

LICENSE FOR PETROLEUM REMEDATION SYSTEM PLACEMENT

License Agreement made this ____ day of _____, 2004 between the City of Lincoln, Nebraska, a municipal corporation, hereinafter "City" and Whitehead Oil Company "Grantee".

1. Description of Premises. CITY agrees to allow Grantee to occupy and use a certain parcel of real property owned by the City of Lincoln located generally in the area of 25th Street and Randolph Street, as shown on the attached Exhibit A, which is incorporated herein by this reference.

2. Term of Agreement. The primary term of this License Agreement will be for ten (10) years, and will commence upon the execution of this agreement.

This License Agreement may thereafter be renewed by the mutual consent of Grantee and the City. The City represents that at the time it enters into this Agreement it has no present intention not to renew this Agreement for any subsequent Term.

3. Use of Premises. The premises will be used for the purpose of installing, constructing, maintaining, repairing, operating and removing Grantee's petroleum remediation system equipment. Grantee will submit plans and specifications for any piping, buildings or facilities that it intends to use as part of the remediation system, to CITY prior to construction. The work shall be constructed in accordance with plans and specifications approved by the Department of Public Works and Utilities. The piping, where it is underground, shall be laid to a minimum depth of 4 feet from the top of the pipe to the surface of the ground. All land surfaces and all pavement shall be restored to their original condition after the work is completed on each segment of the project. "As built" drawings shall be furnished to the City by Grantee to show the precise locations, depths, and nature of all materials installed in accordance with the agreement. The City shall have the right at any time when, in its judgment, it becomes necessary or advisable to require a change of location or removal of said piping as a matter of safety, or on account of change of grade, resurfacing, repair, reconstruction of any street, alley, sidewalk, or other public ground, or the construction of any structure thereon, or for any other reason, all of which shall be done at the cost and expense of Grantee in a good and workmanlike manner. After submission of the plans, CITY shall accept or reject Grantee's plans in an expeditious manner. Approvals will not be unreasonably withheld. If CITY does not approve the plans and specifications, this Agreement will be void at Grantee's election, and terminate without penalty. The approved plans and specifications shall be attached hereto as Exhibit B.

After CITY accepts the building plans, Grantee shall construct and install, at Grantee's cost, the facilities at the location depicted on Exhibit A, in accordance with the

approved plans and specifications, Exhibit B. The facilities may be installed by Grantee or by any of Grantee's agents or contractors.

Grantee may, at its own cost and expense, install, maintain and operate on the premises, only the equipment necessary for the operation of the remediation system in accordance with the plans approved by CITY.

All work to be performed on the premises shall be performed in a good and workmanlike manner, and in accordance with all applicable governmental laws, ordinances, regulations and codes. Grantee shall obtain all permits necessary for such construction. All contractors working on the premises shall carry statutory worker's compensation insurance and liability insurance coverages as are customarily maintained by reputable general contractors in the Lincoln, Nebraska area.

4. Fees. Grantee shall pay to CITY a fee to occupy and use the premises and space under the premises. The annual Fee shall be \$396 (\$1.50 per lineal foot for a total of 264 feet) payable in annual installments on or before the execution day of this agreement and each and every annual anniversary thereafter. All payments shall be made payable to and mailed to the following address:

City of Lincoln
Margaret Remmenga
555 South 10th Street
Lincoln, NE 68508

5. Access to CITY Property. It is acknowledged that some of the facilities and appurtenances thereto are constructed on CITY property which is a vital part of CITY's operations. Grantee shall operate its facilities on the premises in such a manner so that the operation does not interfere with CITY's operation of its property nor will it interfere with access to the property by CITY personnel, agents or contractors. CITY retains the right to use the premises at any time in connection with the need of CITY to provide service to its customers or citizens. CITY will endeavor to do so in such a manner so as to not interfere with the construction, operation and maintenance of the Grantee's facilities. CITY retains the right to use the premises in any ways that do not interfere with Grantee's uses.

6. Taxes. Since the real property is owned and used by a governmental entity (CITY), it is tax exempt. Grantee shall be responsible for and pay all taxes before any penalties or interest shall accrue thereon, as an additional fee, if property taxes or other taxes are subsequently levied against the premises. Grantee will be responsible for payment of all personal property taxes assessed directly upon and arising solely from its possession or use of the facilities or buildings on the premises.

7. Payment of Utilities. Grantee shall fully and promptly pay for all utility service of every kind furnished to the premises for Grantee's uses throughout the term. CITY shall not be liable for any damage to equipment or loss of revenue to Grantee

resulting from the interruption of utility services. All fees due under this Agreement shall continue notwithstanding any interruption of power or other required utility facilities, except for the willful act of CITY.

8. Liability. CITY shall not be liable for damage to Grantee's improvements or for any loss or damage to any of Grantee's property upon the premises, except for the negligent act of CITY. Grantee shall at all times during the term of this agreement carry at its own expense public liability insurance of not less than One Million Dollars (\$1,000,000.00) for the injury to or death of one person, and not less than Two Million Dollars (\$2,000,000.00) for the injury to or the death of two or more persons arising out of a single accident or occurrence on the premises, naming CITY as an additional insured on such policy. The City may, at its discretion, change the required amounts of such insurance during the term of this agreement. Grantee shall furnish CITY with a certificate of such insurance policy which shall provide such insurance policy shall not be reduced or the coverages changed without first having given CITY thirty (30) days written notice of such change. Any contractor or subcontractor performing work on the premises for or on behalf of Grantee shall carry workers' compensation insurance, comprehensive general liability and automobile insurance covering the work in such amounts and with companies satisfactory to CITY with said policies naming CITY as an additional insured.

9. Bond. During the term of the agreement, Grantee shall keep in full force and effect a continuing bond in the sum of \$5000. Such bond shall be conditioned upon the Grantee strictly complying with all applicable laws and regulations and the provisions of this agreement.

10. Indemnification. To the fullest extent permitted by law, the Grantee shall indemnify and Hold Harmless the City, its officers, agents and employees from and against Claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the Grantee's use and occupation of the premises, that results in any Claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by Grantee or anyone directly or indirectly employed by Grantee, or anyone for whose acts any of them may be liable, regardless of whether or not such Claim, damage, loss or expense is caused in part by a party indemnified hereunder. This section shall not require Grantee to indemnify or Hold Harmless the City for any losses, Claims, damages, and expenses arising out of or resulting from the sole negligence or omission of the City.

11. Events of Default. Default shall occur if any one or more of the following events shall happen:

a. Grantee shall default in the punctual payment of the license fee and such default shall continue for thirty (30) days after receipt of written notice from CITY;
or

b. If either party shall neglect or fail to perform or observe any of the material provisions of this Agreement, and such failure is not cured within thirty (30) days after receipt of written notice thereof from the other party, the other party may, at its option, 1) cure the failure at the defaulting party's expense, or 2) terminate this Agreement. If any such default cannot reasonably be cured within thirty (30) days, the defaulting party will not be deemed to be in default under this Agreement if it commences curing such default within the thirty (30) day period and thereafter diligently pursues such cure to completion.

12. Environmental Laws. Grantee will indemnify, protect, defend and hold harmless CITY from and against all claims, suits, actions, causes of action, assessments, losses, penalties, costs, damages and expenses, including, without limitation, attorneys' fees, sustained or incurred by CITY pursuant to any federal, state or local laws, implementing regulations, common law or otherwise dealing with matters relating to Hazardous Substances released by Grantee in, upon or beneath the premises and the improvements on the premises.

The indemnification in this section specifically include without limitation costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority.

13. Nebraska Law. This agreement shall be construed and enforced in accordance with the laws of the State of Nebraska and any legal action brought in respect thereto shall be brought either in the state courts of the State of Nebraska located in Lincoln, Nebraska, or if applicable, in the United States District Court located in Lincoln, Nebraska.

14. Binding Effect. This Agreement shall inure to the benefit and be binding upon Grantee, its successors or assigns.

15. Additional Agreements. Grantee acknowledges the right and authority of CITY to enter into additional agreements for other users on CITY's property so long as such agreement does not interfere with Grantee's use of its facilities.

16. Entire Agreement. This agreement contains the entire understanding of the parties hereto with respect to the conditions of this agreement and supersedes all prior agreements and understandings between the parties with respect to such subject matter. The representations, warranties, undertakings, or promises, whether oral, implied, written, or otherwise, have been made by either party hereto to the other unless expressly stated in this agreement or unless mutually agreed to in writing between the parties hereto after the date hereto, and neither party has relied on any verbal representation, agreements, or undertakings not expressly set forth herein.

17. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier, to the following addresses:

CITY: City of Lincoln
555 S. 10Th
Lincoln, NE 68508
TEL: (402) 441-6000
FAX: (402) 476-0528

With a copy to: Steven Huggenberger
Assistant City Attorney
575 S. 10th / Room 4201
Lincoln, Nebraska 68508
TEL: (402) 441-7286
FAX: (402) 441-8812

GRANTEE: Whitehead Oil Company
2537 Randolph Avenue
Lincoln, NE

A party may change its address to which any notice or demand may be given by written notice thereof to the other party.

18. TERMINATION. In the event Grantee's petroleum remediation project is completed prior to the end of the term of this agreement, Grantee shall be allowed to terminate this agreement and remove their facilities.

19. REMOVAL OF FACILITIES. Grantee shall remove all piping and facilities from the City's property at the end of the term of this agreement or upon termination. All land surfaces and all pavement shall be restored to their original condition after the removal is completed at the cost of the Grantee. If Grantee fails to remove the piping and facilities or fails to restore the property to its original condition, the City may undertake such removal and restoration work and charge the Grantee for the costs.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF LINCOLN, NEBRASKA,

By: _____

Mayor Coleen Seng

WHITEHEAD OIL COMPANY,
GRANTEE

Mark A Whitehead
Mark A Whitehead President

Title:

EXHIBIT A

DESCRIPTION OF PREMISES

Construction of a petroleum remediation system will require occupancy below public property consisting of the following: two, 3" diameter, directionally drilled high-density polyethylene (HDPE) pipe, effluent lines (Lines B and C as denoted in Sheet 2 of Exhibit B) crossing Randolph Street near its intersection with 25th Street and a 4" diameter, directionally drilled HDPE pipe, discharge line running from the treatment facility on the Whitehead Oil property at 2537 Randolph Street to Antelope Creek under City property (Proposed Discharge Line as denoted in Sheet 2 of Exhibit B). Directional drilling techniques will allow line installation with minimal disturbance to the publicly owned street and park property or underlying utilities.

Line B can be described as crossing public property starting at a point approximately 43 feet south and 32 feet west of the intersection of the centerlines of 25th Street and Randolph Street (Control Point #2 as designated on Sheet 2 of Exhibit B) and exiting public property at a point approximately 32 feet north and 86 feet west of above said intersection.

Line C can be described as crossing public property starting at a point approximately 41 feet south and 22 feet west of the intersection of the centerlines of 25th Street and Randolph Street (Control Point #2 as designated on Sheet 2 of Exhibit B) and exiting public property at a point approximately 32 feet north and 70 feet west of above said intersection.

The discharge line can be described as crossing public property starting at a point approximately 32 feet south and 20 feet west of the southwest corner of the Whitehead Oil Company building located on the west edge of the Whitehead Oil Company property and terminating at a point located approximately 88 feet south and 87 feet west of the said corner of the said building.

EXHIBIT B

Plans: Dual Phase Vacuum Extraction Remediation System

Whitehead Oil Company

Lincoln, Nebraska

June 2004

NDEQ NO. UG# 040793-RM-1350

Drawing Numbers: 1008883 through 1008885 and 100886 through 100892

Specifications and Contract Documents:

Dual Phase Vacuum Extraction Remediation System

Whitehead Oil Company

Lincoln, Nebraska

2004

UG# 040793-RM-1350

OA Project No. 2002-0363.04

June 2004