

**LEASE AGREEMENT BETWEEN TANK FARM, LC AND
THE CITY OF HUNTINGTON BEACH**

THIS AGREEMENT is made and entered into this 6th day of February 2006, by and between TANK FARM, LC (hereinafter called "LANDLORD") and THE CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California (hereinafter referred to as "TENANT").

WITNESSETH:

1. LEASE SUMMARY

As used herein the following terms shall have the meanings set forth opposite them. Other terms may be defined in other parts of this Lease.

PREMISES: A portion of that certain improved real property located in the City of Huntington Beach, County of Orange, State of California, set forth in the legal description and diagram attached hereto and incorporated herein as Exhibit "A" and more particularly identified as a portion of the 19081 Huntington Street in the City of Huntington Beach, State of California.

TERM: The term of this Lease shall be for ten years from the date of COMMENCEMENT TENANT shall have the option to extend the Lease for one ten-year term.

COMMENCEMENT: October 1, 2004.

TERMINATION: Notwithstanding the TERM, TENANT may terminate this Lease upon one year written notice to LANDLORD. Further, notwithstanding the TERM, LANDLORD may terminate the Lease at any time during the TERM hereof in the event that TENANT ceases to engage in the PERMITTED USES for a continuous period of six (6) months. In the event that the failure to engage in the PERMITTED USES is the result of the need to repair, replace or improve wells, pipelines or other equipment necessary for the operation of the facilities, LANDLORD shall toll termination for non-operation for a period of six months from the initial date of non-operation if TENANT has commenced and diligently pursues the necessary repairs, replacement or improvements required to operate the facilities within 10 days of notice from LANDLORD. So long as TENANT is continuing to diligently pursue the necessary repairs, replacement or improvements, in LANDLORD's sole judgment, the tolling of LANDLORD's right to terminate shall be extended for two (2) additional six-month

periods. In no event shall the tolling of LANDLORD's non-operation termination rights exceed eighteen (18) months from the original date of non-operation. LANDLORD may exercise its right to terminate by providing TENANT with 10 days written notice of the existence of the terminating condition.

BASE RENT: \$3,500 (Three Thousand Five Hundred Dollars) per month, adjusted annually on the anniversary of the commencement

TENANT'S SHARE 100%

PERMITTED USES: Oil Tank Farm for collection, storage, treatment and transportation of unrefined oil.

SECURITY DEPOSIT: \$6,000

LANDLORD'S ADDRESS: Tank Farm, LC
19081 Huntington Street
Huntington Beach, CA 92646

TENANT'S ADDRESS: City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

2. LEASE OF PREMISES; USES; ACCESS; TERMINATION CONDITION

LANDLORD hereby Leases the PREMISES to TENANT and TENANT hereby Leases the PREMISES from LANDLORD, for the TERM and subject to the provisions herein. The PREMISES shall be used only for the PERMITTED USES and for no other purpose whatsoever. TENANT's use of the PREMISES, provided for herein, shall not interfere with the use, possession, or quiet enjoyment of LANDLORD's property adjacent to the PREMISES. TENANT has inspected and accepted property and improvements for the PERMITTED USES allowed herein. TENANT shall in its use and enjoyment of the PREMISES observe and abide by, and shall require each of its contractors, invitees and licensees to observe and abide by all laws, statutes, ordinances, rules and regulations, any certificate of occupancy, and any recorded document affecting the PREMISES. Neither TENANT nor any of its employees, invitees, or licensees shall permit any nuisance in, on or about the PREMISES or commit or suffer to be committed any waste in, on or about the

PREMISES. TENANT's use of the PREMISES shall not interfere with the use, possession, or quiet enjoyment of LANDLORD's property.

TENANT's sole primary access to the PREMISES shall be from that property commonly known as 19071 Huntington Street, Huntington Beach, California ("TENANT's Property"), which property is immediately adjacent to the PREMISES. TENANT shall install a fence around the perimeter of the PREMISES to prohibit access from the PREMISES to LANDLORD'S property adjacent to the PREMISES; said fence to include a lockable gate allowing LANDLORD access to the PREMISES from LANDLORD'S adjacent property. Further, TENANT hereby grants to LANDLORD a right of entry through TENANT's Property for access to the PREMISES.

TENANT may have secondary access to the PREMISES from LANDLORD's property, if such access is required by TENANT, or its contractors, invitees and licensees, to perform essential maintenance, repair or replacement of the improvements on the PREMISES. Such access may be granted by LANDLORD upon reasonable advance notice from TENANT. TENANT shall indemnify and hold LANDLORD harmless from any and all liability that may arise from TENANT's aforesaid access pursuant to the terms and provisions of the article herein entitled "INDEMNIFICATION AND INSURANCE; SUBROGATION" to the same extent as if such liability or damage had occurred on the PREMISES. TENANT's access provided for herein shall not interfere with the use, possession, or quiet enjoyment of LANDLORD's property.

TENANT may have utility access to the PREMISES from, or across, LANDLORD's property, including TENANT's shipping pipeline, if such utility access is required by TENANT for the use of the improvements on the PREMISES. Such utility access may be granted by LANDLORD upon reasonable advance notice from TENANT. TENANT shall indemnify and hold LANDLORD harmless from any and all liability that may arise from TENANT's aforesaid utility access pursuant to the terms and provisions of the article herein entitled "INDEMNIFICATION AND INSURANCE; SUBROGATION" to the same extent as if such liability or damage had occurred on the PREMISES. TENANT's utility access provided for herein shall not interfere with the use, possession, or quiet enjoyment of LANDLORD's property.

Upon TERMINATION of this Lease, TENANT shall return the PREMISES and improvements to the LANDLORD in the same condition as of the date the TENANT first took possession of the PREMISES, normal wear and tear excepted.

3. IMPROVEMENTS

TENANT shall be solely responsible for operation, maintenance, repair and replacement as necessary of all improvements presently existing or installed in the future on the PREMISES. TENANT shall maintain all licenses and permits necessary to operate the improvements and TENANT shall be solely responsible for compliance with said permits and licenses.

4. BASE RENT

TENANT shall pay the BASE RENT in advance, to the LANDLORD on the first day of the term. BASE RENT shall be paid to LANDLORD, without deduction or offset, at the first of each month or all at commencement, at the address hereinafter set forth, or to such other person or at such other place as LANDLORD may from time to time designate in writing.

On the third anniversary of the COMMENCEMENT (October 1, 2006) and on alternate anniversaries thereafter (October 1, 2008, October 1, 2010, *et cetera*) during the TERM (Adjustment Date), BASE RENT shall be increased by seventy five percent (75%) of the increase, if any, shown by the Consumer Price Index for All Urban Consumers U.S. City Average, All Items (base years 1982-1984 = 100) (Index), published by the United States Department of Labor, Bureau of Labor Statistics, for the month immediately preceding the Adjustment Date as compared with the Index for the same month in the immediately preceding calendar year. LANDLORD shall calculate the amount of this increase in BASE RENT after the United States Department of Labor publishes the statistics on which the amount of the increase will be based. LANDLORD shall give written notice of the amount of the increase, multiplied by the number of installments of rent due under this Lease since the Adjustment Date. TENANT shall pay this amount, together with the monthly rent next becoming due under this Lease, and shall thereafter pay the monthly rent due under this Lease at this increased rate, which shall constitute BASE

RENT. LANDLORD's failure to make the required calculations promptly shall not be considered a waiver of LANDLORD's rights to adjust the monthly rent due, nor shall it affect TENANT's obligations to pay the increased BASE RENT. If the Index is changed so that the base year differs from that in effect on the COMMENCEMENT, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the TERM, the government index or computation with which it is replaced shall be used to obtain substantially the same result as if the Index had not been discontinued or revised.

5. LATE CHARGES.

TENANT hereby acknowledges that late payment by TENANT to LANDLORD of rent and other sums due hereunder will cause LANDLORD to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to processing and accounting charges and late charges which may be imposed on LANDLORD by the terms of any mortgage or trust deed covering the PREMISES. Accordingly, if any installment of rent or any other sum due from TENANT shall not be received by LANDLORD or LANDLORD's designee within ten (10) days after such amount shall be due, TENANT shall pay to LANDLORD a late charge equal to six percent (6%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs LANDLORD will incur by reason of late payments by TENANT. Acceptance of such late charge by LANDLORD shall in no event constitute a waiver of TENANT's default with respect to such overdue amount, nor prevent LANDLORD from exercising any of the other rights and remedies granted hereunder.

6. ALTERATIONS; REMOVAL OF IMPROVEMENTS

Throughout the TERM of this Lease, TENANT shall, at TENANT's sole expense, install, or maintain, separate utility meters to be billed to TENANT for the improvements on the PREMISES. Further, TENANT, at TENANT's sole expense, shall maintain the electrical shipping pump.

TENANT shall be solely responsible for the utility charges for the improvements on the PREMISES. Except as required by this Lease, TENANT shall not alter or improve the PREMISES, or attach any fixtures or equipment thereto without LANDLORD's prior written consent. Any alterations or improvements to the PREMISES consented to by LANDLORD shall be made by TENANT at TENANT's sole cost and expense. The contractor or person selected by TENANT to make alterations or improvements must be approved in writing by LANDLORD prior to commencement of any work. LANDLORD shall have the right to require that any such contractor hired by TENANT shall, prior to commencing work, provide LANDLORD with a performance bond and a labor and materials payment bond in the amount of the contract price for the work naming LANDLORD and TENANT (and any other person designated by LANDLORD) as co-obligees.

All alterations, additions, fixtures and improvements, made in or upon the PREMISES either by TENANT or LANDLORD shall immediately become LANDLORD's property and, at the end of the TERM hereof, shall, at LANDLORD's option, either (1) remain on the PREMISES without compensation to TENANT, (2) be removed by LANDLORD for TENANT's account, or (3) be removed by TENANT at TENANT's sole expense. The removal of the improvements shall include the repair of any damage to the PREMISES caused by the removal of such improvements, and shall include restoration and remediation of the land underlying and surrounding the improvements to the same conditions that existed prior to TENANT's possession as reflected in the PHASE I ENVIRONMENTAL SITE ASSESSMENT REPORT dated May 27, 1997 and the ENVIRONMENTAL SITE ASSESSMENT dated August 5, 1997 prepared for Chevron Land and Development Company by Miller Brooks Environmental, Inc.. If LANDLORD elects to remove the improvements for TENANT's account, TENANT shall reimburse LANDLORD for the cost of removal (including a reasonable charge for LANDLORD's overhead) within ten (10) days after receipt of a statement therefor.

7. INDEMNIFICATION AND INSURANCE; SUBROGATION

(a) TENANT hereby waives all claims against LANDLORD for damage to any property or injury, illness or death of any persons in, upon or about the PREMISES arising at any time and from any cause whatsoever other than solely by reason of the negligence or willful act of LANDLORD, its employees or contractors. TENANT shall protect and hold LANDLORD harmless and defend LANDLORD against any and all claims or liability for any damage to any property or injury, illness or death of any person: 1) occurring in or about the PREMISES or any part thereof arising at any time and from any cause whatsoever other than solely by reason of the negligence or willful act of LANDLORD, its employees or contractors, and 2) occurring in or about any part of the PREMISES when such damage, injury, illness or death shall have been caused in whole or in part by the act, neglect, omission or fault of TENANT, its agents, servants, employees, contractors, invitees or licensees (including without limitation, when such damage, injury, illness or death shall have been caused in part by LANDLORD, its employees or contractors). The provisions of this paragraph shall survive the termination of this Lease.

(b) TENANT shall, at its sole cost and expense, obtain and keep in force during the TERM, fire and extended coverage insurance on TENANT's improvements, fixtures, furnishings and equipment in and upon the PREMISES in an amount not less than one hundred per cent (100%) of the full replacement cost (without deduction for depreciation) thereof. All amounts received from the insurance specified in this subparagraph shall first be applied to the payment of the cost of repair or replacement of any of TENANT's improvements, fixtures, furnishings and equipment that were damaged or destroyed, or, if this Lease terminates prior to such repair or replacement being made, paid over to LANDLORD to the extent that the improvements or fixtures damaged or destroyed would have become LANDLORD's property pursuant to the provisions of this Lease.

(c) TENANT shall, at its sole cost and expense, obtain and keep in force during the terms hereof comprehensive, or commercial, general liability insurance (bodily injury and property

damage), including contractual liability to cover liability assumed under this Lease, with a limit of liability of not less than five million dollars (\$5,000,000) per occurrence for injury to, illness of, or death of persons or for damage to property occurring in, upon or about the PREMISES. All such insurance shall insure the performance by TENANT of the indemnity agreement set forth herein.

(d) *City of Huntington Beach Self-Insurance.* All or any portion of the coverages the City of Huntington Beach, as the tenant hereunder, is required to maintain under this Lease may be maintained under a program of tenant self-insurance or under policies that include self-insured retentions or deductibles larger than those typically carried by similarly situated tenants. The City of Huntington Beach shall advise LANDLORD of the self-insurance program, self-insured retentions, or deductibles. LANDLORD shall not unreasonably withhold consent to the self-insurance program, self-insured retentions, or deductibles. The City of Huntington Beach shall provide reasonable assurances of the sufficiency of net worth and net current assets upon demand by LANDLORD. LANDLORD's consent to self-insurance by the City of Huntington Beach shall not be deemed to be consent to self-insurance by any assignees or successors of the City of Huntington Beach.

(e) Except as provided for above with respect to self-insurance by the City of Huntington Beach, all insurance required under this paragraph and all renewals thereof shall be issued by such responsible companies qualified to do and doing business in the State of California as may be approved by LANDLORD. Each policy shall expressly provide that the policy shall not be cancelled or altered without thirty (30) days prior written notice to LANDLORD. All insurance under this paragraph shall name Tank Farm, LC, and its affiliates, as additional insureds, shall be primary and non-contributing with any insurance which may be carried by LANDLORD, and shall expressly provide that LANDLORD, although named as an insured, shall nevertheless be entitled to recover against TENANT under the policy for any loss, injury or damage to or suffered by LANDLORD, its employees and contractors, and shall contain a standard "cross liability" or "Severability of interest" clause. Upon the issuance thereof, each

such policy or a duplicate or certificate thereof shall be delivered to LANDLORD for its retention. In the event that TENANT shall fail to insure or shall fail to furnish to LANDLORD upon notice to do so, any such policy, duplicate policy or certificate as herein required, LANDLORD may from time to time effect such insurance for the benefit of TENANT or LANDLORD or both of them for a period not exceeding one year, and any premium paid by LANDLORD shall be recoverable from TENANT as additional rent on demand. The term "affiliates" means any entity (including an individual) that controls, is controlled by, or is under common control with a party hereto and an entity shall be deemed to control another if it owns, directly or indirectly, more than fifty percent (50%) of the voting or equity interest in such other.

(f) TENANT waives on behalf of its insurers all policies of fire, theft, public liability, workers compensation and other insurance now or hereafter existing during the TERM hereof and purchased by its insuring or covering the PREMISES, or any portion or any contents thereof, or any operations therein, all rights of subrogation which any insurer might otherwise have to any claims of TENANT against LANDLORD. LANDLORD waives on behalf of its insurers under all policies of fire, theft, public liability, workers compensation and other insurance now or hereafter existing during the TERM hereof and purchased by its insuring or covering the PREMISES or any portion thereof, or any operations therein, all rights of subrogation which any insurer might otherwise have to any claims of LANDLORD against TENANT in excess of the limits of any insurance. TENANT is required to carry pursuant to this paragraph, LANDLORD and TENANT shall each, prior to or immediately after the execution of this Lease, procure from each of the insurers under all policies of fire, theft, public liability, workers compensation and other insurance now or hereafter existing during the terms hereof and purchased by either of them insuring or covering the PREMISES, or any portion thereof, or any operations therein, a waiver of all rights of subrogation which the insurers might otherwise have as against the other, to the extent required by this subparagraph. This subparagraph shall not be construed to require LANDLORD or TENANT

to obtain any insurance coverage not otherwise required by this Lease nor to waive any rights of recovery that either LANDLORD or TENANT may have directly against the other to the extent that any loss or damage giving rise to any such right of recovery is not actually covered by insurance.

8. ASSIGNMENT AND SUBLETTING

TENANT shall not, without the prior written consent of LANDLORD, which consent shall not be unreasonably withheld, assign or hypothecate this Lease or any interest herein or sublet the PREMISES or any part thereof, or permit the use or occupancy of the PREMISES by any person other than TENANT or its employees, invitees or licensees. LANDLORD hereby reserves the right to condition any such approval upon LANDLORD's determination that the proposed assignee is financially responsible as a TENANT and that the proposed assignee is likely to conduct a business on the PREMISES of a type and quality substantially equal to that conducted by TENANT. Unless LANDLORD is endeavoring to exercise a remedy under section 1951.4 of the California Civil Code or any successor statute (to the extent LANDLORD is obligated to permit an assignment of the PREMISES thereunder), any proposed assignee shall only be entitled to engage in the same use of the PREMISES as set forth in Article 1 above. In no event shall any such TENANT be entitled to engage in any other use. LANDLORD reserves the right to transfer the PREMISES and assign this Lease to the new owner.

9. LANDLORD'S RIGHT OF ENTRY

LANDLORD may enter the PREMISES at any reasonable time to 1) inspect the PREMISES; 2) exhibit the PREMISES to prospective purchasers, lenders or TENANT's; 3) determine whether TENANT is complying with all its obligations hereunder, 4) repair, alter or otherwise prepare the PREMISES for reoccupancy if TENANT vacates the PREMISES prior to the expiration of the TERM, and 5) take any other measures, including inspections, repairs, alterations, additions and improvements to the PREMISES as may be necessary or desirable for the safety, protection or preservation of the PREMISES. Any such entry shall be for a reasonable period only and, if

TENANT has not vacated the PREMISES, cause as little interference to TENANT as reasonably possible. TENANT hereby waives any claim for damages for any injury or inconvenience to or interference with TENANT's business, any loss of occupancy or quiet enjoyment of the PREMISES or any other loss occasioned by such entry. LANDLORD shall at all times have the right to use any and all means that LANDLORD may deem proper in an emergency in order to obtain entry to the PREMISES. Any entry to the PREMISES obtained by LANDLORD by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into a detainer of the PREMISES or an eviction, actual or constructive, of TENANT from the PREMISES, or any portion thereof.

10. LIENS

TENANT shall keep the PREMISES free from any liens arising out of any work performed, material furnished or obligations incurred by TENANT. LANDLORD shall have the right to post and keep on the PREMISES any notices that may be provided by law or which LANDLORD may deem to be proper for protection from such liens, or to take any other action necessary to remove or discharge liens or encumbrances at the sole expense of TENANT.

11. EVENTS OF DEFAULT

The occurrence of any one or more of the following events ("Event of Default") shall constitute a breach of this Lease by TENANT:

- (a) If TENANT shall fail to pay any rent, or additional rent, or any other sums or charges payable by TENANT hereunder, when and as the same becomes due and payable; or
- (b) If TENANT interferes with the use, possession, or quiet enjoyment of LANDLORD's property adjacent to the PREMISES and LANDLORD is prevented from using, and does not use, all or part of LANDLORD's property adjacent to the PREMISES as a result of TENANT's interference and if this interference continues for either three (3) consecutive business days after TENANT's receipt of notice from LANDLORD describing the nature of the interference or ten (10) business days in any twelve-month (12-month) period after TENANT's receipt of such notice; or

(c) If TENANT shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a petition in bankruptcy or shall be adjudicated a bankrupt or insolvent; or

(d) If this Lease or any estate of TENANT hereunder shall be levied upon under any attachment or execution and such attachment or execution is not vacated within ten (10) days; or

(e) If TENANT shall abandon the PREMISES.

12. REMEDIES.

In the event of any such default or breach by TENANT, LANDLORD may at any time thereafter, with or without notice or demand and without limiting LANDLORD in the exercise of any right or remedy which LANDLORD may have reason of such default or breach:

(a) Terminate TENANT's right to possession of the PREMISES by any lawful means, in which case this Lease shall terminate and TENANT shall immediately surrender possession the PREMISES to LANDLORD. In such event LANDLORD shall be entitled to recover from TENANT all damages incurred by LANDLORD by reason of TENANT's default, including but not limited to the cost of recovering possession of the PREMISES; expenses of reletting, including necessary renovation and alteration of the PREMISES, reasonable attorneys' fees and any real estate commission actually paid; and the worth at the time of award by the court having jurisdiction thereof of (i) the unpaid rent and other charges and adjustments called for under the Lease which had been earned at the time of TERMINATION, (ii) the amount by which the unpaid rent and other charges and adjustments called for under the Lease which would have been earned after TERMINATION until the time of award exceeds the amount of such rental loss for the same period which the TENANT proves could have been reasonably avoided, and (iii) the amount by which the unpaid rent and other charges and adjustments called for under the Lease for the balance of the TERM after the time of such award exceeds the amount of such rental loss for the same period that TENANT proves could be reasonably avoided, and (iv) any and all costs incurred by LANDLORD for the taking of an inventory of, removal of and/or storage of any and

all property left in, upon or about the PREMISES by TENANT, following TENANT's abandonment, vacating or otherwise surrendering of PREMISES. The worth at the time of award of the sums referred to in clauses (i) and (ii) above, shall be computed by allowing interest from the due date at the highest legal rate attainable. The worth at the time of award of the amount referred to in clause (iii) above, shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). As used herein rent shall include charges equivalent to rent.

(b) Maintain TENANT's right to possession, in which case this Lease shall continue in effect whether or not TENANT shall have abandoned the PREMISES. In such event LANDLORD shall be entitled to enforce all of LANDLORD's rights and remedies under this Lease, including the right to recover the rent and any other charges and adjustments as it becomes due hereunder.

(c) Pursue any other remedy now or hereafter available to LANDLORD under the laws or judicial decisions of the state of California, and recover as damage the value of any free or partial rent or other Lease concessions which may have been granted to TENANT hereunder prior to any such default. Notwithstanding the foregoing, LANDLORD shall not be liable for nor required to credit post judgment replacement Lease rental income against prejudgment rental loss or other monetary damage sustained by LANDLORD as a result of any such default on part of TENANT hereunder and TENANT hereby waives any right TENANT may have to so apply such replacement Lease rental credit, if applicable.

13. ATTORNEY FEES

If TENANT, the City of Huntington Beach, assigns its rights under this lease to any third party, or is succeeded by any third party under operation of law, the following attorneys fees provision shall be applicable to the parties to this lease thereafter: In the event suit is brought by LANDLORD or TENANT to enforce the terms and provisions of this agreement or to secure the performance hereof, the prevailing party shall be entitled to attorney's fees and costs of suit from the other party.

14. ABANDONMENT

If TENANT shall abandon or surrender the PREMISES, or be dispossessed by process of law or otherwise, any personal property belonging to TENANT and left on the PREMISES shall be deemed to be abandoned, and, at the option of LANDLORD, LANDLORD may sell or otherwise dispose of such personal property in any commercially reasonable manner.

15. HAZARDOUS MATERIALS

(a) TENANT shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances, or materials in or about the PREMISES or the property of which the PREMISES are a part. TENANT shall not allow the storage or use of such substances or materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought in or on the PREMISES or the property of which the PREMISES are a part any such materials or substances except to use in the ordinary course of TENANT's business, and then only after written notice is given to LANDLORD of the identity of such substances or materials. Without limitation, hazardous substances and materials shall mean any substance which is toxic, ignitable, reactive, or corrosive and which is regulated, now, or in the future, by any local government, the State of California, or the United States Government, and shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq., any applicable state or local laws and the regulations adopted under these acts. TENANT shall also comply with the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code Section 25249.5 et. seq.), and shall provide notice and warning to all persons required under such law to be notified and/or warned of the existence of any chemicals known to cause cancer or reproductive toxicity, and which chemicals shall also be included within the definition of Hazardous Materials herein set forth.

(b) If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials, then the reasonable costs thereof shall be reimbursed to LANDLORD from TENANT upon demand as additional charges if such requirement applies to the PREMISES. TENANT shall execute affidavits, representations and the like from time to time at LANDLORD's request concerning TENANT's best knowledge and belief regarding the presence of hazardous substances or materials on the PREMISES. In addition, TENANT shall undertake to comply with any and all applicable laws, statutes, and ordinances, concerning hazardous substances and materials to which TENANT, in the course of its business in the PREMISES, is subject, and TENANT hereby agrees to cooperate with LANDLORD as may be required by LANDLORD's undertaking to similarly comply. In all events, TENANT shall indemnify and hold LANDLORD harmless from all liability, claims, penalties, fines, judgments, costs, losses, damages and expenses of any kind, including, without limitation, cleanup costs, a decrease in value of the PREMISES, damages due to loss or restriction of rentable or usable space, or any damages due to adverse impact on marketing of LANDLORD's property, and any and all sums paid for settlement of claims, consultant fees, expert fees, and reasonable attorney's fees incurred by LANDLORD as a result of TENANT's breach regarding hazardous materials on or about the PREMISES occurring while TENANT is in possession, or elsewhere if caused by TENANT or persons acting under TENANT. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated for a federal, state or local agency or political subdivision. Without limitation to the foregoing, if TENANT causes or permits the presence of any hazardous substance on the PREMISES and such results in contamination, TENANT shall promptly, at its sole expense, take any and all necessary actions to return the PREMISES to the condition existing prior to the presence of any hazardous substance on the PREMISES. TENANT shall first obtain LANDLORD's approval for any such remedial action. The within covenants shall survive the expiration or earlier TERMINATION of the Lease TERM.

(c) TENANT hereby acknowledges that prior to executing this Lease, LANDLORD has disclosed to TENANT, and TENANT has had an opportunity to review, information and reports that LANDLORD has in its actual possession concerning the presence, or non-presence, of hazardous materials or substances on the PREMISES. TENANT further hereby acknowledges that its execution of this Lease shall be deemed as TENANT's acceptance of the aforementioned information and reports disclosed to it by LANDLORD.

16. OIL-RELATED HAZARDOUS MATERIALS AND OIL CONTAMINATION

(a) TENANT shall not cause or permit any oil-related hazardous material to be brought upon, kept or used in or about the PREMISES by TENANT, its agents, employees, contractors or invitees, without the prior written consent of LANDLORD. If TENANT breaches the obligations stated in the preceding sentence, or if the presence of any oil-related hazardous material on the PREMISES caused or permitted by TENANT results in contamination of the PREMISES, or if contamination of the PREMISES by any oil-related hazardous material otherwise occurs for which TENANT is legally liable to the LANDLORD for damage resulting therefrom, then TENANT shall indemnify, hold LANDLORD harmless, and defend LANDLORD (with counsel reasonably acceptable to LANDLORD) from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses which arise during or after the Lease TERM as a result of such contamination. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated for a federal, state or local agency or political subdivision. Without limitation to the foregoing, if TENANT causes or permits the presence of any hazardous substance on the PREMISES and such results in contamination, TENANT shall promptly, at its sole expense, take any and all necessary actions to return the PREMISES to the condition existing prior to the presence of any hazardous substance on the PREMISES. TENANT shall first obtain LANDLORD's approval for any such remedial action. The within covenants shall survive the expiration or earlier TERMINATION of the Lease TERM.

(b) TENANT shall be using the PREMISES for the collection, storage, treatment and transportation of unrefined oil, which may not be considered a Hazardous Material as defined above. TENANT shall indemnify, hold LANDLORD harmless, and defend LANDLORD (with counsel reasonably acceptable

to LANDLORD) from any an all claims, judgments, damages, penalties, fines, costs, liabilities or losses which arise during or after the Lease TERM as result of any contamination resulting from or associated with the collection, storage, treatment and transportation of oil and/or separated water.

(c) Notwithstanding the foregoing, in the event that remediation for the contamination disclosed in that certain draft report prepared by Geo Remediation, Inc., dated March 26, 1996 (the "Report") is required by an agency of competent jurisdiction, LANDLORD shall be responsible for such remediation. A copy of the Report is attached hereto as Exhibit "B" and incorporated herein by this reference.

17. WAIVER

The waiver by LANDLORD or TENANT of any breach of any agreement, covenant, condition or provision herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other agreement, covenant, condition or provision herein contained, nor shall any custom or practice which may grow up between LANDLORD and TENANT in the administration of this Lease be construed to waive or to lessen the right of LANDLORD or TENANT to insist upon the performance by LANDLORD or TENANT in strict accordance with this Lease. The subsequent acceptance of rent hereunder by LANDLORD or the payment of rent by TENANT shall not be deemed to be a waiver of any preceding breach by LANDLORD or TENANT of any agreement, covenant, condition or provision of this Lease, other than the failure of TENANT to pay the particular rent so accepted, regardless of LANDLORD's or TENANT's knowledge of such preceding breach at the time of acceptance or payment of such rent.

18. NOTICES

All notices and demand which may or are required to be given by either LANDLORD or TENANT to the other hereunder shall be deemed to have been fully given which made in writing and deposited in the Untied States mail, certified or registered, postage prepaid, and addressed as follows: to TENANT at TENANT's address, or to such other place as TENANT may from time to time designate in a notice to LANDLORD, or delivered to TENANT at the PREMISES; to LANDLORD at LANDLORD's address, or to such other place as LANDLORD may from time to

time designated in a notice to TENANT. TENANT hereby appoints as its agent to receive the service of all dispossessory or distant proceedings and notices thereunder the person in charge of or occupying the PREMISES at the time and if no person shall be in charge of or occupying the PREMISES, then such service may be made by attaching the service on the main entrance of the PREMISES.

19. HOLDING OVER.

Should TENANT hold over after the TERMINATION of this Lease without the consent of LANDLORD, until such time as TENANT shall surrender possession of the PREMISES to LANDLORD, TENANT shall be obligated to reimburse LANDLORD for the fair market rental value of the PREMISES.

20. REAL ESTATE BROKERS

TENANT warrants and represents that TENANT has not authorized or employed, or acted by implication to authorize or to employ, any real estate broker or agent to act for TENANT in connection with this Lease. TENANT shall hold LANDLORD harmless from and indemnify and defend LANDLORD against any and all claims by any real estate broker, agent or any other person, other than the Broker, for any commission, finder's fee or other compensation as a result of TENANT's entering into this Lease.

21. OPTION TO EXTEND

(a) *Grant of Option.* LANDLORD hereby grants to TENANT the option to extend the TERM of this Lease for one (1) additional ten (10) year period (the "Extension Option"). The option granted herein is personal to TENANT and may not be assigned by TENANT. The extension period (the "Option Period") shall begin on the day after the originally fixed expiration date of the original term of the Lease, or the day after expiration date of the initial option period, as applicable, however:

(1) TENANT shall have no right to exercise the Extension Option during the period commencing with the giving of any proper Notice of Default and continuing until the

noticed Default is cured or has commenced to be cured;

(2) TENANT shall not have a right to commence the term of the Extension Option if:

(i) TENANT has failed to pay LANDLORD any monetary obligation of TENANT owing under the Lease for a period of thirty (30) calendar days after such obligation becomes due and which said obligation is still unpaid at the commencement of the term of the Extension Option; or (ii) if TENANT has received: at least five (5) total Notices of Default of a non-monetary or monetary nature; or at least three (3) total Notices of Default of a monetary nature, from LANDLORD prior to TENANT's exercise of the Extension Option, whether or not such defaults have been previously cured by TENANT; (LANDLORD shall waive the requirements of this subsection so long as the TENANT is the City of Huntington Beach.)

(3) TENANT shall exercise the Extension Option in writing to LANDLORD no earlier than twelve (12) months and no later than six (6) months prior to the Expiration Date of the original term.

(b) *Terms of Option.* All the terms and conditions of this Lease, except where specifically modified by this Article shall apply.

(c) *Rent During Option Period.*

(1) The BASE RENT for the term of the Option Period shall be the "Fair Market Rental Value" of the PREMISES, based upon their highest and best use at the time of valuation, but shall in no event be less than the adjusted rent being paid during the month prior to the effective date of the Option Period

(2) The phrase "Fair Market Rental Value" shall mean the annual amount that a willing TENANT would pay and a willing LANDLORD would accept at arm's length for a similar property, regardless of the actual use. The Fair Market Rental Value may also designate periodic rental increases and similar economic adjustments. The Fair Market Rental Value shall be the adjusted Rent in effect as of the beginning of the Option Period, even though the determination may be made in advance of that date, and the parties may

use recent trends in rental rates in determining the proper Fair Market Value as of the beginning of the option period.

(3) If TENANT exercises the Extension Option, LANDLORD shall determine the Fair Market Rental Value by using its good-faith judgment. LANDLORD shall provide TENANT with written notice of such amount and the actual new rental rate within thirty (30) calendar days after TENANT exercises the Extension Option. TENANT shall have fifteen (15) calendar days ("TENANT's Review Period") after receipt of LANDLORD's notice of the new rental within which to accept such rental. In the event TENANT fails to accept in writing such rental proposal by LANDLORD, then such proposal shall be deemed rejected, and LANDLORD and TENANT shall attempt to agree upon such Fair Market Rental Value, using their best good-faith efforts. If LANDLORD and TENANT fail to reach agreement within fifteen (15) calendar days following TENANT's Review Period ("Outside Agreement Date"), then each party shall place in a separate sealed envelope its final proposal as to the Fair Market Rental Value, and such determination shall be submitted to arbitration in accordance with subsections (1) through (5) below. In the event that LANDLORD fails to timely generate the initial notice of LANDLORD's opinion of the Fair Market Rental Value, then TENANT may commence such negotiations by providing the initial notice, in which event LANDLORD shall have fifteen (15) calendar days ("LANDLORD's Review Period") after receipt of TENANT's notice of the new rental within which to accept such rental. In the event LANDLORD fails to accept in writing such rental proposed by TENANT, then such proposal shall be deemed rejected, and LANDLORD and TENANT shall attempt in good faith to agree upon such Fair Market Rental Value, using their best good-faith efforts. If LANDLORD and TENANT fail to reach agreement within fifteen (15) calendar days following LANDLORD's Review Period (which shall be, in such event, the "Outside Agreement Date" in lieu of the above definition of such date), then each party shall place in a separate sealed envelope their final proposal as to Fair Market Rental Value, and such determination shall be submitted to arbitration, as provided below.

(d) *Arbitration of Disputes.*

(1) LANDLORD and TENANT shall meet with each other within five (5) business days after the outside agreement date and exchange their sealed envelopes and then open such envelopes in each other's presence. If LANDLORD and TENANT do not mutually agree upon the Fair Market Rental Value within one (1) business day of the exchange and opening of envelopes, then, within ten (10) business days of the exchange and opening of envelopes, LANDLORD and TENANT shall agree upon and jointly appoint a single arbitrator who shall by profession be a real estate broker or agent who shall have been active over the five (5) year period ending on the date of such appointment in the leasing of property similar to the PREMISES in the geographical area of the PREMISES. Neither LANDLORD nor TENANT shall consult with such broker or agent as to his or her opinion as to the Fair Market Rental Value prior to the appointment. The determination of the Arbitrator shall be limited solely to the issue of whether LANDLORD's or TENANT's submitted Fair Market Rental Value for the PREMISES is the closest to the actual Fair Market Rental Value for the PREMISES as determined by the Arbitrator, taking into account the requirements for determining fair market rental value set forth herein. Such Arbitrator may hold such hearings and require such briefs as the Arbitrator, in his or her sole discretion, determines is necessary. In addition, LANDLORD or TENANT may submit to the Arbitrator (with a copy to the other party) within five (5) business days after the appointment of the Arbitrator any market data and additional information such party deems relevant to the determination of the Fair Market Rental Value ("FMRV Data"), and the other party may submit a reply in writing within five (5) business days after receipt of such FMRV Data.

(2) The Arbitrator shall, within thirty (30) days of his or her appointment, reach a decision as to whether the parties shall use LANDLORD's or TENANT's submitted Fair Market Rental Value and shall notify LANDLORD and TENANT of such determination.

(3) The decision of the Arbitrator shall be final and binding upon LANDLORD and TENANT.

(4) If LANDLORD and TENANT fail to agree upon and appoint an arbitrator, then the appointment of the arbitrator shall be made by the presiding judge of the Orange County Superior Court, or, if he or she refuses to act, by any judge having jurisdiction over the parties.

(5) The cost of the arbitration shall be paid by the losing party. The prevailing party shall also be entitled to an award of its reasonable attorneys fees.

(6) Notice: By initialing in the space below you are agreeing to have any dispute arising out of the matters included in the "Arbitration of Disputes" provision in this article decided by neutral arbitration as provided by California law and you are giving up any rights you might possess to have the dispute litigated in a court or jury trial. By initialing in the space below you are giving up your judicial rights to discovery and appeal, unless those rights are specifically included in the "Arbitration of Disputes" provision. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of the California Code of Civil Procedure. Your agreement to this arbitration provision is voluntary.

(7) We have read and understand the foregoing and agree to submit disputes arising out of the matters included in the "Arbitration of Disputes" provision to neutral arbitration.


(LANDLORD initials)


(TENANT initials)

(e) *Security Deposit.* Upon the commencement of the first month of the Option Period, TENANT shall deposit with LANDLORD such funds as may be necessary to increase TENANT's Security Deposit to an amount equal to the new monthly BASE RENT.

22. GENERAL PROVISIONS

(a) If there be more than one person or entity constituting the TENANT, the obligations hereunder imposed upon TENANT shall be joint and several.

(b) Time is of the essence of this Lease and each and all of its provisions.

(c) The agreements, covenants, conditions and provisions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, executors, administrators, successors and assigns of the parties hereto.

(d) This Agreement sets forth the entire agreement between the parties with regard to the subject matter hereof. All agreements, covenants, representations, and warranties, express and implied, oral and written, of the parties with regard to the subject matter hereof are contained herein, in the Exhibits hereto, and the documents referred to herein or implementing the provisions hereof. Except as may be expressly confirmed herein, no other agreements, covenants, representations, or warranties, express or implied, oral or written, have been made by either party to the other with respect to the subject matter of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter hereof are waived, merged herein and superseded hereby. This is an integrated agreement.

(e) This Agreement can be amended only by a written agreement executed by both parties. No breach of any provision hereof may be waived unless in writing signed by both of the parties hereto. Waiver of the breach of any one provision hereof shall not be deemed a waiver of any other breach of the same provision or the breach of any other provision hereof.

(f) In the event that any covenant, condition, or other provision contained herein is held to be invalid, void, or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair, or invalidate any other covenant, condition, or other provision shall be deemed invalid due to its scope or breadth, such covenant, condition or other provision shall be deemed valid to the extent of the scope or breadth permitted by law.

(g) Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof.

(h) No provision of this Agreement is to be interpreted for or against either party because

that party or that party's legal representative drafted such provision.

(i) Whenever the singular number is used herein and when required by the context, the same shall include the plural, and the masculine, feminine, and neuter genders shall each include the others, and the word "person" shall include corporation, firm, partnership, joint venture, trust or estate.

(j) This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

(k) This Agreement shall be governed by, construed, and enforced in accordance with the internal laws of the State of California, applied to contracts made in California by California domiciliaries to be wholly performed in California.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by and through their authorized offices the day, month and year first above written.

CITY OF HUNTINGTON BEACH, a
municipal corporation of the State of
California, TENANT

Dave Sullivan
Mayor

TANK FARM, LC, LANDLORD

William R. Ellis
By: William Ellis

ATTEST:

Jean A. Flynn
City Clerk 2/10/06

APPROVED AS TO FORM:

Jennifer M. Galt
City Attorney 1/23/06

REVIEWED AND APPROVED:

Lynette Cullum Craft
City Administrator

INITIATED AND APPROVED:

Dwaine Olson
Fire Chief