



April 5, 2011

## GEOHERMAL LEASE BID APPLICATION

### APPLICANT AGREEMENT

I agree, if awarded a lease on the referenced Lease Tract, to comply with all terms and conditions of said lease and with all applicable laws that so govern said lease, and as those laws may be amended.

### APPLICANT IDENTIFICATION TO APPEAR ON LEASE (type/print)

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
(Include +4 Code)  
Telephone: ( ) \_\_\_\_\_

### AREA DESCRIPTION

Tracts: Long Island-667,751,754,755 Acres: 2,200  
County: Cameron

### BID SUBMISSION

Royalty: \_\_\_\_\_ %

Bonus Amount: \$4,400

Sales Fee Amount: \$66.00

This Sales Fee is 1 ½% of the cash bonus as provided in Section 32.110 of the Natural Resources Code

MGL. NO.

312

APPLICANT NAME

\_\_\_\_\_  
(same as above)

STATE OF TEXAS  
TAX I.D. #

\_\_\_\_\_  
(must be an 11-digit number)

SIGNATURE OF  
AGENT

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(type/print name)

# **The General Land Office Sealed Bid Geothermal Lease Sale**

## **Bidding Instructions**

The General Land Office is offering the following Tract located in Cameron County (Long Island/Laguna Madre/Brownsville Navigation District) for lease:

<b><u>Marginal No.</u></b>	<b><u>Area</u></b>	<b><u>Acres</u></b>	<b><u>County</u></b>
312	Long Island-Laguna Madre	2,200	Cameron

**Note:** Marginal No. 312 consists of the following four state tracts: 667, 751, 754, 755

### **Resource Management Codes – April 5, 2011 Geothermal Lease Sale**

<b><u>State Tract No.</u></b>	<b><u>NMFS</u></b>	<b><u>TPWD</u></b>	<b><u>USFWS</u></b>	<b><u>COE</u></b>	<b><u>THC</u></b>
667	DA,ME,CF	DA,OA	DA,OA	MA	MA
751	DA	DA	DA	RW	MK
754	DA	DA	DA	RW	MA
755	DA	DA,TC	DA	RW	MA

The information and definitions for the above referenced Resource Management Codes can be found on pages 28-30 in the enclosed Notice for Bids booklet.

**Note:** These tracts may be subject to existing oil and gas leases and other encumbrances. The Geothermal Lessee must coordinate with other Lessees and Permittees to ensure that rights granted under such leases and permits are not unreasonably affected.

The School Land Board will receive sealed bids until **10:00 am (CST) on April 5, 2011**, at the General Land Office in Austin, Texas. Bids received after 10:00 am will not be considered. The bonus amount and sales fee amount have already been filled in. Make sure you fill in your bid for the Royalty Rate. The royalty rate for years 11 thru 30 (or termination of the lease) shall be the bid amount plus 1.75%.

Subject to the right to reject any bid, the School Land Board will lease the tract to the highest bidder. Further, the General Land Office (GLO) reserves the right to negotiate the terms of this lease with any bidder. Notwithstanding the preceding, the GLO will consider any alternate arrangement of these terms that the Commissioner of the GLO determines is in the best interest of the state.

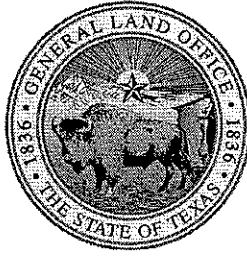
Each bid must be submitted on a Geothermal Bid Application and include all of the following:

1. Bidder's name and address
2. Bidder's TAX I.D. Number

3. A separate check for the bonus amount
4. A separate check for the Sales Fee amount
5. Royalty Rate bid

All Geothermal Energy Bids must be sealed and addressed to the COMMISSIONER OF THE TEXAS GENERAL LAND OFFICE, 1700 N. CONGRESS AVE., STEPHEN F. AUSTIN STATE OFFICE BUILDING, AUSTIN. TEXAS, 78701-1495. Each envelope containing a geothermal energy bid should be endorsed "SEALED BID FOR GEOTHERMAL LEASE, April 5, 2011." Each geothermal energy bid must include separate checks for the Bonus Amount and the Sales Fee. All checks should be payable to the Commissioner of the Texas General Land Office. Bids from unsuccessful bidders will be returned.

# Texas General Land Office



**GEOHERMAL LEASE: GEL – 00000\_\_**

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**ATTACHMENT A-1: MAP OF LEASED PREMISES**

**ATTACHMENT B: REQUIRED INSURANCE**

**1**

**GEOTHERMAL LEASE FOR PRODUCTION OF GEOTHERMAL-  
GENERATED ELECTRICITY, GL - 00000\_\_\_**

By virtue of the authority granted by Chapter 141 of the Texas Natural Resource Code (Code) and subject to all rules and regulations promulgated pursuant to the Code, amendments to the Code, and all other applicable statutes, the State of Texas (Lessor), acting by and through Jerry Patterson, the Commissioner of the Texas General Land Office (GLO) who is acting for and on behalf of the Texas School Land Board (Board), hereby grants to \_\_\_\_\_ (Lessee), a lease of state-owned lands (Lease), as definitively described in **Attachment A** attached hereto (Leased Premises).

**RECITALS**

WHEREAS, the Leased Premises were, after being duly advertised, offered for lease on the \_\_\_\_\_, lease sale, at 10:00 o'clock a.m., by the Commissioner of the GLO and the Board, for the sole and only purpose of exploring for, drilling for, developing, mining, producing, and operating wells for the recovery of geothermal energy and associated resources (hereinafter collectively referred to as "Geothermal Energy") that may be found and produced from the Leased Premises; and

WHEREAS, after all bids and remittances which were received up to said time have been duly considered by the Commissioner of the GLO and the Board at a regular meeting in the GLO, on \_\_\_\_\_ (hereinafter the "Effective Date"), and it was found and determined that \_\_\_\_\_ whose address is \_\_\_\_\_ had offered the highest and best bid for a lease of the Leased Premises and is, therefore, entitled to receive a lease thereon:

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Lease, and for other good and valuable consideration identified in this Lease, the receipt and sufficiency of which is acknowledged by both parties, the Lessor has agreed to grant to the Lessee this exclusive Lease of state-owned lands on the stated terms and conditions that follow:



## ARTICLE I: DEFINITIONS AND INTERPRETIVE PROVISIONS

### 1.1 Definitions

For the purpose of this Lease, the terms listed below are defined as follows:

“Affiliated Party” means a subsidiary, parent, or any other entity that the Lessee or an owner of the Lessee has a financial interest in by stock ownership of ten percent (10%) or more. Conversely, a non-affiliated party is defined as one without any of the aforementioned characteristics.

“Anniversary Date” refers to the anniversary date(s) of this Lease with respect to the Effective Date.

“Board” means the School Land Board.

“By-products” means any other element found in a geothermal formation which is brought to the surface, whether or not it is used in geothermal heat or pressure inducing energy generation, as definitively defined in Section 141.003 of the Code.

“Code” refers to the Texas Natural Resources Code.

“Commercial Production” means the production of Electricity or Electricity Products from the Geothermal Energy on the Leased Premises for sale on a commercial basis to a third party, which such sale shall be based on an arm’s length negotiation.

“Commissioner” refers to the commissioner of the GLO.

“Contracted Capacity” means the portion of the Project Capacity under contract with a term of thirty (30) days or more, as more definitively described in Section 4.3.3.

“Deeper Depths” refers to all depths 100 feet below the deepest producing perforations.

“Effective Date” means the date that this Lease becomes binding on the parties, which shall be \_\_\_\_\_.

“Electricity” or “Electricity Products” means (i) electricity, or generation-based ancillary services, from the Project, meeting the prevailing requirements of ERCOT protocols, and (ii) the capacity of the Project to produce electricity.

“ERCOT” means the Electric Reliability Council of Texas.

"Force Majeure Condition" means the state or condition where an event that is beyond the control of the Lessee suspends the Lessee's obligations to comply with certain covenants of the Lease under certain conditions, as more definitively described in Section 7.21.

"Generally Accepted Accounting Principles" or "GAAP" means the conventions, rules, and procedures that define approved accounting practices at a particular time and are issued by the Financial Accounting Standards Board for use by accountants in preparing financial statements. The principles include not only broad guidelines of general application but also detailed practices and procedures.

"Geothermal Energy" refers to the geothermal energy and associated resources on the Leased Premises, as definitively defined in Section 141.003 of the Code, which include:

- (a) products of geothermal processes, embracing indigenous steam, hot water and hot brines, and geopressured water;
- (b) steam and other gasses, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;
- (c) heat or other associated energy found in geothermal formations; and
- (d) any by-product derived from them.

"GLO" refers to the Texas General Land Office.

"Gross Revenue" means the sum of:

- (a) the total amount of money or other consideration (without subtraction of operating expenses) received by Lessee or any Affiliated Party from the sale of Electricity, Electricity Products, By-products, and/or Geothermal Energy (hereinafter referred to as the "Products") produced or created by the Lessee through the Improvements on the Leased Premises; plus
- (b) the total amount of money or other consideration received by Lessee as compensation for lost production capability and intended to replace revenues that would have otherwise been received for the sale of the Products, including, but not limited to, payments for production lost due to transmission or production curtailments, payments under turbine availability or power curve warranties, or the portion of any applicable insurance payment for business interruption or other covered losses.

If Products are sold to an Affiliated Party, then the gross revenue from the sale of Products under such a contract shall be determined by a competent and mutually agreeable independent third-party.

The sale of the Products is inclusive of the consideration received for the sale of the power and all of the ancillary environmental benefits, such as credits, credit certificates, or similar items, including, but not limited to, renewable energy credits (collectively the "Credits") as defined in 16 Texas Administrative Code 25.173 (or the successor thereto); but specifically excluding any and all federal production tax credits, investment tax credits, and any other tax credits (collectively the "Investment Tax Credits").

"Hazardous Substances" means any substance or material defined or designated as a hazardous waste, toxic substance, or other pollutant or contaminant, by any applicable law or regulation.

"Improvements" refers to any and all equipment used to produce and/or create the Products on the Leased Premises, including, but not limited to, conversion turbines, supporting structures, well sites, pipelines, power plants, platforms and footings, electrical transformers and substations, electrical distribution and transmission lines, interconnection facilities, staging areas, and any related equipment for the construction, installation, operation, and maintenance of any such equipment or facilities installed and operated by the Lessee on the Leased Premises. Notwithstanding the preceding, Improvements shall not include i) equipment or devices that existed on the Leased Premises prior to this Lease and/or ii) equipment or devices installed by the GLO.

"Inoperable Well" refers to a well incapable of producing sufficient Geothermal Energy for the Commercial Production of Electricity.

"Insolvency Event" means any of the following:

- (a) Any writ, judgment, warrant of attachment, execution, or similar process issued or levied against a substantial part of the Lessee's properties, and any such proceeding or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution, or similar process shall not be released, vacated, or fully bonded within ninety (90) days after commencement, filing, or levy;
- (b) The Lessee files a voluntary petition for liquidation, or equivalent relief, under the United States Bankruptcy Code or of a pleading in any court of record admitting in writing its inability to pay its debts as they become due;
- (c) Any general assignment, composition, marshalling of assets, or other similar arrangement with respect to all or some of its creditors, undertaken under U.S. federal, state, or foreign law, including the U.S. Bankruptcy Code;

- (d) The Lessee files an answer admitting the material allegations of, or consenting to or defaulting in answering, a petition for involuntary relief filed against it in any proceeding under the U.S. Bankruptcy Code; or
- (e) The Lessee acquiesces in the appointment of a receiver, trustee, custodian, conservator, liquidator, mortgagee in possession (or agent thereof), or other similar person for itself or a substantial portion of its property or business.

"Lease" refers to this geothermal lease.

"Leased Premises" means the state-owned lands, as definitively described in **Attachment A**.

"Lessee" refers to Geo Texas or a permitted assignee.

"Lessor" refers to the State of Texas, acting by and through Jerry Patterson, the Commissioner of the GLO.

"Off-Site Improvements" means any equipment that is required to produce or transmit the Products from the Leased Premises to a sales point that is installed outside of the Leased Premises or the Retained Acreage.

"Operable Well" refers to a well capable of producing sufficient Geothermal Energy for the Commercial Production of Electricity.

"Partial Termination" refers to the termination of the Leased Premises with respect to those areas not encompassed in the Retained Acreage, as more definitively described in Section 3.3.

"Primary Term" refers to the initial ten (10) years of this Lease from the Effective Date.

"Production Commencement Date" means the date on which the Lessee begins Commercial Production of the Electricity.

"Production Royalty" means the royalty, as definitively described in Section 4.3.1, due to the Lessor by the Lessee beginning on the Production Commencement Date.

"Products" means those products commercially produced or created on the Leased Premises and sold by the Lessee, including Electricity, Electricity Products, By-products, and/or Geothermal Energy.

"Project" means the Improvements, Off-Site Improvement, and any other assets useful and necessary for the Commercial Production, creation, and sale of the

Electricity from the Leased Premises, as well as any ancillary Products.

"Project Capacity" means the aggregate megawatt capacity of the Electricity generated from the Geothermal Energy located on the Leased Premises at any given time.

"PSF" means the Permanent School Fund.

"Records" means all records, accounts, contracts, and data, as definitively described in Section 7.15.

"Reports" means all reports, contracts, statements, or related work product, as definitively described in Article V, that the Lessee is required to provide to the Lessor under this Lease.

"Retained Acreage" means the acreage retained by Lessee, as definitively described in Section 3.3 of this Lease.

"State" means the State of Texas and any state agency; as well as the Board or agency identified in this Lease and their officers, employees, or authorized agents.

"Uncontracted Capacity" means the Project Capacity other than Contracted Capacity, as more definitively described in Section 4.3.3.

"Waste" refers to "oil and gas waste," which includes materials to be disposed of or reclaimed that have been generated in connection with activities associated with the exploration, development, and production of Geothermal Energy, as defined in Title 16, Rule 3.8 of the Texas Administrative Code.

## **1.2 Interpretive Provisions**

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms;
- (b) The term "including" is not limiting and means "including without limitation" and, unless otherwise expressly provided herein, (i) references to leases (including this Lease) and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent that such amendments and other modifications are not prohibited by the terms of this Lease, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation;
- (c) The captions and headings of this Lease are for convenience of reference only and shall not affect the interpretation of this Lease;

- (d) All attachments referenced within this Lease and any amendments are attached hereto and are considered part of the terms of this Lease;
- (e) This Lease may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each shall be performed in accordance with its terms;
- (f) All due dates and/or deadlines referenced in this Lease that occur on a weekend or holiday shall be considered as if occurring on the next business day. For example, if a deliverable is due on Saturday and the Monday of that week is a holiday, then the due date shall be on Tuesday; and
- (g) All time periods in this Lease, shall commence on the day after the date on which the applicable event occurred, report is submitted, or request is received. For example, if the Lessor has 60 days to review the Lessee's report, the 60 days commence on the day after the Lessor receives the report.

### **1.3 Accounting Principles**

Unless the context otherwise clearly requires, all accounting terms shall be construed, and all financial computations required under this Lease shall be made, in accordance with GAAP, consistently applied.

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## **ARTICLE II: GRANTING CLAUSE; RESERVATIONS**

### **2.1 Granting Clause**

In consideration of the payment of the amounts stated in Article IV of this Lease and according to the covenants and commitments herein agreed to be kept and performed by the Lessee, the Lessor grants, leases, and lets to the Lessee an exclusive geothermal lease on the Leased Premises for the purpose of researching and developing a Project to convert the Geothermal Energy on the Leased Premises to Electricity or other beneficial use and for the subsequent collection and transmission of that Electricity or Geothermal Energy to market. Pursuant to this Lease, the Lessee shall have the exclusive right to make use of and convert the Geothermal Energy on the Leased Premises to Electricity. Aside from Electricity, the Lessee shall also have the exclusive right to collect and use any other Products created, produced, or generated as a result of the Lessee's extraction and conversion of the Geothermal Energy on the Leased Premises to Electricity or other beneficial use.

### **2.2 Scope of Granting Clause**

The scope of this grant is limited to the development of the aforementioned Project on the Leased Premises and any other related activities that include, but are not limited to:

- (a) installing any research and/or measuring equipment necessary to analyze the potential of the Geothermal Energy on the Leased Premises;
- (b) accessing the Leased Premises for permitting, site analysis, extraction of soil and water samples, and other geotechnical analyses and tests necessary to determine the feasibility of converting the Geothermal Energy to Electricity;
- (c) constructing, installing, using, replacing, upgrading, relocating, removing, maintaining, and operating the Improvements necessary for the Project;
- (d) extracting, developing, producing, processing, and treating the Geothermal Energy from the Leased Premises for the purpose of producing Products; and
- (e) transporting, disposing, injecting, and re-injecting any Waste back into the Leased Premises.

The Lessee shall continuously monitor Geothermal Energy production and injection wells. If the Lessee's ongoing exploration, development, or utilization activities are having a significant adverse effect on the Geothermal Energy resources or any other natural resources, as solely determined by the

Commissioner of the GLO, the lessee shall suspend activity on the Leased Premises within ten (10) days of notice until remedied.

### **2.3 Easements**

Easements for connecting communication lines, transmission lines, pipelines, substations, and other necessary Off-Site Improvements on Permanent School Fund (PSF) lands not within the Leased Premises shall be granted by the Lessor subject to the provisions of the Texas Natural Resources Code Chapter 51, Subchapter G at the sole cost and expense of the Lessee. The Lessor agrees to cooperate with the Lessee to obtain any such easements necessary for the transmission or delivery of the Electricity produced by the Improvements, as well as the transportation of any Waste. Notwithstanding the preceding sentence, any necessary easements over privately owned lands must be obtained solely by the Lessee and at the sole cost and expense of the Lessee.

### **2.4 Reservations**

The Lessor excepts and reserves the full use of the Leased Premises and all rights with respect to its surface and subsurface for any and all purposes except for those granted to Lessee. The aforementioned excepted and reserved full use of the Leased Premises by the Lessor includes, but is not limited to, the rights of ingress and egress and use of the Leased Premises by the Lessor, its surface lessees, and its mineral lessees, for purposes of exploring for and producing the minerals which are not covered, or which may not be covered in the future, under the terms of this Lease, but which may be located within the boundaries of the Leased Premises. All of the rights in and to the Leased Premises retained by the Lessor and all of the rights in and to the Leased Premises granted to the Lessee in this Lease shall be exercised in such a manner that neither shall unduly interfere with the operations of the other.

### **2.5 As Is**

The Lessee has inspected the physical and topographic condition of the Leased Premises and accepts the same "as is" in their existing physical and topographic condition. The Lessee further acknowledges that it is not relying upon any representation or warranty by the Lessor regarding any aspect of the Leased Premises. The Lessor disclaims any and all warranties of merchantability, suitability, or fitness for any purpose, and any other warranty whatsoever not expressly set forth in this Lease. The Lessor and the Lessee hereby agree and acknowledge that the use of the terms "grant" or "convey" in no way implies that this Lease or the Leased Premises are free of liens, encumbrances, or prior rights. The Lessee is hereby put on notice that any prior grant or encumbrance may be of record and the Lessee is advised to examine all records of the GLO. The provisions of this section shall survive the expiration or earlier termination of this Lease.



## **ARTICLE III: TERM**

### **3.1 Term**

Except as otherwise provided for in this Lease, this Lease shall be for a term of ten (10) years from the Effective Date (hereinafter "Primary Term"), and, beginning on the Production Commencement Date, for thirty (30) years thereafter as long as Electricity is Commercially Produced from the Leased Premises. At the end of the aforementioned thirty (30) years, this Lease shall expire, unless an extension is requested and granted. Not later than one hundred eighty (180) days prior to the expiration of this Lease, the Lessee may advise the Lessor of its desire to obtain an extension of the Lease and enter into negotiations regarding terms and conditions.

### **3.2 Cessation, Drilling, and Reworking**

- (a) After the expiration of the Primary Term, if production of Geothermal Energy from the Leased Premises should cease from any reason, this Lease shall terminate, unless the Lessee commences either additional drilling or reworking operations within sixty (60) days after such cessation. This Lease shall remain in full force and effect for so long as such operations continue in good faith and in a workmanlike manner without interruptions totaling more than sixty (60) days. Any reworking operations must be of a material nature and may encompass any of the Improvements.
- (b) If such drilling or reworking operations result in the production of Geothermal Energy, the Lease shall remain in full force and effect for so long as there is Commercial Production of Electricity from the Geothermal Energy in the Leased Premises. Notwithstanding the preceding, this Lease expires thirty (30) years from the Production Commencement Date.
- (c) If the drilling or reworking operations result in the completion of a well incapable of producing sufficient Geothermal Energy for the Commercial Production of Electricity (hereinafter an "Inoperable Well"), the Lease shall terminate, unless the Lessee commences additional drilling or reworking operations within sixty (60) days after the completion of the Inoperable Well. This Lease shall remain in full force and effect for so long as such operations continue in good faith and in a workmanlike manner without interruptions totaling more than sixty (60) days.

The Lessee shall give written notice to the GLO within thirty (30) days of any cessation of production.

### **3.3 Retained Acreage**

#### **(a) Horizontal**

In the event this lease is in force and effect two (2) years after the expiration date of the Primary Term, there shall be a Partial Termination as to all depths 100 feet below the deepest producing perforations (hereinafter "Deeper Depths"), unless on or before two (2) years after the Primary Term the Lessee pays an amount equal to one-half (1/2) of the bonus originally paid as consideration for this Lease. If such amount is paid, this Lease shall be in force and effect as to such Deeper Depths, and said termination shall be delayed for an additional period of two (2) years and so long thereafter as there is Commercial Production from such Deeper Depths covered by this Lease.

#### **(b) Identification and Filing**

Within thirty (30) days after Partial Termination of this Lease, the Lessee shall execute and record a release(s) containing a satisfactory legal description of the acreage and/or depths not retained. The recorded release(s), or a certified copy of same, shall be filed in the GLO, accompanied by the filing fee prescribed by the GLO rules in effect on the date the release is filed. If the Lessee fails or refuses to execute and record such release(s) within ninety (90) days after being requested to do so by the GLO, the Commissioner at his sole discretion may designate by written instrument the acreage and/or depths to be released and record such instrument at the Lessee's expense in the county or counties where the Lease is located and in the official records of the GLO, and such designation shall be binding upon the Lessee for all purposes. If at any time after the effective date of the Partial Termination, the applicable field rules are changed or the well or wells located thereon are reclassified so that less acreage is thereafter allocated to said well or wells for production purposes, this Lease shall thereupon terminate as to all acreage not thereafter allocated to said well or wells for production purposes.

### **3.4 Use of Water; Surface**

The Lessee shall have the right to use water produced on the Leased Premises necessary for operations under this Lease and solely upon the Leased Premises; provided, however, the Lessee shall not use potable water or water suitable for livestock or irrigation purposes for Geothermal Energy operations without the prior written consent of the Lessor. Subject to its obligation to pay surface damages, the Lessee shall have the right to use so much of the surface of the land that may be reasonably necessary for drilling and operating wells and transporting and marketing the production there from, such use to be conducted under conditions of least injury to the surface of the land. The Lessee shall pay surface damages in an

amount set by the GLO fee schedule that is effective on the date when the activity requiring the payment of surface damages occurs.

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## ARTICLE IV: CONSIDERATION

As consideration for the grant of this Lease, the Lessee agrees to and shall pay the Lessor as follows:

### 4.1 Bonus

The Lessee shall pay a one-time bonus payment of Two Dollars (\$2.00) per acre upon the Effective Date of this Lease.

### 4.2 Annual Delay Rentals

If there is no Commercial Production of Electricity on or before each anniversary date of this Lease (hereinafter the "Anniversary Date"), this Lease shall terminate as to both parties, unless the Lessee on or before each Anniversary Date shall tender to the Commissioner of the GLO, the following sums:

Due Date	Annual Rent
1 <sup>st</sup> Anniversary of Effective date	\$3.00 per acre
2 <sup>nd</sup> Anniversary of Effective date	\$3.00 per acre
3 <sup>rd</sup> Anniversary of Effective date	\$3.00 per acre
4 <sup>th</sup> Anniversary of Effective date	\$3.00 per acre
5 <sup>th</sup> Anniversary of Effective date	\$3.00 per acre
6 <sup>th</sup> Anniversary of Effective date	\$3.00 per acre
7 <sup>th</sup> Anniversary of Effective date	\$3.00 per acre
8 <sup>th</sup> Anniversary of Effective date	\$3.00 per acre
9 <sup>th</sup> Anniversary of Effective date	\$3.00 per acre

The aforementioned payments shall operate as Annual Rentals and cover the privilege of deferring the commencement of Production of Electricity for twelve (12) months from said date.

### 4.3 Royalties

#### 4.3.1 Production Royalty

From the Production Commencement Date and for a period of ten years thereafter, the Lessee shall pay the Lessor a Production Royalty payment on a monthly basis, subject to Sections 4.3.2 through 4.3.5, equal to the percentage bid amount of Gross Revenues receive for sale of Geothermal Energy to be used for generation of Electricity or Electricity Products.

Commencing with the 11<sup>th</sup> year from the Production Commencement Date, and continuing until the expiration of the lease, the Production Royalty payable to Lessor shall be equal to the percentage bid amount plus 1.75%.

Geothermal Energy used for purposes other than generating electricity will require a Production royalty payment determined by the Board after review of the associated Production Plan required by Section 5.1.

#### 4.3.2 Minimum Annual Royalty

During any year after the expiration of the Primary Term of this Lease, the Production Royalty shall in no event be less than an amount equal to an Three Dollars (\$3.00) per acre; otherwise, there shall be due and payable on or before the last day of the month succeeding the Anniversary Date a sum equal to the Three Dollars (\$3.00) per acre less the amount of royalties paid during the preceding year.

#### 4.3.3 Royalty In-Kind

##### (a) Uncontracted Capacity Royalty In-Kind

Upon not less than sixty (60) days notice to the Lessee, the Lessor may require at any time or from time to time that, for a period of not less than thirty (30) days, payment of all royalties accruing to the Lessor under Section 4.3.1 attributable to Project Capacity and not subject to a sales agreement with a term of greater than thirty (30) days (Uncontracted Capacity) be made in-kind (i.e. Electricity) or in cash. If the Lessor provides such indication to receive payment in-kind, the Lessor shall be responsible for complying with all ERCOT protocols (physical and financial) associated with receipt of such in-kind payment.

##### (b) Contracted Capacity Royalty In Kind

Prior to entering into any agreement with a term of greater than

thirty (30) days pursuant to which the Lessee anticipates receiving payment for Electricity Products (Contracted Capacity), the Lessee shall notify the Lessor as to the anticipated payment terms of such agreement. Within ten (10) days of the Lessee's notice, the Lessor may submit an indication to the Lessee requiring that, for the duration of such agreement, payment of all royalties otherwise accruing to the Lessor under Section 4.3.1 attributable to the portion of the Project Capacity subject to sales agreements be made in-kind. If the Lessor provides no such indication, the Lessee shall remit royalties accruing to the Lessor under Section 4.3.1 in cash. If the Lessor provides such indication to receive payment in-kind, the Lessor shall be responsible for complying with all ERCOT protocols (physical and financial) from the point at which the Project is interconnected with the ERCOT grid.

#### 4.3.4 Royalty Payments

##### (a) Production Royalty

Production Royalty payments shall be due and must be received by the Lessor on a monthly basis on or before the fifth (5<sup>th</sup>) day of the second month succeeding the month of production. Production Royalty Payments will be pro-rated to the nearest month for any partial calendar quarter.

##### (b) Minimum Annual Royalty

In the event that the Minimum Annual Royalty is greater than the aggregate Production Royalty paid over a calendar year, the Lessee shall pay the Lessor the positive difference, if any, on or before the fifth (5<sup>th</sup>) day of the second (2<sup>nd</sup>) month that follows the end of the fourth (4<sup>th</sup>) calendar quarter of any given calendar year. Minimum Annual Royalty payments will be pro-rated to the nearest month for any partial calendar year.

**Note: Upon payment of any royalties, the Lessee shall submit an affidavit as required per Section 5.3 of this Lease,**

#### 4.3.5 Past-Due Royalties

If the Lessee pays its royalty within thirty (30) days after the royalty payment was due, then Lessee owes a penalty of 5% on the royalty or \$25.00, whichever is greater. A royalty payment which is over thirty (30) days late shall accrue a penalty of 10% of the royalty due or \$25.00,

whichever is greater. In addition to a penalty, royalties shall accrue interest at a rate of 12% per year; such interest will begin accruing when the royalty is sixty (60) days overdue. Affidavits and supporting documents which are not filed when due shall incur a penalty in an amount set by the GLO administrative rules that are effective on the date when the affidavits or supporting documents were due. The Lessee shall bear all responsibility for paying or causing royalties to be paid as prescribed by the due date provided in this Lease. Payment of the delinquency penalty shall in no way operate to prohibit the State's right of forfeiture as provided by law nor act to postpone the date on which royalties were originally due. The above penalty provisions shall not apply in cases of title dispute as to the State's portion of the royalty or to that portion of the royalty in dispute as to fair market value.

#### **4.4 Removal of Equipment**

Upon the termination of this Lease for any cause, the Lessee shall not, in any event, be permitted to remove the casing or any part of the equipment from any producing, inoperable, or abandoned well without the written consent of the Commissioner of the GLO or his authorized representative; nor shall the Lessee, without the written consent of the Commissioner or his authorized representative, remove from the Leased Premises the casing or any other equipment, material, machinery, appliances, or property owned by the Lessee or used by the Lessee in the development and production of Geothermal Energy until all wells have been plugged and the surface is restored to its pre-lease condition and all structures, broken or discarded lumber, machinery, or debris shall have been removed from the Leased Premises to the satisfaction of the Commissioner or his authorized representative.

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## ARTICLE V: REPORTS

### 5.1 Production Plan

Prior to initiating, altering substantially, or adding new any production related activities on the Leased Premises, the Lessee shall submit a Production Plan to the Lessor for review and approval. The Production Plan must be consistent with the applicable Coastal Management Program (CMP) goals and policies as outlined in Title 31, Section 505.30 of the Texas Administrative Code, as applicable at the time. The Lessee's failure to submit a Production Plan prior to the end of the Primary Term shall terminate the Lease. The Lessor has ninety (90) days to either approve the Lessee's Production Plan or reject the Production Plan. If the Lessor rejects the Lessee's Production Plan, it must do so in writing and include a detailed explanation as to why the Production Plan was rejected. Upon receipt of the Lessor's notice of rejection, the Lessee has thirty (30) days to submit a revised Production Plan, or the Lease shall terminate. The Lessor's failure to approve or reject the Production Plan within the allotted ninety (90) days shall constitute approval of the Production Plan. The Lessee's Production Plan, at a minimum, shall include the following:

#### 5.1.1 Administrative information

The names and mailing addresses of the Lessee's primary Production Plan supervisors and operators; the names and mailing addresses of any company providing project services to the Lessee and the name of each company's contact person; and any other contract operators who will be involved in the Project.

#### 5.1.2 Schedule

A projected schedule and discussion of proposed production activities to be conducted in sufficient detail that the Lessor may be aware of what activities will be conducted, when they will be conducted, and where they will be conducted. The Lessee shall in good faith make every commercially reasonable effort to work expeditiously and stay within this schedule.

#### 5.1.3 Analysis of Market Potential

Documentation of the Lessee's marketing activities and the interest of any municipal providers that may be potential purchasers of Products.

#### 5.1.4 Improvements

Maps and other information sufficient to locate proposed areas of



construction and/or production and the placement of all Improvements. Topographic maps should show the approximate location and size of any surface area that may be disturbed with the placement of proposed Improvements. A detailed description of the Improvements, materials, and procedures the Lessee intends to use.

#### **5.1.5 Development Strategy**

The Lessee's strategy for developing the Geothermal Energy, including, but not limited to, the number of wells to be drilled; the depth of each well; the casing and cementing program; well pad layout and design; a description of existing and planned access roads, a description of any ancillary facilities; the source of drill pad and road building material; the water source; a statement describing surface ownership; a description of procedures to protect the environment and other resources; plans for surface reclamation; the potential Project Capacity; the type and manufacturer of the Improvements; the location of the Improvements within the Leased Premises; the reasonable amount of Retained Acreage required by the Improvements collectively; and any other information that the GLO may require.

### **5.2 Contracts**

Within thirty (30) days after entering or making contracts under which Products are sold, the Lessee shall furnish the Lessor with notice of such contracts and all subsequent amendments to those contracts. All contracts and records pertaining to the production and disposition of Products produced on the Leased Premises shall, at all times, be subject to inspection and examination by the Commissioner, the Attorney General, the State Auditor, the Governor, or any one of their representatives, in each case, of the State of Texas. The foregoing shall, to the extent allowed by law, remain confidential so as to protect the commercial interests of all relevant parties.

### **5.3 Affidavit**

Upon payment of any royalties, as specified in Section 4.3 of this Lease, the Lessee shall submit an affidavit of the owner, manager, or other authorized agent, completed in the form and manner prescribed by the GLO and showing the gross amount and disposition of all Products produced from the Geothermal Energy on the Leased Premises and the market value of such Products, together with a copy of all documents, records, or reports confirming the gross production, disposition, and market value including meter readings, utility invoices, receipts, and other checks or memoranda of the amount produced and sold or used, and any other reports or records that the GLO may require to verify the gross production, disposition, and market value.

#### **5.4 Drilling Records**

Written notice of all operations on the Leased Premises shall be submitted to the Commissioner of the GLO by the Lessee five (5) days before spud date, workover, re-entry, temporary abandonment, or plug and abandonment of any well. Such written notice to the GLO shall include copies of Railroad Commission forms for application to drill. Copies of well tests, completion reports, and plugging reports shall be supplied to the GLO at the time they are filed with the Texas Railroad Commission. The Lessee shall supply the GLO with any records, memoranda, accounts, reports, cuttings and cores, or other information relative to the operation of the Leased Premises, which may be requested by the GLO, in addition to those herein expressly provided for. The Lessee shall have an electrical and/or radioactivity survey made on the bore-hole section, from the base of the surface casing to the total depth of well, of all wells drilled on the above described premises and shall transmit a true copy of the log of each survey on each well to the GLO within fifteen (15) days after the making of said survey.

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## ARTICLE VI: DEFAULT

### 6.1 Events of Default

With respect to the Lessee, subject to Section 6.2, it shall be an Event of Default hereunder if:

- (a) The Lessee commits a material breach of this Lease;
- (b) The Lessee fails or refuses to make payment to the Lessor of any consideration required by this Lease after it becomes due;
- (c) The Lessee or an authorized agent should knowingly make any false return or false report concerning production of Geothermal Energy, Electricity, or any other Product;
- (d) The Lessee fails to file reports in the manner required by this Lease;
- (e) The Lessee fails to materially comply with rules and regulations in the Texas Administrative Code, the Texas Natural Resources Code, or any other rules or regulations promulgated by the GLO, the Board, or any other state or federal governmental entity with proper jurisdiction over any of the uses permitted under this Lease;
- (f) As required in Section 7.15 of this Lease, if the Lessee should refuse the proper authority access to the records pertaining to the operations;
- (g) The Lessee or an authorized agent should knowingly fail or refuse to give correct information to the proper authority, or knowingly fail or refuse to furnish Lessor with an affidavit, as definitively described in Section 5.3;
- (h) The occurrence of any Insolvency Event, whether voluntary or involuntary;
- (i) After the Primary Term, the Lessee ceases Commercial Production of Electricity for reasons other than Force Majeure for any continuous period in excess of six (6) months, notwithstanding Section 3.2(c); or
- (j) The Lessee fails to work diligently to eliminate any Force Majeure Condition.

With respect to Lessor, subject to Section 6.2, it shall be an Event of Default hereunder if:

- (a) The Lessor commits a material breach of this Lease; or

- (b) The Lessor fails to provide or allow access by the Lessee to the Leased Premises at any time during the term of the contract or otherwise materially interferes with the Lessee's exercise of its rights under this Lease.

## **6.2 Notice and Cure**

There shall be no Event of Default under this Lease unless the defaulting party receives written notice of the Event of Default, and such Event of Default continues for a period of thirty (30) days after the defaulting party receives the notice. A notice of Event of Default shall specify the event or events constituting the default. No Event of Default shall be deemed to exist where the act, event, or condition is one that by its nature or circumstances reasonably requires more than thirty (30) days to cure, provided, however, that the defaulting party promptly and in good faith initiates and diligently pursues measures that may reasonably be expected to have cured or eliminated the Event of Default. If either party fails to cure an Event of Default, the non-defaulting party shall be entitled to terminate this Lease by written notice. Notwithstanding the preceding, this Section 6.2 does not apply to Section 6.1(i); as such an event is automatically an Event of Default.

## **6.3 Winding Up**

In the event of termination of this Lease, an Event of Default, or at the end of the term of this Lease, the Lessee shall perform the winding up tasks specified in this section. The Lessee agrees that the provisions of this section shall survive termination of this Lease.

- (a) The Lessee and the Lessor shall account for, and properly present to each other, all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set-off under this Lease; and
- (b) The Lessee shall restore the surface of the Leased Premises and remove any Improvements on the Leased Premises in accordance with Section 4.4.

## **6.4 Cumulative Rights and Remedies; No Waiver**

A right or remedy conferred by this Lease upon or reserved by this Lease to either the Lessee or the Lessor is not intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this Lease, or now or hereafter legally existing upon the occurrence of an Event of Default hereunder. The failure of either the Lessee or the Lessor to insist at any time upon the strict observance or performance of any of the provisions of this Lease or to exercise any right or remedy as provided in this Lease shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof with respect to subsequent defaults. Every right and remedy given by this Lease to the Lessee or Lessor may

be exercised from time-to-time and as often as may be deemed expedient by the Lessee or Lessor, as the case may be.

## **6.5 Forfeiture**

If the Lessee fails to cure an Event of Default, the rights acquired under this Lease shall be subject to forfeiture by the Commissioner. If forfeited, the Leased Premises shall again be subject to Lease to the highest bidder, under the same regulations controlling the original sale of leases. However, nothing in this Lease shall be construed as waiving the automatic termination of this Lease by operation of law or by reason of any special limitation arising hereunder. Forfeitures may be set aside, and this Lease and all rights thereunder reinstated before the rights of another intervene upon satisfactory evidence to the Commissioner of future compliance with the provisions of the law and of this Lease and the rules and regulations that may be adopted relative hereto.

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## **ARTICLE VII: GENERAL TERMS, CONDITIONS, AND EXCEPTIONS**

### **7.1 Assignment**

This Lease may not be assigned, nor the Leased Premises subleased, without the prior written consent of the Lessor, which consent shall not be unreasonably withheld. A change in ownership in the Lessee's business entity of thirty percent (30%) or more shall be deemed an assignment subject to reasonable approval by the Lessor. The preceding notwithstanding, the Lessee may subcontract for some or all of the services or work to be performed on the Leased Premises. The Lessee shall legally bind any such subcontractors to perform and make such subcontractors comply with all applicable certifications, duties, requirements, and obligations of the Lessee as specified in this Lease. Nothing in this Lease shall be construed to relieve the Lessee of the responsibility for ensuring that the services and work rendered comply with all the terms and provisions of this Lease. Upon request by the Lessor, and subject to Section 7.7, the Lessee will provide the Lessor the opportunity to review, inspect, and examine any subcontracts and all amendments, cancellations, or terminations to such subcontracts, which at a minimum shall include the identity of the subcontractor, the scope of its work on the Project, and the projected schedule under which it will be working.

### **7.2 Indemnity**

The lessee shall indemnify and hold harmless the Lessor; the GLO; and the Lessor's and the GLO's officers, agents, and employees from all liability and damages for any and all injuries or damages sustained by any person or property as a consequence of any negligence in the performance of the services referenced in this lease and from any claims or amounts arising or recoverable under both federal and state workers' compensation laws, Texas Tort Claims Act (Chapter 101, Tex. Civ. Prac. and Rem. Code), or any other such laws. The Lessee shall further indemnify and be responsible for all damages or injury to property of any character occurring and prosecution of claims resulting from any act, omission, neglect, or misconduct of Lessee, Lessee's agents, or Lessee's employees, in the manner or method of execution of the services herein to be performed; from failure to properly perform the services; from defective work or materials; or from breach of any representation or warranty in this Lease. These requirements shall survive the term of this Lease until all claims have been settled or resolved and suitable evidence to that effect has been furnished to the Lessor.

### **7.3 Commercial General Liability Insurance**

Prior to entering the Leased Premises, the Lessee shall acquire insurance and/or bonds, with financially sound and reputable independent insurers licensed by the Texas Department of Insurance, in the type, amount, and under the conditions listed in Attachment B for the duration of this Lease. Furthermore, the Lessee agrees to provide to the Lessor, annually, certificates of insurance for all

insurance policies obtained by the Lessee under the terms of this Lease, including a schedule of coverage (or "underwriter's schedules") establishing to the satisfaction of the Lessor the nature and extent of coverage granted by each such policy. In the event that following any audit by the Lessor any such policies are found to be deficient to comply with the terms of this Lease, the Lessee will provide such additional policies as the Lessor may reasonably request or that are required by law or regulation.

#### **7.4 Condition of Leased Premises**

Except as otherwise provided in this Lease, the Leased Premises are to remain in their current topographical and hydrologic condition during the term of the Lease. The Lessee is specifically prohibited from modifying the Leased Premises in any manner not authorized in this Lease and from using, or allowing the use by others, of the Leased Premises for any other purpose.

#### **7.5 Protection of Natural and Historical Resources**

##### **7.5.1 Pollution**

The Lessee shall take no action on the Leased Premises that will result in the discharge of any solid or liquid material. The Lessee shall use the highest degree of care and all appropriate safeguards to:

- (a) Prevent pollution of air, ground, and water in and around the Leased Premises, and
- (b) To protect and preserve natural resources and wildlife habitat.

The Lessee shall comply with all applicable rules and regulations of the GLO and other governmental agencies responsible for the protection and preservation of public lands and waters. In the event of pollution, or an incident that may result in pollution of the Leased Premises or adjacent property, which is the result of the Lessee's (or the Lessee's employees, contractors, invitees, and agents) acts or omissions, the Lessee shall immediately notify the Lessor, use all means reasonably available to recapture any pollutants that have escaped or may escape, and mitigate for any and all natural resources damages caused thereby. Without limiting the foregoing, pollution of coastal wetlands, natural waterways, rivers, and impounded water shall be prevented by the use of containment facilities sufficient to prevent spillage, seepage, or ground water contamination. No discharge of solid waste or garbage shall be allowed into state waters from any construction or support vessels, platforms, crew or supply boat, barge, or other equipment on the Leased Premises. Solid waste includes, but is not limited to, containers, equipment, rubbish, plastic, glass, or any other man-made non-biodegradable items. A sign must be displayed in a high

traffic area on all vessels and platforms stating, "Discharge of any solid waste or garbage into State Waters from vessels or platforms is strictly prohibited and may subject a State of Texas Lease to forfeiture." Such statement shall be in lettering at least 1" in size.

#### **7.5.2 Natural Historical Preservation Act and Antiquities Code of Texas**

**The Lessee is expressly placed on notice of the National Historical Preservation Act of 1966, (PB-89-66, 80 Statute 915; §470) and the Antiquities Code of Texas, Chapter 191, Tex. Nat. Res. Code Ann. In the event that any site, object, location, artifact, or other feature of archeological, scientific, educational, cultural, or historic interest is encountered during any activity on the Leased Premises, the Lessee will immediately cease such activities and will immediately notify the Lessor and the Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711, so that adequate measures may be undertaken to protect or recover such discoveries or findings, as appropriate.**

#### **7.6 Ownership of Improvements**

The Lessee shall own any and all right, title, and interest in and to all Improvements on the Leased Premises. The Lessor, however, reserves the right to receive an assignment at the end of the term of the Lease to all or any portion of any Improvements.

#### **7.7 Confidentiality**

The Lessor shall keep confidential all information, in whatever form produced, prepared, observed, or received by the Lessor, to the extent that such information is: (a) confidential by law; (b) marked or designated "confidential" (or words to that effect); or (c) information that the Lessor is otherwise required to keep confidential by this Lease for a period of no less than twenty four (24) months from the delivery of such reports, information, and relevant data, unless otherwise specified. The Lessor may contract with third parties, at its sole cost and expense, to undertake action or review confidential information provided by the Lessee under this Lease; provided, however, that prior to disclosing information to any such party (i) the Lessor shall provide the Lessee with 14-days written notice of the scope and purpose of such disclosure, and (ii) the Lessor shall obtain from any such party a written agreement to maintain any information shared as confidential in form and substance satisfactory to the Lessee, whose approval shall not be unreasonably withheld. Upon the expiration of this twenty-four (24) month period, the aforementioned confidential information shall become public domain, and the Lessor shall retain all reports and similar work product delivered to it by the Lessee during the entire term of the Lease.

#### **7.8 Public Records**



Pursuant to Chapter 552 of the Texas Government Code, the "Texas Public Information Act" (Act), information or documents received from the Lessee may be open to public inspection and copying. The Lessor will have the duty to disclose unless a particular record is made confidential by law or is exempted from the Act. The Lessee may clearly label individual documents as a "trade secret" provided that the Lessee thereby agrees to indemnify and defend the Lessor for honoring such a designation. The failure to so label any document that is released by the Lessee shall constitute a complete waiver of any and all claims for damages caused by any release of the records. If a public records request for a labeled document is received by the Lessor, the Lessor will notify the Lessee of the request in accordance with the Act.

## **7.9 Compliance with Other Laws**

The Lessee, at its own expense, will comply with all federal, state, municipal, and other laws, codes, ordinances, rules, and regulations applicable to the Leased Premises. The Lessee will likewise install, remove, and alter such fixtures, equipment, and facilities in, and make such alterations to, the Leased Premises as may be necessary so to comply with such laws, codes, ordinances, rules, and regulations. Finally, the Lessee will comply with such generally applicable regulations as the State of Texas may promulgate, regarding sanitation, cleanliness, and other health and/or environmental matters. The Lessee will not make any unlawful use of the Leased Premises or permit any unlawful use thereof.

The Lessee shall not allow the presence on or within the Leased Premises of any Hazardous Substance in any manner that violates Laws and Regulations. The Lessee shall not allow any Hazardous Substances to migrate off the Leased Premises or the release of any Hazardous Substances into adjacent surface waters, soils, underground waters, or air in violation of Laws and Regulations. To the extent applicable, Lessee shall provide Lessor with Lessee's USEPA Waste Generator Number and with copies of all Material Safety Data Sheets, Generator Annual Dangerous Waste Reports, environmentally related regulatory permits or approvals (including revisions or renewals), and any correspondence Lessee receives from, or provides to, any governmental unit or agency in connection with Lessee's handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance on the Leased Premises.

If the Lessee violates any Law or Regulation concerning the presence, use, handling, or storage of Hazardous Substances at, or affecting, the Leased Premises, the Lessee shall promptly take whatever action is necessary to determine the type or extent of the release, to mitigate and to correct the violation. If the Lessee does not act in a prudent and prompt manner, the Lessor may, but is not obligated to, come onto the Leased Premises, act in place of the Lessee and take such action as the Lessor deems necessary to ensure compliance with such

Law or Regulation or to mitigate any violation thereof. If the Lessor reasonably believes that the Lessee is in violation of any Law or Regulation, or that the Lessee's actions or inactions present a threat of violation of any Law or Regulation or a threat of damage to the Leased Premises, the Lessor, after presenting the Lessee with the required notice and opportunity to cure, may enter the Leased Premises and take such corrective or mitigating action as the Lessor deems necessary. All direct costs and actual expenses incurred by the Lessor in connection with any such actions shall become immediately due and payable by the Lessee upon presentation of an invoice.

The Lessor shall have access to the Leased Premises to conduct, at its own discretion, an annual environmental inspection. In addition, the Lessee shall permit the Lessor access to the Leased Premises at any time upon reasonable notice for the purpose of conducting environmental testing at the Lessor's expense, provided any such test does not unreasonably interfere with the business operations of the Lessee and complies with all of the Lessee's insurance and reasonable security requirements. The Lessee shall promptly inform the Lessor of the existence of any environmental study, evaluation, investigation, or results of any environmental testing conducted on the Leased Premises whenever the same becomes known to the Lessee and shall provide copies thereof to the Lessor.

Prior to vacating the Leased Premises, in addition to all other requirements under this Lease, the Lessee shall remove any Hazardous Substances placed on the Leased Premises by the Lessee, its invitees, or licensees during all the terms of this Lease or during the Lessee's possession or use of the Leased Premises and shall demonstrate such removal to the Lessor's reasonable satisfaction.

No remedy provided herein shall be deemed to be exclusive. In addition to any remedy provided in this Section, the Lessor shall be entitled to full reimbursement from the Lessee whenever the Lessor incurs any costs resulting from the Lessee's use or management or sufferance of Hazardous Substances on the Leased Premises, including but not limited to, costs of clean-up or other remedial activities, fines, or penalties assessed directly against the Lessor or the Leased Premises and payments relating to injuries to third persons or other properties.

The obligations of the Lessee under this Section shall survive any termination of this Lease.

#### **7.10 Governing Law and Venue**

This Lease and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Lease shall be in a court of competent jurisdiction in Travis County, Texas. The Lessee irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens that it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Lease or any document related hereto. Nothing contained in this lease shall be construed as a waiver of sovereign immunity of the State.

#### **7.11 Severability**

If any provision contained in this Lease is held to be unenforceable by a court of law or equity, this Lease shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Lease unenforceable.

#### **7.12 Entire Lease and Modification**

This Lease and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Lease specifically displays a mutual intent to amend a particular part of this Lease, general conflicts in language between any such attachment and this Lease shall be construed consistently with the terms of this Lease. Unless otherwise expressly authorized by the terms of this Lease, no modification, renewal, extension, or amendment to this Lease shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

#### **7.13 Lease Filing**

Pursuant to Chapter 9 of the Tex. Bus. & Com. Code, a memorandum of this Lease must be filed of record in the office of the County Clerk in any county in which all or any part of the Leased Premises are located, and certified copies thereof must be filed in the GLO. The Lease must be signed and acknowledged by the Lessee before it is filed of record in the county records and in the GLO.

#### **7.14 Waiver of Privilege**

The Lessee and the Lessor agree that any applicable attorney-client or other legal privilege shall not be deemed waived by this Lease.

#### **7.15 Audit**

The Lessee shall keep true, accurate, and complete books, records, accounts, contracts, and data (collectively "Records") sufficient to support and verify the calculation of royalties owed under this Lease. All records pertaining to the production and disposition of Products produced on the Leased Premises shall, at all times, be subject to inspection and examination by the Commissioner, the Texas Attorney General, the Texas State Auditor, the Governor, or any one of their representatives, in each case, of the State of Texas, upon advanced written notice to the Lessee. Any audit or inquiry conducted pursuant to this Section shall be at the sole expense of the Lessor and shall be conducted during normal business hours at the Lessee's office or such other place as designated by the Lessee. Acceptance of any payments by the Lessor shall not prejudice the right of the Lessor to protest or question the correctness thereof.

#### **7.16 Dispute Resolution**

The dispute resolution process provided for in Section 68.27 of Title 1, Part 3 of the Texas Administrative Code must be used by the parties, to the extent possible, to attempt to resolve any disputes arising under this Lease. This provision shall not apply to any matter with respect to which either party may make a decision within its respective sole discretion. In the event the parties fail to resolve any dispute under this provision, then either party shall have the right to utilize any other remedy available at law or equity. If the dispute involves a good faith issue as to whether the Lease may be terminated, the party claiming the right to terminate shall not be allowed to terminate until the conclusion of the dispute resolution process described above or for one hundred twenty (120) days, whichever is earlier.

#### **7.17 Public Disclosure**

Entering into this Lease should not in any matter be construed as an endorsement of the viability or potential success of the Lessee or its business ventures. Without prior written consent of the Lessor, the Lessee will not issue a press release or hold a press conference, advertise that it is doing business with the Lessor, or publicize this Lease as a marketing or sales tool.

#### **7.18 Contact Information**

Any notices or Reports which may or shall be given under the terms of this Lease shall be in writing and shall be either delivered by hand, by facsimile, or sent by United States first class mail, adequate postage prepaid, to the specific persons listed below. Any party's address may be changed from time-to-time by such party by giving notice as provided above. No change of address of either party shall be binding on the other party until notice of such change of address is given

as herein provided. The Lessee is responsible for updating the Lender's information. Any notice requirements in this Lease to the Lender shall be deemed satisfied if such notice is sent to the last known address as listed in this Section. The provisions of this Section are inapplicable in the event of automatic termination of the Lease.

#### 7.18.1 Lessor's Contact Information

Name: Texas General Land Office  
Title: Renewable Energy  
Address: 1700 N. Congress Ave.  
Address: Austin, Texas 78701  
Phone: (512) 463-5028  
Fax: (512) 463-9211

#### 7.18.2 Lessee's Contact Information

Name:  
Address:  
Address:

#### 7.19 Further Assurance

Each party hereto shall from time-to-time, do and perform such further acts and execute and deliver such further instruments, assignments, and documents as may be required or reasonably requested by any other party to establish, maintain, or protect the respective rights and remedies of the parties hereto and carry out and effect the intentions and purposes of this Lease, including taking such steps as may be required to ensure that any Project located on the Leased Premises shall be certified by the Public Utility Commission under 16 Texas Administrative Code §25.173.

#### 7.20 Inspection and Data Gathering Equipment

The Lessee shall provide the Lessor access to the Improvements for purposes of inspecting the same. Inspection shall be conducted at the Lessor's sole expense and must not interfere with the Lessee's operations.

Subject to prior coordination between the Lessor and the Lessee, the Lessor shall also have the right to install data gathering equipment on the Improvements. The data gathering equipment must be installed and maintained at the Lessor's sole cost and expense and must not interfere with the Lessee's operations.

## **7.21 Force Majeure**

Should the Lessee be prevented from complying with any express or implied covenant of this Lease, from conducting drilling operations, or from producing Geothermal Energy, after effort made in good faith, by reason of war, rebellion, riots, strikes, fires, acts of God or any order, rule or regulation of governmental authority, then while so prevented, the Lessee's obligation to comply with such covenant shall be suspended upon proper and satisfactory proof presented to the Commissioner of the GLO in support of the Lessee's contention, and the Lessee shall not be liable for damages for failure to comply therewith (except in the event of Lease operations suspended as provided in the rules and regulations adopted by the Board); and this Lease shall be extended while and so long as the Lessee is prevented, by any such cause, from drilling, reworking operations or producing Geothermal Energy from the Leased Premises; provided, however, that nothing in this Lease shall be construed to suspend the payment of rentals during the Primary Term, nor to abridge the Lessee's right to a suspension under any applicable statute of this State.

## **7.22 Lease Security**

The Lessee shall take the highest degree of care and all proper safeguards to protect the Leased Premises and to prevent theft of Geothermal Energy or any Product produced from the Leased Premises. This includes, but is not limited to, the installation of all necessary equipment, seals, locks, or other appropriate protective devices on or at all access points at the Lease's production, gathering, and storage systems where theft of Geothermal Energy or Products can occur. The Lessee shall be liable for the loss of any Geothermal Energy or Products resulting from theft and shall pay the State of Texas royalties thereon as provided herein on all Geothermal Energy or Products lost by reason of theft.

## **7.23 Releases**

The Lessee may relinquish the rights granted under this Lease to the State at any time by recording the relinquishment in the county where this area is situated and filing the recorded relinquishment or certified copy of same in the GLO within ninety (90) days after its execution accompanied by the filing fee prescribed by the GLO rules in effect on the date of receipt by the GLO of such relinquishment or certified copy thereof. Such relinquishment will not have the effect of releasing the Lessee from any liability theretofore accrued in favor of the State.

## **7.24 Identification Markers**

The Lessee shall erect, at a distance not to exceed twenty-five (25) feet from each well on the Leased Premises, a legible sign on which shall be stated the name of the operator, the lease designation, and the well number. Where two or more wells on the same lease or where wells on two or more leases are connected to the

same tank battery, whether by individual flow line connections direct to the tank or tanks or by use of a multiple header system, each line between each well and such tank or header shall be legibly identified at all times, either by a firmly attached tag or plate or an identification properly painted on such line at a distance not to exceed three (3) feet from such tank or header connection. Said signs, tags, plates, or other identification markers shall be maintained in a legible condition throughout the term of this Lease.

#### **7.25 Lien**

The State shall have a first lien upon all Products produced from the Leased Premises to secure payment of all unpaid royalty and other sums of money that may become due under this Lease. By acceptance of this Lease, Lessee grants the State, an express contractual lien on and security interest in all Products in and extracted from the Leased Premises, all proceeds which may accrue to Lessee from the sale of such Products, whether such proceeds are held by Lessee or by a third party, and all Improvements to the Leased Premises used in connection with the production or processing of such Products in order to secure the payment of all royalties or other amounts due or to become due under this Lease and to secure payment of any damages or loss that Lessor may suffer by reason of Lessee's breach of any covenant or condition of this Lease, whether express or implied. This lien and security interest may be foreclosed with or without court proceedings in the manner provided in the Title 1, Chapter 9 of the Texas Business and Commerce Code. The Lessee agrees that the Commissioner may require the Lessee to execute and record such instruments as may be reasonably necessary to acknowledge, attach, or perfect this lien. The Lessee represents that there are no prior or superior liens arising from and relating to the Lessee's activities upon the Leased Premises or from the Lessee's acquisition of this Lease. Should the Commissioner at any time determine that this representation is not true, then the Commissioner may declare this Lease forfeited as provided herein.

**ACKNOWLEDGED, AGREED AND ACCEPTED:**  
**LESSEE:**

\_\_\_\_\_  
**LESSEE**  
**BY:** \_\_\_\_\_  
**TITLE:** \_\_\_\_\_  
**DATE:** \_\_\_\_\_

IN TESTIMONY WHEREOF, witness the signature of the Commissioner of the General Land Office, under the seal of the General Land Office, effective as of the \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
**JERRY E. PATTERSON**  
**COMMISSIONER, GENERAL LAND OFFICE**  
**APPROVED**

Contents \_\_\_\_\_  
Legal \_\_\_\_\_  
DC \_\_\_\_\_  
Exec \_\_\_\_\_

**(CORPORATION ACKNOWLEDGMENT)**

**STATE OF** \_\_\_\_\_  
**COUNTY OF** \_\_\_\_\_

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_ known to me to be the person whose name is subscribed to the foregoing instrument, as \_\_\_\_\_ of \_\_\_\_\_ and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity stated, and as the act and deed of said corporation.

Given under my hand and seal of office this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for \_\_\_\_\_

**(INDIVIDUAL ACKNOWLEDGMENT)**

**STATE OF** \_\_\_\_\_  
**COUNTY OF** \_\_\_\_\_

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_ known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for \_\_\_\_\_



## **ATTACHMENT A: LEASED PREMISES**

Tract 667 – Long Island, Port Isabel South East Gas Field (620 Acres)

Tract 751 – Long Island/Laguna Madre (640 Acres)

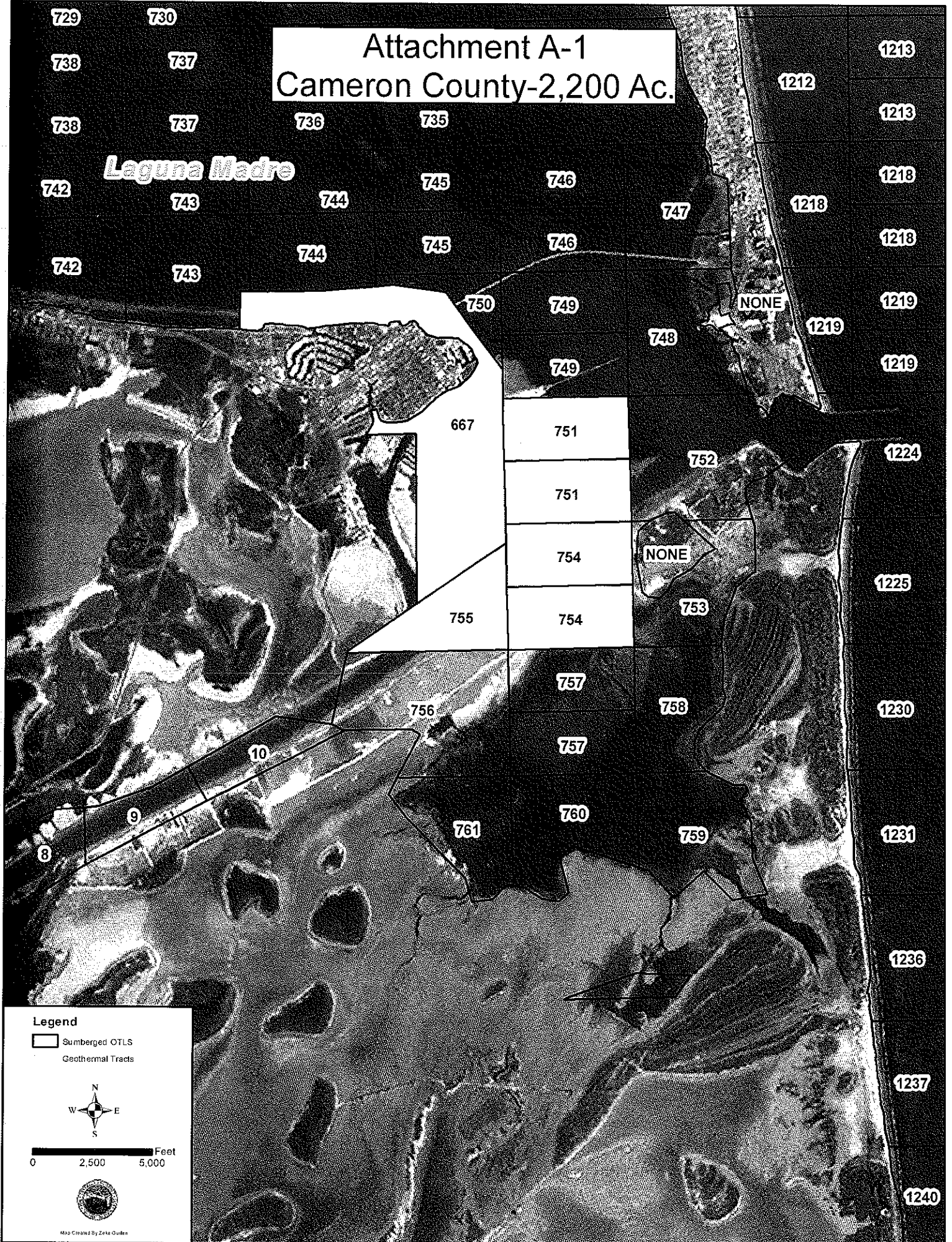
Tract 754 – Long Island/Laguna Madre/Brownsville Navigation District (640 Acres)

Tract 755 – Long Island/Laguna Madre/Brownsville Navigation District (300 Acres)

As shown on the Official Submerged Area Map 2697-112, as filed in the Texas General Land Office.

# Attachment A-1 Cameron County-2,200 Ac.

*Laguna Madre*



## **ATTACHMENT B: REQUIRED INSURANCE**

### **Required Insurance**

Generally. Unless expressly waived in writing by the Lessor, the Lessee, as an independent contractor, must carry policies of insurance and/or bonds in amounts specified in this Attachment and pay all premiums, taxes, and fees incident thereto. The Lessee shall, at its sole expense, acquire, maintain, and keep in force for the duration of this Lease, insurance in the amounts listed below and under the requirements specified herein. Furthermore, unless specified or otherwise agreed to by the Lessor, the required insurance shall be in effect prior to the commencement of work by the Lessee and shall continue in full force until the earlier as appropriate of (i) the expiration of this Lease; or (ii) such time as the Lessor notifies the Lessee that such insurance is no longer required. Any insurance or self-insurance available to the Lessor shall be in excess of and non-contributing with, any insurance required from the Lessee. The Lessee's insurance policies shall apply on a primary basis. If, at any time during the Lease, an insurer or surety shall fail to provide insurance to the Lessee or otherwise fails to comply with the requirements of this Lease, the Lessee shall immediately notify the Lessor as soon it has knowledge of any such failure, and shall immediately replace such insurance or bond with an insurer meeting such requirements.

#### **Specific Coverage:**

<b>Required Type of Coverage</b>	<b>Limits Required (in dollars)</b>
<b>Workers Compensation</b>	<b>Statutory</b>
<b>General Liability</b>	<b>1,000,000 per occurrence</b>
<b>Comprehensive Auto</b>	<b>1,000,000 per occurrence</b>
<b>Officers and Director's Liability</b>	<b>Reasonable Limits TBD</b>
<b>Maritime (Longshoreman's Act)</b>	<b>Reasonable Limits TBD</b>
<b>Environmental Pollution</b>	<b>Reasonable Limits TBD</b>

#### **Additional Requirements.**

##### Approval.

Insurance must be submitted for review and approval by the Lessor prior to the

commencement of work. Any failure of the Lessor to timely approve or failure to disapprove the insurance furnished by the Lessee shall not relieve the Lessee of the Lessee's full responsibility to provide the insurance required by this Lease.

Continuing Coverage. The Lessor's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent to this Lease.

Renewal. The Lessee shall provide the Lessor with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance.

Additional Insured Endorsement. The Lessor, its officers, employees, and authorized agents shall be named as additional insured's for all liability arising under this Lease except on Workers' Compensation and Professional Liability policies. An original additional insured endorsement signed by an authorized insurance company representative must be submitted to the Lessor to evidence the endorsement of the Lessor as an additional insured on all policies.

Subrogation. Each liability insurance policy, except Professional Liability and Workers' Compensation, shall provide for a waiver of subrogation as to all additional insured's, and shall be issued by insurance companies authorized to do business in the State of Texas, and currently rated by A.M. Best as "A-" or better.

Policy Cancellation Endorsement. Except for ten (10) days' notice for non-payment of premium, each insurance policy shall be endorsed to specify that without thirty (30) days' prior written notice to the Lessor, the policy shall not be canceled, non-renewed, or coverage and/or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mail to the address specified in Section 7.18.1 of this Lease. A copy of this signed endorsement must be attached to this Lease.

Alternative Insurability. Notwithstanding the requirements of this Attachment, the Lessor reserves the right to consider reasonable alternative methods of insuring the contract in lieu of the insurance policies and/or bonds required. It will be the Lessee's responsibility to recommend to the Lessor alternative methods of insuring the Lease. Any alternatives proposed by the Lessee should be accompanied by a detailed explanation regarding the Lessee's inability to obtain insurance coverage as described in this Lease. The Lessor shall be the sole and final judge as to the adequacy of any substitute form of insurance coverage.