

**LICENSE AGREEMENT BETWEEN BROWARD COUNTY AND HIGH SIERRA TERMINALING, LLC
FOR BULK PETROLEUM PRODUCT PIPELINES AT PORT EVERGLADES**

This License Agreement ("Agreement") is made and entered into by and between Broward County, a political subdivision of the state of Florida ("County"), and High Sierra Terminaling, LLC, a foreign limited liability company authorized to transact business in the state of Florida ("Licensee") (collectively referred to as the "Parties").

RECITALS

A. County owns and operates Port Everglades, a deepwater port located in Broward County, Florida (the "Port"), having facilities for the receiving and handling of Product(s) (as defined herein), including lands suitable for the installation, use, and maintenance of Pipeline(s) (as defined herein).

B. County has incurred and hereafter will continue to incur substantial costs for construction, maintenance, replacement, and repair of facilities essential to accommodate receiving, handling, and storage of Product(s) at the Port, including: deepwater petroleum berths; the turning basin and entrance channel; bulkheads; wharves; roads; and lighting. Additionally, in providing land for the purposes expressed herein, County has committed itself to the long-term availability of facilities and land to accommodate petroleum terminal users at the Port.

C. County has determined that the covenants of this Agreement are essential in order to justify the expenditures associated with its role in operating the Port.

D. Licensee operates a business at the Port involving the storage and transportation of Product(s) arriving at the Port primarily by water-borne commerce. Licensee is in need of and has requested County provide access to land owned by County for the installation, maintenance, operation, repair, replacement, and removal of Pipeline(s) to transport such Product(s) at the Port.

E. Licensee currently has Pipeline(s) and necessary appurtenances for the transportation of Product(s) at the Port.

F. This Agreement establishes the terms and conditions relating to Licensee's nonexclusive right to install, maintain, operate, repair, replace, relocate, and remove Pipeline(s) and necessary appurtenances within the Premises for the transportation of Product(s) within the Port.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1 – DEFINITIONS AND IDENTIFICATIONS

- 1.1 **Board** means the Board of County Commissioners of Broward County, Florida.
- 1.2 **Contract Administrator** means the Port Director, Deputy Port Director, or Port Director's designee.
- 1.3 **County Administrator** means the administrative head of County appointed by the Board.
- 1.4 **County Attorney** means the chief legal counsel for County appointed by the Board.
- 1.5 **Pipeline(s)** means aboveground and underground piping owned by Licensee to transport Product(s), including all valves, elbows, joints, flanges, pumps, flexible connectors, manifolds, valve pits, and associated cathodic protection equipment located within the Premises.
- 1.6 **Premises** means the property described in Exhibit A, within which Licensee is permitted to install, maintain, and operate its Pipeline(s), in accordance with the terms and conditions in this Agreement.
- 1.7 **Product(s)** means petroleum products, alternative fuels, and fuel blending components.

ARTICLE 2 – GRANT; RELOCATION BY LICENSEE

County hereby grants to Licensee the nonexclusive right to install, maintain, operate, repair, replace, and remove Pipeline(s) for the transportation of Product(s), limited to the Premises within the Port as more particularly described in Exhibit A, subject to the terms and conditions herein. County agrees that it will not unreasonably interfere with the rights and uses granted to Licensee hereunder. County will not be liable for any costs associated with or resulting from Licensee's failure to comply with the terms of this Agreement or for any indemnified matters as more fully described in Article 10, INDEMNIFICATION, of this Agreement. Should it become necessary to relocate Pipeline(s) for reasons determined by federal, state, or local agencies having jurisdiction over Pipeline(s), or at Licensee's request, all expenses of deactivation and relocation of Pipeline(s), including costs for associated environmental remediation, will be borne by Licensee. Licensee may exercise any administrative, judicial, or appellate rights available to it to challenge the determination by a federal, state, or local agency that Pipeline(s) be relocated; provided, however, that Licensee covenants and agrees to indemnify and save harmless County, its current, past, and future commissioners, officers, agents, and employees, their successors and assigns, individually and collectively, from and against all liability for any expenses, fines, damages, claims, suits, demands, or causes of action of any kind or nature in any way arising out of or resulting from Licensee's exercise of such rights.

ARTICLE 3 – TITLE; RESERVATION OF TITLE

This Agreement vests in Licensee no right, title, nor interest in and to the Premises, other than the nonexclusive right of using same for the express purposes and on the terms and conditions herein set forth. It is expressly understood that the fee ownership to said Premises remains in County for such use and occupation as County, its successors or assigns, may desire to make of the Premises, subject only to the license rights hereby given to Licensee to install, maintain, operate, repair, replace, and remove its Pipeline(s).

ARTICLE 4 – TERM

This Agreement is effective on the date it is fully executed by the Parties (the "Commencement Date") and will continue for a period of ten (10) years thereafter, unless sooner terminated as provided herein.

ARTICLE 5 – PIPELINE INSTALLATIONS; RESERVATION OF RIGHT TO USE SURFACE

5.1 Licensee shall maintain all existing Pipeline(s) in a good state of repair and at their original design depths. Licensee shall install all underground Pipeline(s), whether new, replacement, or relocation, so that throughout the entire run of Pipeline(s) there is at a minimum thirty-six (36) covered inches between the top of Pipeline(s) and the surface of the land, and shall maintain Pipeline(s) in a good state of repair. Licensee may, subject to prior review and written approval from the Contract Administrator, install aboveground Pipeline(s). Notwithstanding the above, any and all installation of Pipeline(s), whether new, replacement, or relocation, must be in accordance with all laws, ordinances, and regulations now or hereafter imposed by any or all governmental bodies, agencies, or regulatory entities having jurisdiction over such activities, including County, as well as the reasonable requirements of County's Contract Administrator.

5.2 During installation, repair, replacement, or removal of Pipeline(s), after considering actual subsurface conditions and obstacles encountered in the field, Licensee may request and be granted minor modifications to the placement and location of its Pipeline(s) as depicted in Exhibit A, subject to the prior written approval of the Port Director. In such cases, Licensee shall provide a revised Exhibit A that will be automatically made a part of this Agreement upon prior written approval of the Port Director.

5.3 Should any pavement, railroad trackage, or other improvement be damaged or removed by Licensee, its employees, agents, or contractors, during the installation, maintenance, operation, repair, replacement, or removal of Pipeline(s) herein provided for; or should any such pavement, railroad trackage, or other improvement settle or otherwise deteriorate as a result of work by Licensee, its employees, agents, or contractors, related to the installation, maintenance, operation, repair, replacement, or removal of Pipeline(s); then Licensee shall, at its own expense, replace, restore, or repair the pavement, railroad trackage, or other improvement, as necessary, to the same or substantially similar condition (as determined by the Contract Administrator) existing immediately prior to such damage, removal, settlement, or deterioration.

5.4 County expressly reserves the right to continue to use or to allow third parties to use the aboveground surface of the Premises, accommodating the license hereby granted, including the right to store cargo thereon, provided that such continued use is not inconsistent with Licensee's use of the aboveground surface and will not unreasonably interfere with the rights and uses granted to Licensee hereunder. County agrees that it will not build, or allow to be built, any permanent structures on the Premises during the term of this Agreement that would unreasonably interfere with Licensee's Pipeline(s) and use of the Premises as permitted herein.

5.5 If it should become necessary for Licensee to temporarily use the surface area of the Premises for repair or replacement of Pipeline(s), Licensee and County shall work together to minimize the cost of removal and replacement of any cargo or other materials stored thereon. The cost of such removal and replacement of said cargo or other materials will be borne by Licensee.

5.6 Licensee shall repair any damage or injury to the Premises, including all buildings, structures, and other improvements, caused by its exercise of the privileges granted in this Agreement, promptly restoring the Premises to the same or substantially similar condition (as determined by the Contract Administrator) existing immediately prior to such damage or injury, at no cost whatsoever to County.

5.7 Except as otherwise provided herein, all brush, trimmings, and other growth cut by Licensee, and all earth and other material removed by Licensee, must be removed and disposed of by Licensee at its own cost and expense and at no cost or expense whatsoever to County.

5.8 County will have the right, at any time during the term of this Agreement, to install, develop, or redevelop utilities, cables, roads, parking areas, pavements, piers, docks, deepwater slip areas, railroad tracks, or other Port-related infrastructure under, over, and within the Premises, subject to County taking such steps as are necessary in order to: protect Licensee's Pipeline(s); ensure that the depth of Licensee's Pipeline(s) is not disturbed; and not unreasonably interfere with Licensee's operations. If removal or relocation of Pipeline(s) is necessary as determined by County, through the Contract Administrator, Licensee shall remove or relocate such Pipeline(s) and restore the surface to grade level within one year after receipt of written notice from County, all at the sole cost and expense of Licensee. Any required changes, relocation, or removal of Pipeline(s) as necessary must be made by Licensee within said time period stated above. County shall provide Licensee an adequate alternative licensed location to enable Licensee to install or relocate its Pipeline(s) in order to continue to transport at least the same amount of Product(s) as before the required relocation or removal of Pipeline(s). In such cases, the Premises as defined herein shall be redefined through an amendment to this Agreement. The Port Director is authorized to enter into any amendment addressed in this section. During any installation, maintenance, repair, replacement, or removal of Pipeline(s), both Licensee and County shall use good faith efforts to ensure that each other's operations are not unreasonably interrupted. Licensee is aware that the Port envisions the redevelopment of existing roads and petroleum piers, which would require relocation or removal of Pipeline(s) by Licensee at its own expense.

ARTICLE 6 – LICENSEE'S CONFORMANCE TO RULES AND REGULATIONS OF COUNTY

6.1 Licensee agrees to conform to and abide by Tariff 12, Item No. 1039, Operation of petroleum bulk pipelines, as may be amended from time to time, and by such other written rules, regulations, and policies as may from time to time be adopted and imposed by County with reference to the installation, maintenance, operation, repair, replacement, abandonment, or removal of its Pipeline(s). County agrees that such rules, regulations, and policies will operate in a uniform way with respect to all persons and entities engaged at the Port in the same or a similar class of business and handling the same commodities or materials as Licensee. County shall furnish Licensee a copy of such written rules, regulations, and policies upon request.

6.2 County, at its own expense, may conduct site inspections of the Premises as County deems appropriate upon reasonable prior written notice to Licensee. County, at its own expense, may hire qualified third-party agents, subject to Licensee's prior written approval, which approval will not be unreasonably withheld, who may inspect Pipeline(s) only when accompanied by Licensee's personnel. A copy of any laboratory results, test results and reports, or any other material generated by such inspection will be delivered to Licensee upon receipt by County.

ARTICLE 7 – NOTICES

In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and will be effective upon mailing or hand delivery. The addresses for notice will remain as set forth in this article unless and until changed by providing notice of such change in accordance with the provisions of this article.

FOR COUNTY:

Broward County Port Everglades Department
Attn: Chief Executive/Port Director
1850 Eller Drive
Fort Lauderdale, FL 33316
Email address: gwiltshire@broward.org

FOR LICENSEE:

High Sierra Terminaling, LLC
Attn: Terminal Manager
1326 S.E. 17th Street, Suite 546
Fort Lauderdale, FL 33316
Email address: jlynn@hsterminals.com

With a copy to:
High Sierra Energy, LP
Attn: General Counsel
3773 Cherry Creek Drive North, Suite 655
Denver, CO 80209
Email address: jdormoi@matconcorporation.com

ARTICLE 8 – NONEXCLUSIVITY

The privilege provided to Licensee in this Agreement shall not be construed as precluding County from granting like or similar privileges to others, including the right of County, its grantees or assignees, in implementing the use of any such additional licenses, to cross over, under, or collocate on a shared pipeline support structure housing Pipeline(s) installed by Licensee hereunder, provided that no such grant will interfere with the rights and uses granted to Licensee hereunder.

ARTICLE 9 – TIME OF THE ESSENCE; CUMULATIVE RIGHTS

Time of performance by the Parties of each and every provision, covenant, and term hereof is and will be forever construed to be of the essence of this Agreement. The rights of the Parties hereunder are cumulative and in addition to rights otherwise provided by the statutes and laws of the State of Florida. Failure on the part of a party to promptly exercise any such available right will not operate, nor be construed to operate, as a waiver or forfeiture of any such right.

ARTICLE 10 – INDEMNIFICATION

10.1 Licensee shall indemnify, hold harmless, and defend County and all of County's current, past, and future officers, agents, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including reasonable attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of Licensee, its officers, employees, or agents, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). In the event any Claim is brought against an Indemnified Party, Licensee shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this article will survive the expiration or earlier termination of this Agreement.

10.2 Licensee's indemnity obligations under this Agreement are exclusive of, and in addition to, any and all insurance obligations of Licensee under this Agreement.

ARTICLE 11 – GOVERNMENTAL IMMUNITY

Except to the extent sovereign immunity may be deemed to be waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County nor shall anything included herein be construed as consent by County to be sued by third parties in any matter arising out of this Agreement. County is a political subdivision as defined in Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of its employees pursuant to Section 768.28, Florida Statutes.

ARTICLE 12 – LICENSEE'S RIGHT TO ENTER; REQUIRED CONSTRUCTION PERMITS

12.1. It is expressly understood and agreed that Licensee shall have, and County grants to Licensee, the rights of ingress and egress upon the Premises (as well as County's adjacent property, as reasonably required) at all times during the term of this Agreement, for the purpose of installing, maintaining, operating, repairing, replacing, and removing Pipeline(s).

12.2. Licensee shall not undertake any work, except under emergency circumstances, involving installing, repairing, replacing, or removing of any Pipeline(s) on the Premises without and until the written approval of the Contract Administrator for such planned work has been given. Such written approval by the Contract Administrator will not be unreasonably withheld. In the event of emergency circumstances, Licensee shall immediately notify Contract Administrator and undertake appropriate response measures.

12.3. Licensee shall obtain all required governmental approvals for such work and shall comply with such other rules and regulations as may be prescribed by County, and shall take such steps as may be reasonably necessary or directed by County to ensure that Licensee's employees, agents, contractors, invitees, and guests observe these requirements. All reasonable costs associated with the construction and repair of any Pipeline(s), security fence, barrier, access control, or monitoring system, including, but not limited to, gates, signs, or locks (keying and rekeying), that are installed at any time at the Premises by Licensee will be borne by Licensee. County reserves the right to take whatever action is necessary to rectify any security deficiency or other deficiency and charge such costs and expenses to Licensee in the event Licensee fails to act within a reasonable time frame after being notified by County of any such deficiency. The provisions of this article will survive the expiration or any other termination of this Agreement as long as Pipeline(s) exist on the Premises.

ARTICLE 13 – WHARFAGE AND OTHER PORT CHARGES; SHORE TANK MEASUREMENTS; COMPLIANCE WITH TARIFF

13.1 Licensee shall pay or cause to be paid to County wharfage on the Product(s) off-loaded from vessels or loaded on vessels at the Port and transported through Pipeline(s), as well as additional charges for Licensee's use of other available services, facilities, or equipment at the Port, as provided for in Port Everglades Tariff No. 12, including any amendments thereto or reissues thereof.

13.2 No wharfage charges will be assessed on Product(s) passing through Pipeline(s) within the license provided for herein, where such Product(s) have arrived at the Port and upon which wharfage or nonwaterborne charges have already been paid to County.

13.3 All wharfage charges imposed by County and paid by Licensee will be determined by shore tank measurements taken before and after delivery corrected to sixty (60) degrees Fahrenheit. Such measurements will be based on a U.S. gallon of two hundred thirty-one (231) cubic inches, with forty-two (42) gallons to the barrel. All measurements will be corrected to volume equivalents at sixty (60) degrees Fahrenheit in accordance with ASTM/IP Petroleum Measurement Table 7 (abridged), as amended or revised, at the time the gauge is taken. Representatives of County may be present when said measurements are taken. Each time Product(s) is received or loaded at the Port, Licensee agrees to furnish a sworn statement that discloses the volume in barrels and the type of Product(s) received or loaded by Licensee. Licensee agrees to furnish County with a copy of the ship's manifest and related inspector's report for each cargo received or loaded over the wharf of the Port and such other records and data as County reasonably requests in writing. County has the right, upon not less than seventy-two (72) hours' prior notice and during normal business hours, to inspect Licensee's books and all other appropriate records in connection with Product(s) received or loaded at the Port. The wharfage charges to be paid by Licensee to County must be promptly paid and be subject to any standard accounts receivable policies of County. All references in this section to Product(s) "received or loaded" refer to Product(s) that is subject to wharfage charges under Section 13.1 of this Agreement.

13.4 In making use of the Premises and Port facilities, equipment, or services, Licensee agrees to be bound by and comply with the terms and provisions of Port Everglades Tariff No. 12, including any amendments thereto or reissues thereof.

ARTICLE 14 – COVENANTS OF PARTIES

14.1 County covenants and agrees that it will provide, maintain, and make available for use by Licensee throughout the term of this Agreement deepwater port facilities that will provide efficient, safe, and useable means for the transportation of Product(s) by water. Any delay or failure by County to provide such facilities that results from an Act of God, an Act of War, or through no fault, action, or omission of County will not be considered a breach of County's obligations hereunder.

14.2 The deepwater port facilities that exist at the Port as of the Commencement Date are accepted and acknowledged by the Parties as fulfilling County's obligations in this article.

14.3 Notwithstanding any language contained herein to the contrary, Licensee will have no liability or obligation to indemnify County for any environmental impairments, liabilities, or conditions not caused by Licensee, its predecessors, employees, agents, invitees, or contractors.

14.4 In consideration of the foregoing, Licensee covenants and agrees with County that during the term of this Agreement or any extension thereof:

14.4.1 Licensee, its parent and affiliated or related companies, shall not import Product(s) into the Port by any means other than by water, rail, or truck.

14.4.2 In the event Licensee brings into the Port any Product(s) by means other than by water, rail, or truck, this Agreement will become null and void and Licensee shall remove any Pipeline(s) within the license granted hereunder and perform corrective action in accordance with Article 20, TERMINATION, herein.

ARTICLE 15 – INSURANCE REQUIREMENTS

15.1 For the duration of this Agreement, Licensee shall, at its sole expense, maintain the minimum insurance requirements stated below for General Liability, Pollution Liability, Business Automobile Liability, and Workers' Compensation:

15.1.1 General Liability insurance coverage on a Broad Form Coverage applicable to this specific Agreement including any hold harmless and/or indemnification agreement, in the amount of Twenty-five Million Dollars (\$25,000,000) combined single limit bodily injury and property damage liability, and Twenty-five Million Dollars (\$25,000,000) per aggregate. Such policy will include premises/operations, XCU Explosion/Collapse/Underground, contractual insurance, independent contractors, personal injury, and name Broward County as an additional insured.

15.1.2 Self-Insurance: Licensee may elect self-insurance for General Liability insurance coverage or any other policy required by this article; however, the self-insurance coverage(s) must be approved in writing by County's Risk Management Division and may be adjusted or rejected if the Risk Management Division determines that such adjustments or rejection is necessary to protect County's interest.

15.1.3 Pollution Liability providing sudden and accidental coverage for claims for bodily injury, property damage, clean-up costs, and related legal defense expense for pollution conditions that result from, or are disrupted by, the services rendered in performance of the contract by or on behalf of Licensee. Coverage will include clean-up costs, extensions for transportation and disposal, and full severability of interests, and will not be restricted by any time element limitations. Coverage will apply to pollution conditions on, at, under, or migrating from the site. The Pollution Liability insurance will have the following limits and name Broward County as an additional insured:

Five Million Dollars (\$5,000,000) each loss limit
 Five Million Dollars (\$5,000,000) aggregate limit
 Deductible not to exceed One Hundred Thousand Dollars (\$100,000)

15.1.4 Business Automobile Liability with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury and property damage liability. Coverage must include: owned, hired, and nonowned vehicles, and name Broward County as an additional insured.

15.1.5 Workers' Compensation in compliance with Florida Statutes Chapter 440 as well as any applicable federal Workers' Compensation laws.

15.2 Any policies of insurance obtained hereunder will be evidenced by certificate(s) of insurance, a letter of self-insurance, or a combination of both, which provide County with thirty (30) calendar days' prior written notice of cancellation or nonrenewal. Licensee shall provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s). Licensee shall ensure that there is no lapse of coverage at any time during the time period for which coverage is required by this Agreement. Licensee shall provide proof that its self-insurance complies with the requirements of C.F.R. Title 40, Part 280, Subpart H. Licensee shall substitute "Pipeline" for "underground," where applicable, for any documents required in C.F.R. Title 40, Part 280, Subpart H, that are submitted to County to demonstrate financial responsibility. Licensee shall provide all other required documentation as may be requested in writing by County's Risk Management Division.

15.3 Licensee shall ensure that all required insurance policies are issued by insurers: (1) assigned an A. M. Best rating of at least "A-" with a Financial Size Category of at least Class VII; (2) authorized to transact insurance in the state of Florida; or (3) a qualified eligible surplus lines insurer pursuant to Section 626.917 or 626.918, Florida Statutes, with approval by County's Risk Management Division.

15.4 All required insurance coverages under this article shall provide primary coverage and shall not require contribution from any County insurance, self-insurance, or otherwise, which shall be in excess of and shall not contribute to the insurance required and provided by Licensee.

15.5 Licensee shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against County. County may, at any time, require Licensee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

15.6 Unless prohibited by the applicable policy, Licensee waives any right to subrogation that any of Licensee's insurer may acquire against County and agrees to obtain same in an endorsement of Licensee's insurance policies.

15.7 County reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Agreement, including, but not limited to, deductibles, limits, coverage, and endorsements. Licensee may request in writing, at least sixty (60) calendar days prior to this Agreement's anniversary date, a review of insurance requirements in this Agreement.

ARTICLE 16 – COMPLIANCE WITH LAWS

16.1 Licensee must at all times comply with and abide by Port Everglades Tariff No. 12 and all applicable federal, state, and local laws, codes, ordinances, rules, and regulations of all governmental entities and agencies having jurisdiction over the activities of Licensee under this Agreement, expressly including those dealing with environmental protection, at the sole expense of Licensee.

16.2 Licensee must take all steps necessary to comply with applicable provisions of federal, state, and local law requiring a demonstration of financial responsibility for petroleum terminal facilities, including, but not limited to, through one or more of the following options: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. Licensee shall provide to County written evidence of its compliance with such financial responsibility requirements or evidence that it is not subject to such requirements.

16.3 County, as owner of the Premises, agrees that it will at all times comply with and abide by all applicable rules and regulations and keep active any permits and licenses as required to meet its obligations hereunder.

ARTICLE 17 – LICENSE, PERMITS, AND TAXES

17.1 Licensee must obtain and keep in full force and effect all licenses, permits, and authorizations required by any governmental authority, body, or agency having jurisdiction or regulatory power over the business conducted by Licensee at Terminal(s) in the Port.

17.2 Licensee must pay any and all taxes that may be levied on rights or interests granted to it hereunder and on any of its improvements. This obligation will survive the term of this Agreement.

ARTICLE 18 – ASSIGNMENT

Except for subcontracting approved in writing by County at the time of its execution of this Agreement or any written amendment hereto, neither this Agreement nor any right or interest herein may be assigned, transferred, subcontracted, or encumbered by Licensee without the prior written consent of County, which consent will not be unreasonably withheld. If Licensee violates this provision, County has the right to immediately terminate this Agreement.

ARTICLE 19 – DEFAULT AND REMEDIES

19.1 A party will be in default if such party fails to perform its obligations under this Agreement and such failure continues for more than thirty (30) calendar days after written notice of such default is given by the nondefaulting party, provided that if the default is of such a nature that it cannot be cured within thirty (30) calendar days, then such party will not be in default so long as such party commences to cure within the above period of time and thereafter diligently and

continuously pursues such cure to completion. Upon occurrence of a default, the nondefaulting party, at its option, may terminate this Agreement.

19.2 In the event that a Party defaults in the performance of its obligations hereunder and no termination of this Agreement is claimed by the nondefaulting party, the nondefaulting party may pursue appropriate remedies arising from the default as are provided for by law.

ARTICLE 20 – TERMINATION

20.1 In addition to termination by County or Licensee in accordance with Article 19, DEFAULT AND REMEDIES, this Agreement may be terminated by County at any time upon non-use of Pipeline(s) by Licensee for a continuous period of three (3) years.

20.2 At the expiration or termination of this Agreement, Licensee, at its expense and at the sole option of the Port Director, shall either:

20.2.1 Remove Pipeline(s) that are the subject of this Agreement; or

20.2.2 Deactivate and abandon Pipeline(s) and segments thereof, in accordance with deactivation and abandonment specifications developed by Licensee and approved in writing by the Port Director, and in accordance with all applicable federal, state, and local statutes, rules, and regulations. Port Director may, as part of its approval of deactivation and abandonment specifications, require the following: (i) pressure testing of all single-walled piping in contact with the soil to ensure the tightness of the system at the time of deactivation and abandonment; and (ii) removal of all liquids and sludge from Pipeline(s).

20.3 Licensee must commence such removal or deactivation and abandonment within sixty (60) calendar days after the expiration or termination and must proceed uninterruptedly with same to completion. In conjunction with the removal or deactivation and abandonment, Licensee shall conduct, at its sole expense, an environmental assessment using the services of competent and professional consultants with expertise in the environmental assessment process, to assure that its installation and operation of Pipeline(s) have not caused contamination of the environment in contravention of any and all applicable federal, state, and local statutes, rules, and regulations. If the environmental assessment indicates that Licensee's use or operation of Pipeline(s) has caused environmental contamination at or above the regulatory limits requiring corrective action or further assessment, Licensee will take complete financial and managerial responsibility for the required corrective action and further assessment.

ARTICLE 21 – FORCE MAJEURE

If the performance of this Agreement, or any obligation hereunder, is prevented by reason of hurricane, earthquake, or other casualty caused by nature, or by labor strike, war, or by a law, order, proclamation, regulation, or ordinance of any governmental agency, the party so affected, upon giving prompt notice to the other party, will be excused from such performance

to the extent of such prevention, provided that the party so affected shall first have taken reasonable steps to avoid and remove such cause of nonperformance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other party in writing and resume performance hereunder whenever such causes are removed; provided, however, that if such nonperformance exceeds sixty (60) calendar days, the party that is not prevented from performance by the force majeure event will have the right to terminate this Agreement upon written notice to the party so affected. This section will not supersede or prevent the exercise of any right the Parties may otherwise have to terminate this Agreement.

ARTICLE 22 – MISCELLANEOUS

22.1 This Agreement is subject and subordinate to any written ordinances, rules, or regulations that have been, or may hereafter be, adopted by County pertaining to the Port. In addition, this Agreement is subordinate and subject to the provisions of all written resolutions heretofore and hereafter adopted by County in connection with any revenue bonds issued by County with respect to the operations of the Port, or any improvements to the Port or any of its facilities, and to the provisions of all documents executed in connection with any such bonds, including, without limitation, any pledge, transfer, hypothecation, or assignment made at any time by County to secure any such bonds.

22.2 County acknowledges that Licensee has provided a complete set of "as built" plans and locations of the existing Pipeline(s). Licensee shall provide County with two sets of "as built" plans and locations (using the Florida State Plane Coordinate Grid System and signed and sealed by a State of Florida registered land surveyor) of Pipeline(s), as often as necessary, to reflect changes in alignment of said Pipeline(s). The revised set of "as built" plans and locations must include one (1) set of machine readable disks containing electronic data in an AUTOCAD format or other format acceptable to the Contract Administrator. All improvements, maintenance, and repairs on the Premises must be, and remain, free and clear of all liens, claims, and encumbrances whatsoever.

22.3 This Agreement replaces and supersedes all prior agreements, easements, and rights of way (and any amendments thereto) related to Licensee's use of the Premises for the placement of Pipeline(s). The Parties hereto acknowledge and agree, that effective as of the Commencement Date of this Agreement, the existing license agreement executed on June 2, 2009, by and between County and Licensee is hereby terminated. This Agreement represents the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

22.4 Amendments. No modification, amendment, or alteration in the terms or conditions of this Agreement will be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and Licensee or others delegated authority or otherwise authorized to execute same on their behalf.

22.5 Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part will be deemed severed from this Agreement and the balance of this Agreement will remain in full force and effect.

22.6 Joint Preparation. This Agreement has been jointly prepared by the Parties hereto, and will not be construed more strictly against either party.

22.7 Third-Party Beneficiaries. Neither County nor Licensee intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party will be entitled to assert a right or claim against either of them based upon this Agreement.

22.8 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth herein was bargained for at arm's length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof. Either party's failure to enforce any provision of this Agreement will not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement will not be deemed a waiver of any subsequent breach and will not be construed to be a modification of the terms of this Agreement.

22.9 Interpretation. The headings contained in this Agreement are for reference purposes only and will not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement include the other gender, and the singular includes the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to "days" refers to calendar days unless otherwise expressly stated.

22.10 Cumulative Rights. All rights and remedies of County and Licensee hereunder or at law or in equity are cumulative and are in addition to any other rights and remedies available. The exercise of any right or remedy will not be deemed to exclude or waive the right to the exercise of any other.

22.11 Law, Jurisdiction, Venue, and Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, LICENSEE AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY**

MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

22.12 Equal Employment Opportunity. No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement.

22.13 Audit Rights and Retention of Records.

22.13.1 County has the right to audit the books, records, and accounts of Licensee that are related to this Agreement. Licensee shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement and performance thereunder. All books, records, and accounts of Licensee must be kept in written form, or in a form reasonably capable of conversion into written form within a reasonable time, and upon receipt of a written request to do so, Licensee shall make same available at no cost to County in written form.

22.13.2 Licensee shall preserve and make available, at reasonable times within Broward County for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for a minimum period of three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. County audits and inspections pursuant to this section may be performed by any County representative (including any outside representative engaged by County). County reserves the right to conduct such audit or review at Licensee's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice.

22.13.3 Any incomplete or incorrect entry in such books, records, and accounts will be a basis for County's disallowance, adjustment, and recovery of any payment due County upon such entry. If an audit or inspection in accordance with this section discloses underreporting or underpayment to County of any nature by Licensee in excess of five percent (5%) of the total billing reviewed by County, the reasonable actual cost of County's audit will be reimbursed to County by Licensee in addition to making adjustments for the underreporting or underpayment. Any adjustments and/or payments due as a result of such audit or inspection will be made within thirty (30) calendar days from presentation of County's findings to Licensee.

22.14 Security.

22.14.1 Licensee, at its sole cost, shall comply with Section 311.12, Florida Statutes, Seaport Security, as same may be amended from time to time, relating to security regulations for seaports, and shall obtain all necessary security clearances, including criminal background checks for Licensee's employees, agents, contractors, or subcontractors, that may be required pursuant to County's security plan for the Port.

22.14.2 In addition, Licensee and County acknowledge that security measures at the Port may be increased and that such efforts will likely impact the Premises. In this regard, Licensee agrees to cooperate with County's efforts to increase security and agrees to comply with all security rules and regulations, whether imposed by federal agencies, including, but not limited to, the United States Custom and Border Protection, the United States Coast Guard, the state of Florida, or County. Licensee, at its sole cost, shall be responsible for complying with all security-related measures that impact the Premises, Licensee and its employees, agents, contractors, guests, and invitees.

22.15 Public Records. To the extent Licensee is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Licensee shall:

22.15.1 Keep and maintain public records required by County to perform the services under this Agreement;

22.15.2 Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

22.15.3 Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to County; and

22.15.4 Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of Licensee or keep and maintain public records required by County to perform the services. If Licensee transfers the records to County, Licensee shall destroy any duplicate public records that are exempt or confidential and exempt. If Licensee keeps and maintains the public records, Licensee shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

A request for public records regarding this Agreement must be made directly to County, who will be responsible for responding to any such public records requests. Licensee will provide any requested records to County to enable County to respond to the public records request.

Any material submitted to County that Licensee contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET." In addition, Licensee must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081, Florida Statutes, and stating the factual basis for same. In the event that a third party submits a request to County for records designated by Licensee as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Licensee. Licensee shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a records request by a third party.

IF LICENSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO LICENSEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 468-3501, JORHERNANDEZ@BROWARD.ORG, 1850 ELLER DR., SUITE 603, FORT LAUDERDALE, FLORIDA 33316.

22.16 Public Entity Crime Act. Licensee represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. Licensee further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Licensee has been placed on the convicted vendor list.

22.17 Use of County Logo. Licensee shall not use County's name, logo, or otherwise refer to this Agreement in any marketing or publicity materials without the prior written consent of County.

22.18 Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which will be deemed to be an original, but all of which, taken together, will constitute one and the same agreement.

22.19 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated herein by reference. The attached Exhibit A is incorporated into and made a part of this Agreement.

22.20 Representation of Authority. Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

[THE REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have made and executed this License Agreement: Broward County, through its Board of County Commissioners, signing by and through its Mayor or Vice-Mayor authorized to execute same by Board action on the ___ day of _____, _____, and High Sierra Terminaling, LLC, signing by and through its _____, duly authorized to execute same.

County

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor

____ day of _____, 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Port Everglades Department
1850 Eller Drive, Suite 502
Fort Lauderdale, Florida 33316
Telephone: (954) 523-3404
Telecopier: (954) 468-3690

By _____
Al A DiCalvo (Date)
Assistant County Attorney

By _____
Russell J. Morrison (Date)
Senior Assistant County Attorney

AAD/cr
05/02/19
HighSierraBPP_v2Final-2019-0502

LICENSE AGREEMENT BETWEEN BROWARD COUNTY AND HIGH SIERRA TERMINALING, LLC FOR BULK PETROLEUM PRODUCT PIPELINES AT PORT EVERGLADES

Licensee

WITNESSES:

HIGH SIERRA TERMINALING, LLC

Signature

By _____
Managing Member

Print/Type Name

Print/Type Name and Title

Signature

____ day of _____, 20__.

Print/Type Name

LAND DESCRIPTION:
(HIGH SIERRA LICENSE)

A STRIP OF LAND 6.00 FEET IN WIDTH LYING IN PARCEL "A", PORT EVERGLADES PLAT NO. 2, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 108, PAGE 31 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, AND LYING 3.00 FEET EACH SIDE OF AS MEASURED AT RIGHT ANGLES TO THE FOLLOWING DESCRIBED CENTERLINES:

COMMENCING AT THE WEST MOST SOUTHWEST CORNER OF SAID PARCEL "A"; THENCE NORTH 01°51'04" WEST, ALONG THE WEST MOST WEST BOUNDARY OF SAID PARCEL "A", A DISTANCE OF 373.79 FEET TO THE **POINT OF BEGINNING**; THENCE NORTH 87°46'58" EAST, A DISTANCE OF 5.53 FEET; THENCE SOUTH 02°13'02" EAST, A DISTANCE OF 118.00 FEET; THENCE NORTH 87°46'58" EAST, A DISTANCE OF 12.00 FEET; THENCE SOUTH 02°13'02" EAST, A DISTANCE OF 12.00 FEET; THENCE SOUTH 87°46'58" WEST A DISTANCE OF 12.00 FEET; THENCE SOUTH 02°13'02" EAST, A DISTANCE OF 142.00 FEET; THENCE SOUTH 46°41'43" EAST, A DISTANCE OF 125.05 FEET; THENCE NORTH 87°55'23" EAST, A DISTANCE OF 239.61 FEET; THENCE NORTH 02°04'37" WEST, A DISTANCE OF 18.00 FEET; THENCE NORTH 87°55'23" EAST, A DISTANCE OF 18.00 FEET; THENCE SOUTH 02°04'37" EAST, A DISTANCE OF 18.00 FEET; THENCE NORTH 87°55'23" EAST, A DISTANCE OF 358.84 FEET; THENCE NORTH 02°04'37" WEST, A DISTANCE OF 18.00 FEET; THENCE NORTH 87°55'23" EAST, A DISTANCE OF 18.00 FEET; THENCE SOUTH 02°04'37" EAST, A DISTANCE OF 18.00 FEET; THENCE NORTH 87°55'23" EAST, A DISTANCE OF 358.84 FEET; THENCE NORTH 02°04'37" WEST, A DISTANCE OF 18.00 FEET; THENCE NORTH 87°66'23" EAST, A DISTANCE OF 18.00 FEET; THENCE SOUTH 02°04'37" EAST, A DISTANCE OF 21.00 FEET; THENCE NORTH 87°56'23" EAST, A DISTANCE OF 179.42 FEET; THENCE SOUTH 47°04'37" EAST, A DISTANCE OF 278.27 FEET; THENCE SOUTH 42°55'23" WEST, A DISTANCE OF 25.00 FEET; THENCE SOUTH 47°04'37" EAST, A DISTANCE OF 30.00 FEET; THENCE NORTH 42°55'23" EAST, A DISTANCE OF 25.00 FEET; THENCE SOUTH 47°04'37" EAST, A DISTANCE OF 20.29 FEET; THENCE NORTH 88°03'48" EAST, A DISTANCE OF 203.33 FEET; THENCE NORTH 01°58'12" WEST, A DISTANCE OF 15.00 FEET; THENCE NORTH 88°03'48" EAST, A DISTANCE OF 15.00 FEET; THENCE SOUTH 01°56'12" EAST, A DISTANCE OF 16.00 FEET; THENCE NORTH 88°03'48" EAST, A DISTANCE OF 42.86 FEET TO A POINT SAID POINT HEREINAFTER TO BE KNOWN AS **REFERENCE POINT "A"**; THENCE CONTINUE NORTH 88°03'48" EAST, A DISTANCE OF 194.36 FEET; THENCE NORTH 01°56'12" WEST, A DISTANCE OF 20.00 FEET; THENCE NORTH 88°03'48" EAST, A DISTANCE OF 20.00 FEET; THENCE SOUTH 01°56'12" EAST, A DISTANCE OF 20.00 FEET; THENCE NORTH 88°03'48" EAST, A DISTANCE OF 390.50 FEET; THENCE NORTH 02°42'62" WEST, A DISTANCE OF 77.60 FEET TO A POINT SAID POINT TO BE HEREIN AFTER KNOWN AS **REFERENCE POINT "B"**, SAID POINT ALSO BEING THE **POINT OF TERMINATION**.

TOGETHER WITH:

BEGINNING AT SAID **REFERENCE POINT "A"**; THENCE SOUTH 02°41'45" EAST, A DISTANCE OF 14.56 FEET; THENCE SOUTH 87°18'15" WEST, A DISTANCE OF 20.40 FEET; THENCE SOUTH 02°41'46" EAST, A DISTANCE OF 13.40 FEET; THENCE NORTH 87°18'16" EAST, A DISTANCE OF 20.40 FEET; THENCE SOUTH 02°41'46"

EAST, A DISTANCE OF 254.44 FEET TO A POINT SAID POINT HEREINAFTER TO BE KNOWN AS **REFERENCE POINT "C"**, SAID POINT ALSO BEING THE **POINT OF TERMINATION**.

TOGETHER WITH: (VALVE PIT AREA)

A PORTION OF PARCEL "A", PORT EVERGLADES PLAT NO. 2, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 108, PAGE 31 OF SAID PUBLIC RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT SAID **REFERENCE POINT "B"**; THENCE SOUTH 87°17'08" WEST, A DISTANCE OF 1.67 FEET TO THE **POINT OF BEGINNING**; THENCE NORTH 02°42'62" WEST, A DISTANCE OF 5.33 FEET; THENCE NORTH 87°17'08" EAST, A DISTANCE OF 8.66 FEET; THENCE SOUTH 02°42'52" EAST, A DISTANCE OF 5.33 FEET; THENCE SOUTH 87°17'08" WEST, A DISTANCE OF 6.99 FEET TO THE **POINT OF BEGINNING**.

TOGETHER WITH: (VALVE PIT AREA)

A PORTION OF PARCEL "A", PORT EVERGLADES PLAT NO. 2, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 108, PAGE 31 OF SAID PUBLIC RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT SAID **REFERENCE POINT "C"**; THENCE SOUTH 25°18'11" EAST, A DISTANCE OF 4.30 FEET TO THE **POINT OF BEGINNING**; THENCE NORTH 02°03'22" WEST, A DISTANCE OF 7.70 FEET; THENCE NORTH 87°56'38" EAST, A DISTANCE OF 10.75 FEET; THENCE SOUTH 02°03'22" EAST, A DISTANCE OF 7.70 FEET; THENCE SOUTH 87°56'38" WEST, A DISTANCE OF 10.75 FEET TO THE **POINT OF BEGINNING**.

SAID LANDS SITUATE IN THE CITY OF FORT LAUDERDALE, BROWARD COUNTY, FLORIDA.

THE BEARINGS REFERENCED HEREIN ARE BASED ON AN ASSUMED BEARING OF NORTH 01°51'04" WEST ALONG SAID WEST MOST WEST BOUNDARY OF PARCEL "A", PORT EVERGLADES PLAT NO. 2. ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 108, PAGE 31 OF SAID PUBLIC RECORDS.