

MEMORANDUM

TO: Alvin G. Coby, City Manager
FROM: Clyde E. Mathis, Port Director
DATE: November 17, 2008
SUBJECT: Halcorp Lease Amendment #5

RECOMMENDATION:

That City Council approve Lease Amendment 5 to the existing lease between Halcorp Inc. and the City of Pensacola.

BACKGROUND:

On November 15, 2007, City Council authorized staff to enter into negotiations with Halcorp Inc. to determine whether Halcorp's operations could be continued beyond their July 8, 2008 lease expiration in a manner compatible with the port's long-range development plans.

On June 22, 2008, Council approved a 176-day extension of the lease agreement running through December 31, 2008 to allow staff to continue and complete negotiations.

Those negotiations are complete and staff is now recommending a 5th Lease Amendment which includes a 1 ½ year lease term with 365 calendar day cancellation thereafter. Under the provisions of the amendment, Halcorp's leasehold footprint would be significantly reduced with the excess property being returned to port control. Additionally, revenue to the port would be doubled.

FINANCIAL IMPACT:

Under the financial terms of the proposed 5th Lease Amendment, minimum annual revenue to the port would increase from \$145,000 annually to \$275,000 in year 1 and \$300,000 thereafter.

FIFTH AMENDMENT TO LEASE AGREEMENT

This Fifth Amendment to Lease Agreement is made and entered into this _____ day of _____, 200__ by and between the City of Pensacola, a municipal corporation, hereafter "Lessor", and Halcorp, Inc., a Texas corporation, hereafter "Lessee".

RECITALS:

1. On July 28, 1988, Lessor and Belcher Oil Company entered into a lease agreement under which Lessor leased to Belcher Oil Company a certain parcel of land located at the Port of Pensacola, City of Pensacola, County of Escambia.
2. On February 9, 1993, Lessor and Coastal Fuels Marketing, Inc., formerly known as Belcher Oil Company, modified the original lease agreement to provide for a non-exclusive easement and right of way.
3. On September 8, 1994, Lessor and Coastal Fuels Marketing, Inc., entered into a Second Amendment to Lease Agreement.
4. On February 28, 2003, Coastal Fuels Marketing, Inc., transferred all of its right, title and interest in and to the Lease Agreement to Coastal Mobile Refining Company with such transfer approved and confirmed by Lessor as part of the Third Amendment to the Lease Agreement dated July 14, 2003.
5. On July 14, 2003, Lessor and Trigeant EP, LLC, a Texas corporation, entered into a Third Amendment to Lease Agreement which, in part, transferred all

interest in the Lease Agreement from Coastal Mobile Refining Company to Trigeant EP, LLC.

6. On September 7, 2005, Lessor approved a Transfer of Lease Agreement and Acceptance of Conditions Thereof which, in part, transferred all interest in the Lease Agreement from Trigeant EP, LLC, to Halcorp, Inc., a Texas corporation.
7. On July 25, 2008, Lessor granted a lease extension to expire on December 31, 2008.
8. Lessor and Lessee have agreed to certain terms and conditions by which the provisions of the original Lease Agreement as above described, amended as set forth above, shall be further amended.

NOW, THEREFORE, in consideration of the covenants and conditions set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree that the aforesaid lease, inclusive of all prior amendments hereafter referred to collectively as the "Lease Agreement," shall be further amended in the following manner:

1. The term of the Lease Agreement shall be extended for an Initial Term beginning January 1, 2009 for a two and one-half year period ending at 11:59 p.m. local time June 30, 2011 (Anniversary Date).
2. At the conclusion of the Initial Term, the Lease Agreement shall be renewed and shall renew annually upon its Anniversary Date unless and until such time

as either party provides three hundred sixty-five (365) calendar day advance written Notice of Cancellation. If such notice is issued prior to July 1, 2010, the Lease will terminate upon the conclusion of the Initial Term. If such notice is issued July 1, 2010 or thereafter, the Lease will terminate 365 calendar days after the date of notice, and such Lease Agreement shall not renew on the next Anniversary Date following issuance of the Notice of Cancellation.

3. Upon execution of this Fifth Amendment to Lease Agreement, Lessee agrees to promptly undertake relocation of its storage building and office trailer to a location due south of its tanks and truck scales and, in so doing, shall reduce its Leasehold footprint to 3.90 acres as further depicted in Attachment 1 hereto, and shall construct a Florida Registered Professional Engineer certified Spill Prevention Control and Countermeasure Plan (SPCCP) compliant secondary containment system around the newly defined Leasehold footprint. Such site modifications will be completed no later than June 30, 2009. Lessee shall be permitted to excavate and reuse berm materials from the existing northern and/or southern berms in construction of the new containment berm. If Lessee elects to so utilize existing berm material, Lessee shall be responsible for the complete excavation and removal of all portions of the existing northern and/or southern berms which are no longer required for containment purposes.
4. All land outside the newly defined Leasehold footprint, but included as part of the original Lease Premises, shall be released back to the control, use and enjoyment of Lessor; provided, however, in no event will Lessor use or permit

others to use the released tract for sale and/or storage of paving grade or roofing asphalt during the term of this Lease Agreement or any renewal or extension thereof.

5. Except as otherwise outlined in the Lease Agreement or herein, from and after January 1, 2009, Lessee will have no further obligations with regard to the released land.
6. Annual rent due under this Lease Agreement shall be Two Hundred Seventy-Five Thousand Dollars (\$275,000) in Year One and Three Hundred Thousand Dollars (\$300,000) in Year Two and each year thereafter. Rent shall be payable in twelve (12) equal monthly installments of Twenty-two Thousand Nine-Hundred Sixteen Dollars and Sixty-Seven Cents (\$22,916.67) plus sales tax in Year One and twelve (12) equal monthly installments of Twenty-Five Thousand Dollars (\$25,000) plus sales tax in Year Two and each year thereafter. The rent amount herein described shall cancel and supersede any amounts stipulated as rent in the original lease or any amendments thereto predating this Fifth Amendment to Lease Agreement.
7. Lessee's annual minimum throughput guarantee shall be eliminated. The annual rent as outlined in Paragraph 6 above shall be inclusive of any and all cargo fees and other charges normally billed to Lessee until such time as Lessee has exceeded a throughput of 60,000 tons in the applicable contract year. For purposes of this Fifth Amendment to Lease Agreement, a contract year shall be the calendar year. If in any contract year, Lessee exceeds 60,000 tons total throughput, Lessor shall bill Lessee for the excess amount at the

rates delineated in the Lease Agreement or the Port Tariff, whichever is applicable, and Lessee shall timely pay wharfage and cargo security fees against all tonnage in excess of 60,000 tons. Dockage, harbor fees, vessel security and other fees typically billed to the vessel, vessel agent or responsible party other than Lessee shall continue to be billed to the responsible party.

8. Lessee shall timely undertake aesthetic improvements to its newly defined Leasehold footprint including, but not necessarily limited to, perimeter landscaping and painting of Lessee's large asphalt storage tank. Such improvements to be completed no later than June 30, 2009. Lessee shall be permitted to harvest and re-use any and all landscaping materials, including palm trees located on the existing northern berm, in Lessee's new landscaping plan.
9. **Known Petroleum Discharges.** Two known petroleum fuel discharges have been documented on the Leased premises or easements. The first was documented with a discharge date of November 21, 1988. The second was documented with a discharge date of April 6, 1991. Copies of the eligibility confirmations for those discharges are attached as Attachments 2 and 3.
10. **Identified Petroleum Contamination.** Based on the best available evidence, which includes knowledge of prior activities and operations of the current Lessee and its predecessors, Lessor and Lessee believe that (a) the prior petroleum discharges described in paragraph 9 herein are the only discharges on any portion of the leased or easement property, and (b) that the

contamination resulting from the two discharges is located on the property to be retained under control and use of Lessee. Neither Lessor nor Lessee have any reason to believe that the contamination resulting from the petroleum discharges impact any portion of the property to be released to Lessor's use pursuant to paragraphs 3 and 4 herein. However, in recognition of the Lessor's desire to market the released property for use by other persons/entities in the future, Lessee agrees to undertake voluntarily the following additional obligations:

a. With respect to the Released Property. With respect to the property to be released to the use and control of Lessor pursuant to paragraphs 3 and 4 herein, if petroleum contamination is discovered on the released property and if the contamination is at a level that requires soil remediation in order for Lessor or a prospective tenant to make actual physical use of the property pursuant to a bona fide plan of use or construction of facilities (including, without limitation, all utilities and infrastructure related thereto) on the property that has been approved by the Lessor, and if such discovery occurs by no later than seven (7) years after the termination of the Lease provided by this Fifth Amendment, then Lessee shall, at its cost and pursuant to the requirements of Florida Administrative Code Chapter 62-770, take prompt action to remove the contaminated soil and to replace it with clean soil, unless an alternative is mutually agreed upon, so that the property may be used by the Lessor or prospective tenant.

b. With respect to the Property retained by Lessee. At the termination of this Lease, and for a period thereafter not to exceed seven (7) years, Lessee agrees to take the same action(s) and have the same responsibilities described herein with respect to the released property.

c. Lessee's responsibility for PCPP cost-sharing. Lessee acknowledges its responsibility to the Lessor for the property owner's cost sharing responsibility required for eligibility for the PCPP remediation funding.

11. Lessee's responsibility for any unidentified or future discharges of petroleum or other contaminants is controlled by the Lease Agreement, including all amendments thereto, and all applicable federal, state, county, and existing municipal laws, rules and regulations.
12. In consideration that Lessee's operations will cease upon expiration or termination of this Agreement and thereafter Lessee will have no revenue associated with the Lease Premises, Lessee will pay no rent to Lessor during the six (6) month period identified in Paragraph 3 of the Third Amendment to Lease Agreement, during which inventory and improvements, including tanks, must be removed from the leased premises. However, if Lessee has for any reason not completed required facility dismantling and general site clean up within said six (6) month period, Lessee shall resume regular monthly rental payments at the rates expressed elsewhere herein beginning on the first day of the seventh month following expiration or termination of the Lease and continuing each and every month until such time as all infrastructure and

improvements have been removed and the site has been returned to Lessor in clean and useable condition.

13. Lessee shall cause to be issued an irrevocable letter of credit, in a form and by a financial institution satisfactory to the City of Pensacola, as beneficiary, in the amount of \$300,000 to secure one year's annual rent or to secure the timely performance of Lessee in fulfilling its site remediation and terminal abandonment obligations under this Lease Agreement. Such letter of credit shall remain in effect until such time as (a) the Lessee's obligation to pay annual rent has expired, and (b) Lessee has completed the removal of physical improvements and tanks, and has completed the surface cleanup associated with the removal of physical improvements and tanks. Thereafter, Lessee and Lessor will enter into negotiation as to the amount of continuing financial assurance, not to exceed \$300,000, to be maintained by letter of credit or other method acceptable to the Lessor, to provide protection to Lessor that Lessee will satisfy its obligations imposed by the Lease Agreement, including all amendments thereto. In order to determine the amount, if any, of continuing financial assurance that is appropriate to provide a reasonable level of protection to the Lessor, Lessee may conduct, at its expense, an additional environmental site assessment study to determine the scope and extent of any soil or groundwater contamination that will not be funded by the State from the Inland Protection Trust Fund.
14. Lessee shall abide by all local, state and federal laws, rules and regulations applicable to its facility, leased premises and easements thereto, including, but

not necessarily limited to, state and federal homeland and seaport security requirements, state and federal laws regulating petroleum and petroleum byproduct related facilities, state and federal laws regulating storm water runoff contamination and pollution prevention, state and federal laws regulating water quality, and state and federal laws regulating air quality.

15. Unless expressly amended herein, all other terms and conditions of the Lease Agreement and Port of Pensacola Terminal Tariff #5A, as may be amended from time to time or any successor tariff, shall remain in full force and effect.
16. Lessee agrees to provide, within ninety (90) days of execution of this Fifth Amendment, written notice of whether its facility infrastructure contains lead based paint or asbestos materials.

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IN WITNESS WHEREOF, the parties have set their hands and seal the date first written above.

THE CITY OF PENSACOLA,
a municipal corporation

By: _____
Alvin G. Coby, City Manager

Date: _____

ATTEST:

Ericka L. Burnett, City Clerk

HALCORP, INC.

By: Arthur J. Brass, President

[Affix Corporate Seal Above]

Attest: Corporate Secretary

Approved as to Form & Execution:

City Attorney

FIFTH Amendment to Lease Agreement, Attachment 2



Florida Department of Environmental Regulation

Twin Towers Office Bldg. • 2600 Blair Stone Road • Tallahassee, Florida 32399-2400

Bob Martinez, Governor

Dale Swackhamer, Secretary

John Shearer, Assistant Secretary

June 4, 1990

Mr. Dan E. Dudley
Belcher Oil Company
P. O. Box 12626
Pensacola, FL 32574

Re: Belcher Oil-Pensacola
640 S. Barracks Street
Pensacola, Florida
DER Facility #178627145

Dear Mr. Dudley:

The Department has concluded its review of the documentation submitted in accordance with Section 376.3071(9)(b), Florida Statutes (F.S.), and determined that this site is eligible for state-administered cleanup under the Early Detection Incentive Program.

Persons whose substantial interests are affected by this Order of Determination of Eligibility have a right, pursuant to Section 120.57, Florida Statutes, to petition for an administrative determination (hearing). The Petition must conform to the requirements of Chapters 17-103 and 28-5, Florida Administrative Code, and must be filed (received) with the Department's Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, within twenty-one (21) days of receipt of this notice. Failure to file a petition within the twenty-one (21) days constitutes a waiver of any right such persons have to an administrative determination (hearing) pursuant to Section 120.57, Florida Statutes.

This Order of Determination of Eligibility is final and effective on the date of receipt of this Order unless a petition is filed in accordance with the preceding paragraph. Upon the timely filing of a petition, this Order will not be effective until further order of the Department.

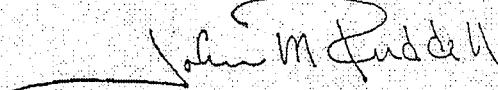
When the Order is final, any party to the Order has the right to seek judicial review of the Order pursuant to Section 120.68, Florida Statutes by filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400; and by filing a copy of the Notice of Appeal, accompanied by the applicable filing fees, with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date the Final Order is filed with the clerk of the Department.

Mr. Dan E. Dudley
June 4, 1990
Page 2

The DER Facility Number for this site is 178627145. Please use this identification on all future correspondence with the Department.

Any questions you may have on the technical aspects of this Order of Determination of Eligibility should be directed to Craig Ash at 904/487-3299. Contact with the above named person does not constitute a petition for administrative determination.

Sincerely,

A handwritten signature in dark ink, appearing to read "John M. Ruddell". The signature is written in a cursive style with a large, sweeping initial "J".

John M. Ruddell, Chief
Bureau of Waste Cleanup

JMR:lfk

c: Bob Barr, FDER Northwest District
Gordon Richmond, Escambia County

FIFTH Amendment to Lease Agreement, Attachment 3



Department of Environmental Protection

Lawton Chiles
Governor

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Virginia B. Wetherell
Secretary

September 24, 1996

-CERTIFIED MAIL-RETURN RECEIPT-

Mr. Edmond R. Hinkle
City of Pensacola
Post Office Box 689
Pensacola, Florida 32594

RE: Port of Pensacola - DEP Facility #179601061
700 South Barracks Street, Pensacola, Florida

Dear Mr. Hinkle:

The Department has completed its review of documentation submitted for this site. The Department has determined that the contamination related to the storage of petroleum products as defined in Section 376.301(16), Florida Statutes (F.S.), at this site is eligible for state-funded remediation assistance, under the Abandoned Tank Restoration Program. This eligibility excludes new oil and creosote.

Pursuant to Section 376.30711, F.S., and effective March 29, 1995, no further site rehabilitation work on sites eligible for state assisted cleanup from the Inland Protection Trust Fund shall be eligible for reimbursement. For any site rehabilitation work conducted prior to March 29, 1995, reimbursement may be requested by December 31, 1996 regardless of whether the program task is completed. In accordance with Section 376.30711, F.S., future state assisted rehabilitation will be dictated by the site's priority ranking score, and shall be conducted on a pre-approval of scope of work and costs basis.

"The person responsible for conducting site rehabilitation, or his agent, shall keep and preserve suitable records... of hydrological and other site investigations and assessments; site rehabilitation plans; contracts and contract negotiations; and accounts, invoices, sales tickets, or other payments records from purchases, sales, leases or other involving costs actually incurred related to site rehabilitation. Such records shall be made available upon request to agents and employees of the Department during regular business hours, and at other times upon written request of the Department. In addition, the Department may from time to time request submission of such site-specific information as it may require. All records of costs actually incurred for cleanup shall be certified by affidavit to the Department as being true and correct."

"Protect, Conserve and Manage Florida's Environment and Natural Resources"

Printed on recycled paper.

Mr. Edmond R. Hinkle
September 24, 1996
Page Two

If you choose to accept the above decision by the Department about this eligibility determination you do not have to do anything. This Order will become final 90 days after the date on the front of this Order, after which time you cannot file a petition for administrative hearing.

If you disagree with the decision, you may do one of the following within 90 days from the date on the first page of this Order:

1. File supplemental information (i.e., additional information which supports your position) with the Bureau of Waste Cleanup within 90 days from the date on the first page of this Order. If you timely file supplemental information with the Bureau of Waste Cleanup, you will have 30 days from the date the Department responds in writing to that supplemental information. (Eligibility Order Regarding Supplemental Information) to file a petition for administrative hearing or more supplemental information. OR
2. File a petition for administrative hearing with the Office of the General Counsel within 90 days of the date on the first page of this Order. You are granted an automatic extension of time to file a petition for hearing until that 90th day.

The Department will ONLY GRANT EXTENSIONS OF TIME IN EXTRAORDINARY CIRCUMSTANCES.

How to file a Petition for Administrative Hearing

Notwithstanding the above, a person whose substantial interests are affected by this Order may petition for administrative hearing in accordance with Section 120.57, Florida Statutes. The petition must contain the information set forth below and must be filed (received) in the Office of the General Counsel of the Department at 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000, within 90 days of the date on the front of this Order. Petitioner, if different from the applicant, shall mail a copy of the petition to the applicant at the time of filing. Failure to file a petition within this time period shall waive the right of anyone who may request an administrative hearing under Section 120.57, F.S.

Mr. Edmond R. Hinkle
September 24, 1996
Page Three

Pursuant to Section 62-103.155, Florida Administrative Code, a petition for administrative hearing shall contain the following information:

- (a) The name, address, and telephone number of each petitioner, the site owner's name and address, if different from the petitioner, the DEP facility number, and the name and address of the facility;
- (b) A statement of how and when each petitioner received notice of the Department's action or proposed action;
- (c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action;
- (d) A statement of the material facts disputed by the petitioner, if any;
- (e) A statement of facts which petitioner contends warrant reversal or modification of the Department's action or proposed action;
- (f) A statement of which rules or statutes petitioner contends requires reversal or modification of the Department's action or proposed action; and
- (g) A statement of the relief petitioner seeks, stating precisely what petitioner wants the Department to do regarding the Department's action or proposed action.

This Order is final and effective 90 days from the date on the first page of this order. Timely filing a petition for administrative hearing or supplemental information postpones the date this Order takes effect until the Department issues either a Final Order pursuant to an administrative hearing or an Order Responding to Supplemental Information.

Appealing a Final Order

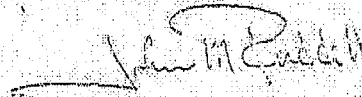
When this Order becomes final on the 90th day, any party to this Order has the right to seek judicial review of this Order pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Department clerk in the Office of the General Counsel, 3900 Commonwealth Boulevard, MS 35, Tallahassee, Florida 32399-3000. Simultaneously with filing a Notice of Appeal with the Department, Petitioner must file a copy of the Notice of Appeal with the applicable filing fees, with the appropriate District Court of Appeal. The Notice of Appeal must be received by the Department clerk within 30 days from the date this Order becomes final (in other words, 120 days from the date on the front page of this Order).

Mr. Edmond R. Hinkle
September 24, 1996
Page Four

Questions

Should you have any questions regarding these processes please contact the Bureau of Waste Cleanup at (904)487-3299 or the Office of the General Counsel at (904)488-9730. Any questions regarding the Department's review of your application should be directed to William Truman at (904)488-3935. Contact with any of the above named persons does not constitute a petition for administrative hearing.

Sincerely,

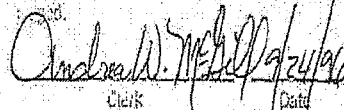


John M. Ruddell, Director
Division of Waste Management

JMR/awm

cc: Eric Ericson - Northwest Florida District Office
Buddy Grimsley - Escambia County Local Program Coordinator

RECEIVED AND ACKNOWLEDGMENT
FILED IN THE OFFICE OF THE CLERK
COUNTY OF ESCAMBIA, FLORIDA
CLERK RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED



Andrew W. McCall
Clerk Date

**Port of Pensacola
Halcorp Lease Amendment Overview**

November 17, 2008

Amended Lease Terms Overview

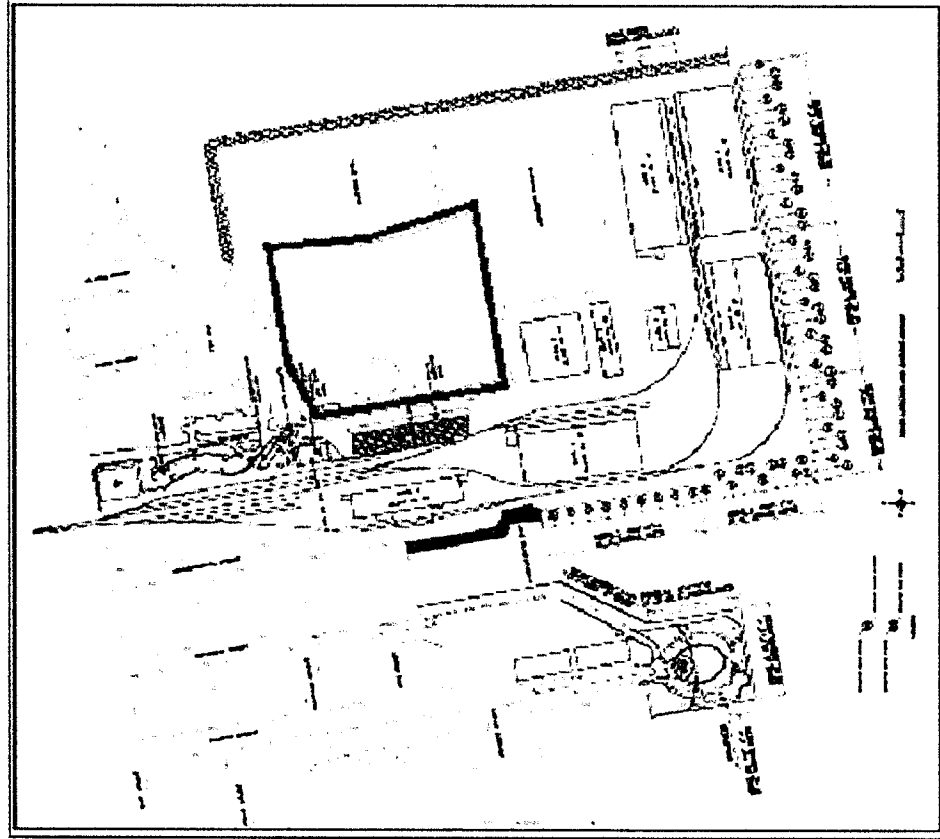
- ┌ Term: January 1, 2009 through June 30, 2011.
- ┌ Cancellation: 365 calendar days effective no sooner than July 1, 2010.
 - Effectively, this is a 1 ½ year term with 365 calendar day cancellation thereafter.
- ┌ Lease Premises:
 - Reduces footprint of the leased premises to 3.9 acres.
 - Relocates some assets south to allow access to the eastern portion of the property. This access can then be easily placed inside or outside the port's gated entrance, depending on the security requirements of any new user that may be placed on the eastern portion of the property.
 - Relocates the containment berm.
 - Requires aesthetic improvements.
- ┌ Revenue: Increases minimum annual revenue to the port from \$145,000 to \$275,000 (year 1) and \$300,000 (after) (\$725,000 over 2 ½ years).

Terms Overview (continued)

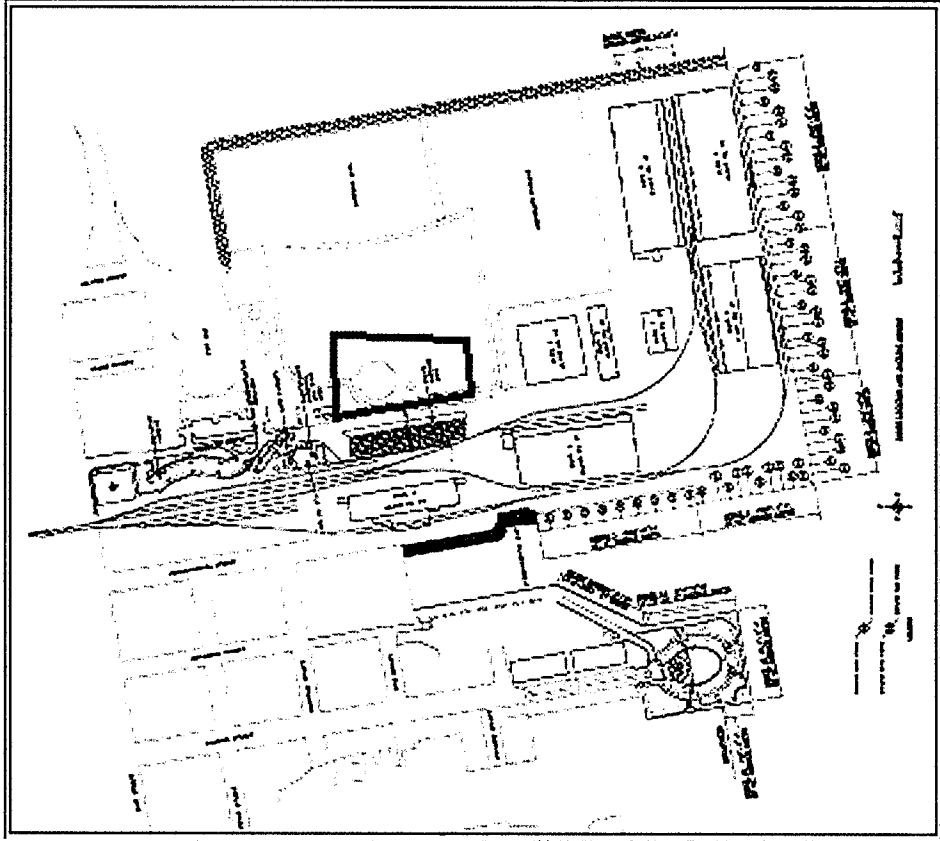
Environmental:

- Establishes baseline by specifically citing 2 known petroleum discharges which occurred and were properly reported and documented in 1988 and 1991.
- Requires Halcorp to follow established Petroleum Cleanup Participation Program funding protocols to remediate the documented existing discharges.
- Requires Halcorp to remediate all or any portion of the released property if any additional prior contamination which would prevent future use of the property is discovered within 7 years.
- Requires the same 7-year commitment with respect to the retained property following lease termination.
- Establishes Halcorp's continued responsibility for the PCPP-eligible remediation and for remediating any new discharges which may occur during the new lease term.

Boundary Alterations

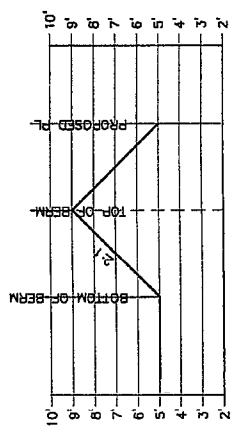
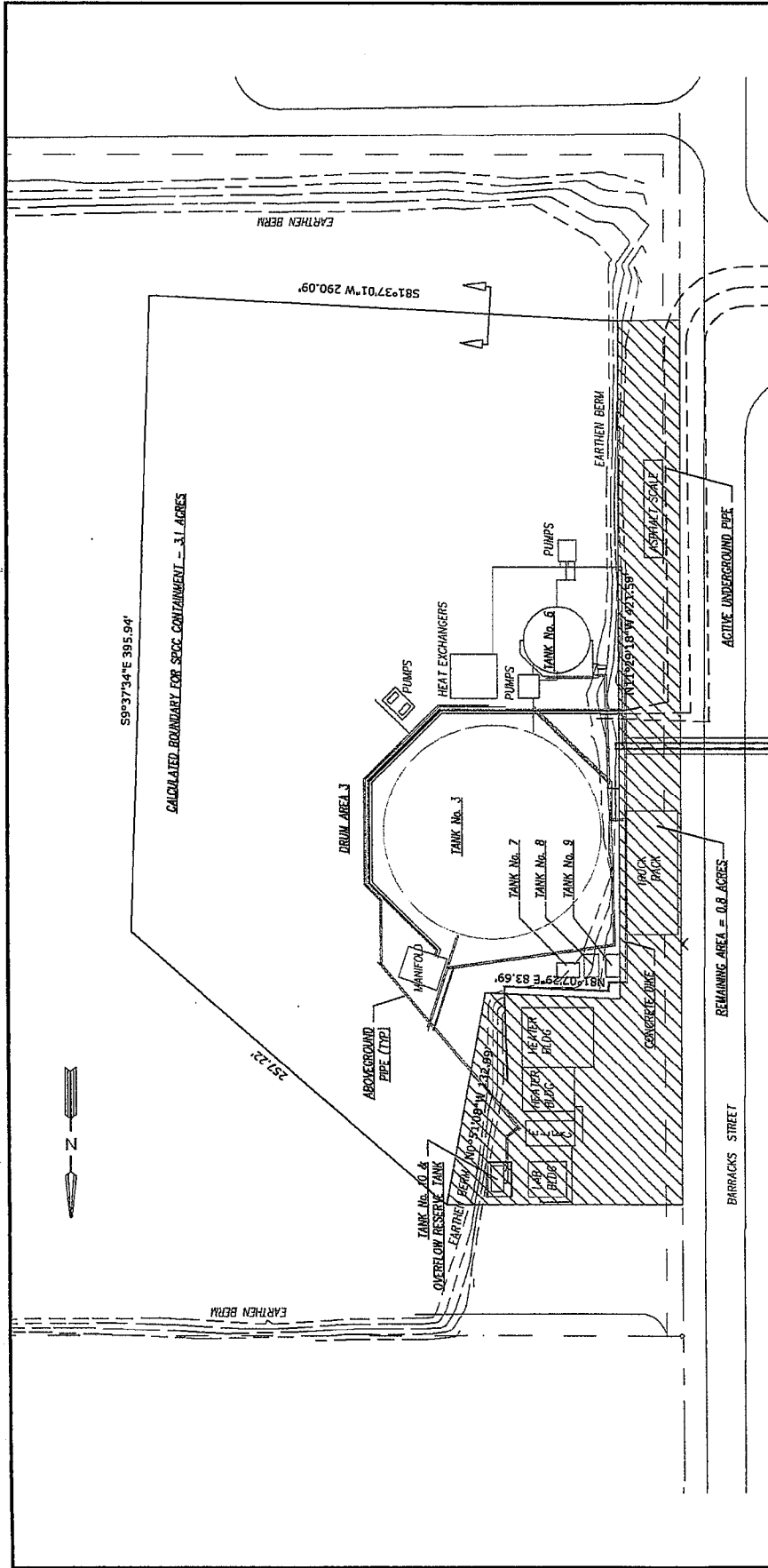


Existing Boundaries



New Boundaries

New Site Plan



| BY | DATE |
|----------|------------|
| DRAWN | 02/11/2009 |
| CHECKED | |
| APPROVED | |
| APPROVED | |



FIGURE 1B
 SPCC PLAN SITE BASE MAP
 HALCORP, INC.
 PENSACOLA, FLORIDA

SCALE: 1" = 60'
 PROJECT NO. 40091

Advantages

- ┆ Preserves and increases existing revenue to the port until such time as new revenue source(s) are secured.
- ┆ Frees up northern property perimeter and eastern portion of property for continued direct marketing to redevelopment interests.
 - Marketing of these parcels, as well as the former Gulf Sulphur Services parcel, is ongoing.
- ┆ Structures lease term in such as way as to allow for a reasonable cancellation and site abandonment period when a new user is secured.
- ┆ Secures and strengthens Halcorp's commitment to any necessary environmental remediation.