

STATE OF TEXAS            §  
COUNTY OF CAMERON §

THIS CONTRACT between the **BROWNSVILLE NAVIGATION DISTRICT OF CAMERON COUNTY, TEXAS**, a navigation district organized, created and existing under and by virtue of the laws of the State of Texas, with its domicile in Brownsville, Cameron County, Texas, hereinafter styled “District”, and \_\_\_\_\_, a Texas limited liability company, hereinafter styled “Lessee”;

W I T N E S S E T H:

The said **BROWNSVILLE NAVIGATION DISTRICT OF CAMERON COUNTY, TEXAS**, does by these presents lease and demise unto the said \_\_\_\_\_, the property described on **Exhibit A**, attached hereto and made a part hereof for all purposes, for a term of \_\_\_\_\_ year, commencing the \_\_\_\_ day of \_\_\_\_\_ (“Commencement Date”) for and upon the following terms and conditions:

**I. Consideration and Term of the Lease**

As a consideration for this lease for the entire term, and as rental for the real property making up said leased premises, the Lessee agrees to pay a (monthly, quarterly, annual) rental of \_\_\_\_\_ (\_\_\_\_\_) (based on \_\_\_\_\_ acres based at a rate of \_\_\_\_\_ per acre, per year). The rent shall be due and payable annually in advance in the amount of \_\_\_\_\_ (\_\_\_\_\_) in on the \_\_\_\_ day of \_\_\_\_\_ for the duration of the lease term and any extension thereof. The annual rental provided for in this paragraph shall be subject to adjustment in accordance with District’s Policy C305 (Local) and any successors or revisions to that policy, including, but not limited to, adjustment in accordance with the “Consumer Price Index for All Urban Consumers” published by the Bureau of Labor

Statistics of the United States Department of Labor, for the South Urban area, All Items, (1982-84=100) or any renamed local index covering the metropolitan Brownsville area or any other successor or substitute index.

Lessee shall pay \_\_\_\_\_ (\_\_\_\_\_) simultaneously with executing this lease. That sum represents the rent for the primary term of the lease.

All rentals shall be paid not later than ten days from the date when due; they shall thereafter bear interest at the rate of   percent   (   % ) per annum from the date due until paid. In the event such            percent rate at any time shall be illegal or usurious under applicable law, it shall be automatically reduced to the highest lawful rate.

## **II. Revisions to District's Standard Rental Rates**

The District acting through its Board of Commissioners and in the sole discretion of such Board shall have the right to adjust the standard rental rates for all leases.

District agrees to give notice of the meeting at which an adjustment to rental rates will be considered and acted on and to afford Lessee an opportunity to be heard at such meeting. Anything in this lease to the contrary notwithstanding, the rent reserved in Article I shall be adjusted no less frequently than every five years, in accordance with District's "Leasing Policies".

Lessee agrees that it shall be bound by the standard rental rates as presented in the District's Leasing Policies' "Table of Lease Rental Rates," as adjusted by the Board of Commissioners.

## **III. Purpose of the Lease and Commencement of Operations; Abandonment**

It is an express condition of this agreement and lease that the property leased hereby is for the purposes of \_\_\_\_\_. In the event Lessee

does not commence operations on the premises within ninety (90) days of the Commencement Date, District may terminate this lease. Furthermore, this lease may be terminated by the District at any time Lessee discontinues the use of the premises for the purposes named, uses the premises for a prohibited purpose, or uses such premises for any other purpose, provided that in the case of nonuse such default of said Lessee shall exist for a period of ninety (90) days at any time after commencement of the operation of said described business.

#### **IV. Construction and Improvements on the Premises**

All construction of improvements and facilities or modifications to existing improvements and facilities on the premises shall be subject to the written approval of the District prior to the beginning of construction and shall conform to the most current editions of the various applicable Standard Codes as published by the Southern Building Code Congress International and the National Electric Code as published by the National Fire Protection Association for such occupancy and facilities. Lessee shall construct, maintain and operate its facilities on the premises so as not to conflict with the regulations of any federal, state or municipal authority having jurisdiction thereof, nor with the rules and regulations prescribed by the District in the official Tariff of the Port of Brownsville.

No building or other similar improvements shall be constructed within 20 feet from the theoretical to of all bank lines and all road right-of-way lines, nor within 10 feet from all other property lines. Violation of these requirements shall be considered a default under this lease.

In the event Lessee breaches the terms of this Article, in addition to its rights under this lease and at law, District may, upon ten days' notice to the Lessee, enter upon the premises and remove, or cause to be removed, at Lessee's sole expense, any improvement or facility that has not been approved by District. District may, in its sole discretion, assess an administrative fee

against Lessee in the amount of twenty-five percent (25%) of the cost to remove the unapproved improvement or facility.

## **V. Assignments and Subleases**

Lessee may not assign this lease or sublet the leased premises without the prior, written consent of District. Further, Lessee may not assign this lease or sublet the leased premises for any use other than as stated in Article III of this lease

In the event Lessee receives District's prior written consent to a sublease or assignment of this lease, as of the effective date of the assignment or sublease, the rental rate under Article I shall be adjusted to the then-current lease rental rate in the Table of Lease Rental Rates contained in the District's Leasing Policy. For purposes of this lease, the sale or transfer of a controlling interest or greater than 50% interest in Lessee shall be considered an assignment of the lease requiring District's consent, in District's sole discretion.

## **VI. Notices**

All notices required hereunder shall be deemed to have been served if hand delivered or sent by regular mail to District at the address below or to Lessee at the leased premises or at the address below. Lessee may elect, in writing, to accept delivery of notices via electronic mail.

**TO DISTRICT:  
BROWNSVILLE NAVIGATION DISTRICT  
1000 FOUST ROAD  
BROWNSVILLE, TEXAS 78521**

**TO LESSEE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **VII. Utilities, Easements, and Rights of Way**

The District reserves the right to have rights-of-way and easements on, over, and across the premises for underground utility lines, pipelines, power lines, and communication and data lines, necessary or proper for the purposes of developing and serving other District lands; said rights-of-way and easements, however, to be so located and said utility lines, pipelines, power lines, and communication and data lines so constructed and maintained as not to impair or interfere with any of the existing improvements on the premises or with the maintenance or operation thereof.

Lessee shall have the right to erect electric lights, power, water and gas lines over and across lands belonging to District, including the premises leased herein, incidental to the rights and privileges herein given, and shall have the further right to connect said lines to main lines maintained by the District; provided and except, however, that the rights in this Article defined shall be, and the same are, specifically made subject to the following conditions and restrictions:

1. The location and construction by Lessee of all or any of said lines shall be subject to the prior, written approval of District, and after the same are installed, no change shall be made without the prior, written consent of said District.

2. District may at any time require a change in location of any wires, poles, water or gas mains or pipelines, accessories or other facilities laid on or across any land or facilities of District other than the leased premises, if it is deemed by District necessary that the same be changed, by giving Lessee 30 days' written notice of such requirements, and such changes so made shall be at the cost and expense of Lessee; provided such right shall not be exercised arbitrarily by District, but only when such action is made necessary for improvements then on said property or the construction thereof being immediately contemplated, and provided that, where any changes

are required to be made under this provision, District shall furnish Lessee with a new location therefor; such new location to be the most convenient and direct available at such time.

3. Lessee agrees to pay District for all water used and all applicable standby charges, at rates customarily charged to other industries on the District's property. In the event Lessee fails to pay such charges, District shall have the right to discontinue Lessee's District-provided utility services in accordance with District's "Port Service Discontinuation Policy." District shall have no obligation to restore service until Lessee pays all charges owed to District by Lessee, including without limitation all current and past due rent.

4. Lessee may connect to the District's water main only upon written request to the District. Upon Lessee's request to connect to the District's water main, District shall install a water meter to serve the premises. The location of the water meter shall, to the extent possible, be installed outside the boundary of the premises. Upon installation of a water meter to serve the premises, Lessee shall be responsible for connecting to the water meter and for the installation and annual inspection of a backflow preventer by a state-licensed backflow prevention tester.

5. All electrical and power line connections, extensions and installations are to be made in accordance with the rules and regulations of the National Electrical Code.

#### **VIII. Petroleum Storage on Premises**

The following requirements supplement all other District policies and rules, and all other provisions of this lease, regarding the construction and maintenance of the petroleum storage facilities on the Premises. In the event that Lessee's activities involve aboveground and/or underground petroleum storage tank facilities, bulk transfer operations or marine transfer facilities, the Lessee agrees to abide by the rules listed in subparagraph A below. In addition, copies of applicable permits, applications, notifications and related documentation shall be maintained at the

Lessee's office and upon request be made available to the District for inspection and copying as necessary.

A. Lessee shall:

1. Install, register, operate and maintain all aboveground and underground petroleum and chemical storage tanks and related appurtenances in bulk transfer operations or marine transfer facilities, in accordance with applicable Federal, State and Local regulations, including the Clean Water Act, National Contingency Plan, Oil Pollution Act, 40 Code of Federal Regulations (CFR) Parts 112, 280, and 300, 33 CFR Part 154, and 30 Texas Administrative Code (TAC) Chapter 334.

2. Develop and implement Spill Prevention, Control, and Countermeasure Plans (SPCC) for the facility prepared in accordance with Federal, State and Local regulations, as applicable, including 40 CFR Part 112, and provide a copy of the SPCC to District.

3. Develop and implement an Oil Spill Response Plan (OSRP) for the facility prepared in accordance with Federal, State and Local regulations, as applicable, including 33 CFR Part 154, and provide a copy of the OSRP to District.

4. Develop and implement a Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) registration for the facility prepared in accordance with Federal, State and Local regulations, as applicable, including the Environmental Protection Agency National Pollution Discharge Elimination System (NPDES – 40 CFR Part 122) and Texas Pollution Discharge Elimination System programs, and provide a copy of the SWPPP and NOI to District.

5. For existing petroleum storage tank facilities provide a copy of the applicable registration information, construction and spill/pollution prevention plans to the District upon submittal to the appropriate agency. For new or proposed petroleum storage tank facilities, the

applicable registration information, construction and spill/pollution prevention plans shall be provided to the District prior to the beginning of construction.

6. Maintain copies of applicable permits, applications, notifications (including notifications of violations) and related documentation at the Lessee's office and upon request make them available to the District for inspection and copying as necessary.

B. In the event of a spill or release, the Lessee shall comply with all applicable Federal State and Local reporting, investigation and remediation requirements, including 30 TAC Chapter 334 and 30 TAC Chapter 350. In addition, for facilities in which a reportable spill has occurred, the Lessee agrees to install groundwater monitoring wells to assess potential environmental impacts to subsurface soils and groundwater. A total of up to four monitoring wells shall be installed on the perimeter of the potentially affected facility or area and shall be placed at strategic locations to define the potential extent and migration of contaminants. Wells shall be constructed to comply with current USEPA standards for monitoring wells.

The wells shall be fully developed upon installation. The groundwater shall be monitored when they are developed and once a year thereafter; the annual sampling results must be submitted to the District within 30-days following receipt of reports. Parameters to be typically analyzed shall include TPH (Total Petroleum Hydrocarbons), PAH (Polynuclear Aromatic Hydrocarbons), and total Lead (Pb) for all facilities. In addition, BETX (Benzene, Toluene, Ethylbenzene, and Xylene) shall also be included in the analysis for all facilities handling crude oil and light distillates. Other parameters may be requested to be analyzed depending on the characteristics of the material released. Facilities handling Hazardous Materials, as defined by USDOT regulations in 49 CFR 100-199 (subpart C) shall also install groundwater monitoring wells as described above and shall monitor for all chemicals stored in tanks with a capacity in excess of 500 gallons.



## **IX. Default by Lessee**

If any of the rent or other sums of money to be paid by Lessee shall not be paid as and when the same becomes due or if Lessee shall default in the performance of any of the other agreements, conditions, covenants or terms herein contained, or if Lessee shall abandon the premises, or fail to timely commence operations, as described in Article III; or if this lease or the estate of Lessee hereunder shall be transferred or passed to or devolve upon any other person, firm, association or corporation except in the manner provided hereunder; then and in any of said events, District shall have the right to terminate this lease and the term hereby granted, as well as the right, title and interest of Lessee hereunder; provided, however, that the District shall first give Lessee 30 days' notice in writing of such default, specifying in particularity the nature of the default, and shall give Lessee the opportunity to cure such default within such 30-day period. If Lessee should fail to cure such default within such 30-day notice period, District may terminate this lease; and it is agreed that upon the expiration of the term fixed in such notice, if the nonpayment, default or other cause of termination specified in such notice shall not have been made good or removed, this lease and the term hereby granted and created, as well as all the right, title and interest of Lessee hereunder shall, at the option of the District, terminate in the same manner and with the same force and effect as if the expiration of time in such notice were the end of the term herein originally demised; and the District may immediately, or at any time thereafter, and without further notice or demand, enter into and upon said premises, or any part thereof, in the name of the whole, and repossess the same as of its first and former estate and expel the Lessee and those claiming under it, and remove its effects (forcibly, if necessary) without being taken or deemed guilty of any manner of trespass, and without prejudice to any remedies which might be otherwise used for arrears of rent or preceding breach of covenants. Notwithstanding the termination of this lease

and possession regained by District, Lessee will indemnify District against all loss of rent which may accrue to District by reason of such termination during the remainder of the lease term. Lessee specifically agrees that this Article supersedes its rights under Section 93.002 of the Texas Property Code.

In the event District does not exercise the right hereinabove given it, it may accept rent from the receiver, trustee or other officer in possession thereof for the term of such occupancy without impairing or affecting in any way the right of District against Lessee hereunder. Any neglect or failure to enforce the right of forfeiture of this lease or re-entry upon breach of any of the conditions, covenants, terms and agreements herein contained, shall not be deemed a waiver of such right upon any subsequent breach of any such or any other condition, covenant, term and/or agreement herein contained.

It is understood and agreed that no part of the time of the discontinuance or cessation in operation referred to in Article III that is caused by the interference of military authorities, strikes, floods, fires, navigation hazards, embargoes, or limitations on production instituted by state, national or local authorities, or any other act not within the control of either party hereto, shall be counted in the 90-day period mentioned in said Article III.

#### **X. Tenancy After Expiration or Termination of the Lease**

If the Lessee complies with all the conditions or covenants of this lease, upon the expiration of the term of this lease, Lessee shall have the right for a period of up to 30 days from the date of said expiration, and not thereafter, to remove all of its improvements of every kind and character, except all water mains, gas mains, railroad tracks, power lines, fences, wharves or bulkheads, which are hereby agreed shall become the property of the District upon said expiration,

cancellation or forfeiture, from the leased premises; provided, however, that the leased premises shall be restored to their present condition after the removal of said improvements, all excavations, (except slips) filled and all refuse of every kind and character removed from said premises. Upon expiration of the 30-day period described above, Lessee must vacate the premises. After Lessee has vacated the premises, if the restoration of the premises is not complete, District may, in its sole discretion remove improvements and restore the premises at Lessee's sole expense. Until such restoration is completed, Lessee shall pay to District on a month-to-month basis **150%** of the then-current rental for the premises. Such rental shall be due monthly in advance and Lessee shall pay a full month's rental for any fraction of a month during which restoration of the premises is still pending.

In the event of the breach of any of the conditions of this Article, and after the termination of this lease by District as in Article IX provided, all improvements owned by Lessee and placed upon the premises shall be considered as part of the real estate and shall become the property of the District. At the District's sole discretion, however, improvements may be removed in whole or in part at Lessee's cost or may be retained by the District. For the avoidance of doubt, Lessee specifically agrees that District may retain, destroy, or dispose of any property left on the Premises after Lessee's rights under this Article X terminate.

In the event that Lessee continues to occupy the Premises after the expiration of the 30-day period provided for in the first paragraph of this Article X, then this continued occupancy must be authorized by the District in writing and will be granted at the District's sole option. The written authorization for continued occupancy of Premises must specify the term of the authorization. This continued occupancy of the Premises will be considered to be a month-to-month tenancy binding the Lessee to all terms and conditions as set forth in this lease with the exception that

Lessee shall pay monthly rent in the amount of **150%** of the then-current rental rate for the Premises as indicated in the District's "Table of Lease Rental Rates". Rental for the month-to-month tenancy shall be due and payable on the first day of each monthly period of tenancy thereafter until the tenancy is terminated by law or as a remedy elected by the District under the terms of this lease and District's leasing policy. The month-to-month tenancy may be terminated by the District at its sole discretion with a 30-day notice mailed to the Lessee's address of record. Lessee may terminate the month-to-month tenancy at any time, and there will be no proration of rental charges for a partial month.

#### **XI. Property Taxes**

Lessee shall pay all taxes and assessments legally levied and assessed against its improvements on said property during the term of this lease and any extension thereof before such taxes and assessments become delinquent. In the event taxes and assessments are legally levied against Lessee's leasehold interest during the term of this lease, Lessee shall pay all such taxes and assessments before they become delinquent. If Lessee, by legal proceedings, contests the legality of same, such taxes and assessments shall be promptly paid upon the judicial determination thereof.

#### **XII. Maintenance of the Premises; Environmental Assessments; Security Deposit**

Lessee accepts the premises in their present condition, "AS IS, WHERE IS", such premises being suitable for Lessee's intended use.

Lessee acknowledges that neither District nor any officer, employee, or agent of District has made any warranty or representation, express or implied, with respect to any of the Premises, including any warranty or representation as to:

- (i) fitness, design or condition for any particular use or purpose,
- (ii) the quality of the material or workmanship therein,
- (iii) the existence of any defect, latent or patent,
- (iv) compliance with applicable laws,
- (v) location,
- (vi) use,
- (vii) operation,
- (viii) the existence of any wetlands affecting the Premises or the use or development thereof, and (except as herein expressly provided) all risks incident thereto are to be borne by Lessee.

Lessee acknowledges that the Premises have been inspected by Lessee and are satisfactory to Lessee. Except as herein expressly provided, in the event of any defect or deficiency in any of the Premises of any nature, whether latent or patent, District shall not have any responsibility or liability for any damages, including incidental or consequential damages. Lessee expressly waives any right of rescission hereunder and (except as herein expressly provided) releases and discharges District from any and all claims or causes of action that lessee may now have or hereafter have against District, Lessee's waivers hereunder shall survive the termination of this lease.

Lessee agrees to the following conditions regarding maintenance of the premises.

1. Lessee agrees to maintain and return the leased premises in a clean and well-maintained condition. All fences will be kept in good repair, grass mowed, and all scrap metal, trash and other litter removed.
2. Lessee shall keep docks, buildings, improvements, sidewalks, roads and passageways, if any, on or over said leased premises in good repair, and shall indemnify and hold harmless District against any and all claims, damages, liabilities, costs (including reasonable engineering and/or attorney's fees) arising out of, in connection with, or incident to any act

or omission or condition (including the negligence of District or its agents or employees) in connection with the ownership, operation, maintenance or repairs of the premises covered by the Lease including any additions to or extensions of the same.

3. Lessee agrees to repair any damage, reasonable wear and tear alone excepted, to District's roads contiguous to the leased premises caused by trucks and other equipment traveling to or from the leased premises.
4. The District has the right to conduct environmental audits and assessments as deemed necessary. For this purpose, the District has the right to access the site and premises to conduct the necessary field activities. Field activities may include, but are not limited to, soil sampling, monitoring well installation(s), groundwater and effluent discharge sampling, stack testing, etc. At the request of the District, the Lessee shall provide to the District documentation regarding environmental reports, notices, and permits that may be applicable to the facility as part of regulatory compliance. District will provide a 24-hour advance notification to the lessee of the intention to conduct the environmental audits and assessments and will coordinate all efforts with the lessee so as, to the extent reasonably practicable, to avoid interfere with the facility operations.
5. Lessee agrees to return the leased premises in the same condition as Lessee received them, ordinary wear and tear excepted, and except for any improvements or remediation required of Lessee by this lease. At a minimum, Lessee shall return the premises to a condition complying with Federal, State and Local regulations, including 30 TAC Chapter 350, with concurrence from the Port as to the specific standard. A security deposit of \_\_\_\_\_ (\$\_\_\_\_\_) will be required of Lessee upon execution of this lease. District shall retain said security deposit and apply the same to this lease. An inspection of the premises will be conducted prior to occupancy and upon termination of the lease. The District will conduct the inspections, but Lessee will be permitted to have a representative present. In the event that any of the lease premises is not returned in the proper condition as defined above, or if Lessee does not pay any amount

due under this Lease, the District will have the right to use any or all of the deposit to restore the condition of the items in question or to recoup any amounts due by Lessee to District under this Lease. The remaining balance of the security deposit after deductions for the cost of any work required to return the lease premises to the proper condition, and deductions for any remaining account balances due to the District by the Lessee, will be refunded to the Lessee and will be returned by Certified Mail to the Lessee's last address of record on file with the District. The District does not release the Lessee from liability for the condition of the items in question nor does it limit its right of recovery of the security deposit.

### **XIII. Hazardous Materials**

As used in this Article, the term "Hazardous Materials" means any hazardous or toxic substances, materials or wastes, including, but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. 172.101) or by the Environmental Protection Agency as hazardous substances (40 C.F.R. Part 302) and amendments thereto, or substances, materials and wastes which are or become regulated under any applicable local, state or federal law, rule, or regulation, including, without limitation, any material, waste or substance that is: (i) petroleum; (ii) asbestos; (iii) polychlorinated biphenyls; (iv) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. 251, et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. 1317); (v) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., (42 U.S.C. 6903); or (vi) defined as a "Hazardous Substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601, et seq. (42 U.S.C. 9601).

#### **A. Initial Environmental Audit**

Before or within thirty days after the Commencement Date, and prior to Lessee's commencing construction on the premises, the Lessee shall perform a Phase I, and as necessary a Phase II, environmental investigation (the "Initial Environmental Audit") of the Premises. The Initial Environmental Audit shall be performed at Lessee's expense and shall be performed by an environmental engineer or consultant approved by District. District shall receive a copy of the report directly from the consultant and is authorized to communicate directly with the consultant both during the investigation and subsequent to receiving the report. Lessee shall have thirty days from receipt of the Initial Environmental Audit report to notify District that it either will remediate any reportable conditions revealed by the environmental investigations in accordance with TCEQ standards, or that it objects to matters contained in the Initial Environmental Audit and has elected to terminate this lease. Lessee's failure to send a Termination Notice shall be conclusive evidence that Lessee elects not to terminate this Lease and agrees to remediate any reportable conditions. Lessee waives and releases District for all claims that it may have against District for damages resulting from the condition of the premises, whether it elects to terminate the lease under this Article or not. Lessee further waives any right it may have to compel District to remediate the premises and acknowledges that performing the Initial Environmental Audit in no way obligates District to perform any remediation. If Lessee elects to terminate the lease under this Article, such termination shall not relieve any prior lessee or occupant of the property of the obligation to remediate any condition found by the Initial Environmental Audit. Nothing in this Article is intended to limit District's right to conduct its own environmental investigations of the lease site.



## **B. Management of Hazardous Materials During Lease Term**

Lessee covenants and agrees from the date hereof, and as long as the provisions of this lease shall remain in effect, to remove from the Premises, if and as required by law, any Hazardous Materials placed in or on the Premises by Lessee, its agents, its employees or its independent contractors, and to comply in all respects with all federal, state and local governmental laws and regulations governing such removal. Lessee promises to give notice to District of any claim, action, administrative proceeding (including, without limitation, informal proceedings), or other demand by any governmental agency or other third party involving the existence of Hazardous Materials on the Premises, and copies of any notice of any releases of Hazardous Materials given by Lessee pursuant to any law, rule or regulation, and any report of and response to any such incident.

Lessee agrees to indemnify, pay and protect, defend and save District harmless from and against any and all claims (including, without limitation, third party claims for personal injury or real or personal property damage), actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities (including sums paid in settlement of claims), interest, or losses, including reasonable attorneys' and paralegals' fees and expenses, consultant fees, and expert fees, together with all other costs and expenses of any kind or nature (collectively, the "Costs") that arise directly or indirectly from or in connection with the release or suspected release by Lessee or its agents, its employees or its independent contractors of any Hazardous Materials in or into the air, soil, ground water, or surface water at, on, about, under, or within the Premises, or any portion thereof, or elsewhere in connection with Lessee's operations on or in connection with the Premises. The indemnification provided in this lease shall specifically apply to and include claims or actions brought by or on

behalf of employees of Lessee. In the event District shall suffer or incur any such costs, Lessee shall pay to District the total of all such costs suffered or incurred by District upon demand therefor by District. Without limiting the generality of the foregoing, the indemnification provided in this lease shall specifically cover costs, (including capital, operating and maintenance costs), incurred in connection with (1) any investigation or monitoring of site conditions, (2) any cleanup, containment, remedial, removal, or restoration work required or performed by any federal, state or local government agency or political subdivision or performed by any nongovernmental entity or person because of the presence, suspected presence, release, or suspected release of any Hazardous Material in or into the air, soil, ground water, or surface water at, on, about, under, or within the Premises or any portion thereof, or elsewhere in connection with Lessee's operations on or in connection with the Premises and (3) any claims of third parties for loss or damage due to such hazardous materials.

In the event Lessee is required to conduct or perform any investigation or monitoring of site conditions for any cleanup, containment, restoration, removal or other remedial work (collectively the "Remedial Work") under any applicable federal, state or local law or regulation, by any judicial order or by any governmental entity, or in order to comply with any agreements affecting the Premises because of or in connection with any occurrence or event described in this lease, Lessee shall perform or cause to be performed the Remedial Work in compliance with such law, regulation, order or agreement; provided that Lessee may withhold such compliance pursuant to a good faith dispute regarding the application, interpretation, or validity of the law, regulation, order or agreement, subject to the requirements of the following paragraph. All remedial work shall be performed by one or more contractors selected by Lessee and approved in advance in writing by District, and under the supervision of a consulting engineer selected by Lessee and

approved in advance in writing by District. All costs and expenses of such Remedial Work shall be paid by Lessee, including, without limitation, the charges of such contractors and/or the consulting engineer, District's reasonable attorneys and paralegals' fees and costs incurred in connection with monitoring or review of such Remedial Work. If Lessee shall fail to timely commence or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, District may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof or incurred in connection therewith shall be Costs within the meaning of this lease. All such Costs shall be due and payable upon demand therefor by District.

Lessee shall be permitted to contest or cause to be contested, subject to compliance with the requirements of this paragraph, by appropriate action any Remedial Work requirement, and District shall not perform such requirement on its behalf, so long as Lessee has given District written notice that Lessee is contesting or shall contest or cause to be contested the application, interpretation, or validity of the governmental law, regulation, order or agreement pertaining to the Remedial Work by appropriate proceedings conducted in good faith with due diligence; provided that such contests shall not subject District or any assignees of District's interest in the Premises to civil liability and does not jeopardize any such parties' interest in the Premises. Lessee shall give such security or assurances as may be reasonably required by District to insure compliance with the legal requirements pertaining to the Remedial Work (and payment of all Costs in connection therewith) and to prevent any sale, forfeiture, or loss by reason of such nonpayment or noncompliance.

### **C. End-of-Lease-Term Assessment and Removal of Hazardous Substances**

In addition, during the final six months prior to the termination of this Lease, Lessee shall perform, at its sole expense, an environmental site assessment reasonably acceptable to District to

determine the extent, if any, of contamination of the Premises and shall, at its sole expense, clean up, remove, and remediate (i) all Hazardous Substances in, on, or under the Premises, (ii) any petroleum in, on, or under the Premises in excess of allowable levels, and (iii) all contaminants and pollutants in, on, or under the Premises that create or threaten to create a substantial threat to human health or the environment and that are required to be removed, cleaned up, or remediated by any applicable federal, state, or local statute, regulation, standard, or order. This obligation does not apply to a Release of Hazardous Substances, pollutants, contaminants, or petroleum caused solely by the act or omission of a third party other than an employee or agent of Lessee or a person having a contractual relationship to Lessee, provided that Lessee can establish that it exercised due care to prevent such act or omission of a third party or to minimize the damages therefrom, as provided in 42 U.S.C. § 9607(b) (3) (1988).

**D. General**

Lessee shall fully cooperate in allowing, from time to time, such examinations, tests, inspections, and reviews of the premises as District, in its sole and absolute discretion, shall determine to be advisable in order to evaluate any potential environmental problems. District expressly reserves the right to conduct examinations, tests, (including but not limited to a geohydrologic survey of soil and subsurface conditions), inspections, and reviews of the premises as District in its sole and absolute discretion may determine to be necessary.

This Article XIII shall be binding upon, inure to the benefit of, and be enforceable by District and Lessee, and their respective heirs, legal representatives, successors and assigns, including, without limitation, any assignee or purchaser of all or any portion of the District's interest in the Premises. If any term of this Article or any application thereof shall be invalid, illegal, or unenforceable, the remainder of this Article and any other application of such term shall

not be affected thereby. No delay or omission in exercising any right hereunder shall operate as a waiver of such right or any other right. The provisions of this Article shall survive the termination or expiration of this lease.

#### **XIV. Insurance**

Lessee shall keep in full force and effect Bodily Injury Liability, Property Damage Liability covering its operations to be carried out upon or in connection with this lease and Pollution Control Insurance covering third-party bodily injury and property damage plus on-site remediation and clean up expenses, and without a terrorism exclusion. Lessee shall also carry replacement cost Fire and Extended Coverage Insurance on all improvements to the leased premises owned by District and leased to Lessee. The policy or policies shall (a) contain a waiver of subrogation in favor of the District for each coverage, (b) name District as additional insured, and (c) contain a clause that the insurance will not be canceled or changed without giving the District thirty days' prior written notice. Certificates of insurance and complete copies of the policies shall be furnished to the District for review. The limits of liability and other insurance policy particulars required are attached hereto as **Exhibit B** and incorporated by reference. The District reserves the rights to amend the limits of liability and other insurance policy particulars required of all District's lessees. Lessee agrees to be bound by said amendments as approved by the District's Board of Commissioners.

#### **XV. Connection to District's Sewer System; Disposal of Wastewater**

Lessee agrees to connect to the sanitary sewer system available to the premises and agrees to pay the District its customary charge for such sewer service.

Lessee will pay all costs caused by Lessee's introduction of materials, other than ordinary human waste, into the sanitary sewer system. Lessee, at Lessee's sole cost and expense, will install, maintain and service any dilution tanks, settling tanks, sewer sampling devices, sand traps, grease traps, or other devices required by law for the permitted use of the sanitary sewer system.

All waste water, rain water, etc., not containing noxious, odorous or otherwise harmful substances, may be disposed of through direct underground drains into the basin, except that such drains must leave the bank at least 8" below the top line of rip rap rock to prevent erosion of the bank. In no event shall any such drain water be shunted or passed over banks of the harbor, nor shall any noxious, odorous, or otherwise harmful substance be discharged into such harbor or basin.

#### **XVI. District's Statutory Interest in Lessee's Property**

In addition to the District's statutory lien, District shall have at all times a valid security interest to secure payment of all rentals and other sums of money becoming due hereunder from Lessee, and to secure payment of any damages or loss which District may suffer by reason of the breach by Lessee of any covenant, agreement or condition contained herein, upon all goods, wares, equipment, fixtures, furniture, improvements and other personal property of Lessee currently or which may hereafter be situated on the premises, and all proceeds therefrom, and such property shall not be removed therefrom without the consent of District until all arrearages in rent, as well as any and all other sums of money then due to District hereunder shall first have been paid and discharged and all the covenants, agreements and conditions hereof have been fully complied with and performed by Lessee. Upon the occurrence of an event of default by Lessee, District may, in addition to any other remedies provided herein, after giving thirty (30) days' notice of the intent to take possession and giving an opportunity for a hearing thereon, enter upon the premises and take

possession of any and all goods, wares, equipment, fixtures, furniture, improvements and other personal property of Lessee situated on the premises, without liability for trespass or conversion, and sell the same at public or private sale, with or without having such property at the sale, after giving Lessee reasonable notice of the time and place of any public sale or of the time after which any private sale is to be made, at which sale the District or its assigns may purchase unless otherwise prohibited by law. Unless otherwise provided by law, and without intending to exclude any other manner of giving Lessee reasonable notice, the requirement of reasonable notice shall be met if such notice is given at least 10 days before the actual time of sale. The proceeds from any such disposition, less any and all expenses connected with the taking possession, holding and selling of the property (including reasonable attorneys' fees and other expenses), shall be applied as a credit against the indebtedness secured by the security interest granted in this section. Any surplus shall be paid to Lessee or as otherwise required by law, and the Lessee shall pay any deficiencies forthwith. Upon request by District, Lessee agrees to execute and deliver to District a financing statement in a form sufficient to perfect the security interest of District under the provisions of the Uniform Commercial Code in force in the State of Texas. The statutory lien for rent is not hereby waived, the security interest herein granted being in addition and supplementary thereto. Anything to the contrary notwithstanding, said security interest shall be subject and subordinate to a security interest granted by the Lessee to a third party in and to any property owned by Lessee and located upon the leased premises ("Lessee's Property") to the extent such security interest was granted for the purpose of securing payment (i) to the Seller for the purchase price paid by Lessee for Lessee's Property or any portion of such purchase price, or (ii) to a lender advancing funds for such purchase price or any portion of such purchase price or for the construction of improvements upon the leased premises by Lessee.

## **XVII. Compliance with the Official Tariff of the Port of Brownsville**

Lessee agrees to comply with all provisions of the official Tariff of the Port of Brownsville as it now exists or hereafter may be amended. Except as may be otherwise specifically provided in this lease, in the event of a conflict between the provisions of this lease and the provisions of such Tariff, the provisions of the Tariff shall control. Lessee further recognizes that the Port of Brownsville is considered a “waterfront facility” within the meaning of the Marine Transportation Safety Act and regulations promulgated thereunder; that the provision of said Act and regulations require District to adopt and enforce a “Facilities Security Plan;” and that the provisions of said Act, regulations, or plan may restrict access to the leased premises.

Lessee agrees to pay to District as and when they accrue wharfage, port, harbor, and other charges for the use of District public facilities at the rates published in the District’s then-effective official Port Tariff containing authorized rates, rules and regulations governing the Brownsville Ship Channel and its publicly-owned wharves, piers, and docks, as well as other lawful charges incurred to District by reason of Lessee’s operations on the demised premises. In addition, Lessee agrees to report any and all cargos loaded or unloaded to or from the docks at the lease site as required in the Port of Brownsville Tariff No. 6. In the event Lessee undertakes loading or unloading cargos for a third party, not Lessee’s own cargo or belonging to a parent, sister, or subsidiary of Lessee, Lessee shall be required to obtain a stevedore’s license before any operations can occur. All Tariff rates apply to any activity on the demised premises, including but not limited to wharfage.

## **XVIII. Compliance with the Leasing Policies of the District**

District and Lessee enter into this Agreement pursuant to District’s “Leasing Policies” as may be amended from time to time. The Leasing Policies address matters such as (i) Land



Classification; (ii) Lease Rental Rates; (iii) leasing of District-owned improvements; (iv) pipeline and right of way easements; (v) negotiation, renewal, and termination of leases; (vi) utility service; and (vii) insurance. The Leasing Policies, as may be amended from time to time, are incorporated into this Lease by reference and are binding on Lessee as fully as if set forth herein. District shall have the right to make reasonable amendments to the Leasing Policies from time to time for the promotion of the long-range objectives of District, as set out in Policy 301(Local), including the preservation of good order on District property. Beginning 30 days after Lessee receives notice of such amendments or additions to the Leasing Policies from District, the amended or added Policy shall apply to this Lease, and Lessee shall comply with such amended Policy. No newly promulgated Policy and no amendments to the Leasing Policies shall be enforceable against Lessee if any such new or amended Policy is not generally applicable to all Lessees within Lessee's Land Classification (or, in the case of insurance requirements, to all Lessees operating businesses within a particular Insurance Level). In the event there is an irreconcilable conflict between the provisions of this Lease and the Leasing Policy, the provisions of the Policy shall govern.

#### **XIX. Authority to Execute Lease; No Third-Party Beneficiaries**

District expressly warrants that it is the sole owner of the premises, that it has the full right, power and authority to make this lease, and that no other person needs to join in the execution thereof in order for the lease to be binding upon all parties having an interest in the leased premises.

Lessee represents and warrants that it is duly formed and in good standing and has full power and authority to enter into this Lease and has taken all corporate action necessary to carry out the transaction contemplated herein, so that when executed, this Lease constitutes a valid and binding obligation enforceable in accordance with its terms. Lessee shall provide District with corporate resolutions or other proof in a form acceptable to District, authorizing the execution of

the Lease at the time of such execution. Lessee explicitly agrees and acknowledges that there are no third-party beneficiaries of this lease

## **XX. Attorney's Fees**

In the event Lessee breaches any of the terms of this agreement, whereupon District employs attorneys to protect or enforce its rights hereunder, or in the event Lessee files a petition in bankruptcy and District employs attorneys to protect its rights, then Lessee agrees to pay the District reasonable attorneys' fees.

## **XXI. Relocation of Lessee (Right to Relocate)**

District reserves the right, on 90 days' notice, to move Lessee at District's expense to another location on District's lands fully suitable for Lessee's purposes. District shall only be responsible for the expense of moving Lessee's operations. Under no circumstance will District be liable for loss of profits or business interruption damages in the event District exercises its rights under this Article.

## **XXII. Liens Prohibited**

Neither Lessee nor anyone claiming by, through or under Lessee shall have the right to file or place any mechanic's lien of any kind or character whatsoever on the premises, or on any of the buildings or improvements thereon, and notice is hereby given that no contractor, subcontractor, or anyone else who may furnish any material, service or labor for any buildings or improvements, alterations or repairs at any time shall be or become entitled to any lien thereon whatsoever. For the further security of District, Lessee shall give actual notice of this restriction in advance to all

contractors, subcontractors or other persons, firms or corporations that may furnish any such material, service, or labor.

### **XXIII. Miscellaneous**

1. Nothing in this Agreement is intended to waive any defense of governmental immunity available to District.

2. The rule of construction that ambiguities in a document are construed against the party who drafted it does not apply in interpreting this Agreement.

3. This Agreement may only be modified in a separate writing signed by both parties. If any controversy, claim, or dispute arises relating to this Agreement or its breach, the prevailing party shall be entitled to recover from the other party reasonable expenses, attorney's fees, and costs. The parties agree that prior to any attempt for court intervention in any dispute between the parties as to this agreement, the dispute will be submitted in good faith to Alternative Dispute Resolution procedures in Cameron County, Texas. If Alternative Dispute Resolution procedures fail, venue for any lawsuit arising out of this Agreement shall be mandatory in State District Court in Cameron County, Texas. This Agreement shall be governed by and construed under the laws of the State of Texas, excluding any choice of law provisions thereof.

4. This Agreement is for a fixed term, including renewal options specifically provided. Lessee specifically acknowledges that Lessee has no expectation that this Agreement will be renewed beyond the stated term, or that Lessee will receive a new lease when this Agreement expires. Any extension of this lease beyond the stated term (including renewal options) or granting of a replacement lease shall be within the sole discretion of District's Board of Commissioners, as the Board deems to be in the best interests of District.

#### **XXIV. Special Conditions**

The following special conditions apply to this Agreement:

1. Lessee is hereby granted the option during the term of this Agreement, provided that the Agreement is then in full force and effect, and that Lessee is not in default under any of the provisions of this Agreement, of extending and renewing this Agreement for \_\_\_\_\_ additional terms of \_\_\_\_\_ year each, upon the same terms and conditions, except that the rent under this Agreement shall be at the then current standard rental rates under the District's Leasing Policy. The exercise of this option to renew shall be by written notice to the District on or before thirty (30) days prior to the expiration of the primary term of this Agreement. EMAIL NOTICE WILL NOT SUFFICE. The notice requirement shall be strictly enforced and it is Lessee's sole responsibility to timely deliver said notice of the exercise of this option to renew.

#### **XXV. Entire Agreement**

This instrument contains the entire Agreement between the parties hereto, and neither party shall be bound by any representation or agreement, oral or written, made by either party or any of their agents, representatives or employees, not set forth herein.

**IN TESTIMONY WHEREOF** said **BROWNSVILLE NAVIGATION DISTRICT OF CAMERON COUNTY, TEXAS** and said \_\_\_\_\_, have each caused these presents to be executed by its proper officers thereunto duly authorized effective the \_\_\_\_\_ day of \_\_\_\_\_.

**BROWNSVILLE NAVIGATION DISTRICT  
OF CAMERON COUNTY, TEXAS**

\_\_\_\_\_  
\_\_\_\_\_, Chairman of the Board

Attest:

By: \_\_\_\_\_  
\_\_\_\_\_, Secretary  
of the Board

\_\_\_\_\_  
**Lessee Name**

\_\_\_\_\_  
By: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGEMENTS**

STATE OF TEXAS           §

COUNTY OF CAMERON   §

        This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
by \_\_\_\_\_, Chairman of the Board of Navigation and Canal Commissioners of the  
**BROWNSVILLE NAVIGATION DISTRICT OF CAMERON COUNTY, TEXAS**, on behalf  
of said District.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS           §

COUNTY OF CAMERON   §

        This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, by  
\_\_\_\_\_, individually and in his capacity as \_\_\_\_\_ of  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

EXHIBIT A  
METES AND BOUNDS DESCRIPTION

SAMPLE

EXHIBIT B  
INSURANCE REQUIREMENTS

SAMPLE