

Memorandum



Date: April 8, 2014

Agenda Item No. 8(J)(2)

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Resolution Approving an Option Agreement to Miami-Dade County to Enter Into a New Lease Agreement with Marine Spill Response Corporation to Relocate the Current Leasehold to Conform to the Port of Miami's Master Plan Approved by the Board of County Commissioners in 2011

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the accompanying Resolution (a) approving the Option Agreement for Miami-Dade County to Enter into a New Lease Agreement with Marine Spill Response Corporation ("Option Agreement") (b) authorizing the Mayor or the Mayor's Designee to Execute the Option Agreement, and (c) authorizing the Mayor or the Mayor's Designee to exercise the Option provided for in the Option Agreement as provided in the Option Agreement. If exercised, the Option Agreement allows for: 1) the on-port relocation and reduction in size of the Marine Spill Response Corporation ("MSRC") leasehold, including its warehouse; 2) the reduction in size of MSRC's leasehold; and 3) the potential relocation of the MSRC Responder vessel's berth ("MSRC Berth") to a new or alternate berth location.

Scope

PortMiami is located within District 5 – Commissioner Bruno A. Barreiro. The impact of this agenda item is countywide as PortMiami is a regional asset and generates employment for residents throughout Miami-Dade County.

Fiscal Impact/Funding Source

Miami-Dade County will not be fiscally impacted by the proposed Option Agreement unless it elects to execute the relocation option allowed by the Option Agreement ("Option"). Should the County exercise the Option, the Seaport Department commits to build MSRC a replacement warehouse as outlined in the Option Agreement and pay for the reasonable relocation costs incurred by MSRC. The replacement warehouse is estimated to cost \$6,200,000 to construct. While the relocation costs are expected to be modest, they have not yet been estimated. The Seaport Department also will have the duty to maintain some elements of the warehouse. These costs are estimated to be minimal for a new warehouse, but are otherwise capped at \$72,000 annually during the first five years of the contract and \$96,000 annually during the five years available under the final option to renew. The County also currently assesses approximately \$30,000 in property taxes (including School Board millage) currently on MSRC's warehouse because it is owned by MSRC. If the Option is exercised the new warehouse would be owned by the County, so the County would no longer be able to assess ad valorem taxes on the property. The Option Agreement would also allow the Seaport to relocate the MSRC Berth to one of several pre-identified areas on Port. This cost could be minimal, involving mostly fencing, or it could involve substantial investment should the Seaport Department decide to create a new MSRC Berth.

The Option Agreement would be exercised by the Mayor or the Mayor's designee only if the County wished to use land currently leased by MSRC for commercial development or other purposes. In that event, it would be the County's intention to pass the relocation costs,

including construction of the warehouse, to a future developer. Similarly, the MSRC Berth would be relocated only if its present area is required by a developer, potentially for use as a bay walk or marina. Again, it would be the Seaport's intention to pass the relocation cost of the MSRC Berth to a future developer. Nonetheless, the County would have the continuing obligation to pay for certain maintenance costs for the new warehouse and MSRC Berth.

Track Record/Monitor

MSRC entered into a Ground Lease Agreement with Miami-Dade County in 1991, which is forty (40) years in length, inclusive of MSRC options to renew. MSRC is in good standing with the Seaport. The Seaport Department staff members responsible for monitoring the Option Agreement are Juan Kuryla, Port Director Designee, and Kevin Lynskey, Assistant Port Director, Business Initiatives.

Background

On September 16, 1991, the Board of County Commissioners approved, through Resolution R-1015-91, the Ground Lease Agreement ("Original Lease") between MSRC and the Seaport. The original lease provided for MSRC's lease of an 8.69 acre parcel located at the Port of Miami for a term of 20 years, with four (4) renewal options of five (5) years each. It required MSRC to improve the parcel by constructing a warehouse and office space, as well as a bulkhead for berthing MSRC's vessel. These improvements were valued in the range of \$6.8 million at the time of their construction. MSRC is a not-for-profit corporation created by companies in the oil industry in response to the Exxon Valdez grounding and resulting oil spill. The facility located at PortMiami was originally designed to be a primary regional response facility for oil spills. It no longer has this 'regional' designation and is, consequently, capable of being accommodated on a smaller parcel with a smaller warehouse.

The Original Lease has been amended twice and renewed once. In December, 1992, the lease was Amended and Restated ("Restated Lease") to modify the description of the parcel to be leased to include, among other things, the MSRC improvements. On March 6, 2007, the Board approved Resolution R-250-07, reducing the size of the leasehold by 2.35 acres (the Original Lease, the Restated Lease and its amendments are referred to as the "Current Ground Lease"). On February 21, 2013, MSRC exercised the first five (5) year renewal options under the Current Ground Lease, extending the Current Ground Lease through May 31, 2018.

The Port of Miami 2035 Master Plan, approved in December of 2011 by the Board (Resolution R-1055-11), proposes that the land currently leased by MSRC be used for commercial development. The Master Plan analysis concluded that this land, situated on the southwest corner of the Port across from Bayside Marketplace, is not well suited for cruise or cargo operations as most passenger and cargo ships calling at the Port currently cannot access the area due to water depth restrictions. The land has consequently been used over time to house accessory facilities, to accommodate overflow operations and construction staging, and for flat lot parking. In order to provide the Port with an additional funding stream, the Master Plan proposed that the area be used for commercial development. The site has also come under consideration recently for the proposed potential expansion of Major League Soccer in Miami.

In order to prepare for future development, Port staff and MSRC representatives have been discussing the proposed relocation as part of the Option Agreement since 2011, which allows the County to, among other things, relocate the existing MSRC warehouse to one of three identified locations on the Port, or to an area mutually agreed upon by MSRC and the

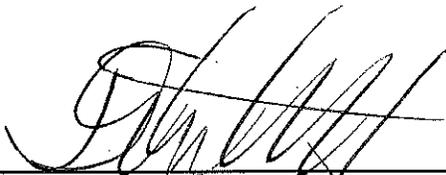
County. It also allows the County to relocate the berth for the Responder vessel to one of three identified areas, or to a berth site mutually agreed upon by MSRC and the County. Importantly, the Option Agreement also allows the Seaport to assign the relocation responsibilities to a transferee (e.g., developer).

MSRC's parcel is currently 6.6 acres, which includes a warehouse of approximately 59,000 square feet, a laydown area – used for preparation of equipment and supplies to be loaded on MSRC's vessel in the event of a spill – of 130,000 square feet, and a 300 foot berth. The Option Agreement substantially reduces the required footprints of the new warehouse and office space (27,600 square feet) and laydown area (11,250 square feet); the berth dimensions remain the same length as under the existing contract. Consequently, the Option Agreement allows the Seaport to recapture approximately five (5) acres for alternative uses.

Currently MSRC pays \$1.00 per square foot of land leased annually with modest escalators throughout the renewal periods. Under the Option Agreement, MSRC would retain the square foot rental rates of its existing agreements. These favorable rates were established in consideration of the large capital improvement expenses MSRC incurred constructing its current warehouse and berth. The Seaport and MSRC entered into this agreement after a long period of cooperative conversations following the release of the 2035 Master Plan.

DELEGATED AUTHORITY

In accordance with Section 2-8.3 of the Miami-Dade County Code related to identifying delegation of Board authority, there are no authorities beyond those specific in the resolution which include the authority for the Mayor or designee to execute the Agree and to exercise any cancellation or renewal provisions.



Jack Osterholt, Deputy Mayor



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: April 8, 2014

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(J)(2)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's _____, 3/5's _____, unanimous _____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(J)(2)
4-8-14

RESOLUTION NO. _____

RESOLUTION APPROVING THE EXECUTION OF AN OPTION AGREEMENT WITH MARINE SPILL RESPONSE CORPORATION TO ALLOW THE COUNTY TO RELOCATE MARINE SPILL RESPONSE CORPORATION'S CURRENT LEASEHOLD TO ANOTHER LOCATION ON THE SEAPORT AT THE COUNTY'S EXPENSE, ESTIMATED TO BE AT LEAST \$6.2 MILLION PLUS ANNUAL MAINTENANCE COSTS, TO ALLOW FOR THE DEVELOPMENT OF THE LAND CURRENTLY LEASED; AND AUTHORIZING THE MAYOR OR THE MAYOR'S DESIGNEE TO EXERCISE THE OPTION AGREEMENT

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Approves The Option Agreement between Miami-Dade County and the Marine Spill Response Corporation in substantially the form attached hereto and authorizes the Mayor or the Mayor's Designee to execute the Option Agreement for and on behalf of Miami-Dade County; and

Section 2. Authorizes the Mayor or the Mayor's to exercise the Option Agreement as described therein, including approving and authorizing the Mayor or the Mayor's Designee to execute The New Lease in substantially the form attached as Exhibit D to the Option Agreement.

The foregoing resolution was offered by Commissioner
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

- | | |
|----------------------|-------------------------|
| | Rebeca Sosa, Chairwoman |
| | Lynda Bell, Vice Chair |
| Bruno A. Barreiro | Esteban L. Bovo, Jr. |
| Jose "Pepe" Diaz | Audrey M. Edmonson |
| Sally A. Heyman | Barbara J. Jordan |
| Jean Monestime | Dennis C. Moss |
| Sen. Javier D. Souto | Xavier L. Suarez |
| Juan C. Zapata | |

The Chairperson thereupon declared the resolution duly passed and adopted this 8th day of April, 2014. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Richard Seavey

MSRC 
Marine Spill Response Corporation®
Michael J. Sample
Vice President & General Counsel

January 9, 2014

Via Fed Ex

Richard C. Seavey
Assistant County Attorney
Miami-Dade County
111 N.W. First St., Ste. 2810
Miami, Florida 33128

Re: Option Agreement

Dear Richard:

Attached are two originals of the Option Agreement. The New Lease is attached as Exhibit D. Each original has been signed by MSRC.

Please return a fully executed original to my attention, once it has been duly approved by the Commissioners and signed by the County.

It has been a pleasure.

Sincerely,



OPTION AGREEMENT TO MIAMI-DADE COUNTY TO ENTER INTO A NEW LEASE
AGREEMENT BETWEEN MARINE SPILL RESPONSE CORPORATION AND MIAMI-
DADE COUNTY FLORIDA

THIS OPTION AGREEMENT ("OPTION AGREEMENT") TO MIAMI-DADE COUNTY TO ENTER INTO A NEW LEASE AGREEMENT BETWEEN MARINE SPILL RESPONSE CORPORATION AND DADE COUNTY FLORIDA ("SECOND AMENDMENT") is made and entered into this ____ day of _____, 2014 by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, hereinafter "County" and the MARINE SPILL RESPONSE CORPORATION, a Tennessee Non-Profit corporation, hereinafter called "MSRC."

WITNESSETH:

WHEREAS, by Resolution R-1015-91 approved on September 16, 1991 the County's Board of County Commissioners approved a Ground Lease between the County and MSRC providing for, among other things, MSRC's lease of an 8.69 acre parcel of property (the "Original Parcel") located at the Seaport of Miami ("Port") for a term of 20 years with four (4) renewal options of five (5) years each and for MSRC's construction of improvements on the parcel including a warehouse, office space and a bulkhead (the last, the "Original Berth") for the berthing of MSRC's vessel (collectively, the "Original Improvements"); and

WHEREAS, in December 1992 the Ground Lease was Amended and Restated to, among other things, modify the description of the Original Parcel to be leased and the description of the Improvements; and

WHEREAS, by Resolution R-250-07 approved on March 6, 2007 the Ground Lease was further amended to, among other things, reduce the size of the Parcel by 2.35 acres (the Ground Lease as so amended and restated shall be referred to as the "Original Lease"); and

WHEREAS, MSRC has exercised the first of its four (4) renewal options of five (5) years under the Original Lease, and the term of the Original Lease has now been extended through

and until May 31, 2018 (subject to further extension through May 31, 2033, as provided in the Original Lease); and

WHEREAS, the County desires to market the Original Parcel for other purposes and, if successful, to move MSRC's leasehold under the Original Lease to different locations on the Port and to enter into a new lease (the "New Lease") with MSRC for the new locations (the "New Parcels" consisting of a "New Warehouse" and a "New Berth"); and

WHEREAS, MSRC desires to agree to the relocation under certain conditions provided for below.

NOW, THEREFORE, in consideration of the County's payment to MSRC of \$10.00, the mutual promises and covenants contained herein, and other good and valuable consideration, it is expressly understood and agreed:

1. Recitals

The foregoing recitals are true and incorporated herein by reference.

2. Effective Date

This Option Agreement shall be effective upon the approval of this Option Agreement by the Miami-Dade Board of County Commissioners, the expiration of any Mayoral veto period, and the execution of this Option Agreement by the County Mayor or the Mayor's designee ("Effective Date").

3. Option Period

Upon the Effective Date, this Option Agreement shall remain in full force and effect through the remaining Term of the Original Lease, including the Terms of any remaining renewal period(s) provided for in the Original Lease. During this period the County, or any Transferee (as described in Section 7 below) of the County, shall have the sole and exclusive right to exercise its option hereunder to effectuate the New Lease and relocate MSRC to the New Warehouse" and the New Berth. The County shall provide MSRC with at least eight (8) months advance written notice of its exercise of this Option

Agreement. In the event of the County's (or a Transferee's) exercise of this Option Agreement, MSRC's acceptance of the proposed new locations as meeting the requirements of Exhibit A, and satisfaction of the other conditions provided herein and in the New Lease, the New Lease shall be executed by the parties and such New Lease shall become effective and replace and supersede the Original Lease as provided herein and in the New Lease, except that the warranties, representations, and Indemnities provided in Article 9 of the Original Lease shall survive its supersession and replacement, including, but not limited to all environmental indemnity provisions. MSRC shall have no right to terminate this Option Agreement, for default or otherwise, other than in conjunction with a termination of the Original Lease.

4. Recordation

The County shall have the right to record this Option Agreement and the New Lease resulting from the exercise of this Option Agreement in the public records of Miami-Dade County and the State of Florida.

5. The County's Option to Relocate MSRC and to Enter into the New Lease

Upon the Effective Date, and for the period described in Section 3 above, and upon providing the advance written notice required in Section 3 above and MSRC's acceptance of the proposed new locations as meeting the requirements of Exhibit A, the County shall have the option to relocate MSRC's leasehold from the Original Parcel to one of the new locations agreed upon by the parties and specified on Exhibit A (and which, if selected, would become the New Parcels consisting of the New Warehouse and the New Berth collectively) and to expressly transfer possession of the Original Parcel and ownership of the Original Improvements located on the Original Parcel to the County or the Transferee upon the completion of the following:

- a. The construction by the County or the Transferee of a warehouse and office space at one of the locations deemed acceptable on Exhibit A for the New Warehouse (or, if

the condition of such locations has materially changed and is no longer acceptable to MSRC, such other location as MSRC and the County mutually agree), with such New Warehouse meeting the specifications and requirements as described more particularly in Exhibit B, all at no expense to MSRC; and

- b. Either (1) the County allowing MSRC to retain possession and control of the Original Berth (including the fenced laydown area and an adequate adjacent parking area for ten (10) vehicles), all to be adequately secured as per the requirements of Exhibit C, or (2) the construction by the County or the Transferee of a berth at one of the berth locations deemed acceptable on Exhibit A for the New Berth (or, if the condition of such locations has materially changed and is no longer acceptable to MSRC, such other location as MSRC and the County mutually agree), with such New Berth meeting the specifications and requirements as described more particularly in Exhibit C, also at no expense to MSRC. Under (1), the Original Berth shall be deemed the "Interim Berth" for the purposes of the New Lease. Also under (1), the County shall have the right during the period of the New Lease to construct a berth as per (2) at one of the berth locations deemed acceptable on Exhibit A (or, if the condition of such locations has materially changed and is no longer acceptable to MSRC, such other location as MSRC and the County mutually agree) and meeting the specifications and requirements of Exhibit C, which berth, when inspected and accepted by MSRC as meeting the requirements and specifications, shall become the New Berth, at which time MSRC shall vacate the Original Berth and relocate to such New Berth in accordance with the relocation provisions herein and in the New Lease; and
- c. MSRC's inspection and acceptance, such acceptance not to be unreasonably withheld, of the New Parcels and the New Warehouse and, if applicable, the New Berth, and the related new warehouse, office space, lay down area, and berth

improvements as meeting the requirements and specifications provided herein and in Exhibits A, B and C;

- d. MSRC's relocation, at County expense, to the New Warehouse and, if applicable, the New Berth; and
- e. The County's payment of all reasonable expenses incurred by MSRC in relocating from the Original Parcel to the New Warehouse and, if applicable, the New Berth (specifically, the reasonable costs of crane service, trucking and other moving costs, third party moving companies or other temporary labor costs, disposal costs, costs to establish new utility connections (including, without limitation, internet service and telephone), costs of new signage and stationary, and any other reasonable costs approved by the County with such approval not to be unreasonably withheld). MSRC shall provide an estimate of these costs prior to their incursion.

6. New Lease

Upon (i) the County's or a Transferee's exercise of this option and its completion of the undertakings set forth above, (ii) MSRC's acceptance of the New Parcels, New Warehouse, New Berth (if applicable) and the related new warehouse, lay down area, office space and (if applicable) berth improvements as meeting all requirements, and (iii) MSRC's relocation to the New Warehouse and, if applicable, the New Berth, the Original Lease shall be terminated, superseded and of no further force and effect except as provided in this Option Agreement and the New Lease, and the parties shall enter into the New Lease as attached hereto as Exhibit D.

7. Transfer

The County shall have the right to assign this Option Agreement to another entity ("Transferee"), provided that the Transferee agrees in writing to: (i) undertake the obligations set forth in Sub-Paragraphs 5(a), (b), (c), (d) & (e) above; (ii) assume all other obligations and honor all other agreements hereunder; and (iii) assume all other

obligations of Landlord under the Original Lease and New Lease, unless such obligations under (i), (ii) and/or (iii) immediately above are assumed by the County in writing at the time of transfer.

8. Terms not defined herein shall have the same meaning as set forth in the Current Ground Lease.

9. Governing Law

This Option Agreement shall be governed by Florida Law.

10. MSRC To Retain All Rights Under Original Lease Until Option is Exercised

Until such time as the option provided herein is exercised and the County (or its Transferee) satisfies its obligations hereunder and a New Lease is entered into, MSRC shall retain all its rights under the Original Lease (including, without limitation, the remaining renewal options to extend the term of the Original Lease through May 31, 2033) and MSRC shall be entitled to occupy, use and quietly enjoy the Original Parcel and the Original Improvements.

11. County Approval of Sublease. The County approves the "Third Amendment to the Sublease between Marine Spill Response Corporation and Kirby Inland Marine, LP," and agrees to approve future subleases or extensions of subleases for the duration of the term of the Current Lease including any Extended Terms.

IN WITNESS WHEREOF, the parties have executed this Option Agreement
effective as of the date first above written.

MARINE SPILL RESPONSE CORPORATION:

Juan Hamm 1/9/14
Contracts & Tax Manager

MIAMI-DADE COUNTY, a Political Subdivision
of the State of Florida

EXHIBIT A

**ACCEPTABLE NEW PARCELS AS LOCATIONS FOR
NEW WAREHOUSE AND NEW BERTH**

The parties agree that the following identified locations, as depicted in Exhibit A-1, in their condition as of the Effective Date of this Option Agreement, are potentially acceptable for the New Warehouse and New Berth, respectively, provided that, at the time the option is exercised: (1) their condition and surrounding uses have not materially changed; (2) neighboring uses and other Port conditions have not changed (and are not projected to change) in a way that could materially affect traffic patterns, volume or flow, or otherwise adversely impact MSRC's use, (3) their access to public roads and navigable waters is direct and unimpeded and provides MSRC with ready 24/7 access to and from the locations, (4) the locations are fully compliant (at no expense to MSRC) with Federal, State and County security requirements, including requirements of Florida Department of Law Enforcement ("FDLE") at the time of acceptance; (5) the locations are able to pass a Phase 1 environmental assessment with no indications of contamination; and (6) the locations are improved to meet the requirements of Exhibit B and C, respectively.

1. New Warehouse:

- a. Under FDOT's Port Bridge (within the circled area labeled as "1" in red font in Exhibit A-1).
- b. In the general area of current Shed C or to the east or west of said area (within the circled area labeled as "2" in red font in Exhibit A-1).
- c. At the Eastern point of the Port, west of the Pilot Station (within the circled area labeled as "3" in red font in Exhibit A-1).
- d. Such other locations inside or outside the Port acceptable to both parties, each in their sole discretion.

2. **New Berth:**

- a. The current berth located on the Original Parcel (within the circled area labeled as "1" in blue font in Exhibit A-1).
- b. A berth between bays 183 and 195 (within the circled area labeled as "2" in blue font in Exhibit A-1). MSRC will have exclusive use of the assigned bays and will not be required to move (temporarily or otherwise) except to the New Berth (identified below as 3c) in accordance with Section 29 of the New Lease.
- c. At the Northeastern point of the Port along the Main Ship Channel (within the circled area labeled as "3" in blue font in Exhibit A-1). MSRC will have exclusive use of this New Berth for the duration of the Term and will not be required to move (temporarily or otherwise) unless agreed to by MSRC.
- d. Such other locations inside or outside the Port acceptable to both parties, each in their sole discretion.

The above locations are identified on the map attached as Exhibit A-1.

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EXHIBIT A-1

MAP OF POTENTIALLY ACCEPTABLE LOCATIONS

JA

MSRC RELOCATION OPTIONS



Legend

- - - Warehouse Locations
- - - Berth Locations

* Locations depicted by dashed lines are approximations of potential areas. Exact location is subject to final concurrence between MSRC and PortMiami.

<h1 style="font-size: 2em; margin: 0;">PORTMIAMI</h1> <p>1015 North America Way Miami, Florida 33132</p>	Project:	MSRC
	Drawing:	Exhibit A-1
Date: 11/20/13		Scale: N.T.S.
Drawn by:		Page: 1 of 1



EXHIBIT B

SPECIFICATION AND REQUIREMENTS FOR NEW WAREHOUSE AND OFFICE SPACE

The County shall improve the New Warehouse location, at the County's expense, by the construction of a new warehouse and office facility meeting or exceeding the following specifications and requirements, or their alternatives as agreed to by MSRC. All construction shall be of new material unless otherwise required by LEED or applicable code, and shall meet any and all related code requirements, including without limitation those regarding wind conditions with all construction to meet or exceed requirements regarding applicable local hurricane strength.

The following list (items 1 to 12) provides certain general specifications and requirements. The parties recognize that this list is not exhaustive and that additional planning and design will be required after the option is exercised, with this collaborative planning and design continuing throughout the programming phase and the Final Construction Documents phase. This additional planning and design will, e.g., provide specifics of lay-out, wiring, finishes, etc., and review and ensure the functionality of the proposed improvements and their ability to support MSRC's spill response mission. At the time of exercise of the option, the parties agree to promptly meet (with their architects and engineers or "A/E") to finalize this programming and design. Exhibit B-2 provides further specifics as to the planning and design and as to the process the parties agree to follow in the programming and Final Construction Documents phases.

All construction shall be in accordance with the 100% Final Construction Documents, as approved by MSRC in accordance with Exhibit B-2, and be completed to MSRC's reasonable satisfaction and acceptance, with such acceptance not to be unreasonably withheld. MSRC and its representatives shall have access to the construction site during construction to verify that the work is in accordance with the 100% Final Construction Documents. MSRC shall not be required to accept the facility until the facility is substantially complete as per the 100% Final Construction Documents and the County Building Department has issued a Temporary Certificate of Occupancy and until MSRC has inspected the facility and confirmed that all other requirements have been met and that construction meets the desired specifications and MSRC's operational needs, not to be unreasonably withheld. The parties shall conduct a

walk-through at such time the County believes all such requirements have been met. MSRC shall accept the facility if only minor corrective work remains, in which case the parties shall agree on a punch list of corrective items and a timeline in which the County is to correct such items.

General Specifications and Requirements: As noted above, the parties recognize that this list is not exhaustive and that additional planning and design will be required after the option is exercised, with this collaborative planning and design continuing throughout the programming phase and the Final Construction Documents phase.

1) Building Requirements: The building shall be a stand-alone structure or a conjoining building with a separation wall (of concrete construction, unless otherwise agreed by MSRC) between MSRC's New Warehouse and the conjoining use of the building. The building shall include both warehouse space and office space, and shall be not less than 24,000 square feet (sf) under roof in total. The acceptable building lay-out, including office, warehouse and mezzanine, shall be as set forth in Exhibit B-1. Immediately adjacent to the building shall be a fenced and gated laydown area of at least 12,000 sf (as more specifically detailed in item 5 below).

2) Office Space: The building shall include at least 3,600 sf of air-conditioned office space for the office and other spaces identified immediately below (plus hallway space and other common area), and with mezzanine above, as detailed in Exhibit B-1. All interior work shall also be concrete construction unless otherwise agreed to by MSRC, and shall be in accordance with applicable code, and shall include:

- a) Ten (10) offices of at least 150 sf each – for a total of at least 1,500 sf
- b) One (1) large meeting/training area – minimum 600 sf
- c) One (1) kitchen area – minimum 400 sf
- d) Restroom locker area – minimum of 500 sf
- e) Men's restroom – at least 350 sf with 8 full lockers and washer/dryer connection
- f) Women's restroom – at least 150 sf with 2 full lockers
- g) Communication/Server room – at least 100 sf and meeting MSRC's air-conditioning requirements for such room
- h) Interior lighting meeting MSRC requirements including 2 x 4 fluorescent fixtures with four (T-series) 48" energy efficient tubes with diffuser with quiet electronic ballast

3) Communications: The building shall support MSRC's communication needs and the needs of MSRC's mobile communications suites, including:

- a) Telephone/Data Drops – to be Cat 6 cabling with specific drops to be identified on plans during development. All data cabling to terminate to a patch panel in a lockable, dedicated Server room. This Server room to be in air-conditioned space.
- b) Emergency Communications Package (ECP, aka Comms Suite) and Support Trailer power specifications to be 240V, single phase, with outdoor (exterior mounted) receptacles; must be able to accommodate 220V, 3 prong Appleton connector. The ECP/Comm Suite receptacle to be 100 Amp and the Support Trailer 60 Amps 208 V.

4) Warehouse Storage Area: To be not less than 24,000 sf (less the square footage of the office space as specified above) of inside, enclosed and secured area; ceiling height to be at least 25 feet. Lighting to be ceiling mounted mercury vapor, unless otherwise agreed to by MSRC. Overhead doors to maximum wind-load resistant and measure at least 20' H x 24' W. Flooring to be sealed-concrete and to withstand heavy-duty use, including 36,000 lb capacity lift truck and other vehicular traffic.

5) Laydown Yard: Minimum of 12,000 sf of outdoor fenced area immediately adjacent to the building. In the alternative, an additional 12,000 sf can be provided inside the building under roof. Surface to be either concrete or asphalt, unless otherwise agreed to by MSRC and compliant with LEED.

6) Parking Area: Reserved spaces for at least ten (10) vehicles adjacent to building. Surface material to be asphalt or concrete capable of withstanding heavy duty usage, including 36,000 lb. capacity lift truck and other commercial vehicular traffic. If Warehouse and laydown are co-located with the berth, then a total of 20 spaces are required.

7) FDLE Compliant: Area to be compliant with FDLE and other Federal, State and County security requirements.

8) 24/7 Access: MSRC shall have 24-hour access to immediately adjacent main public roads at all times to ensure its ability to respond to oil spills.

9) Utilities: Dedicated separate meters for both electrical and water.

10) Compliance: The warehouse, office and laydown space must be, and must remain, in compliance with all applicable laws and County codes, at the County's expense.

11) Finishings: The County shall pay the reasonable cost of all finishings. The finishings shall be as noted below, unless otherwise agreed to by MSRC. All colors and styles must be approved by MSRC.

- a) Carpeting - nylon, level loop, 28 oz., with 4" cove base.
- b) Composition Tile - vinyl 12 x 12 for restrooms, server room and kitchen
- c) Interior Paint - Laytex, egg-shell finish.

12) Site Security System: The facility must be gated and include a security system with card reader access generally consistent with MSRC's current system. If co-located in a conjoining building, the MSRC space shall have separate and secured ingress and egress. To the extent it is reasonably feasible to do so (and such equipment is safe and fully functional, and represents current technology) the County or its Transferee shall have the right to re-use MSRC's existing equipment (from the Original Parcel) in the new facilities to be constructed for MSRC. MSRC shall maintain the system at its own cost, after installation completed.

MSRC may, in its sole discretion, accept space meeting the above specifications and requirements within an existing County building.

The above shall be at County expense including, without limitation, permitting fees, impact fees and all other costs associated with construction.

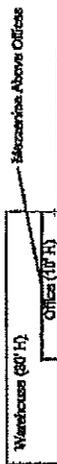
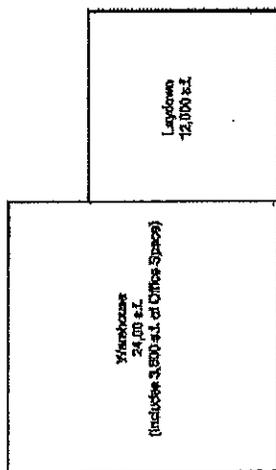
EXHIBIT B-1

LAY-OUT

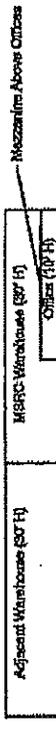
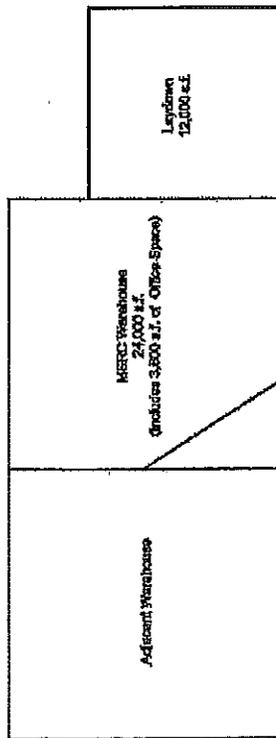
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Floor Plans

Sections

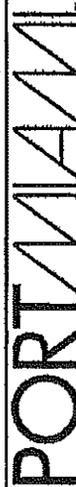


Office Space Inside of Warehouse with Mezzanine Above



Office Space Inside of Warehouse and Sharing Demising Wall with Adjacent Warehouse as Part of a Multi-use Warehouse

* Layouts depicted are for conversational use only and should not be assumed legally binding. Actual Design subject to final concurrence between MSRC and PortMiami.



1015 North America Way
Miami, Florida 33132

Project: MSRC

Drawing: Possible Layouts of Warehouse, Offices and Laydown Area

Date:	11/20/13
Drawn by:	
Scale:	N.T.S.
Page:	1 of 1

EXHIBIT B-2

MSRC and the County shall collaborate in the programming phase, which is where the Port and MSRC agree on the full scope of the project to reflect the above and to meet MSRC's operational needs at the new location, and develop the details and information that needs to be passed on to the A/E to design the project. MSRC (and its A/E) shall continue to be involved during the development of the detailed design drawing and construction plans, resulting in the 100% Final Construction Documents. MSRC shall have the right to review and approve the Final Construction Documents at the 30%, 60% and 90% review periods. All Construction Documents shall be consistent with the full project scope as agreed upon in the programming phase, with the requirements of this Option Agreement and its Exhibits, and with MSRC's operational needs.

When the Final Construction Documents are 30% complete, the County's A/E will submit them to MSRC for its review and approval. MSRC will submit its comments and requested changes within fifteen (15) days. While the County and MSRC are reviewing the 30% plans, the A/E will continue to work towards the 60% plans, incorporating changes from MSRC as they are received. Once MSRC's changes have been incorporated, and once the A/E reaches 60% plans, the A/E will submit them to MSRC for its review and approval. MSRC will submit its comments and requested changes within fifteen (15) days. While the County and MSRC are reviewing the 60% plans, the A/E will continue to work towards the 90% plans, incorporating changes from MSRC as they are received. When the A/E believes it has reached 90% plans, the County's A/E will submit them to MSRC for a final review to confirm that they are consistent with the scope mutually agreed upon in the programming phase, that they meet MSRC's operational needs and are consistent with the requirements of this Option Agreement and its Exhibits, and incorporate MSRC's comments from the 30% and 60% stages. MSRC will submit its comments and requested changes within fifteen (15) days. Once MSRC's final changes are made and the 90% Final Construction Documents are approved by MSRC, the 90% Final Construction Documents shall be submitted to the County Building Department and required regulatory agencies for dry run permitting.

These same 90% documents will be used to solicit competitive contractors' bids

on the project. The only changes made from the 90% and 100% Final Construction Documents shall be those required to conform with Building Department and required regulator's comments. Provided, however, that MSRC will be advised of any changes required by the Building Department or other regulators that materially change the agreed-upon design or otherwise impact MSRC's operational needs, and given fifteen (15) days to either accept the 100% Final Construction Documents or object. Unless MSRC so objects, the 100% Final Construction Documents shall be used to obtain a Building Permit and execute the work. Two (2) complete sets of the 100% Final Construction Documents shall be provided to MSRC.

Both parties agree to act reasonably in their review of proposed documents and to not unreasonably withhold acceptance of documents, recognizing however that MSRC has important operational needs and that MSRC can withhold its approval at any stage if these operational needs are not met or other requirements of this Option Agreement are not satisfied.

EXHIBIT C

SPECIFICATION AND REQUIREMENTS FOR NEW BERTH

The County shall improve the New Berth location, at the County's expense, by the construction of a new berth (or improvement of an existing berth) meeting or exceeding the following specifications and requirements, or their alternatives as agreed to by MSRC. All construction shall be of new material unless otherwise required by LEED or applicable code, and shall meet any and all related code requirements, including without limitation those regarding wind conditions with all construction to meet or exceed requirements regarding applicable local hurricane strength.

The following list (items 1 to 12) provides certain general specifications and requirements. The parties recognize that this list is not exhaustive and that additional planning and design will be required after the option is exercised, with this collaborative planning and design continuing throughout the programming phase and the Final Construction Documents phase. This additional planning and design will, e.g., provide specifics of lay-out, wiring, finishes, etc., and review and ensure the functionality of the proposed improvements and their ability to support MSRC's spill response mission. At the time of exercise of the option, the parties agree to promptly meet (with their architects and engineers or "A/E") to finalize this programming and design. Exhibit C-1 provides further specifics as to the planning and design and as to the process the parties agree to follow in the programming and Final Construction Documents phases.

All construction shall be in accordance with the 100% Final Construction Documents, as approved by MSRC in accordance with Exhibit C-1, and be completed to MSRC's reasonable satisfaction and acceptance, with such acceptance not to be unreasonably withheld. MSRC and its representatives shall have access to the construction site during construction to verify that the work is in accordance with the 100% Final Construction Documents. MSRC shall not be required to accept the berth until the facility is substantially complete as per the 100% Final Construction Documents and the County Building Department has issued a Temporary Certificate of Completion or Occupancy (or other similar document issued by the appropriate authorities evidencing that the berth is safe and suitable for use) and until MSRC has inspected the facility

and confirmed that all other requirements have been met and that construction meets the desired specifications and MSRC's operational needs, not to be unreasonably withheld. The parties shall conduct a walk-through at such time the County believes all such requirements have been met. MSRC shall accept the facility if only minor corrective work remains, in which case the parties shall agree on a punch list of corrective items and a timeline in which the County is to correct such items.

General Specifications and Requirements: As noted above, the parties recognize that this list is not exhaustive and that additional planning and design will be required after the option is exercised, with this collaborative planning and design continuing throughout the programming phase and the Final Construction Documents phase.

- 1) Berth Area: Not less than 300 linear feet of bulk headed space. Berth shall be constructed of concrete or other acceptable materials that will meet pier loading requirements of 500 lbs per sf and shall be capable of supporting an 80,000 lb vehicle. Mooring to consist of bollards/cleats for head lines, stern lines, and spring lines capable of a sustained load of 45 tons.
- 2) Exclusive Use: The berth space shall be dedicated to the exclusive use of MSRC vessels, and no other vessels shall be allowed to use the berth, unless otherwise agreed in writing by MSRC and the County or its Transferee. MSRC shall not be required to pay any Port tariffs or charges for its use.
- 3) Laydown Area: Approximately 45' x 250' (11,250 sf) of concrete or asphalt laydown area adjacent to berth. If the berth is an Interim Berth (as defined in Section 29 of the New Lease) at berth location "2" on Exhibit A-1, or if the New Berth is adjacent to the New Warehouse at location "3" on Exhibit A-1, the parties agree that this laydown area can be made available on an "as needed" basis for Tenant, rather than on an exclusive basis. Such temporary laydown area shall be provided as set forth in Section 29 of the New Lease.
- 4) Parking Area: Reserved spaces provided for at least ten (10) vehicles immediately adjacent to berth / laydown area

- 5) Specialized Electrical Hookup: Shore power to consist of 480V, 3 Phase, 200 Amps. To the extent it is reasonably feasible to do so (and such equipment is safe and fully functional) the County or its Transferee shall have the right to use MSRC's existing equipment (from the original berth) in the new facilities to be constructed for MSRC.
- 6) FDLE Compliant: Area to be compliant with FDLE and other Federal, State and County security requirements.
- 7) 24/7 Access: MSRC shall have 24-hour access at all times to ensure its ability to respond to oil spills – access must be both land side (for crew and supplies to reach the vessel) and water side (for safe navigation of vessel to open ocean).
- 8) Utilities: The berth shall meet shore power needs (see requirements above) and provide for potable water. Water and electrical shall be separately metered for the berth. In addition, a fire main (hydrant) shall be within local fire code proximity to the vessel berth.
- 9) Telecommunications: 25 pair shielded telecommunications cable to be provided from nearest telco POP to end of pier, or alternative as agreed to by MSRC. Cable to be enclosed in dedicated conduit, i.e. separated from the conduit required for power to the vessel.
- 10) Water Depth and Dredging: The berth and approach channels shall have adequate water depth (not less than 20 feet depth) for MSRC operations, and shall not have any surrounding uses that would impede the safe and immediate ingress and egress of MSRC vessels to open water. The County shall bear all costs for present or future dredging of the berth and approach channels.
- 11) Compliance: The New Berth must be, and must remain, in compliance with all applicable laws and County codes, at the County's expense.
- 12) Site Security System: Unless otherwise agreed to by MSRC (for example, such agreement could be based on the County demonstrating other adequate Port security measures are sufficient to MSRC's satisfaction) the facility must be gated and include a security system with card reader access. To the extent it is reasonably feasible to do so (and such equipment is safe and fully functional, and represents current

technology) the County or its Transferee shall have the right to re-use MSRC's existing equipment (from the Original Parcel) at the New Berth. MSRC shall maintain the system at its own cost, after installation is completed.

MSRC may, in its sole and reasonable discretion, accept an existing berth meeting the above specifications and requirements.

The above shall be at County expense including, without limitation, permitting fees, impact fees and all other costs associated with construction.

An Interim Berth (as defined in Section 29 of the New Lease) shall meet the above requirements, with the accommodation provided in (3) above for laydown area.

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EXHIBIT C-1

MSRC and the County shall collaborate in the programming phase, which is where the Port and MSRC agree on the full scope of the project to reflect the above and to meet MSRC's operational needs at the new location, and develop the details and information that needs to be passed on to the A/E to design the project. MSRC (and its A/E) shall continue to be involved during the development of the detailed design drawing and construction plans, resulting in the 100% Final Construction Documents. MSRC shall have the right to review and approve the Final Construction Documents at the 30%, 60% and 90% review periods. All Construction Documents shall be consistent with the full project scope as agreed upon in the programming phase, with the requirements of this Option Agreement and its Exhibits, and with MSRC's operational needs.

When the Final Construction Documents are 30% complete, the County's A/E will submit them to MSRC for its review and approval. MSRC will submit its comments and requested changes within fifteen (15) days. While the County and MSRC are reviewing the 30% plans, the A/E will continue to work towards the 60% plans, incorporating changes from MSRC as they are received. Once MSRC's changes have been incorporated, and once the A/E reaches 60% plans, the A/E will submit them to MSRC for its review and approval. MSRC will submit its comments and requested changes within fifteen (15) days. While the County and MSRC are reviewing the 60% plans, the A/E will continue to work towards the 90% plans, incorporating changes from MSRC as they are received. When the A/E believes it has reached 90% plans, the County's A/E will submit them to MSRC for a final review to confirm that they are consistent with the scope mutually agreed upon in the programming phase, that they meet MSRC's operational needs and are consistent with the requirements of this Option Agreement and its Exhibits, and incorporate MSRC's comments from the 30% and 60% stages. MSRC will submit its comments and requested changes within fifteen (15) days. Once MSRC's final changes are made and the 90% Final Construction Documents are approved by MSRC, the 90% Final Construction Documents shall be submitted to the County Building Department and required regulatory agencies for dry run permitting.

These same 90% documents will be used to solicit competitive contractors' bids

on the project. The only changes made from the 90% and 100% Final Construction Documents shall be those required to conform with Building Department and required regulator's comments. Provided, however, that MSRC will be advised of any changes required by the Building Department or other regulators that materially change the agreed-upon design or otherwise impact MSRC's operational needs, and given fifteen (15) days to either accept the 100% Final Construction Documents or object. Unless MSRC so objects, the 100% Final Construction Documents shall be used to obtain a Building Permit and execute the work. Two (2) complete sets of the 100% Final Construction Documents shall be provided to MSRC.

Both parties agree to act reasonably in their review of proposed documents and to not unreasonably withhold acceptance of documents, recognizing however that MSRC has important operational needs and that MSRC can withhold its approval at any stage if these operational needs are not met or other requirements of this Option Agreement are not satisfied.

EXHIBIT D

NEW LEASE

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NEW LEASE

THIS LEASE is entered into as of _____, 20__, by and between MARINE SPILL RESPONSE CORPORATION, a Tennessee not-for-profit corporation (the "Tenant" or "MSRC"), and MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida (the "County").

WITNESSETH:

WHEREAS, by Resolution R-1015-91 approved on September 16, 1991 the County's Board of County Commissioners approved a Ground Lease between the County and MSRC (the "Original Lease") providing for, among other things, MSRC's lease of an 8.69 acre parcel of property (the "Original Parcel") located at the Seaport of Miami (the "Port") for a term of 20 years with four (4) renewal options of five (5) years each and for MSRC's construction of improvements on the parcel including a warehouse, and office space (the "Original Warehouse") and a bulkhead (with associated laydown area) for the berthing of MSRC's vessel (the "Original Berth") (collectively, the "Original Improvements"); and

WHEREAS, in December 1992 the Original Lease was amended and restated to, among other things, modify the description of the Parcel to be leased and the description of the Improvements; and

WHEREAS, by Resolution R-250-07 approved on March 6, 2007, the Original Lease was further amended to, among other things, reduce the size of the Parcel by 2.35 acres; and

WHEREAS, MSRC has exercised the first [second/third/fourth] of its four (4) renewal options of five (5) years under the Original Lease (as amended), and the term of the Original Lease (as amended) has now been extended through and until May 31, 2018 [2023/2028] (subject to further extension through May 31, 2033, as provided in the Original Lease); and

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WHEREAS, the County desires to market the Original Parcel for other purposes and to move MSRC's leasehold to different locations on the Port (the "New Parcels" consisting of the "New Warehouse" and the "New Berth"); and

WHEREAS, MSRC has agreed to this relocation provided the lease terms between the County and MSRC are revised to reflect: the specifics of the New Warehouse and the New Berth, the termination of all MSRC responsibilities for the Original Parcel and the Original Improvements thereon, and the assumption by the County or its "Transferee" (as defined and described in the Option Agreement submitted to the Board of County Commissioners concurrently herewith) of responsibility for the construction and maintenance of the New Warehouse and the New Berth and the facilities and improvements located thereon; and

WHEREAS, the parties desire to enter into this lease (the "New Lease") to document their agreements as to MSRC's leasing of the New Parcels.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein, and other good and valuable consideration, the parties hereby agree that the Original Lease is terminated and replaced with this New Lease of the New Parcels as follows:

1. Definitions. As used herein:

"County" means Dade County, a political subdivision of the State of Florida, and all departments, agencies and instrumentalities thereof, including the Miami-Dade County Seaport Department.

"Impositions" means only (i) those taxes and assessments (if any) on the personal property of Tenant located on the Project Site, and (ii) sales taxes (if any) imposed on the rent. As provided below, Tenant shall be responsible for payment of these two types of taxes. Notwithstanding anything to the contrary in this New Lease, it is the intent and expectation of the parties that the Tenant shall not be responsible for any real property taxes

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or other ad valorem taxes or assessments based on the value of the real property leased, the New Lease, or the improvements on the real property. Without limitation, it is the intent and expectation of the parties that Tenant shall not be responsible for any real property taxes and assessments on the Project Site itself or on the Improvements thereon, unless such assessment is a fine or civil penalty based on an act or omission of Tenant during the term of the New Lease. If any taxing authority, other than the United States government, imposes such taxes on Tenant, Tenant's rental payment(s) to the County shall be reduced by the cost of such taxes and Tenant may reduce its future rent obligations accordingly.

"Improvements" means the New Warehouse and New Berth improvements as described in Exhibit 2 to this Lease.

"Interim Berth" means the berth described in Section 29 below.

"Landlord's Lien" means any lien, charge or encumbrance arising or resulting directly from acts or omissions of the County.

"Person" means and includes natural persons, corporations, general partnerships, limited partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governments and agencies and political subdivisions thereof.

"Plans and Specifications" shall have the meaning set forth in Section 6.1.

"Port" means the Port of Miami of Miami-Dade County, Florida, as operated by or at the direction of the County by and through its Seaport Department.

"Project" means the operation of a marine spill response center including, without limitation, warehousing, receiving, maintaining, storing, delivering and expediting supplies, equipment, vessels and materials related to Tenant's spill response activities; berthing of spill response vessels; providing training facilities and equipment for training spill response

FINAL

personnel; performing demonstrations of oil spill response techniques and equipment; research, development and testing of supplies, equipment and materials; operating as a spill response communications and operations center consistent with the Tenant's spill response activities, including the rapid deployment by land, sea and air of spill response personnel, supplies, vessels, equipment and materials and such other activities incident thereto on a 24 hours per day seven days per week basis with reasonable access to the Project Site. Except as required by the Dade County Code, no separate cargo handling permit shall be imposed by the County in connection with the loading or unloading of equipment, materials and supplies on vessels and barges of the Tenant or its agents or subcontractors in connection with Tenant's spill response activities hereunder.

"Project Site" means the real property described in Exhibit 1 as the New Parcels and shall include the New Warehouse and (1) the New Berth or (2) the Interim Berth if and while the Interim Berth is utilized; this real property is owned by the County and leased to MSRC pursuant to this Lease.

"Tenant" means Marine Spill Response Corporation, a Tennessee not-for-profit corporation.

2. Leased Premises.

2.1 County's Demise. Upon the terms and conditions hereinafter set forth herein, and in consideration of the payment of the rents and the prompt performance by the Tenant of the covenants and agreements to be kept and performed by the Tenant, the County does lease to the Tenant and the Tenant hereby leases from the County, the premises specifically described by the survey and legal description attached hereto and made a part hereof as Exhibit 1 (the "Project Site") including exclusive berthing rights for the Tenant's vessel(s). In no event shall filling or installation of erosion control facilities result in a denial of access to surrounding waters, it being the intention of the parties that the Interim Berth and the New Berth shall remain riparian to the surrounding waters. Further, it is the intention of the parties that the New Parcels shall remain accessible to public roads. The County shall ensure

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that the New Warehouse and New Berth have such access to allow the Tenant's vessels, vehicles and other equipment to immediately respond as needed for the Project.

2.2 Description of Contemplated Improvements. In consideration of, and as a material inducement to, the parties' executions of this New Lease, the County hereby agrees and shall be obligated to finance, construct and maintain the Improvements, as provided in Section 6 and Exhibit 2.

3. Term.

3.1 Initial and Extended Terms. The initial term (the "Initial Term") of this New Lease shall commence on the "Lease Commencement Date" (as defined in Section 3.2) and, unless sooner terminated as hereinafter provided, ending at the later of either (i) May 31, 2018, or (ii) the end date of any extension period in the Original Lease if such period has been exercised. The Tenant shall have successive five-year options to extend this New Lease through the later of (i) May 31, 2033 or (ii) ten years after the end of the Initial Term. For example, if the Lease Commencement Date is January 1, 2025, the Initial Term shall end on May 31, 2028, and Tenant shall have options to extend the term through May 31, 2033 and May 31, 2038. Each such five-year extension period is herein referred to as an "Extended Term" and shall commence on the date immediately succeeding the expiration date of the Initial Term or of the previous Extended Term, as applicable, upon the terms and conditions hereof, including the rent specified for each such Extended Term, provided that at the time of exercise of the applicable option, the Tenant shall not be in default hereunder. Each option shall be exercised by the Tenant giving written notice to the County at least six (6) months prior to the expiration of the Initial Term or then current Extended Term, as applicable. The word "term" shall mean the Initial Term and any Extended Term as to which Tenant exercises its option.

3.2 Lease Commencement Date. As a condition precedent for the parties to enter into this New Lease, the County shall have satisfied its obligations under the Option Agreement submitted to the Board of County Commissioners herewith, including, without limitation, the obligations of Section 5 and Exhibits A, B, and (to the extent applicable) C of

FINAL

that Option Agreement. The Lease Commencement Date shall be the date those obligations have been satisfied and Tenant has accepted the Improvements to the New Warehouse and (if applicable) the New Berth, and completed its relocation to the New Parcel(s). The parties shall enter into a supplemental memorandum setting forth the Lease Commencement Date and (in accordance with the provisions of Section 3.1) the resulting expiration date of the Initial Term.

3.3 Original Lease Termination. The Original Lease shall be terminated, replaced and superseded, without further action of the parties, upon the later of (i) fourteen (14) days after the Lease Commencement Date of this New Lease, or (ii) the date that Tenant notifies Landlord that Tenant has vacated the Original Warehouse. The termination of the Original Lease shall be subject to the provisions of Section 25.5 of the Original Lease (Surviving Covenants), including, but not limited to, all environmental and other indemnities. Rent for any partial months under either the Original Lease or New Lease shall be prorated.

3.4 The Tenant's Right to Terminate New Lease. Upon not less than six months' written notice to Landlord, the Tenant may terminate this New Lease when both of the following conditions precedent have been satisfied: (1) the Tenant has vacated the leased premises and surrendered possession thereof to the County in the condition required by this New Lease and (2) the Tenant has paid Landlord the "termination amount" and all rent due and payable hereunder through the date of termination. The "termination amount" shall be equal to nine months' rent at the rate in effect at the time of termination. The Lease shall terminate when the conditions precedent have been satisfied on the date of termination specified in the Tenant's notice, or six months after service of the notice, whichever is later.

4. Rent.

4.1 Commencing fourteen (14) days after the Lease Commencement Date, and thereafter during each year of this New Lease, the Tenant shall pay to the County as rent for the leased premises (including both the New Warehouse and the New Berth) base annual rent calculated by multiplying (i) the square footage of the New Parcel containing the New

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Warehouse, as approved by MSRC, which includes but is not limited to, the square footage of the New Warehouse, the square footage of the parking and laydown areas associated with the New Warehouse, and the square footage of the "setback" area surrounding the New Warehouse or other additional area as required by State Statute or County Code to meet Zoning and Building requirements, plus (ii) the square footage of the parking and any exclusive and dedicated laydown area associated with the New Berth or Interim Berth, as applicable, times (iii) the annual rate per square foot set forth in Section 4.3 below as more specifically provided in Exhibit 3. Rent for any partial years shall be prorated. There shall be no separate rent payable for the New Berth (other than its parking and exclusive and dedicated laydown areas), nor shall there be any separate or additional rental or other charges payable for the New Berth; without limitation, MSRC shall not be subject to any Port tariff fees or other such charges except for Tariff fees on additional services requested by MSRC from the County and which are not addressed by the terms of this New Lease (e.g., MSRC shall be subject to Tariff fees for the use of County cranes, or for fresh water deliveries to MSRC vessels). MSRC shall be subject to the non-monetary provisions of the Tariff except to the extent provided in Section 30 below.

4.2 This base annual rent shall be payable in equal monthly installments, along with applicable State of Florida and local Sales Tax, unless the Tenant qualifies for an exemption therefrom. Rent for any period of less than one month shall be apportioned based on the number of days in that month.

4.3 Annual Base Rent Rates. The annual rate per square foot shall be (i) \$1.00 per square foot for each year during the Initial Term, (ii) \$1.10 per square foot for the first five year extended term (if exercised), (iii) \$1.21 per square foot for the second five year extended term (if exercised), and (iv) \$1.33 per square foot for the third five year extended term (if exercised). For purposes of the rent formula provided in Section 4.1, the square footage of the New Parcel containing the New Warehouse shall be as set forth in Exhibit 3.

4.4 Due Date. All rental payments shall be made in advance and on the first day of each month during the entire term of this New Lease.

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4.5 Place of Payment. Rent shall be payable at such place as the County may specify, by written notice as hereinafter provided, from time to time.

4.6 Rent for Temporary (As Needed) Laydown Area at Berth. If the New Berth or Interim Berth, as the case may be, does not have permanently assigned exclusive and dedicated laydown area, Landlord agrees to provide laydown area when and as needed by Tenant in accordance with Section 29 below. Tenant shall not be charged for rent on such temporary laydown area unless Tenant's use exceeds thirty (30) consecutive days. If Tenant uses the laydown area for more than thirty (30) consecutive days, then Tenant shall pay rent commencing on the thirty-first (31st) day at the per-square-foot rates set forth in Section 4.3 above (with these annual per-square-foot rates to be prorated to reflect the actual number of days that Tenant uses such laydown area, above and beyond the initial thirty (30) day period noted above). Landlord shall invoice Tenant for any such rent, with such rent payable thirty (30) days after receipt of invoice.

5. Taxes and Utility Expenses.

5.1 Utilities. Tenant shall pay or cause to be paid all utilities relating its use of the New Warehouse and New Berth.

5.2 Impositions.

(a) Subject to Section 5.2(b) hereof, the Tenant shall pay or cause to be paid, before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all Impositions.

(b) Tenant shall bear the burden of and shall make timely remittances of all Impositions and shall file timely, with appropriate governmental units, all returns, statements and reports legally required with respect thereto.

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Tenant shall promptly remit to any governmental unit any such Imposition, unless the Tenant shall in good faith, with due diligence, and by appropriate judicial or administrative proceedings, contest the validity, applicability, or amount thereof (with respect to Impositions not imposed by the County, its agencies or instrumentalities, only if such proceedings do not, in the reasonable opinion of counsel for the County, subject the fee, reversionary or other estate or interest of the County in and to the Project Site to forfeiture). The Tenant shall give the County 10 days' prior notice of the Tenant's intent to contest such Imposition. Any such contest shall be at the Tenant's sole cost and expense.

(c) Tenant, upon the request of the County, shall furnish to the County, within 30 days after the date when an Imposition becomes delinquent if not paid, official receipts of the appropriate taxing authority or other evidence satisfactory to County evidencing the payment thereof. The certificate, advice, or bill of non-payment of such Imposition issued by the proper official designated by law to make or issue the same or to receive payment of an Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making of such certificate, advice or bill.

(d) Except as expressly otherwise provided herein, nothing contained herein shall modify, amend or constitute a waiver of, expressly or by implication, any applicable taxes or Impositions with respect to all or any portion of the Project or the operation thereof.

6. County Improvements. County shall have the obligation to finance, construct, install and maintain on the Project Site the Improvements, which Improvements shall remain the property of the County during the term of this New Lease.

6.1 Conformity to Plans and Specifications. The County shall construct the Improvements, including the New Warehouse and New Berth, in conformance with the specifications and requirements provided in the Option Agreement and in Exhibit 2 hereto, at

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no expense to MSRC. The construction shall be subject to MSRC's inspection and acceptance, such acceptance not to be unreasonably withheld.

6.2 Tenant's Property. All machinery, equipment, furniture, and other personal property and all severable fixtures of any kind and nature at any time made, installed, affixed, or placed on, in or to the Project Site by the Tenant ("Tenant's Property") shall at all times be and remain the sole property of Tenant. The Tenant shall be entitled to remove the Tenant's Property from the Project Site at any time during or within sixty (60) days after the expiration of the term provided the Tenant uses its best efforts to promptly repair any damage caused by such removal.

6.3 Maintenance of Improvements. During the continuance of this New Lease, the County shall keep in good state of repair and in good and clean condition the Improvements (including, without limitation, the New Warehouse and the New Berth or Interim Berth) and any and all property, open areas, sea walls, bulkheads, berths and dredged approaches (including maintenance dredging), moorings, buildings (including without limitation, the structure, roof and foundation, and the exterior paint and landscaping), building utility systems (including without limitation the electrical, mechanical and plumbing systems) and building equipment on or at the leased premises (including in, on or providing access to the New Warehouse and/or the New Berth), and the County shall maintain, repair, replace and renovate same as often as may be necessary in order to keep all Improvements in good repair, in compliance with applicable building code and government regulations, in good, clean and rodent/termite/insect free condition and to support Tenant's intended use of the leased premises. Notwithstanding the foregoing, the Tenant shall be responsible for maintenance of Tenant's Property, for damage to the Improvements caused by Tenant's negligence, for cleaning and janitorial services to the New Warehouse including office spaces, and for the repair and maintenance of interior finishes such as paint, carpeting and flooring, and for maintenance of the Security System of the New Warehouse and New Parcel. Tenant shall not be responsible for maintenance or repair to structural or system related issues.

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6.4 If Landlord is obligated to perform maintenance or repair under Section 6.3 above, and if the cost of any particular maintenance or repair project (counting the cost of third party contractors, material and equipment, but not the allocated cost of County employee labor) would cause the County's maintenance costs under Section 6.3 for a particular calendar year to exceed the annual rent to be paid by MSRC in the next two (2) calendar years, then the County shall notify MSRC and the County may defer such maintenance or repair until the next calendar year. Provided, however, that the above shall not excuse or allow the County to defer any repairs under Section 15 due to a fire, hurricane, flood or other casualty.

6.5 If the County fails to perform such maintenance and repairs, whether due to the limitations provided in Section 6.4 or otherwise, and as a result Tenant's use or enjoyment of any portion of the leased premises is impaired for more than fifteen (15) consecutive business days, then Tenant shall be entitled to a reasonable abatement of base rent for each consecutive day (after such 15-day period) that Tenant is so prevented from using any portion of the leased premises. The daily amount of rent abatement shall be calculated by dividing the annualized rent payable hereunder by 365. In the alternative, Tenant may effect the necessary maintenance or repair itself, and offset its future rent obligations by the cost of such maintenance or repair.

7. County's Estate in and the Tenant's Surrender of Project Site

7.1 Surrender at End of New Lease. The Tenant shall and will on the last day of the Initial Term hereof or, if extended, on the last day of any Extended Term hereof, or upon any early termination of this New Lease, surrender and deliver the Project Site and the Improvements thereon to the County in good and clean condition and repair (less normal wear and tear, insured casualty, or other repair that was the obligation of the County), free and clear of any liens or encumbrances, except for Landlord's Liens. Upon expiration or earlier termination of this New Lease, the Tenant shall remove its moveable personal property from the Project Site. The Tenant shall not be required to remove any of the Improvements from the Project Site.

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7.2 County Not Liable. The County shall not be responsible for any loss or damage to Tenant's Property, whether or not caused by the act or actions or failure to act of the County, its agents, or employees, prior to or subsequent to the termination of this New Lease, other than, to the extent permitted by Section 768.28, Florida Statutes or other applicable or successor law, for such loss or damage occurring as a result of or, in the case of joint liability under 768.31, Florida Statutes (and any successor statute), to the extent caused by, the negligence or wrongful act or omission of the County, its officers or employees.

8. Use. Tenant agrees not to make any unlawful or offensive use of the Project Site and the Improvements, including without limitation any use constituting a nuisance.

9. Indemnification.

9.1 General Tenant Indemnification. The Tenant shall indemnify and hold the County, its officers, representatives, employees, and agents ("Indemnitee"), harmless from, and assumes any and all liability for, any and all claims, liabilities, causes of action, obligations, damages, penalties, litigation, costs, charges and expenses (including, but not limited to, reasonable attorneys' fees, engineers' fees, architects' fees, and the costs and expenses of appellate action, if any), imposed on, incurred by, or asserted against Indemnitee, to the extent arising out of the acts or omissions, in whole or in part, of the Tenant, its officers, agents, employees, or independent contractors ("Indemnitor), in the fulfillment of this New Lease or in the conduct of activities on or near the Project site by Indemnitor, of any nature, whether foreseen or unforeseen, ordinary or extraordinary, structural or non structural, in connection with the use, occupancy, operation, maintenance or repair of the Project, the Project site, or the Improvements thereon. Any and all claims brought under the authority of or with respect to any local, state or federal environmental statute or regulation shall be governed by Section 9.4 and not this Section 9.1.

9.2 General County Indemnification. The County shall indemnify and hold the Tenant, its officers, representatives, employees and agents ("Indemnitee"), harmless from,

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and assumes any and all liability for, to the extent and within the limitations of Florida Statutes, Section 768.28, all claims, liabilities, obligations, damages, penalties, litigation, costs, charges and expenses (including, without limitation, reasonable attorneys' fees, engineers' fees, architects' fees, and the costs and expenses of appellate action, if any), imposed on, incurred by, or asserted against Indemnitee, to the extent they arise out of the negligent acts or omissions of the County, its officers or employees ("Indemnitor"), in the fulfillment of this New Lease or in the conduct of activities on or near the Project Site by Indemnitor, of any nature, whether foreseen or unforeseen, ordinary or extraordinary, structural or nonstructural, in connection with the County's obligations under this New Lease or under applicable statutes, regulations and tariffs, including Tariff No. 10, with respect to the operation of the Port. Any and all claims brought under the authority of or with respect to any local, state or federal environmental statute or regulation shall be governed by Section 9.3 and not this Section 9.2.

9.3 County Environmental Indemnification. The County either (i) has no knowledge that, at the time of execution of this New Lease, the Project Site has any condition of contamination that could give rise to liability of the Tenant for remediation, cleanup, damages, penalties, or costs of any kind, or (ii) has conducted a Phase 1 Environmental Inspection of the Project Site and identified any condition or contamination on the Project Site and either remedied such condition or contamination or presented a plan acceptable to Tenant whereby the County agrees to promptly remedy and pay for the costs of any required cleanup, damages, penalties and costs associated with such condition or contamination. The County agrees to indemnify and hold the Tenant, its officers, employees, agents, successors and assigns (the "Indemnitee") harmless from and assumes any and all liability for, any and all claims, liabilities, causes of action, obligations, damages, penalties, litigation, costs, charges and expenses (including, but not limited to, reasonable attorneys' fees, engineers' fees, architects' fees, and the costs and expenses of appellate action, if any) (collectively, "Claims"), imposed on, incurred by, or asserted against the Indemnitee by any other party or parties (including, without limitation, a governmental entity), to the extent arising out of, in connection with, or relating to the subject matter of, regardless of cause: (a) the County's breach of the covenant set forth above in this Section 9.3; (b) any environmental

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condition of contamination existing on the Project Site, or on or under property contiguous to the Project Site that migrates onto the Project Site, as of the Lease Commencement Date that may give rise to liability, even if not discovered until after the date thereof; (c) any violation of any environmental law or regulation with respect to the Project Site existing as of or prior to the execution date of this New Lease, even if not discovered until after the date hereof; or (d) any environmental condition of contamination occurring on the Project Site (including that occurring in any materials dredged), or on or under property contiguous to the Project Site that migrates onto the Project Site, after the date hereof; except to the extent, as to (b) through (d) above, that such conditions or violations were caused, created, or contributed to by the Tenant's operation or facilities or those of the Tenant's agents, employees, officers, independent contractors, invitees or guests. With respect to (b), (c) and (d) above, if a condition of contamination is discovered on the Project Site at any time after execution of this New Lease, the County shall not be required to indemnify the Tenant pursuant to this Section 9.3 for those economic damages or losses incurred by the Tenant as a result of the unavailability of the Project Site, such as loss of use, costs of alternative space, relocation costs, design and engineering and site preparation costs. However, the County will be responsible for indemnifying the Tenant as provided in this Section 9.3 with respect to claims asserted by any third party against the Tenant with respect to or as a result of such condition of contamination.

9.4 Tenant Environmental Indemnification. The Tenant shall comply with all federal, state and local environmental laws and regulations applicable to the use, storage and handling of hazardous substances, hazardous materials, industrial wastes and hazardous wastes in, on, or near the Project Site. The Tenant shall indemnify and hold the County, its officers, employees, agents, successors and assigns (the "Indemnitee") harmless from, and assumes any and all liability for, any and all claims, liabilities, causes of action, obligations, damages, penalties, litigation, costs, charges and expenses (including, but not limited to, reasonable attorneys' fees, engineers' fees, architects' fees, environmental response and remediation costs and the costs and expenses of appellate action, if any), imposed on, incurred by, or asserted against Indemnitee, by any party or parties (including, without limitation, a governmental entity), to the extent arising out of, in connection with, or relating

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to the subject matter of: (a) the Tenant's breach of the covenant set forth above in this Section 9.4; (b) any environmental condition of contamination caused or created by the Tenant, its agents, employees, independent contractors, invitees or guests or other third parties (except with respect to third parties to the extent such condition of contamination is caused or created by the County or its agents or employees); or (c) any violation by the Tenant, its agents, employees, independent contractors, invitees or guests of any federal, state or local environmental law with respect to the Project Site or other effected Port property occurring after the date hereof and caused by the Tenant's operation or facilities or those of the Tenant's agents, employees, officers, independent contractors, invitees or guests in the Port.

9.5 Survival of Indemnification. The foregoing indemnities shall survive the term of this New Lease and shall be in addition to any of either party's obligations for breach of a representation or warranty.

10. Insurance.

10.1 Insurance Required: In addition to such insurance as may be required by Federal, State or local law, Tenant shall furnish to the County Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- (a) Public Liability Insurance on a comprehensive basis in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. The County must be shown as an additional insured with respect to this coverage.
- (b) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used by the Tenant in connection with its operations under this Agreement in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.

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All insurance policies required pursuant to the terms of this Agreement shall be issued in companies approved or deemed admitted to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to Management, and no less than "Class V" as to Strength in accordance with the latest edition of "Best's Insurance Guide", published by A.M. Best Company, Oldwick, New Jersey (or its equivalent, subject to approval of the County Risk Management Division); or

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Insurance and must be members of the Florida Guaranty Fund.

10.2 Insurance Certificates Required: Prior to the commencement of operations hereunder and annually thereafter, Tenant shall furnish or cause to be furnished Certificates of Insurance to the County which certificates shall clearly indicate that:

- (a) Tenant has obtained insurance in the types, amounts and classifications as required for strict compliance with this Article;
- (b) The policy cancellation notification provisions specify at least thirty (30) days advance written notice of cancellation to the County; and
- (c) The County is named as "additional insured" with respect to Tenant's public liability policies.

On said insurance certificates, unless specifically shown to be excluded thereon, comprehensive public liability coverage shall include contractual liability, and notification of

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cancellation shall include notification of material changes in the policies. Certificates will indicate that no material modification or change in insurance shall be made without thirty (30) days written advance notice to the certificate holder.

The County reserves the right to require Tenant to provide such reasonably amended insurance coverage as it deems necessary or desirable, consistent with prevailing commercial practices at the Port, upon issuance of notice in writing to Tenant stating such changed coverages and the reasons for the change.

10.3 Compliance: Compliance with the requirements of this Article shall not relieve Tenant of its liability under any other portion of this Agreement or any other agreement between the County and Tenant.

10.4 Right to Examine: The County reserves the right, upon no less than fifteen (15) days' notice, to examine the original or true copies of policies of insurance (including but not limited to binders, amendments, exclusions, riders, and applications) to determine the true extent of coverage. Tenant agrees to permit such inspection at the offices of the County.

10.5 Workers Compensation. Tenant further covenants and agrees, at its expense, to take out and maintain at all times, all necessary workmen's compensation insurance covering all persons employed by the Tenant in and about the leased premises (including longshoremen and harbor workers coverage) as required by Florida Statute 440 or any successor thereto.

10.6 County Insurance Requirements. The County shall maintain insurance covering the full value of the New Parcel, New Warehouse, New Berth and all Improvements thereon, on an "all risk" basis, and with full waiver of subrogation clauses in favor of Tenant. The County may self-insure for these requirements.

11. Compliance with Laws, Ordinances, Etc. Throughout the term of this New Lease,

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the Tenant, at its sole cost and expense, shall comply with all present and future laws, ordinances, orders, rules and regulations of all federal, state, county, and municipal governments, departments, commissions, or offices (collectively, "Applicable Laws"), in each case having jurisdiction over the Project Site. In connection with its work pursuant to Section 21, the County shall comply with all Applicable Laws. The Tenant shall have the right to contest the validity of any Applicable Laws, or the application thereof to the Project Site, provided that such noncompliance shall not subject the Project Site to lien or sale and that the Tenant shall first deliver to the County a security reasonably satisfactory to the County, indemnifying and protecting the County against any liability, loss or injury by reason of such noncompliance. The Tenant shall promptly and diligently prosecute any such contest and keep the County advised at all times as to the status of such contest. The County shall cooperate in good faith with the Tenant in the prosecution of such contest, other than those involving County ordinances, rules and regulations.

12. Liens and Mortgages.

12.1 Prohibition of Liens and Mortgages. The Tenant shall not create or permit to be created or to remain in connection with the Project, the Project Site, the Improvements, or the Tenant's activities thereon, any liens or mortgages, and the Tenant shall discharge any lien, encumbrance or charge (levied on account of any Imposition or any mechanics', laborers', or materialmen's lien or security agreement) which might be or become a lien, encumbrance or charge upon the Project Site or any part thereof in accordance with Section 12.2 hereof.

12.2 Improvements. MSRC shall not construct any improvements to the New Warehouse or New Berth without the permission of the County, with such permission not to be unreasonably withheld. The County will make best efforts to provide its permission within forty five (45) days of Tenant's request. If such permission is granted by the County, MSRC must follow all State Statutes and County Ordinances applicable to the construction of improvements of public property.

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13. Waste. Tenant shall not commit, cause or allow to exist any waste of the Project Site or the Improvements.

14. Entry on Premises by County, Etc.

14.1 Entry on Premises. The Tenant shall permit the County and its authorized representatives to enter the Project Site at reasonable times, upon not less than 48 hours prior oral notice to the Area Response Manager or Vice President of the Tenant's Gulf Region, or their designees, for the purposes of inspecting the Project Site and verifying compliance by the Tenant with the terms of this New Lease; provided, however, that the County expressly retains such rights and power to enter the Project Site, at any time, in the exercise of its police powers or during periods of emergency as declared by the County Manager, the Port Director, or their designees.

14.2 Showings. During the last six months of the Initial Term or any Extended Term, upon reasonable notice to the Tenant, and provided the Tenant shall not have further extended the term as herein provided, the County shall have the right to enter the Project Site at reasonable times during usual business hours for the purpose of showing the same to prospective the Tenants, purchasers or mortgagees of the Project Site and the Improvements.

15. Destruction by Fire or Other Casualty. If any portions of the Improvements erected on the Project Site (including, without limitation, the New Warehouse or the New Berth) are damaged by fire or other casualty (including, without limitation, damage by wind, storm, or water), the County shall, within sixty (60) days after such fire or other casualty, deliver to Tenant a good faith estimate of the time needed to repair the damage. If a material portion of the Improvements are damaged such that Tenant is prevented from conducting its business at either the New Warehouse or the New Berth in a manner reasonably comparable to that conducted immediately before such fire or other casualty and the County estimates that the damage caused thereby cannot be repaired within 180 days after the fire or other casualty, then Tenant may (in its sole discretion) terminate this New Lease by delivering written notice to the County of its election to terminate within thirty (30) days after the good faith

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estimate referenced above has been delivered to Tenant. If Tenant so timely terminates the New Lease, rent for the portion of the premises rendered untenable by the damage shall be abated on a reasonable basis from the date of damage until the date of lease termination. If Tenant does not so timely terminate this New Lease, then the County shall repair the Improvements and rent for the portion of the premises rendered untenable by the damage shall be abated on a reasonable basis from the date of damage until the completion of the repair. In either case, the rent abatement calculation shall be in accordance with the formula provided in Section 6.3 hereof. In addition, and until either the damages are repaired or the New Lease is terminated, County shall use best efforts to provide alternative space or temporary repairs so as to allow Tenant to resume its spill response mission.

16. Prohibition on Assignments and Transfers. The Tenant shall not assign, mortgage or encumber this New Lease, in whole or in part, or sublet all or any portion of the Project Site without the prior written consent of the County; provided, however, that the Tenant may assign this New Lease to a successor corporation under the same terms, restrictions and conditions hereof with the prior written consent of the County, which consent shall not be unreasonably withheld, conditioned, or delayed.

17. Events of Default of the Tenant. In the event that anyone or more of the following events shall happen and not be remedied as herein provided an Event of Default shall be deemed to have occurred:

17.1 Breach of Special Covenants. DELETED.

17.2 Bankruptcy, Insolvency, Etc. The (i) entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the Tenant in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or any other similar law, or the appointing of a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Tenant or for any substantial part of the Tenant's affairs and the continuance of any such decree or order un stayed and in effect for a period of 90 consecutive days, or (ii) commencement by

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the Tenant of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other similar law, or the consent by the Tenant to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Tenant or for any substantial part of the Tenant's property or the making by the Tenant of a general assignment for the benefit of creditors or the taking of any action by the Tenant to authorize or effect any of the foregoing.

17.3 Breach of Covenant. If default shall be made by the Tenant in the performance of or compliance with any of the covenants, agreements, terms or conditions contained in this New Lease, and such default shall continue for a period of 30 days after written notice thereof from County to the Tenant specifying the nature of such default, or, in the case of a default or a contingency which cannot with due diligence be cured within such period of 30 days, the Tenant fails to proceed with all due diligence within such period of 30 days to commence cure of the same and thereafter to prosecute the curing of such default with all due diligence (it being intended that in connection with a default not capable of being cured with due diligence within 30 days that the time of the Tenant within which to cure same shall be extended for such period as may be necessary to complete the same with all due diligence, the period of such extension, however, not to exceed 45 days);

THEN THE COUNTY SHALL HAVE THE REMEDIES HEREBINAFTER PROVIDED.

17.4 Remedies. Cure.

(a) Right to Terminate. Upon the occurrence of an Event of Default, the County may give written notice to the Tenant stating that this New Lease and the term hereby demised shall expire and terminate on the date specified by such notice, and this New Lease, the term hereby demised, and the rights of the Tenant under this New Lease shall expire and terminate unless such default is fully remedied in a timely manner and all arrears of rent, and all other amounts payable by the Tenant under this New Lease, in each case within 60 days from the date of such notice, together with interest thereon at the maximum rate permitted by law from the time when the same became due and payable, and all costs and expenses incurred by or on behalf of the

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County in the premises, including reasonable attorneys' fees, shall have been fully and promptly paid by the Tenant to the County and all other defaults shall have been fully cured and made good or cured to the satisfaction of the County, in either of which events the consequences of such Event of Default shall be deemed to be annulled.

(b) Right to Cure. Upon the occurrence of an Event of Default, the County may take whatever actions are reasonably necessary to cure such Event of Default, including the hiring of attorneys, contracts, consultants, architects, engineers, laborers or others, purchasing the required goods or services and procuring necessary insurance or performance bonds. The Tenant shall be responsible for all costs, including attorney's fees and the fees of other professionals, incurred by the County pursuant to this section and such costs shall be billed to the Tenant in addition to any and all rent due hereunder. The Tenant shall pay all such additional costs and charges within 15 days after billing by the County.

(c) Remedies. Upon the occurrence of any Event of Default hereunder, the County at any time thereafter shall have the right to enjoin such breach and to invoke any right and remedy allowed herein, by law or in equity, or by statute or otherwise including, without limitation, the right of specific performance and remedies of law for damages and for reimbursement of expenses to the County in connection with any such action, including reasonable attorney's fees, costs, and appellate expenses.

17.5 Taking of Possession; Acceleration of Rent. Upon any expiration or termination of this New Lease or any termination by summary proceedings or otherwise, (a) the Tenant shall quit and peacefully surrender the Project Site to the County, without any payment therefor by the County, and the County, upon or at any time after any such expiration or termination, may without further notice, enter upon and re-enter the Project Site and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess the Tenant and remove the Tenant and all other persons and property from the Project Site and may have, hold and enjoy the Project Site and the right to receive all rental income of and from the same; and (b) the County shall be entitled to collect

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forthwith upon such termination as damages, and not as a penalty, an amount equal to the aggregate rent provided for in this New Lease for the residue of the Initial Term or then current Extended Term, as applicable, or five years, whichever is less; and (c) all obligations of the Tenant hereunder for additional rent, or Impositions or any portion thereof arising or accruing with respect to any period prior to such termination and any obligations of the Tenant under the indemnification provisions hereof (Section 9) arising or accruing with respect to any period prior to such termination hereof, in each case without regard to whether such matter is first noticed to the County prior to or subsequent to such termination; shall survive the termination hereof.

17.6 Agent for Service. The Tenant shall maintain a registered agent of the Tenant for service of process, which agent will be located in Dade County, Florida. The Tenant shall provide the name and address of such agent or any successor agent to the County in writing prior to the commencement of the lease term. If the Tenant shall fail to maintain such a registered agent in Dade County, Florida, service of process may be accomplished by public posting on the Project Site in the same manner and for the same period as provided in Florida Statutes, with written notice becoming effective at the time of posting.

17.7 Failure to Enforce Not a Waiver. No failure by either party to insist upon the strict performance of any covenant, agreement, term or condition of this New Lease or to exercise any right or remedy arising upon the breach thereof, and no acceptance by the County of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this New Lease to be performed or complied with by either party and no breach thereof shall be waived, altered or modified except by a written instrument executed by both parties. No waiver of any breach shall affect or alter this New Lease, but each and every covenant, agreement, term and condition of this New Lease shall continue in full force and effect with respect to any other then existing or subsequent breach hereof.

17.8 Rights Cumulative. Each right and remedy of the parties provided for in this

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New Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this New Lease or now or thereafter existing at law or in equity or by statute or otherwise (including, but not limited to specific performance) and the exercise or beginning of the exercise by the parties of anyone or more of such rights or remedies provided for in this New Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the parties of any or all other such rights or remedies provided for in this New Lease or now or hereafter existing at law or in equity or by statute or otherwise.

18. Notices.

18.1 Addresses. All notices, demands and requests which may or are required to be given hereunder shall, except as otherwise expressly provided, be in writing, delivered by personal service, or shall be sent by fed ex (or other express courier), or United States Registered or Certified mail (return receipt requested, postage prepaid), or by such other methods accepted by the parties in their regular course of dealings, to the parties at the following addresses:

To the Tenant:

Marine Spill Response Corporation
220 Spring Street, Ste. 500
Herndon, VA 20170
Attn: General Counsel

With a copy to:

Marine Spill Response Corporation
3838 N. Sam Houston Parkway East, Ste. 400
Houston, TX 77032
Attn: Contracts Administrator

To the County:

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Director Miami-Dade County Seaport Department
1015 North America Way, Second Floor
Miami, Florida 33132

or to such other addresses as either party may from time to time designate by written notice to the other party hereto.

18.2 When Deemed Delivered. Notices, demands and requests which may or shall be served in accordance with Section 18.1 hereof shall be deemed sufficiently served or given for all purposes hereunder at the earlier of (i) the time such notice, demand or request shall be received by the addressee, or (ii) ten (10) days after posting via United States Registered or Certified mail, return receipt requested, postage prepaid.

19. Quiet Enjoyment; Title.

19.1 Subject to the terms and conditions of this New Lease, the Tenant, upon paying the rent and all additional rent, Impositions and other charges herein provided for and observing and keeping all covenants, agreements and conditions of this New Lease on its part to be kept and performed, shall quietly have and enjoy the Project Site during the term of this New Lease, without hindrance or molestation by the County or anyone claiming under or through the County. This agreement shall be construed as a covenant running with the land. Nothing in this Section or any other section herein shall constitute a waiver of the County's exercise of its police powers under the law applicable to third parties generally.

19.2 County's Title. County represents and warrants as a condition of this Ground Lease that it possesses fee simple title to the Project Site subject to no encumbrances other than as set forth herein and that during the term hereof it shall not encumber the Project Site; that it is authorized to make this New Lease for the term hereof; that the provisions of this New Lease do not and will not conflict with or violate any of the provisions of existing agreements between County and any third party; that the certificate of occupancy, when

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issued, will allow the Tenant to use the Improvements for the purposes set forth herein, subject to applicable federal, state and local laws, ordinances and building codes; and that County will deliver the Project Site free of all tenants and occupants (except as herein provided) and claims thereto.

20. [Reserved]

21. County Obligations. In addition to the other obligations of the County set forth herein, the County shall:

21.1 Provide utility service to the New Warehouse and New Berth;

21.2 Provide and maintain a permanent access road, at least 24 feet in width, to the New Warehouse and New Berth in accordance with the same standards and of the same type as other access roads in the Port. Such access road may be relocated if found to be necessary in the reasonable discretion of the Port Director or his designee;

21.3 Dredge or cause to be dredged the New Berth for the Tenant's vessels and barge, and the approach thereto, and maintain adequate water depth throughout the term of this New Lease.

22. Non-Merger of Leasehold. There shall be no merger of this New Lease or of the leasehold estate hereby created with the fee estate in the Project Site or any part thereof by reason of the fact that the same Person may acquire or hold, directly or indirectly, this New Lease or leasehold estate hereby created or any interest in this New Lease or in such leasehold estate and the fee estate in the Project Site or any interest in such fee estate.

23. Eminent Domain.

23.1 Complete Condemnation. If, during the term hereof, the whole of the Project

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Site shall be taken under the power of eminent domain by any public or private authority then this New Lease and the term hereof shall cease and terminate as of the date of such taking. The Tenant may, upon the written approval of the County, continue to occupy the Project Site, subject to the terms of this New Lease, for all or such part of the period between the date of such taking and the date when possession of the Project Site shall be taken by the taking authority, and any unearned rent or other charges, if any, paid in advance, shall be refunded to the Tenant. If required, the Tenant shall procure from the applicable governmental authority, at the Tenant's sole cost and expense, all necessary consents and authorizations to continue to occupy the Project Site from and after the date of such taking.

23.2 Partial Condemnation. If, during the term hereof, any public or private authority shall, under the power of eminent domain, make a taking resulting in the reduction of the Project Site or Improvements by 15% or more or in the Tenant's not being able to use the remainder thereof for the purposes contemplated hereby, then the Tenant may, at its election, terminate this New Lease by giving the County notice of the exercise of its election within thirty (30) days of the date of notice to the Tenant of such taking (or purchase). In the event of termination by the Tenant under this Section 23.2, the term hereof shall cease and terminate as of the last day of the calendar month in which such notice of exercise of its election to terminate has been given, and any unearned rent or other charges, if any, paid in advance, shall be refunded to the Tenant.

23.3 Rent Adjustment. In the event that the Tenant does not elect to terminate this New Lease pursuant to Section 23.2 above, then this New Lease and the term hereof shall continue in full force and effect, and the base annual rent shall be adjusted in accordance with the amount of property actually taken by the condemning authority.

23.4 Allocation of Award. In the event of a complete taking (or partial taking resulting in a termination of this New Lease) of the Project Site and/or the Improvements, the County shall be entitled to recover that portion of the condemnation award (or settlement) fairly attributable to the value of the land and or Improvements taken. Nothing contained herein shall prohibit the Tenant's claiming relocation damages against the taking authority in

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any appropriate proceeding.

23.5 Temporary Taking or Other Deprivation. DELETED.

24. Force Majeure. Either party hereto shall be excused from performing any of its respective obligations or undertaking provided in this New Lease, excepting any of its respective obligations or undertakings to pay any sums of money under the applicable provisions hereof, for so long as the performance of such obligations are prevented or significantly delayed, retarded or hindered by act of God, fire, flood, hurricane, acts of war (declared or undeclared), invasion, or insurrection, not within the reasonable control of the respective party, if such party hereto gives written notice of such delay or hindrance to the other party within 20 calendar days of the occurrence of such event.

25. Miscellaneous.

25.1 Time is of the Essence. Time is of the essence of each and all of the terms and provisions of this New Lease.

25.2 Access to Premises. The County agrees to provide the Tenant, its agents, employees and invitees with reasonable access to the leased premises 24 hours a day, 365 days a year during the term of this New Lease; provided, however, that the Tenant agrees to comply with any and all reasonable rules and regulations of the Port of Miami regarding access to secured areas of the Port and regarding the proper identification of all visitors to the Project Site.

25.3 Prior Obligations of the County. The Tenant assumes no obligation to make payment for the County of any debts incurred by the County prior to the Lease Commencement Date but the Tenant shall do nothing to impair or interfere with the satisfaction of such debts or commitments.

25.4 Successors. The covenants, agreements, terms, provisions and conditions

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contained in this New Lease shall apply to and inure to the benefit of and be binding upon the County and the Tenant and their respective successors and assigns, except as expressly otherwise herein provided, and shall be deemed covenants running with the respective interests of the parties hereto.

25.5 Surviving Covenants. Each provision of this New Lease which may require performance in any respect by or on behalf of either the Tenant or the County after the expiration of the term hereof or its earlier termination shall survive such expiration or earlier termination.

25.6 Provisions Deemed Conditions and Covenants. All of the provisions of this New Lease shall be deemed and construed to be "conditions" and "covenants" as though the words specifically expressing or importing covenants and conditions were used in each separate provision hereof.

25.7 Headings. The headings and section captions in this New Lease are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this New Lease or in any way affect this New Lease as to matters of interpretation or otherwise.

25.8 No Oral Change or Termination. This New Lease and the exhibits appended hereto and incorporated herein by reference contain the entire agreement between the parties hereto with respect to the subject matter hereof, supersedes any prior agreements or understandings between the parties with respect to the subject matter hereof, and no change, modification or discharge hereof in whole or in part shall be effective unless such change, modification or discharge is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought. This New Lease cannot be changed or terminated orally.

25.9 Governing Law: Severability. This New Lease shall be governed by and construed in accordance with the laws of the State of Florida. If any term or provision of this

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New Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remaining provisions of this New Lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this New Lease shall be valid and enforceable to the fullest extent permitted by law.

25.10 Counterparts. This New Lease may be executed in one or more counterparts, each of which so executed shall be deemed to be an original and all of which together shall constitute but a single document.

25.11 Litigation. In case of any litigation between the parties hereto regarding the subject matter hereof, the losing party shall pay all reasonable costs and expenses (including reasonable attorneys' fees at all tribunal levels) of the prevailing party. If the County is the prevailing party and is represented in litigation by the County Attorney or his designee, "reasonable attorneys' fees" shall be calculated using the customary rates of compensation per hour for attorneys of similar experience and seniority in private practice in Dade County, Florida, without regard to the actual compensation received by members of the County Attorney's Office.

25.12 Gender of Words. Words of any gender in this New Lease shall be held to include the masculine, feminine and neuter gender and words in singular number shall be held to include the plural.

25.13 Sovereign Immunity: Statutory Authority. The County represents and warrants that it has the statutory authority to enter into this New Lease, that, when executed, this New Lease shall be binding and enforceable in accordance with its terms, and that it is not immune from suit or judgment resulting from any contractual claim or action brought against it by the Tenant pursuant to the express terms of this New Lease. Notwithstanding the foregoing, nothing contained in this New Lease shall be construed to constitute either a complete or partial waiver by the County of any of its rights, restrictions or immunities arising under Florida Statute Section 768.28.

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26. Helicopter Pad. The parties' rights and obligations with respect to use of any helicopter pads now or hereafter located within the Port are set forth in Exhibit 5 hereto.

27. Additional Fill. DELETED.

28. Security. The County shall be ensure that the New Parcel (including the New Warehouse and New Berth) meets all federal, state and local security requirements at no cost to Tenant. Without limitation, Tenant shall not be obligated to install fencing or other security measures, or post guards at the New Parcel, New Warehouse, Interim Berth or New Berth. Should new federal, state or local security requirements be subsequently imposed, the cost of complying with such new measures shall be borne by the County.

29. Relocation Costs; Possibility of Interim Berth. Tenant shall not be required to relocate from the New Warehouse or New Berth, except in the case of a relocation from an Interim Berth as provided below. If Tenant agrees to remain at its Original Berth at the commencement of this New Lease, or should Tenant agree to accept the second of the identified berth locations on Exhibit A to the Option Agreement with the understanding that ultimately Tenant would relocate to the third identified berth location on Exhibit A, then in either case such berth shall be deemed the Interim Berth for the purposes of this New Lease. Tenant's use and occupancy of such Interim Berth, and the County's maintenance and other obligations with respect to such Interim Berth, shall be subject to the terms and conditions of this Lease and shall be the same as those with respect to the New Berth. Notwithstanding the foregoing, if the Interim Berth is located at the second identified berth location on Exhibit A to the Option Agreement, the adjacent laydown area would be available to Tenant on an "as needed" basis upon ten (10) days' notice to the County, unless there is a spill event in which event the County will make the laydown area immediately available. The County may ask Tenant to relocate from the Interim Berth to another of the berth locations identified on Exhibit A to the Option Agreement, and Tenant shall be obligated to so relocate on a one-time basis, provided the New Berth is one of the locations identified on Exhibit A to the Option Agreement as acceptable to Tenant, and so long as the New Berth is improved such

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that it meets the specification and requirements under the Option Agreement (including without limitation the requirements of Exhibit C). If Tenant so relocates, Tenant shall be reimbursed by the County for utility connection charges and other out-of-pocket costs incurred specific to the move to such berth (but not for the cost of vessel fuel or MSRC crew costs). In the event of such berth relocation, the parties shall amend Exhibit 1 to reflect the specifics of this New Berth.

30. Port Tariff. As provided in Section 4.1, MSRC shall not be subject to any Port tariffs or other such charges except for Tariff fees on additional services requested by MSRC from the County and which are not addressed by the terms of this New Lease (e.g., MSRC shall be subject to Tariff fees for the use of County cranes, or for fresh water deliveries to MSRC vessels). The parties intend that, on the leased premises, the terms of this New Lease shall govern. Outside of the leased premises, and while transiting through other County property, MSRC shall comply with relevant Tariff provisions such as those regarding overall Port security, Port traffic laws, and shall clean up any spills caused by MSRC. MSRC shall also pay the annual Tariff permit fee.

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IN WITNESS WHEREOF, the undersigned parties have executed this New Lease as of the date first above written.

ATTEST:

MARINE SPILL RESPONSE CORPORATION

By: _____

By: _____

Title: _____

Title: _____

(SEAL)

ATTEST:

MIAMI-DADE COUNTY, FLORIDA, a
Political Subdivision of the State of Florida

By: _____

By: _____

Title: _____

Title: _____

(SEAL)

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EXHIBIT 1

LEGAL DESCRIPTION
PROJECT SITE

[NOTE: this would be one of the sites identified in the Option Agreement as acceptable to MSRC; the specifics of the site ultimately selected would be inserted here.

NEW NOTES 9.12.13:

- 1) IF THE PARTIES AGREE THAT MSRC WILL REMAIN AT THE ORIGINAL BERTH AT THE BEGINNING, THIS SHOULD BE NOTED HERE

- 2) THE SQUARE FOOTAGE OF THE EXCLUSIVE DEDICATED (BUT NOT TEMPORARY) BERTH LAYDOWN AND PARKING AREAS SHOULD BE SPECIFICALLY IDENTIFIED, AND THE TOTAL SQUARE FOOTAGE (WAREHOUSE PLUS BERTH PARKING & EXCLUSIVE DEDICATED BERTH LAYDOWN PLUS SETBACK AREA REQUIRED BY CODE) SHOULD BE CLEARLY SPECIFIED AS THIS IS ESSENTIAL TO THE RENT CALCULATION.

EXHIBIT 2

DESCRIPTION OF IMPROVEMENTS

The Improvements shall be completed to MSRC's satisfaction and shall meet the requirements of the Option Agreement and this New Lease. Without limitation, the New Warehouse shall meet the following requirements, and shall be designed and constructed in accordance with the following process, as per Exhibit B to the Option Agreement:

**EXHIBIT B
SPECIFICATION AND REQUIREMENTS FOR
NEW WAREHOUSE AND OFFICE SPACE**

The County shall improve the New Warehouse location, at the County's expense, by the construction of a new warehouse and office facility meeting or exceeding the following specifications and requirements, or their alternatives as agreed to by MSRC. All construction shall be of new material unless otherwise required by LEED or applicable code, and shall meet any and all related code requirements, including without limitation those regarding wind conditions with all construction to meet or exceed requirements regarding applicable local hurricane strength.

The following list (items 1 to 12) provides certain general specifications and requirements. The parties recognize that this list is not exhaustive and that additional planning and design will be required after the option is exercised, with this collaborative planning and design continuing throughout the programming phase and the Final Construction Documents phase. This additional planning and design will, e.g., provide specifics of lay-out, wiring, finishes, etc., and review and ensure the functionality of the proposed improvements and their ability to support MSRC's spill response mission. At the time of exercise of the option, the parties agree to promptly meet (with their architects and engineers or "A/E") to finalize this programming and design. Exhibit B-2 provides further specifics as to the planning and design and as to the process the parties agree to follow in the programming and Final Construction Documents phases.

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All construction shall be in accordance with the 100% Final Construction Documents, as approved by MSRC in accordance with Exhibit B-2, and be completed to MSRC's reasonable satisfaction and acceptance, with such acceptance not to be unreasonably withheld. MSRC and its representatives shall have access to the construction site during construction to verify that the work is in accordance with the 100% Final Construction Documents. MSRC shall not be required to accept the facility until the facility is substantially complete as per the 100% Final Construction Documents and the County Building Department has issued a Temporary Certificate of Occupancy and until MSRC has inspected the facility and confirmed that all other requirements have been met and that construction meets the desired specifications and MSRC's operational needs, not to be unreasonably withheld. The parties shall conduct a walk-through at such time the County believes all such requirements have been met. MSRC shall accept the facility if only minor corrective work remains, in which case the parties shall agree on a punch list of corrective items and a timeline in which the County is to correct such items.

General Specifications and Requirements: As noted above, the parties recognize that this list is not exhaustive and that additional planning and design will be required after the option is exercised, with this collaborative planning and design continuing throughout the programming phase and the Final Construction Documents phase.

1) Building Requirements: The building shall be a stand-alone structure or a conjoining building with a separation wall (of concrete construction, unless otherwise agreed by MSRC) between MSRC's New Warehouse and the conjoining use of the building. The building shall include both warehouse space and office space, and shall be not less than 24,000 square feet (sf) under roof in total. The acceptable building lay-out, including office, warehouse and mezzanine, shall be as set forth in Exhibit B-1. Immediately adjacent to the building shall be a fenced and gated laydown area of at least 12,000 sf (as more specifically detailed in item 5 below).

2) Office Space: The building shall include at least 3,600 sf of air-conditioned office space for the office and other spaces identified immediately below (plus hallway space and other common area), and with mezzanine above, as detailed in Exhibit B-1. All interior work shall also

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be concrete construction unless otherwise agreed to by MSRC, and shall be in accordance with applicable code, and shall include:

- a) Ten (10) offices of at least 150 sf each – for a total of at least 1,500 sf
- b) One (1) large meeting/training area – minimum 600 sf
- c) One (1) kitchen area – minimum 400 sf
- d) Restroom locker area – minimum of 500 sf
- e) Men's restroom – at least 350 sf with 8 full lockers and washer/dryer connection
- f) Women's restroom – at least 150 sf with 2 full lockers
- g) Communication/Server room – at least 100 sf and meeting MSRC's air-conditioning requirements for such room
- h) Interior lighting meeting MSRC requirements including 2 x 4 fluorescent fixtures with four (T-series) 48" energy efficient tubes with diffuser with quiet electronic ballast

3) Communications: The building shall support MSRC's communication needs and the needs of MSRC's mobile communications suites, including:

- a) Telephone/Data Drops – to be Cat 6 cabling with specific drops to be identified on plans during development. All data cabling to terminate to a patch panel in a lockable, dedicated Server room. This Server room to be in air-conditioned space.
- b) Emergency Communications Package (ECP, aka Comms Suite) and Support Trailer power specifications to be 240V, single phase, with outdoor (exterior mounted) receptacles; must be able to accommodate 220V, 3 prong Appleton connector. The ECP/Comm Suite receptacle to be 100 Amp and the Support Trailer 60 Amps 208 V.

4) Warehouse Storage Area: To be not less than 24,000 sf (less the square footage of the office space as specified above) of inside, enclosed and secured area; ceiling height to be at least 25 feet. Lighting to be ceiling mounted mercury vapor, unless otherwise agreed to by MSRC. Overhead doors to maximum wind-load resistant and measure at least 20' H x 24' W. Flooring to be sealed-concrete and to withstand heavy-duty use, including 36,000 lb capacity lift truck and other vehicular traffic.

5) Laydown Yard: Minimum of 12,000 sf of outdoor fenced area immediately adjacent to the building. In the alternative, an additional

12,000 sf can be provided inside the building under roof. Surface to be either concrete or asphalt, unless otherwise agreed to by MSRC and compliant with LEED.

6) Parking Area: Reserved spaces for at least ten (10) vehicles adjacent to building. Surface material to be asphalt or concrete capable of withstanding heavy duty usage, including 36,000 lb. capacity lift truck and other commercial vehicular traffic. If Warehouse and laydown are co-located with the berth, then a total of 20 spaces are required.

7) FDLE Compliant: Area to be compliant with FDLE and other Federal, State and County security requirements.

8) 24/7 Access: MSRC shall have 24-hour access to immediately adjacent main public roads at all times to ensure its ability to respond to oil spills.

9) Utilities: Dedicated separate meters for both electrical and water.

10) Compliance: The warehouse, office and laydown space must be, and must remain, in compliance with all applicable laws and County codes, at the County's expense.

11) Finishings: The County shall pay the reasonable cost of all finishings. The finishings shall be as noted below, unless otherwise agreed to by MSRC. All colors and styles must be approved by MSRC.

- a) Carpeting - nylon, level loop, 28 oz., with 4" cove base.
- b) Composition Tile - vinyl 12 x 12 for restrooms, server room and kitchen
- c) Interior Paint - Laytex, egg-shell finish.

12) Site Security System: The facility must be gated and include a security system with card reader access generally consistent with MSRC's current system. If co-located in a conjoining building, the MSRC space shall have separate and secured ingress and egress. To the extent it is reasonably feasible to do so (and such equipment is safe and fully functional, and represents current technology) the County or its Transferee shall have the right to re-use MSRC's existing equipment (from the Original Parcel) in the new facilities to be

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constructed for MSRC. MSRC shall maintain the system at its own cost, after installation completed.

MSRC may, in its sole discretion, accept space meeting the above specifications and requirements within an existing County building.

The above shall be at County expense including, without limitation, permitting fees, impact fees and all other costs associated with construction.

EXHIBIT B-2

MSRC and the County shall collaborate in the programming phase, which is where the Port and MSRC agree on the full scope of the project to reflect the above and to meet MSRC's operational needs at the new location, and develop the details and information that needs to be passed on to the A/E to design the project. MSRC (and its A/E) shall continue to be involved during the development of the detailed design drawing and construction plans, resulting in the 100% Final Construction Documents. MSRC shall have the right to review and approve the Final Construction Documents at the 30%, 60% and 90% review periods. All Construction Documents shall be consistent with the full project scope as agreed upon in the programming phase, with the requirements of this Option Agreement and its Exhibits, and with MSRC's operational needs.

When the Final Construction Documents are 30% complete, the County's A/E will submit them to MSRC for its review and approval. MSRC will submit its comments and requested changes within fifteen (15) days. While the County and MSRC are reviewing the 30% plans, the A/E will continue to work towards the 60% plans, incorporating changes from MSRC as they are received. Once MSRC's changes have been incorporated, and once the A/E reaches 60% plans, the A/E will submit them to MSRC for its review and approval. MSRC will submit its comments and requested changes within fifteen (15) days. While the County and MSRC are reviewing the 60% plans, the A/E will continue to work towards the 90%

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plans, incorporating changes from MSRC as they are received. When the A/E believes it has reached 90% plans, the County's A/E will submit them to MSRC for a final review to confirm that they are consistent with the scope mutually agreed upon in the programming phase, that they meet MSRC's operational needs and are consistent with the requirements of this Option Agreement and its Exhibits, and incorporate MSRC's comments from the 30% and 60% stages. MSRC will submit its comments and requested changes within fifteen (15) days. Once MSRC's final changes are made and the 90% Final Construction Documents are approved by MSRC, the 90% Final Construction Documents shall be submitted to the County Building Department and required regulatory agencies for dry run permitting.

These same 90% documents will be used to solicit competitive contractors' bids on the project. The only changes made from the 90% and 100% Final Construction Documents shall be those required to conform with Building Department and required regulator's comments. Provided, however, that MSRC will be advised of any changes required by the Building Department or other regulators that materially change the agreed-upon design or otherwise impact MSRC's operational needs, and given fifteen (15) days to either accept the 100% Final Construction Documents or object. Unless MSRC so objects, the 100% Final Construction Documents shall be used to obtain a Building Permit and execute the work. Two (2) complete sets of the 100% Final Construction Documents shall be provided to MSRC.

Both parties agree to act reasonably in their review of proposed documents and to not unreasonably withhold acceptance of documents, recognizing however that MSRC has important operational needs and that MSRC can withhold its approval at any stage if these operational needs are not met or other requirements of this Option Agreement are not satisfied.

The New Berth Improvements shall also be completed to MSRC's satisfaction and shall meet the requirements of the Option Agreement and this New Lease. Without limitation, the New Berth shall meet the following requirements, and shall be designed and constructed in accordance with the following process, as per Exhibit C to the Option Agreement:

EXHIBIT C

**SPECIFICATION AND REQUIREMENTS FOR
NEW BERTH**

The County shall improve the New Berth location, at the County's expense, by the construction of a new berth (or improvement of an existing berth) meeting or exceeding the following specifications and requirements, or their alternatives as agreed to by MSRC. All construction shall be of new material unless otherwise required by LEED or applicable code, and shall meet any and all related code requirements, including without limitation those regarding wind conditions with all construction to meet or exceed requirements regarding applicable local hurricane strength.

The following list (items 1 to 12) provides certain general specifications and requirements. The parties recognize that this list is not exhaustive and that additional planning and design will be required after the option is exercised, with this collaborative planning and design continuing throughout the programming phase and the Final Construction Documents phase. This additional planning and design will, e.g., provide specifics of lay-out, wiring, finishes, etc., and review and ensure the functionality of the proposed improvements and their ability to support MSRC's spill response mission. At the time of exercise of the option, the parties agree to promptly meet (with their architects and engineers or "A/E") to finalize this programming and design. Exhibit C-1 provides further specifics as to the planning and design and as to the process the parties agree to follow in the programming and Final Construction Documents phases.

All construction shall be in accordance with the 100% Final Construction Documents, as approved by MSRC in accordance with Exhibit C-1, and be completed to MSRC's reasonable satisfaction and acceptance, with such acceptance not to be unreasonably withheld. MSRC and its representatives shall have access to the construction site during construction to verify that the work is in accordance with the 100% Final Construction Documents. MSRC shall not be required to accept the berth until the facility is substantially complete as per the 100% Final Construction Documents and the County Building Department has issued a Temporary Certificate of

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Completion or Occupancy (or other similar document issued by the appropriate authorities evidencing that the berth is safe and suitable for use) and until MSRC has inspected the facility and confirmed that all other requirements have been met and that construction meets the desired specifications and MSRC's operational needs, not to be unreasonably withheld. The parties shall conduct a walk-through at such time the County believes all such requirements have been met. MSRC shall accept the facility if only minor corrective work remains, in which case the parties shall agree on a punch list of corrective items and a timeline in which the County is to correct such items.

General Specifications and Requirements: As noted above, the parties recognize that this list is not exhaustive and that additional planning and design will be required after the option is exercised, with this collaborative planning and design continuing throughout the programming phase and the Final Construction Documents phase.

- 1) Berth Area: Not less than 300 linear feet of bulk headed space. Berth shall be constructed of concrete or other acceptable materials that will meet pier loading requirements of 500 lbs per sf and shall be capable of supporting an 80,000 lb vehicle. Mooring to consist of bollards/cleats for head lines, stern lines, and spring lines capable of a sustained load of 45 tons.
- 2) Exclusive Use: The berth space shall be dedicated to the exclusive use of MSRC vessels, and no other vessels shall be allowed to use the berth, unless otherwise agreed in writing by MSRC and the County or its Transferee. MSRC shall not be required to pay any Port tariffs or charges for its use.
- 3) Laydown Area: Approximately 45' x 250' (11,250 sf) of concrete or asphalt laydown area adjacent to berth. If the berth is an Interim Berth (as defined in Section 29 of the New Lease) at berth location "2" on Exhibit A-1, or if the New Berth is adjacent to the New Warehouse at location "3" on Exhibit A-1, the parties agree that this laydown area can be made available on an "as needed" basis for Tenant, rather than on an exclusive basis. Such temporary laydown area shall be provided as set forth in Section 29 of the New Lease.

- 4) Parking Area: Reserved spaces provided for at least ten (10) vehicles immediately adjacent to berth / laydown area
- 5) Specialized Electrical Hookup: Shore power to consist of 480V, 3 Phase, 200 Amps. To the extent it is reasonably feasible to do so (and such equipment is safe and fully functional) the County or its Transferee shall have the right to use MSRC's existing equipment (from the original berth) in the new facilities to be constructed for MSRC.
- 6) FDLE Compliant: Area to be compliant with FDLE and other Federal, State and County security requirements.
- 7) 24/7 Access: MSRC shall have 24-hour access at all times to ensure its ability to respond to oil spills – access must be both land side (for crew and supplies to reach the vessel) and water side (for safe navigation of vessel to open ocean).
- 8) Utilities: The berth shall meet shore power needs (see requirements above) and provide for potable water. Water and electrical shall be separately metered for the berth. In addition, a fire main (hydrant) shall be within local fire code proximity to the vessel berth.
- 9) Telecommunications: 25 pair shielded telecommunications cable to be provided from nearest telco POP to end of pier, or alternative as agreed to by MSRC. Cable to be enclosed in dedicated conduit, i.e. separated from the conduit required for power to the vessel.
- 10) Water Depth and Dredging: The berth and approach channels shall have adequate water depth (not less than 20 feet depth) for MSRC operations, and shall not have any surrounding uses that would impede the safe and immediate ingress and egress of MSRC vessels to open water. The County shall bear all costs for present or future dredging of the berth and approach channels.
- 11) Compliance: The New Berth must be, and must remain, in compliance with all applicable laws and County codes, at the County's expense.

- 12) Site Security System: Unless otherwise agreed to by MSRC (for example, such agreement could be based on the County demonstrating other adequate Port security measures are sufficient to MSRC's satisfaction) the facility must be gated and include a security system with card reader access. To the extent it is reasonably feasible to do so (and such equipment is safe and fully functional, and represents current technology) the County or its Transferee shall have the right to re-use MSRC's existing equipment (from the Original Parcel) at the New Berth. MSRC shall maintain the system at its own cost, after installation is completed.

MSRC may, in its sole and reasonable discretion, accept an existing berth meeting the above specifications and requirements.

The above shall be at County expense including, without limitation, permitting fees, impact fees and all other costs associated with construction.

An Interim Berth (as defined in Section 29 of the New Lease) shall meet the above requirements, with the accommodation provided in (3) above for laydown area.

EXHIBIT C-1

MSRC and the County shall collaborate in the programming phase, which is where the Port and MSRC agree on the full scope of the project to reflect the above and to meet MSRC's operational needs at the new location, and develop the details and information that needs to be passed on to the A/E to design the project. MSRC (and its A/E) shall continue to be involved during the development of the detailed design drawing and construction plans, resulting in the 100% Final Construction Documents. MSRC shall have the right to review and approve the Final Construction Documents at the 30%, 60% and 90% review periods. All Construction Documents shall be consistent with the full project scope as agreed upon in the programming phase, with the requirements of this Option Agreement and its Exhibits, and

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with MSRC's operational needs.

When the Final Construction Documents are 30% complete, the County's A/E will submit them to MSRC for its review and approval. MSRC will submit its comments and requested changes within fifteen (15) days. While the County and MSRC are reviewing the 30% plans, the A/E will continue to work towards the 60% plans, incorporating changes from MSRC as they are received. Once MSRC's changes have been incorporated, and once the A/E reaches 60% plans, the A/E will submit them to MSRC for its review and approval. MSRC will submit its comments and requested changes within fifteen (15) days. While the County and MSRC are reviewing the 60% plans, the A/E will continue to work towards the 90% plans, incorporating changes from MSRC as they are received. When the A/E believes it has reached 90% plans, the County's A/E will submit them to MSRC for a final review to confirm that they are consistent with the scope mutually agreed upon in the programming phase, that they meet MSRC's operational needs and are consistent with the requirements of this Option Agreement and its Exhibits, and incorporate MSRC's comments from the 30% and 60% stages. MSRC will submit its comments and requested changes within fifteen (15) days. Once MSRC's final changes are made and the 90% Final Construction Documents are approved by MSRC, the 90% Final Construction Documents shall be submitted to the County Building Department and required regulatory agencies for dry run permitting.

These same 90% documents will be used to solicit competitive contractors' bids on the project. The only changes made from the 90% and 100% Final Construction Documents shall be those required to conform with Building Department and required regulator's comments. Provided, however, that MSRC will be advised of any changes required by the Building Department or other regulators that materially change the agreed-upon design or otherwise impact MSRC's operational needs, and given fifteen (15) days to either accept the 100% Final Construction Documents or object. Unless MSRC so objects, the 100% Final Construction Documents shall be used to obtain a Building Permit and execute the work. Two (2) complete sets of the 100% Final Construction Documents shall be provided to MSRC.

Both parties agree to act reasonably in their review of proposed documents and to not unreasonably withhold acceptance of documents, recognizing however that MSRC has important operational needs and that MSRC can

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withhold its approval at any stage if these operational needs are not met or other requirements of this Option Agreement are not satisfied.

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EXHIBIT 3

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<u>PERIOD</u>	<u>YEARS</u>	<u>RATE PER ANNUM</u>
Initial Term	Commencing 14 days after Lease Commencement Date, and for Remainder of Current Term	\$ 1.00 PER SQUARE FOOT
First Extension Term	5 Years	\$ 1.10
Second Extension Term	5 Years	\$ 1.21
Third Extension Term (if applicable)	5 Years	\$ 1.33

For purposes of the above calculation, and in accordance with Article 4 of this New Lease, base annual rent for the entire leased premises shall be calculated by multiplying (i) the square footage of the portion of the New Parcel containing the New Warehouse, as approved by MSRC, which includes but is not limited to, the square footage of the New Warehouse, the square footage of the parking and laydown areas associated with the New Warehouse, and the square footage of the minimum "setback" area surrounding the New Warehouse or other additional area as required by State Statute or County Code to meet Zoning and Building requirements, plus (ii) the square of the parking area and any exclusive and dedicated (but not any temporary) laydown area of the New Berth or Interim Berth, as applicable, times (iii) the above annual rates per square foot.

The parties agree that the total square footage is _____ square feet, consisting of _____ square feet for the New Warehouse and _____ square feet for the Berth parking and exclusive dedicated Berth laydown areas.

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Rent for any temporary (as needed) Berth laydown area shall be separately calculated and invoiced in accordance with the provisions of Section 4.6.

FINAL

EXHIBIT 4

DELETED

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EXHIBIT 5

HELICOPTER PAD

The Tenant shall have the nonexclusive right to use in connection with its operations during the term of this New Lease any helicopter pad developed by the County within the Port for the use of tenants within the Port or the public. Such use will be coordinated with the Port Director, shall be conducted in accordance with all applicable laws and Port tariffs, and shall not be conducted in such a manner as to unreasonably interfere with the rights of the Port, other tenants within the Port or third parties to use such helicopter pad. The Tenant shall pay for its use of the helicopter pad the same rate as charged to other private users.



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EXHIBIT 6

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EXHIBIT 7

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