/or "in service" on or about December 10, 2018 according to Sequitur's records.[10]

Before signing the TSA, Sequitur engaged in substantial due diligence regarding its ability to find a purchaser of its oil that would serve as its arbitrage joint venture partner. In that regard, it had extensive discussions with Shell and British Petroleum in search of a contract with them to buy Sequitur's oil, ship it by rail from the Barnhart Facility to the Gulf Coast, and share in the arbitrage that might be realized.[11] It had similar discussions with Valero, Sunoco, Arm, Murex, and Nustar.[12] Sequitur also had discussions with its market consultant, Enmark regarding steps it could take to realize its objective and asking it to opine on the steps Sequitur was taking to pursue the project.[13] It had extensive discussions with Jupiter MLP, after an introduction by Maalt but without Maalt's further involvement, about being its joint venture partner if Shell or British Petroleum did not materialize. It pursued that due diligence for two months before ultimately signing the TSA.

By December 2018, Sequitur had not begun transloading crude.[14] Other than trying to find a joint venture partner who would move its oil for it, Sequitur took no action to implement

[10] Exhibits 76 and 89.

[11] Merrill dep. 33, 34-35, 37.

[12] Merrill dep. 13-14.

[13] Exhibit 35.

[14] Merrill dep. 105:9-25.

the logistics necessary to enable the transloading of crude at the Barnhart Facility.[15] It was, unsuccessful in finding such a joint venture partner with the result that it never had crude oil transloaded at the Barnhart Facility.[16]

Sequitur's Phase 1 Project improvements were complete and the Barnhart Facility was "in service" on December 10, 2018.[17] Nonetheless, it did not bring crude to the Barnhart Facility for transloading as required by the TSA. Instead, Sequitur pretextually claimed that a force majeure event occurred so it would not have to pay Maalt the amounts required by the TSA.[18] It has since refused to pay Maalt although obligated to do so under the TSA.

Sequitur's conduct indicates that at the time of Sequitur's February 8, 2019 letter it was absolutely and unconditionally refusing, and continues to refuse, to perform its obligations under the TSA, including the obligation to pay the amounts required by the TSA. It has therefore repudiated and materially breached the TSA. In response to Maalt's suit, Sequitur has asserted the claims and defenses addressed in this motion, each of which fail as a matter of law.

ARGUMENT AND AUTHORITIES

I. There was no fraudulent inducement.

In its pleadings, Sequitur's fraudulent inducement claim relies upon two purported statements made by Maalt's employee on or about August 3, 2018, two months after the LOI and after Sequitur had months in which to conduct its due diligence. First, Sequitur alleges that the

[15] Merrill dep. 94–95, 105.

[16] Merrill dep. 68:8–69:18.

[17] Exhibits 76 and 89.

[18] Merrill dep. 224–225.

employee pressured Sequitur into finalizing the TSA by stating if Sequitur would not sign a contract to transload crude oil at the Barnhart Facility, then another company stood ready to do so. In short, it was the standard sales tactic of "there's another buyer waiting for this opportunity if you do not buy today." Second, Sequitur alleges that the employee encouraged Sequitur to do a business venture with Jupiter MLP ("Jupiter") because Jupiter was already able to ship on railroads. See, Doc. 44 at ¶18.

A. Texas law on fraudulent inducement.

Fraud "requires 'a material misrepresentation, which was false, and which was either known to be false when made or asserted without knowledge of its truth, which was intended to be acted upon, which was justifiably relied upon, and which caused injury.'" *Formosa Plastics Corp. USA v. Presidio Engineers & Contractors, Inc*., 960 S.W.2d 41, 47 (Tex. 1998). *See also JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, 546 S.W.3d 648, 653 (Tex. 2018). "The reliance element has two requirements: the plaintiff must show that it actually relied on the defendant's representation and, also, that such reliance was justifiable." *JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, *id*.; Grant *Thornton LLP v. Pac. Mut. Life Ins. Co*., 314 S.W.3d 913, 923 (Tex. 2010). "Fraudulent inducement . . . is a particular species of fraud that arises only in the context of a contract . . .." *Haase v. Glazner*, 62 S.W.3d 795 798 (Tex. 2001).

To support a fraudulent inducement claim, the representation "must concern a material fact, as distinguished from a mere matter of opinion, judgment, probability, or expectation." *Harding Co. v. Sendero Res., Inc*., 365 S.W.3d 732, 747 (Tex. App.—Texarkana 2012, pet. denied); *see also Transport Ins. Co. v. Faircloth*, 898 S.W.2d 269, 276 (Tex. 1995). Sequitur may

not base its claim on "sales talk", "dealer talk", or "puffery." *Presidio Enters., Inc. v. Warner Bros. Distr. Corp*. 784 F.2d 674, 682 (5th Cir. 1986); *Prudential Ins. Co. of America v. Jefferson Assocs., Ltd*., 896 S.W.2d 156, 163 (Tex. 1995).

In *Dyer v. Caldcleugh and Powers*, 392 S.W.2d 523, 529-530 (Tex.Civ.App.—Corpus Christi 1965, writ ref'd n.r.e.), the court stated the longstanding law in Texas:

> We recognize the well-established rule of law that an affirmative false statement knowingly made as to a material fact believed and relied on by the other party to the extent of causing him to enter a contract to his detriment may justify recovery of proper damages in fraud, and the fact that the truth could have been discovered by the exercise of reasonable care and diligence would not be a defense. *Isenhower v. Bell*, Tex.Sup.Ct., 365 S.W.2d 354; *Schonrock v. Taylor*, Tex.Civ.App., 212 S.W.2d 260, writ ref. We further realize that it is not unusual for a seller to 'puff' what he is selling, that general commendations, commonly known as dealers' talk, exaggerated statements of value, and expressions of opinion about the business, do not amount to actionable misrepresentations where the parties deal at arm's-length and have equal means of information and are equally well qualified to judge the true facts. 25 Tex.Jur.2d, Fraud and Deceit, Sec. 47, pp. 689, et seq.; same volume, pp. 712, et seq.; Hawkins v. Campbell, Tex.Civ.App., 226 S.W.2d 891, writ ref., n. r. e.; Frankfurt v. Wilson, Tex.Civ.App., 353 S.W.2d 490, n. w. h.; Texas Osage Co-op. Royalty Pool v. Brown, Tex.Civ.App., 118 S.W.2d 944, writ ref.; Moore & Moore Drilling Company v. White, Tex.Civ.App., 345 S.W.2d 550, writ ref., n. r. e.
>
> We feel that any representations Dyer is shown to have made to Cousins concerning the good will and good customer relations of his agency comes under the head of dealers talk, puffing, and expressions of opinion, and not actionable fraud.

Further –

> 'In an arm's-length transaction the defrauded party must exercise ordinary care for the protection of his own interests and is charged with knowledge of all facts which would have been discovered by a reasonable prudent person similarly situated. And a failure to exercise reasonable diligence is not excused by mere confidence in the honesty and integrity of the other party.' *Courseview Incorporated v. Phillips Petroleum Co.*, Tex.Sup.Ct., 312 S.W.2d 197, *quoted with approval in Thigpen v. Locke*, Tex.Sup.Ct. 363 S.W.2d 247, p. 251, in which case an instructed verdict against the party claiming fraud was upheld.

Id. *See also CMS EnergyResource Management Co. v. Quicksilver Resources, Inc*., 2009 WL 1815776 *11 (Tex. App.— Fort Worth 2009, rev. denied).

B. Reliance on the alleged representations was not reasonable or justifiable.[19]

Sequitur's alleged reliance on its claimed representations was not reasonable or justifiable as a matter of law. Sequitur is, no doubt, a sophisticated business entity in the oil and gas industry. It operates producing oil wells in a focus area consisting of approximately 88,000 acres located in five Texas counties.[20] In 2019, Sequitur acquired producing properties in Texas for a purchase price of $264.6 million, which was funded from its revolving credit facility with Wells Fargo Bank.[21] It is sponsored by an international private equity investment firm that manages $5.5 billion in capital.[22] Sequitur has been represented by Vinson & Elkins, LLP, one of the leading energy law firms in the country, both in connection with the negotiation and execution of the TSA and Sequitur's other deals.[23] It employs both in-house general counsel as well as associate counsel. It invested approximately $4 million in connection with its pursuit of the Barnhart Facility for

[19] This motion addresses only the justifiable reliance element of Sequitur's fraudulent inducement claim/defense. Maalt does not believe that the alleged representations amount to actionable representations even if false, and does not admit that they are actionable by not attacking that element in this motion. One of the claimed representations was nothing more than "sales talk" or "dealers talk" that is not actionable. The other was a matter of opinion. Yet others that may be claimed by Sequitur were the same or were predictions of expectation or commendatory comments. Regardless of the representations claimed by Sequitur, in light of the due diligence provisions of the LOI and the other reasons stated herein, its reliance on any other claimed representations was not justifiable.

[20] www.sequiturenergy.com/about/

[21] https://www.hydrocarbons-technology.com/news/sequitur-permian-acquires-producing-assets-in-us-from-callon-petroleum/

[22] www.businesswire.com/news/home/20190709005900/en/Sequitur-Energy-Resources-LLC-Announces-the-Acquisition-of-Producing-Properties-in-Reagan-and-Upton-Counties

[23] Merrill dep. 22.

transloading crude seeking to realize a return of $10 million or more.[24] Its principals are knowledgeable, skilled, experienced people who are very capable assessing risks and negotiating oil and gas deals.[25]

In this case, Sequitur prepared and negotiated a sophisticated LOI which contained provisions protecting it by providing that it would only sign a contract after completing its own due diligence. Its employees prepared and analyzed complex and materials based on sophisticated source materials to aid it in evaluating the arbitrage opportunity and its risks.[26] It negotiated a detailed TSA after months of negotiating and conducting due diligence. It analyzed the risks it was willing to take, and spent millions of dollars before it even had a contract in place. It is not a widow that was duped into an investment she did not understand.[27]

Under Texas law, while justifiable reliance generally presents an issue of fact, the element is negated as a matter of law when circumstances exist under which reliance cannot be justified. *JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, *supra* at 654. In determining whether justifiable reliance is negated as a matter of law, courts must consider the sophistication of the parties, the nature of their relationship (*e.g.*, arms-length versus fiduciary), and the contract at issue. *Id*. In an arms-length transaction, the party complaining of fraud must exercise ordinary care for the protection of its own interests. A failure to do so is not excused by mere confidence

[24] Merrill dep. 25-31.

[25] www.sequiturenergy.com/management/

[26] See, for examples, Exhibits 49 and 79, Sequitur_000323, Merrill email, Maalt Appx. 128.

[27] See, for example, Exhibits 49, 51, 104.

in the honesty and integrity of the other party. *Id*. A party "cannot blindly rely on a representation by a defendant where the plaintiff's knowledge, experience, and background warrant investigation into any representations before the plaintiff acts in reliance upon those representations." *Id*.

Moreover, a party, including Sequitur, may not justifiably rely on a misrepresentation if there are risk indicators or "red flags" indicating that such reliance is unwarranted. *Lewis v. Bank of America NA*, 343 F.3d 540, 546-547 (5th Cir. 2003); *JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, *supra* at 654. In this case, Sequitur, a highly sophisticated party, dealt at arms-length with Maalt in a transaction that Sequitur hoped would provide it with a return approaching $10 million dollars. Sequitur's claim that it relied on the statements made by Maalt belies the risks it knew it existed and had evaluated. Due to the numerous known business risks regarding the difficulty in establishing a crude-by-rail deal, Sequitur's claim of reliance is unwarranted. As in *JPMorgan* and *Lewis*, Sequitur's claims of reliance fail as a matter of law.

From its many discussions with Shell, British Petroleum, Enmark and others in the oil and gas industry during May, June and July 2018, Sequitur knew that there were risks involved in implementing a crude-by-rail program to pursue the arbitrage opportunity.[28] It knew from discussions with Shell, British Petroleum, Valero, Enmark, and others that there were a lot of moving parts in setting up a crude-by-rail operation.[29] Sequitur also knew that the joint venture partners it sought were hesitant to enter into any type of agreement unless and until all the pieces

[28] Merrill dep. 73, 94-95, 146-151, 176-177, Exhibits 9, 42 and 43, Sequitur_001462.

[29] See Exhibit 42.

were in place.[30] While engaging in its due diligence, Sequitur had multiple telephone calls and meetings with Jupiter, and discussed Jupiter with its consultant at Enmark.[31] Enmark actually warned Sequitur about doing a deal with Jupiter due to Jupiter's poor financial statements.[32] While Sequitur desired to have Shell as its preferred joint venture partner, it did not procure a contract with Shell or any other major oil company. Notwithstanding the information learned from its due diligence and the warnings from its consultant, Sequitur signed the TSA without having a desired joint venture partner in place. It placed its bet on the hope that either Shell or Jupiter would come through afterward.[33]

Not only should the known and inherent business risks have put Sequitur on notice that it should not blindly rely on "sales talk", opinions, and expectation, its own actions demonstrate that it was under a duty to conduct appropriate due diligence (and did, in fact, conduct due diligence) before signing a contract. The LOI expressly provided that each party would do appropriate due diligence before signing a definitive agreement.[34] Sequitur knew how to do due diligence, and had done it before in connection with deals.[35] Sequitur employs highly educated people, including MBAs and attorneys, is used to doing due diligence before entering into deals, had the capability

[30] Merrill dep. 251-252, Exhibit 104, 117.

[31] Merrill dep. 51, 146-150.

[32] Merrill dep. 148-149.

[33] Merrill dep. 251-252.

[34] Merrill dep. 144-146.

[35] Merrill dep. 65-66 (for example, Sequitur had conducted due diligence when acquiring oil and gas assets from EOG in proximity to the Barnhart Facility), 145-149, 248-249, 251-252.

of making phone calls and asking people for information relating to a proposed deal, and was used to making decisions based on its own due diligence.[36]

The information known by Sequitur apprised it of the inherent risks associated with the business venture making reliance on vague representations purportedly made by Maalt unreasonable as a matter of law. That information put Sequitur on notice that it should have protected its interests through the exercise of reasonable care and due diligence rather than blindly relying on the types of representations and vague assurances it claims were made by Maalt.

As in *JPMorgan*, Sequitur "needed to protect its own interests through the exercise of ordinary care and reasonable diligence rather than blindly relying upon another party's vague assurances. Its failure to do so precludes its claim of justifiable reliance as a matter of law." *JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, *supra* at 660. The trial court in *JPMorgan* dismissed Orca's fraudulent inducement claim as a matter of law, and the Texas Supreme Court affirmed. Because the *JPMorgan* and *Lewis* cases are "on point" with this case, this Court should do the same and dismiss Sequitur's fraudulent inducement claim as a matter of law.

II. For the same reasons, Sequitur's negligent misrepresentation claim fails as a matter of law.

To prevail on a negligent misrepresentation claim, a plaintiff must prove (1) a representation made by a defendant in the course of its business or in a transaction in which it has a pecuniary interest; (2) the representation conveyed "false information" for the guidance of others

[36] Merrill dep. 248-249.

in their business; (3) the defendant did not exercise reasonable care or competence in obtaining or communicating the information; and (4) the plaintiff suffers pecuniary loss by justifiably relying on the representation. *JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, *id.* at 653-664.

As did the plaintiff in *JPMorgan*, Sequitur alleges the same representations for its negligent misrepresentation claim as it does for its fraudulent inducement. The Supreme Court affirmed the dismissal of Orca's negligent misrepresentation for the same reasons as it confirmed dismissal of the fraudulent inducement claim. This Court should likewise dismiss the negligent misrepresentation claim.

III. Sequitur's mutual mistake defense fails as a matter of law because there was no mistake by Maalt.

In its interrogatory answers, Sequitur claims that the affirmative defense of mutual mistake provides it a defense to its obligation to perform under the TSA:

> Without waiving these objections and subject thereto, the objective circumstances surrounding the execution of the TSA showed that the parties knew that the Terminal would not be operational until rail services had been ascertained to an end destination with capacity to receive an amount of Product necessary to fulfill the minimum throughput contemplated under the TSA and the Product was actually throughput through the Terminal. This understanding was evident through the negotiations between the parties and the efforts by Maalt prior to execution in recommending and ascertaining these services and through the specification of the Terminal Operations Commencement Date as a distinct date under the TSA.[37]

Sequitur cannot prove its defense, and Maalt is entitled to summary judgment in its favor.

In *Liberty Mutual Ins. Co. v. Servisair, L.L.C.*, 698 Fed.Appx. 770, 772-773 (5th Cir. 2017) the 5th Circuit Court of Appeals described the defense as follows:

[37] Interrogatory No. 7 (Maalt Appx. 133).

> "The elements of mutual mistake are: (1) a mistake of fact; (2) held mutually by the parties; **773* (3) which materially affects the agreed-on exchange." *N.Y. Party Shuttle, LLC v. Bilello*, 414 S.W.3d 206, 212 (Tex. App.—Houston [1st Dist.] 2013, pet. denied). **Importantly, "mutual mistake should not be available to avoid the results of an unhappy bargain" because the "[p]arties should be able to rely on the finality of freely bargained agreements."** *Id.* (citing *Williams v. Glash*, 789 S.W.2d 261, 265 (Tex. 1990)). **Accordingly, "a party bears the risk of mistake when the risk is allocated to him by agreement."** *Cherry v. McCall*, 138 S.W.3d 35, 40 (Tex. App.—San Antonio 2004, pet. denied) (citing RESTATEMENT (SECOND) OF CONTRACTS § 154 (AM. LAW INST. 1981) and *de Monet v. PERA*, 877 S.W.2d 352, 359 (Tex. App.—Dallas 1994, no writ)); *accord Smith v. Lagerstam*, No. 03-05-00275-CV, 2007 WL 2066298, at *8 (Tex. App.—Austin 2007, no pet.) (quoting RESTATEMENT (SECOND) OF CONTRACTS § 154(a) (AM. LAW INST. 1981)). **When the risk of mistake is allocated to the defendant by agreement, the defendant's mutual mistake defense "fails as a matter of law."** *Cherry*, 138 S.W.3d at 40; *accord Transworld Leasing Corp. v. Wells Fargo Auto Fin., LLC*, No. 04-12-00036-CV, 2012 WL 4578591, at *6 (Tex. App.—San Antonio 2012, pet. denied). [Emphasis added.]

Under the TSA, Maalt was required to provide the Barnhart Facility to Sequitur for the purpose of transloading crude oil, obtain certain insurance coverage and permits, and provide labor for the transloading process. On the other hand, Sequitur was required, among other things, to get its crude oil to the Barnhart Facility so it could be transloaded, get rail cars to the Barnhart Facility so the crude oil could be transloaded from Sequitur's trucks into them, and provide all logistics necessary to achieve those results. Maalt ***was not*** required to do any of the following under the TSA: (i) provide Sequitur with rail cars, (ii) provide Sequitur with rail service, (iii) provide Sequitur with a place to take the crude oil, (iv) get crude oil to the Barnhart Facility, (v) obtain a joint venture partner for Sequitur, or (vi) assist Sequitur in any of those things. Under the TSA, Sequitur bore all of the risk of obtaining those things, and its defense fails as a matter of law.

Braden Merrill agreed that those risks were on Sequitur. He testified that Maalt had no obligation under the TSA to provide any logistical services relating to transportation services, had no obligation to obtain rail rates for Sequitur, had no obligation to get railcars to the Barnhart Facility, had no obligation to provide transportation consultation services, had no obligation to find a joint venture partner for Sequitur, and had no obligation with respect to obtaining rail cars for the transportation of crude.[38] Merrill also testified that Sequitur was willing to take risks in order to realize a potential $10 million upside.[39] Those risks included the obligation to pay Maalt the Shortfall Payment if Sequitur did not throughput the minimum required volume:

> Q. Any other risks that you would have under the terminal services agreement would be the minimums that you would be required to pay Maalt if things didn't turn out as you hoped?
>
> A. That is a risk.[40]

Sequitur not only had the risk of "rail services had been ascertained to an end destination with capacity to receive an amount of Product necessary to fulfill the minimum throughput contemplated under the TSA and the Product was actually throughput through the Terminal" under the TSA, but it knew it had that risk and freely accepted that risk. For the reasons stated in *Liberty Mutual*, *id*., the defense of mutual mistake fails as a matter of law.

[38] Exhibit 13; Merrill dep. 25-26, 77-78.

[39] Merrill dep. 134-137.

[40] Merrill dep. 134-135.

IV. There was no failure of implied conditions of the contract.

In its interrogatory answers, Sequitur described its alleged affirmative defense as follows:

> Sequitur contends the TSA included implied contract conditions including the availability of proper railcars, a destination to offload the Product with rail capacity and rates to that destination all of which had to be ascertained or met prior to the obligations in the TSA being enforced, including the alleged Throughput Fee or Shortfall Payment becoming due. These conditions were not met.[41]

Sequitur's alleged defense does not make sense in the context of Texas law or the TSA. The TSA expressly states:

> 15.15 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the Parties regarding the subject matters set forth herein. No variation, modification or change of the Agreement shall be binding upon either Party unless contained in a written instrument executed by a duly authorized representative of each of the Parties.

According to the TSA's own terms, it is complete and embodies all of the terms of the parties' agreement, and nothing shall be added to it or modified unless both parties agree in writing. Sequitur's claim that there were implied conditions or terms flies straight into the face of the contract.

Further, as pointed out above, the risks embodied in Sequitur's interrogatory answer are the risks that the TSA put on Sequitur. Its vice-president, Braden Merrill, acknowledged that those risks were on Sequitur.[42]

There is no merit to Sequitur's defense, and summary judgment for Maalt is appropriate.

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[41] Interrogatory No. 6 (Maalt Appx. 133).

[42] Merrill dep. 25-26, 77-78; 134-137.

V. Sequitur's excuse and/or justification defense is without merit.

In its interrogatory answers, Sequitur described this alleged affirmative defense as follows:

> Sequitur contends that it was justified or excused in its actions under the Force Majeure and Terminal Operations Commencement Date definitions in the TSA. Specifically, Sequitur's obligation, if any, to declare the Terminal Operations Commencement Date was subject to the specific language in the TSA under which Sequitur never did send the notice nor did Sequitur determine that the Terminal was operational. Sequitur's obligations in regard to the Terminal Operations Commencement Date were further excused by the Force Majeure Event under the express language of the TSA.[43]

This defense is simply a rebranding of the force majeure and condition precedent defenses also alleged by Sequitur. Both of those defenses have been addressed in Maalt's prior motion for partial summary judgment. For the reasons stated in that motion, this defense also fails as a matter of law.

VI. Sequitur's statute of frauds defense also lacks merit.

This claimed defense is based on Sequitur's game of semantics, and asserts that because Maalt referred to the Shortfall Payment provided in the TSA as a "Minimum Fee' it is attempting to enforce an oral agreement:

> Maalt is seeking a declaration to enforce terms that are not in writing. Specifically, Maalt is seeking to enforce a "Minimum Fee" that is not in writing and for which Maalt admits is not performable within one year.[44]

As shown by Maalt's pleadings, it is only seeking enforcement of the TSA and no other agreement. It is seeking enforcement of Sequitur's obligation to pay the Shortfall Payment under

[43] Interrogatory No. 4 (Maalt Appx. 132).

[44] Interrogatory No. 3 (Maalt Appx. 131-132).

the TSA. The TSA is in writing. Maalt has not alleged any oral agreement or oral modification of the TSA as a basis for recovery. Therefore, the statute of frauds simply does not apply. *See Autonation Direct.Com, Inc. v. Civic Center Motors, Ltd*., 2006 WL 3511808 *3 (Tex. App.—Houston [14th Dist.] 2006, no pet.).

VII. Sequitur's waiver defense does not allow it to escape its obligations under the TSA.

In its interrogatory answers, Sequitur makes the following contention regarding waiver:

> Sequitur asserts that Maalt has waived a claim for lost profits under the specific provisions of the TSA that limit the recoverable damages. Sequitur further asserts that Maalt waived the right to demand notice of commencement or seek a declaration of commencement by failing to declare that Sequitur was in default or breach per the TSA.[45]

Once again, Sequitur's contention flies right into the face of the TSA. Sequitur cannot prove that Maalt waived any right under the TSA. The TSA did not require Maalt to demand that Sequitur give it "notice of commencement." Nor did the TSA require Maalt to declare that Sequitur was in default or breach of the TSA before bringing this suit. On the other hand, Sequitur unequivocally stated to Maalt that it was not going to perform under the TSA, thereby repudiating the TSA.[46]

Section 8.3 of the TSA clearly states:

> 8.3 Remedies for Default. Except as otherwise specifically provided for under the terms of this Agreement, if either Party fails to perform any of the representations, warranties, covenants or other obligations imposed on it by this Agreement in any material respect (the "Defaulting Party"), then the Party to whom the covenant or obligation was owed (the "Non-Defaulting Party") ***may*** (***without***

[45] Interrogatory No. 2 (Maalt Appx. 131).

[46] Exhibit 32.

> ***waiving any other remedy for breach hereof, each of which is hereby reserved***), notify in writing the Defaulting Party, stating specifically the nature of the default (the "Default Notice"). The Defaulting Patty will have thirty (30) Days after receipt of the Default Notice (the "Cure Period") in which to (i) remedy the cause or causes stated in the Default Notice, (ii) provide adequate security satisfactory to Non-Defaulting Party to fully indemnify the Non-Defaulting Patty for any and all consequences of the breach, or (iii) to dispute the claim of breach in good faith. [Emphasis added.][47]

In describing whether a notice of default was required in the event of a default, the TSA uses the permissive word "may" and does not contain any provision requiring any type of notice of default or breach. In addition, the TSA specifically provides that if a notice is given, the non-defaulting party does not waive any other rights or remedies it may have.

Section 8.6 gives the non-defaulting party the right to seek specific performance of all of the terms of the TSA as well as any other contractual, equitable, and legal remedies available to it under the TSA or Texas law, stating: "The existence of this right will not preclude any Party from pursuing any other rights and remedies at law or in equity that such Party may have." That expressly includes the right to seek a declaratory judgment and pursue a claim for actual damages.

The TSA then further provides:

> 15.10 Waivers; Cumulative Rights. ***No*** term, covenant, condition, benefit or ***right accruing to a Party under this Agreement (or any amendment) shall be deemed to be waived unless the waiver is reduced to writing***, expressly refers to this Agreement, ***and is signed by a duly authorized representative of such Party waiving*** compliance. ***No failure or delay in exercising any right hereunder, and no course of conduct or dealing, shall operate as a waiver of any provision*** of this Agreement ***or affect in any way the right of such Party at a later time to enforce the performance of such provision***. ***No waiver by any Party of any condition, or any breach of any term or covenant contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of***

[47] Exhibit 13.

> ***any breach of any other term or covenant***. The rights of Parties under this Agreement shall be cumulative, and the exercise or partial exercise of any such right shall not preclude the exercise of any other right. [Emphasis added.][48]

It is clear from the provisions of the TSA that the parties intended that there would be no waiver of rights by a non-breaching party in the event that the other party breached or repudiated the TSA unless the waiver was reduced to writing and signed by the party waiving its rights. No such writing was ever signed by Maalt. Nor did Maalt ever take any action that could be considered a waiver of any rights in the absence of the provision requiring any waiver to be in writing.

To the contrary, the undisputed facts negate Sequitur's claim of waiver:

- Sequitur sent its letter claiming that force majeure occurred on December 7, 2018;[49]
- Maalt notified Sequitur on January 17, 2019 that it intended to bill for the "quarterly minimums;[50]
- Maalt sent its invoice for the first shortfall payment on January 28, 2019;[51]
- Sequitur refused to pay the invoice per its letter of January 31, 2019;[52]
- Sequitur sent its letter claiming to terminate the TSA on the basis of force majeure on February 8, 2019;[53]
- Maalt filed this suit on February 13, 2019; and

[48] Exhibit 13.

[49] Exhibit 27.

[50] Exhibit 29.

[51] Exhibit 30.

[52] Exhibit 31.

[53] Exhibit 32.

- Maalt notified Sequitur on February 14, 2019 that it considered Sequitur to have repudiated the TSA and sent it a copy of the petition filed in state court.[54]

Those undisputed facts unquestionably prove that no waiver occurred.

Finally, with respect to Sequitur's argument that Maalt waived its alternative claim for direct lost profits damages, that contention was briefed and argued in connection with Sequitur's prior motion for summary judgment.

Maalt is entitled to summary judgment on Sequitur's waiver affirmative defense.

VIII. Sequitur's failure of consideration defense fails as a matter of law.

In its interrogatory answers, Sequitur made the following contention:

> the Terminal Services Agreement ("TSA") requires Maalt to actually perform throughput services prior to the Throughput Fee or Shortfall Payment becoming due. Maalt has sued for the recovery of the Throughput Fee or Shortfall Payment but has not performed the throughput services in consideration of the same.[55]

That contention, however, ignores both the facts and the law.

In essence, Sequitur contends that Maalt failed to perform transloading services (throughput) obligations under the TSA. That contention ignores the fact that Sequitur did not bring crude oil to the Barnhart Facility to transload. Without crude oil at the facility, there was nothing to transload, and Maalt could not transload something that Sequitur failed to deliver to the facility.

[54] Exhibit 33.

[55] Interrogatory No. 1 (Maalt Appx. 131).

Under the TSA, Maalt provided the following consideration to Sequitur: (i) the agreement to transload Sequitur's crude oil from trucks to rail cars when Sequitur brought crude oil and rail cars to the Barnhart Facility; (ii) the right to use the Barnhart Facility exclusively during the term of the TSA; and (iii) the right of first refusal to purchase the Barnhart Facility if Maalt received any offer to buy it. The second and third items are, by themselves, a valuable consideration, and there is no dispute that that consideration was provided as it is contained in the body of the TSA. The first promise was also contained in the agreement and that promise was a valuable consideration. It did not fail as Maalt never refused or failed to provide the service. To the contrary, Sequitur failed to perform its obligation to deliver crude oil to the facility for transloading or throughputting, thus preventing Maalt from performing the service.

It is true that a party's failure to perform its obligations under a contract can result in a failure of consideration. *Austin Lake Estates, Inc. v. Meyer*, 577 S.W.2d 380, 384 (Tex.Civ.App. – Austin 1977, no writ). However, there is also the equal corollary that a party's performance is excused when the other party fails to perform its contract obligations or prevents the first party from performing. In other words, performance is excused when a party to a contract prevents the other from performing. *Bans Properties, L.L.C. v. Housing Authority of City of Odessa*, 327 S.W.3d 310, 315-316 (Tex.App. – Eastland 2010, no pet.).

Sequitur's actions in sending the force majeure claim on a pretextual basis, attempting to terminate the TSA on the basis of a force majeure contention that did not actually exist, and refusing to perform its obligation to pay the Shortfall Payments required under the TSA, all constitute a repudiation of the TSA. Sequitur attempts to set up its own breach to relieve itself of

its contractual obligations, but cannot do so. When a party repudiates a contract, it cannot insist that the other party somehow perform. The repudiation excuses the other party's performance. *Dorsette v. Cross*, 105 S.W.3d 213, 220-221 (Tex. App.–Houston [1st Dist.] 2003, pet. denied).

Sequitur's defense that Maalt did not transload crude oil requires the Court to ignore the fact that Sequitur never delivered crude oil to the Barnhart Facility for Maalt to transload. Since Sequitur prevented Maalt from performing the transloading/throughputting services, it cannot complain that Maalt did not perform. Sequitur's failure of consideration defense therefore fails as a matter of law.

PRAYER

WHEREFORE, Plaintiff, Maalt, L.P., prays that its Third Motion for Partial Summary Judgment be granted in whole or in part, and that the Court award all other relief to which they are entitled.

Respectfully submitted,

By: */s/ James Lanter*

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all counsel of record through the Court's electronic filing service on March 1, 2021.

/s/ *James Lanter*
James Lanter